

VOLUME ONE OF EIGHT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
John C. Few, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

JAMES D. ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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South Carolina Commission on Indigent
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STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN COURT OF GENERAL SESSIONS

THE STATE,)

PLAINTIFF,)

VS.)

JAMES DEJARNETTE)
ROBERTSON,)

DEFENDANT.)

INDICTMENT NOS. 98-GS-46-1020
1021, 1022, 1023

TRANSCRIPT OF TRIAL AND
PRE-TRIAL MOTIONS (7-17-98,
9-22-98, 9-25-98, 11-2-98,
AND 12-4-98)
MARCH 15, 1999
YORK, SOUTH CAROLINA

BEFORE:

HONORABLE JOHN C. HAYES, III, PRESIDING JUDGE

APPEARANCES:

THOMAS E. POPE, SOLICITOR
KEVIN S. BRACKETT, DEPUTY SOLICITOR
YORK, SOUTH CAROLINA
ATTORNEYS FOR THE STATE

JAMES W. HANCOCK
JAMES W. BOYD
ATTORNEYS AT LAW
ROCK HILL, SOUTH CAROLINA
ATTORNEYS FOR THE DEFENDANT

JANET M. FISCHER
COURT REPORTER

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224	PHOTO	2384
225	PHOTO	2384
226	PHOTO	2384
227	PHOTO	2384
228	PHOTO	2384
229	PHOTO	2384
230	PHOTO	2384
231	PHOTO	2384
232	PHOTO	2384
233	PHOTO	2384
234	PHOTO	2384
235	PHOTO	2384
236	PHOTO	2384
237	PHOTO	2384
238	PHOTO	2251
239	PHOTO	2251
240	PHOTO OF AUTOPSY	2251
241	PHOTO OF AUTOPSY	2251
242	PHOTO OF AUTOPSY	2251
243	PHOTO OF AUTOPSY	2251
244	PHOTO OF AUTOPSY	2251
245	PHOTO OF AUTOPSY	2251

STATE'S EXHIBITS CONTINUED

<u>NO.</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>	<u>IN EV.</u>
246	PHOTO OF AUTOPSY		2251
247	PHOTO OF AUTOPSY		2251
248	PHOTO OF AUTOPSY		2251
249	PHOTO OF AUTOPSY		2251
250	PHOTO OF AUTOPSY		2251
251	PHOTO OF AUTOPSY		2251
252	PHOTO OF AUTOPSY		2251
253	PHOTO OF AUTOPSY		2251
254	PHOTO OF AUTOPSY		2251
255	PHOTO OF AUTOPSY		2251
256	PHOTO OF AUTOPSY		2251
257	PHOTO OF AUTOPSY		2251
258	PHOTO OF AUTOPSY		2251
259	PHOTO OF AUTOPSY		2251
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261	PHOTO OF AUTOPSY		2251
262	PHOTO OF AUTOPSY		2251
263	PHOTO OF AUTOPSY		2251
264	PHOTO OF AUTOPSY		2251
265	PHOTO OF AUTOPSY		2251
266	PHOTO OF AUTOPSY		2251
267	DIAGRAM OF INJURIES TO EARL		2251
268	DIAGRAM OF INJURIES TO TERRY		2251

STATE'S EXHIBITS CONTINUED

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270	PHOTO		
271	PHOTO OF EARL		2330
272	PHOTO OF GOLFERS	2341	
273	PHOTO OF TERRY	2341	2353
274	PHOTO OF TERRY	2312	
275	PHOTO OF GRADUATION OF CHIP	2341	2353
276	PHOTO OF TERRY IN COLLEGE		2305
277	WEDDING PHOTO		2305
278	WEDDING PHOTO		2305
279	VIDEO		2383
280	TELEPHONE RECORDS		2248
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282	REPORT	2508	
283	MRI		2509
284	REPORT OF DR. PINCUS		2511
285	'96 RECORDS FROM DEPT. OF CORR.		2747
286	REPORT OF DR. CASCIO	2896	
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9	PHARMACY RECORDS	2692
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11	PHARMACY RECORDS	2692
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20	BLOW-UP OF MR. MEYER'S NOTES	2860
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22	EXCERPT OF MR. MEYER'S NOTES	2864
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26	CHART OF VISITS TO PSYCHIATRISTS	2882
27	CHART OF VISITS TO PSYCHIATRISTS	2882
28	EXCERPT FROM MR. MEYER'S NOTES	2884
29	EXCERPT FROM MR. MEYER'S NOTES	2892
30	EXCERPT FROM TERRY'S NOTES	2892
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1 PRE-TRIAL MOTIONS OF JULY 17, 1998:

2 MR. BRACKETT: MAY IT PLEASE THE COURT?

3 THE COURT: YES, SIR.

4 MR. BRACKETT: YOUR HONOR, THIS IS IN REFERENCE
5 TO DOCKET NUMBERS 98-GS-46-1024, 1025 AND 1026, THESE
6 BEING TRUE BILLED INDICTMENTS CHARGING MEREDITH LEANN
7 MOON WITH MURDER, MURDER AND ARMED ROBBERY RESPECTIVELY.
8 AND IN ADDITION, YOUR HONOR, SHE IS PRESENT IN THE
9 COURTROOM WITH HER APPOINTED COUNSEL, MR. HARRY DEST, THE
10 PUBLIC DEFENDER, MR. B. J. BARROWCLOUGH AND MICHAEL
11 HITCHCOCK, ASSISTANT PUBLIC DEFENDERS.

12 IN ADDITION, YOUR HONOR, 98-GS-46-1020, 1021,
13 1022 AND 1023, THE STATE VERSUS JAMES DEJARNETTE
14 ROBERTSON. THESE ARE RESPECTIVELY TRUE BILLED
15 INDICTMENTS FOR MURDER, MURDER, ARMED ROBBERY AND
16 FINANCIAL TRANSACTION CARD FRAUD. HE IS PRESENT IN THE
17 COURTROOM, YOUR HONOR, WITH HIS APPOINTED COUNSEL MR.
18 JAMES BOYD AND BILL HANCOCK, BOTH OF THE YORK COUNTY BAR.

19 THE COURT: LET ME DO THIS, WHO WILL BE SORT OF
20 LEAD FOR MS. MOON?

21 MR. DEST: I WILL, YOUR HONOR.

22 THE COURT: AND FOR MR. ROBERTSON?

23 MR. HANCOCK: I WILL, YOUR HONOR.

24 THE COURT: IS THERE A CONSENT ON ANY OF THE
25 MATTERS SET FORTH IN THE MOTIONS? THE MOTIONS ARE TO

1 REQUIRE BOTH DEFENDANTS TO GIVE, UNDER PROPER CONTROLLED
2 CIRCUMSTANCES, HAIR, BLOOD, MAJOR CASEPRINTS AND HAND
3 WRITTEN EXEMPLARS. IS THERE AN AGREEMENT ON ANY OF
4 THOSE?

5 MR. DEST: NO, SIR, YOUR HONOR. WE VISITED
6 THIS ISSUE EARLIER ON WITH JUDGE RAWL WHEN HE WAS HERE.
7 WE DID NOT GET IN COURT, BUT WE MET IN CHAMBERS AND JUDGE
8 RAWL AT THAT TIME SAID THAT THE STATE WOULD HAVE TO MAKE
9 A SHOWING TO THE COURT EITHER THROUGH AFFIDAVITS FROM
10 SLED AGENTS OR INVESTIGATORS PERTAINING TO THE NEED UNDER
11 THE SECOND PRONG OF SCHMERBER WHICH STATES THAT THERE
12 MUST BE A CLEAR INDICATION THAT RELEVANT EVIDENCE WILL BE
13 FOUND, YOUR HONOR. AND I THINK AT THAT POINT IN TIME WE
14 WERE JUST INQUIRING WHAT IS THE NEED. THIS CASE HAS BEEN
15 PENDING SINCE NOVEMBER; NO SHOWING WAS MADE AT THAT TIME,
16 YOUR HONOR. SO, THAT'S WHERE WE ARE AT THIS POINT.

17 THE COURT: SO THE ANSWER TO MY QUESTION IS
18 THERE IS NO CONSENT?

19 MR. DEST: NO, SIR.

20 THE COURT: HOW ABOUT MR. ROBERTSON?

21 MR. HANCOCK: NOT HERE EITHER, YOUR HONOR.

22 THE COURT: ALL RIGHT. I'M READY FOR YOU TO
23 MAKE A PRESENTATION.

24 MR. BRACKETT: YES, SIR, YOUR HONOR. THIS
25 INCIDENT OCCURRED ON NOVEMBER 25TH OF 1997. THE BODIES

1 OF TERRY AND JAMES EARL ROBERTSON WERE FOUND DEAD IN
2 THEIR HOME AT 2506 WESTMINSTER DRIVE IN THE CITY OF ROCK
3 HILL. BOTH OF THEM HAD BEEN BRUTALLY MURDERED IN TWO
4 SEPARATE ROOMS OF THE HOUSE. MR. ROBERTSON WAS FOUND IN
5 THE HALLWAY AND MRS. ROBERTSON WAS FOUND IN ONE OF THE
6 BEDROOMS.

7 THE PRIMARY CAUSE OF DEATH WAS BLUDGEONING FROM
8 VARIOUS WEAPONS THAT WERE USED. THE STATE SUBMITS AND
9 ALLEGES THAT A CLAW HAMMER, A SCALPEL, A BASEBALL BAT, A
10 KITCHEN KNIFE, AMONG OTHERS -- POTENTIALLY FIVE WEAPONS
11 WERE USED IN THE ASSAULT ON MR. AND MRS. ROBERTSON.

12 THEY WERE FOUND EARLY THAT MORNING BY A
13 NEIGHBOR WHO HAD GONE OVER TO LOOK FOR MRS. ROBERTSON.
14 THE POLICE WERE CALLED OUT, OBVIOUSLY, AND THE SCENE WAS
15 SECURED.

16 THE SHERIFF'S DEPARTMENT WAS CALLED OUT TO
17 INVESTIGATE THE CASE -- I'M SORRY, THIS HAPPENED IN THE
18 COUNTY. THEY CALLED IN THE SOUTH CAROLINA LAW
19 ENFORCEMENT DIVISION AND THE SCENE WAS SECURED AND THEIR
20 CRIME SCENE ANALYST WENT IN AND COLLECTED EVIDENCE FROM
21 THE HOUSE.

22 ULTIMATELY THE INVESTIGATION DEVELOPED AND
23 FOCUSED ON THE SUSPECTS THAT ARE IN COURT TODAY AND HAVE
24 BEEN INDICTED BY THE GRAND JURY AND A STATEMENT WAS TAKEN
25 FROM MS. MEREDITH MOON WHICH IMPLICATED BOTH HERSELF AND

1 MR. ROBERTSON IN THE MURDERS OF HIS PARENTS.

2 IN ADDITION TO THAT, WEAPONS WERE RECOVERED IN
3 MARYLAND.

4 THE DEFENDANTS WERE ARRESTED, LOCATED
5 EVENTUALLY IN PHILADELPHIA WHERE MR. ROBERTSON'S BROTHER
6 WAS GOING TO SCHOOL AND THEY WERE EXTRADITED BACK HERE.

7 PURSUANT TO A STATEMENT FROM MS. MOON, THE
8 WEAPONS WERE RECOVERED IN MARYLAND IN A DUMPSTER OFF THE
9 INTERSTATE AT A REST AREA BEHIND A RESTAURANT THERE.
10 THEY WERE IN A PLASTIC BAG AND WERE RECOVERED BY THE
11 MARYLAND STATE POLICE AND THEY WERE EVENTUALLY RETURNED
12 TO US.

13 YOUR HONOR, AMONG THE EVIDENCE THAT WAS
14 COLLECTED AT THE SCENE, THERE WAS OBVIOUSLY A LARGE
15 AMOUNT OF BLOOD, THERE WAS A NUMBER OF WEAPONS THAT HAD
16 BLOOD ON THEM, THERE WAS HAIR FOUND IN THE HANDS OF MR.
17 ROBERTSON. HE HAD JUST COME FROM THE SHOWER, APPARENTLY,
18 AND HAD JUST TAKEN A SHOWER AND THERE WAS HAIR FOUND,
19 THUS THE NECESSITY FOR HAIR SAMPLES.

20 THERE WAS A CUT ON MR. ROBERTSON'S HAND AND
21 ALSO THE INVESTIGATION UNCOVERED THAT MR. ROBERTSON HAD
22 APPARENTLY ATTEMPTED TO FAKE A BREAK IN TO MAKE IT LOOK
23 AS IF SOMEONE HAD BROKEN IN AND KILLED HIS PARENTS AND IN
24 THE COURSE OF THAT BREAKING SOME GLASS OUT OF THE
25 DOWNSTAIRS BASEMENT WINDOW THAT LED INTO THE DOWNSTAIRS

1 PORTION OF THE HOUSE AND IN THE COURSE OF DOING THAT, WE
2 BELIEVE HE CUT HIS HANDS.

3 WE DON'T KNOW WHETHER OR NOT MS. MOON SUFFERED
4 ANY INJURIES DURING THIS ATTACK AND WE DON'T KNOW WHETHER
5 SHE BLED; HOWEVER, AS YOUR HONOR IS WELL AWARE FROM MANY
6 TRIALS, ALL THESE DEFENSE ATTORNEYS HAVE STOOD IN FRONT
7 OF A JURY IN THIS BOX AT SOME POINT IN TIME AND ARGUED
8 NOT ONLY WHAT THE STATE DID DO BUT WHAT WE DIDN'T DO,
9 WHAT WE FAILED TO DO, WE DIDN'T EXCLUDE CERTAIN EVIDENCE.

10 SO, WHAT WE NEED IS WE NEED BLOOD FROM THESE
11 TWO INDIVIDUALS SO THAT WE CAN DETERMINE WHETHER OR NOT
12 ALL THE BLOOD FOUND IN THE HOUSE DID IN FACT COME FROM
13 MR. AND MRS. ROBERTSON OR WHETHER SOME OF IT CAME FROM
14 THE CUT ON THE DEFENDANT ROBERTSON'S HAND AND WHETHER OR
15 NOT MS. MOON HAD ANY CUTS ON HER HAND, AND WHETHER OR NOT
16 ANY OF THE BLOOD FOUND IN THE HOUSE CAME FROM THEM.

17 THE BLOOD WAS PRIMARILY LOCATED AROUND THE
18 BODIES OF THE VICTIMS. THEY WERE KILLED VERY CLOSE TO
19 WHERE THE ATTACK BEGAN; THEY DIDN'T MOVE THROUGHOUT THE
20 HOUSE. IN OTHER WORDS, THERE ARE NO LARGE TRAILS OF
21 BLOOD. HOWEVER, BLOOD WAS FOUND IN MORE THAN JUST ONE
22 AREA OF THE HOUSE.

23 IN ADDITION, YOUR HONOR, THERE WAS A NOTE FOUND
24 IN THE HOUSE AND WE WOULD REQUEST HANDWRITING SAMPLES
25 FROM BOTH DEFENDANTS IN ORDER TO DETERMINE THE AUTHORSHIP

1 OF THAT NOTE THAT WAS FOUND IN THE HOUSE.

2 FINALLY, YOUR HONOR, OBVIOUSLY A LARGE NUMBER
3 OF FINGERPRINTS WERE FOUND THROUGHOUT THE HOUSE. IT WAS
4 A HOME THAT WAS BEING LIVED IN. I UNDERSTAND THAT THE
5 DEFENDANTS BOTH HAD LIVED IN THE HOUSE AT ONE TIME, OR AT
6 LEAST MR. ROBERTSON HAD LIVED IN THE HOUSE AND MS. MOON
7 HAD BEEN THERE TO VISIT HIM MANY TIMES. THEY LIVED IN
8 THE DOWNSTAIRS PORTION OF THE HOUSE, HOWEVER THE ATTACK
9 OCCURRED PRIMARILY IN THE UPSTAIRS AREA OF THE HOUSE
10 AROUND WHERE THE PARENTS LIVED. WE NEED THE MAJOR CASE
11 PALM PRINTS. WE HAVE THE FINGERPRINTS, HOWEVER WE NEED
12 MAJOR CASE PALM PRINTS BECAUSE THERE ARE A NUMBER OF
13 UNIDENTIFIED PALM PRINTS AND FINGERPRINTS THAT WE HAVE
14 NOT BEEN ABLE TO EXCLUDE THAT WERE FOUND IN THE CRIME
15 SCENE AREA.

16 I UNDERSTAND THE DEFENSE MAY ARGUE, WELL, THEIR
17 FINGERPRINTS HAVE A RIGHT TO BE THERE, THEY BOTH HAD A
18 RIGHT TO BE IN THE HOUSE; HOWEVER, THE POSITIONING OF THE
19 PALM PRINTS SOMETIMES, ESPECIALLY IN THE AREA IMMEDIATELY
20 SURROUNDING WHERE THE MURDER TOOK PLACE CAN SOMETIMES
21 HELP THE STATE UNDERSTAND HOW THE CRIME OCCURRED. FOR
22 EXAMPLE, WHETHER SOMEBODY HAD TO LEAN ON SOMETHING.

23 THE ATTACK ON MRS. ROBERTSON PARTICULARLY TOOK
24 PLACE IN THE BEDROOM. WE BELIEVE SHE WAS IN THE BED AT
25 FIRST, BUT EVENTUALLY ENDED UP ON THE FLOOR BETWEEN THE

1 BED AND THE WALL IN THE BEDROOM, AND THAT WAS A CLOSE
2 CONFINED AREA. THE ATTACKERS MAY HAVE HAD TO LEAN ON
3 SOMETHING AND MS. MOON CERTAINLY WOULD NOT HAVE HAD
4 OCCASION TO GO INTO THAT ROOM VERY OFTEN. THE PALM
5 PRINTS WOULD ASSIST US IN DEVELOPING A COMPLETE PICTURE
6 OF HOW THIS CRIME OCCURRED AND WHERE EXACTLY THE
7 ASSAILANT MIGHT HAVE STOOD, WHETHER THEY LEANED UP
8 AGAINST SOMETHING IN ORDER TO BRACE HIMSELF IN
9 ACCOMPLISHING THIS ATTACK.

10 THE COURT: I'M GOING TO ASK, NOT FOR
11 SPECIFICS, AND I DON'T KNOW HOW FAR YOU PLAN TO GO WITH
12 YOUR SHOWING, BUT IN GENERAL THE NATURE OF THE NOTE AND
13 HOW IT WOULD RELATE. I MEAN I'D LIKE TO KNOW A LITTLE
14 BIT MORE ABOUT THAT.

15 MR. BRACKETT: YES, SIR.

16 THE COURT: AND YOU MAY BE PLANNING ON PUTTING
17 THAT UP THROUGH YOUR PRESENTATION.

18 MR. BRACKETT: YES, SIR. I WAS ACTUALLY GOING
19 TO PROFFER THE PRESENTATION HERE. I THINK WE JUST NEED TO
20 MAKE A SHOWING OF PROBABLE CAUSE FOR THE NEED FOR IT.
21 WE'VE GOT OBVIOUSLY PROBABLE CAUSE THAT THE CRIME EXISTS,
22 BUT WE NEED TO MAKE A SHOWING FOR THE NEED. I HADN'T
23 PLANNED ON PUTTING ANY WITNESSES UP.

24 THE COURT: ALL RIGHT.

25 MR. BRACKETT: YOUR HONOR, THERE WERE TWO

1 WRITINGS FOUND INSIDE THE HOUSE. THE FIRST ONE WAS AN
2 ACTUAL NOTE THAT WAS APPARENTLY WRITTEN TO MRS. ROBERTSON
3 AND IT PURPORTS TO BE FROM THE DEFENDANT JAMES ROBERTSON,
4 BASICALLY EXPLAINING THAT HE HAD TO GO TO PHILADELPHIA TO
5 SEE HIS BROTHER, IN A NUTSHELL.

6 THERE WAS A PAD FOUND DOWNSTAIRS. THERE WASN'T
7 A NOTE WRITTEN ON IT, HOWEVER THERE WAS AN INDENTION THAT
8 SLED WAS ABLE TO PICK UP. A NOTE HAD BEEN WRITTEN ON IT
9 AND THEY WERE ABLE TO DEVELOP THE CONTENTS OF THAT NOTE
10 AND IT WAS A TO DO LIST, IT WAS A VARIETY OF THINGS. I
11 DON'T KNOW THEM ALL, BUT THERE WERE A NUMBER OF ITEMS ON
12 THERE THAT IT JUST SAID TO DO AND THEN A NUMBER OF THINGS
13 LISTED BELOW THAT.

14 AND THAT PIECE OF PAPER, THE NOTE THAT WAS
15 WRITTEN TO THE MOTHER SAYING I'VE GOT TO GO TO
16 PHILADELPHIA APPEARS TO BE FROM THE SAME PAD THAT WAS
17 FOUND DOWNSTAIRS THAT THE INDENTION WAS LIFTED OFF OF.

18 SO, WE WANT TO DETERMINE THE AUTHORSHIP.
19 THEY'VE BEEN ABLE TO DEVELOP THAT THROUGH SHADING -- I'M
20 NOT EXACTLY SURE HOW THEY DO THAT, BUT THEY WERE ABLE TO
21 READ THE INDENTED NOTE TO THE POINT THAT THEY CAN MAKE A
22 HANDWRITING ANALYSIS ON THAT AND THEY WANT TO DETERMINE
23 WHO THE AUTHOR OF THAT TO DO LIST WAS AND ALSO THE AUTHOR
24 OF THE UPSTAIRS NOTE WAS.

25 THE COURT: ANY RESPONSE?

1 MR. DEST: YES, YOUR HONOR. I WOULD SIMPLY SAY
2 AT THIS TIME, YOUR HONOR, THAT THE STATE IS MAKING THE
3 SAME REQUEST THAT IT MADE IN FRONT OF JUDGE RAWL ---

4 THE COURT: WELL, THIS IS NEW. THE CASE HAS
5 BEEN ASSIGNED TO ME. WE ARE WRITING ON A CLEAN SLATE.
6 I'M NOT FINDING FAULT WITH JUDGE RAWL, HE CERTAINLY HAD
7 EVERY RIGHT TO DO WHAT HE WAS DOING, BUT LET'S LOOK AT
8 WHERE WE ARE NOW. I'M LOOKING AT THIS HEARING WITHIN THE
9 CONTEXT OF THIS HEARING.

10 MR. DEST: I UNDERSTAND, YOUR HONOR. MY POINT
11 IS THIS, THAT JUST BY THAT PROFFER THAT THEY MADE A FEW
12 MINUTES AGO SIMPLY DOES NOT ARTICULATE THE NEED OR THE
13 SHOWING FOR WHAT EVIDENCE THEY ARE GOING TO MATCH IT UP
14 WITH.

15 I THINK WE NEED TO HAVE A BETTER UNDERSTANDING
16 -- I KNOW THAT THERE WAS BLOOD EVERYWHERE, YOUR HONOR,
17 AND THERE MAY BE PRINTS THROUGHOUT THE HOUSE. THE
18 QUESTION IS, WHERE ARE THE PRINTS, WHERE IS THE BLOOD,
19 WHAT TYPE OF TANGIBLE PHYSICAL OBJECTS DO THEY WANT TO
20 MATCH IT UP WITH AND WHY. THEY SIMPLY HAVE NOT ANSWERED
21 THAT QUESTION HERE TODAY AND I'M JUST SAYING THEY HAVEN'T
22 MET THE SECOND PRONG OF SCHMERBER.

23 TO GO A LITTLE BIT FURTHER, YOUR HONOR, IF I
24 MAY. I THINK THEY WILL REQUIRE FORENSIC EXPERTS FROM
25 SLED -- WE KNOW THAT THINGS HAVE BEEN SENT TO SLED; WE

1 KNOW, OF COURSE, NOTHING HAS BEEN FURNISHED TO EITHER
2 MYSELF OR MR. HANCOCK WITH REGARD TO ANY FINDING
3 WHATSOEVER. I THINK IT WOULD REQUIRE A SLED EXPERT
4 TESTIFYING AS TO WHY THEY NEED PRINTS, BLOOD, HAIR AND
5 THOSE TYPES OF EVIDENCE.

6 THE COURT: YOU THINK THAT THIS IS THE TYPE OF
7 INFORMATION THAT WOULD BE OUTSIDE THE REALM OF A
8 REASONABLE PERSON, PARTICULARLY A JUDGE, TO DETERMINE
9 THAT THAT'S AN EVIDENTIARY MATTER IN A CRIME SCENE? DO
10 YOU THINK YOU NEED TO GET A FORENSIC PERSON TO COME UP
11 AND SAY UNDER OATH THAT BLOOD, HAIR, HANDWRITING
12 EXEMPLARS AND PALM PRINTS, THAT THAT'S FORENSICALLY
13 NECESSARY?

14 MR. DEST: MY POSITION WOULD BE, YOUR HONOR,
15 THEY WOULD NEED TO TELL THE COURT WHAT THEY HAVE EXAMINED
16 THUS FAR AND WHY THEY HAVE A NEED FOR FURTHER NON-
17 TESTIMONIAL EVIDENCE. YES, SIR, THAT'S MY POSITION.

18 THE COURT: GIVE ME AN EXAMPLE OF WHAT YOU
19 MEAN. I MEAN WHAT WOULD THEY HAVE TO SAY?

20 MR. DEST: I DON'T KNOW WHAT THEY HAVE
21 EXAMINED. NOTHING HAS BEEN TURNED OVER TO US. THEY'VE
22 HAD THIS CASE SINCE NOVEMBER, YOUR HONOR, AND NOTHING HAS
23 BEEN TURNED OVER TO US. I KNOW THERE WERE SEVERAL ITEMS
24 THAT WERE SEIZED FROM THE SCENE. I JUST WANT TO KNOW
25 WHAT THEY ARE TESTING AND WHY THEY THINK THEY NEED THIS.

1 THE COURT: MR. HANCOCK?

2 MR. HANCOCK: YOUR HONOR, IF IT PLEASE THE
3 COURT, WE KNOW WE'RE HERE AND ONE OF THE REASONS AND THE
4 REASONS IN SCHMERBER IS TO PREVENT THE STATE FROM GOING
5 ON FISHING EXPEDITIONS AT THE EXPENSE OF THE DEFENDANT
6 BECAUSE OF BODILY INTRUSION AND HOW SERIOUS THAT IS.

7 THEY HAD INDICATED, AND I AGREE WITH MR. DEST
8 THAT THEY NEED TO MAKE A CLEAR SHOWING UNDER SCHMERBER
9 THAT THIS PARTICULAR HANDWRITING OR THIS PARTICULAR BLOOD
10 IS NEEDED.

11 EVEN THE HAIR. THEY HAVE SAID HERE THAT THERE
12 WAS HAIR FOUND IN HIS HAND. I BELIEVE THEY WOULD HAVE TO
13 MAKE A SHOWING THAT THEY HAVE EXCLUDED, SAY, THE FATHER'S
14 HAIR. IS IT HIS HAIR? WELL, IF IT'S NOT, THEN YOU MUST
15 GO FURTHER. AND THEY HAVE CONTROL OF THE EVIDENCE.

16 WE ARE SOMEWHAT AT A DISADVANTAGE BECAUSE WE DO
17 NOT HAVE THE FORENSIC BACK AT THIS TIME.

18 FURTHER THEY MENTIONED THAT THEY HAVE BLOOD,
19 THAT THEY WANTED HIS BLOOD BECAUSE OF THE BROKEN WINDOW
20 IN THE BACK. WELL, I HEARD NO SHOWING THAT THERE WERE
21 BLOOD SAMPLES FOUND ON THE WINDOW FROM ANY GLASS THAT
22 WOULD REQUIRE MY DEFENDANT'S BLOOD TO MATCH UP. THAT'S A
23 PARTICULAR INFERENCE THEY MADE, BUT THEY DIDN'T SAY
24 ANYTHING ABOUT THAT BLOOD WAS FOUND ON THOSE PIECES OF
25 GLASS AND NEEDS TO BE MATCHED UP. THAT'S THEIR SPECIFIC

1 SHOWING, BUT I DON'T SEE THAT THAT MEETS THE TEST. THERE
2 HAS BEEN NO CLEAR SHOWING AT THIS TIME THAT MY CLIENT'S
3 BLOOD IS NEEDED TO MATCH UP WITH THAT.

4 THE HANDWRITING SAMPLE, YOUR HONOR, THERE IS A
5 NOTE THERE, I CAN'T ARGUE VERY MUCH AGAINST THE
6 HANDWRITING SAMPLE BECAUSE IT IS THERE. AND, YOUR HONOR,
7 I'M NOT GOING TO ARGUE.

8 AGAIN ON THE PALM PRINTS, YOUR HONOR, THEY SAID
9 THERE MIGHT BE CERTAIN POSITIONING, BUT THEY HAVE CONTROL
10 OF THE FORENSIC. SO, THEREFORE, WHAT ARE WE TALKING
11 ABOUT? ARE THERE PALM PRINTS ON THE WALL, ARE THERE PALM
12 PRINTS ON THE BAT, I THINK HE SAID. WHAT ARE THEY
13 LOOKING FOR? I THINK THAT'S WHAT NEEDS TO BE SHOWN TO
14 THE COURT IN A CLEAR INDICATION.

15 FURTHER, YOUR HONOR, THEY HAVE NOT SHOWN THE
16 METHOD OF OBTAINING -- AND I BELIEVE IT'S IN SCHMERBER
17 THAT THE METHOD USED TO SECURE THIS EVIDENCE FROM MY
18 DEFENDANT ARE RELIABLE AND THAT HASN'T BEEN SHOWN TO THIS
19 COURT AT THIS TIME, SIR.

20 THE COURT: ANYTHING ELSE, MR. BRACKETT?

21 MR. BRACKETT: BRIEFLY, YOUR HONOR. THE
22 INTRUSION ON THE DEFENDANTS IS SLIGHT COMPARED TO THE
23 POSSIBLE VALUE OF THIS EVIDENCE TO THE STATE. SECONDLY,
24 YOUR HONOR, I DID NOT MENTION -- MR. HANCOCK WAS RIGHT ON
25 HIS LAST POINT. THE DEFENDANT'S TO SECURE THE BLOOD

1 WOULD BE TAKEN TO THE PIEDMONT MEDICAL CENTER OR TO A
2 LICENSED MEDICAL FACILITY AND THE BLOOD WOULD BE DRAWN BY
3 A LICENSED PHLEBOTOMIST OR MEDICAL PERSONNEL UNDER
4 MEDICAL CIRCUMSTANCES IN A SAFE MANNER.

5 OF COURSE, THE FINGERPRINTS AND PALM PRINTS
6 WOULD BE TAKEN IN THE STANDARD FASHION. THAT WOULD POSE
7 NO INTRUSION AND THERE WOULD BE NO THREAT OR HARM OR RISK
8 TO THEIR SAFETY DURING THE COURSE OF TAKING EITHER HAIR
9 OR PALM PRINTS AND HANDWRITING EXEMPLARS. IT WOULD JUST
10 BE SIMPLY SITTING DOWN AND WRITING REPEATEDLY OVER A
11 PERIOD OF TIME. THE ONLY ISSUE WOULD BE THE BLOOD, AND
12 THAT WOULD BE TAKEN BY A QUALIFIED MEDICAL PERSONNEL.

13 THE COURT: ANYTHING FURTHER, MR. DEST?

14 MR. DEST: NO, YOUR HONOR, NOT ON THOSE
15 PARTICULAR POINTS. BUT I WOULD POINT OUT THAT IN THE
16 STATE'S MOTION, THE LAST PARAGRAPH, IT SAYS FURTHER IN
17 THE EVENT THAT THIS ORDER IS GRANTED, THE STATE RETAINS
18 THE RIGHT TO COMMENT TO THE COURT ON ANY REFUSAL BY THE
19 DEFENSE TO COOPERATE TO PROVIDE THE SAMPLES BASED ON
20 SOUTH DAKOTA VERSUS NEBBLE, U.S. SUPREME COURT CASE OF
21 STATE VERSUS MIDDLETON, A SOUTH CAROLINA CASE.

22 YOUR HONOR, I LOOKED AT THOSE TWO CASES AND IT
23 IS HARD FOR ME TO DISCERN THE STATE'S POSITION BASED ---

24 THE COURT: THEY CAN'T TELL US WHAT THEY CAN
25 AND CANNOT DO WITH THE EVIDENCE. I MEAN THEY CAN'T DO

1 THAT AT THIS STAGE. THAT'S AN EVIDENTIARY MATTER AT
2 TRIAL, SO THEY CAN'T STAKE THEMSELVES OUT AND Y'ALL CAN'T
3 STAKE THEM OUT EITHER. THAT WILL BE A MATTER FOR TRIAL.

4 MR. DEST: YOUR HONOR, I WOULD POINT OUT FOR
5 THE RECORD THAT THOSE CASES THEY'VE CITED DO NOT STAND
6 FOR THAT PROPOSITION.

7 THE COURT: ANYTHING ELSE, MR. HANCOCK?

8 MR. HANCOCK: YOUR HONOR, I WOULD ONLY ASK THAT
9 IF YOU GRANT THIS MOTION AT THIS TIME THAT WE BE INFORMED
10 OF WHEN THIS WILL TAKE PLACE AND POSSIBLY HAVE A
11 REPRESENTATIVE THERE TO OVERSEE THE PROCEDURE, SIR.

12 MR. DEST: WE WOULD REQUEST THE SAME, YOUR
13 HONOR.

14 THE COURT: I HAVE NO PROBLEM WHATSOEVER WITH
15 THAT. ALL RIGHT. LET ME TAKE IT UNDER ADVISEMENT AND
16 I'LL ISSUE AN ORDER FORTHWITH.

17 MR. HANCOCK: YOUR HONOR, IF I MAY JUST TAKE UP
18 ONE OTHER MATTER. WE NEED TO KNOW WHEN WE ARE GOING TO
19 GET TO SEE SOME OF THIS FORENSIC EVIDENCE THAT IS IN
20 SLED'S HANDS. WE HAVE NOT BEEN PROVIDED -- I DON'T KNOW
21 WHETHER THERE ARE ANALYSES OR WHAT STAGE IT'S IN OR WHAT
22 WE'RE WAITING FOR, BUT I JUST NEED TO KNOW FOR SCHEDULING
23 PURPOSES, FOR TIME FRAME PURPOSES TO KNOW WHEN WE CAN AT
24 LEAST OBTAIN THE FORENSIC EVIDENCE FROM SLED OR SOME
25 GENERAL IDEA.

1 MR. BRACKETT: YOUR HONOR, WE ARE WAITING ON
2 THESE SAMPLES SO THAT THEY CAN CONDUCT THE ANALYSES, MAKE
3 COMPARISONS AND THAT SORT OF THING. ONCE WE CAN GET
4 THOSE IN AND THEY CAN MAKE THOSE COMPARISONS, WE'LL HAND
5 OUT THE RESULTS OF THE TESTS AND ALSO MAKE IT AVAILABLE
6 FOR THEM FOR EXAMINATION IF THEY SO DESIRE.

7 MR. DEST: ALONG THOSE LINES, YOUR HONOR, WE
8 WOULD INQUIRE WHAT TESTS HAVE ALREADY BEEN DONE. WE KNOW
9 THAT THE EVIDENCE HAS BEEN THERE FOR SEVEN MONTHS.
10 CERTAINLY SOME THINGS HAVE BEEN DONE AND WE JUST WANT TO
11 KNOW WHEN THE STATE INTENDS TO TURN OVER THE RESULTS FROM
12 THEIR PRELIMINARY EXAMINATIONS.

13 THE COURT: HAVE RULE 5 AND BRADY MOTIONS BEEN
14 FILED?

15 MR. DEST: YES, SIR.

16 THE COURT: YOU NEED TO COMPLY WITH IT ---

17 MR. BRACKETT: YES, SIR, AS WE GET IT IN.

18 THE COURT: I AM GOING TO REQUIRE THAT IT BE
19 DONE, JUST LIKE YOU SAY, WHEN YOU GET SOMETHING IN, PASS
20 IT ON. AND NOT JUST WHEN YOU GET SOMETHING IN, I THINK
21 THAT, AT LEAST FROM MY PERSPECTIVE, PARTICULARLY IN THIS
22 PARTICULAR ARENA, I'M GOING TO ASK THE SOLICITOR TO ASK
23 LAW ENFORCEMENT TO PROMPTLY PROVIDE THE SOLICITOR WITH
24 SUCH FORENSIC RESULTS; I.E., WHEN A TEST IS DONE, NOT TO
25 HOLD IT TWO MONTHS BEFORE GIVING IT TO THE SOLICITOR

1 BECAUSE THAT CREATES A SITUATION THAT THIS COURT ISN'T
2 COMFORTABLE WITH.

3 I CAN'T FIND FAULT WITH THE SOLICITOR FOR
4 SAYING WELL I JUST GOT IT AND IT'S DATED TWO MONTHS AGO,
5 AND YOU'RE RIGHT, YOU HAD JUST GOT IT. BUT I WANT TO TRY
6 TO MOVE THIS CASE ALONG, SO I WANT THE SOLICITOR TO
7 COMMUNICATE WITH LAW ENFORCEMENT TO PROVIDE SUCH REPORTS,
8 ANALYSES, ET CETERA, AS THEY ARE AVAILABLE.

9 MR. BRACKETT: YES, SIR, YOUR HONOR. AGENT
10 BAKER WITH SLED IS PRESENT IN THE COURTROOM AND I WILL
11 ASK HIM AT THIS TIME TO MAKE SURE THAT WE GET THE
12 INFORMATION AS SOON AS POSSIBLE.

13 THE COURT: AND THIS ISN'T AN INDICATION OF
14 PAST PRACTICE; I'M NOT FINDING FAULT. I HAVE, MAYBE NOT
15 WITH SLED, BUT ON SOME OCCASIONS WE'VE FOUND OURSELVES IN
16 TRIAL AND SOMEBODY COMES UP WITH SOMETHING DATED THREE
17 MONTHS BEFORE IT WAS GIVEN TO THE DEFENSE AND THE
18 SOLICITOR RIGHTLY SAYS WE JUST GOT IT TODAY OR YESTERDAY.
19 I THINK EVERYBODY UNDERSTANDS THAT.

20 IS THERE ANYTHING FROM THE SOLICITOR ABOUT
21 SCHEDULING TO BE PRESENTED AT THIS TIME?

22 MR. BRACKETT: NOT AT THIS TIME, YOUR HONOR.
23 THERE IS AN ISSUE THAT WE MAY NEED TO TAKE UP INFORMALLY
24 WITH SOLICITOR POPE WHEN HE GETS BACK. WE HAD PREVIOUSLY
25 DISCUSSED SCHEDULING THIS CASE ---

1 THE COURT: HE'S EITHER BACK OR SOMEBODY THAT
2 LOOKS JUST LIKE HIM IS SITTING BACK THERE.

3 MR. BRACKETT: OH, HE IS BACK.

4 MR. POPE: IF I MIGHT ADDRESS THIS BRIEFLY WITH
5 THE COURT, YOUR HONOR. I HAVE ADDRESSED BRIEFLY WITH THE
6 DEFENSE, MR. HANCOCK AND MR. DEST, ABOUT A POSSIBILITY OF
7 SETTING A NOVEMBER DATE BUT THERE MAY BE SOME ISSUES THAT
8 WILL CONFLICT WITH THAT AND IT MAY PUSH IT TO JANUARY.
9 THE ADVANTAGE OF THAT WOULD BE SPECIFIC SCHEDULING. AS
10 YOU ARE AWARE, THE COURT ADMINISTRATION GIVES US A BLOCK
11 OF TIME AND WE COULD ASK SPECIFICALLY FOR A BLOCK OF TIME
12 IN JANUARY. WE DON'T HAVE TO TAKE UP MUCH TIME HERE BUT
13 I JUST WANTED TO PUT THEM ON NOTICE, AND I HAVE DONE SO
14 INFORMALLY, AND WE CAN DISCUSS THAT SCHEDULING WITH YOUR
15 HONOR AND TRY TO WORK TOWARD THE JANUARY DATE.

16 THE COURT: VERY GOOD. THANK YOU ALL. I'LL
17 TAKE IT UNDER ADVISEMENT.

18 (WHEREUPON THIS HEARING ENDED.)

19 PRE-TRIAL MOTIONS OF SEPTEMBER 22, 1998:

20 THE COURT: WE ARE HERE INITIALLY ON A RULE TO
21 SHOW CAUSE INVOLVING JAMES ROBERTSON CHARGED WITH MURDER,
22 TWO COUNTS, AND THE DEATH PENALTY IS BEING SOUGHT. I
23 ISSUED A RULE TO SHOW CAUSE RETURNABLE TODAY TO A MR.
24 MEYER CONCERNING SOME RECORDS THAT HAD NOT BEEN PRODUCED.

25 DUE TO A GLITCH THAT SOMETIMES OCCURS, MR.

1 ROBERTSON IS NOT HERE. MR. MEYER IS HERE WITH COUNSEL
2 AND I HAVE MET WITH COUNSEL FOR THE PARTIES AND MR. MEYER
3 IN MY CHAMBERS. IT APPEARS THAT OUR POSTURE IS SUCH THAT
4 WE MIGHT WISH TO CARRY THIS OVER TO FRIDAY WHEN WE CAN
5 HAVE MR. ROBERTSON HERE. ALSO GIVE EACH SIDE THE
6 OPPORTUNITY TO DO FURTHER RESEARCH AND ALSO -- WELL, THAT
7 OUGHT TO COVER IT.

8 NOW, FOR THE RECORD, MR. CHIARENZA REPRESENTS
9 MR. MEYER. MR. CHIARENZA, YOUR CLIENT IS ASSERTING A
10 PRIVILEGE UNDER WHAT STATUTE?

11 MR. CHIARENZA: 44-22-90.

12 THE COURT: WHAT BRINGS HIM WITHIN THE AMBIENT
13 OF THAT STATUTE?

14 MR. CHIARENZA: YOUR HONOR, THE FIRST PARAGRAPH
15 IN THAT STATUTE ENTITLED "COMMUNICATIONS WITH MENTAL
16 HEALTH PROFESSIONALS ARE PRIVILEGED. COMMUNICATIONS
17 BETWEEN PATIENTS AND MENTAL HEALTH PROFESSIONALS,
18 INCLUDING GENERAL PHYSICIANS, PSYCHIATRISTS,
19 PSYCHOLOGISTS, PSYCHOTHERAPISTS, NURSES, SOCIAL WORKERS
20 OR OTHER STAFF MEMBERS EMPLOYED IN A PATIENT THERAPIST
21 CAPACITY OR EMPLOYEES UNDER THE SUPERVISION OF THEM ARE
22 CONSIDERED PRIVILEGED".

23 YOUR HONOR, I WOULD SUBMIT TO THE COURT THAT
24 DR. HICKS IS A PSYCHOTHERAPIST, HE IS A FAMILY AND
25 MARITAL COUNSELOR AND FAMILY AND MARITAL THERAPIST AND

1 HAS TREATED THE PARTIES IN THAT RELATION.

2 THE COURT: ALL RIGHT. I THOUGHT IT WAS MEYER,
3 IT'S HICKS?

4 MR. MEYER: MEYER.

5 MR. CHIARENZA: I'M SORRY, YOUR HONOR.

6 THE COURT: AND YOU CALLED HIM DOCTOR. WHAT
7 SORT OF DOCTOR?

8 MR. MEYER: I'M NOT A DOCTOR.

9 MR. CHIARENZA: HE'S A PSYCHOTHERAPIST.

10 THE COURT: OKAY. AND WHAT WAS THAT CODE
11 SECTION AGAIN?

12 MR. CHIARENZA: 44-22-90.

13 THE COURT: ALL RIGHT. THE COURT HAS ISSUED A
14 RULE TO SHOW CAUSE, SO THE COURT HAS BASICALLY CONTROL OF
15 THE PROCEEDINGS WHICH IT'S SUPPOSED TO HAVE ALL THE TIME,
16 BUT PARTICULARLY WHEN A RULE TO SHOW CAUSE HAS BEEN
17 ISSUED.

18 ANYTHING FROM THE SOLICITOR'S OFFICE?

19 MR. POPE: NO, SIR, YOUR HONOR. AS WE
20 INDICATED, BASED ON THE RECORDS THAT WE BELIEVE ARE
21 AVAILABLE AS WE TALKED IN CHAMBERS, THERE MAY BE SOME
22 ISSUES CONCERNING A MENTAL EVALUATION AND COMPETENCY
23 HEARING IN MR. ROBERTSON'S PRESENCE THIS FRIDAY.

24 THE COURT: COUNSEL FOR MR. ROBERTSON?

25 MR. HANCOCK: YOUR HONOR, IF IT PLEASE THE

1 COURT, WE HAVE ISSUED THIS RULE TO SHOW CAUSE BECAUSE WE
2 HAVE BEEN UNABLE TO COMPEL THE PRODUCTION AND/OR
3 INSPECTION OF DOCUMENTS WHICH WE FEEL ARE NECESSARY TO
4 THE DEFENSE IN DETERMINING THE MENTAL HEALTH OF THE
5 PARENTS AND HISTORY FOR THE YOUNG MAN. THERE HAS BEEN A
6 REFUSAL TO DO SO.

7 WE HAVE SERVED A SUBPOENA UNDER RULE 13 OF THE
8 RULES OF CRIMINAL PROCEDURE. IT IS MY UNDERSTANDING THAT
9 THE RULES IN CRIMINAL PROCEDURE DO NOT PRECLUDE SERVICE
10 AND INFORMATION UNDER RULE 45 OF THE CIVIL RULES AS TO
11 PROPER SERVICE AND PROPER HANDLING OF THE SUBPOENA
12 BECAUSE THERE IS NO RULE IN THE CRIMINAL PROCEDURE. IN
13 THE CIVIL PROCEDURES IT INDICATES THAT WHEN INFORMATION
14 SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS
15 PRIVILEGED, SUBJECT TO PROTECTION AND TRIAL PREPARATION,
16 THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED
17 BY A DESCRIPTION OF THE NATURE OF THE DOCUMENT,
18 COMMUNICATION OR THINGS NOT PRODUCED THAT IS SUFFICIENT
19 TO ENABLE THE DEMANDING PARTY TO CONTEST THE CLAIM.

20 THE SUBPOENA WAS SERVED ON SEPTEMBER 2ND, YOUR
21 HONOR. WE HAVE SERVED A RULE TO SHOW CAUSE. ON JULY
22 14TH WAS THE SUBPOENA; THE RULE TO SHOW CAUSE WAS ON
23 SEPTEMBER 2ND. TO THIS POINT WE HAVE HAD NOTHING TO
24 INDICATE OR GIVE US ANY INFORMATION AS TO THE REASON FOR
25 CONTESTING THE PRODUCTION OF THESE DOCUMENTS AT THIS

1 POINT TO THIS TIME UNTIL THIS MORNING, YOUR HONOR.

2 I WOULD ASK THE COURT UNDER THOSE CIRCUMSTANCES
3 TO GIVE US ACCESS TO THOSE DOCUMENTS AT THIS POINT,
4 TODAY. I HAVE CERTAIN CONCERNS, IT HAS BEEN THAT LONG
5 THAT WE HAVE NOT HAD ANY RESPONSE, THAT WAS WHY THE RULE
6 TO SHOW CAUSE WAS BROUGHT AND I FEEL LIKE IT IS GERMANE
7 TO OUR DEFENSE AND TO THE EVALUATIONS THAT ARE GOING ON
8 RIGHT NOW THAT OUR MENTAL HEALTH PEOPLE NEED THESE
9 DOCUMENTS AND NEED THEM NOW IN ORDER TO PROPERLY PREPARE
10 A DEFENSE.

11 THE COURT: WELL, I'M GOING TO DEFER A FINAL
12 RULING ON THIS UNTIL FRIDAY AND WE WILL RECONVENE AT
13 9:00. I HAVE A TELEPHONE CONFERENCE AT 9:00 SO IT MAY BE
14 A FEW MINUTES AFTER 9:00.

15 AS FAR AS ANY CONCERN ABOUT RECORDS OR
16 ANYTHING, I WOULD THINK THAT MR. MEYER, AGAIN UNDER THE
17 STATUTE, IS REQUIRED TO KEEP THOSE RECORDS, SO I DON'T
18 THINK THERE WILL BE ANY PROBLEM WITH THAT.

19 I WOULD SUGGEST, MR. CHIARENZA, THAT MR. MEYER
20 PROBABLY WOULD FOLLOW THE PROCEDURE THAT SHOULD HAVE BEEN
21 FOLLOWED AND I WOULD SUGGEST THAT NOW THAT HE HAS COUNSEL
22 YOU ADVISE HIM WHAT TO DO IF HE SHOULD RECEIVE ANOTHER
23 SUBPOENA. JUST SAYING I DON'T WANT IT AND I'M NOT GOING
24 TO COMPLY OR I THINK I'M PROTECTED ISN'T QUITE ENOUGH.
25 THERE ARE WAYS TO AVOID A SUBPOENA BUT IT'S NOT BY, IN

1 ESSENCE, THROWING IT IN THE TRASH CAN. BUT MR. CHIARENZA
2 IS YOUR LAWYER, I'M NOT. I'LL LET HIM TELL YOU ABOUT
3 THAT FOR FUTURE REFERENCE.

4 ALL RIGHT, BOTH SIDES WILL DO SOME FURTHER
5 RESEARCH IN REGARD TO THE AVAILABILITY OF THE RECORDS,
6 KEEPING IN MIND THAT THIS SITUATION DOES INVOLVE THE
7 DEATHS OF THE PATIENTS AND THE PATIENTS ARE NOT
8 EXERCISING THE PRIVILEGE; OBVIOUSLY, THEY CANNOT. THEY
9 ARE NOT REPRESENTED BY COUNSEL, THEIR ESTATES, SO THEY
10 ARE NOT EXERCISING THE PRIVILEGE, AND THAT'S JUST ONE
11 OTHER ISSUE THAT NEEDS TO BE LOOKED AT.

12 MR. HANCOCK: YOUR HONOR, IF IT PLEASE THE
13 COURT. THAT IS MY UNDERSTANDING OF THE LAW ALSO BUT IN
14 ORDER TO PROPERLY RESEARCH THIS AND HOPEFULLY GIVE THE
15 COURT GUIDANCE, I NEED TO KNOW WHAT THIS GENTLEMAN CLAIMS
16 HIS STATUS IS. IF HE IS NOT A PSYCHIATRIST,
17 PSYCHOLOGIST, IS HE A MENTAL HEALTH COUNSELOR; WHAT IS
18 HIS STATUS SO THAT I CAN PROPERLY RESEARCH HIM UNDER THE
19 STATUTES BECAUSE THEY DO DELINEATE MANY OF THE FORMS OF
20 PSYCHOLOGICAL HEALTH.

21 THE COURT: IT'S PRETTY BROAD; IT INCLUDES
22 STAFF MEMBERS EVEN UNDER THE SUPERVISION OF THOSE OTHERS.
23 BUT, MR. CHIARENZA, WHICH OF THOSE CATEGORIES, IF ANY, DO
24 YOU FEEL MR. MEYER FALLS?

25 MR. CHIARENZA: I WOULD SAY PSYCHOTHERAPIST,

1 YOUR HONOR.

2 THE COURT: OKAY.

3 MR. HANCOCK: PLUS, YOUR HONOR, I THINK THAT
4 PARTICULAR STATUTE REFERS TO ONES EMPLOYED BY THE STATE
5 IN MENTAL HEALTH, I BELIEVE, YOUR HONOR.

6 THE COURT: WHAT IS IT, 44-25-90? WHAT IS IT
7 AGAIN?

8 MR. CHIARENZA: 22-90.

9 MR. HANCOCK: BUT THAT WOULD BE THE
10 DESIGNATION, PSYCHOTHERAPIST, YOUR HONOR?

11 THE COURT: YES. IS THIS THROUGH THE STATE OR
12 IS THIS PRIVATE PATIENTS?

13 MR. CHIARENZA: PRIVATE, YOUR HONOR. YOUR
14 HONOR, I DON'T SEE WHERE THAT IS IN THE STATUTE.

15 THE COURT: I DON'T EITHER JUST LOOKING AT IT
16 BECAUSE IT STARTS OFF "RIGHTS OF MENTAL HEALTH PATIENTS"
17 OF CHAPTER 22 OF TITLE 44. OF COURSE IT DOES SAY
18 "PATIENT MEANS AN INDIVIDUAL UNDERGOING TREATMENT IN THE
19 DEPARTMENT" UNDER 44-22-10 SUBSECTION 11. YOU BETTER
20 START LOOKING AT THE DEFINITIONS.

21 MR. HANCOCK: I THINK IT'S THE DEPARTMENT OF
22 MENTAL HEALTH, SIR.

23 THE COURT: ALL RIGHT, WE WILL DEFER UNTIL
24 FRIDAY. AND SINCE WE HAVE SOME MEDIA REPRESENTATIVES,
25 THE REQUESTS THAT WERE ISSUED TODAY, I'LL JUST CARRY THEM

1 OVER WITHOUT HAVING TO SUBMIT ANY FURTHER REQUESTS.

2 MR. POPE: MAY IT PLEASE THE COURT, JUST TO
3 MAKE IT CLEAR FOR THE RECORD, I THINK MR. HANCOCK HAD
4 INDICATED IN CHAMBERS THAT HE HAD SPOKEN TO HIS CLIENT
5 ABOUT THE NATURE OF TODAY'S HEARING AND THAT THEY HAD
6 MADE A DECISION FOR HIM NOT TO BE PRESENT AND THAT HE
7 WILL BE PRESENT FRIDAY.

8 MR. HANCOCK: HE WILL BE PRESENT FRIDAY, YOUR
9 HONOR.

10 MR. POPE: HE HAD WAIVED HIS PRESENCE TODAY; I
11 JUST WANTED TO MAKE THAT CLEAR FOR THE RECORD.
12 SECONDARILY, AGAIN, WE DISCUSSED THIS IN CHAMBERS. IT IS
13 THE STATE'S INTENTION TO BRING IT TO THE COURT FRIDAY AND
14 REQUEST THE COURT CONSIDER THE MENTAL EVALUATION,
15 COMPETENCY EVALUATION, A COURT ORDERED EVALUATION. I
16 JUST WANTED TO PUT THAT ON THE RECORD TO GIVE THEM SOME
17 NOTICE THAT THAT'S OUR INTENTION TO DEAL WITH THAT OR TO
18 ASK THE COURT TO CONSIDER THAT FRIDAY ALSO.

19 THE COURT: ALL RIGHT. THANK YOU ALL.
20 (WHEREUPON THIS HEARING ADJOURNED)

21 PRE-TRIAL MATTERS OF SEPTEMBER 25, 1998:

22 THE COURT: MR. CHIARENZA, THIS WAS ORIGINALLY
23 A RULE TO SHOW CAUSE BUT IT'S SORT OF POSTURED AS A
24 MOTION TO QUASH. IN ANY EVENT, THE PARTY'S BURDEN OF
25 PROOF WOULD BE MR. MEYER, AND SO I'M GOING TO LET YOU GO

1 FIRST.

2 MR. CHIARENZA: YES, YOUR HONOR.

3 THE COURT: AND I HAVE REVIEWED YOUR BRIEF.

4 MR. CHIARENZA: YOUR HONOR, FIRST OF ALL THERE
5 ARE A COUPLE OF STIPULATIONS IN THIS MATTER. I HAVE
6 DISCUSSED WITH MR. HANCOCK, AND HE WILL CORRECT ME IF I'M
7 WRONG, BUT WE HAVE STIPULATED THAT A PRIVILEGE DOES EXIST
8 IN THIS STATE AS FAR AS COMMUNICATIONS BETWEEN FAMILY
9 THERAPISTS WHICH MR. MEYER IS, AND HIS CLIENT. AND THAT
10 THAT PRIVILEGE IS CREATED BY SECTION 40-75-190 OF THE
11 SOUTH CAROLINA CODE OF LAWS. THAT WENT INTO EFFECT JULY
12 1ST OF THIS YEAR.

13 YOUR HONOR, WE HAVE FURTHER STIPULATED THAT THE
14 PRIVILEGE HAS TO SOME DEGREE BEEN CONTROLLED BY 19-11-95
15 WHICH PROTECTS CONFIDENCES BETWEEN PATIENTS WITH MENTAL
16 ILLNESS OR EMOTIONAL CONDITIONS AND LICENSEES UNDER THIS
17 CHAPTER.

18 SO, WE HAVE ESSENTIALLY STIPULATED THAT THE
19 COURT NEEDS TO LOOK TO 19-11-95 TO DETERMINE UNDER WHAT
20 CONDITIONS THAT THE PRIVILEGE OF COMMUNICATIONS MUST BE
21 DIVULGED. AND ESSENTIALLY IT COMES DOWN TO WHETHER OR
22 NOT GOOD CAUSE CAN BE SHOWN TO DIVULGE THE PRIVILEGE.

23 I THINK MR. HANCOCK MAY HAVE SOME CONCERN WITH
24 WHETHER OR NOT THE PRIVILEGE SURVIVES THE DEATHS OF THE
25 PATIENTS. AGAIN, I DON'T KNOW THAT HE'S GOING TO MAKE AN

1 ARGUMENT THERE BUT ESSENTIALLY I THINK THAT WE'RE BOTH IN
2 AGREEMENT THAT IF GOOD CAUSE CAN BE SHOWN TO DIVULGE THE
3 RECORDS, THEN THEY OUGHT TO BE DIVULGED.

4 IN THIS CASE MR. MEYER ARGUES THAT THE
5 INTERESTS THAT PSYCHOTHERAPISTS HAVE AND THAT THEIR
6 PATIENTS HAVE IN BEING CONFIDENT THAT THEIR
7 COMMUNICATIONS WILL BE HELD IN CONFIDENCE, THAT THEY WILL
8 NOT BE EXPOSED TO THE PUBLIC, HE SUBMITS THAT THE
9 NECESSITY FOR THAT FOR PEOPLE TO FEEL THAT THEY CAN GO
10 AND SEEK COUNSELING, SEEK THERAPY AND BE CONFIDENT WITH
11 THE KNOWLEDGE THAT WHATEVER THEY SAY TO THEIR THERAPIST
12 WILL STAY BETWEEN THE TWO OF THEM, THAT THAT CONCERN
13 OUTWEIGHS ANY STATE INTERESTS OR ANY INTERESTS OF THE
14 DEFENDANT IN THIS MATTER.

15 YOUR HONOR, I DON'T BELIEVE MR. HANCOCK, AND I
16 KNOW MYSELF, HAVE NOT BEEN ABLE TO FIND ANY CASE LAW IN
17 THIS STATE AND I'VE NOT BEEN ABLE TO FIND ANY CASE LAW IN
18 ANY OTHER STATE DIRECTLY ON POINT AS TO WEIGHING THE
19 CONCERNS OF THE PATIENT AND THE COUNSELOR VERSUS THE
20 CONCERNS OF A DEFENDANT IN A MURDER CASE TO PRESENT HIS
21 CASE IN HIS DEFENSE.

22 CASE LAW IN OTHER STATES SEEM TO FOCUS ON THAT
23 THE PRIVILEGES BE DIVULGED, AND IT CAN ONLY BE DONE IN
24 LIMITED CIRCUMSTANCES AND ESSENTIALLY THEY SEEM TO FOCUS
25 ON THAT LIMITATION BEING A DEFENDANT CAN USE THE

1 INFORMATION IN THE MEDICAL RECORDS TO IMPEACH WITNESSES
2 OF THE STATE, CREDIBILITY OF WITNESSES OF THE STATE OR TO
3 BRING UP SOME MENTAL HEALTH ASPECT TO THE WITNESS OR
4 VICTIM IN THE CASE.

5 IN THIS CASE I DON'T KNOW THAT THAT WOULD APPLY
6 SINCE THE PARTICULAR CLIENTS WILL NOT BE TESTIFYING IN
7 THIS CASE, HOWEVER THERE MAY BE OTHER WITNESSES WHO
8 TESTIFY AS TO THE NATURE OF THE FAMILY RELATIONSHIP OR
9 THINGS OF THAT MATTER. IN THAT CASE, I CAN'T SPEAK FOR
10 MR. HANCOCK, BUT IF HE WOULD WANT TO POTENTIALLY IMPEACH
11 THOSE WITNESSES, THEN IT APPEARS THAT OTHER STATES HAVE
12 SAID THAT HE CAN DO THAT, HE CAN USE THE RECORDS FOR THAT
13 LIMITED PURPOSE, TO IMPEACH WHAT THESE OTHER WITNESSES
14 HAVE TO SAY.

15 IT'S MY UNDERSTANDING THAT IF HE'S GOT ENOUGH
16 GOOD CAUSE LINKING THIS MATTER -- YOUR HONOR, ESSENTIALLY
17 I WOULD SAY THAT THE DANGER HERE IS SETTING A PRECEDENT
18 WHEREIN THESE CONFIDENCES, COMMUNICATIONS ARE NO LONGER
19 PRIVILEGED AND ARE NO LONGER CONFIDENT AND IT COULD
20 POTENTIALLY HAVE A CHILLING EFFECT ON THE PEOPLE WHO NEED
21 TO SEEK COUNSELING WHO OTHERWISE WOULD BUT FOR THE FACT
22 THAT IF WE SET A PRECEDENT HERE THAT WHAT THEY SAY TO
23 THEIR FAMILY COUNSELOR IS NOT AS PROTECTED AS THEY THINK
24 IT MIGHT BE, THEN POTENTIALLY THAT COULD CAUSE A CHILLING
25 EFFECT THAT WOULD PREVENT PEOPLE FROM SEEKING COUNSELING

1 IF NEEDED.

2 AGAIN, I WOULD SUBMIT THAT THE COURT NEEDS TO
3 WEIGH THE POTENTIAL PITFALLS THERE VERSUS THIS NEED BY
4 MR. HANCOCK THAT HE GET THESE RECORDS FOR MR. ROBERTSON.

5 THE COURT: ALL RIGHT. MR. HANCOCK?

6 MR. HANCOCK: IF IT PLEASE THE COURT, MR.
7 CHIARENZA AND I HAVE AGREED ON QUITE A FEW THINGS AND WE
8 DO AGREE THAT SECTION 19-11-95 D-1 IS CONTROLLING. AND
9 IN THAT SECTION, YOUR HONOR, THAT SAYS THAT CONFIDENCES
10 SHALL BE REVEALED WHEN REQUIRED BY STATUTORY LAW OR BY
11 COURT ORDER FOR GOOD CAUSE SHOWN.

12 I DON'T BELIEVE WE CAN SHOW THE COURT ANY
13 BETTER CAUSE THAN A GENTLEMAN FIGHTING FOR HIS LIFE UNDER
14 THE DEATH PENALTY STATUTE IN THIS STATE.

15 YOUR HONOR, WE HAVE ALSO IN OUR BRIEF INDICATED
16 THAT WE HAVE CERTAIN EXPERTS, MITIGATION EXPERTS THAT
17 HAVE BEEN APPROVED BY THE COURT AND FUNDED BY THE COURT
18 THAT DEEMS THESE RECORDS ARE NECESSARY IN PUTTING
19 TOGETHER A FAMILY HISTORY WHICH MAY REFLECT ON MY
20 CLIENT'S MENTAL HEALTH AND HIS MENTAL HISTORY. IT IS
21 NECESSARY FOR HIS PARENTS' RECORDS TO BE REVEALED IN
22 ORDER TO DO THAT, TO PUT TOGETHER A MENTAL HISTORY WHICH
23 MAY REFLECT ON HIS ABILITY TO PRESENT AN INSANITY DEFENSE
24 OR A DEFENSE OF GUILTY BUT MENTALLY ILL SHOULD THAT
25 ARISE.

1 YOUR HONOR, WE ARE IN THE BEGINNING STAGES OF
2 THAT, AND THAT IS WHY THESE RECORDS WERE SUBPOENAED,
3 THAT'S WHY THESE RECORDS WERE SOUGHT.

4 MR. MEYER WAS THE PRIMARY TREATING COUNSELOR OF
5 THE PARENTS; HE ALSO TREATED MY CLIENT AT LENGTH IN
6 FAMILY SESSIONS AND FULLY EVALUATED THE INTERACTION OF
7 THE FAMILY AND THE WAY IT REFLECTS ON MY CLIENT, YOUR
8 HONOR, WE NEED THESE RECORDS.

9 FURTHER, WE ARE NOT SURE, BUT THERE MAY BE
10 BRADY INFORMATION IN THERE; THESE RECORDS MAY HAVE
11 EXCULPATORY INFORMATION THAT MAY REFLECT ON MY CLIENT'S
12 DEFENSE. THEY ARE ALL CONTAINED THERE. THERE WERE
13 FREQUENT VISITS, FREQUENT VISITS AND THESE RECORDS ARE
14 VOLUMINOUS. WE HAVE GATHERED RECORDS FROM ALL OVER THE
15 UNITED STATES, YOUR HONOR, AND THIS IS THE FIRST TIME
16 WE'VE RUN INTO THIS PARTICULAR SITUATION.

17 BUT WE BELIEVE IN THE AFFIDAVIT PRESENTED TO
18 THE COURT IN THE BRIEF THAT WE HAVE SHOWN THAT WE DO NEED
19 THESE RECORDS TO PROPERLY DEFEND IN THIS CASE.

20 THE COURT: ANYTHING FURTHER?

21 MR. CHIARENZA: NO, YOUR HONOR.

22 THE COURT: I FIND THAT MR. MEYER IS TO COMPLY
23 WITH THE DEFENDANT'S SUBPOENA. I FIND THAT GOOD CAUSE
24 FOR REQUIRING THAT DOES EXIST.

25 I FIND THAT IN THIS CASE BOTH THE PATIENTS ARE

1 DECEASED; BOTH ARE ALLEGED TO HAVE BEEN THE VICTIMS OF
2 THE MURDER; BOTH ARE ALLEGED TO HAVE BEEN THE VICTIMS OF
3 A MURDER HAVING BEEN COMMITTED BY THE DEFENDANT, JAMES D.
4 ROBERTSON.

5 IN THIS CASE MR. ROBERTSON WAS NOTICED BY THE
6 STATE THAT IT WILL IN FACT SEEK THE DEATH PENALTY. WE
7 ALWAYS START OFF IN A DEATH PENALTY CASE WITH THE
8 AWARENESS THAT A DEATH PENALTY CASE IS IN FACT DIFFERENT
9 FROM ANY OTHER TYPE CASE THAT COMES BEFORE THE COURT.
10 THE DEFENDANT IN THIS CASE IS ENTITLED TO A BIFURCATED
11 TRIAL IF HE IS FOUND GUILTY OF MURDER.

12 I FIND THAT MITIGATION EXPERTS ARE ALLOWED.
13 MATTERS IN MITIGATION IN REGARD TO THE PENALTY OF DEATH
14 ARE ALLOWED; MITIGATION CAN BE PRESENTED. MITIGATION
15 EXPERTS ARE AN IMPORTANT INTEGRAL, EVEN NECESSARY
16 PARTICIPANTS IN A DEATH PENALTY CASE, AND THEIR
17 PRESENTATION AT TRIAL, BASED ON MY PAST EXPERIENCE, IS
18 PREDICATED TO A LARGE DEGREE ON THE PSYCHOLOGICAL HEALTH
19 OR LACK OF PSYCHOLOGICAL HEALTH OF A DEFENDANT, AND THIS
20 GENERALLY INCLUDES THE ENTIRE FAMILY SCENARIO.

21 I FIND THAT THIS IS TO HAVE NO PRECEDENTIAL
22 VALUE, THIS IS CASE SPECIFIC. THIS RULING IS NOT TO BE
23 AN INDICATION THAT THAT PRIVILEGE THAT MR. MEYER DOES IN
24 FACT HAVE IS NOT A VALID PRIVILEGE, AND THE SANCTITY OF
25 THAT PRIVILEGE IS NOT TO BE RUN OVER ROUGH SHOD, AND SO I

1 FIND THE PRECEDENTIAL VALUE IS CASE SPECIFIC.

2 I FIND THAT THIS RULING WOULD NOT, AND WILL
3 NOT, SHOULD NOT HAVE A CHILLING EFFECT ON THE
4 CIRCUMSTANCES AS OUTLINED HERE.

5 I AM NOT, EVEN THOUGH I HAVE TALKED IN MOST
6 PART ABOUT MITIGATION, I AM NOT RESTRICTING AT THIS POINT
7 THE USE OF ANY EVIDENCE THAT MAY BE REVEALED THROUGH
8 THESE RECORDS. I AM NOT LIMITING ITS USE AT THIS TIME.
9 THERE HAS BEEN A REQUEST THAT IT BE USED ONLY FOR
10 IMPEACHMENT VALUES -- ONLY FOR IMPEACHMENT. I THINK IT IS
11 PREMATURE FOR THE COURT TO RULE ON THAT.

12 ~~THE COURT DOESN'T KNOW WHAT'S IN THE RECORDS;~~
13 ~~THE DEFENSE DOES NOT KNOW WHAT'S IN THE RECORDS, AND THE~~
14 ~~STATE DOESN'T KNOW WHAT'S IN THE RECORDS I WOULD NOT~~
15 ~~THINK. SO, I'M NOT GOING TO RULE ON THE ADMISSIBILITY AT~~
16 ~~TRIAL; I'M NOT GOING TO RULE ON ANY MATTER OTHER THAN~~
17 ~~THAT THEY ARE TO BE PRODUCED.~~

18 THEY ARE TO BE PRODUCED SUBJECT TO A PROTECTIVE
19 ORDER. THEY ARE NOT TO BE DIVULGED TO ANYONE OTHER THAN
20 RETAINED EXPERTS UNDER A CONTRACT WITH THAT EXPERT
21 WHEREIN THAT EXPERT AGREES TO NOT DIVULGE INFORMATION
22 BEYOND -- WELL, NOT DIVULGE IT TO ANYONE. THEY CAN USE
23 IT ONLY FOR THEIR PURPOSES FOR WHICH THEY ARE EMPLOYED IN
24 THIS PARTICULAR CASE, AND NO OTHER.

25 I BELIEVE THAT COVERS EVERYTHING I NEED TO

1 COVER. MR. CHIARENZA, CAN YOU THINK OF ANYTHING ELSE?

2 MR. CHIARENZA: NO, YOUR HONOR, JUST TO ASK IF
3 THERE WOULD BE AN ORDER OF THE COURT.

4 THE COURT: I AM GOING TO ASK COUNSEL TO
5 PREPARE AN ORDER. AND I WOULD LIKE THE ORDER TO
6 INCORPORATE, FOR THE PURPOSE OF THOROUGHNESS, AND TO SHOW
7 THE PREDICATE FOR SUCH RULING, THE LEGAL ARGUMENTS,
8 BRIEFS, TO SHOW HOW WE GOT HERE, AND WHAT THE LAW IN FACT
9 IS BECAUSE I THINK BOTH BRIEFS PRETTY MUCH -- ARE VERY
10 THOROUGH, VERY GOOD, AND VERY WELL DRAWN, AND ACCURATE.

11 SO, I WOULD LIKE THE ORDER TO REFLECT THE LAW,
12 AND THEN MY FINDINGS, AND THEN THE PROTECTIVE PORTIONS OF
13 THE ORDER BE SET FORTH THEREIN WITH THE LIMITATIONS THAT
14 I HAVE OUTLINED. AND YOU SHOULD GO AHEAD AND PUT IN
15 THERE THAT THIS RULING ADDRESSES ONLY THE SUBPOENA ISSUE,
16 AND NOT ANY TRIAL ISSUES.

17 MR. HANCOCK: YOUR HONOR, THE ONLY THING I
18 WOULD HAVE IS WHEN THIS INFORMATION SHOULD BE TURNED
19 OVER, UPON THE DELIVERY OF THE ORDER OR THE FILING OF THE
20 ORDER?

21 THE COURT: WELL, LET ME ASK MR. MEYER THROUGH
22 MR. CHIARENZA WHAT KIND OF TIME FRAME ARE WE ON?

23 MR. CHIARENZA: YOUR HONOR, HE IS PREPARED TO
24 TURN THEM OVER DURING THE REGULAR COURSE OF BUSINESS
25 DURING ANY TIME AT HIS OFFICE STARTING TOMORROW MORNING.

1 THE COURT: WELL, AS SOON AS YOU CAN GET THE
2 ORDER IN. I'LL BE A PARTICIPANT ON A PANEL AT THE
3 SOLICITOR'S CONFERENCE NEXT WEEK SO I WOULD NOT BE BACK
4 HERE UNTIL THURSDAY AND THEN FRIDAY I'VE GOT HEARINGS IN
5 COLUMBIA. SO, THURSDAY IS ABOUT THE ONLY DAY NEXT WEEK
6 THAT I'LL BE HERE, BUT I'LL BE AROUND TODAY. IT JUST
7 DEPENDS ON HOW SPEEDY YOU CAN GET IT AVAILABLE.

8 MR. HANCOCK: I'M EITHER GOING TO GET IT TO YOU
9 TODAY OR I'M GOING TO BE CHASING YOU, JUDGE.

10 THE COURT: ALL RIGHT. YOU CAN FIND ME, I'LL
11 TELL YOU THAT. THANK ALL OF YOU, I APPRECIATE IT.

12 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR?

13 THE COURT: YES, SIR?

14 MR. POPE: WE HAVE A NUMBER OF MATTERS THAT
15 RELATE TO THIS DEFENDANT AND MAYBE GENERALLY RELATED TO
16 THIS PARTICULAR ISSUE, YOUR HONOR.

17 ONE, TO BEGIN WITH, AS WE INDICATED THE OTHER
18 DAY, THERE ARE A NUMBER OF MENTAL ISSUES INVOLVED. MR.
19 HANCOCK AND I HAVE DISCUSSED THESE SEVERAL TIMES AND I
20 UNDERSTAND HE WANTED RECORDS POTENTIALLY FROM MR. MEYER
21 AND OTHER ENTITIES AND, AGAIN, THIS IS THE ONE TIME WE'VE
22 ADDRESSED IT, I DON'T KNOW THAT MR. HANCOCK HAS RUN INTO
23 THE SAME THING YET FROM OTHER PEOPLE, I THINK HE
24 INDICATED THAT HE HADN'T, BUT I JUST WANTED TO MAKE IT
25 CLEAR THAT IT IS THE STATE'S POSITION THAT WE WOULD BE

1 EQUALLY ENTITLED TO WHATEVER RECORDS, WHETHER IT'S MR.
2 MEYER'S RECORDS OR WHATEVER RECORD THAT WE'RE TALKING
3 ABOUT IN THE MENTAL EVALUATIONS OF THE FAMILY MEMBERS OF
4 THIS DEFENDANT.

5 ONE, FOR A NUMBER OF REASONS, YOUR HONOR, BUT
6 PARTICULARLY -- TRADITIONALLY THE WHOLE PURPOSE IN THE
7 COURT GRANTING AN EXCLUSION OF THESE PARTICULAR
8 PROTECTIONS IS BECAUSE OF THE DEFENSE EXPERT HAVING AN
9 OPPORTUNITY TO GIVE A FAMILY HISTORY, BUT TRADITIONALLY,
10 I MEAN ---

11 THE COURT: BEFORE YOU GO ANY FURTHER LET ME
12 ASK YOU, IS THERE ANY PROBLEM WITH GOING AHEAD AND
13 PROVIDING THE SOLICITORS WITH THESE RECORDS AT THIS TIME?
14 DOES ANYBODY OBJECT TO THAT?

15 MR. CHIARENZA: NO, YOUR HONOR.

16 MR. HANCOCK: WE DO, YOUR HONOR. I DON'T THINK
17 HE HAS ANY PARTICULAR RIGHT TO THEM AND UNDER REVERSE
18 DISCOVERY, THEN HE IS ONLY ENTITLED TO THAT WHICH WE ARE
19 GOING TO USE OR PRESENT OR HAVE AN EXPERT TESTIFY TO AT
20 TRIAL. SO, THEREFORE, HE'S NOT ENTITLED TO THESE I DON'T
21 THINK UNDER DISCOVERY RULE 5 UNTIL IT'S DETERMINED WHAT
22 WE ARE GOING TO DO WITH THE RECORDS.

23 THE COURT: I'M NOT SURE THAT'S THE CASE. I
24 MEAN DISCOVERY ISN'T PREDICATED ON SIMPLY WHETHER YOU
25 CHOOSE TO USE STUFF OR NOT; IT'S PREDICATED ON ITS

1 EXISTENCE.

2 MR. POPE: YOUR HONOR, TO TAKE MY STATEMENT
3 FURTHER, THAT'S THE PROBLEM. AS MR. HANCOCK INDICATED,
4 THAT'S EXACTLY WHAT WE RUN INTO. THEY CHOOSE -- AND I'VE
5 DEALT WITH MITIGATION EXPERTS -- THEY CHOOSE NOT TO GIVE
6 A WRITTEN REPORT, BUT THE LAW ALLOWS ALL UNDERLYING BASES
7 AND ---

8 THE COURT: HOW ARE THEY GOING TO CROSS EXAMINE
9 YOUR MITIGATION EXPERTS?

10 MR. HANCOCK: YOUR HONOR, THEY CAN CROSS
11 EXAMINE THEM IF THEY ARE GOING TO USE IT AS A BASIS OF AN
12 OPINION IF THEY EVEN TESTIFY. MITIGATION EXPERTS MAY NOT
13 TESTIFY IN THIS TRIAL. WE DO NOT KNOW AT THIS TIME
14 WHETHER THEY WILL TESTIFY IN THE GUILT PHASE OR IF IT
15 GOES TO THE BIFURCATED DEATH PENALTY PHASE. BUT I DON'T
16 THINK THEY ARE ENTITLED TO IT UNTIL WE DETERMINE WHETHER
17 WE ARE GOING TO USE IT, YOUR HONOR, UNDER RULE 5.

18 THE COURT: BUT WHY THOUGH? HOW COULD YOUR
19 CLIENT BE PREJUDICED BY THE VICTIMS' RECORDS BEING
20 DISCLOSED. AND WHAT RIGHT DOES HE HAVE TO OBJECT TO IT
21 IF THEY HAD BEEN THE FIRST GROUP TO COME INTO COURT AND
22 ASK FOR IT.

23 MR. HANCOCK: YOUR HONOR, AT THIS POINT IN TIME
24 HE IS STILL THE NEXT OF KIN ALTHOUGH IT'S A CONVOLUTED
25 TYPE SITUATION.

1 THE COURT: TELL ME WHAT THAT MEANS.

2 MR. HANCOCK: YOUR HONOR, THAT HE DOESN'T AGREE
3 TO THE RELEASE OF HIS PARENTS' RECORDS AT THIS TIME.

4 MR. POPE: YOUR HONOR, IT PUTS ME IN THE
5 POSITION THAT HE CAN ELIMINATE HIS PARENTS AND THEN
6 ASSERT THEIR RIGHTS AND PREVENT THE STATE FROM -- THAT'S
7 ABSURD.

8 NUMBER TWO, YOUR HONOR, WE'RE NOT IN RULE 5,
9 WE'RE IN SUBPOENA POWERS.

10 THE COURT: I'M INCLINED TO AGREE WITH RULE 5
11 BUT SINCE THIS IS A DEATH PENALTY TRIAL, I'M NOT GOING TO
12 RULE, BUT I'M GOING TO GIVE AN OPPORTUNITY FOR BOTH SIDES
13 TO DEVELOP ---

14 MR. POPE: I WANT TO CLARIFY THE STATE'S
15 POSITION. IF WE'RE GOING BY THE RULES, THE RULES SAY
16 GIVE US AN INSANITY NOTICE WITHIN 10 DAYS. AND I HAVE
17 BEEN DEALING WITH MR. HANCOCK ON THAT AND HE HAS
18 RESPONDED RECENTLY WITH A LETTER AND I WANT TO MAKE IT
19 CLEAR FOR THE RECORD MY UNDERSTANDING -- AND, OF COURSE,
20 WE DID RULE 5 RECIPROCAL DISCOVERY AND ALIBI AND I
21 BELIEVE THAT WAS AT THE BEGINNING OF JULY AND MR. HANCOCK
22 AND MR. BOYD HAVE RESPONDED THAT THEY DO NOT INTEND TO
23 USE ALIBI AND THEY HAVE NOT MADE A DETERMINATION ON
24 INSANITY. IS THAT CORRECT?

25 MR. HANCOCK: AT THIS TIME. I DID NOT RESPOND

1 ONLY THAT WE WERE NOT GOING TO USE ALIBI. IT IS NOT
2 ANTICIPATED IN ANY MANNER AND I INDICATED THAT IT IS
3 SOMEWHAT PREMATURE AT THIS TIME FOR GUILTY BUT MENTALLY
4 ILL OR INSANITY BECAUSE WE STILL HAVE -- WE HAD
5 APPROXIMATELY THREE AND A HALF WEEKS THAT WE WERE TRYING
6 TO GET AN EXPERT IN, A NEUROPSYCHOLOGIST IN TO SEE MR.
7 ROBERTSON BUT THERE WERE PROBLEMS SCHEDULING BECAUSE OF
8 PROBLEMS IN THE PRISON SYSTEM ITSELF AND WE JUST GOT HIM
9 IN THERE YESTERDAY AND WE HAVE A PSYCHIATRIST WHO IS
10 GOING TO HAVE TO LOOK AT ALL THE RECORDS THAT WE PREPARE
11 THROUGH THE MITIGATION EXPERT, AND THEN WE WILL BE ABLE
12 TO MAKE A DETERMINATION.

13 WE'RE NOT GOING TO DRAW THAT OUT, YOUR HONOR,
14 BUT IT'S JUST GETTING THE SCHEDULES, GETTING THE PEOPLE
15 INTO THE PRISON TO ACTUALLY INTERVIEW HIM AND GET THE
16 RECORD. AND WE HAVE RECORDS THAT HAVE NOT COME IN AND
17 THEY ARE COMING IN FROM ALL OVER THE UNITED STATES.

18 SO WE WILL AS SOON AS POSSIBLE, YOUR HONOR,
19 INFORM THE SOLICITOR OF THAT.

20 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
21 THE VICTIMS, THE STATE AND THE DEFENSE ALL HAVE A RIGHT
22 FOR PROPER PREPARATION OF THE CASE. THIS CASE IS
23 SCHEDULED TO GO IN FEBRUARY. THE RULES ARE CLEAR THAT IT
24 IS 10 DAYS. AND I UNDERSTAND THAT THERE ARE ISSUES THAT
25 YOU'VE ADDRESSED TODAY CONCERNING INSANITY, SO LET'S SET

1 THAT ASIDE FOR A SECOND AND WE'LL TALK ABOUT ALIBI.

2 HE CAN'T GIVE A CONDITIONAL, WE DON'T THINK
3 WE'RE GOING TO USE ALIBI. THAT'S WHY THE RULE GIVES 10
4 DAYS SO THAT WE CAN PREPARE BECAUSE ALIBI TAKES US IN A
5 WHOLE DIFFERENT DIRECTION THAN INSANITY DOES, YOUR HONOR.

6 WHAT I'M ASKING IS THAT AT SOME POINT -- NOW
7 WE'RE JUST SITTING AND WAITING AND THINKING MAYBE THEY
8 HAVE ALIBI AND MAYBE THEY DON'T.

9 THE COURT: WELL, THE RULES SAY 10 DAYS AND
10 THEY'VE GOT 10 DAYS. IF THEY DON'T, THEN ---

11 MR. POPE: WELL, THAT WOULD HAVE BEEN 10 DAYS
12 FROM JULY 8TH, 1998, YOUR HONOR.

13 MR. HANCOCK: YOUR HONOR, WE CAN'T EVEN
14 FORMULATE AN ALIBI DEFENSE. THERE IS FORENSIC
15 INFORMATION IN THE HANDS OF SLED THAT HAVE BEEN THERE FOR
16 NINE MONTHS. WE HAVE RECEIVED NOTHING, NOTHING IN THE
17 ANALYSIS OF HAIR SAMPLES WHICH MAY INDICATE THAT THERE
18 ARE OTHER PARTIES AVAILABLE. WE HAVE RECEIVED NOTHING OF
19 THAT FORENSIC EVIDENCE EXCEPT ONE SMALL PACKAGE. AND WE
20 ARE AWAITING THEIR INFORMATION. IF THEY GIVE IT TO US
21 AND I CAN SAY, WELL, THERE'S NO ALIBI. BUT UNTIL I SEE
22 THE FORENSIC INFORMATION IN THIS CASE, SIR, I CAN'T
23 FORMULATE AN OPINION AS TO THAT. I HAVE TO SEE THE
24 INFORMATION THAT THEY HAVE.

25 SO WHAT I'M DOING IS IF THEY DON'T GIVE ME THE

1 INFORMATION, THEN I GO AHEAD AND I DECLARE MYSELF UNDER
2 THE RULES IN 10 DAYS, I'VE DECLARED MYSELF. AND THEN
3 THEY GIVE ME THE INFORMATION AND IT LEADS ME INTO AN
4 ENTIRELY DIFFERENT DIRECTION, AND THEN I'M BOUND BY THE
5 RULES AGAIN.

6 THE COURT: BUT ISN'T AN ALIBI DEFENSE A
7 DEFENSE THAT BASICALLY I WASN'T THERE, I WAS SOMEWHERE
8 ELSE SO I COULD NOT HAVE BEEN A PARTICIPANT IN THIS?

9 MR. HANCOCK: YES, SIR.

10 THE COURT: HOW IS THEIR FORENSIC EVIDENCE
11 GOING TO HELP YOUR CLIENT KNOW WHETHER HE WAS THERE OR
12 NOT?

13 MR. HANCOCK: WELL, YOUR HONOR, RIGHT NOW ---

14 THE COURT: WELL, WE'RE IN OPEN COURT AND I'M
15 NOT GOING TO ASK YOU ABOUT THAT. LET'S HOLD OFF ON THAT
16 ONE.

17 MR. HANCOCK: YES, SIR.

18 THE COURT: BUT THE 10 DAYS HAVE EXPIRED. NOW,
19 IF THEY PUT IN AN ALIBI REQUEST, THEY WILL HAVE TO COME
20 BEFORE THE COURT AND ASK THE COURT TO DECIDE WHETHER OR
21 NOT THEY CAN ASSERT IT AT THAT TIME IF THE 10 DAYS HAS
22 EXPIRED.

23 MR. POPE: MY CONCERN IS, AS THE COURT SAID,
24 THE COURTS ALWAYS TAKES A SLOWER MORE CAUTIOUS APPROACH
25 TO A DEATH PENALTY CASE. I DON'T WANT TO BE FACED IN

1 FEBRUARY SUDDENLY THERE IS ALIBI AND WE SAY, WELL, IT'S A
2 DEATH PENALTY CASE SO WE'D BETTER LET THEM DO IT BECAUSE
3 WE'LL HAVE TO TRY IT AGAIN. I THINK WE ALL UNDERSTAND
4 THE ASPECTS OF THAT, BUT THESE RULES ARE SET UP -- YOUR
5 HONOR, NOT TO ARGUE WITH MR. HANCOCK AGAIN BECAUSE WE
6 HAVE DISCUSSED IT AND HE'S SENT ME A LETTER, BUT I CAN'T
7 HAVE A QUALIFIED ALIBI -- THE RULES, I DON'T HAVE THE
8 RULES HERE BEFORE ME, BUT IT SAYS IF THEY'VE GOT AN
9 ALIBI, SEND A LIST OF THE PEOPLE WHO ARE GOING TO SAY
10 THAT. THAT'S WHAT THE DEFENSE WILL BE REQUIRED TO DO.

11 BUT JUST AS THE COURT JUST SAID, THE MAN KNOWS
12 IF HE WAS THERE OR IF HE WAS NOT AND THE RULES REQUIRE
13 THEM TO TELL US THAT WITHIN 10 DAYS.

14 MY CONCERN IS THEY CAN CHOOSE TO DELAY, CHOOSE
15 TO KEEP THE GENERAL ALIBI AND THEN COME FEBRUARY 1ST THEY
16 WOULD SAY YES AND I WOULD THINK THE COURT, NO DISRESPECT
17 TO THE COURT, I WOULD THINK IN THE ABUNDANCE OF CAUTION
18 THE COURT LET'S THEM STILL PRESENT AN ALIBI DEFENSE OR IF
19 NOT MR. HANCOCK AND MR. BOYD WOULD BE P.C.R.'D, AND THE
20 STATE HAS NEVER HAD THE OPPORTUNITY TO PROPERLY ADDRESS
21 THAT, YOUR HONOR.

22 I UNDERSTAND THERE ARE DIFFICULTIES WITH THE
23 MENTAL ISSUE. THE TRUTH IS, THE MENTAL ISSUES SAY THE
24 SAME THING, SAY 10 DAYS. I UNDERSTAND THERE IS A PROBLEM
25 WITH WHAT THEY ARE WORKING WITH. BUT WE CAN TAKE THE

1 ALIBI SITUATION OUT OF THE PICTURE.

2 MR. HANCOCK KNOWS THE ANSWER, HE'S JUST TRYING
3 TO KEEP HIS OPTIONS OPEN. NO DISRESPECT TO MR. HANCOCK,
4 BUT THAT'S WHERE WE'RE AT, AND THAT'S NOT PROPER UNDER
5 OUR RULES, YOUR HONOR.

6 THE COURT: WELL, TALKING ABOUT RULES REALLY
7 ISN'T BEFORE ME BECAUSE THEY HAVEN'T -- 10 DAYS HAVE
8 EXPIRED AND THEY CAN'T GIVE NOTICE. IF THEY DO GIVE
9 NOTICE, THEY'VE GOT TO ASK SOMEHOW TO MAKE IT
10 APPROPRIATE. THERE IS REALLY NOTHING BEFORE ME AT THIS
11 TIME.

12 MR. POPE: WELL, YOUR HONOR, AT THIS TIME AND
13 REALIZING THAT YOU MAY HAVE TO ADDRESS IT LATER, I'M
14 MAKING A FORMAL MOTION TO HAVE THEM ESTABLISH EITHER, A,
15 THERE'S AN ALIBI DEFENSE OR, B, THERE'S NOT.

16 MR. HANCOCK: AND I COUNTER MOVE THAT I BE
17 PROVIDED ALL FORENSIC INFORMATION WITHIN THREE DAYS SO
18 THAT I CAN REVIEW IT, HAVE MY EXPERTS REVIEW IT AND
19 DETERMINE WHETHER OR NOT THERE IS AN ALIBI DEFENSE AND
20 DISCUSS IT WITH MY CLIENT WHO IS, OF COURSE, NOT IN ROCK
21 HILL BUT IN BISHOPVILLE WHICH CAUSES TRAVEL TIME.

22 AGAIN, MY MOTION IS THAT I BE PROVIDED WITH THE
23 PROPER INFORMATION THAT I CAN PROPERLY EVALUATE ALL
24 ASPECTS OF THIS CASE AND THEN DETERMINE, REGARDLESS,
25 DETERMINE WHAT THE DEFENSE IS AT THAT TIME. I THINK IT'S

1 PREMATURE WITHOUT THE FORENSIC INFORMATION.

2 THE COURT: I HAVE TO ADMIT TO BEING A LITTLE
3 BIT LOST. WHAT I CANNOT UNDERSTAND, AND AGAIN I'M NOT
4 ASKING YOU TO GIVE OUT YOUR THEORY ALTHOUGH YOU'RE SAYING
5 YOU'RE NOT SURE YOU HAVE A THEORY YET BECAUSE YOU HAVEN'T
6 HAD THE EVIDENCE, IF THE DEFENSE IS ALIBI, I COULDN'T
7 HAVE DONE IT BECAUSE I WASN'T THERE, IT BAFFLES ME AS TO
8 WHY THEIR FORENSIC EVIDENCE WOULD PROVE THAT POINT.

9 NOW THERE MAY BE, I KNOW YOU CAN COME UP WITH
10 DIFFERENT THINGS, BUT I'M GOING TO REQUIRE THAT AN ALIBI
11 NOTICE BE GIVEN WITHIN 10 DAYS.

12 MR. HANCOCK: YOUR HONOR, MAY I JUST GIVE YOU
13 ONE EXAMPLE? SUPPOSEDLY THERE'S A PIECE OF GLASS WITH
14 BLOOD ON IT. IF IT CAN BE IDENTIFIED AS TO WHOSE BLOOD
15 THAT WAS WITH DNA, THEN IT MAY REFLECT DIRECTLY UPON A
16 DEFENSE OR LACK OF DEFENSE AS IT IS AVAILABLE HERE.

17 THE COURT: I AGREE WITH THAT A HUNDRED
18 PERCENT. IF IT'S MY BLOOD, THAT DOESN'T PROVE YOUR
19 CLIENT WASN'T THERE. THAT'S MY POINT. MAYBE I JUST
20 MISUNDERSTAND ALIBI AND DIDN'T STUDY IT HARD ENOUGH IN
21 LAW SCHOOL BUT I DON'T SEE HOW -- IF THE BLOOD OF
22 EVERYONE IN THIS ROOM WAS THERE AND YOUR CLIENT'S WAS
23 NOT, THAT'S NOT AN ALIBI. THAT JUST PUTS THEM TO THEIR
24 PROOF.

25 IF SOMETHING POPS UP THAT YOU DON'T KNOW NOW,

1 YOU CAN ALWAYS COME BACK INTO COURT AND SAY, YOU KNOW,
2 WE'VE GOT THIS DEFENSE AND DIDN'T KNOW IT, AND WE'LL LOOK
3 AT IT.

4 MR. HANCOCK: YES, SIR.

5 THE COURT: BUT THE RULES ARE THERE AND THE
6 CASE IS SET FOR FEBRUARY 12TH, I BELIEVE, OR SOMETHING
7 LIKE THAT. IF YOU CAN SHOW ME SOMETHING OTHERWISE ONCE
8 WE GET DOWN, I'LL LOOK AT IT. AGAIN, MAYBE I NEED TO GO
9 BACK AND LOOK AT WHAT ALIBI CONSISTS, BUT RIGHT NOW I'M
10 GOING TO REQUIRE THAT YOU GIVE IT WITHIN 10 DAYS.

11 MR. HANCOCK: THANK YOU VERY MUCH, YOUR HONOR.

12 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
13 AS TO THE SECOND ISSUE. AGAIN THE STATE HAS ASKED FOR
14 NOTICE OF AN INSANITY OR GUILTY BUT MENTALLY ILL. WE
15 ASKED FOR THAT IN JULY ALSO. AGAIN UNDERSTANDING THAT
16 I'M NOT PUSHING THAT IT HASN'T BEEN HERE YET, BUT I FEEL
17 LIKE WE NEED TO MOVE FORWARD FROM THE STANDPOINT THAT I
18 APPRECIATE THE DEFENSE HAVING THE NEED OR OPPORTUNITY TO
19 BRING IN ALL THE VARIOUS EXPERTS, NEUROLOGISTS, AND
20 GATHER ALL THE RECORDS AND DO THE BEST JOB THEY CAN FOR
21 THEIR CLIENT BUT BY THE SAME TOKEN, AGAIN, THE SPIRIT
22 BEHIND NOTICE OF AN INSANITY DEFENSE IS TO BEGIN TO ALLOW
23 THE STATE TO PREPARE.

24 YOUR HONOR, BASED ON THE VOLUME OF RECORDS THAT
25 I KNOW MR. HANCOCK HAS DEALT WITH AND THAT WE HAVE DEALT

1 WITH IN LOOKING AT VARIOUS MENTAL RECORDS THAT MAY BE OUT
2 THERE, WHETHER IT BE FAMILY MEMBERS OR WHETHER IT BE THE
3 DEFENDANT HIMSELF, I THINK IT HAS RISEN TO THE LEVEL THAT
4 THE COURT CLEARLY NEEDS TO LOOK INTO WHETHER THIS
5 DEFENDANT NEEDS TO BE EVALUATED OR NOT.

6 YOUR HONOR, JUST OFF OF THE TOP OF MY HEAD I
7 KNOW THAT FROM '93 TO '97 HE WAS SEEING A PSYCHIATRIST
8 INTERMITTENTLY; I KNOW HE HAS BEEN VOLUNTARILY COMMITTED
9 TO WILLIAM S. HALL. AGAIN AS I INDICATED TO THE COURT,
10 WHETHER IT WAS IN CHAMBERS OR OUT, MY CONCERN IS THAT,
11 AGAIN BEING A DEATH PENALTY CASE, THAT THE POINT IS GOING
12 TO COME THAT MR. HANCOCK AND MR. BOYD ARE GOING TO SAY
13 WELL LET'S DON'T HAVE HIM EVALUATED. OF COURSE, THE
14 WHOLE TIME THEY HAVE READILY ADMITTED THAT THEY ARE
15 HAVING PEOPLE TALK TO HIM.

16 YOUR HONOR, I ALSO HAVE AN INDICATION FROM
17 WITNESSES THAT WE'VE TALKED TO THAT THIS DEFENDANT HAS
18 BOASTED IN THE PAST OF BEING ABLE TO MALINGER OR CONVINCE
19 PSYCHIATRISTS OF THEIR FINDINGS. AND SO I HAVE GREAT
20 CONCERN OF WHAT HAS ACTUALLY CONSPIRED WITH THE TIME THAT
21 HE HAS SPENT PREPARING FOR WHAT. PREPARING FOR THE CASE
22 IN WHATEVER FASHION. WHAT I'M ASKING THE COURT TO DO IS
23 TO MAKE A DETERMINATION NOW WHETHER HE SHOULD BE
24 EVALUATED AT THE STATE HOSPITAL PURSUANT TO MCNAGHTEN AND
25 PURSUANT TO GUILTY BUT MENTALLY ILL.

1 AGAIN, IT FALLS SOMEWHAT IN THE SITUATION OF
2 THE ALIBI IN THAT WE CAN'T CONTINUALLY WAIT. I THINK IF
3 THEY SAY WE'RE NOT GOING WITH INSANITY AND WE'RE NOT
4 GOING WITH G.B.M.I., THE COURT WOULD STILL HAVE AN
5 OBLIGATION TO HAVE HIM EVALUATED FROM A P.C.R. STANDPOINT
6 BASED ON WHAT WE'VE SEEN IN THESE RECORDS AND JUST THE
7 SHEER VOLUME OF RECORDS AND JUST THE FACT THAT HE'S HAD
8 MENTAL TREATMENT IN THE PAST.

9 THE COURT: LET'S KIND OF TAKE IT IN TWO STEPS.
10 FIRST, WHEN DO YOU THINK YOU WOULD BE IN A POSITION TO
11 DETERMINE, MR. HANCOCK OR MR. BOYD, WHETHER OR NOT YOU
12 WILL BE ASSERTING EITHER OF THESE?

13 MR. HANCOCK: YOUR HONOR, THIS IS SEPTEMBER
14 25TH. I WOULD HOPE TO HAVE THAT DETERMINATION BY THE
15 MIDDLE OF NOVEMBER, YOUR HONOR. WE STILL HAVE ---

16 THE COURT: WHAT ABOUT THE FIRST OF NOVEMBER?

17 MR. HANCOCK: WE WILL ATTEMPT TO DO IT BY THE
18 FIRST OF NOVEMBER, YOUR HONOR. WE HAVE TWO OTHER
19 EXPERTS. ONE WHO TALKED TO HIM YESTERDAY, AND WE HAVE
20 ONE OTHER PERSON WHO IS GOING TO HAVE TO EVALUATE HIM AND
21 I BELIEVE WE CAN DO IT IN THAT TIME FRAME.

22 THE COURT: UNLESS YOU SHOW ME SOME EXIGENCIES
23 THAT MAY OCCUR BETWEEN NOW AND THEN, I'M GOING TO SAY
24 NOVEMBER 1. AND I AM GOING TO DEFER ANYTHING IN REGARD
25 TO ANY COURT ORDERED COMPETENCY UNTIL THEN.

1 MR. HANCOCK: YES, SIR.

2 THE COURT: MR. POPE, DO YOU UNDERSTAND THAT?

3 MR. HANCOCK: YES, SIR, NOVEMBER 1ST WE'LL HAVE
4 A RESPONSE ON THAT AND IN 10 DAYS WE'LL HAVE A RESPONSE
5 ON THE ALIBI, AND THEN THE COURT WILL MAKE A
6 DETERMINATION AS FAR AS THE MENTAL ISSUE AT THAT TIME.

7 THE COURT: RIGHT.

8 MR. POPE: YOUR HONOR, I DO HAVE A FEW MORE
9 MATTERS, BUT I THINK MR. CHIARENZA WANTS TO SAY
10 SOMETHING.

11 MR. CHIARENZA: YOUR HONOR, I JUST WONDERED IF
12 MR. MEYER CAN BE EXCUSED.

13 THE COURT: OH, SURE. I'M SORRY, MR. MEYER.

14 MR. POPE: YOUR HONOR, THE ONLY OTHER ISSUE I
15 SEE AND IT'S SOMEWHAT IN CONCERT WITH THE MENTAL ISSUE,
16 PARTICULARLY AS IT APPLIES TO MR. MEYER AND HOW IT IS
17 BRANCHING OUT INTO THE FAMILY, I WOULD EXPECT TO GET INTO
18 MITIGATION EXPERTS AS FAR AS FAMILY HISTORY AND ALL OF
19 THAT, IN CASES THAT I'VE HAD PREVIOUSLY WE'VE RUN INTO
20 SOME PROBLEMS AND I THINK THIS WOULD HONESTLY BENEFIT THE
21 DEFENSE AND THE STATE AS FAR AS ANY MENTAL RECORDS THAT
22 WE ACQUIRE OR THE DEFENSE ACQUIRES THAT THE COURT PLACE
23 GAG ORDERS ON BOTH SIDES THAT THESE NOT BE MADE PUBLIC.

24 NO DISRESPECT TO THE MEDIA HERE TODAY, BUT I
25 MEAN, YOU KNOW, THIS DOES NOT NEED TO BE TRIED IN THE

1 MEDIA. THE VERY CONFIDENCES THAT YOU HAVE GONE PAST TO
2 ASSIST THE DEFENDANT IN HIS CASE, THEY CAN STILL BE
3 PROTECTED BY THE DEFENSE OR THE STATE NOT DISCLOSING ANY
4 OF THAT PUBLICLY, YOU KNOW, OTHER THAN WHAT OBVIOUSLY
5 WOULD COME OUT IN THE COURTROOM, OBVIOUSLY WOULD COME OUT
6 IN THE TRIAL.

7 I DON'T KNOW WHAT THEY CONTAIN. BUT, AGAIN,
8 OUT OF RESPECT TO THEM, THIS IS JUST ONE THING AND I'VE
9 SEEN IT DONE IN MANY CASES AND I THINK IT SHOULD BE
10 ADDRESSED. I HAVEN'T HAD A CHANCE TO TALK TO MR.
11 HANCOCK, BUT I CAN'T SEE THAT THEY HAVE ANY OPPOSITION TO
12 IT.

13 THE COURT: WHY DON'T Y'ALL TALK ABOUT IT. I'M
14 NOT BIG ON DOING ANY GAG ORDER, I'LL TELL YOU THAT, WHEN
15 I DON'T EVEN KNOW WHAT I'M GAGGING. BUT I THINK IT BEST
16 THAT Y'ALL OBVIOUSLY NOT TRY IT IN THE PRESS, AND I DON'T
17 THINK EITHER ONE OF YOU WILL, BUT I'M NOT GOING TO ISSUE
18 ANY KIND OF BLANKET GAG ORDER.

19 MR. POPE: YOUR HONOR, MY UNDERSTANDING ALSO
20 FROM OUR CONVERSATIONS THE OTHER DAY, AND AGAIN THIS IS
21 MORE HOUSEKEEPING THAN ANYTHING, NOVEMBER 1ST OR IN THAT
22 TIME PERIOD WE ARE ALSO GOING TO TRY TO DEAL WITH THE
23 OTHER ISSUES SUCH AS JURY QUESTIONNAIRES, TRY TO GET IT
24 DONE BEFORE THANKSGIVING HOLIDAYS IS WHAT I THINK WE SAID
25 IN CHAMBERS THE OTHER DAY.

1 SO PERHAPS IF WE START WORKING AND THE DEFENSE
2 WORKS ON THE ISSUES LIKE THE QUESTIONNAIRES AND ALL OF
3 THAT, PERHAPS DURING THAT NOVEMBER 1ST TIME PERIOD WHEN
4 WE HAVE A HEARING WITH THE DEFENDANT BEING ABLE TO BE
5 PRESENT, WE COULD GO AHEAD AND ADDRESS SOME OF THOSE
6 ISSUES.

7 THE COURT: AND FOR THE RECORD, MR. ROBERTSON
8 IS HERE AND HAS BEEN THROUGHOUT THIS HEARING. AND ALSO,
9 JUST SO THAT NO ONE WILL BE MISLED, I HAVE REQUESTED
10 WHATEVER WEEK IT IS, FEBRUARY 12TH, AND I HAVE BEEN
11 TENTATIVELY ASSURED BY COURT ADMINISTRATION THAT WE WOULD
12 IN FACT HAVE THOSE DATES, BUT IT IS NOT FIRM. I'M
13 COMFORTABLE WITH THAT, BUT I'M NOT POSITIVE.

14 ALL RIGHT, ANYTHING ELSE?

15 MR. POPE: NO, SIR, YOUR HONOR.

16 THE COURT: WELL, I'M AVAILABLE IF ANYTHING IS
17 NEEDED.

18 MR. HANCOCK: THANK YOU, SIR.

19 PRE-TRIAL MATTERS OF NOVEMBER 2, 1998:

20 THE COURT: ALL RIGHT, THE FIRST MATTER?

21 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
22 THIS IS CONCERNING THE STATE VERSUS JAMES D. ROBERTSON.
23 LET THE RECORD REFLECT THAT THE DEFENDANT IS NOW PRESENT.

24 YOUR HONOR, THE FIRST MATTER OF BUSINESS ---

25 THE COURT: AND BOTH OF HIS ATTORNEYS, MR.

1 HANCOCK AND MR. BOYD ALSO.

2 MR. POPE: YES, SIR. THE RECORD WOULD REFLECT
3 THAT I HAVE SERVED NOTICE OF EVIDENCE IN AGGRAVATION OF
4 PUNISHMENT ON THIS DEFENDANT. I PRESENTED THE DEFENSE A
5 COPY TODAY. I'VE MADE A COPY, I BELIEVE IT'S MARKED
6 STATE'S EXHIBIT 1, INTO THE RECORD TO BE FILED WITH THE
7 CLERK'S OFFICE PURSUANT TO 16-320-B.

8 THE NEXT ISSUE WE HAVE BEFORE US, YOUR HONOR,
9 CONCERNS THE STATE'S REQUEST THAT WE ADDRESSED IN THE
10 PREVIOUS HEARING CONCERNING ALIBI AND INSANITY. MY
11 UNDERSTANDING FROM MR. HANCOCK IN THE PREVIOUS HEARING,
12 ALIBI WILL NOT BE AN ISSUE. WE NOW HAVE THE QUESTION --
13 THE RESPONSE TO THE COURT AS YOU HAD INDICATED THAT THE
14 DEFENSE HAD UNTIL TODAY'S DATE TO RESPOND TO THE STATE'S
15 REQUEST CONCERNING INSANITY OR A PLEA OF GUILTY BUT
16 MENTALLY ILL, AND THE STATE WOULD REQUEST A RESPONSE AT
17 THIS TIME.

18 THE COURT: MR. HANCOCK OR MR. BOYD?

19 MR. HANCOCK: IF IT PLEASE THE COURT, YOUR
20 HONOR, WE WOULD BEG THE INDULGENCE OF THE COURT. WE KNOW
21 WE HAVE A NOVEMBER 1ST DEADLINE. OUR LAST EXPERT SPOKE
22 WITH THE DEFENDANT THIS WEEKEND. WE WOULD ASK THAT WE BE
23 GIVEN UNTIL FRIDAY, AND WE WILL INFORM THE COURT FRIDAY
24 AFTER WE RECEIVE FULL INFORMATION. THERE HAS BEEN
25 EXCHANGE OF INFORMATION BETWEEN TWO OF OUR EXPERTS.

1 THE COURT: I DON'T KNOW IF IT IS A REAL
2 PROBLEM OR NOT, BUT I KNOW I WILL NOT BE HERE FRIDAY
3 BECAUSE OF A CONFERENCE I'M GOING TO. DO WE HAVE GENERAL
4 SESSIONS NEXT WEEK?

5 MR. POPE: NO, SIR.

6 MR. HANCOCK: WE WILL RESPOND IN WRITING, YOUR
7 HONOR.

8 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
9 THE STATE HAS MADE A REQUEST AS OF JULY AND I UNDERSTAND
10 THAT MR. HANCOCK HAS SOME CONCERNS STILL ABOUT SLED AND
11 THE TESTING OF EVIDENCE, WE HAVE DISCUSSED THAT, BUT THAT
12 HAS ABSOLUTELY NOTHING TO DO WITH INSANITY.

13 AS I'VE SUBMITTED IN THE RECORD BEFORE, YOUR
14 HONOR, BASED ON THE POTENTIAL MENTAL HISTORY OF THIS
15 DEFENDANT, I SUBMIT THAT HE SHOULD BE EVALUATED AT A
16 MINIMUM AS TO COMPETENCY REGARDLESS. ALL WE HAVE DONE
17 FOR A YEAR AND THEY'VE HAD AN OPPORTUNITY, I'M NOT SAYING
18 THIS IS THE CASE, BUT THEY'VE HAD AN OPPORTUNITY FOR
19 EXPERTS TO SPEND TIME WITH HIM, AND TIME WITH HIM, AND
20 TIME WITH HIM. IT MAY BE NOTHING MORE THAN PREPARING FOR
21 TESTIMONY AS OPPOSED TO ARISING AT THE ISSUES THAT WE
22 NEED TO ADDRESS.

23 YOUR HONOR, I THINK AMPLE TIME HAS BEEN GIVEN;
24 I HAVE ASKED FOR A RESPONSE SO THAT THE STATE CAN GO
25 FORWARD AND PREPARE BECAUSE IF HE IS TO BE EVALUATED,

1 THEN THAT'S GOING TO TAKE TIME AT THE STATE HOSPITAL, AND
2 THE STATE SHOULD BE AFFORDED THE OPPORTUNITY, WITH THIS
3 CASE SCHEDULED FOR FEBRUARY, TO REVIEW AND PREPARE THE
4 CASE JUST AS THE DEFENSE PREPARES, YOUR HONOR.

5 THE COURT: CAN YOU HAVE IT BY FRIDAY?

6 MR. HANCOCK: YES, SIR, I BELIEVE WE CAN; I
7 DON'T THINK IT WILL BE A PROBLEM. OUR PEOPLE ARE READY
8 TO GO, AND THEY CAN GIVE US THE INFORMATION BY THEN.

9 THE COURT: ALL RIGHT, I'LL REQUIRE IT TO BE
10 DELIVERED TO THE SOLICITOR IN WRITING BY NOON FRIDAY.

11 MR. HANCOCK: YES, SIR.

12 MR. POPE: YOUR HONOR, THE OTHER MATTERS ARE
13 PRIMARILY HOUSEKEEPING MATTERS. AGAIN, AS THE COURT IS
14 AWARE, THIS CASE IS SCHEDULED BEGINNING FEBRUARY 1ST OF
15 1999 AND THE WEEKS OF FEBRUARY 1ST AND FEBRUARY 8TH ARE
16 SET ASIDE.

17 THE DEFENSE HAS GIVEN SOME INDICATION ABOUT
18 POTENTIALLY MOVING FOR A CHANGE OF VENUE. THERE HAS BEEN
19 NO MOTION MADE. THE CLERK'S OFFICE SAYS THAT THEY CAN
20 ACTUALLY DRAW A JURY POOL FOR A 1999 TERM, THAT THEY
21 CANNOT DO THAT UNTIL AFTER THE LAST TERM IS DRAWN FOR
22 THIS YEAR WHICH IN TALKING TO THE CLERK WOULD ROUGHLY PUT
23 THEM ABLE TO DRAW THE JURY POOL FOR THIS CASE IF IT WERE
24 HAD IN THIS COUNTY ABOUT THE BEGINNING OF DECEMBER
25 BECAUSE THEY'VE GOT TO DRAW ONE MORE POOL FOR DECEMBER.

1 YOUR HONOR, THE EXAMPLE ORDER THAT WE HAD FROM
2 A PREVIOUS CASE THAT I HAD DRAWN UP IS AN ORDER FOR
3 ACTUALLY HAVING THE DRAWING TAKING PLACE ABOUT A MONTH
4 BEFORE THE TRIAL. IN OTHER WORDS, BASED ON THE ORDER WE
5 HAD, WE WOULD HAVE HAD A JANUARY DRAWING. IN TALKING TO
6 THE DEFENSE, AND THE STATE HAS SOME OF THE SAME CONCERNS
7 WITH THE QUESTIONNAIRES AND ALL THE THINGS THERE ARE TO
8 GO THROUGH, WE WOULD REQUEST THAT IF THE JURY IS TO BE
9 DRAWN HERE, THAT IT BE DRAWN BY THE CLERK AT THE
10 BEGINNING OF DECEMBER AND THAT THE ORDER SO REFLECT AND
11 THAT IS SO THAT THE DEFENSE AND THE STATE BOTH HAVE AMPLE
12 OPPORTUNITY TO REVIEW THE QUESTIONNAIRES.

13 THE COURT: THE DEFENSE?

14 MR. HANCOCK: YES, SIR, YOUR HONOR.

15 THE COURT: THAT WILL BE FINE.

16 MR. HANCOCK: AND WE WILL MAKE A DECISION AS TO
17 WHETHER TO MOVE FOR A CHANGE OF VENUE. WE ALSO HAVE SOME
18 HOUSEKEEPING MATTERS FOR THE COURT.

19 THE COURT: OKAY. LET ME ASK THIS, SINCE WE
20 ARE TALKING ABOUT CHANGE OF VENUE, DON'T THE MOST RECENT
21 CASES PRETTY MUCH INDICATE THAT BEFORE WE GRANT A CHANGE
22 OF VENUE WE'RE GOING TO HAVE TO IMPANEL A JURY ANYWAY AND
23 SEE IF THERE IS -- I MEAN WE WOULD LIKE TO KNOW IF THAT'S
24 WHAT YOUR MOTION IS, BUT IT SEEMS TO ME THAT IF I'M
25 REMEMBERING THE MOST RECENT LINE OF CASES, THAT THERE'S

1 GOT TO BE A SHOWING MADE OTHER THAN JUST PRE-TRIAL
2 PUBLICITY WHICH ALL FACTORS INTO IT, BUT IN SPITE OF THAT
3 COULD A FAIR AND IMPARTIAL JURY BE DRAWN. AND THE ONLY
4 WAY TO DO THAT IS TO DRAW ONE, BRING THEM IN AND QUESTION
5 THEN.

6 MR. POPE: YOUR HONOR, I THINK THE CASE LAW IS
7 CLEAR ON THAT. IN FACT, FEBRUARY 1ST WE WOULD HAVE TO
8 HAVE A JURY AND YOU WOULD HAVE TO DETERMINE FROM THAT
9 POOL THAT A FAIR AND IMPARTIAL JURY COULD NOT BE DRAWN
10 BEFORE WE WOULD BE ABLE TO DRAW A JURY FROM ANOTHER ---

11 THE COURT: WELL, LET'S GO AHEAD AND DRAW A
12 JURY AS EARLY IN DECEMBER AS CAN BE LEGALLY DONE FOR THAT
13 FEBRUARY TERM.

14 WHEN WILL YOU BE ABLE TO DECIDE WHETHER YOU ARE
15 GOING TO MOVE FOR A CHANGE OF VENUE?

16 MR. HANCOCK: BY DECEMBER 1ST, I WOULD GUESS,
17 YOUR HONOR.

18 THE COURT: LET'S REQUIRE THAT MOTION TO BE
19 FILED AT THAT TIME.

20 MR. HANCOCK: YES, SIR.

21 THE COURT: AND WE WILL STILL HAVE TO CONVENE
22 AND GO THROUGH THE PROCESS BEFORE I CAN RULE ON THAT
23 MOTION BUT AT LEAST THAT WILL GIVE US SOME IDEA OF WHERE
24 WE STAND.

25 MR. HANCOCK: YES, SIR.

1 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
2 I HAD PREPARED AN ORDER BASED ON A PREVIOUS CASE YOU HAD.
3 I HAVE NOT SHOWN IT TO MR. HANCOCK; I'M GOING TO PASS IT
4 OVER. IT DOES REFLECT THE DRAWING OF THE JURY ON A
5 WEDNESDAY IN JANUARY. I'M GOING TO ALLOW HIM TO LOOK AT
6 THAT AND IF THAT MEETS WITH HIS APPROVAL, I'LL CHANGE IT
7 TO THE FIRST WEDNESDAY IN DECEMBER IF THAT'S WHAT THE
8 CLERK NEEDS, AND THEN I'LL HAVE IT BROUGHT TO YOUR HONOR.

9 MAY IT PLEASE THE COURT, YOUR HONOR, THE ONLY
10 OTHER HOUSEKEEPING ISSUES I HAVE BEFORE US IS I HAVE
11 CONTACTED STATE LAW ENFORCEMENT DIVISION CONCERNING MR.
12 HANCOCK'S MOTION TO DETERMINE THE EVIDENCE. AS THE COURT
13 IS AWARE, A SCHMERBER ORDER WAS ISSUED IN JULY. SOME
14 ADDITIONAL EVIDENCE WAS SENT TO SLED. IT IS MY
15 UNDERSTANDING FROM SEROLOGY THAT I WILL HAVE AN ANSWER
16 FROM THEM IN BASICALLY TWO WEEKS AND I TALKED TO THEM
17 LAST WEEK, SO I FIGURE SOMETIME BY THE END OF NEXT WEEK.
18 I WOULD PROPOSE AND I DISCUSSED THIS SOMEWHAT WITH THE
19 DEFENSE, THAT AT SOME POINT HOPEFULLY DURING THIS MONTH
20 THAT WE CAN HAVE AN EVIDENTIARY CONFERENCE, A DISCOVERY
21 CONFERENCE WHERE WE CAN SIT DOWN AROUND A TABLE, ALLOW
22 THEM TO GO THROUGH OUR ENTIRE FILE AND MAKE SURE THAT
23 THEY HAVE ALL THE ITEMS. WE'LL TRY TO DOCUMENT
24 EVERYTHING THEY HAVE AND EVERYTHING THEY DON'T HAVE SO
25 THAT WE CAN GO AHEAD AND GET IT TO TRY TO GET ON TOP OF

1 THIS CASE BEFORE EVERYONE GOES THEIR SEPARATE WAYS FOR
2 THE HOLIDAYS.

3 I WOULD PROPOSE THAT WE DO THAT, AND I HAVE
4 DISCUSSED THAT WITH THEM. I THINK AT SOME POINT WE ALSO
5 NEED TO ADDRESS, BETWEEN NOW AND THE END OF THE MONTH,
6 THE ISSUE OF THE JURY QUESTIONNAIRES SO THE CLERK WON'T
7 BE HAMSTRUNG WITH ACTUALLY FIGURING OUT WHAT THEY NEED TO
8 SEND OUT AND WHEN THAT'S GOING TO BE DONE. AGAIN, MR.
9 HANCOCK AND I HAVE TALKED ABOUT THAT BRIEFLY. I JUST
10 WANTED TO PUT THAT ON THE RECORD.

11 THE COURT: WELL, LET ME RUN OFF THE
12 QUESTIONNAIRE WE JUST USED IN GREENWOOD AND GIVE IT TO
13 BOTH SIDES TODAY OR TOMORROW AND LET Y'ALL START WORKING
14 OFF OF THAT.

15 MR. POPE: YES, SIR.

16 THE COURT: THAT WILL GIVE YOU SOME IDEA OF
17 WHAT I APPROVED, ALTHOUGH EACH OF YOU HAVE BEEN INVOLVED
18 IN THESE TYPE CASES.

19 MR. HANCOCK: YES, SIR, I THINK THAT WOULD BE A
20 GOOD STARTING PLACE.

21 MR. POPE: YOUR HONOR, I UNDERSTAND WE WILL
22 HEAR BY FRIDAY NOON ON THE INSANITY ISSUE. ONE QUESTION
23 WE ARE CONCERNED REGARDING THAT, I REALIZE THE COURT HAS
24 RULED. WHETHER OR NOT THEY ASSERT INSANITY, IT IS THE
25 STATE'S POSITION THAT BASED ON THE RECORD WE HAVE BEFORE

1 US THAT AT A MINIMUM, AGAIN, THAT AN EVALUATION WOULD BE
2 APPROPRIATE IF FOR NOTHING ELSE, FOR COMPETENCY.

3 IF NOT THEN, THEN AT SOME, AND THIS MAY GET
4 SOMEWHAT TRICKY, BUT SOME FORM OF WAIVER BY THE DEFENDANT
5 THAT THE DEFENSE CHOOSES NOT TO PROCEED ON MENTAL ISSUES
6 AND CHOOSES NOT TO HAVE THE COURT ADDRESS ANY MENTAL
7 ISSUES. I JUST WANT TO MAKE SURE THAT IT DOESN'T BECOME
8 A P.C.R. ISSUE. IT'S KIND OF A CATCH 22 BECAUSE IF HE'S
9 NOT COMPETENT TO WAIVE THAT RIGHT -- I THINK THE COURT
10 CAN SEE THE DILEMMA, BUT THE CONCERN I HAVE IS THAT WE
11 ARE NOW CLOSE TO TWO MORE WEEKS BEFORE AN EVALUATION
12 COULD EVEN BEGIN.

13 THE COURT: WELL, I GUESS OUT OF AN ABUNDANCE
14 OF CAUTION WE CAN ALWAYS HAVE SOMEONE EVALUATED. IT MAY
15 BE THAT ONCE WE SEE THE EVALUATIONS THAT HAVE BEEN DONE,
16 IT WILL ALERT US IF THERE IS ANY REAL NEED TO GO FORWARD
17 WITH THE COMPETENCY EVALUATION. I MEAN, YOU KNOW, IT'S
18 SORT OF NOTHING VENTURED, NOTHING GAINED IF WE HAVE A
19 COMPETENCY HEARING JUST TO BE ON THE SAFE SIDE BUT I
20 THINK THERE HAS TO BE A SHOWING BEFORE I ORDER IT.

21 MR. POPE: YOUR HONOR, I BELIEVE THAT WOULD BE
22 ALL THE MATTERS THAT THE STATE HAS AT THIS TIME.

23 THE COURT: ALL RIGHT.

24 MR. HANCOCK: I ONLY HAVE ONE, YOUR HONOR. THE
25 SOLICITOR HAS ADDRESSED THE MATTER OF THE FORENSIC

1 EVIDENCE THAT HAS BEEN AT SLED FOR CLOSE TO ONE YEAR. WE
2 HAVE REQUESTED THAT, AND WE CONTINUE TO REQUEST WHATEVER
3 INFORMATION THEY DO HAVE. IT IS SOMEWHAT TYING OUR HANDS
4 AT THIS TIME NOT KNOWING WHAT THAT EVIDENCE IS TO
5 PROPERLY ADDRESS ALL OF THE ISSUES IN A DEATH PENALTY
6 CASE.

7 I DON'T KNOW WHETHER THEY HAVE A TIME FRAME;
8 THEY SAID THEY WOULD TRY TO GET IT TO US BY THE END OF
9 NEXT WEEK. WELL, YOU HAVE BEEN MORE THAN GENEROUS TO US
10 TO GIVE US FOUR EXTRA DAYS. THAT YEAR HAS ALSO BEEN TO
11 THEIR BENEFIT IF THE SOLICITOR IS TRYING TO INDICATE THAT
12 WE ARE GETTING PEOPLE TO TELL THE DEFENDANT HOW TO
13 TESTIFY, THEN THEY'VE GOT THE BENEFIT OF HANGING ONTO
14 THAT EVIDENCE FOR ONE YEAR THAT WE COULD HAVE BEEN
15 INVESTIGATING OR SEEN AT LEAST WHERE IT GOES AND HAVE OUR
16 OWN SEROLOGIST OR OTHER EXPERTS AT LEAST TELL US WHAT
17 THAT INFORMATION LEADS TO. OUR HANDS ARE TIED, TOO, AND
18 WE ARE IN A TIME FRAME OF FEBRUARY 1ST JUST AS THEY ARE.

19 SO, IF THERE IS ANY TIME FRAME THEY CAN GIVE
20 US, WE WOULD CERTAINLY APPRECIATE IT.

21 THE COURT: WELL, THE COURT IS ALWAYS FACED
22 WITH THE DILEMMA OF A THIRD PARTY HAVING CONTROL OF
23 EVIDENCE, I.E., SLED. I DON'T KNOW HOW TO PROD THEM INTO
24 DOING IT ANY FASTER, BUT THE STATE HAS -- WHAT'S THE
25 STATE'S POSTURE ON THAT?

1 MR. POPE: AS THE COURT SAID, UNTIL WE HAD THE
2 SCHMERBER ORDER, UNTIL WE WENT THROUGH ALL THAT PROCESS,
3 WE CONTINUE TO PROD SLED. FOR OBVIOUS REASONS, WE'D LIKE
4 TO HAVE IT AS SOON AS WE CAN JUST AS THE DEFENSE WOULD.
5 WE CALLED THEM LAST WEEK, THEY SAID IT WOULD BE TWO
6 WEEKS. WE WILL CONTINUE TO DO SO.

7 IF THE COURT HAS FURTHER INSTRUCTIONS, I'LL BE
8 GLAD TO ---

9 THE COURT: WELL, THEY ARE NOT A PARTY HERE SO
10 I CAN'T ISSUE AN ORDER, BUT I CAN CERTAINLY WRITE CHIEF
11 STEWART, IF NEED BE, AND ASK HIM IF HE CAN SEE THAT THIS
12 IS GIVEN SOME SORT OF PRIORITY.

13 MR. POPE: IT MAY BE THAT ME INFORMING THEM
14 THAT YOU ARE WILLING TO TAKE THAT STEP ---

15 THE COURT: I MEAN I COULD CALL HIM ON THE
16 PHONE, EITHER ONE, BUT PROBABLY A LETTER SO THAT I COULD
17 SEND COPIES TO EACH OF YOU AND YOU WILL KNOW EXACTLY WHAT
18 IS COMMUNICATED. THAT IS PROBABLY BETTER. BUT I HAVE NO
19 PROBLEM WITH DOING THAT.

20 MR. POPE: WHAT I WOULD PROPOSE TO DO, YOUR
21 HONOR, NOT BOXING MYSELF IN, BUT HOPEFULLY I COULD DO
22 THIS IS MAKE SOME CALLS AND TRY TO HAVE SOME WRITTEN
23 RESPONSE TO THE DEFENSE BY 12:00 NOON THIS FRIDAY THAT
24 THE FOLLOWING DEPARTMENTS AT SLED SAID THE FOLLOWING, AND
25 GIVE THEM SOMETHING OF THAT NATURE.

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LEFT BLANK**

1 THE COURT: ALL RIGHT: ANYTHING ELSE?

2 MR. HANCOCK: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: LET'S JUST MENTION THIS. I, OF
4 COURSE, AM ASSIGNED HERE -- I THINK I HAVE ONE MORE WEEK
5 IN UNION BUT BASICALLY I'M HERE UNTIL THE END OF THE
6 YEAR. STARTING IN JANUARY I'M PROBABLY GOING TO BE IN
7 CHARLESTON AND GREENVILLE AND ALL OVER THE PLACE, SO JUST
8 TAKE THAT INTO CONSIDERATION. I CAN ALWAYS -- THIS, OF
9 COURSE, IS A PRIORITY MATTER AND I'M NOT GOING TO BE
10 MOVING TO THOSE PLACES, I'LL BE COMING BACK AND FORTH BUT
11 MY AVAILABILITY WILL BE SOMEWHAT RESTRICTED PROBABLY
12 STARTING THE FIRST WEEK IN JANUARY.

13 MR. POPE: YOUR HONOR, BASED ON THINGS THAT ARE
14 PENDING, INCLUDING THE QUESTIONNAIRE THAT YOU ARE GOING
15 TO GIVE US A COPY OF, PERHAPS WE COULD TENTATIVELY
16 SCHEDULE SOMETIME PRIOR TO THE BEGINNING OF DECEMBER, WE
17 COULD HAVE ANOTHER HEARING TO ADDRESS WHATEVER ISSUES WE
18 MAY NEED TO ADDRESS ON THE RECORD.

19 THE COURT: ALL RIGHT. WE WILL RECESS THIS
20 MATTER FOR THE DAY. THANK YOU.
21 PRE-TRIAL MATTERS OF DECEMBER 4, 1998:

22 THE COURT: MR. SOLICITOR, DO YOU WANT TO BRING
23 ME UP TO DATE AS TO WHERE WE ARE?

24 MR. POPE: YES, SIR. MAY IT PLEASE THE COURT,
25 THE DEFENSE HAD ASKED FOR FURTHER TIME TO RESPOND TO THE

1 STATE'S MOTION. I THINK WE'RE AT THE JUNCTURE NOW WHERE
2 THEY HAVE SERVED A RESPONSE AND I BELIEVE THE COURT HAS A
3 COPY OF IT, AND I BELIEVE AT THIS TIME IT WOULD BE
4 APPROPRIATE TO HEAR FROM THE DEFENSE ON THIS ON THIS
5 MATTER AND THEN THE STATE WOULD HAVE FURTHER REPLY ON IT.

6 ALSO WE ARE PREPARED AS FAR AS THE
7 QUESTIONNAIRE. AND I BELIEVE, YOUR HONOR, THOSE WOULD BE
8 THE ONLY TWO ISSUES THAT WE HAVE OTHER THAN MAYBE SOME
9 SCHEDULING ISSUE.

10 THE COURT: AND THE ISSUE IS HIS MENTAL
11 EVALUATION?

12 MR. POPE: YES, SIR, YOUR HONOR. AGAIN, THE
13 DEFENSE HAS RESPONDED TO ALL THREE AREAS, THE BASIC AREAS
14 TO BE ADDRESSED, AND THE COURT ADDRESSED THEM IN PART
15 LAST TIME, BUT BASICALLY THE AREAS WERE CONCERNING THE
16 DEFENSE RESPONSE TO THE RULE 5 REQUEST CONCERNING
17 INSANITY OR GUILTY BUT MENTALLY ILL.

18 MY UNDERSTANDING BASICALLY THE COURT'S RULING
19 AT THAT TIME WAS THAT WE WOULD ACCEPT WHAT THEY GAVE US,
20 AND THEY HAD THE OPTION OPEN THAT THEY MAY CHANGE IT
21 LATER ON AND YOU WOULD ENTERTAIN THAT MOTION, JUST
22 WHATEVER SUITS ON THAT.

23 THE SECOND WOULD BE THE STATE'S MOTION FOR
24 DISCLOSURE OF EVIDENCE BY THE DEFENDANT, PARTICULARLY
25 INTELLECTUAL RESULTS AND REPORTS OF MENTAL AND PHYSICAL

1 EXAMINATIONS. THE DEFENSE HAS RESPONDED THROUGH THEIR
2 RETURN TO THE MOTION AND I WOULD ADDRESS THAT AT THE
3 APPROPRIATE TIME.

4 AND THIRD WOULD BE THE STATE MOVING FOR AN
5 ORDER REQUIRING THE DEFENDANT TO SUBMIT TO AN INDEPENDENT
6 PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND EVALUATION
7 FOR THE PURPOSE OF DETERMINING HIS MENTAL CONDITION.

8 FINALLY, YOUR HONOR, MR. BRACKETT JUST CALLED
9 TO MY ATTENTION ALSO PENDING LAST TIME WAS THE
10 HANDWRITING THAT WAS SORT OF IN DISPUTE?

11 THE COURT: I'VE TAKEN THAT UNDER ADVISEMENT.
12 I'M WORKING ON THAT NOW. I DON'T THINK WE NEED TO REVISIT
13 THAT UNLESS SOMEBODY HAS SOMETHING NEW, BUT WE ARE
14 WORKING ON THAT; WE'RE LOOKING INTO THAT.

15 MR. POPE: I JUST WANTED TO REMIND THE COURT
16 THAT THAT WAS STILL ---

17 THE COURT: WE KNOW THAT'S OUTSTANDING. RE-CAP
18 JUST BRIEFLY THE ISSUES THAT WE'VE GOT THIS MORNING
19 AGAIN?

20 MR. POPE: OKAY. THE ISSUES THIS MORNING, THE
21 LEAST OF WHICH IS OBVIOUSLY THE QUESTIONNAIRE ---

22 THE COURT: YES.

23 MR. POPE: THE ISSUES WE HAVE ARE BASICALLY
24 THREE. AGAIN, I THINK THE FIRST ISSUE HAS PRETTY MUCH
25 BEEN ADDRESSED BY THE COURT. I MAY SPEAK BRIEFLY TO

1 THAT, BUT THE STATE'S REQUEST FOR A CLARIFICATION ON THE
2 DEFENSE MOTION AS FAR AS INSANITY OR GUILTY BUT MENTALLY
3 ILL; THE SECOND IS THE STATE'S REQUEST FOR DISCLOSURE OF
4 EVIDENCE BY THE DEFENDANT. OF COURSE, WE HAVE THE FULL
5 RECIPROCAL RULE 5 MOTION BUT PARTICULARLY THE RESULTS OF
6 THE MENTAL AND PHYSICAL EXAMINATIONS, THE SCIENTIFIC
7 TESTS, AND FINALLY THE STATE IS MOVING FOR AN ORDER THAT
8 THE DEFENDANT SUBMIT TO AN INDEPENDENT PSYCHIATRIC OR
9 PSYCHOLOGICAL EXAMINATION OR EVALUATION FOR THE PURPOSE
10 OF DETERMINING THE MENTAL CONDITION OF THE DEFENDANT.

11 I WOULD NOTE TO THE COURT THAT THAT SHOULD BE
12 CONTAINED ON THE THIRD PAGE OF THE STATE'S MOTION AND IS
13 DELINEATED AS A, B, C UNDER THE MOTIONS.

14 THE COURT: ALL RIGHT. LET'S HEAR COUNSEL FOR
15 MR. ROBERTSON REGARDING THE STATUS OF THE MENTAL DEFENSE.
16 THERE IS A LETTER DATED NOVEMBER 6TH, ACTUALLY TWO
17 LETTERS DATED NOVEMBER 6TH FROM MR. HANCOCK TO THE
18 SOLICITOR WHEREIN IT IS INDICATED, NUMBER ONE, PURSUANT
19 TO MY ORDER THAT MR. ROBERTSON IS NOT INTENDING TO SEEK A
20 FINDING OF GUILTY BUT MENTALLY ILL; AND THE OTHER ONE
21 STATES THAT MR. ROBERTSON AT THAT TIME DID NOT INTEND TO
22 USE ALIBI OR INSANITY.

23 MR. HANCOCK, WHERE DO WE STAND ON ALL OF THAT?

24 MR. HANCOCK: YOUR HONOR, I THOUGHT YOU HAD
25 RULED ON THAT BECAUSE YOU HAD ---

1 THE COURT: WELL, I THOUGHT I HAD, TOO, BUT I
2 JUST WANT TO SEE IF THERE HAS BEEN ANY CHANGE.

3 MR. HANCOCK: NO, SIR, THERE'S BEEN NO CHANGE
4 BECAUSE IN OUR BRIEF WE ADDRESSED THAT AND I THOUGHT THAT
5 YOU HAD ALREADY RULED THAT THE RULE ITSELF IS CLEAR IN
6 THAT IT SAYS EXCEPT FOR GOOD CAUSE SHOWN; THEREFORE, AT
7 THIS TIME WAS NOT IMPROPER BECAUSE THERE WAS A LEEWAY OR
8 A WINDOW WHERE IT COULD POSSIBLY CHANGE UPON GOOD CAUSE
9 SHOWING TO THE COURT.

10 THE COURT: THAT'S MY RECOLLECTION.

11 MR. POPE: YOUR HONOR, I WOULD LIKE TO ADDRESS
12 THIS ISSUE AGAIN, BUT THAT WAS MY UNDERSTANDING OF YOUR
13 RULING. I JUST WANTED TO ADDRESS IT MORE FULLY IN
14 RESPONSE TO THE DEFENSE RETURN.

15 MR. HANCOCK: I'M FINE; I'M THROUGH WITH IT.

16 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
17 AS A REQUEST FOR CLARIFICATION, IN THE DEFENSE RETURN TO
18 THE MOTION, THE ARGUMENT THEY ARE MAKING, THE ARGUMENT
19 THEY PUT FORTH LAST TIME AND, AGAIN, I JUST WANT TO MAKE
20 SURE THAT I UNDERSTAND THE COURT'S RULING, CERTAINLY
21 SOMETHING CAN ALWAYS CHANGE, BUT IF IT IS BASED, AS THEY
22 SAY IN THEIR RETURN, THAT IT IS BASED ON THE STATE'S
23 FAILURE TO COMPLY WITH DISCOVERY REQUESTS IN A TIMELY
24 MANNER AND THE CONTINUING NATURE OF THEIR EVALUATIONS, AT
25 SOME POINT, YOUR HONOR, THE EVALUATIONS HAVE TO COME TO

1 SOME CONCLUSION WITH SOME REPORT, WITH SOME EXAMINATION
2 CONCLUDED BY A DOCTOR -- THAT'S THE WHOLE PURPOSE, I
3 BELIEVE, OF FINANCING -- I THINK WE DIFFER FROM FINANCING
4 FOR COUNSELING AND FINANCING FOR ACTUAL DETERMINATIONS OF
5 DEFENSE MENTAL ISSUES.

6 YOUR HONOR, FIRST AS TO THE STATE'S FAILURE TO
7 COMPLY, AND I APOLOGIZE IN THE PAST FOR NOT BEING MORE
8 PROPERLY PREPARED ON THIS ISSUE, I WOULD JUST LIKE TO
9 NOTE FOR THE RECORD THAT THE DEFENDANT WAS ORIGINALLY
10 REPRESENTED BY MR. THAD MYERS WITH THE ANDERS FIRM IN
11 COLUMBIA, AND THEY WERE ACTUALLY CONTACTED ON MARCH 9TH
12 AND RECEIVED INITIAL DISCOVERY THEN. SINCE THEY HAVE
13 RECEIVED DISCOVERY AND DURING THAT TIME PERIOD IS WHEN
14 MR. HANCOCK WAS GETTING INVOLVED WITH THE POSSIBILITY OF
15 TAKING OVER FROM MR. MYERS.

16 OUR RECORDS INDICATE BEGINNING MAY 1ST OF 1998
17 THEY CAME AND PICKED UP THE FIRST INITIAL PACKET OF
18 DISCOVERY. HE RECEIVED THE SUMMARIES IN JUNE; HE
19 RECEIVED COPIES -- AGAIN, AS THINGS CAME IN, HE RECEIVED
20 AN ADDITIONAL PACKET. I NOTE THAT THEY SAID IN THEIR
21 BRIEF THAT THEY HAD JUST RECEIVED THE BULK OF THE
22 INFORMATION DURING THE DISCOVERY CONFERENCE. THERE HAVE
23 BEEN NUMEROUS TIMES, AND I THINK THE DEFENSE WOULD AGREE,
24 NUMEROUS TIMES THAT THEY HAVE BEEN OFFERED AND THEY WOULD
25 SAY WELL WE'LL GET IT LATER, WE'LL GET IT AT ONE TIME,

1 BUT THE AVAILABILITY HAS BEEN THERE BEGINNING WITH THE
2 MAY 1ST TIME AND ACTUALLY BEFORE THAT WHEN MR. THAD MYERS
3 REVIEWED THE EVIDENCE.

4 YOUR HONOR, AS TO THE INFORMATION THAT WAS
5 REVIEWED THE OTHER WEEK, IT WAS AN ACTUAL REVIEWING OF
6 THE PHYSICAL EVIDENCE, THE EVIDENCE WHICH HAS BEEN IN
7 CUSTODY. AND I THINK THEY ALSO REVIEWED DOCUMENTS AND
8 CHOSE ONES THEY WOULD OR WOULDN'T GET. AS LATE AS THIS
9 LAST WEEK, THEY HAVE RECEIVED ADDITIONAL DISCOVERY. BUT
10 THE DISTINCTION AGAIN THERE, YOUR HONOR, IS WE ARE
11 PROVIDING THEM EVERYTHING WE HAVE. WE ARE PROVIDING THEM
12 WITH INFORMATION THAT, ONE, WE DON'T HAVE TO PROVIDE;
13 AND, TWO, WOULD BE EQUALLY AVAILABLE TO THEM.

14 THE BULK OF THE INFORMATION THAT WENT TO THEM
15 LAST WEEK, FOR EXAMPLE, ACTUALLY CONCERNS HIS SCHOOL
16 RECORDS, YOU KNOW, THE GRADES, THE SCHOOL RECORDS AND ALL
17 THE THINGS THAT WE COMPILED AS FAR AS THE PENALTY PHASE.
18 AND THOSE HAVE BEEN PROVIDED IN A CONTINUING FASHION.

19 GOING BACK TO THE ISSUES, AND I REALIZE THAT
20 THE BIGGEST ISSUE WHEN THEY TALK ABOUT DISCOVERY AND,
21 AGAIN, THEY HAVEN'T CLARIFIED THIS, IS THE ISSUE OF SLED
22 AND SOME OF THE REPORTS THAT HAVE BEEN FORTHCOMING FROM
23 SLED. YOUR HONOR, OF COURSE, WE CONTINUE TO WORK ON
24 THAT. WE CONTINUE TO GET THEM AS SOON AS POSSIBLE BUT IF
25 THEY GO UNDER THE ASSUMPTION THAT THEY CAN'T FULLY TELL

1 US THE MENTAL DEFENSE BASED ON THE FACT THAT THEY DON'T
2 HAVE, AGAIN, DNA OR TRACE EVIDENCE OR THINGS OF THAT
3 NATURE, YOUR HONOR, I WOULD SUBMIT THAT THE SAME LOGIC
4 THAT YOU APPLIED IN MAKING THE ALIBI DETERMINATION, YOU
5 KNOW, THAT EITHER YOU'RE THERE OR YOU'RE NOT, WOULD GO TO
6 THE MENTAL DEFENSE. BECAUSE WHETHER THERE IS A PALM
7 PRINT ON THE WALL OR NOT A PALM PRINT ON THE WALL,
8 WHETHER THERE ARE HAIRS OR NOT HAIRS OR ANYTHING OF THAT
9 NATURE DOES NOT GO AS TO WHETHER AT THAT TIME HE
10 UNDERSTOOD LEGAL AND MORAL RIGHT -- YOU KNOW, HE COULD
11 HAVE BEEN IN CONNECTICUT BUT STILL AT THAT TIME HE
12 UNDERSTOOD, EITHER UNDERSTOOD THESE THINGS OR HE DIDN'T.

13 SO, THE DISCOVERY ISSUE IS INDEPENDENT, I WOULD
14 SUBMIT, FROM THE ISSUE OF COMING FORTH WITH THIS. THIS
15 ACTUALLY ENDS UP TYING INTO THE SECOND LEVEL, THE SECOND
16 ISSUE, TOO, YOUR HONOR, CONCERNING THE MENTAL EXAM.

17 AGAIN, I GUESS WHAT WE ARE LOOKING AT HERE IS
18 THAT AT SOME POINT OUT OF FAIRNESS, AND IT TIES INTO OUR
19 THIRD ISSUE, THE EVALUATION ISSUE, AT SOME POINT, EVEN
20 CONFINING IT TO THE LANGUAGE OF TROTTER THAT THEY
21 PROVIDED IN TALKING ABOUT WHAT A PHYSICAL EXAM OR MEDICAL
22 EXAM IS, WHAT A MENTAL REPORT IS, AT SOME POINT ALL OF
23 THE INVESTIGATION, ALL OF THE EVALUATIONS THAT HAVE TAKEN
24 PLACE HAVE GOT TO RESULT IN SOMETHING THAT SAYS
25 SOMETHING. AND I THINK UNDER DISCOVERY RULES, WE ARE

1 ENTITLED TO RECEIVE THAT.

2 AGAIN, I WILL ADDRESS THE SECOND AND THIRD
3 ELEMENTS AT THE APPROPRIATE TIME.

4 THE COURT: ALL RIGHT.

5 MR. HANCOCK: I WILL ATTEMPT TO REPLY, YOUR
6 HONOR, FIRST TO THE -- I BELIEVE THIS ARGUMENT IS ON
7 WHETHER WE ARE TO AT THIS POINT DISCLOSE TO THE SOLICITOR
8 THE MENTAL REPORTS AND EXAMINATIONS. AS I UNDERSTAND IT,
9 HE IS SEEKING THOSE AT THIS TIME.

10 YOUR HONOR, AGAIN, AT THIS PARTICULAR TIME WE
11 HAVE NOT RECEIVED FULL DISCOVERY, AND THAT DOES IMPACT ON
12 WHAT WE ACTUALLY DO AND WHERE WE GO WITH OUR
13 INVESTIGATION. IT IS A TIME CRUNCH THING, BUT I HAVEN'T
14 EVEN HAD A CHANCE TO TALK TO MY EXPERT. I'VE BEEN IN
15 THIS COURT TRYING CASES, AND I HAVEN'T EVEN HAD A CHANCE
16 TO PUT TOGETHER TWO OF THE EXPERTS THAT HAVE EVALUATED
17 HIM.

18 FURTHER, IT'S NOT INSIGNIFICANT AND THE
19 SOLICITOR HAS BEEN VERY GOOD ABOUT PROVIDING INFORMATION
20 AS IT IS AVAILABLE, BUT THE RULE DOES SAY, YOU KNOW, THAT
21 AT SOME POINT IT HAS TO STOP, BUT THE RULE SAYS THAT I
22 SHALL PERMIT THE PROSECUTION TO EXAMINE THESE UPON HIS
23 COMPLIANCE.

24 WELL, I'VE GOT ELEVEN HUNDRED PAGES THAT I GOT
25 LAST NIGHT FINALLY, AND THE SOLICITOR CALLED EARLIER IN

1 THE WEEK, IT'S THE FIRST CHANCE I COULD GET, I'VE GOT
2 ELEVEN HUNDRED PAGES OF SCHOOL RECORDS, GEORGIA TECH
3 RECORDS -- I HAVEN'T LOOKED AT THEM TO EVALUATE WHAT'S IN
4 THERE IN A MODE OF MENTAL EXAMINATION OR WHAT HAS COME
5 OUT OF GEORGIA TECH. BUT I HAVE CERTAIN OF THAT, I HAVE
6 CERTAIN OF THOSE THINGS THAT I HAVE REVIEWED, BUT I WAS
7 NOT ABLE LAST NIGHT TO LOOK OVER ELEVEN HUNDRED PAGES.
8 IT MIGHT BE FIFTEEN HUNDRED. THAT IS NOT AN
9 INSIGNIFICANT AMOUNT OF DISCOVERY; THAT IS A SIGNIFICANT
10 AMOUNT THAT HAS TO BE GONE OVER AND POURED OVER.

11 SO, I'M NOT REQUIRED -- MR. BOYD AND I ARE NOT
12 AT THIS TIME READY TO DETERMINE WHAT EXACTLY WE ARE GOING
13 TO USE IN OUR TRIAL. AND THAT WILL BE ANOTHER ISSUE THAT
14 I WILL TAKE UP.

15 THE COURT: WAIT JUST A MINUTE. LET ME ASK THE
16 SOLICITOR, WHY WAS THIS INFORMATION NOT PROVIDED EARLIER?

17 MR. POPE: YOUR HONOR, WE'LL STILL RECEIVING
18 INFORMATION ---

19 THE COURT: WELL, I KNOW, BUT THIS PARTICULAR
20 PACKET, THE ELEVEN HUNDRED PAGES, THE SCHOOL RECORDS AND
21 ALL OF THAT.

22 MR. POPE: WE JUST GOT THEM.

23 THE COURT: YOU JUST GO THEM.

24 MR. POPE: YOUR HONOR, WE'RE FIGHTING TO GET
25 THIS STUFF BUT I WANT TO MAKE ONE POINT -- I DON'T MEAN

1 TO INTERRUPT THE COURT, BUT I WANT TO MAKE ONE POINT.
2 HERE'S WHAT WE'RE TALKING ABOUT, HIS SCHOOL RECORDS, HIS
3 GEORGIA TECH RECORDS. WE HAVE TO SERVE SUBPOENAS IN
4 GEORGIA -- YOU KNOW, WE HAVE TO DO THINGS THAT, YOU KNOW,
5 THEY CAN WALK RIGHT IN THE DOOR AND GET.

6 IT'S HARD FOR ME TO BELIEVE -- I DON'T THINK
7 MR. HANCOCK IS SAYING -- HE HASN'T HAD A CHANCE TO
8 COMPARE THIS TO SEE IF IT IS THE SAME THING THAT HE'S
9 GOT. BUT I CAN'T BELIEVE THAT TWO MONTHS BEFORE TRIAL
10 HE'S SAYING, YOU KNOW, WITH ALL THE MENTAL ASPECT AND ALL
11 THAT THEY ARE LOOKING AT, THAT THEY HAVEN'T LOOKED AT THE
12 SCHOOL RECORDS. EVERYTHING THAT WE'RE TALKING ABOUT
13 BEING PROVIDED IN THAT REGARD, YOUR HONOR, ARE THINGS
14 THAT THEY HAVE EQUAL ACCESS TO.

15 I THINK -- THE CASE ESCAPES ME, YOUR HONOR, BUT
16 THERE IS A CASE THAT CLEARLY SAYS THAT WE'RE NOT REQUIRED
17 TO PROVIDE ANYTHING THAT THEY HAVE EQUAL ACCESS TO. THE
18 TRUTH OF THE MATTER IS THEY HAVE BETTER ACCESS TO THESE
19 RECORDS THAN WE DO.

20 AGAIN, IF THAT IS GOING TO PREMISE SOME
21 DECISION ON WHEN THESE THINGS ARE GOING TO BE COMPLIED
22 WITH IN THE TREATMENT MATTERS, WE WOULD HAVE BEEN BETTER
23 OFF NEVER TO HAVE GIVEN THEM TO THEM BECAUSE THEY WOULD
24 HAVE BEEN EQUALLY AVAILABLE TO THEM AND IF THIS IS GOING
25 TO SOMEHOW CONTINUE THE MENTAL EVALUATION PROCESS, WE

1 WOULD HAVE BEEN BETTER OFF JUST NEVER DISCLOSING IT,
2 TAKING FOR GRANTED THAT THEY HAVE AN EQUAL RIGHT TO IT, A
3 BETTER RIGHT TO IT, AND WOULD HAVE HAD ACCESS TO IT
4 THEMSELVES.

5 THE COURT: ANY FOLLOW UP, MR. HANCOCK?

6 MR. HANCOCK: YOUR HONOR, AGAIN, AT THIS
7 PARTICULAR TIME, AND I HAVE EXPERTS WORKING ON THIS, THEY
8 HAVE NOT GIVEN US REPORTS OF RESULTS OF MENTAL
9 EVALUATIONS IN THE FORMS THAT THEY ARE GOING TO BE USED
10 IN THE TRIAL. THAT'S ALL I CAN PROVIDE. I'M NOT
11 REQUIRED TO PROVIDE THE RAW DATA OR THE NOTES OR ANYTHING
12 ELSE THAT LEADS TO THAT CONCLUSION. AND UNTIL I SIT DOWN
13 WITH ALL OF MY EXPERTS, THAT CONCLUSION IS NOT GOING TO
14 BE DRAWN.

15 NOW, I KNOW THAT THE SOLICITOR HAS ACCESS TO
16 THE STATE HOSPITAL, AND I THINK HE ALREADY HAS HIRED A
17 GENTLEMAN DOWN THERE OR HAS A GENTLEMAN AVAILABLE AND,
18 YOUR HONOR, I WILL GET THAT TO YOU AS QUICKLY AS I CAN.
19 I DON'T PERCEIVE THAT HAPPENING UNTIL I GET SOME COURT
20 PROTECTION THAT I CAN GET TO COLUMBIA AND SIT DOWN WITH
21 THESE PEOPLE.

22 MR. BOYD AND MYSELF, WE ARE IN THIS COURT
23 CONSTANTLY AND HAVE BEEN FOR THE LAST THREE MONTHS. SO,
24 YOU KNOW, JUDGE, I CAN'T DO BUT ONE THING AT A TIME AND
25 I'M TRYING TO GIVE WHAT TIME I CAN TO THIS.

1 I WILL BE COMING TO THE COURT FOR A PROTECTIVE
2 ORDER SO THAT I CAN GET THIS TO THE SOLICITOR. I BELIEVE
3 THAT 30 DAYS OR 40 DAYS OR WHATEVER WILL BE SUFFICIENT
4 TIME FOR HIM TO EXAMINE OR HAVE HIS EXPERTS EXAMINE THE
5 REPORTS IF THEY ARE REALLY WILLING AND ABLE TO DO SO.

6 I KNOW THAT WE WILL COME AND ALLOW YOU TO
7 DETERMINE WHICH REPORTS ARE TO BE GIVEN.

8 I'M GOING ON TIME FRAMES BUT, AGAIN, I ASKED
9 FOR ALL OF THE PHYSICAL EVIDENCE BEFORE THE LAST HEARING.
10 I GOT ELEVEN HUNDRED PAGES AND I'VE GOT PART OF IT, I
11 JUST FLIPPED THROUGH IT, I KNOW I'VE GOT HIS GEORGIA TECH
12 RECORDS. I KNOW THAT WE'VE GOT CERTAIN OTHER THINGS, BUT
13 THERE MAY BE EXCULPATORY INFORMATION, THERE MAY BE
14 ANYTHING IN THERE THAT I DON'T HAVE. I'VE GOT TO AT
15 LEAST HAVE TIME TO REVIEW IT BEFORE I MAKE A DECISION AND
16 SAY, OKAY, GIVE ME ALL OF THE REPORTS AND HERE'S
17 EVERYTHING THAT YOU'RE GOING TO GET.

18 YOUR HONOR, I HAVE A QUESTION AND IT IS NOT
19 CONTAINED IN ANY OF THESE BRIEFS, AS TO EXACTLY WHAT THE
20 CASE IN CHIEF IS. THE RULE SAYS "THAT ARE GOING TO BE
21 USED IN THE CASE IN CHIEF". WELL, DOES THAT INCLUDE THE
22 MITIGATING PHASE IF IT COMES TO THE DEATH PENALTY PHASE
23 OF THIS TRIAL? IS THAT THE CASE IN CHIEF?

24 THE COURT: WELL, THAT WOULD BE THE
25 INTRODUCTION OF ANY EVIDENCE AT EITHER PHASE. IT'S A

1 BIFURCATED TRIAL, BUT IT'S ONLY ONE TRIAL.

2 MR. HANCOCK: YES, SIR. I JUST HADN'T
3 ADDRESSED THAT ISSUE AND IT'S NOT ADDRESSED IN ---

4 THE COURT: IF YOU CAN FIND ANY LAW OTHERWISE,
5 BUT MY RULING IS THIS WOULD COVER BOTH PHASES.

6 MR. HANCOCK: YES, SIR.

7 THE COURT: IT COVERS THE TRIAL WHICH INCLUDES
8 ANYTHING INTENDED TO BE INTRODUCED BY THE DEFENSE.

9 MR. HANCOCK: YES, SIR.

10 THE COURT: I FIND THAT THE STATE HAS
11 SUBSTANTIALLY COMPLIED WITH RULE 5 AND UNDER RULE 5-C
12 THEY ARE UNDER A CONTINUING DUTY TO DISCLOSE, WHICH IT
13 APPEARS THEY ARE DOING, SO I AM GOING TO ASK THE STATE TO
14 PREPARE AN ORDER REQUIRING THE DEFENDANT TO COMPLY WITH
15 RULE 5-B.

16 MR. POPE: YOUR HONOR, FINALLY IF YOU HAVE THE
17 DEFENSE RESPONSE TO THE LAST ISSUE CONCERNING AN
18 EVALUATION, THE STATE WOULD LIKE AN OPPORTUNITY TO REPLY
19 TO THAT.

20 THE COURT: ALL RIGHT.

21 MR. HANCOCK: YOUR HONOR, I AM GOING TO GO BACK
22 AND CLARIFY THE OTHER. YOUR HONOR, STATUTORILY YOU HAVE
23 THE AUTHORITY TO ORDER THE EXAMINATION. I BELIEVE THE
24 STATUTE SAYS "WHENEVER A JUDGE OF A CIRCUIT COURT, COUNTY
25 COURT OR FAMILY COURT HAS A REASON TO BELIEVE THAT A

1 PERSON ON TRIAL BEFORE HIM CHARGED WITH THE COMMISSION OF
2 A CRIMINAL OFFENSE IS NOT COMPETENT TO STAND TRIAL
3 BECAUSE SUCH PERSON LACKS THE CAPACITY TO UNDERSTANDING
4 THE PROCEEDINGS AGAINST HIM OR ASSIST IN HIS OWN DEFENSE
5 AS A RESULT OF A LACK OF MENTAL CAPACITY, THE JUDGE SHALL
6 -- " THAT'S 44-23-410.

7 I BELIEVE THAT REQUIRES SOME SHOWING FROM THE
8 SOLICITOR THAT THERE IS SOME EVIDENCE THAT THIS PERSON IS
9 NOT FIT TO STAND TRIAL SINCE WE HAVE RAISED NO MENTAL
10 DEFENSE, WE HAVE NOT REQUESTED ANY EXAMINATION FROM THE
11 COURT, WE HAVE NOT IN ANY WAY INDICATED THAT THIS PERSON
12 IS NOT FIT TO STAND TRIAL OTHER THAN THAT, THIS IS A
13 FISHING EXPEDITION TO DETERMINE HIS MENTAL STATE BECAUSE
14 THEY ARE AFRAID WE'RE GOING TO GO INTO THAT IF IT COMES
15 TO THE DEATH PENALTY STAGE AND I THINK IT COMES VERY
16 CLOSE, VERY CLOSE TO VIOLATING HIS FIFTH AMENDMENT RIGHT
17 WHEN YOU GO IN AND START EVALUATING IN THAT MANNER.

18 IT SAYS ONLY FOR COMPETENCY TO STAND TRIAL. I
19 THINK THAT COULD BE DETERMINED IN 10 MINUTES PROBABLY BY
20 THEIR EXPERTS. WE'RE NOT IN A TIME CRITICAL SITUATION.
21 WE HAVE NOT RAISED THE SPECTER OF THAT, NOR HAS ANYTHING
22 ELSE THAT I'M AWARE OF RAISED THE SPECTER THAT WOULD
23 CAUSE YOU, SIR, AND IT IS YOUR CALL, TO BELIEVE THAT THIS
24 GENTLEMAN OVER HERE CAN'T STAND TRIAL.

25 IN FACT, IN THEIR POSSESSION ARE LETTERS THAT

1 WERE INTRODUCED AND WE DID NOT OBJECT TO IN A HANDWRITING
2 SAMPLE THAT INDICATES THAT HE PERFECTLY UNDERSTANDS WHAT
3 IS THE CHARGE AGAINST HIM AND WHAT ARE THE RAMIFICATIONS
4 OF THE DEATH PENALTY AS WELL AS THE RAMIFICATIONS OF THE
5 TRIAL.

6 THEY HAD THAT THE LAST TIME WE HAD MOTIONS IN
7 THE LETTERS, AND THEY WERE MENTIONED, THAT WERE BROUGHT
8 BEFORE THE COURT.

9 SO, I BELIEVE IT REQUIRES A PRETTY GOOD SHOWING
10 ON THEIR PART, YOUR HONOR; OTHERWISE, WE'RE ON A MENTAL
11 FISHING EXPEDITION.

12 AND, AGAIN, I WOULD LIKE FOR THE SOLICITOR TO
13 INDICATE WHAT IS THE TIME FRAME. I BELIEVE THERE HAVE
14 BEEN TIMES WHERE IF THE SPECTER WAS RAISED, THAT HE CAN
15 BE EVALUATED IN A VERY, VERY SHORT PERIOD OF TIME TO
16 DETERMINE ONE THING, COMPETENCY.

17 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
18 THE DEFENSE SAYS THAT HE CAN BE EVALUATED IN A VERY SHORT
19 PERIOD OF TIME, BUT IT HAS TAKEN MONTHS FOR THE
20 EVALUATION AND YET HAVE A REPORT FOR THE DEFENSE.

21 YOUR HONOR, I WANT TO MAKE IT CLEAR THAT WHAT
22 THE STATE IS ASKING FOR IS SIMPLY A COMPETENCY
23 EVALUATION.

24 I KNOW THE COURT HAS RECEIVED OUR BRIEF, AND
25 THE ATTACHMENTS. I CALL THE COURT'S ATTENTION TO 44-23-

1 420 THAT TALKS ABOUT THE FORM OF THE EXAM ON THE
2 COMPETENCY EXAMINATION. AND I AGREE WITH MR. HANCOCK
3 THAT THE ONLY STATUTORY AREA THAT WE HAVE DIRECTLY
4 PROVIDED BY THE LEGISLATURE IS THE AREA OF COMPETENCY
5 EVALUATION WHICH IT SETS OUT THE PARAMETERS OF HOW THE
6 COURT DOES IT.

7 IT SAYS IN THERE, AND I THINK THIS IS OF UNIQUE
8 IMPORTANCE, AT THE BOTTOM OF 420, YOUR HONOR, IT SAYS
9 UNLESS FURTHER EXAMINATION ON INSANITY IS REQUIRED. AND
10 AGAIN I USE INSANITY AS AN EXAMPLE. THE LEGISLATURE HAS
11 RECOGNIZED THE INHERENT POWER OF THE COURT TO REQUIRE A
12 MENTAL EVALUATION WHEN THE COURT DEEMS APPROPRIATE.

13 YOUR HONOR, WHAT THE STATE IS ASKING FOR TODAY,
14 I ADMIT, IS A NOVEL ISSUE FROM THE STANDPOINT OF WHAT WE
15 ARE ASKING, AND FROM THE CASE OF ESTELLE ON FORWARD,
16 FIRST WHEN WE TALK ABOUT FIFTH AND SIXTH AMENDMENT RIGHTS
17 IT IS CLEAR THAT WE ARE TALKING ABOUT ANY MENTAL
18 EVALUATIONS THAT THE DEFENDANT HAS THE RIGHT TO CHOOSE
19 NOT TO SUBMIT TO AN EVALUATION. IN OTHER WORDS, YOU
20 COULD ORDER AN EVALUATION AND UNDER HIS FIFTH AMENDMENT
21 RIGHT HE COULD STILL CHOOSE NOT TO SUBMIT TO THAT
22 EVALUATION.

23 LIKewise, IF HE IS TO BE EVALUATED, COUNSEL IS
24 NOT ALLOWED NECESSARILY TO BE PHYSICALLY PRESENT AT THE
25 EVALUATION BUT HE IS TO BE APPRISED OF THE NATURE OF THE

1 EVALUATION AND HIS COUNSEL IS TO BE APPRISED OF THE
2 NATURE OF THE EVALUATION SO THAT THEY CAN DISCUSS THAT
3 MATTER AND MAKE A REASONABLE DETERMINATION OF WHETHER IT
4 IS IMPORTANT TO WAIVE THOSE RIGHTS.

5 BUT, YOUR HONOR, WHAT IT ULTIMATELY COMES TO
6 THEN IS IT IS THE DEFENDANT'S CHOICE, AND THIS COMES
7 STRAIGHT OUT OF ESTELLE, BUT IT'S THE DEFENDANT'S CHOICE
8 WHETHER OR NOT TO INTERJECT MENTAL ISSUES INTO THE CASE.

9 THE COURTS CONTINUE TO RECOGNIZE AND ALL THE
10 WAY UP THROUGH STATE V. SLOAN THE COURT RECOGNIZED THAT
11 THERE ARE TWO OPTIONS. IF WE HAVE A MENTAL EVALUATION
12 AND HE DOES NOT ENTER IN ANY MENTAL EVIDENCE AT ALL, YOU
13 KNOW, HE DOESN'T INTERJECT A MENTAL ISSUE INTO THE CASE
14 AT ALL, THEN WE WOULD MAKE NO USE OF IT; THERE COULD BE
15 NO USE MADE OF THE EVALUATION. IF HE INTERJECTS MENTAL
16 ISSUES, AND REFUSES TO SPEAK TO THE STATE'S DOCTORS IN
17 ASSERTING HIS FIFTH AMENDMENT RIGHT, THEN THE COURT COULD
18 PROPERLY UNDER SLOAN NOT ALLOW THOSE MENTAL ISSUES TO
19 COME IN.

20 SO, AGAIN, IT IS A DECISION MAKING PROCESS ON
21 THEIR SIDE. THEY DON'T HAVE TO SUBMIT TO AN EVALUATION
22 BUT THEY CAN'T INTERJECT THE MENTAL ISSUES OF THE CASE
23 UNLESS THEY DO.

24 AS ESTELLE HAS INDICATED, THIS IS SUCH A UNIQUE
25 AREA OF MENTAL ISSUES, THE ONLY WAY THAT THE STATE COULD

1 EFFECTIVELY CROSS EXAMINE THE DEFENDANT ON MENTAL ISSUES
2 IS BY AN EVALUATION.

3 YOUR HONOR, AGAIN, WE ARE NOT ASKING TO COME IN
4 THROUGH JUST THE COMPETENCY EVALUATION, WHAT WE'RE ASKING
5 -- I WANT TO MAKE CLEAR WHAT WE'RE ASKING AND WHAT WE'RE
6 NOT ASKING. WE'RE ASKING FOR A STANDARD MENTAL
7 EVALUATION THAT WOULD INCLUDE COMPETENCY, MCNAGHTEN,
8 CAPACITY TO CONFORM, BUT I WANT TO TELL YOU WHAT WE'RE
9 NOT ASKING FOR TOO. WE ARE NOT ASKING FOR A FUTURE
10 DANGEROUSNESS EVALUATION, YOU KNOW, POWELL VERSUS TEXAS
11 AND ESTELLE AND SOME OF THOSE GET INTO THE ISSUE -- YOU
12 KNOW, IN TEXAS FUTURE DANGEROUSNESS IS A COMPONENT OF
13 THREE COMPONENTS THAT DETERMINE WHETHER A DEATH PENALTY
14 ULTIMATELY IS MANDATORY FROM A JURY FINDING STANDPOINT.

15 I WOULD MAKE CLEAR, AND I THINK IT WOULD BE
16 APPROPRIATE FOR ME TO MAKE IT CLEAR TO THE DEFENSE WHEN
17 THEY DISCUSS WITH THEIR CLIENT WHETHER THEY WOULD WANT TO
18 HAVE THIS EVALUATION OR NOT THAT WE ARE NOT GOING TO THAT
19 ISSUE OF FUTURE DANGEROUSNESS. WE DO NOT INTEND TO GO TO
20 THAT AS FAR AS THE EVALUATION; WE DO NOT INTEND TO
21 INTERJECT THAT INTO THE TRIAL; WE DO NOT INTEND TO ARGUE
22 FUTURE DANGEROUSNESS BEFORE THE JURY.

23 WE HAVE ADDRESSED THAT PREVIOUSLY IN DEATH
24 PENALTY CASES WHEN THAT IS THE STATE'S INTENT FROM THE
25 BEGINNING.

1 YOUR HONOR, AS FOR INDICATIONS, AND THIS IS
2 REALLY AN ASIDE BECAUSE THE POSITION THE STATE IS IN IS
3 WE COULD WAIT, THE COURT COULD WAIT AND SEE IF THEY
4 INTERJECT MENTAL ISSUES AND THIS BECOMES FINALLY A
5 PRACTICAL ISSUE, AND WE GET ALL THE WAY INTO THE TRIAL
6 AND THE DEFENSE COULD CHOOSE OR NOT TO CHOOSE, AND THAT'S
7 THEIR RIGHT, TO INTERJECT MENTAL ISSUES. BUT THE
8 ALTERNATIVE FOR THE STATE WHEN THAT'S INTERJECTED IS TO
9 STOP THE TRIAL RIGHT THEN, RETAIN THE SEQUESTERED JURY,
10 AND HAVE HIM EVALUATED THEN.

11 EITHER ONE OF TWO THINGS HAPPEN. EITHER HE
12 SUBMITS TO THE EVALUATION WHICH ALLOWS HIM TO BRING THE
13 EVIDENCE IN OR HE DECLINES THE EVALUATION WHICH WOULD
14 EXCLUDES THAT EVIDENCE.

15 AS A PRACTICAL MATTER, WE TALKED ABOUT
16 PREPARATION TIME, MR. HANCOCK TALKED ABOUT THAT, I THINK
17 THE STATUTE IS GOING TO ALLOW HIM TO HAVE THE MONTH OF
18 JANUARY TO PREPARE THIS CASE. OBVIOUSLY, THE STATE IS
19 NOT AFFORDED THAT SAME LUXURY. WE WILL CONTINUE TO HAVE
20 CASES BEFORE THE COURT; WE WILL CONTINUE TO PREPARE THOSE
21 CASES FOR THE COURT.

22 YOUR HONOR, AS FAR AS THE MENTAL ISSUE, MR.
23 HANCOCK SAYS THAT THERE HAS BEEN NO SHOWING AND NO
24 INDICATION OF ANY MENTAL ISSUE BUT THE FIRST HEARING WE
25 HAD ON THIS MATTER, AND I APOLOGIZE IF I'M WRONG ABOUT

1 THE DATES, BUT THERE IS AN INDICATION -- NOT INDICATION,
2 BUT THERE IS EVIDENCE THAT THIS DEFENDANT HAS PREVIOUSLY
3 BEEN INVOLUNTARILY COMMITTED.

4 DON'T YOU REMEMBER WE HAD A HEARING WITH SOME
5 OF THE DOCTORS ABOUT GETTING THE RECORDS? THERE IS A
6 CHAIN OF EVALUATIONS THAT HAVE TAKEN PLACE AND THERE ARE
7 MENTAL ISSUES THAT ARE PRESENT IN THIS CASE.

8 IN ADDITION, THE DEFENSE, AS THE COURT IS
9 AWARE, HAS ASKED FOR NUMEROUS VARIOUS MENTAL EVALUATIONS,
10 EXPERTS TO EXAMINE AND REVIEW. SO, THERE IS CERTAINLY
11 SUFFICIENT INDICATION TO THIS COURT THAT WE WILL HEAR
12 MENTAL ISSUES SOMEWHERE IN THIS CASE.

13 FOR THAT REASON AND IN A SENSE OF JUSTICE, THE
14 OPPORTUNITY TO HAVE THE CASE MOVE FORWARD IN A TIMELY
15 FASHION WHILE PROTECTING THE DEFENDANT'S RIGHTS AS WELL
16 AS THE STATE'S RIGHTS, I WOULD REQUEST THAT THE
17 EVALUATION TAKE PLACE, YOUR HONOR. AGAIN, WITH THE
18 UNDERSTANDING THAT IF NO MENTAL ISSUES ARE INTERJECTED, I
19 CAN MAKE NO USE OF THAT EVIDENCE WHATSOEVER.

20 THE COURT: ANY FOLLOW UP?

21 MR. HANCOCK: MAY IT PLEASE THE COURT, SECTION
22 44-23-420 SAYS, AND THE SOLICITOR SAYS THAT IS IN SUPPORT
23 OF HIS ARGUMENT, SAYS THE REPORT IS NOT DESIGNATED AS
24 EVIDENCE, SHALL NOT OBTAIN ANY FINDINGS NOR THE EXAMINER
25 TESTIFY ON THE QUESTION OF INSANITY SHOULD IT BE RAISED

1 AS A DEFENSE UNLESS THERE IS A FURTHER EXAMINATION ON THE
2 QUESTION OF INSANITY ORDERED BY THE COURT. THERE IS NO
3 INSANITY HERE. THAT'S STATUTORY AND IT'S FAIRLY PLAIN.

4 YOUR HONOR, FURTHER, IS THE CART NOT GOING
5 BEFORE THE HORSE HERE WITH AN ORDER TO TURN OVER THE
6 REPORTS OF OUR MENTAL EXAMINATIONS WHICH WE HAVEN'T EVEN
7 INDICATED AT THIS POINT ARE GOING TO BE INTERJECTED INTO
8 THE TRIAL.

9 THE COURT: THEN YOU MISUNDERSTOOD MY ORDER.
10 MY ORDER WAS THAT YOU ARE TO COMPLY WITH THE RULE.

11 MR. HANCOCK: YES, SIR.

12 THE COURT: I DIDN'T TELL YOU WHAT TO GIVE
13 OVER; I JUST TOLD YOU TO COMPLY WITH THE RULE.

14 MR. HANCOCK: YES, SIR. AND I BELIEVE THAT IS
15 WE HAVE TO PERMIT THEM TO INSPECT THE RESULTS OF REPORTS
16 OF PHYSICAL AND MENTAL EXAMINATIONS AND SCIENTIFIC TESTS,
17 THE RESULTS THEREOF.

18 I THINK WHEN THEY GET THAT, THEN THEY CAN ---

19 THE COURT: BUT DOESN'T THAT GO FURTHER AND SAY
20 WHICH THE DEFENDANT INTENDS TO INTRODUCE AS EVIDENCE?

21 MR. HANCOCK: INTRODUCE AS EVIDENCE; YES, SIR.

22 THE COURT: I MEAN IT'S GOT A SAFETY NET IN
23 THERE.

24 MR. HANCOCK: YES, SIR. AND WHEN THAT IS DONE,
25 IS THAT NOT THE PROPER TIME FOR THE STATE THEN, IF THEY

1 ARE GOING TO HAVE ANY EVALUATION, TO CONDUCT THE
2 EVALUATION AT THAT TIME. AGAIN, WE ARE TALKING ABOUT
3 TIME AND I BELIEVE THE STATE INDICATED THAT WE HAD ALL
4 THIS TIME TO DO THIS AND HAVE HIM EVALUATED -- WELL, THE
5 THING IS, THE COMPETENCY EVALUATION TAKES VERY LITTLE
6 TIME.

7 AND WE MAY PLAN, AND I DON'T KNOW AT THIS
8 POINT, WE MAY PLAN TO INTRODUCE THE PSYCHIATRIC AND
9 PSYCHOLOGICAL ISSUES INTO THE TRIAL PROBABLY IF IT CAME
10 TO THE DEATH PENALTY PHASE. BUT WE HAVE NOT GONE WITH
11 GUILTY BUT MENTALLY ILL NOR HAVE WE GONE WITH INSANITY IN
12 THE GUILT PHASE.

13 BUT, YOUR HONOR, IN THE INTEREST, AND WE'RE
14 TALKING JUSTICE, WE ARE TALKING ABOUT PUTTING HIM IN A
15 SITUATION TO TESTIFY AGAINST HIMSELF. HE CAN AND HAS THE
16 RIGHT NOT TO TESTIFY AGAINST HIMSELF.

17 THE COURT: BUT HASN'T THE SOLICITOR COVERED
18 THAT, THAT HE CAN MAKE CHOICES, TOO; THAT IS, HE CAN
19 ASSERT THAT RIGHT AND NOT ALLOW THE EVALUATION TO GO
20 FORWARD, BUT THAT WOULD PRECLUDE HIM FROM RAISING THESE
21 ISSUES AT TRIAL. SO, HE'S GOT A CHOICE TO MAKE.

22 MR. HANCOCK: YOUR HONOR, IS THAT NOT FORCING
23 HIM INTO A FIFTH AMENDMENT CHOICE, HIS RIGHT TO TESTIFY
24 AT THE ---

25 THE COURT: NO, HE CAN TESTIFY. THERE'S NO

1 QUESTION HE CAN TESTIFY. BUT HE CAN'T INTRODUCE EVIDENCE
2 -- WE'RE TALKING ABOUT HIM TESTIFYING. HE CAN TESTIFY;
3 HE JUST CAN'T INTRODUCE PSYCHOLOGICAL EVIDENCE IF HE
4 DOESN'T, AS I UNDERSTAND THE CASE LAW, IF HE EXERCISES
5 HIS RIGHT NOT TO LET THE STATE HAVE A MENTAL EVALUATION
6 AND NOT LET THERE BE A BALANCE ON THAT ISSUE, THAT HE IS
7 PRECLUDED FROM USING THAT AS A DEFENSE AT HIS TRIAL.
8 THAT'S DIFFERENT FROM SELF-INCRIMINATION.

9 MR. HANCOCK: YOUR HONOR, I'M NOT SURE WHERE WE
10 ARE HERE. IN OTHER WORDS, IF HE DOES NOT SUBMIT TO THE
11 ENTIRETY OF THE STATE'S EXAMINATION, ANYTHING HE DOES NOT
12 SUBMIT TO, WE CANNOT INTRODUCE IN THE TRIAL IN CHIEF OR
13 IN THE DEATH PENALTY PHASE, SO ---

14 THE COURT: WELL, I'M NOT RULING ON THAT AT
15 THIS TIME, BUT IT IS MY UNDERSTANDING THAT'S WHAT THE
16 CASES SAY, AND I HAVEN'T GONE BACK AND READ THEM BUT
17 BASED ON THE SYNOPSIS OF THEM BY THE SOLICITOR, AND YOU
18 CAN READ THEM AS WELL AS I CAN, IS THAT YOU CAN'T EAT
19 YOUR CAKE AND HAVE IT TOO. YOU CAN'T SAY I'M GOING TO --
20 AT TRIAL I INTERJECT THIS AS MY DEFENSE, BUT I'M NOT
21 GOING TO COOPERATE WITH THE OTHER SIDE SO THAT THEY WON'T
22 HAVE ANY WAY TO ATTACK MY DEFENSE.

23 MR. HANCOCK: YOUR HONOR, ALL I CAN SAY IS THAT
24 I BELIEVE IN THE FIFTH AMENDMENT LANGUAGE IF THEY ARE
25 GIVEN THE BROAD PARAMETER, THEN THEY CAN ASK HIM ANYTHING

1 THEY WANT TO IN ANY MANNER THEY WANT TO, IN ANY
2 PSYCHOLOGICAL MANNER THEY WANT TO, AND THAT IS BASICALLY
3 FORCING HIM TO TESTIFY AGAINST HIMSELF BECAUSE THEN IT
4 CAN BE USED AGAINST HIM IN TRIAL AND THEY COULD GO TO
5 SPECIFIC QUESTIONS AND USE IT AGAINST HIM IF HIS ANSWER
6 IS NOT PARTICULARLY APPROPRIATE.

7 THE COURT: WELL, I THINK WE CAN PROTECT HIS
8 RESPONSES TO ANY MENTAL EVALUATION SITUATION.

9 MR. HANCOCK: WELL, WHAT ARE WE GOING TO
10 EVALUATE HIM FOR IS WHAT I'M ASKING.

11 THE COURT: I HAVEN'T GOTTEN THERE. I'M JUST
12 LOOKING AT PROCEDURALLY WHERE WE MIGHT BE. WE'RE ARGUING
13 SORT OF LIKE A CAT RUNNING AROUND A TREE, YOU CAN'T DO
14 THIS UNTIL YOU DO THAT; NO, YOU CAN'T DO THIS UNTIL I DO
15 THAT; NO, I WON'T DO THAT UNTIL YOU DO THIS. AND I'M THE
16 TREE AND Y'ALL ARE RUNNING AROUND ME -- THAT'S WHAT IT
17 APPEARS LIKE BECAUSE A CAN'T HAPPEN UNTIL B HAPPENS AND B
18 WON'T HAPPEN UNTIL C HAPPENS AND YOU CAN DEAL WITH C BUT
19 C CAN'T HAPPEN UNTIL, AND YOU KNOW, I'M STANDING IN THE
20 MIDDLE WATCHING EVERYBODY RUN AROUND SAYING WE CAN'T DO
21 THIS AND WE CAN'T DO THAT UNTIL YOU DO THIS AND YOU DO
22 THAT. SO, I'VE GOT TO MAKE A DECISION AS TO WHAT WE'RE
23 GOING TO DO.

24 I'M JUST RUNNING THROUGH MY MIND PROCEDURALLY
25 WHAT CAN HAPPEN, AND AS I UNDERSTAND THE CASE LAW WHAT

1 CAN HAPPEN IS IF THE DEFENDANT GETS TO TRIAL AND WANTS TO
2 INTRODUCE A MENTAL DEFENSE AND HASN'T COOPERATED IN
3 ALLOWING THE STATE TO EXPLORE THAT DEFENSE, THEN THEY ARE
4 PRECLUDED FROM INTRODUCING IT.

5 MR. POPE: YOUR HONOR, I THINK ALSO A POINT
6 THAT I THINK IS CLEAR BUT NEEDS TO BE MADE, NOTHING
7 PRECLUDES THE DEFENDANT -- THE DEFENDANT COULD GET UP AND
8 INTERJECT ANY MENTAL ISSUE HE WANTED TO BECAUSE THE WHOLE
9 ISSUE IS ABOUT FAIR AND EFFECTIVE CROSS EXAMINATION. IF
10 HE TAKES THE STAND AND SAYS I'M CRAZY, I DID THIS, I DID
11 THAT, THEN I AM PHYSICALLY HERE AND CAN CROSS EXAMINE HIM
12 ON THOSE ISSUES. SO NOTHING, WHETHER HE COMPLIES OR
13 DIDN'T COMPLY, PREVENTS HIM FROM EVER EXERCISING HIS
14 RIGHT TO TESTIFY AT THE TRIAL. YOU KNOW, YOU SAID WE
15 HAVEN'T GOTTEN TO THOSE ISSUES YET, BUT HE WOULD ALWAYS
16 HAVE THE RIGHT TO TAKE THE STAND AND TALK ABOUT BASICALLY
17 WHATEVER HE WANTED, YOU KNOW, IN THAT REGARD.

18 WHAT THIS PREVENTS IS HIM SENDING THAT MESSAGE
19 THROUGH EXPERTS THAT FORM OPINIONS THAT SAY THEY HAVE
20 EVALUATED HIM WITHOUT THE SAME OPPORTUNITY FOR THE
21 STATE'S EXPERTS TO PEER INTO HIS MIND AND EITHER POSSIBLY
22 CONFIRM EXACTLY WHAT THEY STATE OR REFUTE IT IF THAT'S
23 WHAT THE CASE MAY BE.

24 THE COURT: WELL, I AM GOING TO TAKE THIS UNDER
25 ADVISEMENT.

1 NOW, HAS BOTH SIDES HAD AN OPPORTUNITY TO
2 REVIEW THE QUESTIONNAIRE?

3 MR. POPE: YES, SIR. COULD I ADD ONE FINAL
4 ISSUE BEFORE WE FINISH ON THAT ONE?

5 THE COURT: CERTAINLY.

6 MR. POPE: YOU SAID THE COURT WOULD ENTERTAIN A
7 MOTION FROM THE STATE TO ORDER THE DEFENSE TO COMPLY WITH
8 THE SECOND ASPECT, THE REPORT, AND THAT WILL BE
9 IMMEDIATELY, YOUR HONOR?

10 THE COURT: YES. I MEAN THE RULE IS THERE, AND
11 ALL I'M SAYING IS, AGAIN SO WE WON'T BE RUNNING AROUND
12 THIS TREE, COMPLY WITH THE RULE. AND I CAN'T TELL THEM
13 WHAT THAT MEANS BECAUSE I DON'T KNOW WHAT THEY INTEND TO
14 USE AT TRIAL.

15 MR. POPE: ONCE THEY COMPLY, THEN WHATEVER
16 HAPPENS IN THE TRIAL HAPPENS. IN OTHER WORDS, I CAN
17 STAND UP AND SAY, YOUR HONOR, WE NEVER GOT THIS, AND THEN
18 THAT'S AN ISSUE THAT WILL HAVE TO BE DEALT WITH AT THAT
19 TIME.

20 THE COURT: RIGHT. IF THEY DON'T GIVE YOU
21 SOMETHING AND THEN IT POPS UP AT TRIAL, AND YOU MOVE THAT
22 THEY DIDN'T PROVIDE THAT, THEN IT MIGHT NOT COME IN. BUT
23 I CAN'T RULE IN ADVANCE. THE BOTTOM LINE IS I CAN'T TELL
24 THEM WHAT TO DISCLOSE BECAUSE I CAN'T FORMULATE THEIR
25 STRATEGY FOR THEM.

1 ALL RIGHT, THE QUESTIONNAIRE. IS THERE ANY
2 PROBLEM WITH THE ONE THAT WAS SENT? THIS IS THE ONE THAT
3 WE USED IN GREENWOOD LAST.

4 MR. POPE: THE STATE HAS LOOKED AT THEM, YOUR
5 HONOR, AND WE HAVE NO PROBLEM WITH THEM. THERE WAS ONE
6 QUESTION CONCERNING SERVING ON THE JURY AND YOUR JURY
7 EXPERIENCE AND WHAT WAS YOUR VERDICT IN THE CASE, THAT'S
8 NUMBER 18 ON PAGE 3. I DON'T HAVE A MAJOR OBJECTION TO
9 IT. IT MAY BE, YOU KNOW, A LITTLE BIT OVER REACHING, A
10 LITTLE BIT PROBING FOR JURY PROFILING UNDER SMART, BUT I
11 DON'T HAVE ANY MAJOR OBJECTIONS TO THE QUESTIONNAIRE AS A
12 WHOLE.

13 MR. HANCOCK: JUDGE, I WILL BE PERFECTLY
14 HONEST. THAT QUESTIONNAIRE WAS SENT TO COLUMBIA AND WE
15 HAVEN'T GOTTEN ANYTHING BACK FROM THEM. I DON'T AT THIS
16 TIME -- AGAIN, I DON'T WANT TO HOLD THINGS UP. I KNOW
17 THIS IS THE QUESTIONNAIRE YOU USED IN GREENWOOD. IT WILL
18 PROBABLY BE ALMOST WORD FOR WORD THE ONE THAT WE USE HERE
19 BECAUSE YOU APPROVED IT IN A CASE THAT MAYBE WASN'T
20 PARALLEL TO THIS ONE, BUT IT WAS A DEATH PENALTY CASE. I
21 HAVE NOT RECEIVED ANY WORD FROM THEM AT THIS TIME.

22 THE COURT: WHO IS "THEM"? YOU TELL ME IT WAS
23 SENT TO COLUMBIA TO "THEM"; I DON'T KNOW WHO "THEM" IS.

24 MR. HANCOCK: WE SENT THEM TO CAPITAL DEFENSE,
25 YOUR HONOR.

1 THE COURT: WELL, THEY ARE NOT INVOLVED IN THIS
2 CASE, ARE THEY? DID I SIGN AN ORDER ---

3 MR. HANCOCK: YES, SIR, YES, SIR. AND I JUST
4 HAVEN'T GOTTEN ANYTHING BACK FROM THEM. I'M NOT TRYING
5 TO EVADE IT, YOUR HONOR, BUT I GOT WORD OF MOUTH
6 WEDNESDAY WHEN WADE WALKED IN THE OFFICE AND SAID WE'RE
7 GOING TO HAVE A HEARING FRIDAY. AND I'M SITTING HERE
8 SAYING, WADE, WHAT HEARING ARE WE TALKING ABOUT, AND HE
9 SAID THE HEARING ON ALL OF THIS. WELL, I GOT ELEVEN
10 HUNDRED PAGES LAST NIGHT ---

11 THE COURT: I UNDERSTAND THAT YOU GOT THAT LAST
12 NIGHT, BUT WHEN DID YOU GET THE QUESTIONNAIRE?

13 MR. HANCOCK: I GOT IT EARLIER, YOUR HONOR.

14 THE COURT: WELL, THAT'S WHAT WE'RE TALKING
15 ABOUT NOW, SO I'M NOT WORRIED ABOUT THE ELEVEN HUNDRED
16 PAGES.

17 MR. HANCOCK: WELL, SIR, THE THING IS I GOT
18 THAT WEDNESDAY, I HAVE NOT HAD A CHANCE AT THIS TIME TO
19 CONTACT THEM. I DID EVERYTHING I COULD TO CONTACT THEM.
20 AS FAR AS THAT GOES, I DON'T SEE ANYTHING AT THIS TIME
21 THAT WOULD BE OBJECTIONABLE IN THE QUESTIONNAIRE. BUT
22 I'M NOT PREPARED TO ANSWER THIS QUESTION ON FRIDAY WHEN I
23 GOT WEDNESDAY AFTERNOON NOTIFICATION. I GOT NO FORMAL
24 NOTIFICATION WHATSOEVER, SIR.

25 I DON'T THINK THIS WAS A DATE SET AT THE LAST

1 HEARING ---

2 MR. POPE: I THINK ACTUALLY MONDAY -- 10 DAYS
3 FROM THE LAST MONDAY WAS SET. WE PHYSICALLY STOOD IN
4 HERE AND SAID WE'LL BE BACK IN HERE IN 10 DAYS.

5 THE COURT: WELL, I'M GOING TO GIVE YOU UNTIL
6 NOON ON MONDAY TO PROVIDE MYSELF AND THE SOLICITOR WITH
7 Y'ALL'S RESPONSE TO THE QUESTIONNAIRE.

8 MR. HANCOCK: YES, SIR.

9 THE COURT: I WILL GRANT YOU PROTECTION FROM
10 ANY COURT THAT MAY CALL YOU THAT'S LOWER THAN MINE THIS
11 AFTERNOON. I'LL GIVE YOU ALL AFTERNOON TO CALL THIS
12 CROWD, TO CALL THEM AND EVEN DRIVE TO COLUMBIA AND MEET
13 WITH THEM OR MEET THEM HALF WAY. BUT I'LL GRANT YOU
14 DISPENSATION THAT YOU WILL NOT BE CALLED FOR ANY COURT
15 BUT I CAN'T CONTROL THE SUPREME COURT, COURT OF APPEALS
16 OR FEDERAL COURT, BUT ANY COURT WHICH I CAN GRANT YOU
17 PROTECTION, I WILL PROTECT YOU FOR THIS AFTERNOON AND ASK
18 THAT YOU HAVE AN ANSWER BY NOON ON MONDAY.

19 MR. HANCOCK: THANK YOU, SIR.

20 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
21 IN REGARD TO SCHEDULING ISSUES, I DON'T WANT TO LOCK THE
22 COURT IN, BUT IN LIGHT OF THESE SAME TYPE THINGS, IS
23 THERE A TIME THAT WE CAN SET OUR NEXT HEARING OR MEETING?
24 I MEAN I KNOW THE COURT HAS TAKEN THIS UNDER ADVISEMENT,
25 BUT THE NEXT STEP, OBVIOUSLY, WOULD BE TO ADDRESS

1 WHATEVER RULING THE COURT MAY MAKE. AGAIN, I'M NOT
2 TRYING TO BLOCK YOU IN, BUT WHILE WE'RE PHYSICALLY HERE,
3 I MEAN PERHAPS NEXT FRIDAY OR IS THAT TOO SOON? I WAS
4 JUST THINKING WHEN WOULD YOU PHYSICALLY BE PRESENT.

5 THE COURT: WHAT WOULD WE BE DEALING WITH
6 FRIDAY?

7 MR. POPE: IF THE COURT WOULD BE PREPARED TO
8 ADDRESS THE ISSUE ONE WAY OR THE OTHER ON THE MENTAL
9 EVALUATION.

10 THE COURT: WELL, I'M GOING TO ISSUE A WRITTEN
11 ORDER ON THAT.

12 MR. POPE: OH, OKAY.

13 THE COURT: WE DON'T NEED TO RECONVENE ON THAT;
14 I'M GOING TO ISSUE A WRITTEN ORDER. AS FAR AS THE
15 QUESTIONNAIRE, I'LL DECIDE WHAT THE QUESTIONNAIRE WILL
16 SAY AFTER I HEAR FROM THEM.

17 MR. POPE: MY UNDERSTANDING, YOUR HONOR, FROM
18 THE CLERK IS THAT THE 14TH WILL BE THE DAY THE JURY POOL
19 IS DRAWN?

20 THE DEPUTY CLERK: YES, SIR.

21 THE COURT: AND IF COUNSEL FOR THE DEFENDANT
22 WANTS TO BE PRESENT FOR THAT DRAWING, JUST LET THE CLERK
23 KNOW. ANYTHING FURTHER?

24 MR. POPE: I BEG THE COURT'S INDULGENCE.
25 (AFTER A BRIEF PAUSE.)

1 THE COURT: YOUR HONOR, TRADITIONALLY WE GET
2 THE LIST, WE HAVE LAW ENFORCEMENT REVIEW IT. NORMALLY I
3 SEND OUT A COVER LETTER OR SOMETHING TO THAT EXTENT TO
4 EXPLAIN TO LAW ENFORCEMENT, YOU KNOW, THAT I WANT THIS
5 INFORMATION BUT NOT TO CONTACT THESE INDIVIDUALS. IS
6 THERE SOME PARTICULAR OTHER THING YOU NEED US TO DO IN
7 REGARD TO THAT? I MEAN ONCE SHE DRAWS THEM, THEY ARE
8 JURORS FOR THIS CASE. IS THERE ANYTHING THAT NEEDS TO BE
9 DONE IN THAT REGARD OTHER THAN WHAT WE STANDARDLY DO?

10 THE COURT: I DON'T SEE ANYTHING. I MEAN
11 CERTAINLY BOTH SIDES HAVE THE RIGHT TO DO WHATEVER
12 INVESTIGATION YOU WANT TO DO.

13 MR. POPE: SHORT OF CONTACTING THEM.

14 THE COURT: THEM OR THEIR IMMEDIATE FAMILY.

15 MR. POPE: THE STATE HAS NOTHING FURTHER, YOUR
16 HONOR.

17 MR. HANCOCK: THE DEFENSE HAS NOTHING FURTHER,
18 YOUR HONOR.

19 THE COURT: OKAY, WELL I'LL ISSUE AN ORDER
20 HOPEFULLY BY THE END OF THE WEEK AND WE'LL HEAR FROM THE
21 DEFENSE ON THE QUESTIONNAIRE AND ALSO ON THE SCHMERBER
22 ISSUE I UNDERSTAND WE MIGHT HAVE THAT BY ABOUT THE MIDDLE
23 OF THE NEXT WEEK, TOO.

24 MR. POPE: THANK YOU, SIR.

25 MR. HANCOCK: THANK YOU, YOUR HONOR.

1 MARCH 15, 1999 (JURY PANEL QUALIFIED)

2 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
3 I AM THE RESIDENT JUDGE HERE IN THE SIXTEENTH JUDICIAL
4 CIRCUIT OF YORK COUNTY UNION COUNTIES, AND I HAVE BEEN
5 ASSIGNED TO PROVIDE OVER THE PARTICULAR CASE BY THE CHIEF
6 JUSTICE OF THE SOUTH CAROLINA SUPREME COURT THAT WE ARE
7 GOING TO BE TRYING STARTING TODAY.

8 SOME OF YOU MAY HAVE BEEN ON JURY PANELS BEFORE
9 AND IN SOME REGARDS THIS PROCESS WILL BE SIMILAR AND IN
10 SOME IT WILL BE DISSIMILAR. YOU ARE DRAWN SOLELY FOR ONE
11 CASE.

12 I AM GOING TO ASK THE SOLICITOR IN JUST A
13 MOMENT TO ANNOUNCE THE CASE, ANNOUNCE THE CHARGES, AND
14 THEN I WILL INTRODUCE TO YOU THE DEFENDANT AND HIS
15 COUNSEL AND THEN WE WILL MOVE FORWARD WITH HAVING YOU ALL
16 SWORN IN AND THEN WE WILL CALL THE ROLL. THEN I WILL
17 HAVE CERTAIN QUESTIONS TO GO OVER WITH YOU. SO AT THIS
18 TIME I AM GOING TO ASK THE SOLICITOR TO CALL THE CASE.

19 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR.
20 YOUR HONOR, I HOLD IN MY HAND INDICTMENTS 98-GS-46-1020,
21 1021, 1022 AND 1023, ALL OF WHICH HAVE BEEN TRUE BILLED
22 BY THE GRAND JURY, YOUR HONOR.

23 THE FIRST INDICTMENT 98-GS-46-1020, THE STATE
24 VERSUS JAMES DEJARNETTE ROBERTSON IS AN INDICTMENT FOR
25 MURDER IN THE DEATH OF EARL ROBERTSON, SR. AS I SAID, IT

1 HAS BEEN TRUE BILLED BY THE GRAND JURY.

2 INDICTMENT 98-GS-46-1021, THE STATE VERSUS
3 JAMES DEJARNETTE ROBERTSON, INDICTMENT FOR MURDER, FOR
4 THE MURDER OF TERRY ROBERTSON. IT HAS ALSO BEEN TRUE
5 BILLED BY THE GRAND JURY.

6 INDICTMENT 98-GS-46-1022, THE STATE VERSUS
7 JAMES DEJARNETTE ROBERTSON, INDICTMENT FOR ARMED ROBBERY.
8 IT HAS ALSO BEEN TRUE BILLED BY THE GRAND JURY.

9 AND INDICTMENT 98-GS-46-1023, THE STATE VERSUS
10 JAMES DEJARNETTE ROBERTSON, INDICTMENT FOR FINANCIAL
11 TRANSACTION CARD FRAUD. IT, TOO, HAS BEEN TRUE BILLED BY
12 THE GRAND JURY.

13 THE STATE IS READY TO PROCEED TO TRIAL ON THESE
14 FOUR INDICTMENTS. THE STATE HAS SOUGHT THE DEATH
15 PENALTY, YOUR HONOR.

16 THE COURT: ALL RIGHT. CAN YOU HEAR ME? I'VE
17 GOT A MICROPHONE. OF COURSE, THAT WAS SOLICITOR POPE, AND
18 WITH HIM IS MR. KEVIN BRACKETT.

19 AT THIS TIME I AM GOING TO ASK MR. JAMES
20 ROBERTSON TO STAND. THAT IS MR. ROBERTSON IN THE MIDDLE
21 WITH THE RED TIE. TO HIS LEFT IS HIS ATTORNEY, MR. BILL
22 HANCOCK, AND TO HIS RIGHT, TO THE DEFENDANT'S RIGHT IS
23 MR. JIM BOYD. THOSE ARE HIS ATTORNEYS. Y'ALL MAY BE
24 SEATED.

25 AS YOU HEARD, THE DEFENDANT IS CHARGED WITH TWO

1 MURDERS FOR WHICH THE STATE IS ASKING FOR THE DEATH
2 PENALTY.

3 AT THIS TIME I AM GOING TO ASK ALL OF YOU ON
4 THE JURY PANEL TO PLEASE STAND AND RAISE YOUR RIGHT HAND
5 AND I'M GOING TO ASK THE CLERK TO ADMINISTER AN OATH.

6 THE CLERK: DO YOU SOLEMNLY SWEAR OR AFFIRM
7 THAT THE TESTIMONY THAT YOU SHALL GIVE WILL BE THE TRUTH,
8 THE WHOLE AND NOTHING BUT THE TRUTH SO HELP YOU GOD?
9 (THE JURY ANSWERED IN THE AFFIRMATIVE.)

10 THE COURT: YOU MAY BE SEATED. NOW I WANT YOU
11 TO BE AWARE THAT YOU HAVE TAKEN THE OATH HERE IN THIS
12 ROOM AND I AM GOING TO BE ASKING YOU SOME QUESTIONS. IN A
13 LITTLE WHILE I'LL TELL YOU MORE ABOUT IT BUT YOU WILL BE
14 BROKEN INTO PANELS AND THESE PANELS WILL COME IN AT
15 CERTAIN TIMES AND THEN YOU WILL INDIVIDUALLY BE BROUGHT
16 INTO THE COURTROOM AND THIS OATH THAT YOU HAVE TAKEN TO
17 TELL THE TRUTH REMAINS THROUGHOUT ALL OF THIS QUESTIONING
18 AND THROUGHOUT THIS TRIAL.

19 NOW FIRST I AM GOING TO GO OVER SOME QUESTIONS
20 CONCERNING YOUR ELIGIBILITY TO SERVE AS A JUROR. IF ANY
21 OF YOU DO NOT FALL INTO ONE OF THESE THREE CATEGORIES,
22 YOU DON'T HAVE TO FALL INTO ALL THREE, BUT YOU MUST FALL
23 INTO ONE, IF YOU ARE NOT A QUALIFIED ELECTOR; THAT IS, A
24 REGISTERED VOTER, OR IF YOU ARE NOT A REGISTERED SOUTH
25 CAROLINA DRIVER; THAT IS, HAVE A VALID SOUTH CAROLINA IN

1 FORCE DRIVERS LICENSE OR IF YOU HAVE A SOUTH CAROLINA
2 IDENTIFICATION CARD, A DRIVER'S IDENTIFICATION CARD, IF
3 YOU DON'T HAVE ONE OF THOSE THINGS, PLEASE STAND AT THIS
4 TIME.

5 ALL RIGHT, YOUR NAME?

6 THE JUROR: BOBBY CHILDERS.

7 THE COURT: I'M GETTING A LITTLE OUT OF KILTER
8 BECAUSE I WAS GOING TO CALL THE ROLL FIRST, BUT LET ME GO
9 AHEAD AND DO THIS SINCE I'VE GOTTEN THIS FAR. YOU ARE
10 BOBBY CHILDERS?

11 THE JUROR: RIGHT.

12 THE COURT: YOU DON'T HAVE A DRIVER'S LICENSE?

13 THE JUROR: NO, IT'S BEEN SUSPENDED.

14 THE COURT: YOU DON'T HAVE AN I.D. CARD?

15 THE JUROR: NO.

16 THE COURT: YOU DON'T HAVE A VOTER'S
17 REGISTRATION?

18 THE JUROR: NO.

19 THE COURT: WOULD YOU KEEP NOTES ON ALL OF THIS
20 FOR ME?

21 THE CLERK: THAT IS JUROR NUMBER 47.

22 THE COURT: JUST REMAIN WITH US FOR RIGHT NOW.

23 THE COURT: YES, MA'AM?

24 THE JUROR: I'M NELL SMART AND I DON'T HAVE A
25 VOTER'S REGISTRATION.

1 THE COURT: DO YOU HAVE A DRIVER'S LICENSE?

2 THE JUROR: YES, SIR.

3 THE COURT: ALL RIGHT, THAT'S ENOUGH THEN.

4 YES, SIR?

5 THE JUROR: JASON HERRING, NO LICENSE OR I.D.

6 THE COURT: AND YOU'RE NOT A REGISTERED VOTER

7 EITHER?

8 THE JUROR: NO, SIR.

9 THE COURT: WHAT NUMBER?

10 THE CLERK: 116.

11 THE COURT: ALL RIGHT. YES, SIR, YOUR NAME?

12 THE JUROR: MICHAEL GOELLER. I'M REGISTERED TO
13 VOTE IN SOUTH CAROLINA BUT I DON'T HAVE IT WITH ME.

14 THE COURT: THAT'S OKAY. YOU DON'T HAVE TO
15 HAVE IT WITH YOU, JUST SO LONG AS YOU'RE REGISTERED.
16 LET ME BACK UP A LITTLE AND I APOLOGIZE BUT I WANT TO
17 KEEP THINGS AS MUCH IN ORDER AS POSSIBLE. I DO WANT TO
18 HAVE THE ROLL CALLED AND THAT WILL TAKE A LITTLE WHILE,
19 BUT LET'S DO THAT.

20 I ALSO NEED TO GO AHEAD AND TELL YOU AT THIS
21 TIME THAT AS TO EACH OF THESE INDICTMENTS, EACH OF THESE
22 CHARGES THAT THE SOLICITOR HAS READ WHEREIN MR. ROBERTSON
23 IS ACCUSED OF CERTAIN CRIMES, MR. ROBERTSON HAS ENTERED
24 PLEAS OF NOT GUILTY AS TO EACH OF THESE OFFENSES.

25 NOW I WILL ASK THE CLERK TO CALL THE ROLL.

1 (THE JURY ROLL WAS CALLED BY THE CLERK)

2 THE COURT: EACH OF YOU WERE MAILED OR SHOULD
3 HAVE BEEN MAILED A QUESTIONNAIRE. HAVE ANY OF YOU NOT
4 RETURNED YOUR QUESTIONNAIRE? IF ANYBODY HAS NOT FILLED
5 IN A QUESTIONNAIRE AND RETURNED IT, PLEASE STAND AT THIS
6 TIME.

7 (SEVERAL JURORS STOOD.)

8 THE COURT: ALL RIGHT, DO WE HAVE SOME EXTRA
9 QUESTIONNAIRES THAT WE CAN GIVE THEM RIGHT NOW? YES,
10 SIR, AND YOU WERE GOING TO BE EXCUSED? WHAT WAS YOUR
11 SITUATION?

12 THE JUROR: YOU JUST ASKED ME TO SIT DOWN FOR
13 THE MOMENT, SIR.

14 THE COURT: AND WHAT WAS YOUR PROBLEM?

15 THE JUROR: NO DRIVER'S LICENSE, VOTERS
16 REGISTRATION OR I.D.

17 THE COURT: WELL, I'M GOING TO LET YOU STAY
18 RIGHT NOW, BUT YOU WILL BE EXCUSED. MADAM CLERK, WILL
19 YOU KEEP A LIST OF THOSE WHO ARE EXCUSED? HAVE YOU GOT
20 HIS NAME?

21 THE CLERK: BOBBY CHILDERS, NUMBER 147.

22 THE COURT: WE HAD TWO JURORS WHO CAME IN AFTER
23 THE CASES WERE ANNOUNCED, SO I AM GOING TO GO BACK OVER
24 FOR THESE TWO INDIVIDUALS -- THESE ARE INDICTMENTS
25 AGAINST JAMES DEJARNETTE ROBERTSON. MR. ROBERTSON, WOULD

1 YOU PLEASE STAND?

2 HE IS REPRESENTED BY ATTORNEYS BILL HANCOCK WHO
3 IS TO HIS LEFT AND JIM BOYD WHO IS TO HIS RIGHT. YOU MAY
4 BE SEATED.

5 IN THIS CASE THE STATE IS REPRESENTED BY
6 SOLICITOR TOMMY POPE AND DEPUTY ASSISTANT SOLICITOR KEVIN
7 BRACKETT.

8 MR. JAMES DEJARNETTE ROBERTSON IS CHARGED WITH
9 SEVERAL COUNTS, SEVERAL CHARGES. THEY ARE ALLEGED TO
10 HAVE OCCURRED ON NOVEMBER 25TH, 1997. HE IS ALLEGED TO
11 HAVE COMMITTED THE CRIME OF MURDER BY KILLING ONE EARL
12 ROBERTSON, SR.; ADDITIONALLY, THE CRIME OF MURDER IN
13 KILLING ONE TERRY ROBERTSON; ADDITIONALLY, A CRIME AT
14 THAT SAME TIME OF ARMED ROBBERY; AND ADDITIONALLY ON THAT
15 DATE THE USE BY FRAUD OF A FINANCIAL TRANSACTION CARD, A
16 VISA CARD.

17 AND TO THESE CHARGES MR. ROBERTSON HAS ENTERED
18 PLEAS OF NOT GUILTY. AND I WILL REMIND THOSE OF YOU THAT
19 IN THIS CASE THE STATE IS SEEKING THE DEATH PENALTY.

20 NOW AS TO THOSE OF YOU WHO JUST GOT THE
21 QUESTIONNAIRES, I'M GOING TO ASK YOU NOT TO FILL THEM OUT
22 RIGHT NOW BECAUSE I'VE GOT A LOT TO SAY AND I WANT YOU TO
23 LISTEN BECAUSE YOU MIGHT HAVE TO RESPOND. DO FILL THEM
24 OUT BEFORE YOU LEAVE.

25 I WILL TELL YOU NOW THAT ONCE I GO THROUGH THIS

1 LIST WHAT WE WILL DO IS WE WILL BREAK YOU UP INTO PANELS
2 OF SIX AND ASSIGN YOU A PANEL LETTER, A, B, C, ON DOWN
3 THE LINE. EACH GROUP WILL BE INSTRUCTED TO RETURN AT A
4 PARTICULAR TIME AND THE BAILIFFS AND THE CLERKS WILL HELP
5 TELL YOU WHERE TO RETURN. THAT WILL BE ON THE SECOND
6 FLOOR TO THE JURY ROOM.

7 WHEN YOU ARRIVE IN THAT ROOM THERE WILL BE A
8 SHEET OF PAPER THAT HAS WHAT IS CALLED THREE JUROR TYPES
9 ON IT. AT THAT TIME I'LL ASK THAT EACH OF YOU READ OVER
10 THOSE THREE JURY TYPES, SEE IF YOU FALL INTO ONE OF THOSE
11 TYPES.

12 THERE ALSO WILL BE A LIST OF POTENTIAL
13 WITNESSES. I WILL TELL YOU IN ADVANCE, IT IS LONG. ALL
14 OF THE WITNESSES PROBABLY WON'T BE CALLED, BUT WE HAVE TO
15 LET YOU KNOW WHO THE WITNESSES ARE BECAUSE I WILL ASK YOU
16 WHEN YOU INDIVIDUALLY COME INTO THE COURTROOM WHETHER YOU
17 ARE RELATED BY BLOOD OR MARRIAGE OR A CLOSE PERSONAL
18 FRIEND OR ACQUAINTANCE OF ANY OF THOSE PARTICULAR
19 WITNESSES.

20 WE WILL HAVE IN THE JURY ROOM PENCILS AND PAPER
21 SO THAT WHEN YOU GO THROUGH THAT LIST YOU CAN WRITE NAMES
22 DOWN IF YOU SEE A NAME THAT CATCHES YOUR EYE AS SOMEBODY
23 YOU GO TO CHURCH WITH, SOMEBODY YOU WORK WITH OR SOMEBODY
24 YOU ARE RELATED TO.

25 ONCE WE HAVE YOU BROKEN INTO PANELS, ONE AT A

1 TIME, REMINDING YOU AGAIN THAT YOU ARE UNDER OATH, YOU
2 WILL BE ASKED TO COME INTO THE COURTROOM. AND IN THE
3 COURTROOM I WILL GO OVER WITH YOU THAT JURY TYPE LIST,
4 ASK YOU TEL TELL ME WHICH IF ANY OF THOSE THREE TYPES YOU
5 FEEL YOU FALL AND THEN THE ATTORNEYS WILL HAVE AN
6 OPPORTUNITY, AN ATTORNEY FOR EACH, THE STATE AND THE
7 DEFENDANT, TO ASK YOU SOME QUESTIONS. THIS IS CALLED
8 VOIR DIRE. IT IS ASKING YOU QUESTIONS TO SEE IF YOU CAN
9 BE A FAIR AND IMPARTIAL JUROR BECAUSE THAT IS WHAT WE
10 MUST HAVE IN ANY TRIAL.

11 NOW I ASKED A LITTLE BIT AGO AND SEVERAL OF YOU
12 HAVE ALREADY STOOD BUT SINCE WE'VE HAD TWO MORE COME IN,
13 I'LL ASK AGAIN. THOSE OF YOU WHO STOOD EARLIER, DO NOT
14 STAND AGAIN. BUT I AM GOING TO START AT THE TOP AND GO
15 THROUGH SINCE WE HAD TWO THAT DID NOT HEAR THESE
16 QUESTIONS.

17 FIRST, IF YOU ARE NOT A QUALIFIED ELECTOR; THAT
18 IS, A REGISTERED VOTER, OR IF YOU DO NOT HOLD A VALID
19 SOUTH CAROLINA DRIVER'S LICENSE, OR IF YOU DO NOT HOLD A
20 VALID SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
21 IDENTIFICATION CARD, IF YOU DON'T HAVE ONE OF THOSE AND
22 DIDN'T STAND EARLIER, PLEASE STAND NOW. NO ONE STANDS.

23 ARE ANY OF YOU NOT A CITIZEN OF THE UNITED
24 STATES OF AMERICA; IF SO, PLEASE STAND. NO ONE STANDS.

25 IF ANY OF YOU RESIDE IN A COUNTY OTHER THAN

1 YORK COUNTY, SOUTH CAROLINA, PLEASE STAND AT THIS TIME.

2 ALL RIGHT, YES, MA'AM; YOUR NAME?

3 THE JUROR: TAMMY FRANK.

4 THE COURT: TAMMY FRANK? AND WHERE DO YOU
5 RESIDE?

6 THE JUROR: LANCASTER COUNTY.

7 THE COURT: AND HOW LONG HAVE YOU RESIDED
8 THERE?

9 THE JUROR: ABOUT A MONTH.

10 THE COURT: HAVE YOU CHANGED YOUR POSTAL
11 ADDRESS AND THOSE SORT OF THINGS?

12 THE JUROR: YES, SIR.

13 THE COURT: AND YOUR DRIVER'S LICENSE?

14 THE JUROR: NO, SIR, NOT YET.

15 THE COURT: OKAY. WELL, I'M GOING TO ASK YOU
16 TO STAY WITH US RIGHT NOW BUT BECAUSE YOU DO NOT RESIDE
17 IN THIS COUNTY YOU WILL NOT BE ABLE TO SERVE IN YORK
18 COUNTY, BUT I DON'T WANT A LOT OF PEOPLE GOING IN AND
19 OUT. SO WHAT WE ARE GOING TO DO IS WE ARE GOING TO KEEP
20 A LIST OF PEOPLE THAT ARE EXCUSED AND THEN AT THE END GO
21 OVER THAT, BUT YOU WILL BE EXCUSED AND YOU WILL HAVE TO
22 PERHAPS SERVE SOME OTHER TIME IN LANCASTER COUNTY.

23 ALL RIGHT, ANYONE ELSE NOT A RESIDENT OF YORK
24 COUNTY? NO ONE STANDS.

25 WERE ANY OF YOU MEMBERS OF THE GRAND JURY WHICH

1 PASSED ON THESE INDICTMENTS AT AN EARLIER TIME? IF SO,
2 PLEASE STAND. NO ONE STANDS.

3 ARE ANY OF YOU ON THE JURY PANEL RELATED BY
4 BLOOD OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OR
5 ACQUAINTANCE OF MR. POPE, MR. BRACKETT WITH THE
6 SOLICITOR'S OFFICE, MR. HANCOCK AND MR. BOYD ON BEHALF OF
7 THE DEFENSE OR THE DEFENDANT HIMSELF, JAMES ROBERTSON.
8 IF ANY OF YOU ARE RELATED BY BLOOD OR MARRIAGE OR IF YOU
9 ARE A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANY OF
10 THOSE INDIVIDUALS, PLEASE STAND AT THIS TIME.

11 ALL RIGHT, YOUR NAME?

12 THE JUROR: LINDA POMPEII. I KNOW TOMMY POPE
13 AND KEVIN BRACKETT.

14 THE COURT: YOU'RE NOT RELATED THOUGH, YOU JUST
15 KNOW THEM?

16 THE JUROR: I KNOW THEM THROUGH MY CHURCH.

17 THE COURT: YOU GO TO THE SAME CHURCH, OKAY.
18 WOULD THE FACT THAT YOU GO TO CHURCH WITH MR. POPE, WOULD
19 THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE
20 STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

21 THE JUROR: NO.

22 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
23 VERDICT IN THIS CASE ON THE LAW AND THE EVIDENCE AS IT IS
24 DEVELOPED IN THE TRIAL?

25 THE JUROR: YES, SIR.

1 THE COURT: ALL RIGHT, THANK YOU. THAT'S
2 EXACTLY WHY I'M ASKING THESE QUESTIONS. YES, MA'AM, YOUR
3 NAME?

4 THE JUROR: CATHERINE TROSKOSKI. MY SON WENT
5 TO SCHOOL WITH JAMES ROBERTSON.

6 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
7 TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT
8 IN THE TRIAL OF THIS CASE?

9 THE JUROR: I GUESS NOT.

10 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
11 VERDICT SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
12 DEVELOPED IN THE TRIAL?

13 THE JUROR: YES, SIR.

14 THE COURT: ALL RIGHT, THANK YOU.

15 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
16 BEFORE WE GO FURTHER, COULD WE GET NUMBERS FROM THE CLERK
17 AS WE GO TO MAKE SURE THAT WE GET THE RIGHT NUMBERS?

18 THE CLERK: THE ONE IN THE BACK THAT WAS
19 EXCUSED DUE TO HER NOT BEING A RESIDENT WAS JUROR NUMBER
20 84. MS. POMPEII, I THINK I'M PRONOUNCING IT RIGHT, IS
21 JUROR NUMBER 213. AND TROSKOSKI IS JUROR NUMBER 275.

22 THE COURT: THANK YOU. AND I KNOW SOME OF YOU
23 STOOD BEFORE THE OTHERS, BUT I'M TRYING TO GO BACK THIS
24 WAY. WELL, I'LL GO AHEAD, YOU WERE UP. YES, MA'AM, YOUR
25 NAME?

1 THE JUROR: LORAIN SPRINGS, MY DAUGHTER WENT
2 TO SCHOOL WITH JAMES ROBERTSON AND ---

3 THE COURT: LET'S GET THE NUMBER.

4 THE CLERK: NUMBER 254.

5 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
6 TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT
7 IN THE TRIAL OF THIS CASE?

8 THE JUROR: YES, SIR.

9 THE COURT: IT WOULD?

10 THE JUROR: YES, SIR.

11 THE COURT: THANK YOU. YOU WILL BE EXCUSED
12 THEN, BUT JUST HAVE A SEAT . LET ME TELL YOU, I AM NOT
13 BEING RUDE WILL I TELL YOU TO SPEAK UP OR NOT SHAKE YOUR
14 HEAD BUT MRS. FISCHER, MY COURT REPORTER WHO IS SEATED
15 DOWN HERE IN FRONT OF ME, AND INCIDENTALLY BESIDE HER IS
16 MY LAW CLERK, ARCHIE DIXON, WE HAVE TO MAKE A RECORD OF
17 THIS. WE HAVE TO HAVE EVERYBODY'S NAME, WE HAVE TO HAVE
18 A VERBAL ANSWER. SHE CAN'T PUT DOWN NODS OR SHAKES
19 BECAUSE WE CAN'T SOMETIMES UNDERSTAND WHAT THAT MEANS.

20 ALL RIGHT, YES, MA'AM?

21 THE JUROR: MY NAME IS JUDY LONGSHAW; MY NUMBER
22 IS 154. AS A REPORTER, I COVERED SEVERAL ASPECTS OF THIS
23 CASE FOR THE HERALD.

24 THE COURT: ALL RIGHT, WOULD THAT FACT AFFECT
25 YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND

1 THE DEFENDANT IN THE TRIAL OF THIS CASE?

2 THE JUROR: NO, SIR.

3 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
4 VERDICT SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
5 DEVELOPED IN THE TRIAL?

6 THE JUROR: YES, SIR.

7 THE COURT: ALL RIGHT, THANK YOU. YES, MA'AM?

8 THE JUROR: JENNIFER STRASZHEIM. I HAVE FRIENDS
9 THAT ---

10 THE COURT: WAIT, LET'S GET YOUR NAME AND
11 NUMBER FIRST.

12 THE CLERK: NUMBER 262.

13 THE COURT: YES, MA'AM?

14 THE JUROR: I HAVE FRIENDS THAT MAY COINCIDE
15 WITH THIS, THEY ARE PROBABLY CONNECTED IN SOME WAY.

16 THE COURT: WELL, LET ME ASK YOU, WHEN YOU SAY
17 COINCIDE, DO YOU MEAN HAVE MUTUAL FRIENDS, WHAT WE CALL
18 MUTUAL FRIENDS?

19 THE JUROR: YES.

20 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
21 TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT
22 IN THE TRIAL OF THIS CASE?

23 THE JUROR: NO, I DON'T THINK SO.

24 THE COURT: YOU DO NOT FEEL THAT YOU COULD BASE
25 YOUR VERDICT SOLELY ON THE LAW AND THE EVIDENCE?

1 THE JUROR: NO, SIR.

2 THE COURT: ALL RIGHT, I WILL EXCUSE YOU BUT
3 JUST STAY WITH US. YES, SIR?

4 THE JUROR: MY WIFE'S SISTER IS MARRIED TO MR.
5 POPE'S WIFE -- I MEAN BROTHER.

6 THE COURT: YOUR NAME?

7 THE JUROR: TONY PANNELL.

8 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
9 TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT
10 IN THE TRIAL OF THIS CASE?

11 THE JUROR: NO, SIR.

12 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
13 VERDICT SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
14 DEVELOPED IN THE TRIAL?

15 THE JUROR: YES, SIR.

16 THE COURT: THANK YOU.

17 THE CLERK: JUROR NUMBER 203 FOR THE RECORD.
18 YES, SIR?

19 THE JUROR: JUROR NUMBER 51, MY WIFE TEACHES
20 MR. POPE'S SON.

21 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
22 TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT
23 IN THE TRIAL OF THIS CASE?

24 THE JUROR: NO, SIR.

25 THE COURT: WOULD YOU BE ABLE TO BASE YOUR

1 VERDICT SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
2 DEVELOPED IN THIS TRIAL?

3 THE JUROR: YES, SIR.

4 THE COURT: ALL RIGHT, THANK YOU. YES, MA'AM?

5 THE JUROR: I'M CATHERINE TROSKOSKI, AND I
6 HAVE THOUGHT ABOUT IT FURTHER AND I'M SORRY, BUT I DO
7 BELIEVE IT MIGHT AFFECT MY SERVICE AND I WOULD LIKE TO
8 CHANGE MY ANSWER TO YOU.

9 THE COURT: YOU FEEL LIKE YOU WOULD NOT BE ABLE
10 TO BE FAIR AND IMPARTIAL?

11 THE JUROR: YES.

12 THE COURT: ALL RIGHT, WELL, I WILL EXCUSE YOU
13 ALSO THEN.

14 THE CLERK: NUMBER 275.

15 THE COURT: ALL RIGHT, DO ANY OF YOU ON THE
16 JURY PANEL HAVE LESS THAN A SIXTH GRADE EDUCATION OR ITS
17 EQUIVALENT OR CAN ANY OF YOU NOT READ, WRITE OR SPEAK OR
18 UNDERSTAND THE ENGLISH LANGUAGE? YES, SIR, YOUR NAME?

19 THE JUROR: CHARLES K. BOULAR.

20 THE COURT: LET'S GET THE NUMBER?

21 THE CLERK: NUMBER 20, YOUR HONOR.

22 THE COURT: YES, SIR?

23 THE JUROR: A SIXTH GRADE EDUCATION.

24 THE COURT: AND YOU'VE WORKED DURING YOUR
25 LIFETIME?

1 THE JUROR: YES, SIR.

2 THE COURT: CAN YOU TAKE CARE OF YOUR OWN
3 MONEY?

4 THE JUROR: YES, SIR.

5 THE COURT: CAN YOU READ AT ALL? I'M NOT
6 TRYING TO EMBARRASS YOU. WE HAVE TO DO THIS. CAN YOU
7 READ?

8 THE JUROR: NO.

9 THE COURT: WHEN YOU WATCH TELEVISION YOU CAN
10 UNDERSTAND WHAT THEY'RE TALKING ABOUT, WHO'S WINNING THE
11 BALL GAMES AND WHO'S THE PRESIDENT AND ALL OF THAT SORT
12 OF STUFF CAN'T YOU?

13 THE JUROR: YES, SIR.

14 THE COURT: WELL, I'LL LET YOU STAY THEN. YOU
15 ARE CERTAINLY INTELLIGENT ENOUGH TO SERVE AS A JUROR.
16 THANK YOU. YES, SIR?

17 THE JUROR: EDWARD WELBORN, AND I'M ON
18 MEDICATION.

19 THE CLERK: JUROR NUMBER 285.

20 THE COURT: YOU'RE TAKING SOME SORT OF
21 MEDICATION?

22 THE JUROR: YES, SIR.

23 THE COURT: DO YOU HAVE ANY KIND OF EXCUSE FROM
24 A DOCTOR?

25 THE JUROR: NO, SIR.

1 THE COURT: WELL, I'M GOING TO LET YOU REMAIN
2 WITH US AND THEN WE'LL TALK TO YOU ABOUT THAT MORE LATER.

3 THE JUROR: I CAN'T TALK TOO GOOD, AND I AIN'T
4 GOT NO EDUCATION.

5 THE COURT: WHAT DO YOU DO FOR A LIVING?

6 THE JUROR: I WORKED IN A COTTON MILL.

7 THE COURT: DO YOU UNDERSTAND THE NEWS WHEN
8 IT'S ON T.V.?

9 THE JUROR: YEAH, BUT I CAN'T TALK.

10 THE COURT: WELL, YOU'RE NOT GOING TO HAVE TO
11 TALK A WHOLE LOT.

12 THE JUROR: MY THROAT SWELLS UP.

13 THE COURT: WELL, I'M GOING TO LET YOU STAY
14 WITH US NOW AND WE'LL BE TALKING TO YOU MORE LATER.

15 THE CLERK: FOR THE RECORD, THAT WAS JUROR
16 NUMBER 146, RICHARD LANIER. YOUR HONOR, THIS JUROR NEEDS
17 TO BE EXCUSED.

18 THE COURT: ALL RIGHT. WE CAN DO SOMETHING
19 WHILE WE'RE WAITING ON THAT GENTLEMAN TO RETURN. THE TWO
20 LADIES THAT CAME IN LATE, IF YOU WILL STAND AND RAISE
21 YOUR RIGHT HAND, I'M GOING TO ASK THE CLERK TO GIVE YOU
22 AN OATH. EVERYBODY ELSE HAS ALREADY BEEN SWORN.

23 (THE TWO JURORS WERE SWORN BY THE CLERK)

24 THE COURT: HAS ANYONE ON THE JURY PLED GUILTY
25 TO A CRIME WHICH CARRIED A PENALTY WHICH WOULD EXCEED ONE

1 YEAR; THAT IS, A CRIME FOR WHICH ONE COULD HAVE RECEIVED
2 A TERM OF IMPRISONMENT THAT EXCEEDED ONE YEAR AND WHOSE
3 CIVIL RIGHTS HAVE NOT BEEN RESTORED BY PARDON OR AMNESTY.
4 AND THAT ADDRESSES OFFENSES FOR WHICH ONE COULD HAVE
5 RECEIVED MORE THAN ONE YEAR, IT HAS NOTHING TO DO WITH
6 ANY SENTENCE ONE MAY HAVE ACTUALLY RECEIVED.

7 DO ANY OF YOU FALL INTO THAT CATEGORY; IF SO,
8 PLEASE STAND. ALL RIGHT, WE WILL START AND WORK OUR WAY
9 BACK. YES, SIR, YOUR NAME?

10 THE JUROR: ANTHONY MORROW, 189.

11 THE COURT: AND WHAT WAS THE OFFENSE?

12 THE JUROR: I'M ON PROBATION FOR ASSAULT AND
13 BATTERY OF A HIGH AND AGGRAVATED NATURE.

14 THE COURT: ALL RIGHT, JUST HAVE A SEAT.
15 YOU'LL BE EXCUSED. YES, MA'AM?

16 THE JUROR: ASHLYN CARTER, NUMBER 42.

17 THE COURT: DO YOU HAVE ANY CRIMINAL OFFENSE?

18 THE JUROR: YES, PRESCRIPTION DRUGS A FEW
19 YEARS AGO.

20 THE COURT: WOULD THAT CARRY MORE THAN ONE
21 YEAR? WE'LL CHECK ON THAT. JUST REMAIN WITH US RIGHT
22 NOW. THERE ARE SO MANY DIFFERENT THINGS. I'M SORRY; I'M
23 A JUDGE AND I SHOULD KNOW.

24 THE JUROR: WOULD YOU EXPLAIN AGAIN WHAT THAT
25 MEANS, AS FAR AS THE TERM?

1 THE COURT: WHY DON'T YOU STAND? YOUR NAME
2 AGAIN IS MS. POMPEII I KNOW, BUT WE HAVE TO MAKE A
3 RECORD.

4 THE JUROR: YES, LINDA POMPEII. I WENT ACROSS
5 STATE LINES AGAINST A CUSTODY ORDER. I DON'T BELIEVE IT
6 WAS OVER A YEAR.

7 THE COURT: I DON'T BELIEVE SO, BUT I
8 APPRECIATE YOUR CALLING THAT TO OUR ATTENTION. YES, SIR,
9 YOUR NAME?

10 THE JUROR: ROBERT HARPER, 1981 ARMED ROBBERY.

11 THE COURT: THAT WOULD HAVE CARRIED OVER ONE
12 YEAR. LET'S GET YOUR NUMBER.

13 THE CLERK: 109.

14 THE COURT: JUST STAY WITH US, BUT YOU WILL BE
15 EXCUSED.

16 THE JUROR: AARON TINKER, 1978 BREAKING AND
17 ENTERING AND GRAND LARCENY AND MALICIOUS INJURY TO REAL
18 PROPERTY.

19 THE COURT: THAT WOULD EXCUSE YOU ALSO.

20 THE CLERK: NUMBER 273.

21 THE JUROR: MASSEY FAILE, NUMBER 79, DRIVING
22 UNDER THE INFLUENCE AND DRIVING UNDER SUSPENSION.

23 THE COURT: THOSE WOULD NOT EXCLUDE YOU, BUT
24 THANK YOU FOR CALLING THAT TO OUR ATTENTION. YOU WILL
25 REMAIN WITH US. YES, SIR?

1 THE JUROR: I'VE BEEN CONVICTED FOR ASSAULT AND
2 BATTERY.

3 THE COURT: OF A HIGH AND AGGRAVATED NATURE OR
4 SIMPLE ASSAULT?

5 THE JUROR: ASSAULT AND BATTERY, I HAVEN'T BEEN
6 LONG GOT OFF PROBATION.

7 THE COURT: ALL RIGHT, WE'LL CHECK ON YOU ALSO,
8 AND YOUR NAME AGAIN?

9 THE JUROR: RICHARD LANIER.

10 THE COURT: HIS NUMBER AGAIN?

11 THE COURT: JUROR NUMBER 146.

12 THE COURT: I APOLOGIZE; WE DON'T DO THIS TO
13 EMBARRASS ANYONE, BUT WE'VE GOT TO DO THIS. THE LAW
14 REQUIRES IT, AND THAT'S ALL I CAN SAY ABOUT THAT. YES,
15 MA'AM?

16 THE JUROR: YEAH, MY NAME IS CASSANDRA CROCKETT
17 AND I WAS CONVICTED, I DIDN'T GO TO JAIL FOR IT, BUT I
18 KNOW IT CARRIED OVER ONE YEAR FOR ASSAULT AND BATTERY
19 WITH INTENT TO KILL.

20 THE COURT: YES.

21 THE JUROR: THAT WAS TWO OR THREE YEARS AGO.

22 THE COURT: AND YOUR NUMBER?

23 THE CLERK: 66.

24 THE COURT: YOU WILL BE EXCUSED, BUT STAY WITH
25 US FOR RIGHT NOW. NO ONE ELSE STANDS. DO ANY OF YOU

1 WORK FOR THE COUNTY IN ONE OF ITS COURTHOUSES? WE NOW
2 HAVE THREE. WE'RE GETTING TO BE SUCH A LARGE COUNTY, WE
3 HAVE THREE COURTHOUSES. WE HAVE THIS ONE, THE ONE
4 DOWNTOWN YORK AND THE ONE IN ROCK HILL WHERE THEY HOLD
5 FAMILY COURT.

6 DO ANY OF YOU WORK IN ANY OF THOSE THREE
7 COURTHOUSES; IF SO, PLEASE STAND. NO ONE STANDS.

8 DO ANY OF YOU HOLD ANY ELECTED OFFICE IN THE
9 COUNTY OF YORK SUCH AS COUNTY COUNCILMAN OR TREASURER OR
10 ANYTHING LIKE THAT? NO ONE STANDS.

11 DO ANY OF YOU HAVE A PHYSICAL OR MENTAL
12 INFIRMITY THAT WOULD PREVENT YOU FROM SERVING AS A JUROR?
13 NOW LET ME TELL YOU THIS AT THIS TIME. I HAVEN'T SAID IT
14 YET, IT MIGHT BE IMPLICIT IN WHAT YOU KNOW ABOUT WHERE WE
15 ARE, BUT THIS CASE WILL TAKE PERHAPS TWO WEEKS. IT WILL
16 BE A CASE WHEREIN THE JURORS ARE SEQUESTERED; THAT IS,
17 THE JURORS WILL STAY TOGETHER. THEY WILL TAKE THEIR
18 MEALS TOGETHER. THEY WILL EACH HAVE THEIR OWN MOTEL
19 ROOM, BUT YOU WILL BE SEQUESTERED FOR THE DURATION OF THE
20 TRIAL. I WANT YOU TO BE AWARE OF THAT.

21 SO, I ASK AGAIN, DO ANY OF YOU HAVE ANY
22 PHYSICAL OR MENTAL INFIRMITY THAT WOULD RENDER YOU UNABLE
23 TO SERVE AS A JUROR WITH US FOR THIS PARTICULAR TERM OF
24 COURT? YES, MA'AM, YOUR NAME?

25 THE JUROR: JOHNELLE BURLEY, NUMBER 37. I HAD

1 OUTPATIENT SURGERY LAST WEEK AND HAVE TO HAVE STITCHES
2 REMOVED.

3 THE COURT: WELL, WE CAN MAKE ARRANGEMENTS FOR
4 THAT. YES, SIR?

5 THE JUROR: I'M JUROR 138. I HAVE A MEDICAL
6 LETTER THAT I SENT TO THE COURT. I HAVE A BACK PROBLEM.
7 I CAN'T SIT FOR NO MORE THAN AN HOUR; I HAVE TO GET UP
8 AND STAND AND WALK. I HAVE TO HAVE A SPECIAL CHAIR.

9 THE COURT: ALL RIGHT, WELL, YOU JUST REMAIN
10 WITH US RIGHT NOW. WHEN WE SEE YOU INDIVIDUALLY, WE WILL
11 TALK TO YOU ABOUT THAT. YES, SIR?

12 THE JUROR: BRIAN ADAMS, JUROR NUMBER 1. I
13 ATTEND YORK TECH.

14 THE COURT: ARE YOU A FULL TIME STUDENT?

15 THE JUROR: I WORK DURING THE DAY AND GO TO
16 SCHOOL AT NIGHT.

17 THE COURT: BY STATUTE THEN, SINCE YOU -- WE'LL
18 TALK TO YOU INDIVIDUALLY ALSO. YES, SIR? YOUR NAME AND
19 NUMBER?

20 THE JUROR: JUROR NUMBER 98. I'M NOT SURE HOW
21 MUCH EFFECT IT WOULD HAVE ON MY ABILITY BUT I DO HAVE AN
22 OCCUPATIONAL HEARING LOSS THAT IS PRETTY SEVERE AND IF
23 I'M IN A SITUATION WHERE THE VOICE IS NOT AMPLIFIED AND
24 PEOPLE ARE NOT SPEAKING DIRECTLY TOWARD ME, I DO HAVE
25 QUITE A PROBLEM UNDERSTANDING WHAT IS BEING SAID.

1 THE COURT: WE APPRECIATE YOU CALLING THAT TO
2 OUR ATTENTION. IF YOU SERVE ON THIS JURY, I INSTRUCT ALL
3 OF MY JURORS WHEN THEY CAN'T HEAR TO LET ME KNOW, SO
4 THANK YOU FOR CALLING THAT TO MY ATTENTION, BUT YOU WILL
5 REMAIN WITH US.

6 THE JUROR: NUMBER 61, I'M UNDER THE DOCTOR'S
7 CARE.

8 THE COURT: DO YOU HAVE A DOCTOR'S EXCUSE?

9 THE JUROR: NO, SIR, I DON'T.

10 THE COURT: WELL, WE'LL TALK TO YOU
11 INDIVIDUALLY AT A LATER TIME. HAVE A SEAT AND REMAIN
12 WITH US. YES, SIR?

13 THE JUROR: I'M JUROR 144. I HAD BY-PASS
14 SURGERY. I'M ON CARDIAC REHAB TWICE A WEEK, TUESDAYS AND
15 THURSDAYS, BUT I COULD PROBABLY GET THAT RE-SCHEDULED.

16 THE COURT: WE'LL TALK TO YOU INDIVIDUALLY
17 LATER. YOUR NAME AGAIN?

18 THE JUROR: LESTER LANDRUM, NUMBER 144.

19 THE COURT: THANK YOU. YES, SIR? YOUR NAME
20 AND NUMBER?

21 THE JUROR: PRESTON LOVE, JUROR NUMBER 156. I
22 HAVE TO GO TO THE BATHROOM REAL OFTEN.

23 THE COURT: WELL, WE WILL TALK TO YOU
24 INDIVIDUALLY AT A LATER TIME. JUST REMAIN WITH US FOR
25 NOW.

1 THE JUROR: KELLY ADAMS, NUMBER 2. MY SON IS
2 A DIABETIC. THERE IS NO ONE IN MY FAMILY THAT REALLY
3 KNOWS ANYTHING ABOUT THAT.

4 THE COURT: WE WILL TALK TO YOU INDIVIDUALLY,
5 TOO, WHEN WE GO THROUGH THE PANEL. YES, MA'AM?

6 THE JUROR: I'VE GOT A DOCTOR'S EXCUSE.

7 THE COURT: WE'LL TAKE A LOOK AT THAT IN JUST A
8 LITTLE BIT, THANK YOU. YOUR NAME?

9 THE JUROR: DORIS EARLE.

10 THE CLERK: JUROR 77.

11 THE COURT: HAVE ANY OF YOU ON THE JURY PANEL
12 SERVED ON A CIRCUIT COURT JURY, THIS TYPE JURY, EITHER
13 CIVIL OR CRIMINAL. I'M NOT TALKING ABOUT FEDERAL COURT,
14 MAGISTRATE OR MUNICIPAL COURT, BUT THIS TYPE OF COURT,
15 SERVED ON THIS TYPE JURY IN THE LAST THREE CALENDAR
16 YEARS? IF SO, PLEASE STAND. NO ONE STANDS.

17 HAVE ANY OF YOU SERVED ON A STATEWIDE OR COUNTY
18 GRAND JURY WITHIN THE LAST FIVE CALENDAR YEARS? IF SO,
19 PLEASE STAND.

20 THE JUROR: MY NAME IS CHRISTINE STRADFORD AND
21 I SERVED ON THE GRAND JURY IN CHESTER COUNTY.

22 THE COURT: WHEN WAS THAT?

23 THE JUROR: THREE YEARS AGO.

24 THE COURT: WE'LL DOUBLE CHECK ON THAT TO MAKE
25 SURE THE TIME PERIOD IS RIGHT. YOU WILL PROBABLY BE

1 EXCUSED, BUT WE WILL CHECK ON THAT.

2 THE JUROR: JUROR NUMBER 264, DAVID SUMMITT, I
3 SERVED IN YORK COUNTY IN '94.

4 THE COURT: ALL RIGHT, THAT WOULD BE FOR THE
5 CALENDAR YEAR '94?

6 THE JUROR: YES, SIR?

7 THE COURT: WE'LL DOUBLE CHECK ON THAT, BUT
8 THAT WILL PROBABLY EXCUSE YOU. THAT WAS THE GRAND JURY?

9 THE JUROR: YES, SIR.

10 THE COURT: WE'LL CHECK ON THAT THEN. IF ANY
11 OF YOU WHO ARE MEMBERS OF THE JURY PANEL IF YOU ARE 65
12 YEARS ARE OLDER YOU HAVE WHAT'S CALLED AN EXEMPTION.
13 THAT IS, YOU CAN SERVE IF YOU WISH OR YOU CAN BE EXCUSED
14 IF YOU WISH. IF YOU ARE 65 OR OLDER AND WHICH TO SERVE
15 AS A JUROR WITH US, JUST KEEP YOUR SEAT, BUT IF YOU ARE
16 65 OR OLDER AND DESIRE TO EXERCISE YOUR EXEMPTION, PLEASE
17 STAND AT THIS TIME. 65 OR OLDER AND WANT TO BE EXCUSED.
18 ALL RIGHT, NO ONE STANDS.

19 ARE ANY OF YOU ON THE JURY PANEL THE PRIMARY
20 CARE GIVER FOR A CHILD UNDER THE AGE OF SEVEN AND IF SO,
21 PLEASE STAND AT THIS TIME. YOUR NAME?

22 THE JUROR: I'M JUROR NUMBER 143. I HAVE FOUR
23 CHILDREN UNDER THE AGE OF 7 AND I WORK BASED ON
24 COMMISSION. IT WOULD BE DIFFICULT FOR ME TO MISS TWO
25 WEEKS OF WORK; IT WOULD BE VERY DIFFICULT.

1 THE COURT: DO YOU HAVE SOMEONE WHO TAKES CARE
2 OF THE CHILDREN?

3 THE JUROR: YES, SIR, BUT I'M THE PROVIDER.

4 THE COURT: I UNDERSTAND THAT.

5 THE JUROR: MAYBE I MISUNDERSTOOD YOUR
6 QUESTION.

7 THE COURT: NO, I'M GLAD YOU BROUGHT THAT TO MY
8 ATTENTION. YOUR NAME AGAIN?

9 THE JUROR: NUMBER 143, STEVE LABARGE.

10 THE COURT: ALL RIGHT, YOU WILL REMAIN WITH US.
11 WE'VE ALREADY EXCUSED YOU; YOU DON'T HAVE TO STAND UP
12 ANYMORE. YES, SIR?

13 THE JUROR: ROSS BELL, NUMBER 14, MY EX-WIFE,
14 WE STILL LIVE AS HUSBAND AND WIFE AND WE TRADE CHILD
15 CARE. SHE WORKS NIGHTS, I DO 24 HOURS AT A TIME. OUR
16 SCHEDULES INTERLAP SO THAT EITHER SHE HAS THE KID OR I'VE
17 GOT THE CHILD AND THERE MAY BE A COUPLE OF DAYS A WEEK
18 WHERE WE BOTH WIND UP WORKING AND MY MOTHER HAS
19 PARKINSON'S BUT SHE'S ABLE TO KEEP THE CHILD AS LONG AS
20 MY FATHER IS THERE BUT HE WORKS, TOO.

21 THE COURT: ALL RIGHT, YOUR NAME AGAIN?

22 THE JUROR: ROSS BELL.

23 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
24 INDIVIDUALLY AT A LATER TIME. YES, MA'AM?

25 THE JUROR: 107, ANNETTE HARGRAVE; I HAVE A

1 GRANDSON THAT I JUST RECENTLY GOT AND WE'VE GOT TO GO TO
2 COURT ON THE CUSTODY OF HIM AND HE'S TWO YEARS OLD. WE
3 ARE SUPPOSED TO GO TO COURT MONDAY.

4 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
5 INDIVIDUALLY ALSO. YES, MA'AM, YOUR NAME?

6 THE JUROR: I'VE GOT A TWO YEAR OLD AND A THREE
7 YEAR OLD AT HOME AND A SECOND GRADER ALSO. MY HUSBAND
8 WORKS THE FIRST SHIFT. HIS MOTHER JUST HAD SURGERY AND
9 MY MOTHER HAS ASTHMA, SO I REALLY DON'T HAVE A BABY
10 SITTER.

11 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
12 LATER.

13 THE CLERK: JUROR NUMBER 60.

14 THE COURT: YES, YOUR NAME?

15 THE JUROR: BESSIE GORDON, 106.

16 THE COURT: YES, MA'AM?

17 THE JUROR: I KEEP A ONE YEAR OLD AND A FOUR
18 YEAR OLD. HER MOTHER AND DADDY -- HER MOTHER TEACHES
19 SCHOOL AND HER HUSBAND IS ON A 12 HOUR SHIFT, SO THEY
20 DON'T HAVE ANYONE ELSE TO KEEP THEM BUT ME.

21 THE COURT: WE'LL TALK TO YOU INDIVIDUALLY
22 LATER THEN. YES, MA'AM?

23 THE JUROR: I HAVE A TWO AND A HALF AND A FOUR
24 YEAR OLD.

25 THE COURT: DO YOU WORK OUTSIDE THE HOME?

1 THE JUROR: YES.

2 THE COURT: WE'LL TALK TO YOU LATER ALSO. YES,
3 MA'AM?

4 THE JUROR: TERRY DUNLAP. I HAVE A THREE YEAR
5 OLD.

6 THE COURT: AND DO YOU WORK OUTSIDE THE HOME?

7 THE JUROR: YES.

8 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
9 LATER ALSO. I THINK I'VE ALREADY ASKED THIS, BUT I'VE
10 KIND OF GOT A SERIES OF QUESTIONS THAT I GO THROUGH, AND
11 I THINK I'VE ALREADY ASKED ABOUT WHETHER ANY OF YOU ARE
12 RELATED BY BLOOD OR MARRIAGE TO ANY OF THE INDIVIDUALS TO
13 WHOM YOU HAVE BEEN INTRODUCED AND I BELIEVE NO ONE STOOD.
14 IS THAT CORRECT?

15 NOW, DO ANY OF YOU HAVE ANY PARTICULAR REASON,
16 SPECIAL CIRCUMSTANCES, AT LEAST IN YOUR MIND THEY ARE
17 SPECIAL CIRCUMSTANCES, THAT WOULD PREVENT YOU FROM
18 SERVING WITH US AS A JUROR IN THIS PARTICULAR CASE? IF
19 SO, PLEASE STAND. YES, SIR?

20 THE JUROR: SIR, I'M A ROMAN CATHOLIC AND I
21 BELIEVE THE DEATH PENALTY IS WRONG.

22 THE COURT: ALL RIGHT, IF THAT'S WHAT YOU WANT
23 TO TALK ABOUT, WE'LL TALK ABOUT THAT LATER. YOUR NAME
24 AGAIN?

25 THE JUROR: STEVE LABARGE, NUMBER 143.

1 THE COURT: ALL RIGHT. YES, MA'AM?

2 THE JUROR: YES, MY NAME IS ANGELA T.

3 WASHINGTON, NUMBER 266. I'M A GRADUATE STUDENT AT USC
4 AND I HAVE A PRIOR COMMITMENT FOR THIS WEDNESDAY AND IF I
5 AM NOT THERE, THEN IT WOULD SERIOUSLY AFFECT MY GRADE.

6 THE COURT: WELL, WE WILL TALK TO YOU
7 SEPARATELY ALSO. YES, SIR, YOUR NAME?

8 THE JUROR: EDWARD J. HAGEMAN, 103. I'M IN THE
9 PROCESS OF GOING FOR JOB INTERVIEWS IN OHIO TO MOVE BACK
10 THERE.

11 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
12 INDIVIDUALLY LATER ALSO. YES, MA'AM?

13 THE JUROR: NUMBER 246, NANCY SMITH. THIS WEEK
14 IS FINE, BUT NEXT WEEK I'VE HAD A WEEK SCHEDULED FOR SIX
15 MONTHS THAT I KNOW IS NOT IMPORTANT TO THE COURT, BUT IT
16 IS VERY IMPORTANT TO MY GRANDCHILDREN.

17 THE COURT: WE WILL TALK ABOUT THAT IN A LITTLE
18 WHILE. YES, SIR, YOUR NAME?

19 THE JUROR: ADAM LUCAS, 160. I'M A RESERVE
20 POLICE OFFICER.

21 THE COURT: I WILL ASK YOU ABOUT THAT IN JUST A
22 MOMENT THEN. YES, SIR?

23 THE JUROR: GROVER BROOME AND I'M UNDER A
24 PERFORMANCE BOND AS A CONTRACTOR FOR THE CITY OF HILTON
25 HEAD ISLAND AND I HAVE ONE OR TWO JOBS COMING IN A WEEK

1 THAT I HAVE TO INSTALL OR THEY DO CHARGE ME FOR THEM.

2 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
3 INDIVIDUALLY LATER. DID YOU GET HIS NUMBER?

4 THE JUROR: 32.

5 THE COURT: YES, SIR, YOUR NAME?

6 THE JUROR: WAYNE YOUNG, NUMBER 298. I HAVE NO
7 ONE TO MANAGE THE OFFICE.

8 THE COURT: WE'LL TALK TO YOU INDIVIDUALLY
9 LATER. NOW, DO ANY OF YOU HOLD A LAW ENFORCEMENT
10 COMMISSION, EITHER WITH OR WITHOUT PAY; IF SO, PLEASE
11 STAND?

12 THE JUROR: I DID HAVE, BUT IT LAPSED.

13 THE COURT: OKAY.

14 THE JUROR: I'M IN THE PROCESS OF MY
15 CERTIFICATION.

16 THE COURT: BUT YOU DON'T HAVE A COMMISSION AT
17 THIS TIME?

18 THE JUROR: NO, SIR.

19 THE COURT: OTHER THAN THOSE OF YOU WHO HAVE
20 ALREADY STOOD BECAUSE WE KNOW YOUR IDENTITY WITH LAW
21 ENFORCEMENT, ANY ONE ELSE RELATED BY BLOOD OR MARRIAGE OR
22 ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE WITH
23 ANYONE INVOLVED IN LAW ENFORCEMENT AT ANY LEVEL OR
24 RELATED BY BLOOD OR MARRIAGE TO ANYONE WHO IS INVOLVED IN
25 THE PROSECUTION OF CRIMINAL CASES SUCH AS THE SOLICITOR,

1 D. A., JUDGE ADVOCATE GENERAL'S CORPS, PLEASE STAND.

2 WE'LL START HERE. YES, SIR?

3 THE JUROR: NUMBER 105, JEFFERY HALL. MY
4 GRANDFATHER IS AN EX-POLICEMAN.

5 THE COURT: FOR WHO?

6 THE JUROR: THE TOWN OF HICKORY GROVE.

7 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY
8 TO BE FAIR AND IMPARTIAL TO THE STATE AND TO THE
9 DEFENDANT IN THE TRIAL OF THIS CASE?

10 THE JUROR: I THINK IT WOULD.

11 THE COURT: ALL RIGHT, THEN I WILL EXCUSE YOU.
12 I TELL YOU, WE WILL TALK TO YOU INDIVIDUALLY. WE WILL
13 PUT ON THE RECORD NOW ALL OF THE NAMES. YES, MA'AM?

14 THE JUROR: NUMBER 4, MARGIE ALEXANDER. MY
15 NEPHEW IS A POLICEMAN IN HOUSTON IN TEXAS.

16 THE COURT: YES, MA'AM?

17 THE JUROR: SARA ANN STANLEY, 255. I HAVE A
18 NIECE THAT WORKS WITH THE SHERIFF'S DEPARTMENT.

19 THE COURT: YES, MA'AM?

20 THE JUROR: BARBARA BRICE, NUMBER 28. I SERVED
21 AS A CORRECTIONAL OFFICER WITH THE ROCK HILL POLICE
22 DEPARTMENT. I ALSO HAVE A FIRST COUSIN WHO IS A
23 POLICEMAN IN ROCK HILL.

24 THE COURT: YES, MA'AM?

25 THE JUROR: MELISSA BARTON, NUMBER 12. MY

1 BROTHER-IN-LAW IS WITH THE YORK COUNTY SHERIFF'S
2 DEPARTMENT.

3 THE COURT: WHO IS THAT?

4 THE JUROR: MIKE MELTON.

5 THE COURT: ALL RIGHT, HAVE A SEAT.

6 THE JUROR: I'M ROBIN PARKER; MY NUMBER IS 205.

7 MY NEXT DOOR NEIGHBOR IS DEAN SHILLINGLAW.

8 THE COURT: YES, MA'AM?

9 THE JUROR: PATRICIA WILSON, NUMBER 292. MY
10 BROTHER-IN-LAW IS A PAROLE OFFICER.

11 THE COURT: WHAT IS HIS NAME?

12 THE JUROR: MATTHEW BLACKWELL.

13 THE COURT: WE WILL TALK TO YOU INDIVIDUALLY
14 ABOUT ALL OF THAT. YES, MA'AM?

15 THE JUROR: TAMMY WILLIAMS, NUMBER 159. I'VE
16 GOT SEVERAL COUSIN'S THAT ARE POLICE OFFICERS.

17 THE COURT: ANY IN YORK COUNTY?

18 THE JUROR: YES, ALL OF THEM.

19 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
20 ABOUT THAT LATER. YOUR NAME?

21 THE JUROR: KELLY HOPE, 119. MY COUSIN IS A
22 SHERIFF'S DEPUTY.

23 THE COURT: YES, SIR; YOUR NAME AND NUMBER?

24 THE JUROR: KENNETH ROBERTS, 225. I'M RELATED
25 BY MARRIAGE TO THE FIRE MARSHALL WHO IS ALSO MY NEXT DOOR

1 NEIGHBOR AND HIS SON IS ALSO A DEPUTY SHERIFF.

2 THE COURT: ALL RIGHT. YOUR NAME AND NUMBER?

3 THE JUROR: NUMBER 243. I HAVE A SISTER THAT
4 WORKS HERE FOR VICTIM'S ASSISTANCE. I HAVE A BROTHER-IN-
5 LAW THAT WORKS AS A DEPUTY IN THIS BUILDING.

6 THE COURT: JUST HAVE A SEAT; WE'LL TAKE CARE
7 OF THAT. YES, SIR, YOUR NAME?

8 THE JUROR: MICHAEL BRAMLETT. MY SON IS AN
9 OFFICER OVER AT WINTHROP UNIVERSITY.

10 THE CLERK: NUMBER 25.

11 THE COURT: YES, SIR?

12 THE JUROR: NUMBER 293, I HAVE A NIECE AND A
13 NEPHEW ON THE SHERIFF'S DEPARTMENT IN LANCASTER.

14 THE COURT: YES, MA'AM?

15 THE JUROR: BETTY CHRISTENSEN, NUMBER 48. I
16 HAVE A BROTHER-IN-LAW WHO IS A POLICE OFFICER.

17 THE COURT: YES, SIR?

18 THE JUROR: I'M MIKE GRIFFIN, NUMBER 98. MY
19 FATHER-IN-LAW IS DECEASED NOW BUT HE WAS RETIRED FROM THE
20 STATE POLICE. AND ALSO I HAVE A VERY CLOSE FRIEND WHO IS
21 A DEPUTY SHERIFF, NOT IN THIS COUNTY BUT CABARRAS COUNTY,
22 NORTH CAROLINA.

23 THE COURT: WE'LL MAKE A NOTE OF THAT AND TALK
24 TO YOU LATER. YES, SIR, YOUR NAME?

25 THE JUROR: 242, I HAVE A BROTHER-IN-LAW THAT'S

1 A DEPUTY SHERIFF. ALSO MY WIFE PREVIOUSLY WORKED FOR THE
2 SHERIFF'S DEPARTMENT.

3 THE COURT: IN YORK COUNTY?

4 THE JUROR: YES SIR.

5 THE COURT: ALL RIGHT, WE WILL TALK TO YOU
6 LATER. YES, SIR?

7 THE JUROR: PAUL MCGUIRT, NUMBER 175. I HAVE A
8 SISTER WHO WAS A SECRETARY FOR THE CHIEF OF POLICE IN
9 ROCK HILL, THE CITY OF ROCK HILL.

10 THE COURT: YES, MA'AM?

11 THE JUROR: I JUST RECENTLY STARTED WORKING FOR
12 A MAGISTRATE.

13 THE COURT: IN YORK COUNTY?

14 THE JUROR: YES.

15 THE COURT: YES, MA'AM?

16 THE JUROR: COULD YOU REPEAT THAT QUESTION?

17 THE COURT: ALL RIGHT. THE QUESTION IS, ARE
18 YOU RELATED BY BLOOD OR MARRIAGE OR A CLOSE PERSONAL
19 FRIEND OR ACQUAINTANCE OF ANYONE WHO IS INVOLVED IN LAW
20 ENFORCEMENT AT ANY LEVEL, POLICE, SHERIFF, M. P., OR WHO
21 IS INVOLVED IN THE PROSECUTION OF CRIMINAL CASES, D.A.,
22 SOLICITOR, JUDGE ADVOCATE, ANYTHING LIKE THAT.

23 THE JUROR: I'M A FRIEND OF MAGISTRATE RAY
24 LONG.

25 THE COURT: YOUR NAME?

1 THE JUROR: CLIFTON GUFFY, NUMBER 100.

2 THE COURT: YES, MA'AM?

3 THE JUROR: JUROR NUMBER 230. MY BROTHER-IN-
4 LAW IS A POLICE OFFICER IN PENNSYLVANIA AND WE HAVE
5 SEVERAL FRIENDS WHO ARE POLICE OFFICERS BUT IT'S ALL IN
6 NEW JERSEY AND PENNSYLVANIA.

7 THE COURT: ALL RIGHT, MAKE A NOTE OF THAT.
8 LET'S GET MR. BOULAR, HE'S BEEN STANDING UP.

9 THE JUROR: CHARLES K. BOULAR. I CAN'T SEE THE
10 NUMBER ON THIS PAPER, BUT I HAVE A SISTER-IN-LAW THAT
11 WORKS AS THE SHERIFF'S SECRETARY.

12 THE COURT: HERE?

13 THE JUROR: YES.

14 THE COURT: WE'LL TALK TO YOU ABOUT THAT LATER
15 THEN.

16 THE CLERK: THAT WAS JUROR NUMBER 20 FOR THE
17 RECORD.

18 THE COURT: YES, SIR?

19 THE JUROR: JUROR 212, WILLIAM PITTMAN. MY
20 GRANDFATHER WAS A CONSTABLE HERE IN YORK COUNTY. HE IS
21 DECEASED NOW.

22 THE COURT: WE'LL MAKE A NOTE OF THAT. YES,
23 SIR?

24 THE JUROR: GENE LANDRUM, 144. ONE OF MY CO-
25 WORKER'S WIFE WORKS FOR TOMMY POPE.

1 THE COURT: WE'LL MAKE NOTE OF THAT. YES, SIR?

2 THE JUROR: 167 WILTON MCALLISTER, I'M A
3 VOLUNTEER FIREMAN. I WORK OCCASIONALLY WITH THE
4 SHERIFF'S DEPUTIES AND WITH THE HIGHWAY PATROL ON THE
5 SCENE.

6 THE COURT: YES, SIR?

7 THE JUROR: I'M A MINISTER. IF I'M CHOSEN,
8 WOULD I HAVE TO SPEND THE WEEKEND?

9 THE JUROR: THE ANSWER TO THAT IS YES, BUT WE
10 WILL BE TALKING TO YOU INDIVIDUALLY AT A LATER TIME.
11 YES, SIR?

12 THE JUROR: JUROR NUMBER 51. I'M A PERSONAL
13 FRIEND OF DAVID HAMILTON.

14 THE COURT: OKAY, THANK YOU. YES, SIR?

15 THE JUROR: I KNOW MR. HANCOCK, HE HAS
16 REPRESENTED ME IN THE PAST.

17 THE JUROR: IS HE WORKING FOR YOU NOW?

18 THE JUROR: HE'S DOING A BIRTH CERTIFICATE.

19 THE COURT: WELL, WE'LL MAKE NOTE OF THAT.
20 YOUR NAME AND NUMBER?

21 THE JUROR: 282 GARY VOYLES.

22 THE COURT: THANK YOU. ALL RIGHT, NO ONE ELSE
23 STANDS. YES, SIR?

24 THE JUROR: IF I COULD JUST BACK UP.

25 THE COURT: YOUR NAME?

1 THE JUROR: DANIEL COLVIN.

2 THE COURT: AND YOUR NUMBER?

3 THE JUROR: I DON'T SEE ANY NUMBER ON HERE.

4 THE CLERK: NUMBER 55.

5 THE COURT: ALL RIGHT, YOUR SITUATION?

6 THE JUROR: I'M OVER THE LIMITED AGE.

7 THE COURT: YES, WELL, I SAID THAT EARLIER AND
8 I NOTICED THAT YOU DIDN'T STAND UP, BUT YOU HAVE AN
9 AUTOMATIC RIGHT TO BE EXCUSED IF YOU WISH.

10 THE JUROR: WELL, THANK YOU.

11 THE COURT: I NOTICED YOUR AGE EARLIER. YOU
12 CAN BE EXCUSED. JUST STAY WITH US RIGHT NOW AND WHEN WE
13 BREAK, YOU CAN BE EXCUSED.

14 THE CLERK: JUDGE, WE HAD TWO WHO WAS NOT
15 RESPONDING TO THAT QUESTION WHO NEED TO GO TO THE REST
16 ROOM.

17 THE COURT: WELL, LET US KNOW WHEN THEY ARE
18 BACK.

19 (AFTER A BRIEF PAUSE.)

20 THE COURT: NOW, THIS CASE HAS RECEIVED SOME
21 MEDIA COVERAGE AND PERHAPS WILL DURING THE COURSE OF THE
22 TRIAL. OF COURSE THOSE OF YOU WHO ARE SEQUESTERED WILL
23 NOT BE ALLOWED TO HAVE ACCESS TO ANY OF THAT, BUT NONE OF
24 YOU WILL BE SEQUESTERED UNTIL WEDNESDAY PROBABLY.

25 YOU ARE NOT TO LET YOURSELF BE EXPOSED TO ANY

1 MEDIA COVERAGE ABOUT THIS CASE FROM HERE ON UNTIL YOU ARE
2 DISMISSED. YOU ARE NOT TO READY ABOUT IT; YOU ARE NOT TO
3 WATCH ANYTHING ON TELEVISION ABOUT IT; YOU ARE NOT TO
4 LISTEN TO THE RADIO ABOUT IT.

5 IF ANYTHING CATCHES YOUR EYE IN THE PAPER OR ON
6 T.V. OR CATCHES YOUR EAR THAT COULD REMOTELY DEAL WITH
7 THIS TRIAL, DO NOT LET YOURSELF BE EXPOSED TO IT. THOSE
8 OF YOU WHO SERVE MUST BASE YOUR VERDICT ON THE LAW AND
9 THE EVIDENCE THAT'S DEVELOPED IN THE TRIAL AND NOT FROM
10 ANYTHING EXTRANEIOUS, ANYTHING OUTSIDE THE TRIAL, THE
11 COURTROOM.

12 SO, DON'T LET YOURSELF BE EXPOSED TO ANYTHING
13 ABOUT THIS CASE.

14 NOW, WITH THAT SAID, I AM GOING TO ASK YOU WHEN
15 YOU COME BACK IN PANELS, I THINK THAT'S PROBABLY THE BEST
16 WAY TO DO IT. EACH ONE OF YOU WHEN YOU COME BACK IN
17 THESE PANELS, I'M GOING TO ASK YOU IF YOU HAVE ALREADY
18 BEEN EXPOSED TO ANY MEDIA COVERAGE AND IF SO, WOULD THAT
19 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL AND ASK YOU
20 A FOLLOW UP QUESTION COULD YOU BASE YOUR VERDICT SOLELY
21 ON THE LAW AND THE EVIDENCE.

22 I'M NOT GOING TO DO THAT WITH EVERYBODY HERE,
23 WE'LL DO THAT ON A ONE ON ONE BASIS STARTING WITH OUR
24 PANELS.

25 AT THIS TIME IS THERE ANYTHING FURTHER AS FAR

1 AS GENERAL QUESTIONS FROM THE STATE?

2 MR. POPE: NOTHING FROM THE STATE, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. HANCOCK: NOTHING FROM THE DEFENSE, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT, IF YOU WILL BEAR WITH US
7 THEN, FIRST LET'S GO THROUGH THE NAMES OF THOSE WHO HAVE
8 BEEN EXCUSED ALREADY AND I WILL LET YOU LEAVE AT THIS
9 TIME. IF YOU HEAR YOUR NAME CALLED, YOU CAN JUST GET UP
10 AND LEAVE AT THAT TIME.

11 THE CLERK: NUMBER 47, BOBBY CHILDERS. NUMBER
12 84, TAMMY FRANK. NUMBER 254, LORAIN SPRINGS. NUMBER
13 262, JENNIFER SRASZHEIM. NUMBER 275, CATHERINE
14 TROSKOSKI. NUMBER 189, ANTHONY MORROW. NUMBER 42,
15 ASHLYN CARTER. NUMBER 66, CASSANDRA CROCKETT. NUMBER
16 55, DANIEL COLVIN.

17 THE COURT: OF COURSE, THERE WERE SOME THAT --
18 YES, SIR?

19 THE JUROR: I WAS EXCUSED.

20 THE COURT: YOUR NAME AND NUMBER?

21 THE JUROR: JASON HERRING.

22 THE COURT: YOU'RE NOT A REGISTERED VOTER?

23 THE JUROR: AND NO I.D.

24 THE COURT: WELL, YOU CAN BE EXCUSED. AND HIS
25 NUMBER?

1 THE CLERK: 116.

2 THE COURT: OKAY. YES, SIR?

3 THE JUROR: YOU EXCUSED ME, BUT I DIDN'T HEAR
4 MY NUMBER CALLED.

5 THE COURT: WHAT WERE YOU EXCUSED FOR?

6 THE JUROR: I HAD PRIOR PAST CONVICTIONS.

7 THE COURT: AND YOUR NAME AND NUMBER?

8 THE JUROR: MY NUMBER IS 273, AARON TINKER.

9 THE COURT: AND YOU'RE IN THE SAME SITUATION?

10 THE JUROR: YES, 109 ROBERT HARPER.

11 THE COURT: BOTH OF YOU THEN CAN EXIT. THANK
12 YOU.

13 THE JUROR: YOU ASKED ABOUT FAMILY MEMBERS THAT
14 WORKED FOR THE POLICE DEPARTMENT?

15 THE COURT: YES, MA'AM.

16 THE JUROR: I WAS ONE OF THEM.

17 THE COURT: I KNOW; WE'RE GOING TO GO OVER THAT
18 LATER. THERE ARE CERTAIN THINGS THAT PEOPLE WILL
19 AUTOMATICALLY BE EXCUSED FOR AND THEN OTHERS THAT WE HAVE
20 TO MAYBE DO SOME FOLLOW UP QUESTIONS AND FIND OUT.

21 I AM GOING TO CALL A COUPLE OF MORE NAMES THAT
22 HAVE NOT RESPONDED BECAUSE WE HAVE SOME INFORMATION THAT
23 MAY BE CORRECT OR IT MAY BE INCORRECT THAT WE WANT TO
24 FIND OUT ABOUT. YES, SIR, YOUR NAME?

25 THE JUROR: I GO TO YORK TECH.

1 THE COURT: ARE YOU A FULL TIME STUDENT?

2 THE JUROR: PART TIME.

3 THE COURT: WE WILL TALK ABOUT THAT WHEN WE
4 TALK INDIVIDUALLY. YES, SIR?

5 THE JUROR: 264, SIR, YOU EXCUSED ME.

6 THE COURT: WE WERE GOING TO CHECK ON THAT. I
7 DON'T DOUBT YOU, BUT THE LAW REQUIRES ME WHEN ANYBODY
8 SAYS THEY HAVE SERVED, WE GO BACK AND CHECK BECAUSE
9 SOMETIMES PEOPLE ARE WRONG ON THE YEAR. YOU'RE PROBABLY
10 RIGHT, BUT WE ARE GOING TO CHECK ON THAT AND LET YOU
11 KNOW.

12 LET ME GO THROUGH THIS LIST, AND SOME OF THESE
13 PEOPLE MAY NOT EVEN BE HERE. WE'VE GOT ABOUT THREE OR
14 FOUR LISTS THAT WE ARE WORKING OFF OF, AND I'M JUST NOT
15 SMART ENOUGH TO ASSIMILATE IT THAT QUICK.

16 THE FIRST, IS JUROR NUMBER 9, JAMES BAGWELL,
17 HERE? ALL RIGHT. WE TOOK CARE OF MR. BOULER, NUMBER 20?

18 THE JUROR: YES, SIR?

19 THE COURT: DO YOU HAVE ANY CRIMINAL RECORD?

20 THE JUROR: DRIVING UNDER THE INFLUENCE ABOUT
21 12 YEARS AGO.

22 THE COURT: HOW ABOUT, AGAIN I'M NOT TRYING TO
23 EMBARRASS YOU, BUT WERE YOU EVER CONVICTED OF VIOLATING
24 THE HABITUAL OFFENDER ACT?

25 THE JUROR: YES, SIR.

1 THE COURT: YOU'LL BE EXCUSED THEN. AGAIN, I'M
2 NOT TRYING TO EMBARRASS ANYONE. 22, ALLEN BOYD? 42,
3 ASHLYN CARTER.

4 THE CLERK: SHE'S ALREADY BEEN EXCUSED.

5 THE COURT: 45, ROBERT CHAPMAN? 79, MASSEY
6 FAILE?

7 THE JUROR: YES, SIR?

8 THE COURT: DO YOU HAVE ANY RECORD?

9 THE JUROR: I TOLD YOU ABOUT IT AWHILE AGO.

10 THE COURT: WHAT WAS IT AGAIN?

11 THE JUROR: DUI'S, DUS.

12 THE COURT: DID YOU HAVE A GRAND LARCENY?

13 THE JUROR: I WASN'T CONVICTED OF IT.

14 THE COURT: WE'LL DOUBLE CHECK ON YOU THEN.
15 JUST REMAIN WITH US. CAN Y'ALL KEEP UP WITH THAT? 95,
16 GLENFORD GOMEZ? I DON'T REMEMBER THAT NAME. 108, RONALD
17 HARGROVE? 109, ROBERT HARPER; I BELIEVE HE WAS EXCUSED.
18 127, MICHAEL HUNDLEY? 136, MICHAEL JONES? 171, WILLIE
19 MCCOY? 177, STEVE MCMANUS. 208 CLARENCE PEELE. 209,
20 DONNA PERRY. 146, RICHARD LANIER?

21 THE JUROR: YES, SIR.

22 THE COURT: ALL RIGHT, THAT'S YOU? WE HAVE
23 CONFIRMED; YOU CAN BE EXCUSED. ANYTHING ELSE?

24 MR. POPE: NOTHING FROM THE STATE, YOUR HONOR.

25 MR. HANCOCK: NOTHING FROM THE DEFENSE, YOUR

1 HONOR.

2 THE COURT: WHAT WE WILL DO AT THIS TIME, IT'S
3 20 TO 12:00, I HAVE SOME MATTERS TO TAKE UP THAT WILL NOT
4 NEED YOUR PRESENCE. WHAT WE WILL DO IS WE ARE GOING TO
5 DRAW PANELS NOW, A, B, C AS I'VE TOLD YOU BEFORE. IT
6 WILL BE DRAWN AT RANDOM. DO BOTH SIDES CONSENT TO THE
7 CLERK DRAWING THE JURY?

8 MR. POPE: THE STATE CONSENTS, YOUR HONOR.

9 MR. BOYD: YES, SIR.

10 THE COURT: SHE WILL DRAW A PANEL OF SIX AND
11 SET A TIME, AND THEN SHE WILL CALL THAT PANEL OUT AND
12 THOSE SIX CAN LEAVE AND RETURN AT THAT TIME. THE FIRST
13 PANEL WILL BE PANEL A TO BE HERE AT 2:00 O'CLOCK. YOU
14 WILL REPORT TO THE SECOND FLOOR TO THE JURY ROOM WHICH IS
15 ALMOST DIRECTLY ABOVE WHERE WE ARE NOW.

16 KEEP IN MIND THAT YOU WILL HAVE THE LIST OF
17 THREE JUROR TYPES THAT I'LL ASK YOU TO REVIEW. YOU'LL
18 HAVE A LIST OF WITNESSES TO REVIEW AND NOTE WHETHER YOU
19 KNOW ANY OF THOSE WITNESSES, RELATED TO THEM OR WORK WITH
20 THEM OR SOCIALIZE WITH THEM OR ANYTHING LIKE THAT. AND
21 THERE WILL BE PADS AND PENCILS SO THAT YOU CAN TAKE NOTES
22 ABOUT THE WITNESSES IF YOU WISH.

23 THEN WHAT WE WILL DO, SO THAT YOU WON'T BE
24 SURPRISED, WE WILL CALL YOU IN INDIVIDUALLY. I WILL GO
25 OVER THAT THREE JUROR TYPE LIST VERY BRIEFLY AND THEN I

1 WILL ALLOW THE ATTORNEYS TO ASK YOU SOME QUESTIONS. THEY
2 ARE NOT CROSS EXAMINING YOU BECAUSE YOU ARE NOT ON TRIAL.
3 BUT THEY HAVE THE RIGHT, AND IT'S NOT SOME OF THE THINGS
4 YOU SEE ON TELEVISION WHERE YOU'LL BE QUESTIONED BY AN
5 ATTORNEY FOR A LONG, LONG TIME. IT WON'T HAPPEN THAT
6 WAY; I WON'T LET IT. AND THEY DON'T INTEND TO; I DON'T
7 THINK EITHER SIDE INTENDS TO DO THAT. EACH SIDE WILL
8 SIMPLY HAVE THE RIGHT TO ASK YOU SOME QUESTIONS AND YOU,
9 OF COURSE, WILL RESPOND UNDER OATH.

10 SO, THAT'S THE WAY THE PROCESS WILL GO. I WILL
11 TELL YOU THAT THIS IS NOT THE FIRST TIME THAT I'VE TRIED
12 SOMETHING LIKE THIS AND WE FIND THAT SIX PER HOUR GO
13 FAIRLY SMOOTHLY. SOMETIMES WE GET BACKED UP A LITTLE
14 BIT. OCCASIONALLY WE GET THROUGH A LITTLE QUICKER THAN
15 IN AN HOUR.

16 BUT WHAT WE WILL DO, WE WILL DO THAT UNTIL WE
17 HAVE WHAT IS THE REQUIRED NUMBER OF JURORS. AND ONCE WE
18 HAVE REACHED THAT NUMBER, WE WILL STOP GOING THROUGH
19 THOSE LISTS. SO IF YOU ARE ON ONE OF THE LOW, LOW LISTS,
20 YOU MAY -- HAVE WE GOT THE PHONE NUMBERS? WHAT'S THE
21 BEST WAY TO DO THAT?

22 THE CLERK: I CAN GIVE THEM THE 1-800 VOICE
23 MAIL NUMBER.

24 THE COURT: ALL RIGHT.

25 THE CLERK: ARE YOU REFERRING TO THOSE THAT ARE

1 FARTHER DOWN THE LIST?

2 THE COURT: YES. WE WILL GIVE YOU A 1-800
3 NUMBER AND IF YOU ARE ON ONE OF THE LOWER LISTS AFTER
4 ABOUT THE 8TH OR 9TH LIST, I WOULD SUGGEST THAT YOU CALL
5 BEFORE YOU COME AND YOUR INSTRUCTIONS MAY BE TO COME ON
6 IN WHEN YOU'RE TOLD TO, OR TO NOT COME IN. BUT MAKE SURE
7 YOU CALL AND MAKE SURE YOU DO WHAT YOU'RE SUPPOSED TO
8 BECAUSE YOU WILL BE HOLDING US UP AND I'LL HAVE TO ASK
9 THE SHERIFF TO COME FIND YOU IF YOU'RE NOT HERE. AND I
10 DON'T SAY THAT AS A WAY OF A THREAT, BUT THAT'S JUST THE
11 WAY THE PROCESS WORKS.

12 THIS IS YOUR PROCESS; IT'S NOT MINE. THE
13 LEGISLATURE ENACTED THESE PROCEDURES, AND THE COURTS
14 ENACTED THESE PROCEDURES. SO, THIS ISN'T JOHN HAYES' WAY
15 DOING IT, THIS IS THE WAY IT'S DONE ALL THE TIME.

16 NOW, LET'S GO AHEAD AND HAVE THE FIRST PANEL
17 COME IN AT 2:00 AND WE'LL DO ONE AT 2:00, 3:00, 4:00 AND
18 5:00 TODAY AND THEN WE'LL START AT 9:00 IN THE MORNING.

19 WE'LL TAKE ABOUT A 10 MINUTE BREAK SO THAT WE
20 CAN GET THESE CAPSULES READY AND WE'LL ALL COME BACK IN
21 HERE AT 12:00, THAT'S 15 MINUTES. DON'T GET AWAY. USE
22 THE REST ROOMS, WHATEVER YOU WANT, AND WE'LL SEE YOU AT
23 12:00 O'CLOCK.

24 (AFTER THE BREAK)

25 THE COURT: WE'LL DRAW THE FIRST SIX PANELS AND

1 THEN WE'LL LET THE FIRST SIX GO.

2 (THE PANELS WERE DRAWN BY THE CLERK)

3 MR. POPE: YOUR HONOR, YOU MAY WANT TO PUT ON
4 THE RECORD, AND YOU MAY HAVE ALREADY DONE THIS, WE HAD
5 THE ONE JUROR, AND I DON'T HAVE THE NAME BEFORE ME, BUT
6 THE ONE JUROR THAT WAS EXCUSED THAT WAS DEALT WITH IN
7 CHAMBERS.

8 THE COURT: ROGERS, WAS THAT NOT THE NAME?

9 THE CLERK: THE LADY?

10 THE COURT: YES.

11 THE CLERK: INEZ ROGERS.

12 MR. POPE: INEZ ROGERS, 228.

13 THE COURT: INEZ ROGERS, 228, BY AGREEMENT OF
14 THE PARTIES, SHE HAS A DISABLED HUSBAND; SHE HAD A
15 DOCTOR'S EXCUSE INDICATING THAT HE REQUIRED 24 HOUR CARE.
16 ANYWAY, SHE WAS EXCUSED BY AGREEMENT.

17 WE'VE GOT MOTIONS, BUT EVERYBODY DOES NEED A
18 BREAK, SO WHY DON'T WE RECONVENE AT -- I KNOW THIS IS
19 ONLY 45 MINUTES, BUT 1:30.

20 AFTER THE LUNCHEON RECESS:

21 THE COURT: I BELIEVE THE FIRST THING WE HAVE
22 ARE MOTIONS. ANYTHING FROM THE STATE?

23 MR. POPE: YOUR HONOR, I DON'T KNOW IF YOU WANT
24 TO TAKE THE BLAIR HEARING ISSUE UP NOW?

25 THE COURT: WELL, WE PROBABLY SHOULD. THAT'S

1 PROBABLY THE BEST THING TO DO FIRST.

2 MR. POPE: WE HAVE THAT, YOUR HONOR, AND ALSO
3 PRIOR TO GOING INTO THAT, I'M GOING TO PASS UP, I HAVE A
4 LETTER, BUT I DO NOT HAVE A COPY OF THE SECOND LETTER AT
5 THIS TIME. THIS PARTICULAR LETTER IS FROM LINDA AND BILL
6 WEAVER ADDRESSED TO THE COURT. OF COURSE I REALIZE RIGHT
7 NOW WE'RE JUST IN JURY VOIR DIRE, BUT THIS WAS CONCERNING
8 THE VICTIMS' CLOSE PERSONAL FRIENDS REMAINING IN THE
9 COURTROOM. I MENTIONED THIS TO THE DEFENSE INVESTIGATOR
10 WHEN HE MET WITH US WHEN MR. HANCOCK AND MR. BOYD WERE
11 OUT OF TOWN. I JUST WANTED TO CALL THAT TO THE COURT'S
12 ATTENTION.

13 ALSO I'LL PASS UP A LETTER FROM MS. ANN JORDAN.
14 I ONLY HAVE ONE COPY; I WILL MAKE A COPY ONCE I RECEIVE
15 IT BACK FROM THE COURT AND GIVE THE DEFENSE A COPY.

16 AGAIN, THE SUBSTANCE OF BOTH OF THESE REQUESTS,
17 AND I HAVE NOT READ THE SECOND LETTER, CONCERNS THE
18 ABILITY OF THE VICTIMS' CLOSE PERSONAL FRIENDS --
19 OBVIOUSLY, YOUR HONOR, IN THIS PARTICULAR CASE, AS YOU
20 KNOW, THE CLOSEST SURVIVING FAMILY MEMBERS ARE THE
21 DEFENDANT AND THE DEFENDANT'S BROTHER WHO IS INCARCERATED
22 HERE.

23 ALSO BASED ON OUR INVESTIGATION OF THE CASE,
24 THE PEOPLE WHO ARE MOST DIRECTLY AFFECTED BY THIS CASE
25 WOULD BE THE VICTIMS CLOSEST PERSONAL FRIENDS. IN

1 PARTICULAR I CALL THE COURT'S ATTENTION TO 16-3-1510
2 WHICH IS THE DEFINITIONS IN THE VICTIMS BILL OF RIGHTS,
3 IT REFERENCES VICTIMS TO BE ANY INDIVIDUAL WHO SUFFERS
4 DIRECT, PHYSICAL OR PSYCHOLOGICAL OR FINANCIAL HARM AS A
5 RESULT OF THE COMMISSION OR ATTEMPT TO COMMIT SOME
6 CRIMINAL OFFENSE AS DEFINED IN THAT SECTION. VICTIM ALSO
7 INCLUDES AN INDIVIDUAL'S SPOUSE, PARENTS, CHILD OR THE
8 LAWFUL REPRESENTATIVE OF THE VICTIM WHO IS DECEASED, A
9 MINOR, INCOMPETENT OR PHYSICALLY OR PSYCHOLOGICALLY
10 INCAPACITATED.

11 AGAIN, THIS GOES PARTICULARLY TO 16-3-1550
12 WHICH TALKS ABOUT SEQUESTRATION. AGAIN, I KNOW WE DEALT
13 WITH THIS AND DISCUSSED IT IN CHAMBERS. THE COURT'S
14 ATTENTION I WOULD PARTICULARLY POINT OUT THAT IT MAKES A
15 DISTINCTION -- IT SAYS VICTIM ALSO INCLUDES, AND NAMES
16 FAMILY MEMBERS. BUT PREVIOUS TO THAT, IT WAS PEOPLE WHO
17 DEALT WITH IT DIRECTLY, WHO SUFFERED DIRECTLY, WHO
18 SUFFERED PHYSICAL, PSYCHOLOGICAL OR FINANCIAL HARM.

19 OBVIOUSLY IN THIS CASE WITH THE CLOSE
20 FRIENDSHIP, WE WOULD BE LOOKING AT THE PSYCHOLOGICAL HARM
21 MORE SO THAN PHYSICAL OR FINANCIAL. BUT, AGAIN, BASED ON
22 THAT THE WITNESSES THAT I HAVE INDICATED WOULD BE BRIEF
23 FACT WITNESSES AS TO HOW THE INVESTIGATION BEGAN AND IT
24 WOULD MOST LIKELY BE PAYNE TESTIMONY WITNESSES IF WE GOT
25 TO THAT SECOND PHASE AT THE TAIL END OF THAT.

1 I UNDERSTAND THAT IT'S IN THE COURT'S
2 DISCRETION, BUT THERE IS NO REAL TESTIMONY THAT THEY
3 WOULD HEAR. AS A MATTER OF FACT, MS. WEAVER WOULD BE MY
4 FIRST OR SECOND WITNESS. SISSY JORDAN AND MS. WEAVER
5 WOULD BE MY FIRST OR SECOND WITNESS AND THERE WOULD BE
6 NOTHING THAT THEY COULD THEN HEAR THAT WOULD HAVE ANY
7 BEARING ON THEIR TESTIMONY.

8 THE COURT: OF COURSE ONCE THEY'VE TESTIFIED,
9 THEY HAVE AN ABSOLUTE RIGHT TO REMAIN IN HERE UNLESS YOU
10 THINK YOU MIGHT NEED THEM AS A REPLY WITNESS.

11 MR. POPE: YES, SIR.

12 THE COURT: WHAT DOES THE DEFENSE SAY ABOUT
13 LINDA WEAVER BEING EXCLUDED FROM THE SEQUESTRATION ORDER?

14 MR. HANCOCK: YOUR HONOR, WE HAVE JUST RECEIVED
15 THIS, BUT I DON'T THINK THE VICTIM'S BILL OF RIGHTS GOES
16 THAT FAR TO ANYBODY THAT IS EMOTIONALLY AFFECTED.

17 THE COURT: WELL, I'M JUST ASKING YOU AS TO
18 YOUR POSITION, REGARDLESS OF THE VICTIM'S RIGHTS ACT.

19 MR. HANCOCK: YES, SIR. WE WOULD ASK THAT
20 THERE BE SEQUESTRATION -- IF WE ARE GOING TO SEQUESTER
21 WITNESSES, THEN I DON'T THINK WE SHOULD PICK AND CHOOSE
22 WHICH ONES WE ARE GOING TO SEQUESTER.

23 THE COURT: ALL RIGHT, THE SAME WOULD GO FOR
24 MS. JORDAN?

25 MR. HANCOCK: YES, SIR.

1 THE COURT: ALL RIGHT. I UNDERSTAND THE CLOSE
2 RELATIONSHIP, BUT IF WE ARE GOING TO SEQUESTER WITNESSES,
3 WE'RE JUST GOING TO HAVE TO SEQUESTER THE WITNESSES
4 UNLESS THEY ARE MEMBERS OF THE FAMILY. SO, I'LL HAVE TO
5 DENY THE REQUEST, MR. POPE.

6 MR. POPE: YOUR HONOR, JUST FOR CLARIFICATION,
7 WE DISCUSSED THIS PREVIOUSLY, AGAIN WHEN MR. COMER WAS
8 AVAILABLE AND THE DEFENSE WASN'T AVAILABLE ON THE ISSUE
9 OF -- AGAIN, USING MS. WEAVER, NOT TO BELABOR THIS, BUT
10 MS. WEAVER WILL BE MY SECOND WITNESS ---

11 THE COURT: WELL, ONCE THEY TESTIFY, THEY DON'T
12 HAVE TO REMAIN SEQUESTERED UNLESS YOU PLAN TO USE THEM AT
13 SOME OTHER POINT.

14 MR. POPE: WELL, THEY WOULD BE USED IN THE
15 PENALTY IN PAYNE, WHICH OBVIOUSLY PAYNE WILL BE THE
16 LATTER PART OF THE SECOND PHASE IF WE GET TO THE SECOND
17 PHASE. YOU SEE THE QUESTION?

18 THE COURT: I SEE THE QUESTION, BUT THE ANSWER
19 IS IF THE WITNESSES ARE GOING TO BE SEQUESTERED, THEY
20 WILL BE SEQUESTERED, AND ABIDE BY THE SEQUESTRATION
21 ORDER.

22 MR. POPE: THANK YOU.

23 MR. HANCOCK: IF I MAY CLARIFY, YOUR HONOR.
24 WE'VE GOT WITNESSES SUPPOSEDLY WHO ARE GOING TO TESTIFY
25 IN THE GUILT PHASE AND THEN TESTIFY AGAIN IN THE PENALTY

1 PHASE. YOU ARE INDICATING, I BELIEVE, THAT IF THEY
2 TESTIFY IN THE GUILT PHASE, THEN THEY ARE FREE AND CLEAR
3 TO REMAIN IN THE COURTROOM ---

4 THE COURT: NO, JUST THE OPPOSITE.

5 MR. HANCOCK: JUST THE OPPOSITE.

6 THE COURT: I SAID IF THEY ARE GOING TO BE A
7 WITNESS AT ANY POINT, UNTIL THEY ARE THROUGH TESTIFYING,
8 THEY ARE SEQUESTERED.

9 MR. HANCOCK: THANK YOU, SIR.

10 THE COURT: INCIDENTALLY, I AM GOING TO ASK
11 THAT COPIES OF MY GENERAL SEQUESTRATION ORDER BE PROVIDED
12 TO THE WITNESSES.

13 MR. BRACKETT: YES, SIR. I'LL MAKE SURE THAT
14 MARY COLLINS, OUR INVESTIGATIVE ASSISTANT, HANDS THAT OUT
15 TO ALL OF THE WITNESSES.

16 (THE LETTERS FROM ANN JORDAN AND LINDA AND BILL WEAVER
17 WERE MARKED COURT'S EXHIBITS 1 AND 2.)

18 THE COURT: NOW, MOTIONS THAT WERE HANDED UP,
19 THE MOTION TO SUPPRESS PHOTOGRAPHS AND VIDEO TAPES. THE
20 MOTION IS MADE -- WELL, LET'S GO AHEAD AND DO THE BLAIR.
21 YOU'RE RIGHT, LET'S DO THE BLAIR HEARING.

22 MR. BRACKETT: MAY IT PLEASE THE COURT, YOUR
23 HONOR, IN REGARD TO THE STATE VS. BLAIR HEARING TO
24 DETERMINE WHETHER THE DEFENDANT IS COMPETENT AT THE TIME
25 OF THE TRIAL, I DON'T BELIEVE THAT THERE IS ANY DISPUTE

1 FROM THE DEFENSE REGARDING THAT ISSUE. THEY HAVE NEVER
2 RAISED THAT ISSUE AT ANY POINT IN THE PROCEEDING.

3 YOUR HONOR, HE WAS EXAMINED BY DR. GEOFFREY
4 MCKEE, AND DR. MCKEE ISSUED A REPORT THAT'S DATED MARCH
5 12TH, THREE DAYS AGO, IN WHICH HE FINDS THAT HE IS
6 COMPETENT AND PURSUANT TO STATE VERSUS ELLIS FRANKLIN, WE
7 WOULD MOVE TO ADMIT THE REPORT IN LIEU OF A FORMAL BLAIR
8 HEARING.

9 THE COURT: ANY OBJECTION?

10 MR. HANCOCK: NO OBJECTION TO THAT, YOUR HONOR.
11 WE HAVE BEEN PROVIDED THE REPORT AND DR. MCKEE IS WELL
12 KNOWN.

13 THE COURT: DOES THE DEFENSE QUESTION THE
14 FINDINGS OF DR. MCKEE?

15 MR. HANCOCK: WE DON'T QUESTION THE FINDINGS ON
16 COMPETENCY, YOUR HONOR.

17 THE COURT: OKAY. ANY WITNESSES FOR THE STATE?

18 MR. BRACKETT: NO, SIR, YOUR HONOR, JUST THE
19 REPORT. WE BELIEVE THAT IT SPEAKS FOR ITSELF. WE JUST
20 ASK THAT IT BE MADE A PART OF THE COURT RECORD.

21 (THE REPORT OF DR. MCKEE WAS MARKED COURT'S EXHIBIT 3)

22 THE COURT: ANY WITNESSES ON BEHALF OF THE
23 DEFENSE?

24 MR. HANCOCK: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. HAVING ORDERED THE

1 DEFENDANT, MR. ROBERTSON, TO UNDERGO STATUTORY
2 PSYCHOLOGICAL EVALUATION CONCERNING BOTH HIS ABILITY TO
3 STAND TRIAL AND CRIMINAL RESPONSIBILITY, BASED ON DR.
4 MCKEE'S REPORT I FIND, AS IT IS HIS OPINION, THAT THE
5 DEFENDANT, JAMES ROBERTSON, IS PRESENTLY CAPABLE OF
6 UNDERSTANDING THE PROCEEDING AGAINST HIM AND ASSIST HIS
7 ATTORNEYS IN HIS DEFENSE AGAINST THE CHARGES HE FACES.
8 I'VE SEEN NO EVIDENCE TO THE CONTRARY.

9 DR. MCKEE STATES THAT MR. ROBERTSON IS ABLE TO
10 CITE AND DEFINE THE CHARGES AGAINST HIM, DESCRIBE THE
11 POSSIBLE PENALTIES HE MIGHT RECEIVE IF CONVICTED; HE IS
12 ABLE TO DESCRIBE THE ROLES AND RESPONSIBILITY OF COURT
13 PARTICIPATION INCLUDING ATTORNEYS, BOTH HIS OWN AND THE
14 SOLICITOR, THE FUNCTION OF THE JUDGE, JURORS AND
15 WITNESSES; IS FULLY CAPABLE OF DISCLOSING THE RELEVANT
16 FACTS OF THIS CASE TO COUNSEL; FULLY CAPABLE OF
17 APPRECIATING THE CONSEQUENCES OF THE DECISIONS MADE BY
18 HIM IN REGARD TO THE DEFENSE TO THE CHARGES AGAINST HIM;
19 THAT HE UNDERSTANDS THE BASIC ELEMENTS OF PLEA
20 BARGAINING; AWARE OF THE NEED TO CONTROL BEHAVIOR IN
21 COURT; AND UNDERSTANDS HOW TO APPROPRIATELY INTERACT WITH
22 COUNSEL DURING TRIAL; IS PRESENTLY ABLE TO ATTEND AND
23 FOLLOW TRIAL TESTIMONY, DECIDING WHETHER TO TESTIFY OR
24 NOT ON HIS OWN BEHALF; CAPABLE OF WORKING PRODUCTIVELY
25 WITH COUNSEL AND ASSISTING THEM; AND HE HAS A SLEF-

1 PROTECTIVE INTEREST IN THE OUTCOME OF THE CASE.

2 SO, I FIND THAT HE IS QUALIFIED AND COMPETENT
3 TO STAND TRIAL.

4 MR. POPE: MAY IT PLEASE THE COURT, OF COURSE
5 WE HAVE ALSO DISCUSSED ALONG THIS MATTER, AND I KNOW THE
6 COURT HAS TAKEN THIS INTO CONSIDERATION, MR. HANCOCK AND
7 MR. BOYD INDICATED THAT THEY HAD HAD CONTACT WITH THE
8 DEFENDANT, OBVIOUSLY THROUGHOUT, BUT ALSO FROM THE TIME
9 DR. MCKEE DID THE EXAMINATION THROUGH THE PRESENT AND
10 HAVE SEEN NO CHANGE IN HIS ABILITY TO COOPERATE. IT IS
11 MY UNDERSTANDING THAT THEY INDICATED THAT.

12 THE COURT: IS THAT CORRECT, MR. HANCOCK?

13 MR. HANCOCK: THAT IS CORRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT, NOW WE WILL TURN TO THE
15 MOTIONS. THE FIRST MOTION IS TO SUPPRESS PHOTOGRAPHS AND
16 VIDEO TAPES, AND I'M NOT GOING TO DO THAT IN LIMINE.

17 THE MOTION IS TO SUPPRESS ALL CRIME SCENE
18 PHOTOGRAPHS AND VIDEO TAPES, AND I'M GOING TO DENY THAT.
19 I AM GOING TO DENY THE MOTION TO SUPPRESS ALL CRIME SCENE
20 PHOTOGRAPHS AND VIDEO TAPES; HOWEVER, I WILL RULE ON ANY
21 TO WHICH THERE ARE OBJECTIONS AT THE TIME THEY ARE
22 PRESENTED AND SUCH OBJECTIONS ARE MADE, AND WE WILL DO
23 THAT IN CAMERA, AND WE WILL PROCEED ALONG THOSE LINES
24 WITH IN CAMERA PRESENTATION AND PROFFER.

25 IN ESSENCE, I AM DENYING THE MOTION AS MADE AND

1 THERE WASN'T ANY ALTERNATIVE, BUT UNDERSTANDING INHERENT
2 IN THIS MOTION WOULD BE THAT AT THE APPROPRIATE TIME
3 REGARDING VARIOUS PRESENTATIONS APPROPRIATE MOTIONS AND
4 OBJECTIONS WOULD BE IN ORDER. OBVIOUSLY I AM NOT RULING
5 ON THOSE AT THIS TIME. DO YOU UNDERSTAND THAT, MR.
6 HANCOCK?

7 MR. HANCOCK: I DO, YOUR HONOR.

8 THE COURT: I KEEP ADDRESSING MR. HANCOCK
9 INSTEAD OF MR. BOYD; WHO IS THE LEAD?

10 MR. BOYD: WELL, YOUR HONOR, I THINK THESE
11 WRITTEN MOTIONS I'M ARGUING.

12 THE COURT: OKAY. WELL, YOU UNDERSTAND THAT?

13 MR. BOYD: YES, SIR.

14 THE COURT: AND THE STATE UNDERSTANDS IT?

15 MR. POPE: YES, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. REQUIRE THE STATE TO
17 DISCLOSE ALL EVIDENCE IT INTENDS TO INTRODUCE IN
18 AGGRAVATION. WHAT DOES THE STATE SAY ABOUT THAT?

19 MR. POPE: YOUR HONOR, PREVIOUSLY WE HAVE
20 SERVED THE DEFENSE NOTICE OF THE EVIDENCE IN AGGRAVATION.
21 IT WAS SERVED ON THE DEFENSE NOVEMBER 2ND OF 1998. IN
22 ADDITION, YOUR HONOR, WE HAVE HAD AN OPEN FILE POLICY,
23 BOTH AS TO GUILT PHASE EVIDENCE AND PENALTY PHASE
24 EVIDENCE. MS. COLLINS HAS CONTINUALLY PROVIDED
25 INFORMATION TO THE DEFENSE AS WE HAVE RECEIVED IT.

1 LIKEWISE, IN FURTHERANCE OF FULL DISCLOSURE,
2 SOMETIME LAST WEEK WE GAVE THE DEFENSE A COPY OF THE
3 POTENTIAL WITNESSES THAT THE STATE WOULD CALL IN THIS
4 CASE ALSO, YOUR HONOR.

5 THE STATE WOULD SUBMIT THAT THEY HAVE BEEN
6 GIVEN FULL DISCOVERY AND PROVIDED ALL THE INFORMATION
7 THAT WOULD BE REQUIRED, AND IN TRUTH OF THE MATTER ALL
8 THE INFORMATION THAT THE STATE HAS, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. BOYD: YOUR HONOR, WE WERE GIVEN A VERY
11 GENERIC NOTICE OF AGGRAVATION AND PUNISHMENT WHICH LISTED
12 JUST ABOUT ANYTHING THAT COULD OCCUR. OF PARTICULAR
13 CONCERN, YOUR HONOR, IS THAT THE STATE WILL PRESENT ANY
14 AND ALL EVIDENCE RELATING TO PRIOR BAD ACTS AND OTHER
15 EVIDENCE RELATING TO THE DEFENDANT'S CHARACTER.

16 THE PROBLEM WITH THAT, YOUR HONOR, WHAT WE ARE
17 ASKING IS THAT BASICALLY THE STATE LIST OUT ANY OF THIS
18 EVIDENCE IN PARTICULAR THAT'S GOING TO BE PRESENTED. NOW
19 WE HAVE GOTTEN SOME FAX CONCERNING -- I RECEIVED A FAX
20 CONCERNING EVIDENCE THEY INTEND TO PRESENT BY A WITNESS,
21 KELLY BIGHAM, ABOUT AN ALLEGED STALKING INCIDENT, THAT
22 TYPE OF THING. BUT I WOULD ASK THAT THE STATE BE
23 REQUIRED TO LIST OUT ANY SUCH EVIDENCE THAT THEY INTEND
24 TO PRESENT.

25 YOUR HONOR, I BELIEVE THIS IS REQUIRED UNDER

1 THE STATE VS. RIDDLE CASE WHICH BASICALLY STATED THAT THE
2 STATE HAD TO PROVIDE THE CRIMINAL RECORD OF THE DEFENDANT
3 PURSUANT TO SECTION 16-3-20-B.

4 NOW LATER ON THERE ARE CASES THAT HAVE STATED
5 THAT PAYNE EVIDENCE IS NOT COVERED BY THIS BECAUSE IT IS
6 NOT EVIDENCE IN AGGRAVATION. BUT I WOULD SUBMIT TO THE
7 COURT THAT PRIOR BAD ACTS FITS INTO THIS SAME CATEGORY OF
8 EVIDENCE AND IT IS SIMILAR TO A RECORD THAT NEEDS TO BE
9 SET OUT SPECIFICALLY IN THE NOTICE OF AGGRAVATION
10 PURSUANT TO 16-3-20-B.

11 YOUR HONOR, I WOULD ALSO POINT OUT PURSUANT TO
12 RULE 404 IN THE NOTES TO IT BASICALLY CONCERNING BAD ACT
13 EVIDENCE UNDER THE FEDERAL RULE THE GOVERNMENT ALWAYS HAS
14 TO GIVE THE PRIOR BAD ACTS THAT THEY ARE GOING TO INTEND
15 TO USE.

16 OUR RULE ADMITS THAT, HOWEVER IN THE NOTES TO
17 THE RULE IT SAYS "THE SOUTH CAROLINA RULE DOES NOT
18 CONTAIN THE REQUIREMENT WHICH IS IN THE FEDERAL RULE.
19 UPON THE REQUEST BY THE ACCUSED, THE PROSECUTION MUST
20 PROVIDE REASONABLE NOTICE OF THE GENERAL NATURE OF ANY
21 EVIDENCE IT INTENDS TO INTRODUCE UNDER THE RULE". AND
22 THEN IT GOES ON TO SAY, "WITH THE EXCEPTION OF NOTICE OF
23 EVIDENCE TO BE USED IN AGGRAVATION IN A SENTENCING PHASE
24 OF CAPITAL CASES, THERE IS NO SIMILAR REQUIREMENT UNDER
25 SOUTH CAROLINA LAW".

1 SO, BASICALLY UNDER THE NOTES OF THIS IT
2 CERTAINLY IMPLIES THAT THAT SECTION REQUIRES NOTICE OF
3 THE DEFINITE ACTS THAT ARE GOING TO BE INTRODUCED OR
4 TESTIMONY PRESENTED BY THE STATE.

5 YOUR HONOR, GOING ON THAT, THAT WOULD INCLUDE -
6 - I BELIEVE IT SAID PRIOR BAD ACTS, EVEN DISRESPECTFUL,
7 DISRUPTIVE AND UNCOOPERATIVE ACTIONS IN CONDUCT AS A
8 JUVENILE. I MEAN THAT COULD BE BASICALLY ANYTHING.

9 ANOTHER REASON FOR REQUIRING THE STATE TO GO
10 AHEAD AND PRESENT THIS EVIDENCE, YOUR HONOR, WE WOULD
11 THINK THAT BEFORE THIS EVIDENCE IS INTRODUCED INTO
12 EVIDENCE IF IT COMES TO THAT PHASE, AND THIS GOES A
13 LITTLE BIT BEYOND THE MOTION AT THIS TIME, BUT THE COURT
14 IS GOING TO HAVE TO MAKE A DETERMINATION PURSUANT TO RULE
15 402 THAT THIS EVIDENCE IS RELEVANT.

16 THE COURT IS ALSO GOING TO HAVE TO MAKE A
17 DETERMINATION PURSUANT TO RULE 403 WHETHER -- TO
18 DETERMINE IF THE PROBATIVE VALUE OF IT IS OUTWEIGHED BY
19 THE DANGER OF UNFAIR PREJUDICE.

20 AND THEN YOU GO TO THE CASE LAW AND IT SAYS
21 EVIDENCE OF OTHER CRIMES OR BAD ACTS MUST BE CLEAR AND
22 CONVINCING.

23 SO, THE COURT IS GOING TO HAVE TO MAKE THE
24 DETERMINATION OF THOSE THREE THINGS BEFORE THE EVIDENCE
25 CAN BE SUBMITTED INTO EVIDENCE. THAT'S GOING TO OF

1 NECESSITY REQUIRE AN IN CAMERA HEARING CONCERNING THAT
2 TYPE OF EVIDENCE BEFORE IT IS SUBMITTED TO THE JURY.

3 YOUR HONOR, I WOULD ALSO LIKE TO POINT OUT, OF
4 COURSE, THAT WE WERE GIVEN A LIST OF 200 WITNESSES AT THE
5 END OF LAST WEEK. SO, TO GO THROUGH THAT LIST AND
6 DETERMINE WHICH WITNESSES ARE GOING TO TESTIFY CONCERNING
7 PRIOR BAD ACTS, THAT TYPE OF THING, IS VIRTUALLY
8 IMPOSSIBLE DUE TO THE LENGTH OF TIME THAT WE'VE HAD.

9 THE COURT: MR. BRACKETT OR MR. POPE?

10 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
11 I THINK AGAIN WE'RE TALKING ABOUT GUILT PHASE AND AS I
12 SAID BEFORE, THERE'S NO LYLE, THERE'S NO 404 EVIDENCE IN
13 THE GUILT PHASE.

14 IN THE PENALTY PHASE WE'VE PUT THEM ON NOTICE -
15 - THEY ALSO HAVE THE ADVANTAGE THAT WE PUT THEM ON
16 NOTICE, WE GAVE THEM WITNESSES WHICH, AGAIN, I DON'T
17 BELIEVE WE HAVE TO DO; WE GAVE THEM THE NATURE OF THE
18 EVIDENCE -- I'LL TELL YOU THE TRUTH, YOUR HONOR, EVIDENCE
19 KEEPS TURNING UP ABOUT THIS DEFENDANT. AND THE TRUTH OF
20 THE MATTER IS WE HAD A CASE OVER IN GREENVILLE WHERE AN
21 INCIDENT COMES BETWEEN THE TWO PHASES OF THE TRIAL, YOU
22 COULDN'T PUT NOTICE ON THAT, BUT YOU COULD ONLY GIVE
23 GENERAL NOTICE AS TO THAT.

24 I THINK WE HAVE COVERED THE NOTICE REQUIREMENT.
25 THIS IS THE SAME NOTICE THAT WE'VE USED IN EVERY OTHER

1 CASE WE'VE HAD, YOUR HONOR; IT HAS BEEN UPHELD PREVIOUSLY
2 BY THE SUPREME COURT. IN ADDITION, I'VE DISCUSSED WITH
3 MR. BRACKETT, AS WE'VE DONE WITH THE DEFENSE IN THE GUILT
4 PHASE, I DON'T MIND GOING THROUGH OUR LIST AND SAYING
5 HERE IS WHAT WE'RE LOOKING AT. I DON'T THINK THERE IS
6 ANY LEGAL REQUIREMENT THAT WE GIVE A WRITTEN LIST.

7 WE HAVE AT LEAST TWO, MAYBE THREE STALKING-LIKE
8 INCIDENTS. AND, AGAIN, THEY HAVE THE DEFENDANT THAT
9 WOULD BE AWARE OF THESE, BUT WE CAN GO THROUGH ---

10 THE COURT: THE DEFENDANT MIGHT NOT HAVE
11 THOUGHT HE WAS STALKING.

12 MR. POPE: WITHOUT GETTING INTO THE SPECIFICS,
13 YOUR HONOR, I THINK HE WOULD UNDERSTAND IT BASED ON HIS
14 ACTIONS.

15 THE COURT: ALL RIGHT.

16 MR. POPE: YOUR HONOR, ANYWAY I WOULD SUBMIT
17 THAT WE HAVE PROVIDED THE STATUTORY NOTICE OF EVIDENCE IN
18 AGGRAVATION. IT'S ONE THAT'S BEEN USED PREVIOUSLY AND
19 HONESTLY WE'VE ACTUALLY FLESHED IT OUT ANY FURTHER THAN
20 THE ONES WE'VE USED PREVIOUSLY. AND THE STATE WOULD
21 SUBMIT THAT THAT COUPLED WITH FULL DISCLOSURE, OUR ENTIRE
22 CASE FILE, THAT THAT WOULD BE SUFFICIENT, YOUR HONOR.

23 I WOULD ALSO NOTE AS FAR AS PHOTOGRAPHS OF THE
24 CRIME SCENE, WE HAVE A NUMBER THAT MAY BE PAYNE TYPE
25 PHOTOGRAPHS. THEY ARE VOLUMES, AND AGAIN I WOULD NOTE

1 THAT PRIOR TO TENDERING THEM WE WILL SIT DOWN AND SAY
2 THESE ARE THE ONES THAT WE ARE GOING TO USE. BUT THEY
3 HAVE HAD THAT OPPORTUNITY, AND I THINK THE DEFENSE WILL
4 ADMIT THAT THEY HAVE HAD THE OPPORTUNITY TO SIT IN OUR
5 OFFICE AS MANY TIMES AS THEY WANTED AND GO AND SEE THE
6 EVIDENCE AS MANY TIMES AS THEY WANTED AND GO THROUGH ALL
7 OF THE EVIDENCE IN THIS CASE, YOUR HONOR.

8 THE COURT: ANY FOLLOW UP?

9 MR. BOYD: WELL, YOUR HONOR, OF COURSE THE
10 EVIDENCE, BAD ACTS AND THAT TYPE OF THING, IS NOT
11 NECESSARILY IN THE EVIDENCE THAT'S PILED ON THE TABLE.
12 THAT'S WHY IT SHOULD BE, IN FAIRNESS, LISTED OUT.

13 THE COURT: I AM GOING TO REQUIRE THE STATE TO
14 PROVIDE WHAT TYPE BAD ACT THAT WITNESS WOULD BE
15 ADDRESSING. AND THAT DOESN'T PREVENT IF SOMETHING COMES
16 UP BETWEEN NOW, I MEAN THAT DOESN'T PRECLUDE ANY FUTURE.

17 ALL RIGHT, MOTION TO REQUIRE THE STATE TO
18 PROVIDE THE DEFENDANT WITH COPIES OF JUROR'S CRIMINAL
19 RECORDS AND PENDING CHARGES.

20 MR. POPE: DO YOU WANT TO HEAR FROM THE DEFENSE
21 FIRST, YOUR HONOR?

22 THE COURT: IT'S THEIR MOTION. IT'S PRETTY
23 SELF-EXPLANATORY.

24 MR. BOYD: YOUR HONOR, THAT'S WHAT WE ARE
25 ASKING, THAT WE BE PROVIDED WITH THE CRIMINAL RECORDS AND

1 PENDING CHARGES OF ANY POTENTIAL JURORS. I ASSUME THEY
2 HAVE BEEN RUN BECAUSE THERE WERE SEVERAL JURORS WHO DID
3 HAVE CRIMINAL RECORDS THAT WERE DISQUALIFIED. WE WOULD
4 LIKE FOR THE STATE TO PROVIDE US WITH THE SAME
5 INFORMATION THEY HAVE CONCERNING THE CRIMINAL RECORDS.
6 IF IT HAS BEEN RUN; NOW IF THE STATE DOESN'T HAVE ANY
7 KNOWLEDGE OF IT, THEY HAVEN'T CHECKED THE JUROR'S
8 RECORDS, THEN THAT'S FINE, WE ARE IN THE SAME BOAT AS
9 THEY ARE. BUT THEY HAVE THE UNIQUE ABILITY ON THEIR
10 COMPUTERS JUST TO RUN THE RECORD OF THE JURORS. WE DON'T
11 HAVE THAT ABILITY.

12 AND PARTICULARLY ALSO, NOT JUST CRIMINAL
13 RECORDS, BUT IF THEY HAVE KNOWLEDGE OF ANY JUROR HAVING
14 PENDING CRIMINAL CHARGES, THAT WOULD BE IMPORTANT FOR US,
15 TOO, BECAUSE ANY JUROR IF THEY HAVE A PENDING CHARGE MAY
16 BE INCLINED TO FAVOR THE STATE BEING THAT THE STATE HAS
17 CONTROL OVER THOSE CHARGES THAT THEY ARE GOING TO BE
18 TRIED FOR AND MAY HAVE A TENDENCY TO LEAN TOWARD THE
19 STATE FOR THAT REASON. SO, WE WOULD REQUEST THAT
20 INFORMATION.

21 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
22 I WILL HAND UP STATE V. CHILES WHICH BASICALLY SAYS THAT
23 THE DEFENSE IS NOT ENTITLED TO ANY OF THE INFORMATION
24 THEY REQUESTED -- WE WILL SAY AS FAR AS PENDING CHARGES,
25 CERTAINLY THAT'S PUBLIC INFORMATION, YOUR HONOR. AS FAR

1 AS THE LIST THAT'S BEEN PRINTED OUT, YOUR HONOR, WE GAVE
2 YOU A COPY TODAY THAT MARY HAD PREPARED WITH A COVER
3 SHEET AND A STACK OF THE RAP SHEETS FOR THE COURT. I
4 DON'T KNOW IF YOU STILL HAVE THAT.

5 THE COURT: I HAVE IT.

6 MR. POPE: I DON'T HAVE ANY OPPOSITION TO YOU
7 GIVING THOSE TO THE DEFENSE.

8 THE COURT: ALL RIGHT. I'M GIVING THEM WHAT I
9 WAS GIVEN WHICH I UNDERSTAND TO BE A COPY OF THE STATE'S
10 FILE.

11 MR. BOYD: THAT SATISFIES THAT PORTION OF THE
12 MOTION, YOUR HONOR.

13 THE COURT: WHAT ABOUT PENDING CHARGES?

14 MR. BOYD: PENDING CHARGES.

15 MR. POPE: YOUR HONOR, WE DO HAVE SOME WORK
16 PRODUCT IN THE FIRST FIVE PAGES, SHE'S GOING TO RETRIEVE
17 THAT.

18 THE COURT: ALL RIGHT.

19 MR. POPE: PRIOR TO THE JURORS COMING IN, I
20 WILL HAVE THIS RETURNED TO THE DEFENSE.

21 THE COURT: WHAT ABOUT PENDING CHARGES, ARE
22 THEY NOTED IN THERE TO THE EXTENT THAT YOU ARE AWARE OF
23 THEM?

24 MR. POPE: NO, SIR, YOUR HONOR. IN THE RAP
25 SHEET IT WOULD BE BY VIRTUE OF SAYING WE DON'T HAVE A

1 DISPOSITION.

2 THE COURT: THAT'S ALL YOU HAVE TO GO ON.

3 MR. POPE: THAT'S WHAT WE HAVE; YES, SIR.

4 THE COURT: WELL, I'M NOT GOING TO REQUIRE YOU
5 TO GO FIND ANYTHING FURTHER; JUST GIVE THEM WHAT YOU'VE
6 GOT. ALL RIGHT, MOTION TO SELECT THE JURY FROM ANOTHER
7 COUNTY. I WILL HAVE TO TAKE THAT UNDER CONSIDERATION AND
8 HEAR WHAT THE POTENTIAL JURORS HAVE TO SAY.

9 MOTION TO REQUIRE ALL LAW ENFORCEMENT OFFICERS
10 TO DRESS IN PLAIN CLOTHES. I'M NOT GOING TO GRANT THAT.
11 I'M GOING TO ASK THAT THE PRESENCE OF LAW ENFORCEMENT IN
12 UNIFORM BE LIMITED, BUT THIS IS A COURTROOM; EVERYBODY
13 KNOWS THAT IT IS A CRIMINAL TRIAL. I DON'T SEE THAT THERE
14 IS ANY PREJUDICE IN HAVING INDIVIDUALS SEATED IN UNIFORM.
15 AGAIN, I DON'T WANT 50 OFFICERS SITTING IN THE BACK IN
16 UNIFORM, BUT AS IT IS SET UP NOW WITH TWO AND PERHAPS IF
17 ONE MORE MIGHT BE THOUGHT TO BE NECESSARY FOR ANY REASON,
18 I WOULD ASK THAT THAT BE CALLED TO MY ATTENTION. BUT I
19 AM GOING TO DENY THE MOTION AND ALLOW AT LEAST TWO
20 UNIFORMED OFFICERS, SUBJECT TO EXPANDING THAT IF ANYTHING
21 IS SHOWN TO MAKE THAT A NECESSITY.

22 IS THERE ANYTHING YOU WANT TO SAY ABOUT THAT,
23 MR. BOYD?

24 MR. BOYD: YOUR HONOR, I WOULD JUST LIKE TO PUT
25 OUR REASONS FOR THAT ON THE RECORD PARTICULARLY SINCE

1 THIS IS A SHERIFF'S DEPARTMENT CASE AND THE OFFICERS
2 PROVIDING SECURITY IN THE COURTROOM ARE SHERIFF'S
3 OFFICERS, I THINK THAT THAT COULD POTENTIALLY BE
4 PREJUDICIAL TO THE JURY. IF IT WASN'T A SHERIFF'S OFFICE
5 CASE, MAYBE A ROCK HILL CITY CASE OR SOMETHING OF THAT
6 NATURE, I DON'T THINK THAT WOULD BE A PROBLEM. THAT WAS
7 THE REASON FOR THE MOTION.

8 THE COURT: AND ACTUALLY I SAID TWO; I THINK I
9 SEE A THIRD UNIFORMED OFFICER THAT I DIDN'T SEE SITTING
10 IN THE BACK. SO THAT IS SUFFICIENT; I HAVE NO PROBLEM
11 WITH THAT. AND EVEN THOUGH IT IS A SHERIFF'S CASE,
12 THAT'S WHO IS CHARGED WITH THE RESPONSIBILITY OF NOT ONLY
13 PROTECTING THE PUBLIC FROM THE DEFENDANT BUT PROTECTING
14 THE DEFENDANT FROM THE PUBLIC. SO, WE WILL LEAVE THAT AS
15 IT IS.

16 MOTION TO REQUIRE THE STATE TO PROVIDE THE
17 DEFENSE WITH ALL PENDING CHARGES AGAINST THE STATE'S
18 WITNESSES AND ANY PLEA AGREEMENTS MADE WITH ANY STATE'S
19 WITNESSES.

20 MR. POPE: YOUR HONOR, WE HAVE PREPARED THAT --
21 I BEG THE COURT'S INDULGENCE. AS WITNESSES COME IN, AS
22 YOU ARE AWARE WE HAVE 200 POTENTIAL WITNESSES, BUT AS A
23 WITNESS TESTIFIES, IF THERE IS A RAP SHEET, WE WILL
24 PROVIDE IT TO THE DEFENSE.

25 LIKEWISE, IF THERE ARE PLEA AGREEMENTS IF THE

1 WITNESS TAKES THE STAND, WE WILL PROVIDE THAT TO THE
2 DEFENSE SO THAT THEY WILL HAVE IT FOR CROSS EXAMINATION.

3 MR. BOYD: AND ANY PENDING CHARGES THAT A
4 WITNESS HAS, WHETHER IT IS A PLEA AGREEMENT OR NOT.

5 MR. POPE: YOUR HONOR, WE WILL GIVE THEM
6 EVERYTHING WE HAVE. PENDING CHARGES, AS I UNDERSTAND,
7 WILL BE PUBLIC RECORD, I READ ABOUT IT IN THE PAPER ALL
8 THE TIME. SO WHATEVER WE GENERATE, WE WILL GIVE -- WHAT
9 WE CAN'T DO ON THE EVE OF TRIAL IS TO BEGIN DOING THE
10 DEFENSE WORK FOR THEM. THEY ARE EQUALLY AVAILABLE TO
11 BOTH OF US AND IF WE HAVE THEM, WE WILL GIVE THEM TO
12 THEM.

13 MR. BOYD: I JUST THINK IT WOULD BE VERY
14 UNUSUAL IF THE STATE DOESN'T KNOW ABOUT PENDING CHARGES
15 OF THEIR WITNESSES.

16 THE COURT: THEY ARE TELLING YOU THAT IF THEY
17 DO KNOW ABOUT THEM, THEY WILL TELL YOU. BUT, YOU KNOW,
18 WE ARE A PRETTY MOBILE SOCIETY AND THEY MAY HAVE PENDING
19 CHARGES IN HORRY COUNTY OR SOMEBODY MAY HAVE THEM IN ---

20 MR. BOYD: I UNDERSTAND. IT IS THE COURT'S
21 RULING THAT IF THEY KNOW ABOUT IT, THEY DO HAVE TO
22 PROVIDE IT?

23 THE COURT: RIGHT, AND I THINK THAT'S WHAT THEY
24 SAID THEY WOULD DO.

25 OKAY, NEXT IS 404 LYLE -- YOU REALLY DON'T NEED

1 TO MAKE THIS MOTION. I WILL CERTAINLY HAVE AN IN CAMERA
2 HEARING ON ANY LYLE TYPE 404 EVIDENCE.

3 NEXT IS TO REQUIRE THE STATE TO PROVIDE
4 CRIMINAL RECORDS OF ALL THE STATE'S WITNESSES. DIDN'T WE
5 JUST COVER THAT?

6 MR. BOYD: YES, SIR.

7 THE COURT: MOTION FOR A JACKSON VERSUS DENNO
8 HEARING.

9 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
10 BASICALLY AS WE DISCUSSED PREVIOUSLY WE HAVE TWO
11 STATEMENTS FROM THE DEFENDANT; ONE IN PHILADELPHIA AND
12 ONE HERE AT THE JAIL. DETECTIVE MISLE WAS INVOLVED ON
13 BOTH OF THEM; HE WILL NOT BE AVAILABLE AGAIN UNTIL
14 WEDNESDAY, BUT IT WILL BE PRIOR TO STARTING THE TRIAL.
15 THEY WILL BOTH BE FAIRLY SHORT.

16 AS I INDICATED, THE STATE'S INTENTION WOULD BE
17 TO USE THE FIRST ONE AND IN AN ABUNDANCE OF CAUTION NOT
18 USE THE SECOND ONE. HOWEVER, IT MAY BE APPROPRIATE --
19 PREVIOUSLY I'D JUST SAID WE WOULD HAVE A HEARING ON THE
20 ONE; IT MAY BE APPROPRIATE TO HAVE A HEARING ON THE TWO
21 SO THAT IF THE ISSUE EVER CAME THAT IT WOULD BE USED FOR
22 IMPEACHMENT, THAT THE COURT COULD HAVE ALREADY MADE A
23 DETERMINATION ON THE VOLUNTARINESS OF THE ASPECT. NOT
24 THE MIRANDA ASPECT, BUT THE VOLUNTARINESS ASPECT.

25 I AM GOING TO HAVE OFFICER MISLE HERE SOMETIME

1 WEDNESDAY AS WE CAN FIT IT INTO OUR SCHEDULE. IT SHOULD
2 TAKE JUST A BRIEF AMOUNT OF TIME. HE WOULD BE THE ONE
3 WITNESS ON THAT ISSUE.

4 THE COURT: ALL RIGHT, WE WILL DEFER THAT UNTIL
5 THAT TIME. FINALLY, I UNDERSTAND THE LAST WAS WITHDRAWN,
6 THAT HAD TO DO WITH THE WILLIAM S. HALL RECORDS?

7 MR. BOYD: YES, SIR. YOUR HONOR, ORIGINALLY
8 THAT MOTION WAS MADE TO DISMISS THE DEATH PENALTY ON THE
9 GROUND THAT THE STATE ILLEGALLY RECEIVED RECORDS FROM THE
10 WILLIAM S. HALL INSTITUTE. THAT MOTION WAS MADE BASED ON
11 THE FEDERAL LAW OF DISCLOSURE OF THESE RECORDS. I HAD
12 BEEN INFORMED BY THE ATTORNEY FOR THE DEPARTMENT OF
13 MENTAL HEALTH THAT THE RECORDS WERE NOT COVERED BY
14 FEDERAL LAW SINCE THEY DO NOT RECEIVE FEDERAL FUNDING.
15 THEREFORE, THERE WOULD BE NO BASIS TO GO FORWARD WITH
16 THAT MOTION. THAT MOTION WOULD BE WITHDRAWN.

17 MR. POPE: YOUR HONOR, FURTHER THE STATE WOULD
18 SUBMIT, IF WE DON'T GET TO IT, THAT THE COURT HAS
19 SUFFICIENT EVIDENCE TO RULE THAT THEY WERE PROPERLY HAD.
20 I KNOW THEY LIKE SLINGING THAT MISCONDUCT THING, I JUST
21 WANTED TO BALANCE THAT OUT.

22 YOUR HONOR, GOING BACK TO THE DENNO ISSUE AND
23 THIS KIND OF GOES SOMEWHAT WITH THE PRIOR BAD ACTS
24 REQUEST THAT THE DEFENSE HAD, THERE WILL BE PRIOR BAD
25 ACTS THAT HAVE DENNO INFORMATION IN IT. THERE WERE

1 STATEMENTS MADE DURING THE ARREST OF PRIOR BAD ACTS. THE
2 DEFENSE SHOULD HAVE A COPY OF THE POLICE FILE FROM THE
3 PRIOR BAD ACT.

4 THE REASON I CALL THAT TO THE COURT'S ATTENTION
5 IS AT SOME APPROPRIATE TIME, MOST LIKELY AFTER THE FIRST
6 PHASE IF WE GO TO THE SECOND PHASE, THERE WOULD BE A NEED
7 FOR A DENNO HEARING CONCERNING THOSE ACTS.

8 AGAIN, I JUST CALL THAT TO THE COURT'S
9 ATTENTION. I THINK THE DEFENSE IS AWARE OF THAT. IT
10 WON'T BE JUST MR. MISLE, THERE WILL ACTUALLY BE A DENNO
11 HEARING IN POSSIBLY THE PENALTY PHASE.

12 THE COURT: ALL RIGHT, IS THE STATE READY TO
13 START WITH THE JURORS?

14 MR. POPE: YES, SIR. THE ONLY ISSUE THE STATE
15 HAS REMAINING IS THE ISSUE CONCERNING THE CHAIN OF
16 EVIDENCE AND THE AVAILABILITY OF WITNESSES IN
17 PHILADELPHIA. BASED ON THE TIME, THIS MAY BE AN ISSUE
18 THAT WE COULD ADDRESS AT A LATER BREAK OR SOMETHING.

19 I HAVE A CASE I WOULD HAND UP TO THE COURT;
20 I'LL HAND IT TO THE DEFENSE CONCERNING THE CHAIN OF
21 EVIDENCE IN PHILADELPHIA AND THE THREE NON-FUNGIBLE ITEMS
22 THAT WERE RETRIEVED FROM THE CAR. I WILL PROVIDE THAT TO
23 THE DEFENSE AND THE STATE WILL BE READY TO PROCEED AND
24 JUST RESERVE THE OPPORTUNITY TO ADDRESS THAT AT SOME
25 LATER POINT.

1 THE COURT: ALL RIGHT.

2 MR. POPE: THE ONLY OTHER ISSUE I SEE, YOUR
3 HONOR, AND IRONICALLY THE CASE I'M HANDING UP ALSO WOULD
4 ADDRESS THAT IS THE DEFENSE MOTION CONCERNING VOIR DIRE.
5 THIS IS HILL -- I APOLOGIZE, YOUR HONOR. THIS CASE DEALS
6 WITH THE VOIR DIRE AND STATE V. GLENN WOULD DEAL WITH THE
7 CHAIN OF EVIDENCE.

8 YOUR HONOR, THE DEFENSE HAS A MOTION BEFORE YOU
9 ON THE VOIR DIRE MATTER. I DON'T KNOW IF IT IS
10 APPROPRIATE IF YOU WOULD LIKE TO HEAR FROM THE STATE.

11 THE COURT: WELL, WE'RE GETTING READY TO START,
12 WE BETTER GO AHEAD. I READ OVER THE BRIEF WHICH WAS
13 HANDED TO ME BEFORE LUNCH REGARDING VOIR DIRE REGARDING
14 SPECIFIC MITIGATING CIRCUMSTANCES.

15 I THINK THE LAW IN THIS STATE IS MOST RECENTLY
16 HILL AND IT STATES THAT THE AUTHORITY IS TO FOCUS ON THE
17 FAIRNESS AND IMPARTIALITY OF THE JUROR AND WHETHER OR NOT
18 THEY ARE DEATH PENALTY QUALIFIED, NOT ON SPECIFICITY OF
19 AGGRAVATING OR MITIGATING CIRCUMSTANCES. MR. BOYD, MR.
20 HANCOCK?

21 MR. HANCOCK: YOUR HONOR, I WOULD JUST ASK THE
22 COURT'S RULING AGAIN SO THAT WE KNOW HOW FAR WE CAN GO
23 WITH OUR VOIR DIRE. IT SAYS SPECIFICITY OF MITIGATING
24 CIRCUMSTANCES. IS THE COURT GOING TO NOT ALLOW US TO
25 MENTION THAT THERE ARE AGGRAVATING AND MITIGATING

1 CIRCUMSTANCES THAT A JUROR MIGHT CONSIDER?

2 THE COURT: NO, I THINK YOU CERTAINLY CAN SAY
3 THAT IN THE PENALTY PHASE, IF IT COMES TO THAT, THAT THE
4 STATE CAN PRESENT AGGRAVATING CIRCUMSTANCES AND THE
5 DEFENSE CAN PRESENT MITIGATING CIRCUMSTANCES AND WOULD
6 YOU CONSIDER AGGRAVATING AND MITIGATING WITHOUT SAYING
7 WOULD YOU CONSIDER MITIGATING CIRCUMSTANCE A, WOULD YOU
8 CONSIDER B, WOULD YOU CONSIDER C; BUT RATHER, WOULD YOU
9 CONSIDER CIRCUMSTANCES IN MITIGATION.

10 MR. HANCOCK: HOW ARE THEY GOING TO KNOW, YOUR
11 HONOR, AND I JUST ASK THE COURT, THEY ARE NOT LEGALLY
12 TRAINED PERSONNEL. WHEN I SAY MITIGATING CIRCUMSTANCES
13 TO THEM IT MEANS NOTHING. CAN I NOT SAY A MITIGATING
14 CIRCUMSTANCE SUCH AS AGE, MENTAL OR EMOTIONAL CONDITION
15 OR MATTERS OF THAT NATURE?

16 THE COURT: I THINK YOU CAN READ THE DEFINITION
17 OF MITIGATING IN WEBSTER AND IT WON'T SAY THAT. YOU CAN
18 SAY THINGS THAT WOULD LESSEN RESPONSIBILITY OR MAKE --
19 I'M NOT GOING TO TELL YOU HOW TO PHRASE IT, BUT YOU DON'T
20 HAVE TO USE THOSE THINGS. I'M SURE WEBSTER HAS A
21 DEFINITION OF MITIGATING THAT DOESN'T INCLUDE THAT; I
22 MIGHT BE WRONG. WHAT DOES WEBSTER SAY? I'M SURE YOU'VE
23 LOOKED IT UP SINCE YOU'RE TALKING ABOUT EXPLAINING IT.

24 MR. HANCOCK: NO, SIR, I HAVEN'T LOOKED IT UP.
25 I'VE JUST LOOKED THROUGH THE CASES AND ---

1 THE COURT: LET'S GET BLACK'S LAW DICTIONARY.
2 SOMEBODY HAND ME BLACK'S LAW DICTIONARY AND LET'S SEE
3 WHAT BLACK'S SAYS.

4 MR. POPE: YOUR HONOR, AGAIN, YOU CAN ASK THEM
5 CAN THEY LISTEN TO AGGRAVATION, CAN THEY LISTEN TO
6 MITIGATION AND I DON'T CARE IF MR. HANCOCK SAYS, YOU
7 KNOW, THE BAD EVIDENCE THE STATE WILL SAY AND SOMETHING
8 GOOD ABOUT THE DEFENDANT OR SOME VARIATION OF THAT, IT'S
9 JUST THAT YOU CAN'T GET INTO WILL YOU LISTEN TO HOW OLD
10 HE WAS AND ALL OF THIS. THE SPECIFICS OF MITIGATION ARE
11 IMPROPER AT THIS STAGE OF THE TRIAL.

12 MR. HANCOCK: THEN, YOUR HONOR, BASICALLY WHAT
13 WE ARE DOING IS WE'RE HIDING STATUTORY MANDATED MATTERS
14 FROM THE JURY BECAUSE IF THEY DON'T KNOW WHAT MITIGATING
15 CIRCUMSTANCES THEY MAY HAVE TO CONSIDER SUCH AS IF YOU
16 ASK A JUROR WOULD YOU CONSIDER INTOXICATION AS A
17 MITIGATING CIRCUMSTANCE. IT CAN BE CONSIDERED AND THIS
18 IS THE ONLY TIME THAT INTOXICATION CAN BE CONSIDERED, AND
19 THAT PERSON SAYS, NO, I HAVE A RELIGIOUS PROBLEM WITH IT,
20 I WOULD NOT EVEN CONSIDER THAT. THEN THAT JUROR CANNOT
21 CONSIDER POSSIBLE MITIGATING CIRCUMSTANCES BECAUSE THAT
22 JUROR DOESN'T KNOW WHAT IT IS. WHEN I SAY MITIGATING
23 CIRCUMSTANCES, THAT JUROR IS SITTING THERE SAYING WHAT IS
24 IT.

25 SO, WHAT WE'RE DOING IS WE'RE QUALIFYING JURORS

1 THAT CANNOT CONSIDER WHAT THE LAW REQUIRES THEM TO
2 CONSIDER OR ASK THEM TO CONSIDER IN THE DEATH PENALTY
3 PHASE.

4 THE COURT: WHAT YOU'RE SAYING IS YOU WANT TO
5 FIND OUT WHETHER THEY WILL CONSIDER IT FAVORABLY, NOT
6 WHETHER THEY WILL CONSIDER IT?

7 MR. HANCOCK: IF THEY CANNOT CONSIDER IT, JUST
8 IF THEY CANNOT CONSIDER GIVING THE DEATH PENALTY, THEN
9 THEY MUST BE DISQUALIFIED.

10 THE COURT: I THINK IT'S A LITTLE MORE
11 DEFINITIVE THAN THAT.

12 (AFTER A PAUSE)

13 THE COURT: MITIGATING CIRCUMSTANCES, SUCH AS
14 DO NOT CONSTITUTE A JUSTIFICATION OR EXCUSE FOR THE
15 OFFENSE IN QUESTION BUT WHICH IN FAIRNESS AND MERCY MAY
16 BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF
17 MORAL CULPABILITY.

18 MR. HANCOCK: JUDGE, AGAIN, THAT MAY BE GENERIC
19 BUT IT DOESN'T TELL US WHAT THEY ARE DOING AS JURORS WHEN
20 THEY ARE IN A DEATH PENALTY CASE. IT IS TOTALLY UNIQUE
21 IN OUR LAW AND DOES LIST AGGRAVATING AND MITIGATING
22 CIRCUMSTANCES AND IT LISTS THEM SO THAT YOU MAY CONSIDER
23 IT. IF THE JURY DOES NOT KNOW THAT, THEN THEY DON'T KNOW
24 WHETHER THEY CAN FOLLOW THE LAW AS YOU GIVE IT TO THEM.

25 THE COURT: WELL, SHOW ME A SOUTH CAROLINA CASE

1 THAT SAYS YOU'RE RIGHT.

2 MR. HANCOCK: JUDGE, I DON'T THINK THERE IS A
3 SOUTH CAROLINA CASE THAT SAYS I'M RIGHT. I'M NOT SURE
4 THERE'S ANY SOUTH CAROLINA CASE THAT SAYS I'M WRONG. IT
5 SAYS SPECIFIC MITIGATING CIRCUMSTANCES HERE. AND I HAVE
6 JUST STARTED READING THIS CASE.

7 MR. POPE: YOUR HONOR, DEVOY VERSUS ILLINOIS IS
8 ALSO CITED IN HERE. WE'RE NOT DISPUTING THAT THEY CAN
9 CONSIDER MITIGATION, IT JUST SAYS THE SUPREME COURT DID
10 NOT HOLD THAT THE DEFENDANT WAS ENTITLED TO KNOW IF THE
11 JURY WOULD CONSIDER SPECIFIC MITIGATION.

12 THE PROBLEM WE RUN INTO, IT'S A SLIPPERY SLOPE,
13 AND THEN YOU START SAYING WELL, LIKE WHAT AGGRAVATION,
14 AND THEN YOU GET INTO HYPOTHETICALS WHICH YOU'RE NOT
15 SUPPOSED TO DO AND I SAY WELL IF I'VE GOT A CASE AND THE
16 GUY DID THIS, THIS AND THIS BUT HE WAS ON THIS, WHAT
17 WOULD YOU DO.

18 THE COURT: I'M GOING TO ALLOW THE DEFENSE TO
19 GO NO FURTHER THAN WHAT JUDGE ANDERSON DID IN HILL WHICH
20 IS PRETTY WELL OUTLINED ON PAGE 66 OF THIS OPINION, AND
21 THE FIRST SENTENCE BECAUSE AFTER THE FIRST SENTENCE THEY
22 START GETTING INTO EXAMPLES AND THEN THEY DO GET INTO
23 WHAT YOU'RE TALKING ABOUT. BUT I WILL ALLOW THE DEFENSE
24 TO USE THE DEFINITION OF MITIGATING CIRCUMSTANCES WHICH
25 WOULD BE THE FIRST SENTENCE OUT OF BLACK'S AND/OR JUDGE

1 ANDERSON, RALPH KING ANDERSON AS CONFIRMED BY THE SOUTH
2 CAROLINA SUPREME COURT IN WHAT APPEARS TO BE A 5-0
3 DECISION, 1998, SUMMER OF '98.

4 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
5 MR. HANCOCK ALSO TALKED ABOUT THE JURY OUGHT TO HAVE THE
6 RIGHT TO KNOW THE VARIOUS STATUTORY THINGS WHICH INCLUDE
7 JUST A WHOLE LAUNDRY LIST OF THINGS THAT AREN'T PERTINENT
8 TO JURY SERVICE AT THIS TIME.

9 YOUR HONOR, I WOULD SUBMIT THAT THE CASE LAW
10 HAS HELD THAT THE JURY INSTRUCTION, THE EDUCATION ON THE
11 LAW, COMES FROM YOU. IT COMES FROM YOUR JURY
12 INSTRUCTION. IT'S NOT THE TIME FOR US TO GIVE THE JURY
13 AN EDUCATIONAL CLASS.

14 MR. HANCOCK: YOUR HONOR, I WOULD ASK HOW FAR
15 THAT LIMITS US. CAN WE JUST GIVE THE GENERIC -- CAN WE
16 SAY ARE YOU AWARE THAT YOU ARE IN A CASE OF HOMICIDE, AND
17 THEN THAT'S IT? WE CAN'T DESCRIBE THE ELEMENTS OF MURDER
18 AND WHAT IT ACTUALLY IS AND ASK THEM IF THEY KNOW WHAT
19 MURDER IS?

20 THE COURT: NO, I'M NOT GOING TO ALLOW YOU TO
21 GO INTO THAT. WE ARE TRYING TO FIND OUT WHETHER THEY
22 WILL BE FAIR AND IMPARTIAL.

23 MR. HANCOCK: WE'RE TRYING TO FIND OUT, JUDGE,
24 AND JUST AGAIN, I'M OBJECTING, I'M ASKING TO BE ABLE TO
25 GO FURTHER. WE'RE BASICALLY ASSUMING THAT THESE PEOPLE

1 KNOW WHAT CAPITAL MURDER IS AND READ THE STATUTE THAT HAS
2 BEEN DEFINED AND RE-DEFINED BY OUR SUPREME COURT. WE ARE
3 ASSUMING THAT THEY KNOW WHAT AGGRAVATING AND MITIGATING
4 CIRCUMSTANCES THEY MAY HAVE TO RULE ON ---

5 THE COURT: NO, WE'RE NOT ASSUMING THAT. I'M
6 NOT ASSUMING THAT.

7 MR. HANCOCK: WELL THEN IF THEY DON'T KNOW,
8 AGAIN, MY REASONING IS THEN HOW CAN THEY BE QUALIFIED IF
9 THEY DON'T KNOW WHAT THEY ARE GOING TO RULE ON EVENTUALLY
10 WHEN WE'RE TRYING TO GET TO ITS FAIRNESS IN A TRIAL AND A
11 JUROR THAT CAN GIVE A TRUE AND JUST OPINION AND INFORMED.

12 JUDGE, I'M JUST SAYING THAT I BELIEVE YOU ARE
13 TYING OUR HANDS IF WE CAN'T EVEN DISCUSS WHAT WE'RE
14 LOOKING FOR WITH THE JURORS.

15 THE COURT: WELL, I'M NOT. I DON'T BELIEVE
16 THAT. I DON'T BELIEVE THAT YOU'RE ENTITLED TO HAVE A
17 JURY PROFILE AND I'M GOING TO STICK TO WHAT I UNDERSTAND
18 THE LAW TO BE AND IF THE SUPREME COURT OR SOMEONE ELSE
19 CHANGES IT, THEY CHANGE IT. ANYTHING ELSE?

20 MR. HANCOCK: ONE OTHER, YOUR HONOR. AT THIS
21 POINT IN TIME IS THE JURY GOING TO BE EXPLAINED, ARE WE
22 GOING TO EXPLAIN TO THEM THAT LIFE IN THE STATE OF SOUTH
23 CAROLINA AS DEFINED STATUTORILY IS LIFE WITHOUT THE
24 POSSIBILITY OF PAROLE?

25 THE COURT: NO, NOT AT THIS TIME.

1 MR. HANCOCK: SO WE WILL NOT BE ABLE TO FRAME
2 LIFE IN THAT MANNER BEFORE THE JURY -- I MEAN BEFORE THE
3 POTENTIAL JURY MEMBERS ARE DRAWN?

4 THE COURT: THEY'RE NOT GOING TO BE CHARGED
5 THAT, I DON'T BELIEVE, UNLESS FUTURE DANGEROUSNESS IS
6 MADE A PART OF THE CASE. SO, I'M NOT GOING TO LET YOU GO
7 INTO THAT.

8 MR. HANCOCK: YOUR HONOR, I WOULD SUBMIT TO THE
9 COURT THAT THERE ARE CERTAIN CASES, AND I DON'T WANT TO
10 PROLONG THIS, BUT THERE ARE CERTAIN CASES THAT -- I THINK
11 POPE V. COMMONWEALTH IS ONE, AND WE'D HAVE TO LOOK THAT
12 UP, WHERE THE VERY NATURE OF THE CRIME ITSELF, THE
13 BRUTALITY, THE KILLING OF PEOPLE AND MULTIPLE PEOPLE
14 WITHOUT THEM BEING ARMED, TO DO IT WITH WEAPONS AND IN
15 THIS CASE POSSIBLY THREE WEAPONS AND THE PURE BRUTALITY
16 OF THE CRIME ITSELF BRINGS FUTURE DANGEROUSNESS INTO
17 EFFECT, JUST THE CRIME ITSELF AS IT IS PRESENTED AND THIS
18 IS A PARTICULARLY HEINOUS CRIME AND I BELIEVE THAT IT
19 INJECTS JUST BY THE NATURE OF THE CRIME THAT THE PERSON
20 WOULD BE A DANGER TO THE COMMUNITY FOR HAVING COMMITTED
21 SUCH A HEINOUS CRIME, THAT IT IS AUTOMATICALLY INHERENT
22 IN THIS CRIME AS IT IS PRESENTED AND WILL BE PRESENTED TO
23 THE JURY BY GRAPHIC EVIDENCE.

24 THE COURT: ARE YOU GOING TO TELL THE JURY
25 THAT?

1 MR. HANCOCK: SIR?

2 THE COURT: ARE YOU PLANNING ON TELLING THE
3 JURY THAT, BECAUSE I'M NOT.

4 MR. HANCOCK: I'M JUST SAYING, YOUR HONOR, THAT
5 I BELIEVE THAT'S GOING TO INTERJECT FUTURE DANGEROUSNESS.

6 THE COURT: WELL, I'M NOT GOING TO LET YOU GO
7 INTO THAT AT THIS POINT. ALL RIGHT, ANYTHING FURTHER?

8 MR. HANCOCK: OH, I WOULD LIKE -- I KEEP GOING
9 ON BECAUSE I WANT THIS TO GO AS QUICKLY AS POSSIBLE. ARE
10 WE DEFINING AT THIS TIME THAT A LIFE SENTENCE IS DEFINED
11 AS IT IS IN A PORTION OF THE STATUTE, THAT IT MEANS LIFE
12 AS IT IS ORDINARILY TAKEN AND IN SOUTH CAROLINA I BELIEVE
13 IN THE MORTALITY, MORTUARY TABLES THAT IT IS NOW 73 YEARS
14 OF AGE, SO WE ARE TALKING ABOUT A MINIMUM OF 49 YEARS IN
15 JAIL.

16 MR. POPE: YOUR HONOR, I OBJECT. THIS IS
17 ABSURD TO GET -- THE WHOLE ISSUE IS NOT JURY EDUCATION
18 NOW. THE WHOLE ISSUE IS JUST TO QUALIFY THE JURY ---

19 THE COURT: I DENY THE MOTION. I UNDERSTAND HE
20 WANTS TO PUT EVERYTHING ON THE RECORD AND I'M GOING TO
21 LET HIM BECAUSE IT'S THE NATURE OF THESE CASES THAT WE
22 NEED EVERYTHING ON THE RECORD. BUT WE ARE GOING TO GO
23 FORWARD WITH THE PARAMETERS OF JURY QUALIFICATIONS AS I
24 HAVE DONE IT IN THREE OR FOUR DEATH PENALTY CASES THAT I
25 HAVE PRESIDED OVER AND THAT I UNDERSTAND TO BE THE

1 PARAMETERS AS OUTLINED BY OUR COURTS. THAT IS, WE'RE
2 LOOKING FOR SOMEONE WHO IS FAIR AND IMPARTIAL AND SOMEONE
3 WHO IS DEATH PENALTY QUALIFIED.

4 MR. HANCOCK: THAN YOU VERY MUCH, YOUR HONOR.

5 MR. POPE: YOUR HONOR, AS FAR AS THE VARIOUS
6 HOUSEKEEPING SPECIFICS THAT YOU LEFT OPEN, YOU KNOW, SOME
7 OF THE THINGS ABOUT THE QUESTIONS ABOUT MEDIA AND ALL THE
8 DIFFERENT QUESTIONS, MY ASSUMPTION IS THE COURT WILL DEAL
9 WITH THAT BEFORE WE EVER BEGIN OUR QUESTIONS, SO OUR ---

10 THE COURT: I'VE GOT MY OWN LITTLE LIST RIGHT
11 HERE. IF I LEAVE ANYTHING OUT, LET ME KNOW.

12 MR. POPE: THANK YOU, SIR.

13 THE COURT: ANYTHING FURTHER FROM THE STATE?

14 MR. POPE: NO, SIR, YOUR HONOR.

15 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

16 MR. HANCOCK: NOTHING AT THIS TIME, YOUR HONOR.

17 MR. POPE: YOUR HONOR, I UNDERSTAND THE MEDIA
18 WON'T PUBLISH ANY JURORS OR ANYTHING BUT BASED ON JURY
19 COMFORT, IT MIGHT BE APPROPRIATE IF THEY SIT IN THE
20 AUDIENCE.

21 THE COURT: I DON'T MIND THEM SITTING OVER THERE.
22 I'M GOING TO TELL THEM THAT THEY CAN'T BE ON T.V.

23 ALL RIGHT, WE ARE READY FOR PANEL A, FIRST JUROR
24 NUMBER 206, DONNA PARLER.

25 MR. POPE: YOUR HONOR, WHILE WE'RE WAITING ON THE

1 JUROR, I HAVEN'T DISCUSSED IT WITH MR. HANCOCK OR MR. BOYD
2 BUT BY THE NATURE OF THE SYSTEM, SOMEBODY HAS GOT TO FIRST
3 ONE TIME AND SOMEBODY ELSE THE NEXT. NORMALLY WE JUST LET
4 THEM GO FIRST AND THEN WE'LL GO FIRST AND ROTATE BACK AND
5 FORTH.

6 MR. HANCOCK: THAT'S FINE.

7 DONNA PARLER, JUROR NUMBER 206, WHITE FEMALE, WAS
8 QUESTIONED AS FOLLOWS:

9 QUESTIONS BY THE COURT:

10 Q. MS. PARLER, THIS COURTROOM IS A LITTLE FUNNY THE
11 WAY IT IS SET UP, AND I WISH I COULD SEE YOU
12 BETTER. FIRST I WANT YOU TO BE COMFORTABLE.
13 FIRST I'LL TELL YOU A FEW THINGS, AND THEN I'M
14 GOING TO ASK YOU A FEW QUESTIONS AND THEN THE
15 ATTORNEYS WILL HAVE A RIGHT TO ASK YOU SOME
16 QUESTIONS.

17 Q. FIRST, YOU WON'T NOTICE ANY CAMERAS IN THE
18 COURTROOM TODAY BUT UNDER CERTAIN CIRCUMSTANCES
19 THERE MAY BE SOMEBODY COVERING THIS CASE, BUT
20 THEY CAN'T COVER YOU. I WANT YOU TO BE AWARE
21 THAT THERE IS NOTHING ABOUT A JUROR THAT CAN BE
22 PUBLICIZED, YOUR NAME, YOUR IDENTITY OR YOUR
23 PHOTOGRAPH OR ANYTHING LIKE THAT. SO, IF YOU
24 SEE CAMERAS OR ANYTHING OR REPORTERS, YOU'RE NOT
25 THE SUBJECT OF NEWS REPORTS.

Q. NOW, YOU FILLED IN A QUESTIONNAIRE?

A. I DID.

Q. IS THERE ANYTHING YOU NEED TO CHANGE ON IT OR IS IT ACCURATE?

A. IT'S ACCURATE.

Q. DID YOU HAVE A CHANCE OR HAD THEY NOT HAD THE WITNESS LIST IN THERE YET?

A. I HAVE NOT SEEN IT.

Q. THE COURT REPORTER WILL HAND YOU ONE. IF YOU WILL TAKE A SECOND AND GO THROUGH THAT AND IF YOU SEE ANYBODY ON THERE THAT YOU KNOW IF YOU WILL JUST TELL US.

(AFTER A PAUSE)

A. YOU MEAN WHETHER I KNOW THEM PERSONALLY OR KNOW OF THEM?

Q. IF YOU KNOW THEM PERSONALLY; IF YOU ARE RELATED OR IF YOU ARE A CLOSE PERSONAL FRIEND OR ACQUAINTANCE.

A. THERE IS NO ONE HERE THAT I'M A PERSONAL FRIEND OF.

Q. OKAY. NOW, THIS CASE HAS RECEIVED SOME PUBLICITY. HAVE YOU READ ABOUT IT OR HEARD ABOUT IT FROM ANY SOURCE?

A. I HAVE SEEN THE WRITE UP IN THE HERALD NEWSPAPER.

Q. HAVE YOU, BASED ON THAT, FORMED OR EXPRESSED ANY
OPINION ABOUT THIS CASE?

A. NO.

Q. EVEN HAVING READ THAT ARTICLE, WOULD YOU BE ABLE
TO BASE YOUR VERDICT SOLELY ON WHAT YOU HEAR
HERE IN THIS COURTROOM?

A. YES, I WOULD.

Q. WOULD YOU BE ABLE TO BE FAIR AND IMPARTIAL TO
BOTH THE STATE AND THE DEFENDANT IN THE TRIAL OF
THIS CASE?

A. YES, I WOULD.

Q. AND THAT WOULD BE UNINFLUENCED BY ANYTHING THAT
YOU HAD HEARD PRIOR TO TODAY?

A. THAT IS CORRECT.

Q. AND HAVE YOU DISCUSSED THE CASE WITH ANYONE?

A. I TEACH SCHOOL IN ROCK HILL AND WHEN THIS EVENT
HAPPENED, TWO YEARS AGO? WHENEVER IT HAPPENED,
THERE ARE TWO TEACHERS AT MY SCHOOL THAT KNEW
THE DEFENDANT AS A CHILD. I THINK MAYBE ONE OF
THE TEACHER'S PARENTS WAS NEIGHBORS OR HAD BEEN
NEIGHBORS AND IN A CASUAL PASSING THEY MENTIONED
TO ME THAT THEY KNEW THE DEFENDANT.

Q. OR NOTHING THAT WOULD INFLUENCE YOU ONE WAY OR
THE OTHER?

A. NO.

1 Q. IN THE JURY ROOM, OR THERE WAS SUPPOSED TO BE
2 AND WE'VE HAD A LITTLE BIT OF LOGISTIC PROBLEMS,
3 I'M SORRY, A LIST THAT HAD THREE JUROR TYPES.
4 HAVE YOU HAD A CHANCE TO READ THAT YET?

5 A. NO, I HAVEN'T.

6 Q. I'M GOING TO ASK YOU TO READ IT NOW AND I
7 APOLOGIZE.

8 (AFTER A PAUSE.)

9 Q. NOW I AM GOING TO REMIND YOU THAT YOU ARE STILL
10 UNDER OATH AND I'M GOING TO ASK YOU SOME
11 QUESTIONS AND THESE ARE NOT MADE FOR THE PURPOSE
12 OF INVADING YOUR PRIVACY OR EMBARRASSING YOU OR
13 SHINING ANY PARTICULAR LIGHT ON YOU, BUT DUE TO
14 THE NATURE OF THESE PROCEEDINGS AND THE CHARGES
15 AGAINST MR. ROBERTSON, WE NEED TO GO INTO
16 CERTAIN MATTERS.

17 THERE ARE NO RIGHT OR WRONG ANSWERS. THEY ARE
18 OPEN, HONEST AND FULL ANSWERS. NOBODY IS
19 CHALLENGING ANY VIEWS YOU MAY HOLD; WE SIMPLY
20 NEED TO ARRIVE AT AND UNDERSTAND CERTAIN VIEWS
21 YOU MAY HAVE ON MATTERS PERTINENT TO THIS CASE.
22 HERE AT THIS TIME WE WILL BE POSSIBLY TALKING
23 ABOUT, OR WE WILL BE TALKING AT TIMES ABOUT THE
24 POSSIBLE PENALTY THAT COULD BE IMPOSED IN THIS
25 CASE. THAT IS, THE STATE IS SEEKING THE DEATH

1 PENALTY IN THIS CASE.

2 THAT DOES NOT INDICATE IN ANY FASHION THAT MR.
3 ROBERTSON IS GUILTY. HE IS PRESUMED INNOCENT OF
4 THE CHARGE AND FIRST THIS CASE WOULD BE TRIED IN
5 TWO STAGES AND IN THE FIRST STAGE THE JURY WOULD
6 HAVE TO DETERMINE UNANIMOUSLY THAT HE IN FACT
7 WAS GUILTY OF THESE CHARGES. AND ONLY IF THEY
8 DID THAT WOULD THE CASE MOVE INTO THE SECOND
9 PHASE WHERE THE PENALTY WHICH COULD INCLUDE THE
10 PENALTY OF DEATH WOULD BE THE SUBJECT MATTER FOR
11 CONSIDERATION. BUT HE IS PRESUMED INNOCENT AND
12 THE FACT THAT WE ARE TALKING ABOUT THE SECOND
13 PHASE IS OF NO IMPACT ON THE QUESTION OF HIS
14 GUILT. DO YOU UNDERSTAND THAT?

15 A. I DO.

16 Q. I AM GOING TO ASK YOU TO ANSWER WITH VERBAL
17 ANSWERS AS MUCH AS YOU CAN BECAUSE WE HAVE TO
18 MAKE A RECORD OF THIS.

19 A. DO I NEED TO SPEAK INTO THIS MICROPHONE OR DO I
20 JUST TALK TO YOU?

21 Q. YOU CAN SPEAK INTO THAT. NOW, I HAVE LET YOU
22 LOOK AT THIS JUROR SHEET AND IT HAS THREE JUROR
23 TYPES ON IT. DO YOU FEEL LIKE YOU FIT INTO ONE
24 OF THESE CATEGORIES?

25 A. YES, I DO.

1 Q. WHICH ONE?

2 A. THE LAST ONE.

3 Q. ALL RIGHT. THIS IS THE TYPE JUROR WHO ALTHOUGH
4 THE JURY HAS DETERMINED THE GUILT OF THE
5 DEFENDANT, THIS JUROR WOULD BE ONE WHO WOULD NOT
6 HAVE MADE UP THEIR MIND IN ADVANCE CONCERNING
7 THE PUNISHMENT. THAT IS, YOU ARE THE TYPE OF
8 JUROR, YOU'RE TELLING ME, THAT WOULD NEED TO
9 HEAR THE FACTS AND CIRCUMSTANCES IN BOTH
10 AGGRAVATION AND MITIGATION AND WOULD WANT TO
11 LISTEN AND FOLLOW THE LAW AS I AS TRIAL JUDGE
12 CHARGED YOU BEFORE YOU WOULD MAKE A DECISION
13 REGARDING PUNISHMENT.

14 AND THIS WOULD BE THE TYPE OF JUROR THAT BASED
15 ON THE FACTS PRESENTED, IF IT WAS SO WARRANTED,
16 YOU COULD BRING IN A VERDICT OF LIFE
17 IMPRISONMENT; OR, IF FACTS WARRANTED, COULD
18 BRING IN A VERDICT FOR THE DEATH PENALTY. IS
19 THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. NOW, YOU AS A TRIAL JUROR IN THIS CASE WILL BE
22 CONSIDERING THE EVIDENCE PRESENTED. YOU WILL BE
23 ONE OF THE JUDGES OF THE FACTS. THE TRIAL JUDGE
24 HAS NOTHING TO DO WITH THE FACTS, THAT'S UP TO
25 THE TRIAL JURY.

1 I WILL BE THE JUDGE OF THE LAW. I WILL GIVE YOU
2 CERTAIN LEGAL PRINCIPLES.

3 NOW COULD YOU IN THIS CASE AND AS A JUROR BASE
4 YOUR VERDICT IN THIS CASE ON WHAT TRANSPIRES --
5 I THINK I MAY HAVE ALREADY ASKED YOU THIS A
6 LITTLE BIT ANYWAY -- IN THE COURTROOM; THAT IS,
7 THE EVIDENCE, THE TESTIMONY AND PHYSICAL THINGS,
8 PHOTOGRAPHS OR WHATEVER THAT MAY COME INTO
9 EVIDENCE, CONSIDER THOSE ALONG WITH THE LAW AND
10 RETURN A FAIR VERDICT?

11 A. YES, I COULD.

12 Q. NOW IF YOU FOUND AS A MEMBER OF THE JURY, THE
13 JURY FOUND UNANIMOUSLY THAT THE JURY WAS IN FACT
14 GUILTY OF MURDER, YOU DO UNDERSTAND THAT WE
15 WOULD MOVE INTO THE SECOND PENALTY PHASE OF THE
16 TRIAL. DO YOU UNDERSTAND THAT?

17 A. YES, I DO.

18 Q. AND IN THAT SITUATION COULD YOU LISTEN TO THE
19 LAW AND THE FACTS THAT ARE PRESENTED AT THAT
20 TIME AND RETURN A VERDICT OF LIFE IMPRISONMENT
21 IF THE FACTS AND THE LAW IN YOUR MIND WARRANTED
22 SUCH A VERDICT?

23 A. YES, I COULD.

24 Q. IF YOU WERE A JUROR IN THAT SITUATION AND
25 DEPENDING ON THE FACTS AND CIRCUMSTANCES AND THE

1 LAW AS IT IS INSTRUCTED, COULD YOU RETURN A
2 VERDICT OF DEATH IF YOU FELT THOSE FACTS AND THE
3 LAW WARRANTED IT?

4 A. YES, I COULD.

5 Q. ALL RIGHT; MR. POPE, ANY QUESTIONS?

6 QUESTIONS BY MR. POPE:

7 Q. MS. PARLER, I'M TOMMY POPE; I'M THE SOLICITOR
8 HERE IN YORK COUNTY. MR. KEVIN BRACKETT, MY
9 DEPUTY SOLICITOR, WILL BE ASSISTING ME WITH THE
10 CASE.

11 AS THE JUDGE, I THINK, EXPLAINED, YOU'RE NOT ON
12 TRIAL. I KNOW IT FEELS LIKE IT PUTTING YOU IN
13 THE BOX NOW, BUT I HAVE JUST A COUPLE OF
14 QUESTIONS TO ASK YOU. ONE, I SAW YOU HAVE
15 SERVED ON JURY DUTY PREVIOUSLY?

16 A. A LONG TIME AGO. IT WAS AT THE COURTHOUSE IN
17 YORK.

18 Q. THE JUDGE KIND OF EXPLAINED TO YOU AND I WANT TO
19 MAKE SURE YOU UNDERSTAND, AS HE SAID WE'RE
20 TALKING ABOUT PENALTY BUT THE FIRST -- THERE ARE
21 TWO PHASES, IT'S CALLED A BIFURCATED TRIAL.
22 THERE ARE TWO PHASES. THE FIRST IS JUST ABOUT
23 GUILT AND, OF COURSE, THE DEFENDANT IS INNOCENT
24 UNTIL PROVEN GUILTY. AND THE SECOND IS ABOUT
25 THE PENALTY.

1 SO YOU UNDERSTAND THAT WE'VE GOT TO DEAL WITH
2 THE FIRST CASE BEFORE WE EVER GET TO THE SECOND
3 CASE BUT OBVIOUSLY WE HAVE TO TALK ABOUT IT,
4 OKAY?

5 A. UH HUH.

6 Q. SO AS I UNDERSTOOD WHAT YOU TOLD THE JUDGE,
7 YOU'RE THE TYPE OF JUROR THAT YOU WOULDN'T MAKE
8 YOUR MIND UP BASED ON NEWSPAPER, BASED ON
9 FRIENDS, BASED ON CO-WORKERS OR ANYTHING, YOU'D
10 BASE IT ON WHAT YOU HEARD IN THE JURY BOX. IS
11 THAT RIGHT?

12 A. YES.

13 Q. AND BASED ON THAT EVIDENCE IF YOU THOUGHT THE
14 STATE HAD PROVED THEIR CASE, YOU'D FIND HIM
15 GUILTY; IF YOU THOUGHT WE DIDN'T, YOU'D FIND HIM
16 NOT GUILTY; IS THAT CORRECT?

17 A. THAT'S RIGHT.

18 Q. BECAUSE, OF COURSE, YOU KNOW WE HAVE THE BURDEN
19 OF PROOF?

20 A. RIGHT.

21 Q. THEN IF WE GET TO THE SECOND PHASE, THE PENALTY
22 PHASE, OF COURSE THAT'S WHEN YOU WOULD COME AND
23 YOU WOULD HEAR WHAT WE CALL EVIDENCE IN
24 AGGRAVATION AND THAT'S THE STATE PUTTING UP
25 EVIDENCE OF WHY THE STATE BELIEVES THE DEATH

1 PENALTY IS APPROPRIATE.

2 LIKEWISE, YOU WOULD HEAR EVIDENCE IN MITIGATION
3 IF THE DEFENDANT SO CHOOSES; OF COURSE, THE
4 DEFENDANT DOESN'T HAVE TO PUT UP ANYTHING, BUT
5 THAT MITIGATION WOULD BE THINGS THAT WOULD
6 LESSEN HIS CULPABILITY OR LESSEN THE REASONS
7 THAT THERE WOULD BE MORE LIKELY A LIFE SENTENCE.
8 DO YOU UNDERSTAND THAT?

9 A. YES, I DO.

10 Q. AND AS I UNDERSTAND, YOU'RE THE TYPE OF JUROR
11 THAT YOU WOULD BE WILLING TO LISTEN TO
12 EVERYTHING THE STATE SAYS AND EVERYTHING THE
13 DEFENSE SAID IF THEY CHOSE TO BEFORE YOU MADE A
14 DECISION. IS THAT RIGHT?

15 A. THAT'S RIGHT.

16 Q. OKAY. AND AFTER HEARING ALL OF THAT IF YOU
17 THOUGHT THAT LIFE WAS THE APPROPRIATE SENTENCE,
18 AFTER MAKING YOUR OWN DECISION, YOU COULD GIVE
19 LIFE AFTER HEARING EVERYTHING?

20 A. THAT'S RIGHT.

21 Q. AND LIKEWISE, IF YOU THOUGHT DEATH WAS THE
22 APPROPRIATE DECISION AFTER HEARING EVERYTHING,
23 YOU COULD DECIDE DEATH?

24 A. THAT'S RIGHT.

25 Q. OKAY. AS PART OF OUR PROCEDURE IN THE DEATH

1 PENALTY ONCE YOU'VE HEARD THE EVIDENCE, IT'S
2 PART OF OUR PROCEDURE THAT IF THE JURY DECIDES
3 THAT LIFE IS THE APPROPRIATE SENTENCE, THE
4 FOREMAN, WHOEVER -- I SAY FOREMAN, FOREPERSON
5 SIGNS THE PAPERWORK THAT SAYS THIS IS THE JURY'S
6 SENTENCE. DO YOU UNDERSTAND THAT?

7 A. I DO.

8 Q. BUT LIKEWISE A DEATH PENALTY IS A LITTLE BIT
9 DIFFERENT. IN A DEATH PENALTY IF ALL THE JURORS
10 DETERMINE THAT DEATH IS APPROPRIATE AND, OF
11 COURSE, IT HAS TO BE UNANIMOUS BUT IF ALL THE
12 JURORS DETERMINE AFTER HEARING EVERYTHING THAT
13 DEATH IS APPROPRIATE, EACH INDIVIDUAL JUROR HAS
14 TO SIGN THEIR NAME TO A DOCUMENT THAT GIVES
15 DEATH IN THIS CASE. YOU KNOW, THAT SAYS THIS IS
16 MY DECISION AND I SAY AFTER HEARING EVERYTHING
17 THAT DEATH IS WHAT SHOULD BE GIVEN. AND IT'S
18 NOT A RECOMMENDATION. THE COURT FOLLOWS WHAT
19 THE JURY SAYS. IF YOU THOUGHT THAT WAS
20 APPROPRIATE IN THE CASE, COULD YOU SIGN YOUR
21 NAME?

22 A. UH, LET'S SEE. I GUESS IF THE CIRCUMSTANCES OF
23 THE CASE WERE AGGRAVATED ENOUGH TO WARRANT THE
24 DEATH PENALTY, I COULD. I'VE NEVER HAD A
25 DECISION LIKE THIS PLACED IN MY HANDS BEFORE

1 AND, YOU KNOW, YOU CAN TALK ABOUT, YES, YOU
2 KNOW, I BELIEVE IN THE DEATH PENALTY BUT WHEN IT
3 COMES DOWN TO ACTUALLY MAKING THAT DECISION,
4 I'VE NEVER HAD TO DO IT BEFORE AND IT WOULD
5 REQUIRE A LOT OF THOUGHT AND CONVERSATION AND
6 DELIBERATION.

7 IT WOULD BE HARD, BUT I'M SAYING IF THE
8 CIRCUMSTANCES WERE AGGRAVATED ENOUGH TO WARRANT
9 A DEATH SENTENCE, THEN I COULD SIGN MY NAME.

10 Q. OKAY. AND, AGAIN, I GO THROUGH THIS WHOLE
11 LITANY, IT SOUNDS LIKE I'M MAKING IT LIKE
12 SIGNING A CHECK. I UNDERSTAND, YOU KNOW, THAT
13 IT IS TRULY A SIGNIFICANT DECISION.
14 IF YOU THOUGHT THAT DEATH WASN'T APPROPRIATE
15 AFTER HEARING EVERYTHING, COULD YOU THEN REFUSE
16 TO SIGN? IT DOESN'T MATTER IF EVERYBODY ELSE
17 SIGNS IT, IF YOU THOUGHT IT WASN'T THE RIGHT
18 THING TO DO, COULD YOU JUST NOT SIGN IT?

19 A. IF IN MY HEART I FELT LIKE IT WAS NOT THE
20 APPROPRIATE SENTENCE, I COULDN'T SIGN IT.

21 Q. SO WHAT YOU'RE TELLING ME, I DON'T WANT TO PUT
22 WORDS IN YOUR MOUTH, BUT WHAT YOU'RE TELLING ME
23 IS YOU'RE GOING TO DO WHAT'S RIGHT EITHER WAY
24 BASED ON YOUR HEART AND YOUR CONVICTIONS OF
25 HEARING THE CASE, HEARING BOTH SIDES AND YOU

1 WILL MAKE A DETERMINATION. IF THAT
2 DETERMINATION IS LIFE, YOU'LL SAY SO. IF IT'S
3 DEATH, YOU'LL SAY SO AND YOU'LL SIGN IT IF YOU
4 THINK THAT'S THE RIGHT VERDICT?

5 A. THAT'S CORRECT.

6 Q. THANK YOU, MS. PARLER.

7 THE COURT: MR. HANCOCK?

8 QUESTIONS BY MR. HANCOCK:

9 Q. I'M BILL HANCOCK; I'M THE ATTORNEY FOR THE
10 DEFENDANT, JIMMY ROBERTSON WHO IS SEATED HERE.
11 THIS IS JIM BOYD CO-COUNSEL IN THIS CASE. I HAVE
12 LISTENED TO YOUR ANSWERS IN THIS PARTICULAR CASE
13 AND, OF COURSE, YOU KNOW THAT YOU WERE REQUIRED
14 TO FILL OUT A QUESTIONNAIRE WHICH I ALSO HAVE
15 BEFORE ME.

16 NOW YOU INDICATED THAT YOU WOULD BE ABLE TO SIGN
17 FOR THE DEATH PENALTY IF THIS WAS IN FACT FOUND
18 IN THAT CASE AND ACCORDING TO THE FACTS AND
19 CIRCUMSTANCES OF THAT CASE. IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. NOW YOU UNDERSTAND THAT WE'RE FLIP-FLOPPING.
22 THE FIRST PHASE IS THE GUILT PHASE WHERE A
23 PERSON HAS TO BE FOUND GUILTY OF THE CRIME AND
24 THEN AFTER THAT YOU GO TO ANOTHER TRIAL ---

25 A. I UNDERSTAND THAT.

1 Q. --- AT WHICH YOU SIT AS A JUROR AND YOU WOULD
2 FIND EITHER THE DEATH PENALTY OR YOU COULD FIND
3 FOR LIFE IMPRISONMENT.

4 A. UH HUH.

5 Q. IS THAT CORRECT?

6 A. YES.

7 Q. AND DO YOU FEEL THAT, SAY IN THE CASE THAT WE
8 HAVE HERE, WE HAVE TWO MURDERS, JIMMY IS ACCUSED
9 OF KILLING BOTH OF HIS PARENTS AND YOU HAVE
10 HEARD THAT BECAUSE YOU WERE DOWN IN THE JURY
11 ROOM. IS THAT CORRECT, MA'AM; YOU UNDERSTAND
12 THAT.

13 A. THAT'S RIGHT.

14 Q. DO YOU FEEL THAT IN THAT CASE THAT YOU COULD
15 FIND IT IN YOUR HEART POSSIBLY FROM THE FACTS
16 AND CIRCUMSTANCES TO PUT SOMEONE IN PRISON FOR
17 LIFE?

18 MR. POPE: YOUR HONOR, I WOULD OBJECT TO THE FORM
19 OF THE QUESTION. YOU DON'T GET INTO SPECIFIC MITIGATION OR
20 AGGRAVATION, YOU HAVE TO ASK CAN SHE CONSIDER BOTH ---

21 THE COURT: I OVERRULE YOUR OBJECTION ON THAT
22 PARTICULAR QUESTION.

23 Q. AND KNOWING THAT HE JUST KILLED HIS MOTHER AND
24 HIS FATHER, THEN COULD YOU, UNDER THE PROPER SET
25 OF FACTS AND CIRCUMSTANCES, VOTE AGAINST ALL

1 OTHERS FOR A SENTENCE OF LIFE IN PRISON FOR THIS
2 YOUNG MAN?

3 A. WELL, IT WOULD DEPEND ON THE EVIDENCE THAT WAS
4 PRESENTED IN THE SECOND TRIAL. IS THAT WHAT
5 YOU'RE SAYING?

6 Q. YES, MA'AM.

7 A. IN THE SECOND TRIAL, THE EVIDENCE AND THE FACTS
8 THAT YOU PRESENTED.

9 Q. SO ARE YOU TELLING ME, AND I'M NOT TRYING TO PUT
10 WORDS IN YOUR MOUTH, I'M JUST TRYING TO
11 UNDERSTAND WHAT YOU'RE SAYING, ARE YOU TELLING
12 ME THAT YOU COULD CONSIDER ALL AGGRAVATING
13 CIRCUMSTANCES?

14 A. YES.

15 Q. AND DO YOU UNDERSTAND WHAT AGGRAVATING
16 CIRCUMSTANCES ARE IN A CAPITAL CASE?

17 A. WHAT MIGHT PRECIPITATE THE ACTION.

18 Q. WELL, COULD YOU -- SO, YOU REALLY DON'T KNOW
19 WHAT WE'RE TALKING ABOUT WHEN WE'RE SAYING
20 AGGRAVATING CIRCUMSTANCES IN A CAPITAL MURDER
21 CASE DO YOU, MA'AM?

22 A. WHAT MIGHT CAUSE THE DEFENDANT TO ACT THE WAY HE
23 DID?

24 Q. AGAIN, AND I'M NOT TRYING TO TRIP YOU UP. I'M
25 JUST LISTENING TO YOUR ANSWERS, OKAY?

1 A. SO, I DON'T UNDERSTAND?

2 Q. AND WHEN WE SAY MITIGATING FACTORS, SOMETHING
3 THAT WOULD MITIGATE; DO YOU UNDERSTAND THE
4 DEFINITION OF THE WORD MITIGATION?

5 A. NO, I DON'T.

6 Q. DO YOU CONSIDER YOURSELF A STRONG PERSON?

7 A. YES, I DO.

8 Q. AND YOU HAVE INDICATED TO SOLICITOR POPE THAT
9 YOU COULD SIGN THE DEATH PENALTY AS AGAINST ALL
10 OTHERS -- IF EVERYONE ELSE IN THE JURY BOX
11 WANTED TO VOTE FOR LIFE BUT YOU FELT THAT YOU
12 SHOULD VOTE FOR DEATH, THEN YOU COULD DO THAT?

13 A. YES, I COULD.

14 Q. AND LIKEWISE, EVEN IN THE MURDER OF TWO PARENTS,
15 YOU HAVE INDICATED THAT YOU AGAINST ALL OTHERS
16 IF THEY WANTED TO SENTENCE HIM TO THE DEATH
17 PENALTY, THEN YOU COULD IF IT WAS IN YOUR HEART,
18 PROVIDE THE YOUNG MAN WITH A LIFE SENTENCE
19 ACCORDING TO THE LAW AND THE FACTS?

20 A. WHATEVER MY CONSCIENCE TOLD ME TO DO BASED ON
21 THE LAW AND THE FACTS.

22 Q. YOU WOULD GO WITH THE LAW AND THE FACTS IN THAT
23 PARTICULAR CASE; IS THAT RIGHT?

24 A. YES, SIR.

25 Q. JUST AS YOU CAN BRIEFLY POSSIBLY TELL ME IF I

1 ASK YOU RIGHT QUICKLY AND DO IT IF YOU COULD IN
2 TWO SENTENCES, WHAT ARE YOUR THOUGHTS ON THE
3 DEATH PENALTY?

4 MR. POPE: YOUR HONOR, WE ARE GOING TO OBJECT.
5 WE DON'T GET INTO THE DETAILS OF IT.

6 THE COURT: I SUSTAIN THE OBJECTION.

7 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: IF YOU WILL JUST STEP OUTSIDE OF THE
9 DOOR FOR A MOMENT.

10 (THE JUROR LEFT THE COURTROOM.)

11 THE COURT: AS TO QUALIFICATION, WHAT SAYS THE
12 STATE?

13 MR. POPE: THE STATE SUBMITS SHE IS QUALIFIED,
14 YOUR HONOR.

15 THE COURT: WHAT SAYS THE DEFENSE?

16 MR. HANCOCK: YOUR HONOR, I MUST RENEW MY
17 OBJECTION; I DON'T THINK SHE HAS BEEN PROPERLY QUALIFIED.
18 WE WERE ATTEMPTING TO QUALIFY A JUROR THAT SAYS THAT SHE
19 COULD FOLLOW THE LAW AS TO AGGRAVATING AND MITIGATING
20 CIRCUMSTANCES. WHEN ASKED ON THE WITNESS STAND WHAT ARE
21 AGGRAVATING AND MITIGATING CIRCUMSTANCES, SHE DOESN'T HAVE
22 ANY IDEA. SHE SAID "I DON'T KNOW". YET, WE ARE SAYING
23 THAT YOU CAN FOLLOW THE LAW.

24 YOUR HONOR, I CAN'T AGREE TO THE QUALIFICATION OF
25 THE JUROR THAT I DON'T BELIEVE CAN FOLLOW THE LAW BECAUSE

1 THEY HAVE NO EARTHLY IDEA WHAT THEY'RE FOLLOWING AND SAYING
2 TO ME THEY ARE FOLLOWING THE LAW.

3 THE COURT: I FIND SHE IS QUALIFIED. BRING HER
4 IN.

5 (THE JURY RETURNED TO THE COURTROOM.)

6 THE COURT: MS. PARLER, YOU CAN JUST STAND RIGHT
7 THERE. I HAVE FOUND THAT YOU ARE QUALIFIED TO SERVE AS A
8 JUROR. OF COURSE, THERE WILL BE A WHOLE GROUP FROM WHICH
9 THE TWELVE AND THE TWO ALTERNATES WILL BE CONSIDERED.

10 I AM GOING TO ASK YOU TO CALL TOMORROW NIGHT TO
11 THE NUMBER THAT YOU WERE GIVEN, AND THEY WILL TELL YOU WHAT
12 TIME TO REPORT. IT WILL PROBABLY BE WEDNESDAY; IT MIGHT
13 NOT BE UNTIL THURSDAY, BUT IT WILL PROBABLY BE WEDNESDAY,
14 AND THEY WILL TELL YOU WHAT TIME TO REPORT.

15 SO, WE WILL SEE YOU THEN. WHEN YOU COME BACK, BE
16 PREPARED TO BE SEQUESTERED IF YOU ARE ACTUALLY CHOSEN ON
17 THE JURY. THAT IS TO BE STAYING AT A MOTEL FOR A WEEK OR
18 A WEEK AND A HALF OR SO.

19 THE JUROR: I TEACH SCHOOL. I'LL BE GOING BACK
20 TO SCHOOL TOMORROW; IS THAT CORRECT?

21 THE COURT: YES, JUST DON'T DISCUSS THE CASE.

22 MR. POPE: OKAY, AND BE BACK HERE WEDNESDAY?

23 THE COURT: WELL, JUST CALL TOMORROW NIGHT.
24 THANK YOU.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: ALL RIGHT, LET'S HAVE DORA LOWDER,
2 NUMBER 158.

3 DONA LOWDER, JUROR 158, WHITE FEMALE, WAS
4 QUESTIONED AS FOLLOWS:

5 QUESTIONS BY THE COURT:

6 Q. MS. LOWDER, IF YOU WILL STEP UP HERE TO THE
7 WITNESS STAND AND JUST HAVE A SEAT. I
8 INTRODUCED MYSELF EARLIER. OF COURSE, I'M JOHN
9 HAYES -- I'M GOING TO STAND UP. I'M TIRED OF
10 LOOKING DOWN LIKE THAT.

11 Q. FIRST, I WILL REMIND YOU THAT YOU ARE UNDER OATH
12 AND I'M GOING TO ASK THAT YOU ANSWER VERBALLY SO
13 THAT WE CAN MAKE A RECORD OF ALL OF THIS. SO,
14 YOU UNDERSTAND THAT YOU ARE UNDER OATH?

15 A. YES, I DO.

16 Q. I'M GOING TO TELL YOU THAT DURING THE COURSE OF
17 THIS TRIAL YOU MAY SEE TELEVISION CAMERAS. I
18 WANT YOU TO BE SURE THAT THEY WILL NOT BE
19 FOCUSING ON YOU. YOU ARE NOT THE SUBJECT OF
20 THIS TRIAL. SO IF YOU SEE CAMERAS OR
21 PHOTOGRAPHERS OR SOMETHING, THEY'RE NOT GOING TO
22 TAKE YOUR PICTURE; THEY ARE NOT ALLOWED TO, SO I
23 WANT YOU TO BE AWARE OF THAT. DO YOU UNDERSTAND
24 THAT?

25 A. YES, I DO.

1 Q. NOW, YOU HANDED UP A QUESTIONNAIRE AND IS IT TO
2 YOUR BEST RECOLLECTION CORRECT OR IS THERE
3 ANYTHING YOU NEED TO CHANGE ON IT?

4 A. IT'S CORRECT.

5 Q. IN THE JURY ROOM THAT YOU WERE JUST IN THERE WAS
6 A WITNESS LIST. DID YOU REVIEW IT?

7 A. YES, SIR.

8 Q. DID YOU FIND ANYBODY ON THERE THAT YOU WERE AN
9 ACQUAINTANCE OF OR RELATED TO?

10 A. NONE RELATED TO. THERE WERE SOME NAMES THAT
11 SOUND FAMILIAR TO ME, BUT I DON'T KNOW ANY OF
12 THEM PERSONALLY.

13 Q. OKAY. ANYBODY IN PARTICULAR?

14 A. DR. MCMEEKIN, MAYBE; I'M NOT REAL SURE.

15 Q. ALL RIGHT. NOW, THIS CASE HAS BEEN PUBLICIZED;
16 THAT IS, THERE HAS BEEN SOME MEDIA COVERAGE.
17 HAVE YOU READ ANYTHING OR HEARD ANYTHING ABOUT
18 THIS CASE OR DISCUSSED IT?

19 A. THE ONLY THING I KNOW IS WHAT I READ IN THE
20 NEWSPAPER.

21 Q. WOULD THE FACT -- WOULD THAT INFLUENCE YOUR
22 DECISION, WHAT YOU READ IN THE NEWSPAPER, OR
23 COULD YOU BASE YOUR VERDICT IN THIS CASE ON THE
24 LAW AND THE EVIDENCE THAT YOU HEAR IN THIS
25 TRIAL?

1 A. I WOULD BASE IT ON THE EVIDENCE I HEAR.

2 Q. YOU FEEL LIKE YOU COULD DISREGARD ANYTHING
3 YOU'VE READ OR HEARD OUTSIDE THE COURTROOM AND
4 BASE YOUR VERDICT IN THIS CASE SOLELY ON THE
5 EVIDENCE PRESENTED IN THIS COURTROOM AND THE LAW
6 AS I CHARGE IT TO YOU?

7 A. YES, SIR, I DO.

8 Q. THE TRIAL OF THIS PARTICULAR TYPE CASE WHERE AN
9 INDIVIDUAL, HERE MR. ROBERTSON, IS CHARGED WITH
10 THE DEATH OF TWO INDIVIDUALS, THE STATE IS
11 SEEKING THE DEATH PENALTY. THAT MEANS THIS CASE
12 WILL BE A TWO PART TRIAL. FIRST, THE JURY WILL
13 LISTEN TO EVIDENCE AND DETERMINE WHETHER OR NOT
14 MR. ROBERTSON IS OR IS NOT GUILTY OF THESE
15 OFFENSES.

16 IF THE JURY UNANIMOUSLY FINDS THAT HE IS, THEN
17 THE CASE WILL MOVE INTO WHAT IS A SECOND PHASE
18 OF THE TRIAL, AND THAT IS WHAT PENALTY, LIFE
19 IMPRISONMENT OR THE DEATH PENALTY SHOULD BE
20 IMPOSED. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. AND I WANT YOU TO BE AWARE THAT THE FACT THAT WE
23 ARE NOW TALKING ABOUT WHAT MAY OCCUR IN THE
24 PENALTY, THE SORT OF SECOND PART, EVEN THOUGH WE
25 ARE TALKING ABOUT THAT, THAT IS NOT TO PRESUME

1 THAT HE IS GUILTY. IN FACT, HE IS PRESUMED
2 INNOCENT AND IS SO PRESUMED UNTIL SUCH TIME AS A
3 JURY WERE TO UNANIMOUSLY FIND HIM GUILTY BEYOND
4 A REASONABLE DOUBT. SO, DO YOU UNDERSTAND THAT?

5 A. YES, I DO.

6 Q. NOW, IN THE JURY ROOM WE HAD A LIST THAT HAD
7 THREE TYPES OF JURORS ON IT. DID YOU HAVE A
8 CHANCE TO REVIEW THAT?

9 A. YES, I DID.

10 Q. DID YOU FIND YOURSELF AS BEING ONE OF THESE
11 TYPES OF JURORS?

12 A. YES, SIR, I DID.

13 Q. WHICH TYPE?

14 A. NUMBER THREE.

15 Q. ALL RIGHT. THAT TYPE, AS I UNDERSTAND IT, IS
16 ONE WHO ALTHOUGH THE JURY HAD RETURNED A VERDICT
17 OF GUILT IN THE FIRST PHASE WOULD NOT HAVE MADE
18 UP THEIR MIND IN ADVANCE CONCERNING THE
19 PUNISHMENT.

20 THIS WOULD BE A JUROR WHO WOULD NEED TO HEAR THE
21 FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
22 MITIGATION AND WOULD WANT TO LISTEN AND FOLLOW
23 THE LAW AS THE JUDGE CHARGED IT TO YOU BEFORE
24 YOU WOULD MAKE A DECISION REGARDING PUNISHMENT.
25 THAT IS, YOU WOULD ONLY BASE YOUR DECISION ON

1 THE TYPE OF PUNISHMENT, EITHER DEATH OR LIFE
2 IMPRISONMENT ON THE FACTS. AND THAT THIS WOULD
3 BE THE TYPE JUROR THAT, DEPENDING ON THE FACTS,
4 COULD RETURN A VERDICT EITHER WAY. IS THAT THE
5 TYPE JUROR YOU ARE?

6 A. YES, IT IS.

7 Q. NOW, I'VE USED THE WORDS AGGRAVATING AND
8 MITIGATING, AND AGGRAVATING CIRCUMSTANCES ARE
9 SIMPLY CIRCUMSTANCES THAT ATTEND THE COMMISSION
10 OF A CRIME WHICH ADD TO ITS ENORMITY OR ITS
11 INJURIOUS CONSEQUENCES.

12 I'VE ALSO USED THE WORD MITIGATING
13 CIRCUMSTANCES. THESE ARE CIRCUMSTANCES WHICH
14 WHILE THEY DO NOT CONSTITUTE JUSTIFICATION OR
15 EXCUSE FOR THE OFFENSE BUT WHICH IN FAIRNESS AND
16 MERCY MAY BE CONSIDERED AS EXTENUATING OR
17 REDUCING THE DEGREE OF MORAL CULPABILITY.

18 DO YOU UNDERSTAND THOSE TWO TERMS?

19 A. YES, SIR, I DO.

20 Q. NOW, IF YOU WERE A JUROR IN THIS CASE IN THE
21 PENALTY PHASE, COULD YOU, DEPENDING ON THE FACTS
22 AND CIRCUMSTANCES AS PRESENTED AND THE LAW,
23 COULD YOU IF YOU FELT IT APPROPRIATE, RETURN A
24 VERDICT OF LIFE IN PRISON?

25 A. COULD I IF I FELT IT APPROPRIATE?

1 Q. YES.

2 A. YES.

3 Q. AND IN THAT SITUATION, DEPENDING ON THE FACTS
4 AND CIRCUMSTANCES AND THE LAW, IF YOU FELT IT
5 APPROPRIATE, COULD YOU RETURN A VERDICT OF
6 DEATH?

7 A. YES.

8 Q. ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THAT MR.
9 HANCOCK OR MR. BOYD AND THEN MR. POPE OR MR.
10 BRACKETT MIGHT HAVE.

11 QUESTIONS BY MR. BOYD:

12 Q. HOW ARE YOU DOING, MS. LOWDER?

13 A. OKAY.

14 Q. MS. LOWDER, I'M JIM BOYD AND I REPRESENT JIMMY
15 ROBERTSON IN THIS CASE. HE'S THE YOUNG MAN
16 SEATED OVER THERE, AND THAT'S MY CO-COUNSEL,
17 BILL HANCOCK SEATED THERE.

18 I JUST NEED TO ASK YOU A FEW QUESTIONS
19 CONCERNING YOUR JURY QUALIFICATIONS. LIKE THE
20 JUDGE TOLD YOU EARLIER, I'M NOT TRYING TO CROSS
21 EXAMINE YOU OR ANYTHING, I'M JUST TRYING TO ASK
22 YOU SOME THINGS TO GET WHAT YOU FEEL ABOUT THESE
23 THINGS.

24 AND, AGAIN, THERE IS NO RIGHT OR WRONG ANSWER TO
25 WHAT I'M GOING TO ASK YOU, SO DON'T FEEL LIKE

1 YOU'RE PRESSURED TO ANSWER ONE WAY OR THE OTHER
2 BECAUSE THERE IS NO WAY YOU CAN GIVE A WRONG
3 ANSWER TO THESE QUESTIONS. OKAY?

4 A. OKAY.

5 Q. IN ANSWER TO THE JUDGE'S QUESTION THAT YOU FIT
6 INTO JUROR CATEGORY THREE WHICH YOU COULD
7 CONSIDER THE DEATH PENALTY OR YOU COULD CONSIDER
8 LIFE IMPRISONMENT; IS THAT CORRECT?

9 A. YES, IT IS.

10 Q. OKAY. AND I WANTED TO ASK YOU A FEW QUESTIONS
11 CONCERNING THAT. CONCERNING THE DEATH PENALTY,
12 YOU SAID IF SOMEONE IS CONVICTED -- LET ME BACK
13 UP A MINUTE. IN ASKING THESE QUESTIONS, OF
14 COURSE, I'M ASSUMING AT THIS POINT WE'RE GOING
15 INTO A PENALTY PHASE OF THE TRIAL WHERE YOU'RE
16 GOING TO BE ASKED TO DETERMINE LIFE IMPRISONMENT
17 OR THE DEATH PENALTY. DO YOU UNDERSTAND?

18 A. YES, I UNDERSTAND.

19 Q. AND I'M NOT ASKING THESE QUESTIONS IMPLYING IN
20 ANY WAY THAT A VERDICT OF GUILTY SHOULD BE
21 RENDERED. IT'S JUST BECAUSE THAT'S A POTENTIAL
22 PENALTY AND I'M HAVING TO ASK YOU ABOUT THAT.
23 OKAY?

24 A. OKAY.

25 Q. YOU COULD RENDER A VERDICT FOR THE DEATH PENALTY

1 IN A MURDER CASE I BELIEVE YOU SAID; IS THAT
2 CORRECT?

3 A. I THINK I COULD.

4 Q. AND LET ME ASK YOU, ALSO IN A MURDER CASE AND
5 THAT IS WHERE SOMEONE HAS ALREADY BEEN CONVICTED
6 OF MURDER; THAT IS, A PERSON HAS BEEN CONVICTED
7 AND THERE WAS NO EXCUSE FOR IT, IT WASN'T
8 ACCIDENT OR SELF-DEFENSE OR ANYTHING OF THAT
9 NATURE, COULD YOU ALSO CONSIDER A SENTENCE OF
10 LIFE IMPRISONMENT?

11 A. THAT'S A HARD QUESTION TO ANSWER, IT REALLY IS.
12 I'M ASSUMING I COULD, YES.

13 Q. YOU'RE ASSUMING YOU COULD?

14 A. YES, UH HUH.

15 Q. AND, AGAIN, I'M TALKING ABOUT A CASE THAT'S NOT
16 ACCIDENT OR SELF-DEFENSE, IT'S A MURDER WHICH
17 SOMEONE HAS DELIBERATELY KILLED SOMEBODY WITHOUT
18 ANY LEGAL JUSTIFICATION. SO, THAT'S WHAT I'M
19 TALKING ABOUT.

20 A. YES.

21 Q. AND UNDER THOSE CIRCUMSTANCES YOU STILL COULD
22 CONSIDER A SENTENCE OF LIFE IMPRISONMENT?

23 A. I COULD CONSIDER THAT, YES.

24 Q. OKAY. AND THE JUDGE WILL CHARGE YOU CERTAIN
25 MITIGATING CIRCUMSTANCES FOR YOU TO CONSIDER.

1 THAT IS, THINGS THAT MAY MITIGATE AGAINST GIVING
2 THE DEATH PENALTY. AND UNDER THOSE
3 CIRCUMSTANCES ARE YOU SAYING YOU STILL COULD
4 CONSIDER THOSE THINGS IN DETERMINING WHETHER OR
5 NOT TO GIVE A LIFE SENTENCE OR A DEATH SENTENCE?

6 A. YES, I THINK I COULD.

7 Q. IN GENERAL, DO YOU FEEL LIKE LIFE IMPRISONMENT
8 IS A SUBSTANTIAL PUNISHMENT?

9 MR. POPE: I'M GOING TO OBJECT TO THAT.

10 THE COURT: I SUSTAIN THE OBJECTION. YOU DON'T
11 NEED TO ANSWER THAT.

12 Q. I'M SORRY. LET ME ASK CONCERNING, YOU RECOGNIZE
13 AS A JUROR ON A CASE THAT YOU WOULD HAVE TO GIVE
14 YOUR OPINION IN THE JURY ROOM. CAN YOU DO THAT?

15 A. YES, I COULD.

16 Q. AND, OF COURSE, YOU WOULD BE ENTITLED TO HAVE
17 THE OTHER JURORS RESPECT YOUR OPINION. YOU
18 UNDERSTAND THAT?

19 A. YES, I DO.

20 Q. AND, OF COURSE, YOU REALIZE IN THE JURY ROOM
21 THERE MAY BE OTHER JURORS THAT DON'T FEEL THE
22 SAME WAY THAT YOU DO ABOUT IT?

23 A. I UNDERSTAND THAT.

24 Q. AND YOU UNDERSTAND THAT YOU WOULD NEED TO
25 RESPECT THEIR OPINIONS?

1 A. YES, I DO.

2 Q. AND YOU WOULD DO -- WOULD YOU DO THAT?

3 A. YES.

4 Q. RESPECT OTHER PEOPLE'S OPINIONS?

5 A. OH, YES.

6 Q. LET ME JUST ASK, YOU DID SAY EARLIER TO THE
7 JUDGE THAT YOU HAVE READ OR HEARD SOMETHING
8 ABOUT THIS CASE?

9 A. WHAT WAS PRINTED IN THE HERALD.

10 Q. AND BASED ON THAT, HAVE YOU MADE ANY DECISION
11 ABOUT WHETHER OR NOT JIMMY ROBERTSON IS GUILTY
12 OR NOT GUILTY BASED ON JUST WHAT YOU'VE READ?

13 A. I DON'T MAKE A DECISION ON ANYTHING I READ IN
14 THE PAPER.

15 Q. OKAY. YOU DON'T TRUST THEM?

16 A. NO, I DON'T.

17 Q. OKAY. THANK YOU; THAT'S ALL THE QUESTIONS I
18 HAVE.

19 QUESTIONS BY MR. POPE:

20 Q. MS. LOWDER, IS IT DONA, D-O-N-A?

21 A. IT'S DONA, BUT IT'S PRONOUNCED DONNA.

22 Q. DONNA, OKAY. I'M TOMMY POPE; I'M THE SOLICITOR
23 HERE IN YORK AND UNION COUNTY. THIS IS KEVIN
24 BRACKETT MY DEPUTY SOLICITOR AND, OF COURSE, WE
25 REPRESENT THE STATE IN THIS CASE.

1 HAVE YOU EVER BEEN IN A SITUATION LIKE THIS
2 BEFORE?

3 A. NO, I HAVE NOT.

4 Q. YOU KIND OF FEEL LIKE YOU'RE ON A TRIAL A LITTLE
5 BIT?

6 A. YES, I DO.

7 Q. LET ME TELL YOU, IT'S LIKE MR. BOYD SAID, YOU
8 HAVE NO RIGHT OR WRONG ANSWERS, YOU'RE JUST
9 TELLING US A LITTLE BIT OF HOW YOU FEEL FOR US
10 TO HAVE A CHANCE TO UNDERSTAND A LITTLE BIT.
11 AND YOU UNDERSTOOD FROM WHAT THE JUDGE SAID AND
12 MR. BOYD SAID, THIS IS A BIFURCATED OR TWO PART
13 TRIAL. THE FIRST PART IS JUST ABOUT GUILT, YOU
14 DON'T EVEN THINK ABOUT WHAT THE PENALTY WILL BE.
15 AND, OF COURSE, THE STATE HAS TO PROVE IT BEYOND
16 A REASONABLE DOUBT AND THE DEFENDANT IS INNOCENT
17 UNTIL PROVEN GUILTY; DO YOU UNDERSTAND THAT?

18 A. YES, I DO.

19 Q. AND THEN IF WE GET TO THE SECOND PHASE, IF THE
20 JURY DECIDES UNANIMOUSLY THAT THE DEFENDANT IS
21 GUILTY, THEN WE GET TO THE SECOND PHASE AND
22 THAT'S WHEN THERE WOULD BE EVIDENCE IN
23 AGGRAVATION; YOU KNOW, THINGS THAT THE STATE
24 WOULD BRING FORWARD, THE BAD THINGS, OR THE
25 REASONS THERE SHOULD BE DEATH. AND THE DEFENSE

1 WOULD BRING FORTH, IF THEY CHOOSE TO, THEY DON'T
2 HAVE TO, BUT EVIDENCE IN MITIGATION, THINGS THAT
3 WOULD LESSEN THE PENALTY, REASONS THERE SHOULD
4 BE LIFE. DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. BASED ON WHAT I UNDERSTOOD YOU TOLD THE JUDGE
7 AND MR. BOYD, YOU'RE CATEGORY THREE, YOU'RE THE
8 TYPE PERSON, YOU'RE NOT GOING TO MAKE UP YOUR
9 MIND, YOU'RE NOT GOING TO MAKE UP YOUR MIND ON
10 WHAT YOU READ IN THE PAPER, YOU'RE GOING TO MAKE
11 UP YOUR MIND BASED ON WHAT YOU HEAR IN THAT JURY
12 BOX, AND YOU'RE GOING TO WAIT UNTIL YOU HEAR
13 EVERYTHING BEFORE YOU DECIDE. IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND IF AFTER THE EVIDENCE IN AGGRAVATION AND
16 MITIGATION, YOU HEAR IT AND IF YOU THINK THE
17 APPROPRIATE SENTENCE IS LIFE, YOU'RE GOING TO
18 SAY SO?

19 A. RIGHT.

20 Q. AND IF YOU THINK THE APPROPRIATE SENTENCE IS
21 DEATH, YOU'RE GOING TO SAY SO?

22 A. RIGHT.

23 Q. ONE FINAL THING I WANT TO ASK YOU, ONE OF THE
24 REQUIREMENTS AS FAR AS OUR DEATH PENALTY
25 STATUTE, IT'S A LITTLE BIT DIFFERENT, IF THE

1 JURY DECIDES UNANIMOUSLY FOR LIFE, THEN THE
2 FOREPERSON SIGNS THEIR NAME. YOU KNOW, SAYS WE
3 DECIDE FOR LIFE AND THEN JUST ONE PERSON SIGNS
4 THEIR NAME.

5 IF THE JURY DECIDES FOR DEATH AND, OF COURSE,
6 THAT'S AFTER HEARING EVERYTHING LIKE WE SAID,
7 AGGRAVATION AND MITIGATION, IF YOU DECIDE THE
8 APPROPRIATE PENALTY WAS DEATH, EACH INDIVIDUAL
9 JUROR HAS TO SIGN THEIR NAME.

10 YOU KNOW, I'M UP HERE TALKING AND I KNOW IT'S A
11 HEAVY DECISION, I'M NOT MAKING LIGHT OF IT, BUT
12 EACH JUROR HAS TO SIGN THEIR NAME AND WHAT THE
13 JURY DECIDES IS WHAT'S GOING TO HAPPEN, YOU
14 KNOW, ONE WAY OR ANOTHER, LIFE OR DEATH.

15 IF YOU HEARD THE EVIDENCE AND YOU FELT IT WAS
16 APPROPRIATE THAT LIFE WAS THE SENTENCE, YOU
17 COULD SAY SO AND REFUSE TO SIGN THAT? IF YOU
18 THOUGHT LIFE WAS APPROPRIATE, COULD YOU REFUSE
19 TO SIGN IT?

20 A. YES.

21 Q. OKAY. AGAIN, AFTER THINKING AND HEARING
22 EVERYTHING. LIKEWISE, IF AFTER HEARING ALL OF
23 THE EVIDENCE IF YOU THOUGHT IN A PARTICULAR CASE
24 THAT DEATH WAS THE APPROPRIATE SENTENCE, AND OF
25 COURSE IT WOULD REQUIRE YOUR SIGNATURE, COULD

1 YOU PUT DONA LOWDER DOWN THERE TO GIVE SOMEBODY
2 DEATH IF YOU THOUGHT THAT WAS APPROPRIATE?

3 A. YES.

4 Q. THANK YOU, MA'AM.

5 THE COURT: DO YOU HAVE ANY EXTENUATING
6 CIRCUMSTANCES WHICH WOULD INTERFERE WITH YOU SERVING WITH
7 US AS A JUROR FOR THE PERIOD OF TIME WE'RE TALKING ABOUT,
8 THROUGH NEXT WEEK?

9 A. NO, SIR.

10 THE COURT: I'M GOING TO ASK YOU TO STEP RIGHT
11 OUTSIDE THE DOOR FOR A MOMENT.

12 (THE JUROR LEFT THE COURTROOM)

13 THE COURT: AS TO QUALIFICATION, WHAT SAYS THE
14 DEFENSE?

15 MR. HANCOCK: YOUR HONOR, SO THAT WE DON'T
16 BELABOR THE POINT, THAT SAME OBJECTION CARRIES ALL THE WAY
17 THROUGH ON EACH OF THESE JURORS.

18 THE COURT: SO YOU FIND THAT SHE IS NOT
19 QUALIFIED?

20 MR. HANCOCK: NO, SIR, WE CANNOT CHALLENGE HER
21 QUALIFICATION.

22 MR. POPE: WE SUBMIT SHE IS QUALIFIED, YOUR
23 HONOR.

24 THE COURT: I FIND SHE IS QUALIFIED. ALL RIGHT,
25 HAVE HER COME BACK IN.

1 (THE JUROR RETURNED TO THE COURTROOM.)

2 THE COURT: MS. LOWDER, YOU CAN JUST STAND RIGHT
3 THERE. I FIND YOU QUALIFIED TO SERVE. THAT DOES NOT MEAN
4 YOU'LL END UP ON THE JURY, YOU'LL JUST BE IN THE POOL.

5 PLEASE CALL BACK TO THAT NUMBER YOU'VE BEEN
6 GIVEN; CALL BACK TOMORROW EVENING AFTER 6:00 AND YOU WILL
7 RECEIVE INSTRUCTIONS ABOUT WHEN TO REPORT AND WHEN YOU DO
8 REPORT, COME PREPARED TO STAY AND BE SEQUESTERED IN THE
9 EVENT YOU ARE SEATED. THANK YOU.

10 (THE JUROR LEFT THE COURTROOM.)

11 THE COURT: TONY PANNELL.

12 TONY PANNELL, JUROR NUMBER 203, WHITE MALE, WAS
13 QUESTIONED AS FOLLOWS:

14 QUESTIONS BY THE COURT:

15 Q. MR. PANNELL, IF YOU WILL JUST COME UP HERE AND
16 HAVE A SEAT. YOU ARE EXPECTING YOUR FIRST
17 CHILD. HAS IT COME YET?

18 A. YEAH, IT CAME THE 5TH. SHE HAD TO HAVE A C-
19 SECTION SO I WAS WANTING TO BE AT HOME WITH HER
20 AT NIGHT AND STUFF TO HELP HER.

21 Q. ARE YOU ASKING TO BE EXCUSED FOR THAT REASON?

22 A. YES, SIR.

23 Q. ARE YOU WORKING NOW?

24 A. WELL, I'VE BEEN OFF A WEEK BUT I WAS SUPPOSED TO
25 WENT BACK TO WORK TODAY.

1 Q. BUT YOU WORK DURING THE DAY AND NOT IN THE
2 EVENINGS?

3 A. RIGHT.

4 Q. LET ME LET YOU STEP OUTSIDE THE DOOR JUST ONE
5 SECOND.

6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: WHAT DOES THE STATE SAY REGARDING
8 EXCUSING HIM BASED ON HIM BEING A FATHER WITH A WEEK OLD
9 CHILD?

10 MR. BRACKETT: YOUR HONOR, BASED ON HIS FAMILY
11 SITUATION, WE HAVE NO OBJECTION TO EXCUSING HIM.

12 THE COURT: WHAT SAYS THE DEFENSE?

13 MR. HANCOCK: I BEG THE INDULGENCE OF THE COURT
14 ONE MOMENT.

15 THE COURT: OKAY.
16 (AFTER A BRIEF PAUSE.)

17 MR. HANCOCK: YOUR HONOR, HIS FAMILY SITUATION IS
18 SUCH THAT WE WOULD NOT OBJECT TO HIM BEING EXCUSED.

19 THE COURT: ALL RIGHT. JUST ASK HIM TO COME IN.
20 (THE JUROR RETURNED TO THE COURTROOM.)

21 THE COURT: YOU CAN JUST STAND RIGHT THERE.
22 WE'RE GOING TO EXCUSE YOU UNDER THE CIRCUMSTANCES. WE
23 FULLY UNDERSTAND AND WE'RE HAPPY FOR YOU THAT YOU'VE GOT
24 THIS NEW CHILD AND WE KNOW WHAT YOU'RE GOING THROUGH, I
25 THINK ALL OF US DO. SO, WE ARE GOING TO EXCUSE YOU AND WE

1 APPRECIATE YOU COMING, BUT YOU WILL NOT HAVE TO RETURN.
2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: ALL RIGHT, NEXT IS LINDA POMPEII,
4 NUMBER 213.

5 MR. BRACKETT: YOUR HONOR, I SUBMIT SHE HAS
6 COMMITTED A CRIME THAT CARRIES MORE THAN A YEAR. SHE IS
7 INELIGIBLE STATUTORILY TO SERVE ON THIS JURY.

8 THE COURT: WELL, I HANDED MY STUFF OVER, SO I
9 NEED TO SEE IT.

10 MR. BRACKETT: I SINCE HAVE HAD AN OPPORTUNITY TO
11 LOOK AT THE STATUTE THAT SHE WAS CONVICTED UNDER.

12 THE COURT: ALL I SAW WAS PETTY LARCENY.

13 MR. BRACKETT: YES, SIR, SHE WAS CONVICTED UNDER
14 16-17-495, TRANSPORTING A CHILD UNDER 16 OUTSIDE THE STATE
15 WITH INTENT TO VIOLATE A CUSTODY ORDER. THERE ARE THREE
16 DIFFERENT CATEGORIES OF AGGRAVATED TYPE CRIMES UNDERNEATH
17 THAT, THE LEAST OF WHICH CARRIES THREE YEARS.

18 THE COURT: OKAY.

19 MR. BRACKETT: IT'S THREE, FIVE AND TEN, SO SHE
20 WOULD BE DISQUALIFIED.

21 THE COURT: ANY COMMENT ON THAT?

22 MR. HANCOCK: NO, SIR.

23 (THE JUROR CAME INTO THE COURTROOM.)

24 THE COURT: MS. POMPEII, WE'VE NOW HAD A CHANCE
25 TO CHECK ON THAT OFFENSE YOU HAD AND FIND THAT IT DID CARRY

1 OVER A YEAR, SO YOU ARE NOT ELIGIBLE TO SERVE. WE
2 APPRECIATE YOU COMING AND YOU CAN BE EXCUSED.

3 THE JUROR: OKAY. THANK YOU VERY MUCH.

4 THE COURT: NEXT WOULD BE 202, STEVEN NORTON.

5 STEVEN NORTON, JUROR NUMBER 202, WHITE MALE, WAS
6 QUESTIONED AS FOLLOWS:

7 QUESTIONS BY THE COURT:

8 Q. FIRST I WILL REMIND YOU THAT YOU ARE UNDER OATH;
9 YOU REMEMBER THAT?

10 A. YES, SIR.

11 Q. NOW DURING THE COURSE OF THE TRIAL IF YOU END UP
12 SITTING ON THE JURY, YOU WILL ON OCCASION
13 PERHAPS SEE CAMERAS; WE DO ALLOW CAMERAS IN THE
14 COURTROOM NOW, BUT THEY WILL NOT BE FOCUSED ON
15 YOU. YOU ARE NOT THE SUBJECT AS A JUROR, OR THE
16 JURORS ARE NOT THE SUBJECT OF THE MATTER BEFORE
17 THE COURT. AND THE MEDIA IS PROHIBITED BY LAW
18 FROM PUBLISHING YOUR NAME OR YOUR IMAGES. SO, I
19 JUST WANT YOU TO BE AWARE OF THAT.

20 NOW EARLIER YOU HAD FILLED OUT A QUESTIONNAIRE.

21 TO YOUR RECOLLECTION IS EVERYTHING ON THERE
22 CORRECT OR DO YOU NEED TO MAKE SOME CHANGES?

23 A. YES, SIR. IT SHOULD BE CORRECT.

24 Q. NOW IN THE JURY ROOM THERE WERE WITNESS LISTS;
25 THEY WERE QUITE EXTENSIVE, DID YOU HAVE A CHANCE

1 TO REVIEW THE WITNESS LIST?

2 A. YES, SIR, I'VE GOT IT RIGHT HERE.

3 Q. DID YOU FIND ANYBODY THEREON THAT YOU WERE
4 RELATED TO BY BLOOD OR MARRIAGE OR THAT YOU WERE
5 A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF?

6 A. THERE WERE A FEW ON HERE THAT I JUST KNEW OF,
7 BUT I'M NOT RELATED TO ANYBODY ON THERE.

8 Q. IS THERE ANYBODY WHO THAT IF THEY WERE TO
9 TESTIFY IT WOULD SOMEHOW HAVE SOME INFLUENCE;
10 THAT IS, SOMEBODY WHO WOULD PRESENT A SITUATION
11 WHERE YOU, BECAUSE THEY WERE A WITNESS, WOULD BE
12 UNABLE TO BE FAIR AND IMPARTIAL?

13 A. NO, I WOULDN'T HAVE A PROBLEM; THAT WOULDN'T
14 AFFECT IT.

15 Q. THIS CASE HAS HAD SOME PUBLICITY IN THE MEDIA.
16 HAVE YOU READ OR HEARD OR DISCUSSED THIS CASE
17 WITH ANYONE?

18 A. I'VE SEEN A GOOD BIT ON T.V. AND ALSO IN THE
19 LOCAL PAPERS, RECENTLY AND IN THE PAST.

20 Q. IS THERE ANYTHING THAT YOU HAVE SEEN, HEARD OR
21 READ WHICH WOULD AFFECT YOUR ABILITY TO BE FAIR
22 AND IMPARTIAL OR WOULD YOU BE ABLE TO BASE YOUR
23 VERDICT ON THE LAW AND THE EVIDENCE THAT IS
24 DEVELOPED IN THE TRIAL?

25 A. WELL, THERE WAS A LOT OF INFORMATION THAT WAS

1 GIVEN THERE THAT WOULD THROW A LOT OF DOUBT.

2 Q. WELL, WHEN YOU SAY THROW A LOT OF DOUBT, LET ME
3 TRY TO REPHRASE THIS. THE JURY THAT SITS ON
4 THIS CASE WILL HEAR EVIDENCE; THEY WILL HEAR
5 TESTIMONY; THEY WILL PERHAPS SEE PHYSICAL
6 THINGS, PHYSICAL ITEMS AND I WILL AS TRIAL JUDGE
7 CHARGE THE LAW WHICH THEY ARE TO APPLY. AND I
8 WILL TELL THE JURY THAT THEY CANNOT CONSIDER
9 ANYTHING THAT THEY HAVE HEARD ABOUT THIS CASE
10 OUTSIDE OF THIS COURTROOM BECAUSE THAT IS NOT A
11 VALID BASIS ON WHICH TO BASE A VERDICT.
12 COULD YOU DO THAT; COULD YOU RETURN A VERDICT
13 EXCLUDING WHAT YOU HAVE PREVIOUSLY HEARD OR
14 READ; COULD YOU EXCLUDE THAT AND BASE YOUR
15 VERDICT SOLELY ON THE LAW AND THE EVIDENCE AS IT
16 IS BASED IN THE TRIAL?

17 A. I BELIEVE I COULD. LIKE YOU SAY, YOU DON'T
18 DISREGARD ANYTHING THAT YOU'VE SEEN OR HEARD;
19 YOU'LL JUST GO BY WHAT'S PRESENTED.

20 Q. COULD YOU BASE YOUR VERDICT SOLELY ON THE LAW
21 AND THE EVIDENCE PRESENTED HERE IN THE TRIAL?

22 A. YES, SIR, I THINK SO.

23 Q. NOW, IN THE JURY ROOM THERE WERE A LIST OF JUROR
24 TYPES. DID YOU REVIEW THAT?

25 A. YES, SIR.

1 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

2 A. YES, SIR.

3 Q. WHICH TYPE?

4 A. NUMBER TWO.

5 Q. ALL RIGHT, NUMBER TWO IS A JUROR WHO EVEN THOUGH
6 THE GUILT OF THE DEFENDANT HAS BEEN DETERMINED
7 AND THE DEFENDANT FOUND GUILTY, YOU WOULD UNDER
8 NO CIRCUMSTANCES EVER GIVE THE DEATH PENALTY.
9 IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. THIS IS A JUROR WHO WOULD NOT NEED TO HEAR OR
12 CARE TO HEAR ANYTHING FURTHER IN THE SECOND
13 PHASE OF THE TRIAL IN AGGRAVATION, BUT WOULD
14 HAVE MADE UP YOUR MIND PRIOR TO EVEN PROCEEDING
15 INTO THE PENALTY PHASE WHICH IS THE SECOND PART
16 OF THE TRIAL THAT THE APPROPRIATE SENTENCE WOULD
17 BE LIFE IMPRISONMENT AS OPPOSED TO DEATH. IS
18 THAT THE TYPE JUROR YOU ARE?

19 A. YES, SIR, THE SECOND ONE. I DON'T PERSONALLY
20 MYSELF BELIEVE IN THE DEATH PENALTY DUE TO MY
21 RELIGIOUS CONVICTIONS.

22 Q. ANSWER ANY QUESTIONS THE STATE MAY HAVE.
23 QUESTIONS BY MR. BRACKETT:

24 Q. MR. NORTON, GOOD AFTERNOON. MY NAME IS KEVIN
25 BRACKETT. I'M THE DEPUTY SOLICITOR HERE IN THE

1 SIXTEENTH CIRCUIT AND MYSELF ALONG WITH
2 SOLICITOR TOMMY POPE WILL BE PROSECUTING THIS
3 CASE ON BEHALF OF THE STATE AND I JUST WANT TO
4 ASK YOU A FEW QUESTIONS TO KIND OF CLARIFY AND
5 FILL OUT A LITTLE BIT ALONG THE LINES OF WHAT
6 THE JUDGE HAS BEEN ASKING.

7 AT THE OUTSET I JUST WANT TO LET YOU KNOW THERE
8 ARE NO RIGHT OR WRONG ANSWERS TO WHAT MY
9 QUESTIONS ARE; WE ARE JUST TRYING TO FIND OUT
10 HOW YOU FEEL, AND IT'S NOT A SITUATION WHERE
11 YOU'RE GOING TO BE GRADED OR ANYBODY IS GOING TO
12 BE LOOKING AND POINTING. YOU'RE ENTITLED TO
13 YOUR OPINION JUST LIKE ANYBODY ELSE.

14 YOU UNDERSTAND THE NATURE OF THIS TRIAL, IT'S A
15 TWO PART TRIAL?

16 A. YES, SIR.

17 Q. THE FIRST PHASE IS EXCLUSIVELY INVOLVED WITH THE
18 ISSUE OF WHETHER OR NOT THE DEFENDANT, JIMMY
19 ROBERTSON SEATED OVER THERE, IS GUILTY. WE'RE
20 NOT CONCERNED ABOUT PENALTY AT ALL; THOSE ISSUES
21 ARE NOT EVEN INVOLVED AND NO ONE EVEN DISCUSSES
22 THOSE IN THE FIRST PHASE. WE NEED TO FIND OUT
23 WHETHER OR NOT HE IS GUILTY.

24 AND, OF COURSE, IN ORDER TO DO THAT WE HAVE TO
25 PRESENT THE EVIDENCE. WE BEAR THE BURDEN OF

1 PROOF. THE DEFENSE DOESN'T HAVE TO PROVE
2 ANYTHING. IT'S THE STATE'S RESPONSIBILITY, YOU
3 UNDERSTAND THAT, RIGHT?

4 A. YES, SIR.

5 Q. NOW IN THAT FIRST PHASE WE PRESENT THE EVIDENCE
6 THROUGH WITNESSES AND TESTIMONY AND ALSO
7 PHYSICAL EVIDENCE, MAYBE PHOTOGRAPHS OR
8 WHATEVER. WE PRESENT THAT EVIDENCE TO THE JURY
9 AND THEY MAKE THE DECISION BASED ON WHAT HAPPENS
10 HERE IN THE COURTROOM.

11 YOU TOLD THE JUDGE JUST A FEW MINUTES AGO THAT
12 YOU HAD READ SOME THINGS IN THE PAPER.

13 A. YES, SIR.

14 Q. COULD YOU PUT EVERYTHING OUT OF YOUR MIND THAT
15 YOU'VE READ THERE OR WOULD THAT STILL BE KIND OF
16 LINGERING BACK THERE?

17 A. WELL, IT WOULD BE HARD TO KIND OF BLOCK
18 EVERYTHING OUT FROM WHAT WAS IN THERE,
19 ESPECIALLY RECENTLY.

20 Q. SURE. I MEAN DO YOU THINK, BECAUSE IT IS
21 IMPORTANT FOR US TO KNOW THAT NOW BEFORE YOU GET
22 ON THE JURY, IT'S A LITTLE LATE AT THAT POINT,
23 SO IF YOU THINK THERE MIGHT BE A PROBLEM IF YOU
24 CAN GO AHEAD AND TELL US NOW. AGAIN, THERE IS
25 NO RIGHT OR WRONG ANSWER. DO YOU THINK YOU CAN

1 PUT OUT WHAT YOU'VE READ AND BASE IT SOLELY ON
2 THE EVIDENCE OR WOULD THAT STILL KIND OF BE IN
3 THE BACK OF YOUR MIND KIND OF RUMBLING AROUND?

4 A. WELL, I KIND OF LIKE I PROBABLY WOULD STILL HAVE
5 IT IN THE BACK OF MY MIND BUT I WOULD TRY TO GO
6 ON THE FACTS THAT'S PRESENTED, BUT STILL IT
7 WOULD PROBABLY LINGER THERE.

8 Q. MIGHT IT EFFECT YOUR DECISION?

9 A. IT COULD POSSIBLY. YOU KNOW, I WOULDN'T WANT IT
10 TO EFFECT MY DECISION.

11 Q. BUT IT COULD?

12 A. IT COULD.

13 Q. AND THAT'S FINE. ASSUME THAT WE CONVICTED MR.
14 ROBERTSON, WE CONVINCED A JURY BEYOND A
15 REASONABLE DOUBT THAT HE'S GUILTY OF ALL THESE
16 CRIMES AND WE MOVE ON TO THE SECOND PHASE, THE
17 PENALTY PHASE. THERE WE'RE DECIDING WHETHER OR
18 NOT THE PENALTY SHOULD BE LIFE IN PRISON OR
19 DEATH.

20 AGAIN, WE HAVE TO SHOW STATUTORY AGGRAVATING
21 CIRCUMSTANCES. WE HAVE TO SHOW AGGRAVATING
22 CIRCUMSTANCES WHICH MAKE THIS MORE THAN JUST A
23 REGULAR MURDER, THAT AGGRAVATE THE CRIME OF
24 MURDER AND HEIGHTEN IT TO SOME EXTENT.

25 THE DEFENSE WOULD BE ALLOWED TO SHOW ANY

1 MITIGATING CIRCUMSTANCES. NOW A MITIGATOR IS
2 SOMETHING THAT KIND OF LESSENS THE DEFENDANT'S
3 CULPABILITY, MORALLY, LOWERS HIS RESPONSIBILITY
4 AND KIND OF MAKES YOU UNDERSTAND HIS SITUATION
5 PERHAPS. THEY ARE ALLOWED TO PRESENT THEIR
6 MITIGATING EVIDENCE.

7 NOW A FAIR JUROR IN THIS CASE HAS TO BE ABLE TO
8 LISTEN TO BOTH WHAT THE STATE HAS TO SAY AND
9 LISTEN TO WHAT THE DEFENSE HAS TO SAY AND THEN
10 MAKE A DECISION AS TO THE PENALTY BASED ON THE
11 EVIDENCE THAT IS PRESENTED.

12 DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. NOW, WHAT YOU'VE TOLD THE JUDGE IS THAT BECAUSE
15 OF YOUR PERSONAL OPINION ABOUT THE DEATH PENALTY
16 YOU NEVER COULD LISTEN TO WHAT THE STATE HAS TO
17 SAY. NO MATTER WHAT EVIDENCE WE PRESENTED, IT
18 WOULD NOT BE ENOUGH TO HAVE YOU RETURN A
19 VERDICT OF DEATH. IS THAT RIGHT?

20 A. I BELIEVE IN JUSTICE, BUT PERSONALLY MYSELF, I
21 DON'T BELIEVE IN THE DEATH PENALTY.

22 Q. SURE. SO, THERE ARE NO CIRCUMSTANCES, THERE IS
23 NO CASE IN WHICH YOU COULD RETURN A VERDICT OF
24 DEATH?

25 A. THAT'S CORRECT.

1 Q. LIKEWISE, ONE OF THE RESPONSIBILITIES OF A JUROR
2 IN A CASE WHERE DEATH IS A POSSIBILITY, ONE OF
3 THE RESPONSIBILITIES OF THE JURORS IS THAT IF
4 THEY DECIDE ON DEATH, EACH JUROR HAS TO TAKE A
5 PEN AND SIGN THEIR NAME ON THE DEATH VERDICT
6 FORM. EACH JUROR NEEDS TO SIGN IT. IF IT'S
7 LIFE, ONLY THE FOREMAN SIGNS IT. BUT IF IT'S
8 DEATH, EACH INDIVIDUAL JUROR HAS TO PUT HIS NAME
9 ON THAT PIECE OF PAPER, HIS OR HER NAME. AND
10 WHAT YOU'RE SAYING IS THAT THERE ARE NO
11 CIRCUMSTANCES UNDER WHICH STEVEN NORTON COULD
12 TAKE A PEN IN HIS HAND AND SIGN HIS NAME ON A
13 DEATH VERDICT FORM?

14 A. THAT'S CORRECT.

15 Q. THANK YOU VERY MUCH, MR. NORTON.

16 THE COURT: MR. HANCOCK OR BY BOYD?

17 QUESTIONS BY MR. HANCOCK:

18 Q. I'M BILL HANCOCK; I'M JIMMY ROBERTSON'S ATTORNEY
19 ALONG WITH MR. BOYD SEATED HERE BESIDE MR.
20 ROBERTSON. AGAIN, I WILL TELL YOU THAT YOU HAVE
21 NO RIGHT OR WRONG ANSWERS HERE. WE'RE JUST
22 TRYING TO ARRIVE AT JURY QUALIFICATION HERE AND
23 YOU'VE MADE SOME ANSWERS THAT I JUST WANT TO
24 TALK TO YOU ABOUT AND SEE EXACTLY -- SEE IF I
25 UNDERSTAND, AND SOMETIMES I DON'T, BUT JUST SEE

1 IF I UNDERSTAND EXACTLY WHAT YOU'RE SAYING.

2 AS I UNDERSTOOD, YOU TOLD THE SOLICITOR THAT YOU
3 HAD READ SOMETHING ABOUT THIS CASE AND SEEN
4 SOMETHING ON T.V.; IS THAT CORRECT?

5 A. YES, SIR.

6 Q. BUT IF YOU WERE PRESENTED WITH A TOTALLY
7 DIFFERENT SET OF FACTS AND CIRCUMSTANCES IN A
8 COURT OF LAW BY PROPER EVIDENCE, IS THAT WHAT
9 YOU WOULD CONSIDER IN ARRIVING AT A VERDICT OF
10 EITHER GUILTY OR NOT GUILTY?

11 A. I'D GO BY WHAT'S ACTUALLY PRESENTED.

12 Q. YOU WOULD GO BY WHAT'S PRESENTED, WOULDN'T YOU?

13 A. THE PAPER CAN HAVE THEIR STATEMENTS, BUT ---

14 Q. BUT THAT CAN BE OVERRIDDEN BY A COURT OF LAW AND
15 YOU BEING PRESENTED PROPER EVIDENCE THAT WOULD
16 BE EVEN DIFFERENT THAN WHAT YOU SAW IN THE
17 PAPER, THEN YOU WOULD GO BY THAT EVIDENCE
18 WOULDN'T YOU, SIR?

19 A. YES, SIR, I WOULD.

20 Q. AND PLEASE UNDERSTAND, WE ALL RESPECT YOU AS A
21 PERSON AND AS A POTENTIAL JUROR, SO I AM NOT
22 ATTACKING ANYTHING, I'M JUST ASKING. YOU HAVE
23 INDICATED THAT YOUR RELIGIOUS BELIEFS WOULD
24 PREVENT YOU FROM SIGNING THE FORM THAT INDICATES
25 THAT SOMEONE IS TO RECEIVE DEATH. IS THAT

1 CORRECT, SIR?

2 A. THAT'S CORRECT.

3 Q. AND YOU HAVE INDICATED THAT THERE WAS NO
4 CIRCUMSTANCE -- NOW YOU WERE DOWNSTAIRS AND YOU
5 HAVE HEARD BY THE WARRANT THAT MR. ROBERTSON IS
6 ACCUSED OF KILLING BOTH OF HIS PARENTS?

7 A. YES, SIR.

8 Q. AND WE'RE IN NO WAY SAYING HE IS GUILTY BECAUSE
9 WE KIND OF FLIP-FLOP THIS PROCESS AND BEFORE THE
10 GUILT IS EVEN DETERMINED, WE HAVE TO FIND
11 SOMEONE TO SIT ON THE JURY. SO YOU HAVE HEARD
12 THAT HE KILLED BOTH OF HIS PARENTS; IS THAT
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND EVEN IF IT WERE PROVEN TO YOU BY PROPER
16 EVIDENCE AND WITH CIRCUMSTANCES THAT ARE
17 AGGRAVATING UNDER THE LAW, THEN ARE YOU TELLING
18 ME THAT THEN YOU COULD NOT EVEN IN THAT
19 CIRCUMSTANCE SIGN THAT HE SHOULD BE PUT TO
20 DEATH?

21 A. THAT'S CORRECT.

22 Q. SO, YOU'RE TELLING ME THAT IN YOUR MIND THERE
23 ARE NO CIRCUMSTANCES, NO MATTER HOW HEINOUS, NO
24 MATTER HOW BAD AND NO MATTER HOW HORRIBLE THAT
25 YOU COULD SIGN YOUR NAME FOR THE DEATH PENALTY?

1 A. NOT FROM MY PERSONAL VIEWPOINT.

2 Q. FROM YOUR PERSONAL VIEWPOINT. WELL, IF THE
3 JUDGE -- IF YOU WERE IN TRIAL AND THE JUDGE
4 INSTRUCTED YOU ---

5 MR. BRACKETT: OBJECTION, YOUR HONOR, HE CAN'T
6 SUBSTITUTE THE COURT ---

7 THE COURT: I SUSTAIN THE OBJECTION.

8 Q. I WILL ASK YOU THIS. ARE YOU FAMILIAR WITH A
9 TIMOTHY MCVEIGH?

10 MR. BRACKETT: OBJECTION, YOUR HONOR,
11 HYPOTHETICAL.

12 THE COURT: I SUSTAIN THE OBJECTION.

13 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: ALL RIGHT, YOU CAN STEP OUTSIDE THE
15 DOOR JUST ONE MINUTE PLEASE, SIR.

16 (THE JUROR LEFT THE COURTROOM.)

17 THE COURT: WHAT SAYS THE STATE?

18 MR. BRACKETT: YOUR HONOR, WE THINK HE IS NOT
19 WITHERSPOON QUALIFIED; HE COULD NEVER RETURN A VERDICT OF
20 DEATH AND, THEREFORE, SHOULD NOT SIT ON THIS JURY.

21 THE COURT: THE DEFENSE?

22 MR. HANCOCK: JUDGE, I CAN'T ARGUE WITH THAT.

23 THE COURT: I FIND THAT HE'S NOT QUALIFIED. HAVE
24 HIM COME BACK IN.

25 (THE JUROR RETURNED TO THE COURTROOM.)

1 **THE COURT:** MR. NORTON, WE'RE GOING TO EXCUSE
2 YOU. WE APPRECIATE YOUR TIME AND APPRECIATE YOUR CANDOR,
3 BUT WE ARE GOING TO EXCUSE YOU FROM FURTHER SERVICE ON THIS
4 JURY PANEL. THANK YOU AN AWFUL LOT.

5 LET'S DO THIS NEXT ONE AND THEN WE WILL TAKE A
6 SHORT BREAK. THIS ONE IS NUMBER 138 DAVID KAYLOR.

7 DAVID KAYLOR, JUROR 138, WHITE MALE, WAS
8 QUESTIONED AS FOLLOWS:

9 **QUESTIONS BY THE COURT;**

10 Q. I TALKED WITH SO MANY PEOPLE THIS MORNING, BUT
11 DID YOU EXPRESS SOME CONCERN ABOUT HEALTH?

12 A. YES, SIR.

13 Q. AND WHAT IS THAT SITUATION?

14 A. I HAVE TWO SITUATIONS, JUDGE. ONE IS, AND I
15 SENT A LETTER TO THE COURT BUT IT WASN'T
16 ACCEPTED FROM A PHYSICIAN. I HAVE SCONOSIS IN
17 THE BACK AND I CAN'T SIT FOR MORE THAN AN HOUR
18 WITHOUT STANDING OR WALKING. AND I WROTE A
19 LETTER BECAUSE I WAS CONCERNED THAT THIS WOULD
20 BE DISRUPTIVE TO YOU, SIR, AND TO THE COURT TO
21 HAVE TO GET UP EVERY HOUR AND STAND, STRETCH,
22 ET CETERA. THAT'S THE FIRST THING.

23 Q. WELL, USUALLY I CAN ACCOMMODATE THAT, BUT I
24 THINK YOU ALSO SAID SOMETHING ABOUT HAVING TO
25 HAVE A PARTICULAR KIND OF BED TO SLEEP IN AND

1 CHAIRS AND ALL?

2 A. YES, SIR.

3 Q. THAT WOULD GIVE ME MORE CONCERN, VERY CANDIDLY,
4 BECAUSE I DON'T MIND JURORS -- I USUALLY TELL
5 JURORS WHO HAVE A BACK PROBLEM TO SIT ON THE
6 BACK ROW, STAND UP IF YOU NEED TO, MOVE AROUND.
7 WE TAKE BREAKS ABOUT EVERY HOUR AND A HALF
8 ANYWAY. TELL ME ABOUT YOUR SITUATION WITH
9 SPECIAL EQUIPMENT?

10 A. WELL, I HAD TO GET A DIFFERENT MATTRESS AND ALL
11 OF THIS. TRUE, I TRAVEL IN MY JOB BUT I HAVE TO
12 STAY IN, I HATE TO USE THIS EXPRESSION, BUT
13 UPSCALE HOTELS BECAUSE THAT'S THE ONLY PLACE YOU
14 CAN GENERALLY GET A FIRMER BETTER BED. CERTAIN
15 HOTELS WHERE I TRAVEL, I KNOW THAT THEY HAVE THE
16 FACILITIES. AT HOME I HAVE A SPECIAL RECLINER
17 CHAIR. MOST HOTELS DON'T, AND THAT'S A PROBLEM
18 THAT I FACE TRAVELING.

19 THE SECOND PROBLEM I'VE GOT IS THAT I HAVE A JAW
20 PROBLEM. THERE'S A NEW DRUG OUT, THIS
21 EXPERIMENTAL DRUG, AND YESTERDAY A PROBLEM
22 ERUPTED AFTER CHURCH AND I CALLED THE PHYSICIAN
23 THIS MORNING AND HE'S GOING TO HAVE THE DRUG IN
24 THURSDAY MORNING. THEY CAN GIVE ME A SHOT, IT
25 ONLY LASTS ABOUT SIX MONTHS, BUT YOU NEVER KNOW

1 WHEN IT'S GOING TO BREAK THROUGH.

2 AND I WOULD REALLY LIKE TO BE EXCUSED TO GET
3 THAT MEDICINE, BUT IF IT DOESN'T PLEASE THE
4 COURT, THEN I'LL BE GLAD TO SERVE IF SELECTED.

5 Q. ALL RIGHT. WOULD THE MEDICINE EFFECT -- WOULD
6 IT HAVE ANY DROWSY SIDE EFFECTS OR ANYTHING LIKE
7 THAT?

8 A. NO, IT DOES NOT, SIR.

9 Q. ALL RIGHT. WELL, LET'S GO FORWARD THEN WITH A
10 FEW QUESTIONS. FIRST DURING THIS TRIAL IF YOU
11 WERE TO SIT ON THE JURY, YOU MIGHT SEE SOME
12 TELEVISION CAMERAS. THEY ARE NOT HERE TODAY,
13 BUT I WANT YOU TO BE AWARE THAT THEY WON'T BE
14 FOCUSED ON YOU, THAT THIS CASE IS NOT ABOUT YOU
15 AND YOUR NAME AND YOUR IMAGE WOULD NOT BE USED
16 IN ANY KIND OF MEDIA. DO YOU UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. NOW YOU WERE GIVEN A QUESTIONNAIRE THAT YOU
19 EARLIER FILLED OUT AND I HAVE IT IN MY HAND. IS
20 IT ACCURATE OR DO YOU THINK YOU NEED TO CHANGE
21 ANYTHING ON IT?

22 A. IT'S A HUNDRED PERCENT ACCURATE.

23 Q. OKAY. IN THE JURY ROOM THERE WERE WITNESS
24 LISTS; DID YOU HAVE A CHANCE TO GO OVER THOSE
25 LISTS?

1 A. YES, SIR, I DID.

2 Q. IN THOSE LISTS DID YOU FIND ANYBODY THAT YOU'RE
3 RELATED TO OR THAT YOU KNEW?

4 A. SOME PEOPLE I KNOW BY ACQUAINTANCE, I DON'T KNOW
5 ANY OF THEM WHAT I WOULD CALL REAL WELL. MOST
6 ALL THE PHYSICIANS THAT ARE LISTED THERE,
7 M.D.'S, BY BEING IN THE PHARMACEUTICAL BUSINESS
8 I'M ACQUAINTED WITH THEM.

9 I ASSUME THAT KATHY BIGHAM IS THE ONE THAT OWNS
10 THURSDAYS, TOO?

11 Q. I DON'T KNOW FOR SURE, BUT I'M ASSUMING THE SAME
12 THING.

13 A. AND THERE'S ONE PERSON ON THERE THAT LIVES DOWN
14 THE STREET FROM ME.

15 Q. OKAY. WOULD THE FACT THAT THOSE PEOPLE POSSIBLY
16 WOULD TESTIFY IN THIS CASE, WOULD THAT EFFECT
17 YOUR ABILITY TO BE FAIR AND IMPARTIAL OR COULD
18 YOU IN SPITE OF THAT ---

19 A. NO, THAT WOULDN'T EFFECT ME.

20 Q. THIS CASE HAS RECEIVED SOME NOTORIETY AS FAR AS
21 THE PRESS, IT'S BEEN PUBLICIZED. HAVE YOU READ
22 ANYTHING ABOUT IT, HEARD ANYTHING ABOUT IT OR
23 DISCUSSED IT?

24 A. WELL, I MEAN, YES, I'VE READ ABOUT IT SINCE DAY
25 ONE WHEN IT WAS IN THE PAPER, THAT IT SUPPOSEDLY

1 HAPPENED. I FOLLOWED IT CLOSELY IN THE PAPER AND
2 WHAT MEDIA I'VE BEEN EXPOSED TO.

3 I HAVE SOME FRIENDS THAT KNEW THE DECEASED. I'VE
4 LISTENED TO WHAT THEY'VE HAD TO SAY. AND THAT'S
5 BEEN MY EXPOSURE.

6 Q. ALL RIGHT. WOULD YOU BE ABLE TO BLOCK THAT OUT
7 OF YOUR MIND IF YOU SAT ON THE JURY; THAT IS,
8 WOULD YOU BE ABLE TO BASE YOUR VERDICT SOLELY ON
9 THE LAW AND THE FACTS THAT ARE DEVELOPED IN THE
10 TRIAL?

11 A. YOUR HONOR, I WOULD LIKE TO TELL YOU I COULD,
12 BUT I'M NOT SURE I COULD.

13 Q. OKAY. LET ME LET YOU STEP OUTSIDE THE DOOR JUST
14 FOR A MINUTE.

15 (THE JUROR LEFT THE COURTROOM.)

16 THE COURT: AT THIS STAGE ANY COMMENT BY THE
17 STATE?

18 MR. BRACKETT: NO, SIR. WE WOULD CONSENT TO HIS
19 BEING EXCUSED.

20 THE COURT: THE DEFENSE?

21 MR. HANCOCK: WE WOULD ALSO CONSENT, YOUR HONOR.

22 THE COURT: ALL RIGHT. HAVE HIM COME BACK IN.

23 (THE JUROR CAME BACK INTO THE COURTROOM.)

24 THE COURT: WE'RE GOING TO EXCUSE YOU FROM
25 SERVING. WE APPRECIATE YOUR CANDOR AND APPRECIATE YOU BEING

1 WITH US AND HOPE THAT YOUR JAW AND YOUR BACK AND ALL DO
2 OKAY. BUT WE APPRECIATE YOUR PARTICIPATION, BUT WE ARE
3 GOING TO EXCUSE YOU.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: LET'S TAKE A REAL SHORT ---

6 MR. BOYD: YOUR HONOR, IT DOESN'T MATTER SINCE
7 THIS JUROR HAS BEEN DISQUALIFIED BUT COULD YOU NOT USE THE
8 WORD NOTORIETY?

9 THE COURT: I DID NOT MEAN TO DO THAT, AND AS
10 SOON AS I SAID IT I WISHED I HAD IT BACK IN MY MOUTH. I
11 AGREE, AND I'LL DO BETTER. THAT WAS NOT A GOOD WORD TO USE
12 AND I AGREE WITH YOU A HUNDRED PERCENT.

13 MR. BOYD: THANK YOU, SIR.

14 MR. POPE: YOUR HONOR, I NOTICE SOME OF THE
15 JURORS END UP HAVING THE LIST AND HAVING IT WITH THEM. WE
16 MIGHT JUST HAVE THE BAILIFFS OR SOMEBODY TO CHECK AND MAKE
17 SURE WE'RE NOT RUNNING LOW.

18 THE COURT: WHEN THEY GO, TAKE THEM BACK UP AND
19 KEEP FEEDING THEM BACK IN THERE. I DON'T MIND THEM BRINGING
20 THEM IN HERE, BUT JUST MAKE SURE THEY'RE NOT TAKING THEM
21 HOME AND ALL OF THAT. JUST KEEP A SUPPLY IN THERE.

22 ALL RIGHT, LET'S TAKE A REAL SHORT, NO MORE THAN
23 A FIVE MINUTE BREAK.

24 AFTER THE BREAK:

25 THE COURT: MR. LABARGE, IF YOU WILL COME UP AND

1 HAVE A SEAT.

2 STEPHEN LABARGE, JUROR NUMBER 143, WHITE MALE,
3 WAS QUESTIONED AS FOLLOWS:

4 QUESTIONS BY THE COURT:

5 Q. FIRST LET ME TELL YOU THAT IN THE EVENT YOU WERE
6 TO BE SEATED ON THIS TRIAL, YOU WOULD PERHAPS
7 SEE CAMERAS IN THE COURTROOM. WE NOW ALLOW
8 THAT, BUT THEY WOULD NOT BE FOCUSED ON THE
9 JURORS AND NO JUROR'S NAME WOULD BE PERMITTED TO
10 BE PUBLICIZED. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. NOW WE HAD YOU FILL OUT A QUESTIONNAIRE. IS
13 THAT CORRECT OR IS THERE ANYTHING ON THERE THAT
14 YOU NEED TO CHANGE?

15 A. I DON'T BELIEVE SO.

16 Q. AND I WILL REMIND YOU THAT YOU ARE STILL UNDER
17 OATH. DID YOU HAVE A CHANCE TO GO OVER THAT
18 WITNESS LIST THAT WAS IN THE JURY ROOM?

19 A. YES, SIR.

20 Q. DID YOU FIND ANYBODY ON THERE THAT YOU WERE
1 RELATED TO OR CLOSE FRIENDS?

22 A. NO, SIR.

3 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE, READ
4 ABOUT IT OR DISCUSSED IT WITH ANYONE?

25 A. MINIMALLY. I MOVED TO THE AREA LAST MAY. THE

1 FIRST I HEARD OF THE CASE WAS IN YESTERDAY'S
2 PAPER. THERE WAS A SHORT ARTICLE IN THE
3 CHARLOTTE OBSERVER. THAT WAS THE FIRST I'D
4 HEARD ABOUT IT.

5 Q. WHAT YOU READ IN THE PAPER, WOULD THAT AFFECT
6 YOUR ABILITY TO BE FAIR AND IMPARTIAL OR WOULD
7 YOU BE ABLE IN THE TRIAL OF THIS CASE IF YOU
8 WERE TO SIT ON IT TO DISCARD THAT INFORMATION
9 AND BASE YOUR VERDICT SOLELY ON THE LAW AND THE
10 EVIDENCE THAT'S DEVELOPED IN THE TRIAL?

11 A. I DON'T BELIEVE THE PAPER WOULD EFFECT MY
12 ABILITY.

13 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU SOME
14 QUESTIONS AND THEY ARE NOT MEANT TO INVAD E YOUR
15 PRIVACY AND THEY ARE NOT COUCHED IN ANY WAY TO
16 REFLECT ANYTHING ON YOU AND THEY HAVE NO RIGHT
17 OR WRONG ANSWERS. WE JUST SIMPLY NEED TO KNOW
18 CERTAIN THINGS DUE TO THE NATURE OF THIS
19 PARTICULAR CASE. YOU'VE ALREADY EXPRESSED SOME
20 VIEW.

21 AND EVEN THOUGH AT THIS TIME WE'RE GOING TO BE
22 TALKING ABOUT WHAT'S CALLED THE PENALTY PHASE OF
23 A DEATH PENALTY TRIAL, THERE ARE TWO PHASES.
24 THERE IS ONE WHEREIN THE GUILT OR INNOCENCE IS
25 DETERMINED AND IF A DEFENDANT WHERE THE DEATH

PENALTY IS SOUGHT IS FOUND GUILTY, THEN THE SECOND TRIAL IS CONVENED WITH THE SAME JURY, BUT WOULD GO FORWARD INTO A SECOND PHASE WHEREIN THE PENALTY IS DETERMINED BY A JURY.

SO EVEN THOUGH WE ARE TALKING ABOUT THAT SECOND PART, THERE IS NO -- THAT'S NOT TO REFLECT ANYTHING ABOUT THE GUILT OR INNOCENCE OF MR. ROBERTSON. HE IS PRESUMED INNOCENT OF THIS CHARGE. HE IS PRESUMED INNOCENT UNTIL SUCH TIME AS A JURY WERE TO DETERMINE BEYOND A REASONABLE DOUBT THAT HE WAS IN FACT GUILTY. HE IS ENTITLED TO THE PRESUMPTION OF INNOCENCE, AND THAT IS A SUBSTANTIAL RIGHT.

NOW IN THE JURY ROOM THERE WAS A SHEET THAT HAD THREE JUROR TYPES ON IT. DID YOU HAVE A CHANCE TO REVIEW IT?

A. YES, I DID.

Q. DID YOU FIND YOURSELF AS BEING ONE OF THOSE JUROR TYPES?

A. YES, I WOULD BE MOST LIKE NUMBER TWO.

Q. THAT IS A JUROR WHO EVEN THOUGH THE GUILT OF A DEFENDANT HAD BEEN DETERMINED BY A JURY BEYOND A REASONABLE DOUBT, YOU'RE THE TYPE JUROR WHO UNDER NO CIRCUMSTANCES COULD EVER GIVE THE DEATH PENALTY. IS THAT CORRECT?

1 A. THAT IS CORRECT.

2 Q. YOU ARE THE TYPE THAT REGARDLESS OF WHAT YOU
3 WERE TO HEAR IN REGARD TO FACTS AND
4 CIRCUMSTANCES IN AGGRAVATION OF THE INCIDENT, NO
5 MATTER WHAT YOU HEARD THAT YOUR MIND WOULD BE
6 MADE UP CONCERNING PUNISHMENT. IS THAT CORRECT?

7 A. THAT IS EXTREMELY CORRECT. THAT IS A VERY FIRM
8 CONVICTION THAT I HOLD, SIR.

9 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT MR.
10 HANCOCK OR MR. BOYD OR THE STATE MAY HAVE.

11 QUESTIONS BY MR. BOYD:

12 Q. HOW ARE YOU DOING, MR. LABARGE? I'M JIM BOYD
13 AND I REPRESENT JIMMY ROBERTSON WHO IS SEATED
14 OVER HERE, MY CO-COUNSEL, BILL HANCOCK, IS
15 SEATED THERE.

16 A. UH HUH.

17 Q. I JUST WANT TO ASK YOU A FEW QUESTIONS. THERE
18 ARE NO RIGHT OR WRONG ANSWERS TO THIS OR
19 ANYTHING , ABOUT YOUR QUALIFICATIONS TO SERVE. I
20 BELIEVE YOU SAID YOU JUST MOVED HERE BACK LAST
21 MAY?

22 A. YES, SIR.

23 Q. SO YOU HADN'T HEARD ANYTHING ABOUT THIS CASE
24 UNTIL YESTERDAY?

25 A. THAT IS CORRECT.

1 Q. OKAY. AND LET ME ASK YOU, PARTICULARLY IN YOUR
2 ANSWER TO THE QUESTION ABOUT THE DEATH PENALTY,
3 THE JUDGE TOLD YOU THAT THERE ARE TWO PHASES TO
4 A TRIAL. THERE'S A PHASE IN WHICH THE
5 DEFENDANT, MR. ROBERTSON, WOULD BE FOUND TO BE
6 NOT GUILTY OR GUILTY.

7 A. UH HUH.

8 Q. OF COURSE IF HE'S NOT GUILTY, THAT'S THE END OF
9 IT YOU UNDERSTAND.

10 A. RIGHT.

11 Q. NOW IS THERE ANYTHING IN YOUR BELIEFS THAT WOULD
12 PREVENT YOU FROM RENDERING A VERDICT IN THAT
13 PHASE OF THE TRIAL OF GUILTY OR NOT GUILTY?

14 A. NO, SIR.

15 Q. ON THE SECOND PHASE PART OF THE TRIAL, OF
16 COURSE, DIFFERENT JURORS HAVE DIFFERENT VIEWS
17 ABOUT THIS, AND I'M JUST GOING TO ASK YOU ABOUT
18 YOUR'S.

19 THE JUDGE WILL CHARGE YOU CONCERNING MURDER AND
20 WHAT CONSTITUTES AGGRAVATING CIRCUMSTANCES FOR
21 MURDER; THAT IS, THINGS MAKING THE MURDER WORSE.
22 AND UNDER SOUTH CAROLINA LAW IF THE MURDER IS
23 COMMITTED UNDER CERTAIN AGGRAVATED
24 CIRCUMSTANCES, THE JURY IS ALLOWED TO CONSIDER
25 THE DEATH PENALTY.

1 A. UH HUH.

2 Q. OF COURSE, THERE IS NEVER ANY FIRM IDEA THAT ANY
3 JUROR HAS TO VOTE A CERTAIN WAY. YOU UNDERSTAND
4 THAT?

5 A. YES, SIR.

6 Q. IF THE JUDGE CHARGES YOU WHAT FACTORS ARE
7 AGGRAVATING AND WHAT FACTORS MAY BE MITIGATING,
8 CAN YOU WEIGH THOSE FACTORS AND CONSIDER THE
9 DEATH PENALTY IN A PARTICULAR CASE?

10 A. SIR, I BELIEVE VERY STRONGLY THAT ALL LIFE IS
11 SACRED, WHETHER AN UNBORN CHILD OR AN OLD PERSON
12 CONSIDERING EUTHANASIA OR A CONVICTED MURDERER.
13 HONESTLY, I DON'T KNOW THE PROCEDURES OF A
14 TRIAL, I'VE NEVER BEEN INVOLVED. I DON'T KNOW -
15 - I BELIEVE THAT ALL TWELVE PEOPLE MUST CONVICT
16 OR NOT CONVICT. I DON'T KNOW IF YOU NEED A
17 MAJORITY OR IF YOU NEED, YOU KNOW, ALL TWELVE TO
18 VOTE FOR THE DEATH PENALTY.

19 I BELIEVE I COULD FUNCTION IMPARTIALLY IN A
20 TRIAL -- WHERE THERE'S NOT A DEATH PENALTY
21 TRIAL, I BELIEVE I WOULD BE A VERY GOOD JUROR.
22 BUT I DO NOT FEEL THAT I COULD VOTE FOR THE
23 DEATH PENALTY AS MY RELIGIOUS BELIEFS WOULDN'T
24 ALLOW ME TO UNDER ANY CIRCUMSTANCES.

25 Q. NOW YOU USED THE WORD FEEL. WHAT I'M ASKING YOU

1 IS ARE YOU FIRM THAT YOU COULD NOT OR IS THERE A
2 POSSIBILITY THAT YOU ---

3 A. I WOULD NOT UNDER ANY CIRCUMSTANCES.

4 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

5 MR. BRACKETT: NO QUESTIONS, YOUR HONOR.

6 THE COURT: ALL RIGHT, SIR. I'M GOING TO ASK YOU
7 TO STEP OUTSIDE FOR JUST A MINUTE.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: WHAT SAYS THE DEFENSE?

10 MR. BOYD: YOUR HONOR, I WOULD LOVE TO HAVE HIM
11 AS A JUROR.

12 THE COURT: WHAT ABOUT HIS QUALIFICATION?

13 MR. BOYD: HE DOESN'T APPEAR TO BE QUALIFIED
14 UNDER WITHERSPOON.

15 THE COURT: ALL RIGHT. ASK HIM TO COME BACK IN.
16 (THE JUROR RETURNED TO THE COURTROOM.)

17 THE COURT: MR. LABARGE, YOU CAN STOP RIGHT
18 THERE. WE APPRECIATE YOUR CANDOR. WE'RE GOING TO EXCUSE
19 YOU FROM SERVING ON THIS PARTICULAR JURY, BUT WE DO
20 APPRECIATE YOUR CANDOR, AND THANK YOU AN AWFUL LOT.

1 (THE JUROR LEFT THE COURTROOM.)

22 THE COURT: ALL RIGHT, NEXT WILL BE KRISTEN
3 GORDON. BEFORE SHE COMES IN, I NOTICE SHE IS A SCHOOL
4 TEACHER AND I BELIEVE SHE WOULD HAVE A STATUTORY -- THAT
5 OTHER SCHOOL TEACHER DIDN'T MENTION IT, BUT ---

1 MR. BOYD: YOUR HONOR, DID THIS JUROR FILL OUT A
2 QUESTIONNAIRE? WE DON'T SEEM TO HAVE ONE.

3 THE COURT: I'VE GOT A COPY.

4 MR. BRACKETT: THE STATE HAS ONE.

5 MR. BOYD: WE HAVE TWO STACKS AND NEITHER ONE HAS
6 THAT JUROR ON IT.

7 THE COURT: I BELIEVE THIS JUROR WOULD BE EXCUSED
8 UNDER SECTION 14-7-845. HAVE HER STEP IN THE DOOR.

9 KRISTEN GORDON, JUROR NUMBER 198, WHITE FEMALE,
10 WAS QUESTIONED AS FOLLOWS:

11 QUESTIONS BY THE COURT:

12 Q. YOU CAN JUST STOP RIGHT THERE. DO YOU TEACH
13 SCHOOL?

14 A. YES, SIR.

15 Q. AND BECAUSE OF THAT, YOU WISH TO BE EXCUSED?

16 A. YES.

17 Q. WE CAN TRANSFER YOU. BY LAW YOU ARE ENTITLED TO
18 BE TRANSFERRED TO ANOTHER TERM.

19 A. OKAY.

20 Q. SO, THEY WILL -- IF YOU WILL GO BACK DOWNSTAIRS
21 TO ---

22 A. WELL, ACTUALLY, CAN I INTERRUPT HERE?

23 Q. YES.

24 A. I HAD REQUESTED TO BE TRANSFERRED, AND THEY
25 TRANSFERRED ME TO A JUNE DATE. AND SINCE MY

1 HUSBAND IS A YOUTH PASTOR, WE GO ON YOUTH
2 RETREATS AND TRIPS DURING THE SUMMER AND THAT
3 CONFLICTED WITH THE TRIP AND SO I SAID HOW ABOUT
4 THIS MARCH DATE AND SHE SAID, SURE, COME BACK
5 FOR THAT. SO, I HAVE REQUESTED TO CHANGE IT
6 ONCE ALREADY IF THAT MEANS ANYTHING.

7 Q. WELL, YOU HAVE AN ABSOLUTE RIGHT NOT TO HAVE IT
8 CONFLICT WITH YOUR SCHOOL. IS THERE ANOTHER
9 TERM THAT SHE COULD BE TRANSFERRED TO?

10 THE CLERK: JULY.

11 Q. HOW ABOUT JULY?

12 A. YES, DEPENDING ON THE DATE.

13 Q. WELL, I MEAN YOU'VE GOT A RIGHT TO BE
14 TRANSFERRED BUT WE CAN'T KEEP TRANSFERRING YOU.
15 THIS WOULD BE A CASE IF YOU WERE SEATED WHERE
16 YOU WOULD BE SEQUESTERED AND YOU WOULD BE OUT OF
17 WORK FOR PROBABLY CLOSE TO TWO WEEKS. THAT'S
18 WHY THE GENERAL ASSEMBLY HAS PASSED THIS LAW.
19 BUT ALL THEY ALLOW ME TO DO IS TO CHANGE IT TO
20 ANOTHER TIME.

21 IT SORT OF BOILS DOWN TO WHAT'S MORE IMPORTANT
22 TO YOU, WHETHER OR NOT YOU WANT TO GO AHEAD AND
23 SERVE NOW BECAUSE WE ARE GOING TO HAVE TO SET
24 ANOTHER TIME. YOU DON'T GET TO CHOOSE IN THE
25 SUMMER TIME.

1 A. RIGHT.

2 Q. IF IT CONFLICTS WITH SOMETHING YOUR HUSBAND IS
3 DOING, THAT'S UNFORTUNATE. SO, YOU'VE GOT TO
4 MAKE A CHOICE OF WHETHER IT'S THE SCHOOL
5 CHILDREN OR YOUR HUSBAND.

6 A. OKAY. I'LL HAVE IT MOVED THEN, IF THAT'S OKAY.

7 Q. ALL RIGHT, WE WILL MOVE IT TO A TERM IN JULY AND
8 IF THAT CONFLICTS WITH SOMETHING, YOU WON'T BE
9 ENTITLED TO HAVE IT CHANGED ANYMORE.

10 A. OKAY.

11 Q. ALL RIGHT, THANK YOU.

12 (THE JUROR LEFT THE COURTROOM.)

13 THE COURT: CLARK HOLT, 118.

14 MR. POPE: YOUR HONOR, AS I UNDERSTAND THE
15 DISTINCTION, THE ONES THAT REQUEST TO BE EXCUSED, SCHOOL
16 TEACHERS, YOU WOULD ---

17 THE COURT: WELL, I REALLY DIDN'T EVEN THINK
18 ABOUT IT THAT MUCH WHEN THE OTHER LADY WAS UP HERE AND SHE
19 DIDN'T EXPRESS -- I ASKED HER BEFORE SHE LEFT IF THERE WAS
20 ANYTHING SHE FELT WOULD CONFLICT.

21 MR. POPE: BUT I THINK THE STATUTE CLEARLY SAID
22 THAT THEY HAVE TO ---

23 THE COURT: YES, THAT'S RIGHT, THEY HAVE TO
24 REQUEST IT.

25 CLARK HOLT, JUROR NUMBER 118, WHITE MALE, WAS

1 QUESTIONED AS FOLLOWS:

2 QUESTIONS BY THE COURT:

3 Q. MR. HOLT, YOU'RE STILL UNDER OATH, OKAY?

4 A. OKAY.

5 Q. AND I'M JOHN HAYES. I WANT YOU TO KNOW THAT
6 THIS CASE, DURING PARTS OF IT, YOU MAY SEE A
7 CAMERA OR A PHOTOGRAPHER IN THE COURTROOM, BUT
8 THEY ARE NOT ALLOWED TO PHOTOGRAPH OR DO ANY
9 IMAGE OF A JUROR OR PUBLISH YOUR NAME. SO, I
10 JUST WANT YOU TO BE AWARE THAT IF YOU SEE ANY
11 NEWS TYPES AROUND, YOU'RE NOT THE SUBJECT OF
12 WHAT THEY'RE DOING. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. NOW, YOU HANDED IN A QUESTIONNAIRE, AND I HAVE A
15 COPY RIGHT HERE. IS THERE ANYTHING ON THERE
16 THAT YOU NEED TO CHANGE OR DO YOU FEEL IT'S
17 ACCURATE?

18 A. IT'S PRETTY ACCURATE, SIR.

19 Q. HAVE YOU REVIEWED IN THE JURY ROOM THOSE LISTS
20 OF WITNESSES?

1 A. YES, SIR.

22 Q. DID YOU FIND ANYBODY ON THERE THAT YOU ARE
3 RELATED TO OR CLOSE TO?

4 A. NO, SIR.

25 Q. THIS CASE HAS BEEN COVERED BY THE NEWS MEDIA.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

)
) IN COURT OF GENERAL SESSIONS
)

THE STATE,

PLAINTIFF,

VS.

JAMES DEJARNETTE
ROBERTSON,

DEFENDANT.

) INDICTMENT NOS. 98-GS-46-1020
) 1021, 1022, 1023
)

) TRANSCRIPT OF TRIAL AND
) PRE-TRIAL MOTIONS (7-17-98,
) 9-22-98, 9-25-98, 11-2-98,
) AND 12-4-98)
) MARCH 15, 1999
) YORK, SOUTH CAROLINA

VOLUME II

1 HAVE YOU HEARD ANYTHING ABOUT IT, READ ANYTHING
2 ABOUT IT OR DISCUSSED IT WITH ANYONE?

3 A. I HAVE READ QUITE A BIT ABOUT IT. JUST
4 RECENTLY, YESTERDAY.

5 Q. WOULD THE FACT THAT YOU READ ABOUT IT, WOULD
6 THAT AFFECT YOUR ABILITY TO BE FAIR AND
7 IMPARTIAL AT THE TRIAL OR WOULD YOU BE ABLE TO
8 PUT WHAT YOU HAD READ OUT OF YOUR MIND AND BASE
9 YOUR VERDICT ON THE LAW AND EVIDENCE THAT'S
10 RECEIVED IN THE TRIAL? COULD YOU DO THAT?

11 A. I THINK SO.

12 Q. COULD YOU OR COULD YOU NOT?

13 A. I'M NOT SURE; I MEAN I THINK I COULD, YEAH.

14 Q. I TELL YOU THAT THE LAW REQUIRES THAT YOU BASE
15 YOUR VERDICT SOLELY ON THE LAW AND EVIDENCE AND
16 DISASSOCIATE FROM YOUR CONSIDERATION ANY PRE-
17 TRIAL PUBLICITY CONCERNING THIS CASE. COULD YOU
18 OR COULD YOU NOT DO THAT?

19 A. WELL, IT WAS KIND OF BRUTAL AND IT INVOLVED THE
20 PARENTS. I'M NOT SURE. I MEAN, I THINK I MIGHT
21 COULD.

22 Q. WELL, LET ME GO AHEAD THEN AND ASK YOU, IN THE
23 JURY ROOM THERE WAS A LIST OF THREE TYPES OF
24 JURORS. DID YOU HAVE A CHANCE TO REVIEW IT?

25 A. YES, SIR.

1 Q. DID YOU FIND YOURSELF AS BEING ONE OF THOSE
2 JUROR TYPES?

3 A. YES, SIR.

4 Q. WHICH ONE?

5 A. IT WOULD BE NUMBER 2.

6 Q. ALL RIGHT. THAT IS A JUROR WHO, REGARDLESS OF
7 THE CIRCUMSTANCES, COULD NEVER UNDER ANY
8 CIRCUMSTANCE GIVE THE DEATH PENALTY TO ONE EVEN
9 HAD THEY BEEN FOUND GUILTY OF MURDER. IS THAT
10 CORRECT?

11 A. THAT'S TRUE.

12 Q. YOU WOULD BE ONE WHO WOULD NOT NEED TO HEAR ANY
13 FACTS AND CIRCUMSTANCES IN AGGRAVATION OF THE
14 PARTICULAR INCIDENT, BUT YOU WOULD HAVE YOUR
15 MIND MADE UP CONCERNING THE PUNISHMENT NO MATTER
16 WHAT YOU HEARD. IS THAT CORRECT?

17 A. YES, SIR.

18 Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH YOU
19 COULD IMPOSE THE PENALTY OF DEATH ON SOMEONE FOR
20 MURDER?

21 A. I DON'T THINK SO.

22 Q. ALL RIGHT. ANSWER ANY QUESTIONS THE STATE MAY
23 HAVE.

24 QUESTIONS BY MR. POPE:

25 Q. MR. HOLT, MY NAME IS TOMMY POPE. I'M THE

1 SOLICITOR HERE IN YORK AND UNION. THIS IS KEVIN
2 BRACKETT, MY DEPUTY SOLICITOR, AND WE REPRESENT
3 THE STATE IN THIS CASE.

4 A COUPLE OF QUICK THINGS. YOU UNDERSTAND IT IS
5 A TWO PART TRIAL; THE FIRST PART IS GUILT, THE
6 SECOND PART IS PENALTY. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. AND YOU UNDERSTAND THAT THE DEFENDANT IS
9 INNOCENT UNTIL PROVEN GUILTY AND WE'VE GOT TO
10 PROVE THE CASE.

11 A. YES, SIR.

12 Q. AND YOU TOLD THE JUDGE THAT YOU HAD READ -- I
13 THINK PARTICULARLY YOU SAID YESTERDAY YOU HAD
14 READ A NUMBER OF THINGS ABOUT THE CASE AND ABOUT
15 THE NATURE, I THINK I HEARD YOU SAY, YOU KNOW,
16 THE PARENTS AND THE BRUTALITY AND THINGS OF THAT
17 NATURE. AGAIN, YOU FEEL LIKE YOU'RE KIND OF ON
18 TRIAL HERE YOURSELF NOW WITH US ASKING
19 QUESTIONS, BUT THERE'S NO RIGHT OR WRONG
20 ANSWERS.

21 A. RIGHT.

22 Q. THIS IS JUST THE WAY THAT YOU FEEL. LET ME ASK
23 YOU, IN THIS SITUATION IF YOU TOOK THE JURY BOX,
24 DO YOU THINK YOU COULD SET ASIDE THE STUFF, THE
25 BRUTALITY, YOU KNOW, THE PARENTS AND WHATEVER

1 AND JUST BASE IT ON WHAT YOU HEAR FROM THE
2 WITNESS STAND AND WHAT YOU HEAR IN THE
3 COURTROOM, OR DO YOU THINK THAT WOULD BE
4 CREEPING BACK IN ON YOU?

5 A. THERE AGAIN LIKE I TOLD YOU, I'M NOT SURE. I
6 MEAN I THINK I COULD, BUT I'M NOT SURE. YOU
7 KNOW, IT INVOLVED HIS PARENTS. I MEAN TO ME HOW
8 COULD YOU DO ANYTHING TO YOUR PARENTS; THAT WAS
9 KIND OF BIZARRE.

10 Q. AND BASED ON THAT, HAVE YOU GOT ANY
11 PRECONCEIVED NOTIONS ABOUT THE CASE BASED ON
12 WHAT YOU SAW IN THE PAPER OR WOULD YOU WAIT AND
13 HEAR FROM IT OVER HERE?

14 A. I JUST KIND OF FEEL LIKE THE BOY WAS SICK OR
15 SOMETHING WAS GOING ON THAT IS BEYOND WHAT
16 PEOPLE KNOW, I GUESS.

17 Q. BEYOND WHAT YOU READ IN THE PAPER, OKAY. AND SO
18 YOU WOULD TRY TO PUT THAT OUT OF YOUR MIND, AND
19 BASED ON THAT YOU WOULD TRY TO DELIBERATE JUST
20 ON WHAT YOU HEARD AND THE EVIDENCE WE PUT UP.
21 AND, OF COURSE, THEY DON'T HAVE TO PROVE
22 ANYTHING. YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. OKAY. BUT, AGAIN, YOU WOULD DO YOUR BEST TO SET
25 IT ASIDE AND MAYBE YOU COULD AND MAYBE YOU

1 COULDN'T, IS THAT A FAIR STATEMENT?

2 A. RIGHT.

3 Q. OKAY. AND THEN WE GET -- IF HE IS CONVICTED,
4 THEN WE WOULD GET TO THE SECOND PHASE. AND,
5 AGAIN, WE'RE JUST SUPPOSING. OF COURSE, WE'VE
6 GOT TO PROVE THE CASE. AND AS I UNDERSTAND WHAT
7 YOU TOLD ME OR WHAT YOU TOLD THE JUDGE, THAT YOU
8 WOULD BE WHAT THEY CALL CATEGORY TWO?

9 A. YES, SIR.

10 Q. AND YOU'RE THE TYPE OF JUROR THAT NO MATTER HOW
11 BAD WE'D SHOW, THAT YOU JUST ALWAYS FEEL THAT
12 LIFE IS THE APPROPRIATE SENTENCE. IS THAT
13 RIGHT?

14 A. THAT'S ONLY GOD'S RIGHT. I DON'T EVEN OWN A
15 GUN.

16 Q. OKAY. AND AGAIN I DON'T WANT YOU TO THINK I'M
17 TRYING TO TWIST YOUR OPINION.

18 A. RIGHT.

19 Q. BUT YOU SAID THAT'S GOD'S RIGHT, SO YOUR VIEW IN
20 THIS, THAT'S YOUR RELIGIOUS VIEW TO THE DEATH
21 PENALTY?

22 A. WELL, MY HEARTFELT VIEW.

23 Q. OKAY. AND NO MATTER WHAT TYPE OF BAD EVIDENCE I
24 COULD SHOW YOU, AND THAT'S CALLED EVIDENCE IN
25 AGGRAVATION, NO MATTER HOW BAD IT WAS THAT I

1 COULD SHOW YOU, NO MATTER WHAT I COULD SHOW OR
2 ANYTHING OF THAT NATURE, THAT'S NOT GOING TO
3 CHANGE THAT VIEW?

4 A. NO, SIR.

5 Q. OKAY. WELL, I'M NOT GOING TO WASTE MUCH MORE OF
6 YOUR TIME. ONE OF THE THINGS THAT HAPPENS IN A
7 DEATH PENALTY TRIAL, ONCE A JURY HEARS IT, AND
8 OF COURSE THEY HEAR WHAT'S CALLED EVIDENCE IN
9 AGGRAVATION AND THEN THEY HEAR WHAT'S CALLED
10 EVIDENCE IN MITIGATION. AGGRAVATION IS THE BAD
11 STUFF; MITIGATION IS THINGS, LIKE YOU SAID, THAT
12 MIGHT MAKE IT A LESSER CRIME.

13 A. YES, SIR.

14 Q. NO MATTER HOW THAT WASHED OUT, WHAT WE
15 PRESENTED, YOU WOULD SAY LIFE WAS APPROPRIATE
16 BECAUSE YOU DON'T OWN A GUN AND YOU DON'T
17 BELIEVE IN THE DEATH PENALTY. FAIR ENOUGH?

18 A. YES, SIR.

19 Q. SO WHEN IT CAME DOWN TO THE TIME THAT EVERYBODY
20 BELIEVED THAT LIFE OUGHT TO BE THE VERDICT, YOU
21 COULD AGREE WITH THAT?

22 A. POSSIBLY, YES.

23 Q. I MEAN YOU DON'T KNOW UNTIL YOU HEAR IT. BUT IF
24 IT CAME DOWN AND EVERYBODY AGREED DEATH, YOUR
25 HEARTFELT CONVICTION IS NOT GOING TO ALLOW YOU,

1 NO MATTER WHAT.

2 A. YES, SIR.

3 Q. AND IF A LIST COMES AROUND -- I SAY A LIST, IT'S
4 ACTUALLY A DOCUMENT THAT'S SIGNED AND IF IT'S
5 DEATH -- OF COURSE, IF IT'S LIFE, ONE PERSON
6 SIGNS IT. BUT IF IT IS DEATH, ALL THE JURORS
7 SIGN IT, ALL TWELVE. MR. HOLT, IS THERE EVER A
8 TIME THAT YOU COULD IMAGINE THAT YOU COULD SIGN
9 YOUR NAME THAT WOULD GIVE SOMEBODY THE DEATH
10 PENALTY?

11 A. NO, SIR.

12 Q. AND THAT'S A FIRM BELIEVE ON YOUR PART?

13 A. YES, SIR.

14 Q. ALL RIGHT, THANK YOU, SIR. I APPRECIATE IT.

15 QUESTIONS BY MR. HANCOCK:

16 Q. MR. HOLT, AS I UNDERSTAND WHAT YOU HAVE SAID,
17 AND I'M BILL HANCOCK, I'M THE ATTORNEY FOR JIMMY
18 ROBERTSON, AND THIS IS JIMMY SITTING HERE AND
19 THIS IS JIM BOYD WHO IS CO-COUNSEL.

20 NOW I UNDERSTAND FROM WHAT YOU SAID, THAT SHOULD
21 YOU BE SEATED AS A JUROR, AND I'M NOT PUTTING
22 WORDS IN YOUR MOUTH, YOU CAN CORRECT ME, THAT
23 SHOULD YOU BE SEATED AS A JUROR, THEN THE
24 EVIDENCE THAT'S PRESENTED TO YOU IN THIS
25 COURTROOM BY THE SOLICITOR AND BY THE DEFENSE TO

1 BE CONSIDERED BY YOU TO DECIDE GUILT OR
2 INNOCENCE, YOU COULD DO THAT. IS THAT CORRECT?

3 A. YES.

4 Q. AND WOULD YOU CONSIDER THAT EVIDENCE TO BE MORE
5 CREDIBLE THAN WHAT YOU'VE READ IN THE NEWSPAPER
6 OR FROM SOME OTHER SOURCE?

7 A. YES.

8 Q. SO YOU'RE TELLING ME THAT YOU COULD GIVE THIS
9 GENTLEMAN A FAIR TRIAL AND IF HE WAS GUILTY, YOU
10 COULD VOTE GUILTY; AND IF HE WAS NOT GUILTY, YOU
11 COULD VOTE NOT GUILTY. IS THAT CORRECT, SIR?

12 A. IN THE TRIAL, YES.

13 Q. NOW YOU UNDERSTAND THAT IT GOES TO A SECOND
14 PHASE, AND THE JUDGE EXPLAINED IT TO YOU. IT
15 WOULD GO TO WHAT'S CALLED THE DEATH PENALTY
16 PHASE. AND THE JUDGE HAS TOLD YOU IN THAT DEATH
17 PENALTY PHASE, THEN WE ARE ASSUMING THAT THE
18 DEFENDANT HAD BEEN CONVICTED OF THE CRIME AND
19 THE ONLY CONSIDERATION THERE IS WHETHER HE WOULD
20 GET A DEATH SENTENCE OR A LIFE SENTENCE. IS
21 THAT CORRECT? DO YOU UNDERSTAND THAT?

22 A. CORRECT.

23 Q. NOW YOU INDICATED THAT YOU HAVE A BELIEF THAT
24 YOU COULD NOT PUT ANYONE TO DEATH. IS THAT
25 CORRECT?

1 A. CORRECT.

2 Q. AND YOU HAVE INDICATED TO THE SOLICITOR THAT YOU
3 COULDN'T?

4 A. CORRECT.

5 Q. NOW YOU WERE IN THE UNITED STATES MILITARY; IS
6 THAT RIGHT?

7 A. YES, I WAS.

8 Q. IN THE U.S. NAVY.

9 A. YES, SIR.

10 Q. AND YOU WERE IN PERSONNEL?

11 A. YES, I WAS.

12 Q. WERE YOU EVER IN A COMBAT SITUATION ---

13 A. NO, SIR.

14 Q. NOT AT ALL?

15 A. NO, SIR.

16 Q. BUT YOU WERE IN A SITUATION IN THE MILITARY THAT
17 YOU WERE PROVIDING FOR PEOPLE WITH DIFFERENT
18 BELIEFS TO BECOME AVAILABLE TO BE KILLED; ISN'T
19 THAT RIGHT?

20 A. THAT WAS DURING PEACE TIME.

21 Q. DURING PEACE TIME, BUT SHOULD THERE HAVE BECOME
22 A WAR, THEN YOU WOULD PROVIDE THAT; IS THAT
23 RIGHT?

24 A. CORRECT.

25 Q. YOU DIDN'T ESTABLISH ANY CONSCIENTIOUS OBJECTOR

1 STATUS DID YOU, SIR?

2 A. NO, SIR, I DID NOT.

3 Q. SO YOU KNEW THAT'S WHAT YOU WERE INVOLVED IN?

4 A. POSSIBLY, YES.

5 Q. POSSIBLY A WAR TIME SITUATION THAT WOULD INVOLVE
6 DEATHS IN WHICH YOU WOULD BE INVOLVED; ISN'T
7 THAT RIGHT?

8 A. YES.

9 Q. NOW, YOU HEARD DOWNSTAIRS THAT JIMMY IS CHARGED
10 WITH KILLING BOTH OF HIS PARENTS?

11 A. YES, SIR.

12 Q. AND YOU SAID SOMETHING ABOUT THAT I BELIEVE,
13 SIR, AND YOU SAID THAT YOU DIDN'T UNDERSTAND HOW
14 ANYBODY COULD KILL BOTH OF THEIR PARENTS. IS
15 THAT CORRECT?

16 A. YES, SIR.

17 Q. AND EVEN IF WE CAME TO A POINT THAT HE WAS
18 CONVICTED OF KILLING BOTH OF HIS PARENTS AND YOU
19 HAD TO MAKE A DECISION THAT THAT WAS A HEINOUS
20 ENOUGH CRIME TO GIVE THE DEATH PENALTY, NO
21 MATTER WHAT AGGRAVATING CIRCUMSTANCES, HOW IT
22 WOULD HAVE BEEN DONE, WHAT WOULD HAVE BEEN DONE,
23 THEN YOU COULD NOT SIT THERE IN JUDGMENT AND SAY
24 HE SHOULD GET THE DEATH PENALTY?

25 A. NO, SIR, I COULD NOT.

1 Q. AND IS THAT A RELIGIOUS BELIEF?

2 A. IT'S A HEARTFELT CONDITION.

3 Q. HEARTFELT CONDITION. AND HOW LONG HAVE YOU HELD
4 THIS HEARTFELT CONDITION, SIR?

5 A. PROBABLY ---

6 THE COURT: HEARTFELT CONVICTION I BELIEVE IS
7 WHAT HE SAID, NOT CONDITION.

8 Q. OH, CONVICTION, HEARTFELT CONVICTION?

9 A. CONDITION.

10 Q. I THOUGHT YOU SAID CONDITION.

11 THE COURT: I'M SORRY; I THOUGHT IT WAS
12 CONVICTION.

13 Q. AND HOW LONG HAVE YOU HELD THIS HEARTFELT
14 CONDITION?

15 A. PROBABLY ABOUT FOUR OR FIVE YEARS NOW. I'VE
16 LEARNED A LOT OF TRUTH THAT I DIDN'T KNOW.

17 Q. BUT PRIOR TO THAT FIVE YEARS YOU COULD HAVE DONE
18 IT?

19 A. POSSIBLY, YES.

20 Q. WHAT CONVINCED YOU THAT YOU COULDN'T?

21 A. GOD IS LOVE AND IT'S NOBODY'S RIGHT TO TAKE
22 ANOTHER LIFE.

23 Q. ARE YOU A MEMBER OF ANY RELIGIOUS ORGANIZATIONS
24 THAT ---

25 A. NO, SIR, I AM NOT.

1 Q. I HAVE NO FURTHER QUESTIONS.

2 THE COURT: MR. HOLT, I'M GOING TO LET YOU STEP
3 RIGHT OUTSIDE THE DOOR JUST FOR A MOMENT.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: WHAT SAYS THE STATE?

6 MR. POPE: I WOULD SUBMIT THAT HE'S MAINTAINED
7 THAT IT IS A HEARTFELT CONDITION, THAT HE'S STUCK WITH IT
8 THROUGHOUT AND HE SAID THAT HE COULDN'T SIGN TO GIVE THE
9 DEATH PENALTY AND HE'S NOT QUALIFIED.

10 THE COURT: WHAT SAYS THE DEFENSE?

11 MR. HANCOCK: AGAIN, I WOULD LIKE TO HAVE HIM ON
12 THE JURY, BUT I CAN'T ARGUE WITH HIM UNDER THE CASE LAW.

13 THE COURT: I FIND THAT HE'S NOT QUALIFIED. HAVE
14 HIM STEP IN.

15 (THE JUROR RETURNED TO THE COURTROOM.)

16 THE COURT: MR. HOLT, WE APPRECIATE YOUR CANDOR,
17 AND WE APPRECIATE YOUR TIME AND I AM GOING TO EXCUSE YOU
18 FROM ANY FURTHER SERVICE, BUT THANK YOU AN AWFUL LOT.

19 (THE JUROR LEFT THE COURTROOM.)

20 THE COURT: FRANCES MATTHEWS, 165.

21 FRANCES MATTHEWS, JUROR NUMBER 165, WHITE FEMALE,
22 WAS QUESTIONED AS FOLLOWS:

23 QUESTIONS BY THE COURT:

24 Q. GOOD AFTERNOON.

25 A. HI, HOW ARE YOU.

1 Q. I'M JOHN HAYES, I INTRODUCED MYSELF DOWNSTAIRS
2 THIS MORNING. YOU'RE STILL UNDER OATH, OF
3 COURSE. AND I WANT YOU TO KNOW THAT DURING --
4 IF YOU WERE TO SIT ON THIS TRIAL, ON OCCASION
5 YOU MIGHT SEE CAMERAS IN THE COURTROOM. WE
6 ALLOW THAT NOW, BUT THEY WOULD NOT BE ALLOWED TO
7 SHOW JURORS OR IDENTIFY JURORS. Y'ALL ARE NOT
8 ON TRIAL, SO Y'ALL ARE NOT PART OF THE STORY IF
9 THERE WAS ONE. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. YOU HANDED UP A QUESTIONNAIRE. DO YOU NEED TO
12 MAKE ANY CHANGES OR DO YOU BELIEVE IT'S
13 ACCURATE?

14 A. I BELIEVE IT'S ACCURATE, SIR.

15 Q. DID YOU GO OVER THE WITNESS LIST?

16 A. YES, SIR, I DID.

17 Q. DID YOU FIND ANYBODY THEREON TO WHOM YOU WERE
18 KIN OR RELATED BY BLOOD OR MARRIAGE OR WHO YOU
19 KNEW VERY WELL?

20 A. THE ONLY PERSON I KNOW IS MR. ARCHIE, JOHNNY
21 ARCHIE, AND THE ONLY REASON I KNOW HIM IS MY
22 SON-IN-LAW HAS JUST GONE TO WORK FOR HIM.

23 Q. ALL RIGHT. WOULD THE FACT THAT HE MAY BE A
24 WITNESS, WOULD THAT IF YOU WERE A JUROR AFFECT
25 YOUR ABILITY TO BE FAIR AND IMPARTIAL OR IN

1 SPITE OF THAT COULD YOU BE FAIR AND IMPARTIAL?

2 A. I CAN BE FAIR AND IMPARTIAL; YES, SIR.

3 Q. THANK YOU. WELL, LET ME ASK YOU THIS. HAVE YOU
4 HEARD ANYTHING ABOUT THIS CASE, READ ABOUT OR
5 TALKED ABOUT IT OR HEARD ABOUT IT FROM ANY
6 SOURCE WHATSOEVER?

7 A. JUST WHAT I READ IN THE NEWSPAPER, SIR.

8 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR
9 AND IMPARTIAL; THAT IS, WOULD YOU BE ABLE TO
10 BLOCK FROM YOUR MIND WHAT YOU HAVE HEARD OR READ
11 AND BASE YOUR VERDICT SOLELY ON THE LAW AND THE
12 EVIDENCE IN THE TRIAL?

13 A. YES, SIR.

14 Q. YOU COULD BASE YOUR VERDICT ON THE LAW AND THE
15 EVIDENCE IN THE TRIAL?

16 A. YES, SIR.

17 Q. AND YOU COULD DISABUSE FROM YOUR MIND AND NOT
18 FACTOR IN WHAT YOU HAD HEARD BEFORE YOU GOT
19 HERE?

20 A. YES, SIR.

21 Q. THIS CASE WOULD PROCEED IN PERHAPS TWO STAGES.
22 THE FIRST STAGE BEING THAT WHERE MR. ROBERTSON
23 WOULD BE TRIED AS TO WHETHER HE IS GUILTY OR
24 NOT. IF HE WERE FOUND GUILTY, THE CASE WOULD GO
25 INTO A SECOND STAGE. IF NOT GUILTY, THEN THE

1 MATTER WOULD END. IF HE WERE FOUND GUILTY, WE
2 WOULD GO INTO WHAT'S CALLED THE PENALTY PHASE.
3 THAT IS WHERE THE JURY WOULD DETERMINE THE
4 PUNISHMENT, WHETHER IT WOULD BE LIFE
5 IMPRISONMENT OR DEATH. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. NOW I'M GOING TO ASK YOU SOME QUESTIONS AND THEY
8 ARE MAINLY GOING TO BE ABOUT THAT SECOND PART,
9 BUT I WANT YOU TO KNOW THAT JUST BECAUSE WE'RE
10 TALKING ABOUT THAT PENALTY PHASE, THAT IS NOT TO
11 BE CONSIDERED AS ANY INDICATION OF MR.
12 ROBERTSON'S GUILT. HE IS PRESUMED INNOCENT. HE
13 IS SO PRESUMED UNTIL A JURY WERE TO FIND HIM
14 GUILTY BEYOND A REASONABLE DOUBT.

15 Q. SO THE FACT THAT WE ARE SORT OF JUMPING OVER
16 THAT FIRST STAGE AND TALKING ABOUT THE SECOND IS
17 NO INDICATION OF WHAT A JURY OUGHT TO DO IN THE
18 FIRST BUT JUST BECAUSE OF THE NATURE OF THESE
19 PROCEEDINGS, WE HAVE TO TALK ABOUT THAT SECOND
20 PART BEFORE WE EVEN GET INTO THE FIRST. DO YOU
21 UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. IN THE JURY ROOM I HAD A SHEET OF PAPER THAT HAD
24 THREE JUROR TYPES SET FORTH ON IT. DID YOU READ
25 THAT?

1 A. YES, SIR, I DID.

2 Q. DID YOU FIND YOURSELF IN ONE OF THOSE
3 CATEGORIES?

4 A. YES, I DID.

5 Q. WHICH ONE?

6 A. NUMBER THREE.

7 Q. BEFORE I GO OVER THAT WITH YOU, LET ME TELL YOU
8 THAT IN THERE THAT TYPE TALKS ABOUT AGGRAVATING
9 AND MITIGATING CIRCUMSTANCES. AND WHAT THOSE
10 WORDS MEAN, AGGRAVATING CIRCUMSTANCES ARE
11 CIRCUMSTANCES WHICH INCREASE THE ENORMITY OR ADD
12 TO THE INJURIOUS CONSEQUENCES OF AN EVENT OVER
13 AND BEYOND THE ESSENTIAL ELEMENTS OF THE CHARGE
14 ITSELF. MITIGATING CIRCUMSTANCES ARE THINGS,
15 CIRCUMSTANCES THAT WHILE THEY ARE NOT
16 JUSTIFICATION OR EXCUSE FOR AN OFFENSE, BUT ARE
17 THINGS WHICH IN FAIRNESS AND MERCY MAY BE
18 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE
19 OF CULPABILITY OF SOMEONE CHARGED. DO YOU
20 UNDERSTAND THOSE TERMS?

21 A. YES, SIR, I DO.

22 Q. YOU'RE TELLING ME THAT AS A JUROR YOU WOULD,
23 EVEN THOUGH THE GUILT HAD BEEN DETERMINED IN
24 THAT FIRST STAGE, IN THAT SECOND STAGE YOU WOULD
25 WANT TO HEAR AND NEED TO HEAR ALL THE FACTS AND

1 CIRCUMSTANCES BOTH IN AGGRAVATION AND MITIGATION
2 AND WOULD WANT TO LISTEN TO AND FOLLOW THE LAW
3 THAT I AS THE TRIAL JUDGE WERE TO CHARGE YOU
4 BEFORE YOU WOULD MAKE YOUR DECISION REGARDING
5 PUNISHMENT. IS THAT CORRECT?

6 A. YES, SIR.

7 Q. AND YOU'RE TELLING ME THAT IF THE FACTS
8 PRESENTED SO WARRANTED, THAT YOU COULD BRING IN
9 A VERDICT OF LIFE. IS THAT CORRECT?

10 A. YES, SIR.

11 Q. OR IF THE FACTS PRESENTED SO WARRANTED, YOU
12 COULD BRING IN A VERDICT OF THE DEATH PENALTY.
13 IS THAT CORRECT?

14 A. THAT IS CORRECT.

15 Q. ALL RIGHT, I AM GOING TO LET YOU ANSWER, PLEASE,
16 ANY QUESTIONS FIRST FROM THE DEFENSE.

17 QUESTIONS BY MR. BOYD:

18 Q. GOOD AFTERNOON, MS. MATTHEWS.

19 A. GOOD AFTERNOON, SIR.

20 Q. MY NAME IS JIM BOYD. I REPRESENT JIMMY ROBERTSON
21 WHO IS SEATED OVER THERE, AND BILL HANCOCK, MY
22 CO-COUNSEL IS SEATED RIGHT THERE.

23 Q. MS. MATTHEWS, I JUST NEED TO ASK YOU A FEW
24 QUESTIONS AND LIKE THE JUDGE TOLD YOU EARLIER,
25 THIS ISN'T CROSS EXAMINATION OR ANYTHING, YOU'RE

1 NOT ON THE HOT SPOT, I JUST HAVE TO ASK YOU A
2 FEW QUESTIONS CONCERNING YOUR QUALIFICATIONS AND
3 THAT TYPE OF THING.

4 AND THERE IS NO RIGHT OR WRONG ANSWERS TO WHAT
5 I'M ASKING YOU, SO JUST TELL US HOW YOU TRULY
6 FEEL ABOUT THIS IF YOU DON'T MIND.

7 MS. MATTHEWS, YOU WERE ASKED SOME QUESTIONS
8 CONCERNING THE DEATH PENALTY AND YOU SAID YOU
9 FIT IN CATEGORY THREE WHICH IS YOU COULD EITHER
10 VOTE FOR THE DEATH PENALTY OR FOR LIFE
11 IMPRISONMENT; IS THAT CORRECT?

12 A. THAT IS CORRECT, SIR.

13 Q. AND WHAT I WANT TO ASK YOU CONCERNS WHAT THE
14 JUDGE TOLD YOU A LITTLE BIT ABOUT, BUT THE STATE
15 WILL PRESENT EVIDENCE IN AGGRAVATION. THAT
16 MEANS THINGS THAT MAKE THE MURDER WORSE, THAT IS
17 IF WE GET TO A PENALTY PHASE. AND WE WOULD
18 PRESENT EVIDENCE IN MITIGATION WHICH ARE THINGS
19 WHICH MAKE OUR CLIENT LESS CULPABLE.

20 WHAT I GUESS I'M ASKING YOU AT THIS POINT, I'M
21 ASSUMING THAT SOMEONE HAS ALREADY BEEN CONVICTED
22 OF MURDER IN THE FIRST PHASE OF THE TRIAL FOR
23 PURPOSES OF THESE QUESTIONS. AND THAT IS THERE
24 HAS BEEN NO DEFENSE TO IT; IT'S NOT SELF-
25 DEFENSE; IT'S NOT ACCIDENT; IT'S NOT SOMETHING

1 THAT THERE IS AN EXCUSE FOR.

2 UNDER THOSE CIRCUMSTANCES, CAN YOU CONSIDER A
3 SENTENCE OF LESS THAN A DEATH SENTENCE?

4 A. YES, SIR, I COULD.

5 Q. OKAY. AND COULD YOU CONSIDER THAT EVEN IF THE
6 PERSON HAS AT THAT POINT BEEN CONVICTED OF
7 KILLING BOTH THEIR PARENTS?

8 A. YES, SIR, I THINK I COULD.

9 Q. NOW, YOU SAID YOU THINK YOU COULD. IS THERE ANY
10 HESITATION ABOUT THAT ON YOUR PART?

11 A. NO, SIR.

12 Q. AND COULD YOU CONSIDER THE MITIGATING FACTORS
13 ABOUT OUR CLIENT, ANYTHING WE WOULD SUBMIT FOR
14 YOUR CONSIDERATION ABOUT THE CIRCUMSTANCES OF
15 WHAT HAPPENED OR HIS LIFE OR ANYTHING OF THAT
16 NATURE; WOULD YOU BE WILLING TO CONSIDER THAT?

17 A. YES, SIR.

18 Q. NOW, LET ME ASK YOU, AS A JUROR, OF COURSE, YOU
19 WILL BE ASKED IF YOU ARE CHOSEN TO SIT AND
20 DELIBERATE WITH OTHER JURORS; YOU UNDERSTAND
21 THAT?

22 A. YES, SIR.

23 Q. AND YOU UNDERSTAND THAT YOU WOULD MAKE AN
24 INDIVIDUAL DECISION?

25 A. YES, SIR.

1 Q. AND YOU WOULD, OF COURSE, LISTEN TO THE OPINION
2 OF OTHER JURORS; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND YOU REALIZE THAT SOME JURORS MAY NOT SHARE
5 THE SAME OPINION AS YOU?

6 A. YES, SIR.

7 Q. AND YOU WOULD BE WILLING TO RESPECT THEIR
8 OPINIONS, WOULDN'T YOU?

9 A. YES, SIR.

10 Q. AND LIKEWISE, YOU WOULD EXPECT THEM TO RESPECT
11 YOUR OPINIONS?

12 A. YES, SIR.

13 Q. I THINK YOU HAD MENTIONED ON YOUR SHEET THAT YOU
14 HAD SERVED ON A JURY IN THE PAST?

15 A. YES, SIR.

16 Q. DO YOU REMEMBER WHAT KIND OF CASE THAT WAS?

17 A. NO, SIR, I DON'T, IT'S BEEN SO LONG.

18 Q. WAS THAT AT THE OLD COURTHOUSE?

19 A. YES, SIR, UH HUH.

20 Q. WAS IT A CRIMINAL CASE OR A CIVIL CASE; DO YOU
21 REMEMBER?

22 A. NO, SIR, I DO NOT. IT'S BEEN THAT LONG AGO.

23 Q. OKAY. THANK YOU.

24 QUESTIONS BY MR. POPE:

25 Q. MS. MATTHEWS, MY NAME IS TOMMY POPE; I'M THE

1 SOLICITOR HERE IN YORK COUNTY AND KEVIN BRACKETT
2 IS MY DEPUTY SOLICITOR.

3 A. YES, SIR.

4 Q. WE REPRESENT THE STATE. MY UNDERSTANDING OF
5 WHAT YOU TOLD THE JUDGE AND MR. BOYD IS YOU'RE
6 THE TYPE OF JUROR WHO WOULD WANT TO HEAR
7 EVERYTHING BEFORE YOU MADE A DECISION; IS THAT
8 CORRECT?

9 A. THAT IS CORRECT.

10 Q. AND IN THE SECOND PHASE -- AND, OF COURSE, THEY
11 HAVE TALKED ABOUT THE FIRST PHASE AND YOU
12 UNDERSTAND THAT WE'VE GOT TO PROVE THE CASE
13 BEYOND A REASONABLE DOUBT AND HE'S INNOCENT
14 UNTIL WE CAN PROVE HIM GUILTY.

15 A. I UNDERSTAND THAT.

16 Q. IN THE SECOND PHASE YOU WOULD HEAR EVIDENCE IN
17 AGGRAVATION WHICH WOULD BE THINGS THAT WE WOULD
18 PUT UP THAT WOULD MAKE THE CASE MORE LIKELY TO
19 RECEIVE THE DEATH PENALTY; AND YOU WOULD HEAR
20 MITIGATION, THINGS THEY WOULD SAY THAT WOULD
21 BRING AWAY FROM THE DEATH PENALTY TOWARD LIFE.
22 DO YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. BASED ON YOU PUTTING YOURSELF IN CATEGORY THREE,
25 YOU'RE THE TYPE OF JUROR THAT WOULD WANT TO HEAR

1 EVERYTHING AND WOULDN'T MAKE UP YOUR MIND WITH
2 ONE HALF OR THE OTHER UNTIL YOU HAD HEARD THE
3 WHOLE THING AND THEN MAKE A DETERMINATION BASED
4 ON WHAT YOU BELIEVE. IS THAT TRUE?

5 A. THAT IS CORRECT.

6 Q. OKAY. LET ME TELL YOU, IN THE PENALTY PHASE
7 WHEN IT GETS TO THE END AND THEIR VERDICTS AS
8 FAR AS LIFE OR DEATH, OF COURSE, HAS TO BE
9 UNANIMOUS, ALL TWELVE JURORS. IF THE JURORS
10 DETERMINE THAT BASED ON ALL THE EVIDENCE AND
11 HEARING EVERYTHING THAT LIFE IS APPROPRIATE AND
12 ALL 12 VOTE FOR LIFE, THEN JUST THE FOREPERSON -
13 - YOU KNOW, YOU SAID YOU HAD BEEN ON THE JURY A
14 LONG TIME AGO?

15 A. UH HUH.

16 Q. THE FOREPERSON WOULD SIGN THE VERDICT FOR LIFE.
17 HOWEVER, IF THE VERDICT IS DEATH -- UNDER OUR
18 LAW IF THE VERDICT IS DEATH, OF COURSE, IT WOULD
19 BE AFTER YOU HAD MADE YOUR OWN DECISION, IF EACH
20 JUROR THOUGHT DEATH WAS APPROPRIATE AND, OF
21 COURSE, THE COURT IS GOING TO DO WHAT THE JURY
22 SAYS, THERE WOULD BE A FORM THAT WOULD BE IN
23 ESSENCE THE VERDICT, THE DEATH VERDICT, AND IT
24 WOULD BE SIGNED BY ALL TWELVE JURORS.

25 AGAIN, I'M NOT MAKING LIGHT -- YOU'VE BEEN HIT

1 WITH A BUNCH OF QUESTIONS ALMOST LIKE YOU'RE ON
2 TRIAL AND THERE'S NO WRONG ANSWER, BUT IF YOU
3 HEARD THE FACTS AND YOU FELT LIKE DEATH WAS THE
4 APPROPRIATE SENTENCE IN THE CASE, COULD YOU TAKE
5 THAT FORM AND SIGN FRANCES MATTHEWS KNOWING THAT
6 IT WOULD GIVE THIS MAN DEATH IF YOU THOUGHT THAT
7 WAS APPROPRIATE?

8 A. YES, SIR, I COULD.

9 Q. OKAY AND LIKEWISE, IF YOU THOUGHT IT WASN'T
10 APPROPRIATE, THEN YOU WOULDN'T SIGN IT?

11 A. THAT IS CORRECT.

12 Q. THANK YOU, MA'AM, I APPRECIATE IT.

13 THE COURT: I'M GOING TO LET YOU STEP RIGHT
14 OUTSIDE THE DOOR FOR A MOMENT.

15 (THE JUROR LEFT THE COURTROOM.)

16 THE COURT: WHAT SAYS THE STATE?

17 MR. POPE: WE SUBMIT SHE'S QUALIFIED, YOUR HONOR.

18 THE COURT: THE DEFENSE?

19 MR. BOYD: YOUR HONOR, I BELIEVE SHE'S QUALIFIED,
20 SUBJECT TO OUR PRIOR OBJECTION.

21 THE COURT: I FIND THAT SHE IS QUALIFIED. BRING
22 HER BACK IN, PLEASE.

23 (THE JUROR RETURNED TO THE COURTROOM.)

24 THE COURT: YOU CAN JUST STAND RIGHT THERE. DO
25 YOU KNOW OF ANY EXTENUATING CIRCUMSTANCES THAT WOULD

1 INTERFERE WITH YOUR SERVICE WITH US AS A JUROR IN THIS
2 CASE?

3 THE JUROR: NO, SIR, I DO NOT.

4 THE COURT: WELL, I AM INCLUDING YOU ON THE PANEL
5 AND I AM GOING TO ASK YOU TO CALL BACK AFTER 6:00 TO THAT
6 NUMBER YOU'VE BEEN GIVEN TOMORROW NIGHT, TUESDAY NIGHT. IF
7 YOU WILL CALL BACK AFTER 6:00 YOU WILL RECEIVE INSTRUCTIONS
8 ABOUT WHAT TIME TO COME. IT MAY BE WEDNESDAY OR IT MAY NOT
9 BE UNTIL THURSDAY BUT YOU WILL RECEIVE INSTRUCTIONS AS TO
10 WHAT TIME TO BE HERE.

11 AND WHEN YOU DO COME, COME PREPARED TO BE
12 SEQUESTERED; THAT IS, TO BE STAYING IN A MOTEL FOR A FEW
13 DAYS IN THE EVENT YOU'RE CHOSEN ON THE JURY. OKAY?

14 THE JUROR: OKAY. MAY I ASK YOU ONE QUESTION?

15 THE COURT: YES, MA'AM.

16 THE JUROR: IS IT ALL RIGHT TO GO BACK TO SCHOOL
17 OR WOULD YOU PREFER THAT I STAY HOME?

18 THE COURT: I DON'T MIND YOU DOING THAT, JUST DO
19 NOT DISCUSS THIS CASE WITH ANYONE; DON'T LET ANYONE DISCUSS
20 THE CASE WITH YOU. AS I HAVE TOLD YOU BEFORE, YOU ARE NOT
21 ON THE PANEL YET, BUT YOU ARE SUBJECT TO BEING ON IT.
22 DON'T TALK ABOUT IT. IF ANYBODY TRIES TO TALK TO YOU, TELL
23 THEM YOU CAN'T. IF THEY PERSIST, REPORT BACK TO ME THAT
24 SOMEONE HAS TRIED TO TALK TO YOU ABOUT IT. AND, OF COURSE,
25 DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE

1 CONCERNING IT. BUT CALL BACK TOMORROW NIGHT AFTER 6:00.

2 THE JUROR: ALL RIGHT. THANK YOU.

3 THE COURT: THANK YOU.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT, PAMELA WITHERSPOON, 293.

6 PAMELA WITHERSPOON, JUROR NUMBER 293, WHITE
7 FEMALE, WAS QUESTIONED AS FOLLOWS:

8 QUESTIONS BY THE COURT:

9 Q. MA'AM, IF YOU WILL JUST COME UP HERE AND HAVE A
10 SEAT. HELLO AGAIN; I'M JOHN HAYES, I INTRODUCED
11 MYSELF DOWNSTAIRS.

12 Q. FIRST, I WANT TO REMIND YOU THAT YOU ARE UNDER
13 OATH, AND YOU NEED TO ANSWER WITH WORDS SO THAT
14 WE CAN MAKE A RECORD.

15 A. YES, SIR.

16 Q. I WANT TO TELL YOU THAT IF YOU ARE SEATED ON
17 THIS JURY, YOU MAY ON OCCASION SEE CAMERAS OR
18 PHOTOGRAPHERS IN THE COURTROOM. THEY WON'T BE
19 TAKING YOUR PICTURE; THEY ARE NOT REPORTING ON
20 YOU. IN FACT, THEY ARE NOT ALLOWED TO. SO, I
21 WANT YOU TO FEEL COMFORTABLE.

22 NOW, YOU HANDED US A QUESTIONNAIRE. DO YOU NEED
23 TO MAKE ANY CHANGES ON THAT OR IS IT ACCURATE?

24 A. IT'S ACCURATE.

25 Q. DID YOU HAVE A CHANCE TO REVIEW THE WITNESS

1 LIST?

2 A. YES, SIR.

3 Q. ARE THERE ANY INDIVIDUALS ON THERE TO WHOM YOU
4 ARE RELATED BY BLOOD OR MARRIAGE OR CLOSELY
5 CONNECTED AS FRIENDS?

6 A. NO, SIR, SOME ACQUAINTANCES.

7 Q. ARE THESE ACQUAINTANCES SUCH THAT WERE YOU TO BE
8 SEATED AS A JUROR, THE FACT THAT THEY ARE
9 WITNESSES, WOULD THAT INFLUENCE YOUR DECISION IN
10 ANY WAY OR IN SPITE OF YOUR KNOWING THEM WOULD
11 YOU STILL BE ABLE TO BE FAIR AND IMPARTIAL TO
12 THE STATE AND THE DEFENDANT AT THE TRIAL?

13 A. YES, SIR.

14 Q. YOU COULD BE FAIR AND IMPARTIAL?

15 A. YES, SIR.

16 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
17 YOU GOT HERE TODAY? READ ABOUT IT OR SEEN
18 ANYTHING AT ALL ABOUT IT TO YOUR RECOLLECTION?

19 A. WHEN IT HAPPENED.

20 Q. WOULD THE FACT THAT YOU HAD HEARD SOMETHING
21 ABOUT THE CASE, WOULD THAT AFFECT YOUR ABILITY
22 TO BE FAIR AND IMPARTIAL OR WOULD YOU BE ABLE TO
23 DISREGARD THAT AND BASE YOUR VERDICT SOLELY ON
24 THE LAW AND THE EVIDENCE THAT'S RECEIVED IN THE
25 TRIAL?

1 A. SOLELY ON THE EVIDENCE.

2 Q. AND THE LAW FROM THE JUDGE?

3 A. YES, SIR.

4 Q. OKAY. IN THE JURY ROOM THERE WERE THREE JUROR
5 TYPES LISTED. DID YOU HAVE A CHANCE TO REVIEW
6 IT?

7 A. YES, SIR.

8 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

9 A. YES, SIR.

10 Q. AND WHICH TYPE WOULD THAT BE?

11 A. THE THIRD TYPE.

12 Q. ALL RIGHT, THE THIRD TYPE, IN THERE THERE ARE
13 SOME PHRASES USED CONCERNING AGGRAVATION AND
14 MITIGATION. AGGRAVATING CIRCUMSTANCES ARE THOSE
15 WHICH ATTEND THE COMMISSION OF A CRIME OR AN
16 EVENT WHICH INCREASE ITS ENORMITY OR ADDS TO
17 IT'S INJURIOUS CONSEQUENCE BUT ARE ABOVE AND
18 BEYOND THE ESSENTIAL ELEMENTS OF THE OFFENSE
19 ITSELF. MITIGATING CIRCUMSTANCES ARE THOSE KIND
20 OF CIRCUMSTANCES THAT WHILE NOT CONSTITUTING
21 JUSTIFICATION OR EXCUSE FOR THE OFFENSE ARE
22 CIRCUMSTANCES WHICH IN FAIRNESS AND MERCY SHOULD
23 BE CONSIDERED AS EXTENUATING OR REDUCING THE
24 DEGREE OR MORAL CULPABILITY. DO YOU UNDERSTAND
25 THOSE TWO TERMS?

1 A. YES, SIR.

2 Q. SO YOU ARE TELLING ME THAT -- WELL, LET ME GO
3 BACK. AS THIS CASE WERE TO UNFOLD, THE FIRST
4 PART OF THE TRIAL WOULD BE AS TO MR. ROBERTSON'S
5 GUILT OR INNOCENCE. IF HE WERE FOUND INNOCENT,
6 NOT GUILTY, THE CASE WOULD BE OVER. IF HE WERE
7 FOUND GUILTY, THE CASE WOULD GO FORWARD TO THE
8 SECOND PART OR WHAT'S CALLED THE PENALTY PHASE
9 WHERE THE JURY WOULD DETERMINE WHETHER HE WOULD
10 RECEIVE LIFE IMPRISONMENT OR DEATH.

11 THE FACT THAT WE ARE TALKING ABOUT THAT SECOND
12 PART IS NO INDICATION OF ANYTHING ABOUT HIS
13 GUILT. HE IS PRESUMED INNOCENT AND IS SO
14 PRESUMED UNTIL A TRIAL JURY WERE TO FIND HIM
15 GUILTY BEYOND A REASONABLE DOUBT. DO YOU
16 UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. EVEN THOUGH WE ARE TALKING ABOUT THE SECOND
19 PART, THAT'S NOT TO ASSUME WE WOULD EVER EVEN
20 GET THERE BECAUSE HE WOULD HAVE TO BE FOUND
21 GUILTY. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. SO YOU'RE TELLING ME THAT YOU ARE THE TYPE OF
24 JUROR THOUGH THAT WERE YOU FOUND TO BE IN THAT
25 SECOND PHASE; THAT IS, MR. ROBERTSON HAVING BEEN

1 FOUND GUILTY, THAT YOU WOULD NOT HAVE MADE UP
2 YOUR MIND ENTERING THAT PHASE AS TO THE TYPE OF
3 PUNISHMENT HE SHOULD RECEIVE BUT RATHER YOU
4 WOULD NEED TO HEAR THE FACTS AND CIRCUMSTANCES
5 IN AGGRAVATION AND MITIGATION AND WOULD WANT TO
6 LISTEN TO AND FOLLOW THE LAW THAT I AS TRIAL
7 JUDGE CHARGE YOU BEFORE YOU WOULD MAKE YOUR
8 DECISION REGARDING PUNISHMENT. AND YOU'RE
9 TELLING ME THAT YOU FALL IN THAT TYPE, TYPE
10 THREE, THAT BASED ON THE FACTS PRESENTED IF IT
11 WERE WARRANTED, YOU COULD RETURN A VERDICT OF
12 LIFE IMPRISONMENT; OR IF IT WERE WARRANTED, YOU
13 COULD RETURN A VERDICT FOR THE DEATH PENALTY.
14 ARE YOU TELLING ME THAT YOU'RE THAT TYPE JUROR?

15 A. YES, SIR.

16 Q. ALL RIGHT. I AM GOING TO LET THE ATTORNEYS ASK
17 YOU SOME QUESTIONS.

18 QUESTIONS BY MR. BRACKETT:

19 Q. GOOD AFTERNOON, MS. WITHERSPOON, HOW ARE YOU
20 DOING TODAY?

21 A. FINE.

22 Q. MY NAME IS KEVIN BRACKETT; I AM THE DEPUTY
23 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT AND
24 MYSELF ALONG WITH TOMMY POPE SEATED OVER HERE
25 ARE GOING TO BE PROSECUTING THIS CASE ON BEHALF

1 OF THE STATE.

2 I AM JUST GOING TO GO OVER A COUPLE OF QUICK
3 THINKS TO KIND OF CLARIFY SOME OF THE THINGS THE
4 JUDGE SAID AND ALSO ASK YOU A COUPLE OF
5 QUESTIONS ABOUT YOUR QUESTIONNAIRE THAT YOU SENT
6 IN.

7 A. UH HUH.

8 Q. AS THE JUDGE EXPLAINED TO YOU, YOU UNDERSTAND
9 THIS IS A TWO PART TRIAL. AND IN THE FIRST PART
10 WE'RE ONLY CONCERNED ABOUT WHETHER HE'S GUILTY
11 OR NOT BECAUSE IF SOMEBODY IS NOT GUILTY, THEY
12 DON'T GET PUNISHED, RIGHT?

13 A. RIGHT.

14 Q. AND BEFORE I GET TOO DEEP INTO THIS, LET ME JUST
15 REMIND YOU THAT THERE ARE NO RIGHT OR WRONG
16 ANSWERS HERE; YOU'RE JUST TELLING US KIND OF HOW
17 YOU FEEL SO THAT WE CAN DO OUR JOBS PROPERLY.

18 Q. THE FIRST PHASE WE'RE JUST CONCERNED WITH GUILT
19 OR INNOCENCE. AND WHAT YOU HAVE SAID IS THAT
20 YOU BELIEVE YOU COULD LISTEN TO THE EVIDENCE,
21 LISTEN TO THE TESTIMONY AND MAKE YOUR MIND UP AS
22 TO WHETHER THE DEFENDANT IS GUILTY OF THESE
23 CHARGES BASED ON THE EVIDENCE THAT COMES OUT IN
24 COURT, NOT BASED ON ANYTHING YOU MIGHT HAVE READ
25 IN THE NEWSPAPER OR ANYTHING LIKE THAT. IS THAT

1 RIGHT?

2 A. YES, SIR.

3 Q. OKAY. THEN IF YOU DO FIND HIM GUILTY, ALONG
4 WITH THE OTHER 11 JURORS, THEN WE GO TO THE
5 SECOND PART OF THE TRIAL WHEN WE'RE CONCERNED
6 WITH PENALTY. AND IN THE PENALTY PHASE WE'RE
7 KIND OF DEALING WITH DIFFERENT SORT OF THINGS.
8 WE'RE NOT CONCERNED WITH GUILT OR INNOCENCE, NOW
9 WE'RE CONCERNED WITH WHAT ARE CALLED AGGRAVATING
10 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.
11 AND THE AGGRAVATING CIRCUMSTANCES ARE THINGS
12 THAT TEND TO MAKE THE CASE A LITTLE WORSE. AND
13 MITIGATING TEND TO MAKE IT A LITTLE LESS
14 SERIOUS.

15 WHAT YOU ARE SAYING IS THAT YOU COULD CONSIDER
16 THE AGGRAVATING AND YOU COULD CONSIDER ALL THE
17 MITIGATING AND YOU WOULDN'T HAVE YOUR MIND MADE
18 UP ONE WAY OR THE OTHER. YOU WOULD CONSIDER ALL
19 THE MITIGATING CIRCUMSTANCES AND YOU WOULD
20 CONSIDER THE AGGRAVATING CIRCUMSTANCES. AND
21 DEPENDING ON HOW IT ALL SHOOK OUT, YOU COULD
22 GIVE LIFE IN SOME CASES AND DEATH IN SOME CASES?

23 A. YES, SIR.

24 Q. OKAY. ONE OF THE REQUIREMENTS OF A DEATH
25 PENALTY JURY IS A LITTLE BIT DIFFERENT FROM

1 OTHER CASES. I SEE YOU'VE SERVED ON A JURY
2 BEFORE.

3 A. YES, SIR.

4 Q. OKAY, AND YOU KNOW AT THE END OF THE CASE THE
5 FOREMAN HAS TO SIGN THE VERDICT SAYING THIS IS
6 WHAT THE JURY DECIDED. A DEATH PENALTY CASE IS
7 A LITTLE BIT DIFFERENT. IF THE SENTENCE IS
8 LIFE, THEN JUST THE FOREMAN SIGNS THE VERDICT
9 FOR LIFE AND HE SIGNS HIS NAME OR HER NAME
10 DEPENDING.

11 IF IT'S DEATH, HOWEVER, EACH AND EVERY JUROR HAS
12 TO SIGN THEIR NAME ON THE VERDICT FORM FOR A
13 SENTENCE OF DEATH TO BE IMPOSED.

14 NOW IF YOU WERE ON THE JURY AND YOU HEARD ALL
15 THE EVIDENCE AND IT ALL SHOOK OUT AND YOU
16 DECIDED THAT DEATH WAS THE APPROPRIATE SENTENCE,
17 WHAT YOU'RE SAYING IS THAT YOU COULD GIVE DEATH
18 AND THAT YOU COULD SIGN YOUR NAME PAMELA
19 WITHERSPOON ON THAT DEATH SHEET?

20 A. YES, SIR.

21 Q. NOW, YOU AGREE THAT A JURY HAS TO BE FAIR?

22 A. YES, SIR.

23 Q. AND THAT YOU CAN'T COME INTO THE JURY SERVICE
24 WITH ANY KIND OF PRECONCEIVED NOTION ONE WAY OR
25 ANOTHER. YOU WOULDN'T DO THAT WOULD YOU?

1 A. NO, SIR.

2 Q. I NOTICED ON YOUR JURY FORM, THE QUESTIONNAIRE
3 THAT YOU HAD FILLED OUT, AND I DON'T MEAN TO GET
4 PERSONAL, I JUST HAVE TO ASK THESE QUESTIONS.
5 BUT I NOTICED THAT YOU HAD SAID THAT YOU HAD
6 LOST A FRIEND OR A LOVED ONE TO A HOMICIDE?

7 A. MY BROTHER-IN-LAW'S PARENTS WERE KILLED.

8 Q. OKAY. NOW YOU UNDERSTAND AS TRAGIC AS THAT WAS,
9 THAT DOESN'T HAVE ANYTHING TO DO WITH THIS
10 DEFENDANT.

11 A. RIGHT.

12 Q. AND SO THAT WOULDN'T IMPACT YOUR DECISION, YOU
13 WOULDN'T BE COMING IN HERE SEEKING SOME KIND ---

14 A. NO, NO.

15 Q. YOU COULD PUT THAT ASIDE AND THAT WOULDN'T
16 AFFECT YOUR DECISIONS IN THIS CASE ONE WAY OR
17 THE OTHER?

18 A. NO.

19 Q. THANK YOU VERY MUCH, MA'AM.

20 QUESTIONS BY MR. HANCOCK:

21 Q. MS. WITHERSPOON, I'M BILL HANCOCK; I'M ONE OF
22 THE ATTORNEYS FOR JIMMY ROBERTSON SEATED HERE;
23 MR. BOYD IS THE OTHER ATTORNEY. AND IN THAT
24 VEIN I WILL ASK YOU SOME QUESTIONS.

25 AGAIN, I WILL IMPLORE YOU AS EVERYONE HAS, THAT

1 THERE ARE NO RIGHT OR WRONG ANSWERS. WE ARE
2 JUST TRYING TO ARRIVE AT A FAIR AND IMPARTIAL
3 JURY IN THIS CASE AND WE HAVE TO ASK CERTAIN
4 THINGS. SOME ARE FAIRLY INTRUSIVE OR SEEM
5 FAIRLY INTRUSIVE, BUT WE ARE TRYING TO ARRIVE AT
6 A JUST AND FAIR DECISION IN THIS CASE.
7 TO DO SO I MUST ASK YOU, YOU INDICATED THAT YOU
8 HAD HAD YOUR, I BELIEVE, BROTHER-IN-LAW'S
9 PARENTS HAD BEEN MURDERED; IS THAT CORRECT?

10 A. YES, SIR.

11 Q. AND HOW LONG AGO WAS THAT?

12 A. IT WAS A LONG TIME AGO; IT WAS BEFORE MY SISTER
13 MARRIED HIM.

14 Q. BEFORE YOUR SISTER MARRIED HIM?

15 A. I DIDN'T KNOW HIM WHEN IT HAPPENED.

16 Q. AND HAVE YOU DISCUSSED IT WITH YOUR SISTER OR
17 YOUR BROTHER-IN-LAW?

18 A. YES.

19 Q. HAVE YOU FORMED ANY OPINION, A SOLID OPINION
20 ABOUT SOMEONE WHO KILLS PARENTS?

21 A. NO, SIR.

22 Q. ARE YOU AWARE THAT THIS CASE INVOLVES MR.
23 ROBERTSON SITTING HERE, AND YOU HEARD DOWNSTAIRS
24 THAT HE IS CHARGED WITH KILLING HIS PARENTS?

25 A. YES, SIR.

1 Q. WOULD THAT IN ANY WAY IMPACT UPON YOUR DECISION
2 AND YOUR IMPARTIALITY AS A JUROR?

3 A. NO, SIR.

4 Q. COULD YOU PUT THAT ASIDE?

5 A. YES, SIR.

6 Q. NOW THAT'S A FAIRLY TRAGIC EVENT AND I'M JUST
7 GOING TO ASK YOU ONE OTHER THING. IT DOESN'T
8 HAPPEN TO MANY OF US, THAT IS A VERY TRAGIC
9 EVENT, BUT YOU CAN PUT IT ASIDE AND NOT HAVE IT
10 IMPACT ANY AT ALL ON YOUR DECISION FOR EITHER
11 THE DEATH PENALTY OR LIFE IN THIS SITUATION? IS
12 THAT WHAT YOU'RE TELLING US?

13 A. YES, SIR.

14 Q. NOW, DO YOU HAVE ANY STRONG FEELINGS CONCERNING
15 THE DEATH PENALTY?

16 MR. BRACKETT: OBJECTION, YOUR HONOR.

17 THE COURT: I SUSTAIN THE OBJECTION.

18 Q. YOU REALIZE THAT, AS WE SAY, THIS IS A DEATH
19 PENALTY SITUATION. MR. ROBERTSON HAS NOT BEEN
20 CONVICTED OF ANYTHING BUT SHOULD HE, THEN YOU
21 WOULD DECIDE ON EITHER DEATH OR LIFE IN PRISON?

22 A. YES, SIR.

23 Q. AND YOU HAVE INDICATED TO BOTH THE JUDGE AND THE
24 SOLICITOR THAT YOU COULD VOTE, NO MATTER HOW
25 HORRIBLE THE CRIME IF THERE WERE MITIGATING

1 CIRCUMSTANCES IN YOUR MIND, THEN YOU COULD VOTE
2 FOR A LIFE SENTENCE IN THIS PARTICULAR CASE OR
3 IN ANY CASE OF THIS NATURE. IS THAT RIGHT?

4 A. UNDER CIRCUMSTANCES; YES, SIR.

5 Q. THAT YOU WOULD CONSIDER ALL OF THE AGGRAVATING
6 CIRCUMSTANCES AND ALL OF THE MITIGATING
7 CIRCUMSTANCES, WHATEVER THEY MAY BE?

8 A. YES, SIR.

9 Q. AND YOU COULD VOTE FOR LIFE EVEN THOUGH YOU WERE
10 VOTING FOR SOMEONE THAT MAY HAVE BEEN CONVICTED
11 OF KILLING BOTH OF THEIR PARENTS?

12 A. YES, SIR.

13 Q. AND YOU'VE INDICATED TO THE SOLICITOR THAT YOU
14 COULD SIGN AS ONE OF TWELVE A SENTENCE OF DEATH;
15 IS THAT CORRECT?

16 A. YES, SIR.

17 Q. COULD YOU ALSO IF IT WERE YOUR CONVICTION, NOT
18 VOTE FOR THE SENTENCE OF DEATH AND DO SO AGAINST
19 ALL OTHERS?

20 A. YES, SIR.

21 Q. I'LL JUST ASK YOU, WHO WERE YOUR BROTHER-IN-
22 LAW'S PARENTS? DO YOU KNOW THEIR NAMES?

23 A. HIS MOTHER'S NAME WAS VIRGINIA AND I CAN'T
24 REMEMBER WHAT HIS FATHER'S NAME WAS, THE
25 RAYFIELDS.

1 Q. THE RAYFIELDS?

2 A. UH HUH.

3 Q. AND YOU'VE INDICATED THAT YOU KNEW OR WERE
4 FAMILIAR WITH CERTAIN PERSONS INVOLVED IN THIS
5 CASE OR THAT YOU SAW ON THE WITNESS LIST; IS
6 THAT CORRECT?

7 A. ON THE WITNESS LIST.

8 Q. AND WHO ARE THOSE PEOPLE?

9 A. DR. FLEISHER; I WORK WITH HIM AT THE HOSPITAL,
10 I'M A NURSE. AND DOUG MCKOWN, I WENT TO SCHOOL
11 WITH. AND DEBORAH ROGERS IS A MEMBER OF MY
12 CHURCH. AND BRUCE BRYANT AND DEAN SHILLINGLAW,
13 I JUST KNOW, AND OUR FAMILIES KNOW EACH OTHER.

14 Q. WOULD THAT IN ANY WAY CAUSE YOU TO GIVE MORE
15 CREDIBILITY TO THEIR TESTIMONY THAN TO OTHERS?

16 A. NO, SIR.

17 Q. YOU COULD GIVE IT THE SAME WEIGHT, YOU'RE
18 SAYING, AS ALL OTHERS?

19 A. YES, SIR.

20 Q. I HAVE NO FURTHER QUESTIONS.

21 THE COURT: JUST STEP OUTSIDE THE DOOR FOR JUST
22 A MOMENT.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: WHAT SAYS THE STATE?

25 MR. BRACKETT: WE SUBMIT SHE'S QUALIFIED, YOUR

1 HONOR.

2 THE COURT: THE DEFENSE?

3 MR. HANCOCK: YOUR HONOR, I BELIEVE SHE IS
4 QUALIFIED UNDER THE LAW AS IT STANDS.

5 THE COURT: I FIND THAT SHE IS QUALIFIED. HAVE
6 HER STEP BACK IN.

7 (THE JUROR RETURNED TO THE COURTROOM.)

8 THE COURT: MS. WITHERSPOON, CAN YOU THINK OF ANY
9 EXTENUATING CIRCUMSTANCES THAT WOULD PREVENT YOU FROM
10 SERVING WITH US AS A JUROR?

11 THE JUROR: NO, SIR.

12 THE COURT: ALL RIGHT. I AM GOING TO INCLUDE YOU
13 ON THE PANEL. THAT DOESN'T MEAN THAT YOU WILL ACTUALLY BE
14 ON THE JURY BECAUSE WE WILL ONLY DRAW A CERTAIN NUMBER.

15 CALL BACK TO THE NUMBER YOU'VE BEEN GIVEN AFTER
16 6:00 TOMORROW. WHEN YOU COME, WHATEVER TIME THEY TELL YOU
17 TO COME, PLEASE COME PREPARED TO BE SEQUESTERED; THAT IS,
18 HOUSED AND STAY TOGETHER WITH THE OTHER JURORS FOR A WEEK
19 OR SO.

20 DON'T LET ANYBODY DISCUSS THE CASE WITH YOU, OF
21 COURSE, AND DON'T READ ANYTHING ABOUT IT OR WATCH IT OR
22 HEAR IT. IF ANYONE TRIES TO TALK TO YOU ABOUT THE CASE,
23 REPORT THAT BACK TO ME, AND TELL THEM YOU CAN'T DO IT.

24 SO, WE WILL SEE YOU, IT MIGHT BE WEDNESDAY OR IT
25 MIGHT BE THURSDAY, BUT JUST CALL BACK TOMORROW NIGHT AFTER

1 6:00 AND FOLLOW THOSE INSTRUCTIONS.

2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: ALL RIGHT, TAMARA GILL.

4 TAMARA GILL, JUROR NUMBER 92, BLACK FEMALE, WAS
5 QUESTIONED AS FOLLOWS:

6 QUESTIONS BY THE COURT:

7 Q. PLEASE COME ON UP AND HAVE A SEAT RIGHT HERE.

8 MS. GILL, I'M JOHN HAYES, YOU MET ME DOWNSTAIRS.

9 WE'VE GOT YOU UP HERE NOW AND I WANT TO ASK YOU

10 SOME QUESTIONS, BUT FIRST I WANT TO REMIND YOU

11 THAT YOU'RE UNDER OATH. DO YOU UNDERSTAND?

12 A. YES, SIR.

13 Q. THESE AREN'T QUESTIONS THAT ARE AIMED AT

14 INTERFERING WITH YOUR PRIVACY, THEY ARE JUST

15 THINGS WE HAVE TO GO INTO DUE TO THE NATURE OF

16 THIS PARTICULAR TYPE CASE. DO YOU UNDERSTAND

17 THAT?

18 A. YES, SIR.

19 Q. NOW IF YOU ARE SEATED ON THIS TRIAL, YOU MAY SEE

20 CAMERAS AT SOME POINT IN THE COURTROOM. THEY

21 WON'T BE FILMING YOU, THEY AREN'T ALLOWED TO.

22 AND THEY WON'T BE REPORTING ON YOU OR PUTTING

23 YOUR NAME IN THE PAPER. I WANT YOU TO BE AWARE

24 OF THAT.

25 Q. YOU HANDED UP A QUESTIONNAIRE; DO YOU NEED TO

1 MAKE ANY CHANGES TO IT OR IS IT ACCURATE?

2 A. IT'S ACCURATE.

3 Q. DID YOU REVIEW THE WITNESS LISTS THAT WERE IN
4 THE JURY ROOM?

5 A. YES, SIR.

6 Q. DID YOU KNOW ANYBODY ON THERE?

7 A. NO.

8 Q. WERE YOU RELATED TO ANYBODY ON THERE?

9 A. NO.

10 Q. HAVE YOU HEARD ABOUT THIS CASE FROM ANY SOURCE
11 PRIOR TO YOUR COMING TO TRIAL?

12 A. NO.

13 Q. YOU HADN'T TALKED ABOUT IT OR READ ABOUT IT OR
14 HEARD ANYTHING ABOUT IT?

15 A. NO NOT UNTIL ---

16 Q. I BEG YOUR PARDON?

17 A. I HADN'T HEARD ANYTHING ABOUT IT UNTIL TODAY.

18 Q. NOW IN THE JURY ROOM I PUT A LIST THAT HAD THREE
19 TYPES OF JURORS. DID YOU HAVE A CHANCE TO
20 REVIEW IT?

21 A. YES.

22 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE
23 PARTICULAR TYPES OF JURORS?

24 A. YES.

25 Q. WHICH ONE?

1 A. NUMBER THREE.

2 Q. NUMBER ---

3 A. THE THIRD.

4 Q. NOW IN THAT THIRD TYPE THERE ARE THE WORDS USED
5 MITIGATION AND AGGRAVATION. AGGRAVATION MEANS
6 CIRCUMSTANCES THAT ATTEND THE COMMISSION OF AN
7 OFFENSE WHICH INCREASE ITS ENORMITY OR ADDS TO
8 ITS INJURIOUS CONSEQUENCE BUT ARE ABOVE AND
9 BEYOND THE ESSENTIAL ELEMENTS OF THE CRIME
10 ITSELF.

11 MITIGATING CIRCUMSTANCES ARE THOSE CIRCUMSTANCES
12 WHICH DON'T CONSTITUTE JUSTIFICATION OR EXCUSE
13 FOR AN ACT BUT WHICH IN FAIRNESS AND MERCY MAY
14 BE CONSIDERED AS EXTENUATING OR REDUCING THE
15 DEGREE OF MORAL CULPABILITY OF AN INDIVIDUAL.
16 DO YOU UNDERSTAND THOSE TERMS?

17 A. YES.

18 Q. SO YOU ARE TELLING ME THAT YOU'RE THE TYPE OF
19 JUROR WHO -- WELL, LET ME BACK UP. THIS CASE
20 WOULD TAKE TWO PHASES; THAT IS, FIRST MR.
21 ROBERTSON WOULD BE TRIED AS TO WHETHER OR NOT HE
22 WAS IN FACT GUILTY OR NOT OF MURDER. IF HE WERE
23 TO BE FOUND GUILTY, THEN THE CASE WOULD MOVE
24 INTO A SECOND PHASE WHICH WOULD DEAL WITH THE
25 PENALTY THAT IS TO BE IMPOSED.

1 HE IS PRESUMED INNOCENT, AND THE FACT THAT WE'RE
2 TALKING ABOUT THE SECOND PART IS NOT TO
3 PRESUPPOSE THAT HE IS GUILTY BECAUSE HE'S NOT.
4 HE'S PRESUMED INNOCENT AND IS SO PRESUMED UNTIL
5 SUCH TIME AS A JURY WERE CONVINCED BEYOND A
6 REASONABLE DOUBT OF HIS GUILT. DO YOU
7 UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. SO, WE'RE TALKING ABOUT THE SECOND PART BUT
10 THAT'S NO INDICATION THAT WE WOULD EVER REACH
11 THE SECOND PART BECAUSE IF HE WERE FOUND NOT
12 GUILTY, OF COURSE, THE MATTER WOULD END. DO YOU
13 UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. SO YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR
16 THAT EVEN THOUGH THE JURY HAD FOUND MR.
17 ROBERTSON GUILTY OF MURDER, THAT YOU WOULD
18 CONSIDER THE FACTS AND EVIDENCE AND NOT HAVE IN
19 ADVANCE YOUR MIND MADE UP AS TO WHAT PENALTY
20 SHOULD BE IMPOSED UNTIL YOU HEARD THE FACTS AND
21 CIRCUMSTANCES AND THE LAW, FACTS AND
22 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION IN
23 THE SECOND PART. IS THAT WHAT YOU'RE TELLING
24 ME?

25 A. YES, SIR.

1 Q. YOU'RE TELLING ME, IF I UNDERSTAND IT, THAT IF
2 THE FACTS AND THE LAW ARE SO WARRANTED, YOU
3 COULD RETURN A VERDICT OF LIFE IMPRISONMENT IF
4 THAT'S WHAT YOU FELT THE FACTS AND THE LAW
5 WARRANTED. ARE YOU TELLING ME THAT?

6 A. YES, SIR.

7 Q. ARE YOU TELLING ME THAT IF THE FACTS AND LAW
8 WARRANTED A VERDICT OF DEATH, THAT YOU COULD
9 RETURN THE DEATH PENALTY. ARE YOU TELLING ME
10 THAT?

11 A. YES, SIR.

12 Q. ALL RIGHT. I'M GOING TO ALLOW YOU TO ANSWER ANY
13 QUESTIONS THAT THESE ATTORNEYS MAY HAVE FOR YOU.

14 QUESTIONS BY MR. BOYD:

15 Q. GOOD AFTERNOON, MS. GILL. I'M JIM BOYD; I'M
16 REPRESENTING JIMMY ROBERTSON IN THIS CASE. HE'S
17 THE YOUNG MAN SEATED OVER THERE; AND THAT'S MY
18 CO-COUNSEL, BILL HANCOCK, SEATED THERE.

19 I NEED TO ASK YOU JUST A FEW QUESTIONS ABOUT
20 YOUR QUALIFICATION. YOU'RE NOT ON TRIAL AND I'M
21 NOT CROSS EXAMINING YOU OR ANYTHING, AND THERE'S
22 NO RIGHT OR WRONG ANSWERS TO WHAT I'M GOING TO
23 ASK YOU. SO, YOU KNOW, YOU JUST GIVE ME THE
24 ANSWERS AS TO HOW YOU FEEL.

25 YOU HAVE SAID THAT YOU'RE IN CATEGORY THREE,

1 THAT YOU COULD CONSIDER ALL OF THE EVIDENCE AND
2 DETERMINE WHETHER TO GIVE THE DEATH PENALTY OR
3 LIFE IMPRISONMENT; IS THAT CORRECT?

4 A. YES.

5 Q. NOW I WANT TO ASSUME FOR A MINUTE THAT WE ARE IN
6 THE SECOND PHASE OF THE TRIAL. THE QUESTIONS
7 I'M ASKING YOU DO NOT IMPLY IN ANY WAY THAT MY
8 CLIENT IS GOING TO BE FOUND GUILTY, BUT LET'S
9 JUST ASSUME FOR THE SAKE OF ARGUMENT HE WAS AND
10 IS FOUND GUILTY OF MURDER.

11 NOW UNDER THOSE CIRCUMSTANCES, HE IS FOUND
12 GUILTY OF MURDER, AND THE STATE HAS ALREADY
13 PROVEN THAT HE COMMITTED IT; IT'S NOT AN
14 ACCIDENT, IT'S NOT SELF-DEFENSE; IT'S A
15 DELIBERATE KILLING OF ANOTHER PERSON WITHOUT ANY
16 JUSTIFICATION OR EXCUSE.

17 UNDER THOSE CIRCUMSTANCES, CAN YOU STILL
18 CONSIDER A SENTENCE OF LIFE IMPRISONMENT?

19 A. YES.

20 Q. OKAY. IF WE PRESENT MITIGATING EVIDENCE TO YOU;
21 THAT IS, THINGS THAT MAY MAKE HIM LESS
22 RESPONSIBLE, YOU CAN CONSIDER THOSE THINGS?

23 A. NO, SIR. ARE YOU SAYING -- SAY THE SECOND PART
24 AGAIN?

25 Q. IF WE PRESENT THINGS IN MITIGATION; THAT IS,

1 THINGS THAT MAKE HIM LESS RESPONSIBLE ---

2 A. FOR THE MURDER?

3 Q. FOR THE MURDER.

4 A. UH HUH.

5 Q. NOT THAT HE DIDN'T DO IT, NOT ANY JUSTIFICATION,
6 BUT JUST THINGS ABOUT IT THAT BEAR ON WHETHER OR
7 NOT HE SHOULD GET THE DEATH PENALTY OR LIFE
8 IMPRISONMENT. CAN YOU CONSIDER THOSE THINGS?

9 A. YES.

10 Q. SO WHAT YOU'RE TELLING ME IS THAT YOU'RE NOT
11 AUTOMATICALLY GOING TO VOTE FOR THE DEATH
12 PENALTY JUST BECAUSE HE'S CONVICTED OF MURDER?

13 A. NO, I'M NOT.

14 Q. OKAY. AND LIKEWISE, YOU'RE NOT GOING TO
15 AUTOMATICALLY VOTE FOR LIFE IMPRISONMENT EITHER?

16 A. NO.

17 Q. YOU'RE GOING TO CONSIDER ALL THE FACTS AND
18 CIRCUMSTANCES?

19 A. YES, SIR.

20 Q. AND IF HE IS CONVICTED OF MURDER AND YOU CHOOSE
21 TO VOTE FOR THE DEATH PENALTY AND YOU AND THE
22 OTHER JURORS HAVE DONE THAT, YOU WOULD -- ALL
23 THE JURORS WOULD HAVE TO SIGN THEIR NAME TO THE
24 VERDICT. DO YOU UNDERSTAND THAT?

25 A. YES.

1 Q. AND YOU WOULD BE ABLE TO DO THAT?

2 A. YES.

3 Q. AND LET ME ASK YOU, AS A JUROR, OF COURSE, YOU
4 HAVE YOUR OWN INDIVIDUAL DECISION IN THERE. YOU
5 UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. AND YOU UNDERSTAND THAT NOBODY CAN MAKE YOU VOTE
8 A CERTAIN WAY?

9 A. YES, SIR.

10 Q. AND YOU'RE ENTITLED TO HAVE YOUR OPINION
11 RESPECTED BY THE OTHER JURORS. DO YOU
12 UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND LIKEWISE, YOU HAVE AN OBLIGATION TO RESPECT
15 THE OPINION OF THE OTHER JURORS, TOO.

16 A. YES.

17 Q. BECAUSE YOU UNDERSTAND THAT YOU MAY DISAGREE
18 WITH THE OTHER JURORS AND Y'ALL ALL SHOULD
19 RESPECT THE OTHER'S OPINION. DO YOU UNDERSTAND
20 THAT?

21 A. YES, SIR.

22 Q. BUT NONE OF YOU ARE REQUIRED TO CHANGE YOUR
23 OPINION BECAUSE ANOTHER JUROR SAYS SO. DO YOU
24 UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. DID YOU SAY YOU DID OR DID NOT KNOW ANYTHING
2 ABOUT OR HAD READ ANYTHING ABOUT THIS CASE?

3 A. I DID NOT KNOW ANYTHING ABOUT THE CASE.

4 Q. HAVE YOU FOUND OUT ANYTHING ABOUT THIS CASE
5 OTHER THAN WHAT YOU'VE HEARD IN THE COURTROOM
6 TODAY?

7 A. NOTHING OTHER THAN WHAT I HEARD IN THE COURTROOM
8 TODAY.

9 Q. ALL RIGHT. THANK YOU.

10 QUESTIONS BY MR. BRACKETT:

11 Q. GOOD AFTERNOON, MS. GILL; HOW ARE YOU DOING
12 TODAY?

13 A. ALL RIGHT.

14 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY
15 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT.
16 SOLICITOR POPE OVER HERE, TOMMY POPE AND MYSELF
17 ARE GOING TO BE PROSECUTING MR. ROBERTSON SEATED
18 OVER THERE WITH HIS ATTORNEYS AND HE'S CHARGED
19 WITH MURDER.

20 YOU UNDERSTAND THAT THERE ARE TWO PARTS TO THIS
21 TRIAL AND IN THE FIRST PART WE ARE ONLY
22 CONCERNED WITH GUILT OR INNOCENCE. YOU
23 UNDERSTAND THAT.

24 A. YES.

25 Q. AND YOU UNDERSTAND IT'S IMPORTANT FOR THE JUROR

1 WHO COMES IN TO HEAR THIS CASE NOT TO HAVE ANY
2 INFORMATION FROM OUTSIDE THE COURTROOM KIND OF
3 CLUTTERING UP THEIR HEAD IN THINKING ABOUT THIS
4 CASE. THEY NEED TO DECIDE WHETHER OR NOT MR.
5 ROBERTSON IS GUILTY BASED ONLY ON THE EVIDENCE
6 THAT COMES OUT IN THIS COURTROOM FROM THAT
7 WITNESS STAND YOU'RE SITTING IN RIGHT NOW. YOU
8 UNDERSTAND THAT?

9 A. YES, SIR.

10 Q. AND YOU'RE SAYING THAT IN THE FIRST PART OF THE
11 TRIAL WHEN WE PUT UP THE EVIDENCE TRYING TO
12 PROVE THAT HE'S GUILTY, YOU'RE SAYING THAT YOU
13 COULD LISTEN TO THAT EVIDENCE AND WEIGH IT AND
14 BASED ON THAT EVIDENCE AND WHAT THIS JUDGE TELLS
15 YOU IS THE LAW, YOU COULD DECIDE WHETHER OR NOT
16 MR. ROBERTSON IS GUILTY?

17 A. YES.

18 Q. AND THEN IF HE IS FOUND GUILTY OF THESE MURDERS,
19 THEN WE MOVE INTO THE SECOND PART OF THE TRIAL,
20 THE PENALTY PHASE. BECAUSE IF HE'S NOT GUILTY
21 OF ANYTHING, THEN WE DON'T HAVE ANY PENALTY.
22 YOU UNDERSTAND THAT.

23 A. YES.

24 Q. SO IN THE SECOND HALF OF THE TRIAL, WE'RE ONLY
25 CONCERNED WITH WHAT SHOULD HAPPEN TO MR.

1 ROBERTSON NOW THAT HE'S BEEN FOUND GUILTY.

2 IN THAT PHASE WE AGAIN HAVE TO PROVE TO YOU
3 AGGRAVATING CIRCUMSTANCES THAT MAKE THIS MORE
4 THAN JUST A REGULAR MURDER, MAKE IT WORSE THAN
5 JUST A REGULAR MURDER. YOU UNDERSTAND THAT?

6 A. YES.

7 Q. AND THEN THE DEFENSE, THEY HAVE THE OPPORTUNITY
8 BUT THEY DON'T HAVE TO, BUT THEY HAVE THE
9 OPPORTUNITY TO PUT UP WHAT'S CALLED MITIGATING
10 CIRCUMSTANCES WHICH MEANS THINGS THAT YOU SHOULD
11 KIND OF TAKE INTO CONSIDERATION, IT'S NOT SO
12 BAD, THAT SORT OF THING. DO YOU UNDERSTAND?

13 A. YES.

14 Q. AND WHAT YOU'RE SAYING IS THAT YOU WOULD
15 CONSIDER THE GOOD THINGS THAT THEY TELL YOU
16 ABOUT MR. ROBERTSON AS WELL AS THE BAD THINGS
17 THAT WE TELL YOU ABOUT MR. ROBERTSON AND THEN
18 YOU WOULD LISTEN TO ALL OF THAT AND MAKE UP YOUR
19 DECISION AS TO WHAT THE PENALTY SHOULD BE IN
20 THIS CASE. IS THAT RIGHT?

21 A. YES.

22 Q. AND YOU'RE SAYING THAT YOU'RE THE TYPE OF JUROR
23 WHO COULD GIVE LIFE IN PRISON -- AND BEFORE I
24 ASK YOU THIS, ALTHOUGH IT SEEMS LIKE YOU'RE ON
25 TRIAL, YOU'RE NOT. WE'RE JUST TRYING TO FIND OUT

1 HOW YOU FEEL. OKAY?

2 A. OKAY.

3 Q. AND THERE IS NO RIGHT OR WRONG ANSWER TO ANY OF
4 THESE QUESTIONS. YOU'RE JUST AS ENTITLED TO
5 YOUR OPINION AS ANYBODY ELSE. BUT IT'S
6 IMPORTANT THAT WE KNOW THE ANSWERS TO THESE
7 QUESTIONS AND HOW YOU REALLY FEEL IN YOUR HEART
8 BECAUSE NOW IS THE TIME FOR YOU TO TELL US IF
9 THERE IS GOING TO BE A PROBLEM. ONCE THE TRIAL
10 GETS STARTED IF YOU'RE IN THE JURY BOX OVER
11 THERE, IT'S TOO LATE. DO YOU UNDERSTAND?

12 A. YES.

13 Q. WHAT YOU'RE SAYING IS THAT IF YOU FOUND THAT
14 THERE WERE AGGRAVATING CIRCUMSTANCES AND YOU
15 LISTENED TO THE MITIGATING EVIDENCE AND YOU
16 DECIDED LIFE WAS APPROPRIATE, YOU COULD VOTE FOR
17 LIFE?

18 A. YES, I COULD.

19 Q. NOW, IF YOU FOUND THAT THERE WERE AGGRAVATING
20 CIRCUMSTANCES AND YOU AGREED WITH ALL THE OTHER
21 JURORS AND Y'ALL GOT TOGETHER AND TALKED ABOUT
22 THE AGGRAVATING AND THE MITIGATING, YOU'RE
23 SAYING YOU COULD ALSO VOTE FOR DEATH?

24 A. YES, I COULD.

25 Q. A DEATH PENALTY CASE IS A LITTLE BIT UNUSUAL IN

1 THAT IN A REGULAR CASE ONCE THE VERDICT COMES
2 IN, THE FOREMAN OF THE JURY SIGNS AND THEY ARE
3 THE ONLY PERSON THAT HAS TO SIGN. THEY HAVE TO
4 SIGN THEIR NAME SAYING THIS IS WHAT THE VERDICT
5 IS.

6 AND IF THE JURY IN THIS CASE DECIDES THAT LIFE
7 IS THE APPROPRIATE VERDICT, STILL ONLY THE
8 FOREMAN HAS TO SIGN THEIR NAME.

9 BUT IF THE JURY UNANIMOUSLY FINDS THAT THIS
10 DEFENDANT SHOULD BE SENTENCED TO DEATH, EACH AND
11 EVERY JUROR HAS GOT TO TAKE A PEN AND SIGN A
12 SHEET OF PAPER THAT SENTENCES THIS MAN, AND HE
13 WILL BE SENTENCED TO DEATH. YOU UNDERSTAND THAT?

14 A. YES, I UNDERSTAND.

15 Q. AND WHAT YOU'RE SAYING IS THAT IF THIS CASE GOES
16 TO THAT POINT AND THAT PIECE OF PAPER IS MAKING
17 ITS WAY AROUND THE ROOM THAT YOU'RE IN AND YOU
18 THINK DEATH IS THE APPROPRIATE VERDICT, YOU
19 COULD PICK THAT PEN UP AND SIGN TAMARA GILL ON
20 THAT DEATH SHEET?

21 A. NO, NOT ON DEATH.

22 Q. YOU COULD NOT SIGN YOUR NAME?

23 A. NO.

24 Q. AND THAT'S OKAY ---

25 THE COURT: I COULDN'T HEAR HER. WHAT DID YOU

1 SAY?

2 A. I SAID, NO, NOT FOR HIM TO BE SENTENCED TO
3 DEATH.

4 Q. OKAY. AND THAT'S ALL RIGHT. THAT'S WHAT WE
5 NEED TO KNOW, AND WE NEED TO KNOW THAT NOW. SO,
6 LET'S EXPLORE THAT BECAUSE THAT'S A LITTLE BIT
7 DIFFERENT FROM WHAT YOU HAVE BEEN SAYING AND
8 THAT'S ALL RIGHT. IF THAT'S A PROBLEM, WE NEED
9 TO KNOW THAT NOW.

10 SO WHAT YOU ARE TELLING ME NOW IS THAT YOU
11 COULDN'T SENTENCE SOMEBODY TO DEATH?

12 A. NO.

13 Q. IF IT CAME DOWN THAT ALL THE OTHER ELEVEN JURORS
14 HAVE ALREADY SIGNED THEIR NAME AND THE PEN COMES
15 TO YOU AND THEY SAY, OKAY, PAMELA, IT'S TIME TO
16 SIGN, YOU'RE SAYING PAMELA GILL COULDN'T SIGN
17 THAT PAPER?

18 A. NO.

19 Q. OKAY. AND IS THAT BECAUSE OF A RELIGIOUS
20 BELIEF?

21 A. YES.

22 Q. OKAY. AND IS IT THE KIND OF BELIEVE THAT YOU
23 FEEL IN YOUR HEART?

24 A. YES.

25 Q. AND IS IT THE KIND OF BELIEF THAT NO MATTER WHAT

1 THE CIRCUMSTANCES OF THE CASE WERE, NO MATTER
2 WHAT EVIDENCE WAS PRESENTED, IT WOULDN'T MATTER
3 BECAUSE YOU THINK THE DEATH PENALTY IS WRONG AND
4 NOBODY SHOULD BE SENTENCED TO DEATH?

5 A. YES.

6 Q. IS THAT THE KIND OF BELIEF THAT WOULD PREVENT
7 YOU FROM BEING A FAIR JUROR IN THE SECOND PART
8 OF THE TRIAL?

9 A. NO.

10 Q. BUT YOU COULDN'T GIVE DEATH?

11 A. YES -- NO, I COULDN'T GIVE DEATH.

12 Q. YOU COULDN'T GIVE DEATH UNDER ANY CIRCUMSTANCES?

13 A. NO.

14 Q. OKAY. THE COURT'S INDULGENCE ONE MOMENT.

15 (AFTER A BRIEF PAUSE.)

16 Q. THANK YOU VERY MUCH, MS. GILL.

17 THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE
18 THE DOOR JUST FOR A MINUTE.

19 (THE JUROR LEFT THE COURTROOM.)

20 THE COURT: WHAT SAYS THE DEFENSE?

21 MR. BOYD: YOUR HONOR, I BELIEVE SHE'S QUALIFIED.
22 I MEAN SHE SAID SHE COULD EARLIER. SHE WENT THROUGH THE
23 WHOLE SCENARIO EARLIER IN QUESTIONS BY THE COURT AND
24 QUESTIONS BY ME AND I THOUGHT SHE WAS PRETTY FIRM THAT SHE
25 COULD.

1 THE COURT: WELL, I THOUGHT SHE WAS, TOO, AND
2 THEN SHE EQUIVOCATED. WHAT SAYS THE STATE?

3 MR. BRACKETT: YOUR HONOR, I BELIEVE ONCE THE
4 ISSUE, THE RESPONSIBILITY ABOUT SIGNING YOUR NAME WAS
5 EXPLAINED TO HER AND SHE REALIZED THAT SHE HAD TO TAKE AN
6 AFFIRMATIVE ACT THAT WOULD SENTENCE THIS MAN TO DEATH, IT
7 BECAME APPARENT TO HER THAT SHE COULD NOT DO THAT. AND THEN
8 SHE TURNED AROUND AND EXPRESSED HER HONEST OPINION ABOUT
9 THE FEELINGS OF THE DEATH PENALTY AND I DO NOT BELIEVE SHE
10 IS WITHERSPOON QUALIFIED.

11 I THINK THE SUPREME COURT HAS HELD SIGNING IS ONE
12 OF THE ESSENTIAL RESPONSIBILITIES THAT A DEATH PENALTY
13 JUROR HAS TO UNDERTAKE, AND IF THEY CANNOT SIGN, THEN THEY
14 CANNOT BE QUALIFIED.

15 MR. BOYD: YOUR HONOR, SHE SAID AT ONE POINT SHE
16 COULD SIGN.

17 THE COURT: YES, SHE SAID SHE COULD WHEN
18 QUESTIONED BY MR. BOYD, BUT THEN SHE UNEQUIVOCALLY SAID SHE
19 COULD NOT AT A LATER POINT. SO, I FIND THAT SHE IS NOT
20 DEATH PENALTY QUALIFIED.

21 (THE JUROR RETURNED TO THE COURTROOM.)

22 THE COURT: YOU CAN JUST STAND RIGHT THERE. WE
23 APPRECIATE YOUR CANDOR. I AM GOING TO EXCUSE YOU FROM ANY
24 FURTHER SERVICE WITH US, BUT WE APPRECIATE YOUR BEING HERE
25 AND APPRECIATE YOUR CANDOR. THANK YOU AN AWFUL LOT.

1 (THE JUROR LEFT THE COURTROOM.)

2 THE COURT: ALL RIGHT, NEXT IS JUROR 152, LISA
3 LILLY, AND I DON'T HAVE A QUESTIONNAIRE FOR HER. DO Y'ALL?

4 MR. BRACKETT: NO, SIR.

5 LISA LILLY, JUROR 152, WHITE FEMALE, WAS
6 QUESTIONED AS FOLLOWS:

7 QUESTIONS BY THE COURT:

8 Q. HAVE YOU FILLED OUT A QUESTIONNAIRE?

9 A. YES, SIR.

10 Q. OKAY, WE'RE HAVING TROUBLE FINDING IT, BUT WE
11 WILL LOCATE IT.

12 A. I GAVE IT TO MELISSA THIS MORNING.

13 Q. THAT'S FINE, WE'LL GET IT. FIRST, I'M JOHN
14 HAYES, I INTRODUCED MYSELF EARLIER THIS MORNING.
15 AND I WANT TO TELL YOU EARLY ON THAT IF YOU ARE
16 SEATED ON THIS JURY, YOU MAY SEE CAMERAS OR
17 PHOTOGRAPHERS IN THIS COURTROOM BUT THEY CANNOT
18 TAKE YOUR PICTURE OR REPORT ABOUT YOU BEING A
19 JUROR. THEY ARE FORBIDDEN TO DO THAT. I JUST
20 WANTED YOU TO BE AWARE OF THAT.

21 ONCE WE GET THE QUESTIONNAIRE, WE'LL TAKE A LOOK
22 AT IT, BUT IS THE QUESTIONNAIRE ACCURATE OR DO
23 YOU NEED TO MAKE ANY CHANGES ON IT?

24 A. NO, SIR, IT WAS ACCURATE.

25 Q. ALL RIGHT. DID YOU HAVE A CHANCE TO REVIEW THE

1 WITNESS LISTS THAT WERE IN THE JURY ROOM?

2 A. YES, SIR, I DID.

3 Q. DID YOU KNOW ANYBODY ON THERE?

4 A. I WORK AT THE HOSPITAL, SO I'M FAMILIAR WITH
5 SOME OF THE PHYSICIANS, BUT I DON'T PERSONALLY
6 KNOW THEM.

7 Q. OKAY.

8 A. AND I DO PERSONALLY KNOW KERRY SPITZENBERGER.

9 Q. ALL RIGHT.

10 A. I HAVE CONTACT WITH HER SOMETIMES.

11 Q. ARE YOU RELATED TO ANYBODY ON THERE?

12 A. NO, SIR.

13 Q. WOULD THE FACT THAT YOU KNOW SOME OF THE
14 PHYSICIANS AND KAREN SPITZENBERGER, WOULD THAT
15 FACT INFLUENCE YOU IN ANY WAY; THAT IS, IN SPITE
16 OF THE FACT THAT THEY ARE WITNESSES, WILL YOU
17 STILL BE ABLE TO BASE YOUR VERDICT ON THE LAW
18 AND THE EVIDENCE IN THIS TRIAL?

19 A. I BELIEVE I WOULD.

20 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE?

21 A. NO, ACTUALLY I HAVE NOT. I WAS SURPRISED WHEN I
22 CAME THIS MORNING AND SAW THE THINGS OUTSIDE AND
23 THEN YOU TOLD US WHAT THE CASE WAS. I HAVEN'T
24 HEARD ANYTHING ABOUT IT.

25 Q. DID YOU HAVE A CHANCE TO REVIEW THE THREE JUROR

1 TYPES ON THAT LIST?

2 A. YES, SIR, I DID.

3 Q. DID YOU FIND YOURSELF IN ONE OF THOSE
4 CATEGORIES?

5 A. I BELIEVE I WOULD BE NUMBER THREE.

6 Q. ALL RIGHT. IN THAT EXPLANATION THE TERMS
7 AGGRAVATION AND MITIGATION ARE USED. AND WHEN
8 THEY ARE USED THEY MEAN -- AGGRAVATION MEANS
9 CIRCUMSTANCES WHICH ATTEND THE COMMISSION OF A
10 CRIME WHICH INCREASE ITS ENORMITY OR ADDS TO ITS
11 INJURIOUS CONSEQUENCE THAT ARE ABOVE AND BEYOND
12 THE ESSENTIAL ELEMENTS OF THE CRIME ITSELF.
13 MITIGATING CIRCUMSTANCES ARE THOSE WHICH WHILE
14 THEY DO NOT CONSTITUTE A JUSTIFICATION OR AN
15 EXCUSE FOR AN OFFENSE, THEY ARE THINGS WHICH IN
16 FAIRNESS AND MERCY SHOULD BE OR MUST BE OR MAY
17 BE CONSIDERED AS EXTENUATING OR REDUCING THE
18 DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND
19 THAT'S THE WAY WE ARE USING THOSE TERMS?

20 A. YES, SIR.

21 Q. NOW THEN YOU ARE TELLING ME THAT YOU ARE THE
22 TYPE OF JUROR -- WELL, LET ME BACK UP. THESE
23 TYPE CASES TAKE PLACE IN TWO PHASES. ONE IS TO
24 DETERMINE WHETHER OR NOT MR. ROBERTSON IS OR IS
25 NOT GUILTY OF MURDER. IF HE IS FOUND NOT

1 GUILTY, THEN THE CASE IS OVER. IF HE IS FOUND
2 GUILTY, THEN WE MOVE INTO THE SECOND PHASE.
3 NOW WE ARE TALKING ABOUT THAT SECOND PHASE, BUT
4 THAT IS NOT TO BE INDICATIVE OF ANYTHING
5 INDICATING WHAT THE VERDICT IN THE FIRST PHASE
6 SHOULD BE.

7 HE IS PRESUMED INNOCENT AND A JURY MUST BE
8 CONVINCED BEYOND A REASONABLE DOUBT OF HIS GUILT
9 BEFORE A JURY COULD CONVICT HIM IN THAT FIRST
10 PHASE. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. SO YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR
13 WHO EVEN THOUGH THE JURY HAD FOUND HIM GUILTY OF
14 MURDER, THAT YOU WOULD NOT HAVE MADE UP YOUR
15 MIND IN ADVANCE AS TO WHAT PUNISHMENT HE SHOULD
16 RECEIVE. IS THAT THE TYPE JUROR YOU ARE?

17 A. YES, SIR.

18 Q. YOU ARE TELLING ME THAT YOU WOULD, BEFORE
19 DETERMINING PUNISHMENT, YOU WOULD NEED TO HEAR
20 THE FACTS AND CIRCUMSTANCES IN BOTH AGGRAVATION
21 AND MITIGATION AND WOULD WANT TO LISTEN TO AND
22 FOLLOW THE LAW AS THE TRIAL JUDGE CHARGES YOU
23 BEFORE YOU MAKE A DECISION AS TO PUNISHMENT. IS
24 THAT CORRECT?

25 A. YES, SIR.

1 Q. AND ARE YOU TELLING ME THAT YOU'RE THE TYPE
2 JUROR THAT BASED ON THE FACTS PRESENTED, IF IT
3 WARRANTED, YOU COULD RETURN A VERDICT OF LIFE
4 IMPRISONMENT?

5 A. YES, SIR.

6 Q. ARE YOU TELLING ME THAT YOU'RE THE TYPE JUROR
7 THAT IF THE FACTS PRESENTED SO WARRANTED, YOU
8 COULD BRING IN A VERDICT FOR THE DEATH PENALTY?

9 A. I COULD, SIR.

10 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT THE
11 ATTORNEYS MAY HAVE.

12 QUESTIONS BY MR. POPE:

13 Q. MS. LILLY, MY NAME IS TOMMY POPE; I'M THE
14 SOLICITOR HERE IN YORK COUNTY. KEVIN BRACKETT
15 IS MY DEPUTY SOLICITOR, AND WE REPRESENT THE
16 STATE IN THIS CASE.

17 AS YOU UNDERSTOOD, AND I'M GOING TO GO THROUGH
18 JUST A FEW THINGS THE JUDGE WAS TALKING ABOUT,
19 JUST A COUPLE OF OTHER ISSUES. THIS IS A
20 BIFURCATED OR TWO PART TRIAL. DO YOU UNDERSTAND
21 THAT?

22 A. YES, SIR, I DO.

23 Q. AND THE DEFENDANT IS INNOCENT UNTIL PROVEN
24 GUILTY AND WE'VE GOT TO PROVE IT BEYOND A
25 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. AGAIN, YOU FEEL LIKE YOU'RE ON TRIAL, YOU'VE
3 BEEN SWORN, YOU'RE SITTING HERE. THERE ARE NO
4 RIGHT OR WRONG ANSWERS, THIS IS JUST HOW YOU
5 FEEL AND YOUR TESTIMONY IN THAT REGARD. IT JUST
6 KIND OF GIVES US A CHANCE TO GET A LITTLE
7 INSIGHT, PARTICULARLY SINCE I'M DOING IT WITHOUT
8 YOUR QUESTIONNAIRE.

9 A. RIGHT.

10 Q. JUST TO LEARN A LITTLE BIT ABOUT YOU. YOU TOLD
11 THE JUDGE THAT YOU LOOKED AT THOSE CATEGORIES
12 AND YOU SAID THAT BASED ON THAT, YOU'RE TYPE
13 THREE JUROR?

14 A. YES, SIR.

15 Q. IN OTHER WORDS, IF YOU WERE TO SIT IN THE JURY
16 BOX, EVEN THOUGH THE STATE HAD ALREADY PROVEN
17 GUILT BEYOND A REASONABLE DOUBT, YOU'D WANT TO
18 HEAR THE EVIDENCE IN AGGRAVATION AND THE
19 EVIDENCE IN MITIGATION. IN OTHER WORDS, THE
20 THINGS THAT COULD MAKE IT A WORSE CRIME OR
21 THINGS THAT MIGHT MITIGATE IT BEFORE YOU MADE A
22 DECISION. IS THAT TRUE?

23 A. YES, SIR.

24 Q. OKAY. AND YOU WOULDN'T MAKE A DECISION JUST
25 AFTER YOU HEARD OUR'S OR JUST BASED ON WHAT THEY

1 SAID, YOU WOULD WANT TO HEAR THE WHOLE THING. IS
2 THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND BASED ON THAT, YOU TOLD THE JUDGE THAT
5 YOU'RE THE TYPE JUROR THAT IN SOME CASES COULD
6 GIVE LIFE AND IN SOME CASES COULD GIVE DEATH.
7 YOU DON'T KNOW UNTIL YOU HEAR THE FACTS?

8 A. RIGHT.

9 Q. AND IF THE FACTS WARRANTED IT, BASED ON WHAT
10 YOU'VE HEARD, AND YOU DETERMINED BASED IN YOUR
11 MIND THAT LIFE WAS THE APPROPRIATE SENTENCE,
12 COULD YOU GO IN THAT JURY ROOM AND TELL THE
13 OTHER JURORS THAT. SAY I'VE HEARD EVERYTHING
14 GOOD AND BAD AND I SAY IT OUGHT TO BE LIFE.
15 COULD YOU TELL THEM?

16 A. I COULD.

17 Q. AND LIKEWISE IF YOU DETERMINED THAT DEATH WAS
18 APPROPRIATE, AND AGAIN THIS IS YOUR VIEW, AGAIN
19 IT'S NO PREREQUISITE, THIS IS YOUR FEELING, IF
20 YOU THOUGHT DEATH WAS APPROPRIATE AFTER HEARING
21 EVERYTHING IN THE CASE, COULD YOU EXPLAIN THAT
22 TO THE OTHER JURORS, THAT YOU FELT DEATH WAS
23 APPROPRIATE?

24 A. PROBABLY AFTER I KNEW THE CIRCUMSTANCES; I'D
25 MAKE MY OWN MIND UP.

1 Q. AND THAT'S TRUE EITHER WAY.

2 A. RIGHT.

3 Q. YOU DON'T EVEN KNOW ABOUT THE CASE TO BEGIN
4 WITH.

5 A. CORRECT.

6 Q. AND SO YOU'D REALLY JUST BE A CLEAN SLATE BEFORE
7 YOU GOT IN THE JURY BOX.

8 A. RIGHT.

9 Q. BECAUSE YOU DON'T KNOW. BOTH AS TO HIS GUILT
10 AND AS TO PENALTY?

11 A. DEATH WOULD JUST BE A LITTLE BIT HARDER THAN
12 LIFE IN PRISON, AND THAT'S WHAT I'M SAYING, I
13 WOULD HAVE TO MAKE SURE I KNOW ALL THE
14 CIRCUMSTANCES BEFORE I ---

15 Q. AND -- I DIDN'T MEAN TO CUT YOU OFF.

16 A. THAT'S OKAY.

17 Q. AND, OF COURSE, AGAIN, IT SEEMS LIKE WE JUST GO
18 THROUGH QUESTIONS, COULD YOU DO THIS, COULD YOU
19 DO THAT. CERTAINLY EITHER WAY IT'S A DIFFICULT
20 DECISION.

21 A. RIGHT.

22 Q. YOU'RE SAYING THAT YOU WOULD TAKE IT SERIOUS.

23 A. YES, SIR.

24 Q. AND TAKE IT ALL IN AND DECIDE. HAVE YOU EVER
25 SERVED ON A JURY BEFORE?

1 A. I HAVE NOT.

2 Q. SO YOU HAVEN'T BEEN THROUGH ALL OF THIS BEFORE?

3 A. NO, SIR.

4 Q. OKAY. ONE THING IN PARTICULAR, ON A NORMAL
5 JURY, IN A NORMAL CIRCUMSTANCE OF COURSE THE
6 JURY DOESN'T EVEN DECIDE PENALTY, THE JUDGE
7 DECIDES PENALTY. HERE, LIKE I SAY, IN THE
8 SECOND PHASE THE JURY WILL DECIDE. BUT ONE
9 THING, IF ALL THE JURORS -- IT'S GOT TO BE
10 UNANIMOUS FOR LIFE OR UNANIMOUS FOR DEATH AS FAR
11 AS THE JURY'S DETERMINATION THAT COMES BACK TO
12 THE JUDGE. AND, OF COURSE, THE JUDGE IS GOING TO
13 DO WHATEVER THE JURY SAYS. YOUR VERDICT IS WHAT
14 IT WILL BE.

15 WELL, IF THE JURY DECIDES UNANIMOUSLY THAT LIFE
16 IS APPROPRIATE, THEN JUST THE FOREPERSON WOULD
17 SAY, FORELADY, FOREMEMBER WOULD SIGN AND SAY WE
18 FIND FOR LIFE. HOWEVER, IF THE JURY DETERMINES
19 THAT DEATH IS APPROPRIATE AND MAYBE BECAUSE IT'S
20 A MORE DIFFICULT DECISION, IF THE JURY
21 DETERMINES THAT DEATH IS APPROPRIATE, THEN EACH
22 OF THE TWELVE JURORS HAVE TO SIGN IT.

23 AND SO THE QUESTION I HAVE FOR YOU IS AFTER
24 HEARING ALL THE EVIDENCE -- YOU HAVEN'T HEARD IT
25 YET, YOU DON'T KNOW -- BUT AFTER HEARING ALL THE

1 EVIDENCE IF YOU THOUGHT THAT DEATH WAS
2 APPROPRIATE, COULD YOU WRITE LISA LILLY DOWN ON
3 A LINE KNOWING IT WOULD GIVE THIS MAN DEATH?

4 A. I'VE NEVER HAD TO DO IT BEFORE, BUT I BELIEVE I
5 COULD.

6 Q. THANK YOU, MA'AM, I APPRECIATE IT.

7 **QUESTIONS BY MR. HANCOCK:**

8 Q. MS. LILLY, I'M BILL HANCOCK. I'M THE ATTORNEY
9 FOR JIMMY ROBERTSON WHO IS CHARGED WITH TWO
10 COUNTS OF MURDER, AND THIS IS MR. BOYD WHO IS
11 CO-COUNSEL IN THIS CASE.

12 I KNOW THAT YOU HAVE BEEN SUBJECTED TO A LOT OF
13 QUESTIONS AND IT'S BEEN TOLD TO YOU OVER AND
14 OVER THAT THERE IS NO PROPER ANSWER. IT IS YOUR
15 ANSWER AND SOLELY AND UNIQUELY YOUR'S AND WILL
16 BE CONSIDERED NEITHER RIGHT NOR WRONG, BUT JUST
17 AS YOUR ANSWERS. OKAY?

18 A. OKAY.

19 Q. AND IN THAT VEIN I NEED TO ASK IF I UNDERSTAND
20 EXACTLY WHAT YOU HAVE SAID. AND TO THIS POINT I
21 BELIEVE YOU HAVE SAID TO THE JUDGE THAT YOU
22 COULD MAKE YOUR OWN DETERMINATION IN A CASE
23 WHERE THE DEATH PENALTY IS SOUGHT. IS THAT
24 CORRECT?

25 A. YES, SIR.

1 Q. YOU UNDERSTAND THAT YOU HAVE TWO FORMS OF
2 VERDICT HERE. YOU HAVE THE DEATH PENALTY OR LIFE
3 IN PRISON. IS THAT CORRECT?

4 A. YES, SIR.

5 Q. AND YOU'VE INDICATED THAT YOU COULD LISTEN TO
6 THE AGGRAVATING CIRCUMSTANCES, THOSE
7 CIRCUMSTANCES THAT MAKE IT WORSE, AND TO THE
8 MITIGATING CIRCUMSTANCES WHICH WOULD TEND TO
9 LESSEN THE DEGREE OF PUNISHMENT FOR THE
10 INDIVIDUAL?

11 A. YES, SIR.

12 Q. YOU COULD LISTEN TO THAT AND YOU COULD CONSIDER
13 IT; IS THAT CORRECT?

14 A. YES, SIR.

15 Q. AND YOU WOULD CONSIDER IT IN YOUR VERDICT; IS
16 THAT ALSO CORRECT?

17 A. I WOULD.

18 Q. AND YOU HAVE INDICATED, AS I HAVE LISTENED TO
19 YOU, THAT YOU ARE FAIRLY STRONG IN YOUR BELIEFS
20 THAT YOU CAN MAKE YOUR OWN INDIVIDUAL DECISION.
21 ISN'T THAT CORRECT?

22 A. YES, SIR.

23 Q. AND SO YOU REALIZE THAT THERE IS NO -- THERE
24 DOES NOT HAVE TO BE ANY UNANIMITY AS THE
25 SOLICITOR SAID, IN OTHER WORDS UNANIMOUS VOTE

1 FOR LIFE IN JAIL. YOU UNDERSTAND THAT?

2 A. RIGHT.

3 Q. THAT IF YOU FIND IT IN YOUR HEART, DO YOU FEEL
4 LIKE YOU ARE STRONG ENOUGH THAT YOU WOULD STAND
5 BY YOUR OPINION AND YOUR CHOICE IN THIS CASE?

6 A. I THINK I COULD IF I TRULY BELIEVED IT.

7 Q. SHOULD THE FACTS AND CIRCUMSTANCES SO WARRANT?

8 A. YES, SIR.

9 Q. AND THAT WOULD BE AS AGAINST ALL OTHERS, AND YOU
10 REALIZE THAT?

11 A. THE OTHER ELEVEN PEOPLE?

12 Q. YES.

13 A. YES, SIR.

14 Q. IF YOU ARE SELECTED AS A JUROR, YOU HAVE THE
15 RIGHT FOR THE OTHER JURORS AND EVERYONE ELSE IN
16 THE COURTROOM AND OTHERWISE TO RESPECT YOUR
17 DECISION. AND YOU ARE ALSO REQUIRED TO RESPECT
18 THEIR DECISIONS IN THIS PARTICULAR CASE OR ANY
19 CASE OF THIS NATURE.

20 A. RIGHT.

21 Q. AND YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. AND UNDERSTANDING THAT, YOU BELIEVE THAT YOU
24 COULD ARRIVE AT A FAIR, JUST AND IMPARTIAL
25 DECISION IN THIS CASE?

1 A. YES, SIR.

2 Q. AND LISTEN ONLY TO THE EVIDENCE.

3 A. ONLY THE EVIDENCE.

4 Q. AND YOU HAVE SAID, I BELIEVE, AND CORRECT ME IF
5 I'M WRONG, THAT YOU HAVE HAD NO OTHER OUTSIDE
6 INFLUENCES INTERJECTED INTO YOUR DECISION AT
7 THIS TIME?

8 A. NO, SIR.

9 Q. SUCH AS NEWSPAPER, RADIO OR ANYTHING OF THAT
10 NATURE?

11 A. I HATE TO SAY IT, BUT I DON'T READ THE PAPER AND
12 I DON'T WATCH THE NEWS.

13 Q. OKAY. BUT I BELIEVE YOU SAID THOUGH YOU WERE
14 FAMILIAR WITH SOME OF THE OTHER PEOPLE INVOLVED?

15 A. I'M FAMILIAR WITH A FEW OF THE PHYSICIANS ONLY
16 BECAUSE I WORK AT THE HOSPITAL. I'M FAMILIAR
17 WITH THEIR NAMES AND THEIR FACES, BUT I DON'T
18 HAVE A PERSONAL RELATIONSHIP WITH THEM EXCEPT
19 FOR KERRY SPITZENBERGER WHO IS THE MEDICAL
20 RECORDS DIRECTOR. I DO KNOW HER PERSONALLY.

21 Q. THANK YOU.

22 THE COURT: YOU CAN STEP OUTSIDE THE DOOR JUST
23 FOR A MINUTE.

24 (THE JUROR LEFT THE COURTROOM.)

25 THE COURT: WHAT SAYS THE STATE?

1 THE JUROR: YOUR HONOR, I WOULD SUBMIT SHE IS
2 QUALIFIED. I STILL DON'T HAVE THE QUESTIONNAIRE, BUT
3 OUTSIDE OF GETTING THAT, I WOULD SUBMIT THAT SHE IS
4 QUALIFIED.

5 MR. HANCOCK: THE SAME HERE, YOUR HONOR.

6 THE COURT: WELL, I FIND SHE IS QUALIFIED. YOU
7 WILL CERTAINLY HAVE HER QUESTIONNAIRE BY THE TIME WE DRAW
8 THE JURY BUT THERE ARE NO QUESTIONS REALLY ON THERE THAT
9 WOULD BEAR ON THIS PARTICULAR ISSUE. IF WE DID FIND
10 SOMETHING THAT WE DIDN'T KNOW, WE WILL DEAL WITH IT.

11 ALL RIGHT, BRING HER BACK IN.

12 (THE JUROR RETURNED TO THE COURTROOM.)

13 THE COURT: YOU CAN JUST STAND RIGHT THERE. I AM
14 GOING TO INCLUDE YOU ON THE PANEL. WE WILL DRAW THE JURY
15 LATER IN THE WEEK.

16 DON'T DISCUSS THIS CASE WITH ANYONE; DON'T READ
17 ABOUT IT OR WATCH IT ON T.V. LIKE I HAVE ALREADY TOLD YOU.

18 IF ANYBODY DOES TRY TO TALK TO YOU ABOUT IT --
19 YOU CAN GO ON TO WORK, BUT DON'T TALK ABOUT IT AT WORK. IF
20 ANYBODY TRIES TO TALK TO YOU, TELL THEM YOU CANNOT. AND IF
21 THEY DO, REPORT BACK TO ME WHO TRIED TO IF THEY DID.

22 NOW CALL BACK TOMORROW NIGHT AFTER 6:00 TO THE
23 NUMBER YOU'VE BEEN GIVEN. THEY WILL TELL YOU WHEN TO
24 REPORT. WHEN YOU DO REPORT, BRING WITH YOU CLOTHING OR
25 WHATEVER YOU NEED BECAUSE YOU WILL BE SEQUESTERED FOR THE

1 DURATION OF THE TRIAL WHICH WOULD BE A WEEK OR SO. DO YOU
2 UNDERSTAND THAT?

3 THE JUROR: YES, SIR.

4 THE COURT: ARE THERE ANY EXTENUATING
5 CIRCUMSTANCES THAT WE NEED TO KNOW ABOUT THAT WOULD
6 PROHIBIT YOU FROM SERVING?

7 THE JUROR: I DON'T BELIEVE SO; NO, SIR.

8 THE COURT: ALL RIGHT. JUST CALL BACK TOMORROW
9 AFTER 6:00. THANK YOU.

10 (THE JUROR LEFT THE COURTROOM.)

11 THE COURT: ALL RIGHT, 238, FRED SHELLEY.

12 (A FEMALE JUROR CAME INTO THE COURTROOM.)

13 THE COURT: JUST COME UP HERE AND HAVE A SEAT.
14 ARE YOU FRED SHELLEY?

15 THE JUROR: SHARON FREDERICK.

16 THE COURT: WELL, WE'LL CALL YOU BACK IN A
17 MINUTE. THEY MISUNDERSTOOD.

18 THE JUROR: OKAY.

19 (THE JUROR LEFT THE COURTROOM.)

20 THE COURT: MR. BAILIFF, FRED SHELLEY.

21 FRED SHELLEY, JUROR NUMBER 238, WHITE MALE, WAS
22 QUESTIONED AS FOLLOWS:

23 QUESTIONS BY THE COURT:

24 Q. JUST STEP UP HERE AND YOU'LL SEE A SEAT RIGHT
25 HERE SORT OF BELOW ME A LITTLE BIT. MR.

1 SHELLEY, I'M JOHN HAYES; I INTRODUCED MYSELF TO
2 YOU THIS MORNING.

3 Q. FIRST LET ME TELL YOU THAT IF YOU'RE SEATED ON
4 THIS JURY, DURING THE COURSE OF THE TRIAL YOU
5 MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE
6 COURTROOM. THEY THEY CAN'T TAKE YOUR PICTURE;
7 AND THEY CAN'T REPORT THAT YOU ARE ON THE JURY
8 IF IN FACT YOU ARE. THEY ARE HERE FOR OTHER
9 REASONS. BUT I JUST WANT YOU TO BE AWARE OF
10 THAT.

11 Q. NOW YOU'VE TURNED IN A QUESTIONNAIRE. I HAVE A
12 COPY OF IT. IS IT ACCURATE OR IS ANYTHING ON
13 THERE YOU NEED TO CHANGE?

14 A. NO, SIR.

15 Q. IT'S ACCURATE?

16 A. IT'S ACCURATE.

17 Q. IN THE JURY ROOM WERE WITNESSES LISTED ON SOME
18 PAPER. DID YOU KNOW OR ARE YOU RELATED TO ANY
19 OF THOSE WITNESSES?

20 A. I'M NOT RELATED TO ANY, I DO KNOW SOME.

21 Q. WHO DO YOU KNOW?

22 A. JOHNNY ARCHIE, WAYNE LANGLEY AND JOHN WILLIAMS.

23 Q. WOULD THE FACT THAT YOU KNOW THEM AND THE FACT
24 THAT THEY MAY TESTIFY, WOULD THAT HAVE ANY
25 AFFECT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL

1 IN THIS TRIAL?

2 A. NO, SIR.

3 Q. IF THEY TESTIFIED, YOU WOULD STILL BE ABLE TO
4 BASE YOUR VERDICT FAIRLY AND IMPARTIALLY ON THE
5 ENTIRE EVIDENCE AND THE LAW?

6 A. YES, SIR.

7 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
8 TODAY, HEARD ABOUT IT OR TALKED ABOUT IT OR KNOW
9 ANYTHING ABOUT IT FROM ANY SOURCE WHATSOEVER?

10 A. JUST WHAT I'VE READ IN THE PAPER.

11 Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR
12 AND IMPARTIAL; THAT IS, WOULD THAT SOMEHOW
13 INFLUENCE YOUR DECISION IN THIS CASE OR COULD
14 YOU BASE YOUR VERDICT SOLELY ON THE LAW AND THE
15 EVIDENCE THAT'S DEVELOPED IN THE TRIAL OF THIS
16 CASE?

17 A. I THINK I COULD JUST BASE MY JUDGMENT ON JUST
18 THE LAW AND WHAT'S IN THE CASE.

19 Q. YOU COULD DISASSOCIATE WHAT YOU HAD EARLIER
20 HEARD, OR COULD YOU DISASSOCIATE WHAT YOU HAD
21 EARLIER HEARD AND CONCENTRATE AND BASE YOUR
22 VERDICT SOLELY ON WHAT HAPPENS IN THE TRIAL OF
23 THIS CASE AND THE UNDER OATH EVIDENCE AND
24 EXHIBITS AND THE LAW THAT IS PRESENTED IN THE
25 TRIAL?

1 A. YES, SIR.

2 Q. YOU COULD DO THAT?

3 A. YES, SIR.

4 Q. IN THE JURY ROOM THERE WERE THREE TYPE JURORS
5 SET FORTH ON A LIST. DID YOU GET A CHANCE TO
6 READ THAT?

7 A. YES, SIR, I DID.

8 Q. DID YOU FIND YOURSELF AS ONE OF THOSE JURORS?

9 A. YES, SIR.

10 Q. AND WHICH TYPE WOULD THAT BE?

11 A. I THINK THE THIRD.

12 Q. ALL RIGHT. THE LANGUAGE IN THAT THIRD TYPE
13 THERE WERE THE WORDS AGGRAVATION AND MITIGATION
14 USED.

15 Q. WHEN WE USE THOSE WORDS, WE'RE TALKING ABOUT
16 AGGRAVATION AS BEING CIRCUMSTANCES WHICH ATTEND
17 THE COMMISSION OF A CRIME WHICH INCREASE THE
18 ENORMITY OR ADD TO THE INJURIOUS CONSEQUENCE OF
19 THE CRIME WHICH ARE NOT REALLY ESSENTIALLY
20 ELEMENTS OF THE CRIME. WHEN WE USE THE WORD
21 MITIGATING CIRCUMSTANCES, WE'RE TALKING ABOUT
22 CIRCUMSTANCES WHICH DO NOT CONSTITUTE A
23 JUSTIFICATION OR EXCUSE FOR THE OFFENSE BUT ARE
24 THINGS WHICH IN FAIRNESS AND MERCY MAY BE
25 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE

1 OR CULPABILITY OF AN INDIVIDUAL. DO YOU
2 UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. NOW, WE'RE TALKING ABOUT THE SECOND PART OF A
5 TWO PART TRIAL. FOR THE MAIN PART WE'RE TALKING
6 ABOUT THE PENALTY PHASE. THE CASE PROCEEDS IN
7 TWO PARTS. ONE IS TO DETERMINE WHETHER OR NOT
8 MR. ROBERTSON IS GUILTY OR NOT OF MURDER. IF HE
9 IS FOUND NOT GUILTY, THE CASE IS OVER. IF HE IS
10 FOUND GUILTY BY THE JURY, THEN WE WOULD MOVE
11 INTO THE SECOND PART.

12 Q. BUT HE IS PRESUMED INNOCENT OF THESE CHARGES AND
13 IS SO PRESUMED UNTIL A JURY FINDS HIM GUILTY
14 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND
15 ALL OF THAT?

16 A. YES, SIR.

17 Q. SO WE ARE TALKING ABOUT THE SECOND PART, BUT
18 THAT'S NOT TO PRESUPPOSE THAT WE WOULD EVER EVEN
19 GET THERE. THAT'S JUST BECAUSE IF WE DO GET
20 THERE, WE HAVE TO DISCUSS THESE THINGS NOW. DO
21 YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. SO YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR
24 WHO EVEN THOUGH THE GUILT OF MR. ROBERTSON HAD
25 BEEN DETERMINED BY THE JURY, YOU WOULD NOT HAVE

1 MADE UP YOUR MIND IN ADVANCE AS TO WHAT
2 PUNISHMENT TO IMPOSE. BUT YOU ARE TELLING ME,
3 AS I UNDERSTAND IT, THAT YOU ARE A JUROR WHO
4 WOULD NEED TO HEAR THE FACTS AND CIRCUMSTANCES
5 IN BOTH AGGRAVATION AND MITIGATION AND WOULD
6 LISTEN TO AND FOLLOW THE LAW AS THE JUDGE
7 CHARGES IT BEFORE YOU WOULD MAKE YOUR DECISION
8 REGARDING WHAT PUNISHMENT SHOULD BE IMPOSED. IS
9 THAT WHAT YOU ARE TELLING ME?

10 A. THAT'S RIGHT.

11 Q. AND ARE YOU THE TYPE JUROR WHO IF THE FACTS
12 PRESENTED WARRANTED IT, COULD RETURN A VERDICT
13 FOR LIFE IMPRISONMENT?

14 A. YES, SIR.

15 Q. ARE YOU THE TYPE OF JUROR THAT IF THE FACTS
16 PRESENTED SO WARRANTED, YOU COULD RETURN A
17 VERDICT OF THE DEATH PENALTY?

18 A. YES, SIR.

19 Q. ALL RIGHT. I'M GOING TO ASK YOU NOW TO ANSWER
20 QUESTIONS POSED BY COUNSEL. MR. BOYD?

21 QUESTIONS BY MR. BOYD:

22 Q. GOOD AFTERNOON, MR. SHELLEY. MY NAME IS JIM
23 BOYD; I REPRESENT JIMMY ROBERTSON WHO IS SEATED
24 RIGHT THERE. BILL HANCOCK SEATED THERE IS MY
25 CO-COUNSEL ON THIS CASE.

1 Q. I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT
2 THIS, AND THERE'S NO RIGHT OR WRONG ANSWERS;
3 YOU'RE NOT ON THE SPOT HERE, SO ANYTHING ---

4 A. COULD I SAY SOMETHING FIRST?

5 Q. SURE.

6 A. DOES IT MAKE ANY DIFFERENCE IF I'VE HAD MR.
7 HANCOCK HANDLE A RECENT CASE FOR ME?

8 THE COURT: WELL, IS HE REPRESENTING YOU NOW?

9 A. NO, SIR, HE'S NOT.

10 THE COURT: WELL, LET ME ASK YOU, SINCE YOU
11 BROUGHT IT UP. EXCUSE ME FOR INTERJECTING. WOULD THE FACT
12 THAT MR. HANCOCK REPRESENTED YOU AT SOME POINT, WOULD THAT
13 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

14 A. NO, SIR, NOT IF IT DON'T HIM.

15 THE COURT: ALL RIGHT. THEN THE ANSWER TO YOUR
16 QUESTION IS, NO, THAT WOULD NOT PROHIBIT YOU -- THE ONLY
17 WAY IT WOULD PROHIBIT YOU FROM SERVING IS IF YOU THOUGHT
18 YOU COULD NOT BE FAIR AND IMPARTIAL; THAT IS, THAT YOU
19 WOULD BE PARTIAL TO MR. HANCOCK. AND WHAT I AM HEARING IS
20 YOU'RE TELLING ME THAT YOU WOULD BE FAIR AND IMPARTIAL. IS
21 THAT CORRECT?

22 A. RIGHT.

23 THE COURT: I APPRECIATE YOU SAYING THAT.
24 CONTINUED QUESTIONING BY MR. BOYD:

25 Q. SO THE FACT THAT HE HAS REPRESENTED YOU WOULDN'T

1 AFFECT YOUR PARTIALITY IN THIS CASE?

2 A. NO, SIR.

3 Q. LET ME ASK YOU THIS. WOULD THE FACT THAT HE HAS
4 REPRESENTED YOU MAKE YOU MORE LIKELY TO GO
5 AGAINST HIM?

6 A. NO, SIR, BECAUSE I WAS DISSATISFIED WITH WHAT
7 HAPPENED.

8 Q. YOU WERE DISSATISFIED WITH WHAT HAPPENED?

9 A. UH HUH.

10 Q. SO MY QUESTION IS WOULD THAT MAKE YOU LESS
11 LIKELY TO BE FAIR ON HIS SIDE?

12 A. OH, NO, IT WASN'T HIS FAULT IS WHAT I'M SAYING.

13 Q. OH, OKAY.

14 A. I HAVE NO FEELINGS ONE WAY OR ANOTHER.

15 Q. OKAY. SO, YOU HAVE NOTHING AGAINST MR. HANCOCK
16 IS WHAT I'M SAYING.

17 A. OH, NO.

18 Q. LET ME ASK YOU A FEW OTHER QUESTIONS. YOU SAID
19 THAT YOU'VE READ ABOUT THIS IN THE PAPER. IS
20 THAT RIGHT?

21 A. YES, SIR.

22 Q. AND HAVE YOU FORMED AN OPINION BASED ON WHAT
23 YOU'VE READ IN THE PAPER?

24 A. NO, SIR, I HAVEN'T.

25 Q. AND HAVE YOU HAD CONVERSATIONS WITH ANY PEOPLE

1 ABOUT THIS CASE?

2 A. NO, SIR.

3 Q. YOU HAVEN'T TALKED TO ANYBODY AT ALL ABOUT IT, I
4 MEAN JUST GENERAL CONVERSATION?

5 A. JUST MY WIFE.

6 Q. JUST YOUR WIFE?

7 A. YES.

8 Q. LET ME ASK YOU ABOUT YOUR QUESTIONS CONCERNING
9 YOUR ANSWERS ABOUT THE DEATH PENALTY AND THAT
10 TYPE OF THING. AND YOU UNDERSTAND THAT THIS
11 TRIAL, IF IT GOES THAT FAR, IS IN TWO PARTS.
12 THE FIRST PART THE JURY DETERMINES WHETHER JIMMY
13 ROBERTSON COMMITTED THE OFFENSE. THAT IS,
14 WHETHER HE'S GUILTY OF MURDER. AND IF HE'S
15 FOUND NOT GUILTY, THAT'S THE END OF THE CASE.
16 THE QUESTIONS I'M GOING TO ASK YOU ARE ABOUT THE
17 PENALTY PART, BUT I DON'T WANT TO IMPLY THAT
18 HE'S GOING TO BE FOUND GUILTY OF THAT BUT I JUST
19 NEED TO ASK YOU SOME QUESTIONS ABOUT THAT.

20 YOU SAID YOU ARE IN THE CATEGORY OF JURORS THAT
21 COULD CONSIDER EITHER LIFE IN PRISON OR THE
22 DEATH PENALTY; IS THAT CORRECT?

23 A. YES, SIR.

24 Q. NOW, OF COURSE, IN SOUTH CAROLINA MURDER -- WHEN
25 YOU'RE TALKING ABOUT MURDER AND YOU'RE TALKING

1 ABOUT A PENALTY, THE PERSON HAS ALREADY BEEN
2 CONVICTED OF A MURDER BY THE TIME YOU GET TO THE
3 PENALTY PHASE. YOU UNDERSTAND THAT.

4 A. I UNDERSTAND.

5 Q. SO THE QUESTION IS CAN YOU CONSIDER A LIFE
6 SENTENCE EVEN THOUGH THE PERSON HAS ALREADY BEEN
7 CONVICTED OF MURDER?

8 A. YES, I CAN.

9 Q. AND BY BEING CONVICTED OF MURDER, THAT MEANS
10 THERE WAS NO EXCUSE FOR IT, IT WASN'T ACCIDENT,
11 IT WASN'T SELF-DEFENSE, IT WAS A DELIBERATE ACT
12 THAT KILLED SOMEBODY.

13 AND IN THIS CASE, AS YOU'VE PROBABLY ALREADY
14 BEEN TOLD, JIMMY ROBERTSON IS ACCUSED OF KILLING
15 BOTH OF HIS PARENTS. AND CAN YOU CONSIDER A
16 LIFE SENTENCE INSTEAD OF A DEATH SENTENCE EVEN
17 IF HE IS CONVICTED OF KILLING BOTH OF HIS
18 PARENTS?

19 A. BASED ON THE FACTS.

20 Q. BASED ON THE FACTS. AND WHEN -- YOU SAY BASED
21 ON THE FACTS, WHAT KIND OF FACTS ARE YOU TALKING
22 ABOUT?

23 MR. POPE: OBJECTION, YOUR HONOR.

24 THE COURT: I SUSTAIN THE OBJECTION.

25 Q. LET ME THEN ASK IT THIS WAY. ASSUMING FOR THE

1 SAKE OF THIS QUESTION THAT HE HAS BEEN
2 CONVICTED, THERE IS NO EXCUSE FOR IT, THAT TYPE
3 OF THING, THE COURT CHARGES CERTAIN MITIGATING
4 FACTORS YOU CAN CONSIDER; IN FACT, YOU CAN
5 CONSIDER ANY MITIGATING FACTOR. AND THE JUDGE
6 HAS TOLD YOU WHAT MITIGATION MEANS. WOULD YOU
7 TAKE INTO ACCOUNT ANY MITIGATION THAT WAS
8 INTRODUCED INTO EVIDENCE IN DECIDING SENTENCE?

9 A. YES, I WOULD.

10 Q. AND LIKEWISE YOU WOULD CONSIDER ANY AGGRAVATION
11 THAT WAS PRESENTED?

12 A. YES.

13 Q. AND YOU CAN RENDER A VOTE FOR THE DEATH PENALTY;
14 IS THAT CORRECT?

15 A. YES, SIR.

16 Q. AND CAN YOU RENDER A VOTE FOR LIFE IN PRISON?

17 A. YES.

18 Q. AND YOU UNDERSTAND THAT AS A JUROR OTHER JURORS
19 MAY DISAGREE WITH YOUR OPINION IN THE JURY ROOM;
20 YOU UNDERSTAND THAT.

21 A. YES, SIR.

22 Q. HAVE YOU BEEN ON JURY DUTY BEFORE?

23 A. NO, SIR.

24 Q. BUT YOU UNDERSTAND THAT YOU HAVE A RIGHT TO HAVE
25 YOUR OPINION RESPECTED BY THE OTHER JURORS?

1 A. YES, SIR.

2 Q. AND YOU UNDERSTAND THAT YOU HAVE AN OBLIGATION
3 TO RESPECT THEIR OPINION EVEN IF IT DISAGREES
4 WITH YOUR'S. DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. AND YOU WOULD BE FAIR IN DEALING WITH THE OTHER
7 JURORS IN RESPECTING THEIR OPINIONS, WOULDN'T
8 YOU?

9 A. YES, SIR, I WOULD.

10 Q. EXCUSE ME ONE MOMENT.

11 THE COURT: CERTAINLY.

12 (AFTER A BRIEF PAUSE.)

13 Q. NOW YOU SAID THAT YOU KNOW WAYNE LANGLEY, IS
14 THAT CORRECT?

15 A. UH HUH.

16 Q. WHO IS A POTENTIAL WITNESS IN THIS CASE. HOW DO
17 YOU KNOW HIM?

18 A. JUST A LONG TIME FRIEND.

19 Q. A LONG TIME FRIEND?

20 A. 40 YEARS.

21 Q. 40 YEARS? DO YOU SEE HIM ON A REGULAR BASIS?

22 A. NO, I DON'T.

23 Q. WHAT'S THE NATURE OF YOUR RELATIONSHIP, I MEAN
24 DO Y'ALL SOCIALIZE, BELONG TO CLUBS TOGETHER OR
25 ANYTHING?

1 A. NO.

2 Q. HOW OFTEN HAVE YOU SEEN HIM?

3 A. WE HAVE THE SAME BARBER, AND OCCASIONALLY I'LL
4 SEE HIM THERE.

5 Q. DO YOU AND YOUR WIFE EVER GO OUT TO DINNER WITH
6 HE AND HIS FAMILY OR ANYTHING LIKE THAT?

7 A. NO, SIR.

8 Q. HAVE YOU TALKED WITH HIM ABOUT THIS CASE AT ALL?

9 A. I HAVE NOT. I HAVE NOT SEEN HIM IN A COUPLE OF
10 YEARS PROBABLY.

11 Q. WERE YOU AWARE BEFORE HIS NAME WAS ON THE
12 WITNESS LIST THAT HE WAS A POTENTIAL WITNESS IN
13 THIS CASE?

14 A. NO, SIR, I WASN'T.

15 Q. THANK YOU VERY MUCH, SIR.

16 QUESTIONS BY MR. POPE:

17 Q. MR. SHELLEY, MY NAME IS TOMMY POPE; I'M THE
18 SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN
19 BRACKETT, MY DEPUTY SOLICITOR.

20 Q. I KNOW YOU FEEL LIKE YOU'RE ON TRIAL A LITTLE
21 BIT WITH US HITTING YOU WITH QUESTIONS, SO I'M
22 GOING TO BE REAL BRIEF WITH YOU.

23 Q. THE DEFENSE HAS ALREADY TALKED, AND THE JUDGE
24 HAS TALKED ABOUT THE GUILT PHASE. AND, OF
25 COURSE, WE'VE GOT TO PROVE IT BEYOND A

1 REASONABLE DOUBT. THE DEFENDANT IS INNOCENT
2 UNTIL WE CAN PROVE HIM GUILTY BY THE EVIDENCE.
3 WE THEN GET TO THE SECOND PHASE, AND AS I
4 UNDERSTOOD IT YOU PUT YOURSELF IN THE CATEGORY
5 THAT YOU'D WANT TO HEAR EVERYTHING BEFORE YOU
6 MADE A DECISION. IN THE SIMPLEST TERMS YOU'D
7 WANT TO HEAR AGGRAVATION, THE BAD THINGS WE
8 MIGHT BRING FORTH, AND IN MITIGATION ANYTHING
9 THEY WOULD WANT TO PUT IN THAT WOULD LESSEN IT.
10 IS THAT CORRECT?

11 A. YES, SIR.

12 Q. IF YOU THOUGHT IN YOUR HEART AFTER HEARING
13 EVERYTHING THAT LIFE WAS APPROPRIATE, YOU COULD
14 SAY SO?

15 A. I FEEL I COULD.

16 Q. AND LIKEWISE AFTER HEARING EVERYTHING AND THE
17 FACTS THAT YOU'D HEARD THAT DEATH WAS
18 APPROPRIATE, YOU COULD VOTE FOR DEATH, TOO?

19 A. I COULD.

20 Q. YOU SAID THAT YOU HAD NOT BEEN ON JURY SERVICE.
21 LET ME TELL YOU ONE THING, OF COURSE EVERYBODY
22 SEES IT ON T.V. AND STUFF BUT WHAT HAPPENS IN A
23 NORMAL CASE IS THAT THE FOREPERSON WOULD END UP
24 SIGNING WHATEVER THE JURY VERDICT WAS. YOU
25 KNOW, OF COURSE, IT HAD TO BE UNANIMOUS BUT THE

1 FOREPERSON WOULD SIGN WHAT THE JURY VERDICT WAS.
2 IN A DEATH PENALTY CASE, IT'S A LITTLE BIT
3 DIFFERENT. IF THE JURY ALL VOTES UNANIMOUSLY
4 FOR LIFE, THEN ONLY THE FOREPERSON SIGNS. BUT
5 IF THE JURY VOTES DEATH, THEN THERE'S A
6 PARTICULAR DOCUMENT AND, OF COURSE, THE JUDGE IS
7 GOING TO DO WHATEVER THE JURY SAYS. YOU KNOW,
8 IF YOU SAY LIFE, IT'S GOING TO BE LIFE; IF YOU
9 SAY DEATH, IT'S GOING TO BE DEATH. THERE IS A
10 DOCUMENT THAT COMES OUT, AN OFFICIAL DOCUMENT
11 THAT'S RECORDED DOWNSTAIRS AND IN THAT EACH
12 JUROR THAT VOTES FOR DEATH, AND OF COURSE TO GET
13 DEATH IT WOULD HAVE TO BE UNANIMOUS, EACH JUROR
14 THAT VOTES FOR DEATH WOULD HAVE TO SIGN THEIR
15 NAME.

16 IF YOU HEARD THE EVIDENCE AND YOU THOUGHT THAT
17 DEATH WAS THE APPROPRIATE SENTENCE, COULD YOU
18 SIGN FRED SHELLEY ON THAT DOCUMENT TO GIVE THIS
19 MAN DEATH?

20 A. I COULD.

21 Q. OKAY. LIKEWISE, IF YOU DIDN'T THINK DEATH WAS
22 APPROPRIATE, YOU WOULDN'T SIGN IT?

23 A. NO.

24 Q. THANK YOU, MR. SHELLEY.

25 THE COURT: I'M GOING TO ASK YOU TO STEP RIGHT

1 OUTSIDE THE DOOR FOR A MINUTE, MR. SHELLEY.

2 (THE JUROR LEFT THE COURTROOM.)

3 THE COURT: WHAT SAYS THE STATE?

4 MR. POPE: WE SUBMIT HE'S QUALIFIED, YOUR HONOR.

5 THE COURT: THE DEFENSE?

6 MR. BOYD: HE'S QUALIFIED.

7 THE COURT: ALL RIGHT, I FIND HE IS QUALIFIED.

8 BRING HIM BACK IN.

9 (THE JUROR RETURNED TO THE COURTROOM.)

10 THE COURT: MR. SHELLEY, WE'RE GOING TO INCLUDE
11 YOU ON THE GROUP FROM WHICH WE DRAW THE JURY. YOU'RE NOT
12 NECESSARILY GOING TO BE ON IT BECAUSE THERE WILL BE A GOOD
13 MANY PEOPLE AND SOME WILL BE STRUCK.

14 WE DON'T KNOW QUITE YET WHEN THAT'S GOING TO
15 START, SO I'M GOING TO ASK YOU TO CALL TOMORROW NIGHT AFTER
16 6:00 TO THE NUMBER THAT YOU'VE BEEN GIVEN, THAT 1-800
17 NUMBER, AND THEY WILL TELL YOU WHAT TIME TO REPORT.

18 NOW COME PREPARED TO STAY THROUGHOUT THE DURATION
19 OF THE TRIAL WHICH WILL BE A WEEK OR SO BECAUSE YOU WILL BE
20 SEQUESTERED.

21 DO YOU KNOW OF ANY EXTENUATING CIRCUMSTANCES
22 WHICH WOULD INTERFERE WITH YOUR DOING THAT?

23 THE JUROR: NO, SIR.

24 THE COURT: ALL RIGHT. NOW DON'T DISCUSS THE
25 CASE; DON'T LET ANYONE DISCUSS THE CASE WITH YOU. IF

1 ANYONE TRIES, TELL THEM YOU CAN'T AND REPORT BACK TO ME IF
2 THEY DO TRY. AND DON'T LET YOURSELF BE EXPOSED TO ANY
3 COVERAGE, NEWS COVERAGE WHATSOEVER OF THIS CASE.

4 YOU CAN GO ABOUT YOUR DAILY BUSINESS AND CALL
5 BACK TOMORROW NIGHT AFTER 6:00 AND FOLLOW THOSE
6 INSTRUCTIONS. THANK YOU.

7 THE JUROR: THANK YOU, SIR.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: STEVEN SAMIOS.

10 STEVEN SAMIOS, JUROR NUMBER 231, WHITE MALE, WAS
11 QUESTIONED AS FOLLOWS:

12 QUESTIONS BY THE COURT:

13 Q. HAVE A SEAT RIGHT OVER HERE.

14 A. GOOD AFTERNOON.

15 Q. GOOD AFTERNOON. SO THAT I CAN GET IT RIGHT,
16 PRONOUNCE YOUR LAST NAME FOR ME.

17 A. SAMIOS.

18 Q. SAMIOS, OKAY, JUST LIKE IT'S SPELLED.

19 A. YES.

20 Q. ALL RIGHT. I INTRODUCED MYSELF THIS MORNING;
21 I'M JOHN HAYES, I'M THE JUDGE PRESIDING OVER
22 THIS CASE. LET ME TELL YOU FIRST THAT DURING
23 THE COURSE OF THIS TRIAL IF YOU ARE SEATED ON
24 THE JURY, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS.
25 THEY WILL NOT BE TAKING YOUR PICTURE; THEY ARE

1 NOT ALLOWED TO, AND THEY WILL NOT BE REPORTING
2 YOUR INVOLVEMENT IN THIS TRIAL. I JUST WANT YOU
3 TO FEEL COMFORTABLE ABOUT THAT.

4 YOU HANDED US UP A QUESTIONNAIRE. DO YOU FEEL
5 IT IS ACCURATE OR DO YOU NEED TO MAKE ANY
6 CHANGES?

7 A. AS FAR AS I CAN REMEMBER IT'S PRETTY MUCH
8 ACCURATE.

9 Q. ALL RIGHT. DID YOU REVIEW THE LISTS OF
10 WITNESSES THAT WERE IN THE JURY ROOM?

11 A. YES, I DID.

12 Q. DO YOU KNOW ANY OF THEM OR ARE YOU RELATED TO
13 ANY OF THEM?

14 A. NO, I DO NOT.

15 Q. NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE,
16 HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER OR
17 HAVE YOU FORMED OR EXPRESSED AN OPINION ABOUT
18 ANY MATTER OR ISSUE INVOLVED IN THIS CASE?

19 A. I HAD NEVER HEARD ANYTHING ABOUT THE CASE BEFORE
20 AT ALL.

21 Q. NOW IN THE JURY ROOM THERE WERE THREE TYPES OF
22 JURORS LISTED ON A FORM. DID YOU HAVE A CHANCE
23 TO REVIEW THAT?

24 A. YES, I DID.

25 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

1 A. YES, I DID.

2 Q. WHICH TYPE WOULD THAT BE?

3 A. IT WOULD BE ITEM THREE.

4 Q. IN THAT TYPE JUROR THERE ARE TERMS THAT ARE USED
5 BEING AGGRAVATING AND MITIGATING CIRCUMSTANCES.

6 BY THOSE TERMS, AGGRAVATION, THOSE ARE
7 CIRCUMSTANCES WHICH ARE ATTENDANT TO A
8 COMMISSION OF A CRIME WHICH INCREASE ITS
9 ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE
10 BUT WHICH ARE ABOVE AND BEYOND THE ACTUAL
11 ELEMENTS THAT CONSTITUTE THE CRIME.

12 MITIGATING CIRCUMSTANCES ARE THOSE CIRCUMSTANCES
13 WHICH WHILE THEY DO NOT CONSTITUTE JUSTIFICATION
14 OR EXCUSE FOR A CRIME, THEY ARE THINGS WHICH ARE
15 IN FAIRNESS AND MERCY ARE THINGS THAT SHOULD BE
16 OR MAY BE CONSIDERED AS EXTENUATING OR REDUCING
17 THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU
18 UNDERSTAND THOSE TERMS?

19 A. YES, I DO.

20 Q. SO YOU ARE TELLING ME THAT AS THE THIRD TYPE
21 JUROR YOU ARE ONE WHO -- WELL, LET ME BACK UP.
22 THIS CASE WILL PROCEED IN TWO STAGES. THE FIRST
23 WILL BE TO DETERMINE WHETHER OR NOT MR.
24 ROBERTSON IS OR IS NOT GUILTY OF THE OFFENSES
25 WITH WHICH HE IS CHARGED. IF HE IS FOUND NOT

1 GUILTY, OF COURSE, THE MATTER WOULD END. IF HE
2 IS FOUND GUILTY, THEN THE CASE WOULD GO INTO --
3 IF HE IS FOUND GUILTY OF MURDER, THE CASE WOULD
4 GO INTO THE PENALTY PHASE.

5 HE IS PRESUMED INNOCENT OF THESE OFFENSES AND IS
6 SO PRESUMED UNTIL THE JURY WERE CONVINCED BEYOND
7 A REASONABLE DOUBT OF HIS GUILT. SO THE FACT
8 THAT WE ARE DISCUSSING THIS SECOND PART, EVEN
9 THOUGH WE HAVEN'T GOTTEN THROUGH WITH THE FIRST
10 PART IS NOT INDICATIVE OF ANYTHING INDICATING
11 HIS GUILT BUT RATHER WE JUST HAVE TO DO IT THIS
12 WAY. DO YOU UNDERSTAND THAT?

13 A. UH HUH.

14 Q. NOW YOU'RE TELLING ME THAT YOU'RE THE TYPE
15 JUROR, I WANT TO MAKE SURE I UNDERSTAND, THAT
16 ALTHOUGH MR. ROBERTSON'S GUILT WOULD HAVE AT
17 THAT POINT BEEN DETERMINED, YOU WOULD NOT HAVE
18 MADE UP YOUR MIND IN ADVANCE CONCERNING WHAT THE
19 PUNISHMENT SHOULD BE. IS THAT CORRECT?

20 A. CORRECT.

21 Q. YOU'RE THE TYPE JUROR WHO WOULD NEED TO HEAR THE
22 FACTS AND CIRCUMSTANCES IN BOTH AGGRAVATION AND
23 MITIGATION, AND YOU WOULD WANT TO LISTEN AND
24 FOLLOW THE LAW AS I CHARGE IT TO YOU AS TRIAL
25 JUDGE. YOU WOULD WANT THIS BEFORE YOU WOULD

1 MAKE A DECISION REGARDING PUNISHMENT. IS THAT
2 CORRECT?

3 A. CORRECT.

4 Q. AND YOU'RE THE KIND OF JUROR THAT IF THE FACTS
5 SO WARRANTED AFTER BEING PRESENTED, YOU COULD IF
6 YOU FELT IT WAS WARRANTED, BRING IN A VERDICT OF
7 LIFE IMPRISONMENT; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. AND YOU ARE ALSO, I UNDERSTAND AS THIS TYPE
10 JUROR, YOU ARE ONE WHO IF THOSE FACTS PRESENTED
11 WARRANTED A VERDICT OF DEATH, YOU COULD RETURN
12 THE DEATH PENALTY. IS THAT CORRECT?

13 A. YES.

14 Q. ALL RIGHT. I'M GOING TO ASK YOU TO ANSWER ANY
15 QUESTIONS THAT COUNSEL MAY HAVE.

16 QUESTIONS BY MR. BRACKETT:

17 Q. COULD AFTERNOON, MR. SAMIOS, HOW ARE YOU DOING?

18 A. GREAT, HOW ABOUT YOURSELF?

19 Q. MY NAME IS KEVIN BRACKETT; I AM THE DEPUTY
20 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. TOMMY
21 POPE WHO IS THE SOLICITOR AND I WILL BE
22 PROSECUTING THE MURDER CASE AGAINST MR. JIMMY
23 ROBERTSON WHO IS SEATED OVER THERE WITH HIS TWO
24 ATTORNEYS.

25 I JUST WANT TO KIND OF FOLLOW UP QUICKLY ON WHAT

1 THE JUDGE HAD ASKED YOU ABOUT. HE TOLD YOU, OF
2 COURSE, THAT THIS IS A TWO PART TRIAL.

3 A. CORRECT.

4 Q. THE FIRST PART IS GUILT OR INNOCENCE; IT DOESN'T
5 HAVE ANYTHING TO DO WITH THE PENALTY. IF HE'S
6 NOT GUILTY, THERE IS NO PENALTY. YOU UNDERSTAND
7 THAT?

8 A. YES.

9 Q. AND DURING THAT PHASE YOU COULD LISTEN TO ALL OF
10 THE EVIDENCE, TAKE IT ALL IN, AND MAKE A
11 DETERMINATION OF WHETHER HE IS GUILTY OR
12 INNOCENT BASED ON WHAT YOU HEAR FROM THIS
13 WITNESS STAND AND THE EVIDENCE WE PUT IN AND
14 COUPLED WITH THE LAW THAT THE JUDGE TELLS YOU.
15 THE JUDGE WILL DESCRIBE WHAT THE LAW IS AND YOU
16 WILL APPLY THE LAW THAT HE TELLS YOU TO THE
17 EVIDENCE YOU HEAR AND COME UP WITH A VERDICT.
18 IS THIS YOUR FIRST TIME SERVING AS A JUROR?

19 A. YES, IT IS.

20 Q. OKAY. AND YOU TOLD THE JUDGE THAT YOU DIDN'T
21 HEAR ANYTHING ABOUT THIS CASE BEFORE YOU ---

22 A. NO, I GUESS WHENEVER THE CRIMES WERE COMMITTED,
23 I HAD JUST MOVED UP HERE FROM FLORIDA. I MEAN I
24 REALLY DON'T FOLLOW THE PAPER, AND I DON'T
25 FOLLOW THE NEWS VERY MUCH.

1 Q. SO YOU COME IN HERE WITH, YOU KNOW, A BLANK
2 SLATE; YOU DON'T KNOW ANYTHING ABOUT THIS TO
3 BEGIN WITH?

4 A. NO.

5 Q. AND YOU DIDN'T KNOW ANY OF THE WITNESSES?

6 A. NO, I DID NOT.

7 Q. ASSUME THAT HE'S FOUND GUILTY, WE MOVE TO THE
8 SECOND PHASE OF THE TRIAL. AND IT'S ONLY IF
9 HE'S FOUND GUILTY THAT WE GO THERE.

10 IN THAT PHASE WE ARE TALKING ABOUT TWO POSSIBLE
11 SENTENCES, LIFE AND DEATH. DO YOU UNDERSTAND
12 THAT?

13 A. YES.

14 Q. IN THAT PHASE WE, AGAIN, WE'VE GOT TO PROVE
15 EVERYTHING. THE STATE IN BOTH PHASES HAS THE
16 BURDEN OF PROOF. THEY DON'T HAVE TO PROVE
17 ANYTHING. THEY COULD SIT THERE SILENT AND NEVER
18 SAY A WORD THROUGH THE WHOLE TRIAL. WE HAVE TO
19 PROVE THAT HE'S GUILTY AND ONCE WE PROVE HE'S
20 GUILTY, WE HAVE TO PROVE THAT THERE ARE
21 AGGRAVATING CIRCUMSTANCES WHICH MAKE THIS WORSE
22 THAN JUST A REGULAR MURDER. DO YOU UNDERSTAND
23 THAT?

24 A. YES.

25 Q. THOSE AGGRAVATING CIRCUMSTANCES HAVE TO BE

1 PRESENT IN ORDER FOR THERE TO BE A DEATH
2 SENTENCE.

3 Q. THE DEFENSE, IF THEY SO CHOOSE, CAN PUT UP WHAT
4 THEY CALL MITIGATING EVIDENCE WHICH KIND OF
5 LESSENS THE SERIOUSNESS OF THE MURDER OR MAY
6 EXPLAIN IN SOME FORM OR FASHION WHY THE MURDER
7 HAPPENED. THEY CAN PUT THAT EVIDENCE UP IF THEY
8 CHOOSE.

9 A JUROR HAS TO BE ABLE TO LISTEN TO THE
10 AGGRAVATING EVIDENCE AND THE MITIGATING EVIDENCE
11 BEFORE THEY MAKE UP THEIR MIND. AND YOU COULD
12 DO THAT?

13 A. SURE.

14 Q. OKAY. NOW, YOU'D HAVE YOUR TWO CHOICES. AND IF
15 THE JURY DECIDES THAT LIFE IS THE APPROPRIATE
16 SENTENCE, YOU COULD DO THAT?

17 A. SURE.

18 Q. YOU COULD SENTENCE HIM TO LIFE BASED ON THE
19 CIRCUMSTANCES OF THE MURDER?

20 A. YES.

21 Q. AND IF THAT HAPPENS, ONLY THE FOREMAN WOULD SIGN
22 THE VERDICT FORM. JUST THE JURY FOREMAN WOULD
23 SIGN HIS NAME OR HER NAME AND THAT WOULD BE ALL
24 THAT WOULD BE REQUIRED IN ORDER TO GIVE THIS
25 DEFENDANT A SENTENCE OF LIFE.

1 HOWEVER, IF THE JURY DECIDED UNANIMOUSLY THAT A
2 SENTENCE OF DEATH WAS APPROPRIATE -- IN BOTH
3 INSTANCES, LIFE OR DEATH, IT HAS TO BE UNANIMOUS
4 -- BUT IF THEY DECIDE UNANIMOUSLY THAT IT HAS TO
5 BE DEATH, THAT DEATH IS THE APPROPRIATE
6 SENTENCE, IT'S A LITTLE BIT DIFFERENT IN THAT
7 CIRCUMSTANCE. EACH AND EVERY INDIVIDUAL JUROR
8 WOULD HAVE TO PICK UP THE PEN AND A DEATH
9 SENTENCE SHEET WOULD GO AROUND THE JURY ROOM AND
10 EACH JUROR WOULD HAVE TO SIGN THEIR NAME SAYING
11 THAT THEY ATTEST THAT THEY SENTENCE JIMMY
12 ROBERTSON TO DEATH IN THIS CASE.

13 NOW, IF THAT PEN WAS COMING AROUND THE ROOM AND
14 IT WAS PUT IN YOUR HANDS, YOU COULD SIGN STEVEN
15 SAMIOS SENTENCING THIS MAN TO DEATH IF THAT WAS
16 THE APPROPRIATE VERDICT?

17 A. YES.

18 Q. OKAY. THANK YOU VERY MUCH, SIR; I HAVE NO
19 FURTHER QUESTIONS.

20 THE COURT: MR. HANCOCK?

21 QUESTIONS BY MR. HANCOCK:

22 Q. MR. SAMIOS, I'M BILL HANCOCK. I'M THE ATTORNEY
23 FOR JIMMY ROBERTSON WHO IS SEATED HERE. THIS IS
24 MR. BOYD WHO IS CO-COUNSEL AND WE WILL BE
25 DEFENDING MR. ROBERTSON.

1 YOU WERE DOWNSTAIRS THIS MORNING, I BELIEVE, AND
2 YOU KNOW THAT HE HAS BEEN CHARGED WITH KILLING
3 HIS PARENTS, IS THAT CORRECT?

4 A. YES.

5 Q. YOU UNDERSTAND THAT?

6 A. YES.

7 Q. AND YOU UNDERSTAND THAT WE'RE NOT -- AT THIS
8 TIME WE HAVE NOT ENTERED INTO ANY PHASE THAT
9 INDICATES THAT HE'S GUILTY IN ANY WAY. YOU
10 UNDERSTAND THAT?

11 A. YES, I DO.

12 Q. WE'RE PUTTING THE CART BEFORE THE HORSE. WE ARE
13 ACTUALLY ASKING YOU ABOUT SOMETHING THAT MAY
14 NEVER TAKE PLACE. YOU UNDERSTAND THAT?

15 A. YES.

16 Q. AND YOU UNDERSTAND THAT HE IS PRESUMED INNOCENT?

17 A. YES.

18 Q. YOU HAVE INDICATED THAT YOU COULD LISTEN TO BOTH
19 THE AGGRAVATING CIRCUMSTANCES WHICH ARE
20 CIRCUMSTANCES WHICH TEND TO MAKE THE CRIME
21 WORSE. IS THAT CORRECT?

22 A. UH HUH.

23 Q. AND YOU'VE INDICATED THAT YOU COULD ALSO
24 CONSIDER MITIGATING CIRCUMSTANCES AND VOTE FOR A
25 LIFE SENTENCE. IS THAT CORRECT, SIR?

1 A. YES.

2 Q. AND DO YOU BELIEVE THAT THERE ARE SUCH
3 MITIGATING OR COULD BE SUCH MITIGATING
4 CIRCUMSTANCES THAT WOULD REQUIRE YOU OR LEAD YOU
5 TO VOTE FOR LIFE AFTER SOMEONE HAS KILLED BOTH
6 OF THEIR PARENTS?

7 A. YES, I DO.

8 Q. YOU COULD CONSIDER THOSE?

9 A. YES, I CAN.

10 Q. AND YOU COULD ARRIVE AT A FAIR AND IMPARTIAL
11 VERDICT. IS THAT CORRECT?

12 A. YES, I COULD.

13 Q. AND VOTE FOR EITHER LIFE OR DEATH. IS THAT
14 CORRECT?

15 A. YES.

16 Q. AND YOU SEEM TO HAVE A STRONG OPINION, SIR.
17 COULD YOU DO THAT AS PER YOUR OWN CONVICTIONS?
18 PER YOUR OWN CONVICTIONS COULD YOU VOTE FOR LIFE
19 AGAINST ALL OTHERS OR DEATH AGAINST ALL OTHERS?

20 A. I'M KIND OF CONFUSED ON THAT QUESTION.

21 Q. AFTER HEARING THE EVIDENCE AND LISTENING TO ALL
22 OF THE EVIDENCE IN AGGRAVATION AND MITIGATION,
23 YOU'VE SAID THAT YOU COULD SIGN A SHEET THAT
24 SAID THAT YOU COULD SENTENCE MR. ROBERTSON TO
25 DEATH. IS THAT CORRECT?

1 A. YES.

2 Q. ON THE OTHER HAND, COULD YOU ALSO VOTE YOUR
3 CONVICTIONS AND INDICATE THAT HE SHOULD RECEIVE
4 A LIFE SENTENCE IF YOU WERE CONVINCED BY
5 MITIGATING FACTORS THAT THAT SHOULD BE THE CASE?

6 A. YES.

7 Q. AND YOU COULD DO THAT AGAINST ALL OTHERS?

8 A. SURE.

9 Q. AND YOU UNDERSTAND THAT IF YOU ARE SELECTED AS A
10 JUROR, THEN IT IS REQUIRED BY ALL PEOPLE TO
11 RESPECT YOUR DECISION, AND YOU ARE TO RESPECT
12 ALL OTHER JURORS' DECISIONS; IS THAT CORRECT,
13 SIR?

14 A. YES.

15 Q. NOW ON QUESTION 27 OF YOUR QUESTIONNAIRE, THE
16 QUESTION IS "HAVE YOU OR DO YOU KNOW OF ANYONE
17 WHO HAS BEEN THE VICTIM OF A SERIOUS ACT OF
18 VIOLENCE OR AN UNLAWFUL KILLING OR HOMICIDE" AND
19 YOU INDICATED "YES" THERE, SIR.

20 A. OKAY.

21 Q. AND IS THAT THE TRUTH?

22 A. I DON'T KNOW ANYBODY ON HOMICIDE, BUT I'VE KNOWN
23 PEOPLE THAT HAVE BEEN MUGGED AND ROBBED; NO
24 MURDER OR NOTHING LIKE THAT.

25 Q. SO AT THAT POINT DID YOU UNDERSTAND THAT, IT

1 SAYS "OF VIOLENCE OR AN UNLAWFUL KILLING" SO NOW
2 YOU'RE SAYING THAT YOU DO NOT KNOW ANYBODY THAT
3 HAS BEEN INVOLVED IN AN UNLAWFUL KILLING?

4 MR. BRACKETT: OBJECTION, YOUR HONOR, THE
5 SENTENCE SAYS ---

6 THE COURT: YES, READ THE WHOLE SENTENCE.

7 Q. YOU'RE INDICATING THAT THESE ARE SERIOUS ACTS OF
8 VIOLENCE, IS THAT IT?

9 A. A MUGGING IS; IT SEEMS SERIOUS TO ME.

10 Q. OKAY. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: IF YOU WILL JUST STEP OUTSIDE THE
12 DOOR JUST FOR A MOMENT.
13 (THE JUROR LEFT THE COURTROOM.)

14 THE COURT: WHAT SAYS THE STATE?

15 MR. BRACKETT: WE SUBMIT HE IS QUALIFIED.

16 THE COURT: THE DEFENSE?

17 MR. HANCOCK: HE'S QUALIFIED, YOUR HONOR.

18 THE COURT: BRING HIM BACK IN.
19 (THE JUROR RETURNED TO THE COURTROOM.)

20 THE COURT: MR. SAMIOS, WE'RE GOING TO INCLUDE
21 YOU IN THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT
22 DOESN'T MEAN THAT YOU WILL NECESSARY BE ON IT BECAUSE THERE
23 WILL BE A BIG POOL TO DRAW FROM, BUT WE DON'T KNOW WHEN WE
24 WILL START THAT PROCESS. CALL BACK TOMORROW NIGHT AFTER
25 6:00 TO THE NUMBER THAT YOU HAVE BEEN GIVEN, THE 1-800.

1 DO YOU KNOW OF ANY EXTENUATING CIRCUMSTANCES THAT
2 WOULD INTERFERE WITH YOUR SERVING?

3 THE JUROR: WELL, I'M WORKING OUT OF TOWN. I'M
4 WORKING UP IN NORTH WILKSBORO ON A BIG PROJECT RIGHT NOW,
5 AND I'M SUPPOSED TO HEAD OUT OF TOWN TOMORROW MORNING.
6 WHEN WOULD I ---

7 THE COURT: IT WILL BE PROBABLY THE MIDDLE OF
8 NEXT WEEK BEFORE WE ARE THROUGH.

9 THE JUROR: OKAY, SO I WOULD HAVE TO BE LOCAL FOR
10 THE WEEK HERE?

11 THE COURT: WELL, YOU WILL BE SEQUESTERED. WHEN
12 YOU COME BACK, BRING WITH YOU CLOTHING, YOU KNOW, TOILETRY
13 ARTICLES BECAUSE IF YOU ARE CHOSEN, YOU WILL STAY.

14 THE JUROR: OKAY.

15 THE COURT: OF COURSE, IF NOT, YOU WILL BE FREE
16 TO GO. DO NOT DISCUSS THE CASE WITH ANYONE; DON'T LET
17 ANYONE DISCUSS THE CASE WITH YOU, AND DON'T LET YOURSELF
18 RECEIVE ANY INFORMATION THROUGH ANY OF THE NEWS MEDIA ABOUT
19 THE CASE. SO, JUST CALL BACK TOMORROW NIGHT AFTER 6:00 AND
20 YOU WILL BE TOLD WHAT TIME TO REPORT.

21 THE JUROR: OKAY.

22 THE COURT: THANK YOU.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT, LESTER LANDRUM, 144.

25 LESTER LANDRUM, JUROR NUMBER 144, WHITE MALE, WAS

1 QUESTIONED AS FOLLOWS:

2 QUESTIONS BY THE COURT:

3 Q. JUST HAVE A SEAT. YOU'RE STILL UNDER OATH. YOU
4 REMEMBER THAT?

5 A. YES, SIR.

6 Q. AND I'M JOHN HAYES; I INTRODUCED MYSELF
7 DOWNSTAIRS. IF YOU ARE CHOSEN ON THIS JURY, YOU
8 WILL AT TIMES PERHAPS SEE PHOTOGRAPHERS OR
9 CAMERAS IN THE COURTROOM. THEY WILL NOT BE
10 TAKING YOUR PICTURES, THEY ARE NOT ALLOWED TO,
11 IT'S AGAINST THE LAW. AND THEY WON'T BE
12 REPORTING ABOUT YOU. I JUST WANT YOU TO BE AWARE
13 OF THAT.

14 NOW YOU HAVE TURNED IN A QUESTIONNAIRE. DO YOU
15 NEED TO MAKE ANY ALTERATIONS TO IT OR IS IT FINE
16 LIKE IT IS?

17 A. I WOULD SAY IT'S FINE.

18 Q. YOU HAVE REVIEWED, I HOPE, THE LISTS OF
19 WITNESSES THAT WAS IN THE JURY ROOM. DID YOU
20 FIND ANYBODY ON THERE THAT YOU WERE RELATED TO
21 BY BLOOD OR MARRIAGE OR WHO YOU KNEW?

22 A. NO BLOOD OR MARRIAGE, BUT IT WAS ABOUT FIVE OR
23 SIX PEOPLE THAT I KNEW.

24 Q. OKAY. WOULD THE FACT THAT THERE ARE PEOPLE WHO
25 ARE ON THAT LIST THAT YOU KNOW THAT MAY TESTIFY

1 IN THIS CASE, WOULD THAT FACT AFFECT YOUR
2 ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE
3 AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

4 A. NO, SIR, IT WOULDN'T.

5 Q. NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE
6 FROM ANY SOURCE WHATSOEVER OR DISCUSSED THE
7 CASE?

8 A. I READ THE NEWSPAPER ARTICLE YESTERDAY.

9 Q. HAVING READ THAT NEWSPAPER ARTICLE, COULD YOU
10 PUT THAT OUT OF YOUR MIND AND BASE YOUR VERDICT
11 SOLELY ON THE LAW AND THE EVIDENCE AS IT IS
12 DEVELOPED IN THE TRIAL?

13 A. ABSOLUTELY.

14 Q. AND ARE YOU TELLING ME THAT YOU WOULD NOT BE
15 INFLUENCED BY WHAT YOU HAD PREVIOUSLY READ BUT
16 WOULD BASE YOUR VERDICT SOLELY ON THE MATTERS
17 THAT ARE PRESENTED IN THIS COURTROOM?

18 A. YES, SIR.

19 Q. NOW IN THE JURY ROOM THERE ARE THREE JUROR TYPES
20 LISTED ON A SHEET OF PAPER. DID YOU HAVE A
21 CHANCE TO REVIEW THAT?

22 A. YES, SIR, I DID.

23 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE JUROR
24 TYPES?

25 A. I WOULD LIKE TO THINK I'M A TYPE THREE.

1 Q. ALL RIGHT. IN THAT SORT OF DEFINITION OR THE
2 OUTLINING OF THAT TYPE JUROR WE USE THE WORDS
3 AGGRAVATION AND MITIGATION.

4 AGGRAVATION RELATES TO CIRCUMSTANCES WHICH
5 ATTEND THE COMMISSION OF A CRIME WHICH INCREASES
6 ITS ENORMITY OR ADDS TO ITS INJURIOUS
7 CONSEQUENCE BUT ARE THINGS OR CIRCUMSTANCES
8 WHICH ARE ABOVE AND BEYOND THE ESSENTIAL
9 ELEMENTS OF THE CRIME ITSELF.

10 MITIGATING CIRCUMSTANCES ARE THOSE CIRCUMSTANCES
11 WHICH DO NOT RISE TO THE LEVEL OR CONSTITUTE
12 JUSTIFICATION OR EXCUSE BUT ARE THINGS THAT IN
13 FAIRNESS AND MERCY MAY BE CONSIDERED AS
14 EXTENUATING OR REDUCING ONE'S CULPABILITY. DO
15 YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. NOW AS A TYPE THREE JUROR WHICH YOU TELL ME YOU
18 FEEL LIKE YOU ARE IN THAT CATEGORY, THEN I
19 UNDERSTAND YOU ARE TELLING ME THAT YOU ARE THE
20 TYPE JUROR WHO EVEN THOUGH THE GUILT OF MR.
21 ROBERTSON HAD BEEN DETERMINED, YOU WOULD NOT
22 HAVE MADE UP YOUR MIND IN ADVANCE CONCERNING
23 PUNISHMENT?

24 A. YES, SIR.

25 Q. AND DO YOU UNDERSTAND THAT THESE TYPE CASES TAKE

1 PLACE IN TWO PHASES; THAT IS, MR. ROBERTSON IS
2 PRESUMED INNOCENT AND IS SO PRESUMED INNOCENT
3 UNTIL A JURY WERE CONVINCED OF HIS GUILT BEYOND
4 A REASONABLE DOUBT AND WOULD RETURN A UNANIMOUS
5 VERDICT OF GUILT OF MURDER.

6 IF THEY SAID NOT GUILTY, THAT JURY, THEN, OF
7 COURSE, THE MATTER WOULD END. BUT IF A VERDICT
8 OF GUILTY WERE RETURNED, THEN THE CASE WOULD GO
9 FORWARD INTO A SECOND PENALTY PHASE. DO YOU
10 UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND THE FACT THAT WE ARE TALKING ABOUT THE
13 SECOND PART IS NO INDICATION THAT THERE WILL
14 EVER EVEN BE A SECOND PART. BUT WE HAVE TO,
15 UNDER THE CIRCUMSTANCES, TALK ABOUT IT AT THIS
16 POINT. DO YOU UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. SO YOU'RE TELLING ME AS THE THIRD TYPE JUROR
19 THAT EVEN AFTER THAT FIRST PART IF MR. ROBERTSON
20 WERE FOUND GUILTY BEYOND A REASONABLE DOUBT OF
21 MURDER, THAT YOU WOULD NOT HAVE MADE UP YOUR
22 MIND IN ADVANCE CONCERNING PUNISHMENT. IS THAT
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU'RE TELLING ME THAT YOU ARE THE TYPE

1 JUROR THAT WOULD NEED TO HEAR THE FACTS AND
2 CIRCUMSTANCES IN BOTH AGGRAVATION AND MITIGATION
3 IN THAT SECOND PHASE AND THAT YOU WOULD WANT TO
4 LISTEN TO AND FOLLOW THE LAW AS THE JUDGE
5 CHARGES THE LAW BEFORE YOU WOULD MAKE A DECISION
6 REGARDING PUNISHMENT. IS THAT CORRECT?

7 A. YES, SIR.

8 Q. AND IF I UNDERSTAND IT, YOU ARE TELLING ME THAT
9 IF THE FACTS PRESENTED SO WARRANTED, THAT YOU
10 COULD RETURN AND BRING IN A VERDICT OF LIFE
11 IMPRISONMENT. IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND YOU'RE TELLING ME ALSO THAT IF THE FACTS
14 PRESENTED AND WARRANTED IT, YOU COULD LIKEWISE
15 BRING IN A VERDICT IMPOSING THE DEATH PENALTY.
16 IS THAT CORRECT?

17 A. YES, SIR.

18 Q. ALL RIGHT, I AM GOING TO ASK YOU TO ANSWER ANY
19 QUESTIONS THE ATTORNEYS MAY HAVE. MR. BOYD?

20 QUESTIONS BY MR. BOYD:

21 Q. GOOD AFTERNOON, MR. LANDRUM.

22 A. MR. BOYD.

23 Q. MY NAME IS JIM BOYD. I REPRESENT JIMMY ROBERTSON
24 WHO IS SEATED RIGHT HERE. MY CO-COUNSEL IS BILL
25 HANCOCK AND HE'S SEATED THERE. I NEED TO ASK

1 YOU A FEW QUESTIONS ABOUT YOUR QUESTIONNAIRE,
2 ABOUT THE ANSWERS YOU'VE GIVEN TO THE JUDGE JUST
3 THEN IF YOU DON'T MIND.

4 A. OKAY.

5 Q. YOU SAID YOU KNEW SOME PEOPLE THAT WERE ON THE
6 WITNESS LISTS?

7 A. YES, SIR.

8 Q. AND WHO ARE THE PEOPLE YOU KNOW?

9 A. THE PEOPLE THAT I KNOW, I KNOW CATHY BIGHAM.

10 Q. OKAY.

11 A. ALL THESE PEOPLE WITH THE EXCEPTION OF ONE IS
12 THROUGH MY JOB AT THE BAXTER HOOD CENTER. I'M
13 THE DIRECTOR OF MARKETING THERE.

14 I DIDN'T QUITE UNDERSTAND, ON NORTHWESTERN HIGH
15 SCHOOL IT SAID KEEPER OF RECORDS. I ANNOUNCE ALL
16 OF NORTHWESTERN'S FOOTBALL AND BASKETBALL GAMES.
17 SO, I DIDN'T KNOW HOW THAT IS RELATED, BUT I DO
18 HAVE SOME TYPE OF CORRELATION WITH NORTHWESTERN
19 HIGH SCHOOL.

20 Q. ALL RIGHT.

21 A. CAROL SARN WORKS WITH ME AT YORK TECH COLLEGE.

22 Q. OKAY.

23 A. JIMMY FUDGE IS A DEPUTY SHERIFF HERE, AND I KNOW
24 LIEUTENANT FUDGE THROUGH -- I SCHEDULE ALL THE
25 UMPIRES FOR WINTHROP AND JIMMY FUDGE IS ONE OF

1 MY UMPIRES.

2 Q. OKAY.

3 A. SHERIFF BRYANT I'VE MET THROUGH THE BAXTER HOOD
4 CENTER; HE HAS ATTENDED SEVERAL FUNCTIONS THERE,
5 SO I'VE MET HIM -- NOT ANY SOCIAL CONTACT, BUT I
6 HAD MET HIM THROUGH THERE.

7 KEYSTONE, MY DAUGHTER ATTENDED KEYSTONE EIGHT
8 YEARS AGO WHEN SHE WAS IN A DRUG REHABILITATION
9 PROGRAM. AND DOUG MCKOWN, HE JUST HAD A
10 FUNCTION AT THE BAXTER HOOD CENTER FOR THE
11 CORONERS AND I DEALT WITH HIM THROUGH THAT.

12 Q. ARE YOU PERSONAL FRIENDS WITH ANY OF THESE
13 PEOPLE OR HAS IT ALL JUST BEEN THROUGH ---

14 A. THROUGH BUSINESS RELATIONS, THAT'S ALL.

15 Q. AND I UNDERSTAND FROM YOUR QUESTIONNAIRE, YOU
16 HAVE A DEGREE IN SOCIAL WORK; IS THAT CORRECT?

17 A. YES, SIR, I DO.

18 Q. WHEN DID YOU -- I'M SURE IT'S ON YOUR
19 QUESTIONNAIRE, BUT YOU GOT THAT DEGREE WHEN?

20 A. I GRADUATED IN 1976.

21 Q. AND DO YOU HAVE ANY HIGHER EDUCATION AFTER THAT
22 POINT?

23 A. I TOOK A COUPLE OF ADVANCED CLASSES BUT NEVER
24 FOLLOWED UP ON THEM, TOWARDS MY MASTERS. SO, I
25 JUST STRICTLY HAVE A BACHELORS.

1 Q. WHAT FIELD WAS THAT IN?

2 A. IT WAS IN SOCIAL WORK ALSO.

3 Q. OKAY. NOW, I NEED TO ASK YOU ALSO SOME
4 QUESTIONS ABOUT WHAT YOU TOLD THE JUDGE ABOUT
5 THE DEATH PENALTY. YOU UNDERSTAND THERE ARE TWO
6 PHASES TO THE TRIAL, POTENTIALLY AT LEAST.

7 THE FIRST PHASE IS TO DETERMINE WHETHER JIMMY
8 ROBERTSON WOULD BE FOUND GUILTY OR NOT GUILTY.

9 OF COURSE, IF HE IS FOUND NOT GUILTY, THAT'S THE
10 END OF IT. THE QUESTIONS I'M GOING TO ASK ARE
11 ASSUMING THERE IS A SECOND PHASE TO THE TRIAL.

12 AND I DON'T WANT BY THAT ASSUMPTION TO INTIMATE
13 TO YOU AT ALL THAT HE'S GUILTY, IT'S JUST THAT I
14 NEED TO ASK YOU QUESTIONS ABOUT THAT.

15 A. SURE.

16 Q. YOU HAVE ANSWERED SOME QUESTIONS CONCERNING THE
17 DEATH PENALTY. YOU HAD SAID THAT YOU COULD GIVE
18 THE DEATH PENALTY IF THE CIRCUMSTANCES WARRANTED
19 IT; IS THAT CORRECT?

20 A. I BELIEVE SO; YES, SIR.

21 Q. AND YOU CAN GIVE A LIFE SENTENCE IF THE
22 CIRCUMSTANCES WARRANTED IT; IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. OF COURSE AT THE POINT YOU WOULD BE DECIDING THE
25 SENTENCE AS A JUROR, MR. ROBERTSON AT THAT POINT

1 WOULD HAVE ALREADY BEEN FOUND GUILTY. YOU
2 UNDERSTAND THAT.

3 A. I UNDERSTAND THAT.

4 Q. SO THERE WOULDN'T BE ANY QUESTION ABOUT
5 ACCIDENT, SELF-DEFENSE OR ANYTHING LIKE THAT.
6 IT WOULD BE THAT HE HAD DELIBERATELY KILLED
7 SOMEBODY. YOU UNDERSTAND THAT.

8 A. YES, SIR.

9 Q. AND EVEN UNDER THOSE CIRCUMSTANCES WHERE SOMEONE
10 HAS DELIBERATELY COMMITTED A MURDER, YOU CAN
11 STILL CONSIDER A SENTENCE OF OTHER THAN DEATH?

12 A. RIGHT.

13 Q. AND YOU CAN CONSIDER ANY KIND OF MITIGATING
14 CIRCUMSTANCES THAT MAY BE PRESENTED ON HIS
15 BEHALF ALSO?

16 A. YES, SIR, IF THEY ARE RELEVANT AND THE JUDGE'S
17 INSTRUCTIONS SAY THEY ARE RELEVANT, I COULD
18 CONSIDER THEM.

19 Q. OF COURSE IT WOULD BE UP TO YOU AS A JUROR TO
20 DETERMINE WHETHER THEY ARE RELEVANT. DO YOU
21 UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. AND YOU UNDERSTAND THAT MITIGATING CIRCUMSTANCES
24 MIGHT NOT BE JUST ABOUT THE CRIME. THEY MAY BE
25 THINGS ABOUT JIMMY ROBERTSON HIMSELF. YOU

1 UNDERSTAND THAT.

2 A. YES, SIR, I DO.

3 Q. AND YOU CAN CONSIDER THOSE THINGS?

4 A. YES, SIR.

5 Q. YOU UNDERSTAND THAT AS A JUROR -- LET ME JUST,
6 HAVE YOU SERVED ON A JURY BEFORE?

7 A. NO, SIR, I HAVEN'T.

8 Q. OKAY. AND YOU UNDERSTAND AS A JUROR YOU HAVE A
9 RIGHT TO HAVE YOUR OPINION RESPECTED BY THE REST
10 OF THE JURORS; DO YOU UNDERSTAND THAT?

11 A. RIGHT.

12 Q. AND YOU UNDERSTAND THAT YOU HAVE AN OBLIGATION
13 ALSO TO RESPECT THE OPINION OF OTHER JURORS?

14 A. ABSOLUTELY.

15 Q. AND THERE WILL PROBABLY BE OR MAY BE JURORS ON
16 THERE WHO HAVE A DIFFERING OPINION THAN YOU.
17 YOU UNDERSTAND THAT.

18 A. YES, SIR.

19 Q. AND YOU WOULD BE ABLE TO RESPECT THEIR OPINIONS
20 EVEN IF THEY DISAGREE WITH YOUR OWN?

21 A. YES, SIR, ABSOLUTELY.

22 Q. AND IF OTHER JURORS, IF THEIR OPINIONS DIFFER
23 FROM YOU, WOULD YOU CHANGE YOUR OPINION JUST
24 BECAUSE YOU ARE IN THE MINORITY?

25 A. I'VE BEEN MARRIED 36 YEARS, SO I'VE CHANGED MY

1 MIND SEVERAL TIMES.

2 Q. OKAY.

3 A. YES, SIR; THE ANSWER TO THAT IS YES.

4 Q. YOU WOULD CHANGE YOUR OPINION BECAUSE YOU ARE IN
5 THE MINORITY?

6 A. NO, I WOULD BE WILLING TO LISTEN TO THEIR
7 PERSPECTIVE AND THEN JUDGE AND WEIGH WHAT I
8 FELT.

9 Q. BUT MY QUESTION IS WOULD YOU CHANGE YOUR OPINION
10 JUST TO BE IN THE MAJORITY?

11 A. NO, ABSOLUTELY NOT.

12 Q. JUST TO GET IT OVER WITH.

13 A. NO.

14 Q. AND WOULD BEING SEQUESTERED ON THE JURY; THAT
15 IS, HAVE TO SPEND THE NIGHT IN A MOTEL AND ALL
16 OF THAT UNTIL THE TRIAL IS OVER, WOULD THAT
17 AFFECT YOUR ABILITY TO FAIRLY JUDGE THIS CASE?

18 A. IT'S NOT SOMETHING I'M LOOKING FORWARD TO, BUT
19 IT WOULD NOT AFFECT MY JUDGMENT.

20 Q. OKAY. THANK YOU; THAT'S ALL THE QUESTIONS I
21 HAVE.

22 QUESTIONS BY MR. BRACKETT:

23 Q. GOOD AFTERNOON, MR. LANDRUM, HOW ARE YOU?

24 A. FINE.

25 Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY

1 SOLICITOR. AND SEATED OVER HERE AT COUNSEL TABLE
2 WITH ME IS TOMMY POPE. MR. POPE AND I WILL BE
3 PROSECUTING MR. JIMMY ROBERTSON WHO IS SEATED
4 OVER THERE WITH HIS ATTORNEYS AND WE ARE
5 PROSECUTING HIM FOR THE CRIMES OF MURDER AND
6 ARMED ROBBERY AND FINANCIAL TRANSACTION CARD
7 FRAUD.

8 AND YOU UNDERSTAND, I'LL GO THROUGH IT REAL
9 BRIEFLY, YOU HAVE TO FIND HIM GUILTY IN THE
10 FIRST PHASE BEFORE WE EVEN GET TO THE SECOND
11 PHASE. YOU UNDERSTAND THAT?

12 A. ABSOLUTELY.

13 Q. IN THE FIRST PHASE WE JUST TALK ABOUT THE
14 EVIDENCE REGARDING THE CRIME ITSELF. THAT'S ALL
15 WE FOCUS ON. AND IF HE'S NOT GUILTY, THEN THERE
16 IS NO SECOND PHASE.

17 BUT IF THEY DO FIND HIM GUILTY, WE MOVE TO THE
18 SECOND PHASE. AND IN THAT PHASE WE ARE
19 CONCERNED WITH THE PENALTY AND THE
20 CHARACTERISTICS OF THE DEFENDANT, THE NATURE OF
21 THE CRIME AND THE CIRCUMSTANCES SURROUNDING THE
22 CRIME. AND WE NEED TO CONSIDER ALL OF THOSE
23 THINGS BEFORE WE CAN ARRIVE AT A JUST
24 PUNISHMENT. YOU WOULD AGREE WITH THAT?

25 A. YES, SIR.

1 Q. OKAY. HARKING BACK TO SOMETHING THAT MR. BOYD
2 ASKED YOU, YOU GOT YOUR DEGREE, A B.S. IN SOCIAL
3 WORK?

4 A. YES, SIR.

5 Q. AND I NOTICE YOU WORK NOW AT THE BAXTER HOOD
6 CENTER AS THE DIRECTOR OF MARKETING?

7 A. YES, SIR.

8 Q. AND BEFORE THAT YOU WERE IN PUBLISHING?

9 A. BEFORE THAT I WAS IN PUBLISHING; PRIOR TO THAT,
10 I WAS IN THE AIR FORCE FOR 22 YEARS.

11 Q. OKAY. HAVE YOU EVER ACTUALLY DONE ANY SOCIAL
12 WORK, BEEN A SOCIAL WORKER OR ANYTHING LIKE
13 THAT?

14 A. NO, SIR, I HAVEN'T.

15 Q. ARE YOU A MEMBER OF ANY NATIONAL ORGANIZATIONS
16 IN THE SOCIAL WORK FIELD?

17 A. NO, SIR, NONE AT ALL.

18 Q. IN THE SECOND PHASE WE ARE CONCERNED WITH THE
19 PENALTY. WE TAKE INTO ACCOUNT ALL OF THE
20 AGGRAVATING CIRCUMSTANCES AND MITIGATING
21 CIRCUMSTANCES.

22 AND BRIEFLY AGGRAVATING CIRCUMSTANCES ARE
23 CIRCUMSTANCES WHICH MAKE THE MURDER MORE HEINOUS
24 OR MORE SEVERE, RAISE IT OUT OF THE REALM OF
25 JUST AN AVERAGE MURDER IF THERE IS SUCH A THING,

1 AND JUST MAKE THE CASE MUCH MORE SERIOUS.
2 MITIGATING, OF COURSE, YOU KNOW WHAT THAT MEANS,
3 LESSENS THE DEGREE OF CULPABILITY THAT THE
4 DEFENDANT HAS.

5 THEY HAVE THE OPTION OF PRESENTING MITIGATING
6 EVIDENCE IF THEY CHOOSE. THE STATE MUST PRESENT
7 AGGRAVATING CIRCUMSTANCES. WE HAVE TO PROVE TO
8 THE JURY THAT THERE EXIST AGGRAVATING
9 CIRCUMSTANCES, OTHERWISE THE JURY CAN'T IMPOSE A
10 SENTENCE OF DEATH.

11 WHAT YOU ARE SAYING IS THAT YOU WOULD LISTEN TO
12 ALL OF THAT, ASSIMILATE ALL OF THAT INFORMATION
13 AND BASED ON YOUR UNDERSTANDING OF THE LAW AS
14 THE JUDGE TELLS IT TO YOU AND YOUR UNDERSTANDING
15 OF THE FACTS AS YOU'VE HEARD THEM, YOU WOULD
16 THEN DECIDE ON A SENTENCE?

17 A. YES, SIR.

18 Q. SINCE THIS IS YOUR FIRST TIME OF SERVING, YOU
19 DON'T KNOW THAT IN A TYPICAL CASE THE ONLY
20 PERSON THAT HAS TO SIGN THE VERDICT FORM IS THE
21 FOREMAN.

22 A. I DIDN'T KNOW THAT.

23 Q. NINETY-NINE PERCENT OF ALL OF THE CASES TRIED,
24 BOTH CIVIL AND CRIMINAL, THE ONLY PERSON THAT
25 HAS TO SIGN THE VERDICT FORM SAYING WHAT THE

1 VERDICT IS, IS THE FOREPERSON OF THE JURY.

2 IN A DEATH PENALTY CASE IT'S A LITTLE BIT
3 DIFFERENT. IF THE VERDICT IS LIFE, IF THE
4 JURORS UNANIMOUSLY AGREE THAT LIFE SHOULD BE THE
5 SENTENCE, THEN THE FOREMAN OR FOREPERSON SIGNS
6 THE VERDICT FORM JUST LIKE NORMAL.

7 IF THE VERDICT IS DEATH, IF ALL TWELVE JURORS
8 AFTER HEARING ALL THE AGGRAVATING AND MITIGATING
9 EVIDENCE DECIDE THE PROPER AND JUST PUNISHMENT
10 FOR THIS CRIME IS DEATH, THEN EACH AND EVERY
11 JUROR HAS TO SIGN A DEATH VERDICT FORM ATTESTING
12 THAT THAT WAS THAT PARTICULAR JUROR'S VOTE.

13 NOW, IF YOU WERE IN THE JURY ROOM AND THE PEN IS
14 COMING AROUND AND THE SHEET IS COMING AROUND
15 WITH IT AND EVERYBODY HAS AGREED THAT DEATH
16 SHOULD BE THE SENTENCE AND YOU'VE AGREED, COULD
17 YOU TAKE THAT PEN AND SIGN YOUR NAME ON THAT
18 VERDICT FORM?

19 A. YES, SIR, I COULD.

20 Q. OKAY. THANK YOU VERY MUCH, SIR.

21 THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE
22 THE DOOR FOR JUST ONE SECOND.

23 (THE JUROR LEFT THE COURTROOM.)

24 THE COURT: WHAT SAYS THE DEFENSE?

25 MR. BOYD: HE'S QUALIFIED.

1 THE COURT: THE STATE?

2 MR. BRACKETT: WE SUBMIT HE'S QUALIFIED, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT, BRING HIM BACK IN.
5 (THE JUROR RETURNED TO THE COURTROOM.)

6 THE COURT: YOU CAN JUST STAND RIGHT THERE. MR.
7 LANDRUM, YOU'LL BE INCLUDED IN THE POOL FROM WHICH WE DRAW
8 THE JURY. THERE WILL BE A LARGER POOL AND WE'LL COMPRESS
9 IT DOWN TO THE TWELVE PLUS TWO ALTERNATES.

10 WE DON'T KNOW WHEN WE'RE GOING TO START THAT
11 PROCESS, SO PLEASE CALL BACK TOMORROW NIGHT AFTER 6:00 AND
12 YOU'LL RECEIVE INSTRUCTIONS ABOUT WHEN TO REPORT.

13 WHEN YOU REPORT, BRING WITH YOU SOME BELONGINGS
14 AND THINGS YOU'LL NEED TO BE AWAY FROM HOME FOR A WEEK OR
15 SO WHILE WE TRY THIS CASE.

16 ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT WE
17 OUGHT TO KNOW ABOUT THAT WOULD PROHIBIT YOUR SERVING OR
18 INTERFERE WITH YOUR SERVICE? I KNOW NORTHWESTERN'S
19 BASKETBALL SEASON, UNFORTUNATELY, IS OVER SO YOU WON'T BE
20 CALLING ANY OF THEIR GAMES.

21 THE JUROR: I CAN'T THINK OF -- THE ONLY THING I
22 MENTIONED THIS MORNING IS I RECENTLY HAD BY-PASS SURGERY
23 AND I'M ON CARDIAC REHAB, AND I GO TUESDAYS AND THURSDAYS,
24 BUT I'M SURE I COULD GET THAT CHANGED.

25 THE COURT: WELL, WE CAN WORK WITH THAT AND

1 DEPENDING ON HOW -- I'VE DONE SEVERAL OF THESE -- PERHAPS
2 IF IT'S SOMETHING WE CAN MOVE TO EARLY IN THE MORNING,
3 STATE LAW ENFORCEMENT WILL BE TRANSPORTING AND HOUSING AND
4 ALL OF THAT AND WE CAN POSSIBLY EVEN MAKE ARRANGEMENTS TO
5 ACCOMMODATE THAT.

6 BUT DON'T DISCUSS THE CASE WITH ANYONE. IF
7 ANYONE TRIES TO DISCUSS THE CASE WITH YOU, TELL THEM YOU
8 CAN'T AND REPORT BACK TO US THAT EVENT. AND DON'T LET
9 YOURSELF BE EXPOSED TO ANY NEWS MEDIA COVERAGE IF THERE IS
10 ANY.

11 ALL RIGHT, SIR, CALL BACK TOMORROW NIGHT AFTER
12 6:00. THANK YOU.

13 (THE JUROR LEFT THE COURTROOM.)

14 THE COURT: TIMOTHY MCALLISTER. AND ONCE WE TAKE
15 THESE TWO, WE'LL TAKE A BREAK BEFORE WE GET INTO THE FINAL
16 SIX.

17 TIMOTHY MCALLISTER, JUROR NUMBER 166, WHITE MALE,
18 WAS QUESTIONED AS FOLLOWS:

19 QUESTIONS BY THE COURT:

20 Q. COME ON OVER HERE AND HAVE A SEAT, MR.
21 MCALLISTER. WE HAVE A UNIQUENESS, WE DON'T
22 USUALLY HAVE MANY FATHER AND SON TEAMS ON A JURY
23 DUTY, THAT'S RATHER INTERESTING.

24 I'M JOHN HAYES. I INTRODUCED MYSELF TO YOU THIS
25 MORNING. I WANT TO TELL YOU THAT IF YOU ARE

1 SEATED ON THIS JURY PANEL, YOU MAY SEE CAMERAS
2 OR PHOTOGRAPHERS. THEY WON'T BE TAKING YOUR
3 PICTURE; THEY'RE NOT ALLOWED TO, AND THEY ARE
4 NOT ALLOWED TO REPORT YOUR INVOLVEMENT. SO, I
5 WANT YOU TO BE AWARE OF THAT.

6 NOW, YOU'VE HANDED UP A QUESTIONNAIRE AND WE
7 HAVE THAT. IS THERE ANYTHING YOU NEED TO CHANGE
8 ON THAT QUESTIONNAIRE OR DO YOU BELIEVE IT'S
9 ACCURATE?

10 A. AS FAR AS I KNOW, IT'S ACCURATE.

11 Q. HAVE YOU REVIEWED THE WITNESS LIST THAT WAS IN
12 THE JURY ROOM?

13 A. YES, SIR.

14 Q. ARE YOU KIN TO ANYBODY ON THERE BY BLOOD OR
15 MARRIAGE OR DO YOU KNOW ANYBODY?

16 A. I KNOW A COUPLE OF THEM, BUT IT'S JUST ELECTED
17 OFFICIALS IN THE COUNTY. I'M NOT PERSONAL
18 FRIENDS WITH THEM, BUT I KNOW WHO THEY ARE.

19 Q. WOULD THAT FACT, THE FACT THAT YOU KNOW WHO THEY
20 ARE, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
21 AND IMPARTIAL IN THE TRIAL OF THIS CASE? WOULD
22 IT INFLUENCE YOU THAT YOU KNEW THEM AND THEY
23 WERE WITNESSES OR WOULD YOU BE ABLE TO BE FAIR
24 AND IMPARTIAL IN SPITE OF THAT?

25 A. I THINK I WOULD BE ABLE TO BE FAIR.

1 Q. ALL RIGHT. HAVE YOU HEARD ANYTHING ABOUT THIS
2 CASE, KNOW ABOUT IT FROM ANY SOURCE WHATSOEVER
3 OR HAVE YOU FORMED OR EXPRESSED ANY OPINION OR
4 TALKED TO ANYBODY ABOUT THIS CASE?

5 A. OTHER THAN THE FACT THAT THEY WERE GOING TO BE
6 DRAWING A JURY FOR THIS CASE TODAY, THAT'S ALL
7 I'VE HEARD.

8 Q. WOULD THE FACT THAT YOU'VE HEARD THAT, WOULD
9 THAT AFFECT YOUR ABILITY TO BE FAIR AND
10 IMPARTIAL?

11 A. NO, SIR.

12 Q. IN SPITE OF THAT, WOULD YOU BE ABLE TO BE FAIR
13 AND IMPARTIAL AND BASE YOUR VERDICT SOLELY ON
14 THE LAW AND THE EVIDENCE THAT'S DEVELOPED IN
15 THIS TRIAL?

16 A. YES, SIR.

17 Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES
18 LISTED ON A SHEET OF PAPER. DID YOU HAVE A
19 CHANCE TO REVIEW IT?

20 A. YES, SIR.

21 Q. IN REVIEWING IT, DID YOU FIND YOURSELF TO BE ONE
22 OF THOSE JUROR TYPES?

23 A. PROBABLY THE THIRD TYPE.

24 Q. IN THAT DEFINITION OF THAT TYPE JUROR, THE WORDS
25 AGGRAVATION AND MITIGATION ARE USED.

1 AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT
2 ATTEND THE COMMISSION OF A CRIME WHICH INCREASE
3 ITS ENORMITY OR ADDS TO ITS INJURIOUS
4 CONSEQUENCE BUT ARE ABOVE AND BEYOND THE ACTUAL
5 ELEMENTS THAT ARE ESSENTIAL FOR CONVICTION OF
6 THAT PARTICULAR OFFENSE.

7 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
8 DO NOT CONSTITUTE A JUSTIFICATION OR EXCUSE FOR
9 THE OFFENSE, BUT ARE THINGS THAT IN FAIRNESS AND
10 MERCY MAY BE CONSIDERED AS EXTENUATING OR
11 REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO
12 YOU UNDERSTAND THAT?

13 A. YES.

14 Q. SO, LET ME MAKE SURE YOU'RE SAYING YOU'RE THE
15 THIRD TYPE JUROR WHO IS ONE WHO AFTER THE GUILT
16 PHASE, AND THIS CASE, ANY CASE LIKE THIS
17 PROCEEDS IN TWO STAGES. THE FIRST HAS TO DO
18 WITH WHETHER OR NOT THE ONE CHARGED IS GUILTY OR
19 NOT GUILTY OF MURDER. IF THE PERSON IS FOUND
20 NOT GUILTY, THE CASE IS OVER. IF THE PERSON IS
21 FOUND GUILTY, THE CASE PROCEEDS FURTHER INTO THE
22 SECOND STAGE.

23 BUT THE FACT THAT WE ARE TALKING ABOUT THAT
24 SECOND STAGE IS NOT INDICATIVE OF ANY FINDING
25 THAT THE JURY SHOULD MAKE IN THAT FIRST TRIAL,

1 FIRST PART.

2 MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
3 CHARGES AND IS SO PRESUMED UNTIL SUCH TIME AS
4 THE STATE WOULD BE ABLE TO PROVE TO A JURY HIS
5 GUILT BEYOND A REASONABLE DOUBT.

6 SO, WE WOULD NOT GET TO THIS POINT OF TALKING
7 ABOUT PENALTY UNLESS HE WERE FOUND GUILTY OF
8 MURDER. BUT WE HAVE TO TALK ABOUT IT AT THIS
9 POINT. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. SO, YOU'RE TELLING ME THAT WERE YOU ON THE JURY
12 AND THE GUILT HAD BEEN DETERMINED, THAT YOU
13 WOULD STILL HAVE TO HEAR FACTS AND CIRCUMSTANCES
14 IN AGGRAVATION AND MITIGATION, THAT YOU WOULD
15 LISTEN TO THESE, FOLLOW THE LAW I WOULD CHARGE
16 YOU AND THEN AND ONLY THEN WOULD YOU MAKE YOUR
17 DECISION REGARDING PUNISHMENT. IS THAT CORRECT?

18 A. YES, SIR.

19 Q. AND ARE YOU TELLING ME THAT IF THE FACTS
20 PRESENTED WARRANTED IT, YOU COULD BRING IN A
21 VERDICT OF LIFE IMPRISONMENT?

22 A. YES.

23 Q. ARE YOU TELLING ME THAT IF THE FACTS PRESENTED
24 SO WARRANTED YOU COULD ON THE OTHER HAND BRING
25 IN A VERDICT IMPOSING THE DEATH PENALTY?

1 A. YES, SIR.

2 Q. ALL RIGHT; ANSWER ANY QUESTIONS THAT THESE
3 ATTORNEYS MAY HAVE FOR YOU.

4 QUESTIONS BY MR. POPE:

5 Q. MR. MCALLISTER, MY NAME IS TOMMY POPE. I'M THE
6 SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN
7 BRACKETT, MY DEPUTY SOLICITOR, AND WE REPRESENT
8 THE STATE IN THIS CASE.

9 I'VE JUST GOT A FEW QUESTIONS. I SEE YOU'VE
10 NEVER SERVED ON JURY DUTY BEFORE?

11 A. YES, SIR.

12 Q. DO YOU KIND OF FEEL LIKE YOU'RE ON TRIAL A
13 LITTLE BIT GETTING QUESTIONED HERE? LIKE I SAY,
14 THE JUDGE HAS DISCUSSED THAT THIS IS A TWO PART
15 TRIAL. IT'S A LITTLE DIFFERENT THAN A NORMAL
16 TRIAL. THE FIRST PART IS JUST ABOUT GUILT.
17 AND, OF COURSE, THE DEFENDANT IS INNOCENT UNTIL
18 PROVEN GUILTY AND WE HAVE TO PROVE THE CASE
19 BEYOND A REASONABLE DOUBT.

20 IF HE'S FOUND GUILTY, THEN WE GO TO THE SECOND
21 PHASE. SO, NOW WE'RE REALLY TALKING PAST THE
22 FIRST STAGE INTO THE SECOND PHASE. IN THAT
23 PHASE THE STATE WOULD BRING FORTH, AND THE JUDGE
24 DID GIVE YOU A DEFINITION OF IT, WE'D BRING
25 FORTH WHAT'S CALLED EVIDENCE IN AGGRAVATION. YOU

1 KNOW, WE'D BRING FORTH BASICALLY THE REASONS WHY
2 IT SHOULD BE A DEATH PENALTY CASE AND THE BAD
3 THINGS.

4 THE DEFENSE COULD, BUT THEY DON'T HAVE TO, BRING
5 FORTH EVIDENCE IN MITIGATION, THE REASONS IT
6 SHOULDN'T BE THE DEATH PENALTY, REASONS IT
7 SHOULD BE LIFE.

8 I UNDERSTOOD FROM YOU LOOKING AT THE LIST AND
9 PUTTING YOURSELF IN A CATEGORY, YOU'RE CATEGORY
10 THREE, AND YOU'D WANT TO HEAR WHATEVER WE HAD TO
11 SAY AND WHATEVER THEY HAD TO SAY BEFORE YOU MADE
12 A DECISION. IS THAT CORRECT?

13 A. YES, SIR.

14 Q. OKAY. AND JUST BECAUSE -- OF COURSE, AT THAT
15 POINT HE WOULD BE CONVICTED, YOU KNOW, TO BE IN
16 THE SECOND PHASE. JUST BECAUSE HE WAS
17 CONVICTED, YOU DON'T AUTOMATICALLY PICK LIFE OR
18 DEATH, YOU'D WANT TO WAIT AND HEAR IT; IS THAT
19 RIGHT?

20 A. YES, SIR.

21 Q. OKAY. SINCE YOU HAVEN'T SERVED ON A JURY, LET
22 ME TELL YOU ONE MORE THING. NORMALLY A REGULAR
23 JURY, THE JURORS ALL VOTE AND, OF COURSE, LIFE
24 OR DEATH IT'S GOT TO BE UNANIMOUS, BUT IN A
25 REGULAR VERDICT, YOU KNOW, THE VERDICT HAS TO BE

1 UNANIMOUS AND JUST THE FOREPERSON, THE FORELADY
2 OR FOREMAN OF THE JURY WOULD SIGN A FORM THAT
3 SAYS WE THE JURY UNANIMOUSLY FIND LIFE OR FIND A
4 VERDICT. WELL, IN A DEATH PENALTY CASE IF YOU
5 FIND LIFE, JUST THE FOREPERSON SIGNS. JUST LIKE
6 I SAID, ALL TWELVE WOULD VOTE, BUT JUST ONE
7 WOULD SIGN. IF THE VERDICT IS DEATH, THEN EACH
8 AND EVERY JUROR HAS TO SIGN THEIR NAME
9 INDIVIDUALLY. THAT PART IS A LITTLE DIFFERENT
10 BUT IT'S TO MAKE SURE, YOU KNOW, THAT THAT IS
11 YOUR VERDICT AND IT REMAINS YOUR VERDICT.

12 IF AFTER HEARING ALL THE FACTS -- YOU SAY YOU'RE
13 THE TYPE OF JUROR THAT AFTER HEARING ALL THE
14 FACTS IF YOU FELT THAT LIFE WAS APPROPRIATE, TIM
15 MCALLISTER COULD SAY LIFE. IS THAT CORRECT?

16 A. CORRECT.

17 Q. LIKewise IF AFTER HEARING ALL THE FACTS YOU
18 THOUGHT THAT DEATH WAS APPROPRIATE AND THERE WAS
19 A SHEET AND THIS SHEET -- OF COURSE, THE JUDGE
20 IS GOING TO DO WHATEVER YOU SAY. YOU KNOW, LIFE
21 OR DEATH, THE JUDGE IS GOING TO DO WHAT THE JURY
22 SAYS. IF YOU THOUGHT DEATH WAS APPROPRIATE,
23 COULD YOU SIGN TIM MCALLISTER TO A DOCUMENT THAT
24 WOULD GIVE THIS MAN DEATH?

25 A. YES, SIR.

1 Q. ALL RIGHT, THANK YOU.

2 QUESTIONS BY MR. HANCOCK:

3 Q. MR. MCALLISTER, I'M BILL HANCOCK, ONE OF THE
4 ATTORNEYS FOR JIMMY ROBERTSON WHO IS SITTING
5 HERE. THIS IS MR. JAMES BOYD, JIM BOYD. HE IS
6 THE OTHER ATTORNEY FOR MR. ROBERTSON.

7 YOU WERE DOWNSTAIRS TODAY AND YOU KNOW THAT HE
8 IS CHARGED WITH KILLING HIS PARENTS, BOTH OF HIS
9 PARENTS. YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. NOW YOU HAVE INDICATED THAT YOU COULD GO FORWARD
12 AND YOU COULD CONSIDER BOTH AGGRAVATING AND
13 MITIGATING CIRCUMSTANCES. IS THAT CORRECT, SIR?

14 A. YES, SIR.

15 Q. OKAY. AND AT THIS POINT IN TIME YOU HAVE NO
16 IDEA WHAT ANY OF THOSE AGGRAVATING OR MITIGATING
17 CIRCUMSTANCES MAY BE; IS THAT CORRECT, SIR?

18 A. THAT'S CORRECT.

19 Q. SO YOU'RE ANSWERING MY QUESTION WITHOUT ACTUALLY
20 KNOWING WHAT WE'RE TALKING ABOUT; ISN'T THAT
21 CORRECT?

22 A. YES, SIR.

23 Q. NOW, YOU HAVE INDICATED THAT YOU WOULD GIVE A
24 FAIR AND IMPARTIAL TRIAL IN THIS PARTICULAR
25 CASE?

1 A. YES, SIR.

2 Q. AND YOU HAVE ALSO, AND YOU SOUND LIKE A PERSON
3 WHO IS SURE OF WHAT THEY ARE SAYING, BUT YOU
4 HAVE INDICATED THAT YOU COULD SIGN FOR THE DEATH
5 PENALTY?

6 A. YES, SIR.

7 Q. LIKEWISE, GIVEN THE CIRCUMSTANCES, YOU COULD
8 SIGN FOR LIFE IMPRISONMENT?

9 A. YES, SIR.

10 Q. AND YOU ARE SAYING THAT ALTHOUGH YOU DO NOT KNOW
11 WHAT ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES
12 MAY OR MAY NOT BE. IS THAT CORRECT, SIR?

13 A. YES, SIR.

14 Q. SO DO YOU FEEL LIKE YOU'RE ANSWERING THE
15 QUESTION WITHOUT PROPER INFORMATION?

16 A. NO, I FEEL LIKE BASED ON THE INFORMATION THAT I
17 RECEIVE THAT I WILL THEN MAKE MY DECISION TO
18 EITHER GO WITH LIFE OR THE DEATH PENALTY.

19 Q. BUT YOU COULD GO WITH THE LIFE SENTENCE; IS THAT
20 CORRECT?

21 A. YES, SIR.

22 Q. NO FURTHER QUESTIONS.

23 THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE
24 DOOR FOR JUST ONE SECOND.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE STATE?

2 MR. POPE: WE SUBMIT HE'S QUALIFIED, YOUR HONOR.

3 THE COURT: THE DEFENSE?

4 MR. HANCOCK: QUALIFIED, YOUR HONOR.

5 THE COURT: I FIND THAT HE IS QUALIFIED. LET'S
6 BRING HIM BACK IN.

7 (THE JUROR RETURNED TO THE COURTROOM.)

8 THE COURT: MR. MCALLISTER, WE ARE GOING TO
9 INCLUDE YOU IN THE POOL FROM WHICH WE DRAW THE JURY. THAT
10 DOESN'T NECESSARILY MEAN THAT YOU WILL END UP ON THE JURY.

11 WE DON'T KNOW YET WHEN WE'RE GOING TO DO THAT.
12 SO I ASK THAT YOU CALL BACK TOMORROW NIGHT AFTER 6:00
13 O'CLOCK AND THEY WILL TELL YOU WHEN TO REPORT.

14 WHEN YOU DO REPORT, BRING WITH YOU YOUR
15 BELONGINGS SO YOU CAN STAY BECAUSE YOU WILL BE SEQUESTERED;
16 YOU WILL STAY IN A MOTEL AND FED AND ALL OF THAT.

17 DO YOU KNOW OF ANY EXTENUATING REASONS THAT WOULD
18 PROHIBIT YOU OR INTERFERE WITH YOUR DOING THIS?

19 THE JUROR: NO, SIR.

20 THE COURT: ALL RIGHT. DON'T DISCUSS THE CASE
21 WITH ANYONE. IF ANYONE TRIES TO DISCUSS THE CASE, TELL
22 THEM YOU CANNOT AS YOU ARE A JUROR, OR A POTENTIAL JUROR.
23 REPORT TO ME IF ANYBODY TRIES TO DISCUSS THE CASE WITH YOU.

24 AND DO NOT LET YOURSELF BE EXPOSED TO ANY NEWS
25 COVERAGE IF THERE IS ANY, OKAY?

1 THE JUROR: ALL RIGHT, SIR.

2 THE COURT: CALL BACK TOMORROW NIGHT AFTER 6:00.

3 THANK YOU.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT, SHARON FREDERICK, 257.

6 SHARON FREDERICK, JUROR NUMBER 257, BLACK FEMALE,
7 WAS QUESTIONED AS FOLLOWS:

8 QUESTIONS BY THE COURT:

9 Q. I'M JOHN HAYES. I INTRODUCED MYSELF TO YOU THIS
10 MORNING. I WANT YOU TO KNOW FIRST THAT IN THE
11 EVENT THAT YOU DO SERVE ON THIS JURY, YOU MAY
12 SEE TELEVISION CAMERAS OR PHOTOGRAPHERS IN THE
13 COURTROOM. THEY CAN'T TAKE YOUR PICTURE; THEY
14 ARE PROHIBITED FROM DOING THAT. AND THEY CAN'T
15 REPORT ABOUT YOUR BEING ON THE JURY. BUT THEY
16 DO HAVE A RIGHT TO BE HERE. I JUST WANTED YOU TO
17 BE AWARE OF THAT.

18 YOU'VE TURNED IN YOUR QUESTIONNAIRE. IS THERE
19 ANYTHING ON IT YOU NEED TO CHANGE, OR DO YOU
20 BELIEVE IT'S ACCURATE?

21 A. IT'S ACCURATE.

22 Q. YOU HAVE HAD A CHANCE TO REVIEW A LIST OF
23 WITNESSES. DID YOU DO THAT?

24 A. YES, SIR, I DID.

25 Q. WAS THERE ANYBODY ON THERE YOU WERE RELATED TO?

1 A. NO, THERE WAS NOT.

2 Q. ANYBODY ON THERE YOU KNEW?

3 A. NO.

4 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
5 YOU GOT HERE; HEARD ABOUT IT FROM ANY SOURCE
6 WHATSOEVER, TALKED ABOUT IT OR FORMED AN
7 OPINION. HAVE YOU HEARD ANYTHING ABOUT IT?

8 A. YES, I'VE HEARD ABOUT IT FROM T.V.

9 Q. OKAY. WOULD THAT INFLUENCE YOUR ABILITY TO BE
10 FAIR AND IMPARTIAL IN THIS TRIAL?

11 A. NO, IT WOULDN'T.

12 Q. IN SPITE OF HAVING HEARD ABOUT IT ON T.V., WOULD
13 YOU BE ABLE TO BASE YOUR VERDICT ON WHAT YOU
14 HEAR IN THE COURTROOM?

15 A. YES, SIR.

16 Q. IN SPITE OF HAVING HEARD ABOUT IT, WOULD YOU BE
17 ABLE TO BE FAIR AND IMPARTIAL TO BOTH THE STATE
18 AND THE DEFENDANT AND BASE YOUR VERDICT SOLELY
19 ON WHAT YOU HEAR IN THIS COURTROOM?

20 A. YES, SIR.

21 Q. IN THE JURY ROOM I HAD A LIST OF JUROR TYPES,
22 THREE. DID YOU FIND YOURSELF TO BE ONE OF THOSE
23 THREE?

24 A. YES, SIR, I DID.

25 Q. WHICH TYPE?

1 A. THREE.

2 Q. IN THAT TYPE JUROR -- BEFORE I GET TO THAT LET
3 ME TELL YOU THAT THESE TYPE CASES ARE IN TWO
4 STAGES. THAT IS, THE FIRST STAGE WILL BE TO
5 DETERMINE WHETHER OR NOT MR. ROBERTSON IS IN
6 FACT GUILTY OF MURDER. THE JURY WILL HEAR THE
7 EVIDENCE AND RETURN A UNANIMOUS VERDICT. IF THEY
8 FOUND HIM NOT GUILTY, THE CASE WOULD BE OVER.
9 IF THEY FOUND HIM GUILTY, THE CASE WOULD GO
10 FURTHER INTO WHAT'S CALLED THE PENALTY PHASE.
11 THE FACT THAT WE ARE DISCUSSING THAT SECOND
12 PHASE IS NOT INDICATIVE OF ANYTHING REGARDING
13 HIS GUILT BECAUSE THAT'S UP TO THE JURY. BUT WE
14 HAVE TO TALK ABOUT THAT SECOND PHASE BEFORE WE
15 EVEN START THE TRIAL.
16 MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
17 CHARGES AND IS SO PRESUMED UNTIL A JURY WERE
18 CONVINCED OF HIS GUILT BEYOND A REASONABLE
19 DOUBT. DO YOU UNDERSTAND ALL OF THAT?

20 A. YES, SIR.

21 Q. SO YOU'RE TELLING ME BY SAYING YOU'RE THIS THIRD
22 TYPE THAT IF YOU WERE ON THAT JURY AND THAT JURY
23 HAD FOUND MR. ROBERTSON GUILTY OF MURDER, YOU
24 WOULD STILL NOT HAVE MADE UP YOUR MIND IN
25 ADVANCE CONCERNING THE PUNISHMENT. IS THAT

1 CORRECT?

2 A. YES, SIR.

3 Q. YOU'RE TELLING ME THAT YOU WOULD NEED TO HEAR
4 FACTS AND CIRCUMSTANCES IN AGGRAVATION, IN
5 MITIGATION -- IN AGGRAVATION AND MITIGATION AND
6 LISTEN TO THE LAW THAT THE JUDGE CHARGES YOU
7 BEFORE YOU WOULD MAKE A DECISION REGARDING
8 PUNISHMENT. IS THAT CORRECT?

9 A. YES, SIR.

10 Q. AND IN AGGRAVATION AND MITIGATION WE MEAN
11 CIRCUMSTANCES IN AGGRAVATION ARE THOSE THAT GO
12 ALONG WITH OR ATTEND THE COMMISSION OF A CRIME
13 WHICH ARE SUCH THAT ADD TO THE ENORMITY OR ITS
14 INJURIOUS CONSEQUENCE OF THE OFFENSE, BUT THEY
15 ARE ABOVE AND BEYOND THE ESSENTIAL ELEMENTS THAT
16 CONSTITUTE THE CRIME ITSELF.

17 AND WHEN WE TALK ABOUT MITIGATING CIRCUMSTANCES,
18 THESE ARE THINGS THAT WHILE THEY ARE NOT
19 JUSTIFICATION OR EXCUSE FOR THE OFFENSE, THEY
20 ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE
21 CONSIDERED AS EXTENUATING AND REDUCING ONE'S
22 DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND
23 THAT?

24 A. YES, SIR.

25 Q. NOW, ARE YOU THE JUROR TYPE THAT WHEN PRESENTED

1 WITH THE EVIDENCE COULD YOU IF YOU FELT THE
2 EVIDENCE WARRANTED IT, RETURN A VERDICT OF LIFE
3 IN PRISON?

4 A. YES, SIR.

5 Q. AND ARE YOU THE JUROR TYPE THAT WHEN PRESENTED
6 WITH THE EVIDENCE IF YOU FELT IT WARRANTED,
7 COULD RETURN A VERDICT IMPOSING THE DEATH
8 PENALTY?

9 A. YES, SIR.

10 Q. ALL RIGHT. I'M GOING TO ASK YOU TO ANSWER ANY
11 QUESTIONS THAT THESE ATTORNEYS MAY HAVE. MR.
12 BOYD?

13 QUESTIONS BY MR. BOYD:

14 Q. GOOD AFTERNOON, MS. FREDERICK.

15 A. GOOD AFTERNOON.

16 Q. I'M JIM BOYD AND I'M REPRESENTING JIMMY
17 ROBERTSON WHO IS SEATED RIGHT THERE. AND MY CO-
18 COUNSEL IS BILL HANCOCK WHO IS SEATED RIGHT
19 THERE.

20 I JUST NEED TO ASK YOU A FEW QUESTIONS. I JUST
21 WANT YOU TO ANSWER THESE QUESTIONS OPENLY AND
22 HONESTLY BECAUSE YOU'RE NOT ON TRIAL OR
23 ANYTHING. YOU JUST TELL ME HOW YOU FEEL.

24 YOU WERE ASKED SOME QUESTIONS CONCERNING THE
25 DEATH PENALTY BY THE JUDGE. AND I BELIEVE YOU

1 SAID YOU WOULD HAVE TO LISTEN TO ALL OF THE
2 EVIDENCE AND MAKE A DECISION BASED ON WHAT THE
3 EVIDENCE SHOWED. IS THAT CORRECT?

4 A. YES, SIR.

5 Q. AND YOU UNDERSTAND THAT IN THE FIRST PHASE OF
6 THE TRIAL YOU WOULD ONLY BE DETERMINING WHETHER
7 MR. ROBERTSON SHOULD BE FOUND GUILTY OR NOT
8 GUILTY OF ANY OF THE CHARGES HE'S CHARGED WITH.
9 DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. AND, OF COURSE, IF HE'S FOUND NOT GUILTY, WE
12 DON'T HAVE A SECOND PHASE OF THE TRIAL. BUT IF
13 HE IS FOUND GUILTY, THERE WILL BE A SECOND PHASE
14 OF THE TRIAL AND YOU'LL BE ASKED ALONG WITH THE
15 OTHER JURORS TO DETERMINE WHETHER OR NOT HE
16 SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR
17 RECEIVE THE DEATH PENALTY. DO YOU UNDERSTAND
18 THAT?

19 A. YES, SIR.

20 Q. AND I BELIEVE YOU HAD SAID BASED ON THE FACTS
21 AND CIRCUMSTANCES HEARD AT THAT TIME, YOU WOULD
22 WANT TO -- WELL, YOU COULD RENDER A VERDICT OF A
23 SENTENCE OF LIFE IN THE APPROPRIATE CASE. IS
24 THAT CORRECT?

25 A. YES, SIR.

1 Q. AND LIKEWISE IF THE CASE IS BAD ENOUGH, YOU CAN
2 ALSO CONSIDER A SENTENCE OF DEATH. IS THAT
3 CORRECT?

4 A. YES, SIR.

5 Q. AND, OF COURSE, YOU'RE GOING TO HAVE TO HEAR ALL
6 THE FACTS AND CIRCUMSTANCES BEFORE MAKING UP
7 YOUR MIND EITHER WAY. IS THAT RIGHT?

8 A. YES, SIR.

9 Q. OKAY. AND IF YOU DO, OF COURSE, REACH A VERDICT
10 AND DECIDE FOR THE DEATH PENALTY, YOU ALONG WITH
11 THE OTHER JURORS WOULD NEED TO SIGN YOUR NAME TO
12 THE SENTENCE THAT YOU ARE SENTENCING THIS
13 DEFENDANT TO DEATH. DO YOU UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. AND IS THAT SOMETHING YOU COULD DO, SIGN YOUR
16 NAME ON THAT VERDICT FORM TO SENTENCE THE
17 DEFENDANT TO DEATH?

18 A. YES, SIR.

19 Q. OKAY. AND EVERYTHING I'VE JUST ASKED YOU,
20 YOU'VE ANSWERED TRUTHFULLY AND HONESTLY; ISN'T
21 THAT CORRECT?

22 A. YES, SIR.

23 Q. AND YOU'RE NOT GOING TO CHANGE YOUR ANSWERS TO
24 WHAT I'VE JUST SAID, ARE YOU?

25 A. NO, SIR.

1 Q. OKAY. AND LET ME ASK YOU ALSO, DO YOU
2 UNDERSTAND THAT AS A JUROR, YOU KNOW, THERE MAY
3 BE OTHER JURORS THAT DISAGREE WITH YOU. DO YOU
4 UNDERSTAND THAT?

5 A. UH HUH.

6 Q. YOU, OF COURSE, HAVE AN OBLIGATION TO RESPECT
7 THEIR OPINIONS. DO YOU UNDERSTAND THAT?

8 A. YES.

9 Q. AND LIKEWISE, THEY HAVE AN OBLIGATION TO RESPECT
10 YOUR OPINIONS. DO YOU UNDERSTAND THAT?

11 A. YES.

12 Q. OF COURSE YOU'RE NEVER REQUIRED TO CHANGE YOUR
13 OPINION JUST BECAUSE ANOTHER JUROR HAS A
14 DIFFERENT OPINION. YOU UNDERSTAND THAT?

15 A. YES.

16 Q. YOU HAVE A RIGHT TO YOUR OWN OPINIONS AND TO
17 VOICE YOUR OPINIONS. DO YOU UNDERSTAND THAT?

18 A. YES.

19 Q. AND TO STICK WITH YOUR OPINIONS.

20 A. UH HUH.

21 Q. DO YOU UNDERSTAND THAT?

22 A. YES.

23 Q. OKAY. THANK YOU; THAT'S ALL THE QUESTIONS I
24 HAVE. LET ME ASK YOU, I DO HAVE ONE MORE
25 QUESTION. YOU ANSWERED ON YOUR FORM THAT YOU

1 KNEW SOMEBODY WHO HAD BEEN KILLED. IS THAT
2 CORRECT?

3 A. YES.

4 Q. AND WHO WAS THAT?

5 A. MY COUSIN'S HUSBAND.

6 Q. YOUR COUSIN'S HUSBAND?

7 A. UH HUH.

8 Q. WAS THAT HERE IN YORK COUNTY?

9 A. UN HUH.

10 Q. WHO WAS HE?

11 A. HE WAS THOMAS CLARK.

12 Q. WHEN DID THAT HAPPEN?

13 A. IT'S BEEN A COUPLE OF YEARS AGO.

14 Q. DID YOU ATTEND THE TRIAL OR ANYTHING?

15 A. NO.

16 Q. WAS SOMEBODY CHARGED WITH THAT?

17 A. YES.

18 Q. BUT YOU DIDN'T ATTEND THE TRIAL OR ANYTHING OF
19 THAT NATURE?

20 A. NO.

21 Q. DO YOU KNOW WHAT HAPPENED IN THAT CASE?

22 A. HE WAS SHOT. I DON'T KNOW -- HE WENT TO JAIL AND
23 IT'S BEEN LIKE SIX YEARS SINCE HE'S BEEN LOCKED
24 UP.

25 Q. THE PERSON WHO DID IT WENT TO JAIL?

1 A. YEAH.

2 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

3 QUESTIONS BY MR. POPE:

4 Q. MS. FREDERICK, MY NAME IS TOMMY POPE. I'M THE
5 SOLICITOR HERE IN YORK COUNTY. THIS IS MR.
6 KEVIN BRACKETT, HE'S MY DEPUTY SOLICITOR. AND
7 WE REPRESENT THE STATE. I HAVE JUST A FEW
8 QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE AND MR.
9 BOYD SAID.

10 YOU KIND OF FEEL LIKE YOU'RE ON TRIAL HERE
11 GETTING ALL THESE QUESTIONS. PARTICULARLY I'M
12 GOING TO GO THROUGH, YOU UNDERSTOOD THAT THERE
13 IS A TWO PART TRIAL AND THE FIRST PART IS JUST
14 GUILT. AND WE DON'T EVEN GET TO THE SECOND PART
15 ABOUT WHAT THE PENALTY IS UNTIL AFTER THE FIRST
16 PART. DO YOU UNDERSTAND THAT?

17 A. YES.

18 Q. OF COURSE, IF HE'S NOT GUILTY, THERE ISN'T A
19 SECOND PART. DO YOU UNDERSTAND THAT?

20 A. YES.

21 Q. I WANT TO ASK YOU PARTICULARLY, YOU HAD SAID
22 THAT YOU WERE JUROR NUMBER THREE. AND, AGAIN,
23 BEFORE I GET INTO IT I WANT TO TELL YOU, I'M NOT
24 TRYING TO PUT WORDS IN YOUR MOUTH, THIS IS JUST
25 MY CHANCE TO SEE, YOU KNOW, HOW SHARON FREDERICK

1 FEELS ABOUT THINGS. SO, THERE ARE NO RIGHT OR
2 WRONG ANSWERS.

3 MR. BOYD SAID NOW YOU PROMISE YOU WON'T CHANGE
4 YOUR ANSWERS. YOU TELL US WHATEVER IS IN YOUR
5 HEART, YOU KNOW.

6 A. OKAY.

7 Q. THIS ISN'T A QUIZ. SO AS FAR AS BEING IN
8 CATEGORY THREE, YOU SAY THAT YOU'RE THE TYPE OF
9 JUROR THAT WOULD WANT TO HEAR WHATEVER BAD WE'VE
10 GOT TO SAY AND WHATEVER GOOD THEY WOULD WANT TO
11 SAY IF THEY WANT TO PUT IT IN. IS THAT RIGHT?

12 A. YES.

13 Q. OKAY. AND YOU'D WAIT -- YOU'D BE LIKE A CLEAN
14 SLATE. YOU WOULDN'T MAKE UP YOUR MIND, EVEN
15 THOUGH HE'D BEEN CONVICTED, YOU WOULDN'T MAKE UP
16 YOUR MIND UNTIL YOU GET TO THE END. IS THAT
17 RIGHT?

18 A. YES.

19 Q. OKAY. AND THEN AFTER HEARING THAT, AND, OF
20 COURSE, YOU WOULD HEAR INSTRUCTION ON THE LAW,
21 IF YOU HEARD ALL THE EVIDENCE, COULD YOU VOTE
22 FOR A LIFE SENTENCE?

23 A. YES.

24 Q. OKAY. AND IF YOU HEARD ALL THE EVIDENCE AND YOU
25 THOUGHT IT WAS RIGHT, COULD YOU VOTE FOR THE

1 DEATH PENALTY?

2 A. YES.

3 Q. PARTICULARLY LET ME ASK YOU, AND MR. BOYD
4 TOUCHED ON IT AND, AGAIN, THERE IS NO RIGHT OR
5 WRONG ANSWER. IN A LIFE SENTENCE, OF COURSE
6 IT'S GOT TO BE UNANIMOUS, EITHER SENTENCE, I
7 MEAN YOU VOTE YOUR CONSCIENCE BUT FOR THE
8 VERDICT TO COME BACK, IT'S GOT TO BE UNANIMOUS.
9 IF THE VERDICT IS LIFE, THEN ONLY THE
10 FOREPERSON, ONE PERSON WOULD SIGN AND SAY WE
11 TWELVE HAVE ALL VOTED AND WE VOTED LIFE.
12 BUT IF THE VERDICT IS DEATH, THEN EACH
13 INDIVIDUAL JUROR HAS TO SIGN THEIR NAME TO THE
14 COURT DOCUMENT. IT'S DIFFERENT, YOU KNOW,
15 INSTEAD OF ONE PERSON SAYING, YEAH, THAT'S WHAT
16 WE VOTED, YOU'VE GOT TWELVE AND THEY EACH,
17 EVERYONE OF THEM SIGNS THEIR NAME ON THE VERDICT
18 FORM.
19 IF THE CASE WAS SUCH THAT YOU THOUGHT IN YOUR
20 HEART THAT THE APPROPRIATE PENALTY WAS DEATH;
21 YOU'D THOUGHT ABOUT IT, YOU'D HEARD EVERYTHING,
22 YOU THOUGHT IT WAS DEATH AND THAT DOCUMENT COMES
23 TO YOU, COULD YOU SIGN SHARON FREDERICK TO THAT
24 DOCUMENT TO TAKE A MAN'S LIFE?

25 A. IF I BELIEVED IN MY HEART THAT HE WAS GUILTY,

1 YES, I COULD.

2 Q. LET ME ASK YOU ONE FINAL -- YOU SAID IF YOU
3 BELIEVED HE WAS GUILTY. AND I KNOW YOU'RE NOT A
4 LEGAL SCHOLAR, YOU KNOW, WE'RE ASKING YOU ALL
5 THESE LEGAL TERMS WITHOUT TELLING YOU EVERYTHING
6 -- LET ME WRITE THIS DOWN IF YOU DON'T MIND
7 PLEASE -- OKAY. YOU UNDERSTAND THE FIRST PART
8 IS JUST ABOUT GUILT AND, AGAIN, I'M NOT TRYING
9 TO DRAG YOU THROUGH THIS AGAIN BUT THE FIRST
10 PART IS ABOUT GUILT. SO IN THE SECOND PART WHEN
11 YOU'RE TALKING ABOUT PENALTY, YOU KNOW, YOU'RE
12 TALKING ABOUT LIFE AND YOU'RE TALKING ABOUT
13 DEATH; HE'S ALREADY BEEN FOUND GUILTY.

14 SO, SEE, AT THAT POINT THE ISSUE IS NOT AS MUCH
15 -- THE TWELVE JURORS HAVE ALREADY SAID HE'S
16 GUILTY AND HE DID THIS CRIME. OKAY, THE ISSUE
17 THEN BECOMES AGGRAVATION, MITIGATION, YOU KNOW,
18 IS IT BAD ENOUGH, IS THERE THINGS THAT YOU HEARD
19 ABOUT HIM OR THE CRIME THAT YOU SHOULDN'T GIVE
20 DEATH. AND SO THAT'S WHY I WANT TO COME BACK
21 AND ASK YOU AND I KNOW IT SOUNDS LIKE I'M JUST
22 GOING IN CIRCLES.

23 IF YOU HEARD ENOUGH EVIDENCE IN AGGRAVATION AND
24 YOU HEARD THE MITIGATION AND YOU THOUGHT NOT
25 ONLY THAT HE WAS GUILTY BECAUSE YOU WOULD

1 ALREADY BE PAST THAT, BUT YOU THOUGHT THAT IN
2 THAT CASE DEATH WAS APPROPRIATE, COULD YOU SIGN
3 YOUR NAME KNOWING THAT YOUR VERDICT WOULD MEAN
4 THE TAKING OF A MAN'S LIFE?

5 A. NO.

6 Q. OKAY. SEE, THERE'S NO RIGHT OR WRONG ANSWER.
7 CAN YOU TELL ME, IS THAT BASED ON SOME -- YOU'VE
8 NEVER BEEN ASKED THESE KIND OF QUESTIONS BEFORE,
9 HAVE YOU?

10 A. NO.

11 Q. OKAY. IS THAT BASED ON SOME RELIGIOUS VIEW OR
12 PERSONAL VIEW, AND I DON'T WANT TO PUT WORDS IN
13 YOUR MOUTH, YOU TELL ME WHY IT IS ---

14 A. THAT'S JUST MY PERSONAL FEELINGS; I JUST
15 COULDN'T.

16 Q. OKAY. YOU COULDN'T LIVE KNOWING THAT YOU HAD
17 SIGNED IT AND IT WOULD TAKE A PERSON'S LIFE?

18 A. NO.

19 Q. NO MATTER HOW BAD A CRIME HE COMMITTED?

20 A. NO.

21 Q. NO MATTER WHAT BAD THING, AND I'M NOT TRYING TO
22 CHANGE YOU, BUT NO MATTER WHAT BAD THING I
23 SHOWED YOU OR EVIDENCE OR ANYTHING ELSE, JUST IN
24 YOUR HEART YOU COULDN'T LEAVE THAT DAY HAVING
25 SIGNED YOUR NAME TO TAKE HIS LIFE ---

1 A. NO, SIR.

2 Q. IS THAT CORRECT? NOW MR. BOYD ASKED YOU EARLIER
3 AND YOU SAID, OH, I CAN SIGN. WHY HAS IT
4 CHANGED?

5 A. I REALLY DIDN'T UNDERSTAND THE QUESTION HE ASKED
6 ME.

7 Q. RIGHT. BUT NOW THAT YOU UNDERSTAND, PUTTING THE
8 PEN TO THE PAPER, AND THERE'S NO RIGHT OR WRONG
9 ANSWER, BUT THAT'S NOT SHARON FREDERICK?

10 A. NO.

11 Q. SHARON FREDERICK COULDN'T SIGN HER NAME TO GIVE
12 SOMEBODY DEATH?

13 A. NO.

14 Q. I APPRECIATE YOU BEING HONEST WITH ME. THANK
15 YOU, MA'AM.

16 THE COURT: MS. FREDERICK, I NOTICE YOU'VE GOT A
17 TWO YEAR OLD AND A SIX YEAR OLD. YOU, OF COURSE, DO WORK
18 AND YOUR HUSBAND WORKS. WHO WOULD TAKE CARE OF THESE
19 CHILDREN IF YOU WERE ON THE JURY?

20 THE JUROR: MY MOTHER.

21 THE COURT: SHE WOULD?

22 THE JUROR: UH HUH.

23 THE COURT: OKAY. ALL RIGHT, I'M GOING TO LET
24 YOU STEP OUTSIDE FOR JUST A MINUTE.

25 (THE JUROR LEFT THE COURTROOM.)

1 THE COURT: WHAT SAYS THE DEFENSE?

2 MR. BOYD: YOUR HONOR, WE BELIEVE SHE'S
3 QUALIFIED. SHE ANSWERED AFFIRMATIVELY SEVERAL TIMES ABOUT
4 SIGNING HER NAME AND THAT TYPE OF THING.

5 THE COURT: WHAT SAYS THE STATE?

6 MR. POPE: YOUR HONOR, IT IS CLEAR THAT INITIALLY
7 SHE DIDN'T UNDERSTAND IT. I WENT THROUGH IT AND I GAVE HER
8 AN OPPORTUNITY TO GO BACK TO WHAT MR. BOYD SAID EVEN, AND
9 SHE SAID THAT SHE DID NOT UNDERSTAND THAT THAT WAS WHAT HE
10 WAS SAYING AND THAT'S NOT JUST HER MAKE-UP, SHE COULD NOT
11 SIGN TO GIVE THE DEATH PENALTY.

12 THE COURT: I FIND THAT SHE IS NOT QUALIFIED.
13 ALL RIGHT, BRING HER IN.

14 (THE JUROR RETURNED TO THE COURTROOM.)

15 THE COURT: MS. FREDERICK, WE'RE GOING TO EXCUSE
16 YOU FROM SERVING ON THIS JURY. WE APPRECIATE YOUR CANDOR
17 AND WE APPRECIATE YOUR TIME. YOU CAN FEEL FREE TO LEAVE.
18 THANK YOU.

19 THE JUROR: OKAY, THANK YOU.
20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: ALL RIGHT, WE'VE GOT SIX MORE; LET'S
22 TAKE ABOUT A FIVE MINUTE BREAK.

23 AFTER THE RECESS:

24 MR. BOYD: YOUR HONOR, THE MEMO THAT WE GAVE
25 EARLIER CONCERNING APPROPRIATE JURY VOIR DIRE IF WE COULD

1 HAVE THAT MADE A PART OF THE RECORD.

2 THE COURT: JUST HAND UP A COPY.

3 (DEFENDANT'S BRIEF REGARDING APPROPRIATE JURY VOIR DIRE WAS
4 MARKED COURT'S EXHIBIT 4)

5 THE COURT: ALL RIGHT, NOW IT IS TIME FOR D. IT
6 WAS SCHEDULED FOR 5:00 O'CLOCK AND IT'S 6:45. MICHAEL
7 GOELLER.

8 MICHAEL GOELLER, JUROR NUMBER 93, WHITE MALE, WAS
9 QUESTIONED AS FOLLOWS:

10 Q. MR. GOELLER, I INTRODUCED MYSELF EARLIER. OF
11 COURSE, I'M JOHN HAYES. IF YOU ARE CHOSEN ON
12 THIS JURY, I'M GOING TO TELL YOU IN ADVANCE,
13 THERE MAY BE CAMERAS OR PHOTOGRAPHERS HERE.
14 THEY ARE NOT HERE TO TAKE YOUR PICTURE, AND THEY
15 CAN'T BY LAW. SO, I DON'T WANT YOU TO BE
16 DISTRACTED IF YOU SEE CAMERAS OR PHOTOGRAPHERS.
17 JUST DON'T WORRY ABOUT THAT.

18 NOW YOU HANDED UP A QUESTIONNAIRE THAT YOU
19 FILLED OUT. DO YOU NEED TO MAKE ANY CHANGES TO
20 IT OR DO YOU BELIEVE IT IS ACCURATE?

21 A. IT'S AS ACCURATE AS I CAN MAKE IT.

22 Q. OKAY. DID YOU REVIEW THE WITNESS LISTS THAT
23 WERE IN THE JURY ROOM?

24 A. YES, I SURE DID.

25 Q. DID YOU FIND ANYBODY IN THERE THAT YOU WERE

1 RELATED TO BY BLOOD OR MARRIAGE ---

2 A. NOT A ONE.

3 Q. --- OR ANYBODY YOU KNEW?

4 A. NOT A ONE.

5 Q. NOW, HAVE YOU HEARD ANYTHING PRIOR TO TODAY
6 ABOUT THIS CASE FROM ANY SOURCE WHATSOEVER, READ
7 ABOUT IT, HEARD ABOUT IT, TALKED ABOUT IT?

8 A. NO, SIR, I SURE HAVEN'T.

9 Q. IN CASES SUCH AS THIS, THEY ARE TRIED IN TWO
10 STAGES. THE STATE, OF COURSE, IS SEEKING THE
11 DEATH PENALTY AND SO THE FIRST STAGE WOULD BE A
12 DETERMINATION OF WHETHER OR NOT A JURY WERE
13 CONVINCED BEYOND A REASONABLE DOUBT OF MR.
14 ROBERTSON'S GUILT OF MURDER.

15 HE IS PRESUMED INNOCENT AND IS SO PRESUMED UNTIL
16 SUCH TIME AS THE STATE WERE TO BE ABLE TO PROVE
17 TO A JURY HIS GUILT BEYOND A REASONABLE DOUBT.

18 IF THE JURY WERE TO FIND HIM NOT GUILTY, THE
19 CASE WOULD BE OVER.

20 HOWEVER, IF THE JURY WERE TO FIND HIM GUILTY,
21 THEN WE WOULD GO INTO WHAT'S CALLED THE SECOND
22 PHASE, THE PENALTY PHASE OF THE TRIAL AND THE
23 QUESTION WOULD BE WHAT PUNISHMENT AND THAT WOULD
24 BE FOR THE JURY'S CONSIDERATION.

25 THE FACT THAT WE ARE TALKING ABOUT THE SECOND

1 PHASE IS NO INDICATION OF ANYTHING REGARDING HIS
2 GUILT IN THE FIRST PHASE, THAT'S GOT TO BE
3 DECIDED, BUT WE HAVE TO AT THE FRONT END TALK
4 ABOUT THE SECOND PART EVEN THOUGH WE MAY NEVER
5 HAVE THAT. DO YOU UNDERSTAND THAT?

6 A. I UNDERSTAND.

7 Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES
8 LISTED ON A SHEET OF PAPER. DID YOU HAVE A
9 CHANCE TO REVIEW THAT?

10 A. YES, I SURE DID.

11 Q. DID YOU FIND YOURSELF TO FALL INTO ONE OF THOSE
12 CATEGORIES?

13 A. YES, I DID.

14 Q. WHICH ONE?

15 A. THE THIRD TYPE.

16 Q. IN THAT THIRD TYPE THERE ARE TWO WORDS THAT ARE
17 USED, AGGRAVATION AND MITIGATION, AND YOU'LL
18 HEAR THOSE A GOOD BIT.

19 Q. AGGRAVATION INVOLVES CIRCUMSTANCES THAT ATTEND
20 THE COMMISSION OF A CRIME WHICH INCREASE ITS
21 ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE.
22 THEY ARE NOT PART OF THE ESSENTIAL ELEMENTS OF
23 THE CRIME ITSELF, BUT ARE ABOVE AND BEYOND THE
24 ELEMENTS OF THE CRIMES.
25 MITIGATING CIRCUMSTANCES ARE THINGS THAT ARE NOT

1 SUFFICIENT TO CONSTITUTE JUSTIFICATION OR EXCUSE
2 FOR A CRIME, BUT THEY ARE THINGS WHICH IN
3 FAIRNESS AND MERCY MAY BE CONSIDERED AS
4 EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL
5 CULPABILITY. DO YOU UNDERSTAND THAT?

6 A. YES.

7 Q. NOW THE THIRD TYPE JUROR, IF I UNDERSTAND IT
8 CORRECT, THEN WHAT YOU ARE SAYING IS THAT YOU
9 ARE THE TYPE OF JUROR WHO EVEN THOUGH THE JURY
10 WOULD HAVE AT THIS POINT FOUND MR. ROBERTSON
11 GUILTY OF MURDER, YOU WOULD NOT HAVE MADE UP
12 YOUR MIND IN ADVANCE AS TO THE PUNISHMENT TO BE
13 METED OUT. IS THAT CORRECT?

14 A. UH -- THIS IS AT THE POINT WHERE ALL THE
15 EVIDENCE HAS COME OUT?

16 Q. ALL RIGHT, I'LL START OVER. WE'RE AT THE POINT
17 -- LET'S JUST START HERE. THE JURY HAS JUST
18 RETURNED A VERDICT OF GUILTY. THE JURY HAS
19 UNANIMOUSLY BEYOND A REASONABLE DOUBT FOUND HIM
20 GUILTY OF MURDER. AT THAT POINT WOULD YOU HAVE
21 ALREADY MADE UP YOUR MIND AS TO WHAT PUNISHMENT
22 OR WOULD YOU WANT TO HEAR FURTHER EVIDENCE IN
23 AGGRAVATION AND MITIGATION AND THE LAW THAT
24 REGARDS PUNISHMENT BEFORE YOU WOULD MAKE A
25 DETERMINATION AS TO WHAT PUNISHMENT SHOULD BE

1 GIVEN?

2 A. YES, I WOULD WANT TO HEAR THE CHARGES, FOLLOW
3 THE LAW AS THE JUDGE CHARGES THE JURY, AND
4 MITIGATING AND AGGRAVATING CIRCUMSTANCES.

5 Q. YOU WOULD WANT TO HEAR THAT BEFORE YOU DECIDED
6 WHAT PUNISHMENT?

7 A. YES, YOUR HONOR.

8 Q. IF WHEN YOU HEARD ALL OF THAT YOU THOUGHT THAT
9 THE FACTS WARRANTED A VERDICT OF LIFE
10 IMPRISONMENT, COULD YOU RETURN A VERDICT OF LIFE
11 IMPRISONMENT?

12 A. YES, YOUR HONOR.

13 Q. IF YOU FELT THAT THE FACTS PRESENTED WARRANTED A
14 VERDICT IMPOSING THE DEATH PENALTY, COULD YOU
15 IMPOSE THE DEATH PENALTY?

16 A. YES, YOUR HONOR, I COULD.

17 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT THESE
18 ATTORNEYS MAY HAVE.

19 QUESTIONS BY MR. BRACKETT:

20 Q. GOOD EVENING, MR. GOELLER, HOW ARE YOU DOING?

21 A. I'M A LITTLE BIT NERVOUS.

22 Q. OKAY, DON'T BE, THAT'S ALL RIGHT. I KNOW IT
23 FEELS LIKE YOU'RE ON TRIAL HERE, BUT WE JUST
24 NEED TO ASK THESE QUESTIONS BECAUSE WE NEED TO
25 KNOW THE ANSWERS SO THAT WE CAN DO OUR JOBS

1 PROPERLY.

2 A. I UNDERSTAND.

3 Q. MY NAME IS KEVIN BRACKETT, AND I AM THE DEPUTY
4 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. THIS
5 IS TOMMY POPE OVER HERE. HE'S THE SOLICITOR AND
6 HE AND I ARE PROSECUTING MR. ROBERTSON WHO IS
7 SEATED OVER THERE WHO IS THE ONE CHARGED HERE
8 WITH THE MURDERS.

9 NOW AT THE OUTSIDE I WANT TO MAKE SURE YOU
10 UNDERSTAND. I KNOW YOU FEEL LIKE YOU'RE ON
11 TRIAL AND I KNOW YOU'RE A LITTLE BIT NERVOUS,
12 YOU DON'T NEED TO BE BECAUSE YOU ARE BASICALLY
13 JUST TELLING US HOW YOU FEEL. AND WHAT WE NEED
14 FOR YOU TO DO IS TO JUST GIVE US YOUR HONEST
15 OPINION AND YOUR HEARTFELT ANSWERS TO THESE
16 QUESTIONS BECAUSE NOW IS THE TIME WHEN WE GET
17 THIS INFORMATION AND WE NEED TO HAVE THIS
18 INFORMATION NOW. IF YOU DECIDE A LITTLE BIT
19 LATER ON AFTER YOU'RE ON THE JURY AND YOU SAY,
20 YOU KNOW, GEE, I REALLY DON'T THINK I COULD DO
21 THIS. OR, YOU KNOW, GEE, I THINK I ALWAYS WOULD
22 GIVE DEATH. IT'S A LITTLE BIT LATE THEN TO TELL
23 US THAT BECAUSE YOU'RE ALREADY ON THE JURY AND
24 WE'VE ALREADY GOT THE JURY PICKED AND WE'VE
25 STARTED THE TRIAL AND IT'S TOO LATE THEN. SO,

1 WE JUST NEED TO KNOW THESE ANSWERS NOW SO THAT
2 WE CAN MAKE THE APPROPRIATE DECISIONS IN THIS
3 CASE. OKAY?

4 A. YES, SIR.

5 Q. SO, IF YOU THINK I'M TRYING TO PUSH YOU ONE WAY
6 OR THE OTHER, I'M NOT; I JUST NEED TO GET YOUR
7 ANSWERS.

8 A. OKAY.

9 Q. YOU'RE THE KIND OF JUROR THAT COULD LISTEN TO
10 ALL OF THE EVIDENCE IN THE FIRST PART OF THE
11 TRIAL AND YOU WOULDN'T HAVE AN OPINION ONE WAY
12 OR THE OTHER WHETHER THIS MAN WAS GUILTY OF
13 THESE CRIMES UNTIL YOU HEARD THE EVIDENCE,
14 RIGHT?

15 A. I DON'T LIKE TO DETERMINE SOMEONE'S GUILTY
16 UNLESS ALL THE FACTS ARE PRESENTED BECAUSE I
17 WOULDN'T WANT TO BE WRONG.

18 Q. SURE. AND HAVE YOU HEARD ANYTHING ABOUT THIS
19 CASE BEFORE YOU CAME?

20 A. NO, SIR, I REALLY HAVEN'T. THE OTHER JURORS IN
21 THERE SAID THEY HAVE COME ACROSS NEWSPAPER
22 ACCOUNTS AND STUFF AND ON THE NEWS, BUT I HAVE
23 NOT.

24 Q. OKAY. YOU'RE TALKING ABOUT THE OTHER JURORS
25 DOWNSTAIRS OR WHERE?

1 A. IN THE ROOM WAITING TO COME IN HERE.

2 Q. NOW, IF YOU HAD HEARD ANYTHING, WOULD YOU BE
3 ABLE TO PUT THAT OUT OF YOUR MIND AND DECIDE
4 THIS CASE BASED ON THE EVIDENCE THAT'S PRESENTED
5 IN THIS COURTROOM?

6 A. SURE. THE NEWSPAPERS, THEY CAN SLANT STORIES
7 AND STUFF AND THEY PROBABLY HAVE JUST AN INKLING
8 OF WHAT THE PROSECUTION WOULD HAVE AS FAR AS
9 EVIDENCE.

10 Q. OKAY.

11 A. SO, YOU REALLY CAN'T GO ON THAT.

12 Q. OKAY, SO YOU WOULD WAIT UNTIL YOU HEARD
13 EVERYTHING HERE IN THE COURTROOM?

14 A. YOU HAVE TO, YES.

15 Q. OKAY. AND THEN BASED ON THAT EVIDENCE AND WHAT
16 THE JUDGE TOLD YOU THE LAW WAS, THEN YOU WOULD
17 DECIDE WHETHER HE WAS GUILTY?

18 A. YES, SIR.

19 Q. OKAY. AND YOU COULD RETURN A VERDICT OF GUILTY
20 OR NOT GUILTY BASED ON HOW YOU TRULY FELT?

21 A. YES, SIR.

22 Q. NOW ASSUMING FOR THE SECOND HALF OF THE TRIAL
23 LET'S MAKE THE ASSUMPTION THAT YOU'VE FOUND HIM
24 GUILTY, AND WE'VE MOVED ON, AND WE'RE IN THE
25 SECOND HALF OF THE TRIAL NOW.

1 A. UH HUH.

2 Q. NOW, THE SOLE ISSUE HERE IS WHAT SHOULD WE DO
3 WITH MR. ROBERTSON NOW THAT WE'VE FOUND HIM
4 GUILTY OF THESE MURDERS.

5 A. YES, SIR.

6 Q. AND THERE ARE TWO CHOICES, LIFE OR DEATH, OKAY?
7 NOW, WHAT YOU'VE TOLD THE JUDGE IS THAT YOU
8 WOULD LISTEN TO THE EVIDENCE IN THAT SECOND HALF
9 JUST LIKE YOU DID IN THE FIRST HALF?

10 A. THAT'S TRUE.

11 Q. AND YOU WOULD DECIDE THE CASE AND DECIDE WHAT
12 THE PUNISHMENT SHOULD BE BASED ON THE EVIDENCE
13 THAT WAS PRESENTED?

14 A. YES, SIR.

15 Q. AND YOU KNOW THE TWO TYPES OF EVIDENCE THAT ARE
16 GOING TO BE PRESENTED IN THAT SECOND HALF,
17 AGGRAVATING AND MITIGATING?

18 A. YES, YES.

19 Q. OKAY. THE AGGRAVATING IS WHAT WE PRESENT. WE
20 HAVE TO PRESENT AGGRAVATING CIRCUMSTANCES.

21 A. YES, SIR.

22 Q. IT CAN'T JUST BE A REGULAR MURDER. IT'S GOT TO
23 BE A MURDER THAT'S KIND OF WORSE THAN JUST A
24 REGULAR MURDER.

25 A. YES, SIR.

1 Q. WE HAVE TO PRESENT CIRCUMSTANCES OF AGGRAVATION
2 TO SHOW THAT THIS IS A MORE HEINOUS MURDER.

3 A. YES, SIR.

4 Q. IN ORDER FOR THERE TO EVEN BE A DEATH PENALTY.
5 THE DEFENSE HAS THE CHOICE, NOW THEY DON'T HAVE
6 TO, BUT THEY HAVE THE CHOICE OF PRESENTING
7 MITIGATING CIRCUMSTANCES.

8 A. THOSE ARE LESSENING CIRCUMSTANCES?

9 Q. EXACTLY; EXACTLY, SIR. IF THEY CHOOSE TO, THEY
10 CAN PUT THAT SORT OF EVIDENCE UP, AND THE JURY
11 WOULD HAVE TO CONSIDER THAT, TOO. AND IF YOU
12 WERE ON THAT JURY, YOU COULD CONSIDER THOSE
13 MITIGATING CIRCUMSTANCES, COULDN'T YOU?

14 A. YES, I'D HAVE TO BE FAIR.

15 Q. SURE. AND BASED ON BOTH OF THEM, YOU COULD THEN
16 COME UP WITH WHAT YOU THOUGHT WAS A JUST
17 PUNISHMENT FOR THE CRIME?

18 A. I WOULD HOPE I WOULD. I WOULD HAVE TO PRAY
19 ABOUT IT.

20 Q. OKAY. AND IF YOU THOUGHT THE PROPER VERDICT WAS
21 DEATH, YOU COULD IMPOSE A SENTENCE OF DEATH IN
22 THIS CASE?

23 A. YES, SIR. I WOULD HAVE TO BECAUSE THAT WOULD BE
24 THE LAW -- I THINK IT WOULD BE THE LAW.

25 Q. WELL, YOU UNDERSTAND IT'S NOT GOING TO BE -- THE

1 JUDGE ISN'T GOING TO COME IN AND TELL YOU WHAT
2 VERDICT YOU SHOULD PRONOUNCE. YOU'RE THE ONE
3 THAT HAS TO DECIDE, YOU AND THE OTHER ELEVEN
4 JURORS COLLECTIVELY DECIDE.

5 A. YES.

6 Q. YOU HAVE TO TALK WITH THEM, SHARE INFORMATION
7 BACK AND FORTH AND SHARE YOUR FEELINGS AND
8 THOUGHTS ON THE SUBJECT AND COME UP WITH ONE
9 COLLECTIVE VERDICT ABOUT WHAT THE PENALTY SHOULD
10 BE. NO ONE ELSE IS GOING TO COME AND TELL YOU,
11 OKAY, THIS IS WHAT IT'S GOT TO BE.

12 A. YES.

13 Q. SO, YOU COULD DO THAT ON YOUR OWN. YOU COULD
14 LISTEN TO ALL OF THAT AND COME UP WITH A VERDICT
15 OF DEATH ON YOUR OWN WITHOUT ANYBODY TELLING YOU
16 THAT THAT'S WHAT YOU HAD TO DO, RIGHT?

17 A. I BELIEVE I COULD.

18 Q. OKAY. LIKEWISE YOU COULD ALSO DECIDE LIFE; IF
19 THAT WAS APPROPRIATE, YOU COULD COME UP WITH A
20 VERDICT OF LIFE AND SUPPORT THAT VERDICT IF YOU
21 THOUGHT IT WAS APPROPRIATE?

22 A. YES, I WOULD HAVE TO LISTEN TO ALL THE
23 AGGRAVATING AND MITIGATING CIRCUMSTANCES.

24 Q. AND, MR. GOELLER, I TELL YOU NOW THAT IN ORDER
25 FOR A SENTENCE OF DEATH TO BE IMPOSED, IT'S NOT

1 LIKE ANY OTHER VERDICT IN THE LAW. EACH AND
2 EVERY JUROR HAS TO SIGN THEIR NAME ON THE
3 VERDICT SHEET ATTESTING THAT DEATH WAS THE
4 SENTENCE THAT THEY WANTED IMPOSED ON MR.
5 ROBERTSON.

6 A. YES.

7 Q. NOW, IF YOU'RE BACK IN THE JURY ROOM AND THE
8 TWELVE OF YOU HAVE DECIDED THAT DEATH IS THE
9 RIGHT VERDICT FOR THIS CRIME AND YOU HAVE THE
10 PEN IN YOUR HAND, COULD YOU SIGN MICHAEL GOELLER
11 ON THAT SHEET SENDING MR. ROBERTSON TO HIS
12 DEATH?

13 A. IF I THOUGHT THAT THAT'S WHAT SHOULD BE DONE, I
14 WOULD DO IT.

15 Q. OKAY. COURT'S INDULGENCE ONE MOMENT, YOUR
16 HONOR.

17 (AFTER A BRIEF PAUSE.)

18 Q. ON YOUR INFORMATION SHEET, MR. GOELLER, YOU HAD
19 INDICATED THAT YOU HAD BEEN A WITNESS BEFORE IN
20 A HOMICIDE CASE?

21 A. YES, SIR.

22 Q. CAN YOU TELL ME A LITTLE BIT ABOUT THAT?

23 A. I WAS IN THE NAVY RESERVE AT THE TIME AND I WAS
24 SERVING AT THE NORFOLK NAVAL STATION. ONE OF
25 THE FELLOWS IN OUR UNIT HAD COMMITTED A SERIOUS

1 CRIME.

2 Q. WHAT WAS THAT CRIME?

3 A. I THINK IT WAS HOMICIDE.

4 Q. OKAY.

5 A. I HAD SEEN HIM AFTER HE HAD COMMITTED THE CRIME.

6 AND I WAS TO TESTIFY, NOT TO PROVE THAT HE DID
7 IT, BUT AS TO HIS STATE OF MIND AND DEMEANOR AND
8 STUFF AFTERWARDS.

9 Q. OKAY. IT WASN'T A DEATH PENALTY CASE WAS IT?

10 A. I DON'T REMEMBER.

11 Q. WAS IT A NAVY PROSECUTION?

12 A. NO, IT WAS IN THE ---

13 Q. THE STATE COURT?

14 A. THE COMMONWEALTH.

15 Q. OKAY. NOTHING ABOUT YOUR PARTICIPATION IN THAT,
16 YOU UNDERSTAND THAT THAT'S A SEPARATE EVENT FROM
17 THIS.

18 A. OH, YES.

19 Q. AND NOTHING ABOUT THAT WOULD AFFECT YOUR
20 DECISION MAKING IN THIS COURT, WOULD IT?

21 A. I REALLY -- I WASN'T THAT MUCH INVOLVED IN IT. I
22 WAS LIVING DOWN HERE.

23 Q. OKAY. THANK YOU VERY MUCH, MR. GOELLER.

24 QUESTIONS BY MR. HANCOCK:

25 Q. MR. GOELLER, I'M BILL HANCOCK, I'M THE ATTORNEY

1 FOR JIMMY ROBERTSON. THIS IS MR. JIM BOYD WHO
2 IS CO-COUNSEL IN THIS PARTICULAR MATTER.

3 A. YES, SIR.

4 Q. AGAIN, I WILL EMPHASIZE TO YOU THAT THERE ARE NO
5 RIGHT OR WRONG ANSWERS.

6 A. YES, SIR.

7 Q. THEY ARE YOUR ANSWERS AND THEY NEED TO BE
8 YOUR'S, AND WE WILL CONSIDER THOSE ANSWERS AND
9 GIVE THEM GREAT RESPECT AS TO YOUR OPINION AND
10 WHAT YOU FEEL IN THIS CASE. OKAY?

11 A. YES, SIR.

12 Q. NOW, YOU HAVE SAID SOMETHING; YOU INDICATED THAT
13 THERE HAD BEEN DISCUSSION OF THIS CASE AMONG THE
14 JURORS; IS THAT CORRECT?

15 A. I WOULDN'T SAY IT WAS A DISCUSSION.

16 Q. WELL, TELL ME WHAT WAS DONE, WHAT WAS HEARD?

17 A. THEY HAD MENTIONED THAT BEFORE COMING HERE TODAY
18 THAT THERE WAS SOMETHING IN THE PAPER OR ON THE
19 NEWS ABOUT IT.

20 Q. OKAY, NOW WHO IS "THEY"?

21 A. THE OTHER PEOPLE I WAS IN THE ROOM WITH.

22 Q. WAS THAT UP HERE WHERE THERE WERE ONLY SIX OF
23 YOU OR WAS THAT DOWNSTAIRS?

24 A. THERE WERE MORE THAN SIX OF US UP HERE IN THAT
25 ROOM UP HERE.

1 Q. AND WAS THAT JUST PRIOR TO YOU COMING IN HERE?

2 A. YES.

3 Q. AND HOW MANY PEOPLE WERE DISCUSSING THIS?

4 A. I ---

5 Q. WHEN YOU SAY "THEY", HOW MANY PEOPLE ARE WE
6 TALKING ABOUT, SIR?

7 A. IT WASN'T EVERYBODY; I THINK IT WAS MAYBE TWO OR
8 THREE PEOPLE.

9 Q. AND WHEN YOU SAY THEY WERE TALKING ABOUT WHAT
10 WAS IN THE NEWSPAPER, WERE THEY GIVING SPECIFIC
11 FACTS?

12 A. NO, SIR. THEY BASICALLY WERE MENTIONING THAT IT
13 WAS -- THAT THE CASE HAD BEEN REPORTED UPON.
14 AND I WAS SURPRISED, BECAUSE I HADN'T HEARD
15 ANYTHING ABOUT IT.

16 Q. DID THEY TRY TO GIVE YOU ANY OF THE FACTS AND/OR
17 CIRCUMSTANCES OF THIS CASE, SIR?

18 A. NO, THEY SAID THAT THERE WAS A MURDER AND
19 SOMEONE HAD ASKED ABOUT THE PENNSYLVANIA, WHY
20 THE PENNSYLVANIA POLICE DEPARTMENT WAS ON THE
21 WITNESS LIST, AND THEY SAID THAT THE NEWSPAPER
22 SAID HE HAD GONE TO PENNSYLVANIA OR SOMETHING.
23 AND THAT WAS ABOUT IT.

24 Q. WAS THAT THE ENTIRETY OF THE DISCUSSION OR WAS
25 THERE FURTHER DISCUSSION?

1 A. THAT WAS PRETTY MUCH IT; YES, SIR. NOBODY
2 REALLY SEEMED TO KNOW THAT MUCH ABOUT IT. IT
3 WAS JUST A BRIEF LITTLE THING, AND I HEARD IT.
4 AND I WAS SURPRISED BECAUSE I HADN'T HEARD ABOUT
5 IT AT ALL UNTIL TODAY WHEN I HEARD THIS MAN'S
6 NAME.

7 Q. WERE YOU PRIVY TO ALL OF THE DISCUSSIONS BETWEEN
8 THE JURORS WHEN YOU WERE BACK THERE?

9 A. WELL, I WAS IN THE ROOM; YES, SIR.

10 Q. YOU WERE IN THE ROOM BUT WERE YOU PRIVY TO ALL
11 OF THEIR OTHER DISCUSSIONS BETWEEN OTHER PEOPLE
12 OR WERE THERE -- I'LL ASK IT THIS WAY. WERE
13 THERE OTHER DISCUSSIONS BETWEEN INDIVIDUALS THAT
14 YOU DIDN'T HEAR WHAT WAS GOING ON?

15 A. WELL, IF I WASN'T THERE, I COULDN'T SAY.

16 Q. WELL THEN I'LL ASK, WERE OTHER PEOPLE TALKING TO
17 EACH OTHER?

18 A. WHEN I WAS THERE?

19 Q. YES.

20 A. YES, BUT NOT ABOUT THAT. WE TALKED ABOUT ALL
21 KINDS OF THINGS.

22 Q. ALL RIGHT. NOW, AGAIN, YOU UNDERSTAND THAT WE
23 ARE IN A SITUATION WHERE WE'RE ENGAGED IN LEGAL
24 FICTION. THERE HAS BEEN NO DETERMINATION OF
25 GUILT.

1 A. YES, SIR.

2 Q. AT THIS POINT. WE ARE PUTTING THE CART BEFORE
3 THE HORSE. IN OTHER WORDS, WE ARE ASKING YOU
4 ABOUT A DEATH PENALTY WHEN THERE HAS BEEN NO
5 DETERMINATION OF GUILT ON MY CLIENT.

6 A. YES, SIR. YES, SIR, HE HAS NOT BEEN DETERMINED
7 GUILTY YET.

8 Q. WOULD THAT IN ANY WAY AFFECT YOUR OPINION?

9 A. I DON'T SEE WHY IT WOULD.

10 Q. NOW, AND YOU HAVE SAID THAT YOU COULD CONSIDER
11 ALL OF THE EVIDENCE, BOTH THE MITIGATING AND THE
12 AGGRAVATING EVIDENCE. IS THAT CORRECT, SIR?

13 A. ONE HAS TO DO THAT TO TRY AND COME UP WITH A
14 CORRECT DECISION.

15 Q. AND ONCE YOU HAVE ARRIVED AT WHAT YOU BELIEVE IS
16 A CORRECT DECISION, THEN COULD YOU MAINTAIN THAT
17 DECISION AGAINST ALL OTHERS?

18 A. IF IT'S MY HEARTFELT DECISION, I WOULD HAVE TO.

19 Q. WOULD YOU CHANGE THAT DECISION JUST BECAUSE YOU
20 WERE NOT IN THE MAJORITY OF THE JURORS?

21 A. I DON'T THINK SO. WHAT I HAVE DEEPLY THOUGHT
22 ABOUT AND FELT ABOUT, YOU KNOW, IT WOULD BE
23 SOMETHING THAT I ARRIVED AT.

24 Q. I'LL JUST ASK YOU AGAIN, IF THAT WAS YOUR
25 DECISION, WOULD YOU CHANGE THAT JUST SO THAT YOU

1 WOULD BE WITH THE MAJORITY OF THE PEOPLE ON THE
2 JURY?

3 A. NO, I DON'T THINK SO.

4 Q. AND YOU UNDERSTAND THAT AS A JUROR YOU HAVE TO
5 RESPECT THE OPINIONS OF ALL OTHERS ON THE JURY?

6 A. OH, YES.

7 Q. AND THEY MUST RESPECT YOUR OPINION AS WELL.

8 A. YES, SIR.

9 Q. YOU UNDERSTAND THAT ALSO?

10 A. YES, SIR. EVERYONE'S GOT THEIR OWN OPINIONS AND
11 DECISIONS, AND YOU HAVE GOT TO RESPECT THAT.

12 Q. I HAVE NO FURTHER QUESTIONS.

13 THE COURT: STEP OUTSIDE THE DOOR JUST ONE
14 MINUTE.

15 THE JUROR: YES, YOUR HONOR.

16 (THE JUROR LEFT THE COURTROOM.)

17 THE COURT: WHAT SAYS THE STATE?

18 MR. BRACKETT: WE SUBMIT HE'S QUALIFIED.

19 THE COURT: WHAT SAYS THE DEFENSE?

20 MR. HANCOCK: YOUR HONOR, I'M NOT SURE WHAT WE'VE
21 HEARD HERE, BUT IT SOUNDS TO ME LIKE THEY WERE DISCUSSING
22 THE ---

23 THE COURT: WELL, LET'S TAKE IT A STEP AT THE
24 TIME. WHAT DO YOU SAY ABOUT HIS QUALIFICATIONS, DEATH
25 PENALTY QUALIFIED OR NOT?

1 MR. HANCOCK: YES, SIR, HE IS DEATH PENALTY
2 QUALIFIED.

3 THE COURT: ALL RIGHT. I AM GOING TO ASK THE
4 CLERK TO PUT A SIGN ON THE DOOR, A BIG SIGN ON THE DOOR
5 THAT SAYS WHILE YOU ARE IN THIS ROOM YOU ARE NOT TO DISCUSS
6 THE TRIAL OR THE CASE IN ANY REGARD WHATSOEVER.

7 THE CLERK: ALL RIGHT, SIR.

8 MR. HANCOCK: THAT'S CURATIVE IN THE FUTURE, YOUR
9 HONOR. I DON'T KNOW HOW MANY PEOPLE WERE IN THERE ---

10 THE COURT: WELL, I'M GOING TO LET YOU ASK
11 WHOEVER WHATEVER YOU WANT. YOU HAVEN'T MADE ANY KIND OF
12 MOTION SO I DON'T HAVE ANYTHING TO ADDRESS.

13 MR. HANCOCK: WE ARE MOVING FOR THE PEOPLE THAT
14 WERE IN THAT JURY ROOM, THAT THEY BE DISQUALIFIED AT THIS
15 PARTICULAR TIME.

16 THE COURT: I'LL LET YOU ASK THEM QUESTIONS ABOUT
17 IT. ARE YOU MOVING FOR MR. GOELLER TO BE DISQUALIFIED?

18 MR. HANCOCK: YES, SIR, THAT ENTIRE PANEL. AND
19 POSSIBLY THE OTHER ---

20 THE COURT: I KNOW; I'M TAKING IT A STEP AT A
21 TIME. THIS GENTLEMAN, MR. GOELLER, ARE YOU MOVING TO HAVE
22 HIM DISQUALIFIED FOR DISCUSSING THE CASE?

23 MR. HANCOCK: YES, SIR.

24 THE COURT: I DENY THE MOTION. FROM WHAT HE TOLD
25 ME, THE ONLY THING HE HEARD WAS THAT SOMEBODY ASKED WHY

1 THERE WERE PENNSYLVANIA POLICE ON THERE WHICH WAS ANSWERED
2 BECAUSE HE WENT TO PENNSYLVANIA. I DON'T FIND THAT'S
3 ENOUGH TO BE ANY PREJUDICE BECAUSE I BELIEVE THE EVIDENCE
4 WILL MOST PROBABLY SHOW THAT, AND THAT'S ALL HE HEARD. BUT
5 I'M GOING TO LET YOU ASK WHATEVER OTHER WITNESS YOU WANT
6 CONCERNING THAT EVENT, AND WE'LL TAKE IT ONE STEP AT A
7 TIME.

8 MR. HANCOCK: WELL, YOUR HONOR, MY POINT IS THIS.
9 WE HAVE ALREADY QUESTIONED INDIVIDUAL JURORS THAT WE WILL
10 NOT BE ALLOWED TO QUESTION THAT WAS IN THE ROOM AT THAT
11 TIME. THEY HAVE ALREADY BEEN EITHER QUALIFIED, AND THEY
12 POSSIBLY WERE QUALIFIED WITHOUT OUR KNOWLEDGE SINCE THERE
13 WAS MORE THAN ONE PANEL -- I THOUGHT THEY WERE KEEPING
14 EVERYBODY DOWNSTAIRS AND BRINGING ONLY SIX PEOPLE UP AND
15 PUTTING THEM IN THE GRAND JURY ROOM AND THOSE SIX PEOPLE
16 WERE ISOLATED UNTIL WE BROUGHT THEM IN HERE.

17 THE COURT: WELL, THAT WAS WHAT I HAD PLANNED,
18 BUT APPARENTLY THEY CLOSED UP THE DOWNSTAIRS ROOM AND WENT
19 HOME. BUT I HAD PLANNED FOR THEM TO SORT OF HAVE A HOLDING
20 PEN DOWN THERE. MAYBE I WASN'T CLEAR ABOUT THAT.

21 I WILL GIVE A CURATIVE -- WHEN WE GET ALL THE
22 JURY PANEL ASSEMBLED ON WEDNESDAY, IF YOU WILL COME UP WITH
23 SOME CURATIVE TYPE QUESTIONS, I WILL AND THE STATE WILL AND
24 WE CAN ENGAGE IN SOME DIALOG WITH WHAT WE HAVE AT THAT
25 POINT.

1 I KNOW THAT PRESENTS A PROBLEM BECAUSE IF ALL OF
2 A SUDDEN SIX ARE GONE AND ALL WE'VE GOT IS FORTY, WE'RE
3 DOWN TO THIRTY-FOUR. SO, WE MAY GO AHEAD AND DRAW A FEW
4 MORE THAN THE FORTY I HAD PLANNED. I THINK FORTY IS FIVE
5 MORE THAN WE PROBABLY REALLY NEED, BUT WE'LL DRAW A FEW
6 EXTRA AND THEN WE'LL QUIZ THE JURORS AT THAT TIME.

7 MR. HANCOCK: BEFORE ---

8 THE COURT: BEFORE YOU EXERCISE YOUR STRIKES, OF
9 COURSE. BUT BASED ON YOUR MOTION TO DISQUALIFY THIS
10 PARTICULAR INDIVIDUAL BASED ON WHAT HE TOLD ME THAT HE
11 OVERHEARD, I DENY THAT MOTION.

12 MR. HANCOCK: THANK YOU, YOUR HONOR.

13 MR. POPE: YOUR HONOR, I WOULD NOTE, TOO, THAT
14 YOU'VE ADDRESSED THE MEDIA ISSUES. YOU ADDRESSED THEM ON
15 THE FRONT END AND YOU'VE ADDRESSED THEM WITH EACH JUROR,
16 TOO. JUST FOR THE RECORD, EVERY JUROR WE'VE GONE THROUGH
17 THUS FAR, YOU HAVE ADDRESSED THE MEDIA ISSUES THOROUGHLY
18 WITH THEM AND ASKED THEM IF THEY COULD PUT THAT ASIDE. I
19 WOULD JUST NOTE THAT FOR THE RECORD.

20 THE COURT: ALL RIGHT, BRING THE JUROR BACK IN.
21 (THE JUROR RETURNED TO THE COURTROOM.)

22 THE COURT: MR. GOELLER, YOU WILL BE INCLUDED ON
23 THE PANEL. CALL BACK TOMORROW NIGHT AFTER 6:00. THEY WILL
24 TELL YOU WHAT TIME TO REPORT.

25 DO YOU HAVE ANY EXTENUATING CIRCUMSTANCES THAT

1 YOU ARE AWARE OF THAT WOULD PRESENT A PROBLEM?

2 THE JUROR: I DON'T THINK SO.

3 THE COURT: WHEN YOU COME BACK -- YOU WILL BE
4 TOLD TOMORROW NIGHT WHEN YOU CALL BACK WHEN TO REPORT OR
5 WHEN TO CALL AGAIN BECAUSE I DON'T KNOW HOW LONG IT WILL
6 TAKE TO GET THROUGH. IF YOU WOULD BRING WITH YOU AT THAT
7 TIME CLOTHING AND TOILETRY ITEMS AND THE LIKE.

8 AND DON'T BE DISCUSSING THE CASE WITH ANYONE.
9 YOU'VE GOT TO BASE YOUR VERDICT ON WHAT YOU HEAR IN HERE.
10 DON'T TRY TO MAKE UP YOUR MIND ABOUT ANYTHING.

11 IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU,
12 TELL THEM THAT YOU CANNOT AS YOU ARE ON THE JURY PANEL.
13 REPORT BACK TO ME IF ANYONE TRIES TO TALK TO YOU.

14 AND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS
15 COVERAGE WHATSOEVER CONCERNING THIS CASE. THANK YOU.

16 THE JUROR: YES, SIR.

17 (THE JUROR LEFT THE COURTROOM)

18 THE COURT: ALL RIGHT, DAVID YOUNG, 298.

19 DAVID YOUNG, JUROR NUMBER 298, WHITE MALE, WAS
20 QUESTIONED AS FOLLOWS:

21 QUESTIONS BY THE COURT:

22 Q. JUST COME OVER HERE AND HAVE A SEAT. MR. YOUNG,
23 AGAIN I'M JOHN HAYES AND I'M THE JUDGE PRESIDING
24 OVER THIS TRIAL.

25 I NOTICE, OF COURSE, YOU WORK FOR CLASSIC AUTO

1 REPAIR AND YOU'RE THE MANAGER. WERE YOU THE ONE
2 WHO EXPRESSED SOME CONCERN TO ME THIS MORNING
3 ABOUT YOUR JOB?

4 A. YES, SIR.

5 Q. ALL RIGHT, WHAT IS YOUR SITUATION?

6 A. I'VE GOT THREE TECHNICIANS WORKING IN THE SHOP
7 AND NO ONE THERE IS TRAINED TO RUN THE OFFICE.
8 AND I DO NOT HAVE A SERVICE RIGHT AT THIS TIME,
9 SO I AM THE ONLY ONE IN THE OFFICE THAT
10 SCHEDULES WORK, BILLS OUT REPAIR ORDERS, HANDLES
11 CUSTOMERS COMING IN, BILLING INVOICES WHEN CARS
12 ARE COMPLETED AND THINGS LIKE THAT.

13 Q. WELL, UNFORTUNATELY, I CAN'T EXCUSE YOU FOR THAT
14 BECAUSE EVERYONE HAS SOME CONFLICT WITH THEIR
15 WORK. BUT SINCE YOU DID ADDRESS THAT, I WANTED
16 TO LET YOU KNOW THAT I HADN'T FORGOTTEN ABOUT
17 IT, BUT I'M AFRAID THERE'S NOT MUCH I CAN DO TO
18 ACCOMMODATE THAT.

19 IF YOU ARE CHOSEN TO BE ON THE POOL, YOU WILL
20 HAVE AT LEAST UNTIL WEDNESDAY AND MAYBE YOU CAN
21 TRAIN SOMEBODY -- MAYBE YOU CAN FIND SOME TEMP
22 HELP TOMORROW AND GET THINGS SHAPED UP.

23 A. OKAY.

24 Q. NOW, DURING THE TRIAL OF THIS CASE IF YOU ARE ON
25 THE PANEL YOU WILL PERHAPS SEE TELEVISION

1 CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. IF
2 YOU DO, DON'T WORRY ABOUT IT; THEY ARE NOT HERE
3 TO TAKE YOUR PICTURE. IN FACT, THEY ARE NOT BY
4 LAW ALLOWED TO TAKE YOUR PICTURE OR REPORT ABOUT
5 YOU BEING INVOLVED IN THE CASE. SO, DON'T BE
6 CONCERNED ABOUT THAT.

7 NOW, YOU HANDED UP A QUESTIONNAIRE; IS IT
8 CORRECT OR DO YOU NEED TO CHANGE ANYTHING ON IT?

9 A. THE ONE WE SENT IN EARLIER?

10 Q. YES.

11 A. TO MY KNOWLEDGE EVERYTHING IS CORRECT.

12 Q. IN THE JURY ROOM WAS A LIST OF WITNESSES, DID
13 YOU REVIEW IT?

14 A. YES, SIR.

15 Q. WAS THERE ANYBODY ON THERE THAT YOU WERE RELATED
16 TO?

17 A. RELATED TO, NO, SIR.

18 Q. ANYBODY YOU KNEW?

19 A. YES, SIR.

20 Q. WHO WAS THAT?

21 A. I HAVE A LIST HERE.

22 Q. OKAY. DO YOU WANT TO READ IT REAL QUICK?

23 A. I KNOW JOE ALLEN, IF THIS IS THE ALLEN THAT
24 WORKS FOR ALLEN'S WRECKER SERVICE. HE PULLS
25 CARS FOR OUR SHOP ON OCCASION. JOHN ARANTS. I

1 KNOW A JOHNNY ARANTS; I DON'T KNOW IF THIS IS
2 THE SAME GUY OR NOT. I GREW UP WITH HIS BROTHER
3 AND HIS FAMILY. JOHNNY ARCHIE USED TO WORK AT
4 BRYANT ELECTRICAL SUPPLY. IF THAT'S THE SAME
5 JOHNNY ARCHIE, MY WIFE WORKED FOR HIM. ANN HOWE
6 USED TO DATE MY BROTHER. DR. MCMEEKIN USED TO
7 EMPLOY MY MOTHER. I GREW UP AND WENT TO SCHOOL
8 WITH RONALD DEALS AND DAVID FRYE. AND KEN
9 FIELDS IS ALSO A PERSONAL FRIEND OF MINE, I'VE
10 KNOWN HIM FOR A LONG TIME.

11 Q. THE FACT THAT THOSE PEOPLE MAY TESTIFY IN THIS
12 CASE, AND I DON'T KNOW WHAT THEY WOULD TESTIFY
13 TO, BUT THE FACT THAT THEY ARE WITNESSES, WOULD
14 THAT AFFECT YOUR ABILITY TO BE FAIR AND
15 IMPARTIAL?

16 A. I DON'T THINK SO.

17 Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE
18 YOU GOT HERE TODAY?

19 A. NO, SIR.

20 Q. HAVE YOU DISCUSSED THE CASE WITH ANYBODY SINCE
21 YOU'VE BEEN HERE TODAY?

22 A. NO, SIR.

23 Q. NOW, IN THE JURY ROOM WAS A LIST WITH THREE
24 JUROR TYPES SET FORTH ON IT. DID YOU REVIEW
25 THAT?

1 A. YES, SIR.

2 Q. DO YOU THINK YOU'RE ONE OF THOSE TYPES OF
3 JURORS?

4 A. YES, SIR.

5 Q. WHICH ONE?

6 A. PROBABLY THE THIRD JUROR.

7 Q. ALL RIGHT. IN THAT TYPE, WE'RE ADDRESSING THE
8 SECOND PHASE OF THIS TYPE TRIAL. THESE TRIALS
9 WHERE ONE IS FACING A NOTICE OF THE DEATH
10 PENALTY, THE CASE TAKES PLACE IN TWO PARTS. THE
11 FIRST PART DEALING WITH ONE'S GUILT, THE SECOND
12 DEALING WITH THE PENALTY.

13 WE'RE TALKING ABOUT THE SECOND PART, THE PENALTY
14 PART, BUT THAT'S NOT IN ANY WAY TO BE ANY
15 INDICATION THAT MR. ROBERTSON IS IN FACT GUILTY.
16 HE IS PRESUMED INNOCENT.

17 A. CORRECT.

18 Q. HE IS ENTITLED TO BE TRIED AS TO HIS GUILT, AND
19 HE MUST BE FOUND GUILTY BY A JURY BEYOND A
20 REASONABLE DOUBT UNANIMOUSLY BEFORE HE CAN BE
21 CONVICTED OF GUILT -- OF MURDER.

22 IF HE IS FOUND NOT GUILTY, OF COURSE, THE CASE
23 IS OVER. IF HE'S FOUND GUILTY, THEN WE WILL GO
24 INTO THE SECOND PHASE WHERE EVIDENCE WILL BE
25 PRESENTED REGARDING THE ASSESSMENT OR THE

1 IMPOSITION OF THE PENALTY.

2 SO YOU'RE TELLING ME THAT YOU'RE THE TYPE OF
3 JUROR WHO WHEN YOU GOT TO THAT POINT AND GUILT
4 HAD BEEN DETERMINED, YOU WOULD NOT HAVE MADE UP
5 YOUR MIND IN ADVANCE CONCERNING WHAT PUNISHMENT
6 SHOULD BE IMPOSED. IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR
9 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION --
10 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND
11 MITIGATION, LISTEN TO THE LAW AND FOLLOW IT
12 BEFORE DECIDING WHAT PUNISHMENT WOULD BE
13 APPROPRIATE. IS THAT CORRECT?

14 A. YES, SIR.

15 Q. AND WHEN I USE THE WORD AGGRAVATION AND
16 MITIGATION, AGGRAVATION I'M TALKING ABOUT
17 CIRCUMSTANCES ATTENDING THE COMMISSION OF THE
18 CRIME WHICH INCREASES ITS ENORMITY OR ADDS TO
19 ITS INJURIOUS CONSEQUENCE BUT WHICH IS ABOVE AND
20 BEYOND THE ESSENTIAL ELEMENTS OF THE PARTICULAR
21 CRIME.

22 MITIGATING CIRCUMSTANCES ARE THINGS WHICH ARE
23 NOT SUCH AS WOULD CONSTITUTE A JUSTIFICATION OR
24 AN EXCUSE FOR THE OFFENSE BUT ARE THINGS WHICH
25 IN FAIRNESS AND MERCY MAY BE CONSIDERED AS

1 EXTENUATING OR REDUCING THE DEGREE OF ONE'S
2 MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. NOW, ARE YOU TELLING ME THAT YOU ARE THE TYPE
5 PERSON THAT IN THIS SECOND PART OF THE TRIAL
6 THAT IF THE FACTS PRESENTED WARRANTED IT, YOU
7 COULD RETURN A VERDICT OF LIFE IMPRISONMENT?

8 A. YES, SIR.

9 Q. ARE YOU TELLING ME THAT YOU ARE THE TYPE JUROR
10 THAT IN THAT SECOND PART OF THE TRIAL IF THE
11 FACTS WARRANTED IT, YOU COULD RETURN A VERDICT
12 IMPOSING THE DEATH PENALTY?

13 A. I BELIEVE SO; YES, SIR.

14 Q. ALL RIGHT, I'M GOING TO LET YOU ANSWER ANY
15 QUESTIONS THAT THE ATTORNEYS MAY HAVE.

16 QUESTIONS BY MR. BOYD:

17 Q. GOOD AFTERNOON, MR. YOUNG.

18 A. GOOD AFTERNOON.

19 Q. OR EVENING NOW I GUESS. I'M JIM BOYD. I
20 REPRESENT JIMMY ROBERTSON WHO IS SEATED HERE.
21 BILL HANCOCK SEATED THERE IS MY CO-COUNSEL ON
22 THIS CASE.

23 I NEED TO ASK YOU A FEW QUESTIONS AND YOU'RE NOT
24 ON THE SPOT OR ANYTHING. THERE'S NO RIGHT OR
25 WRONG ANSWER, SO JUST TELL ME WHAT YOU FEEL.

1 THIS IS JUST TO DETERMINE WHETHER YOU SIT ON THE
2 JURY OR NOT.

3 A. OKAY.

4 Q. YOU JUST STATED THAT YOU KNEW A NUMBER OF PEOPLE
5 AND YOU LISTED THOSE PEOPLE THAT YOU KNOW THAT
6 WAS ON THE WITNESS LIST. IS THAT CORRECT?

7 A. YES, SIR.

8 Q. ARE SOME OF THESE PEOPLE THAT YOU KNOW VERY
9 WELL?

10 A. THEY ARE NOT DAILY ACQUAINTANCES. SOME I KNOW
11 BETTER THAN OTHERS, BUT THEY ARE NOT PEOPLE I'M
12 IN CONTACT WITH EVERY DAY ON A DAILY BASIS.

13 Q. WOULD THEIR BEING WITNESSES AFFECT YOUR ABILITY
14 TO FAIRLY JUDGE THIS CASE?

15 A. I DON'T THINK SO; NO, SIR.

16 Q. I MEAN DO YOU KNOW THEM TO THE EXTENT THAT IF
17 THEY WERE ON THE WITNESS STAND AND SAID ONE
18 THING AND SOMEBODY ELSE SAID ANOTHER THING, YOU
19 WOULD BE MORE INCLINED TO BELIEVE THEM BECAUSE
20 YOU KNOW THEM?

21 A. SOME OF THEM POSSIBLY.

22 Q. SO, THERE IS A POSSIBILITY THAT YOUR KNOWLEDGE
23 OF THEM COULD AFFECT YOUR JUDGING THE
24 CREDIBILITY OF WITNESSES; IS THAT CORRECT?

25 A. YES, SIR, I GUESS SOMEWHAT.

1 Q. OKAY. NOW, YOU HAD STATED THAT YOU WERE IN
2 CATEGORY THREE CONCERNING THE DEATH PENALTY.
3 YOU UNDERSTAND THIS TRIAL IS A TRIAL IN WHICH
4 FIRST THERE IS A PHASE OF WHETHER OR NOT JIMMY
5 ROBERTSON WILL BE FOUND GUILTY OR NOT GUILTY.

6 A. YES, SIR.

7 Q. AND YOU'RE HEARING THE EVIDENCE ON THAT AND, OF
8 COURSE, IF HE'S FOUND NOT GUILTY, THAT'S THE END
9 OF IT. IF HE IS FOUND GUILTY, IT GOES INTO A
10 SENTENCING PHASE. AND THERE YOU WOULD HEAR
11 EVIDENCE ON WHETHER OR NOT HE SHOULD RECEIVE THE
12 DEATH PENALTY OR LIFE IMPRISONMENT.
13 AND I WANT YOU TO ASSUME, EVEN THOUGH AT THAT
14 POINT HE HAD BEEN CONVICTED ALREADY OF MURDERING
15 BOTH OF HIS PARENTS, COULD YOU STILL CONSIDER A
16 LIFE SENTENCE UNDER THOSE CIRCUMSTANCES?

17 A. YES, SIR.

18 Q. SO, JUST BECAUSE HE WAS CONVICTED OF KILLING
19 BOTH OF HIS PARENTS, YOU WOULDN'T AUTOMATICALLY
20 GIVE HIM THE DEATH PENALTY?

21 A. NO, SIR.

22 Q. YOU COULD LISTEN TO OTHER EVIDENCE ON WHAT THE
23 SENTENCE SHOULD BE?

24 A. YES, SIR.

25 Q. AND THE AGGRAVATING CIRCUMSTANCES YOU HEAR, YOU

1 COULD WEIGH THEM AND YOU WOULD ALSO BE WILLING
2 TO LISTEN AND CONSIDER THE MITIGATING
3 CIRCUMSTANCES THAT WOULD BE INTRODUCED. IS THAT
4 CORRECT?

5 A. YES, SIR.

6 Q. AND YOU COULD CONSIDER THESE MITIGATING
7 CIRCUMSTANCES EVEN THOUGH HE HAD ALREADY BEEN
8 FOUND GUILTY OF KILLING BOTH OF HIS PARENTS?

9 A. YES, SIR.

10 Q. AND YOU UNDERSTAND THAT AT THAT POINT IT'S NO
11 QUESTION OF SELF-DEFENSE OR ACCIDENT OR ANYTHING
12 LIKE THAT. AT THAT POINT HE WOULD HAVE BEEN
13 CONVICTED OF THE DELIBERATE ACT OF MURDERING HIS
14 PARENTS.

15 A. YES, SIR.

16 Q. OKAY. NOW, THE -- WHEN YOU WERE IN THE JURY
17 ROOM -- YOU'VE BEEN SEQUESTERED IN A JURY ROOM,
18 I ASSUME, BEFORE YOU CAME IN HERE; IS THAT
19 CORRECT?

20 A. YES, SIR.

21 Q. HAS THERE BEEN ANY -- HAVE YOU HEARD ANYTHING,
22 TALK ABOUT THIS CASE WHILE YOU WERE IN THE JURY
23 ROOM?

24 A. VERY LITTLE. I MEAN A COUPLE OF QUESTIONS WERE
25 ASKED BUT I DID NOT OFFER ANY INPUT ONE WAY OR

1 THE OTHER.

2 Q. YOU DIDN'T SAY ANYTHING.

3 A. NO, SIR.

4 Q. BUT WHAT KIND OF QUESTIONS WERE ASKED?

5 A. ONE GUY JUST ASKED WAS IT A MAN AND A WOMAN THAT
6 WAS KILLED, AND ANOTHER GUY ANSWERED THAT YES,
7 IT WAS. AND ONE GUY ASKED WHERE THE CHARGE OF -
8 - THE ROBBERY CHARGE CAME INTO EFFECT. AND THE
9 OTHER GUY SAID THEY DID NOT KNOW, DIDN'T KNOW IF
10 THAT WAS ONE CONTINUING ACT OF VIOLENCE OR IF
11 THAT WAS WHEN HE OR WHOEVER FLED TO A DIFFERENT
12 STATE. AND THAT'S ALL THAT WAS SAID.

13 Q. OKAY. WAS THERE ANY OPINION GIVEN ABOUT WHETHER
14 OR NOT JIMMY ROBERTSON DID THIS?

15 A. NO, SIR.

16 Q. HOW MANY PEOPLE WERE IN THE ROOM WHEN THIS WAS
17 DISCUSSED?

18 A. PROBABLY ABOUT NINE, EIGHT OR NINE, SOMEWHERE
19 ALONG IN THERE. I'M NOT SURE EXACTLY.

20 Q. OF COURSE IF YOU ARE SELECTED AS A JUROR IN THIS
21 CASE, YOU UNDERSTAND THAT OTHER PEOPLE MAY HAVE
22 A DIFFERING OPINION WHEN YOU GET BACK THERE IN
23 THE JURY ROOM THAN YOU; YOU UNDERSTAND THAT.

24 A. YES, SIR.

25 Q. AND YOU UNDERSTAND THAT YOU'RE ENTITLED TO HAVE

1 YOUR OPINION RESPECTED BY THE OTHER JURORS?

2 A. YES, SIR.

3 Q. AND LIKEWISE, YOU SHOULD RESPECT THE OPINIONS OF
4 THE OTHER PEOPLE WHO DISAGREE WITH YOU. YOU
5 UNDERSTAND THAT, DON'T YOU?

6 A. YES, SIR.

7 Q. AND YOU WOULDN'T CHANGE YOUR MIND JUST TO BE IN
8 THE MAJORITY OR JUST BECAUSE SOMEONE ELSE IS
9 PRESSURING YOU; IS THAT CORRECT?

10 A. NO, SIR.

11 Q. AND LET ME ASK YOU THIS. YOU MENTIONED YOUR
12 WORK PROBLEM, THAT YOU'VE GOT A PROBLEM AT WORK
13 AS FAR AS BEING AWAY FROM WORK FOR THAT LENGTH
14 OF TIME.

15 A. YES, SIR.

16 Q. DO YOU THINK THAT WOULD AFFECT YOUR ABILITY TO
17 JUDGE THIS CASE AND THAT YOU WOULD BE ANXIOUS TO
18 GET IT OVER WITH AND GET BACK TO WORK AND MAYBE
19 WANT TO REACH A QUICK VERDICT?

20 A. NO, SIR.

21 Q. YOU DON'T THINK THAT WOULD AFFECT YOU AT ALL?

22 A. NO, SIR. NOT WHEN SOMEONE'S LIFE IS IN THE
23 BALANCE.

24 Q. YOU THINK THAT'S PRETTY IMPORTANT?

25 A. YES, SIR.

1 Q. THANK YOU.

2 QUESTIONS BY MR. BRACKETT:

3 Q. GOOD EVENING, MR. YOUNG.

4 A. GOOD EVENING.

5 Q. MY NAME IS KEVIN BRACKETT. I'M THE DEPUTY
6 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. I WORK
7 FOR THIS GENTLEMAN OVER HERE, TOMMY POPE WHO IS
8 THE SOLICITOR, AND HE AND I ARE PROSECUTING MR.
9 ROBERTSON FOR THE CHARGES THAT HE IS IN COURT
10 HERE WITH TODAY.

11 I KNOW YOU'VE BEEN OVER BACK AND FORTH ABOUT THE
12 MITIGATING AND AGGRAVATING CIRCUMSTANCES AND YOU
13 COULD BE FAIR.

14 BASICALLY IN A GUILT PHASE YOU WOULD LISTEN TO
15 THE EVIDENCE THAT WAS PRESENTED FROM THIS
16 WITNESS STAND AND MAKE YOUR DECISION AS TO
17 WHETHER OR NOT HE IS GUILTY OF THE MURDERS FROM
18 THAT EVIDENCE. IS THAT RIGHT?

19 A. YES, SIR.

20 Q. YOU DON'T KNOW ANYTHING ABOUT THIS CASE THAT YOU
21 KNOW OF YOUR OWN PERSONAL KNOWLEDGE, RIGHT?

22 A. NO, SIR.

23 Q. AND YOU UNDERSTAND THE IMPORTANCE OF THE JUSTICE
24 SYSTEM AND THE IMPORTANCE THAT THE JURORS WHO
25 SERVE AND SIT IN THIS BOX OVER HERE TO

1 DELIBERATE ON HIS GUILT OR INNOCENCE AND THEN
2 ULTIMATELY ON HIS FATE, YOU UNDERSTAND HOW
3 IMPORTANT IT IS THAT THEY BE FAIR AND IMPARTIAL?

4 A. YES, SIR.

5 Q. IT WOULDN'T BE FAIR TO PUT ALL THE VICTIM'S
6 FRIENDS IN THERE AND LET THEM DECIDE WHAT SHOULD
7 HAPPEN TO HIM, NOR WOULD IT BE FAIR TO PUT ALL
8 HIS FRIENDS IN THERE AND DECIDE. WE NEED PEOPLE
9 WHO DON'T KNOW ANYTHING ABOUT THE CASE. PEOPLE
10 WHO CAN BE FAIR AND HEAR THE EVIDENCE AND MAKE
11 THE DECISION BASED ON THAT EVIDENCE.

12 TO THAT END MR. BOYD ASKED YOU A QUESTION ABOUT
13 YOU KNOWING SOME OF THE POTENTIAL WITNESSES IN
14 THIS CASE.

15 A. YES, SIR.

16 Q. AND HE SAID IF ONE WITNESS AND THEN ANOTHER
17 WITNESS TESTIFIED TO SOMETHING DIFFERENT, THERE
18 WERE CONFLICTING TESTIMONIES, WOULD YOU BELIEVE
19 YOUR FRIEND OVER THE OTHER PERSON. DO YOU THINK
20 YOU COULD PUT THAT FRIENDSHIP ASIDE KNOWING THE
21 IMPORTANCE THAT IT IS IN HAVING A FAIR AND
22 IMPARTIAL JURY. COULD YOU PUT THAT FRIENDSHIP
23 ASIDE AND BASE THE EVIDENCE, BASE YOUR DECISION
24 ABOUT THAT TESTIMONY ON WHAT YOU THOUGHT WAS
25 BELIEVABLE AND CREDIBLE?

1 A. YES.

2 Q. COULD YOU PUT THE FRIENDSHIP ASIDE, IN OTHER
3 WORDS, AND MAKE A FAIR DECISION?

4 A. I BELIEVE SO; YES, SIR.

5 Q. LIKEWISE HE ASKED YOU SOME QUESTIONS ABOUT SOME
6 THINGS THAT MAY HAVE BEEN BANDIED BACK AND FORTH
7 IN THE JURY ROOM OVER HERE. YOU UNDERSTAND THAT
8 ANYTHING YOU HEAR OUTSIDE OF THIS COURTROOM, YOU
9 DON'T EVEN KNOW IF IT'S RELIABLE.

10 A. RIGHT.

11 Q. I MEAN SOMETHING MAY BE WRONG; PEOPLE DON'T KNOW
12 WHAT'S GOING ON. THIS COURTROOM IS WHERE THIS
13 ISSUE IS GOING TO BE RESOLVED BASED ON THE
14 EVIDENCE THAT THIS JUDGE RIGHT HERE ALLOWS THAT
15 JURY TO HEAR; THE EVIDENCE THAT THAT JURY IS
16 ALLOWED TO HEAR THAT'S PROPER UNDER THE LAW.
17 NOT ANY RUMOR, HEARSAY OR SPECULATION. YOU
18 UNDERSTAND HOW IMPORTANT IT IS TO PUT ALL OF
19 THAT OUT OF YOUR HEAD AND COME IN HERE AND
20 LISTEN TO ONLY THAT EVIDENCE THAT COMES FROM THE
21 WITNESS STAND YOU'RE SITTING IN AND THE PHYSICAL
22 EVIDENCE THAT THE STATE MAY PUT IN?

23 A. YES, SIR.

24 Q. OKAY. IF YOU'RE SERVING ON THE JURY AND THEY
25 FIND MR. ROBERTSON GUILTY, WE GO TO THE SECOND

1 PART OF THE TRIAL. THAT'S WHERE WE DECIDE WHAT
2 THE PENALTY SHOULD BE.

3 IF YOU'RE SITTING ON THAT JURY, YOU COULD LISTEN
4 TO THE AGGRAVATING CIRCUMSTANCES; THAT IS, THE
5 EVIDENCE THAT WE PUT IN THAT'S BAD ABOUT THIS
6 CRIME, THINGS THAT MAKE IT WORSE THAN JUST A
7 REGULAR MURDER. AND IF THE DEFENSE CHOOSES TO,
8 THEY DON'T HAVE TO PUT ANYTHING UP, THEY DON'T
9 HAVE TO SAY A WORD IN THIS CASE, BUT IF THEY
10 CHOOSE TO THEY CAN PUT UP WHAT'S CALLED
11 MITIGATING EVIDENCE WHICH KIND OF LESSENS THE
12 SEVERITY OF THE CRIME OR LESSENS THE DEFENDANT'S
13 RESPONSIBILITY TO SOME EXTENT.

14 IF THEY CHOOSE TO PUT THAT KIND OF EVIDENCE UP,
15 WOULD YOU CONSIDER THAT EVIDENCE AS WELL?

16 A. YES, SIR.

17 Q. OKAY. AS WELL AS THE STATE'S EVIDENCE?

18 A. YES, SIR.

19 Q. AND COULD YOU LISTEN TO ALL OF THAT EVIDENCE,
20 KIND OF TAKE IT ALL IN AND THEN COME TO SORT OF
21 A GUT, WHAT YOU THOUGHT WAS FAIR AND WHAT YOU
22 THOUGHT WAS RIGHT BASED ON THE LAW THAT THE
23 JUDGE TELLS YOU?

24 A. I BELIEVE I COULD, SIR.

25 Q. AND IF YOU THOUGHT IT SHOULD BE LIFE, YOU COULD

1 VOTE LIFE?

2 A. YES, SIR.

3 Q. AND IF YOU THOUGHT IT SHOULD BE DEATH, YOU COULD
4 VOTE DEATH?

5 A. YES, SIR.

6 Q. AND IF IT CAME DOWN TO A VOTE OF DEATH AND YOU
7 WERE REQUIRED TO SIGN YOUR NAME ON A PIECE OF
8 PAPER ATTESTING THAT THAT WAS IN FACT DAVID
9 YOUNG'S VERDICT IN THIS CASE, YOU COULD TAKE A
10 PEN AND WRITE DAVID YOUNG ON A SENTENCING SHEET
11 ATTESTING THAT YOU THOUGHT THE VERDICT SHOULD BE
12 DEATH?

13 A. YES, SIR.

14 Q. ALL RIGHT; THANK YOU VERY MUCH, MR. YOUNG.

15 THE COURT: YOU CAN STEP OUT IN THE HALL JUST FOR
16 A MINUTE.

17 (THE JUROR LEFT THE COURTROOM.)

18 THE COURT: WHAT SAYS THE DEFENSE AS TO DEATH
19 PENALTY QUALIFIED?

20 MR. BOYD: I BELIEVE HE IS DEATH PENALTY
21 QUALIFIED.

22 THE COURT: WHAT SAYS THE STATE?

23 MR. BRACKETT: WE SUBMIT THAT HE IS QUALIFIED.

24 THE COURT: I FIND THAT HE IS DEATH PENALTY
25 QUALIFIED. WHAT ELSE, MR. BOYD?

1 MR. BOYD: YOUR HONOR, WE MOVE TO DISQUALIFY HIM
2 ON TWO GROUNDS. ONE OF THEM IS THAT HE TESTIFIED THAT HIS
3 JUDGING THE CREDIBILITY OF THE WITNESSES WOULD BE AFFECTED
4 BY HIS KNOWING THE WITNESSES. HE WOULD GIVE SOMEBODY HE
5 KNEW AS BEING MORE CREDIBLE POSSIBLY THAN OTHERS.

6 AND MR. BRACKETT ASKED HIM COULD HE JUDGE ALL THE
7 FACTS AND HE SAID YES, BUT STILL THE FACT REMAINS IN
8 JUDGING THE WITNESS' TESTIMONY, HE'S GOING TO BELIEVE THE
9 PERSON THAT HE KNOWS UNLESS THERE IS JUST SOMETHING
10 UNBELIEVABLE ABOUT HIM OR SOMETHING THAT MAKES HIM BELIEVE
11 OTHERWISE.

12 I MEAN HE'S ALREADY GOTTEN THE MINDSET THAT THAT
13 PERSON IS TELLING THE TRUTH. UNDER THOSE CIRCUMSTANCES HE
14 CANNOT FAIRLY JUDGE THIS CASE.

15 I ALSO MOVE TO DISQUALIFY HIM FOR THE SAME REASON
16 AS THE LAST JUROR, THAT HE'S BEEN PRESENT IN THE JURY ROOM
17 WHERE DISCUSSIONS OF THIS CASE HAVE BEEN MADE CONTRARY TO
18 THE COURT'S INSTRUCTIONS.

19 THE COURT: WELL, I FIND THAT THE DISCUSSIONS ARE
20 CONTRARY TO WHAT I THOUGHT I RECALLED INSTRUCTING. I
21 ALWAYS DO, AND IF I NEGLECTED TO DO IT, I WOULD BE
22 SURPRISED. BUT ON THAT ASPECT, HE SAID THAT HE COULD BE
23 FAIR AND IMPARTIAL. AND, AGAIN, I DON'T THINK THE
24 MAGNITUDE OF WHAT WAS DISCUSSED IS SUCH THAT THERE WOULD BE
25 ANY REAL PREJUDICE, PARTICULARLY SINCE HE SAID THAT HE

1 COULD BE FAIR AND IMPARTIAL.

2 WHAT ABOUT THIS THING ABOUT THE WITNESSES?

3 MR. BRACKETT: YES, SIR, YOUR HONOR. I WAS TRYING
4 VERY HARD TO ASK DIRECT QUESTIONS, NOT LEADING, BECAUSE I
5 WANTED TO GIVE HIM THE OPPORTUNITY, BUT I DID EXPRESS TO
6 HIM THE IMPORTANCE OF HAVING AN UNBIASED JURY. AND I THINK
7 I DID THAT ADEQUATELY BY SAYING YOU CAN'T HAVE THE VICTIMS'
8 FRIENDS AND FAMILY DECIDING AND YOU CAN'T HAVE ALL THE
9 DEFENDANT'S FRIENDS DECIDING, IT HAS TO BE SOMEBODY WHO CAN
10 COME IN HERE AND LISTEN TO THE EVIDENCE. AND I THINK HE
11 UNDERSTOOD THAT BY ANSWERING THE QUESTION.

12 AND THEN I FURTHER WENT ON TO SAY COULD YOU GIVE
13 HIM THAT FAIR HEARING; WOULD YOU PUT ASIDE YOUR
14 FRIENDSHIPS; WOULD YOU PUT ASIDE THAT ASPECT OF YOUR
15 FRIENDSHIPS AND MAKE THE DECISION BASED ON WHO YOU THOUGHT
16 WAS TELLING THE TRUTH. AND HE SAID YES, I COULD.

17 I THINK THAT'S ALL THAT WE COULD EVER ASK FROM
18 ANY JURY. IT'S IMPOSSIBLE, ESPECIALLY IN SMALLER COUNTIES,
19 TO FIND, YOU KNOW, IN A CASE OF THIS SIZE WITH AS MANY
20 WITNESSES THAT WE HAVE, TO FIND PEOPLE WHO DON'T KNOW OTHER
21 PEOPLE. ALL WE CAN DO IS ASK THEM CAN YOU PUT IT OUT OF
22 YOUR MIND.

23 OF COURSE IT'S GOING TO BE IN THERE FOR
24 EVERYBODY; BUT THE QUESTION IS, CAN THEY PUT IT OUT OF
25 THEIR MIND. AND HE SAID THAT HE COULD.

1 THE COURT: WHO DID HE SAY WERE THE WITNESSES
2 WITH WHOM HE HAD KNOWLEDGE AND TO WHAT ISSUE ARE THEY GOING
3 TO TESTIFY?

4 MR. POPE: YOU HONOR, I HAVE FIVE THAT I HAD
5 WRITTEN DOWN. ONE WAS THE WRECKER DRIVER THAT TOWED MOON'S
6 CAR. WE WON'T BE CALLING HIM. ONE WAS JOHNNY ARCHIE WHO
7 LIVES ACROSS THE STREET; WE WON'T BE CALLING HIM. ONE WAS
8 RON DEALS, BASED ON WHAT WE KNOW NOW, WE WOULDN'T BE
9 CALLING HIM. ONE WAS DAVID FRYE; BASED ON WHAT I HAVE,
10 AGAIN, WE WOULD NOT BE CALLING HIM.

11 AS I INDICATED TO THE COURT ON OUR WITNESS LIST
12 WE LISTED ANYBODY THAT WAS INVOLVED, ANY INTERVIEW, ANY
13 ANYTHING.

14 THE OTHER WAS DR. MCMEEKIN, AND I THINK ON THAT
15 ONE HE SAID THAT HIS WIFE OR HIS MOTHER WORKED FOR HIM AT
16 SOME POINT.

17 MR. BRACKETT: HE DID ALSO HAVE KEN FIELDS WHO
18 WILL BE A WITNESS IN THE PENALTY PHASE TO THE DEFENDANT'S
19 1996 CONVICTION FOR BURGLARY. HE WAS BASICALLY ONLY
20 INVOLVED IN THE APPREHENSION OF MR. ROBERTSON AFTER HE HAD
21 COMMITTED THE BURGLARY. BUT THE BOTTOM LINE IS MR.
22 ROBERTSON WAS CONVICTED AND STANDS CONVICTED OF THAT. WHAT
23 HE IS GOING TO SAY ISN'T REALLY CONTROVERTED, I DON'T
24 BELIEVE, BY ANYBODY.

25 BASICALLY MR. ROBERTSON HAD USED THE CREDIT CARD

1 HE HAD STOLEN FROM HIS NEIGHBOR'S HOUSE TO PURCHASE A BUNCH
2 OF CIGARETTES, CARTONS OF CIGARETTES AT ANOTHER LOCATION,
3 TOOK THEM TO A ZIPPY MART OVER ON 72 BY-PASS AND WAS
4 ATTEMPTING TO SELL THEM THERE OR PRETENDING LIKE HE WAS
5 RETURNING THEM. THEY THOUGHT SOMETHING WAS FUNNY WHEN A
6 GUY COMES IN WITH A BOX OF CARTONS OF CIGARETTES. THEY
7 CALLED THE POLICE; HE WAS APPREHENDED, GAVE A FAKE NAME,
8 DIDN'T HAVE A DRIVER'S LICENSE. THE CAR TAG CAME BACK TO
9 SOMEBODY ELSE, SO THEY HELD HIM UNTIL THEY FIGURED OUT HE
10 WASN'T WHO HE CLAIMED TO BE. AND THEY ARRESTED HIM FOR THE
11 BURGLARY.

12 THE COURT: DEALS IS GOING TO TESTIFY TO ALL OF
13 THAT?

14 MR. BRACKETT: NO, SIR, KEN FIELDS.

15 THE COURT: FIELDS IS GOING TO TESTIFY TO ALL OF
16 THAT?

17 MR. BRACKETT: NO, SIR. THAT'S JUST THE GENERAL
18 FACTS ---

19 THE COURT: WELL, TELL ME WHAT FIELDS IS GOING TO
20 TESTIFY?

21 MR. BRACKETT: FIELDS IS GOING TO TESTIFY THAT HE
22 RESPONDED TO A CALL AT ZIPPY MART WHERE SOMEBODY WAS TRYING
23 TO SELL A BUNCH OF CARTONS OF CIGARETTES. HE STOPPED THE
24 DEFENDANT THERE AND HELD HIM UNTIL RODNEY PICKEL WHO IS HIS
25 SUPERVISOR CAME ON THE SCENE AND TOOK CONTROL OF THE

1 SITUATION.

2 MR. BOYD: YOUR HONOR, I'VE WRITTEN DOWN TWO
3 OTHER PEOPLE. JOHN ARANT AND ANN HOWE ALSO.

4 MR. BRACKETT: THEY ARE NOT IN THE PENALTY PHASE.
5 I DON'T BELIEVE THEY ARE IN THE GUILT PHASE EITHER.

6 THE COURT: ANN HOWE FROM THE STAGE BRUSH STEAK
7 HOUSE AND SALOON, KEEPER OF RECORDS.

8 MR. BRACKETT: SHE MIGHT TESTIFY THAT HE WAS
9 EMPLOYED THERE FROM ONE PERIOD OF TIME TO ANOTHER.

10 THE COURT: WHAT WAS THE OTHER?

11 MR. BOYD: JOHN ARANT?

12 MR. BRACKETT: HE'S A PHARMACIST AT CVS PHARMACY.
13 HE WOULD TESTIFY THAT CERTAIN PRESCRIPTIONS WERE MADE TO
14 THE DEFENDANT OR THE DEFENDANT'S BROTHER BASED ON THEIR
15 RECORDS; AGAIN, ANOTHER RECORDS WITNESS.

16 MR. BOYD: WHAT ABOUT DR. MCMEEKIN?

17 MR. BRACKETT: IF HE WERE CALLED TO TESTIFY, IT
18 WOULD BE IN REPLY POSSIBLY.

19 MR. BOYD: HE STILL WOULD BE A WITNESS.

20 THE COURT: WHAT IS DR. MCMEEKIN GOING TO TESTIFY
21 TO?

22 MR. BOYD: HE TREATED MY CLIENT AT ONE TIME, MY
23 CLIENT'S MOTHER ALSO, THE WHOLE FAMILY. HE IS POTENTIALLY
24 A WITNESS WHO WOULD BE VERY CONTESTED.

25 MR. BRACKETT: THAT'S A PRETTY TENUOUS CONNECTION

1 BETWEEN THIS JUROR AND THAT WITNESS. DIDN'T HE SAY HIS
2 MOTHER MIGHT HAVE WORKED FOR HIM?

3 THE COURT: HIS WIFE.

4 MR. BRACKETT: WIFE?

5 THE COURT: YOU'VE GOT A WIFE, DON'T YOU?

6 MR. BRACKETT: YES, SIR.

7 THE COURT: IT'S NOT VERY TENUOUS IS IT?

8 MR. BRACKETT: NO, SIR. I THOUGHT HE SAID
9 MOTHER.

10 MR. POPE: HIS MOTHER WORKED FOR MCMEEKIN, YOUR
11 HONOR; HIS WIFE WORKED FOR JOHNNY ARCHIE OR WITH JOHNNY
12 ARCHIE. YOUR HONOR, HE NAMED A NUMBER OF NAMES AND THEN HE
13 SAID SOME WERE FRIENDS AND I THINK TO MR. BOYD'S QUESTION
14 HE SAID SOME OF THEM WERE, BUT TO MR. BRACKETT HE SAID THAT
15 HE COULD SET THAT ASIDE.

16 I WOULD ASK THE COURT TO DIRECT A VOIR DIRE TO
17 HIM ABOUT THE WITNESSES TO ASCERTAIN WHICH ONES HE'S GOING
18 TO HAVE A PROBLEM WITH OR IF HE STILL HAS A PROBLEM WITH
19 ANY, AND MAKE THE DECISION THEN.

20 THE COURT: ALL RIGHT, BRING HIM BACK IN.

21 (THE JUROR RETURNED TO THE COURTROOM)

22 QUESTIONS BY THE COURT:

23 Q. YOU CAN JUST STAND RIGHT THERE. I JUST WANTED TO
24 FOLLOW UP. YOU HAD INDICATED AT ONE POINT THAT
25 YOU MIGHT TEND TO BELIEVE SOME WITNESSES BECAUSE

1 YOU KNEW THEM AS OPPOSED TO OTHER WITNESSES.
2 AND THEN YOU LATER SAID THAT YOU WOULD BASE YOUR
3 VERDICT ON THE FACTS.

4 SO, YOU GOT ME A LITTLE CONFUSED BECAUSE ARE
5 THERE SOME WITNESSES THAT YOU HAVE SUCH HIGH
6 REGARD FOR AND HAVE SUCH TRUST IN THEIR
7 CREDIBILITY THAT YOU WOULD BELIEVE THEM IN SPITE
8 OF TESTIMONY FROM SOMEONE ELSE OTHERWISE?

9 A. THERE ARE SOME WITNESSES ON THERE THAT I HAVE A
10 LOT OF RESPECT FOR. OTHER WITNESSES, I JUST
11 DON'T KNOW THAT WELL.

12 Q. NAME THE ONES THAT YOU WOULD FEEL THAT WAY
13 ABOUT.

14 A. I HAVE A LOT OF RESPECT FOR RONALD DEALS, DAVID
15 FRYE AND KEN FIELDS. THE OTHER WITNESSES I
16 CANNOT SAY ONE WAY OR THE OTHER AS FAR AS I JUST
17 DON'T KNOW THEM THAT WELL.

18 Q. I'M GOING TO LET YOU STEP OUTSIDE AGAIN FOR JUST
19 ONE MINUTE.

20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: TELL ME ABOUT THOSE THREE AGAIN?

22 MR. POPE: RONNIE DEALS WOULD NOT BE CALLED, YOUR
23 HONOR, BASED ON WHAT'S IN THE CASE NOW.

24 THE COURT: WHO WAS THE OTHER ONE?

25 MR. BRACKETT: KEN FIELDS WAS THE ONE WHO

1 RESPONDED TO THE ZIPPY MART AND HELD HIM UNTIL RODNEY
2 PICKEL GOT THERE AND SORTED OUT WHO HE WAS. HE WAS
3 CLAIMING TO BE SOMEBODY ELSE AT THE TIME WITH KEN FIELDS.

4 THE COURT: WELL, IS KEN FIELDS GOING TO TESTIFY
5 THAT HE GAVE HIM A FALSE IDENTITY?

6 MR. BRACKETT: I CAN'T RECALL OFF THE TOP OF MY
7 HEAD WHETHER OR NOT HE TOLD HIM THAT OR RODNEY PICKEL. I
8 DON'T THINK HE TOLD KEN FIELDS ANYTHING; I THINK HE
9 WOULDN'T TELL HIM WHO HE WAS.

10 THE COURT: HOW WOULD THAT PREJUDICE YOUR CLIENT,
11 MR. BOYD? I MEAN IF HE ULTIMATELY PLED GUILTY TO IT OR WAS
12 FOUND GUILTY TO THE EVENT.

13 MR. BOYD: WELL, IF THAT'S THE CASE, WHY DON'T
14 THEY JUST PUT IN THE RECORD.

15 THE COURT: WELL, I AGREE; I'VE GOT SOME CONCERN
16 ABOUT THAT, TOO.

17 MR. BOYD: IT SOUNDS LIKE THEY ARE TRYING TO GET
18 IN ANOTHER BAD ACT OF GIVING FALSE INFORMATION TO THE
19 OFFICER.

20 THE COURT: ALL RIGHT. IF THE STATE INTENDS TO
21 CALL OFFICER FIELDS, I'M GOING TO DISMISS MR. YOUNG.

22 MR. BRACKETT: THAT'S FINE, YOUR HONOR.

23 THE COURT: ALL RIGHT, BRING HIM BACK IN.

24 (THE JUROR RETURNED TO THE COURTROOM.)

25 THE COURT: MR. YOUNG, WE ARE GOING TO EXCUSE YOU

1 FROM SERVING ON THIS JURY. WE APPRECIATE YOUR CANDOR;
2 THANK YOU AN AWFUL LOT.

3 THE JUROR: THANK YOU, SIR.

4 (THE JUROR LEFT THE COURTROOM.)

5 THE COURT: ALL RIGHT, BRING IN MR. HAMRICK.

6 JOHN HAMRICK, JUROR NUMBER 106, WHITE MALE, WAS
7 QUESTIONED AS FOLLOWS:

8 Q. I'LL REMIND YOU THAT YOU'RE STILL UNDER OATH,
9 OKAY?

10 A. YES, SIR.

11 Q. AND I'M JOHN HAYES. NOW, FIRST, YOU'VE BEEN
12 BACK IN THE HOLDING AREA FOR A WHILE, HAVEN'T
13 YOU?

14 A. YES, SIR.

15 Q. WERE YOU INVOLVED IN ANY KIND OF DISCUSSIONS
16 ABOUT THE CASE BACK THERE?

17 A. NO, SIR, NOT REALLY.

18 Q. NOT REALLY; WHAT WAS SAID AND BY WHOM?

19 A. SOMEBODY ASKED WHO WAS IT -- WAS IT A COUPLE;
20 WAS IT A MAN AND A WOMAN.

21 Q. AND WHAT WAS THE ANSWER?

22 A. YES.

23 Q. WELL, THAT WAS ON THE INDICTMENTS THIS MORNING.
24 THAT WAS ALL YOU RECALL?

25 A. YES, SIR.

1 Q. IF YOU ARE CHOSEN TO SIT ON THIS TRIAL, YOU MAY
2 ON OCCASION SEE PHOTOGRAPHERS OR CAMERAS IN THE
3 COURTROOM. THEY WON'T BE TAKING YOUR PICTURE;
4 THEY AREN'T ALLOWED TO. I JUST WANTED TO LET
5 YOU KNOW THAT.

6 A. OKAY.

7 Q. NOW, YOU HANDED UP A QUESTIONNAIRE, IS IT
8 ACCURATE OR DO YOU NEED TO MAKE ANY CHANGES TO
9 THE QUESTIONNAIRE?

10 A. NO, IT'S SUPPOSED TO BE ACCURATE.

11 Q. DID YOU REVIEW THE LIST OF WITNESSES THAT WERE
12 BACK THERE?

13 A. YES, SIR. I'VE GOT ONE QUESTION ON THAT.

14 Q. ALL RIGHT.

15 A. WHO DO I ASK, YOU?

16 Q. YES.

17 A. IS THAT SUPPOSED TO BE CHUCK KOONTZ OR AM I
18 READING THAT WRONG?

19 Q. CHUCK COUNTS.

20 A. OKAY.

21 Q. IS THAT CORRECT?

22 MR. POPE: YES, SIR, YOUR HONOR.

23 Q. DO YOU KNOW ANYBODY ON THERE?

24 A. NO, SIR, I DON'T RECKON.

25 Q. ARE YOU RELATED TO ANYBODY?

1 A. I DON'T RECKON.

2 Q. OKAY. HAVE YOU HEARD ANYTHING BEFORE YOU CAME
3 HERE TODAY ABOUT THIS CASE?

4 A. NO, JUST WHAT WAS IN THE PAPER.

5 Q. WOULD THE FACT THAT YOU READ SOMETHING IN THE
6 PAPER ABOUT THIS CASE, WOULD THAT AFFECT YOUR
7 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF
8 THIS CASE?

9 A. WELL, I DOUBT IT; I MEAN, YOU KNOW, YOU'VE GOT
10 TO HEAR BOTH SIDES OF IT.

11 Q. WELL, COULD YOU PUT ASIDE -- YOU HAVE TO BASE
12 YOUR VERDICT, IF YOU'RE ON THE JURY, YOU HAVE TO
13 BASE YOUR VERDICT SOLELY ON THE LAW AND THE
14 EVIDENCE THAT'S DEVELOPED IN THE TRIAL. YOU
15 CAN'T EVEN TAKE INTO CONSIDERATION ANYTHING THAT
16 YOU MAY HAVE HEARD BEFORE YOU GOT HERE OR
17 ANYTHING YOU HEAR OUTSIDE THE COURTROOM. COULD
18 YOU DO THAT?

19 A. YES, SIR.

20 Q. ALL RIGHT. COULD YOU, IN SPITE OF THE FACT THAT
21 YOU READ SOMETHING IN THE PAPER ABOUT THE CASE,
22 COULD YOU IN SPITE OF THAT BE FAIR AND IMPARTIAL
23 TO THE STATE AND TO MR. ROBERTSON IN THE TRIAL
24 OF THIS CASE?

25 A. YES, SIR.

1 Q. COULD YOU BASE YOUR VERDICT SOLELY ON THE LAW
2 AND THE EVIDENCE THAT'S DEVELOPED IN THE TRIAL?

3 A. YES, SIR.

4 Q. ALL RIGHT. THIS CASE WOULD PROCEED IN TWO
5 PARTS, ONE PART DEALING WITH THE GUILT OF MR.
6 ROBERTSON. HE'S PRESUMED INNOCENT OF THE CHARGE
7 AGAINST HIM, THE CHARGES. AND UNTIL A JURY WERE
8 CONVINCED BEYOND A REASONABLE DOUBT OF HIS
9 GUILT, HE WOULD BE PRESUMED INNOCENT.

10 IF THE JURY WERE TO FIND MR. ROBERTSON NOT
11 GUILTY, THE CASE WOULD BE OVER. IF THEY FIND
12 HIM GUILTY UNANIMOUSLY BEYOND A REASONABLE
13 DOUBT, THEN WE WOULD GO INTO A SECOND PART OF
14 THE TRIAL DEALING WITH WHAT PENALTY WOULD BE
15 IMPOSED. DO YOU UNDERSTAND THAT?

16 (THE WITNESS NODDED IN THE AFFIRMATIVE.)

17 Q. YOU'VE GOT TO ANSWER WITH WORDS.

18 A. YES, SIR.

19 Q. WE'RE GOING TO TALK ABOUT THAT SECOND PART EVEN
20 THOUGH WE HAVEN'T GOTTEN THROUGH THE FIRST PART
21 BECAUSE WE HAVE TO AT THIS STAGE.

22 Q. DID YOU READ THE LIST OF JUROR TYPES IN THE JURY
23 ROOM?

24 A. YES, SIR.

25 Q. DO YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

1 A. YES, SIR, I GUESS.

2 Q. WHICH ONE?

3 A. THE THIRD.

4 Q. THE THIRD ONE? ALL RIGHT, IN THE DEFINITION OF
5 THAT TYPE JUROR IT TALKS ABOUT AGGRAVATING AND
6 MITIGATING CIRCUMSTANCES. AND AGGRAVATING
7 CIRCUMSTANCES WOULD BE CIRCUMSTANCES THAT
8 ATTENDED THE COMMISSION OF THE CRIME WHICH ADD
9 TO THE ENORMITY OR THE INJURIOUS CONSEQUENCES OF
10 THE CRIME BUT ARE NOT ESSENTIAL ELEMENTS OF THE
11 CRIME.

12 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH
13 ARE NOT JUSTIFICATION OR EXCUSE FOR COMMITTING
14 THE CRIME, BUT ARE THINGS WHICH IN FAIRNESS AND
15 MERCY MAY BE CONSIDERED AS EXTENUATING OR
16 REDUCING THE DEGREE OF CULPABILITY OF SOMEONE,
17 LESSENING THEIR RESPONSIBILITY. DO YOU
18 UNDERSTAND THAT?

19 A. NO, YOU LOST ME.

20 Q. ALL RIGHT, LET ME SAY IT LIKE THIS. AGGRAVATING
21 CIRCUMSTANCES ARE THINGS THAT EVEN THOUGH
22 SOMEONE HAD BEEN FOUND GUILTY OF MURDER, MAKES
23 THE SITUATION EVEN WORSE THAN JUST MURDER.

24 MITIGATING CIRCUMSTANCES ARE THINGS ABOUT THE
25 SITUATION OR ABOUT THE INDIVIDUAL THAT LESSEN

1 HIS OR HER FAULT. THAT IS, THEY WEIGH IN THAT
2 PERSON'S FAVOR, TENDING TOWARD LESSENING -- NOT
3 THAT THEY ARE NOT GUILTY, BUT LESSENING THEIR
4 DEGREE OF GUILT, LESSENING THEIR DEGREE OF FAULT
5 OR CULPABILITY. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. ALL RIGHT. SO, YOU'RE TELLING ME THAT YOU ARE
8 THE TYPE OF JUROR WHO EVEN THOUGH THE JURY WOULD
9 HAVE DETERMINED BEYOND A REASONABLE DOUBT
10 UNANIMOUSLY THAT MR. ROBERTSON WAS GUILTY OF
11 MURDER, YOU WOULD STILL WANT TO HEAR THE FACTS
12 AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION
13 BEFORE MAKING YOUR DECISION AS TO PUNISHMENT.
14 IS THAT THE TYPE JUROR YOU ARE?

15 A. THE WAY I READ THAT -- I MIGHT HAVE READ IT
16 DIFFERENT THAN YOU DID.

17 Q. ALL RIGHT.

18 A. IT WOULD BE THAT I'D HAVE TO HEAR HIS SIDE OF IT
19 BEFORE I COULD SAY -- OR MY SIDE OR YOUR SIDE
20 BEFORE I CAN SAY, YES, YOU'RE GUILTY, YOU KNOW.

21 Q. WELL, WE'RE BEYOND GUILT; WE'RE TALKING NOW
22 ABOUT PENALTY.

23 A. YEAH.

24 Q. AND MR. ROBERTSON WOULDN'T HAVE TO PROVE
25 ANYTHING BUT HE COULD CERTAINLY PUT UP WHAT WE

1 CALL MITIGATING CIRCUMSTANCES. HE COULD PUT UP
2 HIS SIDE OF THE STORY TO SAY THESE ARE REASONS,
3 EVEN THOUGH YOU FOUND ME GUILTY OF MURDER, THESE
4 ARE REASONS YOU SHOULDN'T GIVE HIM THE DEATH
5 PENALTY.

6 AND THE STATE CAN PUT UP THINGS TO SAY HE'S
7 FOUND GUILTY OF MURDER AND THESE ARE THINGS
8 WHICH YOU SHOULD CONSIDER IN GIVING THE DEATH
9 PENALTY. DO YOU UNDERSTAND THAT?

10 (THE WITNESSES NODDED HIS HEAD IN THE AFFIRMATIVE.)

11 Q. YES OR NO?

12 A. YES, SIR.

13 Q. IS THAT THE KIND OF JUROR YOU ARE, YOU WOULD
14 WANT TO HEAR ALL OF THAT BEFORE YOU DECIDED?

15 A. YES, SIR.

16 Q. AND COULD YOU, AFTER YOU HEARD THAT IF YOU
17 THOUGHT IT WAS THE RIGHT THING TO DO, COULD YOU
18 RETURN A VERDICT OF LIFE IMPRISONMENT?

19 A. LIFE?

20 Q. YES.

21 A. IN PRISON?

22 Q. YES.

23 A. YES, SIR, I CAN DO THAT.

24 Q. AND UNDER THOSE CIRCUMSTANCES, AFTER YOU'VE
25 HEARD ALL THAT IF YOU THOUGHT IT WAS THE RIGHT

1 THING TO DO, COULD YOU RETURN A VERDICT AND
2 IMPOSE THE DEATH PENALTY ON MR. ROBERTSON?

3 A. YES, SIR.

4 Q. OKAY. ANSWER ANY QUESTIONS THAT THESE ATTORNEYS
5 MAY HAVE.

6 QUESTIONS BY MR. POPE:

7 Q. MR. HAMRICK, I'M TOMMY POPE. I'M THE SOLICITOR
8 HERE IN YORK COUNTY.

9 A. YES, SIR.

10 Q. MR. KEVIN BRACKETT IS MY DEPUTY SOLICITOR AND WE
11 REPRESENT THE STATE IN THIS MATTER.

12 I'VE GOT A COPY OF YOUR JURY QUESTIONNAIRE THAT
13 YOU FILLED OUT AND I'M GOING TO ASK YOU A COUPLE
14 OF QUESTIONS FROM THAT, TOO.

15 I TELL YOU RIGHT OFF THE BAT -- HAVE YOU EVER
16 BEEN IN A SITUATION LIKE THIS BEFORE?

17 A. NO, SIR.

18 Q. LET ME TELL YOU, THERE ARE NO RIGHT OR WRONG
19 ANSWERS, AND YOU'RE NOT ON TRIAL. WE'RE JUST
20 TRYING TO GET A FEEL FOR HOW YOU FEEL, AND, YOU
21 KNOW, WHAT CLAY HAMRICK KNOWS ABOUT DIFFERENT
22 THINGS.

23 ARE YOU A LITTLE NERVOUS ABOUT THIS?

24 A. YEAH. HOW DID YOU GET THAT NAME?

25 Q. SIR?

1 A. HOW DID YOU GET THAT NAME?

2 Q. I GOT IT OFF YOUR LIST.

3 A. OH, OKAY.

4 Q. MR. HAMRICK, TO START WITH, AS THE JUDGE
5 EXPLAINED TO YOU, THIS TRIAL IS A LITTLE BIT
6 DIFFERENT -- YOU SAID YOU HADN'T BEEN ON JURY
7 SERVICE BEFORE, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. OKAY. THE FIRST PART IS JUST ABOUT GUILT. AND,
10 OF COURSE, HE'S INNOCENT UNTIL HE'S PROVEN
11 GUILTY AND WE'VE GOT TO PROVE IT ALL. YOU
12 UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. HE DOESN'T HAVE TO SAY ANYTHING, DO ANYTHING,
15 PUT ANYTHING UP. DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. AND AS I UNDERSTOOD WHAT YOU TOLD THE JUDGE,
18 YOU'RE THE TYPE OF MAN THAT YOU'D WANT TO HEAR
19 EVERYTHING BEFORE YOU MAKE A DECISION. YOU WANT
20 TO HEAR BOTH SIDES -- WHEN I SAY BOTH SIDES, YOU
21 WANT TO HEAR ALL OF OUR EVIDENCE AND IF THEY
22 WANT TO PUT UP SOMETHING YOU'RE GOING TO LISTEN
23 TO IT, TOO, BUT YOU KNOW THEY DON'T HAVE TO.
24 RIGHT?

25 A. YES, SIR.

1 Q. AND BASED ON THAT IF YOU THOUGHT THE PROPER
2 VERDICT WAS NOT GUILTY, YOU'D SAY SO.

3 A. YES, SIR.

4 Q. AND IF WE PROVED OUR CASE, THEN YOU'D VOTE
5 GUILTY; IS THAT CORRECT?

6 A. YES, SIR.

7 Q. OKAY. THEN WE WOULD GET TO THE SECOND PHASE.
8 BEFORE WE GET THERE, YOU KNOW, THE JUDGE ASKED
9 YOU ABOUT ALL KIND OF THINGS LIKE READING IN THE
10 PAPER AND, YOU KNOW, PEOPLE TALKING ABOUT -- I
11 THINK THE QUESTION WAS WAS IT A MAN OR A WOMAN
12 AND ALL OF THAT.

13 A. YES, SIR.

14 Q. YOU UNDERSTOOD FROM WHAT THE JUDGE TOLD YOU THAT
15 IF YOU WERE ON THIS JURY, YOU WOULD SET ALL OF
16 THAT ASIDE AND BASICALLY START OVER. YOU KNOW,
17 YOU'D ONLY TAKE THE EVIDENCE, THE WITNESSES THAT
18 TOLD THIS, AND WHATEVER EVIDENCE WOULD COME IN.

19 A. YES, SIR.

20 Q. AND YOU SAID THAT YOU COULD DO THAT?

21 A. YES, SIR.

22 Q. AND BASICALLY IT WOULD BE LIKE CLEANING A
23 CHALKBOARD, YOU'D JUST PUT ALL OF THAT OUT OF
24 YOUR MIND, RIGHT?

25 A. YES, SIR.

1 Q. OKAY. WELL, IF WE GET TO THE SECOND PHASE, AND
2 WE ONLY GET TO THE SECOND PHASE IF THE DEFENDANT
3 IS FOUND GUILTY. IT'S JUST LIKE ANYTHING, IT
4 WOULDN'T BE A PUNISHMENT IF HE'S NOT GUILTY OF
5 IT. DO YOU SEE WHAT I'M SAYING?

6 A. YES, SIR.

7 Q. WHEN WE GET TO THE SECOND PHASE, AND A DEATH
8 PENALTY TRIAL IS DIFFERENT; IN A NORMAL CASE THE
9 JUDGE DECIDES THE PENALTY. IN A DEATH PENALTY
10 CASE THE JURY DECIDES THE PENALTY.

11 AND, OF COURSE, THERE WOULD BE TWELVE JURORS.
12 IF YOU WERE SELECTED AS A JUROR, ELEVEN OTHER
13 JURORS BESIDES YOURSELF AND YOU WOULD HEAR ALL
14 THE EVIDENCE IN AGGRAVATION WHICH IS STUFF THE
15 STATE HAD PUT UP AS TO WHY IT SHOULD BE A DEATH
16 PENALTY. AND YOU'D HEAR EVIDENCE IN MITIGATION,
17 AGAIN IF THE DEFENSE WANTED TO, THEY DON'T HAVE
18 TO, IF THEY WANTED TO, AND THAT WOULD BE WHY
19 THEY THINK IT SHOULDN'T BE A DEATH PENALTY, YOU
20 KNOW, THINGS TO LESSEN IT.

21 A. YES, SIR.

22 Q. AND AS I UNDERSTOOD, AGAIN I DON'T WANT TO PUT
23 WORDS IN YOUR MOUTH, YOU'RE THE KIND OF MAN,
24 YOU'D WANT TO HEAR BOTH SIDES BEFORE YOU MAKE A
25 DECISION?

1 A. YES, SIR.

2 Q. SO, YOU WOULD KEEP YOUR MIND OPEN AND WOULDN'T
3 DECIDE UNTIL YOU HAD HEARD EVERYTHING WE PUT UP
4 AND EVERYTHING THEY PUT UP IF THEY WANTED TO.
5 IS THAT RIGHT?

6 A. YES, SIR.

7 Q. AND THEN IF YOU DECIDE -- BASED ON HEARING ALL
8 OF THAT, IF YOU DECIDE THAT BASED ON WHAT YOU'VE
9 HEARD, BASED ON WHAT YOU DECIDED -- AND, OF
10 COURSE, YOU ALREADY KNOW HE'S GUILTY. NOW
11 YOU'RE HEARING AGGRAVATION AND MITIGATION.
12 BASED ON THAT IF YOU THOUGHT THE APPROPRIATE
13 SENTENCE WAS LIFE, COULD YOU SAY SO?

14 A. YES, SIR.

15 Q. OKAY. AND THAT'S THE WAY YOU'D VOTE IN THE JURY
16 ROOM, SAY I VOTE LIFE?

17 A. YES, SIR.

18 Q. OKAY. LIKEWISE, AND THIS IS WHERE IT'S A LITTLE
19 BIT DIFFERENT IN A DEATH PENALTY CASE, IF YOU
20 VOTED LIFE AND ALL TWELVE VOTED LIFE, THE
21 FOREPERSON, YOU KNOW, FOREMAN OR FORELADY,
22 WHOEVER THE JUDGE APPOINTED IN THE JURY ROOM,
23 THEY WOULD JUST SIGN THEIR NAME AND SAY WE ALL
24 VOTED, THE TWELVE OF US UNANIMOUS, WE VOTED LIFE
25 AND THEY'D SEND IT OUT TO THE JUDGE.

1 OF COURSE, THE JUDGE IS GOING TO DO WHATEVER
2 Y'ALL SAY. IF Y'ALL SAY LIFE, HE'S GOING TO DO
3 IT; IF YOU SAY DEATH, HE'S GOING TO DO IT.
4 IN A DEATH PENALTY CASE IF IT ENDS UP BEING THAT
5 EVERYBODY AFTER HEARING EVERYTHING VOTES DEATH,
6 THEN IT'S A LITTLE BIT DIFFERENT. EVERYBODY HAS
7 TO SIGN. YOU KNOW, I TOLD YOU THE FOREPERSON
8 HAD TO SIGN?

9 A. YES, SIR.

10 Q. EVERYBODY HAS TO SIGN.

11 A. YES, SIR.

12 Q. IF THE TIME CAME AND YOU HAD HEARD ALL THE FACTS
13 AND EVIDENCE IN A CASE AND THE AGGRAVATION AND
14 MITIGATION AND IT CAME TIME AND YOU IN YOUR
15 HEART FELT THAT IN THIS CASE DEATH WAS
16 APPROPRIATE.

17 A. YES, SIR.

18 Q. AND YOU'RE GOING TO SIGN A FORM -- IT IS THE
19 JURY'S VERDICT, AND YOU'RE GOING TO SIGN A FORM
20 IF YOU THINK IT'S APPROPRIATE AND IT'S GOING TO
21 COME AROUND TO YOU, THERE'S GOING TO BE TWELVE
22 PLACES FOR SIGNATURES AND YOU'RE GOING TO SIGN
23 CLAY HAMRICK TO TAKE A MAN'S LIFE.

24 A. YES, SIR.

25 Q. COULD YOU DO THAT IF YOU THOUGHT THAT WAS RIGHT?

1 A. IF I THOUGHT IT WAS RIGHT; YES, SIR.

2 Q. THANK YOU, SIR.

3 QUESTIONS BY MR. HANCOCK:

4 Q. MR. HAMRICK, I'M BILL HANCOCK AND I REPRESENT
5 JIMMY ROBERTSON IN THIS CASE. HE'S SEATED HERE
6 TO MY LEFT. AND THIS IS JIM BOYD, HE IS CO-
7 COUNSEL AND IS DEFENDING MR. ROBERTSON ALSO.
8 YOU HAVE HEARD WHAT BOTH THE JUDGE AND THE
9 SOLICITOR HAVE SAID TO YOU. WE ARE STARTING
10 FROM A BASIC PREMISE THAT WE'RE GOING INTO THE
11 SECOND PART OF THE TRIAL. IN OTHER WORDS, THAT
12 THERE HAS BEEN A CONVICTION AND THAT WE ARE
13 GOING INTO A SENTENCING PHASE ---

14 A. YES, SIR.

15 Q. --- WHERE YOUR ONLY OPTIONS ARE DEATH ---

16 A. OR LIFE.

17 Q. --- OR LIFE IN PRISON.

18 A. YES, SIR.

19 Q. AND YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND YOU HAVE INDICATED THAT YOU COULD LISTEN TO
22 MITIGATING CIRCUMSTANCES, NO MATTER HOW
23 HORRENDOUS THE CRIME WAS, AND THOSE MITIGATING
24 CIRCUMSTANCES THAT YOU WISH, THAT YOU COULD FIND
25 FOR LIFE IMPRISONMENT. IS THAT WHAT YOU'RE

1 SAYING?

2 A. RUN THAT QUESTION BY ME ONE MORE TIME?

3 Q. OKAY. WE'VE BEEN TALKING ABOUT AGGRAVATING AND
4 MITIGATING CIRCUMSTANCES. THE AGGRAVATING
5 CIRCUMSTANCES WILL BE PRESENTED TO YOU IN THE
6 DEATH PENALTY PHASE OF THE TRIAL. AND NO MATTER
7 HOW BAD THOSE AGGRAVATING CIRCUMSTANCES ARE, ARE
8 YOU SAYING THAT YOU COULD THEN VOTE FOR LIFE IN
9 PRISON IF THE DEFENDANT PUT ON MITIGATING
10 CIRCUMSTANCES THAT EXPLAINED TO YOU MAYBE WHY IT
11 WAS DONE OR SOMETHING OF THAT NATURE AND THEN
12 YOU COULD GO AHEAD AND SAY LIFE IN PRISON?

13 A. I DON'T UNDERSTAND YOUR QUESTION. I THINK
14 YOU'RE SAYING IF Y'ALL PROVED TO ME -- I DON'T
15 UNDERSTAND.

16 Q. DO YOU UNDERSTAND THE PHRASE MITIGATING
17 CIRCUMSTANCES, DO YOU UNDERSTAND WHAT THEY ARE?

18 A. THAT'S ONE OF THE ---

19 Q. WHAT TO YOU ARE MITIGATING CIRCUMSTANCES?

20 A. YOU'D HAVE TO EXPLAIN IT TO ME BETTER THAN THAT
21 BEFORE I COULD ANSWER THAT QUESTION.

22 Q. MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT
23 TEND TO EXPLAIN WHY A CERTAIN ACT OR ACTS TOOK
24 PLACE. AND THEY WOULD BE PRESENTED TO YOU FOR
25 YOUR CONSIDERATION AND YOU WOULD GIVE WHATEVER

1 WEIGHT YOU WANTED TO. WHEN I SAY WEIGHT, DO YOU
2 UNDERSTAND WHAT I'M SAYING WHEN I SAY WEIGHT?

3 A. NOT EXACTLY.

4 Q. YOU COULD CONSIDER THEM IN ANY WAY YOU WANTED
5 TO.

6 A. UH HUH.

7 Q. AND IN CONSIDERING THOSE CIRCUMSTANCES, WHATEVER
8 THEY MAY BE, THEN YOU COULD USE THEM TO FIND A
9 LIFE SENTENCE NO MATTER HOW BAD THE CRIME. DO
10 YOU UNDERSTAND THAT?

11 A. YES, SIR. I'VE GOT YOU NOW.

12 Q. ALL RIGHT. AND WOULD YOU BE WILLING TO DO THAT?

13 A. YES, SIR, I COULD DO THAT.

14 Q. YOU COULD DO THAT, NO MATTER HOW BAD THE CRIME?

15 A. IF Y'ALL CONVINCED ME THAT HE DESERVED LIFE
16 INSTEAD OF DEATH, YES, I COULD.

17 Q. SO WE WOULD HAVE TO CONVINCING YOU, AFTER HE'S
18 GUILTY OF MURDER, WE WOULD HAVE TO CONVINCING YOU
19 NOT TO PUT HIM TO DEATH. IS THAT WHAT YOU'RE
20 SAYING?

21 A. YES, SIR.

22 Q. NOW WE HAVE HEARD SOME DISCUSSION -- WERE YOU IN
23 THIS JURY ROOM UP HERE WHEN PEOPLE STARTED
24 DISCUSSING THIS CASE?

25 A. YES, SIR.

1 Q. AND YOU SAID THERE WERE ABOUT NINE PEOPLE IN
2 THERE?

3 A. I'M NOT SURE. I WAS READING THESE FORMS WHILE
4 THEY WAS TALKING ABOUT SOME OF IT.

5 Q. AND WHERE WERE THEY TALKING ABOUT THIS CASE?

6 A. THEY WAS TALKING IN THE ROOM UP THERE WHILE I
7 WAS READING. I WASN'T PAYING THAT MUCH
8 ATTENTION. LIKE I SAY, I WAS READING THIS. BUT
9 I DO KNOW THERE WAS A FEW THINGS SAID.

10 Q. AND TELL ME AGAIN WHAT YOU HEARD.

11 A. WAS IT A MAN AND A WOMAN OR IT MAY HAVE BEEN A
12 HUSBAND AND A WIFE, SOMETHING OF THAT NATURE.

13 Q. AND THEN YOU HEARD AN ANSWER I BELIEVE YOU SAID?

14 A. YES, SIR.

15 Q. SOMEBODY SAID YES?

16 A. YES, SIR.

17 Q. WAS THERE ANY OTHER DISCUSSION THAT YOU DID NOT
18 OR YOU WERE NOT PRIVY, YOU DIDN'T HEAR IT?

19 A. YES, SIR, WE'D BEEN TALKING IN THERE THE WHOLE
20 TIME, YOU KNOW.

21 Q. HAD YOU BEEN TALKING ABOUT THE CASE THE WHOLE
22 TIME?

23 A. NO. NO, SIR.

24 Q. SO, DID YOU HEAR ALL OF THE DISCUSSION THAT
25 THESE FOLKS WERE HAVING ABOUT THE CASE?

1 A. NO, SIR. I HADN'T HEARD ALL THE DISCUSSION
2 THAT'S BEEN GOING ON IN THERE. LIKE I SAY,
3 WE'VE BEEN IN THERE THREE HOURS. WE'VE TALKED
4 ABOUT EVERYTHING FROM THE SUN TO THE MOON, YOU
5 KNOW.

6 Q. YOU HAVE A RIGHT TO HAVE, IF YOU ARE SELECTED AS
7 A JUROR, TO HAVE YOUR OPINION AND YOUR VOTE AS
8 FAR AS THIS CASE GOES RESPECTED BY ALL OF THE
9 MEMBERS OF THE JURY AND EVERYONE IN THE
10 COURTROOM. YOU UNDERSTAND THAT.

11 A. YES, SIR.

12 Q. AND YOU HAVE A RIGHT TO RESPECT THEIR OPINIONS
13 ALSO.

14 A. YES, SIR.

15 Q. AND IF YOU DECIDED TO VOTE FOR LIFE IN PRISON,
16 COULD YOU HOLD TO THAT BELIEF, HOLD TO THAT
17 OPINION?

18 A. YES, SIR.

19 Q. AGAINST ALL OTHERS?

20 A. YES, SIR.

21 Q. WOULD YOU HAVE A STRONG ENOUGH OPINION THAT YOU
22 WOULD NOT VOTE FOR THE DEATH PENALTY JUST
23 BECAUSE YOU WERE IN THE MINORITY?

24 A. REPEAT THAT ONE MORE TIME? I KNOW WHAT YOU
25 SAID, BUT I DON'T KNOW WHETHER TO ANSWER YES OR

1 NO.

2 Q. WOULD YOU VOTE FOR THE DEATH PENALTY JUST TO GO
3 ALONG WITH THE MAJORITY OF THE JURORS?

4 A. NO, SIR.

5 Q. I HAVE NO FURTHER QUESTIONS.

6 THE COURT: STEP OUTSIDE THE DOOR FOR JUST ONE
7 MOMENT.

8 (THE JUROR LEFT THE COURTROOM.)

9 THE COURT: WHAT SAYS THE STATE?

10 MR. POPE: YOUR HONOR, I WOULD SUBMIT THAT HE IS
11 QUALIFIED IF THE JUDGE TAKES IT IN THE TOTALITY OF HIS
12 STATEMENTS. I UNDERSTAND ONE TIME MR. HANCOCK TURNED
13 AROUND AND HAD THE QUESTION IF WE PROVED MITIGATION.
14 CERTAINLY THAT WOULD BE ADDRESSED BY THE COURT'S
15 INSTRUCTION THAT THE DEFENSE DOESN'T HAVE TO PROVE
16 ANYTHING. HE WAS SAYING IF YOU PROVE MITIGATION TO ME, I
17 COULD GIVE HIM LIFE.

18 HE SAID NUMEROUS TIMES WITH YOU, WITH ME AND WITH
19 MR. HANCOCK THAT HE COULD CONSIDER LIFE AND CONSIDER DEATH.
20 I SUBMIT IN TOTALITY THAT HE IS QUALIFIED, YOUR HONOR.

21 MR. HANCOCK: YOUR HONOR, I BELIEVE THAT ONE --
22 AGAIN WE GO BACK TO THE JURY DISCUSSION. WE KEEP HEARING
23 ABOUT ---

24 THE COURT: WHETHER Y'ALL WANT TO OR NOT, LET'S
25 DO THE QUALIFICATION FIRST BECAUSE IF HE'S NOT QUALIFIED,

1 WE DON'T HAVE TO TALK ABOUT THAT. GO AHEAD. IS HE DEATH
2 PENALTY QUALIFIED?

3 MR. HANCOCK: YOUR HONOR, WE WOULD SAY THAT HE IS
4 NOT BECAUSE HE HAS SAID THAT HE WOULD SHIFT THE BURDEN OF
5 PROOF TO THE DEFENDANT IN ORDER TO PROVE TO HIM THAT THE
6 GENTLEMAN SHOULD NOT BE PUT TO DEATH.

7 THE COURT: I AGREE. I FIND THAT HE IS NOT DEATH
8 PENALTY QUALIFIED. NOW, WHAT DO YOU WANT TO SAY ABOUT ---

9 MR. POPE: YOUR HONOR, I WOULD ASK BEFORE YOU
10 EXCUSE HIM IF THE COURT COULD QUESTION HIM AND CLARIFY
11 THAT.

12 THE COURT: NO; IN FACT I PULLED OUT THE BOOK TO
13 LOOK AND SEE IF ALL THE MITIGATING CIRCUMSTANCES REQUIRED
14 SOME PRESENTATION OF EVIDENCE BY THE DEFENSE, AND THEY
15 DON'T.

16 MR. POPE: WELL, AGAIN, HE HASN'T BEEN INSTRUCTED
17 AT ALL ON THE LAW ---

18 THE COURT: I UNDERSTAND THAT, BUT I FIND HE IS
19 NOT QUALIFIED. NOW, THE OTHER?

20 MR. HANCOCK: ON THE OTHER I WAS PUTTING THE CART
21 BEFORE THE HORSE, YOUR HONOR.

22 THE COURT: ALL RIGHT, WE ARE STILL GOING TO
23 EXPLORE THAT BUT AS TO THIS PARTICULAR WITNESS THE ONLY
24 THING HE TESTIFIED TO WAS THE SAME THING YOU'VE BEEN
25 TELLING A LOT OF PEOPLE, IT WAS HIS MOTHER AND FATHER.

1 NOW, ANGELA LEWIS, THE NEXT LADY HAS AN EIGHT
2 WEEK OLD CHILD I JUST NOTICED. HER ANSWER TO NUMBER
3 TWELVE, EIGHT WEEK OLD CHILD. SO, I AM GOING TO INQUIRE
4 ABOUT THAT FIRST THING.

5 ALL RIGHT, LET'S HAVE ANGELA LEWIS IN.

6 THE BAILIFF: YOU WANT THIS MAN BACK FIRST, DON'T
7 YOU?

8 THE COURT: OH, I'M SORRY; YES, MA'AM.
9 (THE JUROR RETURNED TO THE COURTROOM.)

10 THE COURT: MR. HAMRICK, WE'RE GOING TO EXCUSE
11 YOU FROM SERVING WITH US. WE APPRECIATE YOUR TIME AND YOUR
12 CANDOR. THANK YOU A LOT.

13 THE JUROR: THANK YOU, SIR.
14 (THE JUROR LEFT THE COURTROOM.)

15 THE COURT: BRING IN MS. LEWIS.

16 ANGELA LEWIS, JUROR NUMBER 151, WHITE FEMALE, WAS
17 QUESTIONED AS FOLLOWS:

18 QUESTIONS BY THE COURT:

19 Q. HAVE A SEAT PLEASE, MA'AM. MS. LEWIS, I SEE YOU
20 HAVE AN EIGHT WEEK OLD CHILD?

21 A. FOUR MONTHS OLD.

22 Q. FOUR MONTHS OLD?

23 A. YEAH.

24 Q. WHO'S GOING TO TAKE CARE OF THAT CHILD IF YOU
25 ARE SEQUESTERED ON THE JURY?

1 A. I DON'T KNOW. MY OTHER TWO I CAN FIND SOMEBODY
2 TO KEEP, BUT SHE'S NOT TOO KEEN ON OTHER PEOPLE
3 HOLDING HER. WE WORK OPPOSITE SHIFTS SO THAT WE
4 CAN KEEP THE KIDS AT HOME.

5 Q. WHAT SHIFT DO YOU WORK?

6 A. I WORK FIRST SHIFT; MY HUSBAND WORKS NIGHT
7 SHIFT.

8 Q. SO YOU'RE AT HOME AT NIGHT WITH THE CHILD?

9 A. YES.

10 Q. ALL RIGHT, LET ME LET YOU STEP OUTSIDE JUST A
11 MINUTE BEFORE I ASK YOU ANY FURTHER QUESTIONS.

12 A. OKAY.

13 (THE JUROR LEFT THE COURTROOM.)

14 THE COURT: ANY OBSERVATION FROM THE STATE?

15 MR. POPE: YOUR HONOR, I HAVE NO OBJECTION. WITH
16 THE JURY BEING SEQUESTERED AND WITH A FOUR MONTH OLD, I
17 WOULDN'T WANT MY WIFE GONE AND ME HAVE TO TAKE CARE OF HER.

18 THE COURT: ANY OBSERVATION FROM THE DEFENSE?

19 MR. BOYD: I KNOW THAT, TOO, SO -- SHE MAY NEED
20 A VACATION.

21 THE COURT: YEAH. ALL RIGHT, BRING HER BACK IN.

22 (THE JUROR RETURNED TO THE COURTROOM.)

23 THE COURT: YOU CAN JUST STAND RIGHT THERE. I'M
24 GOING TO EXCUSE YOU BECAUSE OF THE AGE OF YOUR CHILD
25 BECAUSE YOU WOULD BE SEQUESTERED AND YOU WOULD BE HERE

1 EVERY NIGHT FOR AT LEAST A WEEK AND WE'RE NOT GOING TO DO
2 THAT TO YOU OR THAT YOUNG CHILD. SO, THANK YOU FOR COMING;
3 WE APPRECIATE YOUR TIME.

4 THE JUROR: THANK YOU.

5 THE COURT: BEFORE YOU LEAVE, LET ME ASK YOU
6 THIS. WHEN YOU WERE IN THE JURY ROOM, DID YOU HEAR ANYBODY
7 DISCUSSING THE CASE?

8 THE JUROR: THEY WERE JUST MENTIONING, A COUPLE
9 OF THEM, THAT THERE WAS SOMETHING ON THE NEWS OR SOMETHING.

10 THE COURT: DID YOU HEAR ANYBODY SAYING ANY
11 FACTUAL INFORMATION?

12 THE JUROR: NO, UH UH, NOT THAT I KNOW OF.

13 THE COURT: ANY QUESTIONS YOU WANT TO ASK?

14 MR. POPE: NO, SIR, YOUR HONOR.

15 THE COURT: BEFORE SHE LEAVES, DO Y'ALL WANT TO
16 ASK ANY?

17 MR. BOYD: NO, SIR.

18 THE COURT: THANK YOU A LOT.

19 (THE JUROR LEFT THE COURTROOM.)

20 THE COURT: I TELL JURORS NOT TO NOD AND THEN I
21 POINTED MY FINGER. I FIRST POINTED AT MR. POPE'S DESK, AND
22 THEN I POINTED AT MR. HANCOCK AND MR. BOYD'S DESK. ROGER
23 STIKELEATHER.

24 ROGER STIKELEATHER, JUROR NUMBER 258, WHITE MALE,
25 WAS QUESTIONED AS FOLLOWS:

1 QUESTIONS BY MR. COURT:

2 Q. WE APPRECIATE YOUR PATIENCE.

3 A. YOU GUYS HAVE BEEN HERE LONGER THAN I HAVE.

4 Q. WELL, THAT'S TRUE. FIRST LET ME REMIND YOU THAT
5 YOU ARE UNDER OATH AND THEN LET ME TELL YOU THAT
6 IF YOU ARE CHOSEN ON THIS JURY YOU MAY ON
7 OCCASION SEE CAMERAS OR PHOTOGRAPHERS IN THE
8 COURTROOM. THEY ARE NOT TAKING YOUR PICTURE,
9 THEY ARE NOT ALLOWED TO. THEY ARE NOT ALLOWED
10 TO REPORT WHO'S ON THE JURY. THEY ARE ALLOWED
11 TO BE HERE, BUT THEY ARE NOT ALLOWED TO
12 PUBLICIZE THE JURY.

13 NOW, A COUPLE OF INDIVIDUALS WHO HAVE COME IN
14 HERE RECENTLY HAVE SAID THAT THERE HAS BEEN A
15 LITTLE BIT OF DISCUSSION BACK IN THE JURY ROOM
16 ABOUT THIS CASE. DID YOU HEAR ANY DISCUSSION?

17 A. THERE WAS SOME DISCUSSION EARLIER.

18 Q. WHAT WAS IT ABOUT?

19 A. BASICALLY THEY WERE SAYING STUFF ABOUT WHAT WAS
20 IN -- ONE OF THE GUYS WAS ASKING WHAT THE
21 PENNSYLVANIA POLICE WAS ON THE LIST ABOUT. AND
22 A GENTLEMAN WAS TELLING HIM SOMETHING ABOUT THE
23 -- SOMETHING THAT HE HAD SAW IN THE PAPER ABOUT
24 THEY WERE BACK AND FORTH IN THE STATE OF
25 PENNSYLVANIA OR SOMETHING WAS WHY THEY WERE ON

1 THAT LIST.

2 Q. WAS THAT ALL THAT YOU HEARD?

3 A. THAT'S ABOUT IT; YES, SIR.

4 Q. ALL RIGHT. YOU HANDED UP A QUESTIONNAIRE. DO
5 YOU NEED TO MAKE ANY CORRECTIONS TO IT OR IS IT
6 OKAY?

7 A. I'M ASSUMING IT'S OKAY, SIR; I CAN'T REALLY
8 REMEMBER EVERYTHING I PUT ON THERE; IT'S BEEN A
9 WHILE.

10 Q. ALL RIGHT. NOW, THERE WAS A LONG LIST OF NAMES,
11 A WITNESS LIST, DID YOU HAVE A CHANCE TO REVIEW
12 IT?

13 A. YES, SIR.

14 Q. DO YOU KNOW ANY OF THOSE PEOPLE OR ARE YOU
15 RELATED BY BLOOD OR MARRIAGE TO ANY OF THEM?

16 A. THERE'S A POSSIBILITY OF ONE, MARY GILLESPIE.
17 I'M NOT REAL SURE BECAUSE THERE'S A MARY
18 GILLESPIE THAT WORKS AT ROYAL INSURANCE, AND I'M
19 NOT SURE IF THAT'S THE SAME INDIVIDUAL OR NOT,
20 BUT THAT'S THE ONLY INDIVIDUAL I KNOW OF.

21 Q. WELL, THEY ARE INDICATING NOT.

22 A. OKAY. THEN, NO; NO, SIR, I DO NOT KNOW ANYONE.

23 Q. PRIOR TO TODAY HAD YOU HEARD ANYTHING ABOUT THIS
24 CASE? READ ABOUT IT OR HEARD ABOUT IT FROM ANY
25 SOURCE WHATSOEVER?

1 A. I RARELY LISTEN TO THE NEWS, YOUR HONOR. I HAD
2 HEARD A LITTLE BIT ABOUT SOMETHING GOING ON IN
3 ROCK HILL. AND TO BE HONEST WITH YOU, YESTERDAY
4 IN THE NEWS I SAW A HEADLINE SOMETHING ABOUT
5 PICKING A JURY THIS MORNING AND I REALIZED RIGHT
6 THEN, OH, MY GOD, THAT'S PROBABLY THE ONE I'M
7 GOING TO BE ON, SO I DIDN'T READ THAT ARTICLE.

8 Q. THAT'S GOOD.

9 A. AND THE SAME THING ON THE NEWS THIS MORNING, I
10 HEARD SOMETHING GOING ON, AND TURNED IT OFF REAL
11 QUICK.

12 Q. ALL RIGHT. SO YOU TELL ME, IS THERE ANYTHING
13 THAT YOU KNOW ABOUT OR HEARD ABOUT BEFORE COMING
14 HERE TODAY OR TODAY THAT WOULD INTERFERE WITH
15 YOUR BEING FAIR AND IMPARTIAL IN THE TRIAL OF
16 THIS CASE?

17 A. NOT A THING I KNOW OF, YOUR HONOR.

18 Q. ALL RIGHT. IN THE JURY ROOM I HAD A LIST WITH
19 THREE JUROR TYPES SET FORTH ON IT. DID YOU HAVE
20 A CHANCE TO REVIEW IT?

21 A. YES, SIR.

22 Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

23 A. I'D SAY I WAS THE THIRD TYPE, SIR.

24 Q. IN THAT TYPE THERE ARE TWO WORDS USED, ONE IS
25 AGGRAVATION AND ONE IS MITIGATION. AGGRAVATION

1 DEALS WITH CIRCUMSTANCES THAT ATTEND THE
2 COMMISSION OF THE CRIME WHICH INCREASE THE
3 ENORMITY OR THE INJURIOUS CONSEQUENCE OF THE
4 CRIME BUT WHICH ARE ABOVE AND BEYOND THE BASIC
5 ELEMENTS OF THE CRIME.

6 MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE
7 IT WOULDN'T JUSTIFY A CRIME OR EXCUSE A CRIME,
8 THEY ARE THINGS THAT IN FAIRNESS AND MERCY MAY
9 BE CONSIDERED AS EXTENUATING OR REDUCING THE
10 DEGREE OF ONE'S MORAL CULPABILITY. DO YOU
11 UNDERSTAND THAT?

12 A. YES, SIR.

13 Q. NOW, THIS TYPE JUROR WE'RE ASKING ABOUT, WE'RE
14 LOOKING AT WHAT WOULD BE THE SECOND PHASE OF A
15 TRIAL. A TRIAL OF THIS TYPE IS TRIED IN TWO
16 PHASES. ONE HAS TO DO WITH GUILT, AND ONE THE
17 PENALTY.

18 OF COURSE, IF THE INDIVIDUAL ON TRIAL FOR
19 MURDER, HERE MR. ROBERTSON, WAS FOUND NOT GUILTY
20 OF MURDER, THEN THERE IS NO SECOND PART.

21 MR. ROBERTSON IS PRESUMED INNOCENT OF THESE
22 CHARGES AND IS SO PRESUMED UNTIL THE STATE WERE
23 TO BE ABLE TO PROVE TO A JURY HIS GUILT BEYOND A
24 REASONABLE DOUBT.

25 EVEN THOUGH -- OF COURSE, THE CASE WOULD END IF

1 THEY FOUND HIM NOT GUILTY. WE ARE JUMPING OVER
2 THAT FIRST PART, EVEN THOUGH WE MAY NEVER GET
3 THERE, BECAUSE WE WANT TO INQUIRE AND HAVE TO DO
4 IT UP FRONT ABOUT HOW JURORS WOULD APPROACH THE
5 PENALTY PHASE.

6 AND IF I UNDERSTAND WHAT YOU'RE TELLING ME, YOU
7 WOULD BE THE TYPE OF JUROR WHO EVEN THOUGH MR.
8 ROBERTSON HAD BEEN FOUND GUILTY OF MURDER, THAT
9 YOU WOULD NOT HAVE AT THAT TIME MADE UP YOUR
10 MIND CONCERNING PUNISHMENT. IS THAT CORRECT?

11 A. I FEEL THAT'S THE CASE; YES, SIR.

12 Q. THAT YOU WOULD LISTEN TO THE FACTS AND
13 CIRCUMSTANCES IN AGGRAVATION AND MITIGATION IN
14 THE PENALTY PHASE AND YOU WOULD WANT TO LISTEN
15 TO AND FOLLOW THE LAW THAT THE TRIAL JUDGE, HERE
16 ME, WOULD GIVE YOU BEFORE MAKING A DECISION
17 REGARDING PUNISHMENT; IS THAT CORRECT?

18 A. YES, SIR, I FEEL THAT'S TRUE.

19 Q. AND YOU'RE TELLING ME THAT IF THE FACTS WERE
20 SUCH THAT IT WARRANTED IN YOUR MIND A VERDICT OF
21 LIFE IMPRISONMENT, THAT YOU COULD RETURN A
22 VERDICT OF LIFE IN PRISON?

23 A. YES, SIR.

24 Q. AND ARE YOU TELLING ME THAT IF THE FACTS
25 PRESENTED SO WARRANTED, YOU COULD RETURN A

1 VERDICT IMPOSING THE DEATH PENALTY?

2 A. YES, SIR.

3 Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT COUNSEL
4 MAY HAVE.

5 QUESTIONS BY MR. BOYD:

6 Q. GOOD AFTERNOON, OR GOOD EVENING; HOW ARE YOU
7 DOING? I'M JIM BOYD; I REPRESENT JIMMY
8 ROBERTSON WHO IS SEATED THERE. MY CO-COUNSEL IS
9 BILL HANCOCK WHO IS SEATED THERE.

10 Q. I JUST NEED TO ASK YOU A FEW QUESTIONS ABOUT A
11 FEW THINGS ON YOUR INFORMATION FORM AND SOME
12 QUESTIONS ABOUT THE DEATH PENALTY.

13 Q. I NOTICED ON YOUR JURY QUESTIONNAIRE YOU ATTEND
14 A CHURCH IN HARRISBURG; IS THAT CORRECT?

15 A. I USED TO, YES, SIR. I LIVE IN SOUTH CAROLINA
16 NOW AND ATTEND ONE IN LAKE WYLIE.

17 Q. DO YOU ATTEND A CHURCH HERE NOW?

18 A. YES, SIR.

19 Q. WHERE IS THAT?

20 A. LAKE WYLIE CHRISTIAN ASSEMBLY NEAR LAKE WYLIE.

21 Q. AND THE PRESBYTERIAN CHURCH YOU BELONGED TO, WAS
22 THAT A P.C.A. OR U.S.A.?

23 A. P.C.A.

24 Q. NOW, YOU ANSWERED A FEW QUESTIONS ABOUT THE
25 DEATH PENALTY. YOU REALIZE, OF COURSE, THERE'S

1 TWO PHASES TO THIS TRIAL POTENTIALLY AT LEAST.
2 THE FIRST PHASE IS THAT THE JURY MAKES A
3 DETERMINATION OF WHETHER OR NOT JIMMY ROBERTSON
4 IS GUILTY OR NOT GUILTY. IF HE IS FOUND NOT
5 GUILTY, THAT'S THE END OF THE TRIAL.

6 IF HE IS FOUND GUILTY, THEN WE GO INTO WHAT'S
7 CALLED THE PENALTY PHASE OF THE TRIAL. AND
8 THAT'S WHEN THE JURY MAKES THE DETERMINATION OF
9 WHETHER HE SHOULD RECEIVE LIFE IMPRISONMENT OR
10 HE SHOULD RECEIVE THE DEATH PENALTY. DO YOU
11 UNDERSTAND?

12 A. YES, SIR.

13 Q. AND AT THAT POINT IT'S NO QUESTION -- IF IT GETS
14 TO THE PENALTY PHASE, IT'S NO QUESTION OF
15 WHETHER HE'S GUILTY OR NOT AT THAT POINT, THE
16 JURY HAS ALREADY DETERMINED HE DID IT. IT'S NO
17 QUESTION OF WHETHER IT WAS AN ACCIDENT OR SELF-
18 DEFENSE OR JUSTIFIED OR ANYTHING LIKE THAT.
19 HE'S BEEN CONVICTED AT THAT POINT.

20 NOW, KNOWING THAT, AND KNOWING THAT HE'S CHARGED
21 WITH KILLING BOTH OF HIS PARENTS AND ASSUME FOR
22 PURPOSES OF MY QUESTION HE'S BEEN CONVICTED OF
23 THAT, CAN YOU STILL CONSIDER A LIFE SENTENCE AS
24 OPPOSED TO A DEATH SENTENCE IN THAT CASE?

25 A. I BELIEVE I COULD, SIR; YES, SIR.

1 Q. LIKEWISE, IF THE AGGRAVATING CIRCUMSTANCES ARE
2 BAD ENOUGH, CAN YOU CONSIDER A DEATH SENTENCE?

3 A. YES, SIR.

4 Q. AND WOULD YOU BE WILLING TO LISTEN TO AND ALSO
5 CONSIDER, NOT JUST LISTEN TO, BUT CONSIDER ALSO
6 THE MITIGATING CIRCUMSTANCES THAT MAY BE
7 PRESENTED IN HIS BEHALF?

8 A. YES, SIR.

9 Q. NOW, IF YOU WERE SITTING ON THE JURY YOU
10 UNDERSTAND THAT EACH JUROR HAS AN OPINION AND
11 YOUR OPINION MAY BE DIFFERENT FROM OTHERS?

12 A. CERTAINLY.

13 Q. ABOUT THE DEATH PENALTY AND EVERYTHING ELSE.
14 AND ARE YOU WILLING -- LET ME GO BACK A MINUTE.
15 YOU UNDERSTAND THAT EVERY JUROR HAS THE DUTY TO
16 RESPECT YOUR OPINION?

17 A. CERTAINLY.

18 Q. AND LIKEWISE YOU WOULD HAVE A DUTY TO RESPECT
19 OTHER JUROR'S OPINIONS.

20 A. YES, SIR.

21 Q. AND YOU WOULDN'T BE FORCED INTO CHANGING YOUR
22 OPINION JUST BECAUSE OTHER JURORS HAD A
23 DIFFERENT OPINION?

24 A. I DON'T BELIEVE I WOULD, SIR, BUT I WOULD BE
25 WILLING TO HEAR ALL SIDES.

1 Q. SURE, I MEAN YOU'D LISTEN AND IF YOUR OPINION
2 HONESTLY CHANGED, YOU COULD CHANGE YOUR MIND.

3 A. YES, SIR.

4 Q. BUT YOU WOULDN'T CHANGE YOUR MIND JUST TO REACH
5 A VERDICT?

6 A. NO, SIR.

7 Q. AND BEING SEQUESTERED ON THE JURY, OF COURSE,
8 THE COURT IN ALL THESE CASES REQUIRES THAT THE
9 JURY BE SEQUESTERED. IT'S NOT THE FAULT OF THE
10 STATE OR THE DEFENSE, THE COURT REQUIRES THAT.
11 WOULD THE FACT THAT YOU ARE ANXIOUS TO GET HOME
12 AND GET OUT OF THIS, WOULD THAT CAUSE YOU TO
13 REACH A VERDICT FASTER OR NOT CONSIDER EVIDENCE?

14 A. I DON'T THINK SO.

15 Q. OKAY. I BELIEVE THAT'S ALL THE QUESTIONS I
16 HAVE. THANK YOU.

17 QUESTIONS BY MR. POPE:

18 Q. MR. STIKELEATHER, I'M TOMMY POPE; I'M THE
19 DISTRICT ATTORNEY HERE, THE SOLICITOR; THIS IS
20 KEVIN BRACKETT, MY DEPUTY SOLICITOR. I'M GOING
21 TO TRY TO DO SOMETHING LAWYERS DON'T DO, I'M
22 GOING TO TRY TO BE BRIEF WITH YOU.
23 YOU UNDERSTAND THE TWO PART TRIAL?

24 A. YES, SIR.

25 Q. YOU UNDERSTAND THE BURDEN IS ON THE STATE TO

1 PROVE THE CASE IN THE GUILT PHASE BEFORE WE
2 WOULD EVER EVEN GET TO THE PENALTY PHASE?

3 A. YES, SIR.

4 Q. AND IN THE PENALTY PHASE IT'S DIFFERENT.
5 NORMALLY IN MOST CASES THE JUDGE WILL DECIDE THE
6 PENALTY, AND IN THIS CASE A JURY DECIDES THE
7 PENALTY. DO YOU UNDERSTAND?

8 A. YES, SIR.

9 Q. AND THERE WILL BE TWO POSSIBLE VERDICTS, LIFE
10 AND DEATH. AND YOU'RE THE TYPE OF JUROR THAT YOU
11 DON'T HAVE AN ANSWER NOW BECAUSE YOU DON'T KNOW
12 UNTIL YOU HEAR THE FACTS ONE WAY OR ANOTHER WHAT
13 YOUR VERDICT WOULD BE, LIFE OR DEATH; IS THAT
14 CORRECT?

15 A. THAT'S CORRECT.

16 Q. BUT YOU WOULD BE THE TYPE, FROM WHAT I
17 UNDERSTOOD, THAT YOU WOULD WANT TO HEAR
18 EVERYTHING -- AND, OF COURSE, THE DEFENSE
19 DOESN'T HAVE TO PUT UP ANYTHING. YOU UNDERSTAND
20 THAT?

21 A. THAT'S CORRECT.

22 Q. THERE'S NO BURDEN ON THEM TO CONVINCE YOU AWAY
23 FROM DEATH, IT'S OUR BURDEN TO PROVE AGGRAVATING
24 CIRCUMSTANCES. THEY CAN PUT IN MITIGATION IF
25 THEY WANT. DO YOU UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. BUT WHEN IT FINALLY GETS TO THAT PHASE, IN A
3 REGULAR TRIAL IN A LIFE STANDPOINT; IN OTHER
4 WORDS, ALL TWELVE JURORS VOTE FOR LIFE. YOU
5 KNOW, LIFE OR DEATH, THAT PART HAS GOT TO BE
6 UNANIMOUS. IF ALL TWELVE JURORS VOTE FOR LIFE,
7 THEN JUST THE FOREPERSON, FORELADY OR FOREMAN OF
8 THE JURY SIGNS AND SAYS WE'VE ALL VOTED
9 UNANIMOUSLY, WE'VE DETERMINED LIFE.

10 AND, OF COURSE, IF THEY ALL VOTE DEATH, IT'S A
11 LITTLE BIT DIFFERENT IN THAT EACH INDIVIDUAL
12 JUROR HAS TO SIGN THEIR OWN NAME. IN OTHER
13 WORDS, A LIFE SENTENCE HAS ONE SIGNATURE. A
14 DEATH VERDICT HAS TWELVE.

15 AFTER HEARING ALL THE FACTS IN THE CASE AND THE
16 EVIDENCE IN AGGRAVATION AND MITIGATION IF YOU
17 THOUGHT LIFE WAS APPROPRIATE, YOU'VE MADE IT
18 CLEAR THAT YOU COULD VOTE FOR LIFE; IS THAT
19 CORRECT?

20 A. YES, SIR.

21 Q. LIKewise, YOU INDICATED THAT IF YOU THOUGHT
22 DEATH WAS APPROPRIATE, YOU COULD VOTE DEATH.

23 A. YES, SIR.

24 Q. MY FINAL QUESTION WOULD BE IF IN MAKING THE
25 DETERMINATION, YOU'D HEARD EVERYTHING AND YOU

1 DETERMINED DEATH WAS APPROPRIATE IN A CASE AND
2 IT CAME TIME AND THERE IS A LIST -- OF COURSE,
3 WHAT YOU SAY IS WHAT THE JUDGE IS GOING TO DO.
4 IF YOU SAY LIFE, HE'S GOING TO DO LIFE. IF YOU
5 SAY DEATH, HE'S GOING TO DO DEATH. COULD YOU
6 SIGN ROGER STIKELEATHER TO A FORM THAT WOULD
7 TAKE THIS MAN'S LIFE?

8 A. I BELIEVE I COULD, SIR.

9 Q. OKAY. THANK YOU, SIR.

10 THE COURT: YOU MAY STEP OUTSIDE JUST FOR A
11 MINUTE.

12 (THE JUROR LEFT THE COURTROOM.)

13 THE COURT: WHAT SAYS THE DEFENSE?

14 MR. BOYD: I BELIEVE HE'S QUALIFIED.

15 THE COURT: YOU SAID HE WAS?

16 MR. BOYD: HE IS, YES.

17 THE COURT: THE STATE?

18 MR. POPE: WE BELIEVE HE IS QUALIFIED, YOUR
19 HONOR.

20 THE COURT: I AGREE.

21 MR. BOYD: YOUR HONOR, I WOULD ASK THE COURT TO
22 INQUIRE OF HIM ABOUT THE DISCUSSIONS ALSO.

23 THE COURT: WELL, I THOUGHT WE DID. I INQUIRED
24 RIGHT OFF THE BAT. BRING HIM BACK IN.

25 (THE JUROR RETURNED TO THE COURTROOM.)

1 THE COURT: MR. STIKELEATHER, WE ARE GOING TO
2 INCLUDE YOU IN THE POOL FROM WHICH THE JURY IS DRAWN. THAT
3 DOES NOT MEAN THAT YOU WILL ULTIMATELY BE ON THE JURY
4 BECAUSE THERE WILL BE A BIG PANEL WHICH WILL BE COMPRESSED.

5 WE DON'T KNOW WHEN WE'RE GOING TO DO THAT YET,
6 BUT CALL BACK TOMORROW NIGHT AFTER 6:00 TO THAT 1-800
7 NUMBER AND THEY WILL TELL YOU WHAT TO DO. IT MAY BE TO
8 CALL BACK OR IT MAY BE TO REPORT.

9 WHEN YOU COME, COME PREPARED TO SPEND A FEW
10 NIGHTS, BRING YOUR TOILETRY ITEMS AND YOUR CLOTHES.

11 DON'T BE LETTING YOURSELF BE EXPOSED TO ANY NEWS
12 COVERAGE. YOU ALREADY APPARENTLY KNEW THAT.

13 THE JUROR: YES, SIR.

14 THE COURT: BUT DON'T LET YOURSELF BE EXPOSED TO
15 ANY NEWS COVERAGE. DON'T DISCUSS THE CASE WITH ANYONE
16 OUTSIDE THE COURTROOM. IF ANYONE DOES TRY TO DISCUSS IT
17 WITH YOU, REPORT THAT BACK TO ME, HOPEFULLY IDENTIFYING
18 THAT PERSON.

19 SO, WE WILL SEE YOU SOMETIME IN THE NEXT FEW
20 DAYS. THANK YOU.

21 THE JUROR: THANK YOU, SIR.

22 (THE JUROR LEFT THE COURTROOM.)

23 THE COURT: ROSEMARY ROZSAK.

24 ROSEMARY ROZSAK, JUROR NUMBER 230, WHITE FEMALE,
25 WAS QUESTIONED AS FOLLOWS:

1 **QUESTIONS BY THE COURT:**

2 Q. MS. ROZSAK, COME UP AND HAVE A SEAT.

3 A. RIGHT HERE?

4 Q. YES. I'LL REMIND YOU THAT YOU ARE STILL UNDER
5 OATH. IF YOU ARE CHOSEN TO SERVE ON THIS JURY,
6 YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE
7 COURTROOM, BUT THEY WILL NOT BE TAKING YOUR
8 PICTURE; THEY ARE NOT ALLOWED TO. SO, DON'T BE
9 DISTRACTED IF YOU SEE ANY CAMERAS. THERE ARE
10 NOT ANY HERE TODAY THAT I'M AWARE OF; I HAVEN'T
11 SEEN ANY.

12 A. OKAY.

13 Q. NOW, YOU HANDED US A QUESTIONNAIRE; DO YOU NEED
14 TO MAKE ANY CHANGES TO THAT OR IS IT ACCURATE?

15 A. NO, IT'S ACCURATE.

16 Q. OKAY. AND IN THERE YOU MENTIONED THAT YOU HAD
17 ONE MEDICAL PROBLEM, AND I DON'T WANT TO INQUIRE
18 TOO MUCH BUT I CAN TELL YOU IN ADVANCE THAT IF
19 YOU ARE SEATED ON THIS JURY, THE WAY I HANDLE MY
20 JURIES IS THAT I, NUMBER ONE, TAKE BREAKS ABOUT
21 EVERY HOUR AND A HALF; I ALSO TELL JURORS, AND I
22 TELL ATTORNEYS AND MR. ROBERTSON, THAT WHENEVER
23 ANYBODY NEEDS A BREAK, ALL THEY HAVE TO DO IS
24 RAISE THEIR HAND. SO, I THINK WE CAN TAKE CARE
25 OF THAT. BUT I WANT YOU TO KNOW I AM AWARE OF

1 IT AND CONSCIOUS OF IT.

2 A. OKAY.

3 Q. NOW, DID YOU HAVE A CHANCE TO GO OVER THE
4 WITNESS LIST?

5 A. YES.

6 Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR A FRIEND
7 OF ANY OF THOSE INDIVIDUALS?

8 A. NO.

9 Q. PRIOR TO TODAY, HAD YOU HEARD ANYTHING ABOUT
10 THIS CASE, ANYTHING WHATSOEVER FROM ANY SOURCE?

11 A. ONLY ON THE NEWS, THE T.V.

12 Q. ALL RIGHT. HAVE YOU HEARD ANYTHING TODAY? WE
13 UNDERSTAND THERE MAY HAVE BEEN SOME DISCUSSIONS
14 ABOUT THIS CASE IN THE JURY ROOM. DID YOU HEAR
15 ANYBODY DISCUSSING THE CASE IN THE JURY ROOM
16 TODAY?

17 A. NO.

18 Q. I BEG YOUR PARDON?

19 A. NO.

20 Q. SINCE YOU HAVE HEARD A LITTLE BIT ABOUT IT OR
21 SOME ABOUT IT, I BETTER NOT SAY A LITTLE BIT
22 BECAUSE I'M NOT GOING TO PUT WORDS IN YOUR
23 MOUTH, BUT YOU HAVE HEARD SOMETHING ABOUT THE
24 CASE. COULD YOU PUT THAT ASIDE AND BASE YOUR
25 VERDICT ON THE ISSUES OF GUILT OR INNOCENCE AND

1 THE PENALTY, COULD YOU PUT ASIDE ANYTHING THAT
2 YOU'VE HEARD BEFORE YOU GOT HERE TODAY AND BASE
3 YOUR VERDICT SOLELY ON THE LAW AND THE EVIDENCE
4 PRESENTED DURING THE TRIAL?

5 A. I'D LIKE TO THINK I COULD. I KNOW WHAT I HEARD
6 AND I KNOW THAT IT LEFT AN IMPRESSION IN MY HEAD
7 BUT, YEAH, I THINK I COULD.

8 Q. YOU COULD BE FAIR AND IMPARTIAL?

9 A. YEAH.

10 Q. IF YOU CAN'T, LET US KNOW NOW BECAUSE ---

11 A. I DON'T KNOW IF I CAN OR NOT.

12 Q. --- THIS IS A VERY IMPORTANT CASE AND IF ---

13 A. I KNOW. I DON'T KNOW IF I COULD. I DON'T KNOW
14 IF I COULD EVER DO THE DEATH PENALTY THING.

15 Q. ALL RIGHT, WELL, LET ME MOVE TO THAT REAL QUICK.
16 YOU'RE TELLING ME FIRST THAT YOU'RE NOT SURE IF
17 YOU COULD SET ASIDE WHAT YOU'VE ALREADY HEARD.
18 WITHOUT GOING -- DID YOU READ THESE TYPES OF
19 JURORS?

20 A. YEAH.

21 Q. DID YOU FIND YOURSELF TO BE ONE OF THESE TYPES?

22 A. THE SECOND ONE.

23 Q. ALL RIGHT. ARE YOU TELLING ME THAT YOU BELIEVE
24 YOU ARE SOMEONE WHO UNDER NO CIRCUMSTANCES
25 WHATSOEVER WOULD IMPOSE THE DEATH PENALTY ON

1 SOMEONE EVEN THOUGH THEY HAD BEEN FOUND GUILTY
2 OF MURDER?

3 A. THAT'S RIGHT.

4 Q. EVEN AFTER YOU HEARD AGGRAVATING CIRCUMSTANCES
5 IF THERE WERE ANY PRESENTED, YOU STILL WOULD NOT
6 CONSIDER GIVING THE DEATH PENALTY UNDER ANY
7 CIRCUMSTANCES?

8 A. I DON'T THINK I COULD DO IT.

9 Q. ALL RIGHT. ANSWER ANY QUESTIONS THE STATE HAS.

10 QUESTIONS BY MR. BRACKETT:

11 Q. GOOD EVENING, MS. ROZSAK, HOW ARE YOU?

12 A. I'M FINE.

13 Q. MY NAME IS KEVIN BRACKETT. I'M THE DEPUTY
14 SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. TOMMY
15 POPE IS THE SOLICITOR AND HE AND I ARE
16 PROSECUTING MR. ROBERTSON WHO IS SEATED OVER
17 THERE AT COUNSEL TABLE WITH HIS ATTORNEYS.

18 A. RIGHT.

19 Q. BEFORE I ASK YOU ANY QUESTIONS I AM GOING TO
20 REITERATE WHAT THE JUDGE HAS TOLD YOU. THIS
21 ISN'T ABOUT WHETHER YOU'RE RIGHT OR WRONG; THIS
22 ISN'T EVEN A DEBATE ABOUT WHAT IS THE RIGHT
23 ANSWER. IT HAS NOTHING TO DO WITH THAT. WE'RE
24 JUST TRYING TO FIGURE OUT HOW YOU FEEL, FIGURE
25 OUT HOW ROSEMARY ROZSAK FEELS NOW BEFORE YOU GET

1 ON THE JURY AND BEFORE YOU REALIZE, FOR EXAMPLE,
2 I CAN'T PUT IT OUT OF MY HEAD WHAT I READ IN THE
3 NEWSPAPER OR SAW ON T.V., I COULDN'T BE FAIR.
4 BECAUSE YOU REALIZE ONCE YOU'RE IN THE BOX HERE,
5 THEN IT'S TOO LATE. WE CAN'T GO BACK AND GET
6 MORE JURORS AND TAKE YOU OUT AND THEN START THE
7 CASE OVER AGAIN FOR THE NEW JUROR TO HEAR ALL OF
8 THE EVIDENCE YOU'VE ALREADY HEARD. DO YOU SEE
9 WHAT I'M SAYING?

10 A. RIGHT.

11 Q. SO, WE KIND OF NEED TO KNOW THAT NOW. AND IT'S
12 ALL RIGHT IF THE ANSWER IS YOU CAN'T PUT IT OUT
13 OF YOUR HEAD, FOR EXAMPLE, THAT'S OKAY, SOME
14 PEOPLE CAN'T. AND WE'RE NOT GOING TO JUDGE YOU
15 HARSHLY OR GET UPSET OR ANYTHING OF THAT KIND.
16 WE JUST NEED TO KNOW AT THIS POINT.

17 A. I DON'T THINK I COULD.

18 Q. OKAY, AND THAT'S FAIR. YOU'VE SEEN SOME STUFF
19 ON T.V. ABOUT THIS AND YOU'VE READ SOME STUFF IN
20 THE PAPER?

21 A. YES.

22 Q. AND YOU'VE READ SOME OF THE FACTS OF THE CASE?

23 A. WELL, YEAH.

24 Q. AND YOU READ A LITTLE BIT MAYBE ABOUT -- WHAT
25 DID YOU READ, YOU TELL ME. I'M NOT GOING TO TELL

1 YOU, YOU TELL ME.

2 A. I HEARD THAT HE KILLED HIS PARENTS, CHOPPED THEM
3 UP, YOU KNOW, STUFF LIKE THAT.

4 Q. OKAY. DID YOU HEAR ANYTHING ELSE?

5 A. NO. THAT HE WENT UP TO PENNSYLVANIA OR
6 SOMETHING LIKE THAT AND USED CREDIT CARDS.

7 Q. WHICH NEWSPAPER DO YOU READ?

8 A. I SAW SOME OF IT ON THE NEWS, AND I SAW SOME IN
9 THE HERALD.

10 Q. DID YOU READ THE WHOLE ARTICLE IN THE HERALD?

11 A. NO, I JUST READ PARTS OF IT AND I JUST PUT IT
12 DOWN. AND THEN LAST NIGHT BEFORE I WAS GOING TO
13 BED I SAW IT ON THE NEWS AND I THOUGHT OH, MY
14 GOSH, THAT'S GOING TO BE MINE.

15 Q. SURE, SURE. SO DO YOU THINK IF YOU WERE SITTING
16 IN THIS JURY BOX -- YOU KNOW, OF COURSE, IN
17 ORDER FOR MR. ROBERTSON TO GET A FAIR TRIAL HERE
18 AND WE WANT MR. ROBERTSON TO GET A FAIR TRIAL,
19 WE NEED TWELVE JURORS TO SIT IN THIS BOX WHO
20 EITHER KNOW NOTHING ABOUT THE CASE OR WASH THEIR
21 MINDS COMPLETELY CLEAN OF EVERYTHING THAT
22 THEY'VE HEARD AND THEN ONLY BASE THEIR DECISION
23 BASED ON THE EVIDENCE THAT COMES FROM THE
24 WITNESS STAND THAT YOU'RE SITTING IN RIGHT NOW.

25 A. RIGHT.

1 Q. AND THE EVIDENCE, THE PHYSICAL EVIDENCE, PHOTOS
2 OR WHATEVER THAT WE MIGHT PUT IN. THAT IS WHAT
3 THE JURY NEEDS TO DECIDE WHETHER HE'S GUILTY OR
4 NOT. BUT IT'S NOT BASED ON ANY NEWSPAPER
5 REPORTS OR TELEVISION REPORTS. ARE YOU SAYING
6 THAT IF YOU WERE ONE OF THOSE TWELVE JURORS,
7 YOU'RE GOING TO BE HEARING THE TESTIMONY AND
8 YOU'RE GOING TO BE SEEING THE EVIDENCE, BUT
9 ROSEMARY ROZSAK IS ALSO GOING TO BE THINKING
10 ABOUT WHAT SHE READ IN THE HERALD.

11 A. WELL, I KNOW THAT WILL HAPPEN BECAUSE THAT'S HOW
12 I AM. I MEAN LIKE EVEN THOUGH SOMETHING HAPPENS
13 AND I CAN HEAR SOME PART OF THE STORY, LIKE SAY
14 NOT THIS STORY BUT WHATEVER?

15 Q. SURE.

16 A. AND THEN I'M STILL GOING TO BE THINKING BUT
17 YEAH, YOU KNOW, I HEARD, I REMEMBER THAT PART OF
18 IT FROM WHATEVER.

19 Q. YOU CAN'T PUT IT OUT OF YOUR MIND.

20 A. NO, I DON'T THINK I WOULD BE ABLE TO.

21 Q. THAT'S FINE. NOW, ON TO THE SECOND PART OF WHAT
22 THE JUDGE WAS ASKING YOU ABOUT. WHAT I WAS JUST
23 TALKING TO YOU ABOUT WAS JUST FOR LIKE THE GUILT
24 PHASE, WHETHER OR NOT HE'S GUILTY OR NOT.
25 BECAUSE IF HE'S NOT GUILTY, THEN THERE'S NO

1 PUNISHMENT AT ALL, RIGHT?

2 A. NO.

3 Q. YOU DON'T PUNISH SOMEBODY WHO'S NOT GUILTY. BUT
4 IF THEY DO FIND HIM GUILTY, WE GO TO THE SECOND
5 HALF OF THE TRIAL. THAT'S WHEN WE DECIDE, OKAY,
6 NOW WE'VE FOUND HIM GUILTY, WHAT ARE WE GOING TO
7 DO WITH HIM.

8 AND AT THAT POINT THERE ARE TWO CHOICES THAT THE
9 JURY HAS, LIFE AND DEATH. AND ALL JURORS NEED
10 TO BE ABLE TO PICK FROM BOTH; BOTH OF THEM NEED
11 TO BE AVAILABLE OPTIONS TO OUR JURORS. ARE YOU
12 TELLING US THAT YOU COULDN'T BE ONE OF THOSE
13 JURORS BECAUSE YOU COULD NEVER CHOOSE DEATH?

14 A. I COULDN'T.

15 Q. NO MATTER HOW BAD THE CASE?

16 A. I DON'T THINK I COULD.

17 Q. OKAY. IS THIS A RELIGIOUS OR PERSONAL OR
18 PHILOSOPHICAL ---

19 A. I THINK I'D PROBABLY HAVE TO HAVE PSYCHOLOGICAL
20 HELP AFTER I DID SOMETHING LIKE THAT. I DON'T
21 THINK I COULD DO IT.

22 Q. SURE, AND THAT'S FINE, TOO. AND WE'RE NOT DOING
23 THIS TO EMBARRASS YOU OR ANYTHING LIKE THAT.
24 EVERYBODY HAS THEIR OWN FEELINGS ON THIS, AND WE
25 JUST NEED TO KNOW YOUR FEELINGS.

1 A. UH HUH.

2 Q. SO, YOU'RE SAYING HOW IT WOULD MAKE YOU FEEL
3 AFTERWARD WOULD PREVENT YOU FROM IMPOSING A
4 SENTENCE OF DEATH?

5 A. UH HUH.

6 Q. OKAY. ONE OF THE THINGS THAT A JUROR HAS TO DO
7 THAT'S UNIQUE IN ALL OF THE LAW, CIVIL LAW OR
8 CRIMINAL LAW, WHEN A JURY REACHES A VERDICT IN
9 ALMOST EVERY OTHER TYPE OF CASE THE ONLY PERSON
10 THAT HAS TO SIGN WHAT THE VERDICT IS IS THE
11 FOREMAN OR THE FORELADY; THEY SIGN THE VERDICT
12 IS GUILTY OR THE VERDICT IS THIS, AND THEY SIGN
13 THEIR NAME. AND THAT'S THE VERDICT. IN A DEATH
14 PENALTY CASE IT'S A LITTLE BIT DIFFERENT. IN A
15 DEATH PENALTY CASE IN ORDER TO SENTENCE MR.
16 ROBERTSON OVER THERE TO DEATH, EACH JUROR HAS TO
17 PICK UP THE PEN AND SIGN THEIR NAME ATTESTING
18 THAT THEIR VERDICT WAS TO SEND MR. ROBERTSON TO
19 HIS DEATH.

20 IS IT YOUR TESTIMONY HERE NOW THAT YOU COULD
21 NEVER PICK UP THE PEN AND SIGN THE NAME ROSEMARY
22 ROZSAK ON THAT DEATH VERDICT FORM?

23 A. NO, I COULDN'T DO THAT.

24 Q. WELL, THANK YOU VERY MUCH FOR YOUR ANSWERS, AND
25 PLEASE ANSWER ANY QUESTIONS THAT THE DEFENSE

1 ATTORNEYS MAY HAVE FOR YOU.

2 QUESTIONS BY MR. HANCOCK:

3 Q. MS. ROZSAK, I'M BILL HANCOCK. I REPRESENT JIMMY
4 ROBERTSON IN THIS CASE. AND THIS IS JIM BOYD
5 SEATED BESIDE JIMMY AND HE'S CO-COUNSEL IN THIS
6 CASE. AND, AGAIN, I WANT TO EMPHASIZE TO YOU
7 THAT THE ANSWERS YOU GIVE TO ME, THERE ARE NO
8 RIGHT AND WRONG ANSWERS.

9 I HAVE HEARD WHAT YOU HAVE SAID, BUT I JUST WANT
10 TO INQUIRE A LITTLE BIT MORE AND SEE EXACTLY
11 WHAT WE ARE TALKING ABOUT HERE. YOU INDICATE
12 THAT YOU HAVE READ CERTAIN THINGS IN THE
13 NEWSPAPER CONCERNING THIS CASE. IS THAT
14 CORRECT, MA'AM?

15 A. YEAH.

16 Q. NOW, YOU WERE DOWNSTAIRS AND YOU KNOW THAT JIMMY
17 IS CHARGED WITH KILLING BOTH OF HIS PARENTS.
18 AND YOU EVIDENTLY KNOW THAT HE THEN IN SOME WAY
19 WENT TO PENNSYLVANIA AND SOME OTHER FACTS. AND
20 THOSE FACTS YOU SAY YOU CAN'T PUT OUT OF MY
21 HEAD. IS THAT CORRECT; IS THAT WHAT YOU'RE
22 SAYING?

23 A. YEAH. THE THING ABOUT -- ON THE NEWS IT SAID
24 SOMETHING ABOUT HOW HE DID IT OR HOW HE WAS
25 SUPPOSED -- HOW IT WAS DONE OR WHAT WAS USED.

1 Q. BUT YOU CAN'T PUT THOSE OUT OF YOUR HEAD TO VOTE
2 FOR -- THAT YOU WOULD NEVER BE ABLE TO VOTE FOR
3 THE DEATH PENALTY THOUGH THOSE THINGS ARE JUST
4 HEINOUS THINGS, BAD THINGS?

5 A. WELL, I COULDN'T DO IT FOR ANYBODY FOR THE DEATH
6 PENALTY. I JUST CAN'T DO THAT; I JUST DON'T
7 WANT TO DO THAT. I THINK IT WOULD -- I DON'T
8 LIKE THAT.

9 Q. THERE ARE NO FACTS AND CIRCUMSTANCES OR ANY
10 CRIME HEINOUS ENOUGH THAT YOU WOULD ACTUALLY
11 VOTE FOR THE DEATH PENALTY KNOWING ALL THE
12 AGGRAVATING CIRCUMSTANCES WHICH CAN BE MANY,
13 THERE IS NO SITUATION IN WHICH YOU WOULD GIVE
14 THE DEATH PENALTY; IS THAT WHAT YOU'RE SAYING,
15 MA'AM?

16 A. YEAH.

17 Q. THANK YOU.

18 THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE
19 THE DOOR JUST ONE MINUTE.

20 (THE JUROR LEFT THE COURTROOM.)

21 THE COURT: WHAT SAYS THE STATE?

22 MR. BRACKETT: I SUBMIT SHE'S NOT QUALIFIED.

23 THE COURT: WHAT SAYS THE DEFENSE?

24 MR. HANCOCK: NOT QUALIFIED.

25 THE COURT: ALL RIGHT, BRING HER IN.

1 (THE JUROR RETURNED TO THE COURTROOM.)

2 THE COURT: YOU CAN JUST STAND RIGHT THERE. WE
3 APPRECIATE YOUR CANDOR. WE'RE GOING TO EXCUSE YOU FROM ANY
4 FURTHER SERVICE AND THANK YOU A LOT FOR COMING AND WE
5 APPRECIATE YOUR PATIENCE. YOU CAN LEAVE; YOU ARE THROUGH.
6 (THE JUROR LEFT THE COURTROOM.)

7 THE COURT: ALL RIGHT, IT'S BEEN A LONG DAY, AND
8 I KNOW EVERYBODY IS READY TO GO AND HOPEFULLY WE WILL MOVE
9 A LITTLE QUICKER STARTING AT 9:00. WE'LL START AS QUICK AS
10 WE CAN IN THE MORNING, BUT I WOULD LIKE TO DO A QUICK RECAP
11 AND ALSO ASK THAT BOTH SIDES, IF THEY WISH, FEEL FREE TO
12 GIVE ME ANY KIND OF LAW THEY WANT ON THIS ISSUE ABOUT THE
13 DISCUSSION IN THE JURY ROOM.

14 MR. HANCOCK: YOU WANT A RECAP OF WHAT WE ---

15 THE COURT: NO, I'M GOING TO RECAP IN JUST A
16 MOMENT, BUT FIRST I WANT TO INVITE EITHER SIDE TO PRESENT
17 ME WITH ANY LAW THEY WISH CONCERNING THAT ISSUE ABOUT
18 WHAT'S BEEN TALKED ABOUT.

19 ON MY QUICK RECAP I'VE GOT ELEVEN DEATH PENALTY
20 QUALIFIED, SIX OR MAYBE SIX AND A HALF NOT DEATH PENALTY
21 QUALIFIED, AND I'LL TELL YOU THE HALF IN A MOMENT.

22 WE HAVE EXCUSED MR. PANNELL BECAUSE OF HIS CHILD;
23 LINDA POMPEII BECAUSE OF A CRIMINAL RECORD; DAVID KAYLOR
24 BECAUSE OF PRE-TRIAL PUBLICITY; KRISTEN GORDON BECAUSE SHE
25 WAS A TEACHER; DAVID YOUNG ON WHAT I CALL THE CREDIBILITY