

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

Appellate Case No. 2018-001499

WILLIAM O. DICKERSONPETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX
VOLUME 19 OF 22

ELIZABETH FRANKLIN-BEST
SC Bar No. 72555
Blume Franklin-Best & Young, LLC
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044
Counsel for Petitioner

MELODY BROWN
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Counsel for Respondent

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1 any of those groups?

2 A. No.

3 Q. Do you have a special interest or a
4 particular interest in the outcome of this
5 trial?

6 A. No.

7 Q. I'm sorry?

8 A. Say that again.

9 Q. Do you have any interest in the outcome
10 of this particular trial?

11 A. No, I am pleased with it.

12 Q. Pardon?

13 A. I am pleased with it.

14 Q. Are you aware of any bias or prejudice
15 towards the defendant as a result of the
16 charges?

17 A. No.

18 Q. Do you have any religious beliefs that
19 would create any bias or prejudice for or
20 against the defendant?

21 A. No.

22 Q. About the State?

23 A. No.

24 Q. Do you have any bias or prejudice
25 towards the defendant because of his race,

1 being black?

2 A. No.

3 Q. Do you know of any reason, personal or
4 otherwise, why you cannot serve on this
5 jury?

6 A. No.

7 Q. Do you have any reason why you could
8 not give the State and the Defendant a fair
9 and impartial trial?

10 A. No.

11 THE COURT: All right, Mr. Brown.
12 Speak up a bit so that everybody can hear
13 you. Okay? Get close to the microphone,
14 relax. Nobody is going to fuss at you,
15 nobody is going to yell at you. They're
16 going to ask you some questions. Okay?

17 JUROR NUMBER 36: Okay.

18 THE COURT: So relax. Take it
19 easy. The attorneys are going to ask you
20 questions. I want you to listen to the
21 questions. If you don't understand, tell
22 them that you don't understand.

23 JUROR NUMBER 36: Okay.

24 THE COURT: If you don't know the
25 answer, tell them that you don't know the

1 answer.

2 JUROR NUMBER 36: Okay.

3 THE COURT: If you do know the
4 answer, tell them. There is no right or
5 wrong, do you understand?

6 JUROR NUMBER 36: Okay.

7 THE COURT: It's just your
8 opinion and they're going to be asking your
9 opinions and your thoughts. Okay?

10 JUROR NUMBER 36: Okay.

11 THE COURT: And your thoughts and
12 your opinions are not 'right' or 'wrong.'
13 Okay? Can you do that?

14 JUROR NUMBER 36: Yes.

15 THE COURT: Whose turn?

16 EXAMINATION

17 BY WILLIAM MAGUIRE:

18 Q. Mr. Brown, how you doing this
19 afternoon?

20 A. Hi, how you doing, sir?

21 Q. I am just going to ask you a couple of
22 questions. You are a number three according
23 to the sheet. That means that it is going
24 to depend on the circumstances whether you
25 vote ultimately life or death in a death

1 penalty case. It would have to depend on
2 everything.

3 A. Right.

4 Q. You wouldn't automatically give the
5 death penalty just for a murder conviction,
6 would you?

7 A. Uh, -- no.

8 Q. You would want to hear the whole case?

9 A. No. No.

10 Q. You would want to hear all the facts
11 and circumstances, all the evidence, before
12 making a decision?

13 A. No. If you -- no.

14 Q. You could make a decision just hearing
15 a part of the case?

16 A. (No verbal response).

17 Q. If I hear you right, it sounds like ---

18 SCARLETT WILSON: Judge, may we
19 approach?

20 THE COURT: Approach.

21 BENCH CONFERENCE:

22 SCARLETT WILSON: Clearly
23 we've got some problems here with this.

24 THE COURT: I'm sorry.

25 What?

1 BRUCE DURANT: We have
2 serious reservations ---

3 SCARLETT WILSON: --- about
4 his qualifications, period.

5 BRUCE DURANT: His sanity.

6 SCARLETT WILSON: No, it's not
7 that. It's not that.

8 THE COURT: I don't want to
9 embarrass him.

10 BRUCE DURANT: His
11 comprehension. I don't think he even
12 understands what is going on here, Judge.

13 WILLIAM MAGUIRE: If you want
14 to ask him some more questions, Judge, I
15 don't have a problem with that.

16 THE COURT: I am not going
17 to ask him anything. Do you'all want to
18 excuse him?

19 WILLIAM MAGUIRE: No. I think
20 he's got a Constitutional right to sit.

21 BRUCE DURANT: Unless he is
22 not qualified.

23 THE COURT: Right. Ask the
24 questions. I will make a decision on his
25 qualification. I am not talking about the

1 death penalty, just his qualification.

2 (BENCH CONFERENCE CONCLUDED)

3 EXAMINATION CONTINUED

4 BY WILLIAM MAGUIRE:

5 Q. So, Mr. Brown, your answer on that
6 sheet is that you are a number three type
7 juror?

8 A. Right.

9 Q. Would have to depend on everything?

10 A. Not -- no, whatever -- you know, I
11 didn't say, uh, it would have to depend on
12 everything.

13 WILLIAM MAGUIRE: Fair enough. I
14 am going to let the State ask you some
15 questions.

16 JUROR NUMBER 36: Say that again?

17 WILLIAM MAGUIRE: I am going to
18 let one of these folks ask you some
19 questions.

20 JUROR NUMBER 36: No problem.

21 THE COURT: Mr. Brown, let me ask
22 you a few questions before we start. Mr.
23 Maguire, you can come back and ask questions
24 if you want to after I ask.

25 WILLIAM MAGUIRE: Sure.

1 THE COURT: Mr. Brown, how far
2 did you go in school?

3 JUROR NUMBER 36: Oh, I finished
4 the twelfth grade.

5 THE COURT: You finished the
6 twelfth grade?

7 JUROR NUMBER 36: (Affirmative
8 nod).

9 THE COURT: What type of work
10 have you done since you finished school?

11 JUROR NUMBER 36: I used to work
12 at Georgia-Pacific.

13 THE COURT: What did you do at
14 Georgia-Pacific?

15 JUROR NUMBER 36: I work on the
16 green end.

17 THE COURT: On the what?

18 JUROR NUMBER 36: The green end.

19 THE COURT: Tell me what that
20 consisted of?

21 JUROR NUMBER 36: That is where
22 they doing utility work and, uh, plywood.

23 THE COURT: How long did you work
24 there?

25 JUROR NUMBER 36: I worked there

1 over ten year, almost.

2 THE COURT: Ten years?

3 JUROR NUMBER 36: Almost.

4 THE COURT: When is the last time
5 you worked there?

6 JUROR NUMBER 36: I ain't worked
7 there since in the '80s.

8 THE COURT: Have you worked since
9 then?

10 JUROR NUMBER 36: No.

11 THE COURT: Why did you quit
12 working at GP, Georgia-Pacific?

13 JUROR NUMBER 36: I didn't quit.
14 I got sick there.

15 THE COURT: You got what?

16 JUROR NUMBER 36: I got sick
17 there.

18 THE COURT: What is that?

19 JUROR NUMBER 36: I got sick
20 there.

21 THE COURT: What type of sickness
22 did you get at Georgia-Pacific?

23 JUROR NUMBER 36: Oh, I had, uh, I
24 really had a nerve problem.

25 THE COURT: Did you go to the

1 doctor for the nerve problem?

2 JUROR NUMBER 36: Yes, I did.

3 THE COURT: Do you know what the
4 diagnosis was that the doctor made?

5 JUROR NUMBER 36: All he said was
6 schizophrenia.

7 THE COURT: Schizophrenia. Are
8 you drawing SSI, Social Security?

9 JUROR NUMBER 36: Yes.

10 THE COURT: How long have you
11 been drawing Social Security?

12 JUROR NUMBER 36: I've been
13 drawing SSI since the '80s.

14 THE COURT: Since you quit at
15 Georgia-Pacific when you got sick?

16 JUROR NUMBER 36: Yes.

17 THE COURT: Do you go see a
18 psychiatrist or a psychologist, or go to
19 Mental Health on a regular basis?

20 JUROR NUMBER 36: Yes.

21 THE COURT: Do they have you on
22 medication?

23 JUROR NUMBER 36: Yes, I am on
24 medication.

25 THE COURT: What do you take for

1 the schizophrenia?

2 JUROR NUMBER 36: I take Paxil.

3 THE COURT: Paxil. Have you also
4 been diagnosed with bipolar?

5 JUROR NUMBER 36: Yeah.

6 THE COURT: Does the Paxil work
7 for the bipolar?

8 JUROR NUMBER 36: Yes, it does.

9 THE COURT: Have the doctors made
10 any more diagnoses other than bipolar and
11 schizophrenia?

12 JUROR NUMBER 36: No.

13 THE COURT: Who do you live with?

14 JUROR NUMBER 36: I live by
15 myself.

16 THE COURT: Do you have children?

17 JUROR NUMBER 36: No.

18 THE COURT: Do you have brothers
19 or sisters?

20 JUROR NUMBER 36: Yes, sir, I have
21 a brother.

22 THE COURT: Does your brother
23 help you?

24 JUROR NUMBER 36: Yes.

25 THE COURT: Does he come in and

1 look after you?

2 JUROR NUMBER 36: Yes.

3 THE COURT: What all does your
4 brother do for you?

5 JUROR NUMBER 36: Well, uh, he,
6 uh, he comes and he make sure that things be
7 in the house like they should and he, uh, --
8 he helps me, makes sure that I pay the bills
9 and stuff and things, buy food and stuff to
10 make sure that I have that.

11 THE COURT: Who is the payee or
12 who receives the Social Security check,
13 takes care of the money for you? Does your
14 brother do that?

15 JUROR NUMBER 36: Yes, it comes to
16 me in his name.

17 THE COURT: He comes and helps
18 you pay the bills?

19 JUROR NUMBER 36: Yes.

20 THE COURT: Do you get any other
21 funds other than -- other than your Social
22 Security check?

23 JUROR NUMBER 36: No.

24 THE COURT: Did you get any money
25 for disability from Georgia-Pacific?

1 JUROR NUMBER 36: That's where I
2 get my money from now.

3 THE COURT: From Georgia-Pacific?

4 JUROR NUMBER 36: That's right.

5 THE COURT: So you are on a
6 Georgia-Pacific disability?

7 JUROR NUMBER 36: That's right.

8 THE COURT: Do you know what the
9 Social Security Administration is?

10 JUROR NUMBER 36: How much?

11 THE COURT: Yeah, the Social ---

12 JUROR NUMBER 36: How much the
13 income is?

14 THE COURT: --- Security
15 Administration, do you know what that is?

16 JUROR NUMBER 36: Yes.

17 THE COURT: Do you get any money
18 from Social Security?

19 JUROR NUMBER 36: Yes.

20 THE COURT: How much do you get
21 from Social Security?

22 JUROR NUMBER 36: \$652.

23 THE COURT: How much do you get
24 from Georgia-Pacific?

25 JUROR NUMBER 36: Well, that's the

1 same thing I'm getting but I'm getting two
2 checks.

3 THE COURT: You get what?

4 JUROR NUMBER 36: I get two
5 checks. I get a \$42 one and I get a \$652
6 one.

7 THE COURT: Okay.. So you get a
8 \$42 from Georgia-Pacific, and you ---

9 JUROR NUMBER 36: No the \$42 one
10 is for SSI, and the \$652 is Georgia-Pacific.

11 THE COURT: How often do you go
12 to Mental Health?

13 JUROR NUMBER 36: Well, I used to
14 go but they're transferring me from that to
15 my doctor, Dr. Gibbs is my doctor.

16 THE COURT: How often do you go
17 see the doctor?

18 JUROR NUMBER 36: Oh, I been there
19 last week.

20 THE COURT: You got once a week
21 or like ---

22 JUROR NUMBER 36: Yeah.

23 THE COURT: --- once every two
24 weeks.

25 JUROR NUMBER 36: I got every

1 three months. If I got sick, I go.

2 THE COURT: Do you own your own
3 home or do you rent your home?

4 JUROR NUMBER 36: We own.

5 THE COURT: You own it?

6 JUROR NUMBER 36: Yes.

7 THE COURT: What else does your
8 brother do for you?

9 JUROR NUMBER 36: Well, you know,
10 if I get sick or anything he help me -- he
11 takes me to the doctor, back and forth, and
12 all of that, too.

13 THE COURT: Let me ask you this.
14 Have you ever been involved in the court
15 system at all?

16 JUROR NUMBER 36: No.

17 THE COURT: Do you understand
18 what is going on here today?

19 JUROR NUMBER 36: Yes.

20 THE COURT: Tell me your
21 understanding of what's going on here today
22 in this courtroom?

23 JUROR NUMBER 36: Well, I
24 understand, you know, that you call me up by
25 one for trial -- you know, sort of like a

1 jury or whatever for the circumstance.

2 THE COURT: Do you understand
3 anything else about what is going on?

4 JUROR NUMBER 36: (No verbal
5 response).

6 THE COURT: Let me ask you this,
7 your bipolar and schizophrenia, uh, what
8 type of situation brings that on? Do you
9 get nervous in crowds or what type of
10 situation do you put yourself in or do you
11 stay away from to help the schizophrenia and
12 the bipolar?

13 JUROR NUMBER 36: What it is is
14 that sometimes I have problems sleeping and
15 that's why they put me on the medication;
16 but now I don't have that problem too much.

17 THE COURT: So they gave you a
18 medication to help you sleep?

19 JUROR NUMBER 36: And nerves.

20 THE COURT: What medication did
21 they give you for the sleeping?

22 JUROR NUMBER 36: Same thing.

23 THE COURT: Paxil. You take
24 Paxil for everything?

25 JUROR NUMBER 36: Yes.

1 THE COURT: Are you familiar with
2 the Probate Court here in Berkeley County?

3 JUROR NUMBER 36: I'm familiar
4 with it.

5 THE COURT: Have you ever been in
6 the Probate Court?

7 JUROR NUMBER 36: Yes, I have been
8 there before.

9 THE COURT: Why were you there?

10 JUROR NUMBER 36: Oh, no, -- I
11 mean, I select a jury but I ain't never been
12 in no courtroom.

13 THE COURT: Never been in a
14 courtroom?

15 JUROR NUMBER 36: No.

16 THE COURT: Have you ever been
17 declared by the Probate judge as being
18 incompetent to manage your affairs?

19 JUROR NUMBER 36: No.

20 THE COURT: Okay. Other than
21 taking care of your money, what else does
22 your brother do for you -- and pay your
23 bills?

24 JUROR NUMBER 36: Well, you know,
25 he comes over and makes sure that everything

1 be good and all like that. And make sure
2 that, uh, that the yard be cut and stuff and
3 things like I should, the grass and all like
4 that. He will make sure that everything
5 will be, you know, be alright.

6 THE COURT: What do you do for
7 yourself. Do you fix your own meals?

8 JUROR NUMBER 36: Yes, I fix my
9 own meals.

10 THE COURT: Do you clean your own
11 house?

12 JUROR NUMBER 36: Yes, I do.

13 THE COURT: What else do you do
14 for yourself?

15 JUROR NUMBER 36: I fix my own
16 meals and clean my house up and I go to
17 church on Sundays and I go different places.

18 THE COURT: What happens when you
19 get sick?

20 JUROR NUMBER 36: What happened
21 when I got sick?

22 THE COURT: Yeah, what happens to
23 you?

24 JUROR NUMBER 36: Oh, sometimes I
25 just get nervous, nervous-like.

1 THE COURT: Does the nervousness
2 make you more likely to have problems, being
3 nervous?

4 JUROR NUMBER 36: No.

5 THE COURT: Have you been nervous
6 today?

7 JUROR NUMBER 36: A little but not
8 too much.

9 THE COURT: All right. Does
10 anybody have any questions?

11 WILLIAM MAGUIRE: No questions.

12 THE COURT: Does the State have
13 any questions?

14 SCARLETT WILSON: If I need to, if
15 you ---

16 THE COURT: I don't know. I'm
17 just asking you if you have any questions
18 that you want to bring to the Court's
19 attention because I make a decision. That's
20 all that I am asking you. I will try to
21 make a decision.

22 BRUCE DURANT: Just to clarify,
23 we are talking about the ---

24 THE COURT: I am talking about a
25 clarification of whether he is competent to

1 serve as a juror in this courtroom. Okay?

2 BRUCE DURANT: Yes, sir.

3 THE COURT: If you have any
4 questions on that subject, I will let you
5 explore the answers.

6 SCARLETT WILSON: Mr. Brown, I am
7 Scarlett Wilson. How are you?

8 JUROR NUMBER 36: Hi. How you
9 doing?

10 SCARLETT WILSON: I'm alright.
11 I'm sorry we are having to drag this out.

12 JUROR NUMBER 36: No problem.

13 SCARLETT WILSON: I just wanted to
14 ask you, do you remember when the court sent
15 you a questionnaire?

16 JUROR NUMBER 36: Sent a what?

17 SCARLETT WILSON: Do you know what
18 a questionnaire is?

19 JUROR NUMBER 36: A questionaria
20 (phonetic).

21 SCARLETT WILSON: A questionnaire.
22 Do you know what that is?

23 JUROR NUMBER 36: No.

24 SCARLETT WILSON: Do you remember
25 or did you receive at any point a list of

1 different questions that had to be answered
2 about you?

3 JUROR NUMBER 36: (Negative
4 gesture).

5 SCARLETT WILSON: You don't
6 remember getting that?

7 JUROR NUMBER 36: I probably did
8 but I didn't know -- didn't pay attention to
9 it.

10 SCARLETT WILSON: Well, somebody
11 filled one out for you. I was just
12 wondering if that was you or your brother or
13 -- it almost looks like it might be a
14 woman's handwriting but I am not sure. Do
15 you have a woman who might have filled it
16 out for you?

17 JUROR NUMBER 36: Well, my sister-
18 in-law helped me fill it out.

19 THE COURT: So did she do all the
20 writing on it?

21 JUROR NUMBER 36: Yes.

22 SCARLETT WILSON: And when you say
23 that she helped you fill it out, tell the
24 court -- tell the Judge how that worked?

25 JUROR NUMBER 36: She asked me

1 questions and, you know, I tell her and she
2 put it down.

3 SCARLETT WILSON: There were a
4 bunch of questions that were skipped, like
5 what was your occupation prior to your
6 present employment, which you didn't have,
7 -- is that why you'all didn't fill that out,
8 because you didn't have a job?

9 JUROR NUMBER 36: No, I didn't
10 have a job.

11 SCARLETT WILSON: Then on one part
12 of your form it says that you have seven
13 children, is that right?

14 JUROR NUMBER 36: No, I don't have
15 any.

16 SCARLETT WILSON: You don't have
17 any children?

18 JUROR NUMBER 36: No.

19 THE COURT: Solicitor, thank you.
20 I am ready to make a decision.

21 SCARLETT WILSON: Thank you.

22 THE COURT: The Court is going to
23 find that because of this mental illness,
24 being bipolar and schizophrenia, the
25 medication that he is taking, drawing

1 disability Social Security, I am going to
2 find that he is not qualified, not fully
3 cognizant of the affairs taking place in a
4 courtroom. Due to his disability, his SSI
5 and apparently receives disability from
6 Georgia-Pacific, I find that he is not
7 qualified to serve as a juror. I would
8 dismiss him from court.

9 WILLIAM MAGUIRE: Judge, ---

10 THE COURT: You can take
11 exception to that.

12 WILLIAM MAGUIRE: Thank you, sir.

13 THE COURT: Mr. Brown, I am going
14 to excuse you from jury service. Okay?

15 JUROR NUMBER 36: Okay.

16 THE COURT: Thank you very much.

17 JUROR NUMBER 36: Thank you, too.

18 THE COURT: Thank you so very
19 much for being here. I'm sorry that it took
20 so long.

21 JUROR NUMBER 36: No problem.

22 (JUROR NUMBER 36 EXCUSED)

23 (JUROR NUMBER 36 EXITS COURTROOM)

24 THE COURT: We have got, what?
25 Three more people on this group? Is that

1 right?

2 CLERK: Yes, sir.

3 THE COURT: Bring one more,
4 please. Do you'all want to do the last
5 three or do one more? What do you want to
6 do?

7 SCARLETT WILSON: I think we
8 should do the last three. They've been
9 waiting.

10 THE COURT: Okay.

11 (JUROR NUMBER 257 ENTERS COURTROOM)

12 CLERK: Have a seat and state
13 your name.

14 JUROR NUMBER 257: Rocko
15 Patrick.

16 THE COURT: Mr. Patrick, how you
17 doing this afternoon?

18 JUROR NUMBER 257: Doing good.

19 THE COURT: Have you had an
20 opportunity to look at this sheet concerning
21 opinions about death penalty?

22 JUROR NUMBER 257: Yes, I have.

23 THE COURT: Did you understand
24 it?

25 JUROR NUMBER 257: Yes.

1 THE COURT: Did you fall into any
2 category: one, two or three?

3 JUROR NUMBER 257: Type three.

4 THE COURT: Type three. Okay,
5 I've got some questions to ask you.

6 ROCKO PATRICK, having been
7 previously sworn to tell the truth testified
8 as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q. Did you also have an opportunity to
12 read the list of potential witnesses? I
13 believe that there are one hundred thirty-
14 four.

15 A. Yes.

16 Q. Did you know anybody or recognize any
17 names?

18 A. Nothing familiar.

19 Q. Nobody?

20 A. No one.

21 Q. You didn't recognize anyone?

22 A. (Negative gesture).

23 Q. I am going to ask you certain questions
24 and there are no right or wrong answers.

25 And the attorneys will be asking you some

1 questions. Just answer the questions to the
2 best of your ability.

3 A. All right.

4 Q. Do you know anything about the case?

5 A. I think I heard a little bit about it.

6 Q. All right, what did you hear about?

7 A. The guys that I work with were talking
8 about it, when they were reading the
9 newspaper a week or two ago.

10 Q. Did you read anything in the newspaper?

11 A. No, I did not.

12 Q. What did the guys at work tell you
13 about the case?

14 A. Somebody was killed, something about a
15 hammer out in Cainhoy, I believe. I think
16 that he admitted to it, said he did it.

17 Q. Anything else?

18 A. That's about it.

19 Q. When was this told to you?

20 A. Maybe last week, two weeks ago.

21 Q. Have you seen anything on television
22 about the case?

23 A. No.

24 Q. Based upon what the guys at work told
25 you, have you formed an opinion as to the

1 defendant's innocence or guilt?

2 A. I just heard that he pled guilty or
3 that he was going to plead guilty, confessed
4 to it.

5 Q. Okay. Who told you that?

6 A. One of the guys that I work with, who
7 was reading the paper.

8 Q. So my question to you was, based on
9 that, did you form an opinion as to his
10 innocence or his guilt?

11 A. No, sir.

12 Q. Why not?

13 A. I did not know all the details.

14 Q. Pardon?

15 A. I did not know all the details.

16 Q. Well, they told you some details.

17 Q. Yes.

18 Q. You just didn't believe what they told
19 you?

20 A. I really was not paying attention.

21 Q. Okay.

22 Q. It was just talk at work and I happened
23 to overhear.

24 Q. Okay. Can you set that aside and base
25 your decision on what you hear in the court

1 room?

2 A. Yes.

3 Q. The defendant has pled not guilty and
4 it is the State's burden to find him guilty
5 beyond a reasonable doubt. Do you
6 understand?

7 A. Yes, sir.

8 Q. Do you have any relatives who are
9 employed in law enforcement?

10 A. No, sir.

11 Q. Has the solicitor or any member of her
12 staff prosecuted you or any one else in your
13 family?

14 A. No, sir.

15 Q. Have you or any member of your family
16 ever been the victim of a crime?

17 A. No, sir.

18 Q. Do you have any relatives in jail?

19 A. Currently?

20 Q. Yes, sir.

21 A. No, sir.

22 Q. How about in the past?

23 A. Yes.

24 Q. Who?

25 A. Cousin.

1 Q. First second or want?

2 A. A first cousin.

3 Q. A first cousin?

4 A. Yeah.

5 Q. Where did he go to jail?

6 A. Ended up in Ohio.

7 Q. What did they go to jail for?

8 A. Drugs through the mail, somehow ended
9 up in Ohio.

10 Q. Are you a member of any groups, which
11 has primarily as its purpose the support of
12 law enforcement, such as MADD or other
13 groups?

14 A. No, sir.

15 Q. Do you have any special interest in the
16 outcome of this particular case?

17 A. Say that again?

18 Q. Do you have any particular interest in
19 the outcome of this particular case?

20 A. No, sir.

21 Q. Are you aware of any bias or prejudice
22 toward the defendant as a result of the
23 charges that have been brought against him?

24 A. No.

25 Q. Do you have any bias or prejudice

1 towards the defendant because of information
2 that your coworkers told you about the case?

3 A. No.

4 Q. Do you have any religious beliefs that
5 would create a bias or prejudice for or
6 against the defendant?

7 A. No.

8 Q. Do you have any religious beliefs that
9 would create a bias or prejudice for or
10 against the State?

11 A. Not.

12 Q. You have a bias are prejudiced against
13 the defendant because of his race, being
14 black?

15 A. No.

16 Q. Do you know of any reason, personal or
17 otherwise, why you could not serve on the
18 jury?

19 A. No, sir.

20 Q. Do you know of any reason why you could
21 not give both the State and the Defendant a
22 fair and impartial trial?

23 A. No, sir.

24 THE COURT: Whose turn?

25 EXAMINATION

1 BY SCARLETT WILSON:

2 Q. Mr. Rocko, thank you for being patient
3 with us. I know that it's been a long week
4 for you. It has for all of us, too. We
5 just want to ask you some questions to get a
6 general idea of your thoughts on the death
7 penalty and life without parole.

8 Under our rules, we cannot talk about
9 the specifics of this case so we have to
10 talk in generalities. If you don't
11 understand, let me know and I will try to
12 make it make sense. Sometimes it is a
13 little awkward talking in generalities.
14 Okay?

15 A. (Affirmative nod).

16 Q. You said that you were a juror type
17 three?

18 A. Yes.

19 Q. Tell me what that means to you.

20 A. It just depends on the details, just
21 how I hear everything, just how I feel about
22 that particular case.

23 Q. Did you understand from the Judge's
24 instructions and also from reading that
25 sheet that you were given that in South

1 Carolina a murder, by definition, is a
2 killing that is intentional, that is
3 committed with malice aforethought, meaning
4 that the person who killed had a wicked
5 heart and he meant to do evil when they did
6 the killing?

7 A. Yes, ma'am.

8 Q. So every murder case would mean that?
9 Does that make sense to you?

10 A. Yes.

11 Q. Okay. So we are not talking about an
12 accident, we're not talking about a
13 situation where somebody gets provoked into
14 killing. That is the point that I am
15 making.

16 A. I understand what you're saying.

17 Q. Okay. Does that change anything for
18 you?

19 A. I would still have to hear the whole
20 case.

21 Q. Okay. That is kind of what I'm getting
22 at. I want to ask you some questions about
23 whether you would keep your mind open and
24 whether or not you could continue to keep
25 your mind open through the second phase of

1 the trial.

2 Do you understand that in a death
3 penalty case that there are two cases, the
4 guilt phase and then the penalty phase,
5 which are totally separate?

6 A. Yes.

7 Q. And after the guilt phase of a trial.
8 Let's say that you were a juror on the
9 trial, to even get to the penalty phase you
10 and eleven others would've had to have found
11 this malicious, ugly, evil murder to even
12 get to the second phase. You understand
13 that?

14 A. Yes.

15 Q. Then could you hold out on making your
16 decision until the State met its burden of
17 proof in the second phase?

18 A. Yes.

19 Q. We would have to prove one aggravating
20 circumstance in that second phase. Could
21 you make us do that?

22 A. Yes.

23 Q. All right. And if we did not do that,
24 you could return a verdict for life?

25 A. Possibly, yes.

1 Q. Well, in this situation the Judge will
2 instruct you and the other jurors that if
3 the State failed to prove at least one
4 aggravating circumstance, you could not
5 consider death. Could you follow that
6 instruction?

7 A. Yes.

8 Q. Okay. So in a situation, let's say for
9 example in the penalty phase -- let's say
10 that the State set out to prove torture or
11 overkill, like someone does more than is
12 necessary to kill somebody; that that was
13 the aggravating circumstance that the State
14 proved. Could you then, after the State
15 proves that, still wait, as the Judge would
16 instruct you, before making your decision
17 about life without parole or the death
18 penalty to hear things about the defendant?
19 Things about his life, things about what was
20 going on with him when this murder occurred?

21 A. If both were still an option?

22 Q. Yes, but it would always be an option.
23 After the aggravating circumstance, life is
24 always an option, and then death would
25 become an option.

1 A. Yes, I think I would just form my
2 opinion over the whole case.

3 Q. In talking about that, when you said
4 that if both were still an option, again
5 let's make sure that we are clear on that.
6 You would never be required to return a
7 verdict of death. That would never --
8 nobody would ever tell you that you have to
9 do that.

10 A. Yes.

11 Q. Life would always be an option.

12 A. (Affirmative nod).

13 Q. And do you understand that life without
14 parole means just that?

15 A. Oh, yes.

16 Q. Okay. So in that situation, again
17 could you follow the Judge's instructions
18 and get meaningful consideration, not just
19 listen to it but really consider and factor
20 into your opinion and your verdict things
21 about the defendant?

22 A. Yes.

23 Q. Okay. Things about -- even things that
24 might not have had to do with the actual
25 event itself but maybe had to do with why he

1 was the kind of person that he was. Could
2 you consider those things?

3 A. Possibly.

4 Q. Well, that's what we need to hear more
5 about because if you were on a jury you
6 would have to take an oath that you would do
7 that. If you cannot take that oath, then we
8 just need to know that.

9 A. I believe that I could do that.

10 Q. You make -- okay. I am getting the
11 feeling -- and tell me if I am wrong, that
12 if you heard testimony about a brutal,
13 malicious murder and the State proved an
14 aggravating circumstance, that you might
15 lean towards death.

16 A. Is possibly, yes.

17 Q. Is that fair?

18 A. Yes. Yes.

19 Q. And that's all right. But even though
20 you lean that way you could keep an open
21 mind and still consider and factor in things
22 about the defendant and his life, his
23 circumstances, his situation before
24 rendering the final decision?

25 A. I would not say that I would see

1 anything as an excuse for doing anything
2 like that.

3 Q. Well, we are not talking about an
4 excuse. We're just talking about whether
5 not you could factor in, whether or not you
6 could listen to other jurors and their
7 thoughts if they were different than yours?

8 A. Yes.

9 Q. That would not necessarily mean that
10 you would change your mind -- even if you
11 gave it meaningful consideration, really
12 took it to heart, you would make up your own
13 mind as to whether to vote for life without
14 parole or the death penalty?

15 A. Yes.

16 Q. That's all that I have, Mr. Rocko.
17 Thank you.

18 THE COURT: Mr. Maguire.

19 EXAMINATION

20 BY WILLIAM MAGUIRE:

21 Q. Mr. Patrick?

22 A. Yes, my last name is Patrick. My
23 first name is Rocko.

24 Q. That's what I thought. Thank you.
25 Good afternoon, sir.

1 A. Good afternoon.

2 Q. What I am going to ask you is this, in
3 sitting on a jury on a murder case and you
4 have to make a decision to spare someone's
5 life, let them die in prison, life without
6 parole, or vote for the death penalty, what
7 are the kinds of things that you would look
8 at that would make you go one way or the
9 other?

10 A. Just the nature of it. Just all the
11 details that I would hear..

12 Q. You heard the prosecutor. I think she
13 used the terms brutal, heinous, maybe even
14 torture.

15 A. If it was that bad, I could see the
16 death penalty.

17 Q. Is that where you start off all the
18 time?

19 A. No.

20 Q. So you could consider life?

21 A. Yes. That is punishment. I consider
22 that - to some people that could be worse
23 than death.

24 Q. And why is that?

25 A. Just time.

1 Q. Having to think about it every day?

2 A. Yeah, just being imprisoned.

3 Q. Is the death penalty ever appropriate
4 for somebody who expresses substantial
5 remorse for what they have done?

6 A. Say that again?

7 Q. Would the death penalty, for you, be
8 appropriate for somebody who expresses
9 sincere remorse for the crime, for what they
10 have done?

11 A. I don't think that they should get the
12 death penalty if there is remorse.

13 Q. And that is because you are looking at
14 the defendant to see if they have some
15 humanity and some redemption about them?

16 A. Real remorse , (affirmative nod).

17 Q. Is mercy something that is earned or
18 freely given?

19 A. Earned.

20 Q. How would somebody go about earning it?

21 A. From what I hear in the case.

22 Q. Would you maybe focus on their
23 childhood, their upbringing to see what kind
24 of life that they have, their walk in life
25 to see if they deserved mercy?

1 A. No, I don't think so.

2 Q. Does mercy go hand-in-hand with being
3 very remorseful?

4 A. Yes.,

5 Q. In a case like this, if you were on the
6 jury making a decision it is often described
7 as an individual moral decision. It is not
8 a democracy. Is that okay with you?

9 A. Yes.

10 Q. I mean, does that sound like the way
11 that it should be?

12 A. Yes.

13 Q. Do you agree that a vote as to whether
14 somebody lives or dies is a very personal
15 decision?

16 A. Yes.

17 Q. It would be hard to think of a more
18 personal decision?

19 A. Yes.

20 Q. Like what religion to choose or whether
21 to have kids?

22 A. Yes.

23 Q. A personal moral decision?

24 A. Yes.

25 Q. And you could certainly respect other

1 people that have a different decision?

2 A. Yes.

3 WILLIAM MAGUIRE: That's all that
4 I have.

5 THE COURT: Any Motion.

6 WILLIAM MAGUIRE: Sorry, I might
7 have one more question -- could I?

8 THE COURT: Yes, sir.

9 WILLIAM MAGUIRE: I appreciate it,
10 Judge.

11 EXAMINATION RESUMED

12 BY WILLIAM MAGUIRE:

13 Q. Could you ever vote for a life in
14 prison penalty based on the defendant's
15 background? His upbringing, his childhood,
16 his walk in life?

17 A. As saying that is an excuse, in that
18 they should get a lesser sentence?

19 Q. Well, maybe to move you just that bit
20 from death penalty to life without parole?

21 A. I don't see that as an excuse for
22 anything.

23 Q. So if somebody, say, was brought up in
24 abject poverty ---

25 THE COURT: You said one

1 question.

2 WILLIAM MAGUIRE: You're right,
3 Judge. I have exceeded my limit. I
4 apologize.

5 THE COURT: All right. Anybody
6 have any Motions on this juror?

7 SCARLETT WILSON: No Motions.

8 BOYD YOUNG: Yes, sir.

9 WILLIAM MAGUIRE: Yes, sir.

10 THE COURT: All right. You may
11 step outside, Mr. Patrick, for just a
12 second.

13 (JUROR NUMBER 257 EXITS COURTROOM)

14 THE COURT: Be happy to hear you.

15 WILLIAM MAGUIRE: Thank you, Your
16 Honor. Move to strike for cause. The juror
17 appears to be mitigation impaired, in that
18 he could never ---

19 THE COURT: Go ahead, I'm
20 listening.

21 WILLIAM MAGUIRE: I'm waiting for
22 the door to close. Sorry. He could never
23 really meaningfully consider mitigation
24 evidence, a defendant's background. He kept
25 referring to that as 'I don't see that as an

1 excuse, I don't see it as an excuse.' He
2 was very consistent with that.

3 Failure to strike him for cause
4 would violate Mr. Broughton's Sixth and
5 Fourteenth Amendment rights to a fair and
6 impartial jury.

7 THE COURT: Motion denied. Bring
8 us the next juror, please.

9 CLERK: Mr. Patrick?

10 THE COURT: Bring Mr. Rocko
11 Patrick in for a second, please.

12 (JUROR NUMBER 257 ENTERS COURTROOM)

13 THE COURT: Mr. Patrick, the
14 bailiff is going to give you a card with a
15 telephone number on it. Please call that
16 number tomorrow after five o'clock. There
17 will be a message for all jurors. Follow
18 those instructions.

19 What we are doing is that we are
20 qualifying a pool of people from which we
21 are going to strike the jury or draw a jury
22 for this trial. You are now part of that
23 process.

24 Don't discuss the case with anyone.
25 If the people at work start asking you what

1 transpired or start talking about the case,
2 please walk away and tell them that you
3 don't want to hear it. Can you do that?

4 JUROR NUMBER 257: Yes, Sir.

5 THE COURT: Don't read anything
6 in the paper or watch television. Have a
7 good day.

8 WILLIAM MAGUIRE: Your Honor,
9 could I ---

10 THE COURT: Call our next juror.

11 WILLIAM MAGUIRE: May I ask to
12 enter a copy of Mr. Brown's questionnaire
13 into the record as part of his proffer?

14 (JUROR NUMBER 348 ENTERS COURTROOM)

15 THE COURT: Mr. Tibayan?

16 JUROR NUMBER 348: Tibayan.

17 THE COURT: Mr. Tibayan, how are
18 you doing today?

19 JUROR NUMBER 348: Tired.

20 THE COURT: Tired?

21 JUROR NUMBER 348: Yes, sir.

22 THE COURT: I think everybody is
23 at that stage. Okay?

24 JUROR NUMBER 348: (No verbal
25 response).

1 THE COURT: See if you can bear
2 with us a little while and then we can let
3 you go before too much longer. Okay?

4 JUROR NUMBER 348: Yes, sir.

5 THE COURT: Have you had an
6 opportunity to review the sheet that the
7 court gave to you concerning opinions about
8 the death penalty?

9 JUROR NUMBER 348: Yes, sir.

10 THE COURT: Did you understand
11 types one, two and three?

12 JUROR NUMBER 348: Yes, sir.

13 THE COURT: Did you determine
14 whether or not you fit into one of those
15 categories?

16 JUROR NUMBER 348: I think I
17 fit into type one?

18 THE COURT: Type one?

19 JUROR NUMBER 348: Yes, sir.

20 THE COURT: Type one says that it
21 doesn't matter what crime, that you could
22 never vote for death; is that correct?

23 JUROR NUMBER 348: Yes, sir.

24 THE COURT: All right, I will
25 excuse you from jury service on this case.

1 Thank you very much.

2 (JUROR NUMBER 348 EXCUSED)

3 (JUROR NUMBER 348 EXITS COURTROOM)

4 THE COURT: To answer your
5 question about the questionnaire, no. The
6 Court did not consider the questionnaire, I
7 never saw the questionnaire. I ruled based
8 on his testimony and question-and-answer
9 without -- so the answer is no.

10 WILLIAM MAGUIRE: May I be heard
11 on that?

12 THE COURT: No. Yeah, I'll hear
13 you. My problem with it -- I never saw it,
14 the Solicitor asked him some questions about
15 it and he said that his sister (sic) filled
16 it out, that he gave her the information.
17 So I don't know what is in it. It didn't
18 have anything to do with this court's
19 decision. That's the reason I am not going
20 to let you put it in. I'll hear you on it,
21 why you think that it should go in --
22 because it didn't have anything to with the
23 decision, that the court made.

24 WILLIAM MAGUIRE: The Solicitor
25 alleged that the questionnaire was

1 incomplete.

2 THE COURT: No, she said that
3 that there was on -- she brought up one
4 question that they didn't answer, about the
5 employment. That's the only thing that I
6 heard about not being complete.

7 WILLIAM MAGUIRE: And the question
8 about whether or not he had seven children;
9 which there is a "7" with a line drawn
10 through it.

11 THE COURT: If you want to redact
12 the entire thing and just leave those two
13 in, I'll let it come in for that purpose. I
14 don't know what's in it, don't want to know
15 what's in it. I haven't looked at it. That
16 wasn't part of my decision.

17 WILLIAM MAGUIRE: I just want to
18 make it part of the record for later review.

19 THE COURT: I understand. I'm
20 not making it a part of the record because
21 it wasn't a part of the record that the
22 court made a decision on.

23 WILLIAM MAGUIRE: Okay, I will
24 take that.

25 THE COURT: Now, if you want to

1 proffer it, that's fine. I can't stop you
2 from proffering it but I am not making it a
3 court's exhibit and I am not admitting it
4 into evidence. Do you understand what
5 distinction that I am making?

6 WILLIAM MAGUIRE: Yes, sir.

7 THE COURT: If you want to
8 proffer it, that's fine.

9 WILLIAM MAGUIRE: My proffer would
10 be that all the questions in the question-
11 naire are answered in their entirety. The
12 only ones that are left blank are the one
13 which are followup questions, which said
14 specifically that ---

15 THE COURT: I don't care if you
16 proffer it. Just mark it. Okay. Mark it
17 as Defendant's Proffer Number One. Okay.

18 WILLIAM MAGUIRE: That would be
19 great.

20 SCARLETT WILSON: Judge, I think
21 that I need to respond just so that my
22 position is on the record, with his charge
23 of my misrepresenting something. What I
24 asked was -- when I asked the ---

25 THE COURT: Let me say this.

1 Whether he filled it out or not is not the
2 reason that I discharged him. I discharged
3 him because of his mental illness.

4 SCARLETT WILSON: I hear you but
5 I'm being accused of being misleading and I
6 think while we have the record right here
7 that I need to make sure that it is clear
8 what I did. What I did was ask why
9 something was not filled out and then --
10 when I realized that it was about
11 employment, which he didn't even have, I
12 said 'So you didn't fill out that part
13 because you weren't employed?' He said
14 'that's right.'

15 THE COURT: I understand.

16 SCARLETT WILSON: Okay. Well, I
17 just wanted to make sure of that. Then, as
18 noted, I am not sure what the number seven
19 children -- it does have a line through it.
20 I don't know what that means or doesn't
21 mean.

22 THE COURT: All of this is post-
23 decision.

24 SCARLETT WILSON: Yes, sir.

25 THE COURT: Mark it as proffer

1 one.

2 WILLIAM MAGUIRE: Thank you.

3 (SO ENTERED AS DEFENDANT'S PROFFER 1)

4 THE COURT: For whatever good you
5 want to have it introduced. Bring the next
6 juror.

7 (JUROR NUMBER 258 ENTERS COURTROOM)

8 CLERK: Have a seat and state
9 your name.

10 JUROR NUMBER 258: Mark
11 Paulhamus.

12 THE COURT: Mr. Paulhamus, how
13 are you doing today?

14 JUROR NUMBER 258: Pretty good.

15 THE COURT: Sorry to interfere
16 with your supper or your evening meal, but
17 hopefully we can finish up before too long.
18 Okay?

19 JUROR NUMBER 258: Yes, sir.

20 THE COURT: Have you had an
21 opportunity to look at the sheet that the
22 Court gave you concerning opinions about the
23 death penalty?

24 JUROR NUMBER 258: Yes, sir.

25 THE COURT: Did you understand

1 the opinion on type one, two and type three?

2 JUROR NUMBER 258: Yes, sir.

3 THE COURT: Did you make a
4 determination as to which category which you
5 fell into?

6 JUROR NUMBER 258: Type three.

7 THE COURT: Okay, I have some
8 questions for you and then the attorneys
9 will have some questions they want to ask
10 you.

11 MARK PAULHAMUS, having been
12 previously sworn to tell the truth testified
13 as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q. Did you also have the opportunity to
17 review the list of one hundred thirty-four
18 names of potential witnesses?

19 A. Yes, sir.

20 Q. Did you recognize any names or know
21 anybody?

22 A. No, sir.

23 Q. You don't know anyone?

24 A. No, sir.

25 Q. All right. I'm going to ask you some

1 questions. There are no right or wrong
2 answers. Just answer the question to the
3 best of your ability. Okay?

4 A. Yes, sir.

5 Q. Could you do that?

6 A. Yes, sir.

7 Q. Do you have any knowledge about the
8 case, have you heard anything about the
9 case?

10 A. No, sir.

11 Q. Have you read anything in the paper?

12 A. No, sir.

13 Q. Or seen anything on television?

14 A. No, sir.

15 Q. Have you heard anyone talking about the
16 case?

17 A. Other than here, no.

18 Q. Pardon?

19 A. Other than in this courtroom, no.

20 Q. Do you have any relatives or close
21 friends employed in law enforcement?

22 A. No, sir.

23 Q. Has the solicitor or anyone on her
24 staff prosecuted anyone in your family or
25 you?

1 A. No, sir.

2 Q. Have you or any members of your family
3 or close personal friends been victims of
4 crimes?

5 A. No, sir.

6 Q. Do you have any relatives in jail?

7 A. No, sir.

8 Q. Are you a member of any groups which
9 primarily support law enforcement, such as
10 MADD?

11 A. No, sir.

12 Q. Do you have any special interest or
13 particular interest in the outcome of this
14 case?

15 A. No, sir.

16 Q. Are you aware of any bias or prejudice
17 against the defendant just merely as a
18 result of the charges that the State has
19 brought against him?

20 A. No, sir.

21 Q. You have any bias or prejudice against
22 the Defendant because of his race, which is
23 black?

24 A. No.

25 Q. Do you have any religious beliefs that

1 would create a bias or prejudice for or
2 against the defendant?

3 A. No.

4 Q. Any religious belief that would create
5 a bias or prejudice for or against the
6 State?

7 A. No.

8 Q. Have you had any, good or bad
9 experiences with law enforcement?

10 A. Have I had any good or bad experiences?

11 Q. Right.

12 A. I would say no, because I just try to
13 stay off - keep off the radar, stay out of
14 trouble.

15 Q. Have you got one of those radar
16 detectors?

17 A. No. I don't have one on my car. No.

18 Q. Oh, you don't?

19 A. No. By the time that they get you and
20 that thing goes off, it's too late. It's
21 pointless.

22 Q. So you don't have one in your car?

23 A. No, it's useless.

24 Q. Well. It is a running battle between
25 the radar detection people and the police

1 department about equipment.

2 A. I guess.

3 Q. Sort of like jamming airplanes and
4 radars, a battle between the jammers and the
5 jammees.

6 A. Right, exactly.;

7 Q. Okay. Do you know of any reason why,
8 personal or otherwise, you could not serve
9 on this jury?

10 A. No, sir. I did go to the hardship and
11 stood in line and we just confirmed that my
12 employer will pay me for jury duty.

13 Q. That was your original excuse?

14 A. Right.

15 Q. Do you know of any reason why you could
16 not give both the State and the Defendant a
17 fair and impartial trial?

18 A. No, sir.

19 Q. All right, the attorneys are going to
20 ask you some questions. I want to answer
21 them as best you can. Thank you very much.

22 EXAMINATION

23 BY WILLIAM MAGUIRE:

24 Q. Good evening.

25 A. Good evening.

1 Q. We've asked a lot of you and know that
2 this has been very inconvenient. We are
3 just going to ask a little bit more of you,
4 and that's just to be honest and give candid
5 response to the questions. Okay?

6 A. Correct.

7 Q. What I am going to do is that I am
8 going to put you in a hypothetical
9 situation, put you on a jury and tell you
10 the evidence that has been presented to you.
11 The evidence is that a murder occurred and
12 the person -- unlawfully, without
13 justification, killed an innocent victim
14 with malice aforethought. Malice
15 aforethought is described by our courts as
16 having a black, malignant heart fatally bent
17 on wickedness and mischief. Are you with
18 me?

19 A. Yes.

20 Q. All murders and South Carolina are
21 intentional. They are not accident, it is
22 not self-defense, it is not a fight that got
23 out of hand. It is a choice to take the
24 life of an innocent person. Are you with
25 me?

1 A. Yes, I am.

2 Q. Just based on that, is the life
3 penalty, life in prison penalty an
4 appropriate sentence?

5 A. Yes, I would say -- well, basically you
6 described the first paragraph on this first
7 page here. You know, I would have to hear
8 what was the -- there were two things.

9 Q. Well, let me help you out.

10 A. Aggressive or something like that.

11 Q. Aggravation and mitigation.

12 A. Yes. Well, you would hear both sides
13 of that, and then you make a determination
14 and this leads me back to being a type
15 three.

16 Q. Exactly. Okay, so we're going to
17 proceed to the next step now. You're still
18 on the jury.

19 THE COURT: Give him a chance to
20 answer now.

21 WILLIAM MAGUIRE: I'm sorry, did I
22 cut you off?

23 JUROR NUMBER 258: I'm done.

24 THE COURT: Okay.

25 WILLIAM MAGUIRE: I apologize,

1 Judge. I am just trying to go fast.

2 THE COURT: Well, don't go fast.
3 Give him a chance to answer. Go ahead.

4 WILLIAM MAGUIRE: Yes, sir.

5 EXAMINATION RESUMED

6 BY WILLIAM MAGUIRE:

7 Q. We are going to take the next step now,
8 which is the aggravation part. I am not
9 going to talk to you about this case, the
10 details or the specific facts.

11 A. Correct.

12 Q. When I am going to do is that I am
13 going to give you some descriptive terms
14 about a criminal offense. Okay?

15 A. Yes.

16 Q. A home invasion, rape, burglary, armed
17 robbery, murder. Is the life penalty
18 appropriate in that situation?

19 A. (Affirmative nod).

20 Q. You are nodding your head. Are you
21 debating it, or is that a yes?

22 A. I would say yes, life penalty. Yes. I
23 mean, I am pro life. But, again, you have
24 just got to -- you know, you are kind of
25 splitting it up -- well, I would say yeah.

1 Q. Okay. And then -- I am just going to
2 ask you some very short questions. Is the
3 death penalty appropriate in a case where
4 the defendant expresses remorse?

5 A. Is the death penalty appropriate if he
6 expresses remorse? I mean, the deal is
7 done. You know. I would say yes.

8 Q. Okay.

9 A. Yes.

10 Q. You could consider the death penalty
11 even if somebody expresses remorse?

12 A. Yes.

13 Q. Is mercy -- the concept of mercy, is
14 that something that is freely given or is it
15 earned?

16 A. Mercy? It is earned, I believe.

17 Q. How would somebody go about earning it?

18 A. Well, mercy -- it depends on -- like if
19 I kick somebody's dog or something like that
20 and I was like, you know, 'please give me
21 mercy, I will do this or whatever,' you
22 know, that is how it would be earned. That
23 -- I don't really know how to answer that
24 question, honestly.

25 Q. Fair enough. Would you want to hear

1 about the defendant, who he is as a person,
2 his walk in life?

3 A. No.

4 Q. That would not be relative in your
5 decision-making process?

6 A. No. Like his bio or something like
7 that?

8 Q. Sure. Who he is, did he have any
9 hardships in life or that sort of thing?

10 A. No.

11 Q. Those factors, his background factors,
12 maybe his character -- if I hear you
13 correctly, would not be relevant in deciding
14 life or death?

15 A. No, I would say not.

16 Q. Is that because your decision process
17 is going to be centered on the facts of the
18 crime?

19 A. Yes, just ask. Just the facts, as they
20 say.

21 Q. Fair enough. Just the facts. And when
22 you say the facts, you are talking about how
23 brutal the crime was, violent it was or that
24 sort of thing?

25 A. Yes.

1 WILLIAM MAGUIRE: One second,
2 Judge.

3 THE COURT: Okay.

4 EXAMINATION CONTINUED

5 BY WILLIAM MAGUIRE:

6 Q. Obviously you appreciate the gravity of
7 the case that we're here in court about,
8 literally a life and death situation?

9 A. Correct.

10 Q. In cases like this a jury's decision at
11 the end of the case is described in the law
12 as their individual moral judgment or moral
13 assessment.

14 A. Right.

15 Q. Does that sound fair to you, that it
16 should be that way?

17 A. Yes, I would say that it is like an
18 individual decision, but in the long run you
19 are pretty much working together as a team.
20 You know, you just pretty much come to what
21 that -- I know that you all need a unanimous
22 decision to get ---

23 Q. The only time that you only need an
24 unanimous jury decision is for a death
25 verdict.

1 A. Correct. That's what were talking
2 about.

3 Q. Right. If other jurors, a handful or a
4 couple disagreed with you in their own
5 individual moral assessment, could you
6 respect that?

7 A. Yes, I would respect that. They have
8 the right to, sure.

9 Q. You would agree with me that a decision
10 like this is an extremely personal decision?

11 A. Yeah, it's a big decision. Yes.

12 Q. I mean, it might be the most personal
13 hard decision someone ever made in their
14 life; like whether to bring kids into the
15 world or something like that?

16 A. Correct.

17 Q. And you would respect their individual
18 moral judgments?

19 A. Yes.

20 Q. And you could at the end of the day
21 agree to disagree?

22 A. Correct.

23 WILLIAM MAGUIRE: That's all that
24 I have. Thank you.

25 THE COURT: Solicitor?

EXAMINATION

1
2 BY SCARLETT WILSON:

3 Q. I just have one question. You
4 mentioned that you are pro life. I wasn't
5 sure what that means in this context, what
6 did you mean by that?

7 A. You know, I hate to see -- to say, you
8 know, the death penalty or whatever like
9 that. I respect life. But I believe that
10 you make your own decisions and every action
11 has a consequence.

12 I don't especially like to say 'death'
13 or whatever like that but every action has
14 its consequence.

15 I am not afraid to make a decision, if
16 that is what you all are trying to say, you
17 know, 'this guy won't make a decision' or
18 something like that. I am not afraid of
19 that. No.

20 But I would rather see somebody living
21 than dying. It is a very tough decision.

22 Q. So would you say that you lean towards
23 life without parole?

24 A. No. That would kind of be one-sided,
25 you know.

1 Q. So you see yourself right down the
2 middle?

3 A. Correct.

4 Q. And when you said that you were number
5 three, a juror number three, and I know what
6 the form says, but tell me what that means
7 to you.

8 A. A number three is someone who will
9 listen to, you know, both sides of the
10 story. Get the facts versus fiction, and
11 get both sides of the -- what was it?

12 Q. Aggravation, mitigation?

13 A. Mitigation and aggravation, and then
14 make a decision from there. And not just
15 listen to the aggravation part where he,
16 you know, the violent parts.

17 Q. Right.

18 A. That you would listen to the second
19 part as well.

20 Q. So when you used the term in response
21 to Mr. Maguire that you are not interested
22 in somebody's bio, did you mean ---

23 A. Correct.

24 Q. Does that mean like if a movie star
25 killed somebody, you don't care about that?

1 A. No. I don't care, you know, what path
2 someone's life is. I know plenty of people
3 that had a pretty tough life and, you know,
4 they are not making dishonest decisions and
5 all like that. I don't want to hear that.
6 You know.

7 Q. Then how is it that you think that you
8 could listen to mitigating circumstances?

9 A. Well, that would -- the mitigation is
10 like what led up to the part or something
11 like that?

12 Q. Mitigation is a whole bunch of stuff.

13 A. Yeah, so what you're saying now is like
14 said someone was molested?

15 Q. Yes.

16 Q. Yes, that is important, I do agree with
17 you on that.

18 Q. So it sort of depends on what you heard
19 whether or not you -- how much weight you
20 would give it?

21 A. Right.

22 Q. You would be open-minded to hearing it?

23 A. Yes, so what you're saying. Yes, I
24 would.

25 SCARLETT WILSON: Thank you.

1 THE COURT: Any motions on this
2 juror?

3 WILLIAM MAGUIRE: Yes, sir.

4 THE COURT: Mr. Paulhamus, if you
5 will step out in the hall just very briefly.

6 (JUROR NUMBER 258 EXITS COURTROOM)

7 THE COURT: I'll be happy to hear
8 your Motion:

9 WILLIAM MAGUIRE: Thank you,
10 Judge. I move to strike this juror for
11 cause. Not to dismiss him would violate Mr.
12 Broughton's Sixth and Fourteenth Amendment
13 rights to a fair and impartial jury.

14 This juror is substantially
15 impaired because he cannot follow the law
16 regarding mitigation.

17 THE COURT: Motion denied.

18 WILLIAM MAGUIRE: Thank you.

19 THE COURT: Bring Mr. Paulhamus
20 in.

21 (JUROR NUMBER 258 ENTERS COURTROOM)

22 THE COURT: Mr. Paulhamus, the
23 bailiff is going to give you a card with a
24 telephone number on it. Please call that
25 number after five o'clock tomorrow. There

1 will be a message for the jury panel.

2 Please follow those instructions. Okay.

3 What we are doing is drawing a
4 group of people to be qualified to serve as
5 jurors. When we get a certain number, we
6 are going to strike or draw a jury. You are
7 part of that process. Understand?

8 JUROR NUMBER 258: Yes, Sir.

9 THE COURT: Please don't discuss
10 the case with anyone. If somebody tries to
11 talk to you about it, please walk away and
12 tell them that you cannot discuss it or
13 listen to them. Please do not read anything
14 in the papers or watch anything on
15 television. Thank you so very much.

16 JUROR NUMBER 258: You said to
17 call after five on what day?

18 THE COURT: Tomorrow.

19 (JUROR NUMBER 258 EXITS COURTROOM)

20 THE COURT: What you want to
21 start tomorrow? What time is the jury
22 coming?

23 CLERK: Nine o'clock.

24 THE COURT: All right, we are
25 adjourned until nine o'clock in the morning.

1 SCARLETT WILSON: Judge, I would
2 just ask, it is my understanding that we
3 have panels coming at 9:00 and 9:30, 10:00
4 and 10:30. We are not going to get to
5 those. If everybody is okay, and I guess
6 the court is okay with this, but I just hate
7 to see everyone sitting.

8 THE COURT: Well, I've never seen
9 a death penalty yet where they don't sit
10 around some, as the day goes by..

11 SCARLETT WILSON: I understand
12 that. I am not worried about us. I am
13 worried about them.

14 THE COURT: The clerk will make
15 some phone calls and we will adjust
16 accordingly, see how it goes. I mean, some
17 go slow, some go fast.

18 SCARLETT WILSON: That's right.

19 THE COURT: We have gone through
20 eleven groups and we have qualified twenty-
21 five people, so we've got twenty more to go.
22 Maybe we can get this done sometime Friday.

23 I would rather have them sitting
24 here waiting and not need them than to need
25 them and they are not here. Okay?

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SCARLETT WILSON: I understand.

Thank you.

THE COURT: See you all at nine
o'clock.

(COURT IN RECESS)

(TRANSCRIPT CONTINUED NEXT PAGE)

1 SEPTEMBER 17, 2009 9:00 A.M.

2

3

(DEFENDANT PRESENT)

4

5

THE COURT: Good morning. We've
got Panel 12, right? Is there anything from
6 the State before we bring in Panel 12?

7

8

SCARLETT WILSON: Judge, we
noticed this morning that the first juror,
9 Michelle Missroon, according to her rap
10 sheet she may be wanted for bad checks.

11

12

13

As an officer of the court, we need
to bring that to the court's attention. It
14 may be the wrong person. I don't know.

14

15

16

THE COURT: What are the
specifics on the warrant? Who has it? Do
17 you know the date of birth or anything?

17

18

BRUCE DURANT: If I may
18 approach.

19

20

21

22

THE COURT: Yes, sir. Mr.
Maguire, do you want to come up? I mean,
21 this may not affect you but, then again, it
22 may.

23

24

25

WILLIAM MAGUIRE: Yes, sir.

BRUCE DURANT: This was run
25 like a month ago, too.

1 THE COURT: There is a warrant
2 outstanding for her. Is that what you're
3 telling me?

4 BRUCE DURANT: That is what
5 this first page indicates, that ---

6 THE COURT: I understand some of
7 those and some I don't.

8 BRUCE DURANT: Right. It says
9 wanted for fraud, insufficient checks.
10 Berkeley County Sheriff's Office, Moncks
11 Corner. So it would be local, Michelle
12 Angelic Missroon with a date of birth of
13 9/8/70.

14 THE COURT: 9/18?

15 BRUCE DURANT: 9/8/70.

16 THE COURT: That is her date of
17 birth.

18 BRUCE DURANT: I am not saying
19 that -- it could be that she's cleared it up
20 in the last month. I don't know.

21 THE COURT: Is there any way that
22 you can check.

23 BRUCE DURANT: We can have the
24 Sheriff's office to ---

25 THE COURT: Get the Sheriff's

1 office to check and see what we -- check
2 real quick and see if the warrant is still
3 outstanding.

4 WILLIAM MAGUIRE: Bruce, while we
5 are up here -- Judge, ---

6 THE COURT: Let me say this, if
7 the warrant is still outstanding and they
8 take her into custody, which I assume that
9 they will, that is going to end her jury
10 duty.

11 BOYD YOUNG: To a bond hearing,
12 Judge.

13 THE COURT: Are you going to
14 represent her and ask for a bond hearing?

15 BOYD YOUNG: Yes.

16 THE COURT: With an arrest, she
17 very well can't serve on the jury. That's
18 my point.

19 WILLIAM MAGUIRE: Judge, Danielle
20 Johnson, Juror Number 161, who was on Panel
21 5, I talked to my client's mother and Ms.
22 Johnson indicated that she ---

23 THE COURT: Panel five?

24 WILLIAM MAGUIRE: Yes, she lives
25 out there in the Huger area and I just

1 needed to ---

2 THE COURT: What was her name?

3 WILLIAM MAGUIRE: Danielle

4 Johnson.

5 THE COURT: She was qualified.

6 BOYD YOUNG: Right and I just want
7 to be ---

8 THE COURT: Which one was she?

9 BRUCE DURANT: She was the one
10 that lived in Huger. She was a younger
11 black lady and said that she ---

12 THE COURT: Is that the one that
13 was Orangeburg?

14 BRUCE DURANT: No, no, that was
15 a different one. This one lived in Huger
16 and she said that she lived there back in
17 2006 when the lady was murdered but denied
18 that she knew any of the family ---

19 WILLIAM MAGUIRE: Right.

20 BRUCE DURANT: --- or anybody
21 involved in the case, that she lived about
22 ten minutes away.

23 WILLIAM MAGUIRE: And I just want
24 to be honest with you guys, my client's
25 mother says that that they do know here,

1 that they see her around, wave 'Hi', know
2 her by name. I just want to let you'all
3 know that. I don't know what you want to do
4 with it but I just wanted to let you know.

5 THE COURT: Okay. Well, what do
6 you want me to do with it?

7 BRUCE DURANT: Well, it
8 concerns us that she may not have been
9 candid with the court during her *voir dire*.

10 THE COURT: Well, I don't have
11 any problem with -- I am not going to do it
12 today but I don't have any problem at the
13 appropriate time, whenever she comes back to
14 the courthouse, asking her some questions
15 about that before you'all have to strike.

16 BRUCE DURANT: Okay.

17 THE COURT: I am not going to
18 make a special effort to bring her in here.
19 When she comes back as a group, remind me
20 and before we strike the jury I will put
21 her on the witness stand and ask her some
22 questions about it.

23 WILLIAM MAGUIRE: All right.

24 BRUCE DURANT: Thank you.

25 THE COURT: Mr. Durant, remember

1 to remind me because I probably won't
2 remember. Okay?

3 BRUCE DURANT: (Affirmative
4 nod). You may be asking the wrong person
5 that, but I'll try.

6 THE COURT: Maybe your assistant
7 on the left there could make a big note
8 somewhere to remind me.

9 BRUCE DURANT: (Affirmative
10 nod), he's young enough.

11 THE COURT: Anything else before
12 we bring in jury panel number twelve?

13 WILLIAM MAGUIRE: No, sir.

14 THE COURT: Let me see what she
15 found out about this warrant before we do
16 that -- (sidebar with Clerk).

17 All right, we will bring the other
18 five in and let her stay in the room and
19 then they can go in and arrest her. Just
20 bring the five in and leave her in the room
21 -- if they've still got the warrant.

22 Is it still outstanding?

23 CLERK OLLIE TUCKER: No, sir, I
24 talked with the Warrants Division and that
25 there are no checks outstanding, that they

1 don't have anything.

2 THE COURT: All right. As far as
3 the juror, Michelle Missroon, Juror Number
4 225, that you brought to my attention, there
5 were some outstanding warrants for some
6 checks; however, she has taken care of it
7 and there's nothing outstanding at this
8 time.

9 BRUCE DURANT: Thank you, Your
10 Honor.

11 THE COURT: Would you bring the
12 panel, please.

13 (JURY PANEL NUMBER 12 ENTERS COURTROOM)

14 THE COURT: Ladies and Gentlemen
15 of the jury panel, I'm going to make a few
16 remarks to you about the case, then I'll
17 give you some forms to go back in the jury
18 room and read. Then we will you in one at
19 a time, individually, and ask you some
20 questions.

21 In this particular case, the State
22 has charged the Defendant with the following
23 crimes: attempted arson, armed robbery,
24 assault and battery with intent to kill,
25 criminal sexual conduct first, grand

1 larceny, burglary first and murder.

2 Now, as to the murder charge the
3 State has served a notice of the death
4 penalty on the Defendant. Therefore it
5 becomes what is commonly referred to as a
6 death penalty case.

7 The State has the burden of proving
8 the Defendant guilty beyond a reasonable
9 doubt on all the criminal charges as well as
10 the murder charge.

11 I am going to talk to you this
12 morning about the penalty phase of the
13 trial, how a trial is conducted when the
14 death penalty notice has been served.

15 Please don't think that this court
16 or anyone thinks that the defendant is
17 guilty because we are talking to you about
18 the penalty phase. It is just a necessary
19 thing that I have to do because of the
20 nature of the trial and how the trial is
21 conducted.

22 Twelve jurors must unanimously
23 agree that the State has proven the
24 defendant guilty beyond a reasonable doubt
25 of the murder.

1 But for the purposes of our
2 conversation this morning or for the
3 purposes of what I am going to tell you,
4 please consider the guilt phase, which is
5 the first part of the trial, is over and the
6 jury has found the defendant guilty. Then
7 we go into the second part or the second
8 phase of the trial, which is commonly
9 referred to as the penalty phase or the
10 sentencing phase.

11 In the sentencing phase you, the
12 jury, has to make a decision whether or not
13 a defendant receives life without parole or
14 death; that is your decision as the jury.
15 All twelve of you have to unanimously agree
16 on the sentence. The sentence is a
17 recommendation to the court and the court is
18 obligated to follow that recommendation.

19 Now, when I use the term "life
20 without parole", I mean exactly what it
21 says. The defendant will never be eligible
22 for parole. He would die in jail. There is
23 no parole when I use the term life without
24 parole.

25 So the jury, as I said earlier, has

1 to make the determination of life without
2 parole or death.

3 Now, in order for the jury to make
4 that determination, the State has to prove
5 aggravating circumstances. The State has
6 laid out certain aggravating circumstances
7 by statute that the State has to prove. All
8 twelve jurors will have to be convinced that
9 the State has proven this aggravating
10 circumstances before you even decide life or
11 death.

12 If for some reason you decide that
13 the State has not proven the aggravating
14 circumstances, then it would be life.

15 Now, assuming that the jury, all
16 twelve jurors, agree that the State has
17 proven the aggravating circumstances -- and
18 aggravating circumstance are facts,
19 incidents, details or occurrences which
20 state law says aggravates the crime of
21 murder. In other words, these additional
22 circumstances increase the enormity of the
23 crime. It increases the severity of it
24 because of those circumstances.

25 Now, I'm going to read some of the

1 aggravating circumstances that are in the
2 statute. I am not saying that these are
3 aggravating circumstances in this case.
4 I am just going to read some of the
5 aggravating circumstances that are listed in
6 the statute. I do not know what the State
7 is going to prove, I do not know what
8 aggravating circumstance that the State is
9 going to try to prove to the jury because I
10 have not heard the case. Just like you, I
11 have not heard anything. I do not know very
12 much about the case.

13 Aggravating circumstances: that
14 the murder was committed while in the
15 commission of the following crimes or acts:
16 criminal sexual conduct in any degree,
17 kidnaping, burglary in any degree, robbery
18 while armed with a deadly weapon, larceny
19 with the use of a deadly weapon, physical
20 torture. Those are some of the aggravating
21 circumstances that are laid out in the
22 statute.

23 Now, let's assume that all twelve
24 of you agree that the State has proven one
25 of those aggravating circumstances. Then we

1 was moved to the mitigation. The statute
2 also lays out certain mitigation that the
3 jury has to consider before making a
4 decision of life without parole or death.

5 The defendant does not have to
6 offer any mitigation. It is up to the
7 defendant whether he will offer mitigation.

8 I am going to talk to you about
9 mitigation assuming that the defendant will
10 offer some mitigation.

11 Mitigating circumstances are facts
12 either surrounding the incident itself or
13 which shed light on a defendant's history,
14 background, upbringing, childhood which make
15 the crime less severe or less harsh.

16 Just some examples of mitigating
17 circumstances are:

18 The defendant has no significant
19 history or prior criminal convictions
20 involving the use of violence against ,
21 another person.

22 The murder was committed while the
23 defendant was under the influence of mental
24 or emotional disturbance.

25 The capacity of the defendant to

1 appreciate the criminality of his conduct or
2 to conform his conduct to the requirements
3 of the law was substantially impaired.

4 The age or the mentality of the
5 defendant at the time of the crime.

6 Plus any other relevant issue that
7 should arise concerning mitigation.

8 Mitigation can be the reason for
9 any sentence less than the death penalty.
10 Mitigation is offered to the jury to make
11 the defendant's actions less culpable or
12 less responsible, which reduces the severity
13 of the crime of murder.

14 So very briefly, to summarize,
15 before the jury makes a determination in the
16 sentencing phase as to the sentence -- and
17 the two choices are life without parole or
18 the death penalty, -- you have to look at
19 the aggravating circumstances, you have to
20 find the aggravating circumstance, but then
21 you have to look at the mitigating
22 circumstances, consider the mitigating
23 circumstances, and then make a decision on
24 life without parole or death.

25 I have prepared a form. The form

1 has types one, two and three, which are
2 opinions about the death penalty. I am
3 going to give each one of you a copy of this
4 form and ask you to go to the jury room, to
5 read the form, to see if you fit into either
6 category one, two or three. That is a
7 personal decision that you have to make.

8 Please don't discuss your decision
9 or your viewpoints on the death penalty with
10 each other. Just look at it and when you
11 come back in individually, I will ask each
12 one of you do you fit into any of these
13 categories, either one, two or three.

14 I have also prepared a list of
15 names. There are one hundred thirty-four
16 names on the list. These are potential
17 witnesses in this case. I want you to look
18 at these names, see if you recognize any of
19 these names that appear on the list because
20 I am going to ask you about anyone that you
21 recognize or anyone that you know on the
22 list.

23 Solicitor, do you want to introduce
24 yourself?

25 SCARLETT WILSON: Yes, sir.

1 Thank you. I am Scarlett Wilson. I am the
2 solicitor for Charleston and Berkeley
3 counties.

4 This is Bruce Durant; he is the
5 chief deputy (solicitor) for the 9th Circuit,
6 over Charleston and Berkeley counties; which
7 is known as the 9th Circuit.

8 This is Brian Alfaro. He is over
9 our Berkeley office.

10 Together the three of us will be
11 asking questions, submitting evidence,
12 taking testimony during this trial over the
13 next week or so. Thank you. We will be
14 asking witnesses questions, introducing
15 evidence, making arguments, things of that
16 nature. We appreciate you all being here.

17 THE COURT: Is there any member
18 of the jury panel who has close contacts or
19 personal relationship with anyone in the
20 solicitor's office? If so, raise your right
21 hand. Yes, ma'am, Your Honor?

22 JUROR NUMBER 284: Shannon
23 Praete.

24 THE COURT: Shannon Praete.

25 JUROR NUMBER 274: Yes, sir,

1 Juror 174.

2 THE COURT: Ms. Praete, who do
3 you know in the Solicitor's office?

4 JUROR NUMBER 274: I know Miss
5 Wilson, I know Marie Robbins, her
6 administrator. I work for the City of North
7 Charleston. I administer funds and I give
8 some of those funds to the solicitor's
9 office.

10 THE COURT: Do you administer the
11 grant after you receive it from the federal
12 government?

13 JUROR NUMBER 274: Yes, sir.

14 THE COURT: Do you dispatch and
15 disburse the money?

16 JUROR NUMBER 274: Yes, sir.

17 THE COURT: Okay. Is your
18 contact with the Solicitor through the
19 grants?

20 JUROR NUMBER 274: Yes.

21 THE COURT: Do you ever see her
22 outside that business relationship?

23 JUROR NUMBER 274: No, sir.

24 I've seen her at County Council meetings but
25 not personally.

1 THE COURT: Not on a personal
2 basis?

3 JUROR NUMBER 274: No, sir.

4 THE COURT: You just know her
5 through your business?

6 JUROR NUMBER 274: Yes, sir.

7 THE COURT: The same thing with
8 -- who?

9 JUROR NUMBER 274: A lady who
10 works in her office, Marie Robbins; she is
11 employed by the Solicitor's office.

12 THE COURT: Is that the lady who
13 you generally ---

14 JUROR NUMBER 274: That's who I
15 generally talk to.

16 THE COURT: That is who you
17 generally talk to about the grants?

18 JUROR NUMBER 274: Yes, sir.

19 THE COURT: What type of grant is
20 it?

21 JUROR NUMBER 274: Federal
22 grants to law enforcement.

23 THE COURT: Do you know what the
24 Solicitor uses the money for?

25 JUROR NUMBER 274: I believe

1 that they are using their recovery funds for
2 some prosecutors and possibly some
3 equipment.

4 THE COURT: Let me ask you this,
5 Ms. Praete, would that interfere with your
6 ability to be fair and impartial sitting on
7 the jury?

8 JUROR NUMBER 274: No, sir, but
9 I just wanted to make sure that you were
10 aware of it.

11 THE COURT: Thank you very much.
12 I appreciate you bringing it up. Can you
13 set that relationship aside and be fair to
14 both the State and the Defendant?

15 JUROR NUMBER 274: Yes, sir.

16 THE COURT: Mr. Maguire?

17 JUROR NUMBER 80: Your Honor, ---

18 THE COURT: Yes, ma'am? What's
19 your name?

20 JUROR NUMBER 80: Myra Dix, Juror
21 Number 80. I work for an attorney and ---

22 THE COURT: Which attorney?

23 JUROR NUMBER 80: William Pegler.

24 THE COURT: Who?

25 JUROR NUMBER 80: William Pegler

1 Weathers, across the street.

2 THE COURT: Okay.

3 JUROR NUMBER 80: We deal with the
4 Solicitor's office.

5 THE COURT: So the lawyers do
6 defense work, criminal work?

7 JUROR NUMBER 80: Some, yes.

8 THE COURT: So you talk with
9 somebody in the Solicitor's office?

10 JUROR NUMBER 80: Yes.

11 THE COURT: Who do you generally
12 talk to in the Solicitor's office?

13 JUROR NUMBER 80: Mainly just
14 their office help.

15 THE COURT: Okay. Do you have
16 any bias or prejudice against the
17 Solicitor's office as a result of those
18 contacts?

19 JUROR NUMBER 80: No.

20 THE COURT: Do you have any bias
21 or prejudice for the Solicitor as a result
22 of the contacts that you've had?

23 JUROR NUMBER 80: No, sir.

24 THE COURT: All right. Can you
25 set that relationship aside and be fair to

1 both the State and the Defendant?

2 JUROR NUMBER 80: Yes, sir.

3 THE COURT: Would that inter-
4 action that you've had with the Solicitor's
5 office, would that interfere with your
6 ability to be impartial?

7 JUROR NUMBER 80: No, sir.

8 THE COURT: And you could make a
9 decision in this case on what you hear in
10 the courtroom?

11 JUROR NUMBER 80: Yes, sir.

12 THE COURT: Thank you very much,
13 Ms. Nix. Mr. Maguire.

14 WILLIAM MAGUIRE: Thank you, Your
15 Honor. Good morning, Ladies and Gentlemen,
16 my name is Bill Maguire. I am a lawyer, I
17 live in Columbia, I work for the State
18 Government.

19 Well, if you happen to recognize me
20 and know me, I did practice in the
21 lowcountry for a number of years. I worked
22 for Ashley Pennington in the 9th Circuit
23 Public Defender's Office and I also worked
24 for Andy Savage in private practice.

25 I represent Mr. Colin Broughton, my

1 client. I will representing him, along with
2 the people at my table.

3 Next to him is Morgan Daniels. She
4 is an investigator in my office. She's from
5 Florida but a graduate of USC.

6 To her right is Ms. Pati Kennedy.
7 Ms. Kennedy is the chief public defender of
8 the Berkeley County Public Defender's Office
9 and her office is here in Moncks Corner.

10 At the end of the table is Mr. Boyd
11 Young. Mr. Young is a lawyer in my office
12 who works with me; and he, like me, has
13 practiced both in the lowcountry, Charleston
14 for a number of years if you should happen
15 to recognize him.

16 THE COURT: Ladies and gentlemen,
17 is there any member of the jury panel who is
18 personal friends or who has a close
19 relationship with any the attorneys or
20 parties introduced by Mr. Maguire? If you
21 are, raise your right hand. (No response).

22 Have you been represented by Mr.
23 Maguire or any of the attorneys that he has
24 introduced? (No response).

25 Let the record reflect that no one

1 has raised their hands in answer to the
2 questions concerning the Solicitor's office
3 or the defense attorneys.

4 All right. Ladies and Gentlemen,
5 what I am going to do now is I am going to
6 ask you to go to the jury room and start
7 reviewing the individual opinions concerning
8 the death penalty to see if you fit into any
9 of the categories and to look at the witness
10 list. I'm sorry -- swear them, please.

11 CLERK: Please stand and raise
12 your right hands. (Jurors comply).

13 You should truthfully answer all
14 questions asked of you concerning this
15 matter now before the court, by the court
16 or by order thereof.

17 You should speak the truth, the
18 whole truth and nothing but the truth, so
19 help you God. Say "I do." (Affirmative
20 response from jurors). Please be seated.

21 THE COURT: One more question
22 before you go to the jury room. There is
23 one witness whose name was left off --
24 Jessica Broughton. Is there any member of
25 the panel who knows Jessica Broughton? (No

1 response). Have you ever heard that name,
2 Jessica Broughton? (No response).

3 Go to the jury room. They will
4 give you the sheets. After you have had
5 an opportunity to read it, let the bailiff
6 know.

7 (JURY PANEL NUMBER 12 EXITS COURTROOM)

8 THE COURT: See if somebody is
9 ready. What I am going to do is that there
10 is a panel at nine thirty and another one,
11 at ten o'clock. When the ten o'clock panel
12 gets here, I will bring all twelve in and do
13 it for all twelve and it let them start
14 reading. But we need to give an opportunity
15 to this panel to read the information, so we
16 will stand at-ease until we are ready to
17 bring somebody in.

18 SCARLETT WILSON: Judge, I have
19 one matter. I don't mean to nitpicky with
20 the court, but ---

21 THE COURT: You don't mean to be
22 what?

23 THE COURT: Nitpicking with you
24 or the court, but when you go through your
25 initial remarks to the jury, repeatedly

1 through the first part you talk about
2 aggravating circumstances, the State having
3 to prove aggravating circumstances and that
4 these are the aggravating circumstances. It
5 is not until one line at the end that you
6 mentioned that we only have to prove one. I
7 would just ask that you do that on the front
8 end because it's sort of props it up another
9 way. I would just ask you to consider that
10 for us.

11 THE COURT: Okay. I can do that.
12 Any problem with that?

13 WILLIAM MAGUIRE: Judge, I was
14 happy with your very first initial comments
15 when you started in the very beginning. So
16 if you want to go back to that, I'm happy.

17 THE COURT: That's fine. Thank
18 you very much. I don't know how many times
19 that I told them that you just had to do
20 one. I may have told them once or twice.
21 I don't have this thing written out. Okay?
22 I'll try to tell them upfront.

23 SCARLETT WILSON: Thank you.

24 THE COURT: That is a reasonable
25 request. Bring us someone.

1 (JUROR NUMBER 225 ENTERS COURTROOM

2 CLERK: Have a seat and state
3 your name, please.

4 JUROR NUMBER 225: My name is
5 Michelle Missroon.

6 THE COURT: Ms. Missroon, how are
7 you doing today?

8 JUROR NUMBER 225: Good,
9 thanks.

10 THE COURT: Have you had an
11 opportunity to look at the sheet that laid
12 out three different types of opinions about
13 the death penalty?

14 JUROR NUMBER 215: Yes, sir.

15 THE COURT: Were you able to
16 determine whether or not or which category
17 that you're in?

18 JUROR NUMBER 215: Type three.

19 THE COURT: Three?

20 JUROR NUMBER 215: Yes, sir.

21 THE COURT: Okay. I've got some
22 questions for you.

23 MICHELLE MISSROON, having been
24 previously sworn to tell the truth testified
25 as follows:

EXAMINATION

1

2

BY THE COURT:

3

Q. Did you also have the opportunity to
4 look at the witness list?

4

5

A. Yes. Did you recognize any names on
6 the witness list?

6

7

A. No.

8

Q. None of the names were familiar? A.

9

No, sir. I think maybe Danny Mizell.

10

Q. Danny Mizell.

11

A. Right. But I don't really know him.

12

Number six.

13

Q. Number what?

14

A. Number six, Danny Mizell.

15

Q. You think that you knew him from?

16

A. Stratford High School. He was -- I

17

think that he was a police officer that was

18

at Stratford, but that is the only way.

19

Q. You just know the name?

20

A. Yes.

21

Q. Thank you very much. Do you know

22

anything about the case? Have you read

23

anything in the papers anything on TV?

24

A. No.

25

Q. Have you heard anybody talking about

1 it?

2 A. No, sir.

3 Q. Do you have any relatives or close
4 personal friends that are employed in law
5 enforcement?

6 A. No, sir.

7 Q. Has the solicitor prosecuted you or
8 anyone in your immediate family for any
9 crimes?

10 A. (No verbal response).

11 Q. I am talking about the prosecutor?

12 A. No, sir.

13 Q. Have you or a member of your family
14 been a victim of crimes?

15 A. Yes, sir. Someone in my family.

16 Q. Pardon?

17 A. A member of my family.

18 Q. Who?

19 A. My cousin.

20 Q. Your cousin?

21 A. (Affirmative nod).

22 Q. Was it your first cousin?

23 A. My mother's brother's son was killed by
24 a drunk driver.

25 Q. How long ago was that?

1 A. 1984.

2 Q. 1984?

3 A. Yes.

4 Q. Was anybody prosecuted?

5 A. I am not sure. I was like fifteen at
6 the time. I'm pretty sure, (affirmative
7 nod).

8 Q. So you weren't involved in it at all?

9 A. No, just -- (negative gesture).

10 Q. Would have any effect on your sitting
11 on the street?

12 A. No, sir.

13 Q. Do you have any relatives in jail?

14 A. I hope not. I don't think so..

15 Q. Are you a member of any groups that
16 primarily support law enforcement, such as
17 MADD?

18 A. Yes, sir. MADD.

19 Q. You are a member of MADD?

20 A. Yes, sir.

21 Q. You contribute money to MADD?

22 A. Yes, sir.

23 Q. How long have you been a member of
24 MADD?

25 A. Probably since -- I was twenty-four, so

1 1994.

2 Q. Did you join because of your cousin?

3 A. Yes, sir.

4 Q. Do your mother and father also belong?

5 A. I believe my mother does.

6 Q. How would that affect your sitting on
7 the jury?

8 A. I don't think that it would at all.

9 Q. You think that you can set aside?

10 A. Oh, yes, I could.

11 Q. You could be fair to both the State and
12 to the Defendant?

13 A. Yes, sir.

14 Q. Do you have any special or particular
15 interest in the outcome of this particular
16 case?

17 A. No, sir.

18 Q. Are you aware of any bias or prejudice
19 as a result of the charges that the State
20 has brought against the defendant?

21 A. No, sir.

22 Q. Do you have any religious beliefs that
23 would create a bias or a prejudice for or
24 against the Defendant?

25 A. No, sir.

1 Q. Do you have any religious beliefs that
2 would create a bias or prejudice for or
3 against the State?

4 A. No.

5 Q. Do you have any bias or prejudice
6 against the Defendant because of his race,
7 being black?

8 A. No, sir.

9 Q. Have you had any bad or good
10 experiences with law enforcement?

11 A. Good..

12 Q. Most of them were good?

13 A. Yeah. Just a little bit..

14 Q. I'm sorry?

15 A. Just a little bit. I try not to get in
16 trouble or, you know, so I don't really have
17 a whole lot of interaction with law
18 enforcement, but when I have had it's been
19 good.

20 Q. Okay. What is your date of birth?

21 A. September 8, 1970.

22 Q. Do you know of any reason, personal or
23 otherwise, as to why you couldn't serve on
24 this jury?

25 A. No.

1 Q. Do you know of any reason why you could
2 not give the State and the Defendant a fair
3 and impartial trial?

4 A. No.

5 THE COURT: Who is going first
6 this morning?

7 EXAMINATION

8 BY SCARLETT WILSON:

9 Q. Miss Missroon, how are you?

10 A. Good, thank you.

11 Q. Thank you for hanging in there with us.
12 I think after -- after you are finished with
13 your turn in here that you might understand
14 why we can't judge exactly when we need
15 people. So thanks for your patience.

16 A. Sure.

17 Q. But what we are going to do now is
18 that I have an opportunity to ask some
19 questions and so does the defendant. The
20 idea is for both of us to get a better idea
21 about how you feel about the death penalty
22 and about life without parole.

23 Now, the hard part is that we cannot
24 talk about this case in specifics, so we
25 have to talk generally in the abstract. So

1 if I lose you in a scenario, just let me
2 know and I'll try again. Okay?

3 A. Okay.

4 Q. In listening to the Judge and also from
5 reading the sheet that you were given this
6 morning, did you understand that in this
7 sort of prosecution that there are two
8 phases to the trial. Did you know that?

9 A. Yes.

10 Q. And in the first phase all the jury has
11 to worry about or has to be concerned with
12 is whether or not the defendant is guilty or
13 not guilty, did you understand that?

14 A. Yes.

15 Q. Obviously if he is not guilty there is
16 no second phase.

17 A. Right.

18 Q. Okay. Also at the beginning of that
19 sheet that you were given, it explains what
20 murder is under South Carolina law. I just
21 want to make sure that you are on the same
22 page with all of us, kind of in legal and
23 technical terms. Do you understand that
24 murder does not mean something that happens
25 after an accident, like a felony DUI for

1 example?

2 A. (Affirmative nod).

3 Q. Or something that happens, a killing
4 that happens after a provocation?

5 A. (Affirmative nod).

6 Q. Or if two people mutually provoke each
7 other and one ends up getting killed. That
8 is not what we're talking about. Murder in
9 South Carolina means an intentional killing.
10 Every murder is intentional.

11 And it also means that the person, the
12 killer, acted with maliciousness, they had a
13 dark heart bent on mischief, fatally bent on
14 mischief, wickedness.

15 With that in mind, still not every
16 murder is death penalty eligible. Did you
17 know that?

18 A. Yes.

19 Q. Okay. If you are in a scenario where
20 you are on a jury and you and the other
21 eleven have decided that this person is
22 guilty, no question that they did it, it was
23 a malicious murder, you're moving into the
24 second phase, could you withhold your
25 opinion, your verdict for what type of

1 sentence and hold the State to its further
2 burden of proving one of those aggravating
3 circumstances? Could you do that?

4 A. Yes.

5 Q. Okay. We are talking about the second
6 phase now.

7 A. Right, the second phase.

8 Q. And what I am asking -- another way of
9 asking it is, the Judge would tell you and
10 the other jurors, moving into that second
11 phase, that you had to withhold your opinion
12 until the end of the case.

13 A. Right.

14 Q. And could not make your decision until
15 you'd heard everything?

16 A. Right.

17 Q. And if the State in that scenario did
18 not prove an aggravating circumstance --
19 let's say, for example, that in this
20 situation that the State was trying to prove
21 that there was torture involved. If the
22 State did not do that, then the death
23 penalty would not be an option.

24 A. Right.

25 Q. And you could vote for life without

1 parole if we failed to prove to all of the
2 jurors that we'd met that option (sic)?

3 A. Right.

4 Q. Okay. You could wait on that?

5 A. Yes.

6 Q. On the other hand, if you'd heard
7 enough evidence that convinced you that we
8 had proved an aggravating circumstance, or
9 some of them -- it might be burglary, might
10 be rape. The Judge would then tell you that
11 it still would not be over, because there
12 are things called mitigating circumstances.
13 Those with the things about the defendant,
14 his life, his situation at the time of the
15 crime, maybe how he grew up, any involvement
16 in drugs or alcohol, things that might have
17 affected his behavior or that might have
18 affected his walk in life, could you listen
19 to those things from the defense if they
20 decided to put them up and factor this into
21 your final decision?

22 A. Yes.

23 Q. Now, keeping in mind that this would be
24 after you heard heinous, brutality, you
25 still can keep your mind open and consider

1 all those things?

2 A. (Affirmative nod).

3 Q. Those things be important to you?

4 A. The things about the defendant?

5 Q. Defendant. Or a defendant.

6 A. Right. Because I think that, one, you
7 have to know kind of who a person is and
8 maybe -- I am a firm believer that there is
9 a reason that things happen. So, to me, all
10 those things would have to be considered
11 before you can make a decision on somebody's
12 life.

13 Q. Would you also be interested in whether
14 or not the defendant in those situation or
15 in a situation was sorry? Remorseful?

16 A. Yeah, that's important.

17 Q. So all of those things you could factor
18 in bit not make your decision until the end
19 of all the evidence?

20 A. Yes.

21 Q. And then when you got to that point and
22 you would -- with your other jurors, could
23 you engage in a discussion with them and
24 hear their viewpoints and take those to
25 heart?

1 A. Yes, ma'am.

2 Q. And that once you made your own
3 personal moral decision, you would stick to
4 that?

5 A. Yes.

6 Q. Even if others did not agree with you?
7 If you felt strongly, morally that your
8 decision was the right one, you could stick
9 to your guns?

10 A. Yes.

11 Q. Do you ever see yourself just going
12 along to do what everybody else does?

13 A. No, ma'am.

14 Q. That is not you?

15 A. No, ma'am.

16 Q. Thank you for hanging in there with us.
17 I'm sure that Mr. Maguire will have some
18 questions.

19 THE COURT: Mr. Maguire. Mr.
20 Young, it is not your day today?

21 BOYD YOUNG: Not yet.

22 EXAMINATION

23 BY WILLIAM MAGUIRE:

24 Q. Good morning, ma'am.

25 A. Hey.

1 Q. Could you tell what your last name is
2 again?

3 A. Missroon.

4 Q. Did I say it right?

5 A. Yes.

6 Q. Good morning. I am just going to ask
7 you a couple of questions. We have asked a
8 lot of you, I know, so far. It's very
9 inconvenient. The only thing that we are
10 asking of you today is sincerity, candid-
11 ness, honesty. And that's all that you have
12 to do, okay?

13 A. Okay.

14 Q. Nothing is right or wrong. No one is
15 going to judge you.

16 A. Okay.

17 Q. If you were governor and we did not
18 have the death penalty in South Carolina and
19 a Bill came across your desk and you could
20 sign it said that we would have the death
21 penalty, which you sign it?

22 A. Yes, probably.

23 Q. Okay. That kind of assumes that you
24 think there is a usefulness to the death
25 penalty. What would your reasons be?

1 A. Well, I am a firm believer that the
2 punishment should fit the crime. I mean,
3 again, that does not mean that the death
4 penalty should be used all the time, just
5 depending on the circumstances and, you
6 know, the person's state of mind at the time
7 that the crime happened and that kind of
8 thing.

9 Q. Okay. In deciding between the death
10 penalty and life without parole, when you
11 are looking at the crime but with a view
12 towards the death penalty, what would you be
13 looking for?

14 A. Probably the lack of remorse, probably
15 the mental state of the person who committed
16 the crime.

17 Q. Now, we're talking about somebody who
18 theoretically knew right from wrong, their
19 mental faculties are intact and the type of
20 murder, as the Judge told you, would be
21 intentional; that the person knew what they
22 were doing, that it was a choice to take an
23 innocent life.

24 A. Right.

25 Q. Just so that we are on the same page.

1 A. Yes.

2 Q. So when you say mental state, you
3 understand they knew what they were doing?

4 A. Yes. That there is -- I mean there is
5 a difference between someone who knows what
6 they are doing, who -- it's really hard to
7 put into words.

8 Q. Well, let me help you.

9 A. Okay.

10 Q. Maybe they knew right from wrong but
11 were not themselves, not in their right
12 mind?

13 A. Right, or maybe they are and that is
14 their frame of mind -- you know.

15 Q. I want to put a little bit more paint
16 on words, not this case but just general
17 terms. I want you to imagine a crime.

18 A. Okay.

19 Q. A home invasion, somebody goes into a
20 home and people are there, kidnaping, rape,
21 armed robbery, burglary, murder -- all that
22 crime, all at one time. Where are you now
23 that the death penalty is the appropriate
24 punishment.

25 A. I think it would be the appropriate

1 punishment.

2 Q. Okay. In that scenario, would it
3 always be the appropriate punishment?
4 Can you think of anything that would get
5 you down from that?

6 A. No, because that in that particular
7 situation it sounds like they knew what they
8 were doing when they went -- they knew that
9 they were going to go in the house, they
10 knew that there were going to people there
11 and they knew what they were going to do.

12 Q. I just want to get on the same page
13 with you here. Intentional murder, a black,
14 depraved malignant heart going into a home,
15 burglary, rape, kidnaping, murder. For you,
16 the death penalty would always be
17 appropriate?

18 A. Yes.

19 Q. It sounds like that is because you are
20 focused on the heinousness of that type of
21 crime?

22 A. Right.

23 Q. And even though we have talked about
24 some of the background things about the
25 defendant, things that may have happened to

1 him in say his childhood, as long as he knew
2 what he was doing, that would not be
3 relevant in your decision in that kind of
4 case?

5 A. No.

6 Q. Things like that could never get you
7 from death to life, that he may have had a
8 harsh childhood?

9 A. As for a reason, no. If they plotted
10 to go into somebody's house, no.

11 Q. Okay.

12 WILLIAM MAGUIRE: Judge, just one
13 second.

14 THE COURT: Yes, sir.

15 EXAMINATION CONTINUED

16 BY WILLIAM MAGUIRE:

17 Q. Let me talk to you a little bit along
18 the same lines as Ms. Wilson. She used the
19 phrase "individual moral judgment", that's
20 how we describe the jury's verdict or a
21 juror's verdict in a case like this.

22 It is not like a civil case or a fact
23 question. For instance, if you were on a
24 jury in a car wreck case then the big issue
25 was whether the light was red or green, that

1 is a fact. It was either one or the other,
2 right?

3 A. Right.

4 Q. In a penalty case, there may not be a
5 perfectly right answer. Maybe not everybody
6 has the perfect common sense. Would you
7 agree that that is a fair first step?

8 A. Yes.

9 Q. And that it would be different for
10 different people?

11 A. Right.

12 Q. And people bring their own life to the
13 table, their own walk in life, to reach
14 their own individual moral judgment. Just
15 like Ms. Wilson ask you, you would respect
16 everybody else's opinion?

17 A. Yes.

18 Q. And you would want them to respect
19 yours?

20 A. Yes.

21 Q. If you were in the jury room and you
22 saw people like being hostile or bullying
23 people, you would send out a note asking
24 them to stop that. Would that be okay with
25 you?

1 A. Yes.

2 Q. And you would insist on fairness in the
3 jury room?

4 A. Yes.

5 Q. That's all that I have. Thank you,
6 ma'am.

7 THE COURT: Do you want to ask
8 something, Solicitor?

9 SCARLETT WILSON: Yes, sir.

10 THE COURT: Okay.

11 EXAMINATION RESUMED

12 BY SCARLETT WILSON:

13 Q. Ms. Missroon, I just want to make sure
14 that I am clear on this. When you said
15 that you were a type three juror, what does
16 that mean to you?

17 A. Well, I think -- well, for one, I don't
18 think that the death penalty should always
19 be on the table and I don't think that we
20 should not do it at all. I think that it
21 depends on the circumstances.

22 Q. As part of the circumstances -- I guess
23 what confused me was that when you were
24 talking to Mr. Maguire before you had said
25 that you would listen to and consider and

1 factor into your can decision things about
2 the defendant. I was just wondering if you
3 really can do that?

4 A. I really can do that. It is very
5 difficult because -- I mean, I guess because
6 I don't know print aspect of every crime.
7 But you have the premeditated stuff and then
8 you have stuff that just kind of happens.
9 So that's kind of where I think that I am
10 at, is when you think about a crime and then
11 you actually get through and commit it. Or
12 if it just kind of happened, I ---

13 Q. All of those things that you don't know
14 yet?

15 A. Right. Exactly, I don't know.

16 Q. And you don't -- is it difficult for
17 you to think about or to know what you might
18 hear about any random defendant?

19 A. (No verbal response).

20 Q. How do you know that it's going to be
21 important or not until you hear it?

22 A. Right. I would not. I wouldn't know
23 if it was important until I heard
24 everything, the circumstances.

25 Q. Would you keep your mind open?

1 A. Yes, definitely I would keep my mind
2 open. I think that it is very hard to, you
3 know, when you said somebody broke into
4 somebody's house and raped them -- they knew
5 they were there and they were raped, robbed,
6 killed. That is just -- but there is no
7 circumstances behind it, there is no
8 explanation. Given that, yes, I would
9 choose the death penalty. But obviously
10 we're going to get a lot more information.
11 All of that information has to be processed
12 for a decision to be considered that it is
13 somebody's life.

14 Q. All of the things about the crime and
15 all the things about that the person who
16 committed it?

17 A. Yeah.

18 Q. Okay.

19 SCARLETT WILSON: That's all that
20 I have, Judge.

21 THE COURT: Okay. Any Motions?

22 WILLIAM MAGUIRE: Yes, sir.

23 THE COURT: Ms. Missroon, would
24 you step out in the hallway just a moment.

25 (JUROR NUMBER 225 EXITS COURTROOM)

1 THE COURT: I'll be glad to hear
2 your Motion.

3 WILLIAM MAGUIRE: Thank you, Your
4 Honor. I move to strike for cause. Failure
5 to strike this juror for cause would violate
6 Mr. Broughton's Sixth and Fourteenth
7 Amendment rights to an impartial jury.

8 As soon as she heard the scenario
9 where the person meant to do it -- sorry, I
10 was just waiting for the door. As soon as
11 she heard a certain scenario where the
12 person really meant to do it, thought that
13 it didn't just happen, -- for instance, a
14 rape, rapes don't just happen. She said
15 that she was going to vote for the death
16 penalty.

17 When I was speaking to her, I said,
18 'Well, would things about the background, if
19 they had a harsh childhood or things like
20 that, that wouldn't be relevant to your
21 decision because you're focusing on the
22 facts of the crime.' And she said 'yes.'
23 Very plainly. I even referenced, Your
24 Honor, the comments that you made about
25 mitigation and background and she was clear

1 and consistent in saying that that was not
2 relevant to her. She is substantially
3 impaired.

4 THE COURT: Motion denied. Bring
5 the jury in, please.

6 (JUROR NUMBER 225 ENTERS COURTROOM)

7 THE COURT: Ms. Missroon, the
8 bailiff is going to give you a little card.
9 It has got a phone number on it. Call the
10 number after five o'clock tonight and there
11 will be a message for the jury panel. The
12 message may be to call back tomorrow at ten
13 o'clock, it may be to come back tomorrow.
14 Okay?

15 JUROR NUMBER 225: Okay.

16 THE COURT: What we are doing is
17 going through and qualifying people for the
18 case. When we get to a certain number, we
19 will strike from that panel for the jury.
20 You are going to be part of that process.
21 Okay?

22 JUROR NUMBER 225: Okay.

23 THE COURT: Please don't discuss
24 the case with anyone. Don't read anything
25 in the paper or watch anything on

1 television. Okay?

2 JUROR NUMBER 225: Okay.

3 THE COURT: Thank you very much.

4 (JUROR NUMBER 225 EXITS COURTROOM)

5 THE COURT: See who else is ready.

6 (JUROR NUMBER 136 ENTERS COURTROOM)

7 THE COURT: Yes, ma'am, your
8 name?

9 JUROR NUMBER 136: Kelly Harris.

10 THE COURT: Sorry. What?

11 JUROR NUMBER 136: Kelly Harris.

12 THE COURT: Ms. Harris, have you
13 had an opportunity to review the form
14 concerning the different opinions about the
15 death penalty?

16 JUROR NUMBER 136: Yes, sir, I
17 have.

18 THE COURT: You have?

19 JUROR NUMBER 136: Yes.

20 THE COURT: Did you determine
21 whether or not you fit into either category
22 one, two or three?

23 JUROR NUMBER 136: I would fit
24 into category three.

25 THE COURT: Category three?

1 JUROR NUMBER 136: Yes, sir.

2 THE COURT: Okay.

3 KELLY HARRIS, having been
4 previously sworn to tell the truth testified
5 as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Did you have an opportunity to review
9 the witness list that I gave to you?

10 A. Yes.

11 Q. Did you recognize or do you know anyone
12 on the list?

13 A. I did not recognize anyone.

14 Q. You did not recognize any names?

15 A. No -- no, sir.

16 Q. Do you know anything about the case?
17 Have you heard anybody talk about the case?

18 A. No, sir.

19 Q. Have you read anything about the case
20 in the paper -- about the case?

21 A. No, sir.

22 Q. Seen anything on television?

23 A. No, sir.

24 Q. You have never heard anybody speaking
25 about the case, in the courthouse Monday,

1 Tuesday or today?

2 A. No, sir. No specifics, no.

3 Q. No specifics?

4 A. (Negative gesture).

5 Q. What did you hear someone say?

6 A. There was speculation around Monday
7 about what the case was in regards to.

8 Q. What was the speculation?

9 A. That it was in regards to a murder
10 trial.

11 Q. That it was what?

12 A. A murder trial.

13 Q. A murder trial?

14 A. (Affirmative nod).

15 Q. Well, that speculation is correct.

16 Did you hear anything else?

17 A. No, sir.

18 Q. Do you have any relatives or close
19 personal friends employed by law
20 enforcement?

21 A. Yes, sir.

22 Q. Pardon?

23 A. Yes, sir, but not in this state.

24 Q. Who?

25 A. My uncle, he is a patrolman in

1 Illinois.

2 Q. Illinois?

3 A. Yes.

4 Q. Highway patrolman?

5 A. I believe so.

6 Q. Do you know how long he has been a
7 highway patrolman in Illinois?

8 A. Twenty-three years, I believe.

9 Q. Twenty-two (sic) years?

10 A. (Affirmative nod).

11 Q. How often do you see your uncle?

12 A. Maybe once a year.

13 Q. Once a year?

14 A. (Affirmative nod.)

15 Q. Would that cause you any difficulty or
16 problems in sitting on the jury?

17 A. No, sir.

18 Q. You could set that relationship aside
19 and be fair to both the State and the
20 Defendant?

21 A. Yes, sir.

22 Q. Has the solicitor or anyone her office
23 prosecuted you or a member of your family?

24 A. Not to my knowledge.

25 Q. Have you or any member of your family

1 or close friend been the victim of a crime?

2 A. Not that I'm aware of, no.

3 Q. You have any relatives in jail?

4 A. Not currently.

5 Q. Are you a member of a group that
6 primarily has as its purpose the support
7 of law enforcement, such as MADD?

8 A. No, sir.

9 Q. Do you have any special or particular
10 interest in the outcome of this case?

11 A. No, sir.

12 Q. Are you aware of any bias or prejudice
13 for against the defendant as a result of the
14 charges that the State has brought against
15 him?

16 A. No, sir.

17 Q. Do you have any religious beliefs that
18 would create any bias or prejudice for or
19 against the defendant?

20 A. No, sir.

21 Q. Do you have any religious belief that
22 would create a bias or prejudice for or
23 against the State?

24 A. No, sir.

25 Q. Do you have any bias or prejudice as a

1 result of the defendant's race, which is
2 black?

3 A. No, sir.

4 Q. Have you had any bad or good
5 experiences with law enforcement?

6 A. No.

7 Q. Do you know of any reason, personal or
8 otherwise, as to why you could not serve on
9 the jury?

10 A. No, sir.

11 Q. Is there any reason why you could not
12 give a fair and impartial trial to both the
13 State and the Defendant?

14 A. No, sir.

15 THE COURT: Mr. Maguire.

16 WILLIAM MAGUIRE: Thank you, Your
17 Honor.

18 EXAMINATION

19 BY WILLIAM MAGUIRE:

20 Q. Good morning, -- is it Ms. Harris?

21 A. Yes, sir.

22 Q. I know that this is a difficult
23 process, very inconvenient for your guys.

24 You'all have been waiting a rather -- a lot.

25 We're just going to ask a little bit more of

1 you right now. That's just to be honest
2 with your answers. There are no right or
3 wrong answers. Okay?

4 A. Okay.

5 Q. If you were the governor and a Bill
6 came across your desk and we did not even
7 have the death penalty in South Carolina and
8 the Bill said that we are now going to have
9 the death penalty in South Carolina, would
10 you sign it?

11 A. I am not sure. Uh, it's not something
12 that I have ever really considered.

13 Q. Sure.

14 A. I am not sure if I can give you an
15 honest answer immediately on that.

16 Q. It sounds like you value life?

17 A. Yes, sir.

18 Q. And you would consider, if a person was
19 facing the death penalty or life in prison,
20 it sounds like you'd consider life in prison
21 to be substantial penalty?

22 A. Yes, sir.

23 Q. And that not every murder case requires
24 the death penalty?

25 A. Certainly.

1 Q. But obviously there are some for you
2 that would reach to that level?

3 A. Yes. I can say that, yes.

4 Q. Just so that we are on the same page,
5 we are going to start with murder. Murder
6 is the absolutely intentional killing of an
7 innocent person with malice aforethought.
8 Malice aforethought has been described by
9 our court system as having a black and
10 malignant heart, evil in the heart, fatally
11 bent on mischief. So you have an
12 intentional killing of an innocent person,
13 no justification. Not self-defense, not
14 accident, knew right from wrong, knew what
15 they were doing. That sort of thing.

16 A. Okay.

17 Q. What are your thoughts about the death
18 penalty as the appropriate punishment in
19 that case?

20 A. Uh, I think it would have to be
21 considered on a case by case basis.
22 Certainly a lot of specifics and details
23 would go into that decision.

24 Q. I am going to put a little bit more
25 paint on those words, so to speak. I am

1 going to get you to think about a crime, not
2 necessarily this case but just sort of
3 generally: a home invasion, going into a
4 home and people are there, kidnaping, rape,
5 burglary, armed robbery, murder. Are you
6 with me?

7 A. (Affirmative nod).

8 Q. Do you see the appropriateness of the
9 death penalty for something like that?

10 A. I think that it could be considered in
11 that case, certainly.

12 Q. But that doesn't automatically push you
13 to the death penalty?

14 A. Not right off the bat, no.

15 Q. And what would you -- in weighing life
16 and death, what would you want to know in
17 making that decision?

18 A. I guess whether it seems -- (pause) --
19 whether it seems the person should be
20 punished immediately like that or have to
21 live with the guilt of what they've done.

22 Q. Is the death penalty appropriate for
23 somebody who shows substantial remorse for
24 what they've done?

25 A. I think in that even that something

1 like spending your whole life in jail would
2 be -- (pause).

3 Q. Almost worse?

4 A. Yes.

5 Q. Okay. Okay. Uh, would you -- would
6 you want to know about a defendant's walk in
7 life, their upbringing, how they became to
8 be the young person that they were?

9 A. Yes.

10 Q. Why would that matter to you?

11 A. Certainly somebody's past does
12 influence the person they become: their
13 thoughts, their actions, the way that they
14 do things.

15 Q. Okay. For you, does it have to be
16 directly related to the crime? Let's say
17 that somebody is a drug addict and it is
18 connected directly to the crime. Does it
19 have to be that for you or could it be, say,
20 if they have very difficult times in their
21 childhood ten or fifteen years but it
22 doesn't directly relate to a crime, -- maybe
23 I am being ---

24 A. I think that it is important, yeah. I
25 certainly think it's important to know

1 everything, even if it doesn't directly
2 influence.

3 Q. Okay. Is mercy -- the concept of
4 mercy, is that something that is earned or
5 freely given?

6 A. I have to say that in my opinion each
7 person has that ability to give it freely.
8 I guess that it would be a specific person's
9 ability to give mercy if they want to.

10 Q. In cases like this regarding penalty,
11 the law describes the individual juror's
12 decision as an individual moral judgment or
13 assessment; does that sound fair to you, or
14 appropriate?

15 A. Yes..

16 Q. For instances in cases like this it is
17 not like a simple case as in a car wreck and
18 the big issue is with the light red and
19 green.. Because it either was to is wasn't,
20 right? And there is a right answer.

21 But in sentencing, you see how
22 different people based on their different
23 walks of life would have their own
24 individual moral judgment.

25 A. Yes.

1 Q. And you would want your individual
2 moral judgment be respected?

3 A. Yes.

4 Q. And you would respect the others?

5 A. Yes.

6 Q. And you could at the end of the day
7 agree to disagree? That would be fair?

8 A. Yes.

9 Q. In something so important?

10 A. Yes.

11 WILLIAM MAGUIRE: Thank you,
12 ma'am.

13 THE COURT: Solicitor?

14 BRUCE DURANT: Thank you, Your
15 Honor.

16 EXAMINATION

17 BY BRUCE DURANT:

18 Q. Good morning, Ms. Harris. My name is
19 Bruce Durant. I just want to ask you a
20 couple of questions. I noticed when Mr.
21 Maguire asked you his hypothetical about you
22 being the governor and signing a death
23 penalty bill that you seemed very hesitate
24 about whether or not you could do that.
25 Would that be a fair statement of how you

1 responded to that question?

2 A. That's fair.

3 Q. Do you understand that if you are a
4 juror in this case and you and the other
5 jurors collectively determined that the
6 death penalty was appropriate that you would
7 have to sign your name to a verdict form
8 that would put the defendant to death?

9 A. Yes.

10 Q. You could do that?

11 A. If that was the verdict, if that is
12 what we viewed; yes.

13 Q. So you could sign your name to a
14 verdict form putting the defendant to death?

15 A. If it came to that, (affirmative nod),
16 if that is what the decision was.

17 Q. Now, you had mentioned also something
18 when being questioned by Mr. Maguire that
19 you thought that life without parole was a
20 worse penalty than the death penalty. Is
21 that a fair statement of what you said?

22 A. Yes, in some cases I think that it is.

23 Q. Do you believe that would be true in
24 all cases?

25 A. No.

1 Q. In what cases do you believe that the
2 death penalty would be the most appropriate
3 penalty?

4 A. I believe definitely the circumstances
5 surrounding the crime, certainly. How they
6 feel in regards to what they had done, what
7 they had done that they were accused of. In
8 am thinking, in my opinion if they don't
9 have to remorse for what they have done, if
10 they don't feel bad for what they have done,
11 then it would not help them to sit in a jail
12 cell for the rest of their life.

13 Q. So it would depend on whether or not
14 the defendant was remorseful for what he had
15 done?

16 A. That would be a circumstance, yes.

17 Q. What do you mean when you say that it
18 wouldn't help them to stay in prison? What
19 do you mean that?

20 A. If they were not remorseful at all, if
21 they did not regret or have any conscience
22 for what they had done, spending the rest of
23 their life in jail would not be as bad as
24 somebody who felt guilty, who had to think
25 about it every day and regretted it every

1 day. For them to spend their life
2 regretting it, I think it is a punishment
3 worse than death.

4 BRUCE DURANT: I have nothing
5 further, Your Honor. Thank you.

6 THE COURT: Any Motions on this
7 juror?

8 WILLIAM MAGUIRE: No, sir.

9 BRUCE DURANT: Yes, Your Honor.

10 THE COURT: All right. Ms.
11 Harris, would you step out in the hall just
12 very briefly?

13 (JUROR NUMBER 136 EXITS COURTROOM)

14 THE COURT: All right, I'll be
15 happy to hear your Motion.

16 BRUCE DURANT: Your Honor, we
17 would move to disqualify Ms. Harris on the
18 basis that her belief that life in prison is
19 a worse penalty than death in that that
20 would substantially impair her ability to
21 perform her duties as instructed by the
22 court. We would cite State v. Lindsey, 372
23 S.C. 185.

24 THE COURT: Thank you very much.
25 Anything that you want to put on the record?

1 WILLIAM MAGUIRE: I don't think it
2 is really necessary. I think she was pretty
3 clear.

4 THE COURT: Have a seat.

5 WILLIAM MAGUIRE: Thank you.

6 THE COURT: Motion denied. Bring
7 us the next juror.

8 BAILIFF: Do you want to talk
9 to Ms. Harris?

10 THE COURT: Pardon?

11 BAILIFF: Ms. Harris is in the
12 hallway.

13 THE COURT: I'm sorry, bring Ms.
14 Harris back.

15 (JUROR NUMBER 136 ENTERS COURTROOM)

16 THE COURT: Ms. Harris, the
17 bailiff is going to give you a card. It has
18 a phone number on it. Call that number
19 after five o'clock tonight and there will be
20 a message for the jury panel. Follow those
21 instructions.

22 What we are doing is that we are
23 qualifying a group of people from which we
24 are going to draw a jury for this case. You
25 are part of that group.

1 Please don't discuss the case with
2 anybody or watch it on television or read
3 anything in the paper. Okay?

4 JUROR NUMBER 136: Yes, sir.

5 THE COURT: Thanks. See you
6 later. Thanks very much.

7 (JUROR NUMBER 136 EXITS COURTROOM)

8 THE COURT: Bring us the next juror.

9 (JUROR NUMBER 274 ENTERS COURTROOM)

10 THE COURT: Your name?

11 JUROR NUMBER 274: Shannon
12 Praete, 274.

13 THE COURT: Ms. Praete?

14 JUROR NUMBER 274: (Affirmative
15 nod).

16 THE COURT: Ms. Praete, have you
17 had an opportunity to look at the three
18 viewpoints or opinions about the death
19 penalty?

20 JUROR NUMBER 274: Yes, sir.

21 THE COURT: Did you make a
22 determination as to whether or not you fit
23 into one of those types?

24 JUROR NUMBER 274: Yes, sir,
25 type three.

1 THE COURT: Okay, type three. I
2 have some questions for you and then the
3 attorneys may have some questions. Okay?

4 SHANNON PRAETE, having been
5 previously sworn to tell the truth testified
6 as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q. Have you had an opportunity to review
10 the witness list?

11 A. Yes, sir.

12 Q. Through your job, I suspect that you
13 recognize or know a lot of these people?

14 A. I recognize the names. I don't
15 actually know any of the officers
16 personally. The only person that I even
17 know, on really a professional basis, is
18 number one thirty-one, Monique Munzon.

19 She

20 Q. Number 131?

21 A. Yes, sir. She is the North Charleston
22 Police Chief's secretary. I know her just
23 on a professional basis.

24 Q. You don't have a personal relationship
25 other than business?

1 A. No, sir, she sets my appointments when
2 I need to see him and that kind of stuff,
3 but that's it.

4 Q. I assume that they also get public
5 grants.

6 A. They do.

7 Q. You'all administer those?

8 A. Yes, sir, I do.

9 Q. Would that cause you any difficulty
10 sitting on the jury?

11 A. No, sir.

12 Q. Can you set that relationship aside and
13 be fair to both parties?

14 A. Yes, sir.

15 Q. Thank you very much.. Do you know
16 anything about the case? Have you heard
17 anything about the case?

18 A. I saw the little bit that was in the
19 paper on Friday before I knew that I was
20 coming here. I mainly just saw what on the
21 front page, just kind of read what the
22 headline said, that stuff but nothing
23 really.

24 Q. Do you remember what you read in the
25 paper last Friday?

1 A. Something about that -- it said
2 something about Charleston County and that's
3 why I didn't even pay attention to it
4 because I knew that I was coming to Berkeley
5 County. It said something about Judge
6 Jefferson and something else. And that's
7 really all that I read. It said something
8 about Charleston County, so I didn't read.

9 Q. Do you remember anything else?

10 A. No, sir. It was saying something
11 about Charleston County, essentially, and I
12 didn't read it.

13 Q. Have you read anything else?

14 A. No, sir. And I don't even remember
15 anything about this. No, sir.

16 Q. Have you heard anybody talking about it
17 this week?

18 A. No, sir.

19 Q. Have you heard any speculation or
20 anything amongst any of the jurors?

21 A. No, sir.

22 Q. Do you have any relatives or close
23 friends that are in law enforcement?

24 A. No, sir, I sure don't.

25 Q. Has the solicitor prosecuted you or any

1 member of your family?

2 A. No, sir.

3 Q. Have you or any member of your family
4 or close personal friends been the victim of
5 crimes?

6 A. No, sir. I mean - random, car break-
7 ins and that kind of thing. But nothing
8 major.

9 Q. Do you have any relatives in jail?

10 A. No, sir.

11 Q. Are you a member of any groups that
12 primarily support law enforcement, such as
13 MADD?

14 A. No, sir.

15 Q. Do you have any special or particular
16 interest in the outcome of this case?

17 A. No, sir.

18 Q. Are you aware of any bias or prejudice
19 towards the defendant merely as a result of
20 the charges that the State has brought
21 against him?

22 A. No, sir.

23 Q. Do you have any religious beliefs that
24 would create any bias or prejudice for or
25 against the defendant?

1 A. No, sir.

2 Q. Do you have any religious beliefs that
3 would create any bias or prejudice for or
4 against the State?

5 A. No, sir.

6 Q. Do you have any bias or prejudice
7 because of the defendant's race, which is
8 black?

9 A. No, sir.

10 Q. Do you know of any reason, personal or
11 otherwise, as to why you cannot serve on
12 this jury?

13 A. No, sir.

14 Q. Is there any reason why you could not
15 give both the State and the Defendant a fair
16 and impartial trial?

17 A. No.

18 Q. Are you willing to make your decision
19 on the information that you hear in this
20 courtroom?

21 A. Yes.

22 THE COURT: Solicitor.

23 SCARLETT WILSON: Thank you, Your
24 Honor.

25 EXAMINATION

1 BY SCARLETT WILSON:

2 Q. Ms. Praete, thank you for hanging in
3 there with us. I know that it's been a long
4 process for you'all, too. I think after you
5 see this part you might understand why it
6 has been somewhat of a delay.

7 What we are doing to do now is that
8 both sides have an opportunity to ask you
9 more questions about how you feel about the
10 death penalty and about life without parole.

11 A. Okay.

12 Q. Before this week, did you have any
13 knowledge or information about how death
14 penalty cases work here in South Carolina?

15 A. Not in South Carolina. I read some
16 stuff, of course, out of state that may have
17 been in the newspaper about other states but
18 nothing really about South Carolina.

19 Q. Did you know before this week that
20 these types of cases were in two phases, a
21 guilt phase and then a penalty phase?

22 A. No, I didn't. I was reading -- I
23 actually learned when he was talking about
24 other circumstances. I was thinking that
25 that something that I'd never really paid

1 that much attention to either.

2 Q. Okay. So now you understand that the
3 first phase would a phase where a jury would
4 determine whether or not the person was
5 guilty or not guilty?

6 A. (Affirmative nod).

7 Q. Obviously if they are not guilty, there
8 is no second phase?

9 A. Yes, ma'am.

10 Q. Also in reading that sheet, did you
11 understand from the definition that was
12 given there that murder in South Carolina is
13 always intentional?

14 A. Um-humm.

15 Q. That it is always malicious, we're not
16 talking about a situation where there's like
17 a felony DUI or an accident or a situation
18 where two people provoke each other into a
19 fight and somebody gets killed. Did you
20 understand that before?

21 A. No, ma'am. I was ready this, it was
22 actually -- it was very informative.

23 Q. Okay. Well, with that in mind, let's
24 go to a scenario -- we can't talk about the
25 specifics of this case. A. Yes, ma'am.

1 Q. So I've got to kind of talk generally
2 in the abstract. So if you don't understand
3 where I am coming from, just ---

4 A. Okay.

5 Q. --- let me know and I will try to redo
6 it.

7 A. Okay.

8 Q.. If you were in a situation where you
9 were on a jury and you and the other eleven
10 had rendered a verdict of guilty in a murder
11 case and, uh, -- that would mean no doubt
12 that the person did it, no doubt it was a
13 malicious murder, a murder done with a heart
14 fatally bent on mischief, wicked.

15 Could you, in the second phase, still
16 keep an open mind as far as what sentence,
17 what penalty?

18 A. I could as long as I know that if
19 somebody was sentenced to life without
20 parole that it really was truly life without
21 parole.

22 Q. The Judge would tell you that.

23 A. Yeah.

24 Q. That life means life?

25 A. Yes, ma'am. I think, yeah, knowing

1 that -- and it's sort of -- you know, I've
2 thought a lot about it over the last week in
3 terms of my religious beliefs and personal
4 beliefs but, you know, it's probably been a
5 good exercise for me as a person to think
6 about what I truly believe as a mother and
7 as a human. I think I really could in --
8 you know, if this happened to me or a member
9 of my family, just trying to put myself in
10 the same situation.

11 Q. Okay.

12 A. But, yeah.

13 Q. All right. So you would, even after
14 knowing that you'd rendered a guilty
15 verdict, ---

16 A. Yes, ma'am.

17 Q. --- you could require the State, as the
18 Judge would tell you was your duty, to prove
19 then above just the murder conviction an
20 aggravating circumstances, one aggravating
21 circumstance.

22 A. Um-humm.

23 Q. You could make us do that?

24 A. Sort of like the burglary that was
25 mentioned earlier or the sexual?

1 Q. Yeah. We would have to prove an
2 aggravating circumstances. Let's use as an
3 example torture.

4 A. Yes, ma'am.

5 Q. If the State proved that and all twelve
6 of you found that we had proven that
7 aggravating circumstances, you then could
8 consider the death penalty. If we didn't
9 prove that, you ---

10 A. Can't.

11 Q. Death wouldn't be on the table, so it
12 would have to be life without parole. Would
13 that be okay with you?

14 A. Yes, ma'am. Yes, ma'am.

15 Q. Now, in that situation let's assume
16 that the jury has heard overwhelming
17 evidence of aggravating circumstances.

18 Still the Judge would tell you that you
19 would have to keep your mind open and really
20 factor in anything that the defense chose to
21 put in about mitigation. That in this
22 situation could mean things about the
23 defendant, things about his life, things
24 about his childhood, things about possibly
25 abuse, things about drugs and alcohol.

1 Could you give those types of things
2 meaningful consideration in determining what
3 sentence was appropriate?

4 A. Yes, ma'am. I think if the proper
5 information was received, there was the
6 proof that this circumstances actually did
7 exist, yes, ma'am. I could keep those in
8 mind when making my decision.

9 Q. And you could withhold forming your
10 final opinion -- I mean, obviously as you
11 hear information that you might lean one way
12 or the other but you could withhold your
13 final judgment until all that evidence came
14 in?

15 A. Yes, ma'am.

16 Q. And then if you -- at the end of that
17 case, could you have discussions with other
18 people on the jury about their thoughts and
19 views and take those into consideration?

20 A. Yes, ma'am. I mean, I think that I've
21 done that enough with my family and stuff,
22 just having arguments and discussions
23 amongst family members just about various
24 topics.

25 Q. Because sometimes you have to agree to

1 disagree?

2 A. Right. That sometimes is just the best
3 thing to do. Not everybody is going to have
4 your same opinion, but -- Yes, ma'am, I
5 think that I could definitely sit there and
6 talk with others, my peers, and have
7 discussions.

8 Q. And if you in your heart and mind made
9 a decision about what you thought was the
10 appropriate sentence at the end, could you
11 stand firm in that?

12 A. Yes, ma'am. I ---

13 Q. And respect someone else who also stood
14 firm?

15 A. Like you said, sometimes you have to
16 agree to disagree.

17 Q. Okay.

18 SCARLETT WILSON: That's all the
19 questions that I have, Judge. Thank you,
20 Ms. Praete.

21 THE COURT: Mr. Maguire.

22 WILLIAM MAGUIRE: Thank you, sir.

23 EXAMINATION

24 BY WILLIAM MAGUIRE:

25 Q. Good morning, Ms. Praete.

1 A. Good morning.

2 Q. We're asked a lot of you. I know that
3 this is a very unique process. You've been
4 waiting around. I am just going to ask a
5 little bit more of you.

6 A. Okay.

7 Q. That's just to be completely honest and
8 candid in your responses.

9 A. Okay.

10 Q. Okay?

11 A. (Affirmative nod).

12 Q. I am going to pick it up kind of where
13 the prosecutor left off and we're just going
14 to go down this road of a trial.

15 A. Okay.

16 Q. The starting point is that you and
17 eleven other jurors have heard evidence and
18 are convinced beyond a reasonable doubt that
19 the person committed murder. That means an
20 intentional killing of an innocent victim
21 with malice aforethought. Malice
22 aforethought being defined as having a
23 black, depraved, wicked heart fatally bent
24 on mischief. It's kind of an odd definition
25 but it is ours in South Carolina. Are you

1 with me?

2 A. Yes, sir.

3 Q. Beyond a reasonable doubt, you've got
4 the right guy, there is no ID question, no
5 alibi, not self-defense, not accident,
6 nothing like that. Okay?

7 A. Right.

8 Q. In that situation, just knowing that so
9 far, what is your opinion about the death
10 penalty as being the appropriate punishment?

11 A. I think, again, that if you do have
12 these extenuating circumstances -- I mean,
13 it's not a self-defense, it's something --
14 like you said -- who is wicked. I never
15 thought that word was really -- I think it's
16 -- and I kind of hate to even say it but
17 it's almost an eye-for-an-eye type of thing.

18 Q. Right.

19 A. But you go back to that thought and I
20 thought religious -- you know, how do my
21 religious beliefs -- but I think a lot of it
22 comes down to personal choice, you know,
23 that this person has made a bad decision,
24 has taken the life of someone else -- and
25 not just under self-defense but there were

1 some other circumstances.

2 Q. Sure. When I talk to people like this,
3 sometimes people ---

4 A. Yes, sir.

5 Q. --- tell me that 'the thing that makes
6 it offensive and bad to me is that somebody
7 chose to take an innocent life that they
8 didn't have to.'

9 A. Right.

10 Q. Does that resonant with you?

11 A. Yes, sir. I think that and not -- not
12 just that but, you know, it wasn't again --
13 it wasn't, again it wasn't self-defense. I
14 mean, it was just cold-hearted this was
15 done, period.

16 Q. Right. Okay I want to put a little bit
17 more paint on those words.

18 A. Yes, sir.

19 Q. I want to go a little bit farther down
20 the road and I want you to see this crime:
21 home invasion, ---

22 A. Yes, sir.

23 Q. --- rape, kidnaping, burglary, armed
24 robbery, murder. Are you with me?

25 A. Yes, sir.

1 Q. In that situation, your opinion about
2 the death penalty as the appropriate
3 punishment?

4 A. Yes, sir, I think it definitely would
5 be.

6 Q. I mean, for instance, like rape --
7 rapes just don't happen.

8 A. Right.

9 Q. People intend to do something like
10 that.

11 A. Right.

12 Q. It sounds like you're like a lot of
13 people, that as long as a person knows what
14 they are doing and they are choosing to
15 embark on a mean crime and if they take the
16 life of an innocent person, they should
17 forfeit theirs?

18 A. Right.

19 Q. And in that scenario that we are
20 talking about, it sounds like you are pretty
21 consistent with that?

22 A. Yeah.

23 Q. This stuff about the defendant's
24 background, like say he had a hard childhood
25 or an alcoholic father but it doesn't

1 connect to the crime because the person
2 knows what they are doing, could you ever
3 see that as backing you off the death
4 penalty?

5 A. I think I would have to hear all the
6 facts. I mean, I do think some people do
7 have -- I mean, society has got some ill
8 effects on people. I think just hearing
9 about, again, the total picture of what it
10 all -- what happened, you know.

11 Was there an alcohol father that used
12 to hit the child? Was there other
13 circumstances beyond that?

14 I think that you have to know -- you
15 can't just say, 'well, you know' -- I mean,
16 you know, we all watch TV and we all hear,
17 'Oh, he is an alcoholic father.' Well,
18 goodness gracious, I think everybody in
19 their family has got an alcoholic. So I
20 think you've got to see, you know, what are
21 the real circumstances beyond that person.
22 Why was this -- was this child a victim of
23 abuse? Was there some sexual abuse as well?
24 You know, what else was going on?

25 Q. Why would something like that matter to

1 you? You said abuse or sexual abuse.

2 A. I just think, again, you know, when
3 you're raising your children, you try to
4 raise them -- so you think about what are
5 they going to be when they grow up, what
6 kind of children do I want to have to be the
7 parent of. And I just to think, you know,
8 to give them the kind of guidance that we
9 were given as small children where they know
10 that they are loved, that they are
11 protected, that they are safe.

12 I just think that if a child is not
13 safe -- I mean, you know, a lot of child's
14 mind can be formed when they are in, you
15 know, elementary school and younger than
16 that. I just think sometimes that they are
17 not firing on all cylinders because there is
18 something that happened. I just think that
19 there are some unique circumstances with
20 small children that happened. Period.

21 Q. Thank you for that. That is very
22 articulate. That's the best definition that
23 I've had of those facts given to me by a
24 juror. It sounds like you're particularly
25 in tune with that. Have you ever had any

1 kind of personal experience where you've
2 intervened in a child's life to protect
3 them? ,

4 A. No, sir. I was a Big Brother/Big
5 Sister for a couple of years. I had a small
6 child that lived in downtown Charleston and
7 I have two small children, that are five and
8 two. I've kind of done a lot of thought
9 about that, you know, with my husband and
10 friends, just thinking that if something
11 happened to my child, just stuff like that,
12 just growing up. I grew up in a real strong
13 family with a lot of really -- you know,,
14 parents, grandparents, aunts and uncles,
15 just kind of real strong structure. And I
16 work in an area that, uh, has a lot of
17 single families with no -- and I am real
18 involve with kids doing stuff and I just
19 think a lot of it is helping them to succeed
20 and helping them -- give -- you know, make
21 them a whole person so that when they grow
22 up and become a member of society that they
23 give back.

24 Q. I appreciate that.

25 A. Yes, sir.

1 Q. On your questionnaire, you indicated
2 that you are part of a group called HALO's.

3 A. Yes, sir. HALO's is part of the
4 Charleston County DSS.

5 When children are removed from their
6 home, a lot of times they get removed by
7 police. They may go and they'll have the
8 clothes on their back and, you know, with a
9 small child they may need a car seat. There
10 is actually one instance where I've been
11 helping right now and all of a sudden you've
12 got a child being removed but the child
13 can't legally be transported because they
14 don't have a car seat or a booster. So
15 helping to get extra car seats and boosters,
16 a lot of small children may be removed from
17 a home with no toothbrush. I know that my
18 children are kind of -- they are used to
19 that same repetition, they need A, B, C and
20 D. Helping them kind of getting the
21 normalcy of their house, getting their
22 toothbrush, getting a special blanket or an
23 animal or something like that.

24 Q. Thank you, ma'am. I appreciate your
25 honesty.

1 THE COURT: Any Motions.

2 SCARLETT WILSON: No, sir, she's
3 qualified.

4 WILLIAM MAGUIRE: I agree.

5 THE COURT: Ms. Praete, the
6 bailiff is going to give you a card. It has
7 a phone number on it. Call that number
8 after five o'clock tonight and there will be
9 a message for the jury panel. Follow those
10 instructions. It may say to call back in
11 the morning, it may say to call back
12 tomorrow at twelve o'clock. I don't know
13 what it will say but follow those
14 instructions.

15 What we are doing is that we are
16 qualifying a group of people from which we
17 are going to draw a jury for this case. You
18 are part of that group.

19 Please don't discuss the case with
20 anybody or watch it on television or read
21 anything in the paper. Okay?

22 JUROR NUMBER 274: Okay.

23 THE COURT: Thank you very much.

24 (JUROR NUMBER 274 EXITS COURTROOM)

25 (JUROR NUMBER ENTERS COURTROOM)

1 THE COURT: Your name?

2 JUROR NUMBER 80: Myra Dix.

3 THE COURT: Yes, ma'am, Ms. Dix.
4 How are you doing today?

5 JUROR NUMBER 80: Fine, thank you.

6 THE COURT: Have you had an
7 opportunity to look at the three types of
8 opinions about the death penalty?

9 JUROR NUMBER 80: Yes, sir.

10 THE COURT: Have you been able to
11 determine whether or not you fit into one of
12 those types?

13 JUROR NUMBER 80: Yes, sir.

14 THE COURT: Which type?

15 JUROR NUMBER 80: Type three.

16 THE COURT: Okay, I've got some
17 questions for you, then the attorneys will
18 have some questions.

19 MYRA DIX, having been previously
20 sworn to tell the truth testified as
21 follows:

22 EXAMINATION

23 BY THE COURT:

24 Q. Have you had an opportunity to review
25 the list of potential witnesses?

1 A. Yes, sir.

2 Q. Do you recognize any names?

3 A. I recognize a few of them with the
4 Sheriff's Department, just because of
5 dealings with my work. I don't know any of
6 them personally.

7 Q. Who do you recognize?

8 A. I recognize number thirty-six, thirty-
9 seven, just talking cases, you know, cases
10 were we are trying to reach them. Thirty-
11 eight. Number ninety-five, my son goes to
12 school with his children.

13 Q. Number 95?

14 A. Yeah. Ninety-six. One thirteen, one
15 fifteen, all of them is just due to work
16 mostly.

17 Q. What work do you do?

18 A. I am a paralegal with the law firm of
19 Pegler & Weathers.

20 Q. You told me that earlier and I
21 apologize for not remembering. Okay?

22 A. Okay.

23 Q. Are you personal friends with any of
24 the police officers that you have
25 identified?

1 A. No, sir.

2 Q. You just know the names?

3 A. Yes, I just recognize them.

4 Q. Would that cause you any difficulty in
5 sitting on the jury?

6 A. No, sir.

7 Q. Can you set those relationships aside
8 and be fair to both the State and the
9 Defendant?

10 A. Yes, sir.

11 Q. Do you know anything about the case,
12 have you heard anything about the case at
13 all?

14 A. No, sir.

15 Q. Have you read anything in the paper?

16 A. No, sir.

17 Q. Seen anything on television?

18 A. No, sir.

19 Q. Heard any other jurors this week
20 talking about it?

21 A. No, sir.

22 Q. Have any relatives of close friends
23 employed in law enforcement?

24 A. No, sir.

25 Q. Has the solicitor prosecuted you or any

1 member of your family?

2 A. Sorry?

3 Q. Has the solicitor or any of her
4 assistants prosecuted you or any member of
5 your family.

6 A. No, sir.

7 Q. Have you or any member of your family
8 or close personal friends been the victim of
9 crimes?

10 A. My parents were a number of years ago
11 in North Carolina.

12 Q. What happened?

13 A. A renter come up, he had been drinking
14 and he beat my mother and father and they
15 went to court for that.

16 Q. Do you have any relatives in jail?

17 A. No, sir.

18 Q. Are you a member of any groups that
19 primarily support law enforcement, such as
20 MADD?

21 A. No, sir.

22 Q. Do you have any special or particular
23 interest in the outcome of this case?

24 A. No, sir.

25 Q. Are you aware of any bias or prejudice

1 towards the defendant merely as a result of
2 the charges which the State has brought
3 against him?

4 A. No, sir.

5 Q. Do you have any religious beliefs that
6 would create any bias or prejudice for or
7 against the defendant?

8 A. No, sir.

9 Q. Do you have any religious beliefs that
10 would create any bias or prejudice for or
11 against the State?

12 A. No, sir.

13 Q. Do you have any bias or prejudice
14 because of the defendant's race, which is
15 black?

16 A. No, sir.

17 Q. Have you had any bad or good
18 experiences with law enforcement?

19 A. No, sir.

20 Q. Do you know of any reason, personal or
21 otherwise, as to why you cannot serve on
22 this jury?

23 A. No, sir.

24 Q. Is there any reason why you could not
25 give both the State and the Defendant a fair

1 and impartial trial?

2 A. No.

3 Q. Are you willing to make your decision
4 on the information that you hear in this
5 courtroom?

6 A. Yes.

7 THE COURT: Mr. Maguire.

8 EXAMINATION

9 BY WILLIAM MAGUIRE:

10 Q. Good morning, Ms. Dix. Mx. Dix, I want
11 to sort of start from a philosophical point
12 of view. If you were the Governor and we
13 didn't have the death penalty in South
14 Carolina and a Bill came across your desk
15 and you could sign it and we would have the
16 death penalty, would you sign it?

17 A. Hummm -- (pause), probably, yeah.

18 Q. That sort of implies that you believe
19 that there is some usefulness for the death
20 penalty?

21 A. Yes.

22 Q. But it wouldn't be automatic in all
23 cases?

24 A. Right.

25 Q. Reserved for some bad cases?

1 A. Yes.

2 Q. Let's start off with the definition of
3 murder in South Carolina. You are a
4 paralegal in a law office so you're probably
5 a couple of steps ahead of me here, but just
6 to make sure that we're on the same page.

7 A. Okay.

8 Q. Murder in South Carolina, they are all
9 intentional killings, unjustified, unlawful,
10 taking an innocent victim's life with malice
11 aforethought.

12 The court system defines malice
13 aforethought having a black, depraved,
14 wicked heart fatally bent on wickedness and
15 mischief.

16 A. Okay.

17 Q. Are you with me?

18 A. Um-humm.

19 Q. Just knowing that, what is your opinion
20 about the death penalty in that kind of
21 scenario?

22 A. (Chuckles), I guess you'd be for it.

23 Yeah.

24 Q. Okay. When you say "for it", some
25 people pick out details of that scenario

1 that make it particularly bad and deserving
2 of the death penalty.

3 A. Right.

4 Q. Some people say that what is bad is
5 that the person knew what they were doing
6 and chose to take an innocent life.

7 A. Um-humm.

8 Q. Are you there?

9 A. Yeah.

10 Q. I want you walk you down this road a
11 little bit more, put a little bit more paint
12 on these words. I want you to see this
13 crime. Okay? Not necessarily this case but
14 in general terms: home invasion, kidnaping,
15 rape, burglary, armed robbery, murder, all
16 of that happening at one time.

17 A. Um-humm.

18 Q. Is the death penalty appropriate for
19 that?

20 A. Possible.

21 Q. It's possible?

22 A. Possible.

23 Q. What would make the life penalty
24 appropriate in that kind of situation for
25 you? Can you think of anything?

1 A. No.

2 Q. Okay. So it -- given that scenario, it
3 sounds like your starting point is the death
4 penalty.

5 A. Possible -- yeah.

6 Q. Well, is there any reason why it
7 wouldn't be?

8 A. (Chuckles), I can't -- I can't think of
9 anything.

10 Q. Okay. I want to take you another step
11 down the road. That is that you would hear
12 about what is called mitigation evidence,
13 anything that would -- generally about the
14 defendant's background, about how they grew
15 up, their life, that sort of thing. In your
16 mind, in your imagination and in your
17 experience in the world, can you think of
18 anything about someone's background that
19 could get you from the death penalty down to
20 life without parole in prison?

21 A. Possible.

22 Q. What would that be?

23 A. Health, medical reasons I guess.

24 Q. So for instance if a crime was
25 committed by, say, a seventy-year-old person

1 they might ---

2 A. No, no.

3 Q. Tell me what you mean by that.

4 A. I guess -- (pause) -- mentally. I
5 guess that is what I am trying to say maybe.

6 Q. Okay.

7 A. I don't know.

8 Q. Let's go back and make sure that we are
9 on that same page again. We are talking
10 about somebody who knows right from wrong,
11 their mental faculties are intact and when
12 they chose to kill they knew what they were
13 doing.

14 A. Okay.

15 Q. In that situation are you with the
16 death penalty?

17 A. Yes.

18 Q. So I want to put you there again --
19 death penalty in that scenario.

20 Aside from a mental defect or a mental
21 health problem, can you think of anything
22 that could get you off of death then,
23 regarding the defendant's background?

24 A. No.

25 Q. What I am hearing is that that is

1 because your decision making process would
2 be on the facts of the crime.

3 A. Um-humm.

4 Q. How bad it is is going to drive your
5 decision.

6 A. Correct.

7 Q. And something that may have happened
8 ten or fifteen years ago to somebody is not
9 really going to be relevant in that decision
10 making process, is that fair to say?

11 A. Yeah. Correct.

12 Q. Okay.

13 WILLIAM MAGUIRE: Just one second --
14 (sidebar with Mr. Young). Thank you, Ms.
15 Dix, that's all that I have for you.

16 THE COURT: Solicitor?

17 EXAMINATION

18 BY SCARLETT WILSON:

19 Q. Good morning, Ms. Dix.

20 A. Good morning.

21 Q. Thanks for hanging in there with us.
22 I take it that you kind of understand
23 courthouse delays?

24 A. Yes.

25 Q. Tell me -- I am a little bit confused

1 what for you being a type three juror meant,
2 because when you answered some of Mr.
3 Maguire's questions you said that in some
4 situations that death would be automatic
5 whereas ---

6 A. Um-humm.

7 Q. --- a type three was the type person
8 who could wait and listen to everything.

9 A. I guess what I mean would be the
10 severity of the situation.

11 Q. Now, in all murder cases we know that
12 it is an intentional, malicious murder.

13 A. Correct.

14 Q. So does that mean that you think all
15 murder cases should get the death penalty?

16 A. No. No.

17 Q. Okay. Let's go a little bit more. I
18 know that this is confusing and you probably
19 haven't set around across the street
20 thinking about this all the time.

21 Let's move to the situation where you
22 and eleven other jurors in a case have
23 decided that the person charged has
24 committed this crime, that they knew what
25 they were doing, they knew right from wrong,

1 they were guilty. At that point you
2 understand that there would be a second
3 phase.

4 A. Right.

5 Q. And the question is whether or not you
6 would have an open mind or could force
7 yourself to keep an open mind until the
8 whole second phase was finished and you had
9 heard everything before deciding life
10 without parole or death.

11 A. I think I could.

12 Q. You think you could.

13 A. Um-humm.

14 Q. Part of what would happen or happens in
15 death penalty cases is -- the Judge told you
16 about aggravating circumstances. The State
17 only has to prove one aggravating
18 circumstance. But if the State doesn't
19 prove it beyond a reasonable doubt to all
20 twelve (jurors), the death penalty is off
21 the table.

22 A. Okay.

23 Q. Does that make sense to you?

24 A. Yes.

25 Q. And in that situation you would follow

1 the law and return life without parole?

2 A. Yes.

3 Q. Because we didn't prove it?

4 A. Right

5 Q. In the situation where you heard a lot
6 of evidence about the aggravating
7 circumstances and the State had finished its
8 presentation, could you then still keep an
9 open mind and not just listen like, 'Oh,
10 yeah, I heard you', but really factor in
11 things about the defendant that maybe you
12 can't even imagine but things that you might
13 hear?

14 A. (Affirmative nod).

15 Q. And could you use those in determining
16 what sentence that you thought was right?

17 A. I believe that I could.

18 Q. You believe that you could?

19 A. Um-humm.

20 Q. Okay. And when we use that term
21 "mitigating circumstances", there are lots
22 of things that could be a mitigator and --
23 even if there were something that you
24 thought of that just made you think morally
25 that death were not the right sentence, in

1 that situation life without parole would be
2 okay with you?

3 A. (Affirmative nod).

4 Q. Is that right?

5 A. Um-humm.

6 Q. I just want to give you an example.
7 Again, I know that it is hard because you
8 haven't heard anything and can't hear
9 anything about this, so we're talking
10 abstractly. But, uh, -- if you heard things
11 about how a defendant grew up, how he was
12 treated, things that happened that, you
13 know, nobody would want to see happen to a
14 child, whether or not someone was
15 remorseful, could you factor all that in
16 before deciding life or death or would it
17 just be automatic because it was a brutal,
18 heinous, ugly murder?

19 A. I believe that I could consider it.

20 Q. When you say "I believe that I could"
21 consider it -- and I am repeating you
22 because it is a little bit hard to hear you.

23 A. Yeah. Okay.

24 Q. Your voice falls off.

25 A. Okay.

1 Q. What do you mean by "consider it"?

2 A. I could consider it in the -- whether
3 -- life or death, I think.

4 Q. So whether life without parole fit the
5 crime or whether death fit the crime, ---

6 A. Yeah.

7 Q. --- and the defendant?

8 A. Yeah.

9 Q. In your mind, is punishment about what
10 was going on with the defendant as well as
11 what the defendant did?

12 A. (Pause) -- possibly.

13 Q. It just depends on what it is?

14 A. Yeah. Yeah.

15 SCARLETT WILSON: That's all that
16 I have, Judge.

17 THE COURT: Ms. Dix, I want to
18 ask you a couple of questions. Mr. Maguire
19 asked you about reducing murder to life and
20 you said -- asked you could you think of
21 anything that would reduce it and you said
22 something about "mentally".

23 JUROR NUMBER 80: Yes.

24 THE COURT: Then he asked you
25 about right or wrong, if he knew right from

1 wrong.

2 JUROR NUMBER 80: Yes.

3 THE COURT: Knowing right from
4 wrong in South Carolina is referred to as
5 the McNaughton Rule and it would be an
6 insanity defense.

7 JUROR NUMBER 80: Right.

8 THE COURT: Now, I read to you
9 two other mental questions -- questions
10 concerning mitigation. I'll read them to
11 you again, (reading):

12 *The murder was committed by*
13 *the defendant under the influence of mental*
14 *or emotional disturbance.*

15 *The capacity of the defendant*
16 *to appreciate the criminality of his conduct*
17 *or to conform his conduct to the*
18 *requirements of law was substantially*
19 *impaired.*

20 What do you mean when you say
21 "mentally"? I don't understand.

22 JUROR NUMBER 80: I -- (pauses,
23 chuckles), -- well, I guess that they don't
24 understand or comprehend/know what they did.
25 I guess.

1 THE COURT: Well, would it just
2 be simply right and wrong or would it be the
3 influence of mental and emotional
4 disturbance or can't appreciate the
5 criminality of his conduct?

6 JUROR NUMBER 80: (No verbal
7 response).

8 THE COURT: Or would it be all
9 three?

10 JUROR NUMBER 80: All three.

11 THE COURT: I am not trying to
12 put words in your mouth. I am just trying
13 to clarify in my mind what you meant when
14 you said that.

15 JUROR NUMBER 80: Yeah. Yeah, I
16 would -- all three.

17 THE COURT: You clearly think
18 that it would be all three?

19 JUROR NUMBER 80: Um-humm.

20 THE COURT: Do you understand the
21 distinction that I have tried to draw
22 between right from wrong plus the other two?

23 JUROR NUMBER 80: Yes.

24 THE COURT: The right and wrong
25 issue, commonly referred to as McNaughton,

1 is a complete defense to a crime, it's
2 called an insanity defense commonly. Do you
3 understand?

4 JUROR NUMBER 80: Um-humm.

5 THE COURT: The other two that I
6 read to you would have been mitigation or
7 mitigating circumstances that could be
8 offered in a trial.

9 JUROR NUMBER 80: Okay.

10 THE COURT: Anything else you
11 want to tell me about what you meant when
12 you said "mentally"?

13 JUROR NUMBER 80: No.

14 THE COURT: Mr. Maguire, I will
15 be glad for you to ask any question, any
16 cross-examination questions based on my
17 questions -- because I was just very
18 confused about what she meant. I don't mean
19 to be putting word in her mouth.

20 WILLIAM MAGUIRE: Sure. Sure.

21 EXAMINATION RESUMED

22 BY WILLIAM MAGUIRE:

23 Q. Ms. Dix, it is confusing. All right?

24 A. (Chuckles).

25 Q. And, you know, we all people kind of

1 understand stuff because of TV, *Law & Order*,
2 all that. So I am just going to talk to you
3 just a little bit about what the judge
4 talked to you about. That is when we talked
5 about the knowing right from wrong.

6 When you said that you could go from
7 death down to the life penalty based on
8 somebody's mental health, give it your best
9 shot and tell us what you mean by that.

10 A. (Laughing), -- well, (laughing), --
11 (pause) --

12 Q. I tell you what, I'm going to run down
13 a ---

14 THE COURT: Give her a chance to
15 answer.

16 WILLIAM MAGUIRE: Sorry, Judge.

17 EXAMINATION CONTINUED

18 BY WILLIAM MAGUIRE:

19 Q. Yeah, go ahead.

20 A. The situation where there's over and
21 over, you know, a serial-type thing, it's
22 just, you know, versus maybe an accidental
23 or -- I mean, you know, it's hard to say.

24 Q. Now, the Judge will tell you that all
25 murders in South Carolina are intentional.

1 A. I know.

2 Q. Are never accidental.

3 A. Yeah..

4 Q. Sometimes -- and I am going to throw
5 out some examples of some facts, give you
6 something to kind of bite on and to talk to
7 me about. Okay?

8 A. Okay.

9 Q. A situation where somebody kills
10 somebody and they think that they are
11 actually protecting themselves but they are
12 wrong. Like a Vietnam vet kills a waiter in
13 a restaurant, because he thinks that they are
14 the enemy. Is that the mental defect that
15 we're talking about here?

16 A. Um-humm, something to that -- yeah.

17 Q. So the person actually thinks that
18 maybe they are not even doing anything
19 wrong.

20 A. Right.

21 Q. They don't appreciate the wrongness of
22 their act. That is the mental defect that
23 you're talking about?

24 A. Um-humm! Um-humm.

25 Q. Okay. You are -- I assume you're not

1 talking about -- you tell me if I am wrong.

2 Like somebody drinks a lot of alcohol and
3 they are just kind of not in their right
4 mind and they're a little bit surly or a
5 mean drunk and they get in an argument and
6 they kill somebody. You are not talking
7 about that.

8 A. No. No.

9 Q. You are talking about not knowing right
10 from wrong?

11 A. Right.

12 WILLIAM MAGUIRE: That's all that
13 I have. Thank you.

14 THE COURT: Solicitor, do you
15 have any questions on that point?

16 SCARLETT WILSON: Yes, sir.

17 EXAMINATION RESUMED

18 BY SCARLETT WILSON:

19 Q. Now I'm confused -- not by you but just
20 by the whole process. Again, in this
21 situation, in a death penalty situation, you
22 understand that there are two phases to the
23 trial.

24 A. Right.

25 Q. You wouldn't even get to the second

1 phase if someone didn't know right from
2 wrong?

3 A. (No verbal response).

4 Q. Does that make sense to you?

5 A. Yes. (Chuckles), I guess it does.

6 Q. In thinking about these types of
7 things, there could also be situations, as
8 the Judge was naming some, where someone's
9 mental state didn't rise to the level that
10 they didn't know right from wrong but they
11 had some sort of affect, mental affect,
12 emotional affect.

13 A. Um-humm.

14 Q. Still responsible for what they'd done,
15 still guilty, but they had something
16 emotional going on -- whether it was
17 something in their life that had happened
18 then or something that affected them for
19 long ago but it was -- it was on their mind.
20 Is that the type of thing that you could
21 consider before deciding death or life?

22 A. (Pause) -- yeah. Yeah.

23 Q. Okay.

24 A. Yeah.

25 Q. So could you follow the Judge's

1 instructions about -- you know, in the first
2 part, that the person in order for you and
3 the other jurors to find him guilty that you
4 also would have had to find that they were
5 intentionally acting ---

6 WILLIAM MAGUIRE: Judge, I have an
7 objection. I am not sure what ---

8 THE COURT: I will sustain the
9 objection. That's going beyond what I
10 wanted to go into. Okay?

11 SCARLETT WILSON: Okay. Thank
12 you.

13 THE COURT: Anything else you
14 have on the mental issue, I'll be glad to
15 hear it. We are not going to do into any
16 instructions and all that.

17 SCARLETT WILSON: Okay. That's
18 fine. That's all, Judge.

19 THE COURT: Ms. Dix, would you
20 just step out in the hall, please.

21 (JUROR NUMBER 80 EXITS COURTROOM)

22 THE COURT: Motion?

23 WILLIAM MAGUIRE: Yes, sir. Move
24 to strike for cause. Failure to strike this
25 juror for cause would violate Mr.

1 Broughton's Sixth and Fourteenth Amendment
2 rights to an impartial jury trial.

3 Her answers indicate that in
4 capital murder cases she is automatic death
5 penalty. As soon as there is the
6 aggravators, she is automatic death penalty.
7 The only thing that could get her from there
8 down to life would be somebody basically who
9 is insane, who doesn't know right from
10 wrong.

11 I think she was very clear, when I
12 was talking to her and I gave her examples,
13 that she would bite on and talk about -- I
14 mean, she was right there with us. You'd
15 have to basically not even appreciate the
16 rightful or wrongness of your conduct, the
17 rightfulness or the wrongness of your
18 conduct.

19 I think she is trying really hard,
20 I think that she wants to be fair in a death
21 penalty case where every precaution should
22 be observed in favor of the defendant, I
23 think that this is one that you err on the
24 side of the defense despite the fact that I
25 think she is trying really hard.

1 THE COURT: Solicitor?

2 SCARLETT WILSON: Judge, I think
3 basically the whole questioning process was
4 confusing for this juror. I think in the
5 end what she said was that she would
6 consider everything, that she would follow
7 your instructions. I think that is what
8 qualifies her.

9 Does she lean one way or the other?
10 Certainly. But she also said that she
11 should, could and would consider everything.

12 THE COURT: Would you let Mx. Dix
13 go in the jury room for now and bring
14 another juror out, please.

15 BAILIFF: Put her back in the
16 jury room?

17 THE COURT: Please. I will make
18 a decision but I am going to reflect on it
19 for a while. Okay?

20 WILLIAM MAGUIRE: Yes, sir. Do
21 you want to give her an instruction not to
22 talk about what we ---

23 (JUROR NUMBER 275 ENTERS COURTROOM)

24 THE COURT: Your name?

25 JUROR NUMBER 275: Prather-

1 Williams:

2 THE COURT: Your last name is
3 Williams?

4 JUROR NUMBER 275: My last name
5 is Prather-Williams, I hyphenated my name.

6 THE COURT: Cheryl Prather-
7 Williams?

8 JUROR NUMBER 275: Yes, sir.

9 THE COURT: Have you had an
10 opportunity -- before we get to that, would
11 the bailiff bring in Ms. Dix just very
12 briefly?

13 (JUROR NUMBER 80 ENTERS COURTROOM)

14 THE COURT: Ms. Dix, don't talk
15 with the other jurors in the jury room about
16 what transpired in here. Okay? Please,
17 ma'am?

18 JUROR NUMBER 80: Yes, sir.

19 THE COURT: All right. I will be
20 with you before long. Okay?

21 (JUROR NUMBER 80 EXITS COURTROOM)

22 THE COURT: Ms. Prather-Williams,
23 have you had an opportunity to review the
24 sheet that has types one, two and type three
25 on opinions about the death penalty?

1 JUROR NUMBER 275: Yes, sir.

2 THE COURT: Do you fit into any
3 of the types?

4 JUROR NUMBER 275: Type three.

5 THE COURT: You fit into type
6 three?

7 JUROR NUMBER 275: Yes, sir.

8 THE COURT: Okay. I've got some
9 more questions for you.

10 CHERYL PRATHER-WILLIAMS, having
11 been previously sworn to tell the truth
12 testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q. Have you had an opportunity to review
16 the list of potential witnesses, of one
17 hundred thirty-four names?

18 A. Yes, sir.

19 Q. Do you recognize any names?

20 A. I am not really sure, but one eighteen,
21 Sergeant Fludd, I know a David Fludd but I
22 think it is spelled F-l-o-o-d.

23 Q. The Flood that you know ---

24 A. He is a reserve Berkeley County. I
25 don't know if this is the same one or not.

1 WILLIAM MAGUIRE: Judge, I can
2 help you with that.

3 THE COURT: I don't think that he
4 is a reserve officer, is he?

5 WILLIAM MAGUIRE: This Fludd is
6 black female.

7 JUROR NUMBER 275: So it is not
8 him.

9 EXAMINATION CONTINUED

10 BY THE COURT:

11 Q. All right, Ms. Prather-Williams, I am
12 going to ask you a few question and then the
13 attorneys will ask you some questions.

14 There are no right or wrong answers. Okay?

15 A. Okay.

16 Q. Do you know anything about the case,
17 have you heard anything about the case at
18 all?

19 A. No, sir.

20 Q. Have you read anything in the paper?

21 A. No, sir.

22 Q. Seen anything on television?

23 A. No, sir.

24 Q. Heard any other jurors this week
25 talking about it?

1 A. No, sir.

2 Q. Have any relatives of close friends
3 employed in law enforcement?

4 A. No, not at this time. I had a cousin
5 that was a reserve officer.

6 Q. Has the solicitor prosecuted you or any
7 member of your family?

8 A. Sorry?

9 Q. Has the solicitor or any of her staff
10 prosecuted you or any member of your family?

11 A. No, sir.

12 Q. Have you or any member of your family
13 or close personal friends been a victim of a
14 crime?

15 A. No, sir.

16 Q. Do you have any relatives in jail?

17 A. Not to my knowledge.

18 Q. Are you a member of any groups that
19 primarily supports law enforcement, such as
20 MADD?

21 A. No, but I was in a bad car accident and
22 they showed up at that case; so I've met
23 somebody but, no, I am not a member of MADD.

24 Q. Do you contribute any money to them?

25 A. No, sir.

1 Q. Do you have any special interest or
2 particular interest in the outcome of this
3 case?

4 A. No, sir.

5 Q. Are you aware of any bias or prejudice
6 towards the defendant because of the charges
7 which the State has brought against him?

8 A. No, sir.

9 Q. Do you have any religious beliefs that
10 would create any bias or prejudice for or
11 against the defendant?

12 A. No, sir.

13 Q. Do you have any religious beliefs that
14 would create any bias or prejudice for or
15 against the State?

16 A. No, sir.

17 Q. Do you have any bias or prejudice
18 because of the defendant's race, being
19 black?

20 A. No, sir.

21 Q. Have you had any bad or good
22 experiences with law enforcement?

23 A. Good. Everything that I've had has
24 been good.

25 Q. Do you know of any reason, personal or

1 otherwise, as to why you cannot serve on
2 this jury?

3 A. No, sir.

4 Q. Is there any reason why you could not
5 give both the State and the Defendant a fair
6 and impartial trial?

7 A. No.

8 Q. Are you willing to make your decision
9 on the information that you hear in this
10 courtroom?

11 A. Yes.

12 Q. If you would, tell me very briefly
13 about this automobile wreck and the MADD
14 people showing up?

15 A. A drunk driver hit me head-on and they
16 -- I don't know how they ended up there but
17 they ended up there the day that we had out
18 little court.

19 Q. How long ago was this?

20 A. About five or six years ago, I guess.

21 Q. What court did you appear in?

22 A. In the north area, I don't know -- it
23 was -- I guess wherever they -- it wasn't a
24 big thing. He admitted that he was wrong.
25 Of course, he couldn't walk from the

1 accident, so it was pretty obvious.

2 Q. I hope you weren't seriously injured?

3 A. I've recovered.

4 Q. That's good.

5 A. Thank you.

6 THE COURT: The attorneys are
7 going to now ask you some questions. Okay?

8 JUROR NUMBER 275: Yes, sir.

9 THE COURT: Solicitor.

10 SCARLETT WILSON: Thank you.

11 EXAMINATION

12 BY SCARLETT WILSON:

13 Q. Thank you, Ms. Prather-Williams.

14 Thanks for being patient. I think after
15 we got through this step that you will
16 understand why we can't exactly pinpoint
17 what time that we need you. We appreciate
18 your patience.

19 What we are going to do now is, both
20 sides get to ask some questions just to sort
21 of clarify in our minds where you are on
22 life without parole and the death penalty.

23 A. Yes, sir. Yes, ma'am. Sorry.

24 Q. That's okay. Before this week, did you
25 have any involvement or any special

1 knowledge about how death penalty cases work
2 in South Carolina?

3 A. No, sir. No, ma'am.

4 Q. Did you realize or do you realize now
5 that it is a two-step process in the trial?

6 A. Right, where they are found guilty or
7 innocent; then, if they are guilty there's
8 -- right.

9 Q. You got it. The second part would be
10 to determine penalty?

11 A. Yes, sir. Yes, ma'am.

12 Q. Okay. That's all right. Also when
13 you read the sheet this morning -- or, I
14 don't know if you got it yesterday
15 afternoon. Did you understand that in every
16 murder case in South Carolina we're talking
17 about situations that are intentional, where
18 the killed acted intentionally and with
19 malice. That it was malicious, that it was
20 according to the law a death or a kill that
21 was done with a heart fatally bent on
22 mischief, wicked. Those words are some of
23 the words that are used to define malice in
24 South Carolina.

25 A. Okay.

1 Q. That would be every murder.

2 A. Okay.

3 Q. After you in a situation, and again we
4 can't talk about this trial, but generally
5 speaking if you were in a situation where
6 you and eleven other jurors had found
7 someone guilty of a malicious murder, the
8 Judge would then ask you to keep an open
9 mind as to sentence. That's what we are
10 trying to figure out if you could do.

11 A. Yes, ma'am. I could.

12 Q. Even after hearing all that about how
13 guilty the person was?

14 A. Well, I think -- well, it doesn't
15 matter what I think.

16 Q. No, it does! It only matters what you
17 think, actually.

18 A. I think that everybody -- I think you
19 should be open to everything, so I think
20 that I would have to hear everything and
21 that I think that I would have to -- I would
22 have to look at all sides of the ---

23 Q. So you wouldn't have any trouble coming
24 back with a life without parole sentence if
25 the State failed to prove to you that one

1 aggravating circumstance that the Judge told
2 you that we had to?

3 A. That's true.

4 Q. No problem with that?

5 A. (Negative gesture), no problem with
6 that.

7 Q. And if you had -- if you were on a jury
8 and you had heard a lot of evidence about
9 aggravating circumstances, it might be that
10 somebody was tortured, it might be that they
11 were raped, you know, it could be a number
12 of things. Even that if there were a child
13 involved. Even after hearing all that,
14 would you still hold out in your sentence
15 until you heard things about the defendant,
16 his life, what his background, what made him
17 who he was at the time of the crime? Would
18 you listen and really factor that into your
19 decision?

20 A. Yes, ma'am, I could.

21 Q. If you were a juror in that sort of
22 situation, what types of things would you be
23 interested in hearing?

24 A. Of course as far as the defendant, I
25 would want to know about who he was before

1 all this.

2 Q. Why would that matter?

3 A. Well, because I think that -- I can't
4 -- I don't think we should always be defined
5 by one particular act. In that case, this
6 may be his one defining act and we have to
7 know what brought him to this point.

8 Q. Okay. All right. And, again, you
9 understand that the defense is never
10 required to put anything up and that you --
11 you might want to give a life sentence just
12 because you think that's the right thing to
13 do. Could you do that?

14 A. I think that I would have to hear the
15 facts in order to make that determination.
16 I think that it would be -- I mean, without
17 -- I think you have to hear both sides of
18 the story.

19 Q. And that is even in a situation where
20 it is no question that it was a heinous
21 situation, you would still want to hear
22 more?

23 A. Yeah, I want to hear -- I want to hear
24 the details.

25 SCARLETT WILSON: That's all that

1 I have. Thank you very much.

2 THE COURT: Mr. Maguire.

3 WILLIAM MAGUIRE: Thank you,
4 Judge.

5 THE COURT: Please proceed.

6 EXAMINATION

7 BY WILLIAM MAGUIRE:

8 Q. Ms. Prather-Williams?

9 A. Prather-Williams.

10 Q. Good morning. It's still morning.

11 A. Yes.

12 Q. I know this has been time-consuming,
13 very inconvenient. I am just going to ask a
14 little bit more of you and that's just to
15 honest in your responses with me. Okay?

16 A. Certainly.

17 THE COURT: Don't pass the Bill
18 this time. Okay?

19 WILLIAM MAGUIRE: Yes, sir.

20 EXAMINATION CONTINUED

21 BY WILLIAM MAGUIRE:

22 Q. I see on your questionnaire that your
23 husband received a pardon?

24 A. That's correct.

25 Q. Were you with him or did you know him

1 when he committed the criminal act?

2 A. No, I did not.

3 Q. Were you all together when he was going
4 through the pardon process?

5 A. I think that -- yeah, in the very
6 beginning. Yes.

7 Q. Some people describe what you need to
8 do to get a pardon is that you basically
9 have to show that you're not the same person
10 that was the criminal in the beginning?

11 A. Right.

12 Q. Your husband went about doing that?

13 A. Yes. After that one act, there was
14 never any other -- nothing else.

15 Q. Okay. And it would be unfair to define
16 his life in terms of that one act?

17 A. That's correct.

18 Q. And you would apply that principle to
19 all people?

20 A. Yes, I have always.

21 Q. Okay. I am not going to talk to you
22 about the facts of this case.

23 A. Okay.

24 Q. Can you imagine a case where somebody
25 actually committed the act of murder and it

1 was sort of the coming together of the
2 pieces of a puzzle or a perfect storm of
3 emotional issues, drugs, and then later they
4 -- they are not that person anymore. Can
5 you see that situation happening?

6 A. Sure.

7 Q. If you saw that situation, if you -- if
8 the person actually wasn't really almost the
9 same person that committed the crime, could
10 you kill them?

11 A. I think that you have to hear both
12 sides of it. You would have to prove to me
13 that the person is not that person. Okay?
14 Just like they would have to prove to me
15 that he was that person that did that.

16 Q. Okay.

17 A. I think I am -- I am very open-minded.

18 Q. Okay. Well, to get your thought
19 process here, come with me and sit on a jury
20 with eleven other people and I want you to
21 convict somebody of intentionally taking the
22 life of another person.

23 A. Um-humm.

24 Q. Meant to do it, murder, innocent
25 victim. Are you with me?

1 A. Right.

2 Q. I want to put some paint on those
3 words; so to speak, and I want you to
4 imagine this crime: home invasion,
5 kidnaping, rape, burglary, armed robbery,
6 murder. That criminal offense happening all
7 at one time.

8 A. Um-humm.

9 Q. Where are you as to the death penalty
10 being the appropriate punishment in that
11 case?

12 A. I think that you have to hear the case
13 in order to figure that out. I don't think
14 anything is ever cut-and-dried. I think
15 that you really -- you have to hear what is
16 being said, we have to hear from both
17 parties. I wouldn't dare set that judgment
18 on somebody else until I knew all the facts.

19 Q. When you say "all the facts", what do
20 you mean by that phrase?

21 A. Well, the facts that you -- all I know
22 is what you're going to be telling and what
23 they are going to be telling me. That is
24 the only facts that I am going to know. I
25 have to make a judgment call from that.

1 Q. Okay. Let's assume that you don't hear
2 anything from me. Maybe you hear the
3 scenario that we talked about: home
4 invasion, kidnaping, rape, armed robbery,
5 murder -- and you don't hear anything from
6 me. Where are you?

7 A. Why would I not hear anything from you?
8 That's what I would be wondering, is why I
9 wouldn't hear anything from you. I couldn't
10 -- I can't make that judgment call on
11 somebody. That's way we are here, is to
12 give a voice to both sides.

13 Q. Let's say that you hear no voice from
14 my side and you're in essence kind of
15 shooting in the dark, but you know those
16 facts, you know that situation, you know the
17 crime, you know the facts of the crime, the
18 violence of the crime. That's where we
19 stop.

20 A. In a court of law, I would -- you're
21 asking me to estimate how I would feel.
22 Of course I can only go with what I have
23 already heard.

24 Q. Sure.

25 A. That would be the facts. Are you

1 telling me that the facts are as true and
2 you're not going to ---

3 Q. No alibi, you've got the right guy, no
4 identity issue, it's not accident, it is not
5 self-defense, it is those crimes.

6 A. Okay.

7 Q. And you found, with eleven other
8 jurors, that those crimes absolutely
9 happened, that the person knew what they
10 were doing and chose to act in that criminal
11 fashion.

12 A. And the question would be if I have
13 trouble with giving him the death penalty?

14 Q. Not if you have trouble. Do you think
15 it is appropriate?

16 A. I think depending on the facts whether
17 it is appropriate or not.

18 Q. Okay. Let's assume that I meet your
19 expectations and I put up evidence regarding
20 background of my client, Colin, who he is,
21 his walk in life, his childhood, what --
22 tell me what you think might be important in
23 learning about him. What would you be
24 looking for?

25 A. Knowing those things, knowing where he

1 has come from, what he has been through and
2 stuff like that. I think that make a
3 difference with everybody because that's
4 what makes us who we are.

5 Q. So childhood does matter to you?

6 A. I think childhood does matter on every
7 level but I don't think it is always the
8 reason or an excuse for what happens, but
9 I think that it does matter.

10 Q. Tell me anything in a person's back-
11 ground, assuming you -- after hearing the
12 ---

13 SCARLETT WILSON: Your Honor, I
14 object. This has been asked and answered.

15 THE COURT: I sustain the
16 objection. You're getting sort of
17 repetitive.

18 WILLIAM MAGUIRE: Okay.

19 THE COURT: Rephrase it.

20 WILLIAM MAGUIRE: Thank you,
21 Judge.

22 EXAMINATION CONTINUED

23 BY WILLIAM MAGUIRE:

24 Q. Let's assume that you hear the facts of
25 the case, the violence of the crime, the

1 person knew what they were doing and that
2 your starting point is the death penalty.

3 A. All right.

4 Q: In your imagination, in your experience
5 in life, thinking about anything that is
6 possible, is there anything in Colin's
7 background that could bring you ---

8 SCARLETT WILSON: Your Honor, I
9 object. He's talking about this specific
10 defendant.

11 EXAMINATION CONTINUED

12 BY WILLIAM MAGUIRE:

13 Q. --- down to life?

14 THE COURT: I sustain the
15 objection. Okay? You're getting fact
16 specific about this case. Talk to her in
17 generalities. You have already ask her that
18 question one time and she has already said,
19 two or three times, that she would like to
20 hear everything.

21 WILLIAM MAGUIRE: Okay. When
22 I ---

23 SCARLETT WILSON: Your Honor, I
24 would also objection to the "starting point"
25 when the juror has clearly said that she

1 doesn't start from that. He is asking her
2 to start with the premise ---

3 THE COURT: I will sustain the
4 objection.

5 WILLIAM MAGUIRE: All right.

6 EXAMINATION CONTINUED

7 BY WILLIAM MAGUIRE:

8 Q. In deliberations, some jurors might say
9 that a hard background is really just an
10 excuse. Would that resonant with you, a
11 hard childhood?

12 A. I think some people use it as that --
13 okay? But I don't necessarily think that is
14 an excuse or isn't an excuse. I think that,
15 again, you have to look at the facts.

16 Q. Right. What I am -- I'm following up
17 on your definition or term "excuse." Tell
18 me what -- what makes something to an excuse
19 to where it really matters. Give me an
20 example.

21 A. I don't know that I really have an
22 opinion about that because I think you have
23 to go on a case by case instance. I don't
24 think that you can put everybody -- say that
25 'if you had this kind of a background' that

1 this is -- you know, because no one thing
2 defines any of us. Okay? It's not one
3 thing that happened to you. It's how you
4 moved through everything over life, that's
5 happened to you.

6 Q. Okay, I've just got three or four more
7 -- maybe three questions for you.

8 A. Okay.

9 Q. In a civil case your verdict would be
10 sort of a fact question, like a car wreck
11 case. The issue would be was the light red
12 or green and there is a yes/no answer,
13 either it was red or green, -- or I supposed
14 yellow. But it was a color. Right?

15 A. Um-humm.

16 Q. That's a fact issue. The way that the
17 law describes a decision in a case like
18 this, a sentencing decision is that it is an
19 individual moral judgment. Does that sound
20 fair to you?

21 A. I guess if the court says that's what
22 it is, yeah. I think with anything that
23 people use their own morality to judge or
24 not to.

25 Q. Their own walk in life, their own life

1 experiences.

2 A. That's right.

3 Q. And you would respect other people's
4 walk in life, their experience, their own
5 individual moral judgment?

6 A. That's right.

7 Q. And in a case like this, it's obviously
8 a grave matter, could you respect the
9 individual decisions of all the jurors?

10 A. Oh, of course.

11 Q. And it would be okay in something so
12 serious to end the day agreeing to disagree?

13 A. I think in life that most things you
14 end in that manner.

15 WILLIAM MAGUIRE: Thank you,
16 ma'am.

17 THE COURT: Any Motions on this
18 witness -- juror?

19 SCARLETT WILSON: No, sir, she is
20 qualified.

21 WILLIAM MAGUIRE: Yes, sir, she's
22 qualified.

23 THE COURT: Ms. Prather-Williams,
24 the bailiff is going to give you a card that
25 has a phone number. Call in after five

1 o'clock tonight. There will be instructions
2 for the jury panel. The instruction may be
3 to call tomorrow, it may be to report
4 tomorrow. I don't know. Follow those
5 instructions.

6 JUROR NUMBER 275: Yes, sir.

7 THE COURT: What we are doing is
8 that we are qualifying a group of people and
9 from that group of people we will strike the
10 jury for this case. You are now part of
11 that group.

12 Don't talk about the case, don't
13 read anything about it in the paper. Okay?

14 JUROR NUMBER 275: Yes, sir.

15 THE COURT: See you late. Thank
16 you very much.

17 (JUROR NUMBER 275 EXITS COURTROOM)

18 THE COURT: All right, would you
19 bring Ms. Dix out, please?

20 (JUROR NUMBER 80 ENTERS COURTROOM)

21 THE COURT: Ms. Dix, I am find
22 you not qualified for this jury. I want to
23 thank you very much for being here, thank
24 you for your service. You are free to go.

25 (JUROR NUMBER 80 EXCUSED)

1 (JUROR NUMBER 80 EXITS COURTROOM)

2 THE COURT: Would you bring in
3 Mr. Clifford Perry, please.

4 WILLIAM MAGUIRE: Judge, if I
5 could be heard on just one issue -- briefly?

6 THE COURT: Pardon?

7 WILLIAM MAGUIRE: Judge, I just
8 want to object to the prosecutor, when you
9 say for Motions and she says -- hold on.

10 THE COURT: She can say that they
11 are qualified. You can do the same thing if
12 you want to. I am not going to stop you'all
13 from doing that. You can say the same thing
14 if you want to.

15 WILLIAM MAGUIRE: But if I have a
16 Motion, it implies that my position is that
17 they are not qualified. It's just a
18 transparency to curry favor with the juror,
19 to try to put me sideways with the juror.

20 THE COURT: No, I'm going to go
21 on and do this juror -- bring in Mr. Perry
22 if you would.

23 Solicitor, just say that you have
24 no Motions. Okay?

25 SCARLETT WILSON: I don't think

1 I've done it with ---

2 WILLIAM MAGUIRE: You've done it
3 one time.

4 THE COURT: You just said it one
5 time. I think you've done it when he's
6 agreed.

7 SCARLETT WILSON: Right.

8 THE COURT: But just say 'no
9 Motions'.. Okay?

10 SCARLETT WILSON: No problem.
11 Just trying to move along.

12 (JUROR NUMBER 261 ENTERS COURTROOM)

13 THE COURT: Mr. Perry, how you
14 doing?

15 JUROR NUMBER 261: I'm fine.
16 And you?

17 THE COURT: Mr. Perry, did you
18 read the sheet that the court gave you about
19 the three opinions concerning the death
20 penalty?

21 JUROR NUMBER 261: Yes, sir.

22 THE COURT: Did you understand
23 it?

24 JUROR NUMBER 261: Yes, sir.

25 THE COURT: Do you have any

1 questions about it?

2 JUROR NUMBER 261: No, sir.

3 THE COURT: Could you determine
4 whether you fell into either type one, two
5 or three?

6 JUROR NUMBER 261: Type one.

7 THE COURT: Type one? Type one
8 says that you could never give the death
9 penalty to another human being regardless of
10 the reason, is that correct?

11 JUROR NUMBER 261: Yes, sir.

12 THE COURT: Okay. Mr. Perry, I
13 will excuse you from service on this jury.
14 Okay?

15 JUROR NUMBER 261: Yes, sir.

16 THE COURT: Thank you very much.

17 (JUROR NUMBER 261 EXCUSED)

18 (JUROR NUMBER 261 EXITS COURTROOM)

19 THE COURT: Okay, we've got three
20 or four panels out there. Do we have room
21 for eighteen people? First, let's take
22 about a five- or ten-minute break. I am
23 going to try to do two panels, then do two
24 more panels so that they can start reading,
25 because I think we've got four panels here.

1 Take a few minutes.

2 (BRIEF RECESS 11:24 - 11:34 A.M.)

3 (DEFENDANT PRESENT)

4 THE COURT: All right, we've got
5 -- let me see what -- thirteen, fourteen.
6 Is that correct?

7 CLERK: Yes, sir.

8 THE COURT: Bring them in.

9 (JURY PANELS 13 & 14. ENTER COURTROOM)

10 THE COURT: Swear them.

11 CLERK: Please stand and raise
12 your right hands. (Jurors comply).

13 You should truthfully answer all
14 questions asked of you concerning this
15 matter now before the court, by the court
16 or by order thereof.

17 You should speak the truth, the
18 whole truth and nothing but the truth, so
19 help you God. Say "I do." (Affirmative
20 response from jurors). Please be seated.

21 THE COURT: Ladies and Gentlemen
22 of the jury panel, I am going to make some
23 comments and give you some instructions on
24 the law and tell you what has transpired and
25 what is going to transpire.

1 In this particular case the State
2 has served charges on the Defendant on the
3 following crimes, the State has charged the
4 defendant with: attempted arson, armed
5 robbery, assault and battery with intent to
6 kill, criminal sexual conduct first, grand
7 larceny, burglary first and murder.

8 I am primarily going to talk to you
9 this morning about the murder charge. Now,
10 as to the murder charge the State has served
11 a notice of the death penalty on the
12 Defendant. When that happens, murder trials
13 when death penalty notices have been served
14 than regular murder trial.

15 In a death penalty case, it's
16 divided up into two parts. The first part
17 is referred to as the guilt portion or the
18 guilt part of the trial. In that portion of
19 the trial the State would be responsible and
20 the State has the burden of proving the
21 defendant guilty beyond a reasonable doubt.
22 All twelve jurors would have to find the
23 defendant guilty of the crimes charged.

24 The State has the burden of proving
25 the Defendant guilty beyond a reasonable

1 doubt on all the criminal charges as well as
2 the murder charge.

3 I am going to talk to you this
4 morning about the penalty phase of the
5 trial, how a trial is conducted when the
6 death penalty notice has been served.

7 Please don't think that this court
8 or anyone thinks that the defendant is
9 guilty because we are talking to you about
10 the penalty phase. It is just a necessary
11 thing that I have to do because of the
12 nature of the trial and how the trial is
13 conducted.

14 Twelve jurors must unanimously
15 agree that the State has proven the
16 defendant guilty beyond a reasonable doubt
17 of the murder.

18 But for the purposes of our
19 conversation this morning or for the
20 purposes of what I am going to tell you,
21 please consider the guilt phase, which is
22 the first part of the trial, is over and the
23 jury has found the defendant guilty. Then
24 we go into the second part or the second
25 phase of the trial, which is commonly

1 referred to as the penalty phase or the
2 sentencing phase.

3 In the sentencing phase you, the
4 jury, has to make a decision whether or not
5 a defendant should be sentenced to life
6 without parole or death; that is your
7 decision as the jury. All twelve of you
8 have to unanimously agree on the sentence.
9 The sentence is a recommendation to the
10 court and the court is obligated to follow
11 that recommendation.

12 Now, when I use the term "life
13 without parole", I mean exactly what it
14 says. The defendant will never be eligible
15 for parole. He would die in jail. There is
16 no parole when I use the term life without
17 parole.

18 So the jury, as I said earlier, has
19 to make the determination of life without
20 parole or death.

21 Now, in order for the jury to make
22 that determination, the State is required to
23 has to prove what is referred to as an
24 aggravating circumstance. It can be one
25 aggravating circumstances or several. The

1 State only has to prove one aggravating
2 circumstance.

3 The State has laid out certain
4 aggravating circumstances by statute that
5 the State has to prove. All twelve jurors
6 will have to be convinced that the State has
7 proven this aggravating circumstances before
8 you even decide life or death.

9 If for some reason you decide that
10 the State has not proven the aggravating
11 circumstances, then it would be life.

12 Now, assuming that the jury, all
13 twelve jurors, agree that the State has
14 proven the aggravating circumstances -- and
15 aggravating circumstance are facts,
16 incidents, details or occurrences which
17 state law says aggravates the crime of
18 murder. In other words, these additional
19 circumstances increase the enormity of the
20 crime. It increases the severity of it
21 because of those circumstances.

22 Now, I'm going to read to you some
23 of the aggravating circumstances that are
24 set out by statute. I am not saying that
25 these are aggravating circumstances in this

1 case.

2 I am just going to read some of the
3 aggravating circumstances that are listed in
4 the statute. I do not know what the State
5 is going to prove, I do not know what
6 aggravating circumstance that the State is
7 going to try to prove to the jury because I
8 have not heard the case. Just like you, I
9 have not heard anything. I do not know very
10 much about the case.

11 Aggravating circumstances -- that
12 the murder was committed while in the
13 commission of the following crimes or acts:
14 criminal sexual conduct in any degree,
15 kidnaping, burglary in any degree, robbery
16 while armed with a deadly weapon, larceny
17 with the use of a deadly weapon, physical
18 torture. Those are some of the aggravating
19 circumstances that are laid out in the
20 statute.

21 Now, let's assume that all twelve
22 of you agree that the State has proven one
23 of those aggravating circumstances. Then we
24 was moved to the mitigation. The statute
25 also lays out certain mitigation that the

1 jury has to consider before making a
2 decision of life without parole or death.

3 The defendant does not have to
4 offer any mitigation. It is up to the
5 defendant whether he will offer mitigation.

6 I am going to talk to you about
7 mitigation assuming that the defendant will
8 offer some mitigation.

9 What are mitigation circumstances?
10 Mitigating circumstances are facts either
11 surrounding the incident itself or which
12 shed light on a defendant's history,
13 background, upbringing, childhood which make
14 the crime less severe or less harsh.

15 Just some examples of mitigating
16 circumstances are:

17 The defendant has no significant
18 history or prior criminal convictions
19 involving the use of violence against
20 another person.

21 The murder was committed while the
22 defendant was under the influence of mental
23 or emotional distress.

24 The capacity of the defendant to
25 appreciate the criminality of his conduct or

1 to conform his conduct to the requirements
2 of the law was substantially impaired.

3 The age or the mentality of the
4 defendant at the time of the crime.

5 These are statutory mitigating
6 circumstances.

7 Plus any other relevant issue that
8 should arise concerning mitigation.

9 Mitigation can be the reason for
10 any sentence less than the death penalty.
11 Mitigation is offered to the jury to make
12 the defendant's actions less culpable or
13 less responsible, which reduces the severity
14 of the crime of murder.

15 So very briefly, to summarize what
16 I have said, before the jury makes a
17 determination in the sentencing phase as to
18 the sentence -- and the two choices are life
19 without parole or the death penalty, -- you
20 have to look at the aggravating
21 circumstances, you have to find the
22 aggravating circumstance, but then you have
23 to look at the mitigating circumstances,
24 consider the mitigating circumstances, and
25 then make a decision on life without parole

1 or death..

2 I have prepared a form. The form
3 specifies three types of death penalty about
4 the death penalty: types one, two and
5 three, which are opinions about the death
6 penalty. I am going to give each one of
7 you a copy of this form and ask you to go
8 to the jury room, to read the form, to see
9 if you fit into either category one, two or
10 three.

11 That is a personal decision that
12 you have to make. Please don't discuss your
13 decision or your viewpoints on the death
14 penalty with each other. Just look at it
15 and when you come back in individually, I
16 will ask each one of you do you fit into any
17 of these categories, either one, two or
18 three.

19 I have also prepared a list of
20 names. There are one hundred thirty-four
21 names on the list. These are potential
22 witnesses in this case. I want you to look
23 at these names, see if you recognize any of
24 these names or know anybody on the list
25 because I am going to ask you about anyone

1 that you recognize or anyone that you know
2 on the list.

3 There was one name that was left
4 off the list, Jessica Broughton? Does
5 anyone know a Jessica Broughton? (No
6 response).

7 THE COURT: Solicitor, do
8 you want to introduce yourself?

9 SCARLETT WILSON: Yes, sir.
10 Thank you. Ladies and Gentlemen, I am
11 Scarlett Wilson. I am the solicitor, which
12 means the prosecutor, for the 9th Circuit,
13 which is Charleston and Berkeley counties.

14 This is Bruce Durant, he is the my
15 chief deputy for that Circuit, Berkeley
16 County and Charleston County.

17 This is Brian Alfaro. He is over
18 our Berkeley office.

19 Together the three of us will be
20 asking questions, presenting evidence,
21 taking testimony during this trial over the
22 next week or so. Thank you. We will be
23 asking witnesses questions, introducing
24 evidence, making arguments, things of that
25 nature. We appreciate you all being here

1 and Thank you for your patience.

2 THE COURT: Is there any member
3 of the jury panel who has a close contact or
4 personal relationship with the Solicitor
5 herself or anyone in the solicitor's office?
6 If so, raise your right hand. (No.
7 response).

8 Mr. Maguire?

9 WILLIAM MAGUIRE: Thank you,
10 Judge: I am Bill Maguire. I am a lawyer,
11 I live in Columbia, South Carolina. I work
12 for the State Government.

13 If you do know me or recognize me
14 it's probably because I practiced in the
15 lowcountry for a number of years. I worked
16 for Ashley Pennington in the 9th Circuit
17 Public Defender's Office in Charleston and I
18 also worked for Andy Savage in private
19 practice for a number of years.

20 I represent Mr. Colin Broughton, my
21 client who is seated to my right here
22 between me and Morgan Daniels.

23 Next to him is Morgan Daniels. She
24 is an investigator in my office. She's from
25 Florida but she is a graduate of USC.

1 To her right is Ms. Pati Kennedy.
2 Ms. Kennedy is the chief public defender of
3 the Berkeley County Public Defender's Office
4 and her office is here in Moncks Corner.

5 At the end of the table is Mr. Boyd
6 Young. Boyd is a lawyer in my office who
7 works with me; and he, like me, has
8 practiced both in the lowcountry for a
9 number of years as well. Thank you.

10 THE COURT: Is there any member
11 of the panel who is close personal friends
12 with Mr. Maguire, anyone that he introduced
13 or who has been represented by Mr. Maguire
14 or any of the attorneys that he introduced.
15 If so, raise your right hand. (No
16 response).

17 THE COURT: Let the record reflect
18 that as to the solicitor's office and as to
19 Mr. Maguire that no one raised their right
20 hand.

21
22 Michael Singletary

23 Michael Turnage

24 Mark Thompson

25 Richard Kennedy

1 Richard Peck

2 Guy St. Clair...

3 (JURY PANEL NUMBER 13 EXITS COURTROOM)

4 THE COURT: Now, Panel 14, please
5 go with the bailiffs.

6 (JURY PANEL NUMBER 14 EXITS COURTROOM)

7 THE COURT: Bring in the next
8 panels.

9 (JURY PANELS 15 & 16 ENTER COURTROOM)

10 THE COURT: Madame Clerk, would
11 you swear the panels?

12 CLERK: Please stand and raise
13 your right hands. (Jurors comply).

14 You should truthfully answer all
15 questions asked of you concerning this
16 matter now before the court, by the court
17 or by order thereof.

18 You should speak the truth, the
19 whole truth and nothing but the truth, so
20 help you God. Say "I do." (Affirmative
21 response from jurors). Please be seated.

22 THE COURT: All right, Ladies and
23 Gentlemen of the jury panels, I am going to
24 give you some instructions to, try to explain
25 to you what is transpiring and what you can

1 expect.

2 In this case the State has charged
3 the defendant with the following crimes:
4 attempted arson, armed robbery, assault and
5 battery with intent to kill, criminal sexual
6 conduct first, grand larceny, burglary first
7 and murder.

8 I am primarily going to talk to you
9 this morning about the murder charge. Now,
10 as to the murder charge the State has served
11 a notice of the death penalty on the
12 Defendant. When that happens, murder trials
13 when death penalty notices have been served
14 than regular murder trial.

15 In a death penalty case, it's tried
16 differently than other cases. A death
17 penalty divided up into two parts; it is
18 bifurcated, that means that there are two
19 parts.

20 The first part is referred to as
21 the guilt portion or the guilt part of the
22 trial. In that portion of the trial the
23 State would be responsible and the State has
24 the burden of proving the defendant guilty
25 beyond a reasonable doubt. All twelve

1 jurors would have to find the defendant
2 guilty of the crimes charged.

3 The second part is the penalty or
4 sentencing phase.

5 The State has the burden of proving
6 the Defendant guilty beyond a reasonable
7 doubt on all the criminal charges as well as
8 the murder charge.

9 I am going to talk to you this
10 morning about the penalty phase of the
11 trial, how a trial is conducted when the
12 death penalty notice has been served.

13 Please don't take my comments as
14 any indication that the defendant is
15 innocent or guilty. I am just required to
16 talk to you about the penalty phase. It is
17 just a necessary thing that I have to do
18 because of the nature of the trial and how
19 the trial is conducted.

20 Twelve jurors must unanimously
21 agree that the State has proven the
22 defendant guilty beyond a reasonable doubt
23 of the murder.

24 But for the purposes of our
25 conversation this morning or for the

1 purposes of what I am going to tell you,
2 please consider the guilt phase, which is
3 the first part of the trial, is over and the
4 jury has found the defendant guilty. Then
5 we go into the second part or the second
6 phase of the trial, which is commonly
7 referred to as the penalty phase or the
8 sentencing phase.

9 In the sentencing phase you, the
10 jury, has to make a decision whether or not
11 a defendant is innocent -- excuse me -- if
12 he should be sentenced to life without
13 parole or death.

14 Let me repeat that again since I
15 messed it up. In the sentencing phase, you,
16 the jury make a determination of a sentence
17 for the defendant -- and those choices are
18 death or life without parole. You, the
19 jury, make that decision. All twelve of
20 you have to unanimously agree on the
21 sentence. The sentence is a recommendation
22 to the court and the court is obligated to
23 follow that recommendation.

24 Now, when I use the term "life
25 without parole", I mean exactly what it

1 says. The defendant is not eligible for
2 parole. He will die in jail. There is no
3 parole when I use the term life without
4 parole.

5 So the jury, as I said earlier, has
6 to make the determination of life without
7 parole or death.

8 Now, in order for the jury to make
9 that determination, the State is required to
10 has to prove what is referred to as an
11 aggravating circumstance. It can be one
12 aggravating circumstances or several. The
13 State only has to prove one aggravating
14 circumstance.

15 The State has laid out certain
16 aggravating circumstances by statute that
17 the State has to prove. All twelve jurors
18 will have to be convinced that the State has
19 proven this aggravating circumstances before
20 you even decide life or death.

21 If for some reason you decide that
22 the State has not proven the aggravating
23 circumstances, then it would be life.

24 Now, assuming that the jury, all
25 twelve jurors, agree that the State has

1 proven the aggravating circumstances -- and
2 aggravating circumstance are facts,
3 incidents, details or occurrences which
4 state law says aggravates the crime of
5 murder. In other words, these additional
6 circumstances increase the enormity of the
7 crime. It makes the crime more severe.

8 Now, I'm going to read to you some
9 of the aggravating circumstances that are
10 set out by statute. I am not saying that
11 these are aggravating circumstances in this
12 case.

13 I am just going to read some of the
14 aggravating circumstances that are listed in
15 the statute. I do not know what the State
16 is going to prove, I do not know what
17 aggravating circumstance that the State is
18 going to try to prove to the jury because I
19 have not heard the case. Just like you, I
20 have not heard anything. I do not know very
21 much about the case.

22 Aggravating circumstances -- that
23 the murder was committed while in the
24 commission of the following crimes or acts:
25 criminal sexual conduct in any degree,

1 kidnaping, burglary in any degree, robbery
2 while armed with a deadly weapon, larceny
3 with the use of a deadly weapon, physical
4 torture. Those are some of the aggravating
5 circumstances that are laid out in the
6 statute.

7 Now, let's assume that all twelve
8 of you agree that the State has proven one
9 of those aggravating circumstances. Then
10 we was moved to the mitigation. The statute
11 also lays out certain mitigation that the
12 jury has to consider before making a
13 decision of life without parole or death.

14 The defendant does not have to
15 offer any mitigation. It is up to the
16 defendant whether he will offer mitigation.

17 I am going to talk to you about
18 mitigation assuming that the defendant will
19 offer some mitigation.

20 What are mitigation circumstances?
21 Mitigating circumstances are facts either
22 surrounding the incident itself or which
23 shed light on a defendant's history,
24 background, upbringing, childhood which make
25 the crime less severe or less harsh.

1 Just some examples of mitigating
2 circumstances are:

3 The defendant has no significant
4 history or prior criminal convictions
5 involving the use of violence against
6 another person.

7 The murder was committed while the
8 defendant was under the influence of mental
9 or emotional distress.

10 The capacity of the defendant to
11 appreciate the criminality of his conduct or
12 to conform his conduct to the requirements
13 of the law was substantially impaired.

14 The age or the mentality of the
15 defendant at the time of the crime.

16 These are statutory mitigating
17 circumstances.

18 Plus any other relevant issue that
19 should arise concerning mitigation.

20 Mitigation evidence can be the
21 reason for any sentence less than the death
22 penalty. Mitigation is offered to the jury
23 to make the defendant's actions less
24 culpable or less responsible, which reduces
25 the severity of the crime of murder.

1 So very briefly, to summarize what
2 I have said, before the jury makes a
3 determination in the sentencing phase as
4 to the sentence -- and the two choices are
5 life without parole or the death penalty,
6 -- you have to look at the aggravating
7 circumstances, you have to find the
8 aggravating circumstance, but then you have
9 to look at the mitigating circumstances,
10 consider the mitigating circumstances, and
11 then make a decision on life without parole
12 or death.

13 I have prepared a form. The form
14 specifies three types of death penalty about
15 the death penalty: types one, two and
16 three, which are opinions about the death
17 penalty. I am going to give each one of
18 you a copy of this form and ask you to go
19 to the jury room, to read the form, to see
20 if you fit into either category one, two or
21 three.

22 That is a personal decision that
23 you have to make. Please don't discuss your
24 decision or your viewpoints on the death
25 penalty with each other. Just look at it

1 and when you come back in individually, I
2 will ask each one of you do you fit into any
3 of these categories, either one, two or
4 three.

5 I have also prepared a list of
6 names. There are one hundred thirty-four
7 names on the list. These are potential
8 witnesses in this case. I want you to look
9 at these names, see if you recognize any of
10 these names or are familiar with anyone on
11 the list because I am going to ask you about
12 anyone that you recognize or anyone that you
13 know on the list.

14 There was one name that was left
15 off the list, Jessica Broughton. Does
16 anyone know a Jessica Broughton? If so,
17 raise your right hand. (No response). Let
18 the record reflect that no one raised their
19 right hand.

20 Solicitor, do you want to introduce
21 yourself?

22 SCARLETT WILSON: Yes, sir.
23 Thank you. Ladies and Gentlemen, I am
24 Scarlett Wilson. I am the solicitor for
25 Charleston and Berkeley counties. That is

1 known as the 9th Circuit, both of those
2 counties.

3 This is Bruce Durant, he is the my
4 chief deputy for the 9th Circuit.

5 This is Brian Alfaro. He is over
6 our Berkeley office.

7 Together the three of us will be
8 asking questions, submitting evidence,
9 taking testimony during this trial over the
10 next week or so. Thank you. We will be
11 asking witnesses questions, introducing
12 evidence, making arguments, things of that
13 nature. We appreciate you all being here
14 and having patience with us.

15 THE COURT: Is there any member
16 of the jury panel who has a close contact or
17 personal relationship with the Solicitor
18 herself or anyone in the solicitor's office?
19 If so, raise your right hand. (No
20 response).

21 Mr. Maguire?

22 WILLIAM MAGUIRE: Thank you,
23 Judge. I am Bill Maguire. I am a lawyer,
24 I live in Columbia, I work for the State
25 Government.

1 We are introducing ourselves just
2 in case you all recognize us from someplace.
3 So I need to tell you that I used to
4 practice law in the lowcountry for
5 a number of years. I worked for Ashley
6 Pennington in the 9th Circuit Public
7 Defender's Office in Charleston and I also
8 worked for Andy Savage for a number of
9 years.

10 On my immediate right is Mr. Colin
11 Broughton, my client.

12 Next to him is Morgan Daniels. She
13 is an investigator in my office. She's from
14 Florida but she is a graduate of USC.

15 To her right is Ms. Pati Kennedy.
16 Ms. Kennedy is the head or chief public
17 defender of the Berkeley County Public
18 Defender's Office and her office is here in
19 Moncks Corner.

20 At the end of the table is Mr. Boyd
21 Young. Mr. Young is a lawyer in my office
22 who works with me; and he, like me, has
23 practiced both in the lowcountry and in
24 Georgia and he lives in Columbia now.

25 THE COURT: Is there any member

1 of the panel who is close personal friends
2 with Mr. Maguire, anyone that he introduced
3 or who has been represented by Mr. Maguire
4 or any of the attorneys that he introduced.
5 If so, raise your right hand. (No
6 response).

7 Now I am going to call the names of
8 Panel 13 and ask you to go to the jury room,
9 just follow the bailiff and they will show
10 you where the jury room is:

11 Michael Singletary

12 Michael Turnage

13 Mark Thompson

14 Richard Kennedy

15 Richard Peck

16 Guy St. Clair..

17 (JURY PANEL NUMBER 13 EXITS COURTROOM)

18 THE COURT: Now, Panel 14, please
19 go with the bailiffs.

20 (JURY PANEL NUMBER 14 EXITS COURTROOM)

21 THE COURT: Bring in the next
22 panels.

23 (JURY PANELS 15 & 16 ENTER COURTROOM)

24 THE COURT: All right, Ladies and
25 Gentlemen of the jury panels, I am going to

1 give you some instructions to try to explain
2 to you what is transpiring and what you can
3 expect.

4 In this case the State has charged
5 the defendant with the following crimes:
6 attempted arson, armed robbery, assault and
7 battery with intent to kill, criminal sexual
8 conduct first, grand larceny, burglary first
9 and murder.

10 I am primarily going to talk to you
11 this morning about the murder charge. Now,
12 as to the murder charge the State has served
13 a notice of the death penalty on the
14 Defendant. When that happens, murder trials
15 when death penalty notices have been served
16 than regular murder trial.

17 In a death penalty case, it's tried
18 differently than other cases. A death
19 penalty divided up into two parts; it is
20 bifurcated, that means that there are two
21 parts.

22 The first part is referred to as
23 the guilt portion or the guilt part of the
24 trial. In that portion of the trial the
25 State would be responsible and the State has

1 the burden of proving the defendant guilty
2 beyond a reasonable doubt. All twelve
3 jurors would have to find the defendant
4 guilty of the crimes charged.

5 The second part is the penalty or
6 sentencing phase.

7 The State has the burden of proving
8 the Defendant guilty beyond a reasonable
9 doubt on all the criminal charges as well as
10 the murder charge.

11 I am going to talk to you this
12 morning about the penalty phase of the
13 trial, how a trial is conducted when the
14 death penalty notice has been served.

15 Please don't take my comments as
16 any indication that the defendant is
17 innocent or guilty. I am just required to
18 talk to you about the penalty phase. It is
19 just a necessary thing that I have to do
20 because of the nature of the trial and how
21 the trial is conducted.

22 Twelve jurors must unanimously
23 agree that the State has proven the
24 defendant guilty beyond a reasonable doubt
25 of the murder.

1 But for the purposes of our
2 conversation this morning or for the
3 purposes of what I am going to tell you,
4 please consider the guilt phase, which is
5 the first part of the trial, is over and the
6 jury has found the defendant guilty. Then
7 we go into the second part or the second
8 phase of the trial, which is commonly
9 referred to as the penalty phase or the
10 sentencing phase.

11 In the sentencing phase you, the
12 jury, has to make a decision whether or not
13 a defendant is innocent -- excuse me -- if
14 he should be sentenced to life without
15 parole or death.

16 Let me repeat that again since I
17 messed it up. In the sentencing phase, you,
18 the jury make a determination of a sentence
19 for the defendant -- and those choices are
20 death or life without parole. You, the
21 jury, make that decision. All twelve of
22 you have to unanimously agree on the
23 sentence. The sentence is a recommendation
24 to the court and the court is obligated to
25 follow that recommendation.

1 Now, when I use the term "life
2 without parole", I mean exactly what it
3 says.. The defendant is not eligible for
4 parole. He will die in jail. There is no
5 parole when I use the term life without
6 parole.

7 So the jury, as I said earlier, has
8 to make the determination of life without
9 parole or death.

10 Now, in order for the jury to make
11 that determination, the State is required to
12 has to prove what is referred to as an
13 aggravating circumstance. It can be one
14 aggravating circumstances or several. The
15 State only has to prove one aggravating
16 circumstance.

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18 aggravating circumstances by statute that
19 the State has to prove. All twelve jurors
20 will have to be convinced that the State has
21 proven this aggravating circumstances before
22 you even decide life or death.

23 If for some reason you decide that
24 the State has not proven the aggravating
25 circumstances, then it would be life.

1 Now, assuming that the jury, all
2 twelve jurors, agree that the State has
3 proven the aggravating circumstances -- and
4 aggravating circumstance are facts,
5 incidents, details or occurrences which
6 state law says aggravates the crime of
7 murder. In other words, these additional
8 circumstances increase the enormity of the
9 crime. It makes the crime more severe.

10 Now, I'm going to read to you some
11 of the aggravating circumstances that are
12 set out by statute. I am not saying that
13 these are aggravating circumstances in this
14 case.

15 I am just going to read some of the
16 aggravating circumstances that are listed in
17 the statute. I do not know what the State
18 is going to prove, I do not know what
19 aggravating circumstance that the State is
20 going to try to prove to the jury because I
21 have not heard the case. Just like you, I
22 have not heard anything. I do not know very
23 much about the case.

24 Aggravating circumstances -- that
25 the murder was committed while in the

1 commission of the following crimes or acts:
2 criminal sexual conduct in any degree,
3 kidnaping, burglary in any degree, robbery
4 while armed with a deadly weapon, larceny
5 with the use of a deadly weapon, physical
6 torture. Those are some of the aggravating
7 circumstances that are laid out in the
8 statute.

9 Now, let's assume that all twelve
10 of you agree that the State has proven one
11 of those aggravating circumstances. Then
12 we was moved to the mitigation. The statute
13 also lays out certain mitigation that the
14 jury has to consider before making a
15 decision of life without parole or death.

16 The defendant does not have to
17 offer any mitigation. It is up to the
18 defendant whether he will offer mitigation.

19 I am going to talk to you about
20 mitigation assuming that the defendant will
21 offer some mitigation.

22 What are mitigation circumstances?
23 Mitigating circumstances are facts either
24 surrounding the incident itself or which
25 shed light on a defendant's history,

1 background, upbringing, childhood which make
2 the crime less severe or less harsh.

3 Just some examples of mitigating
4 circumstances are:

5 The defendant has no significant
6 history or prior criminal convictions
7 involving the use of violence against
8 another person.

9 The murder was committed while the
10 defendant was under the influence of mental
11 or emotional distress.

12 The capacity of the defendant to
13 appreciate the criminality of his conduct or
14 to conform his conduct to the requirements
15 of the law was substantially impaired.

16 The age or the mentality of the
17 defendant at the time of the crime.

18 These are statutory mitigating
19 circumstances.

20 Plus any other relevant issue that
21 should arise concerning mitigation.

22 Mitigation evidence can be the
23 reason for any sentence less than the death
24 penalty. Mitigation is offered to the jury
25 to make the defendant's actions less

1 culpable or less responsible, which reduces
2 the severity of the crime of murder.

3 So very briefly, to summarize what
4 I have said, before the jury makes a
5 determination in the sentencing phase as
6 to the sentence -- and the two choices are
7 life without parole or the death penalty,
8 -- you have to look at the aggravating
9 circumstances, you have to find the
10 aggravating circumstance, but then you have
11 to look at the mitigating circumstances,
12 consider the mitigating circumstances, and
13 then make a decision on life without parole
14 or death.

15 I have prepared a form. The form
16 specifies three types of death penalty about
17 the death penalty: types one, two and
18 three, which are opinions about the death
19 penalty. I am going to give each one of
20 you a copy of this form and ask you to go
21 to the jury room, to read the form, to see
22 if you fit into either category one, two or
23 three.

24 That is a personal decision that
25 you have to make. Please don't discuss your

1 decision or your viewpoints on the death
2 penalty with each other. Just look at it
3 and when you come back in individually, I
4 will ask each one of you do you fit into any
5 of these categories, either one, two or
6 three.

7 I have also prepared a list of
8 names. There are one hundred thirty-four
9 names on the list. These are potential
10 witnesses in this case. I want you to look
11 at these names, see if you recognize any of
12 these names or are familiar with anyone on
13 the list because I am going to ask you about
14 anyone that you recognize or anyone that you
15 know on the list.

16 There was one name that was left
17 off the list, Jessica Broughton. Does
18 anyone know a Jessica Broughton? If so,
19 raise your right hand. Yes, ma'am, your
20 name?

21 JUROR NUMBER 354: Angela
22 Vanderhorst.

23 THE COURT: Which group is she
24 on?

25 CLERK: Panel 15.

1 THE COURT: Yes, ma'am, Ms.
2 Vanderhorst, how do you know her?

3 JUROR NUMBER 354: She is a
4 coworker of mine and I am quite familiar
5 with the family.

6 THE COURT: All right, I will ask
7 you about that when I bring you in
8 individually. Yes, sir, your name?

9 JUROR NUMBER 244: Ralph Nixon,
10 Panel 16.

11 THE COURT: Yes, sir, Mr. Nixon?
12 Juror 244.

13 JUROR NUMBER 244: I know the
14 defendant and the family of the defendant.

15 THE COURT: I will ask you about
16 that when we bring you in individually.
17 Okay?

18 JUROR NUMBER 244: Yes, sir.

19 THE COURT: Anyone else? (No
20 response).

21 THE COURT: Solicitor, do you
22 want to introduce yourself?

23 SCARLETT WILSON: Yes, sir.
24 Thank you. Ladies and Gentlemen, I am
25 Scarlett Wilson. I am the solicitor for

1 Charleston and Berkeley counties. That is
2 known as the 9th Circuit, both of those
3 counties.

4 This is Bruce Durant, he is the my
5 chief deputy for the 9th Circuit.

6 This is Brian Alfaro. He is over
7 our Berkeley office.

8 Together the three of us will be
9 asking questions, submitting evidence,
10 taking testimony during this trial over the
11 next week or so. Thank you. We will be
12 asking witnesses questions, introducing
13 evidence, making arguments, things of that
14 nature. We appreciate you all being here
15 and having patience with us.

16 THE COURT: Is there any member
17 of the jury panel who has a close contact or
18 personal relationship with the Solicitor
19 herself or anyone in the solicitor's office?
20 If so, raise your right hand. (No
21 response).

22 Mr. Maguire?

23 WILLIAM MAGUIRE: Thank you,
24 Judge. I am Bill Maguire. I am a lawyer,
25 I live in Columbia, I work for the State

1 Government.

2 We are introducing ourselves just
3 in case you all recognize us from someplace.
4 So I need to tell you that I used to
5 practice law in the lowcountry for
6 a number of years.. I worked for Ashley
7 Pennington in the 9th Circuit Public
8 Defender's Office in Charleston and I also
9 worked for Andy Savage for a number of
10 years.

11 On my immediate right is Mr. Colin
12 Broughton, my client.

13 Next to him is Morgan Daniels. She
14 is an investigator in my office. She's from
15 Florida but she is a graduate of USC.

16 To her right is Ms. Pati Kennedy.
17 Ms. Kennedy is the head or chief public
18 defender of the Berkeley County Public
19 Defender's Office and her office is here in
20 Moncks Corner.

21 At the end of the table is Mr. Boyd
22 Young. Mr. Young is a lawyer in my office
23 who works with me; and he, like me, has
24 practiced both in the lowcountry and in
25 Georgia and he lives in Columbia now.

1 THE COURT: Is there any member
2 of the panel who is close personal friends
3 with Mr. Maguire, anyone that he introduced
4 or who has been represented by Mr. Maguire
5 or any of the attorneys that he introduced.
6 If so, raise your right hand. (No
7 response).

8 All right, I am going to call the
9 list of names on Panel 15. What I want you
10 to do is to be back at the courthouse at
11 three o'clock this afternoon?

12 Connie Pittman
13 Angela Vanderhorst
14 Christopher Morgan
15 Yvette Shuler
16 James Murray
17 Susan Doherty

18 Be back at three o'clock.

19 (JURY PANEL NUMBER 15 EXITS COURTROOM)

20 THE COURT: The remaining panel,
21 Panel Number 16, be back at four o'clock.
22 See you then.

23 (JURY PANEL NUMBER 16 EXITS COURTROOM)

24 THE COURT: See who is ready.

25 SCARLETT WILSON: Judge, while we

1 have a minute. This is not a complaint as
2 much as a request. You may have noticed the
3 victim, Ms. Sherese Birch, and her family
4 are here. That includes her sister and
5 brother, who were the children ---

6 THE COURT: I've noticed them but
7 I didn't know who they were.

8 SCARLETT WILSON: Children of the
9 deceased.

10 THE COURT: Okay.

11 THE COURT: I believe that
12 members of the defense team have asked to
13 speak with them; which is part of their job,
14 we understand. But they don't wish to be
15 contacted by the defense or to have contact
16 with them. They brought that to my
17 attention and I would just ask that that be
18 honored.

19 THE COURT: Okay. Any problem
20 with that from defense counsel?

21 WILLIAM MAGUIRE: No, Your Honor.

22 THE COURT: That's their request.
23 If they want to talk to you, that's fine.
24 If they don't, I am not -- leave them,
25 alone.

1 WILLIAM MAGUIRE: Just to put on
2 the record, I think the first day of jury
3 selection that I approached the three family
4 members and introduced myself and said
5 something to the effect of, 'Obviously I
6 represent Colin, I have a job to do, I just
7 want you to know that I acknowledge your
8 loss and I am very sorry.' That's what I
9 said the first day.

10 THE COURT: All right.

11 WILLIAM MAGUIRE: Then Mr. Chris
12 -- I don't know your last name. Broughton.
13 Mr. Chris Broughton, I approached him this
14 morning and just after a few minutes of talk
15 he very politely declined and I will respect
16 his wishes.

17 THE COURT: Okay. Just respect
18 their wishes. If during the trial, you
19 should change your mind and would like to
20 talk to them, please feel free to do that.
21 I leave that strictly up to you. That is
22 your decision. If you will, inform them of
23 that, Solicitor.

24 SCARLETT WILSON: Yes, sir.

25 THE COURT: Anything else before

1 we bring in the next juror?

2 SCARLETT WILSON: No, sir.

3 THE COURT: Bring us the first
4 juror.

5 (OFF RECORD SIDEBAR WITH CLERK
6 RE: SCHEDULE OF PANELS)

7 THE COURT: Tell the rest of the
8 panels to come back at nine o'clock in the
9 morning.

10 (JUROR NUMBER 260 ENTERS COURTROOM)

11 THE COURT: Your name, sir?

12 JUROR NUMBER 260: Richard
13 Peck.

14 THE COURT: Mr. Peck, how you
15 doing today?

16 JUROR NUMBER 260: Fine.

17 THE COURT: Mr. Peck, did you
18 have an opportunity to review the sheet
19 concerning the opinions about the death
20 penalty?

21 JUROR NUMBER 260: Yes, did.

22 THE COURT: Did you understand
23 it?

24 JUROR NUMBER 260: Yes.

25 THE COURT: Did you fall into

1 category one, two or three?

2 JUROR NUMBER 260: I would have
3 to say three.

4 THE COURT: Okay.

5 RICHARD PECK, having been
6 previously sworn to tell the truth testified
7 as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. Did you have an opportunity to review
11 the questionnaire (sic)?

12 A. Yes.

13 Q. Do you know anybody or recognize any
14 names?

15 A. No, I don't believe so.

16 Q. You did not recognize anybody?

17 A. No.

18 Q. Mr. Peck, I am going to ask you some
19 questions. When I've finished asking some
20 questions the attorneys will ask you some
21 questions. There are no right or wrong
22 answers. Just answer the questions as best
23 you can. Okay?

24 A. Yes.

25 Q. Do you have the knowledge of the case?

1 A. (Negative gesture).

2 Q. Have you heard anybody talk about the
3 case?

4 A. I think I read an article a couple of
5 weeks ago in the Post & Courier.

6 Q. What do you remember reading in the
7 Post & Courier?

8 A. I am not even sure that it's the same
9 case but apparently a gentleman had killed
10 his aunt with a hammer, there was talk --
11 the gist of the article in my mind was, uh,
12 they talked about hiring a -- there was a
13 problem, apparently, with the public
14 defenders originally in the case and there
15 was -- procedurally or whatever, they did
16 something wrong. It was never really stated
17 but my opinion was that -- or that my
18 feeling was that it was certainly at the
19 center of whatever in the trial.

20 Q. Well, let me say this -- whatever was
21 in that article, that is not going to be the
22 center of the trial. Okay? I don't even
23 know if that article was related to this
24 case. Okay?

25 A. I understand.

1 Q. I haven't read the article, so I don't
2 know what was in the article. Because of
3 that article, have you formed an opinion?

4 A. No.

5 Q. Because of the article, do you have any
6 bad feelings or bad thoughts about the
7 public defender?

8 A. No.

9 Q. Can you set all of that aside?

10 A. I believe so, yes.

11 Q. Can you or can you not? Only you know.

12 A. Yes, I can.

13 Q. Are you sure?

14 A. Yes.

15 Q. Can you base your decision on the
16 testimony that you hear in the courtroom?

17 A. Yes.

18 Q. Let me say this. To my knowledge, the
19 public defenders in this case have not done
20 anything wrong. Okay? So, disregard
21 anything that article said or anything that
22 you remember about the public defenders.

23 A. Well, I don't even know if it happened
24 with this particular case.

25 Q. Well I am telling you, in this

1 particular case the public defenders have
2 not done anything wrong. So, disregard
3 anything that you read about the public
4 defenders.

5 A. It was nothing specific. It was just
6 some statement.

7 Q. Can you do that?

8 A. Yes, sir.

9 Q. Other than that article, have you read
10 anything else?

11 A. No.

12 Q. Have you seen anything on television?

13 A. No.

14 Q. Do you have any relatives or close
15 personal friends employed in law
16 enforcement?

17 A. Not now.

18 Q. Has the solicitor or any member of her
19 staff prosecuted you or any member of your
20 family?

21 A. No.

22 Q. Have you or any member of your family
23 or a close personal friend been the victim
24 of a crime?

25 A. Not recently.

1 Q. When?

2 A. I was robbed a few times. My apartment
3 has been broken into.

4 Q. Were you present when it took place?

5 A. No.

6 Q. So it was a break-in at your apartment?

7 A. (Affirmative nod).

8 Q. How long ago?

9 A. Oh, it was way back, twenty years ago.

10 Q. A long time?

11 A. (Affirmative nod).

12 Q. Do you have a bias or prejudice as a result
13 of that experience?

14 A. No.

15 Q. Do you have any relatives in jail?

16 A. No, I do not.

17 Q. Are you a member of any group which
18 primarily supports law enforcement, such as
19 MADD?

20 A. No.

21 Q. Do you have any special or particular
22 interest in the outcome of this case?

23 A. No I don't.

24 Q. Do you -- are you aware of any bias or
25 prejudice against the defendant as a result

1 of the charges which have been brought
2 against him?

3 A. No, I don't.

4 Q. Do you have any religious beliefs that
5 would make you biased or prejudiced for or
6 against the defendant?

7 A. No.

8 Q. Do you have any religious beliefs that
9 would make you biased or prejudiced for or
10 against the State?

11 A. No, I don't.

12 Q. The defendant is black in this case.
13 Do you have a bias or prejudice against the
14 defendant because of his race?

15 A. No.

16 Q. Have you had any bad experiences or
17 good experiences with law enforcement?

18 A. Both.

19 Q. Both?

20 A. Yes.

21 Q. Tell me about the bad.

22 A. Oh, I've been pulled over a few times
23 when I didn't feel like it was proper.

24 Q. What did you get a warning ticket?

25 A. Stopped twice.

1 Q. Did you get a warning or did you get a
2 ticket?

3 A. I got a ticket out of one of the two
4 times.

5 Q. Was this a highway patrolman?

6 A. Well, more like local police.

7 Q. Can you set that aside in this case?

8 A. Yes.

9 Q. Do know of any reason, personal or
10 otherwise, as to why you cannot serve on
11 this jury?

12 A. One thing came to mind after we had
13 some conversation on Monday. You were
14 saying that this could go on for two and a
15 half to three and a half weeks. My son is
16 - we are originally from Connecticut, I
17 have been down here about two years. He is
18 been married on October 17th. We are doing
19 the rehearsal dinner on the sixteenth. I
20 was hoping to fly up on the eleventh.

21 Q. I think you'll be able to make that

22 A. In relation to business.

23 Q. I think you'll be able to make that
24 okay.

25 A. Okay.

1 Q. I don't think that that will be a
2 problem.

3 A. Okay.

4 Q. Any other personal problems?

5 A. No, that's it.

6 Q. Do you know of any reason why you could
7 not give the State and the Defendant a fair
8 and impartial trial?

9 A. No.

10 THE COURT: Mr. Maguire.

11 EXAMINATION

12 BY WILLIAM MAGUIRE:

13 Q. Good afternoon, Mr. Peck.

14 A. Hi.

15 Q. I know that this is been inconvenient
16 for every potential juror in the case. You
17 have had to wait a lot. I know that we have
18 tried your patience but hang in there. I'm
19 going to ask one more thing. That is for
20 you to be completely honest and candid in
21 your responses. Okay?

22 A. (Affirmative nod).

23 Q. If you don't understand something, you
24 tell me and I will do a better job in
25 getting the question to you. Okay?

1 A. Okay.

2 Q. We are just going to see if you are
3 going to be able to be a juror. Okay?

4 In South Carolina -- and we are going
5 to start on page one, which is the
6 definition of murder.

7 And South Carolina all murders are
8 intentional. It is where defendant knows
9 what they are doing, that they know right
10 from wrong, a deliberate act to choose to
11 take an innocent life. They did unlawfully,
12 without any justification, and they did it
13 with malice aforethought.

14 Malice aforethought being defined as
15 have a black, depraved, wicked heart fatally
16 bent on mischief. Are you with me?

17 A. Yeah.

18 Q. It's kind of an archaic definition but
19 that's what we have. In your opinion, is
20 the life in prison penalty appropriate in a
21 situation like that, the intentional killing
22 of an innocent life?

23 A. I would need to know more to understand
24 what the consequences are of certain types
25 of actions.

1 Q. Okay. Let's look at ---

2 A. That's part of what -- I think that's
3 part of what you'all have to explain.

4 Q. I think you're right. Let's walk down
5 that road a little bit more and let me give
6 you a little -- I am going to put some paint
7 on those words, so that we both have a
8 picture here. Okay?

9 A. Okay.

10 Q. I want you to see this crime: a home
11 invasion, going into a home and the people
12 are there, kidnaping, rape, armed robbery,
13 burglary, murder, all of that happening at
14 one time. Is life in prison appropriate --
15 is that severe enough for that kind of
16 crime?

17 A. It's a lot.

18 Q. It is a lot.

19 A. It's a lot.

20 Q. So where do you fall out there?

21 A. Well, if -- to me, those seven or eight
22 crimes in particular is what is required to
23 be a death penalty, then I would -- I would
24 have to go along and go for it.

25 Q. What I am asking is, is life in prison

1 severe enough in that scenario, to you?

2 A. (Pause) -- I don't know if I could make
3 a decision on this one but I would say that
4 in some cases -- there are cases, at least
5 in my mind that I don't think life, uh,
6 being sentenced to life without parole is
7 appropriate. I think -- I am not sure what
8 the tipping point is, but -- in my mind
9 there would be -- just a point where you
10 fall over the edge.

11 Q. Okay. In talking to people about this,
12 some people tell me that their focus might
13 go to who the victim is or the status of the
14 victim, like a child or a police officer.
15 Some other people might say, 'well, it is
16 the violence of the crime, how violent was
17 it.' Or motive was important, a really
18 insignificant motive. Anything resonate
19 with you?

20 A. No.

21 Q. Okay. There is going to be -- and I
22 can't remember which panel you are exactly
23 but the judge in his explanation said that
24 it's all twelve jurors that would have to
25 unanimously agree to an aggravating

1 circumstance, at least one aggravating
2 circumstance, before a person becomes
3 eligible for the death penalty.

4 A. Right.

5 Q. Does that sound fair to you or
6 familiar?

7 A. It is familiar, yes.

8 Q. Is it fair?

9 A. I would think, yes. It's been law, so
10 I am not going to argue with it.

11 Q. And there is a lot of confusion about
12 the law in these cases -- it's been my
13 experience anyway. Because it's just the
14 opposite with mitigation evidence. One
15 juror, individually, can find a piece of
16 mitigation evidence and see it for
17 themselves even though eleven other people
18 say 'we don't see it at all.'

19 A. Right.

20 Q. Does that sound fair to you?

21 A. It is the way that the law is written,
22 so -- I mean, I guess if one person is going
23 to stick to that, that I could stand on my
24 head and it is not going to change anything.

25 So.

1 Q. But does it sound fair to you?

2 A. Fair? Humm, -- I guess I would have to
3 say yes.

4 Q. In cases like this, the way to a
5 decision in sentencing is described that it
6 is an individual moral judgment or
7 individual moral assessment.

8 A. Right.

9 Q. What I am going to do is to contrast
10 that with, say, other legal cases like a
11 civil case. Maybe a car accident case.
12 The big issue in that case might be was the
13 light red or green. That's a fact issue.
14 It's right or wrong. You can say that it
15 was either red or yellow or green, it's got
16 to be a color.

17 A sentencing decision is not fact, it's
18 not right or wrong, it's not a fact issue.
19 It's a personal choice. Are you okay with
20 that?

21 A. Yes.

22 Q. If you were on a jury, could you
23 respect the other juror's individual moral
24 judgment?

25 A. I assume that when we were in the room

1 together that I would argue my side of the
2 case.

3 Q. Well, Mr. Broughton is entitled to
4 fairness in the decorum of the jury room.
5 If you saw things in the jury room that
6 amounted to maybe some hostility or ganging
7 up, can we count on you to stop that, to
8 send a note out and say 'things aren't fair
9 in here'?

10 A. Well, I -- (pause) -- I would say yes,
11 okay. I mean, I would argue against --
12 since we are weighing a man's life, I would
13 think that, uh, (pause), opinions are not
14 being a bully, that it has a place.

15 Q. Fair enough. In something so important
16 -- I think you just underscored the fact
17 that it is weighing a man's life. In
18 something so important, is it okay to end
19 the day agreeing to disagree?

20 A. I guess. I guess you don't like to
21 lose but then, again, I'm one of twelve.

22 Q. The only time twelve is required with
23 regard to sentence, twelve have to find an
24 aggravating circumstance beyond a reasonable
25 doubt and all twelve have to vote for death.

1 A. Right.

2 Q. But those are the only times that all
3 twelve are required and the case ends even
4 if twelve people agree to disagree?

5 A. Right.

6 Q. And you're okay with that?

7 A. Yeah.

8 Q. I mean, you wouldn't want to lose but
9 you could respect that?

10 A. Well, sir, the way that the law works,
11 I'll -- (pause).

12 Q. You would allow the law to work?

13 A. Yes.

14 Q. The Judge talked to you a little bit
15 about mitigation and I've talked to you a
16 little bit about it. That is very often
17 something about the defendant, his
18 background, that we might offer to lessen or
19 to ask -- the drop between death to letting
20 him die in prison. Can you think of
21 anything that would matter to you?

22 A. (Pause) -- I am inclined to say no. I
23 will say it in regard to -- you have listed
24 seven or eight charges against this man. We
25 are not talking like a street mugging or a

1 -- it's pretty serious stuff.

2 Q. Yes, we are.

3 A. I think once you've reached that level
4 I am pretty -- I think that most people
5 should be seen all in the same light, not --
6 you know, that he had problems with his
7 parents or whatever the ---

8 Q. The abuse excuse? Had a hard
9 childhood? That really doesn't excuse or
10 justify the crime?

11 A. It may be thought of to somehow
12 mitigate it, but in my mind, of the seven or
13 eight crimes that have been listed, you're
14 at a level where -- if you didn't know
15 enough beforehand to not do that kind of
16 thing and then you went seven or eight
17 times, I -- it'd have to be pretty
18 mitigating circumstances to me.

19 Q. You said seven or eight times. I just
20 want to make sure that we're on the same
21 page here. Are you talking about ---

22 A. You are charging him with seven or
23 eight different ---

24 SCARLETT WILSON: Your Honor,

25 THE COURT: Hold on a second.

1 What?

2 SCARLETT WILSON: I object to
3 specifics.

4 WILLIAM MAGUIRE: I don't
5 understand that legal objection.

6 SCARLETT WILSON: May we approach?

7 THE COURT: Yes, ma'am, I am not
8 sure that I understand what your objection
9 is either.

10 SCARLETT WILSON: We are not
11 supposed to stake them out.

12 BENCH CONFERENCE:

13 THE COURT: Okay. What is
14 your objection?

15 SCARLETT WILSON: He is trying
16 to narrow this down to this crime. He gave
17 examples of when somebody has committed a
18 whole bunch of things and he guy said, 'you
19 know, it depends on all the circumstances,
20 it depends on all of that.' Then he goes,
21 'No, I want to make sure that we are talking
22 about doing it all at one time.' I mean, we
23 are staking out over and over.

24 WILLIAM MAGUIRE: It is not
25 staking out. It's not even close.

1 THE COURT: The point is
2 that he asked him -- he asked him does the
3 background justify the crime and he said no
4 but that it may be offered in mitigation.

5 SCARLETT WILSON: Right.

6 THE COURT: That is what he
7 said and then you went to something else.
8 Quite frankly, what did you ask? I
9 apologize, I was not really -- every time
10 you make an objection, Solicitor, I haven't
11 been listening. Sorry.

12 SCARLETT WILSON: That's all
13 right.

14 THE COURT: What did he say?

15 SCARLETT WILSON: What I
16 thought he was saying was 'again,' we are
17 talking about this situation where it was a
18 burglary, armed robbery, rape' when he has
19 already asked that.

20 THE COURT: If it is
21 repetitive, I'll stop it.

22 WILLIAM MAGUIRE: It is not,
23 Judge.

24 THE COURT: I don't think it
25 is staking but if it is repetitive or

1 cumulative, I'll stop it. Okay. He gets
2 right repetitive sometimes.

3 SCARLETT WILSON: Well, I am
4 just concerned that -- again, we are
5 supposed to be talking in generalities. I
6 understand that you've ruled against us but
7 he's just narrowing it down to this case.

8 THE COURT: I understand.
9 If he gets it too close, make your objection
10 and I will sustain.

11 SCARLETT WILSON: That is what
12 I am trying to do.

13 THE COURT: But cumulative ---

14 SCARLETT WILSON: I know.

15 THE COURT: You've been
16 making them a lot. I've ruled or you some,
17 against you some, so it cuts both ways.

18 SCARLETT WILSON: That's
19 right.

20 THE COURT: Win some, lose
21 some.

22 SCARLETT WILSON: I under-
23 stand.

24 THE COURT: I understand
25 your objection. I am sorry that I didn't

1 hear the question.

2 SCARLETT WILSON: Thank you.

3 (BENCH CONFERENCE CONCLUDED)

4 WILLIAM MAGUIRE: Thank you,
5 Judge.

6 THE COURT: The objection is
7 sustained. Rephrase your question, please.
8 Don't get repetitive, please.

9 WILLIAM MAGUIRE: Thank you,
10 Judge.

11 EXAMINATION CONTINUED

12 BY WILLIAM MAGUIRE:

13 Q. You said something about seven or eight
14 times, a person going back and committing
15 crimes. I just want to make sure that we
16 are understanding each other. Did you mean
17 that we were talking about somebody who
18 commits a rape and then later commits a
19 kidnaping and then a burglary and who has a
20 history of criminal conduct?

21 A. No. What I am led to believe, from
22 what the Judge was saying, is that there are
23 multiple charges in this case, like seven or
24 eight of them. So I am assuming that they
25 are -- must have been done within the time

1 span of the murder.

2 Q. Correct. Yeah.

3 A. That is what I am referring to.

4 Q. Okay. I took from that that -- and
5 tell me if I am wrong, but somebody who
6 would engage in sort of that string of
7 criminality knows what they are doing, that
8 nothing in their background could really
9 matter in your decision?

10 A. I am not going to say 'nothing', but
11 it's going to have to be pretty -- pretty
12 damn serious. I mean, ---

13 Q. Like the person didn't know right from
14 wrong, had a mental defect or something
15 else?

16 A. The mental defect, I might go along.

17 Q. Can you imagine anything else that
18 might matter?

19 THE COURT: All right, ---

20 JUROR NUMBER 260: It would
21 have to be a specific thing. I can't say
22 off the top of my head. I haven't put
23 enough thought into something like that to
24 come up with some ideas.

25 EXAMINATION CONTINUED

1 BY WILLIAM MAGUIRE:

2 Q. But you would keep an open mind and
3 you'd want to hear about a person's
4 background?

5 A. I would suppose. If it had something
6 to do with the case, yes.

7 Q. Well, when you said if it had something
8 to do with the case. Does it have to
9 directly lead to a crime?

10 SCARLETT WILSON: Your Honor,
11 objection.

12 THE COURT: What's your legal
13 objection?

14 SCARLETT WILSON: Staking out.

15 THE COURT: Not yet. I will
16 sustain the objection. Go ahead. It's
17 getting close. Okay? Getting close.

18 EXAMINATION CONTINUED

19 BY WILLIAM MAGUIRE:

20 Q. What I am asking, sir, is in your mind
21 -- in the universe of your imagination, can
22 you think of something that could take you
23 from the death penalty to life in prison
24 regarding the defendant's background?

25 THE COURT: He's already answered

1 that question in a different capacity (sic).
2 He said that he could come up -- move on to
3 something else. Okay? We're getting
4 repetitive.

5 WILLIAM MAGUIRE: Okay.

6 EXAMINATION CONTINUED

7 BY WILLIAM MAGUIRE:

8 Q. Mr. Peck, thank you so much for your
9 time.

10 A. Thank you.

11 THE COURT: Solicitor?

12 SCARLETT WILSON: Beg the Court's
13 indulgence.

14 THE COURT: Do you have any
15 questions?

16 SCARLETT WILSON: Beg the Court's
17 indulgence one second -- (sidebar with Mr.
18 Durant).

19 THE COURT: Okay.

20 EXAMINATION

21 BY SCARLETT WILSON:

22 Q. Mr. Peck, just a couple of questions.
23 There are several times when Mr. Maguire was
24 questioning you that you stated, 'well, if
25 that is what the law is' or 'it depends on

1 what the Judge said', that sort of thing.

2 A. Right.

3 Q. In this situation you would be --
4 moving into that penalty phase, would you be
5 able to follow the instructions and hold the
6 State to its burden of proving one of those
7 aggravating circumstances that the Judge
8 talked about?

9 A. Yes.

10 Q. And if we didn't do that, the death
11 penalty would not be on the table and you
12 could live with that and give life without
13 parole?

14 A. Yes.

15 Q. Okay. Now, also in the second phase --
16 even if you heard evidence, lot of evidence,
17 about these aggravating circumstances and in
18 your mind you felt like there was strong
19 evidence beyond a reasonable doubt of a
20 single aggravating circumstance, the
21 question is could you still keep an open
22 mind and follow the law and give meaningful
23 consideration about things involving the
24 defendant? I am not going to give you
25 specifics because we don't know specifics.

1 But could you do that?

2 A. I believe I would have an open -- I
3 would look at it with an open mind, yes.

4 Q. Okay.

5 SCARLETT WILSON: That's all that
6 I have, Judge.

7 THE COURT: Any Motions on this
8 juror?

9 WILLIAM MAGUIRE: No, sir.

10 THE COURT: Any from the State?

11 SCARLETT WILSON: No, sir.

12 THE COURT: The bailiff is going
13 to give you a card that has a phone number.
14 Call in after five o'clock tonight. There
15 will be instructions for the jury panel.
16 The instruction may be to call tomorrow, it
17 may be to report tomorrow. I don't know.
18 Follow those instructions. I do not know
19 what the message is going to be. Okay?
20 Quite frankly it depends on how many people
21 that we get qualified or get through today.

22 JUROR NUMBER 260: Yes, sir.

23 THE COURT: What we are doing is
24 that we are selecting a group of people and
25 from that group of people we will strike the

1 jury for this case. You are now part of
2 that group.

3 Don't talk about the case, don't
4 read anything about it in the paper. Okay?

5 JUROR NUMBER 260: Okay.

6 THE COURT: See you later.

7 (JUROR NUMBER 260 EXITS COURTROOM)

8 THE COURT: Bring in the next
9 one.

10 (JUROR NUMBER 326 ENTERS COURTROOM)

11 CLERK: State your name.

12 THE COURT: Mr. St. Clair.
13 Sinclair?

14 CLERK: St. Clair.

15 THE COURT: How are you doing
16 today?

17 JUROR NUMBER 326: I am doing
18 all right.

19 THE COURT: Have you had an
20 opportunity to review the sheet that lays
21 out three different viewpoints or types of
22 opinions about the death penalty?

23 JUROR NUMBER 326: Yes, I have.

24 THE COURT: Did you determine if
25 you fit into any of the types?

1 JUROR NUMBER 326: Yes. I
2 would probably -- probably one would be me.

3 THE COURT: Type one. Is that a
4 probably or is that a yes?

5 JUROR NUMBER 326: I would
6 anything probably -- a hundred percent, yes.

7 THE COURT: A hundred percent.

8 JUROR NUMBER 326: Yeah.

9 THE COURT: Type one says that
10 you could never sentence another human being
11 to death regardless of the crime, is that
12 correct?

13 JUROR NUMBER 326: Right, that
14 is my opinion.

15 THE COURT: All right. I
16 appreciate your opinion. There is nothing
17 wrong with your opinion but you're not going
18 to be qualified to serve on this jury.
19 Okay. You're excused.

20 (JUROR NUMBER 326 EXCUSED)

21 (JUROR NUMBER 326 EXITS COURTROOM)

22 (JUROR NUMBER 172 ENTERS COURTROOM)

23 CLERK: State your name?

24 JUROR NUMBER 172: Richard
25 Kennedy.

1 THE COURT: Mr. Kennedy, have you
2 had an opportunity to review the sheet
3 laying out the different opinions about the
4 death penalty?

5 JUROR NUMBER 172: Yes, sir.

6 THE COURT: Could you determine
7 whether you fit into type one, two or three?

8 JUROR NUMBER 172: Type one.

9 THE COURT: You fit in type one?

10 JUROR NUMBER 172: Yes, sir.

11 THE COURT: Did you understand
12 that type one says that you could never
13 sentence another human being to death
14 regardless of the crime; is that right?

15 JUROR NUMBER 172: Yes, sir.

16 THE COURT: That's your opinion
17 about the death penalty?

18 JUROR NUMBER 172: Yes, sir.

19 THE COURT: I appreciate that and
20 I thank you for your opinion. I do not mean
21 to criticize your opinion but I am going to
22 excuse you from service on this jury.

23 JUROR NUMBER 172: Yes, sir.,
24 sir. Understood. Thank you.

25 (JUROR NUMBER 172 EXCUSED)

1 (JUROR NUMBER 172 EXITS COURTROOM)

2 (JUROR NUMBER 313 ENTERS COURTROOM)

3 CLERK: State your name.

4 JUROR NUMBER 313: Michael
5 Singletary.

6 THE COURT: How you do, Mr.
7 Singletary?

8 JUROR NUMBER 313: Fine.

9 THE COURT: Have you had an
10 opinion to review the opinions about the
11 death penalty?

12 JUROR NUMBER 313: Yes, sir.

13 THE COURT: Did you understand
14 it?

15 JUROR NUMBER 313: Yes, sir.

16 THE COURT: Do you fit into type
17 one, two or three?

18 JUROR NUMBER 313: Type three,
19 sir.

20 THE COURT: Type three?

21 JUROR NUMBER 313: Yes, sir.

22 THE COURT: I've got some
23 questions for you.

24 MICHAEL SINGLETARY, having been
25 previously sworn to tell the truth testified

1 as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q. Did you also review the questionnaire
5 of one hundred thirty-four names that I gave
6 you?

7 A. Yes, sir.

8 Q. Did you recognize any name?

9 A. Sir, I just recognized names because I
10 do work Fire/EMS. I do recognize some
11 names.

12 Q. Do you know them?

13 A. I don't know them personally. I just
14 recognize some names.

15 Q. But you don't know anybody personally
16 on the list?

17 A. No, sir.

18 Q. Do you do EMS?

19 A. I do Fire/EMS; yes, sir.

20 Q. So the individuals that you recognize,
21 can you identify those for me? Give me the
22 number, that would be easier.

23 A. Yes, sir, I've got to look at them:

24 Number forty,

25 Number forty-one.

1 Those two appear to be paramedics
2 or EMT's with Berkeley County EMS. I just
3 know of them.

4 Q. Anybody else that you recognize?

5 A. No, sir.

6 Q. Have you heard anybody talking about
7 the case?

8 A. No, sir.

9 Q. Have you read anything in the paper
10 about it?

11 A. I've seen some pictures but I haven't
12 read anything.

13 Q. What pictures did you?

14 A. Just a picture of the gentleman who I
15 guess this case is about.

16 Q. How long ago did you see the picture?

17 A. I don't know, probably three or four
18 days ago.

19 Q. Did you read the article?

20 A. No, sir.

21 Q. Have you heard anything on television
22 about the case?

23 A. No, sir, I don't watch TV.

24 Q. Heard any other jurors talk about it
25 this week?

1 A. No, sir. We were just wondering what
2 it was about.

3 Q. Pardon?

4 A. We were just wondering what it was
5 about.

6 Q. Tell me who was wondering and what was
7 said?

8 A. Sir, I don't know their names and ---

9 Q. I am not asking you their names. I am
10 asking what was said.

11 A. It was just 'what is this case about'.
12 We heard that it may be about a murder
13 trial. That was it.

14 Q. That information was correct.

15 A. Okay.

16 Q. Do you have any relatives or close
17 personal friends employed in law
18 enforcement?

19 A. I had a distant cousin that was killed
20 in the line of duty.

21 Q. How long ago was this?

22 A. It was about a week after Officers
23 Styles and Wells were killed.

24 Q. I am not familiar with when he was
25 killed. How long ago?

1 A. Oh, I'm sorry, sir. Approximately
2 about a year or maybe two years ago.

3 Q. Was this in Berkeley County, Charleston
4 County or where?

5 A. Charlotte, Mecklenburg.

6 Q. Mecklenburg County, North Carolina?

7 A. Yes, sir.

8 Q. As a result of that, do you have any
9 bias or prejudice towards defendants in
10 general?

11 A. No, sir.

12 Q. Can you set that aside and be fair in
13 this case?

14 A. I sure can. Yes, sir.

15 Q. Can you give the Defendant and the
16 State a fair trial?

17 A. Yes, sir.

18 Q. Has the solicitor or anyone in her
19 office prosecuted you or any member of your
20 family?

21 A. Sir?

22 Q. Has the solicitor or anyone in her
23 office prosecuted you or anyone in your
24 family?

25 A. No, sir.

1 Q. Have you or any member of your family
2 or a close personal friend been the victim
3 of a crime?

4 A. Yes, sir.

5 Q. Tell me about it, please.

6 A. Yes, sir. My uncle was shot and robbed
7 in my grandmother's front yard in Hanahan.

8 Q. How long ago?

9 A. Approximately, maybe ten years now.

10 Q. Were you involved in the prosecution?

11 A. No, sir.

12 Q. Were you involved in it at all?

13 A. No, sir, I was the first responder.

14 Q. You were?

15 A. Yes, because my uncle called and --
16 since I had medical training, I was near and
17 I gave him some care.

18 Q. Is he okay now?

19 A. Yes, sir.

20 Q. Do you have a bias or prejudice as a result
21 of that experience?

22 A. No.

23 Q. Do you have any relatives in jail?

24 A. Not that I know of, sir.

25 Q. Are you a member of any group which

1 primarily supports law enforcement, such as
2 MADD?

3 A. No, sir.

4 Q. Do you have any special interest or
5 particular interest in the outcome of this
6 case?

7 A. No, sir.

8 Q. Are you aware of any bias or prejudice
9 against the defendant as a result of the
10 charges which have been brought against him?

11 A. No, I don't.

12 Q. Do you have any religious beliefs that
13 would make you biased or prejudiced for or
14 against the defendant?

15 A. No.

16 Q. Do you have any religious beliefs that
17 would make you biased or prejudiced for or
18 against the State?

19 A. No, I don't.

20 Q. Do you have a bias or prejudice against
21 the defendant because of his race, being
22 black?

23 A. No.

24 Q. Have you had any bad experiences or
25 good experiences with law enforcement?

1 A. No, sir.

2 Q. Do know of any reason, personal or
3 otherwise, as to why you could serve on this
4 jury?

5 A. No, sir. I don't have any excuse.

6 Q. Do you know of any reason why you could
7 not give the State and the Defendant a fair
8 and impartial trial?

9 A. No, sir.

10 THE COURT: Who is next?

11 EXAMINATION

12 BY SCARLETT WILSON:

13 Q. Mr. Singletary, thank you for being
14 patient with us.

15 A. What happens now is that both sides get
16 to ask you some questions, mainly just to
17 sort of clarify or give us a better idea of
18 how you feel about life without parole or
19 the death penalty. Okay?

20 A. Okay.

21 Q. You told the Judge that you are a type
22 three juror?

23 A. Yes, ma'am.

24 Q. Can you tell me kind of in your own
25 words what that means to you?

1 A. What it means to me is everybody is
2 entitled to a fair trial and, uh, -- being
3 in the field that I am in, there are certain
4 reasons why people do certain things. It
5 could be a medical condition or something
6 leading up to whatever. I believe that
7 everything needs to be looked at, both
8 sides, whether somebody thinks you are
9 guilty or not. But -- in other words, you
10 know, I just think the whole picture needs
11 to be looked at instead of just what
12 somebody is being charged with.

13 Q. Good. Now, one thing that is a little
14 bit different about this kind of case versus
15 other murder trials is that we aren't just
16 talking about that first phase. You know
17 there are two phases?

18 A. Yes, ma'am.

19 Q. The first phase of a death penalty
20 trial, all the twelve jurors are concerned
21 with are things like you were talking about,
22 whether or not the person did it, whether or
23 not they meant to do, whether or not it was
24 an intentional act, whether or not it was
25 malicious -- because under South Carolina

1 law for a crime to be a murder it has to be
2 malicious, it has to be committed for a
3 killer whose heart is wicked, that is
4 fatally bent on mischief. So that would be
5 the first phase.

6 The question that we are in this part
7 about is about the second phase:

8 Obviously if you and twelve other
9 jurors had found someone not guilty, there
10 would be no second phase.

11 But if you have found someone guilty of
12 one of those malicious murders, the question
13 then becomes whether or not -- before
14 deciding what kind of sentence that they
15 should get, -- you would keep an open mind
16 and listen to anything that the defense
17 might offer -- they wouldn't have to offer
18 anything but anything that they might offer
19 in mitigation. Could you do that?

20 A. Yes, ma'am.

21 Q. It also means in that second phase, and
22 this part would happen first, that even
23 though it was a malicious murder, an ugly
24 murder perhaps, you and the other twelve
25 jurors, before making your decision or

1 before even considering death as an option,
2 you would have to hold the State to its
3 burden of proving one aggravating
4 circumstance. Could you do that?

5 A. Yes, ma'am.

6 Q. Even though you'd found somebody guilty
7 already of murder, you could make the State
8 prove up that aggravating circumstance?

9 A. I would do my best, (affirmative nod).

10 Q. Could you follow the Judge's
11 instructions and make sure that aggravating
12 circumstance is proven beyond a reasonable
13 doubt?

14 A. Yes, ma'am.

15 Q. Now, let's go a little bit further in
16 that second phase process. We're talking
17 about, again, a situation where you and the
18 other jurors have heard a lot of evidence
19 about aggravation, things that make the
20 crime more heinous, more severe. It might
21 be a rape that occurred with the murder, it
22 might have been things about how the murder
23 was committed that made it just really ugly.

24 You've heard all that testimony, and
25 then the question would become, could you

1 still have an open mind and listen to things
2 about the defendant and factor those things
3 in to your final decision on whether they
4 desire life without parole or the death
5 penalty?-

6 A. Yes, I could.

7 Q. You would do that?

8 A. Yes, ma'am.

9 Q. Okay. So in that situation you
10 wouldn't you -- you would follow the Judge's
11 instructions and wouldn't say 'Boom, death.
12 Am not going to listen, am not going to
13 consider any more.'

14 A. I would listen to what everything is
15 going to be. I mean, if it is up to us.

16 Q. It would be up to you but, again, what
17 this process is do is to make sure that you
18 could keep an open mind and make sure that
19 you wouldn't just give it lip service?

20 A. I could sit there and listen and ---

21 Q. It is really considering it and giving
22 it meaningful consideration.

23 A. (Affirmative nod).

24 Q. It doesn't mean that everything would
25 have to change your mind but it would factor

1 in and you would want to know those things?

2 A. Yes, ma'am.

3 Q. All right. And when the Judge went
4 through some of the items that any defendant
5 could possible put up -- and, again, they
6 never have to put anything up. And life
7 without parole is always an option. Did you
8 realize that?

9 A. Yes, ma'am.

10 Q. Nobody is ever going to make a jury
11 decide death.

12 A. Yes, ma'am.

13 Q. Could you listen to, factor in and
14 consider things about what made the
15 defendant or a defendant who he was?

16 A. Yes, ma'am.

17 Q. How he came along, what was going on in
18 his life, even if it didn't have to do with
19 the events of that day or night when the
20 murder was committed, but it -- it played a
21 part in who he is or was. Could you listen
22 to that and factor that in?

23 A. Yes, ma'am.

24 Q. Do you think in South Carolina that we
25 should have the death penalty?

1 A. I believe ---
2 Q. As an option?
3 A. I believe that it is fair due to
4 certain circumstances. Not everybody should
5 be put on it.
6 Q. Depends on the situation?
7 A. Yes, ma'am.
8 Q. Depends on the defendant?
9 A. (Affirmative nod), it depends on a lot
10 of things.
11 SCARLETT WILSON: That is all that
12 I have, Judge.
13 THE COURT: Mr. Maguire.
14 WILLIAM MAGUIRE: Thank you,
15 Judge.
16 EXAMINATION
17 BY WILLIAM MAGUIRE:
18 Q. Mr. Singletary, how you doing this
19 afternoon.
20 A. I'm fine. You?
21 Q. I'm good. Thank you for asking. I
22 know that this is an inconvenient process
23 and that we have taken up a good bit of your
24 time. I want to ask a little bit more of
25 you, so just hang in there with me and give

1 me honest responses. Okay?

2 A. Okay.

3 Q. I am going to ask you your feeling
4 about mercy, mercy as a concept. Is that
5 something that is earned or freely given?

6 A. Define your definition of mercy? I
7 mean, what are you look at mercy is?

8 Q. That's a good question.

9 A. Mercy would be giving somebody the
10 benefit of something less than the death
11 penalty based on something you seen. What
12 do you have to see to give mercy?

13 A. Look at the whole picture. You can't
14 just be looking at one little piece of
15 whatever that it is that we are looking at.
16 I mean, you have to look at everything.

17 Q. Okay. When you say "everything",
18 part of that is the circumstances of the
19 crime?

20 A. The circumstances of the crime. You
21 have to look at all the evidence. You have
22 to look at the person's background, you have
23 to look -- I mean, you can't just narrow it
24 down to one little, tiny thing. You'd have
25 to look at the whole picture. I mean, you

1 can't just say guilty. You can't just -- I
2 mean, you have to look at everything.

3 Q. I want to get you to walk down a pretty
4 short road with me here. We are going to
5 start with the definition of murder.

6 A. Okay.

7 Q. In South Carolina -- I want to put you
8 on a jury. You and eleven other people have
9 just convicted someone of murder:
10 intentional killing of a totally innocent
11 person with a black and malignant heart bent
12 on wickedness and evil, not accident, not
13 self-defense, not a fight that gets out of
14 hand. They know what they are doing, they
15 know right from wrong and they choose to
16 take an innocent life. Are you with me?

17 A. Yes, sir.

18 Q. Okay, then we are going to take a
19 couple more steps down this road: same jury,
20 presented aggravation -- things that, like
21 the Judge said, that increase the enormity
22 of the crime.

23 I am going to give you terms here --
24 and you've heard the charges but I am to
25 going to talk to you specifically about this

1 case. But a home invasion, kidnaping, rape,
2 burglary, murder -- one crime. Is the life
3 penalty appropriate in that scenario?

4 A. It could be.

5 Q. Based on what?

6 A. I mean, you just -- I mean; -- it's
7 hard to explain because you don't want to
8 say, 'yeah.' I mean, you know, I don't know
9 how to explain it too well but, you know, in
10 my field, like I was telling the young lady,
11 I -- you know, in -- my field is different
12 because I am here to save lives, I'm not
13 here to take them.

14 But -- I mean, if there is something --
15 if there is a reason that somebody did
16 something for a certain -- like you were
17 saying, I mean, in a way, yeah, they should
18 be and in a way they shouldn't be because I
19 am a Christian man and I do believe in
20 forgiving sins and stuff like that.

21 Q. Would the death penalty ever be
22 appropriate for somebody who is extremely
23 remorseful?

24 A. It could be.

25 Q. If the crime was bad enough?

1 A. If it was bad enough, (affirmative
2 nod).

3 Q. Is remorse something that you would
4 factor into your decision?

5 A. Yes.

6 Q. In a case like this, this very serious
7 matter, a sentencing decision is often
8 described as an individual moral judgment.

9 I am going to contrast that with some other
10 legal cases -- like if it is a car wreck,
11 accident-type cases, and they are debating
12 was the light green or red. Well, that's a
13 fact. It's kind of falls out right or
14 wrong, one way or the other. If the car was
15 black or white, it either was or it wasn't.

16 But in a sentencing case, would you
17 agree that there is no perfect, no right or
18 wrong answer?

19 A. I do believe that.

20 Q. Because it's an individual moral
21 judgment that individual people reach based
22 on their walk in life, their life
23 experiences, can you respect the other
24 juror's individual moral judgment?

25 A. Yes, I could.

1 Q. And the Judge in his introductory
2 comments indicated that for an aggravating
3 circumstance, all twelve jurors have to
4 unanimously agree on that.

5 I want to contrast that with mitigation
6 evidence. When it comes to mitigation
7 evidence, which would be anything for a
8 sentence less than death, each individual
9 juror gets to decide what mitigation is and
10 if they see it.

11 You could say, 'I see mitigation based
12 on something that happened to him as a
13 child. For me, I am not going to kill that
14 boy.' All eleven others could disagree with
15 you but you have the right to that vote. Do
16 you understand that?

17 A. Yes, sir.

18 Q. Would you be comfortable in delivering
19 your vote, getting it all the way to court
20 even if eleven others disagreed with you?

21 A. Yes, sir.

22 Q. In a matter as serious as this, can you
23 end the day agreeing to disagree?

24 A. I could if I had to.

25 WILLIAM MAGUIRE: Thank you, sir.

1 That's all that I have.

2 THE COURT: Any Motions?

3 SCARLETT WILSON: No, sir.

4 WILLIAM MAGUIRE: No, sir.

5 THE COURT: All right, Mr.

6 Singletary, what we are doing is composing a
7 group of jurors from which we are going to
8 strike the jury for the trial of this case.

9 The bailiff is going to give you a
10 card and on that card is a phone number.
11 Call in after five o'clock tonight. There
12 will be a message for the jury panel. The
13 message may be to call in tomorrow at ten
14 o'clock, the message may be to come in
15 tomorrow at twelve o'clock. I do not know.
16 It depends on how many people that we get
17 today.

18 Don't discuss the case amongst
19 yourselves or with anyone else. Please
20 don't read anything in the paper or on TV.
21 I hope to see you before long. You are now
22 part of that group. Thank you.

23 JUROR NUMBER 313: Yes, sir.

24 (JUROR NUMBER 313 EXITS COURTROOM)

25 THE COURT: We are making some

1 progress. We are out of the kitchen on the
2 front porch and down the road. Making a
3 little progress.

4 WILLIAM MAGUIRE: Thank you,
5 Judge. I will see how far I can get them.

6 (JUROR NUMBER 342 ENTERS COURTROOM)

7 CLERK: Your name, sir?

8 JUROR NUMBER 342: Mark Thompson.

9 THE COURT: Hey, Mr. Thompson.
10 How you doing today?

11 JUROR NUMBER 342: Good, sir.

12 THE COURT: Mr. Thompson, we are
13 going to ask you some questions. There are
14 no right or wrong answers. Okay?

15 JUROR NUMBER 342: Yes, sir.

16 THE COURT: Have you had an
17 opinion to read the sheet that I gave you
18 concerning the opinions about the death
19 penalty?

20 JUROR NUMBER 342: Yes, sir.

21 THE COURT: Did you understand
22 it?

23 JUROR NUMBER 342: Yes, sir, I
24 did.

25 THE COURT: Did you understand

1 the type one, two and three opinions?

2 JUROR NUMBER 342: Yes, sir.

3 THE COURT: Did you fall into any
4 of the types on the page?

5 JUROR NUMBER 342: I suppose
6 so, yes, sir.

7 THE COURT: What type did you
8 fall into?

9 JUROR NUMBER 342: Number
10 three.

11 THE COURT: Three?

12 JUROR NUMBER 342: Yes, sir.

13 MARK THOMPSON, having been
14 previously sworn to tell the truth testified
15 as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q. Did you have an opportunity to review
19 the list of potential witnesses of one
20 hundred and thirty-four names?

21 A. Yes.

22 Q. Did you recognize or do you know
23 anybody on that list?

24 A. No, sir.

25 Q. Didn't recognize any names?

1 A. Didn't recognize any.

2 Q. Have you heard anybody talking about
3 this case this week?

4 A. Not this week. No, sir.

5 Q. Have you heard anybody talking about it
6 before this week?

7 A. Yes, sir. My wife works with a
8 gentleman that used to be the lead
9 investigator for the Solicitor when the case
10 happened and they've talked about it before.

11 Q. How long ago did they talk to you about
12 it?

13 A. About a year and a half ago, or so.

14 Q. A year and a half or so?

15 A. Yes, sir.

16 Q. Do you remember what they told you?

17 A. We just talked about the case.

18 Q. What do you remember that you were
19 told, what do you remember specifically that
20 you were told?

21 A. Just about some of the things that
22 happened.

23 Q. Tell me what you remember that they
24 specifically told you. I want to know
25 specifically what you remember that that

1 person told you?

2 A. Well, I just knew that they guy broke
3 into the trailer and used a hammer and got
4 one woman and then got a daughter or a
5 younger girl, then beat on her too. That's
6 about all that I really remember.

7 Q. Do you remember anything else?

8 A. No.

9 Q. Who told you this?

10 A. He was the investigator for the
11 Solicitor. His name is Fred Buncombe,
12 Boatman, Voightman (phonetic).

13 Q. Did he tell you or did your wife tell
14 you?

15 A. No, I was -- he was at a wedding and he
16 -- he was -- we was talking about it.

17 Q. That was just after the alleged crime
18 occurred?

19 A. I don't know -- it was a good bit, I
20 think, afterwards.

21 Q. Okay.

22 A. Because he has since retired.

23 Q. Let me ask you this, based on the
24 knowledge that you received from the ex-
25 investigator from the Solicitor's office,

1 did you form an opinion about the defendant?

2 A. An opinion, yes, sir, I guess.

3 Q. What is that opinion?

4 A. That he don't need to be around.

5 Q. Okay.

6 THE COURT: All right, I am going
7 to excuse you from serving on this jury
8 because of your prior knowledge. Okay?

9 JUROR NUMBER 342: Yes, sir.

10 (JUROR NUMBER 342 EXCUSED)

11 WILLIAM MAGUIRE: Judge -- could
12 you -- hold on, sir. Could you maybe issue
13 an instruction that he doesn't talk to
14 anybody else?

15 THE COURT: Mr. Thompson, ---

16 WILLIAM MAGUIRE: And hasn't in
17 the past.

18 THE COURT: Mr. Thompson, have
19 you talked to or have you told anybody, any
20 of the other jurors, what you told me in the
21 courtroom?

22 JUROR NUMBER 342: No, sir.

23 THE COURT: Please don't confer
24 with any of the other jurors and don't talk
25 about it for now. Okay?

1 JUROR NUMBER 342: Yes, sir.

2 (JUROR NUMBER 342 EXITS COURTROOM)

3 THE COURT: Bring in Mr. Turnage.

4 (JUROR NUMBER 352 ENTERS COURTROOM)

5 THE COURT: Good afternoon, Mr.
6 Turnage. How are you doing today?

7 JUROR NUMBER 352: Not bad,
8 sir.

9 THE COURT: That's good. Have
10 you had an opportunity to review the sheet
11 concerning the death penalty opinions?

12 JUROR NUMBER 352: Yes, sir.

13 THE COURT: Did you understand
14 it?

15 JUROR NUMBER 352: Yes, sir.

16 THE COURT: And did you
17 understand types one, two and three?

18 JUROR NUMBER 352: Yes, sir.

19 THE COURT: Could you determine
20 where you fit into any of those types?

21 JUROR NUMBER 352: Type three.

22 THE COURT: You fit into type
23 three? Have you -- do you understand type
24 three?

25 JUROR NUMBER 352: Yes, sir.

1 THE COURT: I've got some
2 questions for you.

3 MICHAEL TURNAGE, having been
4 previously sworn to tell the truth testified
5 as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. All right. Did you also review the
9 list of one hundred thirty-four names?

10 A. Yes, sir.

11 Q. Do you recognize or do you know anybody
12 on the list?

13 A. Not as far as I could tell, Your Honor.
14 I might know them if I'd seen them passing
15 but by looking at a list of names I couldn't
16 tell that I know anyone.

17 Q. You didn't recognize any of the names
18 on that list?

19 A. No, sir.

20 Q. Thank you, sir. I am going to ask you
21 some questions and then the attorneys are
22 going to ask you some questions. There are
23 no right or wrong answers. Just give your
24 opinion as best you can, tell the truth
25 about whatever your opinion may be.

1 A. Yes, sir.

2 Q. We are not trying to criticize your
3 opinion, you're entitled to your opinion.

4 A. Yes, sir.

5 Q. So just answer the questions the best
6 you can.

7 A. Yes, sir.

8 Q. Do you have any knowledge about the
9 case, anything you have heard about the case
10 prior to today?

11 A. No, sir.

12 Q. Have you read anything in the paper?

13 A. No, sir.

14 Q. Have you heard anything on television?

15 A. No, sir.

16 Q. Do you have any relatives or close
17 personal friends employed in law
18 enforcement?

19 A. I've got a pretty close friend that is
20 a Dorchester county sheriff. I've fished
21 with him, hunted with him, known him for
22 fifteen years.

23 Q. Are you from St. George?

24 A. No, sir. Summerville. He lives in
25 Summerville, works with Dorchester County.

1 Q. Is he a Dorchester County deputy
2 sheriff?

3 A. Yes, sir.

4 Q. Does he talk about his job very often?

5 A. No, sir.

6 Q. Does he ever mention his job?

7 A. Usually, you know, he will call up,
8 'Hey, we are busy with this' or 'we're busy
9 with that.' Nothing specific.

10 Q. Have you ever had any conversation with
11 him about his view of law enforcement?

12 A. Other than he's wanted to be a cop all
13 his life, (negative gesture). I mean, I've
14 known that ever since I've known him.

15 Q. How long have you known him?

16 A. Probably fifteen years.

17 Q. Have you ever had any conversation
18 about his views of defendants in general or
19 people that are charged with crimes?

20 A. Not -- nothing specific.

21 Q. How would that relationship with him
22 affect you sitting on this jury, or would
23 it?

24 A. It wouldn't. I mean, he's got a job to
25 do that he loves doing. He's -- like I

1 said, he's wanted to be a cop all his life.

2 Q. Has the solicitor or anyone in her
3 office prosecuted you or any member of your
4 family?

5 A. I have a case pending with my son with
6 the Solicitor's office now.

7 Q. I believe you told me that earlier.

8 A. Yes, sir.

9 Q. How would that fact, that the Solicitor
10 is prosecuting your son, affect you sitting
11 on the jury?

12 A. I don't see that it would. I
13 understand that she has a job to do.

14 Q. You don't think it would create any
15 difficulty for you sitting on the jury, you
16 don't think that you may hold that against
17 the State for prosecuting your son?

18 A. No, sir.

19 Q. I believe you said that your son is
20 twenty years old?

21 A. Yes, sir.

22 Q. He doesn't live at home?

23 A. He does. He's under house arrest.

24 Q. He's under house arrest?

25 A. Yes, sir.

1 Q. But you think that you can put that
2 aside?

3 A. Yes, sir.

4 Q. Have you or any member of your family
5 or close friends been the victim of a crime?

6 A. No, sir.

7 Q. Do you have any victims (sic) in jail
8 -- other than your son on house arrest?

9 A. No, sir. I have a younger brother-in-
10 law that's been in jail -- probably ten
11 years ago when he was thirteen, fourteen
12 years old.

13 Q. When he was a juvenile?

14 A. Sir?

15 Q. When he was a juvenile?

16 A. Yes, sir.

17 Q. Are you a member of any group which
18 primarily have as their purpose the support
19 of law enforcement, such as MADD?

20 A. No.

21 Q. Do you have any special or particular
22 interest in the outcome of this case?

23 A. No, sir.

24 Q. Are you aware of any bias or prejudice
25 against the defendant as a result of the

1 charges which have been brought against him?

2 A. No, sir.

3 Q. Do you have any religious beliefs that
4 would make you biased or prejudiced for or
5 against the defendant?

6 A. No, sir.

7 Q. Do you have any religious beliefs that
8 would make you biased or prejudiced for or
9 against the Solicitor or the State?

10 A. No, sir.

11 Q. Do you have a bias or prejudice against
12 the defendant because of his race, being
13 black?

14 A. No, sir.

15 Q. Do know of any reason, personal or
16 otherwise, as to why you cannot serve on
17 this jury?

18 A. (Negative gesture), other than it being
19 -- like I told you the other anything, it
20 being a hardship being out of work.

21 Q. Right. Do you know of any reason why
22 you could not give the State and the
23 Defendant a fair and impartial trial?

24 A. No, sir.

25 Q. Let me ask you one question about your

1 son. Why do you -- why would you not have
2 any -- I believe that you told me the other
3 day that it was drug-related?

4 A. He was involved -- he was one of five
5 or six people. There was a stabbing in West
6 Ashley. He was the one driving the car
7 because he was staying -- the whole long
8 story short is that he was running about
9 with a girl that was bipolar, she wasn't
10 taking her medication, he wasn't going to
11 school, she was keeping him from going to
12 school, I was paying for him to go to Tech,
13 my family was paying -- Nucor was paying for
14 him to go to Tech. He was skipping school,
15 ---

16 Q. She actually came over to his house?

17 A. He was running around with her, dating
18 her and -- we gotten into it. She was
19 disrespectful, would cuss me, my wife. I
20 told him, I said, 'That's it. No more.'

21 Well, me and my middle son went hunting
22 in St. George one day. We came back, I saw
23 them two in a car. I followed them all the
24 way to Ashley Phosphate Road. He got out of
25 the car and he said, 'Daddy, I love her.'

1 I said, 'that's fine.' I am going home and
2 packing your stuff. So I drove home, went,
3 to his room, packed all his stuff up. I
4 said, 'If you love her, I wish you the best.
5 I have three other children. I can't
6 jeopardize them because of you.' So I
7 packed his stuff. They left. The girl
8 was hanging out of the car window cussing
9 us while they were running through the
10 neighborhood.

11 The last story we heard was that they
12 were spending, that he was staying with some
13 friends in Goose Creek. Come find out, he
14 was staying with Christopher Sprigs in
15 Moncks Corner, which I knew nothing about.

16 When all of this took place, he was the
17 one in Moncks Corner with the car. So when
18 they got a call, Christopher Sprigs mama was
19 supposedly being beat up at a hotel, they
20 all got in Stephen's car, my son's, and he
21 drove them to the hotel because he was the
22 one with the car.

23 Now, as soon as all this happened,
24 before I ever knew it happened, he wanted to
25 come back home. I said, 'Here, you can take

1 my truck, go get your stuff, move back in
2 the house' because I thought he was
3 completely done with the -- the psychotic
4 girl. She was -- she was fine if she was
5 taking her medication, as far as I know, but
6 she wouldn't take her medication, being
7 bipolar.

8 So when all of this went down, that's
9 how I know Scarlett Wilson, the prosecutor's
10 office. He is under house arrest. His case
11 is pending.

12 The last word that I had from his
13 attorney is that his attorney is pending on
14 whether or not I am sitting on jury duty
15 because he is eligible for a plea bargain
16 through the prosecutor's office to where he
17 could just go in front of a judge instead of
18 having a whole blown-out trial all over
19 again.

20 Q. Tell me why that wouldn't create hard
21 feelings on your part towards the prosecutor
22 in this case?

23 A. I don't have any hard feelings -- as
24 far as I am concerned, the prosecutor has a
25 job to do, just like you have a job to do.

1 My biggest concern is being tied up with a
2 court case for two or three weeks. I don't
3 mind serving jury duty any other time but I
4 have waited for him -- his case has been
5 pending now for a year and a half, he's been
6 on house arrest. I found out three weeks
7 ago that my daughter is pregnant, my
8 eighteen year old daughter which is going to
9 Tech is pregnant. We have all of this going
10 on. Any other time ---

11 Q. I believe that your wife is working
12 where?

13 A. She works at home, raising my children.

14 Q. But your employer is paying some money
15 for you to serve jury duty?

16 A. Some.

17 Q. How much is the employer paying you?

18 A. I printed it the other anything, Your
19 Honor. I don't remember what their formula
20 was.

21 Q. That was the reason that I didn't
22 excuse you, because your employer would pay
23 you something.

24 A. Right.

25 Q. Do you remember what percentage that

1 they were paying, or do you know?

2 A. My pay is based on an hourly rate plus
3 a production bonus. So they figure it on an
4 hourly rate. I don't remember what the
5 percentage is that they use to come up --
6 it's like our vacation pay and I don't know
7 what they use to come up with that
8 percentage.

9 Q. Okay.

10 THE COURT: Who is next? Let me
11 see the attorneys up here just a second.
12 Mr. Turnage, could I ask you to step out
13 into the hall?

14 (JUROR NUMBER 352 EXITS COURTROOM)

15 BENCH CONFERENCE:

16 THE COURT: My inclination
17 is to excuse him.

18 WILLIAM MAGUIRE: I've got no
19 objection to that, Judge.

20 THE COURT: Because of the
21 charges pending and the fact that he doesn't
22 want to be here.

23 BRUCE DURANT: I agree.

24 THE COURT: He didn't want
25 to be here last week.

1 WILLIAM MAGUIRE: I agree.

2 SCARLETT WILSON: Why are you
3 agreeing? He said that he could be fair, he
4 said that he doesn't mind serving. I think
5 we need to see if he is qualified or not. I
6 don't have a problem with him being her.

7 THE COURT: You don't have
8 any problem with the charges against his son
9 and your office ---

10 SCARLETT WILSON: I am not
11 involved in that case personally. I don't
12 think he -- I've never laid eyes on him or
13 his son or any of that.

14 THE COURT: He called you by
15 name on the witness stand awhile ago.

16 SCARLETT WILSON: I've
17 introduced myself twice now. I just ran for
18 office in the last year.

19 THE COURT: If you want to
20 try to qualify him, that's fine. I was just
21 trying to think of -- with his not wanting
22 to be here and the case pending, I was going
23 to let him go. If you'all don't want to,
24 that's fine.

25 WILLIAM MAGUIRE: Judge, our

1 position would be that -- I mean, -- he
2 basically knows that Scarlett has got the
3 keys to the jail for his boy. He might want
4 to deliver and 'do the right thing' for her.
5 If I had a boy at home -- accessory after
6 murder is a very serious charge.

7 THE COURT: Is that what the
8 charge is? I don't even know what the
9 charge is.

10 WILLIAM MAGUIRE: Yes, it's a
11 killing.

12 THE COURT: Okay.

13 WILLIAM MAGUIRE: That boy has
14 been home a year and a half and he knows
15 that her office has the keys to his freedom.
16 I am very much opposed to him sitting.

17 THE COURT: I think with
18 that and the fact that he -- the fact that
19 he doesn't want to be here because of his
20 job. He was very -- he came up, if I
21 remember, two times or maybe three times
22 during the general questioning, trying to
23 get off for various reasons. I am going to
24 excuse him.

25 SCARLETT WILSON: Judge, I

1 understand your ruling and that's fine but I
2 -- I don't see how that is any different
3 than these people who know the whole
4 Broughton family and still say that they
5 could be fair.

6 THE COURT: We haven't had
7 anybody there yet.

8 SCARLETT WILSON: We have.
9 We've had a couple of people before.

10 THE COURT: I don't remember
11 anybody that we've qualified ---

12 SCARLETT WILSON: We had the
13 lady with ---

14 THE COURT: They came up
15 during general qualification but we haven't
16 had anybody come up in this section yet.

17 SCARLETT WILSON: Not today.
18 Yesterday.

19 THE COURT: Who yesterday?

20 SCARLETT WILSON: The lady who
21 knew like five people on the list and then
22 she knew somebody named Jerry Richardson.
23 She eventually got excused.

24 THE COURT: Right.

25 SCARLETT WILSON: But we had

1 to go through the whole rigamarole of her
2 stating something ---

3 THE COURT: I finally
4 excused her.

5 SCARLETT WILSON: Finally,
6 (affirmative nod).

7 THE COURT: None of those
8 have been qualified, I don't think, so far.

9 SCARLETT WILSON: What I am
10 saying is that if it is an excusable reason
11 for somebody who says that they can be fair
12 on this end, then it should be on that end
13 too.

14 THE COURT: Well, the
15 problem that I have is what he said. His
16 son has got a serious charge against him and
17 he knows that you've got the keys, so he may
18 favor you rather than the defendant. In
19 being very careful about it, I am going to
20 strike him.

21 SCARLETT WILSON: I don't
22 disagree.

23 THE COURT: That's the
24 reason.

25 SCARLETT WILSON: I don't

1 disagree with that but I think the same
2 analysis is true when someone knows many
3 members and -- many witnesses and many
4 jurors (sic) and they still say that they
5 can be fair.

6 THE COURT: I don't disagree
7 with you.

8 SCARLETT WILSON: That's all.

9 THE COURT: I don't disagree
10 with you at all. I agree with you.

11 SCARLETT WILSON: Good. Thank
12 you.

13 (BENCH CONFERENCE CONCLUDED)

14 THE COURT: Bring Mr. Turnage in.

15 (JUROR NUMBER 352 ENTERS COURTROOM)

16 THE COURT: Mr. Turnage, I'm
17 going to excuse you from jury duty because
18 of your son's situation as well as the fact
19 that you cannot afford to lose the funds
20 that you will obviously lose serving on the
21 jury. Okay? Thank you very much.

22 9JUROR NUMBER 352 EXCUSED)

23 (JUROR NUMBER 352 EXITS COURTROOM)

24 BAILIFF: Bring the next one,
25 Your Honor?

1 THE COURT: Yes, ma'am.

2 (JUROR NUMBER 397 ENTERS COURTROOM)

3 THE COURT: Yes, sir, your name?

4 JUROR NUMBER 397: Larry B. Yeadon.

5 THE COURT: How you doing, Mr.

6 Yeadon?

7 JUROR NUMBER 397: All right.

8 You?

9 THE COURT: Oh, I am okay I
10 guess. I've been sitting in this chair too
11 long. Did you have an opportunity to review
12 the sheet that has the types: one, two and
13 three?

14 JUROR NUMBER 397: Yes, sir.

15 THE COURT: Do you understand it?

16 JUROR NUMBER 397: Yes, sir.

17 THE COURT: Do you understand the
18 three different types?

19 JUROR NUMBER 397: Yes, sir,

20 THE COURT: Did you determine
21 whether or not you'd fit into type one, two
22 or three?

23 JUROR NUMBER 397: Yes, sir.

24 THE COURT: Which type?

25 JUROR NUMBER 397: Type three.

1 THE COURT: Okay, I've got some
2 questions for you and then the attorneys
3 will have some questions for you. There are
4 no right or wrong answers. Okay?

5 EXAMINATION

6 BY THE COURT:

7 Q. Have you had an opportunity to review
8 the list of names, the hundred and thirty-
9 four names?

10 A. Yes, sir.

11 Q. Did you recognize any of the names or
12 did you know anyone on it?

13 A. I believe that I recognized one of
14 them.

15 Q. Who did you recognize?

16 A. Number fifty-nine.

17 Q. Number fifty-nine, ---

18 A. If it is the same person.

19 Q. --- Sharon Bennett?

20 A. Yes, sir.

21 Q. How do you know her?

22 A. Through high school. I don't know if
23 it is the same one or not.

24 Q. You just knew a Sharon Bennett in high
25 school?

1 A. Yeah, there was a Sharon Bennett in
2 high school.

3 Q. How long ago did you graduate from high
4 school?

5 A. About thirty-some years ago.

6 Q. You remember those names that far back?

7 A. Oh, no, not many.

8 Q. Do you -- have you seen Sharon Bennett
9 since you graduated from high school?

10 A. Probably about three months ago.

11 Q. Just one time since high school?

12 A. Probably maybe a couple times, but that
13 was the last time that I've seen her.

14 Usually see her at, like football games and
15 her parents stay down in Cross.

16 Q. Okay. Do you know anything about the
17 case, have you heard anything about the
18 case?

19 A. No, sir.

20 Q. Read anything in the paper?

21 A. No, sir.

22 Q. Seen any television?

23 A. No, sir.

24 Q. Do you have any relatives or close
25 personal friends employed in law

1 enforcement?

2 A. No, sir.

3 Q. Has the solicitor or any member of her
4 staff prosecuted you or any member of your
5 family?

6 A. No, sir.

7 Q. Have you or any member of your family
8 or a close personal friend been the victim
9 of a crime?

10 A. No, sir.

11 Q. Do you have any relatives in jail?

12 A. No, sir.

13 Q. Are you a member of any group which
14 primarily supports law enforcement, such as
15 MADD?

16 A. No.

17 Q. Do you have any special or particular
18 interest in the outcome of this case?

19 A. No, I don't.

20 Q. Do you -- are you aware of any bias or
21 prejudice against the defendant primarily
22 because of the charges which have been
23 brought against him?

24 A. No, I don't.

25 Q. Do you have any religious beliefs that

1 would make you biased or prejudiced for or
2 against the defendant?

3 A. No, sir.

4 Q. Do you have any religious beliefs that
5 would make you biased or prejudiced for or
6 against the State?

7 A. No, sir.

8 Q. Do you have a bias or prejudice against
9 the defendant because of his race, being
10 black?

11 A. No.

12 Q. Have you had any bad experiences or
13 good experiences with law enforcement?

14 A. No, sir.

15 Q. Do you know of any reason, personal or
16 otherwise as to why you cannot serve on this
17 jury?

18 A. No, sir.

19 Q. Do you know of any reason why you could
20 not give the State and the Defendant a fair
21 and impartial trial?

22 A. No, sir.

23 THE COURT: The attorneys are
24 going to ask you some questions. There are
25 no right or wrong answers. Just answer the

1 question as best you can. Okay?

2 JUROR NUMBER 397: Yes, sir.

3 THE COURT: Whose turn?

4 EXAMINATION

5 BY WILLIAM MAGUIRE:-

6 Q. Is it Mr. Yeedon (phonetic)?

7 A. Yeadon.

8 Q. Yeadon. Good afternoon, sir. How are
9 you doing?

10 A. Good. You?

11 Q. I am good, sir. Thank you. We are
12 just going to ask you some questions. I
13 know that it has been difficult being a
14 juror, you've been waiting around and it's
15 inconvenient. I'm just going to ask a
16 little bit more of you and -- just ask that
17 you be honest. Okay?

18 A. Okay.

19 Q. What are your general thoughts about
20 the death penalty?

21 A. I mean, it depends on what it is.

22 Q. Okay. Our starting point is going to
23 be a conviction for murder: Okay? I am
24 going to kind of put you on a jury with
25 eleven other people and I am going to ask

1 you to see this case in front of you:
2 a person who intentionally took the life of
3 an innocent person. They knew right from
4 wrong, it was not an accident, it is not
5 self-defense. A person, a defendant,
6 operating with a black, malignant heart bent
7 on mischief, wickedness and evil. They
8 intentionally decided to take the life of an
9 innocent person. That is murder in South
10 Carolina.

11 And we're going to go a little bit
12 further -- you and your eleven other jurors
13 will hear what is called aggravation,
14 aggravating circumstances. I want you to
15 see this offense: a home invasion, somebody
16 going into home when people are, kidnaping,
17 rape, burglary, armed robbery and murder.
18 That crime. Is the life in prison penalty
19 severe enough for that?

20 A. I don't think so.

21 Q. You don't think so?

22 A. No.

23 Q. In that situation, the death penalty
24 would be your vote?

25 A. Yes.

1 Q. Is there anything that would -- about
2 the defendant, about his background, maybe
3 that he grew up in poverty, had an abusive
4 father, something like that, is there
5 anything like that that could take you from
6 death down to the life in prison penalty?

7 A. No, not the way you described.

8 Q. After what I described -- once somebody
9 gets to the capital murder stage; through
10 the aggravation stage, ---

11 A. Somebody who committed all that, I'd
12 give the death penalty.

13 Q. The death penalty would always be
14 appropriate for you in that situation?

15 A. In that situation, yeah.

16 Q. And -- once second. Mr. Yeadon, I
17 believe that's all that I've got for you
18 today. The State might want to ask you some
19 questions. Thank you, sir.

20 EXAMINATION

21 BY SCARLETT WILSON:

22 Q. Mr. Yeadon, can you tell me kind of in
23 your own words what the -- you said that you
24 are a category three?

25 A. Yes, sir.

1 Q. It sounded then like you might be a
2 category two. Tell me why you picked
3 category three?

4 A. Well, because when they -- because of
5 the aggravation and the mitigation, I'd like
6 to hear the whole story before I made a
7 decision based on that.

8 Q. Well, to even get to the whole story,
9 the aggravation and the mitigation, in this
10 kind of case the jury would have already
11 found a malicious, ugly murder. Obviously
12 if you didn't find that, he would be Not
13 Guilty and the story would end. Right?

14 A. Right.

15 Q. So if we are starting that second
16 phase, not in this case but a case, and the
17 Judge tells you, as he said earlier, that
18 the State has to prove not just that a
19 murder happened but that there was something
20 aggravated ---

21 A. Right.

22 Q. (Affirmative nod), like you noted.

23 A. Right.

24 Q. And if we didn't prove that, life
25 without parole would be the only option.

1 Are you okay with that?

2 A. I am fine with that.

3 Q. Okay.

4 A. My whole thing was depending on the
5 circumstances of what actually happened.
6 I would like to -- that's way I'd go with
7 category three.

8 Q. Well, mitigation -- that second part,
9 mitigation is more involved than what
10 exactly happened in the crime. The question
11 is whether or not you could keep an open
12 mind to everything.

13 A. Yes.

14 Q. That means listening -- not just
15 listening but factoring in and taking to
16 heart anything that might be said about the
17 defendant and his walk in life. His road.
18 Could you listen to that, consider it and
19 factor it in to your decision before
20 deciding life without parole or death?

21 A. Yes.

22 Q. Could you hold off in forming your
23 final opinion as to the death penalty or
24 life without parole until you heard that
25 kind of stuff?

1 A. Yes.

2 Q. And could you listen to your other
3 jurors before making your decision and
4 factor that in, too?

5 A. Yes.

6 Q. But if you came to a decision and you
7 felt that it was the right decision, whether
8 it was for death or for life, could you
9 stick to that decision regardless whether
10 somebody disagreed with you?

11 A. Yes.

12 Q. Agree to disagree?

13 A. Yes.

14 Q. So when we're talking about these
15 aggravating circumstances -- again not this
16 case, because we can't talk about this case.
17 But when we're talking about something
18 that's brutal, that heinous, the question is
19 -- if even after hearing that, you could
20 truly keep an open mind and consider the
21 other factors involved?

22 A. Yes, ma'am.

23 Q. And you would be interested in those
24 things?

25 A. Yes.

1 SCARLETT WILSON: That's all that
2 I have, Judge.

3 EXAMINATION RESUMED

4 BY WILLIAM MAGUIRE:

5 Q. Mr. Yeadon, you've never really
6 thought, my guess is, much about the death
7 penalty before coming here?

8 A. No, sir.

9 Q. And terms like "aggravating
10 circumstances", "mitigating circumstances"
11 are pretty new terms to you?

12 A. Yes, more or less.

13 Q. And they should be -- I mean, the only
14 way that you were going to hear them was
15 from the court. A lot of these definitions
16 you're hearing for the very first time
17 today?

18 A. Yes.

19 Q. I want to go a wee bit backwards with
20 you. When we were talking about that home
21 invasion, rape, burglary, armed robbery,
22 murder, that case, doing all that, knowing
23 what you are dealing with, choosing to do
24 that, including a rape, nothing
25 accidentally, definitely embarking on that

1 kind of criminal behavior, my understanding
2 is that for you that is a death penalty
3 case.

4 A. More less; yes, sir.

5 Q. And that the life penalty is not severe
6 enough in that situation?

7 A. Like I said, if a person did all that I
8 would choose that his life be terminated
9 because he took someone else' life.

10 Q. Exactly. Kind of an-eye-for-an-eye?

11 A. More or less.

12 Q. And a lot of people use the phrase that
13 if you choose to take the life of an
14 innocent person, you forfeit yours.

15 A. I've never heard that before.

16 Q. Does that sound fair to you?

17 A. More or less.

18 Q. Does it describe you?

19 A. I don't know about the eye-for-an-eye
20 in all cases. Like I said, I'd like to hear
21 exactly what happened and whatever, before I
22 could make a decision.

23 Q. Right. You'd want to hear things like
24 if it was an argument that got out of hand
25 or ---

1 A. Yes, sir, I would like to hear the
2 whole case.

3 Q. --- if the gun went off accidentally?

4 A. Yes, sir.

5 Q. Stuff like that?

6 A. Yes, sir.

7 Q. But if the persons knows what they are
8 doing and they enter a house with people in
9 it, rape, kidnap, armed robbery, burglary,
10 murder, that case is the death penalty for
11 you?

12 A. Basically. Yes, sir.

13 Q. And something that may have happened to
14 the defendant in his childhood fifteen years
15 ago or ten years ago, that could never get
16 you from the death penalty to life?

17 A. That's kind of hard to say but I'd
18 think, more or less, yes.

19 Q. You think so?

20 A. Right.

21 THE COURT: Mr. Yeadon, if you
22 would stand out in the hall, please, sir.

23 (JUROR NUMBER 397 EXITS COURTROOM)

24 THE COURT: Does anybody have a
25 Motion?

1 WILLIAM MAGUIRE: I do. Motion
2 to strike for cause. Failure to strike this
3 juror for cause would violate Mr.
4 Broughton's Sixth and Fourteenth Amendment
5 Constitutional rights to a fair and
6 impartial jury trial.

7 Judge, as soon as it was capital
8 murder, he was death penalty. He was death
9 penalty all the time.

10 His only response that would give
11 you any indication that he wanted to hear or
12 could be open-minded to the whole case is
13 when it was raised to him in the most vague
14 terms:

15 'You would want to keep an open
16 mind? You wouldn't make your decision until
17 you heard everything. You'd want to hear
18 all the circumstances.'

19 Judge, I could make everybody say
20 that. Everybody, a hundred percent of the
21 time. Those answers are worthless.

22 When he was specific about capital
23 murder he was death penalty and he couldn't
24 think of anything that would matter after
25 that. That's just where he is.

1 THE COURT: Solicitor?

2 SCARLETT WILSON: Judge, again,
3 the line of questioning that the defense is
4 taking is clearly staking out. They are
5 attempting to give them a set of specific
6 facts -- burglary, rape, armed robbery,
7 murder -- and pledge that person to a future
8 course of conduct.

9 This witness (sic), who was not the
10 most articulate but who seemed intelligent
11 enough, would qualify "more or less", "more
12 or less", "I want to hear the whole story",
13 "I want to hear everything."

14 They don't know what mitigation is.
15 They don't know what to expect. When you
16 throw up a colloquialism like "abusive
17 abuse" or "bad childhood"; that doesn't --
18 that doesn't mean anything to anybody. It
19 is very insignificant. You talk about
20 vague, that's as vague as it gets.

21 What he said was that he would wait
22 to make his decision. That makes him
23 qualified.

24 They have no idea what mitigation
25 looks like. To ask -- to stake these jurors

1 out in the way that they are doing -- first
2 of all it's not proper and, second all, does
3 not give an accurate picture, especially
4 when someone with no exposure to this type
5 of case tells you over and over, "I want to
6 hear it all."

7 THE COURT: Motion denied.
8 It is 1:30. We will break for lunch. We've
9 got five more on this panel and we've got a
10 panel coming at 3:00 and one at 4:00. How
11 long do you'all want for lunch?

12 SCARLETT WILSON: An hour is fine
13 for us, Judge.

14 THE COURT: Is an hour fine for
15 the Defendant?

16 WILLIAM MAGUIRE: I think we could
17 probably -- if you could give us an hour,
18 fifteen.

19 THE COURT: Be back at 2:45 and
20 we will get started at that time.

21 BAILIFF: How about the juror?

22 THE COURT: Yeah, bring him in
23 for just a second. The rest of the jurors,
24 we will bring in as soon as we bring Mr.
25 Yeadon in.

1 Do you have any objection if I get
2 the bailiff to go tell these jurors to be
3 back at 2:45, or do you want me to bring
4 them into the courtroom to do it.

5 WILLIAM MAGUIRE: No objection.

6 BRUCE DURANT: No.

7 (JUROR NUMBER 397 ENTERS COURTROOM)

8 THE COURT: Mr. Yeadon, the
9 bailiff is going to give you a little card
10 with phone number. Please call that number
11 after five o'clock tonight. There will be a
12 message for the jury panel. Please follow
13 the instructions. Okay?

14 JUROR NUMBER 397: Yes, sir.

15 THE COURT: We are trying to get
16 a group together from which we can draw a
17 jury for this case. You are now part of
18 that group. Don't discuss the case with
19 anybody, read anything in the paper or watch
20 television. Okay?

21 JUROR NUMBER 397: Yes, sir.

22 THE COURT: See you -- hopefully
23 tomorrow.

24 (JUROR NUMBER 397 EXITS COURTROOM)

25 THE COURT: Tell the remaining

1 five people on Panel Number 14 to come back
2 at 2:45.

3 (LUNCH RECESS 1:28 - 2:44 P.M.)

4 (DEFENDANT PRESENT)

5 THE COURT: Please be seated. Is
6 there anything from the State before we
7 bring in the next juror?

8 SCARLETT WILSON: No, sir.

9 THE COURT: Anything from the
10 defendant?

11 WILLIAM MAGUIRE: No, sir.

12 THE COURT: Bring us the next
13 juror, please, ma'am.

14 (JUROR NUMBER 382 ENTERS COURTROOM)

15 CLERK: Please state your name.

16 THE COURT: Yes, ma'am, your
17 name?

18 JUROR NUMBER 382: Karrie
19 Wiggerton.

20 THE COURT: Did you say Rachel
21 Peterson?

22 JUROR NUMBER 382: Karrie
23 Wiggerton.

24 THE COURT: Okay. Wiggerton.
25 How are you doing, Ms. Wiggerton?

1 JUROR NUMBER 382: Fine.

2 THE COURT: Ms. Wiggerton, did
3 you read and understand the sheet that I
4 passed out concerning the type of opinions
5 that people have about the death penalty?

6 JUROR NUMBER 382: Yes, sir.

7 THE COURT: Did you understand
8 types one, two and three?

9 JUROR NUMBER 382: Yes, sir.

10 THE COURT: Were you able to
11 determine if you fit in type one, two or
12 three?

13 JUROR NUMBER 382: Yes, sir.

14 THE COURT: Which type do you
15 think that you fit into?

16 JUROR NUMBER 382: Type two.

17 THE COURT: Type two says any person
18 convicted of murder that you would always
19 sentence them to death?

20 JUROR NUMBER 382: Yes, sir.

21 THE COURT: Type two?

22 JUROR NUMBER 382: Yes, sir.

23 THE COURT: Is that correct?

24 JUROR NUMBER 382: Yes, sir.

25 THE COURT: That's your opinion?

1 JUROR NUMBER 382: Yes, sir.

2 THE COURT: I appreciate your
3 sincerity. There is nothing wrong with
4 having that opinion but I am going to find
5 that you're not qualified for this jury.
6 Okay?

7 JUROR NUMBER 382: Thank you.

8 THE COURT: Thank you.

9 (JUROR NUMBER 382 EXCUSED)

10 (JUROR NUMBER 382 EXITS COURTROOM).

11 THE COURT: Who is next?

12 (JUROR NUMBER 165 ENTERS COURTROOM)

13 CLERK: State your name, please.

14 JUROR NUMBER 165: Ashley Jones.

15 THE COURT: Ms. Jones, have you
16 had an opportunity to review the sheet
17 concerning the different opinions about the
18 death penalty?

19 JUROR NUMBER 165: Yes, sir.

20 THE COURT: Did you understand
21 type one, type two and type three?

22 JUROR NUMBER 165: Yes, sir.

23 THE COURT: Were you able to
24 determine whether or not you fit into one
25 of those type categories?

1 JUROR NUMBER 165: Yes, sir.

2 THE COURT: Which category do you
3 think that you fit in?

4 JUROR NUMBER 165: Type one.

5 THE COURT: Type one?

6 JUROR NUMBER 165: (Affirmative
7 nod).

8 THE COURT: So in your opinion
9 you could never give anyone the death
10 penalty regardless of the crime, is that
11 correct?

12 JUROR NUMBER 165: That's right.

13 THE COURT: Ms. Jones, I
14 appreciate your opinion. Thank you so very
15 much for giving it to me. However, I am
16 going to excuse you for service on this
17 jury. Okay?

18 JUROR NUMBER 165: Yes, sir.

19 THE COURT: Thank you very much.

20 (JUROR NUMBER 165 EXCUSED)

21 (JUROR NUMBER 165 EXITS COURTROOM)

22 (JUROR NUMBER 263 ENTERS COURTROOM)

23 CLERK: Have a seat and state
24 your name.

25 JUROR NUMBER 263: My name is

1 Rachel Peterson.

2 THE COURT: Ms. Peterson, have
3 you had an opportunity to review the sheet
4 that the Court gave to you concerning the
5 death penalty?

6 JUROR NUMBER 263: Ample opportu-
7 nity.

8 THE COURT: Pardon?

9 JUROR NUMBER 263: Yes.

10 THE COURT: Did you understand
11 type one, type two or type three?

12 JUROR NUMBER 263: Yes, sir.

13 THE COURT: Were you able to
14 determine if you fit into one of those
15 types?

16 JUROR NUMBER 263: Yes.

17 THE COURT: Which type do you think
18 that you fit into?

19 JUROR NUMBER 263: I decided that
20 I would most likely fit into type three.

21 THE COURT: Type three?

22 JUROR NUMBER 263: Yes.

23 THE COURT: When you say "most
24 likely", does that mean that you are
25 hesitant as to whether you are a type three?

1 JUROR NUMBER 263: . . . I am trying
2 to picture myself in the situation of having
3 to decide and that would probably come down
4 to the evidence and -- you know. I don't
5 think that I would be solid' one way or the
6 other. I think that I would probably have
7 to look at all the evidence.

8 THE COURT: Okay. .

9 RACHEL PETERSON, having been
10 previously sworn to tell the truth testified
11 as follows: .

12 EXAMINATION

13 BY THE COURT:

14 Q. Did you have an opportunity to review
15 all the names on the witness, potential
16 witness list, of one hundred thirty-four
17 names?

18 A. Yes, sir.

19 Q. Did you recognize any name or know
20 anybody on that list?

21 A. To the best of my recollection, no.

22 Q. Have you heard anything about the case?

23 A. I have not.

24 Q. Have you read anything in the paper,
25 seen anything on television?

1 A. No, I have not.

2 Q. Heard any jurors talking about it?

3 A. When I first came on Monday, somebody
4 said that it might be a murder case.

5 Q. Is that all you heard Monday?

6 A. Yes.

7 Q. Do you have any relatives or close
8 personal friends employed in law
9 enforcement?

10 A. Some friends of the family are North
11 Charleston police officers.

12 Q. Friends of the family, friend of you or
13 friend of your mother and daddy?

14 A. Correct, friends of me and my family.

15 Q. Okay. Do the -- how many people with
16 North Charleston are you talking about?

17 A. I know of three friends of our family
18 that are employed by North Charleston Police
19 Department.

20 Q. Are they older than you, your same age
21 or ---

22 A. One is older than me, two are around my
23 age.

24 Q. I guess what I am asking is are they
25 contemporaries of yours or contemporaries of

1 your mother and father, bothers, sister, or
2 who?

3 A. The one that we see the most would
4 probably be considered a contemporary of my
5 parents, I supposed. I don't really talk to
6 the other two very much anymore.

7 Q. Do they visit in your home and your
8 parents visit in their home?

9 A. The one, yes. The one that we hang out
10 with anymore.

11 Q. Would that cause you any difficulty in
12 sitting on this jury?

13 A. Not that I can think of.

14 Q. Has the solicitor or any member of her
15 staff prosecuted you or any member of your
16 family?

17 A. No.

18 Q. Have you or any member of your family
19 or a close personal friend been the victim
20 of a crime?

21 A. Not to my knowledge.

22 A. No.

23 Q. Do you have any relatives in jail?

24 A. No, not currently.

25 Q. Not currently?

1 A. No.

2 Q. Have you had any in the past?

3 A. My uncle has been in and out of jail
4 most of my life, but he's not now.

5 Q. What was he in jail for?

6 A. I wasn't very informed. I think mostly
7 drugs.

8 Q. So you don't know?

9 A. Correct.

10 Q. Okay. Are you a member of any group
11 which primarily supports law enforcement,
12 such as MADD?

13 A. No.

14 Q. Do you have any special or particular
15 interest in the outcome of this particular
16 case?

17 A. No.

18 Q. Are you aware of any bias or prejudice
19 against the defendant as a result of the
20 charges which have been brought against him?

21 A. No, sir.

22 Q. Do you have any religious beliefs that
23 would create a bias or prejudice for or
24 against the defendant?

25 A. No.

1 Q. Do you have any religious beliefs that
2 would make you biased or prejudiced for or
3 against the State?

4 A. No, sir.

5 Q. Do you have any bias or prejudice
6 towards the defendant because of his race,
7 being black?

8 A. No.

9 Q. Have you had any bad experiences or
10 good experiences with law enforcement?

11 A. Mainly good. I haven't had any bad
12 experiences with law enforcement.

13 Q. Do know of any reason, personal or
14 otherwise, why you could not serve on this
15 jury?

16 A. Will I be allowed to take notes?

17 Q. Probably. Yes, ma'am.

18 A. Then I -- I'm ADD, and I have to take
19 certain measurements to make sure that I am
20 keeping track of what is going on.

21 Q. To answer your question -- yes, ma'am,
22 normally when a juror wants to take notes
23 during a trial, I will allow you to do it.
24 I'll cover that at the time that I give you
25 the notepads. Okay.

1 A. Okay.

2 Q. But the answer to your question is
3 'yes.'

4 Q. Do you know of any other personal
5 problems that you would have in serving on a
6 jury?

7 A. I can't think of any.

8 Q. Do you know of any reason why you could
9 not give the State and the Defendant a fair
10 and impartial trial?

11 A. No.

12 Q. Going back to your discussion about a
13 type three, did you understand the
14 explanation that I gave to you earlier today
15 concerning the State's responsibility to
16 prove aggravating circumstances and then the
17 issue of mitigating circumstances?

18 A. I believe I understand the difference
19 between the two but I don't know if I
20 understand the State's responsibility. Do
21 you mean in order to convict someone of
22 murder that the State has to prove ---

23 Q. What I was saying is that the trial is
24 in two parts.

25 A. Okay.

1 Q. I am talking about the second part,
2 which is the penalty phase of the trial.

3 A. Okay.

4 Q. In order for the jury to make a
5 determination of life without parole or
6 death, the State has to prove one
7 aggravating circumstance.

8 A. Okay.

9 Q. All twelve jurors have to believe and
10 understand and vote that the State has
11 proven that aggravating circumstance. Do
12 you understand?

13 A. In order for the?

14 Q. That's the first step. Okay?

15 A. Okay.

16 Q. For the jury to even consider giving
17 death.

18 A. Okay.

19 Q. Okay? Do you understand that?

20 A. Yes.

21 Q. Because if you don't -- if all twelve
22 jurors do not agree on the aggravating
23 circumstance or that the State has prove it,
24 then you wouldn't go any further and the
25 sentence would be life without parole. Do

1 you understand?

2 A. Okay.

3 Q. Now, let's assume that all twelve
4 jurors have approved and agreed that the
5 State proved an aggravating circumstance,
6 regardless of what it is, -- do you
7 understand?

8 A. (Affirmative nod).

9 Q. Then you move to the mitigation.
10 Before you can make a determination of life
11 without parole or death, you have to
12 consider all the mitigating factors. Do you
13 understand that?

14 A. Yes, sir, I understand.

15 Q. So what I am saying to you is that you
16 have to look at the aggravating
17 circumstances, the mitigating circumstances,
18 before you make a decision of life without
19 parole or death. Do you understand?

20 A. Yes, sir.

21 Q. Does that clarify what I told you this
22 morning?

23 A. Yes, sir.

24 Q. Or is it basically -- it's basically
25 the same thing that I told you this morning.

1 A. (Affirmative nod).

2 THE COURT: Whose turn?

3 EXAMINATION

4 BY SCARLETT WILSON:

5 Q. Ms. Peterson, thanks for being patient
6 with us. I think after you go through this
7 part you will understand why it takes a
8 while and why it is hard to predict how long
9 we are going to spend with you.

10 Now what happens is that the State has
11 an opportunity to ask you some questions and
12 the defense will have an opportunity to ask
13 you questions to really learn more about
14 your thoughts about life without parole and
15 about the death penalty. Okay?

16 A. (Affirmative nod).

17 Q. When you said that you were a type
18 three juror, will you tell me just kind of
19 in your own words what that meant to you?

20 A. It means to me that I believe in some
21 cases the death penalty would be justified.
22 But before that were ever applied to a
23 situation, I would really need it to be
24 proven to me that that would be what was
25 just.

1 Q. The right thing?

2 A. Right.

3 Q. Okay. In your mind, do you think that
4 we should have the death penalty as an
5 option in South Carolina?

6 A. (Pause) -- yes.

7 Q. You think that it is good that is an
8 option?

9 A. Yeah -- the last option.

10 Q. That sounds like you would start off
11 with life without parole and you'd have to
12 see something more to convince you of the
13 death penalty?

14 A. Correct.

15 Q. So that kinds of makes the next part of
16 what I was going to ask a little easier.
17 The Judge was talking to you about that
18 second phase. In the second phase, you
19 would have already, if you were on a jury --
20 if you got to the second phase, there would
21 be no question about the defendant's guilt.
22 You and eleven others would have decided on
23 that in the first phase, you would have
24 found that it was a malicious murder,
25 meaning a murder that was committed by

1 someone with a heart fatally bent on
2 mischief, wicked; that sort of thing.

3 But in that second phase, that still
4 wouldn't be enough, just that there was a
5 murder conviction. Do you follow me?

6 A. (Affirmative nod).

7 Q. Okay. So you wouldn't have a problem
8 when the Judge told you that in order to
9 even consider the death penalty that the
10 State is going to have to prove one
11 aggravating circumstance, making sure that
12 we did that before you and the other jurors
13 considered the death penalty?

14 A. (No verbal response).

15 Q. Did you follow me?

16 A. I would -- the question?

17 Q. You wouldn't have a problem holding the
18 State to its burden of proofing that
19 aggravating circumstance?

20 A. No.

21 Q. You would want to make sure that we did
22 that before you and the others actually
23 considered the death penalty?

24 A. Correct.

25 Q. Even then your mind would be open to

1 the possibilities and those mitigating
2 factors that the Judge talked about?

3 A. Yes, ma'am.

4 Q. That would be very important to you?

5 A. Yes.

6 Q. What types of things about a defendant
7 would you want to hear?

8 A. I would look for an attitude of
9 remorse.

10 Q. So whether or not the person had
11 remorse would mean a lot to you?

12 A. Yes, it would.

13 Q. Why is that?

14 A. Because I know that prison isn't an
15 end-all even if you spend the rest of your
16 life there. Hearts can change. People can
17 do good to one another, even within the
18 walls of a prison. I know that rarely has a
19 person's heart gone so far that I would
20 think that they would be beyond, you know,
21 change or hope of some kind, you know.

22 Q. So for you it would be your -- your
23 decision would perhaps be based more on the
24 defendant and the defendant's circumstances
25 than the crime itself?

1 A. I think probably the crime itself would
2 shed light to me on the defendant. Of
3 course, I don't know anything about this.
4 I've never really considered being in this
5 kind of situation, having to decide between
6 those two things. Thinking about it now, I
7 feel like there would be a lot of things
8 going into the decision but a very important
9 thing would be that person's attitude.

10 Q. How about their background? Things
11 that happened to them in childhood, drug and
12 alcohol abuse, that sort of information,
13 would that also factor into your decision?

14 A. Probably -- I mean, (pause) -- I
15 suppose so but not overly much. I would try
16 to be as, you know, just as possible, I
17 suppose.

18 Q. Can you think of situations where death
19 would be appropriate, more appropriate than
20 life without parole?

21 A. I've been trying to think of that. I
22 think if it were presented to me that I
23 might be able to recognize it but it seems
24 to me, without ever having, you know,
25 considered it before that if someone seems

1 actually, like you said, you know, bent on
2 being evil and that if they -- you know that
3 they would never, you know, consider doing
4 good for another person, you know, after
5 that point, you know, it's a hard thing to
6 consider but I feel like, you know, --
7 (pause). If a person is really that far, as
8 to where they really want to want to wreak
9 havoc on other people and damage other
10 people's lives, spread darkness, then I
11 don't think, you know, are going -- if I
12 don't think that they are going to change,
13 you know. That would be a hard thing to
14 decide that, you know.

15 Q. In that scenario or in hearing those
16 thoughts from you, do you think that you
17 would give consideration to the death
18 penalty?

19 A. It's a difficult thing to think about
20 but -- (pause) -- it's hard to think about
21 denying someone a chance at life, a chance
22 of changing. Really the only thing that
23 would ever make me think of it would be --
24 if I thought that they would consider
25 denying other people, I -- (pause).

1 Q. I saw -- you filled out a questionnaire
2 for the court and I believe that you
3 answered all the questions, even some that
4 were optional. I think you mentioned that
5 you -- you said Air Ministry.

6 A. Yes, ma'am:

7 Q. Can you tell me what that means?

8 A. I work on the radio station -- I am
9 employed there on an as-needed basis, I used
10 to work there in a permanent position but
11 now I come in if somebody is sick or if they
12 need me.

13 It is a Christian station and my duties
14 there generally are to run -- make sure that
15 it is running properly, get on the air as to
16 the songs and artists, read Bible verses on
17 the air, be generally encouraging on the
18 air, answering the phone, talk to people who
19 are calling whether for information or to
20 put in a request. Some times people call,
21 you know, in the middle of something awful
22 for them and, you know, I am just there.

23 Q. In your work there or in your faith, do
24 you know what your church's or your beliefs
25 -- I guess your religion, what that view is

1 of the death penalty?

2 A. I've never really discussed it at
3 length with anyone but I know that the wages
4 of sin is death but the gift of God is
5 eternal life through Christ Jesus and I --
6 (pause). I know that everyone needs to be
7 given that chance to change their life, but
8 sometimes people reach a point where they
9 have been presented with that option and
10 they simply are not going to -- (pause).

11 I've never, honestly, really considered
12 the gravity of the death penalty before.
13 The only time that I've ever really
14 considered it was in middle school and I had
15 to write a paper to someone (phonetic) who
16 was sentenced to die.

17 Q. And what did you decide?

18 A. I just think I was angry with him at
19 that point and I just wrote like a little
20 speech of what I would say to him. It was
21 already decided that he was going to be sent
22 to death, I believe. I just wanted him to
23 think about all the people's lives that he
24 had changed for the worse.

25 Q. So back to my question, do you think

1 that you could seriously and fairly consider
2 the death penalty?

3 A. Yes, ma'am.

4 Q. Okay.

5 SCARLETT WILSON: That's all that
6 I have, Judge.

7 THE COURT: Mr. Maguire?

8 WILLIAM MAGUIRE: Ms. Peterson, I
9 don't have any questions for you. Thank you
10 very much for coming.

11 JUROR NUMBER 263: Thank you
12 for having me.

13 THE COURT: Any Motions?

14 WILLIAM MAGUIRE: No, sir.

15 SCARLETT WILSON: Beg the Court's
16 indulgence -- we don't have any Motions.

17 THE COURT: Ms. Peterson. What
18 we are doing is composing a group of people
19 from which we can draw a jury for this
20 trial. Okay?

21 JUROR NUMBER 263: When we get
22 to a certain number, we are going to start
23 doing that. So the bailiff is going to give
24 you a card. On that card is a phone number.
25 Okay. Call the phone number after 5:00

1 o'clock tonight and there will be a message
2 for the jury panel. Follow those
3 instructions. The instructions may be to
4 call in tomorrow at ten o'clock, it might be
5 to come tomorrow at one o'clock or it may be
6 to call in tomorrow night. Follow those
7 instructions. You are part of that group
8 now. Do you understand?

9 JUROR NUMBER 263: Yes, sir.

10 THE COURT: Please don't discuss
11 the case with anyone, your parents or
12 anybody. Please don't read anything in the
13 paper or watch television. Okay? If
14 somebody tries to talk to you about it,
15 please walk away.

16 JUROR NUMBER 263: Yes, sir.

17 THE COURT: Can you do that?

18 JUROR NUMBER 263: Yes, sir.

19 THE COURT: Thank you very much.

20 I will see you later.

21 (JUROR NUMBER 263 EXITS COURTROOM)

22 (JUROR NUMBER 200 ENTERS COURTROOM)

23 CLERK: State your name.

24 JUROR NUMBER 200: Jervise Locke.

25 THE COURT: Mr. Locke, have you

1 had an opportunity to review the sheet that
2 I gave to you?

3 JUROR NUMBER 200: Yes, sir.

4 THE COURT: Did you understand
5 the opinions on the death penalty in type
6 one, two and three?

7 JUROR NUMBER 200: Yes, sir.

8 THE COURT: Were you able to
9 determine whether you would fit into any of
10 those types?

11 JUROR NUMBER 200: Yes, sir.

12 THE COURT: Which type would you
13 fit into?

14 JUROR NUMBER 200: Type three.

15 THE COURT: Okay, I have a few
16 question for you and then the attorneys will
17 have some questions for you. There are no
18 right or wrong answers. Okay?

19 JUROR NUMBER 200: Yes, sir.

20 JERVISE LOCKE, having been
21 previously sworn to tell the truth testified
22 as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q. Have you had an opportunity to review

1 the questionnaire of potential witnesses of
2 a hundred and thirty-four names?

3 A. Yes, sir.

4 Q. Do you recognize any of those names?

5 A. No, sir.

6 Q. You don't know anybody and did not
7 recognize the person by name; is that
8 correct?

9 A. That's correct.

10 Q. Okay. Do you know anything about the
11 case or have you heard anybody talking about
12 the case?

13 A. No, sir.

14 Q. Did you hear anybody talking about the
15 case, any other jurors this week?

16 A. No, sir.

17 Q. Have you read anything in the paper
18 about it?

19 A. No, sir.

20 Q. Have you seen anything on television?

21 A. No, sir.

22 Q. Do you have any relatives or close
23 personal friends employed in law
24 enforcement?

25 A. No, sir.

1 Q. Has the solicitor or any member of her
2 staff prosecuted you or any member of your
3 family?

4 A. No, sir.

5 Q. Have you or any member of your family
6 or close personal friend been the victim of
7 a crime?

8 A. No, sir.

9 Q. Do you have any relatives in jail?

10 A. No, sir.

11 Q. Are you a member of any group which
12 primarily supports law enforcement, such as
13 MADD?

14 A. No, sir.

15 Q. Do you have any special or particular
16 interest in the outcome of this case?

17 A. No, sir.

18 Q. Are you aware of any bias or prejudice
19 against the defendant as a result of the
20 charges which have been brought against him?

21 A. No, sir.

22 Q. Do you have any religious beliefs that
23 would make you biased or prejudiced for or
24 against the defendant?

25 A. No, sir.

1 Q. Do you have any religious beliefs that
2 would make you biased or prejudiced for or
3 against the State?

4 A. No, sir.

5 Q. Do you have a bias or prejudice against
6 the defendant because of his race, being
7 black?

8 A. No, sir.

9 Q. Have you had any bad experiences or
10 good experiences with law enforcement?

11 A. Good.

12 Q. Good?

13 A. Yes, sir.

14 Q. Do know of any reason, personal or
15 otherwise, as to why you cannot serve on
16 this jury?

17 A. No, sir.

18 Q. Do you know of any reason why you could
19 not give the State and the Defendant a fair
20 and impartial trial?

21 A. No, sir.

22 Q. Earlier today I had explained to you
23 about aggravating circumstances and
24 mitigating circumstances. Do you understand
25 what I told you?

1 A. Yes, sir.

2 Q. Do I need to go over it again very
3 briefly with you?

4 A. Yes, I would appreciate that.

5 Q. A death penalty case is two parts, the
6 guilt part and the sentencing part. Do you
7 understand?

8 A. Yes, sir.

9 Q. I am going to talk to you about the
10 sentencing part. In the sentencing part,
11 the jury makes the determination of life
12 without parole or death. Do you understand?

13 A. Yes, sir.

14 Q. Before the jury can consider life
15 without parole or death, basically you have
16 to listen to two things. Okay? Two subject
17 matters. Okay. Do you understand?

18 A. Yes, sir.

19 Q. The State is required to prove one
20 aggravating circumstance. I do not know
21 what it is in this case. But they are
22 required to prove at least one aggravating
23 circumstance. Do you understand?

24 A. Yes, sir.

25 Q. All twelve jurors have to vote that the

1 State has proven that aggravating
2 circumstance, do you understand?

3 A. Yes, sir.

4 Q. If all twelve jurors do not find that
5 the State has proven that aggravating
6 circumstance, whatever it is, then it is
7 life without parole; you don't go any
8 further. Do you understand?

9 A. Yes, sir.

10 Q. After the jury has determined that
11 there is an aggravating circumstance, then
12 you look at the mitigation. Mitigation is
13 things that may be offered to reduce the
14 severity of the crime. It will be about the
15 defendant, the defendant's life, or the
16 crime itself. Do you understand?

17 A. Yes, sir.

18 Q. Then the jury has to consider the
19 mitigating circumstances. Once you listen
20 to mitigating circumstances, having
21 previously found that the State had proven
22 the aggravating circumstance, then you make
23 a determination of whether the defendant
24 should receive life without parole or death.
25 Do you understand?

1 A. Yes, sir.

2 Q. All right.

3 THE COURT: Whose turn?

4 EXAMINATION

5 BY WILLIAM MAGUIRE:

6 Q. Good afternoon, Mr. Locke.

7 A. Good afternoon.

8 Q. Are you in the Navy now?

9 A. I was.

10 Q. Was your last place here?

11 A. No, sir, it was in Virginia Beach,
12 Virginia.

13 Q. Okay. What I want to do, sir, is sort
14 of take you through the process like the
15 Judge did. Our starting point is that I'm
16 going to put on a jury where you and eleven
17 other people are going to hear a case.

18 Okay?

19 A. Okay.

20 Q. The charge is going to be murder. That
21 means that you are finding that a person
22 committed, without justification or excuse,
23 killed an innocent person with malice
24 aforethought. Malice aforethought in South
25 Carolina being defined as have a black,

1 depraved, wicked heart fatally bent on
2 mischief. It's kind of an archaic
3 definition but it's what we have.

4 That is the first step in the process.

5 Then you and the jury would hear more
6 information -- like the Judge said,
7 circumstances that raise the enormity of the
8 offense.

9 I am not going to talk about
10 specifics. I am just going to throw out
11 some terms here and I want you to see what I
12 am talking about. I want you to imagine
13 this event: a home invasion, basically
14 burglary of a home with people in it,
15 kidnaping, rape, armed robbery, burglary,
16 murder. In that situation, is the life
17 penalty in prison severe enough?

18 A. I would say yes.

19 Q. Do you consider life without parole to
20 be a severe punishment?

21 A. Yes.

22 Q. Let's assume for argument sake, and I
23 am not asking you which way that you are
24 going to vote in this case or any other
25 case, but for argument sake let's say that

1 you had voted for the death penalty after
2 hearing about a crime/murder with a lot of
3 aggravation. What would you want to hear or
4 what do you think could make you go
5 backwards, down to life without parole?

6 A. Basically I would be looking for the
7 remorse factor, the remorse that an
8 individual would have, that committed the
9 crime would have. That's basically what I
10 was thinking of, the magnitude of the
11 remorse factor -- for me.

12 Q. So if somebody were to commit a crime,
13 wreak havoc on someone's life and not even
14 feel badly about it, it may be the death
15 penalty for them. But for somebody who
16 shows substantial remorse, maybe not for
17 them. That is a factor that you would
18 consider?

19 A. Yes, sir.

20 Q. Okay. Obviously you haven't heard
21 anything about this case, really. You would
22 keep an open mind throughout the whole
23 process?

24 A. Yes.

25 Q. You would want to hear everything?

1 A. Yes, sir.

2 Q. From both sides?

3 A. Yes, sir.

4 Q. And you're not going to make a decision
5 until you get to the very end.

6 A. Yes, sir.

7 Q. Because that is what the law requires
8 and you could follow the law?

9 A. Yes, sir.

10 Q. And you would want to hear everything
11 that prosecutor had to say and everything
12 that I had to say?

13 A. Yes, sir.

14 Q. And you would withhold judgment until
15 the very end of the case, until the time the
16 Judge said 'now is the time to go decide'?

17 A. Yes, sir.

18 Q. In a case like this, the -- it's
19 different from, say, like a civil case where
20 one might get in a car accident, people are
21 in court suing each other for a car
22 accident. The big issue in that case might
23 be who had the right-of-way at a traffic
24 life. Somebody is right and somebody is
25 wrong. The light was either green or red.

1 That's a right/wrong type case and you have
2 to try to figure out what happened.

3 In sentencing, the decision is
4 described as an individual moral judgment.
5 It's personal to each and every individual
6 juror. Is that something that you are okay
7 with?

8 A. Yes, sir..

9 Q. What I am getting to is that it is not
10 a straw poll or a democracy where you just
11 kind of take a vote and got with the first
12 vote majority. You wouldn't do that, would
13 you?

14 A. No, sir.

15 Q. It sounds like you're the kind of
16 person who would stick to your own
17 individual moral judgment?

18 A. Yes, sir.

19 Q. And you would respect everybody else's?

20 A. Yes, sir.

21 Q. And you would want them to respect
22 yours?

23 A. Yes, sir.

24 Q. Mr. Broughton is entitled to fairness
25 not just in the courtroom but also in the

1 jury room. If things got hostile in there
2 and people were kind of being a bully or
3 just weren't being fair, you could send out
4 a note to the Judge and say, 'things aren't
5 fair in here.' Could you do that?

6 A. Yes, sir.

7 Q. Would you insist on civility in the
8 jury room?

9 A. Yes, sir.

10 Q. And you would protect people if they
11 had an opinion, their own individual
12 opinion; you would protect them, let them
13 have that?

14 A. Yes, sir.

15 WILLIAM MAGUIRE: One second --
16 that's all that I have. Thank you, sir.

17 THE COURT: Solicitor?

18 EXAMINATION

19 BY SCARLETT WILSON:

20 Q. Mr. Locke, can you tell me a little
21 more about when you think the death penalty
22 might be appropriate?

23 A. Like I said, before I -- for me it's
24 all about the remorse factor. If I felt a
25 strong sense of no remorse whatsoever, I

1 could stand by the death penalty.

2 Q. So if a person was remorseful, it
3 wouldn't matter to you what the circum-
4 stances of the crime were?

5 A. No, it would matter. Don't get me
6 wrong. It would matter.

7 Q. Maybe that wasn't a good way for me to
8 ask the question. The death penalty
9 wouldn't be appropriate regardless of what
10 the crime was if someone were sorry?

11 A. No, not necessarily. No. It's -- uh,
12 if I may -- like I said, what I meant to try
13 to say is remorse, meaning like -- for me
14 it's more than just an accidental-like --
15 even though your intentions was to do
16 whatever it was that you set out to do and
17 in the process things transpired and things
18 went away that just kind of like -- like you
19 didn't expect or whatever. I would look at
20 the remorse towards that situation.

21 If you just set in your mind that 'Hey,
22 this is what I am going to do. I am going
23 to go in here and do it.' That's when I
24 would feel like the death penalty is a fair
25 decision, because to me you walked in --

1 there was no -- you know, there was no
2 thought about anything other than
3 accomplishing whatever it was that you set
4 out to accomplish; no concern whether there
5 were casualties or not, you know; that that
6 was that person's intention and there was no
7 remorse whatsoever. Then I'd feel equal
8 justice would be the death penalty.

9 Q. I guess -- I'll ask it this way, for
10 you is remorse the be-all, end-all?

11 A. (No verbal response).

12 Q. Is remorse the deciding factor between
13 the death penalty and life without parole?

14 A. I wouldn't say that I would put my -- I
15 wouldn't say, 'Okay, I am putting my final
16 stamp on it.' But it helps me make the
17 decision because, like I said, ---

18 Q. It's a factor?

19 A. Yeah, it's more -- like I said, maybe
20 the word -- maybe I shouldn't have used
21 "remorse" but that was the only word that
22 came to me. To me it's more or less -- like
23 I said, I believe a person can kill somebody
24 -- set in their mind that that's what they
25 are going to do, they do it. You know, they

1 don't think nothing about it, nothing about
2 who they affected or whatever; they are fine
3 with it, they did what they set out to do,
4 you know, whatever, no remorse whatsoever --
5 and even if there was, the remorse was, you
6 know, it was really low. I mean, there was
7 a little bit of remorse, like 'oh, well, I
8 wish I'd done it sooner' or something -- you
9 know, whatever. Then --, (pause).

10 Q. So there are a lot of variables in
11 that, is what you're saying?

12 A. Yes, ma'am.

13 Q. How significant the remorse is, how bad
14 the facts are?

15 A. Yes, ma'am.

16 SCARLETT WILSON: That's all that
17 I have, Judge.

18 THE COURT: Any Motions?

19 WILLIAM MAGUIRE: No, sir.

20 SCARLETT WILSON: No, sir.

21 THE COURT: Mr. Locke, the
22 bailiff is going to give you a card that
23 has a phone number on it. Call the phone
24 number after 5:00 o'clock today and there
25 will be a message for the jury panel.

1 Follow those instructions. The instructions
2 may say to call in tomorrow at ten o'clock,
3 it might be to come tomorrow at one o'clock
4 or it may be to call in tomorrow night.

5 Follow those instructions. You are part of
6 that group now. Do you understand?

7 JUROR NUMBER 263: Yes, sir.

8 THE COURT: Please don't discuss
9 the case with anyone, your wife or anybody
10 else. Understand?

11 JUROR NUMBER 200: Yes, sir.

12 THE COURT: Please don't read
13 anything in the paper or watch television.
14 Okay?

15 JUROR NUMBER 200: Yes, sir.

16 (JUROR NUMBER 200 ENTERS COURTROOM)

17 (JUROR NUMBER 390 ENTERS COURTROOM)

18 CLERK: State your name, sir.

19 JUROR NUMBER 390: Gary Wilson.

20 THE COURT: Good afternoon, Mr.
21 Wilson. Did you read the sheet concerning
22 murder and the three opinions about the
23 death penalty?

24 JUROR NUMBER 390: Yes, sir.

25 THE COURT: Did you understand

1 type one, type two and type three?

2 JUROR NUMBER 390: Yes, sir.

3 THE COURT: Could you determine
4 if you were in type one, two or three?

5 JUROR NUMBER 390: Type one.

6 THE COURT: You're a type one?

7 JUROR NUMBER 390: Yes, sir.

8 THE COURT: So -- type one says
9 that you could never give death regardless
10 of the crime, is that right?

11 JUROR NUMBER 390: Yes, sir.

12 THE COURT: That is your thoughts
13 on the death penalty?

14 JUROR NUMBER 390: Yes, sir.

15 THE COURT: I appreciate your
16 thoughts, Mr. Wilson. You are entitled to
17 those thoughts but I am going to have to
18 excuse you from service on this jury. Okay.

19 JUROR NUMBER 390: Okay.

20 THE COURT: Thank you very much.

21 (JUROR NUMBER 390 EXCUSED)

22 (JUROR NUMBER 390 EXITS COURTROOM)

23 THE COURT: Bring the next one
24 in.

25 BAILIFF: We are waiting on

1 them to come up, Your Honor.

2 THE COURT: Okay. And this is
3 group number fifteen.

4 (JUROR NUMBER 336 ENTERS COURTROOM)

5 BAILIFF: State your name,
6 please.

7 JUROR NUMBER 336: James Allen
8 Murray, 336.

9 THE COURT: Mr. Murray, did you
10 have an opinion to read the sheet concerning
11 the murder and the three types of opinions
12 about the death penalty?

13 JUROR NUMBER 336: Yes, sir.

14 THE COURT: Did you understand
15 it?

16 JUROR NUMBER 336: Yes, sir.

17 THE COURT: Were you able to
18 determine whether your opinion concerning
19 the death penalty fit into type one or two
20 or three?

21 JUROR NUMBER 336: I fit into
22 number one.

23 THE COURT: Number one?

24 JUROR NUMBER 336: Correct.

25 THE COURT: Number one, you could

1 never give death irregardless of the crime;
2 is that correct?

3 JUROR NUMBER 336: That's
4 right.

5 THE COURT: I appreciate your
6 opinion, I respect your opinion but I'm
7 going to find that you can't serve on this
8 particular juror. Okay?

9 JUROR NUMBER 336: Okay.

10 THE COURT: Thank you very much

11 (JUROR NUMBER 336 EXCUSED

12 (JUROR NUMBER 336 ENTERS COURTROOM)

13 (JUROR NUMBER 354 ENTERS COURTROOM)

14 BAILIFF: State your name.

15 JUROR NUMBER 354: Angela
16 Vanderhorst.

17 THE COURT: I'm sorry? What is
18 your name?

19 JUROR NUMBER 354: Angela
20 Vanderhorst.

21 THE COURT: Ms. Vanderhorst, how
22 are you doing today?

23 JUROR NUMBER 354: I am fine.
24 How are you? .

25 THE COURT: Earlier you told me

1 that you knew Jessica Broughton; is that
2 correct?

3 JUROR NUMBER 354: Yes.

4 THE COURT: And I said that we
5 would talk about it when we brought you in
6 but before we get to that, I want to ask you
7 a couple of other questions. Okay?

8 JUROR NUMBER 354: Yes, sir.

9 THE COURT: Did you have an
10 opportunity to read the sheet that I gave
11 you concerning murder and the three types of
12 opinions about the death penalty?

13 JUROR NUMBER 354: Yes.

14 THE COURT: Did you understand
15 type one, two and three?

16 JUROR NUMBER 354: Yes.

17 THE COURT: Were you able to
18 determine which type that you fit into?

19 JUROR NUMBER 354: One.

20 THE COURT: You fit into one?

21 THE COURT: Do you understand
22 that one says that you could never sentence
23 someone to death regardless of the crime; is
24 that right?

25 JUROR NUMBER 354: (Affirmative

1 nod).

2 THE COURT: All right. I
3 appreciate your opinion and I respect your
4 opinion but I am going to have to excuse you
5 from service on this jury. Thank you very
6 much.

7 (JUROR NUMBER 354 EXCUSED)

8 (JUROR NUMBER 354 EXITS COURTROOM)

9 (JUROR NUMBER 232 ENTERS COURTROOM)

10 CLERK: Have a seat and state
11 your name.

12 JUROR NUMBER 232: Christopher
13 Morgan.

14 THE COURT: Mr. Morgan, how you
15 doing today?

16 JUROR NUMBER 232: I am good.

17 THE COURT: Have you had an
18 opportunity to review the form concerning
19 the murder and the three different opinions
20 about the death penalty?

21 JUROR NUMBER 232: Yes, sir.

22 THE COURT: Did you understand
23 types one, two and three?

24 JUROR NUMBER 232: Yes, sir.

25 THE COURT: Were you able to

1 determine if you fit into type one, two or
2 three?

3 JUROR NUMBER 232: Yes, sir.

4 THE COURT: Which type do you fit
5 into?

6 JUROR NUMBER 232: Type two.

7 THE COURT: Type two says that
8 you would give people death that were
9 convicted of murder, all of the time; is
10 that correct?

11 JUROR NUMBER 232: Yes, sir.

12 THE COURT: Okay. Thank you
13 very much. I respect your opinion, however
14 I am going to have to excuse you from
15 service on this jury.

16 (JUROR NUMBER 232 EXCUSED)

17 (JUROR NUMBER 232 EXITS COURTROOM)

18 (JUROR NUMBER 267 ENTERS COURTROOM)

19 CLERK: Have a seat and state
20 your name.

21 JUROR NUMBER 267: Connie Pittman.

22 THE COURT: Ms. Pittman, have you
23 had an opportunity to review the form that I
24 gave you concerning murder and the different
25 opinions about the death penalty?

1 JUROR NUMBER 267: Yes.

2 THE COURT: Did you understand
3 type one, two and three?

4 JUROR NUMBER 267: Yes.

5 THE COURT: Could you determine
6 if you fit into one of those categories?

7 JUROR NUMBER 267: Yes.

8 THE COURT: Which category do you
9 fit into?

10 JUROR NUMBER 267: Three.

11 THE COURT: All right, then I
12 have some questions for you and then the
13 attorneys may have some questions for you.
14 There are no right or wrong answers.

15 EXAMINATION

16 BY THE COURT:

17 Q. Did you have an opportunity to review
18 the names, one hundred forty-three names -
19 excuse me. The one hundred thirty-four
20 names that I gave you?

21 A. Yes I did.

22 Q. Did you recognize any names?

23 A. No, I did not.

24 Q. So you do not know anybody on that
25 list?

1 A. I do not.

2 O I am going to ask you some questions.
3 There are no right or wrong answers. Just
4 answer the questions as best you can. Can
5 you do that?

6 A. Yes.

7 Q. Do you know anything about the case?
8 Have you heard anybody talking about?

9 A. No, sir.

10 Q. Did you hear any jurors talking about
11 it earlier in the week?

12 A. No, sir.

13 Q. Have you read anything in the paper
14 about it?

15 A. No, sir.

16 Q. Have you seen anything on television?

17 A. No, sir.

18 Do you have any relatives or close personal
19 friends employed in law enforcement?

20 A. No, sir.

21 Q. Has the solicitor or anyone on her
22 staff prosecuted you or any member of your
23 family?

24 A. No.

25 Q. Have you or any member of your family

1 or a close personal friend even been the
2 victim of a crime?

3 A. Do I have close friends who were
4 victims?

5 Q. That were the victim of a crime?

6 A. I had my aunt that was the victim of a
7 crime.

8 Q. What happened?

9 A. She was raped, murdered.

10 Q. How long ago was that?

11 A. Back in the early '80s.

12 Q. Early '80s?

13 A. Yes.

14 Q. Were you involved -- did your aunt live
15 here in South Carolina?

16 A. No, sir, it was in North Carolina and I
17 was in Maine.

18 Q. You were in Maine?

19 A. (Affirmative nod), my husband was in
20 the Air Force.

21 Q. Where were you, at Dwyer Air Force
22 Base?

23 A. Loring.

24 Q. Loring Air Force Base?

25 A. (Affirmative nod).

1 Q. Were you involved in the case at all?

2 A. No, sir.

3 Q. Would that cause you any difficulty in
4 sitting on this jury?

5 A. No, sir.

6 Q. You think that you could set that aside
7 and be fair to both the State and the
8 Defendant?

9 A. Yes, sir.

10 Q. Do you have any relatives in jail?

11 A. No, sir.

12 Q. Are you a member of any group which
13 primarily has as its purpose the support of law
14 enforcement, such as MADD?

15 A. No, sir.

16 Q. Do you have any special or particular
17 interest in the outcome of this case?

18 A. Just that it be done right.

19 Q. Pardon?

20 A. Just that it would be done properly.

21 Q. Are you aware of any bias or prejudice
22 against the defendant based on the charges
23 which have been brought against him?

24 A. No, I don't.

25 Q. Do you have any religious beliefs that

1 would make you biased or prejudiced for or
2 against the defendant?

3 A. No, sir.

4 Q. Do you have any religious beliefs that
5 would make you biased or prejudiced for or
6 against the State?

7 A. No, sir.

8 Q. Do you have a bias or prejudice against
9 the defendant because of his race, being
10 black?

11 A. No, sir.

12 Q. Have you had any bad experiences or
13 good experiences with law enforcement?

14 A. Good.

15 Q. Do you know of any reason, personal or
16 otherwise, as to why you cannot serve on
17 this jury?

18 A. No, sir.

19 Q. Do you know of any reason why you could
20 not give the State and the Defendant a fair
21 and impartial trial?

22 A. No, sir.

23 Q. All right. Earlier today I explained
24 to you that the second phase of a death
25 penalty case. The penalty phase.

1 A. Yes, sir.

2 Q. Did you understand what I said?

3 A. Yes.

4 Q. Do I need to go over it again with you.
5 Briefly?

6 A. You could.

7 Q. And in a death penalty second phase,
8 which we will refer to as the sentencing
9 phase, the State has to prove an aggravating
10 circumstance.

11 Those aggravating circumstances are set
12 out by statute. I do not know in this case
13 what the State is going to prove. However,
14 the State will offer evidence in that
15 penalty phase on aggravation. The
16 aggravation, as I said earlier, is some
17 circumstance or fact that increase the
18 enormity of the crime, that makes it worse.

19 Now, the jury has to decide, all twelve
20 jurors have to unanimously decide that the
21 State has proven the aggravating
22 circumstance beyond a reasonable doubt. If
23 all twelve jurors do not believe that, then
24 it would be life without parole. You would
25 not even consider death. Do you understand

1 that?

2 A. Yes, sir.

3 Q. All right. Let's assume in the second
4 phase that the jury has found, that all
5 twelve jurors have found that the State has
6 proven the aggravating circumstance. Then
7 you would move to the mitigation. The
8 mitigation is information about the crime,
9 information about the defendant. I do not
10 know what that is going to be but it would
11 be information about the defendant, his
12 lifestyle, the crime itself, or other
13 matters. The jury at that time has to
14 consider the mitigation before they make a
15 decision on whether the defendant should
16 receive life, life without parole or death.
17 Do you understand?

18 A. Yes, sir.

19 Q. Now, would you be willing to listen to
20 the mitigating circumstances and the
21 aggravating circumstances before you make a
22 decision?

23 A. Yes, sir

24 Q. Thank you very much.

25 THE COURT: Whose turn?

1 SCARLETT WILSON: I believe that
2 it is my turn.

3 THE COURT: Okay.

4 EXAMINATION

5 BY SCARLETT WILSON:

6 Q. Ms. Pittman, thank you for being
7 patient with us. I think that after you see
8 this part of the process that you might
9 understand a little more about why it has
10 taken us a while and why we cannot predict
11 exactly the time.

12 What we are doing now is that both
13 sides have an opportunity to talk to you a
14 little more so that we can have a better
15 idea or just some category of how you feel
16 about life without parole and how you feel
17 about the death penalty. Okay?

18 A. Yes.

19 Q. You said that you were a type three
20 juror.

21 A. Yes, I am.

22 Q. What does that mean to you?

23 A. I believe that I like to know exactly
24 what we are actually going to hear, being a
25 juror. This is a life result we're talking

1 about. This is our life and we need to know
2 if the person -- what category to put him
3 in. Whether the death -- whether it was
4 premeditated or whatever, accidental or
5 what.

6 THE COURT: Let me ---

7 JUROR NUMBER 267: I would like
8 -- I would like to see the end ---

9 THE COURT: Let me interrupt you
10 just a ---

11 JUROR NUMBER 267: --- before I
12 could say what ---

13 THE COURT: Let me interrupt you
14 just a second. Okay? And tell you that in
15 South Carolina all murders are premeditated.
16 That is not an issue. That decision was
17 made in the guilt phase. Do you understand?

18 JUROR NUMBER 267: Oh, okay.

19 THE COURT: Please proceed.

20 JUROR NUMBER 267: I would like
21 to hear everything.

22 EXAMINATION CONTINUED

23 BY SCARLETT WILSON:

24 Q. So in the situation that we'd be
25 talking about -- and we can't talk about the

1 fact of this case, so we kind of have to
2 talk to you in the abstract, generalities,
3 so if I lose you on a question let me know
4 and I will try to redo it. If you were on a
5 jury and you and the other eleven -- if you
6 were deciding a person's guilt, you'd found
7 them guilty of murder, that would mean that
8 all of you had agreed that the state had
9 proven beyond a reasonable doubt ---

10 A. Yeah.

11 Q. --- that the person committed the
12 murder, that it was intentional and that at
13 some time before that fatal blow that they
14 had malice in their heart; that it was mean,
15 it was wicked, it was a heart fatally bent
16 on mischief. That is what the law says.

17 A. Okay.

18 Q. All right. Are you with me on what
19 that would mean, to have a murder
20 conviction?

21 A. Yes, I understand.

22 Q. It is not like a felony DUI where, you
23 know, someone is drinking and driving and
24 someone gets kills or a situation where two
25 people get in a fight and provoke each other

1 and one of them gets killed.. Nothing like
2 that.

3 A. Okay. I understand.

4 Q. So in order to get to that second
5 phase, that the Judge is talking about,
6 there would already have found the Defendant
7 guilty by the jury. Okay?

8 A. Okay.

9 Q. The second phase has some, Your Honor,
10 requirements too. That is what we are
11 trying to figure out, if you could be open
12 minded throughout that second phase and not
13 have decided on a penalty just after a
14 conviction.

15 A. Yeah.

16 Q. Could you wait and decide the penalty
17 after hearing the rest?

18 A. Yes. ;

19 Q. And the Judge would also tell you, as
20 he did in his initial remarks today, that
21 the State in that second phase, the jury
22 would then have to find at least one
23 aggravating circumstance.

24 A. Yes, I understand.

25 Q. And that would be something that made

1 it worse than a statutory murder. Are you
2 with me?

3 A. Yes, I am.

4 Q. So in that situation, could you hold
5 out in making your decision and hold the
6 State to its burden of proving that
7 aggravator beyond a reasonable doubt?

8 A. Yes.

9 Q. And if we didn't prove it beyond a
10 reasonable doubt, you could go with life
11 without parole; because that's what the law
12 would require?

13 A. Yes.

14 Q. Okay. Now, if you and the other jurors
15 during that penalty phase heard all kinds of
16 evidence about aggravation and saw a brutal,
17 heinous crime -- for example, it might
18 involve a rape, a beating with that murder.
19 The question would then become, could you
20 still wait before deciding what punishment
21 to get, still wait and hear things about the
22 defendant that might shed light on him as to
23 why?

24 A. Yes, I could.

25 Q. Okay . Could you in looking at those

1 factors give meaningful consideration? I
2 mean, you wouldn't just listen to it and
3 say, 'yeah, I heard you' but give meaningful
4 consideration to things about the
5 defendant's background, things about how
6 he was brought up, things that may have
7 happened to him. Could you consider those
8 things?

9 A. I could.

10 Q. Even in a brutal rape, murder or
11 torture, that sort of thing?

12 A. I could.

13 Q. And also I believe that the Judge
14 mentioned things about maybe a mental defect
15 that it did not rise to them knowing right
16 from wrong but that they were under some
17 type of emotional distress or something like
18 that. Could you also consider that?

19 A. Yes -- for mental?

20 Q. (Affirmative nod).

21 A. I could.

22 Q. Okay. Now, remember in the first phase
23 that in order to find that it was an
24 intentional, malicious murder, they would
25 have had to know right from wrong.

1 A. Okay.

2 Q. We are talking about something less
3 than that but still something affecting the
4 mental faculties?

5 A. Yes

6 Q. You could consider that?

7 A. Yes.

8 Q. Drug and alcohol abuse, things like
9 that. Could you take those and use those as
10 part of your decision?

11 A. I could, yes.

12 Q. All of that would matter to you?

13 A. It wasn't.

14 Q. Do you think that life without parole
15 is a severe punishment?

16 A. It depends on the situation as to
17 whether I think it is severe enough. Life
18 without parole is not lasting, it could
19 revert years down the road.

20 Q. What do you mean "revert"?

21 THE COURT: Ma'am, let me
22 interrupt. Life without parole means what
23 it says. The defendant would die in jail.
24 Okay?

25 JUROR NUMBER 267: Die in jail?

1 THE COURT: Yes, ma'am. Okay.

2 That's the law.

3 EXAMINATION CONTINUED

4 BY SCARLETT WILSON:

5 Q. I mean, you hear people saying all the
6 time that 'well, so and so was convicted of
7 murder and they got out in ten years.' That
8 is not what we are talking about. We are
9 talking that life means life; pine box, grow
10 old in prison. Does that change any of your
11 other answers?

12 A. I think that if he got life with parole
13 that it would be punishment.

14 Q. You mean without parole?

15 A. (Affirmative nod), without parole.
16 Yes; would be punishment. I think it would
17 be severe. Yeah, if he would die there.

18 Q. If you knew that life without parole --
19 not if you knew, the Judge would tell you
20 that would always be an option. Always.

21 A. Okay.

22 Q. Knowing that life without parole is
23 always an option, could you consider the
24 death penalty in certain situations?

25 A. Yes.

1 SCARLETT WILSON: That's all that
2 I have, Judge.

3 THE COURT: Mr. Maguire.

4 EXAMINATION

5 BY WILLIAM MAGUIRE:

6 Q. Ms. Pittman, good afternoon.

7 A. Good afternoon.

8 Q. I know that this a difficult process,
9 very inconvenient, that you've been waiting
10 around a long time. I am going to ask just
11 a little bit more of you and that is to just
12 be candid in your responses. Okay?

13 A. (Affirmative nod).

14 Q. What I want to do is, I want to pick
15 up where the prosecutor left off and we can
16 walk through this process pretty quickly.
17 I am going to put you on a jury with eleven
18 other people and you're going to get a case.
19 That case is going to be where a person, a
20 defendant, killed intentionally an innocent
21 person with malice aforethought. Malice
22 aforethought has been described as a black,
23 evil, heart fatally bent on wickedness and
24 mischief. Are you with me?

25 A. Yes, I am.

1 Q. It is not self-defense, it is not an
2 accident, the gun did not go off
3 accidentally. This is not a barroom fight
4 that broke out into a brawl. This is an
5 intentional, deliberate act, choosing to
6 take the life of an innocent person. Are
7 you with me?

8 A. Yes, I am.

9 Q. That we are going to walk down this
10 trial (sic) just a little bit further and
11 that is when you get to the aggravation part
12 from the State. You have heard the charges
13 in this case -- and I am not going to talk
14 to you about this case but I want you to
15 "see" a scenario with me. Okay?

16 A. Okay.

17 Q. Home invasion, going into a home when
18 people are in it, kidnaping, rape, armed
19 robbery, burglary and murder. Are you still
20 with me?

21 A. Yes.

22 Q. You and the eleven other jurors have
23 convicted a person of that crime with that
24 scenario. Okay?

25 A. (Affirmative nod).

1 Q. In that situation, do you feel that the
2 life in prison penalty is severe enough in
3 that situation?

4 A. I would have to say no, that I would
5 give him the death penalty.

6 Q. Okay. Based on that, not knowing more
7 but just knowing that, if it would be for
8 the death penalty?

9 A. Yes.

10 Q. Okay. Would any of these background
11 things about the defendant, like if he had
12 an abusive father when he was ten years' old
13 stuff like that, could that get you from
14 death down to life?

15 A. If he had an abusive parent?

16 Q. Sure. For example.

17 A. No.

18 Q. Now, the person knows right from wrong.

19 A. No.

20 Q. That would not be relevant in your
21 decision?

22 A. No.

23 Q. Because it doesn't directly bear --
24 what is driving your decision-making process
25 are the facts of the crime, where the person

1 knew what they were doing and they chose to
2 take an innocent life?

3 A. Yes.

4 Q. And in that situation you would be
5 consistently in favor of the death penalty?

6 A. Yes.

7 Q. At this other things that we talked
8 about, the background, an abusive father,
9 that kind of thing would not be relevant in
10 your decision-making process?

11 A. Not for that, no.

12 Q. Okay, despite the fact that you want to
13 be fair and open-minded, not make a decision
14 until the end, despite all of that you are
15 just being completely honest?

16 A. Yes.

17 THE COURT: Solicitor?

18 WILLIAM MAGUIRE: I have nothing
19 further, Your Honor.

20 THE COURT: Solicitor?

21 EXAMINATION RESUMED

22 BY SCARLETT WILSON:

23 Q. The question that I'm kind of -- what I
24 am trying to understand is, again, not where
25 you lean, whether you lean towards life or

1 whether you lean towards death but whether
2 or not you would keep an open mind
3 throughout the penalty phase?

4 A. I would.

5 Q. That means more than just listening.

6 A. (Affirmative nod).

7 Q. Whether you could really consider
8 anything a defendant might put forth?

9 A. I would listen to everything that's put
10 out there and I would discuss it with the
11 other jurors as to what -- if I were to
12 misunderstand what was being said out there.
13 But the way that he was presenting it, I
14 would have to lean towards the death penalty
15 for that specific situation which he was
16 describing.

17 Q. Again, there aren't any right or wrong
18 answers.

19 A. No. I am just saying how I would view
20 it.

21 Q. You would have to lean towards the
22 death penalty in a brutal aggravated murder,
23 rape?

24 A. Yes.

25 Q. So the question then becomes -- because

1 that would all come in the State's part,
2 where we were trying to prove an aggravating
3 circumstance.

4 A. Yeah.

5 Q. The question is, if you could judgment,
6 if you could hold your opinion from being
7 set in stone and automatically give the
8 death penalty right then and listen -- and
9 really consider things that the defense
10 might put up afterwards?

11 A. I would listen to see if there was
12 anything being said that would change the
13 action -- the act of what was being done,
14 that caused that. I would listen to that
15 and see how it was presented, if it was
16 presented well enough to change my thoughts
17 on that.

18 Q. So if -- you would have to see if it
19 had meaning to you?

20 A. Or if it was right.

21 Q. How about, again, remorse? How would
22 that -- I can't remember if I asked you
23 that, I'm sorry.

24 A. You didn't.

25 Q. How about remorse, is that something

1 that you would be interested in hearing
2 about -- if the person who committed the
3 crime, committed this murder was really,
4 really sorry and that you were convinced
5 that they really truly were sorry. Could
6 that factor into your decision?

7 A. The fact that they had remorse and they
8 still did the crime, then I would have to --
9 I would have to lean on the actual facts of
10 what went on, is what I would have to do
11 about it.

12 Q. Okay. So would that mean that you're a
13 type two juror, that nothing else matters
14 after the facts of the crime?

15 A. I would have to hear the evidence of
16 what they were presenting that would lead
17 towards the change of mind. He asked me
18 straight out about a situation and I acted
19 on what he said. I haven't hear any other
20 stuff towards that, you know, that changed
21 my mind a to when he presented it.

22 Q. Okay.

23 A. But if I have other evidence to see how
24 it was, then I would have to hear that
25 evidence.

1 Q. Thank you.

2 A. I mean, I'd have to hear the evidence
3 before I could tell you anything.

4 Q. No doubt about it. I know it's hard,
5 talking again in generalities.

6 A. But the facts of what he said and I
7 don't have any other evidence as to what it
8 is, then I'd have to go by what is being
9 said.

10 Q. Thank you.

11 THE COURT: Ms. Pittman, let me
12 ask you this question, you've said once or
13 twice that you would lean on the facts of
14 what happened when it happened. You also
15 said that you would have an open mind and
16 would want to hear everything before you
17 finalized your decision.

18 But I want to ask you is, what
19 would it take to change your mind from the
20 death penalty based on the facts of the
21 crime itself? What would you be looking
22 for? You said remorse would not enter into
23 the picture. What would you be looking for?

24 JUROR NUMBER 267: What
25 happened in regards to led him to do what he

1 did do is what I would have to do.

2 THE COURT: What led him to do what
3 he did do?

4 JUROR NUMBER 267: To do the
5 act. What brought that act on.

6 THE COURT: Okay. What if that
7 was something that someone tied together
8 with what happened in childhood, a brain
9 injury or -- I don't know.

10 JUROR NUMBER 267: If it was a
11 brain injury, it's something dealing with
12 his brain that's not right.

13 THE COURT: What else would tend
14 to -- that you would listen to that could
15 change your mind?

16 JUROR NUMBER 267: If he has a
17 tendency to that, if he has a history -- if
18 the person being tried has a tendency of
19 being bad, you know, being in trouble
20 throughout his life, uh, then it just
21 escalated into that act that he actually
22 did.

23 THE COURT: Okay, so you're
24 talking about ---

25 JUROR NUMBER 267: Than that

1 could ---

2 THE COURT: You would look at the
3 pattern of behavior to this act, is that
4 what you're saying?

5 JUROR NUMBER 267: I would hope
6 that it would come out in the trial so that
7 I could evaluate it.

8 THE COURT: Okay.

9 JUROR NUMBER 267: It is hard
10 to tell you what I would do. I would have
11 to ---

12 THE COURT: I am not asking you
13 what you would do. I am just asking what
14 type of things would make you move off the
15 death penalty based on the facts of the
16 crime. That's all that I am asking. I
17 don't ask -- I am not asking you what you
18 would do. I am just asking you what type of
19 things would cause you -- or that you would
20 seriously consider to move from the death
21 penalty based on the facts of the crime.
22 You given me two or three.

23 JUROR NUMBER 267: Yes, sir.
24 If the person willfully went out with the
25 intention of doing what he was going to do

1 to another person, that is a planned
2 calculation right there.

3 THE COURT: That has already
4 been decided in the first phase of the
5 trial.

6 SCARLETT WILSON: Judge, may we
7 approach?

8 THE COURT: Yes, ma'am.

9 SCARLETT WILSON: Or could we have
10 the ---

11 THE COURT: Yeah, Ms. Pittman,
12 would you step out in the hall?

13 BENCH CONFERENCE:

14 WILLIAM MAGUIRE: Judge, could
15 I ---

16 SCARLETT WILSON: Judge, ---

17 WILLIAM MAGUIRE: Could I be
18 heard first?

19 THE COURT: No, she asked.

20 WILLIAM MAGUIRE: I object to
21 being here. I think that she was halfway
22 through an answer.

23 THE COURT: Go ahead. What?

24 SCARLETT WILSON: Judge, my
25 concern is your telling the jury that that

1 would already be decided. It wouldn't be
2 decide that this was something planned out.
3 Malice aforethought can be something that
4 happens in a split second before a murder.

5 THE COURT: That's fine.

6 SCARLETT WILSON: But it
7 matters to these people, Judge, and we're --
8 Mr. Maguire has said that over and over and
9 the Court joining in that. I think we are
10 forcing people who are uneducated and not
11 sensitive to the courtroom to conjure up
12 things that they just don't know. She has
13 said over and over that it would just depend
14 and that she ---

15 THE COURT: I understand
16 that: I'm trying to get her to tell me what
17 type of things that in her mind ---

18 SCARLETT WILSON: She told you
19 that ---

20 BRUCE DURANT: She's
21 already told you two or three.

22 THE COURT: She's told me
23 two or three. Okay. What's your objection?

24 SCARLETT WILSON: My objection
25 sit that ---

1 BRUCE DURANT: I think that
2 she is being badgered at this point.

3 THE COURT: Overruled. Go
4 have a seat. It's overruled. Go have a
5 seat.

6 (BENCH CONFERENCE CONCLUDED)

7 THE COURT: Bring the juror in.

8 (JUROR NUMBER 267 ENTERS COURTROOM)

9 THE COURT: Ms. Pittman, before
10 you went out in the hall I'd asked you what
11 type of things would tend to change your
12 mind. You'd given me a couple. Are there
13 any more than you would like to tell me?

14 JUROR NUMBER 267: No. That's
15 basically what I am thinking, just what I
16 told you.

17 THE COURT: So you can't think of
18 anything else?

19 JUROR NUMBER 267: no.

20 THE COURT: Thank you so very
21 much. I appreciate your sincerity and your
22 honesty. If you will, step out in the hall
23 again, please, ma'am. Just in the hall. I
24 will be with you shortly.

25 (JUROR NUMBER 267 EXITS COURTROOM)

1 THE COURT: Is the door shut yet?

2 BAILIFF: Yes, sir.

3 THE COURT: Any Motions?

4 WILLIAM MAGUIRE: Yes, sir. Move
5 to strike for cause. Failure to do so would
6 violate Mr. Broughton's Sixth and Fourteenth
7 Amendments rights to an fair and impartial
8 jury.

9 I am not sure how much you want to
10 hear from me. It seems pretty clear to me
11 that as soon as it was a capital murder that
12 she was for the death penalty, that she was
13 consistent with that.

14 I asked her 'would you consistently
15 be for the death penalty?' "Yes."

16 Then I went over it again. When we
17 talk about specifics of what could be
18 mitigating, I referenced Your Honor's
19 comments that you had made, we talked about
20 the background stuff and things like that.
21 And the only thing that she could come up
22 with would be some mental defect after the
23 suggestion of a brain injury.

24 There is nothing else -- she kept
25 going back to the facts of the crime, the

1 facts of the crime, that she wants to hear
2 stuff or evidence but she always went right
3 back to the facts.

4 The fact is, if the facts are
5 capital murder she has got the death penalty
6 said in her mind.

7 THE COURT: She said that she was
8 very interested in what led up to the act,
9 what caused that act, led up to it about him
10 about his criminal record! She did come out
11 with several things. Okay?

12 WILLIAM MAGUIRE: I think what
13 she was talking about was -- she went into a
14 criminal pattern of behavior, nothing
15 aggravating, nothing ambiguous whatsoever,
16 nothing mitigating.

17 Also that if it was thought out ---

18 THE COURT: Well, one of the
19 statutory mitigations is no prior criminal
20 record or violence.

21 WILLIAM MAGUIRE: Well, we've got
22 a strong arm conviction. It doesn't matter.
23 We were trying -- everybody was trying to
24 get her to say something about mitigation
25 and she kept landing on aggravating

1 circumstance, a course of criminal conduct.

2 That if somebody was doing bad things all
3 along, that was bad for her.

4 Then also it was what led up to the
5 crime. The only thing that she would give
6 is if there was any planning or premedita-
7 tion. That was also bad.

8 I mean, she gave you nothing good.
9 Nothing mitigation in the expanse of her
10 imagination with us throwing examples to her
11 like softballs. She didn't grab onto
12 anything. She was consistent automatic
13 death penalty as soon as it was capital
14 murder.

15 I even did the 'you would want to
16 get an open mind', 'you would want to be
17 fair' and all that. Of course she is going
18 to say yes to all that stuff. Those are
19 zero words/answers. They have no merit,
20 they have no worth whatsoever.

21 When you really ask her about
22 what's going on she is consistent automatic
23 death penalty in a capital case and can't
24 come up with a shred of mitigation to ever
25 get her off of that.

1 THE COURT: Okay. Thank you very
2 much. Solicitor?

3 BRUCE DURANT: That is simply
4 not true. This lady came up with a lot more
5 mitigation than a lot of jurors you've
6 already qualified.

7 On constant questioning by Mr.
8 Maguire and the Court she said -- she said
9 'brain injury', 'she said things in his life
10 that led up t it', I ---

11 WILLIAM MAGUIRE: I am not ---

12 THE COURT: Sit down!

13 WILLIAM MAGUIRE: All right.

14 THE COURT: Sit down. Don't
15 interrupt. I will listen to you but don't
16 interrupt.

17 WILLIAM MAGUIRE: I was just going
18 to say that we've got the wrong lawyer
19 arguing.

20 THE COURT: Sit down! Yes, sir?

21 BRUCE DURANT: She talked about
22 the prior criminal history. She was
23 interested in whether or not this was
24 someone who had constantly been in trouble
25 before, which is a statutory mitigating

1 (sic) circumstance. She repeatedly said
2 that she would hold her opinion to the end
3 of the case and take all these things into
4 consideration before she makes her decision.
5 That's all that is required of her.

6 THE COURT: Thank you.

7 BRUCE DURANT: Certainly she
8 leans towards the death penalty but I think
9 it was clear, taking her testimony in the
10 whole, that there were things that could
11 move her off of that.

12 THE COURT: Anything else?

13 BRUCE DURANT: No, sir.

14 THE COURT: Thank you very much.
15 I'll be glad to hear you now. What were you
16 going to say?

17 WILLIAM MAGUIRE: I was going to
18 say that Ms. Wilson should have been arguing
19 since it was her juror, but ---

20 THE COURT: I don't mind Mr.
21 Durant arguing. If you want somebody else
22 to argue at your table, feel free to do
23 that.

24 WILLIAM MAGUIRE: That's fine. I
25 mean, the only thing -- the only thing that

1 I will say is that if one of them gets on
2 the panel that should not have been -- I
3 mean if is the horse that I am going to ride
4 to the Supreme Court, I will take it. It is
5 not good for me, she clearly is not
6 qualified. If she is on the panel, I think
7 we will all just have to hear this again.

8 THE COURT: And as far as
9 interruptions, I mean ---

10 WILLIAM MAGUIRE: I apologize.

11 THE COURT: I mean, two things.
12 I can't listen to both of you. She (court
13 reporter) can't take both of you down. I
14 want to hear what you have to say, so don't
15 interrupt.

16 If you have something to say, I
17 will listen to you before I rule. All
18 you've got to do is let me know that you've
19 got something to say.

20 If you are emotional that you can't
21 remember it, write it on a piece of paper.
22 Okay?

23 WILLIAM MAGUIRE: I will wait my
24 turn in line. Yes, sir.

25 THE COURT: All right. Motion

1 denied. You want to bring us our next juror
2 -- or bring her in for a second, please.

3 (JUROR NUMBER 267 ENTERS COURTROOM)

4 THE COURT: Ms. Pittman, the
5 bailiff is going to give you a card. The
6 card has a phone number on it. Call that
7 number after five o'clock. Okay?. Follow
8 the instructions. The instructions may be
9 to report tomorrow, it may be to call
10 sometime tomorrow. Okay?

11 JUROR NUMBER 267: Yes, sir.

12 THE COURT: Please don't discuss
13 the case with anyone else, don't watch
14 anything on television or read the paper.
15 Thank you very much.

16 (JUROR NUMBER 267 EXITS COURTROOM)

17 THE COURT: We have got two more
18 people on this panel. Okay.

19 (JUROR NUMBER 311 ENTERS COURTROOM)

20 CLERK: State your name.

21 JUROR NUMBER 311: Yvette
22 Shuler.

23 THE COURT: Ms. Shuler, how are
24 you doing today?

25 JUROR NUMBER 311: Fine.

1 THE COURT: Good. Have you had
2 an opportunity to review the sheet that I
3 gave you concerning murder and the various
4 opinions about the death penalty?

5 JUROR NUMBER 311: Yes, sir.
6 I did.

7 THE COURT: Did you understand
8 types one, two and three?

9 JUROR NUMBER 311: Yes, sir.

10 THE COURT: What category do you
11 fall in?

12 JUROR NUMBER 311: Type three.

13 THE COURT: Type three?

14 JUROR NUMBER 311: Type three.

15 Yes, sir.

16 THE COURT: Okay, I've got some
17 questions for you.

18 EXAMINATION

19 BY THE COURT:

20 Q. Have you had an opportunity to review
21 the witness list?

22 A. Yes, sir.

23 Q. Did you recognize any of the names or
24 know anyone on the list?

25 A. Yes, I did know one person, Sharon

1 Shuler.

2 Q. Do you know her number?

3 A. Twenty-two (22)

4 Q. I'm sorry, what number?

5 A. Twenty-two.

6 Q. Sharon Shuler. How do you know Sharon
7 Shuler?

8 A. She's my cousin.

9 Q. She is your cousin?

10 A. (Affirmative nod).

11 Q. How often do you see her?

12 A. Maybe once or twice a year.

13 Q. How long has she worked for the
14 Berkeley County Sheriff's office, do you
15 know?

16 A. No, sir, I don't know. I know that she
17 just started recently within the past year
18 or so I think.

19 Q. In the past year or so?

20 A. (Affirmative nod).

21 Q. Have you ever had any conversations
22 with her about her views on law enforcement?

23 A. No, sir.

24 Q. Had any conversations with her about
25 her views on defendants or law enforcement

1 in general?

2 A. No, sir.

3 Q. Would that cause you any difficulty in
4 sitting on this jury?

5 A. No, sir.

6 Q. Can you set that relationship aside and
7 be fair to both the State and the Defendant?

8 A. Yeah.

9 Q. Thank you very much. I am going to
10 ask you some questions and then the
11 attorneys are going to ask you some
12 questions. Okay?

13 A. Okay.

14 Q. Do you have any knowledge of the case?

15 A. No, sir.

16 Q. Do you know anything about it at all?

17 A. No, sir.

18 Q. Have you heard anybody talk about it
19 this week?

20 A. No, other than hearing rumors, and that
21 may or may not be about the case.

22 Q. What rumors have you heard?

23 A. Just that it was probably a murder
24 case. That's all.

25 Q. You heard that from other jurors this

1 week?

2 A. Yes.

3 Q. Have you read anything in the paper
4 about it?

5 A. No, sir.

6 Q. Have you seen anything on television?

7 A. No, sir.

8 Q. Do you have any relatives or close
9 friends, other than the lady who you have
10 already identified, working with law
11 enforcement?

12 A. No, sir.

13 Q. Has the solicitor or any member of her
14 staff prosecuted you or any member of your
15 family?

16 A. No, sir.

17 Q. Have you or any member of your family
18 or a close personal friend been the victim
19 of a crime?

20 A. No, sir.

21 Q. Do you have any relatives in jail?

22 A. No, sir.

23 Q. Are you a member of any group which
24 primarily supports law enforcement, such as
25 MADD?

1 A. No, sir.

2 Q. Do you have any special interest or
3 particular interest in the outcome of this
4 case?

5 A. No, sir.

6 Q. Are you aware of any bias or prejudice
7 against the defendant as a result of the
8 charges which have been brought against him?

9 A. No, sir.

10 Q. Do you have any religious beliefs that
11 would make you biased or prejudiced for or
12 against the defendant?

13 A. No, sir.

14 Q. Do you have any religious beliefs that
15 would make you biased or prejudiced for or
16 against the State?

17 A. No, sir.

18 Q. Do you have a bias or prejudice against
19 the defendant because of his race, being
20 black?

21 A. No, sir.

22 Q. Have you had any good or bad
23 experiences or good experiences with law
24 enforcement?

25 A. No, sir.

1 Q. Do know of any reason, personal or
2 otherwise, why you cannot serve on this
3 jury?

4 A. No, sir.

5 Q. Do you know of any reason why you could
6 not give the State and the Defendant a fair
7 and impartial trial?

8 A. No, sir.

9 Q. Earlier today I explained to you the
10 two phases of a trial, the second phase
11 being the penalty phase. Do you understand
12 what I told you?

13 A. Yes, sir.

14 Q. Do I need to review it with you?

15 A. I don't believe so.

16 Q. Okay.

17 THE COURT: Whose turn?

18 EXAMINATION

19 BY WILLIAM MAGUIRE:

20 Q. Good afternoon. Is it Ms. Shuler?

21 A. Yes.

22 Q. Good afternoon, Ms. Shuler. How are
23 you doing today?

24 A. Fairly well.

25 Q. I want to start off just asking you a

1 little bit about your questionnaire. You
2 indicated that you were a witness in a
3 criminal case before?

4 A. Yes, sir.

5 Q. Where was that?

6 A. It was in this courtroom. I am not
7 sure, Berkeley County.

8 Q. And was it a criminal case or a civil
9 case?

10 A. It was a criminal case.

11 Q. Do you remember who the lawyers were?

12 A. No, sir.

13 Q. You wouldn't happen to recognize Ms.
14 Kennedy over here as one of the lawyers?

15 A. No, sir.

16 Q. Was that a pleasant process for you or
17 an uncomfortable process?

18 A. Well, I wouldn't say that it was
19 pleasant, because of what the case was, but
20 -- (pause).

21 Q. What was the case?

22 A. It was a child molestation.

23 Q. That's a difficult topic?

24 A. Yes, sir.

25 Q. And what was the outcome of the case?

1 A. I believe that he was found guilty.

2 Q. And when you say that it was difficult,
3 it was difficult hearing about the victim
4 and ---

5 A. That's correct.

6 Q. Your heart went out to the victim?

7 A. Yes.

8 Q. Sexual abuse against children is pretty
9 sensitive, typically, subject?

10 A. Yes.

11 Q. What I am going to do -- I am going to
12 ask that you come with in your imagination
13 and I am going to put you on a jury right
14 here, you and eleven other people.

15 A. Okay.

16 Q. We are going to start out with you and
17 eleven others having convicted a person of
18 murder. In South Carolina murder is the
19 intentional unlawful killing of an innocent
20 person with malice aforethought. Malice
21 aforethought being defined as have a black,
22 depraved, wicked heart fatally bent on
23 mischief and wickedness. Are you with me?

24 A. Yes.

25 Q. An intentional choice to take an

1 innocent life?

2 A. (Affirmative nod).

3 Q. Then you and your eleven other people,
4 after having convicted a person, you would
5 hear what is called aggravation. I am not
6 going to mention any facts to you or
7 specifics. I am not going to talk to you
8 about this case but I want to speak in
9 generalities. I want you to see this crime
10 with me. Okay?

11 A. Okay.

12 Q. A home invasion, burglary, armed
13 robbery, kidnaping, rape, murder -- all at
14 one time.

15 A. Okay.

16 Q. One event. Are you with me?

17 A. Yeah.

18 Q. Okay. Given that scenario, do you
19 think the life penalty, the life in prison
20 penalty is severe enough in that situation?

21 A. I believe that it depends on the
22 circumstances of the case, the evidence.

23 Q. Do you mean like how violent the crime
24 might have been?

25 A. Correct.

1 Q. Who the victims are?

2 A. I think more the intimate details of
3 the crime.

4 Q. Fair enough. Let's assume for argument
5 sake that it is pretty bad. You could
6 consider both death and life in these cases.
7 Correct?

8 A. Correct.

9 Q. For argument sake, let's say that it is
10 bad enough for you where you're for the
11 death penalty. Okay?

12 A. (Affirmative nod).

13 Q. I am going to bring you back to a
14 concept that the Judge talked to you about,
15 which is mitigation evidence; which could be
16 something about the defendant, this walk in
17 life, who he is, that sort of thing.

18 A. (Affirmative nod).

19 Q. Can anything about him or his back-
20 ground or his character move you from the
21 death penalty to the life penalty?

22 A. I would say 'yes.'

23 Q. What would that be for you?

24 A. The details around his life, what has
25 happened to him in his life.

1 Q. For instance, we have already talked
2 about sexual molestation. If you heard
3 something like that, would you give it great
4 weight and importance?

5 A. I would give it importance. I mean, it
6 would depend. I do believe that people can
7 change. You know, what happens to your
8 lifetime can cause problems but you can also
9 -- it can also cause you to be a better
10 person. So -- (pause).

11 Q. Since you talked about people changing,
12 would substantial remorse be something that
13 you would place great importance on or any
14 importance whatsoever?

15 A. (Affirmative nod), maybe not "great".

16 Q. And that's because the deed is done and
17 there is nothing that you can do to bring
18 the person back?

19 A. That's correct.

20 Q. So your focus would be on things
21 leading up to the event?

22 A. Yes.

23 Q. Let's say that it is something removed,
24 like ten or fifteen years ago in a
25 defendant's background, has no connection to

1 the crime, would that have any relevance in
2 your decision making?

3 A. Once again it would depend on the
4 evidence set forth and the situation.

5 Q. And how strong that evidence might be?

6 A. That's correct.

7 Q. And are you talking about the evidence
8 of the crime itself or the evidence of what
9 may have happened to the defendant?

10 A. It could be both.

11 Q. Fair enough. The concept of mercy with
12 you, Ms. Shuler, is mercy something that if
13 freely giveth or is it earned?

14 A. I believe that it is earned.

15 Q. How would somebody go about earning it?

16 A. I guess helping me understand --
17 understanding what happened. Trust --
18 understanding what was happening in someone
19 life, at what point they are.

20 Q. Fair enough. Fair enough. I want to
21 talk to you a little bit about the
22 difference of this case that we are here for
23 and some other legal case like a civil case,
24 such as a car wreck. If you were sitting on
25 a car wreck case the issue might be who had

1 the right-of-way, was the light red or
2 green. That's a fact issue. Somebody is
3 right, somebody is wrong. Pretty much.

4 A. That's true.

5 Q. In a sentencing case where the decision
6 is whether somebody lives or somebody dies.
7 That is described in the law as an
8 individual moral judgment or an individual
9 moral assessment based on that individual
10 juror's walk in life. Does that sound fair .
11 to you?

12 A. Yes, it does.

13 Q. You would agree with me that it
14 shouldn't be a straw poll and go with the
15 majority?

16 A. No, I think that there should be a
17 consensus and understanding by the jury and
18 everyone can live with whatever the outcome
19 is going to be.

20 Q. In cases like this where it is so grave
21 a situation, life or death, you -- could you
22 -- you would respect everybody else's
23 individual moral judgment?

24 A. Yes, sir.

25 Q. You would want yours to be respected?

1 A. Yes, I would.

2 Q. And at the end of the day could you
3 simply agree to disagree?

4 A. Yes.

5 WILLIAM MAGUIRE: If I could have
6 just one second, Judge, ---

7 THE COURT: Yes, sir.

8 WILLIAM MAGUIRE: Ms. Shuler,
9 that's all that I have for you. Thank you
10 for much for coming.

11 THE COURT: Solicitor, do you
12 have any questions?

13 BRUCE DURANT: No questions,
14 Your Honor.

15 THE COURT: Are there any
16 Motions?

17 WILLIAM MAGUIRE: No, sir.

18 THE COURT: Ms. Shuler, the
19 bailiff is going to give you a card. There
20 is a phone number on the card. Please call
21 the number after five o'clock today or, say,
22 after six o'clock today. There will be a
23 message for the jury panel. Please follow
24 those instructions. Okay?

25 JUROR NUMBER 311: Okay.

1 THE COURT: Don't talk to anybody
2 about the case, don't read anything in the
3 paper or watch television about the case.
4 Okay?

5 JUROR NUMBER 311: Okay.

6 THE COURT: Thank you very much.
7 We will see you later.

8 (JUROR NUMBER 311 EXITS COURTROOM)

9 (JUROR NUMBER 82 ENTERS COURTROOM)

10 THE COURT: Ms. Doherty, how are
11 you doing today?

12 JUROR NUMBER 82: I am fine.

13 THE COURT: Have you had an
14 opportunity to review the sheet concerning
15 the opinions about the death penalty?

16 JUROR NUMBER 82: Yes, sir.

17 THE COURT: Did you understand
18 types one, two and three?

19 JUROR NUMBER 82: Could you
20 determine if you fit into any of those
21 categories?

22 JUROR NUMBER 82: Number one.

23 THE COURT: You fit into number
24 one?

25 JUROR NUMBER 82: Yes.

1 THE COURT: You understand that
2 on number one that you could never sentence
3 someone to death regardless of the crime?

4 JUROR NUMBER 82: Right.

5 THE COURT: Is that what you
6 understood?

7 JUROR NUMBER 82: Yes.

8 THE COURT: And that is your
9 opinion?

10 JUROR NUMBER 82: Right.

11 THE COURT: I respect that
12 opinion. I appreciate that opinion. I am
13 going to excuse you from service on this
14 jury. Okay? Thank you very much.

15 JUROR NUMBER 82: Thank you.

16 (JUROR NUMBER 82 EXCUSED)

17 (JUROR NUMBER 82, EXITS COURTROOM)

18 THE COURT: Let me see the
19 attorneys up here just a second. I don't
20 need this on the record. I am just going
21 to talk about scheduling with them.

22 (OFF RECORD BENCH CONFERENCE)

23 (BRIEF RECESS 4:16 - 4:35 P.M.)

24 (DEFENDANT PRESENT)

25 THE COURT: Anything from the

1 State before we bring in the first juror?

2 BRUCE DURANT: No, sir.

3 THE COURT: Defense ready?

4 WILLIAM MAGUIRE: Yes, sir.

5 THE COURT: Bring us the first
6 juror, please, ma'am.

7 (JUROR NUMBER 353 ENTERS COURTROOM)

8 CLERK: State your name.

9 JUROR NUMBER 353: Darren Turner.

10 THE COURT: Mr. Turner, how are
11 you doing today?

12 JUROR NUMBER 353: I am doing
13 well. How are you, sir?

14 THE COURT: Okay. Have you had
15 an opportunity to review the form that I
16 gave you concerning murder and the three
17 opinions about the death penalty?

18 JUROR NUMBER 353: Yes, sir.

19 THE COURT: Did you understand
20 it?

21 JUROR NUMBER 353: Yes, sir.

22 THE COURT: Do you have any
23 questions about it?

24 JUROR NUMBER 353: No, sir.

25 THE COURT: Did you determine

1 whether you fell into type one, two or
2 three?

3 JUROR NUMBER 353: After
4 reading those categories, I felt that I fit
5 best into type three.

6 THE COURT: Type three?

7 JUROR NUMBER 353: Yes, sir.

8 THE COURT: I've got some
9 questions I'll need to ask you and then the
10 attorneys will have some questions that they
11 will want to ask you.

12 EXAMINATION

13 BY THE COURT:

14 Q. Did you review the potential witness
15 list of one hundred thirty-four names?

16 A. Yes, sir.

17 Q. Did you know any of this?

18 A. No, sir.

19 Q. Did you recognize any names?

20 A. No, sir.

21 Q. Account. Mr. Turner, I'm going to ask
22 you some questions and then the attorneys
23 will ask you some questions. Okay?

24 A. Okay.

25 Q. There are no right or wrong answers.

1 Just answer the questions as truthfully and
2 as best you can. Okay? If you don't know
3 the answer, say that you don't know. Okay?

4 A. Okay.

5 Q. Have you heard anything about the case
6 this week from any of the jurors are
7 anybody?

8 A. I have briefly heard some discussion
9 regarding what it was about.

10 Q. What have you heard, specifically
11 heard?

12 A. What I have heard thus far outside of
13 the court, other than that you've told us
14 earlier today, was that a gentleman had
15 murdered a woman, I believe some sort of
16 relative but I'm not sure what it was.
17 Really that's about the most detail that
18 I got, that somebody was killed. T Tt's
19 probably about it.

20 Q. Based on that knowledge, did you form
21 an opinion about the defendant?

22 A. No, I didn't have enough information to
23 really form an opinion. I just heard one
24 person killed another person.

25 Q. Okay. Can you set that aside and base

1 your decision on what you hear in the
2 courtroom?

3 A: (Affirmative nod), I believe that I
4 can.

5 Q. Do you have any relatives or close
6 personal friends employed in law
7 enforcement?

8 A. Not close friends. A recent friend --
9 actually my brother is a friend of a
10 gentleman that's a resource officer, but I
11 haven't had any acquaintance with him for
12 quite a few months.

13 Q. He is a friend of your brother? You
14 know him through your brother?

15 A. Yes, sir.

16 Q. Has the solicitor or any member of her
17 staff prosecuted you or any member of your
18 family?

19 A. No.

20 Q. Have you or any member of your family
21 or a close personal friend been the victim
22 of a crime?

23 A. No, sir.

24 Q. Do you have any relatives in jail?

25 A. No, I do not.

1 Q. Are you a member of any group which
2 primarily supports law enforcement, such as
3 MADD?

4 A. No.

5 Q. Do you have any special interest or
6 particular interest in the outcome of this
7 case?

8 A. No.

9 Q. Are you aware of any bias or prejudice
10 against the defendant as a result of the
11 charges which have been brought against him?

12 A. No.

13 Q. Do you have any religious beliefs that
14 would make you biased or prejudiced for or
15 against the defendant?

16 A. Not against the defendant. I did take
17 that into consideration when I made my
18 decision as to whether I was type one, type
19 two or type three.

20 Q. Tell me the factors that you were
21 trying to consider between one -- you said
22 one and three?

23 A. Yes.

24 Q. What were some of those factors that
25 you were considering?

1 A. For me personally battling between
2 whether a person should have the right to
3 grant another person death, outside of what
4 I feel, God has that ability to do. You
5 know, my final decision was that I needed to
6 make a life's approach to that and look at
7 the facts and make that decision, that
8 hopefully that's the right thing to do, and
9 whatever comes of that hopefully God will
10 take that into His hands in the correct way.

11 Q. Do you have any religious beliefs that
12 would make you biased or prejudiced for or
13 against the State? Other than what you just
14 told me.

15 A. No, sir.

16 Q. Do you have a bias or prejudice against
17 the defendant because of his race, being
18 black?

19 A. No, sir.

20 Q. Have you had any bad experiences or
21 good experiences with law enforcement?

22 A. All good experiences.

23 Q. Do know of any reason, personal or
24 otherwise, why you cannot serve on this
25 jury?

1 A. No, sir.

2 Q. Do you know of any reason why you could
3 not give the State and the Defendant a fair
4 and impartial trial?

5 A. No, sir.

6 Q. I had talked to you earlier about a
7 death penalty trial being in two portions,
8 two parts, the guilt part and the sentencing
9 part -- and aggravating circumstances,
10 mitigating circumstances. Did you
11 understand everything that I told you?

12 A. Yes, sir.

13 Q. Do I need to review it for you?

14 A. No, I understand the first time.

15 THE COURT: Thank you very much.
16 Solicitor, your turn.

17 BRUCE DURANT: Thank you, Your
18 Honor.

19 EXAMINATION

20 BY BRUCE DURANT:

21 Q. Good afternoon, Mr. Turner. Thanks for
22 being with us. I just want to take this
23 opportunity to ask you a few questions
24 concerning your views on the death penalty.
25 If you could start, could you just tell me

1 what your views are on the death penalty?

2 A. Up to this morning, I never really put
3 a lot of thought into it. You know,
4 everything that you've seen on the news,
5 the effects of that, I'd sort of taken an
6 outside perspective on that but being put
7 on the stand, it feels a little different.
8 So this afternoon I have done some soul
9 searching on my perspective on that.

10 Q. You mentioned some religion and your
11 faith when you were talking to the Judge.
12 Do you believe that could impair your
13 ability to fairly consider both forms of a
14 verdict in this case, or do you believe that
15 because of your religious faith that it
16 would incline you to vote for life without
17 parole in all cases?

18 A. I chose type three. I am confident at
19 this point that without hearing any
20 information, that I could sway away from
21 that. However, based on information that is
22 presented to me, I believe that it could go
23 either way. At this point, I think that I
24 could vote either for the death penalty or
25 for life in prison.

1 Q. So, in other words, you think that you
2 could vote for the death penalty without
3 violating your conscience or violating your
4 faith, if you felt that was the appropriate
5 penalty in a particular case; is that
6 correct?

7 A. I think given the proper justification,
8 that I could vote either way.

9 Q. Let's talk little bit about that. What
10 kind of cases do you feel like would warrant
11 the death penalty?

12 A. Well, obviously murder to a certain
13 extent -- but I couldn't necessarily gauge
14 how excessive (sic) that would be, to say
15 whether it should be or shouldn't be.

16 As I said, I really have not been in
17 involved in this before -- as most people
18 here probably have not been. So this is
19 going to be new ground for me. It has
20 certainly given me a different perspective
21 on things.

22 Q. Okay.

23 A. That's sort of beating around the bush,
24 but -- not a real concise answer for you.

25 Q. I understand this is a very new

1 situation for you.

2 A. Yes, sir.

3 Q. I know that we're kinda putting you on
4 the spot. That's why we ask these
5 questions, you know, because the law
6 requires and the Judge has already charged
7 you that it is a two-part thing.

8 We're passed finding someone guilty of
9 murder. If we're in the penalty phase,
10 you've passed the point of finding somebody
11 guilty of murder. It's not a question of,
12 you know, an accident or anything like that.
13 It was a murder, he intended to kill
14 somebody, he killed somebody, he did it.

15 Then you move to the second phase where
16 it is incumbent upon us to prove at least
17 one aggravating circumstance beyond a
18 reasonable doubt. If there is one and the
19 jury so finds, then and only then can the
20 jury even consider a death penalty.

21 The death penalty at that point would
22 be based on what you, the jurors, find. It
23 is basically a balancing test. The question
24 is, assuming that you're a juror in this
25 case and you get to this penalty phase, the

1 State has to prove an aggravating
2 circumstance to the satisfaction of the
3 jury.

4 A. Um-humm.

5 Q. The defense can, but is not required
6 to, put up mitigation evidence, what is
7 called mitigation evidence. It can be any
8 -- it could be lots of things. It could be
9 a mental defect, it could be his background,
10 it could be his -- you know, a poverty-
11 stricken background, it could be child
12 abuse, it could be lots of things that made
13 him what he is. Are you interested in
14 listening to that kind of stuff?

15 A. Yeah, I believe so. I think that given
16 the different mitigation characteristics and
17 -- I think that I could analyze those
18 individually and then probably make a
19 decision as to whether there would be a
20 proper justification for life versus death.

21 Q. But there are situations that you could
22 envision in your mind where you think that
23 the death -- given your faith, that you
24 think the death penalty would be
25 appropriate?

1 A. Would be appropriate?

2 Q. Yes.

3 A. Yes.

4 Q. And just to be sure, are those
5 situations something that are personal to
6 you? Would it have to be, for example, a
7 member of your family or something like
8 that?

9 A. Yeah, I think if you bring it closer to
10 your family you're going to get a little bit
11 more ---

12 Q. No, I am not talking about that. Would
13 it have to be -- could you only consider the
14 death penalty in a case where it involved a
15 member of your family?

16 A. No.

17 Q. Okay. And if it came down to it and
18 you were on the this jury and you listened
19 to aggravating circumstances and you
20 listened to mitigating circumstances, if the
21 jury collectively determined that a death
22 sentence was appropriate, could you sign
23 your name on that death verdict form?

24 A. Yes.

25 BRUCE DURANT: Court's

1 indulgence for just a second?

2 THE COURT: Yes, sir.

3 BRUCE DURANT: I have nothing
4 further. Please answer any questions that
5 Mr. Maguire might have for you.

6 THE COURT: Mr. Maguire.

7 EXAMINATION

8 BY WILLIAM MAGUIRE:

9 Q. Mr. Turner?

10 A. Yes, sir.

11 Q. Good afternoon, Mr. Turner. How are
12 you doing?

13 A. Very good, thank you.

14 Q. I want to take you through the process
15 as well and check in with you regarding your
16 decision making and how you.-- how you may
17 analyze a case. Okay?

18 A. Okay.

19 Q. And we are going to start at the very
20 beginning with you getting on a jury with
21 eleven other people and you're going to
22 convict somebody of murder. Okay?

23 A. (Affirmative nod).

24 Q. What that means is that a defendant
25 intentionally took the life of an innocent

1 person with malice aforethought. Malice
2 aforethought being defined as have a black,
3 depraved, wicked heart fatally bent on
4 wickedness and mischief. It is kind of
5 archaic definition but that's our law in
6 South Carolina. Are you with me?

7 A. Yes.

8 Q. And there is no doubt that you've got
9 the right guy, there is no alibi, there is
10 no mistaken ID, it is not self-defense, it
11 is not an accident. The person knew what
12 they were doing, knew right from wrong, a
13 convicted guilty murder, chose to take an
14 innocent life. Is the life in prison
15 penalty appropriate in that situation?

16 A. Without any other mitigation factors,
17 perhaps. I would consider it.

18 Q. Then -- I am going to walk you down
19 this road a little bit further and that is
20 the aggravation phase, where the State would
21 have to prove an aggravating circumstance
22 beyond a reasonable doubt to the
23 satisfaction of all twelve of you, the
24 jurors.

25 I am not going to give you any on

1 factor specific, I am not going to talk
2 about this case but am going to talk about
3 sort of a category. I want you to 'see'
4 this crime with me. Okay?

5 A. Okay.

6 Q. Breaking into a house, basically a home
7 invasion where people are home, burglary,
8 kidnaping, rape, armed robbery, murder. Are
9 you with me?

10 A. (Affirmative nod).

11 Q. Is the life penalty appropriate in that
12 situation?

13 A. Yes.

14 Q. Why?

15 A. I feel that there's quite a few crimes
16 there. It's a decision that a person
17 committed to along the way ---

18 Q. This happened all at one time.

19 A. All together, at the same time?

20 Absolutely, I think that person has made
21 some pretty poor decisions and life without
22 parole is definitely a consideration at that
23 point.

24 Q. How about the death penalty?

25 A. Yes. Including murder, absolutely.

1 Q. And I may have left that out: a home
2 invasion with rape, armed robbery,
3 kidnaping, murder, all at one time. Is the
4 life penalty only severe enough for that
5 kind of crime?

6 A. No, I believe that the death penalty is
7 probably more of a justifiable place for
8 that, for that type of crime -- that list of
9 crimes.

10 Q. That category?

11 A. Committed by one person. I would say
12 'yeah.' Yes.

13 Q. Sure. Regarding things that the Judge
14 talked to you about, regarding somebody's
15 background, like if they had an abusive
16 father when they were ten years old but they
17 knew right from wrong and it didn't really
18 lead up to the crime, could anything like
19 that ever move you from death down to life?

20 A. If -- I don't believe so, no. I think
21 that once a person reaches a certain age,
22 and I am not sure of the gentleman's age but
23 I think they could make their own decisions
24 when they are adults, have their own
25 thoughts, and they could determine what's

1 the past and where they are now.

2 Q. I don't want to put words in your mouth
3 but in our conversation it sounds like if
4 the person knows right from wrong and they
5 are not suffering from a mental defect and
6 they choose to take the life of an innocent
7 person, then that's an appropriate situation
8 for the death penalty?

9 A. Yes.

10 Q. And there's nothing about their back-
11 ground, character, growing up or anything of
12 that, that could move you from death down to
13 life?

14 A. I don't believe so. I believe that
15 would be death.

16 Q. Of course you would wait, of course, to
17 make this decision after hearing everything,
18 all of the evidence, right?

19 A. Um-humm.

20 Q. And you would listen to the laws as the
21 Judge presents it?

22 A. (Affirmative nod).

23 Q. And you would follow the law?

24 A. Absolutely.

25 Q. And you would keep an open mind?

1 A. (Affirmative nod).

2 Q. But in the situation that we've talked
3 about, it would be the death penalty?

4 A. Yes. Without hearing anything else, it
5 would be.

6 WILLIAM MAGUIRE: That's all that
7 I have for you. Thank you.

8 THE COURT: Any Motions?

9 WILLIAM MAGUIRE: Yes, sir.

10 THE COURT: Mr. Turner, would you
11 step out in the hall?

12 (JUROR NUMBER 363 EXITS COURTROOM)

13 THE COURT: Be glad to hear your
14 Motions.

15 WILLIAM MAGUIRE: Move to strike
16 for cause. Failure to do so would violate
17 Mr. Broughton's Sixth and Fourteenth
18 Amendments rights to an fair and impartial
19 jury in this matter.

20 As soon as he realized what capital
21 murder was, he was one hundred percent
22 consistent, he was always on the death
23 penalty.

24 We talked about mitigation. I gave
25 him the example that as long as a person

1 knew what they were -- in fact, I backed him
2 off of capital and just said that in the
3 situation where a person is an adult, knew
4 what they were doing and chooses to take an
5 innocent life -- for him, that was the death
6 penalty. Not only did he hit on the death
7 penalty but he consistently automatically
8 for capital murder -- well, we just narrowed
9 it down to knowing what you're doing,
10 deliberating taking an innocent life, he was
11 consistent with the death penalty there and
12 he said that there was nothing that you
13 could consider about a defendant's
14 background, character, etc., that would get
15 him to move from the death penalty down to
16 the life penalty. He's impaired.
17 Substantially impaired. He should be struck
18 for cause.

19 THE COURT: Mr. Maguire, as I
20 said earlier -- I don't know if it was last
21 night or the day before, you keep leaving
22 out -- and this juror just hit the nail on
23 the head to your last question. When you
24 asked him a question he said, 'Yes, without
25 hearing anything else.' That is what you've

1 been leaving out of these arguments. Okay?

2 Motion denied.

3 Bring us the next -- bring Mr.

4 Turner in.

5 (JUROR NUMBER 353 ENTERS COURTROOM)

6 THE COURT: Mr. Turner, the bailiff

7 is going to give you a card. There is a

8 phone number on the card. Well, we don't

9 even have to give you a card. Be back in

10 the courtroom tomorrow at 2:30.

11 JUROR NUMBER 353: Okay.

12 THE COURT: Don't talk to anybody

13 about the case, don't read anything in the

14 paper or watch television about the case.

15 Okay?

16 JUROR NUMBER 353: Okay.

17 THE COURT: Thank you very much.

18 We will see you tomorrow at 2:30.

19 (JUROR NUMBER 353 EXITS COURTROOM)

20 (JUROR NUMBER 2 ENTERS COURTROOM)

21 CLERK: State your name.

22 JUROR NUMBER 2: Naqual Abdallah.

23 THE COURT: Ms. Abdallah, how are

24 you doing today?

25 JUROR NUMBER 2: Fine. Thank

1 you.

2 THE COURT: Do you have any
3 relatives in Greenville?

4 JUROR NUMBER 2: No, sir.

5 THE COURT: Did you have an
6 opportunity to read the sheet about the
7 murder and the three different types of
8 opinions concerning the death penalty?

9 JUROR NUMBER 2: Yes, sir.

10 THE COURT: Do you understand it?

11 JUROR NUMBER 2: Yes

12 THE COURT: Could you determine
13 if you fell any of three types?

14 JUROR NUMBER 2: Yes, sir.

15 THE COURT: Which type?

16 JUROR NUMBER 2: Three.

17 THE COURT: Three?

18 JUROR NUMBER 2: Yes, sir.

19 THE COURT: All right.

20 NAQUAL ABDALLAH, having been
21 previously sworn to tell the truth testified
22 as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q. Did you have an opportunity to review

1 the list of potential witnesses, which
2 number one hundred thirty-four?

3 A. Yes.

4 Q. Did you recognize any names or did you
5 know anybody on the list?

6 A. No, sir.

7 Q. You did not know anybody on the list?

8 A. No, sir.

9 Q. You did not recognize anybody?

10 A. No, I did not.

11 Q. All right, I'm going to ask you some
12 questions and the attorneys are also going
13 to ask you some questions. There are no
14 right or wrong answers. Just answer the
15 questions as best you can and be as truthful
16 as you can concerning the question. If you
17 don't know the answer, just say that you
18 don't know the answer. Do you understand?

19 A. Yes.

20 Q. Have you heard anybody talk about the
21 case?

22 A. No.

23 Q. This week? Jurors or anybody?

24 A. No.

25 Q. Have you ready anything in the paper

1 about it?

2 A. No.

3 Q. Seen anything on television about it?

4 A. No.

5 Q. Do you have any relatives or close
6 friends employed in law enforcement?

7 A. No, sir.

8 Q. Has the solicitor or any member of her
9 staff prosecuted you or any member of your
10 family?

11 A. No, sir.

12 Q. Have you or any member of your
13 immediate family or a close personal friend
14 been the victim of a crime?

15 A. No, sir.

16 Q. Do you have any relatives in jail?

17 A. No, I do not.

18 Q. Are you a member of any group which
19 primarily supports law enforcement, such as
20 MADD?

21 A. No.

22 Q. Do you have any special or particular
23 interest in the outcome of this case?

24 A. No, sir.

25 Q. Are you aware of any bias or prejudice

1 against the defendant as a result of the
2 charges which the State has brought against
3 him?

4 A. No, I don't.

5 Q. Do you have any religious beliefs that
6 would make you biased or prejudiced for or
7 against the defendant?

8 A. No, sir.

9 Q. Do you have any religious beliefs, that
10 would make you biased or prejudiced for or
11 against the State?

12 A. No, sir.

13 Q. Do you have a bias or prejudice against
14 the defendant because of his race, being
15 black?

16 A. No, sir.

17 Q. Have you had any bad experiences or
18 good experiences with law enforcement?

19 A. Good.

20 Q. Do know of any reason, personal or
21 otherwise, as to why you cannot serve on
22 this jury?

23 A. No, sir.

24 Q. Do you know of any reason why you could
25 not give the State and the Defendant a fair

1 and impartial trial?

2 A. No, sir.

3 Q. Earlier today I had explained to you
4 about the bifurcated or two-part trial, and
5 explained to you about aggravating
6 circumstances and mitigating circumstances.

7 Do I need to review that with you?

8 A. No, sir.

9 Q. Thank you very much.

10 THE COURT: Mr. Maguire.

11 EXAMINATION

12 BY WILLIAM MAGUIRE:

13 Q. Good afternoon, Ms. -- Abdullah?

14 A. Yes, sir.

15 Q. Thank you for being here. I know that,
16 it's difficult for you, you've been waiting
17 a long time. I am just going to ask a
18 little bit more from you, and that is that
19 you be really candid in your responses.

20 There are no right or wrong answers. Okay?

21 A. Yes.

22 Q. When you were filling out the sheet as
23 to number one, two or three, did you
24 hesitate between one of the numbers or did
25 you go straight to three?

1 A. Do you mean in reading this?

2 Q. Yes.

3 A. No, I read all of them.

4 Q. And was it obvious to you that you are
5 a number three, did you think that 'maybe I
6 am the number one' or 'a number two'?

7 A. No. It was obvious.

8 Q. It was obvious?

9 A. (Affirmative nod).

10 Q. You just went straight to number three?

11 A. (Affirmative nod).

12 Q. It was obvious that you would wait to
13 hear all the circumstances?

14 A. Yes.

15 Q. All right. Let's talk about the
16 circumstances. What I am going to do is to
17 walk you through the trial. I am going to
18 put you over here on the jury, imagine that
19 you are over there with eleven other jurors
20 and that you are going to convict a
21 defendant for murder in South Carolina.

22 What that means is that the
23 defendant has committed an intentional
24 killing of an innocent victim with malice
25 aforethought, unlawfully and without

1 justification. Malice aforethought being
2 defined as have a black, depraved, wicked
3 heart fatally bent on mischief. Are you
4 with me?

5 A. Yes.

6 Q. That is the definition of murder in
7 South Carolina -- an intentional killing,
8 without accident, not self-defense, not a
9 fight that out of hand, an intentional
10 choice to take an innocent life. Okay?

11 A. Okay.

12 Q. And I am going to ask you to go a
13 little bit more into the trial and you are
14 going to hear what is called aggravation
15 evidence. I am not going to go into
16 specifics or facts, I am not going to talk
17 about this case rather talk about a certain
18 category of offenses.

19 I want you to see this crime with me:
20 burglary, which is going into a home with no
21 permission, kidnaping, rape, armed robbery,
22 murder; that happens all at one time in the
23 house, okay?

24 A. Okay.

25 Q. Is life in prison a severe enough

1 punishment for that category of crime?

2 A. Yes.

3 Q. And would the death penalty also be
4 appropriate for that crime?

5 A. Yes.

6 Q. You could go either way?

7 A. Yes.

8 Q. In deciding something so important as
9 to whether another human being lives or
10 dies, what would go into your decision-
11 making process? What would you want to
12 hear?

13 A. Well, I can say that if they
14 intentionally do that.

15 Q. And the judge will tell you that all
16 murders in South Carolina are intentional,
17 deliberate and intentional.

18 A. I would have to hear a lot more, just
19 to know what happened.

20 Q. When you say a lot more, are you
21 talking about the facts of the crime itself,
22 to determine if it was violent or who the
23 victims are and that sort of thing?

24 A. Not necessarily who the victims are.

25 Q. I need to know what would move you to a

1 death penalty vote? Okay?

2 A. Um-humm.

3 Q. I want to bring you back to something
4 that the Judge talked to you about, which is
5 called mitigating circumstances -- maybe
6 something about the defendant, his
7 background, his childhood and that sort of
8 thing.

9 For arguments sake if you saw something
10 so violent that it moved you to a death
11 penalty sentence, is there anything about
12 the defendant that can make you go down to
13 a life in prison sentence?

14 A. I don't know how to answer that. I'd
15 say yes.

16 Q. Well, I will open it up to your
17 imagination. Anything you can think of in
18 your experience, anything that you can think
19 of that somebody else in their walk of life
20 might have gone through that would shed some
21 light on the situation. Anything at all?

22 A. Maybe if the defendant was remorseful,
23 understood what he did and takes responsi-
24 bility for what he did.

25 Q. What that be important to you?

1 A. I think so.

2 Q. Why would that be important to you?

3 A. That would make it to where a person
4 now understands and knows his crime and is
5 willing to pay the price for it.

6 Q. So accepting responsibility and showing
7 remorse is something that would factor into
8 your decision?

9 A. Yes.

10 Q. Is there anything else that you can
11 think of about a defendant, his life,
12 childhood, upbringing, rearing, that might
13 be important to you?

14 A. (No verbal response).

15 Q. Okay. What about if they had hardships
16 in growing up, like sexual abuse; is that a
17 factor you would like to know?

18 A. (No verbal response).

19 Q. Tell me if I am wrong. What I am
20 hearing is that you are putting some
21 emphasis on, despite someone's upbringing or
22 childhood, that once they are an adult they
23 are responsible for their decisions and if
24 they choose to do something like take an
25 innocent life, they should be held

1 accountable for it?

2 A. (No verbal response).

3 Q. And the only factor that you are going
4 to look at with regard to the defendant is
5 if he shows remorse and appreciates the
6 wrongness of his contact and is willing to
7 accept responsibility?

8 A. (No verbal response).

9 Q. But absent that -- absent that, his
10 background is not relevant?

11 A. (No verbal response).

12 Q. And of course you want to be open
13 minded in this process and hear everything?

14 A. Right.

15 Q. Follow the judge's instructions and
16 follow the law?

17 A. (No verbal response).

18 Q. Wait until the very end of make your
19 decision?

20 A. (No verbal response).

21
22 Q. What I am going to do now is shift
23 gears just a little bit and I am going to
24 contrast this kind of case with maybe
25 another legal case. In this kind of case --

1 because a human being's life is in the
2 balance and it's a sentencing decision made
3 by individual jurors, the individual jurors
4 sentence or judgment as described as an
5 individual moral assessment. Does that
6 sound fair to you?

7 A. Um-humm.

8 Q. I am going to contrast that with a
9 different kind of case, like say if it was a
10 car wreck case, people were suing over money
11 and the big issue was the light red or
12 green, who had the right-of-way. That's a
13 fact question. Somebody is right and
14 somebody is wrong and you kind of have to
15 figure that out: You have to determine what
16 is more likely to be accurate than what
17 really happened.

18 A. Um-humm.

19 Q. But a sentencing decision, uh, would
20 you agree that maybe there is no perfect
21 right answer?

22 A. Yes.

23 Q. And that different people, based on
24 their own individual walk in life, their own
25 life experiences, who they are, could reach

1 a different individual moral judgment or
2 assessment than somebody else?

3 A. Yes.

4 Q. And you would agree with me that's a
5 very personal decision to make?

6 A. Yes.

7 Q. It might be the most difficult decision
8 that people make in their own life? I mean,
9 it's almost like deciding whether to bring a
10 child into the world or what religion you
11 believe?

12 A. Yes.

13 Q. It is so personal that you would want
14 to respect everybody's individual decision?

15 A. Yes.

16 Q. And at the end of the day you could
17 agree to disagree?

18 A. Yes.

19 Q. Because there's only a couple of
20 circumstances where you have to be unanimous
21 and that is that you have to be unanimous to
22 find somebody guilty, you have to be
23 unanimous to find an aggravating
24 circumstance but when it comes to that
25 mitigation evidence, and you're indicated

1 remorse, that is an individual decision.

2 The Judge will tell the jury that each
3 individual juror can find mitigation where
4 they see it. For you, it might be remorse
5 even though eleven other people don't see
6 it.

7 If you saw remorse and that affected
8 you, could you give that weight all by
9 yourself and stick to individual moral
10 judgment?

11 A. Yes.

12 Q. You would agree that it's not a straw
13 poll or a democracy?

14 A. Right.

15 WILLIAM MAGUIRE: That's all that
16 I have for you, ma'am. Thank you.

17 THE COURT: Solicitor?

18 BRUCE DURANT: No questions,
19 Your Honor.

20 THE COURT: Thank very much. Any
21 Motions?

22 WILLIAM MAGUIRE: Yes.

23 THE COURT: You've got a Motion?

24 WILLIAM MAGUIRE: Yes, sir.

25 THE COURT: Ms. Abdallah, would

1 you step out in the hall for just a second,
2 please, ma'am?

3 (JUROR NUMBER 2 EXITS COURTROOM)

4 THE COURT: When the door is
5 shut, you can do your Motion.

6 WILLIAM MAGUIRE: Move to strike
7 for cause.

8 THE COURT: I can't hardly see
9 the door from here.

10 WILLIAM MAGUIRE: It is closed
11 now.

12 THE COURT: Okay.

13 WILLIAM MAGUIRE: Move to strike
14 for cause. Failure to do so would violate
15 Mr. Broughton's Sixth and Fourteenth
16 Constitutional rights to an fair and
17 impartial jury in this matter.

18 She is, in essence, what is called
19 mitigation impaired. She can put her finger
20 on remorse as the only thing that she would
21 consider mitigating. Basically the law has
22 defined mitigating circumstances as any
23 reason to vote for less than a death
24 penalty. It can be whatever a juror finds.
25 The whole world is basically opened up to

1 them, and certainly the character and record
2 of the defendant is something that they
3 would have to take into account. She is not
4 willing to do that, so I move to strike for
5 cause.. Thank you, Judge.

6 THE COURT: Motion denied. Bring
7 us the next juror, please ---

8 CLERK: Do you want to bring her
9 back in?

10 THE COURT: Yeah. I'm sorry.
11 Bring her back in. Thank you.

12 (JUROR NUMBER 2 ENTERS COURTROOM)

13 THE COURT: Ms. Abdallah, be back
14 in the courtroom tomorrow at 2:30. Okay?
15 Thank you very much.

16 Ms: Abdallah, I always forgot --
17 don't talk to anybody tonight about the
18 case, don't watch television or read
19 anything in the paper. Okay?

20 JUROR NUMBER 2: Yes, sir.

21 THE COURT: See you tomorrow.

22 JUROR NUMBER 2: Thank you.

23 (JUROR NUMBER 2 EXITS COURTROOM)

24 THE COURT: Next.

25 (JUROR NUMBER 328 ENTERS COURTROOM)

1 THE COURT: Ms. Still, how you
2 doing today?

3 JUROR NUMBER 328: I am doing
4 fine.

5 THE COURT: Have you had an
6 opportunity to review the sheet that I gave
7 you concerning the different opinions about
8 the death penalty?

9 JUROR NUMBER 328: Yes.

10 THE COURT: Do you understand
11 types one, two and three?

12 JUROR NUMBER 328: Yes, sir.

13 THE COURT: Were you able to
14 determine if you fell into any of those
15 types?

16 JUROR NUMBER 328: Yes, sir.

17 THE COURT: Which type did you
18 fall in?

19 JUROR NUMBER 328: Three.

20 JANE STILL, having been
21 previously sworn to tell the truth testified
22 as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q. Did you also have an opportunity to

1 review the list of potential witnesses, one
2 hundred thirty-four names?

3 A. Yes, sir.

4 Q. Did you recognize any of the names?

5 A. No, sir.

6 Q. You did not know anybody on the list?

7 A. No one.

8 Q. Didn't recognize anybody?

9 A. No.

10 Q. You didn't recognize any names?

11 A. No.

12 Q. Thank you, ma'am. I am going to ask
13 you some questions and the attorneys will
14 ask you some questions. There are no right
15 or wrong answers. Just answer the questions
16 as best you can, be truthful and straight-
17 forward about the questions. If you don't
18 know the answer, say that you don't know.
19 Can you do that?

20 A. Yes.

21 Q. Have you heard anything about the case,
22 heard anyone talking about the case?

23 A. No.

24 Q. Have you read anything in the paper
25 about the case?

1 A. No.

2 Q. Anything on television about it?

3 A. No.

4 Q. Do you have any relatives or close
5 personal friends employed in law
6 enforcement?

7 A. No.

8 Q. Has the solicitor or any of her staff
9 prosecuted you or any member of your family?

10 A. No.

11 Q. Have you or any member of your family
12 or a close personal friend been the victim
13 of a crime?

14 A. No.

15 Q. Do you have any relatives in jail?

16 A. No.

17 Q. Are you a member of any group which
18 primarily supports law enforcement, such as
19 MADD?

20 A. No.

21 Q. Do you have any special or particular
22 interest in the outcome of this case?

23 A. No.

24 Q. Are you aware of any bias or prejudice
25 against the defendant as a result of the

1 charges which have been brought against him?

2 A. No.

3 Q. Do you have any religious beliefs that
4 would create a bias or prejudice for or
5 against the defendant?

6 A. (Negative gesture).

7 Q. Yes or no?

8 A. No.

9 Q. Do you have any religious beliefs that
10 would make you biased or prejudiced for or
11 against the State?

12 A. No.

13 Q. Do you have a bias or prejudice against
14 the defendant because of his race, being
15 black?

16 A. No..

17 Q. Have you had any bad experiences or
18 good experiences with law enforcement?

19 A. Bad or good?

20 Q. Bad or good?

21 A. Uh, -- I can't think of any.

22 Q. You can't think of any?

23 A. (Negative gesture).

24 Q. Okay. Do know of any reason, personal
25 or otherwise, as to why you cannot serve on

1 this jury?

2 A. No.

3 Q. Do you know of any reason why you could
4 not give the State and the Defendant a fair
5 and impartial trial?

6 A. No.

7 Q. I have explained to you earlier about
8 the bifurcated trial or the two-part trial
9 and the penalty phase concerning aggravating
10 circumstances and mitigating circumstances
11 and the jury's obligation in the penalty
12 phase. Did you understand?

13 A. (No verbal response).

14 Q. Do I need to go over it again very
15 briefly for you?

16 A. Sure.

17 Q. Okay. In the penalty phase, which is
18 the second part of the trial, the jury would
19 have already found the defendant guilty of
20 murder. Do you understand?

21 A. Yes.

22 Q. At that time the State would be
23 required to prove an aggravating
24 circumstance. The jury, all twelve jurors,
25 would have to find that the State had proven

1 an aggravating circumstance.. Do you
2 understand?

3 A. Yes.

4 Q. Before they made a decision of life
5 without parole of death. If all twelve
6 jurors did not agree that the State had
7 proven an aggravating circumstance beyond a
8 reasonable doubt then it would life without
9 parole, death would not be an option; do you
10 understand?

11 A. Yes, sir.

12 Q. Let's assume that the State had proven
13 the aggravating circumstance, that all
14 jurors agreed that the State had proven it.
15 Then you would move to the mitigation
16 circumstances. Do you understand?

17 A. Yes.

18 Q. Now, the mitigation can be anything
19 about the defendant, anything about the
20 crime or any circumstances surrounding the
21 crime. It can be either about past or
22 future adaptability to life in prison. You
23 would listen to the mitigating circumstances
24 and then the jury would make a decision
25 whether the defendant were to receive life

1 without parole or death. Do you understand?

2 A. Yes, sir.

3 Q. Can you listen to the aggravating
4 circumstances and the mitigating
5 circumstances before you make the decision
6 without life without parole or death?

7 A. (No verbal response).

8 Q. Can you do that?

9 A. Yes.

10 THE COURT: Thank you very much.

11 Who is next?

12 EXAMINATION

13 BY BRUCE DURANT:

14 Q. Good afternoon, Ms. Still.

15 A. Hello.

16 Q. Could you tell me, what are your views
17 on the death penalty?

18 A. I am not totally against it or for it.
19 I -- it -- in extreme cases, I would
20 consider it.

21 Q. I noticed from questionnaire that you
22 submitted, and we appreciate you filling it
23 out, that you indicated that you are Roman
24 Catholic.

25 A. Yes.