

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S. C. SUPREME COURT

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

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Appellate Case No. 2018-001499

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WILLIAM O. DICKERSON .....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

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APPENDIX  
VOLUME 16 OF 22

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STATE’S EXHIBITS 141, 153, 160, 162, 166, 171, 172, 173, 177, 178, 181, 184, 335, AND 336 (AUTOPSY PHOTOGRAPHS ADMITTED DURING PENALTY PHASE); AND STATE’S EXHIBIT 78 (PHOTOGRAPH OF VICTIM’S BODY AT DISCOVERY SITE) HAVE BEEN TRANSPORTED TO THE COURT

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continuing to make discriminatory strikes), or wait until the jury is selected, keeping track of his strikes in order to argue that any explanations he later gives are merely pretextual. Even if the defense makes discriminatory strikes, do not object if you still like the final composition of the jury.

#### **BATSON v. KENTUCKY**

The purposes of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), and its progeny are to protect the defendant's right to a fair trial by a jury of his peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the justice system by seeking to eliminate discrimination in the jury selection process. *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999).

*Batson* requires a hearing to allow a party the opportunity to make a *prima facie* showing of purposeful discrimination by challenging the other party's use of a preemptory strike, and if such discrimination is found, the proponent of the strike has the opportunity to present a neutral explanation for the strike. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

It is unconstitutional to strike a juror on the basis of:

1. race, *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), or.
2. gender, *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S. Ct. 1419 (1994).

#### **BATSON HEARING**

There are three steps to a *Batson* hearing:

1. Members of a cognizable racial group or gender are struck and the opposing party requests a hearing.  
("The State struck all black males.")
2. The proponent of the strike must offer a facially race or gender-neutral explanation for the strike.  
("Juror #3 was struck because he had a 1999 arrest for marijuana.")
3. The opponent of the strike must show that the race- or gender-neutral explanation given was mere pretext.  
("The State did not strike Juror #2, a white male, even though he had a conviction for assault." Response: "Assault is not a substance abuse offense, and this is a DUI trial.")

*State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999); *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) (adopting the *Batson* procedure set forth in *Purkett v. Elem*, 514 U.S. 765, 115 S. Ct. 1769 (1995)).

In order to raise and preserve a *Batson* issue, the opposing party must move for the hearing after the jury is selected, but before it is sworn. This hearing must be held out of the presence of the jury panel and the jury venire. If the trial judge finds that the opposing party has established a *prima facie* case of purposeful discrimination and that the proponent of the strike has failed to give neutral reasons for the contested strikes, the process of selecting jury shall start over. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

#### **Step One: The Strike**

Members of a cognizable racial group or gender are struck and the opposing party requests a hearing.

Any person, regardless of race or gender, may set forth a *Batson* claim, and the trial court should

hold a *Batson* hearing whenever one is requested. *State v. Chapman*, 317 S.C. 302, 306, 454 S.E.2d 317, 320 (1995) ("striking of any juror can raise the inference of race and/or gender based discrimination"); *State v. Edwards*, 374 S.C. 543, 556, 649 S.E.2d 112, 119 (Ct. App. 2007), *reversed on other grounds*, 384 S.C. 504, 682 S.E.2d 820 (2009) (reversed Court of Appeals' conclusion that proffered reason for defendant's strikes were not race-neutral).

Both the defendant and the State can make a *Batson* motion. *Georgia v. McCollum*, 505 U.S. 42, 112 S. Ct. 2348 (1992); *State v. Hicks*, 330 S.C. 207, 499 S.E.2d 209 (1998).

**Step Two: The Explanation for the Strike**

The proponent of the strike must offer a facially race- or gender-neutral explanation for the strike.

The explanation need not be clear, reasonably specific, or legitimate; it only needs to be race- or gender-neutral. *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *affirmed*, 327 S.C. 121, 489 S.E.2d 617 (1997)

The reason need not be persuasive or even plausible and may even be silly or superstitious. *Purkett v. Elem*, *supra*; *State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). However, as set forth below in "Step Three: The Argument of Mere Pretext," circumstances may lead a judge to find an explanation that so fundamentally implausible to be mere pretext. See *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009).

At the second step of the inquiry, the issue is the facial validity of the explanation. Unless a discriminatory intent is inherent in the explanation, the reason offered will be deemed race- (or gender-) neutral. *Purkett v. Elem*, *supra*.

Although the explanation does not have to rise to the level of justifying the exercise of a challenge for cause, the prosecutor may not merely state that it was his intuitive judgment that the juror would be partial because of the juror's shared race with the defendant or by merely denying that he had a discriminatory motive. *State v. Tomlin*, 299 S.C. 294, 384 S.E.2d 707 (1989)

The trial judge's determination of purposeful discrimination rests largely on his or her evaluation of the challenged attorney's demeanor and credibility. A strike must be examined in light of the circumstances under which it was exercised, including an examination of the explanations offered for other strikes. *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 823.

**Sufficient Reasons for Strike:**

1. lack of employment or place or type of employment, *see, e.g., State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999);
  - Such a reason is credible because of the concern for a juror's life experiences or sense of social duty. *State v. Green*, 306 S.C. 94, 409 S.E.2d 785 (1991).
  - "[E]mployment, or lack of it, is a well-understood and recognized consideration in the exercise of peremptory challenges." *State v. Williams*, 379 S.C. 399, 665 S.E.2d 228 (Ct. App. 2008).
  - Examples where place of employment found sufficient for strike:
    - a. Juror worked at a business where defense attorney's brother was a manager, *State v. Short*, 333 S.C. 473, 511 S.E.2d 358 (1999); and
    - b. Juror worked as a newspaper editor and might have knowledge of story about the case, *State v. Edwards*, 384 S.C. 504, 510-511, 682 S.E.2d 820,

- 823(2009).
2. relationship with law enforcement, *see, e.g., State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990);  
Examples from *State v. Johnson, supra*:
    - a. potential juror #1's neighbor had been arrested by one of the officers involved in the case;
    - b. potential juror #2 lived near and frequented an establishment which had had great conflict with the law enforcement of the county;
    - c. potential juror #3's brother had an indictment against him;
    - d. potential juror #4 lived in close proximity to the defendant; and
    - e. potential juror #5 lived next door to and had a close relationship with a man who had recently been convicted of a drug offense.Other example:
    - a. Juror's employment with DMV resulting in interaction with law enforcement on a regular basis. *State v. Edwards, supra*;
  3. knowledge of and association with the defendant, *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990), or defense attorney, *State v. Lewis*, 293 S.C. 107, 359 S.E.2d 66 (1987); and
  4. past prosecution by that particular Solicitor's office. *See, e.g., State v. Dyar*, 317 S.C. 77, 452 S.E.2d 603 (1994).
  5. possible criminal record, *see, e.g., State v. Martinez*, 294 S.C. 72, 362 S.E.2d 641 (1987);
  6. prior jury service, *see, e.g., State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999);
  7. recipient of prior strike in another trial, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);
  8. demeanor, *see, e.g., State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997);  
Examples:
    - a. apparent disinterest in court, *see, e.g., State v. Guess*, 318 S.C. 269, 457 S.E.2d 6 (1995); *United States v. Hendrieth*, 922 F.2d 748 (1991) (rubbing and rolling eyes during *voir dire*);
    - b. appeared to be slow, *see, e.g., State v. Guess, supra*;
    - c. appeared to be too intelligent, *see, e.g., State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996);
    - d. vacillated in response to *voir dire* questions, *see, e.g., State v. Elmore*, 330 S.C. 130, 386 S.E.2d 769 (1988); and
    - e. trouble with abstract thinking and lacking in understanding of court process, *see, e.g., State v. Tucker*, 334 S.C. 1, 512 S.E.2d 99 (1999).*But see State v. Wright*, 304 S.C. 529, 405 S.E.2d 825 (1991), and relevant cases below, where demeanor was not a sufficient basis for a strike.
  9. third party's decision to strike *if* that person's clear and reasonably specific reason is provided, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);  
Examples:
    - a. officer's apparent knowledge that a potential juror had an anti-law enforcement bias, *State v. Richburg*, 304 S.C. 162, 403 S.E.2d 315 (1991);
    - b. trooper's personal contact with venirepersons and belief they may hold anti-law enforcement bias, *State v. Smith*, 321 S.C. 471, 469 S.E.2d 57 (Ct. App. 1996); and

- c. lead detective knew that venireperson was a high-strung, critical person who would be a polarizing force on jury. *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999).
10. being late for jury duty, *see, e.g., State v. Wilder*, 306 S.C. 535, 413 S.E.2d 323 (1991) (even though two black men and one white woman were late, solicitor's reason for seating the woman was acceptable where she overcame her lateness by saying that she did not want to be excused and was there to serve at the pleasure of the court);
11. "general instability" (based on the juror's having changed employment several times after short periods of work, having had a child out of wedlock, and still living with her parents), *see, e.g., State v. Robinson*, 305 S.C. 469, 409 S.E.2d 404 (1991), *cert. denied*, 503 U.S. 937, 112 S. Ct. 1477 (1992);
12. youth, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);
13. inappropriate dress all week, *see, e.g., id.*; and
14. acquaintance with one of the attorneys of the principal in the case where the defendant was on trial for accessory before the fact of murder. *State v. Lewis*, 293 S.C. 107, 359 S.E.2d 66 (1987).

Insufficient Reasons for Strike:

1. generalization about an entire group, *see Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205 (1998);  
Examples:
  - a. "redneck," *see id.*; and
  - b. Democrat, *see Foster v. Spartanburg Hospital System*, 314 S.C. 282, 442 S.E.2d 624 (Ct. App. 1994).
2. reason that is not specifically clear and reasonably specific (*e.g.*, desire to seat other jurors who had not yet been presented), *see State v. Grandy*, 306 S.C. 224, 411 S.E.2d 207 (1991);
3. third party's decision to strike without a clear and reasonably specific reason provided, *see State v. Marble*, 311 S.C. 23, 426 S.E.2d 744 (1992);  
Examples:
  - a. solicitor's investigator said "do not take him" and victim agreed, since there was no assurance that they did not base their decision on the juror's race, *see id.*; and
  - b. docket clerk had put question marks by the juror's name, which solicitor said he believed indicated that he had a possible criminal record; however, a white juror with question marks by his name was not struck, *see State v. Adams*, 307 S.C. 368, 415 S.E.2d 402 (1992);
4. potential juror's disinterested attitude and demeanor observed throughout three days of courtroom proceedings, which was contrasted with other jurors who appeared to be interested, *see State v. Wright*, 304 S.C. 529, 405 S.E.2d 825 (1991);
5. potential juror who "shucked and jived" to the microphone, *see State v. Tomlin*, 299 S.C. 294, 384 S.E.2d 707 (1989); and
6. potential juror, a 43-year-old black woman, who the solicitor said "walked slow, talked low and might not be able to withstand the trial" (especially when, rather than inquiring into the legitimacy of this explanation, the trial court suggested that the potential juror had a lack of education, was extremely sluggish and would be a "filler" if seated on the jury). *Id.*

**Step Three: The Argument of Mere Pretext**

The opponent of the strike must show that the race- or gender-neutral explanation given was mere pretext, either by showing that:

- a. similarly situated members of another race or gender were seated; or
- b. the reason for the strike is so fundamentally implausible as to constitute mere pretext, despite a lack of disparate treatment.

*State v. Edwards*, 384 S.C. at 508-509, 682 S.E.2d at 822; *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999); *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996); *Purkett v. Elem*, *supra*.

A mere conclusory assertion of racial motivation is insufficient. *State v. Flynn*, 368 S.C. 83, 627 S.E.2d 763 (Ct. App. 2006) (where State said it believed black juror was liberal based on her employment, and defendant, white male, offered no evidence of pretext).

The composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination. *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990).

**Examples:**

1. The defendant did not make out a *prima facie* case of discrimination where the prosecutor struck four black jurors, because he also seated four black people on the jury and seated two black alternates. *State v. Haigler*, *supra*. See also *State v. Elmore*, 300 S.C. 130, 386 S.E.2d 769 (1989).
2. The State's reason for striking black jurors was a pretext, because it was not applied in a neutral manner, where the reason given for striking the jurors was that they were patients of a doctor who was a defense witness, but a white juror was not struck who was also a patient of the doctor. *State v. Oglesby*, 298 S.C. 279, 379 S.E.2d 891 (1989).

The uneven application of a neutral reason does not automatically result in a finding of discrimination if the strike's proponent provides a race- or gender- neutral explanation for the inconsistency. *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995) (where State provided racially neutral explanation for why it did not strike juror with similar characteristics to one previously stricken); *State v. Wright*, 354 S.C. 48, 579 S.E.2d 538 (Ct. App. 2003), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

The State does not have to indicate whether the same standards used to strike black jurors were applied to white jurors who were seated, since the defense has the burden to prove that the State's allegedly neutral reasons were pretextual because they were not applied in a neutral manner. *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990) (no evidence presented that white juror seated who had same disqualification as black jurors who were struck).

Once a discriminatory reason has been uncovered, it taints the entire jury selection procedure. Therefore, where more than one reason is offered for a strike, and one of the reasons is found to be pretextual or discriminatory, the proponent of the strike fails to rebut the opponent's *prima facie* case of discrimination. *Payton v. Kearsse*, 329 S.C. 51, 495 S.E.2d 205 (1998); *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *affirmed*, 327 S.C. 121, 489 S.E.2d 617 (1997) (where court properly refused to accept black juror's demeanor as racially neutral explanation for defendant's strike, when defense counsel failed to point out any specific examples of why his demeanor was disliked, and that reason was offered as explanation only after previous explanation was rejected as not being racially neutral).

**The Burden of Persuasion**

The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike. *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996).

In deciding whether the opponent of a strike has carried the burden of persuasion, a court must undertake a sensitive inquiry into the circumstantial and direct evidence of intent. A strike must be examined in light of the circumstances under which it is exercised, including an examination of the explanations offered for other strikes. *State v. Oglesby*, 298 S.C. 279, 379 S.E.2d 891 (1989).

Whether a party's proffered reason for exercising a peremptory strike is discriminatory must be determined by examining the totality of the facts and circumstances in the record. *Riddle v. State*, 314 S.C. 1, 443 S.E.2d 557 (1994), *reversed on other grounds*, *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

The ultimate question is whether the moving party has met his burden in demonstrating purposeful discrimination. *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996).

Implausible or fantastic justifications may be found to be pretexts for purposeful discrimination. *Purkett v. Elem*, 514 U.S. 765, 115 S. Ct. 1769 (1995); *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 822. However, the appellate court will not disturb the trial judge's decision to deny a *Batson* motion unless the ruling is clearly erroneous (even if the court is "skeptical" about a party's reasons for a strike). *State v. Wright*, 354 S.C. 48, 579 S.E.2d 538 (Cl. App. 2003), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

The trial court must often base its decision on credibility determinations. *State v. Green*, 306 S.C. 94, 409 S.E.2d 785 (1991), *cert. denied*, 503 U.S. 962, 112 S. Ct. 1566 (1992).

The "[trial] court's ruling turns on an examination of 'the totality of the facts and circumstances in the record,' including the 'credibility and demeanor' of the strike's proponent, and the plausibility of a neutral, but otherwise unpersuasive, reason." *State v. Casey*, 325 S.C. 447, 452, 481 S.E.2d 169, 172 (Cl. App. 1997) (citations omitted).

However, where the trial court's findings are not supported by evidence in the record, such findings will be overturned. *Id.*

**Disclosure of Evidentiary Support for Strikes**

The proponent of a strike need not present evidentiary support for the strike. *State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Cl. App. 1997) (e.g., juror's NCIC report).

The general rule is that absent statute or court rule, there is no right to discovery in a criminal case. *State v. Childs*, 299 S.C. 471, 473-74, 385 S.E.2d 839, 841 (1989).

**Death Penalty Jurors**

Vacillating responses to *voir dire* questions will support the use of a peremptory strike, even though merely expressing scruples against the death penalty would not be sufficient to excuse the juror for cause. *State v. Bell*, 305 S.C. 11, 406 S.E.2d 165 (1991), *cert. denied*, 502 U.S. 1038, 112 S. Ct. 888 (1992).

Given the severity of capital punishment, coupled with searching *voir dire* interrogations, it is understandable that juror responses about the death penalty are frequently marked by inconsistency and vacillation. Under such circumstances, the solicitor may view the entirety of a juror's *voir dire* responses in determining whether to accept or reject a prospective juror. Where the responses are susceptible of more than one conclusion, the Supreme Court will not substitute its own opinion for that of the solicitor. *State v. Woodruff*, 300 S.C. 265, 387 S.E.2d 453 (1989); *State v. Patterson*, 302 S.C. 384, 396 S.E.2d 366 (1990), *vacated on other grounds*, 500 U.S. 950, 111 S.Ct. 2253 (1991), *on remand* 307 S.C. 180, 414 S.E.2d 155 (1992).

**Examples:**

1. The State's exercise of a peremptory strike was valid against a potential juror who was reluctant to answer death penalty questions and had several children the same age as the defendant, but who had ultimately told the judge that she could vote for the death penalty. *State v. Bell, supra*.
2. The State's reason for exercising peremptory challenges against three black jurors – reluctance to impose the death penalty – was racially neutral, even though the State did not challenge a white juror who admitted that she would have difficulty in signing a death penalty verdict but who also testified that she was not strongly disposed either for or against the death penalty. *State v. Woodruff, supra*. See also *State v. Patterson, supra*.

**After a Batson Motion is Granted**

If the trial judge finds that the defendant has established a *prima facie* case of purposeful discrimination and that the solicitor has failed to give racially neutral reasons for the contested peremptory strikes, the judge must set aside the petit jury and the process of selecting jury will start over. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

The trial court's findings regarding purposeful discrimination are given great deference and will be set aside on appeal only if clearly erroneous. *State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999).

However, when the record does not support a party's stated reason for a strike, the trial court's findings will be overturned that are based on that reason. *Id.*

It is harmless error for trial judge to seat juror after he finds she was struck in discriminatory manner, rather than just to start jury selection process over. Seating juror who has once been improperly struck in violation of *Batson* is not by itself an impairment or denial of that party's right to peremptory challenges. No prejudice results from the failure to strike the entire jury, when the defendant's right to exercise peremptory strikes was not impaired and the selection process provided him with the same choices he enjoyed the first time, with the exception of that one juror. *State v. Heyward*, 357 S.C. 577, 594 S.E.2d 168 (Ct. App. 2004).

**Striking a Juror after Batson motion**

A trial judge can prohibit a strike against a potential juror who was previously stricken in violation of *Batson*. *State v. Franklin*, 318 S.C. 47, 456 S.E.2d 357 (1995).

However, where jurors originally stricken in the first jury that the judge quashed after an erroneous *Batson* finding are seated on the subsequent jury, the resulting conviction must be reversed. *State v. Short*, 333 S.C. 473, 511 S.E.2d 358 (1997).

A party may strike the same juror after the first jury has been quashed after a *Batson* finding if he

has new facts supporting the strike. *State v. Franklin, supra*. However, any "new" reason supporting a strike must be analyzed in light of *Payton v. Kearsse*, 329 S.C. 51, 495 S.E.2d 205 (1998), which held that once a discriminatory reason has been uncovered, it taints the entire jury selection procedure.

Where a codefendant gives a reason for striking a juror that is found to be not racially neutral, a defendant cannot try to strike her again for another reason. Once a juror has been unconstitutionally stricken, the jury selection process is tainted. If the trial court chooses to reset the improperly stricken juror, the striking party cannot use a strike to remove that juror a second time. *State v. Lewis*, 363 S.C. 37, 609 S.E.2d 515 (2005) (where Court deferred to trial court's opinion that codefendants acted in concert when using strikes first time).

There is no *Batson* violation when a juror against whom a party would have exercised a preemptory challenge is ultimately seated on the jury. The *Batson* right of a juror to equal protection is not abridged if the juror is seated. *State v. Short, supra*; *State v. Adams*, 307 S.C. 368, 415 S.E.2d 402 (1992).

"If a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice; however, if one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed in such cases, because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged, and in that case, the proper remedy is the granting of a new trial." *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 823. See also *State v. Rayfield*, 369 S.C. 106, 631 S.E.2d 244 (2006) (Court admonished prosecutors against frivolous *Batson* motions)

To determine if there has been a constitutional violation in jury qualification, the appellate court will use a three-step analysis:

1. the defendant must show he used all of his preemptory challenges;
2. the court then considers whether the juror was erroneously qualified; and
3. if so, the defendant must show he was deprived of a fair trial.

If the erroneously qualified juror was never seated, then the defendant cannot claim he was deprived of a fair trial by an unbiased jury. *Green v. Maynard*, 349 S.C. 535, 564 S.E.2d 83 (2002), citing *United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774 (2000).

A footnote in *Green v. Maynard, supra*, states that a claim based on the denial of a strike can still be made if, after being forced to use a preemptory strike on an erroneously qualified juror, a defendant can show he was deprived of a subsequent strike he would have exercised, and to which he would have been entitled, but for the forced strike. Such a claim may be preserved by stating for the record an articulable objection to a subsequently presented juror.

There does not need to be a showing of actual prejudice for an appellate court to find reversible error for the denial or impairment of a party's right to a preemptory challenge. Of course, before reversible error can be found, the complaining party must establish the denial of his right to exercise a preemptory challenge. *State v. Short, supra*

#### D. OPENING STATEMENTS

##### Purpose and Scope of Opening Statements

An opening statement serves to inform the jury of the general nature of the action and defenses

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

STATE OF SOUTH CAROLINA )

-VS-

WILLIAM O. DICKERSON )  
Defendant

FILED

2009 MAR 30 AM 10:50

IN THE COURT OF GENERAL SESSIONS

FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 06-GS-10-2981, -3142

JULIE J. ARMSTRONG )  
CLERK OF COURT

BY J.P.

MOTION TO DISMISS THE DEATH PENALTY  
DUE TO UNCONSTITUTIONALITY  
OF STATE PROPORTIONALITY REVIEW

Counsel for the defense will move before the Circuit Court on April 3, 2009, or as soon as this matter may be heard, for a hearing on the defendant's motion to dismiss the death penalty due to the unconstitutionality of the State's method of proportionality review.

State law, as well as the Eighth Amendment, requires the state appellate court to conduct a proportionality review to determine if a defendant's death sentence is "proportionate" and/or constitutes cruel and unusual punishment. *See* S.C. Code § 16-3-25(C)(3). Current case law as set forth by the S.C. Supreme Court employs only other cases involving a death-sentenced inmate, and intentionally excludes cases in which a death-eligible defendant was sentenced to a sentence less than death.

This practice is constitutionally flawed. The S. C. Supreme Court fails to consider, and deliberately excludes, cases in which the defendant was not sentenced to death, and provides a perfunctory review. This is contrary to both the statute and the Eighth Amendment.

The statute, S.C. Code § 16-3-25(C)(3), reads as follows:

With regard to the sentence, the court shall determine: ... Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

The Court's practice to intentionally exclude from the comparable class of cases as to

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ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., S.S. & FC  
By Mark Carter  
DEPUTY CLERK

EXHIBIT  
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Applicant  
5-314

proportionality those defendants who were death-eligible but sentenced to a sentence less than death is arbitrary, and contrary to the jurisprudence of the United States Supreme Court. Recently, in *Walker v. Georgia*, 555 U.S. \_\_\_, 129 S. Ct. 481, 129 S. Ct. 453, 172 L. Ed.2d 344, 2008 U.S. LEXIS 7763555 (2008) (cert. den.) (Stevens, J.; dissenting from denial of certiorari),<sup>1</sup> Justice Stevens outlines the line of cases which mandate that proportionality review not be a mere perfunctory or exclusive exercise. See *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Zant v. Stephens*, 462 U.S. 862 (1983). Indeed, the practice of the Georgia Supreme Court, which Justice Stephens derides as patently unconstitutional, includes the consideration of cases in which death was not imposed, but where the court has conducted a perfunctory review:

Rather than perform a thorough proportionality review to mitigate the heightened risks of arbitrariness and discrimination in this case, the Georgia Supreme Court carried out an utterly perfunctory review. Its undertaking consisted of a single paragraph, only the final sentence of which considered whether imposition of the death penalty in this case was proportionate as compared to the sentences imposed for similar offenses. And even then the court stated its review in the most conclusory terms ... Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment.

*Walker*, 129 S.Ct. at 455-456, 172 L. Ed.2d at 345-346 (Stevens, J., dissenting).

By comparison, the S.C. Supreme Court review on proportionality also consists of conclusory paragraphs in virtually each and every case, and specifically *excludes* cases in which death was not imposed. By way of example, the following are S.C. Supreme Court decisions on proportionality, in their entirety, on this significant legal constitutional requirement:

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<sup>1</sup> Counsel for the defendant acknowledges that *Walker* is not precedent since it was a denial of certiorari. However, Justice Stevens' dissenting opinion outlines in clear detail the constitutional argument against an arbitrary application of proportionality review. (A copy is attached for reference).

In *State v. Stone*, 376 S.C. 32, 36-37, 655 S.E.2d 487, 489 (2007):

Our review of similar prior cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. See *State v. Sapp*, 366 S.C. 283, 621 S.E.2d 883 (2005) (holding that the death penalty was warranted where defendant killed a law enforcement officer while the officer was performing his official duties); *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999) (same); and *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991) (same).

Likewise, in *State v. Bowman*, 366 S.C. 485, 502-503, 623 S.E.2d 378, 387 (2006):

Under State law, S.C. Code Ann. § 16-3-25(C)(3) (2003) requires us to determine in a death case “[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.” There is no requirement the sentence be proportional to any particular case; however, death sentences have been imposed in similar cases. See *State v. Binney*, 362 S.C. 353, 608 S.E.2d 418, cert. denied, 2005 WL 1333888 (2005); *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689, cert. denied, 519 U.S. 972 (1996). Accordingly, appellant’s sentence is not disproportionate under State law.

Similarly, in *State v. Evins*, 373 S.C. 404, 422, 645 S.E.2d 904, 913 (2007):

We have conducted the proportionality review as required by S.C. Code Ann. § 16-3-25(C), and we find the sentence in this case was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of similar cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004) (death sentence warranted where defendant was convicted of murder, kidnapping, and first-degree criminal sexual conduct with a minor); *State v. Stokes*, 345 S.C. 368, 548 S.E.2d 202 (2001); *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999) cert. denied 528 U.S. 1050, 120 S. Ct. 588, 145 L. Ed. 2d 489 (1999); *State v. Tucker*, 319 S.C. 425, 462 S.E.2d 263 (1995) cert. denied 516 U.S. 1080, 116 S. Ct. 789, 133 L. Ed. 2d 739 (1996).

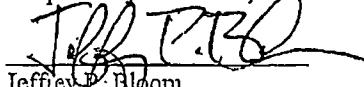
Additional capital cases could be cited with virtually identical results and language. The current proportionality review in South Carolina – both as interpreted by the State Supreme Court and as applied – fails under an Eighth Amendment analysis. The Court deliberately excludes capital cases in which a sentence less than capital punishment was imposed. The Court conducts a cursory and conclusory review of the cases under proportionality. Finally, the Court has never, since the

reinstatement of capital punishment in 1976, found a case to be disproportionate. This means that for over 30 years, the Court has never – not once – found a case to qualify under the statute or Eighth Amendment review to be disproportionate and thus ineligible for the death penalty.

Thus, this provides a system of proportionality review in name only, thereby rendering it an unconstitutional system of review under the Eighth Amendment as well as the statute. Therefore, defense counsel requests the Circuit Court to dismiss the death penalty for the reasons stated herein.


This Motion is made pursuant to *Zant v. Stephens*, 462 U.S. 862 (1983); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972); the U.S. Constitution Amend. 5, 6, 8, and 14; S.C. Constitution Art. I §§ 3, 14, 15, and other applicable law.

Respectfully submitted,



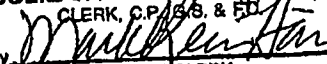
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JULIE J. ARMSTRONG  
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BY   
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Cite as: 555 U. S. \_\_\_\_ (2008)

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Statement of STEVENS, J.

**SUPREME COURT OF THE UNITED STATES**

**ARTEMUS RICK WALKER v. GEORGIA**

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF GEORGIA**

No. 08-5385. Decided October 20, 2008

The petition for a writ of certiorari is denied.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

The question presented by the petition for certiorari is whether Georgia's current administration of its death penalty violates the Eighth Amendment's guarantee against arbitrariness and discrimination in capital sentencing. Specifically, petitioner charges that the Georgia Supreme Court has "fail[ed] to: (1) conduct meaningful proportionality review, and (2) enforce reporting requirements under Georgia's capital sentencing scheme," as is required to ensure that only the most culpable offenders are put to death. Pet. for Cert. i. In its response to the petition, the State persuasively argues that petitioner did not raise and litigate these claims in state court. That argument provides a legitimate basis for this Court's decision to deny review. I write separately to emphasize that the Court's denial has no precedential effect, see *Teague v. Lane*, 489 U. S. 288, 296 (1989), and to note that petitioner's submission is supported by our prior opinions evaluating the constitutionality of the Georgia statute.

Justice Stewart was the principal architect of our death penalty jurisprudence during his tenure on the Court. In his separate opinion in *Furman v. Georgia*, 408 U. S. 238 (1972) (*per curiam*), he observed that death sentences imposed pursuant to Georgia's capital sentencing scheme were "cruel and unusual in the same way that being struck by lightning is cruel and unusual." *Id.*, at 309

## Statement of STEVENS, J.

(concurring opinion). The Georgia statute in effect at that time placed unfettered discretion in the hands of juries, resulting in the arbitrary, and often discriminatory, issuance of capital sentences. Justice Stewart concluded that the Eighth Amendment cannot tolerate the infliction of a death sentence under a legal system that permits this unique penalty to be wantonly and freakishly imposed. *Id.*, at 310.

The Georgia Legislature amended its capital sentencing scheme after *Furman*, and a challenge to the new scheme reached this Court in *Gregg v. Georgia*, 428 U. S. 153 (1976). Our decision in that case to uphold the later enacted statute was founded on an understanding that the new procedures the statute prescribed would protect against the imposition of death sentences influenced by impermissible factors such as race. Among the new procedures was a requirement that the Georgia Supreme Court "compar[e] each death sentence with the sentences imposed on similarly situated defendants to ensure that the sentence of death in a particular case is not disproportionate." *Id.*, at 198 (joint opinion of Stewart, Powell, and STEVENS, JJ.). We assumed that the court would consider whether there were "similarly situated defendants" who had *not* been put to death because that inquiry is an essential part of any meaningful proportionality review.

That assumption was confirmed a few years later in *Zant v. Stephens*, 462 U. S. 862 (1983). The question in that case was whether a death sentence was valid notwithstanding the jury's reliance on an invalid aggravating circumstance. As in *Gregg*, our decision to uphold the sentence "depend[ed] in part on the existence of an important procedural safeguard, the mandatory appellate review of each death sentence by the Georgia Supreme Court to avoid arbitrariness and to assure proportionality." 462 U. S., at 890. In response to our certified question regarding the operation of the State's capital sentenc-

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## Statement of STEVENS, J.

ing scheme, the Georgia Supreme Court expressly stated that its proportionality review “uses for comparison purposes not only similar cases in which death was imposed, but similar cases in which death was not imposed.” *Id.*, at 880, n. 19.<sup>1</sup> That approach seemed judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court.

The opinions in another Georgia case, *McCleskey v. Kemp*, 481 U. S. 279 (1987), make it abundantly clear that there is a special risk of arbitrariness in cases that involve black defendants and white victims. See also *Turner v. Murray*, 476 U. S. 28, 33–37 (1986) (plurality and majority opinions) (discussing the heightened risks of prejudice that inhere in the prosecution of interracial capital offenses). Although there is some indication that those risks have diminished over time, at least the race-of-victim effect persists. See Baldus & Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 *DePaul L. Rev.* 1411, 1424–1426 (2004).

It is against that backdrop that I find this case, which involves a black defendant and a white victim, particularly

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<sup>1</sup>The salient aspects of Georgia’s capital sentencing scheme have changed little since we evaluated them in *Gregg and Zant*. By statute, the State must prove at least one of an enumerated list of aggravating circumstances for an offense to be death eligible. Ga. Code Ann. §17–10–30(b) (2008). The jury then has complete discretion to weigh all aggravating and mitigating factors in determining the sentence. Georgia law requires the State Supreme Court to review each death sentence to determine whether it “was imposed under the influence of passion, prejudice, or any other arbitrary factor” and whether it “is excessive or disproportionate to the penalty imposed in similar cases.” §17–10–35(c). The trial court must in each case transmit the entire record and transcript, along with a special report prepared by the trial judge, to facilitate appellate review. §17–10–36(a).

## WALKER v. GEORGIA

## Statement of STEVENS, J.

troubling. The State's evidence showed that, on the night of the murder, petitioner and an accomplice drove to the victim's home. After petitioner drew the victim outside, the two engaged in a struggle and petitioner stabbed the victim 12 times. While his accomplice collected the victim's wallet, petitioner used the victim's keys to try to gain access to his house, stating that he "had 'one more to kill.'" When a woman inside the house yelled that she had a gun, petitioner and his accomplice fled. 282 Ga. 774, 775, 653 S. E. 2d 439, 443 (2007). The jury found petitioner guilty of murder, felony murder, armed robbery, aggravated assault, attempted burglary, and possession of a firearm during the commission of a crime. After the penalty phase proceeding, the jury concluded that the State had proved five statutory aggravating factors (two of which the Georgia Supreme Court later found invalid, *id.*, at 781, 653 S. E. 2d, at 447), and it sentenced petitioner to death.

Rather than perform a thorough proportionality review to mitigate the heightened risks of arbitrariness and discrimination in this case, the Georgia Supreme Court carried out an utterly perfunctory review. Its undertaking consisted of a single paragraph, only the final sentence of which considered whether imposition of the death penalty in this case was proportionate as compared to the sentences imposed for similar offenses. And even then the court stated its review in the most conclusory terms: "The cases cited in the Appendix support our conclusion that [petitioner's] punishment is not disproportionate in that each involved a deliberate plan to kill and killing for the purpose of receiving something of monetary value." *Id.*, at 782, 653 S. E. 2d, at 447-448. The appendix consists of a string citation of 21 cases in which the jury imposed a death sentence; it makes no reference to the facts of those cases or to the aggravating circumstances found by the jury.

Had the Georgia Supreme Court looked outside the

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Statement of STEVENS, J.

universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. See, e.g., *Jones v. State*, 279 Ga. 854, 622 S. E. 2d 1 (2005); *Spickler v. State*, 276 Ga. 164, 575 S. E. 2d 482 (2003); *Cross v. State*, 271 Ga. 427, 520 S. E. 2d 457 (1999); *Jenkins v. State*, 268 Ga. 468, 491 S. E. 2d 54 (1997); *LeMay v. State*, 265 Ga. 73, 453 S. E. 2d 737 (1995) (the circumstances of the offense are described in *LeMay v. State*, 264 Ga. 263, 443 S. E. 2d 274 (1994)); *Cobb v. State*, 250 Ga. 1, 295 S. E. 2d 319 (1982). If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. See, e.g., *Davis v. State*, 281 Ga. 871, 644 S. E. 2d 113 (2007); *Wiggins v. State*, 280 Ga. 627, 632 S. E. 2d 80 (2006); *Escobar v. State*, 279 Ga. 727, 620 S. E. 2d 812 (2005); *Stanley v. State*, 261 Ga. 412, 405 S. E. 2d 493 (1991). Cases in both of these categories are eminently relevant to the question whether a death sentence in a given case is proportionate to the offense.<sup>2</sup> The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.<sup>3</sup>

<sup>2</sup>JUSTICE THOMAS states that the Georgia Supreme Court in fact "considered a life sentence in its proportionality review" by examining the sentence of petitioner's accomplice. *Post*, at 6, n. 2. As the concurring opinion elsewhere notes, however, the accomplice "was ineligible for the death penalty because he was adjudged mentally retarded." *Post*, at 3. Because petitioner's accomplice is not a "similarly situated defendant," his life sentence does not provide a meaningful point of comparison.

<sup>3</sup>Moreover, even the conclusory review that the Georgia Supreme Court actually undertook was erroneous because it failed to use reasonable comparators. Had the court attended to the facts of the cases cited in the appendix, it would have noted that in almost 80 percent of

Statement of STEVENS, J.

Particularly troubling is that the shortcomings of the Georgia Supreme Court's review are not unique to this case. In the years immediately following *Gregg*, it was that court's regular practice to include in its review cases that did not result in a death sentence. That practice began to change around the time this Court decided *Pulley v. Harris*, 465 U. S. 37 (1984). We stated in that case that the Eighth Amendment does not require comparative proportionality review of every capital sentence. *Id.*, at 44-46; see also *McCleskey*, 481 U. S., at 306 ("[W]here the statutory procedures adequately channel the sentencer's discretion, such proportionality review is not constitutionally required"). But that assertion was intended to convey our recognition of differences among the States' capital schemes and the fact that we consider statutes as we find them, *id.*, at 45; it was not meant to undermine our conclusion in *Gregg* and *Zant* that such review is an important component of the Georgia scheme.<sup>4</sup>

them the defendant was convicted of two homicides, in contrast to the single homicide for which petitioner was convicted. See *Franks v. State*, 278 Ga. 246, 599 S. E. 2d 134 (2004); *Sealey v. State*, 277 Ga. 617, 593 S. E. 2d 835 (2004); *Arevalo v. State*, 275 Ga. 392, 567 S. E. 2d 303 (2002); *Raheem v. State*, 275 Ga. 87, 560 S. E. 2d 680 (2002); *DeYoung v. State*, 268 Ga. 780, 493 S. E. 2d 157 (1997); *Ferrell v. State*, 261 Ga. 115, 401 S. E. 2d 741 (1991). The court's reliance on such dissimilar comparators further undermines the risk-reducing function served by its review.

<sup>4</sup>JUSTICE THOMAS suggests that the Court in *McCleskey* "endorsed" precisely the same proportionality review undertaken by the Georgia Supreme Court in this case. *Post*, at 1. Notably, *McCleskey* did not challenge the scope of the state court's proportionality review. See Brief for Respondent in *McCleskey v. Kemp*, O. T. 1986, No. 84-6811, p. 29. It is thus unsurprising that this Court's brief discussion of the state court's review did not recognize or revisit our observation in *Zant v. Stephens*, 462 U. S. 862 (1983), regarding the usual content of that review, indeed, that portion of the Court's discussion does not acknowledge *Zant* at all. See 481 U. S., at 306. I hesitate to read into *McCleskey* this Court's endorsement of the Georgia Supreme Court's abridged proportionality review when that issue was neither briefed by

Cite as: 555 U.S. \_\_\_\_ (2008)

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Statement of STEVENS, J.

Since *Pulley*, the Georgia Supreme Court has significantly narrowed the universe of cases from which it culls comparators. It now appears to be the court's practice never to consider cases in which the jury sentenced the defendant to life imprisonment. See Note, 39 Ga. L. Rev. 631, 657 (2005) (determining that in each of 55 capital cases reviewed by the Georgia Supreme Court between 1994 and 2004, the court exclusively considered other cases resulting in a death sentence). This is not the review that the Georgia Supreme Court represented to us in *Zant*. And the likely result of such a truncated review—particularly in conjunction with the remainder of the Georgia scheme, which does not cabin the jury's discretion in weighing aggravating and mitigating factors—is the arbitrary or discriminatory imposition of death sentences in contravention of the Eighth Amendment.

Petitioner also notes a second failure of the Georgia Supreme Court's review in this case. In all capital cases, Georgia law requires the trial court to transmit, along with the entire record and transcript, a detailed report prepared by the trial judge describing the defendant's history and the circumstances of the case. Ga. Code Ann. §17-10-35(a). Although it has previously admonished trial courts of the necessity of complying with this rule, see *McDaniel v. State*, 271 Ga. 552, 553, 522 S. E. 2d 648, 650 (1999), the Georgia Supreme Court in this case neglected to enforce it. This breakdown in the statutory process is especially troubling when viewed in light of the other shortcomings of that court's review. "When a defendant's life is at stake, th[is] Court has been particularly sensitive to insure that every safeguard is observed." *Gregg*, 428 U. S., at 187 (joint opinion of Stewart, Powell, and STEVENS, JJ.). The Georgia Supreme Court owes its capital litigants the same duty of care and must take

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the parties nor thoroughly considered by the Court.

8

WALKER v. GEORGIA

Statement of STEVENS, J.

seriously its obligation to safeguard against the imposition of death sentences that are arbitrary or infected by impermissible considerations such as race.

FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
IN THE COURT OF GENERAL SESSIONS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No. 06-GS-10-2981, -3142

2009 MAR 30 AM 10:00  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
BY )  
-VS- )  
WILLIAM O. DICKERSON )  
Defendant )

σ. H  
MOTION TO BAR  
THE DEATH PENALTY  
BASED UPON RACE

Counsel will move for the Court to bar the State from seeking the death penalty based upon race, at a hearing of April 3, 2009, or as soon as this matter can be heard.

On information and belief, the State sought the death penalty in this case based upon the race of the victim and/or the defendant.<sup>1</sup> The State's intention was to seek and obtain the death penalty where an African-American victim was at issue, in response to public pressure and outcry that the State only sought the death penalty where white victims were involved.

Prosecutorial discretion is an important tool in the administration of justice, as long as it is exercised properly. Generally speaking, courts will allow prosecutors wide latitude in making the discretionary judgments necessary to carry out their duties. *Imbler v. Pachtman*, 424 U.S. 409 (1979); *McCleskey v. Kemp*, 481 U.S. 279, 286 (1987). This discretion is not limitless, however. Courts will step in where the prosecutor's exercise of his discretion discriminates against a class of people. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (selective enforcement against a distinct group of people based on their race violates Equal Protection), *Borkentirchir v. Hayes*, 434 U.S. 357 (1978) (vindictive prosecution against people for exercising other rights

<sup>1</sup> The State filed Notice of the death penalty on August 24, 2006.

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BY: *[Signature]*  
DEPUTY CLERK

EXHIBIT  
19  
Applicant

violates Due Process). Courts will also not tolerate the consideration of arbitrary factors such as race or religion in prosecutorial decision making. *Oyler*, 368 U.S. at 456, *Wayte*, 470 U.S. at 608, *Ex parte Littlefield*, 343 S.C. 212, 219, 540 S.E.2d 81, 84 (2000) (judiciary will review prosecutorial discretion where influenced by race, religion, or other arbitrary factors) (citing *State v. Needs*, 333 S.C. 134, 135, 508 S.E.2d 857, 862-63 (1998)). Race can never be an intentional factor, in any degree whatsoever, in the State's decision to seek death. *McKleskey v. Kemp*, 481 U.S. 279, 95 L.Ed.2d 262, 107 S.Ct. 1756 (1987); *Also See Batson v. Kentucky*, 476 U.S. 79 (1986) (Disallowing use of race in jury selection); *Turner v. Murray*, 476 U.S. 28, 90 L.Ed.2d 27, 106 S.Ct. 1669 (1986) (Allowing voir dire on race to probe for juror bias where black defendant charged with killing a white). The Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution bar the state from seeking death whenever race becomes a factor or consideration, such that discriminatory intent is established. *McKleskey, supra*.

The United States Supreme Court "has repeatedly stated that prosecutorial discretion cannot be exercised on the basis of race." *McKleskey*, 481 U.S. at 309, n.30 (citing cases). *McKleskey* specifically held that any proof that racial consideration had entered into a capital sentencing determination would mean that the sentence was unconstitutional under the Eighth and Fourteenth Amendments. *Id.* An inference of abuse of prosecutorial discretion motivated by racial discrimination may be made upon sufficient proof. *Id.* at 291 n.8 citing *Oyler v. Boles*, 368 U.S. 448, 456 (1962). Improper racial influences would create an unconstitutionally arbitrary application of a capital punishment system. *Id.* at 297.

Furthermore, the Supreme Court has held that a conviction violates a defendant's Fourteenth Amendment due process rights and cannot be sustained if it is obtained at a trial

wherein the prosecution was impelled by "community coercion." See *Hawk v. Olson*, 326 U.S. 271, 275 (1945). It can be no more proper for a prosecutor to *decide* to seek a death sentence in response to the pressures of racially-based community sentiment. By comparison, the U.S. Supreme Court recently reversed a death penalty case where evidence involved a history by the prosecutor's office of possible racial discrimination in jury selection. *Miller-el v. Cockrell*, 537 U.S. 322 (2003) (Remanding case for full evidentiary hearing).

The introduction of the extraneous considerations of the race of the decedents and the sentiments of a racial community into the Solicitor's decision to seek a death sentence against Applicant constitute such a fundamental violation of due process as to have given rise to a basic, systemic error, so tainting the process of justice that prejudice need not be shown to require reversal. See, e.g., *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991). Such errors affect "[t]he entire conduct of the trial from beginning to end" and deprive the defendant of "basic protections," without which " 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.' " *Id.* at 310 (quoting *Rose v. Clark*, 478 U.S. 570, 577-78 (1986)). "Errors of this type are so intrinsically harmful as to require automatic reversal ... without regard to their effect on the outcome." *Neder v. United States*, 527 U.S. 1, 7 (1999). If a criminal proceeding includes such an error, the resulting punishment "may [not] be regarded as fundamentally fair." *Rose*, 478 U.S. at 577-78.

The United States Supreme Court has paid particular attention to monitoring the improper intrusion of race into the criminal justice system. See, e.g., *Turnier v. Murray*, 476 U.S. 28 (1986) (defendants must be able to question jurors on their views about race); *Castaneda v. Partida*, 430 U.S. 482 (1977) (grand juries must be assembled in a race neutral manner); *Batson*

*v. Kentucky*, 476 U.S. 79 (1986) (lawyers may not consider race in jury selection).

In order to prove that the consideration of race by the prosecutor violated Equal Protection, a litigant must demonstrate that the prosecutor acted with discriminatory purpose in his case. *McCleskey*, 481 U.S. at 292. Once purposeful discrimination has been proven, the inquiry is over. The United States Supreme Court has explained that certain errors so infect the process that prejudice will be presumed. *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991). The injection of race into the earliest stages of criminal proceedings is one such instance. *See, e.g., Vasquez v. Hillary*, 474 U.S. 254, 263, 264 (1986) (racial discrimination in the selection of grand jurors).

Indeed, recently the Court again reiterated that state action is not ameliorated simply by a change in prosecutors: "...[W]e have held that, *once it is shown that a discriminatory intent was a substantial or motivating factor in an action taken by a state actor, the burden shifts to the party defending the action to show this factor was not determinative.*" *Snyder v. Louisiana*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1203, 1212, 170 L. Ed. 2d 175, 186 (2008) citing *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (*emphasis supplied*).

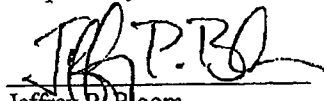
By way of example, in the capital-PCR case of *Kelly v. State* (Case No. 99-CP- 42-1174), trial counsel strongly suspected the prosecutor had sought the death penalty based on the race of the victim even though trial counsel had little evidence to actually present for the trial court. At PCR, the PCR Court granted relief on this issue (along with others), and also admonished trial counsel for failing to raise the issue of race whatsoever to the trial court. The PCR Order Granting Relief was affirmed on appeal by denial of certiorari by the S.C. Supreme Court. (Order of the S.C. Supreme Court, May 24, 2006). Similarly, in defendant Dickerson's case, the State

apparently sought the death penalty based upon the race of the victim.<sup>2</sup>

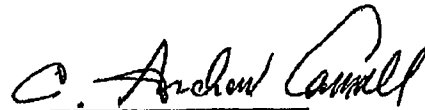
Therefore, counsel for the defendant seek the Court to issue an Order barring the State from seeking the death penalty based upon race.

This Motion is made pursuant to the U.S. Constitution Amend. 5, 6, 8, and 14; S.C. Constitution Art. I §§ 3, 14, 15; and other applicable law.

Respectfully submitted,

  
Jeffrey D. Bloom  
Counsel for the Defendant  
Dated: March 27, 2009

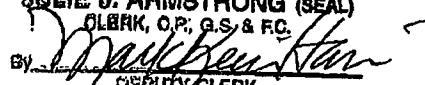
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Dated: March 27, 2009

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<sup>2</sup> The decedent, Gerard Roper, was African-American. The defendant is also African-American.

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BY   
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## Idle hands, more crime?

Effort to revamp anti-loitering law moves forward

Published on 08/16/06

BY TENISHA WALDO  
The Post and Courier

Nearly a dozen young people, many tugging at their low-hanging pants, lingered Tuesday near a "No Loitering" sign posted by Charleston police at Knight's Supermarket on the East Side. Some periodically sipped from bottles tucked in small paper bags, while others puffed, and then passed, cigarettes.

Bill Davis, 73, lives a couple of blocks down from the store and said sights like those frustrate him. "My thing is they've got signs posted on buildings, but they don't recognize that," he said. As a block captain there, Davis said he has suggested several times at neighborhood meetings that a law be passed to keep suspicious drug dealers and nuisance litterers off the street. City Council apparently agrees. Members decided Tuesday night to revamp a former anti-loitering ordinance to be more effective and better sustain potential court challenges.

The council reviewed a draft municipal law that would make it illegal to loiter in most public and private residential areas for unlawful purposes. Someone caught in violation could face a fine and up to 30 days in jail.

Although City Council did not vote on the proposed ordinance, Councilman Wendell Gilliard said he is hopeful it will be met with few challenges.

"The bottom line is we have to do something about this rash of crimes we have in the city," said Gilliard, who has suggested a curfew for minors.

The revised law stems from an increase in gun violence citywide. Davis blamed the upsurge on the growing number of wanderers hanging around street corners and near stores.

He said people in his neighborhood, especially the elderly, are afraid to take on the loiterers and often complain to him. They typically avoid any confrontation with the young people, he said.

"I'm sure they'd rather go the store right here on the corner for a loaf of bread versus walking to the Pig," Davis said. "But they're afraid to do that. They'd rather take the long route to Piggly Wiggly because of the congestion on the corners."

Charleston already has an anti-loitering clause in effect, but court decisions have rendered it unenforceable, said city corporation counsel Charlton deSaussure Jr.

The revised law would need to follow precedents set by the U.S. Supreme Court in a Chicago case where the court found the language too broad and vague. DeSaussure said the city is modeling the ordinance on a Milwaukee anti-loitering law that requires police to seek an explanation and proper identification from loiterers, as long as they don't flee upon approach.

"The ordinance would be drafted in a way which would be specific enough to address loitering, but not so broad as to potentially infringe upon people's constitutional rights," deSaussure said.

Jeremy Wright, 19, lives on the West Side and said he thinks black males might especially be targeted if police are given more leeway to stop people.

"They're going to take advantage of their badge, too, at the same time," said Wright, who was hanging out at the basketball court in Harmon Park on Tuesday afternoon. "If we see them coming, we're supposed to move. But if we move, then we're giving them a reason to come bother us."

Reach Tenisha Waldo at 937-5744

## It just keeps getting worse

### Rally aims to stem the violence

Published on 08/08/06

BY NOAH HAGLUND

The Post and Courier/

He's been shot. He's done time in the penitentiary. Now he owns his own contracting business. If there was a star of "Stop the Violence, End the Killings" forum at Burke High School Monday night, it was Demond McElveen.

Sometimes through tears, the 33-year-old owner of McElveen Home Improvement told of navigating his life through the treacherous waters of drugs, violence and expulsion from high school.

"I see so many young brothers who are out all night and they ask me, 'Can I work?' " said McElveen, one of several panelists. "There are a lot of them who really want an opportunity."

State Sen. Robert Ford, D-Charleston, promoted the forum as a way to stanch the ongoing violence in Charleston and North Charleston. In both cities,

homicides this year already have eclipsed totals for all of 2005. The majority of the victims and suspects have been young black males.

Panelists included a recent College of Charleston graduate, a criminologist, the 100 Black Men of Charleston chairman and the Crime Stoppers of the Lowcountry chairman.

But it was McElveen who drew a standing ovation with remarks about growing up feeling unwanted, feeling he had no future prospects.

"When you're in the streets, it seems that everything is targeted against you," he said. "Here in Charleston, young black men, we get treated like trash."

Several audience members and panelists urged people to mentor students, to get involved in their children's educations and to return to their religious values.

Without action nothing will improve, the crowd nodded in collective agreement.

"You don't just throw the seeds on the ground and expect a rose to grow," said audience member Adolph Meggett, 22.

The 2001 Burke graduate attends South Carolina State University, where he is a junior majoring in English education.

Football was his ticket out, he said, and he had a supportive family. He said he would like to return to Burke to teach

Meggett said schools like Burke aren't as well-equipped as others in the district, leaving Burke students with less chance for success.

Jerome Heyward, a community activist who helped put on the event, agreed, saying there were few opportunities, especially for those who don't have college ambitions. He gave this example:

"I'm a student at Burke High and I don't want to go to college. Who's going to help me? Nobody."

Reach Noah Haglund at

## Senator proposes death penalty for street killings

Published on 09/22/06

BY SCHUYLER KROPP

The Post and Courier

State Sen. Robert Ford has a plan to cut down on murders in the black community: Give the shooters the death penalty.

Gang murders. Drug deals gone bad. Drive-by shootings. All should automatically qualify for a seat on death row, he said.

As long as trigger-happy criminals know they can kill in turf wars and not be subjected to execution by the state, there's no reason for them to stop the gunfire, Ford, D-Charleston, said Thursday.

"It's a message we could send to these thugs who feel compelled to kill other people," Ford said.

Ford's comments came after the state Senate's newly formed Criminal Justice System Task Force met for more than six hours Wednesday in Columbia.

The Senate panel has formed at a time of surging gun violence in the Charleston area, as both Charleston and North Charleston have eclipsed their homicide totals for all of 2005. Each city had 11 slayings last year. Charleston has reported 16 so far this year, while North Charleston has recorded 17 killings.

A total of seven people have been slain in Charleston and Berkeley counties since the first week of September.

Under state law, prosecutors can seek the death penalty in a homicide only when there are aggravating circumstances: The crime must have been committed during a rape, an armed robbery or a kidnapping.

Ford said he is personally opposed to capital punishment, but that because it is a sentencing option, its use should be expanded to combat street crime. Although whites would be included in any changes, Ford contends such a measure would be especially effective in the black community.

"It should go on the table, and solicitors should do everything in their power to seek the death penalty," he said.

Ninth Circuit Solicitor Ralph Holsington of Charleston did not attend the meeting because he wasn't invited, he said. Reached Thursday, Holsington said many of the street crimes Ford is talking about may already qualify for the death penalty, depending on circumstances.

He said also that expanding the scope of crimes that qualify won't necessarily mean more convicted killers will be put to death. Death penalty juries "are very cautious," he said, usually reserving death for "the worst of the worst."

The dominant sentencing option in murder cases in South Carolina is 30 years to life without the possibility of parole, he said.

Last month, Holsington filed death penalty papers in the case of William Oliver Dickerson Jr., who is accused of kidnapping, torturing and murdering Gerard Roper inside a James Island apartment in March. The defendant is black, as was the victim. It is the county's first death penalty case since 2002.

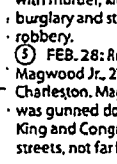
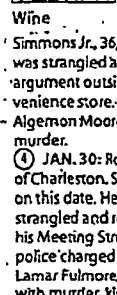
The Senate panel was assembled by Senate President Pro Tem Glenn McConnell, R-Charleston, to examine everything from law enforcement and courts, to prisons and probation, before presenting recommendations to the Judiciary Committee in time for the 2007 Statehouse session.

Reach Schuyler Kropp at 937-5551

# A deadly year

Here is a chronological listing of 2006 homicide victims in the tricounty area as of Saturday evening.

### CHARLESTON COUNTY



① JAN. 21: Robert Bailey, 31, of North Charleston. Robert was killed by a bullet fired into his home. North Charleston police charged Tehran Frazier, 16, of North Charleston, with murder. Authorities dismissed that charge in December to investigate further.

② JAN. 24: Gennaro Wine, 17, of North Charleston. Wine was shot in the head and left to die in the middle of Chateau Avenue. North Charleston police have made no arrests.

③ JAN. 26: Richard Simmons Jr., 36, of Charleston. Simmons was strangled and beaten during an argument outside a Meeting Street convenience store. Charleston police charged Algemon Moore, 28, of Awendaw, with murder.

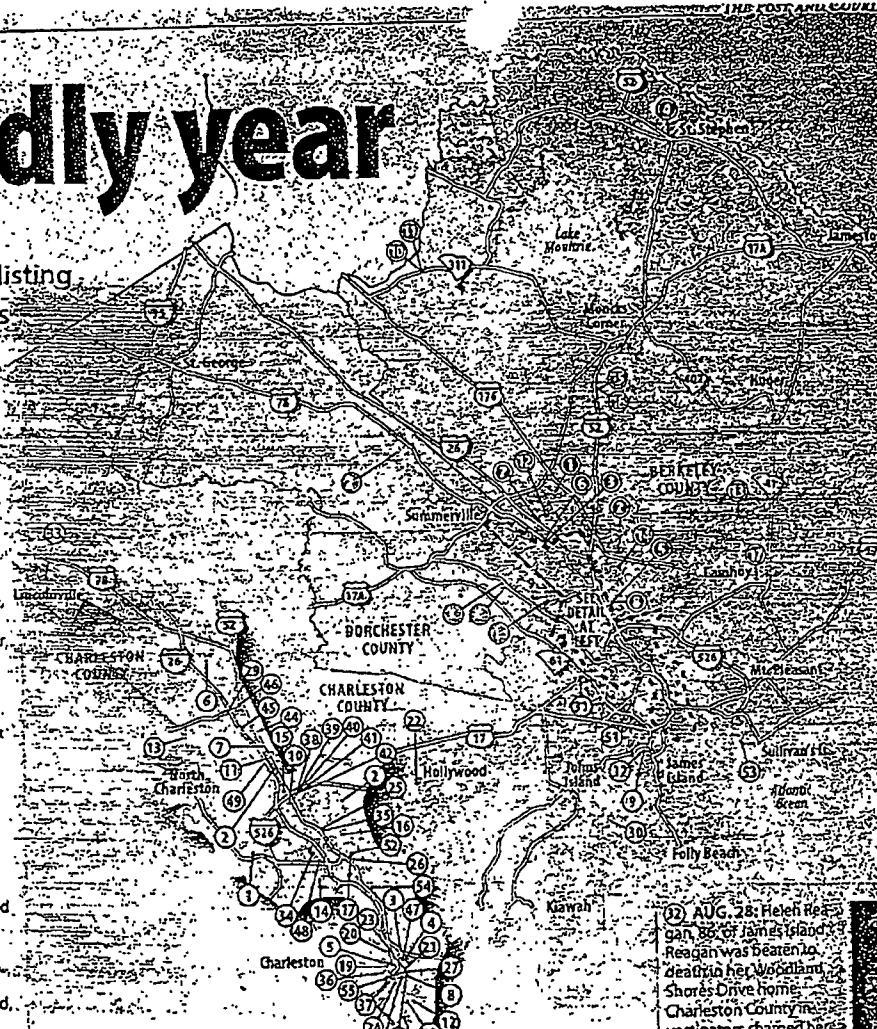
④ JAN. 30: Ronald Kenneth Shaffer, 63, of Charleston. Shaffer's body was found on this date. He had been bound, gagged, strangled and robbed by an intruder at his Meeting Street apartment. Charleston police charged city residents Wendell Lamar Fulmore, 40, and Michael Shine, 44, with murder, kidnapping, burglary and strong-arm robbery.

⑤ FEB. 28: Robert Magwood Jr., 27, of Charleston. Magwood was gunned down near King and Congress streets, not far from a

⑬ APRIL 27: Eric Jermaine Robinson, 24, of North Charleston. Robinson was shot in the head and his body hidden



⑫ MAY 16: Yearlong Lopez, 20, of



### The latest case

Charleston police were investigating a possible homicide-suicide on Morrison Drive late Saturday. More on this story on 1B

⑫ AUG. 28: Helen Reagan, 86, of James Island. Reagan was beaten to death in her Woodhurst Shores Drive home. Charleston County investigators charged her son, Allen Kent Agee, 54, of James Island, with murder.



Reagan

⑬ OCT. 2: Royce Cunningham, 24, of North Charleston. Cunningham was fatally shot in the neck at Birchwood Apartment on Stoke Avenue. North Charleston police



Cunningham

murder charges against Key Malik Smith, 26, of Charleston, and Anthony Dominick Wilder, 22, of Charleston, and Leo Conder

7139

police charge Lamar Fulm with murder, kidnapping, burglary and strong-arm robbery.

FEB. 28: Robert Magwood Jr., 27, of Charleston, Magwood was gunned down near King and Congress streets, not far from a temporary agency where he had been working. Charleston police have made no arrests.

MARCH 1: Antwan Lynn Williams, 28, of North Charleston, Williams was shot twice in the back and once in the arm in the yard of an Oltano Road apartment complex, North Charleston. Police charged Rashaad Banks, 19, of North Charleston with murder.

MARCH 2: Thomas Tremaine Hook, 31, of North Charleston, was robbed, shot five times and dumped out of a truck on Miles Avenue, North Charleston. Police charged Keddell Larry Corbett, 30, of North Charleston, with murder.

MARCH 6: Jason Lloyd, 33, of Charleston, Lloyd was shot to death near a South Street home where he had been staying. Charleston police charged Dominique Yurt Green, 24, of North Charleston, with murder.

MARCH 9: Gerard Roper, 29, of Charleston, Roper was kidnapped, tortured, strangled and dumped on the floor of a James Island home. Charleston police charged William Oliver Dickerson Jr., 29, of Charleston, with murder.

MARCH 25: Antwan Omar Bryant, 23, of North Charleston, Bryant was shot three times after an argument on Delta Street. North Charleston police charged Terrell Lynwood McCoy, 26, of North Charleston, with murder.

APRIL 1: Sidney JenKins, 22, of North Charleston, Jenkins was shot in the abdomen while helping to clear people from the Golden River restaurant on Rivers Avenue, North Charleston. Police charged Robert Laval Green, 18, of North Charleston, with murder.

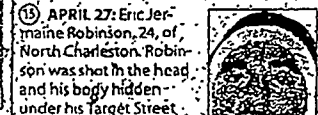
APRIL 1: Willie Cepal Williams, 42, of North Charleston, Williams was shot twice in the back and once in the arm in the yard of an Oltano Road apartment complex, North Charleston. Police charged Rashaad Banks, 19, of North Charleston with murder.

MARCH 27: Eric Jermaine Robinson, 24, of North Charleston, Robinson was shot in the head and his body hidden under his Target Street home. North Charleston police have obtained a warrant to charge his stepfather, Leonard Goodyin, 52, of North Charleston, with murder.

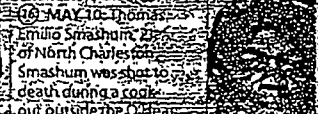
MAY 10: Thomas Emilio Smashum, 27, of North Charleston, Smashum was shot to death during a cook-out outside the Clear Avenue apartment building where he lived. North Charleston police charged Mitchell Lee Cain, 49, of North Charleston, with murder.

JUNE 3: Shantel Bryant, 19, of North Charleston, Bryant was stabbed to death inside her Kraft Avenue home during an argument. North Charleston police charged Fred Richardson, 34, of North Charleston, with murder.

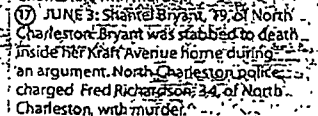
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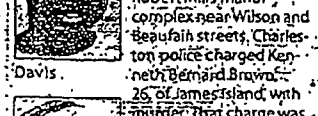
MAY 10: Thomas Emilio Smashum, 27, of North Charleston, Smashum was shot to death during a cook-out outside the Clear Avenue apartment building where he lived. North Charleston police charged Mitchell Lee Cain, 49, of North Charleston, with murder.



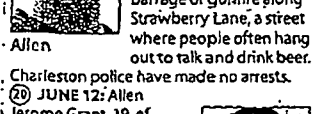
JUNE 3: Shantel Bryant, 19, of North Charleston, Bryant was stabbed to death inside her Kraft Avenue home during an argument. North Charleston police charged Fred Richardson, 34, of North Charleston, with murder.



JUNE 4: Demencio Davis, 17, of Charleston, Demencio was shot in the chest after confronting an adversary at the Robert Mills Mahor complex near Wilson and Beaufair streets, Charleston. Police charged Kenneth Bernard Brown, 26, of James Island, with murder. That charge was later dismissed.



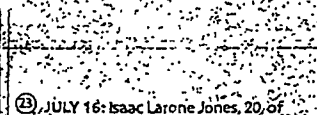
JUNE 4: Earl Allen, 27, of Charleston, Allen was killed after an argument escalated into a barrage of gunfire along Strawberry Lane, a street where people often hang out to talk and drink beer. Charleston police have made no arrests.



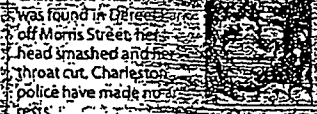
JUNE 12: Allen Jerome Grant, 19, of Charleston, Grant was found lying on Simons Street, bleeding from multiple gunshot wounds after an argument with a woman. Charleston police have made no arrests.



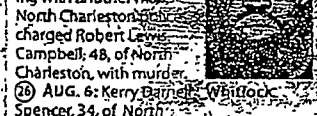
JULY 16: Isaac Larone Jones, 20, of Charleston, Jones was shot several times at Line and Nassau streets. Charleston police have made no arrests.



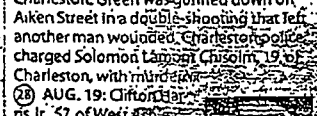
JULY 23: Pamela Fyall Washington, 43, of Charleston, Washington was found in a car off Morris Street her head smashed and her throat cut. Charleston police have made no arrests.



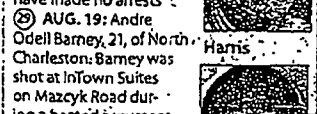
AUG. 1: Elijah Whitlock, 31, of North Charleston, Whitlock was shot in the back of Grimke Street after arguing with another man. North Charleston police charged Robert Lewis Campbell, 48, of North Charleston, with murder.



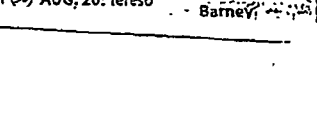
AUG. 6: Kerry Barnett Whitlock, Spencer, 34, of North Charleston, Spencer was shot after reportedly venturing into the Chicora-Cherokee neighborhood to purchase drugs. North Charleston police have made no arrests.



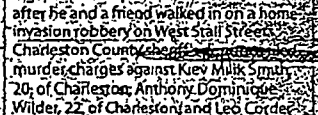
AUG. 6: Montrelle Green, 20, of Charleston, Green was gunned down on Aiken Street in a double-shooting that left another man wounded. Charleston police charged Solomon Lambert Chisolm, 19, of Charleston, with murder.



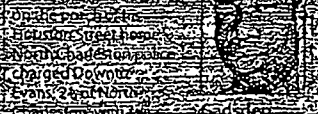
AUG. 19: Clifton Harris Jr., 57, of West Ashley, Harris, a popular teacher at First Baptist Church School, was found shot to death inside his garage at Battery. Charleston police have made no arrests.



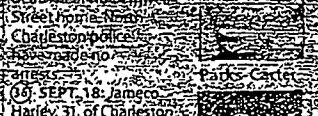
AUG. 19: Clifton Harris Jr., 57, of West Ashley, Harris, a popular teacher at First Baptist Church School, was found shot to death inside his garage at Battery. Charleston police have made no arrests.



AUG. 19: Andre Odell Barney, 21, of North Charleston, Barney was shot at InTown Suites on Mazzyk Road during a heated argument over drugs and money. North Charleston police charged James LeBron Hankerson, 22, of North Charleston, with murder.



AUG. 20: Tereso S4, of James Island, with murder. Charleston police have made no arrests.



SEPT. 13: George Lee Gadsden, 25, of North Charleston, Gadsden was fatally shot in the stomach while sitting with a friend on a bench on a street in North Charleston. Charleston police charged Downey Evans, 24, of North Charleston, with murder.



SEPT. 18: James Harley, 31, of Charleston, Harley was fatally shot while sitting outside a house he was visiting on President Street. Charleston police have made no arrests.



SEPT. 25: David Christopher Holmes, 21, of Charleston, Holmes was gunned down while driving a cab on the CrossTown Expressway at Spring Street and Bikes Street. Charleston police have made no arrests.



OCT. 3: Hoyce Curren, 24, of North Charleston, Curren was fatally shot in the neck at Birchwood Apartments on Stokes Avenue, North Charleston. Police charged Kev Milk Smith, 20, of Charleston, Anthony Dominique Wilder, 22, of Charleston, and Leo Cordier Gadsden, 19, of North Charleston, with murder.



OCT. 4: Antonio White, 27, of North Charleston, White was shot to death in a car on a street in North Charleston. Charleston police charged a man with murder. Charleston police have made no arrests.



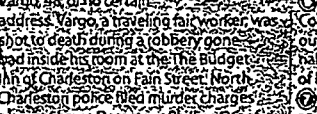
OCT. 16: David Hamilton, 20, of Charleston, Hamilton was shot to death after an argument on Mesquite Street. North Charleston police charged Charles Williams, 22, of Charleston, with murder.



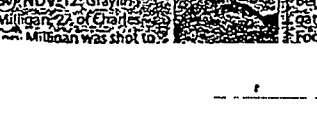
NOV. 7: Ricardo Bailey, 20, of North Charleston, Bailey was gunned down during a street confrontation on a street in North Charleston. Charleston police have made no arrests.



NOV. 8: Robert Vargo, 48, of North Charleston, Vargo, a traveling fair worker, was shot to death during a robbery gone bad inside his room at The Budget Inn of Charleston on Fair Street. North Charleston police filed murder charges against Shawn Demetrius Phillips, 26, of North Charleston, Genie Franklin, 21, of North Charleston, Alana Poole, 19, of North Charleston, and Candia Campbell, 18, of Columbia. Charleston police have made no arrests.



NOV. 12: Graylin Milligan, 22, of Charleston, Milligan was shot to death during a robbery on a street in North Charleston. Charleston police have made no arrests.



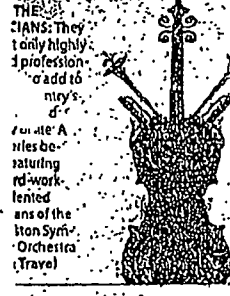
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9B Local News..... 18  
1E Markets..... 118  
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60, 25E Obituaries..... 48  
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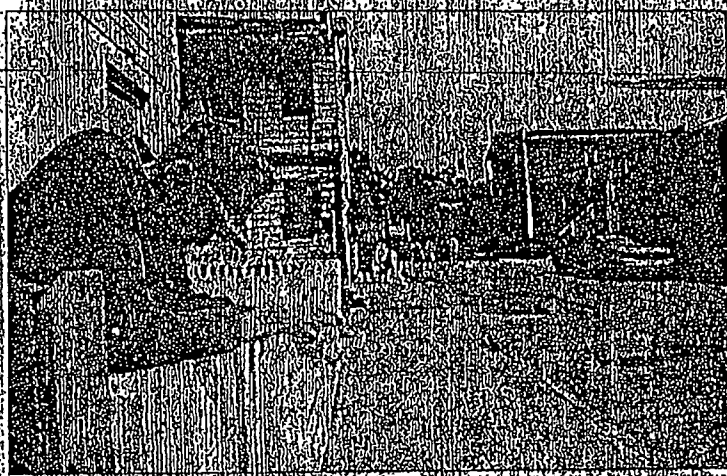
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# Ordeal vs. order

## Charleston neighborhood welcomes police outpost



East Charleston neighborhood Tuesday afternoon and will be the first of its kind in the city.

BY THE STAFF OF THE POST AND COURIER

The porch on David Bridges' Albee Street home is hushed in shade, a perfect spot to catch breath that floats along the Charleston peninsula.

Until recently, however, it would have dared only a brief porch light, let alone a red light in the unceasing darkness beyond.

Drugs, a city quarried the nearby corner of Shepard Street, curbing and heading poison to a back-dropped of slugs and violence. A black flow of bodies fell and resided in a hub.

"When you're in the middle of a street at night, it's a real scary thing," Bridges said.



The new East Charleston police station is located on the corner of Albee Street and Shepard Street.

People like it," Bridges said, plucking the handle on his bicycle. "It keeps things peaceful, more quiet."

Dozens of police officials and community leaders gathered on the corner Tuesday afternoon as the city officially unveiled the new post. Charleston police have used substations for years, but most have been in public housing or in redneck neighborhoods. This one is smack in the middle of a residential neighborhood, a building that is as much a statement as a structure, said Team One commander Lt. David Bridges, who is 2401 Street will.

# Chain to lower generic prices

## Wal-Mart to start in Tampa Bay area

WAL-MART STORES INC. WILL KICK OFF THE YEAR WITH A NEW INITIATIVE TO LOWER THE COST OF GENERIC DRUGS TO CUSTOMERS AND PROVIDE THE BEST COMPETING PHARMACEUTICALS. THE DRUGS WILL BE SOLD FOR AS LITTLE AS 24 CENTS A MONTH. SUPPLYING SOME OF THE MOST COMMONLY PRESCRIBED DRUGS, WAL-MART'S GENERIC DRUGS WILL BE AVAILABLE THROUGH WAL-MART STORES INC. WILL LAUNCH A PROGRAM TODAY AT 65 WAL-MART SUPERCENTERS IN TAMPA BAY AREA. WAL-MART STORES INC. HAS EXPANDED STATEWIDE AND ROLLED OUT TO THE REST OF THE YEAR. COMPANY OFFICIALS SAID THE NEW COMPANY OFFICIALS SAID THE COMPANY WILL SAVE \$1.5 BILLION FROM WAL-MART'S PRICE CUTS BECAUSE OF THE 11 WAL-MART'S PRICE CUTS COULD COST THEM \$1.5 BILLION. ANALYSTS SAID CONSUMER DRUGS IN AN AVERAGE OF 20 PERCENT. AND I

PLEASE SEE PHARMACY PAGE 11A

# Abbas pledges recognition of Israeli state

BY KIM GAMBL  
Associated Press Writer

UNITED NATIONS — Palestinian President Mahmoud Abbas said Thursday the planned national unity government will recognize Israel and renounce violence, warning that failure to reach a conflict would leave the door open to terrorism and violence worldwide. The Hamas-Jehi Peace Initiative document that won elections in June and refused to recognize Israel and honor past agreements between Israel and the Palestinian Liberation Organization, which Abbas heads, said the UN General Assembly annual meeting in December that he has recently sought to get a government of national unity coalition with international support. Abbas said the UN General Assembly should be a "golden opportunity" to achieve peace and honor the Palestinian people's right to self-determination and the right to a state of their own.

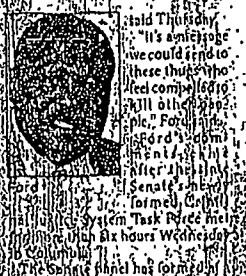
"It's a message we could send to these thugs who feel compelled to kill other people," said Sen. Robert Ford, D-Charleston.

# Senator proposes death penalty for street killings

BY SCOTT YOUNG  
The Post and Courier

State Sen. Robert Ford has a plan to cut down on murders and street deaths. Give the death penalty to anyone who kills another person on a public street.

As Ford's bill moves through the legislature, it will face a tough fight. The current law allows for a life sentence for a first-time offender who kills another person on a public street.



Sen. Robert Ford has a plan to cut down on murders and street deaths.

It's a message we could send to these thugs who feel compelled to kill other people," Ford said. "I would like to see the death penalty for anyone who kills another person on a public street." Ford's bill would change the current law, which allows for a life sentence for a first-time offender who kills another person on a public street. The bill would also allow for the death penalty for anyone who kills another person on a public street. The bill would also allow for the death penalty for anyone who kills another person on a public street.

# eric prices

puted that saying Wal-Mart will have little impact on members.

The initiative follows a series of moves by Wal-Mart to improve its health benefits since last October. They include relaxing eligibility requirements for its part-time employees who want health insurance, and extending coverage for the first time to the children of those employees. Last October, Wal-Mart offered a new lower-premium insurance aimed at getting more of its work force on company plans.

Wal-Mart's shares fell 41 cents to close at \$48.46 in trading Thursday on the New York Stock Exchange. But shares of the nation's largest drug chain, Walgreens Co., slumped 7.4 percent and the stock of rivals CVS Corp. and Rite-Aid Corp. dropped more than 8 percent and more than 5 percent, respectively. Shares of generic drug makers Barr Pharmaceuticals Inc. and Mylan Labs also fell, as did the stock of Caremark RX Inc., a pharmacy-benefit manager firm.

Still, Rite-Aid and Walgreens executives both noted that Wal-Mart's list of the discounted generics contains only a small percentage of the 1,500 and 1,800 generics each offers, respectively.

aced with soaring drug costs, consumers are increasingly turning to generic drugs, which often are made by multiple companies after the original patent on the medicines expire. The average monthly cost for a generic drug prescription is \$28.74, according to the National Association of Chain Drug Stores. For branded drugs, that figure is \$96.01.

The Generic Pharmaceutical Association, a trade association, said generic medicines account for 56 percent of all prescriptions dispensed in the United States, but only 13 percent of all dollars spent on prescription drugs.



NEWSPAPER STAFF A police officer walks through the streets of Charleston, S.C., near the new police outpost.

## New police outpost opens in city

Charleston, S.C., police officers are patrolling the streets of the city's largest drug market, the area between the intersection of the city's largest streets, Market and Sheppard streets, where her office is located.

The new police outpost, which is located in the area between Market and Sheppard streets, is the result of a partnership between the city and the state police. The outpost is staffed by 10 officers and is open 24 hours a day.

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## recognized

rorism, regional confrontations and global crises."

"It is unfortunate today to see that international plans and initiatives, foremost amongst them, road map... have reached a state of stagnation and even regression," he added.

Abbas also called on the international community to "provide credible evidence that they will support the unconditional resumption of negotiations, and will provide them with a true international cover and support to ensure their success through the cessation of settlement activity, collective punishment and separation walls."

o. Hamas' refusal to recognize Is-

## Ford talks tough against crime

Hoisington of Charleston did not attend the meeting because he wasn't invited, he said, clenched his teeth.

Thursday, Hoisington said many of the street crimes, Ford is talking about may already qualify for the death penalty, depending on the circumstances.

He said also that expanding the scope of crimes that qualify for the death penalty are very cautious, he said, usually reserving the death for the worst of the worst.

The dominant sentencing option in murder cases in South Carolina is 30 years to life with the possibility of parole, he said.

last month, Hoisington filed a petition to have the death penalty restored in the case

of William Oliver Dickerson Jr., who is accused of kidnapping, torturing and murdering Gerard Roper inside a James Island apartment in March. The defendant is black, he was the victim. It is the county's first death penalty case since 2002.

The Senate panel was assembled by Senate President Pro Tempore Glenn McChesney, R-Charleston, to examine everything from law enforcement and courts, to prisons and probation, before presenting recommendations to the Judiciary Committee in time for the 2007 legislative session.

Reach Schuyler Kropf at 937-5551 or skropf@postandcourier.com.

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2007 APR 22

# Cities' wave of violence claims 10th victim

BY JOHN CHAMBLISS  
AND GLENN SMITH  
*The Post and Courier*

A man found dead in a pool of blood in a James Island apartment Thursday morning was the latest in a string of homicides and violence that has gripped Charleston County.

The killing of Gerard Roper, 29, of West Ashley was the fifth homicide in Charleston this year. Last year, the city went five months before recording even one homicide.

Neighboring North Charleston also has had five homicides this year compared to 11 in all of 2005.

In addition to the killings, at least five non-fatal shootings have occurred in the two cities in the last three weeks, leaving four people wounded.

"It is of great concern to me," said Charleston Mayor Joe Riley. "A homicide is the most violent of acts, and it is an act upon the community. No matter what the circumstance is, the community's sense of order and peace is violated."

The latest homicide victim was found wearing a T-shirt and wrapped in a bloody blanket, lying face down on the kitchen floor of a vacant apartment in a government housing complex at 311 Fleming Road, police said.

A fingerprint check identified the man as Roper, who had been reported missing by his mother Wednesday evening, police Lt. Richard Vinson said.

Roper's mother told police she received a phone call Wednesday from a friend who claimed Roper



Charleston police detectives investigate a homicide at an apartment complex off Fleming Road on James Island. The body of a man was discovered in the apartment early Thursday morning.

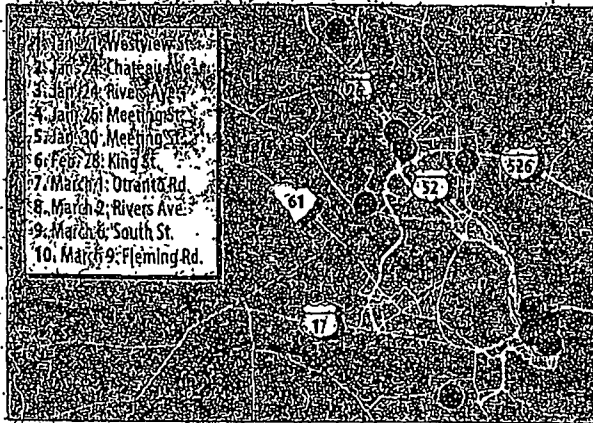
JOHN CHAMBLISS/STAFF

Please see HOMICIDE, Page 7A

7143

3/10/06 PJC

THE POST AND COURIER



SOURCE: ES&J, THE CHARLESTON POST AND COURIER

# James Island man killed

HOMICIDE From Page 1A

was being beaten by someone, Moser said. The victim's mother had not seen him for two days, he said. Roper's girlfriend told police that she last saw Roper leaving his home in the Indigo Creek apartments on Ashley Hall Road on Tuesday, Moser said. He told his girlfriend that he was going to his mother's home in West Ashley but never arrived there, Moser said.

Police refused to release a copy of the missing persons report, saying it contained information that could hinder their investigation of the killing.

A 28-year-old woman called authorities at 7:30 a.m. Thursday after she noticed the rear door of the Fleming Road apartment was open. She had stopped by because she was planning to move into the unit, police said.

Charleston County sheriff's deputy Steven and found a man on his stomach on the kitchen floor. The deputy thought the man was sleeping until he touched him and noticed his skin was cold, police reported.

The man's head appeared wounded, police reported. Later, investigators found a blood stain

in Berkeley and Dorchester counties — 20 more killings than occurred in the region in the previous year, according to county coroners' offices. Interim Charleston Police Chief Ned Hethington said the killings are troubling, but it is nearly impossible for police to predict when someone's temper will boil over to the point where he or she decides to take a life.

"If you can't predict it, you can't prevent it," he said.

As in past years, the victims and suspects are mostly black males, Hethington said.

In 2005, blacks accounted for eight of the city's 10 homicide victims and an equal number of murder suspects, Hethington said. Eighty percent of the suspects and victims had criminal records and seven of the 10 killings involved drugs or alcohol in some way. The average age was 24 for the victims and 25 for the suspects, he said.

Every year, he said, police compile statistics in hope of discerning some pattern that will help them prevent future killings. "But it all ends up just being a bunch of numbers," Hethington said.

Riley said police are documenting the number of homicide victims and suspects in recent years

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V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1001.0	Barnes	Michael		1001.0.001	Faulk	Brenda	I	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1001.0	Barnes	Michael		1001.0.002	Bushnell	Jonathan	P	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1001.0	Barnes	Michael		1001.0.003	Beckwith	Karla	K	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1001.0	Barnes	Michael		1001.0.004	Cornell	Stephanie	M	0	3	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
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1001.0	Barnes	Michael		1001.0.056	Spencer	Sherrie	T	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1001.0	Barnes	Michael		1001.0.057	Krawcheck	Trudie	C	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1001.0	Barnes	Michael		1001.0.058	Alpert	Calvin		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1001.0	Barnes	Michael		1001.0.059	Budds	Carol	E	0	3	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown

DEFENDANT'S  
EXHIBIT  
5-12-16



V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1002.1	Beyah	Jalal	F	1002.1.001	Suttle	Ashton		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.002	Capers	Angela		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.003	Cornwell	Todd	H	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.004	Farmer	Ethan		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.005	Green	Jean	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.006	Richards	David	W	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.007	Lee	Don	C	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.008	Niess	Leah	M	0	-1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.009	McKelvey	Betty	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.010	Sanders	Frank	B	0	2	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.011	Grimes	Joyce	K	0	2	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.012	Phelps	Linda	D	0	4	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.013	Mitchell	Jacqueline	D	0	1	0.0	0.0	2.0	#NULL!	Female	1.0 White/Caucasian	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.021	Cheatham	Jacqueline	M	0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.022	Ferguson	Edna	T	0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.023	Singleton	Judy		0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.024	Freeman	William	H	0	2	1.0	0.0	0.0	#NULL!	Male	1.0 Black/African American	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.025	Kornickey	Kevin	L	0	2	1.0	0.0	0.0	#NULL!	Male	1.0 Black/African American	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.050	Buhle	Kenneth		0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.051	Bartleme	Anthony	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.052	Brissle	Dale	A	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.053	Ward	James	M	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.054	Crites	Judy	L	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.055	Magruder	Sally	H	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	51-75	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.056	Grant	Patricia		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 Black/African American	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.057	Nauman	Matthew	H	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	20-35	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.058	Hendricks	David	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	36-50	unknown	unknown	
1002.1	Beyah	Jalal	F	1002.1.059	Rogers	Jennifer		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	20-35	unknown	unknown	
1002.2	Beyah	Jalal	F	1002.2.001	Ward	James	W	0	2	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	51-75	unknown	unknown	
1002.2	Beyah	Jalal	F	1002.2.002	Capers	Angela		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	20-35	unknown	unknown	

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V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1002.2	Beyah	Jalal	F	1002.2.003	Cornwell	Todd	H	0	1	0.0	0.0	2.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.004	Green	Jean	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.005	Singleton	Judy		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.006	Richards	David	W	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.007	Lee	Don	C	0	2	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.008	Nless	Leah	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.009	McKelvey	Betty	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.010	Driggers	Thomas		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.011	Wilson	Kendra	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.012	Davila	Carolina	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Asian/Asian American	20-35	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.013	Robinson	Amy	B	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.021	Cheatham	Jacqueline	M	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.022	Frazier	Solomon		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.023	Dillingard	Abraham		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.050	Buhle	Kenneth		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.051	Bartleme	Anthony	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.052	Auld	Gale		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	19 or you	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.053	Crites	Judy	L	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.054	Magruder	Sally	H	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.055	Nauman	Matthew	H	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.056	Rogers	Jennifer		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.057	Sanders	Frank	B	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.058	Grimes	Joyce	K	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.059	Dejong	Karen	M	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.060	Bertucci	Unda	L	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1002.2	Beyah	Jalal	F	1002.2.061	Gilchrist	Barbara	B	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.001	Thomson	Leigh	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.002	Corte	Angela	M	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	20-35	Married	unknown
1003.0	Broughton	Collin	J	1003.0.003	Mobley	Shirley	D	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.004	Williams	Ronald	K	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown



V2001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1003.0	Broughton	Collin	J	1003.0.005	Carmen	Dixie	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.006	Hennix	Emma	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.007	Lloyd	Darius	R	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	20-35	Married	unknown
1003.0	Broughton	Collin	J	1003.0.008	Weatherly	Derrick	J	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.009	Storo	Brittany	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	20-35	Single	unknown
1003.0	Broughton	Collin	J	1003.0.010	Aves	Dana	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.011	Missroon	Michele	A	0	2	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.012	Praete	Shannon	B	0	4	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	Married	unknown
1003.0	Broughton	Collin	J	1003.0.013	Singletary	Michael	A	0	3	0.0	0.0	2.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.014	Locke	Jervise	L	0	3	0.0	0.0	2.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.015	Abdallah	Naqual	R	0	2	0.0	0.0	2.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.016	Robinson	Tracy	S	0	4	0.0	0.0	2.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.021	Fann	Cynthia	L	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	Married	unknown
1003.0	Broughton	Collin	J	1003.0.022	Bowman	Alice	A	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.023	Johnson	Danielle	C	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.024	Wilson	Alfreda	P	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.025	Prather-Wi	Cheryl	L	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	Married	unknown
1003.0	Broughton	Collin	J	1003.0.026	Harris	Kelly	M	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.027	Peterson	Rachel	N	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.028	Middleton	Norma	J	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	19 or younger	Widowed	unknown
1003.0	Broughton	Collin	J	1003.0.050	Peck	Richard	W	0	3	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	Married	unknown
1003.0	Broughton	Collin	J	1003.0.051	Paulhamus	Mark	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.052	Phillips	John	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.053	Plona	Stacy	B	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.054	Villaneuva	Tabitha	A	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	Married	unknown
1003.0	Broughton	Collin	J	1003.0.055	Reeb	John	L	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.056	Meibers	Eric	R	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.057	Kent	Charles	L	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	Married	unknown
1003.0	Broughton	Collin	J	1003.0.058	Merritt	Cori	A	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1003.0	Broughton	Collin	J	1003.0.059	Patrick	Rocko		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown



V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1003.0	Broughton	Colin	J	1003.0.060	Yeadon	Larry	B	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 Black/African American	51-75	unknown	unknown	
1003.0	Broughton	Colin	J	1003.0.061	Pittman	Connie	J	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	51-75	Married	unknown	
1003.0	Broughton	Colin	J	1003.0.062	Shuler	Yvette	D	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	36-50	unknown	unknown	
1003.0	Broughton	Colin	J	1003.0.063	Walker	Charles	E	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	51-75	unknown	unknown	
1003.0	Broughton	Colin	J	1003.0.064	Still	Jane	E	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	36-50	unknown	unknown	
1003.0	Broughton	Colin	J	1003.0.065	Etling	Angela	S	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	51-75	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.001	Gates-Slmi	Erica		0	3	0.0	0.0	2.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.002	Davis	Lanita		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.003	Heywood	Richard		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.004	Williams-O	Ester		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.005	Sperduto	Adam		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.006	Willis	Sean		0	1	0.0	0.0	2.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.007	Yates	Deborah		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.008	Horne	Tyler		0	1	0.0	0.0	2.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.009	Dionna	George		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.010	Hibbs	Gregory		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.011	Pamplin	Sheryl		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.012	Molomy	Carol		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.013	Gladde	Rusty		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.014	Carson	Janis		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.015	Robinson	Scott		0	1	0.0	0.0	1.0	#NULL!	Male	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.021	Dixon	Daysha		0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.022	Doyley	Shavish		0	2	1.0	0.0	0.0	#NULL!	Male	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.023	Washington	Mary		0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.05C	McCubbins	George		0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.051	Marshall	Jennifer		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.052	Hubert	Desiree		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.053	O'Brien	Michael		0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.054	Lemon	Kathryn		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasian	unknown	unknown	unknown	
1004.0	Deleston	Ryan	P	1004.0.055	Staley	Noyama		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 Black/African American	unknown	unknown	unknown	



V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1004.0	Deleston	Ryan	P	1004.0.056	O'Brien	Diane		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	unknown	unknown	unknown
1004.0	Deleston	Ryan	P	1004.0.057	Martini	Ed		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	unknown	unknown	unknown
1004.0	Deleston	Ryan	P	1004.0.058	Epps	Cason		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	unknown	unknown	unknown
1004.0	Deleston	Ryan	P	1004.0.059	Wright	Elton		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	unknown	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.001	Kinney	Bcdfle	Y	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.002	Reiheld	Phillip	C	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.003	Balilet	Karen	S	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.004	Nelson	William	E	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.005	Hamman	Andrea	C	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.006	Grimmer	Lisa	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.007	Harris	Diane	C	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.008	Noes	Jennifer	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.009	Williams	Christophe	S	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.010	Smalls	Christian	D	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.011	Holmes	Georgetta	Y	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.012	Rodenburg	William	M	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.013	Smalls	Henretta	J	0	1	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.014	Dunson	Annie	L	0	4	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.021	Ancrum	Sharon	M	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	36-50	Married	unknown
1005.0	Derricotte	Dominic	M	1005.0.022	Franklin	Jemelah	S	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.023	Commodore	Leroy		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.050	Pike	Donald	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.051	Lantz	David	L	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.052	Seithel	David	L	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	Married	unknown
1005.0	Derricotte	Dominic	M	1005.0.053	Charlow	Dorothy	S	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.054	Davis	William	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	Married	unknown
1005.0	Derricotte	Dominic	M	1005.0.055	Brannan	Wayne	L	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.056	Jackson	Kevin	T	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1005.0	Derricotte	Dominic	M	1005.0.057	Thomas	Lisa	A	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1006.0	Dickerson	William	O	1006.0.001	Hood	Nathan		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	20-35	Single	College gradut



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V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1006.0	Dickerson	William	O	1006.0.002	Partee	Joshua	M	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasion	20-35	Single	Attended Coll	
1006.0	Dickerson	William	O	1006.0.003	Newkirkpa	Lauri	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasion	36-50	Married	Attended Coll	
1006.0	Dickerson	William	O	1006.0.004	High	Charles	A	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasion	20-35	Single	College gradu	
1006.0	Dickerson	William	O	1006.0.005	Robinson	Lisa		0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	Single	High School Gi	
1006.0	Dickerson	William	O	1006.0.006	Grant	Debra	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	Separated/divc	Attended high	
1006.0	Dickerson	William	O	1006.0.007	Szvak	Rebekah	J	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasion	20-35	Married	Attended grad	
1006.0	Dickerson	William	O	1006.0.008	Waterman	Garrett	E	0	1	0.0	0.0	1.0	#NULL!	Male	1.0 White/Caucasion	20-35	Single	High School Gi	
1006.0	Dickerson	William	O	1006.0.009	Melville	Donna	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasion	36-50	Married	Attended grad	
1006.0	Dickerson	William	O	1006.0.010	Metersud	Deborah	J	0	2	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasion	51-75	Separated/divc	College gradu	
1006.0	Dickerson	William	O	1006.0.011	Prioleau	Elaine	L	0	2	0.0	0.0	1.0	#NULL!	Female	1.0 Black/African American	36-50	Married	College gradu	
1006.0	Dickerson	William	O	1006.0.012	Mullen	Susan	M	0	2	0.0	0.0	1.0	#NULL!	Female	1.0 White/Caucasion	36-50	Married	Attended Coll	
1006.0	Dickerson	William	O	1006.0.013	Page	Michael	J	0	3	0.0	0.0	2.0	#NULL!	Male	1.0 White/Caucasion	51-75	Married	High School Gi	
1006.0	Dickerson	William	O	1006.0.014	Areheart	Christina	J	0	1	0.0	0.0	2.0	#NULL!	Female	1.0 White/Caucasion	20-35	Married	Attended grad	
1006.0	Dickerson	William	O	1006.0.015	Ancrum	Theresa	S	0	1	0.0	0.0	2.0	#NULL!	Female	1.0 Black/African American	36-50	Married	Attended Coll	
1006.0	Dickerson	William	O	1006.0.016	Dobson	Regina	B	0	1	0.0	0.0	2.0	#NULL!	Female	1.0 White/Caucasion	51-75	Married	College gradu	
1006.0	Dickerson	William	O	1006.0.021	Nicklaus	James	F	0	2	1.0	0.0	0.0	#NULL!	Male	1.0 White/Caucasion	51-75	Married	College gradu	
1006.0	Dickerson	William	O	1006.0.022	Gadsden	Georona		0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	36-50	Single	High School Gi	
1006.0	Dickerson	William	O	1006.0.023	Fields-Cox	Melissa	D	0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	36-50	Married	Attended Coll	
1006.0	Dickerson	William	O	1006.0.024	Toomer	Sallylisha		0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	20-35	Single	High School Gi	
1006.0	Dickerson	William	O	1006.0.025	Grant	Martlyn	D	0	2	1.0	0.0	0.0	#NULL!	Female	1.0 Black/African American	20-35	Single	High School Gi	
1006.0	Dickerson	William	O	1006.0.050	Buchanan	Diane	L	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasion	51-75	Separated/divc	High School Gi	
1006.0	Dickerson	William	O	1006.0.051	Jones	Robert	E	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	20-35	Single	College gradu	
1006.0	Dickerson	William	O	1006.0.052	Cox	Mary		0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasion	20-35	Married	College gradu	
1006.0	Dickerson	William	O	1006.0.053	Martin	James	K	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	20-35	Married	High School Gi	
1006.0	Dickerson	William	O	1006.0.054	Hall	Charles	E	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	51-75	Married	Attended Coll	
1006.0	Dickerson	William	O	1006.0.055	Wineinger	Steven	D	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	51-75	Married	High School Gi	
1006.0	Dickerson	William	O	1006.0.056	Ishmael	David	R	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	36-50	Married	High School Gi	
1006.0	Dickerson	William	O	1006.0.057	Tompkins	Virginia	L	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasion	36-50	Married	High School Gi	
1006.0	Dickerson	William	O	1006.0.058	Johnson	Michael	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0 White/Caucasion	51-75	Married	Attended grad	
1006.0	Dickerson	William	O	1006.0.059	Barker	Sherrl	A	0	1	0.0	1.0	0.0	#NULL!	Female	1.0 White/Caucasion	36-50	Single	College gradu	



V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1008.0	Mack	Lemar	T	1008.0	001 Rogers	John	L	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	002 Isaacs	Josh	C	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	003 Pool	Kenneth	M	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	004 Hueter	Ernest	T	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	005 Rider	Derek	L	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	006 Roberts	Allison	C	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	007 Smalls	Angela	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	008 Holmes	John	R	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	51-75	unknown	Attended grad
1008.0	Mack	Lemar	T	1008.0	009 Bella	Bonnie	S	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasion	51-75	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	010 Sancic	Bianca	A	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	011 Faublton	Julie	H	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	012 Ramshur	Scott		0	2	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	013 Melton	Charles	L	0	1	0.0	0.0	2.0	#NULL!	Male	1.0	Black/African American	51-75	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	014 McPeake	Kimberly	L	0	1	0.0	0.0	2.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	021 Newman	Van	T	0	2	1.0	0.0	0.0	#NULL!	Male	1.0	White/Caucasion	51-75	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	022 Worthem	Ralph	L	0	2	1.0	0.0	0.0	#NULL!	Male	1.0	White/Caucasion	51-75	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	056 Rogers	Robert	B	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	051 Stoll	Mary	E	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	052 Smith	Bachman	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	053 Pearce	William	G	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	20-35	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	054 Anderson	Thomas	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	055 Heltner	Karen	J	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasion	36-50	Married	unknown
1008.0	Mack	Lemar	T	1008.0	056 Jenkins	Marlam	H	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	057 McCutcher	Ladson	F	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	51-75	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	058 Coen	Joseph	A	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	059 Hargrave	Ronald		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	Unknown	unknown	unknown	Attended grad
1008.0	Mack	Lemar	T	1008.0	066 Purcell	Katherine	C	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasion	36-50	unknown	unknown
1008.0	Mack	Lemar	T	1008.0	061 Bevon	Vincent	B	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1009.0	Shline	Michael	G	1009.0	001 Richbourg	Bryan	E	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasion	36-50	unknown	unknown
1009.0	Shline	Michael	G	1009.0	002 Leach	Bernard		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown



V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1009.0	Shine	Michael	G	1009.0.003	Thames Amella	R		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	19 or you	unknown	unknown
1009.0	Shine	Michael	G	1009.0.004	Donaldson Saron	E		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.005	Sams Simoletta			0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Unknown	unknown	unknown	unknown
1009.0	Shine	Michael	G	1009.0.006	Wrighten Leona	R		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.007	Euland Edith	Y		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.008	Helms Tasha	L		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.009	Kuchenbec Todd	L		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.010	Carmody Charles	S		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.011	Rogers Vivian	B		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.012	Hernandez Christopher			0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.013	Adams Linda	S		0	1	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1009.0	Shine	Michael	G	1009.0.014	Franklin Janice	S		0	1	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1009.0	Shine	Michael	G	1009.0.021	Heyward Ronald	W		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.022	Brown Iona	M		0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.023	Simmons Arthur	L		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	51-75	unknown	unknown
1009.0	Shine	Michael	G	1009.0.056	Crawford Alex	S		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1009.0	Shine	Michael	G	1009.0.051	Felix Rachel	C		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.052	Zinko Robert	F		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1009.0	Shine	Michael	G	1009.0.053	Marcellus Donna	M		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.054	Lewis Jennifer	R		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1009.0	Shine	Michael	G	1009.0.055	Gordon Patrisha	E		0	1	0.0	1.0	0.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.056	Kuhl Todd	B		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1009.0	Shine	Michael	G	1009.0.057	Scarborough Ronnie	W		0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.001	Hihn Douglas	L		0	2	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.002	Medd Box	R		0	2	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.003	Nick Deon	M		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.004	Brandenbu Leigh	F		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.005	Artidello Janice	C		0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.006	Lessington Jacob	J		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	Black/African American	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.007	Grossklaus Drew	S		0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown



Military	Employment	V2026	V2027	V2037	V2038	V2039	V2040	V2041	V2045	State	Def	Black		White		RateProsS truckBlack	RateProsS truckWhit	Strike Black	Strike Black_su	Black		White			
										Eligible	Eligible	Black	White	State	State					N_BREAK	Strike White	White_su	State_su	Strike White	White_su
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	1.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	1.00	3.00	10.00	0.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	1.00	1.00	15.00	
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	0.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00
unknown	99.0	99.0	99.0	Not Capital	Rasilch	Stephen	M	4-Dec-15	1.0	1.00	1.00	1.00	0.00	1.00	0.00	25	0.30	0.07	0.00	3.00	10.00	0.00	1.00	15.00	

7163

V1001	V2003	V2004	V2005	V2002	V2011	V2012	V2013	V2006	V2007	V2008	V2009	V2014	V2015	Gender	V2017	Race	Age	Marital	Education
1010.0	Simmons	Brandon	J	1010.0.008	Hill	Glynnis	L	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.009	Miller	Jacqueline	F	0	1	0.0	0.0	1.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.010	Kindt	Joshua	R	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.011	Strickland	Richard	E	0	1	0.0	0.0	1.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.012	Charles	Kemelar		0	2	0.0	0.0	1.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.013	Coker	Ruthie	L	0	1	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.014	Robinson	Melanie	D	0	2	0.0	0.0	2.0	#NULL!	Female	1.0	Black/African American	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.021	Nelson	William	R	0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.022	Coakley	Angela	M	0	2	1.0	0.0	0.0	#NULL!	Female	1.0	Black/African American	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.023	Clauswell	Joshua		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	Black/African American	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.024	Trice	Jefferson		0	2	1.0	0.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.050	Wilson	John	T	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.051	Millet	Deborah	J	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.052	Hagerty	Gervais	S	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	White/Caucasian	20-35	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.053	Grayson	Barry	W	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	51-75	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.054	Moore	Thomas	S	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	unknown	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.055	Gutshall	Edward	C	0	1	0.0	1.0	0.0	#NULL!	Male	1.0	White/Caucasian	36-50	unknown	unknown
1010.0	Simmons	Brandon	J	1010.0.056	McNeal	Mary	S	0	1	0.0	1.0	0.0	#NULL!	Female	1.0	Black/African American	51-75	unknown	unknown

7164



# Criminal Justice Information Services (CJIS) Security Policy

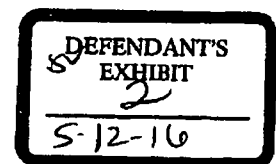
Version 5.3  
8/4/2014

CJISD-ITS-DOC-08140-5.3



Prepared by:  
CJIS Information Security Officer

Approved by:  
CJIS Advisory Policy Board



### **5.8.3 Electronic Media Sanitization and Disposal**

The agency shall sanitize, that is, overwrite at least three times or degauss electronic media prior to disposal or release for reuse by unauthorized individuals. Inoperable electronic media shall be destroyed (cut up, shredded, etc.). The agency shall maintain written documentation of the steps taken to sanitize or destroy electronic media. Agencies shall ensure the sanitization or destruction is witnessed or carried out by authorized personnel.

### **5.8.4 Disposal of Physical Media**

Physical media shall be securely disposed of when no longer required, using formal procedures. Formal procedures for the secure disposal or destruction of physical media shall minimize the risk of sensitive information compromise by unauthorized individuals. Physical media shall be destroyed by shredding or incineration. Agencies shall ensure the disposal or destruction is witnessed or carried out by authorized personnel.

## Melody Brown

---

**From:** Charles Grose <charles@groselawfirm.com>  
**Sent:** Monday, March 28, 2016 2:30 PM  
**To:** Melody Brown; Jeff Bloom; elizabeth.a.franklin@gmail.com  
**Cc:** Anthony Mabry  
**Subject:** Re: William Dickerson v. State  
**Attachments:** Bloom Box 1 - 1129-30.pdf; Bloom Box 1 - 2138-53.pdf

Melody,

It appears that we have not responded to this email.

Attached are Bloom Box One, pages 1229-1230 and 2138-53.

Below is a more detailed description of the other documents you listed in your email.

Box 1, pp. 1083-83 are two copies of an ex parte order dated March 17, 2009 pertaining to investigators and experts having access to Mr. Dickerson at the detention center.

Box 1, pp. 2086-96 are a file on Don Girndt.

Box 1, pp. 2273-86 are a file on a Defense Initiated Victim Outreach (DIVO) consultant.

Box 1, p. 2287 is a copy of a file folder with a name typed on it.

Box 2, p. 1332 is an email from Dr. Phillips to Mr. Bloom.

Box 2, p. 1337 is a letter from the Department of Navy.

Box 5, p. 1 is a supplemental incident report from this case, which was produced in the state's discovery, but it has a sticky notes saying "X-tra Copies" and "Girndt."

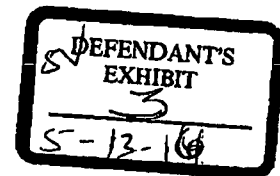
Best,  
Charles

---

**From:** Melody Brown <MBrown@sca.gov>  
**Sent:** Tuesday, December 15, 2015 10:24 AM  
**To:** Jeff Bloom; elizabeth.a.franklin@gmail.com; Charles Grose  
**Cc:** Anthony Mabry  
**Subject:** William Dickerson v. State

Dear Jeff:

I believe you had mentioned on the stand that you consulted with Dr. Needleman and provided information to him. I do not appear to have anything in discovery that indicates the consultation or information given. I would appreciate it if



you would review the file, in particular the folders for consulting experts and emails to consultants who did not testify, to confirm what was given to Dr. Needleman and his response. I would also appreciate a copy of same and a copy of the testing request, receipt of result and/or notes on receipt of the information on lead level that you also referenced in your testimony.

Dear Betsy and Charles:

In line with the above request, I am also asking that you kindly review your copy of counsel's file – in particular, as listed in the privilege log, Box 1, 1083-85; 1229-30; 2083-85; 2086-96; 2138-2153; 2273-87 and Box 2 1332; 1377 and Box 5, 1, and also billing statements and/or vouchers – for the information counsel has disclosed during testimony concerning Dr. Needleman and testing and provide a copy of same.

Thank you all for your cooperation. Given the fast approaching holiday season, I am not requesting an immediate response, but I would appreciate a response on or before January 15, 2016.

Sincerely,  
Melody

Melody J. Brown  
Senior Assistant Attorney General  
Capital Litigation Section  
Office of the Attorney General, State of South Carolina  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
P 803-734-6305  
F 803-734-4035  
[mbrown@scag.gov](mailto:mbrown@scag.gov)

MITIGATION: LEAD LEVELS & HOUSING SUMMARY.

State of S.C. vs. William O. Dickerson, Jr.

Current as of: April 2, 2009

- William – Date of Birth: \_\_\_\_\_
- Test data: William's test records are unavailable – but DHEC records note that he & Arman living in same household and are both exposed

Bogard Street (Residence & Grandmother's house down the street)

- 11/16/1982: William – 6 Y/O
- Blood lead level testing of brother, Arman (DOB: 11/25/1980) – 2 Y/O – Lead Blood: 70
  
- 11/23/1982: William – 6 Y/O
- Blood lead level testing of brother, Arman (DOB: 11/25/1980) – 3 Y/O – Lead Blood: 45
  
- 1/7/1983: William – 6 Y/O
- Blood lead level testing of brother, Arman – 2 Y/O – Lead Blood: 48
  
- 4/27/1983: William – 6 Y/O
- Blood lead level testing of brother, Arman – 2 Y/O – Lead Blood: 33
  
- 8/8/1983: William – 6 Y/O
- Blood lead level testing of brother, Arman – 2 Y/O – Lead Blood: 44
  
- 11/8/1983: William – 7 Y/O
- Blood lead level testing of brother, Arman – 2 Y/O – Lead Blood: 42
  
- 3/21/1984: William – 7 Y/O
- Blood lead level testing of brother, Arman – 3 Y/O – Lead Blood: 37

Orr Court

- 8/6/1984: William – 7 Y/O
- Blood lead level testing of brother, Arman – 3 Y/O – Lead Blood: 48
  
- 3/14/1985: William – 9 Y/O
- Blood lead level testing of brother, Arman – 4 Y/O – Lead Blood: 30
  
- 7/11/1985: William – 9 Y/O
- Blood lead level testing of brother, Arman – 4 Y/O – Lead Blood: 29

- 11/2/1985: William - 9 Y/O
- Blood lead level testing of brother, Arman - 4 Y/O - Lead Blood: 43
  
- 1/15/1986: William - 9 Y/O
- Blood lead level testing of brother, Arman - 5 Y/O - Lead Blood: 26
  
- 4/22/1986: William - 9 Y/O
- Blood lead level testing of brother, Arman - 5 Y/O - Lead Blood: 25
  
- 7/22/1986: William - 9 Y/O
- Blood lead level testing of brother, Arman - 5 Y/O - Lead Blood: 25
  
- 10/30/1986: William - 10 Y/O
- Blood lead level testing of brother, Arman - 5 Y/O - Lead Blood: 33
  
- **Blood lead level testing of William: 6/2/1988 - 11 Y/O**
- **Lead Blood: 9**
  
- **Housing Projects/Areas & DHEC notes**
  - 8 Bogard St.: 8 Bogard (home) & 10 Bogard (grandmother)
    - 12/6/1982: Concerned about "No compliance" by mother
    - 1/21/1983: Inspection reveals Living room/Bedroom/Dining Room "Trim & doors, some peeling" - Exterior "All surfaces, peeling, chalking" at residence - and "Common wall with peeling" at grandmother's home - Warning letter & order to repair issued to landlord/owner
    - 5/4/1983: "Work ordered has not been completed" - Owner "understands the work must be started immediately"
    - 6/8/1983: "Presence of lead hazards" - "No work (has been) attempted" - "Owner is to start work by 6/10/1983 (within 2 days) or legal action to be taken"
    - 8/5/1983: Owner is now deceased - "Attorney for estate (of property) to have work done" for purpose of "hazard abatement" at both Bogard St. homes
  - 20 Orrs Ct.
    - 8/6/84: Note "peeling paint"
  
- **Summary Points from LEAD LEVELS & HOUSING records:**
  - Children eat lead paint chips because it tastes sweet like candy
  - For 5-year period, evidence of peeling paint and lead hazards at residences
  - Documented lead levels are unacceptable by current standards
  - Lead poisoning causes brain damage
  - Evidence of possible organic impairments
  - Other ???

**Dr. Needleman**

Subj: Re: (no subject)  
Date: 10/29/2007 1:16:41 P.M. Eastern Daylight Time  
From: JPBloom803  
To: dalemdavis@bellsouth.net

\* He does not need to be transported. So blood can be drawn at jail and then taken to MUSC. I prefer it to remain confidential as to the nature of the blood draw (ie - the jail does not need to know details -- just "testing").

\* Let me know if you need a subpoena or court order. No problem.

thanks for the update

Jeff

In a message dated 10/29/2007 12:59:33 P.M. Eastern Daylight Time, dalemdavis@bellsouth.net writes:

*How do you want the blood test done? Drawn at the jail & sent to MUSC or him transported to MUSC & drawn there? Do we care if "they" know what we are doing? I am continuing to follow up with DHEC re the older records that were not included with the ones they sent. We may end up having to subpoena someone from Columbia to come in and explain their inability to locate those records - that often leads to "sudden" location of them. I've attached the page that refers to older records. It is hard to read on the scan but the beginning date is 10/13/76 to 11/16/82. Further down the page: 3/6/85 To be destroyed 12/31/2010 Box 41311. There is no reason for the records to have been destroyed; no government/state employee is going to take it on themselves to get rid of records before the designated time. The woman I'm speaking with told me that the records they sent previously (1990's) were in that Box #. I know you don't have those records yet. Also, I got his Probate records last week and, while it is much the same as included in Hall records, there is clear evidence of the social worker at Hall believing there was some serious stuff going on in the house. I am trying to get records referred to in the Hall stuff but is not there. If you plan to come down to see William, I'd like for us to meet. I have a number of records that I don't believe you have and want to copy them for you before you come. Also, I'd like to go over what we have. You can come to the house if you like.*

Dale M. Davis

---

See what's new at [AOL.com](http://AOL.com) and [Make AOL Your Homepage.](#)

Monday, October 29, 2007 AOL: JPBloom803

Subj: (no subject)  
Date: 10/24/2007 10:41:52 A.M. Eastern Daylight Time  
From: hinlead+@pitt.edu  
To: JPBloom803@aol.com

Jeff: A blood lead of 8 $\mu$ g/dl at age 8 suggests that it was higher in infancy, but there is no certainty to this statement. Any more info?

Herb  
Herbert L Needleman M.D.  
Professor of Psychiatry and Pediatrics  
University of Pittsburgh School of Medicine

email: hinlead+@pitt.edu  
Fax 412 383 3131

Monday, October 29, 2007 AOL: JPBloom803

**JEFFREY P. BLOOM  
ATTORNEY AT LAW**

1911 PICKENS STREET  
COLUMBIA, S.C., 29201-2631  
OFFICE # (803) 256-7001  
FAX # (803) 256-7002  
TOLL FREE # 1-888-589-2046

LICENSED MEMBER OF THE  
S.C. AND N.C. BAR  
E-MAIL:  
JPBLOOM803@AOL.COM  
CELL # (803) 261-4576

**FAX TRANSMISSION**

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If you receive this fax in error, please contact the above sending party, and then destroy this message.

VIA FAX #: \_\_\_\_\_  
Total Pages Including this Cover page: 2

TO: Dr. Herbert Needleman  
FROM: Jeff Bloom  
DATE: 10/11/07  
RE: State of S.C. v. William O. Dickerson  
Charleston County, S.C.

Dr. Needleman,

Please find attached a report of a lead level of 9 mg/dcl taken in 1988 when the defendant was 11 years old. Please let me know if this is significant so I can determine whether to pursue additional information and documentation.

In case it is related and perhaps relevant, the same medical exam also found this patient to be very anemic, and prescribed medication (ferrus sulfate 300 mg daily) for that condition.

Thank you for your attention to this matter.

Again, I thoroughly enjoyed working with you on the Lavar Bryant case back around 1995, and am hoping this case works out as well.





1777 Montreal Circle, Tucker, GA 30084 • (404) 634-8200

800-241-9121 AL FL KY MS NC SC TN  
800-241-9121 AR CT IL IA IN LA MA MD MI  
MO NJ NY OH PA TX VA WI  
800-282-1341 GA

# SmithKline Bio-Science Laboratories

DICKERSON, WILLIAM

SEX: M AGE: 40

WILLIAM B. HALL, PSYCHIATRIST

SPECIMEN: BLOOD

LAB REF: 881329A

COLLECTED: 05/02/88

REQ# SB21350

WHP# 055400

CUR. NUM

RECEIVED: 05/03/88

0064 9450239

055400

HOSP# 881329A ROOM# 1200

REPORTED: 05/04/88 4:04PM

BT# 002

TEST

RESULTS

REFERENCE RANGE

LEAD BLOOD

9

UG/DL

LESS THAN 25

ACCEPTABLE BLOOD LEAD LEVELS IN OCCUPATIONALLY EXPOSED INDIVIDUALS VARY WITH CONDITIONS OF EXPOSURE AS DEFINED BY CURRENT FEDERAL REGULATIONS. TEST BY SKBL VAN NUYS, CDC #04-1013

*6-7-88  
CSL*

### CONFIDENTIAL

This information has been disclosed to you from records whose confidentiality is protected by Federal regulations (42 CFR Part 2) and S. C. Law Section 24-24-104. The prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains. A general release for the release of medical or other information is NOT sufficient for this purpose.

# RECEIVED

NUMBER 61000

LABORATORY  
W.E.B.M.C.

ASSAYS BY P. L. LTD., ATLANTA, GEORGIA  
LICENSE NO. 1 CLIA 10-1067; MEDICARE 11-8011  
MEDICAL DIRECTOR: RAPHAEL R. GRAVES, M.D.

CHART  
Laboratory Director: D. P. Nobb, Ph.D.

SKBL

ASSAYS BY SKBL, ATLANTA, GEORGIA  
LICENSE NO. 1 CLIA 10-1010; MEDICARE 11-  
MEDICAL DIRECTOR: JOHN P. NICKERSON, M.D.

7/18/07 RW Dr. Needleman

---

(15)

① Get blood-lead levels  
now

② Check if X-Ray of lead level  
in bone can be done  
- would give argument  
of lead Hx

Bloom Box One - 2144



Hopkins SC  
29061 US

**Notes:**

Only text visible within note field will print.

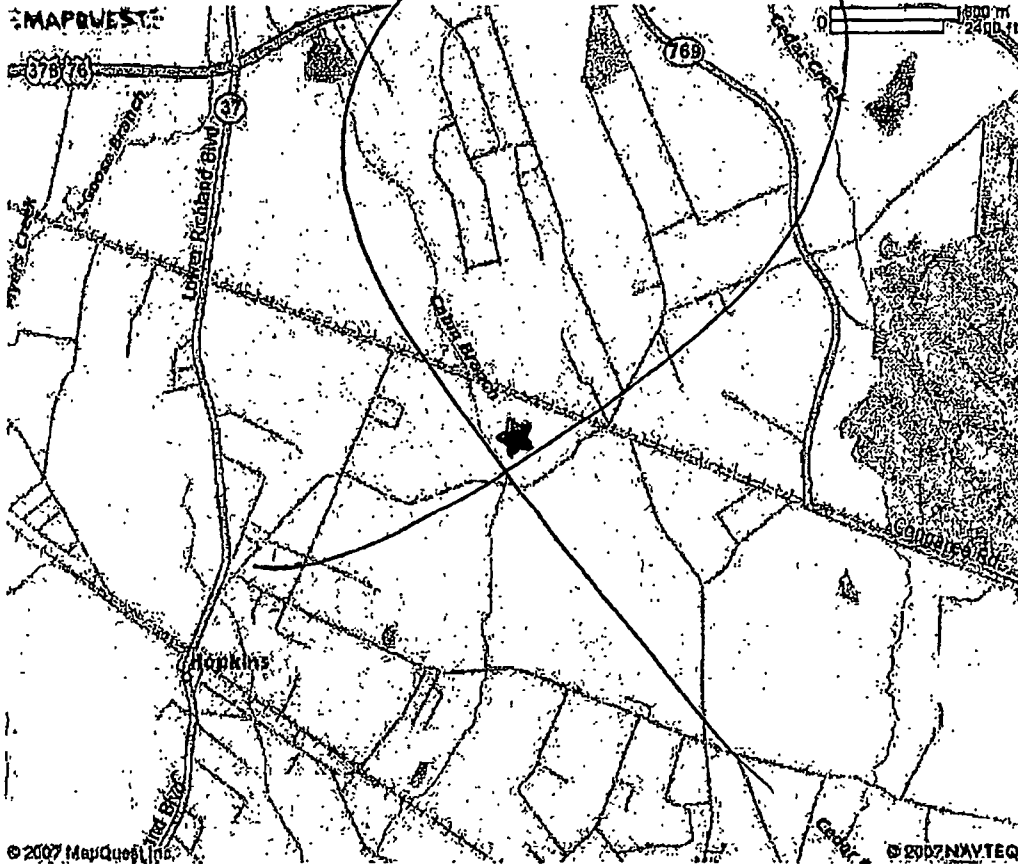
NEED A FAMILY  
GETAWAY?

Find exclusive travel  
offers that can help.

VIEW OFFERS

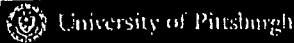


*My Family Vacation*



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accounts.pitt.edu

Name: Needleman, Herbert L  
University relationship: Faculty  
UPMC  
Department: Psychiatry  
Office mailing address: KEY 310 Pittsburgh  
Office phone: (412) 383-3100  
UPMC Office phone: (412) 383-3100  
UPMC Position: Supervisor (non-employee)  
UPMC Department: Lead Research  
UPMC Office address: 310  
UPMC Building address: Keystone Building  
Email: htnlead@pitt.edu

*STONE BLDG, RM# 310, UNV. OF P.  
15213*

Enter Name of Person:    
Last First

or

Enter username:   
Exact Username

Find Person

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# Herbert Needleman

From Wikipedia, the free encyclopedia

**Herbert Needleman, MD**, known for research studies on the neurodevelopmental damages caused by lead poisoning, is a pediatrician, child psychiatrist, researcher and professor at the University of Pittsburgh Medical Center, an elected member of the Institute of Medicine, and the founder of the Alliance to End Childhood Lead Poisoning (now known as the Alliance for Healthy Homes). Dr. Needleman played a key role in securing some of the most significant environmental health protections achieved during the 20th century, which resulted in a fivefold reduction in the prevalence of lead poisoning among children in the United States by the early 1990s. Despite engendering strong resistance from related industries, which made him the target of frequent attacks, Needleman persisted in campaigning to educate stakeholders, including parents and government panels, about the dangers of lead poisoning. Needleman has been credited with having played the key role in triggering environmental safety measures that have reduced average blood lead levels by an estimated 78 percent between 1976 and 1991.

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## Education and faculty appointments

Needleman earned his BS from Muhlenberg College in Allentown, Pennsylvania, and his MD from the University of Pennsylvania in 1952. He trained in Pediatrics at the Children's Hospital of Philadelphia and served as Chief Resident; he completed a fellowship in Pediatric Cardiology and Rheumatic Fever through the National Institutes of Health. After practicing family Pediatrics in Philadelphia and Neonatology at Pennsylvania Hospital, Dr. Needleman completed a residency in psychiatry at Temple University Health Sciences Center in Philadelphia, Pennsylvania. From 1971 to 1980, he was an assistant professor of psychiatry at Temple University and at Harvard University Medical School, in Cambridge, Massachusetts from 1980 to 1981. Since 1981, he has been a professor of child psychiatry and pediatrics at the University of Pittsburgh School of Medicine.

## Lead poisoning research

In the 1970s, Needleman conducted a study at Harvard Medical School that yielded strong evidence that lead, even at very low levels, can affect a child's IQ. By measuring levels of lead in children's teeth, Needleman provided the first evidence that low level lead exposure not only reduces IQs, but also shortens attention spans and delays acquisition of language proficiency. In studies that followed, he determined that lead poisoning had long term implications for a child's attentiveness, behavior, and academic success.

In 1979, Needleman began the first large scale study of intelligence and behavior in children with no outward signs of lead poisoning. His research showed that lead exposure is associated with increased risk for failure to graduate from high school and for reading disabilities. His research involved testing the concentration of lead in bones of 194 juveniles, between the ages of twelve and eighteen, who had been convicted in the Allegheny County Juvenile Court, and 146 students in regular high schools in Pittsburgh, Pennsylvania who did not have behavioral problems. In 1996, findings from the research, reporting on the physical and behavioral problems caused by leaded gasoline and lead paint while linking lead exposure to anti-social behavior, were published in the *Journal of the American Medical Association*. The study found delinquent children were four times more likely to have elevated concentrations of lead in their bones. According to Needleman, "Lead is a brain poison that interferes with the ability to restrain impulses. It's a life experience which gets into biology and increases a child's risk for doing bad things."

After extensive scientific review, Needleman's findings were instrumental in convincing the Centers for Disease Control (CDC) to issue guidelines for the diagnosis and management of lead poisoning in children, in goading the Environmental Protection Agency (EPA) to mandate the removal of lead from gasoline and inducing the Consumer Product Safety Commission to ban lead from interior paints. Needleman's research also helped cause the Department of Housing and Urban Development (HUD) to remove lead from thousands of housing units across the US.

Needleman designed the first forward study of lead exposure during gestation, and showed that such exposure is associated with cognitive deficits later in life. His most recent research has shown that boys with high levels of lead concentrated in their bones are more likely to develop aggressive or delinquent behavior, such as bullying, vandalism and shoplifting.

## Raising Children Toxic Free

In their book, *Raising Children Toxic Free. How to Keep Your Child Safe from Lead, Asbestos, Pesticides, and Other Environmental Hazards* (1996), Needleman and Philip Landrigan offer advice for parents and physicians on how to evaluate and minimize toxic exposure risks, which include lead, asbestos, pesticides, and other toxins. They also address practical means for ensuring community compliance with existing laws.

## Committee of Responsibility

While an associate professor at Temple University's School of Medicine, Needleman was the chairman of the Committee of Responsibility (COR), throughout its existence between 1966 and 1974.[1] (<http://www.swarthmore.edu/Library/peace/D0151-175/D0173COR.html>) COR, which sought to help civilians injured in the Vietnam War, was comprised of medical personnel, scientists, clergymen, and citizens concerned about American involvement. In its efforts to assist injured Vietnamese children shelters were set up in Berkeley, California and Boston, Massachusetts, both called Vietnam House, and another in Saigon, where paraplegic children could be cared for and rehabilitated in their own country.

## Controversy

Needleman has faced intense criticism from the lead industry, and among scientists employed by industry. In 1980, the EPA held a hearing to vet his 1979 controversial paper in the *New England Journal of Medicine*. The EPA concluded that the paper's claims could not be supported, nor refuted. In a legal superfund case, Needleman was a consultant for the prosecution. The Defendants hired two scientists in the area, Ernhart and Scott, to examine the data for the 1979 paper. Upon their review they promptly reported what they thought could be scientific misconduct to the NIH since the research was funded through the NIH. Professor Needleman was then investigated by the University of Pittsburgh, and the Office of Research Integrity. The University hearing board found Needleman guilty of deliberate misrepresentations in the 1979 paper and a 1990 paper as well. The University suggested a full investigation. In an unprecedented move, Needleman argued to have the hearings open to the public. Needleman was not found to have committed misconduct, but the investigative committee did find errors in the paper.

## Recognition

For his research he has been honored with the following awards (among others):

The first scientific studies award of the academy of Association For Children With Learning Disabilities.  
 The Sarah Polley Medal Of The New York Academy of Sciences.  
 The Charles Dana Award For Pioneering Achievement In Public Health.  
 The National Wildlife Federation Conservation Science Award  
 The University Of Pittsburgh Chancellor's Award For Public Service.  
 The H. John Heinz Foundation Environmental Award.  
 The Physician's Forum Edward K. Barsky Award.  
 The Society For Occupational And Environmental Health Vernon Houk Award.  
 Muhlenberg College's Shmuckweiler Award.  
 The University Of Pennsylvania's Distinguished Graduate Award.  
 The Prince Mahidol Award Of Thailand.

For his contributions to the understanding and prevention of childhood lead poisoning, in 1993 Needleman received the Heinz Award.

## Publications

- 1994, Herbert L. Needleman, Philip J. Landrigan, *Raising Children Toxic Free: How to Keep Your Child Safe from Lead, Asbestos, Pesticides, and Other Environmental Hazards*, Farrar Straus & Giroux, Gordonsville, Virginia, ISBN 0-374-24543-2
- 1994, Herbert L. Needleman, David C. Bellinger, *Prenatal Exposure to Toxicants: Developmental Consequences*, Johns Hopkins University Press, Baltimore
- 1991, Herbert L. Needleman (editor), *Human Lead Exposure* CRC Press, Boca Raton, Florida, ISBN 0-8493-6034-X
- 1980, Herbert L. Needleman, *Low level lead exposure: The clinical implications of current research*, ISBN 0-89004-455-4
- Childhood lead poisoning: The promise and abandonment of primary prevention

## Reference

- Rampton, S., Stauber, J., *Toxic Us, We're Experts!* 2001, p 95-7
- Needleman H. "Standing up to the lead industry: an interview with Herbert Needleman. Interview by David Rosner and Gerald Markowitz." *Public Health Rep.* 2005 May-Jun;120(3):330-7. PMID: 16134577 PDF ([http://www.publichealthreports.org/userfiles/120\\_3/120330.pdf](http://www.publichealthreports.org/userfiles/120_3/120330.pdf)).

## External links

- Brown.edu ([http://www.brown.edu/Administration/News\\_Bureau/2003-06/03-110.html](http://www.brown.edu/Administration/News_Bureau/2003-06/03-110.html)) - 'Legacy of Lead Poisoning Detailed at Annual James Lecture', Brown University (April 21, 2006)
- FindArticles.com ([http://www.findarticles.com/p/articles/mi\\_ni1169/is\\_xi\\_v33/ai\\_16776399](http://www.findarticles.com/p/articles/mi_ni1169/is_xi_v33/ai_16776399)) - 'The difficult quest of Herbert Needleman', Thomas A. Lewis, *National Wildlife* (April-May, 1995)
- HealthCentral.com (<http://www.healthcentral.com/newsdetail/408/511134.html>) - 'Take a Bite Out of Crime: Get the Lead Out: Study finds juvenile delinquents have more of the heavy metal in their bones', Jennifer Thomas, *HealthDayNews* (January 6, 2003)
- HeinzAwards.net (<http://www.heinzawards.net/recipient.asp?action=detail&recipientID=29>) - 'Herbert Needleman: 2nd Annual Heinz Award Recipient: Dr. Herbert Needleman receives the Heinz Award in the Environment for his extraordinary contributions to the understanding and prevention of childhood lead poisoning' (1993)

Retrieved from "http://en.wikipedia.org/wiki/Herbert\_Needleman"

Categories: Members and associates of the United States National Academy of Sciences | Living people | Pediatricians | Psychiatrists

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10/2/07 ATTY. NOTES

TRF D. DAVIS

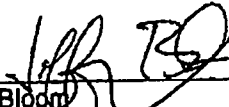
Tested @ WSHPT as child  
Lead level 9

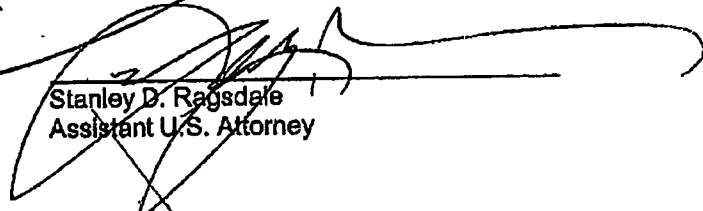
Also notes: D reports  
being disciplined by being  
beaten w/ "belts, weapons, etc."

Dr. calls home + m.  
not there - ph. ans'd  
by 7 y/o boy. Call  
Aunt D. Watson to come  
get D.

- N. Exhibit # 39 is green ziploc baggie with cocaine residue (no weight obtained)
- O. Exhibit # 42 is plastic bag with 6.10 grams of cocaine
- P. Exhibit # 44 is two straws with cocaine residue (no weight obtained)
- Q. Exhibit # 45 is plastic with cocaine residue (no weight obtained)

  
\_\_\_\_\_  
KEVIN ANGELO ROBINSON  
Defendant

  
\_\_\_\_\_  
Jeff Blood  
Attorney for the Defendant

  
\_\_\_\_\_  
Stanley D. Ragsdale  
Assistant U.S. Attorney

\_\_\_\_\_, 2007

Subj: **Timeline**  
Date: 8/24/2007 11:07:47 P.M. Eastern Daylight Time  
From: [dalemdavis@bellsouth.net](mailto:dalemdavis@bellsouth.net)  
To: [JPBloom803@aol.com](mailto:JPBloom803@aol.com), [drewcarroll@joyelawfirm.com](mailto:drewcarroll@joyelawfirm.com)

*Jeff & Drew,*

*I've added new information to the timeline. I am also sending an updated lead memo. I have not been able to locate any facility in the state that does the bone x-ray. There is a portable machine that we may need to explore further. I'm told one of the leading experts in this field used it in studies with prisoners.*

*CC Health Dept. (part of DHEC) has records on William but when I called today to check on them, I was told a supervisor would call me and she did not. I'm hoping these are related to the lead issue and not his immunization records. I'll follow up when we return.*

*Also attached is the sheet I used to track the records I request and related information so you can see where we are.*

*Have a productive meeting and tell me all about it next time.*

*Dale*

*Dale M. Davis  
Capital Mitigation Investigator*

*Information contained in this e-mail transmission is privileged and confidential. If you are not the intended recipient, please do not distribute or reproduce this transmission. Please reply to advise the sender of the error and then immediately delete the message. Thank you.*

Saturday, August 25, 2007 AOL: JPBloom803

**CRM Course Catalog**

Group	Class	Notes	Pre-Requisites	Additional cost
11 years old or Older or First year	Athletics			none
	Basketry & Leatherwork	Kits vary, and are available in the trading post	Scouts will work to earn both MB's	\$14.00 to purchase kit in Trading Post
	Swimming Clinic	This is NOT a merit badge	For non swimmers, beginners, or learn advanced skills.	none
	First Aid ER	Complete requirements 1, 2b, 3c, and 7 prior to camp		none
	Fishing	Please bring your personal gear/ no license required		none
	Indian Lore	Kits vary, and are available in the trading post		\$12.00 to purchase kits in Trading Post
	Mammal Study		Requirement 3c	none
	Metalwork			\$3.00
	Nature			none
	Swimming ER	A long sleeve shirt, long pants, belt, shoes and socks are required for class.	Pass BSA Swim Test	none
	TNT, Tenderfoot	This is a three period class (1, 2, & 3 period) for New Scouts		none
	TNT, Second	This is a two period class (4 & 5 period) for Tenderfoot Scouts		none
	TNT, First	This is a one period class (5th) for 2nd Class Scouts.		none
	Woodcarving	Scouts should have a knife suitable for carving and a T-shirt		\$5.00 to purchase kit in Trading Post

Group	Class	Notes	Pre-Requisites	Additional cost
12 years old or Older or Second year	Archery	Includes materials, bowstring, arrow kit components, etc.	Requirement 1c (local and state laws)	\$17.00
	Art / Music	Scouts will work to earn both MB's		none
	Astronomy	binoculars recommended		none
	Camping ER	This badge can be partially completed at camp; Bring camping gear	Complete requirements 5a, 7c, 9, prior to camp. Scouts should have First Aid MB	none
	Canoing		Pass BSA Swim Test	none
	Cinematography	<b>NEW! at CRM</b>		none
	Cooking	This is a two period class.	Firebuilding skills, complete requirement 7 prior to camp.	none
	Emergency Preparedness ER		Complete requirements 1, 5, 8c prior to camp. Scouts should have First Aid MB	none
	Forestry			none
	Golf	This is a three period class	Bring your own clubs	\$50.00

*This year we have designated our classes by suggesting camper years and age*

**Photocopy the Course Catalog so your scouts can "Be Prepared"**

**ER** = Eagle Required

Subj: **Fw: X-Ray Fluorescence**  
Date: 9/20/2007 4:34:41 P.M. Eastern Daylight Time  
From: [dalemdavis@bellsouth.net](mailto:dalemdavis@bellsouth.net)  
To: [JPBloom803@aol.com](mailto:JPBloom803@aol.com), [drewcarroll@joyelawfirm.com](mailto:drewcarroll@joyelawfirm.com)

*FYI - does not look promising but I'll contact Dr. Needleman & Dr. Hu.*

----- Original Message -----

From: Rouff Reigart  
To: Dale Davis  
Sent: Thursday, September 20, 2007 3:53 PM  
Subject: Re: X-Ray Fluorescence

There are no instruments for this purpose in SC that I am aware of. I am relatively certain that Dr. Herbert Needleman in Pittsburg and Dr. Howard Hu at the Harvard School of Public Health in Boston have operating instruments. I would contact them. They would be aware of any instruments closer to us.

JRR

Dale Davis wrote:

> /  
> /Dr. Reigart:/  
> /I am a mitigation investigator & work for lawyers on sentencing in  
> death penalty cases. In a current case, our client was almost  
> certainly exposed to lead in his early years based on four separate  
> addresses where he lived prior to age 6. I've had difficulty locating  
> any records to document that exposure. /  
> /From my conversations with Nancy Schwartz and Julie Reynolds, you are  
> the expert extraordinaire in this field and have been involved with  
> the Charleston lead program from its inception. I hope you can help  
> us. //We are trying to find a facility that has the ability to x-ray  
> our client using x-ray fluorescence. (I hope I am phrasing that  
> right.) I called MUSC radiology and was told they do not perform this  
> procedure. Do you know of any facility in the state that does this  
> procedure? Does anyone in the medical field here use the portable  
> version?/  
> /Thank you so much for any help you can provide./  
> /Dale Davis/  
> /  
> //  
> /Dale M. Davis  
> Capital Mitigation Investigator/  
> /Information contained in this e-mail transmission is privileged and  
> confidential. If you are not the intended recipient, Please do not  
> distribute or reproduce this transmission. Please reply to advise the  
> sender of the error and then immediately delete the message. Thank you./  
> /  
> //

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.487 / Virus Database: 269.13.27/1020 - Release Date: 9/20/2007 12:07 PM

Thursday, September 20, 2007 AOL: JPBloom803

J- Hold County #10

# NORTH CHARLESTON POLICE DEPARTMENT BOOKING REPORT

AGENCY I.D. SC0100800	DATE/TIME OF ARREST 6-24-94/2313	CASE NUMBER 9,4,0,59,1,9,0
--------------------------	-------------------------------------	-------------------------------

DEPENDANT NAME (LAST, FIRST, MIDDLE) Field's - Melissa Denise										HAIR Blk	SEX F	DATE OF BIRTH	BOOKET NUMBER				
AGE 23	ETH H	HEIGHT 510	WEIGHT 145	HAIR Blk	EYES Brn	SOCIAL SECURITY NUMBER	VISIBLE SCARS AND MARKS	WORK	LD. NUMBER								
ADDRESS N. Charleston						CITY N. Charleston	STATE SC	ZIP CODE 29418	RESIDENT Y	PHONE NUMBER 800							
PLACE OF BIRTH Charleston				DRIVERS LICENSE NUMBER N/A				STATE									
EMPLOYER OR OCCUPATION Student / Trident Tech			NEXT OF KIN VERONICA Fields			ADDRESS (CITY AND STATE)											
BOOKING OFFICER'S NAME Roberts				NUMBER		ARRESTING OFFICER Roberts		AGENCY NCPD		MUGGER 175							
ARRESTEE ARMED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO WEAPON TYPE:										<input type="checkbox"/> BULK AUTO		<input checked="" type="checkbox"/> ON VIEW ARREST		<input type="checkbox"/> SUMMONED		<input type="checkbox"/> CUSTODY	
JUVENILE DISPOSITION: 1. <input type="checkbox"/> HANDLED, RELEASED 2. <input type="checkbox"/> REFERRED TO OTHER AUTHORITY										* J - This Jurisdiction		S - State		O - Out of State		U - Unknown	
ADDITIONAL CASE NUMBERS										MORE IN REMARKS <input type="checkbox"/>							

CHARGE ID.	IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C			
	A	B	C	
STATUTE	13-22 (B)	13-5		
BOND TYPE	NAIL	NAIC		
DISPOSITION	TICKET # 5881VK	TICKET # 5881VK		
	DAYS	AMOUNT	DAYS	AMOUNT
TIME SERVED	10		6	
BALANCE				
RECEIPT NUMBER	Fingerprint Card Sent		North Charleston Municipal Court	
RELEASE DATE	TIME	RELEASING OFFICER	4500 ... BOX 10100 North Charleston, SC 29111	

SIGNATURE OF RECEIVING OFFICIAL X \_\_\_\_\_  
 REMARKS: Disposition Sent  
 Date: 10-17-99  
 Fine \$ \_\_\_\_\_ or 16 days  
 Date: 7/1/94 LIST ANY REMARKS BELOW

I CERTIFY THE ABOVE TO BE A TRUE AND CORRECT COPY  
 Name & # \_\_\_\_\_ CLERK OF COURT  
 TOTAL CASH AT TIME OF ARREST \_\_\_\_\_ CHARLESTON, SC  
 9/21/15

QUANTITY	ITEM	QUANTITY	ITEM

DEFENDANT'S EXHIBIT  
 4  
 513-16

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.  
 X \_\_\_\_\_ DEFENDANT'S SIGNATURE AT TIME OF ARREST  
 \_\_\_\_\_ OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.  
 X \_\_\_\_\_

3048 Bond 248

# NORTH CHARLESTON POLICE DEPARTMENT No Record BOOKING REPORT

AGENCY I.D. SC0100800	DATE/TIME OF ARREST 6-18-92 1910	CASE NUMBER 92054652
--------------------------	-------------------------------------	-------------------------

DEFENDANT NAME (LAST, FIRST, MIDDLE) Fields, Melicia Denise D-350351		RACE RF	SEX F	DATE OF BIRTH	DOCKET NUMBER
AGE 21	ETH. W	HEIGHT 58	WEIGHT 145	HAIR BRN	EYES BRN
ADDRESS (NUMBER AND STREET) N Chas		STATE SC	ZIP CODE 29418	RESIDENT BOU	PHONE NUMBER 764-3192
ALLIANCE NONE	PLACE OF BIRTH C. Chas, SC	DRIVERS LICENSE NUMBER NONE		STATE SC	
EMPLOYER OR OCCUPATION Answer-Phone Operator	NEXT OF KIN Veronica Fields	ADDRESS (CITY AND STATE) SAME			
BOOKING OFFICER'S NAME C. L. HEAR	NUMBER 166	AGENCY NCPD	NUMBER		
ARRESTEE ARMED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WEAPON TYPE:		<input type="checkbox"/> SEM-AUTO	<input type="checkbox"/> FULL-AUTO
JUVENILE DISPOSITION: 1. <input type="checkbox"/> HANDLED, RELEASED 2. <input type="checkbox"/> REFERRED TO OTHER AUTHORITY		ON VIEW ARREST <input type="checkbox"/>		SUMMONED <input checked="" type="checkbox"/> CUSTODY <input type="checkbox"/>	
ADDITIONAL CASE NUMBERS					MORE IN REMARKS <input type="checkbox"/>

CHARGE	IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C		
	CHARGE ID.	A	B
	STATUTE	16-17-110	I CERTIFY THE ABOVE TO BE
	BOND TYPE		
DISPOSITION	DISPOSITION	GUILTY	CLERK OF COURT
	DAYS	1	AMOUNT
	TIME SERVED		
	BALANCE		

RELEASE DATE	TIME	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO
--------------	------	-------------------	--------	--------------------

SIGNATURE OF RECEIVING OFFICIAL X TO: 7/14 LIST ANY REMARKS BELOW

REMARKS: Disposition Sent North Charleston Municipal Court  
1000 LaCross Road/P.O. Box 10100  
Charleston, SC 29412  
Date 10-17-97  
Date 7-14-92

DEFENDANT'S PERSONAL PROPERTY RECEIVED		TOTAL CASH AT TIME OF ARREST → \$	
QUANTITY	ITEM	QUANTITY	ITEM

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X \_\_\_\_\_ DEFENDANT'S SIGNATURE AT TIME OF ARREST \_\_\_\_\_ OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X

*Bel Bong Bank Co*

AGENCY: SC0100800  
 DATE/TIME OF ARREST: 05/08/2005 8:20:00 PM

**BOOKING REPORT**  
 NORTH CHARLESTON POLICE DEP.

CASE NUMBER: 2005017458

*BA*  
*4/20/05*

DEFENDANT NAME (LAST, FIRST, MIDDLE): FIELDS, MELISSA DENISE  
 RACE: B, SEX: F, BIRTH DATE: 11/11/71, SUBJECT NUMBER: [blank]  
 AGE: 34, ETH: N, HEIGHT: 510, WEIGHT: 160, HAIR: BLACK, EYES: BROWN, SOCIAL SECURITY NUMBER: [blank], VISIBLE SCARS AND MARKS: [blank], NCIC: YES, I.D. NUMBER: [blank]  
 ADDRESS (NUMBER AND STREET): 7637 IRELAND DR, CITY: NCHAS, STATE: SC, ZIP CODE: 29420, RESIDENT: J, PHONE NUMBER: 843-760-0356  
 ALIAS: [blank], PLACE OF BIRTH: [blank], DRIVERS LICENSE NUMBER: 008453677, STATE: SC  
 EMPLOYER OR OCCUPATION: [blank], NEXT OF KIN: [blank], ADDRESS (CITY AND STATE): [blank]

BOOKING OFFICER'S NAME: SINGLETARY, DAVID, NUMBER: 76, ARRESTING OFFICER: SINGLETARY, DAVID, AGENCY: NORTH CHARLESTON, NUMBER: 76  
 ARRESTEE ARMED:  YES  NO, WEAPON TYPE:  LETHAL CUTTING INSTRUMENT  FIREARMS FULL-AUTO  ON VIEW ARREST  SUMMONED  CUSTODY  
 JUVENILE DISPOSITION:  HANDLED, RELEASED  REFERRED TO OTHER AUTHORITY, \*J/This Jurisdiction, S-State, O-Out of State, U-Unknown  
 ADDITIONAL CASE NUMBERS: [blank], MORE IN REMARKS:

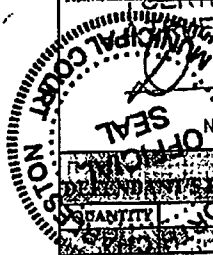
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE A, B, C

CHARGE I.D.	A	B	C
520	35B		
520 POSS CONCEALED WEAPON	35B POSS DRUG PARAPHERNALIA		
STATUS: 13-151	13-97		
BOND AMOUNT: \$1,000.00	\$465	\$650	
BOND TYPE: JAIL	JAIL		
POST DATE: 05/28/2005	05/25/2005		
DISPOSITION: 46978 DH	46978 DH		
	DAYS	AMOUNT	DAYS
TIME SERVED			
COOR TIME			
BALANCE: 10-31-05	00		
RECEIPT NUMBER			

RELEASE DATE: [blank], TIME: [blank], RELASING OFFICER: [blank], NUMBER: [blank], AGENCY RELEASED TO: [blank]

SIGNATURE OF RECEIVING OFFICIAL: [Signature], LIST ANY REMARKS BELOW

REMARKS: CERTIFY THE ABOVE TO BE TRUE AND CORRECT COPY  
 North Charleston Municipal Court  
 4900 LaCross Road/P.O. Box 190016  
 North Charleston, SC 29419-0016  
 Fine \$ [blank] or [blank] Days  
 Date: 10/31/05 4865



TOTAL CASH AT TIME OF ARREST -> \$ [blank]

QUANTITY	ITEM	QUANTITY	ITEM

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X SINGLETARY, DAVID  
 DEFENDANT'S SIGNATURE AT TIME OF ARREST OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.  
 X

**TABLE 1, March 8, 2016 O'Brien & Grosso Report**

<b>Defendant</b>	<b>Year</b>	<b>Black Qualified Venire Members</b>	<b>White Qualified Venire Members</b>	<b>Batson Motions</b>	<b>Judges</b>	<b>Transcripts</b>
1. Michael Barnes	2006	40.0% (2/5)	15.0% (3/20)	no	Dennis	Y
2. Jalal F. Beyah (first...)	2004	55.6% (5/9)	0% (0/18)	yes, granted	Goodstein	Y
3. Jalal F. Beyah (second...)	2004	37.5% (3/8)	0% (0/19)	yes, denied	Goodstein	Y
4. Colin J. Broughton	2009	50.0% (4/8)	14.8% (4/27)	yes, denied	Nicholson	Y
5. Ryan P. Deleston	2013	33.3% (3/9)	0% (0/18)	yes, denied	Harrington	Y
6. Dominic M. Derricotte	2008	37.5% (3/8)	0% (0/16)	no	Jefferson	Y
7. William O. Dickerson	2009	50.0% (4/8)	4.6% (1/22)	yes, denied	Dennis	Y
8. Lemar T. Mack	2008	0% (0/2)	8.0% (2/25)	no	Cole	Y
9. Michael G. Shine	2007	27.3% (3/11)	0% (0/13)	no	Cooper, T.W.	Y
10. Brandon J. Simmons	2010	30.0% (3/10)	6.7% (1/15)	no	Jefferson	Y
<b>Totals 38.5%</b>		<b>(30/78)</b>	<b>5.7% (11/193)</b>			

**Footnote One of Report:**

**Coker and Coulter - solicitor's case file could not be located, not included *Transcript Available, no motion, App. p. 176***

**Jemol Brown- could not find jury list**

***Transcript Available, no motion, Tr. p. 37***

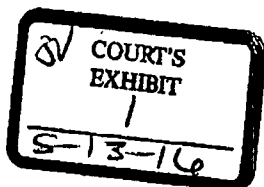
**Ethan Mack - informed no transcript of voir dire in existence**

***Transcript Available, no motion, Tr. p. 69***

**Page 14 of Report:**

**Michael Jeter v. State-no reference in table or Footnote one**

***Transcript and Strike List Available,  
no motion, Tr. p. 31***



Juror Selection - Dickerson 2009 Trial

			Juror#	State	Defense	Seated
(1)	Nathan Hood	W/M	370			(J-1)*
(2)	Joshua Partee	W/M	386			(J-2)*
(3)	James Nicklaus	W/M	228	S-1		
(4)	[not called] Denode Heyward					
(5)	Lauri Newkirk Paggi	W/F	227			(J-3)*
(6)	Charles High	W/M	134			(J-4)*
(7)	[not called] Janet Bergen					
(8)	Diane Buchanan	W/F	37		D-1	
(9)	Robert Jones	W/M	160		D-2	
(10)	Georona Gadsden	B/F	101	S-2		
(11)	Melissa Fields Copeland	B/F	92	S-3		
(12)	Lisa Robinson	B/F	256			(J-5)*
(13)	Mary Cox	W/F	402		D-3	
(14)	Debra Grant	B/F	363			(J-6)*
(15)	James Martin	W/M	378		D-4	
(16)	SallyLisha Toomer	B/F	315	S-4		
(17)	Rebekah Szivak	W/F	306			(J-7)*
(18)	Charles Hall	W/M	124		D-5	
(19)	Garrett Waterman	W/M	330			(J-8)*
(20)	Donna Melville	W/F	209			(J-9)*
(21)	Steven Wineinger	W/M	343		D-6	
(22)	David Ishmael	W/M	149		D-7	
(23)	Virginia Tompkins	W/F	314		D-8	
(24)	Michael Johnson	W/M	157		D-9	
(25)	Sheri Barker	W/F	11		D-10	
(26)	Deborah Meteraud	W/F	381			(J-10)*
(27)	Elaine Prioleau	B/F	247			(J-11)*
(28)	Susan Mullen	W/F	221			(J-12)*

**ALTERNATES:**

(29)	Marilyn Grant	B/F	364	S-A1		
(30)	Michael Page	W/M	234			(A-1)
(31)	Christina Areheart	W/F	7			(A-2)
(22)	Theresa Ancrum	W/F	4			(A-3)
(23)	Regina Dobson	W/F	72			(A-4)

**2009 Jury Composition**

**3 B/F**

**5 W/F**

**4 W/M**

**African Americans made up 25% of Jury (3 out of 12 = 25%)**

**Caucasians made up 75% of Jury (9 out of 12 = 75%)**

---

**Charleston Co. Statistics (2010 information)**

**25.4% African American**

**70.2% Caucasian**

**<http://www.census.gov/quickfacts/table/PST045215/4513330> (last visited 3/30/2016)**

**TABLE 1, March 8, 2016 O'Brien & Grosso Report**

<b>Defendant</b>	<b>Year</b>	<b>Black Qualified Venire Members</b>	<b>White Qualified Venire Members</b>
<b>1. Michael Barnes</b>	<b>2006</b>	<b>40.0% (2/5)</b>	<b>15.0% (3/20)</b>
<b>2. Jalal F. Beyah (first...)</b>	<b>2004</b>	<b>55.6% (5/9)</b>	<b>0% (0/18)</b>
<b>3. Jalal F. Beyah (second...)</b>	<b>2004</b>	<b>37.5% (3/8)</b>	<b>0% (0/19)</b>
<b>4. Colin J. Broughton</b>	<b>2009</b>	<b>50.0% (4/8)</b>	<b>14.8% (4/27)</b>
<b>5. Ryan P. Deleston</b>	<b>2013</b>	<b>33.3% (3/9)</b>	<b>0% (0/18)</b>
<b>6. Dominic M. Derricotte</b>	<b>2008</b>	<b>37.5% (3/8)</b>	<b>0% (0/16)</b>
<b>7. William O. Dickerson</b>	<b>2009</b>	<b>50.0% (4/8)</b>	<b>4.6% (1/22)</b>
<b>8. Lemar T. Mack</b>	<b>2008</b>	<b>0% (0/2)</b>	<b>8.0% (2/25)</b>
<b>9. Michael G. Shine</b>	<b>2007</b>	<b>27.3% (3/11)</b>	<b>0% (0/13)</b>
<b>10. Brandon J. Simmons</b>	<b>2010</b>	<b>30.0% (3/10)</b>	<b>6.7% (1/15)</b>
<b>Totals</b>		<b>38.5%(30/78)</b>	<b>5.7% (11/193)</b>

State of South Carolina ) In the Court of Common Pleas  
County of Richland ) Fifth Judicial Circuit  
2012-CP-40-03216

William O. Dickerson, )  
Plaintiff, )  
Vs. ) Transcript of Record  
State of South Carolina, )  
Defendant. )  
\_\_\_\_\_ )

May 27, 2016  
Columbia, South Carolina

B e f o r e :

The Honorable Thomas Cooper, Judge

A p p e a r a n c e s :

E. Charles Grose, Jr., Esquire  
Elizabeth Franklin-Best, Esq.  
Attorneys for the Plaintiff/Appellant

Caroline M. Scranton, Esquire  
Melody Brown, Esq.  
Donald Zelenka, Esq.  
Attorneys for the Defendant

Bonnie H. Kelly, CVR  
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>				<u>PAGE NO.</u>
	DIRECT	CROSS	RE-DIRECT	RE-CROSS
	Dr. William Norton			
MS. SCRANTON	11		55	
MR. GROSE		32		
THE COURT	62			
Motion/Mr. Grose				67
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Reply/Mr. Grose				81
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<u>WITNESS/DESCRIPTION</u>				<u>PAGE NO.</u>
	DIRECT	CROSS	RE-DIRECT	RE-CROSS
	Dr. William Norton			
MS. SCRANTON	11		55	
MR. GROSE		32		
THE COURT	62			
Motion/Mr. Grose				67
Response/Ms. Brown				77
Reply/Mr. Grose				81
Response/Ms. Brown				83
Decision by the Court				84
Certificate Page				86

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
S-1	CV of Dr. Norton	4	13
S-2	Emailed Opinion	4	
S-3	Formal Report	4	
A-1	CV of Barbara O'Brien	53	66
A-2	CV of Katherine Grosso	53	66
A-3	2-page Question Proffer Document	71	

1 (Pre-marked State's Exhibits Nos. 1, 2, and 3 for  
2 identification.)

3 THE COURT: All right. Let's see. My law clerk will  
4 not be here. She told me to -- that Mr. Grose and Ms. Best  
5 needed to put on the record that the documents produced  
6 subject to the April -- August 27 subpoena and Solicitor  
7 Dickerson's [sic] file were placed into evidence under seal  
8 in Charleston.

9 MR. GROSE: Yes.

10 THE COURT: Correct?

11 MR. GROSE: Yes. We -- we had a meeting right after  
12 -- and actually, I think it's probably two sets of  
13 documents that have been placed under seal. There was the  
14 original stuff that pertained to Mr. Dickerson's case and  
15 then there was the other stuff from the August ---

16 THE COURT: 20 ---

17 MR. GROSE: --- 16, or whatever that August ---

18 THE COURT: She says 27 subpoena.

19 MR. GROSE: Yeah, I think that's right, yes, sir.

20 THE COURT: All right. Good. That's -- we took care  
21 of that.

22 State ready to proceed?

23 MS. SCRANTON: The State is ready to proceed, Your  
24 Honor.

25 THE COURT: Defense ready to proceed?

1 MR. GROSE: We are, Your Honor. We do have a couple  
2 of other things that probably need to go on the record as  
3 housekeeping.

4 THE COURT: Go ahead.

5 MR. GROSE: All right. One of the issues that came up  
6 during the May 12/13 hearing in Charleston had to do with  
7 the prosecutor's desk book. You granted the motion for  
8 prosecution coordination to intervene. There have been  
9 some emails indicating that those materials have been --  
10 were going to be sent to you. I assume that that has taken  
11 place.

12 THE COURT: Yes.

13 MR. GROSE: We wanted to put that on the record, as  
14 well as our request, that if those are not ultimately  
15 disclosed to us that, they are also placed in evidence,  
16 under seal, for any potential appellate review.

17 THE COURT: Well, as of yesterday, we noticed -- I  
18 notified Ms. Clifford that I would admit those documents.  
19 She is going to add a watermark, it's my understanding.

20 MR. GROSE: Okay.

21 THE COURT: And prepare a confidentiality order.

22 MR. GROSE: Okay.

23 THE COURT: So ... but I have them.

24 MR. GROSE: Okay.

25 THE COURT: At least I have the 2005 edition, 2007

1 edition, 2008 edition; and of -- of those, I have the  
2 Batson sections out of -- or for lack of a better term.

3 MR. GROSE: Right.

4 THE COURT: Jury selection, peremptory challenges, and  
5 Bruton issues, too, if you want Bruton.

6 MR. GROSE: Probably be interesting.

7 THE COURT: Anything further?

8 MR. GROSE: The second thing that we wanted to put on  
9 the record, as Your Honor is aware, for a number of months,  
10 going back to last summer, we have been pointing to the  
11 *Foster vs. Chapman* case. It was pending before the United  
12 States Supreme Court.

13 THE COURT: Uh-huh.

14 MR. GROSE: Case number 14-8349. That was decided  
15 this past Monday, May 23, 2016. We -- Ms. Franklin-Best  
16 and I are going to be briefing the effect of that -- what  
17 that case has on some of the materials that we've been  
18 trying to gain access through during this litigation. Of  
19 course, some of them have been released; others are what  
20 you referenced that are under seal in evidence in  
21 Charleston.

22 THE COURT: Well, I understand that. I've read the  
23 *Foster* case, as I'm sure the State has. I would call to  
24 your attention, at least, my preliminary reading of it is  
25 A, that it's a -- it's a habeas case in state court and

1 that the Court -- the Supreme Court was dealing with the  
2 Georgia Open Records Act, which I really hadn't studied to  
3 see how that -- if that has any relationship to practice in  
4 South Carolina and whether -- or whether it's similar to a  
5 FOIA request or something like that.

6 But as a result of that subpoena, I assume, under the  
7 Georgia Open Records Act, the State turned over all the  
8 records, as I read it. And the Supreme Court took it from  
9 there and ran with the Bat -- the Batson analysis.

10 So I'm not certain at this point that it has a lot of  
11 application to this case. There's certainly tangential  
12 issues that apply to this case, but it opens a whole  
13 'nother subject matter that -- whether this Court -- this  
14 Court should consider that or not.

15 And I'll be glad to -- I'll be glad to read your brief  
16 and I would suggest that you do it -- if you're going to do  
17 it, you do it fairly soon because we're -- you know, we're  
18 sort of getting down towards the end of -- I thought we  
19 were getting down towards the end of this case.

20 All right. I understand.

21 MR. GROSE: All right. Thank you, Your Honor -- Your  
22 Honor. The ---

23 THE COURT: Do you have any -- let's hear from the  
24 State on *Foster*. Any ---

25 MS. SCRANTON: Not on *Foster*, Your Honor. I actually

1 wanted to talk about the photographs because we had  
2 mentioned that in the last hearing and I thought that was  
3 the last item Mr. Grose had referenced.

4 THE COURT: Oh, all right. Well, I haven't heard  
5 about the photographs yet.

6 MR. GROSE: Okay. The -- the only other issue that I  
7 had really pertains to the witness that I understand that  
8 they're calling today, Dr. Robert M. "Mick" Norton. And I  
9 wanted to put on the record that we did take his deposition  
10 last Friday in Charleston, and that we had contacted Your  
11 Honor when an issue of privilege was asserted.

12 The testimony was that he'd gotten involved in the  
13 case a day or two before May 11. That's the first time I  
14 was aware of the case. The question was, "And how were you  
15 contacted"? The answer was, "I got a phone call from  
16 Melody Brown." The question, "And did she -- and what did  
17 she inform you in that phone call?" And this is the answer  
18 that is important, "That there was a case -- there was a  
19 couple of people that had been contacted, I guess, who did  
20 not want to become involved in the case. And they both  
21 gave her my name, and so I said I would at least hear it  
22 out."

23 In subsequent questions, you know, we did determine  
24 that he knew the identity of those two people, but did not  
25 know the reasons why they did not want to get involved.

1 The Attorney General asserted privilege as to the identity.

2 Our position was several. Number one, that if it was  
3 information that he knew and him having been designated as  
4 a testifying witness, any information that he had was not  
5 privileged. Any opinions that they had -- we understand  
6 they had not -- well, we don't know if they'd given any  
7 opinions. We just -- they did not want to get involved.

8 Our question was about the identity and what he knew.  
9 So if we weren't getting into any opinions, I don't think  
10 we were getting into anything privileged.

11 And I should just add, you know, it's not lost on us  
12 -- and this goes back to a ruling that you inherited when  
13 you got this case, that we've been required to disclose our  
14 funding requests to the State, but they've not been  
15 required to disclose to us things that they're doing as  
16 broadly as what we've been required to do in -- in that  
17 situation.

18 Your Honor did rule that it was protected by privilege  
19 and we just wanted to make a record of what had happened  
20 since that was happening over the telephone.

21 THE COURT: All right. Yes, ma'am?

22 MS. SCRANTON: Your Honor, that is correct. And --  
23 and we asserted the privilege, and -- and you ruled over  
24 the phone that the identity of those consulting experts was  
25 subject to privilege. And that is the position that we

1 maintain today.

2 THE COURT: All right. State ready to proceed?

3 MS. BROWN: Your Honor, if I -- if I could possibly --

4 -

5 THE COURT: Yes, ma'am, Ms. Brown.

6 MS. BROWN: --- mention about the photographs. I had  
7 made arrangements for Your Honor to be able to look at the  
8 photographs in question at the Supreme Court.

9 When we last spoke about those photographs, we  
10 mentioned having a transportation order to get them back  
11 into Charleston, in the original file. I was advised by  
12 the Clerk's Office in the Supreme Court that they would  
13 prefer to keep those file -- those photographs in the  
14 Clerk's Office, pending appeal from either side in this  
15 particular case.

16 So that's why I would not be requesting a  
17 transportation order, and those photographs should stay in  
18 the Supreme Court.

19 THE COURT: All right. Yes, ma'am?

20 MS. SCRANTON: Your Honor, Caroline Scranton for the  
21 State. And if we're ready to proceed with testimony, the  
22 State would call Dr. Robert Norton to the stand.

23 THE COURT: Come around, Doctor.

24 ROBERT MICHAEL NORTON, after having  
25 been duly sworn, testifies as follows:

1 THE COURT: Have a seat in the witness box and state  
2 your full name for the record.

3 THE WITNESS: I am Robert Michael Norton.

4 DIRECT EXAMINATION

5 BY MS. SCRANTON:

6 Q Thank you, Dr. Norton. Good morning.

7 A Good morning.

8 Q How are you today?

9 A Doing okay.

10 Q Okay. Beginning with your undergraduate degree, could  
11 you please tell us about your education.

12 A Yes. There are two Bachelor's Degrees, Bachelor of  
13 Science in Mathematics, a Bachelor of Science in Education,  
14 both from Truman State University. And at the time that I  
15 went there, the diplomas say Northeast Missouri State  
16 University. I have a Master's Degree in Mathematics from  
17 Oklahoma State University and a Ph.D in Mathematics also  
18 from Oklahoma State University, speciality in probability.

19 Q And from my understanding, you are retired now, but  
20 you previously were a professor at the College of  
21 Charleston?

22 A That's correct.

23 Q And for how long were you a professor there?

24 A Thirty-four years full time. Eight years ago I ceased  
25 being full time. I retired and -- but they always seemed

1 to have a course that needed to be taught, and I would say  
2 yes. And so most of the time, I'd teach a course a  
3 semester, except for the last three, where I've said no.

4 Q And what types of courses did you teach?

5 A Before retiring, there wasn't a lot I didn't teach:  
6 calculus; differential equations; linear algebra; abstract  
7 algebra; pre-calculus; applied statistics - that's  
8 statistical techniques - theoretical statistics, math --  
9 so-called mathematical statistics; operations research; and  
10 some other things.

11 But after retirement, it's been pretty much applied  
12 stat for math and science majors, discrete structures,  
13 linear algebra, a course I designed for middle school  
14 teachers in probabilities and statistics. That's it, I  
15 think.

16 Q Okay. Thank you. And do you maintain a CV or a  
17 resume?

18 A I do.

19 Q This has been marked for identification as State's  
20 Exhibit 1. Do you identify this document -- or can you  
21 identify it?

22 A It appears to be my resume, yes.

23 Q And is that up to date to your knowledge?

24 A I revised that for this, yes, it's up to date.

25 Q Okay. Have you revised it since then?

1 A No.

2 MS. SCRANTON: Your Honor, at this time, the State  
3 would move State's Exhibit No. 1, the CV of Dr. Norton,  
4 into evidence.

5 THE COURT: Any objection?

6 MR. GROSE: Same one?

7 MS. SCRANTON: It's the same one.

8 MR. GROSE: No -- no objection.

9 THE COURT: Without objection.

10 MS. SCRANTON: And Your Honor, if I may approach ---

11 THE COURT: Sure.

12 MS. SCRANTON: --- I have a copy.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MS. SCRANTON:

16 Q Dr. Norton, what types of boards and associations are  
17 you currently or have you been a member of?

18 A Currently, the Mathematical Association of America,  
19 American Statistical Association. My interests were  
20 various, so, earlier, I was in other things, the National  
21 Council of Teachers in Mathematics, which I'm no longer in,  
22 the American Society for Quality. Those are the  
23 professional societies.

24 Q Thank you. And outside of teaching, have you engaged  
25 in consulting work?

1 A Yes, ma'am.

2 Q And would you characterize that consulting work?

3 A I tend to think of it as two kinds: There are events  
4 and cases where I think of in regard to that as expert  
5 witnessing. I've done some depositions, testified in court  
6 one time. I was a court-appointed expert in Medicare -- in  
7 cases involving Medicare, where they wanted money back from  
8 healthcare providers where they decided they shouldn't have  
9 paid the money to begin with. There were statistical  
10 issues in those.

11 The -- the -- the expert witnessing had to do with age  
12 discrimination, race discrimination; and then a good  
13 percentage of those were cases where I would do a report,  
14 and either they were settled out of court or didn't go  
15 beyond the report or I didn't have to testify.

16 Q But you have testified under oath before as an expert  
17 witness?

18 A One time, yes.

19 Q Okay. And what is the nature of your consulting work  
20 outside of the legal setting?

21 A "Outside" can be anything. Oh, an afterthought. Can  
22 I go back to a question you just asked ---

23 Q Absolutely.

24 A --- on expert? I gave a deposition in a -- in a case  
25 that involved pink jumpsuits in the Department of

1 Corrections a few years ago, where they -- where the focus  
2 was on has the percentage of sexual assault/sexual  
3 misconduct cases in the Department of Corrections  
4 increased.

5 Q But that testimony and the addition -- the rest of  
6 your expert testimony, has that had to do specifically with  
7 statistical analyses and mathematics?

8 A Yes. Yes.

9 Q And have you published for peer review in the area of  
10 statistics?

11 A Oh. You had a question that I -- I left.

12 Q The nature of your consulting work outside ---

13 A Oh.

14 Q --- the legal setting?

15 A Outside. Okay. I've worked with -- okay. That can  
16 be anything. I've done some consulting with manufacturing  
17 industries. They look -- if a manufacturer makes a  
18 product, they want to know the product is good. They have  
19 a process that makes the product; they do samples  
20 periodically; they check the samples, they collect data.

21 And an area that -- that I enjoy, I wrote one book in  
22 it, is statistical process control. And that -- it's --  
23 how do you examine data and decide when things in the  
24 process may have change and you need to investigate for a  
25 change because you may not want that change if it's a bad

1 change. So I've done -- I've done that.

2 I once helped the -- as a -- the Math Department Head,  
3 many years ago, came by and asked me if I wanted to do a  
4 community service project. The City of Charleston Police  
5 Department had a death, and they didn't know whether it was  
6 a homicide or suicide; and the issue was what position was  
7 her body in when the bullet went through her head. And it  
8 was a geometry problem. And they -- we -- there was a  
9 crime scene reconstruction. This was before software and -  
10 - and all that CSI folks use now.

11 But we -- we -- we were able to maintain the  
12 approximate position that the body would have been in, and  
13 it was not consistent with the position that somebody would  
14 be in when sitting on a bed, deciding to shoot herself in  
15 the head. It was more consistent with her being in a  
16 struggle for a weapon. That convinced them to pursue --  
17 pursue it as a homicide.

18 Q But in that scenario, was your focus more on the  
19 mathematics of the ---

20 A That ---

21 Q --- situation?

22 A It was a geometry problem. So I -- I did that. You  
23 get -- you get phone calls at the College of Charleston  
24 with off-the-wall questions. The media will ask you  
25 questions: "What's the probability -- today is Friday the

1 13th. We're going to talk about that in the news before we  
2 get serious about reporting the real news today." You just  
3 don't know what you're going to get.

4 Q Okay.

5 A So that could be anything.

6 Q And you have conducted peer review of third parties'  
7 papers?

8 A I have, yes.

9 Q And what's that process like?

10 A Somebody has submitted a manuscript for publication in  
11 a journal. In my case, it's been Math or almost always  
12 Statistics journals. And you read the work that's been  
13 submitted. If it's -- you look to see whether what is --  
14 what's in the article is something new that nobody knew  
15 before. You look at the train of thought, the reasoning  
16 processes that -- that were used to develop that and check  
17 to see if it's true.

18 You check to see, if it's not trivial, if somebody  
19 says, "This is true," can you can prove it. Anybody who  
20 knows the area can sit down and prove it in about 10  
21 minutes, then it's probably not going to be published.

22 Q Why is that?

23 A It needs to -- to be work -- well, this is a corny  
24 example: If I said, "Here's a column of numbers that add  
25 up to a hundred," that's no big deal. But the work can be

1 correct.

2 Now, I'm oversimplifying this, but there can be things  
3 that you never thought about before. You never thought  
4 they would be true. They're true and you go oh, yeah.  
5 It's -- it's not a significant contribution to mathematics  
6 or statistics.

7 And you also look at is -- is there an error in their  
8 reasoning and is it a fixable error? So you can accept --  
9 you can recommend that the editors accept it for  
10 publication. You can recommend there should be some  
11 changes done that I think are fixable and if you can fix  
12 them, then I would recommend accepting it.

13 Sometimes the errors are so great, you would recommend  
14 rejection. And often there are grammar errors or other  
15 little things that you can say, "I recommend for  
16 publication, but you need to fix this."

17 Q Okay. And have you presented papers at professional  
18 meetings in higher education?

19 A Yes, ma'am.

20 MS. SCRANTON: Your Honor, at this time, we would move  
21 to have Dr. Norton qualified as an expert in Mathematics  
22 and Statistical Analysis.

23 THE COURT: Any voir dire or objection?

24 MR. GROSE: No, sir.

25 THE COURT: All right. You may proceed.

1 MS. SCRANTON: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. SCRANTON:

4 Q Dr. Norton, have we shared with you the allegation at  
5 issue in today's litigation?

6 A Yes, ma'am.

7 Q What is your understanding of that allegation?

8 A I received from you --

9 Q Uh-huh.

10 A -- three attachments. One is a report -- well,  
11 there's a report and then an amended report that's a study  
12 done by Michigan State University School of Law on jury  
13 selection. And the issue is did Scarlett Wilson, if I can  
14 name her, is -- the -- the issue is whether the prosecutor  
15 tends to strike black jurors more than white jurors. They  
16 did a report on that. There's an amended report. There  
17 was a data set that accompanied it and I was asked to  
18 critique.

19 Q And did you review that data and the method and the  
20 conclusions from that Michigan State College of Law data  
21 set?

22 A Yes, ma'am.

23 Q And have you formed an opinion about the validity of  
24 that Michigan State report?

25 A I have two concerns. The typical thing that happens

1 in a statistical analysis is there are variables of  
2 particular interest: age, race, sex, say. And then a  
3 question of whether there are patterns in the data so that  
4 -- that -- may seem out of sorts.

5 For example, does a particular prosecutor have a  
6 higher probability of striking a black juror in the pool  
7 than a white juror in the pool?

8 And what -- what happens there is there is a  
9 population. Your report that they had identified the  
10 population of all the cases that the prosecutor was a lead  
11 prosecutor on. And then the report said they identified 12  
12 cases. This is the amended report.

13 And they also -- they had some wording in there that  
14 suggested that they didn't use all the cases. And what --  
15 what happens in statistics is if you have a population and  
16 then you don't consider all the cases, you're looking at a  
17 subset of the population, which stat people would call a  
18 "sample." And you analyze the sample, you see if the  
19 pattern that you're looking for occurs in the sample, and  
20 if it -- if it strongly enough occurs in the sample, you  
21 ask is it reasonable to draw the inference that that  
22 pattern also occurs in the whole population across the  
23 board.

24 And probabilities get involved in that. They're --  
25 they are referred to as "P values." A P value measures --

1 is the answer to a probability question, basically. If --  
2 if you have this surprising pattern that occurs in the  
3 sample, then the issue is what's the probability you would  
4 get this extent of the pattern if it doesn't occur in the  
5 whole population? That's what a probability does. And for  
6 those probabilities to make sense, the sample can't be  
7 convenient.

8           There are different kinds of samples. What a  
9 statistician's looking for is a random sample. So if  
10 you're -- if you're going to look at just part of the  
11 population, you try to sample in such a way that every  
12 possible subset of equal sides has the same chance of being  
13 the sample that you wind up with.

14           And there was wording in the document -- the document  
15 where it identified the -- the populations said that the --  
16 the people who wrote -- the Michigan State people --  
17 identified 12 cases.

18           There's another place in there where it said they took  
19 Mr. Dickerson's case and the cases that proceeded it. And  
20 I looked at that and that did not appear to me to be a  
21 random sample.

22           So I have -- I have a question about the random sample  
23 because if -- if you -- the whole idea of the  
24 probabilities, the P values, is the assumption that the  
25 sample is random. You can't pick your favorite sample to

1 make your case.

2 Q Sure. Would you say or would it be fair to say that  
3 you've identified a flaw in the method -- methodology used  
4 in that report?

5 A I would expect that to have been more vetted in the  
6 beginning of the article. And so I -- yeah, I have a  
7 concern about that.

8 Q So just to make sure that I'm clear, you have a  
9 concern about the way that the sample was created from the  
10 way that it's explained in the report?

11 A Yes, ma'am.

12 Q How would a statistician generate an appropriate  
13 sample for any type of study, or for a type of study like  
14 this?

15 A Let's suppose that there are 40 cases that you're --  
16 you're not going to use all the 40 cases. You're going to  
17 pick 12.

18 MR. GROSE: Objection, Your Honor. If there's going  
19 to be a list of 40 cases now, that's not been produced to  
20 us.

21 THE COURT: It's -- he's hypothetical. Overruled.

22 MR. GROSE: As long as it's a hypothetical. Thank  
23 you.

24 A If there were 40 cases, you number the cases from 1 to  
25 40, and you can have software -- a pocket calculator will

1 do this -- but a pocket calculator, if you decide to use 12  
2 cases, will pick you 12 random integers from 1 to 40; and  
3 then the cases that you have numbered with those numbers  
4 would be the cases that are in the sample. That's  
5 basically a way to pick a random sample.

6 Q Could you also use the entire population instead of a  
7 random sample?

8 A Yes, ma'am.

9 Q But the random sample would have to be generated from  
10 an entire population if you were to do it that way?

11 A Yes.

12 Q Okay. And how does it appear, from the Michigan State  
13 report that you reviewed, that the sample was drawn?

14 A The words -- the researchers or the people who wrote  
15 the report identified 12 cases was -- "identified" was not  
16 a word I expected to see -- stat people, statisticians  
17 would have described their sampling procedure, perhaps even  
18 software that they use -- identified, and then 12 cases in  
19 a row sounded like a decision and that's not the way to  
20 pick a random sample.

21 So those things I think require explanation. So  
22 that's a concern that I have from the report.

23 Q Did that concern cause you to form an opinion of the  
24 methodology used by Michigan State?

25 A It's -- it's a question that needs to be answered.

1 Q And is that question formed in your mind to a  
2 reasonable degree of certainty based upon statistical and  
3 mathematical laws and practice?

4 A Yes.

5 Q Would you also identify -- or did you identify a  
6 second flaw in the Michigan State report?

7 A Another concern report -- I have about the report is  
8 that it takes race as explaining everything. There are  
9 other variables that could be taken into account that might  
10 correlate with race, and to focus on -- on -- on race as  
11 the explanator (phonetic) just more needs to be considered.  
12 You -- you may be able to explain why these people were  
13 picked in a way that correlates with race, but race didn't  
14 really form the basis for the striking of the jurors in  
15 this case.

16 Q So would a statistician, in conducting this type of  
17 sample, take into account other variables?

18 A If a study were done, one would.

19 Q How would you go about identifying or accounting for  
20 those?

21 A Well, if I may, from the background in the cases where  
22 I looked at, I've done a few age and race discrimination  
23 reports, and the age discrimination was cases were brought  
24 against companies. And people suing the companies  
25 typically may look at just one variable, like race or age

1 or whatever.

2 But then the other side, the way the court system  
3 works, will say, "We looked at these other things. This  
4 was not -- either this was not the basis, or -- or  
5 whatever, for our decision making."

6 You don't usually see carefully designed studies --  
7 pharmaceutical companies do studies to decide if -- if a  
8 drug is a good drug, and they're carefully designed. They  
9 would look at the whole ball of wax.

10 Q How would a statistician do it, though?

11 A Well, statisticians in court would look at one  
12 variable with the understanding -- and -- and it's always --  
13 -- there are two sides to this, and then the -- the  
14 correlating variables would come up from the other side.

15 A statistician who designs an experiment for a  
16 pharmaceutical company: Does a statin drug reduce  
17 cholesterol? And in a designed study, they make a global  
18 statement that a statin reduces cholesterol, you would  
19 think of all the factors that might be involved: Do men  
20 react differently than women? Do blacks re -- relate  
21 differently than white? Do people with certain health  
22 issues, you can group them, do they react differently.

23 And you try to collect data in a carefully designed  
24 experiment to -- from all these groups, you collect data  
25 from all of those groups. And then you can conclude

1 whether you can make a global statement "statins reduce  
2 cholesterol." It doesn't make any difference what the  
3 group is, maybe different amounts that get reduced, but --  
4 or it doesn't work in this group but does it work in that  
5 group. But that's a -- that's a carefully designed thing,  
6 and some people do that for a living.

7 Q But in order to be a sound study globally, from a  
8 mathematics perspective, would you need to take into  
9 account the variables that you can identify?

10 A Yes, ma'am.

11 Q And did you provide a written report for us in  
12 preparation for today?

13 A I did.

14 Q Did you provide any preemptive -- before providing a  
15 formal report, did you provide any type of preemptive  
16 opinion?

17 A Yes, ma'am.

18 Q And did you put that in writing?

19 A I did.

20 MS. SCRANTON: Your Honor, may I approach the witness?

21 THE COURT: Sure.

22 (Ms. Scranton hands exhibit to the witness.)

23 Q This has been marked for identification as State's  
24 Exhibit 2. If you could -- 2 and 3. If you could just  
25 look over these documents while I show opposing counsel.

1 (Brief pause.)

2 Q What do you identify those documents to be, Dr.  
3 Norton?

4 A State's Exhibit 2 has a conclusion from just my  
5 initial reaction to the amended report done by Michigan  
6 State University. And Exhibit 3, the May 15 document, is  
7 my I guess you would call it "formal critique."

8 Q Thank you, Dr. Norton.

9 MS. SCRANTON: Your Honor, may I approach?

10 THE COURT: Sure.

11 MS. SCRANTON: I have copies of 2 and 3 here. And at  
12 this time, the State would move Exhibits 2 and 3 into  
13 evidence.

14 MR. GROSE: No objection.

15 THE COURT: Without objection.

16 MS. SCRANTON: Thank you, Your Honor.

17 (Defendant's Exhibit No. 2, Email Document, and  
18 Defendant's Exhibit No. 3, Formal Critique Document, in  
19 evidence.)

20 DIRECT EXAMINATION

21 BY MS. SCRANTON:

22 Q The -- the opinion that you provided, Dr. Norton, to a  
23 reasonable degree of statistical certainty, is it that the  
24 methods in the amended Michigan State report do or do not  
25 reflect accepted methods of statistical research and

1 analysis?

2 A It's not complete if you want a good case and that's  
3 not -- not the kind of reasoning you would expect if you're  
4 really trying to analyze what's going on statistically,  
5 yes, ma'am.

6 Q And going back to the previous discussion about  
7 accounting for variables, what, Dr. Norton, would be a  
8 reason for failing to account for variables?

9 A One would be naivete, not being aware that other  
10 variables might be a factor. Another might be not feeling  
11 a need to address other variables which could be a factor,  
12 figuring the other side might introduce that.

13 I think either being naive -- I mean, it's possible to  
14 try to deceive, but I'm -- I'm not thinking of that as -- I  
15 -- I think either being naive or not feeling a need that  
16 you have to focus on that would be the primary things that  
17 I would think about.

18 Q Can you explain the difference between an observation  
19 study and a causal relationship study?

20 A Well, an observation study, you look at data that you  
21 have observed. You haven't -- you haven't done a random  
22 sample, a statistically designed study.

23 The study, a formal statistical study would -- gets at  
24 what I described earlier: You think through the variables;  
25 you collect data in a -- in a -- in a scientific way;

1 random samples. And there are methodologies that are used,  
2 that are taught in statistics courses in colleges and  
3 universities.

4 Q Of those two types of studies, what, in your opinion,  
5 does the MSU study match up with?

6 A Well, it's at least observational, but I think some  
7 explaining has to be done because it's - it's -- it doesn't  
8 appear to be a random sample. So that being -- and -- and  
9 unless you have that or until you can explain that this  
10 does that, the P values, the probabilities, are subject to  
11 question.

12 Q Okay. And can you explain for us the difference  
13 between correlation and causation? We've kind of used  
14 those words and I'm looking for a definition here.

15 A Sure, I'll try. Let's -- okay. Let's talk about two  
16 variables being correlated: Suppose, in children 10 or  
17 younger, you -- you consider one variable, which is the  
18 number of cavities that they've had in their teeth; and the  
19 other variable is the number of words in their vocabulary.  
20 There's a positive correlation between those, it -- meaning  
21 that the children that tend to have more cavities also tend  
22 to have a bigger vocabulary. So they're correlated.

23 What explains that, though, is age. The older  
24 children get the more cavities they tend to get. Also  
25 their vocabulary tends to grow.

1           If you look at cavities and vocabulary, they're  
2 correlated, but there's not causation there. You are not  
3 going to tell a child, "Don't brush your teeth. We want to  
4 build up your cavities so you get more vocabulary words."

5           I mean, it's not cause/effect. That's dopey, even.  
6 But that's the idea.

7           Q     Sure.

8           A     And -- and -- and failing to teach more vocabulary  
9 words is not going to try to cut down on -- on -- on  
10 cavities.

11           And for that matter, age is not -- is not a causative  
12 variable either. You -- you can't tell a child not to  
13 brush teeth and make them grow older faster. That's not  
14 cause and effect.

15           But where I cited does a statin drug reduce  
16 cholesterol --

17           Q     Uh-huh.

18           a     -- you do a designed study and you try to take all the  
19 variables into count -- account --

20           Q     Uh-huh.

21           A     -- and -- and then you prescribe statins once you're  
22 pretty well convinced that statin lowers cholesterol.

23           Q     So if you were to look at something like education and  
24 try to make a statistical study between the learning  
25 ability of a student and the effect of their -- their

1 teacher, what types of variables would you consider in that  
2 type of study?

3 A Parental involvement: Do the parents make -- make the  
4 children do homework? The teacher can be effective.  
5 Disruptions in the classroom. There are a number of -- a  
6 number of factors involved. You can't -- you can't pin it  
7 all on teacher effectiveness.

8 Q So you wouldn't just pluck out that one scenario as a  
9 possibility for a student's level of education?

10 A It's over simplistic.

11 Q Uh-huh. Okay. So in your opinion, does the MSU  
12 report suggest a correlative study or a causative study?

13 A If -- if the sample issue is dealt with, I -- there  
14 may be -- correlation could come out of this. But it's not  
15 -- it doesn't identify other factors that could be the  
16 basis for the jury strikes. So it's not really causative.

17 Q But the sample, regardless, would have to be more  
18 clearly defined?

19 A Yes, ma'am.

20 Q So in your opinion, to a reasonable degree of  
21 statistical certainty, do the methods in the Michigan  
22 report reflect acceptable research methods for determining  
23 causation?

24 A I have concerns with that paper that -- that need to  
25 be explained.

1 Q And in your opinion, to a reasonable degree of  
2 statistical certainty, do the methods in the Michigan  
3 report reflect acceptable research methods for determining  
4 correlation?

5 A For correlation, if the sample issue is dealt with,  
6 possibly, yes.

7 Q And does your opinion in any way hinge on the  
8 individual data calculations present in the study?

9 A I was not asked to double check the computations, the  
10 number crunching.

11 Q So it's a statistical critique of the methodology?

12 A Yes, ma'am.

13 Q Okay. Thank you, Dr. Norton.

14 MS. SCRANTON: If I may beg the Court's indulgence for  
15 one moment.

16 (Ms. Scranton confers with co-counsel.)

17 MS. SCRANTON: The State has no further questions at  
18 this time.

19 THE COURT: Cross-examination?

20 MR. GROSE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GROSE:

23 Q Dr. Norton, I'm Charles Grose. I think we met for the  
24 first time last Friday at your deposition?

25 A Yes, sir.

1 Q And you met my colleague, Ms. Franklin-Best, at the  
2 same time for the first time?

3 A Yes, sir.

4 Q And before your deposition -- or before you were  
5 contacted in this case, you didn't know anything about  
6 William Dickerson, did you?

7 A No, sir.

8 Q But since being contacted about this case, you've  
9 learned a little bit about Mr. Dickerson and what he'd been  
10 charged with, right?

11 A Yes, sir.

12 Q And you learned a little bit about the proceedings  
13 that were involved in a post-conviction?

14 A Only as raised in the report, the Michigan State  
15 report. I haven't studied the ---

16 Q Well, and I gave you some information about post-  
17 conviction during the deposition.

18 A Yes, sir.

19 Q Okay.

20 A I remember that, yes.

21 Q And you've also -- have seen coverage of Mr.  
22 Dickerson's case in the "Post & Courier." in Charleston,  
23 since being contacted by the Attorney General's Office.

24 A Yes, sir.

25 Q Okay. I want to establish kind of a brief chronology

1 of your involvement in this case, which is going to be  
2 relevant to some of the questions that I'm going to ask  
3 you. It's my understanding that you were contacted a day  
4 or two before May 11?

5 A That sounds right.

6 Q Okay. Well, that's what you told us ---

7 A I don't remember the exact day, but ---

8 Q But ---

9 A --- yes, sir.

10 Q But that's what you told us in your deposition, wasn't  
11 it?

12 A Yes, sir.

13 Q Okay. And if I could walk up there for a second, you  
14 have a copy of State's Exhibit No. 2, and that's an e-mail  
15 from Melody Brown, actually to us, me and Ms. Franklin-  
16 Best, that is dated May 11, right?

17 A Yes, sir.

18 Q Okay. And that's the document that you referred to as  
19 sort of a -- I think they called it a "peremptory analysis  
20 or opinion"?

21 A Yes.

22 Q Okay. All right. And you're aware from the news ---

23 THE COURT: What's the date of that?

24 MR. GROSE: I'm sorry?

25 THE COURT: The date of that?

1 MR. GROSE: I'm sorry. That's May 11 is the e-mail to  
2 us.

3 THE COURT: Okay. Have you got a copy?

4 MS. SCRANTON: Yes. Yes, Your Honor.

5 MR. GROSE: I -- I thought she had handed one ---

6 THE COURT: Well, she handed -- I think she handed ---

7 MS. SCRANTON: It is the e-mail ---

8 THE COURT: --- two of the May 15 -- whatever.

9 MR. GROSE: Oh, okay. All right.

10 THE COURT: I'm not sure.

11 MS. SCRANTON: This is e-mail number two -- oh, I  
12 apologize. Thank you.

13 THE COURT: You gave me two of that.

14 MS. SCRANTON: (Indicates) That's No. 2, that's No. 3.

15 THE COURT: All right. Thank you. Go ahead.

16 MR. GROSE: Okay.

17 CROSS-EXAMINATION

18 BY MR. GROSE:

19 Q And Doctor, before we leave Plaintiff's Exhibit No. 2,  
20 I think we determined in your deposition that the  
21 information that Ms. Brown provided to us is what you had  
22 provided to her.

23 A Yes, sir.

24 Q Okay. And then you're familiar, from the newspaper  
25 and from what we talked about in the deposition, that we

1 had hearings in Mr. Dickerson's case on May 12 and 13 in  
2 Charleston.

3 A Yes, sir.

4 Q Okay. And then, again, I'm looking at State's Exhibit  
5 No. 3, which is a two-page document dated May 15, 2016,  
6 regarding critique of Michigan State University School of  
7 Law amended report on jury selection study; is that right?

8 A Yes. Yes, sir.

9 Q All right. And so that was, I guess, the date that  
10 you finalized your report and provided it to Ms. Brown in  
11 the Attorney General's Office?

12 A I believe it is, yes.

13 Q Okay. And then your deposition, which we took at the  
14 Solicitor's Office in Charleston last Friday, that would  
15 have been on May 20 of 2016; is that right?

16 A Yes, sir.

17 Q Okay. And now we're one week later on the 27; is that  
18 right?

19 A Yes, sir.

20 Q Okay. Now, I want to -- I want to talk about the two  
21 concerns that you raised during your testimony. One  
22 concern had to do with the selection of the cases, the  
23 number of cases; is that correct?

24 A Yes, sir.

25 Q Okay. And you had concerns about how the cases that

1 were included in the study were identified; is that right?

2 A Yes, sir.

3 Q Okay. Now, one of the things that you told us in your  
4 deposition was -- is that you came across Footnote 1 of the  
5 May 5 report the night before your deposition.

6 A Yes, sir.

7 Q Okay. And so if that was the night before your  
8 deposition, that would have been May 19, right?

9 A Yes, sir.

10 Q And that would have been four days after your May 15  
11 report.

12 A Yes, sir.

13 Q Okay. And we actually looked at Footnote 1 during  
14 your deposition, didn't we?

15 A Yes.

16 Q And Footnote 1 explains that (as read): "Attorneys  
17 for Mr. Dickerson reviewed the Clerk of Court records in  
18 Charleston County to identify University" -- I mean, "as to  
19 universe of jury trials in which Scarlett Wilson served as  
20 lead attorney during her tenure in the Ninth Circuit  
21 Solicitor's Office;" is that right?

22 A Yes, sir.

23 Q And that "12 cases were identified for inclusion in  
24 the study."

25 A Yes, sir.

1 Q And that "there was a subpoena and FOIA request that  
2 was attached to the report."

3 A I would -- I would need to look at that sentence in  
4 there. It doesn't cry out at me, but ...

5 (Brief pause.)

6 Q Dr. Norton, I'm going to approach with the May 5  
7 report. And I'm looking at (as read): "They then  
8 subpoenaed the available jury information from these trials  
9 from Solicitor Wilson. A copy of the subpoena, FOIA  
10 request is attached as Exhibit A."

11 A Yes, sir.

12 Q All right. And of course, you had copies of the  
13 reports and saw that that request and the list was  
14 attached; is that right?

15 A Yes, sir.

16 Q Okay. And then the footnote goes on to explain that,  
17 information about certain trials were not available.

18 A I remember that, yes.

19 Q Okay. And just to refresh your memory because some of  
20 these names, there was *State v. Ivory Coker and Ronald*  
21 *Colter*, where a file -- a case file could not be located.

22 A Yes, sir.

23 Q All right. And then there was *Michael Dunham* and  
24 *Jamal Brown* and *Braddy - Bradley Lindsey* where information  
25 couldn't be located.

1 A Yes, sir.

2 Q And I think, in the deposition, we talked about data  
3 that's needed to go into the study that Michigan State did,  
4 right?

5 A I remember that, yes.

6 Q And the -- I think you agreed with us that if  
7 information was unavailable, such as the race of the jurors  
8 that were called to trial and struck or seated on the jury,  
9 if that information about race wasn't available, then you  
10 just didn't have it to put in the study.

11 A Yes, sir.

12 Q Okay. And that would be a legitimate reason for not  
13 including that information, if it wasn't there.

14 A You can't use what you don't have.

15 Q Right. And I think I asked you some questions in your  
16 deposition about whether or not you were familiar with  
17 record retention policies for the Clerks of Court in South  
18 Carolina.

19 A I am not really aware of that, no.

20 Q All right. And nobody had provided you that  
21 information; had they?

22 A No, sir.

23 Q Either before or since your deposition.

24 A No, sir.

25 Q And I also asked if you were familiar with record

1 retention policies for court reporters that take down  
2 transcripts for cases, in General Sessions Court in South  
3 Carolina.

4 A And I am not aware of that either.

5 Q All right. And nobody had provided you that  
6 information before or since your deposition.

7 A No, sir.

8 Q Okay. Now again, this was the footnote that you found  
9 after you did your report, but before your deposition.

10 A Yes, sir.

11 Q Okay. You also expressed a concern in your report  
12 about using the cases up to the time of Mr. Dickerson's  
13 trial -- Mr. Dickerson's, in May of 2009, and the cases  
14 before it -- and excluding the cases that happened  
15 afterwards.

16 A Yes, sir.

17 Q Okay. And you said that if you just excluded -- in  
18 your report, if you excluded the post-May 2009 cases, that  
19 that's not a random reason for excluding them.

20 A Well, it suggest it's not a random, yes, sir.

21 Q Okay. During your deposition, I provided you with a  
22 little information about post-conviction relief cases; you  
23 recall that?

24 A Yes, sir.

25 Q Okay. And that if the question is framed, "What was

1 available to Mr. Dickerson's lawyers up to and including  
2 the time that the jury was struck in May of 2009," if that  
3 was the question that was framed, then it would be  
4 appropriate to exclude everything after 2009 because that  
5 hadn't occurred yet.

6 A Well, if that's a legal reason for that selection,  
7 that would have to be accepted. I'm not in a position to  
8 know the law.

9 Q Right. But you would agree that if you were  
10 determining information available on a certain date,  
11 anything that was created after that, by definition, wasn't  
12 available on that certain day.

13 A If it was -- yeah. nything that's requested on that  
14 particular day, yes.

15 Q Okay. And the Attorney General's Office probably had  
16 not told you, either before or since your deposition, that  
17 they'd actually objected to us including information in the  
18 study after William Dickerson's trial ---

19 MS. SCRANTON: Objection, Your Honor.

20 MR. GROSE: I'm just asking what he knew.

21 THE COURT: Overruled. Go ahead.

22 Q They hadn't told you ---

23 A I -- I do not know about that.

24 Q Okay. All right. And I think that when we talked  
25 through your deposition, it actually became clear that, in

1 the May 5 report, the Michigan State University law  
2 professors actually did the analysis two ways, didn't they?

3 A Well, they had several analyses in there.

4 Q Yes.

5 A Yes.

6 Q All right. And -- and one way that they did it is  
7 they included -- analyzed all the information from all the  
8 cases where the data was available.

9 A Yes.

10 Q And they alternately analyzed it with the information  
11 that was available up to and including the time of Mr.  
12 Dickerson's trial.

13 A I would like to look at that again, if I may.

14 (Mr. Grose hands document to the witness.)

15 Q I'm -- I'm handing you the May 5 report, at page 7,  
16 because I think that's the part that you identified in your  
17 report.

18 (Brief pause.)

19 A "Yes" to your question.

20 Q Okay. So they did it both ways.

21 A Yes, sir.

22 Q All right. And in fact, you didn't really critique,  
23 in your report, anything about the analysis that included  
24 all of the cases that were identified.

25 A I did not double check figures.

1 Q Okay. All right. And -- and that gets back to what  
2 you were provided. And I think you testified about this  
3 today, but just to summarize, you had a copy of the initial  
4 report from March, I believe March 8 of this year; is that  
5 right?

6 A Yes, sir.

7 Q And you had a copy of the amended report of May 5,  
8 right?

9 A Yes, sir.

10 Q And you were given a data set?

11 A Yes.

12 Q And at the time of your deposition, you had made the  
13 assumption that that data set was the data that the  
14 Michigan State University law professors used; is that  
15 correct?

16 A Yes.

17 Q And at the time of your deposition, you had not done  
18 an analysis of that.

19 A Correct.

20 Q I don't even think you had reviewed the entire data  
21 set at that point.

22 A Things were happening pretty quickly.

23 Q All right.

24 A Yes, sir.

25 Q Have -- have you reviewed it at this point, the entire

1 data set?

2 A I've -- I -- I've looked at -- at more of it.

3 Q Okay.

4 A Yes.

5 Q All right. But you've not been asked to check the  
6 calculations that the law professors made based on that  
7 data set, have you?

8 A No, sir.

9 Q And you've not been asked to run your own calculations  
10 based on that data set either, have you?

11 A No, sir.

12 Q All right. You -- your second critique has to do with  
13 not including any variables other than race; is that right?

14 A Yes, sir.

15 Q And on -- on direct examination, you went through this  
16 whole thing about children and cavities and age and number  
17 of words that they know; is that right?

18 A Yes, sir.

19 Q Okay. During the deposition, I asked you if it had  
20 been suggested to you what other variables should be  
21 included. Do you recall that question?

22 A Yes, sir.

23 Q All right. And nobody had suggested any information  
24 to you, had they?

25 A No, sir. Well, nobody suggested to me other -- I read

1 some things in the newspaper.

2 Q Okay. All right. We're going to come back to that in  
3 a second. But nobody had suggested to you other variables  
4 to use in the -- in -- in the study?

5 A No, sir.

6 Q And I asked you what else could be included and you  
7 only had one example, didn't you?

8 A Yes, sir.

9 Q And that was education.

10 A Correct.

11 Q Okay. Let's get back to the thing about you reading  
12 and getting information in the newspaper because I'm sure  
13 you recall that there was a moment in your deposition where  
14 the number of 30 cases came up.

15 A Yes, sir.

16 Q All right. And -- and you were the one who, in fact,  
17 had first used that number in the ---

18 A Yes, sir.

19 Q --- in the deposition, right?

20 A Yes, sir.

21 Q All right. And so we wanted to try to figure out  
22 where that number came from. It hadn't come from anybody  
23 in the Attorney General's Office, had it?

24 A I -- it arose in a discussion that we had. It may  
25 have been a hypothetical. I remember being asked ---

1 Q Okay.

2 A --- how would you draw a random sample and I -- and I  
3 explained how you would draw a random sample.

4 Q Okay. But I'm talking about the number 30.

5 A I'm not sure how 30 popped up, sir.

6 Q Okay. We -- we -- at first, you thought it was in the  
7 Michigan State report, didn't you?

8 A Correct.

9 Q And -- and we gave you time to review the report and  
10 it's not in there, is it?

11 A It was not in there.

12 Q Okay. And you didn't recall it coming up in any of  
13 your discussions with the representatives from the Attorney  
14 General, did you?

15 A Couldn't recall where it came up.

16 Q All right. Well, at the end, there was a question  
17 from the Attorney General, "Was it possible that you had  
18 read that number in the newspaper?"

19 A Yes, sir.

20 Q All right. And -- and you said that that was  
21 possible.

22 A Yes, sir.

23 Q Okay. At the time of your deposition, no one had  
24 provided you a list of 30 cases, had they?

25 A No, sir.

1 Q Since your deposition, based on your answers this  
2 morning, I take, but I want to know for sure, still nobody  
3 has provided you a list of cases, have they?

4 A No, sir.

5 Q Okay. And at the time of your deposition, nobody had  
6 told you that the professors from Michigan State University  
7 wanted to include absolutely every case, from January of  
8 2001 to the present, that Solicitor Wilson was lead counsel  
9 on, if the data was available. Nobody had told you that,  
10 had they?

11 A I was not aware of that.

12 Q Okay. And nobody had told you about what efforts had  
13 been made to try to identify that set of cases, had they --

14 A I am not aware of that.

15 Q -- other than Footnote 1 that you found the night  
16 before your deposition.

17 A Correct.

18 Q All right. And -- and nobody had told you that we had  
19 asked Solicitor Wilson to list the defendants that she  
20 prosecuted in 30 cases, did they?

21 A No.

22 Q Or that we had asked the Attorney General's Office if  
23 they were aware of any cases that could be included in the  
24 study that hadn't been included.

25 A I am not aware of that.

1 Q All right. And if the Michigan State University  
2 people were ultimately provided every case in that field,  
3 from January of 2001 to the present, and included that in  
4 the study, that would be acceptable, wouldn't it?

5 A Yes.

6 Q Okay. Are you aware that they're objecting to our  
7 request that other cases be disclosed?

8 A I am -- I am not aware of that.

9 Q Okay. Now, going back to talking about other  
10 variables, you -- you have looked at the report and based  
11 on the data in the report, it does appear that Solicitor  
12 Wilson has struck a significantly larger number of African-  
13 Americans than whites.

14 A Statisticians tend to look at P values rather than  
15 compare differences in proportions because in -- the size  
16 of the numbers that you're looking at sometimes can make  
17 differences in proportions misleading.

18 Q Okay.

19 A So stat folks tend to look at probabilities.

20 Q And -- and there are P numbers in the Michigan State  
21 report, aren't there?

22 A Yes, sir.

23 Q And you've not been asked to go back and calculate  
24 those, have you?

25 A No, sir.

1 Q Okay. And so therefore, you've not done it.

2 A Correct.

3 Q All right. And their conclusion was -- is dependent  
4 upon which time frame you looked at, Solicitor Wilson was  
5 approximately seven or approximately eight times more  
6 likely to strike African-Americans, right?

7 A I saw that in the document, yes, sir.

8 Q Okay. And when we were questioning you in your  
9 deposition about -- about other variables to take into  
10 account, to control for, one of the questions that I posed  
11 to you was is that in order to account for that difference,  
12 or to decrease it or whatever, the other variable would  
13 have to correlate very closely with race, wouldn't it?

14 A You would expect that to happen. It wouldn't have to,  
15 but that's what you expect.

16 Q That -- that's what you would expect. And in fact,  
17 you talked a little bit on direct about some of the age  
18 discrimination studies that you've done, right?

19 A Yes, sir.

20 Q And we talked at length about one of them involving a  
21 company in Florence, South Carolina.

22 A Well, there was the -- I testified in a court in  
23 Florence.

24 Q Okay. Well, one of the ones that we talked about it  
25 involved terminating people who are over 60 years of age.

1 A Yes, sir.

2 Q And they had brought an age discrimination suit.

3 A Yes, sir.

4 Q And a hundred people -- hundred percent of the people  
5 that were terminated were over 60 years old.

6 A Correct.

7 Q And -- and there was a total of 15 that were over 60,  
8 and 9 of those 15 were terminated.

9 A Yes, sir.

10 Q And none of the people below 60 had been terminated.

11 A Correct.

12 Q And you did look at other factors.

13 A Working on the one side -- let's see. Wait a minute.  
14 No. I believe I looked just at age.

15 Q All right. And you were representing the plaintiffs  
16 -- or hired by the plaintiffs.

17 A Yes, sir.

18 Q And the -- you concluded that there was -- that that  
19 was not random.

20 A Yes, sir.

21 Q All right. And based on controlling for age, that  
22 influenced the employers themselves; is that correct?

23 A Repeat, please.

24 Q Based on -- the -- the employers ultimately settled  
25 that case.

1 A They did.

2 Q And -- and -- and they were interested in the  
3 statistical stuff controlling ---

4 A It was ---

5 Q --- that variable age.

6 A There was a very small P value there, yes, sir.

7 Q All right. And as I understand it, your agreement  
8 with the Attorney General's Office is that you're being  
9 compensated at a rate of \$300 per hour; is that correct?

10 A Yes, sir.

11 Q And by the time of your deposition, you had spent 15  
12 to 16 hours?

13 A Yes, sir.

14 Q How much time have you spent since your deposition?

15 A Five maybe.

16 Q Okay. We also -- and I think this came out, too; but  
17 there was some questions about your experience,  
18 particularly your experience with cases involving the  
19 criminal justice system; is that right?

20 A Yes, sir.

21 Q All right. And you talked about the service project  
22 you did for the Charleston Police Department that involved  
23 a geometry problem.

24 A Yes, sir.

25 Q And so that wasn't statistics.

1 A No.

2 Q All right. And you had been retained on what you  
3 referred to as the "pink jumpsuit case" by the lawyers for  
4 the Department of Corrections.

5 A Yes, sir.

6 Q All right. And other than Mr. Dickerson's case, those  
7 are the only two times you've ever done any work in the  
8 criminal justice system.

9 A I believe that's correct.

10 Q Okay. And -- and you do not have a law degree.

11 A No, sir.

12 Q And we asked whether or not you were familiar with  
13 some of the legal authorities that might be relevant in  
14 this case, case names.

15 A I remember that. Yes.

16 Q All right. And we listed a number of them, *Batson vs.*  
17 *Kentucky, McKlesky vs. Kent, Purkett vs. Elong, Miller El*  
18 *vs. Drefte* - I'm sorry, *Drefte; Synder vs. Lousiana*, and  
19 the case you've heard us talk about again this morning,  
20 *Foster vs. Chapman*, from the U. S. Supreme Court. And you  
21 weren't familiar with any of those cases.

22 A No, sir.

23 Q Have you become familiar with any of them since your  
24 deposition?

25 A No, sir.

1 Q Okay. And we asked you about a couple of state court  
2 cases, *State vs. Stewart* from the Court of Appeals, and  
3 *State vs. Damien Inman* from the South Carolina Supreme  
4 Court; is that right?

5 A I remember the -- the names, yes.

6 Q Okay. And you weren't familiar with any of those.

7 A No, sir.

8 Q All right. You don't know Dr. Barbara O'Brian, do  
9 you?

10 A No, sir.

11 Q Or Professor Katherine Grosso, do you?

12 A No, sir.

13 Q And you didn't recognize the name "David Baldus" when  
14 we gave you that name at the deposition.

15 A I did not.

16 Q Okay. We did ask you to look at the CV's of Barbara  
17 O'Brien and Katherine Grosso during your deposition, didn't  
18 we?

19 A Yes.

20 Q Okay.

21 MR. GROSE: And I'll just mark these as Applicant's  
22 Exhibits 1 and 2 to this hearing.

23 (Marked Applicant's Exhibit No. 1, CV of Barbara  
24 O'Brian.)

25 (Marked Applicant's Exhibit No. 2, CV of Katherine

1       Grosso.)

2       Q     I want to show you what were Plaintiff's Exhibits 5  
3       and 6 to your deposition, but Petitioner's Exhibits 1 and 2  
4       for today, okay?

5               (Mr. Grose hands exhibits to the witness.)

6       A     Yes, sir.

7       Q     And we asked during your deposition for you to review  
8       their publications.

9       A     I remember that, yes.

10      Q     All right. And I think that you stated that you're  
11      not really --

12              (Mr. Grose confers with co-counsel briefly.)

13      Q     We asked you to review that list of publications. And  
14      I believe that you said that you weren't familiar with the  
15      area enough to know whether that was a lot for this  
16      particular area of study.

17      A     Correct.

18      Q     But you did agree that Professor O'Brian and Professor  
19      Grosso appeared to have a niche in studying jury selection  
20      and fairness of juries.

21      A     They've studied it. They're not stat people, but yes,  
22      they've studied that.

23      Q     Okay. But you don't know what their background is in  
24      statistics ---

25      A     Well ---

1 Q --- do you?

2 A I have no idea.

3 Q Okay. And the Attorney General's Office has not  
4 provided you with transcripts of Dr. O'Brian's testimony,  
5 have they?

6 A No, sir.

7 Q Nor a summary of what she testified to.

8 A No, sir.

9 Q So you don't know what questions she was asked and  
10 what questions she answered, do you?

11 A I do not.

12 (Brief pause.)

13 MR. GROSE: Your Honor, I would just hand up  
14 Petitioner's 1 and 2 for Your Honor.

15 THE COURT: All right.

16 MR. GROSE: And that is all the questions that I have  
17 at this time. Thank you, Dr. Norton.

18 MS. SCRANTON: Re-direct, Your Honor?

19 RE-DIRECT EXAMINATION

20 BY MS. SCRANTON:

21 Q Dr. Norton, when we contacted you, we were seeking a  
22 statistical analysis, correct?

23 A I missed a word. I didn't hear a word.

24 Q When we contacted you, Dr. Norton, we were seeking a  
25 statistical critique of the Michigan State report; is that

1 correct?

2 A That's correct, yes.

3 Q We did not discuss any legal opinion.

4 A No, ma'am.

5 Q And we did not discuss any critique of the Michigan  
6 report in legal terms.

7 A No, ma'am.

8 Q Purely statistics, right?

9 A Yes, ma'am.

10 Q The Michigan report, does it articulate or account for  
11 a missing data set?

12 A It describes why some cases were not included.

13 Q In your opinion, does it accurately define the data  
14 set as has been represented today?

15 A Well, it defines a set, it explains why they didn't  
16 explain certain cases. I still come back to the idea of  
17 what the population is and how you take the data from the  
18 population.

19 I got the implication from the document, there are  
20 larger subsets made -- larger sets that could serve as the  
21 population or the universe. There's always the issue of  
22 what is that universe and then how you sample from it. And  
23 so questions were raised, yes.

24 Q And we didn't ask you to do any type of numerical  
25 recalculation of that report.

1 A You did not.

2 Q Have you looked back at that amended report since  
3 providing your opinion in writing for us?

4 A A bit, yes.

5 Q And does it account for the education level of any of  
6 the potential jurors that it lists?

7 A It does not.

8 Q Does it account for their employment?

9 A I'd need to see the data set again, but all that was  
10 studies was race.

11 Q Okay. So it didn't have any data, from your  
12 recollection, about any criminal records?

13 A No, ma'am.

14 Q Or any position on the death penalty of those  
15 individual jurors?

16 A No, ma'am.

17 Q In fact, all of the data that was available for your  
18 review had to do solely with race?

19 A Yes, ma'am.

20 Q But in your opinion, is it true that that's not all of  
21 the data that's available in conducting a study?

22 MR. GROSE: Objection, speculation.

23 THE COURT: Overruled.

24 Q You may answer ---

25 A Oh.

1 Q Would that be all the data that you would look for to  
2 be available in a statistical study?

3 A I would expect more if you wanted to do a good study.

4 Q If you were conducting that type of study, would you  
5 account for the prosecutor's reason for exercising a  
6 strike?

7 A Oh, definitely. That is -- as I said, with variables  
8 that correlate, there are -- there are one or more  
9 explanatory variables that could correlate with race, or  
10 maybe not, but that could explain what happens.

11 Q But that data, the prosecutor's reasoning has not been  
12 provided to you,

13 A No, ma'am.

14 Q Would you say that the way the Michigan State report  
15 presents the data includes numerous representations of the  
16 same numbers?

17 A There's one case where two juries were chosen. For  
18 some reason, the first jury was -- they felt a need to do a  
19 second jury. But then they included both juries in the 12.

20 And the question that arose in me was: Are they  
21 dealing with an entirely different jury pool, or perhaps,  
22 some jurors were -- were booted from the pool. But if  
23 there's overlap in the two jury pools, you're bordering on  
24 using the same data twice. Counting it ---

25 Q Is that what sounds ---

1 A --- twice as much ---

2 Q Sorry.

3 A --- in -- in the sample. And that -- that's a  
4 problem.

5 Q So would that not be sound statistical practice?

6 A If there's overlap, you -- you should not be doing  
7 that. I didn't know if there was overlap or not. It's not  
8 -- I don't know why there were two juries selected or if  
9 there were, were they different people in the jury pool.

10 But I mean, under -- under a crazy scenario, where  
11 they had to select 20 different juries, you -- but it's  
12 almost the same pool all the time, you can't count the same  
13 case many, many times.

14 Q So would -- that would impede those -- the validity of  
15 the ---

16 A It would ---

17 Q --- statistical ---

18 A It would be a problem in the analysis.

19 Q Would lack of data of certain variables impede the  
20 validity of a statistical study?

21 A Yes, ma'am.

22 Q Should the methodology, in its description in a report  
23 from a statistician, account for the lack of data in  
24 certain terms?

25 A There should be an acknowledgment of some kind that

1 other variables could exist if you were going to do a  
2 thorough analysis.

3 Q And has any additional review that you've done of the  
4 Michigan State report -- since you've provided us your  
5 written opinion or since taking your deposition -- altered  
6 the concerns that you have about the report?

7 A I still have the same two concerns.

8 Q And thinking back to the CVs that you were provided  
9 for Professor O'Brien and Grosso, did you, in your review  
10 of those CVs, come to an opinion about their area of  
11 practice?

12 A The -- the articles focused on fairness in -- in jury  
13 selection. The -- the places that they were published were  
14 -- tended not to be statistics journals. And I'm not  
15 familiar with -- with the journals in which they published  
16 -- or in places in which they published.

17 Q And you had testified about a previous age  
18 discrimination case that you were retained on. And you  
19 testified that you looked at the one variable because  
20 that's what you were retained to look at. But did you  
21 acknowledge in that study that other variables were  
22 present?

23 A That was a memorable case. Only people 60 or over  
24 were terminated, and there was the age discrimination suit.  
25 And the company basically took other variables off the

1 table because the company said, "Age has no statistical  
2 connection to our selection process. We just looked at  
3 their performance evaluations."

4 So that made it natural to look at age in isolation.

5 Q Would that be an easy statistical analysis to do?

6 A Something you would teach in a freshman statistics  
7 class.

8 Q Would it be acceptable for publication in a statistics  
9 journal?

10 A You wouldn't expect to see that because it's something  
11 you would teach in a first course. It -- it might be a  
12 textbook example, something like that. I would not expect  
13 to see that.

14 Q So in your experience, if you were engaging in a peer  
15 review of a study like that, would you critique that it was  
16 okay for publication?

17 A I would not expect to see anything like that. The --  
18 the journals are pretty specific about the kinds of  
19 articles that they're looking for.

20 Q Uh-huh. But in terms of difficulty?

21 A It's a -- it's -- I've used one case with the 15,  
22 sixty or over, and the 9 people fired and all and I've done  
23 that, used that in classes as classroom examples. It's --  
24 it's -- it's a good textbook problem or crossword example,  
25 not -- not a publishable work unless it's in a collection

1 of -- of articles that talk about the kinds of things,  
2 perhaps, that you can run into in expert witnessing or  
3 something expository.

4 Q One moment.

5 (Brief pause.)

6 Q Dr. Norton, have you ever met Solicitor Wilson before?

7 A I don't believe that I have.

8 MS. SCRANTON: Thank you. No further questions.

9 MR. GROSE: Nothing further, Your Honor.

10 HE COURT: Let me just ask him one question.

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION

13 BY THE COURT:

14 Q I'm trying to devise a question in light of your  
15 testimony, but consider all the factors that I'm going to  
16 propose to you.

17 Should a Court rely on the Michigan State study to  
18 determine whether the Ninth Circuit Solicitor's Office  
19 routinely excluded black jurors from jury selection up to  
20 and including Mr. Dickerson's trial in May of 2009? want  
21 me to repeat that?

22 A Please.

23 Q Should a Court rely on the Michigan State study to  
24 determine whether the Ninth Circuit Solicitor's Office  
25 routinely excluded black jurors in jury selection up to and

1 including Mr. Dickerson's trial in May of 2009?

2 A Not by itself. There needs to be -- some of the  
3 concerns that I have need to be aired including:  
4 correlating variables, the idea of selecting the  
5 population, how you pick a sample.

6 There are legal issues there. I mean, there are  
7 limits that are imposed on the Court that I don't -- I'm  
8 not aware of. But -- but picking a random sample, if  
9 you're -- if you're not going to look at all population ---

10 Q Remember I -- I said "prior to May of 2009."

11 A Yes, sir, I understand.

12 THE COURT: All right. Thank you. Anything further?

13 MR. GROSE: No, sir.

14 MS. SCRANTON: No, Your Honor.

15 THE COURT: All right. You may come down. Thank you  
16 very much.

17 Is the Doctor to be excused?

18 MR. GROSE: No objection.

19 THE COURT: You're free to go, sir. Thank you very  
20 much.

21 THE WITNESS: Thank you.

22 (The witness exits the stand.)

23 THE COURT: Next witness.

24 MS. SCRANTON: The State has no further witnesses at  
25 this time.

1 THE COURT: All right. Anything further? I -- I -- I  
2 want to take up your motion, your discovery motion -- or  
3 motion to compel, but I want to make sure that we're  
4 finished with this issue.

5 MR. GROSE: No. We want to present a rebuttal case  
6 and we want to call Dr. Grosso and potentially another  
7 witness. We're still in discussions about that.

8 And Dr. Grosso -- not Dr. Grosso, Professor Grosso is  
9 currently on sabbatical in Palestine. She'll be back  
10 sometime this summer.

11 I see the look on your face, and I -- I know what  
12 you're getting at because when we talk on the phone about  
13 your law clerk leaving in July and you wanting to try to  
14 wrap things up with -- while she was still here. And she's  
15 been a pleasure to work with, so we're entirely sympathetic  
16 with that.

17 But I -- I also think this kind of runs up against  
18 what Betsy talked about probably the last time we were here  
19 in Richland County for the hearing about needing to brief  
20 the issues involved, particularly with the *Batson* case,  
21 because there is a lot of documents that have been put into  
22 the record that are evidence in the case that we need to  
23 brief the implications of those. So ---

24 THE COURT: Well, let me -- let me get -- let me get --  
25 -- you said you want to submit a brief on *Foster* and its

1 relationship to this case?

2 MR. GROSE: Right, because we think that ---

3 THE COURT: All right. I understand that.

4 MR. GROSE: Yeah.

5 THE COURT: I don't understand what you're just saying  
6 now ---

7 MR. GROSE: Well, we also ---

8 THE COURT: --- that you want to brief ---

9 MR. GROSE: --- want to brief the issues involved in  
10 the PCR application.

11 THE COURT: Why could you not do that in a final  
12 order?

13 MR. GROSE: We probably could, but we're going to need  
14 transcripts to be able to do that.

15 THE COURT: I understand.

16 MR. GROSE: And so, I mean, that's -- and -- and I've  
17 got -- I've got two homicide trials coming up, one in June,  
18 one in July, and a capital PCR in August; some of which  
19 we've been juggling because of trying to keep this case  
20 moving along, so ...

21 THE COURT: Well, just for the record, I have a week  
22 in Charleston on the 25th of July.

23 MR. GROSE: Okay.

24 THE COURT: I'm just throwing that out there.

25 MR. GROSE: All right. Betsy's telling me she's not

1 going to be back until August. It's somewhere in the  
2 beginning of August, but we could get that for you.

3 THE COURT: All right. Well, let's hear your motion  
4 to compel.

5 MR. GROSE: Okay.

6 THE COURT: I have it.

7 MR. GROSE: Okay. Well -- and I was looking for my  
8 copy, as well as some other documents that I'll get to in -  
9 --

10 THE COURT: You want to take a short break?

11 MR. GROSE: Yeah. I -- I could use a restroom break.

12 THE COURT: All right. Let's take about 10 minutes.

13 MR. GROSE: Thank you, Judge.

14 (Briefly off the record.)

15 THE COURT: All right. Mr. Grose.

16 MR. GROSE: During the recess, the court reporter  
17 reminded me that I had not moved Petitioner's 1 and 2 into  
18 evidence. I would do that at this time.

19 THE COURT: Without objection?

20 MS. SCRANTON: No objection.

21 THE COURT: All right. Thank you.

22 (Applicant's Exhibit NO. 1, CV Barbara O'Brien in  
23 evidence.)

24 (Applicant's Exhibit No. 2, CV of Katherine Grosso, in  
25 evidence.)

1 MR. GROSE: Do you want to take up the motion to  
2 compel now?

3 THE COURT: Well, either that or I'm going to lunch.

4 MR. GROSE: Okay. Fair enough.

5 THE COURT: And I'll start my holiday early.

6 MR. GROSE: Well, I don't think -- hopefully, this  
7 won't take, you know, too long. I think you indicated that  
8 you -- you have our motion, which we did serve initially,  
9 via e-mail, on the 15th of this month. At the time, we had  
10 not received Dr. Norton's report that -- of course, that  
11 portion became moot when we did.

12 The -- the issue that came up -- and this is sort of  
13 how it came up. You are aware, going back to last summer,  
14 when the Charleston County Attorney's Office got involved,  
15 that we had done both a subpoena and a Freedom of  
16 Information Act request for documents involving Solicitor  
17 Wilson's cases. And I think we were pretty candid in  
18 explaining, you know, what we were trying to do. The clerk  
19 in Charleston keeps minutes of cases and -- and we, you  
20 know, tried to identify all the cases that we could based  
21 on that. And then we were trying to determine what  
22 information could be used in the study.

23 Then when we were here for hearings on March 31st, the  
24 Attorney General's Office came forward with four  
25 transcripts that would have been responsive, were --

1 involved the cases that we had on that list. We believe  
2 that those were also responsive to our interrogatories and  
3 request to produce that are exhibits to our motion  
4 requesting them to produce anything that relates to a claim  
5 or a defense. And particularly since, you know, there are  
6 certain heightened obligations in a case like this because  
7 you have the heightened considerations for reliability  
8 because it's a capital case and because you have the  
9 special duties of prosecutors.

10 At the end of that hearing, Ms. Franklin-Best was  
11 trying to determine if there was going to be any more  
12 information and she asked if we needed to send a subpoena  
13 to the Attorney General's Office. And the response from  
14 Your Honor was that it should be provided without a  
15 subpoena. We then followed up with them ---

16 THE COURT: Wait. Back up. Say that again.

17 MR. GROSE: That they should provide the information  
18 without need for a subpoena.

19 THE COURT: Go ahead.

20 MR. GROSE: All right. I mean, the gist that we got  
21 is that the Court wanted everybody to be as cooperative as  
22 possible with the exchange of information.

23 THE COURT: Well, that's generally true.

24 MR. GROSE: Right. Well -- and then after that, Ms.  
25 Franklin-Best wrote a letter to the Attorney General's

1 Office, dated April 11, a copy of which is attached to the  
2 motion, explaining what we were going to do with regard to  
3 the new transcripts; essentially that two were suitable to  
4 be included in the study, two were not; and asked if there  
5 was (as read): " ... any additional cases that you  
6 believed should be included in the Michigan State  
7 University study, could you bring those to our attention at  
8 the earliest convenience."

9 By letter dated April 28 of 2016, the Attorney General  
10 declined to do that.

11 Then we got to the hearing in Charleston and during  
12 the May 12 portion of the hearing, during the State's  
13 examination of Solicitor Wilson, she came out with this  
14 number of 30 cases that she had tried during the period of  
15 time when -- when she returned to the Solicitor's Office,  
16 as deputy solicitor, in January of 2001, through her tenure  
17 to include up 'til now when she has been the elected  
18 solicitor.

19 We asked at that time for her to list the names of the  
20 defendants, and there was an objection by the Attorney  
21 General's Office at that point.

22 I think I say in the motion that you sustained it. I  
23 don't really remember. I think it was probably overruled,  
24 but with the ability for us to bring a written motion,  
25 which is what we did and e-mailed to everybody on May 15;

1 and then supplied the attachments, once I could get all of  
2 those collated together.

3 To us, and -- and I think to most people who would be  
4 looking in on something like this, you know, it seems  
5 fundamentally unfair for them to fight like rabid dogs to  
6 keep us from getting access to certain information, to not  
7 identify it when we ask for it, and then to criticize us  
8 when we don't include it, even though our experts have  
9 testified over and over again that they would include that  
10 information.

11 And to even take that a step further, I think that by  
12 Solicitor Wilson making those allegations during her  
13 testimony last week and the questions here today about not  
14 including certain information, which we've been asking for  
15 that they have claimed privilege over, that Solicitor  
16 Wilson herself is in a better position than anybody in this  
17 room, anybody in the State, anybody in this country to know  
18 what that information is. We think that by her testimony  
19 and the followup questions today of their expert that  
20 directly relate to her testimony that they have now waived  
21 that privilege. That ---

22 THE COURT: What ---

23 MR. GROSE: --- the solicitor has waived ---

24 THE COURT: Whoa, whoa, whoa. What privilege?

25 MR. GROSE: The -- some of the information -- well,

1 the information we talked about at the beginning of the  
2 hearing, that is that they asserted privilege that's in  
3 evidence under seal in the Charleston County courthouse.

4 THE COURT: Okay. I -- I wanted you to be clear about  
5 that.

6 MR. GROSE: Yes, sir. And so that's an additional  
7 matter in addition to our motion.

8 We also, you know, believe that the *Foster* case that's  
9 come out this week is going to have some implications  
10 because certainly when you're dealing with *Batson* and  
11 fundamental fairness and due process and the Sixth  
12 Amendment right to a jury trial, that is all wrapped up  
13 into the information that's available for the Court to make  
14 the decision about whether or not *Batson* and its progenies  
15 have been violated. And you'll recall they've been  
16 disputing our ability to use the Freedom of Information Act  
17 to get to that information.

18 And -- and just kind of related to this, since we were  
19 not allowed to examine Solicitor Wilson with regard to  
20 those cases and any followup, I would like to mark for  
21 identification a two-page proffer of questions that we  
22 think would have been relevant and still are.

23 (Marked Applicant's Exhibit No. 3, 2-page proffer of  
24 questions document, for identification.)

25 MR. GROSE: So I would hand up Petitioner's Exhibit

1 No. 3 for identification to this hearing, and we've handed  
2 the Attorney General's Office a copy of it.

3 THE COURT: All right.

4 MR. GROSE: So at this point, I think what we need to  
5 do is, is we need to find out whether there really are  
6 these 30 cases. If they are, what are they? And then  
7 determine whether or not the information that is out there  
8 on them is suitable to be included in the study; or at  
9 least us to be able to examine it to see if it would make  
10 any impact.

11 THE COURT: Where -- where does privilege fit into  
12 your request?

13 MR. GROSE: Well, it fits into the request because  
14 they have, in the past, claimed privilege to some of the  
15 information that we would be asking for. And our motion to  
16 compel is asking -- the -- the language that we asked --  
17 initially, in December of 2012, when we were asking for  
18 jury information in the *Williams* case, we used almost that  
19 identical language with regard to the list of cases in  
20 August of 2015. And our motion to compel is asking for  
21 that identical language, requesting that identical  
22 information ---

23 THE COURT: I understand you're requesting it.

24 MR. GROSE: Yes, sir.

25 THE COURT: What -- how do you propose the Court

1 should deal with the work product privilege that Solicitor  
2 has invoked, and on which I've already ruled and have  
3 protected ---

4 MR. GROSE: I ---

5 THE COURT: --- protected her under seal with this  
6 file? You -- you suggesting that that be unsealed and that  
7 everything, a la *Foster*, be produced for this file -- for  
8 this record?

9 MR. GROSE: Well, that is something that's going to  
10 have to be briefed. First of all, I don't think that the  
11 list of cases would be something that she could claim work  
12 product privilege to.

13 THE COURT: No.

14 MR. GROSE: So once we get that list, then we already  
15 know the procedure that Your Honor has followed with the  
16 two previous claims of work product privilege, where the  
17 information was submitted to you for review, and you  
18 determined what could be released to us and what would be  
19 placed in evidence under seal.

20 Now, that being said, she did indicate, in Charleston,  
21 that were she approached, she might be more cooperative and  
22 so she might be willing to provide that information. Now,  
23 I don't know. But I'm guessing not because I've seen a  
24 pattern.

25 So that -- that's the procedure: First, we get the

1 list of cases; then she provides us the information; then  
2 we go look for what we can find elsewhere.

3 THE COURT: Well ---

4 MR. GROSE: They look for what they can find and  
5 produce it pursuant to our discovery request, and then we  
6 find out where we are and go from there.

7 THE COURT: How do you -- how does this play into the  
8 post-conviction relief procedure when you're claiming  
9 ineffective assistance as of May, 2009?

10 MR. GROSE: Well ---

11 THE COURT: What does the scope that you've outlined -  
12 - how does it relate to that issue? I mean, what -- what -  
13 - what should Mr. Bloom have known and what should he have  
14 done in May of 2009? And can you use post-2009 data to  
15 make your argument?

16 MR. GROSE: All right. Two -- two responses to that:  
17 First, the -- the time frame that we're looking at is -- is  
18 beginning of January 1, of 2001, when Solicitor Wilson  
19 returned to the Solicitor's Office. I don't know -- I  
20 don't know if a list exists and if there's going to be  
21 cases on it that are before that time frame.

22 THE COURT: She could have done 30 after that.

23 MR. GROSE: She could have done 30, but we don't know.  
24 We don't know the answer to that question. So we do need  
25 to find out the answer to that question.

1           But also, we -- we do have two claims in the petition.  
2           There is the ineffective assistance of counsel and then  
3           there is a prosecutorial misconduct claim for violating  
4           *Batson*. And --

5           THE COURT: But they're related.

6           MR. GROSE: Huh?

7           THE COURT: They're related.

8           MR. GROSE: They are related. They are related. It's  
9           our position that everything that she's tried is related to  
10          the prosecutorial misconduct claim. And they presented  
11          expert testimony criticizing us for doing the calculation  
12          without the post-Dickerson trial information.

13          THE COURT: I understand that.

14          MR. GROSE: Yeah.

15          THE COURT: I understand that.

16          MR. GROSE: So, you know, they can't have it both  
17          ways. We're trying -- we're trying to give you as much  
18          information, so that you can make a decision and determine  
19          what weight to assign to it with regard to each of the  
20          claims. And -- and our preference is to have all out there  
21          and all included. Their preference seems to be not to, so  
22          they can take potshots at us for not including stuff that  
23          they're not cooperating with us getting a hold of.

24          THE COURT: Assume that I agree with the results of  
25          your study, where do we go from there?

1 MR. GROSE: If ---

2 THE COURT: I discount what -- all of this testimony  
3 today.

4 MR. GROSE: If -- if -- if you're making that finding  
5 of fact ---

6 THE COURT: I am not ---

7 MR. GROSE: --- I would like to confer ---

8 THE COURT: I am not making ---

9 MR. GROSE: Oh.

10 THE COURT: I'm not -- I -- I pose that as a  
11 hypothetical.

12 MR. GROSE: Well, it's -- it's difficult to answer  
13 hypotheticals. And our preference would still be to have  
14 all the information because just in an academic world,  
15 thinking out what's going on out in the future, let's say  
16 you agree with us and you grant relief and you give William  
17 Dickerson a new jury trial or a new sentencing hearing,  
18 they're going to appeal. And we're going to want that  
19 information in the record on appeal, either as a proffer or  
20 as evidence in the record.

21 Now, we agree this *Batson* study is only one factor,  
22 but we want to be able to present that factor as fully and  
23 completely and accurately as possible so that you, and any  
24 Court reviewing this subsequent to you, will be able to  
25 review it. And -- and -- and there will be a Court because

1 ---

2 THE COURT: Sure.

3 MR. GROSE: --- whoever you rule against is going to  
4 appeal --

5 THE COURT: I understand.

6 MR. GROSE: -- and you could go half for us and half  
7 for them and then we're both gonna appeal. So you know,  
8 it's just the nature of this type of -- of litigation. I  
9 mean, you know ---

10 THE COURT: Right.

11 MR. GROSE: --- and I think we all kind of ---

12 THE COURT: Well, let me hear from the State.

13 MR. GROSE: --- understand that.

14 MS. BROWN: Thank you, Your Honor. I'd like to begin  
15 with a little short reading from a South Carolina case,  
16 Supreme Court case (as read): "Although the scope of  
17 discovery is broad, requests must show a reasonable  
18 expectation of obtaining information that will aid in the  
19 dispute -- dispute's resolution."

20 And I think Your Honor kind of got to this just a few  
21 minutes ago. No matter what the rhetoric in -- is in -- in  
22 these cases and continued discovery, what end -- to what  
23 end are they requesting this? Is it another report?

24 Professor O'Brien has already testified and she  
25 testified that even if you agree with the numbers, all it

1 goes to is a prima facie case. Step one of *Batson*. Mr.  
2 Jeff Bloom testified the same way. If I use statistics,  
3 it's only going to be step one.

4 Well, Your Honor, respectfully, we passed step one in  
5 2009 at the trial. The reasons for the strikes that are in  
6 question, there are three strikes in question, are already  
7 a part of the record. I went over those reasons with Mr.  
8 Bloom at our last hearing, and even his notes seem to  
9 support exactly the impressions that were recorded at that  
10 time.

11 And of course, we had certified copies of the  
12 convictions for Juror No. 92. That supports what was said.

13 There are no factual misrepresentations in the record.  
14 And the reasons for the strike are already a matter of  
15 record. So if this is done again and again and again, it  
16 won't matter because we're past step one.

17 And that goes into our objection today. Now, I do  
18 have a couple of short reasons. And you know we've done a  
19 response, which I assume Your Honor has received.

20 THE COURT: I'm not sure that I have.

21 MS. BROWN: May I hand up a copy for you?

22 THE COURT: Certainly, if you want me to read it.

23 MS. BROWN: Absolutely. Delivered by my supervisor --

24 -

25 THE COURT: I was going to say that fine -- finally

1 found something for him to do.

2 (Courtroom laughter.)

3 MS. BROWN: Your Honor, there are three short ---

4 THE COURT: No, I have not seen this.

5 MS. BROWN: Oh.

6 THE COURT: Okay. Go ahead.

7 MS. BROWN: Yes, sir. Well, I could just sort of  
8 summarize. We've never been asked for this information.  
9 It wasn't in the standard interrogatories. It wasn't in  
10 the specific interrogatories. The solicitor submitted to a  
11 deposition. She was not asked for this information at the  
12 deposition. There were no specific interrogatories after  
13 the deposition.

14 Now, back in August, there was a copy of the subpoena  
15 supplied to us. The subpoena was directed to Charleston,  
16 and Charleston County supplied the information. There was  
17 a claim of privilege; Your Honor ruled on it. That was  
18 back in September of 2015.

19 What's rather important about that is at that time,  
20 when they're seeking information from a list of 14 cases  
21 that they've come up with from their own criteria, which  
22 has never been admitted into testimony -- we don't know  
23 what that criteria is -- they asked for information.  
24 They're not asking for transcripts. They're not asking us  
25 for that, but the bottom line is, is Charleston did comply.

1 There's nothing to compel at this point.

2 Now, after the solicitor testified -- she did mention  
3 one case during her testimony in Charleston. That was  
4 *Anthony Mann*, so we looked into that.

5 Ms. Franklin-Best currently represents Anthony Mann in  
6 a Federal habeas case. I've given you an attachment there  
7 that shows there's a transcript available. Ms. Wilson's  
8 name is on the transcript.

9 We don't know what criteria they're using, but they  
10 certainly had that information way before we did and they  
11 chose not to put it in their study, either March 8 study or  
12 the May 5 study.

13 Now, Your Honor, at some point, discovery requests  
14 become abusive and beyond the pale. And that, I would  
15 submit, is where we are today.

16 And it is because it doesn't matter. No matter how  
17 much of this information goes in, they are not accounting  
18 for variables in their -- their study, and we have heard  
19 today that is not statistically sound; and besides that,  
20 past step one of *Batson*. We're not going to recreate that  
21 at this point.

22 And again, Your Honor, I would remind the Court that  
23 we've said that this entire free-standing issue is barred  
24 by the *Simmons* doctrine and should not be heard as a free-  
25 standing issue. And of course, we relied on *Thompson v.*

1 Aiken in our March 31 presentation and said that statistics  
2 are disfavored in this jurisdiction just for this reason.  
3 Gross statistics simply do not mean anything. They do not  
4 go to intent.

5 We have heard today, Your Honor, I would submit, based  
6 on the cross-examination you heard today and the argument  
7 you heard in the motion to compel, that this is way beyond  
8 the issues presented in this case. We would like to get  
9 back to the issues presented in the case. And that's why  
10 we ask you -- in addition to the fact that we've never been  
11 requested -- never had a request for this information -- to  
12 deny the motion to compel.

13 THE COURT: All right.

14 MR. GROSE: First of all, a number of things that she  
15 said are just not accurate. The first thing that's not  
16 accurate is that this information only goes to prong one of  
17 *Batson*. It also goes to prong three of *Batson*. It's  
18 information that you can consider then or getting to what  
19 the legal arguments would be.

20 The second thing is the case that she just cited for  
21 you about statistics not being something to be considered  
22 in South Carolina in a *Batson* case is actually the case  
23 that was decided before *Batson* and before *Miller El* and  
24 before *Foster*. And so it would have no relevance as to  
25 interpreting *Batson* since *Batson* didn't exist at the time.

1 So that, while maybe not true, is designed to be  
2 misleading.

3 And the third thing: It's just simply not true that  
4 we didn't ask her for that because it's in this August 11th  
5 letter. And I quote (as read): "Also, if there are any  
6 additional cases that you believe should be included in the  
7 Michigan State University study, could you please bring  
8 those to my attention at your earliest convenience."

9 She can't say she didn't get that letter because on  
10 April 11 - or April 28, she said (as read): "In response  
11 to your letter dated April 11, 2016." And then it gets  
12 down to the last paragraph and says (as read): "As far as  
13 your request for my thoughts as to additional cases that  
14 could be included in your expert study, that would be a  
15 decision for you and your expert to determine based on your  
16 purpose and the approach to study."

17 So we clearly asked for it. So I don't think she's  
18 saying she didn't get that letter or she didn't write the  
19 letter that was in response to it. So I just think these  
20 inaccuracies and attempts to mislead just need to be  
21 corrected.

22 THE COURT: All right. Anything further for the  
23 record?

24 MS. BROWN: Your Honor, I think if we're going to look  
25 at the letter, we ought to look at the whole letter. And

1 the whole letter was Ms. Franklin-Best asked me to  
2 intercede with Charleston County and see if there was any  
3 other information that was due.

4 And I said as a courtesy to you, I will do so. And I  
5 did so. That is a concession that they knew the  
6 information was coming from some other source and they  
7 asked for my help.

8 And it is true that we do -- still do not know what  
9 the criteria is. You heard today something about January 1  
10 of 2000 to present, or something like that, was the  
11 criteria. Professor O'Brien said she didn't know what the  
12 criteria was, this was just a universal case that's given  
13 to her. Very difficult for me to know what they want me to  
14 give them --

15 THE COURT: Well, why don't you ---

16 MS. BROWN: -- when their expert doesn't.

17 THE COURT: --- just tell me in an order why I should  
18 not do that.

19 MS. BROWN: I happen to have a proposed order, Your  
20 Honor.

21 THE COURT: Well, I'll give you both 10 days. Even in  
22 light of -- I want you to consider what took place -- what  
23 took place today that has any relevance to your position on  
24 the motion to compel.

25 MS. BROWN: Yes, sir.

1 THE COURT: I'll give you time to consider that.

2 MS. BROWN: Thank you, Your Honor.

3 MR. GROSE: Two things, Judge, those letters are in  
4 the record.

5 THE COURT: I've got them.

6 MR. GROSE: I put them there.

7 THE COURT: I've got them.

8 MR. GROSE: And the other thing is I -- again, I think  
9 they're trying to "smoke and mirrors" or do something. The  
10 criteria is, is we want every case that she was lead  
11 counsel in ---

12 THE COURT: I understand.

13 MR. GROSE: --- from January of 2000 ---

14 THE COURT: I got you. I -- I can read your motion.

15 MR. GROSE: Thank you, Judge. I don't understand why  
16 they don't undertand.

17 THE COURT: All right. Let me have proposed orders in  
18 10 days --

19 MR. GROSE: Yes, sir.

20 THE COURT: -- on motion to compel.

21 MR. GROSE: Yes, sir.

22 THE COURT: And with that, I will adjourn this hearing  
23 if -- let's back up for a minute.

24 Ms. Brown, any --

25 MS. BROWN: Yes, sir.

1 THE COURT: Mr. Grose says he needs an opportunity to  
2 rebut the testimony of your witness today, and that the  
3 rebuttal witness is not available til August. Understand  
4 that?

5 MS. BROWN: (No audible response.)

6 THE COURT: So I think I have to give him at least  
7 that opportunity just for the record.

8 MS. BROWN: Yes, sir.

9 THE COURT: I do have a term, as I said, in Charleston  
10 on the 25th of July. If other issues come to the fore,  
11 we'll take them up then.

12 MR. GROSE: All right.

13 THE COURT: All right.

14 MR. GROSE: Thank you, Judge.

15 THE COURT: Anything else?

16 MR. GROSE: Hope you enjoy your lunch.

17 MS. BROWN: Thank you, Your Honor.

18 THE COURT: All right. Let's stand adjourned.

19

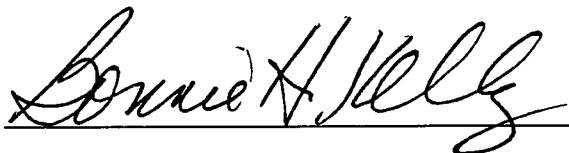
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-- END OF TRANSCRIPT RECORD --

**CERTIFICATE**

1  
2 I, the undersigned Bonnie H. Kelly, Official  
3 Court Reporter for the Fifth Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate, and complete transcript  
6 of record of all the proceedings had and evidence  
7 introduced in the hearing of the captioned cause,  
8 relative to appeal, in the Fifth Circuit Court for  
9 Richland County, South Carolina, on the 27th day of  
10 May, 2016.

11 I do further certify that I am neither of kin,  
12 counsel, nor interest in any party hereto.

13  
14   
15

16 Bonnie H. Kelly, CVR

17 Official Court Reporter

18  
19 Columbia, South Carolina

20 August 31, 2016  
21  
22  
23  
24  
25

## Resume of Robert M. "Mick" Norton

Revised April 27, 2016

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Address:

Education: Oklahoma State Univ.

Ph.D in Mathematics, 1974

Specialization: probability/mathematical statistics

M.S. in Mathematics, 1971

Northeast Missouri State Univ. (now known as Truman State Univ )

B.S. in Mathematics, 1968

B.S. in Educ. (Mathematics), 1968

### Work Experience:

**current:** Consultant in statistics, statistical process control (SPC), mathematics.

**1974-2007:** College of Charleston – Professor of Mathematics;  
Professor Emeritus of Mathematics, 2008-

**1969-1970:** U S Army; Viet Nam veteran.

**Statistics and SPC Consultant** – Since the mid-1990s, I have worked on statistics and probability projects for manufacturing industries – e g., Corning, Bosch, GE Healthcare Bio-Sciences, Bayer-Dorlastan: Examples of accomplishments:

- reduced sample sizes (that had been needlessly high) for some product quality tests
- designed experiments that revealed weaknesses in measurement processes and which improved measurement precision
- reduced the number of lab tests (by improving test procedures)
- created control charts designed to fit non-standard situations and keep key variables closer to target
- raised capability indices
- trained operators in the use of SPC
- estimated the percentage of product units the wouldn't meet federal standards when all sample units easily met the standard

**Expert witness** – Since 1980 I have been a witness in or given depositions in a variety of cases. Some examples are:

- Since 2007 I served three times as a court appointed expert whose role was to evaluate the statistical methods used by the federal government to estimate the amount of money Medicare had overpaid certain health care providers (money that Medicare wanted back from the provider) and to evaluate the critique of the government's statistical analysis offered by the defendant company's statistics expert.
- In 2006 and 2007, I was an expert witness for a state's Department of Corrections on a case in which I used control charts to analyze trends in the frequency of occurrence of sexual assault and sexual misconduct infractions committed by inmates against guards or against other inmates.

- Since 1980, I have served as an expert witness in statistics in a handful of age, sex, or racial discrimination suits.
- I once helped the City of Charleston Police Department with a geometry problem posed by a crime scene reconstruction – using crime scene photos to establish the position the victim would have been in when the bullet went through her head (in order to determine if suicide was plausible).

**Some Leadership/Management Activities at the College of Charleston:**

- Served as “Associate Dean” (an official title did not exist at that time) of the School of Sciences of Mathematics (1992-1998). The most memorable activity for me was chairing (1992-1997) a team of representatives from seven departments (four in the sciences, two in education, and mathematics) that developed a collaborative M. Ed. Program in Science and Mathematics for teachers. With good people and patience came a shared vision, cooperation, collaboration, and the overcoming of territorial “us versus them” blinders that are common in academic disciplines.
- Director of the MS degree program in Mathematics (1994-1998)
- Founding Director of the M. Ed. Program in Science and Mathematics (1997-2002)
- Chair of the institution’s Post-tenure Review Committee (2004-2006)

**Publications:**

**Books:** *A Quick Course in Statistical Process Control*, 2005, Prentice Hall Publishers, Upper Saddle River, NJ. This book integrates and explains how to use Minitab in its examples (reviewed by Christine M. Anderson-Cook, *Los Alamos National Laboratories for The American Statistician* – see Amazon.com).

*Random Tales of a College Math Professor, Over-Easy, on Wry*, 2011, CreateSpace, Charleston, SC. This book, which mixes mathematics, statistics and humor, is a collection of short stories based on personal experiences in teaching, research, consulting, and expert witnessing (for more details and a review by Charles Ashbacher of the Mathematical Association of America, google “maa random tales”).

*The Death of the Professor*, 2015, CreateSpace, Charleston, SC. This book is a whodunit. For a description and a reader review, see Amazon.com.

**Articles: 24 in various areas of mathematics and statistics.** Some examples are:

**In statistical process control:** “Detecting Overcontrol for a Continuous Variable from a Graph Diagnostic,” *Quality Engineering*, 2001-02, Vol. 14, No. 1, 9-12.

“Designing an Out-of-Control Signal When Distribution Location Can Change Frequently With the Arrival of New Chemical Shipments,” *Quality Engineering*, 2001, Vol. 13, No. 4, 601-605.

“Measuring Book Availability: A Monthly Sampling Method” (with Sheila Seaman and Michael Sprankle), *College & Undergraduate Libraries*, 1996, Vol. 3, No. 1, 101-115.

**In applied statistics:** "Fisher's Omnibus Test Statistic Revisited in a Legal Setting," 1993, *Proceedings of the Twenty-third Annual Meeting of the Southeast Region of the Decision Sciences Institute*, co-editors: Kathy Fitzpatrick and Melody McCracken, Appalachian State Univ., 248-250.

"The Statistician as an Expert Witness," 1990, *Proceedings of the Twentieth Annual Meeting of the Southeast Region of the Decision Sciences Institute*, co-editors: Charles H. Smith and Robert L. Andrews, Virginia Commonwealth Univ., 288-290 (invited paper).

"Pocket-Calculator Approximation for Areas Under the Standard Normal Curve," *The American Statistician*, 1989, Vol. 43, No. 1, 24-26.

"A Probability Model for Overflow Sufficiency in Hash Tables" (with Dorian Yeager), *Communications of the ACM*, 1985, Vol. 28, No. 10, 1068-1075.

**In mathematical statistics:** "On Decomposing an Exponential Random Variable into Its Integer and Decimal Parts," (with Dennis Wackerly), *Teaching Statistics*, 1998, Vol. 20, No. 2, 51-52.

"Some Tests for Differences Between Proportions Where the Expected Number of Exposures to an Inferior Treatment is Kept Small," *Communications in Statistics – Theory and Methods*, 1993, Vol. 22, No. 9, 2583-2608

"On Cauchy-like Distributions" (with Barry Arnold), *Sankhya*, 1990, Vol. 52, Series A, Pt. 3, 371-375

"Tests for Patterned Alternatives in k-Sample Problems" (with Tom Hettmansperger), *Journal of the American Statistical Association*, 1987, Vol. 82, No. 397, 292-299.

"A Theorem on Moments" (with Steve Arnold), *The American Statistician*, 1985, Vol. 39, No. 2, p. 106.

"A Relationship Between a Family of Waiting Time Distributions and the Asymptotic Residual Waiting Time Distribution," *Communications in Statistics – Simulation and Computation*, 1985, Vol. 14, No. 3, 709-717.

"A Characterization of the Cauchy Distribution," *Sankhya, Series A*, 1983, 45, Pt. 2, 247-252.

"Moment Properties and the Arc Sine Law," *Sankhya, Series A*, 1978, 40, Pt. 2, 192-198.

"On Properties of the Arc Sine Law," *Sankhya, Series A*, 1975, 37, Pt. 2, 306-308.

**In teaching Statistics and probability:** "An Introductory Course in Probability and Statistics for Elementary and Middle School Teachers," *Proceedings of the National Summit on the Mathematical Education of Teachers*, 2002, sponsored by CBMS, [http://www.cbmsweb.org/NationalSummit/WG\\_Speakers/feldman\\_norton.htm](http://www.cbmsweb.org/NationalSummit/WG_Speakers/feldman_norton.htm) (mine was one of the two papers that were invited on the subject by the American Statistical Association).

"Determining Probabilities by Examining Underlying Structure," *Mathematics Teaching in the Middle School*, 2001, Vol. 7, No. 2, 78-82.

"The Double Exponential Distribution: Using Calculus to Find a Maximum Likelihood Estimator," *The American Statistician*, 1984, Vol. 38, No. 2, 135-136.

**Other Articles:** "Some Results and Opportunities in the Use of Probability Distribution Theory," *Proceedings of the International Conference on Distribution Theory, Order Statistics and Inference in Honor of Barry C. Arnold*, co-editors: N. Balakrishnan, Enrique Castillo, Jose Maria Sarabia, University of Cantabria, Santander Spain, 2004 (invited article).

"A Note on the Union-Closed Sets Conjecture" (with Dinesh Sarvate), *Journal of the Australian Mathematical Society*, 1993, Vol. 55, Series A, 411-413.

"The Arc Sine Distribution," The Encyclopedia of the Statistical Sciences, Volume 1, John Wiley and Sons, 1982, 2003.

**Member of:** American Statistical Association, Mathematical Association of America

**Offices in Professional Organizations:**

- Chair, Carolina Lowcountry Section 1122 of the American Society for Quality, 2000-01
- President of the South Carolina Chapter of the ASA, 1979-80

**Evaluating higher education instructional programs:**

- In 1999, at the request of Mississippi Institutions of Higher Learning, I evaluated the mathematics program at Mississippi Valley State University and made recommendations on how to improve its math curriculum.
- At the request of the National Program on Noncollegiate Sponsored Instruction (National PONSI), a program within the Board of Regents of the University of the State of New York, I was on a three-person team (I chose the team members) that in 2004 went to New York City to evaluate a package of online courses on quality. The courses, designed by a nationally known manufacturer, were on basic statistics, control charts, measuring capability, design of experiments, and more. Our purpose was to determine whether some, all, or none of the courses were of sufficient rigor to justify awarding college credit to those taking the coursework.
- From 1990-1993, I was on the Board of Examiners of the National Council for the Accreditation of Teacher Education (as the representative of the National Council of Teachers of Mathematics). This put me on visiting teams that evaluated teacher education programs at colleges and universities in the U. S.

**Honors:** Distinguished Achievement Award of the School of Sciences and Mathematics at the College of Charleston, 2001.

Research results that are referenced in statistics textbooks.

Recognized for special contributions to the College of Charleston's School of Sciences and Mathematics in April, 1998.

Recognized for leadership and service as the founding program director of the M. Ed. Program in Science and Mathematics, by the Lowcountry Hall of Science and Mathematics, Sept. 2002.

**Miscellaneous:** Former high school and college wrestling referee; South Carolina Wrestling Official of the Year (1997)

Cartoon published: "Mathematics and Statistics Information Available at the Library in Heaven," *American Mathematical Monthly*, 1992, Vol. 99, No. 2, p. 772.

Member VFW

Created a one-day power point course on SPC that dovetails with my book – I've presented it to several Charleston-area industries.

Since retiring from the College of Charleston, I have directed one MS math thesis (2010, student: Delia Voronca) in which a new kind of control chart was created; taught linear algebra, discrete structures and statistics courses for its math department; designed and taught an 8-week course in statistics for Ph.D. students in biochemistry at the Medical University of South Carolina (fall 2008).

**References:**

Rusty Harter Chapman, Harter and Groves Law Firm 1012 East Washington Street Greenville, SC 29603	864-233-4500	<a href="mailto:rwhjr123@bellsouth.net">rwhjr123@bellsouth.net</a>
Gregg Adams	843-870-6400	<a href="mailto:g.w.adams@comcast.net">g.w.adams@comcast.net</a>
Bob Mignone, Chair Department of Mathematics College of Charleston Charleston, SC 29424	843-953-5730	<a href="mailto:mignoner@cofc.edu">mignoner@cofc.edu</a>

TO: Melody Brown

May 15, 2016

FROM: Mick Norton

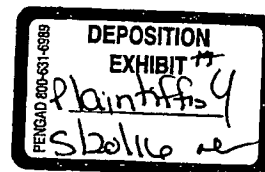
RE: Critique of the Michigan State University School of Law Amended Report on Jury Selection Study

Page 3 of the MSUSOL amended report describes a study design that takes 11 "available" specific cases and refers to those 11 cases as "the study population," so let me begin by elaborating a bit on the science of statistical inference. The focus of a statistical analysis is always on one or more variables of interest in some population (e.g., age, race or sex of all people in all jury pools who may be struck by a particular prosecutor for no legitimate reason) and on trying to answer the question of whether there is an off-the-norm pattern present for these variables (e.g., the percentage of blacks struck for no legitimate reason is higher than the percentage of whites struck for no legitimate reason). When an entire population is impossible or difficult to access, a random sample is taken from the population and data are collected on the variable(s) of interest in the sample, with the intent of looking for whether the off-the-norm pattern occurs strongly enough in the sample to suggest that it is reasonable to draw the global inference that the pattern also occurs in the population. In some studies, it is possible to access every member of the population, and in such a case the population data speak for themselves – there is nothing to infer.

Again, the MSUSOL amended report refers to these 11 cases as the "study population," a phrasing that mixes concepts that don't mix. The 11 cases can be either a sample from a larger population or the population itself, but not both. **The statistical analyst does not get to pick a convenient sample of cases, call it the population and point out that there is an off-the-norm pattern in the population.** I was expecting the population to consist of either all the cases Scarlett Wilson has ever prosecuted while at her present job, all the cases she has prosecuted anywhere, or all cases of some given kind. No such population is described in the report.

According to a statement on page 5 and 6 of the amended report, "The  $p$ -values for the racial disparities observed in this study are consistently well below the standard scientific benchmarks for reliability." In non-statistical terms, when a sample is taken from a population, the  $p$ -value is a measure of the sample's unusualness in deviation from what would be expected from a randomly chosen sample when the pattern is not present in the population as a whole. In other words, **the  $p$ -value is the answer to the question "What is the probability we would see a pattern at least as unusual as what occurred in the sample when the pattern is not present in the population?"** And for the  $p$ -value to have meaning, **the sample needs to be the result of a random selection from the population.** The reason for random selection is that it helps prevent the possibility of potential sample bias.

This returns us to the question of how these particular cases selected. According to page 7 of the amended report the cases examined are "only Mr. Dickerson's case and those that preceded it," which is not how a random sample is chosen.



1

On a related note, when a study is planned that involves collecting a random sample from a population, much thought needs to be given to choosing a sample size, which raises the question "Why 11 cases?" How large a sample should be taken is determined by how much of a risk of drawing incorrect inferences the analyst is willing to allow. **The choice of sample size is not discussed in the report.** It could be that the sample size was 11 simply because the 11 cases were convenient.

In introductory statistics courses, we teach that there is a difference between causation and correlation, which brings me to another fault I see in the amended report. **This is that race is singled out as a causative variable for differences in the strike rates of blacks and whites in the cases examined, without discussion of an effort to explore whether other explanatory variables - which may or may not correlate with race - might be involved in the decision-making of whom to strike, and be reasons that are legally justifiable. And moreover, not only is it suggested that race is causative, but also that it is the only causative variable.**

**The concerns I have raised need to be addressed before a report could be said to reflect sound statistical practice.**

## RE: William Dickerson PCR Hearing

Melody Brown <MBrown@scag.gov>

Wed 5/11/2016 8:12 PM

Inbox

To: Caroline Scrantom <CScrantom@scag.gov>; Charles Grose <charles@groselawfirm.com>; Elizabeth Franklin-Best <elizabeth.a.franklin@gmail.com>,

Cc: Anthony Mabry <amabry@scag.gov>,

Dr. Norton's opinion.

Summary Reaction to the Michigan State University College of Law's Amended Report on Jury Selection Study dated May 5, 2016.

At this point, I have two concerns regarding the report. One is that race is singled out as the single explanatory variable for differences in the strike rates of blacks and whites, without discussion of an effort to explore whether other explanatory variables—which may or may not correlate with race—might be involved in the decision-making of whom to strike. The other is that the report does not give a clear rationale for why the particular cases used in the analysis can be taken to be a random sample for a population. This is essential in order to be able to draw from the data any inferences about the method of striking potential jurors.

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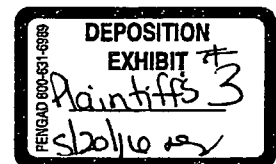
From: Caroline Scrantom  
Sent: Wednesday, May 11, 2016 5:08 PM  
To: charles@groselawfirm.com, Elizabeth Franklin-Best  
Cc: Melody Brown; Anthony Mabry  
Subject: William Dickerson PCR Hearing

Betsy and Charles,

Attached please find documentation Melody received from Chief Deputy Solicitor Bruce DuRant this afternoon. It may be relied upon during tomorrow's hearing.

Best,

Caroline M. Scrantom  
Assistant Attorney General  
Capital and Collateral Litigation



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State of South Carolina		Court of Common Pleas
County of Charleston		
William O. Dickerson, #6030,	)	Transcript of Record
	)	
Applicant,	)	
vs.	)	2012-CP-10-03216
	)	(Capital PCR)
<u>The State of South Carolina.</u>	)	

March 16, 2017  
Columbia, South Carolina

B E F O R E:  
The Honorable G. Thomas Cooper, Jr., Judge

A P P E A R A N C E S:  
Melody J. Brown, Senior Assistant Attorney General  
Caroline M. Scrantom, Assistant Attorney General  
Attorneys for the State  
  
Elizabeth Franklin-Best, Appellate Defender  
E. Charles Gross, Jr., Esquire  
Attorneys for Defendant

Stacy S. Johnson, RPR  
Circuit Court Reporter

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I N D E X

PAGE

CERTIFICATE OF REPORTER

27

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Court's Exhibit 1

(E-mail chain)

16

1 PROCEEDINGS

2 (Whereupon, the following proceedings were held on  
3 March 16, 2071, beginning at 1:01 PM.)

4 BAILIFF: Court come to order. All rise. Be seated.  
5 Thank you.

6 THE COURT: Good afternoon.

7 All right. I have the Respondent's motion for  
8 special interrogatories and concomitant requests for  
9 production of documents. I also have a set of documents  
10 from the 9th Circuit Solicitor's office.

11 Ms. Brown, we don't expect Solicitor DuRant, do we?

12 MS. BROWN: No, sir.

13 THE COURT: Okay. Well, I'm just kind of wondering  
14 what to do with these documents. I can't remember --  
15 somebody remind me. The last time I reviewed documents  
16 for which privilege was claimed and I allowed some of them,  
17 did not allow others, the original documents, where did  
18 they go? Are we holding them in the clerk's file under  
19 seal or something?

20 MS. BROWN: We had held the originals under seal. We  
21 had thought about substituting copies, but the last order  
22 was hold the originals under seal in Charleston.

23 THE COURT: All right.

24 MS. FRANKLIN-BEST: And we think that was actually at  
25 the last hearing.

1 MR. GROSE: The last one in Charleston.

2 THE COURT: Well, I'm not sure how the Solicitor  
3 wants to handle these. I find these -- none of these are  
4 privileged. I mean, I find no privileged documentation in  
5 here. There's nothing in here but information which is  
6 basically public record. In other words, the names of  
7 jurors, the sex of jurors, the employment of jurors, but no  
8 notes from solicitors indicating some sort of methodology  
9 for striking or anything like that. There are rap sheet  
10 records in here, but there's very little else. And as far  
11 as I'm concerned, I could turn this over to the Applicant  
12 today except Joanna Gardner has a label on the front of it  
13 that says please to return to her.

14 MS. BROWN: Your Honor, may I suggest that that goes  
15 back to her with directions to release a full copy to  
16 opposing counsel after you've made your privilege review.  
17 That -- it seems that that would tie the knot on it.

18 THE COURT: Is that satisfactory?

19 MS. BROWN: Yes.

20 MS. FRANKLIN-BEST: We'd be in agreement with that,  
21 Your Honor.

22 THE COURT: Okay. Well, I can -- all right. Well,  
23 that's not for me to say, but I don't think there's  
24 anything that bears on these proceedings even in light of  
25 your -- in other words, I don't think your experts will

1 find -- can find anything here that's of any use to them  
2 to change the nature of their report. That's just my  
3 personal opinion. Of course I'm not getting paid to find  
4 things either.

5 All right. As to the motion for special  
6 interrogatories, are both parties prepared to go forward?

7 MS. FRANKLIN-BEST: Yes, Your Honor.

8 MS. SCRANTOM: Yes, Your Honor.

9 THE COURT: All right. And you're Ms. Scrantom?

10 MS. SCRANTOM: Yes, Your Honor. Caroline Scrantom.

11 Our motion for special interrogatories really gets  
12 to the heart of our need to fully prepare for the  
13 cross-examination of the Applicant's experts that we are  
14 entitled to at this point. We find ourselves --

15 THE COURT: We've already done that.

16 MS. SCRANTOM: We have, Your Honor. We've done it  
17 twice. And we are at this point in what we perceive to  
18 be a unique procedural position where both sides have  
19 presented their case in chief and we are anticipating  
20 reply testimony from the Applicant at this point. In the  
21 meantime since we last convened, Charleston County has  
22 complied with the subpoena and generated a list of what I  
23 believe is thirty-six cases that were tried by the 9th  
24 Circuit Solicitor and has provided that to the Applicant  
25 and our office has also in the meantime --

1 THE COURT: That's in addition to this?

2 MS. SCRANTOM: Yes, Your Honor. I believe so.

3 THE COURT: Okay.

4 MS. SCRANTOM: And our office has in the meantime  
5 complied with a discovery request from Applicant to receive  
6 the transcript of jury selection procedures related to  
7 that list of cases and so we are at a point where we are  
8 awaiting reply testimony, but we are also anticipating that  
9 new evidence will be presented in reply, either, and/or  
10 that the Applicant is going to ask to redo their study with  
11 this list that's been produced by Charleston.

12 THE COURT: This is something I've not seen; is that  
13 correct?

14 MS. SCRANTOM: To my understanding, that's correct,  
15 Your Honor, you haven't seen it. And it's not a list of  
16 thirty-six new cases. It's a little bit cumulative from  
17 what was presented before and what was included in the  
18 past two studies that have been done by the Michigan State  
19 professors and additional cases that were identified by  
20 Charleston County. And so we're anticipating that in  
21 some form or fashion new evidence is going to come forward  
22 in reply and we, of course, generally object to the  
23 introduction of new testimony -- or new evidence in reply,  
24 and if that were to occur we would assert that we were  
25 entitled to some type of surrebuttal because of the unique

1 procedural posture of this case.

2 And so as a result of what is essentially ongoing  
3 discovery at this point in the proceedings, we have moved  
4 for these special interrogatories so that we can adequately  
5 prepare to fully cross-examine, yet again, the Applicant's  
6 experts. We believe that we've asked for discoverable  
7 material based upon the testimony that's already been given  
8 at our previous convening of evidentiary hearings in this  
9 case and so that's basically why we're seeking to compel  
10 the answers to these special interrogatories today.

11 THE COURT: Charles -- I mean, Ms. Best.

12 MS. FRANKLIN-BEST: Yes, Your Honor. May it please  
13 the Court? I have a number of remarks.

14 THE COURT: Just tell me one thing. One thing. Why  
15 is this not work product?

16 MS. FRANKLIN-BEST: Why is what I'm -- what they're  
17 asking for?

18 THE COURT: Uh-huh.

19 MS. FRANKLIN-BEST: That is precisely our argument;  
20 that it is work product and that work product gives way  
21 upon a finding of substantial need, which they haven't  
22 demonstrated.

23 THE COURT: Well, let me ask -- let me ask  
24 Ms. Scrantom to answer that question first. In your mind,  
25 Ms. Scrantom, why is asking a lawyer to identify how they

1 went about investigating their case, why is that not work  
2 product?

3 MS. SCRANTOM: Yes, Your Honor. We believe that  
4 because of where we are and because of the testimony that  
5 has already been given that a substantial need and undue  
6 hardship are both shown at this point in the proceedings  
7 and that is because we have testimony on two separate  
8 occasions from Barbara O'Brien where they say that the  
9 underlying data that they received and relied upon in  
10 conducting their study was provided to them by counsel,  
11 that they did not independently verify that, and we have no  
12 indication at this point that there was any type of third  
13 party involved in collecting the initial list of cases that  
14 was provided at the -- the onset or the start of this claim  
15 and the beginning of the statistical study that was done.

16 THE COURT: Well, you still haven't answered my  
17 question. Why is it not work product? Explain why  
18 Applicant relies upon the unadjusted observational study in  
19 this case.

20 MS. SCRANTOM: We believe, Your Honor, that at this  
21 point we've reached undue hardship because counsel has  
22 essentially put themselves -- they control the actors at  
23 this point and we --

24 THE COURT: Summarize all discussions between counsel  
25 and the authors of the study. Why is that not work

1 product?

2 MS. SCRANTOM: Because we believe that there's --  
3 there's an indication that counsel created an initial list  
4 of cases and their experts have testified --

5 THE COURT: We know they did.

6 MS. SCRANTOM: So we believe that we could call  
7 counsel as a fact witness at this point to get to what we  
8 are entitled to do under that study, which is to find out  
9 where the basis for this claim and where the basis for this  
10 study came from and how that initial list was generated,  
11 and we think it's unfair to Mr. Dickerson at this point to  
12 potentially have to ask to relieve --

13 THE COURT: Mr. Dickerson? He's not your client.

14 MS. SCRANTOM: -- to relieve counsel at this point in  
15 the proceedings when the case in chief has already been  
16 presented for both sides and asked to appoint new counsel  
17 to call current counsel as a fact witness to give what we  
18 believe we're entitled to in a full cross-examination and  
19 a full, again, examination of the study, which is how this  
20 initial list was created, where were they getting the  
21 criteria for the cases they pulled.

22 THE COURT: Why do you think you're entitled to that?

23 MS. SCRANTOM: Because we think we're entitled to a  
24 full and fair cross-examination and introspection into  
25 where the study came from that has to do with the facts in

1 issues --

2 THE COURT: What if it came from within a lawyer's  
3 brain?

4 MS. SCRANTOM: I think that we're in a unique position  
5 and we can certainly -- they certainly can provide a  
6 privilege log to you on these interrogatories, but in order  
7 to fully and fairly for a third time cross-examination --  
8 cross-examine --

9 THE COURT: Who? Cross-examine who?

10 MS. SCRANTOM: Cross-examine the experts on the  
11 underlying opinions and data that are leading to their  
12 observations and to their study and to their expert  
13 opinions. We need to know where this information came from  
14 and they've already told us twice that it came from counsel  
15 and we already are in a position --

16 THE COURT: Well, it came from public records, too.

17 MS. SCRANTOM: I'm sorry, Your Honor?

18 THE COURT: It came from public records, too.

19 MS. SCRANTOM: We don't have an indication that  
20 counsel reached out to public records to determine any list  
21 of cases other than what they've done since the hearing has  
22 already proceeded in this case and so the list has been  
23 supplemented as a result of our cross-examination and as a  
24 result of our presentation in opposition of this claim.  
25 And so when we go back to the original and we try to get to

1 the meat of why this claim was raised and why -- why these  
2 experts were retained and why this study was conducted, we  
3 believe we are entitled to know why and so that's why we  
4 have moved for these special interrogatories.

5 THE COURT: Okay. I'm real skeptical, but go ahead,  
6 Ms. Best.

7 MS. FRANKLIN-BEST: Yes, Your Honor. If I could just  
8 sort of briefly respond to that particular argument. I  
9 mean, as you're -- as Your Honor is aware, it's been some  
10 back and forth getting the full universe of cases to be  
11 included in the study. At this point they're -- they seem  
12 to want the additional information as to how like the  
13 initial selection was made that really seems to me to have  
14 been rendered moot by the fact that -- after your -- after  
15 this Court's order that Ms. Amanda Dunham of the Charleston  
16 County attorney's office complied back on January -- I'm  
17 sorry -- yes, I'm sorry. Solicitor Wilson complied with  
18 this Court's order back on January 24th of 2017. The next  
19 day Mr. Grose requested transcripts, the AG promptly  
20 replied to that on February 22nd. I mean, we now have the  
21 full universe. There were some cases that should have been  
22 included that were not, but we have the full universe now.

23 So, you know, just looking into how the initial  
24 selection was made, I mean, I've answered that frankly a  
25 number of times now. I went down to the Charleston County

1 Clerk of Court and I searched the public records and the  
2 minutes and it appears that some of the cases that were on  
3 microfiche I did not find. It appears that Ms. Wilson in  
4 recreating her cases has brought those cases to our  
5 attention, we've got them. I've reached out to the Office  
6 of Indigent Defense. I've also reached out to Janet Meyer  
7 of the South Carolina Supreme Court library to obtain --  
8 to see if I could track down any of these additional  
9 transcripts. I received a communication from Ms. Meyer  
10 yesterday afternoon indicating that they, in fact, have one  
11 of the transcripts that the Attorney General's office does  
12 not have. I believe that the Court of Appeals may have an  
13 additional three.

14 So I know where these -- I mean, the whole universe  
15 has now been sort of, you know, discovered, disclosed,  
16 and so now really it's just a matter of us getting those  
17 transcripts, finalizing --

18 THE COURT: Getting what transcripts?

19 MS. FRANKLIN-BEST: Getting a couple of the  
20 transcripts that Ms. Wilson has disclosed that neither the  
21 Attorney General or our office has right now.

22 THE COURT: Transcripts of what?

23 MS. FRANKLIN-BEST: Jury selection in some of the  
24 cases that she's tried.

25 THE COURT: Transcripts of jury selection?

1 MS. FRANKLIN-BEST: Yes. Well, the transcripts exist,  
2 but we haven't seen whether or not they include the jury  
3 selection. I mean, without actually eyeballing the  
4 transcript --

5 THE COURT: You're talking about transcripts of the  
6 entire trials?

7 MS. FRANKLIN-BEST: I believe so. These appear to  
8 be records on appeal, but sometimes records on appeal  
9 are not transcribed -- I'm sorry, jury voir dire is not  
10 transcribed, so I have to take a look at it to see if it's  
11 there, but if it's suitable for inclusion, I mean, I think  
12 we're talking about four additional cases.

13 THE COURT: Inclusion into what?

14 MS. FRANKLIN-BEST: Into the Michigan State study  
15 based on Ms. Wilson's compliance with the court order.

16 THE COURT: How long do you think that will take?

17 MS. FRANKLIN-BEST: Not long. As I said, I heard  
18 from Ms. Meyer yesterday. I think I can probably within  
19 the next week or so secure what is in the possession of  
20 our appellate courts. The Office of Indigent Defense  
21 may take a little bit longer because they'll be going into  
22 archives, but once we have that we can reach out  
23 immediately to our experts. It didn't take them long to  
24 include the last four cases that we found out about.

25 Charles and I have spoken about this. I mean, we

1 think that this could be ready for our rebuttal case  
2 probably in -- in summertime, if not a little bit earlier,  
3 and then it would be -- and then we would be finished. I  
4 mean, that would be the end of our case. We would close  
5 the record and then ask for a reschedule.

6 THE COURT: All right. So you have disclosed on the  
7 record now at least tangentially what the State is seeking  
8 in these interrogatories. Address the interrogatories  
9 specifically on the record, if you would, please.

10 MS. FRANKLIN-BEST: I will. I will. And, Your Honor,  
11 one of the first things I'd like to address is the Anthony  
12 Mann issue and this is one that --

13 THE COURT: It seems to be a big issue.

14 MS. FRANKLIN-BEST: It appears to be a big issue and  
15 I am prepared to discuss that. And so let me, first of  
16 all, go through my filings in Federal court and just  
17 explain what's happened there. On September 4th of 2015, I  
18 entered my notice of appearance in South Carolina Federal  
19 District Court. On November 2, 2015, I filed a traverse  
20 in this case. On February 1, 2016, I filed an objection  
21 to the magistrate judge Paige Gossett's report of  
22 recommendation. An order dismissing his habeas petition  
23 was signed by Judge Richard Gergel and filed on March 1,  
24 2016. I filed a notice of intent to appeal that on  
25 March 1st of 2016 and on April 18, 2016, I filed a formal

1 opening brief in the Fourth Circuit.

2 So my notes indicate that I began representing  
3 Anthony Mann on or about August 24th of 2015. At the time  
4 that he retained me, he had already filed his Federal  
5 habeas petition and the Attorney General had filed its  
6 response and a motion for summary judgment. I was retained  
7 to file the traverse. The issues in the case had already  
8 selected by Anthony prior to my involvement in his case.

9 Now when I received a copy of the record in his case,  
10 I noticed that a number of pages were missing from the  
11 appendix and so on September 3rd, 4th and 14th of 2015,  
12 Ms. Caroline Scrantom and I communicated regarding these  
13 missing pages, and Don Zalenka was also copied on these  
14 communications. They're obviously involved in this case  
15 as well. So they apparently also didn't pick up on the  
16 fact that his case may have had some relevance to the  
17 Batson issue raised here. Ms. Scrantom and Mr. Zalenka  
18 were also copied on all of my Federal pleadings.

19 Until Scarlett Wilson testified in the middle of the  
20 hearing as to the Anthony Mann case, it did not -- it did  
21 not even cross my mind that there was a connection, but  
22 I'm glad that we have the transcript now. You know, it  
23 simply did not occur to me that his case would have any  
24 implication. Since he had already selected the claims to  
25 be raised in his habeas petition, I never even reviewed the

1 voir dire in that particular case and so I first realized  
2 his case was relevant to Dickerson's case when Ms. Wilson  
3 testified that she prosecuted Anthony Mann, you know, so I  
4 can only say that I did not knowingly or willfully fail to  
5 include his case in the universe of cases that we used in  
6 the Michigan State study. It was simply an oversight,  
7 which, frankly, you know, could have been remedied I think  
8 if we'd had some more help in kind of uncovering the  
9 universe of cases at another point, but that's what  
10 happened.

11 And I have, which I would like to move into the  
12 record, just my e-mail correspondence with the Attorney  
13 General in this case regarding Anthony Mann. I mean, this  
14 is something I certainly wouldn't have done if I was trying  
15 to hide my participation in that case.

16 If you could mark that as a Court's exhibit, I would  
17 appreciate it. Let me get a copy for Your Honor.

18 THE COURT: That's all right. I can look at this one.

19 (Court's Exhibit Number 1 was marked for  
20 identification.)

21 MS. FRANKLIN-BEST: So, I mean, that's the Anthony  
22 Mann situation. I can't -- and Charles and I have talked  
23 about it. I still can't believe I missed it, but I did,  
24 and so I apologize for that happening. I know it was my  
25 responsibility to ensure, you know, as faithful a

1 collection of cases as I could, but I missed that one. So  
2 that's the Anthony Mann issue.

3 Now, I mean, as for some of the other issues, the  
4 interrogatories that the Attorney General requests, a  
5 number of these are questions that would be more  
6 appropriate for our experts. I'm not sure that -- I'm not  
7 sure, first of all, that they haven't already been answered  
8 in some of the cases, but in other cases I'm not sure what  
9 additional information I can provide that wouldn't be  
10 better provided by my experts. I mean, I guess perhaps the  
11 best way would be is just to ask if there's anything and  
12 then if I can answer it, I'll answer it, but if it's  
13 something that needs to go to our experts, I guess we can  
14 certainly say that.

15 MS. SCRANTOM: Your Honor, if I may briefly?

16 THE COURT: Sure.

17 MS. SCRANTOM: I think that that last answer is  
18 perhaps why we are trying to utilize the discovery process  
19 in this manner at this time. It appears as the way that  
20 things have unfolded with the revision of the study and  
21 the potential new revision of the study, discovery is  
22 essentially in this case becoming a corrective process for  
23 perhaps the way that things should have been requested in  
24 the first place if this were more typical civil litigation  
25 and so we are asking these interrogatories and serving

1 these -- we wish to serve these requests to produce so that  
2 we can get that underlying data from their experts so that  
3 we can prepare for the cross-examination of --

4 THE COURT: Did you serve any interrogatories on the  
5 experts? Is that what you're saying?

6 MS. SCRANTOM: Well, I think it's kind of, I don't  
7 know, jumbled together is the most eloquent way to say it,  
8 but, I mean, it's an interrogatory on counsel and it  
9 relates to, as I understand it, the materials their experts  
10 have relied upon in preparing for this litigation and on  
11 counsel as well. And I think that the explanation that we  
12 have about Anthony Mann also goes to why we drafted the  
13 interrogatories in this fashion because we have, you know,  
14 some testimony that we knew something had been excluded,  
15 we're trying to figure out how the study was created in  
16 the first place and what the underlying data was. And,  
17 of course, you know, counsel has given us some explanation  
18 for that today, but I think we're entitled to know where  
19 the study came from. And we also are looking to lay a  
20 foundation for requests to admit. We're looking to draft  
21 several requests to admit --

22 THE COURT: When do you want -- when do you want to  
23 try this case? Maybe 2018, '19?

24 MS. SCRANTOM: No, Your Honor. As soon as possible.

25 THE COURT: All right. It seems like it. I hate to

1 use that word, fishing expedition, but, I mean, we're  
2 getting so far away from the issues in this case. I mean,  
3 this can go on forever if everybody just keeps filing  
4 motions and just -- I just -- I don't agree that these  
5 interrogatories and requests for production should be  
6 served on Applicant's counsel and I respectfully deny your  
7 motion.

8 Now where do we go from here? We do not have -- I  
9 would like to set some dates, some target dates, to get  
10 this case at least heard this year, finalized in 2017.

11 MS. FRANKLIN-BEST: Absolutely.

12 THE COURT: I realize Mr. Dickerson is not going  
13 anywhere, but it's getting a little stale now. I mean,  
14 I'm gonna have to go back and read all of the lead-based  
15 paint testimony, you know, and see where that comes in.

16 And the study -- I mean, the study is what it is,  
17 it's in the record, I'm aware of it, but I'm also aware of  
18 Scarlett Wilson's testimony that there were other factors  
19 that she considers in every case in terms of jury selection  
20 and Batson issues. I've let you go pretty far with this  
21 hybrid of ineffective assistance of counsel and I think  
22 you've done, you know, a lot of work trying to convince  
23 the Court, and I'm not saying that I'm not convinced, that  
24 that's not a factual matter, but I'm getting a little  
25 frustrated with the progress, shall I say, not pointing any

1 fingers.

2 MS. FRANKLIN-BEST: Well, Your Honor, I believe as  
3 soon as I know what my experts' schedule is, I mean, and  
4 I'm hoping since they're professors --

5 THE COURT: Well, I mean, I would love for them to say  
6 I see no new information and we could close it with that.

7 MS. FRANKLIN-BEST: I will need to -- well, and that  
8 may be the case. I mean, once I look at these transcripts  
9 and if none of them could be used, then that may very well  
10 be the case. But assuming there's one or two cases that  
11 would need to be included, they are professors, they should  
12 be out for the summer, we should be able to get them  
13 here --

14 THE COURT: Well, then we've got to go back to the  
15 State's expert, too.

16 MS. FRANKLIN-BEST: And we will provide it to the  
17 State's expert as quickly as we can, Your Honor, and then  
18 perhaps have them testify on the same day. I mean, I'm  
19 trying to -- I'm ready for it to end, too, and we would  
20 just like one more court date to finalize this record and  
21 close it.

22 THE COURT: Well, when we get our second half of the  
23 year's schedule, I'm going to be in a position to sit down  
24 with both of you and say we're going forward, you know,  
25 study or no study, so just keep that in mind.

1 MS. FRANKLIN-BEST: Yes, Your Honor.

2 THE COURT: So the quicker you get done what you need  
3 to get done the better.

4 MS. FRANKLIN-BEST: Yes, Your Honor.

5 MS. SCRANTOM: Yes, Your Honor.

6 THE COURT: Anything further? Anything further?

7 MS. SCRANTOM: No, Your Honor. I don't believe so.

8 MR. GROSE: I just want to call something to  
9 everybody's attention at the risk of adding to your  
10 frustration, but also preemptively.

11 THE COURT: Okay.

12 MR. GROSE: I don't want to get into a situation where  
13 they say why wasn't this case not included. Solicitor --

14 THE COURT: In the study?

15 MR. GROSE: In the study, yeah. These are some  
16 motions that are going out today. One is to Your Honor,  
17 the other one is to Judge Clifton Newman. For whatever  
18 reason, I assume it was an oversight, I've given her the  
19 benefit of the doubt, but for whatever reason Solicitor  
20 Wilson did not include State versus Slager on her list and  
21 that was a case where she prosecuted a Caucasian defendant,  
22 which is gonna be the same issue that she raised with  
23 Anthony Mann, so we are asking her for the same information  
24 regarding Mr. Slager and we're asking Judge Newman for  
25 access to the transcript of jury selection, which under the

1 court reporter handbook the court reporter couldn't release  
2 to us without --

3 THE COURT: His permission.

4 MR. GROSE: -- his permission. And there's a  
5 newspaper article attached. It's not my place to  
6 criticize, but for whatever reason some of the jury  
7 selection in Mr. Slager's case looks like it was done  
8 confidentially and so I don't know what other -- I mean,  
9 that's what -- that's what I read in the Post and Courier,  
10 so there's also that potential issue that Judge Newman  
11 would have to address. Like I said, I don't want to be in  
12 a position where Solicitor Wilson's saying why didn't you  
13 include this.

14 THE COURT: Ms. Best, I will take those e-mail  
15 notes --

16 MS. FRANKLIN-BEST: Yes, sir. May I approach?

17 THE COURT: -- just so I'll have a complete set.

18 All right. Anything further?

19 MR. GROSE: No, sir, not from me.

20 MS. FRANKLIN-BEST: One last thing. I mean, it may  
21 be that the materials that Ms. Dunham has provided to you,  
22 those juror materials, they may be something that we need  
23 once I see the transcript.

24 THE COURT: What are you talking about, this?

25 MS. FRANKLIN-BEST: Yes, Your Honor. And I don't know

1 if at that time you would like us to make a motion that you  
2 release those to us or --

3 THE COURT: I'm doing it.

4 MS. FRANKLIN-BEST: You are releasing it?

5 THE COURT: Yes, because I don't feel there's anything  
6 in there that's privilege or work product.

7 MS. FRANKLIN-BEST: Thank you, Your Honor. Nothing  
8 additional.

9 THE COURT: All right. I guess I'll send these back  
10 to Ms. Gardner, right --

11 MR. GROSE: Yes.

12 THE COURT: -- telling her to reproduce them and mail  
13 them directly to you? Is that --

14 MS. FRANKLIN-BEST: That will be fine and probably a  
15 copy to Attorney General's office as well.

16 THE COURT: All right. Let me -- both of you, if you  
17 want to look, this is a -- this is a summary of what's in  
18 this folder.

19 MS. FRANKLIN-BEST: We did receive that, so I've seen  
20 that.

21 MS. SCRANTOM: That's the same thing as in the packet.

22 MS. FRANKLIN-BEST: That's what they sent to you. So,  
23 for example, like Cornelius Williams is a case that you do  
24 not have, but there are --

25 THE COURT: What number?

1 MS. FRANKLIN-BEST: I'm sorry, Number 10. So the  
2 Attorney -- and this is just one that's in my  
3 correspondence with Ms. Meyer. So Cornelius Washington,  
4 the AG does not have a copy of that transcript, but it  
5 appears that the Supreme Court may and so depending on  
6 what that transcript looks like those juror notes may or  
7 may not be relevant. I know that's not very clear. If --  
8 if the transcript itself details the race of potential  
9 jurors, then that's not really relevant, but if it does  
10 not, then we may be able to derive that information based  
11 on what's here.

12 THE COURT: Of course, those records indicate whether  
13 Batson motions were made at trial.

14 MS. FRANKLIN-BEST: It may. I mean, again, if the  
15 transcript reveals the Batson motion, it will.

16 THE COURT: This will tell you what the black/white  
17 composition of the jury was --

18 MS. FRANKLIN-BEST: Well, that's what we need.

19 THE COURT: -- and that's about it.

20 MS. FRANKLIN-BEST: That's what we need. Again, if  
21 the transcript is in existence. I mean, if there's no  
22 transcript and we have that, then there's nothing that can  
23 be done if it's not included in the study.

24 THE COURT: As I say, there's no identifying -- that's  
25 just an example. Just the numbers.

1 MS. FRANKLIN-BEST: Okay. So we need those two pieces  
2 of information to be included in the study. The transcript  
3 that shows who was struck and then the race of the jurors  
4 and so it looks like -- I mean, so if we have to kind of  
5 put the two together and then we can decide if it can be  
6 included. And so it looks like that would be half of the  
7 puzzle if, in fact, the transcripts exist.

8 THE COURT: Right, and that's true of each one of  
9 these.

10 MS. FRANKLIN-BEST: Excellent. So that's going back  
11 to her. Okay. Thank you.

12 THE COURT: Do you want to put on the record that you  
13 waive his presence?

14 MS. FRANKLIN-BEST: Sure. And, Your Honor, just for  
15 the record we have waived the presence of our client,  
16 William Dickerson.

17 THE COURT: All right. Thank you very much.

18 MS. BROWN: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. BROWN: If I may, we didn't get a response to this  
21 new request for information and I just wanted to clarify  
22 because as you pointed out very correctly this has been  
23 ongoing and if you recall that the request -- this latest  
24 request of Solicitor Wilson was for the -- the cases that  
25 she had tried at the time that she'd given her testimony

1 back last year, which didn't include this. So it's not a  
2 matter of they didn't ask for it, it didn't exist at the  
3 time, it wasn't a part of the motion to compel. And, Your  
4 Honor, as you mentioned earlier, this goes to the hybrid  
5 ineffective assistance of counsel claim, and this was one  
6 of our original objections. Mr. Dickerson's trial was in  
7 2009, so anything that happened after that wouldn't have  
8 been available for counsel to use in the study had counsel  
9 been able to get all this other information that has been  
10 gleaned from time to time.

11 THE COURT: I understand that.

12 MS. BROWN: I just wanted to make sure that we had --  
13 if we're going for an ineffective assistance of counsel  
14 claim still, we would ask that still things be limited to  
15 2009 and before.

16 THE COURT: Well, in the words of that famous Alaskan  
17 politician, you betcha.

18 MS. BROWN: Thank you.

19 MS. FRANKLIN-BEST: Thank you, Your Honor.

20 (Whereupon, the proceedings were concluded at  
21 1:38 PM.)

22

23

24

25

## C E R T I F I C A T E

1  
2  
3 I, Stacy S. Johnson, Official Court Reporter for the  
4 Eleventh Judicial Circuit of the State of South Carolina,  
5 do hereby certify that the foregoing is a true, accurate  
6 and complete transcript of record of all the proceedings  
7 had and the evidence introduced in the hearing of the  
8 captioned case in Circuit Court on the 16th day of March,  
9 2017.

10 This transcript may contain quoted material. Such  
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,  
13 counsel, nor have an interest to any party hereto.

14  
15 May 17, 2017  
16

17 *Stacy S. Johnson*  
18 STACY S. JOHNSON  
19 CIRCUIT COURT REPORTER  
20  
21  
22  
23  
24  
25

Státe of South Carolina  
County of Charleston

Court of Common Pleas

William O. Dickerson	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2012-CP-10-3216
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

October 23, 2017  
Columbia, South Carolina

B E F O R E:

The Honorable Thomas Cooper, Judge.

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## P R O C E E D I N G S

\* \* \*

(Applicant's Exhibit Nos. 1 and 2 marked for identification.)

THE COURT: Ms. Brown, tell me what -- our schedule for today.

MS. BROWN: Okay.. Well, we are just -- we would like to renew our prior objections just real quickly and then just go right into testimony. I believe this is their reply, so maybe Betsy could speak to how many people she will put up.

MS. FRANKLIN-BEST: That's right, Your Honor. We are planning to call one witness this morning.

THE COURT: Which one?

MS. FRANKLIN-BEST: Dr. O'Brien.

THE COURT: O'Brien, okay.

MS. FRANKLIN-BEST: And at that point we will be prepared to close the record. This is our final piece of evidence that we're presenting in this case.

And then I'm hoping that we can maybe spend some time with Your Honor discussing a briefing schedule --

THE COURT: Sure.

MS. FRANKLIN-BEST: -- so that we can start

1 working on that aspect of this.

2 THE COURT: Certainly. And I didn't know if  
3 you wanted to do any summations for the record or  
4 anything of that nature. We've got all morning,  
5 so --

6 MS. FRANKLIN-BEST: I appreciate that. I  
7 think, given how long this litigation has gone for,  
8 we might prefer to sit down and brief this.

9 THE COURT: Do it in writing?

10 MS. FRANKLIN-BEST: Yes, Your Honor.

11 THE COURT: All right.

12 Is that satisfactory with the State?

13 MS. BROWN: Sure, Your Honor, that would be  
14 fine with us.

15 THE COURT: Okay. All right.

16 (The Applicant enters the courtroom.)

17 MS. FRANKLIN-BEST: Your Honor, we'd like to  
18 ask that his shackles be removed.

19 THE COURT: All right. He can have his  
20 shackles removed.

21 MS. FRANKLIN-BEST: Take the whole thing off.

22 THE COURT: Just so he can write.

23 THE DEPUTY: You want all the chains off or  
24 just the black box, sir?

25 THE COURT: I want him to be able to write

1 notes.

2 THE DEPUTY: Okay. Just take off the black  
3 box. And if you need to, take out the right arm.

4 MR GROSE: I think in the past we --

5 THE APPLICANT: We take everything off.

6 THE COURT: I'm sorry?

7 THE APPLICANT: When we would come in to see  
8 you, we would take everything off, we never have  
9 them on.

10 THE COURT: No, I know. We've had several  
11 hearings with this --

12 THE APPLICANT: Yeah, with everything off, not  
13 just --

14 THE COURT: You can leave his shackles on.

15 THE CORRECTIONS OFFICER: Say it again, sir.

16 THE COURT: I said you can leave the shackles  
17 on, but he needs to be free to move his hands.

18 MS. FRANKLIN-BEST: May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. FRANKLIN-BEST: I just wanted to give you a  
21 hard copy of this, if you would like one.

22 THE COURT: I've got it.

23 MS. FRANKLIN-BEST: Okay.

24 THE COURT: August 29th?

25 MS. FRANKLIN-BEST: Yes, Your Honor.

1 THE COURT: Ms. Franklin-Best, you may proceed.

2 MS. FRANKLIN-BEST: Yes, Your Honor. May it  
3 please the Court?

4 MS. BROWN: Your Honor, excuse me, sir, but we  
5 had just a few of the objections to place on the  
6 record to make sure we preserve them, sir.

7 THE COURT: Go ahead.

8 MS. BROWN: We renew our prior objections as to  
9 relevance and scope, in particular. We object to  
10 any and all evidence post-May 2009 trial, as we have  
11 in prior proceedings, and that's according to the  
12 Court's November 30th, 2014 order. We object to  
13 evidence that was obtained outside of the discovery  
14 process allowing the Uniform Postconviction Relief  
15 Act. Applicant has consistently used freedom of  
16 information, which has delayed and frustrated the  
17 discovery process. And we also object to  
18 presentation of bare statistics going only to  
19 inferences when the solicitor already gave her  
20 reasons for the strikes at issue at the time of  
21 trial. Thank you, Your Honor.

22 THE COURT: All right. If need be, those  
23 objections are overruled, respectfully.

24 MS. BROWN: Thank you, sir.

25 THE COURT: All right. Ms. Franklin-Best?

1 MS. FRANKLIN-BEST: Yes, Your Honor. May it  
2 please the Court. Just briefly, again, this is the  
3 final piece of evidence that we intend to present in  
4 our PCR case in chief -- I'm sorry, in our PCR case.  
5 We're here on rebuttal.

6 And today we are here to sort of introduce the  
7 second amended Michigan State University study on  
8 the solicitor's jury strikes. We provided those to  
9 Your Honor and the Attorney General's Office on  
10 August 30th of 2017 by e-mail. We subsequently  
11 provided a hard copy of that to the Attorney  
12 General's office. We have every reason to believe  
13 that this is the fullest universe of cases that  
14 exists.

15 And just a very briefly, Your Honor, recap:  
16 After the solicitor's testimony at an earlier  
17 hearing on May 12th, 2016, and we had not included  
18 all of the cases she's tried in our analysis, we  
19 asked this Court to compel her to produce for us a  
20 list of those cases, as well as any and all juror  
21 information she possessed in connection with those  
22 cases. This Court granted that motion on July 26th,  
23 2016, and the Charleston County Attorney's Office  
24 complied in January of 2017.

25 We reviewed those materials and our experts

1 reviewed those materials, and the cases that were  
2 suitable for inclusion of the study have now been  
3 incorporated into this study. So this final report  
4 now includes all of the materials identified by us  
5 as counsel for William Dickerson and by the  
6 solicitor. It is the universal cases that exist.  
7 And we appreciate this Court's assistance in helping  
8 us to secure the necessary information.

9 At this time, Your Honor, I'd like to call  
10 Dr. Barbara O'Brien to testify.

11 THE COURT: All right. Dr. O'Brien.

12 BARBARA O'BRIEN  
13 being first duly sworn, testified as follows:

14 THE WITNESS: I do.

15 THE COURT: Be seated and state your full name  
16 for the record.

17 THE WITNESS: My name is Barbara O'Brien.

18 THE COURT: Thank you. You may proceed.

19 DIRECT EXAMINATION

20 BY MS. FRANKLIN-BEST:

21 Q. All right. Hello, Dr. O'Brien. Thank you for  
22 being here again today. And, briefly, can you just  
23 describe your employment and your role in this  
24 litigation.

25 A. Yes. I'm an associate professor of law at the

1 Michigan State University College of Law. And I  
2 became involved in this litigation, I think, maybe a  
3 little over two years ago when my colleague,  
4 Catherine Grosso, and I were contacted by you about  
5 doing a data study of the jury selection process in  
6 Solicitor Wilson's cases.

7 Q. Okay. And today we're going to be asking you  
8 to present those findings in the second amended  
9 study. And I would like to -- I've had a copy of  
10 the report as well as a flash drive containing the  
11 database premarked as evidence.

12 MS. FRANKLIN-BEST: And at this point, I'd like  
13 to offer that into evidence.

14 THE COURT: Any objection?

15 MS. SCRANTON: No objection, Your Honor.

16 THE COURT: Thank you.

17 (Applicant's Exhibit Nos. 1 and 2 admitted into  
18 evidence.)

19 BY MS. FRANKLIN-BEST:

20 Q. Can you briefly discuss how you and Professor  
21 Grosso ensured the reliability of the information  
22 that you used in this study?

23 A. We used several procedures to ensure the  
24 reliability; one procedure was that the -- well, we  
25 had individual coders, separate coders, each code,

1 every case, independently of each other, and then  
2 compare their answers, and then I would resolve any  
3 discrepancies.

4 We also did some more mundane things such as in  
5 the database, creating fields so that you couldn't  
6 put in a value that didn't belong; it wouldn't  
7 prevent all errors, but it was one such mechanism.

8 Q. And did you use a statistical program?

9 A. Yes. I used SBSS.

10 Q. Okay. Can you describe what that does, just  
11 briefly.

12 A. It's a statistical software package. And  
13 there's several like it. It can do all sorts of  
14 advanced statistics and more basic statistics. It  
15 just does a little bit more than what your typical  
16 Excel file could do.

17 Q. So are these sort of typically the kinds of  
18 things that are involved in a study like this?

19 A. Yes.

20 Q. Okay. It's pretty typical reliability kinds of  
21 measures?

22 A. That's right.

23 Q. And, briefly, can you tell the Court how many  
24 cases have now been included in this study?

25 A. Twenty.

1 Q. Twenty. And given the inclusion of these  
2 additional cases that were identified by the  
3 solicitor, can you discuss the impact of those cases  
4 on the findings in this report?

5 A. Yes. The additional cases that were added,  
6 which we coded and -- we coded for strike and race  
7 of the venire members, there's -- I'm going to have  
8 to refer to my report to give you the exact numbers.  
9 But I believe it was a strike disparity -- if I look  
10 at all of the strike decisions in the entire data  
11 base, it's a disparity of 5.4 to 1. If I just look  
12 at the case level, just an average of the disparity  
13 for each case, it was a disparity of 5.6 to 1. So  
14 it was a little bit lower, but not by much.

15 Q. Okay. Can you describe what the magnitude of  
16 that disparity and what that means? What does it  
17 mean to say it's, like, 5.1 to 1 or 5.6 to 1?

18 A. So it's basically that if you have a pool of  
19 black potential jurors and a pool of white potential  
20 jurors that the prosecution struck the black  
21 potential jurors at five times the rate that they  
22 struck the white potential jurors.

23 Q. Is that a pretty significant --

24 A. That's a very big disparity. Yes.

25 Q. And do you recall what the racial disparity was

1 in William Dickerson's specific case?

2 A. I believe that it was, I will check my notes  
3 here, 11.1 to 1.

4 Q. So 11.1 to 1. And, again, could you just sort  
5 of flesh that out? I mean, what exactly does that  
6 mean?

7 A. Well, that's an extremely large disparity by  
8 any standard. In simplest terms, it simply means  
9 that black potential jurors were struck at 11.1  
10 times the rate that white potential jurors were  
11 struck. So if you think of it as like a roulette  
12 table, you had a certain number that -- forgive me,  
13 I'm not a gambler, but you had a certain number that  
14 the ball landed on 11 times as often as another,  
15 that would be pretty strange.

16 Q. And you would bet on that number?

17 A. I would.

18 Q. Okay. Now, it appears that there are 17 cases  
19 that have been identified as having been tried by  
20 the solicitor for which there was not sufficient  
21 data to incorporate into these findings. How does  
22 the exclusion of these cases affect either the  
23 accuracy or the reliability of these findings?

24 A. Well, two of them were bench trials, so,  
25 obviously, they would not be appropriate for

1 inclusion because there was no jury selected.

2 In the 15 remaining cases, there was various --  
3 some of them were missing any sort of data from  
4 which we could discern strike patterns, and others  
5 just didn't have enough. That doesn't affect the  
6 study. I mean, obviously, if these materials were  
7 on earth and we could include them, we would do so.

8 There was nothing about these cases other than  
9 the lack of a transcript or other information  
10 bearing on the strikes and race that caused us to  
11 exclude them. There was nothing about -- we didn't  
12 exclude them because they were the wrong kind of  
13 case or anything like that, it was just simply  
14 driven by whether the materials were available.

15 So it affects the validity of the study only  
16 if, for some reason, those cases were missing not at  
17 random; that they were missing because of  
18 record-retention policies, but rather something that  
19 had to do with the jury-selection process.

20 Q. So if we, for example, excluded or included  
21 only the cases where defense counsel made a Batson  
22 objection, would that be sort of a statistically  
23 valid study?

24 A. No, that would not. That would not. And I  
25 would -- if the reason you're including a study or

1           excluding a study has something to do with the  
2           phenomenon you're trying to examine, then that would  
3           skew the study. These do not -- I can't think of  
4           any reason why the availability or lack of  
5           availability of a transcript would have anything to  
6           do with the jury-selection process.

7           Q.    So this would still be kind of a random  
8           grouping of cases to have been included in the  
9           study?

10          A.    Well, it seems that the cases that are missing  
11          seem to be missing at random. So it doesn't --  
12          there's nothing about the way these cases are  
13          missing that calls into question the  
14          representativeness of the 20 cases that are  
15          included.

16          Q.    Okay. Now on page 6 of your study, the first  
17          paragraph, you state: The P values for the racial  
18          disparities observed in this study are consistently  
19          well below the standard scientific benchmarks for  
20          reliability. And that's just a whole lot of words.  
21          Can you just sort of describe what that means.

22          A.    Yes. Without getting too philosophical, a P  
23          value is a statistical measure that you use to  
24          assess whether or not some difference you have is  
25          simply due to chance. So if you were to go out on

1 the street and ask five people their opinion on  
2 something and then say men feel this way and women  
3 feel this way, that wouldn't be -- there's too much  
4 noise in there, there's too much for a statistically  
5 significant P value there.

6 So what drives the P value where you can say  
7 this is not due to just random chance -- because in  
8 any given trial, you're going to have noise, you're  
9 going to have the variability, so you -- what goes  
10 into the P value is both the magnitude, how big of a  
11 difference you're seeing, but also the size of the  
12 sample.

13 Q. So what are the P values in this study?

14 A. They're -- so the P values for -- if I pool all  
15 the cases -- I'm going to look at my tables rather  
16 than the text. If you pool all of the jurors and  
17 you just look at the whole of all of the  
18 strike-eligible black or white jurors in the data  
19 set, the difference is statistically significant at  
20 the P less than .001 which is an estimate that says  
21 it's about a one-in-a-thousand chance you would see  
22 this just because of random noise, basically. If I  
23 look at the strike rates where I say take a rate of  
24 the disparity for each case and just take an average  
25 of it, it's also less than .001.

1 Q. So, again, that .001 means that that's the  
2 likelihood that you would have this outcome as the  
3 result of random chance?

4 A. Yes.

5 Q. Okay. It has been a persistent criticism of  
6 your report by the AG's Office and by Dr. Norton  
7 that the study did not include consideration of  
8 other factors, like education or criminal records.  
9 Could you discuss this criticism and tell the Court  
10 why, even without controlling those specific  
11 factors, this study is still reliable?

12 A. Yes. There's a couple of reasons; one is that  
13 the -- simply that the size of the disparity makes  
14 it unlike -- so for another variable, to actually  
15 explain this, this is actually nothing to do with  
16 race, it's about something else about the jurors, it  
17 would have to be very frequent. It couldn't be just  
18 a rare characteristic among the jurors, it would  
19 have to be very common among the jurors. It would  
20 have to be very, very highly correlated with race  
21 and it would have to be very highly correlated with  
22 strikes.

23 It would have to be something that is common  
24 in -- not just a few people have this  
25 characteristic, but a lot of people have this

1 characteristic, and it was a big driver for the  
2 prosecutorial decision to strike, and it was also  
3 very heavily skewed one way or the other as to race,  
4 as to who had these characteristics.

5 In my prior experience in doing analyses where  
6 I have controlled for these things, for instance, in  
7 the North Carolina data set, we did find a number of  
8 characteristics that were -- that did drive strike.  
9 Clearly, there are other factors that are going to  
10 drive the decision to strike. But none made the  
11 race effect go away. So was not --

12 THE COURT: Made the what effect go away?

13 THE WITNESS: The race effect. Right. The --

14 THE COURT: Race effect.

15 THE WITNESS: Even controlling these  
16 disparities, there was still a disparity in the  
17 striking of black potential jurors and white  
18 potential jurors. These disparities in those cases  
19 weren't anywhere near as big as the disparities in  
20 this case.

21 So even though the disparities there were 2.4  
22 to 1, which is still big, the controlling for things  
23 like prior criminal record or having a family member  
24 who was accused of a crime or -- in those cases,  
25 those were all capital cases, so ambivalence about

1 the death penalty, not enough to get excused for  
2 cause but enough to give the prosecutor pause, those  
3 did predict who was struck, but they weren't enough  
4 to explain the disparity in the race as far as race  
5 goes. And then here, you have a disparity of over 5  
6 to 1. It would have to be something so big and so  
7 common and so highly correlated with race to make  
8 this effect go away.

9 The other reason that I'm not concerned about  
10 the lack of controls here is that with a few  
11 exceptions, the voir dire in these cases is pretty  
12 short, so there's not a lot of exchange of  
13 information. It's different when you have a case  
14 where you have, you know, sometimes thousands of  
15 pages of voir dire where there's a lot of -- they  
16 really are probing and people's attitudes and their  
17 experiences, so the prosecutor has a lot of  
18 knowledge from which to make a decision to strike.

19 Here, there's a few cases like that that are  
20 quite lengthy, but you don't have as much  
21 information in the decisionmaker's hands. And so  
22 we're not trying to control for every possible thing  
23 about a juror that would bear on their fitness as a  
24 juror, we're trying to control what information the  
25 decisionmaker had. And if they didn't have as much,

1 it's -- there's less to control for.

2 Q. And so -- right. So you made this observation  
3 that in capital cases you generally have a very  
4 extensive voir dire process. But in most of the  
5 cases that you looked at here --

6 A. It was much more routine, kind of quick  
7 question-and-answer.

8 Q. Now, Dr. Norton testified that he thought it  
9 was an issue with analyzing one case where two  
10 jurors were drawn. And this is the Jalal Beyah  
11 case. And he testified that if there's overlap in  
12 the two jury pools, you're bordering on using the  
13 same data twice. He testified that he believed this  
14 might be a problem for the analysis. And I was  
15 going to ask if you could address that particular  
16 objection.

17 A. Yes. No, I understand his point. And in some  
18 cases that would definitely -- in certain types of  
19 studies, that would be an issue. But here, our  
20 point of interest is the prosecutor's decision to  
21 strike. So the fact that a juror might come up  
22 twice and they make the decision about him twice,  
23 there's still two separate decision points.

24 It's -- so it's not -- it would be  
25 double-counting if I counted a prosecutor's one

1 decision twice, which, obviously, I wouldn't do.  
2 But if the jury selection started from scratch, even  
3 though some of the jurors might repeat -- just like  
4 if I have a study, a data set where you have  
5 somebody called -- just by coincidence, they get  
6 called for one trial and then they get called two  
7 years later for a different trial, that wouldn't be  
8 a problem because you still have two different  
9 decision points.

10 Moreover, even if you were to say -- you know,  
11 even if you just took those cases out of the  
12 analysis, it doesn't change the disparities, so the  
13 disparity is still over 5 to 1.

14 Q. So even if you said, okay, you've got this  
15 concern about this one particular case, we'll just  
16 extract that from the study --

17 A. Yes.

18 Q. -- the impact would still -- the disparity  
19 would still be robust?

20 A. Yes.

21 Q. Okay. Now, in light of including these  
22 additional cases identified by the solicitor into  
23 this study, could you please answer these following  
24 questions: Do you have an opinion to a reasonable  
25 degree of scientific certainty as to whether race

1 was a factor in the solicitor's decision to exercise  
2 preemptory challenges in Charleston County during  
3 this relevant timeframe?

4 A. Yes.

5 Q. And what is that opinion?

6 A. It's my opinion that race was a factor.

7 Q. Also, do you have an opinion to a reasonable  
8 degree of scientific certainty whether race was a  
9 factor in the solicitor's decisions to exercise  
10 preemptory challenges in William Dickerson's  
11 specific case?

12 A. Yes.

13 Q. And what is that opinion?

14 A. It's my opinion that race was a factor.

15 Q. And are you familiar with other studies of the  
16 same jury that have been conducted in other parts of  
17 the country?

18 A. Yes.

19 Q. And can you briefly describe those studies and  
20 discuss how the findings in this case compare to  
21 those other studies?

22 A. Yes. So I've mentioned the North Carolina  
23 study. In that study, we found a disparity of about  
24 2.4 to 1, so this is twice as much. I'm familiar  
25 with a study in -- the Philadelphia study that

1 Professor Baldus and colleagues did. That was about  
2 2 to 1, I believe. I am familiar with a few other  
3 studies that were conducted slightly differently.  
4 But the disparities are, I think, typically, you see  
5 in the range of about 2 to 3 to 1.

6 Q. Okay. And here, we're looking at 5.1 and 5.6  
7 to 1; is that correct?

8 A. Yes.

9 Q. And then 11.1 to 1 in William Dickerson's  
10 specific case?

11 A. Yes.

12 Q. Okay. This will be my final question: Do you  
13 have an opinion as to whether the disparities seen  
14 in these cases supports an inference of intentional  
15 discrimination by the Charleston County Solicitor in  
16 her decision to exercise preemptory challenges of  
17 African-Americans in William Dickerson's case?

18 A. Yes.

19 Q. And what is that opinion?

20 A. I believe it supports an inference of  
21 intentional discrimination.

22 MS. FRANKLIN-BEST: I have no further questions  
23 at this point, Your Honor.

24 THE COURT: You may proceed.

25 MS. SCRANTON: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MS. SCRANTON:

Q. Good morning.

A. Good morning.

Q. The studies that you've conducted in other states included a larger amount of data than you had available in this study; is that correct?

A. Yes -- well, I assume you're referring to North Carolina. Yes, we had the full transcripts. And those were all capital cases, so there was quite a bit of voir dire.

Q. And wasn't that a state-wide study?

A. Yes.

Q. Okay. So you had a number of cases that was larger than the 20 that you presented on today?

A. Yes. But we also did present in -- this isn't part of the published study which you might be referring to. But we did present down there a statistical analysis of one county as well, which had 12 cases.

Q. Okay. And all together for this proceeding, you've prepared a total of three reports?

A. Yes.

Q. And in the first one, you included nine or ten cases?

- 1 A. I believe so. I can look at my chart. Ten  
2 cases, yes.
- 3 Q. Okay. And after you presented that report, you  
4 concluded there was a shocking disparity in the  
5 solicitor's exercise of strikes; correct?
- 6 A. Yes, there was a substantial disparity.
- 7 Q. Okay. And then in your second report, you went  
8 from 10 cases to 12 cases; right?
- 9 A. Yes.
- 10 Q. And you still found there was a disparity?
- 11 A. Yes.
- 12 Q. And today you've presented on 20 cases?
- 13 A. Yes.
- 14 Q. And again you've come to the same conclusion  
15 that there is a disparity in the use of strikes?
- 16 A. Yes.
- 17 Q. But the ratio in your first report -- and I'm  
18 looking at Page 2 of your report -- was a 6.75;  
19 correct?
- 20 A. Yes.
- 21 Q. And then it went down to 6.4 --
- 22 A. Yes.
- 23 Q. -- in the second report?
- 24 And then in today's report, your ratio is a  
25 5.4?

1 A. That's right.

2 Q. So we can agree that the ratio is reducing as  
3 you're including more data?

4 A. Yes. It did go down with each iteration.

5 Q. And could you agree that your report that  
6 you've done for this proceeding could be more  
7 statistically sophisticated?

8 A. Well, the thing about statistical  
9 sophistication is you've got to use the best tool  
10 for the question you're asking and the data that you  
11 have. So fancier statistics isn't necessarily  
12 better --

13 Q. Okay.

14 A. -- unless there's a good theoretical reason to  
15 include it or to do a more advanced test.

16 Q. Okay. And it's statistically possible for a  
17 report, such as the one that's been presented, to  
18 account for other strike-decision factors in  
19 addition to race, isn't it?

20 A. Yes. If we had that information, we could code  
21 for it and we could control for it.

22 Q. Okay. And you've had three opportunities to  
23 code for that type of information; correct?

24 A. Well, somewhat. I mean, like I said, the voir  
25 dire in the vast majority of these cases is very,

1 very limited. I mean, sometimes maybe 30 pages of  
2 the transcript. So there isn't a lot of information  
3 about the individual jurors in those materials. And  
4 so we can only code for the information that was  
5 available at the time of the jury selection.

6 Q. Okay. Yet in today's report you've still  
7 included Appendix B which appears to be an  
8 information sheet that does code for information for  
9 each individual juror in addition to race, haven't  
10 you?

11 A. That's right. When we created the  
12 data-collection instrument, we, at that point,  
13 weren't sure what kind of -- first of all, what the  
14 voir dire would look like, but also what kind of  
15 information we would have access to. So, for  
16 instance, if there was -- in the course of  
17 discovery, say, arrest records were produced to us,  
18 if that was part of the prosecutor's  
19 decision-making, then we could control for it. We  
20 never got that information -- or we did get -- some  
21 of the information is in the transcripts, but it's  
22 not in there consistently enough to be able to do  
23 anything with it.

24 Q. But you kept the appendix the same, you kept  
25 that information sheet the same every time you've

1 recalculated and added cases?

2 A. Yeah. I thought it was -- I didn't want to  
3 just change it halfway through. I mean, that's what  
4 we had included in the original report, that's what  
5 we thought we might be able to go with, and I didn't  
6 want to change it this late in the game.

7 Q. Okay. And that appendix includes information,  
8 if it's available, for marital status of the juror;  
9 correct?

10 A. That's right.

11 Q. As well as the level of the education that the  
12 juror has achieved, if that information is  
13 available?

14 A. Yes.

15 Q. It also includes whether or not that juror has  
16 had military service?

17 A. Yes.

18 Q. And what their employment is?

19 A. Yes.

20 Q. And other factors in addition to those that  
21 I've just named; correct?

22 A. Yes.

23 Q. So would you agree that without including that  
24 type of information and just looking at the race of  
25 the strikes, that you presented a bare statistic?

1 A. It is a bare statistic. Yes.

2 Q. Okay. And are you aware that Miller Elle  
3 [phonetic], as a law professor in your course of  
4 study, objected to the use of bare statistics in a  
5 Batson analysis?

6 A. No. I don't believe that -- that's not my  
7 reading of the case.

8 Q. Okay. Have you argued a Batson motion in South  
9 Carolina?

10 A. Have I argued one? No, I have not.

11 Q. Have you ever argued one over the course of  
12 your career?

13 A. No, I have not.

14 Q. Okay. Are you aware that if you were to argue  
15 a Batson motion, since this is in your course of  
16 study, that there's a three-step process?

17 A. Yes.

18 Q. Are you aware that in the first step, the way  
19 we do it in our jurisdiction is, the movant makes  
20 the Batson motion and they put together their prima  
21 facia case, which is their opportunity to point out  
22 that they believe that there was a disparity in the  
23 strikes that were exercised?

24 A. Yes.

25 Q. And then you're aware that there's two steps

1 after that; correct?

2 A. Yes.

3 Q. And the second step would be where the  
4 proponent of the strike gives their neutral reasons  
5 for the exercise of the strike.

6 A. Yes.

7 Q. Now, the bare statistics that you presented  
8 today cannot account for the reasons that are given  
9 in that second step, can they?

10 A. I'm sorry. I don't quite follow.

11 Q. The ratios that you've presented today where  
12 you've looked at the strikes, black to white, cannot  
13 account for or address the reasons that the  
14 proponent of the strike gives for exercising the  
15 strike?

16 A. I don't know if I would agree with that. I  
17 understand -- I understand the point. The reason I  
18 wouldn't agree with that has to do with the  
19 magnitude of the disparity, that it's -- the size of  
20 the disparity being as great as it is. So I  
21 wouldn't go so far as to say what you just asked me.

22 Q. Okay. And then there's a third step after that  
23 second step --

24 A. Yes.

25 Q. -- to the motion; right? And that third step

1 is where the movant, of course, gets to rebut the  
2 reasons that were given.

3 And then the judge gets to determine whether  
4 similarly situated jurors to those who were stricken  
5 were also seated on the jury; right?

6 A. Yes. That is one of the considerations in  
7 determining whether it's --

8 Q. And a bare statistic that only points to the  
9 disparity in strikes, which is what is presented at  
10 the first step of a Batson motion, can, again, not  
11 account for the whole picture and the judge's  
12 decision on whether or not to grant a Batson motion?

13 A. Sorry. I'm thinking.

14 Q. That's okay.

15 A. Well, I also think there's a different -- I  
16 think one of the things that's easy to sort of lump  
17 together is this idea of bare statistics. But  
18 there's the bare statistics in an individual case  
19 and then there's the statistics of a pattern. And I  
20 do think there's something qualitatively different  
21 about sort of when you're saying the prosecutor,  
22 say, struck three out of the four potential jurors  
23 versus looking at a pattern of behavior. I think  
24 there's something qualitatively different about  
25 those two. They're both -- yes, they're both bare

1 statistics, but there's something different about  
2 them and the information that it provides.

3 Q. Okay. And your study that you presented goes  
4 to the correlation and the ratio of strikes based on  
5 race --

6 A. Yes.

7 Q. -- and not the causation for those strikes?

8 A. That's right. It's not an experiment.

9 MS. SCRANTON: Okay. If I may beg the Court's  
10 indulgence for a moment.

11 No further questions. Thank you.

12 MS. FRANKLIN-BEST: No additional questions,  
13 Your Honor.

14 THE COURT: Following up on that last exchange  
15 you had with counsel, if the Court is the ultimate  
16 decider in Batson situations -- I'm trying to link  
17 up what you have said in your study and throw the  
18 factor of the Court either approving or disapproving  
19 Batson strikes. I'm not quite focused on a  
20 question, but it does seem to me that somehow  
21 interrupt the conclusions that you have reached  
22 if -- of course we don't know -- or do we know if  
23 Batson motions were made in any of these 20 cases,  
24 or do we?

25 THE WITNESS: Well, I believe in Beyah.

1           THE COURT: Well, I mean, certainly, not in all  
2 of them.

3           THE WITNESS: Right.

4           THE COURT: So there's no judicial input in  
5 most of these cases because there's no Batson  
6 challenge; is that correct?

7           THE WITNESS: I believe that's correct. I  
8 believe that -- I don't think that there were Batson  
9 challenges in all of the cases. I don't think there  
10 were.

11          THE COURT: The records that you reviewed would  
12 or would not have that?

13          THE WITNESS: Yes, they would have that.

14          THE COURT: Would have that?

15          THE WITNESS: Right, because I would have the  
16 transcript so I could see if there was a Batson.  
17 The only one I can remember was in Beyah's case.  
18 But I'm sure there were others, I just don't recall.

19          THE COURT: Other Batson challenges?

20          THE WITNESS: Yes.

21          THE COURT: Well, I guess my inquiry is, in  
22 those cases where there is a Batson challenge, would  
23 the fact that the Court would make a decision as to  
24 the legitimacy of the strike or not, would that in  
25 any way interfere with -- or impact, I should say,

1 your ratios? I'm not sure it's a correct linkage,  
2 but --

3 THE WITNESS: So just to make sure I  
4 understand, are you asking me if we coded a strike  
5 or a pass differently based on the judge's ruling or  
6 are you asking --

7 THE COURT: Yeah.

8 THE WITNESS: No. No. We coded it just as  
9 whether the decision was exercised to strike or not.

10 THE COURT: So if the solicitor made a  
11 race-based strike and the Court excluded that juror  
12 and another juror was seated, it would seem to me  
13 that that would throw some -- would have some affect  
14 on your ratios.

15 THE WITNESS: Okay. So -- and please let me  
16 know if I'm misunderstanding. But for one thing, to  
17 the extent that it could possibly skew the results,  
18 if Batson objections and rulings were infrequent  
19 enough that if I took out every single juror for  
20 whom a Batson objection was made, it would have a  
21 very small effect because they're so rare.

22 THE COURT: They're so rare in this case?

23 THE WITNESS: Well, they're so rare in these  
24 cases, these 20 cases. I don't know off the top of  
25 my head exactly how many there were, but they were

1 rare enough events that I --

2 THE COURT: Took them into consideration?

3 THE WITNESS: And also just that these are very  
4 short transcripts too, so there's not a lot of --  
5 there's not a lot of argumentation going on.

6 On the other hand, if what we're looking at is  
7 the solicitor has the opportunity to make a  
8 decision, right, that we could strike this juror or  
9 seat this juror --

10 THE COURT: On the front end?

11 THE WITNESS: Pardon?

12 THE COURT: On the front end?

13 THE WITNESS: Yeah -- well, I mean, throughout  
14 the process they are exercising that decision. And  
15 if a judge then later calls them on it and says that  
16 was a race-based strike, I think it should still be  
17 included because it still shows the pattern of  
18 behavior.

19 THE COURT: My question is if he says it was  
20 not a race-based strike.

21 THE WITNESS: If it was not a race-based  
22 strike. So I were to remove them because,  
23 basically, the judge has ruled it's not race-based,  
24 so take them out of the analysis, I did not do that.  
25 But given the infrequency of Batson objections, if I

1 were to go back and take out every juror for whom  
2 there was an unsuccessful Batson objection made by  
3 the defense, it wouldn't change these numbers.

4 THE COURT: Okay. You answered my question.  
5 Anything further?

6 MS. FRANKLIN-BEST: No additional questions,  
7 Your Honor..

8 THE COURT: From the State?

9 MS. SCRANTON: None, Your Honor.

10 THE COURT: All right. Thank you very much.  
11 Next witness?

12 MS. FRANKLIN-BEST: No additional witnesses,  
13 Your Honor. We're prepared to close the record in  
14 this case.

15 THE COURT: All right.'

16 MS. SCRANTON: Yes, Your Honor. We have  
17 nothing further to present. I did prepare a  
18 summation if you wanted to hear it. I don't know  
19 if -- the other side has already indicated that  
20 they'd rather do briefing. We're fine with briefing  
21 as well..

22 There also is a flash drive that was  
23 preliminarily introduced at the conclusion of one of  
24 our previous hearings in this case that needs to be  
25 cleared up because I -- it's not listed on any

1 exhibit list currently that I've gone through. And  
2 I think at the time it was qualified, it had a  
3 little bit of a work product on it, so we were  
4 supposed to clean that up and get that flash drive  
5 put in as a formal exhibit, and I think we're still  
6 working on that.

7 MS. FRANKLIN-BEST: And, Your Honor, I figured  
8 we' would probably -- given the number of hearings  
9 and number of exhibits that have been admitted,  
10 maybe the State and us can just take a little time,  
11 agree on everything that should be included, and  
12 just see if we can resolve all of these things.

13 THE COURT: What are all of these things, other  
14 than that?

15 MS. FRANKLIN-BEST: I think that's it.

16 MS. BROWN: Are we still going forward on all  
17 the claims that are -- that haven't previously been  
18 withdrawn from the application?

19 MS. FRANKLIN-BEST: I believe so.

20 THE COURT: All of the -- I didn't follow that.

21 MS. BROWN: I'm sorry, Your Honor. I asked  
22 counsel if they were maybe thinking about  
23 withdrawing any other claims that have been  
24 presented in the application because we've had  
25 testimony on the lead poisoning issue and then on

1 the Batson issue. So --

2 THE COURT: How many amendments have you made  
3 to the application?

4 MS. FRANKLIN-BEST: We're on our third amended  
5 application.

6 MR. GROSE: I think what they're getting at,  
7 Judge, is, at the very first hearing in, I guess,  
8 December of 2015, Ms. Franklin-Best put on the  
9 record the claims in that application that we were  
10 not going forward, on, and so those were withdrawn  
11 then. And they're asking if we're withdrawing  
12 anything else, and the answer to that question is,  
13 no, everything else is still included.

14 THE COURT: All right. And they will be  
15 specifically addressed in the proposed orders?

16 MR. GROSE: In the briefing, yes, sir. We  
17 would prefer to do briefing. I can explain why  
18 if --

19 THE COURT: Well, go ahead, because you're  
20 asking me to write an order, which I'm certainly  
21 capable of doing. Go ahead.

22 MR. GROSE: Well -- and I guess that is  
23 implicit in it. I guess -- our concern is, in these  
24 cases, if we send in two orders, one from each side,  
25 it shouldn't just be a competition or a decision

1           between one order that denies all relief and one  
2           order that grants all relief. You may decide to  
3           grant all relief, you may decide to deny all relief,  
4           you may decide to do one of those for reasons  
5           different than what we put into it, you may decide  
6           to grant in part and deny in part.

7           THE COURT: Which I do frequently.

8           MR. GROSE: Which I understand. And I -- just  
9           in my experience, in something that's complicated,  
10          the proposed orders are not as good of a vehicle for  
11          driving that process as briefing is. And that would  
12          be our concern.

13          THE COURT: Well, let's -- while we've got  
14          time, the State asked -- suggested a summation,  
15          basically. I'd be interested in hearing where do  
16          you think you've come down, what do you think you've  
17          proved, and what are the bases for relief?

18          MR. GROSE: And that's kind of the reason that  
19          we wanted to kind of do a brief to lay all that out  
20          since we've had so many hearings over a period of  
21          almost --

22          THE COURT: Well, but they focus on two primary  
23          areas; they talk about the lead paint and this  
24          Batson issue.

25          MR. GROSE: Well, there was also a number of

1 other issues that were dealt with when we had  
2 testimony from the lawyers. There's -- photographs,  
3 for example, come to mind, the reason that certain  
4 issues were included in the direct appeal and not  
5 included in the -- there was testimony about all of  
6 those during the first hearing in Richland County  
7 and during the hearing in Charleston. I mean, we'll  
8 do it however you want to do it. If you want  
9 proposed order, we can do proposed order.

10 THE COURT: Let's put it this way: I prefer  
11 proposed orders.

12 MR. GROSE: Okay.

13 THE COURT: But if you feel that somehow limits  
14 your ability to represent your client, then I  
15 understand that too..

16 MR. GROSE: It -- the argument is going to be  
17 made at some point, if it gets that far, if you deny  
18 all relief, if you do it by signing an order from  
19 the Attorney General's office, the argument is going  
20 to be made that Mr. Dickerson didn't get his right  
21 to have a judge determine all of the issues and,  
22 therefore, that order is not entitled to any kind of  
23 deference later on.

24 So, it's sort of a right created by the statute  
25 and then it's -- you know, it gets into, you know,

1           potentially in federal court, the quality of the  
2           proceeding that he got. So that's sort of where we  
3           come down on it, ultimately.

4           THE COURT: All right. What's the State's  
5           position?

6           MS. BROWN: Your Honor, we've run into this  
7           argument a couple of times recently, and what we've  
8           usually said is that we just would prefer briefing  
9           because it does set aside that argument; however,  
10          we've also said that we can do a proposed order as  
11          long as there is indicia that the judge looks at  
12          every single page and paragraph. And if you want to  
13          initial every page or make changes or what have you,  
14          we're certainly willing to provide something to you  
15          in Word format so you can change the document as you  
16          would, incorporate maybe something in their proposed  
17          order, strike something in our proposed order,  
18          however you would want to do that. But that issue  
19          has come up several times.

20          The leading case, the United States Supreme  
21          Court case, and the problem in that, it was a  
22          Georgia case. The problem there is there was  
23          material in the proposed order prepared by the State  
24          and that material actually was not presented to the  
25          Court, there was some indication that the judge did

1 not see that. The judge had, my understanding, ,  
2 passed away by the time it became an issue and there  
3 was nobody to say, yes, the judge read the order and  
4 adopted the order as is.

5 So there is a case out there that has that  
6 problem. But it's up to Your Honor. Your Honor can  
7 direct us to do briefs which can also be used as a  
8 template you can pull language out of for a proposed  
9 order. It would be your preference, sir.

10 THE COURT: Well, I think I've already  
11 expressed the preference, but I don't want to do  
12 anything that would jeopardize this case . . .  
13 procedurally; not necessarily on the merits because  
14 I believe both proposed orders will address the  
15 merits. I believe that.

16 MS. BROWN: Your Honor, if I may add one more  
17 thing for your consideration --

18 THE COURT: Let me just put on the record.

19 MS. BROWN: Sure. Sure.

20 THE COURT: Just stay right there.

21 MS. BROWN: Yes, sir.

22 THE COURT: I'm in a retired status which means  
23 I'm assigned court duties two weeks a month, and  
24 those are usually busy weeks. A lot of it is  
25 nonjury. I have eight complex cases inhouse now;

1           this being one, of course. And it's a -- I intend  
2           to devote a lot of time -- obviously, I've devoted a  
3           lot of time in this case so far and I'll continue to  
4           do so until it leaves me.

5           .       Taking two briefs and then crafting an order  
6           certainly is within my capabilities, but all that is  
7           preference. My usual practice, particularly in  
8           these more complicated cases, is to request proposed  
9           orders in Word so that editing can be done. And  
10          it's not infrequent that I'll get an order on one  
11          side and an order on the other side and have to meld  
12          the two in a way or edit out and try to address  
13          every issue presented. If you don't think --

14          And this is for Mr. Dickerson's side: If you  
15          don't think that process -- or if you think that  
16          process is somehow flawed or may be considered to be  
17          flawed, then I'll defer and accept briefs. See, I'm  
18          not -- I don't know where you're going, ultimately,  
19          with this case and where this circuit court decision  
20          fits into that scheme. If there's a danger that you  
21          feel with the order process that would somehow  
22          substantially affect your client's rights, I'll do  
23          it on the brief. Thank you.

24          MR. GROSE: Part of your question sort of  
25          implies the unknown. I mean, we don't know where

1 we're all going until we get the order. And I think  
2 our Supreme Court has said that while it may not  
3 necessarily be required but that judges are  
4 encouraged to draft their own orders in capital  
5 PCRs, we would request the briefing process.

6 THE COURT: All right. Briefing process, it is.  
7 How long you need?.

8 MS. BROWN: Your Honor, the only thing that we  
9 would ask is that it not be simultaneous briefing.  
10 We find that that's usually a waste of resources.  
11 So we would just ask for 30 days after their brief  
12 is delivered to you.

13 MS. FRANKLIN-BEST: I would just request, at  
14 this point, 90 days. And I normally would not  
15 request so much time except that I've gotten orders  
16 in two federal cases, as I know that the Attorney  
17 General's office probably has two for certain  
18 briefing in two other capital cases that I have.

19 MR. GROSE: And I have a criminal sexual  
20 conduct trial in November, and one and, possibly two  
21 oral arguments in the court of appeals in November  
22 and December, so the 90 days would also help my  
23 schedule.

24 THE COURT: So it doesn't -- the fact that I've  
25 got eight complex cases, I take a back seat.

1 Ms. Brown?

2 MS. BROWN: Your Honor, I think it would be up  
3 to you. I think the statute allows, generally, 30  
4 days, but it's up to you to set the schedule. And  
5 what you would be willing to -- or you can, Your  
6 Honor, set it for 30 days and see if things clear  
7 up. If they don't, it may be a continuance for good  
8 cause.

9 THE COURT: Why don't we compromise on 60 days?  
10 Is that satisfactory?

11 MR. GROSE: Yes, sir.

12 MS. BROWN: No objection, Your Honor.

13 THE COURT: Sixty days for the Applicant,  
14 followed by the State 30 days after.

15 MS. BROWN: Thank you, Your Honor.

16 THE COURT: Just for the record, this will  
17 conclude the evidentiary hearing; correct?

18 MS. BROWN: Yes, Your Honor, that's our  
19 understanding.

20 THE COURT: All right. No more evidence.  
21 Thank you very much.

22 MR. GROSE: Thank you.

23 MS. FRANKLIN-BEST: Thank you.

24 THE COURT: We're now adjourned.

25 MS. BROWN: Thank you, sir.

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Charleston County, South Carolina, on the 23rd of October, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 23, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon  
Circuit Court Reporter



**MICHIGAN STATE  
UNIVERSITY  
COLLEGE OF LAW**

**Second Amended Report on Jury Selection Study  
STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

Barbara O'Brien & Catherine M. Grosso  
Associate Professors of Law  
August 29, 2017

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## I. Introduction

This report documents the design, methodology, analysis, and results for a study on the exercise of peremptory challenges during jury selection in trials of all defendants for which Solicitor Scarlett Wilson served as lead prosecutor and for which materials were available.<sup>1</sup> The study examined how the state exercised peremptory challenges in criminal cases to assess whether potential jurors' race played any role in those decisions. The primary investigators for the study are Barbara O'Brien and Catherine Grosso. Both are associate professors of law at Michigan State University College of Law.

## II. Study Design

Our goal was to design and conduct a study that would rigorously analyze the role of race in the exercise of peremptory challenges in cases prosecuted by Solicitor Wilson. This study coded and analyzed race and strike information for all qualified venire members in the study. This report presents the methodology, analysis, and results.

Several earlier jury selection studies informed our study design. The most important among these included a study examining strike decisions over a 17-year period in 317 Philadelphia County, Pennsylvania, capital murder trials<sup>2</sup> and our study of the exercise of peremptory challenges during jury selection in trials of all defendants on death row in North Carolina as of July 1, 2010.<sup>3</sup>

### A. Study Population

This study examined jury selection in 20 cases.<sup>4</sup> For each proceeding we sought to include every venire member who faced peremptory challenges as part of jury selection. For the purposes of this report a "venire member" includes anyone who was subjected to voir dire questioning and not excused for cause, including alternates.

This study sought to analyze jury selection in every jury trial in which Solicitor Scarlett Wilson served as lead attorney during her tenure at the Ninth Circuit Solicitor's Office. This report is the second amended report presented on this matter. Each report added cases as the

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<sup>1</sup> See Section II.A for an explanation of the cases included in the study.

<sup>2</sup> David C Baldus, George Woodworth, David Zuckerman, Neil Alan Weiner & Barbara Broffitt, *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3 (2001).

<sup>3</sup> Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2012).

<sup>4</sup> Jalal Beyah's case had two jury selection proceedings. After the jury was selected, the judge granted the defendant's *Batson* motion and jury selection started anew. Beyah Trial Tr, 61. We have coded and analyzed both jury selection proceedings in this case. We consider Beyah's case to be two proceedings.

state made information available. Table 1 reports the cases included in each report and those still excluded due to lack of information.

The initial report, presented on March 8, 2016, included the cases that attorneys for Mr. Dickerson identified via their review of the Clerk of Court records in Charleston County and for which they obtained adequate jury selection information to code. We analyzed jury selection in the 10 cases reported in Column B in Table 1 in the first report. The initial report documented a ratio in strike rates of 6.75 ( $p < .001$ ).

During Mr. Dickerson's post-conviction relief hearing on March 31, 2016, the Attorney General's Office produced four additional voir dire transcripts. Information about venire members' race was available only for the two cases reported in Table 1, Column C. The first amended report (May 5, 2016) incorporated the data from those two cases and documented a ratio in strike rates of 6.4 ( $p < .001$ ).

The state subsequently provided information on additional cases, as well as additional information for previously identified cases tried by Solicitor Wilson. These disclosures allowed us to include the eight cases listed in Table 1, Column D, in this second amended report. The second amended report documents a ratio in strike rates of 5.4 ( $p < .001$ ), as stated in detail below.

We understand that Solicitor Wilson tried the 17 remaining cases listed in Table 1. Two of these cases were bench trials and did not seat juries. We do not have sufficient information to analyze the jury selection in the other cases listed in Table 1, Column E.

## **B. Data Collection**

We created an electronic and paper case file for each proceeding and venire member in the study. The case file contains the primary data for every coding decision. The materials in the case file typically include some combination of juror lists, individual juror questionnaires, and attorneys' or clerks' notes. Each case file also includes an electronic copy of the jury selection transcript and the jury summons list, when available.

## **C. Overview of Database Development**

Staff attorneys completed all coding and data entry at Michigan State University College of Law in East Lansing, Michigan, under the direct supervision of the primary investigators. As set forth more fully below, staff attorneys received detailed training on each step of the coding and data entry process. A total of six staff attorneys worked on this project.

### **i. Development of Data Collection Instruments**

Data collection instruments (DCIs) are forms that staff attorneys completed based on the primary documents and transcripts. We created two data collection instruments for coding data in this study: (1) South Carolina (County of Charleston) Defendant Level Data Collection Instrument, Jury Selection Study (6 November 2015) (“D-Level DCI”), and (2) South Carolina (County of Charleston) Venire Member Level Data Collection Instrument, Jury Selection Study (17 November 2015) (“VM-Level DCI”). (See Appendix B for both DCIs.)

The D-Level DCI collected information about the proceeding generally, including the number of peremptory challenges used by each side, and the name of the judge and attorneys involved in the proceeding.

Questions 1-7 of the VM-Level DCI documented basic procedural information specific to each venire member.

Question 5 of the VM-Level DCI required the staff attorney to determine strike eligibility for each potential juror. “Strike eligibility” refers to which party or parties had the chance to exercise a peremptory strike against a particular venire member. For instance, if the prosecution struck someone before the defense had a chance to strike that person, that juror would be strike eligible to the prosecution only. Likewise, if a party had exhausted its peremptory challenges by the time it reached a potential juror, the failure to strike reveals nothing about how that party exercised its discretion. That juror would therefore be coded as not eligible to be struck by that party. This determination refines the analysis of strike decisions to examine only those instances in which that party actually had a choice to pass or strike a juror, and excludes those when the decision was out of the party’s hands.

Questions 8-22 of the VM-Level DCI documented basic demographic information specific to each venire member.

Question 12 documents the race of the venire member. Staff attorneys completed this question using the race information provided in Charleston County summons lists for about half of the venire members eligible to be struck by the state (51.4%, 283/551).<sup>5</sup> When that information was not available from the summons lists, staff attorneys relied on information

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<sup>5</sup> The Clerk of Court informed Mr. Dickerson’s attorneys that the office does not have the juror lists for the remaining cases because of records retention policies. See S.C. App. Ct. Rule 607(i).

contained in the transcript (24.7%, 136/551), or on notes in the file (23.4%, 129/551). We are missing race information for 3 venire members (0.5%, 3/551).

#### **D. Steps for Ensuring Accuracy of Data**

We took several steps to minimize coding errors. We also developed systematic procedures to catch and correct errors in coding and data entry.

To ensure reliability, we instituted double coding procedures for all coding in this study. Under these procedures, two different staff attorneys separately coded strike information for each venire member to ensure accuracy and intercoder reliability. The first staff attorney identified all potential jurors and assigned each juror a study identification number. This attorney completed the D-Level DCI and the VM-Level DCI. A second staff attorney used the list of jurors provided by the first to code a second VM-Level DCI for each juror. Other than the list of potential jurors created by the first staff attorney, the second staff attorney did not have access to the first staff attorney's codes. A staff attorney then compared and reviewed their codes for consistency and noted any discrepancy, which a primary investigator reviewed and resolved.

To minimize data entry errors, a primary investigator created a Microsoft Excel spreadsheet with data validation restrictions in place to allow us to transfer the data that staff attorneys coded on paper DCIs into a machine-readable format. The data entry fields accepted only valid responses in order to minimize errors. For instance, if an item on the DCI allowed for only three possible responses (0 = No, 1 = Yes, and 9 = Unknown), then entering anything other than 0, 1, or 9 would be rejected and the person entering the data would be prompted to re-enter an acceptable value for that question. Although this mechanism could not prevent all data entry errors (e.g., it could not catch a staff attorney's misspelling of a venire member's name), it provided one line of defense against human error.

We used several other methods to catch and correct other errors in coding or data entry. Using the SPSS statistical program, we could identify instances where inconsistencies in data indicated possible errors and established a process for review and, where appropriate, correction.<sup>6</sup>

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<sup>6</sup> For example, we could identify all instances in which it appeared that a party exercised fewer than the peremptory strikes usually allotted to determine whether there was an error or if the party failed to use all strikes.

### III. Analysis and Results

This report presents unadjusted racial disparities in prosecutorial strikes. Throughout this section, we report the disparities observed as well as a measure of the likelihood that the finding would occur as a result of chance. This measure, called a *p*-value, reflects the probability of observing a disparity of a given magnitude simply by luck of the draw. The lower the *p*-value, the lower the chance that an observed disparity was due merely to chance. The *p*-values for the racial disparities observed in this study are consistently well below the standard scientific benchmarks for reliability.<sup>7</sup> (See Appendix C for a Codebook defining each variable used in the analyses.)

With the addition of eight newly-identified cases with sufficient information to code race and strike information, these analyses examine the strike patterns in 20 jury selection proceedings. Each proceeding involved an average of 27.6 venire members eligible to be struck by the state, producing a database of 551 state strike decisions.<sup>8</sup> (See Appendix A for the complete database.) Of these, 302 (54.8%) were women, and 249 (45.2%) were men. The venire members' racial composition was as follows: white (401, 72.8%); black (143, 26.0%); Asian (2, 0.4%); Latino/Hispanic (2, 0.4%), and unknown (3, 0.5%).

Among state strike-eligible venire members, the overwhelming majority were either white (401/551, 72.8%) or black (143/551, 26.0%); just 4 (0.8%) was of another race.<sup>9</sup> As of the writing of this report, we are missing race information for 3 (0.5%, 3/551) venire members who were eligible to be struck by the state.

The analyses below compare strike decisions relating to 544<sup>10</sup> black or white state strike-eligible venire members. Table 2 presents the comparative strike rates for each of the 20 cases in the study. As a preliminary matter, Table 2, Line 9, shows the strike rates in Mr. Dickerson's case. The state struck 50% of eligible black venire members (4/8) and 4.5% of eligible white venire members (1/22). This is a difference of 45.5 percentage points in the strike rates (50.0 – 4.5) and a ratio between the strike rates of 11.1 (50.0/4.5). This disparity is statistically

<sup>7</sup> David H. Kaye and David A. Freedman, *Reference Guide on Statistics*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE: THIRD EDITION 251-52 (National Research Council, The National Academies Press, 2011).

<sup>8</sup> The full database includes information about 584 venire members, but 33 were not eligible to be struck by the state. Because we are examining the state's decisions to strike or pass potential jurors, we include only those remaining 551 venire members eligible to be struck by the state in these analyses.

<sup>9</sup> For the sake of simplicity, the analysis we present below examines strikes against black potential jurors with those against white potential jurors

<sup>10</sup> Venire members eligible to be struck by the state (551) minus venire members who were neither black nor white (4), minus venire members for whom we were unable to determine race (3).

significant ( $p < 0.02$ ). The numbers in Mr. Dickerson's case are consistent and stronger than the overall strike pattern reported below.

Prosecutors exercised peremptory challenges at a significantly higher rate against black venire members than against other venire members. Across all strike-eligible venire members in the study, prosecutors struck 37.8% (54/143) of eligible black venire members, compared to only 7.0% (28/401) of eligible white venire members. This disparity reflects a difference of 30.8 percentage points in the strike rates (37.8–7.0) and a ratio between strike rates of 5.4 (37.8/7.0). This difference is statistically significant:  $p < .001$ . Put differently, there is less than a one in one thousand chance that we would observe a disparity of this magnitude if the jury selection process were actually race neutral.<sup>11</sup> (See Table 3.)

The average rate per case at which prosecutors struck eligible black venire members is significantly higher than the rate at which they struck other eligible venire members. The analysis presented above (and in Table 3) examines strikes across all venire members in the study, pooled across cases. To assess whether the effect is robust, we also compared the strike rates calculated for each proceeding, so that each represents one data point. Of the 20 proceedings we analyzed, prosecutors struck an average of 33.9% of eligible black venire members, compared to only 6.1% of all other eligible venire members. This disparity reflects a difference of 27.8 percentage points in the strike rates (33.9–6.1) and a ratio between strike rates of 5.6 (33.9/6.1). This difference is statistically significant,  $p < .001$ . (See Table 4.)

We also analyzed the data from only Mr. Dickerson's case and those that preceded it.<sup>12</sup> The racial disparity of strikes was slightly more pronounced in this subsample. Across all strike-eligible venire members in these eight cases, prosecutors struck 38.5% (42/109) of eligible black venire members, compared to only 6.8% (22/325) of eligible white venire members. This disparity reflects a difference of 31.7 percentage points in the strike rates (38.5–6.8) and a ratio between strike rates of 5.7 (38.5/6.8). This difference is statistically significant,  $p < .001$ . (See Table 5.)

The average strike rate per case at which prosecutors struck eligible black venire members is also significantly higher than the rate at which they struck other eligible venire

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<sup>11</sup> Several different chi square tests (Pearson Chi-Square, Continuity Correction, Likelihood Ratio, Fischer's Exact Test, and Linear-by-Linear Association) were used to calculate the  $p$ -values, and the results were consistent regardless of the test used.

<sup>12</sup> For these analyses, we excluded the cases of Colm J. Broughton (2009), Ethan C. Mack (2010), Brandon J. Simmons (2010), and Ryan P. Deleston (2013).

members. Of the 16 proceedings we analyzed, prosecutors struck an average of 33.4% of eligible black venire members, compared to only 5.9% of all other eligible venire members. This disparity reflects a difference of 27.5 percentage points in the strike rates (33.3 – 5.9) and a ratio between strike rates of 5.7 (33.4/5.9). This difference is statistically significant,  $p < .001$ . (See Table 6.)

#### **IV. Summary of Findings**

We have documented the strike decisions and race for 551 potential black or white jurors eligible to be struck by the state in 20 proceedings from 2002 to 2013. In every analysis that we performed, race was a significant factor in prosecutorial decisions to exercise peremptory challenges in jury selection in these proceedings. Regardless of how one looks at the data, a robust and substantial disparity in the exercise of prosecutorial strikes against black venire members compared to others persists.

A statistically significant disparity persists at a magnitude of more than five to one whether calculated by looking at all strike decisions pooled across cases (a disparity of 5.4 to 1, 37.8/7.0), or by comparing the mean strike rates for each case (a disparity of 5.6 to 1, 33.9/6.1).

The effect of race was statistically significant across analyses. Thus, for each of these analyses, the chances that we would see a disparity of that magnitude in a race-neutral jury selection system are slight. The robustness of our findings of racial disparities across a variety of analyses provides powerful evidence that race was a substantial factor in prosecutorial strike decisions in the 20 proceedings in Charleston County.

**TABLE 1.**  
**Cases Identified as Candidates for Inclusion in Study**

	A	B	C	D	E	F
	<i>Defendant</i>	<i>Included in 8 March 2016</i>	<i>Added 5 May 2016</i>	<i>Added in current study</i>	<i>Not included</i>	<i>Explanation for exclusion</i>
1.	Barnes, Michael	X				
2.	Behah, Jelal				X	Materials (from 2002 mistrial) unavailable.
3.	Beyah, Jelal	X				
4.	Beyah, Jelal	X				
5.	Bishop, Wallace				X	Materials unavailable.
6.	Britt, T C & Renee				X	Materials unavailable
7.	Broughton, Colin	X				
8.	Brown, Jemol				X	Venire members' race information unavailable
9.	Brown, Troy Anthony			X		
10.	Butler, Herbert				X	Materials unavailable
11.	Cable, Roderick				X	Materials unavailable.
12.	Choice, Marvin				X	Transcript unavailable.
13.	Coulter, Ronald & Coker, Ivory			X		
14.	Deleston, Ryan	X				
15.	Derricotte, Dominic	X				
16.	Dickerson, William	X				
17.	Dunham, Michael			X		
18.	Ferguson, Julian			X		
19.	Grant, Gary, Hartwell, Jermaine, & Smith, Marquita			X		
20.	Heyward, Sametta				X	Bench trial
21.	Jeter, Michael		X			
22.	Lindsey, Bradley				X	Transcript unavailable
23.	Mack, Lemar Thomas	X				
24.	Mack, Eithan		X			
25.	Mann, Anthony			X		
26.	Moore, Christopher				X	Materials unavailable
27.	Murphy, Jesse James				X	Transcript unavailable.
28.	President, Lamark				X	Transcript unavailable.
29.	Sanders, Tyrone & Hoisington, Ralph				X	Materials unavailable
30.	Shine, Michael	X				
31.	Simmons, Brandon	X				
32.	Smalls, Demetrius Jarod				X	Materials unavailable.
33.	Tapp, Jarod			X		
34.	Waters, Thomas				X	Materials unavailable
35.	Washington, Cornelius				X	Transcript unavailable
36.	Williams, Calvin				X	Bench trial.
37.	Young, Derringer			X		
38.	<i>Total Cases Analyzed in Each Report</i>	<i>10</i>	<i>12</i>	<i>20</i>	<i>17</i>	

**TABLE 2**  
**Rates of State Strikes for Cases in Study**

	Defendant	Year	Mean Strike Rate	
			Black Qualified Venire Members	White Qualified Venire Members
1.	Michael Barnes	2006	40.0% (2/5)	15.0% (3/20)
2.	Jalal F. Beyah (first jury selection)	2004	55.6% (5/9)	0% (0/18)
3.	Jalal F. Beyah (second jury selection)	2004	37.5% (3/8)	0% (0/19)
4.	Colin J. Broughton	2009	50.0% (4/8)	14.8% (4/27)
5.	Troy A. Brown	2006	20.0% (1/5)	5.0% (1/20)
6.	Ronald Coulter & Ivory Coker	2004	62.5% (5/8)	11.0 (4/36)
7.	Ryan P. Deleston	2013	33.3% (3/9)	0% (0/18)
8.	Dominic M. Derricotte	2008	37.5% (3/8)	0% (0/16)
9.	William O. Dickerson	2009	50.0% (4/8)	4.6% (1/22)
10.	Michael B. Dunham	2006	22.2% (2/9)	5.6% (1/18)
11.	Julian L. Ferguson	2003	60.0% (6/10)	0% (0/13)
12.	Gary Grant	2007	40.0% (2/5)	4.2% (1/25)
13.	Michael T. Jeter	2006	20.0% (1/5)	5.3% (1/19)
14.	Ethan C. Mack	2010	28.6% (2/7)	6.3% (1/16)
15.	Lemar T. Mack	2008	0% (0/2)	8.0% (2/25)
16.	Anthony L. Mann	2003	0% (0/6)	15.4% (4/26)
17.	Michael G. Shine	2007	27.3% (3/11)	0% (0/13)
18.	Brandon J. Simmons	2010	30.0% (3/10)	6.7% (1/15)
19.	Jarod W. Tapp	2005	0% (0/2)	12.0% (3/25)
20.	Derringer L. Young	2002	62.5% (5/8)	9.1% (1/11)
	<b>Totals</b>		<b>37.8% (54/143)</b>	<b>7.0% (28/401)</b>

**TABLE 3**  
**Prosecutorial Peremptory Strike Patterns**  
*(Strikes against venire members aggregated across cases)*

		A	B	C
		Black Venire Members	White Venire Members	Total
1.	Passed	62.2% (89)	93.0% (373)	84.9% (462)
2.	Struck	37.8% (54)	7.0% (28)	15.1% (82)
3.	Total	100% (143)	100% (401)	100% (544)

\*Chi square tests (Pearson Chi-Square, Continuity Correction, Likelihood Ratio, Fischer's Exact Test, and Linear-by-Linear Association) indicate that these differences in strike rates are significant at  $p < .001$ .

**TABLE 4**  
**Average Rates of State Strikes**  
*(Average of strike rates calculated in individual cases and number of proceedings averaged)*

	A	B
	Average Strike Rate	Number of Proceedings
1. Strike Rates Against Black Qualified Venire Members	33.9%	20
2. Strike Rates Against White Qualified Venire Members	6.1%	20

\*A paired-sample t-test indicates that this difference in strike rates is significant at  $p < .001$ .

**TABLE 5**  
**Prosecutorial Peremptory Strike Patterns excluding Post-Dickerson Cases**  
*(Strikes against venire members aggregated across cases)*

		<b>A</b>	<b>B</b>	<b>C</b>
		<b>Black Venire Members</b>	<b>White Venire Members</b>	<b>Total</b>
1.	<b>Passed</b>	61.5% (67)	93.2% (303)	85.3% (370)
2.	<b>Struck</b>	38.5% (42)	6.8% (22)	14.7% (64)
3.	<b>Total</b>	25.1% (109)	74.9% (325)	100% (434)

\*Chi square tests (Pearson Chi-Square, Continuity Correction, Likelihood Ratio, Fischer's Exact Test, and Linear-by-Linear Association) indicate that these differences in strike rates are significant at  $p < .001$

**TABLE 6**  
**Average Rates of State Strikes excluding Post-Dickerson Cases**  
*(Average of strike rates calculated in individual cases and number of proceedings averaged)*

	<b>A</b>	<b>B</b>
	<b>Average Strike Rate</b>	<b>Number of Proceedings</b>
1. <b>Strike Rates Against Black Qualified Venire Members</b>	33.4%	16
2. <b>Strike Rates Against White Qualified Venire Members</b>	5.9%	16

\*A paired-sample t-test indicates that this difference in strike rates is significant at  $p < .001$ .

**Appendix A**

Please see electronic file.

**Appendix B**









**SOUTH CAROLINA (COUNTY OF CHARLESTON)**  
**JURY SELECTION STUDY**  
**Defendant Level Data Collection Instrument**  
Version: 6 November 2015

Please fill in the blanks as legibly as possible in capital letters with a sharp dark pencil. For the questions that present multiple answer options, please circle the number of the single most appropriate answer unless otherwise instructed.

**1. Identifying and Procedural Information**

1. Defendant Study ID Number: V1001 \_\_\_\_\_

2. Defendant's Name:

\_\_\_\_\_ [V1002] Last

\_\_\_\_\_ [V1003] First \_\_\_\_\_ [V1004] MI

3. Date of Offense V1007 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YEAR

4. Date of Indictment V1008 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YEAR

5. Date of Guilt Verdict or Plea V1009 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YEAR

6. Date Sentence Imposed V1010 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YEAR

7. Defendant's Date of Birth V1011 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YEAR

8. Defendant's Age at Date of Offense (circle one) V1012

- |              |           |             |
|--------------|-----------|-------------|
| 0 = Under 17 | 2 = 18-29 | 4 = 60+     |
| 1 = 17       | 3 = 30-59 | 9 = Unknown |

9. Defendant's Sex (circle one) V1013

- |            |          |             |
|------------|----------|-------------|
| 0 = Female | 1 = Male | 9 = Unknown |
|------------|----------|-------------|

10. Race/Ethnicity of Defendant (circle one)

V1014

- 1 = White/Caucasian      4 = Pacific Islander      7 = Other (specify) \_\_\_\_\_  
 2 = Black/African American      5 = Latino/Hispanic      8 = Mixed (self-reported) \_\_\_\_\_  
 3 = Asian/Asian American      6 = Native American      9 = Unknown

Source of information: \_\_\_\_\_

11. List all of the Charges in Indictment (circle one)

V2001

a.	f.
b.	g.
c.	h.
d.	i.
e.	j.

12. List all of the Charges of which Defendant was Convicted: (enter "none" if appropriate)

a.	f.
b.	g.
c.	h.
d.	i.
e.	j.

13. Does this case have more than one decedent victim? (circle one)

V1015

- 0 = No      1 = Yes

14. Number of Decedent Victim(s) (circle one)

V1016

- 1 = One      3 = Three      9 = Unknown  
 2 = Two      4 = Four or more

15. Juror Decedent Victim One Race/Ethnicity (circle one)

V1021

- 1 = White/Caucasian                      4 = Pacific Islander                      7 = Other (specify) \_\_\_\_\_
- 2 = Black/African American              5 = Latino/Hispanic                      8 = Mixed (self-reported) \_\_\_\_\_
- 3 = Asian/Asian American              6 = Native American                      9 = Unknown

Source of information: \_\_\_\_\_

16. Decedent Victim One Sex (circle one)

V1022

- 0 = Female                                      1 = Male                                      9 = Unknown

17. Decedent Victim One Age (circle one)

V1023

- 0 = Infant (Under 2)                      2 = Young Adult (18-29)                      4 = Older Adult (60+)
- 1 = Child (2-17)                              3 = Adult (30-59)                              9 = Unknown

Begin Decedent Victim Two

18. Decedent Victim Two Name

LAST [V1024]

FIRST [V1025]                                      MI [V1026]

19. Decedent Victim Two Race/Ethnicity (circle one)

V1027

- 1 = White/Caucasian                      4 = Pacific Islander                      7 = Other (specify) \_\_\_\_\_
- 2 = Black/African American              5 = Latino/Hispanic                      8 = Mixed (self-reported)
- 3 = Asian/Asian American              6 = Native American                      9 = Unknown

Source of information: \_\_\_\_\_

20. Decedent Victim Two Sex (circle one)

V1028

- 0 = Female                                      1 = Male                                      9 = Unknown

21. Decedent Victim Two Age (circle one)

V1029

- 0 = Infant (Under 2)                      2 = Young Adult (18-29)                      4 = Older Adult (60+)
- 1 = Child (2-17)                              3 = Adult (30-59)                              9 = Unknown

**II. Jury Selection Data**

22. How many peremptory strikes did the prosecution have in this case? V1011 \_\_\_/\_\_\_
23. How many peremptory strikes did the defense have in this case? V1012 \_\_\_/\_\_\_
24. Number of Jurors in the Venire V1005 \_\_\_/\_\_\_/\_\_\_  
*If unknown code 999.*
25. Number of Jurors Excused for Cause V1006 \_\_\_/\_\_\_  
*If unknown code 99.*
26. Number of Peremptory Challenges Used by the State V1007 \_\_\_/\_\_\_  
*If unknown code 99.*
27. Number of Peremptory Challenges Used by the Defense V1008 \_\_\_/\_\_\_  
*If unknown code 99.*
28. Number of Venire Members Not Reached During Voir Dire V1009 \_\_\_/\_\_\_  
*If unknown code 99.*
29. Which parties exhausted their peremptory challenges? (circle one) V1010
- 0 = Neither side exhausted peremptory challenges      3 = Both sides exhausted peremptory challenges
- 1 = Only the State exhausted peremptory challenges      9 = Unknown
- 2 = Only the defense exhausted peremptory challenges

**Coder's Name**

\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|  
 [V1030] Last

\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|  
 [V1031] First [V1032] MI

**Date Coded**

V1033 \_\_\_/\_\_\_/\_\_\_  
 MM DD YEAR

## Appendix C

**South Carolina Jury Selection Study  
CODEBOOK  
(7 March 2016)**

	Variable Label	Ques. No.	Variable No.	Coding Instruction or Recoding Syntax	Explanation
1	Black	12		RECODE V2018 ("Black/African American"=1) ("White/Caucasian"=0) (MISSING=SYSMIS) INTO Black	Recodes V2018 into Black or all others.
2	BlackEligibleState	5, 12		IF (Black=1 & StateEligible=1) BlackEligibleState=1 IF (Black=9   StateEligible=9) BlackEligibleState=9 IF (Black=0 & (StateEligible = 0   StateEligible =1)) BlackEligibleState=0 IF ((Black=0   Black = 1) & StateEligible = 0) BlackEligibleState=0	VM is both black and eligible to be struck by state
3	BlackEligibleState_sum	5, 12		/BlackEligibleState_sum=SUM(BlackEligibleState)	Sum of black VMs eligible to be struck by the state in that case.
4	CoderFirst	NA	2039		Coder's first name
5	CoderLast	NA	2038		Coder's last name
6	CoderMiddle	NA	2040		Coder's middle initial
7	StudyID	1 (D-level DCI)	1001	Study Identification Number	Identification number assigned case.
8	DateCoded	NA	2041		Date coded
9	DefEligible	5		RECODE V2007 (SYSMIS=9) (9=9) (4=0) (3=1) (1=1) (2=0) INTO DefEligible.	Indicates whether VM was strike eligible to defense
10	DFirst	3	2004		Defendant's first name
11	DLast	3	2003		Defendant's last name
12	DMiddle	3	2005		Defendant's middle initial
13	Eligibility	5	2007	1 = Both Defense & State, 2 = State; 3 = Defense, 4 = Neither; 9 = Unknown	Peremptory strike eligibility: A VM is "strike eligible" to a party when that party has the chance to either accept the VM or exercise a peremptory challenge against them For instance, if the state strikes a VM before the defense has a chance to strike or accept that VM, that VM's strike eligibility coded as "State." If the state accepts a VM and the defense then strikes or passes on them, coded as "Both Defense and State"
14	Excused	4	2006	0 = No, 1 = Yes, 9 = Unknown	VM excused for cause (for data cleaning purposes only)
15	Gender	10	2016	0 = Female, 1 = Male, 9 = Unknown	VM's gender
16	GenderSource	11	2017	1 = Indicated explicitly, 2 = Inferred from other information (e.g., name), 9 = Gender unknown	Source of information for gender
17	N_Break	NA			Calculated by SPSS to reflect the number of VMs in a case
18	QuestionedFor	24	2037	1 = Both guilty and penalty phase, 2 = Guilt phase only, 3 = Penalty phase only, 8 = Not Capital	Phase for which VM was questioned
19	Race	12	2018	1 = White/Caucasian, 2 = Black/African American, 3 = Asian/Asian American, 4 = Pacific Islander, 5 = Latino/Hispanic, 6 = Native American, 7 = Other (specify), 8 = Mixed (self-reported), 9 = Unknown	VM's race
20	RateProsStruckBlacks	5, 6, 12		COMPUTE RateProsStruckBlacks=StrikeBlack_sum / BlackEligibleState_sum	Rate state struck eligible black jurors. calculated by dividing sum of black VMs state struck by sum of black VMs eligible to be struck
21	RateProsStruckWhites	5, 6, 12		COMPUTE RateProsStruckWhites=StrikeWhite_sum / WhiteEligibleState_sum	Same as above but using sums for whites
22	Seat	9	2015		Number of seat to which VM was called for questioning. If unknown code 99
23	RaceSource	13	2045	1 = Juror summons list; 2 = Noted by court or counsel in transcript and no dispute about characterization; 3 = Noted on a jury chart or in counsel's notes and verified by another source, 8 = N/A because race is unknown	Indicates source of information for race Coders instructed to choose lowest number that applied, even if a subsequent foil also applied (such as when multiple sources of race information were available)
24	StateEligible	17		RECODE V2007 (SYSMIS=9) (9=9) (1=1) (2=1) (3=0) (4=0) INTO StateEligible	Recodes StrikeEligible to indicate whether VM was strike eligible to state
25	Status	8	2014	0 = Neither seated on jury nor selected as alternate, 1 = Seated on jury, 2 = Selected as alternate, 9 = Unknown	VM's ultimate status
26	StrkBlack	6, 12		IF (Black=1 & V2008 = 1) StrkBlack=1. IF (Black=9   V2008 = 9) StrkBlack=9.	VM was both black and struck by the state

	Variable Label	Ques. No.	Variable No.	Coding Instruction or Recoding Syntax	Explanation
				IF (Black=0 & (V2008 = 0   V2008 = 1)) StrikeBlack=0. IF ((Black=0  Black = 1) & V2008 = 0) StrikeBlack=0	
27.	StrikeBlack_sum	6, 12		AGGREGATE /OUTFILE=* MODE=ADDVARIABLES /BREAK=StudyID /StrikeBlack_sum=SUM(StrikeBlack) /N BREAK=N	Computes sum of black VMs state struck in that case.
28	StrikeDef	6	2009	0 = No; 1 = Yes; 9 = Unknown	VM was struck by defense
29.	StrikeState	6	2008	0 = No, 1 = Yes, 9 = Unknown	VM was struck by state
30.	StrikeWhite	6, 12		IF (White=1 & V2008 = 1) StrikeWhite=1. IF (White=9   V2008 = 9) StrikeWhite=9. IF (White=0 & (V2008 = 0   V2008 = 1)) StrikeWhite=0 IF ((White= 0  White = 1) & V2008 = 0) StrikeWhite=0	VM was both white and struck by state
31.	StrikeWhite_sum	6, 12		/StrikeWhite_sum=SUM(StrikeWhite)	Sum of white VMs struck by state
32.	VMFirst	3	2012		VM's first name.
33	VMLast	3	2011		VM's last name
34	VMMiddle	3	2013		VM's middle initial.
35	VMStudyID	1	2002	Venire Member's Study Identification Number	Unique identifier of VM
36	White	12		RECODE V2018 ('Black/African American'=0) ('White/Caucasian'=1) (MISSING=SYSMIS) INTO White VARIABLE LABELS White 'White'	Recodes V2018 into White or all others.
37.	WhiteEligibleState	5, 12		IF (White=1 & StateEligible=1) WhiteEligibleState=1. IF (White=9   StateEligible=9) WhiteEligibleState=9. IF (White=0 & (StateEligible = 0  StateEligible=1)) WhiteEligibleState=0. IF ((White=0  White = 1) & StateEligible = 0) WhiteEligibleState=0.	VM is both white and eligible to be struck by the state
38.	WhiteEligibleState_sum	5, 12		AGGREGATE /OUTFILE=* MODE=ADDVARIABLES /BREAK=CSSStudyID /WhiteEligibleState_sum=SUM(WhiteEligibleState)	Sum of white VMs eligible to be struck by the state in that case

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. O6-GS-08-2164B
	)	
Colin James Broughton,	)	
	)	
Defendant.	)	

**TRANSCRIPT OF JURY TRIAL**

The within JURY TRIAL was held in the above-captioned case beginning on September 14, 2009 and continuing until mistrial granted on September 29, 2009, before The Honorable J.C. Nicholson, in Courtroom E of the Berkeley County Courthouse, 300 California Street, Moncks Corner, South Carolina; attended by Counsel, as follows:

**APPEARANCES:**

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Bruce Durant, Deputy Solicitor  
Brian Alfaro, Assistant Deputy Solicitor  
9<sup>TH</sup> JUDICIAL CIRCUIT SOLICITOR'S OFFICE  
300-B California Avenue  
Moncks Corner, SC 29416  
Appearing for State of South Carolina

Patricia Kennedy, Public Defender  
BERKELEY COUNTY PUBLIC DEFENDER  
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Appearing for Defendant

-and-

William Maguire, Esq.  
S. Boyd Young, Deputy Attorney  
S.C. COMMISSION ON INDIGENT DEFENSE  
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Danny Mozell	1967	1978		
Jamal Foster	1983	1997		
Damien King	2011	2026		
Andrew Coker	2036	2041		
Scott Wyant	2044	2051		
Phillip McElvogue	2054	2066		
Dean Kokinda	2071	2107		
Tabitha Thomas	2109	2132		
Henry Spradlin	2157	2160		
Kevin Murphy	2162			
Faye LeBoeuf	2166			
Charles Harris	2185			
Dianne Freeman	2191			
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1           SEPTEMBER 14, 2009

9:30 A.M.

2  
3           THE COURT:     All right. Ladies and  
4           Gentlemen of the jury panel, thank you for being  
5           here this morning. I'm Judge Nicholson. I'll  
6           be presiding for General Sessions this week here  
7           in Berkeley County. I look forward to working  
8           with you.

9           We have a courtroom full this morning.  
10          First thing we are going to do is the Clerk is  
11          going to call the roll, see who is here and who  
12          is not here. After that I am going to be asking  
13          you some general questions.

14          The Clerk is going to tell you what she  
15          is looking for when you stand as a result of the  
16          question. Madame Clerk.

17                           (JURY SWORN)

18                           (ROLL CALL)

19          THE COURT:     All right, we're going to  
20          take about a fifteen- or twenty-minute recess.  
21          I know that it's a huge crowd, it'll probably  
22          take you about fifteen minutes to get out of the  
23          courtroom. So if everybody will start filing  
24          out, please, while I talk to this lady.

25                           (OFF RECORD SIDEBAR WITH JUROR)

1 THE COURT: Juror Number 272 is  
2 excused.

3 (JUROR NUMBER 372 EXCUSED)

4 THE COURT: Let me see the attorneys  
5 up here for just a moment.

6 BENCH CONFERENCE:

7 THE COURT: These jurors that did not  
8 show you. I can talk to the sheriff; we can try  
9 to call them, we can try to bring them in here  
10 or just tell the sheriff to forget about them.  
11 What do you'all want to do?

12 BOYD YOUNG: Uh, ---

13 THE COURT: If we need to start  
14 looking for them, we need to start looking for  
15 them. If you want to let them slide, we'll let  
16 them slide. I just need to know what you'all  
17 want to do.

18 BOYD YOUNG: I'm inclined to let it  
19 slide.

20 THE COURT: Is that all right with  
21 the State?

22 SCARLETT WILSON: That's fine.

23 THE COURT: If you want, I'll tell  
24 the sheriff and we can make phone calls and try  
25 to get them in here; but I think we've got

1 plenty of jurors?

2 SCARLETT WILSON: I don't think that  
3 we need them for this. I don't like them just  
4 getting out of it, but we don't need them to  
5 do this. Can you roll them into the next  
6 week? I mean that's just not fair.

7 THE COURT: Transfer all of them  
8 to another term, send them another notice.  
9 Put on the record that I've taken up with the  
10 State and the defense counsel the jurors that  
11 were summoned, have not answered and/or sent  
12 in a questionnaire and they do not have any  
13 objection to the Court transferring them to  
14 another term.

15 Thank you very much. Are we ready to  
16 bring the defendant in?

17 WILLIAM MAGUIRE: Yes, sir.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Please be seated.

21 BRUCE DURANT: May I approach,  
22 Your Honor?

23 THE COURT: Yes, sir.

24 BRUCE DURANT: (Tendering), this  
25 is the final version. Ollie, here is that

1 questionnaire.

2 THE COURT: Thank you. Ladies and  
3 Gentlemen of the jury panel, I am going to ask  
4 you some questions and ask you to answer the  
5 questions as best you can.

6 I am required by State law to ask  
7 these questions. The question may embarrass  
8 some of you. Some of you may not be  
9 embarrassed. If you do not want to answer the  
10 question by standing up in front of the group,  
11 I will be glad to talk to you about the answer  
12 to the question in private after I have asked  
13 all of the questions.

14 The first question is, is there any  
15 member of the jury panel who has not reached  
16 his or her eighteenth birthday? If so, please  
17 stand. (No response).

18 Is there any member of the jury panel  
19 a clerk, deputy clerk, probate judge or  
20 employed within the four walls of a  
21 courthouse? If so, please stand. (No  
22 response).

23 Does any member of the jury panel  
24 hold a law enforcement commission, with or  
25 without pay, such as a constable, game warden,

1 deputy sheriff? If so, please stand. (No  
2 response).

3 Has any member of the jury panel been  
4 convicted or pled guilty in State or Federal  
5 court of a crime punishable by more than one  
6 year, whose civil rights have not been  
7 restored by pardon or amnesty? That doesn't  
8 mean that you received more than a year, it  
9 means that you could have received more than  
10 a year. Anybody that meets that criteria,  
11 please stand. Yes, ma'am, your name?

12 JUROR NUMBER 51: Gloria Carter.

13 THE COURT: Do you know your  
14 number?

15 JUROR NUMBER 51: Fifty-one (51).

16 THE COURT: Yes, ma'am, Ms. Carter?

17 JUROR NUMBER 51: I've been convicted  
18 -- I was on probation for ---

19 THE COURT: What was the crime?

20 JUROR NUMBER 51: It was for domestic  
21 violence, breaking-and-entering, and, uh,  
22 grand larceny.

23 THE COURT: Grand larceny?

24 JUROR NUMBER 51: Grand larceny.

25 THE COURT: Okay. Ms. Carter, I

1 appreciate it. I will excuse you because of  
2 that. Okay?

3 JUROR NUMBER 51: Yes, sir.

4 THE COURT: You haven't been  
5 granted a pardon as a result of that, have  
6 you?

7 JUROR NUMBER 51: No.

8 THE COURT: How long ago was it?

9 JUROR NUMBER 51: It's been over  
10 three years.

11 THE COURT: Over three years?

12 JUROR NUMBER 51: Yes, sir.

13 THE COURT: Okay, I will excuse  
14 you. Thank you so much.

15 (JUROR NUMBER 51 EXCUSED)

16 JUROR NUMBER 51: Thank you.

17 THE COURT: Is there any member of  
18 the jury panel -- I'm sorry, what is your  
19 name?

20 JUROR NUMBER 272: Jeremiah  
21 Porcher.

22 THE COURT: Porcher?

23 JUROR NUMBER 272: Yes, sir.

24 THE COURT: Do you know your  
25 number?

1 JUROR NUMBER 272: I think it's  
2 two-seventy-two (272).

3 THE COURT: If you'all find it, let  
4 me know.

5 CLERK: Two-seventy-two (272).

6 THE COURT: Okay. Juror Number  
7 272, Mr. Porcher, what were you convicted of?

8 JUROR NUMBER 272: Forgery.

9 THE COURT: Forgery? How long ago?

10 JUROR NUMBER 272: Back in the  
11 '80s.

12 THE COURT: In the '80s. Have you  
13 been granted a pardon?

14 JUROR NUMBER 272: No, sir.

15 THE COURT: All right. Thank you  
16 very much, Mr. Porcher, I will excuse you.

17 (JUROR NUMBER 272 EXCUSED)

18 THE COURT: Yes, ma'am, your name?

19 JUROR NUMBER 13: Tiffany Banks.

20 THE COURT: You are going to have  
21 to come around so that I can hear you, ma'am.  
22 Do you know your number?

23 JUROR NUMBER 13: Thirteen (13).

24 THE COURT: Thirteen. Tiffany  
25 Banks. Yes, ma'am?

1 JUROR NUMBER 13: I got a felony  
2 charge for marijuana.

3 THE COURT: Simple possession of  
4 marijuana?

5 JUROR NUMBER 13: It was a felony.

6 THE COURT: Felony? What -- how  
7 much marijuana?

8 JUROR NUMBER 13: A couple of pounds.

9 THE COURT: How long ago?

10 JUROR NUMBER 13: Four years ago.

11 THE COURT: And you haven't been  
12 granted a pardon or amnesty?

13 JUROR NUMBER 13: (Negative gesture),  
14 I haven't been in any more trouble.

15 THE COURT: Any more trouble.  
16 Well, that's good. I am glad to hear that.  
17 You give up on the marijuana?

18 JUROR NUMBER 13: Yes.

19 THE COURT: All right, Ms. Banks.  
20 I will excuse you. Thank you very much.

21 (JUROR NUMBER 13 EXCUSED)

22 THE COURT: Yes, sir, your name?

23 JUROR NUMBER 395: Petric Wright.

24 THE COURT: Do you know your  
25 number?

1 JUROR NUMBER 395: I think 389.

2 CLERK: Three-ninety-five (395),  
3 Your Honor.

4 THE COURT: 395. Mr. Wright, what  
5 were you charged with?

6 JUROR NUMBER 395: Assault and  
7 battery of a high and aggravated nature.

8 THE COURT: How long ago?

9 JUROR NUMBER 395: Two years ago.

10 THE COURT: Okay, I am going to  
11 excuse you. Thank you very much.

12 (JUROR NUMBER 395 EXCUSED)

13 THE COURT: Yes, sir, your name?

14 JUROR NUMBER 255: Charles  
15 Paschen.

16 THE COURT: Do you know your  
17 number?

18 JUROR NUMBER 255: I don't know  
19 my number.

20 PATRICIA KENNEDY: Number 255,  
21 Your Honor.

22 THE COURT: Thank you. Mr.  
23 Paschen?

24 JUROR NUMBER 255: Yes, sir.

25 THE COURT: All right, Mr. Paschen,

1 what were you charged with?

2 JUROR NUMBER 255: Burglary,  
3 first.

4 THE COURT: Burglary first.

5 JUROR NUMBER 255: Yes, sir.

6 THE COURT: Have you received a  
7 pardon?

8 JUROR NUMBER 255: No, sir.

9 THE COURT: All right. You're  
10 excused. Thank you very much.

11 (JUROR NUMBER 255 EXCUSED)

12 THE COURT: Yes, sir, your name?

13 JUROR NUMBER 38: Brown.

14 THE COURT: Brown? Yes, sir, Mr.  
15 Brown?

16 JUROR NUMBER 38: Distribution.

17 THE COURT: Come around, I can't  
18 hear you.

19 JUROR NUMBER 38: Distribution.

20 THE COURT: Distribution of what?

21 JUROR NUMBER 38: Marijuana.

22 THE COURT: How long ago?

23 JUROR NUMBER: I forget.

24 THE COURT: Do you have a pardon?

25 JUROR: No, sir.

1 THE COURT: All right, Mr. Norman  
2 M. Brown, Juror Number 38, is excused.

3 (JUROR NUMBER 38 EXCUSED)

4 THE COURT: Anyone else?  
5 Solicitor, do you have anyone else?  
6 Solicitor, you got anybody else?

7 BRUCE DURANT: The numbers are  
8 red-tabbed there, (tendering).

9 THE COURT: Red tab. Okay.  
10 Is there any member of the jury panel unable  
11 to read, write, speak or understand the  
12 English language? If so, please stand. (No  
13 response).

14 I've often wondered why you ask that  
15 question. If you couldn't understand the  
16 language, you wouldn't know to stand. But  
17 it's required and I ask it every week.

18 Is there any member of the jury panel  
19 incapable, by reason of mental or physical  
20 infirmity unable to render jury service this  
21 week? In other words, is there any member of  
22 the jury sick, has a mental problem or a  
23 physical problem as to why they cannot serve?  
24 Is so, please stand.

25 JUROR NUMBER 99: (Stands).

1 THE COURT: Yes, sir, your name?

2 JUROR NUMBER 99: Thurmond Fyall.

3 THE COURT: Do you know your  
4 number?

5 JUROR NUMBER 99: Ninety-nine (99).

6 THE COURT: If you would like to  
7 talk about whatever your problem is in  
8 private, I'll be glad to receive up front?

9 JUROR NUMBER 99: I can speak about  
10 it openly.

11 THE COURT: All right, Mr. Fyall.  
12 What is your problem?

13 JUROR NUMBER 99: I have two ruptured  
14 disc and hip replacement.

15 THE COURT: Had two what?

16 JUROR NUMBER 99: I've had the hip  
17 replacement for about two years.

18 THE COURT: How long can you sit at  
19 any one time?

20 JUROR NUMBER 99: Not very long.

21 THE COURT: Well, give me -- you've  
22 been sitting this morning for a while.

23 JUROR NUMBER 99: But I was in pain  
24 when I went outside, I couldn't sit.

25 THE COURT: Okay. How long can you

1 sit at any one time without having to stand or  
2 move or ---

3 JUROR NUMBER 99: Well, I can sit  
4 about forty-five to fifty minutes.

5 THE COURT: If you stand up after  
6 forty-five minutes, are you okay?

7 JUROR NUMBER 99: Yes.

8 THE COURT: All right. If you're  
9 drawn on the jury, and I'll let you sit on the  
10 back row, if you have to stand, I'll let you  
11 stand at-will. Okay? Can you handle that?

12 JUROR NUMBER 99: Yes, sir.

13 THE COURT: Okay. Thank you so  
14 very much. Yes, ma'am? Come around over  
15 here. Juror Number 188, Krista Lane.

16 JUROR NUMBER 177: No, no, Vicky  
17 King. I don't know my number. It's 188, 189,  
18 somewhere along in there.

19 LAW CLERK: It's 177, Your Honor.

20 THE COURT: Okay. Juror Number  
21 177, Vickie King. The attorneys can join me  
22 up here. Hold on just a second, Ms. King.

23 SIDEBAR:

24 THE COURT: Yes, ma'am, Ms. King,  
25 what's your problem?

1 JUROR NUMBER 177: I just  
2 feel like I can't serve on this jury, Your  
3 Honor. I have an alcohol problem.

4 THE COURT: You have what?

5 JUROR NUMBER 177: An  
6 alcohol problem.

7 THE COURT: You have an alcohol  
8 problem?

9 JUROR NUMBER 177: (Affirmative  
10 nod).

11 THE COURT: Have you been  
12 treated for it?

13 JUROR NUMBER 177: No, but  
14 I know that I drink a lot.

15 THE COURT: How much do you  
16 drink?

17 JUROR NUMBER 177: I drink  
18 anywhere from twelve to fourteen beers a day.

19 THE COURT: Twelve to fourteen?

20 JUROR NUMBER 177: Ever  
21 since my husband left me.

22 THE COURT: When did he leave  
23 you?

24 JUROR NUMBER 177: It's been  
25 four years now. I just can't get myself

1 together.

2 THE COURT: Are you working  
3 anywhere?

4 JUROR NUMBER 177: I work at  
5 Perkins. I'm a server.

6 THE COURT: How do you work and  
7 drink that much?

8 JUROR NUMBER 177: I do.  
9 Because I have to work.

10 THE COURT: Huh?

11 JUROR NUMBER 177: I do. I  
12 guess you would call it a functioning  
13 alcoholic.

14 THE COURT: A what?

15 JUROR NUMBER 177: A  
16 functioning alcoholic, because I have to work.

17 THE COURT: How long have you  
18 been drinking this amount of beer every day?

19 JUROR NUMBER 177: Since he  
20 left.

21 THE COURT: What?

22 JUROR NUMBER 177: Since --  
23 about the last four years, since my husband  
24 left.

25 THE COURT: Okay. You get

1 DT's when you don't have the alcohol?

2 JUROR NUMBER 177: I -- I

3 can tell a difference.

4 THE COURT: Any questions from  
5 the State?

6 SCARLETT WILSON: No, sir.

7 THE COURT: From the defendant?

8 PATRICIA KENNEDY: None.

9 THE COURT: Does anybody have  
10 any objection if I excuse her?

11 SCARLETT WILSON: No, sir.

12 THE COURT: All right, Ms.  
13 King, I will excuse you. Okay?

14 JUROR NUMBER 177: Thank  
15 you.

16 (SIDEBAR CONCLUDED)

17 THE COURT: Juror Number 177  
18 excused.

19 (JUROR NUMBER 177 EXCUSED)

20 THE COURT: Yes, sir, your name?

21 JUROR NUMBER 94: Ellison. Juror  
22 Number 94.

23 THE COURT: Yes, sir, Mr. Allison?

24 JUROR NUMBER 94: I had a fall and  
25 damaged my knee about seven weeks ago. It's

1 pretty but it's swelled up and I have to  
2 elevate and put a heating pack on it. I can't  
3 take much more than Tylenol, so I just have to  
4 elevate it.

5 THE COURT: It is your left knee or  
6 your right knee?

7 JUROR NUMBER 94: Left knee.

8 THE COURT: Left knee?

9 JUROR NUMBER 94: Yes, sir.

10 THE COURT: If you elevate it, does  
11 that help?

12 JUROR NUMBER 94: That helps it,  
13 alleviates some of the swelling, if I have a  
14 heating pad on it.

15 THE COURT: If you're sitting on  
16 the jury and we give you a little chair to be  
17 able to elevate it, would you be able to  
18 handle ---

19 JUROR NUMBER 94: I don't know.

20 THE COURT: I'd be happy to do that  
21 for you?

22 JUROR NUMBER 94: That might work.

23 THE COURT: Would you be able to do  
24 it?

25 JUROR NUMBER 94: I think so.

1 THE COURT: Okay. I will  
2 accommodate you. We'll get you a chair to put  
3 your leg on.. Okay?

4 JUROR NUMBER 94: Okay.

5 THE COURT: Thank you very much.  
6 Yes, ma'am, your name?

7 JUROR NUMBER 343: Thomson. I  
8 think my number is 343.

9 THE COURT: Leigh Thomson?

10 JUROR NUMBER 343: I don't know  
11 if it's going to be a problem but thought I  
12 need to let you know that I have hearing loss,  
13 a moderate-to-severe hearing loss. I wear two  
14 hearing aids, I do a lot of lip reading. I  
15 just wanted to let you know that I don't hear  
16 everything.

17 THE COURT: I've got two on myself.

18 JUROR NUMBER 343: Will everybody  
19 be near a microphone?

20 THE COURT: And they help. How bad  
21 is your hearing?

22 JUROR NUMBER 343: Without these,  
23 I hear nothing.

24 THE COURT: While you will have  
25 those ---

1 JUROR NUMBER 343: If they're not  
2 in sight of me, I can't hear them. It just  
3 depends on the level.

4 THE COURT: You lose your high-  
5 frequency or what -- what is your hearing  
6 problem?

7 JUROR NUMBER 343: I can hear  
8 high-frequencies much better.

9 THE COURT: If I put you on the  
10 front row in the middle and if they're talking  
11 loud enough, you'll raise your hand and I'll  
12 get them to talk later. Can you do that?

13 JUROR NUMBER 343: I can do that.

14 THE COURT: Thank you very much.  
15 Yes, sir?

16 JUROR NUMBER 86: Juror 86, I ---

17 THE COURT: Eighty-six (86)?

18 JUROR NUMBER 86: Yes, sir.

19 THE COURT: Let me find you on the  
20 sheet first, please, sir.

21 JUROR NUMBER 86: Okay.

22 THE COURT: Dubois?

23 JUROR NUMBER 86: Yes, sir.

24 THE COURT: Be glad to hear you?

25 JUROR NUMBER 86: I have a letter

1 from the doctor that is notarized. I didn't  
2 get it turned in in time because I wasn't  
3 aware of ---

4 THE COURT: Give it to the bailiff  
5 and they'll bring it forward to me, please.

6 JUROR NUMBER 86: I would ask that I  
7 be dismissed (tenders to bailiff).

8 BAILIFF: (Tenders note to  
9 Judge).

10 THE COURT: Thank you, sir.  
11 (Upon review), all right, based on the medical  
12 statement I will excuse you. Number 87 is  
13 excused. Excuse me -- not 87 but 86, Mr.  
14 Dubois. Mark that as an exhibit, Court's  
15 exhibit.

16 (SO ENTERED AS COURT'S EXHIBIT 1)

17 (JUROR NUMBER 86 EXCUSED)

18 THE COURT: Yes, sir?

19 JUROR NUMBER 23: Yes, sir, Number  
20 23.

21 THE COURT: Twenty-three (23), Levy  
22 Berry?

23 JUROR NUMBER 23: Levy Berry, yes.

24 THE COURT: Yes, sir, Mr. Levy  
25 Berry?

1 JUROR NUMBER 23: I have two fused  
2 vertebra in my neck and these chair there, and  
3 it would cause pain, headaches, and -- these  
4 chairs, I can't sit in chairs that long  
5 without moving around or find something to  
6 brace my neck.

7 THE COURT: How do you brace your  
8 neck. What do you do?

9 JUROR NUMBER 23: Lean against a wall  
10 or a chair that has a back that is tall enough  
11 to support my head.

12 THE COURT: How often do you have  
13 to do this?

14 JUROR NUMBER 23: I can't sit down  
15 for long periods of time. Either I am sitting  
16 straight up or trying to find some other  
17 comfortable situation.

18 THE COURT: How long can you sit at  
19 any one time?

20 JUROR NUMBER 23: For instance,  
21 sitting here for a long, I'll sit forward --  
22 I'm just uncomfortable. Otherwise I've got to  
23 sit in some way as to support my neck, the  
24 weight -- after -- I can I sit for forty  
25 minutes to an hour without too much discomfort

1 but the more support that I have on my neck or  
2 high back, the better.

3 THE COURT: Do you take any  
4 medication to relieve the pain?

5 JUROR NUMBER 23: No, sir. As long  
6 as I do the things that I know that I need to  
7 do, then I do not need to take medication.

8 THE COURT: Well, you tell me. I  
9 can put you on the back row and let you stand.  
10 I can do whatever I can to accommodate you.  
11 Do you think that you can handle it?

12 JUROR NUMBER 23: As long as I can  
13 work under those conditions, you know, of  
14 being able to ---

15 THE COURT: Do what?

16 JUROR NUMBER 23: As long as I can  
17 work under those conditions, I'll be able to  
18 do it.

19 THE COURT: I will allow you to do  
20 that. If we need to take a break, we'll take  
21 a break.

22 JUROR NUMBER 23: All right.

23 THE COURT: Can you handle that?

24 JUROR NUMBER 23: Sure.

25 THE COURT: Thank you very much.

1 Yes, sir, your name?

2 JUROR NUMBER 77: Randy Defibaugh,  
3 Number 77.

4 THE COURT: Seventy-seven (77).

5 Yes, sir, Mr. Defibaugh?

6 JUROR NUMBER 77: May I approach,  
7 please, sir?

8 THE COURT: Yes, sir. Anybody that  
9 stands up that does not want to talk in front  
10 of the group, I will be glad to receive you up  
11 front and talk to you in private.

12 SIDEBAR:

13 THE COURT: Yes, sir.

14 JUROR NUMBER 77: A few years  
15 ago I had an enlarged prostate and I have to  
16 go to the restroom all the time. I went to  
17 the doctor and I spent a year and a half on  
18 antibiotics and I have to -- he said -- it  
19 didn't seem to work. I said, 'What else can  
20 you do for it?' And he said, 'If it really  
21 discomforts you, I can operate.' I decided  
22 not to go through the operation. So I really  
23 can't -- you know ---

24 THE COURT: How long can you  
25 sit before you have to go to the restroom?

1 JUROR NUMBER 77: Probably  
2 about an hour. I went before I came in and  
3 then I had to go -- was sitting holding it,  
4 holding it, and then I had to go -- I went  
5 when I left here and then I went when I came  
6 back in.

7 THE COURT: I assume that your  
8 fluid intake would affect it drastically?

9 JUROR NUMBER 77: No, sir. Even  
10 if I just drank one cup of coffee in the  
11 morning or ---

12 THE COURT: What are you  
13 thoughts on ---

14 SCARLETT WILSON: Whatever he  
15 wants to do.

16 BOYD YOUNG: I will defer to  
17 you, Judge.

18 THE COURT: You think that you  
19 could handle it? You could be sitting longer  
20 than an hour?

21 JUROR NUMBER 77: No, I don't  
22 think that I can handle that, sir. Honestly,  
23 I don't.

24 THE COURT: I will excuse you.

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(SIDEBAR CONCLUDED)

THE COURT: Juror Number 77 is  
excused.

(JUROR NUMBER 77 EXCUSED)

THE COURT: Yes, ma'am, your name?  
(No response). If there anybody else that is  
going to stand on these questions, please  
stand now.

(JUROR COMES FORWARD)

SIDEBAR:

THE COURT: Yes, ma'am, your  
name?

JUROR NUMBER 179: Alice  
Kinloch.

THE COURT: Alice Kinloch.  
Do you know your number?

JUROR NUMBER 179: One  
seventy-nine (179).

THE COURT: Yes, ma'am, Ms.  
Kinloch?

JUROR NUMBER 179: I have a  
forty to fifty percent hearing loss.

THE COURT: You don't have a  
hearing aid?

JUROR NUMBER 179: No, I

1 need to -- I've had sinus surgery and I need  
2 to have ---

3 THE COURT: Is that in one ear  
4 or both ears?

5 JUROR NUMBER 179: I had  
6 sinus surgery but it did more damage than it  
7 did good.

8 THE COURT: You've lost forty  
9 percent of your hearing?

10 JUROR NUMBER 179: Yes. I  
11 have already had the papers and everything  
12 sent in but she told me that I still needed to  
13 come in.

14 THE COURT: Have you heard  
15 anything this morning?

16 JUROR NUMBER 179: (No  
17 verbal response).

18 THE COURT: Could you hear  
19 everything this morning? Could you hear what  
20 was going on this morning?

21 JUROR NUMBER 179: Blurry.

22 THE COURT: (Lowers volume of  
23 voice): Can you hear me now, can you hear  
24 what I am saying?

25 JUROR NUMBER 179: Right now

1 I am not hearing you.

2 THE COURT: All right, I will  
3 excuse you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 179 is  
6 excused.

7 (JUROR NUMBER 179 EXCUSED)

8 BAILIFF: Juror 31, Mr. Bowen.

9 SIDEBAR:

10 THE COURT: Yes, sir, Mr.  
11 Bowen.

12 JUROR NUMBER 31: My granddad  
13 passed away yesterday. Funeral arrangements  
14 are Tuesday and Wednesday of this week.

15 THE COURT: Whereabouts? Here?

16 JUROR NUMBER 31: In Charleston.

17 THE COURT: Are they going to  
18 have the funeral Wednesday?

19 JUROR NUMBER 31: The funeral is  
20 Wednesday, the viewing will be Tuesday. I  
21 will be in the funeral.

22 THE COURT: All right, Mr.  
23 Bowen. What I am going to do is I am going to  
24 transfer you to another term. I think you  
25 need to go to your grandfather's funeral.

1 JUROR NUMBER 31: Great.

2 THE COURT: So I will transfer  
3 you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Transfer him to another  
6 term. Juror Number 31 is transferred.

7 (JUROR NUMBER 31 TRANSFERRED)

8 THE COURT: Is there any member of  
9 the jury panel -- come around.

10 SIDEBAR:

11 JUROR NUMBER 352: Michael  
12 Turnage.

13 THE COURT: Do you know your  
14 number, Mr. Turnage.

15 JUROR NUMBER 352: No, sir.

16 THE COURT: Let me find you on  
17 the sheet -- 352. Yes, sir, Mr. Turnage?

18 JUROR NUMBER 352: I don't  
19 know if it makes a difference but my son has a  
20 case pending with the prosecution. His case  
21 hasn't come up yet.

22 THE COURT: What is the charge?

23 JUROR NUMBER 352: Accessory  
24 after the fact of murder?

25 THE COURT: Accessory after the

1 fact?

2 JUROR NUMBER 352: Yes, sir.

3 THE COURT: It is still

4 pending?

5 JUROR NUMBER 352: Yes, sir.

6 THE COURT: All right.

7 JUROR NUMBER 352: I don't

8 know if that makes a difference or not.

9 THE COURT: Are you involved in  
10 it?

11 JUROR NUMBER 352: No, sir.

12 THE COURT: How old is your  
13 son?

14 JUROR NUMBER 352: Twenty now.  
15 He was eighteen at the time.

16 THE COURT: Does he live at  
17 home?

18 JUROR NUMBER 352: Yes, sir.  
19 He's under house arrest.

20 THE COURT: He is under house  
21 arrest?

22 JUROR NUMBER 352: Yes, sir.

23 THE COURT: How would that  
24 affect you, assuming that you were sitting on  
25 this jury?

1 JUROR NUMBER 352: I don't  
2 think it would. I just want to make sure from  
3 y'all's point of view that it wouldn't.

4 THE COURT: Well, it is not up  
5 to our point of view. It's up to your point  
6 on view and how you feel about the State  
7 prosecuting your son.

8 JUROR NUMBER 352: They've  
9 got a job to do. I'm thankful that they do  
10 it.

11 THE COURT: You don't think  
12 that it would have any affect at all on ---

13 JUROR NUMBER 352: No, sir.

14 THE COURT: --- your ability to  
15 serve as a juror?

16 JUROR NUMBER 352: No, sir.  
17 I just wanted to make sure that it was known.

18 THE COURT: Does the Solicitor  
19 have any question that you'd like to ask Mr.  
20 Turnage?

21 SCARLETT WILSON: No, sir.  
22 Appreciate it.

23 THE COURT: Does the defense  
24 have any questions that it would like to ask?

25 BOYD YOUNG: No, sir.

1 THE COURT: Mr. Turnage, do you  
2 think that you could set that aside and be  
3 fair to both parties?

4 JUROR NUMBER 352: Yes, sir.

5 THE COURT: Okay, Mr. Turnage,  
6 go have a seat. Thank you very much.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Is there any member of  
9 the jury panel who has less than a sixth grade  
10 education or it's equivalent? If so, please  
11 stand. (No response).

12 Is there any member of the jury panel  
13 who is not now a resident of Berkeley County?  
14 If so, please stand. Yes, ma'am, your name?

15 JUROR NUMBER 199: Latorie Floyd,  
16 Juror Number 199.

17 THE COURT: Yes, ma'am, Ms. Floyd?

18 JUROR NUMBER 199: I just  
19 recently moved to Columbia, South Carolina;  
20 Richland County.

21 THE COURT: When did you move?

22 JUROR NUMBER 199: About two  
23 weeks ago?

24 THE COURT: About two weeks ago.  
25 You no longer reside here. Is that correct?

1 JUROR NUMBER 199: That's  
2 correct.

3 THE COURT: Have you already  
4 changed to Columbia, your driver's license?

5 JUROR NUMBER 199: Yes, sir.

6 THE COURT: Is Zimalcrest Drive in  
7 Columbia?

8 JUROR NUMBER 199: I'm sorry?

9 THE COURT: Where do you live in  
10 Columbia?

11 JUROR NUMBER 199: I live on  
12 Catus Drive now.

13 THE COURT: Okay. You've already  
14 changed the address?

15 JUROR NUMBER 199: Yes, sir.

16 THE COURT: All right, Ms. Latorie  
17 Lloyd, I will excuse you. Okay?

18 JUROR NUMBER 199: Thank you.

19 (JUROR NUMBER 199 EXCUSED)

20 THE COURT: Thank you very much.  
21 Your name?

22 JUROR NUMBER 302: Brooke Rowland,  
23 Juror Number 302.

24 THE COURT: Yes, ma'am, Ms.  
25 Rowland?

1 JUROR NUMBER 302: I live in  
2 Charleston County, West Ashley, now.

3 JUROR NUMBER 302: A couple --  
4 four months ago?

5 THE COURT: What does your driver's  
6 say?

7 JUROR NUMBER 302: 1941 Teakwood.

8 THE COURT: In Charleston? So  
9 you've already change your driver's license?

10 JUROR NUMBER 302: About four  
11 months ago.

12 THE COURT: All right, I will  
13 excuse you, Ms. Rowland.

14 (JUROR NUMBER 302 EXCUSED)

15 THE COURT: Yes, sir, your name?

16 JUROR NUMBER 194: Gadsden  
17 Linton, Number 194. I live in Charleston  
18 County.

19 THE COURT: Gadsden Linton, III; is  
20 that correct?

21 JUROR NUMBER 194: Yes, sir.

22 THE COURT: Still showing you at  
23 141 Waterfront Drive, Moncks Corner, South  
24 Carolina?

25 JUROR NUMBER 194: Yes, sir, I

1 recently moved to Charleston, West of the  
2 Ashley.

3 THE COURT: When did you move?

4 JUROR NUMBER 194: About a month.

5 THE COURT: Have you changed your  
6 driver's license?

7 JUROR NUMBER 194: I have not.

8 THE COURT: You've got ten days to  
9 change them. When are you doing to change it?

10 JUROR NUMBER 194: When I get home.

11 THE COURT: You going to change it  
12 today?

13 JUROR NUMBER 194: I could change  
14 it today. Yes, sir.

15 THE COURT: Okay. Go change it.  
16 Have a good day.

17 (JUROR NUMBER 194 EXCUSED)

18 THE COURT: Yes, sir, your name?

19 JUROR NUMBER 368: Robert Washington,  
20 Number 368.

21 THE COURT: Three-sixty-eight.

22 JUROR NUMBER 368: Yes, sir.

23 THE COURT: Yes, sir, Mr.

24 Washington. I'm showing you at Indian Drive,  
25 Summerville.

1 JUROR NUMBER 368: No, sir, I  
2 moved -- that's my parents' address. I moved  
3 from there three years ago and I've been in  
4 Charleston.

5 THE COURT: Are you still using  
6 your parents address as your home address?

7 JUROR NUMBER 368: No, sir, I  
8 got my address changed shortly after I moved.

9 THE COURT: Do you have -- have you  
10 been using the same address in Summerville for  
11 the last three years?

12 JUROR NUMBER 368: No, sir, I  
13 use my address. I pay property taxes and all  
14 in Charleston County.

15 THE COURT: Okay. Go change your  
16 driver's license?

17 JUROR NUMBER 368: Yes, sir,  
18 it's been changed three years now.

19 THE COURT: Thank you very much.  
20 I will excuse you.

21 (JUROR NUMBER 368 EXCUSED)

22 THE COURT: Yes, sir, your name?

23 JUROR NUMBER 176: Andrew Kinard,  
24 Number 176.

25 THE COURT: I am showing you at

1 1128 Yeamans Hall Road in Hanahan.

2 JUROR NUMBER 176: No, sir, I  
3 live across Rivers Avenue in Charleston County  
4 now.

5 THE COURT: How long ago did you  
6 move?

7 JUROR NUMBER 176: About a week  
8 ago.

9 THE COURT: A week ago?

10 JUROR NUMBER 176: Yes, sir.

11 THE COURT: Well, you haven't even  
12 had time to change your driver's license.

13 JUROR NUMBER 176: No, sir.

14 THE COURT: You live where now?

15 JUROR NUMBER 176: Off of Rivers  
16 Avenue.

17 THE COURT: All right. I will  
18 excuse you. Thank you very much.

19 (JUROR NUMBER 176 EXCUSED)

20 THE COURT: Is there any member of  
21 the jury panel who is not now a citizen of the  
22 United States? If so, please stand. (No  
23 response).

24 Is there any member of the jury  
25 panel who has served as a juror in the last

1 calendar year? If so, please stand. (No  
2 response).

3 The next group of questions are  
4 concerning exemptions, where we may excuse  
5 you, may transfer you to another term.

6 What is your name?

7 JUROR NUMBER 334: Marcella  
8 Howard, Juror Number 334. I was summoned but  
9 I did not serve.

10 THE COURT: Where were you summoned  
11 to?

12 JUROR NUMBER 334: The courthouse  
13 down on 52, right in Goose Creek. Magistrate  
14 Court.

15 THE COURT: Well, I'm speaking of  
16 Circuit Court.

17 JUROR NUMBER 334: I'm sorry.

18 THE COURT: But I'm glad that you  
19 had that experience.

20 The next question concerning  
21 exemptions, is there any member of the jury  
22 panel reached his or her sixth-fifth birthday?  
23 If so, please stand? (No response).

24 Is there any member of the jury  
25 panel an officer or employee or the State

1 Department of Corrections? If so, please  
2 stand. (No response).

3 Is there any member of the jury  
4 panel taking care of someone elderly, over the  
5 age of sixty-five, and no one to care for that  
6 person this week? If so, please stand. (No  
7 response).

8 Is there any member of the jury  
9 panel who has a child or children under the  
10 age of seven, do not work, legal custody of  
11 the children or child and no one to care for  
12 the children this week? If so, please stand.  
13 Yes, ma'am, your name?

14 JUROR NUMBER 307: Kimberly Kepner,  
15 307. I am not saying that it isn't possible,  
16 but I do have a three-year-old and a one-year-  
17 old, and with the one-year-old it would be  
18 extremely difficult -- not impossible but  
19 difficult.

20 THE COURT: Come around and let's  
21 talk about it for a few minutes.

22 SIDEBAR:

23 THE COURT: Tell me how much  
24 difficulty it would be for you.

25 JUROR NUMBER 307: My husband,

1 he is a coach at the College of Charleston, in  
2 volleyball, and they're in season right now --  
3 so he's out of the question.

4 THE COURT: Okay.

5 JUROR NUMBER 307: My mom lives  
6 here but she also lives in Columbia and she  
7 works full-time. That's really -- I would  
8 have to hire a nanny or somebody. So it's not  
9 impossible but it would be costly and ---

10 THE COURT: You don't have a  
11 sister or any ---

12 JUROR NUMBER 307: No.

13 THE COURT: Does your husband  
14 have relatives?

15 JUROR NUMBER 307: No.

16 THE COURT: Grandparents?

17 JUROR NUMBER 307: Grandparents  
18 are just older then to do a three-year-old and  
19 a one-year-old.

20 THE COURT: How old are your  
21 grandparents?

22 JUROR NUMBER 307: My grand-  
23 mother lives here but she's probably eighty-  
24 five. I would have to hire outside help;  
25 which is possible, but ---

1 THE COURT: --- difficult.

2 This trial may last two weeks:

3 JUROR NUMBER 307: No.

4 THE COURT: I am not going to  
5 impose that on you. Does the State have any  
6 questions?

7 SCARLETT WILSON: No, sir.

8 THE COURT: Does the defense  
9 have any questions?

10 MR. MCQUIRE: No, sir.

11 THE COURT: I am going to  
12 excuse her.

13 JUROR NUMBER 307: Thank  
14 you, sir. I appreciate it.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 307,  
17 Kimberly Seaman, is excused.

18 (JUROR NUMBER 307 EXCUSED)

19 THE COURT: Yes, ma'am, your name?

20 JUROR NUMBER 100: Holly Feagin,  
21 Juror 100.

22 THE COURT: Yes, ma'am, Ms. Feagin?

23 SIDEBAR:

24 JUROR NUMBER 100: I work shift  
25 work and I'm regular ---

1 THE COURT: What, now?

2 JUROR NUMBER 100: I work  
3 shift work and I regularly am scheduled to be  
4 off on Tuesdays and my caregiver's husband has  
5 a lung biopsy tomorrow, so I'm not sure if my  
6 in-laws will be able to care for my children  
7 tomorrow.

8 THE COURT: Tomorrow is the  
9 only problem that you have?

10 JUROR NUMBER 100: Tomorrow  
11 is the only problem that I have, so -- if we  
12 could schedule it any time after that, I would  
13 be able to do it.

14 THE COURT: What time  
15 tomorrow?

16 JUROR NUMBER 100: She said  
17 the biopsy is going to be all day, so ---

18 THE COURT: So she is going to  
19 be there all day?

20 JUROR NUMBER 100: All day.

21 THE COURT: So tomorrow is  
22 your difficulty?

23 JUROR NUMBER 100: Tomorrow  
24 would be just a difficult day.

25 THE COURT: All right. I will

1 work around you on that. Okay?

2 JUROR NUMBER 100: Thank  
3 you, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Ollie, if she is drawn  
6 on some of these panels, put her on a panel  
7 for either today or Wednesday. Okay?

8 CLERK OLLIE TUCKER: Yes, sir.

9 THE COURT: What I am going to do  
10 with her, if she is drawn on a panel for  
11 tomorrow, I am going to put her today --  
12 substitute her for today or Wednesday.

13 SCARLETT WILSON: Keep her in the --  
14 I mean, the way that we strike will be the  
15 same?

16 THE COURT: Yeah, but I'll put her  
17 on a different panel. How we strike will stay  
18 the same but I will put her on a different  
19 panel. Okay?

20 SCARLETT WILSON: Okay.

21 THE COURT: Is there any member of  
22 the jury panel a student -- high school, tech  
23 school, college -- and cannot serve this week?  
24 Please stand. Yes, sir, your name?

25 JUROR NUMBER 393: Charles Wood,

1 393.

2 THE COURT: Three-ninety-three?

3 JUROR NUMBER 393: (No verbal  
4 response).

5 THE COURT: Yes, sir, Mr. Wood?

6 JUROR NUMBER 393: I am  
7 currently a grad student; attending full-time,  
8 working full-time, and if I am chosen ---

9 THE COURT: When are your classes?

10 JUROR NUMBER 393: Sir?

11 THE COURT: What time are your  
12 classes?

13 JUROR NUMBER 393: Every Friday,  
14 eight hours on Friday.

15 THE COURT: Just on Fridays?

16 JUROR NUMBER 393: Yes, sir.

17 THE COURT: Moten Woods, is that  
18 correct?

19 JUROR NUMBER 393: Charles Wood.

20 THE COURT: Where are you taking  
21 your graduate studies?

22 JUROR NUMBER 393: It's business  
23 learning through on-site conference rooms.

24 THE COURT: You'all have -- I  
25 assume that you wouldn't have any make-up

1 days. Is that through your work or your job?

2 JUROR NUMBER 393: Yes, sir, it  
3 is paid for through my job. No, sir, there's  
4 no make-up days.

5 THE COURT: Okay, Mr. Wood. I am  
6 going to transfer you. When will you be our  
7 studies?

8 JUROR NUMBER 393: I graduate  
9 December of 2010. I'm available anytime in  
10 January 2011, thereafter.

11 THE COURT: Okay, Mr. Wood, I will  
12 excuse you.

13 (JUROR NUMBER 393 EXCUSED)

14 THE COURT: Yes, ma'am?

15 JUROR NUMBER 174: Number 174, I  
16 have classes ---

17 THE COURT: One-seventy-four?

18 JUROR NUMBER 174: (Affirmative  
19 nod).

20 THE COURT: Okay. Yes, ma'am, Ms.  
21 Kenyon?

22 JUROR NUMBER 174: My classes  
23 are on Tuesday and Thursday, from 1:00 o'clock  
24 to ---

25 THE COURT: Whereabouts?

1 JUROR NUMBER 174: Trident Tech.  
2 THE COURT: Tuesday and Thursday?  
3 JUROR NUMBER 174: Yeah.  
4 THE COURT: I assume every week?  
5 JUROR NUMBER 174: Yes, sir.  
6 THE COURT: When do you finish your  
7 classes or when do you graduate ---  
8 JUROR NUMBER 174: December.  
9 THE COURT: When?  
10 JUROR NUMBER 174: December.  
11 THE COURT: When do you graduate or  
12 when do you have vacation?  
13 JUROR NUMBER 174: I graduate in  
14 December.  
15 THE COURT: All right. But when do  
16 you have -- when does school shut down?  
17 JUROR NUMBER 174: After December  
18 7th.  
19 THE COURT: After December 7th?  
20 All right. Do we have any terms in December?  
21 CLERK: Yes, sir.  
22 THE COURT: All right, I will  
23 transfer you to December the 14th. Okay?  
24 JUROR NUMBER 174: Yes, sir.  
25 THE COURT: What number was she?

1 CLERK: One-seventy-four.

2 THE COURT: All right, Juror Number  
3 174 is transferred to December 14th.

4 (JUROR NUMBER 174 TRANSFERRED)

5 THE COURT: Is there any member of  
6 the jury panel a school employee -- that's  
7 teachers, bus drivers, anyone employed with  
8 the school system -- that cannot serve, please  
9 stand. Yes, ma'am, your name?

10 JUROR NUMBER 87: Jennifer DuBose,  
11 Juror 87.

12 THE COURT: Eighty-seven. Yes,  
13 ma'am, Ms. DuBose?

14 JUROR NUMBER 87: I work in the  
15 library. If I could transfer to the summer  
16 that would be good.

17 THE COURT: You work in the  
18 library. What do you do in the library?

19 JUROR NUMBER 87: I am the assistant  
20 to the media specialist.

21 THE COURT: You cannot get a  
22 substitute or someone ---

23 JUROR NUMBER 87: They do not give  
24 us a substitute.

25 THE COURT: All right. When are

1 you going to be out of school?

2 JUROR NUMBER 87: June, second week  
3 in June.

4 THE COURT: All right. I will  
5 transfer you to June. Okay?

6 JUROR NUMBER 87: Thank you.

7 (JUROR NUMBER 87 TRANSFERRED)

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER

10 THE COURT: You are going to have  
11 to come around. I can't hear that far back.

12 JUROR NUMBER 344: Adrian Thornhill.  
13 I think I'm around 340. I'm not sure.

14 LAW CLERK: Three-forty-four.

15 THE COURT: Yes, ma'am, Ms.  
16 Thornhill.

17 JUROR NUMBER 344: I am a volley  
18 ball coach and we have three games this week:  
19 today, tomorrow and Thursday.

20 THE COURT: What time?

21 JUROR NUMBER 344: Probably about  
22 3:30.

23 THE COURT: When will you be out?  
24 Will you be out December 14th?

25 JUROR NUMBER 344: We finish

1           October 14th.

2                   THE COURT:     October 14th?  Do you  
3           teach and coach or just coach?

4                   JUROR NUMBER 344:         I coach.

5                   THE COURT:     Where are you coaching?

6                   JUROR NUMBER 344:         Volleyball.

7                   THE COURT:     Whereabouts?

8                   JUROR NUMBER 344:         St. John  
9           Christian Academy.

10                   THE COURT:     Okay.  So you don't  
11           teach, you coach volleyball?

12                   JUROR NUMBER 344:         Um-humm.

13                   THE COURT:     You will be through  
14           October -- what?

15                   JUROR NUMBER 344:         The 14th,  
16           I believe.

17                   THE COURT:     All right, I will  
18           transfer you to the November term.  Okay?

19                   JUROR NUMBER 344:         Thank you.

20                   THE COURT:     Has any member of the  
21           jury panel previously served in Circuit Court  
22           within the last three calendar years?  If so,  
23           please stand.  Yes, sir, your name?

24                   JUROR NUMBER 356:         Your Honor, I am  
25           responding to your previous question.  I teach

1 Sports for the Daniel Island School and I've  
2 got games, practice for the next month and a  
3 half to two months.

4 THE COURT: When will you be out --  
5 through? When will you have a vacation?

6 JUROR NUMBER 356: December or  
7 anytime during the summer, I'd be more than  
8 happy to ---

9 THE COURT: What's your name?

10 JUROR NUMBER 356: Robert Van  
11 Newkirk, Juror 356.

12 THE COURT: All right, Mr. Van  
13 NewKirk, I will excuse you until next -- I  
14 will transfer you to next summer. Okay?

15 JUROR NUMBER 356: That would be  
16 fantastic, Your Honor.

17 THE COURT: June of 2010. Okay?

18 JUROR NUMBER 356: Thank you.

19 (JUROR NUMBER 356 TRANSFERRED)

20 THE COURT: Has any member of the  
21 jury panel previously served in Circuit Court  
22 -- that is this court -- in Berkeley County in  
23 the past three calendar years? If so, please  
24 stand. Yes, ma'am, your name?

25 JUROR NUMBER 268: Deanna Pittman.

1 THE COURT: Do you know your  
2 number?

3 JUROR NUMBER 268: Two-sixty-eight  
4 (268).

5 THE COURT: Yes, ma'am, Ms.  
6 Pittman?

7 JUROR NUMBER 268: I served in  
8 June 2007.

9 THE COURT: 2007? Here?

10 JUROR NUMBER 268: It was  
11 Berkeley County but not this court.

12 THE COURT: What Court?

13 JUROR NUMBER 268: It wasn't  
14 magistrate's court but it was some -- General  
15 Sessions court.

16 THE COURT: Do you know what court  
17 that she is talking about? City court?

18 LAW CLERK: Does she mean in this  
19 courtroom?

20 CLERK: Municipal court.

21 THE COURT: Were you -- did you  
22 serve in this courtroom?

23 JUROR NUMBER 268: No.

24 THE COURT: Okay. Thank you very  
25 much. Is there any member of the jury panel

1 who has previously served as a member of the  
2 Grand Jury within the last five calender  
3 years? If so, please stand. (No response).

4 All right, anyone that did not stand  
5 on the questions that I asked previously who  
6 wishes to speak to me in private may come  
7 forward at this time:

8 Juror Number 140, Terry LeGrand  
9 Harvey. If you would come forward.

10 Juror Number 222, Kizer Miller, come  
11 forward.

12 Juror Number 237, Raymond Nagel,  
13 come forward.

14 SIDEBAR:

15 THE COURT: What is your name?

16 JUROR NUMBER 140: Terry Harvey.

17 THE COURT: Let's see, Mr.

18 Harvey, -- what is your Social Security  
19 number?

20 JUROR NUMBER 140: 251-98-  
21 7298.

22 THE COURT: What is your date  
23 of birth?

24 JUROR NUMBER 140: 10/20/52.

25 THE COURT: You were charged

1 with -- back in '95, -- conservation of  
2 animals?

3 JUROR NUMBER 140: Yes, sir  
4 -- well, I don't know about that. That was a  
5 long time ago.

6 THE COURT: Migratory bird  
7 laws?

8 JUROR NUMBER 140: Yes, sir.

9 THE COURT: Is that what it  
10 was?

11 JUROR NUMBER 140: Yes, sir.

12 THE COURT: How much time did  
13 you get?

14 JUROR NUMBER 140: We got  
15 three years probation and six days in jail.

16 THE COURT: You spent six days  
17 in jail. What is the max on that, Solicitor?

18 And you got manufacturing and  
19 possession of some controlled substance?

20 JUROR NUMBER 140: Yes, sir.

21 THE COURT: That was back in  
22 -- when?

23 JUROR NUMBER 140: I would  
24 say in '95 but I am not sure.

25 THE COURT: How about in '99?

1 JUROR NUMBER 140: '99.

2 THE COURT: Is that you?

3 JUROR NUMBER 140: That's

4 me.

5 THE COURT: Why didn't you  
6 stand when I ---

7 JUROR NUMBER 140: I just  
8 wanted to come up and tell you.

9 THE COURT: You want to come  
10 up in private and tell me?

11 JUROR NUMBER 140: Yes, sir.

12 THE COURT: Okay. I am going  
13 to excuse you. Okay?

14 JUROR NUMBER 140: Thank  
15 you, sir.

16 (SIDEBAR CONCLUDED)

17 THE COURT: All right, Juror Number  
18 140 is excused.

19 (JUROR NUMBER 140 EXCUSED)

20 BAILIFF HUTTO: Judge, this is  
21 Juror Number 17, Cherry Beach, Number 17.

22 SIDEBAR:

23 THE COURT: Yes, ma'am, Ms.  
24 Beach?

25 JUROR NUMBER 17: You didn't

1 call my particular category?

2 THE COURT: What is your  
3 category?

4 JUROR NUMBER 17: My husband,  
5 caring for him. He had brain surgery three  
6 weeks ago. I have someone to look after him  
7 but they called at 9:00 o'clock last night and  
8 cancelled. He's not supposed to be left alone  
9 right now.

10 THE COURT: You don't have  
11 anybody that can look after him?

12 JUROR NUMBER 17: All my  
13 friends work and my son and my husband -- I  
14 mean my father -- are calling him to check on  
15 him today while I am here. But the one that I  
16 have to sit with him, she couldn't make it.

17 THE COURT: What kind of care  
18 does he need?

19 JUROR NUMBER 17: He gets a  
20 little wobbly still and he has no memory and,  
21 uh, -- just somebody to be there, make sure  
22 that he is okay.

23 THE COURT: I mean, can he  
24 clothe himself? Bath himself?

25 JUROR NUMBER 17: Yes, he can

1 do that.

2 THE COURT: Feed himself?

3 JUROR NUMBER 17: Yes.

4 THE COURT: Can your father  
5 help?

6 JUROR NUMBER 17: He works.

7 THE COURT: He works?

8 JUROR NUMBER 17: (Affirmative  
9 nod), so does my son.

10 THE COURT: Anybody else in  
11 the family that could come in and ---

12 JUROR NUMBER 17: That is my  
13 family right there. I have a son in the army  
14 but he's in Italy, my sister lives in Florida.

15 THE COURT: Does the State  
16 have any questions?

17 SCARLETT WILSON: No, sir.

18 THE COURT: Solicitor, what is  
19 your position?

20 BRIAN ALFARO: I've got no  
21 objection.

22 SCARLETT WILSON: Transfer to  
23 some other term.

24 JUROR NUMBER 17: He's supposed  
25 to be -- it's an eight-week recovery, he's in

1 week three.

2 THE COURT: What if I transfer  
3 you to February of next year, will you be all  
4 right?

5 JUROR NUMBER 17: Yeah, that  
6 would be fine.

7 THE COURT: All right, let's  
8 transfer Juror Number ---

9 SCARLETT WILSON: Seventeen  
10 (17).

11 THE COURT: --- to January of  
12 next year.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Juror Number 17 is  
15 transferred to January of 2010.

16 (JUROR NUMBER 17 TRANSFERRED)

17 BAILIFF: Number 222, Kizer  
18 Miller.

19 SIDEBAR:

20 THE COURT: What is your date  
21 of birth?

22 JUROR NUMBER 222: 2/20/57.

23 THE COURT: Social Security  
24 Number?

25 JUROR NUMBER 222:

1

THE COURT: You've got a theft  
of an automobile back in '76?

2

3

4

JUROR NUMBER 222: Yes, sir.

5

THE COURT: All right, it  
looks like -- is that it? Anything else?

6

7

JUROR NUMBER 222: I believe  
a marijuana charge two years later than that.

8

9

THE COURT: Two years later?  
'81?

10

11

JUROR NUMBER 222: Yes, sir.

12

THE COURT: All right. Why  
didn't you stand when I called your name?

13

14

JUROR NUMBER 222: I didn't  
really understand the question. I hear  
hearing aids, too.

15

16

17

THE COURT: Pardon?

18

JUROR NUMBER 222: I wear  
hearing aids and at a distance I don't hear  
too good.

19

20

21

THE COURT: I understand that  
it gets noisy in here sometimes, it's hard to  
hear sometimes.

22

23

24

JUROR NUMBER 222: Yes, sir.

25

THE COURT: All right. I will

1 excuse you.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Juror Number 222 is  
4 excused.

5 (JUROR NUMBER 222 EXCUSED)

6 BAILIFF: Juror 237, Raymond J.  
7 Nagel.

8 SIDEBAR:

9 THE COURT: Hey, Mr. Nagel.  
10 How you doing?

11 JUROR NUMBER 237: Okay.

12 THE COURT: What is your date  
13 of birth?

14 JUROR NUMBER 237:

15 THE COURT: And your Social  
16 Security number?

17 JUROR NUMBER 237:

18   
19 THE COURT: Let me see -- you  
20 were charged with burglary back in '80; is  
21 that correct?

22 JUROR NUMBER 237: Not me.

23 THE COURT: That's not you?

24 JUROR NUMBER 237: (Negative  
25 gesture).

1 THE COURT: Criminal trespass?

2 JUROR NUMBER 237: (Negative

3 gesture).

4 THE COURT: Loitering,

5 indecent exposure? That's not you?

6 JUROR NUMBER 237: It was ---

7 THE COURT: A long time ago?

8 JUROR NUMBER 237: Yeah,

9 you're right, it was a long time ago.

10 THE COURT: 1980. Over

11 twenty-five years -- twenty-nine years ago.

12 Was that you or not?

13 JUROR NUMBER 237: Yes, it

14 is, sir. Forgot all about it. Been a long

15 time.

16 THE COURT: Pardon?

17 JUROR NUMBER 237: Forgot

18 all about it. It's been a long time.

19 THE COURT: Up in Clarksburg,

20 West Virginia?

21 JUROR NUMBER 237: No, sir.

22 Be Pennsylvania.

23 THE COURT: Okay. Willow

24 Grove, Pennsylvania?

25 JUROR NUMBER 237: Yes, sir.

1 THE COURT: Okay. And the  
2 disposition was that you were convicted of  
3 burglary. Did you catch any -- get any time  
4 for it?

5 JUROR NUMBER 237: No, it  
6 was probation.

7 THE COURT: A probation  
8 sentence?

9 JUROR NUMBER 237: (Affirma-  
10 tive nod).

11 THE COURT: And you hadn't got  
12 a pardon?

13 JUROR NUMBER 237: No, sir.

14 THE COURT: That will  
15 disqualify you from jury duty.

16 JUROR NUMBER 237: They  
17 don't even have that listed right, but it --  
18 it wasn't ---

19 THE COURT: Well, was it  
20 burglary or was it not burglary?

21 JUROR NUMBER 237: No,  
22 that's why we pleaded it down. It was pled  
23 down to ---

24 THE COURT: What was it pled  
25 down to?

1 JUROR NUMBER 237: Just to  
2 indecent exposure.

3 THE COURT: Pardon? Because  
4 your record shows a conviction of burglary.  
5 Okay?

6 JUROR NUMBER 237: Really?

7 THE COURT: On October the  
8 27th, 1980. It shows that you were convicted  
9 of criminal trespass, loitering, indecent  
10 exposure, simple assault and -- it shows that  
11 you were convicted of all those things.

12 JUROR NUMBER 237: I am not  
13 aware of that.

14 THE COURT: I mean, the only  
15 thing that I can go by is the court record.

16 JUROR NUMBER 237: Yes, sir.

17 THE COURT: If you pled down,  
18 your record is not showing that. Okay? If  
19 what you're telling me is correct, then you  
20 need to get your record straighten out because  
21 all that I can go by is what I have here. I  
22 don't think that you're qualified for jury  
23 duty and I am going to excuse you.

24 JUROR NUMBER 237: Okay.

25 (SIDEBAR CONCLUDED)

1 THE COURT: Juror Number 237 is  
2 excused.

3 (JUROR NUMBER 237 EXCUSED)

4 BAILIFF: Number 98, Cynthia L.  
5 Fann.

6 SIDEBAR:

7 THE COURT: Yes, ma'am, Ms.  
8 Fann?

9 JUROR NUMBER 98: Good after-  
10 noon.. My husband recently had a quadruple  
11 bypass, on August 14th. He has two doctors  
12 appointments with his cardiologist and his  
13 thoracic surgeon this week and he is not able  
14 to drive. So if I could please put to another  
15 session, I would greatly appreciate it.

16 THE COURT: When are the  
17 appointments?

18 JUROR NUMBER 98: He has one  
19 tomorrow morning at 9:30 and he has another  
20 one Thursday at 1:30.

21 THE COURT: He's got one  
22 tomorrow morning at 9:30 ---

23 JUROR NUMBER 98: Yes.

24 THE COURT: --- and one  
25 Thursday at 1:30?

1 JUROR NUMBER 98: (Affirmative  
2 nod), 1:30 at the VA.

3 THE COURT: At the VA by MUSC?

4 JUROR NUMBER 98: Yes, sir.

5 THE COURT: Do you have  
6 anybody else that can take him?

7 JUROR NUMBER 98: Not really.  
8 My adult daughter, she is a teacher and it is  
9 really hard for her to get off, and she has  
10 two small children at home. Of course, my  
11 other sisters and mom, they all still work.

12 THE COURT: You have no one  
13 else?

14 JUROR NUMBER 98: Not that I  
15 can think of. That's why I'm actually on FMLA  
16 right now.

17 THE COURT: All right. You've  
18 got Thursday at what time?

19 JUROR NUMBER 98: Tomorrow  
20 morning at 9:30 and Thursday at 1:30.

21 THE COURT: All right. You  
22 don't have any appointments next week, do you?

23 JUROR NUMBER 98: No, sir, just  
24 this week here.

25 THE COURT: If you are drawn,

1 I will have to work around those dates for you  
2 so that you can had the time but I am not  
3 going to excuse you. . Okay?

4 JUROR NUMBER 98: Thank you.

5 THE COURT: We will work around  
6 those dates, that timeframe, for you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: What I will do with her  
9 is she on a panel -- we will use her the same  
10 way that she is drawn, but if she is on a  
11 panel, I will put her on a panel that doesn't  
12 conflict with the appointments. I mean, she  
13 will still serve.

14 What I am going to do is draw her.  
15 She will stay in the same position that she's  
16 drawn in but I will put her on a different  
17 panel. Okay? Okay.

18 SIDEBAR:

19 THE COURT: Yes, sir, your  
20 name?

21 JUROR NUMBER 156: Lloyd  
22 Hunter, 156.

23 THE COURT: 166?

24 JUROR NUMBER 156: 156.

25 THE COURT: Yes, sir, Mr.

1 Hunter.

2 JUROR NUMBER 156: I have  
3 been out of work since June. I'm supposed to  
4 be called into Man Skills out at the Navy Yard  
5 -- whenever they get all the vehicles in there  
6 -- sometime this week or next week. It's a  
7 government contract. I just need an idea of  
8 how long do you think that this will go on  
9 because whenever they call me, I would like to  
10 go.

11 THE COURT: Probably two  
12 weeks.

13 JUROR NUMBER 156: (Negative  
14 gesture), can you transfer me -- because this  
15 is detrimental. I mean, we're on our last  
16 leg, me and my wife. She is a realtor and you  
17 know who real estate is right now.

18 THE COURT: When are you going  
19 to be called?

20 JUROR NUMBER 156: Supposed  
21 to be this week or next week. They haven't --  
22 I can't -- if you want me to get some kind of  
23 proof, I'll ---

24 THE COURT: Get me some kind  
25 of proof. I'll go with you if you get me some

1 kind of proof. I am not going to do it right  
2 now since you don't have any idea when you're  
3 going to be called.

4 JUROR NUMBER 156: When do I  
5 need to get it to you?

6 THE COURT: Well, we need it  
7 right now.

8 JUROR NUMBER 156: Tomorrow  
9 or just -- I mean, I am going to have to find  
10 out about it. Just go ahead and get one for  
11 you?

12 THE COURT: Get something in  
13 here in the morning. Okay?

14 JUROR NUMBER 156: Okay.

15 (SIDEBAR CONCLUDED)

16 BAILIFF: Judge, this Number 11,  
17 Helen Perry Bachofner.

18 SIDEBAR:

19 THE COURT: Yes, ma'am?

20 JUROR NUMBER 11: I just  
21 started a second job and ---

22 THE COURT: Do what now?

23 JUROR NUMBER 11: I just  
24 started a second job and starting classes and  
25 so forth. However, if it just means being

1 transferred to a ---

2 THE COURT: It says the Family  
3 Circle Cup, a teaching program. Where is the  
4 Family Circle program?

5 JUROR NUMBER 11: Daniel  
6 Island.

7 THE COURT: And you're going  
8 to be a teacher?

9 JUROR NUMBER 11: Yeah, but it  
10 means just being transferred, I would rather  
11 go ahead and serve because there is no other  
12 time.

13 THE COURT: Well, I will  
14 transfer you.

15 JUROR NUMBER 11: Yeah, but  
16 it'll be the same thing. It'd be the same  
17 thing, so I would just rather serve than be  
18 transferred, if it can't be dismissed.

19 THE COURT: How long have you  
20 worked for them?

21 JUROR NUMBER 11: I just  
22 started about three weeks ago.

23 THE COURT: Is it going to  
24 jeopardize your job?

25 JUROR NUMBER 11: No, it is not

1 going to jeopardize my job.

2 THE COURT: I don't want to  
3 jeopardize your job but the only thing that I  
4 could do is to transfer you.

5 JUROR NUMBER 11: Well, if it  
6 can't be ---

7 THE COURT: I could transfer  
8 you if there is going to be a slack time.

9 JUROR NUMBER 11: I don't have  
10 a slack time, there is no slack time in my  
11 life.

12 THE COURT: You play much  
13 tennis on Daniel Island?

14 JUROR NUMBER 11: Well, I have  
15 another job. I have a fulltime job and ---

16 THE COURT: What is your full-  
17 time job?

18 JUROR NUMBER 11: It is real  
19 estate information service.

20 THE COURT: What time do you  
21 do this ---

22 JUROR NUMBER 11: I do that in  
23 the evenings.

24 THE COURT: What time?

25 JUROR NUMBER 11: Usually

1 starts around 4:00.

2 THE COURT: Can you put them  
3 off until about 6:00? How long does it take  
4 to get from here to Daniel Island? Where do  
5 you live?

6 JUROR NUMBER 11: I live in  
7 Goose Creek.

8 THE COURT: How long does it  
9 take to get from her to Daniel Island, about  
10 thirty minutes?

11 PATRICIA KENNEDY: Forty,  
12 forty-five minutes.

13 THE COURT: It doesn't take me  
14 but an hour to get here from the Isle of  
15 Palms.

16 PATRICIA KENNEDY: Well, --  
17 I know.

18 THE COURT: If you will  
19 schedule them 6:00 or afterwards, ---

20 JUROR NUMBER 11: That will be  
21 fine. Can I ask you a ---

22 THE COURT: If you will  
23 schedule your tennis lesson at 6:00 and after  
24 if you're on the jury.

25 JUROR NUMBER 11: Okay. Can I

1 ask one more question. My fulltime job, are  
2 they required to pay you?

3 THE COURT: That's up to them.

4 JUROR NUMBER 11: Up to them.

5 THE COURT: , Every employer is  
6 different. I can't tell you ---

7 SCARLETT WILSON: They can't  
8 fire her.

9 JUROR NUMBER 11: No, they  
10 can't fire me for that but they don't have to  
11 pay me.

12 THE COURT: Some employers pay  
13 and some employers don't. I wish that the  
14 State would pass some kind of law that it  
15 would have to pay you, but that's not the way  
16 that it works right now.

17 JUROR NUMBER 11: Okay.

18 (SIDEBAR CONCLUDED)

19 THE COURT: What number was she?

20 BRIAN ALFARO: She was number  
21 eleven (11).

22 BAILIFF: Number 252, Thomas  
23 M. O'Hare, Jr.

24 SIDEBAR:

25 THE COURT: What is your name?

1 JUROR NUMBER 252: Tommy,  
2 Thomas O'Hare.

3 SCARLETT WILSON: What was your  
4 number?

5 JUROR NUMBER 252: Two-  
6 fifty-two (252).

7 THE COURT: Yes, sir, Mr.  
8 O'Hare?

9 JUROR NUMBER 252: I don't  
10 really know how to say it. I've not dumb. I  
11 just can't read or write. I got into a car  
12 accident and I had like a hundred and ninety  
13 stitched in my head and since then I ain't  
14 been, well, "right".

15 THE COURT: You haven't been  
16 able to read and write since then?

17 JUROR NUMBER 252: No. I  
18 mean, I don't -- (pause).

19 THE COURT: Are you drawing  
20 disability?

21 JUROR NUMBER 252: No, I  
22 -- I mean, I can listen.

23 THE COURT: Where are you  
24 working?

25 JUROR NUMBER 252: I

1 actually work with my dad and myself.

2 THE COURT: What kind of work  
3 do you do?

4 JUROR NUMBER 252: Mechanic  
5 work.

6 THE COURT: Mechanic work?

7 JUROR NUMBER 252: Yes, sir.

8 THE COURT: You do your work  
9 okay?

10 JUROR NUMBER 252: Yeah. I  
11 just didn't know if it has anything to do with  
12 reading or writing.

13 THE COURT: Could you read and  
14 write before this occurred?

15 JUROR NUMBER 252: I don't  
16 know. I don't -- I think so -- I don't know.

17 THE COURT: What, did it just  
18 block out your memory or what? The accident?

19 JUROR NUMBER 252: Uh, ---

20 SCARLETT WILSON: How old were  
21 you?

22 JUROR NUMBER 252: I was,  
23 like, eleven.

24 THE COURT: Eleven years old?

25 JUROR NUMBER 252: Yeah,

1 that's why I -- in school, I didn't do too  
2 good.

3 THE COURT: Does it affect  
4 your long-term memory, short-term memory or  
5 what?

6 JUROR NUMBER 252: No, I can  
7 remember. I just wanted to let you know that  
8 I can't read.

9 THE COURT: I understand. I  
10 am just trying to find out if there are any  
11 other problems that you have that would affect  
12 your memory of what transpires.

13 JUROR NUMBER 252: I don't  
14 think so.

15 THE COURT: Any questions?  
16 (No response). As far as the reading and  
17 writing, my concern about that -- what I can  
18 do if you need to read, I will instruct the  
19 foreman or the forelady of the jury to read it  
20 for you, but to not embarrass you in the jury  
21 room. Okay?

22 JUROR NUMBER 252: That's  
23 cool.

24 THE COURT: All right. If you  
25 are on the jury, all you have to do is to tell

1 the foreman, 'Would you mind reading this to  
2 me?'

3 JUROR NUMBER 252: Okay. I  
4 just -- I'd feel a little better.

5 THE COURT: Do you have any  
6 other difficulties with your memory, your  
7 learning or anything that would affect you  
8 sitting on the jury? That's my concern?

9 JUROR NUMBER 252: I don't  
10 think so.

11 THE COURT: You don't think  
12 so?

13 JUROR NUMBER 252: (Negative  
14 gesture).

15 THE COURT: Okay. Thank you  
16 very much.

17 (JUROR RETURNS TO SEAT)

18 SIDEBAR CONTINUED:

19 SCARLETT WILSON: Is that not a  
20 qualification?

21 THE COURT: Huh?

22 SCARLETT WILSON: Is that not a  
23 qualification, ---

24 'THE COURT: What? Read and  
25 write?

1

SCARLETT WILSON: Yes.

2

THE COURT: No. It's not a  
3 qualification. He can have somebody read and  
4 write for him.

5

SCARLETT WILSON: Do you want  
6 to ---

7

BOYD YOUNG: I would like to  
8 have him stay. Seems pretty good-hearted.

9

THE COURT: I mean, I don't  
10 think that because you can't read and write  
11 that that disqualifies him. One of the  
12 qualifications is a sixth grade education  
13 equivalent. Now, he may come under that  
14 criteria, but he works and holds down a job.

15

SCARLETT WILSON: Okay.

16

THE COURT: You got a Motion  
17 to excuse him for cause?

18

SCARLETT WILSON: No.

19

THE COURT: If you do, I will  
20 be glad to hear it.

21

SCARLETT WILSON: No, I  
22 couldn't remember how the qualification  
23 language was.

24

THE COURT: It's whether they  
25 have a sixth grade education, equivalent;

1 which he would probably fall under.

2 SCARLETT WILSON: Okay.

3 THE COURT: I didn't mean to  
4 open up Pandora's Box.

5 (SIDEBAR CONCLUDED)

6 THE COURT: All right, Ladies and  
7 Gentlemen of the jury panel, this trial is  
8 going last two weeks to maybe two and a half  
9 weeks. I don't know exactly. Let me  
10 emphasize my words, very strongly. If anybody  
11 has an extreme hardship for the next two and a  
12 half weeks, please stand -- (number of jurors  
13 stand). I emphasize the fact "extreme", not  
14 the fact that you just can't be here. Line  
15 up. Here we go.

16 All right. Everybody hold it down  
17 for a minute, please. The people that stood,  
18 stand in line. Everybody else just be quiet  
19 for a second.

20 (SIDEBAR WITH CLERK RE: LUNCH)

21 THE COURT: The jury panel -- the  
22 members of the jury panel that are not  
23 standing to talk to me about their extreme  
24 hardship, and I keep emphasizing that fact and  
25 not the fact that you just don't want to be

1 here for two weeks, need to follow the bailiff  
2 -- to where?

3 CLERK OLLIE TUCKER: To the jury  
4 panel room.

5 THE COURT: To the jury panel room.  
6 There is a lunch to be provided there for you.

7 So other than the people that are  
8 standing, follow the bailiffs to the jury  
9 panel room for lunch.

10 (OFF RECORD DISCUSSION RE: LUNCH FOR COUNSEL)

11 BAILIFF: Juror Number 188,  
12 Christa Lane.

13 SIDEBAR:

14 THE COURT: All right. Yes,  
15 ma'am, Ms. Lane?

16 JUROR NUMBER 188: Hi.  
17 Yeah, I have a baby under the age of one and  
18 if I miss that much work, I will not be able  
19 to afford to take care of her. I just came  
20 back from maternity leave a couple of months  
21 ago, so I am still trying to catch up with  
22 everything.

23 THE COURT: What kind of work  
24 do you do?

25 JUROR NUMBER 188: I am a

1 hair stylist, so times aren't busy either.  
2 We are still trying to catch up with  
3 everything.

4 THE COURT: How long were you  
5 out on maternity leave?

6 JUROR NUMBER 188: For about  
7 three and a half months.

8 THE COURT: Three and a half  
9 months, and you just went back to work?

10 JUROR NUMBER 188: A couple  
11 of months ago. Back in the beginning of  
12 April.

13 THE COURT: Tell me about the  
14 baby now.

15 JUROR NUMBER 188: She is  
16 nine months old.

17 THE COURT: She's what?

18 JUROR NUMBER 188: She is  
19 nine months old and she has daycare ---

20 THE COURT: Who cares for her  
21 on a regular basis?

22 JUROR NUMBER 188: She goes  
23 to daycare. I am off one day that I care  
24 for her and two half days.

25 THE COURT: What time does

1 she go to daycare?

2 JUROR NUMBER 188: Around  
3 7:15 in the mornings.

4 THE COURT: What time do you  
5 pick her up?

6 JUROR NUMBER 188: It kind  
7 of varies with my job. Like the latest is  
8 5:00 5:30.

9 THE COURT: Okay.

10 JUROR NUMBER 188: If I  
11 have a cancellation, I leave early.

12 THE COURT: Could your  
13 husband pick her up?

14 JUROR NUMBER 188: He could  
15 pick her up but we can't afford -- I can't  
16 afford to miss work or, else, we won't be  
17 able to pay our bills and pay stuff for her.  
18 It's really tight right now. We're in a  
19 rental and I need that money to ---

20 THE COURT: Just go have a  
21 seat over there and let me think about it for  
22 a minute.

23 JUROR NUMBER 188: Okay.

24 (JUROR SEATED)

25 SIDEBAR CONTINUED:

1 THE COURT: Come here, let me  
2 talk to you'all just a second. What do  
3 you'all want to do with these things?

4 SCARLETT WILSON: I don't know  
5 what to do.

6 THE COURT: I mean, I don't  
7 know what to do with them.

8 SCARLETT WILSON: Let's see how  
9 many that we have.

10 THE COURT: I understand  
11 their problem.

12 SCARLETT WILSON: I do, too.  
13 Let's see how many that we have.

14 THE COURT: Okay, I am going  
15 to let them sit and then I will check out the  
16 numbers before I say yes or no. I sympathize  
17 with them. Geez, we could lose half the  
18 panel over this. I don't know what the  
19 solution is.

20 PATRICIA KENNEDY: I think  
21 the first is that whether they are on  
22 commission or whether they're paid by -- like  
23 the girl who cuts my hair, they do a split  
24 because they work out of a salon, so she gets  
25 like thirty or forty percent.

1 THE COURT: And if she is not  
2 there, she probably won't get anything.

3 BOYD YOUNG: Right.

4 THE COURT: Zero.

5 (SIDEBAR CONCLUDED)

6 THE COURT: All right, who is  
7 next?

8 BAILIFF: Number 373, Carolyn  
9 Welch.

10 SIDEBAR:

11 THE COURT: Yes, ma'am, Ms.  
12 Welch?

13 JUROR NUMBER 373: Your  
14 Honor, I retired from law enforcement with  
15 chronic fatigue syndrome disability.

16 THE COURT: What kind of  
17 syndrome?

18  
19 JUROR NUMBER 373: Chronic  
20 fatigue syndrome.

21 THE COURT: Chronic fatigue?

22 JUROR NUMBER 373: Yes,  
23 sir. I may be okay one day and for the next  
24 two or three days I am in bed, unable to rise  
25 from the bed.

1 THE COURT: I am not familiar  
2 with chronic fatigue syndrome. Tell me about  
3 it.

4 JUROR NUMBER 373: It is an  
5 auto immune disease that -- there is no cure.  
6 The symptoms are many and varied. They range  
7 from not only the fatigue that most people  
8 associate with ---

9 THE COURT: Does stress or  
10 anything bring it on?

11 JUROR NUMBER 373: Yes,  
12 sir.

13 THE COURT: How often does it  
14 come o?

15 JUROR NUMBER 373: I may be  
16 okay one day and then down two days, or I may  
17 be okay for a week ---

18 THE COURT: In the last  
19 thirty days, how many days have you been  
20 down?

21 JUROR NUMBER 373: Fourteen,  
22 fifteen.

23 THE COURT: In the last week?

24 JUROR NUMBER 373: Three.

25 THE COURT: Three in the last

1 week?

2 JUROR NUMBER 373: Yes,

3 sir.

4 THE COURT: Does the doctor  
5 give you medication?

6 JUROR NUMBER 373: I am on  
7 several medications, yes.

8 THE COURT: Does that help?

9 JUROR NUMBER 373: No. The  
10 symptoms can be affected by the medication.  
11 Significant depression is also one of the  
12 symptoms and that kind of goes up and down,  
13 but I'm on medication for that. I am on  
14 medication for pain ---

15 THE COURT: What did you do  
16 before your disability?

17 JUROR NUMBER 373: I was an  
18 investigator for Berkeley Electric  
19 Cooperative. I retired from there nine years  
20 ago with the disease. I was in bed for two  
21 years.

22 THE COURT: Okay.

23 JUROR NUMBER 373: Prior to  
24 that, I was also an investigator for the  
25 Department of Defense.

1 THE COURT: Okay. Got a  
2 doctor's excuse saying that you can't work,  
3 can't serve as a juror?

4 JUROR NUMBER 373: No, I  
5 don't.

6 THE COURT: Have you tried to  
7 get one?

8 JUROR NUMBER 373: Oh, I  
9 can get one -- easily, -- yes.

10 THE COURT: If you will get  
11 me a doctor's excuse, I will excuse you.  
12 Okay?

13 JUROR NUMBER 373: Okay. I  
14 mean, I would love to serve but -- (negative  
15 gesture).

16 THE COURT: Get me a doctor's  
17 excuse. Okay?

18 JUROR NUMBER 373: That's  
19 fine.

20 THE COURT: Go have your  
21 lunch.

22 (SIDEBAR CONCLUDED)

23 (JUROR NUMBER 373 PENDING EXCUSAL  
24 ON RECEIPT OF DOCTOR'S EXCUSE)

25 THE COURT: Next.

1 BAILIFF: Number 106, Gilbert  
2 Foxworth.

3 SIDEBAR:

4 THE COURT: Yes, sir, Mr.  
5 Foxworth?

6 JUROR NUMBER 106: How you  
7 doing? Judge, the company that I work for is  
8 a startup company and we're short staffed. I  
9 am the quality manager, as I spoke of  
10 earlier, and I am the only one that can  
11 actually run those tests in the lab for that  
12 company. I do have a quality tech but she  
13 has like three hours of training. Now, I  
14 don't have a problem serving if I could put  
15 specific directions on how to run that  
16 equipment in place these evening for somebody  
17 else to take over and do the tests that they  
18 need. I'd be glad to serve.

19 THE COURT: You will have  
20 time to do that. You will be out of here  
21 this afternoon by 5:00 o'clock or before  
22 then.

23 JUROR NUMBER 106: Okay.  
24 Good enough.

25 THE COURT: Thank you very

1 much.

2 (SIDEBAR CONCLUDED)

3 BAILIFF: Number 234, Cheri L.  
4 Murdock.

5 SIDEBAR:

6 THE COURT: Yes, ma'am, Ms.  
7 Murdock?

8 JUROR NUMBER 234: I've  
9 done grand jury. We were there for about two  
10 months. But I thought ---

11 THE COURT: Grand jury duty  
12 where?

13 JUROR NUMBER 234: It was  
14 in San Diego, California.

15 THE COURT: Oh, that was in  
16 California. We ain't ever had a grand jury  
17 for two months in South Carolina.

18 JUROR NUMBER 234: Right,  
19 most likely. But I had thought that this was  
20 only a week or so and I haven't prepared my  
21 employer -- I work an evening type job where  
22 I work until midnight and I prepared them ---

23 THE COURT: What time do you  
24 go to work?

25 JUROR NUMBER 234: At 1:00

1 o'clock.

2 THE COURT: In the afternoon?

3 JUROR NUMBER 234: Right.

4 I prepared them for someone to cover the  
5 drivers on my routes coming in during the day  
6 and I said, 'No problem, I'll be in there to  
7 do the evening shift and shut down the  
8 computer system.' I might have -- you know,  
9 for two or three weeks, not getting back home  
10 until midnight, my employer is over off  
11 Cainhoy Road; you know, it would be a bit  
12 difficult.

13 THE COURT: You'll just have  
14 to tough it out.

15 JUROR NUMBER 234: All  
16 right then. Thank you very much.

17 (SIDEBAR CONCLUDED)

18 BAILIFF: Number 252, Thomas M.  
19 O'Hare -- 252.

20 SIDEBAR:

21 THE COURT: What you back  
22 for, Mr. O'Hare?

23 JUROR NUMBER 252: Well,  
24 I'm broke.

25 THE COURT: Huh? Can't you

1 get your daddy to give you some money?

2 JUROR NUMBER 252: You  
3 don't know my dad. Actually I just borrowed  
4 some money from him yesterday to pay out some  
5 insurance today. I don't know -- like I  
6 said, I am broke.

7 THE COURT: Tell your dad  
8 that you're down here on jury duty, you're  
9 doing your duty and to give you some money.  
10 Okay?

11 JUROR NUMBER 252: You  
12 don't know him.

13 THE COURT: Go talk to him.  
14 Okay? I am not going to excuse you for that  
15 reason. Okay?

16 JUROR NUMBER 252: Okay.  
17 I just borrowed money today.

18 THE COURT: Go talk to your  
19 dad. Okay?

20 JUROR NUMBER 252: What if  
21 he says 'no.'

22 THE COURT: Well, we will --

23 JUROR NUMBER 252: You ask  
24 my dad, he will tell you. Like I said, I get  
25 paid for what I do.

1 THE COURT: Well, you tell  
2 your dad that if he doesn't have any civic  
3 pride, to help you out while you're serving  
4 jury duty, I've got a problem with your dad.  
5 Okay?

6 JUROR NUMBER 252: All  
7 right.

8 (SIDEBAR CONCLUDED)

9 BAILIFF: Number 399, Brandy  
10 Young.

11 SIDEBAR:

12 JUROR NUMBER 399: I've got  
13 two small children that I am not going to be  
14 able to provide care for, for two weeks.

15 THE COURT: Who is providing  
16 for them this week?

17 JUROR NUMBER 399: Actually  
18 I thought it was just like a day thing and  
19 that you'all decide. I didn't know how it  
20 worked. My grandma has got them today but  
21 she's seventy-eight years old and she's not  
22 going to be able to chase around my four-  
23 year-old. Then I also financially can't,  
24 you know, take off that long from work  
25 because ---

1 THE COURT: That is a problem  
2 for ninety percent of the jurors, Ms. Young.  
3 Finances. I can't start excusing everyone --  
4 tell me who can take care of your babies?

5 JUROR NUMBER 399: Nobody.  
6 All my family works during the daytime except  
7 for my grandma, but -- like I'm saying, she  
8 can't pick up a forty-pound kid. So I don't  
9 know ---

10 THE COURT: Go over and have  
11 a seat in the jury box.

12 (JUROR SEATED)

13 SIDEBAR CONTINUED:

14 SCARLETT WILSON: She has a  
15 job, so I am not clear on who keeps the baby  
16 during the job.

17 THE COURT: Ma'am -- just  
18 have a seat right over in the jury box.  
19 Where does she work?

20 SCARLETT WILSON: Red Lobster,  
21 bartender.

22 THE COURT: She is a bar-  
23 tender at Red Lobster, isn't she? Isn't she  
24 a bartender at Rob Lobster?

25 SCARLETT WILSON: Yeah.

1 THE COURT: Okay, we will  
2 see.

3 (SIDEBAR CONCLUDED)

4 SIDEBAR:

5 JUROR NUMBER 260: Your  
6 Honor, Richard Peck.

7 THE COURT: Do you know your  
8 number?

9 JUROR NUMBER 260: Two  
10 sixty.

11 THE COURT: Two sixty (260)?

12 JUROR NUMBER 260: Yes,  
13 sir.

14 THE COURT: Yes, sir, Mr.  
15 Peck?

16 JUROR NUMBER 260: I am  
17 trying to get a startup up off the ground and  
18 my wife -- I'm not employed other than the  
19 startup, which at this point is ---

20 THE COURT: Startup? What  
21 are you talking about?

22 JUROR NUMBER 260: It's a  
23 marine products company. We've come up with  
24 a new -- well, it's a marine -- it's a  
25 gangway, a particular gangway. My wife is

1 self employed. We're basically living on her  
2 money, which isn't that much. I could maybe  
3 make it to the end of this week. I couldn't  
4 possibly go two and a half weeks.

5 I've been trying to line up  
6 investors, etc. This is, like, the season.  
7 It's taken me all summer to make the contacts  
8 for this month and next month.

9 THE COURT: What kind of  
10 contacts are you talking about?

11 JUROR NUMBER 260: People  
12 that would be willing to finance it.

13 THE COURT: What is going on  
14 in the next two weeks that is so crucial that  
15 you can't do after 5:00 o'clock?

16 JUROR NUMBER 260: I have  
17 to see them.

18 THE COURT: Pardon?

19 JUROR NUMBER 260: I have  
20 to see them.

21 THE COURT: Okay. Got any  
22 appointments lined up?

23 JUROR NUMBER 260: Two.

24 THE COURT: When?

25 JUROR NUMBER 260: Uh, one

1 is the 28th of September.

2 THE COURT: When is the 28th?

3 JUROR NUMBER 260: I think  
4 it's a Monday. Uh, it's taken me forever --  
5 it is has taken me the entire summer to put  
6 together ---

7 THE COURT: When is your  
8 appointment on the 28th?

9 JUROR NUMBER 260: When?

10 THE COURT: Yeah. What time?

11 JUROR NUMBER 260: It's  
12 8:00 in the morning.

13 THE COURT: How long is the  
14 appointment going to last?

15 JUROR NUMBER 260: The  
16 whole day.

17 THE COURT: You got any more  
18 lined up?

19 JUROR NUMBER 260: At this  
20 point, no, but if I don't get more lined up  
21 -- I mean, this is my season.

22 THE COURT: Why is this your  
23 season? That's what I don't understand.

24 JUROR NUMBER 260: Well,  
25 investors basically take the summer off.

1 They're back. If I don't get things put  
2 together for this month and October, I am  
3 looking at January/February. I would be  
4 happy to do something for a week. That would  
5 be my max.

6 THE COURT: Go have a seat in  
7 the jury box.

8 (SIDEBAR CONCLUDED)

9 BAILIFF: Juror Number 230,  
10 Michael D. Morris.

11 SIDEBAR:

12 THE COURT: Okay, Mr. Morris.

13 JUROR NUMBER 230: The job  
14 that I work, I don't have any personal days  
15 or sick days, I am just -- I am a contractor/  
16 engineer for Gulfstream Aerospace.

17 THE COURT: For Gulfstream  
18 Aerospace?

19 JUROR NUMBER 230: Yes,  
20 sir.

21 THE COURT: How long have you  
22 been working for Gulfstream?

23 JUROR NUMBER 230: A year  
24 and a half but I don't -- I work for a  
25 contractor but Gulfstream pays me under them.

1 THE COURT: Who is the  
2 contractor?

3 JUROR NUMBER 230: PDS  
4 Technical.

5 THE COURT: Do they pay  
6 anything for jury duty?

7 JUROR NUMBER 230: I get  
8 paid and I get some medical, but that's it.

9 THE COURT: Do you know that  
10 some companies will pay for jury service?  
11 Have you asked them?

12 JUROR NUMBER 230: No, sir,  
13 I haven't asked. I can do that.

14 THE COURT: Go give the Clerk  
15 your employer's name and phone number and we  
16 will make a phone call. All right?

17 JUROR NUMBER 230: Yes,  
18 sir.

19 THE COURT: All right, go  
20 give it to the clerk. We will make a phone  
21 call and see what kind of pay that they give  
22 you. Okay -- if they give you pay.

23 (SIDEBAR CONCLUDED)

24 BAILIFF: Juror Number 201,  
25 Sharon Logan.

1 SIDEBAR:

2 JUROR NUMBER 201: I am a  
3 caretaker for my two grandchildren, a one-  
4 and-a-half and a three-year old.

5 THE COURT: Okay. Tell me  
6 more.

7 JUROR NUMBER 201: One of  
8 their parents is an EMS paramedic for  
9 Berkeley County and I have to keep the one-  
10 year-old overnight. The other parent ---

11 THE COURT: Who else is in  
12 the household overnight?

13 JUROR NUMBER 201: Me.

14 THE COURT: You got a  
15 husband?

16 JUROR NUMBER 201: My  
17 husband has been in Kuwait six months. He  
18 comes home Friday.

19 THE COURT: He has been  
20 where?

21 JUROR NUMBER 201: Kuwait.  
22 We do have a trip planned for a few days next  
23 week. I really would like to take that with  
24 him because he has been gone so long.

25 THE COURT: How long has he

1           been gone?

2                           JUROR NUMBER 201:           Six

3           months.

4                           THE COURT:       Okay. You're  
5           excused.

6                           (JUROR NUMBER 201 EXCUSED)

7                           BAILIFF:         Number ---

8                           THE COURT:       Hold on for just a  
9           second. You'all come here just a second?

10                          SIDEBAR:

11                          THE COURT:       How about this  
12           guy with the investors.

13                          SCARLETT WILSON: I am less  
14           sympathetic to him then I am the other  
15           people.

16                          THE COURT:       I didn't know  
17           that investors take the summer off. I didn't  
18           know that investors quit making money in the  
19           summertime.

20                          SCARLETT WILSON: I am less  
21           sympathetic to him than the other people, the  
22           other two girls.

23                          BRUCE DURANT:     If all he can  
24           say is that he only has one appointment in  
25           the next two weeks, he isn't working too dern

1 hard, is he, Judge?

2 THE COURT: What about the  
3 lady, the bartender?

4 SCARLETT WILSON: I think she  
5 needs to hang around unless we find out -- I  
6 can't figure out how she goes to work ---

7 THE COURT: I just have  
8 problems with the guy's investor story. I  
9 didn't know investors took the summer off.

10 BOYD YOUNG: Maybe ---

11 SCARLETT WILSON: Maybe it's  
12 summer elsewhere.

13 THE COURT: I don't know.  
14 The hairdresser, I am sympathetic to her.

15 (SIDEBAR CONCLUDED) ^

16 THE COURT: Come on up.

17 BAILIFF: Number 256, Richard  
18 Pass.

19 SIDEBAR:

20 THE COURT: Mr. Pass.

21 JUROR NUMBER 256: Your  
22 Honor, I have nonrefundable airline tickets  
23 on the 25th of September. I know that's a  
24 week from this Friday, so -- it's for my in-  
25 laws' family reunion, so there is no way that

1 I can get out of it and get refunded.

2 Otherwise, I am going to lose ---

3 THE COURT: Well, I know that  
4 it is nonrefundable but you could transfer to  
5 another time.

6 JUROR NUMBER 256: Yeah, I  
7 don't want to ---

8 THE COURT: Because I think  
9 it costs a ticket transfer fee of \$100. Got  
10 anywhere else that you want to do?

11 JUROR NUMBER 256: I travel a  
12 lot. I am not worried about that. It is --  
13 I just don't, you know, want to lose the  
14 money. As I said, it's well over \$300.

15 THE COURT: I understand that  
16 but if you want an excuse not to go, you  
17 could transfer the ticket for a hundred  
18 dollars and go to Vegas or something.

19 JUROR NUMBER 256: I am not  
20 worried about going. Like I said, it is  
21 going to cost me.

22 THE COURT: Where are you  
23 going to?

24 JUROR NUMBER 256: Dallas,  
25 actually north of Dallas.

1 THE COURT: Well, you haven't  
2 been to Dallas lately, have you?

3 JUROR NUMBER 256: No, sir.

4 THE COURT: What is your  
5 position?

6 SCARLETT WILSON: It's up to  
7 him.

8 JUROR NUMBER 256: Friday  
9 through Sunday, just a short weekend. Coming  
10 back Sunday night.

11 THE COURT: And when are you  
12 talking about going?

13 JUROR NUMBER 256: The  
14 25th, Friday the ---

15 THE COURT: When is that?

16 SCARLETT WILSON: Friday week.

17 BRUCE DURANT: A week from  
18 this Friday.

19 THE COURT: What time are you  
20 leaving Friday?

21 JUROR NUMBER 256: First  
22 thing Friday morning, come back late Sunday  
23 night. So -- (pause).

24 BOYD YOUNG: You are leaving  
25 on the 25th?

1 JUROR NUMBER 256: Yes,  
2 sir.

3 BOYD YOUNG: This is very  
4 selfish on my part but I'm inclined to keep  
5 you around. My twin boys turn two on the  
6 25th, so if he is gone then I can't be here.  
7 So ---

8 THE COURT: If he's got non-  
9 refundable tickets, I ---

10 SCARLETT WILSON: I will leave  
11 it up to him and you. I'm flexible either  
12 way.

13 BRUCE DURANT: I hate to  
14 lose him for a day, Judge. You know, we  
15 could always ---

16 THE COURT: Well, I am not  
17 going to take the whole day off just because  
18 of him. Okay?

19 SCARLETT WILSON: Are you  
20 interested at all in transferring them?

21 THE COURT: I mean, you could  
22 transfer them to ---

23 JUROR NUMBER 256: Not  
24 really. I mean, I do want to go.

25 SCARLETT WILSON: I hear you.

1 THE COURT: I will excuse  
2 you. I think that's ---

3 JUROR NUMBER 256: Sorry  
4 about that.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Juror Number 256  
7 is excused.

8 (JUROR NUMBER 256 EXCUSED)

9 BAILIFF: Juror Number 258, Mark  
10 Paulhamus.

11 SIDEBAR:

12 THE COURT: Yes, sir?

13 JUROR NUMBER 258: I am not  
14 going to be able to do it, financially,  
15 because my work is not going to compensate me  
16 and I have ---

17 THE COURT: What kind of work  
18 do you have?

19 JUROR NUMBER 258: I am an  
20 automotive technician.

21 THE COURT: For who?

22 JUROR NUMBER 258: Rick  
23 Hendrick Jeep Chrysler.

24 THE COURT: Rick Hendrick  
25 Jeep Chrysler?

1 JUROR NUMBER 258: Yeah,

2 and Dodge.

3 THE COURT: How long have you  
4 worked there?

5 JUROR NUMBER 258: Six  
6 years.

7 THE COURT: And you get paid  
8 by the hour?

9 JUROR NUMBER 258: No, sir,  
10 I get paid a flat rate.

11 THE COURT: Flat rate for  
12 what? Per job?

13 JUROR NUMBER 258: Yeah, I  
14 have installs and I am required to make them  
15 \$10,000 a month, you know, to keep my sales.  
16 It's sort of like a barber shop.

17 THE COURT: Have you asked  
18 them if they would pay for your jury duty?

19 JUROR NUMBER 258: Negative  
20 but ---

21 THE COURT: Have you asked  
22 them?

23 JUROR NUMBER 258: No, sir.

24 THE COURT: Okay. See this  
25 lady right here (indicating Clerk). Go give

1 her your employer's number. She is going to  
2 call the personnel section to see if they  
3 will pay you while you're working on jury  
4 duty. Okay?

5 JUROR NUMBER 258: All  
6 right.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Ollie, when you call  
9 these companies, talk to Human Resources.  
10 Tell them that this guy may be on jury duty.  
11 If he is chosen on jury duty, will they pick  
12 up their patriotic civic duty and pay him?

13 CLERK: Yes, sir.

14 THE COURT: What number was he?

15 SCARLETT WILSON: He was 258.

16 THE COURT: All right.

17 SCARLETT WILSON: Mark Paulhamus.

18 THE COURT: Rick Hendrick, they  
19 advertise enough on television. Who is next?

20 BAILIFF: Juror Number 374,  
21 Francis Wells.

22 THE COURT: What number?

23 BAILIFF: Number 374.

24 SIDEBAR:

25 THE COURT: Yes, sir, Mr.

1 Wells?

2 JUROR NUMBER 374: I run  
3 two medical facilities from 8:00 in the  
4 morning until 8:00 at night. I have a part-  
5 time bookkeeper, full time technical guy, ---

6 THE COURT: What kind of  
7 medical director?

8 JUROR NUMBER 374: Urgent  
9 care, HealthFirst. One of Rivers Avenue and  
10 one here in Summerville.

11 THE COURT: Okay.

12 JUROR NUMBER 374: I pretty  
13 much do all the HR, finance, banking, the  
14 legal. We have depositions going on right  
15 now with a malpractice lawsuit.

16 THE COURT: Those can be  
17 rescheduled?

18 JUROR NUMBER 374: These  
19 can't. We have a certain amount of time and  
20 the last witness has been called and we have  
21 a certain amount of time to get in the last  
22 depositions before trial, which is sometime  
23 in November.

24 THE COURT: I suspect that I  
25 could get those rescheduled?

1 JUROR NUMBER 374: That  
2 would be great.

3 THE COURT: I am not  
4 concerned about rescheduling deposition.

5 JUROR NUMBER 374: Good.

6 THE COURT: I promise that  
7 can get done.

8 JUROR NUMBER 374: Well, I  
9 do that in addition to all the HR, all the  
10 banking, everything in the building. Nobody  
11 has all the safe codes except for me. We do  
12 have an owner ---

13 THE COURT: What happens when  
14 you're sick?

15 JUROR NUMBER 374: I still  
16 go into work when I'm sick. It's an urgent  
17 care facility.

18 THE COURT: How about if you  
19 had the swine flu, you'd go in and spread it  
20 to the whole ---

21 JUROR NUMBER 374: Regular  
22 flu, nothing different than the regular flu.

23 THE COURT: I understand but  
24 would you still go in there and spread?

25 JUROR NUMBER 374: I

1 haven't had the swine flu.

2 THE COURT: I know but -- I  
3 find it absurd. You've got an employer that  
4 you've got to be there every day. What about  
5 vacations? What happens when you have  
6 vacation?

7 JUROR NUMBER 374: I take  
8 off Fridays or Thursday and Friday, we go to  
9 Orlando and we do it all in three days.

10 THE COURT: And you're  
11 worried about the finances and what else?

12 JUROR NUMBER 374: I do  
13 Human Resources, the finances, all the  
14 banking, all the legal, everything in the  
15 building basically. We do have an owner, a  
16 kind of absentee owner. He's hunting for the  
17 month of September. A great guy but ---

18 THE COURT: He's hunting?

19 JUROR NUMBER 374: --- he's  
20 not around much, so I'm there. He pays me  
21 well and I run everything for him.

22 THE COURT: Have a seat over  
23 in the jury box.

24 (JUROR SEATED)

25 SIDEBAR CONTINUED:

1 THE COURT: The owner is off  
2 hunting and he wants off jury duty. What do  
3 you all think about him?

4 BRUCE DURANT: I think he's  
5 good.

6 SCARLETT WILSON: I think he'll  
7 be fine.

8 THE COURT: And his boss is  
9 hunting the whole month of September? There  
10 won't be any banking going on, there ain't  
11 going to be no money coming in. He's -- if  
12 he's got a problem with depositions, I can  
13 take care of that.

14 (SIDEBAR CONCLUDED)

15 BAILIFF: Number 18, Judge,  
16 Travonia Beaufort.

17 SIDEBAR:

18 THE COURT: Yes, ma'am, Ms.  
19 Beaufort: How you doing today?

20 JUROR NUMBER 18: Good. How  
21 are you?

22 THE COURT: What's your  
23 problem?

24 JUROR NUMBER 18: I teach at  
25 Fishburne Headstart and it would be hard for

1 me to take off the next couple of weeks, but  
2 I'd be more than willing to come back over  
3 the summer.

4 THE COURT: Why would it be  
5 hard? Don't you'all have substitutes?

6 JUROR NUMBER 18: No. I am a  
7 lead teacher, so ---

8 THE COURT: What happens when  
9 you get sick?

10 JUROR NUMBER 18: I would have  
11 to take off.

12 THE COURT: You don't have  
13 somebody that you can call in, like public  
14 schools have substitutes?

15 JUROR NUMBER 18: No.

16 THE COURT: You'all don't  
17 have substitutes?

18 JUROR NUMBER 18: (Negative  
19 gesture) not really.

20 THE COURT: What about your  
21 backup teacher?

22 JUROR NUMBER 18: I do have an  
23 assistant teacher but we have ---

24 THE COURT: Can't she teach?

25 JUROR NUMBER 18: We have

1           seventeen kids, though. Being that I am a  
2           lead teacher, we can't leave the kids -- the  
3           kids/classroom over ratio.

4                   THE COURT:     How many teachers  
5           do you have in the Headstart Program?

6                   JUROR NUMBER 18:   At my  
7           location we have six..

8                   THE COURT:     You've got six?

9                   JUROR NUMBER 18:   Yes, sir.

10                   THE COURT:    How many  
11           students?

12                   JUROR NUMBER 18:   In each class  
13           the minimum is seventeen:

14                   THE COURT:     Seventeen?

15                   JUROR NUMBER 18:   Yes, sir.

16                   THE COURT:     Well, you are  
17           just going to have to work out something on  
18           that. I am not going to excuse you. If it  
19           is two weeks, it's two weeks. If there are  
20           thirty-four students in somebody's class,  
21           they're just going to have to be that way.  
22           Thank you very much, though.

23                   (SIDEBAR CONCLUDED)

24                   BAILIFF:        Number 139, Deborah  
25           Harvey., Number 139.

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SIDEBAR:

THE COURT: How you doing,  
Ms. Harvey?

JUROR NUMBER 139: The only  
thing that I have is that I've been paying  
almost ---

THE COURT: Do what now?

JUROR NUMBER 139: I have  
been paying almost every one of the bills in  
my house. My husband is an over-the-road  
trucker but work has slowed down so bad that  
he's lucky, after they take \$180 for child  
support to go to another state, he's bringing  
home about \$150. We have one vehicle. They  
are probably going to repo it because it's  
already three and a half months behind.

THE COURT: Where do you  
work?

JUROR NUMBER 139: I work  
for the City of Goose Creek.

THE COURT: Where?

JUROR NUMBER 139: The City  
of Goose Creek.

THE COURT: What do you do?

JUROR NUMBER 139: I clean

1 the rec center from midnight to 8:30 in the  
2 morning. We have one vehicle. I take my  
3 children back and forth to work (sic) every  
4 day. I have a daughter that is a fulltime  
5 student at Trident Tech. So it's either ---  
6 it's impossible.

7 THE COURT: And you work from  
8 midnight to ---

9 JUROR NUMBER 139: Until  
10 8:30 in the morning.

11 THE COURT: Cleaning up the  
12 rec center?

13 JUROR NUMBER 139: Yes.

14 THE COURT: That's the only  
15 job that you have?

16 JUROR NUMBER 139: That's  
17 the only job that I have other than taking  
18 care of four teenagers.

19 THE COURT: When do you  
20 sleep?

21 JUROR NUMBER 139: Actually  
22 maybe four to five hours between 11:00 and  
23 3:00, and then I sleep for maybe two hours  
24 before I go in. That's just about it. I  
25 have to do something. Like I say, it's me

1           trying to pay all the bills in the house. My  
2           husband does get freight ---

3                           THE COURT:       Who does he drive  
4           for?

5                           JUROR NUMBER 139:       Southern  
6           Tank. Sometime he gets paid \$75 a load and  
7           that's it.

8                           THE COURT:       Why is he doing  
9           it?

10                          JUROR NUMBER 139:       It's the  
11           only thing he's got right now. He's put his  
12           application in at other places. He's been  
13           driving a truck for nineteen years and they  
14           are just not paying. They've dropped the  
15           freight prices so bad -- out of Westvaco  
16           he'll take a load that pay \$50 only, just for  
17           something; because he's got to meet his child  
18           support obligations from New York, because  
19           otherwise New York will come and get him.

20                          THE COURT:       All right. You  
21           got enough on you without having to worry  
22           about jury duty. Have a great day.

23                          Go eat you a free lunch. Okay?

24                          JUROR NUMBER 139:       Thank  
25           you.

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(SIDEBAR CONCLUDED)

(JUROR NUMBER 139 EXCUSED)

BAILIFF: Number 107, David

Fuchs.

SIDEBAR:

THE COURT: Yes, sir?

JUROR NUMBER 107: My wife  
was laid off work back in March. So I've  
been six months without her income. She also  
had a pending workers comp claim, they took  
her -- they limited her functions at the  
time. She was laid off through the  
downsizing. So she has no ---

THE COURT: Where do you  
work?

JUROR NUMBER 107: I work  
at Nucor Steel.

THE COURT: Doing what?

JUROR NUMBER 107: I am a  
crane operator for them.

THE COURT: Do you get paid  
by the hour?

JUROR NUMBER 107: I get  
paid production pay, production bonus. I do  
get paid for jury leave ---

1 THE COURT: You get paid for  
2 jury leave?

3 JUROR NUMBER 107: Yeah,  
4 but it's like a third of what I normally make  
5 and it would really put me in a bind. She is  
6 not even getting -- my wife is not even  
7 getting, uh, uh, -- I can't think of the word  
8 now.

9 THE COURT: She is not  
10 getting temporary total disability?

11 JUROR NUMBER 107: No.  
12 She's not getting anything yet. We're  
13 waiting to see ---

14 THE COURT: Has she had a  
15 hearing yet?

16 JUROR NUMBER 107: No, sir,  
17 we haven't. We're waiting to hear a date on  
18 the hearing. I am the one that is going to  
19 be ---

20 THE COURT: Tell me about  
21 what your company pays you.

22 JUROR NUMBER 107: They pay  
23 me, like, vacation, they pay me -- we get  
24 paid on the production week we run, so we get  
25 paid an hourly rate and then it is multiplied

1 by whatever the production is. On jury duty  
2 or vacation, we only get paid just whatever  
3 the production rate was.

4 THE COURT: Well, tell me  
5 what that is.

6 JUROR NUMBER 107: Well, on  
7 a normal day when I am there working, I make  
8 \$350 a day. On vacation I probably make  
9 about \$120; which would be jury duty, leave  
10 or the vacation ---

11 THE COURT: That's all  
12 that they pay you?

13 JUROR NUMBER 107: Yes,  
14 sir.

15 THE COURT: Production leave?

16 JUROR NUMBER 107: Yes,  
17 sir.

18 THE COURT: How have you'all  
19 been doing for the last six months?

20 JUROR NUMBER 107: Well,  
21 been limping along. My savings is dried out.  
22 I'm in debt with my in-laws. So it's kind of  
23 like, you know, -- we've been limping along  
24 but with this, with this I -- it will put me  
25 way behind.

1 THE COURT: Has the company  
2 accepted liability on the comp case with your  
3 wife, or are they fighting it?

4 JUROR NUMBER 107: No.  
5 They're fighting it.

6 THE COURT: They are fighting  
7 the ---

8 JUROR NUMBER 107: The only  
9 thing that they are paying for is the  
10 medication and any kind of treatment for her  
11 neck. She fell at work and she has two  
12 bulging vertebrae, disks, in her neck.

13 THE COURT: Okay.

14 JUROR NUMBER 107: Also her  
15 right shoulder was damaged.

16 THE COURT: Any questions?

17 WILLIAM MAGUIRE: I've got no  
18 questions, nor any objections.

19 THE COURT: Objections?

20 SCARLETT WILSON: Can he sit  
21 with the other group and let's take them up  
22 when ---

23 THE COURT: Have a seat over  
24 there.

25 (JUROR SEATED)

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SIDEBAR CONTINUED:

THE COURT: What number was he?

BRUCE DURANT: Number 107.

SCARLETT WILSON: My concern is -- I mean, compared to the other folks, he's getting something.

THE COURT: I know. He's getting a third or he's getting half of what he normally gets.

SCARLETT WILSON: A lot of people are getting none.

THE COURT: I know. I'll just have to let him sit a minute, think about it.

Have you'all gotten their names written down.

PATRICIA KENNEDY: I have stars behind them.

THE COURT: Go get their names and numbers and let them go ahead and eat their box lunches.

CLERK: Yes, sir.

(SIDEBAR CONCLUDED)

THE COURT: Mr. Paulhamus, do you

1 want to come around?

2 JUROR NUMBER 258: Yes, sir.

3 THE COURT: Your employer will pay  
4 you for jury duty, so I am not excusing you.  
5 Go get your lunch.

6 Who is next? Ma'am, you can come  
7 around. What was your name again?

8 JUROR NUMBER 188: Krista Lane.  
9 Krista -- 188.

10 THE COURT: Tell me this, tell me  
11 how you are paid at the hair salon?

12 JUROR NUMBER 188: It is  
13 commission based. So if I am not there, I  
14 don't get paid.

15 THE COURT: You don't get anything  
16 if you're not there?

17 JUROR NUMBER 188: (Negative  
18 gesture).

19 THE COURT: You've got to cut hair  
20 to get paid?

21 JUROR NUMBER 188: (Affirmative  
22 nod), and then you only ---

23 THE COURT: Where do you work?

24 JUROR NUMBER 188: Villanova --  
25 and then you only make half.

1 THE COURT: Split commissions with  
2 your employer?

3 JUROR NUMBER 188: Yeah.

4 THE COURT: They don't pay you a  
5 base, so much over and above the number of  
6 cuts?

7 JUROR NUMBER 188: Nothing. If  
8 you're not there, you don't get paid.

9 THE COURT: Any questions?

10 BOYD YOUNG: No objection.

11 THE COURT: Any objection?

12 SCARLETT WILSON: No, sir.

13 THE COURT: I am going to excuse  
14 you.

15 JUROR NUMBER 188: Thank you  
16 very much.

17 (JUROR NUMBER 188 EXCUSED)

18 THE COURT: What's next? Do  
19 you'all want to take a break for lunch or  
20 plough on through these? Mia, how are you  
21 doing? There's a line out the door still.

22 BRIAN ALFARO: I wouldn't mind  
23 taking a few minutes.

24 THE COURT: How many more have we  
25 got?

1 BAILIFF: About twenty or so.

2 THE COURT: It is 1:30 now, what  
3 do you'all want to do?

4 BAILIFF: Twenty-five.

5 THE COURT: We're talking about  
6 another hour ---

7 WILLIAM MAGUIRE: We are probably  
8 talking about another two hours. If you  
9 think -- if you're thinking about starting  
10 to do panels today, that is going to be ---

11 THE COURT: How much time do  
12 you'all want for lunch?

13 (OFF RECORD DISCUSSION)

14 THE COURT: Tell the twenty-five  
15 who are waiting that we are going to take a  
16 lunch break, about thirty minutes. Tell them  
17 to go get their lunch and get back lined up  
18 in about, say, forty-five minutes. Instead  
19 of thirty, we will take about forty-five  
20 minutes.

21 (LUNCH RECESS 1:35 - 2:22 P.M.)

22 THE COURT: Please be seated. Is  
23 the State ready to proceed?

24 SCARLETT WILSON: Yes, sir.

25 THE COURT: Is the defense ready

1 to proceed? Are you'all ready to proceed?

2 BOYD YOUNG: Yes, sir, Your Honor.

3 THE COURT: All right, who is next  
4 on our list?

5 BAILIFF: Number 79, Judge.

6 SIDEBAR:

7 THE COURT: Number 79, Mr.  
8 Dennis. How you doing today?

9 JUROR NUMBER 79: How you doing  
10 today?

11 THE COURT: You doing okay?

12 JUROR NUMBER 79: Yes, sir.

13 THE COURT: What can I help  
14 you with?

15 JUROR NUMBER 79: I own a  
16 company, Swampfox Utilities. In this  
17 economy, we haven't been doing good. To miss  
18 even a week's work, I might as well put a  
19 nail in the coffin. It's done. We're  
20 bidding work. I've got ten jobs bid this  
21 week, I've got six bid next week, I've got  
22 more bid the following week.

23 THE COURT: Are you in the  
24 bidding process?

25 JUROR NUMBER 79: I am in the

1 bidding process, I am also working and I'm  
2 managing four jobs.

3 THE COURT: How many jobs  
4 have you got going now?

5 JUROR NUMBER 79: Four.

6 THE COURT: Four?

7 JUROR NUMBER 79: Yes, sir.

8 THE COURT: And what is the  
9 name of your company?

10 JUROR NUMBER 79: Swamp Fox  
11 Utilities.

12 THE COURT: What do you do?

13 JUROR NUMBER 79: Roads,  
14 bridges, water, sewer. We're working on  
15 three DOT projects and one Federal law  
16 enforcement.

17 THE COURT: What is your  
18 involvement in the company?

19 JUROR NUMBER 79: I'm VP, VP  
20 and Owner and -- I bid the work and I manage  
21 the work.

22 THE COURT: Okay. Do you  
23 have anybody else to help you?

24 JUROR NUMBER 79: No, sir.

25 THE COURT: How many people do

1 you have employed?

2 JUROR NUMBER 79: Thirty-

3 something...

4 THE COURT: Thirty?

5 JUROR NUMBER 79: Yes, sir.

6 THE COURT: Who assists you  
7 with the bids?

8 JUROR NUMBER 79: Me.

9 THE COURT: Nobody else?

10 JUROR NUMBER 79: No, sir.

11 THE COURT: What happens when  
12 you're sick?

13 JUROR NUMBER 79: That part  
14 don't get done.

15 THE COURT: You don't have  
16 anybody that can help you with the bid  
17 process?

18 JUROR NUMBER 79: No, sir. I  
19 laid him off two months ago.

20 THE COURT: You laid him off  
21 two months ago?

22 JUROR NUMBER 79: Yes, sir.

23 THE COURT: Because of the  
24 economy?

25 JUROR NUMBER 79: Yes, sir.

1 THE COURT: And you've got  
2 how many bids to put out this week?

3 JUROR NUMBER 79: I've got ten  
4 this week.

5 THE COURT: Ten bids to put  
6 out?

7 JUROR NUMBER 79: Yes, sir.

8 THE COURT: How many next  
9 week?

10 JUROR NUMBER 79: I know that  
11 I've got six next week and the following week  
12 is probably another eight on the board right  
13 now.

14 THE COURT: Who manages the  
15 on-the-site job work?

16 JUROR NUMBER 79: I've got  
17 people that's on site. I talk with them on a  
18 daily basis and I see the jobs at least a  
19 couple times a week.

20 THE COURT: The rest of the  
21 time you're in the office?

22 JUROR NUMBER 79: Yes, sir.

23 THE COURT: Who is in the  
24 office with you?

25 JUROR NUMBER 79: My wife and

1 the secretary.

2 THE COURT: That's it?

3 JUROR NUMBER 79: Yes, sir.

4 BOYD YOUNG: I have no  
5 objections. Solicitor?

6 SCARLETT WILSON: It's up to  
7 you.

8 THE COURT: When is your  
9 slack time?

10 JUROR NUMBER 79: There is  
11 none. And now if the economy doesn't back  
12 up, we're going to shut the doors.

13 THE COURT: There has to be  
14 some slack time. You're not going to be  
15 doing many roads in January and February, are  
16 you?

17 JUROR NUMBER 79: No, I stay  
18 busy.

19 THE COURT: Pardon?

20 JUROR NUMBER 79: When the  
21 economy is up, I stay busy.

22 THE COURT: Well, the economy  
23 is not up right now.

24 JUROR NUMBER 79: I know that  
25 but still there's -- that's the problem.

1 With the economy being down, I've laid off  
2 people. Now I am working harder than I would  
3 be working if it was up.

4 THE COURT: All right. I will  
5 excuse you, Mr. Dennis. Okay?

6 JUROR NUMBER 79: Thank you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Excuse Juror Number  
9 79.

10 (JUROR NUMBER 79 EXCUSED)

11 BAILIFF: Number 230, Michael  
12 Morris.

13 SIDEBAR:

14 THE COURT: Hey, Mr. Morris,  
15 how you doing?

16 JUROR NUMBER 230: Pretty  
17 good, sir. I ---

18 THE COURT: What did you find  
19 out about his employer?

20 CLERK: He didn't give me any  
21 help on numbers so that we could call. We  
22 went online and ---

23 JUROR NUMBER 230: I got a  
24 phone number.

25 THE COURT: Go talk with her.

1 I am going to have to find out whether your  
2 employer is going to pay you. If your  
3 employer is not going to pay you, then I will  
4 talk to you. Until that decision is made  
5 you're on the jury. Okay?

6 JUROR NUMBER 230: Yes,  
7 sir.

8 THE COURT: Do you understand?

9 JUROR NUMBER 230: Yes,  
10 sir.

11 THE COURT: It behooves you,  
12 if you want off of this, to talk to her and  
13 get somebody that she can talk to. Okay?

14 JUROR NUMBER 230: Yes,  
15 sir.

16 (SIDEBAR CONCLUDED)

17 BAILIFF: Juror Number 159,  
18 Clifton Jenkins.

19 SIDEBAR:

20 THE COURT: Yes, sir, Mr.  
21 Jenkins?

22 JUROR NUMBER 159: Your  
23 Honor, I will be honest with you. I can't  
24 financially afford to miss two to two-and-  
25 a-half weeks of work.

1 THE COURT: What kind of work  
2 do you do?

3 JUROR NUMBER 159: I am an  
4 auto technician and work has been about half  
5 of what it normally is.

6 THE COURT: Do you work for  
7 yourself or do you work for ---

8 JUROR NUMBER 159: I work  
9 for somebody else.

10 THE COURT: Who do you work for?

11 JUROR NUMBER 159: Citadel  
12 Auto Service on West Ashley.

13 THE COURT: How many  
14 employees do they have?

15 JUROR NUMBER 159: I am the  
16 only employee.

17 THE COURT: One?

18 JUROR NUMBER 159: (Affirmative  
19 nod).

20 THE COURT: It's just you and  
21 one other person?

22 JUROR NUMBER 159: Yes,  
23 sir.

24 THE COURT: Does he work on  
25 cars, too?

1 JUROR NUMBER 159: Well, I  
2 work -- he's actually like sixty, sixty-five  
3 years old and I do all of the work on those  
4 vehicles.

5 THE COURT: What does he do?  
6 Just the office work?

7 JUROR NUMBER 159: Yes,  
8 sir.

9 THE COURT: How many stalls  
10 do you have?

11 JUROR NUMBER 159: We have  
12 two lifts.

13 THE COURT: Got what? .

14 JUROR NUMBER 159: Two  
15 lifts.

16 THE COURT: Two lifts?

17 JUROR NUMBER 159? Yes,  
18 sir.

19 THE COURT: There's nobody  
20 else?

21 JUROR NUMBER 159: (Negative  
22 gesture).

23 THE COURT: What happens when  
24 you're sick?

25 JUROR NUMBER 159: He

1 pretty much shuts down?

2 THE COURT: Huh?

3 JUROR NUMBER 159: He has  
4 been closing when I haven't been there. Like  
5 today, he's closed.

6 THE COURT: Do you have any  
7 other source of income?

8 JUROR NUMBER 159: My wife  
9 works but that's -- money is very tight for  
10 us right now. If I was to miss two and a  
11 half weeks, I'd been late for my rent -- I  
12 mean my mortgage this coming month.

13 THE COURT: Solicitor?

14 SCARLETT WILSON: Can he sit  
15 with the other group over there?

16 JUROR NUMBER 159: I mean,  
17 I'd be willing to try this in a couple of  
18 months if business were better.

19 THE COURT: Do what?

20 JUROR NUMBER 159: I would  
21 be willing to serve on a jury in a couple of  
22 months, especially if business were to pick  
23 up so that I could afford to do it.

24 THE COURT: But nobody knows  
25 that. Some of the best economists in the

1 country don't know that.

2 JUROR NUMBER 159: Right.

3 THE COURT: I am sure not  
4 going to try to predict that.

5 JUROR NUMBER 159: Yes,  
6 sir. I understand.

7 BOYD YOUNG: We've got no  
8 objection to transferring him to a week where  
9 there would be a little shorter trial?

10 SCARLETT WILSON: Can we just  
11 take this up as we get to them?

12 THE COURT: I mean, we can  
13 drag it out forever, keep rehashing it.

14 SCARLETT WILSON: That's fine.  
15 I would like to be heard after that.

16 THE COURT: All right, go  
17 have a seat in the jury box.

18 (JUROR TAKES SEAT)

19 SIDEBAR CONTINUED:

20 THE COURT: Number 159,  
21 Jenkins.

22 SCARLETT WILSON: Judge, this  
23 has put me on the spot.

24 THE COURT: What about the  
25 ones that we have already got sitting over

1           there. Where are they?

2                       SCARLETT WILSON: I don't know.  
3 I would just ask that you not put me on the  
4 spot in front of the person.

5                       THE COURT: I didn't put you  
6 on the spot with that.

7                       SCARLETT WILSON: I know, but  
8 when they are volunteering in front of the  
9 person to excuse them and then I am having to  
10 say 'well, wait a minute'.

11                      THE COURT: I won't ask  
12 either one of you. That's fine. I will just  
13 make the decision myself. I will just ask if  
14 you have any Motions. Okay?

15                      SCARLETT WILSON: Okay.

16                      THE COURT: Okay? I won't  
17 put you on the spot. I understand what  
18 you're saying.

19                      (SIDEBAR CONCLUDED)

20                      THE COURT: Call them out, please.

21                      BOYD YOUNG: I don't think any of  
22 them are in here.

23                      THE COURT: Of the ones that were  
24 sitting in the jury box, are there -- are  
25 they still in the room eating? See if you

1 can round them up and get them back in the  
2 jury box. Who is next?

3 BAILIFF: Number 50 is next,  
4 Judge, Marie Carroll.

5 SIDEBAR:

6 THE COURT: Yes, ma'am, Ms.  
7 Carroll?

8 JUROR NUMBER 50: I just  
9 checked with work and we don't get any jury  
10 pay.

11 THE COURT: Do what?

12 JUROR NUMBER 50: We don't get  
13 any jury pay.

14 THE COURT: Where do you  
15 work?

16 JUROR NUMBER 50: Dr. Andrews'  
17 office.

18 THE COURT: Who?

19 JUROR NUMBER 50: James Andrews  
20 in Summerville.

21 THE COURT: What does he do?

22 JUROR NUMBER 50: He's a  
23 dentist.

24 THE COURT: He's a dentist?

25 JUROR NUMBER 50: Um-humm.

1 THE COURT: He doesn't pay  
2 you anything?

3 JUROR NUMBER 50: Not for jury  
4 duty.

5 THE COURT: Have you asked  
6 him?

7 JUROR NUMBER 50: No, I just  
8 asked the office manager when I called her.

9 THE COURT: Pardon?

10 JUROR NUMBER 50: I asked the  
11 office manager when I called her.

12 THE COURT: And it is Doctor  
13 -- who?

14 JUROR NUMBER 50: James  
15 Andrews.

16 THE COURT: What do you do  
17 with James Andrews?

18 JUROR NUMBER 50: Receptionist.

19 THE COURT: Receptionist?

20 JUROR NUMBER 50: Um-humm.

21 THE COURT: How long have you  
22 worked there?

23 JUROR NUMBER 50: Two years.

24 THE COURT: Two years?

25 JUROR NUMBER 50: Yes, sir.

1 THE COURT: Does your husband  
2 work?

3 JUROR NUMBER 50: My husband  
4 does work.

5 THE COURT: Where does he  
6 work?

7 JUROR NUMBER 50: He works for  
8 the Ports Authority but we are two house  
9 payments behind ---

10 THE COURT: What?

11 JUROR NUMBER 50: --- two house  
12 payments behind, getting ready to lose our  
13 house. So I need to work.

14 THE COURT: Has he been laid  
15 off recently?

16 JUROR NUMBER 50: He has not.  
17 Then they say this thing is going to last  
18 about two and a half weeks?

19 THE COURT: My question is --  
20 you've been working, he's been working, you  
21 are two house payments behind. You'all were  
22 in trouble before I asked you to sit on the  
23 jury. Right?

24 JUROR NUMBER 50: Yeah.

25 THE COURT: Because I have --

1 at one point we split up and I bought another  
2 house.

3 THE COURT: You did what?

4 JUROR NUMBER 50: I bought  
5 another house.

6 THE COURT: You split up and  
7 you bought another house?

8 JUROR NUMBER 50: Uh-huh.

9 THE COURT: So now you've got  
10 two mortgage payments?

11 JUROR NUMBER 50: Uh-huh.

12 THE COURT: So that's why  
13 you're in the hole?

14 JUROR NUMBER 50: That's why we  
15 are in the hole. Then -- if this goes on for  
16 two and a half weeks, I don't mean to sound  
17 selfish but after forty years I found my  
18 brother, who was adopted out, and he's flying  
19 in on the 30<sup>th</sup> of September and I'm never seen  
20 him before.

21 THE COURT: Flying in on the  
22 30<sup>th</sup> of September?

23 JUROR NUMBER 50: Um-humm.

24 THE COURT: Okay.

25 JUROR NUMBER 50: I mean, I

1 will be happy to do this any time or if you  
2 can just grant me ---

3 THE COURT: This is the 14<sup>th</sup>,  
4 the 21<sup>st</sup>, -- okay. What I am going to do is  
5 to get the Clerk to call your employer and  
6 talk to them and see if they will pay  
7 anything for your jury duty.

8 JUROR NUMBER 50: Okay.

9 THE COURT: Go talk to the  
10 clerk and -- see if you (addressing Clerk)  
11 can make a phone call, see if they're willing  
12 to pay anything for jury duty.

13 CLERK: Yes, sir.

14 (SIDEBAR CONCLUDED)

15 BAILIFF: Juror 295, Tracy  
16 Robinson Hughes.

17 THE COURT: What number?

18 BAILIFF: Juror 295.

19 SIDEBAR:

20 THE COURT: Yes, ma'am, Ms.  
21 Robinson?

22 JUROR NUMBER 295: Yes, two  
23 and a half weeks will put -- I am in school  
24 right now ---

25 THE COURT: Where are you in

1 school?

2 JUROR NUMBER 295: At

3 Trident Tech. I informed my instructors that  
4 I would be out of class for this but we  
5 guesstimated maybe a week, week and a half.  
6 They said two and a half weeks.

7 On the first of October, my  
8 entire family is flying out to St. Louis,  
9 Missouri, for a wedding; my sister's wedding  
10 on the 3<sup>rd</sup> of October.

11 Also I am on a cruise on the  
12 5<sup>th</sup> and I will be back on the 10<sup>th</sup> of October.

13 THE COURT: When are you  
14 going to school if you're doing all that?

15 JUROR NUMBER 295: Well,  
16 initially I was only going to be out for the  
17 cruise until I was tagged for jury duty. So  
18 it would have been only two days. I only go  
19 to school two days a week and ---

20 THE COURT: What days do you  
21 go?

22 JUROR NUMBER 295: Tuesday  
23 and Thursday.

24 THE COURT: Tuesday and  
25 Thursday?

1 JUROR NUMBER 295: (Affirmative  
2 nod), and I am online ---

3 THE COURT: I mean, you've  
4 done put yourself out for -- how many days?

5 JUROR NUMBER 295: Two and a  
6 half weeks would put me right very close to  
7 the day that we're supposed to fly, so I  
8 would be out of school for probably like,  
9 almost, three and a half weeks.

10 THE COURT: Is it tri-  
11 semester, bisemester or what?

12 JUROR NUMBER 295: Tri?  
13 What do you mean?

14 THE COURT: When do you get  
15 out for the semester?

16 JUROR NUMBER 295: The  
17 semester ends in December.

18 THE COURT: So it runs from  
19 September to December ---

20 JUROR NUMBER 295: August  
21 until ---

22 THE COURT: I've found some  
23 schools run for two months and two months or  
24 three months and three months.

25 JUROR NUMBER 295: Trident

1 goes -- this is my first time going to  
2 Trident -- from August to December. Then I  
3 start back again in January.

4 I mean, I would love to do my  
5 duty but -- if they are not going to excuse  
6 me and it's going to push me to where -- I  
7 mean, I am going to be out of school for a  
8 long period of time. I can be transferred or  
9 ---

10 THE COURT: When do you want  
11 to be transferred to?

12 JUROR NUMBER 295: Whenever  
13 I am out of school.

14 THE COURT: Pardon?

15 JUROR NUMBER 295: Whenever  
16 I am out of school.

17 THE COURT: Well, you're in  
18 the school. I don't know the schedule. You  
19 tell me. I will transfer you if you will  
20 give me a time when you can be here?

21 JUROR NUMBER 295: All I  
22 can say is probably after the December  
23 session. I think that the last day is ---

24 THE COURT: Somebody else  
25 this morning said December 7<sup>th</sup>.

1 JUROR NUMBER 259: I think  
2 it's the 7<sup>th</sup>, it might be the 7<sup>th</sup>.

3 THE COURT: All right, I will  
4 transfer you to December 14<sup>th</sup>. Okay?

5 JUROR NUMBER 295: Okay.  
6 That will be fine.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Transfer 295 to  
9 December 14<sup>th</sup>.

10 BAILIFF: Number 124, Jimmy  
11 Greenway.

12 THE COURT: Jimmy Greenway?

13 JUROR NUMBER 124: Yes,  
14 sir.

15 THE COURT: Yes, sir?

16 JUROR NUMBER 124: Your  
17 Honor, I got children that come to the house  
18 at 3:20 after getting off the bus and, uh,  
19 they don't have nobody to let them in. On  
20 top of that, I've got a child at the College  
21 of Charleston that's got a 5:00 o'clock  
22 appointment at Daniel Island for a skin  
23 doctor. I am the only person that drives in  
24 the family.

25 THE COURT: What day?

1 JUROR NUMBER 124: Today.

2 THE COURT: Today, at 5:00

3 o'clock?

4 JUROR NUMBER 124: Yes,

5 sir.

6 THE COURT: Who normally  
7 meets -- how old is the children?

8 JUROR NUMBER 124: My  
9 daughter Jordan is sixteen, she's at the  
10 College of Charleston; and I've got two other  
11 daughters, fourteen and thirteen.

12 THE COURT: Fourteen and  
13 thirteen.

14 JUROR NUMBER 124: Yes,  
15 sir.

16 THE COURT: And they get home  
17 at 3:30?

18  
19 JUROR NUMBER 124: 3:20.

20 THE COURT: Who normally  
21 meets them?

22 JUROR NUMBER 124: Normally  
23 my wife is there. She's with me because she  
24 going to get ahead of the rush here --  
25 normally she does but today I have to rush

1 down to the 'College' of Charleston, to go over  
2 to Daniel Island to get my daughter, Jordan,  
3 to a skin doctor. She is the only one that  
4 knows anything about it. I don't know  
5 anything about what the child is suffering.

6 THE COURT: I am not going to  
7 excuse you but you're free to go get your  
8 daughter to her appointment with the skin  
9 doctor on Daniel Island. Just be back in the  
10 morning. Okay?

11 JUROR NUMBER 124: Okay.

12 THE COURT: Be back in the  
13 morning at 9:30.

14 JUROR NUMBER 124: All  
15 right.

16 (SIDEBAR CONCLUDED)

17 SIDEBAR WITH COUNSEL:

18 THE COURT: Solicitor, on any  
19 of these, if you'all have a Motion, tell me  
20 that you have a Motion and I will send the  
21 juror out and I will listen to your Motion  
22 first. Okay?

23 SCARLETT WILSON: Thank you,  
24 Judge.

25 (SIDEBAR CONCLUDED)

1 BAILIFF: Number 19, Mary  
2 Beaufort. Number 19.

3 SIDEBAR:

4 THE COURT: All right. Yes,  
5 ma'am, Ms. Beaufort. How you doing today?

6 JUROR NUMBER 19: I'm doing  
7 great. I am responsible for picking up my  
8 three grands in the afternoon from preschool,  
9 and ---

10 THE COURT: What time do they  
11 get out of school?

12 JUROR NUMBER 19: Anytime that  
13 I pick them up in the afternoon -- well,  
14 between 5:00 and 6:00.

15 THE COURT: You pick them up  
16 between 5:00 and 6:00?

17 JUROR NUMBER 19: Right. And,  
18 I also know the defendant personally.

19 THE COURT: You know the  
20 defendant?

21 JUROR NUMBER 19: Yes.

22 THE COURT: Where do you know  
23 the defendant form?

24 JUROR NUMBER 19: He lives  
25 right down -- about a few blocks away from

1 me.

2 THE COURT: How long have you  
3 known him?

4 JUROR NUMBER 19: Every since  
5 he was young. He went to school with my  
6 children.

7 THE COURT: You've known him  
8 all of his life? Does he come into your home  
9 to visit with your children, friends with  
10 your children?

11 JUROR NUMBER 19: Yeah.

12 THE COURT: How long has he  
13 been friends with your children?

14 JUROR NUMBER 19: Uh, ---

15 THE COURT: All their life?

16 JUROR NUMBER 19: Yes.

17 THE COURT: How often does he  
18 come into your home?

19 JUROR NUMBER 19: Uh, I'd say  
20 about once or twice a week or so. Every  
21 other afternoon.

22 THE COURT: How would that  
23 affect you if you were chosen for this jury?

24 JUROR NUMBER 19: I think that  
25 it would affect me, because ---

1 THE COURT: How would it  
2 affect you?

3 JUROR NUMBER 19: I think of  
4 him like a son.

5 THE COURT: Could you be fair  
6 or not?

7 JUROR NUMBER 19: Yeah, I would  
8 be fair.

9 THE COURT: To who?

10 JUROR NUMBER 19: To God first.

11 THE COURT: You said that you  
12 treat him like a son. Could you find your  
13 son guilty of murder?

14 JUROR NUMBER 19: If he is  
15 guilty, yes.

16 THE COURT: If he was guilty,  
17 yes?

18 JUROR NUMBER 19: Yeah.

19 THE COURT: All right, let's  
20 go back to your children, your grandchildren.  
21 Is there anybody else that can pick them up?

22 JUROR NUMBER 19: No.

23 THE COURT: Who normally  
24 picks them up?

25 JUROR NUMBER 19: No.

1 THE COURT: You pick them up  
2 between 5:00 and 6:00?

3 JUROR NUMBER 19: Between 4:00  
4 and 5:00.

5 THE COURT: Can you pick them  
6 up after 5:00?

7 JUROR NUMBER 19: Yes.

8 THE COURT: Pardon?

9 JUROR NUMBER 19: I believe so.

10 THE COURT: Where do you pick  
11 them up from?

12 JUROR NUMBER 19: Mount  
13 Pleasant.

14 THE COURT: Where?

15 JUROR NUMBER 19: Mount  
16 Pleasant.

17 THE COURT: Well, if you're  
18 chosen for the jury you will have to make  
19 arrangements to pick them up after 5:00.  
20 Okay?

21 JUROR NUMBER 19: And also I  
22 served with the jury ---

23 THE COURT: Pardon?

24 JUROR NUMBER 19: I served with  
25 the jury last year..

1 THE COURT: Where?

2 JUROR NUMBER 19: St. Stephens.

3 THE COURT: That was probably  
4 city court. Thank you.

5 SCARLETT WILSON: We have a  
6 Motion, Judge.

7 THE COURT: Go have a seat.

8 (JUROR SEATED)

9 SIDEBAR CONTINUED:

10 THE COURT: All right. As  
11 far as your Motion for cause, if she gets on  
12 a panel we will hear it at that time. I am  
13 not going to go into it in any more depth  
14 now, not going to take the time now. I know  
15 what she said and I -- I've got a note here  
16 that she's on a panel and I will ask her  
17 questions, you can ask her questions, the two  
18 of you can, and I'll decide then. If you  
19 want to make your Motion that's fine, but  
20 I've decided ---

21 SCARLETT WILSON: That's fine.  
22 We can do it then.

23 THE COURT: Let's see if she  
24 gets on a panel.

25 (SIDEBAR CONCLUDED)

1 BAILIFF: Number 365, Judge,  
2 Sonya Waring.

3 SIDEBAR:

4 THE COURT: Yes, sir -- yes,  
5 ma'am, Mr. Waring.

6 JUROR NUMBER 365: I have  
7 several concerns. The first is that I have  
8 certifications for my job that I can't ---

9 THE COURT: Do what now?

10 JUROR NUMBER 365: I have  
11 certifications.

12 THE COURT: What is  
13 certifications?

14 JUROR NUMBER 365: Like  
15 board certifications that I have to go.

16 THE COURT: What is your job?

17 JUROR NUMBER 365: I'm an  
18 RN.

19 THE COURT: A what?

20 JUROR NUMBER 365: I am an  
21 RN. Sorry.

22 THE COURT: An RN. All  
23 right.

24 JUROR NUMBER 365: I've  
25 rescheduled them several times and ---

1 THE COURT: Where do you go  
2 to have the recertification?

3 JUROR NUMBER 365: It's  
4 right here in North Charleston, RiverGate, a  
5 testing center.

6 THE COURT: In what timeframe  
7 do you have to get recertified? How often?

8 JUROR NUMBER 365: Well,  
9 I've rescheduled several times and this is  
10 the last one that I had -- the 26<sup>th</sup>, and I  
11 scheduled for the 24<sup>th</sup>, which is Thursday at  
12 8:00 o'clock. Next Thursday.

13 THE COURT: How long does it  
14 take for the certification?

15 JUROR NUMBER 365: We have  
16 five hours but usually it doesn't take that  
17 long.

18 THE COURT: When does your  
19 nursing certification run out this time?

20 JUROR NUMBER 365: The 26<sup>th</sup>.

21 THE COURT: The 26<sup>th</sup> of this  
22 month?

23 JUROR NUMBER 365: Yes,  
24 sir. I waited until the last minute.

25 THE COURT: You sort of

1 waited until the last minute.

2 JUROR NUMBER 365: I did.

3 Sorry.

4 THE COURT: Pardon?

5 JUROR NUMBER 365: I am a  
6 procrastinator. Yes, sir.

7 THE COURT: You sure  
8 procrastinated on this?

9 JUROR NUMBER 365: I did.

10 THE COURT: How many years --  
11 how long is your certification good for?

12 JUROR NUMBER 365: I am not  
13 sure. Ten years.

14 THE COURT: So you've been a  
15 nurse for ten years?

16 JUROR NUMBER 365: No, sir,  
17 this is my first time taking the certifica-  
18 tion actually.

19 THE COURT: Oh, you've never  
20 taken it before.

21 JUROR NUMBER 365: Yes,  
22 sir.

23 THE COURT: So you actually  
24 haven't been certified by the State as an RN.  
25 So are you an LPN, Practical?

1 JUROR NUMBER 365: Yes,  
2 sir. Until I finished RN school, yes, sir,  
3 in May.

4 THE COURT: When did you  
5 finish RN school?

6 JUROR NUMBER 365: May of  
7 this year.

8 THE COURT: When does your  
9 LPN expire?

10 JUROR NUMBER 365: I think  
11 ---

12 THE COURT: You are working  
13 on your RN certification right now?

14 JUROR NUMBER 365: Yes,  
15 sir.

16 THE COURT: When does your  
17 LPN license expires?

18 JUROR NUMBER 365: A long  
19 time but I lose \$200 if I don't go this time.

20 THE COURT: What do you mean,  
21 \$200:

22 JUROR NUMBER 365: It is  
23 \$200 to sign up for your RN, and I have --  
24 have until the 26<sup>th</sup>. Since I have already  
25 signed up -- I signed up in May when I

1 graduated and they give you from June until  
2 September the 26<sup>th</sup>.

3 THE COURT: Your procrastina-  
4 tion puts you in a spot, doesn't it?

5 JUROR NUMBER 365: Yes,  
6 sir.

7 THE COURT: Huh?

8 JUROR NUMBER 365: Yes,  
9 sir.

10 THE COURT: You might lose  
11 \$200?

12 JUROR NUMBER 365: Yes,  
13 sir, and first baby.

14 THE COURT: What?

15 JUROR NUMBER 365: And  
16 first baby.

17 THE COURT: What about first  
18 baby? How far along are you?

19 JUROR NUMBER 365: I am six  
20 months, twenty-seven weeks.

21 THE COURT: Yes, sir. When  
22 is the baby due?

23 JUROR NUMBER 365: December  
24 10<sup>th</sup>.

25 THE COURT: Well, you will be

1 all right.

2 JUROR NUMBER 365: Two weeks

3 pay, though? No pay for two weeks?

4 THE COURT: Yeah.

5 JUROR NUMBER 365: Wow.

6 THE COURT: Can you handle

7 that?

8 JUROR NUMBER 365: Stressful.

9 THE COURT: Pardon?

10 JUROR NUMBER 365: Yes,

11 sir. It's stressful, though.

12 THE COURT: Are you married?

13 JUROR NUMBER 365: Yes,

14 sir, I am.

15 THE COURT: Is your husband

16 working?

17 JUROR NUMBER 365: Yes, sir.

18 THE COURT: Who do you work

19 for as an LPN?

20 JUROR NUMBER 365: Charleston

21 GI, gastro.

22 THE COURT: Do they pay you

23 anything for jury duty?

24 JUROR NUMBER 365: I am not

25 sure of the stipulations with that.

1 THE COURT: Have you asked?

2 JUROR NUMBER 365: No, sir.

3 THE COURT: Go give the clerk  
4 your employer's name and number so that they  
5 can call and see if they pay anything for  
6 jury duty.

7 JUROR NUMBER 365: Okay.  
8 Will do.

9 (JUROR GOES TO CLERK)

10 SIDEBAR CONTINUED:

11 THE COURT: My inclination is  
12 that -- since she operating on an LPN license  
13 and should have gone to take this test since  
14 May, I am -- my inclination is not to excuse  
15 her.

16 BOYD YOUNG: I agree.

17 SCARLETT WILSON: I think that  
18 this is no different than the guy with the  
19 plane ticket. She's going to lose \$200 and  
20 he's going to lose \$300. She said that ---

21 THE COURT: But that's  
22 because of her own ---

23 SCARLETT WILSON: She  
24 rescheduled a couple of times not knowing  
25 that this was going to be a two and a half

1 week trial.

2 THE COURT: What do you want  
3 to do, excuse her?

4 SCARLETT WILSON: I think she  
5 should be excused just like Mr. Airplane Guy  
6 should be excused.

7 BOYD YOUNG: Hey, but his  
8 family reunion picked his date.

9 THE COURT: You'd think he  
10 would want to miss ---

11 SCARLETT WILSON: That's why if  
12 you don't get married you don't have to worry  
13 about that. I don't have to worry about ---

14 THE COURT: Imagine if he  
15 gets on the jury? He'd be hearing about that  
16 for the next twenty years.

17 SCARLETT WILSON: I think \$200  
18 to that lady is a lot more than \$300 was to  
19 that dude.

20 BOYD YOUNG: I wanted him to  
21 stick around anyway.

22 THE COURT: Pardon?

23 BOYD YOUNG: I wanted the dude  
24 to stick around anyway.

25 THE COURT: Well, let's see

1 what we find out from her employer.

2 SCARLETT WILSON: I mean, I  
3 don't think her issue -- I think her issue is  
4 missing the test?

5 THE COURT: Is what?

6 SCARLETT WILSON: Is missing  
7 the test.

8 THE COURT: Right.

9 SCARLETT WILSON: That kind of  
10 screws her over pretty good, in my mind.

11 THE COURT: All right.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Who is next?

14 BAILIFF: Number 62, Judge.

15 Susana Comte-Walters

16 SIDEBAR:

17 THE COURT: Comte?

18 JUROR NUMBER 62: Comte-  
19 Walters. I start on a new position in a  
20 different department at MUSC on the last two  
21 weeks of this ---

22 THE COURT: Where are you  
23 working, at MUSC?

24 JUROR NUMBER 62: Right now I  
25 am working in the pharmacology department but

1 I ---

2 THE COURT: Where?

3 JUROR NUMBER 62: Psychiatry.

4 THE COURT: Psychiatry?

5 JUROR NUMBER 62: Um-humm, and

6 I was scheduled to train my replacement in  
7 the last two weeks of the month. Also on  
8 October 5<sup>th</sup>, which is three weeks from now, I  
9 have to be in Atlanta.

10 THE COURT: Have to be what?

11 JUROR NUMBER 62: I have to be  
12 in Atlanta.

13 THE COURT: Okay. What do you  
14 have to be in Atlanta for?

15 JUROR NUMBER 62: I have to  
16 take my mother to catch her flight back home  
17 to Argentina. She is eighty-seven ---

18 THE COURT: Anybody else that  
19 can take her?

20 JUROR NUMBER 62: No.

21 THE COURT: Your husband?

22 JUROR NUMBER 62: No.

23 THE COURT: Nobody?

24 JUROR NUMBER 62: No.

25 THE COURT: Why?

1 JUROR NUMBER 62: Because ---

2 THE COURT: They can't drive,  
3 or what?

4 JUROR NUMBER 62: My husband  
5 doesn't speak Spanish and she doesn't speak  
6 English.

7 THE COURT: How about your  
8 daughter?

9 JUROR NUMBER 62: I don't have  
10 children.

11 THE COURT: Pardon?

12 JUROR NUMBER 62: I do not have  
13 children, Your Honor.

14 THE COURT: You don't have  
15 children?

16 JUROR NUMBER 62: No.

17 THE COURT: And there's  
18 nobody else in Charleston County or Berkeley  
19 County that can drive your mother?

20 JUROR NUMBER 62: No. I have  
21 to drive her there.

22 THE COURT: When -- I know,  
23 there is nobody else that can drive her.  
24 When?

25 JUROR NUMBER 62: It is October

1 10<sup>th</sup>, three weeks.

2 BRUCE DURANT: It's three  
3 weeks, Your Honor. That would be the ---

4 JUROR NUMBER 62: It's ---

5 THE COURT: Just that October  
6 1<sup>st</sup> would be a problem?

7 JUROR NUMBER 62: Yes.

8 THE COURT: When is October  
9 1<sup>st</sup>, when is it?

10 BRUCE DURANT: Next week is  
11 the 21<sup>st</sup>, then the 28<sup>th</sup>, ---

12 THE COURT: That is Thursday  
13 of the third week?

14 JUROR NUMBER 62: That's when I  
15 start my new ---

16 THE COURT: I don't think  
17 that's going to be a problem. You just have  
18 to work with your job if you're on the jury,  
19 as going from one department to another  
20 department. I am sure that MUSC is big  
21 enough to work out something. Thank you very  
22 much.

23 (SIDEBAR CONCLUDED)

24 BAILIFF: Number 68, Troy Crank.

25 SIDEBAR:

1 THE COURT: Yes, sir.

2 JUROR NUMBER 68: Mine is  
3 actually two-part. The first of all is work.  
4 I haven't been there quite a year yet, so I  
5 don't have any leave built up.

6 THE COURT: No what?

7 JUROR NUMBER 68: No leave or  
8 anything built up. I am outside sales.

9 THE COURT: Where do you  
10 work?

11 JUROR NUMBER 68: Window World.

12 THE COURT: You work for  
13 Window World?

14 JUROR NUMBER 68: Outside  
15 sales, one hundred percent commission. If I  
16 don't sell, I make zero. I don't get a draw,  
17 I don't get any pay for jury duty, and I am  
18 the primary wage earner in the household.

19 THE COURT: Have you asked  
20 them?

21 JUROR NUMBER 68: Yes.

22 THE COURT: You have asked if  
23 they pay anything for when you're on jury  
24 duty?

25 JUROR NUMBER 68: Yes, and they

1 say zero, we get nothing.

2 THE COURT: Okay.

3 JUROR NUMBER 68: I am the  
4 primary wage earner. My wife works on  
5 an as-needed basis.

6 The second part, which wasn't  
7 an issue but since the trial may be two to  
8 three weeks, I am a fulltime student as well.  
9 I am an A student, so one week I wouldn't  
10 worry about.

11 THE COURT: Where do you go  
12 to school?

13 JUROR NUMBER 68: Trident Tech.

14 THE COURT: What hours?

15 JUROR NUMBER 68: Wednesday is  
16 my only -- I go from 2:00 to 6:00 in the  
17 afternoon on Wednesdays. So not a big issue  
18 there, everything else is online. Income is  
19 the main problem. If I don't work, I make  
20 zero.

21 THE COURT: And your wife  
22 works where?

23 JUROR NUMBER 68: Heritage  
24 Healthcare, White Oak Manor. It's a nursing  
25 home.

1 THE COURT: How often?

2 JUROR NUMBER 68: Couple days a  
3 week right now. It's slow.

4 THE COURT: Is it because  
5 it's slow or because she doesn't want to work  
6 any more?

7 JUROR NUMBER 68: Because it is  
8 slow. Because it is slow.

9 THE COURT: She can't work  
10 for the next two weeks, fulltime?

11 JUROR NUMBER 68: No.

12 THE COURT: How about if she  
13 volunteered?

14 JUROR NUMBER 68: No, she tries  
15 to -- because of the way that I get paid, she  
16 tries to get everything that she can get;  
17 because I could make something this week,  
18 zero next week.

19 THE COURT: And they don't  
20 give you any kind of base pay?

21 JUROR NUMBER 68: Zero. One  
22 hundred percent zero. Welcome to sales.

23 THE COURT: Well, that's the  
24 way that most sales are. How long have you  
25 been working for Window World?

1 JUROR NUMBER 68: Eight months  
2 now.

3 THE COURT: Do you sell  
4 anything?

5 JUROR NUMBER 68: Yes, sir. Do  
6 I?

7 THE COURT: Have you been  
8 selling anything?

9 JUROR, NUMBER 68: Yeah, we've  
10 been doing okay. You know, with the economy,  
11 we take our hit like everybody else. The way  
12 that they do their pay makes it kind of  
13 tough. When we first sell the job, we get  
14 fifty percent of the commission and then we  
15 don't get the other half until it is  
16 installed. So two weeks could equate to a  
17 month without pay.

18 THE COURT: Okay, go have a  
19 seat over in the jury box.

20 (JUROR TAKES SEAT)

21 SIDEBAR CONTINUED:

22 THE COURT: What is your  
23 position as to him?

24 SCARLETT WILSON: I think he's  
25 qualified.

1 BOYD YOUNG: I would say that  
2 he is exactly like Krista Lane.

3 THE COURT: He's like all of  
4 them. I mean, you've either got to let all  
5 of them go or you keep them all. I don't  
6 know what the answer is, they've all got the  
7 same problem.

8 BRUCE DURANT: I think that  
9 maybe we should just go pick them at the  
10 homeless shelter.

11 SCARLETT WILSON: Again, the  
12 difference here is that he's got a wife that  
13 can work. I mean, he -- at least he's got  
14 somebody who is bringing in some money. Some  
15 of these other people who are single with  
16 kids and don't have, you know, another wage  
17 earner. I mean, he is never going to be --  
18 it is never going to suit a salesperson to be  
19 on a jury.

20 THE COURT: That's right.  
21 See, what I get irritated about is all these  
22 good outstanding companies that want to do so  
23 good for society but, then, won't pay their  
24 people for jury duty. They advertise, talk  
25 about how great they are. Nothing that we

1 can do about that.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Come on up, ma'am.

4 BAILIFF: Juror 378, Felita

5 Whaley.

6 SIDEBAR:

7 THE COURT: Hey, Ms. Whaley.

8 JUROR NUMBER 378: I don't

9 have hardship but I was told to tell you  
10 exactly what my dilemma is. When my -- I  
11 just got promoted and what my job does is  
12 they promote in group. Training is like four  
13 weeks. They are not going to hold up the  
14 rest of the group just because of, you know,  
15 my problem. So I am going to lose my  
16 promotion if I miss two weeks of work.

17 THE COURT: Where do you  
18 work?

19 JUROR NUMBER 378: I work  
20 at Dial America.

21 THE COURT: Where?

22 JUROR NUMBER 378: Dial  
23 America.

24 THE COURT: What is that?

25 JUROR NUMBER 378: They do

1 banking and -- or, I do banking and sales.  
2 What they do is they have an entry level,  
3 then they have a level one and then a level  
4 two. I was promoted to level one and I was  
5 hoping to get promoted to level two, but for  
6 now we are starting at level one and I'm  
7 afraid that what is going to happen is that  
8 if I do miss that time I am going to lose my  
9 promotion, because it is required.

10 THE COURT: Well, when will  
11 they have another level group two moving  
12 forward?

13 JUROR NUMBER 378: Probably  
14 another two or three months.

15 THE COURT: Okay. And you  
16 don't think that they will let you move  
17 forward?

18 JUROR NUMBER 378: No. I'm  
19 sure they will in another three or four  
20 months but not now, because I've actually  
21 gotten it now and if I miss the time -- then  
22 back to the entry level.

23 THE COURT: How much  
24 difference in money?

25 JUROR NUMBER 378: About

1 \$1.75 per hour.

2 THE COURT: \$1.75 per hour?

3 JUROR NUMBER 378: Yeah.

4 THE COURT: Tell me about how  
5 these groups move forward.

6 JUROR NUMBER 378: Okay.

7 What they do is -- I've been working there  
8 for six months. You have to actually put it  
9 -- you have to actually apply for it. Then  
10 they choose between everyone, about sixteen  
11 people, out of everyone -- there's five  
12 hundred reps. Out of everyone that puts in,  
13 they will choose sixteen people and those  
14 people ---

15 THE COURT: And they have  
16 chosen you?

17 JUROR NUMBER 378: Right,  
18 and they've chosen me.

19 THE COURT: You are supposed  
20 to start when?

21 JUROR NUMBER 378: Today is  
22 the first day of coaching and development.  
23 Today, you know, -- they had a a problem with  
24 today but they understood for the simple fact  
25 that it's jury duty. But I don't know about

1 two and a half weeks.

2 THE COURT: Have you asked  
3 them?

4 JUROR NUMBER 378: I have  
5 not..

6 THE COURT: Go give this lady  
7 their phone number and let her call and see  
8 if they have a problem -- would you (clerk)  
9 talk with them and see if they have a  
10 problem.

11 (SIDEBAR CONCLUDED)

12 BAILIFF: Juror Number 325,  
13 Kristin Starr.

14 SIDEBAR:

15 THE COURT: Yes, ma'am, Ms.  
16 Starr.

17 JUROR NUMBER 325: Basically  
18 I -- I talked to work, I don't get paid at  
19 all if I have to do this. I had one personal  
20 day left. I used it today.

21 THE COURT: Where do you  
22 work?

23 JUROR NUMBER 325: Children's  
24 Center -- I am a teacher. It's a year-round  
25 school, so I don't get vacation to come back

1 at another time.

2 THE COURT: You work at the  
3 Children's ---

4 JUROR NUMBER 325: A children's  
5 center, yeah.

6 THE COURT: Where is that?

7 JUROR NUMBER 325: It is in  
8 Park West.

9 THE COURT: Is that a  
10 nursery?

11 JUROR NUMBER 325: It is  
12 preschool.

13 THE COURT: What do you do in  
14 the preschool?

15 JUROR NUMBER 325: I am a  
16 teacher.

17 THE COURT: You are a  
18 teacher?

19 JUROR NUMBER 325: Yeah.

20 THE COURT: Do you get paid  
21 by the hour, by the salary or what?

22 JUROR NUMBER 325: It is  
23 supposed to be salary. I get twelve personal  
24 days a year.

25 THE COURT: You get how many

1 days a year?

2 JUROR NUMBER 325: Twelve.

3 I earn twelve. So far I've used two for  
4 sick, three for my grandfather getting sick  
5 and then when he died. I don't have any more  
6 personal days. So, basically all my personal  
7 days are bereavement, sick, holidays,  
8 everything gets lumped into those days. So  
9 even if I did use them for ---

10 THE COURT: Who runs the  
11 school?

12 JUROR NUMBER 325: Do you  
13 want to know the owner's name?

14 THE COURT: Um-humm.

15 JUROR NUMBER 325: Chris  
16 Moreno.

17 THE COURT: Chris Moreno?

18 JUROR NUMBER 325: Um-humm.

19 THE COURT: What is his phone  
20 number?

21 JUROR NUMBER 325: I don't  
22 have it on me. It's in my cell phone, if you  
23 look up the Children's Center. I know we  
24 could find it on the website but I don't --  
25 it is in my phone.

1 THE COURT: Go get your  
2 phone. Get his number.

3 JUROR NUMBER 325: I am not  
4 sure that I brought it. I think that I might  
5 have left it at home. Is there any other  
6 method that I can use?

7 THE COURT: I don't know.

8 SCARLETT WILSON: They might be  
9 able to get it online.

10 JUROR NUMBER 325: If you  
11 look up the Children's Center, you can find  
12 it. There is a website that has the phone  
13 number there.

14 THE COURT: Those twelve  
15 days, you get paid?

16 JUROR NUMBER 325: Yeah,  
17 I get those.

18 THE COURT: After those  
19 twelve days you don't get paid, is what  
20 you're telling us?

21 JUROR NUMBER 325: Right.

22 THE COURT: Various reasons,  
23 sick, personal or whatever?

24 JUROR NUMBER 325: Yeah.

25 THE COURT: How many days

1 have you got left?  
2 JUROR NUMBER 325: One.  
3 Today. I might have a half day now.  
4 THE COURT: Are you married?  
5 JUROR NUMBER 325: No.  
6 Single.  
7 THE COURT: Where do you  
8 live?  
9 JUROR NUMBER 325: On  
10 Clements Ferry in Charleston.  
11 THE COURT: Who do you live  
12 with?  
13 JUROR NUMBER 325: My  
14 boyfriend.  
15 THE COURT: Boyfriend?  
16 JUROR NUMBER 325: Um-humm.  
17 THE COURT: Does he have a  
18 job?  
19 JUROR NUMBER 325: He does.  
20 THE COURT: Do you'all share  
21 expenses or does he have his expenses and you  
22 have your expenses?  
23 JUROR NUMBER 325: We have  
24 separate expenses.  
25 THE COURT: You have separate

1 expenses?

2 JUROR NUMBER 325: Yeah.

3 THE COURT: He can't help you  
4 with yours?

5 JUROR NUMBER 325: No.

6 THE COURT: He won't?

7 JUROR NUMBER 325: He  
8 can't.

9 THE COURT: I didn't ask you  
10 if he can. I said, will he?

11 JUROR NUMBER 325: He has  
12 before, yes, but he's not in a position to  
13 help me right now.

14 THE COURT: Huh?

15 JUROR NUMBER 325: He's not  
16 in a position to help me right now.

17 THE COURT: He is not?

18 JUROR NUMBER 325: No.

19 THE COURT: All right.

20 BOYD YOUNG: Is the name of it  
21 The Children's Center.

22 JUROR NUMBER 325: Children's  
23 Center.

24 THE COURT: Park West in  
25 Mount Pleasant.