

VOLUME ONE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Larry R. Patterson, Circuit Court Judge

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S.C. Supreme Court

JOHN RICHARD WOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF

GENERAL SESSIONS

THE STATE)
OF SOUTH CAROLINA,)

VOLUME I

-vs-

01-GS-23-3106
TRANSCRIPT OF RECORD
JURY QUALIFICATION
DAY 1 (2/4/02)

JOHN RICHARD WOOD,)
)
DEFENDANT.)

FEBRUARY 4-16, 2002
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

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MATTERS AND MOTIONS

1 THE COURT: WE'RE ON THE RECORD IN THE STATE VERSUS
2 JOHN RICHARD WOOD. ALL ARE PRESENT, INCLUDING THE DEFENDANT.

3 THE FIRST ORDER OF BUSINESS IS TO CONFIRM WITH THE MEDIA
4 PRESENT THE STANDARD RULES AND OPERATING PROCEDURES. WE ARE
5 IN THE INITIAL STAGES OF THE SELECTION PROCESS. THERE CAN BE
6 NO DISPLAY OF THE JURORS, ANY IDENTIFYING MARKS OF THE
7 JURORS. AND I WANT TO THANK THE PRESS FURTHER FOR THOSE
8 OPERATING THE POOL CAMERA AND ALSO THE NEWS MEDIA, WITH WHOM
9 I SPOKE, HAS GRACIOUSLY AGREED NOT TO REPORT DURING THE
10 SELECTION PROCESS THE BREAKDOWN OF THE JURY IN TERMS OF RACE
11 OR GENDER, AND I APPRECIATE VERY MUCH THEIR ACCOMMODATION IN
12 THAT REGARD.

13 PANEL ONE IS IN COURTROOM 7 REVIEWING THE WITNESS LIST
14 AND THE STATEMENT WITH WHICH COUNSEL IS VERY FAMILIAR, THAT
15 IS, THE THREE TYPES OF JURORS. AT THIS TIME I AM GOING TO
16 GIVE TO THE COURT REPORTER AND MARK AS A COURT'S EXHIBIT BOTH
17 THE -- BOTH FORMS WHICH ARE BEING REVIEWED BY THIS PANEL AND
18 EACH SUBSEQUENT PANEL -- THE WITNESS LIST FURNISHED BY BOTH
19 SIDES AND THE THREE TYPES OF JURORS. MADAME COURT REPORTER,
20 IF YOU WOULD, MARK THOSE RESPECTIVELY AS COURT'S EXHIBITS.

21 (LIST OF WITNESSES MARKED AS COURT'S EXHIBIT NUMBER 1)

22 (THREE TYPES OF JURORS DOCUMENT MARKED AS COURT'S
23 EXHIBIT NUMBER 2)

24 I UNDERSTAND THERE ARE SOME PRELIMINARY MATTERS THAT
25 NEED TO BE ADDRESSED. TO THE EXTENT THEY IMPACT VOIR DIRE,

MATTERS AND MOTIONS

1 THOSE, OF COURSE, NEED TO BE RESOLVED. IF THEY DON'T,
2 PERHAPS THEY COULD BE RESOLVED EITHER AFTER THE PANEL OR
3 EARLY IN THE MORNING.

4 I'M AWARE OF ONE MOTION THAT WAS FILED TODAY THAT
5 IMPACTS THE EXTENT OF INDIVIDUAL VOIR DIRE. IF THERE ARE
6 OTHER MATTERS, I'LL BE GLAD FOR COUNSEL TO EDUCATE ME ON WHAT
7 ISSUES ARE BEFORE THE COURT AT THIS TIME.

8 SOLICITOR ARIAIL: THE STATE HAS NONE OTHER THAN THE
9 ONE WE HAVE FILED.

10 MR. MAULDIN: YOUR HONOR, I ASSUME THAT THE MOTION THAT
11 THE STATE FILED WOULD HAVE TO BE HEARD PRIOR TO THE FIRST
12 JUROR. I WANTED TO ASK A COUPLE OF QUESTIONS OFF OF THAT
13 MOTION BUT WITH REGARD TO VOIR DIRE IN GENERAL.

14 THERE HAD BEEN A PROPOSAL TO THE COURT TO BRING IN THE
15 PANEL INITIALLY, MAKE GENERAL COMMENTS, DETERMINE WHETHER OR
16 NOT, IF ANY, EXPOSURE TO PUBLICITY BY SHOWS OF HANDS AND SO
17 FORTH, THEN TAKE THEM OUT AND BRING THEM IN INDIVIDUALLY. IS
18 THE COURT NOT -- I ASSUME THE COURT IS NOT GOING TO USE THAT
19 METHOD BUT USE A FULL INDIVIDUAL METHOD?

20 THE COURT: WHAT COUNSEL PROPOSED WAS TO SEND ME A
21 TRANSCRIPT OF I DON'T KNOW HOW MANY PAGES, AND IT SAYS,
22 "HERE'S WHAT WE WANT." I GLANCED AT IT, AND I DID NOT REVIEW
23 IT IN DETAIL. BUT I DID SEE WHERE INITIAL PROCESS WAS DONE
24 COLLECTIVELY, AND THAT I WILL DO. IT MAY NOT BE IDENTICAL TO
25 THE TRANSCRIPT THAT YOU PROVIDED, BUT I WILL BRING ALL OF

MATTERS AND MOTIONS

1 THEM IN, SWEAR THEM, REMIND THEM OF THE LEGAL PRINCIPLES OF
2 PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF. I WILL
3 EXPLAIN TO THEM GENERALLY THE PROCESS OF THE TWO-STAGE TRIAL.
4 I WILL INFORM THEM OF AGGRAVATING AND MITIGATING
5 CIRCUMSTANCES. I WILL INSURE THAT THE JURORS COLLECTIVELY
6 UNDERSTAND THE BASIC LEGAL PRINCIPLES.

7 I WILL THEN INTRODUCE THE PANEL COLLECTIVELY TO COUNSEL
8 AND MR. WOOD. I WILL THEN INQUIRE IF THERE IS ANY
9 RELATIONSHIP BY BLOOD OR MARRIAGE TO COUNSEL OR MR. WOOD.
10 THEY WILL HAVE ALSO REVIEWED THE WITNESS LIST.

11 THEY HAVE FURTHER SUPPLIED UNDER THEIR SEATS AN
12 ADDITIONAL COPY OF THE WITNESS LIST IF THEY NEED TO REVIEW
13 IT. AND I WILL ASK THEM IF THEY ARE RELATED BY BLOOD OR
14 MARRIAGE OR ACQUAINTED WITH ANY POTENTIAL WITNESS.

15 AT THAT POINT I WOULD THEN PROCEED TO THE INDIVIDUAL
16 QUESTIONING. THE FOUR WHO ARE NOT UP WOULD RETURN TO
17 COURTROOM 7.

18 I WAS CONSIDERING ASKING A PUBLICITY QUESTION, WHAT THEY
19 WERE EXPOSED TO, BUT I DIDN'T WANT TO GO INTO ANY DETAIL
20 BECAUSE I DIDN'T WANT WHAT ONE HAD HEARD TO IMPACT WHAT THE
21 OTHER MAY NOT HAVE HEARD.

22 IF Y'ALL WISH TO OBJECT TO THAT PROCESS, YOU MAY DO SO.

23 SOLICITOR ARIAIL: NO OBJECTION FROM THE STATE.

24 MR. MAULDIN: NO OBJECTIONS GENERALLY, JUDGE. I'LL
25 HAVE TO JUST WAIT AND SEE HOW THAT FIRST GROUP GOES TO

MATTERS AND MOTIONS

1 DETERMINE IF I HAVE AN OBJECTION.

2 THE COURT: SURE.

3 MR. MAULDIN: AND OF COURSE I WOULD MAKE IT AT THE
4 APPROPRIATE TIME.

5 I DID WANT TO HAVE THE COURT AT LEAST MAKE NOTE OF THESE
6 SITUATIONS WITH REGARD TO THIS ISSUE OF PRETRIAL PUBLICITY
7 THAT WE KEEP DEALING WITH -- OR KEEP -- OR I KEEP BEING VERY
8 NERVOUS ABOUT. IF THE COURT RECALLS -- OR WOULD RECALL,
9 AFTER THE INCIDENT THERE WAS A PERIOD OF AN HOUR OR TWO WHEN
10 THERE WERE -- THEY WERE -- LAW ENFORCEMENT WAS SEARCHING FOR
11 THE SUSPECTS OF THE ALLEGED SHOOTING. DURING THAT -- THAT
12 WAS IN EARLY AFTERNOON OF DECEMBER THE 6TH, AND IT RESULTED
13 IN THE GREENVILLE COUNTY SCHOOL DISTRICT LOCKING THEIR
14 SCHOOLS DOWN, AND IT HAD A -- THERE WAS A NUMBER OF MIDDLE
15 SCHOOLS, HIGH SCHOOLS IN THE EAST SIDE OF TOWN.

16 AGAIN, THIS IS -- THEY MAY NOT KNOW THAT THEY KNOW ABOUT
17 IT UNLESS THEY HEAR SOMETHING THAT WILL SPUR THE MEMORY. SO
18 I'M NOT ASKING THAT WE TELL THEM ABOUT THAT EXCEPT THAT YOU
19 BE REAL -- REALIZE THAT THAT COULD BE SOMETHING THAT IN THE
20 MIDDLE OF THIS TRIAL THEY WOULD SAY, "OH, THIS IS THAT CASE,"
21 AND THAT MIGHT CAUSE SOME DIFFICULTY THAT COULD BE DEALT WITH
22 UP FRONT.

23 ALSO, YOUR HONOR, THE OTHER IDEAS THAT I HAD WITH
24 REGARDS TO QUESTIONS ON PUBLICITY WERE THE ISSUE OF THE
25 MOTORCYCLE OR SCOOTER SITUATION, THE ALLEGATION OF CONNECTION

MATTERS AND MOTIONS

1 WITH BANK ROBBERIES -- AND OBVIOUSLY THAT NEVER HAS -- WE
2 MADE MOTIONS FOR PRODUCTION OF THAT AND NEVER GOT ANYTHING,
3 SO I ASSUME THERE IS NO EVIDENCE OF THAT.

4 AND THEN THE ANDERSON CHASE. AND THIS IS -- THE REASON
5 I WAS KIND OF SUGGESTING YOU MIGHT WANT TO GO AHEAD AND IRON
6 OUT ALL OF THE ANDERSON PROBLEMS IS BECAUSE I'M ANTICIPATING
7 THAT THERE WILL BE SOME SITUATION IN THIS VOIR DIRE THAT'S
8 GOING TO MAKE US DECIDE WHAT THE REAL ULTIMATE ISSUE IN THE
9 ANDERSON EVIDENCE CONTROVERSY IN THIS CASE IS, IF THAT MAKES
10 SENSE.

11 I HAVE FILED A RESPONSE AND CONSENTED UNDER THESE
12 CIRCUMSTANCES TO A MOTION. I'M ASSUMING THAT CHANGES THE
13 TERRITORY AND IT MAY CHANGE WITH REGARD TO THE VOIR DIRE
14 PROCESS.

15 I THINK THAT'S ALL THE MATTERS I HAVE ON THAT SUBJECT,
16 YOUR HONOR.

17 THE COURT: IF A JUROR INDICATES NO KNOWLEDGE OF THE
18 CASE OR VERY LITTLE KNOWLEDGE, WOULD YOU WANT ME TO ASK THE
19 JUROR OR REMIND THEM THAT AT THE TIME SCHOOLS IN THAT AREA OF
20 THE COUNTY WERE CLOSED AND SEE IF THAT TRIGGERS SOME MEMORY?
21 WOULD YOU WANT ME FURTHER TO STATE THERE WERE FURTHER ALLEGED
22 INCIDENTS IN ANDERSON COUNTY TO SEE IF THAT TRIGGERS A
23 MEMORY? OR DO YOU WANT ME TO LEAVE IT ALONE?

24 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

25 THE COURT: AND MAY I SAY SOMETHING ELSE ABOUT THAT? I

MATTERS AND MOTIONS

1 RECEIVED YOUR RESPONSE. I WORKED OVER THE WEEKEND, DID
2 CONSIDERABLE ADDITIONAL RESEARCH, AND I HAVE PREPARED A BENCH
3 ORDER. I WAS GOING TO HEAR FURTHER AT THE APPROPRIATE TIME.
4 YOUR RESPONSE TODAY, I THINK, ESSENTIALLY MOOTS THAT BENCH
5 ORDER. BUT I WAS GOING TO READ THAT ON THE RECORD ONCE WE
6 HAD SELECTED THE JURY. I DID NOT WANT TO REALLY VISIT THAT
7 ISSUE IN MEANINGFUL DETAIL UNTIL THE JURY WAS SEQUESTERED.

8 MR. MAULDIN: WELL, YOU KNOW WHAT'S IN YOUR BENCH
9 ORDER. YOU KNOW THE RESEARCH YOU'VE DONE. YOU KNOW THE
10 DILEMMA THE DEFENSE IS IN. SO I BELIEVE YOU -- I'M JUST --
11 THESE ARE THE KIND OF THINGS THAT I KEEP KIND OF THROWING OUT
12 FLAGS, BECAUSE IF WE STUMBLE ON THEM, THEN, YOU KNOW, WE
13 WOULDN'T WANT IT TO BE TOO LATE. BUT I DON'T KNOW THE GOOD
14 TIMING FOR IT, YOUR HONOR, ON THE ANDERSON COUNTY STUFF. BUT
15 I DID SUBMIT A RESPONSE CONSENTING TO THE POSITIONS -- THE
16 ORIGINAL POSITIONS OF THE STATE AND TO THEIR MEMORANDUM.

17 WITH REGARD TO YOUR QUESTION ABOUT DO WE TRY TO REMIND
18 THEM OF MATTERS, FOR EXAMPLE, THE SCHOOL CLOSINGS AND THE
19 SUBSEQUENT ANDERSON SITUATION, THE SUBSEQUENT ANDERSON
20 SITUATION, I THINK IT PROBABLY WOULD BE APPROPRIATE FOR THIS
21 COURT TO GIVE THEM A LITTLE HINT, BECAUSE THAT IS GOING TO
22 COME OUT.

23 ON THE OTHER HAND, THE SCHOOL CLOSINGS MAY BE THE KIND
24 OF THING THAT YOU MIGHT -- IF THE JURY IS KIND OF UNDECIDED,
25 YOU MIGHT SAY, WELL, I THINK MAYBE SOME SCHOOLS -- THE

MATTERS AND MOTIONS

1 LETTING OUT OF SCHOOL KIDS WAS AFFECTED OR SOMETHING. I
2 DON'T KNOW THE BEST WAY TO DO THAT. I JUST WANTED TO BRING
3 IT TO THE COURT'S ATTENTION THOUGH.

4 THE COURT: ALL RIGHT, SIR.

5 SOLICITOR ARIAIL: I JUST WANT TO ADDRESS ONE ISSUE AND
6 I -- SINCE HE HAS MADE THIS POINT. MAYBE I'M GETTING OVERLY
7 PARANOID IN THESE THINGS, BUT THE STATEMENT IN PARAGRAPH 5 OF
8 HIS MOTION THAT HE'S CONSENTED IS BASED ON THIS, IT SAYS, "IN
9 LIGHT OF THE COURT'S RULING ON FEBRUARY 1ST," I DON'T BELIEVE
10 THE COURT RULED ON FEBRUARY THE 1ST. I DON'T THINK THE COURT
11 HAS EVER RULED OTHER THAN TO BE KIND ENOUGH TO GIVE US AN
12 ADVISORY OPINION AS TO WHERE YOU MIGHT BE GOING. AND WHAT I
13 DON'T WANT TO HAVE APPEAR IN SOME APPELLATE RECORD IS THAT
14 THIS DEFENDANT RAISED SOME SUBSTANTIAL RIGHT TO OBJECT TO
15 EVIDENCE BASED ON YOUR HONOR'S RULING. I DON'T THINK THAT'S
16 WHERE WE ARE, AND I HAD NEVER EXPECTED THAT THAT'S WHERE WE
17 WOULD BE. AND I THOUGHT THAT THE COURT GAVE US SOME
18 GUIDANCE, BUT IT WAS CERTAINLY OUR OPINION THAT THE ISSUE WAS
19 NOT GOING TO BE FINALIZED UNTIL THAT FIRST WITNESS BROUGHT IT
20 HEAD TO HEAD FOR THE COURT TO RULE ON IN A MOTION SITUATION
21 -- I MEAN, IN AN ACTUAL TRIAL SITUATION.

22 SO I DON'T WANT THIS RECORD TO REFLECT ON ANY APPELLATE
23 SITUATION THAT IN LIGHT OF THE COURT'S RULING OF FEBRUARY 1ST
24 SAYING THAT THAT EVIDENCE COULDN'T COME IN IN THE PENALTY
25 PHASE -- OR COULD COME IN IN THE PENALTY PHASE, BECAUSE I

MATTERS AND MOTIONS

1 HAVEN'T UNDERSTOOD THAT OTHER THAN AN ADVISORY RULING.

2 MR. MAULDIN: I THINK YOUR RULING OR YOUR POSITION AS
3 STATED ON THE RECORD FEBRUARY THE FIRST SPEAKS FOR ITSELF.
4 IF I'M MISUNDERSTANDING IT, THAT'S MY FAULT. SO I -- I
5 DIDN'T MEAN TO USE THE WORD RULING AS THOUGH IT HAD BEEN AN
6 ORDER. I JUST KNOW WHAT I HEARD.

7 THE COURT: OKAY. IN LIGHT OF THAT, LET ME GO AHEAD
8 AND READ MY BENCH ORDER. AND I DON'T THINK ANYTHING IN THIS
9 ADVERSELY AFFECTS JURY SELECTION.

10 DEFENDANT SEEKS AN ORDER OF THE COURT RULING WITH
11 FINALITY AS TO THE ADMISSIBILITY DURING THE SENTENCING PHASE
12 OF THE ANDERSON EVIDENCE IN ITS ENTIRETY. I HAVE EARLIER
13 RULED THAT I WOULD LIKELY SUBSTANTIALLY LIMIT THE
14 ADMISSIBILITY OF SUCH EVIDENCE IN THE FIRST PHASE. THE STATE
15 PROMPTLY SERVED NOTICE OF ITS INTENT TO SUBMIT THE ADDITIONAL
16 EVIDENCE IN THE SENTENCING PHASE.

17 WE NOW HAVE DEFENDANT'S REQUEST. IT APPEARS DEFENDANT
18 DESIRES AN EARLY RULING SO FOR STRATEGY REASONS HE MAY
19 REASSESS HIS POSITION. IF SUCH EVIDENCE IS LIKELY ADMISSIBLE
20 IN THE SENTENCING PHASE, FOR STRATEGY AND TIMING PURPOSES
21 DEFENDANT MAY REVISIT HIS POSITION CONCERNING THE
22 ADMISSIBILITY OF SUCH EVIDENCE IN THE FIRST PHASE.

23 INITIALLY I AM PRECLUDED ON RULING WITH ABSOLUTE
24 FINALITY PURSUANT TO A MOTION IN LIMINE. HOWEVER,
25 RECOGNIZING THE VALID REASONS OF DEFENDANT IN SEEKING A

MATTERS AND MOTIONS

1 RULING, I WILL INDICATE A SUBSTANTIAL LIKELIHOOD THAT SUCH
2 EVIDENCE WOULD BE ADMISSIBLE IN A SENTENCING HEARING. THAT,
3 OF COURSE, ULTIMATELY MUST BE DETERMINED AT THE TIME AND
4 CIRCUMSTANCES PRESENTED WHEN SUCH EVIDENCE IS OFFERED.

5 I HAVE FOUND NUMEROUS CASES, UNITED STATES SUPREME COURT
6 AND SOUTH CAROLINA SUPREME COURT, FINDING SUCH EVIDENCE
7 CLEARLY ADMISSIBLE.

8 MOREOVER, IN MY FIRM JUDGMENT, THE EVIDENCE AT ISSUE IS
9 PART OF THE RES GESTAE OF THE INDICTED OFFENSE. IT IS MY
10 INTENT TO EXCLUDE MUCH OF THE EVIDENCE IN THE GUILT PHASE
11 ONLY BECAUSE OF ITS POTENTIAL SUBSTANTIAL PREJUDICIAL NATURE
12 VIS A VIS THE INDICTED AND LIMITED ISSUES BEFORE THE JURY IN
13 THE GUILT PHASE. SUCH EVIDENCE TAKES ON AN ENTIRELY
14 DIFFERENT LIGHT WHEN IT IS EXAMINED IN THE CONTEXT OF A
15 POSSIBLE SENTENCING HEARING.

16 HERE ARE TYPICAL QUOTES IN THE CASE LAW. "WHAT IS
17 ESSENTIAL IS THAT THE JURY HAVE BEFORE IT ALL POSSIBLE
18 RELEVANT INFORMATION ABOUT THE INDIVIDUAL DEFENDANT WHOSE
19 FATE IT MUST DETERMINE."

20 I EVEN FOUND CASES WHERE ACTS OR CRIMES UNRELATED TO THE
21 INDICTED CHARGE WERE HELD ADMISSIBLE. "EVIDENCE OF SERIOUS
22 UNRELATED CRIMES IS EXTREMELY PROBATIVE AND RELEVANT TO THE
23 CHARACTER AND PROPENSITIES OF THE DEFENDANT AND MAY BE USEFUL
24 FOR THE JURY TO EVALUATE IN PERFORMING ITS AWESOME TASK OF
25 DECIDING WHETHER OR NOT TO RECOMMEND EXECUTION."

MATTERS AND MOTIONS

1 THE U.S. SUPREME COURT HAS HELD THE EIGHTH AMENDMENT
2 REQUIRES CONSIDERATION OF THE CHARACTER OF THE ACCUSED AS A
3 CONSTITUTIONALLY INDISPENSABLE PART OF THE PROCESS OF
4 INFLECTING THE DEATH PENALTY.

5 THEREFORE, IN LIGHT OF MY PROBABLE RULING, I WOULD OF
6 COURSE EXTEND TO THE DEFENDANT THE OPPORTUNITY TO CONSIDER
7 HOW SUCH RULING MAY IMPACT TRIAL STRATEGY.

8 THE STATE HAS A MOTION AS TO VOIR DIRE, AND I'D LIKE TO
9 HEAR A SUMMARY OF THAT MOTION. I HAVE THE MEMO -- OR THE
10 MOTION. BUT IF YOU WANT TO ADD ANYTHING TO IT, THIS IS YOUR
11 OPPORTUNITY.

12 SOLICITOR ARIAIL: YOUR HONOR, THE MOTION, I WOULD
13 SUBMIT, IS PROBABLY MORE OF ONE IN LIMINE. I THINK AS THE --
14 WE'VE CITED THE APPLICABLE LAW. BUT I THINK AS THE QUESTIONS
15 ARE ASKED THEY'RE GOING TO TAKE ON DIFFERENT FORMS; AND,
16 THEREFORE, IT'S INCAPABLE OF DEFINING EACH ONE. BUT THE
17 GENERAL PURPOSE IS TO PROHIBIT WHAT WE CALL -- OR HAS BEEN
18 HELD BY OTHER COURTS IN SIMILAR SITUATIONS LIMITING VOIR DIRE
19 STAKING OUT OR PROFILING A JUROR ON A FISHING EXPEDITION TO
20 FIND OUT A SET OF BROAD-BASED QUESTIONS SUCH AS WHAT OTHER
21 INFORMATION WOULD YOU HAVE WANTED HERE RATHER THAN STATING IT
22 IN THE CONTEXT OF THE INSTRUCTIONS FROM THE COURT AND THE
23 PROCEDURE.

24 AND IT MAY BE BETTER FOR US TO DEFINE THAT. I THINK WE
25 TRIED TO DEFINE IT IN EXACT QUOTES THAT WERE TAKEN FROM THE

MATTERS AND MOTIONS

1 LAST TRIAL, A SIMILAR OBJECTION TO IT THAT WE MADE THAT WERE
2 RULED -- THE OBJECTIONS WERE SUSTAINED IN THE PRIOR TRIAL.

3 OUR PURPOSE IS NOT TO IMPEDE ANYTHING. OUR PURPOSE IS
4 TO MAKE SURE THAT IT REMAINS WITHIN THE BOUNDS WITHOUT US
5 HAVING TO STAND UP EACH TIME AND OBJECT. BUT IF IT'S EASIER
6 FOR THE COURT, WE'LL BE GLAD TO RESERVE THAT AND BRING IT TO
7 THE COURT'S SPECIFIC ATTENTION WHEN ONE OF THOSE QUESTIONS IS
8 ASKED.

9 BUT FROM GENERAL OVERVIEW, IT'S SIMPLY A MATTER OF
10 TRYING TO LIMIT PROFILING, STAKING OUT. AND WE CITED, OF
11 COURSE, YOUR HONOR, THE AUTHORITY WHERE HE IS NOT ENTITLED --
12 THE DEFENDANT IS NOT ENTITLED TO AN OPEN-ENDED INQUIRY
13 REGARDING THE PROSPECTIVE JUROR SENTIMENTS ON EACH AND EVERY
14 POSSIBLE AGGRAVATING AND MITIGATING CIRCUMSTANCE.

15 I THINK IN FLESHING THIS OUT JUST TO THE CONTRARY -- IF
16 I WERE TO STAND UP IN FRONT OF A JUROR AND SAY SOMETHING
17 ALONG THE LINES, "IF THIS CASE -- IF YOU WERE FACED WITH THE
18 SITUATION OF A POLICE OFFICER BEING KILLED IN THE LINE OF
19 DUTY," THE FIRST THING I'M GOING TO HEAR IS, "WHOA, YOU'RE
20 GETTING CASE SPECIFIC." AND I THINK THE RULE OUGHT TO APPLY
21 BOTH WAYS, AND THAT'S ALL I'M ASKING. IF I WANTED TO GET
22 INTO FISHING AROUND ABOUT SOMETHING OF THE NATURE OF
23 PROFILING, "WELL, WHAT WOULD YOU WANT TO HEAR IN TERMS OF
24 WHAT COULD THE STATE BRING TO YOU TO CONVINCE YOU TO GIVE THE
25 DEATH PENALTY?" I THINK YOU WOULD HEAR AN OBJECTION AND I

MATTERS AND MOTIONS

1 THINK YOU WOULD SUSTAIN IT. AND SO FROM THAT STANDPOINT, I'M
2 SIMPLY SAYING, LET'S KEEP THE PLAYING FIELD LEVEL AND NOT GO
3 FISHING. THAT'S THE BASIS FOR OUR ARGUMENT.

4 THE COURT: DO YOU WISH TO RESPOND?

5 MR. MAULDIN: YES, SIR. YOUR HONOR, THE STATE HAS
6 CITED STATE VERSUS POWERS, AND THEY SAY IN THEIR CITE, STATE
7 VERSUS POWERS CITING STATE OF NORTH CAROLINA VERSUS SKIPPER,
8 WHICH I THINK IS WHERE WE REALLY -- I THINK THAT THE FACT
9 THAT THEY'RE CITING INDIRECTLY STATE VERSUS SKIPPER, WELL,
10 WE'VE READ STATE VERSUS SKIPPER, AND I WANT TO MAKE A COUPLE
11 OF REFERENCES TO THAT CASE, YOUR HONOR, BECAUSE I THINK WE
12 NEED TO DEFINE WHAT STAKING OUT -- THE DEFINITION OF STAKING
13 OUT.

14 THE SOUTH CAROLINA SUPREME COURT, I DON'T THINK HAS
15 ACTUALLY CLEARLY -- THEY'VE SAID STAKING OUT, AND THEN
16 THEY'VE REFERRED TO NORTH CAROLINA VERSUS SKIPPER. BUT LET
17 ME TALK ABOUT, A MINUTE, SKIPPER. ON PAGE 262 OF THE
18 SOUTHEASTERN, WE CONCLUDE THAT IN PERMITTING THE DEFENDANT TO
19 INQUIRE GENERALLY INTO THE JURORS' FEELINGS ABOUT MENTAL
20 ILLNESS AND RETARDATION AND OTHER MITIGATING CIRCUMSTANCES,
21 HE WAS GIVEN AN ADEQUATE OPPORTUNITY TO DISCOVER ANY BIAS ON
22 THE PART OF THE JUROR. THE ONLY RESTRICTION ENFORCED BY THE
23 COURT IS WHETHER THE JUROR COULD CONSIDER A SPECIFIC
24 MITIGATING CIRCUMSTANCE, AND THE STAKING OUT PART IS IN
25 GETTING A SPECIFIC SENTENCE. NOW, THAT'S WHAT STAKING OUT

MATTERS AND MOTIONS

1 REALLY MEANS.

2 THE WILLINGNESS OF A JUROR TO CONSIDER THE STATUTORY
3 MITIGATING CIRCUMSTANCES IN OUR STATE, WHICH ARE RIGHT HERE,
4 THERE IS NO QUESTION THAT IF YOU DO NOT ALLOW US TO ASK THAT,
5 THEN THEY DON'T HAVE A CLUE WHAT THEY'RE TALKING ABOUT. THEY
6 MAY THINK STATUTORY MITIGATING CIRCUMSTANCES MEANS THE GUY IS
7 OVER 6'6" OR UNDER 5'5". THEY MAY THINK IT MEANS HE LIVES ON
8 A CERTAIN -- THEY DON'T HAVE ANY IDEA UNLESS YOU GIVE THEM
9 GENERALLY AN IDEA OF WHAT THAT TYPE OF TERMINOLOGY MEANS.

10 STAKING OUT MEANS THAT YOU ARE TRYING TO GET THE JUROR
11 TO COMMIT TO A SENTENCE, ESSENTIALLY, IN ADVANCE. I AGREE
12 THAT'S WRONG. WE'RE SUPPOSED -- BOTH NOT SUPPOSED TO DO
13 THAT. EITHER WAY.

14 BUT INDIVIDUAL VOIR DIRE HAS GOT TO -- IN ORDER FOR IT
15 TO SERVE A MEANINGFUL PURPOSE, THE JUROR WHEN YOU'RE TALKING
16 TO THEM ABOUT MITIGATING AND AGGRAVATING -- AND HE'S TALKING
17 ABOUT AGGRAVATING AND I'M TALKING ABOUT MITIGATING -- THEY'VE
18 GOT TO HAVE A CLUE AS TO THE KINDS OF THINGS THAT MEANS. AND
19 AS LONG AS YOU COUCH IT IN DESCRIBING GENERALLY MITIGATION,
20 MITIGATING CIRCUMSTANCES, FOR EXAMPLE, A PERSON'S BACKGROUND,
21 EDUCATION, MENTAL HEALTH, MENTAL HEALTH ISSUES, ANY OF THAT
22 KINDS OF THINGS, WOULD THEY GIVE CONSIDERATION TO THOSE KINDS
23 OF THINGS IF TOLD BY THE COURT THEY HAD TO IN DECIDING WHICH
24 PENALTY, NOT IN -- IF YOU TRY TO MAKE THEM COMMIT TO A LIFE
25 SENTENCE, THEN I'M DOING THE WRONG THING. BUT IF I'M TELLING

MATTERS AND MOTIONS

1 THEM YOU'VE GOT TO BE WILLING TO GIVE CONSIDERATION TO THAT
2 KIND OF THING IN ORDER TO QUALIFY THE JUROR, THEN I THINK
3 THAT WE'RE ON BASE.

4 NOW, LAST EXAMPLE, YOUR HONOR. FOR EXAMPLE, LET'S SAY
5 THAT THIS CASE -- THIS CASE DOESN'T INVOLVE THIS, BUT THIS
6 CASE LET'S SAY IT WAS AGE. AGE IS A STATUTORY MITIGATOR.
7 AND IF A JUROR FROM THE WITNESS STAND SAID, "I WOULDN'T
8 CONSIDER AGE." AND I SAID, "WELL, IF THIS WAS A STATUTORY
9 FACTOR THAT THE JUDGE INSTRUCTED YOU TO BE ELIGIBLE AS A
10 JUROR YOU HAD TO TAKE THAT INTO CONSIDERATION, WOULD YOU TAKE
11 IT INTO CONSIDERATION?" "NO." THAT JUROR IS NOT QUALIFIED
12 UNDER OUR LAW. BUT I CAN'T FIND THAT OUT UNLESS YOU ASK THEM
13 ENOUGH QUESTIONS TO GET THEM TO SAY THAT.

14 SO I RESIST THIS KIND OF -- WE MIGHT AS WELL TAKE THE
15 FIRST TWELVE. WE MIGHT AS WELL PICK THE FIRST TWELVE JURORS
16 IF YOU CAN'T FIGURE OUT WHAT THEY THINK. AND SO I RESIST IT
17 ACCORDING TO NORTH CAROLINA VERSUS SKIPPER, MORTON VERSUS
18 ILLINOIS, MISSOURI VERSUS KRIEGER, WHICH I THINK IS ALSO IN
19 THEIR BRIEF -- YEAH, STATE VERSUS KREUTZER IS A MISSOURI
20 CASE. I'VE GOT THAT CASE TOO. SO I TAKE THE POSITION THAT
21 I'VE GOT TO BE ABLE TO ASK THEM WHETHER OR NOT THEY CAN
22 CONSIDER THAT TYPE OF INFORMATION IN DECIDING WHICH PENALTY
23 WAS APPROPRIATE, NOT IN COMMITTING THEM TO A LIFE SENTENCE.

24 THE COURT: ALL RIGHT. I HAVE THE QUESTIONS I'M GOING
25 TO ASK, AND I'VE ALREADY DECIDED THAT WHEN I QUESTION THEM

MATTERS AND MOTIONS

1 INDIVIDUALLY I INFORM THEM GENERALLY OF EXAMPLES OF
2 MITIGATION MAY INCLUDE A DEFENDANT'S BACKGROUND, MENTAL
3 HEALTH ISSUES, OR OTHER ASPECT OF HIS CHARACTER AND THINGS OF
4 THAT NATURE IN GENERAL. MY POINT TO THEM IS THAT THEY HAVE
5 AN OATH THAT THEY MUST GIVE MEANINGFUL CONSIDERATION BOTH TO
6 AN AGGRAVATING CIRCUMSTANCE AS WELL AS MITIGATING
7 CIRCUMSTANCES, AND IF THEIR PRECONCEPTION DIFFERS FROM WHAT I
8 INSTRUCT, THEY MUST FOLLOW THEIR OATH. AND IF THEY HAVE A
9 PROBLEM WITH THAT, THEN THEY NEED TO INFORM ME.

10 WHAT YOU SAID TO ME, MR. MAULDIN, SOUNDS FINE. BUT WHAT
11 I'M NOT GOING TO PERMIT -- AND I DON'T NEED AN OBJECTION FROM
12 THE STATE. I'LL HANDLE IT. BUT WHAT I'M NOT GOING TO PERMIT
13 IS -- AND WE KNOW WHO THESE JURORS ARE. WE KNOW EARLY ON
14 WHETHER THE STATE WANTS THEM OR YOU WANT THEM. AND WHAT I'M
15 NOT GOING TO PERMIT EITHER SIDE TO DO IS TO LEAD THEM AROUND
16 WITH SOME UNFAIR QUESTION TO PIT THEM TO WHERE THEY ARE
17 PERFECTLY QUALIFIED AND BECAUSE OF YOUR ADVOCACY SKILLS ON
18 BOTH SIDES YOU ASK AN UNFAIR QUESTION AND ELICIT A RESPONSE,
19 AND THEN THE NEXT THING OUT OF YOUR MOUTH IS, "MITIGATION
20 IMPAIRED," AND THAT'S THE END OF THE ANALYSIS.

21 SO THE WAY YOU APPROACHED IT WHEN YOU STOOD UP AND WENT
22 THROUGH YOUR ARGUMENT IS PERFECTLY PERMISSIBLE FOR ME. SO
23 IT'S NOT JUST SIMPLY THEIR OPINION OF VARIOUS MITIGATING
24 CIRCUMSTANCES -- THAT'S NOT SUFFICIENT, AND THE LAW DOESN'T
25 PERMIT IT -- BUT THEIR WILLINGNESS TO FOLLOW THEIR OATH AND

MATTERS AND MOTIONS

1 HONOR THEIR OATH AND FOLLOW THE LAW AS I INSTRUCT IT.

2 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

3 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

4 THE COURT: ANYTHING FURTHER.

5 SOLICITOR ARIAIL: NOT FROM THE STATE.

6 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

7 THE COURT: TAKE YOUR TIME, SIR.

8 MR. MAULDIN: (PAUSE) YOUR HONOR, THE -- AND I'M
9 TRYING -- I WANT TO TAKE A FEW MINUTES UP FRONT, I MEAN, I
10 REALLY -- YOU KNOW HOW IMPORTANT I THINK THIS PROCESS IS AT
11 THIS PART OF THIS CASE. THIS IS REAL CRITICAL. SO I'VE GOT
12 TO TRY TO DO THE BEST I CAN.

13 AND I HAVE WRITTEN THIS QUESTION OUT AND I'LL GIVE YOU
14 AN EXAMPLE. WELL, I'LL GO BACK TO THE EXAMPLE I WAS GIVING
15 YOU A MINUTE AGO. LET'S SAY I WAS SAYING THIS -- AND I KNOW
16 I'M -- I GUESS I'M ASKING FOR AN ADVISORY OPINION, BUT I --
17 TO THAT EXTENT, I MEAN, OBVIOUSLY---

18 THE COURT: ASK IT. MOVE ON. ASK IT.

19 MR. MAULDIN: ---I HAVE TO. IF THE JUDGE INSTRUCTED
20 YOU -- I'M SAYING THIS TO THE JUROR. IF THE JUDGE INSTRUCTED
21 YOU TO CONSIDER, FOR EXAMPLE, THE AGE OF THE PERSON WHO YOU
22 HAD CONVICTED AS A MITIGATING CIRCUMSTANCE, WOULD YOU BE ABLE
23 TO FOLLOW THAT INSTRUCTION? NOW, THAT QUESTION -- SEE, THAT
24 IS A MITIGATING SPECIFIC QUESTION. AND THE REASON I BROUGHT
25 ALL -- I RAN A COPY---

MATTERS AND MOTIONS

1 THE COURT: I DON'T HAVE A PROBLEM WITH IT.

2 MR. MAULDIN: ALL RIGHT.

3 THE COURT: BUT YOU'RE NOT GOING TO ASK IF YOU THINK
4 AGE IS IMPORTANT, BECAUSE A LOT OF THEM SAY NO AND THEN---

5 MR. MAULDIN: AND IF---

6 THE COURT: OR LAST TIME AROUND---

7 MR. MAULDIN: YES, SIR.

8 THE COURT: ---THE SOLICITOR ASKED A QUESTION, "DO YOU
9 THINK IT WOULD BE AGGRAVATING FOR SOMEONE TO KILL A POLICE
10 OFFICER?" WE HAD TWO OR THREE SAY, "NO, I DON'T KNOW WHY IT
11 WOULD BE AGGRAVATING."

12 MR. MAULDIN: YES, SIR.

13 THE COURT: THE QUESTION HAS GOT TO BE BOTTOMED ON
14 THEIR ABILITY TO FOLLOW THEIR OATH. SO IF YOU WANT TO ASK DO
15 THEY THINK AGE IS IMPORTANT, YOU'RE GOING TO GET A LOT OF
16 JURORS, IF YOU GO OUT AND LISTEN, AND THEY SAY, NO, THAT'S
17 NOT AN IMPORTANT MITIGATING THING. THAT'S JUST THE WAY LIFE
18 IS. BUT IF YOUR QUESTION IS PREMISED ON FOLLOWING THEIR OATH
19 AND IF THEY DISAGREE PERSONALLY WOULD THEY BE ABLE TO SET
20 THEIR PERSONAL FEELINGS ASIDE AND HONOR THEIR OATH AND GIVE
21 THE INSTRUCTIONS FROM THE COURT MEANINGFUL CONSIDERATION IN
22 REACHING A DECISION, THE QUESTION AS YOU POSED IT IS
23 SATISFACTORY.

24 MR. MAULDIN: AND THEN LAST THING, YOUR HONOR, IS WITH
25 REGARD TO THE AGGRAVATING CIRCUMSTANCE IN THIS CASE, THAT IS,

MATTERS AND MOTIONS

1 THE ONLY ONE THAT HAS BEEN SERVED ON US, THE KILLING OF A
2 POLICE OFFICER IN THE LINE OF DUTY. IN -- WE TAKE THE
3 POSITION THAT THAT QUESTION MUST BE ASKED TO DETERMINE
4 WHETHER OR NOT THE JUROR ESSENTIALLY WOULD GIVE AN AUTOMATIC
5 DEATH PENALTY IN THE EVENT OF THE KILLING OF A POLICE
6 OFFICER. IN PRIOR CASES -- I WILL TELL YOU A COUPLE OF WAYS
7 I HAVE ASKED THAT IN PRIOR CASES. ONE IS, DO YOU HAVE AN
8 OPINION ABOUT WHAT THE APPROPRIATE PUNISHMENT WOULD BE FOR
9 THE KILLING OF A POLICE OFFICER? UP FRONT. AND THEN ANOTHER
10 WOULD BE REGARDING PUNISHMENT, WOULD YOU LOOK DIFFERENTLY
11 FROM THE OUTSET ON A PERSON WHO HAD BEEN CONVICTED OF THE
12 MURDER OF A POLICE OFFICER THAN A MURDER OF A PERSON WHO
13 WASN'T A POLICE OFFICER? THOSE ARE TWO WAYS I'VE COINED
14 THAT QUESTION. I DON'T KNOW IF THAT'S GOING TO DRAW AN
15 OBJECTION, BUT---

16 THE COURT: DO YOU OBJECT TO THOSE TWO QUESTIONS?

17 SOLICITOR ARIAIL: I THINK WE WILL.

18 THE COURT: I'LL SUSTAIN THE OBJECTION. I DON'T
19 BELIEVE IT'S APPROPRIATE. WHAT -- YOU'RE SIMPLY FINDING --
20 IT'S NOT PERMISSIBLE, AND I DON'T THINK THERE IS REALLY ANY
21 ARGUMENT ABOUT THAT. NOW, YOU CAN ASK JUST AS YOU COULD ASK
22 ABOUT MITIGATION, WOULD YOU GIVE CONSIDERATION IF THE COURT
23 INSTRUCTED YOU THAT AN AGGRAVATING CIRCUMSTANCE IS KILLING A
24 POLICE OFFICER WHILE ON DUTY? WOULD YOU CONSIDER THAT? BUT
25 YOU WANT TO DO -- YOU WANT TO RESPOND? GO AHEAD.

MATTERS AND MOTIONS

1 MR. MAULDIN: WELL, I'LL TELL YOU -- I'LL GIVE YOU THE
2 EXAMPLE, YOUR HONOR, THAT I WOULD OFFER TO YOU FOR YOUR
3 CONSIDERATION.

4 LET'S SAY THAT WE HAD A CLIENT WHO, IN FACT, WAS FIFTEEN
5 YEARS OLD. IF THE JUROR IS NOT SOMEHOW ALLOWED TO EXPRESS
6 THE ISSUE OF IMPAIRMENT ON THE QUESTION FROM THE STATE -- IN
7 OTHER WORDS, IF THE STATE IS NOT ASKED, CONVERSELY, IF
8 THEY'RE NOT ALLOWED TO ASK WHETHER OR NOT THE YOUNG AGE OF A
9 DEFENDANT IN A CASE LIKE THAT WOULD AUTOMATICALLY MAKE THEM
10 LIFE IN PRISON EVERY TIME, THEN THEY NEVER COULD PICK A FAIR
11 JURY IF THEY WERE TRYING A CASE INVOLVING A JUVENILE
12 DEFENDANT. THE STATE COULDN'T. WE TAKE THE SAME -- WE SAY
13 THAT IT REVERSES WHEN YOU HAVE A LAW ENFORCEMENT OFFICER
14 WHICH IS AN AUTOMATIC AGGRAVATOR. IN OTHER WORDS, THEY'RE
15 NOT GOING TO HAVE TO PROVE ANYTHING OTHER THAN OFFICER
16 NICHOLSON WAS KILLED -- YES, SIR.

17 THE COURT: I'LL PERMIT THIS. YOU CAN ASK THEM IF YOU
18 THINK IN THEIR JUDGMENT IT IS MORE SERIOUS TO KILL A POLICE
19 OFFICER IN THE LINE OF DUTY THAN A NON-POLICE OFFICER. IF
20 THE ANSWER IS YES, IT HAS NO BEARING ON THEIR LACK OF
21 QUALIFICATION. OUR LEGISLATURE HAS SAID THAT IS AN
22 AGGRAVATOR.

23 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

24 THE COURT: GO AHEAD AND RESPOND, SOLICITOR.

25 SOLICITOR ARIAIL: I WANT...

MATTERS AND MOTIONS

1 MR. MAULDIN: AND JUST FOR THE RECORD, YOUR HONOR, THE
2 QUESTION, AT LEAST FROM MY POINT OF VIEW, IN QUESTIONING
3 THESE JURORS -- BECAUSE I KNOW HOW THE PUBLIC FEELS ABOUT
4 THINGS BECAUSE I LIVE IN THE PUBLIC AND I HAVE FRIENDS AND I
5 TALK TO PEOPLE -- SOME -- IT CREATES AN AUTOMATIC DEATH
6 PENALTY JUROR. BUT IF WE DON'T -- IF YOU DON'T ASK THEM THE
7 QUESTIONS OR IN SOME FASHION---

8 THE COURT: I DON'T SEE HOW THEY'RE GOING TO AVOID THE
9 QUESTION. I'M GOING TO ASK THEM EXTENSIVE QUESTIONS UP
10 FRONT. THEY'RE GOING TO KNOW WHAT THE ALLEGED AGGRAVATING
11 CIRCUMSTANCE IS. I'M GOING TO TELL THEM HE WAS ALLEGEDLY A
12 STATE TROOPER ON DUTY AT THE TIME HE WAS ALLEGEDLY KILLED.

13 MR. MAULDIN: HE WAS A STATE TROOPER, YOUR HONOR. SO,
14 YOU WON'T---

15 THE COURT: I'M JUST SO SCARED TO SAY ANYTHING IS A
16 FACT BECAUSE, YOU KNOW, ERROR, ERROR, ERROR.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: SO IT'S ALL ALLEGED. AND IF YOU WANT TO
19 TAKE A DIFFERENT TONE WHEN YOU QUESTION JURORS, THAT'S FINE.
20 BUT I DON'T SEE HOW WE CAN ESCAPE NOT FINDING THOSE ISSUES
21 OUT DURING THE QUESTIONING.

22 MR. MAULDIN: AND IF WE'RE NOT ABLE TO, THEN THAT'S
23 WHERE I'M NOT GOING TO BE ABLE TO BE IN A POSITION OF
24 EXERCISING MEANINGFUL PEREMPTORY STRIKES. IF I'M NOT ABLE TO
25 FIGURE OUT REALLY HOW THEY FEEL ABOUT AN AUTOMATIC SITUATION,

MATTERS AND MOTIONS

1 I.E. THE KILLING OF A POLICE OFFICER---

2 THE COURT: WELL, I DON'T HAVE A PROBLEM ASKING IS
3 THERE ANY SCENARIO IN WHICH YOU WOULD AUTOMATICALLY -- HOW
4 ABOUT SOME OPEN-ENDED QUESTION LIKE THAT?

5 MR. MAULDIN: I'LL TRY THAT A FEW TIMES AND SEE IF I
6 CAN GET WHAT WE WANT TO HEAR, YOUR HONOR, IN TERMS OF
7 EVALUATION OF THE JURORS.

8 THE COURT: ALL RIGHT. LET ME GIVE THE SOLICITOR A
9 FAIR CHANCE TO RESPOND.

10 SOLICITOR ARIAIL: WE'RE OKAY WITH THAT. I DON'T HAVE
11 A PROBLEM WITH THE OPEN-ENDED QUESTION. I DO HAVE A PROBLEM
12 WITH THEM ASKING A QUESTION ABOUT A REGULAR MURDER AND
13 KILLING OF A POLICE OFFICER IN THE LINE OF DUTY, BECAUSE
14 THERE IS A DIFFERENCE.

15 THE COURT: AND OUR LEGISLATURE RECOGNIZES IT.

16 SOLICITOR ARIAIL: AND THE LEGISLATURE RECOGNIZES IT.
17 SO FOR THEM TO SAY, NO, THERE ISN'T ANY DIFFERENCE, THEN
18 YOU'VE GOT TO GO BACK AND TRY TO EDUCATE THEM THAT THERE IS A
19 DIFFERENCE, THE LAW SAYS THERE IS A DIFFERENCE. SO I
20 HESITATE ABOUT GETTING INTO IT. BUT THE LAST ONE YOU SAID,
21 THE OPEN-ENDED QUESTION, I HAVE NO PROBLEMS WITH IT.

22 THE COURT: OKAY. THAT'S PROBABLY---

23 SOLICITOR ARIAIL: IS THERE ANY CIRCUMSTANCE IN WHICH
24 YOU WOULD---

25 THE COURT: AND I MAY ASK THE CONVERSE: IS THERE ANY

MATTERS AND MOTIONS

1 CIRCUMSTANCE WHERE YOU WOULD NEVER?

2 SOLICITOR ARIAIL: I'LL GET THAT ONE.

3 THE COURT: OKAY.

4 SEE IF THE FIRST PANEL HAS HAD A CHANCE TO REVIEW THE
5 INFORMATION. IF THEY HAVE, LEAVE THE DOCUMENTS IN THERE AND
6 COME IN THE COURTROOM. PANEL NUMBER 1. (TO THE BAILIFF)

7 DOES COUNSEL HAVE A LIST OF THE PANELS?

8 MADAME CLERK: YES.

9 SOLICITOR ARIAIL: YES.

10 (MADAME CLERK OFF RECORD WITH THE COURT)

11 THE COURT: MR. MAULDIN, WOULD YOU OBJECT IF I INFORM
12 THE JURY THAT HE WAS A STATE TROOPER?

13 MR. MAULDIN: (INDICATES NEGATIVE RESPONSE)

14 THE COURT: HE INDICATES NOT. NO OBJECTION.

15 (PANEL NUMBER 1 ENTERS COURTROOM AT 5.33 P.M.)

16 (PANEL 1: JUROR NUMBER 325, WILL M. SHARPE; JUROR
17 NUMBER 385, KEITH A. WHITE; JUROR NUMBER 320, HAMILTON E.
18 RUSSELL, III; JUROR NUMBER 91, CALVIN F. DONALDSON; AND JUROR
19 NUMBER 344, CYNTHIA B. STANCIL)

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET ME
21 JUST IDENTIFY. I THINK I HAVE MR. WILL SHARPE, KEITH WHITE,
22 HAMILTON RUSSELL, III, CALVIN DONALDSON AND MS. CYNTHIA
23 STANCIL.

24 I'M GOING TO PUT YOU UNDER OATH FOR PURPOSES OF THIS
25 PROCESS. YOU CAN JUST STAY SEATED, BUT IF YOU WOULD, JUST

VOIR DIRE -- PANEL NUMBER 1

1 RAISE YOUR RIGHT HAND.

2 DO YOU SWEAR OR AFFIRM THAT THE RESPONSES YOU GIVE
3 DURING THE VOIR DIRE OF THE JURY SELECTION PROCESS WILL BE
4 TRUTHFUL AND COMPLETE? IF YOU WILL AGREE TO BE BOUND BY
5 THIS, PLEASE SAY, "I WILL" AT THIS TIME. (PAUSE) ALL
6 INDICATE IN THE INFIRMATIVE.

7 LET ME JUST FIRST OF ALL TELL YOU AGAIN THANK YOU FOR
8 BEING HERE. I WANT TO DO MY BEST TO PUT YOU AT EASE. YOU
9 WILL NOTICE THAT A CAMERA IS IN THE COURTROOM, BUT THERE ARE
10 CERTAIN RULES AND LAWS THAT APPLY. I WANT YOU TO UNDERSTAND
11 FULLY THAT THERE WILL BE NO DESCRIPTION OF YOU INDIVIDUALLY
12 IN ANY MEDIA, BE IT THE RADIO, TELEVISION, NEWSPAPER. IN
13 FACT, IT'S AGAINST THE LAW FOR THEM TO PUT A PICTURE OR YOUR
14 NAME OR SOME IDENTIFYING CHARACTERISTIC OF YOU. SO PLEASE
15 REST ASSURED ABOUT THAT.

16 WHAT I WANT TO DO IS SPEAK TO YOU COLLECTIVELY, ALL
17 FIVE, AT FIRST, ASK YOU SOME QUESTIONS, AND THEN WE'LL
18 PROCEED WITH QUESTIONING INDIVIDUALLY IN THE ORDER IN WHICH
19 YOU WERE SELECTED. THERE ARE NO RIGHT OR WRONG ANSWERS. WE
20 ARE SIMPLY GATHERING INFORMATION SO THAT WE CAN BE IN A
21 POSITION TO SELECT A FAIR AND IMPARTIAL JURY.

22 I WANT TO REPEAT WHAT I TOLD YOU EARLIER, THAT I HAVE NO
23 OPINION ABOUT THE FACTS OF THIS CASE. SO PLEASE DO NOT
24 CONSTRUE FROM ANY QUESTION OR COMMENT FROM ME AS A STATEMENT
25 OR OPINION FROM ME OF ANY FACT IN THE CASE OR OPINION ABOUT

VOIR DIRE -- PANEL NUMBER 1

1 THE FACTS OF THE CASE.

2 I WANT AGAIN TO REITERATE THE TWO FUNDAMENTAL LEGAL
3 PRINCIPLES I MENTIONED EARLIER. ONE IS THE PRESUMPTION OF
4 INNOCENCE. IT'S A FUNDAMENTAL RIGHT OF ANYONE CHARGED WITH A
5 CRIME THAT THAT INDIVIDUAL IS PRESUMED INNOCENT OF ANY CRIME
6 FOR WHICH HE HAS BEEN INDICTED. THAT'S AN IMPORTANT AND
7 SUBSTANTIAL RIGHT TO WHICH ANY ACCUSED, INCLUDING THE
8 DEFENDANT HERE, MR. WOOD, IS ENTITLED.

9 RELATED TO THE PRINCIPLE OF PRESUMPTION OF INNOCENCE IS
10 A CONCEPT WE REFER TO AS THE BURDEN OF PROOF. THAT'S THE
11 LEGAL YARDSTICK YOU WILL USE IN MEASURING THE EVIDENCE IF YOU
12 ARE SELECTED TO SERVE IN THIS CASE. PLEASE UNDERSTAND THAT
13 UNDER OUR SYSTEM A DEFENDANT IS NEVER UNDER A BURDEN TO PROVE
14 OR DISPROVE ANYTHING. THE STATE HAS THE BURDEN AT ALL TIMES
15 TO PROVE GUILT BEYOND A REASONABLE DOUBT.

16 DO EACH OF YOU UNDERSTAND THESE LEGAL PRINCIPLES THAT
17 I'VE OUTLINED TO YOU, THE PRESUMPTION OF INNOCENCE AS WELL AS
18 THE BURDEN OF PROOF? (PAUSE) ALL INDICATE IN THE
19 AFFIRMATIVE.

20 NOW, AS YOU KNOW, THIS IS A CASE IN WHICH THE STATE
21 SEEKS THE DEATH PENALTY, AND PERMIT ME TO EXPLAIN THE PROCESS
22 OF A CAPITAL CASE IN GENERAL.

23 ONCE A JURY IS SELECTED, WE WILL CONDUCT WHAT IS CALLED
24 THE FIRST PHASE, AND PERHAPS THE ONLY PHASE OF THE TRIAL.
25 THE JURY DETERMINES WHETHER THE STATE HAS PROVEN THAT THE

VOIR DIRE -- PANEL NUMBER 1

1 DEFENDANT ON TRIAL IS GUILTY OF MURDER AND PROVES THAT BEYOND
2 A REASONABLE DOUBT. SHOULD A JURY FIND A DEFENDANT NOT
3 GUILTY OF MURDER, THAT WOULD END THE CASE AS FAR AS THE
4 JURY'S INVOLVEMENT. THERE WOULD BE NO FURTHER JURY SERVICE.
5 THE CASE WOULD BE OVER.

6 IF A JURY, HOWEVER, FINDS SUCH A DEFENDANT GUILTY OF
7 MURDER, THEN WE WOULD MOVE TO A SECOND PHASE. AND SOMETIMES
8 WE CALL THE SECOND PHASE THE SENTENCING PHASE. AND THE JURY
9 WOULD CONSIDER AT THAT POINT WHAT WE CALL EVIDENCE IN
10 AGGRAVATION AND EVIDENCE IN MITIGATION. AND THE JURY AFTER
11 HEARING THIS ADDITIONAL EVIDENCE WOULD DETERMINE THE SENTENCE
12 -- LIFE IMPRISONMENT OR DEATH.

13 AND I WANT YOU TO LISTEN TO THIS VERY CAREFULLY. IN A
14 CAPITAL CASE IF THE JURY FINDS THE PRESENCE OF WHAT WE CALL
15 AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT, A
16 SENTENCE OF LIFE IMPRISONMENT MEANS LIFE WITHOUT THE
17 POSSIBILITY OF PAROLE.

18 YOU KNOW, SOMETIMES WE HEAR OUT ON THE STREET, WELL,
19 WHEN WILL THEY BE ELIGIBLE FOR PAROLE? WHEN DO THEY GET OUT?
20 I TELL YOU, UNDER SOUTH CAROLINA LAW WHEN AN INDIVIDUAL IS
21 CONVICTED OF MURDER AND THE JURY FINDS THE EXISTENCE OF AN
22 AGGRAVATING CIRCUMSTANCE, THERE IS NO PAROLE. IT IS LIFE
23 UNTIL THAT INDIVIDUAL DIES. THAT INDIVIDUAL WILL DIE IN
24 PRISON. THAT'S WHAT LIFE IMPRISONMENT MEANS WHEN A MURDER IS
25 ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE.

VOIR DIRE -- PANEL NUMBER 1

1 PLEASE UNDERSTAND WHAT I AM TALKING TO YOU ABOUT IS THE
2 PROCESS OF A CAPITAL CASE IN GENERAL. IN THIS PARTICULAR
3 CASE WE MAY NOT EVEN REACH THE SECOND PHASE OR THE SENTENCING
4 PHASE. BUT IN THE EVENT WE DO, I NEED TO ASK YOU CERTAIN
5 QUESTIONS AND YOU NEED TO UNDERSTAND THE ISSUES THAT WOULD
6 ARISE IN A POTENTIAL SENTENCING PHASE.

7 NOW I AM GOING TO BRIEFLY EXPLAIN TO YOU AGGRAVATING
8 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES. TO THIS POINT DO
9 EACH OF YOU UNDERSTAND THE PROCESS THAT WE WOULD FOLLOW IN A
10 CASE IN WHICH THE STATE SEEKS THE DEATH PENALTY? THERE IS A
11 FIRST PHASE WHERE THE ONLY ISSUE TO DETERMINE IS WHETHER THE
12 STATE HAS PROVEN GUILT OF THE CRIME OF MURDER, AND THEN THERE
13 IS A SECOND PHASE ONLY IF THE JURY FIRST FINDS THE DEFENDANT
14 GUILTY BEYOND A REASONABLE DOUBT OF MURDER.

15 DO EACH OF YOU UNDERSTAND THAT PROCESS AND CONCEPT?
16 (PAUSE) ALL INDICATE IN THE AFFIRMATIVE.

17 IF YOU HAVE QUESTIONS ABOUT THAT, WHEN WE QUESTION YOU
18 INDIVIDUALLY, I'LL BE GLAD TO DISCUSS THAT FURTHER WITH YOU
19 AND REVISIT THOSE ISSUES WITH YOU.

20 WHILE YOU ARE STILL HERE TOGETHER, LET ME JUST TELL YOU
21 AND EXPLAIN TO YOU, IN GENERAL TERMS, AGGRAVATING
22 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES. AND WE'RE GOING
23 TO ADDRESS IT IN A LITTLE MORE DETAIL WHEN I TALK TO YOU
24 INDIVIDUALLY. THESE ARE TERMS -- AGGRAVATING CIRCUMSTANCES
25 AND MITIGATING CIRCUMSTANCES -- YOU WILL HEAR ONLY IF THE

VOIR DIRE -- PANEL NUMBER 1

1 CASE MOVES TO THE SECOND PHASE OR THE SENTENCING PHASE.
2 THOSE TERMS WOULDN'T EVEN BE MENTIONED AS PART OF YOUR
3 CONSIDERATION IN THE FIRST PHASE OF THE TRIAL.

4 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS OR AN
5 OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY, OUR
6 LEGISLATURE, HAS DECLARED BY STATUTE WOULD AGGRAVATE OR
7 WORSEN THE CRIME OF MURDER. IN OTHER WORDS, AN AGGRAVATING
8 CIRCUMSTANCE WHEN IT EXISTS AND IT ACCOMPANIES A MURDER
9 INCREASES THE ENORMITY, THE SEVERITY OF THE OFFENSE. IT ADDS
10 TO THE INJURY OF THE CRIME OF MURDER.

11 NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE
12 INCIDENTS, FACTS OR OCCURRENCES WHICH OUR GENERAL ASSEMBLY,
13 OUR LEGISLATURE, HAS DECLARED BY STATUTE OR WHICH YOU MAY
14 OTHERWISE FIND FROM THE EVIDENCE SHOULD REDUCE THE SEVERITY
15 OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
16 OR AS REDUCING THE DEGREE OF RESPONSIBILITY OR CULPABILITY.

17 LADIES AND GENTLEMEN, DO YOU UNDERSTAND IN GENERAL TERMS
18 THE CONCEPTS OF AGGRAVATING CIRCUMSTANCES AND MITIGATING
19 CIRCUMSTANCES? PLEASE INDICATE THAT YOU DO. (PAUSE) ALL
20 DO.

21 AGAIN, WE WILL REVISIT THESE ISSUES, IF NECESSARY,
22 DURING THE INDIVIDUAL QUESTIONING. THE RECORD WILL REFLECT
23 AGAIN ALL FIVE INDICATE IN THE AFFIRMATIVE.

24 NOW WHAT I WANT TO DO AT THIS POINT, EARLIER TODAY YOU
25 WERE INTRODUCED TO MR. ARIAIL, MS. STROM AND MS. HERVEY FROM

VOIR DIRE -- PANEL NUMBER 1

1 THE SOLICITOR'S OFFICE. YOU WERE INTRODUCED TO MR. MAULDIN,
2 THE PUBLIC DEFENDER, MR. BANNISTER AND MR. RICHEY. AND THIS
3 IS MR. WOOD HERE SEATED BETWEEN MR. BANNISTER AND MR. RICHEY.

4 NOW, I WANT TO KNOW IF ANY OF YOU FOLKS ARE RELATED BY
5 BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH THE ACCUSED,
6 MR. JOHN RICHARD WOOD. IF YOU ARE, WILL YOU PLEASE RAISE
7 YOUR RIGHT HAND? (PAUSE) THERE IS NO RESPONSE.

8 LADIES AND GENTLEMEN, ARE YOU RELATED BY BLOOD OR
9 MARRIAGE OR ACQUAINTED IN ANY WAY WITH THE ATTORNEYS TO WHOM
10 YOU HAVE BEEN INTRODUCED? IF SO, PLEASE RAISE YOUR HAND.
11 (PAUSE)

12 AND, MR. RUSSELL, WE WILL DEAL WITH THAT. AS A MEMBER
13 OF THE BAR YOU MAY BE ACQUAINTED EITHER PROFESSIONALLY AND
14 PERHAPS SOCIALLY AS WELL, AND WE'LL ADDRESS THAT WHEN WE
15 SPEAK TO YOU.

16 THE RECORD WILL REFLECT NONE OF THE OTHERS INDICATED AN
17 AFFIRMATIVE RESPONSE.

18 NOW, I'VE ASKED YOU ABOUT THE ATTORNEYS. YOU MAY NOT BE
19 RELATED OR ACQUAINTED WITH THESE FINE ATTORNEYS, BUT IF YOU
20 ARE RELATED OR ACQUAINTED BY BLOOD OR MARRIAGE WITH ANYONE
21 ASSOCIATED WITH THEIR RESPECTIVE OFFICES, THE SOLICITOR
22 OFFICE, THE PUBLIC DEFENDER'S OFFICE, MR. RICHEY'S OFFICE,
23 MR. BANNISTER'S OFFICE, THAT LIKewise IS ENCOMPASSED IN THIS
24 QUESTION. IF THAT APPLIES, WOULD YOU RAISE YOUR RIGHT HAND.
25 (PAUSE)

VOIR DIRE -- PANEL NUMBER 1

1 GIVE ME YOUR NAME AGAIN, SIR.

2 JUROR NUMBER 385: KEITH WHITE.

3 THE COURT: ALL RIGHT, MR. WHITE. TELL ME YOUR
4 RESPONSE.

5 JUROR NUMBER 385: NOT IN GREENVILLE COUNTY, IN ANOTHER
6 COUNTY.

7 THE COURT: YOU KNOW SOMEBODY IN AN OFFICE IN ANOTHER
8 COUNTY?

9 JUROR NUMBER 385: SOMEONE RELATED TO ME IN LAW
10 ENFORCEMENT.

11 THE COURT: OKAY. SOMEONE IS RELATED TO YOU IN LAW
12 ENFORCEMENT?

13 JUROR NUMBER 385: (INDICATES AFFIRMATIVE RESPONSE)

14 THE COURT: ARE THEY EMPLOYED IN ANY WAY WITH THE
15 SOLICITOR'S OFFICE OR CONNECTED WITH THE SOLICITOR'S OFFICE?

16 JUROR NUMBER 385: NO.

17 THE COURT: OKAY. AND WE MAY PURSUE THAT, MR. WHITE,
18 WHEN WE QUESTION YOU.

19 MR. RUSSELL, LET ME JUST GO BACK TO YOU. TELL ME WHICH
20 OF THESE ATTORNEYS YOU KNOW. LET'S GO AHEAD AND SEE IF WE
21 CAN RESOLVE THIS ISSUE.

22 JUROR NUMBER 320: I KNOW JIM BANNISTER AND RODNEY
23 RICHEY. WE WERE IN THE SAME LAW SCHOOL CLASS, AND WE'RE JUST
24 FRIENDS. AND I KNOW MR. ARIAIL AND HIS FAMILY.

25 THE COURT: OKAY. THE FACT THAT YOU KNOW THE

VOIR DIRE -- PANEL NUMBER 1

1 ATTORNEYS, WENT TO LAW SCHOOL, KNOW THE FINE LAWYERS ON BOTH
2 SIDES OF THIS CASE, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY
3 TO BE FAIR?

4 JUROR NUMBER 320: IT WOULD NOT.

5 THE COURT: ALL RIGHT. THANK YOU, SIR.

6 AND TO THE LAST QUESTION, OTHER THAN MR. RUSSELL AND MR.
7 WHITE THERE IS NO RESPONSE.

8 NOW, YOU HAD AN EXTENSIVE LIST OF POTENTIAL WITNESSES
9 THAT YOU REVIEWED WHEN YOU WERE IN THE OTHER COURTROOM. AND
10 YOU ALSO HAVE IN THE FOLDER THAT WAS IN YOUR SEAT A COPY OF
11 THAT. I PUT THAT THERE SIMPLY AS A CONVENIENCE TO YOU, IF
12 YOU NEED TO REVIEW IT, BECAUSE THERE ARE SO MANY POTENTIAL
13 WITNESSES.

14 IF YOU NEED TO REVIEW IT AGAIN, PLEASE TAKE TIME TO DO
15 SO. IF YOU HAVEN'T HAD SUFFICIENT TIME, PLEASE LET ME KNOW.
16 IF YOU HAVE, I'D LIKE TO KNOW IF YOU ARE RELATED BY BLOOD OR
17 MARRIAGE OR ACQUAINTED IN ANY WAY WITH ANY OF THE POTENTIAL
18 WITNESSES IN THIS CASE. IF YOU ARE, WOULD YOU PLEASE RAISE
19 YOUR RIGHT HAND? (PAUSE) THERE IS NO RESPONSE.

20 LET ME ASK ALL FIVE OF YOU WHILE YOU'RE HERE, HAVE YOU
21 HAD SUFFICIENT TIME TO REVIEW THE EXTENSIVE LIST OF POTENTIAL
22 WITNESSES? (PAUSE) ALL INDICATE, AGAIN, IN THE AFFIRMATIVE.

23 WE'RE NOW GOING TO PROCEED TO THE INDIVIDUAL
24 QUESTIONING. AND, MR. SHARPE, YOU'RE FIRST ON THE LIST. SO
25 WHAT I'M GOING TO DO IS ASK THE REST OF YOU, MS. STANCIL, MR.

VOIR DIRE -- PANEL NUMBER 1

1 WHITE, MR. DONALDSON AND MR. RUSSELL, IF Y'ALL WOULD RETURN
2 -- JUST LEAVE THOSE LISTS THERE -- THAT WILL BE FINE -- FOR
3 YOUR FUTURE JURORS. RETURN TO COURTROOM 7 AND WE WILL CALL
4 YOU BACK IN THE ORDER IN WHICH YOU WERE SELECTED.

5 SO, WE'LL DEAL WITH YOU, MR. SHARPE, FIRST, THEN WE'LL
6 DEAL MR. WHITE, MR. RUSSELL, MR. DONALDSON AND MS. STANCIL.
7 THANK YOU SO MUCH.

8 MR. SHARPE, IF YOU WOULD BE KIND ENOUGH, I'D LIKE FOR
9 YOU TO COME TO THE WITNESS CHAIR, PLEASE. (MR. SHARPE
10 COMPLIES)

11 (BALANCE OF PANEL EXITS COURTROOM AT 5:45 P.M.)

12 WILL M. SHARPE, HAVING BEEN
13 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

14 VOIR DIRE BY THE COURT:

15 Q MR. SHARPE (WHITE MALE), THIS CASE ARISES FROM AN
16 INCIDENT THAT ACCORDING TO THE INDICTMENT OCCURRED IN
17 GREENVILLE COUNTY ON DECEMBER THE 6TH OF THE YEAR 2000. IT
18 INVOLVED A STATE TROOPER. IT IS ALLEGED THAT THE DEFENDANT
19 COMMITTED THE OFFENSE OF MURDER IN KILLING THE STATE TROOPER.
20 SO THERE IS A CHARGE IN THIS CASE OF MURDER. THERE IS ALSO A
21 RELATED CHARGE OF POSSESSION OF A FIREARM DURING THE
22 COMMISSION OF A VIOLENT CRIME.

23 WE RECOGNIZE THERE WAS PUBLICITY REGARDING THIS CASE,
24 SIR -- T.V., RADIO, NEWSPAPER -- AND WE WANT TO KNOW IF YOU
25 HAVE READ ANYTHING, HEARD ANYTHING OR SEEN ANYTHING ABOUT

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 THIS CASE FROM THE MEDIA OR FROM ANY SOURCE.

2 A NOTHING AT ALL.

3 Q HOW LONG HAVE YOU BEEN IN THE GREENVILLE AREA?

4 A SINCE 1976.

5 Q DO YOU REGULARLY WATCH T.V., NEWSPAPER, THINGS OF THAT
6 NATURE?

7 A YES.

8 Q AND YOU HAVE NOT SEEN ANY NEWS BROADCAST OR NEWS ARTICLE
9 ABOUT THIS CASE?

10 A NO.

11 Q WHAT PART OF TOWN DO YOU LIVE IN?

12 A NORTH MAIN.

13 Q DO YOU HAVE ANY CHILDREN WHO ATTEND SCHOOL IN THE PUBLIC
14 SCHOOLS OF GREENVILLE COUNTY?

15 A NO, SIR.

16 Q THERE WAS FURTHER SOME ALLEGATIONS OF EVENTS THAT
17 OCCURRED LATER THE SAME DAY IN ANDERSON COUNTY. DOES THAT
18 TRIGGER ANY MEMORY OF ANYTHING YOU MAY HAVE HEARD ABOUT THIS
19 CASE?

20 A YES, SIR, IT DOES.

21 Q TELL ME WHAT IT TRIGGERS IN YOUR MIND.

22 A I WANT TO BELIEVE A MOPED OR A MOTORCYCLE WAS INVOLVED;
23 IS THAT CORRECT?

24 Q YOU KEEP GOING.

25 A THAT'S PRETTY MUCH THE EXTENT OF MY KNOWLEDGE. I DON'T

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 REALLY FOLLOW THE NEWS PROBABLY LIKE I SHOULD. THAT'S ABOUT
2 IT.

3 Q WHEN I SAID THE WORD "ANDERSON,"---

4 A YEAH, I THOUGHT OF A SITUATION INVOLVING A MOTORCYCLE.
5 THAT'S PRETTY MUCH ALL I CAN RECALL.

6 Q SO YOU RECALL NOTHING OTHER THAN HEARING SOME REFERENCE
7 TO A MOTORCYCLE?

8 A THAT'S CORRECT.

9 Q MR. SHARPE, DO YOU UNDERSTAND THAT AS A JUROR IF YOU ARE
10 SELECTED YOU WOULD BE GIVEN AN OATH, AND YOUR OATH, SIR,
11 WOULD REQUIRE YOU TO DISREGARD ANYTHING YOU MAY HAVE SEEN OR
12 HEARD OR READ? IT MAY BE AS WE PROCEED YOU REMEMBER SOME
13 OTHER NUGGET ABOUT AN ALLEGATION IN THE CASE. YOU KNOW,
14 THAT'S NOT UNUSUAL. BUT WHAT I NEED TO UNDERSTAND FROM YOU
15 IS THAT YOU APPRECIATE THE SIGNIFICANCE OF YOUR OATH AS A
16 JUROR, IF YOU ARE SELECTED, AND THAT YOU WILL FIND THE TRUTH
17 OR THE FACTS ONLY FROM THE EVIDENCE PRESENTED DURING THE
18 COURSE OF THE TRIAL. IF YOU WERE SELECTED AS A JUROR AND
19 GIVEN THAT OATH, COULD YOU HONOR YOUR OATH IN THAT REGARD?

20 A YES.

21 Q IF YOU WERE SELECTED TO SERVE, WOULD YOU SERVE AS A FAIR
22 AND IMPARTIAL JUROR AND REACH A VERDICT BASED ON THE FACTS
23 PRESENTED IN ACCORDANCE WITH MY INSTRUCTIONS ON THE LAW?

24 A YES.

25 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 INNOCENCE OF THIS DEFENDANT?

2 A NO.

3 Q KEEPING IN MIND THE LEGAL PRINCIPLES WE HAVE DISCUSSED,
4 PRESUMPTION OF INNOCENCE, THE STATE'S OBLIGATION TO PROVE
5 GUILT BEYOND A REASONABLE DOUBT, COULD YOU DEPENDING ON THE
6 FACTS AND THE EVIDENCE AND THE LAW AS I INSTRUCT IT, COULD
7 YOU FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY?

8 A YES.

9 Q AND PLEASE REMEMBER, WE MAY NOT EVEN REACH WHAT I REFER
10 TO AS THE SENTENCING PHASE. I KNOW YOU'RE NODDING AT ME
11 BECAUSE YOU'VE HEARD THAT SEVERAL TIMES. BUT PLEASE REMEMBER
12 THAT. WE MAY NOT REACH THE SECOND OR SENTENCING PHASE. BUT
13 SINCE WE POSSIBLY COULD, I MUST ASK YOU QUESTIONS ABOUT YOUR
14 VIEWS ON THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

15 A YES.

16 Q WHEN A JURY MOVES TO A SENTENCING PHASE THAT MEANS THE
17 JURY HAS ALREADY FOUND THAT PARTICULAR DEFENDANT GUILTY OF
18 MURDER. AT THAT POINT THERE IS NO LEGAL DEFENSE TO DISCUSS
19 OR EXPLORE IN THE SECOND PHASE OF THE TRIAL AS TO THE ISSUE
20 OF GUILT. DO YOU UNDERSTAND THAT?

21 A YES.

22 Q GUILT OF MURDER WOULD HAVE BEEN ESTABLISHED IN THE FIRST
23 PHASE. IN THE SECOND OR SENTENCING PHASE WE WOULD HEAR
24 EVIDENCE THAT I HAVE REFERRED TO AS EVIDENCE IN AGGRAVATION
25 AND EVIDENCE IN MITIGATION. EVIDENCE OF MITIGATION MAY

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 INCLUDE A DEFENDANT'S BACKGROUND, EDUCATION, MENTAL HEALTH
2 HISTORY, CHARACTER, THINGS OF THAT NATURE. YOUR OATH WOULD
3 REQUIRE YOU TO ABANDON ANY PRECONCEPTION YOU MAY HAVE. YOU
4 MAY THINK CERTAIN THINGS ARE UNIMPORTANT. BUT IF THE LAW
5 REQUIRES YOU TO GIVE MEANINGFUL CONSIDERATION TO CERTAIN
6 ISSUES, WOULD YOU ABANDON ANY PRECONCEPTION YOU HAVE AND
7 HONOR THE LAW AND GIVE SERIOUS CONSIDERATION TO THOSE ISSUES?

8 A I WOULD HAVE TO HONOR THE LAW. THAT'S MY OATH.

9 Q I THANK YOU FOR THAT, SIR.

10 AND IF I INSTRUCTED YOU TO GIVE SERIOUS AND MEANINGFUL
11 CONSIDERATION TO AN AGGRAVATING CIRCUMSTANCE IN REACHING A
12 DECISION ON APPROPRIATE PUNISHMENT, WOULD YOU DO THAT?

13 A YES.

14 Q AND IF I SIMILARLY GAVE YOU INSTRUCTIONS TO GIVE SERIOUS
15 AND MEANINGFUL CONSIDERATION TO MITIGATION EVIDENCE, WOULD
16 YOU DO THAT?

17 A YES.

18 Q ALL RIGHT. IS THERE ANY REASON YOU HESITATED ON THAT?

19 A NO. NO, I'M SORRY. I JUST...

20 Q OKAY. IF YOU WERE A JUROR IN A SENTENCING PHASE, COULD
21 YOU, DEPENDING ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF A
22 CASE INCLUDING CONSIDERATION OF AGGRAVATING AND MITIGATING
23 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT, COULD YOU
24 RETURN A SENTENCE OF LIFE IMPRISONMENT?

25 A YES.

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 Q IF YOU THOUGHT IT WAS APPROPRIATE?

2 A (INDICATES AFFIRMATIVE RESPONSE)

3 Q IS THAT YES?

4 A YES.

5 Q ON THE OTHER HAND, IF YOU WERE A JUROR, DEPENDING ON THE
6 PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING
7 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
8 THE LAW THAT I WOULD INSTRUCT YOU, COULD YOU, IF YOU BELIEVED
9 IT APPROPRIATE, RETURN A SENTENCE OF DEATH?

10 A YES.

11 Q IN THE EVENT OF A DEATH SENTENCE IN SOUTH CAROLINA,
12 SOUTH CAROLINA LAW REQUIRES EACH JUROR TO SIGN HIS OR HER
13 NAME TO THE VERDICT FORM. IN THAT EVENT, COULD YOU SIGN YOUR
14 NAME TO A DEATH SENTENCE VERDICT?

15 A YES, I COULD.

16 Q DO YOU RECALL THE SHEET THAT WAS IN THE OTHER COURTROOM,
17 NOT THE WITNESS LIST BUT IT DESCRIBED THE THREE TYPES OF
18 JURORS WHICH I REVIEWED DOWNSTAIRS?

19 A UH-HUH (AFFIRMATIVE).

20 Q IF ONE OF THOSE FITS YOU AND YOU BELIEVE YOU FIT INTO
21 ONE OF THOSE CATEGORIES, WHICH ONE DO YOU BELIEVE DESCRIBES
22 YOU?

23 A THE THIRD ONE.

24 Q MR. SHARPE, IF YOU WERE SELECTED WOULD YOU HONOR YOUR
25 OATH AND SERVE AS A FAIR AND IMPARTIAL JUROR?

WILL M. SHARPE -- VOIR DIRE BY THE COURT

1 A YES.

2 Q AND WOULD YOU APPROACH JURY SERVICE WITH AN OPEN MIND TO
3 FIND THE TRUTH FROM THE EVIDENCE AND APPLY THE LAW AS I
4 INSTRUCT IT?

5 A YES.

6 Q MR. SHARPE, DO YOU KNOW OF ANY REASON WHY YOU COULD NOT
7 SERVE AS A JUROR IN THIS CASE?

8 A NO.

9 THE COURT: THE ATTORNEYS HAVE QUESTIONS AND I'M GOING
10 TO PERMIT THEM TO ASK QUESTIONS.

11 UNLESS YOU HAVE AN AGREEMENT TO THE CONTRARY, WE'LL
12 START THE FIRST ONE WITH THE STATE AND THEN WE'LL FLIP-FLOP
13 IT ON SUBSEQUENT JURORS.

14 SOLICITOR ARIAIL: THANK YOU.

15 THE COURT: THANK YOU, SOLICITOR.

16 VOIR DIRE BY SOLICITOR ARIAIL:

17 Q MR. SHARPE, MY NAME BOB ARIAIL, AND I'M THE SOLICITOR
18 FOR THE THIRTEENTH JUDICIAL CIRCUIT, WHICH IS GREENVILLE AND
19 PICKENS COUNTIES. AND IN THAT POSITION -- THE SOLICITOR IS
20 THE DISTRICT ATTORNEY. WE HAVE A FUNNY NAME FOR IT HERE IN
21 SOUTH CAROLINA.

22 HELPING ME IN THIS CASE WILL BE MS. STROM, WHO IS IN THE
23 -- SITTING IN THE BEIGE OR KHAKI, AND MS. HERVEY IS IN BLACK.
24 WE WILL BE REPRESENTING THE STATE.

25 OBVIOUSLY, WHAT WE'RE LOOKING FOR HERE IS TO DETERMINE

WILL M .SHARPE -- VOIR DIRE BY SOLICITOR ARIAIL

1 IF YOU CAN BE A FAIR JUROR, AND THE JUDGE HAS GONE OVER ALL
2 OF THAT. YOU SAY YOU ARE QUALIFIED AS A NUMBER THREE.

3 IS THERE ANY REASON THAT YOU CAN THINK OF WHETHER IT BE
4 RELIGIOUS, MORAL, EDUCATIONAL OR OTHERWISE THAT WOULD
5 PROHIBIT YOU FROM GIVING FAIR CONSIDERATION TO IMPOSING THE
6 DEATH SENTENCE IN A CASE WHERE YOU FELT THE FACTS WERE
7 APPROPRIATE?

8 A NO.

9 SOLICITOR ARIAIL: OKAY. THAT'S ALL I HAVE.

10 VOIR DIRE BY MR. MAULDIN:

11 Q MR. SHARPE, MY NAME IS JOHN MAULDIN, AND I ALONG WITH
12 JIM BANNISTER AND RODNEY RICHEY REPRESENT JOHN WOOD WITH THE
13 WHITE SHIRT THERE.

14 A UH-HUH (AFFIRMATIVE).

15 Q YOU ARE THE FIRST JUROR. SO I ASSURE YOU I AM AS
16 NERVOUS AS YOU ARE, AND I'M GOING TO TAKE A LITTLE LONGER
17 THAN THE PROSECUTOR---

18 A I FIGURED THAT.

19 Q ---IF YOU DON'T MIND.

20 A YEAH, I FIGURED YOU'D DO THAT.

21 Q AND I APPRECIATE THAT. I'VE GOT -- THE COURT, I ASSURE
22 YOU, WILL NOT ALLOW ME TO TAKE TOO MUCH TIME, BUT I DO WANT
23 TO MAKE SURE THAT I'VE GOT SOME UNDERSTANDING ABOUT HOW YOU
24 FEEL ABOUT THESE ISSUES.

25 FIRST OF ALL, IS THIS THE FIRST TIME YOU EVER HAD TO

1 APPEAR AS LIKE TESTIFYING AS A WITNESS?

2 A YES.

3 Q I WANT YOU TO ACT LIKE WE'RE JUST HAVING A CONVERSATION.
4 YOU'RE STILL UNDER OATH, OBVIOUSLY.

5 A YEAH.

6 Q BUT I JUST WANT YOU TO TRY TO TALK AND NOT FEEL CONFINED
7 TO YES, NO, YES, NO. YOU -- THE COURT NEEDS TO KNOW AS MUCH
8 ABOUT YOU AS POSSIBLE TO DETERMINE YOUR QUALIFICATIONS IN A
9 CASE OF THIS NATURE. SO I ENCOURAGE YOU TO DO THAT.

10 THERE ARE NO RIGHT ANSWERS, NO WRONG ANSWERS. YOU'RE
11 NOT ON TRIAL. SO I'M GOING TO ASK YOU TO GIVE US AS MUCH
12 INFORMATION AS YOU CAN.

13 YOU KNOW, JURY SERVICE IS AN AWESOME RESPONSIBILITY, BUT
14 SO IS REPRESENTING PEOPLE, AND SO IS PRESIDING. AND WE ALL
15 IN THIS ROOM HAVE AWESOME RESPONSIBILITIES, AND I ENCOURAGE
16 YOU TO GIVE US AS MUCH HELP AS YOU CAN.

17 IN DESCRIBING YOURSELF AS A JUROR NUMBER THREE, I GOT
18 THE IMPRESSION THAT YOU COULD GIVE THE DEATH PENALTY IN
19 CERTAIN CIRCUMSTANCES, NOT GIVE THE DEATH PENALTY IN OTHER
20 CIRCUMSTANCES. SO I'M GOING TO SAY TO THIS EXTENT YOU AT
21 LEAST BELIEVE IN THE DEATH PENALTY; IS THAT FAIR TO SAY?

22 A THAT WOULD BE FAIR TO SAY.

23 Q OKAY. HOW DO YOU -- HOW HAVE YOU COME TO THAT
24 IMPRESSION? AND, AGAIN, THESE QUESTIONS HAVE NOTHING TO DO
25 WITH ANY PARTICULAR CASE UNLESS YOU WANT TO USE THEM AS AN

1 EXAMPLE.

2 A RIGHT.

3 Q BUT HOW HAVE YOU COME TO DEVELOP YOUR OWN FEELINGS ABOUT
4 WHETHER CAPITAL PUNISHMENT IS SOMETHING WE OUGHT TO HAVE IN
5 OUR SYSTEM?

6 A REALLY IT DEPENDS ON THE HEINOUSNESS OF THE CRIME.

7 Q OKAY.

8 A EXTREMELY -- OBVIOUSLY, MURDER IS VIOLENT. BUT THERE
9 IS, I'M SURE, THREE, OR FOUR OR FIVE DIFFERENT LEVELS OF
10 MURDER WOULD BE COMMITTED IF THAT MURDER WAS PROVEN TO BE THE
11 CASE.

12 Q ALL RIGHT. SO IS IT FAIR THEN TO CONCLUDE THAT THE
13 DEGREE OF HEINOUSNESS, IF THAT'S A WORD---

14 A IF THAT'S A WORD, YEAH.

15 Q ALL RIGHT. NOW, HAVE YOU FOUND THAT YOUR IDEAS ABOUT
16 THE DEATH PENALTY HAVE CHANGED OVER THE YEARS? HAVE YOU BEEN
17 MORE FOR IT OR AGAINST IT AT ONE TIME OR NOT OR...

18 A NO. IT'S BEEN PRETTY CONSISTENT.

19 Q OKAY. HAVE YOU HAD THE OPPORTUNITY -- IN SCHOOLING OR
20 GROWING UP OR SOCIALLY OR OTHERWISE HAVE YOU HAD THE
21 OPPORTUNITY TO DISCUSS YOUR VIEWS OR IMPRESSIONS ABOUT
22 CAPITAL PUNISHMENT WITH OTHER PEOPLE?

23 A YES.

24 Q AND WHEN YOU FIND YOURSELF DISCUSSING WITH OTHER PEOPLE,
25 WHAT HAVE YOU SAID WERE THE REASONS WHY YOU WOULD, SAY,

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 BELIEVE IN IT? WHAT ARE THE REASONS WHY YOU HAVE FORMED THE
2 IMPRESSIONS YOU HAVE?

3 A PUT YOURSELF IN THE, SAY, THE FAMILIES OF SOMEONE WHO
4 HAS HAD A LOVED ONE THAT'S BEEN MURDERED, AND THEN LOOK AT
5 THE SEVERITY OF IT. AND I'VE COME TO THE CONCLUSION THAT
6 THERE IS DEFINITELY CERTAIN -- I DON'T WANT TO LABEL MURDER,
7 BUT CERTAIN---

8 Q NO. I MEAN, IT'S PERFECTLY FINE THAT YOU LABEL MURDER,
9 BECAUSE THAT'S WHAT WE'RE TALKING ABOUT.

10 A YEAH, I MEAN, IT'S DIFFERENT LEVELS OF HOW I VIEW
11 MURDER. I MEAN, OBVIOUSLY, MURDER IS WRONG.

12 Q RIGHT.

13 A BUT SOME CERTAIN WAYS OF, I GUESS, KILLING ANOTHER HUMAN
14 BEING IS HEINOUS.

15 Q ALL RIGHT. NOW, LET ME GO BACK JUST A SECOND WITH
16 REGARD TO THIS IDEA OF A TWO-PHASE TRIAL.

17 A OKAY.

18 Q BECAUSE BEFORE A JURY IS EVER ASKED TO CONSIDER ONE
19 PENALTY OR ANOTHER THEY GO THROUGH A TRIAL ON THE FACTS OF
20 THE CASE THAT DEAL WITH THE HEINOUSNESS OF IT, FOR EXAMPLE,
21 THE -- AND ANY OTHER FACTUAL INFORMATION ABOUT THE
22 CIRCUMSTANCES OF THE OFFENSE. THEN THAT JURY DELIBERATES AT
23 THE CONCLUSION AND THAT JURY MUST AGREE, ALL TWELVE OF THOSE
24 JURORS MUST AGREE, THAT THE PERSON WHO IS CHARGED -- AND
25 WE'RE TALKING ABOUT A HYPOTHETICAL CASE --

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 A RIGHT.

2 Q -- WAS GUILTY OF MURDER. SO WE KNOW THAT -- WE HAVE TO
3 KIND OF PUT THE CART BEFORE THE HORSE HERE. WE KNOW THAT IN
4 THIS IMAGINARY CASE I'M TALKING ABOUT THAT THE JURORS WOULD
5 HAVE ALREADY FOUND THE PERSON GUILTY OF MURDER.

6 NOW, THE JUDGE -- AT THAT POINT YOU'LL HEAR ADDITIONAL
7 INFORMATION, AND THE JUDGE WILL INSTRUCT THE JURY THAT THEY
8 ARE TO CONSIDER THE EVIDENCE REGARDING AGGRAVATING
9 CIRCUMSTANCES THAT MIGHT MAKE THE OFFENSE MORE HEINOUS OR
10 VIOLENT. BEFORE A JURY CAN EVEN CONSIDER IMPOSING A DEATH
11 SENTENCE THEY MUST ALREADY HAVE FOUND THE PERSON GUILTY OF
12 MURDER AND THEY MUST THEN DELIBERATE AND DECIDE THAT THE
13 AGGRAVATING INFORMATION, AT LEAST ONE OR MORE OF THE FACTS,
14 DO EXIST.

15 A UH-HUH (AFFIRMATIVE).

16 Q NOW, HERE'S WHERE I WANT TO TALK TO YOU SPECIFICALLY.
17 LET'S TAKE YOU TO THAT POINT WHERE YOU HAVE BEEN ON A JURY
18 WHERE A CONVICTION OF MURDER HAS BEEN FOUND BEYOND A
19 REASONABLE DOUBT. WE'RE NOT TALKING ABOUT SELF-DEFENSE OR
20 ALIBI. THE PERSON IS IN FACT GUILTY. YOU'VE DECIDED IT.

21 A UH-HUH (AFFIRMATIVE).

22 Q YOU'VE SEEN THE EVIDENCE. AND YOU DECIDED UPON A PROPER
23 DELIBERATION THAT AN AGGRAVATING FACTOR EXISTS.

24 A OKAY.

25 Q NOW AND ONLY THEN CAN THE STATE EVEN ASK YOU TO CONSIDER

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 THE DEATH PENALTY. I'VE GOT TO ASK YOU, MR. SHARPE, IF AT
2 THAT TIME YOU WOULD BE WILLING TO CONSIDER WHAT THE COURT HAS
3 DESCRIBED AS MITIGATING CIRCUMSTANCES. AND LET ME GIVE YOU
4 JUST A KIND OF A BROAD BRUSH.

5 THERE ARE CERTAIN CIRCUMSTANCES UNDER OUR LAW, AND THE
6 JUDGE WOULD INSTRUCT THE JURY IF THESE CIRCUMSTANCES EXISTED,
7 THAT IF THEY DID EXIST, THE JURY MUST BE WILLING TO TAKE THEM
8 INTO CONSIDERATION. KEEP IN MIND, WE'RE NOT TALKING ABOUT
9 WHETHER THERE IS SELF-DEFENSE OR SOMETHING, BECAUSE ALL THAT
10 IS DEFENSES TO THE MURDER.

11 A RIGHT.

12 Q WE'RE TALKING ABOUT -- AND IF THE COURT INSTRUCTED YOU
13 -- IF THE COURT INSTRUCTED YOU AS A JUROR TO GIVE MEANINGFUL
14 CONSIDERATION TO SUCH THINGS AS -- AND LET ME JUST GIVE YOU
15 THREE OR FOUR OF THE TYPE OF THINGS THAT MIGHT OCCUR IN A
16 HYPOTHETICAL CASE -- THE AGE OF THE PERSON CHARGED, THE
17 MENTAL RETARDATION OR MENTAL ILLNESS STATUS OF THE PERSON,
18 THE LACK OF A PRIOR CRIMINAL RECORD INVOLVING VIOLENCE, THE
19 BACKGROUND OR HISTORY OR -- THAT IS THE TYPE OF INFORMATION
20 THAT WE'RE TALKING ABOUT.

21 IF THE COURT INSTRUCTED THAT YOU WERE TO GIVE
22 CONSIDERATION TO THOSE, WOULD YOU BE ABLE TO FOLLOW THE
23 COURT'S INSTRUCTIONS AND DO THAT OR WOULD YOU BE ALREADY
24 PREDETERMINED TO GIVE ONE SENTENCE OR THE OTHER?

25 A NO, I WOULD DO WHAT THE COURT WOULD ASK ME TO DO.

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 Q DO YOU FEEL YOU COULD GIVE MEANINGFUL CONSIDERATION TO
2 THAT TYPE OF INFORMATION FOR A PERSON WHO HAD BEEN CONVICTED
3 OF MURDER BY YOU?

4 A SPEAKING OF, SAY, AGE OR MENTAL...

5 Q AND I CAN'T BE ANY MORE SPECIFIC, BUT THAT IS, IN A VERY
6 BROAD WAY -- AND I GUESS WHAT I'M SAYING IS IT DOESN'T RELATE
7 AT ALL TO WHETHER THE PERSON IS GUILTY.

8 A RIGHT.

9 Q IN OTHER WORDS, HE'S ALREADY BEEN GUILTY. THESE ARE
10 PERSONAL THINGS ABOUT THE PERSON WHO HAS BEEN CONVICTED. DO
11 YOU FOLLOW ME?

12 A YES, I DO. THOSE WOULD HAVE TO BE CONSIDERED.

13 Q WOULD YOU BE ABLE TO CONSIDER THEM?

14 A YES.

15 Q ALL RIGHT. LET ME ASK YOU A COUPLE OF MORE QUESTIONS,
16 AND THEN BECAUSE I'M SO NERVOUS I'M PROBABLY GOING TO GO BACK
17 OVER THERE AND ASK THEM WHAT I'VE FORGOTTEN.

18 MR. SHARPE, THE JUDGE MENTIONED TO YOU THAT IN OUR LAW
19 IN ORDER FOR A SENTENCE OF DEATH TO BE IMPOSED -- AND
20 REMEMBER WE HAVE THE FIRST TRIAL IF THE PERSON IS FOUND NOT
21 GUILTY OR GUILTY OF SOMETHING LESS THAN MURDER, THEN THERE IS
22 NO SECOND TRIAL.

23 A UH-HUH (AFFIRMATIVE).

24 Q SO WE GO THROUGH THE FIRST TRIAL. THE PERSON IS
25 CONVICTED OF MURDER. YOU GO THROUGH THE SECOND TRIAL. NOW

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 THE JURY IS GOING TO HAVE TO DECIDE THE PENALTY.

2 THE JURY GOES -- YOU REMEMBER THAT THE JUDGE MENTIONED
3 THAT IN SOUTH CAROLINA THAT A PERSON -- THAT EACH OF THE
4 TWELVE JURORS TO IMPOSE THE DEATH PENALTY ALL TWELVE EACH
5 MUST SIGN THEIR NAME TO THE DEATH WARRANT. DO YOU RECALL
6 THAT?

7 A YES.

8 Q I WANT TO KIND OF FAST FORWARD FOR A MOMENT. LET'S TAKE
9 YOU TO THE POINT WHERE YOU'VE HAD THE GUILTY VERDICT. YOU'VE
10 COME BACK INTO THE SAME COURTROOM. YOU'VE GOT THE SAME
11 LAWYERS, SAME PERSON CHARGED. YOU HEAR ADDITIONAL EVIDENCE.
12 THE PROSECUTION, THE GOVERNMENT, WOULD BRING IN THE EVIDENCE
13 THAT HE'S GOING TO SAY THIS MEANS THAT THE SENTENCE MUST BE
14 DEATH. AND THEN THE DEFENSE, IF THEY SO CHOOSE, WOULD BRING
15 TO YOU INFORMATION AND SAY, THIS MEANS THAT A LIFE SENTENCE
16 IS SUFFICIENT EVEN THOUGH IT'S A MURDER.

17 YOU THEN GO INTO THE JURY ROOM AND YOU BEGIN
18 DELIBERATION. AND LET'S SAY YOU DELIBERATE FOR HOURS. ALL
19 RIGHT. AND YOU'RE LISTENING TO EVERYBODY AND EVERYBODY IS
20 TALKING AND PASSING OPINIONS BACK AND FORTH. ALL RIGHT.

21 THE FACT IS, MR. SHARPE, OBVIOUSLY, THAT'S A LIFE OR
22 DEATH QUESTION THOSE JURORS ARE ANSWERING.

23 A RIGHT.

24 Q AND IT'S IMPORTANT THAT IT BE AN INDIVIDUAL DECISION,
25 THAT NOBODY BE TELLING EACH OTHER WHAT TO DO.

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 LET'S -- I'M GOING TO GIVE YOU TWO SCENARIOS AND ASK HOW
2 YOU WOULD REACT, AND THEN I'M GOING TO BE DONE.

3 LET'S ASSUME THAT AFTER APPROPRIATE DELIBERATIONS --
4 EVERYBODY HAD HAD THEIR SAY -- THAT YOU TOOK A VOTE AND THERE
5 WERE A HEAVY MAJORITY IN FAVOR OF ONE OF THE SENTENCES, AND
6 WE DON'T HAVE TO SAY WHICH, AND A MINORITY IN FAVOR OF THE
7 OTHER SENTENCE. LET'S SAY IT WAS TEN TO TWO, NINE TO THREE,
8 ELEVEN TO ONE -- BUT LET'S SAY TEN TO TWO.

9 A OKAY.

10 Q LET'S SAY FOR A MOMENT THAT YOU WERE ONE OF THE TWO IN
11 THE MINORITY OF THAT SCENARIO. WOULD YOU BE THE TYPE OF
12 PERSON, I GUESS THAT'S THE POINT OF THE QUESTION, WHO WOULD
13 GIVE UP YOUR VIEW ON THAT TYPE OF SUBJECT TO SIMPLY AGREE
14 WITH THE MAJORITY BECAUSE, I MEAN, IT'S LATE AND YOU WANT TO
15 GO HOME? YOU'VE BEEN SEQUESTERED AND ALL THAT KIND OF STUFF.
16 OR WOULD YOU TEND TO MAINTAIN YOUR POSITION EVEN IF A HEAVY
17 MAJORITY WAS ON THE OTHER SIDE?

18 A I WOULD MAINTAIN MY POSITION, EVEN IF IT WAS IN THE
19 MINORITY.

20 Q AND CONVERSELY, LET ME CHANGE -- LET'S SAY YOU WERE THE
21 MAJORITY---

22 A RIGHT.

23 Q ---AND YOU HAVE A COUPLE OF PEOPLE THAT DISAGREED WITH
24 YOU. WOULD YOU ATTEMPT TO FORCE THE MINORITY, THE TWO,
25 COUPLE OF JURORS, TO COME TO YOUR POSITION OR WOULD YOU

WILL M. SHARPE -- VOIR DIRE BY MR. MAULDIN

1 LIKEWISE RESPECT THEIR POSITION AS YOU WOULD EXPECT THEM TO
2 RESPECT YOURS?

3 A I WOULD RESPECT THEIR POSITION AS WELL.

4 MR. MAULDIN: THANK YOU. HANG ON ONE SECOND. (OFF
5 RECORD WITH CO-COUNSEL) ONE MOMENT.

6 THE COURT: ALL RIGHT, SIR.

7 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL)

8 Q ONE FINAL QUESTION, MR. SHARPE. MAYBE ONE OR TWO. WITH
9 -- AND WHAT WE'RE TRYING -- WHAT I'M TRYING TO DO IS MAKE
10 SURE I UNDERSTAND WHAT YOU MEAN BY "HEINOUS," A HEINOUS
11 CRIME, HEINOUS MURDER.

12 A OKAY.

13 Q WHAT IS -- IN YOUR OPINION OR YOUR VIEW WHAT WOULD BE
14 THE MOST HEINOUS MURDER THAT YOU COULD JUST THINK OF OFF THE
15 TOP OF YOUR HEAD? WITHOUT ANY CONNECTION TO THIS CASE OR ANY
16 LOCAL CASE, JUST THINK OF THE WORST HEINOUS CRIME YOU CAN
17 THINK OF.

18 A DECAPITATION.

19 Q OKAY. SO -- ALL RIGHT. IN A CASE OF THAT NATURE IF THE
20 COURT INSTRUCTED THAT CERTAIN MITIGATING CIRCUMSTANCES
21 EXISTED, COULD YOU STILL GIVE THEM MEANINGFUL CONSIDERATION
22 EVEN THOUGH IT WAS A HEINOUS CRIME?

23 A YES.

24 MR. MAULDIN: ALL RIGHT. THANK YOU.

25 THE COURT: ANY FOLLOW-UP, SIR?

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. MR. SHARPE, THANK YOU SO MUCH.
3 WHAT I'M GOING TO ASK YOU TO DO NOW IS -- THE BAILIFFS WILL
4 HELP YOU -- YOU WILL GO TO A ROOM. WE'RE GOING TO GO AHEAD
5 AND RESOLVE YOUR ISSUE RIGHT NOW AND YOU'LL BE OUT OF HERE IN
6 JUST A FEW MINUTES. THANK YOU FOR YOUR PATIENCE.

7 (JUROR EXITS COURTROOM AT 6:10 P.M.)

8 THE COURT: MR. SHARPE HAS BEEN EXCUSED FROM THE
9 COURTROOM. I'D LIKE TO HEAR IF THE STATE -- THE STATE'S
10 POSITION OF WHETHER HE IS QUALIFIED OF NOT.

11 SOLICITOR ARIAIL: YES, QUALIFIED.

12 MR. MAULDIN: WE TAKE THE POSITION THAT HE IS
13 QUALIFIED, YOUR HONOR.

14 THE COURT: ALL RIGHT. WE'RE NOW GOING TO STRIKE AS WE
15 GO. I WILL GIVE YOU TIME TO HUDDLE UP ON EITHER SIDE, MAKE
16 YOUR DECISION. PLEASE TAKE YOUR TIME. AND WE WILL START
17 FIRST FROM THE STATE. I'M NOT FORCING THE ISSUE NOW BUT---

18 SOLICITOR ARIAIL: WE'RE READY.

19 THE COURT: I'M READY IF YOU'RE READY.

20 SOLICITOR ARIAIL: PRESENT HIM.

21 AND BEFORE THE NEXT ONE, I WOULD LIKE TO STATE I HAVE
22 TWO OBJECTIONS TO QUESTIONS THAT WERE ASKED OF THAT JUROR.

23 THE COURT: ALL RIGHT, SIR. THANK YOU.

24 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL)

25 THE COURT: ARE YOU READY?

1 MR. MAULDIN: SWEAR THE JUROR, YOUR HONOR.

2 THE COURT: I'M SORRY. WERE YOU GOING TO SAY SOMETHING
3 ELSE?

4 MR. MAULDIN: AND I JUST -- SINCE THIS IS THE FIRST
5 ONE, I HAVE NO IDEA WHAT METHOD WE'RE GOING TO -- HOW YOU'RE
6 GOING TO DO THIS. CAN YOU TELL US HOW WE'RE GOING TO DO
7 THIS?

8 THE COURT: I'M GOING TO BRING THE GENTLEMAN BACK TO
9 THE WITNESS CHAIR. I'M GOING TO TELL HIM HE HAS BEEN
10 SELECTED AS A JUROR. I HAVE AN ORDER FOR JURORS WHO HAVE
11 BEEN SELECTED. I'LL BE GLAD FOR YOU GENTLEMEN TO REVIEW IT.
12 IT JUST TELLS THEM TO CALL A CERTAIN NUMBER BEGINNING
13 WEDNESDAY EVENING AND FOLLOW THOSE INSTRUCTIONS. IT
14 REITERATES THE OATH NOT TO DISCUSS THE CASE OR EXPOSE
15 THEMSELVES TO THE MEDIA. IT ALSO INSTRUCTS THEM NOT TO BRING
16 A CELL PHONE OR BEEPER BACK FOR THEIR JURY SERVICE.

17 BRING MR. SHARPE BACK TO THE WITNESS CHAIR. (TO THE
18 BAILIFF)

19 (JUROR REENTERS COURTROOM AT 6:13 P.M.)

20 THE COURT: MR. SHARPE, THANK YOU, SIR. YOU HAVE BEEN
21 SELECTED AS A JUROR IN THIS CASE, AND I'M GOING TO HAND YOU
22 AN ORDER THAT OUTLINES YOUR RESPONSIBILITIES FROM THIS POINT
23 FORWARD. AS A COURTESY TO YOU, YOU'RE NOT GOING TO BE
24 SEQUESTERED AT THIS TIME. YOU ARE WELCOME TO GO HOME, GO
25 ABOUT YOUR BUSINESS AND YOUR DAILY LIFE. YOU WILL SEE THE

1 INSTRUCTIONS IN THERE. I WOULD LIKE FOR YOU TO PLEASE FOLLOW
2 THEM, AND I WILL BRIEFLY REVIEW THEM TO MAKE SURE THERE IS NO
3 QUESTIONS. BEGINNING WEDNESDAY, DAY AFTER TOMORROW, AFTER
4 EIGHT P.M. CALL THAT NUMBER THAT IS DESIGNATED ON THE ORDER.

5 JUROR NUMBER 325: OKAY.

6 THE COURT: LISTEN TO THE MESSAGE. IT MAY BE TO COME
7 BACK THURSDAY WITH YOUR BAGS PACKED READY TO BEGIN JURY
8 SERVICE. IT MAY BE TO CALL BACK THE NEXT NIGHT AFTER EIGHT
9 O'CLOCK. SIMPLY FOLLOW THE INSTRUCTIONS.

10 WHEN YOU ARE FINALLY INSTRUCTED TO RETURN TO THE
11 COURTHOUSE, FOLLOW THE INSTRUCTIONS ABOUT PACKING OF CLOTHING
12 AND ARTICLES OF THAT NATURE. DO NOT INCLUDE IN YOUR BAG ANY
13 CELL PHONE OR BEEPER. DON'T BRING A BEEPER, CELL PHONE TO
14 THE COURTHOUSE. AND PLEASE REMEMBER THE PREVIOUSLY
15 ADMINISTERED OATH REMAINS IN EFFECT NOT TO DISCUSS THIS CASE
16 OR ANY POTENTIAL ASPECT OF THE CASE, AND DO NOT EXPOSE
17 YOURSELF TO ANY INFORMATION REGARDING THE CASE.

18 THANK YOU SO MUCH FOR BEING HERE. YOU ARE FREE TO GO.
19 WE LOOK FORWARD TO SEEING YOU BACK.

20 JUROR NUMBER 325: ALL RIGHT.

21 THE COURT: THANK YOU, SIR.

22 (JUROR EXITS COURTROOM AT 6:14 P.M.)

23 THE COURT: MR. SHARPE HAS BEEN EXCUSED. SOLICITOR,
24 I'LL BE GLAD TO HEAR FROM YOU, SIR.

25 SOLICITOR ARIAL: ALL RIGHT. JUST IN REGARD TO THE

MATTERS AND MOTIONS

1 TEN-TWO QUESTION, IT WOULD BE OUR POSITION THAT'S AN IMPROPER
2 QUESTION, THAT IT VIOLATES THE ALLEN CHARGE IN THE EVENT THE
3 COURT WOULD HAVE TO GIVE THAT CHARGE, THAT IT ENCOURAGES AND
4 SOLICITS A RESPONSE THAT A JUROR WILL NOT PARTICIPATE IN GIVE
5 AND TAKE. AND THE WORST CASE SCENARIO IN OUR VIEW IS IT IS
6 JUST ANOTHER FORM OF STAKEOUT INFORMATION ABOUT WHAT
7 INFORMATION WOULD YOU CONSIDER IN A WORST CASE SCENARIO. SO
8 WE WOULD HAVE AN OBJECTION TO THOSE TWO.

9 THE COURT: DO YOU WISH TO RESPOND?

10 MR. MAULDIN: WELL, I MEAN, OBVIOUSLY, I WOULDN'T ASK
11 THE QUESTIONS IF I DIDN'T THINK THEY WERE APPROPRIATE. SO I
12 DO SUPPORT MY QUESTIONS AS ASKED. WITH REGARD TO THE
13 MAJORITY-MINORITY QUESTION, THAT'S THE -- I THINK CAME OUT OF
14 THE BENNETT -- SOUTH CAROLINA SUPREME COURT BENNETT CASE.

15 I QUESTION THE APPLICATION OF THE ALLEN CHARGE UNDER THE
16 -- THE -- I QUESTION WHETHER OR NOT AN ALLEN CHARGE IS
17 APPROPRIATE IN A SENTENCING PROCEEDING IN A CAPITAL CASE. OF
18 COURSE, STATE V. TUCKER IS THE NAME OF THE CASE THAT I'VE
19 BEEN REFERRED TO.

20 BUT BE THAT AS IT MAY, I THINK THE QUESTIONS ARE
21 APPROPRIATE AS I ASKED THEM.

22 THE COURT: AND I'LL HEAR FROM YOU FURTHER. I'M
23 INCLINED TO AGREE WITH THE STATE AS TO ASKING THE WITNESS,
24 THE JUROR, JUST TELL US OFF THE TOP OF YOUR HEAD, WHAT DO YOU
25 THINK IS A HEINOUS SITUATION OR ONE WARRANTING THE DEATH

MATTERS AND MOTIONS

1 PENALTY. I MEAN, I THINK THAT'S THE VERY THING THAT THE CASE
2 LAW I'VE READ SEEKS TO AVOID.

3 MR. MAULDIN: WELL, AND I ACTUALLY, YOUR HONOR, THAT
4 WAS AFTER I CAME BACK TO THE TABLE. I WAS ACTUALLY TRYING TO
5 FIGURE OUT WHAT HE MEANT BY THE TERM "HEINOUS" DEFINITION. I
6 PROBABLY SHOULD HAVE SAID IT THIS WAY, IMAGINE IN YOUR WORD,
7 IN YOUR TERMS, A HEINOUS MURDER.. WOULD YOU STILL BE ABLE TO
8 FOLLOW THE COURT'S INSTRUCTIONS REGARDING CONSIDERATION?
9 THERE AGAIN---

10 THE COURT: I'LL PERMIT THAT.

11 MR. MAULDIN: YES, SIR. AND I WILL REPHRASE IT.

12 THE COURT: AND I'M GOING TO ALLOW YOU TO ASK THE
13 QUESTION ABOUT BEING IN THE MAJORITY OR THE MINORITY. BUT---

14 SOLICITOR ARIAIL: AND I DON'T HAVE A PROBLEM WITH THE
15 MINORITY. IT'S JUST THE TEN-TWO.

16 THE COURT: BUT IF THEY INDICATE, LIKE IF THEY'RE THE
17 MINORITY, THEY SAY, YES, I WOULD LISTEN TO THE MAJORITY. I
18 WOULD GIVE CAREFUL CONSIDERATION. THAT'S APPROPRIATE. THERE
19 IS A---

20 MR. MAULDIN: ABSOLUTELY.

21 THE COURT: ---PARTICULAR CASE THAT A JUROR SAID, "I
22 WOULD CAVE IN."

23 MR. MAULDIN: ABSOLUTELY, YOUR HONOR, AND THAT'S THE
24 WHOLE POINT OF THOSE QUESTIONS.

25 THE COURT: THAT'S RIGHT. IN BEING THE MAJORITY THERE

MATTERS AND MOTIONS

1 IS NOTHING IMPROPER ABOUT TRYING TO SWAY OR INFLUENCE THE
2 OPINION OF A FELLOW JUROR. THAT'S WHAT DELIBERATIONS ARE.

3 MR. MAULDIN: AND THAT IS TRUE. BUT IS A -- THERE ARE
4 TWO SIDES TO THAT, AND ONE SIDE HELD UP DOESN'T MAKE A LOT OF
5 SENSE.

6 THE COURT: RIGHT. I JUST DON'T WANT TO LEAVE YOU WITH
7 THE IMPRESSION BECAUSE I'M LETTING YOU ASK THE QUESTION THAT
8 IF THEY SAY, NO, I WOULD TRY TO INFLUENCE THE OTHER TWO---

9 MR. MAULDIN: AND THAT -- MANY OF THEM SAY THAT, JUDGE.

10 THE COURT: RIGHT. AND THERE IS NOTHING WRONG THAT.

11 MR. MAULDIN: RIGHT. I'LL FOLLOW UP -- I UNDERSTAND
12 THAT DOESN'T MAKE THEM NECESSARILY DISQUALIFIED.

13 I THINK THE NEXT ONE IS MR. WHITE?

14 THE COURT: YES, SIR.

15 MR. MAULDIN: AND I WANT TO REFER TO PAGE 4, QUESTION
16 30, AND IT IS PARTICULARLY RELEVANT REGARDING THE INCIDENT
17 THAT WE HAVE BEFORE US, YOUR HONOR. I JUST SIMPLY---

18 THE COURT: ALL RIGHT.

19 MR. MAULDIN: I DON'T KNOW WHAT HE'S GOING TO SAY, HOW
20 HE COULD BE IMPARTIAL ABOUT THAT. BUT WE'LL SEE.

21 THE COURT: THANK YOU.

22 MR. KEITH WHITE, PLEASE.

23 SOLICITOR ARIAIL: IF YOU'RE POINTING OUT PARAGRAPHS,
24 YOU MIGHT WANT TO LOOK AT 55 ALSO.

25 THE COURT: OKAY.

MATTERS AND MOTIONS

1 MR. MAULDIN: FIFTY-FIVE YOU SAID?

2 SOLICITOR ARIAIL: YES.

3 (JUROR NUMBER 385 ENTERS COURTROOM AT 6:20 P.M.)

4 THE COURT: JUST HAVE A SEAT THERE, MR. WHITE.

5 JUROR NUMBER 385: GOOD EVENING.

6 THE COURT: GOOD EVENING, SIR.

7 KEITH A. WHITE, HAVING BEEN
8 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

9 VOIR DIRE BY THE COURT:

10 Q MR. WHITE (WHITE MALE), THIS CASE ARISES FROM AN
11 INCIDENT THAT OCCURRED IN GREENVILLE COUNTY ON DECEMBER 6TH
12 OF THE YEAR 2000. THE VICTIM ALLEGED IN THE INDICTMENT IS AN
13 INDIVIDUAL BY THE NAME OF ERIC NICHOLSON, AND AT THE TIME WAS
14 A STATE TROOPER WITH THE HIGHWAY PATROL. IT IS ALLEGED THAT
15 THIS DEFENDANT COMMITTED A CRIME OF MURDER IN KILLING TROOPER
16 NICHOLSON.

17 THE REASON I MENTION THAT TO YOU AND THOSE ALLEGATIONS
18 IS THAT THIS CASE DID RECEIVE PUBLICITY, AND I WANT TO KNOW
19 IF YOU HAVE READ ANYTHING, HEARD ANYTHING OR SEEN ANYTHING
20 ABOUT THIS CASE FROM THE MEDIA OR OTHERWISE. HAVE YOU?

21 A YES.

22 Q TELL US EVERYTHING YOU CAN RECALL ABOUT YOUR
23 RECOLLECTION OF WHAT YOU HAVE BEEN EXPOSED TO INFORMATIONWISE
24 ABOUT THIS CASE.

25 A OKAY. I CAN'T REMEMBER EXACT DATES BUT I REMEMBER

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 WHEN -- BACK WHEN IT FIRST HAPPENED, I REMEMBER SEEING NEWS
2 REPORTS THAT EVENING WHEN I GOT HOME FROM WORK SAYING THAT A
3 POLICE OFFICER HAD BEEN KILLED AND, YOU KNOW, THERE WERE
4 FOLLOW-UP REPORTS FOR A COUPLE OF DAYS AFTERWARDS.

5 I NEVER -- I MEAN, IT WAS ON THE FRONT PAGE OF THE
6 GREENVILLE NEWS. I REMEMBER SEEING THAT. I DON'T RECALL
7 READING AN IN-DEPTH STORY. I CAN'T RECALL READING THE
8 ARTICLE.

9 THAT'S BASICALLY IT, JUST THE NEWS REPORTS THAT THEY
10 SAID THAT THE POLICE OFFICER WAS KILLED AND WHERE, JUST THE
11 BASIC---

12 Q WELL, TELL ME WHAT YOU RECALL ABOUT THE BASICS. WHERE
13 DO YOU BELIEVE THIS OCCURRED FROM YOUR INFORMATION?

14 A FROM THE INFORMATION THAT I HEARD BEFORE IT WAS
15 SOMEWHERE ON 85 NEAR WOODRUFF ROAD.

16 Q ALL RIGHT. WHAT ELSE DO YOU RECALL ABOUT INFORMATION
17 ABOUT THE CASE?

18 A THERE WAS A -- THEY DIDN'T -- THEY DIDN'T IMMEDIATELY
19 KNOW WHERE THE SUSPECT WAS. THERE WAS A CHASE OR A HUNT OR
20 SOMETHING. I'M NOT REAL FAMILIAR WITH WHAT HAPPENED AFTER
21 THAT. I MEAN, I KNOW THAT IT WAS -- WHAT I REMEMBER IS THIS,
22 SEEING IT WAS A POLICE OFFICER KILLED AND THEY DIDN'T KNOW
23 WHO IT WAS, WHERE IT WAS OR WHERE HE WAS. THERE WAS A CHASE
24 OR SOMETHING TO THAT EFFECT. AND LIKE A DAY OR TWO LATER OR
25 SOMETHING, THEY FOUND SOMEONE.

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 Q THERE ARE ALLEGED INCIDENTS THAT SUPPOSEDLY ARISE OR
2 AROSE IN ANDERSON COUNTY.. DOES THAT TRIGGER ANY MEMORY OF
3 ANYTHING YOU MAY HAVE HEARD ABOUT THIS CASE OR BEEN EXPOSED
4 TO?

5 A WELL, THAT'S -- WHEN THEY DID -- THAT'S WHERE THEY FOUND
6 SOMEONE, YEAH.

7 Q OKAY. SO YOU RECALL SOMETHING ABOUT---

8 A YEAH, I REMEMBER READING IT.

9 Q ---FINDING SOMEONE IN ANDERSON?

10 A YEAH.

11 Q ANY SPECIFICS ABOUT THOSE ALLEGATIONS YOU CAN RECALL?

12 A NO.

13 Q LET ME TELL YOU THE REASON THAT WE ASK THAT. WE'RE SORT
14 OF TRYING TO FIND OUT WHAT YOU REMEMBER. IF YOU ARE SELECTED
15 AS A JUROR, MR. WHITE, YOU WOULD BE GIVEN AN OATH, AND YOUR
16 OATH WOULD REQUIRE YOU TO DISREGARD ANYTHING YOU MAY HAVE
17 SEEN, HEARD OR READ ABOUT THIS CASE. AND YOU WOULD BE
18 REQUIRED UNDER YOUR OATH TO FIND THE TRUTH, THE FACTS, ONLY
19 FROM THE EVIDENCE PRESENTED DURING THE COURSE OF THE TRIAL IN
20 THIS COURTROOM. DO YOU UNDERSTAND YOUR OATH WOULD REQUIRE
21 YOU TO DO THAT?

22 A YES, SIR.

23 Q IF YOU WERE SELECTED TO SERVE AS A JUROR, WOULD YOU
24 SERVE AS A FAIR AND IMPARTIAL JUROR AND REACH A VERDICT BASED
25 ON THE FACTS PRESENTED AT TRIAL AND IN ACCORDANCE WITH THE

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 LAW AS I INSTRUCT IT?

2 A YES, SIR.

3 Q MR. WHITE, HAVE YOU ALREADY FORMED AN OPINION AS TO THE
4 FACTS OF THIS CASE OR THE GUILT OR INNOCENCE OF THIS
5 DEFENDANT?

6 A NO, SIR.

7 Q KEEPING IN MIND THE LEGAL PRINCIPLES THAT I HAVE
8 OUTLINED NOW TWICE TODAY, PRESUMPTION OF INNOCENCE AND THE
9 STATE'S BURDEN OF PROOF, COULD YOU -- DEPENDING ON THE FACTS
10 AND THE LAW AS I INSTRUCT IT, COULD YOU FIND A DEFENDANT
11 EITHER GUILTY OR NOT GUILTY?

12 A DEPENDING ON THE FACTS, YES, SIR, I COULD.

13 Q SO YOU WOULD FIND THE TRUTH FROM THE EVIDENCE; IS THAT
14 CORRECT?

15 A FROM THE FACTS AS PRESENTED TO ME, YES, SIR.

16 Q OKAY. NOW, I WANT YOU TO REMEMBER -- AND I KNOW I HAVE
17 STRESSED THIS TO YOU ALREADY REPEATEDLY -- THAT WE MAY NOT
18 EVEN REACH THE SECOND PHASE OR THE SENTENCING PHASE. BUT
19 BECAUSE WE POSSIBLY COULD, MYSELF AND THE ATTORNEYS MUST ASK
20 YOU QUESTIONS ABOUT YOUR VIEWS OF THE DEATH PENALTY. DO YOU
21 UNDERSTAND THAT?

22 A YES, SIR.

23 Q WHEN A JURY MOVES TO THE SENTENCING PHASE, THAT MEANS
24 THE JURY HAS ALREADY FOUND THE DEFENDANT IN A CASE GUILTY OF
25 MURDER. SO AT THAT POINT GUILT OF MURDER IN A PARTICULAR

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 CASE HAS BEEN ESTABLISHED. THERE IS NO DEFENSE LEFT. GUILT
2 OF MURDER HAS BEEN ESTABLISHED. SO THERE IS NO LEGAL DEFENSE
3 TO HASH OUT OR DISCUSS DURING WHAT WE CALL THE SECOND PHASE,
4 THE SENTENCING PHASE. DO YOU UNDERSTAND THAT?

5 A YES, SIR.

6 Q IN THE SECOND OR SENTENCING PART OF THE TRIAL WE WOULD
7 HEAR EVIDENCE THAT I HAVE ALREADY REFERRED TO A COUPLE OF
8 TIMES, WHAT WE CALL THE EVIDENCE IN AGGRAVATION AND EVIDENCE
9 IN MITIGATION. EXAMPLES OF MITIGATION MAY INCLUDE A
10 DEFENDANT'S BACKGROUND, FAMILY HISTORY, MENTAL HEALTH STATUS,
11 THINGS OF THAT NATURE. IF I INSTRUCTED YOU AS PART OF YOUR
12 OATH TO GIVE CONSIDERATION TO THOSE TYPE ISSUES OR OTHERS,
13 WOULD YOU FOLLOW YOUR OATH AND GIVE THOSE ISSUES SERIOUS AND
14 MEANINGFUL CONSIDERATION?

15 A YES, SIR.

16 Q NOW, SOMETIMES, AND I THINK THIS IS PROBABLY TRUE WITH
17 ALL OF US, WE HAVE CERTAIN PRECONCEIVED IDEAS. AND THAT'S
18 NOT UNUSUAL FOR JURORS IN ANY CASE. THEY COME WITH
19 PRECONCEIVED IDEAS. AND OFTENTIMES A JUROR'S PRECONCEIVED
20 IDEAS ARE NOT CONSISTENT WITH WHAT THE LAW REQUIRES. SO A
21 JUROR IN THAT SITUATION HAS TO MAKE A DECISION TO DISREGARD
22 THE OATH AND SIMPLY FOLLOW THAT JUROR'S OWN PERSONAL VIEWS OR
23 TO ABANDON ANY PREDISPOSITION AND HONOR THE OATH AND FOLLOW
24 THE LAW AS INSTRUCTED BY THE COURT. IF YOU WERE IN THAT
25 SITUATION, HOW WOULD YOU APPROACH THAT?

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 A WELL, I'D APPROACH IT -- I MEAN, IF I WERE EVER BROUGHT
2 TO TRIAL FOR ANY REASON, I WOULD WANT A FAIR TRIAL. I'D WANT
3 TO BE -- IF THERE'S GOING TO BE TWELVE PEOPLE LOOKING AT ME
4 DECIDING WHETHER I DID SOMETHING OR I DIDN'T DO IT, I WOULD
5 WANT THOSE PEOPLE TO BE FAIR AS THEY COULD BE AND TO BE ABLE
6 TO LOOK AT THE LAW AS THE LAW IS PRESENTED TO THEM AND MAKE
7 THEIR DECISION BASED ON THE LAW AND THE FACTS THAT ARE
8 INVOLVED.

9 Q OKAY. WOULD YOU THEN IF INSTRUCTED TO GIVE SERIOUS
10 CONSIDERATION TO AN AGGRAVATING CIRCUMSTANCE OR MITIGATING
11 CIRCUMSTANCES, WOULD YOU DO THAT IF INSTRUCTED BY THE COURT?

12 A OF COURSE, YES, SIR.

13 Q NOW, AGAIN, WE'RE JUST TALKING ABOUT THE PROCESS OF A
14 CASE IN GENERAL, NOT THIS SPECIFIC CASE OF COURSE.

15 A YES, SIR.

16 Q IF YOU WERE A JUROR IN THIS SITUATION AND PROCESS THAT
17 WE'VE TALKED ABOUT AND YOU'RE IN THE SENTENCING PHASE,
18 ALREADY FOUND A DEFENDANT GUILTY OF MURDER, COULD YOU --
19 DEPENDING ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE
20 CASE, INCLUDING AGGRAVATING CIRCUMSTANCES, MITIGATING
21 CIRCUMSTANCES, IF YOU BELIEVED IT APPROPRIATE, COULD YOU
22 RETURN A SENTENCE OF LIFE IMPRISONMENT?

23 A YES, I COULD.

24 Q ON THE OTHER HAND, IF YOU WERE IN THAT SITUATION COULD
25 YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES, CAREFUL

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES, IF
2 YOU BELIEVED IT WARRANTED THE DEATH PENALTY, COULD YOU VOTE
3 FOR THE DEATH PENALTY?

4 A YES, SIR, I COULD.

5 Q IN THE EVENT OF A DEATH SENTENCE IN SOUTH CAROLINA, THE
6 LAW REQUIRES EACH JUROR -- IT MUST BE A UNANIMOUS DECISION --
7 ALL TWELVE JURORS THAT REACH THAT DECISION TO IMPOSE THE
8 DEATH PENALTY MUST SIGN THEIR NAMES TO THE VERDICT FORM. IN
9 THAT EVENT, COULD YOU SIGN YOUR NAME TO THE VERDICT FORM?

10 A YES, SIR.

11 Q I KNOW YOU HESITATED WHEN I ASKED YOU THAT. ARE YOU
12 CONFIDENT IN YOUR ABILITY TO DO SO?

13 A I'M CONFIDENT IN MY ABILITY TO DO SO. IT'S JUST THAT'S
14 -- THIS IS THE FIRST TIME I'VE EVER BEEN INVOLVED IN ANYTHING
15 LIKE THAT. AND BEFORE YOU MAKE A DECISION LIKE THAT, IT'S
16 JUST A -- I DON'T KNOW HOW TO EXPLAIN IT.

17 Q WELL, I---

18 A IT'S A COMPLICATED THING.

19 Q I APPRECIATE YOUR CANDOR IN THAT REGARD. NOW, HAVE YOU
20 HAD TIME TO REVIEW THAT SHEET THAT LISTED THE THREE TYPES OF
21 JUROR?

22 A YES, SIR.

23 Q IF YOU FIT ONE OF THOSE CATEGORIES, WHICH ONE BEST
24 DESCRIBES YOU, SIR?

25 A I WOULD SAY IT WOULD BE THE THIRD ONE ON THAT LIST.

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 Q OKAY. IF YOU WERE SELECTED THEN, WOULD YOU HONOR YOUR
2 OATH AND SERVE AS A FAIR AND IMPARTIAL JUROR?

3 A YES, SIR, I WOULD.

4 Q AND WOULD YOU APPROACH JURY SERVICE WITH AN OPEN MIND TO
5 FIND THE TRUTH FROM THE EVIDENCE AND APPLY THE LAW AS I
6 INSTRUCT IT?

7 A YES, SIR, I WOULD.

8 Q MR. WHITE, DO YOU KNOW OF ANY REASON -- MAYBE I HAVEN'T
9 ASKED THE RIGHT QUESTION. DO YOU KNOW OF ANY REASON WHY YOU
10 COULD NOT SERVE AS A JUROR IN THIS CASE?

11 A NO, SIR.

12 Q OKAY. I NOTICED IN LOOKING AT YOUR QUESTIONNAIRE, YOUR
13 BROTHER, DOES HE WORK FOR THE ANDERSON COUNTY SHERIFF'S
14 OFFICE?

15 A YES, SIR, HE DOES.

16 Q OKAY. IT MAY BE THAT WITNESSES ASSOCIATED WITH THE
17 ANDERSON COUNTY SHERIFF'S OFFICE MAY TESTIFY IN THIS CASE.
18 WHAT IS THE POSITION OF YOUR BROTHER WITH THE ANDERSON COUNTY
19 SHERIFF'S OFFICE?

20 A HE'S A LIEUTENANT.

21 Q WHAT DIVISION, UNIFORM, DETECTIVE?

22 A UNIFORM.

23 Q DOES HE WORK THE ROAD? IS HE A SHIFT COMMANDER?

24 A HE'S A THIRD SHIFT COMMANDER, YES,

25 Q OKAY. IS HE PERMANENT THIRD SHIFT OR DOES HE SWING

KEITH A. WHITE -- VOIR DIRE BY THE COURT

1 SHIFTS?

2 A HE'S A -- I THINK HE'S PERMANENT ON THIRD SHIFT.

3 Q OKAY. HAVE YOU DISCUSSED AT ALL THIS CASE WITH HIM?

4 A NEVER.

5 Q THE FACT THAT PERHAPS FELLOW OFFICERS THAT WORK WITH HIM
6 WITH HIS DEPARTMENT, WOULD THAT IN ANY WAY AFFECT YOUR
7 ABILITY TO BE FAIR?

8 A NO, SIR. I DON'T EVEN KNOW ANY OF HIS FRIENDS OR ANY OF
9 THEM.

10 THE COURT: ALL RIGHT, SIR. WHAT WE'RE GOING TO DO NOW
11 IS I'M GOING TO HAVE THE ATTORNEYS GET AN OPPORTUNITY TO ASK
12 YOU SOME QUESTIONS, MR. WHITE. AND THEN THE PROCESS WILL BE
13 OVER WITH FOR THE EVENING AND YOU'LL BE FREE TO GO. WE THANK
14 YOU SO MUCH FOR YOUR PATIENCE. WE KNOW WE'VE RUN LATE THIS
15 EVENING.

16 MR. MAULDIN, YOU MAY PROCEED.

17 MR. MAULDIN: YOUR HONOR, COULD WE TAKE UP A MATTER?
18 OR I'LL BE GLAD TO PROCEED, BUT I COULD HAVE ANOTHER MATTER
19 ON ANOTHER SITUATION THAT I THOUGHT YOU MIGHT WANT TO HEAR AT
20 THIS TIME BEFORE I QUESTION MR. WHITE.

21 THE COURT: WE'LL PUT IT ON THE RECORD, BUT COULD I
22 MEET WITH Y'ALL TO THE SIDE MOMENTARILY?

23 MR. MAULDIN: YES, SIR.

24 (BENCH CONFERENCE OFF RECORD FROM 6:31 TO 6:33 P.M.)

25 MR. MAULDIN: THANK YOU, YOUR HONOR.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 THE COURT: YES, SIR.

2 VOIR DIRE BY MR. MAULDIN:

3 Q MR. WHITE, MY NAME IS JOHN MAULDIN.

4 A GOOD AFTERNOON, SIR.

5 Q I'M THE PUBLIC DEFENDER IN GREENVILLE COUNTY, AND I
6 ALONG WITH JIM BANNISTER AND RODNEY RICHEY REPRESENT JOHN
7 WOOD, WHO IS SEATED THERE IN THE WHITE SHIRT.

8 FIRST OF ALL, THIS IS THE OPPORTUNITY FOR US TO TALK A
9 LITTLE MORE IN DETAIL WITH YOU ABOUT YOUR FEELINGS ABOUT
10 CAPITAL PUNISHMENT AND OTHER MATTERS. AND I WANT YOU TO
11 LET'S ACT AS THOUGH WE'RE HAVING A CONVERSATION INSTEAD OF
12 TESTIFYING. I'D RATHER YOU JUST TELL US HOW YOU FEEL ABOUT
13 THINGS INSTEAD OF YES OR NO ANSWERS. DO YOU FOLLOW ME?

14 A YES, SIR.

15 Q LET'S SIT AND HAVE A---

16 A I'LL DO THE BEST I CAN.

17 Q ALL RIGHT.

18 A HOW'S THAT?

19 Q JUST TELL ME ANYTHING THAT COMES TO YOUR MIND. WE ALL
20 HAVE AN AWESOME RESPONSIBILITY HERE. THE COURT MUST
21 DETERMINE YOUR OVERALL QUALIFICATIONS AND THEN, OF COURSE,
22 EACH SIDE NEEDS TO KNOW HOW YOU FEEL IN ORDER THAT WE
23 REPRESENT THE VARIOUS POSITIONS IN THE CASE.

24 A I UNDERSTAND.

25 Q WE CAN'T DO THAT BECAUSE I'VE NEVER SEEN YOU BEFORE IN

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 MY LIFE.

2 A RIGHT.

3 Q NOW, I WANT TO BEGIN OFF THE BAT WITH REGARD TO MATTERS
4 IN YOUR QUESTIONNAIRE.

5 A OKAY.

6 Q AND THE COURT SENT THE QUESTIONNAIRE AND THEN PROVIDED
7 IT TO EACH SIDE, AND THESE ARE CONFIDENTIAL AND PRIVATE AND
8 YOU SHOULD -- AND THE COURT WILL RESPECT THAT. THEY WILL NOT
9 GO BEYOND THE HANDS OF JUST THE ATTORNEYS INVOLVED.

10 BUT I WANT TO ASK YOU AND THE COURT MADE REFERENCE TO
11 YOUR BROTHER BEING THE THIRD SHIFT WATCH COMMANDER IN
12 ANDERSON COUNTY. WAS HE THE THIRD SHIFT WATCH COMMANDER OR
13 WAS HE WORKING WITH THE ANDERSON COUNTY SHERIFF'S DEPARTMENT
14 IN DECEMBER OF THE YEAR 2000?

15 A I BELIEVE HE WAS WITH ANDERSON COUNTY. WHAT HIS
16 POSITION WAS, I DON'T KNOW.

17 Q SO YOU'RE NOT SURE WHETHER HE WAS IN THE SAME POSITION
18 HE IS NOW?

19 A HE WASN'T A LIEUTENANT.

20 Q OKAY. BUT HE WAS WITH THE SAME SHERIFF'S DEPARTMENT,
21 ANDERSON COUNTY SHERIFF?

22 A HE DID WORK WITH ANDERSON COUNTY, YES.

23 Q ALL RIGHT. AND I THINK YOU MENTIONED THAT YOU AND YOUR
24 BROTHER HAD NOT HAD ANY CONVERSATIONS ABOUT THIS PARTICULAR
25 INCIDENT; IS THAT RIGHT?

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 A WE HAVEN'T HAD ANY CONVERSATIONS. WE HARDLY EVER -- WE
2 SEE EACH OTHER CHRISTMAS, WEEKENDS, HOLIDAYS. I MEAN, HE
3 WORKS ALL THE TIME. I WORK ALL THE TIME.

4 Q RIGHT.

5 A WE DON'T GET TOGETHER LIKE WE SHOULD.

6 Q OKAY. THE -- I GUESS ONE OF THE QUESTIONS THAT I WOULD
7 HAVE IS WITH A BROTHER IN LAW ENFORCEMENT, WHETHER IT WAS
8 ANDERSON COUNTY IN PARTICULAR IN THIS SITUATION, BUT LAW
9 ENFORCEMENT ANYWHERE, WHEN YOU HEARD ABOUT A LAW ENFORCEMENT
10 OFFICER BEING KILLED, HOW DID YOU IMMEDIATELY FEEL ABOUT WHAT
11 SHOULD BE DONE TO THE PERSON ACCUSED OF THAT? DID YOU HAVE
12 IMMEDIATE FEELINGS ABOUT -- BECAUSE YOUR BROTHER IS IN LAW
13 ENFORCEMENT AND YOU HAVE THIS FAMILY CONNECTION, DID YOU HAVE
14 AN IMMEDIATE REACTION WHEN YOU HEARD THAT A LAW ENFORCEMENT
15 OFFICER HAD BEEN KILLED IN GREENVILLE COUNTY?

16 A MY IMMEDIATE REACTION -- NOT BECAUSE IT WAS A LAW
17 ENFORCEMENT OFFICER, JUST THE NEWS -- I DIDN'T EVEN KNOW
18 ABOUT IT TILL I GOT HOME THAT EVENING.

19 Q UH-HUH (AFFIRMATIVE).

20 A I SEEN IT ON THE NEWS. DID I HAVE ANY FEELING -- LET ME
21 MAKE SURE I UNDERSTAND YOUR QUESTION CORRECTLY.

22 Q YEAH.

23 A DID I HAVE ANY FEELING IMMEDIATELY ABOUT THE PERSON WHO
24 DONE IT?

25 Q RIGHT.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 A NO, SIR. I MEAN, IT DIDN'T -- IT WAS IMPORTANT TO ME,
2 BUT IT DIDN'T -- NOTHING JUMPED OUT AT ME. YOU KNOW, I
3 DIDN'T GET ALL MAD AND ANGRY, ANYTHING LIKE THAT, BECAUSE
4 THINGS LIKE THAT -- PEOPLE GET KILLED AND PEOPLE ARE INJURED
5 AND TRAGEDIES HAPPEN. AND YOU WATCH THE NEWS AND -- IT
6 HAPPENS. THINGS LIKE THAT HAPPEN A LOT.

7 Q ALL RIGHT. AND I GUESS THE PURPOSE OF MY QUESTION IS
8 BECAUSE YOUR BROTHER IS IN LAW ENFORCEMENT, I GUESS, IS THE
9 ANGLE---

10 A OKAY. THEN JUST BECAUSE MY BROTHER IS A LAW ENFORCEMENT
11 OFFICER DID I GET ANGRIER THAN I WOULD HAVE IN ANY OTHER
12 CIRCUMSTANCE?

13 Q RIGHT.

14 A NO, SIR.

15 Q ALL RIGHT. NOW, IN A CASE OF THIS NATURE AND IN
16 PARTICULAR I DRAW -- I KIND OF SPIN A LITTLE BIT TO THE FACT
17 THAT YOUR BROTHER IS WITH THE ANDERSON COUNTY SHERIFF'S
18 DEPARTMENT. AND I THINK YOU SAID HE STILL IS WITH THEM?

19 A YES.

20 Q A NUMBER OF WITNESSES WOULD TESTIFY -- I THINK THE COURT
21 IN ITS QUESTIONING ABOUT WHAT YOU KNEW ABOUT THE CASE
22 REFERRED TO THE ANDERSON -- AND YOU SAID, YEAH, I THINK
23 SOMEBODY GOT CAUGHT IN ANDERSON?

24 A THAT'S WHAT I RECALL.

25 Q THAT'S RIGHT.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 **A** THAT'S WHAT I SAID.

2 **Q** OKAY. ALL RIGHT. A NUMBER OF PEOPLE WHO WILL TESTIFY
3 IN THIS CASE WOULD BY ITS VERY NATURE BE ANDERSON COUNTY LAW
4 ENFORCEMENT OFFICERS. WOULD YOU BE MORE LIKELY TO BELIEVE
5 THEIR TESTIMONY IN LIGHT OF YOUR CONNECTION WITH YOUR BROTHER
6 AND HIS EMPLOYMENT WITH THE ANDERSON COUNTY SHERIFF'S
7 DEPARTMENT?

8 **SOLICITOR ARIAIL:** YOUR HONOR, WE'RE GOING TO OBJECT TO
9 THAT QUESTION AS PITTING ONE WITNESS AGAINST OTHER. I DON'T
10 THINK THAT'S AN APPROPRIATE QUESTION.

11 **THE COURT:** SUSTAINED.

12 **MR. MAULDIN:** I THINK IT'S INAPPROPRIATE IN THE NORMAL
13 CONTEXT. I DON'T THINK SO IN THIS PARTICULAR CONTEXT
14 CONSIDERING MR. WHITE'S BROTHER'S EMPLOYER. THAT'S THE
15 REASON I'VE COUCHED THE QUESTION THAT WAY, YOUR HONOR.

16 **THE COURT:** I SUSTAIN IT TO THE EXTENT IT REQUIRES THIS
17 POTENTIAL JUROR TO PREJUDGE CREDIBILITY. YOUR QUESTION IS
18 PREMISED ON THE ISSUE OF CREDIBILITY. IF YOU WANT TO TALK
19 ABOUT FEELINGS OF CO-EMPLOYEES OF HIS BROTHER AND IF THAT
20 WOULD IMPACT HIS VIEW OF THE CASE IN GENERAL, I JUST -- I
21 KNOW OF SPECIFIC CASES WHERE IT'S IMPROPER TO ASK WHETHER YOU
22 WOULD BELIEVE ONE TYPE OF WITNESS AS AGAINST ANOTHER.

23 **MR. MAULDIN:** AND I AGREE WITH THAT RULING.

24 **THE COURT:** BUT BECAUSE OF HIS BROTHER'S ASSOCIATION,
25 I'M GOING TO GIVE YOU SOME LATITUDE---

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 MR. MAULDIN: RIGHT.

2 THE COURT: ---TO HIS FEELINGS ABOUT CO-OFFICERS OR
3 OTHER DEPUTIES WITH THE SHERIFF'S OFFICE.

4 Q AND LET ME MAKE SURE, MR. WHITE, THAT YOU UNDERSTAND THE
5 KIND OF THE -- IN A NORMAL SITUATION IT WOULD BE
6 INAPPROPRIATE TO TRY TO COMPARE ONE WITNESS AGAINST ANOTHER
7 WHEN YOU HAVEN'T HEARD ANY OF THEM, OKAY?

8 A RIGHT.

9 Q AND THAT'S -- HERE THE QUESTION IS, BECAUSE YOUR BROTHER
10 IS AN EMPLOYEE AT THE ANDERSON COUNTY SHERIFF'S DEPARTMENT --
11 I KNOW HOW I CAN ASK IT. BECAUSE HE IS AN EMPLOYEE OF THE
12 ANDERSON COUNTY SHERIFF'S DEPARTMENT AND BECAUSE A NUMBER OF
13 ANDERSON COUNTY SHERIFF'S DEPARTMENT EMPLOYEES WOULD BY THE
14 VERY NATURE OF THE CASE BE REQUIRED TO COME AND TESTIFY,
15 COULD THAT AFFECT -- THE FACT WITH YOUR BROTHER'S EMPLOYMENT,
16 THE RELATIONSHIP YOU HAVE WITH YOUR BROTHER, THE FACT THAT
17 CO-WORKERS ARE TESTIFYING, WOULD THAT COMBINATION HAVE AN
18 EFFECT ON YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

19 A THAT WOULD HAVE NO EFFECT WHATSOEVER ON ME.

20 Q YOU DON'T THINK IT COULD HAVE ANY EFFECT ON YOU?

21 A I KNOW IT WOULDN'T HAVE ANY EFFECT ON ME.

22 Q ALL RIGHT. AND ADDITIONALLY, MR. WHITE, WITH REGARD TO
23 THOSE QUESTIONS, WOULD THE FACT THAT A LAW ENFORCEMENT
24 OFFICER WAS ALLEGEDLY KILLED AND YOUR BROTHER IS A LAW
25 ENFORCEMENT OFFICER, WOULD THAT COMBINATION OF FACTORS HAVE

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 ANY EFFECT ON YOUR ABILITY TO SIT AS A FAIR AND IMPARTIAL
2 JUROR IN A CASE OF THIS NATURE? COULD IT HAVE ANY EFFECT ON
3 YOU?

4 A IT WOULD HAVE NO EFFECT WHATSOEVER. I MEAN, I LISTEN TO
5 THINGS. I HEAR THEM. I TAKE THEM FOR WHAT THEY ARE. THE
6 TRUTH IS THE TRUTH. A LIE IS A LIE.

7 Q ALL RIGHT. NOW LET ME ASK YOU JUST A FEW FINAL
8 QUESTIONS OF A MORE GENERAL TYPE, MR. WHITE. WITH REGARD TO
9 YOUR VIEWS ON THE DEATH PENALTY, YOU MENTIONED TO THE COURT
10 THAT YOU FELT LIKE YOU WERE PROBABLY A NUMBER THREE JUROR OR
11 A JUROR THAT FIT KIND OF IN THE CATEGORY OF THE NUMBER THREE
12 JUROR?

13 A YES.

14 Q I'M GOING TO THEN ASSUME THAT YOU AT LEAST BELIEVE IN
15 THE DEATH PENALTY UNDER CERTAIN CIRCUMSTANCES?

16 A I BELIEVE IN THE DEATH PENALTY UNDER CERTAIN
17 CIRCUMSTANCES.

18 Q ALL RIGHT. NOW, YOU UNDERSTAND THAT THE DEATH PENALTY
19 IN SOUTH CAROLINA IS NEVER REQUIRED AS A PENALTY? IN THE
20 CASE OF A MURDER, IN THE CASE OF THE WORST MURDER YOU COULD
21 EVER EVEN IMAGINE, YOU JUST -- LET YOUR IMAGINATION RUN WILD.
22 YOU COULD IMAGINE THE WORST POSSIBLE CASE. THE LAW IN SOUTH
23 CAROLINA NEVER REQUIRES THAT THE JURY IMPOSE THE DEATH
24 PENALTY. DO YOU---

25 A I UNDERSTAND THAT.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 Q ALL RIGHT. AND YOU UNDERSTAND THAT WHEN A JURY IS
2 CALLED UPON TO DETERMINE WHETHER A DEATH PENALTY IS
3 APPROPRIATE IN A CASE TWO THINGS HAVE TO HAVE HAPPENED BEFORE
4 THAT DECISION IS UPON THE TABLE OF THE JURY.

5 THE FIRST THING IS THE JURORS MUST ALREADY HAVE FOUND
6 THE DEFENDANT GUILTY OF MURDER. THERE MUST ALREADY HAVE BEEN
7 A CONVICTION FOR THE OFFENSE OF MURDER. THAT MEANS NO SELF-
8 DEFENSE, NO ALIBI, NO INSANITY. IN OTHER WORDS, THIS PERSON
9 IS CLEARLY GUILTY OF MURDER, INTENTIONAL KILLING BEYOND A
10 REASONABLE DOUBT. THAT'S THE FIRST STEP.

11 THE SECOND STEP IS THERE MUST BE PROOF OF AN AGGRAVATING
12 CIRCUMSTANCE, AND THE JUDGE TALKED TO YOU A LITTLE BIT ABOUT
13 THAT.

14 A I UNDERSTAND THAT.

15 Q IT'S GOT TO BE A MURDER AND THEN IT'S GOT TO BE
16 ACCOMPANIED BY OR THERE MUST ALSO BE SOME ELEMENT THAT MAKES
17 IT EVEN WORSE THAN A DIFFERENT MURDER. DO YOU FOLLOW THAT?

18 A YES.

19 Q ALL RIGHT. UNDER THOSE CIRCUMSTANCES, MR. WHITE, THE
20 COURT WOULD INSTRUCT AT THE SECOND PHASE OF THE TRIAL -- YOU
21 KNOW, THIS FIRST PHASE, THE PERSON'S BEEN CONVICTED. THE
22 SAME JURY COMES BACK AND HEARS ADDITIONAL EVIDENCE. AT THAT
23 SECOND PHASE THE JUDGE WOULD TELL THAT JURY THAT EVEN IN A
24 CASE WHERE THE PERSON HAS BEEN CONVICTED OF MURDER AND EVEN
25 IN THE CASE WHERE AN AGGRAVATING CIRCUMSTANCE HAS BEEN FOUND

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 THAT THE JUDGE, IF HE INSTRUCTED YOU TO CONSIDER MITIGATING
2 INFORMATION -- AND TO GIVE YOU EXAMPLES, IT WOULD INCLUDE
3 SUCH THINGS AS THE AGE, MENTAL CONDITION OF THE PERSON THAT'S
4 BEEN CONVICTED, BACKGROUND INFORMATION, EDUCATIONAL
5 INFORMATION, YOU KNOW, THAT TYPE OF INFORMATION -- WOULD YOU
6 BE ABLE TO FOLLOW THE COURT'S INSTRUCTION AND GIVE REAL
7 CONSIDERATION TO THAT TYPE OF INFORMATION EVEN WHEN AN
8 AGGRAVATED CASE OF MURDER HAD BEEN FOUND?

9 A YES, SIR.

10 Q YOU WOULD?

11 A I COULD DO THAT. I MEAN -- YES.

12 Q MR. WHITE, IN AN AGGRAVATED CASE -- AND I KNOW IT'S KIND
13 OF HARD. YOU JUST HAVE TO KIND OF IMAGINE AN AGGRAVATED CASE
14 BECAUSE WE CAN'T DEAL WITH CIRCUMSTANCE -- WE HAVE TO DEAL
15 KIND OF IN EXAMPLES. IN AN AGGRAVATED CASE DO YOU BELIEVE
16 THAT UNDER CERTAIN CIRCUMSTANCES A LIFE IN PRISON SENTENCE IS
17 AN APPROPRIATE SENTENCE IN AN AGGRAVATED CIRCUMSTANCE?

18 A YES, IT CAN BE. IT DEPENDS ON HOW AGGRAVATED YOU'RE
19 TALKING ABOUT.

20 Q ALL RIGHT. LET'S ASSUME THAT YOU'VE GOT AN AGGRAVATED
21 CASE. AND YOU HAVE -- AND WE HATE TO PUT THE CART BEFORE THE
22 HORSE BECAUSE WE HAVEN'T EVEN HAD THE TRIAL YET. BUT LET'S
23 ASSUME THAT YOU HAVE A TRIAL IN THIS HYPOTHETICAL EXAMPLE
24 CASE AND THE CASE HAS BEEN PROVEN BEYOND A REASONABLE DOUBT
25 THAT IT WAS MURDER.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 A OKAY.

2 Q AND THE PROSECUTOR HAS COME IN AND PROVEN BEYOND A
3 REASONABLE DOUBT THIS AGGRAVATING INFORMATION, AGGRAVATING TO
4 MAKE IT WORSE. ALL RIGHT. UNDER THOSE CIRCUMSTANCES --
5 BECAUSE ONLY THEN CAN YOU EVEN CONSIDER A DEATH PENALTY.

6 A OKAY.

7 Q IN MAKING THAT CONSIDERATION IN AN AGGRAVATING CASE LIKE
8 I'VE JUST DESCRIBED TO YOU, DO YOU BELIEVE THAT A LIFE IN
9 PRISON SENTENCE COULD BE APPROPRIATE UNDER THOSE
10 CIRCUMSTANCES?

11 A YEAH, I DO.

12 Q ALL RIGHT. CAN YOU GIVE ME -- WHAT TYPE OF INFORMATION
13 WOULD YOU THINK YOU AS A JUROR WOULD WANT TO EVALUATE IN
14 DECIDING IN THE AGGRAVATED CASE WHETHER THE SENTENCE WOULD BE
15 LIFE IN PRISON WITHOUT PAROLE OR THE DEATH PENALTY? CAN YOU
16 GIVE ME AN EXAMPLE OF---

17 A THE INFORMATION THAT I WOULD NEED IN ORDER TO HELP ME---

18 Q YES, SIR.

19 A ---DECIDE BETWEEN LIFE---

20 Q RIGHT.

21 A ---IN PRISON AND THE DEATH PENALTY?

22 Q RIGHT.

23 SOLICITOR ARIALL: AND I'M GOING TO OBJECT TO THAT
24 QUESTION.

25 THE COURT: AND I SUSTAIN THE OBJECTION.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 Q LET ME ASK YOU IF -- LET ME SEE IF I CAN ASK IT THIS
2 WAY. DO YOU UNDERSTAND, MR. WHITE, THAT -- AND IF I SOUND
3 REPETITIVE, I MAY BE. YOU'RE THE SECOND JUROR AND I'M
4 PROBABLY A WHOLE LOT MORE NERVOUS THAN YOU ARE.

5 A I DON'T KNOW.

6 Q BUT LET ME -- LET'S TRY TO PUT IT THIS WAY. FOR THE
7 OFFENSE OF MURDER IN SOUTH CAROLINA THERE ARE ANY NUMBER OF
8 MURDER CASES THAT DO NOT ALLOW THE GOVERNMENT TO ASK THAT THE
9 DEATH PENALTY BE CONSIDERED. THERE ARE A -- THERE ARE MORE
10 MURDERS WHERE THE DEATH PENALTY IS NOT ALLOWED TO BE ASKED
11 FOR THAN THERE ARE CASES WHERE THE DEATH PENALTY IS ASKED
12 FOR. DO YOU UNDERSTAND THAT?

13 A YES.

14 Q ALL RIGHT. SO THAT THE DEATH PENALTY IS ONLY ASKED
15 WHERE THE PROSECUTION BELIEVES THAT NOT ONLY CAN THEY PROVE
16 THAT A PERSON IS GUILTY BEYOND A REASONABLE DOUBT OF THE
17 OFFENSE OF MURDER BUT ONCE THAT CONVICTION IS HAD BY THAT
18 JURY THEY THEN WOULD COME IN TO THE SAME JURY AND THE SAME
19 JURY BOX AND SAY, HERE IS THE EVIDENCE THAT MAKES THIS
20 PARTICULAR MURDER MORE AGGRAVATED.

21 NOW, THE QUESTION THAT I NEED TO ASK YOU IS, EVEN UNDER
22 THOSE CIRCUMSTANCES WOULD YOU BE WILLING TO CONSIDER A LIFE
23 SENTENCE EVEN WHERE BOTH THE DEFENDANT'S BEEN CONVICTED OF
24 MURDER AND AN AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN TO
25 EXIST, WOULD YOU STILL BE WILLING TO CONSIDER A LIFE

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 SENTENCE?

2 SOLICITOR ARIAIL: I OBJECT. UNLESS HE PUTS A
3 QUALIFIER IN.

4 THE COURT: YES, SIR.

5 SOLICITOR ARIAIL: QUALIFIER BEING THAT THE JUDGE
6 INSTRUCTS. HE HASN'T PUT THAT IN THE QUESTION.

7 THE COURT: SUSTAINED.

8 Q ALL RIGHT. I'M GOING TO GO BACK TO THE -- I'M TRYING TO
9 KEEP THIS SENTENCE -- QUESTION FROM BEING TOO LONG.

10 A MURDER CONVICTION IS HAD. LET'S JUST SAY, FOR
11 EXAMPLE, YOU'RE ON THE JURY AND THE TWELVE JURORS DECIDE THAT
12 A PERSON, MR. JONES, MR. SMITH, WHATEVER IS CONVICTED OF
13 MURDER. THE JURY ALSO HAS BEEN GIVEN EVIDENCE THAT THERE
14 EXISTS AN AGGRAVATING CIRCUMSTANCE AND THEY HAVE DECIDED IN
15 THEIR DELIBERATIONS THAT THAT AGGRAVATOR EXISTS BEYOND A
16 REASONABLE DOUBT. SO THOSE TWO THINGS WE HAVE ON THE TABLE.

17 A OKAY.

18 Q IF THE JUDGE WERE TO INSTRUCT YOU THAT YOU WERE TO
19 CONSIDER BOTH THE DEATH PENALTY AND LIFE IN PRISON FOR AN
20 AGGRAVATED MURDER, WOULD YOU IN FACT BE ABLE TO ACTUALLY GIVE
21 LEGITIMATE CONSIDERATION TO A LIFE IN PRISON SENTENCE INSTEAD
22 OF A DEATH SENTENCE?

23 A I'D BE ABLE TO GIVE CONSIDERATION TO EITHER ONE
24 DEPENDING ON WHAT EVIDENCE WAS SHOWN TO ME IN THE SECOND
25 PHASE IF THAT -- IF WE GOT TO THAT PART.

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 Q OKAY. FINAL QUESTION, MR. WHITE, AND AGAIN I APOLOGIZE
2 TO YOU FOR KIND OF GOING AROUND IN CIRCLES. SOMETIMES I
3 DON'T KNOW WHETHER I'M ASKING THE QUESTIONS RIGHT.

4 I'M GOING TO TAKE YOU -- I'M GOING TO KIND OF SPIN YOU
5 FORWARD TO THE DELIBERATION PART OF THE CASE, AND LET'S SAY
6 THAT YOU'VE HEARD ALL OF THE EVIDENCE ABOUT THE CRIME, YOU'VE
7 GONE INTO THE JURY ROOM WITH THE OTHER ELEVEN JURORS AND ALL
8 ELEVEN JURORS HAVE DECIDED THAT THE PERSON IS GUILTY OF
9 MURDER, AND THEY COME INTO THE JURY ROOM -- I MEAN, COURTROOM
10 AND ANNOUNCE GUILTY. THEN THEY HAVE THE TWENTY-FOUR HOUR
11 WAITING PERIOD BEFORE THE SENTENCING PROCEEDING STARTS. THE
12 GOVERNMENT HAS THE OPPORTUNITY TO COME IN AND PRESENT
13 EVIDENCE WHAT YOU MIGHT CALL TO MAKE IT MORE AGGRAVATED. THE
14 DEFENSE, IF THEY SO CHOSE, WOULD HAVE THE OPPORTUNITY ALSO TO
15 PRESENT THE MITIGATING INFORMATION THAT THE JUDGE WOULD
16 INSTRUCT YOU MUST BE CONSIDERED.

17 A RIGHT.

18 Q AND YOU'VE RECEIVED ALL THAT AND YOU GO INTO THE JURY
19 ROOM AND YOU START DELIBERATING. LET'S SAY YOU DELIBERATE
20 FOR HOURS, DELIBERATE FOR, YOU KNOW, QUITE A BIT OF TIME, AND
21 EVERYBODY HAS THE OPPORTUNITY, IF THEY SO CHOOSE, TO
22 PARTICIPATE, DISCUSS, GIVE INPUT, SAY UP AND DOWN OR
23 WHATEVER, AND YOU FINALLY COME TO THE POINT WHERE YOU TAKE A
24 VOTE. YOU TAKE ANY NUMBER OF VOTES. BUT THE FINAL VOTE THAT
25 YOU ARE TAKING, THE VOTE IS TEN TO TWO, AND IT DOESN'T MATTER

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 WHICH FOR WHICH SENTENCE, BUT IT'S JUST TEN -- THERE'S A
2 SPLIT.

3 A OKAY.

4 Q YOU RECALL THE JUDGE TOLD YOU WHEN HE WAS QUESTIONING
5 YOU OR TALKING TO YOU THAT IN ORDER TO IMPOSE THE DEATH
6 PENALTY IN SOUTH CAROLINA ALL TWELVE JURORS WOULD HAVE TO
7 SIGN A FORM. YOU REMEMBER?

8 A (INDICATES AFFIRMATIVE RESPONSE)

9 Q I WANT TO ASK YOU IF YOU WERE IN A POSITION WHERE IT WAS
10 TEN TO TWO AND YOU WERE IN THE MINORITY -- YOU WERE ONE OF
11 THOSE TWO THAT HAVE YOUR VIEW, TEN OTHER PEOPLE, A WHOLE LOT
12 MORE BELIEVE THE OTHER WAY -- WOULD YOU BE INCLINED TO GIVE
13 UP THE POSITION THAT YOU HAVE AND GO WITH THE MAJORITY BASED
14 UPON THE FACT THAT IT IS A SIGNIFICANT MAJORITY, A HEAVY
15 MAJORITY OVER YOU? OR WOULD YOU BE INCLINED NOT TO DO THAT
16 UNDER THOSE CIRCUMSTANCES?

17 A I'M MORE INCLINED TO STICK WITH MY POSITION, WHAT I
18 THINK IS -- WHATEVER DECISION I COME TO. UNLESS YOU CAN
19 PROVE TO ME OTHERWISE, I'LL STICK WITH MY DECISION.

20 Q AND I WANT TO REVERSE THAT. IN THE EVENT YOU HAD THE
21 SAME VOTE, TEN TO TWO, AND YOU WERE ONE OF THE MAJORITY --
22 YOU WERE ONE OF THE TEN JURORS, HAD PLENTY OF OPPORTUNITY TO
23 DISCUSS AND YOU INTERCHANGED INFORMATION -- WOULD YOU ATTEMPT
24 TO REQUIRE THE MINORITY TO CHANGE THEIR VOTE OR WOULD YOU
25 RESPECT THEIR RIGHT TO HAVE THEIR VIEW AS YOU WOULD EXPECT

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 THE SAME IF YOU WERE IN THE MINORITY?

2 A I WOULD RESPECT THEIR RIGHT TO MAINTAIN THEIR VIEW.

3 MR. MAULDIN: ONE MOMENT, PLEASE, MR. WHITE.

4 (MR. MAULDIN OFF RECORD WITH CO-COUNSEL)

5 Q ALL RIGHT. MY -- I ALWAYS FORGET THINGS. SO LET ME ASK
6 ONE QUESTION OUT OF THE QUESTIONNAIRE, AND THEN ONE FINAL
7 QUESTION AND THEN I'LL BE DONE.

8 IN ONE OF YOUR QUESTIONS YOU STATED THAT YOU DEAL WITH
9 PEOPLE IN EVERY WALK OF LIFE, AND THEN YOU SAID THAT "THE
10 GUILTY SHALL PAY. THE INNOCENT SHALL BE FREE."

11 A THAT'S CORRECT.

12 Q CAN YOU GIVE ME -- WHEN YOU SAY "THE GUILTY SHALL PAY,"
13 WHEN YOU WROTE THAT, CAN YOU GIVE ME KIND OF YOUR IMPRESSION
14 OF WHAT YOU WERE TRYING TO TELL TO THE COURT OR TO OTHER...

15 A YES, SIR, I SURE CAN.

16 Q ALL RIGHT.

17 A BASICALLY, ALL I MEAN WHEN I WROTE THAT THERE IF -- IN A
18 SITUATION, IF EVIDENCE OR WHATEVER IS PRODUCED AND SOMEONE IS
19 PROVED GUILTY, THEY SHOULD FACE WHATEVER -- THEY SHOULD FACE
20 THE MUSIC FOR IT. BUT, HOWEVER, ON THE OTHER SIDE OF THE
21 COIN, AND I FEEL JUST AS STRONGLY ABOUT THIS, IF THAT PERSON
22 IS PROVED TO BE INNOCENT, THEN THEY SHOULD BE FREE. I MEAN,
23 EXACTLY WHAT IT SAYS IS EXACTLY WHAT I MEAN. IF SOMEONE IS
24 PROVED GUILTY OF SOMETHING, YEAH, THEY SHOULD FACE THE MUSIC
25 FOR IT. IF THEY ARE INNOCENT, THEN, YEAH, THEY SHOULD BE

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 FREE. I -- YOU KNOW, THAT'S THE WAY I EXPECT TO BE TREATED
2 BY THE COURT SYSTEM, AND I ASSUME EVERYONE IN THIS ROOM WOULD
3 WANT THE COURT SYSTEM TO TREAT THEM THE SAME WAY.

4 Q THE LAST QUESTION THAT I HAVE, MR. WHITE, AND I
5 NEGLECTED TO ASK YOU THIS.

6 A OKAY.

7 Q THIS WOULD HAVE BEEN A QUESTION THAT I WOULD HAVE ASKED
8 VERY EARLY ON. BUT I JUST WANT TO ASK THIS QUESTION, KIND OF
9 THROW IT OUT TO YOU AND GET SOME COMMENTS FROM YOU AND THEN
10 I'LL BE DONE.

11 WHAT IS YOUR -- WITH REGARD TO -- YOU SAY YOU'RE A
12 NUMBER THREE AND, THEREFORE, YOU WOULD BE IN FAVOR OF THE
13 DEATH PENALTY ANYWAY. WHAT IS YOUR OPINION, IF YOU WILL,
14 ABOUT THE DEATH PENALTY? AND BY -- AND I GUESS I -- THERE
15 I'M TALKING ABOUT SUCH THINGS AS THE PURPOSE OF THE DEATH
16 PENALTY, APPROPRIATENESS OF THE DEATH PENALTY, WHETHER YOU
17 THINK IT'S RIGHT OR WRONG. JUST GENERALLY, WHAT IS YOUR
18 OPINION ABOUT IT?

19 A THE DEATH PENALTY. WELL, I GUESS I AM -- THE DEATH
20 PENALTY HAS ITS PURPOSE IN OUR SOCIETY. I BELIEVE IT'S THERE
21 AS A DETERRENT AGAINST PEOPLE GOING OUT AND JUST RANDOMLY
22 KILLING PEOPLE. I MEAN, THAT'S WHAT IT'S THERE FOR. CERTAIN
23 SITUATIONS IF -- SAY SOMEONE GOES OUT AND THEY'RE JUST UNDER
24 CRAZY CIRCUMSTANCES THEY GO CRAZY AND THEY KILL A PERSON, AND
25 THEN THEY BEAT THEM AND KICK THEM WHILE THEY'RE -- AFTER

1 THEY'RE ALREADY DEAD AND -- OR SOMEBODY JUST FOR NO REASON
2 WHATSOEVER OUT OF THE BLUE JUST KILLED SOMEBODY JUST BECAUSE
3 OF NO REASON WHATSOEVER AND THERE'S, YOU KNOW -- I DON'T KNOW
4 EXACTLY HOW TO EXPLAIN IT.

5 Q I THINK YOU'RE DOING A GREAT JOB. I MEAN, THIS IS THE
6 KIND OF INFORMATION WE NEED.

7 A IT'S THERE AS A DETERRENT. IT'S ALSO -- NOT EVERYONE
8 SHOULD GET THE DEATH PENALTY. THERE ARE CERTAIN
9 CIRCUMSTANCES WHERE IT'S NOT SOMETHING THAT SHOULD BE DONE TO
10 SOMEONE. SOMEONE -- SAY SOMEONE GETS KILLED AND IT WAS NOT
11 INTENTIONAL BUT THEY WERE COMMITTING A CRIME AND THE PERSON
12 KIND OF GOT KILLED BUT NOBODY THOUGHT ABOUT WELL, I'M GOING
13 TO -- YOU KNOW, THEY DIDN'T SAY, "I'M GOING TO GO KILL
14 SOMEBODY," AND THEN SOMEONE GOT KILLED. I MEAN, THEY'RE NOT
15 THINKING -- THEY'RE NOT PLANNING "I'M GOING TO KILL
16 SOMEBODY." THAT'S JUST -- THAT'S NOT EVIL, YOU KNOW, THAT
17 KIND OF EVIL. YOU KNOW? BUT FOR SOMEONE TO PUT THEMSELVES
18 IN A SITUATION, YOU KNOW, CARRYING WEAPONS WITH THEM, AND
19 THEY KNOW HOW TO USE THEM AND THEY'RE -- THEY KNOW THAT THEY
20 PROBABLY WOULD USE THEM IF IT CAME DOWN TO IT, THEN THAT IS
21 THE SAME AS THINKING AHEAD OF TIME, "I'M GOING TO GO KILL
22 SOMEBODY," BECAUSE THEY'RE PUTTING THAT GUN IN THEIR POCKET
23 OR WHATEVER THINKING, "WELL, I'M GOING TO KILL SOMEBODY IF I
24 HAVE TO." I MEAN, IT JUST DEPENDS ON -- I DON'T KNOW.

25 Q ONE FOLLOW-UP THEN, MR. WHITE, REGARDING THAT LAST

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 EXAMPLE YOU JUST GAVE ME. LET'S SAY A PERSON IS CARRYING --
2 YOU KNOW, IN YOUR EXAMPLE YOU SAY HE'S CARRYING A GUN AND
3 HE'S---

4 A A LOT OF PEOPLE CARRY GUNS THAT AREN'T EVIL---

5 Q RIGHT.

6 A ---OR AREN'T BAD PEOPLE.

7 Q BUT YOU -- YOU UNDERSTAND UNDER OUR SYSTEM WITH REGARD
8 TO THIS BI- -- THIS TWO-TRIAL SITUATION?

9 A YES.

10 Q THE JURY WOULD HAVE ALREADY FOUND THAT IT WAS
11 INTENTIONAL.

12 A OKAY.

13 Q IN OTHER WORDS---

14 A YEAH.

15 Q ---YOU KNOW, TO BE MURDER, IT'S GOT TO -- YOU CAN'T---

16 A BE INTENTIONAL.

17 Q ---COMMIT MURDER BY AN ACCIDENT.

18 A EXACTLY.

19 Q RIGHT. SO YOU UNDERSTAND THAT?

20 A YES, SIR, I DO.

21 Q AND EVEN IN THE INTENTIONAL ACT, THE ACT THAT YOU JUST
22 -- THE ONE YOU JUST DESCRIBED---

23 A YEAH.

24 Q ---WOULD YOU BE ABLE -- IF INSTRUCTED BY THE COURT,
25 WOULD YOU BE ABLE TO GIVE MEANINGFUL CONSIDERATION TO A LIFE

KEITH A. WHITE -- VOIR DIRE BY MR. MAULDIN

1 SENTENCE INSTEAD OF A DEATH SENTENCE?

2 A YES.

3 SOLICITOR ARIAIL: YOUR HONOR I OBJECT. HE HAS ALREADY
4 ASKED HIM THAT TWICE. THE COURT HAS ASKED HIM THAT. WE
5 OUGHT NOT TO BE HERE. IF -- I SHOULD HAVE OBJECTED TO THE
6 FIRST QUESTION. WE WENT OFF -- I WOULD OBJECT.

7 THE COURT: GO AHEAD. THIS WILL BE THE LAST TIME,
8 BECAUSE HE HAS ALREADY ANSWERED SEVERAL TIMES. BUT GO AHEAD.
9 YOU CAN ANSWER THE QUESTION AGAIN, SIR.

10 Q WITH REGARD TO WHAT YOU JUST MENTIONED---

11 A WOULD I BE ABLE TO DECIDE BETWEEN EITHER LIFE IN PRISON
12 OR A DEATH PENALTY? YES, I WOULD BE ABLE TO MAKE THAT
13 DECISION.

14 MR. MAULDIN: ALL RIGHT. THANK YOU.

15 THE COURT: SOLICITOR?

16 SOLICITOR ARIAIL: JUST A COUPLE OF QUESTIONS.

17 VOIR DIRE BY SOLICITOR ARIAIL:

18 Q MR. WHITE, MY NAME IS BOB ARIAIL. I'M THE SOLICITOR FOR
19 GREENVILLE AND PICKENS COUNTIES. MS. STROM, SEATED IN THE
20 BEIGE, IS MY DEPUTY WHO WILL BE ASSISTING ME ALONG WITH MS.
21 HERVEY IN THE PRESENTATION OF THE EVIDENCE IN THIS CASE.

22 I WANT TO GO BACK TO THE TEN-TWO QUESTION, YOU KNOW,
23 WHERE HE WAS ASKING YOU YOU'RE IN THE MINORITY OR YOU'RE IN
24 THE MAJORITY.

25 A TEN TO TWO.

1 Q OKAY. YOU ALSO UNDERSTAND THAT IT IS ENTIRELY
2 APPROPRIATE TO CONTINUE TO EXCHANGE VIEWS WITH YOUR FELLOW
3 JURORS RATHER THAN TO STICK WITH THE VIEW YOU ARE PRESENTLY
4 HOLDING, TO ELICIT INFORMATION AND CONTINUE TO DELIBERATE?

5 A YES, SIR. I UNDERSTAND THAT. I MEAN, IF WE'RE IN THE
6 ROOM TOGETHER, I'M SURE WE ALL HAVE A CHANCE TO TALK TO EACH
7 OTHER AND CONSIDER EVERYTHING TOGETHER.

8 Q IN A CONTINUING DISCUSSION?

9 A YES, SIR.

10 Q NOW, THE JUDGE POINTED OUT THERE WAS A LITTLE HESITANCY
11 ON YOUR BEHALF IN ANSWERING THE QUESTION ABOUT THE SIGNATURE,
12 AND YOU EXPLAINED THAT THIS IS SOMETHING NEW. AND WE
13 UNDERSTAND THAT.

14 MY QUESTION IS, IF YOU WERE IN THE JURY ROOM IN THE
15 STAGE OF THE SENTENCING PHASE, WOULD THE FACT THAT YOU HAD TO
16 SIGN THE DOCUMENT AT THE END, KNOWING THAT, WOULD THAT IN ANY
17 WAY IMPAIR YOUR ABILITY TO FAIRLY DECIDE THE ISSUE OF THE
18 APPROPRIATE PUNISHMENT? IN OTHER WORDS, WOULD YOU BE SAYING,
19 "I DON'T WANT TO VOTE THIS WAY BECAUSE I'VE GOT TO SIGN THAT
20 THING"?

21 A NO, I WOULDN'T.

22 Q YOU COULD DO -- ONCE YOU CAME TO THE RIGHT DECISION, YOU
23 COULD DO IT?

24 A ONCE PRESENTED WITH ALL THE FACTS AND EVERYTHING AND MY
25 DECISION HAS BEEN MADE, AND IF THAT WERE THE DECISION, YES.

KEITH A. WHITE -- VOIR DIRE BY SOLICITOR ARIAIL

1 SOLICITOR ARIAIL: THANK YOU.

2 THE COURT: ALL RIGHT. MR. WHITE, WE APPRECIATE IT SO
3 MUCH. IF YOU WOULD, THEY WILL TAKE YOU TO A JURY ROOM AND WE
4 WILL BE WITH YOU IN JUST A FEW MOMENTS AND THEN WE'LL EXCUSE
5 YOU FOR THE EVENING. THANK YOU, SIR.

6 (JUROR EXITS COURTROOM AT 7:04 P.M.)

7 THE COURT: THE JUROR HAS BEEN EXCUSED. I WOULD FIRST
8 LIKE TO HEAR THE POSITION OF BOTH SIDES AS TO WHETHER THEY
9 BELIEVE THIS JUROR IS QUALIFIED OR NOT QUALIFIED.

10 SOLICITOR ARIAIL: THE STATE VIEWS HE IS QUALIFIED.

11 MR. MAULDIN: WE TAKE THE POSITION THAT HE IS NOT
12 QUALIFIED, YOUR HONOR, ON THE FOLLOWING BASES. THE FIRST
13 BASIS IS THAT I RAISED THE QUESTION REGARDING HIS BROTHER'S
14 EMPLOYMENT WITH THE ANDERSON COUNTY SHERIFF'S DEPARTMENT AND
15 THE FACT THAT AS A -- WITH THE SHERIFF'S DEPARTMENT HE IS A
16 LIEUTENANT, A SUPERVISOR, LIKELY TO BE THE SUPERVISOR OF
17 PEOPLE WHO WILL ACTUALLY TESTIFY IN THIS CASE FROM ANDERSON
18 COUNTY. HE MAY EVEN BE ON THE WITNESS LIST. I MEAN, I
19 DIDN'T HEAR -- SURELY THE FELLOW WOULD HAVE SAID HIS NAME IF
20 HE WAS, BUT HE DIDN'T.

21 SO I JUST SIMPLY AM UNWILLING TO ACCEPT THE FACT THAT
22 THIS JUROR IS CAPABLE OF SETTING ASIDE HIS BROTHER'S
23 EMPLOYMENT, THE FACT THAT HE IS A LAW ENFORCEMENT OFFICER,
24 THE FACT THAT THE VICTIM IN THIS CASE WAS A LAW ENFORCEMENT
25 OFFICER, THE FACT THAT THE CHASE OCCURRED IN ANDERSON COUNTY,

MATTERS AND MOTIONS

1 THAT ANDERSON COUNTY DEPUTIES WERE THE VICTIMS OF ASSAULT AND
2 BATTERIES. AND SO I JUST DON'T BELIEVE THAT IS SUFFICIENTLY
3 CREDIBLE AND I ASK THAT HE BE EXCUSED FOR THAT REASON.

4 THE SECOND REASON, YOUR HONOR, IS HE TESTIFIED THAT IF
5 THE PERSON WERE PROVED INNOCENT, THEN THAT PERSON SHOULD BE
6 FREE. I TAKE THAT AS A BURDEN SHIFTING STATEMENT AND WOULD
7 SAY THAT THAT WOULD DISQUALIFY HIM IN THAT HE WOULD PLACE THE
8 BURDEN ON THE DEFENDANT TO PROVE HIMSELF INNOCENT, NOT TO
9 MENTION WHAT A PERSON IN THE CASE WOULD HAVE TO PROVE TO GET
10 A LIFE SENTENCE. SO I BELIEVE THAT THAT WOULD FURTHERMORE
11 DISQUALIFY HIM UNDER THOSE CIRCUMSTANCES.

12 THAT'S OUR POSITION, YOUR HONOR.

13 THE COURT: ALL RIGHT. THE JUROR IS QUALIFIED. HE
14 TESTIFIED. I OBSERVED HIM VERY CAREFULLY. HE ADAMANTLY
15 TESTIFIED THAT HIS RELATIONSHIP, WHICH IS NOT A CLOSE ONE,
16 WITH HIS BROTHER, HE SAID, WOULD HAVE NO EFFECT ON HIS
17 ABILITY TO BE FAIR.

18 AND HIS CHOICE OF WORDS ABOUT BURDEN SHIFTING, I REJECT.
19 THE FACT THAT JURORS DON'T USE THE SAME PHRASEOLOGY THAT WE
20 ARE ACCUSTOMED TO DOING DOES NOT DISQUALIFY A JUROR,
21 ESPECIALLY IN LIGHT OF THE FACT THIS JUROR REPEATEDLY
22 ACKNOWLEDGED HIS WILLINGNESS AND ABILITY TO FOLLOW HIS OATH
23 AND HE UNDERSTOOD THE CONCEPT OF BURDEN OF PROOF. THE PHRASE
24 "PROVING INNOCENCE" COULD MEAN NOTHING MORE THAN A FINDING
25 THAT THE STATE HAD FAILED TO PROVE GUILT BEYOND A REASONABLE

MATTERS AND MOTIONS

1 DOUBT.

2 THE JUROR IS QUALIFIED. WHAT SAYS THE STATE?

3 SOLICITOR ARIAIL: PRESENT HIM.

4 THE COURT: WHAT SAYS THE DEFENDANT?

5 MR. MAULDIN: STRIKE HIM, YOUR HONOR.

6 THE COURT: ALL RIGHT. TAKE HIS COAT TO HIM. TELL HIM
7 WE APPRECIATE HIM BEING HERE. HE IS FREE TO GO. THAT
8 CONCLUDES THAT JUROR.

9 WE'RE GOING TO TAKE A FIVE-MINUTE BREAK AND THEN WE'LL
10 DO THE NEXT JUROR.

11 LET ME ASK ONE QUESTION. IS THERE ANY BATSON MOTION
12 WITH REGARD TO MR. WHITE?

13 SOLICITOR ARIAIL: NOT AT THIS TIME.

14 THE COURT: THANK YOU.

15 MR. MAULDIN: YOUR HONOR, WOULD THE COURT JUST CONSIDER
16 THIS? WHEN THE JURORS COME IN TO DO INDIVIDUAL VOIR DIRE,
17 WOULD YOU ACTUALLY REQUIRE THEM TO BE SWORN ON THE BIBLE
18 BEFORE THEY DO INDIVIDUAL QUESTIONING, YOUR HONOR?

19 THE COURT: WHAT'S WRONG WITH THE OATH THEY TOOK
20 EARLIER?

21 MR. MAULDIN: WELL, I MEAN---

22 THE COURT: IF YOU WANT IT ON THE BIBLE, I'LL DO IT ON
23 THE BIBLE. IT DOESN'T MAKE A BIG DEAL.

24 MR. MAULDIN: THANK YOU, YOUR HONOR.

25 THE COURT: FIVE-MINUTE BREAK.

MATTERS AND MOTIONS

1 (A RECESS WAS TAKEN FROM 7:08 TO 7:17 P.M.)

2 THE COURT: MR. RUSSELL. BRING JUROR RUSSELL (TO THE
3 BAILIFF).

4 (JUROR ENTERS COURTROOM AT 7:17 P.M.)

5 HAMILTON E. RUSSELL, III,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 VOIR DIRE BY THE COURT:

8 Q MR. RUSSELL (WHITE MALE), WE APPRECIATE YOU BEING HERE.
9 WE RECOGNIZE THE LATENESS OF THE HOUR. I HAVE SOME QUESTIONS
10 I'M GOING TO ASK YOU, JUST SOME LEGAL PRINCIPLES I'M GOING TO
11 ADVISE YOU OF, AND THEN THE ATTORNEYS WILL HAVE QUESTIONS AS
12 WELL.

13 MR. RUSSELL, THIS CASE ARISES FROM AN INCIDENT,
14 ACCORDING TO THE ALLEGATIONS IN THE INDICTMENT, ON DECEMBER
15 THE 6TH, 2000. THE VICTIM IDENTIFIED IN THE INDICTMENT, A
16 MR. NICHOLSON, WAS AT THAT TIME A STATE TROOPER. THE
17 DEFENDANT IS ON TRIAL CHARGED WITH THE MURDER OF MR.
18 NICHOLSON. WE RECOGNIZE THERE WAS PUBLICITY REGARDING THIS
19 CASE, T.V., NEWSPAPER, RADIO, AND WE WANT TO KNOW INITIALLY
20 IF YOU HAVE BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS
21 CASE OR FROM ANY OTHER SOURCE. AND IF YOU HAVE, SHARE THE
22 EXTENT OF YOUR KNOWLEDGE.

23 A I'M SURE AT THE TIME JUST IN READING THE PAPER OR
24 WATCHING THE NEWS I MAY HAVE SEEN SOMETHING ABOUT IT. BUT I
25 CAN'T RECALL ANY PARTICULAR CIRCUMSTANCES OR I WOULDN'T HAVE

MATTERS AND MOTIONS

1 RECOGNIZED THE NAMES UNLESS YOU HAD TOLD ME THEM.

2 Q IT MAY COME OUT IN TESTIMONY ABOUT AN INCIDENT OR SERIES
3 OF INCIDENTS IN ANDERSON COUNTY FOLLOWING THIS ALLEGED EVENT.
4 DOES THAT TRIGGER ANY MEMORY THAT YOU MAY HAVE AS TO THE
5 ALLEGATIONS IN THIS CASE?

6 A THE ONLY THING I RECALL ABOUT THAT WAS READING AFTER THE
7 FACT THAT THERE WAS SOME QUESTION ABOUT JURISDICTION FOR
8 PURPOSES OF ANY TRIAL RELATED TO WHAT WE'RE HERE FOR NOW.

9 Q YES, SIR. AS A LAWYER, YOU WOULD BE INTERESTED IN THE
10 LEGAL ASPECTS.

11 A RIGHT.

12 Q BUT I'M TALKING ABOUT THE FACTS. DO YOU RECALL ANYTHING
13 OF THE ALLEGED FACTS OR EVENTS THAT OCCURRED IN EITHER
14 GREENVILLE OR ANDERSON?

15 A OTHER THAN THE FACT THAT IT MAY HAVE INVOLVED A PURSUIT
16 AND...

17 Q THE REASON WE ASK THAT, MR. RUSSELL, IS BECAUSE IF YOU
18 ARE SELECTED AS A JUROR, YOU AND YOUR FELLOW JURORS WILL BE
19 GIVEN AN OATH TO FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW
20 THE LAW AS I INSTRUCT IT. AND DO YOU UNDERSTAND THAT YOU
21 WOULD BE GIVEN AN OATH OF THAT NATURE?

22 A YES.

23 Q IF YOU WERE SELECTED TO SERVE, WOULD YOU SERVE AS A FAIR
24 AND IMPARTIAL JUROR AND REACH A VERDICT BASED ONLY ON THE
25 FACTS PRESENTED AT TRIAL AND IN ACCORDANCE WITH MY

MATTERS AND MOTIONS

1 INSTRUCTIONS ON THE LAW?

2 A YES.

3 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
4 THE CASE OR THE GUILT OR INNOCENCE OF THIS DEFENDANT?

5 A NO.

6 Q OFTENTIMES AS WE BEGIN TO HEAR EVENTS IT MAY TRIGGER
7 OTHER THINGS THAT WE CAN RECALL. YOU MAY, IF YOU ARE
8 SELECTED TO SERVE, DURING THE FIRST DAY OF TESTIMONY, SECOND
9 DAY OF TESTIMONY, SOMETHING MAY BE SAID, SOMETHING THAT MAY
10 BE INNOCUOUS BUT TO YOU IT TRIGGERS SOME MEMORY OF OTHER
11 THINGS YOU MAY HAVE BEEN EXPOSED TO IN THE MEDIA ABOUT THIS
12 CASE. IF THAT WERE TO OCCUR AND YOU HAD RECEIVED THE OATH,
13 AT THAT TIME WOULD YOU BE ABLE TO DISREGARD AND DISABUSE FROM
14 YOUR MIND IN MAKING A DECISION ANY OF THE INFORMATION YOU
15 RECEIVED OUTSIDE OF COURT?

16 A YES.

17 Q KEEPING IN MIND THESE LEGAL PRINCIPLES OF PRESUMPTION OF
18 INNOCENCE AND THE STATE'S OBLIGATION TO PROVE GUILT BEYOND A
19 REASONABLE DOUBT, COULD YOU DEPENDING ON THE FACTS AND THE
20 EVIDENCE AND THE LAW THAT I WOULD INSTRUCT FIND A DEFENDANT
21 EITHER GUILTY OR NOT GUILTY?

22 A YES.

23 Q AND I EMPHASIZE TO YOU, MR. RUSSELL, WE MAY NOT EVEN
24 REACH THIS SO-CALLED SECOND PHASE OR SENTENCING PHASE. BUT
25 SINCE WE POSSIBLY COULD, I MUST ASK YOU QUESTIONS ABOUT YOUR

MATTERS AND MOTIONS

1 VIEWS ON THE DEATH PENALTY. DO YOU UNDERSTAND THAT, SIR?

2 A YES.

3 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THE JURY HAS
4 ALREADY FOUND THAT DEFENDANT WHO IS ON TRIAL GUILTY OF
5 MURDER. AT THAT POINT THERE IS NO LEGAL DEFENSE TO DISCUSS.
6 THERE IS NOTHING TO DEAL WITH ON THE ISSUE OF GUILT. THAT'S
7 BEEN ESTABLISHED BEFORE WE ENTER THE SENTENCING PHASE. DO
8 YOU UNDERSTAND THAT?

9 A YES.

10 Q IN THE SECOND PHASE WE WOULD HEAR EVIDENCE THAT I
11 REFERRED TO BOTH DOWN IN QUALIFICATION AND UPSTAIRS EARLIER
12 KNOWN AS EVIDENCE OF AGGRAVATION AND EVIDENCE IN MITIGATION.
13 EVIDENCE IN MITIGATION MAY INCLUDE A DEFENDANT'S BACKGROUND,
14 MENTAL HEALTH HISTORY, CHARACTER, THINGS OF THAT NATURE.
15 YOUR OATH WOULD REQUIRE YOU TO FOLLOW THE LAW AND GIVE
16 SERIOUS AND MEANINGFUL CONSIDERATION TO BOTH AN AGGRAVATING
17 CIRCUMSTANCE AS WELL AS MITIGATING CIRCUMSTANCES. AND IF YOU
18 WERE INSTRUCTED TO GIVE SERIOUS AND MEANINGFUL CONSIDERATION
19 TO SUCH CIRCUMSTANCES, BE IT AGGRAVATION OR MITIGATION, WOULD
20 YOU DO SO?

21 A YES.

22 Q SOMETIMES OUR VIEW MAY NOT COMPORT WITH THE LAW. AND
23 WHAT I NEED TO KNOW IS, IF YOU'RE EVER FACED WITH THAT
24 SITUATION AND I INSTRUCT YOU TO CONSIDER SUCH AND SUCH AS
25 MITIGATING CIRCUMSTANCES AND YOU PERSONALLY HAVE A

MATTERS AND MOTIONS

1 PREDISPOSITION THAT THAT SHOULDN'T BE CONSIDERED, THAT YOU
2 THINK THE LAW IS WRONG, IN THAT SITUATION I NEED TO KNOW
3 WHETHER YOU WILL ABANDON YOUR OATH AND FOLLOW YOUR
4 PREDISPOSITION OR WOULD YOU ABANDON YOUR PREDISPOSITION AND
5 FOLLOW YOUR OATH? DO YOU UNDERSTAND THAT QUESTION?

6 A YOU'D HAVE TO FOLLOW YOUR OATH.

7 Q OKAY. AND YOU WOULD DO THAT?

8 A I WOULD.

9 Q NOW, DEALING WITH JUST A CASE IN GENERAL, CERTAINLY NOT
10 TALKING ABOUT THIS CASE, BUT LET'S ASSUME YOU'RE IN THE
11 SENTENCING PHASE. AND IF YOU WERE A JUROR IN THAT SITUATION
12 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES AS FOUND
13 BY THE JURY, INCLUDING THE CONSIDERATION OF BOTH AGGRAVATING
14 AND MITIGATING CIRCUMSTANCES AND FOLLOWING THE LAW, COULD YOU
15 RETURN A SENTENCE OF LIFE IMPRISONMENT IF YOU THOUGHT THAT
16 WAS THE APPROPRIATE RESULT?

17 A YES.

18 Q ON THE OTHER HAND, IF YOU WERE A JUROR IN THAT
19 SITUATION, CONSIDERING THE EVIDENCE, ALL FACTS AND
20 CIRCUMSTANCES, MITIGATION EVIDENCE, AGGRAVATION EVIDENCE, IF
21 YOU BELIEVED THE DEATH PENALTY WAS THE APPROPRIATE SENTENCE,
22 COULD YOU VOTE FOR THE DEATH PENALTY?

23 A YES.

24 Q UNDER SOUTH CAROLINA LAW IN THE EVENT OF A DEATH
25 SENTENCE OUR LAW REQUIRES EACH MEMBER OF THE JURY TO SIGN HIS

MATTERS AND MOTIONS

1 OR HER NAME TO THE VERDICT FORM IMPOSING THE DEATH SENTENCE.
2 IN THAT SITUATION COULD YOU SIGN YOUR NAME TO THE VERDICT
3 FORM?

4 A IF THAT WAS A DECISION THAT I HAD COME TO, I WOULD HAVE
5 TO SIGN MY NAME TO IT.

6 Q DO YOU RECALL THE LIST OF THE THREE TYPES OF JURORS THAT
7 YOU HAVE BEEN REVIEWING FOR THE LAST HOUR OR TWO IN THE OTHER
8 JUROR ROOM---

9 A YES.

10 Q ---OTHER COURTROOM? IF YOU FIT ONE OF THOSE CATEGORIES,
11 WHICH ONE BEST DESCRIBES YOU?

12 A IF I RECALL CORRECTLY, IT WAS THE ONE THAT SAID IF YOU
13 HAD SOME PREDISPOSITION AGAINST THE DEATH PENALTY AND
14 COULDN'T COME TO THAT SORT OF DECISION, I WOULDN'T
15 NECESSARILY FALL IN THAT CATEGORY. IT'D BE THE THIRD
16 CATEGORY, I BELIEVE, ON THE LIST, THAT YOU'D HAVE TO LOOK AT
17 THE CIRCUMSTANCES, COME TO A DECISION AS TO LIFE IN PRISON OR
18 IS IT THE DEATH PENALTY. IT WOULD NOT BE THE CATEGORY THAT
19 SAID IF THERE WAS A GUILTY VERDICT RETURNED IT WOULD -- THE
20 PUNISHMENT FOR THAT CRIME WOULD HAVE TO BE THE DEATH PENALTY.

21 Q WOULD YOU THEN APPROACH YOUR JURY SERVICE WITH AN OPEN
22 MIND TO FIND THE TRUTH FROM THE EVIDENCE AND APPLY THE LAW AS
23 I INSTRUCT IT?

24 A I WOULD.

25 Q MR. RUSSELL, I MAY NOT HAVE ASKED THE RIGHT QUESTION BUT

MATTERS AND MOTIONS

1 YOU MAY KNOW OF SOME REASON WHY YOU CANNOT SERVE AS A JUROR
2 FAIRLY AND IMPARTIALLY IN THIS CASE. AND IF YOU KNOW OF ANY
3 REASON, WOULD YOU PLEASE SHARE THAT WITH US?

4 A I DON'T KNOW OF ANY REASON WHY I COULDN'T SERVE AS A
5 JUROR IN THIS CASE.

6 THE COURT: ALL RIGHT. MR. RUSSELL, I'M GOING TO ASK
7 THE ATTORNEYS, THEY MAY HAVE QUESTIONS OF YOU, AND THEN WE'LL
8 BE THROUGH WITH YOU FOR THE EVENING. THANK YOU SO MUCH FOR
9 YOUR PATIENCE.

10 SOLICITOR, YOU MAY PROCEED?

11 SOLICITOR ARIAIL: THANK YOU, JUDGE.

12 VOIR DIRE BY SOLICITOR ARIAIL:

13 Q MR. RUSSELL, I'M BOB ARIAIL, AND, OF COURSE, I'M THE
14 SOLICITOR FOR THE THIRTEENTH CIRCUIT, WHICH IS GREENVILLE AND
15 PICKENS. ASSISTING ME IN THIS CASE WILL BE MS. STROM, WHO IS
16 MY DEPUTY, IN THE BEIGE, AND MS. HERVEY, WHO IS IN THE BLACK.

17 JUST SO WE GET THIS ALL ON THE RECORD, LET ME GO BACK.
18 I THINK AT SOME POINT YOUR PATH MAY HAVE CROSSED WITH ONE OF
19 MY CHILDREN AT CHRIST CHURCH SCHOOL AND ALSO THAT YOUR FATHER
20 AND MY OLDER BROTHER WERE ROOMMATES AT DAVIDSON COLLEGE
21 TOGETHER. YOUR FAMILY, MOTHER AND FATHER, ARE BOTH SOCIAL
22 FRIENDS OF MINE. AND YOU'RE AWARE OF ALL THAT?

23 A YES, SIR.

24 Q AND WHEN THE JUDGE ASKED YOU ABOUT THOSE THINGS THAT WAS
25 PART OF THE RESPONSE THAT YOU COULD BE FAIR AND IMPARTIAL IN

HAMILTON E. RUSSELL, III -- VOIR DIRE BY SOLICITOR ARIAIL

1 SPITE OF THAT?

2 A YES, SIR.

3 Q AND YOU KNOW MR. RICHEY AND YOU KNOW MR. BANNISTER, AND
4 YOU'RE GOOD FRIENDS WITH THAT GROUP AND GOOD FRIENDS WITH
5 PEOPLE THAT WORK IN MY OFFICE, AND---

6 A YES, SIR.

7 Q SO THAT ANSWER INCLUDED IT ALL?

8 A THAT'S CORRECT.

9 Q ALL RIGHT. DO YOU KNOW OF ANY REASON EITHER MORAL,
10 RELIGIOUS, OR PERSONAL THAT WOULD IMPEDE YOU FROM BEING ABLE
11 TO FAIRLY CONSIDER THE IMPOSITION OF THE DEATH PENALTY UNDER
12 THE FACTS OF A GIVEN CASE IF YOU HAD FOUND THE DEFENDANT
13 GUILTY OF MURDER IN THE SENTENCING PHASE?

14 A I CAN'T THINK OF ANY REASON THAT WOULD KEEP ME FROM
15 HAVING AN OPEN MIND ABOUT THAT.

16 Q OTHER THAN THE FACTS, LOOKING AT THE FACTS THEMSELVES?

17 A THAT'S CORRECT.

18 Q ALL RIGHT.

19 SOLICITOR ARIAIL: THAT'S ALL I HAVE.

20 THE COURT: MR. RICHEY?

21 MR. RICHEY: THANK YOU, YOUR HONOR.

22 VOIR DIRE BY MR. RICHEY:

23 Q MR. RUSSELL, I THINK THAT'S THE FIRST TIME I'VE EVER
24 CALLED YOU MR. RUSSELL. I'M PRETTY SURE YOU DIDN'T KNOW YOU
25 HAD SO MANY GOOD FRIENDS BECAUSE YOU'RE PROBABLY ALL OUR BEST

1 FRIENDS---

2 A ALL THREE OF YOU ARE IN THE ROOM.

3 Q ---AT THIS STAGE OF THE GAME. MR. ARIAIL WENT THROUGH A
4 LITANY OF RELATIONSHIPS THAT YOU HAD, AND I'LL FOLLOW UP A
5 LITTLE BIT ON THAT IN THAT I'LL JUST SAY THAT ME AND YOU WERE
6 PRETTY CLOSE LAW SCHOOL FRIENDS. WE HAD ALL OUR CLASSES
7 TOGETHER THE FIRST YEAR. YOU DO KNOW MY WIFE, MRS. RICHEY.
8 I'LL JUST SAY FOR THE RECORD YOU HAVE BEEN GENEROUS TO US IN
9 OUR PRACTICE WITH CASES.

10 BE THAT MAY, DO YOU BELIEVE THAT YOU COULD SET ALL OF
11 THIS -- BECAUSE, SEE, RIGHT NOW YOU'RE KIND OF IN, YOU KNOW -
12 - WHEN YOU WALK OUT OF HERE, WE'RE ALL PROBABLY STILL GOING
13 TO BE YOUR FRIENDS, BUT YOU'RE KIND OF IN A BIND WHERE YOU
14 KNOW A LOT OF THEM AND A LOT OF US. AND WHEN YOU SIT OVER
15 THERE, THEN YOU'RE GOING TO HEAR FROM BOTH SIDES OF US. IT'S
16 GOING TO PUT YOU IN SOMEWHAT OF A SUBCONSCIOUS PICKLE. WOULD
17 YOU AGREE WITH THAT?

18 A I DON'T NECESSARILY AGREE. I MEAN, I RESPECT ALL OF
19 Y'ALL. BUT, I MEAN, I'D HEAR WHAT I'D HEAR.

20 Q AND YOU BELIEVE THAT YOU COULD SET ALL OF THAT ASIDE AND
21 MOVE FORWARD?

22 A ABSOLUTELY.

23 Q THANK YOU. WE'RE GOING TO HAVE WHAT WE NORMALLY HAVE.
24 AND I KNOW YOU ARE A LAWYER, AND I WOULD SAY AN OUTSTANDING
25 LAWYER. BUT YOU MADE A WISE DECISION BY PROBABLY NOT

HAMILTON E. RUSSELL, III -- VOIR DIRE BY MR. RICHEY

1 PRACTICING LAW LIKE THE REST OF US. SO I WILL GIVE YOU THE
2 QUESTION THAT WE WOULD GIVE TO ANY OTHER LAY PERSON. I'M
3 GOING TO TREAT YOU LIKE A LAY PERSON, NOT A LAWYER, OKAY?

4 A THANK YOU.

5 Q OKAY. I WANT YOU TO JUST, YOU KNOW, NOT TESTIFY. I --
6 THERE IS NO RIGHT ANSWER AND THERE IS NO WRONG ANSWER HERE.
7 I JUST WANT TO ASK YOU, WHAT DO YOU THINK ABOUT THE DEATH
8 PENALTY?

9 A WHAT DO I THINK ABOUT DEATH PENALTY?

10 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT TO
11 THAT. I THINK AGAIN THAT'S ONE OF THOSE QUESTIONS WHERE IT
12 FALLS INTO THE CATEGORY OF OUR PREVIOUS OBJECTION AS STAKING
13 A WITNESS OUT OR TRYING TO PROFILE A WITNESS -- OR, EXCUSE
14 ME, JUROR.

15 MR. RICHEY: I'M NOT TRYING TO PROFILE OR STAKE HIM
16 OUT. I'M JUST ASKING HIM WHAT HIS GENERAL FEELINGS ARE.

17 THE COURT: I'M GOING TO PERMIT IT. OVERRULED.

18 A YOU KNOW, I'VE NEVER BEEN IN -- IN SOUTH CAROLINA IT CAN
19 BE APPLIED AS OPPOSED TO SOME STATES WHERE IT CANNOT. I
20 THINK THAT, YOU KNOW, YOU'RE GOING TO HAVE TO -- IF IT'S A
21 CASE WHERE THAT IS A POSSIBILITY IF A GUILTY VERDICT IS
22 RETURNED, IT'S SOMETHING THAT YOU'D HAVE TO WEIGH AND YOU
23 WOULD HAVE TO PUT SOME LEGITIMATE AND SERIOUS CONSIDERATION
24 INTO YOUR DECISION IF A GUILTY VERDICT WAS RETURNED BY A
25 GROUP OF JURORS.

1 Q WOULD YOU SAY THAT IT IS USED -- THE DEATH PENALTY IS
2 USED NOT OFTEN ENOUGH, JUST ABOUT RIGHT?

3 A I DON'T KNOW IF YOU CAN SAY THAT A DEATH PENALTY IS USED
4 -- I DON'T KNOW IF YOU CAN CHARACTERIZE IT AS THAT. I WOULD
5 THINK THAT -- I MEAN, WHAT TYPE OF SITUATION JUSTIFIES THE
6 USE OF THE DEATH PENALTY? I MEAN, CERTAIN ONES WOULD, I
7 WOULD THINK, IF THAT'S WHAT THE LAW TELLS YOU TO DO. BUT I
8 CAN'T NECESSARILY SAY THAT IN ANY EVENT IT'S -- YOU KNOW, IS
9 IT RIGHT OR NOT RIGHT. I DON'T THINK THERE'S A 51 PERCENT-49
10 PERCENT SITUATION.

11 Q AND I -- I KNOW YOU COME IN WITH AN UNDERSTANDING OF
12 LEGAL PHRASES. YOU KNOW, FOR THE DEATH PENALTY TO BE IMPOSED
13 YOU KNOW THAT THE DEFENDANT WOULD HAVE TO -- THE PERSON OR
14 ACCUSED WOULD HAVE TO BE FOUND GUILTY OF MURDER AND THAT IT
15 WASN'T SELF-DEFENSE. IT WASN'T MANSLAUGHTER. IT WASN'T AN
16 ACCIDENT. HE WASN'T INSANE. HE KNEW WHAT HE WAS DOING. HE
17 GOT THE RIGHT PERSON. IT WAS INTENTIONAL. SO YOU UNDERSTAND
18 THAT PERSON THEN WOULD BE ELIGIBLE FOR THE DEATH PENALTY?

19 A IF -- IF WHATEVER WOULD HAVE TO BE PROVED WAS PROVED BY
20 THE FACTS, THERE MIGHT BE THAT ELIGIBILITY. I UNDERSTAND
21 THAT.

22 Q AND LET ME ASK YOU THIS QUESTION. WOULD YOU THINK THAT
23 THE UNLAWFUL KILLING OF A POLICE OFFICER WOULD BE MORE
24 EXTREME THAN THE UNLAWFUL KILLING OF A REGULAR PERSON?

25 A I DON'T KNOW HOW YOU CAN WEIGH ONE PERSON OVER ANOTHER.

HAMILTON E. RUSSELL, III -- VOIR DIRE BY MR. RICHEY

1 I MEAN, IT'S -- POLICE OFFICERS OFTEN -- I MEAN, I CONSIDER
2 THEM AS ACTING SELFLESSLY AND THAT THEY ARE OUT THERE TO
3 PROTECT PEOPLE. BUT, YOU KNOW, POLICE OFFICERS HAVE CHOSEN
4 THEIR LINE OF WORK THE WAY YOU HAVE CHOSEN YOURS. SO I DON'T
5 NECESSARILY KNOW IF YOU PUT MORE OF A VALUE ON ONE PERSON AS
6 OPPOSED TO ANOTHER.

7 Q JUST A COUPLE QUESTIONS. YOU KNOW THAT FOR THE DEATH
8 PENALTY TO BE CONSIDERED THE STATE WOULD HAVE TO PROVE SOME
9 AGGRAVATION. YOU UNDERSTAND THAT THE JUDGE WOULD CHARGE YOU
10 ON THAT?

11 A I DO.

12 Q ASSUMING THAT AGGRAVATION WAS SHOWN TO YOU, THAT YOU HAD
13 FOUND A PERSON GUILTY OF MURDER AND YOU WERE CHARGED AND
14 INSTRUCTED BY THE JUDGE, COULD YOU GIVE MEANINGFUL
15 CONSIDERATION TO MITIGATION SUCH AS THE AGE OF THE DEFENDANT,
16 THE BACKGROUND, HIS MENTAL STATE OR ANYTHING? COULD YOU GIVE
17 THAT MEANINGFUL CONSIDERATION?

18 A ABSOLUTELY.

19 Q AND THE FINAL QUESTION IS, SAY IF YOU WERE ON A JURY AND
20 IT WAS GETTING KIND OF LATE IN THE DAY AND YOU HAD BEEN
21 AROUND HERE A LONG TIME -- AND I'M GOING TO PREFACE THIS AS
22 YOU ARE A LAY PERSON -- AND THERE WAS A SPLIT IN THE JURY.
23 THERE WAS A MAJORITY FEELING ONE WAY AND THERE WAS A MINORITY
24 FEELING THE OTHER WAY. AND SAY, FOR INSTANCE, THAT IF YOU
25 WERE IN THE MINORITY WOULD YOU -- AND AFTER YOU HAVE GIVEN

1 DUE DELIBERATION, YOU'VE TALKED ABOUT IT AND THERE'S BEEN AN
2 EXCHANGE BETWEEN YOU AND THE OTHER JURORS, AND EVERYBODY HAD
3 CAME TO WHAT THEY BELIEVE THEIR POSITION WAS, WOULD YOU
4 ABANDON YOUR POSITION TO GO WITH THE OTHER SIDE?

5 A NO. YOU'VE GOT TO COME TO YOUR OWN DECISION. YOUR
6 DECISION HAS TO BE MADE ON WHAT YOU'VE HEARD AND WHAT YOU
7 BELIEVE. AND I DON'T -- I DON'T THINK THAT UNLESS SOMEBODY
8 PROVIDED SOME REASONS THAT I HAD NOT CONSIDERED THAT I WOULD
9 CHANGE MY DECISION ONCE I HAD COME TO IT.

10 Q WOULD YOU BE ABLE TO RESPECT THE DECISION OF THE OTHER
11 PEOPLE?

12 A YES. BUT AT THE SAME TIME, YOU KNOW, IF SOMEBODY'S GOT
13 A HARD AND FAST DECISION, I THINK YOU CAN TELL THAT. BUT IF
14 YOU ARE ASKED TO, YOU KNOW, TRY TO COME TO A DECISION
15 TOGETHER, YOU'VE GOT TO STATE WHY YOU THINK SOMETHING'S A
16 CERTAIN WAY JUST AS THAT PERSON HAS TO PRESENT THEIR
17 ARGUMENTS FOR WHAT THEY BELIEVE.

18 Q AND YOU WOULD WANT THEM TO RESPECT YOUR POSITION?

19 A ABSOLUTELY, YES.

20 Q AND YOU WOULD IN TURN GIVE THEIR POSITION THAT SAME
21 RESPECT?

22 A THEY WOULD DESERVE THAT RESPECT ALSO.

23 MR. RICHEY: THANK YOU, MR. RUSSELL.

24 THE COURT: MR. RUSSELL, THANK YOU, SIR. THEY'RE GOING
25 TO TAKE YOU TO A JURY ROOM AND WE'LL BE BACK WITH YOU VERY

MATTERS AND MOTIONS

1 SHORTLY AND YOU'LL BE FREE TO GO. THANK YOU SO MUCH FOR YOUR
2 PATIENCE.

3 JUROR NUMBER 385: OKAY. THANK YOU.

4 (WITNESS EXITS COURTROOM AT 7:36 P.M.)

5 THE COURT: THE JUROR HAS BEEN EXCUSED. QUALIFIED OR
6 NOT QUALIFIED, STATE?

7 SOLICITOR ARIAIL: QUALIFIED FOR THE STATE.

8 MR. RICHEY: QUALIFIED, YOUR HONOR.

9 THE COURT: WHAT SAYS THE STATE?

10 SOLICITOR ARIAIL: PRESENT HIM.

11 (PAUSE)

12 MR. MAULDIN: EXCUSE THE JUROR. YOUR HONOR.

13 THE COURT: TAKE HIM HIS MATERIAL. TELL HIM HE IS FREE
14 TO GO, AND WE THANK HIM SO MUCH FOR HIS PATIENCE THIS
15 EVENING, AND BID HIM FAREWELL (TO BAILIFF).

16 MS. STROM: YOUR HONOR, JUST ONE MOMENT.

17 SOLICITOR ARIAIL: ON THE BATSON.

18 THE COURT: OH.

19 MS. STROM: JUST TO MAKE SURE I'M CLEAR.

20 THE COURT: GO AHEAD.

21 (CO-COUNSEL FOR THE STATE OFF RECORD)

22 SOLICITOR ARIAIL: WE WOULD SUBMIT THAT THIS INDIVIDUAL
23 SHOULD BE GIVEN NOTICE THAT HE IS QUALIFIED IN THAT AT THIS
24 JUNCTURE WE DON'T KNOW OF A PATTERN EXISTING BUT THERE MAY
25 BEGIN TO DEVELOP ONE THAT WE WOULD LIKE TO RAISE.

MATTERS AND MOTIONS

1 THE COURT: SO YOU WANT THE RECORD TO REFLECT A BATSON
2 MOTION AT THIS TIME?

3 SOLICITOR ARIAIL: YES, IN REGARD TO THIS PARTICULAR
4 JUROR, NOT -- YES. YES.

5 THE COURT: THE BATSON MOTION IS INITIALLY DENIED. BUT
6 AS I INDICATED TO COUNSEL WHEN WE REVIEWED THIS PROCESS, IT
7 MAY BE REVISITED AND THE STATE HAS PRESERVED THE ISSUE. THE
8 JUROR IS, OF COURSE, QUALIFIED.

9 AND IN THAT EVENT, BRING HIM BACK IN THE COURTROOM (TO
10 BAILIFF).

11 (JUROR REENTERS COURTROOM AT 7:40 P.M.)

12 THE COURT: MR. RUSSELL, YOU ARE A QUALIFIED JUROR AND
13 YOU MAY ULTIMATELY BE SELECTED TO SERVE ON THIS CASE. YOU
14 MAY NOT. WHAT I'M GOING TO DO IS GIVE YOU A NOTICE THAT I'M
15 GIVING TO QUALIFIED JURORS THAT INDICATES YOU REMAIN ELIGIBLE
16 TO SERVE IN THIS CASE, AND MS. PLUMLEY, THE JURY COORDINATOR,
17 IS GOING TO STEP OUT IN THE HALL WITH YOU IN JUST A MOMENT
18 AND SHE IS GOING TO MAKE SURE THAT SHE HAS ALL YOUR PHONE
19 NUMBERS SO THAT YOU'LL BE NOTIFIED AS SOON AS A DECISION IS
20 MADE.

21 NOW, SINCE YOU REMAIN ELIGIBLE FOR JURY SERVICE, THE
22 PREVIOUSLY ADMINISTERED OATH REMAINS IN EFFECT. DO NOT
23 DISCUSS THE CASE OR ANY POTENTIAL ASPECT OF THE CASE WITH
24 ANYONE. DO NOT EXPOSE YOURSELF TO ANY INFORMATION REGARDING
25 THE CASE FROM THE MEDIA OR OTHERWISE. AT THIS TIME, I WILL

MATTERS AND MOTIONS

1 HAND YOU THIS ORDER.

2 MR. RUSSELL, THANK YOU, SIR, AND HAVE A PLEASANT
3 EVENING.

4 JUROR NUMBER 385: THANK YOU.

5 (JUROR EXITS COURTROOM AT 7:41 P.M.)

6 THE COURT: TELL HER TO BRING MR. DONALDSON.

7 SOLICITOR ARIAIL: BEFORE THIS NEXT ONE COMES---

8 THE COURT: JUST HAVE MR. DONALDSON STAND BY THE DOOR
9 OUTSIDE (TO THE BAILIFF).

10 SOLICITOR ARIAIL: ---I WOULD LIKE TO MOVE TO STRIKE
11 THIS -- TO STRIKE THIS DEFENDANT FOR CAUSE. THIS DEFENDANT
12 IS---

13 MR. MAULDIN: JUROR? YOU'RE TALKING ABOUT THE JUROR.

14 SOLICITOR ARIAIL: I'M SORRY. I'VE GOT TOO MANY
15 THINGS. THE JUROR. BECAUSE HE WAS ARRESTED IN DECEMBER OF
16 THIS PRECEDING YEAR ON -- HE HAS AN ACTIVE DRUG CONSPIRACY
17 CHARGE PENDING IN MY OFFICE. BASED ON THAT---

18 THE COURT: STAY IN THE HALL (TO BAILIFF AND JUROR).

19 SOLICITOR ARIAIL: BASED ON THAT I CANNOT, REGARDLESS
20 OF HIS RESPONSES, CONCEDE THAT HE COULD POSSIBLY BE FAIR AND
21 IMPARTIAL TO MY OFFICE OR ANYTHING WE WOULD SUBMIT ON HIS
22 BEHALF. WITH THAT -- HE HAS A PRIOR CONVICTION FROM MY
23 OFFICE THAT DOES NOT MEET THE QUALIFICATIONS AS I UNDERSTAND
24 IT. BUT -- AND NOW HE HAS A SECOND ONE THAT'S STILL PENDING
25 BASED ON A DECEMBER '01 ARREST.

MATTERS AND MOTIONS

1 THE COURT: THANK YOU. YOUR REQUEST FOR AUTOMATIC
2 DISQUALIFICATION FOR CAUSE IS RESPECTFULLY DENIED. THE
3 RECORD WILL REFLECT YOUR EXCEPTION.

4 ASK MR. DONALDSON TO COME IN, PLEASE (TO BAILIFF).

5 (JUROR ENTERS COURTROOM AT 7:43 P.M.)

6 CALVIN F. DONALDSON, HAVING
7 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

8 VOIR DIRE BY THE COURT:

9 Q MR. DONALDSON (BLACK MALE), I APPRECIATE SO MUCH YOUR
10 PATIENCE. YOU'VE BEEN HERE A LONG TIME TODAY AND IT'S LATE
11 IN THE EVENING. IT'S A LONG PROCESS TO PICK A JURY.

12 I HAVE SOME QUESTIONS AND PRINCIPLES I WANT TO DISCUSS
13 WITH YOU AND ALSO THE ATTORNEYS MAY HAVE QUESTIONS AS WELL,
14 SIR. THIS CASE ARISES FROM AN INCIDENT WHICH ACCORDING TO
15 THE INDICTMENT OCCURRED IN GREENVILLE COUNTY ON DECEMBER 6TH
16 IN THE YEAR 2000. THE VICTIM WHO IS NAMED IN THE INDICTMENT
17 OF THIS ALLEGED MURDER, MR. NICHOLSON, WAS AT THAT TIME A
18 STATE TROOPER. HE WAS A HIGHWAY PATROLMAN.

19 WE RECOGNIZE THAT THIS CASE RECEIVED PUBLICITY. IT WAS
20 IN THE NEWSPAPER, RADIO AND ON TELEVISION AS WELL. AND I
21 WANT TO KNOW INITIALLY IF YOU WERE EXPOSED TO ANY MEDIA
22 COVERAGE ABOUT THIS CASE OR IF YOU LEARNED ANYTHING ABOUT
23 THIS CASE FROM ANY SOURCE. IF YOU HAVE, WOULD YOU SHARE THAT
24 WITH US?

25 A I DON'T RECALL SEEING ANYTHING ON THE NEWS. I MIGHT

1 HAVE READ IT AND FORGOTTEN. I DIDN'T REALLY JUST, YOU KNOW,
2 GET INTO THE SITUATION.

3 Q OKAY.

4 A I MIGHT HAVE SEEN IT ON THE NEWS AT ONE TIME. SO MUCH
5 HAPPEN, YOU KNOW, DURING THE NEWS.

6 Q RIGHT. DO YOU HAVE ANY CHILDREN IN SCHOOL?

7 A I'VE GOT A LITTLE GIRL THAT'S IN SCHOOL.

8 Q WHERE DOES SHE GO TO SCHOOL?

9 A TANGLEWOOD.

10 Q OKAY. NOW, THERE MAY BE EVIDENCE THAT COMES OUT THAT
11 DEALS WITH AN ALLEGED EVENT OR SERIES OF EVENTS IN ANDERSON
12 COUNTY. HAVING SAID THAT, DOES THAT TRIGGER ANYTHING IN YOUR
13 MEMORY ABOUT THIS CASE? ANYTHING FROM ANDERSON COUNTY?

14 A NOT ANDERSON COUNTY.

15 Q OKAY. THE REASON I GO INTO DETAIL ON THESE ISSUES, MR.
16 DONALDSON, IS THAT IF YOU ARE SELECTED AS A JUROR IN THIS
17 CASE, YOUR OATH AS A JUROR WOULD REQUIRE YOU TO DISREGARD
18 ANYTHING YOU MAY HAVE HEARD OR SEEN OR ANY INFORMATION
19 OUTSIDE OF COURT. UNDER YOUR OATH YOU WOULD BE REQUIRED TO
20 FIND THE TRUTH FROM THE EVIDENCE PRESENTED DURING THE COURSE
21 OF THE TRIAL. COULD YOU HONOR YOUR OATH IN THAT REGARD IF
22 YOU WERE SELECTED AS A JUROR?

23 A YEAH, I BELIEVE I COULD.

24 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
25 INNOCENCE OR ANY OPINION AS TO FACTS OF THIS CASE?

CALVIN F. DONALDSON -- VOIR DIRE BY THE COURT

1 A I DON'T -- NO, SIR. I DON'T KNOW ANYTHING ABOUT IT.

2 Q OKAY. NOW, REMEMBERING THE LEGAL PRINCIPLES OF THE
3 PRESUMPTION OF INNOCENCE OF ANYONE ACCUSED OF A CRIME---

4 A (INDICATES AFFIRMATIVE RESPONSE)

5 Q ---THE BURDEN OF PROOF BEING ON THE STATE TO PROVE GUILT
6 BEYOND A REASONABLE DOUBT, COULD YOU, DEPENDING ON WHATEVER
7 THE FACTS ARE, BUT HAVING HEARD A CASE COULD YOU FIND A
8 DEFENDANT GUILTY OR NOT GUILTY?

9 A I BELIEVE I COULD. IF I HEARD ENOUGH ABOUT IT, I COULD.

10 Q RIGHT. SO IF YOU HEARD SUFFICIENT FACTS THAT IN YOUR
11 MIND YOU WERE CONVINCED IN ACCORDANCE WITH THE LAW THAT THE
12 DEFENDANT WAS GUILTY OF THE CRIME CHARGED, WOULD YOU FIND
13 THAT DEFENDANT GUILTY?

14 A IF THE EVIDENCE WAS THERE.

15 Q RIGHT.

16 A YEAH.

17 Q ON THE OTHER HAND, IF THE EVIDENCE WAS NOT THERE AND THE
18 STATE DID NOT PROVE ITS BURDEN, WOULD YOU FIND THE DEFENDANT
19 NOT GUILTY?

20 A YES, SIR.

21 Q OKAY. NOW, MR. DONALDSON, WE MAY NOT EVEN REACH THE
22 SECOND PHASE, THE SENTENCING PHASE.

23 A UH-HUH (AFFIRMATIVE).

24 Q WE MAY END THE CASE ON THE FIRST PHASE. BUT SINCE WE
25 POSSIBLY COULD MOVE TO A SENTENCING PHASE, I'M REQUIRED TO

CALVIN F. DONALDSON -- VOIR DIRE BY THE COURT

1 ASK YOU CERTAIN ISSUES SUCH AS YOUR VIEW OF THE DEATH
2 PENALTY. DO YOU UNDERSTAND THAT?

3 A OKAY.

4 Q WHEN A JURY MOVES TO THE SENTENCING PHASE, THAT MEANS
5 THE JURY HAS ALREADY FOUND THE DEFENDANT GUILTY OF MURDER.
6 THERE IS NO ISSUE OF GUILT LEFT. GUILT OF MURDER HAS BEEN
7 ESTABLISHED. SO AS YOU MOVE TO THE SENTENCING PHASE, WE HEAR
8 EVIDENCE WHICH I'VE ALREADY DISCUSSED WITH YOU AND YOUR
9 FELLOW JURORS THAT WE CALL EVIDENCE IN AGGRAVATION AND
10 EVIDENCE IN MITIGATION.

11 NOW, EXAMPLES OF MITIGATION EVIDENCE MAY BE TO LOOK AT A
12 DEFENDANT'S BACKGROUND, CHARACTER, FAMILY HISTORY, MENTAL
13 HEALTH STATUS, THINGS OF THAT NATURE.

14 A UH-HUH (AFFIRMATIVE).

15 Q IF YOU WERE A JUROR AND I INSTRUCTED YOU UNDER YOUR OATH
16 TO GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO THE
17 AGGRAVATING CIRCUMSTANCES AS WELL AS THE MITIGATING
18 CIRCUMSTANCES, WOULD YOU DO THAT?

19 A YEAH, I WOULD DO THAT. BUT THE AGGRAVATION -- WHAT DO
20 YOU MEAN BY AGGRAVATION?

21 Q WELL, THE LAW DEFINES CERTAIN EVENTS OR INSTANCES WHERE
22 A MURDER ALLOWS A JURY TO CONSIDER IMPOSING THE DEATH
23 PENALTY. AS I DISCUSSED EARLIER TODAY DOWN IN THE JURY
24 ASSEMBLY ROOM, THE STATE CANNOT SEEK THE DEATH PENALTY IN
25 EVERY MURDER.

- 1 A YEAH.
- 2 Q IT'S ONLY WHEN THE MURDER IS ACCOMPANIED BY WHAT THE LAW
3 DEFINES AS AN AGGRAVATING CIRCUMSTANCE. AN EXAMPLE MAY BE
4 MURDER IN THE COMMISSION OF CRIMINAL SEXUAL CONDUCT OR MURDER
5 IN THE COMMISSION OF A KIDNAPPING.
- 6 A OKAY.
- 7 Q SO IT'S NOT JUST MURDER, IT'S MURDER PLUS SOMETHING
8 ELSE.
- 9 A OKAY.
- 10 Q SO -- BUT WHAT I'M TRYING TO MAKE SURE IS THAT IF I
11 INSTRUCTED YOU UNDER THE LAW AND YOU'RE UNDER AN OATH AS A
12 JUROR AND I INFORMED YOU THAT YOU MUST GIVE SERIOUS
13 CONSIDERATION, MEANINGFUL CONSIDERATION TO AGGRAVATING
14 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES, WOULD YOU DO SO?
- 15 A YES, SIR.
- 16 Q NOW, AGAIN, WE'RE NOT TALKING ABOUT THIS CASE. WE'RE
17 JUST TALKING ABOUT THE PROCESS IN GENERAL. AND IF YOU WERE
18 IN A SITUATION IN A SENTENCING PHASE COULD YOU, DEPENDING ON
19 THE FACTS, CONSIDERING AGGRAVATING EVIDENCE AND MITIGATING
20 EVIDENCE, COULD YOU, IF YOU BELIEVED IT WAS APPROPRIATE,
21 RETURN A SENTENCE OF LIFE IN PRISON?
- 22 A YEAH.
- 23 Q ALL RIGHT. ON THE OTHER HAND, IF YOU WERE IN A
24 SENTENCING PHASE---
- 25 A UH-HUH (AFFIRMATIVE).

CALVIN F. DONALDSON -- VOIR DIRE BY THE COURT

1 Q ---AND CAREFUL CONSIDERATION OF THE FACTS, CAREFUL
2 CONSIDERATION OF EVIDENCE IN AGGRAVATION, EVIDENCE IN
3 MITIGATION, IF YOU BELIEVED THE DEATH PENALTY WAS
4 APPROPRIATE, COULD YOU VOTE FOR THE DEATH PENALTY?

5 A YES, SIR.

6 Q ALSO, UNDER SOUTH CAROLINA LAW IN THE EVENT OF A DEATH
7 SENTENCE OUR LAW REQUIRES EACH JUROR -- THAT'S A UNANIMOUS
8 DECISION TO VOTE FOR THE DEATH PENALTY, EACH JUROR WOULD HAVE
9 TO SIGN HIS OR HER NAME TO THE DEATH SENTENCE VERDICT. IN
10 THAT EVENT, COULD YOU SIGN YOUR NAME TO THE VERDICT?

11 A YES, SIR.

12 Q DO YOU RECALL THE SHEET WHICH LISTED THE THREE TYPES OF
13 JURORS?

14 A UH-HUH (AFFIRMATIVE).

15 Q IF YOU FIT ONE OF THOSE CATEGORIES, WHICH ONE DESCRIBES
16 YOU?

17 A WELL, IT DEPENDS ON THE CIRCUMSTANCE. I COULD -- LIKE I
18 SAY, I COULD VOTE FOR THE DEATH PENALTY AND I -- IT JUST
19 DEPENDS ON THE SITUATION AND THE EVIDENCE, YOU KNOW. SOME
20 PEOPLE DESERVE SOME THINGS. SOME PEOPLE DON'T, YOU KNOW. IT
21 DEPENDS ON THE SITUATION OF WHAT HAPPENED, YOU KNOW. SOME
22 PEOPLE OUT THERE -- IF SOMEBODY KILLS SOMEBODY JUST FOR THE
23 FUN OF IT, THEN, YEAH, I THINK THEY DESERVE THE DEATH
24 PENALTY, YOU KNOW. BUT IF SOMEBODY KILLS SOMEBODY BECAUSE
25 THEY BEING ROBBED OR SOMETHING LIKE THAT, I DON'T THINK THAT

CALVIN F. DONALDSON -- VOIR DIRE BY THE COURT

1 PERSON DESERVES TO BE KILLED. I MEAN, YOU KNOW, IF SOMETHING
2 BAD HAPPEN TO THEM AND THAT'S THE ONLY RECOURSE THEY HAD OR
3 BY ACCIDENT OR SOMETHING LIKE THAT, NO.

4 Q WELL, I WANT YOU TO UNDERSTAND THAT WHEN WE'RE TALKING
5 ABOUT THE SENTENCING PHASE---

6 A UH-HUH (AFFIRMATIVE).

7 Q ---WE'RE DEALING WITH A MURDERER.

8 A OKAY.

9 Q WE'RE NOT DEALING WITH SOMEONE WHO HAS SELF-DEFENSE---

10 A OKAY.

11 Q ---OR IS A VICTIM AND SOMEBODY WAS ROBBING THEM.

12 A OKAY.

13 Q THE LAW DOESN'T CALL THAT A MURDER.

14 A OKAY.

15 Q SO WHAT WE'RE TALKING ABOUT IS A SITUATION WHERE A JURY
16 IN A HYPOTHETICAL CASE HAS FOUND A DEFENDANT GUILTY OF
17 MURDER. THERE IS NO DEFENSE. IT'S MURDER. THERE'S NO SELF-
18 DEFENSE, NO ALIBI. THEY WEREN'T THE VICTIM OF A ROBBERY.

19 A UH-HUH (AFFIRMATIVE).

20 Q THAT'S THE EXAMPLE YOU USED.

21 A OKAY.

22 Q IT'S A MURDER.

23 A OKAY.

24 Q AND WHAT I WANT TO MAKE SURE, THAT YOUR MIND WOULDN'T BE
25 MADE UP, THAT YOU'D STILL HAVE AN OPEN MIND AS TO EITHER

1 DEATH SENTENCE OR LIFE IMPRISONMENT AS YOU APPROACH THE
2 SENTENCING PHASE?

3 A YEAH.

4 Q OKAY.

5 A SO WHICH ONE OF THOSE THREE WOULD I?

6 Q RIGHT.

7 A WELL, THE -- NUMBER ONE, I WOULDN'T HAVE A PROBLEM WITH
8 THE DEATH PENALTY.

9 Q WELL, SO YOU BELIEVE IN THE DEATH PENALTY FOR SOMEONE
10 WHO HAS BEEN CONVICTED OF MURDER AND THERE IS AN AGGRAVATING
11 CIRCUMSTANCE?

12 A YEAH.

13 Q OKAY. BUT THE QUESTION IS---

14 A YOU'RE SAYING WHICH ONE WOULD I FALL IN?

15 Q RIGHT. AND YOU SAY NUMBER ONE?

16 A I MEAN, YOU KNOW, I DON'T HAVE A PROBLEM WITH ALL THREE
17 OF THEM. IT'S JUST HARD FOR ME TO SAY THAT---

18 Q OKAY.

19 A ---WITHOUT JUST KNOWING THE SITUATION. I DON'T REALLY
20 WANT TO SAY THAT, OF COURSE, YOU KNOW, EVERYBODY THAT KILL
21 SOMEBODY DESERVE THAT. YOU KNOW, IT'S HARD FOR ME TO SAY
22 THAT, YOU KNOW.

23 Q WOULD YOU APPROACH JURY SERVICE WITH AN OPEN MIND---

24 A YEAH.

25 Q ---TO FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW THE

CALVIN F. DONALDSON -- VOIR DIRE BY THE COURT

1 LAW AS I INSTRUCT IT?

2 A RIGHT. YEAH.

3 Q AND IF IN THE SENTENCING PHASE AN INDIVIDUAL HAS BEEN
4 CONVICTED OF MURDER---

5 A RIGHT.

6 Q ---EVEN IN AN AGGRAVATING CIRCUMSTANCE WOULD YOU STILL
7 GIVE MEANINGFUL CONSIDERATION TO MITIGATION AND CONSIDER
8 IMPOSING A LIFE SENTENCE?

9 A YEAH.

10 Q SO YOU'RE NOT STUCK ON THE DEATH PENALTY?

11 A NO, I'M NOT STUCK ON THE DEATH PENALTY.

12 Q YOU WOULD GIVE FAIR CONSIDERATION TO BOTH---

13 A RIGHT.

14 Q ---AND KEEP AN OPEN MIND?

15 A RIGHT.

16 Q NOW, MR. DONALDSON, I MAY NOT HAVE ASKED THE RIGHT
17 QUESTION. I MAY HAVE SOME MORE QUESTIONS TO ASK YOU. BUT DO
18 YOU KNOW OF ANY REASON WHY YOU COULD NOT SERVE AS A FAIR
19 JUROR IN THIS CASE?

20 A NO, I DON'T.

21 THE COURT: THE ATTORNEYS HAVE SOME QUESTIONS FOR YOU
22 AND I MAY HAVE SOME FOLLOW-UP QUESTIONS, AND THEN YOU'LL BE
23 FREE TO GO. THANK YOU SO MUCH.

24 JUROR NUMBER 91: THANK YOU.

25 VOIR DIRE BY MR. MAULDIN:

CALVIN F. DONALDSON -- VOIR DIRE BY MR. MAULDIN

1 Q MR. DONALDSON, MY NAME IS JOHN MAULDIN. I'M THE PUBLIC
2 DEFENDER. I'VE GOT A FEW QUESTIONS FOR YOU, BASICALLY
3 FOLLOWING UP ON WHAT THE JUDGE ASKED YOU.

4 A OKAY.

5 Q AND I WANT TO -- IF I ASK YOU SOMETHING THAT YOU DON'T
6 UNDERSTAND OR WANT CLARIFICATION ON, PLEASE MAKE SURE THAT
7 YOU LET ME KNOW.

8 A OKAY.

9 Q THIS IS, BY THE WAY, JIM BANNISTER AND RODNEY RICHEY
10 SITTING AT THE TABLE WITH ME THERE. THE THREE OF US
11 REPRESENT JOHN WOOD, SITTING IN THE WHITE SHIRT (INDICATING).

12 A OKAY.

13 Q THE QUESTIONS THAT I'LL ASK YOU AND THE COMMENTS THAT
14 WE'LL BE MAKING ARE NOT NECESSARILY ABOUT JOHN WOOD'S CASE.
15 WE'RE TALKING ABOUT THE IMAGINARY CASE, JUST THE -- BECAUSE
16 IT WOULDN'T BE FAIR TO ASK YOU HOW YOU FELT ABOUT THE PENALTY
17 ABOUT THE CASE YOU HADN'T HEARD YET.

18 A YEAH.

19 Q SO I'M GOING TO GIVE YOU SOME EXAMPLES OR SCENARIOS OR
20 KIND OF STORIES, AND THEN I WANT TO MAKE SURE I UNDERSTAND
21 WHAT YOUR ANSWERS HAVE BEEN TO THE COURT, OKAY?

22 A OKAY.

23 Q FIRST OF ALL, THE COURT MENTIONED TO YOU THAT IT'S --
24 DOWNSTAIRS AND AGAIN JUST A FEW MINUTES AGO THAT THERE WAS A
25 TWO-PART TRIAL IN A SITUATION LIKE THIS. THE FIRST PART OF

- 1 THE TRIAL IS THE QUESTION OF WHETHER THE PERSON ON TRIAL IS
2 GUILTY OR NOT.
- 3 A UH-HUH (AFFIRMATIVE).
- 4 Q AND THE JURY HAS TO DECIDE OR HAS TO AGREE ON WHETHER HE
5 IS GUILTY. IF HE'S NOT GUILTY, YOU NEVER HAVE A SECOND PART
6 BECAUSE HE DOESN'T GET A SENTENCE.
- 7 A RIGHT.
- 8 Q HE GOES ON.
- 9 A RIGHT.
- 10 Q BUT IF HE IS FOUND GUILTY OF MURDER, THEN THERE IS A
11 SECOND TRIAL.
- 12 A RIGHT.
- 13 Q AND THERE ARE TWO POSSIBLE SENTENCES IN A CASE OF THAT
14 NATURE, WHERE YOU GO INTO THE SECOND TRIAL.
- 15 A UH-HUH (AFFIRMATIVE).
- 16 Q ONE OF THOSE SENTENCES IS LIFE IN PRISON WITHOUT PAROLE.
- 17 A UH-HUH (AFFIRMATIVE).
- 18 Q ONE OF THOSE SENTENCES IS THE DEATH PENALTY. AND I WANT
19 TO MAKE SURE I UNDERSTAND WHEN YOU TELL THE JUDGE YOU WOULD
20 BE WILLING TO CONSIDER, IF HE INSTRUCTED YOU TO, GAVE YOU
21 INSTRUCTIONS THAT YOU WERE TO TAKE INTO CONSIDERATION, THAT
22 YOU ARE WILLING TO CONSIDER A LIFE SENTENCE WITHOUT PAROLE
23 FOR A PERSON CONVICTED OF MURDER UNDER THE PROPER
24 CIRCUMSTANCE.
- 25 A UH-HUH (AFFIRMATIVE).

1 Q AND YOU ALSO ARE WILLING TO CONSIDER IMPOSITION OF A
2 DEATH SENTENCE IN THE PROPER CIRCUMSTANCE.

3 A OKAY.

4 Q NOW, IS THAT RIGHT? IF THE JUDGE TOLD YOU TO CONSIDER
5 BOTH PENALTIES, WOULD YOU GIVE BOTH REASONABLE, MEANINGFUL
6 CONSIDERATION?

7 A YES, SIR.

8 Q ALL RIGHT. THE NEXT QUESTION I HAVE FOR YOU, MR.
9 DONALDSON, IS, WHEN YOU GET TO THAT SECOND STAGE IF YOU WERE
10 ON A JURY IN A CASE LIKE I'VE JUST DESCRIBED WHERE IT WAS A
11 MURDER, PERSON HAS BEEN FOUND GUILTY, THEN YOU COME INTO THAT
12 SECOND STAGE AND YOU'RE GOING TO HAVE A TRIAL TO DECIDE WHICH
13 OF THE TWO PENALTIES, FOLLOW ME?

14 A UH-HUH (AFFIRMATIVE).

15 Q SO THE GOVERNMENT COMES IN AND THEY BRING ALL OF THEIR
16 INFORMATION IN THAT SAYS THIS WAS HORRIBLE, VICIOUS, AWFUL,
17 JUST AS AGGRAVATED AS THEY CAN GET IT. AND THEN THE
18 DEFENDANT WOULD HAVE THE OPPORTUNITY TO COME IN AND SAY, I
19 SHOULD GET A LIFE SENTENCE, AND THE REASONS I SHOULD GET A
20 LIFE SENTENCE ARE THIS AND THAT, THIS AND THAT. SO YOU GO
21 INTO THE JURY ROOM AND YOU START DELIBERATING. YOU START
22 TALKING ABOUT HOW YOU FEEL AND WHAT YOU THINK, AND THE OTHER
23 JURORS ARE DOING THE SAME THING. AND YOU TAKE A VOTE, AND
24 YOU VOTE, AND YOU VOTE, KEEP VOTING. AND YOU KNOW THE JUDGE
25 SAID IN ORDER TO IMPOSE THE DEATH PENALTY ALL TWELVE JURORS

1 HAVE TO BE IN AGREEMENT.

2 A UH-HUH (AFFIRMATIVE).

3 Q AND ALL TWELVE HAVE TO SIGN A FORM. NOW -- AND IN THAT
4 REGARD, MR. DONALDSON, IF YOU HAD DECIDED YOURSELF, ON YOUR
5 OWN YOU HAD DECIDED, THAT THE DEATH PENALTY WAS RIGHT YOU
6 WOULD BE ABLE TO SIGN YOUR NAME; IS THAT RIGHT? IS THAT -- I
7 UNDERSTOOD YOU TO TELL THE JUDGE THAT?

8 A YEAH. UH-HUH (AFFIRMATIVE).

9 Q OKAY. SO YOU COULD SIGN THE FORM IF YOU FELT LIKE THAT
10 WAS THE RIGHT THING TO DO?

11 A UH-HUH (AFFIRMATIVE).

12 Q NOW, WITH REGARD TO THESE VOTES I WAS TELLING YOU ABOUT
13 A MINUTE AGO, LET'S SAY THAT YOU TAKE THE LAST VOTE AND THE
14 LAST VOTE IS TEN IN FAVOR OF ONE PENALTY, TWO IN FAVOR OF THE
15 OTHER PENALTY. YOU'VE GOT TEN SAYING ONE SENTENCE, TWO
16 SAYING THE OTHER.

17 A UH-HUH (AFFIRMATIVE).

18 Q YOU'RE ONE OF THESE TWO. GOT A WHOLE BUNCH OF PEOPLE
19 DISAGREEING WITH YOU. WOULD YOU BE WILLING -- ARE YOU JUST
20 GOING TO SIMPLY GO ON WITH THE MAJORITY OR WOULD YOU WANT
21 TO -- OR WOULD YOU BE WILLING TO STAND BY YOUR OWN POSITION
22 ABOUT WHAT YOU THOUGHT WAS RIGHT IN THAT CASE?

23 A I WOULD PROBABLY STAND MY POSITION. YOU KNOW, I'M GOING
24 TO STAND BY WHAT I BELIEVE. I MEAN, YOU KNOW...

25 Q ALL RIGHT. SO EVEN IF A WHOLE BUNCH MORE PEOPLE THOUGHT

1 SOMETHING ELSE, THAT WOULDN'T NECESSARILY MEAN YOU WOULD JUST
2 GIVE UP AND GO TO THAT SIDE?

3 A NO, I WOULDN'T. I WOULD PROBABLY STAND BY MY POSITION
4 AND PROBABLY RETHINK IT, YOU KNOW, SEE WHY THESE OTHER PEOPLE
5 WENT THAT DIRECTION, YOU KNOW.

6 Q RIGHT. SO YOU WOULD WANT TO DELIBERATE AS MUCH AS YOU
7 COULD TO COME TO YOUR OWN DECISION?

8 A YEAH.

9 Q BUT YOU WOULD STICK BY WHATEVER YOUR OWN DECISION WAS?

10 A YEAH. YEAH.

11 Q AND THEN---

12 A UNLESS SOMEBODY CAN CONVINCE ME THAT I -- WHY I SHOULD
13 CHANGE IT.

14 Q RIGHT. AND THE REVERSE -- THE FINAL QUESTION, THE
15 REVERSE, IF YOU WERE IN THE GROUP OF TEN---

16 A UH-HUH (AFFIRMATIVE).

17 Q ---AND SO YOU HAD A LOT OF PEOPLE ON YOUR SIDE---

18 A YEAH.

19 Q ---AND THERE WERE ONLY JUST A COUPLE OF PEOPLE ON THE
20 OTHER SIDE, WOULD YOU ATTEMPT TO FORCE THEM TO COME TO YOUR
21 SIDE OR WOULD YOU RESPECT THEIR RIGHT TO HAVE FORMED THEIR
22 OWN OPINION HEARING THE SAME EVIDENCE YOU DID?

23 A I WOULD PROBABLY RESPECT THEIR RIGHT.

24 Q ALL RIGHT.

25 A RESPECT, YOU KNOW...

CALVIN F. DONALDSON -- VOIR DIRE BY MR. MAULDIN

1 MR. MAULDIN: THAT'S ALL I HAVE, MR. DONALDSON. THANK
2 YOU.

3 THE COURT: SOLICITOR?

4 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

5 VOIR DIRE BY SOLICITOR ARIAIL:

6 Q MR. DONALDSON, MY NAME IS BOB ARIAIL, AND I'M THE
7 SOLICITOR FOR GREENVILLE AND PICKENS COUNTIES, WHICH IS THE
8 THIRTEENTH JUDICIAL CIRCUIT OF SOUTH CAROLINA. AS THE
9 SOLICITOR I AM THE PERSON RESPONSIBLE FOR PROSECUTING ALL
10 CRIMINAL CASES, AND I HAVE A NUMBER OF LAWYERS WHO WORK FOR
11 ME WHO PROSECUTE THOSE CASES. TWO OF THEM, MS. STROM HERE,
12 MY DEPUTY IN THE BEIGE, AND MS. HERVEY IN THE BLACK, WILL BE
13 ASSISTING ME IN THIS CASE.

14 A RIGHT.

15 Q AND I DON'T WANT TO GO BACK OVER YOUR RESPONSES TOO
16 MUCH. BUT WHAT I'M MORE INTERESTED IN IS THE PRIOR CHARGES
17 THAT YOU HAVE HAD AND THE PRESENT CHARGES YOU HAVE.

18 A UH-HUH (AFFIRMATIVE).

19 Q ALL RIGHT. THE PRIOR CHARGE, THE DISPOSITION, AS I
20 UNDERSTAND IT, WAS CARRYING A PISTOL AND YOU RECEIVED A SIX-
21 MONTH OR \$600 SENTENCE.

22 A UH-HUH (AFFIRMATIVE).

23 Q AND I ASSUME IT WAS IN THIS COURT?

24 A YEAH.

25 Q OR MAYBE IN THE OLD COURTHOUSE, 1995. IT MIGHT HAVE

1 BEEN THE OTHER COURTHOUSE.

2 A YEAH.

3 Q DID YOU HAVE A LAWYER IN THAT CASE?

4 A NO. I JUST PAID THE FINE.

5 Q ON YOUR OWN, CAME TO COURT, PLED GUILTY BEFORE THE
6 JUDGE?

7 A YEAH.

8 Q ALL RIGHT. NOW, AS I UNDERSTAND IT, YOU HAVE SOME
9 PRESENT OUTSTANDING CHARGES DEALING WITH SOME CONSPIRACY OR
10 CONSPIRACY TO---

11 A POSSESS.

12 Q ---DISTRIBUTE DRUGS?

13 A NO.

14 Q CONSPIRACY TO DO WHAT?

15 A TO POSSESS DRUGS.

16 Q CONSPIRACY TO POSSESS DRUGS?

17 A RIGHT.

18 Q TRYING TO BUY SOME?

19 A YEAH.

20 Q ALL RIGHT. DO YOU HAVE A LAWYER ON THAT CASE?

21 A NOT YET. I WASN'T REALLY THE ONE TRYING TO GET THE
22 DRUGS. IT WAS A STING OPERATION.

23 Q RIGHT.

24 A AND A FEMALE---

25 MR. MAULDIN: EXCUSE ME, YOUR HONOR. YOUR HONOR, I

CALVIN F. DONALDSON -- VOIR DIRE BY SOLICITOR ARIAIL

1 DON'T KNOW WHETHER YOU NECESSARILY WANT---

2 THE COURT: YEAH, WE'RE NOT GOING TO GO INTO THE FACTS.

3 MR. MAULDIN: I REALLY DON'T THINK THAT'S---

4 THE COURT: IT'S JUST THE EFFECT OF PENDING CHARGES,
5 AND I'M GOING TO GIVE THE SOLICITOR SOME LATITUDE TO PURSUE
6 THAT. BUT NOT THE UNDERLYING FACTS.

7 SOLICITOR ARIAIL: RIGHT.

8 Q I ONLY WANT TO KNOW -- I'M NOT ASKING YOU WHETHER YOU'RE
9 GUILTY OR NOT GUILTY.

10 A OH.

11 Q WHAT I'M -- I MAY GET TO THAT IN A MINUTE. BUT THE
12 JUDGE IS GOING TO LET ME -- WHAT I'M INTERESTED MORE IN IS
13 YOUR RELATIONSHIP WITH MY OFFICE. ALL RIGHT? BECAUSE MY
14 OFFICE IS THE SAME PERSON OR SAME GROUP THAT WILL BE
15 PROSECUTING YOU. SOME LAWYER THAT WORKS FOR ME OUT OF THE
16 GROUP THAT I -- NOT THESE TWO. I HAVE NUMEROUS OTHERS. BUT
17 SOMEBODY WILL BE HANDLING THAT CASE.

18 A OKAY.

19 Q ALL RIGHT. YOU SEE WHERE I'M GOING?

20 A YEAH.

21 Q ALL RIGHT. I WANT TO MAKE SURE IF YOU'RE -- THE JUDGE
22 SAYS THAT YOU'RE QUALIFIED AND YOU'RE SITTING ON THIS JURY
23 THAT WHEN YOU'RE BACK THERE AT THE END OF THIS CASE
24 DELIBERATING THAT ALL OF A SUDDEN YOU DON'T SAY, THAT'S THE
25 GUY THAT'S PROSECUTING ME AND SOMETHING CAUSES YOU TO IMPACT

1 YOUR ABILITY TO BE FAIR IN WHAT WE'RE PRESENTING.

2 A OKAY.

3 Q ALL RIGHT? BECAUSE I'M YOUR ADVERSARY THEORETICALLY.

4 A YEAH.

5 Q NOT PERSONALLY---

6 A YEAH.

7 Q ---BUT MY OFFICE IS YOUR ADVERSARY. WE'RE PRESSING
8 CHARGES THE POLICE MAKE,

9 A RIGHT.

10 Q YOU MAY THINK YOU'RE NOT GUILTY. WE MAY PRESS THE
11 CHARGES ANYWAY.

12 A YEAH.

13 Q OKAY? NOW, WHAT I WANT TO MAKE SURE IS, HOW DO YOU FEEL
14 ABOUT THAT AND YOUR RELATIONSHIP ON THAT BASIS?

15 A THAT WOULDN'T HAVE ANYTHING TO DO WITH HOW I FEEL ABOUT
16 THIS BECAUSE THIS SITUATION I'M IN, I'M -- I HONESTLY BELIEVE
17 I WAS INNOCENT BECAUSE I DIDN'T SAY ANYTHING TO ANYBODY ABOUT
18 ANY DRUGS. I JUST WENT ALONG WITH THE GROUP THAT THEY
19 ARRESTED.

20 Q ALL RIGHT.

21 A SO, YOU KNOW...

22 Q SO WHAT YOU'RE TELLING ME IS THAT'S NOT -- WOULDN'T HAVE
23 ANY IMPACT?

24 A NO.

25 Q LET ME ASK YOU ONE OTHER QUESTION. WOULD THE FACT THAT

CALVIN F. DONALDSON -- VOIR DIRE BY SOLICITOR ARIAIL

1 YOU'VE BEEN ARRESTED AND YOU DON'T THINK YOU'RE GUILTY HAVE
2 ANY IMPACT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL REGARDING
3 EITHER THE TESTIMONY OR A CASE INVOLVING A LAW ENFORCEMENT
4 OFFICER, THAT IS, A POLICEMAN?

5 A YEAH.

6 MR. MAULDIN: YOUR HONOR, NOW I ENTER THE SAME
7 OBJECTION THAT WAS PREVIOUSLY ENTERED WITHOUT ANOTHER WITNESS
8 REGARDING PITTING CERTAIN CREDIBILITY OF WITNESSES AGAINST
9 EACH OTHER.

10 THE COURT: THE ISSUE WAS NOT PREMISED ON CREDIBILITY.
11 OVERRULED.

12 A ASK ME THE QUESTION AGAIN, SIR.

13 Q THE QUESTION IS WHETHER OR NOT THE FACT THAT THE CASE
14 MAY INVOLVE A LAW ENFORCEMENT OFFICER---

15 A RIGHT.

16 Q ---AND THAT YOU HAVE BEEN ARRESTED---

17 A RIGHT.

18 Q ---BY A LAW ENFORCEMENT OFFICER AND YOU THINK THAT THAT
19 LAW ENFORCEMENT OFFICER -- YOU'RE INNOCENT, SO THEREFORE YOU
20 THINK THAT LAW ENFORCEMENT OFFICER WRONGFULLY ARRESTED YOU.
21 WOULD THAT IN ANY WAY IMPACT YOUR ABILITY TO FAIRLY CONSIDER
22 THE EVIDENCE IF THE CASE INVOLVED A LAW ENFORCEMENT OFFICER,
23 EITHER AS A WITNESS OR AS A VICTIM?

24 A NO. I HAVE TO CALL THE LAW ALL THE TIME. SO I KNOW HOW
25 IMPORTANT IT IS TO HAVE THE POLICE AROUND.

CALVIN F. DONALDSON -- VOIR DIRE BY SOLICITOR ARIAIL

1 Q OKAY.

2 SOLICITOR ARIAIL: JUST ONE MOMENT.

3 THE COURT: SURE.

4 (SOLICITOR ARIAIL OFF RECORD WITH CO-COUNSEL)

5 Q MAYBE I DIDN'T ASK. DID YOU SAY YOU HAVE -- DO YOU HAVE
6 A LAWYER ON THIS CHARGE?

7 A I'VE GOT A PUBLIC DEFENDER. I HAVEN'T TALKED TO HIM
8 YET.

9 Q THANK YOU. THAT'S ALL I HAVE. (PAUSE) DO YOU KNOW THE
10 PUBLIC DEFENDER'S NAME?

11 A HE WORK WITH LYNN WEST. I HAVEN'T MET THE PERSON THAT'S
12 SUPPOSED TO BE REPRESENTING ME YET. I HAVEN'T TALKED TO HIM
13 YET. BUT HE WORKS WITH LYNN WEST.

14 Q OKAY. YOU'VE BEEN ASSIGNED ONE BUT YOU HAVEN'T BEEN TO
15 SEE HIM YET?

16 A RIGHT.

17 Q DO YOU KNOW WHEN YOUR APPOINTMENT TO SEE THIS PUBLIC
18 DEFENDER IS?

19 A THEY HAVEN'T NOTIFIED ME.

20 Q ALL RIGHT. THEY'LL NOTIFY YOU AND THEN YOU'LL GO?

21 A UH-HUH (AFFIRMATIVE).

22 SOLICITOR ARIAIL: THAT'S ALL.

23 THE COURT: ALL RIGHT. MR. DONALDSON, THANK YOU SO
24 MUCH. THEY'RE GOING TO TAKE YOU TO A JURY ROOM AND WE'LL BE
25 WITH YOU IN JUST A FEW SHORT MOMENTS. ALL RIGHT?

1 JUROR NUMBER 93: OKAY.

2 THE COURT: THANK YOU.

3 (JUROR EXITS COURTROOM AT 8:07 P.M.)

4 THE COURT: THE JUROR HAS BEEN EXCUSED. QUALIFIED OR
5 NOT QUALIFIED, FROM THE STATE?

6 SOLICITOR ARIAIL: WE WOULD SAY BASIS NUMBER ONE, HE'S
7 NOT QUALIFIED, ONE, THE PRIOR CHARGES. I UNDERSTAND HE GAVE
8 THE ANSWER. BUT NUMBER TWO, THE CONCERN I HAVE NOW IS THE
9 PUBLIC DEFENDER AND WHERE THAT'S GOING AND WHAT THE CONFLICT
10 IS THERE. WE HAVE THE PUBLIC DEFENDER AND WE HAVE THE PUBLIC
11 DEFENDER'S OFFICE, AND WE HAVE OTHERS WHO HAVE BEEN
12 APPOINTED, AND HE'S DEALING WITH THE SAME PEOPLE, MR. WEST.

13 THE COURT: THANK YOU.

14 MR. MAULDIN: YOUR HONOR, IF I MAY, REGARDING, I DON'T
15 THINK THE CHARGES REALLY ARE AN ISSUE AT THIS POINT. I THINK
16 THE PUBLIC DEFENDER IDEA IS PERHAPS AN ISSUE, AND I WOULD
17 LIKE TO PUT ON THE RECORD, LYNN WEST IS THE PERSON WHO WORKS
18 FOR THE OFFICE OF INDIGENT DEFENSE IN GREENVILLE COUNTY THAT
19 APPOINTS CONTRACT LAWYERS AND PUBLIC DEFENDERS. THERE ARE
20 ACTUALLY TWO DIFFERENT GROUPS OF PEOPLE. I, JOHN MAULDIN,
21 GET ALL OF THE PUBLIC DEFENDER APPOINTMENTS AND THEN I
22 DISTRIBUTE THEM TO PEOPLE THAT WORK FOR THE PUBLIC DEFENDER
23 OFFICE UNDER ME. ALL THE OTHER CASES GO TO THE CONTRACT
24 LAWYERS THAT ARE INDEPENDENT OF OUR OFFICE AND HAVE NO
25 CONNECTION.

MATTERS AND MOTIONS

1 IN FACT, I CAN -- IF THE COURT WISHES, I'LL GO LOOK AND
2 SEE IF OUR CARDS SHOW THAT THIS PERSON HAS BEEN APPOINTED TO
3 OUR OFFICE. I DON'T KNOW ANY -- I'VE NEVER EVEN HEARD OF
4 HIM, BUT HE COULD HAVE BEEN APPOINTED TO OUR OFFICE AND I
5 WOULD NOT NECESSARILY HAVE BEEN PRIVY TO THAT INFORMATION.

6 BUT JUST BECAUSE HE HAS A PUBLIC DEFENDER, I'D SAY ODDS
7 ARE EIGHTY PERCENT THAT HE'S GOT A CONTRACT LAWYER, AN
8 INDEPENDENT CONTRACT LAWYER. SO I DON'T THINK THAT'S A
9 DISQUALIFYING FACTOR. IT MIGHT BE -- IT WOULD BE IF IT WAS
10 ACTUALLY APPOINTED TO ME, I BELIEVE, BUT NOT WITH A CONTRACT
11 LAWYER. AND HE ALSO IS -- HE DOESN'T EVEN KNOW WHO THE
12 LAWYER IS, AND HE HASN'T MET WITH THE LAWYER.

13 THE COURT: I FIND BASED ON HIS RESPONSES HE IS
14 QUALIFIED. I WOULD LIKE TO DETERMINE IF YOU, YOUR OFFICE,
15 HAS BEEN APPOINTED. I'M VERY FAMILIAR WITH THE DIFFERENCE
16 BETWEEN THE CONTRACT ATTORNEYS AND YOUR OFFICE.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: AND IF HE HAS BEEN APPOINTED A CONTRACT
19 ATTORNEY, TOTALLY SEPARATE FROM YOUR OFFICE.

20 MR. MAULDIN: I WILL NOT BE ABLE TO TELL YOU WHETHER
21 HE'S BEEN APPOINTED A CONTRACT ATTORNEY. I WILL BE ABLE TO
22 TELL YOU WHETHER HE'S BEEN APPOINTED TO ME.

23 THE COURT: YEAH, THAT'S FINE.

24 MR. MAULDIN: BECAUSE I CAN GET INTO MY OFFICE BUT I
25 CAN'T GET INTO THAT OTHER ONE.

MATTERS AND MOTIONS

1 THE COURT: AND DO YOU HAVE AN ASSISTANT HERE FROM YOUR
2 OFFICE OR ARE YOU BY YOURSELF?

3 MR. MAULDIN: NO, I DON'T HAVE ANYBODY HERE. YOU DON'T
4 KNOW HOW TO READ THE CARDS (TO MR. RICHEY). I HAVE TO GO
5 LOOK AT THE CARDS TO SEE IF HIS NAME HAS COME IN. WE HAVE A
6 LOG BOOK AND IT WILL BE ON THE CARDS OF THE LOG BOOK.

7 THE COURT: OKAY. ARE YOU GOING TO CONDUCT THE VOIR
8 DIRE OF THE NEXT JUROR?

9 MR. MAULDIN: ONE MOMENT, YOUR HONOR. (PAUSE) YOUR
10 HONOR, THE NEXT JUROR, I BELIEVE, IS THE PERSON WHO HAS AN
11 INJURED FINGER.

12 THE COURT: RIGHT.

13 MR. MAULDIN: AND THERE WAS SOME QUESTION ABOUT WHETHER
14 SHE WOULD HAVE A DOCTOR'S EXCUSE OR SOMETHING OR WHETHER SHE
15 WAS GOING TO BE BRINGING IN A DOCTOR'S EXCUSE.

16 THE COURT: SHE HAS A DOCTOR'S APPOINTMENT TOMORROW.

17 MR. MAULDIN: RIGHT. AND SOME -- ANOTHER ONE LATER, I
18 BELIEVE, TOO.

19 THE COURT: NEXT WEEK. AND SHE WAS GOING TO SEE
20 TOMORROW IF SHE COULD GET THAT ONE EXTENDED -- POSTPONED.

21 MR. MAULDIN: HE'LL HANDLE THAT. WE'LL JUST SUSPEND
22 THAT MR. DONALDSON FOR JUST A MOMENT.

23 THE COURT: I WILL. AND WE'RE GOING TO PROCEED TO MS.
24 STANCIL.

25 MR. MAULDIN: ALL RIGHT.

MATTERS AND MOTIONS

1 **THE COURT:** BRING MS. STANCIL IN, PLEASE (TO BAILIFF).

2 (JUROR ENTERS COURTROOM AT 8:11 P.M.)

3 **CYNTHIA B. STANCIL**, HAVING BEEN

4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 **VOIR DIRE BY THE COURT:**

6 **Q** MS. STANCIL (WHITE FEMALE), MS. STANCIL, THANK YOU SO
7 MUCH FOR YOUR PATIENCE. WE'RE LATE INTO THE EVENING AND
8 YOU'VE BEEN SO KIND TO STAY WITH US, AND I THANK YOU SO MUCH.

9 **A** YOU'RE WELCOME.

10 **Q** THIS CASE ARISES FROM AN ALLEGED INCIDENT THAT OCCURRED
11 IN GREENVILLE COUNTY ACCORDING TO THE INDICTMENT ON DECEMBER
12 THE 6TH OF THE YEAR 2000. THE VICTIM IDENTIFIED IN THE
13 INDICTMENT IS IDENTIFIED AS ERIC NICHOLSON. MR. NICHOLSON
14 WAS AT THAT TIME A STATE TROOPER. HE WAS A HIGHWAY
15 PATROLMAN.

16 AND WE RECOGNIZE THAT THERE WAS PUBLICITY REGARDING THIS
17 CASE ON THE TELEVISION, IN THE NEWSPAPER AND THE RADIO, AND I
18 WANT TO KNOW, MA'AM, IF YOU WERE EXPOSED TO ANY MEDIA
19 COVERAGE ABOUT THIS CASE, IF YOU HEARD ANYTHING ABOUT THIS
20 CASE, OR HAVE ANY INFORMATION ABOUT THIS CASE. AND IF YOU
21 HAVE, WOULD YOU SHARE THAT WITH US?

22 **A** YES, SIR. I SAW THE NEWS, YOU KNOW, WHAT WENT ON THEN.
23 BUT AS FAR AS REMEMBERING DETAILS NOW, I DON'T.

24 **Q** DO YOU REMEMBER ANYTHING ABOUT THE CASE?

25 **A** ERIC, I REMEMBER THAT, AND HE WAS A STATE TROOPER, AND

- 1 THAT'S ABOUT IT.
- 2 Q WHAT WAS THE AREA?
- 3 A THE MAN'S NAME? THE STATE TROOPER'S NAME?
- 4 Q I THOUGHT YOU SAID YOU REMEMBERED THE AREA.
- 5 A NO, NO, THE NAME.
- 6 Q THE NAME. ERIC?
- 7 A ERIC.
- 8 Q ERIC, OKAY.
- 9 A YES, SIR.
- 10 Q THERE ALSO MAY BE SOME EVIDENCE FROM AN ALLEGED EVENT OR
- 11 SERIES OF EVENTS IN ANDERSON COUNTY. DOES THAT TRIGGER ANY
- 12 MEMORY THAT YOU HAVE ABOUT THIS CASE?
- 13 A NO, SIR.
- 14 Q IT DOESN'T RING A BELL?
- 15 A NO.
- 16 Q THE REASON I ASK YOU ABOUT THAT, MS. STANCIL, IS THAT AS
- 17 A JUROR, IF YOU'RE SELECTED TO SERVE, YOU WOULD BE GIVEN AN
- 18 OATH TO FIND THE TRUTH, THE FACTS, FROM THE EVIDENCE AND NOT
- 19 BE INFLUENCED IN ANY WAY BY WHAT YOU MAY HAVE HEARD OR BEEN
- 20 EXPOSED TO OUTSIDE OF THE COURTROOM. DO YOU UNDERSTAND THAT?
- 21 A YES, SIR.
- 22 Q IF YOU WERE SELECTED TO SERVE IN THIS CASE, MS. STANCIL,
- 23 WOULD YOU SERVE AS A FAIR AND IMPARTIAL JUROR AND REACH A
- 24 VERDICT BASED ON THE FACTS PRESENTED AT TRIAL?
- 25 A I'D DO MY BEST.

1 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
2 THIS CASE?

3 A NO, SIR.

4 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
5 INNOCENCE OF THE DEFENDANT?

6 A NO, SIR.

7 Q OKAY. YOU WILL RECALL THE LEGAL PRINCIPLES I HAVE
8 ALREADY MENTIONED TO YOU TWICE TODAY---

9 A YEAH.

10 Q ---THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF
11 BEING WITH THE STATE. KEEPING THAT IN MIND AND CONSIDERING
12 JUST ANY CASE IF YOU WERE SERVING AS A JUROR AND AFTER
13 CONSIDERING ALL THE EVIDENCE AND APPLYING THE LAW IF YOU
14 BELIEVED THAT A DEFENDANT WAS GUILTY OF THE CRIME CHARGED
15 WOULD YOU VOTE TO FIND HIM GUILTY?

16 A YES, I WOULD. IF I---

17 Q IF YOU -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

18 A IF I FELT LIKE THAT I HAD LOOKED AT ALL THE EVIDENCE AND
19 SAW THAT HE COULD BE GUILTY.

20 Q ALL RIGHT. ON THE SAME HAND -- LET'S LOOK AT IT JUST A
21 LITTLE BIT DIFFERENTLY. LET'S SAY YOU'RE SERVING ON THE JURY
22 AND YOU CONSIDER ALL THE EVIDENCE AND YOU'RE NOT CONVINCED
23 BEYOND A REASONABLE DOUBT OF THE DEFENDANT'S GUILT, WOULD YOU
24 FIND HIM NOT GUILTY?

25 A THAT I DON'T KNOW. I MAY---

1 Q OKAY. DO YOU UNDERSTAND THE QUESTION?

2 A YES, SIR. I'D HAVE TO LOOK AT IT CLOSELY, YOU KNOW,
3 TO...

4 Q WHAT IF YOU BELIEVED THE DEFENDANT WAS NOT GUILTY
5 BECAUSE THE STATE DIDN'T PROVE ITS CASE, HOW WOULD YOU VOTE?

6 A I'D VOTE NOT GUILTY.

7 Q I WANT YOU TO REMEMBER WE MAY NOT EVEN REACH A
8 SENTENCING PHASE. BUT SINCE WE POSSIBLY COULD I NEED TO ASK
9 YOU QUESTIONS AS THE ATTORNEYS WILL AS WELL OF YOUR VIEWS ON
10 THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THAT MEANS THE
13 JURY HAS ALREADY FOUND THAT DEFENDANT GUILTY OF MURDER. SO
14 AT THAT POINT THERE IS NO DEFENSE LEFT. IT'S NOT SELF-
15 DEFENSE. THERE IS NO ALIBI. IT'S MURDER. GUILT HAS BEEN
16 ESTABLISHED. IN THE SENTENCING TRIAL WE WOULD HEAR EVIDENCE
17 AS TO WHAT I'VE TALKED TO YOU ABOUT EARLIER -- EVIDENCE IN
18 AGGRAVATION AND EVIDENCE IN MITIGATION.

19 A UH-HUH (AFFIRMATIVE).

20 Q EXAMPLES OF MITIGATION EVIDENCE MAY BE THE DEFENDANT'S
21 BACKGROUND, FAMILY HISTORY, CHARACTER, MENTAL HEALTH STATUS,
22 THINGS OF THAT NATURE. IF YOU WERE ON THE JURY AND I
23 INSTRUCTED YOU UNDER YOUR OATH TO GIVE SERIOUS AND MEANINGFUL
24 CONSIDERATION TO BOTH THE AGGRAVATING EVIDENCE AS WELL AS THE
25 MITIGATING EVIDENCE, WOULD YOU DO THAT?

CYNTHIA B. STANCIL -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q AND, AGAIN, WE'RE TALKING JUST ABOUT A CASE IN GENERAL,
3 CERTAINLY NOT THIS CASE. IF YOU WERE A JUROR IN THAT
4 SITUATION AND THAT JURY HAD ALREADY FOUND THE PARTICULAR
5 DEFENDANT GUILTY OF MURDER AND YOU'RE IN THE SENTENCING
6 PHASE, DEPENDING ON THE FACTS AND CIRCUMSTANCES, CONSIDERING
7 AGGRAVATING EVIDENCE AND MITIGATING EVIDENCE, FOLLOWING THE
8 LAW AS I INSTRUCT IT, IF YOU BELIEVE THAT LIFE IN PRISON WAS
9 THE PROPER SENTENCE, WOULD YOU VOTE FOR LIFE IN PRISON?

10 A YES, SIR.

11 Q ON THE OTHER HAND---

12 A AND IF IT---

13 Q AND IF YOU BELIEVED AFTER ALL OF THE EVIDENCE AND
14 FOLLOWING THE LAW AND UNDER THE LAW THE DEFENDANT WAS
15 ELIGIBLE FOR THE DEATH PENALTY AND YOU BELIEVED THE DEATH
16 PENALTY WAS THE APPROPRIATE SENTENCE WOULD YOU VOTE FOR THE
17 DEATH PENALTY?

18 A YES, SIR.

19 Q ALL RIGHT. UNDER SOUTH CAROLINA LAW IF A JURY VOTES FOR
20 THE DEATH PENALTY, THE LAW REQUIRES EACH JUROR TO SIGN HIS OR
21 HER NAME TO THE VERDICT FORM IMPOSING THE DEATH SENTENCE. IN
22 THAT EVENT, COULD YOU SIGN YOUR NAME TO THE VERDICT FORM?

23 A YES, SIR.

24 Q DO YOU RECALL THAT LIST THAT HAD THREE TYPES OF JURORS?

25 A YES, SIR.

CYNTHIA B. STANCIL -- VOIR DIRE BY THE COURT

1 Q OKAY. IF ONE OF THOSE FITS YOU, WHICH CATEGORY BEST
2 DESCRIBES YOU? DO YOU RECALL? DO YOU WANT TO LOOK AT IT
3 AGAIN?

4 A I HADN'T EVEN THOUGHT ABOUT IT.

5 Q WELL, LET ME LET YOU LOOK AT IT AGAIN. I HAVE ANOTHER
6 COPY. LOOK AT THIS SHEET.

7 A OKAY.

8 Q AND IF ANY OF THOSE CATEGORIES DESCRIBES YOU, POINT THAT
9 OUT.

10 A (REVIEWS DOCUMENT) I WOULD THINK A NUMBER TWO.

11 Q OKAY. NUMBER TWO IS A JUROR WHO COULD NEVER GIVE THE
12 DEATH PENALTY.

13 A OOPS.

14 Q ALL RIGHT. LET ME READ THESE OUT TO YOU BECAUSE YOU
15 TESTIFIED EARLIER YOU COULD GO EITHER WAY.

16 A YES, I COULD.

17 Q OKAY. THE FIRST ONE IS A JUROR ONCE THE CRIME OF MURDER
18 HAS BEEN PROVED FEELS THAT HE OR SHE WOULD GIVE THE DEATH
19 PENALTY IN EACH AND EVERY CASE. THIS JUROR FEELS THAT ONCE A
20 MURDER HAS BEEN COMMITTED THE DEATH PENALTY IS THE
21 APPROPRIATE PUNISHMENT NO MATTER WHAT THE CIRCUMSTANCES OF
22 THE CASE.

23 A NO.

24 Q OKAY. THAT DOESN'T FIT YOU. ALL RIGHT. LET'S READ THE
25 NEXT ONE. THE JUROR WHO ALTHOUGH THE GUILT OF THE DEFENDANT

CYNTHIA B. STANCIL -- VOIR DIRE BY THE COURT

1 HAS BEEN DETERMINED UNDER NO CIRCUMSTANCES COULD EVER GIVE
2 THE DEATH PENALTY. THIS JUROR WOULD NOT NEED TO HEAR WHAT
3 THE FACTS AND CIRCUMSTANCES IN AGGRAVATION IN THE CASE WERE
4 BECAUSE THE JUROR WOULD HAVE HIS OR HER MIND MADE UP
5 CONCERNING PUNISHMENT NO MATTER WHAT SHE OR HE HEARD. DOES
6 THAT FIT YOU?

7 A NO.

8 Q THE LAST ONE IS AS FOLLOWS: .THIS JUROR WOULD NOT HAVE
9 HIS OR HER MIND MADE UP CONCERNING PUNISHMENT. THIS JUROR
10 WOULD NEED TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION
11 AND IN MITIGATION AND WOULD WANT TO LISTEN AND FOLLOW THE LAW
12 AS THE JUDGE CHARGES THE LAW BEFORE HE OR SHE COULD MAKE THE
13 DECISION REGARDING PUNISHMENT. AND IF THE FACTS PRESENTED SO
14 WARRANTED, THIS JUROR COULD BRING IN A VERDICT OF LIFE
15 IMPRISONMENT. ALSO, IF THE FACTS PRESENTED SO WARRANTED, THE
16 JUROR COULD BRING IN A VERDICT FOR THE DEATH PENALTY.

17 A THAT ONE.

18 Q THAT FITS YOU?

19 A YES, SIR.

20 Q OKAY. IF YOU WERE SELECTED AS A JUROR, MS. STANCIL,
21 WOULD YOU APPROACH YOUR JURY SERVICE WITH AN OPEN MIND TO
22 FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW THE LAW AS I
23 INSTRUCT IT?

24 A I WOULD DO EVERYTHING I COULD TO.

25 Q THANK YOU, MA'AM. NOW, WE TALKED EARLIER TODAY. YOU

CYNTHIA B. STANCIL -- VOIR DIRE BY THE COURT

1 HURT YOUR FINGER AT WORK. I KNOW YOU'VE GOT A DOCTOR'S
2 APPOINTMENT TOMORROW AND YOU'RE GOING TO---

3 A YES, SIR.

4 Q ---SEE IF THE DOCTOR CAN DELAY THAT APPOINTMENT A LITTLE
5 WHILE. IS THERE ANY OTHER REASON THAT YOU CAN THINK OF WHY
6 YOU COULD NOT SERVE IN THIS CASE?

7 A NO.

8 THE COURT: OKAY. I MAY HAVE SOME FURTHER QUESTIONS
9 FOR YOU, BUT I BELIEVE THE ATTORNEYS MAY HAVE SOME QUESTIONS
10 AS WELL, SO I'M GOING TO GIVE THEM A CHANCE TO ASK YOU SOME
11 QUESTIONS.

12 JUROR NUMBER 344: OKAY.

13 THE COURT: THANK YOU, MS. STANCIL.

14 JUROR NUMBER 344: YOU'RE WELCOME.

15 THE COURT: I THINK IT'S THE STATE'S TURN?

16 SOLICITOR ARIAIL: IT IS.

17 VOIR DIRE BY SOLICITOR ARIAIL:

18 Q MS. STANCIL, MY NAME IS BOB ARIAIL, AND I'M THE
19 SOLICITOR FOR THE 13TH JUDICIAL CIRCUIT OF SOUTH CAROLINA,
20 WHICH IS GREENVILLE AND PICKENS COUNTIES. THE SOLICITOR IS A
21 FANCY NAME THAT SOUTH CAROLINA USES FOR THE PROSECUTING
22 ATTORNEY, THE DISTRICT ATTORNEY. SO WE ARE THE ONES
23 RESPONSIBLE FOR HANDLING THE CASE AND PRESENTING EVIDENCE TO
24 YOU ON BEHALF OF THE STATE SEEKING A CONVICTION IN THIS CASE.
25 I WILL BE ASSISTED BY MY DEPUTY, BETTY STROM, WHO IS IN THE

CYNTHIA B. STANCIL -- VOIR DIRE BY SOLICITOR ARIAIL

1 BEIGE OUTFIT, AND MS. HERVEY, MINDY HERVEY, WHO IS IN THE
2 BLACK.

3 A OKAY.

4 Q I APPRECIATE YOUR RESPONSES. OTHER THAN THAT, WE DON'T
5 HAVE ANY QUESTIONS.

6 A OKAY.

7 SOLICITOR ARIAIL: THANK YOU, JUDGE.

8 VOIR DIRE BY MR. RICHEY:

9 Q HEY, MA'AM. HOW YOU DOING?

10 A ALL RIGHT.

11 Q I'M RODNEY RICHEY, AND I'M REPRESENTING MR. WOOD IN THIS
12 CASE. ALONG WITH ME IS JOHN MAULDIN, THE GENTLEMAN RIGHT
13 THERE (INDICATING), AND JIM BANNISTER.

14 MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS AND WHAT I
15 WANT YOU TO DO IS DON'T FEEL LIKE THAT YOU'RE ON TRIAL
16 BECAUSE---

17 A I DO.

18 Q ---YOU'RE NOT. I JUST WANT YOU TO RELAX AND JUST HAVE A
19 CONVERSATION AND LET'S JUST TALK ABOUT THIS FOR A LITTLE
20 WHILE. OKAY?

21 A OKAY.

22 Q AND I WANT YOU TO UNDERSTAND TOO THAT THERE IS NO RIGHT
23 ANSWERS OR WRONG ANSWERS AT ALL. SO JUST -- I WANT YOU TO BE
24 COMFORTABLE WITH THAT. YOU DON'T HAVE TO GIVE THE RIGHT
25 ANSWER. OKAY.

1 MA'AM, CAN YOU TELL ME, WHAT DO YOU THINK ABOUT THE
2 DEATH PENALTY?

3 A WELL, IN SOME CASES I FEEL LIKE IT SHOULD BE, AND SOME
4 IT SHOULDN'T BE, IT SHOULD BE LIFE IN PRISON.

5 Q MA'AM, LET ME ASK YOU THIS QUESTION. YOU KNOW, IN A
6 DEATH PENALTY CASE THE JUROR IN THIS SCENARIO WOULD HAVE TO
7 FIND SOMEONE GUILTY OF MURDER. DO YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q AND MURDER WOULD MEAN THAT IT WOULD BE AN INTENTIONAL
10 KILLING. THE PERSON KNEW WHAT THEY WERE DOING. IT WASN'T A
11 MISTAKE. IT WASN'T AN ACCIDENT. THEY WASN'T FIGHTING. THEY
12 WASN'T DEFENDING THEMSELVES. THEY KNEW WHAT THEY WERE DOING.
13 THEY WASN'T INSANE. NONE OF THAT.

14 A YES.

15 Q STRAIGHT MURDER. OKAY. TELL ME WHAT YOU FEEL ABOUT THE
16 DEATH PENALTY IN THAT SITUATION.

17 A WELL, SOMETIMES PEOPLE KILLS ANOTHER PERSON OUT OF ANGER
18 OR SOMETHING, YOU KNOW, LIKE PREMEDITATED MURDER OR
19 SOMETHING. I THINK THE DEATH PENALTY WOULD BE THE ONE THAT
20 THEY SHOULD HAVE.

21 Q OKAY. AND YOU WOULD THINK IN THAT SITUATION THAT WOULD
22 BE THE MOST APPROPRIATE PUNISHMENT?

23 A YEAH.

24 Q AND THAT LIFE IMPRISONMENT WOULD NOT BE THE MOST
25 APPROPRIATE?

CYNTHIA B. STANCIL -- VOIR DIRE BY MR. RICHEY

1 **A** SOMETIMES NOT.

2 **Q** AND YOU WOULD BE MORE INCLINED TO GIVE THE DEATH PENALTY
3 IN THAT SITUATION WE JUST DISCUSSED?

4 **A** YES, SIR.

5 **MR. RICHEY:** THANK YOU, MA'AM.

6 **THE COURT:** ALL RIGHT. MS. STANCIL, THANK YOU SO MUCH.
7 THEY'RE GOING TO TAKE YOU TO A JURY ROOM. WE'VE GOT TO DEAL
8 WITH A COUPLE LEGAL ISSUES. WE'LL GET YOU BACK IN HERE
9 QUICKLY AND THEN YOU WILL BE FREE TO GO FOR THE EVENING. I
10 APPRECIATE SO MUCH YOUR PATIENCE.

11 **JUROR NUMBER 344:** YOU'RE WELCOME.

12 **THE COURT:** THANK YOU, MA'AM.

13 (JUROR EXITS COURTROOM AT 8:25 P.M.)

14 **THE COURT:** LET'S GO BACK AND DEAL WITH MR. DONALDSON.
15 HAS MR. DONALDSON BEEN ASSIGNED TO YOUR OFFICE?

16 **MR. MAULDIN:** YOUR HONOR, ON DECEMBER THE 20TH OF THIS
17 PAST YEAR HE WAS SIGNED TO BILL DODSON. BILL DODSON WORKS AS
18 AN ASSISTANT IN OUR OFFICE PART-TIME. THIS GENTLEMAN SAYS HE
19 HAS NEVER TALKED TO HIM, AND AS FAR AS I KNOW HE DOESN'T KNOW
20 ANYTHING ABOUT HIM IN CONNECTION. BUT HE'S NOT A CLIENT OF
21 MINE. I BROUGHT THE CARD THAT SHOWS THE DATE OF THE
22 APPOINTMENT AND THAT IT'S BEEN ASSIGNED TO BILL, WHICH WOULD
23 BE BILL DODSON.

24 SO TO SOME EXTENT -- THERE IS NO QUESTION THAT HE WENT
25 THROUGH THE ASSIGNMENT WITH LYNN WEST, CAME TO THE PUBLIC

MATTERS AND MOTIONS

1 DEFENDER OFFICE, AND THE PARALEGAL WHO ASSIGNS CASES GAVE HIM
2 TO BILL DODSON. AND HE'S NEVER BEEN TO OUR OFFICE,
3 APPARENTLY. HE HAS NEVER MET WITH HIS LAWYER, BILL DODSON.
4 AND THAT'S ALL I CAN TELL YOU FROM THAT CARD.

5 THE COURT: IT WOULD SEEM TO ME THAT SINCE BILL DODSON
6 WORKS NOT AS A CONTRACT ATTORNEY BUT---

7 MR. MAULDIN: HE IS NOT A GREENVILLE COUNTY CONTRACT.
8 HE IS A PART-TIME PUBLIC DEFENDER UNDER MY AUTHORITY.

9 THE COURT: I MEAN, DO YOU TAKE SOME ISSUE THAT THIS
10 JUROR WOULD NOT BE AUTOMATICALLY DISQUALIFIED BECAUSE OF
11 THAT.

12 MR. MAULDIN: IF WE HAD KNOWN THAT, I WOULD HAVE
13 BROUGHT IT TO THE COURT'S ATTENTION BEFORE WE EVER EVEN ASKED
14 HIM THE FIRST QUESTION.

15 THE COURT: I UNDERSTAND THAT.

16 MR. MAULDIN: YES, SIR.

17 THE COURT: I MEAN, IT SEEMS TO ME IT'S SORT OF AN
18 AUTOMATIC RESULT AS A RESULT OF THIS APPOINTMENT TO YOUR
19 OFFICE.

20 MR. MAULDIN: YES, SIR. BUT I DID WANT THE COURT TO
21 KNOW THAT I DON'T KNOW ANYTHING ABOUT HIM AND WOULD NOT HAVE
22 KNOWN ABOUT HIM.

23 THE COURT: I HAVE NO DOUBT ABOUT THAT.

24 LET'S DEAL WITH MS. STANCIL. QUALIFIED OR NOT
25 QUALIFIED, WHAT SAY THE STATE?

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: QUALIFIED.

2 MR. RICHEY: YOUR HONOR, WE WOULD SUBMIT THAT SHE'S NOT
3 QUALIFIED. SHE DID TESTIFY THAT IF IT WAS A MURDER, UNLAWFUL
4 KILLING, PREMEDITATED, THAT SHE WOULD BE INCLINED TO GIVE THE
5 DEATH PENALTY IN THAT CASE. SHE THOUGHT THAT THAT WAS THE
6 MOST APPROPRIATE PUNISHMENT. BASED ON THAT ANSWER, YOUR
7 HONOR, WE BELIEVE THAT SHE IS NOT QUALIFIED BECAUSE IN THAT
8 SCENARIO WE'RE TALKING ABOUT, SHE WOULD AUTOMATICALLY GIVE
9 THE DEATH PENALTY.

10 THE COURT: I FIND MS. STANCIL IS QUALIFIED WHEN I
11 CONSIDER THE TOTALITY OF HER CIRCUMSTANCES. SHE WAS VERY
12 CLEAR IN THAT SHE COULD KEEP AN OPEN MIND. WHEN I READ THE
13 SPECIFIC JUROR SCENARIOS TO HER, SHE ADOPTED NUMBER THREE.
14 THAT WAS CONSISTENT WITH ALL OF HER OTHER RESPONSES. WHILE
15 SHE DID UNDER SKILLFUL QUESTIONING BY DEFENSE COUNSEL
16 INDICATE THAT IN CERTAIN PREMEDITATED TYPE MURDERS THAT SHE
17 THOUGHT THE DEATH PENALTY WOULD BE APPROPRIATE, SHE REMAINED
18 OPEN, IN MY FIRM JUDGMENT, THAT SHE WOULD CAREFULLY CONSIDER
19 THE LAW AND FOLLOW IT AND GIVE MEANINGFUL CONSIDERATION TO
20 ANY ISSUE INSTRUCTED BY THE COURT..

21 THE RECORD WILL REFLECT THE DEFENDANT'S EXCEPTION TO MY
22 RULING REGARDING JUROR STANCIL.

23 HAVING FOUND HER QUALIFIED, WHAT SAYS THE STATE?

24 SOLICITOR ARIAIL: PRESENT HER. AND COULD I ALSO ADD
25 TO THE QUALIFICATION THAT---

MATTERS AND MOTIONS

1 THE COURT: GO AHEAD.

2 SOLICITOR ARIAIL: SHE SAID -- IN THE ARTFUL, SKILLFUL
3 THING THAT WE'RE TRYING TO AVOID, SHE SAID SOMETIMES NOT.

4 THE COURT: SHE DID. THAT'S TRUE.

5 SOLICITOR ARIAIL: IN RESPONSE TO THEIR QUESTION. SO
6 SHE MAINTAINED THAT OBJECTIVITY ALL THE WAY THROUGH. WE SAY
7 PRESENT HER.

8 THE COURT: WHAT SAYS THE STATE (SIC)? AND IF Y'ALL
9 WANT TO HUDDLE UP, TAKE YOUR TIME.

10 EXCUSE MR. DONALDSON, JUROR 91, AND---

11 MR. MAULDIN: YOUR HONOR, I'M GOING TO NEED TO PUT
12 SOMETHING ELSE ON THE RECORD ABOUT DONALDSON BEFORE WE EXCUSE
13 HIM.

14 THE COURT: OKAY. JUST HOLD OFF. SORRY.

15 SOLICITOR ARIAIL: I'D LIKE TO PUT ONE OTHER THING ON
16 THE RECORD ABOUT MR. DONALDSON TOO.

17 THE COURT: OKAY.

18 (DEFENSE COUNSEL OFF RECORD)

19 MR. MAULDIN: REGARDING MS. STANCIL, SWEAR HER, YOUR
20 HONOR.

21 THE COURT: WHAT ELSE DID YOU WANT TO PUT ON THE RECORD
22 REGARDING MR. DONALDSON?

23 MR. MAULDIN: WE -- AND THIS MAY BE STRETCHING THE
24 POINT BECAUSE I CERTAINLY UNDERSTAND THE POSTURE. WE
25 QUESTION IF HE IS OTHERWISE QUALIFIED -- IF HE IS OTHERWISE

MATTERS AND MOTIONS

1 QUALIFIED -- AND HAS NEVER BEEN TO HIS LAWYER AND DOESN'T
2 KNOW WHO IS LAWYER IS, THEN WHY CAN'T HE BE REASSIGNED TO A
3 CONTRACT LAWYER AND HE WILL -- THIS JUROR, IN FACT, WOULD
4 NEVER KNOW THE DIFFERENCE? HE DOESN'T KNOW THE DIFFERENCE.
5 HE WOULDN'T HAVE POINTED IT OUT TO ME IF HE HAD KNOWN THE
6 DIFFERENCE.

7 SO THE POINT IS, TO THE EXTENT THAT HE IS OTHERWISE
8 QUALIFIED AND IF HE IS APPOINTED AN ATTORNEY AS AN INDIGENT
9 AND DOESN'T KNOW THE NAME OF THE LAWYER AND WE HAVE ANOTHER
10 LAWYER AVAILABLE WHO COULD TAKE IT, WHICH WE HAVE TEN OTHER
11 LAWYERS IN THE GREENVILLE COUNTY CONTRACT SYSTEM, THEN WHY
12 DON'T WE RETAIN AN OTHERWISE QUALIFIED JUROR?

13 THE COURT: OKAY. AND I'LL DEAL WITH THAT.

14 MR. MAULDIN: YES, SIR.

15 THE COURT: LET ME HEAR THE STATE'S VIEW AND WE MAY ASK
16 MR. STANCIL -- I'M SORRY, MR. DONALDSON SOME MORE QUESTIONS.

17 LET ME FIRST DEAL WITH MS. STANCIL WHO HAS BEEN
18 SELECTED.

19 BRING MS. STANCIL BACK IN PLEASE (TO BAILIFF)

20 (JUROR REENTERS COURTROOM AT 8:32 P.M.)

21 THE COURT: MS. STANCIL?

22 JUROR NUMBER 344: SIR?

23 THE COURT: YOU'VE BEEN SELECTED AS A JUROR IN THIS
24 CASE. AS A COURTESY TO YOU WE'RE GOING TO LET YOU GO THIS
25 EVENING AND GO TO THE DOCTOR'S TOMORROW---

MATTERS AND MOTIONS

1 JUROR NUMBER 344: OKAY.

2 THE COURT: ---AND FIND OUT IF YOU CAN BE GIVEN
3 MEDICINE OR WHATEVER AND GET YOUR APPOINTMENT NEXT WEEK
4 DELAYED FOR ANOTHER WEEK.

5 I'M GOING TO GIVE YOU AN ORDER AND I'M GOING TO GO OVER
6 AND REVIEW IT WITH YOU. IT TALKS ABOUT YOU'VE BEEN SELECTED
7 TO THE JURY. IT SAYS THAT BEGINNING WEDNESDAY, DAY AFTER
8 TOMORROW, CALL THE PHONE NUMBER. AND THE NUMBER IS ON HERE.

9 JUROR NUMBER 344: OKAY.

10 THE COURT: IT SAYS CALL AFTER 8:00 P.M. AND YOU WILL
11 RECEIVE INSTRUCTIONS. IT WILL BE ONE OF TWO THINGS. IT WILL
12 EITHER SAY CALL BACK TOMORROW EVENING. IT WILL HAVE
13 INSTRUCTIONS TO CALL BACK AT SOME TIME.

14 JUROR NUMBER 344: UH-HUH (AFFIRMATIVE).

15 THE COURT: IF YOU RECEIVE THAT INSTRUCTION, FOLLOW
16 THAT. CALL BACK WHEN INSTRUCTED. AT SOME POINT IT IS GOING
17 TO SAY, RETURN TO THE COURTHOUSE AND IT WILL GIVE YOU
18 INSTRUCTIONS OF WHEN TO RETURN TO THE COURTHOUSE FOR THE
19 BEGINNING OF THE JURY PROCESS.

20 WHEN YOU RETURN IT SAYS IN HERE ABOUT BRINGING YOUR
21 CLOTHES WITH YOU, LEAVE THEM IN YOUR VEHICLE OUTSIDE. THE
22 OFFICERS WHO ARE ASSIGNED TO ASSIST YOU WILL HELP YOU GET
23 YOUR LUGGAGE AND RETURN YOUR VEHICLE TO A FAMILY MEMBER OR IF
24 YOU WANT TO TAKE IT TO THE HOTEL, WHATEVER. WHATEVER YOUR
25 PLEASURE IS. DO NOT BRING ANY CELL PHONE OR BEEPER WITH YOU

MATTERS AND MOTIONS

1 IN YOUR LUGGAGE OR TO THE COURTHOUSE.

2 AND IT ALSO REMINDS YOU THAT THE OATH THAT I'VE GIVEN
3 YOU EARLIER REMAINS IN EFFECT. IN OTHER WORDS, DO NOT
4 DISCUSS THE CASE OR ANY PART OF THE CASE WITH ANYONE AND DO
5 NOT EXPOSE YOURSELF TO ANY INFORMATION REGARDING THE CASE
6 FROM THE MEDIA OR OTHERWISE.

7 DO YOU UNDERSTAND THESE INSTRUCTIONS, MA'AM?

8 JUROR NUMBER 344: YES, I DO.

9 THE COURT: MS. STANCIL, THANK YOU SO MUCH. YOU ARE
10 FREE TO GO. HAVE A PLEASANT EVENING. WE'LL SEE YOU LATER IN
11 THE WEEK. APPRECIATE IT.

12 (JUROR EXITS COURTROOM AT 8:35 P.M.)

13 THE COURT: ALL RIGHT. THE DEFENDANT WANTS TO REVISIT
14 MR. DONALDSON, IF HE'S NEVER MET WITH THE ATTORNEY AND A
15 CONTRACT ATTORNEY IS APPOINTED, THAT HE HAS NO KNOWLEDGE THAT
16 WAS EVER INVOLVED WITH SOMEONE SPECIFICALLY CONNECTED TO THE
17 PUBLIC DEFENDER'S OFFICE. THAT'S THEIR POSITION. I'D LIKE
18 TO HEAR THE STATE'S RESPONSE.

19 SOLICITOR ARIAIL: I HAVE TWO POINTS. NUMBER ONE, YOUR
20 HONOR IS INTELLIGENT AND WISE AS TO HOW THE SYSTEM WORKS.
21 THIS MAN HAS NO CONCEPT. WE HAVE THE ONLY CONTRACT PUBLIC
22 DEFENDER SYSTEM IN THE STATE. MAYBE IN THE WORLD. AND WHAT
23 THE RULING THAT I THINK MR. MAULDIN IS TRYING TO URGE THE
24 COURT, AND I THINK THE COURT WAS LEANING TOWARD TO START
25 WITH, IS SOMEHOW THIS MAN THINKS -- (PAUSE) -- SOMEHOW THIS

MATTERS AND MOTIONS

1 MAN IS SUPPOSED TO BE ASTUTE ENOUGH TO FIGURE OUT THAT HIS
2 LAWYER DOESN'T REALLY WORK FOR THE PUBLIC DEFENDER EVEN
3 THOUGH HE'S GOT A PUBLIC DEFENDER. HE'LL TELL THE COURT HE'S
4 GOT A PUBLIC DEFENDER. BUT HE'S SUPPOSED TO SOMEHOW FIGURE
5 OUT THAT THIS PUBLIC DEFENDER HERE IS DIFFERENT AND THAT HE
6 DOESN'T WORK FOR THIS PERSON. NOW, THAT'D BE LIKE TRYING TO
7 TELL HIM THAT MY ASSISTANTS DON'T WORK FOR ME. IT'S JUST NOT
8 GOING TO FLY IN THIS MAN'S MIND.

9 NUMBER TWO, HE SPENT TWENTY DAYS, FROM DECEMBER THE 5TH
10 TO DECEMBER THE 25TH, CONFINED IN THE SAME JAIL AS THIS
11 DEFENDANT, AND I DON'T SEE HOW IT'S POSSIBLE THAT WE EVER
12 COULD POSSIBLY CLEANSE THE POTENTIAL DAMAGE THAT MAY HAVE
13 BEEN DONE JUST BY THAT. WE DON'T KNOW IF THEY CAME IN
14 CONTACT. WE HAVE TO GO INTO DELVING INTO ALL THE WITH HIM.

15 AND I JUST SAY THERE IS SO MUCH BAGGAGE THAT HE IS
16 BRINGING ALONG THAT REASSIGNING HIM IS BASICALLY A SHORT-
17 SIGHTED WAY OF HANDLING A VERY SERIOUS PROBLEM I THINK YOUR
18 HONOR HAS IDENTIFIED. WE WOULD SAY HE NEEDS TO BE STRICKEN
19 FOR CAUSE.

20 THE COURT: TWO COMMENTS. NUMBER ONE, I CONTINUE IN MY
21 INITIAL FINDING, THE GENTLEMEN IS NOT QUALIFIED. THE SOLE
22 BASIS OF THAT IS MR. DONALDSON'S VIEW THAT HE IS REPRESENTED
23 BY THE PUBLIC DEFENDER. MR. MAULDIN HAS BEEN INTRODUCED TO
24 THE PANEL, TO THE ENTIRE JURY VENIRE, TO THIS PARTICULAR
25 PANEL AS THE PUBLIC DEFENDER. THIS POTENTIAL JUROR BELIEVES

MATTERS AND MOTIONS

1 AND REFERS TO THE TERM PUBLIC DEFENDER. HE MAY NOT GRASP THE
2 NUANCES OF THE SYSTEM IN GREENVILLE, THE PUBLIC DEFENDER VIS
3 A VIS THE CONTRACT SYSTEM.

4 I ACCEPT THE REALITY THAT THIS JUROR HAS NOT MET WITH
5 ANYONE FROM THE PUBLIC DEFENDER'S OFFICE AND FROM THE PUBLIC
6 DEFENDER STANDPOINT THERE IS NO CONFLICT. BUT IN THIS
7 JUROR'S MIND HE IS CONVINCED HE IS REPRESENTED BY THE PUBLIC
8 DEFENDER WHO HAS BEEN IDENTIFIED IN THIS COURT AS MR.
9 MAULDIN. I THINK IN REALITY, TECHNICALLY, THERE IS A
10 CONFLICT, SINCE HE'S BEEN APPOINTED BY SOMEONE WHO WORKS WITH
11 THE PUBLIC DEFENDER, AND I WOULD BE VERY CONCERNED ALLOWING
12 HIM TO BE QUALIFIED IN LIGHT OF HIS STATE OF MIND AND HIS
13 ADAMANT VIEW THAT HE IS REPRESENTED BY THE PUBLIC DEFENDER.
14 ON THAT BASIS AND THAT BASIS ALONE I FIND HIM NOT QUALIFIED.

15 THE OTHER BASIS I WOULD RESPECTFULLY DISAGREE WITH AND I
16 DO NOT BELIEVE THAT THAT WOULD SERVE AS AN INDEPENDENT BASIS
17 FOR DISQUALIFICATION.

18 THE RECORD WILL NOTE THE STATE'S EXCEPTION TO MY RULING.

19 THANK MR. DONALDSON FOR BEING HERE. HE IS EXCUSED AND
20 HE IS FREE TO GO.

21 I'M SORRY. IT WILL REFLECT THE DEFENDANT'S EXCEPTION TO
22 MY RULING.

23 SOLICITOR ARIAIL: RIGHT. WE DO NOT EXCEPT.

24 THE COURT: THAT'S THE LAST JUROR FOR THE EVENING.
25 WE'LL START BACK AT NINE O'CLOCK IN THE MORNING. THANK YOU.

MATTERS AND MOTIONS

1 (DOCUMENTS FROM PUBLIC DEFENDER'S OFFICE REGARDING JUROR
2 NUMBER 91, CALVIN DONALDSON, MARKED AS COURT'S EXHIBIT NUMBER
3 3)

4 (COURT RECESSED FOR THE DAY AT 8:40 P.M.)
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 20, 2003



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF

GENERAL SESSIONS

THE STATE)
OF SOUTH CAROLINA,)

VOLUME II

-vs-

01-GS-23-3106
TRANSCRIPT OF RECORD
JURY QUALIFICATION
DAY 2 (2/5/02)

JOHN RICHARD WOOD,)
)
DEFENDANT.)

FEBRUARY 4-16, 2002
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

A P P E A R A N C E S:

ROBERT M. ARIAIL, Esquire
Solicitor of the 13th Circuit
BETTY C. STROM, Esquire
Deputy Solicitor
MINDY HERVEY, Esquire
Assistant Solicitor

JOHN I. MAULDIN, Esquire
Public Defender
JAMES BANNISTER, Esquire
Co-counsel for the Defendant
RODNEY RICHEY, Esquire
Co-counsel for the Defendant

DAWN V. KOFFSKEY
Court Reporter

MATTERS AND MOTIONS

1 (COURT RESUMED ON FEBRUARY 5, 2002 AT 9:12 A.M.)

2 THE COURT: GOOD MORNING.

3 SOLICITOR ARIAIL: GOOD MORNING.

4 MR. MAULDIN: GOOD MORNING.

5 THE COURT: TWO THINGS. ONE IS ONE OF THE JURORS WHO
6 DID NOT APPEAR FOR WHICH AN ORDER WAS SIGNED FOR THE
7 INDIVIDUAL TO BE BROUGHT TO COURT, THE DOCTOR HAS SENT A NOTE
8 IN AS TO THE MEDICATION THAT WAS PRESCRIBED A WEEK OR SO AGO
9 AND THE EFFECTS OF THAT, AND I'M GOING TO SHARE THAT WITH
10 YOU. ANDREA HAS IT. I CAN'T RECALL THE JUROR'S NAME, BUT IT
11 WILL BE MARKED AS A COURT'S EXHIBIT AND I WANT YOU TO REVIEW
12 IT.

13 SOLICITOR ARIAIL: THIS IS ONE THAT DIDN'T COME
14 YESTERDAY?

15 THE COURT: RIGHT. HE'S NOT ON A PANEL TODAY, I DON'T
16 THINK. BUT HE HAS A DOCTOR'S EXCUSE, AND THE DOCTOR ATTEMPTS
17 TO HELP THE PATIENT OUT BY EXPLAINING THE SIDE EFFECTS OF THE
18 VARIOUS MEDICATIONS, SUCH AS MEMORY LOSS AND THINGS OF THAT
19 NATURE.

20 THE SECOND THING IS THE FIRST JUROR ON THE PANEL THIS
21 MORNING, NUMBER 238, IS NOT PRESENT. MS. PLUMLEY IS MAKING A
22 CALL TO DETERMINE WHERE HE IS. WE'LL START WITH THE OTHER
23 FOUR.

24 MS. PLUMLEY: HE'S JUST WALKED OUT THE DOOR. HE'LL BE
25 HERE IN ABOUT FIFTEEN MINUTES.

MATTERS AND MOTIONS

THE COURT: I'M INFORMED THAT SHE JUST SPOKE TO HIM AND HE'S LEAVING AND WILL BE HERE IN ABOUT FIFTEEN MINUTES.

SO HE WILL BE PART OF THIS PANEL, BUT I'M GOING TO PROCEED AND DO THE OTHER FOUR COLLECTIVELY AND THEN DEAL WITH HIM INDIVIDUALLY, AND WE'LL DEAL WITH MR. MAYER AT THE END OF THIS PANEL AND DO HIM BY HIMSELF.

ANDREA, DO YOU HAVE THE DOCTOR'S NOTES THAT WERE SENT ON THAT PARTICULAR JUROR?

MS. PLUMLEY: YES, SIR.

THE COURT: ALL RIGHT. THIS IS JUROR JOHN -- I THINK IT LOOKS LIKE -- YOUNTS.

MS. PLUMLEY: YOUNTS.

THE COURT: Y-O-U-N-T-S. COUNSEL, I'M NOT SURE OF THAT JUROR'S NUMBER. BUT LOOK FOR YOUNTS, Y-O-U-N-T-S.

MR. MAULDIN: HE'S 299.

THE COURT: OKAY. HERE IS THE ORDER I SIGNED, AND HERE IS THE DOCTOR'S NOTE. I WANT Y'ALL TO TAKE AN OPPORTUNITY TO REVIEW THE DOCTOR'S NOTE, AND IF YOU HAVE ANY POSITION YOU'D LIKE TO PUT ON THE RECORD, YOU MAY DO SO.

(PAUSE)

THE COURT: I WANT COUNSEL TO BE AWARE THAT MR. YOUNTS, LIKE ALL THE OTHER JURORS, WAS ASSIGNED TO A PANEL. MR. YOUNTS WAS RANDOMLY SELECTED AND ASSIGNED TO GROUP 24, AND THAT WOULD BE JUROR -- HE WOULD BE THE 119TH JUROR WE WOULD REACH.

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: 119?

2 THE COURT: HE'D BE IN GROUP TWENTY -- I THINK -- I
3 JUST PUT IT ASIDE. I THINK IT WAS GROUP 24. IT'S NOT
4 WRITTEN IN YOUR -- YESTERDAY, WHAT WE DID IS WE TOOK ALL THE
5 JURORS WHO DID NOT APPEAR AND WE RANDOMLY ASSIGNED THEM TO
6 VARIOUS PANELS. MR. YOUNTS ENDED UP GOING TO THAT PANEL. SO
7 WE HAVE SOME PANELS THAT HAVE SIX PEOPLE.

8 MR. MAULDIN: THIS IS THE NEW LIST HERE THAT INCLUDES
9 THOSE THAT HE'S---

10 MS. PLUMLEY: (INDICATES AFFIRMATIVE RESPONSE)

11 SOLICITOR ARIAIL: GOTCHA.

12 MR. MAULDIN: YOUR HONOR, WITH REGARD TO JUROR 399 AND
13 THE DOCTOR'S EXCUSE, THE DEFENSE HAS NO OBJECTION TO THE
14 DOCTOR'S EXCUSE BEING ACCEPTED AND THE JUROR BEING EXCUSED.

15 MS. HERVEY: NONE FROM THE STATE.

16 THE COURT: ALL RIGHT. SO ORDERED. IT WILL BE
17 ACCEPTED AND THE JUROR WILL BE EXCUSED AND THE ORDER
18 DIRECTING LAW ENFORCEMENT TO BRING HIM IN IS HEREBY
19 RESCINDED.

20 WE'RE GOING TO PROCEED WITH THE FOUR JURORS IN GROUP
21 NUMBER 2 WHO ARE PRESENT. WE'LL DEAL WITH THE INDIVIDUAL,
22 MR. MAYER, WHEN HE ARRIVES.

23 SOLICITOR ARIAIL: I WOULD MAKE ONE OTHER REQUEST AT
24 THIS TIME. THE STATE WOULD REQUEST IN REGARD TO JUROR 320,
25 MR. RUSSELL, THAT THE DEFENSE BE REQUIRED TO PUT ON THE

MATTERS AND MOTIONS

1 RECORD A RACIALLY AND GENDER NEUTRAL REASON AS TO WHY THEY
2 STRUCK HIM AT THIS TIME.

3 MR. MAULDIN: YOUR HONOR, IF I UNDERSTAND CORRECTLY,
4 YOU HAD DENIED THEIR CHALLENGE ON THAT -- ON THE ISSUE OF
5 WHETHER IT WAS A BATSON QUALIFICATION. YOU DENIED THAT. SO
6 I DON'T THINK WE'RE CALLED UPON TO MAKE ANY EXPLANATION
7 BECAUSE IT WAS OUT ON ITS FACE.

8 THE COURT: I'M NOT GOING TO REQUIRE THEM TO STATE A
9 POSITION AT THIS TIME. THE MATTER MAY BE DIFFERENT AS I
10 UNDERSTAND THAT LAW THAT IF IT WAS A MEMBER OF A MINORITY OR
11 FEMALE, THOSE WOULD HAVE BEEN THE TWO CLASSIFICATIONS WHICH I
12 BELIEVE OUR SUPREME COURT HAS EXTENDED TO BATSON.

13 NOW, THE USE OF A STRIKE FOR SOMEONE NOT INCLUDED IN
14 THOSE GROUPS MAY BE EVIDENCE OF DISPARATE TREATMENT TO
15 SUPPORT A CHALLENGE. AND I'LL BE GLAD TO HEAR FURTHER FROM
16 YOU, SIR, IF YOU'D LIKE.

17 SOLICITOR ARIAIL: WELL, LET ME GO BACK. FIRST, IT
18 WASN'T MY UNDERSTANDING -- IT WAS MY UNDERSTANDING YESTERDAY
19 WHAT WE WERE SUPPOSED TO DO WAS IF WE FELT THERE WAS EVIDENCE
20 OF A BATSON VIOLATION OR POTENTIAL BATSON VIOLATION THAT
21 BEFORE WE LET A JUROR GO WE PUT THE COURT ON NOTICE THAT WAS
22 RESERVED. MY UNDERSTANDING WAS THERE WASN'T EVEN A RULING
23 YESTERDAY. IT WAS JUST MY PUTTING YOU ON NOTICE AS TO THE
24 POTENTIAL THAT THERE WAS A PATTERN BEING DEVELOPED, AN
25 INCONSISTENT PATTERN AS TO PARTICULAR JURORS. AND THE

MATTERS AND MOTIONS

1 PURPOSE OF REQUESTING THAT THE GROUNDS BE PUT ON RECORD NOW
2 IS SIMPLY SO THAT WE CAN GET AN ACCURATE VERSION OF THE
3 GROUNDS AS THEY EXIST NOW AND NOT GET THE VERSION THAT MAY
4 EXIST A DAY OR TWO FROM NOW IS MY WHOLE REASON IN ASKING.

5 THE COURT: ALL RIGHT.

6 SOLICITOR ARIAIL: AND I....

7 THE COURT: THERE MAY BE OCCASIONS WHEN I'M GOING TO
8 REQUIRE INITIALLY A STATEMENT FROM ONE SIDE OR THE OTHER AS
9 TO THE REASONS THE JUROR WAS STRUCK. I'M NOT GOING TO
10 REQUIRE IT WITH REGARD TO MR. RUSSELL. THE RECORD WILL
11 REFLECT YOUR EXCEPTION TO MY RULING.

12 BRING THE FOUR WE HAVE, PLEASE.

13 (PANEL NUMBER 2 ENTERS COURTROOM AT 9:22 A.M.)

14 (PANEL 2: JUROR NUMBER 250, JENNIFER A. MCKINLEY; JUROR
15 NUMBER 353, MARK ALAN STUBER; JUROR NUMBER 334, CLIFFORD L.
16 SMITH; AND JUROR NUMBER 333, CHARLOTTE A. SMITH)

17 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. I
18 APPRECIATE SO MUCH YOUR BEING HERE IN A TIMELY MANNER. ONE
19 OF YOUR FELLOW JURORS IS NOT HERE BUT I AM INFORMED IS IN
20 ROUTE. WE'LL DEAL WITH THAT JUROR LATER.

21 LET ME MAKE SURE I'VE GOT EVERYBODY HERE. JENNIFER
22 MCKINLEY?

23 JUROR NUMBER 250: (INDICATING)

24 THE COURT: ALL RIGHT. GOOD MORNING. MARK STUBER?

25 JUROR NUMBER 353: (INDICATING)

VOIR DIRE -- GROUP 2

1 **THE COURT:** GOOD MORNING, SIR. CLIFFORD SMITH?

2 **JUROR NUMBER 334:** (INDICATING)

3 **THE COURT:** GOOD MORNING, MR. SMITH. AND CHARLOTTE
4 SMITH?

5 **JUROR NUMBER 333:** (INDICATING)

6 **THE COURT:** GOOD MORNING.

7 LADIES AND GENTLEMEN, THE FIRST THING I'M GOING TO DO IS
8 -- YOU CAN JUST REMAIN SEATED. I'M GOING TO PUT YOU UNDER AN
9 OATH, AND THEN I'VE GOT SOME INFORMATION I WANT TO SHARE WITH
10 YOU COLLECTIVELY AND ASK YOU JUST A FEW THINGS, AND THEN
11 WE'LL GO FROM THERE TO THE INDIVIDUAL QUESTIONING. SO IF YOU
12 WOULD FIRST PLEASE RAISE YOUR RIGHT HAND.

13 DO EACH OF YOU SWEAR OR AFFIRM THE RESPONSES YOU GIVE
14 DURING THE JURY SELECTION PROCESS WILL BE TRUTHFUL AND
15 COMPLETE? IF YOU AGREE TO BE BOUND BY THIS OATH, PLEASE SAY,
16 "I WILL." (PAUSE) ALL INDICATE IN THE AFFIRMATIVE.

17 AGAIN, THANK YOU FOR BEING HERE AND WE APPRECIATE THE
18 EFFORT YOU HAVE MADE TO PARTICIPATE IN THE SYSTEM IN THIS
19 JURY SELECTION PROCESS. WE ALL WANT TO DO OUR BEST TO PUT
20 YOU AT EASE, AND WE ARE HERE SIMPLY TO GATHER INFORMATION. I
21 WILL SPEAK TO YOU COLLECTIVELY AT FIRST AS A GROUP, AND THEN
22 WE WILL PROCEED TO QUESTION YOU INDIVIDUALLY ONE AT A TIME.
23 PLEASE UNDERSTAND THERE ARE NO RIGHT OR WRONG ANSWERS. WE'RE
24 SIMPLY GATHERING INFORMATION.

25 I WANT YOU TO UNDERSTAND AT THE OUTSET, AS I INDICATED

VOIR DIRE -- GROUP 2

1 YESTERDAY, I HAVE NO OPINION ABOUT THE FACTS OF THE CASE
2 THAT'S TO BE TRIED, SO PLEASE DO NOT CONSTRUE FROM ANYTHING I
3 SAY TO YOU THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS
4 CASE.

5 NOW, YESTERDAY I PLACED YOU AND YOUR FELLOW JURORS UNDER
6 OATH, AND YOU HAVE ADDITIONALLY BEEN SWORN FOR TODAY'S
7 PROCEEDINGS. SINCE THE QUALIFICATION YESTERDAY HAVE ANY OF
8 YOU TALKED WITH ANYONE ABOUT THIS CASE OR BEEN EXPOSED TO ANY
9 INFORMATION ABOUT THIS CASE FROM THE MEDIA OR OTHERWISE? IF
10 YOU HAVE, WOULD YOU PLEASE RAISE YOUR RIGHT HAND? (PAUSE)
11 THERE IS NO RESPONSE.

12 I WANT TO REMIND YOU OF TWO VERY IMPORTANT LEGAL
13 PRINCIPLES THAT I DISCUSSED YESTERDAY, THAT IS, THE
14 PRESUMPTION OF INNOCENCE -- ANYONE ACCUSED OF A CRIME IS
15 PRESUMED TO BE INNOCENT. I FURTHER REMIND YOU ONCE AGAIN OF
16 THE BURDEN OF PROOF. THAT IS THE LEGAL YARDSTICK YOU WILL
17 USE FOR MEASURING THE EVIDENCE IF YOU ARE SELECTED TO SERVE
18 IN THIS CASE. THAT IS THE BURDEN IS ON THE STATE TO PROVE
19 GUILT BEYOND A REASONABLE DOUBT. THERE IS NEVER A BURDEN ON
20 A DEFENDANT TO PROVE OR DISPROVE ANYTHING.

21 DO EACH OF YOU UNDERSTAND AND AGREE WITH THESE IMPORTANT
22 LEGAL PRINCIPLES? IF YOU DO, PLEASE INDICATE BY SAYING SO.
23 (PAUSE) ALL INDICATE IN THE AFFIRMATIVE.

24 NOW, LADIES AND GENTLEMEN, A CASE OF THIS NATURE WE
25 GENERALLY REFER TO AS A CAPITAL CASE. THAT'S A CASE IN WHICH

VOIR DIRE -- GROUP 2

1 THE STATE SEEKS THE DEATH PENALTY. I'M GOING TO EXPLAIN THE
2 PROCESS IN GENERAL.

3 ONCE A JURY IS SELECTED THE COURT CONDUCTS THE FIRST
4 PHASE OF THE TRIAL, PERHAPS THE ONLY PHASE OF THE TRIAL.
5 THIS IS THE PHASE WHERE THE JURY DETERMINES WHETHER OR NOT
6 THE STATE HAS PROVEN GUILT OF THE OFFENSE OF MURDER BEYOND A
7 REASONABLE DOUBT. SHOULD A JURY FIND A DEFENDANT NOT GUILTY,
8 THAT WOULD END THE CASE. THERE WOULD BE NO FURTHER JURY
9 INVOLVEMENT. THE CASE WOULD BE OVER.

10 HOWEVER, IF A JURY FINDS A DEFENDANT GUILTY OF THE CRIME
11 OF MURDER, THEN WE WOULD MOVE TO THE SECOND PHASE. I
12 DISCUSSED THIS WITH YOU SOME YESTERDAY. THIS IS WHAT WE CALL
13 THE SENTENCING PHASE. THE JURY AT THAT POINT WOULD CONSIDER
14 WHAT WE CALL EVIDENCE IN AGGRAVATION AND EVIDENCE IN
15 MITIGATION. AND THE JURY AFTER CONSIDERING ALL OF THIS
16 ADDITIONAL EVIDENCE WOULD DETERMINE THE SENTENCE, AN
17 APPROPRIATE SENTENCE FOR THE DEFENDANT. THAT WOULD BE LIFE
18 IMPRISONMENT OR DEATH.

19 LET ME TELL YOU SOMETHING VERY IMPORTANT ABOUT LIFE
20 IMPRISONMENT. IN A CAPITAL CASE IF THE JURY FINDS THE
21 PRESENCE OF AN AGGRAVATING CIRCUMSTANCE -- AND THOSE ARE
22 MATTERS THAT ARE DEFINED BY OUR STATE LEGISLATURE IN THE CODE
23 OF LAW -- AND IF A JURY FINDS A MURDER ACCOMPANIED BY AN
24 AGGRAVATING CIRCUMSTANCE, A SENTENCE OF LIFE IMPRISONMENT
25 MEANS LIFE WITHOUT THE POSSIBILITY OF PAROLE.

VOIR DIRE -- GROUP 2

1 IN OTHER WORDS, IF A DEFENDANT WHO HAS BEEN CONVICTED OF
2 MURDER AND THE MURDER WAS ACCOMPANIED BY AN AGGRAVATING
3 CIRCUMSTANCE, THEN A LIFE SENTENCE MEANS LIFE. THERE WOULD
4 BE NO POSSIBILITY FOR PAROLE UNDER SUCH CIRCUMSTANCES. A
5 PARTICULAR DEFENDANT IN THAT SITUATION WOULD DIE IN JAIL.

6 NOW, PLEASE UNDERSTAND I AM TALKING ABOUT THE PROCESS OF
7 A CASE IN GENERAL. IN THIS CASE WE MAY NOT EVEN REACH THE
8 SENTENCING PHASE. BUT IN THE EVENT THAT WE DO, I NEED TO ASK
9 YOU CERTAIN QUESTIONS AND EXPLAIN THE PROCESS. AND LET ME
10 EXPLAIN TO YOU THE TERMS AGGRAVATING CIRCUMSTANCES AND
11 MITIGATING CIRCUMSTANCES, AND WE'LL EXPLORE THIS IN A LITTLE
12 MORE DETAIL WHEN I QUESTION YOU INDIVIDUALLY.

13 THESE ARE TERMS -- AGGRAVATING EVIDENCE, MITIGATING
14 EVIDENCE -- THAT IF YOU ARE SELECTED TO SERVE YOU WON'T HEAR
15 IN THE FIRST PHASE OF THE TRIAL. THOSE ARE TERMS THAT HAVE
16 MEANING ONLY IF THE CASE GOES TO A SENTENCING PHASE.

17 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS OR AN
18 OCCURRENCE WHICH OUR LEGISLATURE, THE SOUTH CAROLINA GENERAL
19 ASSEMBLY, HAS DECLARED BY STATUTE WOULD AGGRAVATE OR WORSEN
20 THE CRIME OF MURDER. IN OTHER WORDS, AN AGGRAVATING
21 CIRCUMSTANCE WHEN ACCOMPANYING A MURDER INCREASES THE
22 ENORMITY OF IT OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

23 MITIGATING CIRCUMSTANCES ARE INCIDENTS, FACTS, OR
24 OCCURRENCES WHICH OUR GENERAL ASSEMBLY HAS DECLARED BY
25 STATUTE OR WHICH A JURY OTHERWISE DETERMINES SHOULD REDUCE

VOIR DIRE -- GROUP 2

1 THE SEVERITY OF THE OFFENSE OF MURDER. IT MAY BE CONSIDERED
2 AS EXTENUATING OR MITIGATING OR REDUCING THE DEGREE OF
3 RESPONSIBILITY OR CULPABILITY.

4 IF YOU UNDERSTAND IN A GENERAL SENSE THIS APPROACH TO A
5 CAPITAL CASE AND THOSE LEGAL CONCEPTS, WOULD YOU PLEASE
6 INDICATE? (PAUSE) DO YOU UNDERSTAND THAT? ALL INDICATE IN
7 THE AFFIRMATIVE.

8 NOW, IF YOU HAVE ANY QUESTION ABOUT THAT, I'LL BE GLAD
9 TO -- AND WE'RE GOING TO DISCUSS IT IN A LITTLE MORE DETAIL
10 WHEN WE TALK TO YOU INDIVIDUALLY, BUT IF YOU HAVE ANY CONCERN
11 ABOUT THAT, PLEASE LET ME KNOW DURING THE INDIVIDUAL
12 QUESTIONING, AND WE'LL GO INTO IT AS FAR AS WE NEED TO TO
13 MAKE SURE THAT YOU FULLY UNDERSTAND THE PROCESS AND HOW YOU
14 AS A POTENTIAL JUROR WOULD FIT INTO THE PROCESS AND WHAT YOUR
15 ROLE WOULD BE.

16 I INTRODUCED THE ATTORNEYS YESTERDAY. WE HAVE MR.
17 ARIAIL, THE SOLICITOR, DEPUTY SOLICITOR BETTY STROM, AND
18 MINDY HERVEY, ASSISTANT SOLICITOR. MR. MAULDIN, THE PUBLIC
19 DEFENDER, MR. RICHEY, MR. BANNISTER. THIS IS MR. WOOD HERE
20 IN THE MIDDLE WITH THE WHITE SHIRT.

21 NOW, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
22 RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH
23 THE ATTORNEYS TO WHOM YOU HAVE BEEN INTRODUCED? IF SO, WOULD
24 YOU RAISE YOUR RIGHT HAND? (PAUSE) THERE IS NO RESPONSE.

25 YOU MAY NOT BE RELATED TO THESE SPECIFIC ATTORNEYS BUT

VOIR DIRE -- GROUP 2

1 I'M GOING TO EXTEND THE QUESTION TO ANY EMPLOYEE OR
2 REPRESENTATIVE OF THEIR RESPECTIVE OFFICES. SO IF YOU'RE
3 RELATED BY BLOOD OR MARRIAGE TO ANYONE ACQUAINTED WITH ANYONE
4 ASSOCIATED WITH THE SOLICITOR'S OFFICE, PUBLIC DEFENDER'S
5 OFFICE, MR. RICHEY'S LAW OFFICE OR MR. BANNISTER'S LAW
6 OFFICE, WOULD YOU PLEASE RAISE YOUR RIGHT HAND? (PAUSE)
7 AGAIN, THERE IS NO RESPONSE.

8 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY
9 BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH THE
10 DEFENDANT, MR. JOHN RICHARD WOOD? IF SO, PLEASE RAISE YOUR
11 RIGHT HAND. (PAUSE) AGAIN, THERE IS NO RESPONSE.

12 NOW, I KNOW YOU HAVE BEEN IN THE OTHER ROOM, AND I LET
13 YOU STAY IN THERE A LITTLE WHILE BECAUSE I WANTED TO GIVE YOU
14 ENOUGH TIME TO REVIEW THE DOCUMENTS THAT WERE SUBMITTED
15 THERE. I HAVEN'T CHECKED THIS MORNING BUT THERE IS SUPPOSED
16 TO BE A FOLDER OVER NEAR YOUR AREA AND I HAVE THAT THERE
17 SIMPLY IF YOU NEED TO REVIEW IT AGAIN. THAT'S THE LIST, THE
18 EXTENSIVE LIST, OF THE POTENTIAL WITNESSES WHO COULD TESTIFY,
19 AND I WANTED YOU TO HAVE IT HANDY IF YOU NEEDED TO REVIEW IT
20 IN ANSWERING THIS QUESTION. AND TAKE WHATEVER TIME YOU NEED.
21 JUST LET ME KNOW IF YOU NEED ADDITIONAL TIME TO LOOK OVER IT.

22 BUT I'D LIKE TO KNOW IF YOU ARE RELATED BY BLOOD OR
23 MARRIAGE OR ACQUAINTED IN ANY WAY, SOCIALLY OR
24 PROFESSIONALLY, WITH ANY OF THOSE POTENTIAL WITNESSES ON THE
25 WITNESS LIST. IF YOU ARE, WOULD YOU PLEASE RAISE YOUR RIGHT

VOIR DIRE -- GROUP 2

1 HAND? (PAUSE)

2 ALL RIGHT. THERE IS---

3 JUROR NUMBER 333: I HAVE A QUESTION. THERE IS A DAVID
4 PITTMAN ON HERE. I WORK WITH A DAVID PITTMAN, BUT I DON'T
5 KNOW IF IT'S THE SAME PERSON.

6 THE COURT: OKAY. AND I KNOW YOU HAD A QUESTION ABOUT
7 IT.

8 JUROR NUMBER 353: THERE ARE A COUPLE THAT I RECOGNIZE
9 THE NAME, BUT I DON'T KNOW IF IT'S THE SAME PEOPLE.

10 THE COURT: OKAY. THAT'S WHAT WE'RE GOING TO FIND OUT.
11 NOW, YOU'RE MS. SMITH?

12 JUROR NUMBER 333: YES, SIR.

13 THE COURT: MS. CHARLOTTE SMITH. AND YOU ASKED ABOUT
14 MR. PITTMAN?

15 JUROR NUMBER 333: THAT'S CORRECT.

16 THE COURT: I'M JUST GOING TO ASK COUNSEL TO ASSIST ME.
17 WHERE DOES THIS GENTLEMAN WORK? AND THAT MAY RESOLVE THE
18 ISSUE.

19 JUROR NUMBER 333: AT THE WAL-MART SUPER CENTER ON WHITE
20 HORSE ROAD.

21 THE COURT: OKAY. THIS DAVID PITTMAN WORKS AT THE WAL-
22 MART SUPER CENTER ON WHITE HORSE ROAD. (PAUSE)

23 MS. STROM: YOUR HONOR, WE PUT MR. PITTMAN ON THERE AS
24 A PRECAUTION. WE DO NOT INTEND TO CALL HIM. I DO NOT
25 BELIEVE HE WORKS AT THE SAME PLACE ANYWAY.

VOIR DIRE -- GROUP 2

1 **THE COURT:** ALL RIGHT. NOW, MS. SMITH, IT MAY NOT BE
2 THE SAME DAVID PITTMAN, AND MANY OF THESE WITNESSES MAY NOT
3 TESTIFY. BUT HERE IS WHAT I WANT TO ASK YOU. LET'S JUST
4 ASSUME THAT IT'S THE SAME DAVID PITTMAN AND YOU'RE SITTING
5 OVER THERE IN THE JURY BOX AND HE WALKS IN AND SITS IN THE
6 WITNESS CHAIR. I WANT TO KNOW IF THAT WOULD AFFECT YOUR
7 ABILITY TO BE FAIR OR WOULD YOU STILL BE A FAIR JUROR?

8 **JUROR NUMBER 333:** NO. BECAUSE HE'S ONE OF MY CO-
9 MANAGERS, AND HE HAS AUTHORITY OVER ME. I DON'T THINK I
10 COULD MAKE THAT DECISION. I COULD SIT AND LISTEN TO WHAT HE
11 HAD TO SAY.

12 **THE COURT:** I DON'T UNDERSTAND YOUR ANSWER. WHAT DO
13 YOU MEAN "YOU COULDN'T MAKE THAT DECISION"?

14 **JUROR NUMBER 333:** IF HE CAME IN, I DON'T THINK I COULD
15 BE PARTIAL TO WHAT HE HAD TO SAY. BUT HE IS AN ASSISTANT
16 OVER THE STORE THAT I WORK AT.

17 **THE COURT:** YOU COULD NOT BE PARTIAL?

18 **JUROR NUMBER 333:** YES, SIR.

19 **THE COURT:** DOES THAT MEAN YOU COULD NOT BE FAIR OR YOU
20 WOULD BE FAIR?

21 **JUROR NUMBER 333:** AH...

22 **THE COURT:** BECAUSE WE'RE LOOKING FOR JURORS WHO ARE
23 IMPARTIAL.

24 **JUROR NUMBER 333:** YEAH.

25 **THE COURT:** WE DON'T WANT YOU TO BE PARTIAL ON ONE SIDE

VOIR DIRE -- GROUP 2

1 OR THE OTHER.

2 JUROR NUMBER 333: YEAH. I DON'T KNOW. I MEAN, YOU
3 KNOW, I DO -- YOU KNOW, HE WORKS ON THE GROCERY SIDE OF THE
4 STORE. BUT I DO HAVE CONTACT WITH THE MAN, AND HE IS A CO-
5 MANAGER OF THE STORE THAT I WORK AT. I WOULD HAVE TO -- I
6 WOULD -- THE PERSON THAT I KNOW AS DAVID, I WOULD TAKE
7 EVERYTHING THAT HE SAID AS THE TRUTH BECAUSE HE'S JUST THAT
8 TYPE OF PERSON TO ME.

9 THE COURT: OKAY.

10 JUROR NUMBER 333: AND I WOULD UNDERSTAND WHAT HE WAS,
11 YOU KNOW...

12 THE COURT: ALL RIGHT. THEN WE NEED----

13 JUROR NUMBER 333: WHERE I WOULD GO FROM THERE, I DON'T
14 KNOW.

15 THE COURT: THAT'S FINE. I APPRECIATE YOUR CANDOR.
16 THAT'S THE TYPE OF CANDOR THAT MAKES THE SYSTEM WORK, AND I
17 THANK YOU.

18 I NEED TO KNOW IF MR. PITTMAN -- FIRST OF ALL, WE NEED
19 TO KNOW IS IT THE SAME ONE. IF IT'S NOT, IT'S A MOOT POINT.
20 IF IT IS, THEN THAT GENTLEMAN COULDN'T BE A WITNESS FOR
21 EITHER SIDE IF MS. SMITH IS GOING TO BE A POTENTIAL ELIGIBLE
22 JUROR.

23 MS. STROM: YES, SIR. EXCUSE ME ONE MINUTE. (OFF
24 RECORD WITH CO-COUNSEL) YOUR HONOR, IT MAY TAKE A FEW
25 MOMENTS JUST TO VERIFY THE EMPLOYMENT. SO IF I MAY SUGGEST

VOIR DIRE -- GROUP 2

1 WE CONTINUE---

2 THE COURT: SURE.

3 MS STROM: ---AND I CAN GET THAT INFORMATION.

4 THE COURT: WHAT WE'LL DO IS WE'LL FIND OUT AND BY THE
5 TIME I THINK YOU'LL COME, MS. SMITH, TO YOUR QUESTIONING,
6 WE'LL KNOW THE ANSWER TO THAT, OKAY?

7 JUROR NUMBER 333: OKAY.

8 THE COURT: ALL RIGHT. NOW, MR. STUBER, I BELIEVE YOU
9 HAD A QUESTION ABOUT A COUPLE OF WITNESSES. WHICH ARE THOSE,
10 PLEASE, SIR?

11 JUROR NUMBER 353: JIMMY BOLT, PAUL SILVAGGIO, IF IT'S
12 THE SAME BILL MCCAULEY, IF IT'S THE SAME PERSON THAT I KNOW,
13 AND A KEN BROCK, KENNETH BROCK.

14 THE COURT: OKAY. WHAT I LIKE TO DO IS GO TO THE FIRST
15 ONE YOU MENTIONED, AND LET'S DO THEM INDIVIDUALLY. JUST TELL
16 ME HOW YOU KNOW THESE PEOPLE. IS IT SOCIAL? IS IT
17 PROFESSIONAL? HOW LONG HAVE YOU KNOWN THEM? IN WHAT
18 CAPACITY?

19 JUROR NUMBER 353: JIMMY BOLT, IF IT'S THE SAME ONE,
20 WORKS FOR THE SHERIFF'S OFFICE. I WAS A RESERVE DEPUTY THERE
21 FROM '88 TO '93. HE WAS IN A DIFFERENT DIVISION THAN I WAS.
22 I JUST KNEW WHO HE WAS.

23 THE COURT: OKAY.

24 JUROR NUMBER 353: THE SAME WITH PAUL SILVAGGIO. THE
25 SAME WITH, I BELIEVE, KENNETH BROCK. I DID NOT KNOW THEM. I

VOIR DIRE -- GROUP 2

1 KNEW WHO THEY WERE. AND MR. MCCAULEY, I BELIEVE, IS A
2 FACULTY MEMBER AT BOB JONES, IF IT'S THE SAME MCCAULEY.

3 THE COURT: MR. MCCAULEY?

4 JUROR NUMBER 353: BILL MCCAULEY.

5 THE COURT: OKAY. CAN ONE SIDE OR THE OTHER HELP ME
6 OUT ON MR. MCCAULEY? IS THAT THE SAME INDIVIDUAL FROM
7 FURMAN?

8 MS. STROM: NO, SIR.

9 THE COURT: OKAY. NOW, THE OTHER THREE, I IMAGINE ARE
10 WITH THE SHERIFF'S OFFICE. THAT'S MY GUESS.

11 MS. STROM: NO, SIR. KENNETH BROCK IS WITH THE
12 ANDERSON COUNTY SHERIFF'S OFFICE, NOT GREENVILLE.

13 THE COURT: OKAY. MAYBE HE WAS WITH THE SHERIFF'S
14 OFFICE TEN OR FIFTEEN YEARS AGO WHEN YOU WERE A RESERVE, I
15 DON'T KNOW. BUT WE KNOW TWO, BOLT AND SILVAGGIO, ARE THE
16 SAME ONES THAT YOU HAVE HAD DEALINGS WITH IN THE PAST.
17 BOLT -- I'M SORRY. BROCK MAY BE. MY QUESTION TO YOU, MR.
18 STUBER, IS, IF YOU WERE A JUROR AND THESE WITNESSES TESTIFIED
19 WOULD IT AFFECT YOUR ABILITY TO BE FAIR OR WOULD YOU STILL BE
20 A FAIR JUROR?

21 JUROR NUMBER 353: I THINK I COULD BE A FAIR JUROR.

22 THE COURT: OKAY. ALL RIGHT. IS THERE ANYONE ELSE ON
23 THE WITNESS LIST WHO YOU RECOGNIZE, SIR?

24 JUROR NUMBER 353: NO, SIR.

25 THE COURT: OKAY. NOW, MR. SMITH, DID YOU HAVE YOUR

VOIR DIRE -- GROUP 2

1 HAND RAISED? DO YOU KNOW ANY OF THESE WITNESSES?

2 JUROR NUMBER 334: YES. DR. MICHAEL WARD, BUT HE'S
3 FROM MT. PLEASANT, SOUTH CAROLINA. HE'S A PEDIATRICIAN.

4 THE COURT: OKAY. SO YOU KNOW A DOCTOR MICHAEL WARD
5 WHO IS A PEDIATRICIAN FROM MT. PLEASANT?

6 JUROR NUMBER 334: YEAH, FROM MT. PLEASANT.

7 THE COURT: INDICATING FROM COUNSEL, THAT'S NOT THE
8 SAME DR. WARD. IS THERE ANYONE ELSE ON THE LIST WHO YOU
9 RECOGNIZE?

10 JUROR NUMBER 334: NO.

11 THE COURT: ALL RIGHT. THANK YOU. WE'RE NOW GOING TO
12 PROCEED TO INDIVIDUAL QUESTIONING. WE MAY ASK YOU SOME
13 FURTHER QUESTIONS ABOUT THESE WITNESSES, AND WE'RE GOING TO
14 START FIRST WITH MS. MCKINLEY. SO IF THE OTHER THREE OF YOU
15 WOULD JUST PLEASE RETURN BACK TO THE OTHER COURTROOM AND
16 WE'LL CALL YOU IN THE ORDER IN WHICH YOUR NAME APPEARS ON THE
17 PANEL LIST. THANK YOU SO MUCH. WE WILL DO OUR BEST TO GET
18 YOU OUT OF HERE AS QUICKLY AS WE CAN.

19 (MS. MCKINLEY, JUROR NUMBER 250 REMAINS AND BALANCE OF
20 PANEL EXITS COURTROOM AT 9:39 A.M.)

21 MS. MCKINLEY, I'M GOING TO HAVE YOU SIT UP HERE NEXT TO
22 ME IN THE WITNESS CHAIR. ON THE WAY OVER HERE, IF YOU WOULD,
23 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

24 JENNIFER MCKINLEY (WHITE
25 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 VOIR DIRE BY THE COURT:

2 Q MS. MCKINLEY, THIS CASE THAT WE ARE GOING TO TRY ARISES,
3 ACCORDING TO THE INDICTMENT, FROM AN INCIDENT WHICH ALLEGEDLY
4 OCCURRED IN GREENVILLE COUNTY ON DECEMBER THE 6TH OF THE YEAR
5 2000. IN THE INDICTMENT IT ALLEGES THE VICTIM OF THE ALLEGED
6 MURDER WAS ERIC NICHOLSON. AT THAT TIME MR. NICHOLSON WAS A
7 STATE TROOPER. HE WAS A HIGHWAY PATROLMAN.

8 THIS CASE RECEIVED SOME PUBLICITY, AND I WANT TO KNOW
9 INITIALLY FROM YOU IF YOU RECALL ANYTHING YOU MAY HAVE BEEN
10 EXPOSED TO IN THE MEDIA ABOUT THIS CASE OR FROM ANY OTHER
11 SOURCE?

12 A I LIVED IN CHARLESTON AT THE TIME IN SCHOOL, AND I JUST
13 HEARD ABOUT IT.

14 Q OKAY. TELL ME WHAT YOU HEARD ABOUT IT.

15 A THAT AN OFFICER WAS SHOT AND KILLED.

16 Q WHERE WAS HE SHOT AND KILLED?

17 A ON WOODRUFF ROAD.

18 Q AND WHAT ELSE HAVE YOU HEARD?

19 A THAT'S -- I'M NOT BIG INTO POLITICS. I DON'T REALLY
20 WATCH T.V. OR -- I READ THE NEWSPAPER. THAT'S ABOUT IT.

21 Q OKAY. YOU SAID YOU HEARD THIS INFORMATION. FROM WHAT
22 SOURCE DID YOU HEAR THIS INFORMATION?

23 A I THINK I DID SEE IT ON T.V. AND MY PARENTS LIVE HERE
24 AND THEY WERE -- IT WAS SAD. THAT'S ALL I REMEMBER.

25 Q DO YOU REMEMBER ANYTHING ELSE ABOUT THE SPECIFIC

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 ALLEGATIONS OF WHAT HAPPENED?

2 A NO.

3 Q OKAY. SO YOU REMEMBER THAT A TROOPER WAS KILLED ON THE
4 SIDE OF THE ROAD?

5 A UH-HUH (AFFIRMATIVE).

6 Q AND THAT'S THE EXTENT OF WHAT YOU CAN RECALL?

7 A AND I REMEMBER SEEING ON THE NEWS A CAR. THAT'S -- I
8 MEAN, I CAN REMEMBER SEEING, LIKE, WHERE THEY WOULD SHOW
9 CLIPS, AND THAT WAS REALLY---

10 Q WHAT KIND OF CAR DID YOU SEE?

11 A I REMEMBER SEEING A STATE TROOPER CAR.

12 Q A STATE TROOPER CAR. ALL RIGHT.

13 NOW, THERE MAY BE SOME ALLEGATION OF AN INCIDENT OR
14 SERIES OF INCIDENTS IN ANDERSON COUNTY. WHEN I MENTION THE
15 TERM "ANDERSON COUNTY" IN CONNECTION WITH THIS CASE DOES THAT
16 TRIGGER ANY MEMORY THAT YOU HAVE ABOUT THIS CASE?

17 A NO.

18 Q LET ME TELL YOU THE REASON I ASK YOU IN DETAIL AS TO
19 WHAT YOU CAN RECALL. IF YOU ARE SELECTED AS A JUROR IN THIS
20 CASE, MS. MCKINLEY, YOU WILL RECEIVE AN OATH. THAT OATH
21 WOULD REQUIRE YOU TO FIND THE TRUTH FROM THE EVIDENCE. IN
22 THAT REGARD, YOU COULD NOT BE SWAYED OR INFLUENCED IN ANY WAY
23 FROM WHAT YOU MAY HAVE HEARD OR BEEN EXPOSED TO BY PUBLICITY
24 OR OTHERWISE OUTSIDE OF COURT. DO YOU UNDERSTAND THAT?

25 A YES.

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 Q IF YOU WERE SELECTED AS A JUROR, WOULD YOU HONOR YOUR
2 OATH IN THAT REGARD AND SERVE AS A FAIR AND IMPARTIAL JUROR?

3 A YES.

4 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
5 THE CASE OR THE GUILT OR INNOCENCE OF THE DEFENDANT?

6 A NO.

7 Q KEEPING IN MIND THE LEGAL PRINCIPLE WE HAVE DISCUSSED,
8 THE PRESUMPTION OF INNOCENCE AND THE STATE'S BURDEN OF PROOF,
9 COULD YOU -- DEPENDING ON THE FACTS AND THE EVIDENCE AND
10 FOLLOWING THE LAW, IF YOU BELIEVED THAT A DEFENDANT WAS
11 GUILTY OF A PARTICULAR CRIME AND THE STATE HAD PROVED IT
12 BEYOND A REASONABLE DOUBT, COULD YOU FIND THAT DEFENDANT
13 GUILTY?

14 A YES.

15 Q IF ON THE OTHER HAND YOU WERE NOT PERSUADED BEYOND A
16 REASONABLE DOUBT OF THE DEFENDANT'S GUILT, IN OTHER WORDS,
17 THE STATE HAD FAILED TO MEET ITS BURDEN, IN THAT EVENT WOULD
18 YOU FIND THE DEFENDANT NOT GUILTY?

19 A I WOULD FIND HIM INNOCENT YEAH.

20 Q VERY GOOD. NOW, I WANT YOU TO UNDERSTAND WE MAY NOT
21 EVEN HAVE A SENTENCING HEARING IN THIS CASE. BUT BECAUSE WE
22 POSSIBLY COULD I HAVE TO ASK YOU AND THE ATTORNEYS HAVE TO
23 ASK YOU QUESTIONS ABOUT YOUR VIEWS ON THE DEATH PENALTY. DO
24 YOU UNDERSTAND THAT?

25 A YES.

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 Q WHEN A JURY MOVES TO THE SENTENCING PHASE, THE SECOND
2 PHASE, THAT MEANS THE JURY HAS ALREADY FOUND A PARTICULAR
3 DEFENDANT -- WE'RE NOT TALKING ABOUT THIS CASE. WE'RE
4 TALKING ABOUT THE PROCESS IN GENERAL. -- A DEFENDANT GUILTY
5 OF THE CRIME OF MURDER. SO AT THAT POINT, HAVING FOUND A
6 DEFENDANT GUILTY OF MURDER, THERE IS NO DEFENSE. THERE IS NO
7 SELF-DEFENSE. THERE IS NO EVIDENCE THAT WOULD REDUCE IT
8 BELOW MURDER. IT'S A MURDER, AND WE'RE MOVING INTO THE
9 SENTENCING PHASE. AT THAT POINT WE WOULD HEAR EVIDENCE THAT
10 I HAVE REFERRED TO YOU AS EVIDENCE IN AGGRAVATION AND
11 EVIDENCE IN MITIGATION.

12 EXAMPLES OF MITIGATION EVIDENCE COULD BE A DEFENDANT'S
13 BACKGROUND, MENTAL HEALTH STATUS, CHARACTER, FAMILY HISTORY,
14 THINGS OF THAT NATURE. AND I WANT TO KNOW THAT IF I
15 INSTRUCTED YOU AS PART OF YOUR OATH TO GIVE SERIOUS AND
16 MEANINGFUL CONSIDERATION TO BOTH AGGRAVATING CIRCUMSTANCES
17 AND MITIGATING CIRCUMSTANCES IN MAKING YOUR DECISION WOULD
18 YOU HONOR YOUR OATH IN THAT REGARD?

19 A YES.

20 Q OKAY. AND LET ME TELL YOU THE REASON I ASK THAT.
21 SOMETIMES AN INDIVIDUAL MAY HAVE A PERSONAL FEELING THAT'S
22 NOT CONSISTENT WITH A LEGAL PRINCIPLE AND A JUROR SITTING
23 OVER IN THE JURY BOX AND THE JUROR HEARS SOMETHING THAT THEY
24 MAY PERSONALLY DISAGREE WITH. AND THE JUROR MAY SAY TO
25 HIMSELF OR HERSELF, I DON'T REALLY THINK THAT'S RIGHT. WELL,

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 A JUROR IS UNDER AN OATH TO FOLLOW THE LAW. AND WHAT I WANT
2 TO KNOW IS, IF YOU WERE EVER IN THAT SITUATION AND YOU HAD A
3 FEELING THAT WAS DIFFERENT FROM WHAT I INSTRUCTED YOU TO
4 CONSIDER, WOULD YOU DISREGARD YOUR OATH OR WOULD YOU FOLLOW
5 THE LAW AND GIVE CONSIDERATION TO THOSE THINGS INSTRUCTED BY
6 THE COURT?

7 A I PROBABLY WOULDN'T BE ABLE TO TAKE THAT OATH.

8 Q AND WHERE IS THAT?

9 A I WOULD DO WHAT MY HEART TOLD ME.

10 Q OKAY. SO YOU WOULD DISREGARD YOUR OATH AS A JUROR?

11 A NO, I WOULDN'T GIVE THE OATH.

12 Q OKAY. SO YOU WOULD NOT TAKE AN OATH BECAUSE YOU KNEW UP
13 FRONT YOU WOULD DO WHAT YOU WANT TO DO REGARDLESS OF THE LAW?

14 A (PAUSE) NO. I WOULD DO WHAT -- I WOULD DO WHAT WAS
15 RIGHT. WHAT -- I MEAN, I'M OPINIONATED, YES, ON SOME THINGS,
16 YOU KNOW, AS FAR AS THE DEATH PENALTY AND THINGS LIKE THAT.

17 Q WHAT'S YOUR OPINION OF THE DEATH PENALTY?

18 A I THINK IT'S GOOD. SOMETIMES I DON'T THINK PEOPLE GET
19 AS MUCH PUNISHMENT AS THEY SHOULD. IT MIGHT DEPEND ON THE
20 FACTS. I MEAN, YOU KNOW, ON -- BUT, YES, LIKE AS FAR AS, YOU
21 KNOW, IF SOMEONE HAD A MENTAL PROBLEM AND -- I DON'T THINK
22 THAT'S ANY EXCUSE FOR KILLING SOMEONE.

23 Q ALL RIGHT. LET'S USE THAT EXAMPLE. LET'S SAY YOU'RE ON
24 A JURY AND I INSTRUCTED YOU TO -- THAT MENTAL HEALTH, UNDER
25 THE LAW, IS SOMETHING WHICH YOU MUST CONSIDER UNDER YOUR OATH

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 IN MAKING A DECISION. I WOULD NEVER TELL YOU WHAT YOUR
2 DECISION HAD TO BE, BUT IN ORDER TO MAKE A DECISION YOU HAD
3 TO GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO MANY
4 FACTORS -- AND LET'S JUST SAY MENTAL HEALTH -- AND YOUR VIEW
5 IS YOU DON'T BELIEVE THAT'S A PROPER EXCUSE UNDER THE LAW.
6 IT'S NOT A PROPER MITIGATING CIRCUMSTANCE. IN THAT EVENT
7 WOULD YOU CONSIDER AND GIVE SERIOUS CONSIDERATION TO ONE'S
8 MENTAL HEALTH OR WOULD YOU GO ON YOUR HEART AND DISREGARD IT?

9 A I WOULD DO WHAT THE LAW -- BECAUSE THAT'S WHAT'S RIGHT
10 TO DO. I WOULD DO WHAT WAS ASKED OF ME AS A CITIZEN. BUT,
11 YES, I CAN ALSO KEEP MY OWN BELIEFS. THOSE ARE MY FEELINGS.
12 I WOULD DO WHAT WAS RIGHT.

13 Q WHAT'S RIGHT, TO DO WHAT YOU WANT TO DO OR DO WHAT THE
14 LAW SAYS UNDER YOUR OATH? TELL ME WHAT---

15 A WHAT THE LAW SAYS UNDER MY OATH IS WHAT I SHOULD DO.

16 Q NOW, IF YOU ARE IN THAT PREDICAMENT AT ANY POINT AS A
17 JUROR ARE YOU CONFIDENT IN YOUR ABILITY TO ABANDON YOUR
18 PRECONCEPTION, ABANDON YOUR FEELINGS, AND FOLLOW THE OATH
19 WITH INTEGRITY AND FOLLOW THE INSTRUCTIONS GIVEN BY THE
20 COURT? ARE YOU CONFIDENT YOU COULD DO THAT?

21 A INTEGRITY IS THE KEY WORD. YEAH, THAT'S -- YES.

22 Q IF YOU WERE A JUROR AND THE CASE HAD GONE TO THE
23 SENTENCING PHASE, MA'AM, COULD YOU DEPENDING ON THE FACTS AND
24 CIRCUMSTANCES AND GIVING CAREFUL, THOUGHTFUL, MEANINGFUL
25 CONSIDERATION TO BOTH AGGRAVATING CIRCUMSTANCES AND

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 MITIGATING CIRCUMSTANCES, IF YOU BELIEVED AFTER DOING THAT
2 THAT THE APPROPRIATE SENTENCE WAS LIFE IMPRISONMENT, COULD
3 YOU VOTE FOR LIFE IMPRISONMENT?

4 A YES.

5 Q ON THE OTHER HAND, IF YOU WERE A JUROR AND AFTER
6 CAREFULLY REVIEWING THE EVIDENCE, CAREFUL AND THOUGHTFUL
7 CONSIDERATION TO AGGRAVATING CIRCUMSTANCES, MITIGATING
8 CIRCUMSTANCES, IF YOU BELIEVED THE DEATH PENALTY WAS
9 APPROPRIATE, COULD YOU VOTE FOR THE DEATH PENALTY?

10 A YES.

11 Q IN SOUTH CAROLINA IN THE EVENT OF A DEATH SENTENCE, OF
12 COURSE, IT MUST BE UNANIMOUS, ALL JURORS MUST AGREE. EACH
13 JUROR MUST SIGN HIS OR HER NAME TO THE DEATH VERDICT FORM.
14 IN THAT EVENT COULD YOU SIGN YOUR NAME TO THE VERDICT FORM?

15 A YES.

16 Q DO YOU RECALL LOOKING AT THAT SHEET THAT LISTED THE
17 THREE TYPES OF JURORS?

18 A UH-HUH (AFFIRMATIVE).

19 Q IF ONE OF THOSE CATEGORIES DESCRIBES YOU, WHICH ONE
20 DOES?

21 A THREE.

22 Q IF YOU WERE SELECTED THEN, WOULD YOU HONOR YOUR OATH AND
23 SERVE AS A FAIR AND IMPARTIAL JUROR?

24 A YES.

25 Q AND WOULD YOU APPROACH JURY SERVICE WITH AN OPEN MIND TO

JENNIFER MCKINLEY -- VOIR DIRE BY THE COURT

1 FIND THE TRUTH FROM THE EVIDENCE AND APPLY THE LAW AS I
2 INSTRUCT IT?

3 A YES.

4 Q AND EVEN APPLY THE LAW IF THE LAW IS NOT CONSISTENT WITH
5 YOUR VIEW OF WHAT IS RIGHT AND WRONG?

6 A YES.

7 Q MS. MCKINLEY, DO YOU KNOW OF ANY REASON WHY YOU COULD
8 NOT SERVE ON THIS JURY? I MAY NOT HAVE ASKED THE RIGHT
9 QUESTION AND YOU MAY BE THINKING I'M GOING TO ASK SOME
10 QUESTION. WELL, I'M BASICALLY AT THE END OF MY QUESTIONS.
11 DO YOU KNOW OF ANY REASON WHY YOU COULD NOT SERVE AS A FAIR
12 JUROR?

13 A NO.

14 THE COURT: OKAY . THE ATTORNEYS ARE NOW GOING TO HAVE
15 AN OPPORTUNITY TO ASK YOU SOME QUESTIONS, MA'AM. I MAY HAVE
16 SOME FOLLOW UP AT THAT TIME.

17 VOIR DIRE BY MR. MAULDIN:

18 Q MS. MCKINLEY, I WANT TO JUST SPEND A FEW MINUTES THIS
19 MORNING WITH YOU AND I'M GOING TO CONCENTRATE MY QUESTIONS ON
20 YOUR VIEWS OF CAPITAL PUNISHMENT AND FOLLOW-UPS REGARDING
21 WHERE YOU HAVE A CONFLICT BETWEEN WHAT YOU ARE BEING
22 INSTRUCTED BY THE COURT TO DO AND WHAT YOU MIGHT HAVE THOUGHT
23 SHOULD BE DONE AND HOW YOU RESOLVE THAT CONFLICT.

24 FIRST OF ALL, KEEP IN MIND YOU MAY FEEL LIKE YOU'RE ON
25 TRIAL, BUT YOU'RE NOT. YOU KNOW, YOU ARE A CITIZEN WHO HAS

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 BEEN SUMMONED TO COME IN, AND IT IS BEING DETERMINED WHETHER
2 YOU ARE QUALIFIED TO BE A JUROR. IF YOU ARE EXCUSED FROM
3 JURY DUTY, YOU GO ABOUT YOUR NORMAL LIFE. IN OTHER WORDS,
4 THERE'S NO PENALTY INVOLVED IN THIS.

5 LET ME FURTHERMORE ASK YOU, WITH REGARD TO YOUR VIEW ON
6 THE DEATH PENALTY, I WANT YOU TO DESCRIBE TO ME OR EXPLAIN TO
7 ME HOW YOU FEEL ABOUT THE DEATH PENALTY AND ITS USE IN OUR
8 SYSTEM.

9 A I THINK IT'S GREAT FOR THOSE WHO COMMIT THE CRIME.

10 Q OKAY. SLIP JUST A LITTLE CLOSER TO THE MIKE.

11 A THOSE WHO COMMIT THE CRIME LIKE THAT SHOULD PAY.

12 Q OKAY. AND HAVE YOU HAD THE VIEWS BASICALLY THAT YOU
13 HAVE ABOUT THE DEATH PENALTY OVER AN EXTENDED PERIOD OF TIME
14 OR IS THIS SOMETHING THAT YOU HAVE DECIDED RECENTLY OR---

15 A THAT'S HOW I WAS RAISED.

16 Q OKAY. AND WERE YOU RAISED IN GREENVILLE OR IN THIS
17 COMMUNITY?

18 A IN GREENVILLE.

19 Q OKAY. WHAT DO YOU FEEL OR HOW DO YOU FEEL ABOUT THE
20 PURPOSE OF THE DEATH PENALTY? (PAUSE) WHAT WOULD YOU
21 DESCRIBE IN YOUR OWN WORDS? AND AGAIN, THIS IS YOU TALKING,
22 NOT -- LET'S JUST---

23 A RIGHT.

24 Q LIKE WE'RE HAVING A CONVERSATION.

25 A HOW WOULD I DESCRIBE THE DEATH PENALTY?

1 Q HOW WOULD YOU DESCRIBE YOUR VIEW OF THE PURPOSE OF THE
2 DEATH PENALTY?

3 A THE PURPOSE OF THE DEATH PENALTY IS A PUNISHMENT FOR
4 SOMETHING YOU'VE DONE. AND I THINK THE DEATH PENALTY SHOULD
5 BE SHOWN AS AN EXAMPLE FOR OTHERS, IF YOU DO THIS, YOU KILL
6 SOMEONE, IF YOU MURDER SOMEONE, YOU WILL BE MURDERED
7 YOURSELF. YOU WILL BE KILLED YOURSELF.

8 Q ALL RIGHT. NOW, DO YOU BELIEVE THAT THE DEATH PENALTY
9 IN OUR SYSTEM IS USED NOT OFTEN ENOUGH, TOO OFTEN OR ABOUT
10 RIGHT? AND I'VE GIVEN YOU KIND OF THREE CHOICES. YOU CAN
11 EXPLAIN IT IN ANY WAY YOU WANT.

12 A RIGHT. TO TELL YOU THE TRUTH, I DON'T KNOW. I DON'T --
13 I TRY TO FOCUS MY LIFE ON POSITIVE THINGS, AND THOSE ARE
14 NEGATIVE THINGS TO ME. I DON'T CARE TO TELL YOU -- I MEAN, I
15 DO. I THINK IT'S VERY UNFORTUNATE, BUT I TRY NOT TO ABSORB
16 MY LIFE WITH THOSE TYPES OF THINGS.

17 Q OKAY. DO YOU -- A MOMENT AGO YOU SAID THAT WHERE A
18 PERSON HAD BEEN CONVICTED OR CHARGED AND CONVICTED OF A
19 MURDER, THAT PERSON SHOULD ALSO -- AND I THINK YOU USED THE
20 WORD "BE MURDERED."

21 A YEAH.

22 Q DO YOU -- WOULD YOU EQUATE THAT BELIEF, YOUR OWN
23 PERSONAL BELIEF, WOULD YOU EQUATE THAT BELIEF WITH WHAT
24 SOMETIMES MIGHT BE CALLED AN EYE FOR AN EYE? IS THAT A GOOD
25 WAY OF DESCRIBING THAT?

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 A NO.

2 Q OKAY. CAN YOU DESCRIBE IT IN YOUR OWN WORDS THEN?

3 A I THINK EVERYONE -- I MEAN, EVERYBODY HAS A LIFE. AND
4 FOR SOMEONE TO THINK THAT THEY CAN TAKE SOMEONE ELSE'S LIFE
5 IS JUST SICK, AND I THINK THAT THEY ARE SICK AND SOMETHING IS
6 WRONG WITH THEM. THERE'S A LOT OF PEOPLE IN THIS WORLD AND
7 WE DON'T NEED THOSE KIND OF PEOPLE IN THIS WORLD.

8 Q ALL RIGHT. NOW THE COURT TALKED TO YOU ABOUT THE FACT
9 THAT IN A CASE OF THIS NATURE THE FIRST PHASE OF THAT TRIAL
10 WOULD BE ABOUT WHETHER THE PERSON ACCUSED OF THE OFFENSE WAS
11 GUILTY OR NOT. THAT'S THE ISSUE AT THE FIRST PHASE OF THE
12 TRIAL. THE JURY THAT SITS AND HEARS THAT INFORMATION AND
13 THEN MAKES A DECISION ON THE VERDICT IS THE SAME JURY THAT
14 THEN DECIDES A SENTENCING IF A CONVICTION OF MURDER IS HAD.
15 DO YOU FOLLOW ME?

16 A YES.

17 Q ALL RIGHT. THE QUESTION I GUESS I HAVE FOR YOU IS,
18 BEFORE SENTENCING EVER BECOMES AN ISSUE, THE PERSON INVOLVED
19 OR CHARGED IN THE CASE MUST BE CONVICTED OF MURDER. SO
20 BEFORE WE EVER ARE DECIDING WHETHER IT'S A LIFE SENTENCE OR A
21 DEATH SENTENCE, THE PERSON HAS TO HAVE ALREADY BEEN
22 CONVICTED.

23 LET'S KIND OF FAST FORWARD AND SAY THAT YOU ARE A MEMBER
24 OF A JURY WHO HAS FOUND A PERSON GUILTY OF INTENTIONAL AND,
25 BASED UPON THE EVIDENCE AT THE SENTENCING PHASE, AGGRAVATED

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 MURDER. FROM YOUR STATEMENT REGARDING WHERE A PERSON HAS
2 COMMITTED A MURDER THEY SHOULD ALSO BE KILLED, I GET THE
3 IMPRESSION, MS. MCKINLEY, THAT A PERSON CONVICTED OF AN
4 INTENTIONAL ACT OF MURDER YOU WOULD BELIEVE SHOULD BE GIVEN
5 THE DEATH PENALTY?

6 A YES.

7 Q NOW, AND CORRECT ME IF I'M WRONG -- THIS IS WHERE I WANT
8 TO CONCENTRATE BECAUSE THE LAW IN OUR STATE SAYS THAT THE
9 DEATH PENALTY IS NEVER A REQUIREMENT -- BUT THE LAW MAY BE
10 DIFFERENT FROM WHAT YOUR PERSONAL VIEWS ARE.

11 A UH-HUH (AFFIRMATIVE).

12 Q NOW, IF THE JUDGE INSTRUCTED YOU -- LET'S SAY THAT
13 YOU'RE AT THE SECOND TRIAL AND YOU HAVE FOUND A PERSON GUILTY
14 OF MURDER AND IT WAS AN INTENTIONAL MURDER AND IT WAS AN
15 AGGRAVATED MURDER -- YOU FOUND THE EXISTENCE OF AN
16 AGGRAVATING FACTOR -- AND THE JUDGE INSTRUCTED YOU TO TAKE
17 INTO CONSIDERATION PERSONAL INFORMATION ABOUT THE PERSON THAT
18 HAD BEEN CONVICTED. IT COULD BE THINGS THAT HE HAD
19 MENTIONED, THE MENTAL HEALTH OF THE PERSON, THE AGE OF THE
20 PERSON, INFORMATION ABOUT HIS BACKGROUND, THAT KIND OF WHAT
21 THE LAW CALLS MITIGATING CIRCUMSTANCES, BASED UPON YOUR OWN
22 PREDETERMINED VIEW, WOULD YOU REALLY BE ABLE TO GIVE ANY
23 SIGNIFICANT CONSIDERATION TO THAT IN CONSIDERING A LIFE
24 SENTENCE FOR A PERSON CONVICTED OF MURDER OR WOULD YOU BE
25 INCLINED TO IMPOSE THE DEATH PENALTY BASED UPON WHAT YOU HAVE

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 TOLD US?

2 A I WOULD HAVE -- I WOULD MAKE A DECISION ON -- BY WHAT
3 THE EVIDENCE I HEARD, ON THE THINGS I HAD HEARD ABOUT THE
4 PERSON. I'M A PRETTY GOOD -- I CAN TELL WHAT KIND OF PERSON
5 SOMEBODY IS.

6 Q AND THIS WAS A PERSON THAT YOU HAD CAST A VOTE WAS
7 GUILTY OF INTENTIONAL MURDER?

8 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT TO
9 THAT QUESTION. I MEAN, IT'S PRESUPPOSED IN THE WHOLE
10 SITUATION THAT---

11 MR. MAULDIN: WELL, WE'RE PRESUPPOSE---

12 SOLICITOR ARIAIL: EXCUSE ME. UNTIL EVERYBODY HAS
13 VOTED. THE FACT SHE HAS VOTED FOR SOMETHING IS NOT THE ISSUE
14 BECAUSE THEY HAVE ALL VOTED AT THAT TIME. THE QUESTION IS,
15 CAN SHE -- AS SHE SAID, GAVE HER ANSWER, SHE CAN CONSIDER THE
16 FACTS AND DETERMINE WHAT THE APPROPRIATE SENTENCE SHOULD BE.

17 THE COURT: AND YOUR PRECISE QUESTION IS WHAT?

18 MR. MAULDIN: I THINK THE QUESTION IS IF THIS JUROR --
19 AND MY QUESTION TO MS. MCKINLEY WAS IF SHE HAD CAST A VOTE AT
20 THAT FIRST PHASE OF THE TRIAL THAT THE PERSON WAS GUILTY --
21 AND I -- SHE UNDERSTANDS THAT QUESTION -- COULD SHE THEN TAKE
22 INTO CONSIDERATION THE INSTRUCTIONS FROM THE COURT TO
23 CONSIDER SOMETHING OTHER THAN A DEATH SENTENCE?

24 THE COURT: YOU CAN ASK HER THAT.

25 Q DO YOU UNDERSTAND THAT QUESTION?

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 A YEAH. YES, I COULD. AND I WOULD CONSIDER IF THEY HAD
2 MENTAL HEALTH PROBLEMS THE INTENT WHY THEY KILLED SOMEONE.
3 WHY THEY KILLED SOMEONE AND, YOU KNOW, IF -- I MEAN, -- I
4 DON'T -- I HAVE TO KNOW A LOT ABOUT THEM.

5 Q OKAY.

6 A AND SEE THEM.

7 Q LET ME ASK YOU----

8 A AND LOOK INTO THEIR SOUL.

9 Q LET ME ASK YOU ABOUT WHAT YOU SAID, "THEIR INTENTION,"
10 BECAUSE WE HAVE TO MAKE SURE WE CLARIFY IT. IN SOUTH
11 CAROLINA IN ORDER TO BE CONVICTED OF MURDER THE STATE WOULD
12 HAVE HAD TO PROVE TO YOUR SATISFACTION BEYOND A REASONABLE
13 DOUBT THAT IT WAS AN INTENTIONAL ACT OF MURDER.

14 A RIGHT.

15 Q ALL RIGHT. NOW, AND YOUR QUESTION -- THEN THE QUESTION
16 WOULD BE LET'S -- WE'RE ASSUMING AND HAVE FOUND THAT A PERSON
17 IN THIS HYPOTHETICAL CASE HAS BEEN CONVICTED OF INTENTIONAL
18 MURDER. NOW, IN THAT PARTICULAR CASE, LET ME REPHRASE IT A
19 LITTLE BIT -- OBVIOUSLY YOU BELIEVE THAT THE DEATH PENALTY
20 COULD BE A POSSIBLE SENTENCE IN A CASE LIKE THAT?

21 A UH-HUH (AFFIRMATIVE).

22 Q DO YOU BELIEVE THAT A LIFE SENTENCE IN AN AGGRAVATED
23 CASE THAT A LIFE SENTENCE IS OR COULD BE A SERIOUS PENALTY
24 FOR A PERSON CONVICTED OF MURDER?

25 SOLICITOR ARIAIL: I'M GOING TO OBJECT TO THE FORM OF

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 THAT QUESTION AT THIS JUNCTURE AND FOR THE REST OF THE TIME.
2 AN AGGRAVATED CASE IS A DIFFERENT SITUATION THAN A MURDER
3 ACCOMPANIED AND FOUND BY THE JURY TO HAVE AN AGGRAVATING
4 CIRCUMSTANCE.

5 MR. MAULDIN: I'LL REPHRASE THAT.

6 THE COURT: ALL RIGHT. I SUSTAIN IT. THE QUESTION IS
7 WHETHER SHE BELIEVES LIFE IN PRISON WITHOUT POSSIBILITY OF
8 PAROLE IS A SERIOUS SENTENCE.

9 MR. MAULDIN: THAT'S RIGHT. AND I COULDN'T HAVE ASKED
10 IT BETTER.

11 Q DO YOU BELIEVE FOR AN OFFENSE OF MURDER WITH AN
12 AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES IS A SERIOUS
13 PENALTY FOR THE OFFENSE OF MURDER?

14 A YES.

15 Q YOU DO?

16 A UH-HUH (AFFIRMATIVE).

17 Q ALL RIGHT. CAN YOU -- THE NEXT QUESTION, MS. MCKINLEY,
18 WOULD BE REGARDING WHERE THERE IS A CONFLICT BETWEEN YOUR
19 VIEW AND THE JUDGE'S VIEW. ONCE AGAIN, YOUR VIEWS ARE NOT ON
20 TRIAL, AND IN THE EVENT YOU WERE RULED NOT QUALIFIED BECAUSE
21 OF YOUR VIEWS, THEN THAT WOULD BE THE END OF IT. YOU WOULD
22 GO HOME.

23 A CAN I ASK YOU SOMETHING?

24 Q YES, MA'AM.

25 A WHY WOULD YOU HAVE A JURY IF IT WASN'T ABOUT THEIR

1 VIEWS?

2 Q AND LET ME TRY TO ANSWER THAT. YOU RECALL THE JURY
3 TELLING YOU THAT WHEN A PERSON COMES IN A -- AND HE MAY NOT
4 USE THESE SAME WORDS. BUT BASICALLY THE POINT IS THIS, IF A
5 PERSON COMES INTO COURT AND THEY HAVE A PERSONAL VIEW ON A
6 SUBJECT -- AND THE DEATH PENALTY IS A PERFECT EXAMPLE --

7 A RIGHT.

8 Q -- IF A PERSON CAME INTO COURT AND SAID, "IN THE EVENT A
9 PERSON IS CONVICTED OF MURDER, I'M GOING TO GIVE THE DEATH
10 PENALTY" -- AND THAT MAY BE THEIR PERSONAL VIEW. YOU MAY
11 HAVE ANOTHER JUROR WHO WOULD COME IN AND SAY, "WHERE A PERSON
12 IS CONVICTED OF MURDER, I'M NEVER GOING TO GIVE THE DEATH
13 PENALTY. I AM OPPOSED TO IT COMPLETELY. I WOULD ALWAYS GIVE
14 A LIFE SENTENCE." DO YOU SEE THOSE TWO? THOSE ARE PERSONAL
15 VIEWS.

16 A YEAH. I DON'T HAVE THOSE.

17 Q NEITHER OF THOSE TWO JURORS SHOULD SERVE ON A DEATH
18 PENALTY CASE IN OUR STATE. THEY ARE DISQUALIFIED. AND YOU
19 UNDERSTAND WHY?

20 A RIGHT.

21 Q ALL RIGHT. WITH THAT IN MIND -- SO THE POINT IS,
22 SOMETIMES PERSONAL VIEWS DO CONFLICT WITH WHAT THE LAW IS.
23 AND IT'S NOT THAT THEIR PERSONAL VIEWS ARE ON TRIAL. IT IS
24 THAT THEY SHOULD BE EXCUSED FROM THE JURY SO THAT THEY WON'T
25 HAVE TO MAKE THAT---

1 A BECAUSE THEY WOULDN'T BE ABLE TO MAKE A FAIR DECISION.

2 Q THAT'S RIGHT.

3 A RIGHT.

4 Q NOW, LET'S TALK ABOUT THAT JUST A MOMENT. YOU SAID --
5 AND I WROTE THIS DOWN. I MAY NOT HAVE WRITTEN -- I WRITE
6 QUICK AS I CAN. "PROBABLY WOULDN'T BE ABLE TO FOLLOW THAT
7 OATH." AND THEN THE JUDGE ASKED YOU ABOUT IT AND YOU SAID,
8 "I WOULDN'T TAKE THAT OATH." AND THEN THERE WERE ADDITIONAL
9 QUESTIONS.

10 A YEAH.

11 Q AND I WANT TO GO TO KIND OF THE HEART OF THAT AND THEN
12 WE'LL BE DONE. IF YOU -- IF THERE'S A QUESTION THAT THIS
13 COURT DOES NOT ASK YOU OR IF I DON'T ASK YOU OR THE
14 PROSECUTOR AND YOU FOUND YOURSELF IN A SITUATION WHERE YOU
15 HAD A PERSONAL BELIEF ABOUT WHAT WAS RIGHT AND WHAT WAS WRONG
16 AND THAT PERSONAL BELIEF WAS IN DIRECT CONFLICT WITH WHAT THE
17 JUDGE GAVE YOU AS THE INSTRUCTIONS THAT YOU NEEDED TO FOLLOW
18 TO BE A JUROR, DO YOU BELIEVE THAT THAT WOULD CREATE A
19 CONFLICT FOR YOU? AND TO THE EXTENT NECESSARY, IF YOU COULD,
20 EXPLAIN HOW YOU FEEL ABOUT THAT.

21 A SO BASICALLY IF I WAS A JUROR I WOULD BE ASKED TO MAKE A
22 DECISION BASED ON THE EVIDENCE OF WHETHER THIS PERSON KILLED
23 THIS MAN? THAT'S WHAT I WOULD BE ASKED AS A JUROR?

24 Q THAT'S ONE OF THE THINGS.

25 A AND SO I WOULD NOT HAVE TO USE MY HEART AND -- YEAH, I

1 COULD MAKE A FAIR DECISION.

2 Q SO YOU WOULD BE ABLE TO SET ASIDE THE CONFLICT THAT YOU
3 MIGHT HAVE ON PERSONAL VIEWS AND FOLLOW THE INSTRUCTIONS
4 GIVEN BY THE COURT? IS THAT...

5 A IF I WAS ASKED TO, YES.

6 Q WELL, THAT WOULD BE A REQUIREMENT.

7 A YEAH. WELL, I UNDERSTAND THAT.

8 Q ALL RIGHT. FINALLY, MS. MCKINLEY, I WANT TO TAKE YOU
9 FORWARD FOR JUST A MOMENT ON THIS BECAUSE WE HAVE TO MAKE
10 CERTAIN -- WE'VE GOT TO PUT THE CART BEFORE THE HORSE HERE.
11 WE HAVE A TRIAL WHERE A PERSON IS CHARGED WITH MURDER. THE
12 JURY HEARS THE EVIDENCE OF THE OFFENSE, AND THEN THEY
13 DELIBERATE TO DECIDE ONLY WHETHER THE PERSON IS GUILTY OR NOT
14 GUILTY. THEY THEN -- TO GO TO THE SECOND PHASE, THEY WOULD
15 HAVE TO FIND THE PERSON GUILTY OF MURDER.

16 SO LET'S ASSUME. LET'S GO TO THAT POINT AND NOW WE'RE
17 GETTING READY TO GO INTO THE SENTENCING PHASE. THE
18 PROSECUTION WOULD COME IN AND SAY, "HERE IS THE AGGRAVATING
19 INFORMATION ABOUT THIS CASE THAT THE STATUTE SETS OUT ALLOWS
20 THE PROSECUTION TO ASK THAT THE JURY CONSIDER THE DEATH
21 PENALTY." THE DEFENSE WOULD HAVE AN OPPORTUNITY TO PRESENT
22 WHAT THE COURT HAS INSTRUCTED OR DESCRIBED TO YOU AS THE
23 MITIGATING INFORMATION. AND, MS. MCKINLEY, KEEP IN MIND THAT
24 DOESN'T MEAN THAT IT EXCUSES OR IS A DEFENSE. IT'S NOT
25 INSANITY OR ALIBI OR SELF-DEFENSE, NONE OF THAT. THIS IS

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 STUFF ABOUT THE DEFENDANT HIMSELF. AND THE DEFENDANT WOULD
2 BE SAYING TO THE JURY, CONSIDER A LIFE SENTENCE FOR THAT
3 OFFENSE DUE TO THOSE CIRCUMSTANCES.

4 I UNDERSTAND YOU TO SAY THAT YOU COULD CONSIDER BOTH OF
5 THOSE PENALTIES AS A POSSIBLE SENTENCE IN A CASE OF THAT
6 NATURE; IS THAT RIGHT?

7 A YES.

8 Q SAY YOU'RE ON THAT JURY. YOU GO IN TO DELIBERATE A
9 SENTENCE, AND YOU DELIBERATE AND YOU DELIBERATE AND YOU HAVE
10 VARIOUS VOTES AND EVERYBODY IS EXPRESSING THEIR VIEW AND YOU
11 HAVE PLENTY OF TIME FOR EVERYBODY TO TALK ABOUT THE CASE.
12 YOU TAKE A -- AFTER FULL DELIBERATION YOU TAKE A VOTE AND THE
13 VOTE IS TEN PEOPLE WANT ONE SENTENCE AND TWO PEOPLE WANT THE
14 OTHER SENTENCE. SO THERE WEREN'T -- THERE ARE ONLY TWO
15 POSSIBLE. I'M GOING TO PUT YOU IN BOTH OF THOSE GROUPS AND
16 ASK YOU TO REACT, IF I COULD.

17 LET'S SAY THAT YOU ARE ONE OF THE TWO THAT FEEL STRONGLY
18 FOR YOUR VIEW AS TO THE APPROPRIATE SENTENCE, AND THERE ARE
19 TEN PEOPLE, A HEAVY MAJORITY, WHO DISAGREE WITH YOU. NOT
20 KNOWING YOU ANY BETTER THAN WE DO, WE NEED TO GET SOME INPUT
21 AS TO HOW YOU WOULD REACT. IN THAT SITUATION WOULD YOU TEND
22 TO SIMPLY SIDE WITH THE MAJORITY OR WOULD YOU TEND TO HOLD TO
23 THAT POSITION, EVEN IF FACED WITH A HEAVY MAJORITY?

24 A I DON'T THINK I HAVE A CHOICE, I MEAN, REALLY. BECAUSE
25 ISN'T IT LIKE -- DON'T YOU HAVE TO HAVE ALL TWELVE TO FIND

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 HIM EITHER GUILTY OR NOT GUILTY. ONE JUROR THAT IS -- MAKES
2 A DIFFERENT DECISION WOULD TOTALLY -- YOU'D HAVE TO HAVE A
3 RETRIAL OR -- I DON'T KNOW.

4 Q WELL, THE LAW -- LET ME JUST SIMPLY ASK THE QUESTION
5 THIS WAY AND PERHAPS THE COURT COULD CLARIFY THE QUESTION AS
6 TO THE LAW. HE'S THE SPEAKER OF THE LAW. THE NATURE OF MY
7 QUESTION IS, IF FACED WITH THAT SITUATION WHERE YOU HAD A
8 HEAVY MAJORITY ON ONE SIDE -- AND IT DOESN'T MATTER WHICH
9 SENTENCE IS WHICH -- YOU'VE GOT TEN IN FAVOR OF ONE OF THE
10 PENALTIES AND TWO IN FAVOR OF -- OR ONE IN FAVOR. LET'S SAY
11 IT WAS ONLY YOU, ONE PERSON. AND THE QUESTION IS, WOULD YOU
12 BE INCLINED TO SIDE WITH THE MAJORITY FOR THE PURPOSE OF
13 WRITING A VERDICT, WRITING A SENTENCE?

14 A NO. I MADE MY DECISION. THAT'S IT.

15 Q ALL RIGHT. SO YOU WOULD STICK BY YOUR POSITION?

16 A YEAH.

17 Q EVEN IF THERE WERE ONLY ONE OF YOU?

18 A YEAH.

19 Q CONVERSELY NOW, IF YOU WERE IN THE MAJORITY, LET'S SAY A
20 MAJORITY OF TEN -- OR NINE OR TEN OR ELEVEN, A HEAVY
21 MAJORITY -- AND THERE WAS ONE PERSON ON THE OTHER SIDE WHO
22 EQUALLY HAD MADE THEIR DECISION, WHO HAD DECIDED AN
23 INDIVIDUAL DECISION ABOUT WHAT THEY THOUGHT THE APPROPRIATE
24 PENALTY WAS IN THIS CASE, WOULD YOU ATTEMPT TO FORCE THAT
25 JUROR TO COME TO THE MAJORITY---

JENNIFER MCKINLEY -- VOIR DIRE BY MR. MAULDIN

1 A NO.

2 Q ---OR WOULD YOU RESPECT THAT JUROR'S VIEW ON THEIR
3 ATTITUDE ABOUT WHAT WAS APPROPRIATE?

4 A WHAT IS IT, HONOR, LOVE, RESPECT -- YEAH. I WOULD
5 RESPECT THEM.

6 MR. MAULDIN: ALL RIGHT. THANK YOU, MA'AM.

7 THE COURT: MR. ARIAIL?

8 SOLICITOR ARIAIL: THANK YOU. JUST BRIEFLY.

9 VOIR DIRE BY SOLICITOR ARIAIL:

10 Q MS. MCKINLEY, I'M BOB ARIAIL, AND I'M THE SOLICITOR FOR
11 GREENVILLE AND PICKENS COUNTY, AND MS. STROM AND MS. HERVEY
12 WILL BE ASSISTING ME. I JUST HAVE TWO QUESTIONS.

13 ONE BEING THAT I NOTICED THAT YOU HAD HAD A RECENT EVENT
14 WITH A MEMBER OF THE HIGHWAY PATROL?

15 A UH-HUH (AFFIRMATIVE)..

16 Q AND WHAT I WANTED TO DETERMINE IS IF THIS CASE INVOLVED
17 TESTIMONY FROM OR ABOUT A HIGHWAY PATROLMAN -- AS THE JUDGE
18 TOLD YOU, THIS IS THE HIGHWAY PATROLMAN WHO WAS SHOT IN THE
19 LINE OF DUTY -- WOULD THAT IN ANY WAY IMPACT YOUR ABILITY TO
20 BE A FAIR JUROR?

21 A NO.

22 Q ALL RIGHT. NUMBER TWO, I NOTICED THAT ON YOUR
23 QUESTIONNAIRE YOU POINTED OUT YOU'VE GOT A BUMPER STICKER
24 THAT RELATES TO ABORTION KILLS?

25 A UH-HUH (AFFIRMATIVE).

JENNIFER MCKINLEY -- VOIR DIRE BY SOLICITOR ARIAIL

1 Q DOES THAT IN ANY WAY HAVE ANY IMPACT ON YOUR VIEWS OF
2 THE DEATH PENALTY OR WOULD IT IMPACT YOU IF YOU WERE FORCED
3 TO MAKE A DECISION REGARDING THAT?

4 A NO.

5 SOLICITOR ARIAIL: THANK YOU. THAT'S ALL I HAVE, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. MS. MCKINLEY, THANK YOU SO
8 MUCH. YOU WILL BE TAKEN TO A JURY ROOM JUST BRIEFLY AND
9 WE'LL GET YOU BACK OUT HERE IN JUST A COUPLE MINUTES AND
10 YOU'LL BE FREE TO GO.

11 JUROR NUMBER 250: OKAY.

12 THE COURT: THANK YOU, MA'AM.

13 (JUROR EXITS COURTROOM AT 10:11 A.M.)

14 THE COURT: THE JUROR HAS BEEN EXCUSED. QUALIFIED OR
15 NOT QUALIFIED, WHAT SAYS THE STATE?

16 SOLICITOR ARIAIL: QUALIFIED.

17 THE COURT: Y'ALL CAN HUDDLE UP IF YOU'D LIKE, AND JUST
18 LET ME KNOW YOUR POSITION IN A MOMENT.

19 (DEFENSE COUNSEL OFF RECORD)

20 MR. MAULDIN: YOUR HONOR, WE PUT ON THE RECORD OUR
21 MOTION THAT MS. MCKINLEY IS NOT QUALIFIED, AND I CITE
22 ESSENTIALLY THE FOLLOWING POSITIONS THAT MS. MCKINLEY TOOK.
23 WE CONCEDE THAT THERE WAS TESTIMONY FROM THIS WITNESS THAT
24 COULD, IF TAKEN IN ITS BROADEST TEXT, ATTEMPT TO REHABILITATE
25 HER. I DID IT MYSELF. SO I'M -- YOU KNOW, TO THE EXTENT I'M

MATTERS AND MOTIONS

1 TO BLAME FOR ALLOWING THIS WITNESS TO BECOME QUALIFIED, THEN
2 I'LL TAKE THE BLAME FOR IT. BUT THE THING IS, MS. MCKINLEY
3 -- IN ALL OF MY YEARS OF DOING THIS WORK, I'VE NEVER HAD A
4 JUROR SAY THAT THEY THINK THE DEATH PENALTY IS GREAT, UNTIL
5 NOW. IT'S THE FIRST TIME I'VE HEARD ONE SAY THE DEATH
6 PENALTY WAS GREAT. AND IT JUST TOOK MY BREATH.

7 SHE -- WHEN CONFRONTED WITH THE QUESTION OF WHETHER SHE
8 WOULD FOLLOW HER OATH, SHE DID SAY THAT SHE COULD FOLLOW HER
9 OATH, BUT IT IS CRYSTAL CLEAR, AT LEAST TO ME, FROM THE
10 ANSWERS AND THE RESPONSES, IF A PERSON IS CONVICTED OF
11 INTENTIONAL MURDER, HE SHOULD BE MURDERED WAS A QUOTE FROM
12 HER. WE WENT BACK, TALKED ABOUT CONSIDERATION OF MITIGATION
13 AND WE TALKED ABOUT WHETHER A PENALTY OF LIFE IN PRISON WAS A
14 SERIOUS PENALTY. WELL, SHE CAME CLEAN -- SHE CAME WITH
15 PASSING GRADES ON ALL OF THOSE. BUT I THINK IT IS OUR
16 RESPONSIBILITY TO TRY TO MAKE SURE WHAT WE'RE GETTING ARE
17 REALLY APPROPRIATE AND LEGAL JURORS IN THIS PROCESS.

18 MS. MCKINLEY -- AND I WROTE DOWN THAT WITH REGARD TO
19 MENTAL HEALTH HER FIRST RESPONSE WAS THAT SHE WOULD NOT
20 CONSIDER THAT WHEN SHE WAS BEING QUESTIONED BY YOU. AND THEN
21 YOU REPEATED THE QUESTION AND SHE CHANGED HER ANSWER.

22 AND IN THAT REGARD, ONE MESSAGE THAT I WOULD CERTAINLY
23 LIKE TO PUT ON THE RECORD IS WITH REGARD TO THE PRELIMINARY
24 REMARKS TO ALL THE JURORS, AND IT RELATES DIRECTLY TO MS.
25 MCKINLEY BUT IN GENERAL TO ALL.

MATTERS AND MOTIONS

1 WHAT I THINK IS HAPPENING IS THE COURT IS COUCHING A
2 GENERAL DESCRIPTION OF THE JUROR, WHETHER THEY CAN FOLLOW
3 THEIR OATH, AND IT PLACES THE -- NO JUROR IS GOING TO WANT TO
4 SAY, "WELL, I'M NOT GOING TO FOLLOW MY OATH." I THINK WE'VE
5 GOT TO LOOK AT WHAT THE JUROR REALLY THINKS IS IN FACT RIGHT
6 OR WRONG AT THE FRONT END.

7 FOR EXAMPLE, THE JUDGE QUALIFIED THE JUROR INITIALLY,
8 AND THE VERY LAST THING THAT ESSENTIALLY YOU ASKED HER WAS
9 WHETHER SHE WAS A ONE, A TWO OR A THREE JUROR, AND SHE SAID A
10 NUMBER THREE. THEY WILL ALL BE NUMBER THREES AT THAT STAGE
11 BECAUSE THE COURT IS DOING A GOOD JOB OF MAKING SURE THEY
12 UNDERSTAND THAT THEY WILL BE GIVEN THESE INSTRUCTIONS.

13 I THINK WE OUGHT TO ASK THEM UP FRONT, "HAVING READ THE
14 DOCUMENT HOW DO YOU FEEL ABOUT THE OFFENSE OF MURDER AND THE
15 DEATH PENALTY AND LIFE IMPRISONMENT?" AND SEE HOW THEY
16 RESPOND UP FRONT. OTHERWISE, WE'RE NOT REALLY GETTING A
17 CLEAR PICTURE, AND THIS IS A PERFECT EXAMPLE.

18 SO WE DO OBJECT TO HER QUALIFICATIONS, YOUR HONOR. WE
19 BELIEVE THAT SHE IS A JUROR WHO WOULD ALWAYS GIVE A DEATH
20 SENTENCE IN THE CASE OF A CONVICTION OF INTENTIONAL MURDER.

21 **THE COURT:** THANK YOU. I FIND THE JUROR IS QUALIFIED
22 WHEN CONSIDERING THE TOTALITY OF HER RESPONSES AND MY CAREFUL
23 OBSERVATIONS OF HER. I FIND THAT HER VIEWS WOULD NOT PREVENT
24 OR SUBSTANTIALLY IMPAIR THE PERFORMANCE OF HER DUTIES AS A
25 JUROR IN ACCORDANCE WITH HER INSTRUCTIONS AND OATH. I FIND

MATTERS AND MOTIONS

1 SHE IS QUALIFIED.

2 THE SECOND OBJECTION IS JUST TO HOW THE COURT IS
3 CONDUCTING THE VOIR DIRE. I'M GOING TO CONTINUE IN THE SAME
4 MANNER AND ORDER OF WHICH THE VOIR DIRE HAS BEEN CONDUCTED
5 THUS FAR. YOUR EXCEPTION IS NOTED FOR THE RECORD.

6 THE JUROR HAVING BEEN QUALIFIED, WHAT SAYS THE STATE?

7 SOLICITOR ARIAIL: PRESENT HER.

8 THE COURT: WHAT SAYS THE DEFENDANT?

9 MR. MAULDIN: EXCUSE THE JUROR, YOUR HONOR.

10 THE COURT: IS THERE ANY BATSON MOTION?

11 SOLICITOR ARIAIL: NONE, YOUR HONOR.

12 THE COURT: EXCUSE MS. MCKINLEY AND ASK MR. STUBER --
13 THE NEXT JUROR IS MR. STUBER -- TO COME IN. EXCUSE HER AND
14 BRING MR. STUBER IN.

15 (JUROR NUMBER 353 ENTERS COURTROOM AT 10:20 A.M.)

16 MARK STUBER (WHITE MALE),
17 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 VOIR DIRE BY THE COURT:

19 Q MR. STUBER, WE'RE JUST GATHERING INFORMATION, FINDING
20 OUT WHAT YOU'VE HEARD ABOUT THE CASE, YOUR VIEWS ON VARIOUS
21 ISSUES THAT COULD ARISE IN THE CASE. THIS PARTICULAR CASE
22 ARISES FROM AN INCIDENT, ACCORDING TO THE INDICTMENT, WHICH
23 OCCURRED IN GREENVILLE COUNTY BACK ON DECEMBER THE 6TH OF
24 YEAR 2000. IN THE INDICTMENT THE VICTIM IS IDENTIFIED AS
25 ERIC NICHOLSON. I TELL YOU AT THAT TIME MR. NICHOLSON WAS A

MARK STUBER -- VOIR DIRE BY THE COURT

1 STATE TROOPER.

2 THIS CASE RECEIVED PUBLICITY, AND I WANT TO KNOW IF YOU
3 AT ANY TIME HAVE BEEN EXPOSED TO ANY INFORMATION ABOUT THIS
4 CASE FROM THE MEDIA OR OTHERWISE. AND IF YOU HAVE, WOULD YOU
5 SHARE IN DETAIL WHAT YOU CAN RECALL?

6 A JUST ABOUT WHEN IT HAPPENED IT WAS ON -- YOU KNOW, OF
7 COURSE, WHAT THE MEDIA SAID, THAT A TROOPER HAD BEEN KILLED
8 AND A BRIEF DESCRIPTION OF WHERE. I KNOW THEY NAMED THE PART
9 OF THE HIGHWAY THERE AFTER HIM. I'M NOT EVEN SURE EXACTLY
10 WHERE THAT IS THOUGH. AND THAT FOLLOWING THE SHOOTING THERE
11 HAD BEEN A CHASE AND THAT THEY HAD ARRESTED SOMEONE IN
12 CONNECTION WITH THAT. I DON'T KNOW A LOT MORE THAN THAT.

13 I KNOW WHAT WAS ON THE MEDIA AT THAT TIME. I DON'T GET
14 THE PAPER. I SEE WHAT'S ON THE EVENING NEWS AT NIGHT. SO
15 OTHER THAN THAT, I DON'T KNOW A WHOLE LOT. I'VE SEEN THE
16 MEDIA RECENTLY THAT THE TRIAL WAS COMING UP. OTHER THAN
17 THAT, I DO NOT KNOW A WHOLE LOT.

18 Q OKAY. THAT'S THE EXTENT OF WHAT YOU CAN RECALL ABOUT
19 THE FACTUAL ALLEGATIONS?

20 A UH-HUH (AFFIRMATIVE). I DON'T KNOW -- NEVER DID HEAR
21 REALLY WHY THEY -- HOW THE CONNECTION WAS MADE THAT THIS WAS
22 THE SAME PERSON THAT DID THE ACTUAL SHOOTING. I KNEW THE
23 CHASE WAS THERE, BUT I DON'T KNOW HOW THE CONNECTION -- I
24 NEVER DID HEAR HOW THE CONNECTION WAS MADE.

25 Q DID -- DO YOU RECALL AS TO ANY CIRCUMSTANCE INVOLVED IN

MARK STUBER -- VOIR DIRE BY THE COURT

1 THIS SO-CALLED CHASE OR WHERE IT OCCURRED?

2 A WELL, I KNEW IT WAS UP ON 385 NEAR ROPER MOUNTAIN IS
3 WHERE IT STARTED, I THINK. I THINK IT WENT INTO THE SOUTHERN
4 PART OF THE COUNTY, BUT I'M NOT SURE WHERE.

5 Q OKAY. IF I TOLD YOU THAT THERE MAY BE SOME ALLEGATIONS
6 OF AN INCIDENT OR INCIDENTS THAT OCCURRED IN ANDERSON COUNTY,
7 DOES THAT TRIGGER ANY MEMORY ON YOUR PART?

8 A IT DOES.

9 Q OKAY. TELL ME, WHEN I SAID THAT, WHAT DOES THAT TRIGGER
10 IN YOUR MEMORY?

11 A IF I REMEMBER, I THINK IT ENDED UP ON A DEAD END ROAD OR
12 SOMETHING LIKE THAT IN ANDERSON, AND THERE WAS SOME KIND OF
13 SHOOT OUT THERE OR ALTERCATION WITH THE VEHICLES INVOLVED,
14 AND THEN THAT'S WHERE THE ARREST WAS MADE, I BELIEVE.

15 Q LET ME TELL YOU THE REASON I ASK YOU THAT, MR. STUBER,
16 IS THAT IF YOU ARE SELECTED AS A JUROR IN THIS CASE, YOU
17 WOULD BE GIVEN AN OATH. YOUR OATH WOULD REQUIRE YOU TO FIND
18 THE TRUE FACTS FROM THE EVIDENCE. IN THAT REGARD YOU WOULD
19 REQUIRED TO DISABUSE FROM YOUR MIND AND NOT BE SWAYED OR
20 INFLUENCED IN ANY WAY BY WHAT YOU MAY HAVE BEEN EXPOSED TO
21 OUTSIDE OF THE COURT FROM THE MEDIA OR FROM SOME OTHER
22 SOURCE. DO YOU UNDERSTAND YOUR OBLIGATION IN THAT REGARD?

23 A YES, SIR.

24 Q IF YOU WERE SELECTED AS A JUROR, WOULD YOU SERVE AS A
25 FAIR AND IMPARTIAL JUROR AND REACH A VERDICT BASED ONLY ON

MARK STUBER -- VOIR DIRE BY THE COURT

1 THE FACTS PRESENTED IN TRIAL?

2 A I THINK SO, YES, SIR.

3 Q ARE YOU CONFIDENT IN YOUR ABILITY TO DO SO?

4 A YES, SIR.

5 Q DO YOU HAVE ANY HESITATION IN YOUR ABILITY TO SERVE AS A
6 FAIR JUROR?

7 A NO, SIR.

8 Q WOULD YOU FOLLOW THE LAW AS I INSTRUCT IT?

9 A YES, SIR.

10 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
11 INNOCENCE OF THIS DEFENDANT?

12 A NOT REALLY BECAUSE I DON'T KNOW -- I DON'T MANY OF THE
13 FACTS.

14 Q WHEN YOU SAY, "NOT REALLY," WHAT DOES THAT MEAN? HAVE
15 YOU FORMED AN OPINION, ARE YOU LEANING ONE WAY?

16 A NO. NO, SIR.

17 Q YOU UNDERSTAND THE LEGAL PRINCIPLES THAT I HAVE STRESSED
18 BOTH YESTERDAY AND TODAY, PRESUMPTION OF INNOCENCE AND THE
19 STATE HAVING THE BURDEN OF PROOF?

20 A YES, SIR.

21 Q DO YOU AGREE WITH THOSE LEGAL PRINCIPLES?

22 A YES, SIR.

23 Q IF YOU SERVED AS A JUROR ON A CASE AND, AFTER CAREFULLY
24 CONSIDERING THE EVIDENCE AND FOLLOWING THE LAW, IF YOU
25 BELIEVED A DEFENDANT WAS GUILTY OF THE CRIME CHARGED, COULD

MARK STUBER -- VOIR DIRE BY THE COURT

1 YOU VOTE FOR GUILTY?

2 A YES, SIR.

3 Q ON THE OTHER HAND, IF YOU HAD SERVED AS A JUROR AND
4 FOUND THAT THE STATE HAD NOT MET ITS BURDEN OF PROOF, IN THAT
5 INSTANCE WOULD YOU VOTE FOR NOT GUILTY?

6 A YES, SIR.

7 Q NOW, I WANT YOU TO UNDERSTAND WE'RE GOING TO TALK ABOUT
8 A POTENTIAL SENTENCING PHASE IN GENERAL TERMS. WE MAY NOT
9 EVEN REACH A SENTENCING PHASE IN THIS TRIAL. BUT SINCE WE
10 POSSIBLY COULD, MYSELF AND THE ATTORNEYS ARE GOING TO ASK YOU
11 SOME QUESTIONS ABOUT YOUR VIEWS ON THE DEATH PENALTY. DO YOU
12 UNDERSTAND THAT?

13 A YES, SIR.

14 Q OKAY. WHEN A JURY MOVES TO A SENTENCING PHASE, THAT
15 MEANS A JURY HAS ALREADY CONVICTED A PARTICULAR DEFENDANT OF
16 GUILT OF THE CRIME OF MURDER. AT THAT POINT THERE IS NO
17 DEFENSE. IT IS MURDER.

18 AND SO AS WE MOVE INTO THE SECOND OR SENTENCING PART OF
19 THE TRIAL, WE HEAR ADDITIONAL EVIDENCE. AND THIS IS THE
20 EVIDENCE THAT I'VE TALKED TO YOU ABOUT EARLIER. IT'S THE
21 AGGRAVATION EVIDENCE, EVIDENCE IN MITIGATION. EXAMPLES OF
22 MITIGATION COULD INCLUDE THE MENTAL HEALTH STATUS OF A
23 DEFENDANT, THE AGE OF THE DEFENDANT, THE BACKGROUND, THE
24 FAMILY HISTORY, THINGS OF THAT NATURE. YOUR OATH AS A JUROR
25 WOULD REQUIRE THAT YOU GIVE SERIOUS AND MEANINGFUL

MARK STUBER -- VOIR DIRE BY THE COURT

1 CONSIDERATION TO BOTH AGGRAVATING CIRCUMSTANCES AND TO
2 MITIGATING CIRCUMSTANCES. IF YOU WERE A JUROR, WOULD YOU
3 FOLLOW YOUR OATH IN THAT REGARD AND GIVE THOSE FACTORS, BOTH
4 AGGRAVATING AND MITIGATING, SERIOUS AND MEANINGFUL
5 CONSIDERATION?

6 A YES, SIR, I WOULD.

7 Q SOMETIMES PEOPLE WILL HAVE A PERSONAL VIEW THAT DIFFERS
8 FROM WHAT THE LAW SAYS. AND WHAT I NEED TO KNOW IS THAT IF
9 YOU'RE SITTING IN THE JURY AND I INSTRUCT YOU TO GIVE
10 SOMETHING SERIOUS AND MEANINGFUL CONSIDERATION BEFORE YOU
11 MAKE A FINAL DECISION AND YOU SAY TO YOURSELF, "I DON'T
12 BELIEVE THAT SHOULD BE THE LAW," WHAT I NEED OFTEN KNOW IN
13 THAT SITUATION, IF YOU'RE CONFRONTED WITH THAT ISSUE, WOULD
14 YOU DISREGARD YOUR OATH AND FOLLOW YOUR PERSONAL VIEW OR
15 WOULD YOU HONOR YOUR OATH AND GIVE SERIOUS CONSIDERATION TO
16 THOSE ISSUES AS I INSTRUCT?

17 A I FEEL IT WOULD BE MY DUTY TO HONOR MY OATH IF I AGREE
18 TO SERVE.

19 Q NOW, IF YOU WERE TO SERVE AS A JUROR IN A SENTENCING
20 PHASE, HAVING ALREADY FOUND A DEFENDANT GUILTY OF THE CRIME
21 OF MURDER, COULD YOU DEPENDING ON THE FACTS AND
22 CIRCUMSTANCES, APPLYING THE LAW AS I INSTRUCT IT, MITIGATION
23 AND AGGRAVATION, IF YOU BELIEVED THAT LIFE IN PRISON WAS THE
24 PROPER SENTENCE, COULD YOU VOTE FOR A LIFE SENTENCE?

25 A YES, SIR.

MARK STUBER -- VOIR DIRE BY THE COURT

1 Q ON THE OTHER HAND, CONSIDERING THE EVIDENCE VERY
2 CAREFULLY, FOLLOWING THE LAW, CONSIDERING ALL THE FACTS AND
3 CIRCUMSTANCES, MITIGATION AND AGGRAVATION, IF YOU BELIEVED
4 THE DEATH PENALTY WAS THE APPROPRIATE SENTENCE, COULD YOU
5 VOTE FOR THE DEATH PENALTY?

6 A YES, SIR, I COULD.

7 Q IN SOUTH CAROLINA, IN THE EVENT OF A DEATH SENTENCE,
8 EACH JUROR IS REQUIRED TO SIGN HIS OR HER NAME TO THE VERDICT
9 FORM. IN THAT EVENT, COULD YOU SIGN YOUR NAME TO THE VERDICT
10 FORM?

11 A YES, SIR, IF I BELIEVED THAT WAS THE RIGHT THING TO DO.

12 Q OKAY. DO YOU RECALL THAT LISTING OF THREE TYPES OF
13 JURORS?

14 A YES, SIR.

15 Q IF ONE OF THOSE DESCRIBES YOU, WHICH CATEGORY FITS YOU,
16 SIR?

17 A I DON'T REMEMBER WHAT ORDER THEY WERE IN, BUT I WOULD
18 PUT MYSELF IN THE -- IN NEITHER OF THE EXTREME CATEGORIES AS
19 FAR AS ABSOLUTELY ONE WAY OR THE OTHER. I THINK I WOULD HAVE
20 TO LISTEN TO EVERYTHING AND KNOW FOR SURE I HAD ALL THE FACTS
21 AND UNDERSTOOD COMPLETELY WHAT WAS HAPPENING BEFORE I WOULD
22 MAKE THE DECISION.

23 Q IF YOU WERE SELECTED, SIR, WOULD YOU HONOR YOUR OATH AND
24 SERVE AS A FAIR JUROR?

25 A YES, SIR.

MARK STUBER -- VOIR DIRE BY THE COURT

1 Q AND WOULD YOU APPROACH JURY SERVICE WITH AN OPEN MIND TO
2 FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW THE LAW AS I
3 INSTRUCT IT?

4 A YES, SIR.

5 Q NOW, I NOTICE FROM YOUR RESPONSE EARLIER THAT YOU SERVED
6 YEARS AGO AS A RESERVE DEPUTY. IN FACT, YOU INDICATED YOU
7 KNOW TWO, PERHAPS THREE OF THE POTENTIAL WITNESSES AS A
8 RESULT OF YOUR PRIOR SERVICE AS A RESERVE DEPUTY. DO YOU
9 BELIEVE THAT -- THIS CASE INVOLVES THE DEATH OF A LAW
10 ENFORCEMENT OFFICER, GIVEN YOUR BACKGROUND, WOULD THAT IN ANY
11 WAY AFFECT YOUR ABILITY TO BE FAIR?

12 A I REALLY DON'T THINK SO.

13 Q TELL ME YOUR THOUGHTS ABOUT THAT.

14 A I KNOW I HAVE A -- I WORKED IN LAW ENFORCEMENT FOR QUITE
15 A FEW YEARS, AND I, YOU KNOW -- BUT I WAS RAISED TO UPHOLD
16 THE LAW AND TO FOLLOW THE LAW. BUT IF I AM SELECTED AS A
17 JUROR AND IT'S MY DUTY TO FOLLOW THE COURT AND WHAT'S
18 DIRECTED, I THINK THAT'S JUST AS IMPORTANT. I THINK EVEN AS
19 A LAW ENFORCEMENT OFFICER YOU'VE STILL GOT TO FOLLOW THE LAW
20 IN THE CASE, AND YOU'VE GOT TO FOLLOW THE FACTS, AND THE
21 FACTS NEED TO BE RIGHT, ESPECIALLY IF YOU'RE GOING TO
22 CONSIDER SOMEONE'S LIFE OR DEATH.

23 Q AND I'M NOT TALKING ABOUT THIS CASE, BUT LET'S JUST SAY,
24 IN A HYPOTHETICAL SITUATION, YOU ARE SELECTED TO SERVE ON A
25 JURY. AND LET'S SAY IT'S ONE OF YOUR FELLOW DEPUTIES WHO

MARK STUBER -- VOIR DIRE BY THE COURT

1 IS -- THAT YOU KNEW IN THE PAST OR YOU DIDN'T KNOW BUT YOU
2 HAD ASSOCIATION WITH THAT AGENCY, AND IT TURNED OUT THAT THAT
3 PARTICULAR DEFENDANT WAS GUILTY AS CHARGED AND NOW YOU'RE
4 MOVING TO THE SENTENCING PHASE. WOULD YOUR MIND ALREADY BE
5 MADE UP?

6 A I DON'T THINK SO. I THINK I WOULD STILL HAVE TO BE OPEN
7 ENOUGH TO CONSIDER EVERYTHING BEFORE I MADE A DECISION. I
8 MEAN, I DON'T KNOW ANY OF THEM THAT WELL. I MEAN, I'M NOT
9 REAL GOOD FRIENDS WITH ANY OF THEM. EVEN IF I HAPPENED TO BE
10 A GOOD FRIEND, I, OF COURSE, WOULDN'T BE A JUROR IN THE FIRST
11 PLACE. BUT I DON'T THINK IF I WAS THAT CLEARLY ONE SIDE OR
12 THE OTHER AND A FRIEND OF THAT PERSON THAT I WOULD EVEN
13 CONSIDER BEING A JUROR.

14 Q WELL, DID YOU KNOW TROOPER NICHOLSON?

15 A NO, SIR.

16 Q EVER MET HIM?

17 A NO, SIR.

18 Q I DON'T KNOW WHAT ROLE MR. BOLT, MR. SILVAGGIO, AND MR.
19 BROCK -- IT MAY NOT EVEN BE THE SAME MR. BROCK. HOW CLOSE
20 WERE YOU TO THESE GENTLEMEN WHEN YOU SERVED AS A RESERVE BACK
21 IN THE LATE EIGHTIES AND EARLY NINETIES?

22 A JIMMY BROCK, I RODE WITH ONE SHIFT, I BELIEVE, ONE TIME.
23 I KNEW WHO HE WAS. HE WAS IN THE TRAFFIC DIVISION. I WAS ON
24 THE DELTA -- ON THE NIGHT SHIFT. SO SOMETIMES WE DID OVERLAP
25 IN OUR AREAS AND WE'D BACK EACH OTHER UP.

MARK STUBER -- VOIR DIRE BY THE COURT

1 MR. SILVAGGIO, I WAS INVOLVED WITH IN ONE ARREST, A DU
2 -- IT WASN'T A DUI. IT WAS A -- WE WERE CALLED TO A CALL FOR
3 A GUY WHO WAS SOLICITING HOUSE TO HOUSE FOR SEXUAL FAVORS AND
4 HE WAS HIGH ON PAINT, HUFFING PAINT, AND HE BACKED US UP IN
5 THAT ARREST BECAUSE THE GUY GOT VIOLENT AND TRIED TO FIGHT.
6 OTHER THAN THAT I DON'T -- I JUST KNEW WHO HE WAS. HE WAS ON
7 A DIFFERENT PLATOON AS WELL.

8 Q I THINK THERE WAS ONE FELLOW NAMED BOLT OR HAVE YOU
9 ALREADY MENTIONED HIM?

10 A I JUST KNEW WHO HE WAS. BUT JIMMY WAS THE TRAFFIC
11 OFFICER.

12 Q OKAY. AND DID YOU MENTION BROCK?

13 A BROCK, I JUST KNEW WHO HE WAS.

14 Q OKAY. AND IF THEY HAPPEN TO BE WITNESSES IN THIS CASE
15 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR? WOULD YOU STILL
16 REMAIN A FAIR JUROR?

17 A I THINK I COULD BE A FAIR JUROR.

18 Q AND AGAIN, ARE YOU CONFIDENT IN YOUR ABILITY IN THAT
19 REGARD TO CONTINUE TO SERVE AS A FAIR JUROR?

20 A YES, SIR.

21 THE COURT: ALL RIGHT. I MAY HAVE SOME FOLLOW-UP
22 QUESTIONS, BUT I'M GOING TO GIVE THE ATTORNEYS AN OPPORTUNITY
23 TO ASK YOU QUESTIONS AS WELL, MR. STUBER. THANK YOU, SIR.

24 JUROR NUMBER 353: SURE.

25 THE COURT: SOLICITOR?

MARK STUBER -- VOIR DIRE BY THE COURT

1 SOLICITOR ARIAIL: THANK YOU, JUDGE.

2 VOIR DIRE BY SOLICITOR ARIAIL:

3 Q MR. STUBER, THE JUDGE HAS ALREADY INTRODUCED US, BUT I'M
4 BOB ARIAIL, THE SOLICITOR FOR GREENVILLE. WITH ME IN THIS
5 CASE IS BETTY STROM IN THE BEIGE COAT AND MINDY HERVEY.

6 LET ME JUST GO OVER A COUPLE OF THINGS WITH YOU SO
7 YOU'LL UNDERSTAND. I KNOW THE JUDGE HAS BEEN OVER THE
8 PROCESS. BUT WE GO THROUGH A TRIAL WHERE GUILT IS
9 DETERMINED, AND AFTER GUILT IS DETERMINED THE STATE OF SOUTH
10 CAROLINA HAS PASSED IN ITS LEGISLATURE -- OR THE LEGISLATURE
11 HAS PASSED A LIST OF DIFFERENT ACCOMPANYING CIRCUMSTANCES IN
12 WHICH THE STATE CAN, AFTER A CONVICTION OF MURDER, THEN SEEK
13 THE DEATH PENALTY. WE HAVE TO, OF COURSE, NOTIFY THE COURT
14 WELL IN ADVANCE OF THAT AS TO WHAT WE UNDERSTAND THAT
15 CIRCUMSTANCE TO BE.

16 THOSE CIRCUMSTANCES ARE CALLED CIRCUMSTANCES OF
17 AGGRAVATION. NOW, THE LEGISLATURE CALLS THEM -- WE CALL THEM
18 CIRCUMSTANCES OF AGGRAVATION. THE LAW CALLS THEM
19 CIRCUMSTANCES OF AGGRAVATION. THAT DOESN'T NECESSARILY MEAN
20 IT'S AN AGGRAVATED CASE. IT MEANS THAT ONCE A MURDER IS
21 COMMITTED AND THERE IS A CIRCUMSTANCE THAT ACCOMPANIES IT,
22 THE STATE CAN SEEK THE DEATH PENALTY. AND THOSE ARE SET OUT.

23 AND ONCE YOU HAVE PASSED THAT STAGE AND THE JURY FINDS
24 THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE, THEN THAT'S
25 WHEN YOU GO INTO THE PHASE OF DECIDING -- THE JURY ACTUALLY

MARK STUBER -- VOIR DIRE BY SOLICITOR ARIAIL

1 DECIDES WHAT THE SENTENCE IS. DO YOU UNDERSTAND THAT'S
2 HOW---

3 A YES, SIR.

4 Q SO YOU WOULD ACTUALLY BE DECIDING THE APPROPRIATE
5 SENTENCE. AT THE END OF THAT PROCEEDING THE JUDGE WILL
6 INSTRUCT YOU THAT YOU WILL HAVE -- IF YOU VIEW THAT THE DEATH
7 PENALTY IS THE APPROPRIATE SENTENCE, YOU WILL HAVE TO SIGN
8 THE DOCUMENT. IT WOULD -- THE FACT THAT YOU HAD TO ACTUALLY
9 SIGN THAT DOCUMENT THAT WOULD BE USED TO CARRY OUT THE
10 EXECUTION, WOULD THAT IN ANY WAY IMPAIR YOUR ABILITY TO BE A
11 FAIR AND IMPARTIAL JUROR?

12 A NO, SIR.

13 Q ALL RIGHT. AND IF YOU WERE IN THE JURY DEBATING WHETHER
14 -- OR NEGOTIATING -- NOT NEGOTIATING BUT DELIBERATING OVER
15 SENTENCING AND YOU HAD GONE THROUGH THE DELIBERATION PROCESS
16 AND AT THE END OF THE DELIBERATION PROCESS THERE IS A VOTE
17 AND THE VOTE WAS TEN FOR ONE AND TWO FOR ANOTHER AND YOU WERE
18 IN THE MINORITY POSITION, AND THAT MINORITY POSITION WAS THAT
19 YOU HELD ONE VIEW AS OPPOSED TO THE TEN WHO HELD A CONTRARY
20 VIEW, WOULD YOU AT THAT TIME BE WILLING TO STAND BY YOUR
21 DECISION ALTHOUGH LISTENING TO THE OTHER SIDE, STAND BY YOUR
22 POSITION RATHER THAN JUST CAVING IN TO GO HOME?

23 A YES, SIR.

24 Q ALL RIGHT. AND ON THE CONTRARY, WOULD YOU RESPECT -- IF
25 YOU WERE IN THE TEN, WOULD YOU RESPECT THOSE PEOPLE'S VIEWS,

MARK STUBER -- VOIR DIRE BY SOLICITOR ARIAIL

1 ALTHOUGH TRYING TO CHANGE THEIR MIND AND CONVINCE THEM WITH
2 YOUR POSITION BUT RESPECTING THEIR RIGHT TO HAVE A MINORITY
3 POSITION?

4 A YES, SIR.

5 SOLICITOR ARIAIL: SURE. THANK YOU. THAT'S ALL I
6 HAVE.

7 VOIR DIRE BY MR. MAULDIN:

8 Q MR. STUBER, MY NAME IS JOHN MAULDIN. I THINK THE JUDGE
9 DID INTRODUCE US EARLIER, SO I WON'T GO THROUGH THAT. BUT
10 LET ME FOLLOW UP ON A FEW OF THESE QUESTIONS THAT THE COURT
11 HAS ASKED YOU.

12 AND I THINK THAT FROM THE VERY OUTSET I WANT TO MAKE
13 SURE THAT YOU ARE DOING MORE TALKING THAN ME. YOU DON'T
14 REALLY LEARN MUCH ABOUT SOMEBODY WHEN YOU'RE DOING THE
15 TALKING.

16 A RIGHT.

17 Q SO I NEED TO KNOW HOW YOU FEEL ABOUT SOME OF THESE
18 POSITIONS AND WHAT YOU BRING INTO THIS COURTROOM. YOU'RE NOT
19 ON TRIAL. YOU MAY FEEL LIKE YOU ARE.

20 A RIGHT.

21 Q AND YOUR VIEWS ARE NOT ON TRIAL. AND QUITE FRANKLY, I
22 WOULD SUSPECT THAT YOUR VIEWS ARE GOING TO BE THE SAME WHEN
23 YOU LEAVE HERE WHETHER YOU'RE A QUALIFIED JUROR OR NOT.

24 A RIGHT.

25 Q BECAUSE YOU ARE ENTITLED TO YOUR VIEWS.

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 AND WE HAVE AN AWESOME RESPONSIBILITY. WE NEED TO KNOW
2 WHAT THEY ARE. WE NEED TO KNOW HOW MARK STUBER FEELS ABOUT
3 SOME OF THESE ISSUES.

4 NOW, AND LET ME GO TO THIS PARTICULAR AREA OF
5 QUESTIONING REGARDING THE DEATH PENALTY. TELL ME HOW YOU
6 FEEL OR HOW YOU WOULD DESCRIBE YOUR FEELINGS ABOUT THE DEATH
7 PENALTY, AND LET'S JUST -- AS THOUGH WE WERE HAVING A CHAT.

8 A YEAH. I THINK UNDER THE RIGHT CIRCUMSTANCES, UNDER THE
9 RIGHT INSTANCES OF WHAT HAPPENED IN THE CASE, IN THE RIGHT --
10 IN THE WAY THE LIFE WAS TAKEN, AND IF IT'S MURDER OR
11 WHATEVER, I THINK IT'S -- I THINK THE DEATH PENALTY IS AN
12 OPTION THAT GOD CREATED THAT IS THERE FOR THE BENEFIT OF THE
13 PEOPLE. I THINK THAT, YOU KNOW, THAT'S A GOD-GIVEN RIGHT OF
14 THE GOVERNMENT IN THE BIBLE, IN SCRIPTURE -- AND I THINK THAT
15 -- BUT UNDER THE RIGHT CIRCUMSTANCES. IT'S NOT JUST GIVEN
16 GENERALLY JUST TO DO AWAY WITH PEOPLE THAT YOU DON'T LIKE. I
17 MEAN, THAT WOULD BE CHAOS AND ANARCHY THEN. BUT UNDER THE
18 RIGHT PROVOCATION AND CIRCUMSTANCES, I THINK IT'S JUSTIFIED.

19 Q ALL RIGHT. AND DO YOU -- IF I ASKED YOU WHAT WERE THE
20 REASONS WHY YOU HAD DEVELOPED THOSE VIEWS, YOU KNOW, WHAT
21 WERE -- AND PEOPLE GIVE VARYING REASONS. THEY GIVE RELIGIOUS
22 REASONS, SOCIAL REASONS, FAMILY BACKGROUND REASONS,
23 EDUCATIONAL REASONS, POLITICAL REASONS. CAN YOU TELL ME WHY
24 YOU FEEL LIKE MR. STUBER FEELS THE WAY HE DOES ABOUT THE
25 DEATH PENALTY?

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 A I THINK THAT'S PART OF THE REASON THE WAY I WAS RAISED.
2 I MEAN, MY FATHER, I THINK, HOLDS THE SAME VIEWS OF THAT. HE
3 WAS A MINISTER. LIKE I SAID, IN SCRIPTURE, I THINK THE
4 GOVERNMENT IS GIVEN THE RIGHT IN THE RIGHT INSTANCES TO TAKE
5 THE LIFE OF SOMEONE WHO HAS COMMITTED A CRIME OF THAT NATURE.
6 AND THAT'S PRETTY MUCH WHY I BELIEVE THAT WAY.

7 Q IS THE DEATH PENALTY IN OUR SYSTEM USED -- AND I'LL GIVE
8 YOU THREE CHOICES AND THEN YOU CAN EXPOUND OR EXPLAIN. IS IT
9 USED NOT OFTEN ENOUGH, TOO OFTEN OR ABOUT RIGHT OR ANY OTHER
10 DESCRIPTION?

11 A I WOULD SAY IT'S PROBABLY USED ABOUT RIGHT, MAYBE A
12 LITTLE BIT LESS, BECAUSE PUBLIC OPINION IS SO MUCH AGAINST IT
13 SOMETIMES. IT'S HARD TO SAY, BECAUSE I DON'T KNOW -- I THINK
14 IT'S REALLY ON A CASE BY CASE BASIS. WITHOUT KNOWING EACH
15 INDIVIDUAL CASE, IT'S HARD TO KNOW.

16 Q WOULD YOU -- BEING IN FAVOR -- AND I'LL USE THE TERM IN
17 FAVOR OF USE OF THE DEATH PENALTY AS HOW I WOULD CLASSIFY YOU
18 AT THIS POINT. WHAT WOULD YOU DESCRIBE AS THE MAIN PURPOSE
19 FOR IMPOSITION OF A DEATH PENALTY IN ANY PARTICULAR CASE?
20 WHAT IS THE MAIN PURPOSE THAT THE SYSTEM WOULD USE THE DEATH
21 PENALTY FOR?

22 A I THINK THEY WOULD USE IT AS THE ULTIMATE PUNISHMENT FOR
23 SOMEONE WHO JUST WITH TOTAL DISREGARD OR TOTAL FORETHOUGHT,
24 TOTAL, YOU KNOW, FOR A GOOD REASON OR NO GOOD REASON TOOK
25 SOMEONE ELSE'S LIFE. I DON'T THINK IN EVERY CASE WHERE

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 SOMEONE TOOK A LIFE IT WOULD BE APPROPRIATE.

2 Q CAN YOU GIVE ME WHILE YOU HAVE THAT ON -- CAN YOU GIVE
3 ME AN EXAMPLE OF WHAT WOULD MAKE YOU THINK THAT? WHAT YOU
4 JUST DESCRIBED, TELL ME, IF YOU CAN THINK OF IT, AN OCCASION
5 WHERE A PERSON WOULD HAVE TAKEN SOMEONE'S LIFE AND IT
6 WOULDN'T BE APPROPRIATE?

7 SOLICITOR ARIAIL: I'M GOING TO OBJECT, YOUR HONOR. I
8 THINK THAT'S---

9 THE COURT: SUSTAINED.

10 A UM---

11 THE COURT: YOU DON'T HAVE TO ANSWER THAT, SIR.

12 Q YEAH, LET ME TRY TO REPHRASE IT SO IT WOULD BE AN
13 APPROPRIATE QUESTION, MR. STUBER. WHAT YOU WERE SAYING WAS
14 THAT THERE PERHAPS WOULD BE CIRCUMSTANCES WHERE A PERSON
15 WOULD HAVE TAKEN A LIFE WHERE THE DEATH PENALTY WOULDN'T BE
16 APPROPRIATE. I THINK THAT'S WHAT I WAS UNDERSTANDING. I'M
17 TRYING TO FOLLOW UP ON THAT. LET'S -- LET ME DO IT THIS WAY.
18 LET ME ASK IT THIS WAY. YOU UNDERSTAND THAT THE ONLY TIME
19 THAT A JUROR IN OUR SYSTEM WOULD EVEN BE CALLED UPON TO
20 CONSIDER A SENTENCE OF DEATH WOULD BE WHERE A PERSON HAD
21 ALREADY BEEN CONVICTED OF MURDER?

22 A YES, SIR.

23 Q NO EXCUSES, NO MANSLAUGHTER, NO ALIBI, SELF-DEFENSE,
24 MISTAKE, ACCIDENT. ALL THOSE THINGS HAVE ALREADY BEEN
25 ELIMINATED. SO I WANT TO MAKE SURE THAT WHEN YOU AS A JUROR

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 OR POTENTIAL JUROR WOULD HAVE MOVED INTO THAT SECOND STAGE,
2 YOU WOULD NOT HAVE ALREADY -- IF YOU'VE ALREADY FOUND A
3 PERSON CONVICTED OF INTENTIONAL MURDER, WOULD YOU
4 AUTOMATICALLY BE IMPOSING THE DEATH PENALTY?

5 A NO, I WOULD -- I THINK I'D STILL LIKE TO HEAR WHY THE
6 DEATH PENALTY SHOULD BE THE WAY TO GO. I -- I MEAN, NOT
7 BEING PUT IN THIS POSITION BEFORE IT'S HARD TO KNOW WHAT --
8 HOW YOU'D REACT UNTIL YOU'RE ACTUALLY THERE. BUT I THINK I
9 WOULD STILL WANT TO KNOW MORE, YOU KNOW, AS MUCH AS POSSIBLE
10 BEFORE WE ACTUALLY PUT OUR NAME TO IT AND VOTE FOR THAT.

11 Q ALL RIGHT. AND LET ME FOLLOW UP NOW ON THE TYPE OF
12 THING YOU MIGHT BE PROVIDED WITH THAT WOULD -- YOU'D BE
13 USING. THE JUDGE DESCRIBED AGGRAVATING CIRCUMSTANCES AND
14 MITIGATING CIRCUMSTANCES. I WANT TO TALK A MINUTE WITH YOU
15 ABOUT WHAT THE LAW HAS IDENTIFIED AS POSSIBLE MITIGATING
16 CIRCUMSTANCES IN A CASE. AND IF THESE EXISTED, THE JUDGE, BY
17 LAW, IS REQUIRED TO INSTRUCT THE JURY THAT THEY ARE TO TAKE
18 THESE MATTERS INTO CONSIDERATION. AND THE QUESTION THEN
19 WOULD BE, COULD YOU AS A JUROR ACTUALLY FOLLOW THAT
20 INSTRUCTION? ARE YOU FOLLOWING ME?

21 A UH-HUH (AFFIRMATIVE).

22 Q ALL RIGHT. THE TYPE OF THINGS THAT THE JUDGE WOULD BE
23 INSTRUCTING NEED TO BE CONSIDERED WOULD BE SUCH THINGS AS THE
24 AGE OF A PERSON CONVICTED OF MURDER, THE PRESENT MENTAL
25 HEALTH OF THE PERSON -- NOT NECESSARILY AT THE TIME OF THE

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 OFFENSE, BUT COULD BE, BUT IT COULD BE THE PRESENT MENTAL
2 HEALTH OF PERSON AS WELL AS THE MENTAL HEALTH AT THE TIME OF
3 THE INCIDENT -- INFORMATION ABOUT THAT PERSON'S BACKGROUND OR
4 HISTORY. SO WE'RE TALKING ABOUT PERSONAL INFORMATION, NOT
5 INFORMATION ABOUT THE INCIDENT.

6 A RIGHT.

7 Q WOULD YOU BE ABLE TO TAKE THAT KIND OF INFORMATION INTO
8 CONSIDERATION AND IN FACT CONSIDER IMPOSING A LIFE SENTENCE
9 INSTEAD OF A DEATH SENTENCE?

10 A I BELIEVE I COULD.

11 Q YOU BELIEVE YOU COULD?

12 A YES, SIR.

13 Q NOW I WANT TO FOLLOW UP ON THE JUDGE'S QUESTIONS
14 REGARDING YOUR BACKGROUND WITH LAW ENFORCEMENT. YOU KNOW,
15 THIS CASE, THE COURT HAS INSTRUCTED TO YOU YOU THAT IT
16 INVOLVES THE DEATH OF A LAW ENFORCEMENT OFFICER.

17 A RIGHT.

18 Q SO I WANT TO MAKE SURE I UNDERSTAND YOUR VIEW OR
19 POSITION ON IT. THE JUDGE ASKED YOU IF CONSIDERING YOUR
20 BACKGROUND IN LAW ENFORCEMENT WOULD AFFECT YOUR ABILITY SINCE
21 AN OFFICER, A LAW ENFORCEMENT OFFICER, WAS A VICTIM, AND YOU
22 SAID THAT YOU WOULD WANT TO HEAR ALL THE FACTS -- LET ME --
23 OF THE INCIDENT.

24 LET'S FAST FORWARD FOR A MOMENT, MR. STUBER, AND SAY,
25 ONCE YOU HAVE HEARD ALL THE FACTS, IF YOU HAVE DECIDED THAT

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 THE RIGHT PERSON HAS BEEN CHARGED AND THE OFFENSE WAS
2 MURDER -- SO YOU HAVE THE RIGHT PERSON WHO IS GUILTY AND THE
3 PERSON IS GUILTY OF THE OFFENSE OF INTENTIONAL KILLING OF A
4 LAW ENFORCEMENT OFFICER -- WOULD YOU BE INCLINED TO IMPOSE A
5 DEATH SENTENCE AS OPPOSED TO A LIFE SENTENCE UNDER THAT
6 CIRCUMSTANCE?

7 A IF THAT WAS THE ONLY THING, I---

8 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT. I
9 THINK THAT'S THE SAME AREA WE'VE BEEN IN BEFORE. THE PROPER
10 QUESTION IS, THE JUDGE INSTRUCTS YOU---

11 THE COURT: I SUSTAIN THE OBJECTION.

12 Q ALL RIGHT. LISTEN TO THIS QUESTION, AND I'LL MAKE IT AS
13 SIMPLE -- REALIZING -- AND THIS QUESTION IS BEING ASKED BASED
14 UPON THE INFORMATION YOU'VE PROVIDED TO THIS COURT IN YOUR
15 QUESTIONNAIRE AND WHAT HAS COME OUT THIS MORNING. DO YOU
16 HAVE AN OPINION FROM THE OUTSET ABOUT THE APPROPRIATE -- WHAT
17 THE APPROPRIATE PUNISHMENT WOULD BE FOR A PERSON CONVICTED OF
18 THE INTENTIONAL MURDER OF A LAW ENFORCEMENT OFFICER?

19 A I DON'T THINK I HAVE ANY PRECONCEIVED NOTIONS ABOUT
20 THAT, NO.

21 Q SO YOU'RE NOT PREDETERMINED TO VOTE FOR THE DEATH
22 PENALTY UNDER THAT CIRCUMSTANCE NECESSARILY?

23 A NO, SIR.

24 Q ALL RIGHT. THE LAST QUESTION THAT I'M GOING TO ASK YOU,
25 MR. STUBER, IS A FOLLOW-UP TO MR. ARIAIL'S QUESTIONS

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 REGARDING THIS TEN-TWO MAJORITY TYPE ISSUE.

2 ONCE THE JURY IS IN THE SECOND STAGE OF THE TRIAL, WHICH
3 AS THE COURT MENTIONED A MOMENT AGO MAY NOT EVER EVEN HAPPEN
4 -- BUT YOU HAVE TO PUT THE CART BEFORE THE HORSE TO ASK THE
5 QUESTION -- ONCE THE JURY IS IN A POSITION WHERE THEY ARE
6 DELIBERATING ON THE PENALTY, THEY'VE BEEN PROVIDED -- THEY'VE
7 FOUND THE PERSON GUILTY. THEY HAVE LISTENED TO THE
8 AGGRAVATING INFORMATION. THEY HAVE LISTENED TO THE
9 MITIGATING INFORMATION, IF ANY IS PROVIDED. IT MAY NOT EVEN
10 BE ANY. THEY ARE DELIBERATING AND THEY HAVE HAD A MEANINGFUL
11 OPPORTUNITY TO DISCUSS THE MATTERS WITH EACH OTHER TO THE
12 EXTENT THEY CHOSE TO. THEY TAKE VOTE AFTER VOTE. IT'S GETS
13 LATE, TIME FOR DINNER AND SO FORTH, AND EVERYONE IS GETTING
14 TIRED. AND SO THEY VOTE, AND IT'S TEN VOTES FOR ONE PENALTY
15 AND TWO FOR ANOTHER PENALTY.

16 I WANT TO ASK YOU, IF YOU WERE IN THAT MINORITY, WOULD
17 YOU AFTER FULL DELIBERATION -- NOW, YOU'VE HEARD EVERYBODY'S
18 VIEW TO THE EXTENT THEY'RE GOING TO SHARE IT WITH YOU --
19 WOULD YOU BE INCLINED TO SIDE WITH THE MAJORITY FOR THE
20 PURPOSE OF HAVING A UNANIMOUS -- OR ALL TWELVE AGREE OR WOULD
21 YOU MAINTAIN YOUR POSITION AS AN INDIVIDUAL DECISION ON THE
22 LIFE OR DEATH QUESTION?

23 A I'D HAVE TO GO WITH -- I WOULD FIRST HAVE TO REALLY
24 RECONSIDER WHY I WAS CHOOSING WHAT I WAS CHOOSING. BUT I
25 WOULD HAVE TO GO WITH A CLEAR CONSCIENCE AND CHOOSE WHATEVER

MARK STUBER -- VOIR DIRE BY MR. MAULDIN

1 I THOUGHT WAS THE BEST WAY TO GO.

2 Q ALL RIGHT. SO YOU WOULD NOT NECESSARILY SHIFT TO A
3 MAJORITY SIDE SIMPLY BECAUSE IT WAS A HEAVIER NUMBER?

4 A NOT NECESSARILY.

5 Q AND CONVERSELY, IF YOU WERE IN THE MAJORITY, YOU WOULD
6 NOT INSIST UPON A PERSON WHO WAS IN THE MINORITY TO GIVE UP
7 THEIR VIEW ANY MORE THAN YOU WOULD WANT TO GIVE UP YOUR OWN?

8 A THAT'S CORRECT.

9 Q YOU WOULD BE WILLING TO RESPECT THAT PERSON'S VIEW?

10 A YES, SIR.

11 MR. MAULDIN: THANK YOU, MR. STUBER.

12 THE COURT: MR. STUBER. THANK YOU SO MUCH. THEY'RE
13 GOING TO TAKE YOU TO A JURY ROOM. YOU'LL JUST BE THERE
14 MOMENTARILY. WE'LL GET YOU BACK OUT HERE QUICKLY AND YOU
15 WILL BE FREE TO GO. THANK YOU, SIR.

16 JUROR NUMBER 353: THANK YOU.

17 (JUROR EXITS COURTROOM AT 10:50 A.M.)

18 THE COURT: THE JUROR HAS BEEN EXCUSED. QUALIFIED OR
19 NOT QUALIFIED?

20 SOLICITOR ARIAIL: QUALIFIED.

21 (DEFENSE COUNSEL OFF RECORD)

22 MR. MAULDIN: YOUR HONOR, WE DON'T TAKE A POSITION AS
23 TO HIS QUALIFICATION.

24 THE COURT: ALL RIGHT. I FIND THE JUROR QUALIFIED.
25 HAVING FOUND HIM QUALIFIED, WHAT SAYS THE STATE?

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: PRESENT HIM.

2 THE COURT: WHAT SAYS THE DEFENDANT?

3 MR. MAULDIN: ONE MOMENT.

4 (DEFENSE COUNSEL OFF RECORD)

5 MR. MAULDIN: EXCUSE THE JUROR, YOUR HONOR.

6 THE COURT: EXCUSE THE JUROR AND BRING MR. CLIFFORD
7 SMITH IN. MR. CLIFFORD SMITH.

8 IS THERE ANY BATSON MOTION WITH REGARD TO MR. STUBER?

9 SOLICITOR ARIAIL: LET'S TELL HER NOT TO EXCUSE HIM

10 MS. STROM: SHE'S BRINGING HIM BACK.

11 SOLICITOR ARIAIL: OH, SHE'S BRINGING HIM IN?

12 THE COURT: NO. GO TELL HER TO KEEP MR. STUBER IN THE
13 HALL. LET ME KNOW WHETHER YOU HAVE A BATSON MOTION OR NOT.

14 SOLICITOR ARIAIL: I'M SORRY. I CAN'T THINK THAT
15 QUICK.

16 THE COURT: ALL RIGHT.

17 SOLICITOR ARIAIL: I APOLOGIZE.

18 THE COURT: THAT'S ALL RIGHT. TAKE YOUR TIME, SIR.

19 (COUNSEL FOR THE STATE OFF RECORD)

20 SOLICITOR ARIAIL: I THINK WE'RE GOING TO PUT THE COURT
21 ON NOTICE AT THIS TIME OF POTENTIAL BATSON MOTION ALSO IN
22 REGARD TO THIS INDIVIDUAL, AS WITH MR. RUSSELL AND MR. WHITE.

23 THE COURT: ALL RIGHT. WOULD YOU JUST BRIEFLY STATE
24 THE REASONS WHY MR. STUBER WAS EXCUSED?

25 MR. MAULDIN: YOUR HONOR, THE REASONS WOULD BE THAT THE

MATTERS AND MOTIONS

1 WITNESS IS ACQUAINTED WITH -- THE JUROR IS ACQUAINTED WITH
2 STATE LAW ENFORCEMENT WITNESSES. THE JUROR HAS A BACKGROUND
3 IN LAW ENFORCEMENT. THE JUROR, WE TOOK THE POSITION, AT
4 LEAST I TOOK THE POSITION, AND IN FACT I JUST EXPRESSED IT TO
5 MY OWN CLIENT, THAT IF MR. STUBER WAS PUT ON THE JURY IT
6 WOULD BE LITERALLY SENDING A LAW ENFORCEMENT OFFICER INTO THE
7 JURY ROOM ON A CASE OF THE DEATH OF A LAW ENFORCEMENT
8 OFFICER. I DIDN'T THINK THAT WAS WISE, AND I BELIEVE IT'S AN
9 APPROPRIATE EXERCISE OF A PEREMPTORY STRIKE.

10 THE COURT: I CONCUR AT THIS STAGE. WE'LL REVISIT THE
11 ISSUE LATER SHOULD THE STATE WISH TO PURSUE IT. EXCUSE MR.
12 -- NO. BRING MR. STUBER BACK IN.

13 BAILIFF: OH, YOU TOLD ME TO EXCUSE HIM. LET ME SEE IF
14 HE'S STILL HERE.

15 THE COURT: YOU DIDN'T TELL HER STUBER.

16 BAILIFF: YOU WANT MR. STUBER BACK?

17 THE COURT: HAS HE LEFT THE BUILDING?

18 BAILIFF: I'LL SEE.

19 MR. MAULDIN: I WANT TO GO AHEAD, YOUR HONOR, ALSO AND
20 PUT AN ADDITIONAL, SINCE THIS MAY COME UP LATER.

21 THE COURT: YES, SIR.

22 MR. MAULDIN: THE JUROR DID SAY, POTENTIAL JUROR, MR.
23 STUBER, DID SAY THE DEATH PENALTY WAS A GOD-GIVEN RIGHT TO
24 GOVERNMENT. WE DID TAKE THAT INTO CONSIDERATION IN MAKING
25 OUR STRIKE.

MATTERS AND MOTIONS

1 **THE COURT:** THANK YOU. (PAUSE)

2 **MR. MAULDIN:** THIS JUROR DID APPROACH ABOUT A POSSIBLE
3 WANTING TO BE EXCUSED, YOUR HONOR, IF YOU WILL RECALL.

4 (PAUSE)

5 **THE COURT:** DEPUTY, STAND IN THE HALL -- DEPUTY, STEP
6 OUT IN THE ALL AND BRING ME A BAILIFF.

7 BRING THE NEXT JUROR IN RIGHT AWAY.

8 (PAUSE)

9 (JUROR NUMBER 334 ENTERS THE COURTROOM)

10 **CLIFFORD SMITH** (BLACK MALE) ,
11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 **VOIR DIRE BY THE COURT:**

13 **Q** MR. SMITH, WE DO THANK YOU FOR BEING HERE. WE
14 APPRECIATE THE EFFORT YOU HAVE MADE TO BE WITH US. I'M GOING
15 TO ASK YOU SOME QUESTIONS AS WELL AS THE ATTORNEYS, AND THEN
16 YOU WILL BE EXCUSED.

17 THIS CASE ARISES FROM AN INCIDENT, ACCORDING TO THE
18 INDICTMENT, THAT OCCURRED IN GREENVILLE COUNTY BACK ON
19 DECEMBER THE 6TH OF THE YEAR 2000. THE CRIME SET FORTH IN
20 THE INDICTMENT IS THAT OF MURDER. THE VICTIM IS IDENTIFIED
21 AS AN INDIVIDUAL BY THE NAME OF ERIC NICHOLSON. I TELL YOU,
22 SIR, THAT MR. NICHOLSON WAS A STATE TROOPER, HIGHWAY
23 PATROLMAN, AT THE TIME.

24 THERE WAS PUBLICITY REGARDING THIS CASE, AND I WANT TO
25 KNOW IF THROUGH THE MEDIA OR OTHERWISE YOU HAVE GAINED ANY

CLIFFORD SMITH -- VOIR DIRE BY THE COURT

1 INFORMATION OR KNOWLEDGE ABOUT THIS CASE. IF SO, WOULD YOU
2 SHARE THAT WITH US?

3 A I DON'T KNOW OF ANYTHING.

4 Q DO YOU RECALL ANYTHING ABOUT THIS CASE?

5 A NO, I DON'T THINK SO.

6 Q I THINK THE DAY THIS OCCURRED SOME SCHOOLS OVER IN A
7 PARTICULAR AREA OF TOWN MAY HAVE BEEN CLOSED EARLY OR SHUT
8 DOWN. DOES THAT TRIGGER ANY MEMORY?

9 A NO.

10 Q ALL RIGHT. THERE MAY BE SOME REFERENCE IN THE CASE TO
11 ANDERSON OR EVENTS THAT OCCURRED IN ANDERSON COUNTY. HAVING
12 SAID THAT DOES THAT TRIGGER ANY MEMORY?

13 A NO.

14 Q OKAY. DO YOU UNDERSTAND, SIR, THAT IF YOU ARE SELECTED
15 AS A JUROR YOU WOULD BE GIVEN AN OATH AND YOUR OATH WOULD
16 REQUIRE THAT YOU FIND THE TRUTH ONLY FROM THE EVIDENCE
17 PRESENTED DURING THE CASE IN COURT. DO YOU UNDERSTAND THAT?

18 A YES.

19 Q AND IF YOU ARE SITTING ON THE JURY AND SOMETHING COMES
20 UP THAT TRIGGERS A MEMORY AND YOU THINK TO YOURSELF, "I DO
21 REMEMBER SOMETHING IN THE MEDIA ABOUT THAT," THAT IF THAT
22 OCCURS, UNDER YOUR OATH YOU WOULD BE REQUIRED TO DISREGARD
23 THAT AND FIND THE TRUTH ONLY FROM THE EVIDENCE IN THE
24 COURTROOM. DO YOU UNDERSTAND THAT?

25 A YES.

CLIFFORD SMITH -- VOIR DIRE BY THE COURT

1 Q A FURTHER OBLIGATION YOU WOULD HAVE IS TO FOLLOW THE LAW
2 AS I INSTRUCT IT. COULD YOU DO THAT?

3 A YES.

4 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
5 THE CASE OR THE GUILT OR INNOCENCE OF THIS DEFENDANT?

6 A NO.

7 Q DO YOU UNDERSTAND AND AGREE WITH THOSE LEGAL PRINCIPLES,
8 THE PRESUMPTION OF INNOCENCE AND THE STATE HAVING THE BURDEN
9 OF PROOF TO PROVE GUILT BEYOND A REASONABLE DOUBT?

10 A YES.

11 Q KEEPING THAT IN MIND, IF YOU WERE A JUROR IN ANY
12 PARTICULAR CASE AND AFTER CAREFULLY CONSIDERING THE EVIDENCE
13 AND FOLLOWING THE LAW YOU WERE CONVINCED BEYOND A REASONABLE
14 DOUBT THAT A DEFENDANT WAS GUILTY, WOULD YOU FIND THAT
15 PARTICULAR DEFENDANT GUILTY?

16 A YES.

17 Q ON THE OTHER HAND, IF YOU SAT AS A JUROR AND CAREFULLY
18 CONSIDERED THE EVIDENCE AND THE LAW AND YOU WERE NOT
19 CONVINCED BEYOND A REASONABLE DOUBT OF A DEFENDANT'S GUILT,
20 WOULD YOU VOTE FOR NOT GUILTY?

21 A YES.

22 Q NOW, WE MAY NOT EVEN REACH WHAT I HAVE BEEN REFERRING TO
23 YOU AND YOUR FELLOW JURORS AS THE SECOND PHASE OR THE
24 SENTENCING PHASE. THE CASE MAY BE OVER AT THE END OF THE
25 FIRST PHASE. BUT SINCE WE POSSIBLY COULD GO INTO A

CLIFFORD SMITH -- VOIR DIRE BY THE COURT

1 SENTENCING PHASE, MYSELF AND THE ATTORNEYS WILL ASK YOU SOME
2 QUESTIONS ABOUT YOUR VIEWS ON THE DEATH PENALTY. DO YOU
3 UNDERSTAND THAT?

4 A YES.

5 Q WHEN A JURY MOVES TO A SENTENCING PHASE THAT MEANS THE
6 JURY HAS ALREADY FOUND THE DEFENDANT GUILTY OF MURDER. THERE
7 IS NO DEFENSE. THERE IS NO SELF-DEFENSE, NOTHING THAT
8 APPLIES TO REDUCE IT. MURDER HAS BEEN ESTABLISHED. DO YOU
9 UNDERSTAND THAT?

10 A YES.

11 Q SO AS WE MOVE INTO THE SENTENCING PHASE, A DEFENDANT IS
12 ALREADY GUILTY OF MURDER. AT THAT POINT WE WOULD HEAR WHAT I
13 REFERRED TO EARLIER AS EVIDENCE IN AGGRAVATION AND EVIDENCE
14 IN MITIGATION. EXAMPLES OF MITIGATION EVIDENCE MAY BE A
15 DEFENDANT'S BACKGROUND, FAMILY HISTORY, MENTAL HEALTH STATUS,
16 THINGS OF THAT NATURE. IF I INSTRUCTED YOU AS PART OF YOUR
17 OATH BEFORE MAKING A FINAL DECISION TO GIVE SERIOUS AND
18 MEANINGFUL CONSIDERATION TO BOTH AGGRAVATING CIRCUMSTANCES
19 AND MITIGATING CIRCUMSTANCES WOULD YOU DO SO?

20 A YES.

21 Q IF YOU WERE A JUROR, NOT IN THIS CASE BUT JUST IN A CASE
22 IN GENERAL, AND YOU WERE IN THE SENTENCING PHASE ALREADY
23 HAVING FOUND THE DEFENDANT GUILTY OF MURDER AND YOU CAREFULLY
24 CONSIDERED ALL THE EVIDENCE, YOU FOLLOWED THE LAW, YOU GAVE
25 CAREFUL CONSIDERATION TO BOTH AGGRAVATING CIRCUMSTANCES AND

CLIFFORD SMITH -- VOIR DIRE BY THE COURT

1 MITIGATING CIRCUMSTANCES, IF YOU BELIEVED THAT LIFE
2 IMPRISONMENT WAS THE APPROPRIATE PUNISHMENT, WOULD YOU VOTE
3 FOR LIFE IMPRISONMENT?

4 A NO.

5 Q TELL ME YOUR VIEWS ON THE DEATH PENALTY.

6 A I DON'T AGREE WITH IT.

7 Q YOU DON'T AGREE WITH THE DEATH PENALTY?

8 A NO, I DON'T.

9 Q OKAY. SO YOU WOULD VOTE FOR LIFE IMPRISONMENT?

10 A I DON'T AGREE WITH EITHER.

11 Q WHAT SHOULD HAPPEN? WHAT SHOULD BE THE APPROPRIATE
12 PUNISHMENT?

13 A I JUST DON'T BELIEVE IN -- I BELIEVE IT SHOULD BE SOME
14 OTHER TYPE. IT'S JUST WHAT I BELIEVE. EITHER -- LIFE
15 IMPRISONMENT IS STILL DEATH TOO. I MEAN, THEY'LL BE THERE
16 UNTIL THAT TIME. SO...

17 Q OKAY. OFTENTIMES JURORS WILL COME IN WITH THEIR
18 EXPERIENCES IN LIFE, AND THEY HAVE CERTAIN VIEWS. AND
19 OFTENTIMES THERE WILL BE PEOPLE IN THE JURY WHO HAVE VIEWS
20 DIFFERENT FROM WHAT THE LAW SAYS. YOU'RE NOT REQUIRED --
21 AFTER A CASE IS CONSIDERED, YOU ARE NOT REQUIRED TO IMPOSE
22 THE DEATH PENALTY. YOU ARE NOT REQUIRED TO VOTE FOR LIFE
23 IMPRISONMENT. BUT IN ORDER FOR YOU TO BE AN ELIGIBLE JUROR
24 YOU WOULD HAVE TO BE WILLING TO GIVE CAREFUL CONSIDERATION TO
25 EACH OF THOSE SENTENCES AND BE WILLING TO VOTE FOR THE DEATH

CLIFFORD SMITH -- VOIR DIRE BY THE COURT

1 PENALTY OR WILLING TO VOTE FOR LIFE IMPRISONMENT IF YOU
2 BELIEVED ONE OR THE OTHER WAS THE APPROPRIATE PUNISHMENT.
3 COULD YOU DO THAT OR NOT?

4 A I WOULDN'T BE ABLE TO.

5 THE COURT: ALL RIGHT. I'LL GIVE AN OPPORTUNITY TO
6 COUNSEL IF THEY WANT TO ASK ANY FURTHER QUESTIONS.

7 VOIR DIRE BY MR. MAULDIN:

8 Q I WANT TO MAKE SURE, MR. SMITH, I UNDERSTAND YOUR
9 RESPONSES. YOU SAY YOU WOULD NOT BE ABLE TO DO THAT IS WHAT
10 YOU SAID. AND WHEN YOU SAY, "I WOULD NOT BE ABLE TO DO
11 THAT," TELL ME, SO I CAN MAKE SURE I UNDERSTAND, WHAT YOU'RE
12 ACTUALLY SAYING TO THE COURT.

13 A PRETTY MUCH LIFE IMPRISONMENT IS DEATH. AND THE DEATH
14 PENALTY WOULD BE DEATH. THE END RESULT IS DEATH. SO I WOULD
15 PRETTY MUCH RATHER NOT BE INVOLVED IN, MORE OR LESS, I GUESS,
16 HAVING MY HAND OR A DECISION IN SOMETHING LIKE THAT.

17 Q ALL RIGHT. LET'S TRY TO KIND OF TAKE YOU OUT OF HAVING
18 TO BE INVOLVED WITH SOMETHING AND LET'S JUST TALK ABOUT WHAT
19 YOUR VIEWS ON THESE ISSUES ARE.

20 DO YOU COME INTO THIS COURTROOM WITH A BELIEF REGARDING
21 CAPITAL PUNISHMENT? WHAT ARE YOUR VIEWS ON CAPITAL
22 PUNISHMENT, NOT YOUR USE IN ANY PARTICULAR CASE BUT IN
23 GENERAL THE EXISTENCE OF CAPITAL PUNISHMENT IN OUR CRIMINAL
24 JUSTICE SYSTEM. WHAT DO -- HOW DO YOU REACT TO THAT? WHAT
25 IS YOUR RESPONSE TO THAT?

CLIFFORD SMITH -- VOIR DIRE BY MR. MAULDIN

1 A I DON'T AGREE WITH IT.

2 Q YOU DO NOT AGREE WITH THE USE OF CAPITAL PUNISHMENT?

3 A RIGHT.

4 Q ALL RIGHT. LET ME ASK YOU A FEW SIMPLE QUESTIONS, MR.
5 SMITH, THEN WE'LL BE THROUGH WITH YOU.

6 IN THE PROCESS OF THE SELECTION OF QUALIFIED JURORS, IT
7 IS NECESSARY THAT THIS COURT AND ALL OF US UNDERSTAND WHAT
8 YOUR VIEWS ARE. AND THIS COURT RECOGNIZES YOUR RESERVATION
9 REGARDING CAPITAL PUNISHMENT. THE COURT RESPECTS YOUR
10 FEELINGS AND YOUR VIEWS ON CAPITAL PUNISHMENT. YOU'RE NOT --
11 YOUR VIEWS ARE NOT WHAT ARE ON TRIAL. AND THIS COURT DOES
12 NOT EXPECT AND NONE OF THE PARTIES IN THIS CASE EXPECT YOU TO
13 VIOLATE A MORAL POSITION THAT YOU HAVE. SO WE'RE NOT GOING
14 TO ASK YOU TO DO THAT. BUT I WANT TO EXPLAIN A COUPLE OF
15 MATTERS TO YOU AND THEN WE'LL MAKE A DETERMINATION OF WHETHER
16 YOU'RE QUALIFIED.

17 HESITATION OR RESERVATIONS ABOUT IMPOSING THE DEATH
18 PENALTY DO NOT DISQUALIFY A JUROR, BECAUSE IN SOUTH CAROLINA
19 A JUROR NEVER MUST IMPOSE THE DEATH PENALTY. THE QUESTION
20 IS, IN FACT, WOULD THAT JUROR BE WILLING TO FOLLOW THE
21 COURT'S INSTRUCTIONS AND CONSIDER THE IMPOSITION OF THE DEATH
22 PENALTY AS ONE OF TWO ALTERNATIVE SENTENCES? IN OTHER WORDS,
23 THE OTHER SENTENCE IS LIFE IMPRISONMENT. YOU HAVE LIFE --
24 THIS IS AFTER A PERSON HAS ALREADY BEEN CONVICTED OF MURDER.
25 YOU HAVE A SENTENCE OF -- POTENTIAL SENTENCE OF DEATH OR A

CLIFFORD SMITH -- VOIR DIRE BY MR. MAULDIN

1 POTENTIAL SENTENCE OF LIFE IMPRISONMENT. THE COURT WOULD
2 INSTRUCT A JURY THAT THERE ARE CERTAIN AGGRAVATING
3 CIRCUMSTANCES THAT COULD ACCOMPANY THE CRIME WHERE THE
4 GOVERNMENT WOULD BE ALLOWED TO ASK THE JURORS TO CONSIDER THE
5 DEATH PENALTY. THEY NEVER MUST GIVE THE DEATH PENALTY. THE
6 LAW DOESN'T SAY THAT.

7 SO THE QUESTION, I GUESS, COMES DOWN TO WHETHER CLIFFORD
8 SMITH AS A JUROR COULD GIVE MEANINGFUL CONSIDERATION TO BOTH
9 THE GOVERNMENT'S REQUEST THAT A DEATH SENTENCE BE IMPOSED AND
10 THE DEFENSE SIDE'S REQUEST THAT A LIFE SENTENCE BE IMPOSED AS
11 AN ALTERNATIVE. COULD BOTH BE CONSIDERED IF THIS COURT
12 INSTRUCTED THAT UNDER OUR LAW IN ORDER TO BE A QUALIFIED
13 JUROR YOU MUST BE WILLING TO CONSIDER THE IMPOSITION, AND
14 MEANINGFULLY CONSIDER THE IMPOSITION, OF BOTH SENTENCES,
15 COULD YOU DO THAT?

16 A I CAN ONLY CONSIDER THE -- BETWEEN THE TWO IS THE LIFE
17 IMPRISONMENT.

18 Q SO YOU COULD NEVER UNDER ANY CIRCUMSTANCES IMPOSE THE
19 DEATH PENALTY?

20 A NEVER.

21 MR. MAULDIN: ALL RIGHT. THANK YOU.

22 THE COURT: ANYTHING FROM THE STATE?

23 SOLICITOR ARIAIL: NONE, YOUR HONOR.

24 THE COURT: MR. SMITH, WE THANK YOU FOR BEING HERE. WE
25 APPRECIATE IT. YOU'RE FREE TO GO AND EXCUSED AS A JUROR.

CLIFFORD SMITH -- VOIR DIRE BY MR. MAULDIN

1 JUROR NUMBER 334: OKAY. THANK YOU.

2 (JUROR EXITS COURTROOM AT 11:10 A.M.)

3 THE COURT: ASK MR. STUBER TO COME IN, PLEASE.

4 MR. MAULDIN: MR. WHO?

5 THE COURT: MR. STUBER. THE BATSON ISSUE.

6 (JUROR NUMBER 353 REENTERS COURTROOM AT 11:11 A.M.)

7 THE COURT: MR. STUBER, I APOLOGIZE. I KNOW YOU GOT
8 GOING AND WE HAD TO BRING YOU BACK.

9 JUROR NUMBER 353: THAT'S OKAY.

10 THE COURT: THANK YOU FOR YOUR UNDERSTANDING. YOU ARE
11 A QUALIFIED JUROR. YOU MAY OR MAY NOT EVENTUALLY HAVE TO
12 SERVE IN THE CASE. BUT SINCE YOU REMAIN AN ELIGIBLE JUROR,
13 I'M GOING TO GIVE YOU THIS ORDER THAT SIMPLY INFORMS YOU OF
14 THAT FACT. MS. PLUMLEY, THE JURY COORDINATOR, IS GOING TO
15 STEP WITH YOU IN THE HALL AND MAKE SURE SHE HAS ALL YOUR
16 PHONE NUMBERS SO WE CAN REACH YOU AT ANY TIME TO INFORM YOU
17 ONCE WE MAKE A DECISION.

18 JUROR NUMBER 353: SURE.

19 THE COURT: THIS ALSO REITERATES THE OATH WHICH WILL
20 CONTINUE TO REMAIN IN EFFECT NOT TO EXPOSE YOURSELF TO ANY
21 INFORMATION REGARDING THE CASE AND DON'T DISCUSS THE CASE
22 WITH ANYONE. I WILL HAND YOU THAT ORDER AT THIS TIME. NOW
23 YOU ARE FREE TO GO, AND WE APPRECIATE IT.

24 JUROR NUMBER 353: OKAY. NO PROBLEM.

25 (JUROR EXITS COURTROOM AT 11:12 A.M.)

MATTERS AND MOTIONS

1 **THE COURT:** WE'RE GOING TO TAKE A FIVE-MINUTE BREAK.

2 **MS. STROM:** YOUR HONOR, REGARDING THE NEXT JUROR, MS.
3 SMITH, THERE WAS THE ISSUE ABOUT MR. PITTMAN AND WAS HE
4 EMPLOYED HERE AT THE WAL-MART. AND IT IS NOT. HE IS NOT
5 EVEN FROM THIS STATE.

6 **THE COURT:** THANK YOU.

7 **SOLICITOR ARIAIL:** CAN WE SUGGEST THAT MR. MAYER GO IN
8 THE NEXT GROUP?

9 **THE COURT:** YES. WE'RE GOING TO DO THAT. I ASSUME HE
10 IS HERE. I'M NOT SURE.

11 (A RECESS WAS TAKEN FROM 11:13 TO 11:19 A.M.)

12 **THE COURT:** ALL RIGHT. THE NEXT JUROR IS CHARLOTTE
13 SMITH.

14 (JUROR NUMBER 333 ENTERS COURTROOM AT 11:20 A.M.)

15 **CHARLOTTE SMITH** (WHITE FEMALE),
16 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
17 **VOIR DIRE BY THE COURT:**

18 **Q** MS. SMITH, THANK YOU VERY MUCH FOR YOUR PATIENCE. I
19 WANT TO TELL YOU THIS MR. PITTMAN FELLOW---

20 **A** UH-HUH (AFFIRMATIVE).

21 **Q** ---HE'S FROM OUT OF STATE. HE DOESN'T WORK AT THE WAL-
22 MART.

23 **A** OKAY.

24 **Q** SO IT'S A DIFFERENT DAVID PITTMAN.

25 **A** I KNEW IT WAS PROBABLY A COMMON NAME.

CHARLOTTE SMITH -- VOIR DIRE BY THE COURT

1 Q RIGHT. WELL, YOU WERE RIGHT ABOUT THAT.

2 I'VE GOT SOME QUESTIONS FOR YOU AND THINGS I WANT TO
3 DISCUSS WITH YOU AND THE ATTORNEYS DO AS WELL. THIS CASE
4 ARISES, ACCORDING TO THE INDICTMENT, FROM AN INCIDENT THAT
5 OCCURRED IN GREENVILLE COUNTY BACK ON DECEMBER THE 6TH OF THE
6 YEAR 2000. THE DEFENDANT IS CHARGED WITH THE CRIME OF
7 MURDER. THE VICTIM IDENTIFIED IN THE INDICTMENT IS ERIC
8 NICHOLSON. MR. NICHOLSON AT THAT TIME WAS A HIGHWAY
9 PATROLMAN.

10 THIS CASE RECEIVED ATTENTION IN THE MEDIA, AND I WANT TO
11 KNOW IF YOU RECALL ANYTHING YOU MAY HAVE BEEN EXPOSED TO IN
12 THE MEDIA OR FROM ANY OTHER SOURCE ABOUT THIS CASE, AND
13 SPECIFICALLY WHAT YOU RECALL.

14 A IF IT'S THE ONE I'M THINKING ABOUT, THE POLICE OFFICER
15 WAS SHOT, AND I BELIEVE THAT THE DEFENDANT FLED AND WAS
16 CAUGHT LATER. I'M NOT SURE. THAT'S MY UNDERSTANDING OF THE
17 CASE.

18 Q OKAY. SO YOU RECALL OFFICER SHOT, INDIVIDUAL FLED AND
19 CAUGHT LATER?

20 A YES.

21 Q OKAY. THERE MAY BE SOME REFERENCE TO ANDERSON OR
22 ANDERSON COUNTY?

23 A UM...

24 BAILIFF: THEY CAN'T HEAR.

25 A OKAY.

CHARLOTTE SMITH -- VOIR DIRE BY THE COURT

1 Q WHEN I USE THE TERM ANDERSON OR ANDERSON COUNTY, DOES
2 THAT TRIGGER SOME MEMORY ABOUT THIS CASE OR NOT?

3 A NO, SIR.

4 Q OKAY. LET ME TELL YOU WHY I ASK YOU ABOUT WHAT
5 SPECIFICALLY YOU CAN RECALL THAT YOU HAVE HEARD OUTSIDE OF
6 COURT. IF YOU ARE SELECTED AS A JUROR, MS. SMITH, YOU WOULD
7 RECEIVE AN OATH. YOUR OATH WOULD REQUIRE YOU TO FIND THE
8 TRUTH NOT FROM WHAT YOU'RE HEARD OUTSIDE OF COURT---

9 A YES, SIR.

10 Q ---BUT FROM THE EVIDENCE THAT WAS PRESENTED DURING THE
11 COURSE OF THE TRIAL AND TO FOLLOW THE LAW AS I WOULD INSTRUCT
12 IT. IF YOU WERE A JUROR WOULD YOU HONOR YOUR OATH IN THAT
13 REGARD?

14 A YES, SIR.

15 Q HAVE YOU ALREADY MADE UP YOUR MIND OR FORMED AN OPINION
16 AS TO THE FACTS OF THE CASE OR THE GUILT OR INNOCENCE OF THIS
17 PARTICULAR DEFENDANT?

18 A NO, SIR.

19 Q OKAY. WHY DO YOU HESITATE WHEN YOU SAY THAT?

20 A IT INVOLVES A LAW OFFICER, AND I KNOW MY BROTHER WORKS
21 FOR THE PRISON SYSTEM AND HE HAS BEEN INVOLVED IN ARRESTS AND
22 THINGS, AND IT MAKES ME KIND OF HESITATE ABOUT A POLICE
23 OFFICER.

24 Q WELL, LET'S JUST DEAL WITH THAT UP FRONT. THIS CASE
25 INVOLVES A POLICE OFFICER.

CHARLOTTE SMITH -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q AND THE MERE FACT THAT A POLICE OFFICER IS THE VICTIM,
3 WOULD THAT CAUSE YOU TO BE BIASED FOR OR AGAINST THE STATE?

4 A I WOULD PROBABLY BE BIASED FOR THE STATE. LIKE I SAID,
5 MY BROTHER HAS BEEN IN THE CORRECTIONS SYSTEM FOR ALMOST 20
6 YEARS, AND HE DOES HAVE HIS SPECIAL U.S. DEPUTY MARSHALL'S
7 LICENSE. AND I KNOW THAT, YOU KNOW, WHEN HE WALKS INTO A
8 PRISON UNDER A HOSTAGE SITUATION OR SOMETHING, THE FACTS THAT
9 HE FACES, YOU KNOW, EVERY DAY GOING INTO THE SYSTEM LIKE
10 THAT.

11 Q SO BECAUSE OF YOUR BROTHER BEING IN LAW ENFORCEMENT, THE
12 FEELINGS YOU HAVE FOR YOUR BROTHER AND HIS PROFESSION,
13 BECAUSE LAW ENFORCEMENT IS REPRESENTED AS THE VICTIM IN THIS
14 CASE---

15 A YES, SIR.

16 Q ---THAT WOULD CAUSE YOU TO COME IN LEANING TOWARD THE
17 STATE AND AGAINST THE DEFENDANT?

18 A YES, SIR.

19 THE COURT: OKAY. DOES THE STATE HAVE ANY QUESTIONS?

20 SOLICITOR ARIAIL: NO, SIR.

21 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. WE
22 APPRECIATE YOU BEING HERE, MS. SMITH. YOU ARE FREE TO GO AND
23 YOU ARE EXCUSED AS A JUROR.

24 JUROR NUMBER 333: THANK YOU.

25 (JUROR NUMBER 333 EXITS COURTROOM AT 11:25 A.M.)

CHARLOTTE SMITH -- VOIR DIRE BY THE COURT

THE COURT: ALL RIGHT. BRING IN GROUP 3. AND I ASSUME MR. MAYER IS NOW PRESENT?

BAILIFF: YES, SIR.

THE COURT: BRING MR. MAYER IN WITH GROUP 3, ALL SIX OF THEM.

MR. MAULDIN: DO YOU INTEND TO CALL MR. MAYER FIRST,
YOUR HONOR?

THE COURT: YES, SIR.

SOLICITOR ARIAIL: WE SUGGEST THAT MR. MAYER BE DONE LAST, SINCE I DON'T THINK IT IS FAIR TO THE REST OF THEM TO HAVE TO SIT AND WAIT BECAUSE HE WAS LATE.

THE COURT: AS PUNISHMENT FOR HIM, I AGREE
WHOLEHEARTEDLY. BUT I WANT TO MAINTAIN THE INTEGRITY OF THE
RANDOM SELECTION. AND AS MUCH AS WE MAY BE DISPLEASED WITH
HIS LACK OF RESPECT FOR THE COURT, I THINK IN FAIRNESS TO THE
SELECTION PROCESS WE HONOR THE ORDER IN WHICH THEY WERE
DRAFTED. BUT I PERFECTLY UNDERSTAND YOUR POSITION.

(PAUSE)

(PANEL NUMBER 3 ENTERS COURTROOM AT 11:26 A.M.)

(PANEL 3: JUROR NUMBER 238, ERNEST W. MAYER; JUROR
NUMBER 321, GEORGE D. SANDERS; JUROR NUMBER 336, KENYENA V.
SMITH; JUROR NUMBER 160, DALE M. HARVEY; JUROR NUMBER 366,
PRISCILLA ANN TORELLO; AND JUROR NUMBER 191, PATRICIA L.
JOHNSON)

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. LET ME

VOIR DIRE -- GROUP 1

1 JUST GO DOWN THE LINE HERE AND SEE WHICH JURORS I HAVE SO I
2 CAN PUT A FACE WITH A NAME. I'LL START WITH THIS GENTLEMAN
3 HERE ON THE END. WHAT IS YOUR NAME, PLEASE, SIR?

4 JUROR NUMBER 238: ERNEST MAYER.

5 THE COURT: OKAY. YES, MA'AM, YOUR NAME?

6 JUROR NUMBER 366: PRISCILLA TORELLO.

7 THE COURT: YES, MA'AM?

8 JUROR NUMBER 191: PATRICIA JOHNSON.

9 THE COURT: OKAY. YES, SIR?

10 JUROR NUMBER 321: GEORGE SAUNDERS.

11 JUROR NUMBER 336: KENYENA SMITH.

12 THE COURT: ALL RIGHT, MS. SMITH. AND THE GENTLEMAN AT
13 THE END?

14 JUROR NUMBER 150: DALE HARVEY.

15 THE COURT: THE FIRST THING I AM REQUIRED TO DO IS I'M
16 GOING TO GIVE YOU AN OATH, AND I'LL GIVE YOU AN ADDITIONAL
17 OATH WHEN I QUESTION YOU INDIVIDUALLY BECAUSE I'M GOING TO
18 SPEAK TO YOU FIRST COLLECTIVELY AND THEN WE'LL BACK UP AND
19 I'LL DEAL WITH YOU ONE AT A TIME. IF ALL OF YOU WOULD PLEASE
20 BE KIND ENOUGH TO RAISE YOUR RIGHT HAND.

21 DO EACH OF YOU SWEAR OR AFFIRM THE RESPONSES YOU GIVE
22 DURING THE JURY QUALIFICATION PROCESS WILL BE TRUTHFUL AND
23 COMPLETE? IF YOU AGREE TO BE BOUND BY THIS OATH, PLEASE SAY
24 "I WILL" AT THIS TIME." (PAUSE) THANK YOU, LADIES AND
25 GENTLEMEN. LET THE RECORD REFLECT ALL ACCEPTED THE OATH.

VOIR DIRE -- GROUP 1

1 WE THANK YOU FOR BEING HERE. WE KNOW THIS IS A HASSLE.
2 THIS IS AN INCONVENIENCE TO YOU TO PUT YOU THROUGH THIS. OUR
3 PURPOSE NOW IN THE JURY SELECTION PROCESS IS TO GATHER
4 INFORMATION FROM YOU AND TO BEGIN TO FURTHER EDUCATE YOU ON
5 THE PROCESS THAT IS INVOLVED IN A CASE OF THIS NATURE AND TO
6 ELICIT INFORMATION AS WE SEEK TO FIND JURORS WHO ARE
7 QUALIFIED AND WOULD SERVE FAIRLY AND IMPARTIALLY IN THIS
8 PARTICULAR CASE.

9 PLEASE UNDERSTAND I HAVE NO OPINION ABOUT THE FACTS OF
10 THIS CASE AND PLEASE DO NOT CONSTRUE FROM ANYTHING I MAY SAY
11 THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE.

12 YESTERDAY I PLACED YOU UNDER AN OATH. YOU ARE
13 ADDITIONALLY UNDER AN OATH TODAY FOR THESE PROCEEDINGS.
14 SINCE THE QUALIFICATION YESTERDAY HAVE ANY OF YOU TALKED WITH
15 ANYONE ABOUT THE CASE OR BEEN EXPOSED TO ANY MEDIA COVERAGE
16 ABOUT THE CASE? IF SO, WOULD YOU PLEASE RAISE YOUR RIGHT
17 HAND? (PAUSE) THE RECORD WILL REFLECT NO RESPONSE.

18 I WANT YOU TO BEAR IN MIND AND REMEMBER THE TWO
19 IMPORTANT LEGAL PRINCIPLES WE DISCUSSED YESTERDAY. ONE IS
20 THE PRESUMPTION OF INNOCENCE. ANYONE ACCUSED OF A CRIME IS
21 PRESUMED INNOCENT. I ALSO WANT YOU TO UNDERSTAND THE BURDEN
22 OF PROOF. IN A CRIMINAL CASE THE BURDEN OF PROOF IS ALWAYS
23 ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT. THERE
24 IS NEVER ANY BURDEN ON A DEFENDANT TO PROVE OR DISPROVE
25 ANYTHING.

VOIR DIRE -- GROUP 1

1 NOW, A CASE OF THIS NATURE IS GENERALLY REFERRED TO AS A
2 CAPITAL CASE. THAT'S A CASE IN WHICH THE STATE SEEKS THE
3 DEATH PENALTY. AND I WANT TO EXPLAIN IN GENERAL THE PROCESS
4 OF A CAPITAL CASE. ONCE A JURY IS SELECTED WE HAVE A TRIAL,
5 THE FIRST PHASE, WHERE THE JURY SIMPLY DETERMINES WHETHER OR
6 NOT A DEFENDANT IS GUILTY OF THE CRIME OF MURDER. IF A
7 DEFENDANT IS FOUND TO BE NOT GUILTY BECAUSE THE STATE DIDN'T
8 MEET ITS BURDEN OF PROOF, THAT WOULD END THE CASE AS FAR AS
9 THE JURY IS CONCERNED. THERE WOULD BE NO FURTHER JURY
10 SERVICE.

11 IF, HOWEVER, A JURY FINDS A DEFENDANT -- WE'RE JUST
12 TALKING ABOUT THE PROCESS IN GENERAL, CERTAINLY NOT THIS
13 CASE. IF A JURY FINDS A DEFENDANT GUILTY OF MURDER, THEN WE
14 WOULD MOVE TO WHAT WE CALL THE SENTENCING PHASE OR THE SECOND
15 PHASE, AND THE JURY WOULD CONSIDER WHAT WE CALL AGGRAVATING
16 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES. AND THE
17 JURY AFTER CONSIDERING ALL OF THE EVIDENCE, THE AGGRAVATING
18 EVIDENCE, THE EVIDENCE IN MITIGATION, THE JURY WOULD THEN
19 DETERMINE WHAT THE APPROPRIATE PUNISHMENT SHOULD BE. AND
20 THERE ARE TWO OPTIONS -- THE DEATH PENALTY OR LIFE
21 IMPRISONMENT.

22 IN A CAPITAL CASE IF THE JURY FINDS THE PRESENCE OF AN
23 AGGRAVATING CIRCUMSTANCE, IN THAT EVENT A SENTENCE OF LIFE
24 IMPRISONMENT MEANS LIFE WITHOUT PAROLE. AN INDIVIDUAL
25 CONVICTED AND RECEIVING A SENTENCE OF LIFE IN PRISON UNDER

VOIR DIRE -- GROUP 1

1 THAT CIRCUMSTANCE WOULD NEVER BE RELEASED FROM PRISON.

2 I MENTION THAT TO YOU BECAUSE ON THE STREET SOMETIMES WE
3 HEAR, WELL, SO AND SO WILL BE ELIGIBLE FOR PAROLE WHEN HE IS
4 "X" NUMBER OF YEARS OF AGE OR IN SUCH AND SUCH A TIME FRAME.
5 I JUST WANT YOU TO UNDERSTAND, UNDER OUR LAW WHEN A MURDER IS
6 ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE, LIFE MEANS LIFE
7 WITHOUT PAROLE. IN THAT CASE, THAT PARTICULAR INDIVIDUAL
8 WOULD DIE IN JAIL, AND I WANT TO MAKE SURE YOU UNDERSTAND
9 THAT.

10 NOW, THE TERMS AGGRAVATING CIRCUMSTANCES AND MITIGATING
11 CIRCUMSTANCES. IF YOU ARE SELECTED TO SERVE IN THIS CASE,
12 YOU WOULD NOT HEAR THOSE TERMS IN THE INITIAL PHASE. THOSE
13 TERMS WOULD ONLY BE DESCRIBED IF THE CASE PROCEEDS TO THE
14 SECOND PHASE. THAT MEANS THE DEFENDANT HAS BEEN CONVICTED OF
15 THE CRIME OF MURDER.

16 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS OR AN
17 OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS
18 DECLARED BY STATUTE WOULD AGGRAVATE OR WORSEN THE CRIME OF
19 MURDER. IN OTHER WORDS, AN AGGRAVATING CIRCUMSTANCE WHEN
20 ACCOMPANYING A MURDER INCREASES THE SEVERITY OF THE OFFENSE,
21 THE ENORMITY OF IT, ADDS TO THE INJURY OF THE CRIME OF
22 MURDER.

23 MITIGATING CIRCUMSTANCES ARE INCIDENTS, FACTS, OR
24 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
25 STATUTE OR WHICH A JURY OTHERWISE DETERMINES SHOULD REDUCE

VOIR DIRE -- GROUP 1

1 THE SEVERITY OF THE OFFENSE OF MURDER. IT MAY BE CONSIDERED
2 AS EXTENUATING OR AS REDUCING THE DEGREE OF THE
3 RESPONSIBILITY OR CULPABILITY.

4 NOW, I HAVE DESCRIBED TO YOU AGAIN THE TWO FUNDAMENTAL
5 LEGAL PRINCIPLES OF THE PRESUMPTION OF INNOCENCE AND THE
6 BURDEN OF PROOF. I DESCRIBED TO YOU THE PROCESS IN GENERAL
7 OF A CAPITAL CASE, THE TWO DIFFERENT PHASES AND THE TERMS OF
8 ART -- AGGRAVATING EVIDENCE, CIRCUMSTANCES OF AGGRAVATION,
9 CIRCUMSTANCES OF MITIGATION -- THAT WOULD APPLY IN A
10 SENTENCING PHASE.

11 NOW I WANT TO KNOW AND I WANT YOU TO ANSWER ME, DO EACH
12 OF YOU UNDERSTAND THESE LEGAL CONCEPTS AS I HAVE DESCRIBED
13 THEM TO YOU? (PAUSE) ALL NOD AND INDICATE IN THE
14 AFFIRMATIVE.

15 AND IF YOU HAVE ANY QUESTION OR CONCERN ABOUT THAT WE
16 WILL VISIT THAT AGAIN WITH YOU DURING YOUR INDIVIDUAL
17 QUESTIONING. IN FACT, I'LL BRING UP SOME OF THOSE ISSUES ON
18 MY OWN.

19 YOU WERE INTRODUCED YESTERDAY TO THE FINE ATTORNEYS IN
20 THIS CASE ON BOTH SIDES. WE HAVE SOLICITOR ARIAIL, MS.
21 STROM, AND MS. HERVEY FROM THE SOLICITOR'S OFFICE. WE HAVE
22 MR. MAULDIN FROM THE PUBLIC DEFENDER'S OFFICE, MR. RICHEY AND
23 MR. BANNISTER. AND THE GENTLEMAN HERE IN THE WHITE SHIRT
24 BETWEEN MR. RICHEY AND MR. BANNISTER IS MR. JOHN RICHARD
25 WOOD.

VOIR DIRE -- GROUP 1

1 LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF THE JURY
2 PANEL WHO IS RELATED BY BLOOD OR MARRIAGE OR AN ACQUAINTANCE
3 OF ANY KIND WITH THE FINE ATTORNEYS TO WHOM YOU HAVE BEEN
4 INTRODUCED? IF SO, PLEASE RAISE YOUR RIGHT HAND. (PAUSE)
5 THERE IS NO RESPONSE.

6 YOU MAY NOT BE RELATED TO THESE ATTORNEYS BUT IF YOU ARE
7 RELATED OR ACQUAINTED IN ANY WAY WITH ANYONE ASSOCIATED WITH
8 THESE ATTORNEYS' RESPECTIVE OFFICES -- THE SOLICITOR'S
9 OFFICE, PUBLIC DEFENDER'S OFFICE, MR. RICHEY'S OFFICE OR MR.
10 BANNISTER'S OFFICE -- IF THAT APPLIES TO YOU, WOULD YOU
11 PLEASE RAISE YOUR RIGHT HAND? (PAUSE) AGAIN, THERE IS NO
12 RESPONSE.

13 IS THERE ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD
14 OR MARRIAGE OR AN ACQUAINTANCE OF ANY KIND WITH THE
15 DEFENDANT, MR. JOHN RICHARD WOOD? IF SO, PLEASE RAISE YOUR
16 RIGHT HAND. (PAUSE) THERE IS NO RESPONSE.

17 I'M GOING TO ASK IF THE VICTIM IDENTIFIED IN THE
18 INDICTMENT, ERIC NICHOLSON, IF YOU WERE RELATED OR ACQUAINTED
19 WITH THAT GENTLEMAN IN ANY WAY, WOULD YOU PLEASE RAISE YOUR
20 RIGHT HAND? (PAUSE) THERE IS NO RESPONSE.

21 NOW, I HAVE SEVERAL COPIES OF THE WITNESS SHEETS OVER
22 THERE IN THE JURY BOX WITH YOU IF YOU NEED TO LOOK AT IT
23 AGAIN. I KNOW YOU ALL HAVE HAD SUBSTANTIAL TIME TO REVIEW
24 IT. IF YOU NEED MORE TIME OR NEED TO REFRESH YOURSELVES BY
25 LOOKING AT IT AGAIN, PLEASE FEEL FREE TO DO SO.

VOIR DIRE -- GROUP 1

1 IF YOU ARE RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED
2 POTENTIALLY IN ANY WAY WITH THOSE POTENTIAL WITNESSES, WOULD
3 YOU PLEASE SIGNIFY BY RAISING YOUR RIGHT HAND? (PAUSE) THE
4 RECORD WILL REFLECT -- OH, I'M SORRY. I DIDN'T SEE YOU.

5 JUROR NUMBER 191: I RECOGNIZE TWO OF THE NAMES, BUT I
6 DON'T -- AND I USED TO LIVE IN GREENWOOD, SO I DON'T KNOW IF
7 THEY'D BE THE SAME PEOPLE.

8 THE COURT: ALL RIGHT. YOU ARE MS. JOHNSON; IS THAT
9 RIGHT?

10 JUROR NUMBER 191: UH-HUH (AFFIRMATIVE).

11 THE COURT: OKAY. WHICH OF THE TWO PEOPLE'S NAMES DO
12 YOU RECOGNIZE?

13 JUROR NUMBER 191: JIMMY SLIGH AND RUBY WOOD.

14 THE COURT: OKAY. IT'S JIMMY SLIGH AND RUBY WOOD?

15 JUROR NUMBER 191: UH-HUH (AFFIRMATIVE).

16 THE COURT: AND HOW DO YOU KNOW THESE INDIVIDUALS?

17 JUROR NUMBER 191: I JUST KNEW THEM FROM THE TIME I WAS
18 ABOUT 16. BUT I HAVEN'T SEEN THEM IN PROBABLY 20 YEARS.

19 THE COURT: OKAY. AND THEY---

20 JUROR NUMBER 191: I DON'T KNOW IF IT'S THE SAME ONES.

21 THE COURT: BUT WHEN YOU KNEW THEM IT WAS DOWN IN
22 GREENWOOD?

23 JUROR NUMBER 191: RIGHT.

24 THE COURT: I DON'T KNOW IF THEY'RE THE SAME PEOPLE OR
25 NOT, BUT LET'S JUST ASSUME FOR PURPOSES OF THE QUESTION IT IS

VOIR DIRE -- GROUP 1

1 AND THE FRIENDS YOU HAD YOU HADN'T SEEN IN 16 YEARS BUT YOU
2 KNEW THEM WAY BACK.

3 JUROR NUMBER 191: YEAH.

4 THE COURT: AND LET'S SAY YOU'RE SITTING OVER THERE IN
5 THE JURY BOX DURING THE TRIAL AND ONE OR BOTH OF THEM WALKS
6 IN. WOULD YOU STILL BE A FAIR JUROR OR WOULD---

7 JUROR NUMBER 191: YEAH.

8 THE COURT: SO THAT WOULD NOT AFFECT YOUR ABILITY TO BE
9 FAIR?

10 JUROR NUMBER 191: NO.

11 THE COURT: ALL RIGHT. AND WE MAY PURSUE THAT FURTHER,
12 BUT THAT'S WHAT I NEED TO KNOW, MS. JOHNSON.

13 ALL RIGHT. THE RECORD WILL REFLECT NO ADDITIONAL
14 RESPONSE.

15 AT THIS TIME WE'RE GOING TO BEGIN THE PROCESS OF
16 QUESTIONING YOU INDIVIDUALLY. WE'RE GOING TO START WITH MR.
17 MAYER. MR. MAYER WILL REMAIN IN THE COURTROOM AND MR. MAYER
18 WILL COME AND BE SWORN IN HERE AT THE WITNESS STAND.

19 THE REST OF YOU, IF YOU WOULD, PLEASE FOLLOW ONE OF THE
20 BAILIFFS BACK TO THE NEXT COURTROOM. WE'LL BE WITH YOU AS
21 QUICKLY AS WE CAN. THANK YOU FOR YOUR PATIENCE.

22 (MR. MAYER COMPLIES)

23 (BALANCE OF PANEL EXITS COURTROOM AT 11:36 A.M.)

24 ERNEST MAYER (BLACK MALE),
25 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 VOIR DIRE BY THE COURT:

2 Q MR. MAYER, I'M GOING TO DESCRIBE MORE IN DETAIL THE
3 PROCESS. I HAVE SOME QUESTIONS FOR YOU AND I'M SURE THE
4 ATTORNEYS DO AS WELL. OUR PURPOSE IS TO DETERMINE WHETHER
5 YOU'RE ELIGIBLE AND QUALIFIED TO SERVE AS A JUROR IN A CASE
6 OF THIS NATURE AND IN THIS PARTICULAR CASE.

7 THIS CASE ARISES FROM AN INCIDENT ACCORDING TO
8 INDICTMENT OF AN EVENT WHICH OCCURRED BACK IN GREENVILLE
9 COUNTY ON DECEMBER THE 6TH OF THE YEAR 2000. IN THE
10 INDICTMENT THE DEFENDANT, MR. WOOD, IS CHARGED WITH THE CRIME
11 OF THE MURDER. THE VICTIM IDENTIFIED IN THE INDICTMENT IS
12 ERIC NICHOLSON. AT THAT TIME MR. NICHOLSON WAS A STATE
13 TROOPER, A MEMBER OF THE HIGHWAY PATROL.

14 THIS CASE RECEIVED ATTENTION IN THE MEDIA, AND I WANT TO
15 KNOW IF YOU HAVE BEEN EXPOSED TO ANY INFORMATION ABOUT THIS
16 CASE FROM THE MEDIA OR ANY OTHER SOURCE. AND IF YOU HAVE,
17 WOULD YOU TELL US IN DETAIL WHAT YOU CAN SPECIFICALLY RECALL?

18 A THE ONLY THING I CAN BASICALLY RECALL IS THAT A TROOPER
19 HAD BEEN SLAIN, AND JUST SKETCHY DETAILS THAT THERE WERE
20 SOMEONE THAT THEY WERE PURSUING. BUT OTHER THAN THAT, THAT'S
21 ABOUT IT. I DON'T KNOW A WHOLE LOT ABOUT THE CASE.

22 Q DO YOU RECALL WHERE THIS EVENT SUPPOSEDLY OCCURRED,
23 LOCATION?

24 A SOMEWHERE NEAR WOODRUFF ROAD, I BELIEVE, MAYBE NEAR 385
25 AND WOODRUFF ROAD SOMEWHERE, I THINK. I'M NOT POSITIVE, BUT

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 I RECALL I THINK IT WAS IN THAT GENERAL AREA.

2 MR. MAULDIN: WOULD YOU PLEASE---

3 Q GET A LITTLE CLOSER TO THE MICROPHONE BECAUSE I WANT THE
4 ATTORNEYS AND EVERYBODY ELSE TO BE ABLE TO HEAR THE
5 DISCUSSION YOU AND I ARE HAVING.

6 A THANK YOU.

7 Q THERE MAY BE SOME REFERENCE TO ANDERSON COUNTY IN THIS
8 CASE. AND WHEN I MENTION THE TERM ANDERSON COUNTY, DOES THAT
9 TRIGGER ANY MEMORY THAT YOU MAY HAVE ABOUT THIS CASE?

10 A YES, SIR. I BELIEVE IF MY KNOWLEDGE -- OR MY MEMORY
11 SERVE ME RIGHT THAT THAT'S WHERE THE SUSPECT WAS APPREHENDED,
12 I BELIEVE. I THINK THERE WAS A CHASE TO ANDERSON COUNTY. I
13 DO, I THINK, RECALL SOMETHING MENTIONED ABOUT THAT IN THE
14 MEDIA.

15 Q OKAY. OTHER THAN JUST A CHASE IN ANDERSON COUNTY, DO
16 YOU REMEMBER ANY SPECIFIC DETAILS YOU HEARD OR READ ABOUT?

17 A NOT A WHOLE LOT, NO, SIR.

18 Q CAN YOU RECALL ANYTHING?

19 A OTHER THAN I KNOW THERE WAS A YOUNG LADY. I DON'T KNOW
20 WHETHER SHE WAS WITH HIM IN ANDERSON COUNTY OR ANYTHING OF
21 THAT NATURE, BUT I DO KNOW THAT THERE WAS A YOUNG LADY
22 INVOLVED IN THE CASE. I RECALL THAT. AND BASICALLY THAT THE
23 SUSPECT HAD BEEN WOUNDED, I DO RECALL THAT.

24 Q ANYTHING ELSE?

25 A I GUESS THAT'S ABOUT IT.

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 Q OKAY. LET ME TELL YOU THE REASON I ASK YOU AND I ASK
2 YOU IN DETAIL. MR. MAYER, IF YOU ARE SELECTED AS A JUROR,
3 YOU WILL BE GIVEN AN OATH. THAT OATH WOULD REQUIRE YOU TO
4 FIND THE FACTS, WHAT HAPPENED, THE TRUTH FROM THE EVIDENCE,
5 NOT FROM WHAT YOU MAY HAVE HEARD OR BEEN EXPOSED TO OUTSIDE
6 THE COURTROOM. IF YOU WERE A JUROR, WOULD YOU DO THAT AND
7 HONOR YOUR OATH AND FIND THE TRUTH ONLY FROM THE EVIDENCE
8 PRESENTED IN THE COURSE OF THIS TRIAL?

9 A YES, SIR.

10 Q YOUR OATH WOULD FURTHER REQUIRE YOU TO FOLLOW THE LAW AS
11 I INSTRUCT IT. AND IF YOU WERE A JUROR, WOULD YOU HONOR YOUR
12 OATH AND FOLLOW THE LAW AS I INSTRUCT IT?

13 A YES.

14 Q KEEPING IN MIND THE LEGAL PRINCIPLES OF THE PRESUMPTION
15 OF INNOCENCE AND THE STATE HAVING THE BURDEN OF PROOF, IF YOU
16 WERE A JUROR ON ANY CASE AND AFTER CAREFULLY CONSIDERING ALL
17 THE EVIDENCE, FOLLOWING THE LAW, YOU WERE CONVINCED THE
18 DEFENDANT WAS GUILTY -- AND WE'RE TALKING ABOUT JUST A CASE
19 IN GENERAL -- AND IF YOU WERE CONVINCED THAT A DEFENDANT WAS
20 GUILTY OF THE CRIME, WOULD YOU FIND THE DEFENDANT GUILTY?

21 A YES, SIR.

22 Q ON THE OTHER HAND, IF YOU HAD HEARD THE EVIDENCE,
23 FOLLOWED THE LAW AND YOU WERE NOT CONVINCED BEYOND A
24 REASONABLE DOUBT, WOULD YOU FOLLOW YOUR OATH AND FIND THE
25 DEFENDANT NOT GUILTY?

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q OKAY. NOW I WANT TO EMPHASIZE TO YOU THAT WE MAY NOT
3 EVEN REACH A SECOND OR SENTENCING PHASE. BUT SINCE WE
4 POSSIBLY COULD, I, ALONG WITH THE ATTORNEYS, MUST ASK YOU
5 SOME QUESTIONS ABOUT YOUR VIEWS, PARTICULARLY ABOUT THE DEATH
6 PENALTY. DO YOU UNDERSTAND THAT, SIR?

7 A YES, SIR.

8 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THE JURY HAS
9 ALREADY FOUND A DEFENDANT GUILTY OF MURDER. THERE IS NO
10 DEFENSE. THERE IS NOTHING ELSE TO HASH OUT. THE DEFENDANT
11 IS GUILTY OF MURDER IN THAT PARTICULAR HYPOTHETICAL
12 SITUATION. SO AS WE MOVE TO THE SENTENCING PHASE, GUILT HAS
13 ALREADY BEEN ESTABLISHED.

14 THE ISSUE DETERMINED IN THE SENTENCING PHASES IS, WHAT
15 IS THE APPROPRIATE SENTENCE? AND IN THE SENTENCING PHASE THE
16 JURY HEARS FURTHER EVIDENCE, EVIDENCE WHICH IS SOMETIMES
17 CLASSIFIED AS EVIDENCE IN AGGRAVATION AND ALSO EVIDENCE IN
18 MITIGATION. EXAMPLES OF MITIGATION EVIDENCE MAY INCLUDE A
19 DEFENDANT'S BACKGROUND, A DEFENDANT'S MENTAL HEALTH HISTORY,
20 FAMILY HISTORY, THINGS OF THAT NATURE.

21 THE COURT WOULD INSTRUCT A JUROR IN THAT SITUATION TO
22 GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO BOTH AGGRAVATING
23 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES BEFORE MAKING A
24 DECISION. IF YOU WERE A JUROR, WOULD YOU HONOR YOUR OATH IN
25 THAT REGARD AND GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 BOTH AGGRAVATING AND MITIGATING EVIDENCE?

2 A YES, SIR, I COULD.

3 Q IF YOU WERE A JUROR -- AND STILL TALKING ABOUT THE
4 HYPOTHETICAL CASE -- IN A SENTENCING PHASE AFTER HEARING ALL
5 THE EVIDENCE, CAREFULLY CONSIDERING EVIDENCE IN AGGRAVATION,
6 EVIDENCE IN MITIGATION, IF YOU BELIEVED AND FOUND THAT LIFE
7 IMPRISONMENT WAS THE PROPER SENTENCE, COULD YOU AND WOULD YOU
8 VOTE FOR LIFE IMPRISONMENT?

9 A YES, SIR.

10 Q ON THE OTHER HAND, IF YOU WERE A JUROR, CAREFULLY
11 CONSIDERED ALL THE FACTS, FOLLOWED THE LAW AND YOU BELIEVED
12 THAT THE DEATH PENALTY WAS APPROPRIATE, COULD YOU VOTE FOR
13 THE DEATH PENALTY?

14 A I'M NOT SURE.

15 Q ALL RIGHT. WOULD YOU GIVE SERIOUS AND MEANINGFUL
16 CONSIDERATION IF I INSTRUCTED YOU TO AND FOLLOW YOUR OATH
17 BEFORE MAKING A FINAL DECISION?

18 A YES, SIR.

19 Q OKAY. AND LET ME REPHRASE THAT.

20 A OKAY.

21 Q THAT WASN'T A VERY GOOD QUESTION.

22 A OKAY.

23 Q THE COURT, JUST LIKE THE ATTORNEYS, WILL NEVER TELL A
24 JURY WHAT TO DECIDE. THAT'S UP TO THE JURY. BUT THE
25 INTEGRITY OF THE PROCESS THAT WE ARE ABOUT TODAY IS TO MAKE

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 SURE THAT EACH JUROR WHO IS ELIGIBLE DOES QUALIFY AND WOULD
2 BE FAIR. NOW, WHAT THAT MEANS IS THAT JUROR MAY NOT LIKE THE
3 DEATH PENALTY BUT COULD UNDER CERTAIN CIRCUMSTANCES GIVE IT
4 SERIOUS CONSIDERATION AND COULD VOTE FOR IT UNDER CERTAIN
5 SITUATIONS. COULD YOU DO THAT?

6 A I'M NOT POSITIVE.

7 Q TELL ME WHAT YOU MEAN WHEN YOU SAY YOU'RE NOT POSITIVE.
8 IS IT STILL OPEN TO YOU OR JUST CLOSED THE DOOR AND YOU JUST
9 WOULDN'T VOTE FOR THE DEATH PENALTY?

10 A WELL, AT THIS POINT I'M JUST -- I'M CONSIDERING WHAT I'D
11 DO. I'VE THOUGHT IT OVER. I HAVE NOT COME TO A FULL
12 CONCLUSION THAT I WOULD BE ABLE TO FULLY VOTE FOR THE DEATH
13 PENALTY. LIFE IMPRISONMENT WITHOUT PAROLE WOULD NOT BE A
14 FACTOR IF IT, YOU KNOW, CAME TO THAT. BUT I AM NOT POSITIVE
15 ABOUT THE DEATH PENALTY. SO I HAVE TO BE HONEST AND FAIR.
16 I'M NOT POSITIVE I COULD VOTE FOR THAT. I WOULD CAREFULLY
17 CONSIDER JUST THINKING OVER AND OVER IN MY MIND COULD I DO
18 IT. AND AT THIS POINT, I'M JUST NOT POSITIVE THAT I COULD.
19 I HAVE TO BE HONEST WITH YOU. I KNOW THE THAT LAW IS JUST,
20 BUT, ME PERSONALLY, I JUST CAN'T SAY THAT I WOULD. I'M NOT
21 POSITIVE.

22 Q IS THERE ANY SITUATION THAT YOU CAN CREATE IN YOUR MIND
23 THAT YOU THINK WOULD JUSTIFY THE DEATH PENALTY?

24 A YES, SIR, BUT I'M NOT SURE THAT I WOULD BE ABLE TO
25 REALLY SIGN A WARRANT TO THAT EFFECT. I'M JUST NOT POSITIVE.

1 Q YOU WOULD BE WILLING TO CONSIDER BOTH PUNISHMENTS?

2 A YES.

3 Q AND YOU WOULD BE ABLE TO CONSIDER BOTH MITIGATION
4 EVIDENCE AND AGGRAVATION EVIDENCE?

5 A YES, SIR.

6 Q YOU'RE HESITANT THAT WHEN IT CAME TIME THAT IF IT WERE
7 PERHAPS A DEATH PENALTY CASE, EVEN THOUGH THE FACTS MAY LEAN
8 THAT WAY AND THE LAW MAY LEAN THAT WAY---

9 A YES.

10 Q ---YOU'RE HESITANT THAT YOU WOULD BE ABLE TO DO THAT?

11 A THAT'S -- THAT'S THE PROBLEM. I---

12 Q WELL, DO YOU UNDERSTAND NO ONE IS TELLING YOU UP FRONT,
13 "HEY, MR. MAYER," YOU KNOW, "YOU HAVE TO VOTE FOR LIFE" OR
14 "HEY, MR. MAYER, YOU NEED TO VOTE FOR THE DEATH PENALTY"?

15 A YES, SIR. I UNDERSTAND THAT.

16 Q IT'S JUST THAT WHEN YOU TAKE AN OATH AS A JUROR THAT
17 YOU'RE OPEN MINDED AND WILLING TO DO IT IF THE LAW AND THE
18 FACTS PERSUADE YOU IT IS APPROPRIATE UNDER THE CIRCUMSTANCES,
19 AND IF YOU ARE OPEN TO MEANINGFULLY CONSIDER AND DOING IT IF
20 YOU BELIEVE IT APPROPRIATE, THEN YOU MAY WELL BE AN ELIGIBLE
21 JUROR. BUT IF YOU TELL ME AND YOU SAY, WELL, I THOUGHT ABOUT
22 IT, AND I'M JUST NOT GOING TO DO IT," WELL, THAT'S A
23 DIFFERENT SITUATION.

24 A YES, SIR.

25 Q SO I NEED -- DO YOU UNDERSTAND WHERE WE ARE RIGHT NOW?

ERNEST MAYER -- VOIR DIRE BY THE COURT

1 **A** YES, SIR.

2 **Q** RESPOND TO THAT. WHAT WOULD YOU DO IN THAT SITUATION?

3 **A** IN THAT SITUATION THERE'S -- I HAVE PERSONAL REASONS.

4 FIRST OF ALL, I'M A PASTOR. I UNDERSTAND MANY THINGS ABOUT

5 -- I KNOW THAT THE BIBLE BACKS UP CAPITAL PUNISHMENT. I ALSO

6 KNOW THAT IT ALSO PERMITS GRACE. SO THAT'S WHERE MY CONFLICT

7 IS. AND, YOU KNOW, I NEED TO BE HONEST.

8 **Q** AND I APPRECIATE YOUR CANDOR.

9 **A** YES, SIR.

10 **THE COURT:** I MAY HAVE SOME FOLLOW-UP QUESTIONS, BUT
11 I'M GOING TO GIVE THE ATTORNEYS AN OPPORTUNITY TO QUESTION
12 YOU AS WELL.

13 (OFF RECORD DISCUSSION)

14 **SOLICITOR ARIAIL:** IT DEPENDS ON HOW WE'RE GOING TO DO
15 IT. IF WE'RE GOING TO SKIP THE ONES WE DIDN'T QUESTION...

16 **MR. MAULDIN:** WELL, OF COURSE NOT.

17 **MS. HERVEY:** WELL, WE DIDN'T QUESTION THE LAST ONE, SO
18 IT'S HIS TURN.

19 **THE COURT:** WE'RE OFF THE RECORD. HOLD ON A SECOND.

20 (OFF RECORD DISCUSSION)

21 **THE COURT:** MR. ARIAIL IS UP.

22 **SOLICITOR ARIAIL:** THANK YOU, YOUR HONOR.

23 **VOIR DIRE BY SOLICITOR ARIAIL:**

24 **Q** MR. MAYER, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
25 FOR GREENVILLE AND PICKENS COUNTIES, AND I WILL BE

ERNEST MAYER -- VOIR DIRE BY SOLICITOR ARIAIL

1 REPRESENTING THE STATE ALONG WITH MS. STROM AND MS. HERVEY,
2 WHO WORK IN MY OFFICE.

3 OBVIOUSLY, WHAT WE'RE TRYING TO DO, AS YOU'VE ALREADY
4 FIGURED OUT, IS WE'RE TRYING TO QUALIFY CERTAIN PEOPLE TO
5 SERVE ON THE JURY WHO ARE FAIR. YOU'VE GIVEN YOUR FAIR AND
6 STRAIGHTFORWARD ANSWERS, AND WE APPRECIATE THAT BECAUSE
7 THAT'S WHAT WE WANT AND THAT'S WHAT WE NEED.

8 WHAT I WANT YOU TO UNDERSTAND AND MAKE SURE THAT YOU AND
9 I ARE -- I'M HEARING WHAT YOU'RE SAYING, SO THAT I'M NOT
10 MISCONSTRUING IT, THE GUILT PHASE IS WHERE YOU VOTE BASED ON
11 THE EVIDENCE WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY.

12 A YES, SIR.

13 Q WE'RE BEYOND THAT PHASE. MENTALLY, WE'RE GOING BEYOND
14 THAT. WE HAVE TO IMAGINE THAT THE DEFENDANT HAS BEEN
15 CONVICTED SO WE CAN GET TO THE PART THAT DEALS WITH YOUR
16 VIEWS ON CAPITAL PUNISHMENT. THAT'S CALLED THE SENTENCING
17 PHASE.

18 A YES, SIR.

19 Q AND WHEN YOU GET TO THAT SENTENCING PHASE, IT IS THE
20 JURY AND THE JURY ALONE, NOT THE JUDGE BUT THE JURY HAS TO
21 DECIDE WHAT THE APPROPRIATE PUNISHMENT IS, AND THEY HAVE TWO
22 CHOICES -- LIFE IN PRISON AND DEATH. AND EACH SIDE, THE
23 DEFENDANT AND THE STATE, IS ENTITLED TO HAVE A JURY THAT CAN
24 FAIRLY CONSIDER THEIR RESPECTIVE POSITION. YOU CAN HEAR
25 EVIDENCE AS TO THE STATE'S POSITION AND WHY THE DEATH

1 SENTENCE IS APPROPRIATE. YOU MAY HEAR EVIDENCE FROM THE
2 DEFENSE AS TO WHY A LIFE SENTENCE IS APPROPRIATE. AND YOU,
3 AS A FAIR JUROR, ARE SUPPOSED TO BE ABLE TO GO BACK INTO THAT
4 JURY ROOM AND SAY, "ALL RIGHT. NOW I'M GOING TO SIT DOWN AND
5 I'M GOING TO CONSIDER THESE THINGS FAIRLY." AND THAT'S WHAT
6 WE'RE TRYING TO GET TO IS TO WHETHER OR NOT YOU CAN ACTUALLY
7 DO THAT.

8 AND THERE IS NOTHING WRONG WITH NOT BEING ABLE TO DO
9 THAT. THERE ARE PEOPLE WHO SAY THAT "ONCE THERE IS A MURDER
10 CONVICTION, DEATH IS THE ONLY SENTENCE I WOULD EVER IMPOSE."
11 WELL, THAT JUROR IS NOT -- THAT'S NOT AN APPROPRIATE JUROR,
12 BECAUSE THEY'VE GOT TO BE ABLE TO CONSIDER BOTH.

13 THEN THERE ARE OTHERS WHO SAY LIFE IS THE ONLY SENTENCE
14 I WOULD IMPOSE. AND THOSE ARE NOT APPROPRIATE JURORS.
15 THEY'VE GOT TO BE ABLE TO CONSIDER BOTH. BUT THEY'VE GOT TO
16 BE ABLE TO MEANINGFULLY CONSIDER, THAT IS, GIVE MEANING TO
17 THE CONSIDERATION, NOT JUST LIP SERVICE, JUST NOT SAYING,
18 "I'M GOING TO CONSIDER IT."

19 CAN YOU GIVE THE STATE'S REQUEST FOR THE DEATH PENALTY,
20 CAN YOU GIVE IT, BECAUSE OF YOUR PERSONAL VIEWS, MEANINGFUL
21 CONSIDERATION EVEN THOUGH THE JUDGE TELLS YOU DO THAT?

22 A I COULD GIVE IT MEANINGFUL CONSIDERATION, BUT I'M
23 STILL -- PERSONALLY, I KNOW THAT IN MANY CASES JUSTICE MUST
24 BE SERVED. NOW, WHETHER I COULD ACTUALLY PUT MY NAME ON
25 THERE AND SAY THAT I AM -- I WOULD WRITE DOWN YES, THIS

ERNEST MAYER -- VOIR DIRE BY SOLICITOR ARIAIL

1 INDIVIDUAL SHOULD DIE FOR THIS CRIME, I'VE BEEN PONDERING
2 THAT IN MY MIND. NOT EVEN -- NOT IN THIS CASE, BUT I'VE
3 ALWAYS, KNOWING THAT I COULD BE A JUROR AT ANY TIME -- I'VE
4 SERVED A COUPLE OF TIMES BEFORE ON CIVIL CASES. BUT I MUST
5 BE HONEST TO SAY THAT I'M NOT POSITIVE THAT I COULD DO THAT.

6 Q ALL RIGHT.

7 A IF YOU'RE LOOKING FOR SOMEBODY THAT'S TOTALLY POSITIVE
8 RIGHT NOW, I'M NOT TOTALLY POSITIVE RIGHT NOW.

9 Q WHAT -- LET'S GO BACK A LITTLE BIT, ONE STEP BACK. YOU
10 SAY YOU'RE NOT ABLE TO SIGN. WOULD YOU BE ABLE TO RAISE YOUR
11 HAND IN THE JURY ROOM AND VOTE, "I VOTE FOR THE DEATH PENALTY
12 IN THIS CASE"?

13 A I'M NOT POSITIVE.

14 MR. MAULDIN: I OBJECT TO THAT, YOUR HONOR. THAT IS
15 CLEARLY A STAKEOUT.

16 THE COURT: YEAH. SUSTAINED, AND IT CANNOT REFER TO
17 THIS SPECIFIC CASE.

18 Q WELL, I DIDN'T MEAN TO REFER TO THIS SPECIFIC CASE. I'M
19 TALKING ABOUT YOUR THOUGHT PROCESS. IF I LED YOU TO BELIEVE
20 IT WAS A SPECIFIC CASE -- WHAT I'M ASKING YOU, YOU'RE TALKING
21 ABOUT THE ACTUAL SIGNING. I WANT TO KNOW -- GO ONE STEP BACK
22 -- WOULD YOU BE ABLE TO VOTE YES?

23 A I'M NOT POSITIVE.

24 Q YOU'RE NOT POSITIVE ABOUT THAT. NOW, BECAUSE YOU'RE NOT
25 POSITIVE ABOUT THAT, WOULD THE FACT THAT YOU WOULD BE PUT

ERNEST MAYER -- VOIR DIRE BY SOLICITOR ARIAIL

1 INTO THAT SITUATION OF HAVING TO DO THAT WOULD THAT IMPACT
2 YOUR ABILITY TO FAIRLY CONSIDER WHETHER THE DEATH PENALTY WAS
3 APPROPRIATE? WOULD YOU BE SAYING IN YOUR MIND, "I DON'T
4 THINK I CAN DO THIS, SO I'M NOT GOING TO CONSIDER THAT
5 SENTENCE"? DO YOU SEE WHAT I'M SAYING?

6 A YES, SIR. I -- I AM -- I HEAR WHAT YOU'RE SAYING. BUT
7 IN MY MIND -- I'VE NEVER BEEN PUT DIRECTLY IN THAT POSITION.
8 NOW, I'VE WEIGHED IT OUT IN MY MIND SEVERAL TIMES. I'VE
9 THOUGHT IT OUT WHEN I WAS SITTING OUT HERE, AND I THOUGHT
10 ABOUT IT LAST NIGHT. SO ME BEING A JUROR, I WANT TO BE AS
11 FAIR TO THE STATE AS POSSIBLE. I WANT TO BE AS FAIR TO THE
12 DEFENSE AS POSSIBLE. AND I DON'T REALLY -- I MEAN, I
13 CONSIDERED THAT THERE ARE CASES WHERE PEOPLE SHOULD DIE FOR
14 THEIR CRIME. NOW, WHETHER I CAN IMPOSE THAT, I MEAN, I'M
15 JUST NOT POSITIVE.

16 Q ALL RIGHT. SO THE ISSUE IS NOT SO MUCH FOR YOU THAT THE
17 DEATH PENALTY MAY BE APPROPRIATE, IT'S JUST YOUR PERSONAL
18 VIEW THAT YOU MAY NOT BE ABLE TO BE THE ONE TO MAKE THAT
19 DECISION OR TO SIGN THE DOCUMENT?

20 A YES, SIR.

21 Q AND YOU HAVEN'T MADE A DECISION AS OF THIS TIME THAT YOU
22 CAN IN FACT DO THAT?

23 A RIGHT. CORRECT.

24 Q YOUR INCLINATION IS, AS I'M HEARING FROM YOU -- AND
25 CORRECT ME IF I'M WRONG -- YOUR INCLINATION IS THAT YOU

1 CANNOT DO THAT?

2 A I'M NOT POSITIVE. I DON'T THINK THAT I COULD.

3 Q OKAY.

4 A BUT IT'S POSSIBLE THAT I WOULD.

5 SOLICITOR ARIAIL: THANK YOU. JUST A SECOND. (OFF
6 RECORD WITH CO-COUNSEL)

7 Q I NOTED IN YOUR QUESTIONNAIRE THAT YOU HAD A CONFERENCE
8 ON THE 8TH AND 9TH?

9 A YES, SIR.

10 Q IS THAT STILL SOMETHING THAT'S IN PLACE?

11 A YES, SIR.

12 Q YOU UNDERSTAND IF YOU WERE CHOSEN ON THE JURY YOU MAY
13 NOT BE ABLE TO GO TO THAT CONFERENCE?

14 A YES, SIR.

15 Q WOULD THAT CREATE AN UNNECESSARY OR UNDUE HARDSHIP OR
16 WOULD THAT ACT AS ANY SORT OF DISTRACTION TO YOU IN SERVING
17 ON THE JURY?

18 A WELL, ACTUALLY, I'M THE PERSON THAT'S ACTUALLY GOING TO
19 BE IN CHARGE.

20 Q OF THE CONFERENCE?

21 A YES, SIR.

22 Q IF YOU WERE SITTING IN THIS JURY BOX RATHER THAN AT THE
23 CONFERENCE WOULD THE FACT THAT YOU WEREN'T THERE WOULD THAT
24 BE A DISTRACTION? I MEAN, WOULD YOU BE THINKING, "I NEED TO
25 BE THERE" OR "ARE THINGS GOING ON?" OR WOULD IT DISTRACT YOU

ERNEST MAYER -- VOIR DIRE BY SOLICITOR ARIAIL

1 FROM YOUR JURY SERVICE?

2 A I KNOW MY MIND WOULD -- I WOULD CONCENTRATE ON IT SOME.
3 IT WOULD REFLECT THROUGH MY MIND. BUT AS FAR AS ME BEING
4 ABLE TO DO MY DUTY, I DON'T THINK I WOULD HAVE A PROBLEM.
5 BUT IT PROBABLY WOULD REFLECT IN MY MIND SOME.

6 SOLICITOR ARIAIL: OKAY. THANK YOU.

7 VOIR DIRE BY MR. MAULDIN:

8 Q MR. MAYER, JUST A FEW FOLLOW-UP QUESTIONS. WE TALKED
9 ABOUT YOUR THOUGHT PROCESS INCOMING BEFORE US AND TALKING TO
10 US ABOUT THIS, AND THE HESITANCY THAT YOU HAVE EXPRESSED, THE
11 CONCERNS, THE PERSONAL CONCERNS YOU HAVE EXPRESSED REGARDING
12 YOUR VIEW. LET ME ASSURE YOU, MR. MAYER, THAT YOUR VIEWS ARE
13 NOT ON TRIAL, THAT WE RESPECT YOUR RESERVATIONS, WE RESPECT
14 YOUR FEELINGS, AND THE COURT IS NOT GOING TO PLACE YOU IN A
15 POSITION WHERE YOU WOULD HAVE TO VIOLATE SOME VIEW.

16 THE POINT THAT I MAKE, THOUGH, IS -- AND I THOUGHT WHEN
17 THE PROSECUTOR WAS SITTING DOWN AND YOU SAID, "I COULD
18 POSSIBLY DO IT." I MADE A NOTE OF THAT BECAUSE WE'RE NOT --
19 NEITHER SIDE IS TRYING TO GET YOU TO COMMIT TO ONE SENTENCE
20 OR ANOTHER BECAUSE YOU HAVEN'T HEARD THE FIRST INFORMATION
21 ABOUT THE CASE. YOU DON'T KNOW ANYTHING ABOUT THE CASE. AND
22 TO THE EXTENT THAT IT WOULD BE A DIFFICULT DECISION I
23 CERTAINLY WOULD HOPE SO, THAT IT -- I WOULD HOPE IT WOULD BE
24 A DIFFICULT DECISION FOR ANYONE. SO YOUR HESITATION OR YOUR
25 RELUCTANCE REALLY IS NOT AT ISSUE. I THINK THE BETTER WAY TO

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 LOOK AT IT IS WHERE YOU SAID THERE WOULD BE SITUATIONS WHERE
2 THE DEATH PENALTY WOULD BE APPROPRIATE AND YOU WOULD CONSIDER
3 IT AS A POSSIBLE PUNISHMENT IN CERTAIN SITUATIONS. IS THAT
4 ACCURATE?

5 A YES.

6 Q AND WHEN WE USE THE WORD "CONSIDER" IT, I WANT TO MAKE
7 SURE THAT AS THE COURT -- AS THE PROSECUTOR SAID THAT YOU
8 WOULDN'T JUST KIND OF -- I THINK HIS TERM WAS "LIP SERVICE."
9 YOU WOULDN'T JUST KIND OF THINK ABOUT IT AND THEN IGNORE IT.
10 THE POINT IS THAT HE WOULD HAVE THE RIGHT TO HAVE MEANINGFUL
11 CONSIDERATION OF HIS REQUEST THAT THE DEATH PENALTY BE
12 CONSIDERED AS A POSSIBLE PUNISHMENT IN A CASE. AND YOU
13 UNDERSTAND THAT?

14 A YES, SIR.

15 Q AND AS A JUROR THE COURT WOULD INSTRUCT THE JURY THAT
16 THEY ARE TO GIVE CONSIDERATION TO ANY AND ALL AGGRAVATING
17 CIRCUMSTANCES IN DECIDING WHETHER A DEATH PENALTY SHOULD BE
18 IMPOSED IN THAT CASE. DO YOU UNDERSTAND THAT?

19 A YES.

20 Q SO THE QUESTION IS, CAN YOU IN FACT GIVE BOTH SIDES FAIR
21 AND MEANINGFUL CONSIDERATION?

22 A (NO RESPONSE)

23 Q NOW, THE QUESTION CAME UP ABOUT WHETHER YOU COULD RAISE
24 YOUR HAND AND VOTE IN THE JURY ROOM AND WHETHER YOU COULD
25 WRITE YOUR NAME DOWN. I WANT TO TAKE YOU ACTUALLY BACK A

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 STEP FARTHER THAN THAT.

2 LET'S ASSUME -- WE'RE GOING TO HAVE TO ASSUME SOME
3 THINGS, MR. MAYER. LET'S ASSUME THAT YOU ARE CHOSEN IN -- AS
4 A JUROR NOT IN THIS CASE BUT IN A CAPITAL MURDER CASE. THIS
5 IS A HYPOTHETICAL SITUATION. AND YOU AND THE OTHER ELEVEN
6 JURORS HAVE HEARD ALL OF THE EVIDENCE OF THE CRIME AND ALL OF
7 THE EVIDENCE OF WHETHER THE PERSON IS GUILTY AND HAVE VOTED
8 THE PERSON IS GUILTY OF INTENTIONAL MURDER. THEN THE
9 PROSECUTION WOULD BRING TO YOU EVIDENCE THAT THE IMPOSITIONS
10 OF THE DEATH PENALTY SHOULD BE CONSIDERED AS A POSSIBLE
11 SENTENCE. THE DEFENSE, IF THEY CHOSE, COULD PRESENT TO YOU
12 INFORMATION THAT THE POSSIBLE SENTENCE SHOULD BE A LIFE IN
13 PRISON SENTENCE. YOU GO BACK IN THE JURY ROOM AND YOU WOULD
14 LISTEN TO THE INPUT FROM ALL THE OTHER JURORS AND MAKE A
15 DETERMINATION ABOUT WHAT YOU THOUGHT THE CORRECT PUNISHMENT
16 WAS SO THAT WHEN YOU WERE CALLED UPON TO VOTE YOU WOULD HAVE
17 HAD BOTH CONSIDERATIONS AVAILABLE TO YOU.

18 IF UNDER THE CIRCUMSTANCES I'VE DESCRIBED TO YOU, MR.
19 MAYER, YOU WERE -- AND PROSECUTOR USED THE WORD "POSITIVE"
20 WHEN YOU -- IF YOU WERE POSITIVE THAT THE CASE THAT YOU WERE
21 SITTING ON WAS IN FACT ONE OF THE CASES WHERE THE DEATH
22 PENALTY WAS APPROPRIATE, AND IF YOU HAD GIVEN FULL
23 CONSIDERATION TO BOTH AND IF IN FACT YOU HAD DECIDED UNDER
24 YOUR OWN VALUES THAT THE DEATH PENALTY WAS THE APPROPRIATE
25 SENTENCE, COULD YOU THEN VOTE FOR IT, IF YOU HAD MADE THAT

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 DECISION ON YOUR OWN? COULD YOU VOTE FOR IT IF YOU HAD
2 DECIDED AFTER FULL CONSIDERATION THAT IT WAS APPROPRIATE IN
3 THAT CASE, WHATEVER CASE IT MIGHT BE?

4 A I'M STILL NOT SURE.

5 Q YOU'RE NOT SURE ABOUT -- TELL ME WHAT YOU'RE NOT SURE
6 ABOUT WHAT. TELL ME WHERE YOU'RE RELUCTANCE IS.

7 A BASICALLY, MY RELUCTANCE COMES IN -- NOW, I HAVE TO GIVE
8 YOU WHAT I KNOW, WHAT IS DRIVING ME.

9 Q RIGHT.

10 A THE POWERS THAT BE ARE ORDAINED OF GOD. SO WHEN I LOOK
11 AT THE JUDGE I SEE AN ORDINATION. WHEN I LOOK AT THE
12 PROSECUTOR, I SEE AN ORDINATION. WHEN I LOOK AT LAW
13 ENFORCEMENT, I SEE AN ORDINATION. THEY ARE HERE TO CARRY OUT
14 THE LAWS. ALL RIGHT. NOW, THAT IS THEIR FIELD.

15 ME PERSONALLY, AS A CITIZEN I AM SUPPOSED TO PARTICIPATE
16 IN THAT PROCESS. NOW, AS A PASTOR, I AM ALSO SUPPOSED TO
17 GIVE GRACE AND MERCY. SO THAT'S WHERE MY CONFLICT OF
18 INTEREST IS COMING IN. SO WHEN I'M STANDING IN THAT
19 POSITION, BECAUSE I'VE NEVER BEEN THERE BEFORE, IN MY MIND I
20 HAVE BUT PERSONALLY I CAN'T REALLY SAY THAT I WOULD SAY TAKE
21 THIS MAN'S LIFE. SO I'M NOT POSITIVE. I'M NOT SAYING I
22 COULDN'T DO IT. I'M JUST SAYING THAT I'M NOT SURE, AND I
23 HAVE TO BE FAIR TO EVERYBODY HERE. SO THAT'S WHERE I AM. I
24 COULD NOT GUARANTEE THAT, AND I COULD NOT GUARANTEE THAT I
25 WOULD NOT. SO THAT'S WHERE I AM.

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 Q ALL RIGHT. AND YOUR REFERENCE, I BELIEVE, TO THE BIBLE
2 REGARDING -- THAT THE BIBLE BOTH ENDORSES CAPITAL PUNISHMENT
3 AND ENDORSES GRACE AND THAT THERE IS A CONFLICT THERE?

4 A IN ME. YES, SIR.

5 Q ALL RIGHT. AND YOUR RELUCTANCE, YOUR HESITANCY TO
6 COMMIT BECAUSE YOU'VE NEVER BEEN THERE, WELL, IF YOU WERE A
7 JUROR IN A CASE OF THIS NATURE, MR. MAYER, YOU WOULD IN FACT
8 BE THERE WHERE YOU HAD TO MAKE THAT CHOICE BETWEEN CAPITAL
9 PUNISHMENT OR THE DEATH PENALTY OR GRACE AND LIFE
10 IMPRISONMENT. THAT DECISION WOULD BE THERE BEFORE YOU AT THE
11 TABLE AND A VOTE WOULD HAVE TO BE MADE. DO YOU FOLLOW ME?

12 A YES, SIR.

13 Q NOW, WHETHER -- THE QUESTION OF WHETHER YOU ARE
14 QUALIFIED TO BE IN THE PANEL IS WHETHER YOU IN FACT WOULD
15 GIVE MEANINGFUL CONSIDERATION TO BOTH AND IN FACT WERE
16 CAPABLE OF VOTING FOR BOTH DEPENDING UPON WHAT YOU HAD
17 DETERMINED TO BE THE RIGHT PUNISHMENT IN THAT CASE. DO YOU
18 FOLLOW THAT?

19 A YES, SIR.

20 Q AND YOU HAVE TO BE ABLE TO SAY, "IN THE RIGHT CASE, I
21 COULD VOTE FOR DEATH. IN THE RIGHT CASE, I COULD VOTE FOR
22 LIFE. I'M OPEN TO DETERMINE WHAT THE FACTS SUPPORT." DO YOU
23 FOLLOW ME?

24 A YES, SIR.

25 Q ALL RIGHT. UNDER THOSE CIRCUMSTANCES, IF YOU WERE IN A

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 SITUATION WHERE THE PROSECUTION HAD REQUESTED CONSIDERATION
2 OF THE DEATH PENALTY, YOU HAD LOOKED AT ALL OF THE EVIDENCE
3 IN THE CASE, ALL OF THE AGGRAVATING INFORMATION ABOUT THE
4 CASE, THE SITUATION THAT YOU DESCRIBED TO THE COURT WHERE A
5 DEATH PENALTY MIGHT BE APPROPRIATE, YOU THEN HAVE DECIDE IN
6 YOUR MIND BASED UPON YOUR VIEW OF THE EVIDENCE THAT A DEATH
7 PENALTY WAS APPROPRIATE, THE QUESTION THEN BECOMES, WOULD YOU
8 IN FACT CARRY OUT THAT BY VOTING FOR IT? AND THAT IS THE
9 BOTTOM LINE QUESTION. YOU HAVE TO MAKE THE DECISION THAT
10 IT'S APPROPRIATE. THEN YOU HAVE TO ACTUALLY ACT ON THAT
11 DECISION. DO YOU FOLLOW ME?

12 A YES, SIR.

13 Q ALL RIGHT. COULD YOU DO THAT? REALIZING YOU'VE NEVER
14 BEEN HERE BEFORE -- NONE OF THESE JURORS HAVE BEEN HERE
15 BEFORE.

16 A I'M NOT SURE I COULD DO IT. SO THAT'S WHERE I MUST
17 STAND. I'M JUST NOT SURE.

18 Q WELL, YOU UNDERSTAND THAT IN ORDER TO IMPOSE THE DEATH
19 PENALTY IN A CASE OF THIS NATURE A PERSON WOULD HAVE TO
20 ACTUALLY SIGN THEIR NAME TO THE FORM WITH THE OTHER ELEVEN
21 JURORS, ALL OF WHOM HAD VOTED FOR THE DEATH PENALTY AS WELL.
22 DO YOU UNDERSTAND THAT?

23 A YES, SIR.

24 Q YOU HAVE TO SIGN THAT. COULD YOU -- IF YOU HAD DECIDED
25 THAT IT WAS THE RIGHT PUNISHMENT, COULD YOU SIGN THE FORM AND

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 PROVIDE IT TO THE COURT?

2 A UP TO THIS POINT I'M NOT CONVINCED THAT I COULD.

3 MR. MAULDIN: ALL RIGHT. ONE MOMENT, YOUR HONOR.

4 THE COURT: YES, SIR.

5 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL)

6 Q ONE FINAL QUESTION, MR. MAYER. REALIZING YOUR
7 RESERVATION AND REALIZING YOUR INABILITY TO SAY WHETHER YOU
8 COULD OR NOT, THAT HESITANCY, COULD YOU SET THAT HESITANCY
9 ASIDE IF THIS COURT INSTRUCTED YOU UNDER YOUR OATH THAT IF
10 THE DEATH PENALTY WAS THE APPROPRIATE PENALTY THE -- EACH
11 JUROR WOULD HAVE TO SIGN THEIR NAME, THAT THAT WAS PART OF
12 THEIR JURY SERVICE UNDER THEIR OATH AS A JUROR? COULD YOU
13 SET ASIDE YOUR HESITANCY AND FOLLOW THE COURT'S INSTRUCTION?

14 SOLICITOR ARIAIL: I'M GOING TO OBJECT TO THAT, YOUR
15 HONOR. THERE IS NOT GOING TO BE SUCH AN INSTRUCTION. THE
16 INSTRUCTION WOULD BE ASK TO CONSIDER. BUT THERE WOULD NEVER
17 BE AN INSTRUCTION BY THE COURT THAT HE WOULD HAVE TO SET
18 ASIDE THAT BELIEF. IN THE EVENT---

19 MR. MAULDIN: THERE WOULD BE AN INSTRUCTION THAT
20 EACH---

21 THE COURT: HE CAN ANSWER THE QUESTION.

22 MR. MAULDIN: YES, SIR.

23 Q DID YOU UNDERSTAND THE QUESTION, MR. MAYER?

24 A YES, SIR.

25 Q AND IF SO INSTRUCTED BY THE COURT COULD YOU SET ASIDE

ERNEST MAYER -- VOIR DIRE BY MR. MAULDIN

1 THAT RELUCTANCE AND FOLLOW THE COURT'S INSTRUCTIONS?

2 A I'VE ALREADY CONSIDERED THAT AND I'M NOT SURE.

3 MR. MAULDIN: ALL RIGHT.

4 THE COURT: PASTOR MAYER, THANK YOU SO MUCH FOR BEING
5 HERE. IF YOU WOULD, JUST STEP OUT AND FOLLOW THE
6 INSTRUCTIONS, THEY WILL TAKE YOU TO A JURY ROOM AND WE'LL BE
7 THROUGH WITH YOU IN JUST A FEW MOMENTS.

8 JUROR NUMBER 238: THANK YOU, SIR.

9 (JUROR EXITS COURTROOM AT 12:10 P.M.)

10 THE COURT: IF THE DEFENDANT CONTENTS THAT PASTOR MAYER
11 IS QUALIFIED, I'D LIKE TO HEAR YOUR ARGUMENT.

12 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) YOUR HONOR,
13 THE -- I WOULD LIKE TO PUT ON THE RECORD THAT THE JUROR DID
14 STATE THAT THERE WERE SITUATIONS WHERE HE FELT THE DEATH
15 PENALTY WOULD PROBABLY BE CONSIDERED OR APPROPRIATE. THIS
16 WAS IN REPLY TO YOUR QUESTION. AND THEN HE SAID BUT HE
17 PERSONALLY HAD RELUCTANCE ABOUT WHETHER HE COULD ACTUALLY DO
18 IT. I BELIEVE THAT HIS RECOGNITION THAT HE COULD BE IN
19 CERTAIN CIRCUMSTANCES WOULD MAKE HIM QUALIFIED. HIS
20 RELUCTANCE TO ESSENTIALLY COMMIT SHOULDN'T NECESSARILY
21 DISQUALIFY HIM.

22 THE COURT: I FIND THAT THE JUROR, MR. MAYER, IS NOT
23 QUALIFIED. I AM FULLY CONVINCED THAT HIS VIEWS WOULD PREVENT
24 OR AT A MINIMUM SUBSTANTIALLY IMPAIR THE PERFORMANCE OF HIS
25 DUTIES AS A JUROR, AND I PERMITTED DEFENSE COUNSEL TO

MATTERS AND MOTIONS

1 APPROACH THE ISSUE FROM ABOUT A DOZEN DIFFERENT DIRECTIONS TO
2 FIND AN OPENING OR A CHINK IN THE ARMOR, AND HE WAS STEADFAST
3 IN HIS RESPONSE THROUGHOUT, AND I'M CONFIDENT HE IS NOT
4 QUALIFIED.

5 THE RECORD WILL REFLECT THE DEFENDANT'S EXCEPTION TO MY
6 RULING. SINCE THIS JUROR IS NOT QUALIFIED, WE DON'T HAVE TO
7 ADDRESS THE ISSUE OF SELECTION.

8 TELL MR. MAYER HE IS FREE TO GO AND THANK HIM, AND BRING
9 IN MR. SAUNDERS, PLEASE.

10 (JUROR NUMBER 321 ENTERS COURTROOM AT 12:14 P.M.)

11 GEORGE D. SAUNDERS (WHITE
12 MALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 VOIR DIRE BY THE COURT:

14 Q MR. SAUNDERS, THANK YOU SO MUCH FOR YOUR PATIENCE AND
15 YOUR COOPERATION IN THIS DIFFICULT PROCESS. I'M GOING TO
16 DESCRIBE MORE OF THE PROCESS OF A CAPITAL CASE TO YOU. I'M
17 GOING TO ASK YOU SOME QUESTIONS, AND THESE ATTORNEYS WILL
18 LIKEWISE HAVE QUESTIONS.

19 THIS PARTICULAR CASE ARISES FROM AN INCIDENT, ACCORDING
20 TO THE INDICTMENT, WHICH OCCURRED IN GREENVILLE COUNTY ON
21 DECEMBER THE 6TH OF THE YEAR 2000. THE DEFENDANT IS CHARGED
22 WITH THE CRIME OF MURDER. IT IS ALLEGED AND ADMITTED THAT
23 THE VICTIM, MR. NICHOLSON, ERIC NICHOLSON, WAS AT THE TIME A
24 STATE TROOPER.

25 THIS CASE HAS RECEIVED SOME PUBLICITY, AND I WANT TO

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 KNOW IF YOU CAN RECALL ANYTHING THAT -- INFORMATION YOU MAY
2 HAVE GATHERED FROM THE MEDIA OR OTHERWISE ABOUT THIS CASE.
3 AND IF YOU HAVE, BE VERY SPECIFIC IN WHAT YOU RECALL.

4 A YES, SIR, I HAVE. APPARENTLY THERE WAS AN INCIDENT. I
5 THINK IT WAS ON 385 WITH A CAR CHASE, AND I THINK IT BLED
6 OVER INTO ANDERSON COUNTY AS THE DAY PROGRESSED. IT WAS VERY
7 WELL, AS I RECALL, IN THE MEDIA, ON T.V. THEY HAD THE
8 CAMERAS IN THE AIR, TALKS OF SHOOTING, TALKS OF CHASES, TALKS
9 OF ESCAPE CARS. SO, YEAH, IT WAS -- AT THE TIME I DON'T
10 RECALL A LOT OF THE DETAILS, BUT IT WAS VERY WELL PLAYED IN
11 THE MEDIA AS FAR AS I COULD TELL.

12 Q OKAY. AND IS THAT THE EXTENT OF WHAT YOU RECALL ABOUT
13 THE ACTUAL DETAILS?

14 A THE DETAILS WERE THAT IT WAS A LOT OF BULLETS FLYING
15 HERE IN GREENVILLE AND IN ANDERSON COUNTY WHEN, I BELIEVE,
16 THE -- IT FINALLY ENDED. I THERE KNOW WAS DEATH AND THERE
17 WAS SOME WOUNDING. THAT'S ABOUT ALL I CAN RECALL.

18 Q OKAY. MR. SAUNDERS, THE REASON I ASK YOU SPECIFICALLY
19 ABOUT WHAT YOU RECALL IS THAT IF YOU ARE SELECTED TO SERVE AS
20 A JUROR, YOU WOULD BE GIVEN AN OATH, AND PART OF THE OATH
21 WOULD REQUIRE YOU TO FIND THE TRUTH NOT FROM WHAT YOU HEARD
22 IN THE MEDIA OR SAW ON TELEVISION. YOUR OATH WOULD REQUIRE
23 YOU TO FIND THE TRUTH AS TO WHAT HAPPENED, THE FACTS, ONLY
24 FROM THE EVIDENCE PRESENTED DURING THE COURSE OF THE TRIAL
25 HERE IN THE COURTROOM. IF YOU WERE A JUROR, COULD YOU HONOR

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 YOUR OATH IN THAT REGARD AND FIND THE FACTS, THE EVIDENCE,
2 ONLY FROM THE EVIDENCE PRESENTED DURING THE COURSE OF THE
3 TRIAL?

4 A YES, I COULD.

5 Q WOULD YOU FOLLOW YOUR OATH TO HONOR AND FOLLOW THE LAW
6 AS I INSTRUCT IT?

7 A YES, SIR.

8 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
9 THIS CASE AS A RESULT OF YOUR EXPOSURE TO THE MEDIA?

10 A NO.

11 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
12 INNOCENCE OF THIS PARTICULAR DEFENDANT, MR. WOOD?

13 A NO, SIR.

14 Q KEEPING IN MIND THE LEGAL PRINCIPLES WHICH I HAVE
15 MENTIONED TO YOU BOTH YESTERDAY AND EARLIER TODAY, THE
16 PRESUMPTION OF INNOCENCE AND THE STATE'S OBLIGATION TO PROVE
17 GUILT BEYOND A REASONABLE DOUBT, IF YOU SERVED AS A JUROR IN
18 ANY GIVEN CASE -- WE'RE CERTAINLY NOT TALKING ABOUT THIS ONE.
19 BUT IF YOU SERVED AS A JUROR IN ANY CASE AND AFTER CAREFULLY
20 CONSIDERING THE EVIDENCE AND THE LAW YOU WERE CONVINCED THAT
21 A PARTICULAR DEFENDANT WAS GUILTY OF THE CRIME CHARGED, COULD
22 YOU VOTE FOR A GUILTY VERDICT?

23 A YES.

24 Q ON THE OTHER HAND, AFTER CAREFULLY CONSIDERING THE
25 EVIDENCE, FOLLOWING THE LAW, IF YOU WERE NOT PERSUADED THAT

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 THE STATE HAD PROVEN GUILT BEYOND A REASONABLE DOUBT WOULD
2 YOU FOLLOW YOUR OATH IN THAT EVENT AND FIND THE DEFENDANT NOT
3 GUILTY?

4 A YES, SIR.

5 Q MR. SAUNDERS, WE MAY NOT EVEN REACH A SENTENCING PHASE
6 IN THIS CASE. THIS CASE MAY CONCLUDE AT THE END OF THE FIRST
7 PHASE. BUT BECAUSE IT POSSIBLY COULD GO TO A SENTENCING
8 PHASE, I, ALONG WITH THE ATTORNEYS, MUST ASK YOU CERTAIN
9 QUESTIONS ABOUT THE PROCESS, YOUR UNDERSTANDING OF IT, AND
10 PARTICULARLY YOUR VIEWS ON THE DEATH PENALTY. DO YOU
11 UNDERSTAND THAT, SIR?

12 A YES, SIR.

13 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THAT MEANS A
14 JURY HAS ALREADY FOUND A DEFENDANT GUILTY OF MURDER. IN
15 OTHER WORDS, GUILT OF THE MURDER IS ALREADY ESTABLISHED.
16 THAT HAPPENED IN THE FIRST PHASE OF A TRIAL. THERE IS NO
17 DEFENSE LEFT TO ARGUE ABOUT. THERE IS NO SELF-DEFENSE.
18 THERE IS NO ALIBI. MURDER HAS BEEN ESTABLISHED.

19 SO AS A JURY IN A CAPITAL CASE MOVES INTO A SENTENCING
20 PHASE, THE JURY THEN HEARS ADDITIONAL EVIDENCE, EVIDENCE THAT
21 I REFERRED TO EARLIER AS EVIDENCE IN AGGRAVATION AND EVIDENCE
22 IN MITIGATION. EXAMPLES OF MITIGATION MAY INCLUDE SUCH
23 THINGS AS A DEFENDANT'S BACKGROUND, MENTAL STATUS, MENTAL
24 HEALTH HISTORY, FAMILY HISTORY, THINGS OF THAT NATURE.

25 AT THE END OF THE DAY, AT THE END OF THE SENTENCING

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 HEARING, THE COURT WOULD INSTRUCT THE JURY BEFORE MAKING THE
2 DECISION ON LIFE IMPRISONMENT OR DEATH TO GIVE SERIOUS,
3 THOUGHTFUL, MEANINGFUL CONSIDERATION TO BOTH THE EVIDENCE IN
4 AGGRAVATION AS WELL AS THE EVIDENCE IN MITIGATION. IF YOU
5 WERE A JUROR IN THAT SITUATION, COULD YOU HONOR YOUR OATH AND
6 GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO BOTH THE
7 EVIDENCE IN AGGRAVATION AND EVIDENCE IN MITIGATION BEFORE
8 MAKING A FINAL DECISION?

9 A YES, SIR.

10 Q MR. SAUNDERS, WE'RE STILL TALKING ABOUT SOME
11 HYPOTHETICAL CASE AND THE PROCESS IN GENERAL. IF YOU WERE A
12 JUROR IN THAT SITUATION, THAT'S THE SENTENCING PHASE, COULD
13 YOU, DEPENDING ON THE PARTICULAR FACTS AND CIRCUMSTANCES,
14 CONSIDERING THE EVIDENCE IN AGGRAVATION AND MITIGATION AND
15 THE LAW FULLY, IF YOU BELIEVED THAT THE LIFE SENTENCE WAS THE
16 APPROPRIATE ONE, COULD YOU VOTE FOR LIFE IMPRISONMENT?

17 A YES, SIR.

18 Q ON THE OTHER HAND, IF YOU WERE A JUROR, CAREFULLY
19 ASSESSED ALL THE FACTS AND CIRCUMSTANCES, CAREFULLY
20 CONSIDERED AGGRAVATING CIRCUMSTANCES, MITIGATING
21 CIRCUMSTANCES, AND YOU BELIEVED THAT THE APPROPRIATE SENTENCE
22 WAS DEATH, COULD YOU VOTE FOR THE DEATH PENALTY?

23 A YES, SIR.

24 Q UNDER SOUTH CAROLINA LAW IT REQUIRES EACH JUROR IN THE
25 EVENT OF A DEATH PENALTY TO SIGN HIS OR HER NAME TO THE

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 VERDICT FORM. IN THAT EVENT COULD YOU SIGN YOUR NAME TO THE
2 VERDICT FORM?

3 A YES, SIR.

4 Q DO YOU RECALL THE SHEET THAT LISTED THE THREE TYPES OF
5 JURORS? THERE'S ONE JUROR WHO IS GOING TO VOTE FOR THE DEATH
6 PENALTY IN EVERY CASE. THERE IS ONE JUROR WHO IS GOING TO
7 VOTE FOR LIFE IMPRISONMENT IN EVERY CASE. THEN THERE IS A
8 THIRD JUROR WHOSE MIND IS NOT MADE BUT MUST LISTEN TO ALL THE
9 EVIDENCE AND COULD GO EITHER WAY DEPENDING ON WHAT THE FACTS
10 AND CIRCUMSTANCES AND THE LAW REQUIRED. DO YOU FIT INTO ANY
11 OF THOSE CATEGORIES?

12 A THE THIRD ONE. THE THIRD CATEGORY, I WOULD HOPE.

13 Q OKAY. IF YOU WERE SELECTED IN THIS CASE, MR. SAUNDERS,
14 WOULD YOU HONOR YOUR OATH AND SERVE AS A FAIR AND IMPARTIAL
15 JUROR?

16 A YES, SIR.

17 Q AND WOULD YOU APPROACH YOUR JURY SERVICE WITH AN OPEN
18 MIND TO FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW THE LAW
19 AS I INSTRUCT IT?

20 A YES, SIR.

21 Q NOW, YOU MAY HAVE SOME REASON THAT YOU DON'T BELIEVE YOU
22 CAN SERVE IN THIS CASE. I MAY NOT HAVE ASKED THE RIGHT
23 QUESTION. SO DO YOU KNOW OF ANY REASON WHY YOU WOULD NOT BE
24 AN ELIGIBLE JUROR IN THIS CASE?

25 A NO, SIR.

GEORGE D. SAUNDERS -- VOIR DIRE BY THE COURT

1 THE COURT: NOW, I MAY HAVE SOME FOLLOW-UP
2 QUESTIONS FOR YOU, SIR. BUT THE ATTORNEYS ALSO HAVE AN
3 OPPORTUNITY TO ASK YOU QUESTIONS.

4 MR. MAULDIN?

5 VOIR DIRE BY MR. MAULDIN:

6 Q MR. SAUNDERS, I'M JOHN MAULDIN, THE PUBLIC DEFENDER FOR
7 GREENVILLE COUNTY, AND I, ALONG WITH JIM BANNISTER AND RODNEY
8 RICHEY, REPRESENT JOHN WOOD, WHO IS THE DEFENDANT IN THIS
9 CASE AND WHO IS CHARGED WITH THESE OFFENSES. AND I WANT TO
10 BEGIN MY QUESTIONS MY REFERRING BACK TO THE COMMENTS YOU WERE
11 MAKING TO THE JUDGE ABOUT WHAT YOU HAD HEARD ABOUT THE CASE.

12 A UH-HUH (AFFIRMATIVE).

13 Q OBVIOUSLY IT'S EASY TO SAY, WELL, WE CAN SET THIS ASIDE
14 OR WE CAN SET THAT ASIDE OR WE DON'T REALLY HAVE ANY
15 PREDECIDED OPINION. BUT I WANT YOU TO REALLY SEARCH WITHIN
16 YOURSELF TO MAKE SURE YOU FEEL LIKE YOU WOULD NOT BE AFFECTED
17 BY ANYTHING THAT YOU MAY NECESSARILY HAVE HEARD.

18 AND LET ME BEGIN THESE QUESTIONS BY THIS COMMENT:
19 TAKING INTO CONSIDERATION EVERYTHING THAT YOU HAVE HEARD
20 ABOUT THIS CASE, EITHER FROM THE OUTSIDE OR IN THIS COURTROOM
21 THE LAST COUPLE OF DAYS, DO YOU HAVE A VIEW OR AN OPINION
22 REGARDING THE GUILT OR INNOCENCE OF JOHN WOOD? DO YOU COME
23 IN WITH AN OPINION? WOULD BE THE FIRST QUESTION.

24 A YES.

25 Q ALL RIGHT. AND WHAT WOULD THAT OPINION BE?

1 A AT THIS TIME, PROBABLY GUILTY.

2 Q DO YOU -- AND YOU MENTIONED TO THE COURT THAT YOU HEARD
3 A GOOD BIT ABOUT THE INCIDENT?

4 A YES, SIR.

5 Q AS YOU COME IN WITH THE VIEW THAT JOHN WOOD IS PROBABLY
6 GUILTY, WOULD THAT LEAD YOU OR TEND TO LEAD YOU, AS BEST I
7 CAN ASK IT, TO EXPECT THE DEFENDANT TO ESTABLISH THAT HE DID
8 NOT COMMIT THE OFFENSE IN SOME WAY, RESPOND TO THE CHARGES, I
9 GUESS YOU COULD SAY?

10 A I WOULD ASSUME THAT THAT WOULD BE WHAT I WOULD BE
11 LOOKING FOR, YES.

12 Q AND IF THAT DID NOT COME FORTH, IF YOU DID NOT RECEIVE
13 ANY SUCH INFORMATION, WOULD YOU BE INCLINED TO MAINTAIN THE
14 VIEW THAT YOU HAD COMING IN THAT THE PERSON ON TRIAL WAS
15 PROBABLY GUILTY UNLESS SOMETHING CAME TO THE FRONT OTHERWISE?

16 A I WOULD LIKE TO THINK THAT I WOULD BE ABLE TO PUT THAT
17 ASIDE AND WEIGH THE CASE ON ITS OWN MERITS, BECAUSE I HAVE
18 ALSO BEEN INVOLVED AND SEEN THINGS HAPPEN IN MY OWN
19 NEIGHBORHOOD AND THEN WATCHED IT ON TELEVISION LATER AND
20 REALIZED THAT THE MEDIA HAD NO CLUE OF WHAT WAS GOING ON, AND
21 IT WAS IN AN ENTIRELY DIFFERENT SCENARIO THAN WHAT ACTUALLY
22 HAPPENED IN MY OPINION.

23 Q UH-HUH (AFFIRMATIVE).

24 A SO I WOULD LIKE TO THINK I WOULD BE OPEN MINDED ENOUGH
25 TO WEIGH THE CASE ON ITS OWN MERITS.

GEORGE D. SAUNDERS -- VOIR DIRE BY MR. MAULDIN

1 Q YOU PREFACED THAT WITH "I WOULD LIKE TO THINK THAT I
2 COULD DO" AND THEN YOUR DESCRIPTION. THE QUESTION I GUESS
3 THAT THE COURT, IN DETERMINING WHETHER YOU ARE ELIGIBLE OR
4 QUALIFIED TO BE A JUROR, MUST BE SATISFIED THAT THE JURORS
5 WHO SIT ON THIS CASE HAVE NO PREDETERMINED VIEW THAT COULD
6 AFFECT -- COULD POSSIBLY AFFECT -- THEIR ABILITY TO FAIRLY
7 AND IMPARTIALLY TRY THE CASE. DO YOU FOLLOW THAT?

8 A YES.

9 Q WOULD YOU FIND YOURSELF IN THAT POSITION? DO YOU
10 BELIEVE YOU ARE A JUROR WHO COULD FAIRLY AND IMPARTIALLY TRY
11 THE CASE AND NOT BE AFFECTED -- NOT EVEN POSSIBLY BE AFFECTED
12 -- BY WHAT YOU HAD PREDETERMINED?

13 A I DON'T THINK I COULD. I HAVE SOME PRETTY STRONG
14 FEELINGS TOWARD IT.

15 MR. MAULDIN: ALL RIGHT. THANK YOU.

16 THE COURT: ANY QUESTIONS?

17 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) LET ME
18 JUST SEE IF MR. -- EXCUSE ME JUST FOR A MOMENT. (OFF RECORD
19 WITH CO-COUNSEL)

20 VOIR DIRE BY SOLICITOR ARIAIL:

21 Q MR. SAUNDERS, I'M BOB ARIAIL. I'M THE SOLICITOR FOR
22 GREENVILLE COUNTY. AND THE JUDGE INTRODUCED MY STAFF, MS.
23 HERVEY AND MS. STROM.

24 I WANT TO JUST CLARIFY WHAT I HEARD YOU SAY TO THE JUDGE
25 WAS THAT YOU COULD -- EVEN THOUGH YOU HAD HEARD ALL THIS

GEORGE D. SAUNDERS -- VOIR DIRE BY SOLICITOR ARIAIL

1 STUFF, YOU COULD PUT IT ASIDE WHEN YOU WENT INTO THE JURY
2 ROOM IF YOU WERE SELECTED ON THE CASE. AND THEN WHAT I HEAR
3 YOU TELLING THE DEFENSE ATTORNEY IS THAT IT MAY GO INTO THE
4 JURY ROOM AND SOMEHOW AFFECT YOUR ABILITY. CAN YOU -- AM
5 I---

6 A TO CLARIFY, I WOULD LIKE TO THINK I WOULD BE THAT STRONG
7 OF A PERSON TO BE ABLE TO PUT THOSE FEELINGS ASIDE, BUT I
8 REALLY COULD NOT GUARANTEE IT. I HAVE SOME FRIENDS IN LAW
9 ENFORCEMENT AND I FEEL PRETTY STRONGLY ABOUT THIS CASE. AND
10 I DID WATCH IT ON TELEVISION AND I HAVE SOME PRETTY
11 PREDETERMINED POSITIONS ON IT, I GUESS I WOULD SAY.

12 Q OKAY. ALL RIGHT.

13 A I DON'T KNOW IF I'M STRONG ENOUGH TO SAY THAT I COULDN'T
14 PUT THOSE ASIDE.

15 SOLICITOR ARIAIL: ALL RIGHT. THANK YOU FOR BEING SO
16 -- FOR GIVING US THOSE ANSWERS.

17 THE COURT: THANK YOU, SIR. THEY WILL TAKE YOU TO A
18 JURY ROOM, AND WE'LL BE BACK WITH YOU JUST SHORTLY. THANK
19 YOU, MR. SAUNDERS.

20 (JUROR EXITS COURTROOM AT 12:28 P.M.)

21 THE COURT: IF THE STATE CONTENDS MR. SAUNDERS IS
22 QUALIFIED, I'D LIKE TO HEAR THE ARGUMENT.

23 SOLICITOR ARIAIL: NO, SIR.

24 THE COURT: NOT QUALIFIED.

25 EXCUSE MR. SAUNDERS. HE IS FREE TO GO. BRING IN MS.

MATTERS AND MOTIONS

1 SMITH. SHE IS THE NEXT JUROR.

2 (JUROR NUMBER 326 ENTERS COURTROOM AT 12:30 P.M.)

3 KENYENA V. SMITH (BLACK
4 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
5 VOIR DIRE BY THE COURT:

6 Q WE'LL TRY NOT TO KEEP YOU TOO LONG, AND WE THANK YOU FOR
7 YOUR PATIENCE. I'M GOING TO DESCRIBE IN MORE DETAIL A LITTLE
8 BIT ABOUT THE PROCESS OF A CAPITAL CASE AND ALSO ASK YOU YOUR
9 OPINION ON CERTAIN VIEWS THAT MAY ARISE IN A CASE OF THIS
10 NATURE. NO RIGHT OR WRONG ANSWERS. WE'RE JUST SIMPLY TRYING
11 TO GATHER INFORMATION. I'LL BE ASKING YOU QUESTIONS AND THE
12 ATTORNEYS WILL AS WELL.

13 NOW, MS. SMITH, THIS PARTICULAR CASE ARISES FROM AN
14 INCIDENT WHICH OCCURRED IN GREENVILLE COUNTY ON DECEMBER THE
15 6TH, 2000. IN THE INDICTMENT, THE DEFENDANT, MR. WOOD, IS
16 CHARGED WITH THE CRIME OF MURDER. THE VICTIM IDENTIFIED IN
17 THE INDICTMENT IS ERIC NICHOLSON. MR. NICHOLSON WAS AT THAT
18 TIME A MEMBER OF THE HIGHWAY PATROL. HE WAS A STATE TROOPER.

19 THIS CASE RECEIVED ATTENTION IN THE MEDIA. I WANT TO
20 KNOW IF YOU ACQUIRED ANY INFORMATION, KNOWLEDGE, HEARD
21 ANYTHING ABOUT THIS CASE FROM THE MEDIA OR OTHERWISE. AND IF
22 YOU HAVE, TELL US SPECIFICALLY WHAT YOU CAN RECALL.

23 A NO, SIR, I HAVEN'T HEARD ANYTHING ABOUT IT.

24 Q OKAY. HOW LONG HAVE YOU LIVED HERE IN GREENVILLE?

25 A NINETEEN YEARS.

1 Q OKAY. AND YOU DON'T RECALL ANYTHING IN THE MEDIA ABOUT
2 THIS CASE?

3 A NO, SIR.

4 Q OKAY. YOU MAY HEAR SOME REFERENCE, IF YOU SERVE ON THE
5 JURY, TO ANDERSON COUNTY. WHEN I MENTION THE TERM "ANDERSON
6 COUNTY," DOES THAT TRIGGER ANY MEMORY ABOUT THIS CASE?

7 A NO, SIR.

8 Q THE REASON THAT I -- JUST KEEP YOUR VOICE UP. YOU CAN'T
9 GET THE MICROPHONE ANY CLOSER, BUT YOU CAN KEEP YOUR VOICE UP
10 FOR US. THE REASON I ASK YOU THAT IS BECAUSE WHEN A PERSON
11 SERVES ON A JURY, THE JUROR AND EACH MEMBER OF THE JURY TAKES
12 AN OATH TO FIND THE TRUTH FROM THE EVIDENCE. SO IF YOU ARE
13 SITTING ON THE JURY AND YOU HEAR SOMETHING MENTIONED AND YOU
14 DO RECALL AT THAT POINT, "WELL, GOSH, I DO REMEMBER SOMETHING
15 I SAW ON T.V. ABOUT THIS," THE POINT IS, UNDER YOUR OATH YOU
16 WOULD HAVE TO FIND THE TRUTH NOT FROM WHAT HAPPENED OUTSIDE
17 OF COURT BUT ONLY FROM THE EVIDENCE PRESENTED DURING THE
18 COURSE OF THE TRIAL. IF YOU WERE A JUROR, COULD YOU HONOR
19 YOUR OATH IN THAT REGARD?

20 A YES, SIR.

21 Q WOULD YOU FURTHER FOLLOW THE LAW AS I INSTRUCT YOU TO
22 FOLLOW IT?

23 A YES, SIR.

24 Q HAVE YOU ALREADY FORMED AN OPINION ABOUT THE FACTS OF
25 THIS CASE?

KENYENA V. SMITH -- VOIR DIRE BY THE COURT

1 A NO, SIR.

2 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
3 INNOCENCE OF THIS DEFENDANT, MR. WOOD?

4 A NO, SIR.

5 Q DO YOU UNDERSTAND THE LEGAL PRINCIPLES I MENTIONED
6 EARLIER, THE PRESUMPTION OF INNOCENCE OF ANY DEFENDANT AND
7 THE BURDEN OF PROOF ON THE STATE TO PROVE GUILT BEYOND A
8 REASONABLE DOUBT?

9 A YES, SIR.

10 Q DO YOU AGREE WITH THOSE LEGAL PRINCIPLES?

11 A YES, SIR.

12 Q IF YOU WERE A JUROR IN ANY CASE -- WE'RE NOT TALKING
13 ABOUT THIS CASE. BUT IF YOU WERE A JUROR AND YOU WERE
14 CONVINCED HAVING CAREFULLY CONSIDERED THE LAW AND THE
15 EVIDENCE THAT A DEFENDANT WAS GUILTY OF A CRIME, WHATEVER THE
16 CRIME MAY BE, IN THAT EVENT COULD YOU VOTE FOR GUILTY?

17 A YES, SIR.

18 Q IF ON THE OTHER HAND YOU WERE A JUROR AND YOU WERE NOT
19 CONVINCED THAT THE STATE HAD NOT PROVEN GUILT BEYOND A
20 REASONABLE DOUBT, WOULD YOU FOLLOW YOUR OATH AND VOTE FOR NOT
21 GUILTY?

22 A YES, SIR.

23 Q NOW, WE MAY NOT EVEN REACH THE SENTENCING PHASE THAT I
24 DESCRIBED TO YOU EARLIER. BUT SINCE WE POSSIBLY COULD, I AND
25 THE ATTORNEYS NEED TO ASK YOU QUESTIONS ABOUT THE PROCESS AND

1 YOUR VIEWS OF THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THAT MEANS THE
4 JURY HAS ALREADY FOUND A PARTICULAR DEFENDANT GUILTY OF
5 MURDER. AT THAT POINT THERE IS NO DEFENSE LEFT. THE JURY
6 HAS FOUND THAT DEFENDANT GUILTY OF MURDER.

7 SO AS THE JURY MOVES INTO THE NEW PHASE, THE SENTENCING
8 PHASE, THE JURY HEARS THIS EVIDENCE THAT I REFERRED TO
9 EARLIER, EVIDENCE IN AGGRAVATION, EVIDENCE IN MITIGATION.
10 EXAMPLES OF MITIGATION EVIDENCE MAY BE THE BACKGROUND OF THE
11 DEFENDANT, FAMILY HISTORY, MENTAL HEALTH STATUS, THINGS OF
12 THAT NATURE. AND AT THE END OF THE JURY SERVICE WHEN ALL THE
13 EVIDENCE IS IN, I WOULD INSTRUCT THE JURY TO GIVE CAREFUL AND
14 MEANINGFUL CONSIDERATION TO THE EVIDENCE, TO THE AGGRAVATING
15 CIRCUMSTANCES, MITIGATING CIRCUMSTANCES AND EVIDENCE BEFORE
16 MAKING A FINAL DECISION AS TO LIFE OR DEATH. IF YOU WERE A
17 JUROR, COULD YOU HONOR YOUR OATH IN THAT REGARD AND GIVE
18 MEANINGFUL CONSIDERATION TO ALL THOSE FACTORS?

19 A YES, SIR.

20 Q IF YOU WERE A JUROR IN A CAPITAL CASE -- AND AGAIN WE'RE
21 NOT TALKING ABOUT THIS CASE BUT JUST THE PROCESS IN GENERAL -
22 - AND AT THE SENTENCING PHASE IF YOU HAD CAREFULLY CONSIDERED
23 ALL THE FACTS, APPLIED THE LAW AS I REQUIRED YOU TO, IF YOU
24 BELIEVED THAT LIFE IMPRISONMENT WAS THE PROPER PUNISHMENT,
25 COULD YOU VOTE FOR LIFE IMPRISONMENT?

KENYENA V. SMITH -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q ON THE OTHER HAND, IF YOU CONSIDERED ALL THE EVIDENCE
3 VERY CAREFULLY, FOLLOWED THE LAW AND YOU BELIEVED IT WAS
4 APPROPRIATE TO IMPOSE A DEATH SENTENCE, COULD YOU VOTE FOR
5 THE DEATH PENALTY?

6 A NO, SIR.

7 Q YOU COULD NOT. UNDER ANY CIRCUMSTANCES COULD YOU
8 CONSIDER IMPOSING THE DEATH PENALTY?

9 A NO, SIR.

10 Q IS THERE ANY CRIME OR ANY SITUATION WHERE YOU THINK THE
11 DEATH PENALTY WOULD BE APPROPRIATE?

12 A NO, SIR.

13 Q AND THAT IS YOUR FIRM VIEW ON THE DEATH PENALTY?

14 A YES, SIR.

15 Q THAT LISTING OF THE THREE TYPES OF JURORS, ONE, TWO AND
16 THREE, DO YOU REMEMBER REVIEWING THAT?

17 A YES, SIR.

18 Q DOES ONE OF THOSE DESCRIBE YOU?

19 A THE SECOND ONE.

20 THE COURT: MR. ARIAIL IS UP, BUT I'M GOING TO DEFER TO
21 YOU IF YOU WANT TO PROCEED AND ASK QUESTIONS.

22 MR. MAULDIN: YES, SIR. ONLY ON THAT NARROW ISSUE,
23 YOUR HONOR, VERY BRIEFLY, PLEASE. THANK YOU.

24 VOIR DIRE BY MR. MAULDIN:

25 Q MS. SMITH, I WANT TO GET RIGHT DIRECTLY TO IT WITH

1 REGARD TO YOUR BELIEFS ABOUT THE DEATH PENALTY, AND I WANT TO
2 ASK YOU A FEW SCENARIOS, A FEW EXAMPLES. LET'S GET THESE
3 QUESTIONS AND MAKE SURE THAT WE ALL IN THIS COURTROOM
4 UNDERSTAND HOW YOU FEEL ABOUT YOUR OPPOSITION TO THE DEATH
5 PENALTY.

6 NUMBER ONE, THIS PROCESS -- YOUR VIEWS ARE NOT ON TRIAL
7 HERE. THIS PROCESS IS NOT SOME KIND OF ATTEMPT TO REQUEST
8 YOU OR HAVE YOU VIOLATE YOUR OWN MORAL VIEWS. AND THE COURT
9 NOR ANY OF THE OTHER PARTIES ARE GOING TO BE IN THAT
10 POSITION.

11 RELUCTANCE, HESITANCY, NOT WANTING TO DO SOMETHING WITH
12 REGARD TO THE DEATH PENALTY IS NOT A DISQUALIFICATION
13 NECESSARILY. WHAT IS A DISQUALIFICATION IS IF THE JUROR
14 WOULD NEVER UNDER ANY CIRCUMSTANCES GIVE LEGITIMATE,
15 MEANINGFUL CONSIDERATION TO THE IMPOSITION OF THE DEATH
16 PENALTY. THAT'S TWO DIFFERENT THINGS. YOU FOLLOW ME NOW?

17 A YES, SIR.

18 Q SO I WANT TO MAKE SURE WHICH ONE OF THOSE TWO YOU FIT
19 IN. DO YOU AGREE, MS. SMITH, THAT EVERY MEMBER OF THE
20 COMMUNITY, EVERY MEMBER OF THIS COMMUNITY, HAS A CIVIC DUTY
21 TO SERVE AS A JUROR WHEN CALLED IF QUALIFIED?

22 A YES, SIR.

23 Q ALL RIGHT. AND YOU WERE CALLED AND YOU ARE NOT BEING
24 QUESTIONED ABOUT YOUR QUALIFICATIONS. SO YOU BELIEVE OR YOU
25 AGREE WITH ME THAT EVERY MEMBER OF THE COMMUNITY SHOULD SERVE

1 ON A JURY IF IN FACT THEY ARE CALLED TO SERVE?

2 A YES, SIR.

3 Q AND YOU AGREE WITH ME, I WOULD SUSPECT, THAT THE JURY IN
4 A CASE, WHETHER IT'S A CRIMINAL CASE, A CIVIL CASE OR
5 WHATEVER, SHOULD BE MADE UP OF A CROSS SECTION OF THE
6 COMMUNITY?

7 A YES, SIR.

8 Q YOU SHOULD HAVE YOUNG PEOPLE, OLD PEOPLE, BLACK PEOPLE
9 AND WHITE PEOPLE, RICH PEOPLE, POOR PEOPLE, PROTESTANTS,
10 CATHOLICS. IN OTHER WORDS, THE JURY SHOULD BE A CROSS
11 SECTION OF EVERYONE. DO YOU AGREE WITH THAT?

12 A YES, SIR.

13 Q ALL RIGHT. AND EACH ONE OF THOSE PEOPLE HAVE THE RIGHT
14 TO HAVE THEIR OWN VIEWS ABOUT THINGS. AND JUST BECAUSE ONE
15 PERSON HAS A CERTAIN VIEW, IT SHOULDN'T MAKE THEM
16 DISQUALIFIED FOR JURY DUTY. DO YOU AGREE WITH THAT?

17 A YES, SIR.

18 Q ALL RIGHT. IN THIS PARTICULAR SITUATION THE ISSUE IS
19 WHETHER OR NOT YOU, IF CHOSEN AS A JUROR IN A CASE LIKE THIS,
20 COULD GIVE CONSIDERATION TO BOTH A LIFE SENTENCE AND A DEATH
21 SENTENCE FOR A PERSON WHO HAD BEEN CONVICTED BY YOU OF
22 MURDER, INTENTIONAL KILLING.

23 NOW, THE BOTTOM LINE QUESTION. IF YOU WERE ON A JURY
24 AND YOU HAD PARTICIPATED IN THE CONVICTION OF THIS PERSON AND
25 THEN YOU HAD HEARD EVIDENCE FROM THE PROSECUTION WHERE HE IS

1 REQUESTING THAT YOU IMPOSE THE DEATH PENALTY, AND YOU HAVE
2 HEARD QUESTIONS OR INFORMATION FROM THE DEFENDANT, WHEN HE
3 SAYS, "I WOULD PREFER THAT YOU GIVE ME A LIFE SENTENCE,"
4 WOULD YOU TAKE INTO CONSIDERATION THE REQUEST OF THE
5 PROSECUTION AND GIVE MEANINGFUL CONSIDERATION TO THE
6 IMPOSITION OF THE DEATH PENALTY IN ANY CASE?

7 A YES, SIR.

8 Q YOU WOULD?

9 A I WILL.

10 Q NOW, MEANINGFUL CONSIDERATION OF THE DEATH PENALTY IS
11 NOT -- IN OTHER WORDS, YOU WOULD GIVE HIM CONSIDERATION AND
12 LISTEN TO WHAT HE SAID. YOU WOULD DECIDE WHETHER IT WAS THE
13 RIGHT PENALTY; IS THAT CORRECT?

14 A YES, SIR.

15 Q NOW, IN ORDER TO BE A JUROR, IN ORDER TO SERVE AS A
16 JUROR -- NOT IN THIS PARTICULAR CASE BUT IN THIS TYPE OF CASE
17 -- THE PERSON NOT ONLY MUST SAY THEY WOULD GIVE MEANINGFUL
18 CONSIDERATION, BUT THEY ALSO HAVE TO SAY THAT THEY WOULD VOTE
19 FOR THE DEATH PENALTY IF THEY THOUGHT IT WAS THE RIGHT
20 PENALTY.

21 A YES, SIR.

22 Q DO YOU FOLLOW THAT QUESTION?

23 A YES, SIR.

24 Q COULD YOU VOTE FOR THE DEATH PENALTY IF YOU THOUGHT IT
25 WAS THE PROPER PENALTY UNDER THOSE CIRCUMSTANCES?

KENYENA V. SMITH -- VOIR DIRE BY MR. MAULDIN

1 A YES, SIR.

2 Q AND COULD YOU SIGN YOUR NAME THAT YOU HAD VOTED ALONG
3 WITH THE OTHER ELEVEN JURORS?

4 A YES, SIR.

5 MR. MAULDIN: ALL RIGHT. THANK YOU, MA'AM.

6 VOIR DIRE CONTINUED BY THE COURT:

7 Q MS. SMITH, WHAT HAPPENED -- FIVE, TEN MINUTES AGO BEFORE
8 MR. MAULDIN GOT UP, WHY DID YOU TELL ME THAT YOU WOULD NEVER
9 GIVE THE DEATH PENALTY AND ALL OF A SUDDEN WE'RE READY TO
10 GIVE IT? WHAT HAPPENED?

11 A WELL, IN DIFFERENT SITUATIONS. IT, TO ME, JUST ALL
12 DEPENDS. I DON'T KNOW.

13 Q WELL, EARLIER YOU WERE SO ADAMANT TO ME. IT DIDN'T
14 MATTER ABOUT DIFFERENT SITUATIONS. I ASKED YOU IF THERE WAS
15 ANY SITUATION, ANYTHING THAT WOULD WARRANT THE DEATH PENALTY,
16 AND YOU CUT ME OFF. NO WAY. AND NOW I'M TALKING TO A
17 DIFFERENT PERSON. WHAT HAPPENED?

18 A I HAVE NO IDEA.

19 THE COURT: DO YOU WITH TO QUESTION THE JUROR, MR.
20 ARIAIL?

21 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL)
22 BRIEFLY, YOUR HONOR.

23 VOIR DIRE BY SOLICITOR ARIAIL:

24 Q MS. SMITH, I WANT TO FOLLOW UP ON THE JUDGE'S QUESTION.
25 WHEN -- AS THE PROSECUTOR WHO WILL BE ASKING YOU TO IMPOSE

1 THE DEATH PENALTY -- IN ANY CASE, THE PROSECUTOR IS THE ONE
2 WHO COMES FORWARD AND ASKS FOR A DEATH SENTENCE. THE JUDGE
3 WILL TELL YOU THAT YOU'VE GOT TO BE ABLE TO BE FAIR TO BOTH
4 SIDES. AND IN YOUR INITIAL STATEMENT YOU WERE VERY CLEAR
5 THAT YOUR VIEWS WERE THAT YOU DIDN'T BELIEVE IN THE
6 IMPOSITION OF THE DEATH PENALTY AND YOU COULDN'T VOTE FOR IT.
7 AND THEN WHEN THE DEFENSE LAWYER GETS UP HERE AND ASKS YOU
8 THESE QUESTIONS IN SUCH A WAY AS TO STARTING OFF WITH THE
9 DEMOGRAPHICS OF THIS JURY -- EVERYBODY OUGHT TO HAVE A JURY
10 OF DIFFERENT PEOPLE, OLD AND YOUNG, BLACK AND WHITE, RICH AND
11 POOR, CATHOLIC AND PROTESTANT -- DID THAT CONNOTE TO YOU AN
12 IDEA THAT YOU HAD SOME DUTY TO SERVE ON THIS JURY?

13 A YES, SIR.

14 MR. MAULDIN: YOUR HONOR, I---

15 SOLICITOR ARIAIL: WHOA, WHOA, WHOA.

16 MR. MAULDIN: ---OBJECT TO THE FORM OF THE QUESTION.

17 THE COURT: OVERRULED.

18 Q THE ANSWER WAS, "YES, SIR." ALL RIGHT. AND BASED ON
19 HIS APPEAL TO YOU TO SERVE ON THIS JURY TO MAKE IT
20 DEMOGRAPHICALLY AND RACIALLY BALANCED AND ALL OF THAT, IS
21 THAT WHAT LED YOU TO CHANGE YOUR STATEMENT AS TO YOU FELT
22 THAT YOU COULD IMPOSE THE DEATH PENALTY?

23 A YES, SIR.

24 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR. THAT'S ALL.

25 THE COURT: ANYTHING FURTHER?

KENYENA V. SMITH -- VOIR DIRE BY SOLICITOR ARIAIL

1 MR. MAULDIN: NOTHING FURTHER.

2 THE COURT: THANK YOU, MA'AM. THEY'LL TAKE YOU TO A
3 JURY ROOM. WE'LL BE WITH YOU IN JUST A MOMENT AND YOU'LL BE
4 FREE TO GO. THANK YOU, MS. SMITH.

5 JUROR NUMBER 326: YOU'RE WELCOME.

6 (JUROR EXITS COURTROOM AT 12:44 P.M.)

7 THE COURT: IF THE DEFENDANT CONTENDS THAT MS. SMITH IS
8 QUALIFIED, I'LL BE GLAD TO HEAR THE ARGUMENT.

9 MR. MAULDIN: YOUR HONOR, WE DO. AND WE MAKE THIS
10 REFERENCE. WE SPECIFICALLY -- WE QUESTIONED FIRST, AS I
11 THINK -- BY THE WAY, I THINK THE ADOPTION OF THAT PATTERN IS
12 EXACTLY CORRECT, THAT IN THAT PARTICULAR SITUATION WE GO
13 FIRST AND IN THE OTHER SITUATION THE STATE SHOULD GO FIRST.
14 I THINK THAT'S CORRECT, FOR FUTURE REFERENCE.

15 BUT WHAT HAPPENED WAS -- IS I QUESTIONED THIS JUROR AND
16 SHE CLEARLY SAID THAT PERHAPS IN CERTAIN CIRCUMSTANCES SHE
17 WOULD CONSIDER THE DEATH PENALTY AND IN FACT THEN WENT ON TO
18 SAY SHE WOULD VOTE FOR IT IN PARTICULAR SITUATIONS. THE
19 STATE THEN WAS NOT CALLED UPON TO QUESTION BUT THE COURT IN
20 FACT ASKED THE JUROR TO EXPLAIN HER CONTRADICTION.

21 AND I BRING THIS TO THE COURT'S ATTENTION BECAUSE THE
22 VERY LAST JUROR, MR. SAUNDERS, CONTRADICTED STRAIGHT UP. HE
23 TOLD YOU HE DIDN'T HAVE ANY OPINION AS TO GUILT OR INNOCENCE
24 OF THE DEFENDANT, AND THEN TURNED AROUND AND TOLD ME HE DID
25 HAVE A DIFFERENCE IN AN OPINION, AND HE BECAME DISQUALIFIED

MATTERS AND MOTIONS

1 AS A RESULT OF THAT. SO I DO ENTER THAT OBJECTION. I THINK
2 THE STATE IS FULLY CAPABLE OF DOING THEIR OWN QUESTIONING AND
3 -- AND...

4 WITH REGARD -- NOW, WITH REGARD TO HER QUALIFICATION,
5 SHE HAS TESTIFIED THAT SHE COULD IMPOSE THE DEATH PENALTY.
6 SHE HAS TESTIFIED THAT SHE COULD SIGN THE FORM. SHE HAS
7 TESTIFIED THAT SHE COULD VOTE FOR IT. SHE HAS TESTIFIED THAT
8 SHE WOULD GIVE MEANINGFUL CONSIDERATION TO HIS EVIDENCE. HIS
9 QUESTION ABOUT WHETHER SHE TOOK THAT VIEW BECAUSE OF THE
10 DEMOGRAPHICS OF A JURY IS REALLY NOT THE POINT. IT'S NOT THE
11 POINT THAT SHE -- WHY SHE FEELS THAT WAY. WE COULD BE HERE
12 TILL SIX MONTHS FROM NOW IF WE START JUDGING QUALIFICATIONS
13 ON THAT STANDARD.

14 SHE'S TESTIFIED OUT OF HER OWN MOUTH THAT SHE COULD
15 IMPOSE THE DEATH PENALTY AND SHE CLEARLY SAID THAT. AND SO I
16 STRENUOUSLY URGE THE COURT TO AT LEAST QUALIFY HER. I MEAN,
17 AT SOME POINT THE STATE'S GOT TO EXERCISE A STRIKE IN THIS
18 CASE.

19 **THE COURT:** I FIND THE JUROR NOT QUALIFIED. AND I'M
20 NOT GOING TO PERMIT PANDERING ON EITHER SIDE TO QUALIFY A
21 CLEARLY DISQUALIFIED JUROR. YOU WASTED YOUR TIME WITH MR.
22 SAUNDERS. YOU WASTED YOUR TIME WITH MS. SMITH. AND SHE
23 ACKNOWLEDGED ON EXAMINATION BY MR. ARIAIL THAT THE ONLY
24 REASON SHE CHANGED HER TESTIMONY IS BECAUSE SHE FELT A DUTY
25 TO BE ON THIS JURY. AND GIVEN THE TYPES AND THE MANNER IN

MATTERS AND MOTIONS

1 WHICH SHE WAS INTERROGATED, SHE WAS INVITED TO SERVE ON THIS
2 JURY TO CARRY OUT HER ADAMANT VIEW AGAINST THE DEATH PENALTY.
3 AND IF YOU WANT ME TO TELL YOU EARLY ON WHEN I'VE MADE A
4 DECISION, I WILL AND SAVE US SOME TIME. BUT IF WE'RE GOING
5 TO ENGAGE IN THIS TYPE OF STUFF, THAT'S FINE. BUT IT'S A
6 WASTE OF TIME.

7 MS. SMITH IS NOT QUALIFIED. TO SUGGEST THAT SHE CAN
8 COME IN HERE AND TAKE THAT TYPE OF PANDERING EXAMINATION AND
9 THE LIGHT BULB GOES OFF THAT SHE AS A BLACK MUST SERVE ON
10 THIS JURY SO SHE CAN VOTE FOR LIFE IMPRISONMENT, I'M NOT
11 GOING TO PERMIT SOMETHING SO UTTERLY TRANSPARENT.

12 THE RECORD WILL REFLECT DEFENDANT'S EXCEPTION TO MY
13 RULING.

14 EXCUSE MS. SMITH---

15 SOLICITOR ARIAIL: YOUR HONOR, I'VE GOT TWO ISSUES
16 BEFORE YOU BRING MR. HARVEY, IF I COULD. YOU CAN GO AHEAD
17 AND EXCUSE HER. BUT I KNOW HE'S COMING IN.

18 MR. HARVEY IS MARRIED TO AN EMPLOYEE OF MINE. HE
19 BROUGHT THIS TO YOUR ATTENTION YESTERDAY.

20 THE COURT: OKAY. IN FAMILY COURT, I THINK?

21 SOLICITOR ARIAIL: THAT'S CORRECT. AND HE DID NOT
22 BRING IT UP AGAIN THIS MORNING, I ASSUME BECAUSE HE BROUGHT
23 IT UP YESTERDAY AND YOU INSTRUCTED HIM NOT AT THIS TIME,
24 BRING IT UP LATER OR HE ASSUMED THAT.

25 NOW, I ASSUME ON THAT BASIS HE'S GOT A CONFLICT.

MATTERS AND MOTIONS

1 MR. MAULDIN: WE SO MOVE, YOUR HONOR.

2 SOLICITOR ARIAIL: BUT THAT'S YOUR DECISION.

3 NUMBER TWO, I WOULD -- I HAVE NO QUALMS IF YOU WANT TO
4 TELL US IN ADVANCE, I WOULD MUCH RATHER HEAR IT IN ADVANCE
5 RATHER THAN GOING BACK AND ASKING THESE PEOPLE. EXCEPT WITH
6 MR. SAUNDERS I DIDN'T CATCH HIS CHANGE. I MAY HAVE CAUGHT
7 IT, BUT I WASN'T SURE WHAT IT MEANT. THAT'S THE ONLY REASON
8 I WENT BACK.

9 BUT I DO HAVE A THIRD OBJECTION, AND I MADE THIS
10 OBJECTION PREVIOUS -- I THINK I MADE IT IN THE PREVIOUS
11 TRIAL. I KNOW I MADE IT IN THE PREVIOUS TRIAL WE JUST DID.
12 THERE IS NO QUESTION THAT THAT IS NOTHING BUT PANDERING TO A
13 MINORITY JUROR TO GET THEM ON HERE. THIS DEMOGRAPHICS THING
14 HAS NEVER BEEN ASKED TO A WHITE JUROR. IT'S ALWAYS ASKED TO
15 A BLACK, AND IT'S ALWAYS ASKED TO A BLACK FEMALE PRIMARILY.
16 AND I WOULD URGE THE COURT -- IF YOU WANT ME TO JUMP UP, I'M
17 GOING TO JUMP UP EVERY TIME. BUT YOU TOLD ME EARLIER YOU
18 WERE GOING TO BE DOING IT TO KEEP ME FROM JUMPING UP. BUT I
19 WANT TO JUMP UP ON THAT QUESTION IF IT EVER COMES UP AGAIN,
20 BECAUSE I AGREE WITH THE COURT'S RULING. THAT IS NOTHING BUT
21 TRANSPARENT PANDERING.

22 THE COURT: IF YOU WANT TO STATE YOUR POSITION, STATE
23 IT SUCCINCTLY. I'M READY TO MOVE FORWARD.

24 MR. MAULDIN: YES, SIR. THE QUESTION REGARDING CROSS-
25 SECTIONAL REPRESENTATION ON A JURY IN MY VIEW IS NOT AN

MATTERS AND MOTIONS

1 OBJECTIONABLE QUESTION. I TAKE OFFENSE AT THE IDEA THAT I
2 ONLY ASK IT TO BLACK FEMALES. I THINK THAT OVER THE LAST 25
3 YEARS I'VE ASKED IT TO EVERY PERSON WHO HAS EXPRESSED
4 OPPOSITION TO THE DEATH PENALTY. THE FACT THAT THEY COME
5 GENERALLY AND PREDOMINANTLY FROM CERTAIN CLASSES IS NOT MY
6 FAULT. BUT I BELIEVE THAT THAT QUESTION IS APPROPRIATE. I
7 DON'T -- I DIDN'T FIND MYSELF IN A PANDERING POSITION, AND I
8 DID NOT INVITE HER TO SERVE ON THIS JURY. BUT TO THE EXTENT
9 THAT IT REPRESENTS A SERIES OF QUESTIONS REGARDING A
10 CITIZEN'S RESPECT FOR CROSS-SECTIONAL REPRESENTATION ON A
11 JURY, I DON'T THINK ANYTHING COULD BE MORE CLEARLY LEGAL.

12 THE COURT: YOU CAN ASK THE QUESTION. THAT'S FINE.
13 BUT I'M TELLING YOU, WHEN I GET A JUROR WHO IS SO ADAMANTLY
14 OPPOSED AND CUTS ME OFF AND WILL NOT CONSIDER THE DEATH
15 PENALTY, WHEN YOU GO OVER AND PANDER AROUND THE JURY BOX
16 ABOUT HAVING BLACKS IN THE JURY BOX AND ALL OF A SUDDEN SHE
17 SAYS, "I'M FOR THE DEATH PENALTY," I KNOW EXACTLY WHAT'S
18 GOING ON. YOU WANT TO CREATE AN APPELLATE RECORD, THAT'S
19 FINE. BUT I SEE RIGHT THROUGH IT, AND GO RIGHT AHEAD.

20 DO YOU OBJECT TO MR. HARVEY BEING EXCUSED? FROM THE
21 STATE?

22 SOLICITOR ARIAIL: NO, I DO NOT.

23 THE COURT: OKAY. WITHOUT OBJECTION, MR. HARVEY, WHOSE
24 WIFE WORKS FOR THE SOLICITOR'S OFFICE, IS EXCUSED. TELL MR.
25 HARVEY BECAUSE HIS WIFE WORKS FOR THE SOLICITOR'S OFFICE THAT

MATTERS AND MOTIONS

1 HE IS EXCUSED.

2 BRING IN MS. TORELLO.

3 (JUROR NUMBER 366 ENTERS COURTROOM)

4 PRISCILLA ANN TORELLO (WHITE
5 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY THE COURT:

7 Q MS. TORELLO, WE APPRECIATE SO MUCH YOU BEING HERE AND
8 YOUR PATIENCE. I'M GOING TO DESCRIBE IN A LITTLE MORE DETAIL
9 THE PROCESS, THE ISSUES THAT COME UP IN A CASE OF THIS
10 NATURE. IN ADDITION, THE ATTORNEYS WILL HAVE QUESTIONS AS
11 WELL. THIS CASE ARISES, ACCORDING TO THE INDICTMENT, FROM AN
12 INCIDENT THAT OCCURRED IN GREENVILLE COUNTY BACK ON DECEMBER
13 THE 6TH, 2000.

14 THE DEFENDANT, MR. WOOD, IS CHARGED WITH THE OFFENSE OF
15 MURDER. THE VICTIM IDENTIFIED IN THE INDICTMENT IS ERIC
16 NICHOLSON. MR. NICHOLSON WAS AT THAT TIME A STATE TROOPER.

17 THIS CASE RECEIVED ATTENTION IN THE MEDIA. THERE WAS
18 MUCH PUBLICITY. I WANT TO KNOW IF YOU HAVE ANY INFORMATION
19 FROM THE MEDIA OR OTHERWISE ABOUT THIS CASE. AND IF YOU DO,
20 SHARE WITH US SPECIFICALLY WHAT YOU RECALL.

21 A RIGHT. I HAVE NO INFORMATION BECAUSE I WASN'T LIVING IN
22 SOUTH CAROLINA AT THE TIME.

23 Q HOW LONG HAVE YOU BEEN HERE IN SOUTH CAROLINA?

24 A SEVEN MONTHS.

25 Q HAVE YOU HEARD ANYTHING FROM THE MEDIA OR OTHERWISE IN

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 THE LAST SEVEN MONTHS?

2 A NO.

3 Q SO YOU DON'T KNOW ANYTHING ABOUT THIS CASE?

4 A NO.

5 Q OKAY. THE REASON I ASK THAT IS THAT TO SERVE AS A JUROR
6 AN INDIVIDUAL TAKES AN OATH TO FIND THE TRUTH FROM THE
7 EVIDENCE, NOT BE SWAYED OR INFLUENCED BY SOMETHING OUTSIDE OF
8 COURT BUT FIND THE TRUTH FROM THE EVIDENCE IN COURT. AND IF
9 YOU WERE A JUROR, COULD YOU HONOR YOUR OATH IN THAT REGARD?

10 A YES.

11 Q WOULD YOU ALSO HONOR YOUR OATH TO FOLLOW THE LAW AS I
12 INSTRUCT IT?

13 A YES.

14 Q HAVE YOU ALREADY FORMED ANY OPINION AS TO THE GUILT OR
15 INNOCENCE OF THIS DEFENDANT?

16 A AGAIN, I KNOW NOTHING ABOUT THIS CASE. SO, NO.

17 Q AND DO YOU AGREE WITH THOSE LEGAL PRINCIPLES I MENTIONED
18 BOTH YESTERDAY AND EARLIER TODAY THAT ANY ACCUSED IS ALWAYS
19 PRESUMED TO BE INNOCENT?

20 A YES.

21 Q DO YOU BELIEVE IN THAT PROPOSITION?

22 A DEFINITELY.

23 Q DO YOU ALSO BELIEVE IN THE LEGAL PRINCIPLE THAT THE
24 BURDEN OF PROOF IS NEVER ON A DEFENDANT, THE BURDEN OF PROOF
25 IS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT?

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 A YES.

2 Q IF YOU WERE A JUROR -- AND NOT IN THIS CASE BUT JUST IN
3 ANY GIVEN CASE -- AND IF YOU CAREFULLY CONSIDERED THE
4 EVIDENCE AND FOLLOWED THE LAW AND YOU WERE CONVINCED THAT A
5 DEFENDANT WAS GUILTY OF THE CRIME CHARGED, WHATEVER CRIME IT
6 WAS, WOULD YOU FIND THAT DEFENDANT GUILTY?

7 A YES.

8 Q ON THE OTHER HAND, IF YOU CAREFULLY CONSIDERED THE
9 EVIDENCE, FOLLOWED THE LAW AND YOU WERE NOT CONVINCED BEYOND
10 A REASONABLE DOUBT OF THE DEFENDANT'S GUILT, WOULD YOU FOLLOW
11 YOUR OATH AND FIND THE DEFENDANT NOT GUILTY?

12 A YES.

13 Q IS IT TORELLO? AM I PRONOUNCING THAT CORRECTLY?

14 A RIGHT.

15 Q OKAY. PLEASE UNDERSTAND THAT WE MAY NOT EVEN REACH WHAT
16 I DISCUSSED WITH YOU EARLIER, THE SECOND PHASE OR THE
17 SENTENCING PHASE. THIS CASE MAY BE OVER AT THE END OF THE
18 FIRST PHASE. BUT BECAUSE WE POSSIBLY COULD GO TO A
19 SENTENCING PHASE, I HAVE TO ASK YOU QUESTIONS ABOUT YOUR
20 VIEWS ON THE DEATH PENALTY. ALL RIGHT?

21 A UH-HUH (AFFIRMATIVE).

22 Q WHEN A JURY MOVES TO THE SENTENCING PHASE, THAT MEANS A
23 JURY HAS ALREADY FOUND A DEFENDANT -- WE'RE NOT TALKING ABOUT
24 THIS CASE, JUST IN GENERAL -- GUILTY OF MURDER. SO GUILT OF
25 MURDER HAS BEEN ESTABLISHED IN THE FIRST PHASE. THERE IS NO

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 DEFENSE LEFT TO ARGUE ABOUT OR HASH OUT. THAT'S IT. MURDER
2 HAS BEEN ESTABLISHED.

3 WHEN WE MOVE TO THE SENTENCING PHASE, WE HEAR
4 ADDITIONAL, NEW EVIDENCE, EVIDENCE THE LAW CALLS EVIDENCE IN
5 AGGRAVATION AND EVIDENCE IN MITIGATION. MITIGATION EVIDENCE
6 MAY INCLUDE THINGS SUCH AS A DEFENDANT'S BACKGROUND,
7 CHARACTER, FAMILY HISTORY, MENTAL HEALTH HISTORY, THINGS OF
8 THAT NATURE. AND AT THE END OF THE SENTENCING PROCESS THE
9 COURT WOULD INSTRUCT THE JURY TO GIVE CAREFUL, MEANINGFUL
10 CONSIDERATION TO AGGRAVATING EVIDENCE AND THE EVIDENCE IN
11 MITIGATION BEFORE MAKING A DECISION.

12 IF YOU WERE A JUROR IN THAT SETTING, WOULD YOU HONOR
13 YOUR OATH AND GIVE CAREFUL AND THOUGHTFUL CONSIDERATION TO
14 ALL OF THE TYPES OF EVIDENCE BEFORE YOU MAKE A DECISION?

15 A MOST DEFINITELY.

16 Q IF YOU WERE IN THAT SETTING AS A JUROR AND YOU CAREFULLY
17 CONSIDERED ALL OF THE EVIDENCE, YOU CAREFULLY CONSIDERED
18 EVIDENCE IN AGGRAVATION AND IN MITIGATION AND YOU BELIEVED
19 THAT A LIFE SENTENCE WAS APPROPRIATE COULD YOU VOTE FOR LIFE
20 IMPRISONMENT?

21 A YES.

22 Q NOW I'M GOING TO DO THE OTHER SIDE OF THAT. SAY YOU ARE
23 ON THE JURY AND YOU CAREFULLY CONSIDER THE EVIDENCE, EVIDENCE
24 IN AGGRAVATION AND IN MITIGATION, GIVE IT THOUGHTFUL
25 CONSIDERATION, AND AGAIN THE END OF THAT DELIBERATION YOU ARE

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 PERSUADED AND CONVINCED THE APPROPRIATE PENALTY IS DEATH,
2 COULD YOU VOTE FOR THE DEATH PENALTY?

3 A I DON'T THINK SO.

4 Q OKAY. NOW, NO ONE IS CHALLENGING YOUR VIEWS. NO ONE IS
5 ASKING YOU TO COMMIT. NO ONE IS TELLING YOU IN ADVANCE WHAT
6 YOU SHOULD DO OR SHOULD NOT DO. WHAT WE'RE TRYING TO FIND
7 OUT IN THIS PROCESS IS JURORS WHO WOULD HAVE AN OPEN MIND AND
8 THEY MAY BE HESITANT TO IMPOSE THE DEATH PENALTY, BUT
9 FOLLOWING THE LAW THEY COULD GIVE MEANINGFUL CONSIDERATION TO
10 THE STATE'S REQUEST TO IMPOSE THE DEATH PENALTY.

11 A FIRST OF ALL, I DON'T KNOW WHAT THE LAW SAYS. I DON'T
12 KNOW WHO WOULD RECEIVE THE DEATH PENALTY.

13 Q IN SOUTH CAROLINA NOT EVERY MURDER IS ELIGIBLE FOR THE
14 DEATH PENALTY. OUR GENERAL ASSEMBLY, OUR LEGISLATURE IN
15 COLUMBIA, HAS CERTAIN THINGS THAT ARE CALLED AGGRAVATING
16 CIRCUMSTANCES. AND WHEN A MURDER IS ACCOMPANIED BY AN
17 AGGRAVATING CIRCUMSTANCE, THAT MAKES IT DEATH PENALTY
18 ELIGIBLE. THAT MEANS THE STATE CAN SEEK THE DEATH PENALTY.
19 THE JURY NEVER HAS TO GIVE THE DEATH PENALTY. THEY CAN GIVE
20 LIFE IN PRISON IN ANY CASE.

21 I'LL GIVE YOU AN EXAMPLE OF AGGRAVATING CIRCUMSTANCE,
22 MURDER IN THE COMMISSION OF KIDNAPPING, MURDER IN THE
23 COMMISSION OF CRIMINAL SEXUAL CONDUCT, THINGS OF THAT NATURE
24 WHERE IT'S NOT JUST A MURDER, IT'S MURDER PLUS ONE OF THOSE
25 AGGRAVATING CIRCUMSTANCES.

1 NOW, THE LAW WOULD FURTHER YOU REQUIRE TO CONSIDER THE
2 MITIGATION EVIDENCE -- THAT'S SOMETHING THAT WOULD ARGUABLY
3 REDUCE THE SEVERITY OF THE OFFENSE -- AND FOR YOU TO GIVE IT
4 THOUGHTFUL CONSIDERATION. THE DEFENDANT'S BACKGROUND, MENTAL
5 HEALTH HISTORY, FAMILY, THINGS OF THAT NATURE.

6 DO YOU FOLLOW THAT?

7 A YEAH.

8 Q AND WE CAN'T BE TOO SPECIFIC AND GIVE YOU AN EXACT
9 EXAMPLE AND SAY, "HOW WOULD YOU VOTE?" THERE ARE TOO MANY
10 VARIABLES. YOU NEED TO SIT THERE AND LISTEN TO A TRIAL,
11 ASSIMILATE ALL OF THE INFORMATION VERY CAREFULLY, LISTEN TO
12 THE EVIDENCE AGAIN IN A SENTENCING PHASE, AND THEN YOU'RE IN
13 A SITUATION. SO WE'RE FAST FORWARDING TO THE END OF THE
14 PROCESS. AND WHAT I NEED TO KNOW IS IF UNDER ANY
15 CIRCUMSTANCES YOU COULD VOTE FOR THE DEATH PENALTY. AND
16 HESITANCY---

17 A I DON'T THINK I COULD.

18 Q I WANT YOU TO JUST DESCRIBE IT TO ME HOW FIRM YOU ARE
19 WITH THAT VIEW. HESITANCY TO IMPOSE THE DEATH PENALTY DOES
20 NOT DISQUALIFY YOU. YOU STILL COULD BE AN ELIGIBLE JUROR.

21 A WELL, FIRST OF ALL, I AM A CHRISTIAN. IT SAYS THOU
22 SHALL NOT KILL. SECOND OF ALL, I'VE READ ENOUGH CASES OVER
23 MY LIFETIME WHERE PEOPLE HAVE BEEN LATER FOUND INNOCENT.
24 THIRDLY, I THINK WE REALLY HAVE A JUDICIAL SYSTEM THAT'S
25 BASED ON WHAT I CALL BLUE COLLAR CRIME AND WHITE COLLAR

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 CRIME, AND UNFORTUNATELY, THE DEATH PENALTY TENDS TO ALWAYS
2 GO TO THE BLUE COLLAR CRIMINAL. WHEN I LOOK AT THE ENRON
3 SITUATION WHERE THOUSANDS OF PEOPLE HAVE LOST THEIR BENEFITS
4 AND THESE GUYS WILL PROBABLY NEVER BE SUBJECTED TO THE DEATH
5 PENALTY, I JUST THINK IT'S VERY UNFAIRLY APPLIED.

6 Q AND I RESPECT YOUR POSITION ABOUT FLAWS IN THE SYSTEM.
7 BUT RATHER THAN PAINTING WITH A BROAD BRUSH, IF YOU WERE A
8 JUROR IN A PARTICULAR CASE PUTTING ASIDE ANY PREDISPOSITION
9 YOU HAVE TOWARD THE SYSTEM OR THE UNFAIR APPLICATION OF THE
10 DEATH PENALTY OF ONE CLASS VERSUS ANOTHER CLASS, IF YOU WERE
11 PUT IN A PARTICULAR CASE AND YOUR OATH REQUIRED YOU TO
12 CONSIDER THAT PARTICULAR CASE AND THAT CASE WARRANTED, IN
13 YOUR VIEW, THE DEATH PENALTY, COULD YOU PUT ASIDE YOUR
14 PERSONAL FEELINGS ABOUT THE SYSTEM IN GENERAL---

15 A NO, I DON'T THINK SO.

16 Q YOU DON'T THINK SO?

17 A NO. I JUST -- I DON'T WANT THE BURDEN OF PUTTING
18 SOMEONE TO DEATH. I THINK SERVING A LIFE SENTENCE IS A
19 PRETTY CRUEL -- NOT CRUEL, JUSTIFIED. FROM WHAT I
20 UNDERSTAND, PRISONS ARE NOT VERY GREAT PLACES TO BE, AND I
21 THINK ANYONE THAT'S IN PRISON FOR LIFE IS PROBABLY GOING TO
22 HAVE A PRETTY DIFFICULT TIME. I DON'T THINK THE DEATH
23 PENALTY DETERS CRIME. I THINK PEOPLE COMMIT CRIME FOR
24 VARIOUS REASONS AND SOMETIMES VERY IMPULSIVELY, AND I DON'T
25 THINK THEY SHOULD BE PART OF SOCIETY. BUT I DON'T WANT THE

PRISCILLA ANN TORELLO -- VOIR DIRE BY THE COURT

1 RESPONSIBILITY OF PUTTING SOMEBODY TO DEATH.

2 Q ARE YOU TELLING ME THAT YOU PROBABLY WOULD NOT VOTE FOR
3 THE DEATH PENALTY OR YOU DEFINITELY WOULD NOT VOTE FOR THE
4 DEATH PENALTY?

5 A I PROBABLY WOULDN'T.

6 Q DOES THAT MEAN IT IS STILL AN OPTION THAT YOU WOULD GIVE
7 SERIOUS CONSIDERATION TO AND VOTE FOR IF YOU THOUGHT IT WAS
8 APPROPRIATE?

9 A I JUST CAN'T IMAGINE MYSELF DOING IT. I JUST CAN'T.

10 THE COURT: OKAY. MR. ARIAIL, YOU'RE UP. BUT IF YOU
11 WANT TO QUESTION THE JUROR, YOU MAY DO SO.

12 SOLICITOR ARIAIL: I'LL DEFER.

13 MR. MAULDIN: I WOULD LIKE TO QUESTION MS. TORELLO.

14 THE COURT: CERTAINLY. YES, SIR.

15 VOIR DIRE BY MR. MAULDIN:

16 Q MS. TORELLO, MY NAME IS JOHN MAULDIN. I'M THE PUBLIC
17 DEFENDER.

18 A UH-HUH (AFFIRMATIVE).

19 Q AND I REPRESENT JOHN WOOD ALONG WITH JIM BANNISTER AND
20 RODNEY RICHEY.

21 I WANT TO GET DIRECTLY TO THE QUESTION OF THE IMPOSITION
22 OF THE DEATH PENALTY. I WANT TO -- AND I GUESS THAT -- THE
23 REASON I GOT UP HERE IS BECAUSE YOU SAID YOU PROBABLY
24 WOULDN'T, AND THAT'S -- AND SO I WANT TO VENTURE INTO THAT A
25 MOMENT NOT TAKING TOO MUCH OF THE COURT'S TIME. BUT I THINK

PRISCILLA ANN TORELLO -- VOIR DIRE BY MR. MAULDIN

1 THAT THAT IS WHERE I HAVE TO GO.

2 NOTHING THAT THIS COURT IS GOING TO DO OR THAT THE
3 SYSTEM IS GOING TO DO IS GOING TO PLACE YOU IN A POSITION
4 WHERE YOU HAVE TO VIOLATE YOUR OWN MORAL VIEWS. AND THE
5 REASON WE HAVE BROUGHT YOU IN HERE INDIVIDUALLY IS SO YOU CAN
6 TELL US WHAT YOUR VIEWS ARE SO THAT YOU CAN EITHER BE
7 QUALIFIED AS A POSSIBLE JUROR OR DISQUALIFIED. AND THAT'S
8 -REALLY WHERE WE ARE RIGHT AT THIS MOMENT.

9 IN ORDER TO BE -- A JUROR UNDER THE THREE-JUROR SCENARIO
10 THE JUDGE GAVE YOU, THE THREE DIFFERENT JURORS, A JUROR WHO
11 WOULD NEVER IMPOSE THE DEATH PENALTY UNDER ANY CIRCUMSTANCES
12 EVER IS NOT QUALIFIED TO SERVE IN THE STATE OF SOUTH
13 CAROLINA. LIKEWISE, A JUROR WHO WOULD NEVER IMPOSE A LIFE
14 SENTENCE FOR A MURDER BUT ALWAYS IMPOSE DEATH IS NOT ELIGIBLE
15 TO SERVE. SO WITH THAT IN MIND YOUR RELUCTANCE OR HESITANCY
16 DOES NOT DISQUALIFY YOU.

17 AS A CITIZEN OF THIS COMMUNITY DO YOU AGREE WITH ME THAT
18 WHEN A CITIZEN IS SUMMONED FOR JURY DUTY THEY SHOULD RESPOND?
19 AND YOU HAVE RESPONDED.

20 A DEFINITELY.

21 Q AND TO THE EXTENT POSSIBLE, AS LONG AS IT'S WITHIN THEIR
22 VIEWS, THEY SHOULD BE WILLING TO AND CAPABLE OF SERVING AS A
23 JUROR. THAT WOULD INCLUDE RICH PEOPLE AND POOR PEOPLE, MALES
24 AND FEMALES, BLACKS AND WHITES AND OTHER RACES, DIFFERENT
25 RELIGIONS, ALL OF THOSE PEOPLE WOULD FORM WHAT ME MIGHT CALL

PRISCILLA ANN TORELLO -- VOIR DIRE BY MR. MAULDIN

1 A CROSS-SECTION OF THE COMMUNITY AND A JUROR OF A PERSON'S
2 PEERS.

3 A UH-HUH (AFFIRMATIVE).

4 Q DO YOU AGREE WITH THAT AS A MATTER OF CITIZENSHIP?

5 A DEFINITELY.

6 Q ALL RIGHT. AND ONCE AGAIN, I'M TELLING YOU THAT THE
7 COURT IS NOT -- AND NONE OF US ARE PLACING YOU IN A POSITION
8 WHERE YOU VIOLATE A PERSONAL VIEW.

9 WITH REGARD TO IMPOSITION OF THE DEATH PENALTY, IF YOU
10 WERE SERVING AS A JUROR IN A MURDER CASE AND IT WAS PROVEN TO
11 YOU BEYOND A REASONABLE DOUBT THAT THE PERSON CHARGED WITH
12 THE OFFENSE WAS IN FACT THE RIGHT PERSON, HAD THE RIGHT
13 DEFENDANT, AND THAT PERSON HAD NO LEGAL DEFENSES OF INSANITY
14 OF SELF-DEFENSE OR ALIBI OR MISTAKE, ACCIDENT -- ALL OF THOSE
15 THINGS HAD BEEN ELIMINATED FROM THE EVIDENCE -- AND YOU AND
16 THE OTHER ELEVEN JURORS HAD WRITTEN A VERDICT OF GUILTY OF
17 MURDER, YOU THEN WOULD BE ASKED BY THE PROSECUTOR WHO WOULD
18 COME IN WITH THE EVIDENCE THAT IS ALLOWED BY OUR LAW IN OUR
19 STATE -- THE STATE LEGISLATURE HAS LISTED -- THE COURT USED A
20 COUPLE OF EXAMPLES OF MURDER PLUS AN AGGRAVATING FACTOR. THE
21 PROSECUTOR WOULD BE ALLOWED AN OPPORTUNITY TO PRESENT TO YOU
22 AND THE OTHER ELEVEN JURORS THE AGGRAVATING INFORMATION. AND
23 IN THAT HE WOULD BE REQUESTING THAT THIS JURY CONSIDER
24 IMPOSITION OF THE DEATH PENALTY.

25 THE DEFENDANT ON THE OTHER HAND WOULD HAVE THE LIKEWISE

PRISCILLA ANN TORELLO -- VOIR DIRE BY MR. MAULDIN

1 OPPORTUNITY TO PRESENT MITIGATING INFORMATION, BACKGROUND
2 INFORMATION, CIRCUMSTANCES, STATE OF MIND OF THE PERSON
3 ACCUSED, NOT RISING TO THE LEVEL OF A DEFENSE BUT JUST SIMPLY
4 AN EXPLANATION.

5 THE CRITICAL QUESTION FOR YOU, MS. TORELLO, WITH REGARD
6 TO YOUR QUALIFICATION IS, WOULD YOU BE WILLING TO TAKE BOTH
7 GROUPS OF EVIDENCE -- AGGRAVATING EVIDENCE AND THE MITIGATING
8 INFORMATION -- AND WOULD YOU BE WILLING TO GIVE MEANINGFUL
9 CONSIDERATION TO THE IMPOSITION OF THE DEATH PENALTY IN THE
10 EVENT YOU INDIVIDUALLY HAD DECIDED IT WAS THE RIGHT THING TO
11 DO AND LIKEWISE THE SAME CONSIDERATION FOR A LIFE SENTENCE IF
12 YOU HAD INDIVIDUALLY FELT IT WAS THE RIGHT THING TO DO?

13 YOU HAVE TO BE WILLING TO WEIGH BOTH. YOU CAN'T THROW
14 ONE OR THE OTHER OUT. WOULD YOU BE WILLING TO CONSIDER BOTH
15 POSSIBLE PUNISHMENTS UNDER THAT SCENARIO?

16 A I JUST DON'T THINK I CAN. I JUST -- IF I HAD MY WAY,
17 THERE WOULD BE NO DEATH PENALTY. I -- IF A PERSON IS FOUND
18 GUILTY, I DEFINITELY THINK THEY NEED TO STAY AWAY FROM
19 SOCIETY. THEY WILL ULTIMATELY FACE JUDGMENT FOR WHAT THEY'VE
20 DONE. BUT I PERSONALLY CAN'T DO IT. I JUST CAN'T. IT'S NOT
21 IN MY HEART TO KILL ANOTHER INDIVIDUAL.

22 MR. MAULDIN: ALL RIGHT. THANK YOU, MA'AM.

23 THE COURT: MS. TORELLO, THANK YOU SO MUCH. THEY'RE
24 GOING TO TAKE YOU TO A JURY ROOM JUST RIGHT DOWN THE HALL.
25 WE'LL BE WITH YOU IN A MOMENT AND YOU'LL BE FREE TO GO.

PRISCILLA ANN TORELLO -- VOIR DIRE BY MR. MAULDIN

1 THANK YOU.

2 (JUROR EXITS COURTROOM AT 1:10 P.M.)

3 **THE COURT:** IF EITHER SIDE CONTENDS THAT MS. TORELLO IS
4 QUALIFIED, I'LL BE GLAD TO HEAR YOUR ARGUMENT. ANYTHING FROM
5 EITHER SIDE?

6 **SOLICITOR ARIAIL:** NO, YOUR HONOR.

7 **MR. MAULDIN:** NO, SIR.

8 **THE COURT:** MS. TORELLO IS NOT QUALIFIED.

9 EXCUSE MS. TORELLO. SHE IS FREE TO GO. BRING IN MS.
10 JOHNSON.

11 **SOLICITOR ARIAIL:** DO WE CHANGE THE ORDER BECAUSE I
12 DEFERRED? IT DOESN'T MATTER TO ME. I JUST WANT TO KNOW
13 WHETHER...

14 **THE COURT:** MR. MAULDIN GOES FIRST.

15 (JUROR ENTERS COURTROOM AT 1:12 P.M.)

16 **PATRICIA L. JOHNSON** (WHITE
17 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 **DIRECT EXAMINATION BY THE COURT:**

19 **Q** MS. JOHNSON, WE APPRECIATE YOUR PATIENCE IN BEING WITH
20 US DURING THIS LENGTHY AND DIFFICULT PROCESS. WE ARE
21 QUESTIONING EACH OF THE JURORS SUCH AS YOURSELF, FINDING
22 JURORS WHO ARE ELIGIBLE AND QUALIFIED TO SERVE IN THIS
23 PARTICULAR CASE. I WILL ASK YOU SOME QUESTIONS AND THE
24 ATTORNEYS WILL AS WELL.

25 **A** OKAY.

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 Q THIS CASE ARISES FROM AN INCIDENT THAT OCCURRED,
2 ACCORDING TO THE INDICTMENT, IN GREENVILLE COUNTY BACK ON
3 DECEMBER THE 6TH OF THE YEAR 2000. THE DEFENDANT, MR. WOOD,
4 IS CHARGED WITH THE CRIME OF MURDER. THE VICTIM IDENTIFIED
5 IN THE INDICTMENT IS ERIC NICHOLSON. MR. NICHOLSON WAS AT
6 THE TIME A STATE TROOPER.

7 THIS CASE RECEIVED ATTENTION IN THE MEDIA. I WANT TO
8 KNOW IF YOU RECALL ANYTHING THAT YOU MAY HAVE HEARD OR READ
9 OR SEEN ABOUT THIS CASE FROM THE MEDIA OR OTHERWISE. AND IF
10 YOU HAVE, BE VERY SPECIFIC IN WHAT YOU RECALL.

11 A I REMEMBER SEEING IT ON THE NEWS. AND I READ SOME IN
12 THE PAPER. AND ALL I REMEMBER IS THEY SAID HE SHOT THE COP.
13 OF COURSE, I DON'T KNOW WHAT TO CALL HIM. A COP... AND THEN
14 HE LEFT AND GOT IN SOMEBODY'S CAR. I DON'T REMEMBER HER
15 NAME. AND THEN THEY HAD TO CHASE HIM, I WANT TO SAY, TO
16 ANDERSON COUNTY. AND THAT'S ALL I KNOW.

17 Q THAT'S THE EXTENT OF WHAT YOU KNOW?

18 A YEAH.

19 Q THE REASON I ASK YOU THAT, MA'AM, IS THAT A JUROR TAKES
20 AN OATH TO FIND THE TRUTH FROM THE EVIDENCE. SO ANYTHING A
21 JUROR MAY HAVE BEEN EXPOSED TO IN THE MEDIA OR OUTSIDE OF
22 COURT MUST BE DISREGARDED COMPLETELY. THE FACTS AND TRUTH
23 ARE ONLY DETERMINED FROM THE EVIDENCE PRESENTED DURING THE
24 COURSE OF THE TRIAL. DO YOU UNDERSTAND THAT?

25 A YES, SIR.

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 Q AND IF YOU WERE A JUROR IN THAT SITUATION, WOULD YOU
2 HONOR YOUR OATH IN THAT REGARD?

3 A YES.

4 Q WOULD YOU FOLLOW THE LAW AS I INSTRUCT IT?

5 A YES, SIR.

6 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE FACTS OF
7 THIS CASE?

8 A NO.

9 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
10 INNOCENCE OF THIS PARTICULAR DEFENDANT?

11 A NO.

12 Q DO YOU RECALL EARLIER MY DISCUSSION WITH YOU AND THE
13 OTHERS ABOUT TWO VERY IMPORTANT LEGAL PRINCIPLES THAT ANYONE
14 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT?

15 A YES, SIR.

16 Q DO YOU AGREE WITH THAT LEGAL PRINCIPLE?

17 A YES, SIR.

18 Q ALSO, THE BURDEN OF PROOF IS ON THE STATE TO PROVE GUILT
19 BEYOND A REASONABLE DOUBT. THERE IS NEVER A BURDEN ON THE
20 DEFENDANT TO PROVE OR DISPROVE ANYTHING OR PRESENT ANY
21 EVIDENCE. DO YOU UNDERSTAND THAT?

22 A YES, SIR.

23 Q DO YOU AGREE WITH THAT LEGAL PRINCIPLE?

24 A YES, SIR.

25 Q NOW, IF YOU WERE A JUROR -- NOT IN THIS CASE. WE'RE

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 JUST TALKING ABOUT JURY SERVICE IN GENERAL. -- AND YOU HAD
2 LISTENED TO A CASE AND YOU WERE IN THE JURY, AFTER
3 CONSIDERING THE EVIDENCE AND THE LAW YOU WERE CONVINCED
4 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY,
5 WOULD YOU VOTE FOR GUILTY?

6 A YES, SIR.

7 Q ON THE OTHER HAND, IF YOU WERE SITTING ON THE JURY AND
8 YOU HEARD ALL THE EVIDENCE, APPLIED THE LAW AND YOU WERE NOT
9 CONVINCED BEYOND A REASONABLE DOUBT OF THE DEFENDANT'S GUILT,
10 WOULD YOU FOLLOW YOUR OATH AND VOTE NOT GUILTY?

11 A YES, SIR.

12 Q NOW, WE MAY NOT EVEN REACH A SENTENCING PHASE IN THIS
13 CASE. THE CASE MAY END AT THE END OF THE FIRST PHASE. BUT
14 SINCE WE POSSIBLY COULD GO INTO A SENTENCING PHASE, MYSELF
15 AND THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS ABOUT
16 YOUR VIEWS, ESPECIALLY AS TO THE DEATH PENALTY. DO YOU
17 UNDERSTAND THAT?

18 A YES, SIR.

19 Q NOW, WHEN A JURY MOVES FROM THE FIRST PHASE TO THE
20 SENTENCING PHASE THAT MEANS THE JURY HAS ALREADY FOUND A
21 DEFENDANT -- AGAIN, NOT THIS CASE, BUT JUST FOUND A DEFENDANT
22 GUILTY OF THE CRIME OF MURDER. AT THAT POINT GUILT OF MURDER
23 HAS BEEN ESTABLISHED. THERE IS NO DEFENSE LEFT TO ARGUE
24 ABOUT. MURDER HAS BEEN ESTABLISHED.

25 AND THE JURY IN THAT SITUATION WOULD THEN HEAR FURTHER

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 EVIDENCE. FOR EXAMPLE, EVIDENCE THAT WE TALKED ABOUT
2 EARLIER, EVIDENCE IN AGGRAVATION AND EVIDENCE IN MITIGATION.

3 EXAMPLES OF MITIGATION EVIDENCE MAY INCLUDE THE
4 BACKGROUND OF A DEFENDANT, THE FAMILY HISTORY, MENTAL HEALTH
5 STATUS OF A DEFENDANT, THINGS OF THAT NATURE. AT THE END OF
6 THE CASE WHEN THE JURY HAS HEARD ALL THIS ADDITIONAL EVIDENCE
7 THE JURY WOULD BE INSTRUCTED TO GIVE CAREFUL AND MEANINGFUL
8 CONSIDERATION TO THE EVIDENCE, AGGRAVATING CIRCUMSTANCES,
9 MITIGATION EVIDENCE BEFORE MAKING A FINAL DECISION AS TO
10 PUNISHMENT, EITHER LIFE OR THE DEATH PENALTY.

11 IF YOU WERE A JUROR IN THAT SITUATION WOULD YOU FOLLOW
12 THE LAW AND GIVE CAREFUL AND THOUGHTFUL CONSIDERATION TO THE
13 VARIOUS ELEMENTS ON WHICH THE COURT INSTRUCTED YOU?

14 A YES, SIR.

15 Q IF YOU WERE A JUROR IN A SENTENCING PHASE, CERTAINLY NOT
16 THIS CASE BUT JUST IN THE PROCESS, AND IF YOU HAD LISTENED TO
17 THE EVIDENCE, THOUGHT ABOUT IT VERY CAREFULLY, CONSIDERED
18 AGGRAVATING CIRCUMSTANCES, MITIGATION EVIDENCE, CONSIDERED IT
19 ALL AND YOU WERE PERSUADED THAT THE PROPER PUNISHMENT WAS
20 LIFE IMPRISONMENT, COULD YOU VOTE FOR LIFE IMPRISONMENT?

21 A YES, SIR.

22 Q ON THE OTHER HAND, IF YOU CONSIDERED ALL THE EVIDENCE,
23 MITIGATION EVIDENCE, AGGRAVATION EVIDENCE, EVERYTHING,
24 FOLLOWED THE LAW AND YOU WERE CONVINCED THAT THE APPROPRIATE
25 PENALTY WAS THE DEATH PENALTY, COULD YOU VOTE FOR THE DEATH

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 PENALTY?

2 A YES, SIR.

3 Q COULD YOU IN THAT SITUATION SIGN YOUR NAME TO THE
4 VERDICT FORM? BECAUSE UNDER OUR LAW EVERY MEMBER OF THE JURY
5 WHO VOTES FOR THE DEATH PENALTY -- AND IT MUST BE UNANIMOUS
6 -- ALL TWELVE MUST SIGN THEIR NAME TO THE DEATH SENTENCE.
7 COULD YOU DO IT?

8 A YES, SIR.

9 Q EARLIER, MS. JOHNSON, IN THE OTHER ROOM THERE WAS A
10 DOCUMENT, A SHEET OF PAPER THAT CONTAINED A DESCRIPTION OF
11 THREE TYPES OF JURORS. DO YOU RECALL THAT SHEET?

12 A YES, SIR.

13 Q IF ONE OF THOSE CATEGORIES DESCRIBES YOU, WHICH ONE
14 DOES?

15 A THREE.

16 Q IF YOU WERE SELECTED TO SERVE AS A JUROR, WOULD YOU
17 HONOR YOUR OATH AND SERVE AS A FAIR AND IMPARTIAL JUROR?

18 A YES, SIR.

19 Q WOULD YOU APPROACH YOUR JURY SERVICE WITH AN OPEN MIND
20 TO FIND THE TRUTH FROM THE EVIDENCE AND FOLLOW THE LAW AS I
21 INSTRUCT YOU?

22 A YES, SIR.

23 Q NOW, I MAY NOT HAVE ASKED YOU THE RIGHT QUESTION BUT YOU
24 MAY KNOW OF SOME REASON WHY YOU DON'T BELIEVE YOU COULD SERVE
25 ON THIS JURY AND WHY YOU ARE NOT ELIGIBLE. IF YOU KNOW OF

PATRICIA L. JOHNSON -- VOIR DIRE BY THE COURT

1 ANY REASON WHY YOU COULD NOT SERVE, WOULD YOU SHARE THAT WITH
2 ME?

3 A YES, SIR. THE ONLY THING I CAN THINK OF, I'M A DIABETIC
4 AND I'M ON AN INSULIN PUMP. I WANT TO DO THIS. I LIKE THIS
5 KIND OF STUFF. THE ONLY PROBLEM WOULD BE IF WE WERE
6 SEQUESTERED IF THAT WOULD BE A PROBLEM THERE.

7 Q OKAY.

8 A BECAUSE I WOULDN'T KNOW HOW LONG IT WOULD BE, YOU KNOW.

9 Q THE JURY WILL BE SEQUESTERED. IT COULD BE SEVEN DAYS,
10 TEN DAYS. I THINK AT THE OUTSIDE TWO WEEKS. NOW, AS FAR AS
11 HAVING MEDICINE, ACCESS TO MEDICAL TREATMENT, THAT CAN BE
12 ARRANGED.

13 A OKAY. WELL, THAT'D BE NO PROBLEM.

14 Q OKAY. SO YOU'RE ABLE -- IF YOU HAVE THE APPROPRIATE
15 MEDICINE, YOU ARE ABLE TO TAKE CARE OF YOURSELF AND BEING
16 AWAY FROM HOME WOULD NOT PLACE YOU IN MEDICAL JEOPARDY?

17 A NO.

18 THE COURT: OKAY. I APPRECIATE YOU SHARING THAT.

19 MR. MAULDIN?

20 VOIR DIRE BY MR. MAULDIN:

21 Q MS. JOHNSON?

22 A UH-HUH (AFFIRMATIVE).

23 Q I'M JOHN MAULDIN. I'M THE PUBLIC DEFENDER IN GREENVILLE
24 COUNTY. I, ALONG WITH JIM BANNISTER AND RODNEY RICHEY,
25 REPRESENT JOHN WOOD, OUR CLIENT, WHO IS THE DEFENDANT IN THIS

1 CASE.

2 I WANT TO SPEND A LITTLE TIME, IF I COULD, TALKING TO
3 YOU THIS MORNING -- THIS AFTERNOON ABOUT SOME OF THE VIEWS
4 THAT YOU TALKED TO WITH THE JUDGE. NOW, BEFORE I DO THAT, I
5 WANTED TO REFER TO YOUR QUESTIONNAIRE WHERE YOU DID BRING OUT
6 THE POINT -- AND BY THE WAY, THESE ARE CONFIDENTIAL. THE
7 COURT PROVIDED ONLY COUNSEL WITH A COPY, SO YOU SHOULD BE
8 CONFIDENT IN THAT. BUT YOU DID BRING OUT THE FACT THAT YOU
9 ARE A DIABETIC.

10 A UH-HUH (AFFIRMATIVE).

11 Q AND WE APPRECIATE YOU BRINGING THAT AGAIN TO THE COURT'S
12 ATTENTION. THE WAY THE COURT WOULD RUN, OBVIOUSLY, THERE'D
13 BE PERIODS OF TIME WHERE THE JURORS WOULD BE IN THE JURY
14 ROOM, AND THEN THEY WOULD TAKE BREAKS. DO YOU HAVE A
15 PARTICULAR TIME FRAME THAT WOULD BE A DIFFICULTY FOR YOU OR
16 CAN YOU SIT FOR PERIODS OF TIME WITHOUT MUCH DISCOMFORT?

17 A YES, SIR. NO PROBLEM.

18 Q OKAY. AND WHEN -- NOW -- AND I'VE KNOWN FOLKS WHO HAD
19 DIABETIC ISSUES -- WHEN YOUR INSULIN GETS LOW OR WHEN IT IS
20 TIME FOR YOU TO HAVE AN ADDITIONAL MEDICATION IS YOUR ABILITY
21 TO SERVE AS A JUROR GOING TO BE AFFECTED BY THAT KIND OF
22 SITUATION?

23 A NO.

24 Q ALL RIGHT. AND I APPRECIATE YOU SHARING THAT WITH ME.
25 LET ME ASK YOU, MS. JOHNSON, IF WE COULD DO MORE LIKE A

PATRICIA L. JOHNSON -- VOIR DIRE BY MR. MAULDIN

1 CONVERSATION INSTEAD OF TESTIMONY. I DON'T KNOW IF YOU'VE
2 TESTIFIED BEFORE.

3 A NO.

4 Q I NOTICED IN YOUR QUESTIONNAIRE THAT YOU LIKE COURT T.V.
5 AND STUFF.

6 A I'VE DONE JURY DUTY BEFORE BUT NOT A CASE LIKE THIS.

7 Q OKAY. WELL, WE'RE GOING TO KIND OF STRIP AWAY SOME OF
8 THIS FORMALITY AND JUST TALK ABOUT SOME OF THE VIEWS THAT YOU
9 HAVE EXPRESSED WITH THE COURT. EACH OF US HAS AN AWESOME
10 RESPONSIBILITY IN THE SELECTION OF THIS JURY. WE WANT TO
11 MAKE SURE THAT THE JURY IS APPROPRIATELY QUALIFIED AND
12 SELECTED, AND I WOULD SUSPECT THAT YOU WOULD RECOGNIZE THOSE
13 RESPONSIBILITIES. THE JURORS HAVE A RESPONSIBILITY, BUT SO
14 DOES THE PROSECUTOR AND SO DO THE DEFENSE AND THE COURT. DO
15 YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q AND WE CAN'T EXERCISE THAT UNLESS WE UNDERSTAND HOW YOU
18 FEEL. SO I WANT YOU TO EXPRESS YOUR VIEWS AS CLEARLY AND AS
19 SPECIFICALLY AS YOU CAN.

20 WITH REGARD TO THE DEATH PENALTY IN GENERAL -- AND LET
21 ME SAY, MS. JOHNSON, WE'RE GOING TO BE TALKING ABOUT NOT THIS
22 CASE. I KNOW YOU SAID YOU HAD HEARD SOME STUFF ABOUT IT.
23 LET'S JUST ASSUME WE'RE TALKING ABOUT SOME OTHER CASE. HOW
24 DO YOU FEEL OR WHAT DO YOU THINK ABOUT THE DEATH PENALTY IN
25 OUR JUSTICE SYSTEM? WHAT IS YOUR VIEW OF THE DEATH PENALTY

1 IN OUR JUSTICE SYSTEM?

2 A I THINK THAT THE PUNISHMENT SHOULD FIT THE CRIME. IF I
3 THOUGHT HE WERE GUILTY AND DID IT MALICIOUSLY, I WOULD VOTE
4 FOR THE DEATH PENALTY.

5 Q OKAY. AND DO YOU -- WHAT REASONS OR -- OR EXPLAIN WHY
6 YOU FEEL THAT WAY TO THE EXTENT YOU CAN OR GIVE REASONS FOR
7 IT TO THE EXTENT YOU CAN.

8 A I DON'T REALLY KNOW. IT JUST DEPENDS ON THE CRIME. HOW
9 VICIOUS, I GUESS, IT WAS. AND IT WOULD BE LIKE MENTALITY,
10 YOU KNOW, HIS, LIKE, SAY, BACKGROUND AND ALL THAT WOULD HAVE
11 A LOT OF BEARING ON IT. I MEAN ANY CASE. I'M NOT TALKING
12 ABOUT JUST THIS ONE.

13 Q RIGHT.

14 A IF THEY HAD MENTAL PROBLEMS, THEY WOULD NEED HELP MORE
15 THAN TO DIE, I GUESS, AND IN THAT CASE I WOULD VOTE FOR LIFE
16 IN PRISON.

17 Q ALL RIGHT. AND LET ME CLARIFY ONE THING FOR YOU. THE
18 JUDGE DESCRIBED THE TWO DIFFERENT PHASES. ONE IS GUILT OR
19 INNOCENCE ONLY AND ONE IS PENALTY ONLY. SO THE AGGRAVATING
20 INFORMATION AND THE MITIGATING THAT HE DESCRIBED TO YOU HAVE
21 NOTHING TO DO WITH THE ISSUE OF GUILT OR INNOCENCE.

22 A RIGHT.

23 Q SO WHEN YOU AS A JUROR HAVE ALREADY DECIDED -- YOU
24 MENTIONED A MINUTE AGO THAT IF IT WAS A MALICIOUS ACT OR IF
25 IT WAS AN INTENTIONAL ACT -- THE OFFENSE OF MURDER IN OUR

PATRICIA L. JOHNSON -- VOIR DIRE BY MR. MAULDIN

1 STATE IS DEFINED AS THE KILLING OF A PERSON WITH MALICE,
2 MALICIOUS ACT, AND IT IS IN FACT INTENTIONAL. IN OTHER
3 WORDS, TO BE CONVICTED OF MURDER, THE PERSON WOULD HAVE BEEN
4 FOUND TO HAVE BEEN INTENDING TO DO WHAT HE DID. ARE YOU WITH
5 ME?

6 A YEAH.

7 Q ALL RIGHT. NOW, HAS YOUR -- DO YOU BELIEVE IN OUR
8 SYSTEM THAT THE DEATH PENALTY IS USED NOT OFTEN ENOUGH, TOO
9 OFTEN, OR JUST ABOUT RIGHT? AND YOU CAN EXPOUND OR EXPAND ON
10 THAT IF YOU WISH OR EXPRESS IT IN ANY WORDS THAT YOU WISH.

11 A IN SOME CASES -- OF COURSE, I WASN'T THERE AND DIDN'T
12 KNOW ALL THE DETAILS. YOU JUST KNOW WHAT YOU HEAR FROM THE
13 NEWS. I THINK IT SHOULD HAVE GONE A DIFFERENT WAY THAN THE
14 WAY THEY DECIDED.

15 Q CAN YOU GIVE ME AN EXAMPLE?

16 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT TO
17 THIS. I THINK HE IS ONCE AGAIN OUTSIDE THE SCOPE OF THE
18 PARAMETERS OF STAKING OUT.

19 THE COURT: SUSTAINED.

20 Q LET ME REPHRASE THAT, MS. JOHNSON. THE QUESTION I HAD
21 ASKED WAS, IS THE DEATH PENALTY USED NOT OFTEN ENOUGH, TOO
22 OFTEN OR ABOUT RIGHT? AND YOU SAID SOMETIMES YOU HAD A
23 DISAGREEMENT AS TO WHAT HAPPENED. SO LET'S STOP AT THAT
24 POINT.

25 NOW, GOING BACK TO THE QUESTION, IN GENERAL WOULD YOU

1 BELIEVE THAT THE DEATH PENALTY SHOULD BE USED MORE OFTEN THAN
2 IT IS OR NOT AS OFTEN AS IT IS OR IN ANY OTHER WAY THAT YOU
3 WOULD LIKE TO DESCRIBE?

4 A MORE OFTEN.

5 Q YOU BELIEVE THAT IT SHOULD BE USED MORE OFTEN. ALL
6 RIGHT.

7 NOW, DO YOU BELIEVE THAT IN THE CASE OF A -- THE
8 COMMISSION OF A MURDER, WHICH IS AN INTENTIONAL AND MALICIOUS
9 ACT, AND THERE ARE ADDITIONAL AGGRAVATING CIRCUMSTANCES THAT
10 THE JUDGE MENTIONED A MOMENT AGO TO YOU, DO YOU BELIEVE IN
11 THAT TYPE OF CASE WHERE THE MURDER HAS BEEN PROVEN BEYOND A
12 REASONABLE DOUBT -- IT'S THE RIGHT PERSON. NO DEFENSES TO IT
13 -- AND THERE IS ADDITIONALLY AGGRAVATING INFORMATION THAT
14 MAKES THE MURDER WORSE, DO YOU BELIEVE UNDER THOSE
15 CIRCUMSTANCES THAT A LIFE IN PRISON SENTENCE IS A SERIOUS
16 PENALTY FOR THAT ACT?

17 A I DON'T THINK IT WOULD BE SERIOUS ENOUGH.

18 Q YOU DON'T THINK THAT THE LIFE IN PRISON PENALTY UNDER
19 THOSE CIRCUMSTANCES THAT I DESCRIBED TO YOU WOULD BE SERIOUS
20 ENOUGH?

21 A NO.

22 MR. MAULDIN: OKAY. ONE MOMENT. JUST ONE MOMENT,
23 PLEASE, MA'AM. (OFF RECORD WITH CO-COUNSEL)

24 Q JUST A COUPLE OF OTHER QUESTIONS, MS. JOHNSON, BECAUSE I
25 WANT TO MAKE SURE THAT I HAVE FOLLOWED YOU.

PATRICIA L. JOHNSON -- VOIR DIRE BY MR. MAULDIN

1 THE FIRST PHASE IS ON GUILT OR INNOCENCE ONLY. THE JURY
2 HEARS THE EVIDENCE OF THE INCIDENT. IF THERE IS EVIDENCE OF
3 MISTAKE OR SELF-DEFENSE, IT WOULD COME UP THEN AND THE JURY
4 WOULD DECIDE WHETHER THE STATE HAD PROVEN MURDER BEYOND A
5 REASONABLE DOUBT. DO YOU UNDERSTAND THAT FIRST PHASE?

6 A (INDICATES AFFIRMATIVE RESPONSE)

7 Q SO THAT WHEN THE SENTENCING PHASE BEGINS THE JURY WOULD
8 HAVE ALREADY FOUND THE DEFENDANT GUILTY OF MURDER, OF AN
9 INTENTIONAL MALICIOUS ACT. AND IF AT THAT POINT ADDITIONAL
10 AGGRAVATING INFORMATION IS PROVEN TO YOU BEYOND A REASONABLE
11 DOUBT BY THE PROSECUTION, IT IS THEN THAT YOU HAVE SAID TO ME
12 A MOMENT AGO THAT LIFE IN PRISON IS NOT A SERIOUS ENOUGH
13 PENALTY?

14 A WHAT DID YOU MEAN BY MISTAKE?

15 Q AT THE FIRST TRIAL, FIRST PHASE?

16 THE COURT: MA'AM, LET ME EXPLAIN THIS TO YOU. WHEN WE
17 GO TO A SENTENCING PHASE IN ANY CAPITAL CASE, WE'RE NOT GOING
18 TO REHASH GUILT. IT'S GUILT. IT'S MURDER. IT'S INTENTIONAL
19 MURDER.

20 JUROR NUMBER 191: RIGHT.

21 THE COURT: DONE DEAL. MALICE, THE WHOLE BALL OF WAX.
22 IS YOUR MIND MADE UP? THAT'S THE QUESTION. A MALICIOUS ACT,
23 MURDER, INTENTIONAL, YOU FOUND HIM GUILTY. NOW WE'RE GETTING
24 READY TO START THE SENTENCING PHASE OF THAT PARTICULAR TRIAL
25 AND ARE YOU ALREADY CONVINCED THAT YOU'RE GOING TO FIND THE

PATRICIA L. JOHNSON -- VOIR DIRE BY MR. MAULDIN

1 DEATH PENALTY? THAT'S THE QUESTION.

2 JUROR NUMBER 191: NOT IN THIS CASE. I MEAN---

3 THE COURT: I'M TALKING IN GENERAL.

4 JUROR NUMBER 191: I HAVEN'T -- YEAH. YEAH.

5 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

6 SOLICITOR ARIAIL: SURE.

7 VOIR DIRE BY SOLICITOR ARIAIL:

8 Q LET ME GO BACK OVER THAT WITH YOU IF YOU DON'T MIND JUST
9 A MOMENT, SO I CAN MAKE SURE I UNDERSTAND YOU. WHEN WE GET
10 TO THE SENTENCING PHASE OF THE CASE, YOU'VE ALREADY FOUND THE
11 DEFENDANT GUILTY.

12 A OKAY.

13 Q ALL RIGHT. YOU GO IN THE SENTENCING PHASE. YOU HAVE
14 TWO CHOICES FOR SENTENCING -- LIFE IN PRISON OR THE DEATH
15 SENTENCE. THE JUDGE IS GOING TO INSTRUCT YOU WHEN YOU GO TO
16 THE JURY ROOM YOU'RE GOING TO HAVE TO CONSIDER EVIDENCE OF
17 AGGRAVATION AND YOU'RE GOING TO HAVE TO CONSIDER EVIDENCE IN
18 MITIGATION, AND YOU'RE GOING TO HAVE TO GIVE MEANINGFUL
19 CONSIDER BOTH OF THOSE OPTIONS.

20 NOW, LET ME EXPLAIN TO YOU ABOUT AGGRAVATING BECAUSE THE
21 DEFENSE LAWYER USING AGGRAVATING INFORMATION AND AGGRAVATING
22 CIRCUMSTANCES. UNDER THE LAW THAT DOES NOT NECESSARILY MEAN
23 AGGRAVATING IN THE SENSE THAT YOU AND I AS LAY PEOPLE MEAN
24 AGGRAVATING.

25 MR. MAULDIN: YOUR HONOR, AND I -- I OBJECT TO THAT

PATRICIA L. JOHNSON -- VOIR DIRE BY SOLICITOR ARIAIL

1 SPEECH BECAUSE I DON'T THINK THAT'S TRUE. I MEAN, THE
2 AGGRAVATING CIRCUMSTANCES SPEAK FOR THEMSELVES. YOU GAVE HER
3 A COUPLE OF EXAMPLES.

4 THE COURT: WAS IT THIS JUROR WHO I DID THAT WITH? AN
5 AGGRAVATING CIRCUMSTANCE IS WHERE A MURDER IS COMMITTED WHILE
6 IN THE COMMISSION OF THE FOLLOWING CRIMES OR ACTS. I'M GOING
7 TO GIVE YOU JUST SOME EXAMPLES. CRIMINAL SEXUAL CONDUCT,
8 KIDNAPPING, BURGLARY, ROBBERY WHILE ARMED WITH A DEADLY
9 WEAPON, KILLING BY POISON, PHYSICAL TORTURE, AND THE LIST
10 GOES ON.

11 Q ALL RIGHT. THOSE ARE CIRCUMSTANCES WHERE THE
12 LEGISLATURE SAID, "IF YOU HAVE A MURDER AND IT'S COMMITTED
13 WITH A KIDNAPPING OR POISON OR ET CETERA, THE STATE CAN ASK
14 FOR THE DEATH PENALTY." AGGRAVATING IN THE COMMON SENSICAL,
15 WHAT WE NORMALLY TALK ABOUT, IS NOT WHAT WE'RE TALKING ABOUT
16 HERE. WE'RE TALKING ABOUT SPECIFIC INSTANCES AND WHEN MURDER
17 IS ACCOMPANIED BY ANOTHER ACT. ALL RIGHT.

18 MR. MAULDIN: YOUR HONOR, AND I RENEW THAT OBJECTION.
19 NOW, THAT IS NOT NECESSARILY TRUE.

20 THE COURT: OVERRULED.

21 Q ALL RIGHT. AND WHEN WE GET TO THE PHASE WHERE YOU'RE IN
22 THE JURY BOX TO DETERMINE THE SENTENCE, THE ISSUE IS, AFTER
23 YOU HAVE FOUND THE DEFENDANT GUILTY AND YOU HAVE FOUND ONE OF
24 THESE AGGRAVATING CIRCUMSTANCES THAT THE JUDGE READ TO YOU --
25 SO, THEREFORE, THE CASE IS HE IS GUILTY OF MURDER. HE IS

PATRICIA L. JOHNSON -- VOIR DIRE BY SOLICITOR ARIAIL

1 GUILTY OF MURDER AND HE DID IT WITH POISON. WOULD YOU, WHEN
2 THE JUDGE INSTRUCTED YOU, CONSIDER EVIDENCE IN MITIGATION TO
3 DETERMINE WHETHER OR NOT A LIFE SENTENCE WAS APPROPRIATE
4 UNDER THOSE CIRCUMSTANCES?

5 A NO.

6 Q YOU WOULD NOT. WHAT WOULD YOUR VIEW OF IT BE?

7 A DEATH PENALTY.

8 Q AT THAT TIME. ALL RIGHT.

9 SOLICITOR ARIAIL: THANK YOU.

10 THE COURT: MS. JOHNSON, THANK YOU SO MUCH. WE
11 APPRECIATE YOU BEING HERE. WE'LL BE WITH YOU IN JUST A
12 MOMENT. THEY'RE GOING TO TAKE YOU TO A JURY ROOM, AND THEN
13 WE'LL BE WITH YOU AND YOU'LL BE FREE TO GO. THANK YOU.

14 (JUROR EXITS COURTROOM AT 1:35 P.M.)

15 THE COURT: THE JUROR HAS BEEN EXCUSED. IF ANYONE
16 CONTENTS MS. JOHNSON IS SOMEHOW QUALIFIED, I'LL BE GLAD TO
17 HEAR THE ARGUMENT. (PAUSE) HEARING NONE---

18 SOLICITOR ARIAIL: NONE.

19 THE COURT: ---THIS JUROR IS CLEARLY NOT QUALIFIED.
20 EXCUSE MS. JOHNSON. THANK HER FOR HER SERVICE. SHE IS FREE
21 TO GO.

22 THE NEXT PANEL WILL BE HEAR AT 2:00. I'M GOING TO GIVE
23 THEM TIME TO REVIEW THE EXTENSIVE WITNESS LIST, AND WE'LL
24 BRING THEM IN AT APPROXIMATELY 2:15. SO THAT WILL GIVE YOU A
25 FEW EXTRA MINUTES. THANK YOU.

MATTERS AND MOTIONS

1 (A LUNCH RECESS WAS TAKEN FROM 1:36 TO 2:20 P.M.)

2 THE COURT: ALL RIGHT. COUNSEL, WE HAVE A DEPUTY WHO
3 HAS LOCATED ONE OF THE JURORS. THIS IS THE JUROR WE
4 DISCUSSED PREVIOUSLY. HE IS BACK IN HIS ROOM AT THE
5 SUBURBAN. HE IS GROSSLY INTOXICATED AND THE DEPUTY DOESN'T
6 KNOW WHETHER TO BRING HIM IN A DRUNKEN STUPOR TO THE
7 COURTHOUSE OR NOT. THE DEPUTY HAS GIVEN US A CELL NUMBER
8 WHERE HE CAN BE CONTACTED AS TO FURTHER INSTRUCTIONS. IF
9 EITHER SIDE WANTS THE -- THAT JUROR BROUGHT TO THE
10 COURTHOUSE, PLEASE ADVISE. (PAUSE)

11 MS. HERVEY: CAN I JUST ASK, HE ACTUALLY SHOWED UP
12 MONDAY, DIDN'T HE, AND ASKED TO BE EXCUSED BECAUSE HE HAD A
13 DUI?

14 THE COURT: (INDICATES NEGATIVE RESPONSE)

15 MS. HERVEY: THAT WAS A DIFFERENT ONE.

16 MS. STROM: NO, THE STATE DOES NOT NEED HIM BROUGHT TO
17 COURT.

18 MR. MAULDIN: JUDGE, DO YOU HAVE THAT JUROR NUMBER
19 THERE HANDY?

20 THE COURT: SHE CAN HELP YOU.

21 MR. MAULDIN: 40 OR 90?

22 (OFF RECORD WITH MS. PLUMLEY)

23 MR. MAULDIN: AND HE WAS ONE OF THE GUYS THAT DID NOT
24 SHOW UP YESTERDAY?

25 THE COURT: AND I SIGNED AN ORDER.

MATTERS AND MOTIONS

1 MS. PLUMLEY: 146.

2 THE COURT: AND I'VE GOT A DEPUTY OUT THERE WITH HIM
3 NOW AT THE SUBURBAN. 146.

4 MR. MAULDIN: YOUR HONOR, WE HAVE NO OBJECTION TO HIM
5 NOT BEING USED AS A JUROR IN THE NORMAL COURSE OF THIS
6 PROCESS. BUT WHAT THE COURT SHOULD DO WITH REGARD TO HIM NOT
7 RESPONDING TO HIS SUBPOENA, OF COURSE, WOULD BE UP TO THE
8 COURT.

9 THE COURT: ALL RIGHT. COMMUNICATE -- THE RECORD WILL
10 REFLECT THERE IS NO OBJECTION TO THE JUROR BEING EXCUSED IN
11 THIS PARTICULAR CASE. COMMUNICATE TO THE DEPUTY NOT TO TAKE
12 HIM INTO CUSTODY, AND I WILL DEAL WITH IT SUBSEQUENTLY.

13 ALSO, THERE ARE TWO JURORS -- AND MS. PLUMLEY CAN SORT
14 OF BRING US UP TO SPEED. WE HAVE DURING THE LAST 30 MINUTES
15 RECEIVED MORE DOCTOR'S STATEMENTS. AND WHAT JURORS DO THESE
16 CONCERN, MS. PLUMLEY?

17 MS. PLUMLEY: JUROR 167, MS. HILL, AND JUROR 213,
18 LAUBE.

19 THE COURT: NOW, WERE EITHER OF THEM HERE YESTERDAY?

20 MS. PLUMLEY: YES, SIR. THEY WERE HERE YESTERDAY AND
21 CAME UP IN THE LINE AND WERE ADVISED TO PROVIDE DOCTOR'S
22 STATEMENTS.

23 MR. MAULDIN: ARE THEY IN ONE OF THESE PANELS?

24 THE COURT: THEY WOULD BE.

25 MS. HERVEY: 167 IS IN PANEL 15.

MATTERS AND MOTIONS

1 MR. MAULDIN: 15.

2 MS. PLUMLEY: AND NUMBER 213 IS IN PANEL 26.

3 MR. MAULDIN: ALL RIGHT. 167 AND---

4 MS. PLUMLEY: AND NUMBER 213. NUMBER 213 IS IN PANEL
5 26.

6 MR. MAULDIN: ALL RIGHT. AND SO THEY ARE NOW EXCUSED,
7 JUDGE?

8 THE COURT: WELL, I'M GOING TO LOOK AT THE STATEMENTS
9 AND I WANT YOU TO DO THAT AS WELL.

10 MR. MAULDIN: YES, SIR.

11 THE COURT: AND THEN WE'RE GOING TO MAKE A DECISION. I
12 GENERALLY WILL DEFER TO A DOCTOR'S STATEMENT. (PAUSE) ALL
13 RIGHT. THIS JUROR IS BEING TREATED FOR DEPRESSION. THIS IS
14 A STATEMENT FROM THE COUNSELOR.

15 MR. MAULDIN: IS THIS THE THERAPIST, YOUR HONOR?

16 THE COURT: I THINK IT IS. IT SAYS PIEDMONT CENTER FOR
17 MENTAL HEALTH SERVICES.

18 AND, LET'S SEE, THE OTHER ONE HAS -- I'M NOT GOING TO
19 CALL THE JUROR'S NAME OUT. YOU'LL SEE IT. -- CHRONIC
20 COLONIC, I GUESS COLON, DISFUNCTION.

21 MS. HERVEY: I BELIEVE SHE DID -- I REMEMBER. SHORT
22 LITTLE GIRL, I THINK SO.

23 THE COURT: AND SHE DIDN'T HAVE AN EXCUSE, AND I TOLD
24 HER WE HAD TO TREAT HER LIKE EVERYBODY ELSE.

25 MR. MAULDIN: SHORT DARK HAIR.

MATTERS AND MOTIONS

1 THE COURT: SO THAT'S THAT NOTE.

2 MR. MAULDIN: ALL RIGHT.

3 MS. HERVEY: THAT'S FINE. NO OBJECTION FROM THE STATE.

4 MR. MAULDIN: NO OBJECTION TO EITHER ONE, YOUR HONOR.

5 THE COURT: THESE WITHOUT OBJECTION WITH BE EXCUSED,
6 AND WE'LL PLACE THESE WITH THE OTHER JUROR EXHIBITS.

7 NOW, COUNSEL, THERE ARE TWO JURORS WHO WE PICKED UP AND
8 THEY HAVE BEEN HERE SINCE THIS MORNING, AND I'M GOING TO
9 BRING THEM IN AN QUALIFY THEM.

10 I'M GOING TO ASK MS. PLUMLEY, WOULD YOU REFRESH MY
11 MEMORY? YOU TOLD ME EARLIER TODAY, WHO ARE THESE TWO JURORS
12 THAT WERE PICKED UP?

13 MS. PLUMLEY: THEY CAME IN VOLUNTARILY.

14 THE COURT: WERE THEY APPARENTLY SERVED WITH THE ORDERS
15 OR---

16 MS. PLUMLEY: THEY WERE.

17 THE COURT: ---ELSE CONTACTED AND THEY CAME IN
18 VOLUNTARILY. THAT'S WHAT I'M TOLD NOW.

19 MS. PLUMLEY: JUROR NUMBER 77---

20 THE COURT: 77.

21 MS. PLUMLEY: AND JUROR NUMBER -- AND JUROR 95.

22 THE COURT: WILL YOU GIVE ME THEIR NAMES, PLEASE?

23 MS. PLUMLEY: JUROR 77 IS MICHAEL K. DAILEY. HE IS THE
24 TWIN.

25 THE COURT: DID HE SEND THE TWIN TO THE COURTHOUSE?

MATTERS AND MOTIONS

1 **MS. PLUMLEY:** THE TWIN CAME TO THE COURTHOUSE.

2 **THE COURT:** PRETENDING TO BE HIM?

3 **MS. PLUMLEY:** NO. SAYING THAT HE WAS SERVED BUT THAT
4 WASN'T HIM.

5 **THE COURT:** OKAY.

6 (THE COURT AND MS. PLUMLEY OFF RECORD)

7 **MS. PLUMLEY:** THE OTHER ONE IS CLYDE DRUMMOND.

8 **THE COURT:** OKAY. MICHAEL DAILEY, 77 AND CLYDE
9 DRUMMOND, 95.

10 **MS. PLUMLEY:** I HAVE NO BACKGROUND ON DRUMMOND. HE
11 JUST DID NOT SHOW UP.

12 (THE COURT AND MS. PLUMLEY OFF RECORD)

13 **THE COURT:** ALL RIGHT. I'M GOING TO BRING THESE JURORS
14 IN. I'M GOING TO PLACE THEM UNDER OATH. I'LL DO IT IN THE
15 JURY BOX. AND I'M GOING TO ASK THE QUALIFICATION QUESTIONS
16 AND EXEMPTION QUESTIONS.

17 **MR. MAULDIN:** SO THESE ARE PEOPLE THAT DID NOT SHOW
18 YESTERDAY MORNING?

19 **THE COURT:** THEY WERE NOT HERE. THAT'S EXACTLY RIGHT.

20 **SOLICITOR ARIAIL:** COULD I -- I HATE TO BE THE
21 PERSECUTOR, BUT COULD WE WAIT AND DO THEM AFTER WE FINISH THE
22 RESPONSIBLE MEMBERS OF THE JURY WHO SHOWED UP AND LET THEM
23 COME IN HERE AFTER WE'RE THROUGH, AND WE'LL STAY. I JUST
24 DON'T SEE WHY WE PUT THEM AHEAD OF THESE RESPONSIBLE JURORS.

25 **THE COURT:** WELL, THEY'VE BEEN HERE SINCE 8:30 THIS

MATTERS AND MOTIONS

1 MORNING.

2 SOLICITOR ARIAIL: OH, OKAY.

3 THE COURT: AND FOR THAT VERY REASON I WAS NOT GOING TO
4 HEAR THEM, AND THEY HAVE BEEN SITTING HERE---

5 SOLICITOR ARIAIL: OKAY.

6 THE COURT: ---SINCE THIS MORNING. THAT VERY THOUGHT
7 PROCESS THAT I CONCUR WITH---

8 SOLICITOR ARIAIL: WELL, THAT'S ENOUGH PUNISHMENT.

9 THE COURT: ---IS THE WAY I LET THEM SIT FOR SIX HOURS
10 OR SO.

11 SOLICITOR ARIAIL: ALL RIGHT. HALF A DAY IS ENOUGH.

12 THE COURT: ALL RIGHT. THERE IS A MR. DAILEY AND A MR.
13 DRUMMOND. BRING THEM AND THEY CAN JUST BE SEATED IN THE JURY
14 BOX.

15 (THE COURT AND MS. PLUMLEY OFF RECORD)

16 THE COURT: WE REFERENCED JUROR 167 EARLIER. IT'S
17 ACTUALLY JUROR 166, SAME NAME. I JUST MISSTATED THE NUMBER.
18 YOU'LL HAVE TO CORRECT THAT. I SEE A DOCUMENT THAT SAYS 167.
19 IS IT 167 OR 166?

20 MS. PLUMLEY: IT'S 166. OH.

21 MR. MAULDIN: THAT'S TWO DIFFERENT---

22 MS. PLUMLEY: IT'S 166. I LOOKED AT IT WRONG.

23 THE COURT: IT'S 166. THAT'S THE MENTAL HEALTH ONE.

24 MR. MAULDIN: ALL RIGHT.

25 THE COURT: SO THAT WILL BE A DIFFERENT GROUP. IT WILL

MATTERS AND MOTIONS

1 BE A DIFFERENT JUROR.

2 MR. MAULDIN: THIS PERSON SHOULD STILL BE---

3 MS. PLUMLEY: YES, SIR.

4 MR. MAULDIN: ALL RIGHT. WILL YOU LOCATE THAT OTHER
5 ONE?

6 THE COURT: YES. TELL US WHERE 166 IS. THANK YOU, MS.
7 KOFFSKEY. WE'LL MAKE SURE WE GET THAT CORRECT.

8 (JUROR NUMBER 77 AND 95 ENTER COURTROOM AT 2:29 P.M.)

9 THE COURT: WHICH OF YOU GENTLEMEN IS MR. MICHAEL
10 DAILEY?

11 JUROR NUMBER 77: (INDICATING)

12 THE COURT: AND I TAKE IT YOU ARE MR. CLYDE DRUMMOND?

13 JUROR NUMBER 95: YES, SIR.

14 THE COURT: THESE ARE JURORS WHO WERE SUMMONED TO
15 APPEAR YESTERDAY AND FAILED TO APPEAR. WE ARE HERE FOR THE
16 PURPOSE OF QUALIFYING THESE RESPECTIVE JURORS.

17 (JURORS 77 AND 95 WERE FOUND QUALIFIED AND EXITED THE
18 COURTROOM AT 2:37 P.M.)

19 THE COURT: BRING THE NEXT PANEL.

20 MS. STROM: YOUR HONOR, AT THIS TIME WOULD YOU LET US
21 KNOW WHAT PANELS THEY ARE PLACED INTO SO THAT WAY WE CAN PULL
22 THEIR JUROR INFORMATION?

23 MR. MAULDIN: I CAN TELL YOU. THEY'RE PLACED IN
24 PANEL -- THE LAST PANEL AND THE NEXT TO LAST PANEL.

25 THE COURT: 166, MS. HILL WAS IN THE LAST PANEL.

MATTERS AND MOTIONS

1 MS. PLUMLEY: YES, SIR.

2 THE COURT: THAT'S THE ONE WE'RE EXCUSING, 166.

3 LET THE RECORD REFLECT 166 IS THE ONE SUBJECT TO THAT --
4 BEING EXCUSED FOR HEALTH REASONS.

5 (PANEL NUMBER 4 ENTERS COURTROOM AT 2:39 P.M.)

6 (PANEL 4: JUROR NUMBER 298, NORMA B. PITTS; JUROR
7 NUMBER 374, VERNON D. WADE, JR.; JUROR NUMBER 11, JOHN R.
8 BAILEY; JUROR NUMBER 233, TERRY B. MARSHALL; AND JUROR NUMBER
9 47, ANNE CASEY SMITH)

10 THE COURT: LADIES AND GENTLEMEN, GOOD AFTERNOON. WE
11 APPRECIATE SO MUCH YOU BEING HERE, AND WE UNDERSTAND THE
12 INCONVENIENCE CAUSED BY JURY SERVICE, PARTICULARLY IN THIS
13 SITUATION WHERE THE SELECTION PROCESS IS DIFFICULT AND TIME
14 CONSUMING.

15 I WANT TO JUST MAKE SURE THAT I HAVE A NAME WITH A FACE,
16 SO I'M GOING TO ASK AS WE GO DOWN THE LINE IF YOU WOULD JUST
17 GIVE ME YOUR NAME.

18 WHAT IS YOUR NAME, PLEASE, SIR?

19 JUROR NUMBER 11: MY NAME IS JOHN BAILEY.

20 THE COURT: MR. BAILEY. ALL RIGHT. THANK YOU, SIR.

21 THERE IS NO REASON TO STAND. JUST TELL ME YOUR NAME.
22 YOUR NAME, SIR?

23 JUROR NUMBER 374: I'M VERNON WADE, JR. ACTUALLY, DAVID
24 WADE.

25 THE COURT: OKAY. AND YOU, SIR?

VOIR DIRE -- GROUP 1

1 JUROR NUMBER 233: TERRY BRUCE MARSHALL.

2 THE COURT: AND YOU, MA'AM?

3 JUROR NUMBER 47: ANNE CASEY SMITH.

4 THE COURT: AND YOU, MA'AM?

5 JUROR NUMBER 298: NORMA BURLESON PITTS.

6 THE COURT: OKAY. WE'RE GOING TO MEET COLLECTIVELY
7 JUST FOR A FEW MINUTES, AND I'M GOING TO GIVE YOU SOME
8 GENERAL OUTLINES AND FURTHER EDUCATION. WE STARTED YESTERDAY
9 ON WHAT IS INVOLVED IN A CASE OF THIS NATURE. AND FROM THAT
10 POINT I WILL THEN ASK YOU QUESTIONS INDIVIDUALLY. I'LL LET
11 ONE STAY IN THE COURTROOM, AND THEN I'LL BRING YOU BACK ONE
12 AT A TIME AS WE GET TO YOUR NAME ON THE PANEL LIST.

13 IT IS NECESSARY THAT I ADMINISTER AN OATH TO YOU, SO I'M
14 GOING TO ASK AT THIS TIME IF YOU WOULD BE KIND ENOUGH TO
15 RAISE YOUR RIGHT HAND.

16 DO EACH OF YOU SWEAR OR AFFIRM THE RESPONSES YOU GIVE
17 DURING THIS JURY SELECTION PROCESS WILL BE TRUTHFUL AND
18 COMPLETE TO THE BEST OF YOUR ABILITY? IF YOU AGREE TO BE
19 BOUND BY THIS OATH, PLEASE SAY, "I WILL" AT THIS TIME.
20 (PAUSE) ALL INDICATE IN THE AFFIRMATIVE. THANK YOU.

21 WE KNOW THIS IS AN UNCOMFORTABLE AND AWKWARD SITUATION
22 TO BE IN AND WE WANT TO DO OUR BEST TO PUT YOU AT EASE AS WE
23 GO THROUGH THIS PROCESS OF GATHERING INFORMATION.

24 I WANT YOU TO UNDERSTAND AT THE OUTSET THAT I HAVE NO
25 OPINION ABOUT THE FACTS OF THIS CASE. SO PLEASE DO NOT

VOIR DIRE -- GROUP 1

1 CONSTRUE FROM ANYTHING I ASK OR SAY THAT I HAVE ANY OPINION
2 ABOUT THE FACTS OF THIS CASE.

3 YESTERDAY I PLACED YOU AND YOUR FELLOW JURORS UNDER OATH
4 NOT TO DISCUSS THE CASE OR TO EXPOSE YOURSELF TO ANY MEDIA
5 COVERAGE ABOUT THE CASE. I WANT TO KNOW IF ANY OF YOU HAVE
6 DISCUSSED THIS CASE WITH ANYONE OR HAVE BEEN EXPOSED TO ANY
7 MEDIA COVERAGE OR OTHER INFORMATION ABOUT THIS CASE. IF SO,
8 WOULD YOU PLEASE RAISE YOUR RIGHT HAND. (PAUSE) THE RECORD
9 WILL REFLECT NO RESPONSE.

10 I ALSO WANT YOU TO UNDERSTAND TWO VERY IMPORTANT LEGAL
11 PRINCIPLES. AGAIN, THESE ARE ONES THAT I MENTIONED
12 YESTERDAY. ONE IS THE PRESUMPTION OF INNOCENCE. ANYONE
13 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT. SECONDLY, THE
14 BURDEN OF PROOF IS NEVER ON A DEFENDANT. A DEFENDANT HAS THE
15 RIGHT TO REMAIN SILENT UNDER OUR CONSTITUTION. THE BURDEN OF
16 PROOF IS ALWAYS ON THE STATE TO PROVE GUILT BEYOND A
17 REASONABLE DOUBT.

18 A CASE OF THIS NATURE IS GENERALLY REFERRED TO AS A
19 CAPITAL CASE. IT'S A CASE IN WHICH THE STATE SEEKS THE DEATH
20 PENALTY. AND I WANT TO EXPLAIN TO YOU COLLECTIVELY AT FIRST
21 THE PROCESS OF A CAPITAL CASE. ONCE A JURY IS SELECTED WE
22 HAVE THE FIRST PHASE OF THE TRIAL AND PERHAPS THE ONLY PHASE
23 OF THE TRIAL. IN THE INITIAL PHASE THE JURY IS ASKED TO
24 DETERMINE WHETHER OR NOT THE STATE HAS PROVEN GUILT OF THE
25 OFFENSE OF MURDER BEYOND A REASONABLE DOUBT. IF THE JURY

VOIR DIRE -- GROUP 1

1 FINDS THE DEFENDANT NOT GUILTY OF THE OFFENSE OF MURDER, THAT
2 ENDS THE CASE AS FAR AS THE JURY IS CONCERNED. THERE IS NO
3 FURTHER JURY INVOLVEMENT.

4 IF, HOWEVER, A JURY FINDS A DEFENDANT GUILTY OF THE
5 OFFENSE OF MURDER, THEN AND ONLY THEN DO WE MOVE FORWARD INTO
6 THE SECOND PHASE OF THE TRIAL, SOMETIMES CALLED THE
7 SENTENCING PHASE OF THE TRIAL. IN THAT SENTENCING PHASE A
8 JURY WOULD HEAR ADDITIONAL EVIDENCE. SOME OF THAT EVIDENCE
9 WOULD BE REFERRED TO AS EVIDENCE IN AGGRAVATION, OF
10 AGGRAVATING CIRCUMSTANCES THAT ARE DEFINED BY STATE LAW, AND
11 ALSO EVIDENCE IN MITIGATION. AND THE JURY AFTER HEARING THIS
12 ADDITIONAL EVIDENCE WOULD THEN DETERMINE BETWEEN TWO POSSIBLE
13 PENALTIES, LIFE IMPRISONMENT AND THE DEATH PENALTY.

14 I WANT YOU TO UNDERSTAND SOMETHING VERY IMPORTANT, AND
15 THAT IS UNDER SOUTH CAROLINA LAW WHEN A MURDER IS ACCOMPANIED
16 BY AN AGGRAVATING CIRCUMSTANCE THAT LIFE IN PRISON MEANS LIFE
17 WITHOUT THE POSSIBILITY OF PAROLE.

18 I'LL GIVE YOU SOME EXAMPLES OF AGGRAVATING
19 CIRCUMSTANCES. THE GENERAL ASSEMBLY, OUR LEGISLATURE IN
20 COLUMBIA, SAYS WHEN A MURDER IS ACCOMPANIED IN THE COMMISSION
21 OF ARMED ROBBERY, KIDNAPPING, CRIMINAL SEXUAL CONDUCT, AND
22 THERE ARE OTHER EXAMPLES, BUT WHEN A MURDER IS ACCOMPANIED BY
23 ONE OF THESE THINGS THAT THE LEGISLATURE HAS DESCRIBED AS AN
24 AGGRAVATING CIRCUMSTANCE, IN THAT EVENT THE INDIVIDUAL GUILTY
25 OF THE OFFENSE, IF SENTENCED TO LIFE IN PRISON, WOULD NEVER

VOIR DIRE -- GROUP 1

1 BE ELIGIBLE FOR PAROLE. THAT INDIVIDUAL WOULD DIE IN JAIL.

2 THE REASON I MENTION THAT TO YOU IS BECAUSE SOMETIMES WE
3 HEAR ON THE STREETS, "WELL SO AND SO IS GOING TO BE ELIGIBLE
4 FOR PAROLE. WHEN DOES HE GET OUT? WHEN DOES SHE GET OUT?"
5 THAT DOESN'T APPLY IN SOUTH CAROLINA WHEN A MURDER IS
6 ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE, AND I WANTED YOU
7 TO BE FULLY INFORMED OF THAT.

8 NOW, IN THIS PARTICULAR CASE WE MAY NOT EVEN REACH THE
9 SENTENCING PHASE. BUT BECAUSE WE POSSIBLY COULD, IT IS
10 NECESSARY THAT I AND THE ATTORNEYS ASK YOU SOME QUESTIONS
11 ABOUT ISSUES THAT COULD COME UP AND, QUITE CLEARLY, AS YOU
12 CAN UNDERSTAND, YOUR VIEWS ON THE DEATH PENALTY. AND WE'LL
13 DISCUSS THAT WHEN WE DEAL WITH YOU INDIVIDUALLY.

14 I WANT TO GO INTO A LITTLE MORE DETAIL ABOUT THE TERMS
15 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.
16 THESE ARE TERMS THAT YOU WILL HEAR AND CONSIDER ONLY IN THE
17 EVENT THE TRIAL PROCEEDS TO THE SECOND OR SENTENCING PHASE.
18 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS OR AN
19 OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS
20 DECLARED BY STATUTE WHICH WOULD AGGRAVATE OR WORSEN THE CRIME
21 OF MURDER. I'VE GIVEN YOU EXAMPLES OF THAT. THESE
22 AGGRAVATING CIRCUMSTANCES WHEN ACCOMPANYING A MURDER INCREASE
23 THE ENORMITY OF IT OR ADD TO THE INJURY OF THE CRIME OF
24 MURDER.

25 ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE

VOIR DIRE -- GROUP 1

1 INCIDENTS, FACTS OR OCCURRENCES WHICH THE GENERAL ASSEMBLY
2 HAS DECLARED BY STATUTE OR WHICH A JURY OTHERWISE DETERMINES
3 SHOULD REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
4 BE CONSIDERED AS EXTENUATING OR REDUCING FAULT OR THE DEGREE
5 OF RESPONSIBILITY.

6 NOW, I OUTLINED TO YOU TWO IMPORTANT LEGAL PRINCIPLES.
7 WE HAVE TALKED ABOUT THE TWO-STEP PROCESS OF THE TRIAL, AND
8 AN OVERVIEW OF THE JURY'S ROLE IN BOTH THE FIRST PHASE AND A
9 POTENTIAL SENTENCING PHASE IN GIVING YOU AN INTRODUCTION TO
10 THIS CONCEPT OF AGGRAVATING AND MITIGATING EVIDENCE, AND WE
11 WILL DISCUSS FURTHER TO THE EXTENT NECESSARY WHEN WE QUESTION
12 YOU INDIVIDUALLY.

13 I WANT TO KNOW AT THIS POINT THAT EACH OF YOU UNDERSTAND
14 THE LEGAL PRINCIPLES AND THE PROCESS THAT I HAVE OUTLINED TO
15 YOU. WILL YOU PLEASE SIGNIFY BY SAYING YOU HAVE OR IF YOU
16 HAVE A QUESTION LET ME KNOW? (PAUSE) OKAY. ALL INDICATE IN
17 THE AFFIRMATIVE.

18 NOW, YESTERDAY YOU WERE INTRODUCED TO THE FINE ATTORNEYS
19 IN THIS CASE. WE HAVE MR. MAULDIN FROM THE PUBLIC DEFENDER'S
20 OFFICE, MR. RICHEY AND MR. BANNISTER. THIS IS MR. WOOD HERE,
21 JOHN RICHARD WOOD HERE IN THE WHITE SHIRT. OVER AT THIS
22 TABLE IS THE SOLICITOR'S OFFICE. THIS IS MR. ARIALL, MS.
23 STROM AND MS. HERVEY.

24 NOW, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
25 RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH

VOIR DIRE -- GROUP 1

1 THE ATTORNEYS TO WHOM YOU HAVE BEEN INTRODUCED? IF YOU ARE,
2 RAISE YOUR RIGHT HAND. (PAUSE) NO RESPONSE. OH, I'M SORRY.

3 JUROR NUMBER 11: DID YOU SAY, "DO YOU KNOW THEM?"

4 THE COURT: IF YOU ARE RELATED BY BLOOD OR MARRIAGE OR
5 YOU KNOW ANY OF THESE ATTORNEYS.

6 JUROR NUMBER 11: YES, I DO.

7 THE COURT: OKAY. WHICH OF THESE ATTORNEYS DO YOU
8 KNOW?

9 JUROR NUMBER 11: MR. RICHEY.

10 THE COURT: ALL RIGHT. AND HOW DO YOU KNOW MR. RICHEY?
11 AND YOU ARE MR. BAILEY, IS THAT RIGHT?

12 JUROR NUMBER 11: CORRECT.

13 THE COURT: ALL RIGHT. MR. BAILEY, HOW DO YOU KNOW MR.
14 RICHEY?

15 JUROR NUMBER 11: WE WENT TO SCHOOL TOGETHER.

16 THE COURT: OKAY. HOW LONG AGO?

17 JUROR NUMBER 11: HIGH SCHOOL.

18 THE COURT: LONG TIME AGO?

19 JUROR NUMBER 11: YES.

20 THE COURT: OKAY.

21 MR. RICHEY: NOT THAT LONG.

22 THE COURT: THE FACT THAT YOU WENT TO HIGH SCHOOL WITH
23 MR. RICHEY AND YOU WERE TO SERVE ON A JURY IN WHICH HE WAS
24 INVOLVED, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR OR WOULD
25 YOU STILL BE A FAIR JUROR?

VOIR DIRE -- GROUP 1

1 JUROR NUMBER 11: YES, I WILL.

2 THE COURT: WOULD YOU STILL BE A FAIR JUROR?

3 JUROR NUMBER 11: YES, I WILL.

4 THE COURT: OKAY. VERY GOOD. ANY OTHER RESPONSE TO
5 THESE PARTICULAR ATTORNEYS? (PAUSE) ALL RIGHT. THERE IS
6 NONE.

7 NOW, LET'S GO BEYOND THESE ATTORNEYS AND TALK ABOUT THE
8 OFFICES THEY REPRESENT, THE SOLICITOR'S OFFICE, THE PUBLIC
9 DEFENDER'S OFFICE, MR. RICHEY'S OFFICE, MR. BANNISTER'S
10 OFFICE. YOU MAY NOT KNOW THEM. BUT IF YOU ARE RELATED BY
11 BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH ANYONE
12 ASSOCIATED WITH THESE RESPECTIVE OFFICES, WOULD YOU PLEASE
13 RAISE YOUR RIGHT HAND? (PAUSE) ALL RIGHT. THERE IS NO
14 RESPONSE.

15 AND FINALLY, BEFORE WE START THE INDIVIDUAL QUESTIONING,
16 ARE YOU RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY
17 WITH MR. JOHN RICHARD WOOD, THE ACCUSED IN THIS CASE? IF SO,
18 RAISE YOUR RIGHT HAND. (PAUSE) NO RESPONSE.

19 IN THE INDICTMENT THE VICTIM ALLEGED IS ERIC NICHOLSON,
20 WHO WAS AT THE TIME A STATE TROOPER. IS THERE ANYONE RELATED
21 BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH MR. ERIC
22 NICHOLSON? IF SO, RAISE YOUR RIGHT HAND. (PAUSE) THERE IS
23 NO RESPONSE.

24 I KNOW THAT YOU HAVE HAD A PERIOD OF TIME TO REVIEW THAT
25 EXTENSIVE LIST OF POTENTIAL WITNESSES. AS A COURTESY TO YOU,

VOIR DIRE -- GROUP 1

1 I HAVE AN EXTRA COPY THERE IN THE JURY BOX IN THOSE FOLDERS.
2 SO IF YOU NEED TO LOOK AT THE WITNESS LIST AGAIN, FEEL FREE
3 TO. BUT I'D LIKE TO KNOW IF YOU ARE RELATED BY BLOOD OR
4 MARRIAGE OR ACQUAINTED IN ANY WAY, SOCIALLY OR
5 PROFESSIONALLY, WITH ANY OF THE POTENTIAL WITNESSES WHOSE
6 NAMES APPEAR ON THAT LIST. IF SO, WOULD YOU RAISE YOUR RIGHT
7 HAND? (PAUSE)

8 MR. BAILEY?

9 JUROR NUMBER 11: I THINK I RECOGNIZE A COUPLE NAMES ON
10 THE LIST.

11 THE COURT: OKAY. DO YOU RECALL WHICH OF THOSE NAMES
12 YOU RECOGNIZE? AND IF YOU NEED TO LOOK AT THE LIST, PLEASE
13 DO SO, SIR.

14 JUROR NUMBER 11: KENNETH BROCK.

15 THE COURT: KENNETH BROCK. AND WHO ELSE?

16 JUROR NUMBER 11: I THINK MIKE GIBSON.

17 THE COURT: ANYONE ELSE?

18 JUROR NUMBER 11: ERIC SULLIVAN.

19 THE COURT: ALL RIGHT. IS THAT IT?

20 JUROR NUMBER 11: YES, SIR.

21 THE COURT: ALL RIGHT. TELL ME HOW YOU KNOW MR. BROCK,
22 MR. GIBSON AND MR. SULLIVAN.

23 JUROR NUMBER 11: I'M NOT FOR SURE. I THINK I WENT TO
24 SCHOOL WITH A KENNETH BROCK.

25 THE COURT: OKAY. IS THAT BACK IN HIGH SCHOOL?

VOIR DIRE -- GROUP 1

1 JUROR NUMBER 11: YES.

2 THE COURT: OKAY. DO YOU KNOW WHERE HE WORKS NOW?

3 JUROR NUMBER 11: NO, I DON'T.

4 THE COURT: OKAY. WE MAY QUESTION YOU FURTHER ON THAT
5 WHEN IT'S YOUR TURN TO TESTIFY. JUST ASSUME THAT YOU ARE IN
6 THE JURY BOX AND KENNETH BROCK COMES IN AND TAKES THE WITNESS
7 STAND, AND IT'S THE SAME GUY YOU WENT TO SCHOOL WITH YEARS
8 AGO. WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR?

9 JUROR NUMBER 11: NO, IT WOULDN'T.

10 THE COURT: SO YOU WOULD STILL BE A FAIR JUROR?

11 JUROR NUMBER 11: YES.

12 THE COURT: ALL RIGHT. TELL ME ABOUT MIKE GIBSON.

13 JUROR NUMBER 11: LIKE I SAY, SOME OF THE NAMES I
14 RECOGNIZE. I THINK I KNOW A MIKE GIBSON. I'M NOT TOO SURE
15 OF THE LAST NAME.

16 THE COURT: OKAY. YOU KNOW A FELLOW NAMED MIKE AND YOU
17 THINK HIS LAST NAME MIGHT BE GIBSON?

18 JUROR NUMBER 11: YES.

19 THE COURT: AND IN WHAT SETTING DO YOU KNOW HIM? DO
20 YOU KNOW HIM AT WORK OR JUST IN THE COMMUNITY?

21 JUROR NUMBER 11: IN THE GENERAL COMMUNITY.

22 THE COURT: OKAY. IF IT TURNS OUT THAT THIS MIKE HAS A
23 LAST NAME OF GIBSON AND IS THE SAME ONE, SAME QUESTION.

24 JUROR NUMBER 11: YES.

25 THE COURT: WOULD YOU STILL BE A FAIR JUROR?

VOIR DIRE -- GROUP 1

1 **JUROR NUMBER 11:** YES.

2 **THE COURT:** ALL RIGHT. HOW ABOUT ERIC SULLIVAN? IS
3 THAT THE SAME SITUATION?

4 **JUROR NUMBER 11:** YES.

5 **THE COURT:** YOU THINK YOU KNOW AN INDIVIDUAL BY THE
6 NAME OF ERIC SULLIVAN BUT YOU'RE NOT SURE OTHER THAN JUST
7 SEEING HIM IN THE COMMUNITY; IS THAT RIGHT?

8 **JUROR NUMBER 11:** CORRECT.

9 **THE COURT:** NOW, IF IT TURNS OUT TO BE THE SAME ERIC
10 SULLIVAN, STILL YOU WOULD BE A FAIR JUROR EVEN IF YOU KNEW
11 THAT WITNESS; IS THAT CORRECT?

12 **JUROR NUMBER 11:** YES.

13 **THE COURT:** OKAY. IS THERE ANY OTHER JUROR WHO NEEDS
14 TO RESPOND TO THE WITNESS LIST? IF SO, RAISE YOUR RIGHT
15 HAND. (PAUSE) ALL RIGHT. THERE IS NO RESPONSE.

16 WE'RE NOW GOING TO PROCEED TO THE INDIVIDUAL QUESTIONING
17 AND WE'RE GOING TO START WITH MS. PITTS. MS. PITTS, YOU WILL
18 BE FIRST, AND I'LL BRING YOU UP HERE TO THE WITNESS STAND IN
19 JUST A MOMENT. BUT I'M GOING TO ASK THE OTHER FOUR IF YOU
20 WOULD BE KIND ENOUGH TO RETURN BACK TO THE OTHER COURTROOM
21 AND WE'LL GET YOU IN HERE AS QUICKLY AS WE CAN, AND THANK YOU
22 FOR YOUR PATIENCE. YOU CAN JUST SIMPLY LEAVE THAT WITNESS
23 LIST IN THE CHAIRS. THANK YOU.

24 (MS. PITTS REMAINS AND BALANCE OF PANEL EXITS COURTROOM
25 AT 2:54 P.M.)

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 NORMA B. PITTS (WHITE FEMALE),
2 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
3 VOIR DIRE BY THE COURT:

4 Q MS. PITTS, WE APPRECIATE SO MUCH YOU BEING HERE IN THIS
5 DIFFICULT SETTING FOR YOU AND, I'M SURE, THE OTHER JURORS AS
6 WELL.

7 A I'M SURE.

8 Q UNDERSTAND, WE ARE JUST SIMPLY HERE TO GATHER
9 INFORMATION, TELL YOU A LITTLE BIT MORE ABOUT THE PROCESS,
10 BECAUSE WE'RE TRYING TO FIND OUT WHICH JURORS ARE ELIGIBLE
11 AND QUALIFIED TO SERVE AND WHICH ARE NOT.

12 A CERTAINLY.

13 Q THIS CASE ARISES FROM AN INCIDENT THAT OCCURRED BACK ON
14 DECEMBER THE 6TH, 2000. IN THE INDICTMENT IT STATES THAT THE
15 VICTIM WAS ERIC NICHOLSON. MR. NICHOLSON WAS AT THE TIME A
16 STATE TROOPER, HIGHWAY PATROLMAN. THE DEFENDANT IS CHARGED
17 WITH THE CRIME OF MURDER, THE ALLEGED MURDER OF TROOPER
18 NICHOLSON.

19 THIS CASE RECEIVED SOME ATTENTION IN THE MEDIA, AND I
20 WANT TO KNOW THAT IF YOU HAVE BEEN EXPOSED TO ANY
21 INFORMATION. IT MAY BE THE MEDIA. IT MAY BE OUTSIDE THE
22 MEDIA. BUT IF YOU HAVE ANY INFORMATION ABOUT THIS CASE,
23 PLEASE TELL US THAT AND BE VERY SPECIFIC IN WHAT YOU CAN
24 RECALL FROM WHATEVER SOURCE.

25 A ACTUALLY, I DON'T RECALL ANYTHING ABOUT IT. I MAY HAVE

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 BEEN OUT OF TOWN AT THAT TIME. WE HAVE A HOME AT THE BEACH.
2 AND I JUST DON'T RECALL IT.

3 Q OKAY.

4 A UNTIL I HEARD SOMETHING IN THE COURTROOM YESTERDAY.

5 Q OKAY.

6 A I KNOW NOTHING OF IT.

7 Q IF I MENTION WOODRUFF ROAD, DOES THAT RING A BELL IN
8 TERMS OF ANYTHING YOU MAY HAVE HEARD?

9 A I KNOW WHERE IT IS.

10 Q OKAY. IN THIS CASE THERE MAY BE SOME REFERENCE TO AN
11 EVENT OR SERIES OF EVENTS IN ANDERSON COUNTY. NOW THAT I'VE
12 MENTIONED THE LOCATION OF ANDERSON COUNTY, DOES THAT JOG ANY
13 MEMORY?

14 A IT DOESN'T.

15 Q OKAY.

16 A I'M SORRY.

17 Q NO, THAT'S FINE. IT'S OKAY.

18 THE REASON I MENTION THAT IS BECAUSE A LOT OF JURORS HAD
19 SEEN SOMETHING ON T.V., READ AN ARTICLE IN THE PAPER. AND
20 THAT'S REAL IMPORTANT IN TERMS OF JURY SERVICE BECAUSE WHEN A
21 PERSON SERVES ON JURY DUTY YOU CAN'T BE SWAYED OR INFLUENCED
22 BY WHAT YOU SAW OUTSIDE THE COURTROOM. YOU HAVE TO FIND THE
23 TRUTH FROM THE EVIDENCE IN COURT. IN FACT, THE OATH THAT A
24 JUROR TAKES REQUIRES A JUROR TO DO JUST THAT.

25 IF YOU WERE SELECTED AS A JUROR IN THIS CASE, WOULD YOU

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 HONOR YOUR OATH AND FIND THE TRUTH ONLY FROM THE EVIDENCE
2 PRESENTED IN THE COURSE OF THIS TRIAL?

3 A OH, ABSOLUTELY.

4 Q AND WOULD YOU FOLLOW THE LAW AS I INSTRUCT IT?

5 A I WOULD.

6 Q HAVE YOU ALREADY FORMED ANY OPINION ABOUT THE FACTS OF
7 THIS CASE?

8 A I DON'T KNOW ANY FACTS.

9 Q OKAY. HAVE YOU ALREADY FORMED AN OPINION AS TO THE
10 GUILT OR INNOCENCE OF THIS ACCUSED, MR. WOOD?

11 A I HAVE NOT.

12 Q OKAY. DO YOU AGREE WITH THOSE FUNDAMENTAL LEGAL
13 PRINCIPLES THAT I HAVE ANNOUNCED BOTH YESTERDAY AND EARLIER
14 TODAY ABOUT ANYONE ACCUSED OF A CRIME IS PRESUMED INNOCENT?
15 DO YOU AGREE WITH THAT?

16 A I DO.

17 Q DO YOU ALSO AGREE THAT THE BURDEN OF PROOF SHOULD BE ON
18 THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT?

19 A I DO.

20 Q AND THAT THERE IS NO BURDEN ON A DEFENDANT TO PROVE OR
21 DISPROVE ANYTHING. DO YOU UNDERSTAND AND ACCEPT THAT?

22 A I DO.

23 Q IF YOU WERE A JUROR -- AND WE'RE NOT TALKING ABOUT THIS
24 CASE. WE'RE JUST TALKING ABOUT JURY SERVICE IN GENERAL. AND
25 IF YOU WERE A JUROR AND YOU HAD HEARD THE EVIDENCE IN A CASE,

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 FOLLOWED THE LAW, AND YOU WERE CONVINCED THAT A DEFENDANT WAS
2 GUILTY, WOULD YOU FIND THAT DEFENDANT GUILTY?

3 A I WOULD.

4 Q ON THE OTHER HAND, IF YOU WERE A JUROR, IF YOU
5 CONSIDERED ALL THE FACTS, IF YOU APPLIED THE LAW AND YOU WERE
6 NOT CONVINCED BEYOND A REASONABLE DOUBT WOULD YOU FOLLOW YOUR
7 OATH AND FIND THE DEFENDANT NOT GUILTY?

8 A I WOULD.

9 Q OKAY. NOW, WE'RE GOING TO TALK ABOUT A SENTENCING
10 PHASE, BUT I WANT TO STRESS TO YOU, MA'AM, THERE MAY NOT BE A
11 SENTENCING PHASE. BUT BECAUSE THERE IS THE POSSIBILITY, WE
12 ARE REQUIRED TO DISCUSS THOSE TYPES OF ISSUES WITH YOU, OKAY?

13 A I UNDERSTAND.

14 Q WHEN A JURY MOVES TO A SENTENCING PHASE THIS MEANS THAT
15 THE JURY HAS ALREADY FOUND A DEFENDANT -- AGAIN, WE'RE NOT
16 TALKING ABOUT THIS CASE. WE'RE JUST TALKING ABOUT THE
17 PROCESS. WHEN YOU MOVE TO THE SENTENCING PHASE, THE
18 DEFENDANT HAS ALREADY BEEN FOUND GUILTY OF MURDER. MURDER IS
19 THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE
20 AFORETHOUGHT. SO AS YOU GO TO THE SENTENCING PHASE, WE DON'T
21 WORRY ABOUT SELF-DEFENSE. WE DON'T WORRY ABOUT ALIBI. ALL
22 THAT'S BEEN TAKEN CARE OF IN THE GUILT PHASE, AND THE
23 INDIVIDUAL DEFENDANT HAS BEEN FOUND GUILTY OF MURDER.

24 THERE IS NOTHING ON THE ISSUE OF GUILT TO HASH OUT.
25 IT'S A DONE DEAL. DO YOU UNDERSTAND THAT?

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 A I DO.

2 Q SO WE'RE INTO THE SENTENCING PHASE IN A HYPOTHETICAL
3 CASE. AND AS THE CASE MOVES FORWARD TO THE SENTENCING PHASE,
4 NEW AND ADDITIONAL EVIDENCE IS RECEIVED, EVIDENCE IN
5 AGGRAVATION AND EVIDENCE IN MITIGATION.

6 I'LL GIVE YOU EXAMPLES OF MITIGATION. MITIGATION
7 EVIDENCE CAN BE THINGS LIKE A DEFENDANT'S BACKGROUND, FAMILY
8 HISTORY, MENTAL HEALTH STATUS, THINGS OF THAT NATURE. AND AT
9 THE END OF THE SENTENCING HEARING THE COURT WOULD INSTRUCT
10 THAT JURY THAT UNDER THEIR OATH THEY HAD TO GIVE SERIOUS,
11 THOUGHTFUL AND MEANINGFUL CONSIDERATION TO BOTH AGGRAVATING
12 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES BEFORE DECIDING
13 WHAT THE APPROPRIATE PUNISHMENT SHOULD BE.

14 IF YOU WERE ON A JURY IN THAT SETTING, WOULD YOU HONOR
15 YOUR OATH AND GIVE THOUGHTFUL CONSIDERATION TO ALL OF THE
16 EVIDENCE INCLUDING MITIGATION EVIDENCE AND AGGRAVATION
17 EVIDENCE? WOULD YOU DO THAT?

18 A YES, I WOULD.

19 Q WE'RE STILL DEALING WITH THE PROCESS IN GENERAL. IF YOU
20 WERE A JUROR IN A SENTENCING PHASE AND YOU HAVE COME TO THE
21 END AND YOU HAVE GIVEN CAREFUL CONSIDERATION TO ALL OF THE
22 EVIDENCE, AGGRAVATION, MITIGATION, YOU FOLLOW THE LAW AND YOU
23 ARE PERSUADED THAT THE APPROPRIATE PENALTY IS LIFE IN PRISON,
24 COULD YOU VOTE IN A MURDER CASE -- WE'VE ALREADY ESTABLISHED
25 MURDER. NOW WE'RE TALKING ABOUT WHAT IS THE APPROPRIATE

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 PUNISHMENT FOR THIS PARTICULAR DEFENDANT. IF YOU THOUGHT IT
2 WAS APPROPRIATE TO VOTE FOR LIFE IMPRISONMENT, COULD YOU DO
3 IT?

4 A YES, I COULD.

5 Q OKAY. ON THE OTHER HAND, IF YOU CONSIDERED ALL THE
6 FACTS AND CIRCUMSTANCES AND YOU GAVE CAREFUL CONSIDERATION TO
7 THE EVIDENCE, MITIGATION EVIDENCE, AGGRAVATION, ALL THE
8 EVIDENCE, AND IF YOU WERE PERSUADED AND CONVINCED THAT THE
9 PROPER PENALTY WAS DEATH, COULD YOU VOTE FOR THE DEATH
10 PENALTY?

11 A YES.

12 Q OKAY. NOW, I NOTICE YOU HESITATED AND GAVE THAT A LOT
13 OF THOUGHT, AND I APPRECIATE THAT. NO ONE IS TRYING TO
14 SUGGEST TO YOU THAT YOU HAVE TO VOTE FOR LIFE IMPRISONMENT,
15 YOU HAVE TO VOTE FOR DEATH. WE'RE JUST TRYING TO FIND PEOPLE
16 WHO ARE OPEN MINDED AND COULD BE FAIR AND COULD GO EITHER
17 WAY. DO YOU UNDERSTAND THAT?

18 A I DO. I HAVE GIVEN THIS A LOT OF THOUGHT.

19 Q YEAH. AND YOU REMEMBER THAT LIST OF JURORS?

20 A YES.

21 Q AND THERE ARE THREE TYPES. THERE'S A TYPE THAT IS
22 ALWAYS FOR THE DEATH PENALTY WHEN THERE IS A MURDER. THERE
23 IS A TYPE THAT WAS GOING TO VOTE FOR LIFE IMPRISONMENT NO
24 MATTER WHAT. AND THERE IS A THIRD TYPE THAT KEEPS AN OPEN
25 MIND AND IS NOT SURE WHAT THEY'RE GOING TO DO UNTIL THEY HEAR

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 IT ALL. WHICH ONE OF THOSE DO YOU BEST FIT UNDER?

2 A I BELIEVE I COULD BE THE THIRD TYPE.

3 Q NOW, IN ADDITION TO VOTING FOR THE DEATH PENALTY, IF YOU
4 THOUGHT IT WAS APPROPRIATE, THE LAW REQUIRES SOMETHING
5 FURTHER. THE LAW WOULD REQUIRE YOU TO SIGN YOUR NAME ON WHAT
6 WE CALL THE DEATH WARRANT, THE VERDICT FORM. AND IF YOU HAD
7 VOTED FOR THE DEATH PENALTY ALONG WITH YOUR OTHER JURORS,
8 BECAUSE IT HAS TO BE UNANIMOUS, COULD YOU SIGN YOUR NAME TO
9 THAT VERDICT FORM?

10 A WELL, IT WOULD NOT BE EASY BUT IT'S PART OF THE JOB, AND
11 I BELIEVE THAT I COULD.

12 Q SO IF YOU GOT TO THAT POINT AND YOU HONESTLY BELIEVED,
13 EVEN THOUGH YOU MAY HESITATE, IF YOU HONESTLY BELIEVED THAT
14 IT WAS THE APPROPRIATE PUNISHMENT, YOU THINK THAT YOU COULD
15 BRING YOURSELF TO SIGN THAT VERDICT FORM?

16 A I DO.

17 Q WOULD YOU THEN, MA'AM, APPROACH YOUR JURY SERVICE WITH
18 AN OPEN MIND TO FIND THE TRUTH AND APPLY THE LAW AS I
19 INSTRUCT IT?

20 A YES, I WOULD.

21 Q NOW, THE LAWYERS ARE GOING TO HAVE SOME QUESTIONS FOR
22 YOU, AND I MAY HAVE SOME FOLLOW UP TOO, MA'AM. DO YOU KNOW
23 OF ANY REASON WHY YOU WOULD NOT BE QUALIFIED OR ELIGIBLE TO
24 SERVE ON THE JURY?

25 A I DO NOT. I DO NEED TO TELL YOU THAT MY BROTHER-IN-LAW

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 WAS A FORMER EMPLOYEE OF THE LAW ENFORCEMENT CENTER.

2 Q YOUR BROTHER-IN-LAW USED TO WORK FOR THE LAW ENFORCEMENT
3 CENTER?

4 A YES.

5 Q WHEN WAS THIS AND WHAT DID HE DO?

6 A HE'S BEEN RETIRED ABOUT SIX OR SEVEN YEARS. BUT HE
7 WORKED -- I'M NOT SURE WHAT HE DID ACTUALLY.

8 Q THEY HAVE THE POLICE DEPARTMENT, CITY POLICE. THEY HAVE
9 THE COUNTY SHERIFF'S OFFICE. THEY HAVE THE DETENTION CENTER.
10 THEY HAVE POLICE SERVICE BUREAU.

11 A HE WORKED WITH THE DETENTION CENTER.

12 Q HE WORKED AT THE DETENTION CENTER. DO YOU KNOW WHAT HE
13 DID AT THE DETENTION CENTER?

14 A HE WORKED FOR MR. EICHOR.

15 Q OKAY. DO YOU KNOW WHAT HIS DUTIES WERE OR---

16 A ADMINISTRATIVE.

17 Q HE WAS IN ADMINISTRATIVE AT THE DETENTION CENTER. NOW,
18 THAT FACT IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR OR WOULD
19 YOU STILL BE A FAIR JUROR?

20 A IT WOULD NOT.

21 Q OKAY. AND THAT'S WHAT WE NEED TO KNOW. AND I
22 APPRECIATE YOU SHARING THAT.

23 A I WANTED TO TELL YOU THAT.

24 Q OKAY.

25 A MAY I GET A DRINK OF WATER?

NORMA B. PITTS -- VOIR DIRE BY THE COURT

1 Q YOU CERTAINLY MAY. IS THERE ONE RIGHT THERE?

2 A YES.

3 THE COURT: BEFORE WE GET TO THE QUESTIONING, IT'S MR.
4 ARIAIL. I WANT TO INFORM YOU THE DEPUTY HAS CALLED THE COURT
5 FROM THE SUBURBAN AND THEY HAVE SUMMONED, I THINK, FORENSICS
6 AND THEY HAVE TAKEN PICTURES OF THE JUROR AND WE'RE GOING TO
7 BE FURNISHED WITH PICTURES OF THE JUROR.

8 MR. MAULDIN: THANK YOU, JUDGE.

9 THE COURT: THAT'S ON ANOTHER MATTER. WE'RE LOOKING
10 FOR OTHER JURORS.

11 MR. ARIAIL, THIS IS YOUR TURN.

12 SOLICITOR ARIAIL: YOU'RE NOT BRINGING ME EVIDENCE OF
13 ANOTHER CRIME, ARE YOU?

14 (LAUGHTER)

15 VOIR DIRE BY SOLICITOR ARIAIL:

16 Q MS. PITTS, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
17 FOR GREENVILLE COUNTY AND PICKENS COUNTY. AND THAT IS A
18 FANCY WORD FOR THE DISTRICT ATTORNEY OR STATE PROSECUTOR, BUT
19 SOUTH CAROLINA STILL RETAINS THAT TITLE. AND I WILL BE
20 ASSISTED IN THIS CASE BY MS. STROM AND MS. HERVEY WHO ARE MY
21 DEPUTY SOLICITOR AND ONE OF MY ASSISTANTS.

22 AND OBVIOUSLY WHAT WE ARE DOING IS GOING THROUGH A
23 PROCESS TO FIND FAIR JURORS. THE STATE IN ANY CASE INVOLVING
24 THE DEATH PENALTY WILL BE SEEKING IN THE SENTENCING PHASE THE
25 IMPOSITION OF THE DEATH PENALTY FOR REASONS IT DEEMS ARE

NORMA B. PITTS -- VOIR DIRE BY SOLICITOR ARIAIL

1 APPROPRIATE UNDER LAW. THE DEFENSE WILL BE SEEKING TO DEAL
2 WITH THE JURY AND PRESENT EVIDENCE THAT IT IS NOT THE
3 APPROPRIATE SENTENCE.

4 A JUROR WHO VIEWS THAT EVERY MURDER SHOULD RECEIVE THE
5 DEATH SENTENCE IS NOT A QUALIFIED JUROR BECAUSE THEY'RE --
6 THEY'VE GOT TUNNEL VISION. AND LIKEWISE, ONE WHO VIEWS THE
7 IMPOSITION OF LIFE IN PRISON IS ALSO DISQUALIFIED BECAUSE
8 THEY HAVE TUNNEL VISION. WHAT WE'RE LOOKING FOR IS SOMEBODY
9 WHO CAN VIEW BOTH SIDES.

10 BUT WHAT WE ARE ALSO LOOKING FOR IS SOMEBODY WHO THE
11 JUDGE CAN TALK TO YOU ABOUT WHO CAN GIVE MEANINGFUL
12 CONSIDERATION TO BOTH PARTIES' VIEWS AT THE TIME OF
13 SENTENCING, BECAUSE YOU'RE GOING TO BE DOING THE SENTENCING -
14 - OR THE JURY WOULD BE -- IN A CAPITAL CASE, THE JURY
15 COLLECTIVELY WOULD BE DOING THE SENTENCING AND NOT THE JUDGE.

16 SO WHAT I WANT TO EXPLORE WITH YOU JUST A MINUTE IS YOUR
17 HESITANCY OVER THE ISSUE OF THE IMPOSITION OF THE DEATH
18 PENALTY AND WHETHER OR NOT THAT HESITANCY IS SUCH THAT IT
19 WOULD IMPAIR YOUR ABILITY TO FAIRLY CONSIDER THE STATE'S
20 REQUEST TO IMPOSE THE DEATH PENALTY.

21 AND BY THAT I MEAN, PLACE YOURSELF IN A HYPOTHETICAL
22 SITUATION. NOT THIS CASE, BUT IN JUST A CASE IN GENERAL AND
23 YOU'RE IN THE JURY BOX AND THE ISSUE OF GUILT HAS BEEN
24 DETERMINED, THAT IS, THE DEFENDANT HAS BEEN FOUND GUILTY OF
25 MURDER. IN ADDITION TO THAT THE JURY HAS FOUND ONE OF WHAT

NORMA B. PITTS -- VOIR DIRE BY SOLICITOR ARIAIL

1 WE CALL THE STATUTORY AGGRAVATING CIRCUMSTANCES. I DON'T
2 BELIEVE THE JUDGE WENT OVER THAT YET. BUT UNDER OUR LAW, THE
3 LEGISLATURE HAS SAID, IF YOU HAVE MURDER COMMITTED WITH A
4 CERTAIN ACCOMPANYING EVENT LIKE KIDNAPPING, ARMED ROBBERY,
5 CRIMINAL SEXUAL CONDUCT, SOMETHING OF THAT NATURE, THEN THE
6 STATE CAN THEN ASK THE JURY TO IMPOSE THE DEATH PENALTY.
7 THAT'S CALLED AN AGGRAVATING FACTOR. NOW, THAT'S -- THOSE
8 ARE IMPOSED BY THE LEGISLATURE. SO YOU'VE GOT TO FIND THE
9 DEFENDANT GUILTY OF MURDER, AND THEN YOU'VE GOT TO FIND THE
10 AGGRAVATING CIRCUMSTANCE BEFORE THE JURY CAN EVEN CONSIDER
11 THE DEATH PENALTY.

12 ALL RIGHT. DO YOU UNDERSTAND WHERE WE ARE?

13 A I DO.

14 Q AN AGGRAVATING FACTOR DOESN'T NECESSARILY MEAN THE CASE
15 IS AGGRAVATED. IT JUST MEANS THAT THERE IS AN AGGRAVATING
16 FACTOR. DOES THAT MAKE SENSE?

17 A KIND OF.

18 Q OKAY. THE LEGISLATURE HAS SAID THESE ARE AGGRAVATING
19 CIRCUMSTANCES OR AGGRAVATING FACTORS THAT CAN ALLOW THE STATE
20 TO SEEK THE DEATH PENALTY.

21 A THAT HAS TO CONTRIBUTE TO THE CRIME?

22 Q IT HAS TO BE PART OF IT, YES.

23 A PART OF IT. I SEE.

24 Q IT HAS TO BE PART OF IT.

25 A I UNDERSTAND.

NORMA B. PITTS -- VOIR DIRE BY SOLICITOR ARIAIL

1 Q NOW, THE JURY WOULD THEN IN A GROUP BE ASKED AND TOLD BY
2 THE JUDGE, YOU'VE GOT TO CONSIDER BOTH SIDES. WHAT I WANT TO
3 KNOW IS, BASED ON YOUR HESITANCY, AND UNDERSTANDING YOUR
4 HESITANCY -- I MEAN, THIS IS A SERIOUS ISSUE -- WOULD YOU BE
5 THINKING THAT THE DECISION -- OR WOULD YOUR HESITANCY BE SUCH
6 THAT IT WOULD AFFECT YOUR ABILITY TO FAIRLY CONSIDER THE
7 STATE'S REQUEST TO IMPOSE THE DEATH PENALTY?

8 A I DON'T THINK SO. IF I KNOW THE FACTS---

9 Q OKAY.

10 A ---THEN I CAN MAKE A DECISION.

11 Q ALL RIGHT. AND THAT'S WHERE I WANT TO GO FROM. IS --
12 ARE YOU GOING -- YOUR PERSONAL BELIEFS OR YOUR PERSONAL
13 HESITANCY ASIDE, IF YOU ARE PLACED IN A JURY SITUATION WOULD
14 YOU PROCEED BY HEARING THE FACTS FIRST AND THEN BASED ON THE
15 FACTS SET ASIDE YOUR PERSONAL HESITANCY IF YOU THOUGHT THE
16 FACTS WERE APPROPRIATE FOR THE DEATH SENTENCE?

17 A YES, I WOULD.

18 Q OKAY. AND THE FACT THAT YOU HAD THIS HESITANCY AND THE
19 FACT THAT YOU HAD THIS HESITANCY ABOUT SIGNING THIS DEATH
20 WARRANT IF YOU AGREED WITH IT, WOULD THE FACT YOU HAD TO SIGN
21 IT, WOULD IT LIKEWISE -- COULD YOU LIKEWISE PUT THAT ASIDE
22 AND BRING YOURSELF TO SIGN IT IF YOU THOUGHT THE VERDICT WAS
23 JUSTIFIED ON THE FACTS?

24 A YES.

25 Q LET ME SEE IF I CAN REPHRASE THAT. WHAT I WANT TO MAKE

NORMA B. PITTS -- VOIR DIRE BY SOLICITOR ARIAIL

1 SURE IS THAT YOU'RE NOT IN SUCH A PERSONAL SITUATION THAT
2 YOUR HESITANCY IS CLOUDING YOUR VIEW OF THE FACTS.

3 A NO, IT'S JUST A HUGE DECISION TO MAKE,

4 Q RIGHT.

5 A AND I WOULD NOT MAKE IT LIGHTLY.

6 Q CORRECT.

7 A BUT I WOULD BE -- I WOULD MAKE THE DECISION.

8 Q YOU WOULD MAKE IT?

9 A YES.

10 Q ALL RIGHT. BASED ON THE EVIDENCE AND WHAT WAS SUBMITTED
11 TO YOU?

12 A YES.

13 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR. THAT'S ALL I
14 HAVE.

15 THANK YOU, MS. PITTS.

16 VOIR DIRE BY MR. MAULDIN:

17 Q MS. PITTS?

18 A YES.

19 Q I'M JOHN MAULDIN, THE PUBLIC DEFENDER, AND I, ALONG WITH
20 MR. BANNISTER AND MR. RICHEY, REPRESENT JOHN IN THIS CASE.

21 A YES.

22 Q I WANT TO ASK YOU A FEW QUESTIONS ABOUT YOUR VIEWS ON
23 THE DEATH PENALTY. I WANT YOU TO INSTEAD OF BEING A WITNESS
24 OR LIKE TESTIFYING, I WANT YOU TO ACT AS THOUGH WE WERE
25 HAVING A CONVERSATION. I'M NOT GOING TO LEARN ANYTHING ABOUT

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 YOU IF I'M DOING ALL THE TALKING. SO -- AND I'VE BEEN
2 ACCUSED OF DOING ALL THE TALKING.

3 A SO I HAVE I.

4 Q MS. PITTS, IF YOU HAD TO TELL ME HOW YOU FEEL OR WHAT
5 YOU THINK ABOUT THE DEATH PENALTY IN GENERAL -- AND WE'RE NOT
6 TALKING ABOUT ANY CASE, ANY PARTICULAR CASE, BUT JUST THE USE
7 OF THE DEATH PENALTY IN OUR CRIMINAL JUSTICE SYSTEM -- HOW
8 WOULD YOU DESCRIBE YOUR FEELINGS ABOUT THAT?

9 A WELL, I THINK THERE ARE TIMES AND CRIMES WHERE IT IS
10 REQUIRED, WHERE IT IS NECESSARY---

11 Q OKAY.

12 A ---FOR JUSTICE.

13 Q CAN YOU GIVE ME -- AND IF YOU CAN OR IF YOU WANT ME TO
14 FURTHER EXPLAIN THE QUESTION, PLEASE DO. BUT CAN YOU GIVE ME
15 A REASON WHY YOU WOULD FEEL THAT WAY OR REASONS WHY YOU HAVE
16 THE VIEWS YOU HAVE? AND BEFORE YOU ANSWER, I CAN TELL YOU,
17 IF IT'S RELIGIOUS, SOCIAL, HISTORICAL, POLITICAL, YOU KNOW,
18 OR ANY OTHER THING, I'M JUST LOOKING FOR A GENERAL IDEA ABOUT
19 HOW YOU CAME TO FEEL THE WAY YOU DO ABOUT THE DEATH PENALTY.

20 A WELL, I'M ABSOLUTELY CERTAIN THAT FAITH WOULD HAVE
21 SOMETHING TO DO WITH MY -- WITH EVERY DECISION THAT I MAKE IN
22 MY LIFE. BUT THERE ALSO IS A CIVILIZED SOCIETY THAT WE LIVE
23 IN AND THERE IS A CODE OF CONDUCT THAT SHOULD BE EXPECTED OF
24 EVERY HUMAN BEING.

25 Q OKAY.

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 A AND WHEN THAT IS VIOLATED, THEN THERE HAS TO BE AN
2 APPROPRIATE -- THERE IS A CONSEQUENCE TO EVERYTHING WE DO.
3 AND IN SOME CASES THE CONSEQUENCE OF OUR BEHAVIOR MAY BE
4 SEVERE.

5 Q ALL RIGHT.

6 A IS THAT WHAT YOU'RE LOOKING FOR?

7 Q YES, MA'AM. YES, MA'AM. AND LET ME SAY, THERE ARE NO
8 RIGHT OR WRONG ANSWERS. YOUR VIEWS ARE NOT ON TRIAL.

9 A I UNDERSTAND.

10 Q SO WE -- THE COURT IS GOING TO HAVE TO MAKE A
11 DETERMINATION OF YOUR OVERALL QUALIFICATION, AND THE ROLES OF
12 THE ATTORNEYS IS TO TRY TO SEEK INFORMATION THAT THE COURT
13 WOULD THEN USE TO MAKE A DETERMINATION OF YOUR ELIGIBILITY.
14 THAT'S WHAT WE'RE DOING.

15 A I UNDERSTAND.

16 Q SO THAT'S KIND OF THE WAY IT IS.

17 NOW, WITH REGARD TO THE USE OF THE DEATH PENALTY IN OUR
18 SYSTEM -- I'M GOING TO GIVE YOU THREE CHOICES AND THEN YOU
19 CAN USE A FOURTH OR A DIFFERENT CHOICE IF YOU WISH -- DO YOU
20 BELIEVE THAT THE DEATH PENALTY IS NOT USED OFTEN ENOUGH, USED
21 TOO OFTEN OR USED ABOUT RIGHT? DO YOU UNDERSTAND THAT
22 QUESTION?

23 A I DO UNDERSTAND THE QUESTION, AND I DON'T KNOW THAT I'M
24 QUALIFIED TO ANSWER THE QUESTION BECAUSE I'M NOT A -- I DON'T
25 FOLLOW THIS ON A DAILY BASIS. I HAVE NO IDEA WHETHER IT'S

1 USED ENOUGH OR TOO MUCH OR JUST RIGHT.

2 Q OKAY. AND THAT'S A GOOD ANSWER.

3 HAVE YOU DISCUSSED YOUR VIEWS ON CAPITAL PUNISHMENT, ON
4 THE SUBJECT OF CAPITAL PUNISHMENT, OUTSIDE THIS ENVIRONMENT?
5 IN OTHER WORDS, OBVIOUSLY YOU'RE DISCUSSING IT WITH US TODAY,
6 I GUESS, BECAUSE YOU HAVE TO. BUT HAVE YOU DISCUSSED IT WITH
7 MEMBERS OF YOUR FAMILY, FRIENDS, I THINK YOU SAID YOUR
8 BROTHER-IN-LAW WAS RETIRED LAW ENFORCEMENT, WITH HIM OR WITH
9 ANY OTHERS WHERE YOU EXPRESSED YOUR VIEWS ON IT AND YOU WOULD
10 SHARE THAT WITH US NOW?

11 A EVER?

12 Q JUST IF YOU CAN RECALL.

13 A WELL, I'M CERTAIN THAT I HAVE. I MEAN, IT'S -- I'M
14 CERTAIN THAT I HAVE, BUT I DON'T RECALL WHAT I WOULD HAVE
15 SAID. I THINK THAT I HAVE ALWAYS BELIEVED THAT THERE ARE
16 CASES WHERE IT IS NECESSARY, AND I CERTAINLY AS I HAVE
17 STUDIED SCRIPTURE -- IT'S IN SCRIPTURE, SO I'M SURE I'VE
18 DISCUSSED IT.

19 Q UH-HUH (AFFIRMATIVE).

20 A BUT I'VE NEVER HAD A KEEN INTEREST IN IT.

21 Q ALL RIGHT. THE COURT EXPLAINED TO YOU THAT IN SOUTH
22 CAROLINA NOT -- THE STATE, THE PROSECUTION, IS NOT ALLOWED TO
23 ASK FOR THE DEATH PENALTY IN ALL MURDER CASES.

24 A I KNOW THAT.

25 Q ALL RIGHT. AND TO SOME PEOPLE THAT IN FACT COMES AS A

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 SURPRISE. BUT THAT -- YOU UNDERSTAND THAT?

2 A I DO.

3 Q THEREFORE WITH THAT AS A PREFACE, I GUESS, THERE WOULD
4 BE CERTAIN TYPES OF MURDER CASES WHERE THE DEATH PENALTY
5 WOULD NOT EVEN BE AVAILABLE. SO WHAT WE'RE TALKING ABOUT IN
6 A CASE WHERE THE PROSECUTION THROUGH THE ACT OF THE
7 LEGISLATURE IS ALLOWED TO ASK FOR CONSIDERATION OF THE DEATH
8 PENALTY, WHAT YOU'RE TALKING ABOUT IN THAT SITUATION, MS.
9 PITTS, IS YOU WOULD HAVE HAD A TRIAL WHERE THE PERSON CHARGED
10 WITH THE OFFENSE OF MURDER HAD BEEN CONVICTED, AND THAT MEANS
11 THAT THE EVIDENCE HAD PROVEN TO THE JURY BEYOND A REASONABLE
12 DOUBT THAT THAT PERSON ON TRIAL WAS GUILTY OF AN INTENTIONAL,
13 MALICIOUS ACT OF MURDER.

14 THE JUDGE MENTIONED THERE WOULD BE NO SELF-DEFENSE OR
15 MISTAKE OR ANY KIND OF DEFENSES TO IT. IN OTHER WORDS, THIS
16 PERSON IS GUILTY.

17 NOW, SOME CASES IN SOUTH CAROLINA THAT -- WOULD NOT CALL
18 -- THERE WOULDN'T BE AN OPPORTUNITY TO HAVE A SENTENCING
19 HEARING. BUT IF THE STATE ASKS FOR A CONSIDERATION OF THE
20 DEATH PENALTY, THEY'RE ALLOWED TO PRESENT EVIDENCE OF WHAT
21 THE CIRCUMSTANCE HAS DETERMINED OR DESCRIBED TO YOU AS AN
22 AGGRAVATING CIRCUMSTANCE. THAT'S WHERE I WANT TO TAKE US
23 RIGHT NOW, BECAUSE THOSE -- MY NEXT FEW QUESTIONS WILL RELATE
24 TO THAT PROCESS.

25 A OKAY.

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 Q I WANT YOU TO UNDERSTAND THAT EVEN IF A PERSON HAS BEEN
2 CONVICTED OF MURDER AND EVEN IF ONE OR EVEN MORE OF THE
3 AGGRAVATING TYPES OF CIRCUMSTANCES EXIST, THE LAW NEVER
4 REQUIRES THAT A PERSON BE SENTENCED TO DEATH. EVEN IN THAT
5 CASE, THERE IS NEVER ONE PLUS ONE PLUS ONE EQUAL DEATH
6 PENALTY. DO YOU FOLLOW ME?

7 A I DO.

8 Q SO THE LAW ALWAYS ALLOWS FOR A SENTENCE OF LIFE IN
9 PRISON. AND THE COURT MENTIONED WHILE YOU WERE IN THE GROUP
10 OF FIVE THAT THAT WOULD BE LIFE IN PRISON WITHOUT PAROLE.
11 THE LAW ALWAYS ALLOWS THE IMPOSITION OF THAT SENTENCE EVEN IN
12 THE MOST HORRIBLE MURDER. YOU UNDERSTAND THAT?

13 A UH-HUH (AFFIRMATIVE).

14 Q NOW, WITH THAT IN MIND, I WANT TO ASK YOU, MS. PITTS, IN
15 A CASE WHERE A PERSON HAS BEEN CONVICTED OF MURDER AND THERE
16 EXISTS THE AGGRAVATING CIRCUMSTANCE THAT ALLOWS THE
17 GOVERNMENT TO SEEK THE DEATH PENALTY, DO YOU BELIEVE THAT
18 LIFE IN PRISON FOR THAT TYPE OF OFFENSE IS A SERIOUS PENALTY?

19 A YES.

20 Q ALL RIGHT. SO YOU BELIEVE THAT LIFE IN PRISON FOR
21 MURDER IS A SERIOUS PENALTY AS WELL AS THE DEATH PENALTY FOR
22 MURDER?

23 A BOTH ARE SERIOUS PENALTIES.

24 Q ALL RIGHT. IF THE COURT INSTRUCTED YOU AND HERE WE --
25 WHAT I'M REFERRING TO HERE, MS. PITTS, IS SOME PEOPLE COME IN

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 WITH CERTAIN PREDETERMINED POSITIONS WITH REGARD TO WHAT IS
2 OR ISN'T IMPORTANT, WHAT IS OR ISN'T TO BE CONSIDERED. AND I
3 WANT TO MAKE SURE THAT YOU UNDERSTAND THIS PART OF OUR LAW.

4 IF THE COURT INSTRUCTED YOU AT THE SECOND HEARING -- YOU
5 KNOW, WE HAVE TO PUT THE CART BEFORE THE HORSE HERE. BUT AT
6 THE SECOND HEARING IF THE COURT INSTRUCTED YOU THAT YOU WERE
7 TO GIVE CONSIDERATION TO SUCH THINGS AS THE BACKGROUND
8 INFORMATION REGARDING THE PERSON WHO HAD BEEN CONVICTED, THE
9 MENTAL HEALTH ISSUES INVOLVING THE PERSON WHO HAD BEEN
10 CONVICTED, WOULDN'T APPLY TO THE CRIME ITSELF BUT TO THE
11 PERSON CONVICTED, WOULD YOU BE ABLE TO FOLLOW THOSE
12 INSTRUCTIONS AND GIVE REALISTIC AND MEANINGFUL CONSIDERATION
13 WITH REGARD TO A POSSIBLE LIFE SENTENCE UNDER THOSE
14 CIRCUMSTANCES?

15 A YES. IT WOULD BE MY RESPONSIBILITY TO DO THAT AS A
16 JUROR. IS THAT---

17 Q AND YOU WOULD GIVE -- YOU WOULD FOLLOW THOSE
18 INSTRUCTIONS EVEN IF THEY MIGHT BE DIFFERENT FROM WHAT YOU
19 MIGHT HAVE THOUGHT WOULD HAVE BEEN APPROPRIATE BEFORE YOU
20 CAME IN AS JUROR? DO YOU FOLLOW ME?

21 A I DO. I THINK I DO.

22 Q ALL RIGHT. NOW, LAST QUESTIONS I WANT TO ASK YOU, MS.
23 PITTS. THE COURT MENTIONED TO YOU THAT IN ORDER TO IMPOSE A
24 SENTENCE OF DEATH IN OUR STATE ALL TWELVE JURORS ACTUALLY
25 MUST SIGN THE FORM. WHAT THAT MEANS IS THAT THAT DEATH

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 SENTENCE WOULD HAVE TO BE UNANIMOUS OBVIOUSLY.

2 NOW, LET'S ASSUME FOR A MOMENT THAT YOU HAVE GONE
3 THROUGH THE FIRST TRIAL AND THE PERSON -- AND THIS IS
4 HYPOTHETICAL, NOT JOHN'S CASE, BUT JUST A HYPOTHETICAL CASE.
5 YOU HAVE DELIBERATED. YOU HAVE DECIDED THAT THE PERSON WAS
6 GUILTY OF MURDER. YOU'VE GONE INTO THE SECOND TRIAL. THE
7 PROSECUTION HAS COME IN WITH THE AGGRAVATING INFORMATION.
8 THE DEFENDANT IN THIS HYPOTHETICAL CASE BRINGS MITIGATING
9 INFORMATION, PERSONAL INFORMATION.

10 YOU GO BACK IN THE JURY ROOM AND YOU BEGIN DELIBERATING.
11 EACH OF YOU HAS AN OPPORTUNITY TO SPEAK THEIR MIND OF HOW
12 THEY FEEL AND WHAT THEIR VIEW IS AND WHAT THEY THINK THE
13 RIGHT PUNISHMENT -- THERE ARE ONLY TWO POSSIBLE PUNISHMENTS
14 AT THAT POINT.

15 AND LET'S SAY, WITHOUT GETTING INTO WHICH SENTENCE WE'RE
16 TALKING ABOUT, LET'S SAY THAT WE FINALLY DELIBERATED ALL WE
17 CAN. IT'S GETTING LATE. WE'VE BEEN THERE FOR DAYS OR
18 WHATEVER. AND YOU FINALLY SAY, OKAY, TAKE A VOTE, AND THE
19 VOTE IS TEN TO TWO. YOU'VE GOT TEN PEOPLE ON ONE SIDE FOR
20 ONE PENALTY. THE OTHER TWO ARE IN FAVOR OF THE OTHER
21 PENALTY.

22 I'M GOING TO PUT YOU -- BECAUSE WE DON'T KNOW HOW YOU
23 WOULD REACT, I'VE GOT TO ASK THIS QUESTION. IF YOU WERE IN
24 THAT SITUATION, MS. PITTS, AND YOU WERE IN THE MINORITY,
25 GROUP, THE GROUP OF TWO OR EVEN ONE, AND YOU HAD A HEAVY

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 MAJORITY ON THE OTHER SIDE THAT DIFFERED WITH YOU, WOULD YOU
2 BE INCLINED TO CHANGE YOUR VIEW IN ORDER TO GO WITH THE
3 MAJORITY OR WOULD YOU STICK WITH YOUR VIEW AND JUST ENCOURAGE
4 THE MAJORITY TO RESPECT YOUR VIEW IN THAT PARTICULAR
5 SCENARIO?

6 A I'VE NEVER BEEN IN THIS SITUATION, AND SO I CAN ONLY
7 TELL YOU WHAT MY HABITS ARE. I AM PRETTY FIRM IN MY
8 CONVICTIONS. I HAVE NO PROBLEM BEING IN A MINORITY. AT
9 LEAST I'VE NEVER TO THIS POINT HAD PROBLEMS BEING IN THE
10 MINORITY. SO I BELIEVE THAT I WOULD BE TRUE TO MY
11 CONVICTION. IF I WAS CONVINCED AND SATISFIED IN MY MIND THAT
12 MY DELIBERATION WAS RIGHT, I WOULD STAY WITH THAT.

13 Q ALL RIGHT. NOW REVERSE---

14 A IS THAT WHAT YOU'RE ASKING ME?

15 Q YES. YES. ABSOLUTELY. REVERSE NOW. LET'S SAY YOU'RE
16 IN THE GROUP OF TEN OR ELEVEN, AND THERE IS ONE PERSON OR TWO
17 PEOPLE OR THREE MAYBE WHO HAVE A DIFFERING VIEW. WOULD YOU
18 EXPECT THEM TO COME OVER TO YOUR SIDE BECAUSE OF THE NUMBERS
19 OR WOULD YOU RESPECT THEIR RIGHT TO COME TO THAT INDIVIDUAL
20 AND MORAL CHOICE INVOLVING LIFE OR DEATH?

21 A WELL, I WOULD HAVE TO RESPECT THEIR OPINION IF I EXPECT
22 THEM TO RESPECT MY OPINION.

23 MR. MAULDIN: THANK YOU, MA'AM.

24 THE COURT: MS. PITTS, THANK YOU SO MUCH. WHAT THEY'RE
25 GOING TO DO IS PUT YOU IN JUST A JURY ROOM OUT HERE IN THE

NORMA B. PITTS -- VOIR DIRE BY MR. MAULDIN

1 HALLWAY. WE'LL BE BACK WITH YOU IN JUST A COUPLE OF MINUTES
2 AND YOU'LL BE FREE TO GO. THANK YOU.

3 (JUROR EXITS COURTROOM AT 3:24 P.M.)

4 THE COURT: MS. PITTS HAS BEEN EXCUSED. IF EITHER SIDE
5 CONTENTS SHE IS NOT QUALIFIED, I'LL BE GLAD TO HEAR FROM YOU.

6 SOLICITOR ARIAIL: SHE'S QUALIFIED.

7 MR. MAULDIN: QUALIFIED.

8 THE COURT: SHE IS CLEARLY QUALIFIED AND BOTH SIDES
9 AGREE. IF THE STATE NEEDS TO CONSIDER OR THE DEFENDANT NEEDS
10 TO CONSIDER, WE'LL HEAR FIRST FROM THE STATE WHEN YOU'RE
11 READY.

12 SOLICITOR ARIAIL: PRESENT HER.

13 THE COURT: ALL RIGHT. JUST TAKE YOUR TIME AND LET ME
14 KNOW WHAT THE DEFENDANT SAYS.

15 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) SWEAR THE
16 JUROR.

17 THE COURT: ASK MS. PITTS TO COME BACK TO THE WITNESS
18 CHAIR.

19 MR. MAULDIN: YOUR HONOR, I HAVE A MATTER BEFORE WE
20 BRING IN THE NEXT JUROR.

21 (JUROR REENTERS COURTROOM AT 3:26 P.M.)

22 THE COURT: MS. PITTS, YOU HAVE BEEN SELECTED AS A
23 JUROR IN THIS CASE. I'M GOING TO GIVE YOU A WRITTEN ORDER.
24 I'M JUST GOING TO REVIEW IT WITH YOU TO LET YOU KNOW WHAT YOU
25 DO FROM HERE.

MATTERS AND MOTIONS

1 YOU ARE FREE TO GO, GO ABOUT YOUR NORMAL ACTIVITIES.
2 THE JURY WILL BE SEQUESTERED ONCE THE TRIAL BEGINS. WHAT I
3 WOULD LIKE FOR YOU TO DO IS FOLLOW THE INSTRUCTIONS ON THIS
4 WRITTEN ORDER THAT WE HAVE GIVEN TO ALL THE JURORS WHO ARE
5 SELECTED. THERE IS A NUMBER ON HERE AND IT SAYS, BEGINNING
6 TOMORROW NIGHT, WEDNESDAY, AFTER 8:00 P.M., CALL THIS NUMBER.
7 WE'RE IN A PROCESS, A PRETTY LENGTHY PROCESS, TO SELECT THE
8 JURY. SO WHEN YOU CALL TOMORROW NIGHT, IT MAY SIMPLY SAY,
9 CALL BACK THURSDAY NIGHT AFTER 8:00. THURSDAY NIGHT IT MIGHT
10 SAY, CALL BACK FRIDAY NIGHT AFTER 8:00. AND WE'RE STILL
11 GOING DURING THE WEEKEND, SO THERE'S NO WEEKENDS OFF.

12 AT SOME POINT, EITHER LATER THIS WEEK OR SHORTLY, THERE
13 IS GOING TO BE A MESSAGE TO COME TO THE COURTHOUSE, AND THERE
14 ARE INSTRUCTIONS ABOUT PACKING YOUR CLOTHING, LEAVING YOUR
15 BAG IN THE CAR, OR BAGS. DON'T BRING A CELL PHONE OR BEEPER.
16 AND WHEN YOU FINALLY GET THAT MESSAGE, THERE WILL BE SPECIFIC
17 INSTRUCTIONS ON THE RECORDED MESSAGE AS TO WHERE TO PARK.

18 ALSO, THIS REMINDS YOU THAT THE OATH THAT YOU'VE TAKEN
19 REMAINS IN EFFECT. DON'T DISCUSS THE CASE WITH ANYONE.
20 DON'T EXPOSE YOURSELF TO ANY MEDIA COVERAGE ABOUT THE CASE.
21 DO YOU UNDERSTAND THOSE INSTRUCTIONS?

22 **JUROR NUMBER 298:** I DO. YES, SIR.

23 **THE COURT:** VERY GOOD. MS. PITTS, THANK YOU SO MUCH.
24 HERE IS YOUR ORDER. YOU ARE FREE TO GO. PLEASE START
25 CALLING THAT NUMBER TOMORROW NIGHT AFTER 8:00. THANK YOU,

MATTERS AND MOTIONS

1 MA'AM.

2 JUROR NUMBER 298: THANK YOU.

3 (JUROR EXITS COURTROOM AT 3:28 P.M.)

4 THE COURT: YES, SIR, MR. MAULDIN.

5 MR. MAULDIN: YOUR HONOR, I WANT TO RAISE THE QUESTION
6 ABOUT THE SOLICITOR'S USE OF THE TERMINOLOGY AS IT RELATES TO
7 AGGRAVATED AND AGGRAVATING AND AGGRAVATED CIRCUMSTANCE AND
8 AGGRAVATED CASE. THE JURORS IN MY EXPERIENCE HAVE A
9 DIFFICULT ENOUGH TIME UNDERSTANDING THE AGGRAVATING AND
10 MITIGATING PARTS OF THE SENTENCING PROCESS TO BEGIN WITH.
11 AND THERE IS NO QUESTION ABOUT THAT. I WAS HESITANT TO -- I
12 OBJECTED ONE TIME AND THEN I JUST DECIDED THAT IT WAS -- THAT
13 I WOULD JUST WAIT AND TAKE THIS OPPORTUNITY.

14 THE COURT: OKAY.

15 MR. MAULDIN: I THINK THAT THE SOLICITOR SHOULD BE
16 INSTRUCTED TO STICK WITH ESSENTIALLY WHAT THE LAW IS, AND
17 THAT IS A MURDER ACCOMPANIED BY OR WITH AGGRAVATING
18 CIRCUMSTANCES AS DEFINED BY THE LAW AND NOT THEN BE ALLOWED
19 TO SAY NOT JUST AN AGGRAVATED CASE OF MURDER. THAT IS
20 ABSOLUTELY CONFUSING AND IT IS, IN FACT, MISLEADING.

21 THE COURT: ALL RIGHT. I AGREE WITH THAT IN PART.
22 AND, SOLICITOR, HERE IS WHAT I WOULD LIKE TO DO. IF -- ARE
23 YOU READY?

24 SOLICITOR ARIAIL: I HAVE A HEARING PROBLEM. SHE HAS
25 TO INTERPRET FOR ME.

MATTERS AND MOTIONS

1 THE COURT: I DO TOO.

2 SOLICITOR ARIAIL: THAT'S OKAY. IF YOU'RE NOT SPEAKING
3 IN THE MICROPHONE, I MIGHT MISS IT.

4 THE COURT: ALL RIGHT.

5 SOLICITOR ARIAIL: I JUST HEARD MY NAME.

6 THE COURT: THREE OR FOUR JURORS HAVE SAID, WELL, IF
7 IT'S AN AGGRAVATED MURDER, THEN I WOULD CONSIDER THE DEATH
8 PENALTY OR I'D VOTE FOR THE DEATH PENALTY. I THINK WHEN THE
9 JUROR OPENS THE DOOR AND USES THAT TERM I THINK IT'S
10 APPROPRIATE FOR THE SOLICITOR TO GIVE EXAMPLES, AS I TRIED TO
11 DO, OF MURDER ACCOMPANIED BY AN AGGRAVATING CIRCUMSTANCE.
12 PERHAPS ASK THE JUROR, "WHAT DO YOU MEAN BY THE TERM
13 AGGRAVATED?" AND THEN CITE THE LAW, AND I CAN DO THAT AS
14 WELL. BUT ABSENT THAT AND THE JUROR OPENING THE DOOR, I
15 AGREE THAT THE STATE SHOULD NOT ON ITS OWN RAISE THAT ISSUE
16 OF THE COMMON UNDERSTANDING OF THE TERM AGGRAVATED AND WHAT
17 IT MEANS IN THE LIMITED CONTEXT OF OUR DEATH PENALTY STATUTE.

18 SO THAT'S MY RULING. I AGREE IN PART, BUT I DO BELIEVE
19 A CIRCUMSTANCE COULD ARRIVE WHEN THE JUROR OPENS THE DOOR.

20 SOLICITOR ARIAIL: COULD I JUST -- I THINK THIS IS THE
21 ONLY ONE I DID IT ON, EXCEPT IN INSTANCES WHERE HE DID IT
22 FIRST. BECAUSE I WROTE DOWN -- I FELT I HAD TO GO BACK AND
23 ASK THESE PEOPLE BECAUSE HE USES AGGRAVATED MURDER LIKE
24 IT'S -- YOU KNOW, LIKE THEY CHOP THE BODY UP SOMEWHERE. I
25 MEAN, THAT'S THE CONNOTATION HE'S GETTING TO. SO...

MATTERS AND MOTIONS

1 I DON'T MIND STAYING IN RULES. BUT WHEN I'M GETTING
2 STUNG, I'M GOING TO GET OUT OF THE RULES UNTIL SOMEBODY JUMPS
3 BACK AT ME.

4 AND WHILE WE'RE OBJECTING TO EACH OTHER, I'D LIKE TO
5 RENEW THE PROFILING. I DON'T THINK THAT THE QUESTIONS HE
6 ASKED -- THIS WAS OBVIOUSLY A LIFE PRONE JUROR, CLEARLY, FROM
7 THE GET GO. BUT WE SPENT 20 MINUTES -- 20 MINUTES --
8 TALKING ON QUESTIONS OF WHAT HER VIEW ON THE DEATH PENALTY
9 WAS, HOW LONG SHE HAD HAD IT, WHAT SHE EXPRESSED TO OTHERS,
10 WAS IT ENOUGH, NOT ENOUGH OR JUST RIGHT. THOSE ARE PROFILING
11 QUESTIONS. THEY ARE DESIGNED TO DO NOTHING BUT STAKE OUT
12 ONCE HE'S GOT THEM IN THE MIDDLE TO STAKE OUT WHERE THEY'RE
13 GOING. I ONCE AGAIN RENEW MY OBJECTION TO THAT.

14 SECONDLY, I WOULD LIKE TO AT LEAST PUT EVERYBODY ON
15 NOTICE I'M GOING TO START OBJECTING TO ASKED AND ANSWERED.
16 IF YOU'VE COVERED IT, THEY'VE BEEN OVER IT, THEN I'M GOING TO
17 STAND UP AND OBJECT TO IT BECAUSE WE JUST WENT OVER ALL THIS
18 AGAIN, THE WHOLE SEQUENCE THAT YOU WENT THROUGH AND WE WENT
19 THROUGH IT AGAIN AND AGAIN AND AGAIN AND ASKING, AND THE
20 ANSWERS ARE ALWAYS THE SAME. SO IN THE INTEREST OF SPEEDING
21 THE PROCESS, NOT AT ANYBODY'S DETRIMENT BUT SPEEDING THE
22 PROCESS WITHIN THE RULES, I WOULD OBJECT TO, ONE, THE
23 PROFILING -- AND MAYBE I NEED TO CLARIFY. YOU SAID AT THE
24 BEGINNING YOU WERE GOING TO PROTECT THAT OR YOU WERE GOING TO
25 TAKE CARE OF THAT. BUT I NOTICED YOU HAVEN'T BEEN -- YOU

MATTERS AND MOTIONS

1 KNOW, I NEED TO GET UP THERE AND DO IT. I MISUNDERSTOOD IN
2 THERE SOMEWHERE BECAUSE I THOUGHT YOU WERE GOING TO SAY --
3 PUT THE LIMITS ON IT. BUT I WILL BE GLAD TO STAND UP AND DO
4 THAT.

5 THE COURT: IF MR. MAULDIN OPENS THE DOOR AND USES THE
6 WORD AGGRAVATED, YOU CAN HAVE AT IT. (PAUSE)

7 I'M GOING TO PERMIT MR. MAULDIN TO ASK THE SAME
8 QUESTIONS I HAVE. IF HE GETS THE SAME RESPONSE WHEN IT'S
9 BEEN ASKED TWICE, THAT'S IT. I'LL SUSTAIN THE OBJECTION TO
10 ASKED AND ANSWERED.

11 WE FOUND OUT TWO OCCASIONS WHERE THEY COMPLETELY
12 CHANGED. I'M NOT TALKING ABOUT THE ONE WHO WANTED TO SERVE.
13 BUT THERE WERE TWO THAT I DON'T BELIEVE THERE IS ANYTHING
14 NEFARIOUS ABOUT THE JUROR'S RESPONSE.

15 AND IF THERE IS AN EQUIVOCATION OR CHANGE, THEN I'M
16 GOING TO THEN OPEN IT UP TO ALLOW MORE THAN TWO QUESTIONS.
17 BUT IF I ASK IT AND THEN ONE OF YOU ASK THE IDENTICAL
18 QUESTION AND GET THE IDENTICAL ANSWER, THAT'S SUFFICIENT.

19 BRING MR. WADE.

20 SOLICITOR ARIAIL: HE HAS SPECIFIC REQUEST ON HIS
21 QUESTIONNAIRE TOO ABOUT HIS WORK, IF I MAY POINT THAT OUT.

22 THE COURT: WHICH NUMBER?

23 SOLICITOR ARIAIL: 374. OH, THE QUESTION?

24 THE COURT: YES, SIR.

25 SOLICITOR ARIAIL: THE ANSWER TO NUMBER 45, THAT IS,

MATTERS AND MOTIONS

1 HIS POTENTIAL BANKRUPTCY.

2 THE COURT: ALL RIGHT. THANK YOU.

3 (JUROR NUMBER 374 ENTERS COURTROOM AT 3:35 P.M.)

4 VERNON DAVID WADE, JR. (WHITE
5 MALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

6 VOIR DIRE BY THE COURT:

7 Q MR. VERNON, THANK YOU SO MUCH FOR BEING HERE. WE
8 UNDERSTAND WHAT AN IMPOSITION THIS IS AND WE WILL BE GLAD TO
9 DISCUSS WITH YOU ANYTHING IN YOUR PARTICULAR SITUATION THAT
10 WOULD IMPACT YOUR ABILITY TO SERVE ON A JURY. IN FACT, I'LL
11 ADDRESS THAT FIRST.

12 IT HAS BEEN BROUGHT TO MY ATTENTION BY REVIEWING YOUR
13 QUESTIONNAIRE ABOUT THE DIFFICULTY THAT YOU WOULD ENCOUNTER
14 BY SERVING ON A JURY THAT MAY BE SEQUESTERED FOR A WEEK.
15 TELL ME ABOUT THAT.

16 A MY MAIN PROBLEM IS I'M A CONSULTANT. I WORK FOR FOUR OR
17 FIVE -- RIGHT NOW I WORK FOR FIVE DIFFERENT CLIENTS. I WORK
18 BY THE HOUR. I DO NOT GET ANY PAY WHEN I'M NOT WORKING. MY
19 MAIN PROBLEM WITH SEQUESTERING IS IF I CANNOT DIAL IN TO
20 SUPPORT THOSE CLIENTS -- I MEAN, I DON'T KNOW IF THAT'S A
21 POSSIBILITY. I'M ON CALL TO SUPPORT CLIENTS, AND I DO
22 SOFTWARE. AND I DON'T KNOW HOW THAT'S INVOLVED IN
23 SEQUESTERING OR NOT.

24 Q LET ME GIVE YOU AN EXAMPLE WHAT HAPPENED IN A CASE A
25 YEAR OR SO AGO. I HAD A JUROR AND SHE NEEDED TO CONTACT HER

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 HOME OFFICE IN TEXAS. SO SHE SAID, "CAN I USE MY COMPUTER
2 AND COMMUNICATE WITH MY SUPERVISOR AND COORDINATE WITH MY
3 CUSTOMERS DURING THE EVENING HOURS?" AND THAT WAS NOT A
4 PROBLEM. THERE IS NO SEARCHING THE WEB TO FIND INFORMATION
5 ABOUT THE CASE.

6 A RIGHT.

7 Q THERE'S NO COMMUNICATION WITH PEOPLE ABOUT THE CASE.
8 BUT THAT WAS PERMITTED. IF YOU HAD ACCESS TO THE PHONE OR TO
9 A COMPUTER LINE TO DO BUSINESS WITH CLIENTS AND CUSTOMERS,
10 THAT'S PERMISSIBLE. WOULD THAT HELP ALLEVIATE SOME OF
11 YOUR---

12 A THAT'S PERFECT. THAT'S EXACTLY WHAT I DO. I SPEND MY
13 LIFE IN A HOTEL WORKING FOR MY CLIENTS AT NIGHT TRYING TO
14 DO -- THAT'S MY MAIN THING IS I WORK ON SOFTWARE THAT HAS TO
15 BE SUPPORTED PRETTY MUCH 24 HOURS A DAY. SO I -- IF I'M IN A
16 HOTEL WORKING IN COLUMBIA, I DIAL IN AND WORK, AND IT WOULD
17 BE STRICTLY SUPPORTING THAT WORK. AND THAT'S A MAIN CONCERN
18 WHEN I'M TALKING -- I GUESS I USED THE WORD BANKRUPT. BUT I
19 DON'T GET PAID AND I HAVE KIDS IN COLLEGE, AND I DON'T KNOW
20 HOW FAR I AM FROM BANKRUPTCY.

21 (LAUGHTER IN THE COURTROOM)

22 A I'M JUST AHEAD OF THAT TRAIN.

23 Q ALL RIGHT. WELL, THAT'S ONE WAY IN WHICH WE CAN ASSIST
24 IN MAKING THAT AVAILABLE TO YOU.

25 A THAT'S FINE.

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 Q VERY GOOD, SIR.

2 LET ME TELL YOU A LITTLE BIT ABOUT THE CASE. I'M GOING
3 TO TALK TO YOU SOME AND ASK YOU SOME QUESTIONS. THE
4 ATTORNEYS MAY HAVE QUESTIONS AS WELL, MR. VERNON.

5 THIS CASE ARISES FROM AN INCIDENT, ACCORDING TO THE
6 INDICTMENT, BACK ON DECEMBER THE 6TH OF THE YEAR 2000. MR.
7 WOOD, THE DEFENDANT, IS CHARGED WITH THE CRIME OF MURDER.
8 THE INDICTMENT SETS FORTH THE VICTIM'S NAME, ERIC NICHOLSON.
9 MR. NICHOLSON WAS AT THAT TIME A STATE TROOPER.

10 THIS CASE RECEIVED ATTENTION IN THE MEDIA, AND I WANT TO
11 KNOW IF YOU RECALL ANYTHING YOU MAY HAVE LEARNED ABOUT THIS
12 CASE FROM THE MEDIA OR OTHERWISE, AND IF YOU DO, SPECIFICALLY
13 WHAT YOU RECALL. WOULD YOU SHARE THAT WITH US?

14 A YES. I DO REMEMBER THE CASE ON THE NEWS. AS FAR AS
15 DESCRIPTIONS, I COULDN'T HAVE TOLD YOU YESTERDAY THE
16 ACCUSED'S NAME. I DON'T REMEMBER ANY OF THAT. BUT I DO JUST
17 REMEMBER THE GENERAL -- IT WAS A VERY HIGH PROFILE CASE AS
18 FAR AS, YOU KNOW, A POLICEMAN SHOT. I THINK DURING THE CASE
19 THEY SEARCHED OUR AREA OF TOWN, THE EASTSIDE. SO I REMEMBER
20 THAT PART OF IT. THAT'S WHY I REMEMBER DISTINCTLY THAT --
21 THE SCHOOLS AROUND THE AREA WERE PRETTY MUCH SEARCHED -- NOT
22 SEARCHED BUT SHUT DOWN WHILE THERE WAS A SEARCH GOING ON.
23 BUT OTHER THAN THAT, THAT'S THE MAIN -- THE FACTS OF THE CASE
24 WERE GENERALLY HE WAS SHOT NEAR 385 IS IN MY MIND. THAT'S
25 ALL I KNEW OFF THE TOP OF MY HEAD.

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 Q OKAY.

2 A GOING BACKWARDS, I'M TRYING TO REMEMBER.

3 Q OKAY. AND THAT'S WHAT YOU RECALL?

4 A YES, SIR.

5 Q NOW, THERE MAY BE SOME REFERENCE IN THE TESTIMONY TO AN
6 EVENT OR SERIES OF EVENTS IN ANDERSON COUNTY. HAVING
7 MENTIONED ANDERSON COUNTY, DOES THAT TRIGGER ANY ADDITIONAL
8 MEMORY ON YOUR PART?

9 A THAT WAS -- I REMEMBER THEY WERE SEARCHING OUR AREA AND
10 THEN THEY -- THE FINAL -- IN ANDERSON -- THEY DID SAY THAT
11 THEY CAPTURED A SUSPECT IN ANDERSON. I DO REMEMBER THAT
12 PART. THERE WAS A CHASE IN ANDERSON. AND JUST, AGAIN, THE
13 NEWS SAYING. BUT BEYOND THAT, THE FIRST I HAD THOUGHT OF THE
14 CASE UNTIL, YOU KNOW, THIS WEEK WAS WHEN YOU MENTIONED IT.
15 BECAUSE OUR MAIN CONCERN AT THAT TIME, YOU KNOW, OUR SCHOOLS
16 WERE BEING SHUT DOWN, YOU KNOW, SOMEBODY WAS SEARCHING THE
17 SCHOOLS. I CAN REMEMBER THAT AS BEING THE NUMBER ONE
18 CONCERN. I HAVE AN EIGHT-YEAR-OLD IN A LOCAL SCHOOL.

19 Q OKAY. LET ME TELL YOU THE REASON WHY I ASK YOU TO BE SO
20 SPECIFIC IN WHAT YOU RECALL. ANYTIME THERE IS A TRIAL, A
21 JURY TAKES THE OATH, AND THE OATH OF THE JURY IS TO FIND THE
22 FACTS NOT FROM WHAT YOU HEARD IN THE COMMUNITY, NOT WHAT YOU
23 SAW ON T.V., YOU FIND THE TRUTH FROM WHAT EVIDENCE IS
24 PRESENTED DURING THE COURSE OF THE TRIAL. DO YOU UNDERSTAND
25 THAT?

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q IF YOU WERE A JUROR, WOULD YOU FIND THE TRUTH FROM THE
3 EVIDENCE AND HONOR YOUR OATH IN THAT REGARD?

4 A YES, SIR, AS BEST I COULD. YES, SIR, LOOKING AT THE
5 EVIDENCE AS IT STANDS.

6 Q WOULD YOU FOLLOW THE LAW AS I INSTRUCT IT?

7 A YES, SIR.

8 Q ALL RIGHT. DO YOU ALREADY HAVE YOUR MIND MADE UP AS TO
9 THE GUILT OR INNOCENCE OF THIS DEFENDANT?

10 A NO, SIR, I DO NOT. NOT IN THE SENSE THAT I -- NO, SIR,
11 I JUST HAVE NOT MADE THAT UP.

12 Q OKAY. HAVE YOU MADE UP YOUR MIND IN ANY SENSE?

13 A I -- THE ONLY THING I CAN SAY IN TRUTH IS WHEN YOU SEE
14 THE NEWS, THE NEWS SAYS -- THE NEWS REPORTS THINGS. THE NEWS
15 HAS REPORTED THIS. IN MY MIND -- THAT'S IN MY MIND. AS FAR
16 AS WHETHER THAT MAKES A JUDGMENT ON ME, I DON'T FEEL THAT
17 DOES IN MY HEART, AND THAT'S THE BEST WAY I CAN PUT IT.

18 Q LET ME MAKE TWO COMMENTS IN REGARD TO THAT. YOU CAN'T
19 TRUST ANYTHING YOU SEE ON T.V. OR READ IN THE NEWSPAPER.

20 A RIGHT.

21 Q I'LL GIVE YOU ONE GOOD EXAMPLE. IN TODAY'S NEWSPAPER --
22 AND WE'RE NOT GOING TO TALK ABOUT THE CASE -- THE ARTICLE
23 SAID THE JURY WAS NOT GOING TO BE SEQUESTERED. TOTALLY
24 FALSE. I DON'T KNOW WHERE IT CAME FROM. THE JURY IS GOING
25 TO BE SEQUESTERED. THAT'S A GOOD EXAMPLE OF THAT.

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 ALSO, I WANT TO UNDERSTAND IF YOU ACCEPT AND AGREE WITH
2 THAT LEGAL PRINCIPLE THAT I DISCUSSED EARLIER YESTERDAY AND
3 TODAY ON THE PRESUMPTION OF INNOCENCE. IT DOESN'T MATTER HOW
4 SERIOUS THE CRIME, ANYONE WHO IS ACCUSED OF A CRIME IS
5 PRESUMED TO BE INNOCENT. THAT'S A HALLMARK OF OUR SYSTEM.
6 DO YOU AGREE WITH THAT OR DISAGREE WITH THAT?

7 A I AGREE WITH THAT. THERE IS NO OTHER WAY BUT THAT. IF
8 WE CHANGE THAT PREMISE, I THINK WE'RE IN TROUBLE. I KNOW
9 THERE IS MEDIA AND ALL THAT, BUT THE MEDIA TENDS TO BE
10 OVERHYPING EVERYTHING, IN MY OPINION. IT'S BEEN ALWAYS MY
11 PREMISE THAT IF SOMEONE GETS ACCUSED, I'D RATHER THEM NOT
12 HAVE IT IN THE PAPER AS PROMINENTLY AS THEY DO UNTIL THEY ARE
13 INDICTED OR WHATEVER PAST THAT POINT.

14 Q YES, SIR. AND DO YOU UNDERSTAND EVEN WHEN AN INDIVIDUAL
15 IS INDICTED, THAT'S NOT EVIDENCE OF GUILT?

16 A RIGHT.

17 Q IN FACT, TO BE INDICTED THE STANDARD IS THE GRAND JURY
18 PROBABLY -- THINKS PROBABLY THE DEFENDANT IS GUILTY. IF YOU
19 WERE IN A JURY AND YOU WERE PERSUADED THAT THE DEFENDANT
20 PROBABLY DID IT, YOUR VERDICT WOULD HAVE TO BE NOT GUILTY
21 BECAUSE THE STANDARD IS PROOF BEYOND A REASONABLE DOUBT. NOT
22 PROBABLY, BUT PROOF BEYOND A REASONABLE DOUBT. DO YOU
23 UNDERSTAND THAT?

24 A YES, SIR.

25 Q AND DO YOU AGREE WITH THAT HIGH STRENUOUS BURDEN IN A

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 CRIMINAL CASE?

2 A YES, SIR.

3 Q OKAY. NOW, MR. VERNON, WE'RE GOING TO TALK ABOUT A
4 POTENTIAL SENTENCING PHASE. THE FACT THAT WE ARE TALKING
5 ABOUT A POTENTIAL SENTENCING PHASE, PLEASE UNDERSTAND WE MAY
6 NOT HAVE A SENTENCING PHASE IN THIS PARTICULAR CASE. BUT
7 SINCE WE POSSIBLY COULD, WE MUST DISCUSS THAT TO TALK ABOUT
8 THE ISSUES THAT ARISE AND YOUR VIEWS OF VARIOUS ISSUES,
9 PRIMARILY YOUR VIEWS OF THE DEATH PENALTY. DO YOU UNDERSTAND
10 THAT?

11 A YES, SIR.

12 Q NOW, WHEN A JURY -- AGAIN, WE'RE NOT TALKING THIS CASE,
13 JUST THE CONCEPT. WHEN THE JURY MOVES TO A SENTENCING PHASE
14 THAT MEANS THE JURY HAS ALREADY FOUND THE DEFENDANT GUILTY OF
15 MURDER. SO WHEN YOU GO TO THE SENTENCING PHASE YOU AREN'T
16 SITTING THERE WRINGING YOUR HANDS WONDERING IF HE'S GUILTY.
17 HE IS GUILTY. THAT'S WHY YOU'RE IN THE SENTENCING PHASE.

18 MURDER IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH
19 MALICE AFORETHOUGHT. SO ONCE YOU GET TO THE SENTENCING STAGE
20 AND YOU'RE NOT HAGGLING OVER SELF-DEFENSE AND ALIBI AND
21 MISTAKE, IT'S MURDER. BUT THE PENALTY HAS NOT YET BEEN
22 DETERMINED.

23 AND SO IN THE SENTENCING PHASE ADDITIONAL EVIDENCE IS
24 INTRODUCED, EVIDENCE THAT BEARS UPON WHAT THEY CALL AN
25 AGGRAVATING CIRCUMSTANCE UNDER STATE LAW, WHICH PERMITS THE

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 STATE TO SEEK THE DEATH PENALTY. NEVER REQUIRED TO GIVE IT,
2 BUT THEY CAN SEEK IT IN THOSE LIMITED CASES.

3 AND I MAY HAVE SHARED WITH Y'ALL WHEN ALL FIVE OF YOU
4 WERE IN HERE IN THE JURY BOX, AN AGGRAVATING CIRCUMSTANCE IS
5 WHERE MURDER IS COMMITTED IN THE COMMISSION OF, EXAMPLE,
6 KIDNAPPING, ARMED ROBBERY, CRIMINAL SEXUAL CONDUCT, KILLING
7 BY POISON, THINGS OF THAT NATURE. A JURY NEVER HAS TO GIVE
8 THE DEATH PENALTY, BUT THAT'S THE ONLY LIMITED SITUATIONS OF
9 THAT NATURE WHEN THEY CAN EVEN ASK FOR THE DEATH PENALTY.

10 NOW, THE JURY ALSO WOULD HEAR WHAT'S CALLED EVIDENCE IN
11 MITIGATION IN THE SENTENCING PHASE. MITIGATION EVIDENCE
12 COULD BE THINGS LIKE A DEFENDANT'S BACKGROUND, WHERE YOU
13 LEARN ABOUT THE DEFENDANT, FAMILY HISTORY, MENTAL HEALTH
14 STATUS, THINGS OF THAT NATURE.

15 AND AT THE END OF THAT SENTENCING PHASE THE JURY IS
16 INSTRUCTED TO GIVE CAREFUL AND THOUGHTFUL CONSIDERATION TO
17 ALL OF THE EVIDENCE, INCLUDING EVIDENCE IN AGGRAVATION AND
18 EVIDENCE IN MITIGATION, BEFORE MAKING A DECISION AS TO THE
19 APPROPRIATE PUNISHMENT, BE IT LIFE OR THE DEATH PENALTY.

20 IF YOU WERE A JUROR IN THAT SETTING WOULD YOU HONOR YOUR
21 OATH AND LISTEN, FOLLOW THE INSTRUCTIONS AND GIVE CAREFUL
22 CONSIDERATION TO BOTH THE EVIDENCE IN AGGRAVATION AND THE
23 EVIDENCE IN MITIGATION BEFORE YOU MADE A FINAL DECISION?

24 A YES, SIR, I WOULD.

25 Q NOW LET'S AGAIN JUST TALK ABOUT A CONCEPT, NOT THIS

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 CASE. IF YOU WERE A JUROR IN A SENTENCING HEARING AND THE
2 EVIDENCE WAS IN AND YOU HAD GIVEN CAREFUL CONSIDERATION TO
3 MITIGATION EVIDENCE, AGGRAVATION, AND YOU WERE PERSUADED THAT
4 THE PROPER PUNISHMENT WAS LIFE IMPRISONMENT, COULD YOU VOTE
5 FOR LIFE IMPRISONMENT?

6 A YES, SIR.

7 Q ALL RIGHT. THE OPPOSITE OF THAT, YOU'RE ON THE JURY.
8 YOU'VE CONSIDERED EVERYTHING VERY CAREFULLY, EVIDENCE IN
9 AGGRAVATION, EVIDENCE IN MITIGATION. IF YOU BELIEVE THE
10 DEATH PENALTY WAS APPROPRIATE, COULD YOU VOTE FOR THE DEATH
11 PENALTY?

12 A IN A VERY SPECIFIC CASE -- IF I BELIEVED THAT TO BE
13 TRUE, THAT THE EVIDENCE PROVED THAT, I COULD, YES, SIR.

14 Q SO YOU WOULD BE OPEN TO THAT? NO ONE IS SUGGESTING THAT
15 YOU HAVE TO COMMIT ONE WAY OR THE OTHER. WE'RE JUST TRYING
16 TO FIND---

17 A I'D CONSIDER IT A VERY SERIOUS OPTION TO TAKE.

18 Q EXACTLY.

19 A PROBABLY THE MOST SERIOUS EVER. BUT I WOULD CONSIDER
20 THAT A POSSIBILITY, YES, SIR.

21 Q OKAY. AND THAT'S WHAT WE'RE TRYING TO FIND OUT.

22 NOW, THERE IS AN ADDITIONAL STEP TO A SCENARIO WHERE A
23 JURY UNANIMOUSLY VOTES FOR THE DEATH PENALTY. EVERY JUROR
24 MUST SIGN HIS OR HER NAME TO WHAT IS SOMETIMES CALLED THE
25 DEATH WARRANT. IT'S THE VERDICT FORM THAT IMPOSES THE DEATH

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 PENALTY. IF YOU HAD MADE THE DECISION TO VOTE FOR THE DEATH
2 PENALTY AS WARRANTED UNDER LAW, COULD YOU SIGN THAT VERDICT
3 FORM?

4 A I BELIEVE I COULD, SIR. JUST IN MY MIND AT THIS POINT
5 IN TIME, I BELIEVE, YES, SIR, I COULD IF I -- BASED ON THE
6 EVIDENCE LED ME TO THAT POINT AND I BELIEVED IT WAS
7 WARRANTED.

8 Q THERE WAS A DOCUMENT BACK IN THE OTHER COURTROOM WHERE
9 YOU HAVE BEEN SITTING FOR A WHILE. IT DESCRIBES THREE TYPES
10 OF JURORS. IF ONE OF THOSE TYPES OF JURORS DESCRIBES YOU,
11 WHICH ONE DOES?

12 A NUMBER THREE, I BELIEVE. IN MY OPINION IT WOULD BE --
13 IT HAS TO BE VERY SPECIFIC IN THE CASE THAT YOU'RE IN THAT
14 YOU HAVE TO LOOK AT THE EVIDENCE. YOU CANNOT MAKE DECISIONS
15 BEFOREHAND. IT HAS TO BE BASED ON THE EVIDENCE, BASED ON THE
16 CASE ITSELF. I COULD NOT MAKE A DECISION YEA OR NAY WITHOUT
17 KNOWING THAT AS FAR AS ALWAYS DEATH ALWAYS -- ALWAYS ONE OR
18 THE OTHER. IT'S TOO WIDE -- IT'S TOO BROAD TO SAY THAT -- TO
19 PAINT THAT BRUSH.

20 Q SO IF YOU WERE IN A CASE WHERE EVEN THOUGH YOU HAD
21 ALREADY FOUND MURDER, WOULD YOU STILL REMAIN OPEN TO THE
22 POSSIBILITY OF IMPOSING EITHER PENALTY?

23 A I BELIEVE SO, SIR. YES, SIR. I'D -- AND I -- BOTH
24 PENALTIES ARE VERY SEVERE. BOTH PENALTIES APPEAR TO BE, YOU
25 KNOW, A VERY, VERY EXTREME PENALTY. SO I FEEL LIKE I'M OPEN

VERNON D. WADE, JR. -- VOIR DIRE BY THE COURT

1 TO THAT.

2 THE COURT: ALL RIGHT, SIR. I APPRECIATE YOUR
3 REMARKS. NOW THE ATTORNEYS WILL HAVE QUESTIONS AND I MAY
4 HAVE SOME FOLLOW-UP QUESTIONS AS WELL, MR. VERNON.

5 I HAVE -- MR. MAULDIN, YOUR WITNESS.

6 I THINK I CALLED YOU MR. VERNON JUST THEN. I APOLOGIZE.
7 IT'S MR. WADE.

8 JUROR NUMBER 374: YES. YES. VERNON IS MY DAD'S NAME.
9 DAVID IS MY NAME.

10 THE COURT: WELL, YOU SHOULD HAVE CORRECTED ME EARLIER.

11 JUROR NUMBER 374: JUST CALL ME DAVID IF YOU WANT TO
12 CALL ME BY MY FIRST NAME.

13 VOIR DIRE BY MR. MAULDIN:

14 Q MR. WADE?

15 A MR. WADE IS FINE. YES, SIR.

16 THE COURT: I APOLOGIZE.

17 Q MR. WADE, I'VE GOT MY PAPERWORK HERE. THE JUDGE CAUGHT
18 ME A LITTLE BIT BY SURPRISE THERE. SO IF YOU WOULD, GIVE ME
19 A SECOND.

20 I WAS LOOKING AT YOUR QUESTIONNAIRE, AND ASKED A
21 QUESTION ABOUT -- THERE WAS A QUESTION, NUMBER 30, THAT DEALT
22 WITH WHETHER YOU HAD FAMILY MEMBERS OR PERSONAL FRIENDS
23 EMPLOYED IN LAW ENFORCEMENT, AND THE ANSWER WAS YES. BUT
24 YOU DIDN'T MENTION WHO OR THE CIRCUMSTANCE. COULD YOU
25 DESCRIBE THAT FOR US?

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 A I DON'T HAVE ANY IMMEDIATE FAMILY MEMBERS. I HAVE A
2 COUSIN WHO IS IN LAW ENFORCEMENT IN COLUMBIA.

3 Q ALL RIGHT.

4 A THAT WAS WHY I WASN'T SURE IF THAT WAS -- HE IS IN
5 RICHLAND COUNTY, AND HE IS A COUSIN THAT WORKS THERE. HE HAS
6 BEEN THERE FOR TWENTY-SOMETHING YEARS.

7 Q OKAY.

8 A NO IMMEDIATE FAMILY MEMBERS ARE IN LAW ENFORCEMENT.

9 Q ALL RIGHT. THE OTHER GENERAL QUESTION I WANTED TO ASK
10 YOU, IN DESCRIBING WHAT YOU HAD HEARD ABOUT THE OFFENSE THE
11 DAY OF THE OFFENSE, YOU SAID THAT YOU HAVE AN EIGHT-YEAR-OLD
12 WHO WAS IN A LOCAL SCHOOL AND THAT IMMEDIATELY INTENSIFIED
13 YOUR INTEREST?

14 A UH-HUH (AFFIRMATIVE).

15 Q WITH -- THE COURT USED THE TERM WHETHER YOU HAD YOUR
16 MIND MADE UP ABOUT IT. LET ME CHANGE THE TERM A LITTLE BIT
17 TO MAKE SURE I AM COMFORTABLE WITH THE VIEW YOU TOOK OR HOW
18 YOU FELT ABOUT WHAT HAD HAPPENED. AND ALSO THE COURT CAN
19 TAKE THAT INTO CONSIDERATION IN DECIDING YOUR QUALIFICATION.

20 I WANT TO CHANGE THE TERM TO WHETHER YOU HAD FORMED AN
21 OPINION. IT'S DIFFICULT SOMETIMES WHEN WE'VE GOT MEDIA
22 EXPOSURE AND THEN WHEN WE HAVE SOMETHING HAPPEN THAT HAS A
23 POTENTIAL INTENSIFYING EFFECT ON US, SOMETIMES WE FIND
24 OURSELVES FORMING AN OPINION ABOUT IT. AND THE QUESTION, I
25 GUESS, WOULD BE BEST PUT A LOT LIKE THIS, MR. WADE, AS A

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 RESULT OF THE LOCATION OF YOUR HOME ON THE EASTSIDE, THE
2 PUBLICITY THAT WAS CONCENTRATED ON THIS INCIDENT, THE SEARCH
3 IN THE AREA OF THE SCHOOLS, YOUR EIGHT-YEAR-OLD, SUBSEQUENT
4 ARREST OF A SUSPECT IN ANDERSON, DID YOU FORM AN OPINION AS
5 TO THE GUILT OR INNOCENCE OR PROBABLE GUILT OR INNOCENCE OF
6 THE PERSON WHO HAD BEEN ARRESTED AT THAT -- DID YOU FORM AN
7 OPINION AT THAT TIME?

8 A IN THE MEDIA, THE WAY THEY PUT IT, I TIED THE THINGS
9 TOGETHER AS FAR AS BEING -- THESE INCIDENTS GO TOGETHER. AS
10 FAR AS AN OPINION, AS FAR AS -- AND JUST HONESTLY, I -- AFTER
11 IT WAS OVER, I DIDN'T THINK ABOUT IT SINCE THEN. THAT WAS
12 WHAT I GUESS I WAS SAYING. I DON'T KNOW -- IN MY MIND, I HAD
13 NO PICTURE OF WHAT THE PERSON LOOKED LIKE. I HAD NO PICTURE
14 OF EVEN THE NAME. BUT AS FAR AS KNOWING -- AS FAR AS THE
15 THREE INSTANCES GOING TOGETHER, I FELT LIKE THOSE WENT
16 TOGETHER BASED ON WHAT THE MEDIA TOLD ME. SO THAT WOULD BE
17 AN OPINION, I GUESS, THAT I PUT THOSE TOGETHER.

18 Q ALL RIGHT. AND HAVING PUT THOSE FACTORS TOGETHER THE
19 QUESTION THEN, I GUESS, BEST WAY TO PUT THE QUESTION WOULD
20 BE, WOULD YOU BE ABLE TO SET ASIDE ANY OPINION OR CONNECTION
21 AND SERVE AS A JUROR WITHOUT BEING AFFECTED BY WHAT YOU HAD
22 HEARD FROM ANY SOURCE OUTSIDE THE COURTROOM? AND I GUESS
23 THAT'S THE CRITICAL QUESTION. HOW DO YOU FEEL ABOUT THAT?

24 A I FEEL LIKE I CAN. I MEAN, IN MY HEART, MY MIND AS FAR
25 AS APPROACHING IT, I CAN DETACH FROM THAT AND THE PAST IS THE

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 PAST. IT'S OPEN TO WHAT I SEE AS EVIDENCE IN THE COURTROOM.

2 Q ALL RIGHT. NOW LET ME ASK YOU GENERAL QUESTIONS, MR.
3 WADE, ABOUT THE DEATH PENALTY, ABOUT YOUR VIEWS ON IT.

4 A YES, SIR.

5 Q AND THEN WE -- AFTER WE HAVE DEALT WITH THAT A FEW
6 MOMENTS, THEN WE'LL TALK ABOUT THE SPECIFIC METHOD BY WHICH
7 THE DEATH PENALTY IS CONSIDERED IN SOUTH CAROLINA AND WHAT A
8 ROLE OF A JUROR MIGHT BE.

9 LET'S ASSUME WE'RE HAVING A CONVERSATION INSTEAD OF
10 TESTIFYING. LET'S JUST SAY WE'RE SITTING AT A COFFEE HOUSE
11 HAVING A COKE OR CUP OF COFFEE AND WE'RE JUST CHATTING ABOUT
12 THE DEATH PENALTY.

13 I WANT YOU TO TELL ME HOW YOU WOULD EXPRESS HOW YOU FEEL
14 OR WHAT YOU THINK ABOUT THE DEATH PENALTY AND ITS USE IN THE
15 CRIMINAL JUSTICE SYSTEM, NOT IN ANY PARTICULAR CASE, LIKE
16 THIS CASE OR ANOTHER LOCAL CASE BUT JUST IN GENERAL. HOW DO
17 YOU FEEL ABOUT IT?

18 A IN GENERAL, I WOULD PUT IT IN THE REALM OF I FEEL IT IS
19 JUSTIFIED FOR THOSE PEOPLE THAT HAVE COMMITTED MURDER WITHOUT
20 -- I GUESS I'M LOOKING AT IT AS A PART OF -- THERE'S A
21 HISTORY INVOLVED IN IT. THERE'S MORE THINGS INVOLVED THAN
22 JUST THE MURDER HAPPENING BY CHANCE. I GUESS I, TO BE
23 HONEST, HAVE NOT GONE VERY DEEP INTO IT OTHER THAN TO SAY I
24 THINK IT'S JUSTIFIABLE IN SOME CASES, THAT THERE IS AN
25 EXTREME WHERE THAT'S JUSTIFIABLE. BUT IN ALSO MY MIND I FEEL

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 LIKE BEING IN PRISON FOR LIFE IS PRETTY CLOSE TO BEING
2 EXACTLY THE SAME AS FAR AS---

3 Q IT WOULD BE A HORRIBLE PUNISHMENT.

4 A BOTH CASES ARE VERY HARSH PUNISHMENTS. THE CAPITAL CASE
5 IS WHERE YOU CAN'T COME BACK. THERE IS NO -- TO SAY THAT'S
6 THE LAST CHOICE AS FAR AS IN A CASE WHERE IT JUST IS THE LAST
7 -- I WON'T SAY THE LAST RESORT, BUT WHERE IT'S A VERY -- VERY
8 CLEAR THAT THAT PERSON WILL NOT EVER REFORM, NOT EVER HAVE
9 ANY -- YOU KNOW, THEY'VE BEEN JUSTIFIED IN THAT CASE, I
10 GUESS.

11 Q THE -- HAVE YOU HAD -- THE VIEWS THAT YOU HAVE ON THE
12 DEATH PENALTY THAT YOU'VE JUST DESCRIBED, HAVE YOU HAD THOSE
13 VIEWS FOR A PRETTY GOOD LONG TIME OR HAVE YOUR VIEWS ON THE
14 DEATH PENALTY CHANGED WITH YOUR AGE OR...

15 A AGAIN, IT'S JUST NOT A PROMINENT SUBJECT IN MY MIND.
16 BUT IT'S BEEN PRETTY GENERALLY THAT. NOTHING -- I GUESS IN
17 THE SEVENTIES THERE WERE NO DEATH PENALTY CASES. SO THERE
18 WAS -- I WAS NOT A PERSON THAT SAID WE NEED TO BRING THAT
19 BACK.

20 Q UH-HUH (AFFIRMATIVE).

21 A BUT IN THE CASE WHERE IT WAS BROUGHT BACK IN CERTAIN
22 CASES WHERE IT WAS JUSTIFIED, I TENDED TO AGREE WITH THAT.

23 Q DO YOU THINK THAT WITH REGARD TO THE USE OF THE DEATH
24 PENALTY IN OUR CRIMINAL JUSTICE SYSTEM, AND WE'LL SAY
25 NATIONALLY, DO YOU THINK THAT THE DEATH PENALTY IS USED --

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 AND I'LL GIVE YOU THREE EXAMPLES. THEN YOU CAN KIND OF FEED
2 OFF OF THAT -- NOT OFTEN ENOUGH, TOO OFTEN OR ABOUT RIGHT OR
3 ANY OTHER WAY YOU WOULD LIKE TO DESCRIBE?

4 A I DON'T HAVE THE NUMBERS. I WOULD NOT EVEN HAVE A --
5 YOU KNOW, IN THAT SENSE, I'VE NOT THOUGHT THAT THROUGH TO BE
6 AN OPINION OF MINE.

7 Q UH-HUH (AFFIRMATIVE).

8 A BUT AS FAR AS -- I DON'T EVEN KNOW WHAT THE NUMBERS ARE,
9 WHETHER -- IT'S NEVER BEEN A CONSIDERATION.

10 Q WHEN DETERMINING -- AND I BELIEVE I UNDERSTOOD YOUR
11 ANSWER REGARDING THE SEVERITY OF THE LIFE IN PRISON SENTENCE,
12 BUT I WANT TO PHRASE THIS QUESTION SO THAT I CAN BE SATISFIED
13 AND THE COURT CAN MAKE ACCURATE DETERMINATIONS OF YOUR
14 OVERALL QUALIFICATIONS.

15 MR. WADE, IN A CASE WHERE A PERSON HAD BEEN CONVICTED OF
16 MURDER -- AND AS THE COURT MENTIONED, THAT WILL MEAN NO SELF-
17 DEFENSE, NO ALIBI, NO INSANITY, NO MISTAKE, NO ACCIDENT, ALL
18 OF THOSE THINGS WOULD HAVE ALREADY BEEN DECIDED. THAT
19 DOESN'T APPLY. IT IS INTENTIONAL, MALICIOUS, CRIME OF
20 MURDER. IN A CASE OF THAT NATURE, FURTHERMORE IN THAT CASE
21 WITH THE ADDITION OF AN ACCOMPANYING AGGRAVATING CIRCUMSTANCE
22 THAT THE LAW SETS OUT IN A LIST THAT ONE OR MORE OF THESE
23 ALSO APPLY, DO YOU BELIEVE THAT IN A CASE OF THAT NATURE A
24 SENTENCE OF LIFE IN PRISON IS ALSO A VERY SERIOUS PENALTY?

25 A YES, SIR.

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 Q NOW, IN A CASE OF THAT NATURE, THE JURY WOULD BE
2 DECIDING -- YOU KNOW, THE JURY WHO HAD ALREADY DECIDED GUILT,
3 THAT'S ALREADY BEEN DECIDED. WE'RE IN THE SECOND TRIAL. THE
4 JUDGE WOULD INSTRUCT THE JURY THAT THEY ARE TO TAKE INTO
5 CONSIDERATION AGGRAVATORS AND MITIGATORS AND HE WOULD LIST
6 THE ONES THAT WERE APPLICABLE TO THE SET OF CIRCUMSTANCES.
7 HE WOULD SAY, AND I'M NOT GOING TO QUOTE, BUT JUST
8 ESSENTIALLY HE IN A PARAPHRASE WOULD SAY THAT YOU ARE
9 REQUIRED TO GIVE CONSIDERATION TO CERTAIN TYPES OF STATUTORY
10 INFORMATION, AND THEN HE WOULD LIST THEM. AND HE MENTIONED A
11 FEW A MOMENT AGO. I THINK HE SAID THE HISTORY OR BACKGROUND
12 INFORMATION, MENTAL HEALTH.

13 WHAT I WANT TO KNOW IS IF A PERSON HAS BEEN CONVICTED OR
14 MURDER, ARE YOU GOING TO BE ABLE TO FOLLOW THE JUDGE'S
15 INSTRUCTIONS AND GIVE CONSIDERATION TO THAT TYPE OF
16 INFORMATION THAT WOULD BE A CALL, IF YOU WILL, FOR A LIFE
17 SENTENCE INSTEAD OF THE DEATH PENALTY AND SERIOUSLY CONSIDER A
18 LIFE SENTENCE IN THAT TYPE OF CASE? ARE YOU GOING TO BE ABLE
19 TO FOLLOW THAT SET OF INSTRUCTIONS FROM THE COURT?

20 A I HAVE NO DOUBT IN MY MIND IN THAT SENSE. THAT'S THE
21 MOST IMPORTANT DECISION I'D PROBABLY EVER MAKE IN MY LIFE, I
22 WOULD SAY.

23 Q FINALLY, MR. WADE, LET ME ASK THIS QUESTION, AND AGAIN
24 WE'RE HAVING TO FAST FORWARD. WE'RE HAVING TO MAKE
25 ASSUMPTIONS. WE'RE PUTTING THE CART BEFORE THE HORSE. WE

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 HAVEN'T EVEN HAD THE TRIAL YET. BUT I CAN'T ASK THESE
2 QUESTIONS UNLESS WE MAKE CERTAIN ASSUMPTIONS.

3 LET'S ASSUME THAT YOU WERE PICKED AS A JUROR IN A
4 CAPITAL CASE, NOT THIS CASE BUT IN A CAPITAL CASE UNDER OUR
5 SYSTEM. YOU LISTEN TO THE JURY -- WITH THE JURY. YOU LISTEN
6 TO THE EVIDENCE OF THE INCIDENT. YOU GO OUT, YOU DELIBERATE
7 AND YOU FIND THE PERSON GUILTY OF MURDER.

8 YOU COME BACK IN. THE PROSECUTION HAS THE OPPORTUNITY
9 THEN TO COME IN AND SAY, HERE IS THE AGGRAVATING INFORMATION.
10 HERE IS WHAT WE SAY JUSTIFIES THE DEATH PENALTY. THE
11 DEFENSE, IF THEY SO CHOOSE, WOULD HAVE AN OPPORTUNITY TO SAY,
12 HERE'S THE MITIGATING INFORMATION. HERE'S WHAT WE SAY
13 JUSTIFIES A LIFE SENTENCE INSTEAD OF MURDER -- INSTEAD OF THE
14 DEATH PENALTY. THE JUDGE WOULD INSTRUCT YOU ON HOW TO USE
15 THIS INFORMATION.

16 YOU GO BACK OUT, AND YOU'RE DELIBERATING WITH THE SAME
17 TWELVE PEOPLE, AND YOU DELIBERATE EXTENSIVELY, FOR A LONG
18 PERIOD OF TIME, AND LENGTHY DELIBERATIONS. YOU TAKE VOTES.
19 YOU DO NOT AGREE. YOU KNOW, THE JUDGE SAID ALL TWELVE HAVE
20 TO SIGN THE DEATH WARRANT IF IT'S GOING TO BE A DEATH
21 SENTENCE.

22 SO FINALLY AFTER LENGTHY DELIBERATIONS, EVERYBODY HAS
23 HAD THEIR OPPORTUNITY TO SPEAK. FINALLY, THE LAST VOTE IS
24 TAKEN AND THE VOTE IS TEN TO TWO. WE'LL JUST USE TEN TO TWO,
25 WHICH IS A HEAVY MAJORITY ONE WAY OR THE OTHER.

1 WITHOUT GOING INTO WHICH SENTENCE IS FOR TEN AND WHICH
2 IS FOR TWO, LET'S PUT YOU IN THE TWO FOR A MINUTE. PEOPLE IN
3 THE COURTROOM DON'T KNOW ANYTHING ABOUT HOW YOU WOULD REACT,
4 AND THAT'S WHAT I'M GOING TO ASK YOU. IF THAT WERE YOUR
5 SITUATION AND YOU WERE -- HAD DELIBERATED AND MADE AN
6 INDIVIDUAL, CONSCIOUS AND MORAL CHOICE OF LIFE AND DEATH AND
7 YOU HAD DECIDED WHAT YOU FELT WAS RIGHT, WOULD YOU BE
8 INCLINED TO CHANGE AND SIDE WITH THE MAJORITY OR WOULD YOU BE
9 INCLINED TO REMAIN IN A MINORITY EVEN IF IT MEANT A DIVISION?
10 DO YOU FOLLOW THAT QUESTION? WHAT WOULD BE YOUR REACTION
11 ESSENTIALLY TO THAT SITUATION?

12 A SORT OF LIKE I MENTIONED A MINUTE AGO, I WOULD CONSIDER
13 IT, IF WE EVER GOT TO THAT PHASE, THE MOST IMPORTANT DECISION
14 I EVER MADE IN MY LIFE. I TOOK IT SERIOUSLY, LIKE HE
15 MENTIONED YESTERDAY, THAT THIS IS -- SHORT OF SERVING IN THE
16 SERVICE THIS IS THE MOST IMPORTANT DECISION -- BEING ON THIS
17 THING WOULD BE VERY SERIOUS, VERY -- I DON'T KNOW WHAT THE
18 WORD IS. AS FAR AS -- THE CONSIDERATION WOULD HAVE TO BE
19 VERY DEEP, THAT ALL THE EVIDENCE WOULD HAVE TO BE CONSIDERED.
20 IF I GOT TO A CERTAIN POINT AND I HAD CONSIDERED THE EVIDENCE
21 AND AS BEST AS I COULD DETERMINED WHAT I FELT WAS THE RIGHT
22 ANSWER, I WOULD STICK WITH IT. THAT'S MY NATURE. NOW, I
23 WOULD BE SWAYED BY THE EVIDENCE VERSUS PEER PRESSURE, IF
24 THAT'S THE QUESTION.

25 Q LET'S REVERSE IT. FINAL QUESTION. REVERSE IT AND LET'S

VERNON DAVID WADE, JR. -- VOIR DIRE BY MR. MAULDIN

1 PUT YOU IN THE GROUP OF TEN AND THERE ARE TWO ON THE OTHER
2 SIDE. WOULD YOU SEEK TO HAVE THOSE JURORS -- NOW, OBVIOUSLY,
3 YOU'RE GOING TO HAVE TO DELIBERATE AND DISCUSS AMONG
4 YOURSELVES. BUT WOULD YOU ATTEMPT TO REQUIRE THOSE JURORS TO
5 COME TO THE SIDE OF THE MAJORITY OR WOULD YOU RESPECT THEIR
6 RIGHT TO HAVE MADE THEIR OWN CHOICE REGARDING A LIFE AND
7 DEATH DECISION?

8 A AND MY NATURE, AGAIN, WOULD BE TO DEBATE DURING THE
9 DEBATE. BUT UNDERSTANDING THAT THAT'S WHAT IT IS, IS A
10 DEBATE OF MY OPINION VERSUS YOUR OPINION. I HAVE NOT HAD THE
11 NATURE OF TRYING TO -- OTHER THAN PERSUADING THROUGH
12 ARGUMENTS OR DEBATE, NOTHING BEYOND -- THAT'S WHERE I THINK
13 IS THE TOUGHEST PART OF THE JURY IN THE BACK OF MY MIND, PEER
14 PRESSURE VERSUS TRYING NOT TO MAKE A QUICK DECISION. SO...

15 MR. MAULDIN: THANK YOU, MR. WADE.

16 THANK YOU, JUDGE.

17 THE COURT: MR. ARIAIL?

18 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

19 VOIR DIRE BY SOLICITOR ARIAIL:

20 Q MR. WADE, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
21 FOR THE THIRTEENTH CIRCUIT OF SOUTH CAROLINA, WHICH IS
22 GREENVILLE AND PICKENS COUNTY.

23 A UH-HUH (AFFIRMATIVE).

24 Q AND IN THIS CASE ASSISTING ME WILL BE MY DEPUTY, MS.
25 STROM IN THE BEIGE COAT, AND MS. HERVEY, ONE OF MY

VERNON DAVID WADE, JR. -- VOIR DIRE BY SOLICITOR ARIAIL

1 ASSISTANTS, IN THE BLACK.

2 I JUST WANT TO FOCUS ON A COUPLE OF QUESTIONS, TWO
3 ANSWERS YOU GAVE DEALING WITH THE STATE IN THE HYPOTHETICAL
4 CASE WE'RE TALKING ABOUT, THE STATE'S REQUEST FOR THE DEATH
5 PENALTY AND YOUR VIEWS ON IT.

6 YOU USED THE PHRASE THAT YOU -- THAT IT WOULD BE A
7 POSSIBILITY THAT YOU COULD IMPOSE THE DEATH SENTENCE AND THAT
8 YOU BELIEVED THAT YOU COULD. WHAT I WANT TO ASK THERE IS IF
9 YOU COULD EXPOUND ON THAT. IS THE POSSIBILITY BASED UPON
10 YOUR ANTICIPATED OR IMAGINING A VIEW OF EVIDENCE THAT IS A
11 TYPE OF CASE OR IS THE POSSIBILITY ROOTED IN SOME SORT OF
12 CONCERN YOU HAVE ABOUT YOUR ABILITY OF SOME MORAL, RELIGIOUS,
13 POLITICAL OR SOME REASON THAT WOULD LIMIT YOU FROM DECIDING
14 TO IMPOSE THE DEATH PENALTY? DID THAT MAKE SENSE?

15 A YES, SIR. AND MOSTLY IN MY MIND -- YOU SAY AT THAT
16 POINT YOU'VE REACHED A VERDICT OF MURDER?

17 Q YES.

18 A YOU'VE ALREADY ESTABLISHED AT THAT POINT IT'S NOT SELF-
19 DEFENSE. BUT JUST IN MY LIMITED KNOWLEDGE OF WATCHING T.V.
20 AND PERRY MASON FOR ALL THESE YEARS THAT SOMETIMES IT'S A
21 CIRCUMSTANTIAL CASE, SOMETIMES IT'S A -- YOU CAN BE CONVICTED
22 OF MURDER UNDER STRICTLY CIRCUMSTANTIAL EVIDENCE, THAT THE
23 EVIDENCE MAY NOT TOTALLY BE -- I GUESS IN -- THAT'S WHAT I
24 WAS TRYING TO GET BACK TO. IN MY MIND, THERE'S A DIFFERENCE
25 AS FAR AS IF THE TIME WOULD COME WHERE THERE WERE

VERNON DAVID WADE, JR. -- VOIR DIRE BY SOLICITOR ARIAIL

1 EYEWITNESSES TOTALLY, DIRECTLY SAYING THIS IS WHAT HAPPENED
2 VERSUS A TOTALLY CIRCUMSTANTIAL CASE WHERE -- AND I'LL THROW
3 OUT THE O.J. SIMPSON THING -- IN MY MIND THERE IS NOBODY THAT
4 PERSONALLY SAW -- AND I DON'T KNOW IF THIS IS THE RIGHT WAY
5 TO LOOK AT IT. BUT I'M LOOKING AT THE EVIDENCE THAT REACHED
6 THE MURDER VERDICT PLUS THE OTHER EVIDENCE THAT COMES UP
7 VERSUS I HAVE NO MORAL OBLIGATION IN MY MIND---

8 Q AND THE POSSIBILITY -- WHEN YOU SAY POSSIBILITY, TO ME
9 POSSIBILITY IS A LIMITING WORD. AND WHAT I WANT TO -- WHAT
10 I'M GETTING TO IS IT A LIMITING WORD THAT IS -- YOU'RE SAYING
11 IT WOULD BE LIMITED BECAUSE OF THE NATURE OF THE EVIDENCE AS
12 OPPOSED TO A LIMITING WORD BASED ON SOME RELUCTANCE YOU MAY
13 HAVE PERSONALLY THAT YOU ALREADY HAVE NOW?

14 A RIGHT. AND I GUESS WHAT I'M SAYING, TO ME, IN MY
15 OPINION, TO TAKE A MAN'S LIFE IS THE MOST SERIOUS THING IN
16 THE WORLD.

17 Q SURE.

18 A I'D HAVE TO KNOW THE EVIDENCE TO SAY, YES, I COULD.

19 Q ALL RIGHT.

20 A I'D HAVE TO KNOW THE TOTAL EVIDENCE, AND I DON'T KNOW
21 THAT I COULD SAY WITHOUT KNOWING THAT.

22 Q ALL RIGHT. BUT ASSUMING YOU KNOW THE EVIDENCE AND
23 ASSUMING THE EVIDENCE MEETS THAT STANDARD THAT YOU THINK IS
24 APPROPRIATE AND YOU LISTEN TO THE JUDGE'S CHARGE AND HE HAS
25 INSTRUCTED WHEN THESE FACTORS EXIST YOU MUST GIVE

VERNON DAVID WADE, JR. -- VOIR DIRE BY SOLICITOR ARIAIL

1 CONSIDERATION TO THE DEATH SENTENCE -- OR THE IMPOSITION OF
2 THE DEATH PENALTY, IS IT YOUR VIEW AT THAT POINT THAT YOU
3 WOULD BE ABLE, IF YOU WERE SATISFIED WITH THE EVIDENCE, TO
4 IMPOSE THE DEATH PENALTY?

5 A YES, SIR. THAT'S WHAT I WAS SAYING. I'M A NUMBER
6 THREE.

7 Q ALL RIGHT. AND THE SIGNING PART, THIS THING THAT YOU
8 WOULD HAVE TO ACTUALLY TAKE THE DEATH WARRANT AND SIGN IT,
9 DOES THAT GIVE YOU ANY SORT OF HESITATION?

10 A IT MAKES IT SERIOUS IN MY MIND. IT MAKES IT VERY --
11 IT'S REAL. I MEAN, IT'S NOT TRIVIAL, NOT WITHOUT A LOT OF
12 CONSIDERATION.

13 Q AND WE DON'T WANT YOU TO VIEW IT IN ANY OTHER WAY. BUT
14 WHAT I'M -- MY INTEREST HERE IS, WOULD THE FACT THAT YOU
15 WOULD HAVE TO SIGN YOUR NAME TO IT HAVE THE REVERSE EFFECT OF
16 CAUSING YOU NOT TO FAIRLY CONSIDER THE EVIDENCE BECAUSE YOU
17 DIDN'T WANT TO HAVE TO SIGN IN THE END?

18 A IN MY MIND, I DON'T -- JUST AT THIS POINT, I SAY NO. I
19 CANNOT SAY THAT HAS ANYTHING TO DO WITH IT.

20 Q OKAY.

21 A THAT'S AS FAR AS I KNOW.

22 SOLICITOR ARIAIL: THANK YOU.

23 THE COURT: MR. WADE, THANK YOU, SIR. THEY'RE GOING TO
24 TAKE YOU TO A JURY ROOM OUT HERE IN THE HALLWAY. WE'RE GOING
25 TO GET YOU BACK OUT HERE IN JUST A COUPLE MINUTES AND YOU'LL

VERNON DAVID WADE, JR. -- VOIR DIRE BY SOLICITOR ARIAIL

1 BE FREE TO GO.

2 JUROR NUMBER 374: THANK YOU, SIR.

3 THE COURT: THANK YOU.

4 (JUROR EXITS COURTROOM AT 4:09 P.M.)

5 THE COURT: MR. WADE HAS BEEN EXCUSED. REGARDING
6 QUALIFICATION, WHAT SAYS THE STATE?

7 SOLICITOR ARIAIL: HE'S QUALIFIED.

8 MR. MAULDIN: QUALIFIED.

9 THE COURT: AND TAKE YOUR TIME. THE GENTLEMAN IS
10 QUALIFIED AND I WANT TO PROCEED TO SELECTION. WHAT SAYS THE
11 STATE?

12 SOLICITOR ARIAIL: PRESENT HIM.

13 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) EXCUSE THE
14 JUROR.

15 THE COURT: DOES THE STATE WISH TO FILE A BATSON
16 MOTION?

17 SOLICITOR ARIAIL: YES, SIR.

18 THE COURT: WHAT WOULD BE THE REASON OFFERED BY THE
19 DEFENDANT TO STRIKE THE JUROR?

20 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) YOUR HONOR,
21 I AM PREPARED TO PUT ON THE RECORD REGARDING THE BATSON
22 CHALLENGE.

23 WE IN THE EVALUATION OF OUR JURORS HAVE A NUMBER OF
24 PEOPLE PARTICIPATING INDEPENDENTLY AND THEN COLLECTIVELY
25 BRINGING OUR COMMENTS INTO THE PROCESS. MY NOTES -- AND

MATTERS AND MOTIONS

1 WE'RE TAKING SEPARATE NOTES.

2 THE COURT: I JUST NEED THE REASON, JUST SOME REASON TO
3 HANG MY HAT ON.

4 MR. MAULDIN: THE REASONS RELATE TO, NUMBER ONE, THE
5 PUBLICITY ISSUES AND THE HAVING OF -- HIS OWN EIGHT-YEAR-OLD
6 CHILD WAS IN ONE OF THE SCHOOLS THAT WAS THE SUBJECT OF THE
7 SCHOOL SHUTDOWN. THAT'S ONE REASON.

8 ANOTHER REASON IS THE QUESTIONS TO THE SOLICITOR -- OR
9 WITH REGARD TO THE SOLICITOR'S QUESTIONS CONCERNING THE
10 DIRECT AND CIRCUMSTANTIAL EVIDENCE ISSUES. THAT HAS A
11 SIGNIFICANT IMPACT ON US AS WE RATE PEOPLE WHETHER OR NOT
12 THEY ARE DEATH PENALTY PRONE OR NOT. SO THAT WAS A
13 CONSIDERATION.

14 I WOULD ALSO ADD AT THIS POINT, YOUR HONOR, I DON'T
15 THINK IT IS A VALID BATSON CHALLENGE. IN ORDER TO BE A VALID
16 BATSON CHALLENGE YOU -- WE HAVEN'T HAD ANY PERSONS OF ANOTHER
17 CLASS TO BE COMPARED TO BECAUSE ALL OF THE AFRICAN-AMERICANS
18 HAVE BEEN DISQUALIFIED. SO WE DON'T BELIEVE AT THIS POINT
19 IT'S EVEN A VALID BATSON ISSUE.

20 THE COURT: ALL RIGHT. THERE IS NO BASIS TO FIND A
21 BATSON VIOLATION AT THIS TIME, BUT THE RECORD IS PRESERVED
22 AND AT THE APPROPRIATE TIME WE WILL REVISIT THE ISSUE.

23 ASK MR. WADE TO COME BACK IN THE COURTROOM. GET THE
24 NEXT JUROR. GET MR. BAILEY OUTSIDE THAT DOOR SO HE CAN COME
25 IN IMMEDIATELY.

MATTERS AND MOTIONS

1 (JUROR REENTERS COURTROOM AT 4:16 P.M.)

2 THE COURT: MR. WADE, THANK YOU, SIR. YOU REMAIN
3 ELIGIBLE TO SERVE AS A JUROR. YOU POTENTIALLY COULD SERVE IN
4 THIS CASE. I AM GOING TO GIVE YOU AN ORDER THAT REMINDS YOU
5 OF THAT, AND MS. PLUMLEY, THE JURY COORDINATOR, WILL MEET YOU
6 OUT IN THE HALL HERE AND SHE'S GOING TO GET ALL YOUR NUMBERS
7 SO WE CAN CONTACT YOU AT ANY TIME ONCE A DECISION IS MADE.
8 SINCE YOU REMAIN ELIGIBLE FOR JURY SERVICE, PLEASE CONTINUE
9 UNDER THE SAME OATH, THAT IS, DON'T DISCUSS THE CASE WITH
10 ANYONE AND DON'T EXPOSE YOURSELF TO ANY MEDIA COVERAGE OR
11 OTHERWISE ABOUT THIS CASE. I WILL HAND YOU THE ORDER AT THIS
12 TIME.

13 DO YOU UNDERSTAND THOSE INSTRUCTIONS?

14 JUROR NUMBER 374: YES, SIR.

15 THE COURT: THANK YOU SO MUCH. THEY WILL GET YOUR
16 PHONE NUMBERS OUT HERE IN THE HALLWAY.

17 JUROR NUMBER 374: I APPRECIATE IT. THANK YOU.

18 THE COURT: THANK YOU.

19 (JUROR EXITS COURTROOM AT 4:16 P.M.)

20 THE COURT: MR. BAILEY.

21 (JUROR NUMBER 11 ENTERS COURTROOM AT 4:16 P.M.)

22 JOHN R. BAILEY (BLACK MALE),
23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 VOIR DIRE BY THE COURT:

25 Q MR. BAILEY, WE APPRECIATE SO MUCH YOU BEING HERE. WE

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 KNOW THIS IS AN INCONVENIENT PROCESS AND WE THANK YOU FOR
2 YOUR PATIENCE.

3 I'M GOING TO ASK YOU A SERIES OF QUESTIONS, TALK TO YOU
4 A LITTLE BIT MORE ABOUT THE NATURE OF A CAPITAL CASE, AND THE
5 ATTORNEYS MAY HAVE QUESTIONS AS WELL.

6 THIS CASE ARISES, ACCORDING TO THE INDICTMENT, FROM AN
7 INCIDENT THAT OCCURRED IN GREENVILLE COUNTY BACK ON DECEMBER
8 THE 6TH IN THE YEAR 2000. THE DEFENDANT, MR. WOOD, IS
9 CHARGED WITH THE CRIME OF MURDER. THE VICTIM IS IDENTIFIED
10 AS ERIC NICHOLSON. MR. NICHOLSON AT THAT TIME, SIR, WAS A
11 STATE TROOPER.

12 THIS CASE RECEIVED MUCH ATTENTION IN THE MEDIA. I WANT
13 TO KNOW IF YOU HAVE HEARD ANYTHING, SEEN ANYTHING, READ
14 ANYTHING ABOUT THIS CASE IN THE MEDIA OR FROM ANY OTHER
15 SOURCE, AND IF YOU HAVE ANY SUCH INFORMATION, PLEASE BE VERY
16 SPECIFIC IN WHAT YOU CAN RECALL.

17 A YEAH, I REMEMBER THE CASE. I READ THE PAPER EVERY DAY,
18 SO I'M PRETTY MUCH ON THE NEWS -- UP ON THE NEWS. ALSO, I
19 HAVE A LOT OF FRIENDS THAT'S OFFICERS. SO, YOU KNOW, IT WAS
20 SOMETHING TO CHECK OUT.

21 Q TELL ME WHAT YOU CAN RECALL. I MEAN, WHAT DO YOU THINK
22 HAPPENED AS A RESULT OF WHAT YOU WERE EXPOSED TO IN THE MEDIA
23 OR TALKING WITH FRIENDS?

24 A OKAY. BASICALLY, I HEARD THERE WAS A SHOOTING -- I
25 DON'T KNOW EXACTLY HOW THE SHOOTING STARTED -- UP AT THE

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 WAFFLE HOUSE. INDIVIDUALS, I WANT TO SAY, SHOT -- ALL I KNOW
2 IS A SHOOTING. GUYS IN A CAR TRIED TO GET AWAY. OFFICERS
3 STARTED SHOOTING. I THINK THERE WERE SOME SHOTS BACK. I
4 THINK THE GUYS MIGHT HAVE GOT AWAY. SOMETHING LIKE THAT.

5 Q DO YOU REMEMBER ANYTHING ELSE THAT YOU CAN RECALL?

6 A YES. I THINK THERE WAS A QUESTION ABOUT THE BULLET FOR
7 A WHILE. THERE WAS A QUESTION ABOUT THE GUN BEING FOUND.
8 I'M NOT TOO SURE ABOUT WHAT HAPPENED AFTER THAT.

9 Q IT MAY BE -- I'M NOT CERTAIN, MR. BAILEY. IT MAY BE
10 THAT YOUR RECOLLECTION IS ABOUT A DIFFERENT CASE.

11 A OKAY.

12 Q IF I MENTION THE TERM ANDERSON COUNTY, THAT SOMETHING IN
13 THIS CASE MAY HAVE TRANSPIRED IN ANDERSON COUNTY, DOES THAT
14 JOG ANY MEMORY?

15 A NO, IT DOESN'T.

16 Q OKAY. THE REASON I MENTION THIS IS WHETHER WHAT YOU'RE
17 RECALLING HAS ANY SIMILARITY TO THIS CASE, THE IMPORTANT
18 THING FOR YOU TO KNOW THAT IF YOU SERVE AS A JUROR, YOU AND
19 YOUR FELLOW JURORS WOULD TAKE AN OATH TO FIND THE TRUTH FROM
20 THE EVIDENCE. SO IF YOU HAVE BEEN EXPOSED TO ANY
21 CONVERSATIONS OR MEDIA COVERAGE ABOUT THIS CASE, YOU WOULD BE
22 REQUIRED TO DISREGARD THAT AND FIND THE TRUTH ONLY FROM THE
23 EVIDENCE. DO YOU UNDERSTAND THAT?

24 A YES, I DO.

25 Q AND IF YOU WERE A JUROR, COULD YOU HONOR YOUR OATH IN

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 THAT REGARD?

2 A YES, I CAN.

3 Q WOULD YOU ALSO FOLLOW THE LAW AS I INSTRUCT IT?

4 A YES, I WILL.

5 Q THERE ARE TWO LEGAL PRINCIPLES -- THERE ARE NUMEROUS,
6 BUT I MENTIONED A COUPLE OF THEM YESTERDAY AND TODAY. DO YOU
7 UNDERSTAND AND AGREE WITH THE LEGAL PRINCIPLE THAT ANYONE
8 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT?

9 A YES.

10 Q DO YOU FURTHER AGREE WITH THE LEGAL PRINCIPLE AND ACCEPT
11 IT THAT THERE IS NEVER A BURDEN ON A DEFENDANT TO PROVE OR
12 DISPROVE ANYTHING? THE BURDEN OF PROOF IS ALWAYS ON THE
13 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT?

14 A YES.

15 Q NOW, MR. BAILEY, WE MAY NOT EVEN REACH A SENTENCING
16 PHASE IN THIS PARTICULAR CASE. SINCE WE POSSIBLY COULD, I'M
17 REQUIRED TO ASK YOU CERTAIN QUESTIONS ABOUT ISSUES THAT COME
18 UP IN A SENTENCING PHASE, AND THE ATTORNEYS WOULD HAVE
19 QUESTIONS AS WELL. SO PLEASE UNDERSTAND, AS WE ASK THESE
20 QUESTIONS, IT MAY NEVER HAPPEN IN THIS PARTICULAR CASE.
21 WE'RE JUST EXPLORING YOUR VIEWS ON THESE TYPES OF ISSUES,
22 INCLUDING YOUR VIEWS ON THE DEATH PENALTY. DO YOU UNDERSTAND
23 THAT?

24 A YES.

25 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THAT MEANS THAT

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 A JURY HAS ALREADY FOUND THE PARTICULAR DEFENDANT GUILTY OF
2 MURDER. WE'RE NOT TALKING ABOUT THIS CASE BUT JUST THE
3 CONCEPT.

4 SO AS A JURY MOVES TO THE SECOND PHASE, OR THE
5 SENTENCING PHASE, WE'RE NOT GOING TO ARGUE MORE ABOUT GUILT
6 OR INNOCENCE. GUILT HAS BEEN DETERMINED, AND IT'S GUILT OF
7 MURDER, THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE
8 AFORETHOUGHT.

9 BUT IN THE SENTENCING PHASE WE HEAR NEW AND ADDITIONAL
10 EVIDENCE, EVIDENCE THAT DEALS WITH WHAT THE LAW CALLS AN
11 AGGRAVATING CIRCUMSTANCE, WHAT THE LAW ALSO CALLS MITIGATION
12 EVIDENCE. EXAMPLES OF MITIGATION EVIDENCE MAY BE THE
13 BACKGROUND OF A DEFENDANT, THE FAMILY HISTORY, THE MENTAL
14 HEALTH STATUS OF A DEFENDANT, THINGS OF THAT NATURE. AND AT
15 THE END OF THE SENTENCING PHASE THE JURY WOULD BE INSTRUCTED
16 BEFORE THEY MAKE A DECISION AS TO LIFE IMPRISONMENT OR THE
17 DEATH PENALTY TO GIVE CAREFUL AND THOUGHTFUL CONSIDERATION TO
18 ALL OF THE EVIDENCE, INCLUDING EVIDENCE IN AGGRAVATION AND
19 THE EVIDENCE IN MITIGATION.

20 IF YOU WERE A JUROR IN THAT SITUATION, WOULD YOU
21 CONSIDER THOSE THINGS AND GIVE THEM SERIOUS CONSIDERATION
22 BEFORE YOU MAKE A FINAL DECISION?

23 A YES, I WOULD.

24 Q NOW, IF YOU WERE IN THE HYPOTHETICAL CASE ON A JURY AND
25 YOU HEARD THE EVIDENCE, YOU CAREFULLY CONSIDERED IT, YOU

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 CAREFULLY CONSIDERED THE LAW, EVIDENCE IN AGGRAVATION AS WELL
2 AS MITIGATION EVIDENCE, AND YOU WERE CONVINCED THAT THE
3 PROPER PUNISHMENT IS LIFE IMPRISONMENT, COULD YOU VOTE FOR
4 LIFE IMPRISONMENT?

5 A YES, I COULD.

6 Q ALL RIGHT. ON THE OTHER HAND, IF YOU WERE ON A JURY,
7 CONSIDERED THE FACTS, YOU CONSIDERED THE LAW, MITIGATION
8 EVIDENCE, EVIDENCE IN AGGRAVATION AS WELL, IF YOU WERE
9 PERSUADED AND CONVINCED THAT THE PROPER PUNISHMENT IS THE
10 DEATH PENALTY, COULD YOU VOTE FOR THE DEATH PENALTY?

11 A YES, I COULD.

12 Q OKAY. NOW, NO ONE IS SUGGESTING THAT YOU HAVE TO
13 INDICATE WHAT YOU WOULD DO IN A PARTICULAR CASE. WE'RE JUST
14 SEEING IF YOU WOULD REMAIN OPEN AND KEEP AN OPEN MIND IF YOU
15 MOVE TO THE SENTENCING PHASE. SO YOU WOULD STILL BE OPEN IN
16 THE SENTENCING PHASE TO DO EITHER LIFE IMPRISONMENT OR THE
17 DEATH PENALTY; IS THAT CORRECT?

18 A CORRECT.

19 Q ADDITIONALLY, IN SOUTH CAROLINA WHEN A JURY UNANIMOUSLY
20 VOTES -- THAT MEANS ALL TWELVE HAVE TO VOTE -- FOR THE DEATH
21 PENALTY, THEY HAVE TO DO SOMETHING ELSE. THEY HAVE TO SIGN
22 THEIR NAMES, EACH OF THEM, TO THE VERDICT FORM. WE SOMETIMES
23 CALL IT THE DEATH WARRANT.

24 IF YOU HAD VOTED FOR THE DEATH PENALTY, COULD YOU SIGN
25 YOUR NAME TO THE VERDICT FORM?

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 A YES, I COULD.

2 Q OKAY. DO YOU RECALL THAT SHEET BACK IN THE OTHER
3 COURTROOM THAT LISTED THE THREE TYPES OF JURORS?

4 A YES.

5 Q AND I'VE GOT ANOTHER HERE IF YOU WANT TO LOOK AT IT
6 AGAIN. IF ONE OF THOSE DESCRIBED YOU, WHICH CATEGORY FITS
7 YOU, SIR?

8 A POSSIBLY THE SECOND ONE.

9 Q OKAY. THE SECOND ONE -- LET ME JUST GET IT OUT HERE AND
10 LET'S LOOK AT IT. THE SECOND ONE IS A JUROR ALTHOUGH THE
11 DEFENDANT HAS BEEN CONVICTED OF MURDER WOULD NEVER , UNDER NO
12 CIRCUMSTANCES, GIVE THE DEATH PENALTY.

13 A I'M SORRY. COULD I SEE THAT AGAIN?

14 Q YEAH, LOOK AT IT AGAIN BECAUSE THAT'S NOT CONSISTENT
15 WITH WHAT YOU TOLD ME THROUGHOUT.

16 A (REVIEWS DOCUMENT) NUMBER THREE.

17 Q NUMBER THREE. SO IF YOU WERE SELECTED AS A JUROR, MR.
18 BAILEY, YOU WOULD APPROACH IT WITH AN OPEN MIND AND YOU WOULD
19 SERVE FAIRLY AND IMPARTIALLY AND YOU WOULD FOLLOW THE LAW AS
20 I INSTRUCT IT?

21 A YES.

22 Q DO YOU KNOW OF ANY REASON WHY YOU WOULD NOT BE QUALIFIED
23 TO SERVE OR ELIGIBLE TO SERVE IN THIS CASE?

24 A NOT THAT I KNOW OF.

25 THE COURT: OKAY. I MAY HAVE SOME OTHER QUESTIONS FOR

JOHN R. BAILEY -- VOIR DIRE BY THE COURT

1 YOU. THE ATTORNEYS WILL ALSO HAVE QUESTIONS.

2 AND THIS WILL BE MR. ARIAIL.

3 VOIR DIRE BY SOLICITOR ARIAIL:

4 Q MR. BAILEY, MY NAME IS BOB ARIAIL. I'M THE SOLICITOR
5 FOR GREENVILLE AND PICKENS COUNTIES. AND IN THAT REGARD I
6 WILL BE THE PERSON REPRESENTING THE STATE OF SOUTH CAROLINA
7 BRINGING TO THE JURY THE EVIDENCE IN THIS CASE. ASSISTING ME
8 WILL BE MS. BETTY STROM, WHO IS MY DEPUTY, AND THEN MS.
9 HERVEY, WHO IS NOT IN THE COURTROOM RIGHT NOW, WILL ALSO BE
10 ASSISTING ME.

11 WHAT I WANT TO -- OBVIOUSLY, WHAT WE'RE TRYING TO DO IN
12 THIS PROCESS IS FIGURE OUT WHAT JURORS CAN BE FAIR AS TO BOTH
13 SIDES WHEN THE ISSUE OF SENTENCING IS BEFORE THE JURY.
14 BECAUSE AS YOU UNDERSTAND IT, THE JURY AS A GROUP WOULD BE
15 THE ONES WHO WOULD DETERMINE WHAT THE PUNISHMENT WOULD BE.

16 A YES.

17 Q AND IT'S YOUR TESTIMONY TO THE JUDGE THAT YOU COULD
18 LISTEN TO EVIDENCE AND FOLLOW HIS INSTRUCTIONS AND IMPOSE A
19 SENTENCE OF LIFE IN PRISON WITHOUT PAROLE?

20 A YES.

21 Q AND DO YOU CONSIDER THAT A SERIOUS, SIGNIFICANT
22 SENTENCE?

23 A YES, I DO.

24 Q ALL RIGHT. THE JUDGE ALSO ASKED YOU IF YOU COULD
25 CONSIDER THE EVIDENCE AND IMPOSE THE DEATH PENALTY. BEFORE

JOHN R. BAILEY -- VOIR DIRE BY SOLICITOR ARIAIL

1 YOU ANSWERED THAT, I THOUGHT YOU HESITATED. IS THERE SOME
2 REASON YOU HESITATED OR WAS THAT JUST MY MISUNDERSTANDING
3 WHAT YOU WERE DOING? OR IS THERE SOMETHING THAT WOULD CAUSE
4 TO HESITATE ABOUT IMPOSING THE DEATH PENALTY?

5 A IF ALL THE INFORMATION WAS CORRECT AND IT WAS WARRANTED,
6 THEN IT COULD BE DONE. IF NOT ALL -- I MEAN, IT'S NOT A
7 WHOLE, SOLID FACT, YOU KNOW, IT'S HARD TO SAY.

8 Q ALL RIGHT. SO YOUR VIEW WOULD BE BASED ON THE PROOF AS
9 TO THE DEFENDANT HAVING COMMITTED THE ACT AND THE PROOF OF
10 THE AGGRAVATING FACTOR AND THE AGGRAVATING NATURE OF THE
11 CASE?

12 A YES.

13 Q ALL RIGHT. AND SO YOUR HESITANCY WOULD BE BASED UPON
14 WHETHER OR NOT THERE WAS SUFFICIENT EVIDENCE. ALL RIGHT. IF
15 THE EVIDENCE WAS SUFFICIENT IN YOUR VIEW, THAT IS,
16 SIGNIFICANT TO A DEGREE OF PROOF AND IT WAS SOLID, WOULD YOU
17 HAVE ANY HESITANCY AT THAT TIME?

18 A IF THE PROOF WAS DEFINITE, I WOULDN'T.

19 Q ALL RIGHT. NOW, YOU HAD TESTIFIED EARLIER OR MENTIONED
20 EARLIER THAT YOU HAD GONE TO SCHOOL WITH MR. RICHEY, AND MR.
21 RICHEY IS, IN THIS CASE, WOULD BE REPRESENTING THE DEFENSE.
22 LET'S ASSUME THAT WE'RE IN A HYPOTHETICAL CASE SOMEWHERE
23 ELSE, NOT THIS CASE, AND THE STATE COMES BEFORE YOU
24 REPRESENTED BY THE SOLICITOR ASKING YOU TO IMPOSE THE DEATH
25 SENTENCE, AND MR. RICHEY COMES BEFORE YOU REPRESENTING THE

JOHN R. BAILEY -- VOIR DIRE BY SOLICITOR ARIAIL

1 DEFENDANT AND YOU HAVE THIS PRIOR HISTORY, THIS RELATIONSHIP,
2 FRIENDSHIP, KNOWLEDGE, HE LIVES IN THE COMMUNITY, YOU SEE HIM
3 AROUND, THAT SORT OF THING, WOULD THAT FACT CAUSE YOU TO
4 FAVOR HIS POSITION IN THE CASE OR GIVE IT A GREATER
5 CONSIDERATION AS OPPOSED TO THE POSITION OF THE STATE?

6 A NO.

7 Q IT WOULD NOT?

8 A IT WOULD NOT.

9 Q ALL RIGHT. YOU COULD SET THAT ASIDE?

10 A YES.

11 SOLICITOR ARIAIL: ONE MOMENT, YOUR HONOR. JUST A
12 SECOND.

13 THE COURT: ALL RIGHT.

14 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) THAT'S
15 ALL I HAVE. THANK YOU.

16 THE COURT: MR. MAULDIN? MR. RICHEY?

17 MR. RICHEY: THANK YOU, YOUR HONOR.

18 VOIR DIRE BY MR. RICHEY:

19 Q HOW YOU DOING, MR. BAILEY? MR. BAILEY, ME AND YOU WENT
20 TO HIGH SCHOOL TOGETHER. I THINK YOU WERE IN THE CLASS WITH
21 MY BROTHER MICHAEL, AND THAT WOULD HAVE BEEN A CLASS BEHIND
22 ME. BUT WE DID PLAY FOOTBALL AND DO ALL THAT STUFF TOGETHER,
23 IS THAT---

24 A YES, CORRECT.

25 Q MR. BAILEY, LET ME ASK YOU THIS. IN THIS CASE YOU COULD

JOHN R. BAILEY -- VOIR DIRE BY MR. RICHEY

1 STILL CONSIDER ALL THE EVIDENCE IMPARTIALLY, NOT FAVORING
2 EITHER SIDE?

3 A EXCUSE ME?

4 Q CAN YOU CONSIDER -- YOU CAN CONSIDER THE EVIDENCE IN
5 THIS CASE INDEPENDENT OF ANY RELATIONSHIP WITH ME OR ANYBODY
6 ELSE?

7 A YES.

8 Q AND YOU CAN EVALUATE THE EVIDENCE AND DETERMINE WHETHER
9 A LIFE SENTENCE OR A DEATH SENTENCE SHOULD BE GIVEN?

10 A YES.

11 Q MR. BAILEY, LET ME ASK YOU THIS QUESTION. MR. BAILEY,
12 LET'S KIND OF FAST FORWARD A LITTLE BIT AND LET'S SAY THAT
13 YOU ARE ON THE JURY AND WE'RE KIND OF PUTTING -- WE'RE IN THE
14 SECOND PHASE OF THE TRIAL. YOU REMEMBER THE JUDGE TALKED
15 ABOUT THE FIRST PHASE?

16 A YES.

17 Q WELL, WE'RE IN THE SECOND PHASE AND SO IN ESSENCE WE'RE
18 KIND OF PUTTING THE CART BEFORE THE HORSE AND WE'RE ASSUMING
19 THAT THERE'S ALREADY BEEN A SENTENCE IN THE FIRST PART --
20 VERDICT IN THE FIRST PART OF THE CASE.

21 LET'S SAY THAT YOU'RE SITTING IN THE JURY ROOM AND Y'ALL
22 HAVE DELIBERATED AND TALKED ABOUT THE CASE, ALL THE JURORS,
23 AND IT COMES TIME FOR EVERYBODY TO MAKE A DECISION. THERE IS
24 A SPLIT IN THE JURY ROOM OF, SAY, THERE'S TEN PEOPLE WANT TO
25 DO ONE THING, TWO PEOPLE WANT TO DO ANOTHER THING. AND LET'S

JOHN R. BAILEY -- VOIR DIRE BY MR. RICHEY

1 JUST SAY THAT YOU ARE IN THE MAJORITY. WOULD YOU -- AND IT'S
2 GETTING LATE IN THE DAY AND YOU'VE BEEN HERE IN THIS PROCESS
3 SEVEN OR EIGHT DAYS OR WHATEVER, AND THIS IS YOUR OPPORTUNITY
4 TO GET HOME TO YOUR WIFE AND YOUR KIDS. WOULD YOU BE LIKELY
5 TO ABANDON YOUR POSITION WHERE YOU ARE IN THE MAJORITY TO GO
6 WITH THE MINORITY JUST TO GET IT OVER WITH?

7 A IT WOULD PROBABLY SEEM SIMPLE THAT WAY, BUT, YOU KNOW,
8 I'D PROBABLY STICK WITH MY ORIGINAL FACT.

9 Q WOULD YOU WANT THE MINORITY TO RESPECT YOUR DECISION?

10 A FIRST OF ALL, IT'D BE BASED ON THE FACTS OF WHAT WENT
11 DOWN AS FAR AS THE CASE.

12 Q IF IT WAS BASED ON THE FACTS AS YOU BELIEVED, WOULD YOU
13 WANT THEM TO RESPECT THAT DECISION THAT YOU HAD MADE?

14 A YES.

15 Q AND WOULD YOU RESPECT THEIR DECISION AS WELL?

16 A YES.

17 Q AND WHAT IF YOU WERE IN THE MINORITY, NOT THE MAJORITY,
18 WOULD YOU STILL FEEL THE SAME WAY?

19 A YES.

20 Q WOULD YOU STILL RESPECT THE MAJORITY'S OPINION?

21 A YES, I WOULD RESPECT THEM. BUT I WOULD STILL HAVE MY
22 OWN OPINION.

23 Q AND WOULD YOU EXPECT THEM TO RESPECT YOUR OPINION?

24 A YES.

25 MR. RICHEY: THANK YOU, SIR.

JOHN R. BAILEY -- VOIR DIRE BY MR. RICHEY

1 THE COURT: MR. BAILEY, THANK YOU SO MUCH. THE BAILIFF
2 WILL TAKE YOU TO A JURY ROOM, AND THEN WE'LL BE BACK WITH YOU
3 IN JUST A MINUTE OR TWO, AND THEN YOU'LL BE FREE TO GO.
4 THANK YOU, SIR.

5 JUROR NUMBER 11: THANK YOU.

6 (JUROR EXITS COURTROOM AT 4:34 P.M.)

7 THE COURT: THE FIRST ISSUE IS WHETHER HE IS QUALIFIED
8 OR NOT, AND I'LL HEAR FROM EACH SIDE WHEN YOU'RE READY. IF
9 YOU NEED TO DISCUSS IT, DISCUSS IT. BUT LET ME KNOW WHEN
10 YOU'RE READY.

11 SOLICITOR ARIAIL: THE STATE SAYS HE'S QUALIFIED.

12 MR. RICHEY: QUALIFIED.

13 THE COURT: ALL RIGHT. WHENEVER THE STATE IS READY TO
14 PROCEED, LET ME KNOW YOUR DECISION, AND IF ACCEPTED, THEN
15 WE'LL ASK FOR THE DEFENDANT'S POSITION.

16 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) EXCUSE
17 THE JUROR IN THIS CASE, PLEASE.

18 THE COURT: ALL RIGHT. I'D LIKE TO KNOW IF THERE IS A
19 BATSON MOTION.

20 MR. MAULDIN: YES, SIR.

21 THE COURT: ALL RIGHT. IF THE STATE WOULD PROFFER THE
22 REASON AS TO WHY THE JUROR WAS STRUCK.

23 SOLICITOR ARIAIL: HE'S FRIENDS WITH MR. RICHEY. HE
24 PLAYED FOOTBALL WITH MR. RICHEY. HE IS FRIENDS WITH MR.
25 RICHEY'S BROTHER. HE KNOWS THE FAMILY. HE IS IN THE

MATTERS AND MOTIONS

1 COMMUNITY. AND FOR THAT REASON, WE JUST FEEL THAT HE'S NOT
2 -- FOR THOSE REASONS, HE IS NOT AN APPROPRIATE JUROR.

3 THE COURT: ALL RIGHT. IF YOU WANT TO STATE ON THE
4 RECORD AS TO WHY YOU BELIEVE THE PROFFERED REASON IS A
5 PRETEXT, YOU MAY DO SO. BUT YOU ARE NOT BEING FORECLOSED
6 FROM DOING IT SUBSEQUENTLY WHEN WE RECEIVE MORE INFORMATION
7 FROM OTHER JURORS AND WE GO THROUGH THE SELECTION PROCESS
8 FURTHER.

9 MR. MAULDIN: I RESERVE THAT RIGHT, YOUR HONOR.

10 THE COURT: VERY GOOD. THANK YOU.

11 ASK MR. BAILEY---

12 SOLICITOR ARIAIL: WE HAVE ONE OTHER -- I'M SORRY. LET
13 ME ADD ONE OTHER THAT I FORGOT IN MY NOTES. I NOTED WHEN THE
14 JUROR ENTERED THE JURY QUALIFICATION THAT HE SPOKE TO MR.
15 RICHEY WHEN MR. RICHEY CAME THROUGH ALSO. THAT WAS AN
16 UNSOLICITED SORT OF SPEAKING AT THAT POINT.

17 THE COURT: ALL RIGHT. I FIND HE IS QUALIFIED.

18 SOLICITOR ARIAIL: SURE.

19 THE COURT: AND I AM GOING TO GIVE THIS GENTLEMAN THE
20 ORDER THAT HE REMAINS ELIGIBLE TO SERVE AND WE'RE GOING TO
21 RECEIVE HIS PHONE NUMBERS.

22 ASK MR. BAILEY TO COME BACK IN.

23 MR. MAULDIN: YOUR HONOR, I WOULD HAVE A MATTER BEFORE
24 WE GO TO THE NEXT JUROR.

25 (JUROR REENTERS COURTROOM AT 4:39 P.M.)

MATTERS AND MOTIONS

1 **THE COURT:** MR. BAILEY, YOU REMAIN AN ELIGIBLE JUROR.
2 YOU MAY POTENTIALLY SERVE IN THIS CASE. BECAUSE OF THAT, I
3 WANT YOU TO REMAIN UNDER YOUR OATH NOT TO DISCUSS THE CASE
4 WITH ANYONE OR EXPOSE YOURSELF TO ANY MEDIA COVERAGE.

5 WHEN YOU LEAVE, MS. PLUMLEY, THE JURY COORDINATOR, WILL
6 BE OUT HERE IN THE HALLWAY. SHE IS GOING TO GET YOUR PHONE
7 NUMBERS SO WHENEVER A DECISION IS MADE, WE'LL LET YOU KNOW.
8 SO WE WON'T LEAVE YOU HANGING. AND IF WE NEED TO BRING YOU
9 BACK IN FOR SERVICE ON THIS CASE, WE'LL CALL YOU. AND EVEN
10 IF WE DON'T, WE'LL LET YOU KNOW THAT YOU ARE OFF THE HOOK AND
11 YOU CAN GO ABOUT YOUR NORMAL AFFAIRS.

12 AND AT THAT POINT THE ORDER NOT TO DISCUSS THE CASE AND
13 EXPOSE YOURSELF TO MEDIA COVERAGE WILL CEASE AT THAT TIME.
14 BUT UNTIL THAT TIME, PLEASE HONOR THIS ORDER AND FOLLOW IT.
15 DO YOU UNDERSTAND YOUR INSTRUCTIONS?

16 **JUROR NUMBER 11:** YES, I DO.

17 **THE COURT:** THANK YOU, SIR, AND I APPRECIATE YOU BEING
18 HERE. YOU'RE FREE TO GO.

19 (JUROR EXITS COURTROOM AT 4:40 P.M.)

20 **THE COURT:** YES, SIR?

21 **MR. MAULDIN:** YOUR HONOR, I HAVE NOTICED THROUGH THE
22 PROCESS THROUGH ALL THE JURORS THAT MR. ARIAIL IS LAYING HIS
23 PAD ON THE BENCH THERE IN FRONT OF THE JUROR. THE ONLY JUROR
24 I ACTUALLY -- I'VE NOTICED IT ALL DAY, BUT THE ONLY ONE I'VE
25 NOTICED THAT ACTUALLY PAID ANY ATTENTION TO IT WAS MR. WADE.

MATTERS AND MOTIONS

1 AND WHEN MR. ARIAIL WAS TURNING THE PAGES, MR. WADE WAS
2 LOOKING RIGHT DOWN AT HIS PAD.

3 I ASK THAT MR. ARIAIL BE INSTRUCTED JUST TO LEAVE HIS
4 PAD EITHER BACK HERE ON THE RAIL OR ON THE PODIUM. HE IS
5 ESSENTIALLY INVADING THE SPACE OF THE JURORS FOR ONE THING,
6 AND HE IS PUTTING HIS PAPERS IN THEIR LAP.

7 THE COURT: YOU CAN APPROACH THE WITNESS BOX. JUST BE
8 CAREFUL NOT TO EXPOSE THE JUROR TO ANY NOTES YOU MAY HAVE ON
9 YOUR PAD. THAT'S THE EXTENT OF THAT.

10 WE'VE BEEN GOING FOR TWO AND A HALF HOURS. LET'S TAKE A
11 TEN-MINUTE BREAK, PLEASE.

12 (A RECESS WAS TAKEN FROM 4:41 TO 4:50 P.M.)

13 THE COURT: ALL RIGHT. THE NEXT JUROR IS MR. MARSHALL.
14 MR. MARSHALL, PLEASE.

15 (JUROR NUMBER 233 ENTERS COURTROOM AT 4:51 P.M.)

16 TERRY B. MARSHALL (WHITE MALE),
17 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 VOIR DIRE BY THE COURT:

19 Q MR. MARSHALL, WE APPRECIATE SO MUCH YOUR PATIENCE IN
20 THIS LONG AND DIFFICULT PROCESS. BUT WE ARE QUESTIONING EACH
21 OF THE JURORS SUCH AS YOURSELF INDIVIDUALLY IN AN EFFORT TO
22 FIND JURORS WHO ARE QUALIFIED AND ELIGIBLE TO SERVE IN A CASE
23 OF THIS NATURE. SO I HAVE SOME THINGS I WANT TO BRING TO
24 YOUR ATTENTION, QUESTIONS AS WELL, AND THE ATTORNEYS WILL
25 HAVE QUESTIONS AS WELL.

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 THIS CASE ARISES, ACCORDING TO THE INDICTMENT, FROM AN
2 INCIDENT THAT OCCURRED ON DECEMBER THE 6TH, 2000. THE
3 DEFENDANT, MR. WOOD, IS CHARGED WITH THE CRIME OF MURDER.
4 THE VICTIM IDENTIFIED IN THE INDICTMENT IS ERIC NICHOLSON.
5 MR. NICHOLSON WAS AT THAT TIME A STATE TROOPER.

6 THIS CASE RECEIVED ATTENTION IN THE MEDIA. I WANT TO
7 KNOW INITIALLY FROM YOU IF YOU HAVE ANY INFORMATION ABOUT
8 THIS CASE FROM THE MEDIA OR ANY OTHER SOURCE, AND IF YOU DO,
9 BE SPECIFIC IN WHAT YOU CAN RECALL.

10 A I THINK, OKAY, THAT IT WAS ABOUT THE STATE TROOPER THAT
11 WAS SHOT AT THE WAFFLE HOUSE.

12 Q I DON'T THINK IT WAS THE WAFFLE HOUSE, BUT I MIGHT BE
13 MISTAKEN. I DON'T KNOW---

14 A OKAY. THAT'S THE ONLY ONE I CAN THINK OF.

15 Q OKAY. A TROOPER WAS SHOT AT THE WAFFLE HOUSE, THAT'S
16 WHAT YOU REMEMBER?

17 A YES.

18 Q WHICH WAFFLE HOUSE, DO YOU RECALL?

19 A NEAR 85, I THINK IT WAS.

20 Q OKAY.

21 A I DON'T WATCH MUCH NEWS.

22 Q OKAY. NOW, THERE MAY BE SOMETHING IN THIS CASE WHERE
23 ANDERSON COUNTY IS INVOLVED, AN EVENT OR SERIES OF EVENTS IN
24 ANDERSON COUNTY. HAVING MENTIONED ANDERSON COUNTY TO YOU,
25 DOES THAT TRIGGER ANY MEMORY THAT YOU HAVE OF THIS PARTICULAR

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 CASE?

2 A NO, SIR.

3 Q OKAY. THE REASON I ASK THAT, SIR, IS AS A JUROR YOU
4 WOULD BE REQUIRED TO DISREGARD ANYTHING YOU MAY HAVE HEARD
5 ABOUT THIS CASE OUTSIDE OF COURT. AS A JUROR, UNDER YOUR
6 OATH YOU WOULD HAVE TO FIND THE FACTS ONLY FROM THE EVIDENCE
7 PRESENTED DURING THE COURSE OF THE TRIAL. DO YOU UNDERSTAND
8 THAT?

9 A YES, YOUR HONOR.

10 Q AND IF YOU WERE A JUROR WOULD YOU HONOR YOUR OATH AND
11 FIND THE EVIDENCE ONLY FROM THAT PRESENTED DURING THE COURSE
12 OF THE TRIAL?

13 A YES.

14 Q WOULD YOU ALSO FOLLOW THE LAW AS I INSTRUCT IT?

15 A YES.

16 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
17 INNOCENCE OF THIS PARTICULAR DEFENDANT, MR. WOOD?

18 A NO.

19 Q I MENTIONED EARLIER TWO LEGAL PRINCIPLES. ONE IS THE
20 PRESUMPTION OF INNOCENCE. ANYONE ACCUSED OF A CRIME IS
21 PRESUMED TO BE INNOCENT. DO YOU UNDERSTAND THAT PRINCIPLE
22 AND DO YOU AGREE WITH IT?

23 A YES.

24 Q FURTHER, UNDER OUR SYSTEM A DEFENDANT IS UNDER NO
25 OBLIGATION TO PROVE OR DISPROVE ANYTHING OR PRESENT ANY

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 EVIDENCE. BECAUSE OF THAT PRESUMPTION OF INNOCENCE AND THE
2 BURDEN OF PROOF IS AT ALL TIMES ON THE STATE TO PROVE GUILT
3 BEYOND A REASONABLE DOUBT, DO YOU UNDERSTAND AND AGREE WITH
4 THAT LEGAL PRINCIPLE?

5 A YES.

6 Q NOW, MR. MARSHALL, WE IN THIS CASE MAY NOT EVEN GET INTO
7 THE SECOND PHASE, THE SENTENCING PHASE, THAT I'VE DISCUSSED
8 WITH YOU FOLKS. WE ONLY GO TO A SENTENCING PHASE IF A JURY
9 FIRST FINDS THE DEFENDANT GUILTY OF THE OFFENSE OF MURDER.
10 DO YOU UNDERSTAND THAT?

11 A YES.

12 Q WE MAY NOT EVEN REACH IT. BUT BECAUSE WE POSSIBLY
13 COULD, I'M REQUIRED TO FIND OUT FROM YOU TO MAKE SURE YOU
14 UNDERSTAND THE PROCESS AND WHAT YOUR VIEWS ARE ON CERTAIN
15 ISSUES, PARTICULARLY YOUR VIEWS ON THE DEATH PENALTY. DO YOU
16 UNDERSTAND?

17 A YES.

18 Q OKAY. WHEN A JURY MOVES TO THE SENTENCING PHASE, THAT
19 MEANS THE JURY HAS ALREADY FOUND THAT PARTICULAR DEFENDANT
20 GUILTY OF MURDER. CERTAINLY NOT TALKING ABOUT THIS CASE.
21 WE'RE JUST TALKING ABOUT THE PROCESS IN GENERAL. SO WHEN YOU
22 GO TO A SENTENCING PHASE, THERE IS NOTHING ELSE TO ARGUE
23 ABOUT IN TERMS OF GUILT. GUILT HAS ALREADY BEEN ESTABLISHED
24 OF MURDER. THERE IS NO DEFENSE -- NO SELF-DEFENSE, NO ALIBI,
25 NOTHING. GUILT OF MURDER HAS BEEN ESTABLISHED. AND MURDER

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE
2 AFORETHOUGHT. SO WHEN WE GO TO THE SENTENCING PHASE, MURDER
3 HAS ALREADY BEEN DETERMINED.

4 IN THE SENTENCING PHASE WE HEAR ADDITIONAL EVIDENCE,
5 EVIDENCE THAT WE CALL EVIDENCE IN AGGRAVATION, WHICH THE LAW
6 DEFINES AS AN AGGRAVATING CIRCUMSTANCE THAT ACCOMPANIES THE
7 MURDER THAT ALLOWS THE JURY TO CONSIDER IMPOSING A DEATH
8 SENTENCE. THE JURY ALSO HEARS EVIDENCE OF WHAT WE CALL
9 EVIDENCE IN MITIGATION. EVIDENCE IN MITIGATION, LET ME GIVE
10 YOU EXAMPLES -- BACKGROUND OF A DEFENDANT, MENTAL HEALTH
11 STATUS OF A DEFENDANT, FAMILY BACKGROUND, THINGS OF THAT
12 NATURE.

13 AT THE END OF THE PROCESS THE JURY WOULD BE INSTRUCTED -
14 - BEFORE THEY MAKE A FINAL DECISION OF LIFE IMPRISONMENT OR
15 DEATH, THE JURY WOULD BE TOLD TO GIVE SERIOUS, CAREFUL
16 CONSIDERATION TO ALL THE EVIDENCE, THE INSTRUCTIONS ON THE
17 LAW, AND THAT INCLUDES ANY AGGRAVATING CIRCUMSTANCE AND
18 EVIDENCE IN MITIGATION. AND BEFORE YOU MADE A FINAL
19 DECISION, IF YOU WERE IN THAT SITUATION, WOULD YOU FOLLOW
20 YOUR OATH AND GIVE CAREFUL CONSIDERATION TO ALL OF THAT
21 EVIDENCE?

22 A YES.

23 Q NOW, IF YOU WERE IN THAT SITUATION, JUST IN A GENERAL
24 SENSE, AND YOU WERE IN A SENTENCING JURY, AND WE'RE AT THE
25 END OF THE PROCESS AND YOU HAVE WEIGHED THE EVIDENCE VERY

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 CAREFULLY, YOU HAVE CONSIDERED ANY AGGRAVATING CIRCUMSTANCE.
2 YOU HAVE CONSIDERED THE MITIGATION EVIDENCE. IF YOU BELIEVE
3 THAT THE APPROPRIATE SENTENCE WAS LIFE IN PRISON, COULD YOU
4 VOTE FOR LIFE IMPRISONMENT?

5 A I DON'T KNOW. I -- YES, I GUESS I COULD.

6 Q OKAY. LET'S LOOK AT THE OTHER SIDE OF THAT. LET'S SAY
7 YOU ARE ON THE JURY, YOU'VE CONSIDERED THE EVIDENCE, GO
8 THROUGH IT VERY CAREFULLY. YOU CONSIDER THE EVIDENCE IN
9 AGGRAVATION AND MITIGATION, AND YOU BELIEVED AND WERE
10 CONVINCED THAT THE PROPER PUNISHMENT IS THE DEATH PENALTY.
11 COULD YOU VOTE FOR THE DEATH PENALTY?

12 A I DON'T KNOW.

13 Q I'M SORRY?

14 A I DON'T KNOW.

15 Q WOULD YOU CONSIDER BOTH PENALTIES AS AN OPTION THAT YOU
16 WOULD GIVE SERIOUS CONSIDERATION TO?

17 A YES.

18 Q WOULD YOU APPROACH A SENTENCING HEARING -- AND AN
19 EXAMPLE, YOU KNOW, IS, WHEN YOU GO TO THE SENTENCING HEARING
20 THE DEFENDANT HAS BEEN FOUND GUILTY. WE DON'T NEED TO REHASH
21 THAT. SO YOU'RE DEALING WITH A MURDERER. AND THE LAW NEVER
22 REQUIRES THE DEATH PENALTY. BUT THE LAW SAYS UNDER CERTAIN
23 CIRCUMSTANCES, AN AGGRAVATING CIRCUMSTANCE, THAT THE STATE
24 CAN SEEK THE DEATH PENALTY.

25 I'LL GIVE YOU EXAMPLES OF THAT, IF I DIDN'T DO IT

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 EARLIER WITH YOU AND THE OTHER FOLKS. MURDER COMMITTED IN
2 THE COMMISSION OF CRIMINAL SEXUAL CONDUCT, MURDER COMMITTED
3 IN THE COMMISSION OF ARMED ROBBERY, KIDNAPPING, SOMETHING OF
4 THAT NATURE. THAT'S AN AGGRAVATING CIRCUMSTANCE THAT
5 COMBINES WITH THE MURDER AND PERMITS THE STATE TO SEEK THE
6 DEATH PENALTY.

7 AND IF I INSTRUCTED YOU AS A JUROR TO GIVE CAREFUL AND
8 THOUGHTFUL CONSIDERATION TO ANY SUCH AGGRAVATING
9 CIRCUMSTANCE, WOULD YOU HONOR YOUR OATH AND DO SO?

10 A YES.

11 Q ON THE OTHER HAND, THE MITIGATION EVIDENCE, EVIDENCE
12 WHICH MAY TEND TO LESSEN THE SEVERITY OF THE OFFENSE, THAT
13 MAY MITIGATE IN FAVOR OF A DEFENDANT. AND IF I INSTRUCTED
14 YOU TO GIVE CAREFUL AND MEANINGFUL CONSIDERATION OF THAT
15 EVIDENCE, WOULD YOU DO SO?

16 A YES.

17 Q NOW, WHEN I ASKED YOU THE NEXT QUESTION, AND THAT IS,
18 YOU ARE WILLING TO CONSIDER EITHER ONE, YOU HESITATED ON
19 BOTH. SO IF YOU BELIEVED THAT LIFE IMPRISONMENT WAS THE
20 APPROPRIATE PENALTY AND YOU HAVE BEEN THROUGH THAT ANALYSIS,
21 COULD YOU VOTE FOR LIFE IMPRISONMENT?

22 A YES.

23 Q ON THE SAME TOKEN, WHAT WOULD YOU DO IF YOU BELIEVED AND
24 WERE CONVINCED THAT THE DEATH SENTENCE WAS APPROPRIATE, COULD
25 YOU VOTE FOR IT?

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 A YES.

2 Q AND I NOTICE YOU HESITATE WHEN I ASK ON EITHER ONE. IS
3 THAT BECAUSE OF THE SERIOUSNESS OF THIS SITUATION?

4 A YES.

5 Q OKAY. AND WE APPRECIATE THAT.

6 NOW, THERE IS AN ADDITIONAL REQUIREMENT IN SOUTH
7 CAROLINA WHEN A JURY -- AND IT MUST BE UNANIMOUS, ALL TWELVE
8 MUST AGREE. WHEN A JURY VOTES TO IMPOSE THE DEATH PENALTY
9 THE LAW REQUIRES EACH JUROR TO SIGN HIS OR HER NAME TO THE
10 VERDICT FORM. IN THAT EVENT, COULD YOU SIGN YOUR NAME TO THE
11 VERDICT THAT IMPOSES THE DEATH PENALTY?

12 A YES.

13 Q DO YOU RECALL -- WELL, YOU'VE BEEN WAITING A LONG TIME
14 OVER THERE, I KNOW -- THAT LIST OF THREE TYPES OF JURORS?
15 AND I'VE GOT ANOTHER COPY HERE IF YOU WANT TO LOOK AT IT.
16 AND PERHAPS YOU DON'T FALL INTO ONE OF THOSE THREE
17 CATEGORIES, BUT IF YOU DO, WHICH ONE DESCRIBES YOU, SIR? AND
18 WOULD YOU LIKE TO LOOK AT THE LIST AGAIN?

19 A I WOULD SAY THE ONE THAT I'M NOT ALL ONE SIDE OR -- I'M
20 KIND OF IN THE MIDDLE. THE MIDDLE ONE.

21 Q THE ONE WHERE YOU APPROACH WITH AN OPEN MIND?

22 A YES.

23 Q YOU ARE NOT MADE UP FOR THE DEATH PENALTY, YOU'RE NOT
24 MADE FOR LIFE IMPRISONMENT?

25 A RIGHT.

TERRY B. MARSHALL -- VOIR DIRE BY THE COURT

1 Q SO WOULD YOU APPROACH YOUR JURY SERVICE WITH AN OPEN
2 MIND TO BE FAIR AND IMPARTIAL? WOULD YOU DO THAT?

3 A YES.

4 Q AND IF A CASE GOES TO A SENTENCING PHASE, WOULD YOU
5 REMAIN OPEN, EVEN IN THE SITUATION OF A MURDER, TO IMPOSE
6 EITHER LIFE IMPRISONMENT IF YOU BELIEVED IT APPROPRIATE OR
7 THE DEATH PENALTY IF YOU BELIEVED THAT APPROPRIATE? COULD
8 YOU GO EITHER WAY?

9 A YES.

10 Q DO YOU KNOW ANY REASON WHY YOU COULD NOT SERVE AS A
11 JUROR IN THIS CASE OR WHY YOU WOULD NOT BE QUALIFIED?

12 A NO.

13 THE COURT: MR. MARSHALL, THANK YOU, SIR. THE
14 ATTORNEYS ARE GOING TO HAVE SOME QUESTIONS. I MAY HAVE SOME
15 FOLLOW UP. AND AFTER THAT YOU WILL BE FREE TO GO. THANK
16 YOU.

17 LET'S SEE. MR. MAULDIN?

18 VOIR DIRE BY MR. MAULDIN:

19 Q MR. MARSHALL, HOW ARE YOU?

20 A (NO RESPONSE)

21 Q I WANT TO FIRST OF ALL PREFACE MY QUESTIONS WITH THESE
22 REMARKS. WE ARE IN THE PROCESS OF ATTEMPTING TO DETERMINE
23 WHICH OF THE LARGE ROOM FULL OF PEOPLE YESTERDAY END UP BEING
24 QUALIFIED FROM WHICH THE JURY WILL BE SELECTED IN THIS CASE.
25 THAT'S KIND OF WHAT THIS ENTIRE PROCESS IS ABOUT. AND THE

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 REALLY BEST WAY FOR US TO DO THAT IS FOR YOU TO DO MOST OF
2 THE TALKING INSTEAD OF US. WE'VE GOT TO KNOW HOW YOU FEEL IN
3 ORDER TO DETERMINE WHETHER YOU IN FACT ARE A QUALIFIED JUROR
4 IN THIS TYPE OF CASE. DO YOU FOLLOW ME?

5 A YES, SIR.

6 Q ALL RIGHT. SO WHAT I'M GOING TO SUGGEST IS THAT WE HAVE
7 A CONVERSATION. INSTEAD OF TESTIFYING, INSTEAD OF APPEARING
8 AS WITNESS AND BEING RESTRAINED, I WANT YOU TO OPEN UP AND
9 TELL US HOW YOU FEEL SO THE COURT WILL BE ABLE TO MAKE A
10 VALID DETERMINATION OF YOUR ELIGIBILITY. ALL RIGHT?

11 A OKAY. YOU'RE JUST NOT GOING TO MAKE IT SIMPLE.

12 Q THAT'S RIGHT. I'M GOING TO TRY TO -- I'M GOING TO TRY
13 TO MAKE MY QUESTIONS AS SIMPLE REGARDING THE ISSUES, AND THEN
14 I WANT YOU TO EXPRESS YOURSELF. AND IF YOU NEED ANY -- IF
15 YOU WANT TO ASK US QUESTIONS, PLEASE FEEL FREE TO DO SO.

16 ALL RIGHT. NOW, FIRST OF ALL, LET'S TALK A LITTLE BIT
17 ABOUT YOUR IMPRESSIONS OR FEELINGS ABOUT CAPITAL PUNISHMENT.
18 AND IN ORDER TO DO THIS WE'VE GOT TO ASSUME THAT WE'RE NOT
19 TALKING ABOUT THIS PARTICULAR CASE OR ANY PARTICULAR CASE
20 NECESSARILY. BUT JUST IN GENERAL, HOW DOES TERRY MARSHALL
21 FEEL ABOUT THE DEATH PENALTY AND WHAT IS HIS OPINION
22 REGARDING THE DEATH PENALTY AND ITS USE IN OUR CRIMINAL
23 JUSTICE SYSTEM?

24 A I THINK IT'S A NECESSARY EVIL. I THINK THE MOST
25 PRECIOUS THING THAT WE HAVE IS LIFE. SOMETIMES WE HAVE TO

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 THINK OF THE LIFE THAT WAS TAKEN BY THE LIFE THAT WE HAVE
2 NOW. SO WE HAVE TO BALANCE OUR EVILS AND OUR BLESSINGS.

3 Q OKAY. DO YOU THINK -- AND I'M TALKING ABOUT NATIONALLY,
4 NOT NECESSARILY JUST LOCALLY BUT NATIONALLY, DO YOU THINK
5 THAT THE DEATH PENALTY IS USED NOT OFTEN ENOUGH, TOO OFTEN OR
6 JUST ABOUT RIGHT, OR ANY OTHER WAY YOU WOULD LIKE TO DESCRIBE
7 YOUR VIEWS ON THAT? AND I'M GOING TO ASK YOU TO SIT A LITTLE
8 CLOSER TO THE MIKE. YOU'VE GOT A REAL QUIET VOICE.

9 A (COMPLIES)

10 Q THERE YOU GO. SO EVERYBODY IN THE ROOM CAN HEAR YOU.

11 A THEN YOU'LL REALLY MAKE ME NERVOUS.

12 Q (LAUGHTER)

13 A I CAN HEAR MYSELF. I REALLY DON'T HAVE AN OPINION OF
14 WHETHER WE USE IT TOO MUCH OR TOO LITTLE. I'M REALLY NOT
15 FAMILIAR WITH HOW MANY GET EXECUTED. I HEAR ABOUT A FEW, YOU
16 KNOW, THAT BECOME NATIONAL TELEVISION AND STUFF IN THE MEDIA.

17 Q WHAT DO YOU THINK IF YOU HAD TO GIVE A REASON OF LET'S
18 SAY A PURPOSE -- LET'S USE THAT TERM. IF YOU HAD TO GIVE A
19 PURPOSE FOR THE DEATH PENALTY, WHAT DO YOU THINK THE PURPOSE
20 OF THE DEATH PENALTY WOULD BE IN YOUR VIEW?

21 A TO KEEP SOCIETY FROM -- OTHER HUMAN BEINGS FROM BEING
22 HURT THE SAME WAY.

23 Q ALL RIGHT. HAVE YOUR VIEWS OR THE WAY THAT YOU FEEL
24 ABOUT THE DEATH PENALTY TODAY THAT YOU ARE EXPRESSING TO US,
25 HAVE YOUR VIEWS ON THE DEATH PENALTY CHANGED DURING YOUR

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 LIFETIME OR REMAINED GENERALLY THE SAME OR HOW WOULD YOU
2 EXPRESS YOUR RESPONSE TO THAT?

3 A I WOULD SAY THEY HAVE CHANGED.

4 Q AND HOW HAVE THEY CHANGED, MR. MARSHALL?

5 A I THINK WHEN I WAS A TEENAGER I PROBABLY DIDN'T BELIEVE
6 IN THE DEATH PENALTY AT ALL. I ALWAYS THOUGHT THAT WAS
7 CRUEL. AS I GREW OLDER, IT CHANGED FROM JUST LIFE ITSELF,
8 WATCHING, YOU KNOW, CRIMINALS KILL PEOPLE AND...

9 Q HAVE YOU HAD A OCCASIONS TO DISCUSS YOUR VIEWS WITH
10 EITHER FRIENDS OR -- I NOTICE YOU'RE ACTIVE IN YOUR CHURCH --
11 CHURCH MEMBERS, SOCIAL FRIENDS, FAMILY, WITH REGARD TO YOUR
12 VIEWS ON CAPITAL PUNISHMENT? HAVE YOU HAD THOSE OCCASIONS TO
13 DO THAT OVER THE YEARS OR...

14 A I'M SURE WE HAVE AT TIMES MENTIONED CAPITAL PUNISHMENT.

15 Q WOULD YOU SAY THAT THE EXPLANATION OR POSITIONS THAT YOU
16 HAVE TAKEN TODAY ARE ESSENTIALLY THE SAME THAT YOU HAVE TAKEN
17 IN THOSE CONVERSATIONS OR ARE THEY DIFFERENT?

18 A YES, I WOULD SAY THEY ARE.

19 Q THE -- I -- THE PROCESS, SOMETIMES IT'S VIEWED AS A
20 LITTLE BIT COMPLICATED, BUT REALLY IT'S QUITE SIMPLE, THE
21 PROCESS THAT SOUTH CAROLINA HAS IN PLACE FOR A CONSIDERATION
22 OF CAPITAL PUNISHMENT. THE FIRST THING, I THINK, THAT COMES
23 INTO PLAY IMMEDIATELY IS THAT THE DEATH PENALTY IN NO CASE IS
24 EVER A REQUIRED PUNISHMENT. AND I WANT TO ASK YOU FOR JUST A
25 MOMENT ABOUT THAT.

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 THE LAW IN SOUTH CAROLINA SAYS THAT THERE ARE ONLY
2 CERTAIN MURDERS WHICH THE PROSECUTION CAN SEEK THE DEATH
3 PENALTY. AND IN THOSE MURDERS OR IN THOSE CASES THEY ARE
4 CASES THAT INVOLVE A MURDER CONVICTION AND THEN THEY INVOLVE
5 AN ADDITIONAL AGGRAVATING CIRCUMSTANCE THAT THE COURT JUST
6 MENTIONED A FEW MOMENTS TO YOU. EVEN IN THOSE CASES, MR.
7 MARSHALL, EVEN WHERE THERE IS A MURDER -- AND THAT IS AN
8 INTENTIONAL, NO ACCIDENT, NO SELF-DEFENSE, NO MISTAKE, NO
9 INSANITY, NO ALIBI, ALL THAT IS OUT OF THE WAY. AS THE JUDGE
10 SAID, WE'RE NOT GOING TO HASH THAT OUT. THAT'S OVER -- THE
11 PERSON BEFORE THE JURY TO BE SENTENCED HAS BEEN CONVICTED BY
12 THAT SAME JURY OF THE OFFENSE OF INTENTIONAL MURDER WITH
13 MALICE. AND THERE IS AN AGGRAVATING CIRCUMSTANCE THAT MUST
14 BE PROVEN BEFORE THE JURY CAN EVEN CONSIDER A SENTENCE OF
15 DEATH.

16 IN THAT PARTICULAR SITUATION, MR. MARSHALL, IN THAT TYPE
17 OF CASE OF A MURDER WITH AN AGGRAVATING CIRCUMSTANCE, DO YOU
18 BELIEVE THAT A SENTENCE OF LIFE IN PRISON IS A SERIOUS
19 SENTENCE FOR A CONVICTED MURDER UNDER THOSE CIRCUMSTANCES?

20 A YES.

21 Q YOU DO. SO WE ARE LOOKING AT THE TWO MOST SERIOUS
22 POSSIBLE PUNISHMENTS. DO YOU AGREE WITH THAT?

23 A YES.

24 Q DO YOU -- IF THE JUDGE INSTRUCTED YOU -- AND AGAIN I'M
25 GOING TO THE SECOND PHASE TRIAL, YOU KNOW, WE'VE GOT THE TWO-

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 PART TRIAL. IF THE JUDGE INSTRUCTED YOU, MR. MARSHALL, THAT
2 YOU WERE TO GIVE CONSIDERATION, THAT YOU WERE INSTRUCTED,
3 REQUIRED TO CONSIDER CERTAIN INFORMATION IN SUPPORT OF A LIFE
4 SENTENCE -- AND THAT'S CALLED MITIGATING CIRCUMSTANCES, THAT
5 IS, THE TYPE THAT WOULD MAKE A LIFE SENTENCE THE MORE
6 APPROPRIATE SENTENCE -- THAT TYPE OF INFORMATION DOES NOT
7 NECESSARILY RELATE TO THE CRIME ITSELF. IN OTHER WORDS, THE
8 AGGRAVATORS AND THE MITIGATORS DON'T HAVE ANYTHING DO TO WITH
9 THE GUILT OF THE DEFENDANT. IT'S ONLY AS TO PUNISHMENT. AND
10 THEY MAY NOT RELATE AT ALL TO THE INCIDENT. THEY MAY BE SUCH
11 THINGS AS THE PERSON'S AGE OR THE PERSON'S MENTAL STATE AT
12 THE TIME OF THE TRIAL. THEY MAY BE HIS BACKGROUND
13 INFORMATION THAT HAVE NOTHING TO DO WITH THE OFFENSE. DO YOU
14 FOLLOW ME?

15 A YES.

16 Q WOULD YOU BE ABLE TO GIVE MEANINGFUL CONSIDERATION TO
17 THAT TYPE OF INFORMATION AND CONSIDER THE IMPOSITION OF A
18 LIFE SENTENCE ON A PERSON CONVICTED OF MURDER?

19 A YES.

20 Q ALL RIGHT. AND YOU ARE COMFORTABLE WITH YOUR ABILITY TO
21 GIVE CONSIDERATION TO THOSE TYPES OF THINGS?

22 A YES.

23 Q WOULD -- AND LET ME ASK YOU ONE FINAL QUESTION IN THAT
24 AND THEN I'VE GOT A COUPLE OF OTHER QUESTIONS ON ANOTHER
25 SUBJECT. WOULD THE LEVEL OF -- AND WE'RE TALKING -- NOW

TERRY B. MARSHALL -- VOIR DIRE BY MR. MAULDIN

1 WE'RE GOING BACK TO THE MURDER CONVICTION, THE OFFENSE, THE
2 INCIDENT. WOULD THE LEVEL OF PREMEDITATION MAKE ANY---

3 SOLICITOR ARIAIL: OBJECTION. HE IS PROFILING AND
4 STAKING OUT.

5 MR. MAULDIN: I'D LIKE TO BE HEARD THERE ON THAT, YOUR
6 HONOR, BECAUSE IT'S THE FIRST TIME THAT MATTER HAS COME UP
7 TODAY. I MEAN, I DON'T KNOW WHAT YOU'RE RULING IS GOING TO
8 BE, BUT IN THE EVENT THAT YOU WERE TO SUSTAIN THAT, I WOULD
9 LIKE TO HEARD ABOUT THE APPROPRIATENESS OF THAT QUESTION.

10 THE COURT: ALL RIGHT. MR. MARSHALL, WOULD YOU INDULGE
11 US JUST FOR A BRIEF MOMENT AND STEP OUT IN THE HALLWAY.
12 WE'LL GET YOU RIGHT BACK IN HERE.

13 (JUROR EXITS COURTROOM AT 5:14 P.M.)

14 THE COURT: YES, SIR.

15 MR. MAULDIN: THE QUESTION THAT I HAVE ASKED IS WHETHER
16 THE LEVEL OF PREMEDITATION IN THE OFFENSE ITSELF, THE ACT OF
17 MURDER, WHETHER THE LEVEL OF PREMEDITATION BY THE DEFENDANT
18 WOULD MAKE ANY DIFFERENCE IN THE EVALUATION OF WHICH SENTENCE
19 IS APPROPRIATE? I CAN'T IMAGINE HOW THAT WOULD NECESSARILY
20 -- I MEAN, THAT IS SOMETHING THAT THE JUROR HAS THE RIGHT TO
21 EXPRESS.

22 A COUPLE OF JURORS AGO -- AND I CAN'T REMEMBER THE
23 GENTLEMAN'S NAME -- HE TALKED ABOUT THE -- HE SAID -- HE
24 CALLED IT THE LEVEL OF PLANNING WAS HIS TERM, AND THAT WAS
25 WHEN I SAID, "WHY I HAVEN'T I BEEN ASKING THAT?" SO THAT'S

MATTERS AND MOTIONS

1 WHY IT'S THE FIRST TIME I'VE ASKED IT. I THINK IT'S AN
2 APPROPRIATE QUESTION.

3 THE COURT: YOUR POSITION, SIR?

4 SOLICITOR ARIAIL: MY POSITION IS HE -- WHAT HE'S DOING
5 IS HE'S ASKING THE JUROR TO GET INTO BASICALLY CASE SPECIFIC.
6 HE WANTS TO STAKE OUT WHERE IN THE JUROR'S MIND DOES IT
7 TRIGGER THAT THE PENALTY FOR DEATH LEAVES THE PENALTY FOR
8 LIFE. AND HE WANTS TO -- I MEAN, IT'S NO DIFFERENT THAN
9 ASKING HIM SOMETHING ELSE ABOUT THE CRIME OR WOULD IT BE OKAY
10 OR WOULD IT TRIGGER YOUR MIND FOR DEATH IF HE CUT HIS HEAD
11 OFF? I MEAN, THAT'S WHAT WE'RE ASKING HERE. HOW MUCH
12 PREMEDITATION, A DEGREE OF THE CRIME. WHERE HE IS TRYING TO
13 THINK BACK TO IS MR. WHITE WHERE MR. WHITE HAD WANDERED INTO
14 THE QUESTION, WELL, I HAD THE THING ABOUT THE DEGREE OF PROOF
15 AND THAT SORT OF THING. THAT'S WHAT SPUN HIS MEMORY ON THAT.

16 THE POINT IS, REGARDLESS OF WHO RESPONDED, IT WASN'T
17 RESPONSIVE TO THE QUESTION. AND MY ARGUMENT IS THAT ASKING
18 HIM HOW MUCH THE DEGREE OF PREMEDITATION -- I MEAN, FIRST, I
19 DON'T KNOW HOW THE WITNESS COULD ANSWER THAT. BUT, NUMBER
20 TWO, EVEN IF HE DOES, IT'S ASKING THE WITNESS TO GIVE A
21 TRIGGER POINT, TO STAKE OUT WHERE HE WOULD MAKE THAT DECISION
22 SO HE'LL KNOW AND HAVE A BETTER IDEA OF WHAT TO PRESENT, AND
23 I THINK THAT'S THE WHOLE -- THAT'S NOT THE PURPOSE OF THIS
24 PROCEEDING.

25 THE COURT: DO YOU WISH TO RESPOND FURTHER?

MATTERS AND MOTIONS

1 MR. MAULDIN: WELL, ONLY TO THIS EXTENT, YOUR HONOR,
2 THAT THE STATE IS GOING TO PRESENT THEIR CASE. I'M VERY
3 FAMILIAR WITH THEIR CASE. I KNOW WHAT THE EVIDENCE IS IN
4 THIS CASE. I'M NOT GOING TO BE ABLE TO CHANGE THE EVIDENCE.
5 I WANT TO KNOW HOW THIS GENTLEMAN FEELS ABOUT THE LEVEL OF
6 PREMEDITATION IN ANY CASE AND WHETHER OR NOT THAT GOES INTO
7 THE FORMULA REGARDING THE APPROPRIATE PUNISHMENT FOR MURDER.
8 AND I'LL TELL THE JUROR, IF IT WOULD MAKE THE QUESTION MORE
9 APPROPRIATE, I'LL TELL THE JUROR NOT IN THIS CASE BUT IN JUST
10 A HYPOTHETICAL CASE WOULD THE LEVEL OF PREMEDITATION OF THE
11 PERSON CONVICTED OF MURDER MAKE ANY DIFFERENCE TO YOU IN
12 REGARD TO PENALTY?

13 SOLICITOR ARIAIL: MAY I RESPOND?

14 THE COURT: YES, SIR.

15 SOLICITOR ARIAIL: I THOUGHT THE PURPOSE OF VOIR DIRE
16 WAS TO DETERMINE THE BIAS OR LACK THEREOF OR PRESENCE THEREOF
17 OF A JUROR, NOT TO STAKE OUT WHEN AND WHERE THEY MAY GIVE ONE
18 OF THE PUNISHMENTS. THE NEXT RESPONSE IS GOING TO BE, I'M
19 GOING TO START GOING BACK INTO THAT AREA AND THEN WE'RE GOING
20 TO HAVE ALL OF THESE QUESTIONS THAT DEAL WITH AN INDIVIDUAL
21 JUROR'S POSITIONS THAT ARE TRIGGER POINTS. AND THAT'S NOT
22 WHERE WE'RE SUPPOSED TO BE. WE'RE SUPPOSED TO FIND OUT IF
23 THIS JUROR CAN BE FAIR AND IMPARTIAL IN DECIDING A SENTENCE
24 AND NOT WHERE IT TRIGGERS THAT THE DEGREE OF THE TWO
25 SEPARATES. WHAT HE'S BASICALLY ASKING THIS JUROR TO TELL HIM

MATTERS AND MOTIONS

1 AND TELL US IS WHERE DOES THE SEVERITY OF THE CRIME LEAVE
2 LIFE AND CROSS TO DEATH, AND I THINK THAT'S IMPROPER.

3 THE COURT: OBJECTION SUSTAINED.

4 MR. MAULDIN: YOUR HONOR, THE NEXT QUESTION IS GOING TO
5 BE THE QUESTION REGARDING THE OPINION AS TO THE
6 APPROPRIATENESS OF THE PENALTY IN THE DEATH OF A LAW
7 ENFORCEMENT OFFICER, AND I -- THAT'S BEEN SOMEWHAT OF A
8 SENSITIVE QUESTION. I DON'T KNOW IF THAT'S -- I DON'T KNOW
9 HOW STAKING OUT THAT'S GOING TO BE.

10 SOLICITOR ARIAIL: I THINK THAT'S THE ULTIMATE
11 STAKEOUT. THAT'S THE ULTIMATE STAKEOUT. HE'S ASKING HIM --
12 THAT IS VERY CASE SPECIFIC, AND HE'S ASKING HOW THAT'S GOING
13 TO REACT, AND I DON'T THINK HE'S GOT A RIGHT TO KNOW THAT
14 QUESTION---

15 THE COURT: OBJECTION---

16 SOLICITOR ARIAIL: HE CERTAINLY CAN ABOUT THE BIAS
17 OF---

18 THE COURT: OBJECTION SUSTAINED.

19 SOLICITOR ARIAIL: THANK YOU.

20 MR. MAULDIN: CAN I PUT ON THE RECORD MY POSITION AND
21 THEN I'LL BE THROUGH?

22 THE COURT: PLEASE DO SO.

23 MR. MAULDIN: YOUR HONOR, AS IN THE -- I THINK IT'S
24 LONGWORTH, I BELIEVE, OUT OF SPARTANBURG IS A CASE THAT JUST
25 COMES TO MIND. IF THE PROSECUTION IN THE REVERSE SITUATION

MATTERS AND MOTIONS

1 WERE NOT ALLOWED TO ASK IF THE AGE OF A DEFENDANT WOULD BE
2 CONSIDERED A MITIGATOR AND WOULD AFFECT A PENALTY WHERE A
3 DEFENDANT IN FACT WAS OF A YOUNG AGE, THEN HE COULD NEVER
4 KNOW WHETHER HE WAS PICKING AN ELIGIBLE JUROR. IF -- A NON-
5 TRIGGER MAN WOULD BE A SIMILAR TYPE SITUATION. IF YOU
6 COULDN'T EVER ASK THAT, THEN YOU WOULD NEVER KNOW IF YOUR
7 JURORS WERE QUALIFIED. I SAY THE REVERSE APPLIES. IF WE
8 CAN'T ASK THE QUESTION ABOUT A LAW ENFORCEMENT OFFICER AND
9 WHETHER THEY HAVE A PREDETERMINED PENALTY IN THE CASE OF A
10 KILLING OF A LAW ENFORCEMENT OFFICER, THEN WE'RE NOT GOING TO
11 KNOW WHETHER THIS JUROR IS -- JURY AS A WHOLE IS IMPAIRED
12 ACROSS THE BOARD REGARDING THAT AGGRAVATOR. SO THAT'S MY
13 POSITION ON SUPPORT OF THAT QUESTION.

14 THE COURT: THE PROBLEM IS PROBABLY MY FAULT. I HAD
15 ALL THESE GREAT INTENTIONS THAT WE WERE GOING TO QUALIFY THE
16 JURY AND MOVE FORWARD AND I JUST -- AND I TAKE BLAME FOR IT.
17 THE LAST THING WE'RE DOING REALLY IS QUALIFYING A JURY. I
18 MEAN, WE'RE STAKING OUT. WE'RE PROFILING. AND I'M TRYING TO
19 GET A GRIP ON HOW TO STOP IT. I DON'T SEE HOW YOU CAN
20 PROPERLY ASK A POTENTIAL JUROR THE VERY ISSUE IN THIS CASE.

21 MR. MAULDIN: LET ME SAY -- LET ME RESPOND TO IT, YOUR
22 HONOR. IF THE QUESTION IS ONE OF TWO -- AND I HAVE TWO
23 DIFFERENT PHRASEOLOGIES -- DO YOU HAVE AN OPINION ABOUT WHAT
24 THE APPROPRIATE PUNISHMENT WOULD BE IN THE KILLING OF A LAW
25 ENFORCEMENT OFFICER? IF THEY HAVE A PREDETERMINED VIEW AS TO

MATTERS AND MOTIONS

1 WHAT THE APPROPRIATE PUNISHMENT IS FOR THAT STATUTORY
2 AGGRAVATOR AND THAT WILL IMPAIR THEIR ABILITY TO THEN LISTEN
3 TO THE JUDGE'S INSTRUCTIONS ON MITIGATION, THEN WE DO NOT
4 KNOW WHETHER WE HAVE A QUALIFIED JURY OR NOT. AND THAT IS---

5 THE COURT: ALL RIGHT.

6 MR. MAULDIN: AND I APOLOGIZE---

7 THE COURT: HERE IS WHAT I'LL LET YOU ASK. YOU CAN ASK
8 -- YOU CAN'T ASK THAT QUESTION IN A VACUUM. YOU JUST -- I
9 KNOW WHAT WE'RE DOING. I JUST DON'T KNOW HOW TO STOP IT.
10 YOU CAN ASK THAT IF THERE IS AN AGGRAVATING CIRCUMSTANCE SUCH
11 AS MURDER IN THE COMMISSION OF -- AND YOU CAN JUST PICK
12 SEVERAL -- KILLING BY POISON, TORTURE, ARMED ROBBERY,
13 KIDNAPPING, AND IN THAT SERIES THAT YOU GIVE OF AGGRAVATING
14 CIRCUMSTANCES IF YOU THROW IN THERE THE KILLING OF A POLICE
15 OFFICER AS AN EXAMPLE AMONG OTHERS, YOU CAN ASK SOMETHING TO
16 THE EFFECT THAT WOULD THEY ALSO CONSIDER THE EVIDENCE IN
17 MITIGATION OR WOULD THEIR MIND ALREADY BE MADE UP BECAUSE OF
18 THE NATURE OF AN AGGRAVATION OR SOMETHING TO THAT EXTENT.
19 BUT I'M NOT GOING TO LET YOU HIT THE BULL'S-EYE ON THIS CASE
20 WITHOUT COMBINING IT WITH THEIR CONSIDERATION OF THE
21 MITIGATION EVIDENCE.

22 MR. MAULDIN: ALL RIGHT.

23 THE COURT: BRING MR. MARSHALL BACK IN.

24 (JUROR REENTERS COURTROOM AT 5:24 P.M.)

25 THE COURT: ALL RIGHT. MR. MARSHALL, I THINK WE'RE

MATTERS AND MOTIONS

1 READY TO RESUME. THANK YOU FOR YOUR PATIENCE, SIR.

2 VOIR DIRE CONTINUES BY MR. MAULDIN

3 Q MR. MARSHALL, I WANT TO ASK ONE FINAL QUESTION REGARDING
4 THIS PARTICULAR AREA, AND I WANT YOU TO -- A LITTLE BIT OF A
5 COMPLICATED QUESTION. IT'S GOT A LOT OF ANGLES. BUT I WANT
6 YOU TO STOP ME OR HAVE ME REPEAT IT IF YOU DON'T UNDERSTAND.

7 A OKAY.

8 Q RECALLING WHAT THE JUDGE HAS INSTRUCTED YOU ABOUT THE
9 TWO-PHASE TRIAL AND YOU HAVE THE GUILT OR INNOCENCE ISSUE
10 FIRST, AND THEN UPON A CONVICTION YOU GO INTO THE SECOND
11 PHASE, AND IN THE SECOND PHASE THE GOVERNMENT WOULD HAVE THE
12 RIGHT TO BRING FORTH AGGRAVATING INFORMATION OR CIRCUMSTANCES
13 THAT THE STATUTE PROVIDES, WITH THAT AS A CAVEAT, IF THERE
14 WERE PRESENTED TO YOU AN AGGRAVATING CIRCUMSTANCE -- AND I'M
15 GOING TO GIVE YOU A SERIES JUST AS EXAMPLES OF THOSE, THE
16 TYPES THAT ARE CONTAINED IN THE STATUTE, FOR EXAMPLE, MURDER
17 IN THE COMMISSION OF AN ARMED ROBBERY, MURDER IN THE
18 COMMISSION OF A KIDNAPPING OR CRIMINAL SEXUAL MISCONDUCT, THE
19 KILLING OF A LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY, THE
20 TORTURE OR POISON OF A VICTIM, THAT TYPE OF INFORMATION -- IF
21 THAT TYPE OF INFORMATION WERE GIVEN TO YOU, COULD YOU STILL
22 GIVE MEANINGFUL CONSIDERATION TO MITIGATING INFORMATION OR
23 WOULD YOUR MIND BE MADE UP REGARDING WHAT YOU FELT LIKE WAS
24 THE APPROPRIATE PUNISHMENT FOR AN OFFENSE WITH THIS
25 AGGRAVATING CIRCUMSTANCE?

TERRY B. MARSHALL -- VOIR DIRE CONTINUES BY MR. MAULDIN

1 A (PAUSE) I COULD MAKE A SIMPLE YES, BUT TRUE TO MYSELF I
2 WOULD HAVE TO SAY IF A LIFE IS TAKEN AND NOW WE HAVE ANOTHER
3 LIFE IN OUR HANDS, IT WOULD TAKE A LOT OF EVIDENCE FOR ME TO
4 PUT THIS PERSON'S LIFE IN JEOPARDY MORE THAN IT WOULD FOR
5 PRISON.

6 Q OKAY. SO YOU WOULD STILL CONSIDER A LIFE IN PRISON
7 SENTENCE AS BEING A SUFFICIENT PENALTY FOR EVEN AN AGGRAVATED
8 CASE?

9 A YES.

10 Q ALL RIGHT. THANK YOU.

11 LAST QUESTION NOW, MR. MARSHALL, AND I APPRECIATE YOUR
12 PATIENCE AS WELL. WHEN A JURY IN A CAPITAL CASE GOES INTO
13 THE SECOND PHASE -- AND WE'VE GOT TO ASSUME -- YOU KNOW, YOU
14 SPIN FORWARD AND ASSUME THAT THE SECOND PHASE OCCURS IN ORDER
15 TO ASK THE QUESTION -- THE JURY OF TWELVE PEOPLE WOULD
16 DELIBERATE. THEY WOULD BE GIVEN THE INSTRUCTIONS FROM THE
17 JUDGE ABOUT WHAT THEY ARE TO CONSIDER ABOUT THE POSSIBLE LIFE
18 SENTENCE, POSSIBLE DEATH SENTENCE, ALL OF THAT. THEY GO BACK
19 AND THEY START DELIBERATING, AND THEY DELIBERATE FOR AS LONG
20 AS THEY NEED. THE JUDGE HAS TOLD YOU ALL TWELVE WOULD HAVE
21 TO SIGN THE FORM TO IMPOSE THE DEATH PENALTY.

22 LET'S ASSUME -- AFTER LENGTHY DELIBERATIONS AND
23 EVERYBODY HAS BEEN GIVEN AN OPPORTUNITY, LET'S ASSUME THAT
24 THEY TAKE THE FINAL VOTE AND IT'S TEN TO TWO. TEN IN FAVOR
25 OF ONE PENALTY, TWO IN FAVOR OF THE OTHER, WHICHEVER, EITHER

TERRY B. MARSHALL -- VOIR DIRE CONTINUES BY MR. MAULDIN

1 PENALTY OR THE OTHER.

2 LET'S PUT YOU IN THE MINORITY FOR A MOMENT. I WANT TO
3 ASK YOU HOW YOU WOULD REACT TO THAT. AND THE QUESTION IS
4 THIS, IF YOU WERE IN THAT GROUP OF ONE OR TWO OR MAYBE THREE,
5 A HEAVY MAJORITY DISAGREED ON A LIFE OR DEATH DECISION, WOULD
6 YOU GIVE UP THE POSITION YOU HAD TAKEN AND SIDE WITH THE
7 MAJORITY SIMPLY TO AGREE AND GET THE PROCESS OVER WITH OR
8 WOULD YOU TEND TO STICK WITH THE POSITION YOU HAD TAKEN
9 DURING THE DELIBERATIONS?

10 A NO, I WOULDN'T.

11 Q NO, I WOULDN'T WHAT?

12 A I WOULDN'T JUST SIDE WITH THE MAJORITY.

13 Q ALL RIGHT. AND THEN THE REVERSE. IF YOU WERE WITH THE
14 MAJORITY, IF YOU WERE ONE OF THE TEN AND THERE WERE MAYBE TWO
15 ON THE OTHER SIDE, WOULD YOU TRY TO -- AND OBVIOUSLY YOU ARE
16 DELIBERATING AND TALKING AND ALL, BUT WOULD YOU TRY TO FORCE
17 THOSE TWO TO SIDE WITH YOU OR WOULD YOU RESPECT THEIR RIGHT
18 TO HAVE THEIR OWN VIEW ON A LIFE OR DEATH QUESTION?

19 A I WOULD HAVE TO RESPECT THEIR RIGHT.

20 MR. MAULDIN: THANK YOU.

21 THANK YOU, JUDGE,

22 THE COURT: YES, SIR.

23 MR. ARIAIL?

24 SOLICITOR ARIAIL: JUST ONE QUESTION.

25 VOIR DIRE BY SOLICITOR ARIAIL:

TERRY B. MARSHALL -- VOIR DIRE BY SOLICITOR ARIAIL

1 Q MR. MARSHALL, MY NAME IS BOB ARIAIL, AND I'M THE
2 SOLICITOR FOR THE THIRTEENTH CIRCUIT, AND I WILL BE
3 REPRESENTING THE STATE. THIS IS MS. STROM, WHO IS MY DEPUTY,
4 AND MS. HERVEY, WHO IS MY ASSISTANT.

5 IS THERE ANYTHING THAT YOU ARE AWARE OF, EITHER YOUR
6 PERSONAL, RELIGIOUS, MORAL OR OTHER TYPES OF BELIEFS THAT YOU
7 BRING INTO THE COURTHOUSE, THAT WOULD IMPACT OR AFFECT YOUR
8 ABILITY TO FAIRLY CONSIDER THE STATE'S REQUEST TO IMPOSE THE
9 DEATH SENTENCE? ANYTHING IN YOUR BACKGROUND THAT YOU MAY BE
10 AWARE OF?

11 A NO, SIR.

12 SOLICITOR ARIAIL: OKAY. THANK YOU.

13 THANK YOU, YOUR HONOR. THAT'S ALL WE HAVE.

14 THE COURT: MR. MARSHALL, THANK YOU SO MUCH. THEY'RE
15 GOING TO TAKE YOU TO A JURY ROOM, AND WE'LL GET YOU BACK HERE
16 IN A COUPLE OF MINUTES AND YOU'LL BE FREE TO GO. THANK YOU.

17 (JUROR EXITS COURTROOM AT 5:29 P.M.)

18 THE COURT: ALL RIGHT. THE JUROR HAS BEEN EXCUSED.
19 QUALIFIED OR NOT QUALIFIED?

20 SOLICITOR ARIAIL: QUALIFIED.

21 MR. MAULDIN: QUALIFIED.

22 THE COURT: AND I'LL BE GLAD TO HEAR FIRST FROM THE
23 STATE WHENEVER THE STATE IS READY TO MAKE A DECISION. Y'ALL
24 TAKE YOUR TIME.

25 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL)

MATTERS AND MOTION

1 PRESENT HIM.

2 **MR. MAULDIN:** (OFF RECORD WITH CO-COUNSEL) SWEAR HIM.

3 **THE COURT:** ALL RIGHT. ASK MR. MARSHALL TO COME BACK.

4 AND IF YOU WOULD, GET MS. SMITH, THE LAST ONE IN THAT PANEL.

5 **SOLICITOR ARIAIL:** YOUR HONOR, BEFORE WE GO TO THE NEXT
6 ONE, I JUST LIKE TO POINT OUT SOME LAW ON THOSE LAST TWO
7 ISSUES.

8 **THE COURT:** ALL RIGHT, SIR. THANK YOU.

9 (JUROR REENTERS COURTROOM 5:31 P.M.)

10 **THE COURT:** MR. MARSHALL, YOU HAVE BEEN SELECTED AS A
11 JUROR IN THIS CASE. I'M GOING TO GIVE YOU AN ORDER THAT
12 TELLS YOU WHAT TO DO FROM HERE. NUMBER ONE, REMEMBER THE
13 OATH THAT YOU ARE STILL UNDER NOT TO DISCUSS THIS CASE WITH
14 ANYONE. DON'T SPECULATE ABOUT THE CASE WITH ANYONE. AND
15 DON'T EXPOSE YOURSELF TO ANY MEDIA COVERAGE ABOUT THE CASE.

16 IN THIS ORDER I'M GOING TO GIVE YOU, SIR, IT HAS A PHONE
17 NUMBER THAT YOU WILL CALL BEGINNING TOMORROW NIGHT. YOU
18 DON'T HAVE TO CALL IT TONIGHT. BUT TOMORROW NIGHT AFTER 8:00
19 CALL THIS NUMBER. THERE WILL BE A RECORDED MESSAGE. THE
20 MESSAGE MAY BE TO CALL BACK THURSDAY NIGHT AFTER 8:00. IT
21 MAY BE TO COME BACK AND REPORT ON THURSDAY FOR JURY DUTY.
22 WE'LL JUST HAVE TO WAIT AND SEE. IT DEPENDS HOW MANY JURORS
23 WE PICK UP IN THIS LENGTHY PROCESS.

24 BUT AT SOME POINT WE'RE GOING TO HAVE A SUFFICIENT
25 NUMBER OF JURORS. AT THAT POINT THE MESSAGE WILL INSTRUCT

MATTERS AND MOTION

1 YOU TO COME IN. IT WILL TELL YOU WHERE TO PARK. THERE ARE
2 OTHER INSTRUCTIONS IN THIS ORDER ABOUT PACKING YOUR BAGS AND
3 KEEPING THEM IN YOUR CAR -- WHEN YOU ENTER THE COURTHOUSE,
4 DON'T BRING THEM WITH YOU JUST KEEP THEM IN YOUR CAR -- AND
5 THINGS OF THAT NATURE.

6 FOLLOW THE INSTRUCTIONS ON THE RECORDED MESSAGE AND
7 BEGIN CALLING THAT NUMBER EACH EVENING BEGINNING TOMORROW
8 NIGHT AFTER 8:00 P.M.

9 THANK YOU SO MUCH. I'M GOING TO GIVE YOU THE ORDER AT
10 THIS TIME. DO YOU UNDERSTAND THE INSTRUCTIONS I HAVE JUST
11 GIVEN YOU?

12 JUROR NUMBER 233: YES, SIR.

13 THE COURT: VERY GOOD. THANK YOU, SIR, AND I'LL SEE
14 YOU LATER.

15 (JUROR EXITS COURTROOM AT 5:32 P.M.)

16 THE COURT: KEEP MS. SMITH OUT THERE JUST FOR A MOMENT.

17 BAILIFF: ALL RIGHT.

18 THE COURT: YES, SIR?

19 SOLICITOR ARIAIL: I'M SORRY. STATE VERSUS DAVID
20 CLAYTON HILL FROM 1998, STATE VERSUS BENJAMIN POWERS FROM
21 1998 BOTH HELD THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION
22 IN REFUSING TO ALLOW THE DEFENSE TO VOIR DIRE JURORS ON
23 SPECIFIC MITIGATING CIRCUMSTANCES WHERE A TRIAL JUDGE DID
24 ALLOW THE DEFENSE TO ASK JURORS WOULD THEY CONSIDER
25 MITIGATING CIRCUMSTANCES IF PRESENTED BY DEFENSE AND

MATTERS AND MOTION

1 INSTRUCTED BY THE COURT. BUT ONCE YOU GO INTO THE GENERAL,
2 IF YOU'VE DONE THAT, THE SUPREME COURT HAS SAID THAT IS
3 ENOUGH. YOU'RE NOT ABUSING YOUR DISCRETION WITH ANY SPECIFIC
4 IDENTIFICATION OF AGGRAVATING FACTORS.

5 STATE VERSUS JAMES NEAL TUCKER FROM 1999 SAYS -- AS TO
6 YOUR SECOND QUESTION AS TO HOW DO YOU LIMIT, HOW DO YOU STOP
7 IT? -- AND I WANT TO JOIN WITH THE COURT. I'D LIKE TO STOP
8 IT TOO. AND I THINK THAT'S ALL THAT'S GOING ON IS WE'RE
9 PROFILING. WE HAVE HELD THAT SECTION 16-3-20 (D) DOES NOT
10 REQUIRE THE TRIAL JUDGE TO ALLOW COUNSEL TO ENGAGE IN LENGTHY
11 INTERVIEWS OF A PROSPECTIVE JUROR. AND THAT IS ALL THESE ARE
12 IS LENGTHY INTERVIEWS. THEY ARE NOTHING MORE THAN LENGTHY
13 INTERVIEWS AIMED AT PROFILING AND STAKING OUT, AND THEY'RE
14 NOT AIMED AT REALLY DETERMINING BIAS OF THE JURY. IT'S
15 ALMOST DETERMINED WHEN YOU FINISH AS TO WHERE THIS JUROR IS.

16 IF EVERYBODY COULDN'T TELL THAT WAS A LIFE PRONE JUROR
17 -- HE WOULD IMPOSE THE DEATH PENALTY, BUT HE'S GOING TO PUT
18 AN EXTRA BURDEN ON THAT. I KNEW THAT. IT DIDN'T TAKE 25
19 MINUTES OF QUESTIONING TO FIGURE THAT OUT. AND I JUST THINK
20 THAT WE'RE WASTING TIME, AND I WOULD URGE THE COURT TO SPEED
21 THIS UP. THANK YOU.

22 THE COURT: THANK YOU.

23 ASK MS. SMITH TO COME IN.

24 (JUROR NUMBER 47 ENTERS COURTROOM AT 5:35 P.M.)

25 ANN CASEY SMITH (WHITE FEMALE),

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

2 VOIR DIRE BY THE COURT:

3 Q MS. SMITH, FIRST I APOLOGIZE FOR THE LATENESS OF THE
4 HOUR. WE'RE DOING THE BEST WE CAN. IT'S SORT OF A SLOW AND
5 LENGTHY PROCESS. AND WE KNOW IT'S A BURDEN FOR YOU TO BE
6 HERE AND TO SIT OVER THERE FOR HOURS IN THAT OTHER COURTROOM,
7 AND I APPRECIATE SO MUCH YOUR PATIENCE.

8 A YOU'RE WELCOME.

9 Q ONCE WE GET THROUGH WITH THIS YOU'LL BE FREE TO GO FOR
10 THE DAY.

11 I'M GOING TO TELL YOU A LITTLE BIT MORE ABOUT THE
12 PROCESS OF A CAPITAL CASE. I'M GOING TO ASK YOU SOME
13 QUESTIONS AND THE ATTORNEYS WILL HAVE QUESTIONS AS WELL.

14 THIS CASE ARISES FROM AN INCIDENT WHICH OCCURRED IN
15 GREENVILLE COUNTY ON DECEMBER THE 6TH IN 2000. THE DEFENDANT,
16 MR. WOOD, IS CHARGED WITH THE OFFENSE OF MURDER. THE VICTIM
17 LISTED IN THE INDICTMENT IS ERIC NICHOLSON. MR. NICHOLSON
18 WAS AT THAT TIME A STATE TROOPER, A HIGHWAY PATROLMAN.

19 THIS CASE RECEIVED ATTENTION IN THE MEDIA. AND WHAT I
20 WANT TO KNOW INITIALLY FROM YOU IS IF YOU RECALL ANY
21 INFORMATION THAT YOU HAVE LEARNED FROM THE MEDIA OR OTHERWISE
22 ABOUT THIS CASE, AND IF YOU HAVE, TELL ME SPECIFICALLY WHAT
23 YOU RECALL.

24 A THE ONLY THING THAT I RECALL IS THAT A POLICE OFFICER
25 PULLED SOMEONE OVER IN A TRAFFIC SITUATION AND THAT HE WAS

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 SHOT, ALSO THAT THE PERSON WAS SUPPOSEDLY ON A MOTOR SCOOTER.

2 Q ANYTHING BEYOND THAT?

3 A THAT'S IT.

4 Q OKAY. NOW, THERE MAY BE SOME REFERENCE TO AN EVENT OR
5 SERIES OF EVENTS IN ANDERSON COUNTY. NOW, WHEN I MENTION
6 ANDERSON COUNTY DOES THAT TRIGGER ANY MEMORY YOU HAVE ABOUT
7 THIS CASE?

8 A NO, IT DOESN'T.

9 Q THE REASON I ASK THESE TYPES OF QUESTIONS, MS. SMITH, IS
10 THAT ANYBODY WHO SERVES ON A JURY TAKES AN OATH, AND THAT
11 OATH REQUIRES THE JURY TO FIND THE TRUTH FROM THE EVIDENCE,
12 NOT FROM WHAT THEY HAVE HEARD IN THE MEDIA OR OUTSIDE OF
13 COURT. SO IN THAT REGARD A JUROR WOULD HAVE TO DISREGARD ANY
14 INFORMATION HE OR SHE CAME BY OUTSIDE OF COURT. YOU HAVE TO
15 MAKE YOUR DECISION ONLY BASED ON THE FACTS PRESENTED DURING
16 THE COURSE OF THE TRIAL. DO YOU UNDERSTAND THAT?

17 A ABSOLUTELY.

18 Q AND IF YOU WERE A JUROR, WOULD YOU FOLLOW YOUR OATH IN
19 THAT REGARD?

20 A YES, I WOULD.

21 Q WOULD YOU ALSO FOLLOW YOUR OATH TO COMPLY WITH MY LEGAL
22 INSTRUCTIONS AND FOLLOW THE LAW AS I GIVE IT?

23 A YES, I WOULD.

24 Q NOW, HAVE YOU ALREADY FORMED AN OPINION ABOUT THE GUILT
25 OR INNOCENCE OF THIS PARTICULAR DEFENDANT?

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 A NO, I HAVE NOT.

2 Q TWO LEGAL PRINCIPLES I MENTIONED TO YOU EARLIER TODAY
3 AND ALSO YESTERDAY. PRESUMPTION OF INNOCENCE. ANYONE
4 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT. DO YOU
5 UNDERSTAND AND AGREE WITH THAT LEGAL PRINCIPLE?

6 A YES, I DO.

7 Q DO YOU FURTHER AGREE THAT THE BURDEN OF PROOF SHOULD BE
8 ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT BECAUSE
9 THERE IS NEVER A BURDEN ON A DEFENDANT TO PROVE OR DISPROVE
10 ANYTHING? DO YOU UNDERSTAND AND AGREE WITH THAT?

11 A YES, I DO.

12 Q OKAY. NOW, MS. SMITH, WE MAY NOT REACH THE SECOND PHASE
13 OF THE TRIAL IN THIS CASE, THE SENTENCING PHASE, WHICH I
14 DISCUSSED WITH YOU, BUT WE POSSIBLY COULD. AND SINCE WE
15 POSSIBLY COULD, I NEED TO ASK YOU QUESTIONS ABOUT A
16 SENTENCING PHASE -- EVEN THOUGH IT MAY NOT EVEN OCCUR -- AND
17 FIND OUT FROM YOU VIEWS YOU MAY HAVE ON ISSUES THAT COULD
18 ARISE IN THE SENTENCING PHASE, LIKE YOUR CONSIDERATION OF
19 CERTAIN TYPES OF EVIDENCE AND YOUR VIEWS ON THE DEATH
20 PENALTY. ALL RIGHT?

21 A UH-HUH (AFFIRMATIVE).

22 Q WHEN A JURY MOVES TO A SENTENCING PHASE, I WANT YOU TO
23 UNDERSTAND THAT THE GUILT PHASE OR THE FIRST PHASE IS OVER.
24 SO WHEN A JURY MOVES TO THE SENTENCING PHASE, GUILT OF THE
25 CRIME OF MURDER HAS BEEN ESTABLISHED. THERE IS NOTHING LEFT

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 TO HASH OUT. THERE IS NO DEFENSE, NO ALIBI, NO SELF-DEFENSE.
2 IT'S MURDER. AND WHEN THE JURY MOVES TO THE SENTENCING PHASE
3 HAVING ALREADY FOUND A DEFENDANT -- WE'RE NOT TALKING ABOUT
4 THIS CASE, JUST THE PROCESS IN GENERAL -- A DEFENDANT GUILTY
5 OF MURDER, THE JURY THEN HEARS NEW INFORMATION, NEW EVIDENCE
6 TO AID IT IN MAKING THE RIGHT DECISION ABOUT PUNISHMENT. TWO
7 PENALTIES -- LIFE IMPRISONMENT OR THE DEATH PENALTY.

8 IN THAT SENTENCING PHASE THE JURY HEARS EVIDENCE OF WHAT
9 THE LAW CALLS PERHAPS AN AGGRAVATING CIRCUMSTANCE. AND THAT
10 MEANS THAT UNDER OUR CODE OF LAWS THE STATE CAN SEEK -- ASK
11 FOR -- THE DEATH PENALTY WHEN A MURDER IS COMMITTED IN THE
12 COMMISSION OF -- AND IT LISTS A SERIES OF CRIMES SUCH AS
13 MURDER IN THE -- OR CIRCUMSTANCES -- MURDER IN THE COMMISSION
14 OF AN ARMED ROBBERY, MURDER IN THE COMMISSION OF KIDNAPPING,
15 ET CETERA. AND WHEN THERE IS AN AGGRAVATING CIRCUMSTANCE THE
16 STATE CAN ASK FOR THE DEATH PENALTY. AND SO IN A SENTENCING
17 PHASE ADDITIONAL EVIDENCE WOULD BE RECEIVED. ALSO RECEIVED
18 IN A SENTENCING PHASE IS WHAT WE CALL MITIGATION EVIDENCE.
19 THIS MIGHT BE EVIDENCE ABOUT THE DEFENDANT'S BACKGROUND,
20 FAMILY HISTORY, MENTAL HEALTH STATUS, THINGS OF THAT NATURE.
21 AND AT THE END OF THE PROCESS THE JURY WOULD BE INSTRUCTED TO
22 GIVE CAREFUL AND SERIOUS CONSIDERATION TO ALL THE EVIDENCE,
23 INCLUDING EVIDENCE IN AGGRAVATION AND EVIDENCE IN MITIGATION,
24 BEFORE IT MAKES A DECISION AS TO THE PROPER PUNISHMENT.

25 NOW, IF YOU WERE A JUROR IN THAT SITUATION, WOULD YOU

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 GIVE SERIOUS AND MEANINGFUL CONSIDERATION TO ALL THESE
2 FACTORS AND FOLLOW THE LAW BEFORE YOU MADE A DECISION?

3 A YES, I WOULD.

4 Q NOW, AGAIN, IN A HYPOTHETICAL SITUATION, IF YOU WERE ON
5 A JURY THAT WAS IN THE SENTENCING PHASE AND YOU HAVE REVIEWED
6 ALL OF THE EVIDENCE VERY CAREFULLY, YOU HAVE CONSIDERED
7 EVIDENCE IN AGGRAVATION, YOU'VE CONSIDERED MITIGATION
8 EVIDENCE, AND YOU BELIEVE AND YOU FIND THAT THE APPROPRIATE
9 PENALTY IS LIFE IMPRISONMENT, COULD YOU VOTE FOR LIFE
10 IMPRISONMENT?

11 A YES, I COULD.

12 Q ALL RIGHT. ON THE OTHER HAND, YOU VIEW THE EVIDENCE
13 VERY CAREFULLY, YOU FOLLOW THE LAW, YOU CONSIDER THE EVIDENCE
14 IN AGGRAVATION AND MITIGATION, AND YOU ARE PERSUADED AND
15 CONVINCED THAT THE PROPER PENALTY IS THE DEATH PENALTY. IN
16 THAT EVENT, COULD YOU VOTE FOR THE DEATH PENALTY?

17 A YES, I COULD.

18 Q ALSO, IN SOUTH CAROLINA IN ADDITION TO VOTING FOR THE
19 DEATH PENALTY, THE LAW REQUIRES EACH MEMBER OF THE JURY --
20 AND IT MUST BE UNANIMOUS. ALL TWELVE MUST AGREE TO VOTE FOR
21 THE DEATH PENALTY. EACH JUROR MUST SIGN HIS OR HER NAME TO
22 THE VERDICT FORM. IF YOU HAD VOTED FOR THE DEATH PENALTY,
23 COULD YOU ALSO SIGN YOUR NAME TO THE DEATH WARRANT?

24 A YES, I COULD.

25 Q DO YOU RECALL IN THE OTHER ROOM THERE WAS A SHEET OF

ANNE CASEY SMITH -- VOIR DIRE BY THE COURT

1 PAPER THAT LISTED THREE TYPES OF JURORS AND HOW THEY APPROACH
2 THE DEATH PENALTY? I'VE GOT A COPY HERE IF YOU NEED TO
3 REFRESH YOURSELF WITH IT. IF YOU FIT ONE OF THOSE
4 CATEGORIES, WOULD YOU DESCRIBE WHICH ONE?

5 A THE THIRD ONE, AS I RECALL, WHICH STATED THAT AS A JUROR
6 I WOULD TAKE ALL CONSIDERATION TO THE FACTS AND THE EVIDENCE
7 BEFORE I MADE UP MY MIND AS TO GUILTY OR INNOCENT.

8 Q OKAY. SO IF YOU WERE SELECTED ON A JURY OR THIS JURY IN
9 PARTICULAR WOULD YOU APPROACH YOUR JURY DUTY AND SERVICE WITH
10 AN OPEN MIND TO FOLLOW YOUR OATH TO FIND THE TRUTH FROM THE
11 EVIDENCE AND FOLLOW THE LAW IN NOT ONLY THE FIRST PHASE BUT
12 IN THE EVENT IT REACHED A SECOND PHASE YOU WOULD CONTINUE TO
13 KEEP AN OPEN MIND AS YOU APPROACH THE SENTENCING PHASE? IS
14 THAT TRUE OR NOT TRUE?

15 A THAT IS TRUE.

16 Q MS. SMITH, DO YOU KNOW OF -- AND I MAY NOT HAVE ASKED
17 THE RIGHT QUESTION, BUT DO YOU KNOW OF ANY REASON WHY YOU
18 WOULD NOT BE ELIGIBLE OR WHY YOU COULD NOT SERVE AS A JUROR
19 IN THIS CASE?

20 A NO, I DON'T.

21 THE COURT: OKAY. THE LAWYERS WILL HAVE SOME
22 QUESTIONS, MA'AM, AND THEN I MAY HAVE SOME FOLLOW-UP
23 QUESTIONS.

24 MR. ARIAIL, I BELIEVE IT'S YOUR TURN, SIR.

25 SOLICITOR ARIAIL: THANK YOU.

ANNE CASEY SMITH -- VOIR DIRE BY SOLICITOR ARIAIL

1 VOIR DIRE BY SOLICITOR ARIAIL:

2 Q MS. SMITH, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
3 FOR THE THIRTEENTH JUDICIAL CIRCUIT OF SOUTH CAROLINA, WHICH
4 IS COMPOSED OF GREENVILLE AND PICKENS COUNTIES. IN THIS CASE
5 I'LL BE REPRESENTING THE STATE AND PRESENTING EVIDENCE IF YOU
6 ARE SELECTED ON THIS JURY. MS. STROM, SEATED HERE, IS MY
7 DEPUTY, AND SHE WILL BE ASSISTING ALONG WITH MS. HERVEY, ONE
8 OF MY ASSISTANTS, WHO WILL BE ASSISTING.

9 WHEN THE JUDGE JUST MENTIONED TO YOU THAT YOU TALKED
10 ABOUT A NUMBER THREE, THAT YOU WERE A JUROR NUMBER THREE, YOU
11 SAID SOMETHING ALONG THE LINES THAT JUROR NUMBER THREE --
12 THAT I WOULD CONSIDER ALL THE EVIDENCE BEFORE DECIDING GUILT
13 OR INNOCENCE. DID YOU UNDERSTAND THAT THAT'S WHAT HE WAS
14 TALKING ABOUT OR WERE YOU -- DID I MISUNDERSTAND YOUR ANSWER?

15 A UM...

16 Q AND I CAN'T HEAR. I WILL TELL YOU THAT. SO I MAY HAVE
17 MISUNDERSTOOD---

18 MR. MAULDIN: THAT WAS HEARD CORRECTLY.

19 A YOU MEAN IN THE ASPECT OF---

20 SOLICITOR ARIAIL: OKAY. GOOD.

21 Q NUMBER THREE, LET ME GO BACK -- I DON'T WANT TO CONFUSE
22 YOU, BUT NUMBER THREE JUROR --

23 SOLICITOR ARIAIL: COULD I ASK THE COURT TO READ HER
24 NUMBER THREE JUROR?

25 THE COURT: YEAH, I'VE GOT THE THING RIGHT HERE IF YOU

ANNE CASEY SMITH -- VOIR DIRE BY SOLICITOR ARIAIL

1 WANT TO LOOK AT IT.

2 SOLICITOR ARIAIL: IF SHE WANTS TO READ IT.

3 THE COURT: HERE IT IS, MA'AM.

4 A (REVIEWS DOCUMENT) OKAY.

5 Q NUMBER THREE JUROR -- WHEN WE TALK ABOUT ONE, TWO OR
6 THREE, WE'RE TALKING ABOUT WHAT TYPE OF JUROR YOU WOULD BE
7 WHEN THE DEFENDANT HAS ALREADY BEEN CONVICTED. HE'S GUILTY.

8 A OKAY.

9 Q AND YOU ARE GOING TO THE SECOND PHASE AND YOU AS A
10 MEMBER OF THE JURY HAVE TO DETERMINE SENTENCE. AND SO THE
11 ISSUE IS WHERE YOU FALL IN THE CATEGORIES. BECAUSE CATEGORY
12 ONE, THE ONE WHO ALWAYS IMPOSES LIFE IS NOT QUALIFIED, AND
13 THE ONE WHO ALWAYS IMPOSES DEATH IS NOT QUALIFIED. SO NUMBER
14 THREE IS WHERE YOU WOULD BE?

15 A RIGHT.

16 Q THE ONE THAT WOULD WANT TO HEAR THE EVIDENCE?

17 A OKAY.

18 Q DO YOU KNOW OF ANY REASON, EITHER RELIGIOUS, MORAL,
19 POLITICAL OR OTHERWISE THAT YOU HOLD, THAT WOULD LIMIT OR
20 AFFECT YOUR ABILITY TO FAIRLY CONSIDER THE STATE'S REQUEST TO
21 IMPOSE THE DEATH PENALTY?

22 A NO.

23 Q NOTHING YOU WOULD BRING WITH YOU?

24 A NO.

25 Q WOULD YOUR DECISION THEN BE FOCUSED STRICTLY ON THE

ANNE CASEY SMITH -- VOIR DIRE BY SOLICITOR ARIAIL

1 NATURE OF THE CASE, THE EVIDENCE PRESENTED AND THAT SORT OF
2 THING?

3 A YES.

4 Q AND DO YOU HAVE ANY HESITANCY THAT YOU WOULD NOT BE ABLE
5 TO SIGN -- IF YOU THOUGHT THAT THE DEATH SENTENCE WAS THE
6 APPROPRIATE SENTENCE, THAT YOU WOULD HAVE IN SIGNING YOUR
7 NAME TO THE DOCUMENT THAT CARRIED OUT THAT SENTENCE?

8 A YES.

9 Q WOULD YOU HAVE ANY HESITATION ABOUT DOING THAT?

10 A NO.

11 Q YOU COULD TO THAT?

12 A I COULD DO THAT. IT WOULD BE HARD, BUT I COULD DO IT.

13 Q IT WOULD BE HARD. ALL RIGHT. WELL, LET ME ASK THAT
14 QUESTION. WOULD THE FACT THAT IT WOULD BE HARD CAUSE YOU TO
15 HESITATE?

16 A NO. I FEEL THAT IF THE CASE IS APPROPRIATE AND THE
17 FACTS ARE THERE, I KNOW I COULD DO IT.

18 SOLICITOR ARIAIL: OKAY. GOOD. THANK YOU VERY MUCH.

19 THAT'S ALL WE HAVE, JUDGE.

20 VOIR DIRE BY MR. MAULDIN:

21 Q MS. SMITH, I'M JOHN MAULDIN, PUBLIC DEFENDER. AND THIS
22 IS JIM BANNISTER AND RODNEY RICHEY. THEY ARE ASSISTING ME IN
23 REPRESENTING JOHN IN THIS CASE.

24 I WANT TO FOLLOW UP ON A FEW QUESTIONS ABOUT CAPITAL
25 PUNISHMENT, YOUR VIEWS ON CAPITAL PUNISHMENT, AND I'D RATHER

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 CHANGE THE FORMAT HERE. INSTEAD OF YES OR NO, I'D LIKE FOR
2 US TO HAVE MORE OF A CONVERSATION. I CAN'T FIGURE OUT HOW
3 YOU FEEL IF IT'S JUST YES OR NO.

4 A UH-HUH (AFFIRMATIVE).

5 Q SO I WANT YOU TO DO MORE OF THE TALKING THAN I DO, IF
6 THAT'S POSSIBLE. PERHAPS IT ISN'T.

7 COULD YOU DESCRIBE TO THE COURT OR EXPLAIN TO THE COURT
8 YOUR FEELINGS BASICALLY ABOUT CAPITAL PUNISHMENT AND ITS USE
9 IN OUR CRIMINAL JUSTICE SYSTEM IN YOUR VIEW?

10 A I FEEL THAT CAPITAL PUNISHMENT -- OR I'M IN FAVOR OF
11 CAPITAL PUNISHMENT IF THE CRIME IS HEINOUS AND HIDEOUS ENOUGH
12 TO WARRANT THE DEATH PENALTY. I FEEL IN CERTAIN SITUATIONS
13 THAT THE DEATH PENALTY IS APPROPRIATE, AND I THINK THAT IT'S
14 OKAY FOR OUR SOCIETY TO USE THAT AND THAT IT'S NECESSARY IN
15 CERTAIN CASES.

16 Q DO YOU THINK THAT IN LOOKING, SAY, NATIONALLY AS OPPOSED
17 TO LOCALLY, BUT JUST IN A NATIONAL VIEW, DO YOU THINK THAT
18 THE DEATH PENALTY IN OUR SYSTEM IS USED OFTEN ENOUGH, TOO
19 OFTEN OR ABOUT RIGHT OR CAN YOU GIVE ME ANY INPUT ON
20 SOMETHING LIKE THAT?

21 A I DON'T REALLY FOLLOW IT THAT MUCH TO KNOW WHETHER IT'S
22 BEEN ABUSED OR NOT ABUSED, TO BE HONEST WITH YOU.

23 Q OKAY. HAVE YOUR VIEWS ON CAPITAL PUNISHMENT GENERALLY
24 BEEN BASICALLY THE SAME OVER A PERIOD OF TIME OR HAVE THEY
25 CHANGED AS YOU'VE GROWN OLDER OR...

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 A I PROBABLY HADN'T THOUGHT ABOUT IT UNTIL I WAS, YOU
2 KNOW, OLD ENOUGH, TEENAGER AND SO FORTH. AND SO BASICALLY,
3 SINCE THEN I'VE HAD THE SAME VIEW.

4 Q OKAY. IN A -- YOU UNDERSTAND THAT IN SOUTH CAROLINA THE
5 DEATH PENALTY IS NEVER A REQUIRED PENALTY NO MATTER HOW --
6 YOUR WORDS WERE HEINOUS OR VICIOUS OR WHATEVER. NO MATTER
7 HOW HORRIBLE, TERRIBLE AN OFFENSE MIGHT BE, THE DEATH PENALTY
8 IS NEVER THE REQUIRED PENALTY. DO YOU FOLLOW THAT?

9 A I'M LEARNING THAT, YES.

10 Q DID YOU KNOW THAT BEFORE YOU WERE SUMMONED FOR JURY
11 DUTY?

12 A NO, I DID NOT.

13 Q ALL RIGHT. WELL, THAT IS IN FACT THE CASE. IN FACT, IN
14 SOUTH CAROLINA THERE ARE CASES INVOLVING MURDER, THAT IS,
15 INTENTIONAL, MALICIOUS KILLING OF ANOTHER PERSON WITHOUT JUST
16 CAUSE OR EXCUSE, WHERE THE DEATH PENALTY IS NOT EVEN
17 AVAILABLE, WHERE THE PROSECUTOR CANNOT EVEN ASK FOR IT. WERE
18 YOU AWARE OF THAT?

19 A I AM NOW.

20 Q ALL RIGHT. NOW, IN A CASE THAT WE ARE QUALIFYING THE
21 JURORS FOR, THE PROSECUTION WILL ASK THIS JURY, IN THE EVENT
22 OF A CONVICTION, TO CONSIDER THE IMPOSITION OF THE DEATH
23 PENALTY. AND THAT'S WHY WE'RE GOING THROUGH THIS PROCESS.
24 THE SOLICITOR MENTIONED TO YOU, IF A JUROR WOULD ALWAYS GIVE
25 THE DEATH PENALTY UPON A CONVICTION OF MURDER, THEY WOULD NOT

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 BE ELIGIBLE. IF A JUROR WOULD ALWAYS GIVE LIFE IN PRISON TO
2 A CONVICTED MURDERER, THEY WOULD NOT BE ELIGIBLE. THE ONLY
3 PEOPLE THAT WOULD BE ELIGIBLE ARE THE PEOPLE THAT CAN
4 CONSIDER BOTH PENALTIES EVEN FOR A PERSON ALREADY CONVICTED
5 BY THEM OF MURDER BASED UP ON THE FACTS OF THE CASE. DO YOU
6 FOLLOW?

7 A YES, I DO.

8 Q NOW, WITH REGARD TO THOSE CONSIDERATIONS, I WANT TO ASK
9 YOU THESE QUESTIONS. IF YOU WERE IN THE SECOND TRIAL -- AND
10 WHEN I SAY SECOND TRIAL, ARE YOU FOLLOWING ME?

11 A THE SENTENCING PHASE.

12 Q THE SENTENCING TRIAL. IF YOU WERE IN A JURY PANEL AND
13 IN A SECOND TRIAL IN A SENTENCING PHASE IN A CAPITAL CASE --
14 NOT THIS ONE BUT JUST IN A HYPOTHETICAL -- AND THE COURT
15 INSTRUCTED YOU THAT CERTAIN MATTERS HAD BEEN BROUGHT INTO THE
16 COURT THAT WERE IN TERMS MITIGATING CIRCUMSTANCES AND THAT
17 YOU WERE REQUIRED TO CONSIDER THEM AND CONSIDER THE
18 IMPOSITION OF A LIFE SENTENCE INSTEAD OF A DEATH SENTENCE,
19 WOULD YOU BE ABLE TO FOLLOW THAT TYPE OF INSTRUCTION FROM THE
20 COURT?

21 A ABSOLUTELY.

22 Q WHEN I ASK YOU IN A CASE YOU HAVE SERVED AS A JUROR ON
23 AND HAVE CONVICTED A PERSON OF MURDER AND THE GOVERNMENT THEN
24 BRINGS IN AGGRAVATING CIRCUMSTANCES UNDER THAT STATUTE, UNDER
25 THE LAW, THE LISTED AGGRAVATING CIRCUMSTANCES, AND THAT

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN TO YOU BEYOND A
2 REASONABLE DOUBT -- YOU HAVE GUILT AND THE AGGRAVATING
3 CIRCUMSTANCE IS PROVEN -- DO YOU BELIEVE THAT LIFE IN PRISON
4 FOR THAT TYPE OF CASE IS A SERIOUS PENALTY?

5 A I GUESS I'M A LITTLE BIT CONFUSED AT THIS POINT.

6 Q ALL RIGHT. AND IF YOU NEED ME TO CLARIFY, I'LL BE GLAD
7 TO.

8 A IT'S MY UNDERSTANDING THAT IF THEY PROVE -- ARE YOU
9 SAYING TAKING INTO CONSIDERATION THE AGGRAVATION OR---

10 Q NO, I'M TALKING ABOUT---

11 A ---IF THEY PROVE THAT THE AGGRAVATION---

12 Q RIGHT. IN OTHER WORDS, THE PROOF OF THE OFFENSE OF
13 MURDER HAS BEEN PROVEN BEYOND A REASONABLE DOUBT---

14 A UH-HUH (AFFIRMATIVE).

15 Q ---AND AN AGGRAVATING CIRCUMSTANCE THAT THE LAW WOULD --
16 THE JUDGE WOULD INSTRUCT YOU IS WITHIN OUR LAW HAS BEEN
17 PROVEN BEYOND A REASONABLE DOUBT. BOTH OF THOSE HAVE BEEN
18 PROVEN.

19 A UH-HUH (AFFIRMATIVE).

20 Q LET'S PUT YOU AT THAT POINT. EVEN UNDER THOSE
21 CIRCUMSTANCES DO YOU BELIEVE THAT -- AND I WANT TO MAKE SURE
22 I GET MY QUESTION RIGHT. DO YOU BELIEVE THAT LIFE IN PRISON
23 WITHOUT PAROLE IS A SERIOUS PENALTY UNDER THAT CIRCUMSTANCE I
24 JUST DESCRIBED TO YOU?

25 A YES, I DO.

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 Q ALL RIGHT. LAST QUESTIONS, MS. SMITH, I HAVE FOR YOU IS
2 REGARDING DELIBERATIONS IN A CASE LIKE THIS. THE JUDGE
3 MENTIONED TO YOU THAT IN ORDER TO IMPOSE THE DEATH PENALTY
4 ALL TWELVE JURORS WOULD HAVE TO SIGN A FORM. NOW, IN THAT
5 SECOND PHASE OF THE TRIAL, THE SAME JURORS WOULD THEN GO OUT
6 AND DELIBERATE THE SENTENCE, AND THERE WOULD BE A LOT OF
7 DELIBERATION AND POINTS OF VIEW AND DIFFERENT OPINIONS AND SO
8 FORTH AND DISCUSSIONS ABOUT WHICH OF THE TWO PENALTIES, LIFE
9 IN PRISON WITHOUT PAROLE OR THE DEATH PENALTY.

10 LET'S SAY AFTER LENGTHY DELIBERATIONS -- IT'S GETTING
11 LATE. YOU'RE TIRED OF BEING IN THE CASE. THE CASE HAS GONE
12 ON FOR DAYS. SO YOU SAY, WE'VE GOT TO GET THIS DONE. AND
13 YOU VOTE AND IT'S TEN TO TWO. IT DOESN'T MATTER WHICH
14 SENTENCE IS WHICH, JUST THERE'S A SPLIT TEN TO TWO. I'M
15 GOING TO PUT YOU IN THE MINORITY, THE TWO.

16 I WANT TO ASK YOU UNDER THOSE CIRCUMSTANCES IF YOU WOULD
17 TEND TO GIVE UP YOUR VIEW IN ORDER TO SIDE WITH THE MAJORITY
18 AND RESOLVE THE MATTER OR WOULD YOU TEND TO STICK TO THE
19 POSITION ON THE LIFE AND DEATH QUESTION THAT YOU HAD MADE?

20 A I WOULD TEND TO KEEP MY OWN VIEW ON IT. I WOULDN'T BE
21 PERSUADED BY THEM JUST SAYING IT'S LATE OR WHATEVER. THAT
22 WOULDN'T BE WHAT PERSUADED ME. IF THEY COULD CONVINCE ME
23 BASED ON FACTS AND EVIDENCE OR BRING TO LIGHT SOMETHING THAT
24 I WAS UNAWARE OF, THEN I WOULD BE ABLE TO BE PERSUADED. BUT
25 I AM MORE LIKELY -- I WOULD STICK TO MY OPINION UNLESS THEY

ANNE CASEY SMITH -- VOIR DIRE BY MR. MAULDIN

1 COULD PERSUADE ME OTHERWISE BASED ON THE FACTS AND EVIDENCE.

2 Q SO YOU COULD BE PERSUADED THROUGH DELIBERATION AND
3 DISCUSSION BUT YOU WOULD NOT NECESSARILY DO IT SIMPLY TO SIDE
4 WITH THE MAJORITY?

5 A NOT TO SIDE WITH THE MAJORITY.

6 Q FINALLY, MS. SMITH, IF YOU WERE IN THE GROUP OF TEN, YOU
7 WERE IN THE MAJORITY, AND THERE WERE ONE OR TWO ON THE OTHER
8 SIDE, WOULD YOU ATTEMPT TO FORCE THOSE, THE MINORITY, TO SIDE
9 WITH YOU IN ORDER TO RESOLVE THE ISSUE OR WOULD YOU RESPECT
10 THEIR RIGHT TO HAVE THEIR VIEW ON A LIFE OR DEATH DECISION?

11 A I WOULD RESPECT THEIR RIGHT.

12 MR. MAULDIN: THANK YOU, MA'AM.

13 THANK YOU, JUDGE.

14 THE COURT: ALL RIGHT. MS. SMITH, THANK YOU AGAIN SO
15 MUCH FOR YOUR PATIENCE. WE'RE JUST ABOUT THROUGH. THE
16 BAILIFF IS GOING TO TAKE YOU TO A JURY ROOM, AND THEN WE'LL
17 LET YOU KNOW IN A COUPLE MINUTES WHAT THE DECISION IS AND
18 THEN YOU'LL BE FREE TO GO.

19 JUROR NUMBER 47: OKAY.

20 THE COURT: THANK YOU, MA'AM.

21 (JUROR EXITS COURTROOM AT 5:56 P.M.)

22 THE COURT: THE JUROR HAS BEEN EXCUSED. EITHER SIDE
23 TAKE THE VIEW SHE IS NOT QUALIFIED?

24 MS. STROM: SHE'S QUALIFIED.

25 SOLICITOR ARIAIL: NO, SHE'S QUALIFIED.

MATTERS AND MOTIONS

1 MR. MAULDIN: QUALIFIED.

2 THE COURT: WE'LL NOW MOVE TO SELECTION. TAKE YOUR
3 TIME AND JUST -- I'LL FIRST HEAR FROM THE STATE. TELL ME
4 WHEN YOU ARE READY.

5 SOLICITOR ARIAIL: PRESENT HER.

6 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) SWEAR THE
7 JUROR.

8 THE COURT: ASK MS. SMITH TO COME BACK IN HERE, PLEASE.

9 (JUROR REENTERS COURTROOM AT 5:57 P.M.)

10 THE COURT: THANK YOU, MS. SMITH. MS. SMITH, YOU'VE
11 BEEN SELECTED TO SERVE AS A JUROR IN THIS CASE. I'M GOING TO
12 GIVE YOU AN ORDER THAT REFLECTS THAT AND GIVE YOU SOME
13 INSTRUCTIONS. I'M GOING TO REVIEW IT WITH YOU NOW.

14 WE'RE GOING TO CONTINUE THIS PROCESS -- IT MAY BE TWO
15 DAYS, FOUR DAYS. I DON'T KNOW -- UNTIL WE HAVE A SUFFICIENT
16 NUMBER TO START THE CASE. OKAY?

17 BEGINNING TOMORROW NIGHT, WEDNESDAY, AFTER 8:00, CALL
18 THIS NUMBER. IT'S IN THE ORDER. FOLLOW THE INSTRUCTIONS.
19 IT MAY BE IT SAYS CALL BACK THURSDAY NIGHT AFTER 8:00.
20 WHATEVER IT IS, FOLLOW THE INSTRUCTIONS.

21 AT SOME POINT IT'S GOING TO SAY, "WE HAVE A SUFFICIENT
22 NUMBER OF JURORS. PLEASE REPORT AT SUCH AND SUCH A TIME."
23 THIS GIVES YOU INSTRUCTIONS OF PACKING YOUR BAGS, LEAVING
24 THEM IN YOUR CAR, AND THE RECORDED MESSAGE WILL ALSO HAVE
25 INSTRUCTIONS TO CONFIRM THIS AND WHERE TO PARK AND THINGS OF

MATTERS AND MOTIONS

1 THAT NATURE.

2 THIS ORDER VERY IMPORTANTLY ALSO CONTINUES THE EXISTING
3 ORDER IN EFFECT, THAT IS, DO NOT DISCUSS THE CASE WITH
4 ANYONE. DON'T SPECULATE ABOUT THE CASE. AND DO NOT EXPOSE
5 YOURSELF TO ANY INFORMATION FROM THE CASE FROM THE MEDIA OR
6 OTHERWISE. ---

7 MA'AM, DO YOU UNDERSTAND THOSE INSTRUCTIONS?

8 JUROR NUMBER 47: YES.

9 THE COURT: ALL RIGHT. HERE IS THE ORDER FOR YOU.
10 THANK YOU SO MUCH, AND WE'LL SEE YOU LATER. YOU ARE FREE TO
11 GO.

12 (JUROR EXITS COURTROOM AT 6:00 P.M.)

13 THE COURT: GO AHEAD AND BRING THE PANEL DOWN THE HALL.

14 I'M GOING TO TELL COUNSEL, I'M GOING TO APOLOGIZE TO
15 THIS NEXT PANEL FOR THE LATENESS OF THE HOUR. THEY MAY HAVE
16 OBLIGATIONS WITH CHILD CARE, SECOND SHIFT. WE'RE GOING TO
17 PRESS FORWARD. BUT I'M GOING TO GIVE THEM THE OPTION IF THEY
18 WANT TO COME BACK IN THE MORNING, IF ONE MORE OR ALL OF THEM,
19 I'M GOING TO HONOR THAT. AND I'VE ONLY GOT THREE PANELS
20 TOMORROW, SO MAYBE WE COULD CATCH UP A LITTLE BIT. BUT IF
21 THEY'RE WILLING TO STAY, WE'RE GOING TO PRESS FORWARD. BUT
22 IF THEY'RE NOT BECAUSE OF SOME ENGAGEMENT THEY HAVE -- AND I
23 TOLD THEM THEY WOULD ONLY BE HERE MAYBE THREE HOURS. THEY'VE
24 ALREADY BEEN HERE TWO AND WE HAVEN'T STARTED -- I'M GOING TO
25 HONOR THAT COMMITMENT I MADE TO THEM.

MATTERS AND MOTIONS

1 **MR. MAULDIN:** SUGGESTION, YOUR HONOR. I AGREE WITH
2 THAT AND THE ONLY SUGGESTION IS, IF POSSIBLE, WHOEVER THEY
3 MIGHT BE I WOULD THINK WOULD NEED TO GO IN FRONT OF THE NEXT
4 PANEL IN ORDER TO KEEP THE ORDER. BUT THAT'S JUST MY
5 OPINION. I AGREE WITH THE PRINCIPLE THAT THE COURT IS
6 BRINGING TO OUR ATTENTION.

7 **THE COURT:** I'VE GOT THE NEXT PANEL COMING AT 8:30 IN
8 THE MORNING.

9 **MR. MAULDIN:** WELL, IN THAT CASE, I WITHDRAW THAT.

10 **THE COURT:** AND I'M THINKING I WOULD BRING THEM BACK --
11 IT DEPENDS. IF ALL FIVE SAY, "WE WANT TO GET OUT OF HERE," I
12 MAY NOT BRING THEM IN UNTIL TOMORROW AFTERNOON. IF I'VE GOT
13 TWO OR THREE, I MIGHT TRY TO SQUEEZE THEM IN AT TENISH,
14 BECAUSE MY SECOND PANEL IS COMING TOMORROW AT 11:00. BUT I
15 JUST WANTED YOU TO KNOW THAT I'M GOING TO EXTEND THAT TO THEM
16 AND SEE IF THERE ARE ANY TAKERS.

17 BRING IN THE WHOLE PANEL, PLEASE.

18 (PANEL NUMBER 5 ENTERS COURTROOM AT 6:01 P.M. P.M.)

19 (PANEL 5: JUROR NUMBER 261, ISSIAC N. MILLER; JUROR
20 NUMBER 316, REBECCA D. ROGERS; JUROR NUMBER 275, NANCY L.
21 MURPHY; JUROR NUMBER 265, RALPH J. MOODY; AND JUROR NUMBER
22 174, THELMA D. HONEYCUTT)

23 **THE COURT:** LADIES AND GENTLEMEN, FIRST OF ALL, LET ME
24 IDENTIFY WHO YOU ARE AND PUT A FACE WITH A NAME. I'M GOING
25 TO START WITH THIS LADY AT THE END, AND THEN WE'LL WORK OUR

VOIR DIRE -- PANEL NUMBER 5

1 WAY DOWN.

2 WHAT IS YOUR NAME, PLEASE, MA'AM?

3 JUROR NUMBER 316: REBECCA ROGERS.

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

5 JUROR NUMBER 174: THELMA HONEYCUTT.

6 JUROR NUMBER 275: NANCY MURPHY.

7 THE COURT: OKAY. YES, SIR?

8 JUROR NUMBER 261: ISSIAC MILLER.

9 THE COURT: YES, SIR?

10 JUROR NUMBER 265: RALPH MOODY.

11 THE COURT: ALL RIGHT. LET ME TELL YOU WHAT WE'RE
12 GOING TO DO, AND I'M GOING TO GIVE YOU AN OPTION. FIRST OF
13 ALL, I APOLOGIZE. THIS IS A LENGTHY PROCESS. WE DO OUR BEST
14 TO PREDICT WHEN WE NEED JURORS SO THAT WE DON'T UNREASONABLY
15 INCONVENIENCE YOU. AND YOU'VE BEEN SITTING IN THAT ROOM OVER
16 THERE FOR A COUPLE OF HOURS, AND I REGRET THAT AND I
17 APOLOGIZE TO YOU. IT'S MY FAULT.

18 IF THERE IS ANY ONE OF YOU WHO HAS A COMMITMENT THIS
19 EVENING, SECOND SHIFT JOB OR SOMETHING WHERE YOU THOUGHT YOU
20 WOULD BE THROUGH BY 6:00 OR 6:30, I'M GOING TO GO AHEAD AND
21 LET YOU GO, IF YOU WANT TO, AND BRING YOU BACK TOMORROW. WE
22 ARE WILLING TO PRESS FORWARD AND COMPLETE YOUR QUALIFICATION
23 PROCESS THIS EVENING. BUT I DON'T WANT TO BURDEN YOU
24 UNREASONABLY. SO IF YOU WOULD LIKE BECAUSE OF SOME
25 COMMITMENT YOU HAVE TO BE EXCUSED NOW, WE'LL HONOR THAT AND

1 BRING YOU BACK AT SOME POINT TOMORROW TO DO YOUR
2 QUALIFICATION AND QUESTIONING.

3 IS THERE ANYONE WHO WOULD LIKE TO TAKE ADVANTAGE OF THAT
4 AND COME BACK TOMORROW? JUST RAISE YOUR HAND. OTHERWISE,
5 WE'RE GOING TO PRESS FORWARD AND COMPLETE IT THIS EVENING.
6 (PAUSE) ALL RIGHT. I GUESS WE'RE GOING TO PRESS FORWARD.
7 ALL RIGHT.

8 NOW, THE FIRST THING I'M GOING TO DO IS PUT ALL OF YOU
9 UNDER OATH. AND YOU CAN JUST STAY SEATED, BUT I NEED FOR YOU
10 TO RAISE YOUR RIGHT HAND.

11 DO EACH OF YOU SWEAR OR AFFIRM THAT THE RESPONSES YOU
12 GIVE DURING THE JURY SELECTION PROCESS WILL BE TRUTHFUL AND
13 COMPLETE? IF YOU AGREE TO BE BOUND BY THIS OATH, PLEASE SAY,
14 "I WILL." (PAUSE) ALL INDICATE IN THE AFFIRMATIVE.

15 THE FIRST THING -- PUT YOUR HANDS DOWN. (LAUGHTER)
16 IT'S LATE IN THE DAY. I'M GOING TO TALK TO YOU AS A GROUP
17 FOR JUST A FEW MINUTES, AND THEN WE START THE PROCESS OF THE
18 INDIVIDUAL QUESTIONING, AND IT WILL BE DONE IN THE ORDER IN
19 WHICH YOUR NAMES WERE DRAWN. LIKE FOR EXAMPLE, MR. MILLER
20 WILL GO FIRST ONCE WE GET TO THAT POINT. SO I'M GOING TO
21 TELL YOU AN OVERVIEW ABOUT THE PROCESS OF A CAPITAL CASE, AND
22 THEN GO INTO MORE DETAIL WITH YOU AND FIND OUT YOUR VIEW ON
23 CERTAIN ISSUES WHEN I QUESTION YOU INDIVIDUALLY.

24 NOW, LET ME TELL YOU AT THE OUTSET THAT I HAVE NO
25 OPINION ABOUT THE FACTS OF THIS CASE. SO DO NOT CONSTRUE

VOIR DIRE -- PANEL NUMBER 5

1 FROM ANYTHING I SAY OR ANY QUESTION I ASK THAT I HAVE ANY
2 OPINION ABOUT THE FACTS OF THIS CASE. I DO NOT.

3 YESTERDAY I PLACED YOU AND YOUR FELLOW JURORS UNDER OATH
4 NOT TO DISCUSS THIS CASE WITH ANYONE OR GAIN ANY INFORMATION
5 FROM THE MEDIA OR ANY OTHER SOURCE. IS THERE ANY ONE OF YOU
6 WHO HAS GAINED INFORMATION ABOUT THIS CASE FROM ANY SOURCE OR
7 IF YOU HAVE TALKED ABOUT THIS CASE WITH ANYONE, WOULD YOU
8 PLEASE SIGNIFY BY RAISING YOUR RIGHT HAND? (PAUSE) THERE IS
9 NO RESPONSE.

10 I WANT YOU TO BE AWARE OF THE TWO VERY IMPORTANT LEGAL
11 PRINCIPLES WE DISCUSSED YESTERDAY. THE PRESUMPTION OF
12 INNOCENCE. ANYONE ACCUSED OF A CRIME IS PRESUMED TO BE
13 INNOCENT. ALSO, THE BURDEN OF PROOF. THE BURDEN OF PROOF IS
14 NEVER ON A DEFENDANT. THE DEFENDANT NEVER HAS A BURDEN TO
15 PROVE OR DISPROVE ANYTHING. THE BURDEN IS AT ALL TIMES ON
16 THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

17 A CASE OF THIS NATURE IS GENERALLY REFERRED TO AS A
18 CAPITAL CASE, ONE IN WHICH THE STATE SEEKS THE DEATH PENALTY,
19 AND I WANT TO EXPLAIN THE PROCESS OF SUCH A CASE TO YOU IN
20 GENERAL TERMS.

21 ONCE A JURY IS SELECTED, THE COURT CONDUCTS THE FIRST
22 PHASE, AND PERHAPS THE ONLY PHASE, OF THE TRIAL. IN THE
23 FIRST PHASE THE JURY IS CALLED UPON TO DETERMINE WHETHER THE
24 STATE HAS PROVEN GUILT OF THE OFFENSE OF MURDER BEYOND A
25 REASONABLE DOUBT. IF A JURY FINDS A DEFENDANT NOT GUILTY OF

VOIR DIRE -- PANEL NUMBER 5

1 THE CRIME OF MURDER, THAT ENDS THE CASE AS FAR AS THE JURY IS
2 CONCERNED. THERE IS NO FURTHER JURY INVOLVEMENT.

3 BUT IF A JURY FINDS A DEFENDANT GUILTY OF MURDER IN A
4 CASE IN WHICH THE STATE IS ELIGIBLE TO SEEK THE DEATH
5 PENALTY, THEN WE MOVE TO THE SECOND PHASE, SOMETIMES CALLED
6 THE SENTENCING PHASE. IN THAT SENTENCING PHASE THE JURY
7 WOULD HEAR ADDITIONAL EVIDENCE, NEW EVIDENCE, EVIDENCE --
8 WHAT WE CALL EVIDENCE IN AGGRAVATION AND EVIDENCE IN
9 MITIGATION. AND THE JURY AFTER HEARING THIS ADDITIONAL
10 EVIDENCE WOULD DETERMINE THE SENTENCE, LIFE IMPRISONMENT OR
11 THE DEATH PENALTY.

12 NOW LET ME MENTION SOMETHING TO YOU UP FRONT AND VERY
13 IMPORTANT. OFTENTIMES ON THE STREET WE TALK ABOUT, "WELL,
14 LIFE IMPRISONMENT DOESN'T MEAN LIFE. THEY GET OUT AFTER 'X'
15 NUMBER OF YEARS. THEY'RE ELIGIBLE FOR PAROLE." BUT LET ME
16 TELL YOU SOMETHING VERY IMPORTANT IN SOUTH CAROLINA. WHEN A
17 MURDER IS COMMITTED AND ACCOMPANIED BY AN AGGRAVATING
18 CIRCUMSTANCE -- I'M GOING TO GIVE YOU A FEW EXAMPLES OF THAT
19 IN A MOMENT -- BUT WHEN AN AGGRAVATING CIRCUMSTANCE
20 ACCOMPANIES A MURDER, LIFE IMPRISONMENT MEANS UNTIL THE DEATH
21 OF THE OFFENDER. THERE IS NO POSSIBILITY OF PAROLE. THAT
22 INDIVIDUAL CONVICTED OF THAT MURDER WOULD DIE IN JAIL. I
23 WANT YOU TO UNDERSTAND THAT.

24 I REITERATE THAT WE MAY NOT EVEN REACH A SENTENCING
25 PHASE. BUT BECAUSE OF THAT POSSIBILITY I NEED TO DISCUSS

1 CERTAIN ISSUES THAT COULD ARISE. LET ME EXPLAIN IN A LITTLE
2 MORE DETAIL -- AND WE'LL TALK ABOUT IT FURTHER WHEN YOU'RE IN
3 HERE INDIVIDUALLY -- THE TERMS AGGRAVATING CIRCUMSTANCES AND
4 MITIGATING CIRCUMSTANCES.

5 THESE ARE TERMS OF ART IN THE LAW, AND THESE ARE TERMS
6 THAT YOU WILL ONLY HEAR ABOUT IN THE SENTENCING PHASE, IF
7 THERE IS A SENTENCING PHASE. YOU WON'T HEAR QUESTIONS
8 TALKING ABOUT THE AGGRAVATING CIRCUMSTANCE OR MITIGATION
9 EVIDENCE. THOSE TERMS WILL ONLY BE DESCRIBED TO YOU IN THE
10 CONTEXT OF A SENTENCING PROCEEDING.

11 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS OR AN
12 OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS
13 DECLARED BY STATUTE WHICH WOULD AGGRAVATE OR WORSEN THE CRIME
14 OF MURDER. IN OTHER WORDS, AN AGGRAVATING CIRCUMSTANCE WHEN
15 ACCOMPANYING A MURDER INCREASES THE SEVERITY OF IT. IT ADDS
16 TO THE INJURY OF THE CRIME OF MURDER. EXAMPLES IN OUR STATE
17 LAW, WHEN A MURDER IS ACCOMPANIED BY, FOR EXAMPLE, CRIMINAL
18 SEXUAL CONDUCT, MURDER ACCOMPANIED BY ARMED ROBBERY,
19 KIDNAPPING, AND THERE ARE OTHER EXAMPLES. THAT SORT OF GIVES
20 YOU AN IDEA OF AN AGGRAVATING CIRCUMSTANCE AS DETERMINED BY
21 OUR LEGISLATURE.

22 MITIGATING CIRCUMSTANCES ARE INCIDENTS, FACTS OR
23 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
24 STATUTE OR WHICH A JURY OTHERWISE DETERMINES SHOULD REDUCE
25 THE SEVERITY OF THE OFFENSE OF MURDER. THEY MAY BE

VOIR DIRE -- PANEL NUMBER 5

1 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF
2 RESPONSIBILITY OR CULPABILITY.

3 NOW, I HAVE GIVEN YOU A COUPLE LEGAL PRINCIPLES. I'VE
4 TOLD YOU ABOUT THE TWO-STEP PROCESS OF A CAPITAL TRIAL, AND
5 THE GENERAL ISSUES THAT WOULD BE PRESENTED IN BOTH, AND
6 PARTICULARLY THE TYPES OF ISSUES THAT WOULD BE PRESENTED IN
7 THE CONTEXT OF A SENTENCING PHASE. IF YOU HAVE A QUESTION OR
8 A CONCERN ABOUT THAT, WE'LL EXPLORE IT WHEN WE QUESTION YOU
9 INDIVIDUALLY.

10 BUT BASED ON WHAT I'VE TOLD YOU -- AND I WANT EACH OF
11 YOU TO TELL ME YES OR NO -- DO YOU UNDERSTAND WHAT I HAVE
12 INSTRUCTED TO YOU ABOUT THE PROCESS THUS FAR? (PAUSE) OKAY.
13 ALL INDICATE IN THE AFFIRMATIVE.

14 NOW YESTERDAY YOU WERE INTRODUCED TO THE ATTORNEYS. WE
15 HAVE SOLICITOR ARIAIL HERE FOR THE STATE, DEPUTY SOLICITOR
16 STROM AND ASSISTANT SOLICITOR MINDY HERVEY. MR. MAULDIN,
17 JOHN MAULDIN, THE PUBLIC DEFENDER, MR. RICHEY, RODNEY RICHEY,
18 MR. JIM BANNISTER, AND THIS IS MR. JOHN RICHARD WOOD, THE
19 GENTLEMAN HERE IN THE WHITE SHIRT BETWEEN COUNSEL.

20 I WANT TO KNOW IF ANY OF YOU ARE RELATED BY BLOOD OR
21 MARRIAGE OR ACQUAINTED IN ANY WAY WITH THE ATTORNEYS TO WHOM
22 YOU HAVE BEEN INTRODUCED. IF YOU ARE, RAISE YOUR RIGHT HAND.
23 (PAUSE) THERE IS NO RESPONSE.

24 BEYOND THESE FINE ATTORNEYS, I'M GOING TO TALK ABOUT
25 THEIR RESPECTIVE OFFICES, THE SOLICITOR'S OFFICE, PUBLIC

VOIR DIRE -- PANEL NUMBER 5

1 DEFENDER'S OFFICE, MR. RICHEY'S LAW OFFICE, MR. BANNISTER'S
2 LAW OFFICE. IF YOU ARE RELATED BY BLOOD OR MARRIAGE OR
3 ACQUAINTED WITH ANYONE ASSOCIATED IN ANY CAPACITY WITH THOSE
4 RESPECTIVE LAW OFFICES, WOULD YOU PLEASE RAISE YOUR RIGHT
5 HAND? (PAUSE) AGAIN, THERE IS NO RESPONSE.

6 ANY MEMBER OF THIS PANEL RELATED BY BLOOD OR MARRIAGE OR
7 ACQUAINTED IN ANY WAY WITH THE ACCUSED, MR. JOHN RICHARD
8 WOOD? IF SO, RAISE YOUR RIGHT HAND. (PAUSE) AGAIN, NO
9 RESPONSE.

10 IN THE INDICTMENT THE VICTIM IS IDENTIFIED AS ERIC
11 NICHOLSON, WHO AT THE TIME OF THE ALLEGED OFFENSE WAS A STATE
12 TROOPER, HIGHWAY PATROLMAN. ANY MEMBER OF THIS PANEL RELATED
13 BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY WITH MR. ERIC
14 NICHOLSON? IF SO, PLEASE RAISE YOUR RIGHT HAND. (PAUSE)
15 THERE IS NO RESPONSE.

16 NOW, I KNOW YOU HAVE BEEN OVER THERE A LONG TIME AND
17 HOPEFULLY YOU'VE BEEN ABLE TO REVIEW THAT EXTENSIVE LIST OF
18 POTENTIAL WITNESSES. IN FACT, I HAVE EXTRA COPIES OVER THERE
19 IN THE JURY BOX FOR YOU TO LOOK AT IF YOU WOULD LIKE TO
20 REMIND YOURSELF OF IT AND REVIEW IT. I WANT TO KNOW IF YOU
21 ARE RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED IN ANY WAY
22 WITH ANY OF THE POTENTIAL WITNESSES WHOSE NAMES APPEAR ON
23 THAT LIST. IF SO, RAISE YOUR RIGHT HAND. (PAUSE) ALL
24 RIGHT. THERE IS NO RESPONSE.

25 AT THIS TIME WE'RE GOING TO BEGIN THE INDIVIDUAL

VOIR DIRE -- PANEL NUMBER 5

1 QUESTIONING. I WILL QUESTION YOU INDIVIDUALLY UP HERE AT THE
2 WITNESS STAND. MR. MILLER WILL GO FIRST.

3 I'M GOING TO ASK IF THE REST OF YOU, THE FOUR OF YOU,
4 WOULD RETIRE BACK TO COURTROOM 7. AND IF YOU NEED A SNACK, A
5 COKE, SNACKS OR ANYTHING, TELL THE BAILIFF AND WE'LL
6 ACCOMMODATE YOU. OKAY? WE'LL GET TO YOU AS SOON AS WE CAN.

7

8 THANK YOU.

9 (BALANCE OF PANEL EXITS COURTROOM AT 6:12 P.M.)

10 THE COURT: MR. MILLER, GO AHEAD AND HAVE A SEAT UP
11 HERE NEXT TO ME. (MR. MILLER COMPLIES)

12 ISSIAC N. MILLER (BLACK MALE),
13 TESTIFIED AS FOLLOWS:

14 VOIR DIRE BY THE COURT:

15 Q MR. MILLER, I'M GOING TO ASK YOU SOME QUESTIONS, TELL
16 YOU A LITTLE BIT MORE ABOUT THE PROCESS, AND THE ATTORNEYS
17 MAY HAVE QUESTIONS AS WELL. WE THANK YOU SO MUCH FOR BEING
18 HERE, SIR.

19 THIS CASE ARISES FROM AN INCIDENT WHICH ACCORDING TO THE
20 INDICTMENT OCCURRED IN GREENVILLE COUNTY ON DECEMBER THE 6TH,
21 2000. IT IS ALLEGED THAT THE DEFENDANT COMMITTED THE OFFENSE
22 OF MURDER. THE VICTIM IS IDENTIFIED AS ERIC NICHOLSON, AS I
23 MENTIONED, A STATE TROOPER AT THE TIME.

24 THERE WAS PUBLICITY REGARDING THIS CASE, AND I WANT TO
25 KNOW IF YOU HAVE GAINED ANY INFORMATION FROM THIS CASE FROM

ISSIAC N. MILLER -- VOIR DIRE BY THE COURT

1 THE MEDIA OR OTHERWISE. AND IF YOU HAVE, WILL YOU TELL US
2 SPECIFICALLY WHAT YOU CAN REMEMBER?

3 A NO, SIR.

4 Q YOU DON'T RECALL ANYTHING ABOUT THIS PARTICULAR CASE?

5 A UH-UH (NEGATIVE). I MEAN, I HEARD SOMETHING ABOUT IT,
6 BUT I DON'T REALLY READ THE NEWSPAPER THAT MUCH.

7 Q WHAT DID YOU HEAR ABOUT IT?

8 A THAT A TROOPER HAD GOT SHOT AND KILLED. THAT'S ABOUT
9 BASICALLY IT.

10 Q DO YOU REMEMBER THE CIRCUMSTANCES THAT WERE REPORTED TO
11 YOU OR WHERE IT HAPPENED, ANYTHING LIKE THAT?

12 A NO. JUST PICKING IT UP -- LIKE I SAY, WHEN I GET UP IN
13 THE MORNING AND GETTING READY FOR WORK, I USUALLY JUST CATCH
14 A LITTLE BIT OF THE NEWS BEFORE I HEAD OUT.

15 Q NOW, THERE MAY BE SOME REFERENCE IN THE EVIDENCE TO
16 ANDERSON COUNTY OR EVENTS IN ANDERSON COUNTY. HAVING
17 MENTIONED ANDERSON COUNTY, DOES THAT TRIGGER ANY MEMORY ON
18 YOUR PART AS TO THIS CASE?

19 A NO, SIR.

20 Q OKAY. NOW, THE REASON I ASK YOU THAT IS A JUROR IS
21 REQUIRED UNDER HIS OR HER OATH TO FIND THE TRUTH NOT FROM
22 WHAT HAPPENED OUTSIDE OF COURT IN THE MEDIA AND IS TOLD IN
23 THE MEDIA BUT WHAT THE JUROR LEARNS IN THE COURTROOM FROM THE
24 EVIDENCE. AND THAT'S A PART OF A JUROR'S OATH. DO YOU
25 UNDERSTAND THAT?

1 A YES.

2 Q AND IF YOU WERE A JUROR, WOULD YOU HONOR YOUR OATH AND
3 FIND THE TRUTH ONLY FROM THE EVIDENCE?

4 A YES.

5 Q WOULD YOU ALSO HONOR YOUR OATH AND FOLLOW THE LAW AS I
6 INSTRUCT IT?

7 A YES.

8 Q HAVE YOU ALREADY FORMED AN OPINION AS TO THE GUILT OR
9 INNOCENCE OF THIS DEFENDANT, MR. WOOD?

10 A NO, SIR.

11 Q THE TWO LEGAL PRINCIPLES I MENTIONED EARLIER. THE
12 PRESUMPTION OF INNOCENCE, DO YOU ACCEPT AND AGREE WITH THE
13 LEGAL PRINCIPLE THAT ANY ACCUSED IS PRESUMED TO BE INNOCENT?

14 A YES, SIR.

15 Q DO YOU FURTHER AGREE AND UNDERSTAND THE LEGAL CONCEPT
16 THAT THE STATE HAS THE BURDEN OF PROOF AND THERE IS NO BURDEN
17 WHATSOEVER ON A DEFENDANT?

18 A YES, SIR.

19 Q OKAY. NOW, WE MAY NOT EVEN MOVE TO A SENTENCING PHASE.
20 IT MAY BE OVER AFTER THE FIRST PHASE. BUT SINCE WE POSSIBLY
21 COULD HAVE A SENTENCING PHASE, I MUST ASK YOU CERTAIN
22 QUESTIONS, AND THE LAWYERS WILL AS WELL, ABOUT YOUR VIEWS ON
23 THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q WHEN A JURY MOVES TO A SENTENCING PHASE, THAT MEANS THE

ISSIAC N. MILLER -- VOIR DIRE BY THE COURT

1 JURY HAS ALREADY FOUND THAT PARTICULAR DEFENDANT GUILTY OF
2 MURDER. WE'RE NOT TALKING ABOUT THIS CASE BUT JUST THE
3 PROCESS IN GENERAL.

4 SO WHEN A JURY MOVES TO THE SENTENCING PHASE, GUILT OF
5 MURDER HAS BEEN ESTABLISHED. WE DON'T NEED TO HASH THAT OUT
6 ANYMORE. MURDER HAS BEEN COMMITTED. WHAT WE'RE CONCERNED
7 ABOUT IN THE SENTENCING PHASE IS THE APPROPRIATE PUNISHMENT
8 -- LIFE IMPRISONMENT OR DEATH.

9 AND IN THE SENTENCING PHASE WE HEAR ADDITIONAL EVIDENCE.
10 IT COULD BE EVIDENCE IN AGGRAVATION UNDER STATE LAW OR IT
11 COULD BE MITIGATION EVIDENCE. I HAVE GIVEN YOU EXAMPLES OF
12 AN AGGRAVATING CIRCUMSTANCE AS DEFINED BY STATE LAW.

13 LET ME GIVE YOU SOME EXAMPLES OF THE TYPES OF MITIGATION
14 EVIDENCE THAT MAY BE RECEIVED. IT WOULD BE EVIDENCE
15 INVOLVING A DEFENDANT'S BACKGROUND, FAMILY HISTORY, MENTAL
16 HEALTH STATUS, THINGS OF THAT NATURE.

17 NOW, WHEN A JURY IS AT THE END OF THE SENTENCING
18 HEARING, THE COURT WOULD INSTRUCT THE JURY THAT THE JURY MUST
19 BEFORE MAKING A DECISION AS TO DEATH OR LIFE IMPRISONMENT
20 GIVE SERIOUS CONSIDERATION TO ALL THE EVIDENCE, ANY
21 AGGRAVATING CIRCUMSTANCE AS WELL AS THE MITIGATION EVIDENCE.
22 IF YOU WERE IN THAT SITUATION, WOULD YOU GIVE SERIOUS
23 CONSIDERATION TO ALL THOSE FACTORS BEFORE MAKING A DECISION?

24 A YES, SIR.

25 Q NOW, LET'S AGAIN TALK ABOUT THE PROCESS IN GENERAL AND

ISSIAC N. MILLER -- VOIR DIRE BY THE COURT

1 NOT THIS CASE. IF YOU WERE ON A JURY THAT WAS IN A
2 SENTENCING PHASE, YOU HAD HEARD ALL THE EVIDENCE, CONSIDERED
3 ALL THE FACTS, YOU HAD CAREFULLY THOUGHT AND APPLIED THE LAW
4 BOTH EVIDENCE IN AGGRAVATION AND MITIGATION EVIDENCE. AND IF
5 YOU WERE PERSUADED AND CONVINCED THAT THE PROPER PUNISHMENT
6 IS LIFE IN PRISON, COULD YOU VOTE FOR LIFE IN PRISON?

7 A YES, SIR.

8 Q ON THE OTHER HAND, IF YOU WERE A JUROR AND YOU
9 CONSIDERED THE EVIDENCE VERY CAREFULLY, YOU FOLLOWED THE LAW,
10 YOU CONSIDERED EVIDENCE IN AGGRAVATION, YOU CONSIDERED
11 MITIGATION EVIDENCE AND AFTER THOUGHTFUL CONSIDERATION YOU
12 DETERMINED THAT THE APPROPRIATE PENALTY WAS DEATH, COULD YOU
13 VOTE FOR THE DEATH PENALTY?

14 A YES, SIR.

15 Q IN SOUTH CAROLINA THERE IS AN ADDITIONAL REQUIREMENT.
16 YOU NOT ONLY WOULD HAVE TO VOTE FOR THE DEATH PENALTY BUT
17 EACH JUROR -- THAT'S ALL TWELVE. IT'S GOT TO BE
18 UNANIMOUS. -- MUST SIGN HIS OR HER NAME TO THE VERDICT FORM.
19 IN THAT EVENT COULD YOU SIGN YOUR NAME TO THE VERDICT FORM?

20 A YES, SIR.

21 Q DO YOU REMEMBER THAT LIST THAT WAS BACK IN THE OTHER
22 ROOM? AND I'VE GOT A COPY OF IT IF YOU WANT TO LOOK AT IT.
23 IT LISTED THREE TYPES OF JURORS.

24 A YES.

25 Q ONE TYPE WAS A JUROR THAT'S GOING TO GIVE THE DEATH

ISSIAC N. MILLER -- VOIR DIRE BY THE COURT

1 PENALTY NO MATTER WHAT. ANOTHER TYPE OF JUROR IS GOING TO
2 GIVE A LIFE SENTENCE NO MATTER WHAT. AND THERE WAS A THIRD
3 TYPE OF JUROR, WHO AFTER THE GUILT HAS BEEN DETERMINED AS
4 THEY MOVE INTO THE SENTENCING PHASE, THAT JUROR WOULD STILL
5 HAVE AN OPEN MIND, WOULD WANT TO HEAR ADDITIONAL EVIDENCE
6 BEFORE MAKING THE FINAL DECISION. DO YOU FIT ONE OF THOSE
7 THREE CATEGORIES?

8 A PROBABLY THE THIRD ONE.

9 Q SO IF YOU WERE SELECTED TO SERVE AS A JUROR, WOULD YOU
10 APPROACH YOUR JURY SERVICE WITH AN OPEN MIND AND FIND THE
11 TRUTH FROM THE EVIDENCE AND APPLY THE LAW AS I INSTRUCT IT?

12 A YES.

13 Q AND IF YOU WERE IN A SENTENCING PHASE -- AND REMEMBER
14 GUILT OF MURDER HAS BEEN DETERMINED -- YOU WOULD STILL BE
15 OPEN AND WANT TO HEAR ALL OF THE ADDITIONAL EVIDENCE AND
16 FOLLOW THE LAW BEFORE MAKING A DECISION; IS THAT CORRECT?

17 A YES.

18 Q AND IF YOU BELIEVED THE CIRCUMSTANCES WARRANTED, YOU
19 COULD VOTE FOR DEATH OR YOU COULD VOTE FOR LIFE?

20 A YES.

21 Q VERY GOOD, SIR.

22 THE COURT: NOW, THE ATTORNEYS MAY HAVE QUESTIONS
23 OF YOU, AND THEN I MAY HAVE SOME FOLLOW-UPS, AND THEN YOU'LL
24 BE FREE TO GO. AND THANK YOU AGAIN FOR YOUR PATIENCE, MR.
25 MILLER.

ISSIAC N. MILLER -- VOIR DIRE BY THE COURT

1 THIS IS MR. MAULDIN.

2 MR. MAULDIN: THANK YOU, YOUR HONOR.

3 THE COURT: YES, SIR.

4 VOIR DIRE BY MR. MAULDIN:

5 Q MR. MILLER, I KNOW THAT YOU'VE BEEN HERE A LONG TIME, SO
6 I'M GOING TO TRY TO BE -- GET THROUGH MY QUESTIONS QUICKLY.
7 I'M JOHN MAULDIN, AND I, ALONG WITH JIM BANNISTER AND RODNEY
8 RICHEY, REPRESENT JOHN IN THIS CASE.

9 YOU HAVE ANSWERED A NUMBER OF THE QUESTIONS TO THE COURT
10 REGARDING YOUR VIEW AND YOU CLASSIFY YOURSELF AS PROBABLY A
11 NUMBER THREE JUROR, THAT IS, WILLING TO CONSIDER BOTH
12 PENALTIES. I'LL ASK A FEW FOLLOW UP TO THAT, BUT I WANT TO
13 ASK YOU ONE THING BEFORE I GET INTO THAT.

14 IT HAD BEEN BROUGHT TO OUR ATTENTION THAT THERE HAD BEEN
15 SOME CASES WHERE YOU HAD PAID FINES OR SO FORTH IN CITY COURT
16 IN MAGISTRATE COURT, MISDEMEANOR CASES?

17 A YES.

18 Q I WANT TO MAKE ABSOLUTELY SURE THAT YOU WOULD NOT BE
19 UNFAIR TO EITHER SIDE, THAT YOU WOULD STILL BE FAIR TO BOTH
20 THE PROSECUTOR AND TO THE DEFENDANT AND YOU WOULD NOT SIDE
21 WITH ONE OR THE OTHER SIMPLY BECAUSE YOU HAD PAID THESE FINES
22 ON THESE VARIOUS CASES IN MAGISTRATE OR MUNICIPAL COURT. IS
23 THAT CORRECT?

24 A I WOULD TAKE IT INTO CONSIDERATION.

25 Q ALL RIGHT. AND YOU WOULD NOT -- YOU WOULD BE WILLING TO

ISSIAC N. MILLER -- VOIR DIRE BY MR. MAULDIN

1 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR TRIAL?

2 A YES.

3 Q ALL RIGHT.

4 THE COURT: I HATE TO INTERRUPT. I APOLOGIZE.

5 MR. MAULDIN: YES, SIR.

6 THE COURT: BUT I HEARD SOMETHING THAT I NEED TO MAKE
7 SURE WHAT I HEARD. YOU ASKED HIM IF HE WOULD TAKE INTO
8 CONSIDERATION HIS INVOLVEMENT WITH THE COURT AND PENALTIES
9 AND FINES, AND HE SAID, I'LL TAKE IT INTO CONSIDERATION. AND
10 I MAY HAVE MISUNDERSTOOD THAT. YOU SEE WHAT I'M SAYING.

11 MR. MAULDIN: I DIDN'T UNDERSTAND -- I DON'T KNOW. I
12 DIDN'T UNDERSTAND THAT TO BE HIS RESPONSE. BUT IF THE COURT
13 WISHES, I'LL PASS THIS MATTER UP. IF THE COURT WISHES TO
14 LOOK---

15 THE COURT: OKAY. I'M GOING TO LOOK AT IT.

16 MR. MAULDIN: YES, SIR. AND YOU CAN ASK HIM.

17 THE COURT: HE'S ASKED YOU A QUESTION ABOUT GOING TO
18 COURT AND BEING CHARGED WITH SOMETHING OR PAYING A FINE OR
19 WHATEVER THE SENTENCE WAS.

20 JUROR NUMBER 261: OKAY. I---

21 THE COURT: I DON'T NEED TO KNOW WHAT IT IS. THEY MAY
22 ASK YOU---

23 JUROR NUMBER 261: WELL, BASICALLY WHAT HE'S SAYING IS,
24 LIKE, SAY I HAD TO, YOU KNOW, PAY FINES AND STUFF LIKE THAT,
25 WOULD I CONSIDER NOT BECAUSE I HAD TO GO TO COURT MYSELF IN

ISSIAC N. MILLER -- VOIR DIRE BY MR. MAULDIN

1 CONSIDERATION FOR THE DEFENDANT PLUS THE STATE. SO THAT'S
2 WHY I SAID, YOU KNOW, YES, I WOULD BE FAIR, YOU KNOW, FAR
3 AS---

4 **THE COURT:** OKAY.

5 **JUROR NUMBER 261:** ---BOTH SIDES.

6 **THE COURT:** SO THE FACT THAT YOU'VE BEEN TO COURT AND
7 PAID FINES WOULD NOT PREVENT YOU FROM BEING FAIR? YOU'D
8 STILL BE FAIR TO BOTH SIDES, THAT'S WHAT YOU MEANT?

9 **JUROR NUMBER 261:** YES.

10 **THE COURT:** OKAY. THAT'S MY FAULT. I'M SURE I
11 MISUNDERSTOOD.

12 **MR. MAULDIN:** THANK YOU, YOUR HONOR.

13 **VOIR DIRE CONTINUES BY MR. MAULDIN:**

14 **Q** MR. MILLER, BRIEFLY, THE COURT TALKED TO YOU ABOUT YOUR
15 WILLINGNESS TO CONSIDER IN A CASE WHERE A PERSON HAD BEEN
16 CONVICTED OF MURDER BEFORE YOU DECIDED WHICH OF THE TWO
17 PENALTIES YOU WOULD VOTE FOR. MY UNDERSTANDING IS THAT YOU
18 WOULD LISTEN TO WHAT THE STATE PRESENTS IN THEIR REQUEST FOR
19 A DEATH SENTENCE, AND YOU WOULD LISTEN TO WHAT A DEFENDANT
20 WOULD PRESENT IN A REQUEST FOR A LIFE SENTENCE. AND IF THE
21 COURT INSTRUCTED THAT YOU WERE TO GIVE MEANINGFUL
22 CONSIDERATION TO BOTH THE AGGRAVATION AND THE MITIGATING
23 CIRCUMSTANCES, THAT IS, THINGS THAT WOULD ENCOURAGE A LIFE
24 SENTENCE, YOU WOULD CONSIDER THOSE AND DECIDE WHICH PENALTY
25 WAS APPROPRIATE?

1 A THAT'S CORRECT.

2 Q AND THAT YOU COULD SENTENCE THE DEFENDANT TO EITHER
3 PENALTY DEPENDING UPON THOSE CIRCUMSTANCES?

4 A THAT'S CORRECT.

5 Q ALL RIGHT. AND ONE FINAL QUESTION, MR. MILLER, I WANT
6 TO ASK YOU. WHEN A JURY IN A CASE OF THIS NATURE HAS A
7 DEFENDANT WHO HAS BEEN CONVICTED OF MURDER AND THEY ARE
8 DECIDING WHICH PENALTY AT THE SECOND PHASE OF THE TRIAL, WHEN
9 THAT PHASE COMES ALONG AND THEY RECEIVE THE INFORMATION FROM
10 THE PROSECUTION AND FROM THE DEFENDANT, THE EVIDENCE COMES IN
11 TO THEM, THE JURY THEN DELIBERATES AND THEY CAN DELIBERATE AS
12 LONG AS IT TAKES FOR THE TWELVE OF THEM TO EXPRESS THEIR VIEW
13 OR TO LET EVERYBODY KNOW HOW THEY FEEL ABOUT WHICH OF THE TWO
14 PENALTIES.

15 THE JUDGE HAD MENTIONED TO YOU A FEW MOMENTS AGO THAT AN
16 IMPORTANT -- IN ORDER TO IMPOSE THE DEATH PENALTY IN SOUTH
17 CAROLINA ALL TWELVE JURORS WOULD HAVE TO SIGN A FORM. YOU
18 HEARD HIM SAY THAT?

19 A YES.

20 Q ALL RIGHT. LET'S ASSUME THAT THERE HAS BEEN LENGTHY
21 DELIBERATION. YOU'RE TALKING AND DISCUSSING THE CASE AND
22 WHAT TO DO. AND YOU COME TO ALL THIS DISCUSSION, AND FINALLY
23 YOU SAY, OKAY, GETTING LATE. GETTING TIRED. SO WE TAKE A
24 VOTE. AND YOU CAN TAKE SEVERAL VOTES. BUT YOU TAKE THE
25 FINAL VOTE, AND THE FINAL VOTE IS TEN PEOPLE IN FAVOR OF ONE

ISSIAC N. MILLER -- VOIR DIRE BY MR. MAULDIN

1 PENALTY AND TWO PEOPLE IN FAVOR OF ANOTHER PENALTY. AND IT
2 DOESN'T MATTER WHICH PENALTY, BUT YOU'VE GOT TEN ON ONE SIDE
3 AND TWO ON THE OTHER.

4 HERE IS MY QUESTION TO YOU: IF THAT WERE TO OCCUR AND
5 YOU HAD TEN -- A BUNCH OF PEOPLE ON ONE SIDE BUT YOU WERE IN
6 THE MINORITY, WOULD YOU SIMPLY GIVE UP YOUR POSITION JUST TO
7 GO ALONG WITH THE MAJORITY AND RESOLVE THE CASE OR WOULD YOU
8 STICK TO YOUR POSITION THAT YOU HAD DECIDED BASED UPON THE
9 DELIBERATIONS IN THE CASE AND WHAT YOU THOUGHT WAS RIGHT?

10 A I WOULD STICK WITH MY OPINION.

11 Q NOW, THE REVERSE ALSO. IF YOU WERE IN THE GROUP OF TEN
12 OR EIGHT OR NINE OR ELEVEN, WOULD YOU FORCE THE OTHER
13 MINORITY JUROR TO GO ALONG WITH YOU OR WOULD YOU RESPECT THAT
14 JUROR'S OPINION ON THAT LIFE OR DEATH QUESTION?

15 A I WOULD RESPECT THEIR OPINION.

16 MR. MAULDIN: THANK YOU.

17 THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR. THANK YOU.

19 MR. ARIAIL?

20 VOIR DIRE BY SOLICITOR ARIAIL:

21 Q MR. MILLER, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
22 FOR THE THIRTEENTH CIRCUIT, AND I REPRESENT GREENVILLE AND
23 PICKENS COUNTIES IN ALL CRIMINAL MATTERS. HELPING ME IN THIS
24 CASE WILL BE MS. STROM IN THE BEIGE COAT AND MS. HERVEY, WHO
25 IS MY ASSISTANT, IN THE BLACK.

1 WHAT IS YOUR GENERAL VIEW OF THE DEATH PENALTY?

2 A WELL, LIKE, SAY THE CIRCUMSTANCE, EVIDENCE AND IF THE
3 PERSON REALLY DESERVE, YOU KNOW, TO BE PUT TO DEATH.

4 Q ALL RIGHT. AND HAVE YOU HELD THAT OPINION ON THE DEATH
5 PENALTY FOR ANY LENGTHY PERIOD OF TIME OR IS THIS SOMETHING
6 YOU'VE THOUGHT ABOUT RECENTLY OR HOW LONG ... GIVE ME AN IDEA
7 ON THAT.

8 A WELL, I MEAN, GROWING UP I, YOU KNOW, THOUGHT ABOUT IT,
9 I MEAN, FOR A, YOU KNOW, GOOD LENGTH OF TIME. LIKE I SAID,
10 IT'S ACCORDING TO WHAT STATE THAT PERSON WAS IN AND, LIKE I
11 SAID, THE EVIDENCE THAT WAS PRESENTED TO DETERMINE IF THEY
12 DESERVED THE DEATH PENALTY OR NOT.

13 Q ALL RIGHT. AND YOU BELIEVE THAT IF THE COURT INSTRUCTED
14 YOU AND THE EVIDENCE WAS APPROPRIATE THAT -- AND YOU THOUGHT
15 THE EVIDENCE WAS APPROPRIATE THAT YOU COULD IMPOSE THE DEATH
16 PENALTY?

17 A YES.

18 Q FOR A CRIME BASED UPON WHETHER OR NOT YOU THOUGHT THE
19 EVIDENCE WAS SUFFICIENT FOR THAT -- TO WARRANT THAT
20 PUNISHMENT -- OR TO JUSTIFY THAT PUNISHMENT?

21 A WELL, I WOULD HAVE TO KNOW, LIKE I SAID, THE TRUE FACTS
22 BEFORE I COULD.

23 Q RIGHT, WHATEVER THE EVIDENCE WAS. ALL RIGHT. BEFORE
24 THE JURY SELECTION BEGAN YOU MADE A REQUEST TO BE EXCUSED DUE
25 TO YOUR WORK AND YOUR FAMILY OBLIGATIONS, AND YOU ALSO

1 RENEWED THAT REQUEST YESTERDAY?

2 A YES. I SUPPOSED TO HAVE PICKED UP A DOCTOR'S NOTE.
3 THEY ALREADY HAD IT READY. I HAD TALKED TO THE JUDGE. HE
4 TOLD ME I NEEDED THE NOTE. SO WHERE I WORK AT WE IN A
5 POSITION WHERE I CAN'T JUST TAKE OFF BECAUSE I GOT TO COME
6 OVER HERE. THEY TOLD ME I COULD JUST ONLY GET OFF TO COME UP
7 HERE AND GET MY NOTE SIGNED AND MAKE SURE THAT'S WHERE I WAS
8 AT.

9 Q ALL RIGHT, SIR. NOW, DO YOU UNDERSTAND THAT WHAT WE'RE
10 DOING IS QUALIFYING A JURY AND YOU MAY BE SELECTED AS A
11 CANDIDATE TO BE ON THE JURY, AND IF SO YOU COULD BE
12 SEQUESTERED AND TAKEN AWAY FROM WORK FOR UP TO TEN DAYS TO
13 TWO WEEKS?

14 A I UNDERSTAND THAT.

15 Q ALL RIGHT. AND HAVE YOU ARRANGED WITH WORK AND WITH
16 YOUR FAMILY? IS THAT SOMETHING YOU CAN DO?

17 A YES. I HAVEN'T DISCUSSED IT WITH THEM YET, AS FAR AS MY
18 FAMILY. BUT I HAVE LET THEM BE AWARE AT WORK OF THE
19 SITUATION.

20 Q OKAY. AND SO YOUR PREVIOUS REQUEST HAS BEEN TAKEN CARE
21 OF, THE ONES YOU ASKED TO BE EXCUSED?

22 A YES.

23 SOLICITOR ARIAIL: JUST ONE SECOND, YOUR HONOR. (OFF
24 RECORD WITH CO-COUNSEL)

25 Q YESTERDAY YOU BROUGHT THE SUBJECT UP WITH THE JUDGE THAT

ISSIAC N. MILLER -- VOIR DIRE BY MR. MAULDIN

1 YOU WERE GOING TO GET A DOCTOR'S NOTE BECAUSE YOUR WIFE HAD
2 HAD SURGERY AND COULD NOT TAKE CARE OF THE CHILDREN AND YOU
3 NEEDED TO DO THAT?

4 A NO. I GOT FOUR KIDS IN SCHOOL. MY WIFE USUALLY TAKES
5 THEM TO SCHOOL BEFORE SHE GO TO WORK.

6 Q RIGHT.

7 A THEY PUT HER ON LEAVE FOR A COUPLE OF WEEKS BECAUSE SHE
8 HAD BOTH FEET OPERATED ON, AND THEY BANDAGED UP AND PUT
9 STITCHES IN THEM. SO I HAD AN ARRANGEMENT WITH MY JOB THAT I
10 COULD TAKE THEM TO SCHOOL AND THEN COME IN AND THEN GET OFF
11 IN TIME TO PICK THEM UP AND COME BACK TO WORK. BECAUSE WE'RE
12 ON THREE TWELVE AND OFF, LIKE THAT, ROTATE.

13 Q BUT YOU'VE GOT THAT WORKED OUT THAT SOMEONE ELSE -- IF
14 YOU GOT PICKED ON THIS JURY, THAT SOMEONE ELSE WOULD BE
15 TAKING THOSE CHILDREN TO SCHOOL AND PICKING THEM UP?

16 A WELL, I HAVEN'T GOT THAT -- I MEAN, TO THAT STAGE. I
17 WOULD HAVE TO GET MY AUNT, MY SISTER-IN-LAW OR MY MOM TO TRY
18 TO PICK THEM UP UNTIL MY WIFE CAN GET ABLE TO DRIVE AND GET
19 THEM BACK AND FORTH.

20 Q BUT THERE IS SOMEBODY THAT CAN DO THAT?

21 A YES.

22 SOLICITOR ARIAIL: OKAY. ALL RIGHT. THANK YOU.

23 THE COURT: MR. MILLER, THANK YOU, SIR. THE BAILIFF IS
24 GOING TO ESCORT YOU TO A JURY ROOM. WE'LL GET YOU BACK IN
25 HERE BRIEFLY AND THEN YOU'LL BE FREE TO GO FOR THE EVENING.

ISSIAC N. MILLER -- VOIR DIRE BY MR. MAULDIN

1 **JUROR NUMBER 261:** OKAY. THE NOTE THAT I HAVE FROM
2 WORK, HOW WOULD I GET THAT FILLED OUT? THEY GAVE ME A NOTE
3 AT WORK.

4 **THE COURT:** YOU HAVE A NOTE -- THEY WANT TO KNOW IF
5 YOU'RE ON JURY DUTY?

6 **JUROR NUMBER 261:** YES.

7 **THE COURT:** I TELL YOU, BRING THIS BACK IN WHEN A
8 DECISION IS MADE, AND IT MAY BE THAT I CAN GIVE YOU AN ORDER
9 THAT ADDRESSES THIS AND YOUR EMPLOYER WILL KNOW WHAT YOUR
10 OBLIGATIONS ARE. OKAY?

11 **JUROR NUMBER 261:** OKAY. WELL, BASICALLY, LIKE I SAID,
12 THE SITUATION THAT I'M IN AT WORK BY ME COMING IN, I'M GOING
13 TO NEED SOMETHING TO, YOU KNOW, STATE THAT THIS IS WHERE I BE
14 AT AND SO FORTH, BECAUSE, I GUESS, FOR THEIR RECORDS THAT
15 THEY NEED IT AT MY JOB.

16 **THE COURT:** I TELL YOU, LET ME KEEP THIS HERE AND THEN
17 I'LL FILL IT OUT AS I NEED TO WHEN YOU COME BACK IN. THANK
18 YOU, MR. MILLER.

19 **JUROR NUMBER 261:** ALL RIGHT. UH-HUH (AFFIRMATIVE).

20 (JUROR EXITS COURTROOM AT 6:31 P.M.)

21 **THE COURT:** ALL RIGHT. THE GENTLEMAN HAS BEEN EXCUSED.
22 I'D LIKE TO HEAR IF ANYONE CONTENTS HE IS NOT QUALIFIED.

23 **MS. STROM:** HE'S QUALIFIED.

24 **SOLICITOR ARIAIL:** HE'S QUALIFIED.

25 **MR. MAULDIN:** QUALIFIED.

MATTERS AND MOTIONS

1 **THE COURT:** ALL RIGHT. THE STATE, ONCE YOU'VE
2 CONSIDERED IT, LET ME KNOW WHAT YOUR DECISION IS, PLEASE.

3 **SOLICITOR ARIAIL:** (OFF RECORD WITH CO-COUNSEL) EXCUSE
4 THE JUROR IN THIS CASE, PLEASE.

5 **THE COURT:** OKAY. ANY BATSON MOTION?

6 **MR. MAULDIN:** YES, SIR.

7 **THE COURT:** ALL RIGHT. LET ME HEAR THE REASONS TO
8 EXCUSE THIS JUROR.

9 **SOLICITOR ARIAIL:** EIGHT CONVICTIONS FOR VARIOUS
10 OFFENSES RANGING FROM 19 -- ON A CONTINUAL BASIS FROM 1989 --
11 EXCUSE ME, 1987. TWO OF THOSE CONVICTIONS DEAL WITH FAILURE
12 TO COMPLY WITH A DIRECT COURT ORDER, AND ONE OF THOSE
13 CONVICTIONS INVOLVES THE BREACH OF TRUST AND FILING A FALSE
14 POLICE REPORT -- FALSE REPORTING OF A CRIME. IT'S OUR
15 CONTENTION THAT HE HAS AN EXTENSIVE CRIMINAL RECORD. THIS IS
16 NOT JUST ONE CONVICTION FOR FRAUDULENT CHECK. AND THE TWO
17 ITEMS DEALING WITH THE FAILURE TO FOLLOW THE COURT ORDER GO
18 TO THE VERY HEART OF WHAT HE IS GOING TO BE INSTRUCTED TO DO
19 HERE.

20 **THE COURT:** AND WE MAY VERY WELL REVISIT THIS ISSUE
21 DOWN THE ROAD. BUT AT THIS POINT, AND I MAY HAVE ACCESS TO
22 THIS INFORMATION. I JUST DON'T KNOW THE ANSWER. DOES ANY
23 JUROR THAT'S BEEN SEATED HAVE A CRIMINAL RECORD? AND IF SO,
24 THE EXTENT OF THAT CRIMINAL RECORD.

25 **SOLICITOR ARIAIL:** NO, SIR.

MATTERS AND MOTIONS

1 **THE COURT:** OKAY.

2 **SOLICITOR ARIAIL:** AS TO THE EXTENT, NO, SIR. I DON'T
3 THINK WE HAVE ANYBODY THAT HAS A CRIMINAL RECORD.

4 **THE COURT:** I MEAN, I DON'T KNOW. I'M TRYING TO
5 COMPARE.

6 (OFF RECORD DISCUSSION)

7 **SOLICITOR ARIAIL:** NO ONE HAS BEEN SEATED THAT HAS A
8 CRIMINAL RECORD, MUCH LESS ANYONE WHO HAS ONE TO THE EXTENT
9 OF THIS GENTLEMAN.

10 **THE COURT:** ONE SECOND. THERE IS ONE JUROR WE
11 INTERVIEWED THAT HAD A RECORD. I DON'T KNOW IF -- (OFF
12 RECORD DISCUSSION WITH MS. PLUMLEY)

13 **SOLICITOR ARIAIL:** WE HAD ONE WHO HAD A DUI CONVICTION.

14 **THE COURT:** OKAY. THE FIRST JUROR -- THE FIRST JUROR
15 WE SELECTED, JUROR NUMBER 325, HAD A BAD CHECK CHARGE.

16 **SOLICITOR ARIAIL:** RIGHT.

17 **THE COURT:** AND MR. MAULDIN, I'LL LET YOU RESPOND AT
18 THIS TIME---

19 **SOLICITOR ARIAIL:** 325 DID HAVE A FRAUDULENT CHECK.

20 **THE COURT:** I'M NOT REQUIRING IT. WE'LL REVISIT THE
21 ISSUE LATER. I JUST DON'T WANT TO FORECLOSE YOU IF YOU WANT
22 TO SAY SOMETHING ABOUT THAT ISSUE AT THIS TIME.

23 **MR. MAULDIN:** YOUR HONOR, THE ONLY POINT I WOULD MAKE
24 -- AND I DO REQUEST A RESERVATION BECAUSE OF THE SYSTEMATIC
25 ISSUES THAT INVOLVE -- THAT COME UP IN BATSON SO OFTEN. SO I

MATTERS AND MOTIONS

1 DO MAKE THE RESERVATION ON THAT.

2 I WOULD COMMENT THAT IT'S NOT ONLY TO PEOPLE THAT HAVE
3 BEEN SEATED BUT IN THE FACT THAT THERE HAVE BEEN PEOPLE WHO
4 HAVE BEEN QUALIFIED, PASSED ON BY THE STATE AND EXCUSED BY
5 THE DEFENSE, OR ANYONE WHO HAS BEEN QUALIFIED THAT THE STATE
6 HAS HAD AN OPPORTUNITY, THE SAME RULE WOULD APPLY. IT'S NOT
7 JUST WHETHER OR NOT THEY DIDN'T---

8 THE COURT: GOOD POINT.

9 MR. MAULDIN: ALL RIGHT. AND THEN THE LAST COMMENT I'D
10 MAKE PRIOR TO RESERVING ADDITIONAL IS JUST FOR THIS RECORD,
11 THERE HAVE BEEN SIX AFRICAN AMERICANS COME BEFORE US AS
12 MEMBERS OF THIS PANEL. FOUR OF THOSE HAVE NOT QUALIFIED AND
13 THE OTHER TWO HAVE BEEN STRUCK BY THE STATE WITH THEIR ONLY
14 TWO STRIKES AT THIS POINT. SO I JUST BRING THAT POINT TO THE
15 COURT'S ATTENTION AS OF NOW IN THIS PROCEEDING.

16 THE COURT: ALL RIGHT. I WOULD LIKE TO KNOW -- LET'S
17 SEE, BATSON WAS MADE WITH REGARD TO HAMILTON E. RUSSELL, III.
18 I'D LIKE TO KNOW IF HE HAS ANY CRIMINAL RECORD. A JENNIFER
19 MCKINLEY?

20 MS. HERVEY: YES, SHE HAS A DUI CONVICTION IN 2001.

21 MR. MAULDIN: AND WE STRUCK HER.

22 THE COURT: YOU STRUCK HER. THEY DID NOT.

23 MR. MAULDIN: YES, SIR.

24 THE COURT: ALL RIGHT. SO DUI. YOU AGREED ON WILL
25 SHARPE WHO HAD A BAD CHECK. LET'S SEE.

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: A FRAUDULENT CHECK ARREST. NOT A
2 CONVICTION.

3 THE COURT: OH, NOT A CONVICTION?

4 SOLICITOR ARIAIL: NO, SIR. AND WE DON'T EVEN HAVE A
5 RAP SHEET ON HIM THAT I KNEW OF. ALL I HAD WAS A LITTLE
6 NOTE.

7 THE COURT: YEAH, HE FILLED OUT HIS JURY INFORMATION
8 CARD. HE JUST PUT "BAD CHECK."

9 SOLICITOR ARIAIL: OKAY. WE DON'T HAVE A RAP SHEET.

10 THE COURT: ALL RIGHT. HOW ABOUT MR. VERNON WADE?

11 MS. HERVEY: WELL, I THINK YOU SKIPPED ONE.

12 THE COURT: OH, I'M SORRY.

13 MS. HERVEY: CLIFFORD SMITH.

14 THE COURT: OH, THERE WAS NO BATSON ON MS. MCKINLEY.

15 MS. HERVEY: RIGHT.

16 THE COURT: BUT YOU ACCEPTED HER. SO MS. MCKINLEY, ANY
17 RECORD ON MS. MCKINLEY?

18 MS. HERVEY: SHE HAS A DUI.

19 THE COURT: OKAY. I'M SORRY. YOU TOLD ME THAT. I
20 APOLOGIZE.

21 HOW ABOUT MR. STUBER, MARK ALLEN STUBER?

22 MS. HERVEY: NO.

23 THE COURT: THE NEXT ONE I HAVE IS VERNON WADE?

24 MS. HERVEY: WELL, WHAT ABOUT CLIFFORD SMITH?

25 MS. STROM: HE WAS FOUND NOT QUALIFIED.

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** HE WAS EXCUSED BY THE COURT.

2 **MS. HERVEY:** OH.

3 **THE COURT:** NORMA PITTS DOESN'T HAVE A RECORD. BECAUSE
4 THE ONLY ONE THAT'S SEATED IS MR. SHARPE, BAD CHECK, AND IT
5 MAY NOT BE A CONVICTION. I'M TRYING TO FIND OUT THE ONES
6 THAT YOU ACCEPTED BUT THE DEFENDANT REJECTED.

7 SO WHAT INFORMATION DO YOU HAVE ON MR. WADE'S CRIMINAL
8 HISTORY?

9 **MS. HERVEY:** HE HAS NONE.

10 **THE COURT:** OKAY. THIS IS AN ISSUE THAT WE'LL REVISIT
11 THROUGH THE PROCESS.

12 ASK, MR. MILLER TO COME BACK. GET MS. ROGERS.

13 (JUROR REENTERS COURTROOM AT 6:40 P.M.)

14 **THE COURT:** ALL RIGHT. MR. MILLER, THANK YOU VERY
15 MUCH. YOU ARE ELIGIBLE TO SERVE AND YOU MAY BE SELECTED TO
16 SERVE IN THIS CASE. WE JUST DON'T KNOW AT THIS POINT . SO
17 I'M GOING TO GIVE YOU AN ORDER THAT SAYS THAT AND ALSO
18 REQUIRES YOU TO CONTINUE WITH YOUR EARLIER ORDER NOT TO
19 DISCUSS THE CASE, SPECULATE ABOUT THE CASE WITH ANYONE AND DO
20 NOT EXPOSE YOURSELF TO ANY INFORMATION FROM THE MEDIA OR FROM
21 SOME OTHER SOURCE.

22 MS. PLUMLEY, THE JURY COORDINATOR WHO HAS BEEN SITTING
23 HERE -- YOU MET HER DOWNSTAIRS YESTERDAY -- SHE IS GOING TO
24 BE OUT IN THE HALL WHEN YOU LEAVE. WE JUST WANT TO GET ALL
25 OF YOUR PHONE NUMBERS, HOME AND WORK, SO WHEN THE DECISION IS

MATTERS AND MOTIONS

1 MADE WHETHER WE NEED YOU WE CAN LET YOU KNOW, TO BRING YOU
2 BACK IN OR JUST TO LET YOU GO COMPLETELY.

3 I'VE ALSO -- I'M GOING TO GIVE YOU THIS. YOU CAN SHOW
4 IT TO YOUR EMPLOYER. AND I HAVE FILLED OUT THE FORM FOR THE
5 TWO DAYS YOU WERE HERE AND WHAT THE COUNTY PAYS YOU, AND ALSO
6 SIGNED IT AND GAVE MS. PLUMLEY'S NAME AND HER PHONE NUMBER IF
7 THEY WANT TO CONFIRM IT. OKAY?

8 THANK YOU, MR. MILLER. DO YOU UNDERSTAND THOSE
9 INSTRUCTIONS?

10 JUROR NUMBER 261: YES, SIR.

11 THE COURT: THANK YOU, SIR.

12 (JUROR EXITS COURTROOM AT 6:41 P.M.)

13 (JUROR NUMBER 316 ENTERS COURTROOM AT 6:43 P.M.)

14 REBECCA D. ROGERS (WHITE
15 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

16 VOIR DIRE BY THE COURT:

17 Q AGAIN, THANK YOU SO MUCH FOR YOUR PATIENCE AND
18 UNDERSTANDING. I'VE GOT SOME THINGS I WANT TO BRING TO YOUR
19 ATTENTION, QUESTIONS, AND THE ATTORNEYS WILL HAVE QUESTIONS
20 AS WELL.

21 THIS CASE, MS. ROGERS, ARISES FROM AN INCIDENT WHICH,
22 ACCORDING TO THE INDICTMENT, OCCURRED IN GREENVILLE COUNTY
23 BACK ON DECEMBER THE 6TH OF 2000. IN THE INDICTMENT THE
24 DEFENDANT MR. WOOD IS CHARGED WITH THE OFFENSE OF MURDER.
25 THE VICTIM IDENTIFIED IN THE INDICTMENT IS ERIC NICHOLSON.

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 MR. NICHOLSON WAS AT THAT TIME A STATE TROOPER.

2 THIS CASE RECEIVED SOME ATTENTION IN THE MEDIA, AND I'D
3 LIKE TO KNOW IF YOU FROM THE MEDIA OR OTHERWISE HAVE HEARD
4 ANYTHING OR GAINED ANY INFORMATION ABOUT THIS CASE, AND IF
5 YOU HAVE, TELL US SPECIFICALLY WHAT YOU REMEMBER.

6 A WELL, YESTERDAY I WAS GOING TO COURT TO PAY A FINE THAT
7 I HAD GOTTEN, AND I JUST HEARD SOMETHING SAID ABOUT THAT THEY
8 WOULD BE CHOOSING JURORS FOR A TRIAL, AND THAT'S ALL I HEARD.
9 AND THEN I COME AND FOUND OUT THAT THAT WAS WHAT I WAS HERE
10 FOR.

11 Q OKAY. BUT DO -- HOW LONG HAVE YOU LIVED HERE IN THE
12 GREENVILLE AREA?

13 A FOR APPROXIMATELY THREE YEARS.

14 Q SO YOU WERE IN GREENVILLE AND LIVING IN GREENVILLE BACK
15 IN DECEMBER OF 2000?

16 A YEAH.

17 Q AND YOU DON'T RECALL ANY NEWS COVERAGE ABOUT THE EVENT
18 OF A TROOPER---

19 A I SEEN IT ON THE NEWS, BUT IT SLIPPED MY MIND. I
20 DON'T -- I WORK NIGHT SHIFT AND THE NEWS IS THE LAST THING I
21 WATCH. BUT I THINK IT WAS NEAR WADE HAMPTON ROAD, I THINK IS
22 WHERE IT WAS AT. I MEAN, I DON'T RECALL MUCH.

23 Q DO YOU RECALL ANYTHING ELSE?

24 A THAT'S ALL.

25 Q ALL RIGHT. IT MAY BE IN EVIDENCE THAT ANDERSON COUNTY

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 IS REFERRED TO OR AN EVENT OR SERIES OF EVENTS IN ANDERSON
2 COUNTY. NOW THAT I HAVE MENTIONED ANDERSON COUNTY, DOES THAT
3 TRIGGER ANY MEMORY YOU HAVE ABOUT THIS CASE?

4 A UH-UH (NEGATIVE).

5 Q THE REASON I ASK THAT, MS. ROGERS, IS EVERY JUROR WHO IS
6 SELECTED TO SERVE MUST TAKE AN OATH, AND THAT OATH REQUIRES
7 EACH JUROR TO FIND THE TRUTH, THE FACTS, FROM THE EVIDENCE,
8 NOT FROM WHAT YOU MAY HAVE HEARD OUT IN THE COMMUNITY FROM
9 THE MEDIA OR OTHERWISE. SO IF YOU WERE SELECTED AS A JUROR,
10 WOULD YOU HONOR YOUR OATH AND FIND THE TRUTH ONLY FROM THE
11 FACTS PRESENTED IN THE COURSE OF THIS TRIAL?

12 A UH-HUH (AFFIRMATIVE).

13 Q IS THAT A YES?

14 A YES, SIR. I'M SORRY.

15 Q OKAY. IT'S HARD TO TAKE DOWN FOR THE COURT REPORTER,
16 THE NODS AND STUFF LIKE THAT.

17 A YES, SIR.

18 Q WOULD YOU ALSO FOLLOW YOUR OATH AND FOLLOW MY
19 INSTRUCTIONS ON THE LAW AS I GIVE THEM?

20 A YES, SIR.

21 Q HAVE YOU ALREADY FORMED AN OPINION ABOUT THE GUILT OR
22 INNOCENCE OF THIS DEFENDANT, MR. WOOD?

23 A NO, SIR.

24 Q YOU REMEMBER THOSE TWO LEGAL PRINCIPLES WE DISCUSSED?
25 THE PRESUMPTION OF INNOCENCE. ANYONE ACCUSED OF A CRIME IS

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 PRESUMED TO BE INNOCENT. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q DO YOU AGREE WITH THAT?

4 A I DON'T JUDGE PEOPLE. IF I AM CHOSEN, I WILL LISTEN TO
5 EVERYTHING THAT IS SAID, AND THEN I WILL MAKE MY FINAL
6 JUDGMENT. BUT I THINK EVERYBODY HAS A RIGHT TO HAVE THEIR
7 CASE HEARD.

8 Q PART OF YOUR OATH WOULD BE TO FOLLOW THE LAW, AND ONE OF
9 THE THINGS I WOULD EMPHASIZE TO YOU IS THAT LEGAL PRINCIPLE,
10 THE PRESUMPTION OF INNOCENCE. SO ANYONE ACCUSED -- WE'RE NOT
11 JUST TALKING ABOUT MR. WOOD, BUT JUST ANYONE ACCUSED OF A
12 CRIME IS PRESUMED TO BE INNOCENT. THERE IS NO BURDEN ON A
13 DEFENDANT TO PROVE OR DISPROVE ANYTHING. THE BURDEN OF PROOF
14 IS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT. DO
15 YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q IF YOU HEARD A CASE, NOT -- JUST ANY CASE. IF YOU WERE
18 A JUROR IN A CASE AND YOU HEARD THE EVIDENCE AND FOLLOWED THE
19 LAW AND YOU WERE CONVINCED BASED ON THE EVIDENCE AND THE LAW
20 THAT THE DEFENDANT WAS GUILTY BEYOND A REASONABLE DOUBT,
21 WOULD YOU FIND THE DEFENDANT GUILTY?

22 A I WOULD SAY WHAT I FELT. YES, SIR.

23 Q OKAY. NOW SWITCH THAT. LET'S SAY THAT YOU APPLIED THE
24 LAW AND YOU FOUND THE FACTS AND AFTER CAREFULLY CONSIDERING
25 IT ALL YOU FOUND THE STATE HAD NOT PROVEN GUILT BEYOND A

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 REASONABLE DOUBT. WOULD YOU FOLLOW YOUR OATH AND FIND THE
2 DEFENDANT NOT GUILTY?

3 A CAN YOU REPEAT THE QUESTION, PLEASE?

4 Q ALL RIGHT. AND UNDERSTAND, WHAT I'M JUST TRYING TO FIND
5 OUT IS IF YOU AS A JUROR WOULD FOLLOW YOUR OATH. SOMETIMES
6 PEOPLE COME IN WITH PRECONCEPTIONS ABOUT WHAT THE LAW IS OR
7 WHAT THE LAW OUGHT TO BE. AND WHEN THE LAW DIFFERS FROM THAT
8 PERSON'S OWN FEELINGS, SOME PEOPLE WILL DISREGARD THE JURY
9 OATH AND DO WHAT THEY THINK IS THE RIGHT THING TO DO.

10 A UH-HUH (AFFIRMATIVE).

11 Q SO WHAT I WANT TO KNOW IS IF YOU'RE ON A JURY AND YOU'RE
12 SITTING IN THE JURY BOX AND THE JUDGE INSTRUCTS YOU ON A
13 PRINCIPLE OF LAW THAT YOU MUST HONOR AND FOLLOW AND APPLY, IF
14 YOU PERSONALLY DISAGREE WITH IT, WHICH WINS, YOUR OATH TO
15 FOLLOW THE JUDGE'S INSTRUCTIONS OR YOUR PERSONAL FEELINGS
16 WHEN THEY'RE IN CONFLICT?

17 A I HAVE TO FOLLOW THE JUDGE'S INSTRUCTIONS.

18 Q OKAY. SO IF YOU ARE ON A JURY AND YOU HAVE FOLLOWED
19 YOUR OATH AND YOU HAVE LISTENED TO THE EVIDENCE AND YOU
20 APPLIED THE LAW AND YOU BELIEVED THAT THE STATE HAD NOT
21 PROVEN A DEFENDANT GUILTY, WOULD YOU---

22 A I WOULD SAY HE WAS INNOCENT.

23 Q OKAY. AND I'M GOING TO GO BACK AND REVISIT A QUESTION I
24 ASKED YOU A MINUTE AGO, AND IT WAS, DO YOU ALREADY HAVE AN
25 OPINION AS TO THE GUILT OR INNOCENCE OF THIS DEFENDANT, MR.

1 WOOD?

2 A NO, SIR.

3 Q NOW, MR. ROGERS, WE MAY NOT EVEN REACH A SENTENCING
4 PHASE. THE SECOND PHASE?

5 A UH-HUH (AFFIRMATIVE).

6 Q IT MAY BE OVER AFTER THE FIRST PHASE. BUT SINCE WE
7 POSSIBLY COULD REACH THE SENTENCING PHASE, I'VE GOT TO ASK
8 YOU SOME QUESTIONS ABOUT IT. THE ATTORNEYS WILL HAVE SOME
9 QUESTIONS FOR YOU, INCLUDING YOUR VIEWS ON THE DEATH PENALTY.
10 DO YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q ALL RIGHT. SO WHEN A JURY MOVES TO A SENTENCING PHASE,
13 AND WE'RE TALKING ABOUT JUST A GENERAL CONCEPT, A JURY WOULD
14 HAVE ALREADY FOUND THE DEFENDANT GUILTY OF MURDER. MURDER IS
15 THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE
16 AFORETHOUGHT.

17 SO WHEN YOU GO TO THE SENTENCING PHASE, WE'RE NOT
18 TALKING SELF-DEFENSE. WE'RE NOT TALKING ABOUT ALIBI. WE'RE
19 NOT TALKING ABOUT MISTAKE. IT'S MURDER. THAT'S BEEN
20 ESTABLISHED. WHEN WE GO TO THE SENTENCING PHASE, WE ARE
21 GOING TO THE SENTENCING PHASE TO HEAR NEW EVIDENCE, TO
22 CAREFULLY CONSIDER THAT EVIDENCE AND THEN DECIDE WHAT IS THE
23 APPROPRIATE PENALTY, LIFE IMPRISONMENT OR DEATH. DO YOU
24 UNDERSTAND THAT?

25 A YES, SIR.

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 Q WHEN A JURY MOVES TO A SENTENCING PHASE THE JURY HEARS
2 ADDITIONAL EVIDENCE. IT MIGHT BE EVIDENCE IN AGGRAVATION.
3 AGGRAVATING CIRCUMSTANCE, THAT'S THE CORRECT TERM. AND UNDER
4 OUR LAW, SOUTH CAROLINA ALLOWS THE STATE TO ASK FOR THE DEATH
5 PENALTY IN CERTAIN CRIMES OF MURDER. NOT EVERY MURDER ALLOWS
6 THE STATE TO ASK FOR THE DEATH PENALTY.

7 I'LL GIVE YOU SOME EXAMPLES OF AN AGGRAVATING
8 CIRCUMSTANCE. MURDER COMMITTED IN THE COMMISSION OF ARMED
9 ROBBERY, MURDER COMMITTED IN THE COMMISSION OF KIDNAPPING,
10 MURDER COMMITTED IN THE COMMISSION OF TORTURE, POISON,
11 SOMETHING LIKE THAT. THERE ARE OTHER EXAMPLES. THAT JUST
12 GIVES YOU AN IDEA OF AN AGGRAVATING CIRCUMSTANCE. AND THAT'S
13 THE TYPE OF EVIDENCE THAT WOULD BE PRESENTED AND ARGUED AT A
14 SENTENCING PHASE.

15 YOU WOULD ALSO BE PRESENTED WITH WHAT WE CALL MITIGATION
16 EVIDENCE THAT THE LAW SPECIFICALLY ALLOWS. MITIGATION
17 EVIDENCE, MS. ROGERS, MAY BE SUCH THINGS AS A DEFENDANT'S
18 BACKGROUND, FAMILY HISTORY, MENTAL HEALTH STATUS, THINGS OF
19 THAT NATURE. AND AT THE END OF THE SENTENCING PROCESS, THE
20 JURY HAS HEARD IT ALL, THE JUDGE WOULD TELL THE JURY THAT
21 THEY MUST GIVE CAREFUL AND MEANINGFUL CONSIDERATION TO ALL OF
22 THE EVIDENCE AND THE EVIDENCE IN AGGRAVATION AS WELL AS THE
23 EVIDENCE IN MITIGATION AND TO GIVE THAT CONSIDERATION BEFORE
24 MAKING A FINAL DECISION, BEFORE DECIDING WHETHER LIFE OR
25 DEATH IS THE PROPER PENALTY.

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 IF YOU WERE A JUROR IN THAT SITUATION, WOULD YOU HONOR
2 YOUR OATH AND CONSIDER ALL OF THE EVIDENCE AND APPLY THE LAW
3 AND CONSIDER THE EVIDENCE IN AGGRAVATION AND THE EVIDENCE IN
4 MITIGATION BEFORE YOU MAKE A DECISION?

5 A YES, SIR.

6 Q IF YOU WERE A JUROR, AGAIN JUST A HYPOTHETICAL CASE, AND
7 YOU WERE IN A SENTENCING PHASE AND YOU WERE AT THE END, YOU
8 HEARD THE EVIDENCE, YOU LISTENED TO THE JUDGE'S INSTRUCTIONS
9 AND YOU FOLLOWED IT AND YOU GAVE CAREFUL CONSIDERATION TO ALL
10 THE FACTORS -- EVIDENCE IN AGGRAVATION, MITIGATION AND
11 EVERYTHING -- IF YOU WERE PERSUADED THAT THE PROPER PENALTY
12 IS LIFE IMPRISONMENT, COULD YOU VOTE FOR LIFE IMPRISONMENT?

13 A YEAH.

14 Q ALL RIGHT. I'LL ASK YOU THE FLIP SIDE OF THAT. YOU'RE
15 ON A JURY. YOU'VE LISTENED TO IT ALL. YOU'VE CAREFULLY
16 CONSIDERED IT. YOU'VE APPLIED THE LAW, EVIDENCE IN
17 AGGRAVATION, EVIDENCE IN MITIGATION. AT THE END OF THE
18 PROCESS YOU WERE CONVINCED UNDER THE LAW IN YOUR VIEW THAT
19 THE DEATH PENALTY WAS THE APPROPRIATE PUNISHMENT. IN THAT
20 EVENT COULD YOU VOTE FOR THE DEATH PENALTY?

21 A YES, SIR.

22 Q SOUTH CAROLINA ALSO REQUIRES IN THAT EVENT WHEN ALL
23 TWELVE JURORS VOTE -- AND IT MUST BE UNANIMOUS FOR THE DEATH
24 PENALTY -- EACH JUROR MUST SIGN THE VERDICT FORM. COULD YOU
25 SIGN YOUR NAME TO SUCH A VERDICT FORM IMPOSING THE DEATH

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 PENALTY?

2 A YES, SIR.

3 Q OKAY. DO YOU RECALL THE SHEET THAT WAS IN THE OTHER
4 ROOM? AND I'VE GOT ANOTHER COPY HERE IF YOU WANT TO LOOK AT
5 IT. IT DESCRIBED THE THREE TYPES OF JURORS. ONE WAS A JUROR
6 WHO IS GOING TO GIVE THE DEATH PENALTY IN EVERY CRIME OF
7 MURDER NO MATTER WHAT. THE SECOND ONE IS A JUROR WHO IS
8 GOING TO GIVE LIFE IMPRISONMENT IN EVERY MURDER CASE, DOESN'T
9 WANT TO HEAR ANYTHING ELSE. THE THIRD JUROR IS ONE WHO
10 APPROACHES THE SENTENCING PROCESS AFTER GUILT HAS BEEN
11 DETERMINED WITH AN OPEN MIND AND STILL IS UNDECIDED AND WOULD
12 NEED TO HEAR EVIDENCE BOTH IN AGGRAVATION AND MITIGATION
13 BEFORE MAKING A FINAL DECISION. WHICH ONE OF THOSE DO YOU
14 THINK BEST DESCRIBES YOU?

15 A NUMBER THREE.

16 Q SO IF YOU WERE IN A CASE WHERE THE STATE SOUGHT THE
17 DEATH PENALTY AND YOU MOVED FROM THE FIRST PHASE TO THE
18 SENTENCING PHASE, YOU WOULD STILL HAVE AN OPEN MIND AND YOU
19 WOULD STILL AT THAT POINT NOT HAVE MADE YOUR MIND UP BUT WANT
20 TO HEAR ADDITIONAL EVIDENCE AND FOLLOW THE LAW BEFORE YOU DO
21 MAKE A FINAL DECISION?

22 A YES, SIR.

23 Q AND YOU COULD VOTE FOR LIFE OR YOU COULD VOTE FOR THE
24 DEATH PENALTY BASED ON THE ADDITIONAL EVIDENCE AND CAREFUL
25 CONSIDERATION OF ALL THE FACTORS INSTRUCTED BY THE COURT?

REBECCA D. ROGERS -- VOIR DIRE BY THE COURT

1 A YES, SIR.

2 Q MS. ROGERS, DO YOU KNOW OF ANY REASON WHY YOU WOULD NOT
3 BE ELIGIBLE OR WHY YOU WOULD NOT BE QUALIFIED TO SERVE AS A
4 JUROR IN THIS CASE?

5 A NO, SIR.

6 THE COURT: OKAY. I MAY HAVE SOME FOLLOW-UP QUESTIONS,
7 BUT I'M SURE THE ATTORNEYS WOULD LIKE TO ASK YOU SOME
8 QUESTIONS AS WELL. WHEN WE GET THROUGH WITH THAT, THEN
9 YOU'LL BE FREE TO GO. AND THANKS AGAIN FOR YOUR PATIENCE
10 THIS EVENING.

11 THE COURT: MR. ARIAIL?

12 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

13 VOIR DIRE BY SOLICITOR ARIAIL:

14 Q MS. ROGERS, MY NAME IS BOB ARIAIL, AND I'M THE SOLICITOR
15 FOR GREENVILLE AND PICKENS COUNTIES, WHICH IS THE THIRTEENTH
16 CIRCUIT OF THE STATE OF SOUTH CAROLINA. AND THE SOLICITOR IS
17 WHAT WOULD BE KNOWN ON T.V. AS THE DISTRICT ATTORNEY. BUT IN
18 SOUTH CAROLINA WE HAVE A FUNNY NAME FOR THEM.

19 ASSISTING ME WILL BE MY DEPUTY SOLICITOR, BETTY STROM,
20 SEATED IN THE TAN COAT, AND MINDY HERVEY, ONE OF MY
21 ASSISTANTS, IN THE BLACK.

22 THE ONLY ISSUE THAT I WANTED TO ASK ABOUT IS THE JUDGE
23 TALKED ABOUT WHEN YOU GOT TO THE FINAL PHASE AND YOU WERE
24 DECIDING PUNISHMENT, YOU SAID YOU COULD VOTE FOR EITHER LIFE
25 IN PRISON OR FOR THE DEATH PENALTY?

1 A UH-HUH (AFFIRMATIVE).

2 Q DEPENDING UPON WHAT THE FACTS AND THE CIRCUMSTANCES AND
3 THE EVIDENCE SHOW; IS THAT RIGHT?

4 A YES, SIR.

5 Q ALL RIGHT. THEN HE ASKED YOU IF YOU WOULD HAVE ANY
6 DIFFICULTY KNOWING THAT YOU HAD TO SIGN THE ACTUAL DOCUMENT
7 THAT WOULD CARRY OUT WHAT'S KNOWN AS THE DEATH WARRANT, AND
8 YOU SAID YOU WOULD NOT?

9 A RIGHT.

10 Q YOU WOULD NOT HAVE ANY PROBLEM SIGNING IT?

11 A NO, SIR.

12 Q IT WOULDN'T CAUSE YOU TO HESITATE, IT WOULDN'T CAUSE YOU
13 TO RECONSIDER HOW YOU HAD ORIGINALLY VOTED OR ANYTHING LIKE
14 THAT?

15 A UH-UH (NEGATIVE).

16 Q IS THERE ANYTHING THAT YOU KNOW OF IN YOUR BACKGROUND,
17 THAT IS, THAT YOU ARE BRINGING WITH YOU, WHETHER IT BE
18 RELIGIOUS BELIEFS OR MORAL BELIEFS, WHATEVER, THAT WOULD
19 LIMIT YOUR ABILITY TO GIVE FAIR CONSIDERATION TO THE STATE'S
20 REQUEST TO IMPOSE THE DEATH PENALTY?

21 A NO, SIR.

22 Q NOTHING YOU'RE AWARE OF?

23 A NO, NOTHING TO MY KNOWLEDGE.

24 Q AND DO YOU BELIEVE THE DEATH PENALTY IS AN APPROPRIATE
25 SENTENCE IN THIS COUNTRY?

REBECCA D. ROGERS -- VOIR DIRE BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q AND HAVE YOU FELT THAT WAY FOR SOME PERIOD OF TIME?

3 A IT'S JUST ON CERTAIN THINGS, YOU KNOW, IF -- ONCE YOU
4 HEAR WHAT ALL HAS HAPPENED AND YOU'RE SHOWN PROOF OF WHAT ALL
5 HAS HAPPENED---

6 Q UH-HUH (AFFIRMATIVE).

7 A ---THEN THOSE -- I MEAN, THERE'S SOME THINGS THAT PEOPLE
8 NEED A DEATH WARRANT AND THERE'S SOME THINGS THAT---

9 Q THEY DON'T NEED IT.

10 A ---THEY DON'T NEED TO DIE FOR.

11 SOLICITOR ARIAIL: OKAY. THANK YOU VERY MUCH.

12 THE COURT: YES, SIR.

13 MR. MAULDIN: THANK YOU, YOUR HONOR.

14 VOIR DIRE BY MR. MAULDIN:

15 Q MS. ROGERS?

16 A HELLO.

17 Q MY NAME IS JOHN MAULDIN, AND I, ALONG WITH JIM BANNISTER
18 AND RODNEY RICHEY, REPRESENT JOHN IN THIS MATTER.

19 A UH-HUH (AFFIRMATIVE).

20 Q I WANT TO ASK YOU A FEW QUESTIONS, PARTICULARLY I'M
21 GOING TO CONCENTRATE MY QUESTIONS ON THE DEATH PENALTY AND
22 YOUR VIEWS ABOUT THE USE OF THE DEATH PENALTY AND THAT.

23 BUT BEFORE I DO, LET ME GO BACK TO ONE THING THAT I MADE
24 A NOTE OF THAT I WANT TO MAKE SURE THAT I UNDERSTOOD WHEN THE
25 JUDGE WAS QUESTIONING WHEN HE WAS TALKING TO YOU ABOUT THE

1 PRESUMPTION OF INNOCENCE AND THE OBLIGATION OF THE GOVERNMENT
2 TO PROVE THE CASE. DO YOU RECALL THE QUESTIONS FROM THE
3 COURT?

4 A YES, SIR.

5 Q AND I WAS -- I THINK I -- I WROTE DOWN THAT EVERYONE HAS
6 THEIR RIGHT TO A DAY IN COURT AND SO FORTH. BUT I WANT MAKE
7 SURE OF ONE THING. IN A CRIMINAL MATTER, NOT JUST IN A
8 CAPITAL TYPE OR A MURDER CASE BUT JUST IN ANY CRIMINAL CASE,
9 EVEN A CASE DOWN AT THE CITY COURT OR IN SOME OTHER COURT, IN
10 A CRIMINAL MATTER A DEFENDANT NEVER HAS AN OBLIGATION TO COME
11 FORTH WITH PROOF OF ANYTHING. AND SO I WANTED TO MAKE SURE
12 THAT -- SEE, A LOT OF PEOPLE WOULD SAY, "OKAY. I WANT TO
13 COME IN COURT AND I WANT TO HEAR FROM BOTH SIDES AND THEN I
14 WANT TO DECIDE."

15 A UH-HUH (AFFIRMATIVE).

16 Q WELL, THE PROBLEM WITH THAT IS THAT THAT PERSON THAT I
17 JUST EXPLAINED TO YOU WOULD BE LOOKING TO THE SIDE OF THE
18 DEFENSE TO BRING THEM SOMETHING TO EXPLAIN OR JUSTIFY. DO
19 YOU FOLLOW ME?

20 A YES, SIR.

21 Q AND THAT IS NOT WHAT THE LAW SAYS. THE COURT SAID THE
22 THAT DEFENDANT IN A CRIMINAL CASE IS PRESUMED FULLY AND
23 COMPLETELY INNOCENT AND HAS NO OBLIGATION OR REQUIREMENT TO
24 PROVE ANYTHING. SO I WANT TO MAKE SURE THAT YOU WOULDN'T
25 ACCIDENTALLY, IF YOU MIGHT, SAY, OR JUST FROM NOT KNOWING

REBECCA D. ROGERS -- VOIR DIRE BY MR. MAULDIN

1 SHIFT ANY TYPE OF BURDEN UPON THE DEFENSE SIDE OF A CASE AND
2 LOOK FOR THE DEFENSE TO PROVE SOMETHING. DO YOU FOLLOW ME?

3 A YES, SIR.

4 Q ARE YOU COMFORTABLE WITH WHAT I'VE SAID NOW? I WANT TO
5 MAKE SURE I KNOW HOW YOU FEEL ABOUT THINGS.

6 A YES, SIR. I'LL BE HONEST. THIS IS MY FIRST TIME EVER
7 IN A COURTROOM.

8 Q RIGHT.

9 A I WOULD LISTEN TO EVERYTHING THAT EVERYBODY HAD TO SAY
10 WITH AN OPEN MIND, AND THEN AFTER EVERYTHING WAS FINISHED AND
11 SAID AND DONE, THEN I WOULD MAKE MY FINAL CHOICE.

12 Q OKAY. OKAY. ALL RIGHT. NOW, AND IN THAT REGARD, MS.
13 ROGERS, I WANT TO ASK YOU A FEW QUESTIONS ABOUT YOUR FEELINGS
14 ABOUT THE DEATH PENALTY, OKAY?

15 A OKAY.

16 Q WOULD YOU JUST DESCRIBE -- AND YOU SAID THIS IS THE
17 FIRST TIME TESTIFYING. LET'S ACT LIKE YOU'RE NOT TESTIFYING.
18 LET'S JUST ACT LIKE WE'RE HAVING A CONVERSATION.

19 A OKAY.

20 Q WE'RE JUST TALKING. ALL RIGHT.

21 TELL ME HOW YOU FEEL ABOUT THE DEATH PENALTY, MS.
22 ROGERS.

23 A OKAY. IT'S LIKE I TOLD THE JUDGE EARLIER -- OR MAYBE IT
24 WAS THE OTHER MAN. I FEEL LIKE THERE ARE CERTAIN CRIMES THAT
25 PEOPLE DO, AFTER IT'S PROVEN WITHOUT A DOUBT THAT THEY DONE

REBECCA D. ROGERS -- VOIR DIRE BY MR. MAULDIN

1 IT, THAT THEY NEED TO DIE FOR IT. AND THEN THERE ARE CERTAIN
2 THINGS THAT I WOULD RATHER SEE PEOPLE SPEND THE REST OF THEIR
3 DAYS IN JAIL SO THEY CAN SIT AND THINK ABOUT WHAT THEY HAD
4 DONE. I WOULD RATHER THEM LIVE.

5 Q DO YOU BELIEVE THAT IN YOUR WORDS "SPENDING THE REST OF
6 YOUR DAYS IN JAIL THINKING ABOUT IT" IS A SERIOUS PENALTY FOR
7 THE OFFENSE OF MURDER?

8 SOLICITOR ARIAIL: OBJECT TO THE FORM OF THE QUESTION,
9 THINKING ABOUT IT.

10 THE COURT: WELL, OVERRULED.

11 MR. MAULDIN: OKAY.

12 THE COURT: I'LL ALLOW IT. THAT'S HER -- THAT'S HOW
13 SHE APPROACHED IT.

14 MR. MAULDIN: RIGHT.

15 Q BASED ON WHAT YOU JUST DESCRIBED ABOUT A PERSON GETTING
16 A LIFE SENTENCE IS WHAT I UNDERSTOOD.

17 A UH-HUH (AFFIRMATIVE).

18 Q DO YOU BELIEVE A LIFE SENTENCE, AS YOU HAVE DESCRIBED
19 IT, WOULD CONSTITUTE A SERIOUS PENALTY FOR A PERSON WHO HAD
20 BEEN CONVICTED OF INTENTIONAL MURDER?

21 A COLD BLOOD MURDER?

22 Q WELL, I DON'T KNOW IF I -- I DON'T KNOW IF I CAN RESPOND
23 TO THAT.

24 THE COURT: IT GOES BACK TO WHAT WE TALKED ABOUT
25 EARLIER. IF YOU'RE IN THE SENTENCING PHASE, YOU'VE ALREADY

REBECCA D. ROGERS -- VOIR DIRE BY MR. MAULDIN

1 GOT A MURDER.

2 JUROR NUMBER 316: YEAH, OKAY.

3 THE COURT: YOU'RE DEALING WITH A MURDER. AND WHAT YOU
4 -- YOU SEE WHAT I'M SAYING?

5 JUROR NUMBER 316: YEAH.

6 THE COURT: SO IT'S NOT LIKE WE CAN GO BACK AND SAY
7 BECAUSE IT'S A MURDER I'VE MADE UP MY MIND. AND IF YOU HAVE,
8 THAT'S WHAT YOU NEED TO TELL US.

9 JUROR NUMBER 316: YEAH, OKAY.

10 THE COURT: THAT'S WHAT WE'RE TRYING TO FIND OUT. IF
11 YOU HAVE THAT VIEW, THAT'S FINE. WE'RE JUST TRYING TO FIND
12 OUT HOW YOU THINK ABOUT IT AND WHETHER YOU WOULD CONTINUE TO
13 BE OPEN WHEN YOU APPROACH THE SENTENCING PHASE. BECAUSE WHEN
14 YOU GO TO THE SENTENCING PHASE, LET ME TELL YOU WHO YOU'RE
15 DEALING WITH. NOT THIS CASE, BUT I'M SAYING IF YOU WERE
16 SELECTED FOR A JURY IN ANY CASE OF A CAPITAL NATURE, WHEN YOU
17 GO TO A SENTENCING PHASE, YOU'RE DEALING WITH A MURDERER.
18 AND IF THAT'S ALL YOU NEED TO KNOW BEFORE YOU MAKE UP YOUR
19 MIND, YOU NEED TO TELL US THAT.

20 JUROR NUMBER 316: NO.

21 Q HOW DO YOU FEEL ABOUT THAT, MS. ROGERS?

22 A MURDER? I FEEL LIKE -- IT'S LIKE I SAID, THERE IS OTHER
23 CRIMES OTHER THAN MURDER THAT NEED THE DEATH PENALTY. SO I
24 CANNOT JUST SIT HERE AND SAY THAT I WOULD HEAR MURDER AND
25 THEN SAY DIE. I WOULD, YOU KNOW, GIVE THAT A FAIR SHOT OF

1 LISTENING TO IT AND THEN SAY WHETHER DEATH PENALTY OR LIFE
2 SENTENCE.

3 Q OKAY. NOW, LET ME GO BACK AND -- HAVING HEARD THE
4 JUDGE'S EXPLANATION AND WHAT YOU'VE JUST SAID, AND REPEAT --
5 NOW, LISTEN TO THE QUESTION. IF A PERSON HAD BEEN CONVICTED
6 OF MURDER AND THERE EXISTED EVIDENCE PRESENTED BY THE
7 PROSECUTION OF AN AGGRAVATING CIRCUMSTANCE -- DO YOU FOLLOW
8 THAT?

9 A YES, SIR.

10 Q DO YOU REMEMBER WHAT THE JUDGE TOLD YOU, SOME MURDERS
11 HAVE SPECIFIC---

12 A YEAH, UH-HUH (AFFIRMATIVE).

13 Q ALL RIGHT. SO YOU HAVE A PERSON CONVICTED OF MURDER AND
14 THE PERSON -- AND THERE IS EVIDENCE OF AN AGGRAVATING
15 CIRCUMSTANCE. IN THAT SITUATION, WOULD YOU BELIEVE THAT A
16 LIFE SENTENCE WITHOUT PAROLE WOULD BE A SERIOUS PENALTY FOR
17 THAT PERSON?

18 A NO, SIR.

19 Q PARDON ME?

20 A NO, SIR.

21 Q NO, SIR?

22 A (INDICATES NEGATIVE RESPONSE)

23 Q WOULD YOU -- WOULD YOU SENTENCE THAT PERSON TO DEATH?

24 A YES, SIR.

25 Q AND LIFE IN PRISON WOULD NOT BE A SERIOUS CONSIDERATION

REBECCA D. ROGERS -- VOIR DIRE BY MR. MAULDIN

1 FOR YOU IF THE PERSON HAD BEEN CONVICTED OF MURDER AND THERE
2 EXISTED PROOF OF AN AGGRAVATING CIRCUMSTANCE?

3 A NO, SIR.

4 MR. MAULDIN: THANK YOU.

5 SOLICITOR ARIAIL: HERE WE GO AGAIN.

6 THE COURT: I KNOW.

7 SOLICITOR ARIAIL: HERE WE GO AGAIN. AND I DON'T THINK
8 THAT'S A PROPER QUESTION, AND I WOULD URGE THE COURT---

9 THE COURT: IF YOU WANT TO ASK ADDITIONAL QUESTIONS,
10 YOU MAY.

11 SOLICITOR ARIAIL: WELL, I REALLY DON'T BECAUSE IT JUST
12 DRAGS US BACK INTO THE SAME PROFILING MESS. BUT -- NO, I
13 DON'T WANT TO ASK ANY.

14 THE COURT: ALL RIGHT.

15 SOLICITOR ARIAIL: I WOULD LIKE TO -- HOLD ON JUST A
16 SECOND. (OFF RECORD WITH CO-COUNSEL)

17 MS. STROM: JUST A MOMENT, YOUR HONOR.

18 THE COURT: TAKE YOUR TIME.

19 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL)

20 VOIR DIRE CONTINUES BY SOLICITOR ARIAIL:

21 Q MS. ROGERS, LET ME SEE IF I CAN GO OVER SOMETHING JUST A
22 -- BECAUSE I UNDERSTAND YOUR ANSWER.

23 THE JUDGE ASKED YOU, THE DEFENSE LAWYER ASKED YOU IF YOU
24 COULD CONSIDER BOTH SENTENCES AND BASED ON THE EVIDENCE
25 DECIDE WHICH ONE WAS APPROPRIATE AFTER YOU HEARD EVERYTHING,

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY SOLICITOR ARIAIL

1 AND YOUR ANSWER AS I UNDERSTOOD IT WAS, YES, YOU COULD. ALL
2 RIGHT. IS THAT CORRECT?

3 A YES, SIR.

4 Q ALL RIGHT. NOW, DEFENSE COUNSEL USED A WORD OF ART AS
5 WE SAY AND HE REFERRED TO "AGGRAVATED." YOU HAVE A MURDER,
6 THEN YOU'VE GOT AN AGGRAVATED CIRCUMSTANCE. AGGRAVATED
7 CIRCUMSTANCE DOES NOT MEAN NECESSARILY AGGRAVATED CASE. DO
8 YOU UNDERSTAND THAT DIFFERENCE? AGGRAVATED CIRCUMSTANCE IS
9 SOMETHING DEFINED BY OUR LEGISLATURE THAT THE JUDGE TOLD YOU
10 ABOUT. IT COULD BE KILLING OR MURDER BY POISON, MURDER
11 COMMITTED DURING THE COURSE OF CRIMINAL SEXUAL CONDUCT.
12 THERE ARE CIRCUMSTANCES -- WHAT THE CIRCUMSTANCES, AGGRAVATED
13 CIRCUMSTANCE IS, IS THE SPECIAL CIRCUMSTANCES UNDER WHICH THE
14 MURDER IS COMMITTED.

15 IT IS FOR YOU TO DETERMINE AS THE JUROR WHETHER OR NOT
16 WHEN YOU FIND THAT AGGRAVATED CIRCUMSTANCE WHETHER OR NOT THE
17 APPROPRIATE SENTENCE IS LIFE OR DEATH. DO YOU UNDERSTAND
18 THAT?

19 A YES, SIR.

20 Q ALL RIGHT. NOW, I BELIEVE YOU SAID EARLIER YOU COULD
21 CONSIDER THE EVIDENCE AND IMPOSE EITHER ONE?

22 A YES, SIR.

23 Q NOW, DO YOU KNOW AS A MATTER OF RIGHT YOU AS A JUROR
24 COULD VOTE TO IMPOSE A LIFE SENTENCE ON A DEFENDANT FOR ANY
25 REASON OR FOR NO REASON OTHER THAN JUST AN ACT OF MERCY?

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY SOLICITOR ARIAIL

1 THAT IS YOUR ULTIMATE AUTHORITY. DO YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q ALL RIGHT. AND KNOWING THAT, WOULD YOU BE ABLE TO
4 CONSIDER THE EVIDENCE PRESENTED IN THE SENTENCING PHASE AND
5 THEN MAKE A DETERMINATION AS TO WHETHER OR NOT THE
6 APPROPRIATE SENTENCE WAS LIFE OR THE APPROPRIATE SENTENCE WAS
7 DEATH?

8 A YES, SIR.

9 SOLICITOR ARIAIL: THANK YOU.

10 VOIR DIRE CONTINUES BY THE COURT

11 Q MS. ROGERS, I'M GOING TO ASK WHAT MAY APPEAR TO BE THE
12 SAME QUESTIONS TO YOU. AND LET ME TELL YOU WHY I'M GOING TO
13 ASK THESE QUESTIONS. AND THE ATTORNEYS MAY HAVE OTHER
14 QUESTIONS.

15 WHEN I ASKED YOU EARLIER YOU WERE, IT APPEARED TO ME,
16 COMFORTABLE WITH YOUR ANSWERS AND THAT YOU WERE FIRM WITH
17 YOUR ANSWERS THAT WHEN YOU APPROACHED A SENTENCING HEARING
18 YOUR MIND WOULD NOT BE MADE UP AND YOU WOULD STILL BE OPEN
19 AND YOU COULD GO EITHER WAY. DO YOU REMEMBER TELLING ME
20 THAT?

21 A YES, SIR.

22 Q IS THAT TRUE OR NOT TRUE?

23 A THAT'S THE GOD'S HONEST TRUTH.

24 Q OKAY. NOW, MR. MAULDIN ASKED YOU THAT IF YOU HAD -- AND
25 I MAY NOT HAVE THE WORDS EXACTLY RIGHT -- BUT IF YOU HAD A

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 CRIME OF MURDER AND IT WAS AGGRAVATED OR THERE WAS AN
2 AGGRAVATING CIRCUMSTANCE, IN THAT EVENT WOULD YOU CONSIDER
3 IMPOSING LIFE IN PRISON? AND I THINK YOU SAID NO. IS THAT
4 WHAT YOU SAID TO HIM?

5 A CAN YOU REPEAT THE QUESTION?

6 Q OKAY. I THINK MR. MAULDIN ASKED YOU THAT IF YOU WERE A
7 JUROR AND IT WAS A CASE OF MURDER WITH ONE OF THESE
8 AGGRAVATING CIRCUMSTANCES -- MURDER IN THE COMMISSION OF
9 ARMED ROBBERY, MURDER IN THE COMMISSION OF KIDNAPPING,
10 WHATEVER OUR STATE LAW SAYS -- IF IT WAS MURDER PLUS AN
11 AGGRAVATING CIRCUMSTANCE, THAT ALONE THAT YOU THOUGHT THAT
12 LIFE IMPRISONMENT YOU COULD NOT VOTE FOR.

13 A RIGHT. YES.

14 Q IS THAT CORRECT?

15 A NO IS WHAT I SAID TO HIM. YES, SIR.

16 Q OKAY. DO YOU UNDERSTAND HOW WHAT YOU TOLD ME EARLIER IS
17 IN CONFLICT WITH WHAT YOU TOLD MR. MAULDIN?

18 A THE REASON I ANSWERED NO TO HIS QUESTION IS IF
19 EVERYTHING WAS SAID AND DONE AND PROVEN AND EVERY FINGER
20 POINTED AT THIS MAN OR WOMAN, THEN THAT WOULD BE MY FINAL
21 ANSWER.

22 Q OKAY. SO LET'S BACK AND LET'S SAY YOU'RE ON A JURY IN A
23 HYPOTHETICAL CASE.

24 A OKAY.

25 Q AND YOU'VE GOT A DEFENDANT WHO HAS BEEN CONVICTED, ALL

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 RIGHT?

2 A UH-HUH (AFFIRMATIVE).

3 Q YOU ARE DEALING WITH A MURDERER. AND UNDER STATE LAW
4 THAT MURDER WAS ACCOMPANIED BY, COMMITTED IN THE COMMISSION
5 OF AN AGGRAVATING CIRCUMSTANCE. ARE YOU WITH ME?

6 A YES.

7 Q YOU'RE WITH ME SO FAR. AND WE'RE JUST NOW STARTING THE
8 SENTENCING PHASE. WE HAVEN'T HEARD ANY MITIGATION ABOUT THE
9 DEFENDANT, ANYTHING OF HIS BACKGROUND, FAMILY HISTORY,
10 NOTHING. BECAUSE WE HAVE A MURDER ACCOMPANIED BY AN
11 AGGRAVATING CIRCUMSTANCE, YOU WOULD NOT VOTE FOR LIFE IN
12 PRISON?

13 A NOW LET ME MAKE SURE I UNDERSTAND YOU RIGHT.

14 Q YES, MA'AM.

15 A HE OR SHE HAS NOT SAID NOTHING. IT'S JUST BEEN THE
16 OTHERS TALKING SAYING THAT HE WAS THERE OR SHE WAS THERE AND
17 THEY DONE IT AND NOTHING WAS SAID, AND I HAVE TO CHOOSE ON
18 THAT?

19 Q NO. WE'RE TALKING ABOUT A SENTENCING PHASE WHERE A LOT
20 IS SAID.

21 A UH-HUH (AFFIRMATIVE).

22 Q AND NOT JUST ONE SIDE. IT'S NOT JUST AN AGGRAVATING
23 CIRCUMSTANCE AND NOTHING ELSE. WHAT I'M TRYING TO FIND OUT
24 IS, WHEN YOU ENTER THE SENTENCING PHASE, IS YOUR MIND MADE UP
25 SIMPLY BECAUSE IT'S A MURDER ACCOMPANIED BY AN AGGRAVATING

1 CIRCUMSTANCE OR ARE YOU STILL OPEN AND WILLING TO GIVE
2 SERIOUS CONSIDERATION TO THE OTHER EVIDENCE, SUCH AS
3 MITIGATION EVIDENCE? THAT'S WHAT I WANT TO KNOW. DO YOU
4 UNDERSTAND THOSE TWO?

5 A YES, SIR.

6 Q SO ONE IS MURDER ACCOMPANIED BY AGGRAVATING
7 CIRCUMSTANCE, END OF THE ROAD, NO LIFE IMPRISONMENT, OR I
8 WANT TO HEAR EVIDENCE IN MITIGATION AND GIVE IT SERIOUS
9 CONSIDERATION. AND I WANT YOU TO TELL ME WHAT YOU FEEL IN
10 YOUR HEART YOU WOULD DO, IF YOU COULD HONOR YOUR OATH,
11 BECAUSE YOUR OATH WOULD REQUIRE YOU NOT TO HAVE YOUR MIND
12 MADE UP. BUT IF YOUR MIND IS MADE UP, THEN I WANT YOU TO
13 TELL ME BECAUSE THAT'S THE TYPE OF HONESTY THAT MAKES OUR
14 SYSTEM WORK. IF YOU HAD A CASE, YOU'D WANT A FAIR JURY,
15 WOULDN'T YOU?

16 A UH-HUH (AFFIRMATIVE). I DON'T UNDERSTAND ALL THIS
17 LAWYER TALK. I'M SORRY Y'ALL. AND YOU ARE BREAKING IT DOWN
18 MORE PLAINER AND MORE SIMPLE FOR ME.

19 I WOULD PROBABLY STILL HAVE AN OPEN MIND. I WOULD SAY
20 OPEN MIND.

21 Q OKAY. AND WHAT I NEED TO KNOW FROM YOU IS NOT, "WELL,
22 JUDGE, I THINK I PROBABLY WOULD HAVE AN OPEN MIND."

23 A YES, SIR. IT IS WITHOUT A DOUBT I WOULD HAVE AN OPEN
24 MIND.

25 Q I NEED TO KNOW IF YOU'RE GOING TO HONOR YOUR OATH AND

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 YOU'RE GOING TO KEEP AN OPEN MIND AND YOU'RE NOT GOING TO
2 PREJUDGE THE PENALTY PHASE, BUT YOU'RE GOING TO SIT THERE
3 WITH AN OPEN MIND, LISTEN TO ALL THE EVIDENCE FROM BOTH SIDES
4 AS TO MITIGATION. IT COULD BE BACKGROUND, FAMILY HISTORY,
5 CHARACTER, MENTAL HEALTH STATUS OF THE DEFENDANT, THOSE TYPE
6 OF ISSUES WHICH OUR LAW SAYS MUST BE CONSIDERED IN MAKING AN
7 APPROPRIATE SENTENCE.

8 IF YOU'RE TELLING ME THAT YOU'RE NOT GOING TO CONSIDER
9 THAT TYPE OF INFORMATION, PLEASE TELL ME RIGHT NOW. IF YOU
10 ARE AND YOU WOULD CONSIDER IT AND GIVE IT SERIOUS
11 CONSIDERATION, THEN I WANT YOU TO TELL ME THAT. THERE IS NO
12 RIGHT OR WRONG ANSWER. WE'RE SIMPLY LOOKING FOR YOUR VIEW
13 AND HOW YOU WOULD HANDLE IT.

14 A I WOULD STILL HAVE AN OPEN MIND WITHOUT A DOUBT. I'M
15 SORRY. I DID NOT UNDERSTAND HIS WORDING.

16 THE COURT: OKAY. I'M GOING TO GIVE COUNSEL -- THEY
17 MAY WANT TO PURSUE THIS FURTHER.

18 JUROR NUMBER 316: OKAY.

19 THE COURT: LET ME SEE WHO I STARTED WITH. MR. ARIAIL,
20 ANY FURTHER QUESTIONS OF MS. ROGERS?

21 SOLICITOR ARIAIL: NONE.

22 THE COURT: MR. MAULDIN?

23 MR. MAULDIN: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT. MS. ROGERS, THANK YOU VERY
25 MUCH. APPRECIATE YOUR PATIENCE IN DEALING WITH THIS.

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 JUROR NUMBER 316: I'M SORRY.

2 THE COURT: I KNOW IT'S LATE IN THE DAY. NO, NOTHING
3 TO APOLOGIZE FOR.

4 WE'RE GOING TO -- THE BAILIFF WILL ESCORT YOU TO A JURY
5 ROOM. WE'LL DEAL WITH IT AND GET YOU BACK OUT HERE. IN A
6 COUPLE OF MINUTES YOU'LL BE FREE TO GO.

7 JUROR NUMBER 316: OKAY. THANK YOU.

8 THE COURT: THANK YOU, MA'AM.

9 (JUROR EXITS COURTROOM AT 7:16 P.M.)

10 THE COURT: ALL RIGHT. ONCE YOU HAVE DISCUSSED IT, I'D
11 LIKE TO HEAR FROM EACH SIDE WHETHER YOU THINK SHE IS
12 QUALIFIED OR NOT QUALIFIED.

13 SOLICITOR ARIAIL: QUALIFIED.

14 MR. MAULDIN:--- (OFF RECORD WITH CO-COUNSEL) YOUR HONOR,
15 INITIAL QUESTIONING WERE JUST LIKE YESTERDAY AND SO FORTH
16 WITH THE COURT, AND THEN THE CRITICAL QUESTION, AND IT WASN'T
17 -- IT REALLY WASN'T MISUNDERSTOOD -- IT WAS WHETHER A LIFE
18 SENTENCE WAS A SERIOUS PENALTY. THAT'S HOW THAT DOOR GOT
19 OPENED. THAT WAS WHAT -- AND SHE SAID NO. AND THEN I -- AND
20 THAT ACTUALLY CAUGHT ME BY SURPRISE WHEN SHE SAID NO. IN
21 FACT, I SAID "WHAT?" AND SHE SAID "NO." THEN I ASKED HER IF
22 SHE COULD CONSIDER A LIFE SENTENCE AND SHE SAID NO FOR A
23 PERSON CONVICTED OF MURDER WHERE THERE WAS PROOF OF AN
24 AGGRAVATING CIRCUMSTANCE AS DESCRIBED BY THE COURT. IN THE
25 QUESTIONS OF THE COURT SHE WAS REHABILITATED ON PAPER.

MATTERS AND MOTIONS

1 I WANT TO BRING JUST A COUPLE OTHER POINTS ON MY
2 CHALLENGE OF HER QUALIFICATION. THIS YOUNG LADY REALLY IS
3 ACTUALLY INTERESTED IN WHO DONE IT. AND THAT'S FAIR.
4 THERE'S NOTHING WRONG THAT. BUT THAT'S REALLY WHERE SHE IS.
5 AND WHEN SHE SAYS SHE PROBABLY WOULD HAVE AN OPEN MIND AND
6 THEN YOU FOLLOW IT UP, PROBABLY AIN'T GOING TO GET IT, SHE
7 SAID, "OKAY. I'LL HAVE AN OPEN MIND." SHE'S REALLY TRYING
8 TO PLEASE THE COURT, AND I UNDERSTAND THAT. I EVEN FIND
9 MYSELF IN THAT POSITION SOMETIMES.

10 BUT THE POINT OF THE MATTER IS SHE IS A 20-YEAR-OLD GIRL
11 WHO HAS HAD LIMITED EXPOSURE TO THESE TYPES OF ISSUES, AND
12 SHE IS TRYING TO TELL US THE WAY SHE REALLY FEELS. I THINK
13 THAT IN THE CASE OF A CONVICTION OF A PERSON OF MURDER WITH
14 AN AGGRAVATING CIRCUMSTANCE SHE WOULD, AS SHE SAID, NOT
15 BELIEVE THAT THE LIFE SENTENCE WAS A SERIOUS PENALTY, QUOTE-
16 UNQUOTE, AND THAT MAKES HER UNQUALIFIED.

17 THE COURT: ALL RIGHT. DO YOU WANT TO SAY SOMETHING
18 ELSE, SIR?

19 SOLICITOR ARIAIL: WELL, THE ONLY THING I WOULD SAY WHY
20 SHE IS QUALIFIED IS BECAUSE IT'S CLEAR TO ME THE FORM OF THAT
21 QUESTION WITH SOMEONE OF -- THIS JUROR PARTICULARLY, IT'S A
22 TIMING ISSUE. THE JUROR IS ASKED A QUESTION, "IF YOU HAVE A
23 MURDER AND YOU FIND AN AGGRAVATING CIRCUMSTANCE," WELL, ALL
24 THAT DOES IS CONVEY TO THE JUROR THE DECISION HAS BEEN MADE.
25 BECAUSE THEY'RE NOT MAKING ANY DECISION ON FINDING AN

MATTERS AND MOTIONS

1 AGGRAVATING CIRCUMSTANCE UNTIL THE DURN CASE IS OVER.

2 THE COURT: I UNDERSTAND THAT.

3 SOLICITOR ARIAIL: AND HE'S ASKING THAT, AND THAT'S WHY
4 THAT QUESTION IS SO OBJECTIONABLE. SO I SAY THE POOR GIRL,
5 SHE'S NOT TRYING TO PLEASE THIS COURT. SHE IS TRYING TO TELL
6 THE TRUTH. YOU CAN TELL IN HER EYES SHE'S TRYING TO TELL THE
7 TRUTH.

8 THE COURT: I AGREE.

9 SOLICITOR ARIAIL: AND I SAY THAT'S WHY SHE'S
10 QUALIFIED.

11 THE COURT: I DO WANT TO ASK HER AN ADDITIONAL
12 QUESTION.

13 ASK MS. ROGERS TO COME BACK IN HERE.

14 (JUROR REENTERS COURTROOM AT 7:20 P.M.)

15 VOIR DIRE CONTINUES BY THE COURT:

16 Q MS. ROGERS, THANKS FOR COMING BACK IN. THIS IS MY
17 FAULT. I ACCEPT RESPONSIBILITY. THERE WAS SOMETHING ELSE I
18 WANTED TO ASK YOU, AND THEN WE'RE READY TO LET YOU GO. HOW
19 ABOUT THAT?

20 A OKAY.

21 Q IF YOU WERE IN A SENTENCING HEARING AND YOU HAD
22 CONSIDERED EVERYTHING AND YOU DECIDED THAT THE DEATH PENALTY
23 WAS THE APPROPRIATE PENALTY, YOU COULD VOTE FOR THAT; IS THAT
24 CORRECT?

25 A YES, SIR.

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 Q ON THE OTHER HAND, IF YOU WERE WILLING TO CONSIDER
2 EVERYTHING AND KEEP AN OPEN MIND AND YOU LISTEN TO BOTH THE
3 EVIDENCE IN AGGRAVATION, MURDER WITH AN AGGRAVATING
4 CIRCUMSTANCE, BUT ALSO THERE WAS MITIGATION EVIDENCE, AND YOU
5 WEIGHED IT CAREFULLY AND YOU THOUGHT ABOUT IT THAT YOU COULD
6 RETURN A SENTENCE OF LIFE IMPRISONMENT. IS THAT TRUE?

7 A YES, SIR.

8 Q IN THAT CIRCUMSTANCE WOULD YOU VIEW A SENTENCE OF LIFE
9 IMPRISONMENT AS A SERIOUS PENALTY?

10 A FOR CERTAIN CRIMES. I MEAN, LIKE NOT REALLY CERTAIN
11 CRIMES. LIKE FOR, YOU KNOW, RAPE BUT NOT RAPE AND MURDER.
12 YOU KNOW, I WOULD SEE THAT AS A SERIOUS PUNISHMENT.

13 Q BUT WOULD YOU -- IN THE CONTEXT OF A MURDER WITH AN
14 AGGRAVATING CIRCUMSTANCE AND IF YOU CONSIDERED THE OTHER
15 EVIDENCE TOO, THE MITIGATION, AND YOU HAVE INDICATED YOU'D
16 KEEP AN OPEN MIND AND THAT YOU COULD WITH A CASE WITH AN
17 AGGRAVATING CIRCUMSTANCE RETURN A VERDICT OF LIFE
18 IMPRISONMENT; IS THAT TRUE OR NOT TRUE?

19 A REPEAT THE QUESTION ONE TIME. I'M SORRY.

20 Q OKAY. IF YOU GOT TO THE POINT ON JURY SERVICE---

21 A UH-HUH (AFFIRMATIVE).

22 Q ---WHETHER IT WAS -- AND YOU HAVE DECIDED THAT THERE WAS
23 A MURDER WITH AN AGGRAVATING CIRCUMSTANCE. BUT AFTER
24 CONSIDERING THE MITIGATION EVIDENCE AND ALL THE OTHER
25 EVIDENCE, YOU HAVE DECIDED THAT LIFE IMPRISONMENT WAS THE

REBECCA D. ROGERS -- VOIR DIRE CONTINUES BY THE COURT

1 APPROPRIATE PENALTY. IS THERE A SITUATION WHERE YOU WOULD
2 CONSIDER MEANINGFULLY GIVING LIFE IMPRISONMENT TO ONE WHO HAD
3 BEEN CONVICTED OR MURDER WITH AN AGGRAVATING CIRCUMSTANCE?
4 DOES THAT MAKE SENSE?

5 A YES, SIR. YES, SIR.

6 Q AND WOULD YOU DO THAT?

7 A YES, SIR. YES, SIR.

8 Q OKAY. IN THAT EVENT, IF YOU THOUGHT IT WAS APPROPRIATE,
9 WOULD YOU VIEW LIFE IMPRISONMENT WITHOUT PAROLE AS A SERIOUS
10 PENALTY?

11 A YES, SIR.

12 THE COURT: THAT'S WHAT I NEEDED TO KNOW. THANK YOU,
13 MA'AM.

14 JUROR NUMBER 316: OKAY.

15 THE COURT: JUST STEP OUT IN THE HALL. WE'LL BE WITH
16 YOU SHORTLY.

17 (JUROR EXITS COURTROOM AT 7:24 P.M.)

18 THE COURT: THE JUROR IS QUALIFIED. THE RECORD WILL
19 REFLECT DEFENDANT'S EXCEPTION TO MY RULING.

20 WHAT SAYS THE STATE?

21 SOLICITOR ARIAIL: PRESENT HER.

22 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) ONE MOMENT,
23 YOUR HONOR.

24 THE COURT: TAKE YOUR TIME, SIR.

25 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) MAY IT

MATTERS AND MOTIONS

1 PLEASE THE COURT. YOUR HONOR, I WOULD RENEW OUR OBJECTION TO
2 HER QUALIFICATION BASED ON THE STATEMENT THAT SHE MADE WHEN
3 ASKED ABOUT THE SERIOUSNESS OF A LIFE SENTENCE AND
4 CONSIDERATION OF A LIFE SENTENCE, THE COURT SAID FOR SOME
5 CRIMES LIKE RAPE, AND THEN WITH FURTHER QUESTIONING BY THE
6 COURT SHE CAME AROUND AND ESSENTIALLY REQUALIFIED HERSELF.
7 WE BELIEVE THAT THAT ALONG WITH HER DIRECT EXAMIN -- OR
8 DIRECT INFORMATION INITIALLY COMPOUNDS THE ISSUE AND MAKES
9 OUR OBJECTION TO HER QUALIFICATIONS APPROPRIATE. WE RENEW
10 THAT, YOUR HONOR, ON THAT ADDITIONAL INFORMATION.

11 THAT BEING DENIED---

12 THE COURT: DENIED.

13 MR. MAULDIN: YES, SIR. ---WE DO EXCUSE THAT JUROR.

14 THE COURT: ANY BATSON MOTION WITH RESPECT TO MS.

15 ROGERS?

16 SOLICITOR ARIAIL: NONE.

17 THE COURT: TELL MS. ROGERS THANK YOU VERY MUCH. SHE
18 IS FREE TO GO.

19 AND WE'RE GOING TO TAKE A FIVE-MINUTE BREAK BEFORE WE DO
20 THE NEXT ONE.

21 (A RECESS WAS TAKEN FROM 7:26 TO 7:32 P.M.)

22 THE COURT: MS. MURPHY. BRING HER IN, PLEASE.

23 MR. MAULDIN: YOUR HONOR, COULD MR. BANNISTER BE
24 EXCUSED FOR FAMILY?

25 THE COURT: I UNDERSTAND. MY LAW CLERK TOLD ME. I

NANCY L. MURPHY -- VOIR DIRE BY THE COURT

1 UNDERSTAND. THANK YOU.

2 (JUROR NUMBER 275 ENTERS COURTROOM AT 7:33 P.M.)

3 THE COURT: HEY, MS. MURPHY.

4 JUROR NUMBER 275: HI.

5 THE COURT: THANK YOU AGAIN FOR YOUR PATIENCE. JUST
6 HAVE A SEAT AND WE'LL GET UNDER WAY.

7 JUROR NUMBER 275: CAN I ASK YOU SOMETHING FIRST?

8 THE COURT: YOU CERTAINLY MAY.

9 JUROR NUMBER 275: I AM A SCHOOL TEACHER, AND YESTERDAY
10 THERE WAS A LADY WHO ASKED ABOUT BEING GONE FROM THE
11 CLASSROOM FOR AN EXTENDED PERIOD OF TIME. IS IT -- I HAVE A
12 LETTER FROM MY PRINCIPAL. IS THAT GOING TO DO ME ANY GOOD AT
13 THIS POINT?

14 THE COURT: YEAH.

15 JUROR NUMBER 275: I REALIZE IT'S MY DUTY TO SERVE. I
16 JUST HAVE A GROUP OF FIVE-YEAR-OLDS THAT---

17 THE COURT: SORT OF HAD A CHANGE OF HEART AFTER
18 YESTERDAY?

19 JUROR NUMBER 275: WELL, NO. ACTUALLY, I'M VERY HAPPY
20 TO DO MY DUTY TO SERVE. MY PRINCIPAL IS A LITTLE CONCERNED
21 ABOUT ME BEING GONE. MY STUDENTS WERE PULLED FROM OTHER
22 CLASSROOMS. AT THE BEGINNING OF THE YEAR THERE WAS AN
23 OVERCROWDING SITUATION, AND I GOT BROUGHT IN AFTER THE SCHOOL
24 YEAR STARTED. SO THE KIDS HAVE HAD ONE CHANGE ALREADY AND
25 WE'VE BEEN ADJUSTING. IF YOU WOULD LIKE TO READ THE LETTER?

NANCY L. MURPHY -- VOIR DIRE BY THE COURT

1 **THE COURT:** YES, MA'AM. (PAUSE WHILE THE COURT READS
2 LETTER)

3 THANK YOU FOR BRINGING THIS LETTER, MS. MURPHY. IF YOU
4 WOULD LIKE TO SERVE, YOU ARE WELCOME TO SERVE. BUT THE LAW
5 BECAUSE YOU ARE A TEACHER ALLOWS YOU TO POSTPONE YOUR JURY
6 SERVICE TO ANOTHER TERM OF COURT. SO WE WOULD INVITE YOU TO
7 STAY AND POTENTIALLY SERVE AS A JUROR IN THIS CASE. YOU MAY
8 NOT EVEN BE SELECTED. YOU MAY BE THROUGH THIS EVENING.

9 **JUROR NUMBER 275:** I UNDERSTAND.

10 **THE COURT:** YOU MAY BE SELECTED. I DON'T KNOW. BUT
11 IT'S UP TO YOU, AND THE LAW PERMITS YOU TO HAVE THAT RIGHT
12 WHERE YOU CAN SAY, "I CHOOSE NOT TO SERVE AT THIS TIME."

13 **JUROR NUMBER 275:** IF I COULD JUST ASK YOU, DO YOU AT
14 ANY POINT -- I MEAN, YOU HAVE NO IDEA OF KNOWING HOW LONG
15 THIS COULD LAST?

16 **THE COURT:** WELL, I'LL THINK OUT LOUD WITH YOU.

17 **JUROR NUMBER 275:** OKAY.

18 **THE COURT:** WE'VE GOT TO SELECT TWELVE JURORS PLUS AN
19 ADEQUATE NUMBER OF ALTERNATES. I THINK WE'VE GOT FOUR OR
20 FIVE JURORS AT THIS POINT. SO WE'RE GOING TO GO ALL DAY
21 TOMORROW. WE'RE PROBABLY GOING TO GO ALL DAY THURSDAY. AND
22 WE MAY BE GETTING CLOSE AT THAT POINT. I DON'T KNOW. WE MAY
23 HAVE TO GO ALL DAY FRIDAY. SO I'M THINKING LATER THIS WEEK
24 WE WILL HOPEFULLY HAVE A SUFFICIENT NUMBER.

25 SO LATER THIS WEEK WE WOULD ACTUALLY BEGIN THE TRIAL.

NANCY L. MURPHY -- VOIR DIRE BY THE COURT

1 IT MAY NOT BEGIN UNTIL FRIDAY, MAYBE EVEN SATURDAY. I'M NOT
2 SURE. BUT ONCE IT STARTS IT PROBABLY WOULD BE ABOUT A WEEK.
3 IT COULD BE TEN DAYS. IT COULD BE AS LONG AS TWO WEEKS, BUT
4 PROBABLY NOT. A WEEK IS MORE REALISTIC. IT COULD BE A
5 LITTLE BIT SHORTER THAN THAT. IT COULD BE A LITTLE BIT
6 LONGER THAN THAT.

7 SO THAT'S WHAT YOU'RE LOOKING AT FROM -- YOU KNOW, YOU'D
8 WORK UNTIL THEN. BUT ONCE THE TRIAL BEGAN, YOU WOULD BE
9 SEQUESTERED -- I WANT TO BE HONEST WITH YOU -- AND YOU'RE
10 LOOKING AT ABOUT A WEEK.

11 JUROR NUMBER 275: I WOULD PREFER TO POSTPONE AT THIS
12 TIME IF THAT'S A CHOICE FOR ME.

13 THE COURT: YES, MA'AM.

14 JUROR NUMBER 275: OKAY.

15 THE COURT: IF THE -- JUST BEAR WITH ME JUST ONE
16 SECOND.

17 JUROR NUMBER 275: OKAY. SURE.

18 THE COURT: I'D LIKE FOR THE ATTORNEYS TO EXAMINE THE
19 NOTE FROM THE PRINCIPAL. AND ONCE THAT IS DONE, IT WILL BE
20 INCLUDED IN THE OTHER EXHIBITS WITH THE JURY AND WILL
21 EVENTUALLY BE MARKED AND SEALED AT THE APPROPRIATE TIME.

22 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

23 MS. STROM: (REVIEWS DOCUMENT) NO OBJECTION.

24 THE COURT: ALL RIGHT. MS. MURPHY, THANK YOU SO MUCH.
25 IT IS CERTAINLY UP TO YOU AND YOUR PREROGATIVE. WE THANK YOU

NANCY L. MURPHY -- VOIR DIRE BY THE COURT

1 FOR BEING HERE AND WE APOLOGIZE FOR THE INCONVENIENCE CAUSED
2 TO YOU.

3 JUROR NUMBER 275: THAT'S OKAY. I JUST WANT TO DO WHAT
4 IS BEST FOR MY STUDENTS.

5 THE COURT: YES, MA'AM.

6 JUROR NUMBER 275: THANK YOU.

7 THE COURT: GOOD LUCK TO YOU.

8 JUROR NUMBER 275: DO I NEED TO TALK TO ANYONE ABOUT
9 POSTPONEMENT AND WHAT TIME I WOULD COME BACK OR WHAT---

10 THE COURT: NO. YOU WILL BE NOTIFIED BY THE COURT BY A
11 SUMMONS.

12 JUROR NUMBER 275: THANK YOU SO MUCH. I APPRECIATE IT.

13 THE COURT: THANK YOU, MA'AM.

14 JUROR NUMBER 275: THANK YOU FOR YOUR TIME.

15 (JUROR EXCUSED AT 7:37 P.M.)

16 THE COURT: MR. RALPH MOODY.

17 MR. MAULDIN: I MIGHT MENTION, PARTICULARLY IN LIGHT OF
18 WHAT JUST HAPPENED WITH HER, BOTH OF THE NEXT TWO ARE OVER
19 65. YOU MIGHT WANT TO AT LEAST MENTION THAT BEFORE WE GO
20 THROUGH AN ENTIRE VOIR DIRE.

21 THE COURT: THANK YOU.

22 (JUROR NUMBER 265 ENTERS COURTROOM AT 7:39 P.M.)

23 THE COURT: GOOD EVENING, MR. MOODY.

24 JUROR NUMBER 265: HI.

25 THE COURT: MR. MOODY, BEFORE WE GET STARTED, IF YOU

RALPH J. MOODY -- VOIR DIRE BY THE COURT

1 DON'T MIND ME ASKING, I DON'T MEAN TO ASK TOO PERSONAL A
2 QUESTION, HOW OLD ARE YOU, SIR?

3 JUROR NUMBER 265: I'M 72.

4 THE COURT: ALL RIGHT. LET ME FIRST TELL YOU I WOULD
5 INVITE YOU TO STAY AND SERVE WITH US. I BELIEVE JURY SERVICE
6 IS A GOOD POSITIVE EXPERIENCE. BUT I WANT YOU TO BE AWARE
7 THE LAW ALLOWS YOU TO EXCUSE YOURSELF BECAUSE YOU ARE 65 OR
8 OLDER. ARE YOU AWARE OF THAT?

9 JUROR NUMBER 265: I AM AWARE OF THAT. AND IF YOU WILL
10 ALLOW ME TO TAKE ADVANTAGE OF THE NOW, I THINK I'LL DO IT AT
11 THIS TIME.

12 THE COURT: ALL RIGHT. AND I UNDERSTAND THAT AND I
13 APOLOGIZE THAT YOU HAVE BEEN SITTING BACK THERE FOR SEVERAL
14 HOURS.

15 JUROR NUMBER 265: OH, THAT'S NOT THE REASON. BUT...

16 THE COURT: OKAY. BUT YOU HAVE THE RIGHT UNDER LAW TO
17 BE EXCUSED BECAUSE OF YOUR AGE. THANK YOU FOR BEING HERE AND
18 YOU ARE EXCUSED AT THIS TIME.

19 JUROR NUMBER 265: THANK YOU VERY MUCH.

20 THE COURT: THANK YOU, MR. MOODY. GOOD LUCK TO YOU.

21 (JUROR EXCUSED AT 7:40 P.M.)

22 THE COURT: MS. HONEYCUTT.

23 (JUROR NUMBER 174 ENTERS COURTROOM AT 7:40 P.M.)

24 THE COURT: MS. HONEYCUTT, THANK YOU SO MUCH FOR YOUR
25 PATIENCE. WE KNOW IT'S A LONG, DRAWN OUT PROCESS.

THELMA D. HONEYCUTT -- VOIR DIRE BY THE COURT

1 JUROR NUMBER 174: YOU'RE WELCOME.

2 THE COURT: AND YOU'VE BEEN VERY KIND SITTING OVER
3 THERE IN THE OTHER JURY ROOM JUST WAITING FOR YOUR TURN.

4 I NOTICED SOMETHING IN REVIEWING YOUR AFFIDAVIT. IT
5 INDICATES THAT YOU WERE BORN IN 1936; IS THAT CORRECT?

6 JUROR NUMBER 174: THAT'S CORRECT.

7 THE COURT: AND IF YOU DON'T MIND ME ASKING, HOW OLD
8 DOES THAT MAKE YOU?

9 JUROR NUMBER 174: SIXTY-SIX.

10 THE COURT: SIXTY-SIX. OKAY.

11 JUROR NUMBER 174: UH-HUH (AFFIRMATIVE).

12 THE COURT: I MENTIONED IT YESTERDAY AND I JUST WANT
13 TO MAKE SURE YOU UNDERSTAND THAT BECAUSE YOU ARE 65 OR OLDER
14 THE LAW ALLOWS YOU TO EXCUSE YOURSELF FROM JURY DUTY.

15 JUROR NUMBER 174: UH-HUH (AFFIRMATIVE).

16 THE COURT: NOW, HAVING SAID THAT, I WANT TO ENCOURAGE
17 YOU TO STAY AND SERVE IF YOU WOULD LIKE TO BECAUSE I THINK
18 JURY SERVICE IS A POSITIVE EXPERIENCE, AND WE VALUE THE
19 SERVICE OF THOSE WHO ARE 65 OR OLDER. BUT THE CHOICE IS
20 YOURS. WOULD YOU LIKE TO BE EXCUSED OR ARE YOU WILLING TO
21 CONTINUE TO SERVE?

22 JUROR NUMBER 174: I'M WILLING TO CONTINUE.

23 THE COURT: VERY GOOD, MA'AM. THANK YOU SO MUCH.

24 THELMA D. HONEYCUTT (WHITE
25 FEMALE), HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THELMA D. HONEYCUTT -- VOIR DIRE BY THE COURT

1 VOIR DIRE BY THE COURT:

2 Q NOW, MS. HONEYCUTT, THIS PARTICULAR CASE, ACCORDING TO
3 THE INDICTMENT, OCCURRED BACK ON DECEMBER THE 6TH, 2000.

4 A UH-HUH (AFFIRMATIVE).

5 Q THE DEFENDANT, MR. WOOD, IS CHARGED WITH THE CRIME OF
6 MURDER. AND IN THE INDICTMENT THE DEFENDANT -- EXCUSE ME,
7 THE VICTIM IS IDENTIFIED AS ERIC NICHOLSON. MR. NICHOLSON
8 WAS A STATE TROOPER AT THAT TIME.

9 A UH-HUH (AFFIRMATIVE).

10 Q THIS CASE RECEIVED MUCH ATTENTION IN THE MEDIA, AND I
11 WANT TO KNOW IF YOU HAVE HEARD ANYTHING, SEEN ANYTHING, READ
12 ANYTHING ABOUT THIS CASE FROM THE MEDIA OR OTHERWISE. AND IF
13 YOU HAVE, WOULD YOU SHARE THAT WITH US SPECIFICALLY?

14 A I DID. I DID SEE THE INFORMATION ON T.V. WHEN THE
15 INCIDENT OCCURRED. AND IT WAS BROUGHT OUT THAT THE
16 GENTLEMAN, MR. WOOD, HAD SHOT A MR. NICHOLSON. SO IT WAS
17 COVERED ON THE T.V.

18 Q OKAY. TELL -- I WANT TO KNOW SPECIFICALLY WHAT DO YOU
19 RECALL OF WHERE IT HAPPENED, WHAT HAPPENED, WHAT HAPPENED
20 NEXT. I JUST WANT TO SEE WHAT YOU REMEMBER ABOUT---

21 A I THINK IT HAPPENED ON 385, ON I-385 SOMEWHERE CLOSE TO
22 WOODRUFF ROAD.

23 Q ALL RIGHT. KEEP GOING.

24 A AND THAT HE DID DRIVE UP TO THE PATROLMAN -- THE
25 PATROLMAN STOPPED THE SCOOTER, AND ONCE HE STOPPED THE

THELMA D. HONEYCUTT -- VOIR DIRE BY THE COURT

1 SCOOTER, THE GENTLEMAN DID SHOOT MR. NICHOLSON. AND THEN HE
2 DISAPPEARED AND HE WAS TAKEN INTO A -- SOMEHOW PICKED UP BY
3 SOMEONE ELSE, AND THEN THERE WAS A WILD CHASE DOWN THE
4 HIGHWAY, I THINK IT WAS 85, TO ANDERSON, AND THERE SHOTS RANG
5 OUT AND HE WAS CAPTURED AT THAT POINT, HE AND ANOTHER LADY.
6 THE LADY WAS DRIVING SOME JEEP. AND THAT'S ABOUT IT.

7 Q OKAY. LET ME TELL YOU THE REASON I ASK YOU AND I WANTED
8 YOU TO BE SO SPECIFIC.

9 A OKAY.

10 Q IT'S THAT IT IS NOT UNUSUAL TO HAVE JURORS WHO HAVE BEEN
11 EXPOSED TO MEDIA COVERAGE ABOUT A CASE.

12 A UH-HUH (AFFIRMATIVE).

13 Q HERE'S WHAT'S IMPORTANT.

14 A UH-HUH (AFFIRMATIVE).

15 Q ANYONE THAT SERVES ON A JURY MUST TAKE AN OATH.

16 A UH-HUH (AFFIRMATIVE).

17 Q AND THAT'S AN IMPORTANT OATH. AND THAT OATH REQUIRES A
18 JUROR TO FIND THE TRUTH FROM THE EVIDENCE IN THE COURTROOM.
19 DO YOU UNDERSTAND THAT?

20 A I UNDERSTAND.

21 Q SO IF A JUROR HAS HEARD SOMETHING, READ SOMETHING, SEEN
22 SOMETHING ON T.V., THAT WOULD HAVE TO BE DISREGARDED.

23 A UH-HUH (AFFIRMATIVE).

24 Q SAY, FOR EXAMPLE, YOU WERE ON THE JURY AND YOU THINK
25 THAT YOU HEARD A CERTAIN THING ABOUT THIS CASE AND SO YOU'RE

THELMA D. HONEYCUTT -- VOIR DIRE BY THE COURT

1 WAITING FOR IT TO COME IN WHEN YOU'RE IN THE JURY BOX. WELL,
2 YOU SEE, YOU CAN'T DO THAT. YOU HAVE TO---

3 A I UNDERSTAND.

4 Q ---COME IN WITH AN OPEN MIND---

5 A UH-HUH (AFFIRMATIVE).

6 Q ---DISREGARD ANYTHING YOU MAY HAVE HEARD OR SEEN FROM
7 THE MEDIA OR OTHERWISE AND FIND THE TRUTH ONLY FROM THE
8 EVIDENCE.

9 A I UNDERSTAND.

10 Q OKAY. COULD YOU DO THAT IF YOU WERE A JUROR IN THIS
11 CASE?

12 A YES, SIR, I COULD.

13 Q AND WOULD YOU FOLLOW YOUR OATH IN THAT REGARD?

14 A YES, SIR, I WOULD.

15 Q AND WOULD YOU FOLLOW YOUR OATH TO FOLLOW THE LAW?

16 A YES, SIR, I WOULD.

17 Q NOW, DO YOU UNDERSTAND THIS LEGAL PRINCIPLE THAT ANYONE
18 ACCUSED OF A CRIME IS PRESUMED TO BE INNOCENT?

19 A I DO UNDERSTAND.

20 Q DO YOU AGREE WITH THAT?

21 A I -- I AGREE.

22 Q AND DO YOU UNDERSTAND MR. WOOD, AS HE SITS HERE TODAY,
23 HE IS AN INNOCENT MAN?

24 A I AGREE.

25 Q DO YOU FURTHER UNDERSTAND AND AGREE WITH THE PRINCIPLE,

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF

GENERAL SESSIONS

THE STATE)
OF SOUTH CAROLINA,)
)

VOLUME III

-vs-)

01-GS-23-3106
TRANSCRIPT OF RECORD
JURY QUALIFICATION
DAY 1 (2/6-7/02)

JOHN RICHARD WOOD,)
)
DEFENDANT.)

FEBRUARY 4-16, 2002
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

A P P E A R A N C E S:

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DAWN V. KOFFSKEY
Court Reporter

500 A