

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

John C. Few, Circuit Court Judge

Case No. 00-CP-32-3470

GARY DUBOSE TERRY Petitioner,

v.

STATE OF SOUTH CAROLINA Respondent.

APPENDIX
VOLUME II OF VII

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INDEX

Record on Appeal	1
Final Brief of Appellant	2216
Final Brief of Respondent	2247
Final Reply Brief of Appellant	2304
Opinion of South Carolina Supreme Court	2318
Petition for Rehearing	2328
Order Denying Rehearing	2333
U.S. Petition for Writ of Certiorari	2335
Brief in Opposition	2411
Denial of Writ of Certiorari	2443
Application for Post-Conviction Relief	2444
Return and Motion to Dismiss	2457
Applicant's Final Amendments to Application for Post-Conviction Relief	2481
Transcript of Evidentiary Hearing July 10-12, 2006	2483
Applicant's Post-Hearing Memorandum of Law	2804
Respondent's Proposed Order of Dismissal	2875
Applicant's Objections to Respondent's Proposed Order of Dismissal	2989
Order of Dismissal	3014
Applicant's Motion for Reconsideration in Re: Final Order of Dismissal	3126
Order Denying Motion For New Trial	3127
Order Appointing Counsel	3129

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APPEAL FROM LEXINGTON COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY DUBOSE TERRY,

APPELLANT.

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1 PATIENTS AND THINGS LIKE THAT?

2 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
3 THIS TIME.)

4 THE COURT: YOU NEED TO ANSWER OUT LOUD, PLEASE,
5 MA'AM.

6 THE JUROR: YES, SIR.

7 MS. FULLWOOD: OKAY. AND THAT'S KIND OF AN
8 ADMINISTRATIVE TYPE OF THING THAT'S PART OF YOUR JOB?

9 A YES.

10 Q OKAY. NOW, SIGNING YOUR NAME TO A SENTENCING FORM IS
11 KIND OF LIKE THAT. IT'S AN ADMINISTRATIVE THING. IT'S
12 SOMETHING---

13 MR. HUMPHRIES: I'M GOING TO OBJECT TO THAT, YOUR
14 HONOR. I'M GOING TO OBJECT TO THAT.

15 THE COURT: LET ME SEE THE LAWYERS AT THE SIDE
16 BAR, PLEASE.

17 (WHEREUPON, A BENCH CONFERENCE WAS
18 HELD AT THIS TIME OFF THE RECORD.)

19 THE COURT: IF YOU WOULD, MA'AM, I'M GOING TO ASK
20 YOU TO SPEAK UP JUST A LITTLE BIT. I'M HAVING TROUBLE
21 HEARING YOU UP HERE---

22 THE JUROR: OKAY.

23 THE COURT: ---SO IF YOU WOULD, PLEASE, SPEAK A
24 LITTLE BIT LOUDER FOR US AND I THINK THAT THE MIKE WILL
25 PROBABLY PICK YOU UP SUFFICIENTLY.

1 ALL RIGHT, MS. FULLWOOD.

2 MS. FULLWOOD: OKAY.

3 DON'T YOU THINK THAT ONCE YOU HAVE MADE UP YOUR
4 MIND ONE WAY OR THE OTHER ABOUT WHAT WAS THE RIGHT THING TO
5 DO, WHAT WAS THE RIGHT SENTENCE TO IMPOSE, YOU COULD SIGN
6 YOUR NAME SAYING THAT THAT'S THE WAY YOU HAD MADE UP YOUR
7 MIND?

8 THE JUROR: YES.

9 Q OKAY. SO IT WOULDN'T PREVENT YOU FROM ARRIVING AT A
10 VERDICT, WOULD IT?

11 A NO, IT WOULD NOT.

12 Q THANK YOU, MA'AM.

13 MR. HUMPHRIES: JUST BRIEFLY, YOUR HONOR.

14 THE COURT: YES, SIR, CERTAINLY.

15 RE-EXAMINATION

16 BY MR. HUMPHRIES:

17 Q MS. MOORE, I'M -- I'M SO SORRY. I REALLY AM. AND
18 THIS MAY APPEAR TO YOU TO BE A PRETTY FINE POINT, BUT IT
19 REALLY GOES TO THE ESSENCE OF WHAT WE ARE LOOKING FOR IN A
20 JUROR.

21 WHEN -- AND YOU TELL ME IF I'M WRONG. WHAT I
22 HEARD YOU SAY TO ME IS THAT THE TASK OF SIGNING YOUR NAME
23 TO INDICATE YOUR VOTE FOR DEATH, HAVING TO DO THAT WOULD
24 SUBSTANTIALLY IMPAIR YOUR ABILITY TO CONSIDER AND TO IMPOSE
25 THE DEATH SENTENCE? IS THAT A FAIR STATEMENT OF WHAT YOU

1 SAID OR?

2 A IT WOULD DEPEND ON MY FEELINGS FROM WHENEVER -- IF
3 THERE WAS A GUILTY VERDICT. IF THERE WAS, THEN GOING TO
4 THE NEXT PHASE. DEPENDING ON WHY HE WAS FOUND GUILTY. THE
5 REASONS THAT HE WAS FOUND GUILTY IF FOUND GUILTY.

6 Q YOU UNDERSTAND THAT WE ARE NOT TALKING ABOUT MERELY
7 CONSIDERING, BEING ABLE TO CONSIDER A DEATH VERDICT, BUT WE
8 ARE LOOKING FOR A JUROR WHO ACTUALLY CAN CONSIDER AND
9 IMPOSE A DEATH VERDICT---

10 MS. FULLWOOD: OBJECTION, YOUR HONOR---

11 MR. HUMPHRIES: ---UNDER THE RIGHT
12 CIRCUMSTANCES---

13 THE COURT: STATE YOUR GROUND.

14 MS. FULLWOOD: I'M NOT SURE THAT'S A CORRECT
15 STATEMENT OF THE LAW.

16 MR. HUMPHRIES: I BELIEVE THAT IS RIGHT ON POINT.

17 THE COURT: WELL---

18 MR. HUMPHRIES: I'LL BE GLAD TO CITE THE CASE.

19 THE COURT: I UNDERSTAND THE CASE AND I'M GOING
20 TO LET HIM GO AHEAD -- I OVERRULE. I'M GOING TO ALLOW HIM
21 TO CONTINUE TO STATE HIS QUESTION.

22 MR. HUMPHRIES: ARE YOU THE TYPE JUROR WHO COULD
23 CONSIDER ALL OF THE EVIDENCE, AGGRAVATION AND MITIGATION,
24 AND NOT ONLY CONSIDER THE DEATH PENALTY, BUT ACTUALLY
25 IMPOSE THE DEATH PENALTY GIVEN THE RIGHT FACTS AND

1 CIRCUMSTANCES?

2 THE JUROR: YES.

3 Q THAT'S WHAT I NEED TO KNOW. THANK YOU VERY MUCH.

4 THE COURT: LET ME ASK YOU A FOLLOW-UP QUESTION.

5 NOW, WE ARE TALKING ABOUT IN THE SECOND PHASE.

6 WE ARE TALKING ABOUT THE SENTENCING PHASE. THE GUILT PHASE
7 HAS BEEN DECIDED. THE JURY HAS DETERMINED THE GUILT OF THE
8 DEFENDANT FOR THE PURPOSES OF OUR DISCUSSION. COULD YOU
9 CONSIDER THE TESTIMONY AND EVIDENCE WHICH HAS BEEN
10 PRESENTED AND IMPOSE AND WHEN I TALK ABOUT THAT, THE
11 AGGRAVATING CIRCUMSTANCES THAT WOULD BE PRESENTED AS WELL
12 AS THE MITIGATING CIRCUMSTANCES THAT ARE PRESENTED, COULD
13 YOU IMPOSE A SENTENCE OF LIFE IN PRISON?

14 A YES.

15 THE COURT: COULD YOU IMPOSE A SENTENCE OF DEATH?

16 A YES.

17 THE COURT: SO, ARE YOU TELLING ME THAT YOU COULD
18 CONSIDER AND IMPOSE EITHER OF THOSE SENTENCES?

19 A YES, SIR.

20 THE COURT: DEPENDING UPON WHAT?

21 A DEPENDING ON THE EVIDENCE AND THE REASONING OF WHY
22 THE CRIME WAS COMMITTED.

23 THE COURT: AND CONSIDERING ALL OF THE
24 CIRCUMSTANCES ATTENTIVE THERETO?

25 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT

1 THIS TIME.)

2 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE
3 DEFENDANT?

4 MS. FULLWOOD: NO, SIR.

5 THE COURT: FROM THE STATE?

6 MR. HUMPHRIES: NO, SIR.

7 THE COURT: ALL RIGHT.

8 MS. MOORE, I FIND THAT YOU ARE QUALIFIED TO SERVE
9 AS A POTENTIAL JUROR IN THIS CASE AND WITH THAT
10 QUALIFICATION, SEVERAL THINGS THAT I AM GOING TO TELL YOU.

11 NUMBER ONE, YOU ARE NOT TO DISCUSS, AFTER YOU
12 LEAVE HERE TODAY AND UNTIL YOU RETURN HERE ON WEDNESDAY
13 MORNING, YOU ARE NOT TO DISCUSS THIS CASE IN ANY FASHION
14 WHATSOEVER WITH ANY OF YOUR FELLOW JURORS, FAMILY, FRIENDS
15 OR ANYONE ELSE. IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
16 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
17 INFORMATION ABOUT THAT INDIVIDUAL AS YOU CAN AND REPORT
18 THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER
19 THAT I WILL DEAL WITH ACCORDINGLY.

20 ALSO, YOU ARE TO REFRAIN FROM READING, WATCHING
21 OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

22 VERY SIMPLY PUT, ALL I WANT YOU TO CONSIDER IN
23 THIS CASE IS WHAT YOU SEE AND HEAR IN THIS COURTROOM.
24 NOTHING MORE AND NOTHING LESS.

25 NOW, I'M GOING TO INSTRUCT YOU THAT YOU ARE TO GO

1 HOME AND BEGIN PACKING YOUR BAGS BECAUSE WHEN YOU COME BACK
2 HERE ON WEDNESDAY MORNING AT 9:30, PLEASE LEAVE ALL OF YOUR
3 BAGGAGE IN YOUR VEHICLE THAT YOU DRIVE HERE OR THAT YOU
4 ARRIVE IN HERE AND IF YOU ARE SELECTED AS A JUROR IN THIS
5 CASE, THEN YOU AND YOUR BELONGINGS WILL BE TAKEN TO THE
6 MOTEL AND THE JURY CUSTODIANS WILL SEE THAT YOU ARE
7 PROPERLY DELIVERED THERE. AND IN THE EVENT THAT YOU ARE
8 NOT SELECTED TO SERVE IN THIS CASE, THE -- WE WILL BE
9 EXCUSING YOU WITH OUR THANKS FOR PARTICIPATING IN THE
10 SYSTEM.

11 ONCE AGAIN, PLEASE REPORT HERE WEDNESDAY MORNING
12 AT NINE-THIRTY WITH ALL OF YOUR BELONGINGS IN YOUR CAR AND
13 I'LL LOOK FORWARD TO SEEING YOU AT THAT TIME. THANK YOU
14 VERY MUCH AND HAVE A PLEASANT EVENING.

15 THE JUROR: THANK YOU.

16 (WHEREUPON, THE JUROR WAS EXCUSED
17 AT THIS TIME.)

18 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
19 THAT JUROR NUMBER 170, MS. MOORE, IS QUALIFIED TO SERVE AS
20 A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320
21 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
22 AMENDED.

23 JUROR NUMBER 137, MS. KIRKPATRICK.

24 CHERYL H. KIRKPATRICK,

25 (JUROR NUMBER 137, WHITE FEMALE,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

2 EXAMINATION

3 BY THE COURT:

4 Q GOOD AFTERNOON -- EXCUSE ME, GOOD EVENING, MS.

5 KIRKPATRICK. HOW ARE YOU?

6 A FINE. THANK YOU.

7 Q YOU ARE CHERYL H. KIRKPATRICK, JUROR NUMBER 137,

8 CORRECT?

9 A YES, SIR.

10 Q AND, MS. KIRKPATRICK, YOU UNDERSTAND THAT YOU HAVE
11 BEEN PLACED UNDER OATH FOR THESE PROCEEDING THIS EVENING?

12 A YES, SIR.

13 Q AND DO YOU ALSO RECALL THAT I GAVE YOU CERTAIN
14 INSTRUCTIONS BEFORE YOU LEFT THE COURT HOUSE EARLIER THIS
15 AFTERNOON THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
16 ANYONE---

17 A UH-HUH.

18 Q ---IF ANYONE ATTEMPTED TO DISCUSS THIS CASE WITH YOU,
19 TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO REFRAIN FROM
20 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
21 CONCERNING THIS CASE?

22 A YES, SIR.

23 Q AND HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

24 A NO, SIR.

25 Q NOW, I'M GOING TO BE ASKING YOU SEVERAL QUESTIONS AS

0507

1 WELL AS THE LAWYERS FOR THE DEFENDANT AND THE STATE AND I
2 WANT YOU TO KEEP IN MIND THAT IN NO WAY ARE WE ATTEMPTING
3 TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE NATURE OF THE
4 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
5 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED AND ANSWERS
6 RECEIVED BY ALL PARTIES INVOLVED HERE.

7 KEEP IN MIND ALSO THAT THERE ARE NO RIGHT OR
8 WRONG ANSWERS TO THE QUESTIONS TO WHICH YOU ARE GOING TO BE
9 RESPONDING. ANSWER THEM HONESTLY AND OPENLY AND FULLY AND
10 ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING THE VIEW THAT
11 YOU MIGHT HAVE IN AN AREA. IT'S SIMPLY THAT WE NEED TO
12 KNOW WHAT YOUR VIEW IS.

13 ALSO, I'M GOING TO REMIND YOU -- I UNDERSTAND
14 THAT YOU MAY BE NERVOUS, BUT PLEASE BE AS CALM AS POSSIBLE
15 BECAUSE THAT'S IMPORTANT IN RESPONDING TO THE QUESTIONS AND
16 ALSO KEEP IN MIND THAT YOU'RE PROBABLY GOING TO BE ASKED
17 SOME QUESTIONS HERE THIS EVENING THAT YOU MAY HAVE NEVER
18 EVEN CONSIDERED BEFORE.

19 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
20 DISCUSSING OVER THE NEXT FEW MINUTES WILL INVOLVE THE WORD
21 PENALTY AND THE MERE FACT THAT I EVEN USE OR MENTION THAT
22 WORD IN NO WAY INDICATES ANYTHING ABOUT THE DEFENDANT, MR.
23 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
24 UNDERSTAND THAT?

25 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT

1 THIS TIME.)

2 Q YOU NEED TO ANSWER OUT LOUD FOR ME.

3 A YES, SIR.

4 Q NOW, LET'S CONSIDER FOR A MOMENT THAT YOU WERE A
5 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
6 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
7 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
8 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

9 A YES, SIR, I BELIEVE SO.

10 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
11 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

12 A YES, SIR.

13 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
14 HAS THE BURDEN OF PROVING GUILT. THE BURDEN OF PROOF THAT
15 THE STATE MUST MEET IS TO PROVE THE GUILT OF THE DEFENDANT
16 INSOFAR AS EACH ELEMENT OF EACH CRIME IS CONCERNED BEYOND A
17 REASONABLE DOUBT. NOW, A DEFENDANT HAS ABSOLUTELY NO
18 RESPONSIBILITY OR BURDEN FOR PROVING HIMSELF INNOCENT. YOU
19 UNDERSTAND THAT?

20 A YES, SIR.

21 Q NOW, DEPENDING UPON THE FACTS AND THE EVIDENCE AND
22 THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE, COULD
23 YOU FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

24 A YES, SIR.

25 Q NOW, AS YOU ARE WELL AWARE, THIS IS A CASE IN WHICH

1 THE STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY. AND I
2 THINK THAT I TOLD YOU EARLIER TODAY THAT THESE TRIALS ARE
3 SPLIT INTO TWO PARTS. THEY ARE BIFURCATED.

4 THE FIRST PART IS WHAT WE CALL THE GUILT PHASE
5 AND THE SECOND PART IS THE SENTENCING PHASE.

6 NOW, DO YOU UNDERSTAND THAT IF YOU WERE A JUROR
7 IN SUCH A TRIAL, IN THE GUILT PHASE, AND IF THE JURY FOUND
8 THE DEFENDANT NOT GUILTY OF MURDER, THAT THE TRIAL WOULD BE
9 OVER AT THE END OF THAT PART OF IT BECAUSE THERE WOULD BE
10 NO NECESSITY OF A SENTENCING PHASE?

11 A YES, SIR.

12 Q NOW, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
13 IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
14 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
15 OR THE SECOND PHASE OF THE TRIAL?

16 A YES, SIR.

17 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
18 PRESENTED TO THE JURY IN THE FORM OF AGGRAVATING
19 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

20 NOW, BY WAY OF DEFINITION, AGGRAVATING
21 CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS OR AN
22 OCCURRENCE WHICH OUR GENERAL ASSEMBLY HAS DECLARED BY LAW
23 WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF
24 MURDER.

25 IN OTHER WORDS, WHEN THE AGGRAVATING CIRCUMSTANCE

1 IS COUPLED OR INCLUDED WITH THE MURDER, IT INCREASES THE
2 ENORMITY OR ADDS TO THE INJURY OF THAT MURDER.

3 FOR EXAMPLE, A MURDER THAT IS COMMITTED AND
4 ACCOMPANIED BY AN ACT OF CRIMINAL SEXUAL CONDUCT AND OR
5 BURGLARY. THOSE WOULD BE EXAMPLES OF AGGRAVATING
6 CIRCUMSTANCES TO THE MURDER. YOU UNDERSTAND THAT?

7 A YES, SIR.

8 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
9 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
10 ASSEMBLY HAS ALSO DECLARED OR ENACTED BY LAW OR STATUTE
11 THAT REDUCES THE SEVERITY OF THE CRIME OF MURDER. AND THAT
12 THEY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE
13 DEGREE OF RESPONSIBILITY OR MORAL CULPABILITY OF A PARTY
14 WHO HAS COMMITTED MURDER.

15 FOR EXAMPLE, MITIGATING CIRCUMSTANCES OCCUR WHEN
16 A -- OR CAN BE CONSIDERED WHEN A MURDER HAS BEEN COMMITTED
17 BY ONE WHO IS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
18 DISTURBANCES; ALSO WHERE THE CAPACITY OF THE DEFENDANT TO
19 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
20 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
21 IMPAIRED; AND ALSO YOU MAY CONSIDER THE AGE OR MENTALITY OF
22 THE DEFENDANT AT THE TIME OF THE CRIME. THOSE ARE EXAMPLES
23 OF MITIGATING CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q NOW, LET'S CONSIDER THAT YOU WERE A JUROR IN THAT

0511

1 SITUATION AND YOU WERE TALKING ABOUT THE SENTENCING PHASE,
2 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
3 CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
4 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
5 LIFE IN PRISON?

6 A YES, SIR.

7 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
8 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
9 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
10 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

11 A I THINK SO. BUT I'M NOT SURE.

12 Q ALL RIGHT. YOU UNDERSTAND THAT -- THAT UNDER THE LAW
13 OF THIS STATE, THAT THOSE ARE THE TWO OPTIONS THAT YOU
14 WOULD HAVE IN THE SENTENCING PHASE AND THAT THE LAW THAT I
15 WOULD INSTRUCT YOU IS THAT YOU WOULD HAVE TO CONSIDER THE
16 AND ACTUALLY IMPOSE ONE OF THOSE TWO SENTENCES AND THAT THE
17 SENTENCE OF DEATH IS ONE THAT IS TO BE CONSIDERED BY THE
18 JURY AND THAT JURORS WOULD HAVE TO BE ABLE TO IMPOSE THAT
19 SENTENCE IF THEY FOUND FROM ALL THE FACTS AND CIRCUMSTANCES
20 PRESENTED THAT IT WAS APPROPRIATE?

21 A YES, SIR.

22 Q NOW, IF YOU ARE CHOSEN AS A JUROR IN THIS CASE, MS.
23 KIRKPATRICK, YOU WOULD BE SEQUESTERED. IT'S KIND OF A
24 FANCY WORD OR A LEGAL WORD THAT WE LIKE TO THROW AROUND,
25 HOUSED IN A MOTEL DURING THE COURSE OF THE TRIAL. IT CAN

1 LAST ANYWHERE FROM A WEEK TO TEN DAYS. I DON'T KNOW
2 EXACTLY HOW LONG THAT WOULD BE. IT COULD BE A LITTLE BIT
3 LESS THAN THAT. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT
4 YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE
5 HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON
6 YOU?

7 A NO, SIR.

8 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. PLEASE
9 ANSWER MR. STONE'S QUESTIONS ON BEHALF OF THE DEFENDANT.

10 MR. STONE: THANK YOU, YOUR HONOR.

11 EXAMINATION

12 BY MR. STONE:

13 Q MS. KIRKPATRICK, MY NAME IS DUFFIE STONE. THIS IS
14 BETH FULLWOOD AND THIS IS GARY TERRY.

15 MS. FULLWOOD AND I REPRESENT MR. TERRY AND I KNOW
16 WE WERE INTRODUCED EARLIER, BUT I WANTED TO MAKE SURE THAT
17 -- IT'S BEEN AWHILE SINCE WE'VE GONE THROUGH THIS.

18 I HAVE GOT YOUR QUESTIONNAIRE. LET ME JUST ASK A
19 FEW QUESTIONS ABOUT IT AND I'LL LET YOU GO.

20 YOU WERE BORN IN ABERDEEN, MISSISSIPPI?

21 A YES, SIR.

22 Q AND THEN YOU MOVED TO -- OR WENT TO STARKVILLE FOR
23 COLLEGE?

24 A YES, SIR.

25 Q DID YOU GRADUATE FROM MISSISSIPPI STATE?

0513

1 A YES, SIR.

2 Q OKAY. AND YOU SAY -- YOU INDICATED IN YOUR
3 QUESTIONNAIRE THAT YOU HAVE A BACHELOR OF SCIENCE DEGREE,
4 IS THAT RIGHT?

5 A YES, SIR.

6 Q AND WHAT IS THAT IN?

7 A ELEMENTARY EDUCATION.

8 Q PARDON ME, I'M SORRY?

9 A ELEMENTARY EDUCATION.

10 Q AND YOU'VE GOT SOME GRADUATE SCHOOL STUDIES AS WELL,
11 RIGHT?

12 A YES, SIR, I'VE TAKEN COURSES TO KEEP MY TEACHING
13 CERTIFICATE UP TO DATE, BUT I HAVEN'T GOTTEN MY MASTERS.

14 Q OKAY. FINE. THAT'S WHAT I WANTED TO CLEAR UP, A
15 LITTLE BIT ON THAT.

16 IT ALSO INDICATES THAT YOUR HOME WAS BROKEN INTO
17 AND ROBBED---

18 A UH-HUH.

19 Q ---IS THAT -- WAS THAT A LONG TIME AGO OR IS THAT
20 SOMETHING RECENT?

21 A IT WAS ABOUT TEN YEARS AGO, ABOUT.

22 Q WAS THE PERSON EVER CAUGHT?

23 A NO, SIR.

24 Q DID THAT LEAVE YOU WITH ANY PARTICULAR FEELING ONE
25 WAY OR THE OTHER ABOUT THE CRIMINAL JUSTICE SYSTEM?

1 A MORE ABOUT THE POLICE DEPARTMENT THAN THE CRIMINAL
2 JUSTICE SYSTEM.

3 Q I UNDERSTAND. WHEN THE JUDGE ASKED YOU EARLIER --
4 THE PROBLEM WE'VE GOT HERE IS THAT LAWYERS, WE HAVE TO ASK
5 YOU ABOUT SOMETHING THAT MAY NOT EVEN HAPPEN AND THAT BEING
6 A SENTENCING PHASE.

7 WHEN -- WHEN WE DO THAT, WE HAVE TO DO IT BECAUSE
8 WE DON'T EVER GET ANOTHER OPPORTUNITY. IT'S SOMETHING WE
9 JUST HAVE TO DO. BECAUSE, OF COURSE, IF MR. TERRY IS FOUND
10 NOT GUILTY, WE DON'T HAVE A SENTENCING PHASE, YOU
11 UNDERSTAND THAT?

12 A UH-HUH.

13 Q BUT WHAT I WANT TO ASK YOU ABOUT BECAUSE THE JUDGE
14 COVERED THE GUILT PHASE PRETTY WELL, BUT I WANT TO TALK TO
15 YOU A LITTLE BIT ABOUT THE SENTENCING PHASE.

16 THE JUDGE ASKED YOU IF, AS A JUROR, YOU FIND
17 SOMEONE GUILTY OF MURDER AND ANOTHER CIRCUMSTANCE -- HE
18 CALLED IT CRIMINAL SEXUAL CONDUCT -- IT'S A VERY PLEASANT
19 WAY OF CALLING IT RAPE, OKAY.

20 IF YOU, AS A JUROR, FOUND SOMEBODY GUILTY OF
21 MURDER AND FOUND THEM GUILTY OF RAPE AS WELL AND MAYBE EVEN
22 BURGLARY, ARE THERE CIRCUMSTANCES THAT WOULD LEND YOU TO
23 GIVE A DEATH SENTENCE?

24 A IF -- IF THE JUDGE HAD EXPLAINED TO US THAT RIGHT
25 CALL FOR THE DEATH SENTENCE, I PROBABLY WOULD.

0515

1 Q WELL, LET ME SPEND JUST A LITTLE BIT OF TIME TALKING
2 ABOUT THIS NOW. NOW, I THINK I UNDERSTAND WHAT YOU MEAN.
3 WHEN THE JUDGE GIVES YOU THE LAW, YOU, AS A FACT FINDER,
4 WILL FOLLOW THAT LAW---

5 A RIGHT.

6 Q ---IS THAT -- IS THAT---

7 A CORRECT.

8 Q WELL, LET ME EXPLAIN TO YOU THAT HE IS -- HE IS THE
9 JUDGE OF THE LAW AND HE WILL GIVE YOU THE LAW, BUT YOUR
10 DECISIONS ARE THE FACTS.

11 NOW, WHAT I WANT TO MAKE SURE YOU UNDERSTAND IS
12 THERE WON'T BE A SITUATION WHERE THE JUDGE SAID YOU HAVE
13 FOUND MURDER, YOU HAVE FOUND RAPE OR EVEN YOU HAVE FOUND
14 BURGLARY; THEREFORE, YOU MUST COME BACK WITH THE DEATH
15 PENALTY? YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q THERE WILL NOT BE THAT SITUATION. THERE WILL STILL
18 BE A SITUATION WHERE YOU, ALONG WITH ELEVEN OTHER PEOPLE,
19 HAVE TO AGREE ON A SENTENCE, WHETHER THAT BE LIFE OR DEATH.
20 DO YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q OKAY. SO IN THAT CIRCUMSTANCE, YOU BEING ONE OF THE
23 TWELVE PEOPLE, COULD YOU CONSIDER AGGRAVATING CIRCUMSTANCES
24 AND AGREE WITH ELEVEN OTHER PEOPLE THAT THE DEATH PENALTY
25 IS APPROPRIATE?

1 A CONSIDERING THE DEATH PENALTY HAS ONLY BEEN AN
2 INTELLECTUAL EXERCISE FOR ME UP TO THIS TIME.

3 Q I SEE.

4 A YOU KNOW, AND I DO AGREE WITH THE DEATH PENALTY---

5 Q OKAY.

6 A ---SO, YOU KNOW, INTELLECTUALLY, I CAN SAY YES, BUT
7 EMOTIONALLY, IT'S ONE OF -- TO ME IT'S ONE OF THOSE THINGS
8 UNTIL I'M IN A SITUATION, I CAN'T TELL YOU DEFINITELY WHAT
9 I'M GOING TO DO.

10 Q I APPRECIATE IT. THAT'S FAIR. I MEAN, I APPRECIATE
11 IT. WHAT YOU ARE SAYING THEN IS YOU JUST HAVE TO FIND
12 WHATEVER EVIDENCE FOR OR AGAINST AND YOU HAVE TO MAKE THAT
13 DETERMINATION?

14 A CORRECT.

15 Q OKAY. BUT YOU INDICATED THAT YOU DO BELIEVE IN THE
16 CONCEPT, AT LEAST, IN THE DEATH PENALTY?

17 A YES, SIR.

18 Q IN A JURY BOX, AS A JUROR, YOU ARE ALSO GOING TO BE
19 ASKED TO SIGN THE VERDICT. IF THE VERDICT IS THE DEATH
20 PENALTY VERDICT, YOU WILL HAVE TO SIGN THAT. OF COURSE,
21 AFTER YOU HAVE AGREED WITH ELEVEN OTHER JURORS WHAT -- THAT
22 THE DEATH PENALTY IS APPROPRIATE, DOES THAT SIGNING OF A
23 PIECE OF PAPER AFFECT YOU ONE WAY OR THE OTHER?

24 A NO.

25 Q BUT YOU CAN FOLLOW THE INSTRUCTIONS OF THE COURT AND

0517

1 YOU CAN LISTEN TO THE AGGRAVATING CIRCUMSTANCES AND THE
2 MITIGATING CIRCUMSTANCES AND YOU CAN CONSIDER BOTH LIFE AND
3 DEATH?

4 A YES, SIR.

5 Q OKAY. THANK YOU. I APPRECIATE YOUR HONESTY.

6 THANK YOU, YOUR HONOR.

7 THE COURT: MR. CHASE.

8 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

9 THE COURT: YES, SIR.

10 EXAMINATION

11 BY MR. CHASE:

12 Q HI, MS. KIRKPATRICK.

13 A HI.

14 Q MY NAME IS TOM CHASE. I'M AN ASSISTANT SOLICITOR
15 HERE IN LEXINGTON---

16 A UH-HUH.

17 Q ---AND I WILL BE HELPING DEPUTY SOLICITOR FRAN
18 HUMPHRIES AND SOLICITOR DONNIE MYERS IN PROSECUTING THIS
19 CASE.

20 I JUST WANT TO CLARIFY A COUPLE OF POINTS.

21 FIRST OF ALL, YOU UNDERSTAND THAT THERE'S NEVER A
22 SITUATION WHERE YOU ARE REQUIRED UNDER THE LAW TO IMPOSE A
23 SENTENCE OF DEATH?

24 A OKAY. YES, SIR.

25 Q BASED ON THAT UNDERLYING THEME, ARE YOU SAYING OR YOU

1 TELL ME WHAT YOU WERE SAYING---

2 A OKAY.

3 Q ---YOU INDICATED THAT IT'S ONLY BEEN AN INTELLECTUAL
4 EXERCISE FOR YOU UP TO THIS POINT.

5 A UH-HUH.

6 Q WHAT I NEED TO KNOW IS -- WHAT WE ALL NEED TO KNOW IS
7 CONSIDERING THE EMOTIONAL ASPECT OF THE POTENTIAL FOR NOT
8 ONLY CONSIDERING A DEATH SENTENCE, BUT ALSO ON THE OTHER
9 HAND TAKING IT ONE STEP FURTHER AND IMPOSING A DEATH
10 SENTENCE---

11 A UH-HUH.

12 Q ---DO YOU HAVE THE ABILITY WITH THESE EMOTIONAL PULLS
13 THAT YOU HAVE INDICATED, DO YOU HAVE THE ABILITY TO TAKE IT
14 THAT ONE STEP FURTHER IN A CASE SUCH AS THIS CONSIDERING
15 ALL THE EVIDENCE?

16 A I THINK SO. I JUST CAN'T GIVE YOU A DEFINITE
17 ANSWER, BUT I BELIEVE SO. GIVING YOU A YES OR NO ANSWER, I
18 FEEL LIKE I WOULDN'T BE GIVING YOU AN HONEST ANSWER BECAUSE
19 IT'S -- I BELIEVE SO.

20 Q AND BY SAYING THAT, ARE YOU SAYING THAT THERE'S
21 NOTHING -- THAT THOSE EMOTIONAL TIES OR THOSE EMOTIONAL
22 PULLS ARE NOT GOING TO SUBSTANTIALLY IMPAIR YOUR ABILITY?

23 A I WOULD TRY TO KEEP THEM FROM DOING THAT.

24 Q SO YOU COULD TAKE ALL OF THE EVIDENCE BOTH IN
25 AGGRAVATION AND IN MITIGATION IN THIS CASE AND YOU WOULD

0519

- 1 CONSIDER BOTH OF THOSE SIDES---
- 2 A YES, SIR.
- 3 Q ---BEFORE YOU WERE TO RENDER YOUR DECISION?
- 4 A YES, SIR.
- 5 Q AND THAT ONCE YOU HAVE DONE THAT, YOU'RE SAYING THAT
- 6 YOU WOULD BE ABLE TO ONE, IMPOSE A LIFE SENTENCE, YOU COULD
- 7 DO THAT?
- 8 A OH, YES, SIR.
- 9 Q AND AFTER DOING THAT, YOU COULD ALSO IMPOSE A DEATH
- 10 SENTENCE?
- 11 A I BELIEVE SO.
- 12 Q AND I BELIEVE YOU INDICATED THIS, BUT I WANT TO MAKE
- 13 SURE THAT IT'S CLEAR BECAUSE ALONG WITH TO IMPOSE A DEATH
- 14 SENTENCE AND ALONG WITH THE EMOTIONAL STRAINS THAT YOU
- 15 WOULD HAVE IN JUST MAKING THAT DECISION, YOU ALSO HAVE TO
- 16 LITERALLY SIGN YOUR NAME ON THE VERDICT FORM THAT SAYS:
- 17 WE, THE JURY, FIND THAT A SENTENCE OF DEATH IS APPROPRIATE
- 18 FOR GARY DUBOSE TERRY, IF YOU WERE TO GET TO THAT POINT?
- 19 WOULD SIGNING YOUR NAME ON THAT SHEET OF PAPER HINDER YOUR
- 20 ABILITY TO IMPOSE THAT SENTENCE?
- 21 A NO, SIR.
- 22 Q WE APPRECIATE IT. THAT'S ALL WE CAN ASK OF YOU.
- 23 THANK YOU, MA'AM.
- 24 A UH-HUH.
- 25 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

1 MR. STONE: NO, SIR. THANK YOU.

2 THE COURT: FROM THE STATE?

3 MR. CHASE: NO, SIR.

4 THE COURT: MS. KIRKPATRICK, I WANT TO THANK YOU
5 VERY MUCH FOR YOUR PARTICIPATION HERE WITH US TODAY AND
6 INTO THIS EVENING. I APOLOGIZE FOR ANY INCONVENIENCE THAT
7 WE HAVE CAUSED YOU FOR -- BY BEING HERE TODAY.

8 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
9 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION
10 COMES SOME FURTHER INSTRUCTION.

11 FIRST OF ALL, WHEN YOU LEAVE HERE THIS EVENING,
12 YOU ARE NOT IN ANY WAY TO DISCUSS THIS CASE WITH YOUR
13 FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE THAT YOU
14 MIGHT COME IN CONTACT WITH. IF ANYONE SHOULD ATTEMPT TO
15 CONTACT YOU CONCERNING THIS CASE, YOU ARE TO GATHER AS MUCH
16 INFORMATION ABOUT THAT INDIVIDUAL AND REPORT THAT TO ME
17 IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER AND I
18 TREAT IT VERY SERIOUSLY.

19 ALSO, I AM INSTRUCTING YOU THAT YOU ARE NOT TO
20 READ, WATCH OR LISTEN TO ANY NEWS ACCOUNT CONCERNING THIS
21 CASE.

22 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IF
23 YOU ARE A JUROR IN THIS CASE IS WHAT YOU SEE AND HEAR IN
24 THIS COURTROOM. NOTHING MORE AND NOTHING LESS.

25 NOW, I'M GOING TO FURTHER INSTRUCT YOU THAT YOU

0521

1 ARE TO GO HOME AND START PACKING YOUR BAG AND BE BACK HERE
2 WEDNESDAY MORNING AT NINE-THIRTY.

3 NOW, AT THAT TIME WHEN YOU COME BACK, PLEASE
4 LEAVE ALL OF YOUR BELONGINGS IN YOUR VEHICLE BECAUSE IF YOU
5 ARE SELECTED AS A JUROR IN THIS CASE, THEN THE JURY
6 CUSTODIANS WOULD SEE THAT YOU AND ALL OF YOUR BELONGINGS
7 ARE PROPERLY TAKEN TO THE MOTEL WHERE YOU WILL BE HOUSED
8 AND IF YOU ARE NOT SELECTED, THEN YOU WOULD BE GIVEN OUR
9 THANKS FOR PARTICIPATING IN THIS PROCESS AND SENT ALONG
10 YOUR DAILY -- TO YOUR DAILY ACTIVITIES.

11 SO WITH ALL OF THAT, I'LL LOOK FORWARD TO SEEING
12 YOU BACK HERE WEDNESDAY MORNING AT 9:30 A.M. AND YOU HAVE A
13 PLEASANT NEXT DAY OR SO.

14 THANK YOU, MA'AM.

15 THE JUROR: THANK YOU.

16 (WHEREUPON, THE JUROR WAS EXCUSED
17 AT THIS TIME.)

18 THE COURT: ALL RIGHT. LET THE RECORD REFLECT.
19 THAT JUROR NUMBER 137, CHERYL KIRKPATRICK, IS QUALIFIED TO
20 SERVE AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
21 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
22 1976 AS AMENDED.

23 SANDRA KYZER, JUROR NUMBER 139.

24 SANDRA J. KYZER,

25 (JUROR NUMBER 139, WHITE FEMALE,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

2 EXAMINATION

3 BY THE COURT:

4 Q IF YOU WILL JUST SIT FACING THAT WAY AND SPEAK INTO
5 THAT MICROPHONE. IF YOU WANT TO TURN AROUND AND LOOK AT
6 ME, YOU MAY DO SO BECAUSE I'M GOING TO BE POSING SOME
7 QUESTIONS TO YOU.

8 A OKAY.

9 Q YOU ARE SANDRA J. KYZER, IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q AND SHE IS JUROR NUMBER 139.

12 MS. KYZER, YOU UNDERSTAND THAT YOU ARE PLACED
13 UNDER OATH FOR THIS PROCEEDING?

14 A I DO.

15 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
16 CAUTIONARY INSTRUCTIONS EARLIER TODAY THAT YOU WERE NOT TO
17 DISCUSS THIS CASE WITH ANYONE, THAT IF ANYONE ATTEMPTED TO
18 CONTACT YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT
19 THAT TO ME AND THAT YOU WERE ALSO TO REFRAIN FROM READING,
20 WATCHING OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS
21 CASE?

22 A I DO.

23 Q AND HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

24 A NO, SIR.

25 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND

0523

1 THEREAFTER ONE OF MR. TERRY'S LAWYERS WILL ASK YOU SOME
2 QUESTIONS AND THE SOLICITOR'S OFFICE WILL ALSO POSE SOME
3 QUESTIONS TO YOU. PLEASE KEEP IN MIND THAT WE ARE NOT IN
4 ANY WAY ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF
5 THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
6 IMPORTANT THAT WE ASK CERTAIN QUESTIONS.

7 PLEASE KEEP IN MIND ALSO THAT THERE ARE NO RIGHT
8 OR WRONG ANSWERS TO THESE QUESTIONS.

9 IT'S SIMPLY THAT WE'RE WANTING YOU TO ANSWER
10 OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO
11 ONE IS CHALLENGING YOUR VIEW. WE SIMPLY NEED TO KNOW WHAT
12 YOUR VIEW IS IN PARTICULAR AREAS.

13 ALSO, I WANT YOU TO UNDERSTAND THROUGHOUT THE
14 COURSE OF THIS QUESTIONING THAT YOU ARE MAYBE GOING TO BE
15 POSED QUESTIONS THAT YOU HAVE NEVER EVEN CONSIDERED BEFORE.
16 SO PLEASE UNDERSTAND THAT IN LISTENING TO THE QUESTIONS
17 THAT ARE PRESENTED TO YOU.

18 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
19 TALKING ABOUT OVER THE NEXT FEW MINUTES WILL INCLUDE
20 PENALTY. THE MERE FACT THAT I EVEN MENTION THE WORD
21 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
22 TERRY, WHO IS ON TRIAL THIS WEEK. HE IS PRESUMED IN THE
23 LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

24 A I DO.

25 Q NOW, LET'S ASSUME FOR A FEW MOMENTS THAT YOU ARE A

1 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW AND
2 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
3 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
4 THAT LAW OR THINK THAT IT SHOULD TO BE SOME OTHER WAY?

5 A I COULD.

6 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
7 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

8 A YES.

9 Q NOW, IN A CRIMINAL CASE, MS. KYZER, THE STATE OF
10 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
11 GUILT. THE BURDEN OF PROOF WHICH THE STATE MUST MEET IN
12 THAT REGARD IS TO PROVE ALL OF THE ELEMENTS OF THE CRIME
13 WITH WHICH THAT PERSON IS CHARGED BEYOND A REASONABLE
14 DOUBT.

15 NOW, A DEFENDANT HAS NO BURDEN OR RESPONSIBILITY
16 TO PROVE HIMSELF INNOCENT. YOU UNDERSTAND THAT?

17 A I SURE DO.

18 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
19 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
20 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
21 GUILTY?

22 A (NO RESPONSE.)

23 Q COULD YOU REACH EITHER OF THOSE VERDICTS?

24 A I COULD.

25 Q NOW, YOU UNDERSTAND THAT THE CASE THAT WE ARE TALKING

0525 1

2 ABOUT THIS WEEK IS ONE IN WHICH THE STATE SEEKS THE DEATH
3 PENALTY AND IN SUCH CASE I THINK I TOLD YOU EARLIER TODAY
4 THAT THAT'S WHAT WE CALL A BIFURCATED TRIAL, MEANING THAT
5 IT'S DIVIDED INTO TWO PARTS.

6 THE FIRST PHASE IS WHAT WE CALL THE GUILT PHASE.
7 AND IN THE EVENT THAT THE JURY THAT WAS SEATED IN THAT CASE
8 REACHED A VERDICT OF NOT GUILTY AS TO THE CRIME OF MURDER,
9 DO YOU UNDERSTAND THAT THERE WOULD BE NO NEED FOR THE
10 SECOND PORTION OF THE TRIAL, THE SENTENCING PHASE?

11 A I SURE DO.

12 Q NOW, IF YOU WERE A JUROR IN SUCH A CASE, A DEATH
13 PENALTY CASE, AND IF THE JURY HAD FOUND THE DEFENDANT
14 GUILTY OF MURDER IN THE INITIAL PHASE, THE GUILT PHASE, YOU
15 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING OR
16 SECOND PHASE OF THE TRIAL?

17 A YES.

18 Q NOW, IN SUCH A PHASE OF THAT TRIAL, THE SENTENCING
19 PHASE, EVIDENCE WOULD BE PRESENTED IN THE FORM OF
20 AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
21 CIRCUMSTANCES.

22 NOW, BY DEFINITION, AGGRAVATING CIRCUMSTANCES ARE
23 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
24 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
25 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING

1 CIRCUMSTANCE OR CIRCUMSTANCES INCREASES OR ADDS TO THE
2 ENORMITY OF THE INJURY OF THE CRIME OF MURDER.

3 FOR EXAMPLE, A MURDER COMMITTED IN CONNECTION
4 WITH A CRIMINAL SEXUAL CONDUCT OFFENSE OR -- AND OR A
5 BURGLARY OFFENSE. THOSE WOULD BE EXAMPLES OF AGGRAVATING
6 CIRCUMSTANCES TO THE MURDER. DO YOU UNDERSTAND THAT?

7 A YES.

8 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
9 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
10 ASSEMBLY HAS DECLARED BY STATUTE THAT REDUCES OR MAKES LESS
11 SEVERE THE OFFENSE OR CRIME OF MURDER. THAT MEANS THAT THE
12 JURY MAY CONSIDER AS EXTENUATING OR REDUCING THE DEGREE OF
13 RESPONSIBILITY OR MORAL CULPABILITY OF THE PERSON WHO
14 COMMITTED THE MURDER. IT LESSENS THE CRIME OF MURDER.

15 NOW, SOME EXAMPLES OF MITIGATING CIRCUMSTANCES
16 THAT MAY BE PRESENTED TO A JURY ARE THAT THE MURDER WAS
17 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
18 MENTAL OR EMOTIONAL DISTURBANCE OR THAT THE CAPACITY OF THE
19 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
20 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
21 SUBSTANTIALLY IMPAIRED AS WELL AS CONSIDERING THE AGE OR
22 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. DO
23 YOU UNDERSTAND WHAT I MEAN BY MITIGATING CIRCUMSTANCES AS A
24 RESULT OF THOSE EXAMPLES?

25 A YES.

0527₁

Q NOW, IF YOU WERE A JUROR IN THAT SITUATION AND WE ARE
TALKING ABOUT THE SECOND PHASE, THE SENTENCING PHASE OF THE
TRIAL, COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
LIFE IN PRISON?

A I COULD.

Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

A I COULD THAT, TOO.

Q NOW, MS. KYZER, IF YOU ARE CHOSEN TO SERVE ON THIS
JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I DON'T
KNOW EXACTLY HOW LONG IT WOULD BE, SOMEWHERE BETWEEN A WEEK
AND TEN DAYS. IT COULD BE LESS THAN THAT, BUT I'M SAY A
WEEK TO TEN DAYS SO THAT THAT WOULD GIVE YOU A GOOD IDEA.
EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU WOULD
SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

A FINANCIALLY, YES.

Q OKAY. THROUGH YOUR EMPLOYMENT, ARE YOU NOT
COMPENSATED FOR JURY SERVICE?

A I WORK TWO JOBS.

1 Q OKAY. ALL RIGHT---

2 A IT'S THE SECOND ONE I'M NOT SURE OF.

3 Q WHERE IS YOUR SECOND JOB?

4 A AT K-MART AT DUTCH SQUARE.

5 Q OKAY.

6 A THAT'S PART-TIME.

7 Q YES, MA'AM. AND WHAT HOURS DO YOU WORK THERE?

8 A ANYWHERE FROM TWENTY-ONE TO 40 HOURS A WEEK.

9 Q OKAY. AND YOU UNDERSTAND THAT I HAVE -- FROM WHAT I

10 TELL YOU, THAT IF YOU WERE A JUROR IN THIS CASE, THAT YOU

11 WOULD BE HOUSED FOR ANYWHERE FROM SEVEN TO TEN DAYS?

12 A I UNDERSTAND THAT.

13 Q SO INsofar AS YOUR RESPONSIBILITIES AT YOUR SECOND

14 JOB AND YOUR FINANCIAL RESPONSIBILITIES THAT YOU HAVE,

15 WOULD THIS POSE A SERIOUS PROBLEM FOR YOU?

16 A NOT SERIOUS, SERIOUS, NO. I GUESS I'LL PUT IT THAT

17 WAY.

18 Q ALL RIGHT. I'LL TALK TO YOU A LITTLE BIT MORE ABOUT

19 THAT IN A FEW MINUTES.

20 A OKAY.

21 Q MS. FULLWOOD.

22 MS. FULLWOOD: THANK YOU, YOUR HONOR.

23 EXAMINATION

24 BY MS. FULLWOOD:

25 Q GOOD EVENING, MS. KYZER.

0529

1 A GOOD EVENING.

2 Q HOW ARE YOU?

3 A JUST FINE.

4 Q GOOD. GOOD. I APPRECIATE YOU BEING HERE TONIGHT TO
5 ANSWER THESE QUESTIONS. I'M NOT ASKING YOU QUESTIONS TO BE
6 NOSY OR TO BE INTRUSIVE.

7 YOU'VE BEEN TOLD THAT I'M BETH FULLWOOD. DUFFIE
8 STONE AND I REPRESENT GARY TERRY. I'M GOING TO MOSTLY BE
9 ASKING YOU QUESTIONS ABOUT THE SECOND TRIAL THAT JUDGE
10 CLARY JUST TOLD YOU ABOUT. IT'S NOT BECAUSE I'M ASSUMING
11 ANYTHING ONE WAY OR THE OTHER ABOUT THIS FIRST TRIAL, BUT
12 THIS IS THE ONLY CHANCE I GET TO ASK YOU ANY QUESTIONS
13 ABOUT EITHER PART OF THIS CASE. SO THAT'S WHY I HAVE TO DO
14 IT NOW.

15 FIRST, I WANTED TO DO A LITTLE FOLLOW-UP ON THAT
16 JUROR QUESTIONNAIRE YOU FILLED OUT. I NOTICED THAT YOU PUT
17 DOWN THAT YOU HAD SERVED ON A CIVIL AND A CRIMINAL JURY
18 BEFORE?

19 A THAT'S CORRECT.

20 Q DO YOU REMEMBER ABOUT WHEN?

21 A UH -- I'M GOING TO SAY IT'S -- JUST OFF THE TOP OF MY
22 HEAD, MAYBE TEN YEARS AGO.

23 Q ABOUT TEN YEARS AGO?

24 A MAYBE SOMETHING LIKE THAT.

25 Q IN THIS COUNTY?

- 1 A YES.
- 2 Q IN THIS COURT HOUSE OR A DIFFERENT MAGISTRATE--
- 3 A THIS COURT -- THIS COURT HOUSE.
- 4 Q THIS COURT HOUSE.
- 5 A UH-HUH.
- 6 Q HOW DID THAT EXPERIENCE LEAVE YOU FEELING ABOUT THE
- 7 CRIMINAL JUSTICE SYSTEM?
- 8 A WELL, I DON'T KNOW HOW TO PUT THAT.
- 9 Q OKAY.
- 10 A I REALLY DON'T KNOW HOW TO ANSWER YOU ON THAT. I
- 11 REALLY DON'T. I MEAN, IT'S BEEN SO LONG AGO. I WOULD
- 12 THINK -- UH -- PUT IT THIS WAY. WHENEVER THE TRIAL WAS
- 13 OVER, EVERYTHING THAT HAPPENED, IT MADE ME FEEL BETTER.
- 14 DOES THAT MAKE ANY SENSE---
- 15 Q MADE YOU FEEL BETTER?
- 16 A WELL, I MEAN, YOU KNOW -- I DON'T KNOW EXACTLY HOW TO
- 17 PUT THAT. JUST PERTAINING TO THE TRIAL?
- 18 Q DID YOU GO AWAY WITH A GOOD FEELING OR A BAD FEELING?
- 19 A A GOOD FEELING. THAT'S WHAT I'M SAYING. IT MADE ME
- 20 FEEL BETTER. IT WAS A GOOD FEELING.
- 21 Q OKAY.
- 22 A I GUESS THAT'S THE WAY I WOULD PUT IT THEN.
- 23 Q OKAY. WAS THAT BY ANY CHANCE A DEATH PENALTY TRIAL?
- 24 A NO, IT WASN'T.
- 25 Q OKAY. A DIFFERENT KIND OF CASE?

0531

- 1 A YES.
- 2 Q OKAY. BEFORE TODAY AND YOU WERE TOLD THIS WAS A
- 3 DEATH PENALTY CASE, HAD YOU EVER GIVEN MUCH THOUGHT TO THE
- 4 DEATH PENALTY?
- 5 A NO, NOT REALLY.
- 6 Q NO. EVER HAD ANY DISCUSSIONS WITH YOUR FAMILY,
- 7 FRIENDS OR ANYTHING ABOUT IT?
- 8 A NO.
- 9 Q NO.
- 10 A ONE THING I DO NOT WATCH T.V.
- 11 Q OKAY.
- 12 A I DO NOT READ NEWSPAPERS.
- 13 Q ALL RIGHT.
- 14 A SO REALLY ALL I KNOW, ALL I KNOW THAT REALLY GOES ON
- 15 IS IF I HEAR MY HUSBAND OR SON, YOU KNOW, SAY SOMETHING
- 16 ABOUT SOMETHING THEY SAW ON T.V.
- 17 Q OKAY.
- 18 A BECAUSE I JUST DON'T HAVE THE TIME TO DO IT. I DON'T
- 19 -- I DON'T WATCH T.V. PERIOD.
- 20 Q OKAY. COULD YOU GIVE US AN IDEA OF WHAT YOUR OPINION
- 21 IS ABOUT THE DEATH PENALTY?
- 22 A WELL, IT IS ACCORDING TO THE CIRCUMSTANCES, I GUESS,
- 23 YOU WOULD SAY---
- 24 Q OKAY.
- 25 A ---AS TO WHETHER I WOULD SAY THE DEATH PENALTY OR,

1 YOU KNOW, IMPRISONMENT, YOU KNOW, OR WHATEVER. I WOULD
2 HAVE TO LISTEN, YOU KNOW, TO ALL OF THE CIRCUMSTANCES
3 BEFORE I COULD REALLY, YOU KNOW, DECIDE ON ANYTHING LIKE
4 THAT.

5 Q OKAY. NOW, THERE ARE SOME PEOPLE -- AND YOU KNOW
6 THERE ARE NO RIGHT OR WRONG HERE, BUT THERE ARE SOME PEOPLE
7 WHO THINK THAT IF A PERSON IS GUILTY OF MURDER, THEY SHOULD
8 AUTOMATICALLY GET THE DEATH PENALTY---

9 MR. HUMPHRIES: YOUR HONOR, I OBJECT TO THE FORM
10 OF THE QUESTION. HYPOTHETICAL.

11 THE COURT: LET'S -- I THINK THAT WHAT I WOULD
12 LIKE FOR YOU TO DO IS TO REPHRASE IT AND TAKE IT OUT OF
13 THAT REALM.

14 MS. FULLWOOD: YES, SIR.

15 ALL RIGHT. ALL RIGHT. JUDGE CLARY TOLD YOU THAT
16 WE WOULD HAVE A FIRST TRIAL TO DECIDE WHETHER OR NOT MR.
17 TERRY IS GUILTY OR INNOCENT.

18 THE JUROR: RIGHT.

19 Q OKAY. AND DO YOU UNDERSTAND THAT WE WOULD ONLY GO
20 INTO A SECOND TRIAL IF THE JURY FOUND THAT HE WAS GUILTY?

21 A I UNDERSTAND THAT.

22 Q ALL RIGHT. ALL RIGHT. AND DO YOU UNDERSTAND THAT
23 WHEN WE TALK ABOUT MURDER, WE ARE TALKING ABOUT KILLING
24 SOMEBODY WITH MALICE AFORETHOUGHT?

25 A I UNDERSTAND THAT.

0533

- 1 Q AND YOU UNDERSTAND THAT MEANS WITH AN EVIL HEART?
- 2 A YES---
- 3 Q YOU UNDERSTAND---
- 4 A ---SOMETIMES.
- 5 Q OKAY. DO YOU UNDERSTAND THAT MURDER DOES NOT MEAN
- 6 HEAT OF PASSION OR SELF-DEFENSE OR AN ACCIDENT?
- 7 A THAT'S TRUE.
- 8 Q OKAY. CAN -- CAN YOU VOTE TO IMPOSE A LIFE SENTENCE
- 9 ON SOMEONE WHO YOU ARE CONVINCED BEYOND A REASONABLE DOUBT
- 10 HAS COMMITTED MURDER AND THE CRIME OF RAPE OR BURGLARY?
- 11 A I COULD AFTER LISTENING TO THE CIRCUMSTANCES OF WHAT
- 12 HAS HAPPENED.
- 13 Q OKAY. AND ON THE OTHER HAND, COULD YOU VOTE TO
- 14 IMPOSE THE DEATH SENTENCE ON THE SAME TYPE OF PERSON?
- 15 A I COULD ON THAT, TOO.
- 16 Q OKAY. JUDGE CLARY TOLD YOU THAT IF WE EVER HAD A
- 17 SECOND TRIAL, BOTH SIDES WOULD PRESENT ADDITIONAL EVIDENCE?
- 18 A RIGHT.
- 19 Q ARE YOU WILLING TO LISTEN TO EVIDENCE FROM BOTH
- 20 SIDES?
- 21 A YES, I AM.
- 22 Q OKAY. ARE YOU WILLING TO MAKE YOUR DECISION BASED
- 23 UPON THAT EVIDENCE, PLUS THE EVIDENCE YOU'VE ALREADY HEARD
- 24 IN THE FIRST TRIAL?
- 25 A YES.

1 Q ALL RIGHT. MS. KYZER, I APPRECIATE YOU BEING HERE.
2 I APPRECIATE YOU BEING PATIENT WITH ME AND GIVING SUCH
3 THOUGHTFUL ANSWERS TO THE QUESTIONS.

4 A ALL RIGHT.

5 Q THANK YOU.

6 THE COURT: MR. HUMPHRIES.

7 EXAMINATION

8 BY MR. HUMPHRIES:

9 Q MS. KYZER---

10 A YES.

11 Q HOW ARE YOU DOING?

12 A JUST FINE. HOW ABOUT YOU?

13 Q GOOD. I'M FRAN HUMPHRIES. I'M THE DEPUTY SOLICITOR.

14 A UH-HUH.

15 Q I'M GOING TO BE TRYING THIS CASE ALONG WITH TOM CHASE
16 AND SOLICITOR DONNIE MYERS. AND I'VE JUST GOT A COUPLE OF
17 QUESTIONS.

18 YOU DON'T KNOW ME AND I DON'T KNOW YOU SO I HAVE
19 GOT TO ASK YOU A FEW QUESTIONS---

20 A THAT'S TRUE.

21 Q IS THERE ANYTHING ABOUT YOU, WHETHER IT'S YOUR
22 RELIGION OR -- AND I'M JUST ASSUMING---

23 A UH-HUH.

24 Q ---BECAUSE I DON'T KNOW IF YOU EVEN GO TO CHURCH.
25 IT'S NOT MY BUSINESS. YOUR RELIGION, THE WAY YOU WERE

0535

- 1 BROUGHT UP, YOUR FAMILY TIES, YOUR RELATIONSHIPS TODAY,
2 THAT WOULD CAUSE YOU TO BE -- IT'S SUCH AN UGLY WORD, I
3 DON'T REALLY MEAN IT THAT WAY -- BIASED OR PREJUDICED
4 AGAINST THE STATE OR FEEL BAD TOWARDS THE STATE OR FEEL
5 BAD TOWARDS THE DEFENSE? YOU KNOW WHAT I'M ASKING?
- 6 A YEAH, I KNOW WHAT YOU'RE SAYING.
- 7 Q OKAY.
- 8 A NO.
- 9 Q IS THERE ANYTHING LIKE THAT?
- 10 A NO, NO.
- 11 Q OKAY. SO EVERYBODY STARTS ON EVEN GROUND, I GUESS IS
12 WHAT I'M ASKING?
- 13 A RIGHT, RIGHT.
- 14 Q OKAY. AND I THINK WHAT YOU'VE SAID HERE TODAY IS
15 THAT ONCE THAT JURY, ASSUMING THAT YOU ARE A MEMBER OF THAT
16 JURY, HAS FOUND GARY TERRY GUILTY OF MURDER AND EVEN THOUGH
17 YOU FIND HIM GUILTY OF MURDER AND BURGLARY OR RAPE, YOU'D
18 GO INTO THAT SECOND PHASE WITH AN OPEN MIND AND YOU'D WANT
19 TO HEAR---
- 20 A RIGHT.
- 21 Q ---CIRCUMSTANCES IN AGGRAVATION---
- 22 A RIGHT.
- 23 Q ---AND ANY OTHER EVIDENCE RELATED TO THAT AND THE
24 EVIDENCE IN MITIGATION---
- 25 A RIGHT.

- 1 Q ---THE GOOD THINGS ABOUT GARY TERRY. YOU'D WANT TO
2 HEAR ALL THAT BEFORE YOU MADE YOUR DECISION---
- 3 A RIGHT.
- 4 Q ---IS THAT RIGHT?
- 5 A RIGHT.
- 6 Q AND YOU'RE NOT PREDISPOSED TO LIFE. YOU'RE NOT
7 PREDISPOSED TO DEATH. IS THAT CORRECT?
- 8 A THAT'S CORRECT.
- 9 Q IT DEPENDS ON THE CIRCUMSTANCES?
- 10 A RIGHT.
- 11 Q NOW, AT THE END OF THE CASE, IF YOU WERE ON THIS JURY
12 AND THE JURY INCLUDING YOU DETERMINED THAT THE APPROPRIATE
13 VERDICT WAS DEATH AND YOU UNDERSTAND IT'S NOT A -- IT'S NOT
14 CONSIDERATION OF DEATH, BUT IT AN IMPOSITION OF THE DEATH
15 SENTENCE---
- 16 A UH-HUH.
- 17 Q ---YOU UNDERSTAND THAT?
- 18 A RIGHT.
- 19 Q COULD YOU ACTUALLY WRITE YOUR NAME ON THE VERDICT
20 FORM INDICATING YOUR VOTE OF DEATH; THAT IS, WE, THE JURY,
21 FIND THAT THE APPROPRIATE VERDICT IN THIS CASE IS THAT GARY
22 DUBOSE TERRY BE SENTENCED TO DEATH FOR HIS CRIMES?
- 23 A IF THAT'S WHAT I BELIEVED, YES.
- 24 Q SIGNING YOUR NAME WOULD NOT SUBSTANTIALLY IMPAIR YOU
25 FROM CONSIDERING THE DEATH PENALTY OR IMPOSING IT IF YOU

0537

THOUGHT IT WAS RIGHT UNDER THE FACTS AND CIRCUMSTANCES---

2 A RIGHT.

3 Q ---IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q MS. KYZER, THAT'S ALL WE CAN ASK OF YOU.

6 A OKAY.

7 Q THANK YOU VERY MUCH.

8 A SURE.

9 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

10 MS. FULLWOOD: NO, SIR.

11 THE COURT: FROM THE STATE?

12 MR. HUMPHRIES: NO, SIR.

13 THE COURT: MS. KYZER, I WANT TO THANK YOU VERY
14 MUCH FOR YOUR PARTICIPATION HERE ALL DAY TODAY AND I
15 APOLOGIZE FOR ANY INCONVENIENCE THAT WE MAY HAVE CAUSED YOU
16 FOR KEEPING YOU HERE SO LATE THIS EVENING.

17 I'M GOING TO INFORM YOU THAT YOU ARE -- I FIND
18 THAT YOU ARE QUALIFIED TO SERVE AS A POTENTIAL JUROR IN
19 THIS CASE AND WITH THAT QUALIFICATION COMES CERTAIN
20 INSTRUCTIONS THAT I NEED TO GIVE YOU.

21 FIRST OF ALL, YOU ARE -- WHEN YOU LEAVE HERE
22 TONIGHT, ONCE AGAIN, INSTRUCTED THAT YOU ARE NOT TO DISCUSS
23 THIS CASE WITH YOUR FAMILY, FRIENDS, FELLOW JURORS OR
24 ANYONE ELSE. NOR ARE YOU TO, IF ANYONE SHOULD ATTEMPT TO
25 CONTACT YOU CONCERNING THIS CASE, ONCE AGAIN, GATHER AS

1 MUCH INFORMATION ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN
2 AND REPORT THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY
3 SERIOUS MATTER AND I DO TAKE IT VERY SERIOUSLY.

4 ALSO, YOU ARE NOT TO READ, WATCH OR LISTEN TO ANY
5 NEWS ACCOUNTS CONCERNING THIS CASE. I UNDERSTAND WHAT YOU
6 SAID ABOUT THE T.V. AND NEWSPAPERS AND THINGS LIKE THAT,
7 BUT I HAVE TO GIVE YOU THAT INSTRUCTION---

8 THE JUROR: RIGHT.

9 THE COURT: ---BECAUSE ALL I WOULD WANT YOU TO
10 CONSIDER IN THIS CASE IS WHAT YOU WOULD SEE AND HEAR IN
11 THIS COURTROOM, NOTHING MORE AND NOTHING LESS.

12 NOW, THE ONLY THING THAT CONCERNS ME IS THE
13 RESPOND THAT YOU GAVE ME CONCERNING YOUR PART-TIME
14 EMPLOYMENT AT K-MART---

15 THE JUROR: YES.

16 THE COURT: IF THAT PRESENTS A PROBLEM TO YOU, I
17 NEED TO KNOW ABOUT THAT NOW. IF THAT IS SOMETHING THAT YOU
18 NEED TO LET ME KNOW THAT THIS COULD CAUSE YOU A FINANCIAL
19 HARDSHIP OR IF IT WOULD CAUSE ANY PROBLEMS WITH YOUR
20 EMPLOYMENT THERE.

21 THE JUROR: I DON'T THINK IT WOULD CAUSE ANY
22 PROBLEMS WITH THE EMPLOYMENT BECAUSE I TALKED TO -- I
23 TALKED TO THEM THIS AFTERNOON, TOLD THEM THAT I MAY NOT BE
24 THERE TOMORROW.

25 THE COURT: OKAY. ALL RIGHT.

05391

THE JUROR: AND I WAS -- I'M SUPPOSED TO CALL
THEM BACK AND LET THEM KNOW WHETHER I WILL BE THERE OR NOT.

THE COURT: ALL RIGHT.

THE JUROR: BUT IT WON'T CAUSE ANY PROBLEMS BEING
THERE. THE ONLY PROBLEM IS, YOU KNOW, I DON'T KNOW WHETHER
THEY WILL BE PAYING ME FOR THE TIME I'M OUT OR NOT.

THE COURT: ALL RIGHT.

THE JUROR: THAT'S THE ONLY THING.

THE COURT: ALL RIGHT.

WELL, LET ME -- LET ME DO THIS THEN. LET ME TELL
YOU -- WELL, INsofar AS THEM NOT PAYING YOU, IS THE FACT
THAT YOU WON'T RECEIVE YOUR MONEY FROM AND I'M TRYING NOT
TO PRY, I JUST WANT YOU TO BE VERY HONEST WITH ME. THE
FACT THAT YOU WOULD NOT BE RECEIVING THAT COMPENSATION,
WOULD THAT CAUSE YOU A SERIOUS PROBLEM WITH YOUR FINANCES?

THE JUROR: IT COULD. I CANNOT SAY FOR CERTAIN.
IT WOULD BE -- REALLY, IT WOULD BE ACCORDING TO HOW LONG I
WOULD BE OUT.

THE COURT: YOU KNOW, ONCE AGAIN, I'VE---

THE JUROR: WHICH, YEAH---

THE COURT: ---ESTIMATED THE LENGTH OF THE TRIAL
AT MOST WOULD BE TEN DAYS---

THE JUROR: TEN DAYS. SO THAT WOULD BE TILL---

THE COURT: ---OR SEVEN DAYS OR MAYBE EVEN LESS.
I CAN'T -- I CAN'T BE SURE---

1 THE JUROR: SAY THROUGH NEXT WEEK? 01:24

2 THE COURT: YES, MA'AM, THAT WOULD BE.

3 THE JUROR: OKAY. THAT WOULDN'T BE BUT MAYBE
4 THREE OR FOUR DAYS. I DON'T THINK SO.

5 THE COURT: ALL RIGHT.

6 WELL, WITH THAT, I'M GOING TO INSTRUCT YOU THAT
7 YOU ARE TO GO HOME AND I'M NOT GOING TO ASK THAT YOU BE
8 BACK HERE UNTIL WEDNESDAY MORNING AT 9:30 A.M.

9 WHEN YOU COME BACK, PLEASE BRING YOUR PACKED BAGS
10 PREPARED TO STAY WITH US IN THE EVENT THAT YOU ARE CHOSEN
11 AS A JUROR IN THIS CASE. PLEASE LEAVE YOUR BAGS AND ALL IN
12 YOUR VEHICLE BECAUSE IF YOU ARE CHOSEN, THE JURY CUSTODIANS
13 WILL SEE THAT YOU AND YOUR BELONGINGS ARE PROPERLY TAKEN
14 CARE OF TO GO TO THE MOTEL WHERE YOU WOULD BE HOUSED FOR
15 THE COURSE OF THE TRIAL AND, OF COURSE, ALL OF THE EXPENSES
16 SURROUNDING YOUR MOTEL AND YOUR FOOD AND SO FORTH WOULD BE
17 BORNE BY THE COUNTY. THAT WOULD NOT BE YOUR
18 RESPONSIBILITY.

19 ALSO, IF YOU ARE NOT SELECTED AS A JUROR IN THIS
20 CASE ON WEDNESDAY MORNING AFTER YOU COME BACK, WE'D BE
21 SENDING YOU ALONG YOUR WAY WITH OUR THANKS FOR YOUR
22 PARTICIPATION IN OUR PROCESS. BUT I'M GOING TO ASK THAT
23 YOU BE BACK HERE IN THIS COURTROOM WEDNESDAY MORNING AT
24 9:30 A.M. AND I'LL LOOK FORWARD TO SEEING YOU THEN.

25 THE JUROR: OKAY.

0541

1 THE COURT: THANK YOU, MS. KYZER.

2 THE JUROR: THANK YOU.

3 (WHEREUPON, THE JUROR WAS EXCUSED

4 AT THIS TIME.)

5 THE COURT: ALL RIGHT.

6 LET THE RECORD REFLECT THAT I FIND THAT JUROR

7 NUMBER 139, SANDRA KYZER, IS QUALIFIED TO SERVE AS A

8 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF

9 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS

10 AMENDED.

11 JUROR NUMBER 124, GAIL JONES.

12 GAIL C. JONES,

13 (JUROR NUMBER 124, WHITE FEMALE,

14 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

15 EXAMINATION

16 BY THE COURT:

17 Q GOOD EVENING, MS. JONES. HOW ARE YOU?

18 A FINE.

19 Q YOU ARE GAIL JONES, IS THAT CORRECT?

20 A THAT'S RIGHT.

21 Q AND YOU ARE JUROR NUMBER 124.

22 MS. JONES, YOU UNDERSTAND THAT YOU ARE UNDER OATH

23 FOR THIS PROCEEDING THIS EVENING?

24 A YES, SIR.

25 Q AND YOU ALSO RECALL THAT I GAVE YOU CERTAIN

1 CAUTIONARY INSTRUCTIONS WHEN YOU LEFT THE COURT HOUSE,
2 EARLIER TODAY THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
3 ANYONE, THAT IF ANYONE ATTEMPTED TO CONTACT YOU, THAT YOU
4 WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO REFRAIN
5 FROM READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
6 CONCERNING THIS CASE?

7 A YES, SIR.

8 Q HAVE THERE BEEN ANY VIOLATIONS OF THOSE INSTRUCTIONS?

9 A NO, SIR.

10 Q NOW, I'M GOING TO BE ASKING YOU SEVERAL QUESTIONS AND
11 THEN THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY, AS WELL
12 AS ONE OF THE SOLICITORS WILL ASK YOU SOME QUESTIONS.

13 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY. SIMPLY THAT WE NEED TO
15 KNOW WHAT YOUR VIEWS ARE IN PARTICULAR AREAS BECAUSE OF THE
16 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK. PLEASE KEEP IN
17 MIND THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO MY
18 QUESTIONS OR ANYONE ELSE'S QUESTIONS THAT THEY WILL ASK.
19 JUST ANSWER THEM HONESTLY, OPENLY AND FULLY AND ALSO KEEP
20 IN MIND THAT NO ONE IS CHALLENGING A VIEW THAT YOU MIGHT
21 HAVE. IT'S SIMPLY THAT WE NEED TO KNOW WHAT YOUR VIEWS
22 ARE.

23 ALSO, KEEP IN MIND THAT THROUGHOUT THIS
24 QUESTIONING THAT YOU ARE PROBABLY GOING TO BE ASKED SOME
25 QUESTIONS THAT YOU HAVE NEVER EVEN BEEN ASKED TO CONSIDER

0543 1 BEFORE. SO KEEP THAT IN MIND AS WE DO GO THROUGH THIS
2 PROCESS.

3 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
4 DISCUSSING TONIGHT WILL INCLUDE TALKING ABOUT PENALTY. BUT
5 THE MERE FACT THAT I EVEN TALK ABOUT PENALTY DOES NOT IN
6 ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY,
7 BECAUSE HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
8 UNDERSTAND THAT?

9 A YES, SIR.

10 Q NOW, LET'S ASSUME FOR A FEW MINUTES THAT YOU WERE A
11 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
12 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
13 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
14 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

15 A COULD I LISTEN TO THE VIEWS?

16 Q COULD YOU LISTEN TO THE LAW AND ACCEPT AND APPLY THE
17 LAW AS I WOULD INSTRUCT YOU EVEN THOUGH YOU MAY NOT AGREE
18 WITH THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

19 A YES, SIR.

20 Q NOW, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
21 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

22 A YES.

23 Q NOW, IN A CRIMINAL CASE, THE STATE HAS THE BURDEN OF
24 PROVING A DEFENDANT'S GUILT. THE BURDEN OF PROOF THAT THE
25 STATE MUST MEET IS TO PROVE THE ELEMENTS OF THE CRIME WITH

1 WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT
2 HAS NO RESPONSIBILITY, NO BURDEN TO PROVE HIMSELF INNOCENT.
3 YOU UNDERSTAND THAT?

4 A YES.

5 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
6 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
7 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

8 A YES.

9 Q NOW, YOU UNDERSTAND THAT THE CASE THAT WE ARE TALKING
10 ABOUT THIS WEEK IS ONE IN WHICH THE STATE SEEKS THE DEATH
11 PENALTY AND IN THOSE CASES THEY ARE CALLED BIFURCATED
12 TRIALS, MEANING THAT THEY ARE SPLIT INTO TWO SEPARATE
13 TRIALS.

14 THE FIRST PHASE IS WHAT WE CALL THE GUILT PHASE.
15 AND IF YOU WERE A JUROR IN SUCH A PHASE AND THE JURY FOUND
16 THE DEFENDANT NOT GUILTY OF MURDER, DO YOU UNDERSTAND THAT
17 THERE WOULD BE NO NEED FOR THE SECOND PHASE OF THE TRIAL AT
18 THAT POINT?

19 A YES.

20 Q NOW, ON THE OTHER HAND, IF YOU WERE A JUROR IN A
21 DEATH PENALTY AND IF THE JURY HAD FOUND THE DEFENDANT
22 GUILTY OF MURDER, DO YOU UNDERSTAND THAT YOU WOULD THEN
23 MOVE TO THE SENTENCING PHASE OF THE TRIAL?

24 A YES.

25 Q NOW, DURING THAT PHASE OF THE TRIAL, EVIDENCE WOULD

1 BE PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS
2 WELL AS MITIGATING CIRCUMSTANCES.

3 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
4 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
5 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW THAT WOULD MAKE
6 WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

7 IN OTHER WORDS, WHEN THESE -- THIS AGGRAVATING
8 CIRCUMSTANCE OR AGGRAVATING CIRCUMSTANCES ARE PRESENT WITH
9 A MURDER, IT INCREASES THE ENORMITY OR ADDS TO THE INJURY
10 OF THE CRIME OF MURDER.

11 FOR EXAMPLE, I'M TALKING ABOUT WHEN A MURDER IS
12 COMMITTED IN CONJUNCTION WITH THE OFFENSE OF CRIMINAL
13 SEXUAL CONDUCT AND OR THE OFFENSE OF BURGLARY. THOSE WOULD
14 BE TWO EXAMPLES OF THAT. DO YOU UNDERSTAND THAT?

15 A YES.

16 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
17 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
18 ASSEMBLY HAS DECLARED BY STATUTE REDUCES THE SEVERITY OF
19 THE CRIME OF MURDER AND MAY BE CONSIDERED AS EXTENUATING OR
20 AS REDUCING THE DEGREE OF RESPONSIBILITY OR MORAL
21 CULPABILITY OF THE PARTY COMMITTING THE MURDER.

22 NOW, SOME EXAMPLES OF THAT WOULD BE WHEN A MURDER
23 IS COMMITTED WHEN A PERSON IS UNDER THE INFLUENCE OF MENTAL
24 OR EMOTIONAL DISTURBANCE, WHERE THE CAPACITY OF THE PERSON
25 COMMITTING THE CRIME TO APPRECIATE THE CRIMINALITY OF HIS

1 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
2 LAW WAS SUBSTANTIALLY IMPAIRED OR ALSO THE AGE OR MENTALITY
3 OF THE PERSON COMMITTING THE CRIME AT THE TIME OF THE CRIME
4 MAY ALSO BE CONSIDERED. THOSE ARE EXAMPLES OF MITIGATING
5 CIRCUMSTANCES, AND, OF COURSE, THERE COULD BE OTHERS.

6 NOW, LET'S CONSIDER THAT YOU WERE A JUROR IN THAT
7 SITUATION AND WE ARE TALKING ABOUT THAT SECOND PHASE, THE
8 SENTENCING PHASE. COULD YOU, DEPENDING UPON THE PARTICULAR
9 FACTS AND CIRCUMSTANCES OF THAT CASE AND THE LAW AS I
10 INSTRUCT YOU AT THE END OF THE CASE, RETURN A SENTENCE OF
11 LIFE IMPRISONMENT?

12 A YES.

13 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
14 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
15 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
16 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

17 A NO.

18 Q YOU COULD NOT UNDER ANY CIRCUMSTANCES RETURN A
19 SENTENCE OF DEATH?

20 A NO.

21 Q EVEN IF I INSTRUCT YOU THAT THE LAW OF THIS STATE
22 WOULD BE THAT JURORS ARE TO CONSIDER AND IF THEY FIND THAT
23 THERE ARE AGGRAVATING CIRCUMSTANCES THAT OUTWEIGH
24 MITIGATING CIRCUMSTANCES THAT ARE PRESENT IN A MURDER, THAT
25 YOU WOULD CONSIDER IMPOSING A DEATH PENALTY?

0547

1 A I COULD NOT DO IT.

2 Q YOU COULD NOT DO IT. ALL RIGHT. THANK YOU, MA'AM.

3 QUESTIONS FROM MR. STONE.

4 EXAMINATION

5 BY MR. STONE:

6 Q HEY, MS. JONES. MY NAME IS DUFFIE STONE. I

7 REPRESENT GARY TERRY ALONG WITH MS. FULLWOOD.

8 LET ME GO BACK AND ASK YOU JUST A FEW QUESTIONS

9 ABOUT WHAT THE JUDGE TALKED TO YOU ABOUT.

10 IS THERE SOMETHING IN YOUR RELIGIOUS BACKGROUND

11 OR YOUR -- AND CERTAINLY, I'M NOT -- I DON'T WANT TO PRY,

12 BUT IS THERE SOMETHING IN YOUR RELIGIOUS BACKGROUND OR

13 SOMETHING IN YOUR PAST THAT MAKES YOU FEEL VERY STRONGLY

14 AGAINST THE DEATH PENALTY?

15 A NO. NOTHING PARTICULAR IN THE PAST. IT'S JUST THE

16 WAY I FEEL ABOUT IT.

17 Q OKAY. HAVE YOU THOUGHT A LOT ABOUT THE DEATH

18 PENALTY?

19 A YES.

20 Q OKAY. HAVE YOU HAD SOME DISCUSSIONS WITH VARIOUS

21 PEOPLE ABOUT THE DEATH PENALTY?

22 A YES.

23 Q OKAY. HAVE YOU DISCUSSED ANY OTHER LAWS IN SOUTH

24 CAROLINA THAT YOU MAY THINK ARE APPROPRIATE OR NOT

25 APPROPRIATE---

1 MR. HUMPHRIES: OBJECTION AS TO RELEVANCE, YOUR
2 HONOR.

3 THE COURT: I'M GOING TO ALLOW HIM TO ASK THE
4 QUESTION.

5 MR. STONE: THANK YOU, YOUR HONOR. I'M SORRY FOR
6 THE INTERRUPTION.

7 HAVE YOU DISCUSSED ANY OTHER THINGS, ANY OTHER
8 LAWS THAT MAY BE IN AFFECT THAT YOU MIGHT NOT AGREE WITH?

9 THE JUROR: I' PROBABLY HAVE OVER THE YEARS.

10 Q OKAY. NOW, IN A CRIMINAL CASE -- HAVE YOU SERVED ON
11 A CRIMINAL JURY BEFORE?

12 A NO.

13 Q OKAY. HAVE YOU SERVED ON A CIVIL JURY BEFORE? I
14 DON'T---

15 A I WAS CALLED, BUT NOT -- NO, I WAS NOT, YOU KNOW.

16 Q OKAY. WHEN YOU SIT IN A JURY BOX, YOU ARE WHAT THEY
17 CALL THE FINDER OF THE FACTS, OKAY. I DON'T PRONOUNCE THAT
18 VERY WELL, BUT IT'S FACTS, OKAY. THE JUDGE IS THE FINDER
19 OF THE LAW. HE TELLS YOU AND HE INSTRUCTS YOU ABOUT THE
20 LAW AS IT APPLIES IN SOUTH CAROLINA. DO YOU UNDERSTAND
21 THAT?

22 A YES.

23 Q OKAY. AS A JUROR, YOU ARE TO ACCEPT WHAT THE JUDGE
24 TELLS YOU AS THE LAW WHETHER YOU LIKE IT OR NOT. YOU
25 UNDERSTAND THAT?

0549¹

A YES.

2 Q OKAY. AND YOUR JOB IS TO TAKE THOSE FACTS AND
3 DETERMINE WHETHER OR NOT THOSE FACTS, APPLY THEM TO THE LAW
4 AND FIND THE PERSON GUILTY OR NOT GUILTY. YOU UNDERSTAND
5 THAT?

6 A YES.

7 Q OKAY. NOW, THE SAME THING HAPPENS IN A DEATH PENALTY
8 CASE ON THE SENTENCING END. THE JUDGE WILL GIVE YOU
9 INSTRUCTIONS ACCORDING TO THE LAW. YOU CAN TAKE THE FACTS
10 AND THE CIRCUMSTANCES, AGGRAVATING, MITIGATING, WHATEVER
11 AND AS A JUROR, AS ONE OF THE TWELVE, YOU MAKE A
12 DETERMINATION WHETHER YOU THINK A DEATH SENTENCE IS
13 APPROPRIATE OR NOT APPROPRIATE. IS THAT -- DO YOU
14 UNDERSTAND THAT?

15 A YES.

16 Q OKAY. COULD YOU FOLLOW THE LAW IN THAT SITUATION?
17 COULD YOU FOLLOW WHAT THE JUDGE TELLS YOU IS THE LAW AND IF
18 YOU ALONG WITH ELEVEN OTHER PEOPLE THINK THE FACTS AND
19 CIRCUMSTANCES ARE APPROPRIATE, COULD YOU FOLLOW THAT LAW
20 AND THE FACTS AS YOU HEARD THEM AND RENDER A DECISION FOR
21 THE DEATH PENALTY?

22 A I COULD NOT DO THAT.

23 Q THANK YOU. THANK YOU FOR YOUR HONESTY.

24 MR. STONE: YOU'RE NOT FINISHED YET. JUST A FEW
25 MINUTES.

1 THE COURT: SOLICITOR.

2 MR. HUMPHRIES: NO, SIR.

3 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

4 MR. STONE: NO, SIR. THANK YOU. THANK YOU.

5 THE COURT: ALL RIGHT. MS. JONES, I WANT TO
6 THANK YOU VERY MUCH FOR YOUR PARTICIPATION HERE ALL DAY
7 TODAY. I KNOW IT'S BEEN A RATHER LONG DAY. HAS BEEN FOR
8 EVERYONE. BUT I HOPE THAT WE HAVE NOT INCONVENIENCED YOU
9 GREATLY. YOU'VE PROVIDED A VERY VALUABLE SERVICE NOT ONLY
10 TO YOUR COUNTY, BUT ALSO THE STATE IN BEING HERE TODAY AND
11 PARTICIPATING IN OUR PROCESS. THIS IS GOING TO CONCLUDE
12 YOUR RESPONSIBILITIES FOR THIS TERM OF COURT AND THANK YOU
13 VERY MUCH FOR BEING HERE.

14 (WHEREUPON, THE JUROR WAS EXCUSED
15 AT THIS TIME.)

16 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
17 THAT JUROR NUMBER 124, GAIL JONES, IS NOT QUALIFIED TO
18 SERVE AS A POTENTIAL JUROR IN THIS CASE IN THAT SHE STATES
19 THAT SHE WOULD BE UNABLE TO IMPOSE THE DEATH PENALTY IN
20 ACCORDANCE TO SECTION 16-320 OF THE CODE OF LAWS OF THE
21 STATE OF SOUTH CAROLINA, 1976 AS AMENDED.

22 JUROR 183, ERNEST RAMSEY.

23 ERNEST R. RAMSEY,

24 (JUROR NUMBER 183, WHITE MALE,
25 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON -- GOOD EVENING, MR. RAMSEY.

A GOOD EVENING, SIR.

Q KIND OF LOST TRACK OF TIME.

A I'M SURE YOU HAVE.

Q MR. RAMSEY, YOU UNDERSTAND THAT YOU ARE UNDER OATH
FOR THESE PROCEEDINGS TONIGHT?

A YES, SIR.

Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
CAUTIONARY INSTRUCTIONS WHEN YOU LEFT THE COURT HOUSE THAT
YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE; THAT IF
ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT
YOU WERE TO REPORT THAT TO ME AND THAT ALSO YOU WERE NOT TO
READ, WATCH OR LISTEN TO ANY NEWS ACCOUNT CONCERNING THIS
CASE. HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

A NO, SIR.

Q NOW, I'M GOING TO ASK YOU SEVERAL QUESTIONS OVER THE
NEXT FEW MINUTES AND THEREAFTER ONE OF THE LAWYERS FOR MR.
TERRY WILL ASK YOU A QUESTION -- SOME QUESTIONS AND THEN
SOMEONE FROM THE SOLICITOR'S OFFICE WILL ALSO ASK SOME
QUESTIONS.

PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
NATURE OF THESE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK,

1 IT'S IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED.

2 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
3 ANSWERS TO THESE QUESTIONS. PLEASE JUST ANSWER THEM OPENLY
4 AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO ONE IS
5 CHALLENGING YOUR VIEW. WE SIMPLY NEED TO KNOW WHAT YOUR
6 VIEW IS IN A PARTICULAR AREA OR AREAS. AND ALSO I WANT YOU
7 TO REMEMBER THAT THROUGHOUT THE COURSE OF THIS QUESTIONING,
8 THAT YOU'RE PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT
9 YOU HAVE NEVER CONSIDERED BEFORE. SO PLEASE KEEP THAT IN
10 MIND AS WE GO THROUGH THIS PROCESS.

11 A YES, SIR.

12 Q NOW, AMONG OTHER THINGS, WE ARE GOING TO BE TALKING
13 ABOUT PENALTY. AND THE MERE FACT THAT WE TALK ABOUT
14 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
15 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
16 UNDERSTAND THAT?

17 A YES, SIR.

18 Q NOW, LET'S ASSUME FOR A FEW MOMENTS THAT YOU WERE A
19 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
20 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
21 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
22 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

23 A YES, SIR.

24 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

0553

1 A YES, SIR.

2 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
3 HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE
4 BURDEN OF PROOF THAT THE STATE MUST MEET IS TO PROVE THE
5 ELEMENTS OF THE CRIME OR CRIMES WITH WHICH HE IS CHARGED
6 BEYOND A REASONABLE DOUBT.

7 NOW, THE DEFENDANT HAS ABSOLUTELY NO BURDEN OR
8 RESPONSIBILITY TO PROVE HIMSELF INNOCENT. YOU UNDERSTAND
9 THAT?

10 A YES, SIR.

11 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
12 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
13 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

14 A YES, SIR.

15 Q NOW, DO YOU UNDERSTAND THAT THE CASE THAT WE ARE
16 TALKING ABOUT THIS WEEK, MR. RAMSEY, IS ONE IN WHICH THE
17 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND IN SUCH
18 A CASE IT'S WHAT WE CALL A BIFURCATED TRIAL, MEANING THAT
19 IT'S DIVIDED INTO TWO PARTS.

20 THE FIRST PHASE OF THAT TRIAL IS THE GUILT PHASE.
21 AND IF THE JURY FINDS, AFTER CONSIDERING THE EVIDENCE
22 THAT'S BEEN PRESENTED IN THAT PHASE, THAT THE DEFENDANT IS
23 NOT GUILTY OF MURDER, DO YOU UNDERSTAND THAT THERE WOULD BE
24 NO NEED FOR THAT SECOND PHASE, THE SENTENCING PHASE?

25 A YES, SIR.

1 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
2 AND THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
3 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING OR
4 SECOND PHASE OF THE TRIAL?

5 A YES, SIR.

6 Q NOW, IN THAT PHASE OF THE TRIAL, YOU WOULD BE
7 PRESENTED WITH EVIDENCE IN THE FORM OF AGGRAVATING
8 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

9 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
10 INCIDENTS, DETAILS OR AN OCCURRENCE WHICH OUR GENERAL
11 ASSEMBLY HAS DECLARED BY LAW THAT WOULD MAKE WORSE; THAT
12 IS, TO AGGRAVATE THE CRIME OF MURDER.

13 IN OTHER WORDS, WHEN THE MURDER IS COMMITTED IN
14 CONJUNCTION OR IN ASSOCIATION WITH AN AGGRAVATING
15 CIRCUMSTANCE OR CIRCUMSTANCES BEING PRESENT THAT INCREASES
16 THE ENORMITY OR ADDS TO THE INJURY OF MURDER; THAT IS AN
17 AGGRAVATING CIRCUMSTANCE.

18 FOR EXAMPLE, AN AGGRAVATING CIRCUMSTANCE OR
19 CIRCUMSTANCES COULD BE A MURDER THAT IS COMMITTED IN
20 CONJUNCTION WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT AND
21 OR THE CRIME OF BURGLARY FOR EXAMPLE. DO YOU UNDERSTAND
22 THAT?

23 A YES, SIR.

24 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
25 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL

0555

1 ASSEMBLY OF OUR STATE HAS ALSO DECLARED BY LAW THAT REDUCES
2 THE SEVERITY OF THE CRIME OF MURDER AND MAY BE CONSIDERED
3 BY THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF
4 RESPONSIBILITY OR OF MORAL CULPABILITY.

5 NOW, EXAMPLES OF MITIGATING CIRCUMSTANCES ARE
6 WHEN A MURDER IS COMMITTED WHEN A PERSON IS UNDER THE
7 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE OR WHEN THE
8 CAPACITY OF THE PERSON TO APPRECIATE THE CRIMINALITY OF HIS
9 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
10 LAW HAVE BEEN SUBSTANTIALLY IMPAIRED OR YOU MAY ALSO
11 CONSIDER THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME
12 OF THE CRIME. THOSE ARE EXAMPLES OF MITIGATING
13 CIRCUMSTANCES.

14 NOW, LET'S CONSIDER THAT YOU WERE A JUROR IN THAT
15 SITUATION AND WE ARE TALKING ABOUT THE SECOND STAGE, THE
16 SECOND PHASE OF THE TRIAL, COULD YOU, DEPENDING UPON THE
17 PARTICULAR FACTS AND CIRCUMSTANCES AND I'M TALKING ABOUT
18 AGGRAVATING AND MITIGATING CIRCUMSTANCES OF THAT CASE AND
19 THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE
20 CASE, RETURN A SENTENCE OF LIFE IN PRISON?

21 A I COULD, YES, SIR.

22 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
23 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
24 THAT CASE AND THE LAW THAT I WOULD INSTRUCT YOU AT THE
25 CONCLUSION OF THE CASE, TOGETHER WITH THE AGGRAVATING AND

1 MITIGATING CIRCUMSTANCES, RETURN A SENTENCE OF DEATH?

2 A I COULD, YES, SIR.

3 Q NOW, MR. RAMSEY, IF YOU ARE CHOSEN FOR SERVICE ON
4 THIS JURY YOU WOULD BE SEQUESTERED WHICH MEANS HOUSED IN A
5 MOTEL FOR THE DURATION OF THE TRIAL. THAT COULD BE
6 ANYWHERE FROM A WEEK TO TEN DAYS. I DON'T KNOW EXACTLY HOW
7 LONG IT WOULD BE. IT COULD BE LESS THAN THAT, BUT I'M
8 GIVING YOU THOSE OUTSIDE FIGURES. EXCEPT FOR THE PERSONAL
9 INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A
10 SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
11 OF THOSE DEPENDENT UPON YOU?

12 A NO, SIR.

13 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. ANSWER ANY
14 OF MR. STONE'S QUESTIONS AT THIS TIME.

15 A YES, SIR.

16 MR. STONE: THANK YOU, YOUR HONOR.

17 EXAMINATION

18 BY MR. STONE:

19 Q MR. RAMSEY, MY NAME IS DUFFIE STONE. I KNOW I WAS
20 INTRODUCED EARLIER, BUT I WANTED TO DO THAT AGAIN. THIS IS
21 BETH FULLWOOD AND SHE AND I ARE REPRESENTING GARY TERRY,
22 WHO IS THE GENTLEMAN AT THE END.

23 A YES, SIR.

24 Q MR. RAMSEY, I NOTICED THAT YOU WERE A -- IS IT A
25 STAFF SERGEANT THAT YOU USED TO BE IN THE ARMY?

0557

1 A YES, SIR, I WAS.

2 Q HELP ME OUT. WHAT IS A STAFF SERGEANT?

3 A IT'S -- AS FAR AS PAY GRADE OR---

4 Q NO. WHAT IS IT? WHAT DOES A STAFF SERGEANT DO?

5 A IT'S A SQUAD LEADER. I'M RESPONSIBLE FOR AROUND
6 THIRTEEN INDIVIDUALS DEPENDING ON WHAT THE TASK CALLED FOR.

7 Q ALL RIGHT. ARE YOU STILL IN THE NATIONAL GUARD NOW?

8 A NO, SIR. I'VE BEEN OUT FOR AWHILE NOW.

9 Q WHEN YOU WERE IN THE NATIONAL GUARD, YOU WERE IN THE
10 MILITARY POLICE AS WELL, IS THAT RIGHT?

11 A COMBAT. IT WAS A COMBAT MILITARY POLICE. IT'S NOT A
12 WHITE HAT DUTY.

13 Q WHAT IS COMBAT MILITARY POLICE?

14 A WE PERFORM FUNCTIONS AS FAR AS SECURITY FOR CONVOY
15 MISSIONS, PERIMETER AROUND PRISON WAR CAMPS.

16 Q OKAY.

17 A THAT TYPE OF THING.

18 Q I SEE. YOU DID THAT FOR HOW LONG?

19 A UH -- I THINK I GOT OUT IN '87. I THINK IT WAS
20 SOMETHING LIKE -- I WAS IN THERE AROUND NINE YEARS.

21 Q OKAY. ALL RIGHT.

22 THE JUDGE TALKED A LITTLE BIT ABOUT WHAT'S GOING
23 TO HAPPEN TODAY. HAVE YOU EVER BEEN INVOLVED IN A CRIMINAL
24 CASE BEFORE? HAVE YOU EVER SAT ON A JURY IN A CRIMINAL
25 CASE?

1 A NO, SIR.

2 Q ALL RIGHT, SIR. MILITARY OR OTHERWISE?

3 A NO, SIR.

4 Q OKAY. EVEN AS MILITARY POLICE, Y'ALL DIDN'T HAVE ANY
5 -- YOU WEREN'T INVOLVED IN ANY TRIALS OR ANYTHING?

6 A AGAIN, WE WERE COMBAT---

7 Q JUST TOTALLY DIFFERENT FROM THAT---

8 A YES, SIR.

9 Q AND I APOLOGIZE. I DON'T KNOW THAT MUCH ABOUT IT.

10 A THAT'S ALL RIGHT. THAT'S NOT A PROBLEM.

11 Q WHAT WE ARE GOING TO DO TODAY AND WHAT I HAVE TO ASK
12 YOU QUESTIONS ABOUT SOMETHING THAT MAY NOT EVEN HAPPEN, BUT
13 IT'S SOMETHING THAT WE HAVE TO GO THROUGH AND TALK ABOUT.
14 AND THE JUDGE EXPLAINED TO YOU THAT THIS -- FIRST, THERE IS
15 A GUILT PHASE AND IF THERE IS A NOT GUILTY DECISION AT THE
16 GUILT PHASE, THERE'S NO SENTENCING PHASE AT ALL.

17 A RIGHT.

18 Q WHAT I WANT TO ASK YOU ABOUT IS THE SENTENCING PHASE
19 BECAUSE THAT'S A LITTLE BIT DIFFERENT THAN WHAT WE NORMALLY
20 HAVE IN A CRIMINAL COURT AND PROBABLY WHAT YOU NORMALLY SEE
21 ON TELEVISION.

22 NOW, IN A SENTENCING PHASE, IF YOU WERE TO SERVE
23 AS A JURY, AS A JUROR, YOU, ALONG WITH ELEVEN OTHER PEOPLE,
24 HAVE ALREADY DECIDED THAT SOMEBODY IS GUILTY OF MURDER AND
25 THEY ARE GUILTY OF ANOTHER CRIME SUCH AS RAPE OR SUCH AS

1 BURGLARY AND, IN FACT, COULD VERY WELL BE ALL THREE, OKAY.
2 YOU UNDERSTAND THAT?

3 A YES, SIR.

4 Q BECAUSE IF YOU DON'T FIND SOMEBODY GUILTY OF MURDER
5 AND RAPE OR BURGLARY, SOMETHING LIKE THAT, YOU DON'T GET TO
6 A SENTENCING PHASE. YOU UNDERSTAND THAT?

7 A YES, SIR.

8 Q NOW, MURDER IN SOUTH CAROLINA AND I DON'T KNOW -- I
9 APOLOGIZE IF I'M TELLING YOU SOMETHING YOU ALREADY KNOW,
10 BUT MURDER IN SOUTH CAROLINA AND FOR YOU TO FIND THAT,
11 WOULD NOT BE A SELF-DEFENSE TYPE THING, IT WOULD NOT BE AN
12 ACCIDENTAL TYPE THING. IT WOULDN'T EVEN BE A HEAT OF
13 PASSION TYPE MURDER. IT WOULD BE WHAT THEY CALL MALICE
14 AFORETHOUGHT. DO YOU UNDERSTAND THAT? DO YOU UNDERSTAND
15 WHAT THAT MEANS?

16 A YES, SIR.

17 Q NOW, TAKING THAT INTO CONSIDERATION, THE FACT THAT
18 YOU -- IF YOU'RE SERVING IN A SENTENCING PHASE, YOU HAVE
19 ALREADY DETERMINED SOMEBODY'S GUILTY OF MURDER AND GUILTY
20 OF RAPE, MAY EVEN BE GUILTY OF BURGLARY, OKAY, COULD YOU
21 STILL GIVE THAT PERSON A LIFE SENTENCE?

22 A THAT'S HARD FOR ME TO SAY. I GUESS IT WOULD DEPEND
23 ON ACTUALLY WHAT EVERYTHING HAPPENED IN THE MEANTIME. IT
24 WOULD -- I'M NOT GOING TO SAY IT WOULDN'T BE HARD.

25 Q YES, SIR.

1 A I'M NOT SAYING THAT I COULDN'T.

2 Q I SEE. NOW, THE DIFFICULT THING I THINK ABOUT
3 TALKING ABOUT THIS IS THAT IN ONE STAGE YOU DETERMINE GUILT
4 AND INNOCENCE SO YOU'VE GOT A LOT OF FACTS AND THINGS LIKE
5 THAT THAT YOU HAVE TO DECIDE ON AS A JUROR---

6 A I UNDERSTAND.

7 Q ---YOU UNDERSTAND WHAT I'M GETTING AT MAYBE?

8 A YES, SIR.

9 Q OKAY.

10 A I THINK SO.

11 Q IN THE SENTENCING PHASE, YOU ARE GOING TO HEAR SOME
12 AGGRAVATION. YOU MAY HEAR SOME MITIGATION, BUT YOU HAVE
13 ALREADY DETERMINED THE GUILT STUFF. DOES THAT MAKE SENSE?

14 A YES, SIR.

15 Q OKAY. AFTER YOU DETERMINE THAT GUILT STUFF, AFTER
16 YOU DETERMINE ALL THE FACTS AND YOU FOUND SOMEBODY IS
17 GUILTY OF MURDER, NOT ACCIDENT, BUT MURDER AND RAPE AND
18 POTENTIALLY BURGLARY, COULD YOU GIVE THAT PERSON A LIFE
19 SENTENCE?

20 A I COULD. YES, SIR.

21 Q AND THAT WOULD DEPEND ON ANY MITIGATING CIRCUMSTANCES
22 YOU MAY -- FOR INSTANCE, WHAT THE JUDGE TALKED TO YOU ABOUT
23 EARLIER.

24 A EXACTLY, YES, SIR.

25 Q ALL RIGHT, SIR. CERTAINLY NOT AGE. WE'RE NOT IN THE

0561

1 AGE CATEGORY, BUT SOME OF THE OTHER THINGS HE MAY HAVE
2 MENTIONED?

3 A YES, SIR.

4 Q ALL RIGHT, SIR. ALSO -- AND LIKEWISE, IF YOU FIND
5 THAT THE AGGRAVATION MAY OUTWEIGH THE MITIGATION AND THE
6 AGGRAVATION IS SOMETHING THAT'S PARTICULARLY OFFENSIVE TO
7 YOU, COULD YOU THEN GIVE THE DEATH PENALTY AS WELL?

8 A YES, SIR, I COULD.

9 Q AND YOU COULD DO THAT -- I REALIZE YOU SAID IT WAS --
10 EARLIER YOU SAID IT WAS HARD, BUT YOU COULD GIVE BOTH
11 MITIGATING AND AGGRAVATING CIRCUMSTANCES, LISTEN TO BOTH OF
12 THOSE AND MAKE A DETERMINATION BETWEEN LIFE OR DEATH?

13 A YES, SIR. THAT'S WHAT Y'ALL ASK ME TO DO.

14 Q ALL RIGHT, SIR. WOULD IT HAVE TO NECESSARILY BE MORE
15 OF ONE OR THE OTHER?

16 A NO, SIR, NOT NECESSARILY.

17 Q I GUESS WHAT I'M GETTING AT BECAUSE YOU SAID EARLIER
18 THAT IT WOULD BE HARD -- AND I APPRECIATE YOUR HONESTY AND
19 I'M NOT -- I DON'T WANT TO -- I'M NOT TRYING TO PUSH YOU
20 WITH THAT.

21 A YES, SIR.

22 Q YOU SAID IT WOULD BE HARDER IF YOU FOUND SOMEBODY
23 GUILTY OF MURDER AND RAPE TO CONSIDER LIFE?

24 A YES, SIR.

25 Q DOES THAT MEAN THAT SOMEBODY HAS GOT TO GIVE YOU MORE

1 MITIGATION THAN AGGRAVATION OR THAT THEY REALLY HAVE TO
2 PUSH YOU A LITTLE BIT WHERE THEY MIGHT NOT HAVE TO DO SO---

3 MR. HUMPHRIES: I'M GOING TO OBJECT.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 MR. HUMPHRIES: THANK YOU.

6 MR. STONE: IS THERE ANY -- WHY WOULD IT BE
7 HARDER?

8 THE JUROR: WHY WOULD IT BE HARDER?

9 Q YES, SIR. IF THAT'S A FAIR QUESTION. I'M NOT TRYING
10 TO -- I'M NOT TRYING TO---

11 A IT'S FAIR TO ME. I HAVE NO PROBLEM ANSWERING THAT.
12 IT'S JUST THAT IF YOU COMMIT THOSE KIND OF CRIMES,
13 GENERALLY, GENERALLY, THERE WAS SOME PRETTY AGGRAVATING
14 CIRCUMSTANCES THERE AND IF THAT KIND OF THING HAPPENS, THEN
15 I DON'T THINK THAT -- I THINK THAT THE PENALTY SHOULD FIT
16 THE CRIME.

17 Q ALL RIGHT, SIR. THANK YOU. I APPRECIATE THAT.

18 A YES, SIR.

19 THE COURT: SOLICITOR.

20 EXAMINATION

21 BY MR. HUMPHRIES:

22 Q MR. RAMSEY, I'M FRAN HUMPHRIES. I'M THE DEPUTY
23 SOLICITOR.

24 A YES, SIR.

25 Q I, ALONG WITH TOM CHASE, WHO IS SEATED HERE, ARE

0563

- 1 GOING TO ASSIST SOLICITOR MYERS IN THE TRIAL OF THIS CASE.
- 2 I'LL BE REAL BRIEF WITH YOU.
- 3 A OKAY.
- 4 Q WE ARE GOING TO ASSUME A NUMBER OF THINGS JUST FOR
- 5 THE PURPOSE OF MY LAST QUESTION.
- 6 A OKAY.
- 7 Q WE ARE GOING TO ASSUME THAT YOU WERE SEATED ON THE
- 8 JURY---
- 9 A OKAY.
- 10 Q ---THAT YOU AND THE OTHER ELEVEN MEMBERS OF THE JURY
- 11 RETURNED A VERDICT OF GUILTY OF MURDER AND SOME OTHER
- 12 ACCOMPANYING CRIME OR CRIMES---
- 13 A YES, SIR.
- 14 Q --- BURGLARY, RAPE---
- 15 A YES, SIR.
- 16 Q ---WENT INTO THE PENALTY PHASE. AFTER HEARING ALL
- 17 THE EVIDENCE IN AGGRAVATION AND ALL THE EVIDENCE IN
- 18 MITIGATION, YOU, ALONG WITH THE OTHER ELEVEN MEMBERS OF THE
- 19 JURY, DETERMINED THAT THE DEATH VERDICT WAS THE APPROPRIATE
- 20 VERDICT IN THE CASE.
- 21 OUR LAW REQUIRES THAT JURORS IN THAT SET OF
- 22 CIRCUMSTANCES TO SIGN THEIR NAME, EACH AND EVERY ONE OF
- 23 THAT MEMBER OF THAT JURY ON THAT DEATH VERDICT, IF THAT'S
- 24 THEIR VERDICT.
- 25 WOULD THE FACT THAT YOU WOULD HAVE TO AFFIX YOUR

1 NAME TO A DOCUMENT WHICH, IN ESSENCE, IS THE DEATH VERDICT
2 FOR GARY TERRY PROHIBIT YOU FROM RENDERING THAT VERDICT IF
3 YOU THOUGHT IT APPROPRIATE?

4 A NO, SIR.

5 Q DOES THAT MAKE SENSE TO YOU?

6 A YES, SIR.

7 Q OKAY. SO AS I UNDERSTAND WHAT YOU'VE SAID BOTH TO
8 MR. STONE AND TO THE JUDGE, IS THAT YOU WOULD WANT TO HEAR
9 ALL OF THE EVIDENCE, AGGRAVATION AND MITIGATION, AND NOT
10 UNTIL YOU HAVE HEARD ALL OF THE EVIDENCE, WOULD YOU RENDER
11 A VERDICT IN THIS CASE AS IT RELATES TO THE PENALTY PHASE?

12 A ABSOLUTELY.

13 Q IS THAT CORRECT?

14 A YES, SIR.

15 Q YOU COULD LISTEN TO ALL OF THE EVIDENCE, TAKE THE LAW
16 AS THE JUDGE INSTRUCTED IT TO YOU AND RETURN A FAIR AND
17 IMPARTIAL VERDICT BASED SOLELY ON THE EVIDENCE AND THE LAW,
18 IS THAT CORRECT?

19 A YES, SIR.

20 Q AND COULD YOU BE FAIR AND IMPARTIAL BOTH TO THE STATE
21 AND TO THE DEFENSE IN THIS CASE?

22 A YES, SIR.

23 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, SIR.

24 A YES, SIR.

25 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

0565

1 MR. STONE: NO, SIR.

2 THE COURT: FROM THE STATE?

3 MR. HUMPHRIES: NO, SIR.

4 THE COURT: ALL RIGHT. MR. RAMSEY, I WANT TO
5 THANK YOU VERY MUCH FOR YOUR PARTICIPATION HERE TODAY AND
6 INTO THIS EVENING. I APOLOGIZE FOR ANY INCONVENIENCE THAT
7 WE MAY HAVE CAUSED YOU.

8 I WILL TELL YOU NOW THAT YOU ARE QUALIFIED TO
9 SERVE AS A POTENTIAL JUROR IN THIS CASE AND WITH THAT
10 QUALIFICATION COMES SOME MORE INSTRUCTIONS THAT YOU HAVE
11 HEARD BEFORE AND I'M GOING TO GIVE IT TO YOU AGAIN THOUGH.

12 WHEN YOU LEAVE HERE, YOU ARE NOT TO DISCUSS THIS
13 CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR ANYONE
14 ELSE.

15 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
16 CONCERNING THIS CASE, PLEASE GATHER AS MUCH INFORMATION
17 ABOUT THAT INDIVIDUAL OR INDIVIDUALS AS YOU CAN AND REPORT
18 THAT TO ME IMMEDIATELY BECAUSE THAT IS A VERY SERIOUS
19 MATTER AND I WILL DEAL WITH THOSE INDIVIDUALS ACCORDINGLY.

20 ALSO, I INSTRUCT YOU THAT YOU ARE TO REFRAIN FROM
21 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
22 CONCERNING THIS CASE.

23 VERY SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER
24 IN THIS MATTER IF YOU ARE SELECTED AS A JUROR IS WHAT YOU
25 SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING

1 LESS.

2 NOW, I'M GOING TO SEND YOU HOME TONIGHT WITH THE
3 INSTRUCTION THAT YOU ARE TO PACK YOUR BAGS AND BE BACK UP
4 HERE WEDNESDAY MORNING AT 9:30 A.M.

5 THE JUROR: YES, SIR.

6 THE COURT: LEAVE YOUR BELONGINGS IN YOUR
7 VEHICLE. IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN
8 THE JURY CUSTODIANS WOULD TAKE YOU TOGETHER WITH YOUR
9 BELONGINGS TO YOUR MOTEL THAT WOULD BE YOUR RESIDENCE
10 DURING THE COURSE OF THE TRIAL. IF YOU ARE NOT SELECTED AS
11 A JUROR, THEN YOU WOULD BE SENT ALONG YOUR WAY WITH OUR
12 THANKS FOR PARTICIPATING HERE DURING THIS PROCESS.

13 I HOPE YOU HAVE A PLEASANT REMAINDER OF THIS
14 EVENING. YOU CAN JUST ABOUT, DEPENDING ON WHERE YOU LIVE,
15 GET HOME IN TIME FOR MONDAY NIGHT FOOTBALL OR---

16 THE JUROR: JUST IN TIME, YOUR HONOR.

17 THE COURT: ---OR LATE IN THE FIRST QUARTER. BUT
18 ALSO PLEASE REPORT BACK HERE WEDNESDAY MORNING AT 9:30 A.M.

19 I'LL LOOK FORWARD TO SEEING YOU THEN.

20 THE JUROR: YES, SIR.

21 THE COURT: THANK YOU, SIR.

22 THE JUROR: YES, SIR.

23 (WHEREUPON, THE JUROR WAS EXCUSED
24 AT THIS TIME.)

25 THE COURT: ALL RIGHT. LET THE RECORD REFLECT

0567

1 THAT JUROR NUMBER 183, ERNEST RAMSEY, IS QUALIFIED TO SERVE
2 AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
3 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
4 1976 AS AMENDED.

5 ALL RIGHT. GENTLEMEN AND MS. FULLWOOD, I WANT TO
6 THANK YOU VERY MUCH FOR ALL OF YOUR HARD WORK TODAY. I
7 KNOW THAT WE ARE GETTING RIGHT AT THAT 9 O'CLOCK HOUR AND
8 I'M GLAD THAT WE DECIDED ONLY TO DO THREE PANELS TODAY.
9 I'M SURE THAT YOU PROBABLY ARE AT THIS TIME ALSO.

10 I ASSUME THAT WE ARE BRINGING IN OUR FIRST PANEL
11 IN THE MORNING AT NINE.

12 THE CLERK: YES, SIR.

13 THE COURT: ANYTHING FURTHER FROM THE STATE
14 BEFORE WE BREAK FOR THE EVENING?

15 MR. HUMPHRIES: ONE BRIEF THING. AND I KNOW MR.
16 STONE IS JUST TIRED OR HE WOULDN'T HAVE DONE IT OTHERWISE,
17 BUT I HAVE A PROBLEM WITH HIM REFERRING TO MY OBJECTION AS
18 AN INTERRUPTION TO THE WITNESS. AND IF I HAD KNEW SHE
19 WASN'T GOING TO BE DISQUALIFIED, I WOULDN'T HAVE SAID -- I
20 WOULD HAVE SAID SOMETHING. AND I'M SURE IT'S JUST GETTING
21 LATE.

22 THE COURT: YES, SIR. I'LL -- YEAH, I SUSTAIN OR
23 OVERRULE AN OBJECTION, THAT'S SUFFICIENT COMMENT ON IT. SO
24 PLEASE KEEP THAT IN MIND.

25 MR. STONE: WHILE -- WHILE WE'RE AT IT, JUDGE, I

1 CERTAINLY DON'T MEAN TO DELAY THE PROCESS, BUT AS FAR AS
2 THE LAST JUROR IS CONCERNED, I THINK MORGAN VERSUS
3 ILLINOIS ALLOWS US TO PROBE A LITTLE BIT INTO THE
4 BIASNESS OF THE JUROR AND IN THEIR IMPARTIALITY. I BELIEVE
5 THAT JUROR WAS QUITE HONEST HIS RESPONSES AND HIS DIRECT
6 RESPONSE TO MY QUESTION WAS HE THOUGHT IT WOULD BE VERY
7 DIFFICULT FOR HIM TO GIVE SOMEBODY A LIFE SENTENCE IF HE'S
8 FOUND THEM GUILTY OF MURDER AND RAPE.

9 I THINK, YOUR HONOR, THE DEFENSE HAS THE -- NOT
10 ONLY THE RIGHT, BUT THE OBLIGATION TO PURSUE THAT AND FIND
11 OUT EXACTLY WHAT HE MEANS BY THAT.

12 MY QUESTION TO THAT JUROR AFTER THAT WAS
13 SPECIFICALLY, DO YOU -- YOU KNOW, WHAT DO YOU MEAN BY THAT?
14 WHAT, FROM YOUR STANDPOINT OF SAYING IT'S DIFFICULT TO GET
15 THERE, WOULD YOU AUTOMATICALLY DO IT.

16 THE OBJECTION FROM MR. HUMPHRIES -- AND I'M NOT
17 QUITE SURE I UNDERSTAND EXACTLY WHAT THE OBJECTION WAS --
18 PREVENTED ME FROM PROBING INTO THAT. WE'RE GOING TO
19 HAVE---

20 THE COURT: I BELIEVE HE ALSO RESPONDED TO YOUR
21 QUESTION, IN ESSENCE.

22 MR. STONE: SIR?

23 THE COURT: I BELIEVE THIS GENTLEMAN ALSO
24 RESPONDED. MR. RAMSEY RESPONDED, IN ESSENCE, TO YOUR
25 QUESTION.

0569

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MR. STONE: I THINK EVENTUALLY HE DID. I THINK HE EVENTUALLY DID. I, OF COURSE, DON'T WANT TO SIT HERE AND GO BACK OVER A JUDGE'S RULING, YOUR HONOR'S RULING, AND SIT THERE AND TRY TO REPHRASE IT TO GET AROUND IT. I WANT TO MAKE SURE I'M CLEAR ON THAT.

THE COURT: ALL RIGHT, SIR,

MR. STONE: BUT IF WE'RE IN THAT SITUATION, I WANT TO MAKE SURE I UNDERSTAND.

THE COURT: MR. HUMPHRIES, YOU WANT TO BE HEARD ON THAT?

MR. HUMPHRIES: NO, SIR, MY -- THAT -- THE QUESTION THAT I OBJECTED TO WAS NOT THE QUESTION WHICH WAS JUST POSED TO THE COURT. IT WAS A HYPOTHETICAL IN MY MIND---

THE COURT: YES, SIR.

MR. HUMPHRIES: ---IN AN ATTEMPT TO STAKE OUT. THAT'S WHY I OBJECTED.

THE COURT: I THINK THAT'S THE PROBLEM THAT SOMETIMES WE -- YOU GET INTO WHEN YOU -- AND I UNDERSTAND THE -- WHAT YOU ARE TRYING TO GET AT AND I BELIEVE THAT WHEN A RESPONSE IS ELICITED, IF YOU WILL MAYBE THINK ABOUT THAT RESPONSE INSOFAR AS FORMULATING YOUR NEXT QUESTION AND NOT TRY TO PLACE IT IN THE FORM OF A HYPOTHETICAL, YOU CAN GET THE INFORMATION THAT YOU NEED WITHOUT TRYING TO TAKE IT THAT STEP FARTHER THAT WE ARE TALKING ABOUT IN PATTERSON

1 AND SOUTH AND THAT IS WHERE I SUSTAIN OBJECTIONS ALONG
2 THOSE LINES.

3 AND AS I RECALL THE QUESTION, IT WAS PRESENTED IN
4 WHAT THE COURT VIEWED TO BE A HYPOTHETICAL AND I'M VIGILANT
5 OF THAT BECAUSE HYPOTHETICALS CAN GET COMPLETELY OUT OF
6 CONTROL AND COMPLETELY UNDERMINE THE ENTIRE PROCESS THAT WE
7 ARE ABOUT. BECAUSE I THINK INSOFAR AS THE UNDERSTANDING OF
8 AGGRAVATING AND MITIGATING CIRCUMSTANCES, THAT BY
9 PRESENTING THEM WITH EXAMPLES OF THAT THAT COME DIRECTLY
10 FROM THE CODE, THAT THEY ARE ABLE TO UNDERSTAND THOSE
11 ISSUES WHERE THEY MIGHT BE UNCLEAR ON THEM IN OTHER WAYS
12 AND AS A RESULT, THAT PRESENTS THEM WITH THOSE ISSUES THAT
13 THE DEFENSE WAS CONFRONTED WITH EARLY ON TODAY AS TO WHAT
14 THEY WOULD CONSIDER IN THOSE AREAS. SO JUST THINK ABOUT
15 THAT OVERNIGHT. IF WE HAVE ANY PROBLEMS WITH IT, WE'LL
16 DISCUSS IT FURTHER TOMORROW.

17 MR. STONE: ALL RIGHT, SIR.

18 THE COURT: AND I THINK THAT YOU ALL HAVE DONE A
19 VERY FINE JOB IN MOVING THIS ALONG TODAY AND I APPRECIATE
20 THAT AND I'LL LOOK FORWARD TO SEEING ALL OF YOU IN THE
21 MORNING AT 9:00 A.M., TWELVE HOURS FROM NOW.

22 MR. HUMPHRIES: THANK YOU, JUDGE.

23 THE COURT: HAVE A PLEASANT EVENING.

24 (WHEREUPON, COURT RECESSED FOR THE
25 DAY AT 9:00 P.M.)

1 TUESDAY, SEPTEMBER, 16, 1997.

2 (WHEREUPON, COURT RECONVENED ON
3 TUESDAY, SEPTEMBER 16, 1997, AT 9:00 A.M.)

4 THE BAILIFF: ALL RISE. THE HONORABLE GARY E.
5 CLARY PRESIDING.

6 THE COURT: THANK YOU VERY MUCH. PLEASE TAKE
7 YOUR SEATS.

8 ALL RIGHT. IS THE STATE READY?

9 MR. HUMPHRIES: THE STATE IS READY TO PROCEED,
10 YOUR HONOR.

11 THE COURT: IS THE DEFENSE?

12 MS. FULLWOOD: YES, SIR.

13 THE COURT: ALL RIGHT.

14 LET'S BRING IN JUROR NUMBER 18, MS. BECKSTROM.

15 KATHRYN J. BECKSTROM,

16 (JUROR NUMBER 18, WHITE FEMALE,
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

18 EXAMINATION

19 BY THE COURT:

20 Q GOOD MORNING TO YOU, MS. BECKSTROM?

21 A GOOD MORNING.

22 Q YOU ARE JUROR NUMBER 18, KATHRYN J. BECKSTROM, IS
23 THAT CORRECT?

24 A CORRECT.

25 Q NOW, DO YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR

1 THESE PROCEEDINGS?

2 A YES.

3 Q AND YESTERDAY WHEN I SENT YOU AWAY, YESTERDAY
4 AFTERNOON RIGHT BEFORE LUNCH, I GAVE YOU CERTAIN
5 INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
6 ANYONE AND IF ANYONE ATTEMPTED TO CONTACT YOU CONCERNING
7 THIS CASE, THAT YOU WERE TO REPORT THAT TO ME AND ALSO THAT
8 YOU WERE TO REFRAIN FROM READING, WATCHING OR LISTENING TO
9 ANY NEWS ACCOUNTS CONCERNING THIS CASE. HAVE ANY OF THOSE
10 INSTRUCTIONS BEEN VIOLATED?

11 A NO.

12 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
13 THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY WILL ASK YOU
14 SOME QUESTIONS AS WELL AS ONE OF THE SOLICITORS.

15 I WANT YOU TO KEEP IN MIND THAT WE ARE NOT IN ANY
16 WAY ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
17 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
18 NECESSARY THAT CERTAIN QUESTIONS ARE ASKED.

19 ALSO, KEEP IN MIND THAT THERE ARE ABSOLUTELY NO
20 RIGHT OR WRONG ANSWERS TO THE QUESTIONS THAT YOU ARE GOING
21 TO BE POSED. PLEASE JUST ANSWER THEM OPENLY AND HONESTLY
22 AND FULLY. AND ALSO KEEP IN MIND THAT NO ONE IS
23 CHALLENGING THE VIEW THAT YOU MIGHT HAVE. IT'S SIMPLY THAT
24 WE NEED TO KNOW WHAT THAT VIEW IS.

25 A UH-HUH.

0573

1 Q ALSO, KEEP IN MIND THROUGHOUT THIS QUESTIONING THAT
2 YOU ARE PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU
3 HAVE NEVER EVEN CONSIDERED BEFORE. SO KEEP THAT IN MIND.

4 A ALL RIGHT.

5 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
6 ABOUT OVER THE NEXT FEW MINUTES WILL BE THE WORD PENALTY.
7 AND THE MERE FACT THAT I EVEN MENTION THAT WORD DOES NOT IN
8 ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY.
9 HE IS PRESUMED -- EXCUSE ME, HE IS PRESUMED IN THE LAW TO
10 BE INNOCENT. DO YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q NOW, LET'S CONSIDER FOR A FEW MINUTES THAT YOU WERE A
13 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
14 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
15 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
16 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

17 A YES, SIR.

18 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

20 A YES, SIR.

21 Q NOW, IN A CRIMINAL CASE, MS. BECKSTROM, THE STATE OF
22 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
23 GUILT. AND THE BURDEN OF PROOF THAT THE STATE MUST MEET IS
24 TO PROVE THE ELEMENTS OF THE CRIMES WITH WHICH HE IS
25 CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT HAS

1 ABSOLUTELY NO RESPONSIBILITY OR BURDEN TO PROVE HIMSELF
2 INNOCENT. DO YOU UNDERSTAND THAT?

3 A YES.

4 Q NOW, COULD YOU, DEPENDING ON THE FACTS, EVIDENCE AND
5 THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE, FIND
6 A DEFENDANT EITHER GUILTY OR NOT GUILTY?

7 A YES.

8 Q NOW, YOU UNDERSTAND THAT THE CASE THAT WE ARE TALKING
9 ABOUT THIS WEEK IS ONE IN WHICH THE STATE OF SOUTH CAROLINA
10 SEEKS THE DEATH PENALTY. AND IN SUCH A CASE, WE CALL THAT
11 A BIFURCATED TRIAL. I THINK THAT I EXPLAINED THAT TO YOU
12 YESTERDAY. MEANING THAT ITS DIVIDED INTO TWO PARTS.

13 THE FIRST PART IS THE GUILT PHASE. AND IF THE
14 JURY FINDS THAT THE DEFENDANT WAS NOT GUILTY OF MURDER IN
15 THAT PHASE, THE TRIAL WOULD END AT THAT POINT AND THERE
16 WOULD BE NO NEED FOR THE SECOND PHASE. YOU UNDERSTAND
17 THAT?

18 A YES.

19 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
20 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, DO
21 YOU UNDERSTAND THAT YOU WOULD THEN MOVE INTO THAT SECOND OR
22 SENTENCING PHASE OF THE TRIAL?

23 A YES, SIR.

24 Q NOW, DURING THAT PHASE OF THE TRIAL, EVIDENCE WOULD
25 BE PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS

0575

1 WELL AS MITIGATING CIRCUMSTANCES.

2 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
3 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
4 ASSEMBLY HAS DECLARED BY LAW THAT WOULD MAKE WORSE; THAT
5 IS, TO AGGRAVATE THE CRIME OF MURDER.

6 IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING
7 CIRCUMSTANCE OR CIRCUMSTANCES INCREASES THE ENORMITY OR
8 ADDS TO THE CRIME OF MURDER.

9 FOR EXAMPLE, THAT WOULD BE WHEN A MURDER OCCURS
10 IN CONJUNCTION WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT
11 AND OR THE CRIME OF BURGLARY. DO YOU UNDERSTAND THAT?

12 A YES.

13 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
14 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
15 ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE
16 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
17 EXTENUATING OR REDUCING THE DEGREE OF RESPONSIBILITY OR
18 MORAL CULPABILITY.

19 AND SOME EXAMPLES OF MITIGATING CIRCUMSTANCES
20 PRESCRIBED BY STATUTE ARE THAT THE MURDER WAS COMMITTED
21 WHILE THE PERSON WAS UNDER THE INFLUENCE OF MENTAL OR
22 EMOTIONAL DISTURBANCE; THAT THE CAPACITY OF THE DEFENDANT
23 TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM
24 HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
25 SUBSTANTIALLY IMPAIRED AND ALSO THE AGE OR MENTALITY OF A

1 DEFENDANT MAY BE CONSIDERED AT THE TIME OF THE CRIME. DO
2 YOU UNDERSTAND THAT?

3 A YES.

4 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN SUCH A
5 SITUATION AND WE ARE TALKING ABOUT THE SENTENCING PHASE,
6 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
7 CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
8 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
9 LIFE IN PRISON?

10 A YES.

11 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
12 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
13 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
14 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

15 A YES.

16 Q NOW, IF YOU ARE CHOSEN TO SERVE ON THIS JURY, YOU
17 WOULD BE SEQUESTERED. THAT'S KIND OF A FANCY LEGAL WORD
18 MEANING THAT YOU WOULD BE PLACED IN A MOTEL FOR THE
19 DURATION OF THE TRIAL. I DON'T KNOW EXACTLY HOW LONG THE
20 CASE WILL LAST, BUT I HAVE AN ESTIMATE THAT IT COULD BE A
21 WEEK TO TEN DAYS. IT COULD EVEN BE LESS THAN THAT, BUT I
22 SAY A WEEK TO TEN DAYS TO GIVE YOU AN IDEA AT THE OUTSIDE
23 RANGE OF THE TRIAL. EXCEPT FOR THE PERSONAL INCONVENIENCE
24 THAT YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO
25 THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT

0577

1 UPON YOU?

2 A NO.

3 Q THANK YOU FOR ANSWERING MY QUESTIONS. PLEASE RESPOND

4 TO MS. FULLWOOD'S QUESTIONS AT THIS TIME.

5 EXAMINATION

6 BY MS. FULLWOOD:

7 Q GOOD MORNING, DR. BECKSTROM.

8 A GOOD MORNING.

9 Q HOW ARE YOU?

10 A FINE. THANK YOU.

11 Q GOOD. DR. BECKSTROM, I'M BETH FULLWOOD. ALONG WITH

12 DUFFIE STONE, I'M REPRESENTING GARY TERRY.

13 A UH-HUH.

14 Q THIS TYPE OF CASE IS DIFFERENT IN JURY SELECTION

15 BECAUSE THIS IS THE ONLY TYPE OF CASE THAT THE LAWYERS GET

16 TO ASK YOU QUESTIONS---

17 A UH-HUH.

18 Q ---A LOT OF THE QUESTIONS THAT I HAVE ARE GOING TO

19 CONCERN THE SECOND TYPE OF TRIAL THAT MAY OR MAY NOT BE

20 HELD IN THIS CASE. IT MAY SEEM THAT WE ARE PUTTING THE

21 CART BEFORE THE HORSE TO START ASKING YOU ABOUT YOUR VIEWS

22 ABOUT THESE THINGS, BUT THIS IS THE ONLY TIME THAT WE CAN

23 ASK YOU.

24 A UH-HUH.

25 Q BEFORE YOU WERE CALLED AS A JUROR IN THIS CASE AND

1 FOUND OUT THAT THIS WAS A CAPITAL CASE YESTERDAY, HAD YOU
2 GIVEN MUCH THOUGHT TO THE QUESTION OF CAPITAL PUNISHMENT?

3 A I HAD THOUGHT ABOUT IT IN THE PAST, YES.

4 Q COULD YOU TELL ME IN GENERAL WHAT YOUR THOUGHTS ARE
5 ON CAPITAL PUNISHMENT?

6 A I'M IN FAVOR OF IT.

7 Q ALL RIGHT. AND COULD YOU EXPOUND A LITTLE MORE ON
8 THAT?

9 A GIVEN -- GIVEN PARTICULAR CIRCUMSTANCES, I THINK
10 THERE ARE TIMES WHERE IT IS AN APPROPRIATE PUNISHMENT IF
11 YOU WANT TO CALL IT THAT, THE PENALTY.

12 Q OKAY, COULD YOU TELL ME WHAT YOU MEAN BY PARTICULAR
13 CIRCUMSTANCES---

14 MR. HUMPHRIES: YOUR HONOR, I WOULD OBJECT TO
15 THAT.

16 THE COURT: I WILL SUSTAIN THE OBJECTION. I
17 THINK IF YOU WANT TO REPHRASE, YOU MAY DO SO.

18 MS. FULLWOOD: YES, SIR.

19 DR. BECKSTROM, YOU UNDERSTAND IF, IN FACT, WE DO
20 GET TO A SECOND TRIAL IN THIS CASE, IT WOULD ONLY BE IF THE
21 JURY HAD DECIDED IN THE FIRST TRIAL AND THAT THE VERDICT
22 SHOULD BE GUILTY OF MURDER AND GUILTY OF EITHER CRIMINAL
23 SEXUAL CONDUCT WHICH MEANS RAPE BASICALLY---

24 A UH-HUH.

25 Q --AND BURGLARY? DO YOU UNDERSTAND THAT---

0579

- 1 A YES.
- 2 Q ---THAT'S THE ONLY POSTURE WHERE YOU WOULD GO INTO A
- 3 SECOND TRIAL?
- 4 A YES.
- 5 Q ALL RIGHT. AND DO YOU UNDERSTAND THAT IN THIS STATE
- 6 MURDER MEANS KILLING ANOTHER PERSON WITH MALICE
- 7 AFORETHOUGHT?
- 8 A YES.
- 9 Q OKAY. AND WHEN I SAY MALICE AFORETHOUGHT, THAT WOULD
- 10 EXCLUDE ANY POSSIBILITY OF, SAY, HEAT OF PASSION,
- 11 SELF-DEFENSE OR ACCIDENT OR ANYTHING OF THAT NATURE?
- 12 A UH-HUH.
- 13 Q ALL RIGHT. CAN YOU VOTE FOR A SENTENCE OF LIFE
- 14 IMPRISONMENT FOR A PERSON WHOM YOU HAVE DECIDED BEYOND A
- 15 REASONABLE DOUBT IS GUILTY OF THE CRIME OF MURDER AND
- 16 CRIMINAL SEXUAL CONDUCT OR BURGLARY?
- 17 A YES, I COULD.
- 18 Q ALL RIGHT.
- 19 ON THE OTHER HAND, CAN YOU VOTE FOR THE DEATH
- 20 PENALTY FOR A PERSON YOU HAVE DECIDED BEYOND A REASONABLE
- 21 DOUBT IS GUILTY OF CRIMINAL SEXUAL CONDUCT AND OR BURGLARY?
- 22 A WAS MURDER INCLUDED IN THERE AS WELL?
- 23 Q IF IT WASN'T, I MEANT TO.
- 24 A YES, I COULD.
- 25 Q ALL RIGHT. HAVE YOU EVER HAD ANY DISCUSSIONS ABOUT

1 THE DEATH PENALTY, SAY, WITH FAMILY MEMBERS---

2 A YES.

3 Q ---OR FRIENDS? OF COURSE, I DON'T WANT A
4 WORD-FOR-WORD REPLAY OF THE DISCUSSION, CAN YOU TELL ME
5 GENERALLY WHAT KIND OF VIEWS YOU HAVE EXPRESSED IN THOSE
6 TYPE OF CONVERSATIONS?

7 A I THINK AS I KIND OF STATED EARLIER WHEN THE TOPIC
8 HAS COME UP, IT IS SOMETHING THAT I HAVE SAID IN THE
9 PARTICULAR CIRCUMSTANCES, I AM IN FAVOR OF IT.

10 Q ALL RIGHT. BEG THE COURT'S INDULGENCE.

11 JUST WANTED TO MAKE SURE I HADN'T FORGOTTEN
12 ANYTHING SINCE THIS IS THE ONLY CHANCE WE DO HAVE TO TALK
13 TO YOU. I'M JUST ABOUT FINISHED.

14 CAN YOU GIVE ME SOME IDEA OF WHAT KIND OF
15 INFORMATION YOU WOULD LIKE TO HAVE ABOUT A PERSON OR ABOUT
16 A CRIME BEFORE YOU WOULD LIKE TO MAKE UP YOUR MIND ABOUT
17 WHAT KIND OF SENTENCE TO IMPOSE?

18 MR. HUMPHRIES: YOUR HONOR, I WOULD OBJECT TO
19 THAT.

20 THE COURT: YOU WANT TO STATE THE BASIS FOR YOUR
21 OBJECTION.

22 MR. HUMPHRIES: YES, YOUR HONOR. IT'S AN ATTEMPT
23 TO STAKE OUT THE JUROR.

24 THE COURT: LET ME SEE THE LAWYERS UP HERE JUST A
25 MINUTE.

0581

1 (WHEREUPON, A BENCH CONFERENCE WAS
2 HELD AT THIS TIME OFF THE RECORD.)

3 THE COURT: OBJECTION SUSTAINED.

4 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

5 MS. FULLWOOD: DR. BECKSTROM, I THINK I HAVE JUST
6 ABOUT FINISHED HERE.

7 LET ME ASK YOU ABOUT ONE MORE THING. IN THIS
8 TYPE OF CASE, IF A JURY DECIDES TO IMPOSE A DEATH SENTENCE,
9 ALL THE JURY MUST AGREE---

10 A UH-HUH.

11 Q ---YOU UNDERSTAND THAT?

12 A UH-HUH.

13 Q OF COURSE, YOU PROBABLY KNEW THAT, THAT THE VERDICT
14 HAS TO BE UNANIMOUS. AND AS PART OF THE PROCEDURE, THERE'S
15 A SENTENCING FORM TO LET THE COURT KNOW WHAT SENTENCE HAS
16 BEEN IMPOSED.

17 NOW, IF A PERSON IS SENTENCED TO DEATH EACH
18 MEMBER OF THAT JURY MUST SIGN THE SENTENCING FORM. MY
19 QUESTION TO YOU IS WOULD YOU BE ABLE TO SIGN THAT TYPE OF
20 SENTENCING FORM?

21 A IF THE MAJORITY OF THE -- IF THE ENTIRE JURY HAD
22 AGREED ON THAT AND I WAS ONE OF THOSE JURY MEMBERS, YES, I
23 WOULD.

24 Q OKAY. WOULD THE FACT THAT YOU WOULD HAVE TO SIGN
25 THAT SENTENCING FORM PREVENT YOU FROM IMPOSING THE DEATH

0582

1 SENTENCE?

2 A NO.

3 Q ALL RIGHT. THANK YOU VERY MUCH, DOCTOR. I
4 APPRECIATE YOU ANSWERING MY QUESTIONS.

5 THE COURT: SOLICITOR HUMPHRIES.

6 EXAMINATION

7 BY MR. HUMPHRIES:

8 Q DR. BECKSTROM, I'M FRAN HUMPHRIES. I'M THE DEPUTY
9 SOLICITOR HERE IN LEXINGTON.

10 A UH-HUH.

11 Q TOM CHASE, WHO IS SITTING HERE, IS GOING TO ASSIST ME
12 IN ASSISTING SOLICITOR MYERS IN TRYING THIS CASE.

13 A UH-HUH.

14 Q I JUST HAVE ONE QUESTION FOR YOU AND THAT IS -- I
15 UNDERSTAND THAT YOU ARE A PHYSICIAN AND I UNDERSTAND THAT
16 YOU TAKE AN OATH IN CONNECTION WITH YOUR DUTIES AS A
17 PHYSICIAN AND I ALSO UNDERSTAND THAT YOU ARE CATHOLIC. I'M
18 NOT INTERESTED IN THE BASIS OF YOUR BELIEFS, WHETHER
19 THEY'RE BASED ON YOUR RELIGION OR OTHERWISE. MY QUESTION
20 SIMPLY IS THIS AND I THINK YOU'VE BEEN PRETTY CLEAR ABOUT
21 IT ALREADY. IS THERE ANYTHING IN YOUR BACKGROUND, WHETHER
22 RELIGIOUS OR SOCIETAL OR OTHERWISE, THAT WOULD PREVENT YOU
23 IN RIGHT CIRCUMSTANCES FROM LISTENING TO BOTH THE EVIDENCE
24 IN AGGRAVATION AND MITIGATION AND BASED ON THE FACTS AND
25 CIRCUMSTANCES AND THE LAW AS THE JUDGE CHARGES YOU RETURN A

0583

1 VERDICT EITHER FOR LIFE OR DEATH DEPENDING ON THOSE
2 CIRCUMSTANCES?

3 A NO, SIR.

4 Q NOTHING TO PREVENT YOU FROM DOING THAT?

5 A NO, SIR.

6 Q AND YOU COULD BE A FAIR AND IMPARTIAL JUROR BOTH TO
7 THE STATE AND TO THE DEFENSE IN THIS CASE?

8 A YES, SIR.

9 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU.

10 A YOU'RE WELCOME.

11 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

12 MS. FULLWOOD: NO, SIR.

13 THE COURT: FROM THE STATE?

14 MR. HUMPHRIES: NO, SIR.

15 THE COURT: DR. BECKSTROM, I WANT TO THANK YOU
16 VERY MUCH FOR YOUR PARTICIPATION IN OUR PROCESS. I FIND
17 THAT YOU ARE QUALIFIED TO SERVE AS A POTENTIAL JUROR IN
18 THIS CASE AND WITH THAT QUALIFICATION, THERE COMES SOME
19 MORE INSTRUCTION THAT YOU HAVE ALREADY HEARD BUT I HAVE TO
20 GIVE IT TO YOU AGAIN.

21 WHEN YOU LEAVE HERE TODAY, YOU ARE NOT TO DISCUSS
22 THIS CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR
23 ANYONE ELSE. AND IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
24 CONCERNING THIS CASE, ONCE AGAIN, GATHER AS MUCH
25 INFORMATION ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN AND

1 REPORT THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS
2 MATTER AND I WOULD DEAL WITH IT ACCORDINGLY.

3 ALSO, I'M GOING TO FURTHER INSTRUCT YOU THAT YOU
4 ARE TO CONTINUE TO REFRAIN FROM READING, WATCHING OR
5 LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

6 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IN
7 THIS CASE IF YOU ARE SELECTED AS A JUROR IS WHAT YOU SEE
8 AND HEAR IN THIS COURTROOM. ABSOLUTELY NOTHING MORE OR
9 NOTHING LESS.

10 WITH THAT, I'M GOING TO BE SENDING YOU AWAY WITH
11 THE INSTRUCTIONS THAT YOU ARE TO GO HOME AND START PACKING
12 YOUR BAGS AND COME BACK TOMORROW MORNING AT 9:30 A.M.
13 PLEASE LEAVE YOUR LUGGAGE IN YOUR VEHICLE. IF YOU ARE
14 SELECTED AS A JUROR IN THIS CASE, THEN THE JURY CUSTODIANS
15 WOULD SEE THAT YOU AND YOUR BELONGINGS ARE PROPERLY
16 DELIVERED TO OUR MOTEL WHERE YOU WOULD BE SEQUESTERED
17 DURING THE LENGTH OF THE TRIAL.

18 IN THE EVENT THAT YOU ARE NOT SELECTED, THEN WE
19 WOULD THANK YOU VERY MUCH FOR PARTICIPATING IN OUR PROCESS
20 AND SEND YOU ALONG YOUR WAY AND YOU WOULD NO LONGER BE
21 RESPONSIBLE FOR BEING HERE. SO WITH THAT, I'LL LOOK
22 FORWARD TO SEEING YOU IN THE MORNING AROUND NINE-THIRTY.
23 HAVE A PLEASANT DAY.

24 THE JUROR: THANK YOU.

25 (WHEREUPON, THE JUROR WAS EXCUSED)

0585

1 AT THIS TIME.)

2 THE COURT: LET THE RECORD REFLECT THAT JUROR
3 NUMBER 18, KATHRYN J. BECKSTROM, IS QUALIFIED PURSUANT TO
4 SECTION 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH
5 CAROLINA, 1976 AS AMENDED.

6 ALL RIGHT. JUROR NUMBER 1, LISA G. ABBOTT.

7 LISA G. ABBOTT,

8 (JUROR NUMBER 1, WHITE FEMALE,
9 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

10 EXAMINATION

11 BY THE COURT:

12 Q GOOD MORNING, MS. ABBOTT.

13 A GOOD MORNING.

14 Q YOU ARE LISA ABBOTT, CORRECT?

15 A RIGHT.

16 Q JUROR NUMBER ONE. NOW, MS. ABBOTT, YOU UNDERSTAND
17 THAT YOU UNDER OATH FOR THESE PROCEEDINGS?

18 A YES, I DO.

19 Q AND ALSO YOU RECALL THAT WHEN I DISMISSED YOU
20 YESTERDAY AROUND LUNCH TIME THAT I GAVE YOU INSTRUCTIONS
21 THAT YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE. IF
22 ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT
23 YOU WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO
24 REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
25 ACCOUNTS CONCERNING THIS CASE. HAVE ANY OF THOSE

1 INSTRUCTIONS BEEN VIOLATED?

2 A NO.

3 Q NOW, I'M GOING TO BE ASKING YOU SEVERAL QUESTIONS AND
4 THEN ONE OF THE LAWYERS REPRESENTING MR. TERRY WILL ASK YOU
5 SOME QUESTIONS AND ONE OF THE SOLICITORS WILL ALSO ASK YOU
6 SOME QUESTIONS. PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY
7 WAY ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
8 NATURE OF THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S
9 EXTREMELY IMPORTANT THAT WE DO ASK CERTAIN QUESTIONS.

10 ALSO, KEEP IN MIND THAT THERE ARE ABSOLUTELY NO
11 RIGHT OR WRONG ANSWERS TO THE QUESTIONS THAT YOU ARE GOING
12 TO BE ASKED. ANSWER THEM OPENLY AND FULLY AND HONESTLY AND
13 ALSO KEEP IN MIND THAT IN NO WAY IS ANYONE CHALLENGING YOUR
14 VIEW. WE JUST NEED TO KNOW WHAT THAT VIEW IS.

15 ALSO, I WANT YOU TO KEEP IN MIND THAT YOU ARE
16 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE
17 NEVER EVEN CONSIDERED BEFORE. SO PLEASE KEEP THAT IN MIND
18 AS YOU DO LISTEN TO THE QUESTIONS VERY CAREFULLY.

19 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
20 TALKING ABOUT OVER THE NEXT FEW MINUTES WILL INCLUDE
21 PENALTY. BUT THE MERE FACT THAT I EVEN MENTION THE WORD
22 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
23 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
24 UNDERSTAND THAT?

25 A YES.

0537

1 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
2 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
3 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
4 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
5 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

6 A YES.

7 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
8 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

9 A YES.

10 Q NOW, IN A CRIMINAL CASE, MS. ABBOTT, THE STATE OF
11 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
12 GUILT. THE BURDEN OF PROOF THAT THE STATE MUST MEET IS TO
13 PROVE THE ELEMENTS OF THE CRIMES WITH WHICH HE IS CHARGED
14 BEYOND A REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO
15 BURDEN OR RESPONSIBILITY TO PROVE HIMSELF INNOCENT. DO YOU
16 UNDERSTAND THAT?

17 A YES.

18 Q COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE AND
19 THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE, FIND
20 A DEFENDANT EITHER GUILTY OR NOT GUILTY?

21 A YES.

22 Q NOW, AS YOU KNOW, THE CASE THAT WE ARE ABOUT THIS
23 WEEK IS ONE IN WHICH THE STATE OF SOUTH CAROLINA SEEKS THE
24 DEATH PENALTY AND IN SUCH A TRIAL, IT'S WHAT WE CALL A
25 BIFURCATED TRIAL. I THINK THAT I EXPLAINED THAT TO YOU

1 YESTERDAY, MEANING THAT IT'S DIVIDED INTO TWO PARTS.

2 THE FIRST PART OF THE TRIAL IS WHAT WE CALL THE
3 GUILT PHASE AND IF THE JURY RETURNED A VERDICT OF NOT
4 GUILTY AS TO MURDER IN THAT PHASE OF THE TRIAL, THE SECOND
5 PHASE OR THE SENTENCING PHASE WOULD NOT BE NECESSARY YOU
6 UNDERSTAND?

7 A RIGHT, UH-HUH.

8 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
9 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
10 YOU DO UNDERSTAND THAT YOU WOULD THEN MOVE TO THE
11 SENTENCING PHASE OF THE TRIAL?

12 A YES.

13 Q NOW, IN THAT PHASE OF THE TRIAL, MS. ABBOTT, EVIDENCE
14 WOULD BE PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES
15 AS WELL AS MITIGATING CIRCUMSTANCES.

16 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
17 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
18 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
19 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

20 IN OTHER WORDS, THE PRESENCE OF THE AGGRAVATING
21 CIRCUMSTANCE INCREASES OR ADDS TO THE ENORMITY OF THE
22 INJURY OF THE MURDER.

23 FOR EXAMPLE, WHAT I AM TALKING ABOUT IS WHEN A
24 MURDER IS COMMITTED IN CONNECTION WITH ANOTHER CRIME SUCH
25 AS CRIMINAL SEXUAL CONDUCT AND OR BURGLARY. DO YOU

0589

1 UNDERSTAND THAT?

2 A YES.

3 Q NOW, MITIGATING CIRCUMSTANCES ON THE OTHER HAND, ARE
4 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
5 ASSEMBLY HAS ALSO DECLARED BY STATUTE REDUCES THE SEVERITY
6 OF THE OFFENSE OF MURDER AND THESE MAY BE CONSIDER AS
7 EXTENUATING OR AS REDUCING THE DEGREE OF RESPONSIBILITY OR
8 MORAL CULPABILITY OF THE PARTY WHO HAS COMMITTED THE
9 MURDER.

10 AND WHAT I'M TALKING ABOUT IS WHEN A MURDER WAS
11 COMMITTED WHILE A PERSON WAS UNDER THE INFLUENCE OF MENTAL
12 OR EMOTIONAL DISTURBANCES, THE CAPACITY OF THE PERSON TO
13 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
14 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
15 IMPAIRED OR THE JURY MAY CONSIDER THE AGE OR MENTALITY OF
16 THE PERSON AT THE TIME THE CRIME WAS COMMITTED. DO YOU
17 UNDERSTAND THOSE EXAMPLES?

18 A YES.

19 Q NOW, LET'S CONSIDER IF YOU WERE A JUROR IN THAT
20 SITUATION AND WE ARE TALKING ABOUT THE SENTENCING PHASE,
21 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
22 CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
23 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
24 LIFE IN PRISON?

25 A NO.

1 Q YOU COULD NOT?

2 A NO.

3 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
4 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
5 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
6 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

7 A YES.

8 Q ARE YOU SAYING THAT YOU WOULD NEVER CONSIDER THE
9 IMPOSITION OF LIFE IN PRISON IN SUCH AN INSTANCE?

10 A YES.

11 Q EVEN IF I INSTRUCTED YOU THAT THE LAW OF THIS STATE
12 SAYS THAT YOU ARE TO CONSIDER THE -- BOTH SENTENCES IN
13 WEIGHING THE AGGRAVATING AND MITIGATING CIRCUMSTANCES?

14 A YES.

15 Q ALL RIGHT.

16 MR. STONE: I DON'T HAVE ANYTHING AT THIS TIME.

17 THANK YOU FOR YOUR HONESTY, MS. ABBOTT.

18 THE COURT: ANYTHING FROM THE STATE?

19 MR. HUMPHRIES: NO, SIR. THANK YOU VERY MUCH.

20 THE COURT: I WANT TO THANK YOU VERY MUCH FOR
21 YOUR PARTICIPATION, MS. ABBOTT, IN OUR PROCESS. I HOPE
22 THAT WE HAVE NOT INCONVENIENCED YOU TOO GREATLY. YOU HAVE
23 PERFORMED A VERY VALUABLE SERVICE TO YOUR COUNTY AND TO
24 YOUR STATE IN PARTICIPATING IN ALL OF THE ACTIVITIES OF
25 YESTERDAY AS WELL AS TODAY.

0591

1 THIS IS GOING TO CONCLUDE YOUR RESPONSIBILITIES,
2 YOU WILL NOT BE NEEDED THE REMAINDER OF THIS TERM OF COURT,
3 BUT THANK YOU VERY MUCH FOR BEING HERE.

4 THE JUROR: THANK YOU.

5 (WHEREUPON, THE JUROR WAS EXCUSED
6 AT THIS TIME.)

7 THE COURT: JUROR NUMBER 99, DEXTER GRAVES.

8 DEXTER T. L. GRAVES,

9 (JUROR NUMBER 99, BLACK MALE,
10 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

11 EXAMINATION

12 BY THE COURT:

13 Q GOOD MORNING, MR. GRAVES.

14 A GOOD MORNING.

15 Q YOU ARE DEXTER GRAVES, JUROR NUMBER 99, CORRECT?

16 A YES, SIR.

17 Q NOW, MR. GRAVES, YOU UNDERSTAND THAT YOU ARE UNDER
18 OATH FOR THESE PROCEEDINGS TODAY?

19 A YES, SIR.

20 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
21 INSTRUCTIONS YESTERDAY AFTERNOON BEFORE YOU LEFT THE COURT
22 HOUSE THAT YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE.
23 THAT IF ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS
24 CASE, THAT YOU WERE TO REPORT THAT TO ME AND ALSO THAT YOU
25 WERE TO REFRAIN FROM READING, WATCHING OR LISTENING TO ANY

1 NEWS ACCOUNTS CONCERNING THIS CASE. HAVE ANY OF THOSE
2 INSTRUCTIONS BEEN VIOLATED?

3 A NO, SIR.

4 Q NOW, MR. GRAVES, I'M GOING TO BE ASKING YOU A FEW
5 QUESTIONS AND THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY
6 AS WELL AS ONE OF THE LAWYERS FOR THE STATE WILL ASK YOU
7 SOME QUESTIONS. KEEP IN MIND THAT WE ARE NOT IN ANY WAY
8 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
9 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S NECESSARY
10 THAT CERTAIN QUESTIONS ARE ASKED.

11 ALSO KEEP IN MIND, THAT THERE ARE ABSOLUTELY NO
12 RIGHT OR WRONG ANSWERS TO THE QUESTIONS THAT YOU ARE GOING
13 TO BE POSED. ALSO, PLEASE JUST ANSWER OPENLY AND HONESTLY
14 AND FULLY AND KEEP IN MIND THAT NO ONE IS CHALLENGING THE
15 VIEW THAT YOU MIGHT HAVE. WE JUST NEED TO KNOW WHAT THAT
16 VIEW IS.

17 ALSO, KEEP IN MIND THAT YOU ARE PROBABLY GOING TO
18 BE ASKED SOME QUESTIONS THAT YOU HAVE NEVER CONSIDERED
19 BEFORE.

20 A OKAY.

21 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
22 ABOUT, MR. GRAVES, WILL BE THE TERM PENALTY. AND THE MERE
23 FACT THAT I EVEN MENTION THAT WORD DOES NOT IN ANY WAY
24 INDICATE ANYTHING ABOUT THIS DEFENDANT. HE IS PRESUMED IN
25 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

1 A UH-HUH.

2 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, LET'S
3 SUPPOSE FOR A FEW MINUTES, COULD YOU LISTEN TO THE LAW,
4 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
5 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
6 THAT COURT OR THINK THAT IT OUGHT BE SOME OTHER WAY?

7 A YES, SIR, I CAN.

8 Q CAN YOU DECIDE THIS CASE BASED SOLELY ON THE EVIDENCE
9 PRESENTED HERE IN THIS COURTROOM?

10 A UH-HUH.

11 Q NOW, IN A CRIMINAL CASE, MR. GRAVES, THE STATE OF
12 SOUTH CAROLINA HAS THE BURDEN OF PROVING GUILT. THE BURDEN
13 OF PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS
14 OF THE CRIMES WITH WHICH THE DEFENDANT IS CHARGED BEYOND A
15 REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO BURDEN OR
16 RESPONSIBILITY TO PROVE HIMSELF INNOCENT. DO YOU
17 UNDERSTAND THAT?

18 A YES, SIR.

19 Q COULD YOU, DEPENDING UPON THE FACTS AND THE EVIDENCE
20 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
21 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

22 A YES, SIR.

23 Q NOW, YOU UNDERSTAND FROM THE INFORMATION THAT I GAVE
24 YOU YESTERDAY THAT THIS IS A CASE IN WHICH THE STATE OF
25 SOUTH CAROLINA SEEKS THE DEATH PENALTY AND YOU UNDERSTAND

1 THAT SUCH A TRIAL IS DIVIDED INTO TWO PARTS.

2 THE FIRST PHASE IS CALLED THE GUILT PHASE. THE
3 SECOND PHASE IS CALLED THE SENTENCING PHASE. AND IF THE
4 JURY RETURNED A VERDICT OF NOT GUILTY AS TO MURDER IN THE
5 GUILT PHASE, DO YOU UNDERSTAND THERE WOULD BE NO REASON TO
6 HAVE THE SECOND PHASE OF THE TRIAL?

7 A YES, SIR.

8 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
9 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER IN THE
10 FIRST PHASE, YOU DO UNDERSTAND THAT YOU WOULD THEN MOVE TO
11 THE SENTENCING PHASE OF THE TRIAL?

12 A YES, SIR.

13 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
14 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
15 AS MITIGATING CIRCUMSTANCES.

16 BY WAY OF EXPLANATION, AGGRAVATING CIRCUMSTANCES
17 ARE FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE
18 GENERAL ASSEMBLY OF OUR STATE HAS DECLARED BY LAW THAT
19 WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF
20 MURDER.

21 IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING
22 CIRCUMSTANCE INCREASES OR ADDS TO THE ENORMITY OF THE
23 INJURY OF MURDER. AND WHAT I AM TALKING ABOUT WHEN I SPEAK
24 OF AN AGGRAVATING CIRCUMSTANCE IS WHEN A MURDER IS
25 COMMITTED IN CONJUNCTION WITH A CRIME SUCH AS CRIMINAL

1 SEXUAL CONDUCT AND OR BURGLARY. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
4 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
5 ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE
6 SEVERITY OF THE OFFENSE OF MURDER AND ALSO MAY BE
7 CONSIDERED BY THE JURY AS EXTENUATING OR AS REDUCING THE
8 DEGREE OF RESPONSIBILITY OR MORAL CULPABILITY.

9 AND SOME EXAMPLES OF THAT WOULD BE WHEN A MURDER
10 WAS COMMITTED WHILE THE PERSON WAS UNDER THE INFLUENCE OF
11 MENTAL OR EMOTIONAL DISTURBANCE, WHEN THE CAPACITY OF THE
12 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT AND
13 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
14 SUBSTANTIALLY IMPAIRED AND THE AGE OR MENTALITY OF THE
15 PERSON AT THE TIME THAT HE OR SHE COMMITTED THE CRIME.

16 NOW, IF YOU WERE A JUROR IN SUCH A SITUATION, THE
17 SENTENCING -- AND DO YOU UNDERSTAND THOSE MITIGATING
18 CIRCUMSTANCES?

19 A YES, SIR.

20 Q IF YOU WERE A JUROR IN THE SITUATION AND WE ARE
21 TALKING ABOUT THE SENTENCING PHASE, THE SECOND PHASE OF THE
22 TRIAL, COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
23 CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
24 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
25 LIFE IN PRISON?

1 A YES, SIR, I CAN.

2 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
3 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
4 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
5 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

6 A YES, SIR.

7 Q NOW, MR. GRAVES, IF YOU ARE CHOSEN TO SERVE AS A
8 JUROR IN THIS CASE, YOU WOULD BE WHAT WE CALL SEQUESTERED
9 OR HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. IT'S
10 PROBABLY GOING TO LAST ANYWHERE FROM A WEEK TO TEN DAYS,
11 IT MAY BE LESS THAN THAT. I DON'T KNOW. I CAN'T GIVE YOU
12 AN EXACT TIME. EXCEPT FOR THE PERSONAL INCONVENIENCE,
13 WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
14 WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

15 A PROBABLY MY FAMILY.

16 Q ALL RIGHT. COULD YOU EXPLAIN THAT TO ME JUST A
17 LITTLE BIT MORE.

18 A WELL, I HAVE TWO KIDS, ME AND MY WIFE. WE BASICALLY
19 DEPEND ON EACH OTHER BECAUSE SHE WORKS AT NIGHT AND I WORK
20 AT NIGHT. THEN WHEN I GET HOME IN THE MORNING, I GET THE
21 KIDS READY FOR SCHOOL AND STUFF AND GET THEM ON THE BUS AND
22 MY WIFE DON'T GET HOME UNTIL ABOUT EIGHT. SEE, I HAVE TO
23 GET THEM READY TO GO TO SCHOOL---

24 Q YES, SIR.

25 A ---TO GET THEM THERE ON TIME. THAT WOULD BE THE ONLY

0597

1 PROBLEM.

2 Q IS THERE ANYONE ELSE WHO COULD ASSIST YOU IN TENDING
3 TO THOSE DUTIES?

4 A WELL, MY MOTHER-IN-LAW, SHE'S THERE, BUT SHE'S NOT IN
5 TOO GOOD OF HEALTH.

6 Q UH-HUH.

7 A THAT'S THE ONLY THING. BECAUSE SHE LIVES NEXT DOOR.

8 Q OKAY. AND YOU SAY THAT YOU AND YOUR WIFE BOTH LIVE
9 OR BOTH WORK AT NIGHT?

10 A UH-HUH, WE DO.

11 Q WHO -- WHO TAKES CARE OF YOUR CHILDREN AT THAT TIME?

12 A WE HAVE A BABY SITTER, SHE WATCHES THEM AT NIGHT.

13 Q OKAY.

14 MR. STONE.

15 MR. STONE: YES, SIR. EXCUSE ME, YOUR HONOR, WE
16 SWITCHED UP ON YOU.

17 EXAMINATION

18 BY MR. STONE:

19 Q MR. GRAVES, MY NAME IS DUFFIE STONE. SITTING BACK
20 HERE IS BETH FULLWOOD. SHE'S ALSO WITH US AND WE REPRESENT
21 MR. TERRY OVER HERE.

22 NOW, I NOTICED ON YOUR QUESTIONNAIRE -- I HAVE
23 LOOKED THROUGH THAT SO I'M NOT GOING TO GO BACK OVER ALL
24 THAT STUFF WITH YOU. I WANT TO TALK WITH YOU JUST A LITTLE
25 BIT ABOUT WHAT AS A JUROR YOU MAY HAVE TO DO, OKAY.

1 A OKAY.

2 Q NOW, THIS IS A DEATH PENALTY CASE. IT'S A LITTLE BIT
3 DIFFERENT THAN A NORMAL CRIMINAL CASE.

4 A UH-HUH.

5 Q THE PROBLEM I HAVE IS I'VE GOT TO COME UP HERE AND
6 ASK YOU SOME QUESTIONS ABOUT SOMETHING THAT MAY NEVER
7 HAPPEN. THAT BEING A SENTENCING PHASE. BECAUSE IF THE
8 JURY FINDS GARY TERRY NOT GUILTY, WE DON'T TALK ABOUT A
9 SENTENCING PHASE. BUT I HAVE TO COME UP HERE AND ASK YOU
10 ABOUT SOMETHING ANYWAY AND WHETHER IT WILL HAPPEN OR NOT, I
11 STILL NEED, IF YOU WOULD, JUST TO GIVE ME SOME HONEST
12 RESPONSES. NO RIGHT OR WRONG ANSWERS.

13 A OKAY.

14 Q AND IF YOU DON'T UNDERSTAND MY QUESTION, JUST ASK ME
15 TO REPHRASE IT. SOMETIMES I CONFUSE MYSELF, OKAY.

16 A OKAY.

17 Q WHEN IN A DEATH PENALTY CASE SOMEONE SITS IN A JURY
18 BOX AND THEY DECIDE THE GUILT-INNOCENCE PHASE, IN ORDER
19 FOR IT TO GET TO A SENTENCING PHASE, THIS JURY HAS TO HAVE
20 FOUND SOMEBODY GUILTY OF MURDER AND GUILTY OF ANOTHER CRIME
21 LIKE RAPE OR BURGLARY.

22 AS A JUROR, IF YOU HAVE ALREADY DETERMINED THAT
23 SOMEBODY IS GUILTY OF MURDER AND YOU FIND THAT THAT SAME
24 PERSON IS ALSO GUILTY OF RAPE AND MAYBE EVEN BURGLARY, ONE
25 OR THE OTHER, COULD YOU THEN CONSIDER THE MITIGATING

0599

- 1 FACTORS AND SOME AGGRAVATING FACTORS, AS WELL, AND STILL
2 GIVE THAT PERSON LIFE?
- 3 A YES, I COULD.
- 4 Q OKAY. IN THE SAME WAY THEN, COULD YOU ALSO SIT
5 THERE, HAVING FOUND SOMEBODY GUILTY OF MURDER AND I DON'T
6 MEAN -- WHEN I TALK ABOUT MURDER, I DON'T MEAN ACCIDENT, I
7 DON'T MEAN SELF-DEFENSE, I DON'T MEAN HEAT OF PASSION,
8 ANYTHING LIKE THAT. YOU UNDERSTAND?
- 9 A UH-HUH.
- 10 Q I MEAN MURDER, OKAY. LEGAL FANCY WORD FOR MALICE
11 AFORETHOUGHT, BUT IT'S -- IT'S THE UNLAWFUL KILLING WITH
12 MALICE AFORETHOUGHT. IT'S MURDER. OKAY. DO YOU
13 UNDERSTAND THAT?
- 14 A YES.
- 15 Q NOW, HAVING CONVICTED SOMEBODY OF THAT, HAVING FOUND
16 THAT THAT PERSON IS GUILTY, COULD YOU THEN LISTEN TO THE
17 AGGRAVATING CIRCUMSTANCES OF THE STATE AND THE MITIGATING
18 CIRCUMSTANCES AND, IN FACT, GIVE THAT PERSON DEATH?
- 19 A YES, I COULD.
- 20 Q OKAY. NOW, IN SOUTH CAROLINA, THEY REQUIRE THAT YOU
21 NOT ONLY -- THAT IF YOU ARE A JUROR AND YOU DECIDE SOMEONE
22 IS GUILTY OF MURDER AND RAPE AND BURGLARY OR WHATEVER AND
23 YOU COME BACK FOR A SENTENCE THAT SAYS THE DEATH PENALTY,
24 THAT YOU HAVE TO SIGN YOUR NAME TO THAT. DOES THAT GIVE
25 YOU ANY CONCERN?

1 A NO, IT DON'T.

2 Q OKAY. SO IF YOU JUST MAKE A DECISION AND EVERYBODY
3 AND ALL ELEVEN OTHER JURORS MAKE THAT DECISION WITH YOU,
4 SIGNING YOUR NAME DOESN'T AFFECT YOU ONE WAY OR THE OTHER?

5 A NO, SIR.

6 Q ALL RIGHT, SIR. HAVE YOU GIVEN A LOT OF THOUGHT TO
7 THE DEATH PENALTY?

8 A NOT, NOT REALLY.

9 Q ALL RIGHT. DO YOU HAVE ANY IDEAS ABOUT THE DEATH
10 PENALTY?

11 A NO, I SURE DON'T.

12 Q OKAY. ALL RIGHT. THANK YOU ANSWERING MY QUESTIONS.

13 A YOU'RE WELCOME.

14 Q AND I APPRECIATE IT.

15 A OH, OKAY.

16 Q THANK YOU, YOUR HONOR.

17 THE COURT: MR. HUMPHRIES.

18 EXAMINATION

19 BY MR. HUMPHRIES:

20 Q MR. GRAVES, I'M FRAN HUMPHRIES. I'M THE DEPUTY
21 SOLICITOR HERE IN LEXINGTON. I'M GOING TO BE TRYING THIS
22 CASE FOR THE STATE ALONG WITH TOM CHASE AND SOLICITOR
23 MYERS.

24 TELL YOU WHAT. INSTEAD OF GOING BACK THROUGH ALL
25 OF THAT, LET ME ASK YOU THIS PARTICULARLY. RELATING TO THE

0601

- 1 CARE OF YOUR CHILDREN---
- 2 A UH-HUH.
- 3 Q ---AS I UNDERSTAND IT, YOU AND YOUR WIFE WORK AT
- 4 NIGHT, IS THAT CORRECT?
- 5 A YES, SIR.
- 6 Q BUT YOUR SHIFTS OVERLAP A LITTLE?
- 7 A WELL, SOMETIMES I GET OFF ABOUT 6:30. MY KIDS DON'T
- 8 HAVE TO BE AT SCHOOL UNTIL ABOUT 7:45---
- 9 Q RIGHT.
- 10 A ---SEE THAT GIVES ME ENOUGH TIME TO GO TO THE
- 11 BABY-SITTER AND GET THEM AND GET THEM ON THE BUS.
- 12 Q I GOT YOU. I GOT YOU. AND YOUR BABY-SITTER KEEPS
- 13 THE CHILDREN THROUGH THE NIGHT WHILE THEY'RE SLEEPING?
- 14 A UH-HUH.
- 15 Q OR AT LEAST WE ASSUME THEY'RE SLEEPING?
- 16 A YES.
- 17 Q THIS IS SORT -- THESE THINGS ARE DIFFICULT ANYWAY---
- 18 A UH-HUH.
- 19 Q ---THESE CASES, BUT LET ME ASK YOU PARTICULARLY.
- 20 WOULD THE SITUATION THAT YOU MAY NOT BE WITH YOUR CHILDREN
- 21 FOR THAT PORTION OF THE MORNING, DO YOU THINK THAT WOULD
- 22 IMPAIR YOUR ABILITY TO BE A JUROR AND CARRY OUT THE OATH
- 23 THAT YOU TAKE TO BE THAT JUROR, TO BE FAIR AND IMPARTIAL?
- 24 A IT WOULD BECAUSE I'D BE MISSING THEM.
- 25 Q YOU KNOW WHAT I'M SAYING. I GUESS WHAT I'M ASKING IS

1 THIS---

2 A OKAY.

0602

3 Q ---WOULD YOU BE SO FOCUSED ON WHAT'S HAPPENING IN
4 YOUR CHILDREN'S LIVES AND NOBODY CAN BLAME YOU FOR THAT,
5 THAT YOU WOULDN'T BE ABLE TO BE FULLY ATTENTIVE AND FOCUSED
6 ON THE MATTERS HERE IN COURT?

7 A NO, THAT WOULDN'T BOTHER ME.

8 Q OKAY. ALL RIGHT.

9 THE COURT: I SORRY, I COULDN'T HEAR YOUR ANSWER.

10 THE JUROR: THAT WOULDN'T BOTHER ME.

11 MR. HUMPHRIES: OKAY. YOU COULD CARRY OUT YOUR
12 DUTY AS A JUROR AND THE FACT THAT YOUR CHILDREN, AT LEAST
13 DURING THAT PERIOD OF TIME, THAT HOUR AND A HALF OR SO,
14 THAT YOU WOULDN'T BE THERE, THAT WOULDN'T SUBSTANTIALLY
15 IMPACT OR IMPAIR YOUR ABILITY TO CARRY OUT YOUR SERVICE AS
16 A JUROR?

17 A YES, IT WOULD BECAUSE BETWEEN THAT HOUR AND AN HOUR
18 AND A HALF, SEE, IF I DON'T GET THERE, THEN I'LL BE
19 CONCERNED HOW THEY'RE GOING TO GET TO SCHOOL AND STUFF LIKE
20 THAT. IT WOULD.

21 Q OKAY. AND DO YOU THINK YOU HAVE ANY OTHER MEANS BY
22 WHICH YOU COULD HAVE YOUR CHILDREN TAKEN CARE OF DURING
23 THAT HOUR AND A HALF?

24 A UH -- NO.

25 Q OKAY. WELL, THAT'S ALL I NEED TO KNOW. WE ARE

0603

1 LOOKING FOR SOMEBODY WHO CAN, AS MUCH AS THEY CAN, PUT
2 ASIDE THOSE FAMILIAL CONCERNS AND FOCUS ON---

3 A UH-HUH.

4 Q ---THE MATTER AT HAND BECAUSE OBVIOUSLY THIS IS A
5 VERY SERIOUS CASE---

6 A YEAH, I UNDERSTAND.

7 Q AND I APPRECIATE YOUR ANSWERS.

8 A YEAH, I UNDERSTAND.

9 Q THANK YOU, MR. GRAVES.

10 A YOU'RE WELCOME.

11 MR. STONE: JUST A FEW QUESTIONS, YOUR HONOR.

12 THE COURT: YES, SIR.

13 RE-EXAMINATION

14 BY MR. STONE:

15 Q MR. GRAVES, YOU UNDERSTAND WHAT MR. HUMPHRIES WAS
16 ASKING YOU. YOU UNDERSTAND WHEN YOU SIT IN A JURY BOX, YOU
17 TAKE AN OATH TO PAY ATTENTION TO FOLLOW THE LAW AS THE
18 JUDGE INSTRUCTS IT AND LISTEN AND JUDGE THE FACTS. YOU
19 UNDERSTAND THAT?

20 A YES, I DO.

21 Q AND YOU UNDERSTAND THAT THIS IS A POTENTIAL DEATH
22 PENALTY CASE. THIS IS A CASE IN WHICH INVOLVES SOMEONE'S
23 DEATH AND A POTENTIAL SOMEONE'S DEATH. YOU UNDERSTAND
24 THAT?

25 A YES.

1 Q PRETTY SERIOUS. DO YOU THINK, BEING THAT THIS IS AN
2 IMPORTANT CASE AND THE FACT THAT THE JUDGE WILL GIVE YOU
3 INSTRUCTIONS AS TO THE LAW AND THE FACT THAT YOU HAVE TO
4 SIT IN A JURY BOX AND PAY ATTENTION, CAN YOU FOLLOW THE
5 LAW? CAN YOU FOLLOW THE JUDGE'S INSTRUCTIONS AND SIT IN
6 THIS JURY BOX AND PAY ATTENTION TO WHAT YOU HEAR FROM THE
7 WITNESS STAND AND FROM THE LAWYERS?

8 A YES, I COULD.

9 Q WHAT TIME DOES YOUR WIFE, AND YOU MAY HAVE TOLD ME
10 THIS, WHAT TIME DOES YOUR WIFE COME HOME?

11 A SHE GETS HOME ABOUT -- I'LL SAY ABOUT QUARTER TILL
12 EIGHT BECAUSE SHE GETS OFF AT 7 O'CLOCK.

13 Q OKAY. IS THAT IN THE MORNING?

14 A YEAH, IN THE MORNING.

15 Q AND THE KIDS -- THE KID HAVE TO BE IN SCHOOL AT?

16 A SEVEN-FORTY-FIVE EXACTLY.

17 Q SEVEN-FORTY-FIVE. YOU SAID I KNOW YOUR MOTHER-IN-LAW
18 IS IN BAD HEALTH. IS SHE CAPABLE OF DRIVING? CAN SHE
19 DRIVE?

20 A NO. SOMETIMES HER LEGS GO NUMB.

21 Q I SEE. OKAY. DO YOU HAVE -- CAN YOUR BABY-SITTER
22 DRIVE OR ANYBODY LIKE THAT?

23 A WELL, BY THAT TIME, SEE, SHE'S WATCHES ANOTHER
24 BABY---

25 Q SURE.

0605

- 1 A ---IN THE MORNING TIME. SEE THE OTHER LADY DROPS HER
2 CHILD OFF.
- 3 Q OH, YOU'VE GOT ANOTHER LADY THAT DROPS HER CHILD OFF
4 AT YOUR HOUSE?
- 5 A NO. DROPS -- SEE, WHAT SHE DOES, SHE BABY SITS MY
6 KIDS AT NIGHT---
- 7 Q RIGHT.
- 8 A AND THIS OTHER LADY, SHE BABY SITS FOR HER IN THE
9 DAYTIME.
- 10 Q I SEE. I SEE.
- 11 A SEE, BY THE TIME, ONCE I GET THERE, SHE GETS THERE
12 ABOUT -- I'D SAY ABOUT 7 O'CLOCK.
- 13 Q I GOT YOU. AND WHO IS THIS LADY?
- 14 A MS. ANITA CAIN.
- 15 Q OKAY. IS IT POSSIBLE FOR MS. CAIN TO GIVE YOUR
16 CHILDREN A RIDE?
- 17 A IT WOULD BE KIND OF ROUGH ON HER.
- 18 Q OKAY. I UNDERSTAND.
- 19 A BECAUSE SHE HAS TO TAKE THE OTHER CHILD OUT.
- 20 Q SURE.
- 21 A IT WOULD BE ROUGH ON HER.
- 22 A YOU THINK IT'S POSSIBLE THAT SHE COULD DO THAT?
- 23 A NO, IT'S -- SHE WOULDN'T. BE HONEST WITH YOU, SHE
24 WOULDN'T.
- 25 Q OKAY. THANK YOU.

1 A OKAY.

2 Q THANK YOU, YOUR HONOR.

3 THE COURT: MR. GRAVES, FROM THE QUESTIONS THAT I
4 ASKED YOU AS WELL AS MR. STONE AND MR. HUMPHRIES, AM I
5 HEARING FROM YOU THAT YOUR CHILDREN'S SITUATION, WOULD THAT
6 BE SOMETHING THAT YOU WOULD BE UNABLE TO DEAL WITH AS A
7 JUROR?

8 A YES, IT IS BECAUSE MY KIDS ARE VERY IMPORTANT.

9 THE COURT: I UNDERSTAND THAT.

10 A THEY ARE VERY IMPORTANT.

11 THE COURT: I APPRECIATE THAT AND I RESPECT YOU
12 FOR THAT. I UNDERSTAND THAT FULLY.

13 AND WOULD THERE BE ANYONE WHO WOULD BE ABLE TO
14 PROVIDE THE CARE AND ATTENTION TO GETTING THEM TO SCHOOL
15 AND GETTING THEM READY TO GO TO SCHOOL, THAT KIND OF THING,
16 OTHER THAN YOU?

17 A NO. IT'S ME.

18 THE COURT: LET ME SEE THE LAWYERS JUST A MINUTE.

19 (WHEREUPON, A BENCH CONFERENCE WAS
20 HELD AT THIS TIME OFF THE RECORD.)

21 THE COURT: MR. GRAVES, I TELL YOU WHAT I'M GOING
22 TO DO. I'M GOING TO SEND YOU AWAY WITH THIS UNDERSTANDING.

23 NUMBER ONE, I FIND THAT YOU ARE QUALIFIED TO
24 SERVE AS A POTENTIAL JUROR IN THIS CASE, BUT I ALSO
25 UNDERSTAND THAT YOU HAVE SOME PROBLEMS INsofar AS YOUR

0607

1 CHILDREN ARE CONCERNED. I'M GOING TO ASK THAT YOU GO AND
2 ATTEMPT TO SEE IF YOU CAN FIND SOMEONE ELSE THAT COULD
3 PROVIDE THESE SERVICES TO YOUR CHILDREN IF YOU WERE
4 SELECTED AS A JUROR IN THIS CASE.

5 THE JUROR: UH-HUH.

6 THE COURT: AND I'M GOING TO ASK THE CLERK TO
7 GIVE YOU A NUMBER THAT YOU WILL CALL BACK BY THIS AFTERNOON
8 AT, LET'S SAY, FOUR-THIRTY OR FIVE O'CLOCK BEFORE THE
9 CLERK'S OFFICE CLOSES SO THAT WE CAN -- I CAN HAVE FURTHER
10 INPUT FROM YOU BECAUSE IF YOU CAN FIND SOMEONE THAT CAN
11 PROVIDE THESE SERVICES TO YOUR CHILDREN, THEN CERTAINLY I
12 WANT YOU TO SERVE AS A POTENTIAL JUROR IN THIS OR BE
13 ELIGIBLE TO SERVE AS A POTENTIAL JUROR IN THIS CASE.

14 AND BEFORE I SEND YOU AWAY, I WANT YOU TO, ONCE
15 AGAIN, UNDERSTAND THAT YOU ARE NOT TO DISCUSS THIS CASE
16 WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE.
17 AND IF ANYONE SHOULD ATTEMPT TO CONTACT YOU CONCERNING THIS
18 CASE, I CERTAINLY WANT YOU TO REPORT THAT TO ME IMMEDIATELY
19 BECAUSE THAT'S A VERY SERIOUS MATTER AND I WOULD DEAL WITH
20 IT ACCORDINGLY.

21 ALSO, YOU ARE FURTHER INSTRUCTED THAT YOU ARE NOT
22 TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS CONCERNING
23 THIS CASE. IF YOU ARE SELECTED AS A JUROR IN THIS CASE,
24 THEN THE ONLY THING THAT I WOULD WANT YOU TO CONSIDER IS
25 WHAT YOU SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND

1 NOTHING LESS.

2 THE JUROR: UH-HUH.

3 THE COURT: IN THE EVENT THAT YOU ARE ABLE TO
4 LOCATE SOMEONE TO PROVIDE THESE NEEDS AND, OF COURSE, YOU
5 WILL NOTIFY THE CLERK'S OFFICE AND IF YOU FIND SOMEONE
6 EARLIER IN THE DAY---

7 THE JUROR: UH-HUH.

8 THE COURT: ---TODAY, THEN I WANT YOU TO NOTIFY
9 US IMMEDIATELY---

10 THE JUROR: OH, OKAY.

11 THE COURT: ---AND THAT WOULD ALLOW US TO MAKE
12 OUR PLANS ACCORDINGLY. THAT YOU ARE TO PACK YOUR BAGS AND
13 TO BE BACK HERE IN THE MORNING AT 9:30 A.M.

14 THE JUROR: OH, OKAY.

15 THE COURT: PLEASE LEAVE YOUR BAGS IN YOUR
16 VEHICLE BECAUSE IF YOU ARE SELECTED AS A JUROR IN THIS
17 CASE, THE JURY CUSTODIANS WOULD TAKE YOU AND YOUR
18 BELONGINGS TO THE MOTEL WHERE YOU WOULD STAY FOR THE
19 DURATION OF THE TRIAL.

20 AND IF YOU ARE NOT SELECTED, THEN WE WOULD SEND
21 YOU ALONG YOUR WAY, THANK YOU VERY MUCH FOR BEING HERE AND
22 PARTICIPATING IN OUR PROCESS.

23 THE CLERK WILL GIVE YOU THAT NUMBER AS YOU STEP
24 OUT IN JUST A MOMENT---

25 THE JUROR: OH, OKAY.

0609

1 THE COURT: ---AND PLEASE GET BACK IN TOUCH WITH
2 US JUST AS SOON AS YOU WORK OUT THOSE DETAILS OR YOU ARE
3 UNABLE TO WORK THEM OUT, WHATEVER THE SITUATION IS.

4 THE JUROR: OKAY.

5 THE COURT: HAVE A PLEASANT DAY.

6 THE JUROR: YOU, TOO.

7 (WHEREUPON, THE JUROR WAS EXCUSED
8 AT THIS TIME.)

9 THE COURT: LET THE RECORD REFLECT THAT JUROR
10 NUMBER 99, DEXTER GRAVES, IS QUALIFIED TO SERVE AS A
11 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
12 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
13 AMENDED. AND, OF COURSE, WE ARE GOING TO AWAIT FURTHER
14 INSTRUCTION FROM HIM AS TO HIS CHILDREN'S WELL-BEING.

15 ALL RIGHT. JUROR NUMBER 16, KENDALL BEACH.

16 KENDALL G. BEACH,

17 (JUROR NUMBER 16, WHITE MALE,
18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

19 EXAMINATION

20 BY THE COURT:

21 Q YOU ARE KENDALL BEACH?

22 A YES, I AM.

23 Q JUROR NUMBER 16. MR. BEACH, YOU UNDERSTAND THAT YOU
24 ARE UNDER OATH AND SWORN FOR THESE PROCEEDINGS?

25 A YES, SIR.

1 Q AND DO YOU ALSO REMEMBER THAT YESTERDAY AFTERNOON
2 WHEN I DISMISSED THE REMAINDER OR THE PANEL THAT YOU WERE
3 GIVEN CERTAIN INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS
4 THIS CASE WITH ANYONE. IF ANYONE ATTEMPTED TO CONTACT YOU
5 CONCERNING THIS CASE, THAT YOU WERE TO REPORT THAT TO ME
6 AND ALSO THAT YOU WERE TO REFRAIN FROM READING, WATCHING OR
7 LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE?

8 A UH-HUH.

9 Q HAVE THERE BEEN ANY VIOLATIONS OF THOSE INSTRUCTIONS?

10 A NO, THERE HASN'T.

11 Q NOW, I'M GOING TO ASK YOU SOME QUESTIONS AND
12 THEREAFTER ONE OF THE LAWYERS FOR THE DEFENDANT, MR. TERRY,
13 AS WELL AS ONE OF THE STATE'S LAWYERS, WILL ASK YOU SOME
14 QUESTIONS. PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
15 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
16 THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
17 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED. KEEP IN MIND
18 ALSO THAT THERE ARE ABSOLUTELY NO RIGHT OR WRONG ANSWERS TO
19 THE QUESTIONS. PLEASE ANSWER OPENLY AND HONESTLY AND FULLY
20 AND ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING YOUR VIEW.
21 IT'S SIMPLY THAT WE NEED TO KNOW WHAT YOUR VIEW IS.

22 ALSO, I WOULD ADVISE YOU THAT YOU'RE PROBABLY
23 GOING TO BE ASKED SOME QUESTIONS WHICH YOU PROBABLY HAVE
24 NEVER EVER CONSIDERED BEFORE. SO PLEASE KEEP THAT IN MIND.

25 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE

1 TALKING ABOUT OVER THE NEXT FEW MINUTES WILL INCLUDE THE
2 WORD PENALTY. BUT THE MERE FACT THAT WE EVEN TALK ABOUT OR
3 MENTION THAT WORD DOES NOT IN ANY WAY INDICATE ANYTHING
4 ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW
5 TO BE INNOCENT. DO YOU UNDERSTAND THAT?

6 A YES, I DO.

7 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
8 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
9 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
10 JUDGE OF THIS COURT, EVEN THOUGH YOU MAY NOT AGREE WITH
11 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

12 A YES, I COULD.

13 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
14 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

15 A YES, I COULD.

16 Q NOW, IN A CRIMINAL CASE, MR. BEACH, THE STATE OF
17 SOUTH CAROLINA HAS THE BURDEN OF PROVING GUILT. THE BURDEN
18 OF PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS
19 OF EACH CRIME THAT'S ALLEGED TO BE COMMITTED BEYOND A
20 REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO BURDEN TO
21 PROVE HIMSELF INNOCENT. YOU UNDERSTAND THAT?

22 A YES, I DO.

23 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
24 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
25 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

1 A YES.

2 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
3 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND IN SUCH
4 A CASE, AS I TOLD YOU YESTERDAY, THAT IT'S WHAT WE CALL A
5 BIFURCATED TRIAL, MEANING THAT IT'S SPLIT INTO TWO PARTS.

6 THE FIRST PART CONSISTING OF THE GUILT PHASE AND
7 THE SECOND PART, THE SENTENCING PHASE.

8 NOW, IF YOU WERE ON THE JURY THAT RETURNED A
9 VERDICT OF NOT GUILTY AS TO MURDER, DO YOU UNDERSTAND THAT
10 THERE WOULD BE NO NEED FOR THE SECOND PHASE AT THAT TIME?

11 A YES, I DO.

12 Q HOWEVER, IF YOU WERE A JUROR IN A CASE SUCH AS THAT
13 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
14 YOU FULLY UNDERSTAND THAT YOU WOULD THEN MOVE TO THE
15 SENTENCING PHASE OF THE TRIAL?

16 A YES, I DO.

17 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
18 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
19 AS MITIGATING CIRCUMSTANCES.

20 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
21 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
22 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW THAT WOULD MAKE
23 WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

24 IN OTHER WORDS, THE PRESENCE OF THE AGGRAVATING
25 CIRCUMSTANCE INCREASES OR ADDS TO THE ENORMITY OF THE

0613

1 INJURY OF THE CRIME OF MURDER.

2 NOW, WHAT I AM TALKING ABOUT BY WAY OF
3 ILLUSTRATION WOULD BE A MURDER THAT IS COMMITTED IN
4 CONJUNCTION WITH A CRIME SUCH AS CRIMINAL SEXUAL CONDUCT
5 AND OR BURGLARY. DO YOU UNDERSTAND THAT?

6 A YES.

7 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
8 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
9 ASSEMBLY HAS ALSO DECLARED BY LAW OR STATUTE THAT REDUCES
10 THE SEVERITY OF THE CRIME OF MURDER AND MAY BE CONSIDERED
11 AS EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY
12 OR RESPONSIBILITY.

13 AND YOU WOULD CONSIDER AS MITIGATING
14 CIRCUMSTANCES SUCH THINGS AS THE MURDER WAS COMMITTED WHILE
15 THE PERSON, THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL
16 OR EMOTIONAL DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO
17 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
18 CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
19 IMPAIRED AND ALSO CONSIDERING THE AGE OR MENTALITY OF THE
20 DEFENDANT AT THE TIME OF THE CRIME.

21 NOW, IF YOU WERE A JUROR IN SUCH A SITUATION AND
22 WE ARE TALKING ABOUT THE SECOND PHASE, THE SENTENCING
23 PHASE, OF A DEATH PENALTY CASE, COULD YOU, DEPENDING UPON
24 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE AND THE
25 LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE,

1 RETURN A SENTENCE OF LIFE IN PRISON?

2 A YES, I COULD.

3 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
4 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
5 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
6 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

7 A YES, I COULD.

8 Q NOW, MR. BEACH, IF YOU ARE CHOSEN TO SERVE ON THIS
9 JURY, YOU WOULD BE SEQUESTERED OR HOUSED IN A MOTEL FOR THE
10 DURATION OF THE TRIAL. THAT COULD BE ANYWHERE FROM A WEEK
11 TO TEN DAYS. IT COULD BE LESS THAN THAT, BUT I HAVE NO WAY
12 OF KNOWING. EXCEPT FOR THE PERSONAL INCONVENIENCE, WOULD
13 THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
14 YOURSELF OR OF THOSE DEPENDENT UPON YOU?

15 A NO.

16 Q THANK YOU FOR RESPONDING TO MY QUESTIONS.

17 PLEASE ANSWER MR. STONE'S QUESTIONS.

18 MR. STONE: THANK YOU, YOUR HONOR.

19 EXAMINATION

20 BY MR. STONE:

21 Q MR. BEACH, GOOD MORNING---

22 A GOOD MORNING.

23 Q ---MY NAME IS DUFFIE STONE. I KNOW I WAS INTRODUCED
24 EARLIER, BUT I WANT TO DO THIS AGAIN. THIS IS BETH
25 FULLWOOD. AND MS. FULLWOOD AND I ARE REPRESENTING GARY

1 TERRY, WHO IS THE GENTLEMAN SITTING AT THE END OF THE
2 TABLE.

3 I'VE READ YOUR QUESTIONNAIRE. SO I JUST WANT TO
4 CLEAR UP SOME THINGS ON IT. YOU GRADUATED FROM CALHOUN
5 ACADEMY, JOHNSTON-CALHOUN ACADEMY---

6 A RIGHT.

7 Q ---DOWN IN WALTERBORO?

8 A YES.

9 Q OKAY. '83?

10 A '84.

11 Q '84. OKAY. YOUR BACHELOR OF SCIENCE DEGREE IS IN
12 BUSINESS ADMINISTRATION?

13 A YES, IT IS.

14 Q OKAY. DOES THAT HAVE ANYTHING TO DO WITH WHY YOU
15 MOVED TO LEXINGTON FROM WALTERBORO?

16 A NO, IT DOESN'T.

17 Q OKAY. WHY DID YOU MOVE TO LEXINGTON?

18 A ACTUALLY, AFTER I GRADUATED FROM COLLEGE, I STAYED IN
19 CHARLESTON FOR TWELVE YEARS---

20 Q OKAY.

21 A ---AND I MET MY FUTURE WIFE THERE AND HER JOB
22 TRANSFERRED UP HERE WHICH IS WHY I MOVED TO LEXINGTON.

23 Q I UNDERSTAND. WHERE DO YOU WORK NOW?

24 A I WORK FOR RICHLAND COUNTY. I'M AN ECONOMIC
25 DEVELOPMENT ACCOUNTANT.

1 Q ALL RIGHT. THE JUDGE HAS GIVEN YOU A GOOD IDEA ABOUT
2 WHAT'S -- WHAT'S GOING ON HERE TODAY. THE DIFFICULT THING
3 THAT THE LAWYERS HAVE TO DO IS WE HAVE TO COME IN HERE AND
4 ASK YOU ABOUT SOMETHING THAT MAY NEVER TAKE PLACE; THAT
5 BEING A SENTENCING PHASE BECAUSE IF THE JURY FINDS GARY
6 TERRY NOT GUILTY, WE DON'T HAVE A SENTENCING PHASE. AND,
7 IN FACT, THE ONLY WAY WE GET TO A SENTENCING PHASE IS IF
8 THE JURY HAS ALREADY FOUND, ALL TWELVE PEOPLE HAVE AGREED
9 THAT HE IS GUILTY OF NOT ONLY MURDER, BUT OF ANOTHER
10 AGGRAVATING CIRCUMSTANCE WHICH THE JUDGE REFERRED TO AS
11 CRIMINAL SEXUAL CONDUCT, BUT IT'S RAPE, OKAY.

12 FOR A JURY TO FIND SOMEONE GUILTY OF MURDER AND
13 RAPE AND MAYBE EVEN POTENTIALLY BURGLARY, THAT'S THE ONLY
14 WAY YOU GET TO A SENTENCING PHASE. SO WE HAVE TO COME IN
15 HERE AND ASK YOU ABOUT SOMETHING LIKE I SAID THAT MAY NEVER
16 HAPPEN, BUT WE HAVE TO DO IT ANYWAY SO I'M GOING TO ASK YOU
17 SOME QUESTIONS ABOUT IT, OKAY.

18 HAVE YOU FORMED ANY OPINION, HAVE YOU THOUGHT
19 ABOUT -- THOUGHT MUCH ABOUT THE DEATH PENALTY AND YOUR
20 OPINIONS OF THAT?

21 A NO, I HAVEN'T.

22 Q DOES YOUR RELIGIOUS AFFILIATION -- DO YOU KNOW --
23 DOES YOUR CHURCH HAVE ANY POSITION ON THE DEATH PENALTY?

24 A UH---

25 Q THAT YOU KNOW OF?

- 1 A NOT THAT I KNOW OF, NO.
- 2 Q OKAY. IT IS ADVENT CHRISTIAN.
- 3 A RIGHT.
- 4 Q WHAT IS THAT EXACTLY? I APOLOGIZE. I JUST -- I
- 5 DON'T KNOW. I'M METHODIST---
- 6 A IT'S -- IT'S VERY CLOSE TO BAPTIST.
- 7 Q OKAY. BUT YOU DON'T KNOW IF THEY HAVE ANY POSITION
- 8 ONE WAY OR THE OTHER ABOUT THE DEATH PENALTY?
- 9 A NO.
- 10 Q OKAY. IF YOU ARE SITTING HERE AS A SENTENCING JUROR,
- 11 IN OTHER WORDS, YOU HAVE ALREADY FOUND SOMEBODY GUILTY OF
- 12 MURDER, YOU HAVE ALREADY FOUND SOMEBODY GUILTY OF RAPE. NO
- 13 QUESTION ABOUT THAT. YOU HAVE ALREADY PUT THAT ASIDE. CAN
- 14 YOU STILL, CONSIDERING THAT YOU HAVE FOUND SOMEBODY GUILTY
- 15 AND YOU KNOW THAT PERSON IS GUILTY OF MURDER, GUILTY OF
- 16 RAPE, MAYBE EVEN GUILTY OF BURGLARY AT THE SAME TIME, CAN
- 17 YOU SENTENCE THAT PERSON TO DEATH?
- 18 A YES, I COULD.
- 19 Q OKAY. NOW, IN SOUTH CAROLINA WHEN YOU DO THAT, YOU
- 20 HAVE TO SIGN YOUR NAME ON A SENTENCING SHEET?
- 21 A UH-HUH.
- 22 Q YOU HAVE TO SAY -- YOU HAVE TO WRITE YOUR FULL NAME
- 23 OUT AND SIGN IT THAT YOU FIND THAT THE DEATH PENALTY IS
- 24 APPROPRIATE. DOES THAT GIVE YOU ANY CONCERN?
- 25 A NO, NOT AT ALL.

1 Q OKAY. IN THE SAME LIGHT, IF YOU ARE CONVINCED THAT
2 SOMEBODY IS GUILTY OF MURDER AND RAPE AND BURGLARY, COULD
3 YOU ALSO GIVE THAT PERSON IN THE RIGHT CIRCUMSTANCES LIFE?

4 A YES, I COULD.

5 Q OKAY. SO YOU COULD PAY ATTENTION TO MITIGATING AND
6 AGGRAVATING CIRCUMSTANCES AS YOU HEAR THEM. FORGET ABOUT
7 THE GUILT PHASE.

8 A UH-HUH.

9 Q YOU COULD PAY ATTENTION TO THE AGGRAVATING AND
10 MITIGATING CIRCUMSTANCES AND COME BACK WITH A DECISION OF
11 EITHER LIFE OR DEATH DEPENDING ON WHAT YOU'VE HEARD?

12 A YES, I CAN.

13 Q OKAY. NOW, YOU HAVE GOT A COUSIN IN LAW ENFORCEMENT?

14 A YES, I DO.

15 Q OKAY. WHAT -- HE OR SHE?

16 A HE IS A -- WELL, HE WAS A DEPUTY THE LAST -- I
17 HAVEN'T SEEN HIM IN ABOUT TWENTY YEARS.

18 Q I UNDERSTAND. WAS HE IN SOUTH CAROLINA?

19 A YES, HE IS.

20 Q OKAY. DO YOU KNOW WHAT COUNTY?

21 A I BELIEVE IT'S STILL COLLETON.

22 Q COLLETON COUNTY?

23 A YES.

24 Q WHAT'S HIS NAME?

25 A UH---

0 0619

1 Q DON'T WORRY ABOUT IT. I DON'T WANT TO EMBARRASS
2 YOU---

3 A JOHNNY BEACH.

4 Q OKAY. ALL RIGHT. THANK YOU. I APPRECIATE YOUR
5 ANSWERS.

6 A YOU'RE WELCOME.

7 Q THANK YOU, YOUR HONOR.

8 THE COURT: SOLICITOR HUMPHRIES.

9 EXAMINATION

10 BY MR. HUMPHRIES:

11 Q MR. BEACH, I'M FRAN HUMPHRIES. I'M THE DEPUTY
12 SOLICITOR HERE IN LEXINGTON. I WILL BE TRYING THIS CASE
13 FOR THE STATE WITH MR. CHASE, WHO IS SEATED HERE, AND
14 DONNIE MYERS, THE SOLICITOR.

15 I BELIEVE YOU HAVE ALREADY ANSWERED ALL OF THE
16 QUESTIONS FULLY AND I DON'T HAVE ANY QUALMS WITH ANY OF
17 YOUR ANSWERS.

18 I GUESS MY BASIC QUESTION IS THIS AND THIS IS
19 WHAT WE ARE LOOKING FOR. WE ARE LOOKING FOR A JUROR WHO
20 CAN BE FAIR AND IMPARTIAL TO BOTH THE STATE AND TO THE
21 DEFENSE. DO YOU FEEL AS THOUGH YOU COULD BE THAT KIND OF
22 JUROR?

23 A YES, I DO.

24 Q DO YOU FEEL AS THOUGH YOU COULD BE THE KIND OF JUROR
25 THAT COULD LISTEN TO THE CIRCUMSTANCES IN AGGRAVATION, THE

1 CIRCUMSTANCES IN MITIGATION AND WAITING TO HEAR ALL OF THAT
2 EVIDENCE, ONCE YOU HEAR IT AND YOU LISTEN TO THE CHARGE AND
3 THE LAW AS THE JUDGE GIVES IT, YOU COULD RENDER EITHER A
4 DEATH VERDICT OR A LIFE VERDICT DEPENDING ON THE FACTS AND
5 CIRCUMSTANCES?

6 A YES, I COULD.

7 Q MR. BEACH, THAT'S ALL WE CAN ASK OF YOU. THANK YOU,
8 SIR.

9 THE COURT: ANYTHING ELSE FROM THE DEFENDANT?

10 MS. FULLWOOD: NO, YOUR HONOR.

11 THE COURT: FROM THE STATE?

12 MR. HUMPHRIES: NO, SIR.

13 THE COURT: MR. BEACH, I WANT TO THANK YOU VERY
14 MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AS WELL AS TODAY
15 AND I DO FIND THAT YOU ARE QUALIFIED TO SERVE AS A
16 POTENTIAL JUROR IN THIS CASE.

17 AND WITH THAT QUALIFICATION, I'M GOING TO FURTHER
18 INSTRUCT YOU THAT YOU ARE NOT TO DISCUSS -- WHEN YOU LEAVE
19 THE COURT HOUSE, YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR
20 FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE.

21 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
22 CONCERNING THIS CASE, THE INSTRUCTION THAT I GAVE YOU THAT
23 YOU ARE TO GATHER AS MUCH INFORMATION ABOUT THAT INDIVIDUAL
24 AND REPORT THAT TO ME IMMEDIATELY STILL HOLDS TRUE AND ALSO
25 THAT YOU ARE TO CONTINUE TO REFRAIN FROM READING, WATCHING

0621

OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

VERY SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER
IN THIS CASE IS WHAT YOU WOULD SEE AND HEAR IN THIS
COURTROOM. NOTHING MORE OR NOTHING LESS.

NOW, I'M GOING TO ASK THAT YOU ALSO GO HOME AND
START PACKING YOUR BAGS AND BE BACK HERE IN THE MORNING AT
9:30 A.M. PLEASE LEAVE YOUR LUGGAGE IN YOUR VEHICLE. IF
YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN THE JURY
CUSTODIANS WOULD SEE THAT YOU AND YOUR BELONGINGS ARE
PROPERLY DELIVERED TO THE MOTEL WHERE YOU ARE GOING TO BE
STAYING FOR THE DURATION OF THE TRIAL. IF YOU ARE NOT
SELECTED, THEN WE WOULD THANK YOU VERY MUCH FOR YOUR
PARTICIPATION AND YOU WOULD BE SENT ALONG YOUR WAY AFTER
THAT PROCESS IS COMPLETED AND YOU WOULD HAVE NO FURTHER
RESPONSIBILITIES HERE AT THE COURT HOUSE.

I HOPE YOU HAVE A VERY PLEASANT DAY AND I'LL LOOK
FORWARD TO SEEING YOU BACK HERE IN THE MORNING AT 9:30.
THANK YOU VERY MUCH.

(WHEREUPON, THE JUROR WAS EXCUSED
AT THIS TIME.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT
THAT JUROR NUMBER 16, KENDALL BEACH, IS QUALIFIED PURSUANT
TO SECTION 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH
CAROLINA, 1976 AS AMENDED, TO SERVE AS A POTENTIAL JUROR IN
THIS CASE.

1 NUMBER 134, DENNY KINARD.

2 DENNY J. KINARD,

3 (JUROR NUMBER 134, BLACK MALE,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

5 EXAMINATION

6 BY THE COURT:

7 Q GOOD MORNING, MR. KINARD.

8 A GOOD MORNING.

9 Q IF YOU COULD SPEAK UP JUST A LITTLE BIT SO THAT THE
10 COURT REPORTER AND EVERYONE CAN HEAR YOU WHEN YOU RESPOND
11 TO MY QUESTIONS, I WOULD APPRECIATE IT.

12 YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR THIS
13 PROCEEDING?

14 A YES, SIR.

15 Q AND YESTERDAY AFTERNOON WHEN YOU LEFT THE COURT
16 HOUSE, I GAVE YOU CERTAIN INSTRUCTIONS THAT YOU WERE NOT TO
17 DISCUSS THIS CASE WITH ANYONE, THAT NO ONE WAS TO DISCUSS
18 THIS CASE WITH YOU AND THAT YOU WERE ALSO TO REFRAIN FROM
19 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
20 CONCERNING THIS CASE. HAVE THERE BEEN ANY VIOLATIONS OF
21 THOSE INSTRUCTIONS?

22 A NO, SIR.

23 Q NOW, MR. KINARD, I'M GOING TO ASK YOU SEVERAL
24 QUESTIONS AND THEN THE LAWYERS OR ONE OF THE LAWYERS
25 REPRESENTING MR. TERRY, AS WELL AS ONE OF THE SOLICITORS,

0623

1 WILL ASK YOU SOME QUESTIONS. KEEP IN MIND, THAT WE ARE NOT
2 IN ANY WAY ATTEMPTING TO INVAD E YOUR PRIVACY, BUT BECAUSE
3 OF THE CASE THAT WE ARE GOING TO BE TRYING THIS WEEK, IT'S
4 EXTREMELY IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED.

5 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
6 WRONG ANSWERS TO THE QUESTIONS THAT I'M GOING TO BE -- OR
7 THAT ANYONE IS GOING TO BE POSING TO YOU. PLEASE ANSWER
8 THEM OPENLY AND HONESTLY AND FULLY. AND ALSO KEEP IN MIND
9 THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW
10 WHAT THAT VIEW IS. DO YOU UNDERSTAND THAT?

11 A YES.

12 Q ALSO, PLEASE, UNDERSTAND THAT YOU ARE PROBABLY GOING
13 TO BE ASKED SOME QUESTIONS THAT YOU'VE NEVER EVEN
14 CONSIDERED BEFORE. SO KEEP THAT IN MIND AS WE GO THROUGH
15 THE PROCESS AND LISTEN VERY CAREFULLY TO THE QUESTIONS AS
16 THEY ARE PRESENTED TO YOU.

17 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
18 DISCUSSING OVER THE NEXT FEW MINUTES, I'M GOING -- THE WORD
19 PENALTY WILL BE MENTIONED, BUT THE MERE FACT THAT WE EVEN
20 TALK ABOUT THAT WORD DOES NOT INDICATE ANYTHING ABOUT THE
21 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
22 INNOCENT. DO YOU UNDERSTAND THAT?

23 A YES, SIR.

24 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU ARE A
25 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,

1 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
2 JUDGE OF THE COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
3 THAT LAW OR THINK THAT IT MIGHT OUGHT TO BE SOME OTHER WAY?

4 A I COULD LISTEN.

5 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
6 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

7 A YES.

8 Q NOW, MR. KINARD, IN A CRIMINAL CASE, THE STATE OF
9 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
10 GUILT. THE BURDEN OF PROOF THAT THEY MUST MEET IS TO PROVE
11 THE ELEMENTS OF EACH CRIME OF WHICH THE PERSON IS CHARGED
12 BEYOND A REASONABLE DOUBT. NOW A DEFENDANT HAS ABSOLUTELY
13 NO BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND
14 THAT?

15 A YES.

16 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
17 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
18 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

19 A (NO RESPONSE.)

20 Q COULD YOU REACH EITHER OF THOSE VERDICTS?

21 A YES.

22 Q NOW, YOU UNDERSTAND AS I HAVE TOLD YOU -- TOLD YOU
23 YESTERDAY THAT THIS IS A CASE IN WHICH THE STATE OF SOUTH
24 CAROLINA SEEKS THE DEATH PENALTY AND IF YOU ARE A JUROR IN
25 SUCH A CASE, YOU UNDERSTAND THAT THERE ARE REALLY TWO

0625

1 TRIALS THAT MAKE UP A DEATH PENALTY CASE. AND IF YOU WERE
2 A JUROR IN SUCH A CASE AND YOU FOUND, YOU, THE JURY,
3 UNANIMOUSLY FOUND THE DEFENDANT NOT GUILTY OF MURDER, YOU
4 UNDERSTAND THAT THERE WOULD BE NO NEED TO HAVE THAT SECOND
5 PHASE OF THE TRIAL. THE TRIAL WOULD BE ENDED AT THAT POINT
6 IN TIME?

7 A YES.

8 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A DEATH PENALTY
9 CASE AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF
10 MURDER, DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE INTO THE
11 SECOND PHASE, THE SENTENCING PHASE OF THE TRIAL?

12 A YES.

13 Q NOW, IN THAT PART OF THE TRIAL, EVIDENCE WOULD BE
14 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
15 AS MITIGATING CIRCUMSTANCES.

16 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
17 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
18 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW THAT WOULD MAKE
19 WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

20 IN OTHER WORDS, THE PRESENCE OF THAT AGGRAVATING
21 CIRCUMSTANCE IN CONJUNCTION WITH MURDER ADDS TO OR
22 INCREASES THE ENORMITY OF THE INJURY OF THE CRIME OF
23 MURDER.

24 NOW, WHAT I AM TALKING ABOUT THERE, FOR EXAMPLE,
25 WOULD BE A MURDER THAT OCCURS IN CONJUNCTION OR AT THE SAME

1 TIME OF A CRIME OF CRIMINAL SEXUAL CONDUCT AND OR BURGLARY.
2 DO YOU UNDERSTAND THAT?

3 A YES.

4 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
5 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
6 ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE
7 SEVERITY OF THE MURDER. IT MAY BE CONSIDERED BY THE JURY
8 EXTENUATING OR AS REDUCING THE DEGREE OF RESPONSIBILITY OF
9 THE PERSON THAT HAS COMMITTED THE MURDER?

10 A YES, SIR.

11 Q FOR EXAMPLE, I WOULD BE TALKING ABOUT MITIGATING
12 CIRCUMSTANCES WHERE THE MURDER WAS COMMITTED WHILE THE
13 DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
14 DISTURBANCE OR THE CAPACITY OF THE DEFENDANT TO APPRECIATE
15 THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO
16 THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED AND ALSO
17 THAT THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF
18 THE CRIME COULD BE CONSIDERED. DO YOU UNDERSTAND THAT?

19 A YES, SIR.

20 Q LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
21 SITUATION. WE ARE TALKING ABOUT THE SECOND PHASE, THE
22 SENTENCING PHASE, OF A DEATH PENALTY CASE, COULD YOU,
23 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
24 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
25 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN

0627

- 1 PRISON?
- 2 A APPARENTLY SO, IF I DID WRONG, YES.
- 3 Q I'M SORRY, I COULDN'T HEAR YOU.
- 4 A APPARENTLY SO IF I HAD DID WRONG, YES.
- 5 Q LET ME ASK THAT QUESTION AGAIN.
- 6 A OKAY.
- 7 Q IF YOU WERE A JUROR IN THAT SITUATION, IN THE
- 8 SENTENCING PHASE---
- 9 A UH-HUH.
- 10 Q ---COULD YOU, DEPENDING ON THE PARTICULAR FACTS AND
- 11 CIRCUMSTANCES OF THAT CASE AND THE LAW AS I WOULD INSTRUCT
- 12 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
- 13 LIFE IN PRISON?
- 14 A COULD I RETURN THAT?
- 15 Q YES, SIR.
- 16 A NO.
- 17 Q YOU COULD NOT?
- 18 A NO.
- 19 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
- 20 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
- 21 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
- 22 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?
- 23 A I THINK I WOULD GO WITH THE IMPRISONMENT. THE FIRST
- 24 ONE. NOT THE ONE WITH DEATH.
- 25 Q ALL RIGHT. WOULD YOU NEVER BE ABLE TO CONSIDER

1 IMPOSING THE DEATH PENALTY?

2 A NO.

3 Q UNDER ANY CIRCUMSTANCES WHATSOEVER? IF I INSTRUCTED
4 YOU THAT THE LAW OF THIS STATE WAS THAT A JUROR IS TO
5 LISTEN TO THE LAW AS I WOULD INSTRUCT IT, ALSO LISTEN TO
6 THE FACTS THAT WERE PRESENTED IN EVIDENCE IN THE CASE AND
7 APPLY THE LAW THAT I WOULD CHARGE OR INSTRUCT YOU AS TO
8 THOSE FACTS AND THAT YOU WOULD CONSIDER LIFE IN PRISON OR
9 DEATH, WOULD YOU BE ABLE TO CONSIDER AND RETURN A VERDICT
10 OF EITHER ONE OF THOSE?

11 A YES.

12 Q YOU COULD RETURN A SENTENCE OF LIFE IN PRISON? IS
13 THAT WHAT YOU'RE TELLING ME OR DEATH?

14 A LIFE IN PRISON.

15 Q COULD YOU NOT CONSIDER THE DEATH PENALTY?

16 A NO.

17 Q ALL RIGHT. QUESTIONS FROM MS. FULLWOOD.

18 MS. FULLWOOD: YES, SIR.

19 EXAMINATION

20 BY MS. FULLWOOD:

21 Q MR. KINARD, HI.

22 A HI.

23 Q I'M BETH FULLWOOD. ALONG WITH DUFFIE STONE, I
24 REPRESENT GARY TERRY.

25 I NOTICE YOU JUST MOVED HERE 18 MONTHS AGO?

0629

- 1 A YES.
- 2 Q WHERE DID YOU LIVE BEFORE?
- 3 A RIDGE SPRINGS, SOUTH CAROLINA.
- 4 Q SO YOU JUST MOVED A LITTLE DOWN THE ROAD?
- 5 A UH-HUH.
- 6 Q OKAY. DO YOU UNDERSTAND, MR. KINARD, NOBODY IS HERE
- 7 RIGHT NOW TRYING TO MAKE YOU CHOOSE ONE OR THE OTHER WHICH
- 8 WAY YOU WOULD VOTE?
- 9 A UH-HUH.
- 10 Q DON'T YOU THINK THAT BEFORE YOU COULD EVER CHOOSE,
- 11 YOU WOULD HAVE TO HEAR ALL OF THE EVIDENCE FROM ONE SIDE OR
- 12 THE OTHER?
- 13 A YES.
- 14 Q OKAY. AND WOULD YOU WANT TO HEAR THAT EVIDENCE?
- 15 A YES.
- 16 Q OKAY. OKAY. AND DO YOU THINK THAT YOU COULD LISTEN
- 17 TO THE EVIDENCE FROM BOTH SIDES?
- 18 A YES.
- 19 Q OKAY. AND DO YOU THINK YOU COULD CONSIDER IT FAIRLY
- 20 TO BOTH PARTIES, BOTH SIDES?
- 21 A YES.
- 22 Q OKAY. AND AGAIN, I'M NOT TRYING TO ASK YOU RIGHT NOW
- 23 TO COMMIT ONE WAY OR THE OTHER AS TO HOW YOU WOULD VOTE?
- 24 A OKAY.
- 25 Q IF YOU LISTENED TO THE EVIDENCE FOR BOTH SIDES, COULD

1 YOU VOTE FOR A LIFE SENTENCE IF YOU THOUGHT THAT THAT'S
2 WHAT THE EVIDENCE SHOWED?

3 A YES.

4 Q OKAY. AND IF YOU LISTENED TO BOTH SIDES, COULD YOU
5 VOTE FOR A DEATH SENTENCE IF YOU THOUGHT THAT'S WHAT ALL
6 THE EVIDENCE SHOWED?

7 A YES.

8 Q THANK YOU, SIR.

9 THE COURT: SOLICITOR HUMPHRIES.

10 EXAMINATION

11 BY MR. HUMPHRIES:

12 Q MR. KINARD, I'M FRAN HUMPHRIES. I'M THE DEPUTY
13 SOLICITOR. IT AIN'T YOUR FAULT, BUT I'M ALL CONFUSED.

14 WHEN -- AND IT MAY BE THAT YOU PROBABLY AIN'T
15 NEVER BEEN SITTING IN THAT SEAT BEFORE, HAVE YOU?

16 A NO, TELL YOU THE TRUTH, I HAVEN'T.

17 Q MAKES YOU A LITTLE NERVOUS?

18 A YEAH.

19 Q AND SOMEHOW IT SOMETIMES MAKES THINGS THAT PEOPLE SAY
20 TO YOU SOUND CONFUSING USUALLY BECAUSE THEY ARE.

21 A YEAH.

22 THE COURT: AND I'LL PROBABLY ASK YOU SOME
23 QUESTIONS THAT MIGHT CONFUSE YOU, TOO.

24 MR. HUMPHRIES: SO WHAT I'M GOING TO TRY AND DO
25 -- AND LET ME TELL YOU THIS. I'M NOT TRYING TO CHANGE YOUR

0631

1 MIND. NOBODY IS. WHAT YOUR POSITION ABOUT THE DEATH
2 PENALTY IS YOUR POSITION AND THAT'S NOBODY BUSINESS TO
3 CHANGE, OKAY?

4 THE JUROR: OKAY.

5 Q WE'VE JUST GOT TO FIGURE OUT WHAT IT IS.

6 I BELIEVE WHEN THE JUDGE ASKED YOU IF YOU COULD
7 CONSIDER THE DEATH PENALTY AND IMPOSE THE DEATH PENALTY
8 UNDER THE RIGHT FACTS AND CIRCUMSTANCES, YOU SAID ONCE THAT
9 YOU COULD NEVER DO IT AND THAT YOU COULD NEVER CONSIDER
10 IMPOSING IT. DID I HEAR YOU RIGHT?

11 A NO. LIKE HEARING WHAT WAS GOING ON AND I DECIDED, I
12 WOULD SAY THAT.

13 Q OKAY---

14 A YOU KNOW DEPEND UPON WHAT I HEARD ABOUT THE
15 SITUATION.

16 Q UH-HUH.

17 A AND IF THAT OCCURS, YES.

18 Q OKAY. SO YOU'RE SAYING IF YOU HEARD ALL OF THE
19 EVIDENCE---

20 A YES.

21 Q SEE, NOBODY IS ASKING YOU TO DECIDE TODAY, OKAY.
22 THAT -- THAT WOULD BE SO UNFAIR AND NOBODY IS GOING TO DO
23 THAT TO YOU, ALL RIGHT.

24 A ALL RIGHT.

25 Q WHAT WE ARE CONSIDERING IS THIS AND, YOU KNOW, WE'RE

1 TALKING DOWN THE LINE. BUT WHAT WE ARE TALKING ABOUT IS
2 SAY, FOR INSTANCE, YOU WERE SEATED ON THIS JURY, OKAY?

3 A YES.

4 Q AND WHILE SITTING ON THIS JURY, YOU'VE HEARD ALL OF
5 THE EVIDENCE IN THE GUILT PHASE, THAT FIRST PART, THAT
6 FIRST TRIAL---

7 A UH-HUH.

8 Q ---AFTER HEARING ALL OF THE EVIDENCE, YOU AND THE
9 OTHER JURORS DETERMINED THAT GUILT WAS THE APPROPRIATE
10 VERDICT. THE CHARGES WERE MURDER, BURGLARY, CRIMINAL
11 SEXUAL CONDUCT AND ANY OTHER CHARGES THE STATE MIGHT BRING,
12 OKAY.

13 A UH-HUH.

14 Q LET'S ASSUME THAT THAT'S ALREADY HAPPENED. AND I
15 KNOW THAT'S A BIG ASSUMPTION, BUT LET'S ASSUME THAT. THEN
16 YOU GO INTO THAT SECOND PHASE, THAT SECOND STAGE, YOU WITH
17 ME SO FAR?

18 A YES.

19 Q OKAY. IN THAT CASE, IN THAT TRIAL, YOU'LL BE HEARING
20 EVIDENCE IN AGGRAVATION. NOT JUST TO THE STATUTORY
21 AGGRAVATING CIRCUMSTANCES. THE JUDGE EXPLAINED TO YOU
22 MURDER COMMITTED DURING THE COMMISSION OF A BURGLARY AND
23 CRIMINAL SEXUAL CONDUCT AND MAYBE SOME OTHER STUFF ABOUT
24 THE CONDUCT AND THE CHARACTER OF THE DEFENDANT WHICH YOU
25 WOULDN'T HEAR IN THE GUILT PHASE.

0633

1

IN ADDITION, YOU MAY HEAR EVIDENCE IN MITIGATION.

2

JUST AS THE JUDGE EXPLAINED TO YOU THOSE STATUTORY

3

MITIGATING CIRCUMSTANCES AND SOME OTHER STUFF WHICH ISN'T

4

STATUTORY, OKAY?

5

A UH-HUH.

6

Q COULD YOU AT THAT POINT, LISTEN TO ALL THAT EVIDENCE

7

AND HAVING HEARD ALL THAT EVIDENCE, LISTEN TO THE CHARGE ON

8

THE LAW, AS THE JUDGE GIVES IT TO YOU, AND RETURN A VERDICT

9

EITHER FOR LIFE OR DEATH, DEPENDING ON THE FACTS AND

10

CIRCUMSTANCES?

11

A YES, I COULD.

12

Q I KNOW THAT WAS A MOUTHFUL, BUT RIGHT THERE AT THE

13

END, DID YOU GET WHAT I'M GOING FOR?

14

A YES.

15

Q YOU COULD LISTEN TO EVERYTHING AND YOU'RE NOT

16

PREVENTED PERSONALLY BY YOUR BELIEFS OR OTHERWISE IN

17

RENDERING A DEATH VERDICT IF YOU FEEL LIKE IT'S

18

APPROPRIATE, IS THAT CORRECT?

19

A THAT'S CORRECT.

20

Q OKAY. LET ME ASK YOU THIS. IN CONNECTION WITH THAT,

21

IF YOU WERE ON THIS JURY AND THIS JURY, INCLUDING YOU,

22

DETERMINED THAT DEATH WAS THE APPROPRIATE VERDICT, THE

23

JUDGE WOULD PROVIDE YOU A FORM.

24

NOW, THAT'S NO INDICATION ONE WAY OR THE OTHER

25

THE WAY THE JUDGE FEELS ABOUT THE CASE, OKAY, BECAUSE HE

1 DOESN'T HAVE AN OPINION ABOUT THAT. BUT HE WILL PROVIDE
2 YOU WITH A FORM AMONG MANY OTHER FORMS TO GIVE YOU A
3 CHOICE. IF THE JURY CHOSE DEATH AS THE APPROPRIATE
4 VERDICT, THAT FORM WOULD SAY: WE, THE JURY, FIND IN THE
5 CASE OF THE STATE VERSUS GARY DUBOSE TERRY, THAT DEATH IS
6 THE VERDICT OR SOME WORDS TO THAT EFFECT AND IT WOULD HAVE
7 ON THAT FORM TWELVE SIGNATURE LINES.

8 IF THAT WAS YOUR VOTE, IN ORDER TO IMPOSE THAT
9 DEATH VERDICT, YOU WOULD HAVE TO SIGN YOUR NAME ON THAT
10 FORM INDICATING YOUR VOTE. YOU DIDN'T REALIZE THAT, DID
11 YOU?

12 A NO, I DIDN'T.

13 Q BECAUSE THAT'S UNUSUAL IN OUR LAW. TYPICALLY, SAY IN
14 THE GUILT PHASE, THERE WILL BE A VERDICT FORM, BUT ONLY THE
15 FOREPERSON SIGNS THAT VERDICT FORM FOR THE VOTE OF ALL
16 TWELVE. BUT IN A DEATH VERDICT, EACH MEMBER OF THE JURY,
17 IF THAT'S THEIR VOTE, HAS TO SIGN THEIR NAME.

18 NOW, WOULD THE FACT THAT YOU WOULD HAVE TO SIGN
19 YOUR NAME IF YOU VOTED FOR DEATH, WOULD THAT -- WAS THAT
20 SOMETHING YOU COULD DO?

21 A I DON'T KNOW.

22 THE COURT: I'M SORRY, I COULDN'T HEAR YOU.

23 THE JUROR: I DON'T KNOW ABOUT THAT.

24 MR. HUMPHRIES: THESE ARE HARD QUESTIONS---

25 A YEAH.

0635

1 Q ---AND LIKE I SAID, NOBODY IS HERE TO CHANGE YOUR
2 MIND, OKAY. WE'VE JUST GOT TO FIGURE OUT THE WAY YOUR MIND
3 THINKS ABOUT THESE PARTICULAR THINGS. IT WOULD BE A
4 REQUIREMENT THAT -- NOW, THE JUDGE IS NEVER GOING TO SAY
5 YOU HAVE TO VOTE FOR DEATH, OKAY. NOBODY EVER DOES THAT.
6 THERE'S A CHOICE BETWEEN LIFE AND DEATH, BUT THOSE ARE THE
7 ONLY TWO CHOICES, OKAY. BUT WHAT THE JUDGE IS GOING TO
8 INSTRUCT YOU IS IF ALL TWELVE JURORS AGREE THAT DEATH IS
9 THE APPROPRIATE VERDICT, THEN IN ORDER TO INDICATE THAT
10 VERDICT, EACH JUROR, INCLUDING YOURSELF, WOULD HAVE TO SIGN
11 THAT DEATH FORM, OKAY.

12 A OKAY.

13 Q NOW, HERE'S MY QUESTION TO YOU. UNDERSTANDING ALL OF
14 THAT, WOULD THE FACT THAT YOU WOULD HAVE TO SIGN THAT FORM,
15 PHYSICALLY PUT YOUR NAME ON THAT FORM, PREVENT YOU FROM
16 FULLY CONSIDERING AND IMPOSING A DEATH VERDICT UNDER THE
17 RIGHT FACTS AND CIRCUMSTANCES? DOES THAT MAKE SENSE TO
18 YOU?

19 A YES.

20 Q AND WOULD IT -- WOULD IT SUBSTANTIALLY IMPAIR YOUR
21 ABILITY TO FULLY CONSIDER THE DEATH VERDICT AND IMPOSE THE
22 DEATH VERDICT IF YOU HAD TO SIGN THAT FORM?

23 A NO.

24 Q SO ARE YOU SAYING THEN THAT YOU COULD SIGN THAT
25 FORM--

1 A YES.

2 Q ---IF YOUR VERDICT WAS DEATH?

3 A YES.

4 Q FAIR ENOUGH. LET ME ASK YOU THIS, TOO. AND THERE
5 ARE NOT THAT MANY PEOPLE IN THE COURTROOM NOW. BUT WHEN
6 THE JUDGE ASKED A NUMBER OF QUESTIONS ABOUT -- AND TRULY
7 I'M NOT REAL SURE WHEN YOU CAME UP, BUT I RECALL THAT YOU
8 DID COME UP WHEN THE LAWYERS WERE UP HERE AND YOU SPOKE
9 WITH THE JUDGE, DO YOU RECALL THAT---

10 A YES.

11 Q ---DURING VOIR DIRE?

12 A YES.

13 Q AND YOU MENTIONED AT THAT TIME AND, I BELIEVE, YOU
14 CAME UP WHEN THE JUDGE ASKED IF THERE WAS ANYBODY IN THE
15 PANEL WHO COULDN'T BE FAIR AND IMPARTIAL BOTH TO THE STATE
16 AND THE DEFENSE IN THIS CASE. IS THAT WHEN YOU CAME UP?

17 A NO.

18 Q WHEN DID YOU COME UP, DO YOU RECALL?

19 A I COME UP WHEN HE WAS ASKING ABOUT HAVING ANY
20 IMMEDIATE FAMILY THAT HAVE BEEN CRIMINAL IN YOUR FAMILY.
21 HAD A CRIMINAL IN YOUR FAMILY.

22 Q OH, ACTUALLY -- YEAH, HE WAS ACTUALLY ASKING ABOUT
23 LAW ENFORCEMENT, BUT YOU CAME UP TO TELL US THAT YOUR WIFE
24 HAD HAD SOME CONTACT WITH LAW ENFORCEMENT.

25 A YES.

1 Q WHICH YOU FELT WAS UNFAIR?

2 A YES.

3 Q IS THAT RIGHT?

4 A YES.

5 Q LIKE I SAID, THIS IS PROBABLY AS FEW PEOPLE THAT'S
6 EVER GOING TO BE IN THIS COURTROOM IN CONNECTION WITH THIS
7 CASE. I'M GOING TO TAKE THIS OPPORTUNITY TO ASK YOU ABOUT
8 THAT BECAUSE REALLY IT'S THE ONLY TIME I CAN.

9 YOU INDICATED, I BELIEVE, AT THAT TIME THAT YOUR
10 WIFE HAD BEEN INVOLVED IN SOME ALTERCATION OR A FIGHT---

11 A YES.

12 Q ---WITH SOME POLICE OFFICERS, IS THAT RIGHT?

13 A YES.

14 Q AND THAT SHE HAD COMMITTED SOME ASSAULT ON THE
15 OFFICERS?

16 A YES.

17 Q HAD THE OFFICER ASSAULTED HER AS WELL, WAS THAT -- IS
18 THAT WHAT YOU WERE SAYING OR---

19 A YEAH, THEY HARASSED HER, YES.

20 Q THEY HARASSED HER?

21 A YES.

22 Q AS A RESULT, WAS SHE ARRESTED?

23 A YES.

24 Q DO YOU REMEMBER WHAT HER CHARGES WERE?

25 A RESISTING ARREST AND -- THAT'S THE ONLY THING THEY

1 CHARGED HER FOR.

2 Q OKAY. WAS SHE CONVICTED FOR RESISTING ARREST?

3 A YES---

4 Q DO YOU KNOW -- I'M SORRY -- YES, SIR.

5 A ---BECAUSE AT THE TIME, WHEN SHE WAS TRYING TO STOP
6 THE GIRLS FROM FIGHTING AND THE GIRL HOLLERED OUT A CURSE
7 WORD, YOU KNOW, AND CURSED AT HER AND THE COPS THOUGHT SHE
8 WAS TALKING TO THEM AND THAT'S WHEN THEY TRIED TO ARREST
9 HER, YOU KNOW, AND SHE WASN'T EVEN INVOLVED IN THE FIGHT OR
10 NOTHING. AND THAT'S WHEN SHE KICK BOTH OF THEM IN THE
11 BACK. SHE WAS RESISTING ARREST.

12 Q SHE KICKED THE POLICE OFFICERS?

13 A YEAH, TWO OF THEM.

14 Q OKAY. AS A RESULT OF THOSE CHARGES, WAS SHE
15 ULTIMATELY CONVICTED?

16 A NO.

17 Q SHE WASN'T FOUND GUILTY OR DIDN'T PLEAD GUILTY?

18 A SHE -- WELL, WHEN WE WENT TO COURT, THE JUDGE TOLD
19 HER THAT SHE HAD TO PAY A FINE.

20 Q OKAY. SO SHE WAS FOUND GUILTY---

21 A YES.

22 Q ---BECAUSE SHE WAS ASSESSED A FINE?

23 A YES.

24 Q WAS THAT IN LIKE BIG COURT, GENERAL SESSIONS COURT,
25 OR MUNICIPAL COURT?

0639

- 1 A NO, JUST MUNICIPAL COURT.
- 2 Q OKAY. DO YOU REMEMBER HOW MUCH THE FINE WAS?
- 3 A YES, 13 HUNDRED DOLLARS.
- 4 Q SAY THAT AGAIN?
- 5 A THIRTEEN-HUNDRED DOLLARS.
- 6 Q Y'ALL STILL PAYING THAT FINE?
- 7 A YES.
- 8 Q AS A RESULT OF THAT, DO YOU HAVE SOME PARTICULAR
- 9 FEELINGS ABOUT LAW ENFORCEMENT IN GENERAL?
- 10 A YEAH, I DO.
- 11 Q TELL ME WHAT THEY ARE.
- 12 A WELL, FOR ONE REASON I KNOW MY WIFE EVERY NOW AND
- 13 THEN SHE BE IN TROUBLE BUT SHE NEVER BOTHERS ANYBODY. AND
- 14 THE POLICEMAN DOWN THERE ALWAYS HAVE A PROBLEM ABOUT HER
- 15 BOTHERING PEOPLE, YOU KNOW WHAT I'M SAYING.
- 16 Q UH-HUH.
- 17 A AND WHEN THEY ARREST HER, THEY CAN'T ALWAYS GET A
- 18 HOLD OF HER BECAUSE SHE ALWAYS KNOCK THEM OUT OR SOMETHING
- 19 LIKE THAT BECAUSE SHE KNOWS SHE AIN'T DID NOTHING TO GET
- 20 ARRESTED FOR. AND, YOU KNOW, THAT'S BASICALLY WHAT I WAS
- 21 SAYING.
- 22 Q AND SOMETHING LIKE THIS -- THIS ISN'T AN ISOLATED
- 23 INCIDENT. IT DIDN'T HAPPEN JUST ONCE, BUT IT'S HAPPENED IN
- 24 THE PAST?
- 25 A YEAH.

1 Q HOW DOES THAT THEN MAKE YOU FEEL ABOUT LAW
2 ENFORCEMENT?

3 A IT DOESN'T MAKE ME FEEL BAD ABOUT OTHER LAW
4 ENFORCEMENT, BUT JUST THE MAIN ONES THAT'S IN BATESBURG.

5 Q BATESBURG-LEESVILLE POLICE DEPARTMENT?

6 A YEAH.

7 Q BECAUSE, I GUESS, HERE'S MY QUESTION. I DON'T GUESS,
8 I KNOW. THIS IS MY QUESTION---

9 A UH-HUH.

10 Q ---WHAT WE ARE LOOKING FOR, BOTH THE DEFENSE AND THE
11 STATE, IS FOR A JUROR WHO CAN BE FAIR AND IMPARTIAL BOTH TO
12 THE STATE AND TO THE DEFENSE, OKAY. SOMEBODY WHO CAN START
13 US OUT BASICALLY ON EVEN GROUND.

14 SO MY QUESTION TO YOU IS BECAUSE YOUR WIFE HAVE
15 HAD THOSE KINDS OF CONTACTS WITH THE BATESBURG-LEESVILLE
16 POLICE DEPARTMENT---

17 A UH-HUH.

18 Q ---WOULD THAT HAVE AN AFFECT IN TERMS OF YOUR
19 FEELINGS, IF YOU WILL, ABOUT LAW ENFORCEMENT IN GENERAL AND
20 SPECIFICALLY IN THIS CASE?

21 A NO.

22 Q SO EVERYBODY WOULDN'T BE STARTED ON EVEN GROUND?

23 A NO, NO PROBLEM.

24 Q OKAY. SO THERE WOULDN'T BE ANY PROBLEM FOR YOU
25 THERE?

0641

1 A NO.

2 Q OKAY. COULD YOU THEN BE FAIR AND IMPARTIAL BOTH TO
3 THE STATE AND THE DEFENSE OF LISTENING TO ALL OF THE
4 EVIDENCE AND BE ABLE TO RETURN EITHER A VERDICT OF DEATH OR
5 LIFE DEPENDING ON THE CIRCUMSTANCES?

6 A YES.

7 Q THANK YOU VERY MUCH.

8 A ALL RIGHT.

9 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

10 MS. FULLWOOD: NO, SIR.

11 THE COURT: FROM THE STATE?

12 MR. HUMPHRIES: YOUR HONOR, WE HAVE A MATTER OF
13 LAW AS IT RELATES TO THIS---

14 THE COURT: ALL RIGHT. IF YOU WOULD STEP
15 OUTSIDE, PLEASE, SIR. I'LL GET YOU BACK IN IN JUST A
16 MOMENT.

17 THE JUROR: ALL RIGHT.

18 (JUROR OUT.)

19 THE COURT: YES, SIR.

20 MR. HUMPHRIES: YOUR HONOR, THE STATE'S POSITION
21 IN REGARD TO JUROR NUMBER 134, DENNY J. KINARD, IS THAT HE
22 IS THE TYPE OF JUROR TALKED ABOUT IN THOSE CASES WHICH DEAL
23 WITH VACILLATING JURORS.

24 DURING YOUR QUESTIONING, YOUR INITIAL QUESTIONING
25 WITH THE JUROR, WHEN ASKED DIRECTLY, COULD YOU IMPOSE A

1 DEATH SENTENCE AND THAT WAS AFTER YOU HAD ALREADY ASKED THE
2 QUESTION COULD YOU IMPOSE A LIFE SENTENCE UNDER CERTAIN
3 FACTS AND CIRCUMSTANCES, HE SAID AND I THINK I WRITE --
4 WROTE IT DOWN EXACTLY AS HE SAID IT. "I COULD NEVER GO
5 WITH DEATH."

6 YOU THEN ASKED HIM ANOTHER SERIES OF QUESTIONS
7 REGARDING HIS POSITION ON THE DEATH PENALTY AND ASKED HIM
8 POINTEDLY AT THAT TIME AND HE SAID I COULD NOT CONSIDER THE
9 DEATH PENALTY WHICH IS ONE STEP AWAY FROM THE STANDARD IN
10 THIS CASE.

11 NOW, AFTER YOUR QUESTIONS, MS. FULLWOOD
12 QUESTIONED HIM AND I GUESS AT THAT POINT, THAT'S MY --
13 THAT'S MY CONCERN REGARDING THE, AT LEAST, THE VACILLATION
14 ASPECT OF HIS ENTIRE COLLOQUY ON VOIR DIRE.

15 HE PAUSED ON ALMOST EVERY OCCASION WHEN
16 QUESTIONED ABOUT THE ABILITY TO IMPOSE THE DEATH PENALTY
17 AND CLEARLY HE WAS PUTTING SOME THOUGHT ON IT AND
18 ESPECIALLY IN REGARD TO MY QUESTIONS AS THEY RELATE TO
19 BEING ABLE TO SIGN THE DEATH VERDICT. HE INDICATED ON THE
20 FRONT END WHEN I FIRST ASKED HIM THAT HE COULD NOT OR HE
21 DIDN'T THINK HE COULD.

22 THE COURT: HE SAID HE DIDN'T KNOW.

23 MR. HUMPHRIES: HE DIDN'T SAY -- I'M SORRY, YOUR
24 HONOR.

25 THE COURT: HE SAID I DON'T KNOW.

0643

1 MR. HUMPHRIES: I DON'T KNOW, THAT'S CORRECT.
2 AND I WENT BACK THROUGH THAT WITH HIM AND I THINK AT THAT
3 POINT, THEN HE VACILLATED AGAIN AND SAID, WELL, I THINK I
4 COULD.

5 NOW, THE STATE'S POSITION IS THIS.

6 NUMBER ONE, THEY ARE VACILLATING RESPONSES AND
7 THAT IN CONNECTION WITH THE INFORMATION HE PROVIDED THE
8 COURT ON VOIR DIRE REGARDING HIS CONTACTS WITH THE
9 BATESBURG-LEESVILLE POLICE DEPARTMENT AND HIS FEELINGS
10 ABOUT THEM, THE STATE BELIEVES THAT THIS IS A JUROR, NUMBER
11 ONE, WHO IS VACILLATING AS IT RELATES TO HIS ABILITY TO
12 IMPOSE THE DEATH VERDICT IN THAT HE POINTEDLY SAID ON THE
13 FRONT END AFTER -- AND PRIOR TO -- OR BEFORE ARTFUL
14 EXAMINATION BY DEFENSE COUNSEL, THAT HE COULD NOT GO WITH
15 THE DEATH PENALTY, COULD NOT CONSIDER THE DEATH PENALTY.

16 THE STATE'S POSITION IS THAT HE'S AN UNQUALIFIED
17 JUROR IN THAT HE IS NOT ABLE, BASED ON HIS VACILLATING
18 RESPONSES, TO RETURN A DEATH VERDICT IN CONNECTION WITH THE
19 OTHER BIAS WHICH, WE SUBMIT, IT IS PROBABLY A LITTLE MORE
20 PREVALENT THAN THE JUROR WOULD LIKE TO ADMIT ON THE STAND.

21 THE COURT: MS. FULLWOOD.

22 MS. FULLWOOD: YOUR HONOR, I DON'T THINK THIS
23 JUROR WAS VACILLATING. I THINK HE WAS QUITE CLEAR ONCE HE
24 UNDERSTOOD THE QUESTIONS AS TO WHAT HIS ANSWERS WERE.

25 I THINK THIS IS THE TYPE OF INDIVIDUAL THAT NEEDS

1 TO BE COMMUNICATED WITH IN A REAL CONCRETE WAY. HE -- I
2 THINK WAS CONFUSED A BIT BY THE COURT'S QUESTIONING,
3 PERHAPS, COULD NOT FOLLOW IT THAT WELL.

4 WHEN I ASKED HIM IN REAL SIMPLE DIRECT MANNER
5 WHAT HIS ANSWERS WERE, HE WAS VERY CLEAR AS TO THE FACT
6 THAT HE COULD CONSIDER BOTH THE GUILT AND PENALTY.

7 MR. HUMPHRIES QUESTIONED HIM AT LENGTH. HE
8 CONFRONTED HIM WITH WHETHER OR NOT HE HAD MISUNDERSTAND HIS
9 RESPONSES TO THE COURT'S QUESTIONS AND THE JUROR SAID QUITE
10 CLEARLY, YES, YOU MISUNDERSTOOD, I COULD VOTE FOR EITHER.
11 THE JUROR, I THINK, INITIALLY WHEN MR. HUMPHRIES WAS
12 QUESTIONING HIM ABOUT BEING ABLE TO SIGN THE SENTENCING
13 FORM, AGAIN, MR. HUMPHRIES ASKED SOME RATHER LENGTHY
14 QUESTIONS. THE JUROR WAS CONFUSED. ONCE IT WAS BROKEN
15 DOWN INTO THE STEPS, IT WAS CLEAR TO THE JUROR AND HE
16 STATED UNEQUIVOCALLY, YES, I COULD SIGN THAT FORM.

17 THE STATE MAY NOT BE HAPPY THAT THIS JUROR'S WIFE
18 HAS HAD PRIOR DIFFICULTIES WITH THE BATESBURG-LEESVILLE
19 POLICE DEPARTMENT, BUT, AGAIN, THE JUROR WAS QUITE CLEAR
20 THAT, YES, PERHAPS, HE DOES NOT LIKE SPECIFIC MEMBERS OF
21 THAT POLICE DEPARTMENT, BUT IT DOES NOT EXTEND TO OTHER LAW
22 ENFORCEMENT OFFICERS AND THAT POLICE AGENCY ISN'T INVOLVED
23 WITH THIS CASE. I THINK THE JUROR IS QUALIFIED.

24 THE COURT: WELL, I THINK FROM THE QUESTIONS THAT
25 WERE POSED BY THE COURT, BY THE DEFENSE AND BY THE STATE,

0645

1 THAT IT'S EVIDENT THAT MR. KINARD HAD SOME TROUBLE IN
2 UNDERSTANDING AND APPRECIATING AND I THINK THAT SOME OF THE
3 TIMES THAT HE DID, HE WAS VERY THOUGHTFUL BEFORE FORMING
4 HIS ANSWERS. I DO NOT FIND THAT HE HAS VACILLATED. I
5 THINK THAT IT'S BASED UPON PROBABLY SOME CONFUSION FROM THE
6 QUESTION OF THE COURT.

7 WHILE MOST OF THE JURORS HAVE UNDERSTOOD THE
8 COURT'S QUESTION, YOU DO RUN UP ON JURORS FOR VARIOUS
9 REASONS THAT ARE UNABLE TO UNDERSTAND THE INITIAL
10 QUESTIONING AND THAT'S THE REASON THAT YOU ALL GET TO ASK
11 QUESTIONS ALSO. AND I THINK THAT FROM WHAT I HAVE HEARD
12 FROM HIS RESPONSES TO BOTH SIDES THAT HE IS ONE WHO COULD
13 CONSIDER AND IMPOSE EITHER SENTENCE IN ACCORDANCE WITH THE
14 STATUTE.

15 AND INSOFAR AS HIS WIFE'S PROBLEMS WITH THE
16 BATESBURG-LEESVILLE POLICE DEPARTMENT, I THINK THAT IS
17 SOMETHING THAT HE SAID THAT DEALT WITH THOSE PARTICULAR
18 INDIVIDUALS AND I WOULD REMIND YOU THAT THAT'S THE REASON
19 THAT YOU HAVE PEREMPTORY STRIKES AND I THINK THAT YOU'VE
20 FULLY ELABORATED ON THAT ON THE RECORD.

21 I'M GOING TO FIND HIM QUALIFIED. I NEED TO BRING
22 HIM BACK IN HERE NOW AND EXPLAIN TO HIM HOW LONG HE'S GOING
23 TO HAVE TO BE WITH US BECAUSE I DIDN'T KNOW IF I WAS GOING
24 TO GET THAT FAR OR NOT.

25 LET'S BRING HIM BACK IN.

(JUROR IN.)

THE COURT: THANK YOU VERY MUCH, MR. KINARD. MR. KINARD, I'M GOING TO FOLLOW-UP WITH A QUESTION THAT -- DO YOU UNDERSTAND THAT IF YOU ARE CHOSEN FOR THIS JURY, THAT YOU WOULD BE HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. THAT COULD BE ANYWHERE FROM A WEEK TO TEN DAYS, IT MAY BE LESS THAN THAT. I DON'T KNOW. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

THE JUROR: YES, SIR, I UNDERSTAND THAT.

THE COURT: I'M SORRY?

THE JUROR: I SAID, YES, I UNDERSTAND THAT.

THE COURT: I SAY WOULD THAT POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU TO BE AWAY FROM THEM FOR A WEEK TO TEN DAYS?

THE JUROR: I WOULD SAY SO, YES.

THE COURT: COULD YOU TELL ME A LITTLE BIT MORE ABOUT THAT? HOW IT WOULD AFFECT YOUR FAMILY, ANY OTHER WAY?

THE JUROR: WELL, RIGHT NOW IT'S -- MY WIFE IS NOT WORKING AND I'M NOT WORKING EITHER. I HAVE TO PAY, YOU KNOW, SOME BILLS AND I WOULD SAY THE BEST TIME FOR ME TO DO THIS IS PROBABLY BE THIS WEEK BECAUSE MY JOB JUST GAVE OUT.

0647

1 I DON'T HAVE ANYMORE MONEY. SO I THINK IT WOULD PROBABLY
2 BE A PROBLEM.

3 THE COURT: I'M -- I'M NOT UNDERSTANDING YOU---

4 THE JUROR: SEE WHAT I'M SAYING IS---

5 THE COURT: I UNDERSTAND THAT YOU DON'T HAVE A
6 JOB RIGHT NOW, NOR DOES YOUR WIFE---

7 THE JUROR: RIGHT. I HAVE ONE LINED UP RIGHT
8 NOW.

9 THE COURT: OH, YOU HAVE ONE LINED UP?

10 THE JUROR: YES, SIR.

11 THE COURT: IS IT A JOB THAT YOU COULD START NOW?

12 THE JUROR: YES, SIR.

13 THE COURT: WHERE IS THAT?

14 THE JUROR: IT'S BORAL BRICKS IN COLUMBIA.

15 THE COURT: BORAL BRICKS?

16 THE JUROR: UH-HUH.

17 THE COURT: ALL RIGHT. AND HAVE THEY OFFERED YOU
18 A JOB?

19 THE JUROR: YES. SHE TOLD ME TO CALL AS SOON AS
20 EVERYTHING WAS OVER WITH JURY DUTY.

21 THE COURT: ALL RIGHT. IF WE KEPT YOU HERE FOR A
22 WEEK OR TEN DAYS, DO YOU THINK THAT YOU WOULD HAVE A JOB
23 AVAILABLE AT THE END OF THAT TIME?

24 THE JUROR: I'M NOT SURE.

25 THE COURT: AND IF YOU WERE SELECTED AS A JUROR

1 IN THIS CASE, WOULD YOU -- WOULD THE FACT THAT YOU COULD
2 NOT GO TO WORK AT THIS PARTICULAR TIME WITH BORAL BRICKS
3 WOULD THAT AFFECT YOU FINANCIALLY?

4 THE JUROR: YES.

5 THE COURT: WELL, LET ME ASK YOU THIS. WOULD YOU
6 START TO WORK RIGHT AWAY IF YOU WERE NOT PARTICIPATING IN
7 THIS PROCESS?

8 THE JUROR: YES.

9 THE COURT: AND WHEN WERE YOU -- WHEN WERE YOU
10 SUPPOSED TO START WORKING?

11 THE JUROR: WELL, SHE TOLD ME WHENEVER THIS BE
12 OVER WITH, GIVE HER A CALL. BE ANY TIME. I WAS THINKING
13 MAYBE THIS PROBABLY TAKE THE WHOLE WEEK. I DIDN'T KNOW.
14 SHE TOLD ME AS SOON AS IT WAS OVER WITH TO GIVE HER A CALL.
15 I COULD START TO WORK. I'M THE ONE THAT'S GOING TO BE
16 WORKING. MY WIFE CAN'T WORK RIGHT NOW BUT WE NEED TO DO
17 SOMETHING ABOUT IT.

18 THE COURT: SO YOU'RE THE ONLY ONE THAT WILL BE
19 WORKING IN YOUR FAMILY?

20 THE JUROR: YES, SIR.

21 THE COURT: LET ME SEE THE LAWYERS AT THE BENCH.

22 (WHEREUPON, A BENCH CONFERENCE WAS
23 HELD AT THIS TIME OFF THE RECORD.)

24 THE COURT: MR. KINARD, I APPRECIATE THE
25 QUESTIONS THAT YOU HAVE RESPONDED TO. LET ME ASK YOU THIS

0649

1 QUESTION. IF I GAVE YOU THE -- SAID, WELL, YOU KNOW, IF
2 YOU NEED TO GO TO WORK OR IF YOU WANT TO STAY AND
3 PARTICIPATE, POTENTIALLY PARTICIPATE IN THIS PROCESS, WHICH
4 WOULD YOU CHOOSE?

5 THE JUROR: WELL, I'D CONSIDER GOING TO WORK.

6 THE COURT: IS IT A FINANCIAL HARDSHIP ON YOU TO
7 BE HERE?

8 THE JUROR: YES.

9 THE COURT: ALL RIGHT. THANK YOU, SIR. STEP
10 OUTSIDE FOR JUST ONE MOMENT, PLEASE, SIR.

11 (JUROR OUT.)

12 THE COURT: MS. FULLWOOD, MR. STONE, MR.
13 HUMPHRIES, I THINK THAT TO BE CONSISTENT WITH MY PRIOR
14 RULINGS IN THIS REGARD, THAT EVERYONE THAT HAS HAD A
15 FINANCIAL HARDSHIP I HAVE ALLOW THEM TO BE RELIEVED OF
16 THEIR DUTIES BECAUSE I THINK -- I HAVE RUN INTO THIS BEFORE
17 IN CASES SUCH AS THIS THAT SOMEONE WHO IS IN SUCH A
18 SITUATION, MIDWAY THROUGH A TRIAL, YOU KNOW, THEY -- THEY
19 NEED TO BE WORKING, THEY -- THEY START -- WE START HAVING
20 PROBLEMS IN THAT REGARD AND I HAVE TRIED TO BE CONSISTENT
21 IN A NUMBER OF AREAS AND FEEL LIKE I HAVE BEEN AND I'M
22 GOING TO EXCUSE HIM ON THE BASIS OF A FINANCIAL HARDSHIP.
23 IF THIS MAN HAS A JOB THAT HE CAN GO TO, IF HE'S BEEN OUT
24 OF WORK, HE NEEDS TO GET TO WORK AND SUPPORT HIS FAMILY. I
25 SEE HERE THAT HE HAS A CHILD, A YOUNG SON, AND I'M GOING TO

1 ALLOW HIM TO BE EXCUSED.

2 ALL RIGHT. LET'S BRING HIM BACK IN.

3 (JUROR IN.)

4 THE COURT: MR. KINARD, I WANT TO THANK YOU VERY
5 MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AND TODAY. DUE
6 TO WHAT YOU'VE TOLD ME ABOUT YOUR ABILITY TO GO TO WORK
7 WITH BORAL BRICKS AT THIS TIME AND THE FINANCIAL HARDSHIP
8 THAT YOU FACE BEING THE SOLE BREADWINNER OF YOUR FAMILY AND
9 I NOTE THAT YOU HAVE A SON, I BELIEVE, THAT YOU ARE
10 RESPONSIBLE FOR. I'M GOING TO EXCUSE YOU FROM FURTHER
11 PARTICIPATION IN THIS CASE. I WANT TO THANK YOU VERY MUCH
12 FOR BEING HERE ON BEHALF OF LEXINGTON COUNTY AND THE STATE
13 OF SOUTH CAROLINA. AND I HOPE THAT WE HAVEN'T
14 INCONVENIENCED YOU TOO MUCH. AND YOU ARE EXCUSED. THANK
15 YOU FOR COMING.

16 THE JUROR: OKAY. THANK YOU, SIR.

17 THE COURT: YES, SIR.

18 (WHEREUPON, THE JUROR WAS EXCUSED
19 AT THIS TIME.)

20 THE COURT: JUROR NUMBER 63, JAN CURTIS.

21 JAN M. CURTIS,

22 (JUROR NUMBER 63, WHITE FEMALE,
23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

24 EXAMINATION

25 BY THE COURT:

0651

- 1 Q GOOD MORNING TO YOU, MS. CURTIS?
- 2 A GOOD MORNING.
- 3 Q YOU ARE JAN CURTIS, JUROR NUMBER 63, I THINK?
- 4 A YES, SIR.
- 5 Q AND YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR THESE
- 6 PROCEEDINGS?
- 7 A YES, SIR.
- 8 Q AND YESTERDAY BEFORE YOU LEFT THE COURT HOUSE, I GAVE
- 9 YOU CERTAIN CAUTIONARY INSTRUCTIONS THAT YOU WERE NOT TO
- 10 DISCUSS THIS CASE WITH ANYONE AND IF ANYONE ATTEMPTED TO
- 11 CONTACT YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT
- 12 THAT TO ME AS WELL AS THE FACT THAT YOU WERE NOT TO READ,
- 13 WATCH OR LISTEN TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.
- 14 DO YOU REMEMBER THAT?
- 15 A YES, SIR.
- 16 Q AND HAS ANYONE VIOLATED OR HAVE THERE BEEN ANY
- 17 VIOLATIONS OF THOSE INSTRUCTIONS?
- 18 A NO, SIR.
- 19 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
- 20 THEN THE LAWYERS FROM EACH SIDE WILL ASK YOU SOME QUESTIONS
- 21 AND KEEP IN MIND THAT WE ARE NOT IN ANY WAY ATTEMPTING TO
- 22 INVADE YOUR PRIVACY, BUT BECAUSE OF THE NATURE OF THESE
- 23 PROCEEDINGS, IT'S NECESSARY THAT CERTAIN QUESTIONS ARE
- 24 ASKED. PLEASE KEEP IN MIND THAT THERE ARE NO RIGHT OR
- 25 WRONG ANSWERS TO THE QUESTIONS THAT ARE GOING TO BE ASKED

1 OF YOU AND ALSO PLEASE JUST ANSWER THEM OPENLY AND HONESTLY
2 AND FULLY. AND KEEP IN MIND THAT NO ONE IS CHALLENGING
3 YOUR VIEW. IT'S SIMPLY THAT WE NEED TO KNOW WHAT YOUR VIEW
4 IS.

5 ALSO KEEP IN MIND THAT YOU ARE PROBABLY GOING TO
6 BE ASKED SOME QUESTIONS THAT YOU HAVE NEVER CONSIDERED
7 BEFORE. SO LISTEN CAREFULLY TO THE QUESTIONS.

8 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
9 DISCUSSING OVER THE NEXT FEW MINUTES, WE ARE GOING TO BE
10 TALKING ABOUT PENALTY, BUT THE MERE FACT I EVEN MENTION
11 THAT WORD DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT THE
12 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
13 INNOCENT. DO YOU UNDERSTAND THAT?

14 A YES, SIR.

15 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
16 YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE LAW AS I WOULD
17 INSTRUCT YOU AS THE JUDGE OF THIS COURT EVEN THOUGH YOU MAY
18 NOT AGREE WITH THAT LAW OR THINK THAT IT OUGHT TO BE SOME
19 OTHER WAY?

20 A YES, SIR, I COULD.

21 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
22 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

23 A YES, SIR.

24 Q NOW IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
25 HAS THE BURDEN OF PROVING GUILT. THE BURDEN OF PROOF THAT

0653

1 THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF EACH CRIME
2 CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT HAS NO
3 BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND THIS?
4 A YES, SIR.
5 Q COULD YOU, DEPENDING ON THE FACTS AND THE EVIDENCE
6 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
7 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?
8 A YES, SIR.
9 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
10 STATE SEEKS THE DEATH PENALTY AGAINST THE DEFENDANT, MR.
11 TERRY?
12 A YES, SIR.
13 Q AND YOU FURTHER UNDERSTAND THAT IF YOU WERE A JUROR
14 IN SUCH AN INSTANCE AND IF THE JURY FOUND THE DEFENDANT NOT
15 GUILTY OF MURDER IN THE FIRST PHASE OF THE TRIAL, THAT
16 THERE WOULD BE NO NEED FOR THE SECOND PHASE OR THE
17 SENTENCING PHASE?
18 A YES, SIR.
19 Q NOW, IF YOU WERE A JUROR IN SUCH A SITUATION AND THE
20 JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU DO
21 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING
22 PHASE?
23 A YES, SIR.
24 Q NOW, IN THAT PART OF THE CASE, DO YOU UNDERSTAND THAT
25 THERE WOULD BE EVIDENCE PRESENTED IN THE FORM OF

1 AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
2 CIRCUMSTANCES?

3 A YES, SIR.

4 Q NOW, AGGRAVATING CIRCUMSTANCE ARE FACTS, INCIDENTS,
5 DETAILS OR OCCURRENCES WHICH THE GENERAL ASSEMBLY OF OUR
6 STATE HAS DECLARED BY STATUTE THAT WOULD MAKE WORSE; THAT
7 IS, TO AGGRAVATE THE OFFENSE OF MURDER.

8 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE
9 INCREASES THE ENORMITY OR ADDS TO THE INJURY OF MURDER?

10 A YES, SIR.

11 Q YOU UNDERSTAND THAT?

12 A YES, SIR.

13 Q AND WHAT I AM TALKING ABOUT IS A MURDER THAT WOULD BE
14 COMMITTED IN CONNECTION WITH ANOTHER CRIME SUCH AS CRIMINAL
15 SEXUAL CONDUCT AND OR BURGLARY. DO YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
18 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
19 ASSEMBLY HAS DECLARED BY STATUTE TO REDUCE THE SEVERITY OF
20 THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
21 OR REDUCING THE DEGREE OF RESPONSIBILITY.

22 AND, FOR EXAMPLE, I'M TALKING ABOUT SITUATIONS
23 SUCH AS WHERE THE MURDER WAS COMMITTED WHILE THE DEFENDANT
24 WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
25 DISTURBANCES; THE CAPACITY OF THE DEFENDANT TO APPRECIATE

0655

1 THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO
2 THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; OR THE
3 AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME.
4 YOU UNDERSTAND THOSE AS MITIGATING CIRCUMSTANCES. EXAMPLES
5 OF THAT.

6 A YES, SIR.

7 Q NOW, LET'S CONSIDER THAT IF YOU WERE A JUROR IN THAT
8 SITUATION AND WE'RE TALKING ABOUT THE SENTENCING PHASE,
9 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
10 CIRCUMSTANCES OF THAT CASE AND THE LAW, AS I WOULD INSTRUCT
11 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
12 LIFE IN PRISON?

13 A YES, SIR.

14 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
15 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
16 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
17 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

18 A YES, SIR.

19 Q NOW, IF YOU WERE CHOSEN TO SERVE AS A JUROR IN THIS
20 CASE, MS. CURTIS, YOU WOULD BE HOUSED IN A MOTEL,
21 SEQUESTERED FOR A PERIOD OF THE TRIAL WHICH COULD BE
22 ANYWHERE FROM A WEEK TO TEN DAYS, MAYBE LESS THAN THAT, BUT
23 THAT'S WHAT I GIVE YOU AS AN ESTIMATE. EXCEPT FOR THE
24 PERSONAL INCONVENIENCE, WOULD THIS POSE A SERIOUS DANGER TO
25 THE HEALTH AND WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT

1 UPON YOU?

2 A NO, SIR.

3 Q THANK YOU, MA'AM. PLEASE RESPOND TO MS. FULLWOOD'S
4 QUESTIONS.

5 EXAMINATION

6 BY MS. FULLWOOD:

7 Q GOOD MORNING, MS. CURTIS.

8 A GOOD MORNING.

9 Q I'M BETH FULLWOOD. ALONG WITH DUFFIE STONE, WHO IS
10 SEATED OVER THERE, WE REPRESENT GARY TERRY.

11 I APPRECIATE YOU BEING HERE THIS MORNING. I'M
12 GOING TO NEED TO ASK YOU SOME QUESTIONS. A LOT OF THEM
13 WILL HAVE TO DO WITH THE SECOND TRIAL THAT JUDGE CLARY JUST
14 EXPLAINED TO YOU. THIS IS THE ONLY TIME THAT THE LAWYERS
15 HAVE A CHANCE TO ASK YOU QUESTIONS SO THAT'S WHY I'M ASKING
16 THEM NOW. I'M NOT TRYING TO ASSUME ONE WAY OR THE OTHER
17 WHAT WOULD HAPPEN IN THE FIRST TRIAL, BUT I NEED TO KNOW
18 YOUR ATTITUDES IN CASE WE EVER DID GET TO THE SECOND TRIAL.

19 A YES, MA'AM.

20 Q BEFORE YOU WERE CALLED AS A JUROR IN THIS CASE AND
21 YOU FOUND OUT YESTERDAY THAT THIS WAS A DEATH PENALTY CASE,
22 HAD YOU GIVEN MUCH THOUGHT TO CAPITAL PUNISHMENT?

23 A SURE. YES.

24 Q OKAY. AND COULD YOU GENERALLY TELL ME YOUR VIEWS ON
25 IT?

0657

1 A I JUST FEEL THAT IT'S A CASE-BY-CASE DECISION
2 DEPENDING ON MITIGATING CIRCUMSTANCES, DEPENDING ON JUST
3 ALL THE FACTS.

4 Q ALL RIGHT. DO YOU UNDERSTAND THAT IF A JURY WERE TO
5 GET TO A SECOND TRIAL, IT WOULD HAVE ALREADY FOUND THE
6 ACCUSED PERSON GUILTY OF THE CRIME OF MURDER AND ONE OR
7 MORE OTHER TYPES OF CRIME?

8 A YES, MA'AM.

9 Q OKAY. AND DO YOU --- AND DO YOU REALIZE AND IF YOU
10 WOULD KNOW THIS, I'M NOT TRYING TO INSULT YOUR
11 INTELLIGENCE, IT'S JUST THAT SOMETIMES PEOPLE JUST DON'T
12 KNOW, BUT DO YOU REALIZE THAT IN SOUTH CAROLINA, MURDER
13 MEANS KILLING SOMEONE WITH MALICE AFORETHOUGHT?

14 A YES, MA'AM.

15 Q OKAY. SO YOU REALIZE THEN ALSO THAT THAT WOULD
16 EXCLUDE ANYTHING LIKE SELF-DEFENSE, ACCIDENT, HEAT OF
17 PASSION?

18 A YES, MA'AM.

19 Q ALL RIGHT. SO AS I UNDERSTAND IT -- WELL, LET ME ASK
20 YOU THIS. CAN YOU CONSIDER A LIFE SENTENCE FOR SOMEONE WHO
21 YOU HAVE ALREADY DECIDED IS GUILTY OF MURDER AND ONE OR
22 MORE OTHER CRIMES?

23 A YES.

24 Q OKAY. AND CAN YOU CONSIDER, ON THE OTHER HAND, A
25 DEATH SENTENCE FOR SUCH A PERSON?

1 A YES. AS I SAID, IT WOULD JUST DEPEND ON ALL OF THE
2 FACTS.

3 Q ALL RIGHT. MS. CURTIS, ONE OF THE REQUIREMENTS OF
4 THE LAW IS THAT IF A JURY DECIDES THAT DEATH IS THE
5 APPROPRIATE SENTENCE, EACH JUROR MUST SIGN A VERDICT FORM
6 INDICATING THAT THAT IS HIS OR HER SENTENCE.

7 IF YOU WERE TO LISTEN TO ALL OF THE FACTS IN THE
8 CASE AND DECIDE THAT DEATH WAS THE APPROPRIATE SENTENCE,
9 WOULD YOU HAVE ANY HESITATION ABOUT SIGNING SUCH A FORM?

10 A NO, NOT ONCE THE DECISION HAD BEEN MADE.

11 Q ALL RIGHT. MS. CURTIS, I APPRECIATE YOUR FRANKNESS
12 AND THANK YOU FOR ANSWERING MY QUESTIONS.

13 A UH-HUH.

14 MR. HUMPHRIES: JUDGE, COULD WE HAVE A VERY BRIEF
15 SIDE BAR.

16 THE COURT: YES, SIR.

17 (WHEREUPON, A BENCH CONFERENCE WAS
18 HELD AT THIS TIME OFF THE RECORD.)

19 THE COURT: MS. CURTIS, LET ME ASK YOU THIS. I
20 NOTE FROM YOUR INFORMATION THAT YOU TEACH AT JOHN P. THOMAS
21 ELEMENTARY, CORRECT?

22 A YES, SIR.

23 THE COURT: IN THE EVENT THAT THERE WERE WITNESSES
24 THAT TESTIFIED IN THIS CASE THAT HAD ANY CONNECTION WITH
25 THAT SCHOOL, WOULD THAT -- WOULD THAT IN ANY WAY INTERFERE

0659

1 WITH YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL VERDICT
2 FOR EITHER THE STATE OR THE DEFENDANT BASED SOLELY UPON THE
3 TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR PRODUCED IN THIS
4 COURTROOM?

5 A NO, SIR.

6 THE COURT: WOULD YOU BE ABLE TO SET ASIDE ANY
7 PRIOR KNOWLEDGE OF ANYONE WHO MAY HAVE TESTIFIED AND RENDER
8 A VERDICT BASED STRICTLY UPON THE TESTIMONY AND EVIDENCE
9 PRESENTED?

10 A YES, SIR.

11 THE COURT: ALL RIGHT.

12 MR. HUMPHRIES: THANK YOU, JUDGE.

13 EXAMINATION

14 BY MR. HUMPHRIES:

15 Q MS. CURTIS, I'M FRAN HUMPHRIES. I'M THE DEPUTY
16 SOLICITOR HERE IN LEXINGTON. I'LL BE TRYING THIS CASE FOR
17 THE STATE, ALONG WITH TOM CHASE, WHO IS SEATED HERE, AND
18 SOLICITOR DONNIE MYERS. I'VE JUST GOT A COUPLE OF BRIEF
19 QUESTIONS.

20 YOU -- WHEN MS. FULLWOOD ASKED YOU ABOUT THE
21 DEATH PENALTY AND YOUR ABILITY TO IMPOSE EITHER DEATH OR
22 LIFE, BUT PARTICULARLY THE DEATH PENALTY, I THINK YOU
23 INDICATED TO HER AT THAT TIME THAT IT WOULD BE -- THAT YOU
24 HAD GIVEN IT A LOT OF THOUGHT IN THE PAST, THAT IT WOULD BE
25 A CASE-BY-CASE -- IT WOULD BE DETERMINED ON A CASE-BY-CASE

1 BASIS---

2 A RIGHT.

3 Q ---AND YOU WOULD CONSIDER THE MITIGATING
4 CIRCUMSTANCES AND THEN SAID JUST ALL THE FACTS?

5 A RIGHT.

6 Q WHEN YOU SAY JUST ALL THE FACTS, ARE YOU ALSO
7 INDICATING THAT YOU WOULD CONSIDER AS WELL THE AGGRAVATING
8 CIRCUMSTANCES IN CONNECTION---

9 A CERTAINLY, CERTAINLY---

10 Q ---WITH THE MITIGATING CIRCUMSTANCES---

11 A ---I MEAN, IT CERTAINLY WOULD NOT BE A DECISION TO BE
12 TAKEN LIGHTLY.

13 Q SURE.

14 A I WOULD CERTAINLY TAKE EVERYTHING INTO CONSIDERATION.

15 Q AND KNOWING THAT YOU WOULD RECEIVE THE DEFENDANT,
16 GARY DUBOSE TERRY, INTO THE PENALTY PHASE, HAVING BEEN
17 CONVICTED OF MURDER AND BURGLARY AND CRIMINAL SEXUAL
18 CONDUCT AND ANY OTHER CHARGE, PERHAPS, THAT THE STATE MIGHT
19 BRING AT THAT TIME, YOU COULD STILL LISTEN TO ADDITIONAL
20 EVIDENCE REGARDING AGGRAVATION AND ALL THE EVIDENCE IN
21 MITIGATION BEFORE DETERMINING WHAT YOUR VERDICT SHOULD BE?

22 A YES, SIR, I BELIEVE SO.

23 Q AND YOU WOULD WANT TO DO THAT?

24 A CERTAINLY.

25 Q YOU ARE SAYING THEN, MS. CURTIS, THAT YOU COULD BE

0661

1 FAIR AND IMPARTIAL BOTH TO THE STATE AND TO THE DEFENSE IN
2 THIS CASE?

3 A YES, SIR.

4 Q AND THAT YOU WOULD LISTEN TO ALL THE EVIDENCE, LISTEN
5 TO THE LAW AS THE JUDGE CHARGED YOU AND AFTER HEARING ALL
6 THE EVIDENCE AND LISTENING TO THE CHARGE ON THE LAW, RENDER
7 A VERDICT EITHER FOR DEATH OR LIFE DEPENDING ON THE FACTS
8 AND CIRCUMSTANCES?

9 A YES, SIR.

10 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

11 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

12 MS. FULLWOOD: NO, YOUR HONOR.

13 THE COURT: FROM THE STATE?

14 MR. HUMPHRIES: NO, SIR.

15 THE COURT: MS. CURTIS, I FIND THAT YOU ARE
16 QUALIFIED TO SERVE AS A POTENTIAL JUROR IN THIS CASE AND
17 WITH THAT QUALIFICATION, I'M GOING TO INSTRUCT YOU THAT YOU
18 ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW JURORS,
19 FAMILY, FRIENDS OR ANYONE ELSE AND ALSO IF ANYONE SHOULD
20 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, THAT YOU
21 SHOULD GATHER AS MUCH INFORMATION ABOUT THAT INDIVIDUAL AS
22 YOU POSSIBLY CAN AND REPORT IT TO ME IMMEDIATELY.

23 ALSO, YOU ARE TO REFRAIN FROM READING, WATCHING
24 OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.
25 ALL I WOULD WANT YOU TO CONSIDER IN THIS MATTER IS WHAT YOU

1 SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING
2 LESS.

3 I'M GOING TO SEND YOU AWAY AND ASK THAT YOU BE
4 BACK HERE IN THE MORNING WITH YOUR BAGS PACKED AT 9:30 A.M.
5 PLEASE LEAVE THOSE IN YOUR CAR. IF YOU ARE CHOSEN AS A
6 JUROR, THEN YOU WOULD BE TAKEN TO YOUR MOTEL ALONG WITH
7 YOUR LUGGAGE BY THE JURY CUSTODIANS AND IF YOU ARE NOT
8 SELECTED, THEN YOU WOULD BE SENT HOME AND WE WOULD THANK
9 YOU FOR YOUR PARTICIPATION.

10 THE JUROR: OKAY.

11 THE COURT: THANK YOU VERY MUCH. WE'LL SEE YOU
12 IN THE MORNING AT 9:30.

13 THE JUROR: THANK YOU.

14 (WHEREUPON, THE JUROR WAS EXCUSED
15 AT THIS TIME.)

16 THE COURT: ALL RIGHT. I FIND THAT THIS JUROR,
17 MS. CURTIS, IS QUALIFIED PURSUANT TO SECTION 16-320 OF OUR
18 CODE.

19 WE'LL TAKE A BREAK.

20 (RECESS.)

21 THE BAILIFF: ALL RISE. COURT IS IN SESSION.

22 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

23 THE COURT: ALL RIGHT. JUROR NUMBER 248, MS.
24 MICKENS.

25 LOURINE YOUNG MICKENS,

0663

1 (JUROR NUMBER 248, BLACK FEMALE,
2 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
3 EXAMINATION
4 BY THE COURT:
5 Q GOOD MORNING, MS. MICKENS.
6 A GOOD MORNING.
7 Q HOW ARE YOU?
8 A I'M ALL RIGHT.
9 Q ALL RIGHT. YOU ARE LOURINE YOUNG MICKENS, IS THAT
10 CORRECT?
11 A YES, SIR.
12 Q NOW, YOU UNDERSTAND THAT YOU HAVE BEEN PLACED UNDER
13 OATH FOR THESE PROCEEDINGS THIS MORNING?
14 A YES, SIR.
15 Q AND YESTERDAY BEFORE YOU LEFT THE COURT HOUSE, I GAVE
16 YOU SOME INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS THIS
17 CASE WITH ANYONE AND THAT IF ANYONE ATTEMPTED TO CONTACT
18 YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT THAT TO
19 ME AND ALSO THAT YOU WERE TO REFRAIN FROM READING, WATCHING
20 OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE AND
21 HAVE THERE BEEN ANY VIOLATIONS OF MY INSTRUCTIONS?
22 A NO, SIR.
23 Q NOW, MS. MICKENS, I'M GOING TO ASK YOU SOME QUESTIONS
24 AND THEREAFTER ONE OF MR. TERRY'S ATTORNEYS WILL ASK YOU
25 SOME QUESTIONS AND ONE OF THE SOLICITORS WILL ASK YOU SOME

1 QUESTIONS. KEEP IN MIND THAT WE ARE NOT IN ANY WAY
2 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE KIND
3 OF CASE THAT WE'RE DEALING WITH THIS WEEK, IT'S NECESSARY
4 THAT WE ASK YOU SOME QUESTIONS. KEEP IN MIND THAT THERE
5 ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS THAT YOU ARE
6 GOING TO BE ASKED. IF YOU WOULD JUST ANSWER THEM OPENLY
7 AND HONESTLY AND FULLY. AND ALSO KEEP IN MIND, THAT NO ONE
8 IS CHALLENGING THE VIEW THAT YOU MIGHT HAVE. WE JUST NEED
9 TO KNOW WHAT THAT VIEW IS.

10 ALSO, I WOULD TELL YOU THAT YOU'RE PROBABLY GOING
11 TO BE ASKED SOME QUESTIONS THAT YOU HAVE NEVER BEEN ASKED
12 TO CONSIDER BEFORE. SO PLEASE LISTEN VERY CAREFULLY TO ALL
13 OF THE QUESTIONS THAT ARE PRESENTED TO YOU.

14 A OKAY.

15 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
16 ABOUT OVER THE NEXT FEW MINUTES WILL BE THE WORD PENALTY,
17 BUT THE MERE FACT THAT I EVEN TALK ABOUT OR MENTION THE
18 WORD PENALTY DOES NOT INDICATE ANYTHING ABOUT THE
19 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
20 INNOCENT. YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT IF YOU WERE
23 A JUROR IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW,
24 ACCEPT AND APPLY THE LAW THAT I WOULD INSTRUCT YOU AS THE
25 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH

0665

1 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

2 A YES, SIR.

3 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
4 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

5 A YES, SIR.

6 Q NOW, IN A CRIMINAL CASE, MS. MICKENS, THE STATE HAS
7 THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE BURDEN OF
8 PROOF THAT THE STATE MUST MEET IS TO PROVE EACH ELEMENT OF
9 THE CRIMES WITH WHICH THE PERSON IS CHARGED BEYOND A
10 REASONABLE DOUBT. NOW, A DEFENDANT HAS ABSOLUTELY NO
11 BURDEN OR RESPONSIBILITY TO PROVE HIMSELF INNOCENT. YOU
12 UNDERSTAND THAT?

13 A YES, SIR.

14 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
15 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
16 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

17 A YES, SIR.

18 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
19 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND AS A
20 RESULT OF THAT, I THINK THAT I TOLD YOU YESTERDAY THAT THE
21 TRIAL IS BASICALLY TWO TRIALS IN ONE.

22 THE FIRST PART IS CALLED THE GUILT PHASE; THE
23 SECOND PART THE SENTENCING PHASE. AND DO YOU UNDERSTAND
24 THAT IF YOU WERE A JUROR IN SUCH CASE AND THE JURY FOUND
25 THE DEFENDANT NOT GUILTY OF MURDER IN THE GUILT PHASE, THAT

1 THERE WOULD BE NO NECESSITY TO HAVE A TRIAL OF THE
2 SENTENCING PHASE?

3 A YES, SIR.

4 Q NOW, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
5 IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
6 DO UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING
7 PHASE OF THE TRIAL?

8 A YES, SIR.

9 Q NOW, IN THAT PHASE OF THE TRIAL, MS. MICKENS,
10 EVIDENCE WOULD BE PRESENTED IN THE FORM OF AGGRAVATING
11 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

12 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
13 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
14 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
15 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

16 IN OTHER WORDS, WHEN THESE AGGRAVATING
17 CIRCUMSTANCES ARE COMMITTED IN CONNECTION WITH A MURDER, IT
18 INCREASES OR ADDS TO THE ENORMITY OF THE INJURY OF THAT
19 CRIME OF MURDER. NOW, WHAT I MEAN BY THAT IS A MURDER THAT
20 IS COMMITTED IN CONNECTION WITH THE CRIME OF CRIMINAL
21 SEXUAL CONDUCT AND OR BURGLARY, AS AN EXAMPLE, YOU
22 UNDERSTAND THAT?

23 A YES, SIR.

24 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
25 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL

0667

1 ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE
2 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
3 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
4 OR RESPONSIBILITY.

5 NOW, WHAT I MEAN AS AN EXAMPLE OF MITIGATING
6 CIRCUMSTANCES COULD BE AS FOLLOWS: THE MURDER WAS
7 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
8 MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF THE
9 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
10 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
11 SUBSTANTIALLY IMPAIRED OR THE JURY MAY CONSIDER THE AGE OR
12 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. DO
13 YOU UNDERSTAND THOSE EXAMPLES OF MITIGATING CIRCUMSTANCES?

14 A YES, SIR.

15 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
16 JUROR IN THAT SITUATION, THE SENTENCING PHASE OF THE TRIAL,
17 AND THE JURY HAS PREVIOUSLY IN THE GUILT PHASE FOUND THE
18 DEFENDANT GUILTY OF MURDER, COULD YOU, DEPENDING UPON THE
19 PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE, INCLUDING
20 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW AS I
21 WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
22 SENTENCE OF LIFE IMPRISONMENT?

23 A YES, SIR.

24 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
25 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF

1 THAT CASE, INCLUDING AGGRAVATING AND MITIGATING
2 CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT YOU AT THE
3 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

4 A NO, SIR.

5 Q NOT UNDER ANY CIRCUMSTANCES?

6 A NO, SIR.

7 Q IF I INSTRUCTED YOU THAT THE LAW OF THIS STATE WOULD
8 BE THAT YOU WOULD HAVE TO CONSIDER ALL OF THE TESTIMONY AND
9 EVIDENCE INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES
10 AND THAT YOU WOULD RETURN EITHER A SENTENCE OF LIFE IN
11 PRISON OR A SENTENCE OF DEATH, WOULD YOU BE UNABLE TO EVEN
12 CONSIDER THE DEATH PENALTY?

13 A NO, SIR.

14 Q YOU WOULD BE UNABLE TO DO THAT?

15 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
16 THIS TIME.)

17 Q THANK YOU, MA'AM.

18 MR. STONE.

19 MR. STONE: THANK YOU, YOUR HONOR. JUST A FEW
20 QUESTIONS.

21 EXAMINATION

22 BY MR. STONE:

23 Q MS. MICKENS, MY NAME IS DUFFIE STONE. I REPRESENT
24 MR. TERRY OVER HERE. HAVE YOU EVER BEEN A WITNESS TO A
25 CRIMINAL TRIAL, EVER BEEN IN HERE?

0669

1 A NO.

2 Q KIND OF AN INTIMIDATING KIND OF THING, ISN'T IT?

3 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT

4 THIS TIME.)

5 Q OKAY---

6 THE COURT: YOU NEED TO ANSWER OUT LOUD IF YOU

7 WOULD, PLEASE, MA'AM, SO THAT WE CAN ALL HEAR YOU---

8 THE JUROR: ALL RIGHT.

9 MR. STONE: THIS LADY HERE IS TAKING DOWN

10 EVERYTHING YOU SAY AND SHE CAN'T HEAR YOU UNLESS YOU SPEAK.

11 A I UNDERSTAND.

12 Q YOU'RE KIND OF NERVOUS TODAY?

13 A NO, SIR.

14 Q OKAY. WELL, I AM. SO IT'S OKAY. ALL RIGHT. WHAT I

15 NEED YOU TO DO IS JUST THINK OF THIS AS A JOB THAT YOU

16 HAVE.

17 A YES, SIR.

18 Q IF YOU ARE SELECTED AS A JUROR, YOUR JOB WOULD BE TO

19 SIT IN THIS JURY BOX AND FIND THE FACTS, OKAY. FIND WHAT

20 HAPPENED, MAY BE SOME AGGRAVATING CIRCUMSTANCES, MAY BE

21 SOME MITIGATING CIRCUMSTANCES. THE JUDGE IS THE JUDGE OF

22 THE LAW. NOW, HE TELLS YOU WHAT THE LAW IS AND YOU HAVE TO

23 TAKE THAT EVEN IF YOU DON'T LIKE IT. YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q YOUR JOB IS TO LISTEN AND TO PAY ATTENTION. CAN YOU

1 LISTEN AND PAY ATTENTION?

2 A YES, SIR.

3 Q OKAY. COULD YOU TAKE THE LAW AS THE JUDGE TOLD YOU?

4 A YES, SIR.

5 Q EVEN IF YOU DIDN'T LIKE IT. I MEAN, EVEN IF THAT LAW
6 WAS SOMETHING THAT WAS DIFFERENT THAN WHAT YOU THOUGHT IT
7 WAS, YOU COULD TAKE THAT AS YOUR JOB TO LISTEN TO THE JUDGE
8 AND CONSIDER THAT LAW?

9 A YES, SIR.

10 Q OKAY. PART OF THE LAW THAT THE JUDGE MAY INSTRUCT
11 YOU IS THAT YOU ARE TO CONSIDER GOOD THINGS AND BAD THINGS
12 ABOUT THE CRIME AND ABOUT THE PEOPLE INVOLVED. YOU
13 UNDERSTAND THAT?

14 A YES, SIR.

15 Q OKAY. AND YOU COULD CONSIDER THOSE THINGS IF THE
16 JUDGE TOLD YOU YOU HAD TO?

17 A YES, SIR.

18 Q OKAY. HE ALSO WOULD TELL YOU THAT YOU SHOULD
19 CONSIDER OR HAD TO CONSIDER GIVING SOMEBODY LIFE IN PRISON
20 OR GIVING HIM DEATH. COULD YOU DO THAT AS WELL?

21 A YES, SIR.

22 MR. HUMPHRIES: I'M GOING TO OBJECT. THE FORM OF
23 THE QUESTION AND IT'S AN INCOMPLETE STATEMENTS AS TO
24 CONSIDERING---

25 THE COURT: I'M GOING -- I UNDERSTAND THAT AND

0671

1 I'M GOING TO INSTRUCT THE LAWYERS THAT YOU ARE TO
2 APPROPRIATELY ADDRESS THE WAY THAT THE LAW READS AND IT'S
3 TO BE ABLE TO RETURN A VERDICT OF ONE OR THE OTHER.

4 MR. STONE: OKAY.

5 THE JUDGE, AS HE TOLD YOU EARLIER. HE WOULD
6 INSTRUCT YOU THERE WERE SOME AGGRAVATING AND MITIGATING
7 CIRCUMSTANCES THAT YOU NEEDED TO PAY ATTENTION TO?

8 THE JUROR: YES, SIR.

9 Q THAT YOU NEED TO UNDERSTAND, RIGHT?

10 A YES, SIR.

11 Q AND I THINK YOU UNDERSTOOD MY QUESTION EARLIER, BUT
12 THE JUDGE WILL ALSO TELL YOU THAT YOU HAVE TO CONSIDER AND
13 THAT YOU MAY HAVE TO COME BACK WITH A VERDICT OF EITHER
14 LIFE OR DEATH. COULD YOU DO THAT?

15 A YES, SIR.

16 Q OKAY. AND EVEN THOUGH YOU MAY NOT LIKE THAT ONE WAY
17 OR THE OTHER, IF YOU AND ELEVEN OTHER PEOPLE AGREE, COULD
18 YOU COME BACK WITH A VERDICT THAT SAYS GARY TERRY SHOULD
19 RECEIVE LIFE IN PRISON?

20 A YES, SIR.

21 Q OKAY. AND SIMILARLY -- SIMILARLY, IF YOU AND ELEVEN
22 OTHER PEOPLE AGREE, COULD YOU COME BACK WITH A VERDICT THAT
23 SAYS THAT HE SHOULD RECEIVE THE DEATH PENALTY?

24 A UNDER THE CIRCUMSTANCES OF THAT, YES, SIR.

25 Q OKAY. IN OTHER WORDS, UNDER THE CIRCUMSTANCES YOU

1 WOULD HAVE TO LISTEN TO, YOU COULD STILL DO THAT?

2 A YES.

3 Q OKAY. NOW, IN SOUTH CAROLINA, THEY ALSO REQUIRE THAT

4 YOU SIGN YOUR NAME ON THE VERDICT FORM IF YOU FIND DEATH,

5 DOES THAT GIVE YOU ANY PROBLEM?

6 A YES, SIR.

7 Q OKAY. IT'S MORE DIFFICULT BECAUSE YOU HAVE TO SIGN

8 YOUR NAME?

9 A YES, SIR.

10 Q OKAY. AND I UNDERSTAND THIS IS AN IMPORTANT

11 DECISION. NO QUESTION ABOUT THAT. BUT BECAUSE IT'S THE

12 LAW IN SOUTH CAROLINA THAT YOU HAVE TO IF YOU FIND THE

13 DEATH PENALTY, YOU HAVE TO SIGN YOUR NAME. IF YOU AND

14 ELEVEN OTHER PEOPLE AGREE THAT DEATH IS THE APPROPRIATE

15 SENTENCE AFTER YOU CONSIDER EVERYTHING, COULD YOU THEN SIGN

16 YOUR NAME ON IT?

17 A YES, SIR.

18 Q THANK YOU, MS. MICKENS. I APPRECIATE YOUR HONESTY.

19 THANK YOU, YOUR HONOR.

20 THE COURT: SOLICITOR.

21 EXAMINATION

22 BY MR. HUMPHRIES:

23 Q MS. MICKENS, I'M FRAN HUMPHRIES WITH THE SOLICITOR'S

24 OFFICE. HOW ARE YOU DOING?

25 A GOOD MORNING.

0673

- 1 Q OKAY. LET ME -- LET ME MAKE SURE WE ARE ALL TALKING
- 2 ABOUT THE SAME THING, OKAY?
- 3 A I UNDERSTAND.
- 4 Q I WANT YOU TO UNDERSTAND RIGHT FROM THE VERY
- 5 BEGINNING THAT THERE IS NO SET OF CIRCUMSTANCES IN THIS
- 6 WHOLE TRIAL THAT IS GOING TO REQUIRE YOU TO RETURN A DEATH
- 7 VERDICT---
- 8 A I UNDERSTAND THAT.
- 9 Q ---OKAY---
- 10 A YES, SIR.
- 11 Q THE JUDGE WILL NEVER TELL YOU IF YOU FIND THERE ARE
- 12 AGGRAVATING CIRCUMSTANCES, THEN YOU MUST RETURN A SENTENCE
- 13 OF DEATH, OKAY?
- 14 A YES, SIR.
- 15 Q THAT AIN'T HAPPENING. THERE WILL ALWAYS BE TWO
- 16 CHOICES. THERE ARE ONLY TWO, LIFE AND DEATH.
- 17 A YES, SIR.
- 18 Q OKAY. NOW, MY QUESTION TO YOU IS AND I'VE HEARD WHAT
- 19 YOU TOLD THE JUDGE AND I'VE HEARD WHAT YOU TOLD MR. STONE,
- 20 BUT REALLY WHAT WE ARE DOING IS WE'RE GOING RIGHT TO THE
- 21 MEAT OF THE MATTER HERE, OKAY. WHAT WE ARE LOOKING FOR OR
- 22 WHAT I NEED TO KNOW FROM YOU IS COULD YOU HONESTLY CONSIDER
- 23 AND UNDER THE RIGHT CIRCUMSTANCES IMPOSE A DEATH VERDICT?
- 24 A YES, SIR.
- 25 Q YOU COULD?

1 A YES, SIR.

2 Q COULD YOU, AFTER LISTENING TO ALL OF THE EVIDENCE,
3 OKAY, AND LISTENING TO THE LAW AS THE JUDGE CHARGES YOU,
4 COULD YOU TO INDICATE YOUR VOTE FOR DEATH, PHYSICALLY SIGN
5 YOUR NAME ON THE DEATH VERDICT? THERE WOULD BE TWELVE
6 LINES. IT'S NOT LIKE IN THE FIRST PART OF THE CASE WHERE
7 JUST THE FOREPERSON WOULD SIGN THEIR NAME TO INDICATE THE
8 VOTE OF THE TWELVE---

9 A YES, SIR.

10 Q ---IN THIS CASE, YOU HAVE TO SIGN YOUR NAME TO
11 INDICATE YOUR VOTE. AND MY QUESTION ABOUT THAT IS THIS.
12 WOULD THE FACT THAT YOU WOULD HAVE TO SIGN YOUR NAME ON THE
13 DEATH VERDICT TO INDICATE THAT THAT, IN FACT, WAS YOUR
14 VERDICT, WOULD THAT FACT SUBSTANTIALLY IMPAIR YOU OR
15 PREVENT YOU FROM FULLY CONSIDERING AND IMPOSING THE DEATH
16 VERDICT?

17 A NO, SIR.

18 Q YOU COULD SIGN YOUR NAME?

19 A YES, SIR.

20 Q OKAY. NOW, HERE'S MY QUESTION THEN. INITIALLY, AS I
21 UNDERSTOOD IT, YOU TOLD MR. STONE THAT YOU COULD NOT SIGN
22 IT, IS THAT RIGHT?

23 A YES, SIR. I WANT TO EXPLAIN THAT.

24 Q OKAY. YOU WANT TO TELL ME A LITTLE BIT MORE ABOUT
25 THAT?

0675

1 A OKAY. THE REASON I SAID THAT I THOUGHT ABOUT THE
2 FACT ME BEING A CHRISTIAN THAT---

3 Q YES, MA'AM.

4 A ---YOU ARE NOT SUPPOSE TO TAKE ANYBODY'S LIFE.

5 Q YES, MA'AM.

6 A SO THAT WAS MY REASON FOR SAYING NO WHEN I, YOU KNOW,
7 WHEN I WAS FIRST ASKED THAT, BUT THEN I CAME BACK -- AND
8 YOU CAME BACK AND THEN EXPLAINED ALL OF THE DETAILS OF
9 IT---

10 Q UH-HUH.

11 A ---THAT MAKES THE DIFFERENCE.

12 Q OKAY. AND I DIDN'T BRING THIS UP, BUT YOU DID. I
13 WAS RAISED HOLINESS, TOO. YOU -- YOU'VE ALREADY REFERENCED
14 OR YOU MENTIONED YOUR RELIGIOUS UPBRINGING---

15 A YES, SIR.

16 Q ---AND YOUR RELIGIOUS BACKGROUND AND IS IT THEN YOUR
17 OPINION THAT BASED ON YOUR -- AND LISTEN, NOBODY IS FUSSING
18 WITH YOU ABOUT YOUR RELIGION, OKAY---

19 A YES, SIR, I UNDERSTAND.

20 Q ---THAT'S YOURS AND YOURS ALONE AND NOBODY IS HERE
21 TRYING TO CHANGE THAT, BUT MY QUESTION IS THIS. WOULD --
22 WOULD YOUR RELIGIOUS CONVICTIONS -- WELL, HERE'S MY
23 QUESTION. GOD'S LAW VERSUS MAN'S LAW. IS IT YOUR OPINION
24 THAT THEY ARE ALWAYS THE SAME?

25 A NO, SIR.

1 Q OKAY. IS IT YOUR OPINION THAT GOD'S LAW IS THAT YOU
2 SHOULD NEVER TAKE ANOTHER MAN'S LIFE?

3 A YES, SIR.

4 Q WHAT IS YOUR POSITION -- WHAT IS YOUR BELIEFS ABOUT
5 WHOSE LAW YOU WOULD FOLLOW GIVEN THAT QUESTION?

6 A I WOULD FOLLOW GOD'S LAW.

7 Q AND IF IT CAME DOWN TO IT, MS. MICKENS, AND YOU HAD
8 TO CHOOSE BETWEEN WHAT YOU BELIEVE IS GOD'S LAW AND; THAT
9 IS, THAT YOU NOT TAKE A MAN'S LIFE AND MAN'S LAW OR THE LAW
10 IN SOUTH CAROLINA AS RELATES TO THE DEATH PENALTY; THAT IS,
11 THAT YOU MUST NOT ONLY BE WILLING TO CONSIDER IT, BUT UNDER
12 THE RIGHT FACTS AND CIRCUMSTANCES ACTUALLY BE ABLE TO
13 IMPOSE THE DEATH VERDICT?

14 A YES, SIR.

15 Q OKAY. COMING DOWN BETWEEN A CHOICE WHICH YOU SAY TO
16 ME NOW AND I BELIEVE YOU IS DIFFERENT; THAT IS, GOD'S LAW
17 VERSUS MAN'S LAW, WHOSE LAW WOULD YOU FOLLOW?

18 A GOD'S LAW.

19 Q ANY QUESTION ABOUT THAT IN YOUR MIND, MS. MICKENS?

20 A NO, SIR.

21 Q NONE WHATSOEVER?

22 A NO, SIR.

23 Q AND WOULD THAT FACT, THE FACT THAT THERE MAY BE SOME
24 CONTRADICTION OR DIFFERENCE BETWEEN GOD'S LAW AND MAN'S LAW
25 AS IT RELATES TO THE DEATH PENALTY, WOULD THAT FACT

0677

1 SUBSTANTIALLY IMPAIR OR PREVENT YOU THEN FROM FULLY
2 CONSIDERING THE DEATH PENALTY AND IMPOSING THE DEATH
3 PENALTY?
4 A YES, SIR.
5 Q IT WOULD?
6 A YES, SIR.
7 Q NOBODY'S FUSSING WITH YOU ABOUT THAT, MS. MICKENS.
8 WE JUST NEEDED TO KNOW.
9 A YES, SIR.
10 Q THANK YOU SO MUCH.
11 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?
12 MR. STONE: JUST BRIEFLY, YOUR HONOR.
13 RE-EXAMINATION
14 BY MR. STONE:
15 Q I UNDERSTAND WHAT YOU'RE SAYING, MS. MICKENS. I
16 APPRECIATE YOUR HONESTY. THE JUDGE ASKED YOU EARLIER COULD
17 YOU TAKE HIS INSTRUCTIONS ABOUT THE LAW AND FOLLOW THEM
18 DESPITE THE FACT THAT YOU MAY NOT AGREE WITH THEM?
19 A UH-HUH.
20 Q AND YOU INDICATED TO HIM THAT YOU COULD DO THAT?
21 A OKAY, I UNDERSTAND WHAT YOU'RE SAYING.
22 Q YOU REALIZE THAT YOU ARE IN A COURT OF LAW NOW?
23 A YES, SIR.
24 Q AND I UNDERSTAND IT MAY BE DIFFICULT FOR YOU, BUT
25 COULD YOU PUT YOUR RELIGION ASIDE AND FOLLOW THE JUDGE'S

1 INSTRUCTIONS AND DO AS HE INSTRUCTS YOU TO DO?

0678

2 A THAT'S A HARD DECISION TO MAKE.

3 Q SURE.

4 A WHEN YOU PUT IT LIKE THAT, BUT---

5 MR. HUMPHRIES: YOUR HONOR, I'M GOING TO OBJECT
6 AT THIS TIME---

7 THE COURT: WELL -- I UNDERSTAND. MA'AM, YOU GO
8 AHEAD AND FINISH YOUR ANSWER.

9 THE JUROR: WELL, BECAUSE OF WHAT I BELIEVE IN
10 AND I DO NOT WANT TO TAKE NO ONE'S LIFE---

11 MR. STONE: SURE.

12 THE JUROR: ---I WOULD HAVE TO STAND ON GOD'S
13 LAW.

14 Q OKAY. THANK YOU, MS. MICKENS.

15 THE COURT: ANYTHING FURTHER FROM THE DEFENSE OR
16 THE STATE?

17 MR. CHASE: NO, SIR.

18 THE COURT: MS. MICKENS, I WANT TO THANK YOU VERY
19 MUCH FOR YOUR PARTICIPATION HERE. YOU HAVE BEEN HERE
20 YESTERDAY AND TODAY AND I HOPE WE HAVEN'T BEEN TOO MUCH OF
21 AN INCONVENIENCE TO YOU---

22 THE JUROR: NO, SIR.

23 THE COURT: ---AND I ALSO WANT TO THANK YOU FOR
24 THE FORTHRIGHTNESS IN YOUR ANSWERS THAT YOU HAVE GIVEN IN
25 RESPONSE TO THESE QUESTIONS THAT HAVE BEEN PROVIDED BY THE

0679

1 COURT AS WELL AS THE LAWYERS REPRESENTING THE VARIOUS
2 SIDES. THIS IS GOING TO CONCLUDE YOUR RESPONSIBILITIES IN
3 THIS MATTER. I'LL SEND YOU AWAY WITH THE THANKS OF
4 LEXINGTON COUNTY AND THE STATE OF SOUTH CAROLINA FOR BEING
5 HERE AND THIS WILL END YOUR RESPONSIBILITIES DURING THIS
6 TERM OF COURT. THANK YOU VERY MUCH.

7 THE JUROR: THANK YOU. Y'ALL HAVE A GOOD DAY.

8 MR. HUMPHRIES: THANK YOU, MA'AM.

9 (WHEREUPON, THE JUROR WAS EXCUSED
10 AT THIS TIME.)

11 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
12 THAT JUROR NUMBER 248, MS. MICKENS, IS NOT QUALIFIED
13 PURSUANT TO SECTION 16-320, AS SHE STATES THAT SHE WOULD BE
14 UNABLE TO FOLLOW THE LAW OF THIS STATE IN CONSIDERING THE
15 PENALTY OF DEATH AND I WOULD CITE SPECIFICALLY TO THE CASE
16 OF THE STATE VERSUS RIDDLE, WHEREIN ALMOST THE EXACT SAME
17 INSTANCE WAS PRESENTED TO THE TRIAL JUDGE IN THAT CASE AND
18 THAT AS A RESULT OF HER RELIGIOUS BELIEFS, SHE WOULD BE
19 UNABLE TO IMPOSE A CAPITAL SENTENCE IN ACCORDANCE WITH HER
20 OATH AND INSTRUCTIONS.

21 ALL RIGHT. JUROR NUMBER 148, DAMMIE B. MARSHALL.

22 DAMMIE B. MARSHALL,

23 (JUROR NUMBER 148, WHITE FEMALE,
24 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

25 EXAMINATION

1 BY THE COURT:

2 Q GOOD MORNING TO YOU, MS. MARSHALL.

3 A GOOD MORNING.

4 Q YOU ARE -- IS THAT DAMMIE?

5 A DAMMIE, YES, SIR.

6 Q DAMMIE MARSHALL AND SHE IS JUROR NUMBER 148.

7 MS. MARSHALL, YOU UNDERSTAND THAT YOU ARE UNDER
8 OATH FOR THESE PROCEEDINGS THIS MORNING?

9 A YES, SIR.

10 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
11 CAUTIONARY INSTRUCTIONS YESTERDAY WHEN YOU LEFT THE COURT
12 HOUSE THAT YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE,
13 IF ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE,
14 THAT YOU WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE
15 TO REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
16 ACCOUNTS CONCERNING THIS CASE. HAVE THERE BEEN ANY
17 VIOLATIONS OF THOSE INSTRUCTIONS?

18 A NO, SIR.

19 Q NOW, I'M GOING TO ASK YOU SOME QUESTIONS AND
20 THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY WILL ASK YOU
21 SOME QUESTIONS AND ONE OF THE SOLICITORS WILL ALSO ASK YOU
22 SOME QUESTIONS.

23 KEEP IN MIND THAT IN NO WAY ARE WE ATTEMPTING TO
24 INVADE YOUR PRIVACY, BUT BECAUSE OF THE PROCEEDINGS THAT WE
25 ARE ABOUT THIS WEEK, IT'S EXTREMELY NECESSARY THAT CERTAIN

0681

1 QUESTIONS ARE ASKED. ALSO KEEP IN MIND THAT THERE ARE
2 ABSOLUTELY NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS.

3 A OKAY.

4 Q PLEASE ANSWER THEM OPENLY AND HONESTLY AND FULLY AND
5 ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING YOUR VIEW.
6 IT'S SIMPLY THAT WE NEED TO KNOW WHAT YOUR VIEW IS IN
7 CERTAIN AREAS.

8 ALSO KEEP IN MIND THROUGHOUT THIS QUESTIONING
9 THAT YOU'RE PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT
10 YOU'VE NEVER BEEN ASKED TO CONSIDER BEFORE. SO LISTEN VERY
11 CAREFULLY TO THE QUESTIONS THAT ARE PRESENTED TO YOU.

12 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
13 TALKING ABOUT OR DISCUSSING TODAY WILL BE THE WORD PENALTY,
14 BUT THE MERE FACT THAT WE EVEN TALK ABOUT PENALTY DOES NOT
15 IN ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
16 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
17 UNDERSTAND THAT?

18 A YES, SIR.

19 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
20 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
21 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
22 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
23 THAT LAW OR THINK IT OUGHT TO BE SOME OTHER WAY?

24 A YES, SIR, I FEEL THAT I COULD.

25 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE

1 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

2 A YES, SIR.

3 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
4 HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT. THE BURDEN
5 OF PROOF THAT THE STATE MUST MEET IS TO PROVE ALL OF THE
6 ELEMENTS OF EACH CRIME THAT IS ALLEGED THAT THE DEFENDANT
7 HAS COMMITTED BEYOND A REASONABLE DOUBT.

8 NOW, A DEFENDANT HAS ABSOLUTELY NO BURDEN OR
9 RESPONSIBILITY TO PROVE HIMSELF INNOCENT. YOU UNDERSTAND
10 THAT?

11 A YES, SIR.

12 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
13 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
14 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

15 A YES, SIR, I FEEL THAT I COULD.

16 Q NOW, YOU UNDERSTAND THAT THIS CASE THAT WE ARE
17 TALKING ABOUT THIS WEEK IS ONE IN WHICH THE STATE OF SOUTH
18 CAROLINA SEEKS THE DEATH PENALTY AND AS A RESULT OF THAT, I
19 THINK THAT I TOLD YOU YESTERDAY THAT THIS IS WHAT WE CALL A
20 BIFURCATED TRIAL, MEANING THAT IT'S SPLIT INTO TWO PARTS.
21 THE GUILT PHASE ON ONE HAND; THE SENTENCING PHASE ON THE
22 OTHER.

23 NOW, DO YOU UNDERSTAND THAT IF YOU ARE ON THE
24 JURY AND THE JURY FOUND THE DEFENDANT NOT GUILTY OF MURDER
25 IN THE GUILT PHASE, THAT THAT WOULD END THE TRIAL?

1 A YES, SIR.

2 Q HOWEVER, IF YOU WERE ON A JURY IN SUCH A CASE AND IF
3 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER IN THE
4 GUILT PHASE, DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE TO
5 THE SENTENCING PHASE OF THE TRIAL?

6 A YES, SIR, I DO.

7 Q NOW, IN THAT PHASE OF THE TRIAL, YOU WOULD BE
8 PRESENTED WITH EVIDENCE OF AGGRAVATING CIRCUMSTANCES AS
9 WELL AS MITIGATING CIRCUMSTANCES.

10 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
11 INCIDENTS, DETAILS, OCCURRENCES WHICH THE GENERAL ASSEMBLY
12 OF OUR STATE HAS DECLARED BY STATUTE WOULD MAKE WORSE; THAT
13 IS, TO AGGRAVATE THE OFFENSE OF MURDER.

14 IN OTHER WORDS, THE PRESENCE OF THAT AGGRAVATING
15 CIRCUMSTANCE INCREASES OR ADDS TO THE ENORMITY OF THE
16 INJURY OF THE CRIME OF MURDER.

17 NOW WHAT I'M TALKING ABOUT AS AN EXAMPLE OF THAT
18 WOULD BE WHERE A MURDER IS COMMITTED IN CONNECTION WITH THE
19 CRIME OF CRIMINAL SEXUAL CONDUCT AND OR BURGLARY. YOU
20 UNDERSTAND THAT?

21 A YES, SIR.

22 Q NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE
23 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH OUR GENERAL
24 ASSEMBLY HAS ALSO DECLARED BY LAW THAT REDUCES THE SEVERITY
25 OF THE CRIME OF MURDER AND MAY BE CONSIDERED AS EXTENUATING

1 OR REDUCING THE DEGREE OF MORAL CULPABILITY OR
2 RESPONSIBILITY. 0684

3 AND WHAT I AM TALKING ABOUT WHEN I SPEAK OF
4 MITIGATING CIRCUMSTANCES WOULD BE -- THAT THE JURY WOULD BE
5 ALLOWED TO CONSIDER WOULD BE THE MURDER WAS COMMITTED WHILE
6 THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
7 EMOTIONAL DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO
8 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
9 CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
10 IMPAIRED; ALSO THE AGE OR MENTALITY OF THE DEFENDANT AT THE
11 TIME OF THE CRIME.. YOU UNDERSTAND WHAT I'M TALKING ABOUT
12 WITH MITIGATING CIRCUMSTANCES?

13 A YES, SIR, I DO.

14 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
15 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
16 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE AND THE
17 LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE,
18 RETURN A SENTENCE OF LIFE IN PRISON?

19 A YES, SIR, I FEEL I COULD.

20 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
21 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
22 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
23 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH?

24 A I FEEL I COULD IF IT WAS WARRANTED.

25 Q NOW, IF YOU ARE CHOSEN AS A JUROR IN THIS CASE, MS.

1 MARSHALL, YOU WOULD BE SEQUESTERED, WHICH IS KIND OF AN
2 EXPENSIVE WORD FOR MEANING HOUSED IN A MOTEL DURING THE
3 TRIAL AND IT WOULD LAST ANYWHERE FROM A WEEK TO TEN DAYS.

4 NOW, EXCEPT FOR THE PERSONAL INCONVENIENCE, WOULD
5 THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
6 YOURSELF OR OF THOSE DEPENDENT UPON YOU?

7 A NO, SIR.

8 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. I'M GOING
9 TO ASK THAT YOU ANSWER ANY QUESTIONS THAT MS. FULLWOOD
10 MIGHT HAVE.

11 A YES, SIR.

12 Q AND IF YOU WOULD, I'M GOING TO GET YOU TO TURN THAT
13 MICROPHONE, THE ONE ON THE RIGHT, AROUND TO YOU JUST A
14 LITTLE BIT.

15 A (WITNESS COMPLIES.)

16 Q GOOD. THANK YOU, MA'AM.

17 A YES, SIR.

18 EXAMINATION

19 BY MS. FULLWOOD:

20 Q GOOD MORNING, MS. MARSHALL.

21 A GOOD MORNING.

22 Q AS JUDGE CLARY TOLD YOU, I'M BETH FULLWOOD. ALONG
23 WITH DUFFIE STONE, I'M REPRESENTING GARY TERRY.

24 IT'S IMPORTANT TO BE ABLE TO ASK YOU THESE
25 QUESTIONS NOW. THIS IS THE ONLY TIME THAT MR. STONE AND I

1 AND MR. HUMPHRIES AND MR. CHASE HAVE A CHANCE TO ASK YOU
2 THESE QUESTIONS. WHILE OUR QUESTIONS ARE PRETTY MUCH GOING
3 TO FOCUS ON YOUR ATTITUDE AND BELIEFS ABOUT THE SECOND
4 TRIAL, WHICH WE MAY OR MAY NOT GET TO, WE HAVE GOT TO ASK
5 YOU NOW BECAUSE THIS IS THE ONLY TIME AVAILABLE---

6 A YES, MA'AM.

7 Q ---BEFORE WE START ANYTHING.

8 A YES, MA'AM.

9 Q WHEN YOU CAME IN HERE YESTERDAY MORNING, DID YOU KNOW
10 THAT YOU HAD BEEN CALLED AS A JUROR IN A CAPITAL CASE?

11 A NO, MA'AM, BUT I KNEW WHAT COURT IT WAS CALLED FOR, I
12 GUESS.

13 Q YOU KNEW IT WAS CRIMINAL COURT?

14 A YES, MA'AM.

15 Q OKAY. HAVE YOU GIVEN MUCH THOUGHT TO THE QUESTION OF
16 CAPITAL PUNISHMENT BEFORE?

17 A YES, MA'AM, I ACTUALLY HAVE.

18 Q OKAY. COULD YOU TELL ME A LITTLE ABOUT IT?

19 A AS I WAS SAYING, I FEEL THERE ARE CERTAIN
20 CIRCUMSTANCES THAT ARE, YOU KNOW, THAT ARE OVERWHELMING
21 THAT LEAD TO AND I FEEL AND---

22 Q EXCUSE ME, THAT LEAD TO WHAT?

23 A I MEAN THAT QUALIFY FOR CAPITAL PUNISHMENT THAT WOULD
24 BE -- THAT I WOULD CONSIDER TO BE A CIRCUMSTANCE THAT
25 CAPITAL PUNISHMENT IS APPROPRIATE FOR IN THAT CIRCUMSTANCE.

0687

1 Q OKAY. COULD YOU EXPOUND A LITTLE BIT MORE ABOUT
2 THAT?

3 A I GUESS USUALLY IN THE DISCUSSION OF CAPITAL
4 PUNISHMENT, IT'S BEEN IN A CASE WHERE A MURDER HAS BEEN
5 COMMITTED OR A VIOLENT CRIME HAS BEEN COMMITTED AND USUALLY
6 IT'S NOT NECESSARILY BEEN IN THE CONTEXT OF MAYBE WHAT THE
7 PUBLIC HAS SEEN OR HEARD, BUT BASICALLY MY PERSONAL
8 FEELINGS ON IT AS TO WHETHER OR NOT THE PERSON WHO IS BEING
9 TRIED IF THEY WERE FOUND GUILTY WHETHER OR NOT I FELT THAT
10 CAPITAL PUNISHMENT WAS -- I GUESS -- HOW AM I'M TRYING TO
11 SAY THIS. CAPITAL PUNISHMENT WAS PERTINENT TO THEIR CASE,
12 PERTINENT TO THE SITUATION DEPENDING ON AND NOT NECESSARILY
13 MAYBE HAVING ALL THE FACTS, BUT WHAT I KNEW OF WHAT WAS
14 HAPPENING THAT I FELT IN SOME CASES THAT, YES, CAPITAL
15 PUNISHMENT WAS THE ONLY WAY TO GO IN MAYBE THAT CASE.

16 Q OKAY. SO DO YOU THINK THAT THERE ARE SOME INSTANCES
17 IN WHICH CAPITAL PUNISHMENT IS THE ONLY WAY TO GO?

18 A IN SOME.

19 Q ALL RIGHT. COULD YOU TELL ME ABOUT THOSE INSTANCES?

20 MR. HUMPHRIES: NO, SIR.

21 THE COURT: I SUSTAIN THE OBJECTION. IF YOU WANT
22 TO REPHRASE YOUR QUESTION, YOU MAY CERTAINLY DO SO.

23 MS. FULLWOOD: YES, SIR. THANK YOU.

24 MS. MARSHALL, YOU UNDERSTAND THAT IF A JURY EVER
25 GOT TO A SECOND TRIAL, DID YOU KNOW THAT THEY WOULD HAVE

1 ALREADY FOUND THE ACCUSED PERSON GUILTY OF MURDER AND ONE
2 OR MORE OTHER CRIMES SUCH AS, SAY, BURGLARY OR RAPE?

3 THE JUROR: NOT IN MAYBE MY PREVIOUS KNOWLEDGE,
4 BUT LISTENING TO THE JUDGE AND THE COURT, THEN, YES, I DO
5 KNOW THAT THEY HAVE ALREADY BEEN FOUND GUILTY OF, AS YOU
6 WOULD SAY, MURDER AND OR BURGLARY OR RAPE.

7 Q OKAY. SO JUDGE CLARY TOLD YOU THAT?

8 A YES.

9 Q OKAY. AND YOU REALIZE THAT IF A JURY EVER GOT TO
10 THAT POINT OF FINDING A PERSON GUILTY, THEY WOULD HAVE
11 FOUND A PERSON GUILTY BEYOND A REASONABLE DOUBT?

12 A YES, MA'AM.

13 Q OKAY. NOW, DO YOU FEEL THAT IN A SITUATION WHERE A
14 PERSON HAS BEEN FOUND GUILTY BEYOND A REASONABLE DOUBT OF
15 MURDER -- LET ME EXPLAIN. YOU MAY ALREADY KNOW, THAT
16 MURDER EXCLUDES ANYTHING LIKE HEAT OF PASSION, SELF-DEFENSE
17 OR AN ACCIDENT. DO YOU UNDERSTAND THAT?

18 A YES, MA'AM.

19 Q OKAY. MURDER MEANS KILLING SOMEONE WITH MALICE?

20 A YES, MA'AM.

21 Q ALL RIGHT. DO YOU THINK IN A SITUATION WHERE A JURY
22 HAS ALREADY DECIDED THAT SOMEBODY IS GUILTY OF MURDER AND
23 ONE OR MORE OTHER CRIMES, THAT THE DEATH PENALTY IS, AS YOU
24 SAY, THE ONLY WAY TO GO?

25 A NOT NECESSARILY.

0689

1 Q OKAY. WOULD YOU WANT TO HEAR MORE EVIDENCE?

2 A PROBABLY.

3 Q PROBABLY?

4 A I MEAN, I WOULD WANT TO KNOW ABOUT THE SITUATION
5 BEFORE I SAID THAT WAS THE ONLY WAY TO GO IN A CASE.

6 Q OKAY. WOULD YOU WANT TO KNOW MORE ABOUT THE
7 SITUATIONS THAN THE CIRCUMSTANCES OF THE CRIME OR CRIMES
8 ITSELF?

9 MR. HUMPHRIES: YOUR HONOR, I'M GOING TO OBJECT
10 TO THE FORM OF THE QUESTION. IT'S AN INCOMPLETE STATEMENT
11 REGARDING THE EVIDENCE THAT WOULD BE SUBMITTED IN THE
12 PENALTY PHASE. I HAVE NOT PREVIOUSLY OBJECTED TO THE FORM,
13 BUT AT THIS TIME, I THINK I NEED TO.

14 THE COURT: I THINK THAT WE NEED TO FOCUS ON THE
15 EVIDENCE THAT WOULD BE PRESENTED IN THAT STAGE OF THE
16 TRIAL, THE TYPE, AGGRAVATING, MITIGATING---

17 MS. FULLWOOD: YES, SIR.

18 THE COURT: ---AND MOVE ALONG IN THAT DIRECTION.

19 MS. FULLWOOD: OKAY.

20 WELL, MS. MARSHALL, IF YOU HAD FOUND SOMEONE
21 GUILTY OF MURDER AND OTHER CRIMES, WOULD YOU WANT TO HEAR
22 EXTRA EVIDENCE IN AGGRAVATION OF THE PUNISHMENT AND IN
23 MITIGATION OF THE PUNISHMENT BEFORE YOU MADE UP YOUR MIND?

24 THE JUROR: I THINK I'M FOLLOWING YOUR QUESTION.
25 I'M NOT SURE.

1 MR. HUMPHRIES: YOUR HONOR, AND LET ME INTERPOSE
2 -- INTERPOSE THIS OBJECTION. IT'S NOT WHAT YOU WANT TO
3 HEAR, BUT WILL YOU CONSIDER EVIDENCE IN AGGRAVATION---

4 THE COURT: I'LL SUSTAIN THE OBJECTION AND ASK
5 YOU TO REPHRASE THE QUESTION.

6 MS. FULLWOOD: IN A SITUATION WHERE YOU HAD FOUND
7 SOMEONE GUILTY OF MURDER AND OTHER CRIMES, WOULD YOU
8 CONSIDER ADDITIONAL EVIDENCE IN AGGRAVATION; THAT IS, TO
9 MAKE IT WORSE AND IN MITIGATION TO MAKE IT LESS SEVERE?

10 A I THINK, YES, THAT I WOULD CONSIDER TESTIMONY IN
11 AGGRAVATION AND MITIGATION.

12 Q THAT'S RIGHT. YOU WOULD CONSIDER?

13 A YES, MA'AM.

14 Q OKAY. AND EVEN AFTER YOU HAD CONVICTED SOMEONE OF
15 MURDER, AFTER YOU HAD HEARD THAT ADDITIONAL EVIDENCE, COULD
16 YOU IMPOSE A LIFE SENTENCE?

17 A I FEEL IF THE CIRCUMSTANCES WARRANTED IT, YES, MA'AM,
18 I COULD.

19 Q AND DON'T GET ME WRONG. NEITHER I NOR ANYBODY ELSE
20 IS TRYING TO PEN YOU DOWN AND GET YOU TO COMMIT ONE WAY OR
21 THE OTHER BECAUSE OBVIOUSLY YOU COULDN'T AT THIS STAGE?

22 A YES, MA'AM.

23 Q AND ON THE OTHER HAND, IF YOU FOUND SOMEBODY GUILTY
24 OF MURDER AND HAD CONSIDERED EVIDENCE IN AGGRAVATION AND
25 MITIGATION, COULD YOU CONSIDER IMPOSING A DEATH SENTENCE?

0691

1 A I FEEL IF THE CIRCUMSTANCES LED TO IT, YES, MA'AM, I
2 COULD.

3 Q OKAY. NOW, ONE OF THE PARTICULARITIES OF OUR LAW IS
4 THAT WHEN A JURY DECIDES THAT THE DEATH PENALTY IS THE
5 RIGHT SENTENCE, EVERY JUROR MUST SIGN A SENTENCING FORM
6 STATING THAT THAT IS THEIR INDIVIDUAL VERDICT.

7 IF YOU WERE A JUROR IN A CAPITAL CASE AND HAD
8 MADE THE DECISION THAT THE DEATH SENTENCE WAS THE RIGHT
9 VERDICT, COULD YOU SIGN YOUR NAME TO SUCH A FORM?

10 A YES, MA'AM, I COULD.

11 Q OKAY. MS. MARSHALL, THANK YOU SO MUCH.

12 A THANK YOU, MA'AM.

13 THE COURT: SOLICITOR.

14 EXAMINATION

15 BY MR. HUMPHRIES:

16 Q MS. MARSHALL, JUST ONE QUESTION---

17 A YES, SIR.

18 Q ---AND THAT'S THIS. COULD YOU, AS A JUROR, LISTEN TO
19 ALL THE EVIDENCE PARTICULARLY IN THE PENALTY PHASE, BOTH IN
20 AGGRAVATION AND MITIGATION, NOT MAKING UP YOUR MIND UNTIL
21 YOU'VE HEARD ALL OF THE EVIDENCE AND THE LAW AS THE JUDGE
22 CHARGED YOU AND AT THAT TIME RETURN A VERDICT OF EITHER
23 LIFE OR DEATH GIVEN THE FACTS AND CIRCUMSTANCES OF THE
24 CASE?

25 A YES, SIR, I FEEL I COULD.

1 Q AND COULD YOU BE FAIR AND IMPARTIAL BOTH TO THE STATE
2 OF SOUTH CAROLINA AND THE DEFENDANT, GARY DUBOSE TERRY, IN
3 THIS CASE?

4 A YES, SIR, I FEEL THAT I COULD.

5 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

6 A THANK YOU, SIR.

7 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

8 MS. FULLWOOD: NO, YOUR HONOR.

9 THE COURT: FROM THE STATE?

10 MR. HUMPHRIES: NO, SIR.

11 THE COURT: MS. MARSHALL, I WANT TO THANK YOU
12 VERY MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AS WELL AS
13 TODAY AND I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
14 POTENTIAL JUROR IN THIS CASE.

15 WITH THAT QUALIFICATION, I'M GOING TO REMIND YOU
16 OF THE CAUTIONARY INSTRUCTIONS THAT YOU ARE NOT TO DISCUSS
17 THIS CASE WITH YOUR FAMILY, FRIENDS, FELLOW JURORS OR
18 ANYONE ELSE.

19 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
20 CONCERNING THIS CASE, I WANT YOU TO REPORT THAT TO ME
21 IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER AND I
22 WOULD DEAL WITH THAT ACCORDINGLY.

23 THE JUROR: YES, SIR.

24 THE COURT: AND, FURTHERMORE, I'M GOING TO ASK
25 THAT YOU CONTINUE TO REFRAIN FROM READING, WATCHING OR

0693

1 LISTENING TO ANY NEWS REPORTS CONCERNING THIS CASE.

2 THE JUROR: YES, SIR.

3 THE COURT: SIMPLY PUT, IF YOU ARE SELECTED AS A
4 JUROR IN THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IS
5 WHAT YOU SEE AND HEAR IN THIS COURTROOM. ABSOLUTELY
6 NOTHING MORE OR NOTHING LESS.

7 NOW, WITH THAT INSTRUCTION, I'M GOING TO SEND YOU
8 AWAY FROM THE COURT HOUSE AND TELL YOU THAT YOU NEED TO GO
9 HOME AND START PACKING YOUR BAGS BECAUSE YOU NEED TO BE
10 BACK HERE IN THE MORNING AT 9:30 A.M.

11 THE JUROR: OKAY.

12 THE COURT: PLEASE LEAVE YOUR BAGGAGE IN YOUR
13 VEHICLE. IF YOU ARE SELECTED TO SERVE ON THIS CASE, THEN
14 THE JURY CUSTODIANS WOULD SEE THAT YOU ARE PROPERLY, YOU
15 AND YOUR BELONGINGS, ARE PROPERLY HOUSED IN THE MOTEL THAT
16 WOULD BE YOUR HOME FOR THE DURATION OF THE TRIAL.

17 IF YOU ARE NOT SELECTED, THEN YOU WOULD BE SENT
18 AWAY WITH OUR THANKS TOMORROW FOR PARTICIPATING IN OUR
19 PROCESS AND YOU WOULD NO LONGER BE NEEDED DURING THE TERM
20 OF THIS -- DURING THIS TERM OF COURT. SO I'LL LOOK FORWARD
21 TO SEEING YOU IN THE MORNING AT 9:30 A.M.

22 THE JUROR: YES, SIR.

23 THE COURT: THANK YOU VERY MUCH. YOU ARE
24 EXCUSED.

25 THE JUROR: THANK YOU, SIR.

1 (WHEREUPON, THE JUROR WAS EXCUSED
2 AT THIS TIME.)

3 THE COURT: LET THE RECORD REFLECT THAT JUROR
4 NUMBER 148, DAMMIE B. MARSHALL, IS QUALIFIED TO SERVE AS A
5 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
6 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
7 AMENDED.

8 JUROR NUMBER 68, JEANETTE E. DAVIS.

9 JEANETTE E. DAVIS,

10 (JUROR NUMBER 68, WHITE FEMALE,
11 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

12 EXAMINATION

13 BY THE COURT:

14 Q GOOD MORNING, MS. DAVIS.

15 A GOOD MORNING.

16 Q MS. DAVIS, YOU ARE JEANETTE E. DAVIS, JUROR NUMBER
17 68, CORRECT?

18 A THAT'S CORRECT.

19 Q NOW, MS. DAVIS, YOU UNDERSTAND THAT YOU ARE UNDER
20 OATH FOR THESE PROCEEDINGS TODAY?

21 A YES.

22 Q AND YESTERDAY AFTERNOON WHEN I SENT YOU AWAY FROM THE
23 COURT HOUSE, I GAVE YOU CERTAIN INSTRUCTIONS THAT YOU WERE
24 NOT TO SPEAK WITH ANYONE ABOUT THIS CASE, NOR WAS ANYONE TO
25 SPEAK TO YOU ABOUT IT AND ALSO THAT YOU WERE TO REFRAIN

0695 1 FROM READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
2 CONCERNING THIS CASE. HAVE THERE BEEN ANY VIOLATIONS OF
3 THOSE INSTRUCTIONS?

4 A NO.

5 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
6 THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY WILL ASK YOU
7 SOME QUESTIONS, AS WELL AS ONE OF THE SOLICITORS.

8 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
9 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
10 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S NECESSARY
11 THAT WE ASK YOU CERTAIN QUESTIONS.

12 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
13 ANSWERS TO MY QUESTIONS OR TO ANYONE ELSE'S QUESTIONS.
14 ALSO, PLEASE JUST ANSWER OPENLY AND HONESTLY AND FULLY AND
15 ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING YOUR VIEW. WE
16 JUST NEED TO KNOW WHAT YOUR VIEW IS. ALSO KEEP IN MIND
17 THAT THROUGHOUT THIS QUESTIONING, THAT YOU ARE PROBABLY
18 GOING TO BE POSED SOME QUESTIONS THAT YOU HAVE NEVER EVEN
19 CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO THE
20 QUESTIONS AS THEY ARE PRESENTED TO YOU.

21 NOW, DURING THE NEXT FEW MINUTES, WE ARE GOING TO
22 BE TALKING ABOUT THE WORD PENALTY, BUT THE MERE FACT THAT I
23 EVEN MENTION THAT WORD DOES NOT IN ANY WAY INDICATE
24 ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN
25 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

1 A YES.

2 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU WERE A
3 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
4 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
5 JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH
6 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

7 A UH-HUH, YES.

8 Q NOW, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
9 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

10 A YES.

11 Q NOW, MS. DAVIS, IN A CRIMINAL CASE, THE STATE OF
12 SOUTH CAROLINA HAS THE BURDEN OF PROVING GUILT. THE BURDEN
13 OF PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS
14 OF EACH CRIME BEYOND A REASONABLE DOUBT. A DEFENDANT HAS
15 NO BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND
16 THAT?

17 A YES.

18 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
19 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
20 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

21 A YES.

22 Q NOW, YOU UNDERSTAND THAT THE CASE WE ARE SPEAKING OF
23 THIS WEEK IS ONE IN WHICH THE STATE OF SOUTH CAROLINA SEEKS
24 THE DEATH PENALTY?

25 A YES.

0697

1 Q AS A RESULT OF THAT, I THINK THAT I TOLD YOU
2 YESTERDAY THAT THIS IS WHAT WE CALL A BIFURCATED TRIAL,
3 MEANING THAT IT'S DIVIDED INTO TWO PARTS.

4 THE FIRST PHASE IS THE GUILT PHASE. THE SECOND
5 PHASE IS THE SENTENCING PHASE. IF YOU WERE A JUROR IN THAT
6 GUILT PHASE AND THE JURY RETURNED A VERDICT OF NOT GUILTY
7 AS TO THE CRIME OF MURDER, DO YOU UNDERSTAND THAT THERE
8 WOULD BE NO NEED FOR THE SECOND PART, THE SENTENCING PHASE,
9 OF THAT TRIAL?

10 A YES.

11 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
12 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
13 YOU DO UNDERSTAND THAT YOU WOULD THEN MOVE INTO THE
14 SENTENCING PHASE?

15 A YES.

16 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
17 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
18 AS MITIGATING CIRCUMSTANCES.

19 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
20 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
21 ASSEMBLY OF OUR STATE HAS DECLARED BY STATUTE WOULD MAKE
22 WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

23 IN OTHER WORDS, WHEN A MURDER IS COMMITTED THAT
24 IS ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE -- AN
25 AGGRAVATING CIRCUMSTANCE IT INCREASES OR ADDS TO THE INJURY

1 OF THE CRIME OF MURDER.

2 AN EXAMPLE OF THAT WOULD BE A MURDER THAT IS
3 COMMITTED IN CONJUNCTION WITH THE CRIME OF CRIMINAL SEXUAL
4 CONDUCT AND OR BURGLARY. DO YOU UNDERSTAND THAT?

5 A YES.

6 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
7 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
8 THE GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
9 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
10 EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY OR
11 RESPONSIBILITY.

12 WHAT I AM TALKING ABOUT WHEN I SAY MITIGATING
13 CIRCUMSTANCES WOULD BE THAT A MURDER WAS COMMITTED WHILE
14 THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
15 EMOTIONAL DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO
16 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
17 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
18 IMPAIRED; ALSO THE AGE OR MENTALITY OF THE DEFENDANT AT THE
19 TIME OF THE CRIME TO BE CONSIDERED. YOU UNDERSTAND WHAT
20 I'M TALKING ABOUT WHEN WE SPEAK OF MITIGATING
21 CIRCUMSTANCES?

22 A UH-HUH.

23 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
24 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
25 THE PARTICULAR FACTS AND CIRCUMSTANCES INCLUDING

0699

1 AGGRAVATING AND MITIGATING CIRCUMSTANCES OF THAT CASE AND
2 THE LAW, AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE
3 CASE, RETURN A SENTENCE OF LIFE IN PRISON?

4 A YES.

5 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
6 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
7 INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES OF THAT
8 CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION
9 OF THE CASE, RETURN A SENTENCE OF DEATH?

10 A YES.

11 Q NOW, MS. DAVIS, IF YOU ARE CHOSEN TO SERVE AS A JUROR
12 IN THIS CASE, YOU WOULD BE SEQUESTERED, MEANING HOUSED IN A
13 MOTEL DURING THE DURATION OF THE TRIAL. I DON'T KNOW HOW
14 LONG IT'S GOING TO LAST, BUT MY BEST ESTIMATE AT THE
15 OUTSIDE LENGTH OF THE TRIAL IS SEVEN TO TEN DAYS. IT COULD
16 BE LESS THAN THAT. EXCEPT FOR THE PERSONAL INCONVENIENCE
17 THAT YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO
18 THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT
19 ON YOU?

20 A NO.

21 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS. MR.
22 STONE WILL POSE SOME QUESTIONS TO YOU NOW.

23 EXAMINATION

24 BY MR. STONE:

25 Q HELLO, MS. DAVIS.

1 A MORNING.

2 Q MY NAME IS DUFFIE STONE AND I, ALONG WITH MS.
3 FULLWOOD HERE, WHO I THINK YOU HAVE ALREADY BEEN INTRODUCED
4 TO BEFORE, REPRESENT GARY TERRY, DOWN AT THE VERY END OF
5 THE TABLE.

6 I'VE READ YOUR SUMMARY, THE INFORMATION THEY SENT
7 YOU AND ASKED YOU TO FILL IN---

8 A UH-HUH.

9 Q ---I JUST WANT TO ASK YOU A FEW QUESTIONS. YOU'VE
10 GOT A SON AND A DAUGHTER, IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q WHAT DO THEY DO?

13 A MY SON RUNS A BUSINESS THAT WAS MY HUSBAND'S AND HE
14 HAS STEPPED INTO MY HUSBAND'S POSITION.

15 Q WHAT BUSINESS IS THAT?

16 A IT'S AN ELECTRIC MOTOR AND REPAIR.

17 Q OKAY.

18 A WE REPAIR ELECTRICAL -- INDUSTRIAL MOTORS AND SELL
19 MOTORS, NEW MOTORS.

20 Q IS THAT HERE IN LEXINGTON?

21 A IT'S IN WEST COLUMBIA.

22 Q WEST COLUMBIA?

23 A UH-HUH.

24 Q OKAY. WHAT DOES YOUR DAUGHTER -- WHAT ABOUT YOUR
25 DAUGHTER, WHAT DOES SHE DO?

0701

- 1 A SHE RUNS A BUSINESS CALLED THE FIRM IN IRMO. IT'S AN
2 AEROBIC EXERCISE---
- 3 Q IT'S THE EXERCISE PLACE?
- 4 A UH-HUH. IT'S IN THE KROGER SHOPPING CENTER.
- 5 Q OKAY. ALL RIGHT.
- 6 A SHE OWNS THE BUSINESS.
- 7 Q DOES SHE?
- 8 A YES, SHE DOES.
- 9 Q OKAY. ALSO, ON YOUR QUESTIONNAIRE, I THINK YOU HAD
10 INDICATED YOU HAD BEEN ON A CIVIL AND A CRIMINAL JURY
11 BEFORE, IS THAT RIGHT? DID I READ THAT RIGHT?
- 12 A YES, UH-HUH. I THINK THAT'S WHAT YOU WOULD CALL IT.
- 13 Q OKAY. WHAT WAS THAT ABOUT? I DON'T MEAN THE
14 PARTICULAR CASE, BUT WAS THAT -- DO YOU REMEMBER IF IT WAS
15 CRIMINAL OR CIVIL?
- 16 A THE CITY OF LEXINGTON. IT WAS A DRUNK DRIVING CASE.
- 17 Q OKAY.
- 18 A AND THEN THE COUNTY OF LEXINGTON WAS A CONTESTED
19 WILL.
- 20 Q OH, I SEE. AND YOU SAT ON BOTH OF THOSE?
- 21 A YES.
- 22 Q OKAY. WHAT WE ARE GOING TO HAVE TODAY AND THROUGHOUT
23 THIS NEXT WEEK IS A LITTLE BIT DIFFERENT FROM EITHER ONE OF
24 THOSE?
- 25 A I UNDERSTAND.

1 Q AND PLEASE UNDERSTAND THAT I'M NOT TRYING TO TELL YOU
2 ANYTHING, YOU PROBABLY UNDERSTAND. I JUST WANT TO MAKE
3 SURE THAT WE ARE ALL ON THE SAME PAGE.

4 WHAT THE JUDGE TOLD YOU A LITTLE BIT ABOUT BEFORE
5 IS THERE MAY BE A POTENTIAL TWO CASES OR ACTUALLY TWO
6 TRIALS IN THIS. THE FUNNY THING ABOUT THIS AND THE
7 DIFFICULT THING ABOUT IT FROM THE STANDPOINT OF THE LAWYERS
8 IS WE HAVE TO SIT UP HERE AND ASK YOU QUESTIONS ABOUT
9 SOMETHING THAT MAY NOT EVER HAPPEN, THAT BEING THE
10 SENTENCING PHASE. DO YOU UNDERSTAND THAT?

11 A YES.

12 Q BECAUSE IF YOU FIND MR. TERRY -- IF YOU'RE SITTING ON
13 THE JURY AND YOU FIND HIM NOT GUILTY OF MURDER, WE DON'T
14 HAVE A SENTENCING PHASE AND THAT'S NOT SOMETHING WE HAVE TO
15 WORRY ABOUT. YOU UNDERSTAND?

16 A YES, SIR.

17 Q OKAY. BUT I'VE GOT TO ASK YOU THESE QUESTIONS SO
18 PLEASE EXCUSE THEM, BUT WE'RE GOING TO -- I WANT TO ASK YOU
19 SPECIFICALLY ABOUT THE DEATH PENALTY CASE. THE WHOLE IDEA
20 OF THE DEATH PENALTY.

21 HAVE YOU THOUGHT ABOUT THE DEATH PENALTY BEFORE
22 AND WHETHER OR NOT IT SHOULD BE SOMETHING THAT'S PROPER IN
23 SOUTH CAROLINA?

24 A YES.

25 Q WHAT -- WHAT DO YOU THINK ABOUT THAT IF YOU DON'T

0703

1 MIND TELLING ME?

2 A I GUESS EVERYONE HAS MIXED FEELINGS ABOUT IT. AND I
3 DO TO SOME EXTENT. I -- I FEEL PEOPLE SHOULD BE PUNISHED
4 FOR THEIR CRIMES, BUT I -- I WOULD BE MORE FOR LETHAL
5 INJECTION THAN ELECTROCUTION. I FEEL THAT'S INHUMANE.

6 Q OKAY. IN A DEATH PENALTY CASE, THE ONLY DECISION YOU
7 WOULD ACTUALLY HAVE TO MAKE, AS A JUROR, WOULD BE WHETHER
8 OR NOT IT'S A LIFE SENTENCE OR DEATH SENTENCE---

9 A RIGHT.

10 Q ---AND THE FACT THAT IT MAY BE ELECTRIC CHAIR AND
11 LETHAL---

12 A UH-HUH.

13 Q ---I THINK THE JUDGE, IN FACT, HAS ALREADY EXPLAINED
14 IT---

15 A YES.

16 Q ---BOTH OF THOSE ARE AVAILABLE?

17 A YES.

18 Q BUT YOUR DECISION IS JUST WHETHER OR NOT IT'S LIFE OR
19 DEATH. DO YOU UNDERSTAND THAT?

20 A YES, I DO.

21 Q OKAY. NOW -- EXCUSE ME, I APOLOGIZE. IF YOU WERE
22 SITTING ON A SENTENCING PHASE, IF YOU WERE SITTING ON A
23 JURY AS A SENTENCING-PHASE JUROR---

24 A UH-HUH.

25 Q ---YOU HAVE ALREADY DECIDED THAT SOMEBODY IS GUILTY

1 OF MURDER AND ANOTHER CRIME AND THAT CRIME COULD BE RAPE,
2 IT COULD BE BURGLARY, IT COULD BE BOTH. YOU UNDERSTAND
3 THAT?

4 A YES.

5 Q AND MURDER IN SOUTH CAROLINA IS NOT AN
6 ACCIDENTAL-TYPE KILLING, IT'S NOT A KILLING THAT IS IN THE
7 HEAT OF THE MOMENT. IT IS A MURDER. YOU UNDERSTAND THAT?

8 A YES.

9 Q IF YOU ARE SITTING IN A SENTENCING PHASE AS A JUROR
10 AND YOU'VE ALREADY DECIDED AND I'M NOT TALKING ABOUT GUILT
11 OR INNOCENCE ANYMORE---

12 A UH-HUH.

13 Q ---YOU'VE ALREADY DECIDED SOMEBODY IS GUILTY OF
14 MURDER AND THEY ARE GUILTY OF RAPE AND THEY MAY EVEN BE
15 GUILTY OF BURGLARY---

16 A RIGHT.

17 Q ---COULD YOU STILL GIVE THAT PERSON UNDER CERTAIN
18 CIRCUMSTANCES LIFE IN PRISON?

19 A YES.

20 Q OKAY. AND UNDER THE SAME CIRCUMSTANCES, IF YOU HEARD
21 THE CIRCUMSTANCES, IF YOU FELT LIKE IT WAS THE RIGHT CASE,
22 COULD YOU ALSO GIVE THAT PERSON THE DEATH PENALTY?

23 A YES.

24 Q OKAY. YOUR RELIGION I NOTICED WAS EPISCOPALIAN?

25 A THAT'S CORRECT.

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1 Q OKAY. I'M NOT AN EPISCOPALIAN SO I APOLOGIZE FOR
2 ASKING. DO YOU KNOW IF YOUR CHURCH OR HAVE YOU DISCUSSED
3 THIS WITH ANY OF YOUR CHURCH MEMBERS THEIR POSITION ON THE
4 DEATH PENALTY?

5 A NOT ABSOLUTELY, NO.

6 Q OKAY. SO THAT DOESN'T -- THAT'S NOT---

7 A NO, THAT -- I THINK EVERYONE THINKS FOR THEMSELVES
8 REALLY.

9 Q YES, MA'AM. AND THAT'S ALL WE'D ASK YOU TO DO.

10 A UH-HUH.

11 Q THANK YOU. I APPRECIATE IT.

12 THE COURT: MR. CHASE.

13 MR. CHASE: MAY IT PLEASE THE COURT, YOUR HONOR.

14 THE COURT: YES, SIR.

15 EXAMINATION

16 BY MR. CHASE:

17 Q HELLO, MS. DAVIS.

18 A MORNING.

19 Q HOW ARE YOU DOING?

20 A WELL, THANK YOU. AND YOU?

21 Q FINE. THANKS.

22 MY NAME IS TOM CHASE AND I, ALONG WITH DEPUTY
23 SOLICITOR FRAN HUMPHRIES, WILL BE TRYING THIS CASE WITH
24 SOLICITOR MYERS, WILL BE THE PROSECUTORS INVOLVED IN THE
25 CASE. I JUST HAVE A COUPLE OF QUESTIONS FOR YOU.

1 A ALL RIGHT.

2 Q WHEN YOU WERE DESCRIBING -- I DIDN'T QUITE HEAR YOU
3 FINISH ONE OF YOUR STATEMENTS AND SO I JUST WANT TO GO BACK
4 OVER ONE POINT---

5 A UH-HUH.

6 Q ---WHEN YOU SAID THAT YOU HAD MIXED FEELINGS A LITTLE
7 BIT LIKE EVERYONE ELSE, YOU SAID ON THE ONE HAND THAT YOU
8 FEEL THAT EVERYONE SHOULD BE PUNISHED FOR THEIR CRIMES,
9 THEN YOU KIND OF TAILED-OFF ON THE END THERE. COULD YOU
10 JUST REPEAT THAT FOR ME? WHAT YOU SAID AFTER THAT? YOU
11 SAID---

12 A I DON'T REMEMBER.

13 Q ---YOU SAID EVERYONE SHOULD -- YOU FELT THAT
14 PEOPLE---

15 A YES.

16 Q ---SHOULD BE PUNISHED FOR THEIR CRIMES---

17 A YES.

18 Q ---AND THEN YOU SAID, BUT ON THE OTHER HAND, I THINK,
19 AND THEN YOU STARTED TO SAY SOMETHING ELSE AND I DON'T
20 RECOLLECT. I COULDN'T HEAR WHAT YOU SAID.

21 A WELL, I DON'T REMEMBER WHAT I SAID.

22 Q WELL, WE CAN JUST MOVE ON.

23 IN THESE TYPE CASES, BASICALLY, WHAT WE ARE
24 LOOKING FOR IS A JUROR WHO CAN BE FAIR AND IMPARTIAL BOTH
25 TO THE STATE OF SOUTH CAROLINA AND ALSO TO THE DEFENDANT,

0707

1 WHO IN THIS CASE IS GARY DUBOSE TERRY. DO YOU FEEL LIKE
2 YOU CAN BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

3 A YES.

4 Q BASICALLY, STARTING ON EVEN GROUND FOR BOTH SIDES?

5 A YES.

6 Q AND THAT IF YOU WERE TO BE A JUROR IN A CASE AND YOU
7 MOVED INTO THAT SECOND STAGE, THAT PENALTY PHASE, THAT YOU
8 WOULD CONSIDER NOT ONLY THE EVIDENCE IN MITIGATION, BUT
9 ALSO THE EVIDENCE IN AGGRAVATION AND THAT YOU WOULD TAKE
10 ALL OF THAT IN BEFORE YOU MADE A DECISION ON WHAT THE
11 APPROPRIATE SENTENCE WOULD BE? WOULD YOU BE THAT TYPE
12 JUROR?

13 A YES, I WOULD CERTAINLY TRY.

14 Q AND THAT AFTER DOING THAT, YOU COULD CONSIDER AND
15 IMPOSE, DEPENDING ON THE CIRCUMSTANCES, EITHER A SENTENCE
16 OF LIFE OR DEATH DEPENDING ON THE SITUATION?

17 A YES.

18 Q THANK YOU. THAT'S ALL WE CAN ASK OF YOU.

19 A YOU'RE WELCOME.

20 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

21 MR. STONE: NO, SIR, THANK YOU.

22 THE COURT: FROM THE STATE?

23 MR. CHASE: NO, SIR.

24 THE COURT: MS. DAVIS, I WANT TO THANK YOU VERY
25 MUCH FOR YOUR PARTICIPATION HERE IN OUR PROCESS. I FIND

1 THAT YOU ARE QUALIFIED TO SERVE AS A POTENTIAL JUROR IN
2 THIS CASE AND WITH THAT QUALIFICATION, I'M GOING TO REMIND
3 YOU OF THE CAUTIONARY INSTRUCTIONS THAT YOU ARE NOT TO
4 DISCUSS THIS CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS
5 OR ANYONE ELSE.

6 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
7 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
8 INFORMATION ABOUT THAT PERSON AS YOU POSSIBLY CAN OR
9 PERSONS AND REPORT THAT TO ME IMMEDIATELY BECAUSE THAT IS A
10 VERY SERIOUS MATTER---

11 THE JUROR: YES, SIR.

12 THE COURT: ---AND I WOULD DEAL WITH THAT
13 ACCORDINGLY.

14 ALSO, I'M INSTRUCTING YOU THAT YOU ARE TO
15 CONTINUE TO REFRAIN FROM READING, WATCHING OR LISTENING TO
16 ANY NEWS ACCOUNTS CONCERNING THIS CASE.

17 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IF
18 YOU WERE A JUROR IN THIS CASE IS WHAT YOU WOULD SEE AND
19 HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING LESS.

20 NOW, WITH THAT INSTRUCTION, I'M GOING TO BE
21 SENDING YOU AWAY AND FURTHER ADVISING YOU THAT YOU NEED TO
22 GO HOME AND START PACKING YOUR BAGS BECAUSE YOU NEED TO BE
23 BACK HERE IN THE MORNING AT 9:30 A.M. THAT'S WEDNESDAY
24 MORNING AT NINE-THIRTY.

25 PLEASE LEAVE YOUR LUGGAGE, BAGGAGE IN YOUR CAR.

0709

1 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN THE JURY
2 CUSTODIANS WOULD SEE THAT YOU AND YOUR BELONGINGS ARE
3 PROPERLY DELIVERED TO THE MOTEL WHERE YOU WOULD BE
4 THROUGHOUT THE DURATION OF THE TRIAL.

5 IF YOU ARE NOT SELECTED AS A JUROR IN THE CASE,
6 THEN WE WOULD SEND YOU ALONG YOUR WAY WITH OUR VERY BEST
7 WISHES AND THANKS FOR PARTICIPATING IN OUR PROCESS.

8 I'LL LOOK FORWARD TO SEEING YOU IN THE MORNING AT
9 NINE-THIRTY.

10 THE JUROR: ALL RIGHT.

11 THE COURT: THANK YOU VERY MUCH.

12 (WHEREUPON, THE JUROR WAS EXCUSED
13 AT THIS TIME.)

14 THE COURT: LET THE RECORD REFLECT THAT JUROR
15 NUMBER 68, JEANETTE E. DAVIS, IS QUALIFIED TO SERVE AS A
16 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
17 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
18 AMENDED.

19 ALSO, LET ME INFORM THE LAWYERS THAT I HAVE
20 RECEIVED A MESSAGE FROM THE CLERK, FROM JERI, THAT MS.
21 MILNE, JUROR NUMBER 164, HAS TRIED SEVERAL FRIENDS AND
22 RELATIVES. SHE HAS NOT BEEN ABLE TO MAKE APPROPRIATE
23 ARRANGEMENTS FOR HER CHILDREN.

24 NOW, I KNOW MR. HUMPHRIES IS OUT OF THE ROOM SO
25 I'M GOING TO WAIT UNTIL HE GETS BACK IN BEFORE I RULE ON

1 THIS.

2 (WHEREUPON, MR. HUMPHRIES ENTERS
3 THE COURTROOM AT THIS TIME.)

4 THE COURT: MR. HUMPHRIES, I JUST INFORMED THE
5 OTHERS THAT MS. MILNE HAS RESPONDED TO THE CLERK'S OFFICE
6 AND SHE HAS TRIED SEVERAL FRIENDS AND RELATIVES. SHE HAS
7 NOT BEEN ABLE TO MAKE APPROPRIATE ARRANGEMENTS FOR HER
8 CHILDREN AND AS A RESULT OF THAT, I AM GOING TO EXCUSE HER
9 FROM FURTHER CONSIDERATION IN THIS CASE AND ANYONE ELSE
10 THAT HAS THAT PROBLEM WILL BE AFFORDED THE SAME TREATMENT.

11 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

12 (WHEREUPON, COURT'S EXHIBIT NUMBER
13 2-A, NOTE/JUROR MILNE, MARKED FOR THE RECORD AT THIS TIME.)

14 THE COURT: SANDRA RUNION, JUROR NUMBER 195.

15 SANDRA J. RUNION,

16 (JUROR NUMBER 195, WHITE FEMALE,
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

18 EXAMINATION

19 BY THE COURT:

20 Q GOOD AFTERNOON, MS. RUNION.

21 A HELLO. HOW ARE YOU?

22 A I'M FINE. THANK YOU VERY MUCH.

23 Q YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH TODAY?

24 A YES, SIR.

25 Q AND YOU ALSO UNDERSTAND THAT I GAVE YOU CERTAIN

0711

1 CAUTIONARY INSTRUCTIONS YESTERDAY THAT YOU WERE NOT TO
2 DISCUSS THIS CASE WITH ANYONE, THAT IF ANYONE ATTEMPTED TO
3 CONTACT YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT
4 THAT TO ME AND ALSO THAT YOU WERE TO REFRAIN FROM READING,
5 WATCHING OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS
6 CASE?

7 A YES, SIR.

8 Q HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

9 A NO, SIR.

10 Q NOW, I'M GOING TO ASK YOU SOME QUESTIONS AND THEN THE
11 DEFENSE, AS WELL AS THE STATE, WILL BE ALLOWED TO ASK SOME
12 QUESTIONS. PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
13 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
14 THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
15 NECESSARY THAT CERTAIN QUESTIONS ARE ASKED. KEEP IN MIND
16 THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE
17 QUESTIONS. JUST BE OPEN, HONEST AND FULLY ANSWER THE
18 QUESTIONS AND ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING
19 THE VIEW THAT YOU MIGHT HAVE. WE JUST NEED TO KNOW WHAT
20 YOUR VIEW IS IN CERTAIN AREAS.

21 ALSO, I WANT YOU TO UNDERSTAND THAT YOU'RE
22 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU'VE NEVER
23 CONSIDERED BEFORE---

24 A OKAY.

25 Q ---SO PLEASE LISTEN VERY CAREFULLY TO THE QUESTIONS

1 THAT ARE POSED TO YOU BY THE COURT AS WELL AS THE LAWYERS.

2 A OKAY.

3 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
4 ABOUT OR SPEAKING ABOUT OVER THE NEXT FEW MINUTES WILL
5 INCLUDE THE WORD PENALTY, BUT THE MERE FACT THAT THAT WORD
6 IS EVEN USED DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT
7 THE DEFENDANT, MR. TERRY. HE IS PRESUMED TO BE INNOCENT IN
8 THE LAW. DO YOU UNDERSTAND THAT?

9 A YES, SIR.

10 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU WERE A
11 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
12 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
13 JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
14 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

15 A YES, SIR.

16 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
17 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

18 A YES, SIR.

19 Q NOW, IN A CRIMINAL CASE, MS. RUNION, THE STATE HAS
20 THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE BURDEN OF
21 PROOF THAT THE STATE MUST MEET IS TO PROVE EACH ELEMENT OF
22 THE CRIMES WITH WHICH THE DEFENDANT IS CHARGED BEYOND A
23 REASONABLE DOUBT.

24 A DEFENDANT HAS ABSOLUTELY NO BURDEN OR
25 RESPONSIBILITY TO PROVE HIMSELF INNOCENT. YOU UNDERSTAND

0713

1 THAT?

2 A YES.

3 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
4 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
5 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
6 GUILTY?

7 A YES.

8 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
9 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AGAINST THE
10 DEFENDANT AND YOU UNDERSTAND FROM YESTERDAY THAT I
11 EXPLAINED THAT THIS IS WHAT WE CALL A BIFURCATED
12 PROCEEDING. BASICALLY, IT HAS TWO TRIALS IN ONE.

13 A OKAY.

14 Q AND DO YOU UNDERSTAND THAT IF YOU WERE A JUROR IN THE
15 FIRST PHASE OF THE TRIAL, WHICH IS CALLED THE GUILT PHASE,
16 AND THE JURY RETURNED A VERDICT OF NOT GUILTY AS TO THE
17 CRIME OF MURDER, THAT THERE WILL BE NO NECESSITY TO HAVE A
18 SECOND PHASE?

19 A I UNDERSTAND.

20 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE, A DEATH
21 PENALTY CASE, AND IF THE JURY HAD FOUND THE DEFENDANT
22 GUILTY OF MURDER IN THE FIRST PHASE, THE GUILT PHASE, DO
23 YOU UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING
24 PHASE OF THE TRIAL?

25 A I DO.

1 Q NOW, IN THAT SENTENCING PHASE, EVIDENCE WOULD BE
2 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES, AS WELL
3 AS MITIGATING CIRCUMSTANCES.

4 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
5 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
6 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
7 AGGRAVATE THE CRIME OF MURDER.

8 IN OTHER WORDS, WHEN THE CRIME OF MURDER OCCURS
9 IN CONJUNCTION WITH AN AGGRAVATING CIRCUMSTANCE, IT
10 INCREASE THE ENORMITY, ADDS TO THE INJURY OF THE MURDER.
11 WHAT WE ARE TALKING ABOUT THERE BY WAY OF EXAMPLE WOULD BE
12 A MURDER COMMITTED IN CONJUNCTION WITH THE CRIME OF
13 CRIMINAL SEXUAL CONDUCT AND OR BURGLARY. YOU UNDERSTAND
14 THAT?

15 A YES, SIR.

16 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
17 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH, ONCE AGAIN,
18 OUR GENERAL ASSEMBLY HAS DECLARED BY STATUTE REDUCES THE
19 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
20 EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY OR
21 RESPONSIBILITY.

22 AND WHEN WE TALK ABOUT MITIGATING CIRCUMSTANCES,
23 I'M SPEAKING OF INCIDENTS WHERE A MURDER WAS COMMITTED
24 WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
25 EMOTIONAL DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO

0715

1 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
2 CONDUCT TO THE REQUIREMENTS OF THE LAW WERE SUBSTANTIALLY
3 IMPAIRED OR THE AGE OR MENTALITY OF THE DEFENDANT AT THE
4 TIME OF THE CRIME. DO YOU UNDERSTAND WHAT I'M TALKING
5 ABOUT WHEN I SPEAK OF MITIGATING CIRCUMSTANCES?

6 A YES, SIR.

7 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION AND WE ARE
8 TALKING ABOUT THE SENTENCING PHASE, COULD YOU, DEPENDING
9 UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE,
10 INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE
11 LAW, AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE,
12 RETURN A SENTENCE OF LIFE IN PRISON?

13 A YEAH.

14 Q IF YOU WERE A JUROR IN THAT PARTICULAR -- IN THAT
15 SITUATION, COULD YOU, DEPENDING UPON THE PARTICULAR FACTS
16 AND CIRCUMSTANCES OF THAT CASE AND THE LAW, AS I WOULD
17 INSTRUCT YOU AT THE CONCLUSION OF THE CASE, INCLUDING
18 CONSIDERING AGGRAVATING AND MITIGATING CIRCUMSTANCES,
19 RETURN A SENTENCE OF DEATH?

20 A YES.

21 Q NOW, MS. RUNION, IF YOU ARE CHOSEN TO SERVE ON THIS
22 JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
23 HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I REALLY
24 DON'T KNOW HOW LONG IT'S GOING TO LAST, BUT MY BEST
25 ESTIMATE IS OF A WEEK TO TEN DAYS AT THE OUTSIDE. IT COULD

1 BE A SHORTER THAN THAT. I JUST HAVE NO IDEA OF KNOWING.
2 EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU WOULD
3 SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
4 WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

5 A NO.

6 Q THANK YOU, MA'AM. WOULD YOU PLEASE RESPOND TO MS.
7 FULLWOOD'S QUESTIONS?

8 EXAMINATION

9 BY MS. FULLWOOD:

10 Q GOOD AFTERNOON, MS. RUNION.

11 A HELLO.

12 Q HOW ARE YOU DOING?

13 A FINE. THANK YOU.

14 Q GOOD. AS JUDGE CLARY TOLD YOU, I'M BETH FULLWOOD.
15 ALONG WITH DUFFIE STONE, WE ARE REPRESENTING GARY TERRY,
16 WHO IS SEATED AT THE END OF THE TABLE OVER THERE.

17 A OKAY.

18 Q I KNOW THAT YOU WERE SENT THE JUROR QUESTIONNAIRES
19 AND YOU'VE RETURNED YOURS AND TO START OUT, I WOULD LIKE TO
20 FOLLOW UP A LITTLE BIT WITH SOME OF YOUR ANSWERS.

21 A OKAY.

22 Q YOU NOTICED -- YOU NOTED ON YOUR QUESTIONNAIRE THAT
23 YOU HAD BEEN THE VICTIM OF A BREAK-IN?

24 A THAT'S CORRECT.

25 Q YOU HAVE. AND APPARENTLY YOU KNEW IN PRETTY MUCH

0717¹

DETAIL ABOUT THE OUTCOME OF THAT CASE?

2 A YES.

3 Q DID -- WAS THAT A SITUATION WHERE YOU ACTUALLY HAD TO
4 COME INTO COURT AND TESTIFY IN THE CASE?

5 A WE DID NOT HAVE TO TESTIFY, BUT WE WERE HERE IN COURT
6 WHENEVER THAT MATTER WAS BROUGHT BEFORE A JUDGE HERE IN
7 LEXINGTON COUNTY.

8 Q I SEE. WAS THAT VERY LONG AGO?

9 A IT WAS APPROXIMATELY THREE TO FOUR YEARS AGO. THE
10 EXACT DATE I DON'T KNOW.

11 Q OKAY. SO IT WAS A LITTLE WHILE BACK.

12 A YES.

13 Q OKAY. DID THAT EXPERIENCE WITH LAW ENFORCEMENT AND
14 WITH THE COURT SYSTEM ITSELF HAVE YOU WALK AWAY FROM IT
15 WITH ANY KIND OF FEELINGS ABOUT THE CRIMINAL JUSTICE
16 SYSTEM?

17 A I CAN'T SAY THAT I HAD ANY PARTICULAR FEELINGS. I --
18 I---

19 Q IMPRESSIONS? ANYTHING?

20 A (WHEREUPON, THE WITNESS NODS IN THE NEGATIVE AT THIS
21 TIME.)

22 Q OKAY.

23 A THAT'S HARD TO RESPOND TO. I'M NOT CERTAIN EXACTLY
24 WHAT THE ANSWER MIGHT BE. I WAS -- I SUPPOSE THAT I WAS
25 GLAD THAT THAT PERSON WAS FOUND AND WITH THE INFORMATION

1 THAT WAS GIVEN, THAT HE WAS GIVEN A TRIAL AND WAS TREATED
2 FAIRLY I WOULD PRESUME.

3 Q OKAY. OKAY. WELL, LET ME ASK YOU THIS. BEFORE
4 YESTERDAY, WHEN IT WAS ANNOUNCED THAT EVERYONE HAD BEEN
5 CALLED HERE TO BE POSSIBLE JURORS IN A CAPITAL CASE, HAD
6 YOU EVER GIVEN MUCH THOUGHT TO CAPITAL PUNISHMENT?

7 A NO, NOT REALLY.

8 Q NOT REALLY. EVER HAD ANY DISCUSSIONS WITH FRIENDS OR
9 FAMILY ABOUT IT ONE WAY OR THE OTHER?

10 A NOT IN ANY DETAIL, NO.

11 Q OKAY. WELL, COULD YOU TELL US, JUST IN GENERAL, WHAT
12 YOUR VIEWS ARE ON THE SUBJECT OF CAPITAL PUNISHMENT?

13 A I GUESS THAT WOULD DEPEND UPON WHAT THE CIRCUMSTANCES
14 ARE AND WHAT THE CRIME WAS AND HOW IT WAS INVESTIGATED AND
15 HOW IT WAS -- IF I FELT LIKE THE PERSON WAS, INDEED, GUILTY
16 OR IF THEY WERE INNOCENT, DEPENDING UPON HOW THE CASE WAS
17 PRESENTED.

18 Q OKAY. OKAY. WELL, YOU REMEMBER JUDGE CLARY TOLD YOU
19 THAT THERE -- POSSIBLY THERE COULD BE TWO TRIALS IN A
20 CAPITAL CASE?

21 A YES.

22 Q OKAY. AND YOU KNOW THE REASON FOR THE FIRST TRIAL IS
23 TO DECIDE WHETHER THE PERSON IS GUILTY OR NOT GUILTY?

24 A RIGHT.

25 Q OKAY. AND IT'S ONLY IF A JURY FOUND THE PERSON

0719

- 1 GUILTY OF MURDER AND OTHER CRIMES---
- 2 A CORRECT.
- 3 Q ---THAT THEY WOULD GO INTO THE SECOND TRIAL?
- 4 A YES.
- 5 Q OKAY. AND DO YOU UNDERSTAND THAT WHEN I TALK ABOUT
- 6 THE PERSON BEING FOUND GUILTY OF MURDER, THAT MEANS KILLING
- 7 SOMEONE WITH MALICE?
- 8 A I UNDERSTAND.
- 9 Q IT DOESN'T MEAN SELF-DEFENSE OR ACCIDENT OR HEAT OF
- 10 PASSION?
- 11 A OKAY.
- 12 Q YOU UNDERSTAND THAT?
- 13 A YES.
- 14 Q OKAY. DO YOU BELIEVE THAT BEING GUILTY OF MURDER AND
- 15 OTHER CRIMES ALONE CALLS FOR THE DEATH PENALTY IN EVERY
- 16 CASE?
- 17 A NO.
- 18 MR. HUMPHRIES: OBJECT TO THE FORM OF THE
- 19 QUESTION.
- 20 THE COURT: I SUSTAIN THE OBJECTION.
- 21 MS. FULLWOOD: OKAY. LET ME ASK YOU THIS THEN.
- 22 DO YOU THINK THAT IF YOU WERE A JUROR IN A SECOND
- 23 TRIAL, AFTER YOU HAD HEARD THE EVIDENCE FROM BOTH SIDES AND
- 24 AFTER YOU HAD FOUND, YOU KNOW, IN THE FIRST TRIAL THAT THE
- 25 PERSON WAS GUILTY, IN FACT, OF MURDER AND OTHER CRIMES SUCH

1 AS BURGLARY OR RAPE, COULD YOU VOTE FOR A SENTENCE OF LIFE
2 IN PRISON?

3 A I WANT TO SAY, YES, BUT I WANT TO QUALIFY THAT. THAT
4 IF IT WAS CERTAINLY PROVED TO ME WITH THE GUILTY AND IF
5 THERE WERE ENOUGH CIRCUMSTANCES SURROUNDING THAT, I COULD
6 PROBABLY GO EITHER WAY, LIFE IN PRISON OR FOR THE DEATH
7 PENALTY, DEPENDING UPON THE EXACT FACTS.

8 Q OKAY. OKAY. SO, YOU ARE TRYING TO TELL ME THAT YOU
9 WOULD WANT TO LISTEN TO THE FACTS BOTH WAYS BEFORE YOU MADE
10 UP YOUR MIND?

11 A YES.

12 Q OKAY. SO YOUR MIND -- ARE YOU ALSO TELLING ME THAT
13 YOU WOULDN'T BE GOING INTO A SECOND TRIAL WITH YOUR MIND
14 MADE UP ONE WAY OR THE OTHER AT THAT POINT IN TIME?

15 A YES.

16 Q OKAY. WELL, THAT'S ALL ANYBODY COULD EVER WANT.

17 ONE LAST QUESTION. UNDER THE LAW, IF A JURY IN A
18 SECOND TRIAL DECIDES THAT THE DEATH SENTENCE IS THE RIGHT
19 SENTENCE, EACH MEMBER OF THAT JURY MUST SIGN THEIR NAME TO
20 A SENTENCING FORM INDICATING TO THE COURT THAT THAT IS, IN
21 FACT, THEIR INDIVIDUAL SENTENCE AS WELL AS THEIR VERDICT AS
22 A WHOLE.

23 IF YOU WERE A JUROR IN A CAPITAL CASE AND DECIDED
24 THAT THE DEATH SENTENCE WAS THE APPROPRIATE SENTENCE, WOULD
25 YOU HAVE ANY HESITATION IN ACTUALLY SIGNING THAT FORM?

0721

1 A IF I HAD MADE UP MY MIND WITHOUT A DOUBT THAT THAT
2 WAS THE RIGHT THING TO DO, THEN I WOULD CERTAINLY FOLLOW
3 THROUGH WITH THAT DECISION.

4 Q OKAY. AND THEN YOU COULD SIGN YOUR NAME TO THE FORM?

5 A YES.

6 Q ALL RIGHT, MA'AM. I APPRECIATE YOUR FRANKNESS AND
7 YOUR THOUGHTFULNESS IN ANSWERING MY QUESTIONS.

8 A THANK YOU.

9 Q THANK YOU VERY MUCH.

10 A YES, MA'AM.

11 THE COURT: MR. HUMPHRIES.

12 EXAMINATION

13 BY MR. HUMPHRIES:

14 Q MS. RUNION, MY NAME IS FRAN HUMPHRIES. I'M THE
15 DEPUTY SOLICITOR HERE IN LEXINGTON.

16 A HELLO.

17 Q I, ALONG WITH TOM CHASE AND SOLICITOR MYERS, WILL BE
18 TRYING THIS CASE. I'VE JUST GOT ONE -- WELL YOU ALWAYS
19 HEAR LAWYERS SAY ONE---

20 A ONE QUESTION.

21 Q ---I THINK I'VE GOT ONE QUESTION.

22 A OKAY.

23 Q MAYBE TWO PARTS.

24 MY QUESTION IS THIS. ARE YOU THE KIND OF JUROR
25 WHO IN THAT SECOND PHASE, THAT SECOND TRIAL, WOULD LISTEN

1 TO ALL OF THE EVIDENCE, EVIDENCE IN AGGRAVATION AND
2 EVIDENCE IN MITIGATION, LISTEN TO THE CHARGE AS THE JUDGE
3 CHARGES YOU AND ONLY AFTER THAT, RENDER A VERDICT WHICH IS
4 JUSTICE IN THIS CASE, EITHER LIFE OR DEATH, DEPENDING ON
5 THE FACTS AND CIRCUMSTANCES? ARE YOU THAT TYPE OF JUROR?

6 A YES.

7 Q ARE YOU THE TYPE OF JUROR THAT COULD BE FAIR AND
8 IMPARTIAL BOTH TO THE STATE OF SOUTH CAROLINA AND THE
9 DEFENDANT, GARY DUBOSE TERRY?

10 A YES.

11 Q THAT'S ALL WE CAN ASK OF YOU.

12 THANK YOU, MA'AM.

13 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

14 MS. FULLWOOD: NO, YOUR HONOR.

15 THE COURT: FROM THE STATE?

16 MR. HUMPHRIES: NO, SIR.

17 THE COURT: MS. RUNION, I WANT TO THANK YOU VERY
18 MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AS WELL AS TODAY
19 AND I'M GOING TO INFORM YOU AT THIS TIME THAT YOU ARE
20 QUALIFIED TO SERVE AS A POTENTIAL JUROR IN THIS CASE.

21 WITH THAT QUALIFICATION, I'M GOING TO CONTINUE
22 THE CAUTIONARY INSTRUCTIONS THAT I GAVE YOU YESTERDAY THAT
23 YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW JURORS,
24 FAMILY, FRIENDS OR ANYONE ELSE. AND IF ANYONE SHOULD
25 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, ONCE AGAIN,

0723

1 PLEASE GATHER AS MUCH INFORMATION ABOUT THAT INDIVIDUAL AS
2 YOU POSSIBLY CAN AND REPORT THAT TO ME IMMEDIATELY BECAUSE
3 THAT'S A VERY SERIOUS MATTER.

4 THE JUROR: OKAY.

5 THE COURT: ALSO, I'M GOING TO FURTHER INSTRUCT
6 YOU THAT YOU ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS
7 ACCOUNTS CONCERNING THIS CASE.

8 VERY SIMPLY PUT, ALL I WANT YOU TO DO IF YOU ARE
9 SELECTED AS A JUROR IN THIS CASE IS TO CONSIDER WHAT YOU
10 SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING
11 LESS.

12 NOW, WITH THAT INSTRUCTION, I'M GOING TO BE
13 SENDING YOU AWAY AND ASK THAT YOU GO HOME AND START PACKING
14 YOUR BAGS BECAUSE YOU NEED TO COME BACK IN THE MORNING AT
15 NINE-THIRTY AND AT THAT TIME, IF YOU ARE CHOSEN AS A JUROR,
16 PLEASE LEAVE YOUR BELONGINGS IN YOUR CAR---

17 THE JUROR: OKAY.

18 THE COURT: ---IF YOU ARE CHOSEN AS A JUROR IN
19 THIS CASE, THEN YOU WOULD BE TAKEN BY THE JURY CUSTODIANS,
20 ALONG WITH YOUR BELONGINGS, TO THE MOTEL AND YOU WOULD BE
21 THERE FOR THE DURATION OF THE TRIAL.

22 IN THE EVENT, THAT YOU ARE NOT CHOSEN, THEN WE
23 WOULD THANK YOU VERY MUCH FOR YOUR PARTICIPATION AND SEND
24 YOU ALONG YOUR WAY AND THAT WOULD END YOUR RESPONSIBILITIES
25 IN THIS MATTER.

0724

1 THE JUROR: OKAY.

2 THE COURT: BUT PLEASE BE BACK IN THE MORNING IN
3 THE COURTROOM AT 9:30 A.M. AND WE WILL THEN HOPEFULLY BE
4 ABLE TO PROCEED IN DRAWING A JURY IN THIS CASE.

5 THANK YOU, MA'AM.

6 THE JUROR: THANK YOU.

7 (WHEREUPON, THE JUROR WAS EXCUSED
8 AT THIS TIME.)

9 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
10 THAT JUROR NUMBER 195, SANDRA RUNION, IS QUALIFIED AS A
11 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
12 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
13 AMENDED.

14 JUROR NUMBER 197, CHERYL SANDERS.

15 CHERYL L. SANDERS,

16 (JUROR NUMBER 197, WHITE FEMALE,
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

18 EXAMINATION

19 BY THE COURT:

20 Q GOOD AFTERNOON, MS. SANDERS.

21 A HEY.

22 Q YOU ARE CHERYL SANDERS, JUROR NUMBER 197, CORRECT?

23 A CORRECT.

24 Q NOW, YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH FOR
25 THIS PROCEEDING TODAY?

1 A CORRECT.

0725

2 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
3 INSTRUCTIONS YESTERDAY THAT YOU WERE NOT TO DISCUSS THIS
4 CASE WITH ANYONE. IF ANYONE ATTEMPTED TO CONTACT YOU
5 CONCERNING THIS CASE, THAT YOU WERE TO REPORT THAT TO ME
6 AND ALSO THAT YOU WERE TO REFRAIN FROM READING, WATCHING OR
7 LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE. HAVE
8 THERE BEEN ANY VIOLATIONS OF THOSE INSTRUCTIONS?

9 A NO, SIR.

10 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
11 THEN ONE OF THE LAWYERS FOR THE DEFENDANT AND ONE FROM THE
12 STATE WILL ALSO ASK YOU SOME QUESTIONS.

13 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
15 NATURE OF THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S
16 NECESSARY THAT CERTAIN QUESTIONS ARE ASKED OF YOU.

17 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
18 ANSWERS TO THESE QUESTIONS. PLEASE JUST ANSWER THESE
19 QUESTIONS OPENLY AND HONESTLY AND FULLY AND ALSO PLEASE
20 REMEMBER THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST
21 NEED TO KNOW WHAT YOUR VIEW IS IN CERTAIN AREAS.

22 ALSO, I WANT YOU TO CONSIDER THAT SOME OF THE
23 QUESTIONS THAT YOU MAY BE ASKED, YOU MAY HAVE NEVER
24 CONSIDERED THESE QUESTIONS BEFORE. SO LISTEN CAREFULLY TO
25 THE QUESTIONS THAT ARE POSED TO YOU BY THE COURT AS WELL AS

1 BY THE LAWYERS.

2 NOW AMONG THE THINGS THAT WE ARE GOING TO BE
3 TALKING ABOUT OVER THE NEXT FEW MINUTES WILL BE INCLUDING
4 THE WORD PENALTY, BUT THE MERE FACT THAT I EVEN MENTION
5 THAT WORD DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT THE
6 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
7 INNOCENT. DO YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT IF YOU WERE
10 A JUROR IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW,
11 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
12 JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
13 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

14 A YES, SIR.

15 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
16 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

17 A YES, SIR.

18 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
19 HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT. THE STATE
20 MUST MEET THIS BURDEN OF PROOF BY PROVING EACH ELEMENT OF
21 THE CRIMES WITH WHICH HE IS CHARGED BEYOND A REASONABLE
22 DOUBT. A DEFENDANT HAS ABSOLUTELY NO RESPONSIBILITY OR
23 BURDEN TO PROVE HIMSELF INNOCENT. YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE

0727

1 AND LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE, FIND
2 A DEFENDANT EITHER GUILTY OR NOT GUILTY?

3 A YES, SIR.

4 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
5 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY. AND I
6 THINK THAT I TOLD YOU YESTERDAY AS WELL AS ALL -- AS YOUR
7 COLLEAGUES ON THE JURY, THAT THIS IS A BIFURCATED TRIAL,
8 MEANING THAT IT'S DIVIDED INTO TWO PARTS.

9 THE FIRST PART IS CALLED THE GUILT PHASE AND THEN
10 THE SECOND PART IS CALLED THE SENTENCING PHASE.

11 NOW, IF YOU WERE ON A JURY IN THIS CASE IN THE
12 GUILT PHASE AND THE JURY DETERMINED THAT THE DEFENDANT WAS
13 NOT GUILTY OF MURDER, DO YOU UNDERSTAND THE CASE WOULD END
14 THEN AND THERE WOULD NOT BE A SECOND PROCEEDING?

15 A YES, SIR.

16 Q NOW, IF YOU WERE A JUROR IN SUCH A CASE, A DEATH
17 PENALTY CASE, AND IF THE JURY HAD FOUND THE DEFENDANT
18 GUILTY OF MURDER, YOU DO UNDERSTAND THAT YOU WOULD THEN
19 MOVE TO THE SENTENCING PHASE OF THE TRIAL?

20 A YES, SIR.

21 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
22 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
23 AS MITIGATING CIRCUMSTANCES.

24 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS
25 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL

1 ASSEMBLY OF OUR STATE HAS DECLARED BY STATUTE WOULD MAKE
2 WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

3 IN OTHER WORDS, WHEN THE MURDER IS ACCOMPANIED BY
4 AN AGGRAVATING CIRCUMSTANCE IT INCREASES THE ENORMITY, ADDS
5 TO THE CRIME OR THE INJURY OF THE MURDER. DO YOU
6 UNDERSTAND THAT?

7 A YES, SIR.

8 Q AND YOU UNDERSTAND WHAT I AM TALKING ABOUT IS WHEN A
9 MURDER OCCURS IN CONJUNCTION WITH A CRIME SUCH AS CRIMINAL
10 SEXUAL CONDUCT AND OR BURGLARY?

11 A YES, SIR.

12 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
13 ALSO FACTS, INCIDENTS, DETAILS, OCCURRENCES WHICH, ONCE
14 AGAIN, OUR GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
15 SEVERITY OF THE CRIME OF MURDER AND MAY BE CONSIDER AS
16 EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY OR
17 RESPONSIBILITY.

18 AND WHAT I'M TALKING ABOUT WHEN WE CONSIDER
19 ISSUES OF MITIGATING CIRCUMSTANCES, WHEN A MURDER IS
20 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
21 MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF A
22 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
23 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
24 SUBSTANTIALLY IMPAIRED OR THE AGE OR MENTALITY OF THE
25 DEFENDANT AT THE TIME OF THE CRIME. YOU UNDERSTAND WHAT

0729

- 1 I'M TALKING ABOUT WHEN I MENTION MITIGATING CIRCUMSTANCES?
- 2 A YES, SIR.
- 3 Q NOW, LET'S SUPPOSE FOR A FEW MORE MINUTES THAT YOU
- 4 WERE A JUROR IN THAT SITUATION, THE SENTENCING PHASE, COULD
- 5 YOU, DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
- 6 INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES OF THAT
- 7 CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION
- 8 OF THE TRIAL, RETURN A SENTENCE OF LIFE IN PRISON?
- 9 A YES, SIR.
- 10 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, COULD
- 11 YOU, DEPENDING UPON THE FACTS AND CIRCUMSTANCES OF THAT
- 12 CASE INCLUDING AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
- 13 THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE
- 14 CASE, RETURN A SENTENCE OF DEATH?
- 15 A YES, SIR.
- 16 Q NOW, MS. SANDERS, IF YOU ARE CHOSEN AS A JUROR IN
- 17 THIS CASE, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD
- 18 BE HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I
- 19 DON'T REALLY HAVE ANY WAY OF KNOWING HOW LONG IT WILL LAST,
- 20 BUT I HAVE AN IDEA THAT IT WILL NOT LAST MORE THAN SEVEN TO
- 21 TEN DAYS. IT COULD BE SHORTER THAN THAT. EXCEPT FOR THE
- 22 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
- 23 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
- 24 YOURSELF OR OF THOSE DEPENDENT UPON YOU?
- 25 A NO, SIR.

1 Q THANK YOU, MA'AM, FOR ANSWERING MY QUESTIONS.

2 MR. STONE.

3 MR. STONE: THANK YOU, YOUR HONOR.

4 EXAMINATION

5 BY MR. STONE:

6 Q HEY, MS. SANDERS. MY NAME IS DUFFIE STONE. I KNOW
7 THE JUDGE INTRODUCED US EARLIER, BUT I WANTED TO DO THAT
8 AGAIN.

9 THIS LADY HERE IS BETH FULLWOOD AND TOGETHER WE
10 ARE REPRESENTING MR. GARY TERRY, WHO IS AT THE END OVER
11 HERE.

12 I'VE GOT YOUR QUESTIONNAIRE AND I'VE GONE THROUGH
13 IT SO I'M NOT GOING TO ASK YOU ANY OTHER QUESTIONS ABOUT
14 THAT. JUST A FEW MAYBE TO CLARIFY.

15 WHEN WE MET UP HERE, I GUESS, IT WAS YESTERDAY
16 AND THE JUDGE ASKED VARIOUS PEOPLE TO COME UP AND TALK A
17 LITTLE BIT ABOUT SOME VARIOUS PROBLEMS THAT THEY MAY HAVE,
18 I THINK YOU RESPONDED TO HIS QUESTION CONCERNING FRIENDS IN
19 LAW ENFORCEMENT---

20 A RIGHT.

21 Q ---AM I RIGHT ABOUT THAT? IF I'M NOT, JUST TELL---

22 A YES, SIR.

23 Q ALL RIGHT. WOULD YOU REMIND ME WHAT -- YOU HAD YOUR
24 COUSIN, I THINK, IS THE CORONER?

25 A MY COUSIN WORKS FOR THE LEXINGTON COUNTY CORONER'S

0731

1 OFFICE AND HER HUSBAND IS A PRIVATE INVESTIGATOR FOR
2 LEXINGTON COUNTY.

3 Q OKAY. HE'S AN INVESTIGATOR FOR LEXINGTON COUNTY?

4 A YES, SIR.

5 Q WHAT IS HIS NAME, DO YOU---

6 A CARLISLE MCNAIR.

7 Q OKAY. ANY OTHER CONNECTIONS WITH LAW ENFORCEMENT
8 OTHER THAN THAT?

9 A NO, SIR.

10 Q OKAY. ALL RIGHT. NOW, THE FACT THAT THE LEXINGTON
11 COUNTY SHERIFF'S DEPARTMENT, SOME INVESTIGATORS MAY TESTIFY
12 IN THIS TRIAL, DOES THAT CAUSE YOU ANY PROBLEMS WITH THAT
13 CONNECTION?

14 A NO, SIR.

15 Q ALL RIGHT. THAT'S FAIR.

16 NOW, WHAT THE JUDGE TALKED ABOUT EARLIER AND I'M
17 JUST GOING TO TALK ABOUT IT JUST A FEW MINUTES. THE
18 LAWYERS, WHAT WE HAVE TO DO IS COME UP HERE AND ASK YOU
19 ABOUT SOME QUESTIONS ABOUT SOME THINGS THAT MAY NOT EVEN
20 HAPPEN. WE HAVE GOT TO ASK YOU ABOUT -- WELL, FOR
21 INSTANCE, IF YOU WERE TO FIND -- IF YOU WERE TO SIT ON THE
22 JURY AND FIND SOMEBODY NOT GUILTY, YOU WOULD NEVER HAVE A
23 SENTENCING PHASE. YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q OKAY. BUT WHAT WE HAVE TO ASK YOU UNFORTUNATELY IS

1 COME IN HERE AND ASK YOU ABOUT THE SENTENCING PHASE. THIS
2 OTHER STUFF IS PRETTY COMMON IN CRIMINAL COURT. HAVE YOU
3 EVER BEEN IN CRIMINAL COURT BEFORE AS A WITNESS?

4 A NO, SIR.

5 Q OKAY. IN A NORMAL CRIMINAL SETTING, THE ONLY
6 DETERMINATION IS GUILT OR INNOCENCE.

7 IN A DEATH PENALTY CASE SUCH AS THIS, YOU HAVE TO
8 DETERMINE THAT AND THEN YOU MAY ALSO HAVE TO DETERMINE THE
9 SENTENCE, WHETHER THAT BE LIFE OR DEATH. YOU UNDERSTAND
10 THAT?

11 A YES, SIR.

12 Q OKAY. ODDLY ENOUGH, IN A DEATH PENALTY CASE SUCH AS
13 THIS, WHEN YOU GET TO THE SENTENCING PHASE, YOU'VE ALREADY
14 DETERMINED AT LEAST TWO THINGS. ONE IS THAT SOMEBODY IS
15 GUILTY OF MURDER AND THAT THEY ARE GUILTY OF EITHER RAPE OR
16 BURGLARY OR SOMETHING LIKE THAT, YOU UNDERSTAND?

17 A YES, SIR.

18 Q OKAY. NOW, IN SOUTH CAROLINA -- IF I'M TELLING YOU
19 SOMETHING YOU ALREADY KNOW, JUST IGNORE IT, BUT MURDER IS
20 NOT AN ACCIDENTAL KILLING. IT'S NOT A KILLING IN THE HEAT
21 OF PASSION. IT DOESN'T HAVE ANYTHING TO DO WITH
22 SELF-DEFENSE. MURDER IS WHAT THEY CALL MALICE
23 AFORETHOUGHT, AN UNLAWFUL KILLING WITH MALICE AFORETHOUGHT.
24 DO YOU UNDERSTAND THAT?

25 A YES, SIR.

0733

- 1 Q IN ORDER FOR YOU TO BE IN A SENTENCING PHASE, YOU
2 HAVE ALREADY DETERMINED THAT SOMEBODY HAS MURDERED SOMEONE
3 AND THAT THEY HAVE RAPED THEM OR BURGLARIZED THEM. YOU
4 UNDERSTAND?
- 5 A YES, SIR.
- 6 Q IN THAT SITUATION, WITH NO QUESTION ABOUT THE GUILT,
7 NO QUESTION ABOUT ANY OF THE FACTS THAT YOU HEARD ABOUT IN
8 THAT CASE, COULD YOU THEN RETURN A VERDICT THAT SAYS DEATH?
- 9 A NOT KNOWING IF HE WAS GUILTY OR NOT?
- 10 Q NO. AND THAT'S -- AND I'M SORRY FOR CONFUSING YOU
11 BECAUSE THAT'S WHAT I'M HITTING AT. YOU'VE ALREADY DECIDED
12 GUILT. YOU'RE NOW IN THE SECOND PHASE.
- 13 A UH-HUH.
- 14 Q NO QUESTION ABOUT IT HE'S GUILTY OF MURDER, HE'S
15 GUILTY OF RAPE, MAY EVEN BE GUILTY OF A BURGLARY, OKAY?
- 16 A OKAY.
- 17 Q YOU ARE IN THE SENTENCING PHASE NOW. COULD YOU
18 RETURN A VERDICT FOR DEATH?
- 19 A YES, SIR.
- 20 Q OKAY. ALSO IN THE SAME SITUATION, IF YOU'VE ALREADY
21 DECIDED GUILT, THAT HE'S COMMITTED MURDER AND HE'S
22 COMMITTED RAPE, COULD YOU ALSO IN SOME CIRCUMSTANCES GIVE
23 THAT PERSON LIFE?
- 24 A YES, SIR.
- 25 Q GOOD. OKAY. AND IT DEPENDS ON THE MITIGATION AND

1 THE AGGRAVATION THAT YOU HEAR?

2 A YES, SIR.

3 Q OKAY. THAT'S FAIR.

4 HAVE YOU GIVEN MUCH THOUGHT TO THE DEATH PENALTY
5 BEFORE? HAD ANY DISCUSSIONS WITH ANY FAMILY OR FRIENDS OR
6 ANYTHING LIKE THAT?

7 A NO, NOT REALLY.

8 Q OKAY. ALL RIGHT. DO YOU HAVE ANY PARTICULAR OPINION
9 ABOUT WHETHER OR NOT THAT'S PROPER?

10 A NOT REALLY PROPER, BUT IT DEPENDS ON WHAT THE CRIME
11 IS AND HOW SEVERE.

12 Q AND THE CIRCUMSTANCES THAT HAPPENED ALONG WITH THE
13 CRIME?

14 A RIGHT.

15 Q OKAY. THANK YOU. I APPRECIATE IT. THANK YOU.

16 THE COURT: SOLICITOR.

17 EXAMINATION

18 BY MR. HUMPHRIES:

19 Q MS. SANDERS, I'M FRAN HUMPHRIES. HOW ARE YOU DOING?

20 A I'M FINE.

21 Q I, ALONG WITH MR. CHASE, ARE GOING TO BE ASSISTING
22 DONNIE MYERS IN THE TRIAL OF THE CASE. I'VE JUST GOT ONE
23 QUESTION FOR YOU AND IT RELATES TO REALLY A PROCEDURAL
24 POINT WHICH ACTUALLY HAS SOME MEANING IN THIS CASE AND THAT
25 IS THIS.

6735

1 WE ARE GOING TO ASSUME A LOT OF THINGS TO GET TO
2 MY QUESTION, OKAY. WE ARE GOING TO ASSUME THAT YOU WERE
3 SEATED ON THIS JURY, THAT YOU HEARD THE GUILT PORTION AND
4 THAT YOU, ALONG WITH THE OTHER ELEVEN MEMBERS OF THE JURY,
5 RETURNED A VERDICT OF GUILTY ON MURDER AND THE OTHER
6 CHARGES PRESENTED BY THE STATE, BURGLARY, CRIMINAL SEXUAL
7 CONDUCT AND ANY OTHER CHARGE THAT MAY HAVE BEEN PRESENTED.
8 LET'S ASSUME THAT.

9 A UH-HUH.

10 Q YOU'RE INTO THE SECOND PHASE. YOU'VE HEARD ALL THE
11 EVIDENCE IN AGGRAVATION, ALL THE EVIDENCE IN MITIGATION.
12 YOU AND ALL ELEVEN JURORS DECIDE THAT DEATH IS THE
13 APPROPRIATE VERDICT, OKAY. AND I NEED YOU TO THAT POINT TO
14 ASK THIS QUESTION.

15 OUR LAW REQUIRES, IF THE JURY DETERMINES THAT THE
16 VERDICT SHOULD BE A DEATH, OUR LAW REQUIRES THAT EACH JUROR
17 AFFIX THEIR SIGNATURE TO A DEATH VERDICT FORM.

18 A UH-HUH.

19 Q NOW, MY QUESTION IS SIMPLE. WOULD THE FACT THAT YOU
20 WOULD HAVE TO SIGN YOUR NAME TO THE DEATH VERDICT PROHIBIT
21 YOU FROM FULLY CONSIDERING AND IMPOSING A DEATH VERDICT?

22 A NO, SIR.

23 Q COULD YOU BE FAIR AND IMPARTIAL BOTH TO THE STATE AND
24 THE DEFENSE IN THIS CASE?

25 A YES, SIR.

0736

1 Q WOULD YOU WAIT AND LISTEN TO ALL THE EVIDENCE IN
2 AGGRAVATION AND MITIGATION AND LISTEN TO THE CHARGE ON THE
3 LAW AS THE JUDGE GIVES IT TO YOU BEFORE RENDERING A VERDICT
4 THAT SPEAKS JUSTICE IN THIS CASE, EITHER LIFE OR DEATH?

5 A YES, SIR.

6 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

7 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

8 MR. STONE: NO, SIR. THANK YOU.

9 THE COURT: THE STATE?

10 (NO RESPONSE.)

11 THE COURT: MS. SANDERS, I WANT TO THANK YOU VERY
12 MUCH FOR YOUR PARTICIPATION IN THIS CASE, THE ANSWERS THAT
13 YOU'VE GIVEN THIS MORNING AND ALL THE PARTICIPATION
14 YESTERDAY.

15 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
16 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
17 ONCE AGAIN, COMES CERTAIN INSTRUCTIONS THAT I'M GOING TO
18 HAVE TO GIVE YOU.

19 FIRST OF ALL, YOU ARE REMINDED, ONE AGAIN, THAT
20 YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW JURORS,
21 FAMILY, FRIENDS OR ANYONE ELSE. AND IF ANYONE SHOULD
22 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, I WANT YOU TO
23 GATHER AS MUCH INFORMATION ABOUT THAT INDIVIDUAL OR
24 INDIVIDUALS AS YOU POSSIBLY CAN AND REPORT THAT TO ME
25 IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER.

THE COURT: LET THE RECORD REFLECT THAT JUROR
NUMBER 197, CHERYL L. SANDERS, IS QUALIFIED TO SERVE AS A
POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS

1 AMENDED.

2 JUROR NUMBER 77, MARY A. ELLIS.

3 MARY A. ELLIS,

4 (JUROR NUMBER 77, WHITE FEMALE,

5 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

6 EXAMINATION

7 BY THE COURT:

8 Q GOOD AFTERNOON. YOU ARE MARY ELLIS?

9 A THAT'S CORRECT.

10 Q AND YOU ARE JUROR NUMBER 77?

11 A THAT'S RIGHT.

12 Q MS. ELLIS, YOU UNDERSTAND THAT YOU ARE SWORN FOR
13 THESE PROCEEDINGS HERE TODAY AND YOU ALSO UNDERSTAND THAT I
14 GAVE YOU CERTAIN CAUTIONARY INSTRUCTIONS YESTERDAY THAT YOU
15 WERE NOT TO DISCUSS THIS CASE WITH ANYONE, THAT IF ANYONE
16 ATTEMPTED TO CONTACT YOU, THAT YOU WERE TO NOTIFY ME OF
17 THAT AND ALSO THAT YOU WERE TO REFRAIN FROM READING,
18 WATCHING OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS
19 CASE?

20 A THAT'S CORRECT.

21 Q HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

22 A NO, THEY HAVE NOT.

23 Q NOW, I'M GOING TO ASK YOU SOME QUESTIONS AND THEN THE
24 LAWYERS FOR BOTH SIDES WILL BE ALLOWED TO ASK YOU SOME
25 QUESTIONS. PLEASE UNDERSTAND AND KEEP IN MIND THAT IN NO

0739

1 WAY ARE WE ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE
2 OF THE PROCEDURALS OR THE PROCEEDINGS THAT WE ARE ABOUT
3 THIS WEEK, IT'S VERY NECESSARY THAT CERTAIN QUESTIONS ARE
4 ASKED. KEEP IN MIND ALSO THAT THERE ARE NO RIGHT OR WRONG
5 ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER THEM
6 OPENLY AND HONESTLY AND FULLY. AND ALSO KEEP IN MIND THAT
7 NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW WHAT
8 YOUR VIEW IS IN CERTAIN AREAS.

9 ALSO, I'M GOING TO ADVISE YOU THAT YOU'RE
10 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE
11 NEVER EVEN CONSIDERED BEFORE. SO PLEASE LISTEN VERY
12 CAREFULLY TO THE QUESTIONS THAT I WILL POSE TO YOU AS WELL
13 AS THE LAWYERS.

14 NOW, AMONG THE THINGS THAT YOU AND I ARE GOING TO
15 BE TALKING ABOUT, AS WELL AS THE LAWYERS, OVER THE NEXT FEW
16 MINUTES WILL BE THE WORD PENALTY. AND THE MERE FACT THAT I
17 EVEN MENTION THE WORD PENALTY DOES NOT IN ANY WAY INDICATE
18 ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN
19 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

20 A YES, I DO.

21 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU WERE A
22 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
23 ACCEPT AND APPLY THE LAW THAT I WOULD CHARGE OR INSTRUCT
24 YOU AS THE JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT
25 AGREE WITH THAT LAW OR THINK THAT IT SHOULD TO BE SOME

1 OTHER WAY?

2 A YES, I THINK I COULD FOR SURE.

3 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
4 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

5 A YES.

6 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
7 HAS THE BURDEN OF PROVING A DEFENDANT IS GUILTY. THE
8 BURDEN OF PROOF FOR THE STATE TO MEET IS TO PROVE EACH
9 ELEMENT OF THE CRIME WITH WHICH THE DEFENDANT IS CHARGED
10 BEYOND A REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO
11 BURDEN OR RESPONSIBILITY TO PROVE HIMSELF INNOCENT. YOU
12 UNDERSTAND THAT?

13 A YES, I DO.

14 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
15 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
16 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

17 A YES, I THINK I COULD.

18 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
19 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND I TOLD
20 YOU AND YOUR FELLOW JURORS YESTERDAY THAT THAT'S WHAT WE
21 CALL A BIFURCATED PROCEEDING. MEANS THAT IT'S A TRIAL
22 DIVIDED INTO TWO PARTS.

23 THE FIRST PHASE IS THE GUILT PHASE; THE SECOND
24 PHASE IS THE SENTENCING PHASE.

25 NOW, LET'S SUPPOSE FOR A MOMENT THAT YOU WERE A

0741

1 JUROR IN SUCH A CASE AND IF THE JURY HAD FOUND THE
2 DEFENDANT NOT GUILTY IN THE GUILT PHASE OF MURDER, DO YOU
3 UNDERSTAND THAT THERE WOULD BE NO REASON TO HAVE A SECOND
4 PHASE?

5 A RIGHT.

6 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
7 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
8 DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE TO THE
9 SENTENCING PHASE OF THE TRIAL?

10 A YES, I DO.

11 Q AND IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
12 PRESENTED TO YOU IN THE FORM OF AGGRAVATING CIRCUMSTANCES
13 AS WELL AS MITIGATING CIRCUMSTANCES.

14 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
15 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
16 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
17 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

18 IN OTHER WORDS, WHEN MURDER OCCURS WHEN
19 ACCOMPANIED BY A CIRCUMSTANCE OF AGGRAVATION, THAT
20 INCREASES OR ADDS TO THE ENORMITY OF THE INJURY OF THE
21 CRIME OF MURDER.

22 NOW, WHAT I AM TALKING ABOUT BY WAY OF
23 ILLUSTRATION WOULD BE WHEN A MURDER OCCURS IN CONNECTION
24 WITH A CHARGE OF CRIMINAL SEXUAL CONDUCT AND OR BURGLARY.
25 YOU UNDERSTAND THAT?

1 A YES, I DO.

2 Q NOW, INSOFAR AS MITIGATING CIRCUMSTANCES ARE
3 CONCERNED, MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS,
4 FACTS, OCCURRENCES WHICH OUR GENERAL ASSEMBLY HAS ALSO
5 DECLARED BY LAW THAT REDUCES THE SEVERITY OF THE OFFENSE OF
6 MURDER AND MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING
7 THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

8 AND WHAT I AM TALKING ABOUT AS MITIGATING
9 CIRCUMSTANCES AS A WAY OF EXAMPLE COULD BE WHEN THE MURDER
10 WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE
11 OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF THE
12 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
13 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
14 SUBSTANTIALLY IMPAIRED AND THE AGE OR MENTALITY OF THE
15 DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND WHAT
16 WE'RE TALKING ABOUT WHEN I SPEAK OF MITIGATING
17 CIRCUMSTANCES?

18 A YES, I DO.

19 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
20 SITUATION AND WE'RE TALKING ABOUT THAT SECOND PHASE, THE
21 SENTENCING PHASE, OF A DEATH PENALTY CASE. COULD YOU,
22 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
23 THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
24 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
25 YOU AT THE CONCLUSION OF THE TRIAL, RETURN A SENTENCE OF

1 LIFE IN PRISON?

2 A YES, I COULD.

0743
3 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, COULD
4 YOU, DEPENDING UPON THE PARTICULAR FACTS AND SITUATIONS,
5 ONCE AGAIN, CONSIDERING THE AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES AND THE LAW AS I WILL INSTRUCT YOU AT THE END
7 OF THAT TRIAL, RETURN A SENTENCE OF DEATH?

8 A YES, I COULD.

9 Q NOW, MS. ELLIS, IF YOU WERE CHOSEN AS A JUROR IN THIS
10 CASE, YOU WILL BE HOUSED IN A MOTEL OR SEQUESTERED IS WHAT
11 WE LIKE TO CALL IT. IT SOUNDS A LITTLE BIT DIFFERENT. YOU
12 WILL BE HOUSED IN A MOTEL FOR THE COURSE OF THE TRIAL. I
13 DON'T HAVE ANY IDEA OF REALLY HOW LONG IT WILL LAST, BUT MY
14 BEST ESTIMATE IS THAT IT WOULD NOT LAST ANY LONGER THAN
15 SEVEN TO TEN DAYS. IT COULD BE SHORTER THAN THAT, BUT I
16 HAVE NO WAY OF KNOWING SO I WANT TO GIVE YOU KIND OF THE
17 OUTSIDE FIGURE. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT
18 YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE
19 HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON
20 YOU?

21 A NO, IT WOULD NOT.

22 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS.

23 MS. FULLWOOD.

24 MS. FULLWOOD: THANK YOU, YOUR HONOR.

25 EXAMINATION

1 BY MS. FULLWOOD:

2 Q GOOD AFTERNOON, MS. ELLIS.

3 A HI.

4 Q AS JUDGE CLARY TOLD YOU, I'M BETH FULLWOOD. ALONG
5 WITH DUFFIE STONE, SEATED OVER THERE---

6 A UH-HUH.

7 Q ---WE DEFEND GARY TERRY, WHO IS THE GENTLEMAN AT THE
8 END OF THE TABLE.

9 A UH-HUH.

10 Q LET ME ASK YOU THIS. MS. ELLIS, BEFORE YOU GOT HERE
11 YESTERDAY, DID YOU HAVE ANY IDEA THAT YOU HAD BEEN CALLED
12 AS A JUROR IN THIS TYPE OF CASE?

13 A NOT IN THE LEAST, NO.

14 Q OKAY. WAS IT SORT OF A SURPRISE?

15 A VERY MUCH SO.

16 Q OKAY. CAN YOU TELL US WHAT YOUR OPINIONS ARE ABOUT
17 CAPITAL PUNISHMENT IN GENERAL?

18 A I THINK THAT IN SOME CIRCUMSTANCES, IT'S INDICATED
19 AND I, AS A JUROR, COULD GO WITH THAT.

20 Q OKAY. COULD YOU EXPOUND A LITTLE BIT MORE ABOUT
21 THAT?

22 A UH -- I THINK LIKE THE JUDGE SAID, I FEEL LIKE WHEN
23 HE WAS TALKING ABOUT THE MITIGATING AND AGGRAVATING
24 CIRCUMSTANCES---

25 Q UH-HUH.

0745

- 1 A ---DEPENDING ON THAT AND IF SOMEONE WAS FOUND GUILTY,
2 THAT -- I DON'T SEE IT AS A DETERRENT TO CRIME, BUT I SEE
3 IT MORE AS A PUNISHMENT FOR THE SEVERITY OF WHAT YOU DID.
- 4 Q OKAY. AND, OF COURSE, JUDGE CLARY TOLD YOU THAT
5 THAT'S A POSSIBILITY THAT THERE WOULD BE TWO TRIALS IN THIS
6 CASE?
- 7 A UH-HUH.
- 8 Q AND THE FIRST TRIAL, THE ONLY QUESTION BEFORE THE
9 JURY WOULD BE GUILT OR INNOCENCE?
- 10 A RIGHT.
- 11 Q OKAY. AND DO YOU UNDERSTAND THAT IT'S ONLY IF A JURY
12 FINDS A DEFENDANT GUILTY OF MURDER AND SOME OTHER CRIMES
13 SUCH AS RAPE OR BURGLARY OR BOTH, THAT THE JURY WOULD EVEN
14 EVER MOVE INTO THE SECOND TRIAL?
- 15 A RIGHT. SURE.
- 16 Q OKAY. OKAY. AND ALONG WITH THAT, DO YOU UNDERSTAND
17 THAT WHEN WE ARE TALKING ABOUT MURDER, WE ARE TALKING ABOUT
18 KILLING SOMEONE ELSE WITH MALICE AFORETHOUGHT. WE ARE NOT
19 TALKING ABOUT SELF-DEFENSE OR HEAT OF PASSION--
- 20 A RIGHT.
- 21 Q OKAY.
- 22 A YES, I UNDERSTAND.
- 23 Q SO YOU UNDERSTOOD THAT.
- 24 A YES.
- 25 Q AGAIN, I'M SORRY IF I'M TELLING YOU THINGS YOU

1 ALREADY KNOW---

2 A THAT'S FINE.

3 Q ---I JUST WANT TO MAKE SURE THAT IT'S ALL CLEAR IN
4 YOUR MIND---

5 A UH-HUH.

6 Q SO YOU KNOW YOU NEVER GET TO POINT B HERE UNLESS YOU
7 GO THROUGH POINT A?

8 A POINT A, RIGHT.

9 Q ALL RIGHT.

10 NOW, IF YOU WERE A JUROR IN A SECOND PHASE TRIAL,
11 YOU WOULD, OF COURSE, BE WILLING TO LISTEN TO ADDITIONAL
12 EVIDENCE BOTH IN AGGRAVATION AND IN MITIGATION OF
13 PUNISHMENT?

14 A YES, IF THAT'S WHAT WAS INDICATED AND WAS SUPPOSED TO
15 HAPPEN, YES.

16 Q OKAY. OKAY. AFTER HEARING THE ADDITIONAL EVIDENCE,
17 BOTH IN AGGRAVATION AND IN MITIGATION---

18 A UH-HUH.

19 Q ---COULD YOU VOTE TO IMPOSE A LIFE SENTENCE ON
20 SOMEONE YOU HAD ALREADY FOUND GUILTY OF MURDER AND OTHER
21 CRIMES?

22 A YES, I COULD.

23 Q OKAY. AND CONVERSELY, AFTER HEARING THAT EVIDENCE,
24 COULD YOU VOTE TO IMPOSE THE DEATH PENALTY ON SOMEONE YOU
25 HAD ALREADY FOUND GUILTY OF MURDER AND OTHER CRIMES?

0747

1 A YES, I COULD.

2 Q OKAY. I'M ALMOST AT THE END HERE SO JUST BEAR WITH

3 ME IF YOU WOULD, PLEASE, MS. ELLIS.

4 NOW, UNDER OUR LAW, IF A SENTENCING JURY DECIDES

5 THAT THE DEATH SENTENCE IS RIGHT---

6 A UH-HUH.

7 Q ---THERE'S A FORM THAT EACH JUROR MUST SIGN

8 INDICATING THAT THAT'S THEIR VERDICT. IF YOU WERE A JUROR

9 IN A CAPITAL CASE AND YOUR VERDICT WAS THE DEATH SENTENCE,

10 WOULD YOU HAVE ANY HESITATION IN SIGNING THAT FORM?

11 A I WOULD DO IT, YEAH.

12 Q OKAY.

13 A YES.

14 Q WOULD IT AFFECT YOUR ABILITY TO GIVE A VERDICT ONE

15 WAY OR THE OTHER---

16 A NO.

17 Q ---JUST BECAUSE YOU HAD TO SIGN THE FORM?

18 A NO.

19 Q OKAY. MS. ELLIS, THANK YOU SO MUCH FOR BEARING WITH

20 ME AND ANSWERING MY QUESTIONS. I APPRECIATE IT.

21 A UH-HUH.

22 THE COURT: MR. CHASE.

23 MR. CHASE: MAY IT PLEASE THE COURT.

24 EXAMINATION

25 BY MR. CHASE:

1 Q MS. ELLIS, HI.

2 A HI.

3 Q MY NAME IS TOM CHASE---

4 A UH-HUH.

5 Q ---I WILL BE ASSISTING DEPUTY SOLICITOR, FRAN
6 HUMPHRIES, AND SOLICITOR MYERS IN THE PROSECUTION OF THIS
7 CASE.

8 I THINK YOUR ANSWERS HAVE BEEN VERY CLEAR. I
9 JUST WANTED TO ASK YOU PRETTY MUCH ONE GENERAL QUESTION.

10 THE TYPE OF JUROR THAT WE ARE LOOKING FOR IN THIS
11 CASE IS ONE THAT CAN BE FAIR AND IMPARTIAL TO BOTH THE
12 STATE OF SOUTH CAROLINA AND THE DEFENDANT, GARY DUBOSE
13 TERRY. THE TYPE OF JUROR THAT'S GOING TO LISTEN TO ALL OF
14 THE EVIDENCE BEFORE THEY MAKE A DECISION. ARE YOU THAT
15 TYPE OF JUROR?

16 A I THINK I AM, YES. I'M A VERY FAIR PERSON.

17 Q AND BOTH THE STATE AND THE DEFENSE WOULD START ON
18 EVEN GROUND IN YOUR MIND?

19 A UH-HUH.

20 Q YOU WOULD HAVE TO TAKE EVERYTHING INTO CONSIDERATION?

21 A SURE.

22 Q THANK YOU. THAT'S ALL THAT WE CAN ASK OF YOU.

23 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

24 MS. FULLWOOD: NO, YOUR HONOR.

25 THE COURT: FROM THE STATE?

1 MR. CHASE: NO, SIR.

2 THE COURT: MS. ELLIS, I WANT TO THANK YOU VERY
3 MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AS WELL AS
4 TODAY. I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
5 POTENTIAL JUROR IN THIS CASE.

6 WITH THAT QUALIFICATION, LET ME REMIND YOU, ONCE
7 AGAIN, OF THE CAUTIONARY INSTRUCTIONS THAT YOU ARE NOT TO
8 DISCUSS THIS CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS
9 OR ANYONE ELSE.

10 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
11 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
12 INFORMATION AS YOU POSSIBLY CAN ABOUT THAT INDIVIDUAL AND
13 REPORT THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS
14 MATTER AND I WILL DEAL WITH IT ACCORDINGLY.

15 ALSO, I'LL REMIND YOU THAT YOU ARE TO CONTINUE TO
16 REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
17 ACCOUNTS CONCERNING THIS CASE. ALL I WOULD WANT YOU TO
18 CONSIDER IN THIS CASE IS WHAT YOU SEE AND HEAR IN THE
19 COURTROOM. ABSOLUTELY NOTHING MORE AND NOTHING LESS.

20 I WAS INTERESTED TO SEE ON YOUR QUESTIONNAIRE
21 WHERE YOU READ SPORTS ILLUSTRATED. YOU MAY CONTINUE TO
22 DO THAT. YOU AND MY DAUGHTER I THINK ARE THE ONLY WOMEN
23 THAT I KNOW THAT READS THAT MAGAZINE. SO I REALLY
24 APPRECIATE THAT.

25 THE JUROR: OKAY.

1 THE COURT: ALSO, IF YOU WOULD, PLEASE BE BACK
2 HERE, YOU NEED TO GO HOME AND START PACKING YOUR BAGS.
3 BECAUSE YOU NEED TO BE BACK HERE IN THE MORNING AT 9:30
4 A.M.

5 NOW, PLEASE LEAVE YOUR LUGGAGE IN YOUR VEHICLE.
6 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN THE JURY
7 CUSTODIANS WOULD SEE THAT YOU AND YOUR BELONGINGS ARE
8 PROPERLY TAKEN TO THE MOTEL AND SITUATED THERE.

9 AND IF YOU ARE NOT CHOSEN, THEN WE WILL DISMISS
10 YOU TOMORROW WITH MANY THANKS FOR PARTICIPATING IN OUR
11 SYSTEM AND OUR PROCESS HERE THIS WEEK. BUT WITH ALL THAT
12 INSTRUCTION, I'LL LOOK FORWARD TO SEEING YOU TOMORROW
13 MORNING AT 9:30.

14 THE JUROR: OKAY.

15 THE COURT: HAVE A GOOD AFTERNOON.

16 THE JUROR: THANK YOU.

17 (WHEREUPON, THE JUROR WAS EXCUSED
18 AT THIS TIME.)

19 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
20 THAT JUROR NUMBER 77, MARY A. ELLIS, IS QUALIFIED TO SERVE
21 AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
22 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
23 1976 AS AMENDED.

24 THANK YOU VERY MUCH FROM THE STATE AND THE
25 DEFENSE. WE'VE HAD A GOOD MORNING MOVING ALONG AND WE'VE

0751

1 ACTUALLY FINISHED UP FIVE MINUTES EARLIER THAN I THOUGHT WE
2 WOULD ON THIS PANEL AND WE'LL BE BACK HERE AT TWO-THIRTY
3 WITH PANEL NUMBER SIX.

4 MR. HUMPHRIES: YOUR HONOR, COULD WE BE ADVISED
5 AS SOON AS MR. GRAVES -- AND I'VE FORGOTTEN THE NAME THIS
6 MORNING. THE ONE JUROR OUTSTANDING REGARDING HIS HOME
7 SITUATION---

8 THE COURT: THAT IS MR. GRAVES, DEXTER GRAVES.

9 WE'LL LET YOU KNOW JUST AS SOON AS WE HEAR
10 SOMETHING FROM HIM.

11 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

12 THE COURT: JUST LIKE I DID ON MS. MILNE.

13 MR. HUMPHRIES: YES, SIR, WE APPRECIATE THAT.

14 THE COURT: Y'ALL HAVE A NICE LUNCH HOUR. WE'LL
15 BE BACK AT 2:30.

16 (WHEREUPON, COURT RECESSED FOR
17 LUNCH AT 12:55 P.M.)

18 (WHEREUPON, COURT RECONVENED AFTER
19 LUNCH AT 2:30 P.M.)

20 THE BAILIFF: ALL RISE, COURT IS NOW IN SESSION.

21 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

22 MR. HUMPHRIES: MAY IT PLEASE THE COURT, YOUR
23 HONOR.

24 THE COURT: YES, SIR.

25 MR. HUMPHRIES: JUST BRIEFLY. OUR OFFICE

1 RECEIVED AFTER 11 O'CLOCK TODAY, A REPORT RELATING TO THE
2 USE OF A -- EITHER A FRAUDULENT DRIVERS LICENSE BY THE
3 DEFENDANT OR A DRIVERS LICENSE IN THE IDENTITY OF HIS
4 BROTHER.

5 IN ANY EVENT, WE RECEIVED IT AT ELEVEN TODAY FROM
6 THE OFFICER INVESTIGATING IT SOME -- WELL, IT'S ALMOST TEN
7 YEARS AGO NOW. IN ANY EVENT, WE RECEIVED IT AND WE
8 REVIEWED IT AT LUNCH TIME AND ARE PROVIDING IT TO THE
9 DEFENSE AT THIS TIME.

10 THE COURT: ALL RIGHT.

11 ALL RIGHT. THE STATE AND DEFENSE READY TO
12 PROCEED WITH PANEL NUMBER SIX?

13 MR. HUMPHRIES: THE STATE IS READY.

14 MS. FULLWOOD: YOUR HONOR, THE DEFENSE IS READY,
15 BUT MAY WE TAKE UP ONE MATTER---

16 THE COURT: YES, MA'AM.

17 MS. FULLWOOD: ---CONCERNING THIS PANEL.

18 YOUR HONOR, PROSPECTIVE JUROR NUMBER 94, MS.
19 GOFF, IS GOING TO BE ON THE NEXT PANEL---

20 THE COURT: UH-HUH.

21 MS. FULLWOOD: ---YOUR HONOR MIGHT RECALL THAT
22 WHEN YOU ASKED THE QUESTION OF THE WHOLE PANEL ABOUT
23 WHETHER OR NOT THEY OR ANY OF THEIR RELATIVES HAD BEEN THE
24 VICTIM OF A CRIME, SHE CAME UP. SHE WAS RATHER EMOTIONAL,
25 TELLING ABOUT HOW HER FATHER HAD BEEN THE VICTIM OF A

0753

1 HOMICIDE.

2 THE COURT: YES, MA'AM.

3 MS. FULLWOOD: THAT WAS SOME YEARS AGO. I
4 REMEMBER THAT CASE.

5 THE COURT: 1983.

6 MS. FULLWOOD: YES, SIR.

7 THE MAIN REASON I REMEMBER IT IS I REPRESENTED
8 ONE OF THE CO-DEFENDANTS ON APPEAL. I SPOKE WITH THE
9 ATTORNEY FOR THE OTHER CO-DEFENDANT THIS MORNING AND HE
10 TELLS ME HE THINKS MS. GOFF WAS ACTUALLY A WITNESS IN THAT
11 CASE AND, I BELIEVE, THAT IN -- WITH THAT PARTICULAR
12 CO-DEFENDANT, TWO TRIALS WERE HAD. I BELIEVE THE FIRST WAS
13 A MISTRIAL. IT HAD A HUNG JURY.

14 I WOULD JUST ASK THE COURT ITSELF TO INQUIRE
15 FURTHER ABOUT THAT FROM MS. GOLF.

16 THE COURT: I WILL. I'LL DO THAT.

17 MS. FULLWOOD: SHE SEEMED VERY EMOTIONAL
18 YESTERDAY AND, I THINK, THE QUESTIONS MIGHT BETTER COME
19 FROM THE COURT THAN FROM COUNSEL.

20 THE COURT: I'LL BE GLAD TO.

21 MS. FULLWOOD: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 JUROR NUMBER 30, WILLIAM A. BRAUN.

24 WILLIAM A. BRAUN,

25 (JUROR NUMBER 30, WHITE MALE,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

2 EXAMINATION

3 BY THE COURT:

4 Q GOOD AFTERNOON, MR. BRAUN.

5 A GOOD AFTERNOON, SIR.

6 Q MR. BRAUN, YOU UNDERSTAND THAT YOU ARE STILL UNDER
7 OATH FOR THIS PROCEEDING.

8 A YES.

9 Q AND YESTERDAY WHEN I SENT YOU AND YOUR COLLEAGUES
10 AWAY FROM THE COURT HOUSE, I GAVE YOU SOME INSTRUCTIONS
11 THAT YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE AND IF
12 ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT
13 YOU WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO
14 REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
15 ACCOUNTS CONCERNING THIS CASE. HAVE THERE BEEN ANY
16 VIOLATIONS OF THAT INSTRUCTION?

17 A NO, SIR.

18 Q NOW, MR. BRAUN, I'M GOING TO BE ASKING YOU A FEW
19 QUESTIONS AND THEN ONE OF THE LAWYERS FOR THE DEFENDANT, AS
20 WELL AS ONE OF THE STATE'S LAWYERS WILL ASK YOU SOME
21 QUESTIONS. PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
22 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE
23 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
24 NECESSARY THAT CERTAIN QUESTIONS ARE ASKED.

25 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR

0755

1 WRONG ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER
2 THEM OPENLY AND HONESTLY AND FULLY. AND ALSO KEEP IN MIND
3 THAT NO ONE IS CHALLENGING YOUR VIEW IN AN AREA. WE JUST
4 NEED TO KNOW WHAT THAT VIEW IS.

5 NOW, I'M ALSO GOING TO ADVISE YOU THAT THROUGHOUT
6 THE QUESTIONING, YOU WILL PROBABLY HAVE SOME QUESTIONS
7 POSED TO YOU THAT YOU'VE NEVER HAD TO CONSIDER BEFORE. SO
8 PLEASE LISTEN TO THE QUESTIONS CAREFULLY AND THOUGHTFULLY
9 AS THEY ARE POSED TO YOU.

10 NOW, DURING THE NEXT FEW MINUTES, WE ARE GOING TO
11 BE TALKING ABOUT A NUMBER OF THINGS, BUT WE ARE GOING TO BE
12 TALKING ABOUT AND USING THE WORD PENALTY. THE MERE FACT
13 THAT WE EVEN TALK ABOUT THAT OR EVEN USE THAT WORD DOES NOT
14 IN ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
15 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
16 UNDERSTAND THAT?

17 A YES.

18 Q NOW, LET'S ASSUME FOR A FEW MINUTES THAT YOU WERE A
19 JUROR IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW,
20 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
21 JUDGE OF THE COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
22 LAW OR THINK IT SHOULD BE SOME OTHER WAY?

23 A YES.

24 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

1 A YES.

2 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
3 HAS THE BURDEN OF PROVING GUILT. THE BURDEN OF PROOF OR
4 THE STATE -- THAT THE STATE MUST MEET IS TO PROVE THE
5 ELEMENTS OF THE CRIMES WITH WHICH THE DEFENDANT IS CHARGED
6 BEYOND A REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO
7 OBLIGATION OR RESPONSIBILITY OR BURDEN TO PROVE HIMSELF
8 INNOCENT. DO YOU UNDERSTAND THAT?

9 A YES.

10 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
11 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
12 PARTICULAR CASE, FIND A DEFENDANT GUILTY OR NOT GUILTY?

13 A YES.

14 Q NOW, AS YOU KNOW FROM WHAT I'VE TOLD YOU AND YOUR
15 FELLOW JURORS YESTERDAY, THIS IS A CASE IN WHICH THE STATE
16 OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND IN SUCH A
17 TRIAL, I ALSO TOLD YOU YESTERDAY THAT IT'S WHAT WE CALL A
18 BIFURCATED PROCEEDING, MEANING THAT IT'S DIVIDED INTO TWO
19 PARTS.

20 THE FIRST PART IS THE GUILT PHASE; THE SECOND
21 PART IS THE SENTENCING PHASE.

22 NOW, IF YOU ARE A JUROR IN SUCH A CASE AND THE
23 JURY FOUND IN THE GUILT PHASE THAT THE DEFENDANT WAS NOT
24 GUILTY OF MURDER, YOU UNDERSTAND THAT THE TRIAL WOULD STOP
25 THEN AND THERE WOULD BE NO NECESSITY FOR A SECOND PHASE?

0757

1 A YES.

2 Q HOWEVER; IF YOU WERE A JUROR IN SUCH A CASE AND IF
3 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
4 FULLY UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING
5 PHASE OF THE TRIAL?

6 A YES.

7 Q NOW, IN THE SENTENCING PHASE, MR. BRAUN, THE EVIDENCE
8 WOULD BE PRESENTED TO YOU AND YOUR FELLOW JURORS IN THE
9 FORM OF AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
10 CIRCUMSTANCES.

11 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
12 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
13 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
14 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

15 IN OTHER WORDS, WHEN A MURDER OCCURS WITH THE
16 AGGRAVATING CIRCUMSTANCE BEING ATTACHED TO IT, IT INCREASES
17 THE ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

18 NOW, WHAT I AM SPEAKING OF IN A SITUATION LIKE
19 THAT WOULD BE WHERE A MURDER IS COMMITTED IN CONJUNCTION
20 WITH ANOTHER CRIME SUCH AS CRIMINAL SEXUAL CONDUCT AND OR
21 BURGLARY OR THE LIKE. YOU UNDERSTAND THAT?

22 A YES.

23 Q NOW, MITIGATING CIRCUMSTANCE, ON THE OTHER HAND, ARE
24 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
25 ASSEMBLY HAS ALSO DECLARED BY LAW THAT REDUCES THE SEVERITY

1 OF THE CRIME OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
2 OR AS REDUCING THE DEGREE OF MORAL CULPABILITY OR
3 RESPONSIBILITY.

4 AND WHEN WE TALK ABOUT MITIGATING CIRCUMSTANCES,
5 THAT COULD BE WHEN A MURDER WAS COMMITTED WHILE A DEFENDANT
6 WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE;
7 WHERE THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
8 CRIMINALITY OF HIS CONDUCT OR CONFORM HIS CONDUCT TO THE
9 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED OR WHEN THE
10 AGE OR MENTALITY OF THE DEFENDANT -- OR THE AGE OR
11 MENTALITY OF THE DEFENDANT AT THE TIME THAT THE CRIME WAS
12 COMMITTED COULD BE CONSIDERED BY THE JURY ALONG WITH OTHER
13 FACTORS. YOU UNDERSTAND WHAT I'M TALKING ABOUT WHEN I
14 DISCUSS MITIGATING CIRCUMSTANCES?

15 A YES.

16 Q NOW, LET'S ASSUME THAT YOU, IF YOU WERE A JUROR IN
17 THAT SITUATION, THE SECOND PHASE, THE SENTENCING PHASE, OF
18 A DEATH PENALTY CASE, COULD YOU, DEPENDING UPON THE
19 PARTICULAR FACTS AND CIRCUMSTANCES INCLUDING AGGRAVATING
20 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES IN THAT
21 CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION
22 OF THE TRIAL, RETURN A SENTENCE OF LIFE IN PRISON?

23 A YES.

24 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
25 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF

0759

1 THAT CASE, INCLUDING AGGRAVATING AND MITIGATING
2 CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
3 CONCLUSION OF THE TRIAL, RETURN A SENTENCE OF DEATH?

4 A YES.

5 Q NOW, MR. BRAUN, IF YOU ARE CHOSEN TO SERVE ON THIS
6 JURY, YOU WOULD BE HOUSED IN A MOTEL -- WE CALL THAT BEING
7 SEQUESTERED -- FOR THE DURATION OF THE TRIAL. I DON'T KNOW
8 EXACTLY HOW LONG IT WILL LAST EXACTLY, BUT IT COULD BE
9 ANYWHERE FROM SEVEN TO TEN DAYS. IT MAY BE SHORTER THAN
10 THAT, BUT I'M GIVING YOU THAT SEVEN-TO-TEN-DAY RANGE.
11 EXCEPT FOR THE PERSONAL INCONVENIENCE WHICH YOU WOULD
12 SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
13 WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

14 A IN SOME WAY. I HAVE MY OWN BUSINESS AND IF I'M OUT
15 TOO LONG, THIS DOES PUT A BURDEN ON MYSELF AND THE FAMILY
16 AND THIS TYPE OF THING.

17 Q ALL RIGHT, SIR. I GUESS WHAT I'M ASKING YOU IS IF
18 YOU WERE SEQUESTERED FOR SEVEN TO TEN DAYS, WOULD THAT
19 IMPACT YOU, CAUSE A FINANCIAL HARDSHIP OR SOME TYPE OF
20 HARDSHIP ON YOUR FAMILY AS A RESULT OF SERVING ON A JURY
21 FOR THAT PERIOD OF TIME?

22 A I GUESS, YOU KNOW, THE SEVEN TO TEN DAYS, YOU KNOW,
23 IF IT WOULD BE LONGER THAN THAT, IT WOULD TEND TO START
24 BURDENING, YES.

25 Q IF IT WERE WITHIN THOSE LIMITS THOUGH THAT---

1 A IT'S POSSIBLE---

2 Q ---YOU COULD PARTICIPATE?

3 A YES.

4 Q ALL RIGHT, SIR. THANK YOU VERY MUCH FOR RESPONDING
5 TO MY QUESTIONS. I'M GOING TO LET MR. STONE POSE SOME
6 QUESTIONS TO YOU.

7 EXAMINATION

8 BY MR. STONE:

9 Q GOOD AFTERNOON, MR. BRAUN.

10 A GOOD AFTERNOON.

11 Q MY NAME IS DUFFIE STONE. I KNOW I WAS INTRODUCED
12 EARLIER, BUT I WANTED TO RE-DO THAT. BETH FULLWOOD IS
13 SITTING HERE AS WELL. SHE AND I ARE REPRESENTING GARY
14 TERRY AT THE END OF THE TABLE.

15 A ALL RIGHT.

16 Q NOW, I HAVE GOTTEN YOUR SHEET, SO I KNOW EXACTLY WHAT
17 YOU -- YOU KNOW, THE QUESTIONNAIRE FORM THAT YOU FILLED OUT
18 -- THAT YOU FILLED OUT. I'VE READ ALL OF THAT SO I'M NOT
19 GOING TO GO THROUGH THAT, BUT THERE ARE SOME QUESTIONS ON
20 THERE THAT I WANTED TO KIND OF CLEAR UP IF I COULD.

21 A ALL RIGHT.

22 Q YOU'VE GOT TWO DAUGHTERS, I THINK?

23 A YES. TWO DAUGHTERS AND A SON---

24 Q AND A SON.

25 A ---OF MY OWN.

0761

- 1 Q OKAY.
- 2 A I'M REMARRIED AND MY WIFE HAS TWO BOYS OF HERS.
- 3 Q I SEE. OKAY. WHAT ARE THEY -- WHAT DO YOUR CHILDREN
- 4 DO?
- 5 A ONE IS A SALES PERSON HERE IN SOUTH CAROLINA AND MY
- 6 DAUGHTERS ARE HOUSEWIVES.
- 7 Q OKAY. ARE THEY ALL IN SOUTH CAROLINA?
- 8 A NO. THE DAUGHTERS ARE IN WISCONSIN.
- 9 Q OKAY. WHERE ARE YOU FROM ORIGINALLY?
- 10 A WISCONSIN.
- 11 Q HOW LONG HAVE YOU BEEN HERE IN LEXINGTON?
- 12 A ABOUT ELEVEN YEARS.
- 13 Q OKAY. ALL RIGHT, SIR.
- 14 THE JUDGE TALKED ABOUT THIS A LITTLE BIT, BUT I
- 15 WANT TO MAKE SURE THAT WE ARE REAL CLEAR ON THIS. THE
- 16 DIFFICULT THING ABOUT IT IS I HAVE GOT TO COME IN HERE AND
- 17 ASK YOU ABOUT SOME QUESTIONS ABOUT SOMETHING THAT MAY NEVER
- 18 TAKE PLACE. IF, FOR INSTANCE, MR. TERRY IS FOUND NOT
- 19 GUILTY, WE DON'T HAVE A SENTENCING PHASE. YOU UNDERSTAND
- 20 THAT?
- 21 A I UNDERSTAND.
- 22 Q BUT I HAVE TO COME AND ASK YOU ABOUT THE SENTENCING
- 23 PHASE AND SORT OF JUMP TO THAT CONCLUSION, YOU UNDERSTAND?
- 24 A YES.
- 25 Q I KNOW THE JUDGE COVERED THE GUILT PHASE SO I JUST

1 WANTED TO TALK TO YOU A LITTLE BIT ABOUT THE SENTENCING
2 PHASE.

3 WHAT THE JUDGE EXPLAINED TO YOU IS THAT YOU COULD
4 POTENTIALLY SIT IN THIS JURY BOX WITH ELEVEN OTHER PEOPLE
5 AND DECIDE WHETHER OR NOT MR. TERRY IS GUILTY OR INNOCENT
6 OF A NUMBER OF CHARGES. YOU UNDERSTAND THAT?

7 A YES.

8 Q THE ONLY WAY FOR YOU TO GET TO A SENTENCING PHASE,
9 THOUGH, IS THAT YOU HAVE ALREADY DETERMINED SOMEBODY IS
10 GUILTY OF MURDER AND THEY ARE GUILTY OF RAPE OR BURGLARY,
11 YOU UNDERSTAND THAT?

12 A YES.

13 Q OKAY. IN SOUTH CAROLINA, MURDER IS NOT AN ACCIDENTAL
14 MURDER. IT'S NOT A QUESTION OF SELF-DEFENSE AT THIS POINT.
15 IT'S NOT ANY TYPE OF HEAT OF PASSION TYPE THING. IT IS
16 MURDER. YOU UNDERSTAND THAT?

17 A YES.

18 Q IF YOU ARE IN A SENTENCING PHASE, AS A JUROR, YOU
19 HAVE ALREADY DETERMINED SOMEBODY COMMITTED MURDER AND
20 THEY'VE COMMITTED SOMETHING ELSE LIKE RAPE. YOU
21 UNDERSTAND?

22 A YES.

23 Q AND, IN FACT, MAY -- MAY EVEN HAVE COMMITTED BURGLARY
24 AS WELL, YOU UNDERSTAND?

25 A YES.

0763

1 Q IN THAT SITUATION, AS A SENTENCING JUROR, HAVING
2 ALREADY DECIDED THAT AND NOT WORRYING ABOUT GUILT OR
3 INNOCENCE OR ANY OF THE EVIDENCE THAT YOU'VE HEARD, YOU'VE
4 ALREADY MADE THAT DECISION, COULD YOU GIVE THAT PERSON THE
5 DEATH SENTENCE?
6 A YES.
7 Q OKAY. IF I TOLD YOU THAT THE LAW REQUIRED YOU TO
8 SIGN YOUR NAME ON A DEATH CERTIFICATE -- IN OTHER WORDS,
9 YOU AND ELEVEN OTHER PEOPLE THOUGHT THAT WAS APPROPRIATE,
10 COULD YOU PUT YOUR NAME ON THAT?
11 A YES.
12 Q OKAY. LIKewise, IF YOU HAVE ALREADY DECIDED SOMEBODY
13 IS A MURDERER, THAT THEY'VE COMMITTED RAPE, THAT THEY MAY
14 HAVE EVEN COMMITTED BURGLARY AS WELL, COULD YOU GIVE THAT
15 PERSON LIFE?
16 A YES.
17 Q OKAY. HAVE YOU THOUGHT MUCH ABOUT THE DEATH PENALTY
18 OR HAVE YOU THOUGHT ANYTHING AT ALL ABOUT IT? HAS IT COME
19 UP IN DISCUSSIONS---
20 A THROUGHOUT THE YEARS, AT TIMES, YES.
21 Q OKAY. WHAT'S YOUR OPINION OF THE DEATH PENALTY?
22 A I FEEL IT'S JUSTIFIED IN A LOT OF CASES.
23 Q DO YOU FEEL IT'S JUSTIFIED IN ALL CASES?
24 A IN -- IN CASES WHERE, YOU KNOW, WHERE SOMEBODY
25 COMMITS A CRIME THAT WARRANTS IT, YES.

1 Q OKAY. SO WHAT YOU'RE TELLING ME IS YOU'D CONSIDER
2 THE TYPE OF CRIME AND THE EVIDENCE THAT YOU HEAR IN
3 DETERMINING THAT?

4 A YES.

5 Q OKAY. THAT'S FAIR.

6 NOW, THE JUDGE HAS ASKED YOU IF YOU COULD
7 CONSIDER AGGRAVATING CIRCUMSTANCES AND MITIGATING
8 CIRCUMSTANCES, ASSUMING THAT YOU HAD ALREADY DETERMINED THE
9 GUILT, OKAY. CAN YOU -- CAN YOU EVALUATE A CASE TO
10 DETERMINE WHETHER OR NOT IT'S APPROPRIATE FOR THE DEATH
11 SENTENCE LISTENING TO AGGRAVATING AND MITIGATING
12 CIRCUMSTANCES?

13 A YES.

14 Q AND SO, YOU CAN CONSIDER MITIGATION AND GIVE A LIFE
15 SENTENCE. YOU COULD CONSIDER BOTH AND GIVE A DEATH
16 SENTENCE?

17 A YES.

18 Q OKAY. ALL RIGHT, SIR.

19 A IT WOULD HAVE TO BE EXTENUATED.

20 Q OKAY. IT WOULD HAVE TO BE EXTENUATED -- I'M SORRY, I
21 DIDN'T UNDERSTAND YOU?

22 A THEY WOULD HAVE -- THE CIRCUMSTANCES, YOU KNOW, WOULD
23 HAVE TO BE OUTSTANDING OR THEY WOULD HAVE TO BE SINCERE.

24 Q OKAY. IN ORDER TO DO WHAT?

25 A TO CONSIDER MITIGATING CIRCUMSTANCES.

0765

1 Q I UNDERSTAND. I UNDERSTAND. AND THAT'S WHAT I WAS
2 -- I JUST DIDN'T UNDERSTAND THAT.

3 DO YOU -- AND I CAN'T REMEMBER. I KNOW YOU
4 INDICATED SOMETHING ON YOUR FORM, BUT WHAT RELIGION ARE
5 YOU?

6 A I AM---

7 Q IF YOU DON'T MIND ME ASKING?

8 A ---I'VE BEEN LUTHERAN ALL MY LIFE AND I'M NOW
9 ATTENDING A CHURCH HERE IN LEXINGTON THAT IS
10 INTERDENOMINATIONAL.

11 Q ALL RIGHT, SIR. AND I DON'T MEAN TO PRY INTO THAT---

12 A THAT'S FINE, REALLY.

13 Q ---THAT'S JUST ANOTHER AREA. DO YOU KNOW IF THAT
14 RELIGION HAS ANY POSITION ON THE DEATH PENALTY THAT YOU MAY
15 HAVE HEARD ABOUT?

16 A NO. IT TEACHES FROM THE BIBLE AND IT TEACHES THAT
17 THE BIBLE IS GOD'S WORD.

18 Q ALL RIGHT, SIR. ALL RIGHT, SIR. IS AN EYE TO AN EYE
19 -- AN EYE FOR AN EYE, IS THAT PART OF YOUR RELIGIOUS
20 UNDERSTANDING OR FEELING?

21 A WELL, AGAIN, YOU KNOW, IT CONSIDERS, YOU KNOW, UPON
22 THE CIRCUMSTANCES.

23 Q ALL RIGHT, SIR. I APPRECIATE THAT. THANK YOU VERY
24 MUCH FOR YOUR HONESTY.

25 THANK YOU, YOUR HONOR.

1 THE COURT: YES, SIR.

2 SOLICITOR.

3 EXAMINATION

4 BY MR. HUMPHRIES:

5 Q MR. BRAUN, MY NAME IS FRAN HUMPHRIES. I'M THE DEPUTY
6 SOLICITOR HERE IN LEXINGTON. I, ALONG WITH TOM CHASE, WHO
7 IS SEATED HERE, WILL BE ASSISTING SOLICITOR MYERS IN THE
8 TRIAL OF THIS CASE.

9 I NEED TO KNOW ONE THING FROM YOU. COULD YOU,
10 AFTER LISTENING TO ALL OF THE EVIDENCE IN THE CASE, BOTH
11 AGGRAVATING AND MITIGATING, AND LISTENING TO THE CHARGE AS
12 THE JUDGE GIVES IT TO YOU, THE CHARGE ON THE LAW, COULD YOU
13 UNDER THE RIGHT CIRCUMSTANCES GIVE A VERDICT OF LIFE?

14 A YES.

15 Q COULD YOU LIKEWISE GIVEN THE RIGHT CIRCUMSTANCES
16 UNDER THOSE SAME CONDITIONS GIVE A VERDICT OF DEATH
17 DEPENDING ON THE CIRCUMSTANCES?

18 A YES.

19 Q AND COULD YOU BE FAIR AND IMPARTIAL BOTH TO THE STATE
20 OF SOUTH CAROLINA AND THE DEFENDANT, GARY DUBOSE TERRY?

21 A YES.

22 Q THAT'S ALL WE ASK OF YOU. THANK YOU, SIR.

23 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

24 MR. STONE: NO, SIR.

25 THE COURT: FROM THE STATE?

1 MR. HUMPHRIES: NO, SIR.

0767

2 THE COURT: MR. BRAUN, I UNDERSTAND WHAT YOU HAVE
3 TOLD ME CONCERNING YOUR BUSINESS AND I THINK WHAT I NEED TO
4 KNOW IS IF, IF THIS CASE IS GOING TO BE ENDED WITHIN A WEEK
5 TO TEN DAYS, DO I UNDERSTAND FROM YOU THAT YOU COULD
6 PARTICIPATE IN THE CASE?

7 THE JUROR: YES.

8 THE COURT: ALL RIGHT, SIR.

9 I WANT TO THANK YOU VERY MUCH FOR YOUR
10 PARTICIPATION YESTERDAY AS WELL AS TODAY. AND I DO FIND
11 THAT YOU ARE QUALIFIED TO SERVE AS A POTENTIAL JUROR IN
12 THIS CASE---

13 THE JUROR: UH-HUH.

14 THE COURT: ---AND AS A RESULT OF THAT
15 QUALIFICATION, THERE ARE A COUPLE OF THINGS THAT I'M GOING
16 TO INSTRUCT YOU ABOUT.

17 FIRST OF ALL, THE CAUTIONARY INSTRUCTIONS THAT I
18 HAVE GIVEN YOU IN THE PAST CONTINUE. YOU ARE NOT TO
19 DISCUSS THIS CASE WITH YOUR FELLOW JURORS, WITH YOUR
20 FAMILY, FRIENDS OR ANYONE ELSE. ALSO, IF ANYONE SHOULD
21 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, PLEASE GATHER
22 AS MUCH INFORMATION ABOUT THAT INDIVIDUAL AS YOU CAN AND
23 REPORT THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS
24 MATTER AND I WOULD HANDLE THAT PROMPTLY.

25 ALSO, I WOULD REMIND YOU, ONCE AGAIN, THAT YOU

1 ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
2 CONCERNING THIS CASE.

3 VERY SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER
4 IN THIS CASE IS WHAT YOU WOULD SEE AND HEAR IN THIS
5 COURTROOM. ABSOLUTELY NOTHING MORE OR NOTHING LESS.

6 SO WITH THAT, I'M GOING TO ALSO TELL YOU THAT YOU
7 NEED TO HEAD ON BACK HOME THIS AFTERNOON OR TONIGHT AND
8 START PACKING YOUR BAGS BECAUSE I'M GOING TO NEED YOU BACK
9 HERE IN THE MORNING AT NINE-THIRTY. PLEASE BRING YOUR
10 LUGGAGE, LEAVE IT IN YOUR VEHICLE THAT YOU COME TO THE
11 COURT HOUSE IN AND IF YOU ARE CHOSEN AS A JUROR IN THIS
12 CASE, THEN THE JURY CUSTODIANS WOULD SEE THAT YOU AND YOUR
13 BELONGINGS ARE PROPERLY DELIVERED TO THE MOTEL THAT WILL BE
14 YOUR RESIDENCE DURING THE COURSE OF THE TRIAL.

15 IF YOU ARE NOT SELECTED, THEN WE WOULD THANK YOU
16 VERY MUCH FOR YOUR PARTICIPATION IN THE PROCESS AND SEND
17 YOU BACK ABOUT YOUR REGULAR ACTIVITIES AFTER THE JURY IS
18 SELECTED TOMORROW. ONCE AGAIN, PLEASE BE HERE IN THE
19 COURTROOM IN THE MORNING AT 9:30 A.M. I'LL LOOK FORWARD TO
20 SEEING YOU THEN.

21 THE JUROR: ALL RIGHT.

22 THE COURT: YOU ARE EXCUSED.

23 (WHEREUPON, THE JUROR WAS EXCUSED
24 AT THIS TIME.)

25 THE COURT: LET THE RECORD REFLECT THAT JUROR

0769

1 NUMBER 30, WILLIAM A. BRAUN, IS QUALIFIED TO SERVE AS A
2 POTENTIAL JUROR IN THIS CASE IN ACCORDANCE WITH SECTION
3 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
4 1976 AS AMENDED.

5 JUROR NUMBER, 34 LOUISE M. BROWN.

6 LOUISE M. BROWN,

7 (JUROR NUMBER 34, WHITE FEMALE,
8 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

9 EXAMINATION

10 BY THE COURT:

11 Q GOOD AFTERNOON, MS. BROWN.

12 A HEY.

13 Q YOU ARE LOUISE M. BROWN, CORRECT?

14 A CORRECT.

15 Q YOU ARE JUROR NUMBER 34.

16 MS. BROWN, YOU UNDERSTAND THAT YOU ARE SWORN FOR
17 THESE PROCEEDINGS THIS AFTERNOON?

18 A YES.

19 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
20 CAUTIONARY INSTRUCTIONS YESTERDAY THAT YOU WERE TO REFRAIN
21 FROM DISCUSSING THIS CASE WITH ANYONE AND IF ANYONE
22 ATTEMPTED TO CONTACT YOU, YOU WERE TO REPORT THAT TO ME AND
23 THAT YOU WERE ALSO NOT TO READ, WATCH OR LISTEN TO ANY NEWS
24 ACCOUNTS CONCERNING THIS CASE.

25 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

1 A NO.

2 Q NOW, I'M GOING TO BE ASKING YOU SEVERAL QUESTIONS AND
3 THEREAFTER ONE OF THE LAWYERS REPRESENTING MR. TERRY WILL
4 ASK YOU SOME QUESTIONS AND THEN ONE OF THE SOLICITORS WILL
5 ALSO POSE QUESTIONS TO YOU.

6 PLEASE KEEP IN MIND THAT IN NO WAY ARE WE
7 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
8 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
9 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED OF YOU AND THAT
10 YOU RESPOND TO THESE. BUT KEEP IN MIND THAT THERE ARE NO
11 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. SO PLEASE JUST
12 BE OPEN AND HONEST AND ANSWER THESE QUESTIONS FULLY.

13 ALSO, KEEP IN MIND THAT NO ONE IS CHALLENGING THE
14 VIEW THAT YOU MAY HAVE, WE JUST NEED TO KNOW WHAT THAT VIEW
15 IS.

16 ALSO, THERE ARE PROBABLY GOING TO BE SOME
17 QUESTIONS POSED TO YOU BY ME OR ONE OF THE LAWYERS THAT YOU
18 HAVE NEVER EVEN CONSIDERED BEFORE. SO PLEASE LISTEN
19 CAREFULLY TO THE QUESTIONS AS THEY ARE PRESENTED TO YOU SO
20 THAT YOU WILL BE ABLE TO RESPOND TO THEM.

21 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
22 DISCUSSING OVER THE NEXT FEW MINUTES WILL BE TALKING ABOUT
23 PENALTY AND THE MERE FACT THAT I EVEN MENTION THAT WORD IN
24 NO WAY INDICATES ANYTHING ABOUT THE DEFENDANT, MR. TERRY.
25 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU

0771

- 1 UNDERSTAND THAT?
- 2 A YES, I DO.
- 3 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
- 4 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
- 5 ACCEPT AND APPLY THE LAW THAT I WOULD INSTRUCT YOU AS THE
- 6 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
- 7 LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?
- 8 A YES.
- 9 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
- 10 EVIDENCE PRESENTED HERE IN THIS COURTROOM?
- 11 A YES, I THINK SO.
- 12 Q NOW, MS. BROWN, IN A CRIMINAL CASE, THE STATE OF
- 13 SOUTH CAROLINA HAS THE BURDEN OF PROVING GUILT. THE BURDEN
- 14 OF PROOF THAT THE STATE MUST MEET IS TO PROVE EACH ELEMENT
- 15 OF THE CRIMES WHICH THE DEFENDANT IS CHARGED WITH, PROVE
- 16 THAT BEYOND A REASONABLE DOUBT. NOW, THE DEFENDANT HAS
- 17 ABSOLUTELY NO BURDEN TO PROVE HIMSELF INNOCENT. DO YOU
- 18 UNDERSTAND THAT?
- 19 A YES.
- 20 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
- 21 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
- 22 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?
- 23 A YES.
- 24 Q NOW, YOU UNDERSTAND THAT THE CASE THAT WE ARE TALKING
- 25 ABOUT THIS WEEK IS ONE IN WHICH THE STATE OF SOUTH CAROLINA

1 SEEKS THE DEATH PENALTY AND AS RESULT OF THAT, I EXPLAINED
2 TO YOU AND ALL OF YOUR COLLEAGUES ON THE JURY YESTERDAY
3 MORNING THAT THIS IS WHAT WE CALL A BIFURCATED TRIAL,
4 MEANING THAT IT'S DIVIDED INTO TWO PARTS.

5 THE FIRST PART BEING THE GUILT PHASE AND THEN THE
6 SECOND PART BEING THE SENTENCING PHASE.

7 NOW, YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
8 SUCH A TRIAL AND IN THE GUILT PHASE, THE FIRST PART, AND IF
9 THE JURY FOUND THE DEFENDANT NOT GUILTY OF MURDER, THAT
10 THERE WOULD BE NO NEED TO HAVE THE SECOND PART OF THE
11 TRIAL, THE SENTENCING PHASE?

12 A OKAY.

13 Q AND DO YOU ALSO UNDERSTAND THAT IF YOU WERE A JUROR
14 IN SUCH A CASE AND IF THE JURY FOUND THE DEFENDANT GUILTY
15 OF MURDER, THAT YOU WOULD THEN PROCEED TO THE SECOND PHASE
16 WHICH IS THE SENTENCING PART?

17 A YES.

18 Q NOW, IN THAT PORTION OF THE TRIAL AND WE ARE TALKING
19 ABOUT THE SENTENCING PHASE, THERE WOULD BE EVIDENCE
20 PRESENTED CONCERNING AGGRAVATING CIRCUMSTANCES AS WELL AS
21 MITIGATING CIRCUMSTANCES.

22 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
23 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
24 ASSEMBLY HAS DECLARED BY STATUTE THAT WOULD MAKE WORSE;
25 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

0773

1 IN OTHER WORDS, WHEN A MURDER OCCURS ALONG WITH
2 AN AGGRAVATING CIRCUMSTANCE, IT IS INCREASED IN ENORMITY
3 AND ADDS TO THE INJURY OF THE MURDER.

4 FOR EXAMPLE, I AM TALKING ABOUT WHEN A MURDER IS
5 COMMITTED IN CONNECTION WITH ANOTHER CRIME SUCH AS CRIMINAL
6 SEXUAL CONDUCT AND OR BURGLARY OR THE LIKE. DO YOU
7 UNDERSTAND THAT?

8 A YES.

9 Q NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE
10 ALSO FACTS, INCIDENTS, DETAILS, OCCURRENCES WHICH OUR
11 GENERAL ASSEMBLY, ONCE AGAIN, HAS DECLARED BY LAW REDUCES
12 THE SEVERITY OF THE CRIME OF MURDER AND MAY BE CONSIDERED
13 BY THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF
14 MORAL CULPABILITY OR RESPONSIBILITY.

15 AND WHAT I'M TALKING ABOUT WHEN I SPEAK OF
16 MITIGATING CIRCUMSTANCES AND THOSE PARTICULAR INCIDENTS,
17 DETAILS OR OCCURRENCES COULD BE THAT THE MURDER WAS
18 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
19 MENTAL OR EMOTIONAL DISTURBANCE; THAT THE CAPACITY OF THE
20 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
21 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
22 SUBSTANTIALLY IMPAIRED AND ALSO THE AGE OR MENTALITY OF THE
23 DEFENDANT AT THE TIME OF THE CRIME. NOW, DO YOU UNDERSTAND
24 WHAT I'M TALKING ABOUT WHEN I'M SPEAKING OF A MITIGATING
25 CIRCUMSTANCE?

1 A YES, SIR.

2 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THE
3 SITUATION OF A SENTENCING PHASE, THAT'S THE SECOND PHASE OF
4 A DEATH PENALTY TRIAL, COULD YOU, DEPENDING UPON THE
5 PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE INCLUDING
6 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
7 CIRCUMSTANCES, TOGETHER WITH THE LAW, AS I WOULD INSTRUCT
8 YOU AT THE END OF THE TRIAL, RETURN A SENTENCE OF LIFE IN
9 PRISON?

10 A YES.

11 Q IF YOU ARE A JUROR IN THAT SITUATION, COULD YOU,
12 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
13 THAT CASE, ONCE AGAIN, CONSIDERING THE AGGRAVATING AND
14 MITIGATING CIRCUMSTANCES PRESENTED AND THE LAW, AS I WOULD
15 INSTRUCT YOU AT THE CONCLUSION OF THE TRIAL, RETURN A
16 SENTENCE OF DEATH?

17 A I THINK SO, BUT I NEVER HAVE BEEN FACED WITH IT.

18 Q NOW, IF YOU ARE CHOSEN TO SERVE ON THIS JURY, YOU
19 WOULD BE SEQUESTERED, WHICH MEANS YOU WOULD BE HOUSED IN A
20 MOTEL FOR THE DURATION OF THE TRIAL. AND THAT COULD BE
21 ANYWHERE FROM SEVEN TO TEN DAYS. I DON'T KNOW EXACTLY HOW
22 LONG IT WOULD BE. IT COULD BE LESS THAN THAT---

23 A UH-HUH.

24 Q ---BUT I'M SAYING SEVEN TO TEN DAYS AT AN OUTSIDE
25 NUMBER. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU

0775

1 WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE
2 HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT ON
3 YOU?

4 A NO.

5 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS.

6 MS. FULLWOOD, WOULD YOU POSE SOME QUESTIONS TO
7 MS. BROWN.

8 MS. FULLWOOD: YES, SIR.

9 EXAMINATION

10 BY MS. FULLWOOD:

11 Q HI, MS. BROWN.

12 A HI.

13 Q AS JUDGE CLARY TOLD YOU, I'M BETH FULLWOOD. DUFFIE
14 STONE, WHO IS SEATED OVER AT THE TABLE, AND I REPRESENT
15 GARY TERRY.

16 A UH-HUH.

17 Q I'M GOING TO NEED TO ASK YOU SOME QUESTIONS THIS
18 AFTERNOON, AND, OF COURSE, THE PROSECUTOR WILL WANT TO ASK
19 YOU SOME, TOO. IT'S KIND OF UNUSUAL FOR US LAWYERS TO GET
20 TO ASK ANY QUESTIONS OF PEOPLE ON THE JURY. I'M NOT ASKING
21 YOU QUESTIONS TO TRY TO BE INTRUSIVE OR TO GIVE YOU A HARD
22 TIME, BUT WE ALL JUST NEED TO HAVE YOUR FRANK AND HONEST
23 AND CANDID ANSWERS TO THESE QUESTIONS.

24 WERE YOU SURPRISED YESTERDAY WHEN YOU FOUND OUT
25 THAT YOU HAD BEEN PULLED AS A POTENTIAL JUROR IN A DEATH

1 PENALTY CASE?

2 A YES.

3 Q WERE YOU REAL SURPRISED?

4 A YES.

5 Q DIDN'T SEE THAT COMING?

6 A NO, I DIDN'T REALLY KNOW WHAT KIND OF COURT IT WAS.

7 Q I SEE. I THINK A LOT OF PEOPLE WERE.

8 A UH-HUH.

9 Q CAN YOU TELL US WHAT YOUR VIEWS ARE IN GENERAL ABOUT
10 THE DEATH PENALTY?

11 A I GENERALLY DON'T DISAGREE WITH IT. IT'S JUST WHEN
12 IT COMES DOWN TO BEING SOMETHING THAT I PERSONALLY HAVE TO
13 DEAL OUT, IT'S A DIFFERENT STORY.

14 Q OKAY. I UNDERSTAND. WERE YOU AWARE BEFORE JUDGE
15 CLARY EXPLAINED IT TO YOU THAT IN THIS TYPE OF A CASE WE
16 HAVE TWO TRIALS?

17 A NO, I WASN'T.

18 Q OKAY. IS IT CLEAR TO YOU HOW THAT WORKS?

19 A YES.

20 Q OKAY. SO YOU UNDERSTAND THAT IN THIS TYPE OF CASE,
21 IN THE FIRST TRIAL, THE JURY DECIDES WHETHER OR NOT THE
22 DEFENDANT IS GUILTY OR NOT GUILTY?

23 A RIGHT.

24 Q OKAY. AND THE ONLY WAY YOU GO INTO THE SECOND TRIAL
25 IS IF THE JURY FINDS A VERDICT OF GUILTY IN THE FIRST?

0777

1 A RIGHT.

2 Q OKAY. AND YOU UNDERSTAND THAT TO EVEN GET TO THE
3 SECOND TRIAL, THE JURY WOULD HAVE ALREADY FOUND THE
4 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT OF MURDER AND
5 SOME OTHER CRIME OR CRIMES?

6 A RIGHT.

7 Q AND THAT WOULD BE SOMETHING, SAY, LIKE RAPE OR
8 BURGLARY OR SOMETHING OF THAT NATURE?

9 A YES.

10 Q OKAY. OF COURSE, IN THE SECOND TRIAL, THE JURY
11 LISTENS TO ADDITIONAL EVIDENCE BOTH FROM THE PROSECUTION
12 AND FROM THE DEFENSE.

13 NOW, IF YOU WERE A JUROR IN THAT TYPE OF TRIAL
14 AND, OF COURSE, YOU HEARD AND LISTENED TO THE EVIDENCE IN
15 THE SECOND TRIAL THAT WAS PRESENTED BY BOTH SIDES AND
16 KEEPING IN MIND THAT YOU HAD ALREADY IN THE FIRST TRIAL
17 FOUND THE DEFENDANT GUILTY OF MURDER AND BY MURDER I MEAN
18 JUST BASICALLY A KILLING WITH MALICE---

19 A UH-HUH.

20 Q ---NO SELF-DEFENSE, NO ACCIDENT, NO HEAT OF PASSION.
21 THAT'S ALREADY BEEN DECIDED. THAT'S NOT PRESENT. COULD
22 YOU IMPOSE A DEATH SENTENCE ON THAT PERSON?

23 A I THINK I COULD. I DON'T KNOW IF I WOULD ENJOY
24 LIVING WITH IT, BUT I THINK I COULD DO IT.

25 Q OKAY. YES, MA'AM. AND NOBODY HERE IS TRYING TO

1 STAKE OUT WHICH WAY YOU'D VOTE ONE WAY OR THE OTHER.

2 A UH-HUH.

3 Q IT WOULDN'T BE FAIR TO ASK YOU BECAUSE YOU HAVEN'T
4 HEARD THE EVIDENCE AND IT WOULDN'T BE FAIR TO EITHER SIDE
5 TO ASK A PERSON WHO HASN'T HEARD THE EVIDENCE TO MAKE THAT
6 KIND OF DECISION.

7 WELL, LET ME ASK YOU THE QUESTION THE OTHER WAY.
8 IF YOU WERE IN THE SECOND TRIAL, HAVING ALREADY FOUND THE
9 PERSON GUILTY OF MURDER AND SOME OTHER CRIMES AND AFTER
10 HAVING LISTENED TO ALL THE EVIDENCE IN THE SECOND TRIAL
11 FROM BOTH SIDES, COULD YOU GIVE THAT PERSON A LIFE
12 SENTENCE?

13 A YES.

14 Q OKAY. ONE LAST QUESTION AND THEN I'LL LEAVE YOU
15 ALONG FOR THIS AFTERNOON.

16 IF -- THE WAY OUR LAW WORKS IS IF THE JURY
17 DECIDES AFTER HEARING ALL THE EVIDENCE THAT THE DEATH
18 PENALTY IS THE RIGHT SENTENCE, THEY HAVE TO SIGN A
19 SENTENCING FORM TO LET THE COURT KNOW WHAT THEIR SENTENCE
20 IS AND EACH MEMBER OF THE JURY HAS TO SIGN THAT FORM TO
21 SIGNIFY THAT THAT, IN FACT, IS THEIR VERDICT. IF YOU HAD
22 LISTENED TO THE EVIDENCE AND DECIDED THE DEATH PENALTY WAS
23 THE RIGHT SENTENCE, COULD YOU SIGN YOUR NAME TO SUCH A
24 FORM?

25 A YES.

0779

1 Q THAT WOULDN'T PREVENT YOU FROM ARRIVING AT YOUR
2 SENTENCE IN ANY WAY?

3 A NO.

4 Q THANK YOU, MA'AM. I APPRECIATE YOUR ANSWERS.

5 THE COURT: SOLICITOR HUMPHRIES.

6 EXAMINATION

7 BY MR. HUMPHRIES:

8 Q MS. BROWN, I'M FRAN HUMPHRIES. I'M THE DEPUTY
9 SOLICITOR. I, ALONG WITH TOM CHASE, WHO IS SEATED HERE,
10 WILL ASSIST SOLICITOR MYERS IN THE TRIAL OF THIS CASE.

11 AND I KNOW FROM THE ONSET, THAT THIS IS A
12 QUESTION WHICH CLEARLY YOU'VE NEVER FACED BEFORE. NOW, IT
13 MAY SHOCK YOU TO LEARN -- IT SHOCKED ME TO LEARN THAT WE
14 HAD A PERSON SITTING IN THAT BOX YESTERDAY WHO ACTUALLY HAD
15 FACED IT BEFORE IN ANOTHER STATE. IT SHOCKED ME. BUT MOST
16 FOLKS HAVEN'T. MOST FOLKS HAVE PRETTY LIMITED ACCESS OR
17 EXPERIENCE WITH THE COURT SYSTEM IN GENERAL, BUT
18 SPECIFICALLY WITH CAPITAL CASES. THEY'RE DIFFERENT AND
19 THEY PRESENT HARD QUESTIONS.

20 I THINK YOUR ANSWERS HAVE REFLECTED THAT---

21 A UH-HUH.

22 Q ---AND DO YOU FEEL LIKE THEY ARE PRETTY HARD
23 QUESTIONS?

24 A OH, YES, DEFINITELY.

25 Q SURE.

1 NOW, I GUESS, MY QUESTION IS THIS. YOU'VE SAID
2 AND LET ME MAKE SURE I'VE GOT IT EXACTLY OR AS CLOSE TO
3 EXACTLY RIGHT AS I CAN.

4 A UH-HUH.

5 Q WHEN TALKING ABOUT THE DEATH PENALTY GENERALLY, YOU
6 SAY YOU DON'T DISAGREE WITH IT?

7 A NO.

8 Q WHICH, I GUESS, IS TO SAY THAT YOU DO DISAGREE --
9 THAT YOU DO AGREE WITH IT?

10 A I THINK IN CERTAIN INSTANCES IT'S WARRANTED, BUT I
11 WOULDN'T ARBITRARILY SAY THAT EVERY MURDER SHOULD GET---

12 Q EVERY MURDER DESERVES THE DEATH PENALTY---

13 A RIGHT. I THINK THERE ARE CERTAIN ONES THAT IT
14 SHOULD.

15 Q EXACTLY. AND THAT WOULD BE CONSISTENT WITH HIS
16 HONOR'S CHARGE TO YOU---

17 A UH-HUH.

18 Q ---AND, IN FACT, HIS COMMENTS ALREADY---

19 A UH-HUH.

20 Q ---TO YOU THAT HE INSTRUCT YOU TO CONSIDER THE
21 AGGRAVATING CIRCUMSTANCES AND THE MITIGATING
22 CIRCUMSTANCES---

23 A RIGHT.

24 Q ---BEFORE YOU'D RENDER A VERDICT IN THIS CASE?

25 A UH-HUH.

0781

- 1 Q WE ALL WANT THAT AS A JUROR?
- 2 A RIGHT.
- 3 Q NOW, MY SECOND QUESTION IS THIS. YOU INDICATED THAT
- 4 YOU FELT AS THOUGH YOU COULD IMPOSE A DEATH VERDICT, BUT
- 5 YOU WOULDN'T ENJOY LIVING WITH IT?
- 6 A NO, I WOULDN'T.
- 7 Q IS THAT A FAIR STATEMENT OF WHAT YOU SAID?
- 8 A YES, IT'S A FAIR STATEMENT.
- 9 Q MY ONLY QUESTION IS THIS AS IT RELATES TO THAT.
- 10 WOULD THE FACT THAT YOU WOULDN'T ENJOY LIVING WITH IT, IF
- 11 YOU WERE TO DECIDE THAT DEATH WAS THE APPROPRIATE VERDICT,
- 12 WOULD THAT FACT IMPAIR YOU FROM FULLY CONSIDERING DEATH AS
- 13 AN APPROPRIATE VERDICT UNDER THE CIRCUMSTANCES AND
- 14 RENDERING A DEATH VERDICT?
- 15 A NO, I DON'T THINK SO. I THINK IT'S JUST SOMETHING
- 16 THAT I WOULD HAVE TO DECIDE BASED ON THE EVIDENCE IF IT WAS
- 17 RIGHT OR WRONG AND THEN JUST KIND OF---
- 18 Q YOU'D FOLLOW YOUR OATH?
- 19 A YEAH. BUT, AGAIN, I'M NOT SAYING IT WOULD BE EASY.
- 20 Q SURE. NOBODY EXPECTS IT TO BE EASY.
- 21 A UH-HUH.
- 22 Q YOU UNDERSTAND ALSO THAT THERE ARE NO CIRCUMSTANCES
- 23 UNDER WHICH IN THIS TRIAL THAT YOU WILL BE FORCED TO RENDER
- 24 A DEATH VERDICT, YOU KNOW THAT?
- 25 A UH-HUH.

1 Q THERE'S ALWAYS TWO CHOICES. BUT THERE ARE ONLY
2 TWO---

3 A UH-HUH.

4 Q ---LIFE AND DEATH, YOU UNDERSTAND THAT?

5 A YES.

6 Q LET ME SEE IF I CAN SUM IT UP. YOU ARE THE TYPE OF
7 JUROR WHO IN THAT SECOND PHASE COULD LISTEN TO THE EVIDENCE
8 IN AGGRAVATION, THE EVIDENCE IN MITIGATION, THE CHARGE ON
9 THE LAW, AS THE JUDGE GIVES IT TO YOU, AND AFTER
10 CONSIDERING ALL OF THAT AND FOLLOWING THE LAW, YOU COULD
11 RENDER EITHER A VERDICT OF LIFE OR A VERDICT OF DEATH GIVEN
12 THE RIGHT CIRCUMSTANCES?

13 A YES, I THINK SO.

14 Q YOU COULD BE FAIR BOTH TO THE STATE AND TO THE
15 DEFENDANT, GARY DUBOSE TERRY?

16 A YES, I THINK SO.

17 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

18 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

19 MS. FULLWOOD: NO, YOUR HONOR.

20 THE COURT: FROM THE STATE?

21 MR. HUMPHRIES: NO, SIR.

22 THE COURT: MS. BROWN, I WANT TO THANK YOU VERY
23 MUCH FOR YOUR PARTICIPATION YESTERDAY AS WELL AS TODAY.

24 I DO FIND THAT YOU ARE QUALIFIED TO SERVE AS A
25 POTENTIAL JUROR IN THIS CASE. AND WITH THAT QUALIFICATION,

0783

1 COMES SOME MORE INSTRUCTIONS FROM ME. PLEASE KEEP IN MIND
2 THAT THE PREVIOUS INSTRUCTION THAT YOU ARE NOT TO DISCUSS
3 THIS CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR
4 ANYONE ELSE IS CONTINUING; AS WELL AS THE FACT THAT IF
5 ANYONE SHOULD ATTEMPT TO CONTACT YOU CONCERNING THIS CASE,
6 I WANT YOU TO GATHER AS MUCH INFORMATION ABOUT THAT
7 INDIVIDUAL AS YOU POSSIBLY CAN AND REPORT THAT TO ME
8 IMMEDIATELY BECAUSE THAT'S VERY SERIOUS AND I WOULD DEAL
9 WITH IT ACCORDINGLY.

10 ALSO, I'M GOING TO ASK THAT YOU CONTINUE TO
11 REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
12 ACCOUNT CONCERNING THIS CASE.

13 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IN
14 THIS CASE IF YOU ARE SELECTED AS A JUROR IS WHAT -- IS TO
15 CONSIDER WHAT YOU SEE AND HEAR IN THIS COURTROOM, NOTHING
16 MORE AND NOTHING LESS.

17 SO WITH THAT INSTRUCTION, I'M GOING TO SEND YOU
18 ALONG YOUR WAY WITH THE FURTHER INSTRUCTION THAT YOU ARE TO
19 START PACKING YOUR BAGS BECAUSE YOU NEED TO BE BACK HERE IN
20 THE MORNING IN THE COURTROOM AT 9:30 A.M.

21 NOW, PLEASE DO NOT BRING YOUR LUGGAGE INTO THE
22 COURTROOM. LEAVE THAT IN YOUR VEHICLE. IF YOU ARE CHOSEN
23 AS A JUROR IN THIS CASE, THEN THE JURY CUSTODIANS WILL SEE
24 THAT YOU AND YOUR BELONGINGS ARE PROPERLY TAKEN TO THE
25 MOTEL AND SETTLED FOR THE DURATION OF THE TRIAL AND IF YOU

1 ARE NOT SELECTED, THEN, YOU WOULD BE GOING ON ABOUT YOUR
2 DAILY ACTIVITIES WITH OUR THANKS FOR PARTICIPATING IN THIS
3 PROCESS. SO UNTIL IN THE MORNING AT NINE-THIRTY, I'LL LOOK
4 FORWARD TO SEEING YOU THEN, HAVE A PLEASANT EVENING.

5 THE JUROR: OKAY. THANK YOU.

6 (WHEREUPON, THE JUROR WAS EXCUSED
7 AT THIS TIME.)

8 THE COURT: INsofar AS MS. GOFF IS CONCERNED, I
9 THINK WHAT I AM GOING TO DO WITH HER WHEN SHE COMES IN, IS
10 TO JUST BRING HER DOWN HERE AND ASK HER SOME QUESTIONS WITH
11 THE COURT REPORTER CONCERNING THOSE ISSUES THAT WERE RAISED
12 EARLIER BY THE DEFENSE AND THEN I'LL PUT HER ON THE STAND.
13 I'LL GO AHEAD AND LET HER BE SWORN AND THEN I'LL PUT HER ON
14 THE STAND.

15 MR. STONE: THANK YOU, YOUR HONOR, AND I WOULD
16 ASK YOU TO DO SOMETHING ELSE, CONSIDER SOMETHING ELSE AS
17 WELL.

18 YESTERDAY WHEN SHE TALKED TO US, SHE MADE THE
19 COMMENT THAT HER FATHER WAS NOT JUST MURDERED, BUT THAT HE
20 WAS BEATEN TO DEATH. I DON'T NECESSARILY WANT TO GET INTO
21 THE FACTS OF THIS CASE EITHER, BUT MY CONCERN IS THAT THIS
22 IS A BEATING CASE AND I WANT TO MAKE SURE THAT THOSE
23 ALLEGATIONS OF A BEATING DON'T TRIGGER SOMETHING SO MUCH IN
24 HER BRAIN THAT SHE IS NOT ABLE TO -- AND I THINK IT MIGHT
25 BE BETTER IF YOU ASKED THAT QUESTION---

0785

1 THE COURT: I'M GOING TO ASK HER THOSE THINGS
2 WHILE WE ARE DOWN HERE. I'M GOING TO TELL HER THAT I
3 UNDERSTAND THAT IT'S PROBABLY PAINFUL, BUT I WOULD LIKE FOR
4 HER TO TELL ME A LITTLE BIT ABOUT THE CASE AND THEN I CAN
5 GET INTO IT A LITTLE BIT MORE.

6 ALL RIGHT. BEFORE SHE COMES IN, LET THE RECORD
7 REFLECT THAT JUROR NUMBER 34, LOUISE M. BROWN, IS QUALIFIED
8 TO SERVE AS A POTENTIAL JUROR IN THIS CASE AND PURSUANT TO
9 SECTION 16-320 OF THE CODE OF LAWS, STATE OF SOUTH
10 CAROLINA, 1976 AS AMENDED.

11 ALL RIGHT. LET'S BRING IN PATRICIA GOFF, JUROR
12 NUMBER 94.

13 PATRICIA E. GOFF,
14 (JUROR NUMBER 94, WHITE FEMALE,
15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

16 THE COURT: MS. GOFF, BEFORE YOU SIT DOWN, I'M
17 GOING TO COME DOWN THERE. I NEED TO ASK YOU A COUPLE OF
18 QUESTIONS---

19 THE JUROR: OKAY.

20 THE COURT: ---BEFORE WE START WITH THE GENERAL
21 PART OF THIS.

22 (WHEREUPON, THE FOLLOWING BENCH
23 CONFERENCE WAS HELD AT THIS TIME.)

24 THE COURT: YESTERDAY WHEN YOU CAME FORWARD, YOU
25 TOLD ME THAT YOUR FATHER HAD BEEN THE VICTIM---

1 THE JUROR: UH-HUH.

2 THE COURT: ---OF A CRIME. THAT HE HAD BEEN --
3 THAT HE HAD BEEN KILLED---

4 THE JUROR: UH-HUH.

5 THE COURT: AND I SEE FROM YOUR QUESTIONNAIRE,
6 THAT IT WAS WHEN HE WAS SIX-YEAR-OLD---

7 THE JUROR: NO, WHEN I WAS SIX---

8 THE COURT: OH, OKAY. EXCUSE ME, WHEN YOU WERE
9 SIX AND YOU FOUND HIM IN A DITCH. YOU KNOW, I UNDERSTAND
10 THAT THESE ARE NOT THINGS THAT ARE EASY TO TALK ABOUT, BUT
11 I NEED FOR YOU TO TELL ME A LITTLE BIT MORE ABOUT THAT IF
12 YOU COULD. HOW WAS THE CRIME COMMITTED THAT YOU KNOW?

13 THE JUROR: WELL, IT'S KIND OF HARD, BUT MY MOM
14 AND HIM HAD SPLIT UP AND HE WAS WATCHING US IN THE PARK
15 WHILE SHE WORKED AND HE HAD WALKED DOWN THE DIRT ROAD BY
16 THE PARK AND -- TO PICK US SOME BLACKBERRIES AND HE NEVER
17 CAME BACK. AND I WENT LOOKING FOR HIM AND THAT'S WHERE I
18 FOUND HIM.

19 THE COURT: YOU FOUND HIM. HAD HE BEEN -- HOW
20 DID -- WAS HE ATTACKED?

21 THE JUROR: YEAH. HE WAS BEATEN. I DON'T -- I
22 DON'T REMEMBER VERY MUCH ABOUT IT. THEY SAID HIS FACE WAS
23 REALLY MESSED UP A LOT AND THEY DIDN'T LET ME SEE HIM, OF
24 COURSE. HE WAS FACE DOWN IN THE DITCH. I DIDN'T SEE HIM.
25 AND SO THAT'S ABOUT REALLY ALL I REMEMBER. I WAS REAL

1 YOUNG.

2 THE COURT: WAS THERE A TRIAL IN THAT CASE?

3 THE JUROR: YEAH---

4 THE COURT: AND---

5 THE JUROR: ---IN THIS COURTROOM.

6 THE COURT: IN THIS COURTROOM. OKAY. AND DID
7 YOU TESTIFY IN THAT CASE?

8 THE JUROR: I THINK I DID. I THINK. I'M NOT
9 SURE. I THINK I DID.

10 THE COURT: OKAY. ALL RIGHT.

11 THE JUROR: I REMEMBER BEING HERE.

12 THE COURT: OKAY. AND THAT WAS, I THINK, YOU
13 TOLD ME BACK IN '83?

14 THE JUROR: '83.

15 THE COURT: OKAY. IF YOU WOULD, I'M GOING TO GET
16 YOU TO STEP OUT IN THE HALL JUST A MINUTE.

17 THE JUROR: OKAY.

18 (WHEREUPON, THE JUROR EXITS THE
19 COURTROOM AT THIS TIME.)

20 (WHEREUPON, THE ATTORNEYS APPROACH
21 THE BENCH AT THIS TIME.)

22 THE COURT: I DON'T KNOW HOW MUCH OF THAT YOU
23 HEARD. BASICALLY---

24 MR. STONE: I DIDN'T HEAR ANY OF IT.

25 THE COURT: ---SHE SAID THAT HER FATHER WAS

1 WATCHING HER AND -- HER FATHER AND MOTHER WERE SEPARATED
2 AND HE HAD TAKEN THEM TO THE PARK TO PLAY AND HE WALKED
3 DOWN A DIRT ROAD NEAR -- NEXT TO THE PARK TO PICK THEM SOME
4 BLACKBERRIES AND DIDN'T COME BACK. SHE WENT TO LOOK FOR
5 HIM AND FOUND HIM IN A DITCH. HE WAS FACEDOWN. SHE SAID
6 THAT SHE NEVER SAW HIS FACE OR ANYTHING. APPARENTLY HE HAD
7 WOUNDS INFLICTED TO HIS FACE. SHE SAID THE PERSON WAS
8 TRIED AND THAT IT WAS IN THIS COURTROOM. SHE REMEMBERS
9 THAT. I SAID, WELL, DID YOU TESTIFY IN THE CASE. SHE SAID
10 I DON'T REMEMBER. SHE SAID I WAS SIX-YEARS-OLD AND I CAN'T
11 REMEMBER IF I TESTIFIED OR NOT.

12 SO, YOU KNOW, THAT WAS THE EXTENT OF IT. SHE
13 DIDN'T SHOW ANY EMOTION TODAY WHEN I ASKED HER QUESTIONS
14 ABOUT THIS.

15 SO I'M GOING TO GO AHEAD AND JUST QUESTION HER
16 AND WE'LL SEE HOW SHE DOES WITH IT AND IF WE RUN INTO ANY
17 PROBLEMS.

18 MR. STONE: OKAY. AND THE MAIN CONCERN THAT I'VE
19 GOT IS, OBVIOUSLY, THE MURDER PICTURES. NO MATTER WHICH
20 PICTURE THE STATE CHOOSES TO USED, AND FRAN CAN OBVIOUSLY
21 CORRECT ME, BUT IT'S GOING TO HAVE A PICTURE OF SOMEONE'S
22 HEAD THAT'S BEEN BEAT---

23 THE COURT: UH-HUH.

24 MR. STONE: ---MAYBE SHE'S DIFFERENT THAN ME, BUT
25 I CAN'T IMAGINE BEING IN A SITUATION WHEN YOU'RE

0789

1 SIX-YEARS-OLD AND YOUR FATHER WAS BEATEN TO DEATH,
2 ESPECIALLY IF I FOUND HIM, AND THEN SEE THAT AND THAT MIGHT
3 TRIGGER SOMETHING. I MEAN, MAYBE -- I DON'T KNOW. I JUST
4 CAN'T IMAGINE THAT.

5 THE COURT: WHAT DO YOU SAY ABOUT THAT, FRAN?

6 MR. HUMPHRIES: I DON'T KNOW HOW WE CAN
7 ANTICIPATE THAT. DUFFIE IS RIGHT. THERE ARE GOING TO BE
8 PICTURES AND THEY ARE GOING TO PORTRAY A BLOODY MESS, BUT
9 -- AND I DON'T KNOW -- I GUESS, I'M A LITTLE CONCERNED
10 ABOUT GOING INTO TOO MUCH DETAIL.

11 THE COURT: WELL, YOU KNOW, THE THING ABOUT IT,
12 THE ONLY THING THAT I WOULD HATE AND, YOU KNOW, LET'S SAY
13 SHE GETS THROUGH ALL THE QUESTIONING AND EVERYTHING, IS TO
14 HAVE HER SITTING UP HERE AND HER SEE THOSE PICTURES AND
15 THEN JUST COMPLETELY FALL APART BECAUSE THAT WOULD BE
16 COUNTERPRODUCTIVE TO THE ENTIRE PROCESS.

17 SO, I'M GOING TO SEE HOW THIS GOES ALONG. OF
18 COURSE, ONCE AGAIN, YOU HAVE STRIKES THAT YOU CAN MAKE AND
19 THAT'S WHAT THEY ARE DESIGNED FOR, BUT LET'S JUST SEE HOW
20 SHE GETS THROUGH THIS.

21 MR. HUMPHRIES: AND WE'VE GOT ALTERNATES.

22 THE COURT: YEAH, SURE.

23 MR. HUMPHRIES: I MEAN, MY EXPERIENCE IS -- WE'VE
24 HAD SOME---

25 MR. STONE: OH, I KNOW.

1 MR. HUMPHRIES: ---ALL THOSE -- YOU CAN'T
2 PREDICT---

3 MR. STONE: OH, I KNOW THAT.

4 MR. HUMPHRIES: ---THE ONES THAT ARE GOING TO
5 FALL OUT.

6 MR. STONE: THIS LOOKS LIKE A BETTER PREDICTION
7 THAN SOME.

8 THE COURT: YOU KNOW, WHAT I ALWAYS SAY ABOUT
9 THESE CASES IS THAT IT'S NOT THE LAW THAT TAKES OVER, IT'S
10 MURPHY'S LAW THAT TAKES OVER. AND ANYTHING THAT CAN GO
11 WRONG WILL GO WRONG WITH A JURY.

12 MR. HUMPHRIES: AIN'T NO QUESTION ABOUT THAT.

13 THE COURT: SO, LET ME TALK WITH HER.

14 MR. HUMPHRIES: YES, SIR.

15 MR. STONE: SURE.

16 (WHEREUPON, THE BENCH CONFERENCE
17 WAS CONCLUDED AT THIS TIME.)

18 THE COURT: ALL RIGHT. BRING HER BACK IN.

19 (WHEREUPON, THE JUROR RETURNS TO
20 THE COURTROOM AND RESUMES THE WITNESS STAND AT THIS TIME.)

21 THE COURT: YOU MAY TAKE YOUR SEAT HERE, MA'AM.

22 THE JUROR: OKAY.

23 EXAMINATION

24 BY THE COURT:

25 Q NOW, YOU ARE PATRICIA E. GOFF, CORRECT?

0791

1 A YES, SIR.

2 Q JUROR NUMBER 94. MS. GOFF, YOU UNDERSTAND THAT YOU
3 ARE SWORN FOR THESE PROCEEDINGS THIS AFTERNOON?

4 A YES, SIR.

5 Q AND DO YOU REMEMBER YESTERDAY BEFORE I DISMISSED YOU
6 AND YOUR FELLOW JURORS, THAT I GAVE YOU CERTAIN
7 INSTRUCTIONS THAT YOU WERE TO NOT DISCUSS THIS CASE WITH
8 ANYONE AND THAT IF ANYONE ATTEMPTED TO CONTACT YOU
9 CONCERNING THIS CASE, THAT YOU WERE TO REPORT THAT TO ME
10 AND ALSO THAT YOU WERE NOT TO READ, WATCH OR LISTEN TO ANY
11 NEWS ACCOUNTS CONCERNING THIS CASE. HAVE ANY OF THOSE
12 INSTRUCTIONS BEEN VIOLATED?

13 A NO, SIR.

14 Q NOW, I'M GOING TO BE ASKING YOU SOME QUESTIONS OVER
15 THE NEXT FEW MINUTES AND THEREAFTER ONE OF THE LAWYERS FOR
16 MR. TERRY WILL ASK SOME QUESTIONS, AS WELL AS ONE OF THE
17 SOLICITORS.

18 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
19 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE TYPE
20 CASE WE ARE ABOUT HERE, IT'S NECESSARY THAT CERTAIN
21 QUESTIONS BE ASKED.

22 ALSO KEEP IN MIND THAT THERE ARE NO RIGHT OR
23 WRONG ANSWERS TO THE QUESTIONS THAT I'M GOING TO BE ASKING
24 YOU. PLEASE ANSWER THEM OPENLY AND HONESTLY AND FULLY AND
25 ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING THE VIEW THAT

1 YOU MAY HAVE. WE JUST NEED TO KNOW WHAT YOUR VIEWS ARE IN
2 CERTAIN AREAS. AND ALSO, PLEASE KEEP IN MIND THAT YOU ARE
3 PROBABLY GOING TO BE ASKED QUESTIONS THAT YOU'VE NEVER EVEN
4 CONSIDERED BEFORE COMING HERE TODAY.

5 A OKAY.

6 Q SO I WANT YOU TO LISTEN VERY CAREFULLY TO THE
7 QUESTIONS AS THEY ARE GIVEN TO YOU.

8 A OKAY.

9 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
10 ABOUT TODAY WILL BE THE USE OF THE WORD PENALTY.

11 NOW, THE MERE FACT THAT WE EVEN TALK ABOUT
12 PENALTY DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT THE
13 DEFENDANT, MR. TERRY. IN THE LAW, HE IS PRESUMED TO BE
14 INNOCENT. DO YOU UNDERSTAND THAT?

15 A YES, SIR.

16 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN A
17 CRIMINAL CASE. COULD YOU LISTEN TO THE LAW, ACCEPT AND
18 APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS
19 COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH THAT LAW OR
20 THINK THAT IT SHOULD TO SOME OTHER WAY?

21 A YES.

22 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
23 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

24 A YES.

25 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA

0793

1 HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE
2 BURDEN OF PROOF THAT THE STATE MUST MEET IS TO PROVE THE
3 ELEMENTS OF A PARTICULAR CRIME OR CRIMES WITH WHICH THAT
4 PERSON IS CHARGED BEYOND A REASONABLE DOUBT?

5 A OKAY.

6 Q A DEFENDANT HAS NO BURDEN TO PROVE HIMSELF INNOCENT.
7 DO YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
10 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
11 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

12 A YES, SIR.

13 Q I'M SORRY, I COULDN'T HEAR YOU?

14 A YES, SIR.

15 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE, AS I TOLD
16 YOU AND YOUR FELLOW JURORS YESTERDAY, IN WHICH THE STATE
17 SEEKS THE DEATH PENALTY AND THAT IS A CASE WHEREIN WE SAY
18 THAT IT'S A BIFURCATED TRIAL, MEANING THAT IT'S DIVIDED
19 INTO TWO PARTS---

20 A UH-HUH.

21 Q ---THE FIRST PART IS THE GUILT PHASE; THE SECOND PART
22 IS THE SENTENCING PHASE.

23 NOW, YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
24 SUCH A CASE AND IF THE JURY FOUND THE DEFENDANT NOT GUILTY
25 OF MURDER IN THE FIRST PHASE, THAT THERE WOULD BE NO

1 NECESSITY TO HAVE THE SECOND PART OF THE TRIAL?

2 A YES, SIR.

3 Q ON THE OTHER HAND, IF YOU WERE A JUROR IN SUCH A CASE
4 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
5 DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SECOND
6 PHASE, THE SENTENCING PHASE OF THE TRIAL?

7 A YES, SIR.

8 Q NOW, IN THAT PHASE OF THE TRIAL, DO YOU FURTHER
9 UNDERSTAND THAT THERE WOULD BE EVIDENCE PRESENTED TO YOU,
10 THE JURY, IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
11 AS MITIGATING CIRCUMSTANCES?

12 A YES, SIR.

13 Q NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
14 DETAILS OR OCCURRENCES WHICH OUR GENERAL ASSEMBLY HAS
15 DECLARED BY LAW THAT WOULD MAKE WORSE; THAT IS, TO
16 AGGRAVATE THE CRIME OF MURDER.

17 IN OTHER WORDS, WHEN A MURDER OCCURS TOGETHER
18 WITH AN AGGRAVATING CIRCUMSTANCE, THAT INCREASES THE
19 ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

20 FOR EXAMPLE, I'M TALKING ABOUT A MURDER THAT IS
21 COMMITTED IN CONJUNCTION WITH A CRIME LIKE CRIMINAL SEXUAL
22 CONDUCT AND OR BURGLARY OR THE LIKE. DO YOU UNDERSTAND
23 THAT?

24 A YES, SIR.

25 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE

0795

1 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
2 ASSEMBLY HAS ALSO DECLARED BY LAW REDUCES THE SEVERITY OF
3 THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
4 OR REDUCING THE DEGREE OF RESPONSIBILITY OR MORAL
5 CULPABILITY.

6 NOW, WHAT I MEAN BY THAT WOULD BE INFORMATION,
7 EVIDENCE THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANT
8 WAS UNDER THE INFLUENCE OF A MENTAL OR EMOTIONAL
9 DISTURBANCE---

10 A YES.

11 Q ---THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
12 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE
13 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS
14 THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF THE
15 CRIME. YOU UNDERSTAND WHAT I MEAN BY MITIGATING
16 CIRCUMSTANCES?

17 A YES.

18 Q CIRCUMSTANCES WHICH LESSEN OR REDUCE THE DEGREE OF
19 THE CRIME?

20 A UH-HUH.

21 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
22 SITUATION, THAT SENTENCING OR SECOND PHASE, COULD YOU,
23 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
24 THE CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
25 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT

1 YOU AT THE END OF THE TRIAL, RETURN A SENTENCE OF LIFE IN
2 PRISON?

3 A YES.

4 Q IF YOU ARE A JUROR IN THAT SITUATION, COULD YOU,
5 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
6 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
7 CONCLUSION OF THE TRIAL, INCLUDING THE CONSIDERATION OF
8 AGGRAVATION AND MITIGATING CIRCUMSTANCES, RETURN A SENTENCE
9 OF DEATH?

10 A YES, SIR.

11 Q NOW, MS. GOFF, IF YOU ARE CHOSEN TO SERVE ON THIS
12 JURY, YOU WOULD BE HOUSED IN A MOTEL. WE ALSO CALL THAT
13 BEING SEQUESTERED FOR THE DURATION OF THE TRIAL.

14 NOW, I DON'T KNOW EXACTLY HOW LONG THE CASE IS
15 GOING TO LAST, BUT IT COULD BE ANYWHERE FROM SEVEN TO TEN
16 DAYS. IT COULD BE SHORTER THAN THAT. EXCEPT FOR THE
17 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
18 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
19 YOURSELF OR OF ANYONE DEPENDENT UPON YOU?

20 A NO.

21 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS.
22 PLEASE ANSWER MR. STONE'S QUESTIONS AT THIS TIME.

23 MR. STONE: THANK YOU, YOUR HONOR.

24 EXAMINATION

25 BY MR. STONE:

0797

- 1 Q MS. GOFF, MY NAME IS DUFFIE STONE. I KNOW I WAS
2 INTRODUCED EARLIER, BUT I WANTED TO DO THAT FORMALLY WITH
3 YOU---
- 4 A OKAY.
- 5 Q THIS IS BETH FULLWOOD. MS. FULLWOOD, ALONG WITH
6 MYSELF, ARE REPRESENTING GARY TERRY, AT THE VERY END.
- 7 A OKAY.
- 8 Q THE DIFFICULT THING ABOUT BEING A LAWYER IS THAT YOU
9 HAVE TO ASK SOME VERY PROBING AND EMBARRASSING QUESTIONS
10 AND QUESTIONS THAT YOU MAY NOT FEEL COMFORTABLE ANSWERING.
11 SO I DO APOLOGIZE FOR ASKING, BUT I HAVE TO---
- 12 A OKAY.
- 13 Q ---OKAY?
- 14 A ALL RIGHT. I UNDERSTAND.
- 15 Q THE JUDGE HAS GIVEN YOU SOME IDEA THAT YOU ARE
16 INVOLVED AT THIS POINT IN A DEATH PENALTY CASE. YOU
17 UNDERSTAND THAT?
- 18 A YES, SIR.
- 19 Q OKAY. NOW, WE ALSO HAVE TO ASK YOU QUESTIONS ABOUT
20 SOMETHING THAT MAY NOT EVER TAKE PLACE. WE ARE GOING TO
21 HAVE TO ASK YOU ABOUT A SENTENCING PHASE THAT WE MAY NEVER
22 GET TO.
- 23 A OKAY.
- 24 Q IF MR. TERRY IS FOUND NOT GUILTY, WE DON'T GO THERE.
- 25 A OKAY.

1 Q BUT WE HAVE TO ASK YOU QUESTIONS ABOUT THAT AND TRY
2 TO GET YOUR IDEA ABOUT CAPITAL PUNISHMENT AND THINGS LIKE
3 THAT ANYWAY.

4 A OKAY.

5 Q OKAY? IN YOUR PAST EXPERIENCE AND WHETHER -- IN
6 PERSONAL OR WHATEVER YOUR RELIGIOUS BELIEFS ARE IN YOUR
7 HISTORY, IT'S NONE OF MY BUSINESS, BUT I AM INTERESTED IN
8 WHAT THAT GIVES YOU TODAY. WHAT KIND OF MIND SET THAT
9 GIVES YOU. WHAT DO YOU FEEL ABOUT CAPITAL PUNISHMENT, THE
10 DEATH SENTENCE?

11 A I THINK THAT IF IT'S IN OUR CONSTITUTION AND IT'S
12 THERE, YOU KNOW, IT'S A CHOICE WE HAVE TO MAKE AND IT'S
13 JUST ACCORDING TO THE CIRCUMSTANCES OF THE CASE, YOU KNOW.

14 Q OKAY. THE -- THE SOMEWHAT DIFFERENT THING ABOUT A
15 DEATH PENALTY CASE IS ONCE YOU GET TO A SENTENCING PHASE,
16 THE ONLY WAY YOU CAN GET TO A SENTENCING PHASE IS THAT
17 YOU'VE ALREADY DECIDED SOMEBODY IS GUILTY OF MURDER AND
18 GUILTY OF ANOTHER CRIME LIKE RAPE OR BURGLARY OR BOTH. YOU
19 UNDERSTAND THAT?

20 A UH-HUH.

21 Q SO WHEN YOU GET TO A SENTENCING PHASE, YOU'VE ALREADY
22 COVERED ALL THE GUILT OR INNOCENCE TYPE THING. THAT'S NOT
23 A QUESTION. YOU KNOW IN YOUR MIND THAT THE PERSON IS
24 GUILTY OF MURDER AND THAT THEY ARE GUILTY OF ANOTHER CRIME
25 WHETHER THAT BE RAPE OR BURGLARY OR BOTH OF THEM. DO YOU

0799

- 1 UNDERSTAND THAT?
- 2 A UH-HUH.
- 3 Q IF YOU'RE IN A SENTENCING PHASE LIKE THAT, HAVING --
- 4 HAVING KNOWN THAT, COULD YOU GIVE SOMEBODY A LIFE SENTENCE?
- 5 A YES, IF THE CIRCUMSTANCES WERE THERE.
- 6 Q AND THE CIRCUMSTANCES WOULD BE WHAT THE JUDGE TALKED
- 7 TO YOU ABOUT EARLIER?
- 8 A YEAH. IF -- IF IT WAS -- IF IT WAS PROVEN, YOU KNOW,
- 9 WITHOUT A DOUBT THAT THE CRIME WAS COMMITTED, THEN SURE.
- 10 Q OKAY. ONCE YOU GET THROUGH THAT GUILT PHASE AND
- 11 YOU'RE IN THE SENTENCING PHASE, IT HAS BEEN PROVEN---
- 12 A UH-HUH.
- 13 Q ---NO QUESTION ABOUT IT, OKAY. YOU CAN'T BE IN THAT
- 14 -- YOU CAN'T BE IN THAT SENTENCING PHASE UNLESS IT HAS.
- 15 DOES THAT MAKES SENSE?
- 16 A YEAH.
- 17 Q OKAY. IN THAT CASE AND IT'S ALREADY BEEN PROVED---
- 18 A UH-HUH.
- 19 Q ---COULD YOU GIVE SOMEBODY A LIFE SENTENCE?
- 20 A YES.
- 21 Q OKAY. DEPENDING ON WHAT EVIDENCE YOU HEAR AFTER
- 22 THAT?
- 23 A UH-HUH.
- 24 Q YOU SPOKE TO US EARLIER I THINK YESTERDAY WHEN YOU
- 25 CAME UP AND YOU TALKED ABOUT YOUR PRIOR EXPERIENCE WITH THE

0800

1 CRIMINAL COURT SYSTEM---

2 A YES, SIR.

3 Q ---AND I APOLOGIZE FOR ASKING YOU. YOU LOST YOUR
4 THAT FATHER WHEN YOU WERE SIX?

5 A UH-HUH.

6 Q YOU MAY NOT BE ABLE TO TELL ME THIS, BUT MY CONCERN
7 -- I WANT TO MAKE SURE THAT THAT DOESN'T INFLUENCE THE WAY
8 YOU THINK, TO MAKE SURE THAT YOU WOULD NOT BE FAIR BOTH TO
9 ME, MR. TERRY AND THE STATE---

10 A UH-HUH.

11 Q ---AND IN THIS CASE, YOU HAVE TO BE FAIR TO ALL OF
12 US?

13 A YES.

14 Q OKAY. AND I'M NOT TRYING TO PUSH YOU ONE WAY OR THE
15 OTHER. ALL WE NEED TO DO, YOUR OPINIONS AND YOUR -- WHAT
16 MAKES UP YOUR IDEAS ARE YOURS. THEY ARE NOT MINE---

17 A UH-HUH.

18 Q ---OKAY? DO YOU THINK THAT WOULD INFLUENCE YOU TO
19 DECIDE WITH ONE OR THE OTHER OR IN ANY WAY---

20 A THIS IS THE WAY I FEEL ABOUT IT. I FEEL THAT WHAT
21 HAPPENED WITH MY FATHER HAPPENED WITH MY FATHER. IT HAS
22 NOTHING TO DO WITH THIS CASE OR ANY OTHER ONE. YOU KNOW,
23 THERE'S NOTHING I CAN DO TO CHANGE THE PAST. IT HAPPENED
24 AND I HAVE TO GO ON.

25 Q OKAY. I UNDERSTAND.

0801

1 A AND I -- IT HAS NO BEARING ON -- THE EVIDENCE IS WHAT
2 I WOULD BASE IT ON, MY DECISION.

3 Q AND WHAT IS IN THE PAST IS IN THE PAST?

4 A THAT'S IT.

5 Q THANK YOU -- THANK YOU FOR YOUR RESPONSES AND, AGAIN,
6 I APOLOGIZE FOR---

7 A THAT'S OKAY. I'VE BEEN -- I'VE BEEN THROUGH
8 COUNSELING AND STUFF TO DEAL WITH IT---

9 Q HAVE YOU---

10 A ---AND IT'S EASY. IT DOESN'T BOTHER ME AS BAD AS---

11 Q HOW OLD WERE YOU?

12 A I WAS ONLY SIX. I DON'T REMEMBER TOO MUCH ABOUT IT
13 WHEN IT HAPPENED. JUST VAGUE MEMORIES OF IT.

14 Q ALL RIGHT. THANK YOU. I APPRECIATE IT.

15 A YOU'RE WELCOME.

16 THE COURT: MR. HUMPHRIES.

17 EXAMINATION

18 BY MR. HUMPHRIES:

19 Q MS. GOFF, I'M FRAN HUMPHRIES. I'M THE DEPUTY
20 SOLICITOR---

21 A OKAY.

22 Q ---AND I, ALONG WITH TOM CHASE, WILL ASSIST SOLICITOR
23 MYERS IN THE TRIAL OF THIS CASE.

24 A OKAY.

25 Q LET ME ASK YOU ONE QUESTION AS IT RELATES TO THE FORM

1 OF THE VERDICT, OKAY. SO I'M NOT GOING TO GO BACK OVER THE
2 WAY WE GO FROM THE GUILT TO THE PENALTY AND ALL LIKE THAT,
3 OKAY?

4 A OKAY.

5 Q LET'S ASSUME FOR THE MOMENT THAT YOU ARE ON THIS JURY
6 AND IN THE PENALTY PHASE, YOU AND THE OTHER TWELVE JURORS,
7 AFTER LISTENING TO ALL THE EVIDENCE IN AGGRAVATION AND
8 MITIGATION AND THE CHARGE AS THE JUDGE GIVES IT TO YOU, THE
9 CHARGE ON THE LAW, ALL THE JURORS DECIDE THAT THE
10 APPROPRIATE VERDICT IN THIS CASE IS A DEATH VERDICT, OKAY?

11 A OKAY.

12 Q AND WE'RE ASSUMING A LOT OF THINGS, BUT LET'S ASSUME
13 THAT MUCH FOR THIS QUESTION, OKAY?

14 A ALL RIGHT.

15 Q IF THAT IS THE JURY'S VERDICT---

16 A UH-HUH.

17 Q ---THE JUDGE WILL PROVIDED THE JURY A FORM WHICH
18 STATES THE POSITION AS TO THE VERDICT; THAT IS, THAT WE,
19 THE JURY, FIND THAT THE APPROPRIATE SENTENCE IN THIS CASE
20 FOR GARY DUBOSE TERRY IS DEATH. IT WILL HAVE TWELVE LINES,
21 OKAY?

22 A UH-HUH.

23 Q ONE OF THOSE LINES WOULD BE FOR YOU?

24 A UH-HUH.

25 Q IN ORDER TO INDICATE YOUR VOTE, YOU WOULD HAVE TO

0803

- 1 SIGN THAT FORM?
- 2 A UH-HUH.
- 3 Q NOW, MY QUESTION IS THIS. KNOWING THAT, WOULD THE
- 4 FACT THAT YOU WOULD HAVE TO SIGN, ACTUALLY SIGN THAT DEATH
- 5 VERDICT PROHIBIT YOU OR SUBSTANTIALLY IMPAIR YOU IN ANY WAY
- 6 FROM FULLY CONSIDERING THE OPTION OF A DEATH VERDICT AND
- 7 IMPOSING A DEATH VERDICT?
- 8 A NO.
- 9 Q YOU COULD SIGN YOUR NAME IF THAT'S YOUR VOTE?
- 10 A YES. IF THE EVIDENCE PROVED THAT, YES.
- 11 Q OKAY. AND WHAT YOU HAVE TOLD US THEN TODAY IS YOU
- 12 WOULD WANT TO LISTEN TO ALL THE EVIDENCE---
- 13 A YEAH.
- 14 Q ---THE EVIDENCE IN AGGRAVATION---
- 15 A I WANT TO KNOW EVERYTHING.
- 16 Q ---AND THE EVIDENCE IN MITIGATION. YOU WANT TO HEAR
- 17 IT ALL?
- 18 A I WANT IT ALL. NO DOUBT.
- 19 Q AND ONCE YOU HEARD THAT, YOU WOULD BE ABLE TO RENDER
- 20 A VERDICT EITHER LIFE OR DEATH---
- 21 A UH-HUH.
- 22 Q ---GIVEN THE CIRCUMSTANCES?
- 23 A YES, SIR.
- 24 Q YOU COULD BE FAIR BOTH TO THE STATE AND TO THE
- 25 DEFENDANT, GARY DUBOSE TERRY?

1 A YES, SIR.

2 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

3 A THANK YOU.

4 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

5 MR. STONE: IF WE COULD HAVE JUST A FEW MOMENTS
6 AT THE SIDE BAR, YOUR HONOR, I THINK THAT WOULD BE IT.

7 THE COURT: YES, SIR.

8 (WHEREUPON, A BENCH CONFERENCE WAS
9 HELD AT THIS TIME OFF THE RECORD.)

10 THE COURT: MS. GOFF, LET ME POSE AN ADDITIONAL
11 QUESTION TO YOU.

12 THE JUROR: OKAY.

13 THE COURT: IF I TOLD YOU THAT PART OF THE
14 ALLEGATIONS OF THIS CASE INVOLVED A MURDER THAT IS ALLEGED
15 TO BE A BEATING DEATH, WOULD THAT IN ANY WAY INTERFERE WITH
16 YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL VERDICT FOR
17 EITHER THE STATE OR THE DEFENDANT BASED SOLELY UPON THE
18 TESTIMONY AND EVIDENCE YOU HEAR PRODUCED IN THIS COURTROOM?

19 THE JUROR: NO.

20 THE COURT: I'M SORRY, YOU HAVE TO---

21 THE JUROR: NO.

22 THE COURT: AND UNDERSTANDING THE SITUATION WITH
23 YOUR FATHER'S DEATH---

24 THE JUROR: UH-HUH.

25 THE COURT: ---WOULD YOU BE ABLE TO SET ASIDE

0805

1 WHAT KNOWLEDGE YOU HAVE ABOUT THAT AND RENDER A VERDICT IN
2 THE CASE BASED SOLELY UPON WHAT YOU SEE AND HEAR IN THIS
3 COURTROOM AND NOTHING ELSE?

4 THE JUROR: YES.

5 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

6 MR. STONE: NO, SIR. THANK YOU.

7 THE COURT: FROM THE STATE?

8 MR. HUMPHRIES: NO, SIR.

9 THE COURT: MS. GOFF, I WANT TO THANK YOU VERY
10 MUCH FOR YOUR PARTICIPATION YESTERDAY AS WELL AS TODAY.

11 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
12 POTENTIAL JUROR IN THIS CASE. WITH THAT QUALIFICATION,
13 THERE ARE SEVERAL MORE INSTRUCTIONS THAT I'M GOING TO HAVE
14 TO GIVE YOU CONCERNING THAT.

15 THE JUROR: OKAY.

16 THE COURT: FIRST OF ALL, I'LL REMIND YOU THAT
17 YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FAMILY, FRIENDS,
18 OR ANYONE ELSE OR FELLOW JURORS.

19 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
20 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
21 INFORMATION AS YOU POSSIBLY CAN ABOUT THAT INDIVIDUAL OR
22 INDIVIDUALS AND REPORT THAT TO ME IMMEDIATELY BECAUSE THAT
23 IS VERY SERIOUS AND I WOULD HANDLE IT ACCORDINGLY. ALSO,
24 I'M GOING TO---

25 THE JUROR: IT'S ILLEGAL.

1 THE COURT: EXCUSE ME?

2 THE JUROR: TAMPERING WITH A JURY.

3 THE COURT: TAMPERING WITH A JURY, I AGREE.

4 AND ALSO, I WOULD CAUTION YOU THAT YOU ARE NOT TO
5 READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS CONCERNING THIS
6 CASE.

7 VERY SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER
8 IN THIS CASE IF YOU WERE A POTENTIAL JUROR OR IF YOU WERE A
9 JUROR IN THIS CASE IS WHAT YOU SEE AND HEAR IN THIS
10 COURTROOM. NOTHING MORE AND NOTHING LESS.

11 NOW, BEFORE I SEND YOU AWAY, I'M GOING TO
12 INSTRUCT YOU THAT YOU ARE TO GO HOME AND START PACKING YOUR
13 BAGS BECAUSE YOU NEED TO BE BACK HERE IN THE MORNING IN
14 THIS COURTROOM AT 9:30 A.M.

15 NOW, WHEN YOU COME BACK IN THE MORNING AT
16 NINE-THIRTY, PLEASE LEAVE YOUR LUGGAGE IN YOUR VEHICLE
17 BECAUSE YOU DO NOT NEED TO BRING IT IN HERE. IF YOU ARE
18 CHOSEN AS A JUROR IN THIS CASE, THEN YOU AND YOUR
19 BELONGINGS WOULD BE TAKEN TO THE MOTEL WHERE YOU WOULD BE
20 SETTLED IN BY THE JURY CUSTODIANS.

21 IN THE EVENT THAT YOU ARE NOT CHOSEN, THEN WE
22 WOULD SEND YOU BACK HOME ABOUT YOUR DAILY ACTIVITIES WITH
23 OUR THANKS FOR PARTICIPATING IN OUR PROCESS.

24 THE JUROR: OKAY.

25 THE COURT: UNTIL IN THE MORNING AT NINE-THIRTY,

0807

1 HAVE A PLEASANT AFTERNOON AND EVENING AND I'LL SEE YOU
2 TOMORROW.

3 THE JUROR: I HAVE A QUESTION FOR YOU.

4 THE COURT: ALL RIGHT.

5 THE JUROR: I HAVE TO BORROW A VEHICLE TO COME UP
6 HERE. IS THERE ANY WAY I CAN GET A RIDE?

7 THE COURT: WE CAN GET YOU A RIDE. WE CERTAINLY
8 MAY.

9 MADAM CLERK, IF YOU WOULD PLEASE MAKE
10 ARRANGEMENTS FOR THAT. WE WILL SEE THAT YOU HAVE PROPER
11 TRANSPORTATION IN THE MORNING.

12 THE JUROR: OKAY.

13 THE COURT: SO SHE'LL STEP OUT IN THE HALL WITH
14 YOU.

15 THE JUROR: OKAY. THANK YOU.

16 (WHEREUPON, THE JUROR WAS EXCUSED
17 AT THIS TIME.)

18 THE COURT: YES, SIR.

19 MR. STONE: YOUR HONOR, I DO UNDERSTAND YOUR
20 PRIOR RULING. I DO WANT, HOWEVER, ON THE RECORD THAT I
21 THINK THAT THIS JUROR SHOULD BE EXCUSED FOR CAUSE AS HER
22 JURY QUESTIONNAIRE REFLECTED SHE FOUND HER FATHER WHEN SHE
23 WAS SIX-YEARS-OLD BEATEN TO DEATH. THIS IS A BEATING CASE
24 AND I THINK THE PHOTOGRAPHS THAT ARE GOING TO BE SHOWN TO
25 HER, IF SHE IS ON THE JURY, WOULD -- THERE'S HARDLY ANY WAY

1 I COULD IMAGINE HER NOT BEING PREJUDICED AT THAT POINT AND
2 NO ABILITY WHATSOEVER LEFT FOR HER TO RENDER A FAIR TRIAL
3 TO MR. TERRY. AND I WOULD ASK YOU TO CONSIDER STRIKING HER
4 FOR CAUSE BECAUSE OF THAT.

5 THE COURT: YOU WANT TO BE HEARD ON THAT,
6 SOLICITOR?

7 MR. HUMPHRIES: NO, SIR, YOUR HONOR.

8 THE COURT: WELL, MR. STONE, I CERTAINLY
9 UNDERSTAND THE ISSUE THAT YOU RAISED AND I THINK THAT GREAT
10 CARE HAS BEEN TAKEN NOT ONLY BY THE COURT, BUT BY THE
11 DEFENSE IN ATTEMPTING TO QUESTION THIS WITNESS.

12 AS A RESULT OF OUR SIDE BAR, AFTER I HAD TALKED
13 WITH BOTH THE DEFENSE AND THE STATE, I POSED THE QUESTION
14 AS TO HER ABILITY TO BE ABLE TO GIVEN THE FACTS -- ALLEGED
15 FACTS OF THIS CASE THAT IT INVOLVES A BEATING DEATH, WOULD
16 SHE BE ABLE TO FAIRLY AND IMPARTIALLY DECIDE THAT CASE AND
17 SET ASIDE ANYTHING THAT SHE HAS IN HER MIND ABOUT HER
18 FATHER'S DEATH AND SHE HAS ANSWERED THOSE QUESTIONS. SHE
19 HAS APPEARED FORTHRIGHT, NOT ONLY TO ME, BUT TO YOU FROM MY
20 OBSERVATIONS OF HER, AS WELL AS HER QUESTIONING BY THE
21 STATE. AND UNDER THE LAW OF THIS STATE, WHILE I UNDERSTAND
22 WHAT YOU ARE TELLING ME, I THINK THAT SHE IS QUALIFIED TO
23 SERVE AS A POTENTIAL JUROR IN THIS CASE AND, ONCE AGAIN,
24 YOU ARE GOING TO HAVE TEN STRIKES ON THIS LIST. SO, I
25 WOULD ASSUME THAT YOU WILL USED THOSE APPROPRIATELY AND I

0809

1 KNOW THAT YOU WILL, YOU AND MS. FULLWOOD. SO I NOTE YOUR
2 OBJECTION FOR THE RECORD, BUT SHE IS QUALIFIED AS A
3 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
4 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
5 AMENDED.

6 JERRY O. JUMPER, NUMBER 128.

7 MR. STONE: THANK YOU, YOUR HONOR.

8 THE COURT: YES, SIR. CERTAINLY.

9 JERRY O. JUMPER,

10 (JUROR NUMBER 128, WHITE MALE,
11 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

12 EXAMINATION

13 BY THE COURT:

14 Q GOOD AFTERNOON, MR. JUMPER.

15 A GOOD AFTERNOON.

16 Q YOU ARE JERRY O. JUMPER, IS THAT CORRECT?

17 A RIGHT.

18 Q NOW, MR. JUMPER, YOU UNDERSTAND THAT YOU ARE UNDER
19 OATH FOR THESE PROCEEDINGS?

20 A RIGHT.

21 Q AND YESTERDAY WHEN I SENT YOU AND THE REMAINDER OF
22 THE JURORS AWAY FROM THE COURT HOUSE, I GAVE YOU CERTAIN
23 INSTRUCTIONS OF CAUTION THAT YOU WERE NOT TO DISCUSS THIS
24 CASE WITH ANYONE, THAT YOU WERE -- IF ANYONE ATTEMPTED TO
25 CONTACT YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT

1 THAT TO ME AND THAT YOU WERE ALSO NOT TO READ, WATCH, OR
2 LISTEN TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

3 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
4 INSTRUCTIONS?

5 A NO, SIR.

6 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
7 THEN ONE OF MR. TERRY'S LAWYERS, AS WELL AS ONE OF THE
8 SOLICITORS, WILL ASK YOU SOME QUESTIONS.

9 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
10 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
11 THIS CASE THAT WE ARE ABOUT THIS WEEK, IT'S VERY IMPORTANT
12 THAT CERTAIN QUESTIONS ARE ASKED.

13 KEEP IN MIND ALSO THAT THERE ARE NO RIGHT OR
14 WRONG ANSWERS TO THE QUESTIONS THAT I'M GOING TO BE -- THAT
15 ARE GOING TO BE POSED TO YOU. SO PLEASE JUST ANSWER THEM
16 OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO
17 ONE IS CHALLENGING YOUR VIEW. IT'S SIMPLY THAT WE NEED TO
18 KNOW WHAT YOUR VIEW IS IN CERTAIN AREAS.

19 ALSO, KEEP IN MIND THROUGHOUT THE QUESTIONING,
20 THAT YOU'RE PROBABLY GOING TO HAVE SOME QUESTIONS ASKED OF
21 YOU THAT YOU MAYBE HAVE NEVER EVEN THOUGHT ABOUT OR
22 CONSIDERED BEFORE. SO IT'S VERY IMPORTANT THAT YOU LISTEN
23 CAREFULLY TO THE QUESTIONS AND IF YOU DON'T UNDERSTAND
24 ANYTHING, JUST ASK THAT THAT BE REPEATED AND I'M SURE THAT
25 I WILL DO THAT OR ANY OF THE LAWYERS INVOLVED.

0811

1 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
2 TALKING ABOUT OVER THE NEXT FEW MINUTES WILL INCLUDE THE
3 WORD PENALTY, BUT THE MERE FACT THAT I EVEN MENTION THAT
4 WORD PENALTY HAS ABSOLUTELY NOTHING TO DO WITH THE
5 DEFENDANT, MR. TERRY. THAT DOES NOT INDICATE ANYTHING
6 ABOUT HIM BECAUSE HE IS PRESUMED IN THE LAW TO BE INNOCENT.
7 DO YOU UNDERSTAND THAT?

8 A YES.

9 Q NOW, LET'S ASSUME FOR A FEW MINUTES THAT YOU WERE A
10 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
11 ACCEPT AND APPLY THE LAW THAT I WOULD INSTRUCT YOU AS THE
12 JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
13 THAT LAW OR THINK THAT IT SHOULD TO BE SOME OTHER WAY?

14 A YES, I BELIEVE SO.

15 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
16 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

17 A YES.

18 Q NOW, IN A CRIMINAL CASE, MR. JUMPER, THE STATE OF
19 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
20 GUILT. THE BURDEN OF PROOF THAT THE STATE MUST MEET IS TO
21 PROVE ALL OF THE ELEMENTS OF THE CRIME WITH WHICH THE
22 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT.

23 NOW, A DEFENDANT HAS ABSOLUTELY NO RESPONSIBILITY
24 OR BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND
25 THAT?

1 A YES, I DO.

2 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
3 AND THE LAW, AS I WOULD INSTRUCT YOU IN A CASE, FIND A
4 DEFENDANT EITHER GUILTY OR NOT GUILTY?

5 A YES.

6 Q NOW, YOU KNOW FROM OUR DISCUSSIONS HERE YESTERDAY
7 MORNING THAT THIS IS CASE IN WHICH THE STATE OF SOUTH
8 CAROLINA SEEKS THE DEATH PENALTY AND IN A DEATH PENALTY
9 CASE, WE TALK ABOUT IT BEING A BIFURCATED TRIAL WHICH IS
10 JUST A DIFFERENT WORD THAT MEANS IT'S DIVIDED INTO TWO
11 PARTS.

12 YOU UNDERSTAND THERE IS A GUILT PHASE AND A
13 SENTENCING PHASE.

14 NOW, IN THAT GUILT PHASE, THE JURY IS SIMPLY
15 CONCERNED WITH WHETHER OR NOT THE DEFENDANT IS GUILTY OF
16 MURDER AS WELL AS ANY OTHER CRIMES WITH WHICH HE MAY BE
17 CHARGED. AND IF THE DEFENDANT IS FOUND NOT GUILTY BY THE
18 JURY OF MURDER IN THAT STAGE, THEN YOU WOULD NOT GO ON TO
19 THE SECOND PHASE OF THE TRIAL BECAUSE IT WOULD NOT BE
20 NECESSARY.

21 BUT LET'S ASSUME FOR A FEW MINUTES THAT YOU WERE
22 A JUROR IN SUCH A CASE, A DEATH PENALTY CASE, AND THAT THE
23 JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
24 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SECOND
25 SENTENCING PHASE OF THE TRIAL?

0813

1 A YES.

2 Q NOW, DURING THAT STAGE OF THE TRIAL, MR. JUMPER,
3 EVIDENCE WOULD BE PRESENTED IN THE FORM OF AGGRAVATING
4 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

5 NOW, BY WAY OF ILLUSTRATION, AGGRAVATING
6 CIRCUMSTANCE ARE FACTS, INCIDENTS, DETAILS, OCCURRENCES
7 WHICH THE GENERAL ASSEMBLY, THAT'S OUR LEGISLATURE, HAS
8 DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE
9 CRIME OF MURDER.

10 IN OTHER WORDS, WHEN A MURDER OCCURS WITH AN
11 AGGRAVATING CIRCUMSTANCE THAT INCREASES OR ADDS TO THE
12 INJURY, THE ENORMITY OF THE CRIME OF MURDER.

13 WHAT I'M TALKING ABOUT IN AN INSTANCE LIKE THAT
14 IS WHEN A MURDER OCCURS ALONG WITH A CRIME SOMETHING LIKE
15 CRIMINAL SEXUAL CONDUCT AND OR BURGLARY OR THE LIKE. DO
16 YOU UNDERSTAND THAT?

17 A YES, I DO.

18 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
19 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH OUR GENERAL
20 ASSEMBLY, ONCE AGAIN, HAS DECLARED BY LAW THAT REDUCES THE
21 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
22 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
23 OR RESPONSIBILITY.

24 AND WHEN I'M TALKING ABOUT MITIGATING
25 CIRCUMSTANCES, IT WOULD BE -- THE JURY WOULD CONSIDER

1 THINGS LIKE THE MURDER WAS COMMITTED WHILE THE DEFENDANT
2 WAS UNDER THE INFLUENCE OF A MENTAL OR EMOTIONAL
3 DISTURBANCE; THAT THE CAPACITY OF THAT DEFENDANT TO
4 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
5 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
6 IMPAIRED; AS WELL AS THE AGE OR MENTALITY OF THE DEFENDANT
7 AT THE TIME OF THE CRIME. YOU UNDERSTAND WHAT I'M TALKING
8 ABOUT WHEN I MENTION MITIGATING CIRCUMSTANCES?

9 A YES, I BELIEVE SO.

10 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION AND I'M
11 TALKING ABOUT THAT SECOND PHASE, THE SENTENCING PHASE OF A
12 DEATH PENALTY TRIAL, COULD YOU, DEPENDING UPON THE
13 PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE INCLUDING
14 THE CONSIDERATION OF AGGRAVATING CIRCUMSTANCES AS WELL AS
15 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
16 YOU AT THE END OF THE TRIAL, RETURN A SENTENCE OF LIFE IN
17 PRISON?

18 A YES.

19 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, COULD
20 YOU, DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
21 OF THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
22 MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT
23 YOU AT THE CONCLUSION OF THE TRIAL, RETURN A SENTENCE OF
24 DEATH?

25 A IT WOULD BE HARD TO DO, BUT, YEAH, I PROBABLY COULD.

0815

1 YES.

2 Q NOW, IF YOU WERE CHOSEN FOR SERVICE ON THIS JURY, YOU
3 WOULD BE HOUSED IN A MOTEL DURING THE COURSE OF THE TRIAL.
4 I DON'T KNOW EXACTLY HOW LONG THIS CASE IS GOING TO LAST.
5 IT COULD BE ANYWHERE FROM SEVEN TO TEN DAYS. IT MAY BE
6 LESS THAN THAT, BUT I'M GIVING YOU KIND OF AN OUTSIDE
7 NUMBER THERE WITH SEVEN TO TEN DAYS. EXCEPT FOR THE
8 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
9 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
10 YOURSELF OR OF THOSE DEPENDENT ON YOU?

11 A WELL, IT WOULD BE -- PUSH MY SCHEDULES KIND OF TIGHT
12 ON THE TYPE OF WORK I DO.

13 Q TELL ME ABOUT YOUR WORK.

14 A I DO CABINET AND TRIM WORK---

15 Q YES, SIR.

16 A ---SUBCONTRACT.

17 Q UH-HUH.

18 A WE HAVE A FEW HOUSES THAT SOME ARE TIME SENSITIVE
19 ABOUT GETTING STUFF DONE. THAT WOULD BE PRETTY MUCH THE
20 EXTENT OF THE PROBLEM I WOULD HAVE WITH THAT.

21 Q ARE THERE OTHER PEOPLE WHO CAN TEND TO YOUR BUSINESS
22 WHILE YOU PERFORM THIS JURY SERVICE? DO YOU HAVE ANYONE
23 ELSE THAT WORKS WITH YOU?

24 A I HAVE A PARTNER. AND BASICALLY WHAT WE DO, WE JUST
25 WORK TOGETHER, JUST THE TWO OF US.

1 Q UH-HUH.

2 A RIGHT NOW IT'S KIND OF PUTTING A STRAIN ON HIM RIGHT
3 NOW AS FAR AS TRYING TO GET -- KEEP THINGS IN LINE.

4 Q UH-HUH. WELL, I GUESS MY QUESTION TO YOU IS WHETHER
5 OR NOT IF YOU SERVED ON THIS JURY, WOULD IT CAUSE YOU A
6 PROBLEM WITH YOUR BUSINESS INsofar AS BEING AWAY FOR SEVEN
7 TO TEN DAYS?

8 A TO A CERTAIN EXTENT, IT PROBABLY WOULD, YES.

9 Q WOULD IT IN ANY WAY JEOPARDIZE YOUR BUSINESS?

10 A NO, I DON'T THINK SO.

11 Q ALL RIGHT. IS THAT SOMETHING THAT -- AND LET ME SEE
12 IF -- YOU CORRECT ME IF I'M WRONG. I'M NOT TRYING TO PUT
13 WORDS IN YOUR MOUTH. I'M JUST TRYING TO FIGURE OUT IS IT
14 SOMETHING THAT YOUR PARTNER COULD HANDLE DOING THAT PERIOD
15 OF TIME?

16 A YES. HE PROBABLY COULD. EXTENDED OUT A LITTLE BIT,
17 HE PROBABLY COULD, YEAH.

18 Q AND DO YOU HAVE ANY TYPE OF CONTRACTS THAT WOULD
19 CAUSE YOU TO BE PENALIZED IF HE WAS UNABLE TO GET THE WORK
20 OUT?

21 A BASICALLY, MOST OF IT RIGHT NOW IS VERBAL CONTRACTS.
22 THE ONES WE ARE WORKING FOR RIGHT NOW IS -- WE HAVEN'T
23 REALLY GIVEN ANY DIRECT DEADLINES ABOUT BEING FINISHED, BUT
24 THEY ARE TALKING BACK AND FORTH TO THE BANK WHICH GIVES
25 THEM DEADLINES. SO.

0817

1 Q WELL, I GUESS, ONCE AGAIN, MY FINAL QUESTION TO YOU
2 IS WOULD THE FACT YOU BEING -- IF YOU WERE SEATED ON THIS
3 JURY, WOULD KNOWING THE FACT THAT YOU HAVE A PARTNER OUT
4 THERE DOING THE WORK THAT YOU AND HE NORMALLY DO, WOULD
5 THAT CAUSE YOU ANY CONCERN AND WOULD THAT INTERFERE WITH
6 YOUR ABILITY TO LISTEN TO THE TESTIMONY AND EVIDENCE IN
7 THIS CASE AND IMPARTIALLY TRY THIS CASE AS THE TRIER OF THE
8 FACTS OR WOULD THAT INTERFERE IN ANY WAY WITH YOUR THOUGHT
9 PROCESS?

10 A NO, I DON'T BELIEVE SO.

11 Q OKAY. THANK YOU VERY MUCH.

12 MS. FULLWOOD.

13 MS. FULLWOOD: THANK YOU.

14 EXAMINATION

15 BY MS. FULLWOOD:

16 Q HI, MR. JUMPER.

17 A HEY.

18 Q HOW ARE YOU THIS AFTERNOON?

19 A ALL RIGHT.

20 Q GOOD. GOOD. WERE YOU SURPRISED YESTERDAY WHEN YOU
21 FOUND OUT THAT YOU HAD BEEN PULLED AS A JUROR IN A POSSIBLE
22 DEATH PENALTY CASE?

23 A UH -- IT WAS KIND OF A SURPRISE, YEAH.

24 Q YEAH. OKAY. CAN YOU TELL US IN GENERAL WHAT YOUR
25 OPINIONS ARE ON THE DEATH PENALTY?

1 A WELL, ACTUALLY I DON'T HAVE TOO MUCH OF AN OPINION ON
2 IT.

3 Q OKAY. IS IT SOMETHING YOU HAVEN'T THOUGHT THAT MUCH
4 ABOUT?

5 A RIGHT.

6 Q OKAY. I NOTICED FROM YOUR QUESTIONNAIRE THAT YOU GO
7 TO THE INDEPENDENT BIBLE CHURCH?

8 A RIGHT.

9 Q AND, OF COURSE, I'M NOT TRYING TO PRY INTO YOUR
10 PERSONAL LIFE, BUT I WANTED TO ASK YOU THIS. DO YOU KNOW
11 WHETHER OR NOT YOUR CHURCH HAS ANY KIND OF OFFICIAL
12 POSITION OR FEELING ABOUT CAPITAL PUNISHMENT?

13 A NO, MA'AM.

14 Q OKAY. YOU'VE NEVER HEARD THAT TALKED ABOUT IN
15 CHURCH?

16 A NO, MA'AM.

17 Q OKAY. YOU REALIZE THAT IN A WAY WE ARE TALKING ABOUT
18 WHAT MAY OR MAY NOT HAPPEN WHEN WE ARE TALKING ABOUT THAT
19 SECOND TRIAL?

20 A RIGHT.

21 Q AND YOU REALIZE THAT THE ONLY WAY A JURY EVER GETS TO
22 THAT SECOND TYPE OF TRIAL TO DECIDE WHAT KIND OF PUNISHMENT
23 IS IF IN THE FIRST TRIAL, THE JURY FINDS THE ACCUSED PERSON
24 GUILTY OF MURDER, PLUS SOME OTHER CRIMES?

25 A RIGHT.

0819

- 1 Q OKAY. AND DID YOU REALIZE THAT IN SOUTH CAROLINA,
2 MURDER MEANS KILLING SOMEBODY WITH MALICE. THAT IT DOESN'T
3 MEAN SELF-DEFENSE OR HEAT OF PASSION OR ANYTHING LIKE THAT?
- 4 A YES.
- 5 Q WAS THAT ALWAYS YOUR UNDERSTANDING?
- 6 A YES.
- 7 Q OKAY. OKAY. NOW, DO YOU THINK IF YOU WERE A JUROR
8 IN THAT SECOND TYPE OF TRIAL THAT DECIDES THE PUNISHMENT,
9 DO YOU THINK THAT AFTER HEARING ALL THE EVIDENCE IN A
10 SECOND TRIAL AND AFTER ALREADY HAVING FOUND THE DEFENDANT
11 GUILTY OF MURDER AND SOME OTHER CRIMES THAT YOU COULD
12 IMPOSE A LIFE SENTENCE?
- 13 A YES.
- 14 Q OKAY. AND ASKING THE OTHER SIDE OF THE QUESTION, DO
15 YOU THINK THAT IF YOU WERE A JUROR IN A SECOND KIND OF
16 TRIAL AND YOU HAD ALREADY CONVICTED THE DEFENDANT OF MURDER
17 AND HAD LISTENED TO ALL THE ADDITIONAL EVIDENCE, DO YOU
18 THINK THAT YOU COULD IMPOSE A DEATH SENTENCE?
- 19 A LIKE I SAID, IT WOULD BE HARD TO DO, BUT YEAH.
- 20 Q OKAY. LET ME ASK YOU ABOUT ONE MORE THING AND THEN
21 I'LL SIT DOWN. IN SOUTH CAROLINA WHEN A JURY -- YOU KNOW,
22 THERE'S TWELVE PEOPLE, WHEN ALL TWELVE PEOPLE ALL AGREE,
23 EACH ONE OF THEM AGREE INDIVIDUALLY AND TOGETHER AS A JURY
24 THAT A DEATH SENTENCE IS THE RIGHT SENTENCE IN A PARTICULAR
25 CASE, THEY GET A SENTENCING FORM THAT LET'S THE COURT KNOW

1 WHAT THEIR DECISION IS AND ON THAT FORM THERE'S A SPACE FOR
2 EACH MEMBER OF THE JURY TO SIGN THEIR NAME TO LET THE COURT
3 KNOW THAT THAT IS HIS OR HER VERDICT. YOU FOLLOW ME?

4 A RIGHT.

5 Q OKAY. IF YOU WERE A JURY IN THAT TYPE -- A JUROR IN
6 THAT TYPE OF TRIAL AND YOU DECIDED AFTER HEARING ALL THE
7 EVIDENCE THAT DEATH WAS THE RIGHT SENTENCE, COULD YOU SIGN
8 YOUR NAME TO THAT FORM?

9 A AS I SAID EARLIER, IT WOULD PROBABLY BE VERY
10 DIFFICULT TO DO, BUT I MIGHT BE ABLE TO DO THAT.

11 Q I BELIEVE YOU HAVE TOLD ME THAT YOU COULD DECIDE---

12 A YES.

13 Q ---THAT YOU COULD GIVE EITHER A DEATH SENTENCE OR A
14 LIFE SENTENCE?

15 A RIGHT.

16 Q OKAY. SO GOING ONE STEP FURTHER, IF IN YOUR HEART
17 AND YOUR MIND, YOU BELIEVED THAT DEATH WAS THE RIGHT
18 SENTENCE, COULD YOU SIGN YOUR NAME ON THAT FORM IF THE LAW
19 REQUIRED THAT?

20 A YES.

21 Q THANK YOU, SIR.

22 THE COURT: SOLICITOR HUMPHRIES.

23 EXAMINATION

24 BY MR. HUMPHRIES:

25 Q HELLO, MR. JUMPER. MY NAME IS FRAN HUMPHRIES. I'M

0821

1 THE DEPUTY SOLICITOR. I'M GOING TO BE TRYING THIS CASE
2 ALONG WITH TOM CHASE, WHO IS SEATED HERE, AND SOLICITOR
3 MYERS.

4 I GUESS WHAT I NEED TO KNOW IS THIS. NOBODY
5 EXPECTS THIS TO BE AN EASY PROCESS, OKAY. WE WOULD ALL BE
6 CONCERNED ABOUT YOU IF IT WAS AN EASY PROCESS. SO NOBODY
7 HAS ANY FAULT WITH YOUR POSITION REGARDING THE DEATH
8 PENALTY, IT BEING A HARD DECISION, OKAY?

9 A ALL RIGHT.

10 Q SO ANYTHING I SAY, I DON'T WANT YOU TO TAKE IT WRONG,
11 AT LEAST, AS IT RELATES TO THAT. BUT MY QUESTION IS THIS.
12 THERE ARE SOME THINGS THAT ARE SO HARD TO DO THAT WE NEVER
13 TRULY CONSIDER DOING THEM. YOU GET WHERE I'M GOING?

14 A RIGHT. I DO.

15 Q THERE ARE SOME THINGS THAT WOULD JUST BE SO HARD
16 PERSONALLY FOR US TO DO, ALTHOUGH, I GUESS, IN THE GRAND
17 SCHEME OF THINGS, WE COULD SAY WE WOULD CONSIDER IT, REALLY
18 WE DON'T, BECAUSE IT WOULD BE SO HARD.

19 A RIGHT.

20 Q NOW, I DON'T WANT TO -- I DON'T WANT TO SAY THAT'S
21 YOU IN THIS CASE, BUT THAT'S MY QUESTION. WOULD -- AND
22 UNDERSTAND THIS. THIS JUDGE, JUDGE CLARY, HE IS NOT GOING
23 TO INSTRUCT YOU THAT YOU MUST FIND FOR THE DEATH PENALTY
24 UNDER ANY CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

25 A RIGHT. I UNDERSTAND THAT.

1 Q OKAY. THERE ARE ALWAYS TWO CHOICES, BUT ONLY TWO
2 CHOICES, LIFE AND DEATH, OKAY?

3 A RIGHT.

4 Q IN THESE CIRCUMSTANCES, WOULD YOUR ABILITY -- WOULD
5 THE ABILITY TO IMPOSE A DEATH VERDICT, WOULD THAT BE SUCH A
6 HARD THING TO DO, THAT YOU NEVER WOULD REALISTICALLY
7 CONSIDER IT LISTENING TO ALL THE EVIDENCE AND THE LAW AS
8 THE JUDGE CHARGED YOU? REALISTICALLY.

9 A WOULD YOU REPEAT THAT AGAIN, PLEASE?

10 Q YEAH, I SURE WILL AND I'M SORRY. IT'S LIKE THIS.
11 WOULD -- WOULD IMPOSING THE DEATH PENALTY, WRITING YOUR
12 NAME ON THAT DEATH VERDICT WHICH IS REQUIRED BY LAW IF
13 THAT'S YOUR VERDICT, OKAY?

14 A ALL RIGHT.

15 Q WOULD WRITING YOUR NAME ON THAT DEATH VERDICT BE
16 SOMETHING THAT WOULD BE SO HARD FOR YOU TO DO THAT YOU
17 NEVER WOULD REALLY TRULY CONSIDER DOING IT?

18 A NO, SIR.

19 Q OKAY. HELP ME OUT. WHAT DOES THAT MEAN?

20 A IF I FELT IT WAS SUFFICIENT ENOUGH, I WOULD PROBABLY
21 DO THAT, YES.

22 Q OKAY. SO YOU COULD DO IT?

23 A YES.

24 Q IT WOULDN'T BE SO HARD TO DO?

25 A RIGHT.

0823

1 Q AND THAT'S ALL I'M LOOKING FOR IS AN HONEST ANSWER.
2 I HAVE NO REASON TO DOUBT YOU IN THAT REGARD. AND I
3 APPRECIATE IT.

4 MR. JUMPER, THERE REALLY IS -- THERE'S ONE KIND
5 OF JUROR THAT WE ALL WANT AND THAT'S A JUROR WHO CAN BE
6 FAIR AND IMPARTIAL BOTH TO THE STATE OF SOUTH CAROLINA, TO
7 THE DEFENDANT, GARY DUBOSE TERRY, SOMEONE WHO STARTS OUT ON
8 EVEN GROUND, WHO CAN LISTEN TO ALL THE EVIDENCE IMPARTIALLY
9 AND ONLY AFTER HEARING ALL THE EVIDENCE IN AGGRAVATION AND
10 MITIGATION AND HEARING THE LAW AS THE JUDGE CHARGES IT,
11 RENDER A VERDICT THAT IS JUSTICE WHEN IT IS EITHER LIFE OR
12 DEATH BASED ON THE FACTS AND CIRCUMSTANCES. ARE YOU THAT
13 KIND OF JUROR, MR. JUMPER?

14 A I LIKE TO TAKE EVERYTHING INTO ACCOUNT BEFORE I
15 ACTUALLY MAKE ANY DECISIONS ABOUT -- JUST ABOUT ANYTHING I
16 DO. I WOULD PROBABLY SAY, YES.

17 Q OKAY. HAVE YOU GOT ANY DOUBT ABOUT THAT, WHETHER YOU
18 COULD BE FAIR AND IMPARTIAL BOTH TO THE STATE AS IT RELATES
19 TO A DEATH VERDICT AND THE DEFENSE AS IT RELATES TO A LIFE
20 VERDICT? WOULD THEY START OUT ON EVEN GROUND?

21 A YES.

22 Q OKAY. THAT'S WHAT I NEED TO KNOW.

23 THE ONLY OTHER AREA OF CONCERN, I GUESS, FOR ME,
24 FOR YOU IS THE ISSUE REGARDING SEQUESTRATION AND I THINK
25 YOU'VE GONE OVER THAT PRETTY FULLY WITH THE JUDGE, BUT THE

1 FACT THAT YOU MAY BE SEQUESTERED FOR UP TO SEVEN TO TEN
2 DAYS, WOULD THAT BE SUCH A DISTRACTION TO YOU, THAT YOU --
3 THAT YOU WOULDN'T BE THE BEST JUROR YOU COULD BE; THAT IS,
4 THAT YOU COULDN'T FOLLOW YOUR OATH FULLY AS A JUROR TO HEAR
5 ALL OF THE EVIDENCE, EVALUATE THE EVIDENCE, TO FIND THE
6 FACTS AND ULTIMATELY RENDER A VERDICT IN THIS CASE?

7 A WELL, I'VE NEVER REALLY BEEN UNDER THOSE KINDS OF
8 CONDITIONS BEFORE SO I COULDN'T REALLY TRULY SAY. I
9 WOULDN'T THINK SO, BUT LIKE I SAY, I REALLY COULDN'T SAY.

10 Q OKAY. YOU'VE INDICATED THAT YOUR WORK IS TIME
11 SENSITIVE?

12 A RIGHT.

13 Q I THINK SOME OF US UNDERSTAND THAT. THERE COMES A
14 TIME IN THE BUILDING OF A HOME WHEN THE TRIM WORK NEEDS TO
15 BE DONE AND UNTIL THAT'S DONE, THEN SOMETHING ELSE CAN'T BE
16 DONE. IS THAT ACCURATE?

17 A RIGHT.

18 Q OKAY. MY QUESTION AS TO THAT IS, ARE -- DO YOU HAVE
19 JOBS NOW WHICH OVER THE NEXT SEVEN TO TEN DAYS WOULD BE
20 IMPACTED NEGATIVELY IF YOU WEREN'T THERE TO ASSIST YOUR
21 PARTNER IN DOING THOSE JOBS?

22 A UH -- THE ONE WE'RE AT RIGHT NOW IS PRETTY MUCH THE
23 MOST CRUCIAL ONE RIGHT NOW. IT WOULD PROBABLY CREATE THE
24 MOST PROBLEMS FOR RIGHT NOW.

25 Q TO WHAT EXTENT WOULD IT CAUSE YOU A PROBLEM?

0825

1 A BASICALLY AS I SAID, JUST MORE OR LESS LIKE
2 RESCHEDULING CERTAIN ITEMS OF IT, STUFF LIKE THAT.

3 Q WOULD IT -- WOULD IT -- WOULD IT NEGATIVELY IMPACT
4 YOUR FUTURE BUSINESS?

5 A NO, SIR.

6 Q THAT'S MY -- THAT'S MY MAIN CONCERN. OKAY. I
7 APPRECIATE IT, MR. JUMPER. THANK YOU, SIR.

8 A YOU'RE WELCOME.

9 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

10 MS. FULLWOOD: NO, SIR.

11 THE COURT: FROM THE STATE?

12 MR. HUMPHRIES: NO, SIR.

13 THE COURT: MR. JUMPER, I WANT TO THANK YOU VERY
14 MUCH FOR YOUR PARTICIPATION HERE YESTERDAY AS WELL AS
15 TODAY.

16 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
17 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
18 I'LL REMIND YOU, ONCE AGAIN, THAT, AS I SEND YOU AWAY THIS
19 AFTERNOON, THAT YOU ARE NOT TO DISCUSS THIS CASE WITH
20 ANYONE WHETHER IT BE YOUR FELLOW JURORS, FAMILY, FRIENDS OR
21 ANYONE ELSE.

22 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
23 CONCERNING THIS CASE, PLEASE GATHER AS MUCH INFORMATION AS
24 YOU POSSIBLY CAN ABOUT THAT INDIVIDUAL AND REPORT THAT TO
25 ME IMMEDIATELY BECAUSE THAT IS A VERY SERIOUS MATTER AND I

1 WILL DEAL WITH THAT ACCORDINGLY.

2 ALSO, I WOULD, ONCE AGAIN, INSTRUCT YOU THAT YOU
3 ARE NOT TO READ, LISTEN OR WATCH ANY NEWS ACCOUNTS
4 CONCERNING THIS CASE. ALL I WOULD WANT YOU TO DO, IF YOU
5 ARE A JUROR IN THIS CASE, IS TO CONSIDER THE TESTIMONY AND
6 EVIDENCE THAT YOU WOULD HEAR AND SEE IN THIS COURTROOM.
7 ABSOLUTELY NOTHING MORE OR NOTHING LESS.

8 SO WITH ALL THAT, I'M GOING TO BE SENDING YOU
9 HOME IN JUST A MOMENT WITH ALL THOSE INSTRUCTIONS, BUT WITH
10 THE FURTHER INSTRUCTION THAT YOU NEED TO GO HOME AND START
11 PACKING YOUR BAG BECAUSE YOU NEED TO BE BACK HERE IN THE
12 MORNING AT 9:30 A.M. PLEASE LEAVE YOUR BELONGINGS IN YOUR
13 VEHICLE THAT YOU BRING WITH YOU BECAUSE IF YOU ARE SELECTED
14 AS A JUROR IN THIS CASE, THEN THE JURY CUSTODIANS WILL TAKE
15 YOU AND YOUR BELONGINGS TO THE MOTEL AND GET YOU SETTLED IN
16 FOR THE DURATION OF THE TRIAL.

17 IF YOU ARE NOT SELECTED AS A JUROR IN THIS CASE,
18 THEN YOU WOULD BE SENT HOME WITH OUR THANKS FOR
19 PARTICIPATING IN THIS PROCESS AND YOU WOULD NO LONGER BE
20 NEEDED FOR THIS TERM OF COURT. HOWEVER, IF YOU ARE CHOSEN,
21 YOU WILL STAY WITH US FOR THE REMAINDER OF THE TIME OF THE
22 TRIAL. I'LL LOOK FORWARD TO SEEING YOU IN THE MORNING AT
23 NINE-THIRTY. HAVE A VERY PLEASANT EVENING. SEE YOU
24 TOMORROW.

25 THE JUROR: OKAY. THANK YOU.

0827

1 (WHEREUPON, THE JUROR WAS EXCUSED
2 AT THIS TIME.)

3 THE COURT: ALL RIGHT. I HAVE RECEIVED NOTICE
4 FROM THE CLERK'S OFFICE THAT JUROR NUMBER 99, DEXTER
5 GRAVES, HE HAS NOT BEEN ABLE TO GET ADEQUATE CARE FOR HIS
6 CHILDREN AND AS A RESULT OF THAT, TO BE CONSISTENT WITH MY
7 PRIOR RULINGS IN REGARD TO MS. MILNE AND OTHERS, THEN I AM
8 GOING TO EXCUSE MR. GRAVES FROM FURTHER PARTICIPATION IN
9 THIS CASE.

10 (WHEREUPON, COURT'S EXHIBIT NUMBER
11 THREE, JUROR NOTE/GRAVES, MARKED FOR THE RECORD AT THIS
12 TIME.)

13 THE COURT: ALL RIGHT. JUROR NUMBER 187, DIANNE
14 C. RICHARDSON.

15 DIANNE C. RICHARDSON,
16 (JUROR NUMBER 187, WHITE FEMALE,
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

18 EXAMINATION

19 BY THE COURT:

20 Q GOOD AFTERNOON, MS. RICHARDSON.

21 A GOOD AFTERNOON.

22 Q YOU ARE DIANNE C. RICHARDSON, THAT'S CORRECT?

23 A YES, SIR.

24 Q JUROR NUMBER 187.

25 MS. RICHARDSON, YOU UNDERSTAND THAT YOU ARE UNDER

1 OATH FOR THIS PROCEEDING THIS AFTERNOON?

2 A YES, SIR.

3 Q AND I GAVE YOU SOME INSTRUCTIONS YESTERDAY THAT YOU
4 WERE NOT TO SPEAK WITH ANYONE ABOUT THIS CASE AND THAT NO
5 ONE WAS TO ATTEMPT TO CONTACT YOU CONCERNING THIS CASE AND
6 THAT YOU WERE ALSO NOT TO READ, WATCH OR LISTEN TO ANY NEWS
7 ACCOUNTS CONCERNING THIS CASE. HAS ANYONE VIOLATED THOSE
8 INSTRUCTIONS?

9 A NO, SIR.

10 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
11 THEREAFTER ONE OF MR. TERRY'S LAWYERS WILL ASK YOU SOME
12 QUESTIONS, AS WELL AS ONE OF THE SOLICITORS.

13 KEEP IN MIND THAT WE ARE NOT ATTEMPTING TO INVADE
14 YOUR PRIVACY IN ANY FASHION WHATSOEVER, BUT DUE TO THE
15 NATURE OF THESE PROCEEDINGS THIS WEEK, THAT IT'S EXTREMELY
16 NECESSARY THAT CERTAIN QUESTIONS BE ASKED OF YOU AS WELL AS
17 OTHER JURORS.

18 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
19 ANSWERS TO THESE QUESTIONS. SO PLEASE ANSWER THEM OPENLY
20 AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO ONE IS
21 CHALLENGING WHATEVER VIEW YOU MIGHT HAVE. IT'S SIMPLY THAT
22 WE NEED TO KNOW WHAT YOUR VIEW IS IN CERTAIN AREAS.

23 ALSO, I'M GOING TO GO AHEAD AND INFORM YOU THAT
24 YOU'RE PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU
25 MAY HAVE NEVER EVEN CONSIDERED BEFORE. SO IT'S VERY

0829

1 IMPORTANT THAT YOU LISTEN VERY CAREFULLY TO THE QUESTIONS
2 THAT ARE POSED TO YOU BY ME, BY ANY OF THE LAWYERS.

3 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
4 TALKING ABOUT OVER THESE NEXT FEW MINUTES WILL BE PENALTY.
5 THE MERE FACT THAT I EVEN MENTION THE WORLD PENALTY DOES
6 NOT IN ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
7 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
8 UNDERSTAND THAT?

9 A YES, SIR.

10 Q NOW, LET'S ASSUME FOR A FEW MINUTES, THAT YOU WERE A
11 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
12 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
13 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
14 LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

15 A YES, SIR.

16 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
17 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

18 A YES, SIR.

19 Q NOW, MS. RICHARDSON, IN A CRIMINAL CASE, THE STATE OF
20 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT
21 GUILTY. THE BURDEN OF PROOF THAT THE STATE MUST MEET IS TO
22 PROVE EACH AND EVERY ELEMENT OF THE CRIMES WITH WHICH THE
23 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT.

24 NOW, A DEFENDANT HAS ABSOLUTELY NO BURDEN TO
25 PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

1 A YES.

2 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
3 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
4 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

5 A YES.

6 Q NOW, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
7 AS YOU KNOW THIS IS A CASE THIS WEEK IN WHICH THE STATE
8 SEEKS THAT PENALTY. YOU UNDERSTAND THAT THERE ARE TWO
9 PARTS TO THE TRIAL. IT'S CALLED A BIFURCATED TRIAL OR
10 PROCEEDING AND THE FIRST PART IS CALLED THE GUILT PHASE;
11 THE SECOND PART IS CALLED THE SENTENCING PHASE.

12 NOW, IF YOU WERE A JUROR IN SUCH A TRIAL AND THE
13 JURY FOUND THE DEFENDANT WAS NOT GUILTY OF MURDER IN THE
14 FIRST PHASE, YOU UNDERSTAND THAT THERE WOULD NOT BE A
15 SECOND PHASE?

16 A RIGHT.

17 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
18 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
19 UNDERSTAND THAT YOU WOULD THEN MOVE INTO THAT SECOND
20 SENTENCING PHASE?

21 A YES.

22 Q ALL RIGHT. NOW, IN SUCH A CASE, EVIDENCE WOULD BE
23 PRESENTED IN THAT SECOND PHASE IN THE FORM OF AGGRAVATING
24 CIRCUMSTANCES TOGETHER WITH MITIGATING CIRCUMSTANCES.

25 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,

0831

1 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
2 ASSEMBLY HAS DECLARED BY LAW THAT WOULD MAKE WORSE; THAT
3 IS, TO AGGRAVATE THE CRIME OF MURDER.

4 IN OTHER WORDS, WHEN THE MURDER OCCURS ALONG WITH
5 THAT AGGRAVATING CIRCUMSTANCE, IT INCREASES THE ENORMITY OR
6 ADDS TO THE INJURY OF THE CRIME OF MURDER.

7 FOR EXAMPLE, A MURDER THAT IS COMMITTED ALONG
8 WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT AND OR BURGLARY
9 OR THE LIKE IS WHAT I'M TALKING ABOUT WHEN I TALK ABOUT AN
10 AGGRAVATING CIRCUMSTANCE IN ADDITION TO THE MURDER.

11 A UH-HUH.

12 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
13 ALSO INCIDENTS, DETAILS, FACTS, OCCURRENCES WHICH OUR
14 GENERAL ASSEMBLY HAS, ONCE AGAIN, DECLARED BY STATUTE TO
15 REDUCE THE SEVERITY OF THE CRIME OF MURDER. AND THEY --
16 THESE MITIGATING CIRCUMSTANCES MAY BE CONSIDERED AS
17 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
18 OR RESPONSIBILITY.

19 AND WHAT I'M TALKING ABOUT WHEN I SPEAK OF
20 MITIGATING CIRCUMSTANCES WOULD BE THAT THE MURDER WAS
21 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
22 MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF THE
23 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
24 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
25 SUBSTANTIALLY IMPAIRED; ALSO THE AGE OR MENTALITY OF THE

1 DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND
2 THAT?

3 A YES.

4 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
5 JUROR IN THAT SITUATION, THE SENTENCING PHASE, THE SECOND
6 PHASE OF A DEATH PENALTY TRIAL. COULD YOU, DEPENDING UPON
7 THE PARTICULAR FACTS AND CIRCUMSTANCES INCLUDING THE
8 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
9 AND THE LAW, AS I WOULD INSTRUCT YOU AT THE END OF THAT
10 CASE, RETURN A SENTENCE OF LIFE IN PRISON?

11 A YES.

12 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
13 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
14 THAT CASE, ONCE AGAIN, INCLUDING THE CONSIDERATION OF
15 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW, AS I
16 WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
17 SENTENCE OF DEATH?

18 A NO, SIR.

19 Q YOU COULD NOT UNDER ANY CIRCUMSTANCES?

20 A NO, SIR.

21 Q IF I INSTRUCT YOU THAT THE LAW OF THIS STATE IS THAT
22 YOU WOULD HAVE TO CONSIDER BOTH OF THESE SENTENCES AND BE
23 CAPABLE OF RETURNING EITHER SENTENCES, YOU ARE TELLING ME
24 THAT YOU COULD NOT IMPOSE THE DEATH SENTENCE?

25 A NO, SIR.

0833

1 Q THANK YOU VERY MUCH FOR RESPONDING TO MY QUESTIONS.
2 MR. STONE.
3 MR. STONE: THANK YOU, YOUR HONOR.
4 EXAMINATION
5 BY MR. STONE:
6 Q HEY, MS. RICHARDSON. MY NAME IS DUFFIE STONE. I
7 KNOW I WAS INTRODUCED EARLIER, BUT I WOULD LIKE TO DO THAT
8 AGAIN.
9 A GOOD.
10 Q THIS IS BETH FULLWOOD AND SHE AND I REPRESENT GARY
11 TERRY, WHO IS AT THE END OF THE TABLE.
12 A OKAY.
13 Q THE JUDGE JUST ASKED YOU IF UNDER ANY CIRCUMSTANCES
14 YOU COULD RETURN A VERDICT OF DEATH AND YOU INDICATED THAT
15 YOU COULD NOT?
16 A UH-HUH.
17 Q OKAY. THE JUDGE ALSO ASKED YOU EARLIER IF YOU COULD
18 TAKE -- WELL, LET ME ASK YOU THIS. HAVE YOU EVER SAT IN A
19 JURY BOX BEFORE? HAVE YOU EVER BEEN A JUROR?
20 A NO, SIR.
21 Q OKAY. IT'S A LITTLE BIT DIFFERENT THAN JUST BEING A
22 NORMAL CITIZEN, I GUESS. WHEN YOU'RE IN THE JURY BOX, YOU
23 HAVE A JOB. YOUR JOB WOULD BE TO BE THE -- YOU ARE THE
24 JUDGE OF THE FACTS, NOT THE LAW, BUT THE FACTS---
25 A UH-HUH.

0834

- 1 Q ---THAT'S WHY THE JUDGE ASKED YOU A LITTLE BIT
2 EARLIER IF HE GAVE YOU THE LAW AND YOU MAY OR MAY NOT LIKE
3 THAT LAW AND MAY NOT AGREE WITH IT, BUT YOU STILL HAVE TO
4 TAKE THAT LAW AS HE GIVES IT. YOU UNDERSTAND THAT?
- 5 A YES, SIR.
- 6 Q OKAY. NOW, IN THE JURY BOX, YOU HAVE TO DETERMINE
7 JUST THE FACTS. AND THEN, IF YOU WERE TO DETERMINE THAT
8 SOMEBODY ACTUALLY MURDERED SOMEONE AND THAT SOMEBODY RAPED
9 SOMEONE AND THAT SOMEONE COMMITTED BURGLARY IN ALL OF THOSE
10 CASES, THEN YOU WOULD GO INTO ANOTHER FACT FINDING AND THAT
11 WOULD BE THAT YOU WOULD TAKE WHAT THE JUDGE GIVES YOU AS
12 THE LAW AND YOU WOULD APPLY THAT TO THE FACTS AS YOU FOUND
13 THEM?
- 14 A UH-HUH.
- 15 Q NOW, THE JUDGE ASKED YOU IF YOU WOULD CONSIDER
16 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES, YOU
17 UNDERSTAND THAT?
- 18 A RIGHT.
- 19 Q AND YOU INDICATED THAT YOU WOULD?
- 20 A UH-HUH.
- 21 Q OKAY. THE QUESTION I HAVE FOR YOU THEN IS COULD YOU,
22 AS THE JOB OF A JUROR, YOU MAY NOT LIKE IT AND YOU MAY NOT
23 BE COMFORTABLE WITH IT, BUT COULD YOU, AS A JUROR, DO YOUR
24 JOB AND FIND THE FACTS AND FIND THAT SOMEBODY WAS
25 APPROPRIATE FOR LIFE -- FOR A LIFE SENTENCE AND IN OPPOSITE

0835

1 OF THAT, COULD YOU FIND SOMEBODY WAS APPROPRIATE FOR THE
2 DEATH SENTENCE?

3 A I COULD FIND SOMEBODY APPROPRIATE FOR THE LIFE
4 SENTENCE---

5 Q RIGHT.

6 A ---NOT THE DEATH SENTENCE.

7 Q OKAY. SO UNDER NO CIRCUMSTANCES COULD YOU EVER DO
8 THAT DESPITE THE FACT THE JUDGE MAY GIVE YOU THE
9 INSTRUCTION TO CONSIDER AGGRAVATING AND MITIGATING---

10 A NO, SIR.

11 Q IS THAT RIGHT?

12 A THAT'S RIGHT.

13 Q MS. RICHARDSON, THANK YOU AND I APPRECIATE YOUR
14 HONEST RESPONSES.

15 A THANK YOU.

16 Q THANK YOU, YOUR HONOR.

17 THE COURT: ANYTHING FROM THE STATE?

18 MR. HUMPHRIES: NO, SIR.

19 THE COURT: MS. RICHARDSON, I WANT TO THANK YOU
20 VERY MUCH FOR BEING HERE YESTERDAY AS WELL AS TODAY.
21 PLEASE ACCEPT MY THANKS ON BEHALF OF LEXINGTON COUNTY AND
22 THE STATE OF SOUTH CAROLINA. THIS IS GOING TO CONCLUDE
23 YOUR RESPONSIBILITIES FOR THIS TERM OF COURT. ONCE I
24 DISMISS YOU IN JUST A MOMENT, YOU WILL NOT HAVE TO COME
25 BACK DURING THIS TERM OF COURT, BUT THANK YOU ONCE AGAIN

1 FOR YOUR HONEST RESPONSES TO OUR QUESTIONS.

2 THE JUROR: OKAY.

3 THE COURT: YOU ARE EXCUSED.

4 THE JUROR: THANK YOU.

5 (WHEREUPON, THE JUROR WAS EXCUSED
6 AT THIS TIME.)

7 THE COURT: LET THE RECORD REFLECT THAT JUROR
8 NUMBER 187, DIANNE C. RICHARDSON, IS NOT QUALIFIED TO SERVE
9 AS A POTENTIAL JUROR IN THIS CASE IN ACCORDANCE WITH
10 SECTION 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH
11 CAROLINA, 1976 AS AMENDED, AS SHE SAYS THAT SHE WOULD BE
12 UNABLE TO CONSIDER THE IMPOSITION OF THE DEATH PENALTY.

13 SAUNDREA J. BAUER, NUMBER 15.

14 SAUNDREA J. BAUER,

15 (JUROR NUMBER 15, WHITE FEMALE,
16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

17 EXAMINATION

18 BY THE COURT:

19 Q GOOD AFTERNOON, MS. BAUER.

20 A GOOD AFTERNOON.

21 Q YOU ARE SAUNDREA J. BAUER, NUMBER 15, IS THAT
22 CORRECT?

23 A THAT IS CORRECT.

24 Q NOW, MS. BAUER, YOU UNDERSTAND THAT YOU ARE UNDER
25 OATH FOR THESE PROCEEDINGS?

0837

1 A YES, I DO.

2 Q AND YESTERDAY WHEN I DISMISSED ALL THE JURORS FROM
3 THE COURT HOUSE, I GAVE YOU CERTAIN INSTRUCTIONS THAT YOU
4 WERE NOT TO DISCUSS THIS CASE WITH ANYONE, NOR WAS ANYONE
5 TO DISCUSS THE CASE WITH YOU OR ATTEMPT TO CONTACT YOU AND
6 ALSO THAT YOU WERE NOT TO READ, WATCH OR LISTEN TO ANY NEWS
7 ACCOUNTS CONCERNING THIS CASE.

8 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

9 A NO, THEY HAVE NOT:

10 Q NOW, MS. BAUER, I'M GOING TO BE ASKING YOU SOME
11 QUESTIONS AND THEREAFTER ONE OF THE LAWYERS FOR MR. TERRY
12 WILL ASK YOU SOME QUESTIONS, AS WELL AS ONE OF THE
13 SOLICITORS. KEEP IN MIND THAT WE ARE IN NO WAY ATTEMPTING
14 TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE PROCEEDINGS THAT
15 WE ARE ABOUT THIS WEEK, IT'S VERY NECESSARY -- IT'S
16 EXTREMELY NECESSARY THAT CERTAIN QUESTIONS ARE ASKED.

17 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
18 ANSWERS TO THESE QUESTIONS AND ALSO, PLEASE, JUST ANSWER
19 THEM OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN MIND
20 THAT NO ONE IS CHALLENGING YOUR VIEW. IT'S SIMPLY THAT WE
21 NEED TO KNOW WHAT YOUR VIEW IS IN PARTICULAR AREAS.

22 ALSO, I'M GOING TO ADVISE YOU THAT YOU'RE
23 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU MAY HAVE
24 NEVER CONSIDERED BEFORE. SO PLEASE LISTEN VERY CAREFULLY
25 TO THE QUESTIONS THAT I POSE TO YOU AS WELL AS THE LAWYERS

1 AND BASE YOUR RESPONSES IN ACCORDANCE WITH THOSE QUESTIONS.

2 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
3 SPEAKING OF OVER THE NEXT FEW MINUTES WILL BE THE TERM
4 PENALTY AND THE MERE FACT THAT I EVEN MENTION THAT WORD OR
5 TALK ABOUT PENALTY DOES NOT INDICATE ANYTHING ABOUT THE
6 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
7 INNOCENT. DO YOU UNDERSTAND THAT?

8 A YES, I DO.

9 Q NOW, LET'S SUPPOSE FOR JUST A FEW MOMENTS THAT YOU
10 WERE A JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE
11 LAW, ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS
12 THE JUDGE OF THIS COURT EVEN THOUGH YOU MIGHT NOT AGREE
13 WITH THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

14 A YES.

15 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
16 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

17 A YES.

18 Q NOW, MS. BAUER, IN A CRIMINAL CASE, THE STATE OF
19 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
20 GUILT AND THE BURDEN OF PROOF THAT THEY MUST MEET IS TO
21 PROVE THE ELEMENTS, EACH AND EVERY ELEMENT OF THE CRIMES
22 WITH WHICH THE DEFENDANT IS CHARGED BEYOND A REASONABLE
23 DOUBT. A DEFENDANT HAS NO BURDEN, NO RESPONSIBILITY TO
24 PROVE HIS INNOCENCE. DO YOU UNDERSTAND THAT?

25 A YES, I DO.

08392

1 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
2 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
3 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

4 A I BELIEVE THAT I COULD.

5 Q YOU COULD REACH EITHER VERDICT?

6 A I BELIEVE THAT I COULD. I WOULD HAVE TO HEAR THE
7 EVIDENCE FIRST.

8 Q I UNDERSTAND THAT.

9 NOW, DO YOU UNDERSTAND THAT THIS IS A CASE IN
10 WHICH THE STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY
11 AND IN SUCH A CASE, AS I EXPLAINED TO YOU AND THE OTHER
12 JURORS YESTERDAY, IT'S WHAT WE CALL A BIFURCATED TRIAL,
13 MEANING THAT IT'S DIVIDED INTO TWO PARTS, THE GUILT PHASE,
14 THE SENTENCING PHASE. AND DO YOU UNDERSTAND THAT IF YOU
15 WERE A JUROR IN SUCH A CASE AND THE JURY FOUND THE
16 DEFENDANT WAS NOT GUILTY OF MURDER, THAT THERE WOULD BE NO
17 NECESSITY TO HAVE THAT SECOND PART FOR, THE SENTENCING
18 PHASE?

19 A CERTAINLY.

20 Q ON THE OTHER HAND, IF YOU WERE A JUROR IN SUCH A CASE
21 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
22 DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE INTO THAT SECOND
23 PHASE, THAT SENTENCING PHASE OF THE TRIAL?

24 A YES.

25 Q NOW, DURING THAT PART OF THE TRIAL, EVIDENCE WOULD BE

1 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
2 AS MITIGATING CIRCUMSTANCES.

3 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
4 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
5 ASSEMBLY OF OUR STATE HAS ENACTED AND DECLARED BY LAW WOULD
6 MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

7 IN OTHER WORDS, THE PRESENCE OF THAT AGGRAVATING
8 CIRCUMSTANCE ALONG WITH THAT MURDER INCREASES THE ENORMITY
9 OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

10 FOR EXAMPLE, I WOULD BE SPEAKING OF MURDER THAT
11 IS COMMITTED IN CONJUNCTION WITH THE CRIME OF CRIMINAL
12 SEXUAL CONDUCT AND OR BURGLARY OR THE LIKE. DO YOU
13 UNDERSTAND THAT?

14 A YES, I DO.

15 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
16 ALSO FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR
17 GENERAL ASSEMBLY HAS, ONCE AGAIN, DECLARED BY LAW REDUCES
18 THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED
19 BY THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF
20 MORAL CULPABILITY OR RESPONSIBILITY.

21 AND WHAT I'M SPEAKING OF ARE INCIDENTS WHERE THE
22 MURDER WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE
23 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE DEFENDANT
24 -- THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
25 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE

0841

1 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS
2 CONSIDERING THE AGE OR MENTALITY OF THE DEFENDANT AT THE
3 TIME OF THE CRIME. YOU UNDERSTAND THOSE?

4 A YES, I DO.

5 Q NOW, LET'S ASSUME FOR A FEW MOMENTS THAT YOU WERE A
6 JUROR IN THAT SITUATION, THE SECOND, SENTENCING PHASE,
7 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
8 CIRCUMSTANCES OF THAT CASE INCLUDING THE CONSIDERATION OF
9 AGGRAVATING AS WELL AS MITIGATING CIRCUMSTANCES AND THE
10 LAW, AS I WOULD INSTRUCT YOU THAT APPLY TO THAT CASE AT THE
11 CONCLUSION OF IT, RETURN A SENTENCE OF LIFE IN PRISON?

12 A I BELIEVE THAT I COULD, UH-HUH.

13 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
14 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
15 THAT CASE, ONCE AGAIN, CONSIDERING THE AGGRAVATING AND
16 MITIGATING CIRCUMSTANCES THAT WERE PRESENTED DURING THE
17 TRIAL, AS WELL AS CONSIDERING THE LAW, AS I WOULD INSTRUCT
18 YOU AT THE END OF THAT CASE, RETURN A SENTENCE OF DEATH?

19 A YES.

20 Q NOW, MS. BAUER, IF YOU WERE CHOSEN TO SERVE ON THIS
21 JURY, YOU WOULD BE SEQUESTERED WHICH IS KIND OF A FANCY
22 WORD FOR BEING HOUSED IN A MOTEL DURING THE ENTIRE LENGTH
23 OF THE TRIAL. I DON'T KNOW EXACTLY HOW LONG IT'S GOING TO
24 LAST, BUT, I THINK, THAT IT COULD GO AS LONG AS SEVEN TO
25 TEN DAYS. IT COULD BE LESS THAN THAT. I HAVE NO WAY OF

1 KNOWING. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU
2 WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE
3 HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON
4 YOU?

5 A NO.

6 Q THANK YOU FOR ANSWERING MY QUESTIONS. WOULD YOU
7 PLEASE RESPOND TO MS. FULLWOOD'S QUESTIONS.

8 MS. FULLWOOD: THANK YOU, YOUR HONOR.

9 EXAMINATION

10 BY MS. FULLWOOD:

11 Q GOOD AFTERNOON, MS. BAUER.

12 A GOOD AFTERNOON.

13 Q HOW ARE YOU DOING?

14 A FINE, THANK YOU.

15 Q GOOD. WHEN YOU CAME IN HERE YESTERDAY AND LEARNED
16 THAT THIS WAS A POTENTIAL DEATH PENALTY CASE, WERE YOU
17 SURPRISED?

18 A HAVING NEVER SERVED ON A JURY BEFORE, I WAS A LITTLE
19 BIT.

20 Q OKAY. THE FIRST TIME OUT, IT'S A CASE LIKE THIS?

21 A CORRECT, CORRECT.

22 Q ALL RIGHT. CAN YOU TELL US IN GENERAL WHAT YOUR
23 VIEWS ARE ON CAPITAL PUNISHMENT?

24 A I THINK NO ONE LIKES CAPITAL PUNISHMENT, BUT I THINK
25 MANY PEOPLE BELIEVE THAT IF THE CRIME WARRANTS IT, THAT

0843

1 IT'S NECESSITATED.

2 Q OKAY. YOU SAID MANY PEOPLE BELIEVE THAT IF THE CRIME
3 WARRANTS IT, IT'S NECESSITATED. DO YOU BELIEVE THAT?

4 A YES, I DO.

5 Q ALL RIGHT. I'M KIND OF CURIOUS ABOUT THE WORD, YOUR
6 USE OF THE WORD NECESSITATES. IS YOUR OPINION THAT SOME
7 TYPES OF CRIMES MEAN THAT THE DEATH PENALTY SHOULD BE
8 MANDATORY FOR THEM OR AM I MAYBE PICKING OUT A WORD AND
9 TAKING IT OUT OF CONTEXT THERE?

10 A I, MYSELF, IF I WERE ON THE JURY, WOULD CERTAINLY
11 LISTEN TO EVERYTHING SURROUNDING THE EVENT AND TO THE
12 JUDGE'S INSTRUCTION AND AT THAT POINT, YOU KNOW, WORK WITH
13 THE OTHER JURORS TO MAKE A DECISION ON WHETHER WE FELT THAT
14 WAS THE CASE.

15 Q ALL RIGHT. AND JUDGE CLARY EXPLAINED TO YOU AND I'M
16 SURE YOU REALIZE THAT WE MAY OR MAY NOT HAVE A SECOND TRIAL
17 HERE BECAUSE THERE WOULD FIRST BE A TRIAL TO DECIDE GUILTY
18 OR NOT GUILTY?

19 A RIGHT.

20 Q AND I'M SURE YOU ALSO UNDERSTAND THAT WERE YOU TO
21 EVER GET TO A SECOND TRIAL TYPE OF SITUATION, YOU WOULD
22 HAVE ALREADY FOUND THE DEFENDANT GUILTY OF MURDER AND ONE
23 OR OTHER CRIMES. IN THIS CASE, SPECIFICALLY CRIMINAL
24 SEXUAL CONDUCT OR BURGLARY.

25 A CORRECT.

1 Q ALL RIGHT. SO YOU REALIZE THAT YOU DON'T -- YOU GO
2 IN -- IF A JURY GOES INTO A SECOND TRIAL SITUATION, THEY'VE
3 ALREADY FOUND THE DEFENDANT GUILTY OF MURDER?

4 A CORRECT.

5 Q OKAY. IN THAT TYPE OF SITUATION, HAVING FOUND THE
6 DEFENDANT GUILTY OF MURDER AND HAVING LISTENED TO THE
7 EVIDENCE GIVEN BY BOTH SIDES IN THE SECOND TRIAL, COULD YOU
8 IMPOSE A SENTENCE OF DEATH?

9 A YES.

10 Q OKAY. AND ON THE OTHER HAND, GOING INTO A SECOND
11 TRIAL OR REALLY COMING OUT OF A SECOND TRIAL HAVING ALREADY
12 FOUND THE DEFENDANT GUILTY OF MURDER AND OTHER CRIMES AND
13 HAVING LISTENED TO THE EVIDENCE, COULD YOU RETURN A
14 SENTENCE OF LIFE?

15 A YES.

16 Q ALL RIGHT. ONE OTHER THING I WANTED TO ASK YOU ABOUT
17 WHEN JUDGE CLARY WAS ASKING THE WHOLE PANEL QUESTIONS
18 YESTERDAY, HE ASKED ABOUT WHETHER PEOPLE KNEW FOLKS IN THE
19 SOLICITOR'S OFFICE AND YOU CAME UP AND YOU TALKED TO THE
20 JUDGE AND US AND APPARENTLY YOU KNOW SOLICITOR MYERS?

21 A THAT IS CORRECT.

22 Q OKAY. AND YOU SAID YOU HAD EVEN WORKED IN ONE OF HIS
23 CAMPAIGNS?

24 A THAT IS CORRECT. IT'S BEEN MANY YEARS.

25 Q WAS THAT A CAMPAIGN FOR SOLICITOR?

0845

- 1 A NO, IT WAS NOT.
- 2 Q WAS THAT THE ATTORNEY GENERAL'S CAMPAIGN?
- 3 A THAT IS CORRECT.
- 4 Q OKAY. OKAY. AND, MS. BAUER, I'M NOT TRYING TO PRY
- 5 INTO YOUR LIFE---
- 6 A NO, THAT'S PERFECTLY ALL RIGHT. I FELT THAT YOU
- 7 SHOULD HAVE THE INFORMATION.
- 8 Q YES, MA'AM. AND IF YOU DON'T MIND, I'D JUST LIKE TO
- 9 ASK A FEW MORE QUESTIONS---
- 10 A CERTAINLY.
- 11 Q ---ABOUT THAT. DO YOU KNOW SOLICITOR MYERS WELL?
- 12 A I KNOW DONNIE AND HIS WIFE, BUT I DON'T REALLY
- 13 COMMUNICATE WITH THEM OFTEN.
- 14 Q ALL RIGHT.
- 15 A I HAVE HAD SOME COMMUNICATIONS WITHIN THE LAST YEAR
- 16 BECAUSE MY DAUGHTER GRADUATED FROM LAW SCHOOL AND THEY WERE
- 17 INVITED TO HER PARTY.
- 18 Q ALL RIGHT. ALL RIGHT.
- 19 A IF THAT HELPS.
- 20 Q SO YOU HAVE A -- IS IT FAIR TO CHARACTERIZE YOUR
- 21 RELATIONSHIP WITH THE MYERS AS A CASUAL SOCIAL
- 22 RELATIONSHIP?
- 23 A YES.
- 24 Q OKAY. SO YOU CONSIDER YOURSELF ON A FRIENDLY BASIS
- 25 WITH THE SOLICITOR AND MRS. MYERS?

1 A MORE SO WITH VANCE THAN WITH DONNIE I WOULD SAY.

2 Q ALL RIGHT. ALL RIGHT.

3 NOW, MS. BAUER, IN THIS CASE, MR. MYERS ISN'T IN
4 THE COURTROOM NOW, BUT HE WILL BE PARTICIPATING IN THIS
5 CASE AT A LATER TIME AND YOU KNOW THIS IS SOMETHING THAT
6 ONLY YOU KNOW, YOU KNOW. ONLY YOU KNOW AND I'M NOT TRYING
7 TO INSULT YOU BY ASKING THIS QUESTION AT ALL---

8 A NO, CERTAINLY NOT.

9 Q ---I JUST REALLY DO NEED TO ASK THE QUESTION.

10 A SURE.

11 Q DO YOU FEEL IN YOUR HEART THAT DESPITE YOUR
12 FRIENDSHIP WITH MR. MYERS AND WITH HIS WIFE, THAT YOU CAN
13 BE IMPARTIAL TO BOTH SIDES IN THIS CASE?

14 A YES, BECAUSE I HAVE A YOUNG -- WELL, WHEN I SAY
15 YOUNG, MY SON IS 28 AND I BELIEVE THAT I COULD BECAUSE I'M
16 A MOTHER AND I HAVE A SON. I DON'T KNOW IF YOU UNDERSTAND
17 WHAT I'M TRYING TO GET ACROSS TO YOU WITH THE YOUNG MAN
18 THAT'S, YOU KNOW, APPEARING HERE IN COURT.

19 Q I SEE.

20 A I FEEL THAT IT WOULD SUPERSEDE THE SITUATION WITH THE
21 SOLICITOR AND I WOULD TRY TO BE FAIR AND IMPARTIAL TO THIS
22 PERSON THAT'S INVOLVED IN THE TRIAL.

23 Q OKAY. SO IS IT FAIR TO SAY THEN THAT YOU THINK YOUR
24 LEGAL OBLIGATION AS A JUROR AND---

25 A AND MORAL---

0847

1 Q ---AND MORAL OBLIGATION JUST BECAUSE OF YOUR CODE OF
2 ETHICS, THAT WOULD SUPERSEDE ANY FRIENDSHIP?

3 A THAT'S CORRECT.

4 Q OKAY. AND, AGAIN, MS. BAUER, I DIDN'T ASK THAT TO BE
5 INSULTING---

6 A NO, OF COURSE, YOU WOULD WANT TO KNOW.

7 Q ---BUT IT WAS A QUESTION THAT HAD TO BE EXPLORED.

8 A CERTAINLY.

9 Q I APPRECIATE YOUR CANDOR. THANK YOU VERY MUCH.

10 A YOU'RE WELCOME.

11 THE COURT: SOLICITOR HUMPHRIES.

12 EXAMINATION

13 BY MR. HUMPHRIES:

14 Q MS. BAUER, I'M GOING TO BE VERY BRIEF. I'M THE
15 DEPUTY SOLICITOR. I WILL BE ASSISTING DONNIE IN THE TRIAL
16 OF THIS CASE, ALONG WITH TOM CHASE.

17 I DON'T HAVE ANY QUALMS WITH THE MANNER IN WHICH
18 YOU ADDRESSED ALL OF THESE QUESTIONS AND THE ANSWERS THAT
19 YOU'VE PROVIDED. YOU'VE BEEN VERY DETAILED AND I
20 APPRECIATE THAT.

21 MY QUESTION IS ONE THAT IS GENERAL. WELL, NOT
22 REALLY GENERAL. IT'S SPECIFIC, BUT IT'S AS TO THE
23 PROCEDURE AS OPPOSED TO THE GENERAL FEELINGS ABOUT THINGS
24 AND IT'S SIMPLY THIS.

25 LET'S ASSUME FOR THE BASIS OF MY QUESTION A

1 NUMBER OF THINGS. THAT YOU WERE SEATED ON THIS JURY; THAT
2 THE JURY THAT YOU WERE SEATED ON, RETURNED A GUILTY VERDICT
3 IN THE GUILT PHASE ON MURDER AND THE OTHER CHARGES
4 PRESENTED BY THE STATE.

5 WE ARE GOING TO ASSUME THEN THAT WE GO TO THE
6 PENALTY PHASE AND THAT YOU, ALONG WITH THE OTHER JURORS,
7 HAVE HEARD ALL OF THE EVIDENCE, BOTH IN AGGRAVATION AND
8 MITIGATION. AND THEN WE'LL ASSUME YET A STEP FURTHER.
9 THAT BASED ON ALL THE EVIDENCE YOU'VE CONSIDERED AND THE
10 CHARGE ON THE LAW, AS THE JUDGE HAS GIVEN IT TO YOU, YOU
11 AND THE OTHER JURORS HAVE DETERMINED THAT DEATH IS THE
12 APPROPRIATE VERDICT. THAT'S A LOT TO CONSIDER, BUT I NEED
13 TO GET TO THAT POINT TO ASK THIS LAST QUESTION. AND THAT
14 IS THIS.

15 IF THAT WERE THE SITUATION; THAT IS, IF YOU HAD
16 HEARD ALL OF THE EVIDENCE IN THE PENALTY PHASE, AGGRAVATION
17 AND MITIGATION, LISTENED TO THE CHARGE AND BASED ON ALL OF
18 THAT, YOU AND THE OTHER ELEVEN JURORS HAD DETERMINED THAT
19 DEATH WAS THE APPROPRIATE VERDICT, COULD YOU THEN, AS
20 REQUIRED BY LAW, SIGN YOUR NAME ON THE DEATH VERDICT? YOU
21 WILL BE PROVIDED A FORM BY JUDGE CLARY, AMONG MANY FORMS,
22 WHICH WILL GIVE YOU AN OPTION, EITHER FOR LIFE OR DEATH AND
23 SOME ACCOMPANYING FORMS FOR THOSE VERDICTS, BUT
24 SPECIFICALLY, THERE'S A FORM WHICH MUST BE FILLED OUT AND
25 SIGNED BY EACH AND EVERY JUROR IF THAT JURY IS TO RETURN A

0813
1 DEATH VERDICT. SOME FOLKS SAY I WOULDN'T PUT MY NAME ON
2 ANYTHING. I DON'T WANT TO LIGHTEN OR MAKE LESS SERIOUS
3 THIS OBLIGATION BECAUSE IT IS A REQUIREMENT OF LAW IF YOU
4 INTEND TO IMPOSED THE DEATH VERDICT. COULD YOU SIGN YOUR
5 NAME TO THAT DEATH VERDICT IF THAT WAS YOUR VOTE REGARDING
6 THE SENTENCE IN THIS CASE?

7 A YES.

8 Q THAT'S WHAT I NEED TO KNOW. COULD YOU THEN BE FAIR
9 AND IMPARTIAL BOTH TO THE STATE OF SOUTH CAROLINA AND THE
10 DEFENDANT, GARY DUBOSE TERRY?

11 A MOST CERTAINLY.

12 Q THAT'S ALL WE CAN ASK OF YOU.

13 THANK YOU VERY MUCH.

14 A YOU'RE WELCOME.

15 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

16 MS. FULLWOOD: MATTER OF LAW, YOUR HONOR.

17 THE COURT: MS. BAUER, I'M GOING TO ASK THAT YOU
18 STEP OUTSIDE PLEASE, MA'AM, AND I'LL GET YOU BACK IN THE
19 COURTROOM IN JUST A MOMENT.

20 (JUROR OUT.)

21 THE COURT: ALL RIGHT.

22 MS. FULLWOOD: YOUR HONOR, WE WOULD MOVE TO
23 DISQUALIFY THIS JUROR FOR CAUSE BASED ON HER SOCIAL
24 RELATIONSHIP AND FRIENDSHIP WITH SOLICITOR MYERS AND HIS
25 WIFE. WE BELIEVE THAT BECAUSE OF THAT RELATIONSHIP, SHE'S

1 INCAPABLE OF BEING A FAIR AND IMPARTIAL JUROR.

2 THE COURT: ALL RIGHT.

3 MR. HUMPHRIES: THE STATE VERSUS ELMORE --

4 STATE VERSUS ELMORE DEALS SPECIFICALLY WITH THIS CASE.

5 THE COURT: YES, SIR. I'M AWARE OF THAT. I
6 THINK THAT THIS JUROR HAS SPECIFICALLY ANSWERED QUESTIONS
7 THAT HAVE BEEN POSED BY THE COURT, BY THE DEFENSE
8 PARTICULARLY IN THIS AREA. AND I THINK THAT UNEQUIVOCALLY
9 SHE HAS STATED THAT SHE WOULD NOT BE INFLUENCED IN ANY
10 MANNER WHATSOEVER AS A RESULT OF THAT. AND I THINK THAT IN
11 ACCORDANCE WITH THE LAW OF THIS STATE AND IN ACCORDANCE
12 WITH OUR STATUTORY LAW, THE CASE LAW AND STATUTORY LAW,
13 THAT I FIND HER TO BE QUALIFIED AND I'LL DENY THAT MOTION.

14 BRING HER BACK IN.

15 (JUROR IN.)

16 THE COURT: MS. BAUER, I WANT TO THANK YOU VERY
17 MUCH FOR YOUR PARTICIPATION IN OUR PROCESS NOT ONLY
18 YESTERDAY, BUT ALSO TODAY. I FIND THAT YOU ARE QUALIFIED
19 TO SERVE AS A POTENTIAL JUROR IN THIS CASE.

20 BEFORE I SEND YOU AWAY THIS AFTERNOON, I'M GOING
21 TO REMIND YOU OF THE CAUTIONARY INSTRUCTIONS THAT I GAVE TO
22 YOU YESTERDAY.

23 FIRST OF ALL, YOU ARE NOT TO DISCUSS THIS CASE IN
24 ANY FASHION WITH YOUR FELLOW JURORS, WITH YOUR FAMILY,
25 FRIENDS OR ANYONE ELSE.

0851

1 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
2 CONCERNING THIS CASE, ONCE AGAIN, GATHER AS MUCH
3 INFORMATION AS YOU POSSIBLY CAN ABOUT THAT INDIVIDUAL OR
4 INDIVIDUALS AND REPORT THAT TO ME IMMEDIATELY BECAUSE
5 THAT'S A VERY SERIOUS MATTER AND I WILL DEAL WITH IT
6 ACCORDINGLY.

7 ALSO, YOU ARE TO CONTINUE TO REFRAIN FROM
8 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
9 CONCERNING THIS CASE.

10 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IN
11 THIS MATTER IF YOU WERE SEATED AS A JUROR IN THIS CASE
12 WOULD BE WHAT YOU SEE AND HEAR IN THIS COURTROOM. NOTHING
13 MORE AND NOTHING LESS.

14 SO WITH THAT, BEFORE I SEND YOU AWAY FOR THE DAY,
15 I'M GOING TO TELL YOU THAT YOU NEED TO GO HOME AND START
16 PACKING BECAUSE YOU NEED TO BE BACK HERE IN THE MORNING AT
17 9:30 A.M. PLEASE LEAVE YOUR LUGGAGE, BAGGAGE IN YOUR CAR
18 BECAUSE IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN
19 THE JURY CUSTODIANS WILL TAKE YOU, AS WELL AS YOUR
20 BELONGINGS, TO THE MOTEL, AND YOU WOULD BE WITH US FOR THE
21 REMAINDER OF THE TRIAL.

22 IF YOU ARE NOT SELECTED, THEN WE WOULD THANK YOU
23 VERY MUCH FOR YOUR PARTICIPATION HERE AND SEND YOU ALONG
24 YOUR WAY ABOUT YOUR DAILY ACTIVITIES. SO UNTIL IN THE
25 MORNING AT NINE-THIRTY, I'LL SEE YOU THEN, HAVE A PLEASANT

1 EVENING.

2 (WHEREUPON, THE JUROR WAS EXCUSED
3 AT THIS TIME.)

4 THE COURT: ALL RIGHT.

5 ONCE AGAIN, AS TO THIS PARTICULAR JUROR, NUMBER
6 15, SAUNDREA J. BAUER, I FIND THAT SHE IS QUALIFIED TO
7 SERVE AS A POTENTIAL JUROR IN THIS CASE IN ACCORDANCE WITH
8 SECTION 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH
9 CAROLINA, 1976, AS AMENDED.

10 WE ARE GOING TO TAKE ABOUT FIVE MINUTES AND THEN
11 PROCEED WITH PANEL SEVEN.

12 (RECESS.)

13 THE BAILIFF: ALL RISE.

14 THE COURT: PLEASE TAKE YOUR SEATS.

15 I APOLOGIZE FOR GETTING US BEHIND TIME, BUT I HAD
16 TO TAKE CARE OF SOME ADMINISTRATIVE MATTERS UP IN MY
17 CIRCUIT. THERE'S NO ONE ELSE TO TAKE CARE OF.

18 ALL RIGHT. LET'S BRING IN JUROR NUMBER 241,
19 LARRY L. WILLIAMSON, JR.

20 LARRY L. WILLIAMSON, JR.,

21 (JUROR NUMBER 241, WHITE MALE,
22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

23 EXAMINATION

24 BY THE COURT:

25 Q GOOD AFTERNOON, MR. WILLIAMSON. YOU ARE LARRY L.

0853

1 WILLIAMSON, JR.?

2 A THAT'S RIGHT.

3 Q NOW, MR. WILLIAMSON, YOU UNDERSTAND THAT YOU ARE
4 UNDER OATH FOR THIS PROCEEDING THIS AFTERNOON?

5 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
6 THIS TIME.)

7 Q AND YOU REMEMBER YESTERDAY WHEN I DISMISSED ALL OF
8 THE JURORS THAT I TOLD YOU THAT YOU WERE NOT TO DISCUSS
9 THIS CASE WITH ANYONE AND THAT IF ANYONE ATTEMPTED TO
10 CONTACT YOU, YOU WERE TO REPORT THAT TO ME. AND THAT YOU
11 WERE ALSO NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
12 CONCERNING THIS CASE. HAVE ANY OF THOSE INSTRUCTIONS BEEN
13 VIOLATED?

14 A NO, SIR.

15 Q NOW, MR. WILLIAMSON, DURING THE NEXT FEW MINUTES, I'M
16 GOING TO ASK YOU SOME QUESTIONS AND THEN ONE OF THE LAWYERS
17 FOR MR. TERRY WILL ASK YOU SOME QUESTIONS, AS WELL AS ONE
18 OF THE SOLICITORS.

19 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
20 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
21 THE CASE THAT WE ARE GOING TO BE TRYING THIS WEEK, IT'S
22 NECESSARY THAT WE DO ASK YOU CERTAIN QUESTIONS.

23 KEEP IN MIND THAT THERE ARE ABSOLUTELY NO RIGHT
24 OR WRONG ANSWERS TO THESE QUESTIONS AND ALSO, PLEASE, JUST
25 ANSWER THEM OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN

1 MIND THAT NO ONE IS CHALLENGING THE VIEW THAT YOU MIGHT
2 HAVE. WE JUST NEED TO KNOW WHAT YOUR VIEW IS. AND ALSO
3 KEEP IN MIND THAT YOU'RE PROBABLY GOING TO BE ASKED SOME
4 QUESTIONS THAT YOU'VE NEVER BEEN ASKED TO CONSIDER BEFORE.
5 SO PLEASE LISTEN VERY CAREFULLY TO THE QUESTIONS THAT I
6 WILL POSE TO YOU AS WELL AS THE LAWYERS. IF YOU DON'T
7 UNDERSTAND THE QUESTION AT ANY TIME, JUST LET US KNOW AND
8 WE'LL ATTEMPT TO CLEAR IT UP FOR YOU. DO YOU UNDERSTAND
9 THAT?

10 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
11 THIS TIME.)

12 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
13 DISCUSSING OVER THE NEXT FEW MINUTES WILL BE PENALTY AND
14 THE MERE FACT THAT I EVEN MENTION THAT WORD OR EVEN TALK
15 ABOUT PENALTY, DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT
16 THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
17 INNOCENT. DO YOU UNDERSTAND THAT?

18 A YES, SIR.

19 Q NOW, LET'S ASSUME FOR A FEW MINUTES THAT YOU WERE A
20 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
21 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
22 JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
23 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

24 A YES.

25 Q NOW, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE

0855

1 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

2 A YES.

3 Q NOW, IN A CRIMINAL CASE, MR. WILLIAMSON, THE STATE OF
4 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
5 GUILT. THE STATE MUST MEET THAT BURDEN BY PROVING HIS
6 GUILT BEYOND A REASONABLE DOUBT, MEANING THAT THEY WOULD
7 HAVE TO PROVE EACH AND EVERY ELEMENT OF THE CRIMES WITH
8 WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT.

9 NOW, A DEFENDANT HAS ABSOLUTELY NO RESPONSIBILITY
10 OR BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND
11 THAT?

12 A YES, SIR.

13 Q NOW, DEPENDING ON THE PARTICULAR FACTS AND EVIDENCE
14 AND THE LAW AS I WOULD INSTRUCT YOU IN A CASE, COULD YOU
15 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

16 A YES, SIR.

17 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
18 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY. NOW, I
19 THINK THAT I EXPLAINED TO YOU AND YOUR FELLOW JURORS
20 YESTERDAY THAT THAT IS WHAT WE CALL A BIFURCATED TRIAL
21 WHICH IS KIND OF A BIG WORD THAT MEANS THAT THE CASE OR
22 TRIAL IS DIVIDED INTO TWO PARTS. THE GUILT PHASE WHICH IS
23 THE FIRST PART; THE SENTENCING PHASE WHICH IS THE SECOND
24 PART.

25 NOW, THE GUILT PHASE OF THE TRIAL IS WHERE THE

1 JURY DETERMINES WHETHER OR NOT THE DEFENDANT IS GUILTY OF
2 MURDER AND ANY OTHER CRIMES WITH WHICH HE IS CHARGED.

3 IF THE JURY WERE TO FIND THE DEFENDANT NOT GUILTY
4 OF MURDER, THAT WOULD END THE CASE AND THERE WOULD BE NO
5 NEED FOR A SECOND SENTENCING PHASE. YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IF THE
8 JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER IN THAT FIRST
9 PHASE, DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE INTO THAT
10 SECOND SENTENCING PHASE OF THE TRIAL?

11 A YES, SIR.

12 Q NOW, IN THAT PART OF THE TRIAL, EVIDENCE WOULD BE
13 PRESENTED TO YOU, THE JURY, IN THE FORM OF AGGRAVATING
14 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

15 NOW, BY WAY OF EXPLANATION, AGGRAVATING
16 CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS AND OCCURRENCES
17 WHICH THE GENERAL ASSEMBLY HAS DECLARED BY LAW WOULD MAKE
18 WORSE, THAT IS; TO AGGRAVATE THE CRIME OF MURDER.

19 IN OTHER WORDS, WHEN THE MURDER OCCURS IN
20 CONJUNCTION OR WITH AN AGGRAVATING CIRCUMSTANCE, THAT
21 AGGRAVATING CIRCUMSTANCE INCREASES OR ADDS TO THE INJURY OF
22 THE CRIME OF MURDER.

23 NOW, WHAT I AM TALKING ABOUT BY THAT IS WHEN THE
24 MURDER OCCURS WITH A CRIME OR IN CONJUNCTION OR IN
25 CONNECTION WITH A CRIME SUCH AS CRIMINAL SEXUAL CONDUCT,

1 BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

0857 3 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
4 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
5 ASSEMBLY OF OUR STATE, ONCE AGAIN, HAS DECLARED BY LAW THAT
6 REDUCES THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
7 CONSIDERED BY THE JURY AS EXTENUATING OR AS REDUCING THE
8 DEGREE OF RESPONSIBILITY OR MORAL CULPABILITY.

9 NOW, WHEN WE TALK ABOUT MITIGATING CIRCUMSTANCES,
10 I'M TALKING ABOUT SITUATIONS WHERE THE MURDER WAS COMMITTED
11 WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
12 EMOTIONAL DISTURBANCE; THE CAPACITY OF A DEFENDANT TO
13 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
14 CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
15 IMPAIRED; AS WELL AS CONSIDERING THE AGE OR MENTALITY OF
16 THE DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND
17 WHAT I MEAN WHEN WE ARE TALKING ABOUT MITIGATING
18 CIRCUMSTANCES?

19 A YES, SIR.

20 Q IF YOU WERE A JUROR IN THAT SITUATION AND I'M TALKING
21 ABOUT THAT SENTENCING PHASE OF THE TRIAL, COULD YOU,
22 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
23 THAT CASE, CONSIDERING ANY AGGRAVATING OR MITIGATING
24 CIRCUMSTANCES THAT HAVE BEEN INTRODUCED BEFORE THE JURY AND
25 THE LAW, AS I WOULD INSTRUCT YOU AT THE END OF THE CASE,

1 RETURN A SENTENCE OF LIFE IN PRISON?

2 A YES, SIR.

3 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
4 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
5 THAT CASE AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
6 CONCLUSION OF THE CASE, CONSIDER ANY AGGRAVATING OR
7 MITIGATING CIRCUMSTANCES THAT HAVE BEEN INTRODUCED, RETURN
8 A SENTENCE OF DEATH?

9 A YES.

10 Q NOW, MR. WILLIAMSON, IF YOU WERE CHOSEN TO SERVE ON
11 THIS JURY, YOU WOULD BE SEQUESTERED WHICH IS KIND OF A
12 FANCY WORD MEANING HOUSED IN A MOTEL FOR THE DURATION OF
13 THE TRIAL.

14 NOW, I DON'T HAVE ANY IDEA HOW LONG THIS CASE IS
15 GOING TO LAST. I HAVE A GOOD ESTIMATE THAT IT COULD BE
16 SEVEN TO TEN DAYS OR IT COULD EVEN BE LESS. EXCEPT FOR THE
17 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
18 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
19 YOURSELF OR OF THOSE DEPENDENT UPON YOU?

20 A NO, SIR.

21 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS.
22 WOULD YOU PLEASE ANSWER ANY OF MR. STONE'S QUESTIONS.

23 MR. STONE: THANK YOU, YOUR HONOR.

24 EXAMINATION

25 BY MR. STONE:

0859

1 Q MR. WILLIAMSON, MY NAME IS DUFFIE STONE. I WAS
2 INTRODUCED EARLIER, BUT I WANTED TO DO THAT AGAIN.

3 SITTING WITH ME AT THE TABLE IS BETH FULLWOOD AND
4 MS. FULLWOOD AND I REPRESENT GARY TERRY AT THE VERY END.

5 NOW, THE JUDGE HAS GIVEN YOU SOME INDICATION OF
6 WHAT KIND OF TRIAL WE HAVE GOING ON TODAY. THE TOUGH PART
7 ABOUT IT FROM A LAWYER'S STANDPOINT IS I'VE GOT TO COME IN
8 HERE AND ASK YOU ABOUT SOME STUFF THAT MAY OR MAY NOT EVER
9 HAPPEN AND THAT BEING A SENTENCING PHASE OF A TRIAL. DO
10 YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q DOES THAT MAKE SENSE? HAVE YOU -- YOU'VE NEVER
13 SERVED ON A JURY BEFORE I DON'T THINK?

14 A NO, SIR.

15 Q OKAY. IN A NORMAL JURY, ALL YOU HAVE TO DO IS TO
16 DETERMINE GUILT OR INNOCENCE.

17 IN A DEATH PENALTY, YOU GET IN A SITUATION WHERE
18 YOU MAY HAVE TO DETERMINE THAT AND YOU MAY HAVE TO
19 DETERMINE THE SENTENCE ITSELF, WHETHER THAT BE LIFE OR
20 DEATH, DO YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q OKAY. WHAT I NEED TO TALK TO YOU ABOUT A LITTLE BIT
23 ARE YOUR VIEWS ON THE DEATH PENALTY AND JUST SOME IDEA
24 ABOUT THAT.

25 NOW -- WELL, LET ME ASK YOU THIS JUST VERY

1 SIMPLY. WHAT ARE YOUR VIEWS ON THE DEATH PENALTY?

2 A I -- I THINK LIKE IF A PERSON DO COMMIT A CRIME; IT
3 JUST DEPENDS WHAT, YOU KNOW, IT IS ABOUT, YEAH.

4 Q DO YOU FEEL LIKE---

5 THE COURT: EXCUSE ME---

6 MR. STONE: YES, SIR, I'M SORRY.

7 THE COURT: ---COULD I GET YOU TO SPEAK UP JUST A
8 LITTLE BIT SO THAT I CAN HEAR YOU.

9 MR. STONE: THESE MIKES ARE REAL BAD.

10 THE COURT: SOMETIMES I HAVE TROUBLE HEARING OVER
11 THIS BAR SO IF YOU'D JUST SPEAK JUST A LITTLE BIT LOUDER.

12 THE JUROR: OKAY.

13 MR. STONE: I'M SORRY, I DIDN'T MEAN -- YOU MIGHT
14 WANT TO REPHRASE THAT -- SAY THAT AGAIN WHERE SHE CAN GET
15 THAT DOWN. I HAD ASKED YOU ABOUT YOUR VIEWS ON THE DEATH
16 PENALTY. WHAT EXACTLY ARE THOSE?

17 A I THINK THAT IT CAN BE DONE AND IT JUST DEPENDS ON
18 WHAT KIND -- THE CASE IT COULD BE.

19 Q OKAY. NOW, MR. WILLIAMSON, WHEN YOU SIT IN THE JURY
20 BOX AND IT'S THE SENTENCING JURY BOX, YOU HAVE ALREADY
21 DETERMINED THAT SOMEBODY IS GUILTY OF MURDER, OKAY. AND AT
22 THIS POINT, YOU HAVE ALREADY DETERMINED THAT THEY ARE ALSO
23 GUILTY OF ANOTHER CRIME AND THAT OTHER CRIME COULD BE RAPE,
24 IT COULD BE BURGLARY, IT COULD BE BOTH, OKAY.

25 KNOWING THAT THE PERSON IS GUILTY OF THOSE

0861

1 CRIMES, COULD YOU STILL GIVE THEM A LIFE SENTENCE?

2 A YES.

3 Q OKAY. DEPENDING ON WHAT OTHER CIRCUMSTANCES YOU
4 HEAR?

5 A UH-HUH.

6 Q OKAY. LIKewise, IF YOU HEAR, IF YOU'RE CONVINCED
7 SOMEBODY IS GUILTY OF MURDER AND RAPE AND BURGLARY, COULD
8 YOU GIVE THEM A DEATH SENTENCE?

9 A YES.

10 Q OKAY. AND, ONCE AGAIN, DEPENDING ON WHATEVER NEW
11 INFORMATION YOU HEAR?

12 A UH-HUH.

13 Q ALL RIGHT, SIR. ALL RIGHT, SIR.

14 NOW, IN SOUTH CAROLINA, WE REQUIRE THAT YOU SIGN
15 THAT FORM. IF YOU FIND SOMEBODY SHOULD RECEIVE THE DEATH
16 PENALTY, YOU HAVE TO SIGN -- YOU HAVE TO SIGN A SHEET.
17 IT'S GOT TWELVE SIGNATURES. AND THAT'S AFTER YOU AND
18 ELEVEN OTHER PEOPLE HAVE AGREED ON THAT SENTENCE, YOU
19 UNDERSTAND THAT?

20 A YES, SIR.

21 Q OKAY. COULD YOU DO THAT? CAN YOU SIGN -- COULD YOU
22 SIGN THAT IF YOU FOUND SOMEBODY WAS APPROPRIATE FOR THE
23 DEATH SENTENCE?

24 A YES, SIR.

25 Q OKAY. SO THE SIGNATURE ITSELF DOESN'T MAKE ANY

1 DIFFERENCE ONE WAY OR THE OTHER?

2 A UH-HUH.

3 Q ALL RIGHT, SIR. I ALSO NOTICED AND PLEASE FORGIVE ME
4 FOR PRYING. I'M NOT TRYING TO EMBARRASS YOU. WHATEVER
5 YOUR RELIGIOUS BELIEFS ARE. I WANT TO MAKE SURE I JUST
6 UNDERSTAND, OKAY?

7 WHAT IS -- YOU ARE A NAZARENE?

8 A YES, SIR.

9 Q ALL RIGHT, SIR. WHAT -- WHAT DOES THAT MEAN? I --
10 IT'S BEEN A LONG TIME, BUT WHAT?

11 A WELL, WE BELIEVE LIKE JESUS CHRIST, YOU KNOW---

12 Q YES, SIR.

13 A ---DIED AND THAT HE'S GOING TO COME BACK.

14 Q OKAY. DO YOU KNOW IF THAT RELIGION HAS ANY POSITION
15 ON THE DEATH PENALTY OR HAVE YOU EVER TALKED TO ANY OF YOUR
16 FELLOW CHURCH MEMBERS ABOUT THE DEATH PENALTY?

17 A NO.

18 Q OKAY, SIR. THAT'S FINE. YOU'VE UNDERSTOOD MY
19 QUESTIONS AND EVERYTHING?

20 A YES, SIR.

21 Q OKAY. CAN YOU, SIR, BE FAIR TO BOTH MR. TERRY AND
22 THE STATE?

23 A YES, SIR.

24 Q ALL RIGHT, SIR. YOU CAN LISTEN TO ALL OF THE
25 EVIDENCE?

0863

1 A UH-HUH.

2 Q ALL RIGHT, SIR. THANK YOU. I APPRECIATE IT. THANK
3 YOU FOR YOUR ANSWERS.

4 THANK YOU, YOUR HONOR.

5 THE COURT: MR. CHASE.

6 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

7 EXAMINATION

8 BY MR. CHASE:

9 Q HI, MR. WILLIAMSON.

10 A HOW ARE YOU DOING?

11 Q MY NAME IS TOM CHASE AND I WILL BE ASSISTING DEPUTY
12 SOLICITOR FRAN HUMPHRIES AND SOLICITOR DONNIE MYERS IN THE
13 PROSECUTION OF THIS CASE. I THINK YOU'VE BEEN VERY CLEAR
14 ABOUT YOUR ANSWERS AND I DON'T HAVE ANY PROBLEM WITH THEM
15 AT ALL. I JUST WANTED TO KIND OF GO OVER ONE AREA JUST TO
16 MAKE SURE.

17 WHAT WE ARE LOOKING FOR IN THIS TYPE OF CASE IS A
18 JUROR THAT CAN BE FAIR AND IMPARTIAL TO BOTH THE STATE OF
19 SOUTH CAROLINA AND ALSO THE DEFENDANT, GARY DUBOSE TERRY,
20 IN THIS CASE. ARE YOU THAT TYPE OF JUROR?

21 A YES, SIR.

22 Q ARE YOU THE ONE, A TYPE JUROR THAT COMING INTO THE
23 CASE, BOTH THE STATE AND THE DEFENDANT ARE ON AN EQUAL
24 PLANE AND YOU ARE GOING TO WANT TO CONSIDER ALL THE
25 EVIDENCE BEFORE YOU MAKE ANY DECISIONS?

1 A YES, SIR.

2 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, SIR.

3 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

4 MR. STONE: NO, SIR. THANK YOU.

5 THE COURT: FROM THE STATE?

6 MR. CHASE: NO, SIR.

7 THE COURT: MR. WILLIAMSON, I WANT TO THANK YOU
8 VERY MUCH FOR YOUR PARTICIPATION HERE NOT ONLY YESTERDAY --
9 NOT ONLY TODAY, BUT ALSO YESTERDAY.

10 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
11 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
12 I'M GOING TO REMIND YOU AS YOU LEAVE THE COURT HOUSE TODAY
13 THAT YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW
14 JURORS, WITH YOUR FAMILY, FRIENDS OR ANYONE ELSE.

15 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
16 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
17 INFORMATION ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN AND
18 REPORT IT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS
19 MATTER AND I WILL DEAL WITH IT ACCORDINGLY.

20 ALSO, YOU ARE TO CONTINUE TO REFRAIN FROM
21 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
22 CONCERNING THIS CASE.

23 VERY SIMPLY PUT, ALL I WANT YOU TO CONSIDER IF
24 YOU ARE SELECTED AS A JUROR IN THIS CASE IS WHAT YOU SEE
25 AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING LESS.

0865

1 NOW, WHEN YOU LEAVE HERE, YOU NEED TO GO HOME AND
2 START PACKING YOUR BAGS BECAUSE I'M GOING TO ASK THAT YOU
3 BE BACK HERE IN THE MORNING AT 9:30 A.M. PLEASE COME TO
4 THE COURTROOM IN THE MORNING AT NINE-THIRTY. DO NOT BRING
5 YOUR BAGGAGE IN. LEAVE IT IN YOUR VEHICLE. IF YOU ARE
6 SELECTED AS A JUROR IN THIS CASE, THEN THE JURY CUSTODIANS
7 WOULD SEE THAT YOU AND YOUR BELONGINGS GET TO THE MOTEL
8 PROPERLY AND IF YOU ARE NOT SELECTED TO SERVE IN THIS CASE,
9 THEN WE WOULD SEND YOU BACK ABOUT YOUR DAILY ACTIVITIES
10 WITH OUR THANKS FOR PARTICIPATING IN THIS PROCESS. THANK
11 YOU VERY MUCH AND I'LL SEE YOU HERE IN THE MORNING AT
12 NINE-THIRTY.

13 THE JUROR: NINE-THIRTY IN THE MORNING.

14 THE COURT: YES, SIR.

15 THE JUROR: OKAY.

16 THE COURT: THANK YOU VERY MUCH.

17 (WHEREUPON, THE JUROR WAS EXCUSED
18 AT THIS TIME.)

19 THE COURT: LET THE RECORD REFLECT THAT JUROR
20 NUMBER 241, LARRY L. WILLIAMSON, JR., IS QUALIFIED TO SERVE
21 AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
22 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
23 1976 AS AMENDED.

24 JUROR NUMBER 236, ALLISON WHITAKER.

25 ALLISON H. WHITAKER,

(JUROR NUMBER 236, WHITE FEMALE,
FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON, MS. WHITAKER.

A HI.

Q YOU ARE ALLISON WHITAKER, CORRECT?

A YES, SIR.

Q NOW, MS. WHITAKER, YOU UNDERSTAND THAT YOU ARE UNDER
OATH FOR THESE PROCEEDING THIS AFTERNOON?

A YES, SIR.

Q AND YESTERDAY WHEN I DISMISSED YOU AND YOUR FELLOW
JURORS, YOU REMEMBER THAT I INSTRUCTED YOU THAT YOU WERE
NOT TO DISCUSS THIS CASE WITH ANYONE, THAT IF ANYONE
ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT YOU
WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO REFRAIN
FROM READING, WATCHING AND LISTENING TO ANY NEWS ACCOUNTS
CONCERNING THIS CASE.HAVE THERE BEEN ANY VIOLATIONS OF THOSE
INSTRUCTIONS?

A NO, SIR.

Q NOW, MS. WHITAKER, I'M GOING TO ASK YOU SOME
QUESTIONS AND THEN ONE OF THE LAWYERS FOR MR. TERRY, AS
WELL AS ONE OF THE SOLICITORS, WILL ALSO ASK YOU SOME
QUESTIONS.

0867

1 I WANT YOU TO KEEP IN MIND THAT WE ARE NOT IN ANY
2 WAY ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
3 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT IS EXTREMELY
4 NECESSARY THAT CERTAIN QUESTIONS BE ASKED.

5 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
6 WRONG ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER
7 THEM OPENLY AND FULLY AND COMPLETELY. AND ALSO KEEP IN
8 MIND THAT NO ONE IS CHALLENGING THE VIEW THAT YOU MIGHT
9 HAVE. WE JUST NEED TO KNOW WHAT YOUR VIEWS ARE.

10 ALSO, I WOULD GO AHEAD AND TELL YOU THAT YOU ARE
11 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE
12 NEVER EVEN CONSIDERED BEFORE. SO PLEASE LISTEN VERY
13 CAREFULLY TO THE QUESTIONS AS THEY'RE PRESENTED TO YOU BY
14 ME, AS WELL AS THE LAWYERS, AND IF, AT ANY TIME, YOU DO NOT
15 UNDERSTAND ME OR THE LAWYERS, JUST SIMPLY ASK US TO
16 REPHRASE THE QUESTION OR REPEAT IT AND WE'LL TRY TO REPEAT
17 IT FOR YOU.

18 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
19 TALKING ABOUT OVER THE NEXT FEW MINUTES, WE'LL BE USING THE
20 WORD PENALTY, BUT THE MERE FACT THAT I EVEN MENTION THAT
21 WORD OR THE LAWYERS TALK ABOUT IT DOES NOT IN ANY WAY
22 INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS
23 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
24 THAT?

25 A YES, SIR.

1 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT IF YOU WERE
2 A JUROR IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW,
3 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
4 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
5 LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

6 A YES, SIR.

7 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
8 EVIDENCE PRESENTED TO YOU HERE IN THIS COURTROOM?

9 A YES.

10 Q NOW, MS. WHITAKER, IN A CRIMINAL CASE, THE STATE HAS
11 THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE BURDEN OF
12 PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF
13 EACH CRIME WITH WHICH HE IS CHARGED BEYOND A REASONABLE
14 DOUBT AND A DEFENDANT HAS ABSOLUTELY NO BURDEN OR
15 RESPONSIBILITY TO PROVE HIMSELF INNOCENT. DO YOU
16 UNDERSTAND THAT?

17 A YES, SIR.

18 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
19 AND THE LAW, AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
20 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

21 A YES.

22 Q NOW, YOU UNDERSTAND FROM WHAT I'VE TOLD YOU YESTERDAY
23 MORNING THAT THIS IS A CASE IN WHICH THE STATE OF SOUTH
24 CAROLINA SEEKS THE DEATH PENALTY. AND I THINK THAT I ALSO
25 EXPLAINED TO YOU YESTERDAY THAT IN SEEING -- AND IN SUCH A

0869

1 CASE, THAT IT'S WHAT WE CALL A BIFURCATED TRIAL, MEANING
2 THAT IT'S SPLIT INTO TWO PARTS. GUILT PHASE; SENTENCING
3 PHASE.

4 NOW, YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
5 SUCH A CASE AND IF THE JURY FOUND THE DEFENDANT WAS NOT
6 GUILTY OF MURDER, THAT THERE WOULD BE NO NECESSITY TO GO
7 INTO THAT SECOND PHASE, THE TRIAL WOULD END THEN. DO YOU
8 UNDERSTAND THAT?

9 A YES, SIR.

10 Q NOW, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
11 IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER IN
12 THAT FIRST PHASE, THEN YOU FULLY UNDERSTAND THAT YOU WOULD
13 THEN MOVE INTO THAT SECOND PHASE OR THE SENTENCING PHASE OF
14 THE TRIAL?

15 A YES.

16 Q NOW, DURING THAT PHASE OF THE TRIAL, EVIDENCE WOULD
17 BE PRESENTED TO THE JURY IN THE FORM OF AGGRAVATING
18 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

19 NOW, AS A WAY OF EXPLANATION, AGGRAVATING
20 CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS, THINGS THAT
21 OCCUR WHICH OUR GENERAL ASSEMBLY HAS DECLARED BY LAW WOULD
22 MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

23 IN OTHER WORDS, WHEN A MURDER OCCURS WITH THE
24 AGGRAVATING CIRCUMSTANCES PRESENT THAT INCREASES THE
25 ENORMITY OR REALLY ADDS TO THE INJURY OF THE MURDER.

1 FOR EXAMPLE, A MURDER THAT IS COMMITTED ALONG
2 WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT OR BURGLARY OR
3 THE LIKE. DO YOU UNDERSTAND THAT?

4 A UH-HUH.

5 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
6 ALSO FACTS, INCIDENTS, DETAILS, OCCURRENCES WHICH THE
7 GENERAL ASSEMBLY, ONCE AGAIN, HAS DECLARED BY LAW THAT
8 REDUCES THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
9 CONSIDERED BY THE JURY AS WHAT WE CALL EXTENUATING OR
10 REDUCING THE DEGREE OF RESPONSIBILITY OR MORAL CULPABILITY.

11 NOW, WHAT WE ARE TALKING ABOUT WHEN WE SPEAK OF
12 MITIGATING CIRCUMSTANCES THAT THE JURY COULD CONSIDER WOULD
13 BE THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANT WAS
14 UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE
15 CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF
16 HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS
17 OF LAW WAS SUBSTANTIALLY IMPAIRED OR THE AGE OR THE
18 MENTALITY OF THE DEFENDANT AT THE TIME THE CRIME WAS
19 COMMITTED. DO YOU UNDERSTAND WHAT I MEAN WHEN I SPEAK OF
20 MITIGATING CIRCUMSTANCES?

21 A YES.

22 Q NOW, LET'S SUPPOSE FOR A MOMENT THAT YOU WERE A JUROR
23 IN A CAPITAL CASE, THE SENTENCING PHASE, COULD YOU,
24 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
25 THAT CASE, CONSIDERING THE AGGRAVATING AND MITIGATING

0871

1 CIRCUMSTANCES IN WITH THAT, AND THE LAW, AS I WOULD
2 INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
3 SENTENCE OF LIFE IN PRISON?

4 A YES.

5 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
6 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
7 THAT CASE, SPECIFICALLY CONSIDERING AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
9 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
10 DEATH?

11 A YES.

12 Q NOW, MS. WHITAKER, IF YOU WERE CHOSEN TO SERVE ON
13 THIS JURY, YOU WOULD BE SEQUESTERED WHICH MEANS HOUSED IN A
14 MOTEL FOR THE DURATION OF THE TRIAL. I DON'T KNOW EXACTLY
15 HOW LONG IT'S GOING TO LAST BUT I'M GOING TO HAVE TO
16 ESTIMATE THAT IT MAY BE A WEEK TO TEN DAYS. IT COULD BE
17 LESS THAN THAT. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT
18 YOU WOULD SUFFER FROM BEING AWAY FROM HOME, WOULD THIS POSE
19 A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
20 OF THOSE DEPENDENT ON YOU?

21 A NO.

22 Q THANK YOU FOR ANSWERING MY QUESTIONS. PLEASE RESPOND
23 TO MS. FULLWOOD'S QUESTIONS.

24 IF YOU WOULD, I'M GOING TO GET YOU TO MOVE A
25 LITTLE CLOSER TO THAT MICROPHONE AND SPEAK A LITTLE BIT

1 LOUDER SO THAT EVERYONE CAN HEAR YOU.

2 A (WITNESS COMPLIES.)

3 EXAMINATION

4 BY MS. FULLWOOD:

5 Q HI, MS. WHITAKER, HOW ARE YOU?

6 A FINE.

7 Q GOOD. WERE YOU SURPRISED YESTERDAY WHEN YOU CAME
8 HERE AND FOUND THAT YOU WERE IN A JURY POOL ON A DEATH
9 PENALTY CASE?

10 A YES.

11 Q YOU DIDN'T EXPECT IT?

12 A NO.

13 Q OKAY. BEFORE YESTERDAY, HAD YOU GIVEN MUCH THOUGHT
14 TO THE ISSUE OF CAPITAL PUNISHMENT?

15 A NOT, NOT REALLY.

16 Q NOT REALLY. OKAY. COULD YOU TELL US IN GENERAL WHAT
17 YOUR OPINION IS ABOUT THE DEATH SENTENCE?

18 A I GUESS IT JUST DEPENDS ON THE CIRCUMSTANCES. I
19 GUESS, ON THE---

20 Q OKAY. OKAY. HAD YOU EVER IN THE PAST -- HAVE YOU
21 EVER IN THE PASS DISCUSSED CAPITAL PUNISHMENT WITH YOUR
22 FRIENDS OR WITH YOUR FAMILY OR ANYTHING LIKE THAT?

23 A YEAH.

24 Q YEAH. OKAY. AND IN THOSE DISCUSSIONS, WHAT TYPES OF
25 THINGS DID YOU SAY?

0873

1 A I -- WELL, I GUESS, JUST ON CERTAIN CASES THAT WE
2 WOULD BE DISCUSSING THAT WERE IN THE NEWS OR STUFF, WE
3 WOULD BE JUST -- SOME OF THEM, I WOULD SAY, YEAH, THAT I
4 THOUGHT THEY SHOULD DESERVE IT AND SOME DIDN'T. BUT, I
5 MEAN, I DON'T KNOW ANY SPECIFIC EXAMPLES.

6 Q OKAY. OKAY. SO BASICALLY, IT'S COME UP TALKING
7 ABOUT DIFFERENT THINGS YOU'VE HEARD ABOUT GOING ON IN THE
8 NEWS?

9 A YES.

10 Q ALL RIGHT. IS IT CLEAR IN YOUR MIND HOW THE JUDGE
11 TOLD YOU THE TWO-TRIAL SYSTEM WORKS?

12 A UH-HUH.

13 Q OKAY. AND SO, I TAKE IT, YOU UNDERSTAND IF YOU WERE
14 ON THAT KIND OF JURY, UNLESS THAT JURY FOUND THE DEFENDANT
15 GUILTY IN THE FIRST TRIAL, YOU WOULD NEVER GET TO THE
16 SECOND TRIAL, RIGHT?

17 A RIGHT.

18 Q OKAY. AND YOU UNDERSTAND IN THE FIRST TRIAL BEFORE
19 -- THE ONLY WAY TO GET TO THE SECOND TRIAL IS WHEN THE JURY
20 IN THE FIRST TRIAL DECIDES THAT THE DEFENDANT IS GUILTY OF
21 MURDER AND SOME OTHER CRIME?

22 A RIGHT.

23 Q OKAY. NOW, DID YOU REALIZE THAT IN SOUTH CAROLINA,
24 MURDER, THE WORD MURDER MEANS KILLING SOMEBODY WITH MALICE.
25 IT DOESN'T MEAN KILLING SOMEONE IN HEAT OF PASSION OR

1 ACCIDENTALLY OR IN SELF-DEFENSE OR ANYTHING LIKE THAT? DID
2 YOU UNDERSTAND -- DID YOU KNOW THAT?

3 A NO.

4 Q DID YOU THINK THEY ALL MEANT MURDER?

5 A YES.

6 Q OH, YOU DID. OKAY.

7 A YEAH.

8 Q WELL, IT'S GOOD THEN TO CLARIFY WHAT IT MEANS.

9 MURDER MEANS KILLING SOMEONE WITH MALICE
10 AFORETHOUGHT. MALICE MEANS AN EVIL HEART, YOU KNOW, IT'S
11 WICKEDLY AND AFORETHOUGHT MEANS THAT FOR SOME PERIOD OF
12 TIME, IT DOESN'T HAVE TO BE A LONG TIME, BUT FOR SOME
13 PERIOD OF TIME BEFOREHAND, YOU THOUGHT ABOUT KILLING
14 SOMEBODY, OKAY?

15 A OKAY.

16 Q IS THAT KIND OF CLEARER FOR YOU NOW WHAT MURDER
17 ACTUALLY MEANS IN SOUTH CAROLINA?

18 A YES.

19 Q OKAY. SO YOU -- SO YOU UNDERSTAND IF YOU -- IF A
20 JURY CONVICTS SOMEONE OF MURDER, IT MEANS THEY KILLED THEM
21 WITH MALICE AFORETHOUGHT AND THAT COMPLETELY RULES OUT
22 ANYTHING LIKE HEAT OF PASSION OR SELF-DEFENSE OR ANYTHING
23 LIKE THAT, OKAY?

24 A OKAY.

25 Q NOW, DO YOU THINK IF YOU WERE A JUROR IN A SECOND

0875

1 TRIAL AND YOU HEARD ALL OF THE EVIDENCE AND ALREADY IN THE
2 FIRST TRIAL, YOU HAD CONVICTED THE DEFENDANT OF MURDER LIKE
3 I EXPLAINED TO YOU WHAT IT MEANS AND SOME OTHER CRIME, DO
4 YOU THINK YOU COULD LISTEN TO EVERYTHING AND VOTE TO IMPOSE
5 THE DEATH PENALTY?

6 A YES.

7 Q OKAY. AND ON THE OTHER HAND, IF YOU SAT AS A JUROR
8 IN A SECOND TRIAL AND HAD ALREADY CONVICTED THE DEFENDANT
9 OF MURDER AND SOME OTHER CRIMES IN THE FIRST TRIAL, AFTER
10 LISTENING TO ALL THE TESTIMONY, COULD YOU IMPOSE A LIFE
11 SENTENCE?

12 A YES.

13 Q OKAY. ARE YOU SAYING YOU -- EITHER SENTENCE YOU
14 COULD VOTE FOR?

15 A YES.

16 Q IT WOULD JUST DEPEND ON ALL THE EVIDENCE?

17 A YES, IT JUST DEPENDS ON ALL THE EVIDENCE, YEAH.

18 Q OKAY. ALL RIGHT.

19 ONE MORE THING AND THEN THAT WILL BE ALL OF MY
20 QUESTIONS, ALL RIGHT.

21 IN SOUTH CAROLINA, IF A JURY DECIDES THAT A DEATH
22 SENTENCE IS THE RIGHT SENTENCE, EVERY JUROR IS REQUIRED TO
23 SIGN A FORM STATING -- THAT SAYS THAT'S MY VERDICT, THAT'S
24 MY DECISION.

25 IF YOU WERE ON A JURY AND YOU DECIDED THAT THE

1 DEATH SENTENCE WAS THE RIGHT SENTENCE, COULD YOU SIGN THAT
2 FORM?

3 A YES.

4 Q OKAY. AND ON THE OTHER HAND, REALIZING THAT IN THIS
5 STATE YOU NEVER HAVE TO GIVE A DEATH SENTENCE, OF COURSE,
6 COULD YOU GIVE A LIFE SENTENCE IF YOU THOUGHT IT WERE THE
7 RIGHT THING TO DO?

8 A YES.

9 Q OKAY. THANK YOU SO MUCH. I APPRECIATE IT.

10 THE COURT: SOLICITOR HUMPHRIES.

11 EXAMINATION

12 BY MR. HUMPHRIES:

13 Q MS. WHITAKER, I'M FRAN HUMPHRIES. I'M THE DEPUTY
14 SOLICITOR. I'M GOING TO BE TRYING THIS CASE FOR THE STATE
15 WITH TOM CHASE, WHO IS SEATED HERE, AND DONNIE MYERS, THE
16 SOLICITOR.

17 I DON'T HAVE ANY PROBLEM WITH YOUR QUESTIONS --
18 OR YOUR ANSWERS THUS FAR TO THE QUESTIONS. YOU'VE BEEN
19 VERY CLEAR AND I APPRECIATE THAT.

20 WHAT WE ARE ALL LOOKING FOR HERE IN TERMS OF A
21 JUROR, IS A JUROR WHO IS FAIR AND IMPARTIAL BOTH TO THE
22 STATE AND TO THE DEFENDANT, GARY DUBOSE TERRY. OKAY. WHAT
23 WE WANT IN A JUROR IS SOMEONE WHO CAN LISTEN TO ALL OF THE
24 EVIDENCE IN THE PENALTY PHASE.

25 WE ARE GOING TO ASSUME FOR THE MOMENT THAT YOU

0877

1 ARE SEATED ON THE JURY. YOU HAVE HEARD THE EVIDENCE IN THE
2 GUILT PHASE, THAT FIRST TRIAL. YOU AND THE OTHER JURORS
3 HAVE FOUND GARY DUBOSE TERRY GUILTY OF MURDER, BURGLARY,
4 CRIMINAL SEXUAL CONDUCT AND ANY OTHER CHARGES THE STATE
5 WOULD PRESENT, OKAY. WE ARE GOING TO ASSUME THAT.

6 A UH-HUH.

7 Q WHAT WE ARE LOOKING FOR IN THE SECOND PHASE IS A
8 JUROR WHO WITH AN OPEN MIND WOULD CONSIDER BOTH
9 CIRCUMSTANCES IN AGGRAVATION AND THE EVIDENCE THAT WOULD
10 ESTABLISH THAT, THE EVIDENCE IN MITIGATION, THE CHARGES,
11 THE LAW -- ON THE LAW AS THE JUDGE GIVES IT TO YOU, WOULD
12 CONSIDER ALL OF THAT AND THEN RENDER A VERDICT WHICH IS
13 JUSTICE IN THIS CASE, EITHER LIFE OR DEATH DEPENDING ON THE
14 CIRCUMSTANCES. ARE YOU THE KIND OF JURY THAT CAN DO THAT?

15 A YES.

16 Q WELL, IF YOU CAN, THEN THAT'S ALL WE CAN ASK OF YOU.
17 I APPRECIATE IT.

18 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

19 MS. FULLWOOD: NO, SIR.

20 THE COURT: FROM THE STATE?

21 MR. HUMPHRIES: NO, SIR.

22 THE COURT: MR. WHITAKER, I WANT TO THANK YOU
23 VERY MUCH FOR YOUR PARTICIPATION NOT ONLY TODAY, BUT
24 YESTERDAY IN OUR PROCESS AND I FIND THAT YOU ARE QUALIFIED
25 TO SERVE AS A POTENTIAL JUROR IN THIS CASE AND WITH THAT

1 QUALIFICATION, I'M GOING TO REMIND YOU THAT WHEN YOU LEAVE
2 THE COURT HOUSE TODAY THAT YOU ARE NOT TO DISCUSS THIS CASE
3 WITH YOUR FELLOW JURORS, WITH YOUR FAMILY, FRIENDS OR
4 ANYONE ELSE.

5 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
6 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
7 INFORMATION ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN AND
8 REPORT IT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS
9 MATTER AND I WILL DEAL WITH IT ACCORDINGLY.

10 ALSO, I WOULD CONTINUE THE INSTRUCTION THAT YOU
11 ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
12 CONCERNING THIS CASE.

13 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IF
14 YOU ARE SELECTED AS A JUROR IN THIS CASE IS WHAT YOU WOULD
15 SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING
16 LESS.

17 SO WITH ALL THAT INSTRUCTION, I'M GOING TO TELL
18 YOU THAT YOU NEED TO GO HOME AND START PACKING YOUR BAGS,
19 TO BE BACK HERE IN THE MORNING AT NINE-THIRTY.

20 NOW, IN THE MORNING AT NINE-THIRTY WHEN YOU
21 REPORT BACK, PLEASE COME TO THE COURTROOM. LEAVE YOUR
22 LUGGAGE, BAGGAGE IN YOUR VEHICLE. IF YOU ARE SELECTED AS A
23 JUROR IN THIS CASE, THEN YOU WOULD BE TAKEN TO THE MOTEL
24 WITH ALL OF YOUR BELONGINGS AND SETTLED DOWN THERE BY THE
25 JURY CUSTODIANS.

0879

1 IF YOU ARE NOT SELECTED, THEN WE WOULD DISMISS
2 YOU AFTER THE SELECTION PROCESS IS OVER AND SEND YOU ALONG
3 WITH OUR THANKS FOR PARTICIPATING IN THE SYSTEM AND THE
4 PROCESS THAT WE'VE BEEN THROUGH OVER THE LAST FEW DAYS.

5 YOU HAVE A VERY PLEASANT EVENING PACKING AND I'LL
6 SEE YOU BACK HERE IN THE MORNING AT NINE-THIRTY.

7 THE JUROR: THANK YOU.

8 THE COURT: THANK YOU.

9 (WHEREUPON, THE JUROR WAS EXCUSED
10 AT THIS TIME.)

11 THE COURT: LET THE RECORD REFLECT THAT JUROR
12 NUMBER 236, ALLISON WHITAKER, IS QUALIFIED TO SERVE AS A
13 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320,
14 CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
15 AMENDED.

16 JUROR NUMBER 141, CASSANDRA LEAPHART -- EXCUSE
17 ME.

18 MR. CHASE: YOUR HONOR, I JUST WANTED TO ADDRESS
19 THE COURT ON ONE POINT.

20 I'M NOT SURE IF THIS IS THE JUROR OR NOT. I
21 BELIEVE IT IS THIS ONE WHEN I WAS LOOKING THROUGH OUR
22 INFORMATION SHEET, WHEN WE TOOK OUR LAST BREAK, I WENT OUT
23 THROUGH THE REAR DOOR OF THE COURTROOM AND THERE WAS A
24 YOUNG BLACK FEMALE COMING UP THE STAIRS AND WE PASSED BY
25 EACH OTHER AND SHE SAID, IS THIS -- EXCUSE ME, IS THIS THE

1 PLACE WHERE I GO FOR GENERAL SESSIONS. AND I SAID WHAT YOU
2 NEED TO DO IS GO OUT THROUGH THIS DOOR DOWN HERE, GO TO THE
3 END OF THE HALLWAY AND YOU CAN GO UP THE STAIRS AND YOU
4 WILL BE DIRECTED FROM THERE. I JUST DIDN'T WANT THERE TO
5 BE ANY QUESTION ABOUT WHAT I HAD DONE.

6 THE COURT: OKAY. ANY QUESTIONS FROM THE
7 DEFENSE?

8 MS. FULLWOOD: NO, SIR.

9 MR. STONE: NO, SIR.

10 THE COURT: ALL RIGHT. LET'S BRING MS. LEAPHART
11 IN.

12 THANK YOU FOR REVEALING THAT, MR. CHASE.

13 CASSANDRA D. LEAPHART,
14 (JUROR NUMBER 141, BLACK FEMALE,
15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

16 EXAMINATION

17 BY THE COURT:

18 Q HOW ARE YOU, MS. LEAPHART?

19 A HI.

20 Q EXCUSE ME JUST ONE MINUTE WHILE I GET A LITTLE BETTER
21 ORGANIZED HERE.

22 YOU ARE CASSANDRA LEAPHART, IS THAT CORRECT?

23 A YES, SIR.

24 Q AND, MS. LEAPHART, YOU UNDERSTAND THAT YOU ARE UNDER
25 OATH FOR THESE PROCEEDINGS TODAY?

0881

1 A YES, SIR.

2 Q AND YESTERDAY WHEN I DISMISSED ALL OF YOU JURORS, I
3 GAVE YOU SOME INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS
4 THIS CASE WITH ANYONE, THAT IF ANYONE ATTEMPTED TO CONTACT
5 YOU CONCERNING THIS CASE, THAT YOU WERE TO NOTIFY ME OF
6 THAT AND ALSO THAT YOU WERE NOT TO READ, WATCH OR LISTEN TO
7 ANY NEWS ACCOUNTS CONCERNING THIS CASE.

8 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
9 INSTRUCTIONS?

10 A NO, SIR.

11 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
12 THEN AFTER THAT, ONE OF THE LAWYERS FOR MR. TERRY WILL ASK
13 YOU SOME QUESTIONS, AS WELL AS ONE OF THE SOLICITORS.
14 PLEASE KEEP IN MIND THAT IN NO WAY ARE WE ATTEMPTING TO
15 INVADE YOUR PRIVACY BUT DUE TO THE NATURE OF THE CASE THAT
16 WE ARE TRYING THIS WEEK, IT'S IMPORTANT THAT CERTAIN
17 QUESTIONS ARE ASKED.

18 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
19 WRONG ANSWERS TO THESE QUESTIONS AND SO PLEASE JUST ANSWER
20 OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO
21 ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW WHAT
22 YOUR VIEW IS IN CERTAIN AREAS.

23 ALSO, I WOULD GO AHEAD AND TELL YOU THAT YOU ARE
24 PROBABLY GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE
25 NEVER CONSIDERED BEFORE SO PLEASE LISTEN VERY CAREFULLY TO

1 THE QUESTIONS THAT I ASK AND AS WELL AS THE LAWYERS. IF
2 YOU NEED TO HAVE THEM REPEATED AT ANY TIME OR CLARIFIED,
3 ALL YOU HAVE TO DO IS ASK US, BUT PLEASE KEEP THAT IN MIND
4 DURING THE QUESTIONING.

5 A OKAY.

6 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
7 DISCUSSING OVER THE NEXT FEW MINUTES WILL BE PENALTY AND
8 THE MERE FACT THAT I EVEN MENTION THAT WORD OR THAT THE
9 LAWYERS MENTION IT AT ANY TIME DURING THIS QUESTIONING
10 PERIOD DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
11 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
12 UNDERSTAND THAT?

13 A YES, SIR.

14 Q NOW, LET'S ASSUME FOR JUST A FEW MOMENTS THAT YOU
15 WERE A JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE
16 LAW, ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS
17 THE JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE
18 WITH THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

19 A NO, SIR.

20 Q I'M SORRY?

21 A NO, SIR.

22 Q ARE YOU -- LET ME GET YOU TO EXPLAIN THAT BACK TO ME
23 THEN. LET ME -- LET ME REPEAT MY QUESTION.

24 COULD YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE
25 LAW, AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS COURT,

1 EVEN THOUGH YOU MAY NOT AGREE WITH THAT LAW OR THINK THAT
2 IT OUGHT TO BE SOME OTHER WAY?

3 A YES, SIR.

4 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
5 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

6 A YES, SIR.

7 Q NOW, IN A CRIMINAL CASE, THE STATE HAS THE BURDEN OF
8 PROVING THE DEFENDANT GUILTY. THE BURDEN OF PROOF THAT THE
9 STATE MUST MEET IS TO PROVE THE ELEMENTS OF THE CRIMES WITH
10 WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT.

11 NOW, A DEFENDANT HAS NO BURDEN OR RESPONSIBILITY
12 TO PROVE HIS OWN INNOCENCE. DO YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
15 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
16 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
17 GUILTY?

18 A YES, SIR.

19 Q NOW, DO YOU UNDERSTAND, AS I TOLD YOU YESTERDAY
20 MORNING, THAT THIS IS A CASE IN WHICH THE STATE SEEKS THE
21 DEATH PENALTY AND I ALSO TOLD YOU YESTERDAY MORNING THAT
22 THESE CASES ARE DIVIDED INTO TWO PARTS. WE CALL IT A
23 BIFURCATED TRIAL.

24 NOW, IN SUCH A TRIAL, THERE IS A GUILT PHASE AND
25 A SENTENCING PHASE AND YOU UNDERSTAND THAT IF YOU WERE A

1 JUROR IN SUCH A TRIAL AND WE ARE TALKING ABOUT THE GUILT
2 PHASE, THAT IF YOU, THE JURY, FOUND THE DEFENDANT NOT
3 GUILTY, THAT THERE WOULD BE NO NEED TO HAVE THAT SECOND
4 PHASE AND IT WOULD NOT OCCUR? YOU UNDERSTAND THAT?

5 A YES, SIR.

6 Q HOWEVER, IF YOU WERE ON A JURY AND THAT JURY RETURNED
7 A VERDICT OF GUILTY OF MURDER IN THE FIRST PHASE, THE GUILT
8 PHASE, DO YOU UNDERSTAND THAT YOU WOULD THEN MOVE TO THE
9 SECOND PART OF THE TRIAL?

10 A YES, SIR.

11 Q NOW, IN THAT PART OF THE TRIAL, YOU WOULD HAVE
12 EVIDENCE PRESENTED TO YOU IN THE FORM OF AGGRAVATING
13 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

14 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
15 INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
16 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
17 AGGRAVATE THE CRIME OF MURDER.

18 IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING
19 CIRCUMSTANCE WITH THE MURDER INCREASES OR ADDS TO THE
20 INJURY OF THAT CRIME OF MURDER.

21 FOR EXAMPLE, IT COULD BE WHERE A MURDER IS
22 COMMITTED IN CONNECTION WITH THE CRIME OF CRIMINAL SEXUAL
23 CONDUCT, BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE

0885

1 INCIDENTS, FACTS, DETAILS, OCCURRENCES WHICH OUR GENERAL
2 ASSEMBLY HAS ALSO DECLARED BY LAW THAT REDUCES THE SEVERITY
3 OF THE CRIME OF MURDER AND THEY MAY BE CONSIDERED AS WHAT
4 WE CALL EXTENUATING OR AS REDUCING THE DEGREE OF
5 RESPONSIBILITY OR MORAL CULPABILITY.

6 AND WHAT I'M TALKING ABOUT THAT THE JURY WOULD BE
7 CONSIDERING IN MITIGATING CIRCUMSTANCES COULD BE THAT THE
8 MURDER WAS COMMITTED BY A DEFENDANT WHILE UNDER THE
9 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
10 OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
11 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
12 THE LAW WAS SUBSTANTIALLY IMPAIRED OR THE AGE OR THE
13 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. YOU
14 UNDERSTAND WHAT I'M TALKING ABOUT WHEN I TALK ABOUT
15 MITIGATING CIRCUMSTANCES?

16 A YES, SIR.

17 Q NOW, LET'S ASSUME FOR A FEW MOMENTS THAT YOU WERE A
18 JUROR IN THAT SITUATION, THE SECOND PHASE, THE SENTENCING
19 PHASE OF THE CASE, COULD YOU, DEPENDING UPON THE PARTICULAR
20 FACTS AND CIRCUMSTANCES OF THAT CASE INCLUDING THE
21 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES,
22 AND THE LAW, AS I WOULD INSTRUCT YOU AT THE END OF THE
23 CASE, RETURN A SENTENCE OF LIFE IN PRISON?

24 A YES, SIR.

25 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,

1 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
2 THAT CASE INCLUDING THE CONSIDERATION OF ANY AGGRAVATING
3 AND MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD
4 INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
5 SENTENCE OF DEATH?

6 A YES, SIR.

7 Q NOW, MS. LEAPHART, IF YOU WERE CHOSEN FOR SERVICE ON
8 THIS JURY, YOU WOULD BE SEQUESTERED WHICH MEANS HOUSED IN A
9 MOTEL FOR THE LENGTH OF THE TRIAL.

10 NOW, I DON'T KNOW EXACTLY HOW LONG THAT WILL BE,
11 BUT MY BEST ESTIMATE IS THAT IT WOULD BE NO LONGER THAN
12 SEVEN TO TEN DAYS. IT COULD BE LESS THAN THAT. EXCEPT FOR
13 THE PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD
14 THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
15 YOURSELF OR OF THOSE DEPENDENT ON YOU?

16 A NO, SIR.

17 Q THANK YOU FOR ANSWERING MY QUESTIONS. PLEASE RESPOND
18 TO MR. STONE'S QUESTIONS.

19 MR. STONE: THANK YOU, YOUR HONOR.

20 EXAMINATION

21 BY MR. STONE:

22 Q HEY, MS. LEAPHART.

23 A HI.

24 Q HOW ARE YOU?

25 A FINE, AND YOU?

0887

1 Q MY NAME IS DUFFIE STONE. I WAS INTRODUCED EARLIER,
2 BUT I WANTED TO DO IT AGAIN.

3 MS. FULLWOOD, BETH FULLWOOD, IS SITTING OVER
4 HERE. SHE AND I ARE REPRESENTING GARY TERRY, WHO IS
5 SITTING AT THE OTHER END OF THE TABLE.

6 LET ME JUST BRIEFLY. I'VE READ YOUR
7 QUESTIONNAIRE SO I KNOW ABOUT ALL THAT AND DON'T NEED TO GO
8 BACK INTO ALL OF THAT, BUT LET ME ASK YOU A COUPLE OF
9 QUESTIONS THAT THE JUDGE SORT OF HIT ON.

10 HE EXPLAINED TO YOU EARLIER THAT -- THAT THERE
11 ARE POTENTIALLY TWO PARTS TO A TRIAL LIKE THIS. DO YOU
12 UNDERSTAND THAT?

13 A YES, SIR.

14 Q OKAY. DO YOU UNDERSTAND AND THIS IS A STRANGE THING
15 BECAUSE I'VE GOT TO COME OUT HERE AND ASK YOU ABOUT
16 SOMETHING THAT MAY NEVER HAPPEN AND THAT BEING A SENTENCING
17 PHASE. IF, FOR INSTANCE, YOU'RE ON THE JURY AND YOU FIND
18 GARY TERRY NOT GUILTY, WE DON'T DO A SENTENCING PHASE. YOU
19 UNDERSTAND THAT?

20 A YES, SIR.

21 Q OKAY. THE JUDGE COVERED THAT, BUT WHAT I WANT TO
22 TALK TO YOU ABOUT IS THE SENTENCING PHASE. I WANT TO GET A
23 LITTLE BIT MORE INTO THAT IF I COULD.

24 IF YOU ARE IN A SENTENCING PHASE AS A JUROR, IF
25 YOU ARE A JUROR, JUST LIKE YOU'D BE SITTING IN A

1 GUILT-INNOCENCE PHASE, BUT YOU'RE IN A SENTENCING PHASE.
2 YOU HAVE AT THIS POINT ALREADY FOUND THAT SOMEBODY IS
3 GUILTY OF MURDER.

4 NOW, IN SOUTH CAROLINA, DO YOU UNDERSTAND THAT
5 MURDER IS NOT -- IT'S NOT ACCIDENTAL, IT'S NOT SOMETHING
6 THAT'S DONE IN THE HEAT OF PASSION, IT'S MURDER, IT'S
7 CALLED MALICE AFORETHOUGHT. DO YOU UNDERSTAND THAT?

8 A YES.

9 Q DOES THAT MAKE SENSE?

10 A YES.

11 Q OKAY. NOW, IF YOU'RE IN A SENTENCING PHASE, YOU HAVE
12 ALREADY FOUND SOMEBODY GUILTY OF MURDER. YOU'VE ALSO FOUND
13 THEM GUILTY OF ANOTHER CRIME. THAT COULD BE RAPE. IT
14 COULD BE BURGLARY. IT COULD BE BOTH. IT COULD BE ALL
15 THREE. OKAY. THAT'S THE ONLY WAY YOU GET TO A SENTENCING
16 CASE. SO WHEN YOU'RE -- WHEN YOU'RE IN THE SENTENCING
17 PHASE OF THE TRIAL, ALL OF THOSE THINGS HAVE ALREADY BEEN
18 PROVED. DO YOU UNDERSTAND THAT?

19 A YES, SIR.

20 Q OKAY. IN THAT SITUATION, YOU'VE ALREADY PROVEN
21 SOMEBODY -- YOU'VE ALREADY FOUND THAT SOMEBODY IS GUILTY OF
22 THAT, CAN YOU CONSIDER A LIFE SENTENCE DESPITE THAT?
23 DESPITE THE FACT THAT YOU'RE CONVINCED BEYOND A REASONABLE
24 DOUBT THAT THEY HAVE COMMITTED MURDER AND RAPE AND MAYBE
25 EVEN BURGLARY?

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- 1 A YES, SIR.
- 2 Q OKAY. AND THE SAME WAY, CAN YOU, AFTER YOU'VE BEEN
3 CONVINCED BEYOND A REASONABLE DOUBT, THAT THEY'VE COMMITTED
4 MURDER, RAPE AND BURGLARY, CAN YOU ALSO GIVE THEM A
5 SENTENCE OF DEATH?
- 6 A YES, SIR.
- 7 Q OKAY, NOW, IN SOUTH CAROLINA, YOU WOULD BE REQUIRED
8 TO SIGN A VERDICT FORM IF YOU FIND THAT THE APPROPRIATE
9 SENTENCE IS DEATH AND THAT MEANS THERE ARE TWELVE, TWELVE
10 SLOTS, TWELVE JURORS. ALL OF YOU HAVE TO SIGN THAT. DOES
11 THAT GIVE YOU ANY PROBLEM, ANY HESITATION?
- 12 A NO, SIR.
- 13 Q OKAY. ALL RIGHT. DO YOU HAVE -- WHAT ARE YOUR
14 FEELINGS ABOUT THE DEATH PENALTY?
- 15 A IT WOULD HAVE TO BE BASED ON THE EVIDENCE. I WOULD
16 REALLY HAVE TO SIT IN ON A GRAND JURY AND HEAR ALL OF THE
17 EVIDENCE---
- 18 Q OKAY.
- 19 A ---AND DECIDE FROM THERE THE FACTS THAT ARE GIVEN.
- 20 Q ALL RIGHT. AND THE JUDGE, I THINK, TOLD YOU EARLIER
21 THAT YOU'D ALMOST GET -- IF YOU'RE IN THAT SITUATION, YOU'D
22 GET TWO SETS OF FACTS. THE FIRST SET OF FACTS YOU WOULD
23 GET WOULD BE ABOUT GUILT AND INNOCENCE; THE SECOND SET
24 WOULD BE AGGRAVATING CIRCUMSTANCES---
- 25 A YES.

1 Q ---AND MITIGATING CIRCUMSTANCES AND YOU'D WAIT AND
2 DETERMINE YOUR SENTENCE AND WHAT YOU FOUND IS APPROPRIATE
3 AFTER YOU'VE HEARD ALL OF THAT?

4 A YES, SIR.

5 Q IS THAT FAIR?

6 A YES, SIR.

7 Q OKAY. WELL, THANK YOU FOR YOUR TIME AND I APPRECIATE
8 YOUR ANSWERS.

9 A OKAY.

10 MR. STONE: THANK YOU, YOUR HONOR.

11 THE COURT: YES, SIR.

12 SOLICITOR HUMPHRIES.

13 EXAMINATION

14 BY MR. HUMPHRIES:

15 Q MS. LEAPHART, MY NAME IS FRAN HUMPHRIES. I'M THE
16 DEPUTY SOLICITOR.

17 A HI.

18 Q I WILL BE TRYING THIS CASE ALONG WITH TOM CHASE AND
19 SOLICITOR DONNIE MYERS.

20 I -- LET ME ASK IT THIS WAY. IT IS NOT MY
21 BUSINESS NOR DO I INTEND TO LEARN FROM YOU THE REASONS WHY
22 YOU MAINTAIN YOUR BELIEFS, OKAY, BUT I NEED TO ASK THIS ONE
23 SPECIFIC QUESTION. IS THERE ANYTHING ABOUT YOU, WHETHER
24 IT'S YOUR RELIGIOUS UPBRINGING, YOUR FAMILY TIES, YOUR
25 SOCIAL TIES; THAT IS, TO YOUR FRIENDS AND WHAT NOT, IS

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1 THERE ANYTHING ABOUT YOU PERSONALLY IN YOUR BACKGROUND THAT
2 WOULD PREVENT YOU UNDER THE RIGHT FACTS AND CIRCUMSTANCES,
3 AFTER HEARING EVIDENCE IN MITIGATION, EVIDENCE IN
4 AGGRAVATION, IN RETURNING A VERDICT OF DEATH IF IT'S THE
5 APPROPRIATE FACTS AND CIRCUMSTANCES?

6 A I WOULD HAVE TO SAY MY MOM, THE UPBRINGING, WITH
7 LISTENING TO THE FACTS AND ALL, SHE'S ALWAYS TOLD ME, YOU
8 KNOW, DON'T JUMP TO A CONCLUSION, ALWAYS HEAR EVERYTHING
9 OUT.

10 Q SO ACTUALLY WHAT YOU'RE SAYING IS YOUR BACKGROUND
11 WOULD MAKE YOU A MORE EFFECTIVE JUROR?

12 A YES.

13 Q BECAUSE YOU WOULD WANT TO LISTEN TO EVERYTHING---

14 A YES, BEFORE I---

15 Q ---BEFORE YOU MADE---

16 A ---MAKE A SELECTION.

17 Q I'VE GOT YOU. OKAY. BECAUSE WHAT WE ARE LOOKING
18 FOR, MS. LEAPHART, IS SOMEBODY WHO CAN BE FAIR AND
19 IMPARTIAL BOTH TO THE STATE OF SOUTH CAROLINA AND TO THE
20 DEFENDANT, GARY DUBOSE TERRY. ARE YOU THAT KIND OF JUROR?

21 A YES, MA'AM.

22 Q WELL, THAT'S ALL WE ASK OF YOU. THANK YOU, MA'AM.

23 A ALL RIGHT.

24 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

25 MR. STONE: NO, SIR.

1 THE COURT: FROM THE STATE?

2 MR. HUMPHRIES: NO, SIR.

3 THE COURT: MS. LEAPHART, I WANT TO THANK YOU
4 VERY MUCH FOR YOUR PARTICIPATION HERE NOT ONLY TODAY, BUT
5 YESTERDAY. I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
6 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
7 I'M GOING TO REMIND YOU THAT WHEN YOU LEAVE HERE TODAY,
8 THAT YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW
9 JURORS, WITH YOUR FAMILY AND FRIENDS OR ANYONE ELSE.

10 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
11 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
12 INFORMATION ABOUT THAT INDIVIDUAL OR INDIVIDUALS AS YOU CAN
13 AND REPORT THAT TO ME BECAUSE I TAKE THAT AS A VERY SERIOUS
14 MATTER AND WILL DEAL WITH IT ACCORDINGLY.

15 ALSO, I WOULD CONTINUE THE INSTRUCTION THAT YOU
16 ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
17 CONCERNING THIS CASE.

18 VERY SIMPLY PUT, IF YOU ARE SELECTED TO SERVE AS
19 A JUROR IN THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IN
20 THIS MATTER IS WHAT YOU SEE AND HEAR IN THIS COURTROOM.
21 NOTHING MORE AND NOTHING LESS.

22 NOW, BEFORE I SEND YOU AWAY FOR THIS EVENING, I
23 NEED TO TELL YOU THAT YOU NEED TO GO HOME AND START PACKING
24 BECAUSE YOU NEED TO BE BACK HERE IN THE MORNING AT
25 NINE-THIRTY. PLEASE BRING YOUR BAGS PACKED AND READY TO GO

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IN THE EVENT THAT YOU ARE SELECTED AS A JUROR IN THIS CASE.

2 NOW, I WANT YOU TO COME IN THE MORNING AT
3 NINE-THIRTY DIRECTLY TO THE COURTROOM. LEAVE YOUR LUGGAGE
4 IN YOUR VEHICLE. IF YOU ARE SELECTED AS A JUROR IN THIS
5 CASE, THEN THE JURY CUSTODIANS WILL SEE THAT YOU AND YOUR
6 BELONGINGS GET TO THE MOTEL AND CAN GET PROPERLY SETTLED IN
7 THERE FOR THE DURATION OF THE TRIAL.

8 IF YOU ARE NOT SELECTED, THEN WE WOULD THANK YOU
9 VERY MUCH FOR YOUR PARTICIPATION IN OUR SYSTEM AND SEND YOU
10 ALONG ABOUT YOUR REGULAR ACTIVITIES. SO UNTIL IN THE
11 MORNING AT NINE-THIRTY, I'LL LOOK FORWARD TO SEEING YOU AT
12 THAT TIME. PLEASE BE HERE AT NINE-THIRTY.

13 THE JUROR: OKAY.

14 THE COURT: THANK YOU, MA'AM.

15 (WHEREUPON, THE JUROR WAS EXCUSED
16 AT THIS TIME.)

17 THE COURT: LET THE RECORD REFLECT THAT JUROR
18 NUMBER 141, CASSANDRA LEAPHART, IS QUALIFIED TO SERVE AS A
19 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
20 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
21 AMENDED.

22 YES, SIR.

23 MR. HUMPHRIES: YOUR HONOR, MY STATEMENTS DON'T
24 REFLECT TO HER QUALIFICATIONS OR NOT DIRECTLY TOWARDS HER
25 QUALIFICATION. MY QUESTION ONLY IS THIS. MY RECORDS

1 INDICATE THAT MS. LEAPHART WAS ONE OF FIVE JURORS WHO
2 WEREN'T PRESENT AT THE INITIAL CALL OF THE JURORS AND HAD
3 TO EITHER BE SUMMONED OR DELIVERED HERE.

4 IS THE COURT ABLE TO PROVIDE THE STATE ANY
5 INFORMATION WHETHER SHE WAS JUST LATE OR---

6 THE COURT: SHE WAS JUST LATE AND, OF COURSE, I
7 QUALIFIED THEM---

8 MR. HUMPHRIES: YES, SIR.

9 THE COURT: ---ON THE INITIAL QUALIFICATIONS HERE
10 AT THE SIDE BAR IN THE PRESENCE OF THE COURT REPORTER
11 BECAUSE I HAD JUST FINISHED WITH THE GENERAL QUALIFICATIONS
12 OF THE JURY AND SHE WAS JUST LATE.

13 MR. HUMPHRIES: NO EXCEPTION TO THAT. JUST A
14 CLARIFICATION. THANK YOU, YOUR HONOR.

15 THE COURT: YES, SIR.

16 JUROR NUMBER 201(SIC), GEORGE M. SIGHTLER, JR.

17 GEORGE M. SIGHTLER, JR.,

18 (JUROR NUMBER 207, WHITE MALE,
19 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

20 EXAMINATION

21 BY THE COURT:

22 Q GOOD AFTERNOON, MR. SIGHTLER, IS THAT CORRECT?

23 A YES, SIR.

24 Q MR. SIGHTLER, YESTERDAY OR -- DO YOU UNDERSTAND THAT
25 YOU ARE SWORN FOR THESE PROCEEDINGS?

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A YES, SIR.

2 Q AND YESTERDAY AFTERNOON, I GAVE OR YESTERDAY MORNING,
3 YESTERDAY AFTERNOON WHENEVER I DISMISSED YOU, IT'S BEEN SO
4 LONG AGO, I HAVE ABOUT FORGOTTEN WHEN I DISMISSED YOU AND
5 ALL THE OTHER JURORS. YOU UNDERSTAND THAT I GAVE YOU
6 CERTAIN CAUTIONARY INSTRUCTIONS THAT YOU WERE NOT TO
7 DISCUSS THIS CASE WITH ANYONE, THAT IF ANYONE ATTEMPTED TO
8 CONTACT YOU CONCERNING THIS CASE, THAT YOU WERE TO REPORT
9 THAT TO ME AND THAT YOU WERE NOT TO READ, WATCH OR LISTEN
10 TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

11 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

12 A NO, SIR.

13 Q MR. SIGHTLER, I'M GOING TO BE ASKING YOU SOME
14 QUESTIONS AND THEREAFTER ONE OF THE LAWYERS FOR THE
15 DEFENDANT, AS WELL AS ONE OF THE SOLICITORS WILL BE ASKING
16 YOU SOME QUESTIONS.

17 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
18 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE CASE
19 THAT WE ARE ENGAGED IN THIS WEEK THAT IT'S VERY IMPORTANT
20 THAT CERTAIN QUESTIONS ARE ASKED.

21 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
22 ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER THEM
23 OPENLY AND HONESTLY AND FULLY.

24 ALSO, KEEP IN MIND THAT NO ONE IS CHALLENGING
25 YOUR VIEW. WE JUST NEED TO KNOW WHAT THAT VIEW IS.

1 ALSO, I WOULD TELL YOU THAT YOU ARE PROBABLY
2 GOING TO BE ASKED SOME QUESTIONS THAT YOU MAY HAVE NEVER
3 EVEN CONSIDERED BEFORE. SO PLEASE LISTEN VERY CAREFULLY TO
4 THESE QUESTIONS THAT I WILL POSE, THAT THE LAWYERS WILL
5 POSE AND IF YOU NEED TO HAVE THEM RESTATED OR CLARIFIED,
6 ALL YOU HAVE TO DO IS LET US KNOW.

7 NOW, OVER THE NEXT FEW MINUTES, WE ARE GOING TO
8 BE TALKING ABOUT PENALTY. NOW, THE WORD, THE MERE FACT
9 THAT WE EVEN MENTION THE WORD PENALTY DOES NOT INDICATE
10 ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN
11 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

12 A YES, I DO.

13 Q NOW, LET'S ASSUME FOR A FEW MOMENTS THAT YOU WERE A
14 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
15 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
16 JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE WITH
17 THAT LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

18 A YES, I COULD.

19 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
20 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

21 A YES.

22 Q NOW, IN A CRIMINAL CASE, MR. SIGHTLER, THE STATE OF
23 SOUTH CAROLINA HAS THE BURDEN OF PROVING GUILT AND THE
24 BURDEN OF PROOF FOR THE STATE IS TO PROVE EACH AND EVERY
25 ELEMENT OF THE CRIMES WITH WHICH THE DEFENDANT IS CHARGED

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1 BEYOND A REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO
2 OBLIGATION OR RESPONSIBILITY OR BURDEN TO PROVE HIMSELF
3 INNOCENT. DO YOU UNDERSTAND THAT?

4 A YES, I DO.

5 Q NOW COULD YOU, DEPENDING ON THE FACTS AND THE
6 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
7 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
8 GUILTY?

9 A I BELIEVE SO.

10 Q NOW, DO YOU UNDERSTAND THAT THIS IS A CASE IN WHICH
11 THE STATE OF SOUTH CAROLINA IS SEEKING THE DEATH PENALTY.
12 AND I THINK THAT I EXPLAINED TO JURORS YESTERDAY MORNING
13 THAT THIS IS A CASE WHICH WE CALL A BIFURCATED PROCEEDING,
14 BIFURCATED TRIAL, MEANING THAT IT'S DIVIDED INTO TWO PARTS.
15 THE GUILT PHASE; THE SENTENCING PHASE.

16 NOW, IF YOU WERE A JUROR IN SUCH A CASE, IN THE
17 GUILT PHASE AND THE JURY FOUND THE DEFENDANT NOT GUILTY OF
18 MURDER, DO YOU UNDERSTAND THAT THAT WOULD END THE CASE
19 INSOFAR AS THE SENTENCING PHASE WAS CONCERNED?

20 A YES, I DO.

21 Q NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IF THE
22 JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU FURTHER
23 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
24 OF THE TRIAL?

25 A YES, I DO.

1 Q NOW, IN THAT STAGE OF THE TRIAL, EVIDENCE WOULD BE
2 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
3 AS MITIGATING CIRCUMSTANCES.

4 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
5 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
6 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
7 THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

8 IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING
9 CIRCUMSTANCE WITH THE MURDER INCREASES THE ENORMITY OR ADDS
10 TO THE INJURIES OF THE CRIME OF MURDER.

11 NOW, WHAT I AM SPEAKING OF IS A MURDER THAT'S
12 COMMITTED IN CONJUNCTION WITH A CRIME SUCH AS CRIMINAL
13 SEXUAL CONDUCT, BURGLARY OR THE LIKE. DO YOU UNDERSTAND
14 THAT?

15 A YES, I DO.

16 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
17 INCIDENTS, DETAILS, FACTS, OCCURRENCES WHICH OUR GENERAL
18 ASSEMBLY HAS ALSO DECLARED BY STATUTE REDUCES THE SEVERITY
19 OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
20 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
21 OR RESPONSIBILITY.

22 AND WHAT WE ARE TALKING ABOUT IN THAT REGARD, A
23 MURDER THAT'S COMMITTED BY A DEFENDANT UNDER THE INFLUENCE
24 OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF A
25 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR

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1 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
2 SUBSTANTIALLY IMPAIRED; AS WELL AS THE AGE OR MENTALITY OF
3 THE DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND
4 WHAT I'M SPEAKING OF WHEN I TALK ABOUT MITIGATING
5 CIRCUMSTANCES?

6 A YES, I DO.

7 Q NOW, LET'S CONSIDER FOR A MOMENT THAT YOU WERE A
8 JUROR IN THAT SITUATION, THE SENTENCING PHASE, COULD YOU,
9 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
10 THAT CASE, CONSIDERING THE AGGRAVATING AND MITIGATING
11 CIRCUMSTANCES THAT ARE PRESENTED AND THE LAW AS I WOULD
12 INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
13 SENTENCE OF LIFE IMPRISONMENT?

14 A YES, I COULD.

15 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
16 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
17 THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING
18 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES AND THE LAW, AS
19 I WOULD INSTRUCT YOU AT THE CONCLUSION OF THAT CASE, RETURN
20 A SENTENCE OF DEATH?

21 A YES, I COULD.

22 Q NOW, MR. SIGHTLER, IF YOU ARE CHOSEN FOR SERVICE ON
23 THIS JURY, YOU WOULD BE HOUSED, SEQUESTERED IN A MOTEL
24 DURING THE TRIAL. I DON'T KNOW EXACTLY HOW LONG THIS CASE
25 IS GOING TO LAST, BUT BEST ESTIMATES WOULD BE NO LONGER

1 THAN TEN DAYS, SEVEN TO TEN DAYS, MAYBE EVEN LESS THAN
 2 THAT. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU WOULD
 3 SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
 4 WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT ON YOU?

5 A UH -- THE ONLY THING IS I'M SELF-EMPLOYED---

6 Q YES, SIR.

7 A ---AND WHEN I DON'T WORK, I DON'T MAKE ANY MONEY.
 8 THAT'S THE ONLY THING ABOUT IT.

9 Q I UNDERSTAND HOW THAT WORKS. AND, I GUESS, MY
 10 QUESTION TO YOU IS WHETHER OR NOT YOUR SERVICE IN THIS CASE
 11 WOULD CREATE A FINANCIAL SITUATION, BE DAMAGING TO YOUR
 12 BUSINESS OR IN ANY WAY HARM YOUR BUSINESS TO WHERE IT WOULD
 13 AFFECT YOUR ABILITY TO CONCENTRATE ON AND APPRECIATE AND
 14 CONSIDER THE FACTS AND TESTIMONY THAT ARE PRESENTED TO YOU?

15 A YES, IT COULD.

16 THE COURT: LET ME SEE THE LAWYERS JUST A MINUTE,
 17 PLEASE, SIR.

18 (WHEREUPON, A BENCH CONFERENCE WAS
 19 HELD AT THIS TIME OFF THE RECORD.)

20 THE COURT: MR. SIGHTLER, GIVEN THE INFORMATION
 21 THAT YOU HAVE PROVIDED TO ME AND IN REVIEWING YOUR
 22 QUESTIONNAIRE THAT YOU'VE PROVIDED TO THE COURT, I SEE THAT
 23 YOU HAVE ONLY BEEN IN BUSINESS FOR EIGHT MONTHS AND I THINK
 24 THAT ANYONE THAT HAS EVER BEEN A SMALL BUSINESS OPERATOR
 25 UNDERSTANDS AND APPRECIATES THE SITUATION THAT YOU ARE IN

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1 AND TO BE CONSISTENT WITH OTHER SITUATIONS OF THIS TYPE
2 THAT I HAVE RUN INTO WITH JURORS, I'M GOING TO ALLOW YOU TO
3 BE EXCUSED FROM THE CONSIDERATION OF THIS CASE. THIS DOES
4 NOT IN ANY WAY MEAN THAT YOU COULD NOT BE A PROPER JUROR IN
5 THIS CASE, BUT WITH THE INFORMATION THAT YOU HAVE GIVEN ME,
6 I WOULDN'T WANT TO PUT YOU IN A SITUATION WHERE YOUR
7 BUSINESS WOULD BE ADVERSELY AFFECTED AND I'LL LET YOU GO.

8 THE JUROR: OKAY. THANK YOU, SIR.

9 THE COURT: YES, SIR. THANK YOU FOR BEING HERE.

10 (WHEREUPON, THE JUROR WAS EXCUSED
11 AT THIS TIME.)

12 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
13 FULLY THAT I HAVE EXCUSED GEORGE M. SIGHTLER, JR., NUMBER
14 207, FOR BUSINESS REASONS.

15 JUROR NUMBER 109, MARY C. HARVEY.

16 MARY C. HARVEY,

17 (JUROR NUMBER 109, WHITE FEMALE,
18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

19 EXAMINATION

20 BY THE COURT:

21 Q YOU ARE MARY C. HARVEY?

22 A YES, I AM.

23 Q MS. HARVEY, YOU UNDERSTAND THAT YOU ARE UNDER OATH
24 FOR THESE PROCEEDINGS THIS AFTERNOON?

25 A YES, SIR.

1 Q AND YOU ALSO UNDERSTAND AND REMEMBER THAT I GAVE YOU
2 CERTAIN CAUTIONARY INSTRUCTIONS YESTERDAY WHEN I DISMISSED
3 THE ENTIRE JURY THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
4 ANYONE, THAT IF ANYONE ATTEMPTED TO CONTACT YOU, THAT YOU
5 WERE TO REPORT THAT TO ME AND ALSO THAT YOU WERE NOT TO
6 READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS CONCERNING THIS
7 MATTER?

8 A YES, SIR.

9 Q HAVE ANY OF THOSE CAUTIONARY INSTRUCTIONS BEEN
10 VIOLATED?

11 A NO, SIR.

12 Q NOW, MS. HARVEY, I'M GOING TO BE ASKING YOU SOME
13 QUESTIONS AND THEN ONE OF THE LAWYERS FOR THE DEFENDANT,
14 MR. TERRY, WILL ASK YOU SOME QUESTIONS, AS WELL AS A MEMBER
15 OF THE SOLICITOR'S OFFICE WILL ASK YOU SOME QUESTIONS.

16 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
17 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THESE
18 PROCEEDINGS, IT'S IMPORTANT THAT CERTAIN QUESTIONS ARE
19 ASKED.

20 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
21 WRONG ANSWERS TO THESE QUESTIONS. PLEASE JUST BE OPEN AND
22 HONEST AND FULLY ANSWER THE QUESTIONS AND ALSO KEEP IN MIND
23 THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW
24 WHAT THAT VIEW IS.

25 A OKAY.

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1 Q ALSO, I WOULD TELL YOU THAT YOU ARE PROBABLY GOING TO
2 BE ASKED QUESTIONS THAT YOU HAVE NEVER CONSIDERED BEFORE SO
3 I WOULD LISTEN TO EACH QUESTION THAT'S PRESENTED TO YOU BY
4 THE COURT OR THE LAWYERS VERY CAREFULLY AND IF YOU NEED TO
5 HAVE THEM EXPLAINED OR CLARIFIED, PLEASE TELL US TO DO
6 SO.

7 A ALL RIGHT.

8 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
9 ABOUT WILL BE THE WORD PENALTY AND THE MERE FACT THAT THAT
10 WORD IS USED SHOULD NOT INDICATE IN ANY WAY ANYTHING ABOUT
11 THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
12 INNOCENT. YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
15 YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE LAW, AS I WOULD
16 INSTRUCT YOU AS THE JUDGE OF THIS COURT, EVEN THOUGH YOU
17 MIGHT NOT AGREE WITH THAT LAW OR THINK THAT IT SHOULD BE
18 SOME OTHER WAY?

19 A YES, SIR.

20 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
21 EVIDENCE PRESENTED IN THIS COURTROOM?

22 A YES, SIR.

23 Q NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH CAROLINA
24 HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THEY MUST
25 MEET THAT BURDEN OF PROOF BY PROVING EACH OF THE ELEMENTS

1 OF THE CRIME OR CRIMES WITH WHICH THAT PERSON IS COMMITTED
2 BEYOND A REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO
3 BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND?

4 A YES, SIR.

5 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
6 EVIDENCE AND THE LAW, AS I WOULD INSTRUCT YOU IN A
7 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
8 GUILTY?

9 A YES, SIR.

10 Q NOW, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
11 I THINK THAT YOU UNDERSTAND FROM YESTERDAY MORNING THAT
12 THAT IS -- THIS IS A CASE IN WHICH THE STATE SEEKS THAT
13 PENALTY. AND I TOLD YOU AT THAT TIME THAT IT'S A
14 BIFURCATED PROCEEDING, MEANING THAT IT'S SPLIT INTO TWO
15 PARTS, THE GUILT PHASE AND THE SENTENCING PHASE.

16 A UH-HUH.

17 Q IF YOU WERE A JUROR IN SUCH A CASE AND IF THE JURY
18 HAD FOUND THE DEFENDANT NOT GUILTY OF MURDER IN THE FIRST
19 PHASE, YOU UNDERSTAND THAT THERE WOULD BE NO NEED FOR THAT
20 SECOND SENTENCING PHASE?

21 A YES, SIR.

22 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
23 THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
24 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
25 OF THE TRIAL?

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A YES, SIR.

Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE PRESENTED TO THE JURY IN THE FORM OF AGGRAVATING AND MITIGATING CIRCUMSTANCES.

NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE OFFENSE OR CRIME OF MURDER.

IN OTHER WORDS, WHERE A MURDER OCCURS WITH AN AGGRAVATING CIRCUMSTANCE, THAT INCREASES THE ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

FOR EXAMPLE, I WOULD BE TALKING ABOUT A MURDER COMMITTED IN CONNECTION WITH ANOTHER CRIME SUCH AS CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE MORAL CULPABILITY OR RESPONSIBILITY.

NOW, WHAT I'M TALKING ABOUT IN MITIGATING CIRCUMSTANCES COULD INCLUDE THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR

1 EMOTIONAL DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO
2 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
3 CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
4 IMPAIRED; AS WELL AS THE AGE OR MENTALITY OF THE DEFENDANT
5 AT THE TIME OF THE CRIME. DO YOU UNDERSTAND WHAT I'M
6 TALKING ABOUT WHEN I REFER TO MITIGATING CIRCUMSTANCES?

7 A YES, SIR, I DO.

8 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU WERE A
9 JUROR IN THAT SITUATION, THE SENTENCING PHASE, COULD YOU,
10 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
11 THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
12 MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT
13 YOU AT THE CONCLUSION OF THAT TRIAL, RETURN A SENTENCE OF
14 LIFE IN PRISON?

15 A YES, SIR.

16 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
17 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
18 THAT CASE, ONCE AGAIN, CONSIDERING AGGRAVATING AND
19 MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT
20 YOU AT THE CONCLUSION OF THAT CASE, RETURN A SENTENCE OF
21 DEATH?

22 A YES, SIR.

23 Q NOW, MS. HARVEY, IF YOU ARE CHOSEN FOR SERVICE ON
24 THIS JURY, YOU WOULD BE SEQUESTERED, WHICH MEANS YOU WOULD
25 BE HOUSED IN A MOTEL FOR THE DURATION OF THE CRIME. NOW, I

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2 REALLY HAVE NO IDEA HOW LONG THE TRIAL WOULD LAST, BUT I
3 HAVE AN OUTSIDE ESTIMATE THAT IT WOULD LAST SEVEN TO TEN
4 DAYS, BUT IT COULD BE LESS THAN THAT. EXCEPT FOR THE
5 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
6 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
7 YOURSELF OR OF THOSE DEPENDENT ON YOU?

8 A NO, SIR.

9 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. PLEASE
10 ANSWER MR. STONE'S QUESTIONS AT THIS TIME.

11 A OKAY.

12 MR. STONE: HEY, MS. HARVEY. THANK YOU, YOUR
13 HONOR.

14 THE JUROR: HI.

15 EXAMINATION

16 BY MR. STONE:

17 Q HEY, MS. HARVEY---

18 A HELLO.

19 Q ---MY NAME IS DUFFIE STONE. I KNOW I WAS INTRODUCED
20 EARLIER, BUT I WANTED TO DO THAT AGAIN.

21 THE LADY SITTING HERE AT THIS TABLE IS BETH
22 FULLWOOD---

23 A HELLO.

24 Q ---SHE AND I ARE REPRESENTING GARY TERRY, WHO IS
25 SITTING AT THE END OF THE TABLE DOWN THERE THROUGH ALL THAT
PAPERWORK AND STUFF.

1 A OKAY.

2 Q WHAT -- YOU HAVE TWO CHILDREN, 28 AND 24, IS THAT
3 RIGHT?

4 A THAT'S RIGHT.

5 Q OKAY. WHAT -- WHAT DO THEY DO?

6 A OUR DAUGHTER IS AN OFFICE MANAGER FOR THE
7 ANESTHESIOLOGIST DEPARTMENT AT BAPTIST -- AT RICHLAND
8 MEMORIAL---

9 Q OKAY.

10 A ---AND OUR SON IS A MASTER-TECHNICIAN AT TOYOTA IN
11 LUGOFF.

12 Q OKAY. GREAT. NOW, YOU'VE ALSO -- YOU HAVE A
13 CLEANING SERVICE?

14 A YES, UH-HUH.

15 Q ALL RIGHT. IS THAT LIKE AN INDUSTRIAL CLEANING
16 SERVICE?

17 A IT'S A CHURCH CLEANING BUSINESS.

18 Q OH, I SEE. IS THAT SOMETHING YOU OWN BY YOURSELF OR
19 DO YOU WORK THAT WITH YOUR HUSBAND? I SAW A LITTLE BIT
20 ABOUT SELF-EMPLOYED.

21 A YEAH. MY HUSBAND HELPS WHEN I'M NOT AVAILABLE AND I
22 HAVE TWO OTHER EMPLOYEES THAT ARE VERY TRUSTWORTHY.

23 Q OKAY. ALL RIGHT. AND YOU JUST -- YOU JUST CLEAN
24 CHURCHES?

25 A YES, SIR.

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- 1 Q OKAY. ALL RIGHT. IS THERE SOME KIND OF SPECIAL
2 EQUIPMENT THAT YOU HAVE TO HAVE FOR SOMETHING LIKE THAT?
- 3 A NO. JUST A GOOD OLD VACUUM AND A MOP.
- 4 Q I GOT YOU. OKAY. ALL RIGHT.
- 5 THE JUDGE HIT ON THIS A LITTLE BIT, BUT I WANT TO
6 TALK TO YOU A LITTLE BIT. WHAT -- WHAT EXACTLY ARE YOUR
7 FEELINGS TOWARD CAPITAL PUNISHMENT AND THE DEATH PENALTY IF
8 YOU DON'T MIND TELLING ME? I HATE -- LIKE THE JUDGE SAID
9 WE HAVE GOT TO BE FAIRLY INTRUSIVE---
- 10 A SURE.
- 11 Q ---AND ASK YOU A LOT OF QUESTIONS---
- 12 A THAT'S ALL RIGHT.
- 13 Q ---THAT I'M SURE ARE NOT---
- 14 A I THINK IF THE CASE WARRANTS IT, THE DEATH PENALTY IS
15 NECESSARY.
- 16 Q OKAY. ALL RIGHT. IS IT SOMETHING YOU HAVE THOUGHT
17 ABOUT OR TALKED ABOUT?
- 18 A SURE, YES.
- 19 Q IS IT -- HAVE YOU TALKED ABOUT IT WITH YOUR FRIENDS
20 AND FAMILY OR IS IT SOMETHING---
- 21 A THROUGH THE COURSE OF DIFFERENT THINGS THROUGH MY
22 LIFE, YEAH. NEWSWORTHY THINGS COME UP, YEAH.
- 23 Q ALL RIGHT.
- 24 A WE'VE DISCUSSED IT.
- 25 Q OKAY. AND I DON'T RECALL YOUR RELIGION AND I DON'T

1 MEAN TO PRY---

2 A I'M LUTHERAN.

3 Q OKAY. DOES THAT -- DO THEY HAVE A POSITION ON IT?

4 I'M METHODIST SO I DON'T KNOW. BUT DO THEY HAVE A POSITION
5 ON THE DEATH PENALTY THAT YOU KNOW OF?

6 A THEY PROBABLY DO, BUT I DON'T PAY MUCH ATTENTION.

7 Q I GOT YOU.

8 A I'M SORRY.

9 Q I UNDERSTAND.

10 A I LISTEN TO MY INNER FEELINGS.

11 Q I UNDERSTAND. THANK YOU.

12 I HAVE TO NOW ASK YOU ABOUT SOMETHING THAT MAY
13 NEVER HAPPEN.

14 A UH-HUH.

15 Q OKAY. YOU MAY NEVER BE ON THE JURY. YOU MAY BE ON
16 THE JURY. IF YOU ARE ON THE JURY, WE MAY NEVER GET TO A
17 SENTENCING PHASE, BUT I'VE GOT TO ASK YOU ABOUT A
18 SENTENCING PHASE, WHETHER OR NOT THAT EVER HAPPENS OR NOT,
19 OKAY?

20 A SURE.

21 Q AT A SENTENCING PHASE IN A DEATH PENALTY CASE -- I
22 NOTICED YOU'VE NEVER BEEN ON A JURY BEFORE, IS THAT RIGHT?

23 A OH, I HAVE.

24 Q OH, YOU HAVE BEEN ON A JURY?

25 A YES.

0911

- 1 Q WHAT, CRIMINAL CASE?
- 2 A ONE -- NO, ONE WAS FELONY.
- 3 Q A FELONY?
- 4 A YES, THE LAST ONE WAS A FELONY.
- 5 Q OKAY. WAS THAT HERE IN LEXINGTON?
- 6 A UH-HUH. THAT'S BEEN, OH, EIGHT OR NINE YEARS AGO.
- 7 Q DO YOU REMEMBER THE RESULTS OF THAT?
- 8 A THEY WERE FOUND NOT GUILTY.
- 9 Q DID -- ALL RIGHT. I'M GLAD YOU HAVE THAT EXPERIENCE
- 10 BECAUSE VERY FEW PEOPLE HAVE BOTH THE EXPERIENCE OF A
- 11 CRIMINAL TRIAL AND A DEATH PENALTY CASE---
- 12 A UH-HUH.
- 13 Q ---IN THAT CASE, AS A JUROR, YOU HAD TO MAKE A
- 14 DECISION ABOUT GUILT OR INNOCENCE?
- 15 A UH-HUH.
- 16 Q THE SENTENCING PHASE YOU DIDN'T HAVE TO DEAL WITH.
- 17 IN A DEATH PENALTY CASE, IT'S A LITTLE DIFFERENT.
- 18 IF YOU GET INTO A SENTENCING PHASE IN A DEATH PENALTY CASE,
- 19 IT MEANS THAT YOU, ALONG WITH ELEVEN OTHER JURORS, HAVE
- 20 DECIDED BEYOND A REASONABLE DOUBT THAT SOMEBODY IS GUILTY
- 21 OF MURDER AND THAT THEY ARE GUILTY OF ANOTHER CRIME; FOR
- 22 INSTANCE, RAPE. IN FACT, IT MAY BE RAPE AND BURGLARY. ALL
- 23 RIGHT. IN FACT, ALL THREE OF THOSE OR ANY TWO OF THOSE.
- 24 THAT TYPE OF THING. YOU UNDERSTAND THAT?
- 25 A CERTAINLY.

1 Q NOW, MURDER IN SOUTH CAROLINA AND YOU MAY ALREADY
2 KNOW THIS AND I'LL SEE IF I CAN DO THIS WITHOUT HACKING UP
3 THE DEFINITION TOO MUCH, BUT MURDER, IT KIND OF EXCLUDES
4 SELF-DEFENSE. WE ARE NOT TALKING ABOUT ACCIDENTAL MURDER.
5 WE ARE NOT TALKING ABOUT A HEAT OF PASSION TYPE THING. DO
6 YOU UNDERSTAND THAT?

7 A YES.

8 Q WE ARE TALKING ABOUT AN UNLAWFUL KILLING WITH MALICE
9 AFORETHOUGHT. YOU UNDERSTAND THAT?

10 A YES.

11 Q SO IN ORDER FOR YOU TO BE IN THAT SENTENCING PHASE,
12 YOU'VE ALREADY DETERMINED SOMEBODY'S A MURDERER AND THAT
13 THEY ARE A RAPIST OR A BURGLAR, EITHER WAY. YOU UNDERSTAND
14 THAT?

15 A YES.

16 Q IF YOU ARE IN THAT TYPE OF SENTENCING PHASE, NO
17 QUESTION THAT YOU HAVE ALREADY MADE THAT DECISION AS FAR AS
18 THE CRIME ITSELF AND THE GUILT, CAN YOU SENTENCE THAT
19 PERSON OR CAN YOU RECOMMEND A SENTENCE TO THE COURT OF
20 LIFE?

21 A YES, I COULD.

22 Q CAN YOU ALSO RECOMMEND A SENTENCE OF DEATH?

23 A YES, I COULD.

24 Q OKAY. AND THAT IS AFTER YOU HAVE LISTENED TO --
25 YOU'LL BASICALLY GET TWO SETS OF INFORMATION. ONE AS FAR

09131

AS GUILT AND THE OTHER AS FAR AS AGGRAVATING AND MITIGATING
CIRCUMSTANCES. YOU UNDERSTAND THAT?

A YES.

Q AND YOU CAN WAIT UNTIL THE END OF THAT AND LISTEN TO
ALL OF THAT AND THAT AGGRAVATING AND MITIGATING
CIRCUMSTANCES CAN HELP YOU MAKE THAT DECISION, IS THAT WHAT
YOU'RE TELLING US?

A THAT'S CORRECT.

Q OKAY. ALSO, IN SOUTH CAROLINA, YOU ARE REQUIRED IF
YOU GET TO A SENTENCING PHASE AND YOU GET INTO A SITUATION
WHERE YOU RECOMMEND TO THE COURT OR YOU FIND THAT THE DEATH
PENALTY IS APPROPRIATE, YOU HAVE TO SIGN A FORM. IT'S A
JUROR FORM---

A UH-HUH.

Q ELEVEN OTHER PEOPLE'S SIGNATURES MAY BE THERE, TOO,
BUT YOURS WOULD HAVE TO BE THERE AS WELL. DOES THAT CAUSE
YOU ANY PROBLEM?

A NOT AT ALL.

Q OKAY. THE SIGNATURE IS NO -- IT'S WHETHER OR NOT
YOU'VE DECIDED?

A UH-HUH.

Q OKAY. THANK YOU FOR YOUR HONEST ANSWERS AND I
APPRECIATE THAT.

A YOU'RE WELCOME.

Q AND THANK YOU, YOUR HONOR.

1 THE COURT: SOLICITOR.

2 EXAMINATION

3 BY MR. HUMPHRIES:

4 Q MS. HARVEY, MY NAME IS FRAN HUMPHRIES. I'M THE
5 DEPUTY SOLICITOR---

6 A HELLO.

7 Q I WILL BE TRYING THIS CASE WITH TOM CHASE, WHO IS
8 SITTING HERE, AND DONNIE MYERS---

9 A UH-HUH.

10 Q I REALLY ONLY HAVE ONE QUESTION FOR YOU AND IT'S
11 REALLY -- IT SORT OF SUMS UP, I THINK, WHAT YOU'VE ALREADY
12 SAID.

13 WHAT EVERYBODY IS LOOKING FOR IN THIS CASE IS THE
14 TYPE OF JUROR WHO CAN, AT LEAST, IN THE PENALTY PHASE,
15 LISTEN TO ALL THE EVIDENCE, THE EVIDENCE IN AGGRAVATION,
16 NOT JUST THE STATUTORY AGGRAVATING CIRCUMSTANCES BUT THE
17 THINGS ABOUT THE DEFENDANT'S CONDUCT AND CHARACTER AS
18 WELL---

19 A UH-HUH.

20 Q ---EVIDENCE IN MITIGATION, NOT JUST THE STATUTORY
21 MITIGATING CIRCUMSTANCES, BUT ANYTHING THAT THE DEFENDANT
22 WISHES TO OFFER IN AN ATTEMPT TO MITIGATE THE VERDICT, TO
23 LISTEN TO ALL OF THAT, TO LISTEN TO THE CHARGE ON THE LAW,
24 AS THE JUDGE GIVES IT TO YOU, AND AFTER HEARING ALL OF
25 THAT, BE ABLE TO RENDER A VERDICT EITHER FOR LIFE OR DEATH,

0915

1 THE ONLY TWO CHOICES, DEPENDING ON THE FACTS AND
2 CIRCUMSTANCES AS YOU FIND THEM---

3 A UH-HUH.

4 Q ---ARE YOU THAT KIND OF JUROR?

5 A YES, I AM.

6 Q COULD YOU BE FAIR AND IMPARTIAL TO THE STATE AND TO
7 THE DEFENDANT, GARY DUBOSE TERRY?

8 A YES, SIR, I THINK I COULD.

9 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

10 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

11 MR. STONE: NO, SIR, THANK YOU.

12 THE COURT: FROM THE STATE?

13 MR. HUMPHRIES: NO, SIR.

14 THE COURT: MS. HARVEY, I WANT TO THANK YOU VERY
15 MUCH FOR YOUR PARTICIPATION, NOT ONLY TODAY, BUT ALSO
16 YESTERDAY.

17 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
18 POTENTIAL JUROR IN THIS CASE. WITH THAT QUALIFICATION, A
19 COUPLE OF THINGS. I'M GOING TO REMIND YOU THAT YOU ARE NOT
20 TO DISCUSS THIS CASE WITH YOUR FELLOW JURORS, FAMILY,
21 FRIENDS OR ANYONE ELSE. FURTHERMORE, IF ANYONE SHOULD
22 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, I WANT YOU TO
23 GATHER AS MUCH INFORMATION YOU CAN ABOUT THAT INDIVIDUAL OR
24 INDIVIDUALS AND REPORT THAT TO ME IMMEDIATELY BECAUSE
25 THAT'S A VERY SERIOUS MATTER.

1 ALSO, I WOULD CONTINUE MY INSTRUCTION THAT YOU
2 ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
3 CONCERNING THIS CASE.

4 SIMPLY PUT, IF YOU ARE SELECTED AS A JUROR IN
5 THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IS WHAT YOU SEE
6 AND HEAR IN THIS MATTER. ABSOLUTELY NOTHING MORE OR
7 NOTHING LESS.

8 NOW, YOU NEED TO GO HOME AND START PACKING YOUR
9 BAGS---

10 THE JUROR: ALL RIGHT.

11 THE COURT: ---BECAUSE YOU NEED TO BE BACK HERE
12 IN THE MORNING AT NINE-THIRTY. PLEASE COME DIRECTLY TO THE
13 COURTROOM HERE IN THE MORNING AT NINE-THIRTY. LEAVE YOUR
14 LUGGAGE IN YOUR VEHICLE BECAUSE IF YOU ARE SELECTED AS A
15 JUROR IN THIS CASE, THEN THE JURY CUSTODIANS WILL SEE THAT
16 YOU AND YOUR BELONGINGS ARE PROPERLY DELIVERED TO WHAT WILL
17 BE YOUR HOME AWAY FROM HOME FOR AWHILE AND IF YOU ARE NOT
18 CHOSEN, THEN WE WILL DISMISS YOU AFTER THAT PROCESS AND
19 SEND YOU ABOUT YOUR BUSINESS AND YOUR OTHER ACTIVITIES WITH
20 OUR THANKS FOR BEING HERE.

21 SO UNTIL IN THE MORNING AT 9:30 A.M., HAVE A VERY
22 PLEASANT EVENING AND I'LL SEE YOU TOMORROW.

23 THE JUROR: THANK YOU.

24 (WHEREUPON, THE JUROR WAS EXCUSED
25 AT THIS TIME.)

0917

1 THE COURT: ALL RIGHT.

2 LET THE RECORD REFLECT THAT JUROR NUMBER 109,
3 MARY C. HARVEY, IS QUALIFIED TO SERVE AS A POTENTIAL JUROR
4 IN THIS CASE PURSUANT TO SECTION 16-320 OF THE CODE OF LAWS
5 OF THE STATE OF SOUTH CAROLINA, 1976 AS AMENDED.

6 JUROR NUMBER 5, KEVIN ANDERSON.

7 KEVIN C. ANDERSON,

8 (JUROR NUMBER 5, WHITE MALE, FIRST
9 BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

10 EXAMINATION

11 BY THE COURT:

12 Q YOU ARE KEVIN ANDERSON?

13 A YES, SIR.

14 Q AND, MR. ANDERSON, YOU UNDERSTAND THAT YOU ARE UNDER
15 OATH FOR THESE PROCEEDINGS TODAY?

16 A YES, SIR.

17 Q AND YOU ALSO UNDERSTAND THAT WHEN I DISMISSED YOU
18 YESTERDAY THAT I GAVE YOU CERTAIN CAUTIONARY INSTRUCTIONS
19 THAT YOU WERE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW
20 JURORS, FAMILY, FRIENDS, THAT TYPE OF THING AND THAT YOU
21 WERE -- IF ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS
22 CASE, THAT YOU WERE TO REPORT THAT TO ME AND ALSO YOU WERE
23 TO REFRAIN FROM READING, WATCHING OR LISTENING TO ANY NEWS
24 ACCOUNTS CONCERNING THIS CASE.

25 HAVE THERE BEEN ANY VIOLATIONS OF THOSE

1 INSTRUCTIONS?

2 A NO, SIR.

3 Q NOW, I'M GOING TO BE ASKING YOU SOME QUESTIONS AND
4 THEREAFTER ONE OF THE LAWYERS FOR THE DEFENDANT, MR. TERRY,
5 WILL ASK YOU SOME QUESTIONS, AS WELL AS ONE OF THE
6 ASSISTANT SOLICITORS OR THE DEPUTY SOLICITOR.

7 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
8 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE TYPE
9 OF CASE THAT WE ARE TRYING HERE THIS WEEK, IT'S EXTREMELY
10 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED. KEEP IN MIND
11 ALSO THAT THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE
12 QUESTIONS THAT WILL BE PRESENTED TO YOU. SO PLEASE JUST
13 ANSWER THEM OPENLY AND HONESTLY AND FULLY. AND ALSO KEEP
14 IN MIND THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED
15 TO KNOW WHAT YOUR VIEW IS IN CERTAIN AREAS.

16 ALSO, I WOULD ADVISE YOU THAT YOU'RE PROBABLY
17 GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE NEVER
18 CONSIDERED BEFORE. SO PLEASE LISTEN VERY CAREFULLY TO
19 THESE QUESTIONS. IF AT ANY TIME, YOU NEED FOR ME OR ONE OF
20 THE LAWYERS TO CLARIFY OR RESTATE THE QUESTION, PLEASE ASK
21 US TO DO SO.

22 NOW, AMONG OTHER THINGS, WE ARE GOING TO BE
23 TALKING ABOUT OR USING THE WORD PENALTY, BUT THE MERE FACT
24 THAT WE TALK ABOUT THIS WORD OR EVEN USE THE WORD PENALTY
25 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY.

0919

- 1 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
2 UNDERSTAND THAT?
- 3 A YES, SIR.
- 4 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
5 YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE LAW, AS I WOULD
6 INSTRUCT YOU AS THE JUDGE OF THIS COURT, EVEN THOUGH YOU
7 MIGHT NOT AGREE WITH THAT LAW OR THINK THAT IT SHOULD BE
8 SOME OTHER WAY?
- 9 A YES.
- 10 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
11 EVIDENCE PRESENTED HERE IN THIS COURTROOM?
- 12 A YES.
- 13 Q NOW, MR. ANDERSON, IN A CRIMINAL CASE, THE STATE OF
14 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
15 GUILT AND THE BURDEN OF PROOF THAT THE STATE MUST MEET IS
16 TO PROVE EACH OF THE ELEMENTS OF THE CRIME OR CRIMES OF
17 WHICH THE DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT.
18 A DEFENDANT HAS NO BURDEN TO PROVE HIS INNOCENCE. DO YOU
19 UNDERSTAND THAT?
- 20 A YES, SIR.
- 21 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
22 EVIDENCE AND THE LAW, AS I WOULD INSTRUCT YOU IN A
23 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
24 GUILTY?
- 25 A YES, SIR.

1 Q NOW, YOU UNDERSTAND FROM WHAT I TOLD YOU YESTERDAY
2 MORNING THAT THIS IS A CASE IN WHICH THE STATE SEEKS THE
3 DEATH PENALTY?

4 A YES, I DO.

5 Q AND AS A RESULT OF THAT, I ALSO EXPLAINED TO YOU THAT
6 THESE ARE WHAT WE CALL BIFURCATED TRIALS, MEANING THAT THEY
7 ARE SPLIT INTO TWO PARTS, THE GUILT PHASE, THE SENTENCING
8 PHASE. AND YOU UNDERSTAND THAT IF YOU WERE A JUROR IN SUCH
9 A CASE AND THE JURY IN THE GUILT PHASE FOUND THE DEFENDANT
10 NOT GUILTY OF MURDER, THAT THERE WOULD BE NO NEED FOR THE
11 SENTENCING PHASE?

12 A YES, I DO.

13 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
14 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
15 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL, YOU
16 UNDERSTAND?

17 A YES.

18 Q NOW, IN THAT SENTENCING PHASE, YOU WOULD BE PRESENTED
19 WITH EVIDENCE IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS
20 WELL AS MITIGATING CIRCUMSTANCES.

21 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
22 INCIDENTS, DETAILS, AN OCCURRENCE WHICH OUR GENERAL
23 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
24 AGGRAVATE THE OFFENSE OF MURDER.

25 IN OTHER WORDS, WHEN A MURDER IS -- WHEN A MURDER

0921

1 IS CONNECTED WITH AN AGGRAVATING CIRCUMSTANCE, THAT
2 INCREASES THE ENORMITY OR ADDS TO THE INJURY OF THE CRIME
3 OF MURDER.

4 AND WHAT WE ARE TALKING ABOUT IN THAT REGARD IS
5 WHEN A MURDER IS COMMITTED IN CONJUNCTION OR IN CONNECTION
6 WITH ANOTHER CRIME SUCH AS CRIMINAL SEXUAL CONDUCT,
7 BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

8 A YES, I DO.

9 Q NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE
10 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH OUR GENERAL
11 ASSEMBLY, ONCE AGAIN, HAS DECLARED BY STATUTE REDUCES THE
12 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
13 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
14 OR RESPONSIBILITY.

15 AND WE ARE TALKING ABOUT THINGS LIKE THE MURDER
16 BEING COMMITTED WHEN A DEFENDANT WAS UNDER THE INFLUENCE OF
17 MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF THE
18 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
19 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
20 SUBSTANTIALLY IMPAIRED; AS WELL AS CONSIDERING THE
21 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. YOU
22 UNDERSTAND WHAT WE SPEAK OF WHEN WE TALK ABOUT MITIGATING
23 CIRCUMSTANCES?

24 A YES, I DO.

25 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A

1 JUROR IN THAT SITUATION, THE SENTENCING PHASE, COULD YOU,
2 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
3 THAT CASE AND THE LAW AS I WOULD INSTRUCT YOU AT THE
4 CONCLUSION OF THE CASE INCLUDING THE CONSIDERATION OF
5 AGGRAVATING AND MITIGATING CIRCUMSTANCES, RETURN A SENTENCE
6 OF LIFE IMPRISONMENT?

7 A YES, I CAN.

8 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
9 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
10 THAT CASE, ONCE AGAIN, CONSIDERING AGGRAVATING AND
11 MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT
12 YOU AT THE CONCLUSION OF THAT CASE, RETURN A SENTENCE OF
13 DEATH?

14 A YES, I CAN.

15 Q NOW, MR. ANDERSON, IF YOU ARE CHOSEN FOR SERVICE ON
16 THIS JURY, YOU WOULD BE SEQUESTERED; THAT IS, HOUSED IN A
17 MOTEL DURING THE DURATION OF THE TRIAL.

18 NOW, OF COURSE, I DON'T HAVE ANY IDEA EXACTLY HOW
19 LONG THE CASE IS GOING TO LAST. I HAVE A GOOD IDEA THAT IT
20 WOULD NOT EXTEND BEYOND SEVEN TO TEN DAYS; HOWEVER, IT
21 COULD BE SHORTER THAN THAT. EXCEPT FOR THE PERSONAL
22 INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A
23 SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
24 OF THOSE DEPENDENT UPON YOU?

25 A NO.

0923

1 Q THANK YOU FOR ANSWERING MY QUESTIONS.
2 MS. FULLWOOD.
3 MS. FULLWOOD: THANK YOU, YOUR HONOR.
4 EXAMINATION
5 BY MS. FULLWOOD:
6 Q GOOD EVENING, MR. ANDERSON---
7 A HI.
8 Q ---HOW ARE YOU?
9 A FINE.
10 Q GOOD. MR. ANDERSON, YOU REMEMBER YOU FILLED OUT A
11 QUESTIONNAIRE PRIOR TO COMING IN YESTERDAY AND I WANTED TO
12 FOLLOW-UP ON A COUPLE OF ANSWERS YOU PUT ON THERE. I SEE
13 THAT YOU WERE IN THE NAVY?
14 A (WHEREUPON, THE JUROR NODS IN THE AFFIRMATIVE AT THIS
15 TIME.)
16 Q WHAT WAS YOUR SPECIALTY IN THE NAVY?
17 A I WAS AN ENGINEMAN, THIRD CASE.
18 Q ENGINEMAN. OKAY. FIX THE ENGINES ON THE---
19 A YEAH, RAN GAS TURBINE AUXILIARY MACHINES, BOATING,
20 STUFF LIKE THAT.
21 Q OKAY. OKAY. AND I ALSO NOTICED THAT YOU'VE LIVED
22 HERE A COUPLE OF YEARS?
23 A ABOUT TWO.
24 Q ABOUT TWO YEARS. WHERE DID YOU LIVE BEFORE?
25 A CALIFORNIA.

1 Q OUT IN CALIFORNIA.

2 A SOUTHERN CALIFORNIA.

3 Q YOU WERE BORN AND RAISED OUT THERE?

4 A YES, I WAS.

5 Q I SEE. I SEE. WERE YOU SURPRISED WHEN YOU FOUND OUT
6 YESTERDAY THAT THIS WAS A CAPITAL CASE?

7 A UH -- IN SOME WAYS, I WAS.

8 Q SOME WAYS?

9 A I WAS WONDERING WHY THEY BROUGHT A JUDGE FROM NOT
10 AROUND HERE. THAT'S THE ONLY REASON.

11 Q THAT KIND OF TIPPED YOU OFF.

12 A SOMEWHAT.

13 Q OKAY. OKAY. WELL, DO YOU MIND TELLING US IN GENERAL
14 WHAT YOUR VIEWS ARE ON CAPITAL PUNISHMENT?

15 A WELL, I BELIEVE THAT IF THE CRIME THAT'S COMMITTED
16 CALLS FOR CAPITAL PUNISHMENT, THEN, I BELIEVE, THERE IS --
17 SHOULD BE CAPITAL PUNISHMENT, BUT IF IT DOESN'T, THEN I
18 DON'T BELIEVE IN IT IN THAT TYPE. IT JUST DEPENDS ON THE
19 CRIME ITSELF. YOU KNOW, I'VE -- I'VE NEVER REALLY THOUGHT
20 ABOUT IT A WHOLE LOT BEFORE, BUT I DO BELIEVE IF THERE'S A
21 REASON FOR CAPITAL PUNISHMENT OR A NEED FOR IT, THEN I
22 BELIEVE IN IT.

23 Q OKAY. OKAY. OF COURSE, YOU UNDERSTAND THAT THE
24 CRIME OF MURDER IS THE ONLY CRIME THAT CAPITAL PUNISHMENT
25 IS EVER ALLOWED IN?

0925¹

A OKAY.

2 Q OKAY. DID YOU REALIZE THAT?

3 A NO. LIKE I SAID, I NEVER THOUGHT ABOUT IT. I
4 FIGURED THAT WOULD PROBABLY BE IT.

5 Q WELL, I -- PROBABLY TREASON AND PROBABLY THE MILITARY
6 OFFENSES---

7 A YEAH.

8 Q ---YOU MIGHT BE FAMILIAR WITH, BUT FOR OUR PURPOSES,
9 THE ONLY CRIME WHERE CAPITAL PUNISHMENT CAN BE IMPOSED IS
10 THE CRIME OF MURDER, OKAY.

11 A ALL RIGHT.

12 Q AND DID YOU KNOW THAT IN THIS STATE, IN SOUTH
13 CAROLINA, MURDER IS PRETTY NARROW. IT IS THE KILLING OF
14 ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. THAT MEANS
15 MALICE, EVIL WITHIN YOUR HEART OR INTENT AND AFORETHOUGHT
16 MEANING HAVING THOUGHT OF IT FOR SOME---

17 A PREMEDITATED.

18 Q WELL, SOME PERIOD OF TIME BEFOREHAND. NOT
19 NECESSARILY A LONG PERIOD OF TIME.

20 A NO, I WASN'T AWARE OF THAT.

21 Q OKAY. SO WHAT I'M TRYING TO EXPLAIN TO YOU IS THAT
22 MURDER MEANS JUST THAT. IT DOES NOT MEAN SOMETHING LIKE
23 HEAT OF PASSION. IT DOES NOT MEAN SOMETHING LIKE
24 SELF-DEFENSE. IT DOES NOT MEAN SOMETHING LIKE AN ACCIDENT,
25 OKAY?

- 1 A OKAY.
- 2 Q DID YOU REALIZE THAT?
- 3 A YES.
- 4 Q OKAY. OKAY.
- 5 A OH, YES.
- 6 Q AND I GO THROUGH ALL OF THAT BECAUSE GOING BACK TO
- 7 YOU SAYING THAT YOUR VIEWS ON CAPITAL PUNISHMENT WERE IF
- 8 THE CRIME CALLS FOR IT AND WHAT I NEED TO KNOW FROM YOU IS,
- 9 AND, OF COURSE, YOU BELIEVE WHAT YOU BELIEVE AND THERE'S NO
- 10 RIGHT OR WRONG IN THIS -- YOU KNOW, IN THIS TYPE OF WHAT WE
- 11 ARE TALKING ABOUT. DO YOU FEEL THAT THE CRIME OF MURDER
- 12 ITSELF AUTOMATICALLY CALLS FOR CAPITAL PUNISHMENT?
- 13 A NO, I DON'T.
- 14 Q OKAY. LET ME ASK YOU THIS. IF YOU WERE A JUROR IN A
- 15 CAPITAL CASE AND IT GOT TO THE PHASE WHERE YOU HAD TO HAVE
- 16 THAT SECOND TRIAL TO DECIDE A SENTENCE, AFTER LISTENING TO
- 17 ALL OF THE EVIDENCE IN THAT SECOND TRIAL FROM BOTH THE
- 18 PROSECUTION AND THE DEFENSE, COULD YOU IMPOSE A LIFE
- 19 SENTENCE DESPITE THE FACT THAT YOU HAD ALREADY CONVICTED
- 20 THE DEFENDANT OF MURDER AND MORE THAN LIKELY OTHER CRIMES
- 21 SUCH AS CRIMINAL SEXUAL CONDUCT AND BURGLARY?
- 22 A YES, I COULD.
- 23 Q OKAY. AND ON THE FLIP OF THAT, IF YOU WERE SERVING
- 24 IN A SECOND PHASE TRIAL AS A JUROR AND YOU HAD HEARD ALL OF
- 25 THE EVIDENCE FROM BOTH SIDES, COULD YOU IMPOSE A SENTENCE

0927

1 OF DEATH?

2 A YES, I COULD.

3 Q ALL RIGHT. ONE LAST THING---

4 A UH-HUH.

5 Q ---IN SOUTH CAROLINA, ONE OF THE LEGAL REQUIREMENTS,
6 WHEN A JURY WANTS TO GIVE THE DEATH SENTENCE, IS EACH
7 MEMBER OF THE JURY MUST SIGN A SHEET OF PAPER SAYING THAT
8 THAT IS HIS OR HER VERDICT, OKAY.

9 NOW, IF YOU WERE A JUROR IN A CAPITAL CASE AND
10 YOU HAD LISTENED TO ALL THE EVIDENCE AND DECIDED THAT THE
11 DEATH PENALTY WAS THE APPROPRIATE PUNISHMENT, WOULD YOU BE
12 CAPABLE OF SIGNING YOUR NAME TO THE VERDICT SHEET?

13 A YES, I WOULD.

14 Q OKAY. AND THEN, OF COURSE, ON THE OTHER HAND,
15 UNDERSTANDING THAT UNDER THE LAW YOU NEVER HAVE TO GIVE THE
16 DEATH PENALTY FOR ANY REASON WHATSOEVER, IF YOU THOUGHT
17 LIFE WAS THE APPROPRIATE SENTENCE, COULD YOU RECOMMEND THAT
18 SENTENCE?

19 A YES, I WOULD.

20 Q THANK YOU SO MUCH, SIR.

21 THE COURT: MR. CHASE.

22 MR. CHASE: THANK YOU, YOUR HONOR.

23 EXAMINATION

24 BY MR. CHASE:

25 Q HI, MR. ANDERSON. MY NAME IS TOM CHASE. I AM AN

1 ASSISTANT SOLICITOR HERE AND I WILL BE ASSISTING DEPUTY
2 SOLICITOR FRAN HUMPHRIES, WHO IS SEATED RIGHT HERE, AND
3 SOLICITOR DONNIE MYERS IN THE PROSECUTION OF THIS CASE.

4 I THINK YOU HAVE BEEN VERY CLEAR WITH YOUR
5 ANSWERS AND I REALLY DON'T HAVE ANY OTHER QUESTIONS THAN
6 ONE.

7 WHAT WE ARE LOOKING FOR IN THIS CASE IS A JUROR
8 THAT CAN BE FAIR AND IMPARTIAL TO NOT ONLY THE STATE BUT
9 ALSO THE DEFENDANT, GARY DUBOSE TERRY. ONE THAT CAN
10 CONSIDER ALL THE EVIDENCE BEFORE MAKING ANY DECISIONS
11 ESPECIALLY IN THAT SENTENCING PHASE. ARE YOU THAT TYPE OF
12 JUROR?

13 A YES, SIR.

14 Q AND I THINK THAT YOU SAID EARLIER THAT YOU COULD
15 CONSIDER NOT ONLY EVIDENCE IN AGGRAVATION, BUT ALSO
16 EVIDENCE IN MITIGATION BEFORE YOU COME UP WITH ANY SORT OF
17 A SENTENCE IN THE EVENT WE REACH A SENTENCING PHASE?

18 A YES.

19 Q IS THAT RIGHT?

20 A YES, SIR.

21 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MR.
22 ANDERSON.

23 A THANK YOU.

24 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

25 MS. FULLWOOD: THAT'S ALL, YOUR HONOR.

09291

THE COURT: FROM THE STATE?

MR. CHASE: NO, SIR, YOUR HONOR.

THE COURT: MR. ANDERSON, I WANT TO THANK YOU
VERY MUCH FOR YOUR PARTICIPATION HERE, NOT ONLY TODAY, BUT
ALSO YESTERDAY.

I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
I'M GOING TO REMIND YOU, ONCE AGAIN, THAT WHEN YOU LEAVE
HERE TODAY, THAT YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR
FELLOW JURORS, FAMILY, FRIENDS, OR ANYONE ELSE.

ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
INFORMATION ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN AND
REPORT THAT TO ME IMMEDIATELY BECAUSE THAT IS A VERY
SERIOUS MATTER AND I WILL DEAL WITH IT ACCORDINGLY.

ALSO, I'M GOING TO CONTINUE MY INSTRUCTION THAT
YOU ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNT
CONCERNING THIS CASE.

SIMPLY PUT, IF YOU ARE SELECTED AS A JUROR IN
THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IS WHAT YOU SEE
AND HEAR IN THIS COURTROOM. ABSOLUTELY NOTHING MORE OR
NOTHING LESS.

SO WITH THAT INSTRUCTION, I'M GOING TO BE SENDING
YOU AWAY WITH THE FURTHER INSTRUCTION THAT YOU NEED TO GO
HOME AND GET PACKED BECAUSE YOU NEED TO BE BACK HERE IN THE

1 MORNING AT 9:30 A.M., BE IN THE COURTROOM HERE. LEAVE YOUR
2 BELONGINGS IN YOUR VEHICLE.

3 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN
4 YOU WILL BE TAKEN, ALONG WITH YOUR BELONGINGS, TO THE MOTEL
5 WHERE YOU WILL BE HOUSED FOR THE DURATION OF THE TRIAL BY
6 THE JURY CUSTODIANS. IF YOU ARE NOT SELECTED, THEN WE
7 WOULD THANK YOU VERY MUCH FOR PARTICIPATING IN OUR PROCESS
8 AND SEND YOU ALONG TO YOUR REGULARLY SCHEDULED ACTIVITIES.

9 UNTIL IN THE MORNING AT 9:30, HAVE A VERY
10 PLEASANT EVENING AND I'LL SEE YOU TOMORROW.

11 THE JUROR: THANK YOU, SIR.

12 THE COURT: THANK YOU.

13 (WHEREUPON, THE JUROR WAS EXCUSED
14 AT THIS TIME.)

15 THE COURT: LET THE RECORD REFLECT THAT JUROR
16 NUMBER FIVE, KEVIN ANDERSON, IS QUALIFIED TO SERVE AS A
17 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
18 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
19 AMENDED.

20 WE'LL MOVE ON TO PANEL EIGHT IN JUST A FEW
21 MINUTES.

22 MR. HUMPHRIES: YOUR HONOR, IF IT PLEASE THE
23 COURT. MY INTENTION AT THIS TIME IS TO GO BACK TO THE
24 OFFICE AND HAVE MS. CARROLL, TRACEY CARROLL, AN ASSISTANT
25 IN OUR OFFICE, ASSIST MR. CHASE IN THE REMAINING VOIR DIRE

0931

1 IF THAT'S NO PROBLEM TO THE COURT.

2 THE COURT: I HAVE NO PROBLEM WHATSOEVER.

3 MR. HUMPHRIES: AND MY COUNT WE HAVE GOT
4 THIRTY-ONE QUALIFIED.

5 THE COURT: LET'S SEE---

6 MR. STONE: THIRTY-ONE.

7 THE COURT: THAT'S RIGHT, THIRTY-ONE.

8 MR. STONE: I'LL MISS MR. HUMPHRIES, THOUGH, YOUR
9 HONOR.

10 THE COURT: I'LL LET YOU WORK THAT OUT WITH MR.
11 HUMPHRIES, MR. STONE.

12 MR. HUMPHRIES: AND IN REGARD TO YOUR PLANS FOR
13 IN THE MORNING -- OBVIOUSLY, I'M AVAILABLE. I'M JUST
14 ACROSS THE HALL.

15 THE COURT: YES, SIR.

16 WHAT WE'LL DO, WE'LL SEE WHERE WE ARE AT THE END
17 OF THIS PANEL, BUT WE DO HAVE TWO PANELS COMING IN IN THE
18 MORNING STARTING AT NINE AND THEN ONE AT ELEVEN.

19 IF WE DO NOT NEED THEM, OF COURSE, WE'LL SEND
20 THEM ON THEIR WAY, BUT I GUESS IF WE GOT REAL LUCKY AND GOT
21 SIX IN THE NEXT GROUP---

22 MR. HUMPHRIES: IS THAT YOUR MAGIC NUMBER, THEN
23 THIRTY-SEVEN?

24 THE COURT: WELL, I WOULD LIKE TO SAY, MAYBE GET
25 THIRTY-SIX, THIRTY-SEVEN, DEPENDING ON ANY FALLOUT THAT WE

1 MIGHT HAVE.

2 MR. HUMPHRIES: I KNOW IT -- YOU NEVER CAN COUNT
3 ON IT, BUT IT'S BEEN OUR EXPERIENCE, WE'VE LOST AT LEAST
4 ONE AND OFTEN TWO ON THE MORNING OF THE STRIKE.

5 THE COURT: OH, NO DOUBT ABOUT IT. IT'S ALWAYS
6 HAPPENED EVERY TIME I'VE DONE ONE.

7 ALL RIGHT. WE'LL STAND AT EASE FOR A FEW
8 MINUTES.

9 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

10 (RECESS.)

11 THE BAILIFF: COURT IS NOW IN SESSION.

12 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

13 ALL RIGHT. LET'S BRING IN JUROR NUMBER 43,
14 BRANDON CALDWELL.

15 BRANDON S. CALDWELL,

16 (JUROR NUMBER 43, WHITE MALE,
17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

18 EXAMINATION

19 BY THE COURT:

20 Q GOOD EVENING. YOU ARE BRANDON CALDWELL?

21 A YES, SIR, I AM.

22 Q NOW, MR. CALDWELL, YOU UNDERSTAND THAT YOU ARE UNDER
23 OATH?

24 A YES, SIR, I DO.

25 Q AND DO YOU ALSO UNDERSTAND THAT I GAVE YOU CERTAIN

0933¹

2 CAUTIONARY INSTRUCTIONS YESTERDAY THAT YOU WERE NOT TO
3 DISCUSS THIS CASE AND IF ANYONE ATTEMPTED TO CONTACT YOU
4 CONCERNING THIS CASE, THAT YOU WERE TO REPORT THAT TO ME
5 AND THAT YOU ARE ALSO TO REFRAIN FROM READING, WATCHING OR
6 LISTENING TO ANY NEWSCAST CONCERNING THIS CASE?

7 A YES, SIR.

8 Q HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

9 A NO, SIR, THEY HAVE NOT.

10 Q NOW, MR. CALDWELL, I'M GOING TO ASK YOU SOME
11 QUESTIONS AND THEN I'M GOING TO ALLOW THE LAWYERS FROM EACH
12 SIDE TO ASK YOU SOME QUESTIONS.

13 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY IN ANY WAY, BUT BECAUSE
15 OF THIS CASE THAT WE ABOUT THIS WEEK, IT'S NECESSARY THAT
16 WE DO ASK CERTAIN QUESTIONS.

17 PLEASE KEEP IN MIND THAT THERE ARE NO RIGHT OR
18 WRONG ANSWERS TO THESE QUESTIONS.

19 A OKAY.

20 Q SO PLEASE JUST ANSWER THEM OPENLY AND HONESTLY AND
21 FULLY AND ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING YOUR
22 VIEW. WE JUST NEED TO KNOW WHAT YOUR VIEW IS.

23 ALSO, I WOULD INFORM YOU THAT YOU'RE PROBABLY
24 GOING TO BE ASKED SOME QUESTIONS THAT YOU HAVE NEVER EVEN
25 CONSIDERED BEFORE. SO PLEASE LISTEN TO THE QUESTIONS
CAREFULLY AND IF YOU NEED FOR ME OR EITHER OF THE LAWYERS

1 TO RESTATE THE QUESTION---

2 A YES, SIR.

3 Q ---SIMPLY ASK US TO DO SO AND WE'LL BE GLAD TO.

4 A UH-HUH.

5 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
6 ABOUT THIS EVENING WILL BE THE TERM OR THE WORD PENALTY.
7 THE MERE FACT THAT I EVEN MENTION THAT WORD DOES NOT IN ANY
8 WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE
9 IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
10 THAT?

11 A YES, SIR, I DO.

12 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
13 YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE LAW AS THE
14 JUDGE -- AS I, AS THE JUDGE OF THIS COURT, WOULD INSTRUCT
15 YOU, EVEN THOUGH YOU MIGHT NOT AGREE WITH THE LAW OR THINK
16 THAT IT OUGHT TO BE CHANGED IN SOME OTHER WAY?

17 A YES.

18 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

20 A YES.

21 Q NOW, IN A CRIMINAL CASE, MR. CALDWELL, THE STATE HAS
22 THE BURDEN OF PROVING A DEFENDANT'S GUILT. THE BURDEN OF
23 PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF
24 THE CRIMES WITH WHICH THE PERSON IS CHARGED BEYOND A
25 REASONABLE DOUBT. A DEFENDANT HAS ABSOLUTELY NO BURDEN TO

0935

1 PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
4 EVIDENCE AND THE LAW, AS I WOULD INSTRUCT YOU IN A
5 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
6 GUILTY?

7 A YES, SIR.

8 Q NOW, YOU UNDERSTAND, AS I EXPLAINED TO YOU AND YOUR
9 FELLOW JURORS YESTERDAY; THAT THIS IS A CASE IN WHICH THE
10 STATE SEEKS THE DEATH PENALTY AND I ALSO TOLD YOU YESTERDAY
11 THAT WHAT WE HAVE IS WHAT IS KNOWN AS A BIFURCATED TRIAL,
12 MEANING THAT IT'S SPLIT INTO TWO PARTS.

13 A YES.

14 Q THE GUILT PHASE AND THE SENTENCING PHASE.

15 NOW, IF YOU WERE A JUROR IN SUCH A CASE AND THE
16 JURY FOUND THE DEFENDANT NOT GUILTY OF MURDER IN THE GUILT
17 PHASE, DO YOU UNDERSTAND THAT THERE WOULD BE NO NEED TO
18 HAVE THE SECOND PHASE, THE SENTENCING PHASE?

19 A YES, SIR.

20 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
21 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
22 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
23 OF THE TRIAL?

24 A YES, SIR.

25 Q NOW, DURING THAT PHASE OF THE TRIAL, YOU WOULD BE

1 PRESENTED WITH EVIDENCE IN THE FORM OF AGGRAVATING
2 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.

3 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
4 INCIDENTS, DETAILS OR AN OCCURRENCE IN WHICH -- OR AN
5 OCCURRENCE WHICH OUR GENERAL ASSEMBLY HAS DECLARED BY LAW
6 THAT WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE OFFENSE OF
7 MURDER.

8 IN OTHER WORDS, THE PRESENCE OF AN AGGRAVATING
9 CIRCUMSTANCE INCREASES THE ENORMITY OR ADDS TO THE INJURY;
10 THAT BEING THE MURDER.

11 NOW, WHAT I MEAN BY THAT, IT'S A MURDER THAT'S
12 COMMITTED IN THE COMMISSION OF ANOTHER CRIME OR ACT SUCH AS
13 CRIMINAL SEXUAL CONDUCT OR BURGLARY OR THE LIKE---

14 A YES, SIR.

15 Q DO YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q NOW MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
18 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
19 OUR GENERAL ASSEMBLY HAS DECLARED BY STATUTE THAT REDUCES
20 THE SEVERITY OF THE CRIME OF MURDER AND IT MAY BE
21 CONSIDERED BY THE JURY AS EXTENUATING OR AS REDUCING THE
22 DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

23 NOW, THE TYPES OF THINGS THAT WE ARE TALKING
24 ABOUT WOULD BE A MURDER THAT WAS COMMITTED WHILE A
25 DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL

0937

1 DISABILITY OR DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO
2 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
3 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
4 IMPAIRED AS WELL AS CONSIDERING THE MENTALITY OF THE
5 DEFENDANT AT THE TIME OF THE CRIME.

6 DO YOU UNDERSTAND WHAT WE SPEAK OF WHEN WE REFER
7 TO MITIGATING CIRCUMSTANCES?

8 A YES.

9 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, THE
10 SENTENCING PHASE, COULD YOU, DEPENDING ON THE PARTICULAR
11 FACTS AND CIRCUMSTANCES OF THAT CASE INCLUDING THE
12 CONSIDERATION OF AGGRAVATING AS WELL AS MITIGATING
13 CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
14 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
15 PRISON?

16 A YES, SIR.

17 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
18 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
19 THAT CASE AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
20 CONCLUSION OF THE CASE, AND CONSIDERING AGGRAVATING AND
21 MITIGATING CIRCUMSTANCES, RETURN A SENTENCE OF DEATH?

22 A YES, SIR.

23 Q NOW, MR. CALDWELL, IF YOU WERE CHOSEN TO SERVE ON
24 THIS JURY, YOU WOULD BE SEQUESTERED, HOUSED IN A MOTEL FOR
25 THE DURATION OF THE TRIAL. IT'S GOING TO LAST ANYWHERE

1 FROM SEVEN TO TEN DAYS. IT COULD BE LESS THAN THAT---

2 A YES, SIR.

3 Q ---BUT I DON'T KNOW THAT FOR SURE. EXCEPT FOR THE
4 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
5 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
6 YOURSELF OR OF THOSE DEPENDENT ON YOU?

7 A NO, SIR.

8 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. PLEASE
9 ANSWER MS. FULLWOOD'S QUESTIONS.

10 MS. FULLWOOD: THANK YOU, YOUR HONOR.

11 EXAMINATION

12 BY MS. FULLWOOD:

13 Q GOOD EVENING, MR. CALDWELL. HOW ARE YOU---

14 A HOW ARE YOU DOING?

15 Q FINE. THANK YOU.

16 MR. CALDWELL, AS YOU'VE BEEN TOLD, I'M BETH
17 FULLWOOD. ALONG WITH DUFFIE STONE, WE REPRESENT GARY
18 TERRY, WHO IS SEATED AT THE END OF THE TABLE.

19 A YES, MA'AM.

20 Q YOU SEE THEM ALL DOWN THERE.

21 A I GOT THEM.

22 Q OKAY. OKAY. I'VE HAD A CHANCE TO LOOK OVER THE
23 JUROR QUESTIONNAIRE THAT YOU SENT IN WITH YOUR JUROR
24 CARD---

25 A YES, MA'AM.

0939

1 Q ---AND IF YOU DON'T MIND, I WOULD LIKE TO START OUT
2 BY ASKING A COUPLE OF FOLLOW-UP QUESTIONS TO SOME OF YOUR
3 ANSWERS.

4 A OKAY.

5 Q I SEE THAT YOU ARE A DISPATCHER FOR THE HIGHWAY
6 PATROL?

7 A YES, MA'AM, I AM.

8 Q IS -- DO YOU WORK LIKE THE CENTRAL OFFICE IN COLUMBIA
9 AND---

10 A WE WORK DISTRICT ONE, HIGHWAY PATROL, ON BROAD RIVER
11 ROAD. SO WE'RE DISTRICT ONE, PATROL HEADQUARTERS FOR THE
12 STATE OF SOUTH CAROLINA.

13 Q OKAY. AND WHAT AREAS DOES DISTRICT ONE---

14 A THAT COVERS AIKEN COUNTY, RICHLAND COUNTY, LEXINGTON
15 COUNTY, BUREAU OF PROTECTIVE SERVICES WHICH GUARDS THE
16 GOVERNOR'S MANSION, THE STATE HOUSE AND STATE TRANSPORT
17 POLICE.

18 Q OH, I SEE. OKAY. I ALSO NOTICED THAT YOU MARKED
19 THAT YOU HAD APPLIED TO SEVERAL LAW ENFORCEMENT AGENCIES?

20 A YES, MA'AM, I HAVE. I'VE APPLIED TO BE A LAW
21 ENFORCEMENT OFFICER, BUT I HAVE NOT, AS FAR AS BEING
22 COMMISSIONED OR BEEN ON ANY INTERVIEWS OR ANYTHING YET.

23 Q I SEE. HAVE YOU APPLIED TO ANY LAW ENFORCEMENT
24 AGENCIES IN LEXINGTON COUNTY?

25 A LEXINGTON COUNTY, LEXINGTON POLICE DEPARTMENT AND

1 LEXINGTON COUNTY HIGHWAY PATROL.

2 Q OKAY.

3 A I SURE HAVE.

4 Q WELL, MR. CALDWELL, IT SEEMS LIKE YOU ARE SINCERELY
5 INTERESTED IN PURSUING A CAREER IN LAW ENFORCEMENT?

6 A YES, MA'AM, I AM.

7 Q OKAY. AND I KNOW THAT IN AND OF ITSELF, YOU KNOW,
8 THAT'S A FINE THING AND IT MAY OR MAY NOT MEAN A THING AS
9 IT RESULTS TO THIS CASE---

10 A YES, MA'AM.

11 Q ---AND I DON'T MEAN TO BE INTRUSIVE OR MAKE ANY KIND
12 OF IMPLICATION THAT I DON'T REALLY MEAN TO, BUT YOU'RE THE
13 ONLY PERSON WHO KNOWS THE ANSWER TO THE QUESTION I WANT TO
14 ASK YOU. THAT QUESTION IS WHETHER YOUR WORK RIGHT NOW IN
15 LAW ENFORCEMENT AGENCY -- WITH A LAW ENFORCEMENT AGENCY AND
16 WHETHER YOUR DESIRE TO CONTINUE YOUR CAREER APPARENTLY AS A
17 LAW ENFORCEMENT OFFICER---

18 A YES, MA'AM.

19 Q ---WITH DIRECT DUTIES IN THAT FIELD, WHETHER YOU
20 BELIEVE THAT YOU CAN ABSOLUTELY TELL ME THAT AND THE COURT
21 AND THE PROSECUTION THAT YOU ARE A HUNDRED PERCENT SURE YOU
22 COULD BE EQUALLY UNBIASED TOWARDS THE PROSECUTION IN THIS
23 CASE AND THE DEFENSE OF THIS CASE?

24 A YES, MA'AM, I DO.

25 Q OKAY---

0941

A UNTIL THE CASE IS HEARD, THERE'S NO -- I MEAN, AS FAR
2 AS OPINIONS, I REALIZE THAT'S THE DUTY OF THE JURY IS UNTIL
3 YOU GET ALL THE FACTS AND, YOU KNOW, AS YOU ARE INSTRUCTED
4 BY THE JUDGE AND WHAT NOT TO LISTEN TO THE CASE, YOUR OWN
5 OPINIONS REALLY DON'T COUNT IN THIS CASE.

6 Q OKAY. OKAY.

7 A THAT'S THE WAY I FEEL PERSONALLY.

8 Q AND DO YOU FEEL AND, AGAIN, THIS IS SOMETHING ONLY
9 YOU WOULD KNOW, DO YOU FEEL LIKE YOU HAVE ANY KIND OF
10 BIASED IN FAVOR OF LAW ENFORCEMENT JUST SORT OF STARTING
11 OUT FROM THE GET-GO?

12 A NO, MA'AM.

13 Q OKAY. OKAY. AND, AGAIN, I DON'T MEAN TO BE---

14 A RIGHT. I UNDERSTAND.

15 Q IT'S JUST SOMETHING, YOU KNOW, WE JUST HAVE TO
16 ADDRESS THESE HARD QUESTIONS---

17 A YES, MA'AM.

18 Q AND I APPRECIATE YOUR FORTHRIGHT ANSWERS.

19 A YES, MA'AM.

20 Q NOW, DO YOU UNDERSTAND THAT WHEN WE ARE TALKING ABOUT
21 A MURDER CASE, THAT MURDER MEANS KILLING SOMEONE WITH
22 MALICE AFORETHOUGHT?

23 A YES, MA'AM.

24 Q OKAY. AND DO YOU REALIZE THAT IF WE SAY THAT SOMEONE
25 HAS COMMITTED MURDER, THAT RULES OUT THAT THEY HAVE ACTED

1 IN SELF-DEFENSE OR HAVE KILLED SOMEBODY BECAUSE OF AN
2 ACCIDENT---

3 A RIGHT.

4 Q ---OR KILLED SOMEBODY BECAUSE OF HEAT OF PASSION?

5 A YES, MA'AM.

6 Q OKAY. AND JUDGE CLARY EXPLAINED TO YOU HOW IN A
7 CAPITAL CASE THERE MIGHT BE TWO TRIALS?

8 A YES, MA'AM.

9 Q OKAY. AND THE SECOND TRIAL MAY OR MAY NOT HAPPEN---

10 A RIGHT.

11 Q ---DEPENDING ON WHAT HAPPENS IN THE FIRST. BUT EVEN
12 SO, I NEED TO ASK YOU NOW ABOUT SOME OF YOUR ATTITUDES
13 ABOUT THAT SECOND PART OF THE TRIAL---

14 A YES, MA'AM.

15 Q ---BECAUSE THIS IS THE ONLY TIME I HAVE TO ASK YOU
16 QUESTIONS.

17 A YES, MA'AM.

18 Q ALL RIGHT. DO YOU BELIEVE THAT IF YOU WERE A JUROR
19 IN A DEATH PENALTY CASE AND YOU CAME TO THE SECOND PART OF
20 THE TRIAL AND YOU LISTENED TO ALL OF THE EVIDENCE FROM BOTH
21 SIDES, DO YOU THINK THAT YOU COULD IMPOSE A LIFE SENTENCE
22 EVEN THOUGH YOU HAVE ALREADY FOUND THAT DEFENDANT GUILTY OF
23 MURDER, RAPE OR BURGLARY?

24 A YES, MA'AM.

25 Q OKAY. AND ON THE OTHER HAND, IF YOU WERE A JUROR IN

0943

1 THE SAME TYPE OF TRIAL, DO YOU THINK THAT AFTER HEARING THE
 2 EVIDENCE, YOU COULD IMPOSE A DEATH SENTENCE IF THE EVIDENCE
 3 WARRANTED IT?
 4 A YES, MA'AM.
 5 Q OKAY. SO, I GUESS, WHAT YOU ARE TRYING TO TELL ME IS
 6 YOU BELIEVE YOU COULD BE FAIR TO BOTH SIDES AND LISTEN TO
 7 ALL OF THE EVIDENCE BEFORE YOU WOULD MAKE UP YOUR MIND?
 8 A YES, MA'AM, I DO.
 9 Q OKAY. WELL, I THINK THAT'S WHAT WE ARE LOOKING FOR.
 10 A ALL RIGHT.
 11 Q THANK YOU VERY MUCH.
 12 A YES, MA'AM.
 13 THE COURT: SOLICITOR.
 14 MR. CHASE: YOUR HONOR, COULD WE JUST HAVE A
 15 BRIEF SIDE BAR?
 16 THE COURT: YES, SIR.
 17 (WHEREUPON, A BENCH CONFERENCE WAS
 18 HELD AT THIS TIME OFF THE RECORD.)
 19 THE COURT: ALL RIGHT. MR. CHASE.
 20 MR. CHASE: THANK YOU, YOUR HONOR.
 21 EXAMINATION
 22 BY MR. CHASE:
 23 Q HI, MR. CALDWELL.
 24 A GOOD EVENING.
 25 Q MY NAME IS TOM CHASE AND I'M AN ASSISTANT SOLICITOR

1 HERE IN LEXINGTON AND I WILL BE PRESENTING THE CASE ON
2 BEHALF OF THE PROSECUTION, ALONG WITH DEPUTY SOLICITOR,
3 FRAN HUMPHRIES, AND SOLICITOR DONNIE MYERS, WHO AREN'T
4 PRESENT IN THE COURTROOM RIGHT NOW---

5 A YES, SIR.

6 Q ---THEY'VE GOT OTHER OBLIGATIONS THEY HAVE TO
7 FULFILL.

8 I THINK YOU'VE BEEN VERY CLEAR AND I THINK YOU'VE
9 BEEN VERY HONEST AND I JUST WANTED TO ASK YOU ONE MORE
10 QUESTION---

11 A YES.

12 Q ---ACTUALLY, TWO MORE QUESTIONS.

13 A YES.

14 Q ONE IS I WANT TO MAKE SURE THAT YOU UNDERSTAND KIND
15 OF A PROCEDURAL POINT THAT GOES TO THE IMPOSITION OF A
16 POTENTIAL DEATH SENTENCE.

17 IN SOUTH CAROLINA -- LET'S MAKE AN ASSUMPTION
18 HERE. YOU GET PAST THE GUILT PHASE. THE JURY, ALL TWELVE
19 JURORS, FIND THE INDIVIDUAL GUILTY OF MURDER PLUS AN
20 ADDITIONAL CIRCUMSTANCE.

21 A YES.

22 Q AND THEN YOU GET TO THAT PENALTY PHASE AND YOU HEAR
23 ALL OF THE EVIDENCE IN AGGRAVATION AND MITIGATION AND ALL
24 TWELVE JURORS DECIDE THAT A DEATH SENTENCE IS APPROPRIATE
25 IN THE CASE?

0945

1 A YES.

2 Q IN ORDER FOR THAT SENTENCE TO BE IMPOSED, EACH JUROR

3 AND IF YOU WERE ON THAT JURY, THAT WOULD INCLUDE YOU---

4 A YES.

5 Q ---WOULD ACTUALLY HAVE TO SIGN THEIR NAME ON THE

6 SENTENCE FOR THE IMPOSITION OF THE DEATH SENTENCE---

7 A YES.

8 Q ---THERE WOULD ACTUALLY BE TWELVE LINES ON THAT PAGE.

9 WOULD THE MERE FACT THAT YOU HAD TO SIGN YOUR NAME ON THAT

10 PAGE, PREVENT YOU OR HINDER YOU FROM IMPOSING A SENTENCE OF

11 DEATH WHERE YOU FOUND UNDER THE FACTS AND CIRCUMSTANCES

12 THAT IT WAS THE APPROPRIATE SENTENCE?

13 A NO, SIR, IT WOULD NOT.

14 Q OKAY. MR. CALDWELL, ALL WE ARE LOOKING FOR IN THIS

15 CASE IS A JUROR THAT CAN BE UNBIASED, IMPARTIAL, FAIR TO

16 BOTH THE STATE OF SOUTH CAROLINA AND ALSO THE DEFENDANT IN

17 THIS CASE, MR. GARY TERRY. ARE YOU THAT TYPE JUROR?

18 A YES, SIR, I AM.

19 Q IF YOU CAN DO THAT, THAT'S ALL WE CAN ASK. THANK

20 YOU, MR. CALDWELL.

21 A YES.

22 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

23 MS. FULLWOOD: NOTHING FURTHER, JUDGE.

24 THE COURT: FROM THE STATE?

25 MR. CHASE: NO, SIR, YOUR HONOR.

1 THE COURT: MR. CALDWELL, I WANT TO THANK YOU
2 VERY MUCH FOR YOUR PARTICIPATION IN OUR PROCESS, NOT ONLY
3 TODAY, BUT ALSO YESTERDAY.

4 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
5 POTENTIAL JUROR IN THIS CASE.

6 WITH THAT QUALIFICATION, THERE COMES SOME
7 INSTRUCTIONS THAT I'M GOING TO GIVE YOU.

8 FIRST OF ALL, YOU ARE NOT TO DISCUSS THIS CASE
9 WITH YOUR FELLOW JURORS, YOUR FAMILY, FRIENDS OR ANYONE
10 ELSE.

11 ALSO, IF ANYONE ATTEMPTS TO CONTACT YOU
12 CONCERNING THIS CASE, ONCE AGAIN, YOU ARE TO GATHER AS MUCH
13 INFORMATION ABOUT THAT INDIVIDUAL OR INDIVIDUALS AS YOU
14 POSSIBLY CAN AND REPORT THAT TO ME IMMEDIATELY BECAUSE
15 THAT'S A VERY SERIOUS MATTER AND I WOULD DEAL WITH IT
16 ACCORDINGLY.

17 ALSO, YOU ARE TO CONTINUE TO REFRAIN FROM
18 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
19 CONCERNING THIS CASE.

20 VERY SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER
21 IN THIS CASE IS WHAT YOU SEE AND HEAR IN THIS COURTROOM.

22 THE JUROR: YES, SIR.

23 THE COURT: NOTHING MORE AND NOTHING LESS.

24 NOW, WHEN YOU LEAVE HERE TODAY, YOU NEED TO GO
25 HOME AND START PACKING BECAUSE YOU NEED TO BE BACK HERE IN

0947

1 THE MORNING AT NINE-THIRTY---

2 THE JUROR: YES, SIR.

3 THE COURT: PLEASE REPORT TO THE COURTROOM. DO
4 NOT BRING YOUR BAGGAGE INTO THE COURT HOUSE---

5 THE JUROR: YES, SIR.

6 THE COURT: ---IF YOU ARE SELECTED AS A JUROR,
7 YOUR BAGGAGE AND YOUR BELONGINGS -- AND YOURSELF WOULD BE
8 TRANSPORTED TO THE MOTEL THAT YOU WOULD BE HOUSED IN FOR
9 THE DURATION OF THE TRIAL SO YOU WOULD BE SETTLED DOWN
10 THERE. PLEASE LEAVE WHATEVER YOU BRING IN YOUR VEHICLE AND
11 THAT WILL BE OBTAINED AFTER YOU'RE SEATED AS A JUROR.

12 IF YOU ARE NOT SELECTED AS A JUROR IN THE CASE---

13 THE JUROR: YES, SIR.

14 THE COURT: ---THEN WE WOULD THANK YOU VERY MUCH
15 FOR YOUR PARTICIPATION HERE THIS WEEK AND SEND YOU ON ABOUT
16 YOUR REGULAR ACTIVITIES.

17 THANK YOU VERY MUCH FOR BEING HERE THIS AFTERNOON
18 AND I'LL LOOK FORWARD TO SEEING YOU IN THE MORNING AROUND
19 NINE-THIRTY.

20 THE JUROR: YES, SIR. THANK YOU.

21 THE COURT: THANK YOU, SIR.

22 (WHEREUPON, THE JUROR WAS EXCUSED
23 AT THIS TIME.)

24 THE COURT: LET THE RECORD REFLECT THAT JUROR
25 NUMBER 43, BRANDON CALDWELL, IS QUALIFIED TO SERVE AS A

1 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
2 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
3 AMENDED.

4 ALL RIGHT. NEXT WILL BE JUROR NUMBER 216, CONNIE
5 D. SOLES.

6 CONNIE D. SOLES,
7 (JUROR NUMBER 216, WHITE FEMALE,
8 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

9 EXAMINATION

10 BY THE COURT:

11 Q GOOD EVENING. YOU ARE CONNIE SOLES?

12 A YES, SIR.

13 Q NOW, MS. SOLES, YOU UNDERSTAND THAT YOU ARE UNDER
14 OATH FOR THIS PROCEEDING TONIGHT?

15 A YES, SIR.

16 Q AND YOU ALSO REMEMBER THAT I GAVE YOU CERTAIN
17 INSTRUCTIONS YESTERDAY TOGETHER WITH ALL OF YOUR FELLOW
18 JURORS THAT YOU WERE NOT TO DISCUSS THIS CASE AND IF ANYONE
19 ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT THAT
20 WAS TO BE REPORTED TO ME AND THAT YOU WERE ALSO TO REFRAIN
21 FROM READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
22 CONCERNING THIS CASE.

23 NOW, HAVE ANY OF THOSE INSTRUCTIONS BEEN
24 VIOLATED?

25 A NO, SIR.

0919

1 Q NOW, MS. SOLES, I'M GOING TO BE ASKING YOU SOME
2 QUESTIONS AND THEN THE LAWYERS FROM EACH SIDE WILL ALSO BE
3 ALLOWED TO ASK YOU SOME QUESTIONS.

4 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
5 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
6 THESE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S
7 EXTREMELY IMPORTANT THAT CERTAIN QUESTIONS ARE RESPONDED
8 TO.

9 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
10 ANSWERS TO THESE QUESTIONS. PLEASE ANSWER THEM OPENLY AND
11 HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO ONE IS
12 CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW WHAT YOUR VIEW
13 IS.

14 AND ALSO, I WOULD TELL YOU THAT WE'RE PROBABLY
15 GOING TO ASK SOME QUESTIONS OF YOU THAT YOU MAYBE HAVE
16 NEVER EVEN CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO
17 THE QUESTIONS AS THEY ARE POSED TO YOU AND IF YOU DO NOT
18 UNDERSTAND THEM AT ANY TIME OR NEED THEM REPEATED OR
19 CLARIFIED, SIMPLY ASK US.

20 A SURE.

21 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
22 DISCUSSING AND TALKING ABOUT WILL BE THE TERM PENALTY. THE
23 MERE FACT THAT I EVEN MENTION THAT WORD OR WE EVEN TALK
24 ABOUT PENALTY DOES NOT INDICATE ANYTHING ABOUT THE
25 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE

1 INNOCENT. YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q NOW, LET'S SUPPOSE IF YOU WERE A JUROR IN A CRIMINAL
4 CASE, COULD YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE
5 LAW, AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS COURT,
6 EVEN THOUGH YOU MAY NOT AGREE WITH THAT LAW OR THINK THAT
7 IT SHOULD BE SOME OTHER WAY?

8 A I THINK I COULD.

9 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
10 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

11 A YES, SIR.

12 Q NOW, IN A CRIMINAL CASE, MS. SOLES, THE STATE HAS THE
13 BURDEN OF PROVING A DEFENDANT'S GUILT. THE BURDEN OF PROOF
14 THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF THE
15 CRIMES WITH WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT.
16 A DEFENDANT HAS NO BURDEN TO PROVE HIMSELF INNOCENT. DO
17 YOU UNDERSTAND THIS?

18 A YES, SIR.

19 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
20 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
21 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
22 GUILTY?

23 A YES, SIR.

24 Q NOW, YOU UNDERSTAND FROM WHAT I TOLD YOU YESTERDAY,
25 THAT THIS IS A CASE IN WHICH THE STATE SEEKS THE DEATH

0951

1 PENALTY AND THAT THIS IS WHAT WE CALL A BIFURCATED TRIAL,
2 MEANING THAT THERE ARE TWO PARTS TO IT. THE GUILT PHASE,
3 THE SENTENCING PHASE.

4 AND DO YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
5 THAT INSTANCE, IN THE GUILT PHASE, THE JURY DETERMINED THAT
6 THE DEFENDANT WAS NOT GUILTY OF MURDER, THAT THERE WOULD
7 NOT BE A SECOND PART OF THE TRIAL? THERE WOULD NOT BE A
8 SENTENCING PHASE?

9 A RIGHT.

10 Q HOWEVER, IF THE JURY FOUND THAT THE DEFENDANT WAS
11 GUILTY OF MURDER AND YOU WERE A JUROR IN THAT PARTICULAR
12 PHASE OF THE CASE, DO YOU UNDERSTAND THAT YOU WOULD THEN
13 MOVE TO THE SENTENCING PHASE?

14 A RIGHT.

15 Q NOW, DURING THAT PHASE OF THE TRIAL, THERE WOULD BE
16 EVIDENCE THAT WOULD BE PRESENTED IN THE FORM OF AGGRAVATING
17 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

18 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
19 INCIDENTS, DETAILS, OCCURRENCES WHICH OUR GENERAL ASSEMBLY
20 HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO AGGRAVATE
21 THE OFFENSE OF MURDER.

22 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
23 ACCOMPANIED A MURDER INCREASES THE ENORMITY OR ADDS TO THE
24 INJURY OF THE CRIME OF MURDER.

25 FOR EXAMPLE, IT WOULD BE A MURDER THAT IS

1 COMMITTED ALSO -- THAT IS ALSO ACCOMPANIED BY A CRIME SUCH
2 AS CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE LIKE. DO YOU
3 UNDERSTAND THAT?

4 A YES, SIR.

5 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
6 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH OUR GENERAL
7 ASSEMBLY HAS ALSO DECLARED BY STATUTE THAT REDUCES THE
8 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED BY
9 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
10 CULPABILITY OR RESPONSIBILITY.

11 AND WHAT WE ARE TALKING ABOUT IN THAT REGARD
12 WOULD BE A MURDER COMMITTED WHILE A DEFENDANT WAS UNDER THE
13 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
14 OF A DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT
15 OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
16 SUBSTANTIALLY IMPAIRED OR THE MENTALITY OF A DEFENDANT AT
17 THE TIME OF THE CRIME. DO YOU UNDERSTAND THE THINGS THAT
18 WE ARE TALKING ABOUT WHEN WE SPEAK ABOUT MITIGATING
19 CIRCUMSTANCES?

20 A YES, SIR.

21 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, THE
22 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE PARTICULAR
23 FACTS AND CIRCUMSTANCES OF THAT CASE, CONSIDERING
24 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW, AS I
25 WOULD INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A

0953

1 SENTENCE OF LIFE IN PRISON?

2 A YES, SIR.

3 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
4 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
5 THAT CASE, ONCE AGAIN, CONSIDERING AGGRAVATING AND
6 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
7 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
8 DEATH?

9 A YES, SIR.

10 Q NOW, MS. SOLES, IF YOU ARE CHOSEN TO SERVE ON THIS
11 JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
12 HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I DON'T
13 KNOW HOW LONG THAT'S GOING TO BE. IT COULD BE SEVEN TO TEN
14 DAYS. IT MAY BE LESS THAN THAT. I JUST DON'T HAVE ANY
15 IDEA. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU WOULD
16 SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE HEALTH OR
17 WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON YOU?

18 A NO, SIR.

19 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. PLEASE
20 ANSWER ANY OF MR. STONE'S QUESTIONS.

21 MR. STONE.

22 MR. STONE: THANK YOU, YOUR HONOR.

23 EXAMINATION

24 BY MR. STONE:

25 Q HEY, MS. SOLES.

1 A HI THERE.

2 Q GOOD EVENING. MY NAME IS DUFFIE STONE AND, I THINK,
3 I'VE BEEN INTRODUCED BEFORE, BUT I WANTED TO DO THAT AGAIN.

4 THIS IS BETH FULLWOOD. MS. FULLWOOD AND I
5 REPRESENT MR. TERRY, WHO IS AT THE END OF THE TABLE OVER
6 THERE.

7 I HAVE GOT YOUR QUESTIONNAIRE AND I JUST WANT TO
8 FOLLOW-UP ON SOME QUESTIONS IN THAT. THE JUDGE INDICATED
9 TO YOU THAT I WOULD HAVE TO ASK YOU SOME QUESTIONS THAT MAY
10 BE A LITTLE BIT PROBING AND I APOLOGIZE FOR THAT, BUT I'VE
11 GOT TO ASK YOU THE QUESTIONS. SO, I'M SORRY, BUT HERE WE
12 GO.

13 YOU HAVE A DAUGHTER THAT'S 23, IS THAT RIGHT?

14 A RIGHT.

15 Q WHAT DOES SHE DO? IS SHE IN SCHOOL OR WHAT DOES SHE
16 DO?

17 A SHE'S MARRIED AND LIVES IN NORTH CAROLINA.

18 Q ALL RIGHT. WHAT DOES HER HUSBAND DO?

19 A HE IS A -- LET ME THINK OF WHAT IT'S CALLED. HE DOES
20 BUILDING MAINTENANCE WORK.

21 Q OKAY.

22 A HE'S THE FOREMAN OF THAT JOB.

23 Q ALL RIGHT. AND YOU ARE A CLAIMS REP, IS THAT RIGHT?

24 A RIGHT.

25 Q DO -- IS THAT -- WHAT I THINK THAT IS YOU'RE AN

0955

1 INSURANCE ADJUSTER BASICALLY?

2 A RIGHT.

3 Q IS THAT RIGHT? OKAY. WHAT COMPANY DO YOU WORK FOR?

4 A KEY RISK MANAGEMENT SERVICES.

5 Q OKAY. AND YOUR HUSBAND WORKS AS A VOCATIONAL

6 REHABILITATION COUNSELOR?

7 A HE IS A REHAB ASSOCIATE BASICALLY. WOULD YOU LIKE ME

8 TO GO INTO WHAT HE DOES?

9 Q IF YOU DON'T MIND.

10 A HE DOES JOB SIMULATIONS FOR PEOPLE THAT ARE

11 HANDICAPPED OR HAVE BEEN REFERRED BY THEIR TREATING

12 PHYSICIAN OR BY EVEN WORKERS' COMP.

13 Q I SEE. OKAY.

14 A THEY DO -- THEY TAKE -- THEY HAVE CONTRACT WORK WITH

15 VARIOUS COMPANIES IN THE COLUMBIA AREA---

16 Q RIGHT.

17 A ---AND DO WORK FOR THEM AND ACTUALLY DO A JOB.

18 Q OKAY. SO DOES -- HE DOES SOME PLACEMENT ALONG WITH

19 THAT AS WELL?

20 A UH---

21 Q DOES HE ACTUALLY PLACE THEM IN THESE BUSINESSES OR---

22 A NO. THEY -- THEY DO THE JOB SIMULATIONS AT THE

23 BOSTON AVENUE LOCATION.

24 Q I SEE. I SEE. SO HE BASICALLY SEES IF -- IF THE

25 HANDICAPPED PERSON COMES IN, HE MAKES A DETERMINATION OF

- 1 WHETHER OR NOT THEY CAN DO THIS PARTICULAR JOB?
- 2 A RIGHT.
- 3 Q I SEE. OKAY. AND I APOLOGIZE. HAVE NEVER DONE THAT
- 4 BEFORE AND I JUST WANT TO MAKE SURE I UNDERSTOOD IT.
- 5 ALSO, ON YOUR FORM, I THINK, YOU INDICATED THAT
- 6 YOU HAD YOUR HUSBAND'S UNCLES WERE IN LAW ENFORCEMENT? WHO
- 7 -- WHO ARE THOSE PEOPLE?
- 8 A HE HAS UNCLE AVERY MARTIN.
- 9 Q OKAY.
- 10 A AND CHALMERS---
- 11 Q RIGHT. CHALMERS SOLES---
- 12 A ---SOLES, RIGHT.
- 13 Q OKAY. WHERE DO THEY WORK?
- 14 A BOTH OF THEM ARE RETIRED NOW.
- 15 Q OH, ARE THEY REALLY? OKAY.
- 16 A I DO BELIEVE THAT HIS UNCLE "CHUBBY" -- THAT HE CALLS
- 17 HIM "CHUBBY" CHALMERS MARTIN IS RUNNING A RESTAURANT ON
- 18 BLUFF RODE.
- 19 Q ALL RIGHT. WERE THEY IN RICHLAND COUNTY OR LEXINGTON
- 20 COUNTY?
- 21 A UH -- THEY WERE ACTUALLY IN LEXINGTON COUNTY, I
- 22 BELIEVE.
- 23 Q OKAY. SOME OF THE WITNESSES---
- 24 A THIS WAS BEFORE I EVEN KNEW HIM.
- 25 Q I'M SORRY AND I DIDN'T MEAN TO INTERRUPT YOU.

0957

- 1 A THAT'S OKAY.
- 2 Q SOME OF THE WITNESSES THAT YOU MAY HEAR ARE FROM
- 3 LEXINGTON COUNTY. THAT WOULDN'T CAUSE YOU ANY PROBLEM,
- 4 WOULD IT?
- 5 A NO, SIR.
- 6 Q OKAY. YOU MAY OR MAY NOT HEAR SOME WITNESSES AND
- 7 THAT ASSOCIATION WITH LAW ENFORCEMENT WOULDN'T NECESSARILY
- 8 AFFECT YOU ONE WAY OR THE OTHER, WOULD IT?
- 9 A NO, SIR.
- 10 Q ALL RIGHT. HAVE YOU GIVEN ANY THOUGHT TO THE DEATH
- 11 PENALTY? WHAT'S YOUR OPINION OF THE DEATH PENALTY?
- 12 A I THINK THAT THAT HAS TO DO A LOT WITH THE EVIDENCE
- 13 REGARDING THE CASE.
- 14 Q ALL RIGHT. THAT'S FAIR. WHAT WE WILL BE DOING.
- 15 I'VE GOT TO ASK YOU ABOUT SOME STUFF THAT MAY OR MAY NOT
- 16 HAPPEN, OKAY. YOU MAY OR MAY NOT BE ON THE JURY. YOU MAY
- 17 OR MAY NOT -- IF YOU GET ON THE JURY, YOU MAY NOT EVER GET
- 18 TO A SENTENCING PHASE. YOU UNDERSTAND THAT?
- 19 A UH-HUH.
- 20 Q BUT I'VE GOT TO ASK YOU SOME QUESTIONS ABOUT THE
- 21 SENTENCING PHASE ANYWAY. IT'S A LITTLE DIFFERENT. HAVE
- 22 YOU EVER BEEN INVOLVED IN A CRIMINAL TRIAL BEFORE? HAVE
- 23 YOU EVER SAT ON A JURY?
- 24 A NO, SIR.
- 25 Q IN A CRIMINAL TRIAL, GENERALLY, NOT A DEATH PENALTY

1 CASE, ALL YOU MAKE A DETERMINATION IS GUILT AND INNOCENCE,
2 OKAY.

3 IN A DEATH PENALTY CASE, YOU MAKE THAT
4 DETERMINATION FIRST. IF IT'S GUILTY, THEN YOU GO TO A
5 SENTENCING PHASE. SO WHAT THAT MEANS IS YOU SIT AS A JUROR
6 IN A SENTENCING PHASE. YOU LISTEN TO AGGRAVATING
7 CIRCUMSTANCE, AS THE JUDGE TOLD YOU, AND MITIGATING
8 CIRCUMSTANCES, AGAIN, AS THE JUDGE TOLD YOU, AND THEN YOU
9 MAKE A DECISION WHETHER OR NOT THAT PERSON SHOULD RECEIVE
10 THE DEATH PENALTY OR LIFE IN PRISON. YOU UNDERSTAND THAT?

11 A UH-HUH.

12 Q AND THE INTERESTING THING ABOUT THIS IS THAT ONCE
13 YOU'RE IN A SENTENCING PHASE, YOU HAVE ALREADY FOUND ALL OF
14 THE EVIDENCE AS FAR AS GUILT THAT NECESSARILY YOU'RE GOING
15 TO HAVE, OKAY? YOU ALREADY DETERMINED THE PERSON IS GUILTY
16 OF MURDER. YOU'VE ALSO, NOT ONLY THAT, YOU'VE ALSO FOUND
17 THE PERSON IS GUILTY OF MURDER AND SOMETHING ELSE, RAPE,
18 BURGLARY, MAYBE BOTH. YOU UNDERSTAND THAT?

19 A YES, SIR.

20 Q OKAY. SO IN A SENTENCING PHASE, THIS IS WHAT THE
21 JUDGE WAS GETTING AT WHEN HE ASKED YOU COULD YOU CONSIDER
22 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND COME BACK WITH
23 A DEATH SENTENCE? COULD YOU DO THAT?

24 A I COULD.

25 Q OKAY. AND COULD YOU ALSO CONSIDER AGGRAVATING AND

0959

1 MITIGATING CIRCUMSTANCES DESPITE THE FACT THAT YOU'VE
2 ALREADY -- NO QUESTION THEY'RE GUILTY OF MURDER AND NO
3 QUESTION THEY'RE GUILTY OF RAPE, COULD YOU ALSO GIVE THAT
4 PERSON A LIFE SENTENCE?

5 A BASED ON THE CIRCUMSTANCES, YES.

6 Q OKAY. BUT NOT BASED ON THE CIRCUMSTANCES OF THE CASE
7 ITSELF, BUT ON THE AGGRAVATING AND MITIGATING?

8 A EXACTLY.

9 Q ALL RIGHT. AND THAT'S FINE. I DON'T THINK I HAVE
10 ANYTHING ELSE, BUT I THANK YOU FOR ANSWERING MY QUESTIONS
11 TRUTHFULLY.

12 THANK YOU.

13 A UH-HUH.

14 THE COURT: MR. CHASE.

15 MR. CHASE: THANK YOU, YOUR HONOR.

16 EXAMINATION

17 BY MR. CHASE:

18 Q HI, MS. SOLES.

19 A HI THERE.

20 Q MY NAME IS TOM CHASE AND I, ALONG WITH DEPUTY
21 SOLICITOR, FRAN HUMPHRIES, WILL BE PROSECUTING THIS CASE
22 ALONG WITH DONNIE MYERS, THE SOLICITOR HERE IN LEXINGTON.

23 I JUST WANTED TO ASK YOU A FEW FOLLOW-UP
24 QUESTIONS TO THAT -- TO WHAT MR. STONE ASKED YOU.

25 THE FIRST THING IS A PROCEDURAL QUESTION THAT

1 GOES TO THE IMPOSITION OF A POTENTIAL DEATH SENTENCE..

2 UNDER THE LAW OF SOUTH CAROLINA, IN ORDER FOR A
3 DEATH SENTENCE TO BE IMPOSED, EACH JUROR THAT WAS INVOLVED
4 IN DECIDING THAT THAT WAS THE APPROPRIATE SENTENCE, WOULD
5 HAVE TO SIGN THE VERDICT FORM SAYING WE, THE JURY, FIND
6 THAT DEATH IS THE APPROPRIATE SENTENCE FOR WHATEVER THE
7 CASE IS AND THERE ACTUALLY ARE TWELVE LINES ON THE VERDICT
8 FORM.

9 IN THE EVENT THAT YOU WERE ON THE JURY AND YOU
10 MOVED PAST THE GUILT PHASE AND FOUND THE PERSON GUILTY,
11 MOVED INTO THE PENALTY PHASE, LISTENED TO ALL OF THE
12 EVIDENCE AND DECIDED THAT THE APPROPRIATE SENTENCE IN THIS
13 CASE WAS A SENTENCE OF DEATH, AS OPPOSED TO LIFE, WOULD THE
14 FACT THAT YOU HAD TO PLACE YOUR NAME, PHYSICALLY PLACE YOUR
15 NAME ON THAT VERDICT FORM IN ORDER TO IMPOSE THAT SENTENCE,
16 WOULD THAT IMPAIR YOUR ABILITY TO NOT ONLY CONSIDER THE
17 DEATH PENALTY, BUT ALSO IMPOSE IT?

18 A NO, SIR.

19 Q I KNOW THAT'S A LOT -- A LOT OF AIR I WAS THROWING
20 OUT.

21 A AND I HAD TO LISTEN VERY CAREFULLY.

22 Q AND IF YOU WANT ME TO GO OVER ANY PART OF THAT, YOU
23 JUST LET ME KNOW?

24 A NO, I THINK I UNDERSTOOD WHAT YOU SAID.

25 Q BASICALLY, YOU WOULD HAVE TO SIGN THE FORM AND YOU

0961 1 DON'T HAVE ANY PROBLEM DOING THAT, PLACING YOUR NAME ON
2 THERE?
3 A NO, SIR.
4 Q MS. SOLES, IS THERE ANYTHING IN YOUR BACKGROUND --
5 THIS IS A STRANGE QUESTION. I DON'T REALLY WANT TO KNOW
6 THE BASIS FOR YOUR BELIEF AND IT'S NONE OF MY BUSINESS, BUT
7 IS THERE ANYTHING IN YOUR -- WHETHER IT'S YOUR RELIGIOUS
8 BACKGROUND, YOUR UPBRINGING, YOUR FAMILY, YOUR RELATIONSHIP
9 WITH ANY INDIVIDUAL THAT WOULD PREVENT YOU IN ANY GIVEN
10 CASE AFTER CONSIDERING THE EVIDENCE IN MITIGATION AND
11 AGGRAVATION FINDING ONE THAT A LIFE SENTENCE WOULD BE
12 APPROPRIATE? IS THERE ANYTHING IN YOUR BACKGROUND THAT
13 WOULD---

14 A NO, SIR.
15 Q WHAT ABOUT AND ALSO AS TO A DEATH SENTENCE?
16 A THERE'S NOTHING, NO, SIR.
17 Q WHAT WE ARE LOOKING FOR, MS. SOLES, IS A JUROR THAT
18 CAN BE FAIR AND IMPARTIAL TO BOTH THE STATE OF SOUTH
19 CAROLINA AND ALSO THE DEFENDANT IN THIS CASE, MR. GARY
20 TERRY---

21 A YES, SIR.
22 Q ---COULD YOU BE THAT TYPE OF JUROR?
23 A YES, SIR.
24 Q THAT'S ALL WE ASK OF YOU. THANK YOU FOR YOUR TIME.
25 A YES, SIR.

1 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

2 MR. STONE: NO, SIR.

3 THE COURT: FROM THE STATE?

4 MR. CHASE: NO, SIR, YOUR HONOR.

5 THE COURT: MS. SOLES, I WANT TO THANK YOU VERY
6 MUCH FOR YOUR PARTICIPATION HERE TODAY AS WELL AS
7 YESTERDAY.

8 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
9 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
10 COMES SOME MORE INSTRUCTIONS TO YOU.

11 FIRST OF ALL, I WOULD REMIND YOU THAT YOU ARE NOT
12 TO DISCUSS THIS CASE IN ANY FASHION WHATSOEVER WITH YOUR
13 FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE.

14 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
15 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
16 INFORMATION ABOUT THAT INDIVIDUAL AS YOU CAN AND REPORT
17 THAT TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER
18 AND I WOULD HANDLE IT ACCORDINGLY.

19 ALSO, YOU ARE REMINDED AND INSTRUCTED THAT YOU
20 ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
21 CONCERNING THIS CASE.

22 SIMPLY PUT, IF YOU ARE SELECTED AS A JUROR IN
23 THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IN THIS MATTER
24 IS WHAT YOU SEE AND HEAR IN THIS COURTROOM. NOTHING MORE
25 AND NOTHING LESS.

1 SO WITH THAT, I'M GOING TO BE SENDING YOU AWAY TO
2 SEND YOU HOME TO START PACKING BECAUSE YOU NEED TO HAVE
3 YOUR BAGS PACKED AND BE BACK UP HERE IN THE MORNING AT
4 NINE-THIRTY. COME DIRECTLY TO THE COURTROOM AND WE'LL BE
5 HERE TO RECEIVE YOU AT THAT TIME. LEAVE YOUR BAGGAGE IN
6 YOUR VEHICLE.

7 IF YOU ARE SELECTED TO SERVE AS A JUROR IN THIS
8 CASE AND YOU WOULD BE TAKEN ALONG WITH ALL OF YOUR
9 BELONGINGS BY THE JURY CUSTODIANS TO THE MOTEL WHERE YOU
10 WOULD BE HOUSED FOR THE DURATION OF THE TRIAL.

11 IF YOU ARE NOT SELECTED, THEN WE WOULD THANK YOU
12 VERY MUCH FOR YOUR BEING HERE AND SEND YOU BACK TO YOUR
13 REGULAR DAILY ACTIVITIES.

14 THANK YOU VERY MUCH. AND I'LL SEE YOU IN THE
15 MORNING AT NINE-THIRTY.

16 THE JUROR: YES, SIR.

17 (WHEREUPON, THE JUROR WAS EXCUSED
18 AT THIS TIME.)

19 THE COURT: LET THE RECORD REFLECT THAT JUROR
20 NUMBER 216, CONNIE D. SOLES IS QUALIFIED TO SERVE AS A
21 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
22 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976, AS
23 AMENDED.

24 JUROR NUMBER 20, PAT BENTLEY.

25 PAT BENTLEY,

1 (JUROR NUMBER 20, WHITE FEMALE,
2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

3 EXAMINATION

4 BY THE COURT:

5 Q GOOD EVENING. YOU ARE PAT BENTLEY?

6 A YES, SIR.

7 Q NOW, MS. BENTLEY, YOU UNDERSTAND THAT YOU ARE UNDER
8 OATH TONIGHT?

9 A YES, SIR.

10 Q AND YOU ALSO UNDERSTAND THAT I GAVE YOU CERTAIN
11 CAUTIONARY INSTRUCTIONS YESTERDAY WHEN I DISMISSED ALL OF
12 THE JURORS THAT YOU WEREN'T TO DISCUSS THE CASE WITH
13 ANYONE, IF ANYONE ATTEMPTED TO CONTACT YOU, THAT YOU WERE
14 TO REPORT THAT TO ME AND ALSO THAT YOU WERE TO REFRAIN FROM
15 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
16 CONCERNING THIS CASE.

17 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
18 INSTRUCTIONS?

19 A NO, SIR.

20 Q NOW, I'M GOING TO ASK YOU SOME QUESTIONS AND THEN ONE
21 OF THE DEFENSE LAWYERS AS WELL AS ONE OF THE MEMBERS OF THE
22 SOLICITOR'S STAFF WILL ALSO ASK YOU SOME QUESTIONS.

23 PLEASE KEEP IN MIND THAT WE ARE IN NO WAY
24 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
25 THE CHARGES SURROUNDING THIS CASE, THE PROCEEDINGS THIS

0965

1 WEEK, IT'S EXTREMELY IMPORTANT THAT CERTAIN QUESTIONS ARE
2 ASKED OF EACH JUROR.

3 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
4 WRONG ANSWERS TO THESE QUESTIONS. PLEASE ANSWER THEM
5 OPENLY, HONESTLY AND FULLY AND KEEP IN MIND THAT NO ONE IS
6 CHALLENGING YOUR VIEW. WE JUST NEE TO KNOW WHAT YOUR VIEW
7 IS.

8 NOW, YOU'RE PROBABLY GOING TO BE ASKED SOME
9 QUESTIONS THAT YOU HAVE NEVER EVEN CONSIDERED BEFORE. SO
10 PLEASE LISTEN VERY CAREFULLY TO THE QUESTIONS THAT ARE
11 PRESENTED TO YOU. IF YOU NEED TO HAVE THEM REPEATED OR
12 CLARIFIED IN ANY WAY, ALL YOU'LL HAVE TO DO IS LET ME OR
13 ONE OF THE ATTORNEYS KNOW AND WE'LL REPHRASE OR REPEAT THE
14 QUESTION.

15 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
16 TALKING ABOUT WILL INCLUDE THE WORD PENALTY, BUT THE MERE
17 FACT THAT WE EVEN MENTION THAT WORD OR TALK ABOUT THE WORD
18 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
19 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
20 UNDERSTAND THAT?

21 A UH-HUH.

22 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
23 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
24 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
25 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT

1 LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

2 A I BELIEVE SO.

3 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
4 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

5 A YES.

6 Q NOW, IN A CRIMINAL CASE, MS. BENTLEY, THE STATE HAS
7 THE BURDEN OF PROVING A DEFENDANT'S GUILT. THAT BURDEN OF
8 PROOF THAT THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF
9 THE CRIME OR CRIMES WITH WHICH HE IS CHARGED BEYOND A
10 REASONABLE DOUBT.

11 NOW, A DEFENDANT HAS ABSOLUTELY NO BURDEN TO
12 PROVE HIMSELF INNOCENT. YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
15 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
16 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
17 GUILTY?

18 A BASED ON THE EVIDENCE -- YOU'RE SAYING WITH OR
19 WITHOUT---

20 Q COULD YOU, DEPENDING ON THE FACTS AND THE EVIDENCE
21 AND THE LAW, AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
22 AND I KNOW WE ARE DEALING WITH SUPPOSITIONS, FIND A
23 DEFENDANT EITHER GUILT OR NOT GUILTY?

24 A I BELIEVE I COULD.

25 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE WHEREIN THE

09671

STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND AS I
TOLD YOU AND THE OTHER JURORS YESTERDAY MORNING THAT IN
SUCH A CASE, WE HAVE WHAT IS KNOWN AS A BIFURCATED TRIAL,
MEANING THAT IT IS SPLIT INTO TWO PARTS. THE FIRST PHASE
IS THE GUILT PHASE; THE SECOND PHASE IS THE SENTENCING
PHASE.

NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IF
THE JURY IN THE GUILT PHASE, THE FIRST PHASE, FOUND THE
DEFENDANT NOT GUILTY OF MURDER, YOU UNDERSTAND THAT THE
SECOND PHASE WOULD NEVER OCCUR? THERE WOULD BE NO NEED FOR
IT?

A RIGHT.

Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU THEN
FULLY UNDERSTAND THAT THE SENTENCING PHASE OF THE TRIAL
WOULD OCCUR?

A YES.

Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
PRESENTED TO THE JURY IN THE FORM OF AGGRAVATING
CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

NOW, BY WAY OF ILLUSTRATION, AGGRAVATING
CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS OR OCCURRENCES
WHICH THE GENERAL ASSEMBLY OF THIS STATE HAS DECLARED BY
LAW WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF
MURDER.

1 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
2 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO THE
3 INJURY OF THE CRIME OF MURDER.

4 WHAT I'M TALKING ABOUT AND TO FURTHER ILLUSTRATE
5 WOULD BE WHEN A MURDER IS COMMITTED IN CONNECTION OR IN
6 CONJUNCTION WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT,
7 BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q NOW, MITIGATING CIRCUMSTANCES. ON THE OTHER HAND, ARE
10 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH OUR GENERAL
11 ASSEMBLY HAS ALSO DECLARED BY LAW THAT REDUCES THE SEVERITY
12 OF THE CRIME OF MURDER AND MAY BE CONSIDERED BY THE JURY AS
13 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
14 OR RESPONSIBILITY.

15 AND WHAT I'M TALKING ABOUT TO FURTHER ILLUSTRATE
16 THAT WOULD BE WHEN A MURDER HAS BEEN COMMITTED WHILE A
17 DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
18 DISTURBANCE; THE CAPACITY OF THE DEFENDANT TO APPRECIATE
19 THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO
20 THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; THE
21 MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. DO
22 YOU UNDERSTAND THAT THOSE ARE EXAMPLES OF MITIGATING
23 CIRCUMSTANCES?

24 A YES, SIR.

25 Q NOW, IF YOU WERE A JUROR IN SUCH A SITUATION, THE

0969

1 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE PARTICULAR
2 FACTS AND CIRCUMSTANCES OF THE CASE INCLUDING THE
3 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
4 AND THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF
5 THE CASE, RETURN A SENTENCE OF LIFE IN PRISON?

6 A I BELIEVE SO.

7 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION, COULD
8 YOU, DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
9 OF THAT CASE AND THE LAW THAT I WOULD INSTRUCT YOU AT THE
10 CONCLUSION OF THE CASE CONSIDERING AGGRAVATING AND
11 MITIGATING CIRCUMSTANCES WHICH MAY BE PRESENTED, RETURN A
12 SENTENCE OF DEATH?

13 A DEPENDING ON THE CIRCUMSTANCES, YES.

14 Q ALL RIGHT. NOW, MS. BENTLEY, IF YOU WERE CHOSEN FOR
15 SERVICE ON THIS JURY, YOU WOULD BE SEQUESTERED WHICH IS
16 KIND OF A FANCY WORD MEANING HOUSED IN A MOTEL DURING THE
17 TRIAL. I DON'T KNOW EXACTLY HOW LONG IT WOULD LAST. IT
18 COULD BE ANYWHERE FROM SEVEN TO TEN DAYS. IT COULD BE EVEN
19 LESS THAN THAT. I JUST GIVE YOU THAT TIME FRAME AS AN
20 OUTSIDE APPROXIMATION.

21 EXCEPT FOR THE PERSONAL INCONVENIENCE THAT YOU
22 WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO THE
23 HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT UPON
24 YOU?

25 A NO.

1 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. IF YOU
2 WOULD, PLEASE, ANSWER MS. FULLWOOD'S QUESTIONS AT THIS
3 TIME.

4 MS. FULLWOOD: THANK YOU, JUDGE.

5 EXAMINATION

6 BY MS. FULLWOOD:

7 Q HI, MS. BENTLEY.

8 A HELLO.

9 Q MS. BENTLEY, I'M BETH FULLWOOD. ALONG WITH DUFFIE
10 STONE, WE REPRESENT GARY TERRY, WHO IS SEATED AT THE END OF
11 THE TABLE DOWN THERE.

12 THIS IS THE ONLY CHANCE I'LL HAVE TO TALK WITH
13 YOU AND IT'S KIND OF UNUSUAL. USUALLY THE LAWYERS DON'T
14 GET TO ASK PROSPECTIVE JURORS QUESTIONS, BUT IN THIS
15 SITUATION WE DO---

16 A UH-HUH.

17 Q ---I'VE SEEN YOUR QUESTIONNAIRE THAT YOU'VE SENT IN
18 SO I WOULD LIKE TO START OFF BY ASKING SOME FOLLOW-UP
19 QUESTIONS.

20 I NOTICED YOU'VE LIVED IN THIS COUNTY FOR A
21 COUPLE OF YEARS?

22 A YES. I WAS A WIDOW FOR TWELVE YEARS AND I JUST
23 REMARRIED IN '95.

24 Q I SEE. OKAY. SO THAT'S WHAT BROUGHT YOU TO THIS
25 COUNTY?

0971

1 A UH-HUH.

2 Q AND BEFORE THAT, WHERE DID YOU LIVE?

3 A GREENVILLE COUNTY.

4 Q OH, I SEE.

5 A IN SIMPSONVILLE.

6 Q SO HAVE YOU BEEN IN SOUTH CAROLINA FOR AWHILE?

7 A TWELVE YEARS.

8 Q I SEE. ALL RIGHT. I ALSO NOTICED THAT YOUR HUSBAND

9 IS SELF-EMPLOYED. COULD YOU TELL US A LITTLE BIT ABOUT

10 WHAT HE DOES?

11 A UH -- WELL, NO. I MEAN, I REALLY DON'T KNOW. HE

12 OWNS THINGS. I MEAN, I REALLY DON'T KNOW WHAT ALL HE DOES.

13 HE HAS SEVERAL BUSINESSES AND I KNOW HE HAS A LOT OF REAL

14 ESTATE, COMMERCIAL REAL ESTATE AND RESIDENTIAL BOTH HERE

15 AND IN GEORGIA. AND AS FAR AS WHAT HE ACTUALLY DOES, I

16 REALLY COULDN'T TELL YOU. I KNOW THAT SOUNDS AWFUL, BUT I

17 REALLY DON'T KNOW EXACTLY WHAT HE DOES OTHER THAN---

18 Q SO, BASICALLY, HE'S A BUSINESSMAN?

19 A YES. OH, YES, HE OWNS LOTS OF REAL ESTATE LIKE I

20 SAID AND SELF-WORTH LIKE THAT. HE HAS BOTH COMMERCIAL AND

21 RESIDENTIAL. HE ALSO OWNS LIKE SOME -- HE HAS LIKE

22 SEVENTEEN COMPANIES AND I COULDN'T TELL YOU WHAT THEY ALL

23 DO.

24 Q OKAY.

25 A OKAY.

- 1 Q WITH THAT MANY, I CAN UNDERSTAND THAT.
- 2 A I REALLY DON'T KNOW. I MEAN, I REALLY -- I KNOW REAL
- 3 ESTATE, I GUESS IS THE MAIN THING.
- 4 Q I SEE. OKAY. THANK YOU.
- 5 A UH-HUH.
- 6 Q I ALSO NOTICED YOU HAVE THREE GROWN CHILDREN?
- 7 A YES, MA'AM.
- 8 Q WHAT DO THEY DO? ARE THEY STUDENTS STILL---
- 9 A MY YOUNGEST ONE IS STILL A STUDENT.
- 10 Q UH-HUH.
- 11 A AND THE OTHER ONE WORKS -- DO YOU WANT TO KNOW WHERE
- 12 SHE WORKS OR---
- 13 Q OR JUST HER GENERAL LINE OF WORK?
- 14 A OH, SHE'S GRADUATED AND SHE'S LIVING UP IN ROCK HILL
- 15 AND SHE'S WORKING IN NUTRITION---
- 16 Q UH-HUH.
- 17 A ---AND THEN I HAVE A SON THAT WORKS IN GREENVILLE IN
- 18 THE MORTGAGE BUSINESS.
- 19 Q THE MORTGAGE BUSINESS. SAME AS YOU?
- 20 A UH-HUH.
- 21 Q I SEE. OKAY. I ALSO WANT TO ASK YOU QUESTIONS ABOUT
- 22 THE SECOND TYPE OF TRIAL THAT JUDGE CLARY WAS EXPLAINING TO
- 23 YOU ABOUT, OKAY?
- 24 A OKAY.
- 25 Q AND I KNOW IT'S A TRIAL THAT MAY OR MAY NOT HAPPEN IN

0973

1 THIS PARTICULAR CASE, BUT STILL I NEED TO ASK YOU SOMETHING
2 ABOUT YOUR ATTITUDES CONCERNING THE ISSUES IN THAT TRIAL AT
3 THIS TIME---

4 A OKAY.

5 Q ---BECAUSE THIS IS THE ONLY TIME I GET TO TALK TO
6 YOU.

7 YOU UNDERSTAND IF A JURY GETS TO THAT SECOND TYPE
8 OF TRIAL, IT'S ONLY BECAUSE THEY HAVE PREVIOUSLY IN THE
9 FIRST TRIAL FOUND THE DEFENDANT GUILTY OF MURDER---

10 A UH-HUH.

11 Q ---AND OTHER CRIMES SUCH AS BURGLARY OR CRIMINAL
12 SEXUAL CONDUCT?

13 A UH-HUH.

14 Q IS THAT CONCEPT KIND OF CLEAR IN YOUR MIND?

15 A UH-HUH.

16 Q OKAY. AND IS IT ALSO YOUR UNDERSTANDING THAT MURDER
17 EXCLUDES ANYTHING LIKE SELF-DEFENSE, ACCIDENT, HEAT OF
18 PASSION, THAT TYPE OF THING?

19 A I BELIEVE SO.

20 Q OKAY. MURDER MEANS KILLING SOMEONE WITH MALICE
21 AFORETHOUGHT?

22 A UH-HUH.

23 Q ALL RIGHT. IF YOU SAT AS A JUROR IN THE SECOND TYPE
24 OF TRIAL AND AFTER HAVING LISTENED TO ALL THE EVIDENCE
25 PRESENTED BY BOTH SIDES, WOULD -- AND, OF COURSE, HAVING

1 FOUND THE DEFENDANT GUILTY IN THE FIRST TRIAL OF MURDER AND
2 OTHER CRIMES---

3 A UH-HUH.

4 Q ---WOULD YOU AUTOMATICALLY VOTE TO IMPOSE THE DEATH
5 PENALTY SIMPLY BECAUSE HE HAD BEEN CONVICTED OF A MURDER?

6 A NO.

7 Q OKAY.

8 A I THINK IT WOULD DEPEND ON THE SITUATION AND THE
9 CIRCUMSTANCES OF THE WHOLE TRIAL. I DON'T THINK YOU CAN
10 JUDGE ANYTHING BECAUSE IT WAS MURDER.

11 Q OKAY. AND THEN ON THE OTHER -- OF COURSE, ON THE
12 OTHER HAND, I ASK THE OPPOSITE QUESTION, AND, OF COURSE,
13 UNDERSTANDING THAT THERE'S NEVER ANY REQUIREMENT IN THE LAW
14 THAT YOU HAVE TO IMPOSE THE DEATH PENALTY FOR ANY REASON,
15 IF YOU SAT AS A JUROR IN THE SECOND TRIAL AND AFTER HEARING
16 ALL THE FACTS AND CIRCUMSTANCES, COULD YOU VOTE TO IMPOSE A
17 LIFE SENTENCE EVEN THOUGH YOU HAD PREVIOUSLY FOUND THAT
18 DEFENDANT GUILTY OF MURDER?

19 A YEAH, I THINK IT WOULD DEPEND ON THE CIRCUMSTANCES IN
20 THE WHOLE TRIAL. I DON'T THINK YOU CAN JUST SAY BECAUSE
21 THIS IS MURDER THIS IS A LIFE SENTENCE OR THAT THIS IS A
22 DEATH PENALTY. I MEAN, I THINK -- I HAVE THOUGHT ABOUT
23 THIS A LOT BECAUSE I DON'T KNOW THAT, YOU KNOW, HOW I EVER
24 FELT ABOUT THE DEATH PENALTY ONE WAY OR THE OTHER---

25 A UH-HUH.

0975

1 Q ---BECAUSE I'VE NEVER BEEN FACED WITH IT AND I DON'T
2 KNOW ANYONE THAT HAS AND I'VE NEVER BEEN IN THAT SITUATION.
3 SO I'VE BEEN THINKING ABOUT THAT ESPECIALLY WHEN I WAS
4 DRIVING OVER HERE AND I DON'T KNOW. I THINK IT WOULD
5 ACTUALLY DEPEND ON THE CIRCUMSTANCES AND THE SITUATION OF
6 THE TRIAL. THAT'S ALL THAT I KNOW.

7 Q OKAY.

8 A I DON'T HAVE A PRECONCEIVED DO I BELIEVE IN THE DEATH
9 PENALTY OR DO I DON'T; DO I BELIEVE IN LIFE IN PRISON OR DO
10 IT -- I MEAN, I JUST -- IF YOU WANT TO KNOW THE TRUTH, I'VE
11 NEVER GIVEN IT A WHOLE LOT OF THOUGHT BECAUSE I'VE NEVER --
12 IT'S NEVER---

13 Q OKAY. IT'S NOT SOMETHING THAT POPS UP IN YOUR
14 MIND---

15 A ---YEAH. I MEAN, IT'S JUST NOT -- YEAH.

16 Q WELL, OF COURSE, I DON'T WANT DO PUT WORDS IN YOUR
17 MOUTH---

18 A UH-HUH.

19 Q ---BUT IS IT FAIR TO SAY, THEN, THAT YOU ARE THE TYPE
20 OF PERSON WHO WOULD WANT TO LISTEN TO THE EVIDENCE FROM
21 BOTH SIDES AND EVALUATE IT BEFORE YOU MADE UP YOUR MIND?

22 A I THINK YOU WOULD HAVE TO---

23 Q OKAY.

24 A ---THAT'S THE ONLY WAY TO BE FAIR.

25 Q THAT'S RIGHT. THANK YOU, MA'AM.

1 A UH-HUH.

2 THE COURT: MR. CHASE.

3 MR. CHASE: THANK YOU, YOUR HONOR.

4 EXAMINATION

5 BY MR. CHASE:

6 Q HI, MS. BENTLEY.

7 A HEY.

8 Q HOW ARE YOU GOING?

9 A FINE.

10 Q MY NAME IS TOM CHASE AND I WILL BE PRESENTING THE
11 PROSECUTION OF THIS CASE, ASSISTING DEPUTY SOLICITOR, FRAN
12 HUMPHRIES AND SOLICITOR DONNIE MYERS. THEY ARE NOT PRESENT
13 IN THE COURTROOM. THEY'VE GOT SOME OTHER OBLIGATIONS THAT
14 THEY HAD TO ATTEND TO.

15 I JUST HAVE A COUPLE OF QUESTIONS AND ONE OF THEM
16 IS A PROCEDURAL STEP UNDER THE LAW OF OUR STATE FOR THE
17 IMPOSITION OF A POTENTIAL DEATH SENTENCE.

18 NOW, AS I WALK YOU THROUGH IT AND HOPEFULLY IT
19 WILL MAKE MORE SENSE THAN WHAT I'VE JUST SAID.

20 IF WE COULD JUST MAKE A COUPLE OF ASSUMPTIONS.
21 ASSUMING THAT YOU HAD BEEN PLACED ON THE JURY, ALL TWELVE
22 DECIDED THAT GUILT WAS APPROPRIATE IN THE CASE---

23 A UH-HUH.

24 Q ---AND WE ACTUALLY MOVED INTO THAT SECOND PHASE---

25 A UH-HUH.

0977

- 1 Q ---THAT PENALTY PHASE---
- 2 A UH-HUH.
- 3 Q ---AND AT THE CONCLUSION OF ALL THE EVIDENCE IN THE
- 4 PENALTY PHASE, YOU, AS ONE OF THE TWELVE JURORS, AND ALL
- 5 THE OTHER JURORS DECIDED THAT A DEATH SENTENCE WAS
- 6 APPROPRIATE ACCORDING TO THE FACTS AND CIRCUMSTANCES OF THE
- 7 CASE---
- 8 A UH-HUH.
- 9 Q ---NOW, BEFORE THAT SENTENCE CAN BE IMPOSED AND
- 10 BEFORE THAT VERDICT CAN BE BROUGHT, UNDER THE LAW OF OUR
- 11 STATE, ALL TWELVE JURORS LITERALLY HAVE TO SIGN THEIR NAME
- 12 ON THE VERDICT FORM AND THERE WOULD BE TWELVE LINES DOWN
- 13 THAT SHEET. AND ASSUMING THAT YOU WERE ONE OF THOSE
- 14 JURORS, YOU WOULD LITERALLY HAVE TO AFFIX YOUR NAME ON THAT
- 15 SHEET OF PAPER BEFORE THAT SENTENCE CAN BE IMPOSED. WOULD
- 16 THE FACT THAT YOU HAD TO SIGN YOUR NAME ON THERE, WOULD
- 17 THAT IN ANY WAY AFFECT OR IMPAIR YOUR ABILITY NOT ONLY TO
- 18 CONSIDER THE DEATH PENALTY BUT ALSO TO IMPOSE THAT
- 19 SENTENCE?
- 20 A I DON'T THINK THE ACTUAL SIGNING OF MY NAME WOULD
- 21 MAKE A DIFFERENCE OF HOW I FELT ONE WAY OR THE OTHER
- 22 BECAUSE IF I FELT STRONG ENOUGH ONE WAY OR THE OTHER, I
- 23 WOULDN'T SIGN IT UNLESS I FELT THAT STRONGLY TO BEGIN WITH.
- 24 BUT LIKE I SAID, YOU KNOW, I'VE NEVER REALLY CONSIDERED ALL
- 25 THIS. I MEAN, DEATH PENALTY OR ANY OF THAT BEFORE BECAUSE

1 I'VE JUST NEVER REALLY THOUGHT ABOUT IT. I MEAN, I'VE
2 NEVER BEEN IN A SITUATION WHERE I HAD TO THINK ABOUT IT
3 AND, YOU KNOW, MORALLY OR, YOU KNOW, WHATEVER, I DON'T KNOW
4 THAT I FELT ONE WAY OR THE OTHER ABOUT IT. THERE ARE SOME
5 THINGS THAT I FEEL STRONGLY ABOUT IT, BUT THAT'S ONE.

6 Q AND FEW PEOPLE ARE REALLY FACED---

7 A RIGHT.

8 Q ---WITH THE QUESTION THAT YOU ARE FACED WITH---

9 A RIGHT.

10 Q ---AND I ASK YOU THAT MORE FROM THE LINE OF THERE ARE
11 SOME PEOPLE WHO---

12 A OH, SIGNING THEIR NAME---

13 A ---BASICALLY SAY I'M NOT SIGNING MY NAME TO
14 ANYTHING---

15 A WELL, I DON'T SIGN MY NAME TO ANYTHING UNTIL I READ
16 EVERY BIT OF IT.

17 Q AND WE ARE CERTAINLY -- YOU WOULD BE OBLIGATED AS A
18 JUROR TO HAVE---

19 A RIGHT.

20 Q ---OBVIOUSLY, DELIBERATED AND THOUGHT OUT ANY
21 SENTENCE THAT YOU WOULD IMPOSE IN THE EVENT THAT YOU GOT TO
22 THAT?

23 A UH-HUH.

24 Q I'M SAYING AFTER YOU HAD GOTTEN TO THE POINT WHERE
25 ALL TWELVE JURORS UNANIMOUSLY DECIDED THAT A DEATH SENTENCE

0979

1 WAS APPROPRIATE, WOULD THE MERE SIGNING---

2 A THE FACT OF SIGNING MY NAME---

3 Q ---OF YOUR NAME HINDER YOUR ABILITY TO IMPOSE THAT
4 SENTENCE OR SUBSTANTIALLY IMPAIR YOUR ABILITY?

5 A BASED ON A SIGNATURE. I DON'T THINK SO. I MEAN,
6 THIS IS AS HONEST AS I CAN BE. I MEAN, I DON'T THINK I
7 WOULD BECAUSE IT WOULD HAVE BEEN SOMETHING THAT I HAD
8 ALREADY THOUGHT THROUGH. IT WOULDN'T BE SO MUCH AS SIGNING
9 IT.

10 Q I UNDERSTAND.

11 A I GUESS.

12 Q AND I ALSO I WANT TO MAKE SURE THAT I---

13 A I DON'T KNOW. I'M JUST---

14 Q ---YOUR INITIAL ANSWER WAS THAT YOU COULD IMPOSE A
15 LIFE SENTENCE AND I THINK THAT'S VERY CLEAR---

16 A RIGHT.

17 Q ---AND THAT YOU COULD IMPOSE A DEATH SENTENCE? IT
18 DEPENDS ON THE CIRCUMSTANCES?

19 A YES.

20 Q AND IF I UNDERSTAND YOU CORRECTLY -- DON'T LET ME PUT
21 WORDS IN YOUR MOUTH -- THAT WOULD DEPEND ON ALL THE FACTS
22 THAT WERE PRESENTED IN THE CASE---

23 A ABSOLUTELY.

24 Q ---AND AFTER DUE CONSIDERATION OF---

25 A ABSOLUTELY.

1 Q ---THESE FACTS IN AGGRAVATION AND ALSO IN MITIGATION?
2 A YES, SIR.
3 Q WHAT WE ARE LOOKING FOR IS A JUROR THAT CAN BE FAIR
4 AND IMPARTIAL TO BOTH THE STATE OF SOUTH CAROLINA AND THE
5 DEFENDANT IN THIS CASE, MR. TERRY. CAN YOU BE THAT TYPE
6 JUROR?
7 A I BELIEVE SO.
8 Q THANK YOU. THAT'S ALL WE CAN ASK.
9 A OKAY.
10 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?
11 MS. FULLWOOD: NO, YOUR HONOR.
12 THE COURT: FROM THE STATE?
13 MR. CHASE: NO, SIR, YOUR HONOR.
14 THE COURT: MS. BENTLEY, I WANT TO THANK YOU VERY
15 MUCH FOR YOUR PARTICIPATION -- JUST ONE MINUTE, PLEASE,
16 MA'AM.
17 THE JUROR: OH.
18 THE COURT: I WANT TO THANK YOU VERY MUCH FOR
19 YOUR PARTICIPATION HERE THIS EVENING AND ALSO YESTERDAY.
20 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
21 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
22 THERE COMES SOME MORE INSTRUCTIONS OF CAUTION THAT NUMBER
23 ONE, YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR FELLOW
24 JURORS, WITH YOUR FAMILY, FRIENDS OR ANYONE ELSE.
25 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU

0981

1 CONCERNING THIS CASE, PLEASE GATHER AS MUCH INFORMATION
2 ABOUT THAT INDIVIDUAL AS YOU POSSIBLY CAN AND REPORT THAT
3 TO ME IMMEDIATELY BECAUSE THAT'S A VERY SERIOUS MATTER AND
4 I WOULD HANDLE IT ACCORDINGLY.

5 ALSO, YOU ARE TO CONTINUE TO REFRAIN FROM
6 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
7 CONCERNING THIS CASE.

8 SIMPLY PUT, IF YOU ARE SELECTED AS A JUROR IN
9 THIS CASE, ALL I WOULD WANT YOU TO CONSIDER IS WHAT YOU SEE
10 AND HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING LESS.

11 NOW, WITH THAT, I'M GOING TO SEND YOU HOME. I
12 KNOW IT'S SEVEN-THIRTY IN THE EVENING NOW AND INSTRUCT YOU
13 THAT YOU NEED TO START PACKING BECAUSE YOU ARE GOING TO
14 NEED TO BE BACK HERE IN THE MORNING AT NINE-THIRTY IN THE
15 COURTROOM. PLEASE LEAVE YOUR BAGGAGE, LUGGAGE AND SO FORTH
16 IN YOUR VEHICLE.

17 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN
18 THE JURY CUSTODIANS WILL SEE THAT YOU AND YOUR BELONGINGS
19 ARE PROPERLY TRANSPORTED TO OUR MOTEL WHERE YOU WOULD BE
20 HOUSED FOR THE DURATION OF THE TRIAL.

21 IF YOU ARE NOT SELECTED FOR SERVICE IN THIS CASE,
22 THEN WE WOULD THANK YOU VERY MUCH FOR ALL OF YOUR
23 PARTICIPATION IN OUR PROCESS AND SEND YOU BACK TO YOUR
24 REGULAR DAILY ACTIVITIES.

25 SO UNTIL IN THE MORNING AT NINE-THIRTY, I'LL SEE

1 YOU THEN.

2 THE JUROR: OKAY. THANK YOU.

3 THE COURT: THANK YOU VERY MUCH, MS. BENTLEY.

4 (WHEREUPON, THE JUROR WAS EXCUSED
5 AT THIS TIME.)

6 THE COURT: LET THE RECORD REFLECT THAT JUROR
7 NUMBER 20, PAT BENTLEY, IS QUALIFIED TO SERVE AS A
8 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
9 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976, AS
10 AMENDED.

11 DAVID FOULKS, JUROR NUMBER 86.

12 DAVID L. FOULKS,

13 (JUROR NUMBER 86, BLACK MALE,
14 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

15 EXAMINATION

16 BY THE COURT:

17 Q YOU CAN TURN AROUND. YOU CAN FACE ME. JUST SPEAK
18 LOUD ENOUGH SO THAT EVERYONE CAN HEAR YOU, MR. FOULKS.

19 A ALL RIGHT.

20 Q BECAUSE I'M GOING TO BE ASKING YOU SOME QUESTIONS
21 INITIALLY.

22 A ALL RIGHT.

23 Q YOU UNDERSTAND THAT YOU ARE UNDER OATH?

24 A YES, SIR.

25 Q AND YESTERDAY BEFORE I SENT YOU AND YOUR FELLOW

0983

1 JURORS AWAY, I EXPLAINED TO YOU THAT YOU WERE NOT TO
2 DISCUSS THIS CASE WITH ANYONE AND IF ANYONE ATTEMPTED TO
3 CONTACT YOU, THAT YOU WERE TO REPORT THAT TO ME AND THAT
4 YOU WERE ALSO NOT TO READ, WATCH OR LISTEN TO ANY NEWS
5 ACCOUNTS CONCERNING THIS CASE.

6 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

7 A NO, SIR.

8 Q NOW, MR. FOULKS, I'M GOING TO BE ASKING YOU SOME
9 QUESTION AND THEN AFTER I GET THROUGH, I'LL ALLOW MR. STONE
10 TO ASK YOU SOME QUESTIONS ON BEHALF OF THE DEFENDANT AND
11 THEN ONE OF THE ASSISTANT SOLICITORS WILL ASK YOU SOME
12 QUESTIONS.

13 PLEASE KEEP IN MIND THAT WE ARE IN NO WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE TYPE
15 CASE THAT WE ARE ABOUT THIS WEEK AND THE PROCEEDINGS THAT
16 ARE GOING ON, IT'S NECESSARY THAT A NUMBER OF QUESTIONS BE
17 ASKED. KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
18 ANSWERS TO THESE QUESTIONS.

19 A ALL RIGHT.

20 Q SO PLEASE JUST ANSWER THEM OPENLY AND HONESTLY AND
21 FULLY AND ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING YOUR
22 VIEW. WE JUST NEED TO KNOW WHAT YOUR VIEW IS IN CERTAIN
23 AREAS.

24 A ALL RIGHT, SIR.

25 Q AND ALSO, PLEASE, UNDERSTAND THAT WE'RE PROBABLY

1 GOING TO ASK YOU SOME QUESTIONS THAT YOU HAVE NEVER EVER
2 CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO THE
3 QUESTIONS THAT ARE POSED TO YOU BY ME AND THE LAWYERS AND
4 IF YOU NEED FOR ANY OF US TO RESTATE THOSE QUESTIONS OR TO
5 RE-EXPLAIN THEM IN ANY WAY, SIMPLY LET US KNOW.

6 A YES, SIR.

7 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
8 ABOUT THIS EVENING WILL INCLUDE THE WORD PENALTY. NOW, THE
9 MERE FACT THAT WE EVEN MENTION THAT WORD OR TALK ABOUT THE
10 WORD PENALTY DOES NOT INDICATE ANYTHING ABOUT THE
11 DEFENDANT, MR. TERRY. DO YOU UNDERSTAND THAT?

12 A YES, SIR.

13 Q HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
14 UNDERSTAND THAT?

15 A YES, SIR.

16 Q NOW, LET'S ASSUME FOR A MOMENT THAT YOU WERE A JUROR
17 IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW, ACCEPT AND
18 APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS
19 COURT EVEN THOUGH YOU MIGHT NOT AGREE WITH THAT LAW OR
20 THINK THAT IT OUGHT TO BE SOME OTHER WAY?

21 A YES, SIR, I COULD DO THAT.

22 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
23 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

24 A YES, SIR.

25 Q NOW, IN A CRIMINAL CASE, MR. FOULKS, THE STATE OF

0985

1 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
2 GUILT. THE BURDEN OF PROOF THAT THE STATE MUST MEET IS TO
3 PROVE ALL THE ELEMENTS OF THE PARTICULAR CRIME OR CRIMES
4 WITH WHICH THE DEFENDANT IS CHARGED BEYOND A REASONABLE
5 DOUBT. NOW, A DEFENDANT HAS ABSOLUTELY NO BURDEN TO PROVE
6 HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

7 A YES, SIR.

8 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
9 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
10 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

11 A YES, SIR.

12 Q NOW, DO YOU UNDERSTAND FROM WHAT I TOLD YOU YESTERDAY
13 MORNING AND ALL THE OTHER JURORS THAT THIS IS A CASE IN
14 WHICH THE STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY
15 AND AS A RESULT OF THAT, I ALSO EXPLAINED TO YOU THAT IT'S
16 WHAT WE CALL A BIFURCATED TRIAL, MEANING THAT IT'S DIVIDED
17 INTO TWO PARTS.

18 THE FIRST PART IS THE GUILT PHASE; THE SECOND
19 PART IS THE SENTENCING PHASE.

20 NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IN
21 THE GUILT PHASE, THE FIRST PART, DO YOU UNDERSTAND THAT IF
22 THE JURY FOUND THE DEFENDANT NOT GUILTY, THAT THAT WOULD BE
23 THE END OF THE TRIAL. THERE WOULD BE NO NEED FOR THE
24 SENTENCING PHASE?

25 A CORRECT.

1 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
2 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
3 FURTHER UNDERSTAND THAT YOU WOULD THEN MOVE INTO THE
4 SENTENCING PHASE OF THAT TRIAL?

5 A YES, SIR.

6 Q NOW, IN THAT PART OF THE TRIAL OR THAT PHASE OF THE
7 TRIAL, EVIDENCE WOULD BE PRESENTED TO THE JURY IN THE FORM
8 OF AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
9 CIRCUMSTANCES.

10 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
11 INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
12 ASSEMBLY OF OUR STATE HAS DECLARED BY STATUTE OR LAW WOULD
13 MAKE WORSE; THAT IS, TO AGGRAVATE THE OFFENSE OF MURDER.

14 IN OTHER WORDS, WHEN A MURDER OCCURS THAT IS
15 ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE, IT INCREASES OR
16 ADDS TO THE ENORMITY OF THE INJURY OF THE CRIME OF MURDER.

17 FOR EXAMPLE, A MURDER THAT IS COMMITTED ALONG
18 WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE
19 LIKE IS WHAT I'M TALKING ABOUT AS AGGRAVATING
20 CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
23 INCIDENTS, DETAILS, FACTS OR OCCURRENCES WHICH THE GENERAL
24 ASSEMBLY HAS ALSO DECLARED BY LAW THAT REDUCES THE SEVERITY
25 OF THE CRIME OF MURDER AND MAY BE CONSIDERED AS EXTENUATING

0987

1 OR AS REDUCING THE DEGREE OF MORAL CULPABILITY OR
2 RESPONSIBILITY.

3 AND SOME EXAMPLES OF THAT WOULD BE WHEN A MURDER
4 WAS COMMITTED WHILE A DEFENDANT WAS UNDER THE INFLUENCE OF
5 MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY OF A
6 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
7 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
8 SUBSTANTIALLY IMPAIRED AND THE MENTALITY OF THE DEFENDANT
9 AT THE TIME OF THE CRIME. DO YOU UNDERSTAND THAT THOSE ARE
10 EXAMPLES OF MITIGATING CIRCUMSTANCES?

11 A YES, SIR.

12 Q NOW, LET'S CONSIDER THAT IF YOU WERE A JUROR IN THAT
13 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
14 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE
15 CONSIDERING AGGRAVATING AS WELL AS MITIGATING CIRCUMSTANCES
16 AND THE LAW AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF
17 THE CASE, RETURN A SENTENCE OF LIFE IN PRISON?

18 A YES, SIR.

19 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
20 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
21 THAT CASE CONSIDERING, ONCE AGAIN, AGGRAVATING AND
22 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
23 YOU AT THE CONCLUSION OF THAT CASE, RETURN A SENTENCE OF
24 DEATH?

25 A YES, SIR.

1 Q NOW, MR. FOULKS, IF YOU WERE CHOSEN TO SERVE AS A
2 MEMBER OF THIS JURY, YOU WOULD BE SEQUESTERED. IT'S KIND
3 OF A BIG WORD THAT MEANS HOUSED IN A MOTEL DURING THE
4 ENTIRE COURSE OF THE TRIAL. NOW, I DON'T KNOW EXACTLY HOW
5 LONG IT WOULD LAST, BUT AT THE OUTSIDE, IT WOULD BE SEVEN
6 TO TEN DAYS. IT COULD BE LESS THAN THAT. EXCEPT FOR THE
7 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
8 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
9 YOURSELF OR OF YOUR FAMILY AND THOSE DEPENDENT UPON YOU?

10 A THE ONLY CONCERN I WOULD HAVE IN REFERENCE TO THAT IS
11 THAT I'M NOT PAID BY MY EMPLOYER---

12 Q UH-HUH.

13 A ---SO THAT WOULD POSE SOME TYPE OF A FINANCIAL
14 RESTRAINT.

15 Q I UNDERSTAND THAT AND THE FACT THAT YOU ARE NOT PAID,
16 DO YOU UNDERSTAND THAT JURY SERVICE DOES NOT PAY YOU AS
17 YOUR JOB DOES---

18 A CORRECT.

19 Q ---AND YOUR -- IF YOUR EMPLOYER DOES NOT PROVIDE JURY
20 PAY TO YOU, IS THAT CORRECT?

21 A YES, SIR.

22 Q GIVEN THAT SITUATION, WOULD THAT POSE A FINANCIAL
23 HARDSHIP UPON YOU?

24 A SOMEWHAT, YES, IT WOULD.

25 Q WOULD IT BE SUCH THAT IF YOU WERE SEATED AS A JUROR

0989

1 IN THIS CASE THAT THAT COULD CAUSE YOU CONCERN THAT WOULD
2 INTERFERE WITH YOUR ABILITY TO CONCENTRATE AND PARTICIPATE
3 IN THE TRIAL IF YOU WERE DISTRACTED BY OUR FINANCIAL
4 SITUATIONS?

5 A DEPENDING UPON THE LENGTH.

6 Q WELL, IF WE WERE HERE FOR TEN DAYS?

7 A TEN DAYS, I COULD PROBABLY DEAL WITH THAT.

8 Q YOU COULD DEAL WITH THAT?

9 A YES, SIR.

10 Q ALL RIGHT, SIR. HOW ABOUT ANSWERING ANY QUESTIONS
11 THAT MR. STONE MIGHT POSE TO YOU THEN.

12 MR. STONE: THANK YOU, YOUR HONOR.

13 EXAMINATION

14 BY MR. STONE:

15 Q HEY, MR. FOULKS.

16 A HOW ARE YOU DOING?

17 Q AND GOOD EVENING. I KNOW YOU'VE BEEN BACK THERE
18 SINCE, I GUESS, SIX-THIRTY NOW, UH?

19 A YES, SIR.

20 Q YOU HAVE TWO CHILDREN. ONE FIVE-YEARS-OLD AND ONE
21 THREE?

22 A TWO-YEARS-OLD.

23 Q ONE TWO. OKAY. DOES YOUR WIFE STAY HOME WITH THEM?

24 A NO, SIR.

25 Q OKAY. DO YOU -- DO YOU TAKE PART IN THE CARE OF THE

1 CHILDREN FROM THE STANDPOINT, YOU GET THEM TO SCHOOL OR
2 TAKE CARE OF THEM DURING THE DAY?

3 A SURE, YES.

4 Q OKAY. I'M KIND OF GETTING IN THE SAME AREA THAT THE
5 JUDGE JUST TALKED TO YOU ABOUT. DOES YOUR WIFE NORMALLY --
6 WELL, I DON'T WANT TO PRY TOO MUCH INTO YOUR FAMILY LIFE,
7 BUT TAKING CARE OF YOUR CHILDREN, OBVIOUSLY, YOU WILL BE
8 SEQUESTERED. YOU WILL BE IN A HOTEL ROOM AWAY FROM YOUR
9 FAMILY FOR -- IF IT LASTS UP TO TEN DAYS, TEN DAYS. WILL
10 THAT CAUSE A PARTICULAR HARDSHIP FROM THE STANDPOINT OF
11 YOUR CHILDREN? NOT JUST YOUR JOB, BUT YOUR CHILDREN?

12 A NO, NOT IN PARTICULAR.

13 Q OKAY. FINE. AND THAT'S WHAT I WANT TO MAKE SURE OF.
14 DOES SHE WORK?

15 A WELL, YES, SHE DOES.

16 Q OKAY. AND SO YOU BOTH WORK AT THE SAME -- WHERE DO
17 YOU WORK NOW?

18 A I WORK FOR COASTAL INTERNATIONAL SECURITY. I'M
19 CONTRACTED OUT AT SOUTH CAROLINA ELECTRIC AND GAS.

20 Q ALL RIGHT, SIR. YOU USED TO WORK AT THE DEPARTMENT
21 OF MENTAL HEALTH AS A SECURITY OFFICER?

22 A YES, SIR.

23 Q OKAY. WHAT EXACTLY DID YOU DO THERE?

24 A BASICALLY, JUST RESPONDED TO CALLS, ASSISTED THE
25 STAFF WITH ANY KIND OF PROBLEMS THEY HAD WITH THE PATIENTS

0991

1 OR CLIENTS.

2 Q ALL RIGHT, SIR. AND YOU ALSO WORKED WITH PROBATION
3 AND PAROLE?

4 A YES, SIR.

5 Q WHEN DID YOU DO THAT? AND THAT WAS WITH RICHLAND
6 COUNTY, RIGHT?

7 A YES, IT WAS.

8 Q WHEN DID YOU DO THAT?

9 A I BEGAN THERE IN 1989 AND LEFT IN 1992.

10 Q OKAY. ALL RIGHT. LET ME SEE WHAT ELSE I'VE GOT
11 HERE. I LEFT YOUR FORM OVER HERE.

12 YOU WERE A MILITARY POLICE OFFICER FOR TEN YEARS?

13 A YES, SIR.

14 Q OKAY. WHEN -- WHEN YOU WERE A MILITARY POLICE
15 OFFICER, DID YOU PARTICIPATE IN ANY TRIALS?

16 A NO, SIR.

17 Q ALL RIGHT, SIR. HAVE YOU PARTICIPATED IN ANY
18 CRIMINAL TRIALS?

19 A NO, SIR.

20 Q OTHER THAN A PROBATION AND PAROLE PERSON FOR, I
21 GUESS, SENTENCING AND VARIOUS THINGS---

22 A RIGHT. THAT'S THE ONLY.

23 Q ALL RIGHT, SIR.

24 IN THIS CASE, IN THIS SITUATION AND THE JUDGE
25 EXPLAINED THIS A LITTLE BIT BEFORE, IN A DEATH PENALTY

1 CASE, WE HAVE TO ASK YOU QUESTIONS ABOUT SENTENCING AND WE
2 MAY NEVER GET TO SENTENCING. YOU MAY NEVER BE ON THE JURY
3 FOR ONE THING AND IF YOU ARE ON THE JURY, YOU MAY NEVER GET
4 TO THE SITUATION OF WHERE YOU HAVE TO WORRY ABOUT A
5 SENTENCING PHASE. DO YOU UNDERSTAND THAT?

6 A CORRECT.

7 Q BUT WE HAVE TO ASK YOU QUESTIONS ABOUT THAT
8 SENTENCING PHASE. WHAT I WOULD LIKE TO KNOW FROM YOU IS IF
9 YOU ARE IN A SENTENCING PHASE, YOU UNDERSTAND THAT, AS A
10 JUROR, YOU HAVE ALREADY DECIDED THAT SOMEBODY IS GUILTY OF
11 MURDER AND GUILTY OF ANOTHER CRIME; FOR INSTANCE, RAPE OR
12 BURGLARY. DO YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. NOW, I DON'T NEED TO DEFINE MURDER
15 FOR YOU. I KNOW YOU UNDERSTAND THAT IT'S NOT AN ACCIDENT,
16 IT'S NOT HEAT OF PASSION, ALL THAT STUFF. YOU UNDERSTAND
17 THAT?

18 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
19 THIS TIME.)

20 Q AND, OBVIOUSLY, YOU UNDERSTAND WHAT RAPE IS. IF YOU
21 HAVE ALREADY DECIDED THAT SOMEBODY IS GUILTY OF MURDER AND
22 GUILTY OF RAPE, CAN YOU STILL SENTENCE THAT PERSON TO LIFE?

23 A SURE.

24 Q OKAY. AND IT DEPENDS ON THE CIRCUMSTANCES AND THE
25 MITIGATION AND THE AGGRAVATION THAT YOU---

0993

- 1 A CORRECT.
- 2 Q ---OKAY. AND I'M ASSUMING FROM THAT STANDPOINT, YOU
- 3 CAN ALSO SENTENCE THAT PERSON TO DEATH?
- 4 A YES.
- 5 Q HAVE YOU GIVEN -- YOU'VE BEEN IN POLICE WORK FOR
- 6 QUITE AWHILE -- HAVE YOU GIVEN THE DEATH PENALTY ANY
- 7 THOUGHT?
- 8 A UH -- I'VE GIVEN IT THOUGHT WHEN IT CAME UP, BUT
- 9 NOTHING SERIOUSLY BECAUSE I'VE NEVER BEEN IN THAT SITUATION
- 10 TO WHERE I HAD TO.
- 11 Q RIGHT. ALL RIGHT. WHAT'S YOUR OPINION OF IT?
- 12 A I THINK IF IT WARRANTS IT, I'M FOR IT.
- 13 Q IF THE---
- 14 A IF THE CIRCUMSTANCES WARRANTS IT.
- 15 Q OKAY. AND WOULD THOSE CIRCUMSTANCES ARE NOT JUST
- 16 GUILT AND INNOCENT THINGS, BUT OTHER THINGS SUCH AS
- 17 AGGRAVATION AND MITIGATION AS WELL, IS THAT RIGHT?
- 18 A YES, UH-HUH.
- 19 Q ALL RIGHT, SIR. SO YOU CAN -- YOU CAN SIT THERE AND
- 20 LISTEN THROUGH THE ENTIRE TRIAL, AS WELL AS INFORMATION YOU
- 21 HEAR, NOT JUST GUILT BUT ALSO MITIGATION AND AGGRAVATION?
- 22 A YES.
- 23 Q ALL RIGHT, SIR. BECAUSE WE ARE LOOKING FOR A JUROR
- 24 WHO CAN BE FAIR TO BOTH THE STATE AND THE DEFENSE AND PAY
- 25 ATTENTION TO ALL THAT INFORMATION. YOU CAN DO THAT?

1 A YES.

2 Q ALL RIGHT, SIR. THANK YOU. I APPRECIATE IT.

3 A THANK YOU.

4 MR. STONE: THANK YOU, YOUR HONOR.

5 THE COURT: MR. CHASE.

6 MR. CHASE: THANK YOU, YOUR HONOR.

7 EXAMINATION

8 BY MR. CHASE:

9 Q GOOD EVENING, MR. FOULKS.

10 A GOOD EVENING. HOW ARE YOU DOING?

11 Q I'M FINE. HOW ARE YOU?

12 A ALL RIGHT.

13 Q I KNOW YOU'VE BEEN SITTING AROUND FOR AWHILE AND I'M
14 ONLY GOING TO ASK, HOPEFULLY, ONE QUESTION.

15 A OKAY.

16 Q MAY NAME -- OH, LET ME INTRODUCE MYSELF. MY NAME IS
17 TOM CHASE AND I WILL BE ASSISTING FRAN HUMPHRIES, THE
18 DEPUTY SOLICITOR, AND SOLICITOR DONNIE MYERS. THEY'RE NOT
19 PRESENT IN THE COURTROOM RIGHT NOW. THEY HAVE SOME OTHER
20 OBLIGATIONS THEY HAD TO ATTEND TO.

21 THE ONLY THING I WANTED TO ASK YOU. IT'S A
22 PROCEDURAL POINT THAT GOES DIRECTLY TO THE CORE OF THE --
23 OF IMPOSING A DEATH SENTENCE. I THINK ALL YOUR ANSWERS UP
24 TO THIS POINT HAVE BEEN VERY CLEAR AND I DON'T WANT TO
25 REHASH THAT. BUT I WANT TO KIND OF HAVE -- LET'S ASSUME A

0995

- 1 COUPLE OF STEPS AND I CAN GET THIS QUESTION OUT OF THE WAY.
- 2 A OKAY.
- 3 Q ASSUME THAT YOU WERE SITTING ON THAT JURY---
- 4 A UH-HUH.
- 5 Q ---AND ALL TWELVE OF YOU DECIDED THAT MR. TERRY WAS
- 6 GUILTY OF THE CRIMES THAT HAVE BEEN ALLEGED---
- 7 A UH-HUH.
- 8 Q YOU MOVED INTO THAT PENALTY PHASE?
- 9 A UH-HUH.
- 10 Q AND AFTER CONSIDERING ALL OF THE EVIDENCE IN
- 11 AGGRAVATION, IN MITIGATION IN THAT PENALTY PHASE, YOU ALONG
- 12 WITH THE OTHER ELEVEN JURORS DECIDED THAT A DEATH SENTENCE
- 13 WAS THE APPROPRIATE VERDICT IN THIS CASE.
- 14 NOW, UNDER THE LAW OF OUR STATE, IN ORDER FOR
- 15 THAT SENTENCE, FOR THAT VERDICT TO GO THROUGH, FOR IT TO BE
- 16 IMPOSED, EACH INDIVIDUAL JUROR HAS TO SIGN THEIR NAME ON
- 17 THAT VERDICT FORM. THERE LITERALLY WILL BE TWELVE BLANK
- 18 LINES ON THERE FOR EACH INDIVIDUAL JUROR TO SIGN.
- 19 WOULD THE FACT THAT, THIS IS, AFTER YOUR
- 20 DELIBERATIONS, YOU DECIDED THAT UNDER THE FACTS AND
- 21 CIRCUMSTANCES OF THE CASE, IT WAS THE APPROPRIATE SENTENCE,
- 22 WOULD THE FACT, THE MERE FACT THAT YOU HAD TO SIGN YOUR
- 23 NAME ON THAT VERDICT FORM IMPAIR YOUR ABILITY TO NOT ONLY
- 24 CONSIDER THE DEATH SENTENCE, BUT ALSO TO IMPOSE IT IN THE
- 25 CASE?

1 A NO.

2 Q AND LOOKING FORWARD, AS MR. STONE SAID, AS A FAIR AND
3 IMPARTIAL JUROR FOR THE STATE AND THE DEFENSE, ARE YOU THAT
4 TYPE JUROR?

5 A YES, I AM.

6 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU.

7 A THANK YOU.

8 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

9 MR. STONE: NO, SIR.

10 THE COURT: OR THE STATE?

11 MR. CHASE: NO, SIR, YOUR HONOR.

12 THE COURT: MR. FOULKS, FROM THE INFORMATION THAT
13 HAS BEEN PRESENTED TO ME AND, OF COURSE, I WAS CONCERNED
14 ABOUT YOUR FINANCIAL SITUATION, BUT FROM WHAT YOU'VE TOLD
15 ME, THAT YOU FEEL LIKE YOU COULD SERVE IN THIS CASE, I FIND
16 THAT YOU ARE QUALIFIED TO SERVE AS A POTENTIAL JUROR IN
17 THIS MATTER.

18 AS A RESULT OF THAT QUALIFICATION, I'M GOING TO
19 REMIND YOU, ONCE AGAIN, THAT YOU ARE NOT TO DISCUSS THIS
20 CASE WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR ANYONE
21 ELSE.

22 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
23 CONCERNING THIS CASE, I WANT YOU TO GATHER AS MUCH
24 INFORMATION AS YOU POSSIBLY CAN ABOUT THAT INDIVIDUAL OR
25 INDIVIDUALS AND REPORT THAT TO ME IMMEDIATELY BECAUSE

0997

1 THAT'S A VERY SERIOUS MATTER AND I WOULD DEAL WITH IT.
2 ACCORDINGLY.

3 ALSO, I AM GOING TO CONTINUE TO INSTRUCT YOU THAT
4 YOU ARE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
5 CONCERNING THIS CASE.

6 SIMPLY PUT, IF YOU ARE A JUROR IN THIS CASE, ALL
7 WE WOULD WANT YOU TO CONSIDER IN THIS MATTER IS WHAT YOU
8 SEE AND HEAR IN THIS COURTROOM. NOTHING MORE OR NOTHING
9 LESS.

10 NOW, I'M GOING TO BE SENDING YOU AWAY THIS
11 EVENING WITH THE INSTRUCTION THAT YOU ARE TO PACK YOUR BAGS
12 AND TO BE BACK HERE IN THE MORNING AT 9:30 A.M. PLEASE
13 LEAVE YOUR LUGGAGE IN YOUR VEHICLE.

14 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, THEN
15 YOU WILL BE TAKEN BY THE JURY CUSTODIANS WITH ALL OF YOUR
16 BELONGINGS TO THE MOTEL AND PROPERLY SITUATED THERE. AND
17 IF YOU ARE NOT SELECTED, WE'LL ALLOW YOU TO GO BACK HOME
18 WITH OUR THANKS FOR YOUR PARTICIPATION HERE THIS WEEK.
19 THANK YOU VERY MUCH. AND I'LL LOOK FORWARD TO SEEING YOU
20 HERE IN THE COURTROOM IN THE MORNING AT NINE-THIRTY.

21 THE JUROR: NINE-THIRTY?

22 THE COURT: YES, SIR.

23 THE JUROR: ALL RIGHT, SIR.

24 THE COURT: THANK YOU, SIR.

25 THE JUROR: THANK YOU.

1 THE COURT: HAVE A PLEASANT EVENING.

2 (WHEREUPON, THE JUROR WAS EXCUSED
3 AT THIS TIME.)

4 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
5 THAT JUROR NUMBER 86, DAVID FOULKS, IS QUALIFIED TO SERVE
6 AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
7 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA,
8 1976, AS AMENDED.

9 JUROR NUMBER EIGHT, DAVID BANKS.

10 DAVID L. BANKS,

11 (JUROR NUMBER 8, BLACK MALE, FIRST
12 BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

13 EXAMINATION

14 BY THE COURT:

15 Q HOW ARE YOU THIS EVENING, MR. BANKS?

16 A I'M DOING ALL RIGHT.

17 Q GOOD. YOU ARE DAVID BANKS, CORRECT?

18 A CORRECT.

19 Q NOW, MR. BANKS, YOU UNDERSTAND THAT YOU ARE UNDER
20 OATH FOR THIS PROCEEDING TONIGHT?

21 A YES.

22 Q AND YESTERDAY WHEN I DISMISSED YOU AND THE REST OF
23 YOUR COLLEAGUES FOR THE REMAINDER OF THE DAY AND UNTIL
24 TODAY, YOU UNDERSTAND THAT I TOLD YOU THAT YOU WERE NOT TO
25 DISCUSS THIS CASE WITH ANYONE, THAT YOU -- IF ANYONE

0999

1 ATTEMPTED TO CONTACT YOU, THAT YOU WERE TO REPORT THAT TO
2 ME AND ALSO THAT YOU WERE TO REFRAIN FROM READING, WATCHING
3 OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

4 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

5 A NO.

6 Q NOW, MR. BANKS, I'M GOING TO BE ASKING YOU SOME
7 QUESTIONS AND THEN AFTER THAT, ONE OF THE LAWYERS FOR THE
8 DEFENDANT WILL BE ASKING YOU SOME QUESTIONS AND THEN MR.
9 CHASE FROM THE SOLICITOR'S OFFICE WILL ASK YOU SOME
10 QUESTIONS.

11 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
12 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE TYPE
13 OF CASE THAT WE ARE GOING TO BE TRYING THIS WEEK, IT'S
14 NECESSARY THAT CERTAIN QUESTIONS BE ASKED.

15 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
16 WRONG ANSWERS TO THESE QUESTIONS THAT I'M GOING TO BE
17 POSING TO YOU AND, PLEASE, JUST ANSWER THEM OPENLY,
18 HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO ONE IS
19 CHALLENGING YOUR VIEW.

20 SIMPLY, WE NEED TO KNOW WHAT YOUR VIEWS ARE IN
21 CERTAIN AREAS.

22 NOW, ALSO, WE'RE PROBABLY GOING TO ASK YOU SOME
23 QUESTIONS THAT YOU HAVE NEVER EVEN CONSIDERED BEFORE. SO I
24 WANT YOU TO LISTEN VERY CAREFULLY TO ALL OF THESE
25 QUESTIONS. IF YOU NEED TO HAVE THEM REPEATED OR EXPLAINED