

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-001499

RECEIVED

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S.C. SUPREME COURT

WILLIAM O. DICKERSON PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX
VOLUME 1 OF 22

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

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RESPONDENT,

V.

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 06-GS-10-2981 et al
	)	
William O. Dickerson,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on April 3, 2009, before The Honorable R. Markley Dennis, in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Scarlett Wilson, Solicitor
Bruce Durant, Assistant Solicitor
Rutledge Durant, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
Appearing for State of South Carolina

Jeffrey Bloom, Esq.
Drew Carroll, Esq.
Appearing for Defendant

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1 THE COURT: Good morning, everyone.

2 Mr. Dickerson, good morning, sir.

3 We have had a status conference and let
4 me disclose -- I indicated to them that my
5 family doctor has me on Prednisone. I was
6 thinking about it -- it sort of makes me antsy.
7 I've never taken steroids. However, I don't
8 believe that it affects my cognitive abilities
9 at all. I believe that Mr. Bloom has indicated
10 that he has had to take Prednisone.

11 MR. BLOOM: Three times a year,
12 poison ivy and the doctor always prescribes the
13 same thing. I have no qualms.

14 THE COURT: Thank you, sir.

15 SOLICITOR WILSON: We have no ---

16 MR. BLOOM: Your Honor, may I request
17 that Mr. Dickerson have his handcuffs removed?

18 THE COURT: Yes, sir. If you
19 (deputy) could accommodate that, I would
20 appreciate it.

21 I will make a statement on the record
22 as to that, too. Let the record reflect that
23 security has removed the handcuffs as requested.
24 Let me make this statement -- and, Mr.
25 Dickerson, this is not reflective of you, it's

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1 pretty much a policy and we're not challenging
2 that policy at all. I just believe that this is
3 your Hearing as well as the State's Hearing and
4 that you ought to have a full opportunity to
5 participate just as they are.

6 Having said that, let me make it clear
7 that if at any point during the proceeding there
8 seems to be a reason you need to be more
9 secured, then I won't have any qualms with -- we
10 will have a perfect proceeding.

11 DEFENDANT: Yes, sir.

12 THE COURT: I mentioned a kind of
13 batting order, persons here -- Mr. Knisley for
14 the County. I'll hear from you first.

15 MR. KNISLEY: Ed Knisley, with
16 Inspector Fields from the Sheriff's Office.
17 They are concerned -- the subpoena is part of
18 the record. Inspector Fields has prepared all
19 requested documents. We have had a
20 conversation whereby I've asked him in any
21 instance where there was any document, let's err
22 on the side of caution. I have looked at those
23 and there is nothing that we are going to
24 challenge. He's prepared an index, a synopsis,
25 which is pretty extensive.

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1 THE COURT: Why don't you share
2 that with Mr. Bloom?

3 ED KNISLEY: (Tenders).

4 THE COURT: Take a moment to review
5 it and if you see something that you believe,
6 that you are aware of that may have been
7 omitted, if you'll bring that to my attention.

8 This incident, for the court's
9 edification, what is -- what is it, just a
10 synopsis of the incident that we are talking
11 about?

12 MR. KNISLEY: They have subpoenaed
13 all of the disciplinary files on John Williams
14 and William Dickerson that involve four of the
15 disciplinary officers. Basically they want any
16 disciplinary history on any of these officers,
17 reports or documents relating to any incidents
18 or investigations that occurred in Unit 1A of
19 the Detention Center from March 1st, 2009 until
20 today, and specifically any documents related to
21 an investigation of an incident on December 7th,
22 2008, involving John Williams and William
23 Dickerson.

24 It is my understanding from reviewing
25 some of the reports that there was a charge

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1 against those individuals for assaults against
2 detention officers. I believe we have produced
3 a full report on that as well.

4 THE COURT: As I understood from your
5 earlier statement, you are not taking any issue
6 that any of that needs to be protected or
7 privileged, is that correct?

8 MR. KNISLEY: We do not, Your
9 Honor.

10 THE COURT: Mr. Bloom, are you
11 satisfied with the response?

12 MR. BLOOM: Yes, sir.

13 THE COURT: Very well.

14 MR. KNISLEY: We are prepared to
15 just hand them the documents.

16 THE COURT: Let the record reflect
17 that Mr. Knisley has handed documents which are
18 -- do you have an extra copy of the summary
19 sheet?

20 MR. KNISLEY: I believe we do.

21 THE COURT: We will make that Court's
22 Exhibit 1, which is a summary of the documents
23 provided in response to the subpoena issued.

24 (SO ENTERED AS COURT'S EXHIBIT 1)

25 MR. KNISLEY: Judge, in speaking

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1 with the Solicitor, they're requesting copies.
2 Rather than regurgitating something here, I
3 would ---

4 MR. BLOOM: We will be glad to make
5 copies through Mr. Carroll's office and make
6 sure the Solicitor gets a complete copy first
7 thing Monday.

8 THE COURT: That would be fine, no
9 problem. By Monday. Anything else on that
10 issue?

11 MR. BLOOM: Nothing further on that.

12 THE COURT: Anything else from Mr.
13 Knisley and his group?

14 MR. BLOOM: No, sir.

15 SOLICITOR WILSON: (Negative
16 gesture).

17 THE COURT: Mr. Knisley, you are
18 excused.

19 MR. KNISLEY: Thank you very much.

20 THE COURT: Before we start with
21 several of the Motions, I would like to take up,
22 so that the clerks can go back to work, I would
23 like to thank Mr. Michele and Jessica for all
24 that they have done thus far. They have been
25 really wonderful at getting this information

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1 together, working with persons calling,
2 complaints from persons who have called their
3 office. They've been extreme professionally and
4 I make that observation and say Thank You for
5 what I knew you'd do anyway, but we appreciate
6 it. Please make that known to Ms. Armstrong, as
7 well. We appreciate it. If you want to come
8 forward and just summarize what you have for us
9 this morning. Give me your full name for the
10 record. That formality.

11 JESSICA DALEY: This is a binder of
12 all the serving juror's responses and their
13 questionnaires.

14 In the blue folder is all the statutory
15 exemptions and on the outside of that is all the
16 pending ones that still need to be looked at.

17 THE COURT: This will be Court's
18 Exhibit 2. The binder will be Court's Exhibit
19 2.

20 (SO ENTERED AS COURT'S EXHIBIT 2)

21 THE COURT: Court's Exhibit 2. It
22 appears -- we will leave as a bulk Court's
23 Exhibit 2. If we need to specify certain
24 documents other than they are identified in,
25 because they are tabbed, as well, uh, we can

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1 make those 2-A. Would that be fine with
2 everybody? That way we could keep continuity
3 with that.

4 Any supplements, we can certainly make
5 those "A", "B", "C", "D" to supplement Court's
6 2, 2A, 2.

7 You have a binder for each side, as I
8 understand it?

9 JESSICA DALEY: Yes, (tenders)..

10 DON MICHELE: Minus the attachment
11 that you have, sir, there. I will give you
12 copies of the excused per your instructions.

13 THE COURT: I would like them to have
14 a copy at some point in time -- I have a binder
15 of the statutory excuses. They are a part of
16 this. They are the ones that the clerk has
17 verified are entitled to be statutorily excused.
18 I just want to make sure that at some point they
19 have those for their files.

20 DON MICHELE: We have got the
21 originals and we'll make you a copy of that.

22 THE COURT: Why don't we -- we will
23 make you all a copy which is a part of this,
24 those that are in the blue binder which are
25 excused, -- why don't we go ahead and make those

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1 Court's Exhibit 3, the excused will be Court's
2 Exhibit 3.

3 (SO ENTERED AS COURT'S EXHIBIT 3)

4 THE COURT: I will just take this
5 out, the blue binder, so that will be separate.

6 DON MICHELE: How would you
7 suggest that we do the remaining summons that
8 we are getting daily, supplement ---

9 THE COURT: Let's see, I would
10 suggest -- let's throw this out: you'all will
11 not need those -- the next time that we are
12 scheduled to be together is, when? Two weeks
13 from today? I think that Friday when the jury
14 is coming in.

15 BRUCE DURANT: Yes, sir, Friday
16 the 17th.

17 THE COURT: Right. I will need
18 those, uh, -- we are scheduled -- the next time
19 that I think we are scheduled to be together is
20 that Friday that the jury is coming in. Friday
21 the 17th, and jury is reporting at? 2:00?

22 DON MICHELE: No, sir, 9:30.

23 THE COURT: We will plan at that
24 time after the qualification to go through any
25 additional. If you could just keep those

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1 together then we will make it whatever the next
2 court's exhibit is at that point in time. We
3 will keep it with 2, make it "A". Rather than
4 doing them piecemeal, let's just do it one time
5 if that's agreeable with everyone.

6 MR. BLOOM: Certainly, Your Honor, on
7 behalf of the defendant.

8 BRUCE DURANT: That's fine.

9 THE COURT: Let's go down -- do they
10 have copies of this? They don't have copies of
11 this, right?

12 JESSICA DALEY: Of the pending ones?

13 THE COURT: Yes.

14 JESSICA DALEY: Yes, they do have
15 copies of the pending one.

16 THE COURT: Okay. We will make the
17 -- well, let's see where we are. We will make
18 this Court's Exhibit 4.

19 (SO ENTERED AS COURT'S EXHIBIT 4)

20 THE COURT: The pending ones, they
21 are -- as of April 3rd, that'll be Court's
22 Exhibit 4. So if you want to make that notation
23 for your purposes. They are numbered
24 sequential.

25 The first one appearing in mine is

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1 Number 55, is Ms. Cochran and -- you can read
2 that. She has an appointment for a disability
3 determination on April 17th. What is the
4 State's position regarding Ms. Cochran?

5 SOLICITOR WILSON: Your Honor, on
6 the 17th, your intention is to ---

7 THE COURT: Qualify the whole panel,
8 then put them into various groups. As of that
9 day when they leave, they will know what day
10 they are to report back, starting on Monday.

11 SOLICITOR WILSON: Okay.

12 THE COURT: That is my goal.

13 SOLICITOR WILSON: I don't have
14 any objection to her being excused.

15 MR. BLOOM: Judge, I hate to excuse
16 any potential juror that is just a temporary
17 situation not intruding on their vacation or
18 any long-term ---

19 THE COURT: My only concern is this,
20 she says, "I have a disability determination",
21 which means that something has happened in her
22 life that has caused her to seek disability.
23 I don't know what that is. I agree with you
24 I'm ruling in a vacuum. But if you want her
25 to reschedule her appointment, that's fine.

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1 MR. BLOOM: And I anticipate
2 similar cases like this, that we may have a
3 small pool of jurors that either forget to
4 show up on time and normally the court will
5 have them either report that afternoon or do
6 a very quick qualification of a small group or
7 have them report a little earlier on Monday
8 and do a qualification.

9 THE COURT: So at this point you
10 would object?

11 MR. BLOOM: Yes, sir.

12 THE COURT: Very well. Number 61,
13 what is the ---

14 MR. BLOOM: Judge, I can't
15 determine what the reason is.

16 THE COURT: What is 61?

17 JESSICA DALEY: The next page goes
18 along with that, Your Honor. What was
19 submitted was a request for active duty.

20 THE COURT: I see, there's an
21 attachment. Is he deployed? The reporting
22 date is -- looks like, am I reading that
23 right, is that January the 17th?

24 DON NICHELE: January 17th.

25 THE COURT: So is he already

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1 deployed?

2 DON MICHELE: It looks like the
3 release date is April 15th.

4 THE COURT: I see. I think he
5 needs to ---

6 DON MICHELE: I think that he
7 is attached permanently to the 315 Air Wing
8 Command.

9 THE COURT: So where ---

10 DON MICHELE: Assuming that they
11 get back here on time.

12 THE COURT: Where is that, assuming
13 that -- that's in Charleston, isn't it?

14 DON MICHELE: Yes, sir.

15 THE COURT: Well, if he is released
16 on the 15th, he needs to be here on the 17th.
17 We need some more information. If he is still
18 deployed, then obviously I'll -- over
19 objection, I certainly would excuse him.
20 According to what I have he is available on
21 the 17th, so without supplementing that, I
22 would deny that request.

23 Number 175, a similar detachment is
24 the issue? Yeah.

25 MR. BLOOM: I am not going to

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1 interfere with someone's funeral plans.

2 THE COURT: Any objection from the
3 State?

4 SOLICITOR WILSON: No, sir.

5 THE COURT: Very well, Number 175
6 by agreement is excused. That is Court's
7 Exhibit 4. All right. Number 201?

8 DON MICHELE: This is the doctor
9 that is on-call.

10 THE COURT: Spartanburg Regional?

11 DON MICHELE: Yes, sir.

12 THE COURT: He lives in Charleston?

13 DON MICHELE: Claims that he is
14 the only physician on-call.

15 JESSICA DALEY: His letter states
16 the 17th. The letter from the Hospital states
17 the week of April 20th.

18 THE COURT: Yeah, it appears that
19 he is on-call that entire week. Any objection
20 from the State?

21 SOLICITOR WILSON: We would
22 object.

23 THE COURT: You object?

24 SOLICITOR WILSON: Yes, sir.

25 THE COURT: Tell him to come.

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1 Number 265, Mr. Scarborough. Well, this one
2 really almost is qualified.

3 DON MICHELE: Our question was the
4 letter ---

5 THE COURT: --- written by the
6 nurse.

7 DON MICHELE: Looks like she
8 might -- it might have been written by the
9 nurse on her own, typed on the computer.

10 THE COURT: Yeah. What is -- an
11 A.T.R.N., what is that?

12 MR. BLOOM: Judge, I think we would
13 want a doctor's excuse, not a nurse's, and a
14 statement as to the nature whether it is
15 something major or something minor. So that a
16 potential juror does not feel that his privacy
17 is invaded, we can keep that information under
18 seal.

19 THE COURT: Tell him that we need a
20 physician's, the treating physician needs to
21 sign and give us a brief summary for the basis
22 of his belief why he believes that he is not
23 suitable for jury service. At this point that
24 request is denied.

25 Number 349. We would have him

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1 returning from France prematurely, he gets
2 back Monday but ---

3 SOLICITOR WILSON: I don't
4 object.

5 MR. BLOOM: We don't object.

6 THE COURT: Very well, Number 349
7 is excused. Number 369?

8 MR. BLOOM: Judge, he is stationed
9 in Germany. My son serves in the military,
10 he's been to Iraq and back, so I would not
11 oppose any military person.

12 THE COURT: The only thing that I
13 -- I thank you for that, Mr. Bloom. The only
14 thing that I have is his mom is the one that
15 is verifying that, not his commanding officer.
16 I guess moms know best.

17 MR. BLOOM: I would never argue
18 with a mother.

19 THE COURT: Any objection from the
20 State?

21 SOLICITOR WILSON: No, sir.

22 THE COURT: The gentleman is
23 serving in Germany. Number 369 is excused.

24 I believe that those are all the --
25 we will make them a separate one, Number 4.

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1 Anything further from the clerk at
2 this point? You will be given copies of all
3 the excused ones, but anything else from the
4 clerk's office from the State before I dismiss
5 them? Solicitor?

6 SOLICITOR WILSON: No, sir.

7 THE COURT: Mr. Bloom?

8 MR. BLOOM: Nothing on behalf of
9 the defense.

10 THE COURT: Thank you. I will
11 see you Monday. If something comes up, just
12 holler.

13 JESSICA DALEY: Thank you, Your
14 Honor.

15 THE COURT: I believe that takes
16 care of those matters. Now, Mr. Bloom, -- the
17 State doesn't have anything that they need to
18 deal with at this point, is that correct?
19 Other than to respond to some of these
20 Motions?

21 SOLICITOR WILSON: We have
22 several Motions of our own but they can ---

23 THE COURT: Mr. Bloom, do you want
24 to proceed?

25 MR. BLOOM: We are prepared to

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1 proceed, Your Honor.

2 THE COURT: Very well. I will turn
3 it over to you, sir.

4 MR. BLOOM: If I might advise our
5 bailiff to have our first witness?

6 THE COURT: Certainly.

7 MR. BLOOM: Your Honor, if I may
8 while they are getting the first witness, the
9 next series of witnesses -- we have six inmate
10 witnesses. This is a Motion for a hearing to
11 prohibit the State from using a December 7th,
12 2008, incident against the Defendant and for
13 other relief.

14 THE COURT: Right.

15 MR. BLOOM: There are six
16 affidavits attached to that Motion, six inmate
17 witnesses. Two are here, four are in transit
18 from the Charleston County jail.

19 THE COURT: Okay, we will take them
20 when they get here.

21 MR. BLOOM: Also attached to that
22 Motion are Xerox copies of some photographs of
23 injuries to Mr. Dickerson and his cellmate,
24 John Williams, as well as medical records and
25 we would of course make them a part.

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1 THE COURT: Let me just make this,
2 all Motions and attachments are incorporated
3 in the record and will be. This runs through-
4 out. If I fail to state, they are incorporat-
5 ed fully in the record and each side may rely
6 on all filings fully for purposes of review
7 should that become necessary.

8 MR. BLOOM: Thank you, Your Honor.
9 If I may outline sort of the general purpose
10 of the Motion so that when we present the
11 testimony Your Honor is familiar with where we
12 are headed on that.

13 THE COURT: Okay.

14 MR. BLOOM: On December 7th, 2008,
15 Your Honor, there was an incident at the
16 Charleston County jail. This involved Mr.
17 Dickerson as well as his cellmate, John
18 Williams. Subsequent to that incident, Mr.
19 Dickerson as well as his cellmate were charged
20 with assaulting detention officers, several
21 counts.

22 The State has, through filings,
23 indicated that they intend to use that
24 incident against Mr. Dickerson in any
25 potential sentencing proceeding. Our position

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1 is quite simply that no assault by Mr.
2 Dickerson happened. There are a number of
3 inmate witnesses who saw the incident and will
4 testify today as to that, that the officers
5 provoked the incident and the officers
6 actually handcuffed Mr. Dickerson, as well as
7 his cellmate, put him on the floor of the pod
8 area, kicked him in the head and groin and
9 physically assaulted him.

10 I would acknowledge that was the
11 limit of it. It would be simply a matter of
12 credibility to the jury.

13 What we discovered as we interviewed
14 the other inmates in the cell block, to find
15 out their perspectives, was that this is a
16 pattern of conduct by those four specific
17 detention officers; not only against Mr.
18 Dickerson but other inmates. We have
19 uncovered information -- in fact, information
20 from other inmate witnesses and I acknowledge
21 that normally inmate witnesses are not the
22 most credible but we interviewed them in
23 separate settings, independently, and their
24 testimony, as I think you can see in their
25 affidavits, corroborates each other that these

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1 four detention officers are basically a rogue
2 unit. They provoke inmates, they assault
3 inmates, they have shackled and beat other
4 inmates. They have at least on one occasion
5 bribed a larger inmate, put him in a cell with
6 an inmate the officers had a grievance
7 against, and bribed that inmate to physically
8 assault the one in the cell. We present that
9 testimony and those affidavits today because
10 that shows a pattern of conduct of these four
11 detention officers.

12 We have filed these affidavits under
13 seal because we didn't want to unnecessarily
14 heighten the accusation against those
15 particular four officers pretrial. Their
16 names of course are contained in those
17 affidavits as well as the assault reports by
18 the Solicitor.

19 As a preface, Your Honor, I have
20 never had to bring such a Motion in over
21 twenty years of practice. I take the
22 allegations seriously. Two of the inmates
23 were interviewed after they were sentenced and
24 were in the Department of Corrections, so they
25 had no opportunity to consult, as it were,

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1 with other inmates. I take it seriously
2 enough that I have reported it to the
3 Department of Justice. The Department of
4 Justice and the F.B.I. are -- intend to
5 conduct their own separate investigation of
6 this matter.

7 THE COURT: Okay.

8 MR. BLOOM: So the testimony to be
9 presented will focus not only on the December
10 7th incidence but other incidents not related
11 to Mr. Dickerson. I believe that is important
12 and critical on our burden of proof on this
13 issue, to show a pattern of conduct. That
14 would be our position.

15 THE COURT: Okay, let's -- any
16 statements from the State at this point or
17 response to Mr. Bloom's position? Mr. Durant?

18 BRUCE DURANT: Your Honor,
19 basically it's been my position all along
20 since reading the Motion that even if every-
21 thing that he says is true -- and all of this
22 is obviously a factual dispute -- that it
23 still wouldn't prohibit these people from
24 testifying in the trial. It's essentially --
25 the only issue in terms of this particular

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1 case is whether or not they would be allowed
2 to cross-examine these officers with regard to
3 these allegations. I know of no authority,
4 nor do they cite any, that would authorize the
5 court to disqualify any witness because they
6 are under investigation. If that were the
7 case, the defendant could virtually never take
8 the stand.

9 I understand that this is a capital
10 case and I understand that they want to make a
11 record, but it is essentially our position at
12 this point that it is completely irrelevant.

13 THE COURT: Okay. Let me make sure
14 that I understand because I've -- I've done
15 some but I don't have the experience of a
16 person sitting here trying these types of
17 cases that you have, but obviously this is an
18 issue that only arises assuming we go to the
19 second phase in the first place.

20 It deals with, as I perceive and
21 understand, the suitability of this person to
22 survive and function in a prison environment.
23 That is the main issue as I understand it, the
24 purpose for that. Of course that brings in
25 the whole discussion of this proceeding in and

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1 of itself, which is quite intriguing to me.

2 But having said that, having had the
3 experience -- and maybe they just chose to
4 focus on the most serious one but the one that
5 -- and I mentioned this to you before and I
6 want to put this on the record because I --
7 I really wrestled with whether or not the
8 Cottrell case that they reversed on failure to
9 charge voluntary manslaughter, whether it was
10 appropriate in the second phase to try two
11 murders that he was suspected of committing.
12 We did, we took testimony. We basically had
13 two separate murder trials in that, alleged
14 that the defendant committed these murders or
15 participated in them. That gave me great
16 concern about how broad that it was.

17 But it's a separate trial. There
18 would be nothing, I don't think, -- I'm not
19 suggesting anything, but isn't that issue
20 something that you present these witnesses
21 at that second phase for this jury's
22 consideration, as well? Wouldn't that be a
23 factor that they could well consider, prison
24 -- I am not suggesting that these people are
25 rogues or not, that's not for me to determine.

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1 I understand the legitimacy of your position
2 and understand that can exist, given human
3 nature being what it is, but isn't that
4 something that the jury would have to then
5 weigh to determine whether or not this was an
6 assault or whether this was provoked? If they
7 felt it was provoked, then obviously that
8 doesn't affect his suitability for prison.

9 MR. BLOOM: Well, my first answer,
10 the short answer to you is 'yes'. Of course
11 the jury, on any factual determination, is
12 always the arbiter of weighing credibility.

13 Secondly, though, I think the trial
14 court -- I don't think, I know -- the trial
15 court has a gatekeeper function on any
16 evidence. For example, if there were an
17 illegal search, Your Honor can exclude such
18 testimony.

19 THE COURT: No question.

20 MR. BLOOM: Secondly, on prior bad
21 act evidence under *State v. Fletcher*, our own
22 Supreme Court case, Your Honor has to first
23 make a threshold determination has the State
24 determined that the alleged prior bad acts
25 exist by clear and convincing evidence.

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1 Our position here is that the trial
2 court certainly has authority under the clear
3 and convincing evidence test to determine the
4 alleged result doesn't meet that minimum
5 threshold. Secondly, because it is an alleged
6 prior bad act.

7 THE COURT: I am familiar with the
8 prior bad acts for which there were no
9 convictions, that it has to be clear and
10 convincing; because that's the standard that
11 the Court has established.

12 MR. BLOOM: (Affirmative nod).

13 THE COURT: Is there a case where
14 you say that I have to find that clear and
15 convincing evidence in any testimony that is
16 offered by the State? I mean, I know that it
17 is specific as to prior bad acts because the
18 Court said so, but it didn't expand it to all
19 testimony; I don't think, did it?

20 MR. BLOOM: Well, the State is
21 alleging of course that this is a prior bad
22 act in terms of assault on a detention
23 officer. But at a minimum, at a minimum, Your
24 Honor, the trial court is not just authorized
25 but compelled to exclude evidence that is the

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1 result as of illegal police conduct, even if
2 that is inadvertent. For example if they
3 search a home and didn't have a search
4 warrant, under the Fourth Amendment Your Honor
5 excludes that. If a confession is coerced,
6 Your Honor excludes that and the jury never
7 hears it.

8 Here we have, under our presentation
9 of evidence, a clear and intentional act of
10 physical assault by law enforcement against
11 the Defendant. If Your Honor makes a
12 threshold determination that the police have
13 acted, that the detention officers acted
14 unlawfully, then clearly the jury is entitled
15 to hear evidence that has been the result of
16 illegal and unlawful police conduct.

17 THE COURT: All right.

18 MR. BLOOM: That is our position.

19 MR. BLOOM: Proceed with your
20 testimony.

21 MR. BLOOM: We would call Jerard
22 Smith.

23 (WITNESS TAKES STAND)

24 JERARD ANTONIO SMITH, being duly
25 sworn to tell the truth, the whole truth and

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1 nothing but the truth, testified, as follows:

2 DIRECT EXAMINATION

3 BY MR. BLOOM:

4 Q. Mr. Smith, how are you doing today?

5 A. Fine.

6 Q. You remember me, I am Mr. Bloom?

7 A. Yes, sir.

8 Q. I came to interview you at the Department
9 of Corrections?

10 A. Yes, sir.

11 Q. Where are you currently incarcerated?

12 A. Lieber Correctional Institute.

13 Q. Let me pull that microphone just a little
14 closer to you if I may -- (adjusting
15 microphone), scoot up there a little bit.

16 A. (Moves chair closer to microphone).

17 Q. Was there a period of time that you were
18 incarcerated at the Charleston County
19 Detention Center?

20 A. Yes, sir.

21 Q. Roughly what timeframe was that,
22 approximately?

23 A. Between September of '06 to December 5th,
24 2008.

25 Q. In December of 2008 is when you came to

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1 court and disposed of your charges?

2 A. Yes, sir.

3 Q. All right. On December 7th, 2008, were
4 you in the same unit as Mr. Dickerson?

5 A. Yes, sir.

6 Q. Did you witness an incident there
7 involving Officers Michael Walters, Lesiter
8 Williams, Elford Asher and Michael Huggins and
9 others?

10 A. Yes, sir.

11 Q. All right. Where was your cell -- well,
12 let me ask you this, what unit was that?

13 A. Unit 1-A.

14 Q. 1-A?

15 A. Yes, sir.

16 Q. Where was your cell in terms of how it
17 faced William Dickerson's cell?

18 A. Right next-door.

19 Q. Next-door?

20 A. (Affirmative nod).

21 Q. So for all practical purposes, you
22 couldn't see inside Mr. Dickerson's cell?

23 A. No, sir.

24 Q. But you could see into the general pod
25 area outside the cell doors?

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1 A. Yes, sir.

2 Q. If you would, describe what happened on
3 December 7th, 2008, regarding Mr. Dickerson and
4 his cellmate, John Williams.

5 A. Well, I was standing at the door. Me and
6 my roommate, we heard a lot of commotion. I
7 heard William Dickerson -- I can't remember
8 the exact words but they was concerned about
9 getting raped and a couple stuff. You know, I
10 didn't really hear the conversation because,
11 you know, I am in my own room. The whole
12 argument broke up to where there was a big
13 discussion over there and when they come out
14 of the room they was actually fighting and ---

15 Q. When you say "they", who was fighting?

16 A. Huggins, Walters, Asher and Mr. Williams,
17 he was just really standing there.

18 Q. Officer Williams was standing there
19 observing while those other officers that you
20 named were engaged in fighting Mr. Dickerson
21 and Mr. Williams?

22 A. Yes, sir.

23 Q. What did you hear leading up to the
24 physical altercation? Did any of the officers
25 say anything to William Dickerson or ---

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1 A. 'Come out of the room', cursing, 'get out
2 of the room', this that and the other, and --
3 I mean, I just heard a lot of commotion but no
4 -- in no way did I see what they had done, the
5 act on Mr. Dickerson. And ---

6 Q. When you say "them", I just want to
7 clarify. You say that you saw no, you didn't
8 see anything that caused the officers to do
9 what?

10 A. When -- let me give you a clear under-
11 standing.

12 Q. Sure.

13 A. When you -- you've got William Dickerson
14 and this other inmate that was in the room.
15 The officers were never in the room, they were
16 standing at the door. As they approached --
17 as they were coming out of the room, ---

18 Q. When you say "they", let me be clear, you
19 mean Dickerson?

20 A. William Dickerson, right. I can't
21 remember the other guy's name. When they was
22 coming out of the room, that's when the whole
23 commotion started. Then I could see -- you
24 know, I can -- I saw and in no way did what
25 happen happened because of they (sic) actions

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1 because they did nothing to get the action
2 that they brought -- I mean, that they got.

3 Q. When you say their actions, you didn't see
4 anything that Dickerson or his cellmate did to
5 antagonize the officers?

6 A. (Negative gesture), so why should they do
7 that?

8 Q. And Dickerson and his cellmate were
9 ordered out of the cell by the officers?

10 A. Yeah.

11 Q. All right. What did the officers then do
12 to Dickerson and the cellmate when they were
13 ordered out of the cell?

14 A. All right. When they stepped out, a lot
15 of swinging and a lot of fighting went on and
16 you know when they got ---

17 Q. Who was swinging and punching?

18 A. Uh, ---

19 Q. Dickerson and his cellmate or the guards?

20 A. Both.

21 Q. Okay. What happened then?

22 A. Even though they were restraining them
23 they still were getting beat, kicked in the
24 face, all type of stuff.

25 Q. At some point were Williams and Dickerson

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1 put in handcuffs?

2 A. Yes, sir.

3 Q. And put on the floor?

4 A. They was in shackles and handcuffs and
5 they was still being beaten.

6 Q. And before that did you see at any time
7 Dickerson hit any officer?

8 A. Yeah.

9 Q. Did he push him away or did he actually
10 strike the officer?

11 A. When he came out of the room, Asher was --

12 Asher was like, 'if you're not 300 pounds...'

13 ---

14 Q. Say exactly what he said.

15 A. "If you are not 300 pounds, you better not
16 fuck with me" and all this crazy stuff, this,
17 that and the third. So when he steps out of
18 the room, Asher pushed him. Asher pushed Mr.
19 Dickerson and then -- after all else, that's
20 really what brought it on. I mean, I see it
21 that were protecting themselves more than
22 bringing it on.

23 Q. So the officer initiated the physical
24 fight?

25 A. Yeah.

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1 Q. And at some point Williams and Dickerson
2 were handcuffed?

3 A. Yes, sir.

4 Q. Were they put on the floor?

5 A. (Affirmative nod), put on the floor.

6 Q. And what did you see from that point on?

7 A. Kicking in their face, hitting in their
8 face, they got kicked in the groin, in their
9 private spots.

10 Q. In their private parts?

11 A. (Affirmative nod).

12 Q. They were kicked?

13 A. (Affirmative nod).

14 Q. And this was while they were handcuffed
15 and on the floor?

16 A. On the floor, (affirmative nod), in the
17 middle of the floor.

18 Q. At any point did you see them slam Mr.
19 Dickerson's head up against any other object?

20 A. When he walked in the, uh, like the little
21 room they've got to the side when people come
22 in the unit, they search them down, in that
23 same room when he walked in there. When he
24 walked in there, Huggins took his head and run
25 it straight into the wall.

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1 Q. So Officer Huggins pushed William
2 Dickerson straight into the wall?

3 A. (Affirmative nod).

4 Q. Was Mr. Dickerson still handcuffed at this
5 point in time?

6 A. Yes, sir.

7 Q. Is there anything else about that incident
8 that you recall in terms of what those
9 officers did to Mr. Dickerson or his cellmate?

10 A. Practically everything I just told you.

11 Q. Was it the officers who initiated the
12 fight?

13 A. (Affirmative nod), from my point. From my
14 eye. Yes, sir.

15 Q. From what you heard and what you saw?

16 A. (Affirmative nod).

17 Q. Had there been incidents where these same
18 officers had assaulted you?

19 A. Many times.

20 Q. Tell me about that.

21 A. Many times. There was one incident where
22 I was actually put in the back. The only
23 reason why you really do go in the back is if
24 you're mentally -- like if you're not taking
25 medicine, you know, you're disciplinary or you

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1 fight or something, they'll -- there's got to
2 be a disciplinary reason why you go in the
3 back.

4 I was put in the back for no reason.
5 I sat back there for maybe like a week and a
6 half. When Officer Huggins, I mean Asher,
7 came around and was passing out canteens, I
8 made up an excuse. I told him that I was
9 having mental problems and that I wanted to
10 kill myself, and that I wanted to get from
11 behind, from behind the wall. He didn't hear
12 that. He was like, 'You're scared, you're a
13 little girl, you talk that bad stuff and now
14 you're somebody where somebody is sticking you
15 trays. I don't care.' So I stuck my hand out
16 the flap and I told him again, 'I'm in
17 disciplinary for no reason.' I have no
18 disciplinary charge and I'm just back there.
19 It goes on and on and on until he grabs my arm
20 and he pulls it out the flap. I still have
21 the scar on my arm to prove ---

22 Q. You say the flap, an iron flap?

23 A. It's the flap that -- it's in the door and
24 it comes down. Instead of opening the door to
25 feed you, they put it through the flap.

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- 1 Q. And the officer slammed that on your arm?
- 2 A. Slammed it, pulled my arm out, ---
- 3 Q. Do you still have a scar on your arm from
- 4 that?
- 5 A. Permanent.
- 6 Q. Where is that? Well, you're shackled, you
- 7 can't lift your hand.
- 8 A. Right.
- 9 Q. Are there any other incidents where these
- 10 same officers have physically assaulted you or
- 11 other inmates?
- 12 A. It's ridiculous, man. I could go on and
- 13 on but it's -- it's ridiculous, man. I mean,
- 14 I believe all of us as being human beings that
- 15 we should be treated as humans.
- 16 Q. What are some of the other incidents where
- 17 the officers -- were there some incidents with
- 18 the taser?
- 19 A. (Affirmative nod), I got tased for no
- 20 reason. I've seen other inmates get tased, I
- 21 mean for no reason: not wanting to put their
- 22 uniform on or they -- I mean, it's -- it's
- 23 crazy, man.
- 24 Q. Was there an incident where another inmate
- 25 named Solomon Chisholm was put in a cell with

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1 a bigger inmate and assaulted?

2 A. Yes, sir.

3 Q. Tell me what you know about that.

4 A. He was in lockup.

5 Q. Who was in lockup? Solomon Chisholm was
6 in lockup?

7 A. Yes.

8 Q. Go ahead.

9 A. And the guy he was in the room with, they
10 put him in the room because -- they had
11 already been arguing, him and the guy that was
12 in the room, just arguing real back and forth.
13 Instead of not putting them in the same room,
14 they put them in the same room. The guy was
15 twice the size of the guy he was put in there
16 with and he actually beat him up. They didn't
17 do anything about it. He went to the
18 hospital.

19 Q. You're talking about Solomon Chisholm?

20 A. (Affirmative nod), all of that's on file.

21 BRUCE DURANT: Your Honor, at this
22 time I would just object on relevance grounds.
23 I think we are getting real far afield here.

24 THE COURT: Objection is noted and
25 overruled.

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. BLOOM:

3 Q. Are there occasions where some of these
4 same officers that you've testified about
5 covered the window flaps on your cell and
6 other inmates' cells?

7 A. Yes, sir.

8 Q. Tell me about that.

9 A. There's two reasons why -- I mean, they
10 give us a window to look out, but when we look
11 out the window we are told not to look out the
12 window. So they put plastic over the window.
13 Now, the reason why they sometimes do put
14 plastic over the window is because they are
15 going to do something. I mean, it could be
16 whatever but I wouldn't be able to tell you
17 that because the plastic is on the window.

18 Q. What you're saying is that sometimes they
19 put plastic over the window flap ---

20 A. Because of an incident that's about to
21 happen.

22 Q. So you wouldn't be able to see what ---

23 A. Right, stop you from looking out the door
24 and seeing what's going on.

25 Q. All right. Let me go back and ask you

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1 another question about the taser, use of the
2 taser. Has that ever been done to you or
3 you've seen it done to other inmates where
4 they were handcuffed?

5 A. It's been done to me and I've seen it done
6 to other inmates.

7 Q. While you were handcuffed?

8 A. No, I wasn't handcuffed. I was behind the
9 door.

10 Q. You were behind the door and you were
11 tasered?

12 A. Yes, sir.

13 Q. So were you in your cell when ---

14 A. I was behind my door when I got tased, I
15 got tased right on my arm.

16 Q. All right. Lastly, going back to incident
17 on December 7th, from what you heard and saw,
18 William Dickerson did not initiate any
19 physical conduct or fight?

20 A. I saw it as him protecting himself.

21 Q. When you say protecting himself, was he
22 trying to put his arms up before he was
23 handcuffed or ---

24 A. From the whole incident, from the
25 beginning to the end I see him as protecting

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1 himself.

2 Q. What were some of the things that Asher or
3 the other officers said to Mr. Dickerson when
4 the officers first approached his cell, if you
5 remember?

6 A. I wouldn't honestly be able to tell you
7 that because when I -- when I caught it, I
8 caught the commotion. I didn't really catch a
9 lot of that.

10 Q. All right, sir. But there is no doubt
11 that you saw the officer struck (sic) first?

12 A. Yes, sir.

13 Q. And after Mr. Dickerson was handcuffed and
14 on the floor he was stomped on the head and in
15 the genitals?

16 A. Yes.

17 Q. Same thing with John Williams?

18 A. Yes, sir.

19 MR. BLOOM: All right. Please
20 answer any questions that the solicitor or
21 His Honor may have.

22 THE COURT: Mr. Durant?

23 CROSS EXAMINATION

24 BY BRUCE DURANT:

25 Q. You were in the detention center for how

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1 long, sir?

2 A. From September of 2006 to December of
3 2008.

4 Q. And you are now doing time for breaking
5 into a quadriplegic's house, robbing him and
6 eventually killing him; correct?

7 A. Wrong.

8 Q. You were given twenty-two years for
9 involuntary manslaughter, burglary, Burglary
10 1st?

11 A. That was a mistake.

12 Q. Huh?

13 A. Accident.

14 Q. Oh, it was an accident. Okay.

15 A. I don't kill people.

16 Q. Is there a fifth version you want to add
17 to what went on on December 7th, because you've
18 already given us four?

19 A. What I said is what I said.

20 Q. You first said that the fight started in
21 the cell and you couldn't see. You just said
22 that ten minutes ago. Correct?

23 A. (No verbal response).

24 Q. Did you not just say that ten minutes ago?

25 A. (No verbal response).

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1 THE COURT: The court heard the
2 statement.

3 BRUCE DURANT: Okay.

4 CROSS EXAMINATION CONTINUED

5 BY BRUCE DURANT:

6 Q. Then of course you said that they just
7 came out of the cell, there was nothing
8 happening, they were doing absolutely nothing
9 and they were assaulted. That was version
10 number two.

11 A. (No verbal response).

12 Q. Then you said that the inmates and the
13 guards were fighting outside. That was
14 version number three.

15 A. (No verbal response).

16 Q. Then when you answered his question, you
17 said that William Dickerson was hitting the
18 detention officers, but then you had to say,
19 'And, oh, yeah, but they hit him first.' That
20 was version number four. Correct?

21 A. (No verbal response).

22 Q. You don't like these detention officers,
23 do you?

24 A. (No verbal response).

25 THE COURT: You need to answer the

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1 questions, Mr. Smith.

2 THE WITNESS: (No verbal
3 response).

4 BRUCE DURANT: I believe he
5 already has, Your Honor.

6 THE WITNESS: I don't got nothing
7 against nobody.

8 BRUCE DURANT: That's all.

9 THE COURT: Any redirect?

10 MR. BLOOM: No, sir.

11 THE COURT: Mr. Smith, you may step
12 down. Thank you, sir.

13 (WITNESS STEPS DOWN)

14 MR. BLOOM: We call Vante Birch.

15 (WITNESS TAKES STAND)

16 VANTE BIRCH, being duly sworn to tell
17 the truth, the whole truth and nothing but the
18 truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. BLOOM:

21 Q. Would you also spell your first name?

22 A. V-a-n-t-e.

23 Q. Where are you currently incarcerated?

24 A. Tilton Road.

25 Q. What is the name of that institution?

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- 1 A. I think it is ---
2 Q. Kirkland?
3 A. No, sir, not Kirkland.
4 Q. Do you know the name of the institution?
5 You just arrived there, I take it?
6 A. I just arrived there about three days ago.
7 Q. You left the reception and evaluation
8 center at Kirkland and you arrived at the new
9 institution?
10 A. Yes, sir.
11 Q. Do you know the name of it off the top of
12 your head, since you first arrived?
13 A. I know the address, 200 Prison Road. I
14 think that's up there in Spartanburg.
15 Q. Up in the Spartanburg area?
16 A. (Affirmative nod).
17 Q. You are currently serving a sentence for
18 armed robbery?
19 A. Yes, sir.
20 Q. Twelve years?
21 A. Yes, sir.
22 Q. You were convicted here in Charleston
23 County?
24 A. Yes, sir.
25 Q. Is that right?

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- 1 A. Yes, sir.
- 2 Q. Was there a period of time when you were
3 in the Charleston County Detention Center?
- 4 A. Yes, sir.
- 5 Q. Approximately when was that? Just
6 roughly.
- 7 A. I'd say about -- I don't know, two months
8 ago? About two months ago.
- 9 Q. So you were there December 7th, 2008, when
10 Mr. Dickerson was there?
- 11 A. Yes, sir.
- 12 Q. All right. On December 7th, were you in
13 Unit 1-A?
- 14 A. Yes, sir.
- 15 Q. Where was your cell located in terms of
16 where William Dickerson's cell was?
- 17 A. Room 1240.
- 18 Q. Where is that in the ---
- 19 A. Back wall facing out, looking at the old
20 S.C.P.A.
- 21 Q. All right.
- 22 A. His room was like -- his room was like
23 1236 or 37, I think.
- 24 Q. Was your cell on the same side as his?
- 25 A. Same side, same wall, back wall.

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1 Q. So you couldn't see inside his cell?

2 A. No, sir.

3 Q. But you could see into the general pod
4 area?

5 A. My door -- my door, the flap, it was
6 broken and I could kick it open and I could
7 see everything by the back wall.

8 Q. Was there an incident on December 7th,
9 2008, involving Officers Michael Walters,
10 Leister Williams, Elford Asher and Michael
11 Huggins?

12 A. Yes, sir.

13 Q. As well as Inmate Dickerson and his
14 cellmate, John Williams?

15 A. Yes, sir.

16 Q. All right. Start from what you initially
17 heard or saw and tell me about that.

18 A. On that day they came around ---

19 Q. When you say "they", do you mean the
20 officers?

21 A. The officers: Williams, Asher, and
22 Huggins and Walters. They came around to
23 where Officer Williams, FTI Williams, and
24 Asher, Officer Asher, came around to do a room
25 search. They came to my room, they did a room

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- 1 search. They sent me to the multipurpose
2 room, they made me stand in the back of the
3 room and they got down -- everybody -- when
4 they got to their room, they was telling him
5 'hurry up, get ya clothes on' and whatnot.
6 Q. When you say "they" you mean the officers?
7 A. (Affirmative nod), the officers.
8 Q. And they are saying that to?
9 A. Dickerson and Williams.
10 Q. What did you hear next?
11 A. They started cursing them boys, 'You'all
12 boys be putting on them clothes.' 'We can't
13 put them on but so fast.' Like that. So
14 after that, that's when I heard a bunch of ---
15 Q. That's what Dickerson or his cellmate
16 said?
17 A. Yeah, what one of them said.
18 Q. All right.
19 A. Then ---
20 Q. What was said next by the officers?
21 A. The officers started cursing them like,
22 'Hurry, hurry, hurry the fuck up' -- excuse
23 me. But 'hurry, hurry put them clothes on,
24 hurry the fuck up.'
25 Q. And that's exactly what you heard?

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- 1 A. (Affirmative nod), it's what I heard.
- 2 Q. Go ahead.
- 3 A. Then after that I heard, uh, one of them
- 4 -- one of them went in the room and they say,
- 5 'come on' and then they grab him. That's when
- 6 I seen John Williams going by the table and
- 7 two officers were on him.
- 8 Q. And this was out in the general area?
- 9 A. This was out in the general area where
- 10 we're supposed to eat at.
- 11 Q. All right.
- 12 A. And after that, that's when Dickerson,
- 13 they told him -- he said, 'You ain't got to do
- 14 that, he ain't resisting nothing. You'all
- 15 done got the cuffs on him and everything.
- 16 You'all don't have to do all that.'
- 17 Q. Let me back up. What you saw out in the
- 18 pod the first time was two officers doing what
- 19 to John Williams?
- 20 A. Had him at the table, boxing him, leaning
- 21 on him, kicking him, and they were saying like
- 22 -- he was saying, like, 'What you'all doing
- 23 that for?'
- 24 Q. At that time was Inmate Williams in
- 25 handcuffs?

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1 A. He was in handcuffs, they already the
2 handcuffs on him. And Officer Williams was
3 like, 'Boy, I do what I want to. I gotcha ya
4 now. I gotcha you.' He started kneeing him,
5 boxing him, kicking him and -- then he got
6 down on the ground and that's when they
7 started kneeing and kicking him again, hard.

8 Q. So you saw officers kneeing and kicking
9 (Inmate) Williams?

10 A. Yeah, that's when I kicked the door and
11 the door came open and then I tried to -- they
12 had the -- but I kicked the flap open and I
13 can see everything now.

14 Q. And what you saw was -- again, I just want
15 to make sure that I understand you -- two of
16 the officers getting Williams out on the floor
17 of the unit.

18 A. Yes, sir.

19 Q. Williams was in handcuffs?

20 A. Yes, sir.

21 Q. And they were kneeing and kicking him?

22 A. Yes, sir.

23 Q. What did you hear William Dickerson say to
24 the officers in response to that?

25 A. He was telling him that they ain't got to

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1 do that to him 'cause he ain't doing nothing.

2 'He ain't doing nothing.' That's when they
3 tell him to 'shut the F up,' shut the F up or
4 you gonna get this, too', this and that.

5 Q. And that's what the officers were saying
6 back to Dickerson, telling him to shut the F
7 up?

8 A. Yes, sir.

9 Q. All right, and what did you see or hear
10 next?

11 A. After I see that, that's when I heard --
12 then Asher came at him.

13 Q. Officer Asher ---

14 A. He started jacking him, 'get on the wall,
15 get on the wall, put your hands behind your
16 back.'

17 Q. Officer Asher is doing that to William
18 Dickerson?

19 A. They doing that to William Dickerson now.
20 Officer Huggins and Walters was on John
21 Williams on the floor, beating him and kicking
22 him and all that. Asher was the one that
23 grabbed Dickerson by the -- started jacking up
24 on him. I couldn't see everything but I saw
25 him grab him and he rushed him to the wall, I

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1 could see that, I know that's when the -- the
2 commotion going on, I see John Dickerson (sic)
3 on the floor, Asher got the cuffs on, has got
4 one leg iron on and is putting the other leg
5 iron on, kicking him in the genitals.

6 Q. Let me back you up. You see an officer
7 push Dickerson ---

8 A. (Affirmative nod), on the wall.

9 Q. Was Dickerson resisting?

10 A. No, he wasn't resisting.

11 Q. All right. The next thing you see is
12 Dickerson on the floor of the unit?

13 A. Yes, sir.

14 Q. And he's handcuffed?

15 A. Yes, sir.

16 Q. Was his hands in front or behind his back?

17 A. They was behind his back and one leg iron
18 was -- his right leg.

19 Q. They had one leg iron on him?

20 A. (Affirmative nod).

21 Q. What are they doing to Dickerson, what are
22 the officers doing to Dickerson once he is on
23 the floor?

24 A. He tried -- he was balled up, trying to
25 keep them from hitting him in his face and his

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1 stomach and stuff because they had him cuffed,
2 they had the handcuffs wrapped around their
3 hands like a boxing glove and he was balled up
4 trying to keep them from hitting him.

5 Q. When you say "he", you mean Dickerson was
6 balled up on ---

7 A. Yeah, he was like 'you don't have to hit
8 me, man'.

9 THE COURT: Mr. Birch, you're going
10 to have to help me. I know you'all are
11 talking to each other but you're going to have
12 to let Mr. Bloom finish answering the question
13 before you start answering.

14 THE WITNESS: Oh, okay.

15 THE COURT: You can't be talking at
16 the same time. Okay?

17 THE WITNESS: Okay.

18 THE COURT: The court reporter has
19 to take down what you're saying and it makes
20 it virtually impossible for that to be done.

21 THE WITNESS: Yes, sir.

22 THE COURT: So please don't
23 interrupt the questions.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Bloom, if you would

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1 help us by letting him finish the answer?

2 MR. BLOOM: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. BLOOM:

5 Q. Mr. Birch, you kind of talk fast. If I
6 could just get you to slow down a little bit.
7 I want to make sure that I get all the
8 information from you. Okay?

9 A. Yes, sir.

10 Q. So let me go back and ask you when you
11 said "he", you meant that Dickerson was on the
12 floor trying to ball up?

13 A. Yes, sir.

14 Q. And he is handcuffed behind his back?

15 A. Yes, sir.

16 Q. With one leg iron on?

17 A. Yes, sir.

18 Q. And he is trying to ball himself up
19 because of why, what you saw?

20 A. Because they was kicking him, boxing him,
21 kneeing him.

22 Q. You said "they" and you mean the ---

23 A. --- officers.

24 Q. Where were they kicking him?

25 A. In his head, face, his stomach and his

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- 1 genitals.
- 2 Q. Genital area too?
- 3 A. Yes, sir.
- 4 Q. What did you see next?
- 5 A. What did I see next? That's when I seen
- 6 another officer came over and -- Officer Asher
- 7 ran back over to John Williams and that is
- 8 when they started beating him some more. Then
- 9 they picked Dickerson up and put Dickerson in
- 10 the multipurpose room and Officer Huggins ran
- 11 over there and rammed his head against the
- 12 wall and they closed the door. They carried
- 13 John Williams upstairs in a corner room.
- 14 Q. So at some point you saw officers put Mr.
- 15 Dickerson in the multipurpose room?
- 16 A. Yes, sir.
- 17 Q. Describe the multipurpose room for us. Is
- 18 it just a side room off the pod?
- 19 A. It's a side room with a table in it and
- 20 some chairs and stuff.
- 21 Q. All right. What did the officers -- did
- 22 Mr. Dickerson still have handcuffs on at this
- 23 point?
- 24 A. Yeah, he had everything on now.
- 25 Q. What did you see the officer do to Mr.

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1 Dickerson in the multipurpose room?

2 A. Officer Huggins grabbed him by the back of
3 his -- by his cuffs and ran him into the wall,
4 slammed his head into the wall and I saw blood
5 coming down his face.

6 Q. So you saw Officer Huggins slam Mr.
7 Dickerson's head against the wall?

8 A. Yes, sir.

9 Q. And you saw blood coming down his face?

10 A. (Affirmative nod), yes, sir.

11 Q. The walls are concrete or cinderblock?

12 A. Concrete.

13 Q. And Mr. Dickerson was still restrained at
14 this point?

15 A. Yes, sir.

16 Q. And at some point I think you said that
17 you saw the officer shut the door to the
18 multipurpose room?

19 A. Yes, sir.

20 Q. Could you see anything after that, after
21 they shut the door?

22 A. No, sir.

23 Q. Now, have these same officers that you
24 have testified to about on December 7th, have
25 you witnessed other assaults that they --

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1 well, let me back up and ask you this: From
2 what you saw, the officers initiated this
3 physical fight?

4 A. Yes, sir.

5 Q. All right. Did you ever see Mr. Dickerson
6 punch or hit an officer at any time?

7 A. No, sir.

8 Q. Have you seen these same officers involved
9 in other physical fights that they initiated
10 or physical abuse of other inmates?

11 A. Yes, sir.

12 Q. Describe some of those for me.

13 A. One of them was me.

14 Q. All right, tell me about that, sir.

15 A. It was April 12th and we was in seg, we
16 was in Segregation, 1 and 4, me and John
17 Williams and two other people. They had a
18 response because John Williams had seizures,
19 catch seizures, so we started throwing stuff
20 at the door to get the C.O. back there, for
21 them to come back there and tell them that he
22 was having a seizure.

23 I was talking to him and then all of a
24 sudden I hear something fall, boom, so we
25 bamming on this wall trying to get them back

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1 there to see what was going on.

2 Then after that he finally came back and I
3 said, 'John, you straight? You straight?'

4 He was like, 'Yeah, I'm good. What
5 happened? What happened? I went out, I went
6 out.'

7 I said, 'I guess, man, you had a seizure.'

8 I started filling water bottles up and
9 throwing it at the door to get the C.O.
10 to come and see, screaming 'Man down, man
11 down.'

12 Q. Let me stop you there. John Williams was
13 a cellmate of yours at that time?

14 A. He wasn't a cellmate of mine. He was,
15 like, next-door -- he was in, like, Room 1
16 and I was in Room 4.

17 Q. Next to you?

18 A. (Affirmative nod).

19 Q. And you were concerned because you
20 couldn't hear anything from him? You were
21 concerned that he needed medical attention?

22 A. Yes, sir.

23 Q. From the time that you were there you had
24 known John Williams to have had other seizures
25 or episodes?

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1 A. Yes, sir.

2 Q. And you did want to try to get the
3 officer's attention?

4 A. I started filling water bottles up and
5 throwing them -- we got a food tray slot, I
6 started slamming door to make some type of
7 noise so that they'd come back and see what
8 was going on.

9 Q. Okay.

10 A. There was this lady named Ms. Worley,
11 Officer Worley, came back there and started
12 yelling, cursing us out, 'I gonna lock you'all
13 up.'

14 We started telling her, 'This man had a
15 seizure, you need to check on him.'

16 'Naw, he ain't had no seizure, he standing
17 right here by the bars', doing this and doing
18 that.

19 John Williams started cursing her out, 'I
20 need to see the doctor, I need medical, I need
21 my medicine.'

22 So after that she called the tac team down
23 there, Officer Asher, FTI Williams and Officer
24 Huggins.

25 Q. When you say tac team, t-a-c-t (sic), what

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1 does that mean?

2 A. Tac unit. I think that's a term that they
3 use for the unit officers when something gets
4 out of hand, that they can't handle.

5 Q. And -- go ahead, what officers came down
6 to the unit then?

7 A. FTI Williams and Asher and Huggins.

8 Q. So the same ones from the December 7th
9 incident?

10 A. Yes, sir.

11 Q. What happened then?

12 A. That's when they started handcuffing me
13 and was carrying on in all the rooms.

14 Q. Okay.

15 A. And when they get down to my room, I had
16 my handcuffs behind my back but I had -- I'd
17 took the handcuffs and put them in front of me
18 because they had them too tight. So that's
19 when they came back to get me out of the room
20 and when they came to get me out of the room,
21 Officer Huggins was, like, 'I told you what
22 he'd do, I told you what he'd do.'

23 Q. He said what to you?

24 A. He told the other officer, Officer Asher,
25 'I told you that he'd put the handcuffs in

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1 front of him.' So they rolled my door, when
2 they rolled my door back he grabbed my wrist
3 -- he took one of the handcuffs off and he
4 grabbed my wrist, bent my hand back. I said,
5 'What you doing, man? You being too rough.'

6 He says, 'Oh, so you're resisting? You're
7 resisting.' When he did that, Officer Asher,
8 he kneed me in my stomach. When he kneed me
9 in my stomach Officer Huggins pushed me to the
10 wall and that's when I started tussling with
11 them. 'Get on the ground, get on the ground,
12 stop resisting.'

13 I say, 'I'm not resisting, I'm getting on
14 the ground. You'all quit rushing me, quit
15 rushing me.' That's when Huggins, Officer
16 Huggins, -- I still had one handcuff on my
17 right hand and Officer Huggins grabbed the
18 handcuff and he started pulling/tugging me and
19 that's when I pushed Huggins and he slipped
20 and fall.

21 That's when Asher came and he boxed me in
22 my head and that's when he smacked me, 'get on
23 the ground, get on the ground, get on the
24 ground', so that's when they started kicking
25 me, kicking me, elbowing me, kneeling me, so

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1 that's when I grabbed Huggins. I picked
2 Huggins up and I slammed him, I slammed
3 Huggins. When I slam Huggins, that's when
4 Asher stomped on me and I said, 'Man, I'm
5 getting on the ground right now, you said get
6 on the ground.'

7 That's when I think LT Johnson came and I
8 was kneeling on the ground and FTI William
9 came, ran and jumped on my back. I mean, man,
10 I was on the ground.

11 Officer Huggins took the handcuff that I
12 had on my right hand and he stomped on it.
13 After he stomped on it, that's when I catch
14 the whole right side of my body going numb.
15 So that's when he -- he stomped on it two
16 times and that's when Asher came and kicked me
17 in my eye.

18 They usually have a video camera that they
19 carry around but right then didn't any of them
20 bring it for that incident right there.

21 Q. You were handcuffed this whole time?

22 A. No, I was in handcuffs, I had one handcuff
23 -- they did have me handcuffed but when he
24 went to bend my arm back to take it off,
25 that's when I only had one handcuff, on the

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- 1 right arm.
- 2 Q. Okay. Because you were trying to ---
- 3 A. They'd put it behind my back.
- 4 Q. While you were down on the ground, they
- 5 kicked you -- where?
- 6 A. They kicked me in my eye, throat -- not in
- 7 my eye, the top of my eye and head. They
- 8 kicked me in my throat, head, back of the
- 9 head.
- 10 Q. Do you still have a scar around your eye
- 11 from that?
- 12 A. Right here (indicating), right here, and I
- 13 got a scar on my arm. I went to the hospital
- 14 -- see, I went to the hospital because they
- 15 was doing it. In order for me to have a
- 16 record, I went to the hospital so they could
- 17 put it on record, 'cause I made a complaint to
- 18 the officers but they -- I filled out a
- 19 grievance form but they -- they brought the
- 20 grievance forms up there but they never give
- 21 them to the higher authorities, so I went to
- 22 the hospital.
- 23 Q. So you tried to report these incidents?
- 24 A. Yes, sir.
- 25 Q. Went to the hospital for treatment?

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- 1 A. Yes, sir.
- 2 Q. But nothing ever happened from it?
- 3 A. No, sir. They said that I suffered from a
4 little co--, -- (pause).
- 5 Q. Contusion?
- 6 A. Contusion on my right hand and I had a
7 whole goose egg.
- 8 Q. Now, were there other times where some of
9 these same officers that you've testified
10 about put bags over the windows, flaps, door?
- 11 A. Yes.
- 12 Q. Tell us about that?
- 13 A. Well, when an incident going on or
14 something be going on in the unit, the unit --
15 the unit was like, 'Man, I know you'all wrong.
16 I know you'all wrong.' But they was like, 'We
17 ain't wrong, this is our job, we can do what
18 we want to do. We have the badges.' So they
19 sprayed the windows with a little spray,
20 whatever spray that they clean up. They
21 started putting trash bags on the windows and
22 put cardboard on the windows.
- 23 Q. So was -- so that if an incident was about
24 to happen, ---
- 25 A. --- that no one could see.

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1 Q. --- no one would see what was going to
2 happen?

3 A. (Affirmative nod).

4 Q. So you couldn't report it, is that right?

5 A. Yes, sir.

6 Q. What do you know about an inmate named
7 Solomon Chisholm getting beat up by another
8 inmate who was paid by detention officers to
9 beat up Mr. Chisholm?

10 A. Well, when I came back in from lockup, the
11 day he was going to the hospital, so I came
12 into lockup and as they were putting me in my
13 room he wasn't in there, he was in the
14 hospital. They were saying, Officer Cross was
15 coming around saying, 'Yeah', that he
16 threatened Officer Cross. 'He threatened me.
17 Yeah, I got somebody that can handle you
18 homeboys. That's all that it took. If you
19 keep on playing with me, I'm going to put him
20 in your room and make him to the same thing
21 that he did with him. You be next.'

22 He walked off and I started asking what
23 happened to Solomon Chisholm. They was like,
24 'Man, they put somebody in the room with him
25 and they beat him up, slammed him, they kicked

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1 him in his ribs, fractured his ribs.'

2 They gave him extra trays and stuff and
3 they had him doing their dirty work on the
4 inside.

5 Q. When you say extra trays, are you saying
6 officers would pay a bigger inmate with extra
7 food trays to ---

8 A. Yeah.

9 BRUCE DURANT: Your Honor, is this
10 something that he is seeing or something that
11 somebody told him about?

12 THE COURT: I don't know.

13 BRUCE DURANT: I mean, what's --
14 what are we doing here?

15 MR. BLOOM: It gets ---

16 THE COURT: Mr. Durant, he is
17 supporting his Motion; I think.

18 BRUCE DURANT: But, well, is this
19 based on hearsay or did he see it?

20 THE COURT: I agree with him. At
21 some pertinent time it may have -- that
22 objection has some relevance but as of right
23 now, (negative gesture). Thank you, sir.

24 BRUCE DURANT: So we are just
25 making a record.

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1 THE COURT: I understand -- no, I'm
2 hearing what they want me to hear. Obviously
3 those things are matters that are pretty
4 significant in determining credibility and
5 weight to be given to their respective
6 position. So I am cognizant of your concern.

7 BRUCE DURANT: Thank you.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. BLOOM:

11 Q. Mr. Birch, let me ask you, these are
12 threats made to you by some detention
13 officers, that if you weren't complying that
14 the officers would put this larger inmate in
15 your cell and pay the larger inmate with extra
16 food trays and canteen privileges to beat you
17 up?

18 A. Yes, and Officer Cross, when I came in he
19 started like, he like rough-housed people and
20 tell them -- they say, 'F-you man, fuck you
21 man, you don't have to handle me like that,
22 you don't have to handle me like that.'

23 He tell me, 'Well, you keep on, I got
24 somebody for you.' I can't testify to that,
25 it might not be an issue right now but -- 'I

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1 got something for you, I'll put somebody in
2 your room, I got somebody for you.' That's
3 what he said, you know, like that.

4 I say, 'Man, I ain't got no problem, I can
5 handle whoever.' You know, like that.

6 Q. All right. So these are threats made to
7 you by some of these same detention officers?

8 A. Yes, sir.

9 Q. And made -- I have nothing further.
10 Please answer any questions that the solicitor
11 or the judge may have.

12 THE COURT: Any questions?

13 CROSS EXAMINATION

14 BY BRUCE DURANT:

15 Q. Why are you wearing pink?

16 A. Sir?

17 Q. Why are you wearing pink?

18 A. (No verbal response).

19 Q. Why are you wearing hot pink?

20 A. I am wearing pink because, uh, they
21 wouldn't let me use the bathroom. I whipped
22 my genitals out and started peeing on the side
23 of the building.

24 Q. Oh, okay. And why were you in 1-A at the
25 Charleston County Detention Center?

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1 A. Because the officers, they don't show --
2 they don't respect you, so why should I
3 respect them?

4 Q. And why don't you tell the judge what 1-A
5 at the Charleston County Detention Center is?

6 A. For people who get riled up, whatnot.

7 Q. Problem children, correct?

8 A. Yes.

9 Q. People that fight with detention officers?

10 A. (No verbal response).

11 Q. Correct?

12 A. Yes, but ---

13 Q. People that are in there for disciplinary
14 reasons, like you were; correct?

15 A. Correct.

16 Q. Criminals like you, correct?

17 A. I ain't a criminal.

18 Q. Oh, you -- I'm sorry, I thought I under-
19 stood you to be doing time for armed robbery.

20 A. Yeah.

21 Q. That is not a crime, though?

22 A. Yeah, it's ---

23 Q. All right. So then you are a criminal?

24 A. (No verbal response).

25 Q. Correct?

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1 THE COURT: Let's move on, Mr.

2 Durant. That's not necessary.

3 CROSS EXAMINATION CONTINUED

4 BY BRUCE DURANT:

5 Q. You don't like these officers, do you?

6 A. 'Cause they don't like me.

7 Q. They don't like you because you fight with
8 them, correct?

9 A. No, they fight me. They don't show me no
10 respect, so I don't show them no respect.

11 Q. That's absolutely correct. They fought
12 you, you did nothing. Correct?

13 A. I ain't did nothing.

14 Q. And on this particular day when this
15 incident involved Mr. Dickerson, you couldn't
16 even see what was going on.

17 A. Yes, I did see what was going on.

18 Q. Tell the judge how you did that.

19 A. How I did it?

20 Q. You're in a cell, right?

21 A. Yes, sir.

22 Q. And it's got cinderblock walls all the way
23 around?

24 A. Yes, sir.

25 Q. And it's got a big steel door right in the

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1 front of it, correct?

2 A. Yes, sir.

3 Q. And it's got a little pass-through like
4 that (indicating size with hands), which you
5 have already said was broken and didn't come
6 in until after you kicked it to try to get
7 somebody's attention.

8 A. I already knew the door was broken.

9 Q. Yeah, but you can't see it if the pass-
10 through is ---

11 A. Why couldn't I see through it?

12 Q. Because you just said when you were
13 testifying that you couldn't see until you
14 kicked the door and the thing came open.

15 A. I said I hear a boom, that's exactly what
16 I said.

17 Q. And you -- you can't see his room because
18 you are there and he is down there or either
19 they are -- they are on the same side.

20 A. He's on my left-hand side.

21 Q. Exactly right. It isn't across from your
22 room where you can sit there and watch his
23 cell; is it?

24 A. (No verbal response).

25 Q. You can't see in his cell from your room.

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1 A. It didn't happen in his room.

2 Q. Can you see in his cell from your room?

3 THE COURT: Mr. Durant, I heard
4 that testimony. Thank you, ---

5 THE WITNESS: It didn't happen in
6 his room, so I didn't have to see in his room.

7 THE COURT: --- sir. I am very
8 aware of where he positioned himself.

9 BRUCE DURANT: No further
10 questions, Your Honor.

11 THE COURT: Thank you, sir. Any
12 further questions?

13 MR. BLOOM: No, sir.

14 THE COURT: Thank you, you may come
15 down.

16 (WITNESS STEPS DOWN)

17 THE COURT: All right, I have heard
18 two witnesses concerning all the assertions
19 about these guards and you've filed
20 affidavits. We don't need any more cumulative
21 testimony. I've incorporated the affidavits.
22 If you will rely on those assertions in your
23 affidavits, which I am assuming you have --
24 everyone that is referenced having prior
25 problems, it's this same group of people, as I

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1 understand?

2 MR. BLOOM: That's correct.

3 THE COURT: The State stipulates
4 that is your position. Is that correct?

5 BRUCE DURANT: That's correct,
6 Your Honor.

7 THE COURT: All right. We just
8 don't need to keep -- I mean, I don't need to
9 hear an abundance -- all of this testimony is
10 going to be basically the same type of
11 evaluation, unless you've got somebody that
12 says the officers came in and said -- by way
13 of illustration, 'I shouldn't have done what I
14 did', or something. That's fine. Otherwise,
15 we don't need to keep ---

16 MR. BLOOM: Yes, sir, I understand
17 the Court's position. In fact, I can just
18 verbally proffer what the other witnesses ---

19 THE COURT: Sure.

20 MR. BLOOM: Their affidavits
21 contain relevant information but the other
22 witnesses were actually across from William
23 Dickerson's cell, so they could see into it.
24 They would corroborate what these witnesses
25 have said.

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1 THE COURT: I don't have any
2 problem with your having testimony about the
3 incident itself. What I am talking about are
4 all these assertions and problems. I don't
5 need to hear about their life anymore. I
6 mean, they've made their statements. They are
7 saying that these people take liberties and
8 abuse them is what they're saying. That is my
9 synopsis of what they're saying.

10 MR. BLOOM: Yes, sir.

11 THE COURT: I assume most of these
12 people would assert the same thing, would aver
13 the same thing.

14 MR. BLOOM: That's correct, they
15 would have the same testimony. Again, the
16 other inmates we would proffer would have been
17 across from William ---

18 THE COURT: Then -- no, you call
19 whomever you want. These persons thus far,
20 they've had the hindrance of not -- they've
21 been on the same side, as I've understood it.
22 They can only testify to what they heard or
23 saw once they came out of the cell. Anyone
24 that you have that had a vantage point, you
25 call the witnesses that you think are

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1 necessary. I am not trying to short-circuit
2 your ---

3 MR. BLOOM: All right, sir. The
4 last two witnesses, I don't know if you need
5 to hear them or not because their affidavits
6 contain the -- that would actually be Solomon
7 Chisholm and Kareem Dodson. Kareem Dodson is
8 the one who admits being bribed by the
9 detention officers with canteen privileges,
10 food trays, and actually cash, to beat up
11 Solomon Chisholm. It is the same officers.

12 THE COURT: Anything that you want
13 -- again, that is a separate thing. What I am
14 talking about -- we spent the last third of
15 his testimony testifying of his own
16 involvement in confrontations. I just don't
17 need to hear that type of cumulative
18 testimony. Okay? But if -- but if it is the
19 incident where somebody -- that's a different
20 aspect.

21 MR. BLOOM: (Sidebar with Mr.
22 Carroll).

23 THE COURT: Excuse me, Mr. Carroll,
24 let me just interrupt -- all of that to say, I
25 am just trying to say the cumulative part, you

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1 don't have to -- I will tell you if I think
2 that it is cumulative. You call any witnesses
3 that you deem fit. Thank you. If I could, be
4 specific about what's cumulative.

5 MR. BLOOM: At this point, I think
6 we have made a showing to the trial court
7 generally what their testimony is.

8 THE COURT: Yes, sir.

9 MR. BLOOM: After consulting with
10 co-counsel, we both agree the additional
11 relevant testimony is contained in their
12 affidavits.

13 THE COURT: Very well.

14 MR. BLOOM: If the State ---

15 THE COURT: According ---

16 MR. BLOOM: --- is going to ---

17 THE COURT: Sorry. I violated my
18 own rule. Sorry.

19 MR. BLOOM: If the State is
20 stipulating that is the content of their
21 testimony, we don't need to present them.
22 We will let the court rely on those
23 affidavits.

24 THE COURT: Very well.

25 MR. BLOOM: The other information

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1 that was shown, I know that it didn't relate
2 to the December 7th incident but shows a
3 pattern of conduct by these same officers.
4 So we would rely on the affidavits presented
5 to you. I think maybe the affidavit of Mr.
6 Britt (phonetic) of three counts, being across
7 -- if I am not mistaken -- from William
8 Dickerson's cell. His testimony would flow
9 from there.

10 I would point out the affidavits,
11 again the affidavits of Solomon Chisholm and
12 Kareem Dobson are the ones who admit being
13 bribed by these detention officers who beat up
14 Solomon Chisholm. That goes to the pattern of
15 conduct by these officers.

16 If Your Honor would like, I will be
17 happy to address the legal basis of our Motion
18 and revisit that at this point.

19 THE COURT: All right, I will be
20 happy to hear from you.

21 MR. BLOOM: Your Honor, I under-
22 stand that these are inmate witnesses and all
23 of them obviously have a record, or some of
24 them are still in the Charleston County Jail
25 and having pending charges which ultimately

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1 will be resolved by the courts or jurors of
2 this county.

3 There are some discrepancies among
4 their different testimonies or affidavits, but
5 I think the corroborating factors among them
6 is that there is -- and I say this with a
7 heavy heart -- a rogue unit in the Charleston
8 County Detention Center that is initiating
9 physical assaults; that on occasions is
10 planning physical assaults, that they cover
11 up the window flaps with plastic bags.

12 This incident on December 7th
13 obviously was not a planned assault because
14 nothing was covered up, but it was initiated
15 by the officers. It started as a verbal
16 altercation, that Mr. Dickerson -- apart from
17 his cellmate, Mr. Williams -- was handcuffed
18 and thrown on the floor, was being kicked in
19 the stomach. Complaints have been filed with
20 his superiors through grievance at the
21 Charleston County Jail but nothing was ever
22 addressed.

23 Finally, that there is a pattern of
24 conduct among these officers separate and
25 apart from December 7th where they taser people

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1 in their cells, where they handcuff inmates
2 and kick and beat them and that they initiate
3 this conduct, that they instigate and talk to
4 inmates, of verbal assaults preceding such
5 physical conduct.

6 I understand that there may be --
7 they are inmates and I understand that they
8 have beefs with certain officers. I think the
9 point of the testimony in the affidavits,
10 though, they aren't saying that every single
11 officer in the Charleston County Detention
12 Center -- in fact, I think one affidavit in
13 there recites that there is a separate team of
14 officers who do follow the rules and protocol
15 and, without bending rules, treat the inmates
16 as human beings.

17 This should be a subject of concern
18 to anybody. In over twenty years of practice,
19 I've never had to make a Motion such as this.
20 I've never felt compelled to report such
21 conduct to the Department of Justice. I think
22 that there is a serious problem with these
23 particular officers.

24 It is obvious that they -- I think
25 the court can take as judicial notice that the

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1 officers understood Mr. Dickerson is an
2 inmate, that he has a murder charge pending
3 and that it is a capital case. There are only
4 a handful of inmates in the Charleston County
5 Detention Center with such charges.

6 I cannot guess why they particularly
7 fought with William Dickerson on December 7th,
8 2008, but based on this pattern of conduct it
9 is serious, illegal, unlawful and
10 unconstitutional conduct.

11 If the trial court can exclude
12 evidence where the police have a faulty search
13 warrant or no search warrant or coerce a
14 confession or where they have engaged in other
15 missteps of the law, clearly where law
16 enforcement officials intentionally and
17 deliberately instigate a situation and then
18 the State tries to use that unlawful police
19 conduct in an aggravating way against a
20 defendant, clearly that is unconstitutional.
21 It would render any sentencing proceeding
22 unreliable and inherently prejudicial to the
23 defendant.

24 It would be no different than if a
25 lead investigator in this case went down to

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1 the jail, using his authority check into the
2 cellblock, went up and hit Mr. Dickerson and
3 did other things, then complained that Mr.
4 Dickerson assaulted him.

5 Clearly law enforcement can't create
6 a situation, an unlawful situation that
7 accrues to the State's benefit and then use
8 that against the defendant in sentencing.

9 It is not just one or two inmates. I
10 know we've proffered two, but the affidavits
11 speak for themselves. Mr. Dodson's affidavit,
12 I cannot imagine why he would admit being
13 bribed by the officers and beating up another
14 inmate if that weren't true; because he
15 exposes himself, obviously, to additional
16 charges.

17 Obviously I understand the
18 Solicitor's point about that Unit 1-A is for
19 inmates who have committed disciplinary
20 infractions and is a segregated community.
21 But that doesn't render what we perceive as
22 the unlawful initiation or illegal conduct by
23 law enforcement officials in this case any
24 different from case law. It is clear in this
25 regard, indeed the inmates would have a civil

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1 action if they chose to pursue it. If there
2 are grounds for a civil action, clearly the
3 State can't use that information against the
4 Defendant where there is illegal or unlawful
5 conduct. I understand a civil action will
6 ultimately be decided by the jury and those
7 sorts of things, but where there is a pattern
8 of conduct, incident after incident by what
9 can plainly and clearly be called rogue
10 officers, the State can't use that to accrue
11 to their benefit.

12 I would humbly submit, and I mean
13 this, if this evidence is allowed, given the
14 information that is before the court at this
15 point, where the court has to meet the clear
16 and convincing threshold initially, and even
17 the State has established some prior act by
18 clear and convincing evidence -- assuming that
19 threshold is met, where the court is clearly
20 the gatekeeper, illegal evidence or
21 unlawfully-obtained evidence, it would in my
22 humble opinion render the whole sentencing
23 phase suspect on this one incident.

24 Our U.S. Supreme Court is clear if
25 there is anything in the sentencing phase of a

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1 death penalty trial that is later determined
2 by a reviewing court to taint that proceeding,
3 it renders the whole phase unconstitutional.

4 We don't get into a prejudice
5 analysis. My easiest example is that there
6 are U.S. Supreme Court cases which talk about
7 improperly-admitted prior bad act evidence.
8 There are also U.S. Supreme Court cases that
9 talk about where an aggravating circumstance
10 is later thrown out, that may render the
11 sentencing phase unconstitutional depending on
12 other factors.

13 Indeed, *Johnson v. Mississippi* is a
14 longstanding U.S. Supreme Court precedent,
15 still good law. That talks about that if one
16 prior conviction is admitted at sentencing,
17 even though at the time it is assumed to be a
18 prior conviction and it is later that that
19 conviction, after the sentencing proceeding,
20 is reversed then that renders the whole phase
21 unconstitutional. I can't remember what the
22 conviction was in *Johnson* but that is a case
23 that at the time of the sentencing proceeding
24 it was a valid conviction. Subsequent to
25 Johnson's death sentence, it wasn't a

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1 conviction -- it wasn't a murder conviction
2 but a separate prior conviction. Subsequent
3 to his death sentence that conviction was
4 later determined to be unconstitutional and it
5 was voided, and that voided the whole
6 sentencing proceeding. That is a case that to
7 this day I'm still surprised at because at the
8 time of trial, if there was ever harmless
9 error or no precedent, it was a valid
10 conviction.

11 Here, we're not even talking about
12 that. We are talking about an alleged prior
13 bad act which -- I am trying to use tactful
14 words -- borders on unconscionable for any
15 inmate to be physically restrained and
16 assaulted; is unconscionable once that inmate
17 is restrained.

18 Even if the court believes from
19 evidence or the arguments of the solicitor
20 that Mr. Dickerson initiated the conduct,
21 let's even assume that for the sake of
22 argument that he initiated the confrontation,
23 it is clear from the testimony and affidavits
24 that he was handcuffed behind his back, prone
25 on the floor and continued to be kicked in the

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1 head and groin. My only regret today is that
2 I don't have color photographs to show you but
3 I've attached copies and it is clear that he
4 was injured.

5 So to take an incident that is
6 unconscionable or unconstitutional, I think
7 and I humbly submit would render the whole
8 sentencing proceeding void. I don't say that
9 lightly. This is a very serious issue and I'd
10 like to try the case once.

11 THE COURT: So would the court. I
12 want to -- do you wish to respond? I'll be
13 happy to hear from you.

14 BRUCE DURANT: It depends on which
15 way that you rule.

16 THE COURT: I understand. The
17 problem that I have is this, because I really
18 and truly -- you're -- I don't necessarily
19 disagree with a lot that you've said. I
20 certainly don't disagree with the urgency of
21 making certain that it is a clean trial. I
22 can honestly say that I don't believe that
23 there is any judge that serves in this state
24 that intentionally tries to create a bad
25 record, in a capital case or any case for that

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1 matter. I also know that we can't sit here
2 and live in fear of reversal. We have to make
3 calls. That's just the nature of the beast.

4 There is no question that if it comes
5 in for prior bad acts, I agree with you.
6 That's that muddled area here of not complying
7 with -- how compliant would he be in a prison
8 setting. But clearly I don't disagree with
9 the assertion that it is a prior bad act, it's
10 an alleged assault on an officer that
11 precipitates all of this.

12 I think that the best way to handle
13 this, Mr. Bloom, is that I can't grant your
14 Motion today because I only have one side. I
15 haven't heard what the other side -- whether
16 it is clear and convincing, there are certain
17 factors that obviously -- frankly, the -- I
18 want to assure you of something, and I hope
19 that I don't do anything and have never done
20 anything, because this is truly what I -- how
21 I believe, -- uh, I'm trying to make sure of
22 this, too, because I think it is important. I
23 understand. I was a lawyer, I understand Mr.
24 Durant's statement about 'you're a criminal.'
25 I understand that and I understand the purpose

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1 for which that was stated. I did the same
2 thing when I was an advocate.

3 But for me, just the statement that I
4 said to Mr. Dickerson earlier today is exactly
5 how I feel. He is a human being that is
6 charged with a heinous crime, he is innocent
7 of it as he sits here today, and after he is
8 guilty he will be -- if he is guilty. If he
9 is acquitted, then his Constitutional rights
10 are preserved and he walks away, as he should.
11 He's faced -- he's had his opportunity. If
12 he is convicted, then he has a record and
13 whatever punishment is then deemed appropriate
14 for that act -- but, you know what? Even with
15 the worst outcome, it doesn't change that he
16 is a human being, to me. It doesn't change
17 that he is entitled to the same respect that
18 you are and I am, that everybody in this room
19 is because we were all creatures placed here
20 on this earth. That's how fundamental I see
21 that. There's a much bigger judge than I.
22 He's the one that makes those judgments, not
23 me.

24 I have done my best to respect people
25 because that is precisely what this young man

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1 said. I think that it is -- it is the philo-
2 sophy that gets people in trouble, ultimately,
3 because you can't apply this across the board
4 in every situation. That is, 'they don't
5 respect me, so therefore I don't respect
6 them.' That is that flip side of the Golden
7 Rule, 'do unto others as they do unto you.'
8 That is not what it says. Mine is that I'm
9 going to respect him. In fact, I just ask
10 that he do the same thing back.

11 I can't make him do that, but that is
12 not going to change how I rule. The fact that
13 they are inmates, yeah. That's why I tell
14 juries as a matter of law that's a factor that
15 you can consider, it doesn't mean that you
16 have to disbelieve that person. It is just a
17 factor in weighing the credibility of that
18 person. It doesn't make his testimony
19 incredible.

20 You're right, there are a lot of
21 things that are there. There are some issues
22 that concern me right now from the standpoint
23 of going to the level of saying that by clear
24 and convincing evidence before me today there
25 was nothing that precipitated this. I don't

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1 know. I know what these people said, there
2 are a lot of areas in the affidavits
3 themselves -- and I appreciate how thorough
4 they were. They were candid enough to say,
5 'I didn't see this particular point.' But
6 there are some issues that have to be
7 addressed.

8 I think to preserve the record,
9 assuming nothing comes out beforehand, is that
10 we will have -- we will take a limited portion
11 of this testimony out of the presence of the
12 jury. You'll have an opportunity to ask
13 questions. As Mr. Durant said, that is the
14 beauty of cross-examination. That is what
15 these persons will have to -- and all these
16 questions that are supportive of the alleged
17 conduct on the part of these persons, they'll
18 have an opportunity, the court will have an
19 opportunity then. It is one of those touchy
20 issues that -- generally, as we all know, any
21 issues of fact are deferred to the jury but
22 the court constantly gives us these little
23 asides that say, 'yeah, but this one you've
24 got to determine by clear and convincing.'
25 No longer is it just a jury issue, but it's

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1 really, really, basically almost unequivocal,
2 -- not necessarily reasonable doubt, but is it
3 that clear? So -- obviously you're right, I
4 have to make a call, a judgment call, but
5 until I hear it I can't make a call.

6 Your Motion is noted, it is very ably
7 supported, the testimony is fully stated
8 insofar as the support for the Motion being
9 made and the support for the line of cross-
10 examination. The only restriction -- and I am
11 not restraining anything, I can't rule in a
12 vacuum but obviously incidents that occurred
13 remotely, I -- that's where I am going to have
14 to weigh that and make a 403 analysis, I
15 guess, if it comes to that. I don't know that
16 it will because I am sure probably most of
17 your attacks will be on the day of the
18 incident itself and not necessarily beyond
19 that. I am not trying to tell you how to try
20 it.

21 I appreciate the seriousness of it, I
22 appreciate your professionalism, I appreciate
23 the candor of your statement that you have
24 never had to do that. It is something that
25 obviously shouldn't exist. I am not saying

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1 that it does or that it doesn't, I am not
2 making a ruling on that issue today.

3 I know this, I know that it points
4 out something that is obviously, is clear, uh,
5 and it's difficult for persons who have never
6 really associated themselves with this to
7 understand what we are talking about. That
8 is, unless you have been where Mr. Dickerson
9 had to be, uh, you really don't understand how
10 it is inside. People are judging that without
11 having any appreciation for it. Tough to do.
12 But in some ways the same standards of decency
13 apply, there's no question about that.

14 But we also know that because of the
15 volatile nature of this situation there are
16 certain restrictions that have to apply, that
17 don't necessarily apply in every state, but to
18 contrast that I was listening to our President
19 speak in France this morning. He was talking
20 about closing the prison and that, uh, we
21 don't torture. I think obviously that there
22 is a recognition that there are certain
23 standards that may apply in certain situations
24 that they don't -- that they don't ever rise
25 to brutality. So I hear you, I understand.

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1 MR. BLOOM: I appreciate those
2 remarks and it is the first time that I've
3 ever had to file a Motion like this or to
4 report anything of this nature to federal
5 authorities. If I could explain my reasons
6 very briefly?

7 THE COURT: Certainly.

8 MR. BLOOM: I personally inter-
9 viewed the last two witnesses. When I
10 contacted them they were in separate
11 Department of Corrections facilities, one was
12 at Lieber and the last one was at Kirkland.
13 They had no idea that I was coming, they
14 didn't know who I was or what I was going to
15 ask.

16 Sometimes, as we know, in these
17 stories sometimes it's the small details that
18 indicate there is some truth. I offer this in
19 way of argument. Both of them told me that
20 they knew of an incident by these officers was
21 going to happen when plastic bags got put over
22 the cell flap door or they would spray some
23 kind of material over it so that the inmates
24 couldn't see out. Both of these inmates told
25 me that -- as they testified to, I believe.

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1 Neither of them knew that I was coming,
2 separate institutions, they had no chance to
3 prepare notes and it had nothing to do with
4 Mr. Dickerson. I just offer that by way of
5 argument to the court as it being a pattern
6 of conduct and I appreciate the court's ---

7 THE COURT: Thank you very much,
8 Mr. Bloom. All right, your next Motion?

9 MR. BLOOM: The next Motion that we
10 would have, Your Honor, is to prohibit the
11 intimidation of witness. We've got one
12 witness in this regard.

13 BRUCE DURANT: Your Honor, before
14 we begin that one, I would like just a two-
15 minute break if we could.

16 THE COURT: I need about a five-
17 minute break.

18 BRUCE DURANT: Also before we
19 leave the last one, I hate to admit my
20 ignorance of the law, which is vast and often,
21 but I understand that when we're in the
22 penalty phase and I am proving the character
23 of the accused that I am not limited by this
24 clear and convincing evidence standard,
25 according to *State v. Middleton* and *State v.*

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1 George.

2 THE COURT: I just said that it is
3 a muddy area. The concern that I have is that
4 if -- let me just liken it to the case where
5 they weren't tried for the two murders. I
6 think before I allowed that I'd have to -- it
7 has to be pretty clear and convincing to
8 permit that sort of conduct to come in to talk
9 about his character. I mean, there's no
10 question it is a character issue but I think
11 if there is not a conviction, I think I would
12 have to apply some standard. I don't quarrel
13 with you that -- let's put it this way, the
14 same ---

15 BRUCE DURANT: I hope I will get
16 to the point where I'm not up there trying to
17 prove rumor and innuendo. Anyway, I just
18 wanted to be -- this is something that we can
19 argue about later. We haven't even got to
20 that point.

21 THE COURT: Precisely and we may
22 not. Let me give you what I did -- not that
23 -- we were just talking about it, it would be
24 great if I had the book. I don't know if it
25 is a good publication, the capital murder book

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1 that they just produced. Is it worth buying?

2 Do you'all have it?

3 BRUCE DURANT: We've purchased it,
4 we haven't gotten it yet.

5 THE COURT: Do you have it?

6 MR. BLOOM: I do not.

7 THE COURT: I am all for that but
8 the great thing that we know as lawyers, you
9 can put down all kind of things in books but
10 it doesn't cover everything.

11 BRUCE DURANT: Yeah.

12 THE COURT: That's why we're here,
13 that's why we do what we do. But to try --
14 just to give you an example of where I did
15 exclude it, in the Stone trial Wade Culp
16 wanted to put in that somebody said that he
17 had made -- he assaulted or threatened to
18 assault a person, criminal sexual conduct, and
19 that didn't come in.

20 BRUCE DURANT: I can promise you
21 that I am not doing that.

22 MR. BLOOM: Just to be clear, I
23 concur with the court. I think any alleged
24 prior bad act at the sentencing, whether it is
25 this incident or any other as a result of a

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1 conviction, that they first have to show the
2 court by clear and convincing evidence. There
3 may be other issues as well, but that as a
4 threshold matter it is our position that ---

5 THE COURT: Yeah. I assure you of
6 this, and I know the State will do this, uh,
7 because you had the same concern that has been
8 expressed by Mr. Bloom, you don't want to
9 retry these cases either. Sometimes we
10 lawyers, as I used to tell the mock trial
11 team, 'you need to learn to get to the edge,
12 you don't step over the edge, you try to find
13 the edge and you stay there, you become an
14 advocate for your side.'

15 But one of the trials that was really
16 easiest, and I am not suggesting that you'all
17 will do anything but they made the suggestion,
18 the State said 'we will withdraw that, I am
19 not going there.'

20 I don't know how -- I've never done
21 it so I am not trying to do that, but I think
22 we all share. I think that is one thing that
23 we have in common but I understand that there
24 are certain things that you have to do.

25 BRUCE DURANT: I understand. I

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1 don't think you could be involved in capital
2 litigation without having that appreciation.

3 THE COURT: Precisely. Let me just
4 tell you my philosophy. I have a rule that
5 deals with prior bad acts. It really comes
6 from mistakes that you make. I got caught up
7 in the *Stone* case, really what's embarrassing
8 is that there was a case directly on point
9 that we just missed. My bad. But when you
10 think about the philosophy behind it, we
11 should have caught it anyway. I excluded
12 anything about his intoxication in the guilt
13 phase, but -- that he was intoxicated doesn't
14 change anything. But I let that exclusion
15 carry over into mitigating circumstances.
16 Intoxication is a mitigating circumstance
17 because it deals with whether or not the
18 person would do it normally, whether this
19 would influence or affect one. It's a
20 rationale -- I mean, when you think about it,
21 it's rationale. It makes perfect sense it
22 should come in. That's what I am saying.
23 I've got a rule, typically what I've said is
24 that there is a rule for that to be in certain
25 situations. Given the severity of what we are

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1 talking about here, the gravity, I am probably
2 going to apply that in making my determination
3 -- just for your information. I am not saying
4 that I am right, I am just saying that is my
5 thought process.

6 BRUCE DURANT: Thank you, Your
7 Honor.

8 THE COURT: We will be at-ease for
9 about five minutes.

10 (BRIEF RECESS)

11 THE COURT: We are ready to
12 continue now.

13 MR. BLOOM: Yes, sir.

14 THE COURT: Very well, Mr. Bloom,
15 -- thank you, sir.

16 MR. BLOOM: Your Honor, we would
17 move to our next Motion, the intimidation of
18 witnesses and we would call Johnette Watson.

19 (WITNESS TAKES STAND)

20 JOHNETTE WATSON, being duly
21 sworn to tell the truth, the whole truth and
22 nothing but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY MR. BLOOM:

25 Q. Ms. Watson, where do you live?

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- 1 A. West Ashley.
- 2 Q. How are you related to William Dickerson?
- 3 A. He is my first cousin.
- 4 Q. Did you come to be a witness in this case
- 5 as to some facts about a cell phone and other
- 6 information?
- 7 A. Correct.
- 8 Q. Were you contacted by the Solicitor's
- 9 Office to come and be interviewed prior to the
- 10 trial in this case?
- 11 A. Correct.
- 12 Q. Do you remember the date or approximately
- 13 when you reported up to the Solicitor's
- 14 office?
- 15 A. February 5th, I believe.
- 16 Q. Of this year?
- 17 A. Um-humm, (affirmative nod).
- 18 Q. Whose office did you report to?
- 19 A. Jeffrey Osborne's.
- 20 Q. Do you know who Mr. Osborne is?
- 21 A. (No verbal response).
- 22 Q. Or did he tell you who he was?
- 23 A. He told me that he was either the
- 24 solicitor or representing the Solicitor or
- 25 representing the Solicitor's office.

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- 1 Q. Could he be a solicitor's investigator or
2 staff member there?
- 3 A. I don't know his title.
- 4 Q. You don't remember his title?
- 5 A. (Negative gesture).
- 6 Q. Whether he is an attorney, a staff member
7 or what?
- 8 A. Correct.
- 9 Q. Did you report up to his office at the
10 Solicitor's office?
- 11 A. Yes.
- 12 Q. What happened then?
- 13 A. When I got there, I waited in the lobby.
14 He came and got me, took me to his office,
15 signed a subpoena, explained to me that I may
16 or it may -- no, that I may have to come to
17 the trial and, uh, from there told me that we
18 were going to meet with the prosecutor.
- 19 Q. All right. Did you then go to another
20 office or stay -- where did you go then?
- 21 A. We walked to another office.
- 22 Q. Do you know whose office that you went to
23 or who was in the room when you got to that
24 other office?
- 25 A. That guy sitting in the middle at that

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1 table.

2 Q. I'm sorry?

3 A. The man sitting in the table over at that
4 time.

5 MR. BLOOM: That would be Mr.
6 (Bruce) Durant, Your Honor, for the record.

7 THE COURT: Yes.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. BLOOM:

10 Q. Was there anyone -- who else was in Mr.
11 Durant's office besides Mr. Durant?

12 A. When I got there he was the only one in
13 there. A couple of minutes later the man
14 sitting next to Mr. Osborne came in.

15 MR. BLOOM: I apologize. I've met
16 the man, but -- could you identify yourself?

17 MATT CASEY: Matt Casey.

18 MR. BLOOM: Thank you.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. BLOOM:

21 Q. So Mr. Casey was in the office while you
22 were in there?

23 A. Correct.

24 Q. Mr. Durant was in the office?

25 A. Correct.

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- 1 Q. And Mr. Osborne was in there?
- 2 A. Correct.
- 3 Q. Can you just generally tell me how the
- 4 interview proceeded or what happened then?
- 5 A. Mr. Durant was on his computer doing some
- 6 stuff. We sat there. He proceeded to ask me
- 7 my name, what I did for a living, about my
- 8 family, I let him know that I have one son.
- 9 Q. You let him know what?
- 10 A. That I have a child.
- 11 Q. How old is your child?
- 12 A. He's six.
- 13 Q. Six?
- 14 A. (Affirmative nod).
- 15 Q. Go ahead, ma'am.
- 16 A. And they asked me -- asked me about
- 17 myself, asked me how William came to get the
- 18 cell phone that was in my name; which is what
- 19 Mr. Osborne told me was going to be my only
- 20 reason for meeting with them -- with him
- 21 rather. He didn't specify a meeting of a
- 22 second or third party. And, uh, I told them
- 23 that I had an extra cell phone, that the
- 24 person that was in the possession of it I had
- 25 took it from them. I didn't want to cancel

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1 the contract. William needed a phone, so we
2 agreed that he would take possession of it and
3 pay the bill for it.

4 Q. So you were there to recount how William
5 Dickerson got a cell phone that was under your
6 name?

7 A. Correct.

8 Q. How did the interview proceed from there?

9 A. From there he played a tape, played a
10 tape, we all listened to it and they proceeded
11 to ask me if I could recognize the voices on
12 the tape. I told them that the tape was loud
13 and I couldn't understand what was on it. He
14 -- Mr. Durant put up a paper, I don't know if
15 he printed it off the computer or if he had it
16 on his desk. It was a statement that I had
17 given to detectives, Sergeant Goldstein from
18 the Charleston City Police Department called
19 me after this incident took place and asked me
20 if I minded meeting with them because they
21 knew that the phone was in my name. I told
22 them 'no.' Sergeant Goldstein knew me from
23 working on a case from my brother being
24 murdered years ago and, so, ---
25 Q. Let me stop you there. The contact that

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1 you had with Sergeant Goldstein or anyone from
2 the Charleston Police Department was back
3 around March of 2006 or shortly thereafter
4 this incident?

5 A. Correct.

6 Q. Go ahead, please.

7 A. So after they played the tape and I told
8 them that I couldn't make the voices out on
9 the tape or recognize any persons, Mr. Durant,
10 he just began to ask me different questions in
11 reference to what I stated to the detective.
12 I told him, 'Okay, you have it on paper. What
13 would be the need to further ask me any
14 questions? I'm not understanding what you're
15 trying to do.' Mr. ---

16 Q. Let me stop you there. Did there appear
17 to be some conflict between Sergeant
18 Goldstein's report from 2006 and what you were
19 now telling them in 2009?

20 A. Yes.

21 Q. And the conflict was that back in 2006 the
22 sergeant understood that you may have been
23 able to identify some voices on the tape?

24 A. Correct.

25 Q. And now in 2009 the tape that they were

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1 playing for you in their office, you were
2 telling them that you couldn't identify the
3 voices?

4 A. Correct. Just as it was noted, we didn't
5 have the tape when I met with the officers.
6 It was my cell phone. I could access the
7 voice mail then. I was the account holder and
8 I could access the voice mail on the phone
9 that William had and we were listening from my
10 cell phone, which is how they recorded it.

11 But the day that I met with them, they had an
12 actual cassette tape.

13 Q. All right. Do you know if the audio
14 recording you listened to in 2006 was the
15 exact same audio recording you listened to in
16 their office in 2009? Do you know if they
17 were one and the same or if they were
18 different, if you know?

19 A. No, I don't know.

20 Q. How did the interview go from there?

21 A. From there they -- the three of them took
22 turns asking me different questions. Mr.
23 Osborne made a statement that he knew my
24 brother Duane Watson who is currently
25 incarcerated. I asked him, you know, 'What

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1 does that have to do with this meeting right
2 here?' One thing doesn't have anything to do
3 with the other. That was -- at that
4 statement, Mr. ---

5 Q. What -- well, go ahead.

6 A. --- Durant, and this is not all in like
7 the sequence of events.

8 Q. Sure.

9 A. I can't remember exactly how everything
10 took place or what was said. Mr. Durant at
11 one point asked me about my brother being
12 murdered, where it had happened and stated
13 that it was the area -- I don't know if he
14 said that he was a law enforcement officer or
15 that he had worked in that area. He related
16 something to himself in that area, saying that
17 he could almost guarantee that somebody knew
18 what happened to my brother. I asked him
19 again, you know, 'What does that have to do
20 with me being right here right now? Why is
21 anyone in my family being brought up?'

22 Q. Who was your brother, just for the record,
23 who was murdered?

24 A. Carlos Watson.

25 Q. Has anyone ever been charged with that

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1 offense?

2 A. No.

3 Q. Now, did there come a point in time in the
4 interview that you felt that they, the
5 officials in the room interviewing you, were
6 upset with you that you weren't able to
7 identify the voices on the tape?

8 A. Yes.

9 Q. That's communicated to you?

10 A. Yes.

11 Q. All right.

12 A. Mr. Osborne even made a statement that I
13 appeared standoffish as soon as I came in. I
14 replied, 'I don't know how you would have
15 wanted me to appear because, first of all, you
16 called me saying that I was coming for one
17 thing and now something else is happening, so
18 I am not going to be smiling and I am not
19 going to give you hugs or, you know, when so
20 to speak basically you lied as to why you
21 wanted me to come down here.'

22 Q. What was the reason that you were told
23 that they wanted you to come down?

24 A. He said that they had either the tape of
25 the voice mail or phone records and wanted to

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1 be able to prove if it was admissible in court
2 that William had the cell phone with
3 permission. He said that he couldn't go by
4 hearsay or something that somebody told him,
5 he needed to hear from, so to speak, the
6 horse's mouth that he had the phone with
7 permission.

8 Q. All right. At some point during the
9 meeting did you feel intimidated, that they
10 were trying to get you to identify the voices
11 on the tape when you'd clearly told them that
12 you could not?

13 A. Yes, the whole meeting.

14 Q. Near the end of the meeting, did there
15 come a point in time when someone made a
16 comment about your son and your brother?

17 A. Yes.

18 Q. What was said to you specifically?

19 A. Mr. Osborne made the statement that I
20 didn't want my son to end up like my brother.

21 Q. What did that mean to you?

22 A. To me, I honestly don't know if he was
23 talking about my brother that is incarcerated
24 or my brother that had been murdered but it
25 was just -- (pause/emotional) -- he didn't

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1 need to say that. That's my son.

2 Q. And you are clearly upset by that today
3 as you recount it, is that correct?

4 A. (Affirmative nod).

5 Q. And you were -- you can't nod your head,
6 you have to say 'yes' or 'no.'

7 A. Yes.

8 Q. And you were clearly upset on the day of
9 the interview by that comment, correct?

10 A. Um-humm, (affirmative nod). Yes.

11 Q. And to you it was being communicated that
12 you didn't want your six-year-old son to end
13 up like your incarcerated cousin (sic) or your
14 dead brother?

15 A. No, he said "brother". So he either meant
16 my incarcerated brother or my ---

17 Q. Dead brother.

18 A. --- deceased brother. Right.

19 Q. Did you take that statement to be an
20 attempt to try to coerce you to change your
21 testimony in terms of what they wanted you to
22 do in terms of identifying the voices on the
23 tape.

24 A. Yes.

25 MR. BLOOM: Thank you. Please --

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1 if you, when I interviewed you recently in
2 preparing for this trial you indicated that
3 you wanted to come to the courthouse and let
4 the judge know what happened to you that day,
5 is that fair to say?

6 THE WITNESS: Correct.

7 MR. BLOOM: Please answer any
8 questions that the solicitor or His Honor may
9 have.

10 SOLICITOR WILSON: Your Honor, I
11 would like to make as a court's exhibit Page
12 0181 of our discovery, which is a police
13 report by Officer Burckhardt.

14 THE COURT: Any objection?

15 MR. BLOOM: No objection, Your
16 Honor.

17 THE COURT: Very well, Court's
18 Exhibit 5 for purposes of this hearing.

19 (SO ENTERED AS COURT'S EXHIBIT 5)

20 CROSS EXAMINATION

21 BY SOLICITOR WILSON:

22 Q. Ms. Watson, I am Scarlett Wilson. You
23 haven't met me before, have you?

24 A. No, ma'am.

25 Q. And you mentioned that you're related to

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- 1 Mr. Dickerson?
- 2 A. Correct.
- 3 Q. And I can't remember if you told the
4 court, but is it your mother and his mother
5 who are sisters?
- 6 A. Correct.
- 7 Q. Did you'all grow up around each other?
- 8 A. Around each other, yes.
- 9 Q. You were cousins but you also were
10 friendly?
- 11 A. Yes.
- 12 Q. I mean, sometimes you have cousins that
13 you don't even know, right?
- 14 A. As a child?
- 15 Q. Yes.
- 16 A. Yes, we grew up around each other.
- 17 Q. And Damien Watson, he is your ---
- 18 A. --- brother.
- 19 Q. When you first talked with police about
20 this case you told them that you had gotten
21 this recording from his phone?
- 22 A. No.
- 23 Q. What did you tell the police initially?
- 24 A. I told them that the voice mail was from
25 William's phone. I told Mr. Durant -- at the

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1 time I didn't have access to Damien's phone,
2 so I couldn't have told them that.

3 Q. The conversation -- you had listened to
4 that conversation before you brought it in to
5 the police; right?

6 A. No.

7 Q. You had never listened to it?

8 A. No.

9 Q. How did you know what to bring in to the
10 police?

11 A. He, Mr. Goldstein called me and he said
12 that he understood that I had access to
13 William's phone. I explained to him that,
14 yes, because I was the account holder that I
15 did have access to the voice mail on the
16 phone. I didn't have the actual phone.

17 Q. So you just volunteered to bring the phone
18 in for them ---

19 A. --- for them to listen to.

20 Q. And, again, this was in March of 2006; is
21 that right?

22 A. Somewhere along there, I don't know the
23 exact date.

24 Q. And during that meeting with Mr.
25 Goldstein, do you remember if Detective

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1 Burckhardt was there also?

2 A. There was another, there were two other
3 police officers in the room.

4 Q. They became interested in a recording on
5 that phone?

6 A. They didn't pick out anything. The whole
7 time that I sat there, the tape was going and
8 they were listening to ---

9 Q. Okay. Now, be careful saying "tape"
10 versus what was on the phone.

11 A. No, they had a tape that they were
12 recording ---

13 Q. They had a ---

14 A. --- what was recorded. They listened to
15 each voice mail message.

16 Q. Like on a speakerphone?

17 A. Yes.

18 Q. Okay.

19 A. I didn't know that they were going to,
20 like, single out anything. They listened to
21 all of them.

22 Q. Okay. You watched as they made a
23 recording onto the cassette tape and played
24 that outloud so that all three of you could
25 hear?

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- 1 A. Correct.
- 2 Q. During them playing it back, you would
3 identify when you could recognize the voice
4 for them?
- 5 A. Yes.
- 6 Q. Because they didn't know those people,
7 right?
- 8 A. (Affirmative nod), no.
- 9 Q. And you at one point you recognized
10 William Dickerson's voice, right, and told the
11 police officers that was William Dickerson?
- 12 A. I told them that I thought -- if you read
13 what you have there, I told them that I
14 thought that was him.
- 15 Q. And you based that on the experiences that
16 you'd had, that you and William Dickerson had
17 had?
- 18 A. Correct.
- 19 Q. And you heard other voices on the tape?
- 20 A. (Affirmative nod).
- 21 Q. Did you ever hear your brother Damien's
22 voice?
- 23 A. No.
- 24 Q. Just William Dickerson's?
- 25 A. Correct. Sergeant Goldstein or either the

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1 first guy, they asked me when they were
2 listening to it, like, who was this or did I
3 know who that was. They were asking me during
4 the time.

5 Q. And this person that you were hearing that
6 you believed at the time was William
7 Dickerson, he is leaving a message trying to
8 get help from your brother?

9 A. If that's what was on there.

10 Q. Well, at the time when you were identify-
11 ing the voices, the voice was William
12 Dickerson trying to get your brother come help
13 him because somebody had shot at him; do you
14 remember that part, that somebody had been
15 shooting at William and he needed your brother
16 to help him?

17 A. Okay.

18 Q. Do you remember that?

19 A. I don't -- like I told you, I don't
20 remember exactly what was said three or four
21 years ago. If you have it on paper -- I'm not
22 saying that I didn't say it but I don't recall
23 the exact conversation.

24 Q. Okay. You remember the meeting, you
25 remember meeting with the two officers and

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1 there being issues with the voice mail and
2 them making a recording of it?

3 A. Correct.

4 Q. Okay. Now, when you were called up to the
5 Solicitor's office, that was not a meeting
6 that you looked forward to, was it?

7 A. When Mr. Osborne called me, I didn't have
8 a reason to not look forward to the meeting,
9 ma'am, because he called me saying that he
10 wanted to have me tell him in person that
11 William had the phone with permission, no
12 more, no less. There was no talk of meeting
13 with the prosecution or anybody else. So
14 there was no reason for me to not look forward
15 to it, because I didn't know what to expect.
16 I just thought that I was going to do just
17 that.

18 Q. Were you looking forward to or glad that
19 this trial was starting and glad that you and
20 other members of your family are having to be
21 witnesses, to go through interviews, be
22 subpoenaed? I mean, that's a pain; isn't it?

23 A. Glad?

24 Q. Yeah. Happy. You're not happy about
25 that, are you?

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1 A. I would have to say that I don't under-
2 stand what you're asking me, if I am glad that
3 the trial is coming up.

4 Q. Are you enjoying having to meet with law
5 enforcement again, having to come up to the
6 Solicitor's office, having a subpoena, having
7 to come to court today?

8 A. No, because I do work.

9 Q. Where do you work?

10 A. At Select Health of South Carolina.

11 Q. And when you came up to the Solicitor's
12 office that day you were missing work?

13 A. No, I told him that I was off on that day
14 because I was going to spend the day with my
15 son and his class.

16 Q. Were you able to do that?

17 A. No.

18 Q. Because you had to come to our office?

19 A. Because I was upset after leaving your
20 office.

21 Q. When you met with the three men that you
22 mentioned, you were the only woman in the
23 room; is that right?

24 A. Yes.

25 Q. Did that cause you some concern?

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- 1 A. No.
- 2 Q. When there were comments made about your
3 not remembering everything that happened three
4 years ago, that bothered you and it bothered
5 them; didn't it?
- 6 A. The whole meeting bothered me.
- 7 Q. Okay.
- 8 A. The guy sitting next to Mr. Osborne, he
9 at one time asked me if I talked to William.
10 I said yes, that we do speak periodically.
11 And he said, 'Is that the reason why you are
12 not remembering anything?' Just the whole
13 time they were making assumptions and
14 insinuating that -- treating me like I was a
15 criminal, with no criminal record. It was
16 just inappropriate and very unprofessional.
- 17 Q. They were clearly upset that your
18 recollection of things now was different in
19 their minds than it was three years ago?
- 20 A. Yes.
- 21 Q. You understand that this is a murder case?
- 22 A. Yes.
- 23 Q. You understand that it is our role and
24 their role to secure evidence for the case?
- 25 A. Okay.

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1 Q. Right?

2 A. Okay.

3 Q. And it is important for us to get to the
4 bottom of whatever the evidence is, whether we
5 like it or we don't. You understand that,
6 right?

7 A. Okay.

8 Q. Do you understand that? Yes or no?

9 A. No.

10 Q. You don't -- what I am saying is ---

11 A. I don't know a prosecutor's job.

12 Q. Well, wouldn't you think it would be
13 important if we have evidence and we have a
14 witness who gave a statement three years ago
15 and when we interview them now that the
16 statement is somehow different that we
17 challenge them to somehow understand why there
18 is a difference?

19 A. Challenging them is one thing but for them
20 to take me through what I went through, that
21 was totally different.

22 Q. You mentioned that one of your brothers
23 was killed? Carlos?

24 A. Yes.

25 Q. How long ago was that?

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1 A. 2004.

2 Q. And I take it that's been a very traumatic
3 event for you and the rest of your family?

4 A. Yes.

5 Q. Have you continued to work with police
6 about that case?

7 A. I haven't spoken to Sergeant Goldstein in
8 probably about three, two to three years.

9 Q. When Mr. Durant and the others who were
10 questioning you that day in the solicitor's
11 office, were asking you or telling you that
12 you didn't want -- that they didn't want their
13 son or your son -- let me start over.

14 That you wouldn't want your son to end up
15 like your brother did, and that many people
16 probably saw what happened to them, were they
17 not making the point that witnesses should
18 come forward and tell the truth so that we can
19 know what's happened and prosecute people who
20 commit crimes?

21 A. I didn't take it that way, no.

22 Q. You took it as what?

23 A. As them being sarcastic, making them do
24 whatever they needed to do to have me say
25 whatever they wanted me to say. Irregardless

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1 of how you point it out and try to make it
2 look here, that statement -- meaning the one
3 about my son ending up like my brother -- was
4 uncalled for. Period.

5 Q. You took great offense that they would
6 make the argument that if anything ever
7 happened to your son that you would want
8 witnesses to come forward and tell the truth?

9 A. I ---

10 Q. You took offense at that?

11 A. I did not take it that way.

12 Q. Okay.

13 A. He said, "You don't want your son to end
14 up like your brother." He didn't explain why
15 he said it, he didn't elaborate on it after he
16 said it. He said it and it should not have
17 been said -- (emotional).

18 Q. When that comment was said in the office,
19 did you become tearful then?

20 A. Um-humm.

21 SOLICITOR WILSON: Do we have
22 some Kleenex?

23 THE COURT: Do we have any?

24 SOLICITOR WILSON: Your Honor, I
25 was trying to find a Kleenex.

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1 THE COURT: The bailiff is going to
2 get some.

3 SOLICITOR WILSON: Are you okay,
4 Ms. Watson? I just have a couple of other
5 questions.

6 THE WITNESS: (Affirmative nod).

7 CROSS EXAMINATION RESUMED

8 BY SOLICITOR WILSON:

9 Q. Did you let the folks that were inter-
10 viewing you know that this was upsetting you?

11 A. How -- they could see that it was
12 upsetting me.

13 Q. But you weren't tearful at the time?

14 A. I was, yes.

15 Q. You were tearful?

16 A. Yes.

17 Q. And at that point you ended the interview?

18 A. Somewhere around there, yes.

19 Q. And you left our office?

20 A. Um-humm.

21 THE COURT: Is that a "yes"?

22 THE WITNESS: "Yes."

23 THE COURT: Thank you.

24 CROSS EXAMINATION CONTINUED

25 BY SOLICITOR WILSON:

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1 Q. I take it that you're not interested in
2 any more interviews with our office?

3 A. Correct.

4 Q. Would you conduct an interview with me?

5 A. No.

6 Q. How about another investigator, Burckhardt
7 or Goldstein?

8 A. No.

9 Q. You are not willing to talk to anybody in
10 law enforcement?

11 A. Correct.

12 SOLICITOR WILSON: That's all that
13 I have.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. BLOOM:

17 Q. Johnette, I just have a couple, two
18 questions for you and then I am done.

19 Regarding the last serious of questions
20 that the Solicitor just asked you, is the
21 reason you don't want to have any further
22 contact with the Solicitor's Office or law
23 enforcement because this has been so upsetting
24 for you in terms of that particular statement
25 that you related about your son?

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1 A. Correct.

2 MR. BLOOM: Thank you.

3 THE COURT: Recross, Solicitor?

4 SOLICITOR WILSON: No, sir.

5 THE COURT: Thank you, you may step
6 down.

7 (WITNESS STEPS DOWN)

8 MR. BLOOM: That would be our only
9 witness.

10 THE COURT: Very well. Does the
11 State have any witnesses that they wish to
12 present on the issue?

13 SOLICITOR WILSON: No, sir.

14 THE COURT: Be glad to hear from
15 you, Mr. Bloom.

16 MR. BLOOM: Your Honor, I think the
17 basis of the Motion is self-evident. The
18 witness' demeanor on the witness stand during
19 her testimony is also self-evident.

20 Since the record is a written record
21 and not a video one, I would place her
22 demeanor in the record. She was obviously
23 tearful during direct testimony when she
24 related the statement made to her, quote,
25 "You don't want your son to end up like your

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1 brother." End quote. By an official of the
2 Solicitor's staff.

3 She obviously became tearful at the
4 end of the cross-examination to the point
5 where the Solicitor requested of the court
6 official to go get some Kleenex for her.

7 I would note that she has left the
8 courtroom crying, in tears, by the back door,
9 headed straight out.

10 So the witness' demeanor and
11 composure, I think, speaks for itself.

12 Like the last Motion, I want to
13 humbly submit that I don't make these Motions
14 lightly. When I interviewed the witness she
15 specifically requested appearing before you,
16 making you aware of the matter.

17 I understand that the solicitor's
18 office has a job to do. I think sometimes we
19 as advocates forget that we're dealing with
20 human beings and human nature is an issue.

21 But as I pondered making this Motion,
22 discussed it with co-counsel, I thought what
23 was said to the witness, quote, "You don't
24 want your son to end up like your brother",
25 end quote, -- when clearly one brother is

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1 incarcerated and one is dead by homicide,
2 again it borders on unconscionable to treat a
3 witness like that; to say that, I think,
4 crosses the line. I say that in all due
5 respect and humility and we would ask the
6 court, pursuant to this Motion, to Order the
7 Solicitor's Office to refrain from such
8 further suggestions or attempts to model
9 testimony.

10 You know, the late Bubba Ness had a
11 great quote. It was in a case that many of us
12 interested in justice say and that is that a
13 solicitor's job -- Solicitor Wilson brought it
14 up on cross, the solicitor's job is to do
15 justice not to obtain a conviction. When they
16 push witnesses with comments to the point
17 where this witness clearly -- and it is a
18 witness' subjective state of mind at issue, I
19 understand that, who thought that there was an
20 attempt for her to remember something or to
21 say something about a recording that she
22 couldn't possibly say, I think is the point
23 where it becomes not just channeling a witness
24 or seeing if a witness can remember but trying
25 to shape testimony. We respectfully object to

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1 that.

2 I don't think that just because this
3 witness is a cousin to William Dickerson --
4 she obviously cooperated with Sergeant
5 Goldstein in the initial investigation.
6 Detective Burckhardt was there. She accessed
7 the voice mail for them, the recordings on it.
8 There may be some discrepancies between her
9 current testimony and that of almost three
10 years ago -- and the witness was very honest
11 about that, that she couldn't remember every-
12 thing from three years ago. But clearly in
13 her mind the comments that were made, or
14 certain comments, were attempts to coerce her
15 testimony to what the State wanted it shaped
16 as. We respectfully object to it.

17 If it comes to our attention that
18 there are other witnesses that similar methods
19 have been used, we will bring it to the
20 court's attention. We would respectfully ask
21 the court to instruct the solicitor not to
22 engage in any further conduct like that.
23 Secondly, that we would be entitled to cross-
24 examine any State's witness about how they
25 were questioned by the State, during the

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1 trial. We would ask for any other measures
2 that Your Honor thinks is appropriate under
3 the circumstances.

4 THE COURT: Response?

5 SOLICITOR WILSON: For the
6 record, I don't believe that the witness made
7 out anything that was unconscionable or
8 intimidation. Obviously there are some
9 sensitive matters that are emotional for her.
10 I certainly understand that. This is a tough
11 business and we can't always worry about
12 people's feelings getting hurt, even amongst
13 ourselves we hurt each other's feelings --
14 quite a lot sometimes.

15 I don't think that it has been made
16 out, I don't make any apologies for the way
17 that this witness was handled. I think cross-
18 examination is a fair game. I think the
19 defense team certainly has been aggressive,
20 as well, and it bothers us when their
21 investigators represent themselves as members
22 of our staff or members of the court but
23 that's how they chose to do their interviews,

24 You know, the goal is to get to the
25 truth. When we have witnesses that are

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1 associated with the defense, who are clearly
2 covering for a defendant or family member, we
3 are going to be aggressive. If we cross the
4 line, I certainly would even bring that
5 forward to the other side or to the court but
6 I have not seen that happen, I don't intend
7 for that to happen.

8 As far as this Motion goes, I was
9 very, very interested in hearing this witness'
10 testimony because, frankly, I don't know that
11 it is a good idea to have three men and one
12 woman in the room, but that didn't seem to
13 bother her and I am glad that wasn't an issue.
14 That tells me that the three men involved
15 handled it more than appropriately.

16 THE COURT: Response? Any
17 response, Mr. Bloom?

18 MR. BLOOM: Just, Your Honor, the
19 Solicitor asserted that it sometimes happens
20 where a defense investigator sometimes
21 represents themselves as a member of the
22 Solicitor's staff or the court. If they are
23 aware of that happening from our side at any
24 point in this case, Mr. Carroll and I would
25 abruptly and promptly correct it. I am aware

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1 of no such instance that's happen.

2 THE COURT: Let me point out
3 something. First of all, we all know -- and
4 the conversation generally comes about with
5 law clerks who haven't had any experience with
6 that and that's why it is not -- Mr.
7 Dickerson, I am not necessarily talking about
8 your case all the time, though we are trying
9 your case. This case is -- we've already
10 commented about the uniqueness of this case,
11 the second phase obviously if that becomes
12 necessary, but the first part is a murder
13 trial. There are certain things in certain
14 murders that we have that change the dynamics
15 of the trial dramatically, as we all know.

16 I don't think that there is anything
17 more emotional that I've experienced in
18 fifteen years than death penalty trials. I
19 think -- I've tried some serious cases, pretty
20 horrific allegations.

21 But overall both sides of the case --
22 and then you factor in family, whether you're
23 kissing cousins or you don't speak to each
24 other, it doesn't really matter. You start
25 putting family into an equation -- then if you

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1 just start putting in humanity, I think the
2 natural tendency that we all have as human
3 beings is to presume the worst, especially
4 when we're not comfortable.

5 I think her expression about this
6 indicated that whether she likes it or not
7 that she -- nobody is comfortable in this
8 setting, whatever side that it is. I never
9 heard any testimony, Mr. Bloom, and this was
10 something that was really key to me because
11 this was an intelligent lady who demonstrated,
12 she was very articulate, even asked questions,
13 'Why are you asking me these questions?' I
14 never heard one time any threat made to her,
15 'you better talk to me or else'. That's --
16 and it doesn't have to be necessarily those
17 words but I never heard anything that even
18 implied that.

19 What triggered the emotional
20 response, as I heard and I can understand as
21 a human being, was something that was pretty
22 harsh -- harsh in the sense of being reality,
23 harsh in the sense of something that -- and I
24 don't know how we deal with this. I know that
25 it is the subject -- we've seen a lot about it

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1 and it is interesting because we've had a lot
2 of this come out in the campaign and
3 statements made since this election. Some of
4 it is not comfortable but it very poignant
5 that what we have to do as human beings, we've
6 got to stop looking at somebody else and start
7 looking at ourselves; to be aware of
8 situations, be cognizant of situations.

9 I agree with you that one connotation
10 and one way of taking it is that it was cruel
11 and harsh. Another way is just to point out
12 to -- to someone -- and how we chose to
13 interrogate, let's -- that's what it was,
14 that's the reason that it was, no question
15 about that. We all as lawyers have to and how
16 we approach that is that when there is some
17 reason and there is some -- there is some
18 apparent reason. 'I remember.' 'I don't.'
19 Okay, 'Why?' It's a pretty legitimate
20 conversation, pretty legitimate questions.

21 But I think assuming that there was
22 a sense of feeling -- just as her's is a
23 perception, each side is entitled to their own
24 perception of that witness. That is what you
25 do, that is what we all have to do because we

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1 have to make assessments. Sometimes we're
2 right, sometimes we are not.

3 But, frankly, to remind someone of
4 the responsibility and why it is not only --
5 not only is important to maybe prevent
6 something from happening but it also might be
7 an example for that person confronting this
8 situation, what should you do? I don't know
9 that that is necessarily bad. I think we as
10 society have got to stop that, because we know
11 that it exists. You know it and I know it. I
12 see it every day: 'I know something but I am
13 not going to say anything because that's not
14 my role.'

15 I am not suggesting that she is
16 withholding anything, I am not suggesting
17 anything but I am just saying to you that
18 there is another side of this that is equally
19 present by the statement.

20 I agree with you that at any point
21 she would have said, 'I am not going to try to
22 answer any more of your questions, I want to
23 leave' and they insisted, you're right.
24 Absolutely. Or if she said, 'I think I have
25 answered your questions, I am going.' 'Well,

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1 wait a minute, I have a few.' Anything that
2 suggests 'I am terminating this conversation',
3 just as she said here. Given that statement,
4 I would suggest that the Solicitor probably
5 won't be asking her any more questions, she
6 was pretty straightforward and clear.

7 I don't find that this witness -- I
8 find this witness to be emotionally affected
9 by the interview, no question about it. I
10 don't find that unusual, I find that to be
11 pretty normal for someone. I am not
12 suggesting that she was affected by it because
13 she felt that they thought she was not telling
14 the truth or not. I think she was affected by
15 the statement made and having to relive, as we
16 all, anybody that has ever confronted that, I
17 don't care what you think about it, it is not
18 a pleasant thought. Having lost a brother,
19 having lost two brothers really, in many ways,
20 that is pretty -- that can be emotional and
21 upsetting, as well. I don't find that they
22 were necessarily harsh or unnecessarily harsh.

23 I think the interview was -- frankly,
24 I was interested in the response to the
25 Solicitor's question, too, about whether or

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1 not she felt threatened by the male presence
2 over female. I would imagine that could
3 trigger an event for something in their future
4 dealings but -- I will leave that to them.
5 Clearly she said that she was not and again --
6 again, which is important to me, not only to
7 point out that but to point out that this lady
8 felt very much in control of that. She didn't
9 feel that she was in a situation where she was
10 "trapped" in any way, nor did she feel
11 threatened by three males. She felt she could
12 stand her, and she did. I think she told
13 them, 'I don't know why you're asking me that
14 question.' Which I thought, 'you're not
15 controlling me.'

16 So all of that, that is my rationale
17 for it. I don't quarrel that it was -- that
18 she was affected by it, no question about
19 that, the court will take judicial notice that
20 she was sincerely emotionally moved by all
21 that. I don't think that was feigned in any
22 way whatsoever. I think that would be true of
23 a lot of people that have been asked questions
24 in this case, so your Motion is noted and for
25 the record is protected but -- I don't think

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1 the court at this time needs to caution
2 anyone. I said when I started that the
3 pleasure that I have is working with
4 professionals, it is an honor to serve with
5 you in this profession and you all demonstrate
6 my initial assessment and I'm delighted to
7 have that.

8 I will be happy at any point, Mr.
9 Bloom, -- if you feel that they have exceeded
10 the bounds of professionalism, please bring
11 that to the court's attention and we will get
12 it before the court as quickly as we can, sir.
13 I appreciate your willingness to take charge
14 of something that if it is brought up you --
15 and I am sure that is exactly what you will
16 do. Thank you for that, as well.

17 Anything else, Mr. Bloom?

18 MR. BLOOM: Not on that Motion. If
19 I might proceed to the next one?

20 THE COURT: All right.

21 MR. BLOOM: Your Honor, our next
22 Motion is a Motion to dismiss the indictments
23 of criminal sexual conduct and grand larceny
24 of a motor vehicle, as well as dismiss the
25 aggravating circumstance of criminal sexual

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1 conduct.

2 I think what is relevant here, Your
3 Honor, are -- briefly -- several significant
4 dates. First off, the Defendant, Mr.
5 Dickerson was initially indicted on May 1st,
6 2006, for murder and kidnaping.

7 Then on August 24th, 2006, the
8 Solicitor filed his first notice to seek the
9 death penalty.

10 The first trial was set, as Your
11 Honor knows, for March 31st, 2008, and it was
12 continued at the State's request.

13 The second trial was set for October
14 2008 and it was continued at the defense's
15 request, and we note in our Motion the reasons
16 for that due to the untimely passing of Mr.
17 Reece Joye, the managing partner of Mr.
18 Carroll's law firm.

19 THE COURT: Correct.

20 MR. BLOOM: Subsequent to October
21 2008, the State obtained an indictment from
22 the Grand Jury for criminal sexual conduct on
23 November 3rd, 2008. Subsequent to that,
24 amended their notice for death by including
25 that as an aggravating circumstance.

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1 Then, next obtained from the Grand
2 Jury an indictment on December 10th, 2008,
3 grand larceny of a motor vehicle.

4 Those are kind of the relevant dates
5 for this Motion.

6 THE COURT: Okay.

7 MR. BLOOM: Our Motion, Your Honor,
8 really is based on multiple grounds. It is
9 based on due process, fundamental fairness,
10 speedy trial rights and cruel-and-unusual
11 punishment under the Eighth Amendment in a
12 sentencing proceeding where the additional
13 aggravating circumstances would affect
14 inherently the fairness of the sentencing
15 proceeding and would introduce arbitrary and
16 capricious factors and lead to the inherent
17 unreliability of that stage.

18 Our first argument in that regard,
19 Your Honor, is simply the timing of the
20 indictments. Had this trial proceeded in
21 March of 2008, indeed we were on the eve of
22 that trial, as I recall, March 31st, when the
23 State moved for a continuance. At no time did
24 they give for their reason that they intended
25 to seek additional aggravating circumstances

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1 or additional indictments or anything of that
2 nature.

3 Likewise, in October of 2008 when we
4 were on the verge of trial and we
5 unfortunately, due to circumstances which were
6 unforeseen and beyond our control, needed to
7 move for a continuance.

8 I think the State then on the eve of
9 this trial, to come in at this late hour with
10 additional indictments and an aggravating
11 circumstance violates all those principles
12 that I just set out. The memorandum that we
13 have submitted cites a number of cases, both
14 on speedy trial, due process, and a whole host
15 of issues -- I don't think any one particular
16 ground can be used in isolation. It seems for
17 the State to benefit, essentially, from its
18 own delay in March and to add charges violates
19 all of those premises of ---

20 THE COURT: Let me interrupt you.
21 At what point did the defense file a speedy
22 trial Motion?

23 MR. BLOOM: We haven't, Your Honor.

24 THE COURT: Okay.

25 MR. BLOOM: We ---

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1 THE COURT: I just wanted to be
2 sure that there wasn't one filed. I don't
3 have one in the file is what I am saying.

4 MR. BLOOM: No, sir. I can relate
5 to you, you know, that Mr. Dickerson has
6 always wanted a speedy trial and counsel --
7 but obviously the *Campbell* case, the timeframe
8 has changed and ---

9 THE COURT: Precisely.

10 MR. BLOOM: --- those types of
11 things. Be that as it may, even under a
12 speedy trial -- and I don't want the court,
13 I don't want my argument to be perceived that
14 the speed trial right is an argument in
15 isolation. I think it ---

16 THE COURT: I understand. I just
17 wanted to be sure that there wasn't one that
18 I'd failed to address.

19 MR. BLOOM: No, sir. I would also
20 note, of course that's only one factor, the
21 speedy trial analysis.

22 THE COURT: Sure.

23 MR. BLOOM: So for the State to
24 benefit by its own delay of the March 2008
25 trial, by adding additional charges when it

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1 never announced its intent to do so, or for
2 the State to benefit from the defense
3 counsel's need in October 2008, due to Mr.
4 Joye's untimely death, affects all of those
5 principles.

6 Indeed, if the State goes forward in
7 that regard it almost puts us in a position of
8 having a post-conviction relief issue in the
9 record, because we moved the October 2008 date
10 due to Mr. Joye's untimely passing when if we
11 had been on target these indictments would
12 have come after the trial; which they couldn't
13 have, so I make that remark I suppose somewhat
14 in irony. It creates that situation that is
15 kind of a Catch 22. We were, you know, doomed
16 if we went to trial in 2008 and now the
17 Defendant is prejudiced because we didn't and
18 the State took the November and December grand
19 jury terms to stack additional charges.

20 The Defendant never asked for a
21 delay, either in March of 2008 or October
22 2008. So it creates those kind of problems
23 when the State clearly doesn't need the second
24 -- and for all those reasons: speedy trial,
25 due process and potential post-conviction

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1 relief issues it creates a fundamental
2 fairness issue. The defense is put in the
3 position that had we gone forward to trial
4 in either March or October 2008, these
5 indictments wouldn't exist.

6 Indeed, you will recall when we on
7 March 31st, 2008, got close and the State moved
8 for a continuance, we advised the court that
9 we were ready. We were ready to go but we
10 wanted fair play, so we didn't oppose the
11 State's Motion at that time. Likewise, the
12 State agreed to our Motion for continuance in
13 October 2008.

14 THE COURT: Refresh my thinking
15 because I am trying to -- that was when there
16 was something, some other persons that
17 allegedly were involved with this incident
18 that were pretty significant, I think as far
19 as everybody thought, to the overall picture
20 being presented. I assume -- I know that
21 occurred and that was the basis, was it not?

22 SOLICITOR WILSON: We are not
23 conceding that there was a State's Motion for
24 continuance.

25 THE COURT: I know, I understand

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1 that. All I am saying is that there came to
2 light that there were potentially other
3 persons who had not been investigated or
4 charged in this, as I recall. I just want to
5 -- I want to be sure that my recollection is
6 consistent. I remember Mr. Joye's tragic
7 situation, no question. The only other that
8 I remember, that is what precipitated some
9 need to maybe postpone the trial.

10 MR. BLOOM: Well, ---

11 THE COURT: I am just -- I am not
12 saying that you agree, necessarily. I am just
13 saying that was the -- that was the background
14 behind not trying it in March.

15 MR. BLOOM: I think so. I hope I
16 am not talking out of school. I think part of
17 the reason as well is that the Solicitor was
18 engaged in a vigorous primary campaign for
19 election and asked for additional time and we
20 didn't oppose that.

21 THE COURT: Well, ---

22 MR. BLOOM: I think that was part
23 of the perception, as well.

24 THE COURT: --- the perception we
25 talked about, and I live in this community, I

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1 think there were some people's perception that
2 that is why she wanted to push it, so that she
3 could have that for purposes of her primary,
4 too. So I, I think that cuts both ways. I
5 don't think that it applied either way.

6 SOLICITOR WILSON: I am going to
7 need to talk about that at some point.

8 THE COURT: No, you don't.

9 SOLICITOR WILSON: Well, I can't
10 just ---

11 THE COURT: That never came from
12 the Solicitor, never came from anything but
13 other folks' perspective. That's the danger
14 of taking facts and reaching conclusions, that
15 is why circumstantial evidence doesn't always
16 -- it's not always good.

17 MR. BLOOM: In any event, Your
18 Honor, we think that the number of those
19 principles that we have cited -- due process
20 and the others -- compel that conclusion to
21 dismiss on those grounds.

22 There are two additional grounds we
23 have. One is to the criminal sexual conduct
24 as an aggravating factor. We submit that
25 essentially it violates the double jeopardy

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1 principles because the State has also alleged
2 physical torture in this case and it is our
3 understanding that some of the same alleged
4 acts for the torture likewise apply to
5 criminal sexual conduct. The same principles
6 would apply to aggravating circumstances. You
7 can't have separate aggravating circumstances
8 supported by the same allegation of facts.

9 Lastly, as to grand larceny of a
10 motor vehicle, it is a codefendant, Rashid
11 Malik, also known as Derrick Jenkins, who gave
12 permission or gave the keys to William
13 Dickerson. The sequence of events, very
14 briefly, is that Mr. Dickerson returns to
15 Charleston some days after the incident. He
16 obtains a car from Derrick Jenkins and then
17 the car is ran into a ditch or wrecked or some
18 how pursued in a pursuit by police and
19 ultimately arrested. That is where the grand
20 larceny of the motor vehicle comes in, it is
21 not connected to the underlying incident
22 itself. So we would object to that because
23 Mr. Malik -- and let me spell that for the
24 court reporter. Rashid Malik is R-a-s-h-I-d,
25 is the first name and the last name is Malik,

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1 M-a-l-I-k.

2 COURT REPORTER: Thank you.

3 MR. BLOOM: He is a codefendant now
4 indicted along with Mr. Dickerson. So we
5 can't, obviously, subpoena him to testify on
6 this issue that he gave permission to Mr.
7 Dickerson to use his car because he has a
8 Fifth Amendment right not to testify on any
9 issue. He's incarcerated, of course, at the
10 Charleston County Jail and is represented by
11 counsel, so we are abridged in our ability to
12 subpoena him to testify.

13 I would add -- and I didn't put this
14 in the written Motion but it occurred to me
15 afterwards. An additional ground is the grand
16 larceny motor vehicle isn't in any way
17 connected to the charges of murder, kidnaping
18 or criminal sexual conduct. It is a separate
19 incident that dates after anyone was murdered,
20 so we would move to sever that from this case
21 because it has no connection whatsoever.

22 THE COURT: That is a separate
23 Motion, isn't it? I mean, that's not your
24 Motion to dismiss. That would be something
25 else?

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1 MR. BLOOM: That would be an -- in
2 an alternative, we move to sever that from the
3 trial of this case because it has nothing to
4 do with the allegations of the underlying
5 murder.

6 That would be our arguments on those
7 points.

8 THE COURT: Thank you, Mr. Bloom.
9 Solicitor?

10 SOLICITOR WILSON: Your Honor,
11 again, even taking the Defendant's Motion and
12 facts as they are, I don't believe that
13 they've made out a sufficient claim to have
14 the indictments dismissed or the aggravating
15 circumstances withdrawn or stricken.

16 One thing that I don't believe that
17 Mr. Bloom mentioned was that there was a
18 second notice filed on February 15th, 2008, for
19 an aggravating circumstance of criminal sexual
20 conduct in the first degree. That was before
21 the initial trial date. So as far as any
22 claim about the circumstances of aggravation,
23 any delays of the trial, any continuances, I
24 don't think that's valid in light of the fact
25 that they've been on notice. That was a month

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1 or a month-and-a-half or so before the first
2 trial date was to take place.

3 As far the indictment itself, I don't
4 believe that there is any sort of prejudice
5 because the penalty for criminal sexual
6 conduct would be up to thirty years, so there
7 is not going to be any sort of additional
8 penalty; when we're looking at hopefully a
9 death penalty case, assuming that we get a
10 conviction for the murder we are looking at
11 life or death. So there is no sort of double
12 jeopardy issue as far as that goes.

13 The criminal sexual conduct that took
14 place involved the victim and is part and
15 parcel of the murder. So the evidence is
16 coming out anyway as part of the *res gesti*.
17 I don't believe that they've shown any sort of
18 prejudice regarding the indictment itself.

19 I don't think the aggravating
20 circumstances are an issue at all.

21 Just for the record, my recollection
22 is more like the court's regarding the first
23 trial date. There were the arrests of three
24 codefendants around that time period before
25 the trial and it was my recollection that in

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1 casual conversation we all agreed that it
2 would be better if we moved the trial date.
3 I certainly never made a Motion for
4 continuance; and would not have based on some
5 external factor, being my campaign.

6 In addressing the Defendant's claim
7 that we cannot benefit from a delay, again it
8 is our position that the February 15th notice
9 of aggravating circumstance created the March
10 30th trial date. We all agreed that we
11 wouldn't go forward in March and then the
12 later continuance was the defense's Motion.

13 There was another claim -- I don't
14 know if Mr. Bloom, if I heard him mention this
15 -- that the criminal sexual conduct and the
16 torture aggravating circumstances, that we
17 shouldn't be allowed to go forward with both.
18 The fact of the matter is that the Legislature
19 has set out those two different elements and
20 they aren't part and parcel of the same. You
21 can have one without the other, certainly.

22 As far as the grand larceny of a
23 motor vehicle, we have another witness,
24 Marlinia Pinckney, who was the girlfriend of
25 this Rashid Malik, who you'll hear referred to

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1 as "Popcorn". Popcorn and Marlinia both are
2 expected to testify for the State and they can
3 be cross-examined whether or not they gave the
4 Defendant consent to use the vehicle or not.

5 I am not prepared to address the
6 severance issue but, again, it will be our
7 position when we get to the point of arguing
8 that, that this all dovetailed with the
9 Defendant's flight after this incident and
10 they can be cross-examined about that consent
11 issue.

12 THE COURT: Response?

13 MR. BLOOM: My only response is --
14 and I understand that she is not prepared to
15 address the severance issue, because I didn't
16 have it in writing. I just wanted to -- but
17 we do need to address it before general jury
18 qualification.

19 THE COURT: That's no problem.
20 Frankly, I -- I know that in the Sapp case
21 we charged Mr. Sapp with grand larceny of a
22 vehicle and the jury acquitted him on that.
23 That was part of the death penalty murder
24 trial because it was a vehicle that he was in,
25 which -- I can understand the reason for it.

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1 I will be happy to revisit the severance
2 issue. I will just indicate to you that I
3 probably am inclined to grant that. I under-
4 stand the connection but I think it is so
5 peripheral that it just is not necessary. I
6 probably will grant that but I will hear from
7 the State. I haven't ruled, I am just
8 indicating my rationale for that. I don't
9 know that it serves any great benefit.

10 Clearly the issues concerning the
11 indictment -- clearly the notice of the CSC,
12 no question they both are aggravating
13 circumstances. I think they are proper. I
14 don't think that there is any violation of any
15 due process, any fundamental fairness, any
16 double jeopardy. I believe that -- of course,
17 they have to be proven and that's what the
18 trial is for.

19 So your Motion to dismiss the
20 indictment on the basis set forth is denied,
21 with the clear understanding that you are
22 certainly at liberty to renew or file a formal
23 Motion of severance, and I will be happy to
24 hear from the State at that time on that
25 issue.

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1 Anything else?

2 MR. BLOOM: Your Honor, our next
3 Motion is to dismiss the death penalty due to
4 the unconstitutionality of State proportion-
5 ality review. If Your Honor would give me a
6 moment to outline that argument.

7 THE COURT: Certainly.

8 MR. BLOOM: I guess as a threshold
9 matter that I need to let the court know that
10 I am arguing against precedent ---

11 THE COURT: You are.

12 MR. BLOOM: --- under South
13 Carolina Supreme Court case law. I clearly
14 understand that and understand the trial
15 court's role in applying South Carolina
16 Supreme Court precedents.

17 If I may lay out the Constitutional
18 argument, ---

19 THE COURT: You may. Let me -- I
20 don't have the full file, but you have briefed
21 this issue?

22 MR. BLOOM: I have, Your Honor.

23 THE COURT: I am not saying that
24 to limit you, I just want to make sure that
25 for purposes of review your entire brief is

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1 incorporated fully. You may rely on that
2 brief, but I'll be delighted to hear from you.

3 MR. BLOOM: Thank you, Your Honor.
4 The South Carolina Supreme Court, like every
5 state supreme court that has a death penalty
6 system, undertakes proportionality review. On
7 every direct appeal from a death sentence, our
8 state supreme court, if the other issues are
9 affirmed and a review is not granted, adds
10 some language as to what the proportionality
11 review is.

12 Recently the U.S. Supreme Court in a
13 case called *Walker v. Georgia* discussed the
14 problem with states' proportionality review.
15 At the outset, I want to acknowledge that
16 *Walker v. Georgia* is not precedent.

17 THE COURT: I understand.

18 MR. BLOOM: I don't want to mislead
19 the trial court. *Walker v. Georgia* was a
20 denial of cert, so the U.S. Supreme Court did
21 not rule on the issue. Justice Stevens wrote
22 a dissent from that denial of cert, which is
23 very rare, and that's attached to the Motion,
24 and outlined his view and U.S. Supreme Court
25 jurisprudence in this area, the problem with

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1 states' proportionality review and certain
2 insufficiencies. So at the outset I
3 acknowledge that *Walker v. Georgia* is in no
4 way precedent but I attached Justice Steven's
5 dissent from cert because I think it outlines
6 the argument, I think it is illustrative.

7 In the Georgia case, what Justice
8 Stevens saw as problematic is several things.
9 One, Georgia's Supreme Court was engaged in a
10 very perfunctory proportionality review. At
11 the end of its direct appeals it would just
12 have one or two sentences saying 'the court
13 undertakes a proportionality review and we
14 don't find any problem here.' Justice Stevens
15 outlines that instance, and he went back to
16 U.S. Supreme Court -- dating back to 1976,
17 *Gray v. Georgia* and others -- that established
18 our current death penalty system in saying
19 that the states have to have some model in
20 these cases; to proceed accordingly and make
21 sure that the death penalty is restricted to
22 the worse of the worse.

23 The other problem that Justice
24 Stevens noted in Georgia's proportionality
25 review structure is that they were limiting

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1 the pool of cases that they compared
2 proportionality to. So that's, in essence,
3 kind of Justice Stevens' outline.

4 This issue of course is being
5 litigated in other state courts, federal
6 courts throughout the country because each
7 state has proportionality review for death
8 penalties imposed.

9 In looking at our process and our
10 state law, the Defendant's arguments in this
11 case are that our system of proportionality
12 review in South Carolina is deficit. It's
13 deficit in several respects. First, I want
14 to say that it is deficit not only in terms
15 of how it is interpreted but as to how it is
16 applied. I say that with all due respect to
17 the justices sitting in Columbia on our state
18 supreme court, because there isn't a lot of
19 case law on this throughout the country -- but
20 I respectfully submit these comments.

21 What I think is deficit about our
22 system in South Carolina, I would respectfully
23 submit, is threefold. First, just like
24 Georgia and a few other states, our state
25 supreme court conducts -- the language used in

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1 its opinions when it conducts proportionality
2 review is very perfunctory. I cite a few
3 examples in the memorandum, but virtually
4 every case that I've looked at in the past
5 twenty years there is one or two sentences
6 saying, 'We, the state supreme court, have
7 conducted a proportionality review and we
8 find in this case the death penalty to be
9 appropriate.' Period. That clearly now,
10 among some federal courts -- and potentially
11 I think the issue will reach the U.S. Supreme
12 Court -- is not enough.

13 Secondly, South Carolina in its
14 proportionality review is the only state that
15 I know of that looks just at other death
16 sentenced cases. It is my understanding that
17 every other state court enlarges that,
18 although Justice Stevens' dissent seems to
19 suggest that the Georgia State Court, while
20 it used to do that, has gravitated more to
21 looking at just death sentenced inmates.

22 We submit under the Eighth Amendment
23 of the United States Constitution that that's
24 not sufficient. For the appellate court to
25 undertake an adequate proportionality review

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1 and one that is consistent with the Eighth
2 Amendment jurisprudence, it must look beyond
3 just death sentenced inmates. At a minimum it
4 needs to look at other -- the pool of cases
5 needs to be, for Eighth Amendment purposes, at
6 a minimum death-eligible defendants who were
7 sentenced to life without parole or a sentence
8 less than death, because otherwise you --
9 you're not looking at those cases that
10 resulted in a sentence less than death, so
11 you'll never, by that circular logic, ever
12 find a case to be disproportionate.

13 That's my third point, South Carolina
14 is the only state that has never found on
15 appellate review a death sentence to be
16 disproportionate.

17 The North Carolina Supreme Court for
18 example, our neighbor to the north, has some
19 cases where they've found death sentence cases
20 they have reversed on other issues, facts that
21 make the sentence proportionally excessive.

22 Georgia, our sister state to the
23 west, similarly has found some cases to be
24 disproportionate.

25 I think currently that there's about

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1 thirty-eight states with the death penalty and
2 each and every one of their state courts have
3 found some case to be disproportionate, at
4 least one. In the more than thirty years that
5 South Carolina has reinstated the death
6 penalty, our state supreme court has never
7 found one case to be disproportionate. Plus,
8 it engages in comparing a pool of cases of
9 just other death sentenced inmates.

10 I think for all those grounds I must
11 respectfully submit that makes our proportion-
12 ality review the one and only -- even if it is
13 a conscientious review, which the South
14 Carolina Supreme Court can address at some
15 point, the other flaws in it render it un-
16 constitutional under the Eighth Amendment;
17 because they are only looking at a limited
18 pool and they've never found a case in over
19 thirty years that was disproportionate.

20 Again, I respectfully submit I
21 understand this occurrence in South Carolina
22 Supreme Court case law in this regard, I
23 understand the trial court's duty and
24 obligations in applying that case law, but I
25 submit that this is an issue which will be

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1 visited at some point in the future, and I
2 respectfully want to preserve that issue on
3 Mr. Dickerson's behalf should it become
4 relevant in this particular case. Thank you.

5 THE COURT: Thank you. I couldn't
6 agree with you more, I think as long as we
7 have it I trust that we will always be
8 reviewing it because of the nature of the
9 punishment involved. There are many, many
10 reasons for it and that's certainly one of
11 them. Solicitor, do you wish to be heard?

12 BRUCE DURANT: Very briefly, Your
13 Honor. In reading this Motion, my initial
14 impression was that this is the wrong time to
15 make it, and it's the wrong court to make it
16 in and I don't believe that I have changed my
17 opinion by anything that I've heard since.

18 THE COURT: Thank you, sir. I
19 appreciate your candor, Mr. Bloom. You're
20 right, and I try to follow precedent as best
21 I can. I think it is an issue that is
22 preserved, worthy of precedent (sic) because
23 of the reasons I just stated. It should
24 always be revisited, constantly. I don't
25 think that we should ever reach -- if we ever

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1 get to the point in this system where we say
2 that we've arrived, it's time for us to all
3 turn in our licenses because I don't think we
4 -- we are always striving for justice, that's
5 what we are all about. Thank you.

6 It is noted, and your Motion is
7 denied.

8 MR. BLOOM: Your Honor, the next
9 Motion that we have is to bar the death
10 penalty based on race. The memorandum that I
11 submitted, I think, clearly outlines the case
12 law in this regard and the court's role in
13 that regard.

14 I would briefly state that there is
15 a portion in there where on information and
16 belief the defense submits the notice to seek
17 the death penalty is based on race. Quite
18 plainly what that means it is that our belief
19 that the initial notice to seek death was done
20 based on the race of the victim in this case.
21 I would note for the record that Defendant
22 Dickerson is an African-American. The victim
23 in this case was an African-American male.
24 Some of the news articles attached to the
25 Motion reflect the widespread feeling in the

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1 community in 2005 and 2006 as to the number of
2 homicides in Charleston County, as an initial
3 matter. There have also been comments by
4 local elected officials in regard that the
5 State only seeks the death penalty when there
6 is a white victim and not when there is a
7 black victim.

8 It is our reasonable belief that the
9 Solicitor initially sought race -- sought the
10 death penalty to appease those segments of the
11 community, that the Solicitor could be tough
12 on crime and could seek the death penalty
13 where there was an African-American victim
14 involved.

15 Obviously the Solicitor who did that
16 is deceased and we can't call him to testify.
17 I point that out because there is one case in
18 South Carolina -- and I don't use it as
19 precedent, I cited it in the memorandum purely
20 by way of illustration -- of *State v. Kelly*.
21 It's out of Spartanburg County. In a post-
22 conviction relief, members of the solicitor's
23 office, under oath, acknowledged that the
24 solicitor sought the death penalty because
25 they didn't want the African-American

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1 community to be upset, and that's the case
2 where the victim was also an African-American.
3 The PCR court found that clearly was intent
4 based on race. It would be no different than
5 if the solicitor said 'we want to make
6 segments of the community happy'. The PCR
7 court clearly saw that analogy.

8 That doesn't mean that the solicitor
9 is prejudiced. It doesn't mean that the
10 solicitor did anything dishonorable. What it
11 means is that there may have intruded in the
12 initial solicitor's decision factors which
13 were inappropriate. I am somewhat bound now
14 because I can't get testimony of the deceased
15 person, obviously, and I don't mean to suggest
16 -- I don't mean to tarnish his memory, that's
17 not what I am trying to do.

18 Part of the reason that we make this
19 Motion, even though we are limited in the
20 available proof we have due to the late
21 solicitor's passing, is the PCR court in the
22 Kelly case somewhat admonished trial counsel
23 in the case by saying, 'if you have this
24 suspicion or this belief, why didn't you make
25 the trial court aware of it', even if your

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1 access to the solicitor's own words was
2 somewhat limited. So in good conscious we
3 feel that we should make this Motion.

4 I think the newspaper articles
5 document somewhat of the hysteria in the
6 community, perhaps rightly so. I think when
7 you read the articles that there was a number
8 of homicides in 2005 and 2006 in Charleston
9 County. Our concern is that William Dickerson
10 not bear the brunt of community concern in a
11 manner that is unconstitutional simply because
12 the death penalty is being sought because the
13 victim was an African-American male.

14 THE COURT: Being a judge -- let me
15 be sure of certain things. You've used the
16 terms -- and I agree with you in terms of a
17 second and possible review, should that become
18 necessary, in a post-conviction relief
19 situation, but as I understood it, as I
20 recall, -- was it Kelly?

21 MR. BLOOM: State v. Theodore
22 Kelly. Yes, sir. Out of Spartanburg.

23 THE COURT: In that case there are
24 affidavits from the solicitor or persons in
25 the solicitor's office who stated that was the

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1 thought. We have none of that before me
2 today, as I understand it.

3 MR. BLOOM: I acknowledge that,
4 sir.

5 THE COURT: Okay. Based primarily
6 on the newspaper articles and just the -- your
7 feeling that this would probably be a major
8 motivating factor, being an elected official
9 and wanting to appease or satisfy the
10 community at-large, as I understand it. I am
11 paraphrasing you, but that's your argument, as
12 I understand it.

13 MR. BLOOM: Yes, sir.

14 THE COURT: There is also an equal
15 basis because there -- I think I can take
16 judicial notice because I've tried a number of
17 them. There were a lot of murders with
18 African-American victims in which the death
19 penalty has not been sought, in this
20 jurisdiction as well. Quite a few,
21 unfortunately. Very tragic.

22 I will be happy to hear from the
23 solicitor but without anything more, I think
24 it's more of a belief, more of -- as I see
25 that -- a preservation-of-the-record argument.

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1 I don't believe that we have anything that I
2 can rely on other than that, and I am not
3 inclined to do that. I will be happy to hear
4 from you.

5 SOLICITOR WILSON: I don't think
6 that there is anything in the record. I want
7 to reaffirm now that since Solicitor
8 Hosington's passing, I certainly have had
9 opportunity to review this case and it is
10 certainly within my discretion and authority
11 to withdraw the death penalty and I -- I
12 continually evaluate this case and will
13 continue to do so until we get to the end.
14 The death penalty was sought, based on my
15 discussions with Solicitor Hosington and based
16 on my willingness to go forward with the death
17 penalty, because it is one of the most brutal
18 crimes that I have ever seen. Nothing more,
19 nothing less.

20 THE COURT: I note that -- let me
21 state further that -- and it's not for me to
22 make a determination, as we have already dealt
23 with in a previous Motion, that's a call that
24 the solicitor makes, a call that ultimately
25 the sentencing body will make, should that

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1 become necessary.

2 Mr. Dickerson, what I am sharing with
3 you is what is alleged. I don't know any of
4 this to be true, so I assure you that I am not
5 concluding any of it is accurate in any
6 respect but the allegations in this case, I
7 think, speak for themselves as to being the
8 motivating factor. Equally, assuming that was
9 a factor, and I am not assuming that it is,
10 there is a reason for me to reach that
11 conclusion because the facts in this case, I
12 think, supports the decision.

13 The Solicitor, very properly so,
14 further confirmed -- and this is critical and
15 I appreciate the Solicitor indicating that.
16 As we all know, and you have probably had
17 some, too, I've had in my career as a judge
18 and as a lawyer where the State for whatever
19 reason decided to withdraw the death penalty
20 in a case and made it a life sentence, or some
21 other offer was made and accepted. The fact
22 that the Solicitor has continued to review
23 this further supports the decision, I think,
24 that it is not based on anything from the
25 community's standpoint but merely from the

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1 standpoint that the facts of the case justify
2 the actions taken by her office, and by the
3 prior solicitor.

4 But, having said that, obviously if
5 there is something that comes out between now
6 and then that puts it in the line of the
7 Spartanburg case where there were statements
8 made by former employees, or present
9 employees, to indicate that there was some
10 discussion, we -- obviously Mr. Hosington,
11 and I wish he were here, and I am sure the
12 solicitor does too, but having had an
13 opportunity to review would not stop me from
14 considering those affidavits that the State
15 has attributed to him. I just want you to be
16 aware of that.

17 MR. BLOOM: If I may make one point
18 about a statement made by the Solicitor, ---

19 THE COURT: Sure.

20 MR. BLOOM: --- she stated that she
21 has of course reviewed the case continually
22 and intends to continue to do so. I would
23 note that the U.S. Supreme Court law on this
24 issue clearly holds that once a prosecutor
25 makes a decision where race is some motivating

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1 factor, a mere change in prosecutors doesn't
2 untaint that. So there is clearly case law
3 and I cited that in my memorandum.

4 SOLICITOR WILSON: One other
5 thing I should add for the record, in my
6 experience with this case, when Solicitor
7 Hosington was alive and since I took over,
8 there has been zero pressure from anyone in
9 this matter. I've worked with the family,
10 they have been very generous, very respectful,
11 very warm, very accommodating, never have they
12 applied any pressure. Outside of the family,
13 I haven't heard from anyone regarding this
14 case. I don't recall Solicitor Hosington had
15 received any pressure in that regard either.

16 As far as the case that Mr. Bloom
17 cites, I think we can cross that bridge when
18 we get to it if you think there are some
19 distinguishing factors. Hopefully we will get
20 to that.

21 THE COURT: I understand. I am not
22 going to address that. I think obviously, as
23 we know, that's an important thing, you have
24 to read those cases very specifically and
25 consider them in each incident. Thank you

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1 very much, Mr. Bloom, your Motion is denied.

2 MR. BLOOM: I have just a handful
3 of Motions, Your Honor, which I think we can
4 address ---

5 THE COURT: Let me inquire because
6 I don't want to be accused of being unfair and
7 brutal. It's 1:10. My feeling would be to
8 push on and resolve it rather than break for
9 lunch and bring you'all back but I don't want
10 to be unfair to you, as well. Is it your
11 preference to continue? I know that sometimes
12 people, for whatever reason, need to take a
13 break and get something to eat. I understand
14 that. But if you are comfortable going
15 forward, I am prepared to, if everybody is.

16 MR. BLOOM: I'm prepared to go
17 forward.

18 SOLICITOR WILSON: Yes, sir.

19 THE COURT: Very well.

20 MR. BLOOM: Your Honor, the next
21 Motion is for the State to account for blood
22 and saliva samples obtained from the
23 Defendant. We have searched through the chain
24 of custody and there may be something that we
25 are missing but we just can't seem to find

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1 where those -- the accounting for where those
2 samples are. It may be a matter that we can
3 address in short form today or after today.
4 The two specific matters that I am referring
5 are that on April 11th, 2006, pursuant to court
6 Order a blood sample was obtained from the
7 Defendant and subsequent to that we had an
8 additional Hearing where testimony was
9 presented, in front of Your Honor, on February
10 15th, 2008, and a saliva sample was collected
11 from the Defendant in the courtroom after Your
12 Honor ruled.

13 THE COURT: Correct.

14 MR. BLOOM: We just need a simple
15 accounting of where those samples went and if
16 they have been returned or where they are.

17 THE COURT: Solicitor?

18 BRUCE DURANT: Yes, Your Honor.
19 With regard to the buccal swab that was done
20 pursuant to your court Order, we just got that
21 stuff from Steve Hood. That went in
22 discovery to them today.

23 THE COURT: Okay.

24 BRUCE DURANT: We are up to about
25 three thousand pages now. As to the other

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1 one, I don't have it with me but I had them do
2 a chain of custody on it and it is back at the
3 office. We weren't planning on using that
4 because we determined that sample probably
5 wouldn't pass muster in light of a case that
6 came out since the Order was first issued, and
7 that sample was withdrawn. So -- certainly at
8 trial we would prove chain of custody on
9 anything, as we're required by law to do.

10 THE COURT: I would ask that if you
11 have that that you make it available to them.

12 BRUCE DURANT: I will be glad to,
13 Your Honor.

14 THE COURT: Thank you.

15 MR. BLOOM: Thank you, Your Honor.
16 Our next Motion is for a hearing to suppress
17 any alleged statements, written, verbal or
18 otherwise, by the Defendant. Basically we are
19 just requesting a *Jackson v. Denno* hearing
20 before any statements by the Defendant are
21 offered to the jury.

22 THE COURT: As I understand it, in
23 the pretrial conference, the State does not at
24 this time intend to introduce any statements
25 by the Defendant?

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1 SOLICITOR WILSON: No statements
2 to law enforcement.

3 THE COURT: Very good. At any time
4 that such statement does (sic), we will excuse
5 the jury and conduct our *Jackson v. Denno*
6 hearing, Mr. Bloom. Your Motion is noted in
7 the record and protected in that regard.

8 MR. BLOOM: Thank you, Your Honor.
9 Similarly we have filed a Motion to suppress
10 any objects seized from the Defendant. Quite
11 plainly, we are just requesting a hearing
12 outside the jury's presence on any search and
13 seizures that were done of the Defendant.
14 From the discovery I know of a search warrant
15 to obtain his cell phone records, a search
16 warrant of his brother Armon's apartment where
17 the Defendant allegedly was, and then the
18 Defendant's clothing that was received from
19 him at the time of his arrest. I think it is
20 just prudent that we have a hearing on this
21 before that comes in.

22 THE COURT: It may be if it is
23 necessary, but as I understand it there's been
24 no specificity of anything that violates the
25 Constitution at this point other than, 'I want

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1 proof.' I mean, you don't have anything to
2 say that the warrants on their face were
3 defective, something was done improperly?

4 MR. BLOOM: We are not prepared to
5 do that at this time.

6 THE COURT: All right.

7 MR. BLOOM: I think that we just
8 want to put the State on notice that ---

9 THE COURT: Then all I would ask --
10 that's fine, I agree and would be delighted to
11 hear any Motions that are framed and filed and
12 served properly. I will hear them prior to
13 any testimony being given. How about that?
14 I think that covers it.

15 But we've got to put -- the court has
16 got to be aware of what I am supposed to
17 consider and the State has to be aware of what
18 they have to defend. So in that regard, I
19 would ask something to be done that would be
20 helpful to me. Thank you for sending them to
21 the clerk, thank you for sending them to my
22 clerk, any memoranda that you'all, please, --
23 because I created a folder that I can have on
24 my computer. If you will send me a copy of
25 it, too, that would be very helpful. Thank

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1 you. It's not required but just as a request.

2 MR. BLOOM: Yes, sir.

3 THE COURT: Okay.

4 MR. BLOOM: Next, Your Honor, we
5 have a Motion to produce and compel
6 disclosure. This is one that we just simply
7 wanted to state on the record the
8 prosecution's duty to disclose not just
9 written reports and SLED reports and things of
10 that nature, but witness statements where
11 they, or members of their staff, or law
12 enforcement interview witnesses and the
13 witness says something different; or where
14 they take a witness to view a particular
15 scene.

16 I think the case on point that taught
17 us all again, anew, of the prosecutor's
18 obligations is the recent *Riddle Fore* case
19 which is cited in our memorandum, that the
20 prosecutor's duty goes beyond just producing
21 written statements that the police obtain,
22 that it also includes interviews of the
23 witnesses by their staff, the prosecutor
24 himself, or herself, and where there are
25 inconsistencies to reveal that.

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1 I do want to state for the record
2 that Mr. Durant has been very good through
3 this process of e-mailing me and Mr. Carroll
4 anytime that he interviews a witness and a
5 witness relates information that was -- that
6 is now inconsistent or different from the
7 previous statement. I want to thank him for
8 that on the record. I think that he, quite
9 frankly, is abiding by that duty.

10 My concern is that there have been
11 cases, and His Honor knows as well, that it is
12 not the prosecutor interviewing a witness but
13 there may be some subordinate, such as a
14 police officer or somebody else, who gets the
15 information, may or may not write it down but
16 clearly has knowledge that a witness has
17 changed material facts in their proposed
18 testimony, and somehow that doesn't work its
19 way up the chain. Obviously the duty is on
20 the prosecutor to find that out from law
21 enforcement or other nonlawyer staff as to
22 whether the witnesses have any differences.
23 So we just wanted to -- we wanted to place
24 that on the record to make sure that we all
25 understood the ground rules and would ask Your

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1 Honor to instruct them to continue to do so.
2 Again, I do think Mr. Durant has been very
3 diligent about e-mailing us as soon as he
4 interviews a witness, listing for us the new
5 information or the discrepancy in information.

6 THE COURT: It goes back to the
7 underlying premise in all these cases. I
8 think we all are aware very clearly of the
9 gravity of "not", what happens when we don't
10 and these cases have to be brought back and
11 redone. Sometimes it may not be, a recent one
12 that just came to light -- the one in Alaska,
13 I understood that they are not even going to
14 pursue it anymore. It's very serious.

15 Obviously if Mr. Durant is doing
16 that, I don't need to tell him to do it, he is
17 already doing it. He understands that and I'm
18 sure that they are thorough in their
19 preparation and I -- until you give me
20 something that suggests otherwise, I am going
21 to presume that everything is functioning as
22 it should and there is no reason for me to
23 feel otherwise. Your Motion is noted. Thank
24 you, sir.

25 MR. BLOOM: The last Motion that we

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1 have, Your Honor, is a Motion to require the
2 Solicitor's Office to reveal any plea bargains
3 that they've made, promises, hopes of reward,
4 payment to any witness or any other
5 consideration extended to any witness,
6 specifically including but not limiting it to
7 the three codefendants. Obviously the three
8 codefendants are Armand Dickerson, Selena
9 Rouse and Rashid Malik. I am just asking that
10 the solicitor reveal any nature of plea
11 bargains, discussions or any other matters
12 regarding their particular charges.

13 We would add to that two witnesses
14 that they've provided to us: Antonio Nelson
15 and Devon Keeling. Whether or not the
16 solicitor has made any assurances or promises
17 not to prosecute those two witnesses. The
18 statement of those two witnesses, Mr. Nelson
19 and Mr. Keeling, clearly are incriminatory in
20 some nature of themselves and they could be
21 prosecuted. So we are just asking that
22 whatever agreements that they've made, or
23 inferences or discussions of bargains, of
24 whatever nature, with those two witnesses,
25 or any other witness, be revealed.

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1 THE COURT: Thank you. I assume
2 that has been done or will be done if it
3 hasn't been done already.

4 SOLICITOR WILSON: We have done
5 it along and along and we will continue to do
6 that.

7 THE COURT: Very good. That's one
8 of those where it continues as the response to
9 interrogatories in a civil trial continue
10 right up to the day that the matter is
11 foreclosed.

12 BRUCE DURANT: I think we've still
13 got stuff going out today.

14 THE COURT: I am sure you probably
15 do.

16 BRUCE DURANT: Probably Monday,
17 too.

18 THE COURT: No problem. Thank you.

19 MR. BLOOM: That would conclude our
20 Motions at this time, Your Honor. We have
21 filed a reply to one of the State's Motions
22 but I will wait until that issue comes up.

23 THE COURT: Be delighted to hear
24 from you. Now, Solicitor, thank you for your
25 patience. I will be happy to hear the State's

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1 Motions.

2 BRUCE DURANT: Your Honor, I will
3 be very brief on this. We filed a Motion to
4 prohibit the defense from staking out jurors
5 during *voir dire*. That's probably premature,
6 because we are not even there yet but we just
7 wanted to bring to the court's attention, as I
8 am sure the court is well aware and defense is
9 well aware, that this is not an opportunity to
10 personality profile jurors and stake them out
11 as to how they feel about psychologists or
12 psychological testimony or various mitigating
13 circumstances. Just to kind of keep on track
14 with what the statute requires. I am sure
15 Your Honor will be more than happy to keep us
16 all in line.

17 THE COURT: I will do the best I
18 can. That's one of those things that
19 obviously -- if we brought in fifty lawyers,
20 we'd probably have fifty different opinions of
21 what constitutes "staking out", but I -- I was
22 just glancing, and let me supplement what I
23 said. There really will not be a need to
24 change Court's Exhibit 2, which is the jury
25 returns. I saw the actual tab and the tab is

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1 consistent with the juror numbers, so all we
2 will need to do if any come in, we will put
3 them in and that will be that juror's
4 response.

5 I was at one point just glancing at
6 the last question, 'Tell me about your
7 feelings about the death penalty.' I am glad
8 that we incorporated that. One comment that
9 really -- and this is the kind of thing that
10 we -- how do we deal with this? It dealt with
11 an assessment of lawyers in general, that he
12 didn't believe any lawyers, thought that we
13 were all despicable, both sides, and that they
14 needed more judges, they need more prosecutors
15 and that judges ought to be elected.

16 This information is going to stake
17 out more than we possibly could, but I hear
18 you and ---

19 BRUCE DURANT: Can we have him?

20 THE COURT: You mean like *My Cousin*
21 *Vinny*, "I'll take him." Thank you. I will be
22 happy to rule on any objections concerning
23 that and will do the best that I can, keeping
24 that in mind. As you will do, my law clerk
25 and I will revisit every night certain issues

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1 that are likely to arise.

2 SOLICITOR WILSON: Judge, we have
3 made a Motion to require the defense to
4 produce underlying data, documents and facts
5 regarding expert testimony under Rule 705 --
6 and also, I think, under Rule 5 you have the
7 authority to do that. You've referenced a
8 couple of times civil practice here and what
9 we are trying to avoid is trial by ambush.

10 THE COURT: Right.

11 SOLICITOR WILSON: Obviously there
12 are going to be expert witnesses should we get
13 to the penalty phase, who are experts. We are
14 not. We need to know what that information is
15 and, if necessary, to have someone who can
16 advise us on that and who could examine that
17 testimony and the data or documents, as well.
18 We would just ask that prior to trial they
19 disclose what information that their experts
20 rely on.

21 THE COURT: Response?

22 MR. BLOOM: If I may, I don't know
23 how Your Honor usually handles this but I can
24 tell you how other circuit judges in cases
25 I've had handle it.

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1 First, we have no problem disclosing
2 to the Solicitor the names of our expert
3 witnesses and attaching their CV's, as an
4 initial matter so that they can look at that
5 information.

6 Secondly, any reports generated by
7 experts for sentencing, as well as any data
8 that they may not have, usually is sealed or
9 is given at the 24-hour waiting period. The
10 reason for that is the State isn't entitled to
11 information which is not relevant to the trial
12 phase in advance, because once they have that
13 it may change the cross-examination strategies
14 of certain witnesses, it may -- some of the
15 information may pertain to facts which could
16 be used in either to facts which could be
17 deduced in either phase. Say, take attorney
18 work product or underlying data, which isn't
19 intended to be used to an potential sentencing
20 phase and give it to the State in advance
21 could prejudice the Defendant.

22 So normally what we do is give them,
23 of course, our experts names prior to trial
24 and CV's so that they are not ambushed in that
25 regard and they know who those expert

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1 witnesses are. But then the reports of their
2 opinion and any underlying data supporting
3 them is provided during the 24-hour waiting
4 period or provided to the Court ahead of time,
5 sealed, and then given to the State at the 24-
6 hour waiting period.

7 THE COURT: Response?

8 SOLICITOR WILSON: Your Honor,
9 again, I think at that point we are going to
10 be so far into it that the time factor, I
11 think it could cause unnecessary delays. I
12 don't believe that the prejudice that Mr.
13 Bloom raises is a real threat.

14 Again, we are ten days out? Some-
15 thing like that. I don't think it is too
16 early for us to have it.

17 THE COURT: You asked me how other
18 judges do it and I certainly don't profess to
19 have tried as many as a lot of circuit court
20 judges -- I've tried five -- but I've never
21 had it come up. This is the first time -- and
22 there has never been a delay, so I assume --
23 and I preface it that this is what I would do
24 as a lawyer, and how I did, I assume that
25 there was some disclosure, both ways, so that

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1 the people knew what they needed to prepare.

2 To me, the only rationale I can -- I
3 don't expect you to tell them what this person
4 is going to testify but you need -- they need
5 to know. Giving a CV of somebody who says 'I
6 am a psychiatrist', -- well, okay, but what
7 issues are they going to have to address?

8 I think that there needs to be a
9 synopsis. You don't have to give details, I
10 agree with you (Mr. Bloom) there. Information
11 that supports, upon which that expert is going
12 to rely, that's a -- 'I need an affidavit so I
13 can talk to some people.' But you've got to
14 have people lined up. Otherwise, we'd just
15 have to stop the trial. I mean, I can't do
16 that.

17 That's the problem that I see with
18 that. Do you have some case law that says
19 that I can't order that? Out of fundamental
20 fairness and moving the trial?

21 As I said, I have never been
22 confronted with the issue and I am not saying
23 that -- maybe I have just been lucky, I don't
24 know, maybe I dodged the bullet.

25 MR. BLOOM: I think the concern,

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1 Your Honor, is that there of course Fifth,
2 Sixth and Eighth Amendment protections for the
3 Defendant, because he has no burden to prove
4 anything.

5 THE COURT: I couldn't agree with
6 you more. I am not asking him to take
7 anything other than the fact that what an
8 expert is going to testify to, just for simple
9 preparation -- this is where we've got to move
10 into the 21st Century. We sit and -- I haven't
11 -- I know that we are talking about a very
12 isolated part of our legal profession; that
13 is, capital cases. But in reality what we are
14 dealing with, the time and energy that is
15 expended, we need to be prudent in how we do
16 that preserving and protecting those
17 Constitutional rights that he has, and I am
18 going to do that. But please tell me how just
19 simply who this person is and what he is in
20 essence going to testify to that violates
21 that.

22 MR. BLOOM: I have usually done
23 that. I usually instruct my experts to
24 prepare a succinct one-page report that
25 outlines their general opinions and

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1 conclusions.

2 THE COURT: That's fine. That is
3 what you say you will give during the 24-hour
4 period.

5 MR. BLOOM: (Affirmative nod).

6 THE COURT: I am asking you to give
7 a synop--, -- it doesn't have to be a full
8 report. I just want them to know if a person
9 -- frankly, to be quite honest with you, my
10 guess is, judging from some of the questions
11 that I have seen, a lot of these people are
12 seen and have testified before. With the
13 computer world, we can find out -- all we need
14 is a CV and you can probably take off and make
15 the assumption and get prepared. But I think
16 it is helpful just to give, as we do in the
17 civil side, 'this expert is going to render
18 opinions in this area.'

19 MR. BLOOM: I don't have any
20 problem doing that, I don't have any problem
21 at all, being fair. In fact, the solicitor
22 actually contacted one of my experts yesterday
23 and tried to hire him, which we had already
24 hired him. I will be glad to provide a
25 synopsis of that expert and others as to the

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1 general areas and topics that they intend to
2 testify to.

3 SOLICITOR WILSON: Could we include
4 in that -- I understand his argument that he
5 doesn't want to supply us with the data and
6 the dockets that the expert relied on but if
7 he could include in that what they are. For
8 example, 'here is the expert and he was
9 provided school records and medical records.'

10 THE COURT: Solicitor, I really
11 believe, unless it is something extremely
12 unusual when you get the synopsis -- and I'll
13 be happy to hear any followup that we need to
14 have.

15 Most of these things are probably
16 going to be self-evident. You'll have that
17 24-hour period but it allows you to have
18 somebody in the wings that now you can take
19 and meet with that person quickly and say,
20 'okay, what do we need?'

21 Then if you need further time, if we
22 need to delay something I will be delighted to
23 hear that because I am going to try to keep an
24 even playing surface here; by the same token
25 to protect Mr. Dickerson's rights to not have

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1 to -- as you say, he doesn't have to prove
2 anything whatsoever, not one thing.

3 MR. BLOOM: I will be glad to do
4 that. I will prepare a synopsis of the
5 general areas and such.

6 THE COURT: That would be good.

7 MR. BLOOM: I will even copy the
8 court.

9 THE COURT: That would be helpful.

10 MR. BLOOM: So that if Your Honor
11 looks at it, you can contact me and say,
12 'Jeff, this wasn't one, this one isn't
13 sufficient' and we could take it up in a
14 telephone conference.

15 THE COURT: That would be fine.

16 MR. BLOOM: I will try to be fair.
17 I am not trying to play hide-the-ball with
18 anybody. When would you like ---

19 THE COURT: As quickly as it can be
20 done. I mean, obviously time -- how long, how
21 quickly can you do it? Reasonably?

22 MR. BLOOM: Probably by the first
23 part of next week.

24 THE COURT: How about by Wednesday?

25 MR. BLOOM: Oh, certainly, Your

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1 Honor, by Wednesday. I will e-mail it so that
2 they aren't waiting.

3 SOLICITOR WILSON: Your Honor, in
4 that same vein, we have moved to have the
5 defense disclose their witness list prior to
6 jury selection. Again, none of us want to do
7 this again. It's a small world. I think
8 that's important information for jury
9 selection.

10 THE COURT: Right, I definitely
11 need that. I assume that will -- that will be
12 the deadline for the *voir dire*, that needs to
13 include the witness list, please, so that you
14 will have those, I think it's two days out.
15 As I recall it's sometime that week, Tuesday
16 or Wednesday. I've had that happen in one and
17 that's why it was retried, because there was a
18 witness that was known to the defendant but
19 was never disclosed. It changed some things.
20 Please do that. Anything else?

21 SOLICITOR WILSON: Your Honor, we
22 had one -- we are withdrawing the Motion
23 regarding the school records.

24 THE COURT: Okay.

25 SOLICITOR WILSON: And we had

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1 another Motion, a request for an independent
2 evaluation of the Defendant, a psychiatric
3 evaluation of the Defendant, which I suppose
4 -- we put the *Locklear* case, which Mr. Bloom
5 cited, and which we would rely on, as well.
6 It would depend on what the defense intends to
7 present as to whether or not -- I think we're
8 actually entitled to it, and I would just ask
9 the court to inquire in that regard.

10 THE COURT: Mr. Bloom?

11 MR. BLOOM: They are not entitled
12 to it. The *Locklear* case says that the court
13 can order a State hospital evaluation if
14 insanity, guilty but mentally ill or
15 competency are an issue.

16 THE COURT: You are telling me that
17 they are not?

18 MR. BLOOM: They are not. Our own
19 independent expert, that will be part of his
20 report which they will get and I will put that
21 in the synopsis.

22 THE COURT: As long as that's
23 stated that they are not relying on it, no, I
24 won't order it. It would only be if they were
25 raising a defense somehow connected to that.

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1 They're not, so therefore no reason -- no
2 reason to have an independent at this point,
3 Solicitor, but again this is a ---

4 SOLICITOR WILSON: A moving ---

5 THE COURT: --- moving target.

6 SOLICITOR WILSON: I think that
7 was all of ours.

8 THE COURT: Anything else? Thank
9 you all very much, I appreciate your coming
10 and the next time we gather I think will be on
11 that Friday unless something arises. I will
12 be in Charleston for the two weeks preceding,
13 let me know if something comes up. If we need
14 to have a Hearing, I will accommodate you. I
15 will cancel things to accommodate this case.
16 Thank you very much.

17 MR. BLOOM: Thank you, Your Honor.

18 (HEARING CONCLUDED)

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1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9TH Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true
7 and accurate transcript of the Motions Hearing
8 of April 3, 2009, held before The Honorable R.
9 Markley Dennis, Jr.;

10 I further certify that I am neither kin
11 nor counsel to any of the parties and have no
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23 April 25, 2009

STATE OF SOUTH CAROLINA)	
COUNTY OF CHARLESTON)	COURT OF GENERAL SESSIONS
State of South Carolina,)	
Plaintiff,)	
vs.)	No. 06-GS-10-2981 et al
William O. Dickerson,)	
Defendant.)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held, commencing on April 17, 2009, and continuing through May 7, 2009, before The Honorable R. Markley Dennis, in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

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3	Devon Keeling's Statement	ID Only
4	Tomisha "Shelly" Nelson's Statement	ID Only
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11	Proffer Statement of Armon Dickerson	ID Only
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1 APRIL 17, 2009 9:00 A.M.

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3 (JURORS SIGNED IN - ROLL CALL)

4 (DEFENDANT PRESENT)

5 THE COURT: Good morning, Ladies
6 and Gentlemen. My name is Markley Dennis,
7 I'm a Circuit Court judge from -- my home is
8 in Moncks Corner, originally. I'm one of the
9 judges in the Ninth Circuit. I've been
10 assigned next week, with Judge Young, to
11 conduct a term of court. Judge Young will be
12 conducting a term of civil court. I will be
13 conducting a term of criminal court. Common
14 Pleas is the name for civil, General Sessions
15 for criminal.

16 You've been summoned to assist us in
17 resolving some of those cases. As some of you
18 have probably already deduced, this is not a
19 normal panel. We had a panel here Monday and
20 there weren't this many people here. There is
21 a reason for that and we'll talk about that
22 more in just a few moments. This is the second
23 qualification this week and, so, I've had
24 double pleasure.

25 I say that sincerely because not-

1 withstanding your displeasure at being
2 summoned, it's one of the things that I really
3 enjoy the most about my job. I assure you that
4 it is not to cause you pain and agony, that's
5 not what I mean.

6 What I mean is that I believe so
7 strongly in this system. I just thought that
8 I did as a lawyer for twenty-one years. I've
9 been a judge for fifteen and I believe in it
10 even more today. The reason that I do, I
11 attribute that solely to you, people like you,
12 with whom I've had the pleasure of working with
13 over the last fifteen years. Because as Mr.
14 Callahan said this morning and your clerk, Mrs.
15 Armstrong, who is back in -- she went out
16 immediately with that (construction) noise. I
17 appreciate her trying to do that. We're trying
18 to work around some problems, there's a little
19 bit of work going on in this building and some
20 of you've observed that. We apologize for that
21 but, that's life. We can't control everything,
22 and I'll talk about that more in just a moment.

23 Mrs. Armstrong is your Clerk. She's
24 one of the persons who has the responsibility
25 of summoning you, by law that is her job, that

1 is part of her job title. She does a great
2 job. She'd love to pay you more. In fact,
3 she leaned over and said to me, asked that
4 question. Of course, we can't but that's her
5 thought and that's what she does. She is a
6 good person, she runs a great office. I'm not
7 saying that just because she's here, because I
8 say that when she is not here.

9 You've had the pleasure of seeing some
10 of the people that work for her -- Mr.
11 Callahan, who is a delightful person. I think
12 I am going to have the pleasure of working with
13 Mr. Callahan some, is that correct?

14 MIKE CALLAHAN, ASSISTANT CLERK:

15 Yes, sir.

16 THE COURT: Then you also have
17 several others -- Mr. Ruger, who is sitting
18 here, and Mr. Michele; who also work for Mrs.
19 Armstrong.

20 Ms. Armstrong has multi-tasks and
21 obviously can't be in every court at one time,
22 so she hires very competent people that will
23 assist us at all times. In fact, you've met
24 another very wonderful group of people that I
25 think you'll come to -- some of you may have a

1 shorter experience than others. You heard Mr.
2 Callahan mention a bailiff. Bailiffs are a
3 title given to persons -- frankly, I think they
4 are the friends of the court and your friend,
5 as well. They are your liaison, if you will,
6 between yourself and the court. If you had a
7 problem, have a concern there will be a bailiff
8 available to you, whether you are on a jury or
9 not, at all times. They are a marvelous group
10 of people. They are some of the best that I've
11 had the pleasure of working with and I've
12 worked pretty much all over the state. They're
13 here. I credit you because they come from
14 here. That's a part of this community, just as
15 you are.

16 There are other persons that you see
17 standing around that will be here. I
18 appreciate what they do for you and for me, for
19 all of us that have to use this facility. They
20 are security persons. I'd love it if we didn't
21 have to have them here, it would be great. But
22 we live in a real world and that's what we have
23 to do. Some of you came through the screening
24 this morning and I know that was cumbersome but
25 that's the way life has become. It wasn't that

1 way in 1973 when I started, but things change
2 and we have to change accordingly. I
3 appreciate their contribution, too. They make
4 a tremendous contribution.

5 There's a lot of people involved in
6 making this process. You and I have something
7 to do, Judge Young has something to do. We
8 have jobs, each of us. Your job is one that,
9 quite frankly, Mr. McCrae -- is that how you,
10 the storyteller?

11 JUROR: Yes, sir.

12 THE COURT: Not to pick on you but,
13 really and truly you preface that with "I am
14 not telling a lie", but that's precisely what a
15 jury does. I thought about that. I thought,
16 you know, that's pretty significant because
17 what you do as a juror, and I'll assure you
18 right now, let me allay any concerns that any
19 of you may have had when you came in. You're
20 the most qualified person(s) that I can think
21 of to perform this task that some of you may
22 have to undertake and that is simply listening
23 to something, looking at something or reading
24 something and deciding whether or not you
25 believe it. I say that because you -- in order

1 to do that you apply your common sense, your
2 sense of logic and reasoning. If you can
3 convince me today that there is anybody in the
4 world that can apply your common sense, your
5 sense of logic and reasoning, your life's
6 experience any better than you can, I'll be
7 delighted to hear it but I don't think that
8 they exist. That's what you do. That's all
9 that you do. That's your job.

10 Your job is also to follow the law
11 because when you're present -- I've had the
12 pleasure of working with another judge -- Judge
13 Young, Judge Young who is seated back here, he
14 wanted to stick around and see this. He's
15 already endured one -- but he's from Sumter and
16 we may see him again as he travels throughout
17 the State. He really didn't need me at all.
18 In fact, he tried some cases without me. He
19 said, 'Can you just be in your office,
20 available, and you can work on the case that
21 you have next week.' Which was a great help to
22 me. But, you know, it's that type of people
23 that do work every day. Judge Young comes to
24 us, to the Circuit Court, by way of the Family
25 Court. As a Family Court judge, he decided the

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1 facts and the law. Sometimes Circuit Court
2 judges do, too. But when you're present, you
3 take that from us, you take half of our job
4 away from us -- thank you, I appreciate that.
5 Because we have -- we no longer have anything
6 to do with the facts. But, by the same token,
7 you don't have anything to do with the law.

8 It's that combination of our efforts that
9 hopefully, and what we all will be seeking, we
10 will achieve a result that the founding fathers
11 of this country contemplated when they decided
12 that we were going to have a jury system.

13 Is it always user friendly? No.

14 Is it cumbersome? Sure.

15 Is it disruptive of your lives? Sure.

16 Is it necessary? You bet,

17 (affirmative nod).

18 It's the best system that I can think
19 of. If somebody could come up with a better
20 one, I'd be delighted to hear it but it's truly
21 the best system to resolve disputes. I've seen
22 it work day after day for a long time. Thank
23 you for that. We will talk a little bit more
24 about that in just a moment.

25 First I have to -- I have to do

1 several things. One, I have to qualify you.
2 In order to do that I am going to ask of you
3 a number of questions. I need to ask now if
4 each juror will solemnly swear or affirm that
5 their responses to my questions will be the
6 truth. If so, please indicate that by saying
7 "I will" -- (affirmative responses). Are there
8 any members of this panel that could not make
9 that commitment for any reason? If so, please
10 stand. (No response). Thank you, there are
11 none.

12 That commitment, Ladies and Gentlemen,
13 applies today and every day that you're here
14 for your service, obviously. I think it goes
15 without saying but we have to do that for a
16 number of reasons and I'm sure that you under-
17 stand that.

18 There has been a questionnaire, a
19 questionnaire that several of you -- the
20 Clerk's office has been helping with that.
21 Thank you for enduring that. I know the
22 questions -- I've read through the responses
23 and I appreciate those responses. Some of them
24 were, justifiably, critical of the format and
25 the questions. Thank you for enduring that.

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1 It was done to assist in getting some
2 information that is simply a part of what we
3 do. Really, believe it or not, it shortens the
4 time that we have to spend to do that. Thank
5 you for helping.

6 I need to ask if everybody has filled
7 out a questionnaire. I believe that there are
8 some of you that maybe have not. It's a nine-
9 page questionnaire. So if you haven't filled
10 out a nine-page questionnaire, please stand --
11 (number of people standing). Thank you very
12 much. Those persons that are standing, the
13 clerk will -- before you leave today you need
14 to get with the clerk and fill out that
15 questionnaire, please. We need that before you
16 leave. Just be sure that you see the clerk
17 before you leave. They have your names and
18 they will be delighted to assist you and
19 accommodate you on that. Thank you very much.

20 Those of you that did not stand, does
21 anyone wish to change any answer that they have
22 given? If so, please stand. (No response).
23 Thank you. Then all of you stand by the
24 answers that appear on that questionnaire, your
25 responses. That's perfectly fine.

1 Let's go to the qualifications. There
2 remain today a few exemptions. Exemptions
3 apply to certain individuals who because of
4 their jobs in some cases, because of stations
5 in life in others, have earned an exemption.
6 In 1973 when I started this job of the legal
7 profession, there were a lot of you who would
8 not have been here -- some of you may have
9 known that, some of you may have been the
10 beneficiary of that or the benefactor of that
11 in that you were exempt because of your
12 profession or occupation.

13 The concept of the jury panel is to
14 bring in a cross section of our community.
15 You heard, as I did, that you represent a true
16 cross section of our community, both by
17 occupation, life's experiences and age. I
18 heard an eighteen-year-old and I think that I
19 heard sixty-four year old. I believe that
20 those are the two that frame -- and there's a
21 lot in between.

22 One of those exemptions that is
23 earned, and Mr. MacMillian, I think that you
24 stated it, and I appreciate that because I
25 joined the 60's Club last year. I used to

1 think that meant something. I used to think
2 that it was -- I used to think that it was old,
3 to be honest with you, when I was a lot
4 younger. When I reached that point, I really
5 believe 'no, it's not.' It just means that
6 I've been here longer than some others but
7 that's about what it means. I appreciate that.
8 I remind -- I try to remind myself to think of
9 it as sixty-one years young instead of old,
10 because that's really the way that it is.

11 The gentleman -- and I've already
12 embarrassed him once this week and I'm going to
13 embarrass him again. This wonderful gentleman
14 that is seated over here, in fact he's one of
15 the bailiffs, Mr. Rivers. Mr. Rivers is my
16 true friend and I mean that sincerely, and he
17 knows that. Mr. Rivers is a little bit older
18 than sixty. I'm not going to ask him how old
19 but he's been ---

20 MR. RIVERS: Eighty-nine.

21 THE COURT: Eighty-nine years old.

22 JURORS: (Applause).

23 THE COURT: He's the most delightful
24 gentleman, an inspiration every day. If you
25 ask Mr. Rivers, 'How are you doing?' he'll say,

1 "Blessed and highly-favored." I think that's
2 appropriate because we all who are able to walk
3 today are. But he has another talent, too. He
4 can sing, a beautiful voice.

5 In fact there was a lady this morning,
6 and maybe some of you saw it, some mornings I
7 watch the TV Show. There was this lady from
8 Scotland and she has wow'ed everybody with her
9 voice. Well, they talked to her on the
10 telephone and then asked her could she
11 demonstrate. She is sitting there talking in
12 her living room and she starts singing a
13 *capella*. Wow. To be able to do that is
14 amazing. That gentleman (indicating Mr.
15 Rivers) can do it also.

16 He also likes to visit his family and
17 he drives himself. So I agree with you, being
18 sixty isn't anything. Mr. Rivers is a
19 testament to that, absolutely. He is ready to
20 roll.

21 If you've reached the age of sixty-
22 five, and I didn't hear any of these, you've
23 earned an exemption. Is there anybody here
24 that is sixty-five and wants to claim the
25 exemption? If so, please stand. (No

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1 response). Thank you, there are none.

2 The next one, I didn't hear any of
3 these but if you are employed with the
4 Department of Corrections, either as an officer
5 or some employee, you earn an exemption. Did I
6 miss any? Are there any members of the panel
7 who are employed with the Department of
8 Corrections? (No response). Thank you, there
9 are none.

10 All of these exemptions are statutory.
11 I say that to preface it with this, because --
12 I've had some debates over the years. People
13 have said 'why this age?' I don't know, I
14 can't answer that question. I didn't -- it's
15 the law. But if you have children under the
16 age of seven years and you don't work outside
17 of the home or your working arrangements are
18 such that you are home while the other care
19 giver is working and you alternate or you share
20 in that responsibility and you need to claim
21 the exemption to care for your child or
22 children, please stand. Yes, ma'am?

23 JUROR NUMBER 27: I have a seven-
24 year-old. She my granddaughter and I have
25 custody of her.

1 THE COURT: But she is seven?

2 JUROR NUMBER 27: Yes.

3 THE COURT: She is not under the age of
4 seven?

5 JUROR NUMBER 27: No.

6 THE COURT: Does she have special
7 needs?

8 JUROR NUMBER 27: No, but there's
9 nobody to -- I get home from work early to get
10 her from school.

11 THE COURT: I understand that.
12 That's another one of those catchalls. I'll
13 talk to you about that later, but that would
14 not qualify.

15 Yes, ma'am?

16 COURT REPORTER: Her number, Judge?

17 THE COURT: Yes, your juror number,
18 please?

19 JUROR NUMBER 27: Twenty-seven.

20 BRUCE DURANT: Twenty-seven?

21 THE COURT: Yes, sir. Yes, ma'am?

22 JUROR NUMBER 95: I keep my grand-
23 daughter who has juvenile diabetes.

24 THE COURT: I heard that ---

25 JUROR NUMBER 95: I can try to get

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1 someone to keep her if ---

2 THE COURT: Hold onto to that one.

3 I want to ---

4 JUROR NUMBER 95: She is three.

5 THE COURT: I will ask you some
6 questions about that. Right now I am dealing
7 with persons that don't have any kind of
8 impairment.

9 JUROR NUMBER 95: Okay.

10 THE COURT: Because there is another
11 question to follow. Okay? And let me say
12 this, I am not trying to be rude.

13 JUROR NUMBER 95: I understand.

14 THE COURT: This lady (court
15 reporter) that is sitting back here, that I was
16 sitting by, is my wonderful court reporter, Ms.
17 Garrison. She is taking down everything that I
18 am saying and that you're saying, that has been
19 said this morning. That's her job.

20 Of all the jobs that I've identified,
21 I'd love to be a bailiff. We've talked and Mr.
22 Brown has said that there's no need to put in
23 my application. He is standing back there. He
24 doesn't think that I am -- he doesn't think
25 that I can really do the job. But I don't want

1 her job, that's one that I absolutely promise
2 you -- I'd love to be a juror but you'll know
3 why I'm not qualified in just a moment, but --
4 there's an order to these questions and we're
5 trying to keep the record straight. That's the
6 reason for it. Thank you for your patience.

7 JUROR NUMBER 95: No problem.

8 THE COURT: Yes, ma'am? And what
9 was your number?

10 COURT REPORTER: Juror 95.

11 JUROR NUMBER 95: Ninety-five (95).

12 THE COURT: Okay. Yes. If you
13 will, give me your juror number, please, when
14 you speak.

15 JUROR NUMBER 37: I have three
16 grandchildren, the youngest one is six. Mom
17 and Dad are working, I'm the only one there to
18 keep them.

19 THE COURT: I understand that but
20 unless you have custody of those children that
21 does ---

22 JUROR NUMBER 37: No, I don't.

23 THE COURT: Then that does not
24 apply. Thank you, ma'am. Yes, ma'am?

25 JUROR NUMBER 132: I have a five-year-

1 old son and an eight-year-old daughter.

2 THE COURT: A five-year-old son?

3 JUROR NUMBER 132: Yeah. I go to
4 work after they leave for school and I'm home
5 when they get home.

6 THE COURT: Very well, do you wish
7 to claim that exemption?

8 JUROR NUMBER 132: I do.

9 THE COURT: Your number, again?

10 JUROR NUMBER 132: One thirty two.

11 THE COURT: Number 132 is excused.

12 (JUROR NUMBER 132 EXCUSED)

13 THE COURT: Thank you, ma'am. You
14 are free to leave. Yes, ma'am?

15 JUROR NUMBER 55: My juror number is
16 fifty five (55).

17 THE COURT: Ma'am, you're going to
18 really -- the one thing that does happen when
19 you live long enough is that certain parts
20 begin to fail and one of mine is obviously my
21 eyesight. I didn't always wear glasses. My
22 hearing is not as good as it used to be. I'm
23 sorry. Just yell at me.

24 JUROR NUMBER 55: My jury number, I
25 believe is fifty-five (55) and I've got a six-

1 year-old daughter and I'm not -- I don't work
2 outside the home.

3 THE COURT: So you're there with her
4 all the time?

5 JUROR NUMBER 55: Not all the time
6 but I'm the one who ---

7 THE COURT: You are there?

8 JUROR NUMBER 55: Yeah.

9 THE COURT: You want to claim that
10 exemption?

11 JUROR NUMBER 55: Yeah.

12 THE COURT: Juror Number 55 is
13 excused.

14 (JUROR NUMBER 55 IS EXCUSED)

15 THE COURT: Are you April Cochran?

16 JUROR NUMBER 55: Yes.

17 THE COURT: Yes, ma'am?

18 JUROR NUMBER 308: Juror Number three-
19 zero-eight. I have an eight-month-old at home.

20 THE COURT: And you are there with
21 them?

22 JUROR NUMBER 308: Yes.

23 THE COURT: I can't imagine that.

24 Understanding I've been blessed with some
25 grandchildren, yes, ma'am, you need to leave.

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1 What is your juror number?

2 JUROR NUMBER 308: 308.

3 THE COURT: Juror Number 308 is
4 excused. Thank you. Good luck.

5 (JUROR NUMBER 308 EXCUSED)

6 THE COURT: Yes, ma'am?

7 JUROR NUMBER 93: I'm number ninety-
8 three (93) and I ---

9 THE COURT: You're going to have to
10 speak up.

11 JUROR NUMBER 93: I have a six-year-
12 old, an eight-year-old and one that is eleven.

13 THE COURT: One is six?

14 JUROR NUMBER 93: One is six, one is
15 eight and one is eleven.

16 THE COURT: And your number, again?

17 JUROR NUMBER 93: Ninety-three (93).

18 THE COURT: Juror Number 93 -- you
19 want to claim that exemption?

20 JUROR NUMBER 93: (Affirmative nod).

21 THE COURT: You are free to leave.

22 (JUROR NUMBER 93 EXCUSED)

23 THE COURT: Yes, ma'am?

24 JUROR NUMBER 356: Hi. Juror Number
25 356. I have a four-year-old, a six-year-old,

1. and a seven-year-old.

2 THE COURT: I understand that you're
3 a stay-at-home?

4 JUROR NUMBER 356: I am currently at
5 home, yes.

6 THE COURT: I understand that, too.
7 Good for you. Your number is what?

8 JUROR NUMBER 356: Three-fifty-six.

9 THE COURT: Juror Number 356 is
10 excused.

11 (JUROR NUMBER 356 EXCUSED)

12 THE COURT: Yes, ma'am?

13 JUROR NUMBER 320: Number 320. I have
14 a five-year-old daughter.

15 THE COURT: And you're there with
16 her?

17 JUROR NUMBER 320: Yes.

18 THE COURT: Your number, again?

19 JUROR NUMBER 320: Three-twenty.

20 THE COURT: 320?

21 JUROR NUMBER 320: Yes.

22 THE COURT: You wish to claim the
23 exemption?

24 JUROR NUMBER 320: I do.

25 THE COURT: You are free to leave.

1 Thank you.

2 (JUROR NUMBER 320 EXCUSED)

3 THE COURT: Yes, ma'am?

4 JUROR NUMBER 359: Number 359, I have
5 a letter from my supervisor and my brother also
6 has a ---

7 THE COURT: Ma'am, ma'am -- hold on
8 a second. I will give you a chance to come
9 talk to me if you want to talk to me.

10 JUROR NUMBER 359: Oh, okay.

11 THE COURT: We're trying to keep
12 this thing in some order and right now we're
13 dealing with small children.

14 JUROR NUMBER 359: Okay. I'm sorry.

15 THE COURT: Do you have small
16 children, sir? Is that what you want to talk
17 to me about?

18 JUROR: No, sir.

19 THE COURT: Just hold on. Let me
20 assure you of something. I may not get there
21 as quickly as you'd like for me to get there
22 but I'm going to get to it. If you have a
23 reason that I don't reach, there's kind of a
24 last question that is kind of a catch all
25 question. That's when we will have a chance

1 to talk about those things but right now please
2 just focus on those questions.

3 And I appreciate but I can't have
4 people leaving right now.

5 JUROR: I can't leave?

6 THE COURT: No, sir.

7 JUROR: Okay.

8 THE COURT: The reason for that --
9 they told you that you could?

10 JUROR: Yes, sir, they did.

11 THE COURT: The reason for that is
12 that we're in the qualification questions now.
13 If you need to take a break, I'll be delighted
14 to. Let me say right now that I know you've
15 been here a long time. We all have. I'm going
16 to take a break right after I qualify you but
17 if anybody has an urgent situation, just raise
18 your hand and I'll stop with the qualification.

19 The next question is a similar
20 question. If you have the care, custody or
21 control of a person of any age, primarily
22 sixty-five and older, but if because of some
23 physical condition they require constant care
24 and you're that care giver and you need to
25 claim that exemption, please stand.

1 JUROR NUMBER 95: Well, I am but ---

2 THE COURT: It's not constant care?

3 JUROR NUMBER 95: Well, my daughter
4 stays home, works one day a week at home so
5 that I can get out one day a week but I keep
6 her every day, every afternoon because we don't
7 have anyone else that is trained to do the
8 caregiving.

9 THE COURT: Any objection from --
10 ma'am, I am going to do this. Your number,
11 please?

12 JUROR NUMBER 95: Ninety-five (95).

13 THE COURT: I am going to find that
14 to fall into that category and you're excused.
15 Good luck, I hope things go well.

16 (JUROR NUMBER 95 EXCUSED)

17 THE COURT: Are there any others?
18 (No response). Thank you, there appear to be
19 none.

20 I heard a number of these. You have
21 an exemption if you're a student, a teacher or
22 necessary employee with institutions of
23 learning. That is K through 12 and
24 institutions of higher learning, including
25 technical colleges, and your responsibilities

1 or duties or obligations as a student, a
2 teacher or necessary employee will conflict
3 with serving on a jury, it is your option. You
4 can be excused, you can be transferred. The
5 reason I say excused is because generally a lot
6 of people in that category are year-round and
7 there is really no effective way to transfer.
8 If you want a transfer, I can. If there are
9 person who fall into that category and wish to
10 claim the exemption, please stand -- (number of
11 persons stand).

12 We will start on this side and come
13 around. You'all may be seated and I'll come
14 back to you. We'll start with you, sir.

15 JUROR NUMBER 44: I start classes for
16 my GED this coming Tuesday.

17 THE COURT: Okay, for your GED?

18 JUROR NUMBER 44: Yes, sir.

19 THE COURT: How long will those
20 classes be?

21 JUROR NUMBER 44: I have no idea,
22 however long it takes me to take the test.

23 THE COURT: Your number?

24 JUROR NUMBER 44: Forty-four (44).

25 THE COURT: I am going to transfer

1 Juror Number 44 because that's not a fulltime
2 situation. Does he need to see you'all?

3 MIKE CALLAHAN, ASSISTANT CLERK: Yes,
4 sir.

5 THE COURT: If you will see this
6 gentleman here, sir, he will help you. Yes,
7 sir?

8 JUROR NUMBER 391: I am a fulltime
9 employee at the Medical University of South
10 Carolina and I go part-time to Trident
11 Technical College. We're near the end of our
12 semester and I still have two research papers,
13 a chapter test and a final exam to get ready
14 for here within the next thirteen days.

15 THE COURT: Will you be continuing
16 that education after spring?

17 JUROR NUMBER 391: I will be starting
18 again during the summertime. I believe that
19 the classes begin June 1st.

20 THE COURT: And you wish to claim
21 the exemption and be excused?

22 JUROR NUMBER 391: Yes, sir.

23 THE COURT: Your number?

24 JUROR NUMBER 391: Three-ninety-one
25 (391).

1 THE COURT: Juror Number 391 is
2 excused. Good luck, sir.

3 (JUROR NUMBER 391 EXCUSED)

4 THE COURT: Yes, ma'am?

5 JUROR NUMBER 359: Jessica Gadsen,
6 359. Carolina Child Development Center.

7 THE COURT: That is not connected
8 with any school system, is it?

9 JUROR NUMBER 359: Excuse me?

10 THE COURT: The Development Center
11 is not tied to any school system, is it?

12 JUROR NUMBER 359: No.

13 THE COURT: That would not qualify
14 you.

15 JUROR NUMBER 359: Well, I have
16 something that ---

17 THE COURT: Ma'am, I sense the
18 urgency but hang on.

19 JUROR NUMBER 164: I do K-4 to first
20 grade and I usually have to be to work at 5:30?

21 THE COURT: You do that for what?

22 JUROR NUMBER 164: James Island
23 Elementary.

24 THE COURT: You want to claim the
25 exemption or do you want to be transferred to

1 the summer?

2 JUROR NUMBER 164: I'll claim the
3 exemption.

4 THE COURT: Your number, please?

5 JUROR NUMBER 164: One-sixty-four
6 (164).

7 THE COURT: JUROR NUMBER 164 is
8 excused. Thank you.

9 (JUROR NUMBER 164 EXCUSED)

10 THE COURT: Yes, sir?

11 JUROR NUMBER 103: I teach at Bishop
12 England High School and also coach.

13 THE COURT: I understand. No
14 problem. You want to claim the exemption?

15 JUROR NUMBER 103: Yes, sir.

16 THE COURT: Your number?

17 JUROR NUMBER 103: One-zero-three
18 (103).

19 THE COURT: Juror Number 103 is
20 excused. Thank you.

21 (JUROR NUMBER 103 EXCUSED)

22 THE COURT: Yes, ma'am?

23 JUROR NUMBER 396: Hi. My juror
24 number is three-ninety-six and I am a
25 substitute teacher. I am on call for the next

1 few ---

2 THE COURT: Do you have any set for
3 next week?

4 JUROR NUMBER 396: Yes, sir.

5 THE COURT: That is more of an
6 employment situation. You don't substitute
7 during the summer months, do you?

8 JUROR NUMBER 396: Yes, sir.

9 THE COURT: Very well, we will
10 transfer 396 until sometime in June.

11 JUROR NUMBER 396: Thank you.

12 THE COURT: After June. Yes, ma'am?

13 JUROR NUMBER 325: I am number three-
14 twenty-five. I am a project manger at the
15 College of Charleston. We are in a three-year
16 project to end July 21st and there are only
17 several weeks left to meet that deadline, so I
18 could be transferred to another ---

19 THE COURT: Is this part of the
20 academic program?

21 JUROR NUMBER 325: It is the entire
22 administration for the University.

23 THE COURT: That is more of a -- I
24 will talk about that in general business
25 reasons.

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1 JUROR NUMBER 325: Okay.
2 THE COURT: Thank you. Yes?
3 JUROR NUMBER 145: I am Juror Number
4 145. I am a teacher.
5 THE COURT: Where?
6 JUROR NUMBER 145: At Chicora
7 (phonetic) Middle School.
8 THE COURT: So you want to claim the
9 exemption?
10 JUROR NUMBER 145: Yes, sir.
11 THE COURT: Juror Number 145 is
12 excused.
13 (JUROR NUMBER 145 EXCUSED)
14 THE COURT: Yes, sir?
15 JUROR NUMBER 395: Juror Number 395,
16 teacher.
17 THE COURT: You need to claim the
18 exemption?
19 JUROR NUMBER 395: Please.
20 THE COURT: 395 is excused.
21 (JUROR NUMBER 395 EXCUSED)
22 THE COURT: Yes, sir?
23 JUROR NUMBER 245: I am Juror Number
24 245. I am a fulltime graduate student. I
25 request to be transferred.

1 THE COURT: You want to be
2 transferred?

3 JUROR NUMBER 245: Yes, sir.

4 THE COURT: Will you be going during
5 the summer?

6 JUROR NUMBER 245: No, sir, this is my
7 last semester.

8 THE COURT: Very good. Good luck to
9 you, sir. 245?

10 JUROR NUMBER 245: Yes, sir.

11 THE COURT: Juror Number 245 will be
12 transferred to a term after June.

13 Now, this side. Okay. Yes, sir?

14 JUROR NUMBER 173: Juror Number 173.
15 I am the dean of research at the College of
16 Dental Medicine. I have lectures next week, we
17 have a recovery program to create jobs here in
18 Charleston. I would like to be excused or
19 transferred -- (applause by jurors).

20 THE COURT: Will you be working
21 during the summer?

22 JUROR NUMBER 173: Yes.

23 THE COURT: It is a twelve-month
24 program?

25 JUROR NUMBER 173: Yes, sir.

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1 THE COURT: Your number again?

2 JUROR NUMBER 173: One-seven-three
3 (173).

4 THE COURT: Juror Number 173 is
5 excused. Good luck, sir.

6 (JUROR NUMBER 173 EXCUSED)

7 THE COURT: All right. Yes, sir.

8 If the rest of you would, please go ahead and
9 stand. Thank you. Yes, sir?

10 JUROR NUMBER 43: I am number forty-
11 three, I am a student at Trident Tech and
12 finals are coming up in the next couple of
13 weeks.

14 THE COURT: You don't want to
15 postpone them ---

16 JUROR NUMBER 43: No.

17 THE COURT: Just teasing.

18 JUROR NUMBER 43: Also I have a part-
19 time job to help pay for school.

20 THE COURT: Don't go to that one
21 because that one isn't going to help you a lot.
22 The first one helps you tremendously. Will you
23 be going during the summer?

24 JUROR NUMBER 43: Yes, sir.

25 THE COURT: Your number, please?

1 JUROR NUMBER 43: Forty-three (43).

2 THE COURT: Juror Number 43 is
3 excused. Good luck, sir, academically.

4 (JUROR NUMBER 43 EXCUSED)

5 THE COURT: Yes, ma'am?

6 JUROR NUMBER 238: My number is two-
7 thirty-eight and I am a tutor and I have
8 students that I help every day. I work for
9 University Instructors who ---

10 THE COURT: You are ---

11 JUROR NUMBER 238: I am a University
12 Instructor that is hired for ---

13 THE COURT: You are compensated for
14 this by the school?

15 JUROR NUMBER 238: I am hired -- like
16 the Charleston County School District hires
17 University Instructors to come in as tutors to
18 work with the students.

19 THE COURT: So you're doing this as
20 part of what? Who pays you?

21 JUROR NUMBER 238: University
22 Instructors.

23 THE COURT: Okay. You want to claim
24 the exemption?

25 JUROR NUMBER 238: (Affirmative nod).

1 THE COURT: Do you do that during
2 the summer?

3 JUROR NUMBER 238: No.

4 THE COURT: Your number?

5 JUROR NUMBER 238: Two-thirty-eight
6 (238).

7 THE COURT: Juror Number 238 will be
8 transferred until a term after June. Yes,
9 ma'am?

10 JUROR NUMBER 379: Hi. I am number
11 three-seven-nine. I'm an elementary school
12 teacher and it's awfully hard finding
13 substitute teachers to ---

14 THE COURT: I know it is.

15 JUROR NUMBER 379: I teach ---

16 THE COURT: Do you want to claim the
17 exemption?

18 JUROR NUMBER 379: Be happy to
19 transfer.

20 THE COURT: Transfer. After June,
21 would that work?

22 JUROR NUMBER 379: Yes, sir.

23 THE COURT: Your number, again?

24 JUROR NUMBER 379: Three-seven-nine.

25 THE COURT: Juror Number 379 will be

1 transferred until a term after June. Good
2 luck. Are there any others? (No response).
3 If there are and you have chosen to stay, I
4 appreciate your assistance in this.

5 The next one will apply to each of you
6 that remain whether you're selected on the jury
7 or not. In this state you can only be required
8 to serve in the Circuit Court once every three
9 years. You earn an exemption. That's a very
10 important -- probably the best thing that will
11 happen insofar as compensation for your
12 service. But you do earn the exemption.

13 So if there are any members of the
14 panel that have served in the Circuit Court,
15 either Common Pleas or General Sessions, in the
16 last three years and you want to claim the
17 exemption, please stand. Now, if you've served
18 in Federal Court or a magistrate's court or a
19 municipal court, it gave you some great
20 experience but it didn't earn an exemption.
21 Does that apply to any juror?

22 JUROR NUMBER 205: I served but --
23 along with the gray hair goes the memory. I
24 can't remember how many years it has been.

25 THE COURT: Did you serve in this

1 building?

2 JUROR NUMBER 205: With you, sir.

3 THE COURT: Did you?

4 JUROR NUMBER 205: (Affirmative nod).

5 THE COURT: You had to tolerate me

6 for that -- sorry. I thought you looked

7 familiar. Maybe it was last week?

8 JUROR NUMBER 205: No, I'd remember

9 that.

10 THE COURT: Do we -- did we run a

11 check?

12 DON MICHELE, ASSISTANT CLERK: Yes,

13 sir.

14 THE COURT: Do you want to claim the

15 exemption?

16 JUROR NUMBER 205: Yes, sir, if I

17 could.

18 THE COURT: We will check and see

19 when it was. We'll check your number. It was

20 in this building?

21 JUROR NUMBER 205: It was.

22 THE COURT: Okay.

23 DON MICHELE, ASSISTANT CLERK: What

24 is his number?

25 THE COURT: Your number, sir?

1 JUROR NUMBER 205: Two-zero-five

2 (205).

3 THE COURT: We'll check on that for
4 you. Thank you so much. Are there others?

5 JUROR NUMBER 110: I don't know how
6 long it's been. It couldn't have been too
7 terribly long, it was in this building. It
8 couldn't have been more than a couple of years.

9 DON MICHELE, ASSISTANT CLERK: We
10 moved in the building in '02, so ---

11 THE COURT: That's this ---

12 DON MICHELE, ASSISTANT CLERK: No,
13 sir. We moved into the building in 2002.

14 THE COURT: Okay. We moved into the
15 building in '02, so it could be a long time
16 ago.

17 CLERK ARMSTRONG: If we get their
18 number, Judge, we can check.

19 JUROR NUMBER 110: One-ten.

20 THE COURT: Juror Number 110, we
21 will check it and let you know. Are there any
22 others? Yes, ma'am?

23 JUROR NUMBER 383: I served, I think
24 it was in this building.

25 THE COURT: Give me your number and

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1 we will check it.

2 JUROR NUMBER 383: Three-eighty-
3 three (383).

4 THE COURT: All right, check for
5 383. We will get back to you. Are there any
6 others? (No response).

7 Is there any member of the jury panel
8 that has served on a grand jury for any county
9 in this state in the last five years? You earn
10 a five-year exemption for serving on a grand
11 jury. Does that apply to anyone? (No
12 response). Thank you, there are none.

13 Folks, those are all the exemptions.
14 The next questions, unlike the previous, they
15 are not optional. In other words, if those
16 applied to you, you could still serve. These
17 deal with your qualifications to serve. The
18 first one, are there any members of the panel
19 that do not have a Highway Department
20 identification card, a voter's registration
21 certificate or a driver's license? You don't
22 have to have all three, you don't have to have
23 it with you today but does that apply to any
24 juror? (No response). I doubt that it does
25 but if there are any, please stand. (No

1 response). Thank you. The reason that I know
2 that is that's how we got your name. Yes?

3 JUROR NUMBER 176: I don't think that
4 I have a voter's registration card.

5 THE COURT: But you've got a
6 driver's license?

7 JUROR NUMBER 176: (Affirmative nod),
8 -- just wanted to make sure.

9 THE COURT: That's a good reason,
10 another example of why I believe so strongly in
11 this system, is because if a juror has a
12 question they ask it. It doesn't matter but
13 'I want to be sure'. Thank you for doing that.
14 Thank you very much.

15 COURT REPORTER: Tell me your
16 number.

17 JUROR: May I leave?

18 THE COURT: Not until we -- do you
19 have an emergency?

20 JUROR: No, you excused me.

21 THE COURT: You were excused?

22 JUROR: Yes, sir.

23 THE COURT: Oh, yes, ma'am. If
24 you've been excused, you can leave.

25 JUROR: Okay.

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1 COURT REPORTER: Judge, what was the
2 number of the juror who wasn't sure she has a
3 voter's registration? Ma'am, please tell me
4 your number.

5 JUROR NUMBER 176: One-seventy-six.

6 COURT REPORTER:

7 THE COURT: I'm sorry -- I'll try to
8 remember. I tell you, she's (court reporter)
9 good. She keeps me straight.

10 The next question, I heard somebody
11 say that they were eighteen but are there any
12 members of the panel that have not reached
13 their eighteenth birthday? If so, please
14 stand. (No response). Thank you, there are
15 none.

16 Are there any members of the panel who
17 are not citizens of the United States? If so,
18 please stand. (No response). Thank you, there
19 are none.

20 Are there any members of the panel who
21 are not residents and citizens of Charleston
22 County? (No response). Thank you, there are
23 none.

24 Are there any members of the jury
25 panel who are clerks of court, deputy clerks of

1 court, constables, sheriffs, probate judges,
2 county commissioners, county officers or any
3 person employed within the walls of any
4 courthouse? If so, please stand. (No
5 response). Thank you, there are none. That is
6 the one that kicks me out.

7 Are there any members of the jury
8 panel that have the power to arrest someone?
9 You are a police officer or you are a
10 commissioned officer, who have general powers
11 of arrest? If that applies to you, please
12 stand. (No response). Thank you, there are
13 none.

14 JUROR NUMBER 214: Aboard ship?

15 THE COURT: Aboard ships?

16 JUROR NUMBER 214: (Affirmative nod).

17 THE COURT: No. Thank you for
18 asking that questions. We have -- security
19 guards a lot of times have the power to arrest
20 within the confines of that facility and yours
21 would be analogous to that situation.

22 COURT REPORTER: His number?

23 JUROR NUMBER 214: Two-fourteen.

24 THE COURT: Thank you, sir. A very
25 good question, sir.

1 All right. The next group of
2 questions, if it applies to you I will give you
3 a chance in just a moment to come forward and
4 share your responses with me. It's imperative
5 that you respond to the questions.

6 If you have ever been convicted in a
7 court of record, State or Federal Court, of a
8 crime that carried a potential sentence -- that
9 means that you were exposed to a sentence of
10 more than a year. You wouldn't have actually
11 had to have been sentenced to more than a year,
12 only the potential for that. If you have been
13 convicted of a crime that carried a potential
14 sentence of more than one year and you haven't
15 had your civil rights restored by pardon or
16 amnesty, then you will not be eligible to
17 serve. It doesn't matter how long ago that may
18 have happened. If it has happened at any time
19 in your life and it has not been removed, then
20 it prevents you from serving.

21 If there are any members of the jury
22 panel who are unable to read, write, speak or
23 understand the English language -- some of you
24 may wonder, as I have, 'well, if they can't
25 understand, then how do they answer the

1 question?' That's the wording from the statute
2 but we know that there are persons who English
3 is not their native tongue and they're not
4 comfortable with that and that's what that
5 question is really dealing with. I would need
6 to talk with you about that, as well.

7 Also if there are persons that have
8 some physical or mental problem that they
9 believe would affect their ability to be a
10 juror, an effective juror, I will need to talk
11 with you about that.

12 If there are persons that do not have
13 the equivalent of a sixth grade education, I
14 will need to talk with you about that.

15 If there are persons in the audience
16 that have, that fall into any of those
17 categories, please line up on either side and
18 I'll be happy to talk with you. The attorneys
19 may approach, as well.

20 BAILIFF: Juror 150.

21 SIDEBAR:

22 COURT REPORTER: Please tell me
23 your number.

24 JUROR NUMBER 150: One-fifty.

25 THE COURT: Okay.

1 JUROR NUMBER 150: I am a Vietnam
2 vet and I suffer from post-traumatic stress
3 disorder because of the cancer and I take a
4 variety of meds. Sometimes as a result of my
5 medications I get confused and I --
6 after Vietnam I was diagnosed as paranoid-
7 schizophrenic and manic, bipolar. I can't --
8 everything else.

9 THE COURT: What is your
10 number?

11 JUROR NUMBER 150: 150.

12 THE COURT: Any objection?

13 MR. BLOOM: I don't have any
14 objection with the medications that he's on,
15 Your Honor.

16 SOLICITOR WILSON: No objection.

17 (SIDEBAR CONCLUDED)

18 THE COURT: Number 150 will be
19 excused for statutory reasons. Thank you, sir.
20 You're free to leave.

21 (JUROR NUMBER 150 EXCUSED)

22 BAILIFF: 385.

23 SIDEBAR:

24 JUROR NUMBER 385: I have a
medical condition that makes it very difficult

1 for me to walk. I don't know that I can handle
2 that walk from Cumberland Street.

3 THE COURT: If we can help you
4 with that, would that allow you to serve?

5 JUROR NUMBER 385: I guess. I
6 just have a hard time walking and standing up.

7 THE COURT: The good thing
8 about it is that once you get here there won't
9 be a lot of walking.

10 JUROR NUMBER 385: I'll give her a
11 shot.

12 THE COURT: It's your call. I
13 tell you what I am going to do. Any objection
14 to me letting him serve only on the civil side?

15 BRUCE DURANT: No objection.

16 MR. BLOOM: We would hate to
17 lose him.

18 THE COURT: Okay, sir. Take
19 your seat and we'll work with you.

20 JUROR NUMBER 385: Thank you,
21 Judge.

22 (SIDEBAR CONCLUDED)

23 BAILIFF: Number 358.

24 SIDEBAR:

25 THE COURT: Good morning.

1 JUROR NUMBER 358: Good morning.

2 THE COURT: Yes, ma'am?

3 JUROR NUMBER 358: I didn't finish
4 school.

5 THE COURT: You have a eighth
6 grade education. I remember getting, reading
7 your answer. You've worked during your life,
8 where?

9 JUROR NUMBER 358: Daycare,
10 Charleston County ---.

11 THE COURT: You have much more
12 than a sixth grade education. You have common
13 sense, a sense of logic and that's what you
14 use. I think you're qualified. Thank you,
15 ma'am. Your number, again?

16 JUROR NUMBER 358: Three-fifty-
17 eight (358).

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 358 will
20 remain. Thank you.

21 BAILIFF: Juror Number 278.

22 SIDEBAR:

23 THE COURT: Good morning, sir.

24 JUROR NUMBER 278: I take a water
25 pill for my high blood pressure. When I got to

1 go to the bathroom, I got to go.

2 THE COURT: I understand. No
3 problem. You just let me know -- how
4 frequently do you go?

5 JUROR NUMBER 278: Every two or
6 three hours?

7 THE COURT: That's no problem.
8 We usually take a break every hour, hour and a
9 half. If you need one sooner, we'll be able to
10 do that.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Juror Number 278 will
13 remain.

14 BAILIFF: Juror 119.

15 SIDEBAR:

16 THE COURT: Good morning.

17 JUROR NUMBER 119: I was convicted
18 of possession of cocaine.

19 THE COURT: Okay. That would
20 excuse you.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Juror Number 119 is
23 excused for statutory reasons. Have a good
24 day.

25 (JUROR NUMBER 119 EXCUSED)

1 BAILIFF: Juror Number 63.

2 SIDEBAR:

3 THE COURT: Good morning, sir.

4 JUROR NUMBER 63: I've had a
5 heart condition my whole life. I'm on five
6 different medications. I am subject to
7 dizziness. I was in the emergency room in
8 Anderson, South Carolina, about three weeks
9 ago. I did send a letter in with my response.
10 It was dated quite a while ago, but I've had
11 the condition my whole life.

12 THE COURT: The letter, as I
13 recall, did not give us ---

14 JUROR NUMBER 63: It gave a bunch
15 of ---

16 THE COURT: I know but what we
17 need is a letter from your physician that says
18 that he doesn't believe that you should sit on
19 a jury.

20 JUROR NUMBER 63: Okay.

21 THE COURT: Okay.

22 JUROR NUMBER 63: I am just
23 saying to you, though, that my medication ---

24 THE COURT: I understand that.
25 There are a lot of people that have heart

1 problems that function every day. I am not
2 trying to put you in any situation that -- I
3 could transfer you ---

4 JUROR NUMBER 63: No, I, you
5 know, I'll be available but it could be a
6 problem.

7 THE COURT: I understand. No
8 problem. Thank you, sir.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Juror Number 63 will
11 remain.

12 BAILIFF: Juror 232.

13 SIDEBAR:

14 THE COURT: What is your
15 number?

16 JUROR NUMBER 232: Two-thirty-two
17 (232).

18 THE COURT: Yes, sir?

19 JUROR NUMBER 232: I had a DUI,
20 first. I got like probation, it was like ten
21 years ago.

22 THE COURT: I think that is
23 probably a magistrate's level and that would
24 not disqualify you.

25 JUROR NUMBER 232: Okay, I just

1 wanted to ---

2 THE COURT: I understand.

3 Thank you, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 232 will
6 remain.

7 BAILIFF: Juror Number 27.

8 SIDEBAR:

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 27: I have
11 tinnitus. Sometimes it rings so loud that I
12 have to take like double Valiums. It was just
13 in one ear, now it is in both ears and -- it's
14 not all the time but sometimes it just rings so
15 loud that it just screams. It does affect my
16 hearing.

17 THE COURT: Are you being
18 treated for that?

19 JUROR NUMBER 27: There's nothing
20 that can be done.

21 THE COURT: Do you have a
22 physician?

23 JUROR NUMBER 27: Yes, I do.

24 THE COURT: If the physician
25 writes Mrs. Armstrong a note that he doesn't

1 think the situation would permit you to serve
2 effectively on a jury then that will excuse
3 you.

4 JUROR NUMBER 27: (Affirmative
5 nod), okay.

6 THE COURT: I am going to
7 transfer you, give you an opportunity to obtain
8 that. If you don't, then you will have to
9 serve. I am going to transfer you. Okay?

10 JUROR NUMBER 27: Okay. Thank
11 you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Juror Number 27 will be
14 transferred for medical reasons. If she gets
15 the doctor's excuse, she may be excused.

16 JUROR NUMBER 27: Do I bring the note
17 here?

18 THE COURT: Just bring it back to
19 Mrs. Armstrong. Thank you, you are free to
20 leave.

21 BAILIFF: Juror 47.

22 SIDEBAR:

23 THE COURT: Yes, sir?

24 JUROR NUMBER 47: I'm Robert
25 Cato. Back in 1978 I was in the United States

1 Army and I did six months in Fort Leavenworth.

2 THE COURT: For?

3 JUROR NUMBER 47: For possession
4 of cocaine.

5 THE COURT: That would qualify
6 you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror Number 47 is
9 excused for statutory reasons. Have a good
10 day, sir.

11 (JUROR NUMBER 47 EXCUSED)

12 BAILIFF: 262.

13 SIDEBAR:

14 THE COURT: Good morning.

15 JUROR NUMBER 262: I have
16 diabetes, I take diuretics. I have to go to
17 the bathroom like every forty-five minutes
18 during the morning, up to about 1:00 o'clock in
19 the afternoon. I mean, I just gotta go pee
20 every five minutes.

21 THE COURT: I understand that.
22 We can stop -- if you're on the jury we'll just
23 work around it.

24 JUROR NUMBER 262: Can we do that?

25 THE COURT: Absolutely.

1 JUROR NUMBER 262: Thank you.

2 THE COURT: So we'll work
3 through that.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 262 will
6 remain.

7 BAILIFF: Juror 216.

8 SIDEBAR:

9 JUROR NUMBER 216: I am
10 claustrophobic, I have panic attacks.

11 THE COURT: I saw that in your
12 responses.

13 JUROR NUMBER 216: I just don't
14 feel like I would be able to ---

15 THE COURT: Do you have a
16 physician that treats you?

17 JUROR NUMBER 216: I do,
18 (affirmative nod).

19 THE COURT: I saw that in your
20 response. I am going to transfer you. If that
21 physician will just simply write Mrs. Armstrong
22 and say 'because she is going to be in a jury
23 room, it would be very difficult for her.' If
24 they will just tell her that you can't serve,
25 then you will be excused.

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1 JUROR NUMBER 216: Thank you.

2 THE COURT: I need that before

3 I can ---

4 JUROR NUMBER 216: By when?

5 THE COURT: I am going to

6 transfer you.

7 JUROR NUMBER 216: Oh, okay.

8 THE COURT: If you bring that,

9 you won't have to serve. If you don't, then

10 whenever you come back then you'll have to

11 serve.

12 JUROR NUMBER 216: All right.

13 THE COURT: Okay?

14 JUROR NUMBER 216: Yes, sir.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 216 is
17 going to be transferred for medical reasons.

18 BAILIFF: Juror Number 46.

19 SIDEBAR:

20 THE COURT: Yes, sir?

21 JUROR NUMBER 46: I am not sure

22 if I fully understand but a few years back I

23 was arrested and charged with a bunch of

24 crimes. I was exposed to many years but I

25 wasn't convicted of it and didn't serve any

1 time.

2 THE COURT: Do you have
3 anything on him?

4 BRUCE DURANT: No, sir.

5 THE COURT: Thank you for
6 sharing that but that does not disqualify you.

7 JUROR NUMBER 46: Thank you.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror Number 46 will
10 remain.

11 BAILIFF: Juror Number 165.

12 SIDEBAR:

13 JUROR NUMBER 165: I am not sure
14 but I had two felony charges a couple of years
15 ago. They were later expunged.

16 THE COURT: Do you have
17 anything on 165?

18 BRUCE DURANT: No, sir.

19 THE COURT: Thank you, sir.
20 That would not prevent you from serving.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Juror Number 165 will
23 remain.

24 BAILIFF: Juror Number 383.

25 SIDEBAR:

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1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 383: I am a
3 diabetic. I take my medicine in the morning
4 and I need to eat ---

5 THE COURT: Yes, ma'am, we can
6 accommodate that. We accommodate diabetics all
7 the time, that's not a problem. Thank you,
8 ma'am.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Thank you, ma'am. 165
11 is your number?

12 JUROR NUMBER 383: No, sir, 383.

13 THE COURT: 383?

14 JUROR NUMBER 383: Um-humm.

15 THE COURT: Juror Number 383 will
16 remain. Thank you.

17 MR. BLOOM: Does she need to get
18 something to eat now?

19 THE COURT: Ma'am, you need some
20 food right now?

21 JUROR NUMBER 383: I'm okay.

22 THE COURT: Okay. Thank you.

23 SIDEBAR:

24 COURT REPORTER: Sir, what is
25 your number?

1 JUROR NUMBER 350: My number is
2 three-fifty (350). I request permission to
3 transfer. I am a part-time student, I'm
4 finishing up my MBA and my final paper, my
5 thesis is due on the 27th of April.

6 THE COURT: Okay.

7 JUROR NUMBER 350: I just want to
8 be transferred to the summer, if possible.

9 (SIDEBAR CONCLUDED)

10 THE COURT: 350 will be
11 transferred. He has decided to exercise his
12 right as a student. We will transfer you until
13 after June.

14 JUROR NUMBER 350: I appreciate that.

15 BAILIFF: Juror 107.

16 SIDEBAR:

17 JUROR NUMBER 107: I have a charge
18 that I just recently had expunged. I don't know
19 if you have -- if it shows up or not but I've
20 just recently ---

21 THE COURT: What was the
22 charge?

23 JUROR NUMBER 107: Shop-lifting,
24 back in the '80s something.

25 THE COURT: Do you (solicitor)

1 have anything?

2 BRUCE DURANT: No, sir.

3 THE COURT: First offense?

4 JUROR NUMBER 107: Right.

5 THE COURT: That would not --

6 and 107 is your number?

7 JUROR NUMBER 107: Yes, sir.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror Number 107 will
10 remain.

11 BAILIFF: 138.

12 SIDEBAR:

13 JUROR NUMBER 138: I just have to
14 ask you this question. My supervisor is about
15 to have a coronary. I work the night shift at
16 Beaufort Memorial, on-call, and he asked that I
17 be excused.

18 THE COURT: I understand that
19 and that's going to be the next question.

20 JUROR NUMBER 138: I'm sorry.

21 THE COURT: But -- no, no. You
22 work the ---

23 JUROR NUMBER 138: --- night
24 shift.

25 THE COURT: Do you want to

1 transfer?

2 JUROR NUMBER 138: Please.

3 THE COURT: What I am to do is
4 to allow him to hire somebody but that doesn't
5 excuse you.

6 JUROR NUMBER 138: I can serve if
7 it isn't more than a few days, just we don't
8 have anyone to cover more than a night or so.

9 THE COURT: I'll do this for
10 you. I'll put 138 on the civil panels.

11 JUROR NUMBER 138: That would
12 work.

13 THE COURT: To accommodate that
14 situation.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 138 will be
17 protected for General Session, she will be
18 available for any civil cases.

19 BAILIFF: Number 291.

20 SIDEBAR:

21 THE COURT: Good morning.

22 JUROR NUMBER 291: Hi, I'm John
23 Smoak. I'm a cancer survivor and I'm waiting
24 on a radiology report to come back Monday or
25 Tuesday. If it is good, it's good but if it is

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1 bad it's bad. So, I just request to be
2 transferred.

3 THE COURT: Thank you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 291, for
6 medical reasons, is going to be transferred.
7 Thank you, sir, I hope everything is good.
8 Congratulations, too.

9 BAILIFF: 406.

10 MR. BLOOM: I didn't hear the
11 number, sir?

12 BAILIFF: 406.

13 MR. BLOOM: Thank you, sir.

14 SIDEBAR:

15 JUROR NUMBER 406: I don't mind
16 being transferred. I just had the best week
17 ever for me, I'm self-employed, heating and
18 air. So if there is no business, ---

19 THE COURT: I understand, but
20 you've been transferred once and that's it.

21 JUROR NUMBER 406: I understand,
22 but I have to make money. I've got a five-
23 year-old daughter, a wife, a fifteen-year-old
24 little ---

25 THE COURT: I understand all

1 that but I can't help you in this respect.

2 JUROR NUMBER 406: Man, I have two
3 jobs that I have to install these units in and
4 I really need ---

5 THE COURT: I'm sorry, but next
6 week you're going to have to serve on a jury.

7 JUROR NUMBER 406: I do heating
8 and air and I've committed to be at their
9 houses to ---

10 THE COURT: Friend, I
11 appreciate your problem but I can't help you.
12 I will do this -- he is subject to call next
13 week on the civil panel.

14 JUROR NUMBER 406: I could -- if
15 you could just give me a day or so and let me
16 know what time ---

17 THE COURT: You're free to
18 leave. Just be back Monday.

19 JUROR NUMBER 406: What time
20 Monday?

21

22 BAILIFF: Order!

23 THE COURT: 1:30 on Monday.

24 JUROR NUMBER 406: Okay, and I'll
25 just do the stuff that I've got planned. I've

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1 one install today and I've got one next week,
2 then I can still make my money and make you'all
3 happy, too.

4 THE COURT: We're happy.

5 JUROR NUMBER 406: I got to take
6 care of my family.

7 THE COURT: I understand.

8 JUROR NUMBER 406: Them diapers
9 get expensive.

10 THE COURT: I understand.

11 (SIDEBAR CONCLUDED)

12 BAILIFF: Juror 161.

13 SIDEBAR:

14 JUROR NUMBER 161: Good morning,
15 sir. I want to serve. I had a traffic
16 violation and the court appearance is on the
17 20th. I -- there was proof of insurance, it's
18 been mailed out. The officer said that it
19 would be fine but if you could or send him
20 these forms ---

21 THE COURT: We are -- I will
22 assure you that if you're selected that we will
23 get that message to him.

24 JUROR NUMBER 161: I do appreciate
25 it.

1 THE COURT: Thank you, sir.

2 161?

3 JUROR NUMBER 161: Yes, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 161 will
6 remain. Thank you, sir.

7 BAILIFF: 64.

8 JUROR NUMBER 64: Hi. I would
9 like to request a transfer. I'm in the golf
10 business and it's the wrong time.

11 THE COURT: I know. We've
12 moved into it. I'm going to accommodate you.
13 I got the note -- this is one that his golf pro
14 wrote the note on. I am going to transfer him

15 JUROR NUMBER 64: Anytime during
16 the summer or winter.

17 THE COURT: All right.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 64 will be
20 transferred to a summer term. Thank you, sir.

21 JUROR NUMBER 64: I really
22 appreciate it. Thank you, sir.

23 BAILIFF: Juror 68.

24 SIDEBAR:

25 JUROR NUMBER 68: Your Honor, we

1 are leaving for China week after next.

2 THE COURT: All right. Those
3 are the kinds of things -- week after next?

4 JUROR NUMBER 68: (Affirmative
5 nod).

6 THE COURT: And your number?

7 JUROR NUMBER 68: 68.

8 THE COURT: You could serve
9 next week, right?

10 JUROR NUMBER 68: (Affirmative
11 nod), next week but after Friday I'm out of
12 here.

13 THE COURT: The next week
14 you're going to be gone. We'll make sure of
15 that. I don't think that case will take more
16 than a couple of days. You'll be on the civil
17 panel, so you need to report on Monday at 1:30.

18 JUROR NUMBER 68: 1:30, here?

19 THE COURT: Yes, back in this
20 room. Thank you, sir. Have a good trip.

21 (SIDEBAR CONCLUDED)

22 BAILIFF: 214.

23 SIDEBAR:

24 JUROR NUMBER 214: Listen, I have
25 to tell you the honest truth. I don't believe

1 that I can be impartial in certain instances
2 dealing with racism because, I know it's bad,
3 but at one point in my life ---

4 THE COURT: I understand but
5 you are ---

6 JUROR NUMBER 214: Sorry, I'm
7 taking a long time to say that I ---

8 THE COURT: Yes, sir, I
9 understand. You put it on your questionnaire.

10 JUROR NUMBER 214: No, I didn't.

11 THE COURT: You didn't fill out
12 a questionnaire?

13 JUROR NUMBER 214: I filled out
14 some things but I didn't fill out some that
15 about the way that I feel about ---

16 THE COURT: I understand, but
17 there's another qualification that ---

18 JUROR NUMBER 214: Okay, I just
19 don't ---

20 THE COURT: That's all right,
21 thank you, sir.

22 JUROR NUMBER 214: I'm sorry to
23 waste your time.

24 THE COURT: You're not wasting
25 my time, it's a very -- it's just that it is at

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1 the wrong time. Thank you, sir.

2 (SIDEBAR CONCLUDED)

3 BAILIFF: Juror Number 399...

4 JUROR NUMBER 399: Hello, Your
5 Honor. I don't have any physical problems.
6 Should I talk to you later?

7 THE COURT: No problem, we're
8 just trying to keep some order to it.

9 JUROR NUMBER 399: Thank you.

10 (SIDEBAR CONCLUDED)

11 BAILIFF: Juror 20.

12 COURT REPORTER: Tell me your
13 number again.

14 JUROR NUMBER 20: There is a lady
15 in the back that told me that I'm supposed to
16 come out.

17 THE COURT: She doesn't
18 understand what we're doing. There is a method
19 to this madness and that will fall under the
20 next question, but what is it?

21 JUROR NUMBER 20: I used to be
22 employed by the Joye Law Firm and these ---

23 THE COURT: I know you did, you
24 put that on there. That doesn't disqualify
25 you.

1 JUROR NUMBER 20: I'm supposed to
2 be leaving, going up to D.C. to help a family
3 member move this weekend.

4 THE COURT: This weekend?

5 JUROR NUMBER 20: Yeah, we're
6 supposed to be leaving at 1:00 o'clock or 2:00
7 o'clock this afternoon.

8 THE COURT: I will do my best
9 to get you out of here.

10 COURT REPORTER: Sir, your
11 number?

12 JUROR NUMBER 20: Twenty. Sorry.

13 COURT REPORTER: Thank you.

14 DON MICHELE, ASSISTANT CLERK:
15 We are down to one-fifty.

16 MR. BLOOM: Judge, on that last
17 juror, he really needs to be excused. Mr.
18 Carroll has some ---

19 MR. CARROLL: I believe we
20 terminated him.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Sir, if you will
23 come forward again, please. What I am going to
24 do is put him on the civil panel.

25 BAILIFF: Juror Number 20.

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1 SIDEBAR:

2 THE COURT: Thank you. I'm
3 going to put you on the civil panel and that
4 means you've got to be back at 1:30 on Monday.
5 So you can leave.

6 JUROR NUMBER 20: Thank you sir.

7 (SIDEBAR CONCLUDED)

8 BAILIFF: Juror Number 369 (sic).

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 359: My brother has
11 a court date, he's in court on Monday. That's
12 what I was trying to tell you about, that I do
13 not believe that it is this week that I want to
14 be up.

15 THE COURT: I am going to
16 transfer you, ma'am, to a term in a couple of
17 months. When you come back for that, you're
18 going to have to serve. Okay?

19 JUROR NUMBER 359: Oh, I will. I
20 will.

21 THE COURT: Your number, again?

22 JUROR NUMBER 359: Three-fifty-
23 nine.

24 (SIDEBAR CONCLUDED)

25 THE COURT: Juror Number 359 will be

1 transferred to another term.

2 COURT REPORTER: Just let me
3 confirm, 359 or 369?

4 JUROR NUMBER 359: Three-fifty-nine.

5 BAILIFF: 321.

6 SIDEBAR:

7 JUROR NUMBER 321: Your Honor, I
8 have to be in court on Monday morning for
9 another hearing -- (tender letter to Judge). I
10 don't mind serving if I don't get picked for
11 Monday, that's what I am saying.

12 THE COURT: What? This is your
13 case?

14 JUROR NUMBER 321: I am one of the
15 unsecured debtors and I've got to testify on
16 Monday. My turn.

17 THE COURT: It can't be
18 postponed?

19 JUROR NUMBER 321: It's -- no,
20 sir. I don't believe that can be put off.

21 THE COURT: What's your number?

22 JUROR NUMBER 321: Three-twenty-
23 one (321).

24 (SIDEBAR CONCLUDED)

25 THE COURT: Juror Number 321 will be

1 transferred to another term. They'll send you
2 a notice. Thank you, sir. That will be the
3 term that you will have to serve now. Plan on
4 it.

5 JUROR NUMBER 321: Yes, sir. Thank
6 you.

7 THE COURT: You'all just stand here.
8 I'm sure that there will be another wave.

9 BRUCE DURANT: I have one matter.

10 SIDEBAR:

11 BRUCE DURANT: Your Honor, we
12 have a juror that has an outstanding bench
13 warrant. They want to take him into custody
14 but I think
15 that they are protected, statutorily.

16 THE COURT: It's not ---

17 BRUCE DURANT: I just wanted
18 to mention it.

19 COURT REPORTER: Bruce, do you
20 have that juror's number?

21 BRUCE DURANT: Yes, ma'am,
22 it's 253.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Can I see Juror Number
25 253, Mr. Riley. If I could speak to you just a

1 second, sir. I'm sorry to bother you.

2 SIDEBAR:

3 THE COURT: Just got a question
4 to ask of you.

5 JUROR NUMBER 253: How are you
6 doing, sir?

7 THE COURT: I'm good, sir. How
8 are you? You're Number 253?

9 JUROR NUMBER 253: Yes.

10 THE COURT: According to the
11 information that's -- are you the same Mr.
12 Riley that has been convicted of possession of
13 a stolen vehicle and other charges?

14 JUROR NUMBER 253: (Negative
15 gesture), that's my twin sister, Kimyetta.

16 THE COURT: That is not you?

17 JUROR NUMBER 253: I'm Kenyatta.
18 I have a twin sister, Kimyetta.

19 COURT REPORTER: How do you
20 spell your sister's name?

21 JUROR NUMBER 253: K-I--y-e-t-t-a.

22 BRUCE DURANT: Are you
23 Kenyatta or Kimyatta?

24 JUROR NUMBER 253: Kenyatta.

25 THE COURT: Are you "Ken" or

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1 "Kim"?

2 JUROR NUMBER 253: Ken,

3 K-e-n.

4 THE COURT: This is for Ken.

5 BRUCE DURANT: No, it's ---

6 THE COURT: You weren't

7 convicted of a grand larceny?

8 JUROR NUMBER 253: No, sir.

9 There's always a lot of mix-ups between me and
10 her.

11 THE COURT: I am not going to
12 disqualify him. Thank you, sir. Sorry to
13 bother you.

14 JUROR NUMBER 253: No problem.

15 THE COURT: That would be
16 confusing.

17 (SIDEBAR CONCLUDED)

18 THE COURT: Could I see Juror Number
19 390. I need to ask her a question, as well.
20 What is her (sic) name?

21 BRUCE DURANT: Jacob Rice.

22 BAILIFF: Juror 390.

23 SIDEBAR:

24 THE COURT: Good morning.

25 According to information that we have, there

1 was a Jacob Rice that was in jail in Atlantic
2 City. Is that you?

3 JUROR NUMBER 390: No.

4 THE COURT: Not you?

5 JUROR NUMBER 390: No.

6 THE COURT: You've never been
7 incarcerated or convicted of ---

8 JUROR NUMBER 390: I was,
9 (affirmative nod), over twenty-five years ago.

10 THE COURT: Unfortunately that
11 doesn't matter?

12 JUROR NUMBER 390: Nothing in
13 Atlantic City.

14 THE COURT: New Brunswick?

15 JUROR NUMBER 390: Yeah, I lived
16 in New Brunswick.

17 THE COURT: Okay. Is that
18 where you -- there was apparently a drug
19 offense, as well, in Middlesex? Was that you?

20 JUROR NUMBER 390: No.

21 THE COURT: Were you convicted
22 -- what were you convicted of over twenty-five
23 year ago?

24 JUROR NUMBER 390: Receiving
25 stolen property.

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1 THE COURT: What was the value
2 of the property?

3 JUROR NUMBER 390: It was about
4 between two hundred and two hundred fifty
5 dollars (\$200-\$250).

6 THE COURT: Okay. Thank you.

7 BRUCE DURANT: Did you get
8 time served?

9 JUROR NUMBER 390: I did a year.

10 THE COURT: You did a year?

11 JUROR NUMBER 390: Yeah. They
12 sent me to a work camp, I don't think I was
13 there the whole year.

14 THE COURT: I am going to find
15 -- I think he is disqualified.

16 MR. BLOOM: Did you ever apply
17 for any expungements or pardons?

18 JUROR NUMBER 390: No, this over
19 twenty-five years ago.

20 THE COURT: It's something that
21 we're trying to change in this state but right
22 now it exists, even though it happened that
23 long ago. Unfortunately, I still have to
24 excuse you. What is your number?

25 JUROR NUMBER 390: Three-ninety

1 (390).

2 (SIDEBAR CONCLUDED)

3 THE COURT: Juror Number 390 is
4 excused for statutory reasons. Any others?

5 BRUCE DURANT: No, sir.

6 THE COURT: All right. We have
7 already dealt with some. Now, I told you that
8 there was a catch-all question and now we're
9 there. Some had already come and shared some
10 concerns. But if you have been subpoenaed to
11 serve and this is your first time -- in other
12 words, you haven't been transferred previously
13 and you have some compelling personal or
14 business reason that you wish to share with me
15 now about postponing your jury service -- I
16 won't be able to excuse you but I may be able
17 to transfer you. We need to form two lines.

18 BAILIFF: Order!

19 THE COURT: Mr. MacMillan, according
20 to our records your service was November the 8th
21 of 2004. That was great experience but --
22 thank you, sir.

23 Mr. Gilbert, your service was in
24 October of 2005. That would be beyond the
25 three years. Okay.

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1 BAILIFF: Juror Number 383.

2 SIDEBAR:

3 THE COURT: Yes, ma'am?

4 JUROR NUMBER 383: I don't know
5 what I'm supposed to do. I have this
6 appointment, I've had it -- the last time, I
7 was at the doctor and I had surgery on my eye
8 on the third. He saw me one time after ---

9 BAILIFF: Order!

10 JUROR NUMBER 383: --- and he gave
11 me this appointment.

12 THE COURT: Excuse me, Deb.
13 Come on' ma'am, step forward so that this lady
14 can also hear you.

15 JUROR NUMBER 383: But that was
16 before I got the summons in the mail and I
17 can't ---

18 THE COURT: Do you think that
19 you can reschedule it?

20 JUROR NUMBER 383: He rescheduled
21 it for the 21st.

22 THE COURT: So he's postponed
23 it until ---

24 JUROR NUMBER 383: I think that's
25 Tuesday of next week.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 383: If you can't do
3 it, I guess you just can't do it.

4 THE COURT: Are you having a
5 problem?

6 JUROR NUMBER 383: With my eye?

7 THE COURT: Yes, ma'am.

8 JUROR NUMBER 383: Sometimes it
9 feels kind of heavy, you know.

10 MR. BLOOM: Maybe we could see
11 if we could work around it Tuesday. We've got
12 several other days next week, she wouldn't have
13 to be here every day.

14 THE COURT: (Affirmative nod),
15 we will try to accommodate your schedule.

16 JUROR NUMBER 383: Um-humm.

17 THE COURT: But if you're
18 selected on the panel that we're going to
19 select today or start the selection process
20 today, then just bring it to our attention and
21 we'll try to make sure that you can make this
22 appointment.

23 JUROR NUMBER 383: All right.

24 THE COURT: Thank you, ma'am.

25 (SIDEBAR CONCLUDED)

1 THE COURT: Juror (Number 383) will
2 remain.

3 BAILIFF: 46.

4 SIDEBAR:

5 JUROR NUMBER 46: I'm not trying
6 to get out of jury duty but if I could get it
7 postponed. First thing, I'm a sole provider.
8 I've got six daughters, my wife and myself, and
9 I'm the sole provider. I work construction and
10 my partner's wife has cancer and although we
11 have eight employees, he's gone. They've
12 headed back to Indiana for their treatment and
13 my guys, they can't -- they're all off today
14 because of this.

15 THE COURT: How long do you
16 need to make arrangements?

17 JUROR NUMBER 46: Well, this
18 cancer thing, I have no idea but I mean -- this
19 summer. You know, if I could just have some
20 more time to make some arrangements.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Juror Number 46 is
23 transferred until June.

24 JUROR NUMBER 46: Do you still want
25 me to fill out that nine-page ---

1 THE COURT: No.

2 JUROR NUMBER 46: Thank you, sir.

3 BAILIFF: Juror Number 237.

4 SIDEBAR:

5 JUROR NUMBER 237: Hi. I'm
6 actually trying to start a new job next week,
7 at a law office, and I didn't know if -- I need
8 to tell them if I will be available.

9 THE COURT: Can you postpone
10 that if you're serving on the jury?

11 JUROR NUMBER 237: What's that?

12 THE COURT: Could you postpone
13 starting the new job?

14 JUROR NUMBER 237: I mean, I don't
15 really want to. I'm excited about a new job.
16 It doesn't come around every day.

17 THE COURT: We'll transfer you
18 to June.

19 JUROR NUMBER 237: Thank you!

20 (SIDEBAR CONCLUDED)

21 THE COURT: Juror Number 237 has a
22 new job starting next week, transfer her to
23 June.

24 BAILIFF: 394.

25 SIDEBAR:

1 JUROR NUMBER 394: My husband is
2 an attorney and he has a meeting in D.C. with
3 the Department of Justice, Monday and Tuesday,
4 and he's up for trial, number three, in
5 Spartanburg. He sent a letter stating that
6 fact. We have two small children and he cannot
7 help me. I'm just asking for a transfer,
8 that's all.

9 THE COURT: How old are your
10 children?

11 JUROR NUMBER 394: My youngest is
12 ten, which he's been home alone at home after
13 school. I have a freshman at Bishop England.
14 They only have one bus stop on James Island and
15 I have to take him there and pick him up, and
16 it's about a four-mile walk that would be
17 required of him.

18 THE COURT: All right. How
19 long do you need to postpone it?

20 JUROR NUMBER 394: Well, my
21 husband looked at his calendar. The week of
22 April 27th or May 11th, can I do that?

23 THE COURT: No.

24 JUROR NUMBER 394: No?

25 THE COURT: No.

1 JUROR NUMBER 394: Okay.

2 THE COURT: I will do it after
3 April, sometime in May.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Transfer 394 to May.
6 Thank you.

7 JUROR NUMBER 394: Thank you, sir. I
8 appreciate it.

9 BAILIFF: Juror 110.

10 SIDEBAR:

11 JUROR NUMBER 110: Judge, John
12 Gilbert.

13 THE COURT: Yes, sir.

14 JUROR NUMBER 110: I am a painting
15 contractor. I haven't had any work. I've got
16 a contractor that starts Monday morning, a
17 \$12,000 contract. If I am not there, I am not
18 going to be able to ---

19 THE COURT: I understand.

20 JUROR NUMBER 110: If I could be
21 transferred -- I would actually enjoy being
22 here, believe it or not.

23 THE COURT: How long are you
24 going to be?

25 JUROR NUMBER 110: Anytime near

1 the end of summer would be fine.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Transfer 110 for
4 business reasons until after June. Thank you,
5 sir.

6 JUROR NUMBER 110: Thank you, Judge.

7 BAILIFF: Juror 89.

8 SIDEBAR:

9 JUROR NUMBER 89: Your Honor,
10 this is a rental agreement for some property
11 that I reserved prior to getting the summons,
12 paid for, next week -- (tendering document to
13 Judge).

14 THE COURT: How long do you
15 need it postponed?

16 JUROR NUMBER 89: Just a couple
17 weeks.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Transfer 89 until
20 May. He has a planned trip.

21 BAILIFF: Juror Number 52.

22 SIDEBAR:

23 THE COURT: Come on and step
24 forward so that this lovely lady can hear you.

25 JUROR NUMBER 52: I am the sole

1 provider in my house. I am the only one that
2 is working. I have a twelve-year-old and a
3 six-year-old grandson to take care of. I pay
4 the rent, \$600 a month, and I've been without a
5 job for like a year. I can't afford to miss
6 work.

7 THE COURT: I understand that.
8 I can't excuse you. I can postpone it but I
9 can't excuse you.

10 JUROR NUMBER 52: Can I get it
11 postponed?

12 THE COURT: All right, do you
13 understand that when you come back that's going
14 to be the week that you have to serve?

15 JUROR NUMBER 52: (No verbal
16 response).

17 THE COURT: Do you understand
18 that?

19 JUROR NUMBER 52: I mean, I
20 really -- I got an eviction notice and I have
21 to ---

22 THE COURT: I understand your
23 problems. Those things, unfortunately, don't
24 allow me to excuse you. So you'll just have to
25 make arrangements and plan to stay for however

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1 long you have to serve when you come back.

2 JUROR NUMBER 52: Okay.

3 THE COURT: How long do you
4 want? Until after June?

5 JUROR NUMBER 52: Yes, that would
6 help, school will be out.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Transfer Juror Number 52
9 until after June.

10 JUROR NUMBER 52: Thank you.

11 BAILIFF: Juror Number 176.

12 SIDEBAR:

13 THE COURT: Good morning.

14 JUROR NUMBER 176: Your Honor,
15 I've been unemployed for almost a year and I'm
16 about sick of it, and I'm also starting a new
17 job next week and I don't want to mess that up.
18 A transfer would be fine.

19 THE COURT: Okay. How long do
20 you want? Until June?

21 JUROR NUMBER 176: That would be
22 fine, sir.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Transfer 176 until after
25 June. They'll send you a new notice. Make

1 plans to be here and be ready to serve at that
2 time.

3 JUROR NUMBER 176: Okay. Yes, sir.
4 Thank you.

5 BAILIFF: Juror 165.

6 SIDEBAR:

7 THE COURT: Yes, sir?

8 JUROR NUMBER 165: I am a chef at
9 a restaurant in Mount Pleasant. I only have
10 three other guys working with me right now, we
11 just lost two people in the last couple of
12 weeks. If I could get a transfer to probably
13 the end of summer, just so that I can get
14 people there, trained up and -- I pretty much
15 am there, I open and close. I just need some
16 time to get some more people in there, so I
17 could not be there.

18 THE COURT: I will give you
19 until August.

20 JUROR NUMBER 165: Thank you.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Transfer 165 for
23 business reasons until August.

24 JUROR NUMBER 165: Thank you.

25 BAILIFF: Juror Number 224.

1 DON MICHELE, ASSISTANT CLERK: What
2 was that number?

3 BAILIFF: Two-two-four, (224).

4 SIDEBAR:

5 JUROR NUMBER I have several
6 reconstructive patients scheduled for next
7 week.

8 THE COURT: How long do you
9 need to arrange your schedule?

10 JUROR NUMBER 224: Currently cases
11 are scheduled out for about eight weeks, until
12 the end of June. June.

13 THE COURT: Okay.

14 (SIDEBAR CONCLUDED)

15 THE COURT: Juror Number 224 will be
16 transferred until June.

17 BAILIFF: Juror Number 5.

18 SIDEBAR:

19 THE COURT: Yes?

20 JUROR NUMBER 5: In September I
21 lost my business and I'll be restarting one,
22 I'm working part-time, I am a single mom, I am
23 in a lawsuit with my former partner and I'm
24 barely making my bills right now. I would like
25 at least a little more time to get back on my

1 feet. I'm willing to do whatever.

2 THE COURT: Willing to do
3 whatever?

4 JUROR NUMBER 5: I am willing to
5 do whatever. You know, I want to do what's
6 right. I'm a single mom, I'm not making enough
7 money to pay my bills so if I can be excused --
8 transferred, rather, that would be my
9 preference. If you think it's best for me to
10 serve on this jury, then I'd like to do that.
11 I want to do what's in the highest good.

12 THE COURT: Your number?

13 JUROR NUMBER 5: Five (5).

14 (SIDEBAR CONCLUDED)

15 THE COURT: I am going to put number
16 five on the civil panel. You need to report at
17 1:30 on Monday. Thank you.

18 JUROR NUMBER 5: Yes, sir. Thank
19 you.

20 BAILIFF: Two-zero-two (202).

21 SIDEBAR:

22 THE COURT: Yes, sir?

23 JUROR NUMBER 202: I am a tour
24 guide and I need to be, or I ask to be
25 transferred because I do have some special

1 tours coming up the week after next and I'm
2 concerned that if this trial goes into the week
3 after this week -- they're coming all the way
4 from California and I -- I met with this last
5 year. I've taken them all over town, taken
6 them to the various museums. I'm only
7 concerned if whatever is being tried might be
8 longer than a week.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Juror 202 will be for
11 civil only. Report Monday at 1:30.

12 JUROR NUMBER 202: Yes, sir.

13 BAILIFF: Juror Number 90.

14 SIDEBAR:

15 JUROR NUMBER 190: Your Honor, I
16 am available and willing to serve until May 9th.
17 My husband and I have already made plans to go
18 to Egypt.

19 THE COURT: May 9th?

20 JUROR NUMBER 190: May 9th,
21 (affirmative nod). I don't know what case this
22 is but ---

23 THE COURT: We will accommodate
24 that. That'll work.

25 JUROR NUMBER 190: Thank you, sir.

1 (SIDEBAR CONCLUDED)

2 BAILIFF: Three-ninety-nine (399).

3 THE COURT: Juror Number 190 will
4 remain.

5 SIDEBAR:

6 JUROR NUMBER 399: Your Honor, I
7 would like to ask for an extension if I
8 possibly could. I am the only breadwinner in
9 my family. I have two children. I do about
10 three hundred and twenty shows a year, I work
11 about seven days a week. I actually have
12 contracts for this next week coming up. I
13 would like to actually get this out of the way
14 because I've been called three years for three
15 separate courts. I went to the first one and
16 they ---

17 THE COURT: Let's go to Las
18 Vegas.

19 JUROR NUMBER 399: (Laughs), yes,
20 sir. They called me to Columbia and I couldn't
21 do that, obviously. Then I actually went for
22 the Folly Beach one and wasn't ever picked. So
23 I've been kind of trying to get this over with
24 so that I can get it over with for the next
25 three years, but my problem is that I have a

1 thirteen-year-old and an eight-year-old, my
2 wife goes fulltime to college, and I am the
3 only breadwinner.

4 THE COURT: So you want to
5 postpone it?

6 JUROR NUMBER 399: If I possibly
7 could, my winters are ---

8 THE COURT: (Negative gesture).

9 JUROR NUMBER 399: No?

10 THE COURT: (Negative gesture).

11 JUROR NUMBER 399: That's not
12 going to work?

13 THE COURT: (Negative gesture).

14 JUROR NUMBER 399: I run about
15 three months in advance on shows, and that is
16 the only way that I can -- it's the only way
17 that I make money.

18 THE COURT: I understand that.
19 That's true of a lot of these people.

20 JUROR NUMBER 399: Yes, sir. I
21 mean, I saying that if I show up -- I have
22 contracts for this week. I'm doing doubles.

23 THE COURT: I will transfer you
24 to August.

25 JUROR NUMBER 399: Okay.

1 THE COURT: That's the best
2 that I can do.

3 JUROR NUMBER 399: All right.

4 THE COURT: Make plans for it.

5 JUROR NUMBER 399: All right, do
6 you know which week that will be?

7 DON MICHELE, ASSISTANT CLERK:
8 We will contact you.

9 THE COURT: They will let you
10 know.

11 JUROR NUMBER 399: Okay.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Juror Number 399, for
14 business reasons, will be transferred to
15 August.

16 BAILIFF: Juror 99.

17 SIDEBAR:

18 JUROR NUMBER 99: I need to be
19 transferred due to personal circumstances. A
20 coworker, the girl that works across from me,
21 her brother was murdered this past weekend in
22 Virginia and she is going to be with her family
23 until this weekend, so she won't be back. My
24 supervisor doesn't have anybody else to run the
25 ---

1 (SIDEBAR CONCLUDED)

2 THE COURT: Transfer Juror Number 99
3 until after May.

4 BAILIFF: Juror Number 194.

5 SIDEBAR:

6 JUROR NUMBER 194: Hi. I'm a real
7 estate agent and I have clients flying in from
8 Germany, transfers in the military. They were
9 originally scheduled to be here on the 25th but
10 they're taking a military flight, so they will
11 be coming on the 22nd. They are buying a
12 \$600,000 house. My husband is a contractor and
13 we have many bills, so I really need the work
14 next week. To be transferred would be great.

15 THE COURT: Nobody else can
16 handle that for them?

17 JUROR NUMBER 194: No, sir. I've
18 been working with them solely for three months
19 and I'm their agent. I've signed an agency
20 contract every month with them. They are going
21 to be here for only five days and they have to
22 buy a house because they will be transferred in
23 July.

24 (SIDEBAR CONCLUDED)

25 THE COURT: Juror Number 194 is

1 transferred until June.

2 JUROR NUMBER 194: Thank you.

3 BAILIFF: Juror Number 325.

4 SIDEBAR:

5 JUROR NUMBER 325: I am a project
6 manager onsite at the College of Charleston
7 project. We have a deadline for May 15th --
8 actually July the 15th, so I only have six more
9 weeks on this project. I'm just asking to be
10 put on another panel so that I can finish the
11 project?

12 THE COURT: Is there nobody
13 else that can do what you're doing?

14 JUROR NUMBER 325: There are two
15 other project managers, one is a third-party
16 project management and one is vice president of
17 business affairs for the College. I represent
18 the company from which they've purchased all
19 the software for the entire campus. It's been
20 a three-year project.

21 THE COURT: Are there other
22 people working on the project? You're not the
23 sole person ---

24 JUROR NUMBER 325: I am the sole
25 person for my company as a project manager.

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1 THE COURT: I understand that
2 but you're working in conjunction with other
3 people?

4 JUROR NUMBER 325: Yes.

5 THE COURT: I can't transfer
6 you.

7 JUROR NUMBER 325: Thank you.

8 (SIDEBAR CONCLUDED).

9 BAILIFF: One fifteen (115).

10 JUROR NUMBER 115: I'm a business
11 owner and ---

12 COURT REPORTER: Tell me your
13 number again, please.

14 JUROR NUMBER 115: Fifteen,
15 one hundred and fifteen (115).

16 COURT REPORTER: Great. Thank
17 you.

18 THE COURT: One fifty (150)?

19 JUROR NUMBER 115: One, one, five.

20 THE COURT: 115. Thank you.

21 JUROR NUMBER 115: I am a small
22 business owner. I am the one that does all the
23 selling, all the purchasing, does all the
24 pricing, does all the business plans, how we
25 are to sell stuff and so forth. Normally I'd

1 been willing to serve but next week -- being
2 that we are a small company, if I am not there
3 nobody can do the sales or the plans for the
4 company. The other people are just ---

5 THE COURT: They're doing what
6 you put together, right?

7 JUROR NUMBER 115: No, they are
8 doing what I tell them to do. I do the sales,
9 I -- we get a lot of sales that come in, so I
10 am making assignments on a daily basis, costing
11 product and so forth on a daily basis.

12 THE COURT: But there is
13 nothing from serving on the jury that would
14 prevent you from doing those things?

15 JUROR NUMBER 115: Well, what time
16 do we ---

17 THE COURT: You'd just have to
18 do it at a different time.

19 JUROR NUMBER 115: Yeah, but
20 there's only so much time in a day.

21 THE COURT: I mean, I
22 understand that but the problem that I have is
23 that there are other people who are going to do
24 what you tell them to do.

25 JUROR NUMBER 115: Right.

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1 THE COURT: So you develop
2 those plans.

3 JUROR NUMBER 115: I also ---

4 THE COURT: I understand that you
5 do the sales but ---

6 JUROR NUMBER 115: There's also
7 calls and if I can't get back to those people
8 then ---

9 THE COURT: I can't transfer
10 you. Thank you, sir.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Juror Number 115 will
13 remain.

14 BAILIFF: Juror Number 223.

15 SIDEBAR:

16 THE COURT: Hi.

17 JUROR NUMBER 223: I am Juror
18 Number 223. I spoke with somebody on the phone
19 like maybe a month ago, and I have a letter
20 from my employer -- (tendering document to
21 Judge). I am the only nurse in the office,
22 plastic surgery office. We do cosmetic and
23 reconstructive surgery.

24 THE COURT: (Upon review,
25 returns letter to prospective juror).

1 JUROR NUMBER 223: We've spent
2 the last few months getting all the policies
3 and everything together because we're expecting
4 a visit from the Joint Commission at any time
5 within the next couple of months and I
6 can't ---

7 THE COURT: Tell your office
8 that they are going to have to make some
9 arrangements because I can postpone it but I
10 can't excuse you.

11 JUROR NUMBER 223: Can you
12 postpone it until after June so that we can at
13 least get through like the Commission. That's
14 a big deal.

15 THE COURT: I can do it to
16 July.

17 JUROR NUMBER 223: Thank you. I
18 would appreciate that.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Juror Number 223, for
21 business reasons, is transferred to July.
22 Thank you.

23 BAILIFF: 273.

24 SIDEBAR:

25 JUROR NUMBER 273: Good morning,

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1 sir. I know you asked the question earlier
2 about occupations with court systems and things
3 of that nature. Well, my girlfriend, Gina
4 Covington, works for a magistrate in the court
5 system.

6 THE COURT: That's not you,
7 though?

8 JUROR NUMBER 273: That's not a
9 problem.

10 THE COURT: That is not a
11 problem.

12 JUROR NUMBER 273: That's fine.
13 The biggest reason that I am here is because I
14 work for International Diving Institute, a
15 subsidiary of Trident Tech. We teach
16 underwater welding and commercial diving. I
17 don't know if that applies -- if that nature
18 applies, I am the primary instructor, lead
19 instructor there, to where if I am not there
20 the school doesn't function properly. I did
21 have my boss here but ---

22 THE COURT: You had a note?
23 That was the one in the file?

24 JUROR NUMBER 273: Yes, sir.

25 THE COURT: I am going to

1 transfer you to -- when do you want to do it,
2 in the summer?

3 JUROR NUMBER 273: Well, the
4 problem is that we've been trying to find an
5 instructor for ---

6 THE COURT: The problem is that
7 -- I can postpone it a little while but you're
8 going to have to serve.

9 JUROR NUMBER 273: I understand,
10 so what can we do?

11 THE COURT: You want to do it
12 in August.

13 JUROR NUMBER 273: August of this
14 year or next year?

15 THE COURT: This year.

16 JUROR NUMBER 273: A boy can ask.

17 THE COURT: I understand.

18 JUROR NUMBER 273: Yes, sir, that
19 will be fine.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Transfer, for business
22 reasons, Number 273 until August. He is
23 employed in conjunction with a school.

24 BAILIFF: Juror Number 127.

25 SIDEBAR:

1 JUROR NUMBER 127: Yes, sir, I am
2 Arthur Harris. My brother owns East Bay Movers
3 & Storage. He's an insulin-dependent diabetic.
4 He just got a pump on his foot. I'm helping
5 him and my mother. I told you I'm unemployed.
6 That's what I am doing. They're paying my
7 child support. They need me at the house.

8 THE COURT: I would love to
9 help you but I can't. That's not a reason to
10 ---

11 JUROR NUMBER 127: I can't even be
12 transferred?

13 THE COURT: NO.

14 (SIDEBAR CONCLUDED)

15 THE COURT: Juror Number 127 will
16 remain.

17 BAILIFF: 372.

18 SIDEBAR:

19 JUROR NUMBER 372: Hi, Your Honor.
20 My problem is that I have been out of work
21 since March the 11th, and I was trying to find a
22 job. I don't know what will become of me if I
23 don't find a job.

24 THE COURT: I understand, but
25 you don't have a job right now?

1 JUROR NUMBER 372: (Negative
2 gesture).

3 THE COURT: I can't transfer
4 you.

5 JUROR NUMBER 372: All right, sir.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Juror Number 372 will
8 remain.

9 BAILIFF: Juror 361.

10 SIDEBAR:

11 THE COURT: Good morning.

12 JUROR NUMBER 361: Good morning.

13 I am working on -- I am the primary source of
14 income. I'm working on a project that will be
15 done August 10th. I'm the project manager.

16 THE COURT: Nobody else can do
17 this job that you do?

18 JUROR NUMBER 361: No, sir.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Two-sixty-one (261)
21 (sic), for business reasons will be transferred
22 to August.

23 BAILIFF: 262.

24 JUROR NUMBER 262: We do home
25 appraisals, just me and my brother Charlie.

1 We're just swamped, we're doing five or six a
2 day.

3 THE COURT: I know but you can
4 do some work when you're at home in the
5 evening.

6 JUROR NUMBER 262: I know, but
7 you've got to go out and measure the houses and
8 ---

9 THE COURT: Yeah, but you've
10 got somebody to help you do that.

11 JUROR NUMBER 262: No, it's just
12 the two of us.

13 THE COURT: I know, but he can
14 do that..

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 262 will
17 remain.

18 BAILIFF: Order! Juror 166.

19 SIDEBAR:

20 THE COURT: Yes, sir?

21 JUROR NUMBER 166: I am starting a
22 new job on Monday that will require business
23 travel. If I could do it in July, I would
24 appreciate the help.

25 THE COURT: Okay.

1 (SIDEBAR CONCLUDED)

2 THE COURT: Transfer 166 to August.

3 Thank you.

4 BAILIFF: 245.

5 SIDEBAR:

6 THE COURT: Yes, sir?

7 JUROR NUMBER 245: I would like a
8 transfer until August. I'm working for a
9 contractor at the Weapons Station. As I
10 stated, we're building armored Humvees. We
11 haven't gotten the first machine off the
12 assembly line yet and I'm the problem solver, I
13 need to be there. We're saving lives.

14 THE COURT: I understand that
15 but you -- no one else can do your job?

16 JUROR NUMBER 245: (Negative
17 gesture), I'm it. I'm the number two man. I
18 would like a transfer to August. Our contract
19 ends in July. Be happy to serve.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Transfer 205 to August.

22 BAILIFF: That's it, Your Honor.

23 THE COURT: Are there any others for
24 business or personal reasons?

25 JUROR NUMBER 230: May I ask a

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1 question?

2 THE COURT: Yes, sir, come forward.

3 SIDEBAR:

4 JUROR NUMBER 230: Next week, I
5 don't have a problem with as far as serving. I
6 am supposed to fly out next Sunday to Nevada.
7 So everything will be done within that week?

8 THE COURT: What is your
9 number?

10 JUROR NUMBER 230: Two-three-zero.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Juror Number 230 will be
13 on the civil panels. You need to report at
14 1:30 on Monday.

15 JUROR NUMBER 320: 1:30?

16 THE COURT: You're free to leave.
17 Be back here on Monday, come back to this room.

18 JUROR NUMBER 320: 1:30, Monday?

19 THE COURT: Yes, sir. How many do
20 we have on the panel.

21 DON MICHELE: One hundred and six.

22 (OFF RECORD DISCUSSION RE: CIVIL DOCKET)

23 THE COURT: All right. The civil
24 attorneys that are here, Judge Young will be
25 qualifying your cases, of course, on Monday.

1 If you want to leave -- you're welcome to stay
2 if you want to but the next part of this
3 qualification will deal with the criminal
4 dispute. If you all want to leave now, you
5 can. It's going to be awhile yet.

6 (ATTORNEYS IN CIVIL MATTERS EXIT)

7 THE COURT: This dispute, Ladies and
8 Gentlemen, the first one that we have for next
9 week is a case that involves a situation that
10 is not -- I said that it wasn't customary. Let
11 me say this, I find that all jurors here
12 present now are qualified and I thank you for
13 that.

14 I know that I have frustrated a number
15 of you and I'm sorry for that. It's not the
16 most pleasant thing that you have to do but
17 it's part -- it goes with the territory and I
18 -- that's all right. I assure you that I am
19 not the mean-spirited person that you think I
20 am, for those of you that were denied. I
21 really am not.

22 But, nevertheless, that being the
23 case, we are now moving into this case. What
24 is unusual about this case, this case involves
25 -- one of the -- one of the charges involved in

1 this case deals with the crime of murder. This
2 case is a case that, because of the nature and
3 some of the other circumstances which we will
4 talk about is the one case in this state in
5 which the jury is involved in sentencing the
6 person, if the person is convicted.

7 Let me assure you, first of all, that
8 everything that I talk about this, this entire
9 process, has to be looked at and viewed in this
10 light: Persons who are accused of criminal
11 offenses in this state, and in this country,
12 are never required to prove anything at all.
13 The law says, in this state and in every state
14 with which I'm familiar, that when a party, an
15 entity makes an accusation, that party that
16 accuses has the burden of proof.

17 In fact, people who are accused of
18 committing criminal offenses have a very
19 important aspect of the law and it's call the
20 presumption of innocence.

21 That presumption of innocence is not
22 something -- it is not just words. It's an
23 active presumption. It means that every single
24 person -- if you're empaneled as a juror, you
25 have to actively presume that that person is

1 innocent.

2 That presumption stands throughout and
3 remains until and if the State proves or
4 convinces you to the standard required of it,
5 that is beyond a reasonable doubt. Only then
6 and, only then, may that presumption be
7 removed. So until then, that's the law.
8 That's the law in this state and that would be
9 the law in the first case that I have, and any
10 other cases that we may have, because persons
11 accused of committing criminal offenses are
12 presumed to be innocent.

13 Let me ask this question, is there any
14 member of the jury panel who could not follow
15 that instruction and adhere to that principle
16 of law because of some strong feeling that you
17 have, some personal philosophy that you have,
18 anything at all? If so, please stand. (No
19 response). Thank you, there are none.

20 Please understand that when I talk
21 about this, because what we will be talking
22 about when I -- I have to ask you questions
23 about this dispute, I have to talk about this
24 dispute. That doesn't mean anything other than
25 I've got to ask you questions. It's not

1 evidence, it's not proof. It is just simply
2 the process that we have to do to determine a
3 number of things.

4 In this case, the State is seeking the
5 death penalty, and that's one of the
6 punishments. There are two -- the jury
7 considers two situations if the person is found
8 guilty and certain factors are present -- a
9 number of things. This is a broad
10 generalization but all of those factors that
11 are necessary are present, then one of the
12 forms of punishment that you may consider would
13 be a sentence of death. The other form of
14 punishment that you would consider would be
15 life imprisonment without the possibility of
16 parole.

17 Two options, and the jury sentences.
18 That is the difference. In a number of cases,
19 unless it is one that falls in this category,
20 the judge makes that determination. But in
21 this case the jury will make that
22 determination.

23 I share that with you, first of all,
24 to let you know why it's a little bit
25 different. Then we're going to go through the

1 process.

2 Let me introduce to you some of the
3 persons involved. First I am going to start
4 with the table to my left. Good afternoon.
5 Mr. Dickerson is here and -- I need for you to
6 stand for a moment, please, sir.

7 DEFENDANT: (Standing before
8 jurors).

9 THE COURT: Ladies and Gentlemen, I
10 am going to introduce to you now Mr. Dickerson.
11 His name is William Oliver Dickerson. Mr.
12 Dickerson, thank you so much. You may take
13 your seat.

14 DEFENDANT: (Complies).

15 THE COURT: Are there any members of
16 the jury panel related by blood or marriage,
17 have any business dealings with, socially or
18 casually acquainted with, have any connection
19 at all with Mr. Dickerson? If so, please
20 stand. (No response). Thank you, there appear
21 to be none.

22 Mr. Dickerson is represented by Mr.
23 Bloom and Mr. Carroll.

24 MR. BLOOM: Jeff Bloom.

25 THE COURT: If you would, Gentlemen,

1 -- if you would, identify yourselves and your
2 law practice.

3 DON MICHELE, ASSISTANT CLERK: There
4 was one, sir.

5 THE COURT: I'm sorry. Yes, ma'am?

6 JUROR NUMBER 107: Yes, I know him.

7 THE COURT: You know him?

8 JUROR NUMBER 107: Yeah.

9 THE COURT: How do you know him?

10 JUROR NUMBER 107: I mean, I just -- I
11 didn't even know that was him. Actually, I ---

12 THE COURT: You know of him?

13 JUROR NUMBER 107: Yeah.

14 THE COURT: You're a casual
15 acquaintance?

16 JUROR NUMBER 107: My sister is --
17 yeah.

18 THE COURT: The fact that you're
19 casually acquainted with him, would that
20 influence or affect you in this matter?

21 JUROR NUMBER 107: It would.

22 THE COURT: Okay. Your number,
23 please?

24 JUROR NUMBER 107: One, one ---

25 THE COURT: Your name?

1 DON MICHELE, ASSISTANT CLERK:

2 Number 107, Your Honor.

3 THE COURT: You are excused. Thank
4 you, ma'am.

5 (JUROR NUMBER 107 EXCUSED)

6 THE COURT: Let me tell you what you
7 need to do. You need to report back to this
8 room at 1:30 on Monday. Okay?

9 JUROR NUMBER 107: Okay.

10 THE COURT: Thank you, ma'am. Okay.
11 This process is going to take a little bit
12 longer, and you've already seen that. That's
13 normal because of the nature of this dispute,
14 that's part of the process. There is a term of
15 court -- Judge Young just came by and that's
16 when I found out that he is going to be ready
17 to go at 1:30. So it's not as though when you
18 get excused here that you're going to be
19 excused for the week. Please understand that.
20 Thank you very much for your patience.

21 Is there anyone else who knows or has
22 any knowledge of Mr. Dickerson? (No response).
23 Thank you, there appears to be none.

24 Thank you (court reporter) for the
25 water. I don't know what I'd do without Ms.

1 Garrison. Thank you.

2 Now, thank you very much. Mr.
3 Carroll, we will start with you and come down
4 to Mr. Bloom.

5 MR. CARROLL: My name is Drew Carroll
6 and I manage the criminal defense practice at
7 the Joye Law Firm. There are other practice
8 areas there. The other lawyers involved in our
9 practice are Mark Joye, Ken Harrell, Chris
10 McCool, Brady Vannoy, Frank Hartman and last,
11 but not least, Matt Jackson and Patrick
12 Jennings. Those are the lawyers that work with
13 the Joye Law Firm.

14 THE COURT: Thank you, Mr. Carroll.
15 Yes, sir, Mr. Bloom?

16 MR. BLOOM: May it please the court,
17 my name is Jeffrey Bloom. I have a sole
18 practice, out of Columbia, South Carolina.

19 THE COURT: Thank you, Mr. Bloom.
20 Are there any members of the jury panel related
21 by blood or marriage, have any business
22 dealings with, socially or casually acquainted,
23 ever been represented by Mr. Bloom or Mr.
24 Carroll or any of the attorneys identified by
25 Mr. Carroll? If so, please stand.

1 JUROR NUMBER 262: I do disk and DVD
2 duplication for the Joye Law Firm.

3 THE COURT: Would that affect or
4 influence you in this dispute, sir?

5 JUROR NUMBER 262: Not really.

6 THE COURT: Would you base your
7 decision on the evidence and the law and would
8 that decision be fair to both sides?

9 JUROR NUMBER 262: Yes. I guess.

10 THE COURT: No, sir. I appreciate
11 that and I understand what you're saying but
12 the question is, can you make a commitment that
13 you would?

14 JUROR NUMBER 262: Yes, sir.

15 THE COURT: Your name and number,
16 please?

17 JUROR NUMBER 262: 262, Kevin
18 Salmonsens.

19 THE COURT: Mr. Salmonsens, thank
20 you, sir. Yes, sir?

21 JUROR NUMBER 201: I know the wife of
22 one of the attorneys in the Joye Law Firm.

23 THE COURT: Would that influence or
24 affect you, sir?

25 JUROR NUMBER 201: No, sir.

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THE COURT: Would you base your
decision on the evidence and the law and would
that decision be fair to both sides?

JUROR NUMBER 201: Yes, sir.

THE COURT: Your name and number,
please?

JUROR NUMBER 201: Ronald Mayfield,
201.

THE COURT: Thank you, Mr. Mayfield.
Yes, sir?

JUROR NUMBER 146: Mark Joye
represented me in a case many years ago. It
wouldn't affect my decision.

THE COURT: It would not affect your
decision?

JUROR NUMBER 146: (Negative gesture).

THE COURT: Has that matter been
concluded, sir?

JUROR NUMBER 146: Yes, sir.

THE COURT: And you would base your
decision on the evidence and the law and that
decision would be fair to both sides?

JUROR NUMBER 146: Absolutely.

THE COURT: Your name and number,

1 please?

2 JUROR NUMBER 146: James Husted,
3 number one-four-six (146).

4 THE COURT: Thank you, Mr. Husted.
5 Are there any others? Yes -- thank you very
6 much.

7 JUROR NUMBER 183: I worked with the
8 late Mr. Joye's wife in remodeling their
9 kitchen.

10 THE COURT: Has that work been
11 concluded, ma'am?

12 JUROR NUMBER 183: Oh, yes.

13 THE COURT: Would that affect or
14 influence you in any way in this matter?

15 JUROR NUMBER 183: No, sir.

16 THE COURT: Would you base your
17 decision on the evidence and the law and would
18 that decision be fair to both sides?

19 JUROR NUMBER 183: Yes, sir.

20 THE COURT: Your name and number,
21 please?

22 JUROR NUMBER 183: 183.

23 THE COURT: Are there any others?
24 (No response). Thank you, there appear to be
25 none.

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1 The State in this matter will be
2 represented by our Solicitor, Ms. Wilson, and
3 Mr. Durant -- two Durants. I would, Solicitor,
4 if you would, to introduce yourself, please.

5 SOLICITOR WILSON: Thank you. I am
6 Scarlet Wilson. I am the Solicitor here for
7 Charleston County and Berkeley County.

8 This is Bruce Durant, he is my Chief
9 Deputy Solicitor.

10 This is Rutledge Durant, he is an
11 Assistant Solicitor here.

12 Together we will be trying this case..

13 THE COURT: Thank you, Solicitor.
14 Are there any members of the jury panel related
15 by blood or marriage, have any business
16 dealings with, socially or casually acquainted
17 with, who are socially or casually acquainted
18 with the Solicitor, Ms. Wilson, Mr. Bruce
19 Durant or Mr. Rutledge Durant -- ever been
20 represented by any of them? If so, please
21 stand. (No response). Thank you, there appear
22 to be none.

23 Are there any members of the jury
24 panel or members of your immediately family
25 that has any business dealings, social or

1 casual acquaintances, with anyone that works
2 for the Solicitor. She has offices in Berkeley
3 County and Charleston County. If so, please
4 stand?

5 JUROR NUMBER 125: My husband is an
6 attorney in Moncks Corner and I've spoken with
7 the Solicitor, so I -- I know her.

8 THE COURT: Would that affect or
9 influence you?

10 JUROR NUMBER 125: No, sir.

11 THE COURT: Would you base your
12 decision on the evidence and the law and would
13 that decision be fair to both sides?

14 JUROR NUMBER 125: Yes, sir.

15 THE COURT: Your name and number,
16 again, for the record?

17 JUROR NUMBER 125: Tara Halverstadt,
18 one-two-five (125).

19 THE COURT: Thank you, Ms.
20 Halverstadt. Are there any others? (No
21 response). Thank you, there appear to be none.

22 Are there any members of the jury
23 panel related by blood or marriage, have any
24 business dealings with, socially or casually
25 acquainted with Ashley Pennington, who is the

1 Public Defender for the Ninth Circuit? If so,
2 please stand? (No response). Thank you, there
3 are none.

4 Are there any members of the jury
5 panel related by blood or marriage, have any
6 business dealings with, who are socially or
7 casually acquainted with anyone employed with
8 his offices? He has offices in Charleston
9 County and Berkeley County. If so, please
10 stand. Yes, sir?

11 JUROR NUMBER 385: Yes, sir. Charles
12 Ott, Juror 385. I know one of the public
13 defenders on a social basis.

14 THE COURT: Would that affect or
15 influence you ---

16 JUROR NUMBER 385: No, sir.

17 THE COURT: And would you base your
18 decision, Mr. Ott, on the evidence and the law
19 and would it be fair to both sides, sir?

20 JUROR NUMBER 385: Yes, sir.

21 THE COURT: And your number, please?

22 JUROR NUMBER 385: Three-eight-five
23 (385).

24 THE COURT: Thank you, sir. Are
25 there any others? (No response). There appear

1 to be none.

2 I am going to identify a number of
3 persons, Ladies and Gentlemen. If you are
4 related by blood or marriage to any of these
5 individuals, have any business dealings with
6 them or are socially or casually acquainted
7 with any of them, you need to stand and share
8 that information.

9 As Mr. Callahan did this morning, and
10 he did a marvelous job, I will do the best that
11 I can with some pronunciations. If it is
12 somebody that sounds like somebody you know,
13 please go ahead and run the risk of -- maybe it
14 is not the same but let's talk about it:

15 James Aiken,
16 Vante Burch,
17 Barry Britt,
18 Kamilah Brown,
19 Soloman Chisholm,
20 Linda Cooper,
21 Kareem Dotson,
22 Jerome Fludd,
23 David Gaddist,
24 Doris Gambrell,
25 Jamisha Gibbs,

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1 Marjorie Hammock,
2 John Hewitt,
3 Curtis Reed Hood,
4 Joseph Ladson,
5 Tierra McIntosh,
6 Jimmy Mitchell,
7 Joseph Powell,
8 John Rials,
9 Stacey Simmons,
10 Jerrod Smith,
11 Timothy Steiner,
12 Charles Watson,
13 Damita Watson,
14 Johnette Watson,
15 Krystal Watson,
16 Travis Watson,
17 John Williams,
18 Tomiesha Nelson,
19 Shondra Rivers,
20 Sandra Fokes,
21 Shareen Roper,
22 Sheryl Archie,
23 Steven Archie,
24 Kanesha Singleton,
25 Steven Rivers, also known as

1 "Stevo"
2 Ben Drayton,
3 Tyra Johnson,
4 Dontairs Anderson,
5 Lisa McReynolds,
6 Antonio Nelson,
7 Davon Keeling,
8 Kimberly Gregg,
9 Terry Murphy,
10 Marlinia Pinckney,
11 Rashid Malik, also known as
12 "Popcorn",
13 Leon Fludd,
14 George Fordham,
15 Cededrick Davis,
16 Aven Allen Roper,
17 Reginald Fuller,
18 Darren Proietti.
19 Any of those persons? If you would
20 just stand.
21 JUROR NUMBER 116: Aven Roper.
22 THE COURT: You know Aven Roper?
23 JUROR NUMBER 116: Yeah, coworker.
24 THE COURT: You are now?
25 JUROR NUMBER 116: Yeah.

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1 THE COURT: The fact that you work
2 with him, would that affect or influence you in
3 this dispute?

4 JUROR NUMBER 116: Yeah, probably.

5 THE COURT: Probably?

6 JUROR NUMBER 116: (Affirmative nod).

7 THE COURT: So if he testifies, you
8 couldn't consider his testimony the same as any
9 witness?

10 JUROR NUMBER 116: (Negative gesture).

11 THE COURT: Your number, please?

12 JUROR NUMBER 116: One sixteen (116).

13 THE COURT: Juror Number 116,
14 you need to report back to this room on Monday
15 at 1:30.

16 (JUROR NUMBER 116 EXCUSED)

17 THE COURT: Thank you, sir. Yes,
18 ma'am?

19 JUROR NUMBER 118: Aven Roper. He's a
20 neighbor.

21 THE COURT: Would that affect you in
22 this dispute?

23 JUROR NUMBER 118: Probably would, we
24 grew up together.

25 THE COURT: So you would have a

1 problem, would not -- you wouldn't be able to
2 consider his testimony the same as any other
3 witness; is that right?

4 JUROR NUMBER 118: Right.

5 THE COURT: Your number, please.

6 JUROR NUMBER 118: One eighteen (118).

7 THE COURT: Juror Number 118, you
8 need to report at 1:30 on Monday, please.

9 (JUROR NUMBER 118 EXCUSED)

10 THE COURT: Yes, sir?

11 JUROR NUMBER 161: I believe that I've
12 taught a couple of the people that you've
13 mentioned.

14 THE COURT: You know them?

15 JUROR NUMBER 161: No, I just taught
16 them.

17 THE COURT: You taught them?

18 JUROR NUMBER 161: Yes, sir.

19 THE COURT: Would that affect you?

20 JUROR NUMBER 161: No, sir, it would
21 not.

22 THE COURT: Would you consider their
23 testimony the same as any witness?

24 JUROR NUMBER 161: Yes, sir, I would.

25 THE COURT: And you would base your

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1 decision on the evidence and the law?

2 JUROR NUMBER 161: Yes, sir, I would.

3 THE COURT: Do you recall the ones
4 that you knew you'd ---

5 JUROR NUMBER 161: The Fludds and the
6 Aikens, I've taught a lot of. Jerome, I
7 believe I've had him in one of my classrooms.

8 THE COURT: Very well. Thank you,
9 sir.

10 COURT REPORTER: Your number, sir?

11 JUROR NUMBER 161: One-six-one.

12 JUROR NUMBER 389: I went to school
13 with a Stacey Simmons, I don't know if it is
14 this one or not.

15 THE COURT: If it was the same
16 person, would that affect or influence you?

17 JUROR NUMBER 389: No, sir.

18 THE COURT: If that person should
19 testify, would you be able to consider that
20 testimony the same as any witness that
21 testifies?

22 JUROR NUMBER 389: Yes, sir.

23 THE COURT: Would you base your
24 decision on the evidence and the law and would
25 the decision be fair to both sides?

1 JUROR NUMBER 389: Yes, sir.

2 THE COURT: Your name and number,
3 please?

4 JUROR NUMBER 389: John Raymond, Juror
5 Number 389.

6 THE COURT: Thank you. Any others?
7 (No response). Thank you, there appear to be
8 none.

9 I am now going to call out some
10 persons involved with law enforcement. If you
11 know any of these persons, you need to stand
12 and share that information, please, with us.
13 The following, and I will try to group them --
14 I may miss some but I'll do the best that I
15 can. The following work with the Charleston
16 Police Department:

17 Rene Charles,
18 Sgt. Mike Sherman,
19 Kalisha Gill,
20 Kathleen Butler,
21 Detective Jerome Fleming,
22 Detective David Osborne,
23 Detective Richard Holmes,
24 Detective Mike Gordon,
25 Judy Gordon,

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1 Anita Maestas,
2 Jennifer Wooley,
3 Randy Unterbrink,
4 Barry Goldstein,
5 Brian Hinton,
6 Daniel Ricco,
7 Detective Ron Hull.

8 Those individuals, anyone? Yes, sir?

9 JUROR NUMBER 149: Four.

10 THE COURT: Which four, do you
11 remember?

12 JUROR NUMBER 149: I think you said
13 Holmes, Goldstein, Mike Gordon, and ---

14 THE COURT: Do you know them
15 casually?

16 JUROR NUMBER 149: I know Barry very
17 well.

18 THE COURT: Would that affect or
19 influence you?

20 JUROR NUMBER 149: No. Working with
21 the fire department, you're going to know most
22 of them. No, it wouldn't affect me. I'd be
23 fair about it.

24 THE COURT: Would you consider their
25 testimony the same as any witness who

1 testifies?

2 JUROR NUMBER 149: Yes, sir.

3 THE COURT: And your decision would
4 be based on the evidence and the law and would
5 be fair to both sides?

6 JUROR NUMBER 149: Yes, sir.

7 THE COURT: Your name and number,
8 please?

9 JUROR NUMBER 149: David Ishmael, I
10 believe that it's one-forty-nine (149).

11 THE COURT: Thank you, Mr. Ishmael.

12 JUROR NUMBER 234: Ricco, I'm friends
13 with him. That wouldn't affect me, I don't
14 guess. He's just a buddy of mine. I'm Mike
15 Page and I'm Juror Number 234.

16 THE COURT: Mr. Page, the fact that
17 he is your buddy, I appreciate that, uh, -- so
18 if he testifies, would you be able to make a
19 commitment to both sides that you would
20 consider his testimony the same as anyone
21 testifying?

22 JUROR NUMBER 234: Yes, sir.

23 THE COURT: Whether they are your
24 buddy or not?

25 JUROR NUMBER 234: (Affirmative nod).

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THE COURT: And you would base your decision on the evidence and the law and that decision would be fair to both sides?

JUROR NUMBER 234: Yes, sir.

THE COURT: Thank you so much, you may be seated. Are there any others? (No response). There are none.

The next group of people, Ladies and Gentlemen, are employed with the Charleston -- with the Sheriff's Office or at the Charleston County Detention Center:

Armon Dickerson,

Selena Rouse,

Sgt. Brenda Jennings,

Master Deputy Howell Gooding,

Alfred Asher,

Michael Walters,

Jack Scarborough,

Leester Williams,

Michael Huggins.

Any of those? If so, please stand.
(No response). Thank you, there appear to be none.

The next group of people, Ladies and

1 Gentlemen, are persons who are employed with
2 the State Law Enforcement Division, also known
3 as SLED:

4 Amy Stephens,
5 Sheree Brown,
6 Karonda Williams,
7 Selena Kinard,
8 Nikki Perry,
9 Janice Bryson,
10 Denise Eargle,
11 Alice Shealy,
12 Lisa McReynolds -- excuse me, not
13 Lisa McReynolds, we've already called that one.
14 Jennifer Stoner,
15 Tammey Bannister,
16 Teresa Hooks,
17 Kenny Kinsey,
18 Lilly Gallman,
19 Lawrence Gainey.

20 Any of those? (No response). Thank
21 you, there are none.

22 The next group of persons, Ladies and
23 Gentlemen, are involved in the healthcare
24 profession or either, through education, have
25 achieved a position of Ph.D. and therefore are

1 referred to as "Doctor." If you have dealt
2 with any of these persons or are familiar with
3 them, if you or any family member has received
4 treatment from any of these healthcare
5 providers you need to stand and share that
6 information, please, with the court:

7 Dr. Cynthia Schandl,
8 Donna Schwartz-Watts, M.D.
9 Dr. Alexandra Morton,
10 Dr. James Dumm,
11 Dr. Robert Phillips,
12 Dr. Johnny K. Rivers.

13 Any of those persons?

14 JUROR NUMBER 201: Sir, was that James
15 Dunn?

16 THE COURT: D-u-m-m.

17 JUROR NUMBER 201: No.

18 COURT REPORTER: His number, Your
19 Honor?

20 THE COURT: Your name and number for
21 the record, sir?

22 JUROR NUMBER 201: Ronald Mayfield,
23 Number 201.

24 THE COURT: Thank you, Mr. Mayfield.
25 There are no others? (No response). There are

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1 none.

2 A number of others individuals, Ladies
3 and Gentlemen. I may not have called Christine
4 M. Carr, M.D. I don't think that I called that
5 name. Anyone? (No response). Thank you.

6 All right, others are:

7 Shemel Williams with Probation
8 and Parole;

9 Eddie Haselden with the Ninth
10 Circuit Family Court;

11 Ian Malone with the Ninth Circuit
12 Clerk of Court;

13 Jack Sinclair, who is an
14 attorney, formerly a Deputy Solicitor;

15 Carlos Cespedes, who was formerly
16 with the Charleston Police Department.

17 BRUCE DURANT: That's correct,
18 Your Honor.

19 THE COURT: Thank you, continuing:

20 Deputy Tim Morgan with the
21 Dorchester County Sheriff's Office;

22 Agent Ron Carter with South
23 Carolina Probation & Parole;

24 Sherry Niblock, who is an
25 investigator with the Solicitor's office;

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1 Darren Flinn, who is with

2 Charleston County EMS;

3 Tonya Chapman, also with

4 Charleston County EMS;

5 Susan Chewning, also with

6 Charleston County EMS -- who is the Charleston

7 County coroner. Excuse me.

8 Any of those?

9 JUROR NUMBER 220: Hi, I am Paula

10 Mullen. My number is 220. Jack Sinclaire is

11 a friend of my husband, they play golf. Susan

12 Chewning, I work for WTMA Talk Radio and she

13 has been in our station before and I have

14 chatted with her.

15 THE COURT: The fact that you've had

16 that connection with Susan Chewning, would that

17 affect or influence you?

18 JUROR NUMBER 330: No.

19 THE COURT: Would you consider her

20 testimony the same as any witness?

21 JUROR NUMBER 330: Yes, sir.

22 THE COURT: And the fact that your

23 husband has that relationship and you have that

24 relationship with Mr. Sinclaire, would that

25 affect or influence you?

1 JUROR NUMBER 330: (Negative gesture).

2 THE COURT: If he testifies, would
3 you likewise be able to consider his testimony
4 the same as any ---

5 JUROR NUMBER 330: Yes, sir.

6 THE COURT: And would you base your
7 decision on the evidence and the law and would
8 it be fair to both sides?

9 JUROR NUMBER 330: Yes, it would.

10 THE COURT: Thank you very much.
11 You may be seated. Are there any others? (No
12 response). There appear to be none.

13 What I am going to share with you now
14 is what is alleged so that I can ask you some
15 questions. Please remember that what I'm
16 sharing with you, which is contained on these
17 documents that you see that I hold in my hand,
18 -- and they are what they appear to you to be,
19 they are pieces of paper. They are not
20 evidence. I have to ask you some questions, so
21 I've got to share with you what is alleged.
22 They frame really what brings us here today,
23 they frame the dispute. That's the purpose,
24 their purpose.

25 Mr. Dickerson is accused in these

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1 documents of committing the offenses of
2 kidnaping, criminal sexual conduct in the first
3 degree and, as I mentioned, the offense of
4 murder; in that it is alleged, as follows:

5 It is alleged that between March the
6 7th, 2006 and March the 9th, 2006, with malice
7 aforethought that Mr. Dickerson killed and
8 murdered Gerard Roper by means of strangling
9 the victim with a ligature and beating him with
10 nunchucks and other unknown objects; that Mr.
11 Roper died in Charleston County as a result of
12 that between March 7th and March the 9th, 2006.

13 It is also alleged that between March
14 the 7th and March the 9th that Mr. Dickerson did
15 commit sexual battery upon Mr. Roper, without
16 his consent, with the use of aggravated force
17 in that he forces objects into his rectum in
18 violation of certain statutes that govern
19 actions in South Carolina.

20 It is further alleged that during that
21 period of time between March 7th and March the
22 9th that Mr. Dickerson did seize, kidnap,
23 abduct, confine and carry away Mr. Roper
24 without the authority of law.

25 I share that with you to find out if

1 any member of the jury panel has read anything,
2 heard anything, if you have any prior knowledge
3 of this dispute, from any source, please stand.
4 I will ask you'all to come forward and the
5 attorneys may approach, as well?

6 SIDEBAR:

7 THE COURT: I am going to take
8 a lunch break after this, folks. Do you'all
9 want to take a lunch break?

10 (SIDEBAR CONCLUDED)

11 BAILIFF: 178.

12 SIDEBAR:

13 JUROR NUMBER 178: I work on the
14 Charleston waterfront and Im familiar with a
15 lot of the Roper family. When you asked the
16 question previously I didn't know what the case
17 was referring and I didn't realize it was this
18 case. I remember this case from when it
19 happened. I think I'd rather not, certainly
20 not since I ---

21 THE COURT: You believe that it
22 would affect or influence you?

23 JUROR NUMBER 178: Since I do know
24 the family, recognize the family, I'd rather
25 not be involved in that.

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1 THE COURT: Do you think it
2 would influence your ability to be fair and
3 impartial?

4 JUROR NUMBER 178: I think so,
5 yes.

6 THE COURT: All right, sir.
7 Your number, again?

8 JUROR NUMBER 178: One-seven-eight
9 (178).

10 (SIDEBAR CONCLUDED)

11 THE COURT: Juror Number 178 will be
12 excused from participation in this dispute.
13 Report back here at 1:30 on Monday. Thank you,
14 sir.

15 (JUROR NUMBER 178 EXCUSED)

16 BAILIFF: Juror 262.

17 SIDEBAR:

18 THE COURT: If you'all have
19 any objection to these, let me know and we'll
20 discuss it.

21 JUROR NUMBER 262: I just read it
22 in the paper. That's it.

23 THE COURT: Okay. Thank you.
24 You're doing exactly what I asked. The fact
25 that you read it in the paper, would that

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1 affect or influence you?

2 JUROR NUMBER 262: No.

3 THE COURT: You understand
4 that's not evidence?

5 JUROR NUMBER 262: Right.

6 THE COURT: And you would be
7 able to set that aside?

8 JUROR NUMBER 262: Yes, sir.

9 THE COURT: And would be able
10 to decide this case based on what happens in
11 court?

12 JUROR NUMBER 262: Right.

13 THE COURT: And your decision
14 would be fair to both sides?

15 JUROR NUMBER 262: Sure.

16 THE COURT: Your number, again?

17 JUROR NUMBER 262: Number 262.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 262 will
20 remain. Thank you.

21 BAILIFF: Order! Number 63.

22 SIDEBAR:

23 JUROR NUMBER 63: I am almost
24 certain that I read some articles in the paper.

25 THE COURT: You understand that

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1 those are allegations?

2 JUROR NUMBER 63: I do understand
3 that.

4 THE COURT: And would that
5 affect you, what you've read?

6 JUROR NUMBER 63: No.

7 THE COURT: I understand that
8 you read it and, obviously, you have good
9 recall. That's great. But you are going to be
10 instructed to set that aside and decide this
11 case based on what you hear in the courtroom.
12 Would you -- could you do that and would you do
13 that?

14 JUROR NUMBER 63: Yes.

15 THE COURT: Would you have any
16 problem making a commitment to both sides that
17 you would not be influenced in any way by what
18 you heard outside the courtroom?

19 JUROR NUMBER 63: Oh, I would.
20 It would not influence me.

21 THE COURT: You could do that?

22 JUROR NUMBER 63: Yes, sir.

23 THE COURT: Your decision would
24 be based therefore on the evidence and the law
25 and, therefore, fair to both sides?

1 JUROR NUMBER 63: Yes, sir.

2 THE COURT: Your number, again?

3 JUROR NUMBER 63: Number 63.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 63 will remain.

6 BAILIFF: Number 255.

7 SIDEBAR:

8 JUROR NUMBER 255: I have -- my
9 family, we're dealing with a murder case
10 involving my brother in Dorchester county and I
11 just ---

12 THE COURT: I recall that you
13 put that on your form.

14 JUROR NUMBER 255: I'm sure I did,
15 (affirmative nod).

16 THE COURT: Do you think this
17 case would affect you?

18 JUROR NUMBER 255: I don't know
19 but it, just sitting here today, brings up all
20 kinds of emotions.

21 THE COURT: I made a note of
22 that, appreciate. I don't want to put you
23 through that. I am going to let you come back
24 and work on the civil side. Your number?

25 JUROR NUMBER 255: I am two-fifty-

1 five (255).

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 255 is excused.
4 from participation in this dispute. Be back
5 here Monday at 1:30.

6 (JUROR NUMBER 255 EXCUSED)

7 THE COURT: Anyone else? (No
8 response). Thank you. Ladies and Gentlemen, I
9 know it's been a long day for you. I'm
10 prepared to do whatever you want to do because
11 your time -- not that these persons' time is
12 not critical but your time is more critical
13 than anybody's. I know it is 1:00 o'clock and
14 we aren't finished yet. We're going to have to
15 go a little bit longer. My question is, do you
16 want to push on or do you want to stop and take
17 lunch?

18 NUMBER OF JURORS: Push on.

19 THE COURT: Thank you. Let's do
20 this. I need to take a break for a second. If
21 we could do this, and maybe some others may
22 have to do that as well. I will be back here,
23 ready to return, -- it's 1:00 o'clock. Let's
24 take ten minutes and then we will come back.
25 Thank you all. Appreciate that.

1 (BRIEF RECESS 1:00 - 1:20 P.M.)

2 THE COURT: Mr. Cochran shared
3 something with me at the break. I will ask him
4 to share that with you. Would you give me your
5 juror number again, Mr. Cochran?

6 JUROR NUMBER 54: Thank you. Are you
7 ready?

8 THE COURT: Just one minute, I think
9 everyone is coming in right now, I just want to
10 give everyone a chance to get seated. Please
11 let the record reflect that Mr. Dickerson is
12 present.

13 (DEFENDANT PRESENT)

14 THE COURT: During the break, Ladies
15 and Gentlemen, I had some jurors ask me some
16 questions and I appreciate that. Mr. Cochran
17 came forward and said he was processing and
18 said that he knew some names of people and that
19 he wanted to share some information. Mr.
20 Cochran, thank you so much for doing that.
21 Again, as I told some other jurors, that's why
22 I believe in the system. You're doing what
23 jurors do every day and I thank you for that,
24 sir. You may know some people?

25 JUROR NUMBER 54: Yes, sir. I told

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1 the judge that I may know some of the Ropers.
2 I don't remember the first names, I met them
3 years ago, almost twenty years ago.

4 THE COURT: If those persons that
5 were identified with the last name "Roper", if
6 any of those persons were to testify during the
7 trial and you were to say, 'Oh, that's -- yeah,
8 I do remember that person.' What that affect
9 or influence you in this dispute, sir?

10 JUROR NUMBER 54: No, sir.

11 THE COURT: Would you be able to
12 consider those persons' testimony the same as
13 anyone who testifies?

14 JUROR NUMBER 54: Yes, sir.

15 THE COURT: And you would base your
16 decision, sir, on the evidence and the law and
17 it would be fair to both sides?

18 JUROR NUMBER 54: Yes, sir.

19 THE COURT: Thank you so much, Mr.
20 Cochran.

21 MR. BLOOM: I didn't get his number?

22 THE COURT: His number is 54.

23 MR. BLOOM: Thank you, Your Honor.

24 THE COURT: All right, Ladies and
25 Gentlemen, the next question that I have is a

1 question -- and there are a lot of you who have
2 already responded, answered this somewhat.
3 But if you or a member of your immediate
4 family, or close personal friend, have ever
5 been the victim of, been involved with
6 testifying for or against someone involved in a
7 violent crime or you've been accused of
8 committing a violent crime, or if there is
9 anything about what you've heard thus far as
10 having been alleged that you, because of
11 something that has happened in your life, feel
12 -- you feel that it would affect or influence
13 your ability to be a fair and impartial juror,
14 please stand. We will ask those persons to
15 form a line over here and we will take you one
16 at a time, as we did before. Thank you so
17 much.

18 BAILIFF: Juror Number 214.

19 SIDEBAR:

20 THE COURT: Thank you for your
21 patience, too.

22 JUROR NUMBER 214: I apologize.

23 THE COURT: No, there's no ---\

24 JUROR NUMBER 214: I check with
25 the bailiff but forgot the first time I came

1 up. This is a private matter, my family does
2 not know, my children do not know. I raised my
3 children to be good citizens but I came up
4 during the age of integration and during there
5 was of sixteen-year-olds, seventeen-year-olds
6 turned loose on us and it was a fight for my
7 life, every day of my life. This went on until
8 I graduated high school and I am scarred for
9 life.

10 THE COURT: I understand.

11 JUROR NUMBER 214: My family does
12 not know this.

13 THE COURT: That's fine, nobody
14 is going to know but me and you. That's your
15 business.

16 JUROR NUMBER 214: I am not real
17 proud of the way that I feel but I cannot let
18 it go.

19 THE COURT: Don't apologize for
20 being honest.

21 JUROR NUMBER 214: I am trying to
22 be honest.

23 THE COURT: You are. You've
24 said something -- you just said 'I am not proud
25 of it' but you -- you're being honest about it

1 and I thank you, sir.

2 JUROR NUMBER 214: I have to keep
3 this inside.

4 THE COURT: I hope you'll be
5 able to work through that.

6 JUROR NUMBER 214: It is a better
7 world than it was in my youth and my children,
8 they -- (pause).

9 THE COURT: I understand.
10 Thank you.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Juror Number 214 will be
13 excused from participation in this dispute. If
14 you will, report here at 1:30 on Monday. Thank
15 you, sir.

16 (JUROR NUMBER 214 EXCUSED)

17 THE COURT: Okay.

18 BAILIFF: Juror Number 221.

19 SIDEBAR:

20 THE COURT: How are you?

21 JUROR NUMBER 221: I'm good.

22 My brother was murdered. I don't think that it
23 would affect me in making an impartial decision
24 but I did need to let you know that.

25 THE COURT: You filled out on

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1 the form, didn't you?

2 JUROR NUMBER 221: I did, I put it
3 on there.

4 THE COURT: I remember reading
5 it. That is a very traumatic experience and I
6 can understand that. I understand from your
7 answer and what you're responding now that you
8 could commit to both sides, that that would not
9 influence your decision one bit?

10 JUROR NUMBER 221: It would not.

11 THE COURT: And you would base
12 your decision on the evidence and the law?

13 JUROR NUMBER 221: Yes, sir.

14 THE COURT: And it would be
15 fair to both sides?

16 JUROR NUMBER 221: Yes, sir.

17 THE COURT: Thank you so much,
18 you may take your seat.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Juror Number 221 will
21 remain.

22 BAILIFF: Juror Number 127.

23 SIDEBAR:

24 JUROR NUMBER 127: Your Honor,
25 this is a terrible thing to say but I am

1 prejudiced against black people. I just got
2 out of being incarcerated and it's like they're
3 all Muslim, I don't like Muslims, I don't like
4 blacks.

5 THE COURT: Thank you.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Number 127 is excused.

8 (JUROR NUMBER 127 EXCUSED)

9 THE COURT: Thank you, sir.

10 DON MICHELE, ASSISTANT CLERK:

11 Civil?

12 THE COURT: Sir, you need to report
13 here at 1:30 on Monday.

14 BAILIFF: Juror 189 -- sorry, 289.

15 SIDEBAR:

16 THE COURT: You're Number 289?

17 JUROR NUMBER 286: Yes, sir.

18 THE COURT: Thank you.

19 JUROR NUMBER 286: I have had --

20 and I can't ---

21 THE COURT: You believe it would
22 affect you?

23 JUROR NUMBER 286: It would affect
24 me.

25 THE COURT: Let the record

1 reflect that this juror was kind enough to come
2 up to me almost in tears during the break. I
3 know her emotionalism is very evident here, as
4 well. I am going to excuse you from
5 participating in this. Please report Monday
6 for the civil side, at 1:30. Thank you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror Number 289
9 (sic) is excused.

10 (JUROR NUMBER 286 EXCUSED)

11 DON MICHELE: What is her name?

12 I think that's the wrong juror number. Is she
13 Damon Smith?

14 JUROR NUMBER 286: Joann Smalls.

15 DON MICHELE: She is Juror 286.

16 THE COURT: Juror Number 286 -- we
17 misspoke. Thank you..

18 BAILIFF: Number 275.

19 SIDEBAR:

20 THE COURT: Yes, sir?

21 JUROR NUMBER 275: My grandfather
22 was shot and killed by a sniper in Beirut,
23 Lebanon.

24 THE COURT: Would that affect
25 you, sir?

1 JUROR NUMBER 275: No, sir.

2 THE COURT: You would be able
3 to make a commitment to both sides that that
4 would not influence your decision at all?

5 JUROR NUMBER 275: Yes, sir.

6 THE COURT: And you would base
7 your decision on the evidence and the law and
8 it would be fair to both sides?

9 JUROR NUMBER 275: Yes, sir.

10 THE COURT: Your name, please?

11 JUROR NUMBER 275: Ghadi Shayban.

12 THE COURT: Thank you, Mr.

13 Shayban. You may remain.

14 (SIDEBAR CONCLUDED)

15 THE COURT: Juror Number 275 will
16 remain.

17 BAILIFF: Juror Number 97.

18 SIDEBAR:

19 JUROR NUMBER 97: Good afternoon.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 97: I guess I just
22 need to say that I do have a problem with this
23 type of thing. My wife, a couple of years ago,
24 she was robbed at gunpoint, thrown in a storage
25 freezer. Friends and coworkers called 911.

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1 After that, even since she's had difficulties
2 with post-traumatic stress disorder because
3 that incident was so violent.

4 THE COURT: Would that affect
5 you?

6 JUROR NUMBER 97: Every time that
7 she gets has an episode, yes, it's -- it's been
8 several years since that and she ---

9 THE COURT: My question is --
10 that is your wife. Is that going to affect
11 you?

12 JUROR NUMBER 97: (No verbal
13 response).

14 THE COURT: I'm concerned. I
15 am going to answer that for you.

16 JUROR NUMBER 97: (Affirmative
17 nod).

18 THE COURT: Based on the
19 juror's hesitancy, I believe that he may have
20 some concern or problem about his ability to be
21 fair and impartial. Your number was 97?

22 JUROR NUMBER 97: Yes, sir.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Number 97 is excused
25 from participation in this dispute. Report

1 here Monday at 1:30. Thank you.

2 (JUROR NUMBER 97 EXCUSED)

3 BAILIFF: Juror 113.

4 SIDEBAR:

5 JUROR NUMBER 113: My sister was
6 kidnaped and raped.

7 THE COURT: Would that affect
8 you?

9 JUROR NUMBER 113: Probably,
10 (affirmative nod).

11 THE COURT: Okay.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Juror Number 115 (sic)
14 will be ---

15 COURT REPORTER: 113, Your Honor.

16 THE COURT: Sorry. Thank you. Juror
17 Number 113 needs -- is excused from this
18 dispute. Report Monday at 1:30.

19 (JUROR NUMBER 113 EXCUSED)

20 BAILIFF: Juror 289.

21 SIDEBAR:

22 THE COURT: Yes, sir?

23 JUROR NUMBER 289: I had a
24 girlfriend in college and also my wife who was
25 raped. I don't honestly know whether or not

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1 that would affect my testimony (sic) but I
2 wanted to bring it forward.

3 THE COURT: I appreciate your
4 candor. The question is, would you be able to
5 make a commitment to both sides that it would
6 not?

7 JUROR NUMBER 289: Yes.

8 THE COURT: Because it requires
9 you consciously to do something. You could
10 make a commitment to them that, yes, you would
11 set that aside and it would not influence your
12 decision one way of the other, and that you'd
13 base your decision on the evidence and the law?

14 JUROR NUMBER 289: Yes, I believe
15 that I could do that.

16 (SIDEBAR CONCLUDED)

17 THE COURT: Juror Number 289 will
18 remain. Thank you so much. Are there others?
19 (No response). Thank you, Ladies and
20 Gentlemen.

21 A number of you were kind enough to
22 fill out your form. I appreciate it. Again,
23 by doing that it's very helpful.

24 It is something that we -- a lot of us
25 do today, there as so many of them, but there

1 are a number of television shows and programs:
2 C.S.I., Law & Order, and the like. Many times
3 I sit there and watch and think, 'Boy, that
4 would be nice if it were the real world' but
5 that's not the real world.

6 Any of you that watch those shows,
7 would they influence you or affect you in your
8 analyses of the evidence or could you set that
9 aside and decide this case applying your common
10 sense, your sense of logic and reasoning, in
11 analyzing the evidence and decide what you
12 believe to be the truth and not be influenced
13 by what you've seen on the television shows?
14 Because, you know, that's something that --
15 could you set that aside and separate that from
16 the TV world versus what happens in the real
17 world. If you feel that it would cause you
18 problems, please stand. (No response). Thank
19 you, there are none.

20 As I mentioned to you when we started
21 this process, this case involves a situation
22 where the jury will be participating or could
23 be participating in the sentence. I say that
24 because it's -- it proceeds in two phases.

25 The first phrase of this proceeding

1 will be a trial dealing with the charges that
2 have been made against Mr. Dickerson. In that
3 phase you will hear the evidence that the State
4 is prepared to present to attempt to comply
5 their obligation; that is, to try to prove Mr.
6 Dickerson guilty beyond a reasonable doubt.

7 In that, they would be required --
8 and I would instruct you that as to each of the
9 crimes with which he stands charged, I will
10 define for you the various elements of those
11 crimes.

12 You at the appropriate time would then
13 retire, after hearing all the evidence and
14 receiving/hearing the arguments and statements
15 of the attorneys and the instruction on the
16 law, you would retire and make a decision
17 considering that evidence what you believe to
18 be the truth.

19 Once deciding the truth, then you
20 would simply take that, the law as I gave it to
21 you, and apply that to those facts. You would
22 be asking yourself in each instance, 'Am I
23 satisfied, am I convinced beyond a reasonable
24 doubt --' -- and I will give you an instruction
25 on that but I would tell you that a reasonable

1 doubt is a doubt that would cause an honest,
2 conscientious juror searching for the truth in
3 the case to hesitate to take some action or to
4 act. That's the standard that you will apply.

5 Some of you may have participated, a
6 lot of you, as jurors in civil cases. In a
7 civil setting, the standard typically that you
8 find in that is a probability standard, meaning
9 'is it more likely so than not?' Well, beyond
10 a reasonable doubt is greater than a
11 probability standard. It is much higher than
12 that.

13 You will apply that standard to each
14 of those elements and at the conclusion of that
15 analysis if you're not convinced as to one or
16 more elements, then my instruction would say
17 that you must return a verdict of Not Guilty.

18 The reason for that is, that is what a
19 verdict of "guilty" and "not guilty" means.
20 Guilty means that the State proved each of the
21 elements to the requisite standard. Not Guilty
22 simply means that the State failed to prove one
23 or more of those elements. If they fail on
24 one, then you must return a verdict of Not
25 Guilty.

1 Is there anything about your
2 philosophy, your -- something that has happened
3 in your life, anything that you can think of or
4 anything that you've heard that would give you
5 any concern about your ability to perform that
6 function fairly and impartially and take the
7 law as I give it to you and apply that law
8 fairly and impartially to those facts? If so,
9 please stand? (No response). Thank you, there
10 are none.

11 Obviously then, again I will
12 reiterate, I am not suggesting what your
13 verdict is going to be but I just need to
14 discuss with you various things. If you return
15 a -- if you're convinced on each instances and
16 on the offense of murder, then -- and only then
17 -- would we move into the second phase. If it
18 is "not guilty" on that charge, then that would
19 end your involvement in this case, and so there
20 would be no second phase.

21 But if we had a verdict of guilty on
22 murder, then we would move into the second
23 phase and at that time we would hear different
24 -- it's a different phase where we deal with
25 various other elements dealing with -- that you

1 would be required to consider and evaluate in
2 making the determination as to the appropriate
3 punishment if we get to that phase. As I
4 mentioned when we started, your options would
5 be a sentence of death or the sentence of life
6 without parole. Life without parole means that
7 he would never get out of jail, he would be in
8 jail for the rest of his life. That's what it
9 means.

10 So is there anything that you've heard
11 thus far that would give you any concern about
12 your ability if you were on this jury to fairly
13 and impartially consider all the evidence in
14 that phase, if we got to that phase? Then take
15 the law, as I gave it to you, and in that part
16 there would be some issues concerning
17 aggravating circumstances, and various other
18 factors that we will instruct you. Anything
19 about your past, anything about your philosophy
20 that would affect or influence you in fairly
21 and impartially considering that in reaching a
22 decision on the evidence and the law, which
23 would be fair to both sides? If so, please
24 stand. (No verbal response). Thank you, there
25 are none.

1 One of the things, obviously, -- and I
2 -- it goes without saying, because I'm speaking
3 to, having had the opportunity to view your
4 responses, it's very nice and it is informative
5 but I am dealing with a very bright group, and
6 thank you for that. It obviously goes without
7 saying that what both sides are seeking in this
8 is empanel a jury, judges, -- because as I
9 mentioned when I qualified you, this wonderful
10 system that we have works with two judges
11 working together; one who will be the judge of
12 the law -- that's me, -- and the other being
13 the judge of the facts. You would be the judge
14 of the facts. What we are looking for are
15 judges that are capable of listening to the
16 testimony and evidence and, considering the
17 evidence, that means exhibits that are
18 introduced through the testimony and then doing
19 something that we do as human beings probably
20 every day of our life -- I'd hate to guess how
21 many times a day we make a decision whether we
22 believe something or not. We read it, we hear
23 it. Most of the time it is subconsciously.
24 There are occasions when we're asked to do that
25 and we do make those determinations, and we

1 apply all of our life's experiences and our
2 knowledge, our sense of reason and logic and we
3 make that decision.

4 The question is whether you are a
5 person that can do that fairly and impartially.
6 All of these questions that we have asked
7 before, and you've seen me excuse some persons,
8 have been to assist you in making that
9 determination.

10 I mentioned to you that being older
11 taught you some things. A lot of you probably
12 reached this point much sooner than I did. I
13 confess, mine has just been in recent years and
14 it shows how silly I am. I've finally realized
15 in my life, and I'd have been a much happier
16 human being, I'm sure, if I had come to this
17 realization years before, that there are very
18 few things in life that I can control. I know
19 that I can't control you. I can ask you to do
20 certain things and request that you do it but
21 the only person that I can control is me.
22 Sometimes I don't do so hot with that. But be
23 that as it may, I know that is the way that it
24 is.

25 This system and why I believe in this

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1 system is because I believe that I've had the
2 privilege and pleasure of working with people
3 who are able to do something that I'm about to
4 state and ask of you. That is to control
5 themselves, to be the fairest person that they
6 know how to be and apply their common sense,
7 their sense of logic and reasoning fairly and
8 impartially and perform the task of being a
9 judge, a judge of the facts.

10 Is there anything that you've heard
11 thus far that would give you any concern about
12 your ability to perform that function for these
13 parties. That is, to be the fairest and most
14 impartial judge of the facts that you know how
15 to be and to apply your common sense and logic
16 reasonably and fairly at the appropriate time
17 and make a decision that would be fair to both
18 sides. If you feel that you could not, please
19 stand. (No verbal response). Thank you, there
20 are none.

21 Any other specific questions from the
22 State?

23 SOLICITOR WILSON: No, sir.

24 THE COURT: Any other specific
25 questions from Mr. Dickerson?

1 MR. BLOOM: No, sir.

2 THE COURT: Ladies and Gentlemen,
3 the next question I saved this to the last. It
4 may not appear this morning but truly we try as
5 quickly as we can. I don't believe in wasting
6 your time, but the process takes time to go
7 through. I am not going to commit to you how
8 long that it will take but I will assure you
9 that it will not be done next week. Is there
10 anything about the fact that this case could
11 run beyond next week that could cause you any
12 problem and affect your ability to be a fair
13 and impartial juror? If so, please stand.
14 (Number of jurors stand). I am going to ask
15 you'all again to form the lines and we will
16 deal with you one by one.

17 Please understand something. I want
18 to try to honor it but understand that I have
19 things that I have to deal with.

20 BAILIFF: Juror Number 362.

21 SIDEBAR:

22 THE COURT: Yes, sir?

23 JUROR NUMBER 362: Your Honor, my
24 name is David Gorstein.

25 THE COURT: Please talk to Ms.

1 Garrison (court reporter). She is the most
2 important person here.

3 JUROR NUMBER 362: I probably
4 should have come forward sooner but I didn't
5 because I want to perform my duty, ---

6 THE COURT: I know you do.

7 JUROR NUMBER 362: --- to the
8 best of my ability. I am a healthcare
9 consultant and I went out on my own about a
10 month ago. I have some key clients -- they are
11 deliverables, and I don't really have a support
12 system. If I don't deliver, they are going to
13 go elsewhere. As I thought about this, I
14 should have asked you for a transfer so that I
15 might be able to come back in three or four
16 months because this is a very key time for me.

17 THE COURT: I am going to do
18 this for you, I am -- your number, please?

19 JUROR NUMBER 362: Number 362.

20 THE COURT: I am going to let
21 you come Monday. They are going to pick one
22 case. If you're not on that case or if the
23 judge wants to excuse you, that'll be up to
24 him. I'll put you in the panel for Monday.

25 JUROR NUMBER 362: Okay. Thank

1 you.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 362 will be for
4 Monday at 1:30.

5 BAILIFF: 225.

6 SIDEBAR:

7 JUROR NUMBER 225: I am the
8 general manager of Morris Sokol Furniture. I
9 am the opener, the closer and the only other
10 person is Mr. Sokol and he will be going to
11 Furniture Market, actually this next Friday,
12 next week. So, you know, I was going to be
13 okay for next week but it would be a -- a bad
14 situation.

15 THE COURT: Your number, again?

16 JUROR NUMBER 225: Two-twenty-five
17 (225).

18 THE COURT: Report Monday at
19 1:30.

20 JUROR NUMBER 225: Thank you, sir.

21 (SIDEBAR CONCLUDED)

22 BAILIFF: Number 161.

23 SIDEBAR:

24 COURT REPORTER: Your name, sir?

25 JUROR NUMBER 161: Jon Jordan. I

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1 am a school teacher.

2 THE COURT: I know you are.

3 JUROR NUMBER 161: I could go for
4 a week, maybe a week and a half.

5 THE COURT: Yeah.

6 JUROR NUMBER 161: But I couldn't
7 get away from my kids for that long.

8 THE COURT: How about two weeks

9 JUROR NUMBER 161: Two weeks?

10 Yes, sir, I think I could do two weeks.

11 THE COURT: I don't want to run
12 the risk. It may go into a little bit over but
13 -- I think we can finish in two but I can't
14 promise you that. You want to -- it's your
15 call.

16 JUROR NUMBER 161: (No verbal
17 response).

18 THE COURT: If it did it would
19 be Monday or Tuesday or the following week,
20 probably.

21 JUROR NUMBER 161: Just as long as
22 it didn't exceed two weeks, I'd be fine.

23 THE COURT: You could have been
24 excused.

25 JUROR NUMBER 161: Yes, sir.

1 THE COURT: I am going to put
2 you on Monday and let you serve on the civil
3 side. Thank you so much.

4 JUROR NUMBER 161: Thank you and I
5 do apologize for ---

6 THE COURT: You don't -- no
7 apology needed. You don't owe an apology,
8 because you could have avoided the whole thing.

9 JUROR NUMBER 161: It's a civic
10 duty, sir. As a teacher, I have to teach the
11 children that we ---

12 THE COURT: Yes, sir. Your
13 number, again?

14 JUROR NUMBER 161: One-six-one.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 161 is to
17 report Monday at 1:30.

18 BAILIFF: Juror Number 115.

19 SIDEBAR:

20 JUROR NUMBER 115: As I discussed
21 with you earlier, I do have my own business.
22 If it goes over two weeks I'm going to be way
23 behind, if it goes over a week I'll be way
24 behind. I don't know that I can ---

25 THE COURT: One fifty (150) is

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1 to report Monday at 1:30.

2 JUROR NUMBER 115: One fifteen
3 (115).

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 115 is to
6 report Monday at 1:30.

7 SIDEBAR:

8 JUROR NUMBER 168: I've got
9 business travel starting a week from Sunday,
10 I'm going to be out for the whole week.

11 THE COURT: Okay.

12 JUROR NUMBER 168: I have no
13 option there. I'm a traveling salesman.

14 THE COURT: I understand.
15 Report Monday at 1:30.

16 (SIDEBAR CONCLUDED)

17 MR. BLOOM: What was his number,
18 Judge?

19 THE COURT: Juror Number 168 is to
20 report Monday at 1:30.

21 BAILIFF: Juror 377.

22 SIDEBAR:

23 JUROR NUMBER 377: I am opposed to
24 the death penalty.

25 THE COURT: Why?

1 JUROR NUMBER 377: I am very
2 opposed to the death penalty.

3 THE COURT: I understand that
4 but there's another step that goes -- you just
5 need to hang around, there is going to be a
6 separate, individual *voir dire* where we talk
7 about all that. I can't excuse you now for
8 that because they have a right to ask you
9 questions about that.

10 (SIDEBAR CONCLUDED)

11 BAILIFF: Number 234.

12 JUROR NUMBER 234: I'm the owner
13 and operator of Hungry Neck Mall. I'm actually
14 the one that opens up, closes, makes bank
15 deposits. You know, it would just put a real
16 hardship on me. I'm actually the one that
17 operates the ---

18 THE COURT: Nobody can do that
19 for you?

20 JUROR NUMBER 234: I have people
21 that work for me but I'm the one that comes in
22 and gets it started, I'm the one that closes it
23 up and, you know, it would put a hardship on
24 me.

25 THE COURT: I realize it but

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1 you've got someone to help you?

2 JUROR NUMBER 234: I do, yes, sir.

3 THE COURT: Thank you. What is
4 your number?

5 JUROR NUMBER 234: It is 234.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Juror Number 234 will
8 remain.

9 BAILIFF: Juror Number 253.

10 SIDEBAR:

11 THE COURT: Yes, sir?

12 JUROR NUMBER 253: I have to
13 take care of my mother, I have a lot of
14 responsibilities. I just lost a brother and,
15 you know, no one -- my sister is there but she
16 not really dependable. So a week would be too
17 much for me.

18 THE COURT: A week?

19 JUROR NUMBER 253: I mean ---

20 THE COURT: Two weeks?

21 JUROR NUMBER 253: --- two weeks,
22 (affirmative nod). Two weeks would be too
23 much for me.

24 THE COURT: What is your name?

25 JUROR NUMBER 253: Kenyatta Riley.

1 THE COURT: That's the person
2 that there was some question about anyway.

3 MR. BLOOM: Judge, I know that
4 you haven't told the jurors yet but we're going
5 to be adjourning here today and they'll get to
6 go home and take care of whatever ---

7 THE COURT: I understand -- I
8 understand that.

9 MR. BLOOM: I don't know if
10 they're assuming, by the questions, ---

11 THE COURT: This is one that --
12 all right, sir, report Monday at 1:30. What is
13 your number?

14 JUROR NUMBER 253: Number 253.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 253 will
17 report Monday.

18 BAILIFF: Number 389.

19 SIDEBAR:

20 JUROR NUMBER 389: Judge, this
21 would be a real imposition. To be out for
22 several weeks is -- that would be a real
23 imposition. I can't really hire people to come
24 in and ---

25 THE COURT: You are not going

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1 to have to really start until Thursday, so that
2 gives you a chance to get something done
3 beforehand, and you'll be able to talk to
4 people when you go home in the evenings about
5 your jobs if you want to. You'll have weekends
6 -- well, you may have weekends. Could you get
7 somebody to handle it for awhile?

8 JUROR NUMBER 389: Well, my
9 partner is there, he's working but ---

10 THE COURT: Why don't you just
11 remain with us. Your number, again?

12 JUROR NUMBER 389: Number 389.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 389 will remain.

15 BAILIFF: Juror Number 254.

16 SIDEBAR:

17 JUROR NUMBER 254: I really hate
18 to do this stuff to you'all but my boss needs
19 me, I live by myself, I pay my own truck
20 payment and no one else does anything. It'll
21 really going to hurt me if -- I can't afford to
22 lose my truck.

23 THE COURT: Report Monday at
24 1:30.

25 JUROR NUMBER 254: All right.

1 (SIDEBAR CONCLUDED)

2 BAILIFF: Number 275.

3 THE COURT: Hold them up after this
4 one. I want to share something.

5 SIDEBAR:

6 JUROR NUMBER 275: I am a
7 concert pianist with the Charleston Symphony.
8 I have two concerts, through June 2nd.

9 THE COURT: When are your
10 concerts? On the weekend?

11 JUROR NUMBER 275: They vary.
12 Some are on Thursday and -- most of them are on
13 the weekend.

14 THE COURT: What time do they
15 start?

16 JUROR NUMBER 275: Eight o'clock.

17 THE COURT: Your number, again?

18 JUROR NUMBER 275: Number 275.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Juror Number 275 is to
21 report Monday at 1:30. Hold on just a second.

22 (OFF RECORD SIDEBAR W/DON MICHELE)

23 THE COURT: All right. Thank you.

24 BAILIFF: Juror Number 14.

25 SIDEBAR:

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1 JUROR NUMBER 14: I work three
2 days a week but I'm the only employee other
3 than the owner and she is covering for me all
4 next week. It would be such a hardship on her
5 if it goes into another week.

6 THE COURT: You can't find
7 somebody to cover for you?

8 JUROR NUMBER 14: (Negative
9 gesture), I mean she is just working -- it's a
10 retail store that is open seven days a week, so
11 she is under a strain as it is.

12 THE COURT: You would probably
13 be able to work on the weekends.

14 JUROR NUMBER 14: I work three
15 days a week: Tuesday, Wednesday, Thursday.

16 THE COURT: All right. Your
17 number?

18 JUROR NUMBER 14: Fourteen.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Number 14 reports Monday
21 at 1:30.

22 BAILIFF: Number 380.

23 SIDEBAR:

24 JUROR NUMBER 380: I am in charge
25 of Walgreens in Goose Creek. It's been near

1 impossible to get my shifts covered just for
2 next week. It would be even more hard as we
3 get later in the season and, plus, I'm moving
4 in less than a month.

5 THE COURT: You're moving?

6 JUROR NUMBER 380: I am moving out
7 of state, I'm moving to Arkansas.

8 THE COURT: Report Monday at
9 1:30.

10 (SIDEBAR CONCLUDED)

11 THE COURT: Juror Number 380 to
12 report Monday at 1:30.

13 BAILIFF: Juror 201.

14 SIDEBAR:

15 JUROR NUMBER 201: I am a
16 physician in private practice. I canceled my
17 patients for next week but if it goes beyond
18 that it would create a hardship on my practice.

19 THE COURT: I understand. Your
20 number, again?

21 JUROR NUMBER 201: Number 201.

22 (SIDEBAR CONCLUDED)

23 THE COURT: Number 201 will report
24 Monday at 1:30.

25 BAILIFF: Number 403.

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1 SIDEBAR:

2 JUROR NUMBER 403: I am a manager
3 and I have a job that I need to complete. I
4 have people who can help me next week but
5 beyond that week I'm scheduled to attend a
6 conference in Spartanburg for three days. It's
7 a conference for all of the reporting
8 departments of a flow review plan. That's my
9 area of specialty. I'm required to do
10 presentations on that. I have also invited a
11 hundred and sixty employees to a benefit
12 breakfast that I am presenting at.

13 THE COURT: Okay. Report at
14 1:30 on Monday.

15 (SIDEBAR CONCLUDED)

16 BAILIFF: Juror 160.

17 SIDEBAR:

18 JUROR NUMBER 160: I just want to
19 make sure. I'm moving to Cleveland, Ohio on
20 the 17th of next month. I just want to be sure
21 if it takes that long that ---

22 THE COURT: We're cool with
23 that. What is your number?

24 JUROR NUMBER 160: Number 160.

25 (SIDEBAR CONCLUDED)

1 THE COURT: Juror Number 160 will
2 remain.

3 BAILIFF: Juror Number 227.

4 SIDEBAR:

5 JUROR NUMBER 227: I am the chief
6 of the contracting branch for the Army Corps of
7 Engineers. As you know, we are getting
8 stimulus funds and we're pre-positioning
9 ourselves to get those. I'm just concerned
10 that if we ---

11 THE COURT: There are other
12 people in your office that ---

13 JUROR NUMBER 227: There is one
14 other individual that could sign contracts but
15 he's been ill, recovering from cancer.

16 THE COURT: Is he there now?

17 JUROR NUMBER 227: He is not there
18 today, sir.

19 THE COURT: Is he going to be
20 there next week?

21 JUROR NUMBER 227: He won't be
22 there next week.

23 THE COURT: You may not be
24 selected. I don't know what -- but I'm going
25 to ask you to stay.

1 JUROR NUMBER 227: Okay.

2 I just needed to ask.

3 THE COURT: I appreciate that.

4 Your number, again?

5 JUROR NUMBER 227: Number 227.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Number 227 will remain.

8 Thank you.

9 BAILIFF: Juror 289.

10 SIDEBAR:

11 MR. BLOOM: What was your
12 number, sir?

13 JUROR NUMBER 289: Juror Number
14 289.

15 THE COURT: Yes, sir?

16 JUROR NUMBER 289: The only issue
17 that I have is that I am a freelance
18 photographer, I am the sole provider of income
19 for my family. I understand that I may not be
20 chosen at all but any day that I am not in the
21 office, such as today, when ---

22 THE COURT: I understand.

23 That's true for a lot of people.

24 JUROR NUMBER 289: I'm sure it is.
25 I just wanted to make sure that you knew.

1 THE COURT: Your number, again?

2 JUROR NUMBER 289: Number 289.

3 (SIDEBAR CONCLUDED)

4 THE COURT: Number 289 will remain.

5 BAILIFF: Number 325.

6 SIDEBAR:

7 JUROR NUMBER 325: I was hoping
8 that if it was only a week, I might be able to
9 cover things. As the project manager, I'm the
10 only one who is assigned to ---

11 THE COURT: Report Monday at
12 1:30.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 325 will remain.

15 BAILIFF: Juror Number 401.

16 SIDEBAR:

17 THE COURT: Hi.

18 JUROR NUMBER 401: I'm a medical
19 assistant with a neurologist's office. There
20 are five doctors in our practice. Out of the
21 five, my doctor is the only one that stays in
22 the satellite office four out of the five days
23 of the week, it's just me and him.

24 THE COURT: But they've hired
25 someone for next week to cover for you?

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1 JUROR NUMBER 401: Yes. It's
2 going to be extra hard, though, to get it
3 covered for the next week, too.

4 THE COURT: Okay. Your number,
5 again?

6 JUROR NUMBER 401: Number 401.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 401 is to report
9 Monday at 1:30.

10 BAILIFF: Juror 404.

11 SIDEBAR:

12 JUROR NUMBER 404: I am self-
13 employed, a company called Wunderkind. I have
14 someone who can work part-time but at the
15 beginning of May I have to do the ordering and
16 -- this week, I can ---

17 THE COURT: They can't cover
18 that for you?

19 JUROR NUMBER 404: They can't.

20 THE COURT: You'll have
21 probably -- this case won't start, we won't
22 start taking testimony until Thursday probably.
23 You'll have the better part of next week to
24 make those arrangements.

25 JUROR NUMBER 404: I am going out

1 of the country on May the 2nd.

2 THE COURT: Now, that's a
3 problem.

4 JUROR NUMBER 404: I am going out
5 of the country on ---

6 THE COURT: All right, report
7 Monday at 1:30.

8 JUROR NUMBER 404: Okay.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Juror Number 404 is to
11 report Monday at 1:30.

12 BAILIFF: Juror Number 239.

13 JUROR: It's three-thirty-nine.

14 BAILIFF: Juror Number 339.

15 SIDEBAR:

16 JUROR NUMBER 339: I am self-
17 employed. I have a contract with the publisher
18 -- there is a date set in Hong Kong for a book
19 signing on -- it's a children's book. If I am
20 not able to make that commitment, it will
21 affect a lot of people and I'm the only person
22 that can finalize the project. I've been
23 working on the final revision since November,
24 it's a new publisher and ---

25 THE COURT: I understand that but

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1 the question is, as I told the last lady, this
2 case probably will not start, we will probably
3 not start taking testimony until Thursday. So
4 you'll have the better part of next week to
5 work. Then you're going to have, more likely
6 than not, the weekends. You will not be
7 sequestered, you'll be home. So you -- I don't
8 think that stops you from doing those things
9 that you may need to do.

10 JUROR NUMBER 339: So if I don't
11 get any changes until when testimony begins --
12 I mean, there's nobody else. I can't pass it
13 on to anybody. I don't work in an office with
14 any help that I could ---

15 THE COURT: I see. You're the
16 sole person?

17 JUROR NUMBER 339: Yes, sir.

18 THE COURT: Report Monday at
19 1:30.

20 (SIDEBAR CONCLUDED)

21 BAILIFF: Number 125.

22 SIDEBAR:

23 JUROR NUMBER 125: I am the sole
24 salesperson for my company right now. I have
25 no backup. To be out for a week ---

1 THE COURT: Who is covering for
2 you next week?

3 JUROR NUMBER 125: Well, next week
4 we are -- we were just kind of crossing our
5 fingers that I wouldn't get picked at this
6 point.

7 THE COURT: Report Monday at
8 1:30.

9 (SIDEBAR CONCLUDED)

10 BAILIFF: Juror Number 353.

11 SIDEBAR:

12 JUROR NUMBER 353: I have two
13 things going on the week after next. Number
14 one, at 9:00 on the 27th I have my annual
15 physical. I can change that. My wife just
16 recently had a lung biopsy and these pulmonary
17 guys are hard to get an appointment with.

18 THE COURT: I understand.

19 JUROR NUMBER 353: The appointment
20 is Wednesday, the 29th. We are supposed to have
21 the cultures back and they are going to try to
22 set up some kind of treatment to help her
23 lungs. I would love to be there with her.

24 THE COURT: Do you think you
25 could schedule it in the afternoon, get an

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1 afternoon appointment?

2 JUROR NUMBER 353: These guys,
3 you've got to (negative gesture) -- it's been
4 scheduled a long time.

5 THE COURT: Report Monday at
6 1:30.

7 JUROR NUMBER 353: I appreciate
8 that, sir. Thank you very much.

9 (SIDEBAR CONCLUDED)

10 THE COURT: What was his number?

11 COURT REPORTER: Number 353.

12 THE COURT: Number 353 is to report
13 Monday.

14 BAILIFF: Juror Number 123.

15 SIDEBAR:

16 THE COURT: Yes, sir?

17 JUROR NUMBER 123: Yes. My main
18 objection is that it just would be an extreme
19 financial hardship for my wife and myself if I
20 had to work beyond, you know, next week. You
21 said that there was a possibility that it could
22 be longer than that.

23 THE COURT: Yes, sir.

24 JUROR NUMBER 123: I am actually
25 our sole source of income at this time and I

1 really cannot afford to do any more time than
2 that, probably. It would put me in dire
3 straits.

4 THE COURT: Report Monday at
5 1:30.

6 (SIDEBAR CONCLUDED)

7 BAILIFF: Number 374.

8 SIDEBAR:

9 JUROR NUMBER 374: To spend two
10 weeks on jury duty, I'd have to take vacation
11 time and sick time. I don't think that my
12 employer would ---

13 THE COURT: Let me make a
14 suggestion to you. If you are penalized for
15 that, you ought to talk to somebody because
16 there's case law that ---

17 JUROR NUMBER 374: If it lasted
18 two weeks or more, it would affect mine and my
19 wife's income and affect being able to make our
20 mortgage payment and everything else. I'm just
21 concerned ---

22 THE COURT: Report at 1:30.

23 (SIDEBAR CONCLUDED)

24 MR. BLOOM: What was his number?

25 THE COURT: What is your number?

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1 JUROR NUMBER 374: Three-seven-four
2 (374) .
3

4 BAILIFF: Juror Number 148.

5 SIDEBAR:

6 JUROR NUMBER 148: I have a
7 question.

8 THE COURT: Sure.

9 JUROR NUMBER 148: Do you know
10 what time at night we'd be done?

11 THE COURT: Yeah, generally we
12 -- you'all are going to determine that for the
13 most part, the jury is very much involved with
14 how late we work but generally we will work
15 until 5:30 or 6:00 o'clock.

16 JUROR NUMBER 148: Okay. The only
17 reason I was questioning is because not this
18 week but next week I have finals, so I didn't
19 want to miss ---

20 THE COURT: We will work around
21 whatever you need to -- if we need to adjourn
22 early, we can do that.

23 JUROR NUMBER 148: Okay. Thank
24 you.

25 THE COURT: You will remain

1 then?

2 JUROR NUMBER 148: Yes, sir.

3 THE COURT: Your number?

4 JUROR NUMBER 148: Number 148.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Number 148 will remain.

7 BAILIFF: Number 146.

8 SIDEBAR:

9 JUROR NUMBER 146: I probably
10 should have come up earlier but -- I'm having a
11 little internal conflict. My wife was raped at
12 gunpoint. It happened many years ago but I
13 just -- I just ---

14 THE COURT: I remember reading
15 that and starring that, as well. Report Monday
16 at 1:30. What is your number?

17 JUROR NUMBER 146: Number 146.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Number 146 reports
20 Monday.

21 BAILIFF: Number 22.

22 SIDEBAR:

23 JUROR NUMBER 22: I don't know if
24 this is in response to what you're talking
25 about here, but I thought I needed to come

1 forward.

2 THE COURT: Okay.

3 JUROR NUMBER 22: I am against
4 the death penalty and, as a Christian, I'm not
5 sure that I could. I've been on a murder trial
6 before but it did not require me to find the
7 death penalty.

8 THE COURT: You will have an
9 opportunity to express that. There is another
10 time, but these folks will have an opportunity
11 to ask you questions.

12 JUROR NUMBER 22: Okay. I just
13 didn't know at this point, so I thought that I
14 should ask.

15 THE COURT: No, ma'am. It's
16 not the last chance. I assure you we will
17 afford you that opportunity.

18 JUROR NUMBER 22: Thank you.

19 THE COURT: Your number, again?

20 JUROR NUMBER 22: I am Number 22.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Number 22 will remain.

23 BAILIFF: Number 220.

24 SIDEBAR:

25 JUROR NUMBER 220: Hi. I am

1 salaried, I am on commission. I was prepared
2 to take five days but not any longer. So -- I
3 worked really hard to do the five days. I have
4 a second business, something that I am not very
5 proud of but I need to share with you that even
6 though I am married I have a husband that was
7 convicted a few years ago of a Federal crime,
8 so even though he has a job his money goes to
9 the government to pay for his crimes. It would
10 help me financially if I could just serve on a
11 jury that is five days.

12 THE COURT: Report Monday at
13 1:30.

14 JUROR NUMBER 220: Thank you.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Are there others? (No
17 response). Thank you very much.

18 Some of you who came up asked some
19 questions concerning certain issues. We are
20 doing a general voir dire because what will
21 happen and what is going to happen now in just
22 a moment is that we're going to divide you into
23 panels. Starting Monday, you will come back in
24 groups of six, and then on Tuesday groups of
25 seven and, if it is necessary, then on

1 Wednesday. There will be some additional
2 questions asked of you along the lines of what
3 we've been talking about, but more specific
4 questions as well; nothing that invades your
5 privacy, nothing that's to -- don't worry about
6 it, I don't want you to be concerned about it.
7 If there is concern and some of you expressed
8 some concerns about certain aspects, you'll
9 have an opportunity to share those. That is
10 not a problem, so don't worry about that, they
11 will be afforded you.

12 Let me ask this last question before
13 we start grouping. Is there anything now, that
14 you heard today, that would give you any
15 concern about your ability to raise your hand
16 and make a commitment to the State and to Mr.
17 Dickerson and to the attorneys representing
18 them, and to the Court, that you would at the
19 appropriate time apply your common sense, your
20 sense of logic and reason, evaluate the
21 evidence and decide what you believe to be the
22 truth and then, once you make that decision,
23 you would also take the law as I gave it to you
24 and apply that law fairly and impartially so
25 that your decision would be fair to all sides

1 and to this process? If you feel that you
2 could not make that commitment for any reason,
3 please stand. (No response). Thank you, there
4 are none.

5 Okay, we are going to start -- what we
6 are going to do, we are going to do, we will
7 number them sequentially and starting Monday at
8 9:30 will be the first panel. We will --
9 please, when we draw these we are keeping this
10 in an order and this order will remain
11 throughout the proceeding. Just number them
12 sequentially, if you will.

13 We will identify the first six and you
14 will be asked to come back -- we are going to
15 show them -- are we going to show them or do
16 you want them to ---

17 DON MICHELE, ASSISTANT CLERK: We
18 are going to have bailiffs at the fourth
19 floor. If they will just go to the fourth
20 floor, the bailiffs will escort them to the
21 room.

22 THE COURT: When you get off the
23 elevator, there will be a bailiff there to
24 escort you to the jury room where you will be
25 because we will be doing the further

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1 questioning in the courtroom. We will do them
2 one at time.

3 Let me say this while they're drawing
4 those panels now. You know, you've heard me
5 say several times and some of you came up
6 talking about having read something. One of
7 the things about this process, and you've
8 heard me say that you'll make a decision
9 considering the evidence. Evidence, Ladies
10 and Gentlemen, is testimony of witnesses and
11 exhibits that are introduced through their
12 testimony. That's the sole source of
13 evidence.

14 Obviously you're going to make a
15 commitment to decide the case based on the
16 evidence. I am confident that each one of
17 you, by not standing, has indicated that you
18 would do that. I thank you for that.

19 You know what? I usually tell jurors
20 when I qualify them that you've already spoken
21 volumes about yourselves. You may not realize
22 this, but think about it. You saw me excuse
23 some people. I didn't go check with anybody.
24 I trusted what they told me to be the truth.
25 You didn't do that, you didn't do it because

1 it didn't apply to you. It wasn't true. So
2 you've said something about who you are and I
3 thank you for that. That's what you have to
4 do as a juror, you have to be true to yourself
5 and to the process.

6 I will share my example of how
7 critical it is that this decision be made by
8 what happens in the courtroom. Several years
9 ago, it wasn't a criminal dispute but a civil
10 dispute, in which we'd been working on for a
11 week. The jury was deliberating and -- in a
12 civil case, sometimes they adjourn. In
13 criminal cases that is not always the case,
14 given the deliberations. But they went home --
15 -- as I will instruct you every night if you're
16 on the panel (sic), you can't talk to anyone.
17 I instruct you now that you can't talk to
18 anyone about this case. You can't read
19 anything about this case. You can't watch
20 anything about this case. You can't allow
21 anybody to talk with you about serving on this
22 case. That includes someone who is home --
23 and let me tell you why. This juror went home
24 and there was an issue about an injury and she
25 was talking to her husband. They talked about

1 someone in their family that had a similar
2 injury. She mentioned it in discussion,
3 'well, my husband and I were talking about it'
4 and the foreperson made that known to me. You
5 know what happened? We have to mistry the
6 case. Do I think that she was influenced by
7 that? No, probably not. But the appearance
8 of it was there. You can't allow that to
9 happen. That's how critical it is.

10 We live in a world of information.
11 Let me give you an example -- thank goodness,
12 I've been very fortunate, and I think people
13 honor it. I had a friend mine, he is no
14 longer on the bench, but he was trying a case
15 over in Horry County and the jury was
16 deliberating, or they were trying the case,
17 and the comment was made -- I think during the
18 deliberation, and that was reported -- that
19 the juror had gone on the internet and looked
20 up some things. Well, guess what? It
21 destroyed that case, too.

22 That is how critical it is. You may
23 not and you must not talk to anyone, you may
24 not read anything about it. If you're
25 accustomed to reading the newspaper, my

1 suggestion is that until you're excused from
2 this case or not involved in this case, put it
3 aside. If there is something that comes on
4 the News and says this case, 'Mr. Dickerson',
5 turn it off. You can't be influenced by it.
6 If it happens, it could affect the whole trial
7 and we'd have to go through this whole process
8 again. That's an expensive process for
9 everyone, you included. So please understand
10 the importance of that and the urgency of
11 that. It is very, very important.

12 I thank you for your indulgence and
13 patience in letting me caution about it, but I
14 really can't caution you enough about. It's
15 that important to the process. I am confident
16 that each one of you will honor that.

17 Okay. Why don't we do this? My
18 feeling is that we can go through -- and I
19 made a quick note on mine last night: one,
20 two, three, four, five, six, seven. I did
21 nine --
22 I did ten. Why don't we do this, let's assign
23 -- let's go ahead and get as many as we --
24 let's go ahead and do groups of six. Let's be
25 consistent. Twenty-four and twenty-four is

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1 forty-eight, and -- let's go with twelve more,
2 so that would be sixty. Give me those, we'll
3 schedule that many and then the other groups
4 that we draw, we will number them but they
5 won't be given a time. They will be asked to
6 call in.

7 What we are going to give in Panel
8 Number One is ---

9 DON MICHELE, ASSISTANT CLERK: I've
10 got that.

11 THE COURT: Then Panel Number Two.
12 Then Panel Number Three.

13 Panel Number One reports at 9:30 on
14 Monday.

15 Panel Number Two will report at
16 11:15.

17 Panel Number Three reports at 2:00.

18 Panel Number Four reports at 3:45.

19 Then do the same times for the next
20 two days.

21 Let me say this to you, my past
22 experience -- we've picked six to do and,
23 obviously, you heard it's about an hour and
24 thirty to forty-five minutes. Sometimes we
25 will be ready, there may be times when you may

1 have to wait a little bit. I want to
2 apologize in advance but we just don't know
3 how long that is going to go, necessarily,
4 until we are there. I just -- if it does
5 occur, please bear with us. With six, it
6 shouldn't be too much of an overlap.

7 Also let me say this to you, some of
8 you may have heard -- you may have heard the
9 word and I haven't mentioned it but somebody
10 said that we were not going to sequester. In
11 the past in some of these cases, I have
12 sequestered the jury. But I've decided, after
13 watching some other things and considering
14 other things, that jurors are willing to do
15 what I've asked them to do -- and that is to
16 not be influenced outside the courtroom. I
17 think we -- in other words, I'm trusting you.
18 So please understand that. We are not going
19 to sequester -- you'll be able to go home.

20 Someone asked how long would we work.
21 Once we empanel the jury, it is my intention
22 to do this, and what I have done, is to
23 involve you in that. I would like to work
24 somewhere between 5:00 and 6:00 every day. We
25 will start about 9:00 or 9:30 in the morning.

1 The weekend is optional. I would prefer -- I
2 have worked seven days when the jury is
3 sequestered but since you're not going to be
4 sequestered, I am not going to require that.
5 If you want to work on Saturday, that's your
6 call. I will let the jury make that call. If
7 you don't, that's fine with me too. It's not
8 mandatory, it just gives us an extra potential
9 day to work. That's the only reason that I
10 mention that to you. I share that with you
11 now so that if you're selected you'll have had
12 an opportunity to give some thought to that
13 also insofar as your desire to work. Right
14 now, this one we are -- obviously the group
15 that comes at 3:45, somebody is going to be
16 after 5:00 o'clock. I'm sorry. But we won't
17 be too late after that, but we -- we will get
18 to you as quick as we can.

19 Why don't we do this? Let's do this
20 -- rather than -- we have the numbers, we'll
21 draw. Do you want him to draw now?

22 MR. BLOOM: Yes, sir.

23 THE COURT: I understand, that's no
24 problem. Now, Ladies and Gentlemen, the
25 process -- you'll do waive, you'll allow the

1 clerk to draw ---

2 MR. BLOOM: Absolutely, Your Honor.

3 THE COURT: You'll allow the clerk
4 to draw out of the hopper?

5 MR. BLOOM: Absolutely. No
6 problem, Your Honor.

7 THE COURT: And they are not -- you
8 are not going to put them in capsules, are
9 you?

10 DON MICHELE, ASSISTANT CLERK: I
11 will defer to you, sir, whatever you want to
12 do.

13 THE COURT: Do you require that
14 they put them in capsules?

15 BRUCE DURANT: No, sir.

16 MR. BLOOM: No, sir.

17 THE COURT: Okay. There are
18 several ways now -- and some do it
19 differently, we still do it in this fashion
20 where they are placed in a hopper, they are
21 going to spin it and then they will draw the
22 names out at random. Years ago when I first
23 started practicing there was a child or a
24 person who was visually challenged that would
25 have to draw the names. We're moving away

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1 from that. Now they use computer-generated,
2 but -- not everywhere do they use that, but we
3 -- we now put your names in and then we draw
4 it out -- yes, it's a lottery, folks. I'm
5 sorry. But it is in order to comply with the
6 statute, it has to be a random draw insofar as
7 the order is concerned and that's the reason I
8 am delaying you. I know you are hungry.
9 Thank you for your patience.

10 If anybody needs a break, please feel
11 free to stretch. If you will just be back in
12 ten minutes, we will be able to announce the
13 panels.

14 (BRIEF RECESS)

15 (DEFENDANT REMAINS PRESENT)

16 THE COURT: May I have your
17 attention, please. Group Number One, for 9:30
18 on Monday.

19 MR. BLOOM: Your Honor, do you want
20 them to stand up as they ---

21 THE COURT: Why don't we do this.
22 Let's line up here -- and I'll stand here with
23 them.

24 CLERK, MIKE CALLAHAN: Panel Number
25 One:

1 Juror Number 370, Nathan Hood

2 Juror number 383, Marlene Morton

3 Juror Number 377, Terry Mainer

4 Juror Number 278, Nathaniel Simmons

5 Juror Number 386, Joshua Partee

6 Juror Number 228, James Nichlaus

7 THE COURT: Thank you. You are
8 free to go. Report to the fourth floor on
9 Monday at 9:30. The bailiff will be there to
10 direct you where to go. You are Panel Number
11 One. Your doctors' appointment is Tuesday.
12 You'll be able to make it. No problem. Thank
13 you. The bailiffs will take you right now and
14 show you where to go.

15 CLERK, MIKE CALLAHAN: Panel Number
16 Two:

17 Juror Number 133, Denode Heyward

18 Juror Number 227, Lauri Newkirkpaggi

19 Juror Number 315, Sally Toomer -- (no
20 response).

21 We will go on to the next one, Judge.

22 Juror Number 372, Maxina Howard

23 Juror Number 134, Charles High

24 Juror Number 6, Jamal Brownlee --

25 (no response).

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1 THE COURT: We are missing two.

2 CLERK, MIKE CALLAHAN: Yes, Ms.

3 Toomer and Mr. Brownlee.

4 THE COURT: Brownlee -- (no
5 response). Call the next number. I don't
6 know where these persons are.

7 CLERK, MIKE CALLAHAN: Yes, sir. Two
8 more jurors for Panel Number Two will be:

9 Juror Number 19, Janet Bergen

10 Juror Number 280, Jeanette Singleton

11 THE COURT: You are Panel Number
12 Two. At 11:15 on Monday, report to the fourth
13 floor. Please follow my instructions, nobody
14 is to talk with you about it. Have a good
15 weekend. They will show you where to go.

16 CLERK, MIKE CALLAHAN: Panel Number
17 Three will be:

18 Juror Number 232, James Orr

19 Juror Number 37, Diane Buchanan

20 Juror Number 65, Steven Deas

21 Juror Number 389, John Raymond

22 Juror Number 197, Brian Manigault

23 Juror Number 66, Terence Deas

24 THE COURT: Your are Panel Number
25 Three. Your time for reporting is 2:00

1 o'clock on Monday, fourth floor. Be there
2 Monday at 2:00 o'clock, come off the elevator
3 and the bailiffs will show you where to go.
4 Thank you. Have a good weekend.

5 CLERK, MIKE CALLAHAN: Panel Number
6 Four will be:

7 Juror Number 160, Robert E. Jones, IV

8 Juror Number 207, Guy Mead

9 Juror Number 101, Georona Gadsden

10 Juror Number 92, Melissa Fields

11 Juror Number 256, Lisa Robinson

12 COURT REPORTER: One more, Mike?

13 CLERK, MIKE CALLAHAN: Juror Number
14 402, Mary Cox.

15 THE COURT: Panel Number Four. You
16 are Panel Four. You need to come to the
17 fourth floor on Monday at 3:45. Obviously you
18 need to plan -- it will probably take about an
19 hour and a half, an hour and forty-five
20 minutes, we'll get you out before 6:00. Have
21 a good weekend. We'll see you Monday. Thank
22 you.

23 Ms. Toomer is here now. Do you want
24 to put her in the next panel or do you want to
25 put here at the end. Put Ms. Toomer in the

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1 next panel. Is Mr. Brownlee here? (No
2 response).

3 CLERK, MIKE CALLAHAN: Panel Number
4 Five will be:

5 Juror Number 398, David E. White

6 Juror Number 385, Charles Ott

7 Juror Number 363, Debra Grant

8 Juror Number 378, James Martin

9 Juror Number 315, Sallylisha Toomer

10 THE COURT: Panel Five, ---

11 DON MICHELE, ASSISTANT CLERK: One
12 more, Judge.

13 THE COURT: Okay.

14 CLERK, MIKE CALLAHAN: And Juror
15 Number 306, Rebekah Szivak.

16 THE COURT: Thank you very much.

17 You are Panel Number Five. You will need to
18 report Tuesday at 9:30. Come to the fourth
19 floor and they will take you where you need to
20 report. Monday is your day, you're free to go
21 to work or do what you normally do. We will
22 plan to be here about an hour to an hour and
23 forty-five minutes on Tuesday. Thank you.
24 See you at 9:30.

25 CLERK, MIKE CALLAHAN: Panel Number

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1 Six will be:

2 Juror Number 124, Charles Hall

3 Juror Number 330, Garrett Waterman

4 Juror Number 121, Anita Green

5 Juror Number 209, Donna Melville

6 Juror Number 54, Anthony Cochran

7 Juror Number 343, Steven Wineinger

8 THE COURT: You are Panel Number

9 Six. You are to return at 11:15 on Tuesday.

10 Have a great weekend. I will see you at 11:15

11 and they will show you where you need to

12 report. Thank you so very much.

13 CLERK, MIKE CALLAHAN: Panel Number

14 Seven:

15 Juror Number 358, Diane Frasier

16 Juror Number 149, David Ishmael

17 Juror Number 314, Virginia Thompson

18 Juror Number 157, Michael Johnson

19 Juror Number 11, Sheri Barker

20 Juror Number 392, Ortez Simmons

21 THE COURT: Panel Number Seven at

22 2:00 o'clock on Tuesday. Come to the fourth

23 floor and they will show you where you need to

24 go. Obviously you will be free to work Monday

25 and to work Monday (sic) morning if you need

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1 to. Just be there at 2:00. You'll be
2 finished probably about 3:00 or 3:30,
3 somewhere along in there. Have a good
4 weekend.

5 CLERK, MIKE CALLAHAN: Panel Number 8
6 will be:

7 Juror Number 381, Deborah Mèteraud
8 Juror Number 247, Elaine Prioleau
9 Juror Number 177, Phillip Kuhnemann
10 Juror Number 221, Susan Mullen
11 Juror Number 289, Damon E. Smith
12 Juror Number 364, Marilyn Grant

13 THE COURT: You're Panel Number
14 Eight. You need to be on the fourth floor at
15 3:45 on Tuesday. Thank you.

16 CLERK, MIKE CALLAHAN: Panel Number
17 Nine:

18 Juror Number 234, Michael Page
19 Juror Number 8, Christine Areheart
20 Juror Number 50, Richard Clapp
21 Juror Number 262, Kevin Salmonsens
22 Juror Number 4, Theresa Ancrum
23 Juror Number 72, Regina Dobson
24 That is Panel Number Nine.

25 THE COURT: That starts?

1 DON MICHELE, ASSISTANT CLERK: 9:30

2 on Wednesday, sir.

3 THE COURT: 9:30 Wednesday. Be
4 here Wednesday at 9:30. Obviously Monday and
5 Tuesday are your days. Have a good weekend.
6 I will see you Wednesday.

7 CLERK, MIKE CALLAHAN: This is Panel
8 Number Ten:

9 Juror Number 246, Dana Pridgen
10 Juror Number 331, Renala Waters
11 Juror Number 264, Rodney Sanders
12 Juror Number 272, Donna Setzehorn
13 Juror Number 148, Samantha Iorio
14 Juror Number 357, Leverne Dawson
15 That is Panel Number Ten.

16 THE COURT: That is ---

17 DON MICHELE: 11:15, sir.

18 THE COURT: Report at 11:15 on
19 Wednesday, fourth floor. Someone will show
20 you where to go on the fourth floor. Have a
21 good weekend, Monday and Tuesday and we'll see
22 on Wednesday. Thank you so much.

23 Hold on a second -- the others are to
24 be on-call, have them call in and then we will
25 have a better idea. Have these panels

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1 identified and then instruct them to call.

2 CLERK, MIKE CALLAHAN: The next one
3 would be number eleven.

4 THE COURT: Panel Number Eleven,
5 we're identifying now. Just stand where you
6 are, please.

7 CLERK, MIKE CALLAHAN: Panel Eleven
8 is:

9 Juror Number 104, Christopher Gaskins

10 Juror Number 69, John Deden

11 Juror Number 22, Pamela Blank

12 Juror Number 252, Carolyn Rhyne

13 Juror Number 90, Andrea Ferguson

14 Juror Number 287, Robert Smalls

15 THE COURT: Okay. You are Panel
16 Number Eleven. Panel Eleven needs to call and
17 I would suggest that you call Tuesday night
18 after 6:00. There will be an instruction on
19 there, probably for other jurors as well but
20 there will be an instruction for "Panel Number
21 Eleven". Follow that instruction as it
22 pertains to Panel Number Eleven. Rather than
23 schedule a time, we're not certain about that,
24 I'd ask that -- rather than have you come in
and it may not be necessary for you to come

1 in, we will know by then. Please remember
2 that you are still -- while you are not coming
3 back, you still are not at liberty to talk to
4 anyone about this or permit anybody to talk to
5 you. Thank you. Have a good weekend.

6 CLERK, MIKE CALLAHAN: Final panel?

7 THE COURT: The final panel. That
8 would leave an extra one, so just put them in
9 -- Panel Eleven will have seven jurors.

10 CLERK, MIKE CALLAHAN: Panel Number
11 Twelve:

12 Juror Number 317, Daniel Tribuna
13 Juror Number 63, Dean Cunliffe
14 Juror Number 319, Suzanne Ulmer
15 Juror Number 38, Ann Burdette
16 Juror Number 26, Laura Bradshaw
17 Juror Number 281, Tameka Singleton
18 Juror Number 304, Daniel Suggs

19 JUROR NUMBER 304: I'm always last.

20 THE COURT: I understand. You are
21 Panel Twelve. Call the number after 6:00
22 o'clock on Tuesday night, follow the
23 instructions as it pertains to Panel Number
24 12. Ignore the instructions for Panel Eleven,
25 ignore any other instructions for any other

1 jurors. Have a good weekend. Again, do not
2 discuss the case with anyone. Thank you.

3 (ALL JURORS HAVE EXITED JURY PANEL ROOM)

4 All right, the strike sheets will be
5 developed and deliberated. Let's go -- do
6 you'all want to go get lunch first or do you
7 want to push on?

8 SOLICITOR WILSON: What do we need to
9 do?

10 THE COURT: We've got to update the
11 court's exhibits with some of the things that
12 Jessica has done. I want to get that done and
13 then I need to put on the record any Motions
14 that need to be made.

15 BRUCE DURANT: Let's push on.

16 THE COURT: Let's go upstairs then.

17 (BRIEF RECESS)

18 (RECONVENED IN COURTROOM 4C)

19 (DEFENDANT PRESENT)

20 THE COURT: Gentlemen, I want to
21 thank you for your assistance and patience
22 this morning. Let me tell you what I intend
23 to -- she (Clerk) is making copies of
24 everything now for you. What I intend to do,
25 the court's exhibit which contains the

1 statutorily disqualified jurors, those that
2 you have or will have, I may have called
3 concerning what their responses were. Any
4 objection from the State about those jurors
5 being added to the already existing Exhibit --
6 do we have the number?

7 COURT REPORTER: They are bringing
8 the exhibits now, Your Honor.

9 THE COURT: That's all right. We
10 have the court's exhibits, they'll be here
11 shortly ---

12 CLERK, MIKE CALLAHAN: (Enters
13 courtroom, tendering document to judge).

14 THE COURT: Thanks, Mike. That
15 would be excused jurors, Court's Exhibit 3.
16 Any objection from the State?

17 SOLICITOR WILSON: No, sir.

18 THE COURT: Any objections from the
19 Defendant?

20 MR. BLOOM: No, sir.

21 THE COURT: Okay. Any objection --
22 any Motions from the State concerning the
23 qualifications thus far?

24 SOLICITOR WILSON: May we have a
25 moment?

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1 THE COURT: Sure.

2 SOLICITOR WILSON: (Sidebar with Bruce
3 Durant and Rutledge Durant), -- no, sir.

4 THE COURT: Any Motions from the
5 Defendant?

6 MR. BLOOM: No, sir.

7 THE COURT: Thank you. You'all
8 will be given the list and we will go down
9 that list. The questions that we have and
10 will have, any matters that we need to take up
11 concerning the individual voir dire which will
12 take place starting on Monday? Any issues
13 that you anticipate or can think of?

14 SOLICITOR WILSON: Regarding the
15 questionnaire?

16 THE COURT: Anything concerning the
17 -- when we are going forward with the
18 individual, you'all will have all the
19 questionnaires. Anything else that you can
20 think of that the State does not have that
21 they need at this point?

22 SOLICITOR WILSON: I haven't seen what
23 we're going to be given.

24 THE COURT: You'll get the
25 supplements and you'll have those. I haven't

1 seen either the ones that were done today that
2 we -- I'm going to give -- you'all have seen
3 it, it's in the notebook. If you want a copy
4 of it, I'll be happy to go get it right now of
5 the types of jurors: Type 1, Type 2, Type 3.
6 I think Type 3 is the one that says that they
7 consider -- can consider both of them.

8 I intend to give those when they
9 arrive and tell them to review that, have the
10 bailiff instructed to have them review that.
11 We'll probably give them a few minutes to
12 review that, the first group; the second group
13 will probably start arriving early and I think
14 that they will have a chance. I intend to ask
15 them if they've had a sufficient time to look
16 at it. If they need additional time, I may
17 send them back and take the next juror just to
18 facilitate that. It won't change the order of
19 the strike but just merely to accommodate the
20 juror, if that be necessary. Any problem with
21 that from the State?

22 BRUCE DURANT: No, sir.

23 THE COURT: Any problem from the
24 defense?

25 MR. BLOOM: No, sir.

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1 THE COURT: The questions, you'all
2 will do what you need to do. Of course I'm
3 going to be reading over the weekend all the
4 objectionable ones and try to rule that out.
5 I don't think that we will have any but I'll
6 try to -- I'll be prepared.

7 If anybody anticipates anything, just
8 in conversations that you've had, you may want
9 to broach that beforehand. If you do, I would
10 appreciate it. Why don't we plan to gather,
11 out of an abundance of caution at 9:00 o'clock
12 on Monday. That gives us thirty minutes to do
13 anything that may come up over the weekend,
14 that needs to be done.

15 SOLICITOR WILSON: Do you plan on --
16 for the jurors on the questionnaire who say
17 'never death penalty' ---

18 THE COURT: My plan is, I am going
19 to question them concerning that and I am
20 going to ask -- I'm going to try -- because I
21 believe I'm supposed to -- the order that I've
22 done and what I typically do is I am going to
23 ask questions and then I am going to turn to
24 the State, then turn to the Defendant.
25 You'all will ask questions, then I may ask

1 some followup and if I do then I will give
2 each of you an opportunity to ask additional
3 questions. But, yes, I am going to inquire
4 about those parts.

5 But as I understand from what I've
6 read in the cases, the fact of what they've
7 stated and the fact -- for instance, those two
8 that came up that said 'I can't possibly do
9 that', as I read these cases, the law says
10 that both sides are entitled to ask questions
11 concerning that. So I understand their
12 position. You'all have made statements how
13 you generally deal with that but I'll afford
14 you an opportunity to ask questions.

15 For your purposes, Solicitor, I've
16 had jurors that were able to be --
17 notwithstanding those statements, after
18 further inquiry, they were able to consider
19 it. Of course, if they can't -- you'all help
20 -- this is my understand-ing and this is what
21 I've applied, and I'm sharing with you because
22 as I understand it, the question is 'Can you
23 follow the instruction of the court to, if you
24 get to that point, consider life without the
25 possibility of parole or death? Can you

1 consider them both?' That's the decision.

2 'Can you be fair in making that determination
3 and consider both and make a determination of
4 what you think is appropriate in accordance
5 with the facts and the law?' I believe that's
6 the question.

7 Now, if somebody, obviously, -- just
8 by way of example, the one that said 'I could
9 never' -- that person that said, 'I could
10 never in any situation give a death penalty',
11 then that's probably -- that probably falls
12 into that category.

13 But if somebody says, for instance we
14 have one that says 'I am pro-death penalty.'
15 I don't know what that means. That may mean
16 he is more -- more typically than not would
17 give the death penalty. But if he says 'I can
18 consider life imprisonment' then,
19 notwithstanding his feelings, I think he
20 probably will meet muster.

21 Those are the types of things that I
22 think we just have to determine through the
23 individual questions. But -- so I -- I say
24 that to say that whatever questions you feel
25 appropriate to ask them, you're free to do so,

1 both sides, concerning that issue. At least
2 as far as I am concerned you are.

3 You also have the strike list. The
4 strike list that you have, I think they are
5 going to group it in groups of six. I guess
6 they will have multiple strike lists. But we
7 will go -- we will probably put together -- my
8 plan would be to put together a major strike
9 list in the order in which we've drawn them,
10 which we will ultimately use a strike list
11 when we select our jury. In other words,
12 we'll combine them so that we don't have ten
13 strike lists floating around.

14 SOLICITOR WILSON: Then we will ---

15 THE COURT: We won't redraw.
16 They'll just so sequentially. For instance,
17 Panel Number One, the group that we -- the
18 groups that we have, we identified them one
19 through six and they will be one through six
20 on that strike list. The next group will be
21 seven, eight, nine, ten, eleven, twelve. So
22 on, when we get together for the final strike.
23 Okay?

24 But I think just to help you in
25 making notes, from what I heard they are going

1 to do individuals -- but at the end we'll
2 combine them and do one. Right?

3 CLERK, MIKE CALLAHAN: Yes, sir.

4 THE COURT: Okay. At that time
5 what I would ask, so -- because what I have
6 done, because we know we do that from the list
7 and not calling them up, uh, -- if we have
8 excused persons along the way we just put
9 those persons in and I respond that that
10 number has been previously excused by the
11 court, so that the record is clear that we are
12 starting at one and going down and we deal
13 with every single one. There will be a
14 response for every single juror on the list.

15 Anything else from the State?

16 SOLICITOR WILSON: No, sir.

17 THE COURT: Anything from the
18 Defendant at this point?

19 MR. BLOOM: If it please the court,
20 we do have a memorandum on *voir dire*, which I
21 have ---

22 THE COURT: For the individual *voir*
23 *dire*?

24 MR. BLOOM: It's just kind of an
25 outline from some of the cases in the event

1 that we have objections -- (tenders to court).

2 THE COURT: Thank you so much.

3 That will be helpful.

4 MR. BLOOM: It is not lengthy but
5 it kind of cites what I think are some of the
6 similar cases.

7 THE COURT: Okay.

8 SOLICITOR WILSON: I just want to make
9 sure that I'm clear on the semantics of it.
10 If a juror states that, you know, they'll
11 consider it, they'll consider anything but
12 they're not going to -- that would be?

13 THE COURT: That's where I have to
14 make a call as to whether -- because they have
15 to fairly consider it. If they say, 'yeah,
16 I'll consider it but I could never do it',
17 that's just -- that is semantics. That's not
18 what I am talking about.

19 I am talking about somebody that
20 says, 'I am opposed to it' but then says
21 'well, in certain situations, I guess then
22 I...' -- that is typically what the question
23 is. You're saying that 'There may be some
24 situations in which I could impose a death
25 penalty.' Then, 'You could consider it?'

1 'Yes. Well, there may be some situations
2 where I would impose the death penalty.'
3 That's as far as it goes.

4 If they may say 'I would never really
5 like to do it but I might in some', then
6 they're probably going to meet it. I haven't
7 heard it. I don't know. We'll take them one
8 at a time. The good thing about it is, at
9 least from my cursory look at some of my
10 notes, there are a lot of cases that have
11 dealt with this issue. We have precedents to
12 deal with it, to help us.

13 MR. BLOOM: Judge, may I inquire as
14 to the order of questioning? Who will go
15 first or how you care to ---

16 THE COURT: What do you propose? I
17 go first.

18 MR. BLOOM: Oh, absolutely. Yes,
19 sir.

20 THE COURT: All right.

21 MR. BLOOM: I've always agreed that
22 the court should ---

23 THE COURT: I've always thought
24 that the State goes because they have a burden
25 of proof.

1 MR. BLOOM: And I've always argued
2 that it is of course the defendant who has a
3 Constitutional right to question.

4 THE COURT: No question about that
5 but it doesn't say that you have the
6 Constitutional right to go first.

7 MR. BLOOM: I understand. What
8 I've often seen done and I think it works fair
9 for both sides is that we take turns -- one
10 juror, the State will go first and the second
11 time we will go first and just alternate in
12 that fashion.

13 THE COURT: What's the State's
14 position?

15 SOLICITOR WILSON: That's fine.

16 THE COURT: We will be
17 accommodating then.

18 MR. BLOOM: Thank you.

19 THE COURT: We'll alternate. You
20 want to take the evens?

21 MR. BLOOM: Whatever.

22 THE COURT: Why doesn't the State
23 take the odds and you take the evens? How
24 about that?

25 MR. BLOOM: That sounds like a

1 plan, Your Honor.

2 THE COURT: All right. Anything
3 else? I don't have any problems doing that.

4 MR. BLOOM: We do have a pending
5 Motion regarding severing the grand larceny of
6 the motor vehicle indictment.

7 THE COURT: Are you prepared to
8 argue that today?

9 SOLICITOR WILSON: We can argue it.

10 THE COURT: Let's do it. Be happy
11 to hear from you.

12 MR. BLOOM: Your Honor, if it
13 please the court, I won't repeat everything
14 that I said at the pretrial hearing on this
15 matter. The record, of course, reflects our
16 arguments in that regard.

17 THE COURT: Right.

18 MR. BLOOM: Essentially, though,
19 the core of our arguments is that the grand
20 larceny of motor vehicle has nothing to do
21 with the alleged murder indictment or
22 kidnaping indictment or criminal sexual
23 conduct indictment. It happened several days
24 after the murder, it surrounds events related
25 to the arrest of the defendant. I may

1 understand that there may be some testimony in
2 terms of what the police did in terms of
3 pursuing the defendant, ultimately arresting
4 him. But in terms of the actual charge
5 itself, it is mixing two separate incidents
6 and two separate -- really the indictment, the
7 car itself -- and I know that you don't know a
8 whole lot about the facts of the case.

9 THE COURT: I don't.

10 MR. BLOOM: The car itself belonged
11 to codefendant Rashid Malik and his
12 girlfriend, or wife, Marlina Pinckney. I
13 believe her name is on the witness list. So
14 it has nothing to do with the allegations
15 surrounding the homicide of Mr. Roper. We
16 think that would be extraneous and prejudicial
17 questioning, quite frankly.

18 THE COURT: How so?

19 MR. BLOOM: It brings in extraneous
20 matter to the homicide, particularly involving
21 an accusation which in fact, I can only
22 assume, assume comes from a codefendant now,
23 Mr. Malik. If it is true, or even if it
24 is not, whatever the allegation is, that's a
25 dispute between the State and Mr. Malik as a

1 witness and his girlfriend against Mr.
2 Dickerson for events wholly-unrelated to the
3 homicide of Mr. Roper. So it seems that it
4 could have the potential to bolster, I think
5 improperly, Mr. Malik's testimony regarding
6 the homicide event in a matter that is
7 extraneous.

8 For example, it would be no different
9 than if I were charged in a homicide and some
10 days later I did an assault against a State's
11 witness. That would seem, I would think, if
12 the jury had to delve into that issue that has
13 the potential for the State to bring an
14 additional charge, involving's a State's
15 witness in homicide, to potentially bolster
16 his testimony on the underlying homicide.

17 So that would be my argument I --
18 really it is just unnecessary. Obviously the
19 penalty is much less than the penalty if a
20 defendant is convicted of murder. I think the
21 prejudice comes from the inference that
22 improperly bolstered a State's witness on an
23 extraneous matter.

24 THE COURT: Solicitor?

25 SOLICITOR WILSON: I am not sure what