

VOLUME TWO OF EIGHT

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY

Deadra L. Jefferson, Circuit Court Judge

ORIGINAL

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

STEPHEN C. STANKO,

APPELLANT

RECORD ON APPEAL

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1 OR SEEN, HAVE YOU FORMED ANY FIXED OPINION ABOUT THE FACTS
2 IN THIS CASE? AND A FIXED OPINION MEANS, HAVE YOU ALREADY
3 MADE UP YOUR MIND ABOUT WHAT YOU THINK MAY HAVE HAPPENED?

4 A NO.

5 Q OKAY. SIR, IN A CRIMINAL CASE THE STATE HAS THE
6 BURDEN OF -- WELL, LET ME ASK ANOTHER QUESTION, SIR. DO
7 YOU BELIEVE THAT YOU COULD LISTEN TO THE EVIDENCE
8 PRESENTED IN THIS CASE, WHICH WILL BE FROM THE LIPS OF
9 SWORN WITNESSES WHO WILL TESTIFY FROM THIS WITNESS STAND,
10 THE OTHER EVIDENCE THAT WILL BE INTRODUCED, AND THE LAW
11 THAT THE COURT WILL INSTRUCT, DO YOU BELIEVE THAT YOU
12 COULD CONSIDER ONLY THOSE THINGS AND MAKE A DECISION IN
13 THIS CASE BASED SOLELY ON THE EVIDENCE THAT WILL BE
14 PRESENTED, THE TESTIMONY, AND THE LAW AS THE COURT WILL
15 CHARGE?

16 A YES.

17 Q IN A CRIMINAL CASE, SIR, THE STATE HAS THE BURDEN OF
18 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
19 DO YOU UNDERSTAND THAT?

20 A YES.

21 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
22 PROVE HIS INNOCENCE?

23 A YES.

24 Q SIR, HAVE YOU REVIEWED THE JUROR TYPE SHEET?

25 A YES.

1 Q OKAY. DO YOU BELIEVE THAT YOU FIT INTO ANY OF THOSE
2 CATEGORIES?

3 A TYPE TWO AND TYPE THREE.

4 Q OKAY. TELL ME -- AND AGAIN, THERE ARE NO RIGHT OR
5 WRONG ANSWERS. AND I NEED YOU TO TELL ME IF YOU HAD TO
6 ULTIMATELY PICK ONLY ONE, WHICH WOULD IT BE?

7 A TYPE THREE.

8 Q OKAY. AND ARE YOU CERTAIN OF THAT?

9 A YES.

10 Q IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND IF
11 THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD
12 THEN MOVE TO THE SENTENCING PHASE. AS I TOLD YOU ON
13 TUESDAY, THERE ARE TWO PHASES, A GUILT PHASE AND A
14 SENTENCING PHASE. DO YOU UNDERSTAND?

15 A YES.

16 Q SIR, IN THE SENTENCING PHASE YOU WOULD BE ALLOWED TO
17 CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES.
18 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS,
19 OR AN OCCURRENCE WHICH THE GENERAL ASSEMBLY, WHICH IS THE
20 LEGISLATURE, YOU KNOW, THE HOUSE AND THE SENATE, HAS
21 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS TO
22 AGGRAVATE THE OFFENSE OF MURDER.

23 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
24 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
25 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE

1 COMMISSION OF A CRIME.

2 AND I'M GOING TO GIVE YOU SOME EXAMPLES OF WHAT WE
3 CONSIDER TO BE AGGRAVATING CIRCUMSTANCES. THIS LIST IS
4 NOT THE ENTIRE LIST. I JUST GIVE IT TO YOU SO YOU CAN
5 HAVE A POINT OF REFERENCE.

6 MURDER OF A CHILD UNDER THE AGE 11, DRUG TRAFFICKING,
7 KILLING BY POISON, BURGLARY IN ANY DEGREE. AGAIN, THESE
8 ARE JUST EXAMPLES.

9 YOU WOULD ALSO HAVE THE ABILITY TO CONSIDER WHAT WE
10 CALL MITIGATING CIRCUMSTANCES WHICH ARE INCIDENTS,
11 DETAILS, OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY
12 STATE LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND
13 MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE
14 OF MORAL CULPABILITY OR RESPONSIBILITY.

15 AND AGAIN, JUST SOME EXAMPLES WOULD BE MENTAL
16 RETARDATION AT THE TIME OF THE CRIME, THE DEFENDANT WAS
17 PROVOKED BY THE VICTIM, THE DEFENDANT WAS AN ACCOMPLICE
18 AND PARTICIPATION WAS RELATIVELY MINOR, THE DEFENDANT
19 ACTED UNDER DURESS OR DOMINATION. AGAIN, THESE ARE JUST
20 EXAMPLES. THEY ARE BY NO MEANS AN EXCLUSIVE LIST.

21 IF YOU WERE A JUROR IN THAT SITUATION, REFERRING TO
22 THE SENTENCING PHASE OF THE TRIAL, COULD YOU, DEPENDING
23 UPON PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE
24 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
25 CIRCUMSTANCES AND THE LAW THE COURT WOULD INSTRUCT AT THE

1 CLOSE OF THAT PHASE OF THE TRIAL RETURN A SENTENCE OF LIFE
2 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

3 A IT WOULD DEPEND ON THE CIRCUMSTANCE.

4 Q OKAY. SO THE QUESTION THAT I'M ASKING, HOWEVER, IS
5 COULD YOU. I'M NOT ASKING WHAT YOU WOULD DO.

6 A YES.

7 Q I'M ASKING THAT COULD YOU APPLY THE LAW AS I WOULD
8 INSTRUCT YOU, WHICH IS THE CONSIDERATION OF AGGRAVATING
9 AND MITIGATING CIRCUMSTANCES, AND FOLLOW WHAT THE LAW
10 PROVIDES, APPLY IT TO THE FACTS OF THE CASE AND RETURN A
11 VERDICT OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
12 PAROLE?

13 A YES.

14 Q COULD YOU UNDER THOSE SAME CIRCUMSTANCES, INCLUDING
15 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
16 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT AT THE
17 CLOSE OF THE TRIAL RETURN A SENTENCE OF DEATH, WHICH IN
18 THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

19 A YES.

20 Q SIR, AS I INDICATED, IF YOU ARE CHOSEN FOR THIS JURY,
21 YOU WILL BE HOUSED IN A MOTEL, WHICH IS SEQUESTERED, FOR A
22 PERIOD OF 10 DAYS. WE ASSUME THAT THAT IS PERSONALLY
23 INCONVENIENT. WE ASSUME THAT THAT IS INCONVENIENT TO YOUR
24 FAMILY AND TO YOUR WORK. OTHER THAN THAT, WOULD THIS POSE
25 A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

1 A NO.

2 Q IN A CAPITAL CASE, AS WE REFER TO THIS TYPE CASE,
3 EVERY CASE REQUIRES THE RETURN OF A VERDICT FORM. AND
4 USUALLY ONLY THE FOREPERSON SIGNS THAT VERDICT FORM. THIS
5 CASE IS A LITTLE DIFFERENT BECAUSE THE JURY DETERMINES
6 PENALTY.

7 AND WHATEVER THE JURY DETERMINES, THE COURT HAS TO
8 FOLLOW, WHETHER THAT BE LIFE WITHOUT THE POSSIBILITY OF
9 PAROLE OR DEATH. AND BECAUSE OF THAT, STATE LAW REQUIRES
10 THAT EACH JUROR INDIVIDUALLY SIGN THE VERDICT FORMS.
11 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT OF A
12 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR A DEATH
13 SENTENCE?

14 A YES.

15 Q OKAY.

16 THE COURT: ANY QUESTIONS FROM THE STATE?

17 MR. HEMBREE: NO, YOUR HONOR.

18 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

19 MR. KELLY: NONE, YOUR HONOR.

20 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
21 QUALIFIED?

22 MR. HEMBREE: HE'S QUALIFIED, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MR. KELLY: NO, MA'AM.

25 THE COURT: OKAY. SIR, YOU HAVE BEEN FOUND

1 QUALIFIED AS A JUROR IN THIS CASE. AND AGAIN, I -- I
2 EXPLAINED A LOT OF STUFF ON TUESDAY, AND PROBABLY
3 BECAUSE JUST EVERYBODY WAS TIRED, NOBODY REMEMBERS,
4 BUT WHAT WE'RE DOING, WE'RE SPEAKING TO EACH JUROR
5 INDIVIDUALLY AS STATE LAW REQUIRES AND WE'RE
6 DEVELOPING A POOL OF QUALIFIED JURORS.

7 FROM THAT POOL WE WILL PICK THE JURY. AND WE
8 WILL DO THAT ON MONDAY. SO I NEED YOU TO RETURN ON
9 MONDAY AT 9:30 PACKED FOR TWO WEEKS. OF COURSE, YOU
10 DON'T HAVE TO LUG YOUR STUFF UP HERE. YOU CAN LEAVE
11 IT IN THE CAR.

12 I HAD A FLASHBACK THE OTHER DAY THINKING WHEN I
13 WAS TELLING FOLK THAT, EVERYBODY WILL SHOW UP WITH
14 THEIR SUITCASES, YOU KNOW, TRYING TO FIGURE OUT WHERE
15 TO PUT EVERYBODY, BECAUSE PEOPLE LITERALLY FOLLOW THE
16 COURT'S INSTRUCTIONS, WHICH IS A GOOD THING.

17 BUT I JUST WANTED TO LET YOU KNOW THAT YOU CAN
18 LEAVE THAT IN YOUR VEHICLE. WE WILL MAKE
19 ARRANGEMENTS IF YOU'RE SELECTED FOR HOTEL CHECK-IN
20 AND FOR YOU TO GET SITUATED.

21 DURING THIS BREAK, HOWEVER, THERE'S SOME RULES
22 THAT I NEED YOU TO FOLLOW FOR ME. PLEASE DO NOT
23 DISCUSS THIS CASE WITH ANYONE. THAT INCLUDES FAMILY
24 MEMBERS, YOUR FRIENDS, ANYBODY CLOSE TO YOU.

25 AND I KNOW IT'S INTERESTING AND PEOPLE ARE GOING

1 TO ASK YOU, THEY'RE GOING TO SAY, WE HEARD YOU GOT
2 SUBPOENAED FOR JURY DUTY ON THAT CASE. AND WITH SO
3 MUCH MEDIA COVERAGE, IT IS JUST TEMPTING TO SAY,
4 YEAH, I GOT PICKED AND, YOU KNOW, IT'S JUST HUMAN
5 NATURE.

6 BUT I NEED FOR YOU IF ANYBODY APPROACHES YOU OR
7 OTHERWISE SAY, I CAN'T TALK ABOUT THAT. IF I TALK
8 ABOUT THAT, I WILL BE IN VIOLATION OF THE COURT'S
9 RULES, SO I'M GOING TO KEEP YOU HONEST, I'M GOING TO
10 KEEP ME HONEST, WE CAN TALK ABOUT ANYTHING BUT THAT.

11 I DON'T WANT YOU TO SPECULATE ABOUT WHAT YOU
12 THINK THE CASE MAY BE ABOUT OR COULD BE ABOUT BECAUSE
13 I NEED YOUR IMPARTIALITY TO BE COMPLETELY -- I NEED
14 YOU TO COME IN HERE ON MONDAY AS AN EMPTY VESSEL
15 READY TO HEAR THE EVIDENCE AND THE LAW.

16 OKAY? I ALSO NEED YOU NOT TO WATCH, READ, OR
17 LISTEN TO ANY MEDIA ACCOUNTS ABOUT THIS CASE. THAT
18 INCLUDES ANYTHING YOU CAN SEE ON THE RADIO,
19 TELEVISION, READ IN THE NEWSPAPER, OR FIND ON THE
20 INTERNET. OKAY?

21 BECAUSE I, YOU KNOW, WE LOVE TO GOOGLE. BECOME
22 A PART OF EVERYBODY'S LIFE. SO I WOULD ASK THAT YOU
23 NOT DO THAT BECAUSE THAT WOULD PUT YOU IN A POSITION
24 OF CONSIDERING EVIDENCE -- INFORMATION THAT IS
25 OUTSIDE OF THE EVIDENCE IN THIS CASE, AND AGAIN, WE

1 NEED YOU TO REMAIN IMPARTIAL. SO WE'LL SEE YOU ON
2 MONDAY AND I HOPE YOU HAVE A GOOD DAY.

3 JUROR: 9:30.

4 THE COURT: 9:30. HAVE A GOOD DAY.

5 JUROR: THANK YOU.

6 (JUROR LEFT THE COURTROOM.)

7 THE COURT: YOU'RE WELCOME. NUMBER 130,
8 MRS. GRIER. I DON'T HAVE HER LISTED ON ANY OF THE
9 QUESTIONS.

10 (JUROR ENTERED THE COURTROOM.)

11 TIANA GRIER, BLACK FEMALE,
12 TESTIFIED AS FOLLOWS:

13 BY THE COURT:

14 Q HOW ARE YOU, MRS. GRIER?

15 A GOOD. HOW ARE YOU?

16 Q FINE. IF YOU'D HAVE A SEAT FOR ME AND GET AS CLOSE
17 TO THE MICROPHONE AS YOU CAN SO WE'LL BE ABLE TO HEAR YOU.
18 IF YOU WOULD STATE YOUR FULL NAME FOR THE RECORD.

19 A IT'S TIANI ROBERTSON.

20 Q ROBERTSON. I'M SORRY. YOUR MAIDEN NAME IS GRIER?

21 A YES, MA'AM.

22 Q OKAY. WE WILL MAKE THAT CORRECTION. AND YOU ARE
23 JUROR NUMBER 130; CORRECT?

24 A YES, MA'AM.

25 Q TAKE A DEEP BREATH. I KNOW THIS CAN BE A LITTLE

1 UNNERVING. WE'RE GOING TO ASK YOU SOME QUESTIONS. I NEED
2 TO REMIND YOU THAT YOU'RE STILL UNDER OATH. DO YOU
3 UNDERSTAND?

4 A YES, MA'AM.

5 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. WE'RE NOT
6 TRYING TO INVADE YOUR PRIVACY IN ANY WAY. BUT THE LAW
7 REQUIRES US TO TALK WITH EACH JUROR INDIVIDUALLY IN A CASE
8 OF THIS TYPE.

9 WE'RE GOING TO INQUIRE ABOUT SOME OF YOUR VIEWS.
10 WE'RE NOT TRYING TO CHALLENGE YOUR VIEWS. WE JUST NEED TO
11 KNOW WHAT THEY ARE. I NEED TO EMPHASIZE THAT THERE ARE NO
12 RIGHT OR WRONG ANSWERS. WE JUST NEED YOU TO ANSWER US AS
13 COMPLETELY AND FULLY AS POSSIBLE. OKAY?

14 A YES, MA'AM.

15 Q IF YOU DON'T UNDERSTAND A QUESTION, LET US KNOW SO WE
16 CAN TRY TO REPEAT IT OR REPHRASE IT TO HELP YOU UNDERSTAND
17 WHAT WE'RE ASKING.

18 A OKAY.

19 Q OKAY.

20 A YES, MA'AM.

21 Q AND I NEED YOU TO ANSWER ALL MY QUESTIONS WITH A YES
22 OR NO SO THE COURT REPORTER CAN TAKE THEM DOWN. AMONG
23 OTHER THINGS WE'LL BE TALKING ABOUT POSSIBLE PENALTIES.
24 THE MERE FACT THAT WE TALK ABOUT A PENALTY DOES NOT
25 INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS

1 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
2 THAT?

3 A YES, MA'AM.

4 Q AND IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
5 LISTEN TO THE LAW?

6 A YES, MA'AM.

7 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

8 A YES, MA'AM.

9 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
10 MAY DISAGREE WITH WHAT I TELL YOU THE LAW IS?

11 A YES, MA'AM.

12 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
13 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
14 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
15 CASE?

16 A YES, MA'AM.

17 Q HAVE YOU HEARD, READ, OR SEEN ANY MEDIA COVERAGE,
18 THAT INCLUDES ANYTHING ON THE RADIO, TELEVISION, NEWSPAPER
19 OR INTERNET ABOUT THIS CASE?

20 A YES, MA'AM.

21 Q OKAY. AND AS A RESULT, HAVE YOU FORMED A FIXED
22 OPINION ABOUT THIS CASE? IN OTHER WORDS, HAVE YOU MADE UP
23 YOUR MIND ALREADY?

24 A NO, MA'AM.

25 Q OKAY. DO YOU BELIEVE THAT YOU COULD LISTEN TO THE

1 EVIDENCE THAT IS PRESENTED FROM THE LIPS OF SWORN
2 WITNESSES AND THE OTHER EVIDENCE THAT IS INTRODUCED AS
3 WELL AS APPLY THE LAW AS THE COURT WILL CHARGE AND RENDER
4 A VERDICT IN THIS CASE BASED SOLELY ON THE EVIDENCE AND
5 THE LAW?

6 A YES, MA'AM.

7 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
8 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
9 DO YOU UNDERSTAND THAT?

10 A YES, MA'AM.

11 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN
12 WHATSOEVER TO PROVE HIS INNOCENCE?

13 A YES, MA'AM.

14 Q HAVE YOU LOOKED AT THE JUROR TYPE SHEET?

15 A YES, MA'AM.

16 Q AND DO YOU FEEL THAT YOU FIT INTO ANY OF THOSE TYPES
17 OF JURORS?

18 A YES, MA'AM.

19 Q AND TELL ME WHICH ONE YOU THINK YOU WOULD FALL INTO.

20 A IT WOULD BE TYPE ONE.

21 Q OKAY. AND THAT IS THE TYPE JUROR THAT COULD NEVER --
22 THAT IS UNABLE OR UNWILLING TO GIVE THE DEATH PENALTY IN
23 ANY TYPE CASE?

24 A YES, MA'AM.

25 Q OKAY.

1 THE COURT: ANY QUESTIONS FROM THE STATE?

2 MR. HEMBREE: NO, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. KELLY: NONE, MA'AM.

5 THE COURT: ANY OBJECTION TO THE JUROR BEING
6 EXCUSED?

7 MR. HEMBREE: NO, YOUR HONOR.

8 MR. KELLY: NO, MA'AM.

9 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
10 COURT'S THANKS. HAVE A GREAT DAY.

11 JUROR: THANK YOU.

12 THE COURT: YOU'RE WELCOME.

13 (JUROR LEFT THE COURTROOM.)

14 THE COURT: CARROLL EUGENE BAKER, 368. WE DO
15 NOT HAVE HIM AS LISTED IN RESPONSE TO ANY OF THE
16 QUESTIONS.

17 MR. HEMBREE: WHAT MY RECORDS REFLECT AS WELL,
18 YOUR HONOR.

19 (JUROR ENTERED THE COURTROOM.)

20 CARROLL EUGENE BAKER, WHITE MALE, TESTIFIED
21 AS FOLLOWS:

22 BY THE COURT:

23 Q HOW ARE YOU, SIR?

24 A HEY.

25 Q IF YOU COULD HAVE A SEAT FOR ME AND PULL YOURSELF AS

1 CLOSE TO THE MICROPHONE AS POSSIBLE. YOU DOING OKAY
2 TODAY?

3 A DOING FINE.

4 Q GOOD. WE APPRECIATE YOUR TIME AND YOUR PATIENCE. IF
5 YOU COULD STATE YOUR FULL NAME FOR THE RECORD.

6 A CARROLL EUGENE BAKER, JUNIOR.

7 Q AND YOU ARE NUMBER 368; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH.

10 A YES, MA'AM.

11 Q YOU UNDERSTAND?

12 A YES, MA'AM.

13 Q AND SIR, HAVE YOU READ, WATCHED, OR LISTENED TO ANY
14 MEDIA ACCOUNTS ABOUT THIS CASE SINCE YOU WERE RELEASED ON
15 TUESDAY?

16 A I HAVE NOT.

17 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. SOME OF
18 THEM MAY SEEM INTENSELY PERSONAL. IT'S NOT OUR INTENT TO
19 INVAD E YOUR PRIVACY. STATE LAW REQUIRES IN THESE TYPE
20 CASES THAT WE TALK TO EACH JUROR INDIVIDUALLY--

21 A YES, MA'AM.

22 Q -- TO INQUIRE OF YOUR VIEWS. WE'RE NOT TRYING TO
23 CHALLENGE YOUR VIEWS. I NEED TO EMPHASIZE THAT THERE ARE
24 NO RIGHT OR WRONG ANSWERS TO ANY OF THE QUESTIONS THAT I'M
25 GOING TO ASK YOU. I JUST NEED YOU TO ANSWER US OPENLY,

1 FULLY, AND HONESTLY.

2 IF YOU DON'T UNDERSTAND A QUESTION, LET ME KNOW, OR
3 IF YOU NEED ME TO REPHRASE IT TO HELP YOU UNDERSTAND WHAT
4 I'M ASKING OR ANY OF THE LAWYERS ARE ASKING, PLEASE LET US
5 KNOW.

6 A YES, MA'AM.

7 Q OKAY. SIR, AMONG OTHER THINGS WE WILL BE TALKING
8 ABOUT POTENTIAL PENALTIES IN THIS CASE. AND THE FACT THAT
9 WE DISCUSS THAT IS NO REFLECTION ON THE DEFENDANT BECAUSE
10 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
11 UNDERSTAND THAT?

12 A I DO.

13 Q SIR, IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
14 LISTEN TO THE LAW?

15 A I COULD.

16 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
17 INSTRUCT YOU?

18 A I COULD.

19 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
20 MAY DISAGREE WITH WHAT I SAY THE LAW IS?

21 A I COULD.

22 Q SIR, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
23 EVIDENCE PRESENTED AND DISREGARD ANYTHING YOU MAY HAVE
24 HEARD, READ, OR SEEN ABOUT THIS CASE?

25 A I COULD.

1 Q HAVE YOU HEARD, READ, OR SEEN ANY MEDIA COVERAGE
2 ABOUT THIS CASE PRIOR TO REPORTING ON TUESDAY?

3 A I HAVE.

4 Q AND HAVE YOU FORMED ANY FIXED OPINION?

5 A I READ -- I MEAN, JUST WHAT WE SAW ON THE NEWSPAPER.
6 I READ IN THE CAPTION, BUT NO, I HAVE NOT FORMED ANY
7 OPINION.

8 Q OKAY. DO YOU BELIEVE THAT YOU COULD DECIDE THIS CASE
9 BASED SOLELY ON THE EVIDENCE FROM THE LIPS OF SWORN
10 WITNESSES AND THE OTHER EVIDENCE THAT WILL BE INTRODUCED
11 AND THE LAW AS THE COURT WILL CHARGE AND RENDER A VERDICT
12 BASED SOLELY ON THOSE THINGS?

13 A SURE.

14 Q IN A CRIMINAL CASE, SIR, THE STATE HAS THE BURDEN OF
15 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
16 DO YOU UNDERSTAND THAT?

17 A YES, MA'AM.

18 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
19 NO BURDEN TO PROVE HIS INNOCENCE?

20 A THAT'S CORRECT.

21 Q OKAY. DO YOU UNDERSTAND?

22 A I UNDERSTAND.

23 Q SIR, HAVE YOU REVIEWED THE JUROR TYPE SHEET?

24 A I HAVE.

25 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE TYPES?

1 A CATEGORY THREE.

2 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
3 AND IF THE JURY FOUND THE DEFENDANT GUILTY, AS I EXPLAINED
4 EARLIER, THERE ARE TWO DIFFERENT PHASES TO THIS TRIAL.
5 THERE'S A GUILT PHASE AND A PENALTY PHASE. DO YOU
6 UNDERSTAND?

7 A YES, MA'AM.

8 Q IF WE WERE TO REACH THE PENALTY PHASE YOU WOULD BE
9 ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING
10 CIRCUMSTANCES. AGGRAVATING CIRCUMSTANCES ARE FACTS,
11 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE
12 HAS DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS
13 AGGRAVATE, THE OFFENSE OF MURDER.

14 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
15 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
16 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
17 COMMISSION OF A CRIME.

18 AND SOME EXAMPLES OF AGGRAVATING FACTORS -- AND THIS
19 IS NOT THE ENTIRE LIST, I JUST GIVE YOU AN EXAMPLE SO YOU
20 CAN HAVE A POINT OF REFERENCE -- THE MURDER OF A CHILD
21 UNDER AGE 11, DRUG TRAFFICKING, KILLING BY POISON, OR
22 BURGLARY IN ANY DEGREE. OF COURSE, THESE ARE JUST
23 EXAMPLES.

24 YOU WOULD ALSO BE ALLOWED TO CONSIDER WHAT WE CALL
25 MITIGATING CIRCUMSTANCES WHICH ARE INCIDENTS, DETAILS, OR

1 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
2 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
3 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
4 MORAL CULPABILITY OR RESPONSIBILITY.

5 AGAIN, THESE ARE ONLY EXAMPLES. THIS IS NOT AN
6 EXHAUSTIVE LIST. MENTAL RETARDATION AT THE TIME OF THE
7 CRIME, THE DEFENDANT WAS PROVOKED BY THE VICTIM, THE
8 DEFENDANT WAS AN ACCOMPLICE AND PARTICIPATION WAS
9 RELATIVELY MINOR, THE DEFENDANT ACTED UNDER DURESS OR
10 DOMINATION. AGAIN, THESE ARE JUST EXAMPLES.

11 SIR, IF YOU WERE A JUROR IN THAT SITUATION, THE
12 SENTENCING PHASE AS I HAVE REFERRED TO, COULD YOU,
13 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
14 THE PARTICULAR CASE INCLUDING THE CONSIDERATION OF
15 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
16 I WOULD INSTRUCT YOU THAT APPLY AT THE CONCLUSION OF THAT
17 PHASE OF THE CASE RETURN A SENTENCE OF LIFE IN PRISON
18 WITHOUT THE POSSIBILITY OF PAROLE?

19 A YES.

20 Q AND UNDER THE SAME CIRCUMSTANCES THAT I JUST
21 EXPLAINED, WHICH IS AT THE END OF THE PENALTY PHASE,
22 DEPENDING ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE
23 CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
24 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD CHARGE,
25 COULD YOU RETURN A SENTENCE OF DEATH WHICH IN THIS STATE

1 IS BY ELECTROCUTION OR BY LETHAL INJECTION?

2 A YES.

3 Q SIR, AS I EXPLAINED ON TUESDAY, IF YOU WERE CHOSEN
4 FOR THIS JURY YOU WOULD BE HOUSED IN A MOTEL, WHICH IS
5 SEQUESTERED FOR APPROXIMATELY 10 DAYS. WE ALREADY PRESUME
6 THAT IT WILL BE PERSONALLY AND PROFESSIONALLY
7 INCONVENIENT. BUT I NEED TO ASK IF THAT WOULD POSE A
8 SERIOUS DANGER TO YOUR HEALTH OR YOUR WELL-BEING?

9 A NO.

10 Q OKAY. SIR, IN EVERY CASE THE JURY RETURNS A VERDICT,
11 AND IT IS USUALLY ONLY SIGNED BY THE FOREPERSON. IN A
12 CAPITAL CASE IT'S A LITTLE DIFFERENT BECAUSE THE JURY
13 DECIDES PENALTY, NOT THE COURT. AND WHATEVER THE JURY
14 DECIDES THE COURT HAS TO CARRY OUT, WHETHER THAT BE A
15 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
16 DEATH.

17 AND AS SUCH, STATE LAW REQUIRES THAT EACH JUROR
18 INDIVIDUALLY SIGN THE SENTENCE SHEET. WOULD YOU BE ABLE
19 TO SIGN A VERDICT FORM IN THE EVENT OF A SENTENCE OF LIFE
20 WITHOUT THE POSSIBILITY OF PAROLE OR A DEATH SENTENCE?

21 A I WOULD.

22 Q OKAY. ANY QUESTIONS FROM THE STATE?

23 MR. HEMBREE: NO, YOUR HONOR.

24 THE COURT: ANY FROM THE DEFENSE?

25 MR. KELLY: NO, MA'AM.

1 THE COURT: OKAY. ANY EXCEPTION TO THIS JUROR
2 BEING FOUND QUALIFIED FROM THE STATE?

3 MR. HEMBREE: NO, YOUR HONOR.

4 THE COURT: FROM THE DEFENSE?

5 MR. KELLY: NO, MA'AM.

6 THE COURT: SIR, AS I EXPLAINED AGAIN -- I KNOW
7 OF A LOT OF THINGS PROBABLY ESCAPED ON TUESDAY
8 BECAUSE EVERYBODY WAS TIRED. WHAT WE'RE DOING IS
9 WE'RE TALKING TO EACH JUROR.

10 WE HAVE TO DEVELOP WHAT WE CALL A POOL OF
11 QUALIFIED JURORS. FROM THAT POOL WE WILL SELECT THE
12 JURY ON MONDAY, TWELVE JURORS AND PROBABLY EITHER TWO
13 OR THREE ALTERNATES I'M STILL DEBATING NOW ABOUT
14 WHETHER I'LL NEED TWO OR THREE.

15 WHAT I NEED FOR YOU TO DO IS RETURN HERE ON
16 MONDAY PACKED FOR TWO WEEKS. OF COURSE, YOU DON'T
17 HAVE TO BRING YOUR LUGGAGE UP TO THE COURTHOUSE. IF
18 YOU'RE SELECTED FOR THE PANEL, WE WILL MAKE
19 ARRANGEMENTS TO GET YOU CHECKED INTO THE HOTEL AND
20 GET YOU SITUATED AND OTHERWISE.

21 I NEED YOU TO ABIDE BY SOME INSTRUCTIONS FOR ME,
22 HOWEVER. AND I KNOW SOMETIMES THESE ARE DIFFICULT
23 BECAUSE, YOU KNOW, IT'S A SMALL COMMUNITY. BUT I
24 NEED FOR YOU TO HAVE NO DISCUSSION ABOUT THIS CASE
25 WITH ANYONE.

1 JUROR: I WON'T.

2 THE COURT: AND NOT TO DISCUSS THIS JURY
3 QUALIFICATION PROCESS EITHER.

4 JUROR: I WON'T.

5 THE COURT: PLEASE DON'T SPECULATE ABOUT WHAT
6 YOU THINK THE CASE COULD BE ABOUT OR MAY BE ABOUT.
7 AND IF ANYBODY COMES UP TO YOU TO BEGIN, YOU KNOW,
8 PEOPLE DO THAT, THEY SAY, GOSH, YOU GOT SUBPOENAED
9 FOR JURY DUTY, WHAT'S IT ALL ABOUT.

10 TELL THEM, I CAN'T DISCUSS THAT, I DON'T WANT TO
11 BE IN VIOLATION OF THE COURT'S RULES. AND THAT KEEPS
12 EVERYBODY HONEST. KEEPS YOU FROM LISTENING. KEEPS
13 THEM FROM TALKING.

14 IF SOMEBODY SHOULD PERSIST IN TRYING TO TALK TO
15 YOU, HOWEVER, PLEASE MAKE US AWARE OF IT SO THAT WE
16 CAN HANDLE IT AND TAKE CARE OF IT APPROPRIATELY.

17 PLEASE DO NOT WATCH, READ, OR LISTEN TO ANY
18 MEDIA ACCOUNTS ABOUT THIS CASE, THAT INCLUDES
19 ANYTHING ON THE RADIO, NEWSPAPER, TELEVISION, OR
20 ANYTHING YOU COULD FIND ON THE INTERNET.

21 JUROR: I WON'T.

22 THE COURT: OKAY. AND WE LOOK FORWARD TO SEEING
23 YOU ON MONDAY.

24 JUROR: THANK YOU.

25 THE COURT: HAVE A GOOD AFTERNOON -- WELL,

1 MORNING. I KEEP THINKING IT'S AFTERNOON, BUT IT'S
2 JUST 10:30. THANK YOU, SIR.

3 (JUROR LEFT THE COURTROOM.)

4 THE COURT: REBECCA FUENER, 374. WE HAVE HER
5 RESPONDING TO 21.

6 MR. HEMBREE: THAT'S WHAT MY RECORDS INDICATE.

7 (JUROR ENTERED THE COURTROOM.)

8 REBECCA FUENER, WHITE FEMALE, TESTIFIED AS
9 FOLLOWS:

10 BY THE COURT:

11 Q MRS. FUENER, HOW ARE YOU? BEAUTIFUL NECKLACE. YOU
12 DOING OKAY THIS MORNING? I KNOW. TAKE A DEEP BREATH.
13 IT'S OKAY. WE'RE NOT -- YOU KNOW, IT FEELS LIKE BEING
14 SORT OF UNDER A SPOTLIGHT; DOESN'T IT? I UNDERSTAND.
15 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

16 A REBECCA M FUENER.

17 Q OKAY. IT'S FUENER. I APOLOGIZE FOR MISPRONOUNCING
18 IT. IF YOU COULD SLIDE OVER TOWARD THE MICROPHONE A
19 LITTLE BIT FOR ME AND SPEAK INTO IT. YOU'RE A LITTLE
20 SOFT-SPOKEN. WE NEED TO BE ABLE TO HEAR ALL OF YOUR
21 RESPONSES. AND YOU ARE JUROR NUMBER 374; IS THAT RIGHT?

22 A CORRECT.

23 Q MA'AM, I WILL REMIND YOU THAT JURY STILL UNDER OATH.
24 DO YOU UNDERSTAND?

25 A YES.

1 Q OKAY. HAVE YOU READ, WATCHED, OR LISTENED TO ANY
2 MEDIA ACCOUNTS ABOUT THIS CASE SINCE WHEN YOU WERE
3 DISMISSED ON TUESDAY?

4 A I -- THE NEWS, GLANCED OVER AND THERE WAS A HEADLINE,
5 SO I SAW--

6 Q OKAY. BUT YOU DID NOT READ THE ARTICLE OR WATCH ANY
7 NEWS ACCOUNTS ABOUT THIS CASE--

8 A NO.

9 Q -- OR OTHERWISE? OKAY. MA'AM, WE'RE GOING TO ASK
10 YOU SOME QUESTIONS. STATE LAW REQUIRES THAT I ASK THEM.
11 WE'RE NOT TRYING TO INVADE YOUR PRIVACY IN ANY WAY.
12 PLEASE DON'T FEEL THAT WE'RE TRYING TO CHALLENGE YOUR
13 VIEWS. WE JUST NEED TO KNOW WHAT THEY ARE.

14 THERE ARE NO RULES TO THIS PROCESS EXCEPT THAT YOU BE
15 COMPLETELY OPEN AND HONEST WITH US. AND THERE ARE NO
16 RIGHT OR WRONG ANSWERS. WE JUST NEED YOU TO ANSWER THE
17 QUESTIONS AS OPENLY AND FULLY, AS HONESTLY AS YOU FEEL
18 THAT YOU CAN. IF YOU DON'T UNDERSTAND A QUESTION, PLEASE
19 LET US KNOW SO THAT WE CAN CLARIFY IT FOR YOU.

20 AMONG OTHER THINGS WE ARE GOING TO BE TALKING ABOUT
21 PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT POTENTIAL
22 PENALTIES IS -- HAS NOTHING TO DO WITH THE DEFENDANT AND
23 IT IS NO REFLECTION ON HIM BECAUSE THE LAW PRESUMES HIM TO
24 BE INNOCENT. DO YOU UNDERSTAND?

25 A YES.

1 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
2 LISTEN TO THE LAW? THE LAW IS NOT THE FACTS.

3 A YEAH.

4 Q SOMETIMES I NEED TO CLARIFY THAT FOR PEOPLE.

5 A YES.

6 Q OKAY. YOU UNDERSTAND WHAT I MEAN BY THE LAW?

7 A YES, I DO.

8 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
9 INSTRUCT YOU?

10 A AND I THOUGHT ABOUT THIS A WHOLE LOT--

11 Q OKAY.

12 A -- THE LAST FEW DAYS. I BELIEVE THAT I COULD, BUT I
13 THINK THAT IN THIS CASE IF THERE ARE A TECHNICALITY OF LAW
14 THAT DIDN'T REALLY DISPUTE THE FACTS AND I WAS GOING TO
15 HAVE TO LET THIS PERSON GO OVER A TECHNICALITY, I DON'T
16 KNOW IF I WOULD WANT TO FOLLOW THE LAW.

17 Q OKAY.

18 A IS THAT...

19 Q LET ME -- WHY DON'T YOU TELL ME WHAT YOUR IMPRESSION
20 OF THE LAW -- WHEN I SAY THE LAW, WHY DON'T YOU TELL ME
21 WHAT YOU BELIEVE THAT TO BE.

22 A SUPPOSE THERE WERE A SET OF FACTS AND THEN THERE WAS
23 A -- ALL I CAN THINK OF IS LIKE THE MIRANDA RIGHTS WERE
24 NOT READ BUT THE PERSON HAD BEEN INCARCERATED 14 TIMES
25 BEFORE, SO YOU KNEW THAT HE KNEW HIS RIGHTS AND HE WAS

1 GOING TO BE DECLARED INNOCENT BECAUSE OF THAT WHEN HE HAD
2 MURDERED AND WOULD BE THEN ON THE STREETS AND NOT RE-TRIED
3 FOR THAT CASE, AND SO I WOULD BE RELEASING A KILLER THAT I
4 KNEW TO BE A KILLER, I WOULD FEEL LIKE I NEEDED TO FOLLOW
5 MORE OF A HIGHER MORAL.

6 Q OKAY.

7 A BUT I KNOW THAT'S LIKE A LITTLE...

8 Q OKAY. WHAT IF I TOLD YOU -- AND IF ANYBODY HAS AN
9 EXCEPTION TO THE WAY I PHRASE THIS, PLEASE MAKE YOUR
10 THOUGHTS KNOWN TO ME. WHAT IF I CLARIFIED FOR YOU THAT
11 THOSE TYPE OF CIRCUMSTANCES WOULD NOT BE SOMETHING YOU'RE
12 EVER PRESENTED WITH BECAUSE THOSE ARE GENERALLY MATTERS OF
13 LAW SOLELY FOR THE COURT?

14 A THEN I'D BE FINE.

15 Q OKAY. NOW, SO LET ME ASK A QUESTION.

16 THE COURT: DOES ANYBODY HAVE ANY EXCEPTION TO
17 THE WAY I PHRASED THAT?

18 MR. HEMBREE: NO, YOUR HONOR.

19 MR. DIGGS: NO.

20 THE COURT: OKAY.

21 BY THE COURT:

22 Q WHAT I'M BASICALLY TRYING TO ASCERTAIN IS STATE LAW
23 IS WRITTEN A CERTAIN WAY AND WE ARE ALL BOUND BY IT. THE
24 JURY IS THE FACT FINDERS, WHICH MEANS THEY LISTEN TO THE
25 EVIDENCE AND THEY DETERMINE WHAT THE FACTS ARE. THEY

1 LISTEN TO WITNESSES, THEY DECIDE BELIEVABILITY AND
2 CREDIBILITY, THEY DECIDE REALLY WHAT THE VERSION OF THE
3 FACTS ARE FOR THE CASE.

4 AFTER ALL OF THAT IS OVER, IN OTHER WORDS, LISTENING
5 TO ALL OF THE EVIDENCE AND WITNESSES, THE COURT THEN GIVES
6 YOU WHAT WE CALL A CHARGE, WHICH IS REALLY JUST AN
7 INSTRUCTION ON THE LAW.

8 AND THEN IN ANY CASE, GENERALLY CRIMINAL CASE, WHAT
9 THE COURT WILL BE INSTRUCTING YOU WOULD BE THE ELEMENTS OF
10 OFFENSES, AND OTHER DEFENSES AND OTHER THINGS THAT WOULD
11 BE APPLICABLE IN THE LAW.

12 AND WHAT I'M TRYING TO DETERMINE IS EVEN IF YOU
13 DISAGREED WITH WHAT I TELL YOU THE LAW IS, CAN YOU UPHOLD
14 THE OATH AND ACCEPT AND APPLY THAT LAW AS I INSTRUCT YOU
15 EVEN THOUGH YOU MAY HAVE A PRECONCEIVED NOTION OF WHAT YOU
16 THINK IT SHOULD BE?

17 A I THINK I COULD. I COULD.

18 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
20 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
21 CASE?

22 A YES, I COULD..

23 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE,
24 THAT INCLUDES ANYTHING THAT YOU MAY HAVE HEARD ON THE
25 RADIO, READ IN THE NEWSPAPER, OR SEEN ON THE TELEVISION OR

1 INTERNET PRIOR TO TUESDAY REGARDING THIS CASE?

2 A I HAVE -- I READ EVERYTHING SINCE IT HAPPENED.

3 Q OKAY. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
4 TO, DO YOU FEEL THAT YOU HAVE FORMED A FIXED OPINION ABOUT
5 THIS CASE? IN OTHER WORDS, DO YOU FEEL YOU HAVE ALREADY
6 MADE UP YOUR MIND ABOUT WHAT HAPPENED? AGAIN, THERE ARE
7 NO RIGHT OR WRONG ANSWERS. I JUST NEED YOU TO BE--

8 A I HAVE AN OPINION, BUT MY--

9 Q OKAY. I NEED TO KNOW IF THAT IS A FIXED OPINION.

10 A NO, IT COULD BE CHANGED BY FACTS.

11 Q PARDON ME?

12 A IT COULD BE CHANGED BY FACTS IN A COURTROOM.

13 Q OKAY. I NEED TO KNOW -- AND I USE THE EXAMPLE OF A
14 HORSE WITH BLINDERS BECAUSE IT'S THE BEST ONE I CAN THINK
15 OF. AND YOU KNOW HOW A HORSE, THEY USUALLY HAVE THOSE
16 LITTLE BLACK BLINDERS, AND IT'S TO KEEP A HORSE -- BECAUSE
17 THEY ARE EASILY DISTRACTED -- TO KEEP THEM ON THE
18 DESIGNATED PATH.

19 AND WHAT I'M TRYING TO DETERMINE IS WHETHER AS A
20 JUROR YOU CAN COME INTO THIS COURTROOM AND BASICALLY EMPTY
21 YOUR MIND OF EVERYTHING AND LISTEN ONLY TO THE WITNESSES
22 WHO WILL BE SWORN AND WHO WILL TESTIFY AND THE OTHER
23 EVIDENCE THAT IS INTRODUCED, AND AS THE FACT FINDER LISTEN
24 IMPARTIALLY TO ALL OF THE EVIDENCE, APPLY THE LAW AS THE
25 COURT WILL CHARGE, AND RENDER A VERDICT IN THIS CASE BASED

1 ONLY ON THAT EVIDENCE AND THE LAW.

2 A I BELIEVE THAT I COULD.

3 Q OKAY. I NEED YOU TO -- AND AGAIN, THERE ARE NO RIGHT
4 OR WRONG ANSWERS, BUT I HAVE TO HAVE A YES OR A NO.

5 A YES.

6 Q OKAY. MA'AM, HAVE YOU READ THE JUROR TYPE SHEET?

7 A YES.

8 Q WELL, ACTUALLY I GOT AHEAD OF MYSELF. LET ME ASK
9 ANOTHER QUESTION, AND THEN -- I APOLOGIZE. MA'AM, IN A
10 CRIMINAL CASE THE STATE HAS THE BURDEN OF PROVING EACH AND
11 EVERY ELEMENT OF THE OFFENSES THEY CHARGE THE DEFENDANT
12 WITH BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

13 A YES.

14 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
15 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

16 A YES.

17 Q OKAY. HAVE YOU REVIEWED THE JUROR TYPE SHEET?

18 A YES, I HAVE.

19 Q OKAY. AND DO YOU BELIEVE THAT YOU FALL INTO ANY OF
20 THESE CATEGORIES? NO RIGHT OR WRONG--

21 A NO, IT'S NOT -- I -- I THINK THAT I AM NUMBER TYPE --
22 JUROR TYPE THREE.

23 Q OKAY.

24 A BUT IT WOULD BE A VERY NARROW RANGE IN WHICH I WOULD
25 WANT THE DEATH PENALTY.

1 Q OKAY. EXPLAIN THAT FOR ME. THERE ARE NO RIGHT OR
2 WRONG ANSWERS.

3 A I DIDN'T KNOW IF IT SAID WILL THE LAW, WILL YOU -- IF
4 HE'S CONVICTED OF -- DOES THE LAW REQUIRE THE DEATH
5 PENALTY UNDER CERTAIN...

6 Q WELL, I'M GOING TO EXPLAIN THAT TO YOU. WE'RE GOING
7 TO ASK YOU SOME MORE QUESTIONS ABOUT THAT. BUT WHAT I'M
8 TRYING TO DETERMINE FROM THIS QUESTION, QUESTION -- TYPE
9 ONE SAYS, NO MATTER WHAT THE CIRCUMSTANCES, I DON'T CARE
10 WHAT THE LAW REQUIRES, I WOULD NEVER GIVE THE DEATH
11 PENALTY.

12 TYPE TWO SAYS, IRREGARDLESS IF THERE'S A MURDER, I
13 WILL ALWAYS GIVE THE DEATH PENALTY. TYPE THREE SAYS, I
14 WANT TO LISTEN TO THE EVIDENCE, I WANT TO SEE WHAT IT
15 SAYS, I WANT TO HEAR THE LAW, AND DEPENDING ON
16 AGGRAVATING -- APPLYING BOTH THE AGGRAVATING AND
17 MITIGATING CIRCUMSTANCES, WHICH I'M GOING TO EXPLAIN TO
18 YOU IN A MOMENT, WEIGHING ALL OF THOSE THINGS, I COULD
19 GIVE EITHER LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
20 DEATH.

21 AND BASICALLY IT SAYS, I'M AN OPEN-MINDED JUROR WHO
22 IS GOING TO LISTEN TO THE LAW, LISTEN TO THE EVIDENCE, AND
23 FOLLOW EACH.

24 A I'M...

25 Q IN AN UNBIASED MANNER.

1 A I THINK I AM JUROR NUMBER THREE.

2 Q OKAY. DO YOU THINK OR ARE YOU CERTAIN? AGAIN, THERE
3 IS NO RIGHT OR WRONG ANSWER, BUT I CAN'T HAVE ANY
4 AMBIVALENCE ON THE QUESTION. I NEED TO HAVE A YES OR A NO
5 ANSWER.

6 A JUROR NUMBER THREE.

7 Q OKAY. MA'AM, IF YOU ARE A JUROR IN A DEATH PENALTY
8 CASE, AS THIS CASE IS, AND IF THE JURY FOUND THE DEFENDANT
9 GUILTY OF MURDER, AS I EXPLAINED, THERE ARE TWO PHASES TO
10 THIS TRIAL. THERE IS A GUILT PHASE AND A PENALTY PHASE.
11 DO YOU UNDERSTAND THAT?

12 A YES.

13 Q AND IF WE WERE TO MOVE TO THE PENALTY PHASE, YOU
14 WOULD BE ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING
15 CIRCUMSTANCES. AND THOSE ARE FACTS, INCIDENTS, DETAILS OF
16 AN OCCURRENCE OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
17 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE
18 THE OFFENSE OF MURDER.

19 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCES WHEN
20 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
21 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
22 COMMISSION OF A CRIME.

23 AND I'M GOING TO GIVE YOU SOME EXAMPLES OF MITIGATING
24 CIRCUMSTANCES. MURDER OF A CHILD UNDER AGE 11, DRUG
25 TRAFFICKING, KILLING BY POISON, OR BURGLARY IN ANY DEGREE.

1 AGAIN, THESE ARE JUST EXAMPLES SO THAT YOU CAN HAVE SOME
2 POINT OF REFERENCE.

3 YOU WOULD ALSO BE ALLOWED TO CONSIDER WHAT WE CALL
4 MITIGATING CIRCUMSTANCES WHICH ARE INCIDENTS, DETAILS, OR
5 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
6 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
7 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
8 MORAL CULPABILITY OR RESPONSIBILITY.

9 SOME EXAMPLES -- AND AGAIN, THESE ARE JUST
10 EXAMPLES -- ARE MENTAL RETARDATION AT THE TIME OF THE
11 CRIME, THE DEFENDANT WAS PROVOKED BY THE VICTIM, THE
12 DEFENDANT WAS AN ACCOMPLICE AND THEIR PARTICIPATION WAS
13 RELATIVELY MINOR OR THAT THE DEFENDANT ACTED UNDER DURESS
14 OR DOMINATION. AGAIN, THESE ARE JUST EXAMPLES. IT IS BY
15 NO MEANS AN EXHAUSTIVE LIST, JUST TO GIVE YOU A POINT OF
16 REFERENCE.

17 IF YOU WERE A JUROR IN THIS SITUATION, MEANING THE
18 PENALTY PHASE OF THIS TRIAL, COULD YOU -- OF ANY TRIAL --
19 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
20 CIRCUMSTANCES OF THE PARTICULAR CASE, INCLUDING THE
21 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
22 AND THE LAW THAT I WOULD INSTRUCT YOU AT THE CONCLUSION OF
23 THE CASE RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
24 POSSIBILITY OF PAROLE?

25 A YES, I COULD.

1 Q AND COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES
2 AFTER AGAIN THE CONCLUSION OF THE EVIDENCE, THE
3 CONSIDERATION OF THE AGGRAVATION AND MITIGATING
4 CIRCUMSTANCES AND THE LAW AS THE COURT WOULD CHARGE AT THE
5 CONCLUSION OF THE CASE RETURN A SENTENCE OF DEATH WHICH IN
6 THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

7 A YES, I COULD.

8 Q AGAIN, WE HAVE EXPLAINED THAT THIS JURY WILL BE
9 SEQUESTERED, WHICH MEANS YOU WILL BE HOUSED IN A SEPARATE
10 FACILITY, WHICH IN THIS INSTANCE WILL BE A HOTEL. EACH
11 PERSON WILL HAVE THEIR OWN ROOM. AND I HAVE EXPLAINED
12 THAT EARLIER, BUT I JUST WANTED TO EXPLAIN IT AGAIN.

13 WE -- THE LAW ALREADY RECOGNIZES THAT THAT IS
14 PERSONAL AND PROFESSIONALLY INCONVENIENT. BUT WHAT I NEED
15 TO KNOW IS WHETHER THAT -- THIS WOULD POSE A SERIOUS
16 DANGER TO YOUR HEALTH OR WELL-BEING.

17 A NO. NO.

18 Q OKAY. NOW, ALSO IN EVERY CASE THE JURY RETURNS A
19 VERDICT AND THAT VERDICT FORM IS USUALLY SIGNED BY THE
20 FOREPERSON. DEATH PENALTY CASES ARE A LITTLE DIFFERENT.
21 WE USUALLY REFER TO THEM AS CAPITAL CASES.

22 THEY'RE SLIGHTLY DIFFERENT BECAUSE WHAT THE JURY
23 DECIDES IN THE PENALTY PHASE IS WHAT THE COURT IS BOUND TO
24 DO. THE COURT HAS ABSOLUTELY NO DISCRETION.

25 SO AS A RESULT, WHETHER IT'S LIFE WITHOUT THE

1 POSSIBILITY OF PAROLE OR DEATH, STATE LAW REQUIRES THAT
2 EACH JUROR SIGN THEIR NAME INDIVIDUALLY ON THE VERDICT
3 FORM.

4 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
5 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
6 DEATH?

7 A YES, I COULD, UNDER THE RIGHT CIRCUMSTANCES.

8 Q OKAY.

9 A BUT IT WOULD BE NARROW.

10 Q OKAY.

11 THE COURT: ANY QUESTIONS FROM THE STATE?

12 MR. HEMBREE: YES, YOUR HONOR. VERY BRIEFLY.

13 THE COURT: YOU CAN PROCEED. GO RIGHT AHEAD.

14 MR. HEMBREE: THANK YOU, JUDGE.

15 THE COURT: YOU'RE WELCOME.

16 BY MR. HEMBREE:

17 Q GOOD MORNING, MRS. FUENER. I'M GREG HEMBREE. I WAS
18 INTRODUCED TO YOU TWO DAYS AGO I THINK. I'M THE SOLICITOR
19 FOR HORRY AND GEORGETOWN COUNTY. AND I ALONG WITH DEPUTY
20 SOLICITOR FRAN HUMPHRIES WILL BE TRYING THIS CASE ON
21 BEHALF OF THE CITIZENS OF GEORGETOWN COUNTY.

22 YOU EXPRESSED SOME CONCERNS A COUPLE OF DIFFERENT
23 WAYS ABOUT THE LAW AND YOU MADE A REFERENCE WHEN YOU WERE
24 TALKING ABOUT IMPOSING THE DEATH PENALTY THAT YOU WOULD
25 SORT OF DO WHAT WAS REQUIRED, IF I REMEMBER CORRECTLY,

1 SOMETHING ALONG THOSE LINES.

2 THERE -- IN DEATH PENALTY LITIGATION YOU ARE NEVER
3 REQUIRED BY THE LAW TO FIND FOR DEATH. YOU CAN FIND FOR
4 LIFE FOR ANY REASON, GOOD REASON, BAD REASON, NO REASON AT
5 ALL. YOU ARE ALL -- AS ANY JUROR, NO MATTER WHAT IS
6 PROVEN BY THE STATE, WHATEVER DEFENSE IS OFFERED BY THE --
7 WHATEVER EVIDENCE IS OFFERED BY THE DEFENSE, THE JUROR MAY
8 ALWAYS VOTE FOR LIFE.

9 AND I DON'T KNOW THAT THAT WAS CLEARLY EXPLAINED. WE
10 DIDN'T GO INTO THAT MUCH DETAIL. UNDERSTANDING THAT,
11 UNDERSTANDING THAT YOU WOULD HAVE THAT OPTION AVAILABLE TO
12 YOU THROUGHOUT THE PROCESS AND YOU WOULD NEVER BE REQUIRED
13 TO VOTE FOR DEATH, WOULD YOU BE ABLE TO NOT ONLY CONSIDER
14 BUT IMPOSE THE DEATH PENALTY GIVEN THE APPROPRIATE
15 EVIDENCE AND CIRCUMSTANCES?

16 A (PAUSE) I CAN THINK OF CIRCUMSTANCES WHERE I COULD
17 FIND FOR THE DEATH PENALTY, BUT AS I SAID, IT WOULD BE
18 NARROW. IT WOULD BE...

19 Q THAT'S ALL WE CAN ASK OF YOU. I APPRECIATE YOUR
20 ANSWER. AND IT'S A DIFFICULT -- SUCH A TOUGH QUESTION,
21 AND IT'S IN -- IT'S KIND OF IN A VACUUM, SO I CAN
22 APPRECIATE YOUR RESPONSES AND YOUR TIME WITH US. THANK
23 YOU.

24 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

25 MR. DIGGS: YOUR HONOR, WE HAVE JUST A COUPLE

1 FOLLOW-UP.

2 THE COURT: YOU MAY PROCEED.

3 BY MR. DIGGS:

4 Q MA'AM, YOU INDICATED LIKE MIRANDA, YOU WOULD PUT IN
5 CATEGORY OF A TECHNICALITY, IT WOULD BE DIFFICULT FOR YOU
6 TO FOLLOW THE LAW IN CIRCUMSTANCES LIKE THAT. BUT LET'S
7 SUPPOSE THAT OUR STATE LAW SET OUT CERTAIN DEFENSES.

8 WOULD YOU CONSIDER THOSE DEFENSES, IF PROVED, TO BE
9 MERE TECHNICALITIES OR SOMETHING OF MORE SUBSTANCE THAT
10 YOU COULD FOLLOW IN YOUR CONSCIENCE?

11 A THEY WOULD BE SUBSTANCE AND I WOULD FOLLOW THEM.

12 Q THAT'S ALL.

13 THE COURT: ANY EXCEPTION TO THE JUROR BEING
14 QUALIFIED FROM THE STATE?

15 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MR. DIGGS: NO.

18 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED
19 AS A JUROR IN THIS CASE. WHAT THAT MEANS, AS I
20 EXPLAINED ON TUESDAY -- PROBABLY ESCAPED MOST PEOPLE
21 BECAUSE EVERYBODY WAS TIRED -- WE ARE FINDING A POOL
22 OF QUALIFIED JURORS FROM WHICH WE WILL SELECT --
23 ACTUALLY SELECT THE ACTUAL JURY ON MONDAY.

24 SO WHAT I NEED FOR YOU TO DO IS TO RETURN ON
25 MONDAY MORNING AT 9:30 PACKED FOR TWO WEEKS. OF

1 COURSE, YOU DON'T HAVE TO BRING YOUR LUGGAGE UP HERE.
2 IF YOU ARE ACTUALLY SELECTED FOR THE PANEL, WE WILL
3 MAKE ARRANGEMENTS TO GET YOU CHECKED INTO THE HOTEL
4 AT THE APPROPRIATE TIME.

5 DURING THE BREAK PLEASE HAVE NO DISCUSSION ABOUT
6 THIS CASE WITH ANYONE. THAT INCLUDES YOUR FAMILY
7 MEMBERS, YOUR FRIENDS, OR OTHERWISE. IF ANYONE
8 APPROACHES YOU AND ATTEMPTS TO DISCUSS THIS CASE, YOU
9 NEED TO TELL THEM, I CANNOT EVEN DISCUSS THE JURY
10 QUALIFICATION PROCESS WITH YOU, I WILL BE IN
11 VIOLATION OF THE COURT'S RULE, AND I WANT TO -- I
12 DON'T WANT TO GET IN TROUBLE, AND I DON'T WANT YOU TO
13 GET IN TROUBLE.

14 ALSO, PLEASE DO NOT WATCH, READ, OR LISTEN TO
15 ANY MEDIA ACCOUNTS ABOUT THIS CASE AT ALL. THAT
16 INCLUDES ANYTHING RADIO, NEWSPAPER, TELEVISION,
17 INTERNET, OR OTHERWISE.

18 IT IS ESSENTIAL THAT YOU MAINTAIN YOUR
19 IMPARTIALITY IN THE EVENT THAT YOU ARE SELECTED AS A
20 JUROR IN THIS CASE. I HOPE YOU HAVE A WONDERFUL DAY
21 AND WE WILL SEE YOU ON MONDAY.

22 JUROR: I DO WANT TO SAY SOMETHING.

23 THE COURT: CERTAINLY.

24 JUROR: I NEVER SAID -- I DIDN'T GET IN LINE,
25 BUT MY GRANDDAUGHTER IS COMING. I RENTED A BEACH

1 HOUSE FOR A WEEK AND MY GRANDDAUGHTER IS COMING NEXT
2 WEEK FROM PENNSYLVANIA.

3 AND I WAS -- SHE GOT A ONE-WAY TICKET BECAUSE I
4 WAS TO DRIVE HER BACK -- AND STAY THERE FOR A WEEK.
5 BUT WHEN I HEARD EVERYBODY ELSE'S LIFE, I THOUGHT,
6 NOT -- TOUGH.

7 THE COURT: OH, I'M SORRY. I WISH YOU HAD MADE
8 ME AWARE OF THAT EARLIER. I COULD HAVE MADE OTHER
9 ARRANGEMENTS FOR YOU, BUT NOW...

10 JUROR: I HAD ALREADY TRANSFERRED FROM LAST TIME
11 FOR AN EMERGENCY, AND I JUST FELT LIKE I JUST NEED TO
12 BE...

13 THE COURT: WELL, WE APPRECIATE YOUR CIVIC
14 SERVICE MORE THAN YOU CAN EVER KNOW. I'M SORRY.

15 JUROR: THAT'S ALL RIGHT.

16 THE COURT: THANK YOU FOR BEING WITH US.

17 JUROR: THANK YOU.

18 THE COURT: YOU'RE WELCOME. NO, MA'AM. I NEED
19 YOU TO LEAVE THAT WITH US AND ACTUALLY WE'LL PUT IT
20 BACK IN THE JURY ROOM. THANK YOU. WE'LL TAKE CARE
21 OF IT. THANK YOU.

22 (JUROR LEFT THE COURTROOM.)

23 THE COURT: ALL RIGHT, GUYS. WE'RE DONE UNTIL
24 11.

25 (WHEREUPON THERE WAS A RECESS.)

1 THE COURT: FIFTY-TWO, MRS. COLE. OH, WAIT ONE
2 SECOND, PLEASE.

3 (JUROR ENTERED THE COURTROOM.)

4 TONRANGELLA COLE, BLACK FEMALE,
5 TESTIFIED AS FOLLOWS:

6 BY THE COURT:

7 Q MRS. COLE, HOW ARE YOU? MRS. COLE, HOW ARE YOU THIS
8 MORNING?

9 A I 'M OKAY.

10 Q GOOD. IF YOU COULD SLIDE AS CLOSE TO THE MICROPHONE
11 AS POSSIBLE FOR US. YOU CAN ADJUST IT. OKAY. YOU ARE
12 JUROR NUMBER 52; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND I REMIND YOU, MA'AM, THAT YOU'RE STILL UNDER
15 OATH. YOU NEED TO TELL ME YES OR NO.

16 A YES.

17 Q OKAY. WE'RE GOING -- DID YOU READ, WATCH, OR LISTEN
18 TO ANY REPORTS ABOUT THIS CASE DURING THE BREAK?

19 A NO.

20 Q I 'M GOING TO ASK YOU SOME QUESTIONS. THEY'RE NOT TO
21 INVADE YOUR PRIVACY. WE KNOW SOME OF THEM ARE PERSONAL.
22 WE KNOW THAT THEY ARE GOING TO REQUIRE YOU TO THINK ABOUT
23 THINGS YOU PROBABLY NEVER THOUGHT ABOUT.

24 THERE ARE NO RIGHT OR WRONG ANSWERS. STATE LAW
25 REQUIRES US TO ASK THESE QUESTIONS. IT REQUIRES IN CASES

1 OF THIS TYPE TO FOR US TO SPEAK TO EACH POTENTIAL JUROR
2 INDIVIDUALLY.

3 AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS. THE ONLY
4 THING WE REQUIRE IS THAT YOU ANSWER AS OPENLY, HONESTLY,
5 AND FULLY AS POSSIBLE. DO YOU UNDERSTAND?

6 A I UNDERSTAND.

7 Q IF YOU DON'T UNDERSTAND THE QUESTIONS, PLEASE LET US
8 KNOW.

9 A OKAY.

10 Q AMONG OTHER THINGS WE'RE GOING TO BE TALKING ABOUT
11 PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT PENALTY IS
12 NO REFLECTION ON THE DEFENDANT BECAUSE HE IS PRESUMED TO
13 BE INNOCENT IN THE LAW. DO YOU UNDERSTAND?

14 A YES.

15 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
16 LISTEN TO THE LAW?

17 A YES.

18 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
19 INSTRUCT YOU?

20 A YES.

21 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
22 MAY DISAGREE WITH WHAT I TELL YOU THE LAW IS?

23 A YES.

24 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING

1 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

2 A YES.

3 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
4 ABOUT THIS CASE PRIOR TO TUESDAY?

5 A YES.

6 Q AND AS A RESULT OF WHAT YOU MAY HAVE READ, HEARD, OR
7 SEEN, HAVE YOU FORMED ANY FIXED OPINION ABOUT THIS CASE?

8 A NO.

9 Q DO YOU BELIEVE YOU COULD LISTEN TO THE EVIDENCE FROM
10 SWORN WITNESSES AND THE EVIDENCE THAT IS INTRODUCED AND
11 THE COURT'S INSTRUCTIONS AND RENDER A VERDICT BASED SOLELY
12 ON THAT INFORMATION IN THIS CASE?

13 A YES.

14 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
15 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
16 DO YOU UNDERSTAND THAT?

17 A YES.

18 Q AND DO YOU ALSO UNDERSTAND THAT THE DEFENDANT HAS NO
19 BURDEN WHATSOEVER TO PROVE HIS INNOCENCE?

20 A YES.

21 Q HAVE YOU READ THE JUROR INFORMATION TYPE SHEET?

22 A YES, I HAVE.

23 Q OKAY. AND DO YOU FEEL THAT YOU FALL INTO ANY OF
24 THOSE CATEGORIES OF JURORS?

25 A YES.

1 Q AND TELL ME WHICH ONE YOU FEEL YOU FALL INTO.

2 A TYPE THREE.

3 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE,
4 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
5 WOULD THEN MOVE TO THE SENTENCING PHASE. AS I INDICATED,
6 THERE ARE TWO PHASES, A GUILT PHASE AND A SENTENCING
7 PHASE. DO YOU UNDERSTAND?

8 A YES.

9 Q IF WE WERE TO MOVE TO THE GUILT PHASE OF THE TRIAL,
10 YOU WOULD BE ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING
11 CIRCUMSTANCES, AND THOSE ARE CIRCUMSTANCES, FACTS,
12 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE
13 HAS DECLARED BY STATE LAW WOULD MAKE WORSE OR AGGRAVATE
14 THE OFFENSE OF MURDER.

15 IN OTHER WORDS, AGGRAVATING CIRCUMSTANCE WHEN
16 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS
17 INJURY OF (SIC) THE CRIME OF MURDER. IT IS COMMITTED IN
18 THE COMMISSION OF A CRIME.

19 AND SOME EXAMPLES, AND THIS IS BY NO MEANS AN
20 EXCLUSIVE LIST, I JUST GIVE IT TO YOU BY WAY OF EXAMPLE --
21 MURDER OF A CHILD UNDER AGE 11, DRUG TRAFFICKING, KILLING
22 BY POISON, OR BURGLARY IN ANY DEGREE. AGAIN, THESE ARE
23 JUST EXAMPLES.

24 YOU WOULD ALSO BE ALLOWED TO CONSIDER WHAT WE CALL
25 MITIGATING CIRCUMSTANCES WHICH ARE INCIDENTS, DETAILS, OR

1 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATUTE
2 REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
3 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
4 MORAL CULPABILITY OR RESPONSIBILITY.

5 AGAIN, SOME EXAMPLES ARE MENTAL RETARDATION AT THE
6 TIME OF THE CRIME, THE DEFENDANT WAS PROVOKED BY THE
7 VICTIM, THE DEFENDANT WAS AN ACCOMPLICE AND THEIR
8 PARTICIPATION WAS RELATIVELY MINOR, OR THAT THE DEFENDANT
9 ACTED UNDER DURESS OR DOMINATION. AGAIN, THESE ARE JUST
10 EXAMPLES AND BY NO MEANS AN EXCLUSIVE OR EXHAUSTIVE LIST.

11 IF YOU WERE A JUROR IN THAT SITUATION, MEANING THE
12 SENTENCING PHASE OF A TRIAL, COULD YOU, DEPENDING UPON THE
13 PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE INCLUDING
14 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
15 CIRCUMSTANCES AND THE LAW WHICH I WOULD INSTRUCT YOU
16 APPLIES AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE
17 OF LIFE WITHOUT THE POSSIBILITY OF PAROLE?

18 A YES.

19 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES,
20 CONSIDERING AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
21 THE LAW THAT I WOULD INSTRUCT THAT APPLIES AT THE
22 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH, WHICH
23 IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

24 A NO.

25 Q OKAY. SO WHEN YOU TOLD ME YOU WERE A TYPE THREE

1 JUROR, THAT WAS NOT ACCURATE?

2 A AS FAR AS MITIGATING, AS FAR AS REDUCING SAID OFFENSE
3 MENTAL RETARDATION, I CONSIDER THAT A PROBLEM.

4 Q OKAY. I WANT TO MAKE SURE YOU UNDERSTAND MY
5 QUESTION. I'M NOT TALKING ABOUT ANY PARTICULAR SITUATION
6 IN GENERAL.

7 A OKAY.

8 Q WHAT I'M TRYING TO ASCERTAIN IS CAN YOU APPLY THE LAW
9 AND DO EITHER OF THOSE THINGS--

10 A OKAY. YES.

11 Q -- APPLYING THE LAW AS IT WOULD RELATE TO A
12 PARTICULAR CASE AND PARTICULAR CIRCUMSTANCES?

13 A OKAY. YES.

14 Q SO I'M GOING TO REPEAT MY QUESTIONS TO MAKE SURE YOU
15 UNDERSTAND THEM. AND I KNOW YOU'RE NERVOUS. IT'S HARD.
16 AND IT'S HARD BECAUSE WE UNDERSTAND THESE CONCEPTS AND
17 YOU'RE PROBABLY -- YOU'RE HEARING THEM FOR THE FIRST TIME.

18 WHAT I'M TRYING TO ASCERTAIN IS IF YOU WERE A
19 JUROR -- AND I WANT YOU TO LISTEN VERY CAREFULLY -- IN THE
20 SENTENCING PHASE OF A DEATH PENALTY TRIAL, COULD YOU
21 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF A
22 PARTICULAR CASE, CONSIDER BOTH AGGRAVATING AND MITIGATING
23 CIRCUMSTANCES AND THE LAW AS THE COURT WOULD INSTRUCT
24 RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
25 POSSIBILITY OF PAROLE?

1 A YES.

2 Q COULD YOU IN THE PENALTY FACE, DEPENDING UPON THE
3 PARTICULAR FACTS AND CIRCUMSTANCES OF A CASE, INCLUDING
4 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
5 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT THAT
6 APPLIES AT THE CONCLUSION OF THE CASE RETURN A SENTENCE OF
7 DEATH WHICH IN THIS STATE IS BY ELECTROCUTION OR LETHAL
8 INJECTION?

9 A YES.

10 Q AGAIN, WE HAVE INDICATED TO YOU THAT THIS JURY WILL
11 BE SEQUESTERED WHICH MEANS YOU WILL BE HOUSED SEPARATELY
12 IN A HOTEL, EACH PERSON WILL HAVE THEIR OWN ROOM, FOR
13 APPROXIMATELY 10 DAYS.

14 WE ALREADY ASSUME THIS WILL BE PERSONALLY AND
15 PROFESSIONALLY INCONVENIENT. I NEED TO KNOW, HOWEVER, IF
16 THIS WOULD POSE A SERIOUS DANGER TO YOUR HEALTH OR
17 WELL-BEING.

18 A NO.

19 Q OKAY. NOW, IN EVERY CASE THE JURY RETURNS A VERDICT
20 FORM WHICH GENERALLY ONLY THE FOREPERSON SIGNS. IN A
21 DEATH PENALTY CASE IT IS DIFFERENT BECAUSE THE JURY
22 DETERMINES PENALTY, WHETHER IT BE LIFE WITHOUT THE
23 POSSIBILITY OF PAROLE OR DEATH.

24 AND AS SUCH STATE LAW REQUIRES THAT EACH JUROR SIGN
25 THAT VERDICT FORM INDIVIDUALLY, WHICH MEANS EACH PERSON ON

1 THE JURY SIGNS THEIR NAME. WOULD YOU BE ABLE TO SIGN A
2 VERDICT FORM IN THE EVENT OF A LIFE WITHOUT THE
3 POSSIBILITY OF PAROLE SENTENCE OR A DEATH SENTENCE?

4 A YES.

5 Q OKAY.

6 THE COURT: ARE THERE ANY QUESTIONS FROM THE
7 STATE?

8 MR. HUMPHRIES: JUST A COUPLE.

9 THE COURT: PROCEED.

10 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

11 BY MR. HUMPHRIES:

12 Q GOOD MORNING, MRS. COLE.

13 A GOOD MORNING.

14 Q CHECK MY WATCH. STAYED HERE ALL DAY. DON'T KNOW
15 WHAT TIME IT IS. YOUR RESPONSE WAS VERY DIRECT. I HAVE
16 NO QUESTION WHAT YOU HAVE SAID THUS FAR. A CAPITAL CASE
17 IS UNIQUE IN A NUMBER OF RESPECTS, LIKE WHAT WE'RE DOING
18 RIGHT NOW, IT'S UNIQUE, IT DOESN'T USUALLY HAPPEN.

19 BUT IT'S A DIFFERENT A KIND OF CASE INVOLVED. ONE OF
20 THE THINGS THAT I WANT TO MAKE SURE WE HAVE A CLEAR
21 UNDERSTANDING ABOUT IS IN A CAPITAL CASE, EVEN IF THE
22 STATE PROVES AGGRAVATING CIRCUMSTANCES AND EVEN IF THERE
23 ARE NO MITIGATING CIRCUMSTANCES OFFERED -- AND I'M NOT
24 SAYING THAT THAT WOULD BE THE CASE -- BUT EVEN IF, THERE
25 IS NO REQUIREMENT UNDER THE LAW THAT A JUROR HAS TO RETURN

1 A DEATH VERDICT.

2 SAID ANOTHER WAY, THE COURT WILL INSTRUCT YOU THAT
3 YOU CAN RETURN A LIFE VERDICT FOR ANY REASON OR NO REASON
4 AT ALL, OFTEN CALLED A MERCY VERDICT. UNDERSTANDING THAT
5 THERE WOULD NEVER BE A FORMULA, YOU KNOW, THAT IF -- IF
6 YOU GOT A PLUS B, THEN YOU MUST GIVE DEATH.

7 IF YOU UNDERSTAND THAT THAT IS NEVER THE SITUATION
8 AND ALWAYS GIVE LIFE, DO YOU BELIEVE THAT YOU CANNOT ONLY
9 FAIRLY CONSIDER IMPOSING THE DEATH PENALTY BUT IMPOSING
10 THE DEATH PENALTY GIVEN THE RIGHT AMOUNT OF EVIDENCE AND
11 THE RIGHT SET OF CIRCUMSTANCES?

12 A I WOULD BELIEVE SO.

13 Q AND CAN YOU BE A FAIR AND IMPARTIAL JUROR BOTH TO THE
14 STATE AND THE DEFENDANT IN THIS CASE?

15 A YES.

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

17 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

18 MR. KELLY: NO, MA'AM.

19 THE COURT: ANY OBJECTION TO THIS JUROR BEING
20 FOUND QUALIFIED? FROM THE STATE?

21 MR. HUMPHRIES: NONE FROM THE STATE.

22 THE COURT: FROM THE DEFENSE?

23 MR. KELLY: NO, MA'AM.

24 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED
25 AS A JUROR IN THIS CASE. AND WHAT THAT MEANS --

1 EVERYBODY WAS TIRED ON TUESDAY, SO I FIGURED THAT THE
2 EXPLANATION PROBABLY DIDN'T REALLY SINK IN.

3 WHAT WE'RE DOING IS, AS I INDICATED, STATE LAW
4 REQUIRES THAT WE TALK TO EACH POTENTIAL JUROR
5 INDIVIDUALLY. WE THEN FROM THAT CREATE A POOL OF
6 JURORS FROM WHICH WE'LL SELECT THE ACTUAL JURY.
7 OKAY. AND WE'RE GOING TO DO THAT ON MONDAY AT 9:30.

8 SO I NEED YOU TO RETURN ON MONDAY AT 9:30 PACKED
9 FOR TWO WEEKS. OF COURSE, YOU DON'T HAVE TO BRING
10 YOUR LUGGAGE UP TO THE COURTHOUSE. LEAVE IT IN YOUR
11 CAR.

12 BUT IF YOU'RE ACTUALLY SELECTED FOR THE PANEL,
13 WE WILL ARRANGE FOR YOU TO GO AHEAD AND GET SITUATED
14 IN THE HOTEL AT THE APPROPRIATE TIME, AND DO
15 EVERYTHING YOU NEED TO DO.

16 DURING THIS BREAK WHICH WILL BE ABOUT, YOU KNOW,
17 THREE OR FOUR DAYS -- I'M LOSING TRACK OF MY DAYS
18 SO MIGHT ONLY BE TWO DAYS -- I NEED FOR YOU TO ABIDE
19 BY SOME INSTRUCTIONS VERY STRICTLY.

20 PLEASE DO NOT SPECULATE ABOUT WHAT YOU THINK
21 THIS CASE COULD BE ABOUT OR MAY BE ABOUT. PLEASE
22 HAVE NO DISCUSSION ABOUT THIS PROCESS OR THE CASE
23 WITH ANYONE.

24 IF ANYBODY ATTEMPTS TO TALK TO YOU, YOU NEED TO
25 TELL THEM, I'M SORRY, I CANNOT DISCUSS THAT, I WOULD

1 BE IN CONTEMPT OF COURT AND I DON'T WANT TO GET YOU
2 IN TROUBLE AND I DON'T WANT TO GET ME IN TROUBLE.

3 NOW, IF SOMEBODY PERSISTS IN TRYING TO SPEAK
4 WITH YOU, PLEASE MAKE US AWARE OF IT SO THAT WE CAN
5 REMEDY THE SITUATION AND TAKE THE APPROPRIATE COURSE
6 OF ACTION.

7 ALSO, PLEASE DO NOT READ, WATCH, OR LISTEN TO
8 ANY MEDIA ACCOUNTS ABOUT THIS CASE. THAT INCLUDES
9 ANYTHING THAT COULD BE ON THE RADIO, NEWSPAPER,
10 TELEVISION, AND ESPECIALLY THE INTERNET. IT HAS
11 BECOME, YOU KNOW, LIKE THE WINDOW TO THE WORLD AND WE
12 ALL DEPEND ON IT AND USE IT.

13 BUT I WOULD ASK THAT YOU STRICTLY ABIDE BY THAT
14 INSTRUCTION BECAUSE AT ALL TIMES WE HAVE TO MAINTAIN
15 YOUR IMPARTIALITY AS A JUROR. HOPE THAT YOU ALL HAVE
16 A GOOD DAY. HOPE YOU HAVE A GOOD DAY AND WE'LL SEE
17 YOU ON MONDAY.

18 (JUROR LEFT THE COURTROOM.)

19 *THE COURT:* ROBERT LUMPKIN THE THIRD, 387.

20 (JUROR ENTERED THE COURTROOM.)

21 ROBERT LUMPKIN, III, WHITE MALE, TESTIFIED
22 AS FOLLOWS:

23 BY THE COURT:

24 Q HOW ARE YOU, SIR?

25 A DOING ALL RIGHT.

1 Q GOOD. I'M DOING FINE. IF YOU COULD GET AS CLOSE TO
2 THAT MICROPHONE AS POSSIBLE FOR ME AND STATE YOUR NAME FOR
3 THE RECORD.

4 A ROBERT LUMPKIN.

5 Q OOH, YOU CAN BACK UP A LITTLE BIT. IF YOU COULD
6 STATE YOUR NAME FOR ME AGAIN.

7 A ROBERT LUMPKIN.

8 Q IS IT THE THIRD?

9 A YES, MA'AM.

10 Q OKAY. AND YOU'RE JUROR 387?

11 A YES, MA'AM.

12 Q AND MR. LUMPKIN, I WILL REMIND YOU THAT YOU'RE STILL
13 UNDER OATH. DO YOU UNDERSTAND?

14 A YES, MA'AM.

15 Q OKAY. AND HAVE YOU READ, WATCHED, OR LISTENED TO ANY
16 MEDIA ACCOUNTS ABOUT THIS CASE SINCE I RELEASED YOU ON
17 TUESDAY?

18 A NO.

19 Q OKAY. SIR, I'M GOING TO ASK YOU SOME QUESTIONS. I
20 KNOW SOME OF THEM ARE PERSONAL. IT'S NOT OUR INTENT TO
21 TRY TO INVADE YOUR PRIVACY. IN CASES OF THIS TYPE THE
22 STATE LAW REQUIRES THAT WE SPEAK TO EACH JUROR
23 INDIVIDUALLY, SORT OF TO INQUIRE INTO YOUR VIEWS ABOUT
24 CERTAIN THINGS, AND MOST OF THEM ARE PROBABLY THINGS
25 YOU'VE NEVER REALLY THOUGHT ABOUT.

1 I NEED TO EMPHASIZE FOR YOU THAT THERE ARE NO RIGHT
2 OR WRONG ANSWERS. WE JUST NEED FOR YOU TO ANSWER US AS
3 OPENLY AND FULLY AND HONESTLY AS POSSIBLE, OKAY?

4 A OKAY.

5 Q AND IF YOU DON'T UNDERSTAND THE QUESTION, PLEASE LET
6 ME KNOW SO I CAN REPHRASE IT OR CLARIFY IT. AND I NEED
7 YOU TO ANSWER EACH OF MY QUESTIONS WITH A YES OR NO ANSWER
8 TO THE BEST OF YOUR ABILITY. ALL RIGHT?

9 A YES.

10 Q AMONG OTHER THINGS WE'RE GOING TO BE TALKING ABOUT
11 PENALTY, BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES
12 NOT INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
13 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

14 A YES, MA'AM.

15 Q SIR, IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
16 LISTEN TO THE LAW?

17 A YES, MA'AM.

18 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
19 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

20 A YES, MA'AM.

21 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
22 MIGHT DISAGREE WITH ME ABOUT WHAT THE LAW IS?

23 A YES, MA'AM.

24 Q SIR, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD

1 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
2 CASE?

3 A YES, MA'AM.

4 Q HAVE YOU HEARD, READ, OR SEEN ANY MEDIA COVERAGE
5 ABOUT THIS CASE PRIOR TO TUESDAY?

6 A NO.

7 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
8 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
9 DO YOU UNDERSTAND THAT?

10 A YES, MA'AM.

11 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
12 ABSOLUTELY NO BURDEN IN THIS CASE TO PROVE HIS INNOCENCE?
13 IN OTHER WORDS -- LET ME SEE IF I CAN EXPLAIN IT TO YOU.
14 IN EVERY CRIMINAL CASE, THE STATE BEARS THE ENTIRE BURDEN.
15 THEY HAVE TO PROVE THEIR CASE COMPLETELY BEYOND A
16 REASONABLE DOUBT, OKAY, WHICH MEANS THAT THEY CARRY THE
17 TOTALITY OF THE BURDEN.

18 THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING. HE
19 COMES INTO THIS COURT CLOAKED WITH A PRESUMPTION OF
20 INNOCENCE. HE DOESN'T HAVE TO SPEAK. HIS LAWYERS DON'T
21 EVEN HAVE TO SPEAK. THEY CAN SIT AT THAT TABLE DURING THE
22 ENTIRE COURSE OF THIS TRIAL AND SAY NOTHING.

23 THEY DON'T HAVE TO GIVE AN OPENING STATEMENT. THEY
24 DON'T HAVE TO GIVE A CLOSING STATEMENT. THEY DON'T HAVE
25 TO PRESENT ANY WITNESSES. THEY HAVE ABSOLUTELY NO BURDEN.

1 THE STATE, HOWEVER, IRREGARDLESS OF THAT, STILL HAS
2 TO PROVE THEIR CASE BEYOND A REASONABLE DOUBT. DO YOU
3 UNDERSTAND THAT?

4 A YES, MA'AM.

5 Q OKAY. HAVE YOU LOOKED AT THE JUROR TYPE SHEET?

6 A THIS?

7 Q YES, SIR, THAT WAS IN THE JURY ROOM.

8 A YES, MA'AM.

9 Q AND DO YOU REMEMBER THE DIFFERENT TYPES OF JURORS,
10 TYPE ONE, TYPE TWO, AND TYPE THREE?

11 A YES, MA'AM.

12 Q WHICH CATEGORY DO YOU FEEL THAT YOU WOULD FALL INTO,
13 IF ANY?

14 A TYPE THREE.

15 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
16 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
17 WE WOULD THEN MOVE TO WHAT WE CALL THE SENTENCING PHASE OF
18 THE TRIAL, BECAUSE THIS TYPE TRIAL HAS TWO PHASES, A GUILT
19 PHASE AND A SENTENCING PHASE. DO YOU UNDERSTAND?

20 A YES, MA'AM.

21 Q IF WE WERE TO MOVE TO THE SENTENCING PHASE, YOU WOULD
22 BE ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING
23 CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU WHAT THOSE
24 MEAN.

25 AN AGGRAVATING CIRCUMSTANCE ARE FACTS, INCIDENTS,

1 DETAILS, OR AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS
2 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
3 THE OFFENSE OF MURDER.

4 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
5 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
6 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
7 COMMISSION OF A CRIME.

8 AND I'M GOING TO GIVE YOU SOME EXAMPLES. THE MURDER
9 OF A CHILD UNDER AGE 11, DRUG TRAFFICKING, KILLING BY
10 POISON, BURGLARY IN ANY DEGREE. THESE ARE JUST EXAMPLES.
11 THEY ARE NOT AN EXHAUSTIVE LIST.

12 YOU WOULD ALSO BE ABLE TO CONSIDER WHAT WE CALL
13 MITIGATING CIRCUMSTANCES WHICH ARE INCIDENTS, DETAILS, OR
14 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
15 STATE LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND
16 MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE
17 OF MORAL CULPABILITY OR RESPONSIBILITY.

18 AND AGAIN, SOME EXAMPLES OF WHAT WE WOULD CALL
19 MITIGATING CIRCUMSTANCES ARE MENTAL RETARDATION AT THE
20 TIME OF THE CRIME, THE DEFENDANT WAS PROVOKED BY THE
21 VICTIM, THE DEFENDANT WAS AN ACCOMPLICE AND THEIR
22 PARTICIPATION WAS RELATIVELY MINOR, THE DEFENDANT ACTED
23 UNDER DURESS OR DOMINATION.

24 AGAIN, THESE ARE JUST EXAMPLES. THEY ARE NOT IN ANY
25 WAY AN ENTIRE LIST. OKAY?

1 A YES, MA'AM.

2 Q IF YOU WERE A JUROR IN THAT SITUATION, MEANING THE
3 SENTENCING PHASE OF A TRIAL, COULD YOU, DEPENDING UPON THE
4 PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING
5 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU AT THE
7 CLOSE OF THE CASE, RETURN A SENTENCE OF LIFE IN PRISON
8 WITHOUT THE POSSIBILITY OF PAROLE?

9 A YES, MA'AM.

10 Q COULD YOU IN THE VERY SAME CIRCUMSTANCE THAT I HAVE
11 JUST EXPLAINED, CONSIDERING AGGRAVATING AND MITIGATING
12 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT AT THE
13 CONCLUSION OF THE CASE, RETURN A SENTENCE OF DEATH WHICH
14 IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

15 A YES, MA'AM.

16 Q SIR, AS I'VE ALREADY EXPLAINED, THIS JURY WILL BE
17 SEQUESTERED WHICH MEANS YOU WILL BE HOUSED IN A MOTEL FOR
18 APPROXIMATELY 10 DAYS. BUT WE ALREADY PRESUME THAT THAT'S
19 INCONVENIENT TO YOU.

20 WE KNOW IT'S INCONVENIENT TO YOUR PERSONAL AND
21 PROFESSIONAL LIFE. BUT I NEED TO KNOW IF THIS WOULD POSE
22 A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING.

23 A NO.

24 Q OKAY. NOW, IN EVERY CASE THE JURY RETURNS A VERDICT
25 AND USUALLY ONLY THE FOREPERSON SIGNS THE VERDICT FORM.

1 BUT CAPITAL CASES ARE DIFFERENT BECAUSE THE JURY DECIDES
2 PENALTY, AND WHATEVER THE JURY DECIDES, THE COURT HAS TO
3 FOLLOW.

4 AND SO IN THAT INSTANCE THE STATE LAW REQUIRES THAT
5 EACH JUROR SIGN THE VERDICT FORM INDIVIDUALLY, WHETHER IT
6 BE FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.
7 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT OF A
8 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
9 DEATH?

10 A YES, MA'AM.

11 Q OKAY.

12 THE COURT: ANY QUESTIONS FROM THE STATE?

13 MR. HUMPHRIES: NONE FROM THE STATE.

14 THE COURT: FROM THE DEFENSE?

15 MR. KELLY: NO, MA'AM.

16 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
17 QUALIFIED FROM THE STATE?

18 MR. HUMPHRIES: NO, YOUR HONOR.

19 THE COURT: FROM THE DEFENSE?

20 MR. KELLY: NO, MA'AM.

21 THE COURT: MR. LUMPKIN YOU HAVE BEEN FOUND
22 QUALIFIED. AND WHAT THIS MEANS IS THAT ON MONDAY I
23 NEED YOU TO RETURN AT 9:30. FROM THE POOL OF
24 QUALIFIED JURORS WE WILL THEN SELECT THE ACTUAL JURY.

25 AND AGAIN, I NEED YOU TO RETURN ON MONDAY AT

1 9:30 PACKED FOR TWO WEEKS. AND WE'LL MAKE
2 ARRANGEMENTS FOR YOU TO, YOU KNOW, IF YOU'RE
3 SELECTED, TO GET YOUR LUGGAGE AND EVERYTHING TO THE
4 HOTEL.

5 DURING THE COURSE OF THIS INTERRUPTION BEFORE
6 MONDAY I NEED FOR YOU TO ABIDE BY SOME STRICT
7 INSTRUCTIONS. PLEASE DO NOT TALK ABOUT THIS WITH
8 ANYONE, THAT INCLUDES YOUR FAMILY MEMBERS OR YOUR
9 FRIENDS OR ANYONE ELSE.

10 IF ANYONE SHOULD APPROACH YOU AND TRY TO SPEAK
11 TO YOU ABOUT IT, TELL THEM, PLEASE STOP SPEAKING I
12 CANNOT DISCUSS THIS WITH YOU, IT WOULD BE IN
13 VIOLATION OF THE COURT'S RULES.

14 I ALSO NEED TO ASK YOU NOT TO READ, WATCH, OR
15 LISTEN TO ANY MEDIA REPORTS ABOUT THIS CASE. IT IS
16 EXTREMELY IMPORTANT THAT YOU REMAIN IMPARTIAL IF
17 YOU'RE SELECTED. OKAY? AND WE'LL SEE YOU ON MONDAY
18 AT 9:30. THANK YOU FOR YOUR TIME AND YOUR PATIENCE.

19 (JUROR LEFT THE COURTROOM.)

20 THE COURT: RALPH SHELLY. 292. I HAVE HIM ON
21 MY LIST FOR 21.

22 (JUROR ENTERED THE COURTROOM.)

23 RALPH SHELLY, WHITE MALE,
24 TESTIFIED AS FOLLOWS:

25 BY THE COURT:

1 Q HOW ARE YOU TODAY, SIR?

2 A PRETTY GOOD.

3 Q IF YOU WOULD SLIDE AS CLOSE TO THAT MIKE AS YOU CAN
4 SO WE CAN HEAR YOU CLEARLY AND STATE YOUR FULL NAME FOR
5 THE RECORD.

6 A YES, MA'AM. JUROR 292, RALPH EDWARD SHELLY.

7 Q WHAT'S YOUR MIDDLE NAME?

8 A EDWARD.

9 Q EDWARD. I COULDN'T HEAR YOU. I AM SORRY.
10 MR. SHELLY, HOW ARE YOU DOING THIS MORNING?

11 A PRETTY GOOD. TIRED.

12 Q TAKE A DEEP BREATH. I KNOW THIS CAN BE A LITTLE
13 UNNERVING. SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER
14 OATH. DO YOU UNDERSTAND?

15 A YES, MA'AM.

16 Q HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE SINCE I
17 EXCUSED YOU ON TUESDAY?

18 A NO, MA'AM.

19 Q SIR, I'M GOING TO ASK YOU SOME QUESTIONS AND SOME OF
20 THEM MAY SEEM INTENSELY PERSONAL. IT'S NOT OUR INTENT TO
21 INVAD E YOUR PRIVACY. WE KNOW YOU -- WE'RE GOING TO BE
22 ASKING YOU ABOUT THINGS THAT YOU PROBABLY HAVE REALLY
23 NEVER THOUGHT ABOUT.

24 STATE LAW REQUIRES IN A CASE OF THIS TYPE THAT WE
25 TALK TO EACH JUROR INDIVIDUALLY. I NEED TO EMPHASIZE TO

1 YOU THAT THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
2 NEED FOR YOU TO ANSWER US AS OPENLY AND FULLY AND HONESTLY
3 AS POSSIBLE.

4 IF YOU DON'T UNDERSTAND THE QUESTION, LET US KNOW SO
5 THAT WE CAN REPHRASE IT OR IF YOU NEED US TO REPEAT IT.
6 AND I NEED YOU AS BEST TO YOUR ABILITY TO ANSWER EACH
7 QUESTION YES OR NO, AGAIN REMINDING YOU THERE IS NO RIGHT
8 OR WRONG ANSWER.

9 A OKAY.

10 Q AMONG OTHER THINGS TODAY WE WILL BE TALKING ABOUT
11 PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT PENALTIES
12 IS NO REFLECTION ON THE DEFENDANT BECAUSE HE IS PRESUMED
13 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

14 A YES, MA'AM.

15 Q BLESS YOU, MR. DIGGS. IF YOU WERE A JUROR IN A
16 CRIMINAL CASE, COULD YOU LISTEN TO THE LAW?

17 A YES, MA'AM.

18 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
19 INSTRUCT YOU?

20 A YES, MA'AM.

21 Q AND COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH
22 YOU MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

23 A YES, MA'AM.

24 Q SIR, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE AND THE SWORN TESTIMONY OF WITNESSES THAT WILL BE

1 PRESENTED IN THIS COURTROOM AND THE LAW AS THE COURT WILL
2 CHARGE AND DISREGARD ANYTHING YOU MAY HAVE HEARD, READ, OR
3 SEEN ABOUT THIS CASE?

4 A YES, MA'AM.

5 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
6 ABOUT THIS CASE PRIOR TO REPORTING ON TUESDAY?

7 A YES, I HAVE.

8 Q AS A RESULT OF WHAT YOU HAVE BEEN EXPOSED TO, HAVE
9 YOU FORMED ANY FIXED OPINION ABOUT THE FACTS OF THIS CASE?
10 IN OTHER WORDS, HAVE YOU MADE UP YOUR MIND ALREADY?

11 A YES, MA'AM.

12 Q OKAY. BECAUSE YOU JUST SAID TO ME YOU COULD
13 DISREGARD WHAT YOU HAD READ AND FORM A DECISION, SO I NEED
14 TO ASK YOU AN ADDITIONAL QUESTION TO MAKE SURE THAT I'M
15 COMPLETELY CLEAR.

16 CAN YOU COME INTO THIS COURT LIKE A HORSE WITH
17 BLINDERS -- YOU KNOW HOW THEY HAVE HORSE BLINDERS -- AND
18 DISREGARD EVERYTHING THAT YOU MAY HAVE HEARD AND ANY
19 OPINIONS YOU FEEL YOU MAY HAVE FORMED AND LISTEN TO THE
20 WITNESSES WHO WILL BE SEATED IN THIS VERY WITNESS STAND
21 WHO WILL BE SWORN TO TELL THE TRUTH AND ANY OTHER EVIDENCE
22 THAT WILL BE INTRODUCED, LISTEN TO THE LAW AS THE COURT
23 WILL CHARGE, THE ARGUMENTS OF THE ATTORNEYS, AND MAKE A
24 DECISION BASED EXCLUSIVELY ON THE EVIDENCE THAT IS
25 PRESENTED AND THE LAW AS THE COURT WILL CHARGE WITHOUT

1 REGARD TO ANY OPINION YOU MAY HAVE FORMED?

2 A NO, MA'AM.

3 Q OKAY.

4 THE COURT: ANY QUESTIONS FROM THE STATE?

5 MR. HUMPHRIES: NONE FROM THE STATE.

6 THE COURT: FROM THE DEFENSE?

7 MR. DIGGS: JUST A COUPLE.

8 THE COURT: CERTAINLY.

9 BY MR. DIGGS:

10 Q MR. SHELLY, LET'S SUPPOSE THAT YOU COME IN AND THE
11 COURT INSTRUCTS YOU FULLY ON THE LAW APPLICABLE TO THIS
12 CASE AND YOU REALIZE IN THAT LAW THAT UNDER SOUTH
13 CAROLINA'S STATUTORY LAW THE GENERAL ASSEMBLY HAS PROVIDED
14 FOR A DEFENSE UNDER THE FACTS THAT YOU FIND PRESENTED AND
15 THE EVIDENCE OR FROM THE EVIDENCE AT TRIAL.

16 COULD YOU FOLLOW THE LAW, SET ASIDE YOUR OPINION IN
17 THAT CASE AND FOLLOW THE LAW, APPLY THAT DEFENSE IF YOU
18 FIND IT TO EXIST UNDER THE LAW?

19 A WELL, I HAVE ALREADY KIND OF HAVE MY OWN PERSONAL
20 OPINION ABOUT THE CASE.

21 Q BUT LET'S ASSUME YOU HAVEN'T HEARD ALL THE EVIDENCE.

22 A I THINK I ALREADY KNOW ENOUGH.

23 Q OKAY. AND THAT'S NOT LIKELY TO CHANGE?

24 A I DOUBT IT.

25 Q YOU TELLING US YOU REALLY DON'T FEEL LIKE YOU COULD

1 BE FAIR IN THIS CASE?

2 A I GUESS SO.

3 THE COURT: ANY OBJECTION TO THE WITNESS BEING
4 EXCUSED FROM THE STATE?

5 MR. HUMPHRIES: NONE FROM THE STATE.

6 THE COURT: FROM THE DEFENSE?

7 MR. DIGGS: NONE FROM THE DEFENSE.

8 THE COURT: SIR YOU'RE EXCUSED WITH THE COURT'S
9 THANKS. HAVE A GOOD DAY.

10 (JUROR LEFT THE COURTROOM.)

11 THE COURT: 361, ELLEN WINNS.

12 (JUROR ENTERED THE COURTROOM.)

13 ELLEN WINNS, BLACK FEMALE,
14 TESTIFIED AS FOLLOWS:

15 BY THE COURT:

16 Q MRS. WINNS, HOW ARE YOU? IF YOU'D COME HAVE A SEAT
17 FOR US. AND IF YOU COULD SIT AS CLOSE TO THIS MICROPHONE
18 FOR US AS POSSIBLE SO THAT WE CAN HEAR YOU. OKAY. MA'AM,
19 PLEASE STATE YOUR NAME FOR THE RECORD.

20 A I'M ELLEN WINNS.

21 Q AND YOU ARE 361; IS THAT CORRECT?

22 A YES.

23 Q MA'AM, I WILL REMIND YOU YOU'RE STILL UNDER OATH. DO
24 YOU UNDERSTAND?

25 A YES.

1 Q HAVE YOU HAD EXPOSE -- HAVE YOU BEEN EXPOSED TO ANY
2 MEDIA ACCOUNTS ABOUT THIS CASE SINCE I DISMISSED YOU ON
3 TUESDAY?

4 A NO.

5 Q MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS. WE KNOW
6 THAT SOME OF THEM ARE INTENSELY PERSONAL. WE DON'T --
7 WE'RE NOT TRYING TO INVAD E YOUR PRIVACY, BUT STATE LAW
8 REQUIRES THAT WE ASK THESE QUESTIONS AND THEY REQUIRE THAT
9 WE IN A CASE OF THIS TYPE TALK TO EACH JUROR INDIVIDUALLY.

10 I KNOW IT CAN BE A LITTLE UNNERVING. I NEED YOU TO
11 TAKE A DEEP BREATH. THERE IS NOTHING TO BE NERVOUS ABOUT.
12 I NEED TO EMPHASIZE THAT THERE ARE NO RIGHT OR WRONG
13 ANSWERS. WE JUST NEED FOR YOU TO ANSWER US AS COMPLETELY
14 AND HONESTLY AND FULLY AS POSSIBLE.

15 IF YOU DON'T UNDERSTAND A QUESTION, LET US KNOW. IF
16 YOU NEED US TO REPEAT A QUESTION, LET US KNOW. AND PLEASE
17 ANSWER EACH QUESTION TO THE BEST OF YOUR ABILITY WITH A
18 YES OR A NO ANSWER.

19 AMONG OTHER THINGS WE WILL BE TALKING ABOUT
20 PENALTIES. THE MERE FACT WE TALK ABOUT PENALTIES IS NO
21 REFLECTION ON THE DEFENDANT. HE IS PRESUMED IN THE LAW TO
22 BE INNOCENT. DO YOU UNDERSTAND?

23 A YES.

24 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
25 LISTEN TO THE LAW?

1 A YES.

2 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
3 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

4 A YES.

5 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
6 MAY DISAGREE WITH ME ABOUT WHAT I -- AS TO WHAT I TELL YOU
7 THE LAW IS? AND LET ME CLARIFY. THE LAW AND THE FACTS
8 ARE DIFFERENT THINGS.

9 A JURY IS THE JUDGE OF THE LAW, WHICH MEANS YOU
10 LISTEN TO THE EVIDENCE AND YOU DECIDE WHAT THE FACTS ARE.
11 NOT THE COURT'S PREROGATIVE. I DON'T HAVE ANY -- IN ANY
12 CASE I NEVER HAVE AN OPINION ABOUT THE FACTS BECAUSE THE
13 LAW DOES NOT ALLOW ME TO HAVE AN OPINION; OKAY?

14 A OKAY.

15 Q MY ONLY JOB IS LIKE A GATEKEEPER OR A HALL MONITOR OR
16 A REFEREE AT A BASEBALL GAME. I TELL EVERYBODY WHAT THE
17 LAW IS AND THEY ARE DUTY BOUND, AND AS THE JUROR WOULD BE,
18 BOUND BY OATH TO FOLLOW THE LAW AS I INSTRUCT YOU.

19 AND WHAT I'M TRYING TO DETERMINE IS THAT SOMETIMES
20 PEOPLE, CITIZENS, THEY HAVE THEIR IDEA OF WHAT THE LAW IS.
21 AND I HAVE TO BE SURE THAT YOU WILL NOT DISREGARD WHAT I
22 TELL YOU THE LAW IS, AND EVEN THOUGH YOU MAY DISAGREE WITH
23 ME, THAT YOU STILL WILL BE ABLE TO APPLY THE LAW AS I
24 INSTRUCT YOU.

25 A YES.

1 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
2 EVIDENCE PRESENTED IN THE COURTROOM FROM THE LIPS OF SWORN
3 WITNESSES AND THE OTHER EVIDENCE AND THE LAW AS CHARGED BY
4 THE COURT AND DISREGARD ANYTHING YOU MAY HAVE HEARD, READ,
5 OR SEEN ABOUT THIS CASE?

6 A YES.

7 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
8 ABOUT THIS CASE PRIOR TO REPORTING ON TUESDAY?

9 A TUESDAY? NO.

10 Q OKAY. IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
11 PROOF REGARDING THE DEFENDANT'S GUILT AND THEY MUST PROVE
12 THAT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND?

13 A YES.

14 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
15 PROVE HIS INNOCENCE?

16 A YES.

17 Q HAVE YOU REVIEWED THE JUROR TYPE SHEET THAT WAS IN
18 THE JURY ROOM?

19 A YES.

20 Q AND DO YOU REMEMBER THE THREE TYPES OF JURORS?

21 A YES.

22 Q DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES?

23 A TYPE THREE.

24 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
25 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,

1 WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL,
2 BECAUSE AS I EXPLAINED ON TUESDAY, THERE ARE TWO PHASES, A
3 GUILT PHASE -- AND IF THE DEFENDANT IS FOUND GUILTY OF
4 MURDER, WE THEN MOVE TO A SENTENCING PHASE WHERE THE JURY
5 DETERMINES THE SENTENCE.

6 DURING THAT SENTENCING PHASE THE JURY IS ALLOWED TO
7 CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES. AN
8 AGGRAVATING CIRCUMSTANCE IS A FACT, INCIDENT, DETAIL, OR
9 OCCURRENCE WHICH THE GENERAL ASSEMBLY, WHICH IS THE
10 LEGISLATURE, HAS DECLARED BY STATE LAW WOULD MAKE WORSE,
11 THAT IS AGGRAVATE THE OFFENSE OF MURDER.

12 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
13 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
14 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
15 COMMISSION OF A CRIME.

16 AND SOME EXAMPLES OF AGGRAVATING CIRCUMSTANCES ARE
17 THE MURDER OF A CHILD UNDER AGE 11, DRUG TRAFFICKING,
18 KILLING BY POISON OR BURGLARY IN ANY DEGREE. AGAIN, THESE
19 ARE JUST EXAMPLES SO YOU CAN HAVE A POINT OF REFERENCE.
20 THAT IS BY NO MEANS THE ENTIRE LIST.

21 YOU WOULD ALSO BE ALLOWED TO CONSIDER MITIGATING
22 CIRCUMSTANCES WHICH ARE INCIDENTS, DETAILS, OR OCCURRENCES
23 WHICH THE GENERAL ASSEMBLY HAS DECLARED BY STATE LAW
24 REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
25 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF

1 MORAL CULPABILITY OR RESPONSIBILITY.

2 AND AGAIN, I WILL GIVE YOU SOME EXAMPLES. MENTAL
3 RETARDATION AT THE TIME OF THE CRIME, THE DEFENDANT WAS
4 PROVOKED BY THE VICTIM, THE DEFENDANT WAS AN ACCOMPLICE
5 AND THEIR PARTICIPATION WAS RELATIVELY MINOR, THE
6 DEFENDANT ACTED UNDER DURESS OR DOMINATION. AGAIN, THESE
7 ARE JUST EXAMPLES OF MITIGATION BECAUSE THERE IS NO
8 EXHAUSTIVE LIST ON MITIGATION.

9 OKAY. SO I JUST GIVE IT TO YOU BY WAY OF EXAMPLE,
10 AND THAT IS THE ONLY PURPOSE FOR BOTH AGGRAVATING AND
11 MITIGATING SO THAT YOU WILL HAVE A POINT OF REFERENCE AS
12 TO WHAT WE MEAN BY THOSE TERMS.

13 IF YOU WERE A JUROR IN THAT SITUATION, MEANING THE
14 SENTENCING PHASE OF THE TRIAL, COULD YOU, DEPENDING UPON
15 THE PARTICULAR FACTS AND CIRCUMSTANCES OF A CASE INCLUDING
16 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
17 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU THAT
18 APPLIES AT THE CONCLUSION OF THE CASE RETURN A SENTENCE OF
19 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

20 A YES.

21 Q AND COULD YOU UNDER THOSE SAME CIRCUMSTANCES, THAT IS
22 THE SENTENCING PHASE, DEPENDING UPON THE PARTICULAR FACTS
23 AND CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION
24 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW
25 THAT I WOULD INSTRUCT YOU THAT APPLIED AT THE CONCLUSION

1 OF A CASE RETURN A SENTENCE OF DEATH WHICH IN THIS STATE
2 IS BY ELECTROCUTION OR BY LETHAL INJECTION?

3 A YES.

4 Q AGAIN, WE'VE TOLD YOU THAT YOU'RE GOING TO BE
5 SEQUESTERED IF YOU'RE SELECTED -- AND JUST TO GIVE YOU
6 MORE INFORMATION, YOU WILL BE HOUSED IN A MOTEL, OF
7 COURSE, IN AN INDIVIDUAL ROOM. YOU WILL NOT BE REQUIRED
8 TO SHARE ROOMS WITH ANYONE -- FOR APPROXIMATELY 10 DAYS.

9 WE ALREADY ASSUME THAT IS PERSONALLY AND
10 PROFESSIONALLY INCONVENIENT. I NEED TO KNOW, HOWEVER,
11 WOULD THIS POSE A SERIOUS DANGER TO YOUR HEALTH OR
12 WELL-BEING?

13 A LONG AS I HAVE MY MEDICINE WITH ME.

14 Q OKAY. WE WILL MAKE SURE THAT YOU HAVE THAT. OKAY.
15 NOW, IN EVERY CASE A JURY RETURNS A VERDICT. AND USUALLY
16 THE FOREPERSON SIGNS THE VERDICT FORM.

17 AND -- BUT IN A CAPITAL CASE OR DEATH PENALTY CASE
18 THE JURY DECIDES PENALTY AND THE COURT IS BOUND BY THAT
19 WHAT THE JURY DECIDES, WHETHER IT BE LIFE WITHOUT THE
20 POSSIBILITY OF PAROLE OR A DEATH SENTENCE.

21 AND AS A RESULT, STATE LAW REQUIRES THAT EACH JUROR
22 SIGN A VERDICT FORM INDIVIDUALLY WHICH MEANS EACH PERSON
23 SIGNS THEIR NAME ONE THROUGH 12. WOULD YOU BE ABLE TO
24 SIGN A VERDICT FORM IN THE EVENT OF A SENTENCE OF LIFE
25 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH?

1 A YES.

2 Q OKAY.

3 A LONG I HEAR THE EVIDENCE.

4 Q YEAH. WELL, THAT PRESUMES THAT THE CASE IS OVER AND
5 THE JURY HAS DELIBERATED AND HAS MADE THE DECISION. AT
6 THE END WHEN THE VERDICT FORM IS DONE, IT REQUIRES EACH
7 JUROR TO SIGN IT.

8 A OH, OKAY. YES.

9 Q OKAY.

10 THE COURT: ANY QUESTIONS FROM THE STATE?

11 MR. HUMPHRIES: NONE FROM THE STATE.

12 THE COURT: FROM THE DEFENSE?

13 MR. KELLY: NO, MA'AM.

14 THE COURT: ANY OBJECTIONS TO THE WITNESS BEING
15 FOUND QUALIFIED FROM THE STATE?

16 MR. HUMPHRIES: NONE FROM THE STATE.

17 THE COURT: FROM THE DEFENSE?

18 MR. KELLY: NO, MA'AM.

19 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED
20 WHICH MEANS THAT FROM THE POOL OF PEOPLE WE FIND
21 QUALIFIED, PROBABLY -- MAYBE -- WE DON'T KNOW. WE
22 MIGHT GO INTO SATURDAY. WE'RE NOT SURE AT THIS
23 POINT.

24 BUT FROM THAT POOL OF PEOPLE WE FIND QUALIFIED
25 WE WILL SELECT THE ACTUAL JURY. SO WE NEED FOR YOU

1 TO RETURN ON MONDAY MORNING AT 9:30 PACKED FOR TWO
2 WEEKS. OF COURSE, YOU DON'T HAVE TO BRING YOUR
3 LUGGAGE UP TO THE COURTHOUSE. AND IF YOU'RE
4 SELECTED, WE WILL MAKE APPROPRIATE ARRANGEMENTS.

5 JUROR: WOULD YOU REPEAT THAT? DON'T HAVE TO OR
6 HAVE TO?

7 THE COURT: YOU DON'T HAVE TO.

8 JUROR: DON'T HAVE TO.

9 THE COURT: YOU CAN LEAVE IT IN YOUR CAR. YEAH,
10 I JUST HAVE VISIONS OF PEOPLE LUGGING STUFF UP HERE.
11 YOU DON'T HAVE TO DO THAT. WE WILL -- IF YOU'RE
12 SELECTED, WE WILL MAKE ARRANGEMENTS TO GET YOU
13 SITUATED; OKAY?

14 AND I NEED FOR YOU TO STRICTLY COMPLY WITH THE
15 COURT'S INSTRUCTIONS, HAVE NO DISCUSSION ABOUT THIS
16 CASE WITH ANYONE. THAT INCLUDES YOUR FAMILY MEMBERS
17 OR FRIENDS. PLEASE DON'T SPECULATE ABOUT WHAT YOU
18 THINK IT COULD BE ABOUT OR MAY BE ABOUT AND DON'T
19 ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE
20 WHATSOEVER. THAT INCLUDES ANYTHING ON THE RADIO,
21 TELEVISION, INTERNET, ANY INTERNET SEARCHES, OR IN
22 THE NEWSPAPER. OKAY?

23 WE'LL SEE YOU ON MONDAY AT 9:30. THANK YOU FOR
24 YOUR TIME.

25 (JUROR LEFT THE COURTROOM.)

1 THE COURT: WE'RE DONE TILL NOON.

2 (WHEREUPON A RECESS WAS HAD.)

3 THE COURT: IS THE STATE READY TO PROCEED?

4 MR. HUMPHRIES: STATE'S READY, YOUR HONOR.

5 THE COURT: IS THE DEFENSE READY TO PROCEED?

6 MR. DIGGS: YES, SIR.

7 THE COURT: PLEASE BRING IN PHILLIP MCCRAY,
8 NUMBER 389.

9 (JUROR ENTERED THE COURTROOM.)

10 PHILLIP MCCRAY, BLACK MALE,
11 TESTIFIED AS FOLLOWS:

12 BY THE COURT:

13 Q HOW ARE YOU, SIR?

14 A HELLO.

15 Q WOULD YOU STATE YOUR FULL NAME FOR THE RECORD? YEAH.

16 I NEED FOR YOU TO SIT AS CLOSE TO THAT MICROPHONE AS
17 POSSIBLE. NO, NO, NO. JUST SPEAK INTO IT.

18 A PHILLIP MCCRAY.

19 Q AND IF YOU PULL IT IN THE MIDDLE OF YOUR... YEAH.

20 TAKE A DEEP BREATH. IT LOOKS LIKE YOU MIGHT HAVE BEEN
21 OUTSIDE IN THAT HEAT. SIR, I REMIND YOU THAT YOU'RE STILL
22 UNDER OATH. HAVE YOU WATCHED OR SEEN ANY MEDIA REPORTS
23 ABOUT THIS CASE SINCE I DISMISSED YOU -- EXCUSED YOU ON
24 TUESDAY?

25 A NO, MA'AM. THIS IS MY FIRST -- FIRST TRIAL LIKE

1 THIS.

2 Q OKAY. NO, I'M TRYING TO ASCERTAIN IS HAVE YOU
3 WATCHED THE NEWS OR READ ANYTHING ABOUT THIS CASE DURING
4 THE BREAK?

5 A NO. NO, MA'AM.

6 Q OKAY. SIR, I'M GOING TO ASK YOU SOME QUESTIONS. I'M
7 NOT TRYING TO INVADE YOUR PRIVACY, BUT IT'S NECESSARY DUE
8 TO THE NATURE OF THESE PROCEEDINGS THAT WE SPEAK TO EACH
9 JUROR INDIVIDUALLY. THERE ARE NO RIGHT OR WRONG ANSWERS.
10 WE JUST NEED YOU TO ANSWER US HONESTLY AND OPENLY.

11 A ALL RIGHT.

12 Q IF YOU DO NOT UNDERSTAND THE QUESTION, LET US KNOW.
13 IF YOU NEED US TO REPEAT A QUESTION, PLEASE LET ME KNOW.
14 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY. BUT
15 THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT HAVE ANY
16 INDICATION OR REFLECTION ON THE DEFENDANT BECAUSE HE IS
17 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

18 A YES, MA'AM.

19 Q I NEED YOU TO SPEAK UP JUST A LITTLE BIT MORE.

20 A YES, MA'AM.

21 Q THANK YOU. SIR, IF YOU WERE A JUROR IN A CRIMINAL
22 CASE, COULD YOU LISTEN TO THE LAW?

23 A YES, MA'AM.

24 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
25 INSTRUCT YOU?

1 A YES, MA'AM.

2 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
3 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

4 A YES, MA'AM.

5 Q SIR, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
6 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
7 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
8 CASE?

9 A PLEASE REPEAT THAT.

10 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
11 EVIDENCE, IN OTHER WORDS FROM THE WITNESSES THAT WILL
12 TESTIFY, THE OTHER EVIDENCE THAT WILL BE INTRODUCED, AND
13 THE LAW THAT THE COURT WILL INSTRUCT YOU, DISREGARDING
14 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
15 CASE PRIOR TO BEING A JUROR?

16 A YES, MA'AM.

17 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
18 ABOUT THIS CASE?

19 A NO, MA'AM.

20 Q ALL RIGHT. SIR, HAVE YOU HAD -- DO YOU UNDERSTAND
21 THAT THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT'S
22 GUILT BEYOND A REASONABLE DOUBT? IN OTHER WORDS, THEY
23 HAVE TO PROVE HIS GUILT. THERE ARE DIFFERENT BURDENS IN
24 THE LAW.

25 WE HAVE LIKE A SCINTILLA, WHICH IS VERY SMALL. WE

1 HAVE A PREPONDERANCE, WHICH IS ON A SCALE JUST SLIGHT.
2 BEYOND A REASONABLE DOUBT IS -- IT'S A HIGHER STANDARD.
3 IT'S ONE OF THE HIGHEST STANDARDS. IT IS ALMOST AS -- I'M
4 TRYING TO THINK, IS CLEAR AND CONVINCING GREATER THAN
5 BEYOND A REASONABLE DOUBT OR IS IT ONE LEVEL BELOW? SO IT
6 IS THE HIGHEST. EXCUSE ME. Y'ALL HAVE TO GIVE ME A
7 LITTLE BLACK'S LAW LESSON.

8 MR. DIGGS: TEACHING OF LAW.

9 BY THE COURT:

10 Q IT'S THE HIGHEST STANDARD OF PROOF IN THE LAW. DO
11 YOU UNDERSTAND THAT THEY HAVE TO PROVE EACH AND EVERY
12 ELEMENT OF THE OFFENSE THEY HAVE CHARGED HIM WITH BEYOND A
13 REASONABLE DOUBT?

14 A YES, MA'AM.

15 Q DO YOU UNDERSTAND THAT HE HAS ABSOLUTELY NO BURDEN IN
16 THIS CASE TO PROVE ANYTHING, INCLUDING HIS INNOCENCE?

17 A YES, MA'AM.

18 Q SIR, HAVE YOU HAD A CHANCE TO LOOK AT THE JUROR TYPE
19 SHEET?

20 A YES, MA'AM.

21 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES?

22 A TYPE THREE.

23 Q OKAY. SIR, IF YOU ARE A JUROR IN A DEATH PENALTY
24 CASE AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER,
25 WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL,

1 BECAUSE AS I EXPLAINED, THERE ARE TWO PHASES, GUILT PHASE
2 AND A SENTENCING PHASE. DO YOU UNDERSTAND?

3 A YES, MA'AM.

4 Q AND DO YOU UNDERSTAND THAT IF WE REACH THE SENTENCING
5 PHASE, THAT YOU WOULD BE ALLOWED TO CONSIDER WHAT WE CALL
6 AGGRAVATING CIRCUMSTANCES WHICH ARE FACTS, INCIDENTS,
7 DETAILS, OR OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS
8 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE
9 THE OFFENSE OF MURDER.

10 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
11 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
12 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
13 COMMISSION OF A CRIME.

14 AND SOME EXAMPLES OF AGGRAVATING CIRCUMSTANCES ARE
15 MURDER OF A CHILD UNDER AGE 11, DRUG TRAFFICKING, KILLING
16 MY POISON, BURGLARY IN ANY DEGREE. OF COURSE, THESE ARE
17 JUST EXAMPLES. IT IS NOT THE ENTIRE LIST. I JUST NEED
18 YOU TO HAVE A POINT OF REFERENCE.

19 YOU WOULD ALSO BE ALLOWED TO CONSIDER WHAT WE CALL
20 MITIGATING CIRCUMSTANCES, WHICH ARE INCIDENTS, DETAILS, OR
21 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
22 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
23 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
24 MORAL CULPABILITY OR RESPONSIBILITY.

25 AGAIN, SOME EXAMPLES. MENTAL RETARDATION AT THE TIME

1 OF THE CRIME, THE DEFENDANT WAS PROVOKED BY THE VICTIM,
2 THE DEFENDANT WAS AN ACCOMPLICE AND THEIR PARTICIPATION
3 WAS RELATIVELY MINOR, THE DEFENDANT ACTED UNDER DURESS OR
4 DOMINATION. AGAIN, THESE ARE JUST EXAMPLES TO GIVE YOU A
5 POINT OF REFERENCE BECAUSE THERE IS NO EXHAUSTIVE LIST ON
6 MITIGATING CIRCUMSTANCES. OKAY?

7 IF YOU WERE A JUROR IN THAT SITUATION, MEANING THE
8 SENTENCING PHASE OF THE TRIAL, COULD YOU, DEPENDING UPON
9 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE,
10 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
11 CIRCUMSTANCES AND THE LAW WHICH I WOULD INSTRUCT YOU THAT
12 APPLIES AT THE CONCLUSION OF THE CASE RETURN A SENTENCE OF
13 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

14 A YES, MA'AM.

15 Q UNDER THE VERY SAME CIRCUMSTANCES THAT I JUST
16 EXPLAINED WHICH IS THE SENTENCING PHASE, CONSIDERING BOTH
17 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THE
18 COURT WOULD INSTRUCT AT THE CONCLUSION OF THE CASE, COULD
19 YOU RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
20 ELECTROCUTION OR LETHAL INJECTION?

21 A YES, MA'AM.

22 Q IF YOU ARE CHOSEN, AS I'VE INDICATED AS A JUROR IN
23 THIS CASE, YOU WILL BE HOUSED IN A MOTEL, WHICH IS
24 SEQUESTERED, FOR APPROXIMATELY 10 DAYS. WE ALREADY ASSUME
25 THAT IS PERSONALLY INCONVENIENT. BUT WE WANT TO MAKE SURE

1 THAT THIS DOES NOT POSE A SERIOUS DANGER TO YOUR HEALTH OR
2 WELL-BEING. IS THAT CORRECT?

3 A YES, MA'AM.

4 Q OKAY. THAT IT WILL NOT. SIR, IN EACH CASE THE JURY
5 ALWAYS RETURNS A VERDICT FORM. AND USUALLY ONLY THE
6 FOREPERSON SIGNS IT. BUT IN A CAPITAL CASE LIKE THIS OR A
7 DEATH PENALTY CASE, THE JURY DECIDES PUNISHMENT, AND SO
8 THE COURT HAS TO FOLLOW THAT RECOMMENDATION, WHETHER IT BE
9 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

10 AND STATE LAW REQUIRES THAT IN THAT -- IN EITHER
11 INSTANCE THAT EACH JUROR INDIVIDUALLY SIGN THE VERDICT
12 FORM. WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE
13 EVENT OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
14 PAROLE OR A SENTENCE OF DEATH? DO YOU UNDERSTAND THE
15 QUESTION?

16 A OH, YEAH. I...

17 Q IN OTHER WORDS, THERE'D BE A SHEET VERY SIMILAR TO
18 THIS, AND THERE'D BE 12 SPACES, AND EACH JUROR HAS TO SIGN
19 THEIR NAME UNDER -- AND WE'LL GIVE YOU THE PROPOSED
20 VERDICT AND IT WILL SAY, LIFE WITHOUT THE POSSIBILITY OF
21 PAROLE, THERE WILL BE ANOTHER POSSIBILITY OF DEATH.

22 BUT EACH JUROR HAS TO SIGN ON THE LINE AND THEIR
23 INDIVIDUAL NAME, ALL TWELVE. DO YOU HAVE A PROBLEM WITH
24 DOING THAT?

25 A I WOULD SAY THE -- I PROBABLY WOULD SIGN THE LIFE

1 WITHOUT PAROLE.

2 Q THAT'S NOT WHAT I'M ASKING. I'M ASKING IN EITHER
3 INSTANCE WOULD YOU HAVE A PROBLEM SIGNING A VERDICT FORM.

4 A OH, NO, NO, NO.

5 Q OKAY. BECAUSE IT IS REQUIRED. AND SOMETIMES PEOPLE
6 GET TO THAT STAGE AND THEY ARE LIKE, I DIDN'T KNOW I HAD
7 TO SIGN MY NAME ON THIS. AND THAT IS WHAT THE QUESTION IS
8 DIRECTED AT.

9 A RIGHT. NO PROBLEM SIGNING -- WILL I HAVE A PROBLEM
10 SIGNING? NO, MA'AM.

11 Q IN EITHER CIRCUMSTANCE--

12 A NO, MA'AM.

13 Q -- WHETHER IT'S LIFE WITHOUT PAROLE OR DEATH?

14 A NO, MA'AM.

15 Q OKAY.

16 THE COURT: ANY QUESTIONS FROM THE STATE?

17 MR. HEMBREE: I JUST WANT TO CLARIFY THAT LAST
18 RESPONSE, YOUR HONOR.

19 JUROR: YES, SIR.

20 BY MR. HEMBREE:

21 Q MR. MCCRAY, I'M GREG HEMBREE. I WAS INTRODUCED TO
22 YOU -- NICE TO MEET YOU. I WAS INTRODUCED TO YOU ON
23 TUESDAY.

24 A YES.

25 Q I JUST NOTED IN YOUR RESPONSES, AND MOST OF THEM ARE

1 VERY CLEAR AND APPRECIATE YOUR TIME. BUT THAT -- TOWARD
2 THE END THERE WHEN THE JUDGE ASKED YOU ABOUT SIGNING--

3 A YES.

4 Q -- THE VERDICT FORM.

5 A YES.

6 Q YOU INDICATED THAT YOU WOULD SIGN FOR LIFE?

7 A TO -- THE REASON WHY I SAID THAT, BECAUSE I'M A
8 PERSON THAT LIKES TO LISTEN TO BOTH SIDES OF THE STORY.
9 IF I FEEL THE JUDGMENT OF THE STORY IN HIS CASE LED MORE
10 EVIDENCE TOWARDS HIM DOING THE MURDER, HE WOULD -- I WOULD
11 ACCEPT HIM TO TAKE DEATH.

12 BUT IF IT WASN'T TOO HARSH IN HIS PART WITH THE
13 MURDER, I WOULD SAY HE BETTER OFF LIFE IN PRISON BECAUSE
14 HE'S DEAD EITHER WAY.

15 Q AND I THINK WHAT YOU HAVE ESSENTIALLY DONE IS SORT OF
16 DESCRIBED TO US JUROR NUMBER THREE--

17 A YES.

18 Q -- IN YOUR OWN WORDS THERE. YOU WANT TO HEAR ALL THE
19 FACTS AND CIRCUMSTANCES.

20 A BEFORE I JUST MAKE A CRUEL DECISION, I WANT TO KNOW
21 WHAT I'M UP AGAINST.

22 Q I REALLY APPRECIATE YOUR CLARIFICATION ON THAT.

23 JUROR: WELL JUDGE, I KNOW THIS MIGHT SOUND
24 STUPID.

25 THE COURT: NO.

1 JUROR: IF -- WHEN WE DO GO INTO A HOTEL, I'M A
2 DIABETIC. I HAVE TO--

3 THE COURT: WE WILL MAKE SURE YOU HAVE ALL OF
4 YOUR MEDICATION. WE WILL MAKE SURE YOU HAVE SNACKS.
5 WE WILL MAKE SURE WE TAKE FREQUENT BREAKS FOR YOU.

6 JUROR: I DON'T CARE ABOUT THE SNACKS, I JUST
7 REALLY NEED THE MEDICINE.

8 THE COURT: YEAH. OH, WE WILL MAKE SURE YOU
9 HAVE YOUR INSULIN. MY MOTHER IS A DIABETIC. I
10 UNDERSTAND HOW IMPORTANT THAT IS.

11 JUROR: OKAY. YEAH. SO THAT'S ALL I'M SAYING.
12 IN THAT CIRCUMSTANCES, PLEASE LET ME GET BOTH FACTS
13 BEFORE I JUST MAKE A CRUEL JUDGMENT, BECAUSE I DON'T
14 KNOW THE GUY, BUT I DON'T WANT TO SEND A MAN THAT
15 COULD BE INNOCENT, YOU KNOW, TO A DEATH PENALTY, AND
16 IT'S GOING TO BE A BURDEN ON MY HEART.

17 BY MR. HEMBREE:

18 Q YOU CAN BE FAIR TO THE DEFENDANT AND--

19 A YES. YES.

20 Q -- AND FAIR TO THE--

21 A WE ALL MAKE MISTAKES IN LIFE, AND I FIGURE LET ME
22 HEAR THE STORY FIRST BEFORE I MAKE JUDGMENT. THAT'S ALL
23 I'M SAYING.

24 Q THAT'S ALL WE CAN ASK OF YOU, MR. MCCRAY. I
25 APPRECIATE YOUR RESPONSES. THANK YOU.

1 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

2 MR. KELLY: NO, MA'AM.

3 THE COURT: ANY EXCEPTION TO THE JUROR BEING
4 QUALIFIED FROM THE STATE?

5 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MR. KELLY: NO, MA'AM.

8 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED
9 WHICH MEANS THAT WE ARE GOING TO DURING THESE NEXT
10 FEW DAYS CONTINUE TALKING WITH EACH JUROR
11 INDIVIDUALLY. WE WILL REACH A CERTAIN NUMBER OF WHAT
12 WE CALL A QUALIFIED POOL OF JURORS. AND FROM THAT
13 POOL WE WILL SELECT THE ACTUAL JURY ON MONDAY.

14 JUROR: YES, MA'AM.

15 THE COURT: YOU HAVE NOW BECOME PART OF THAT
16 QUALIFIED POOL. SO I NEED YOU TO RETURN ON MONDAY
17 MORNING AT 9:30 PACKED FOR TWO WEEKS. NEED A PEN OR
18 SOMETHING TO WRITE? YOU GOT ONE WITH YOU?

19 JUROR: YES, MA'AM.

20 THE COURT: OKAY. PREPARED. I LIKE THAT.
21 MONDAY AT 9:30. YOU HAVE ANY DIFFICULTY WITH
22 TRANSPORTATION OR OTHERWISE, YOU CAN MAKE -- DO YOU
23 NEED A RIDE?

24 JUROR: WELL, TO GET HERE I HAVE A BICYCLE, BUT
25 YOU TALKING ABOUT RIDING TO...

1 THE COURT: IT'S A 110-DEGREES. WE ARE GOING TO
2 COME PICK YOU UP.

3 JUROR: APARTMENT 30, GILLER (SIC) STREET.

4 THE COURT: OKAY. I'M GOING TO MAKE SURE YOU
5 GIVE THAT TO THE DEPUTY SHERIFFS BEFORE YOU LEAVE
6 BECAUSE WE AIN'T GOING TO HAVE YOU GETTING A HEAT
7 STROKE COMING HERE ON MONDAY MORNING, ESPECIALLY
8 BEING PACKED CARRYING YOUR LUGGAGE. WE WILL SEND
9 SOMEBODY FOR YOU.

10 WE WILL HAVE SOMEBODY PICK YOU UP AND HAVE YOU
11 HERE ON MONDAY MORNING BY 9:30. BE PACKED FOR TWO
12 WEEKS.

13 JUROR: YES, MA'AM.

14 THE COURT: DURING THIS BREAK, PLEASE DON'T
15 DISCUSS THE CASE WITH ANYBODY.

16 JUROR: OKAY.

17 THE COURT: UNDER ANY CIRCUMSTANCES. IF ANYBODY
18 TRIES TO TALK WITH YOU, TELL THEM, I CAN'T DISCUSS
19 THAT.

20 JUROR: YES, MA'AM.

21 THE COURT: IT WOULD BE A VIOLATION OF THE
22 COURT'S RULES. AND PLEASE DON'T WATCH ANY MEDIA
23 ACCOUNTS. DON'T LOOK UP ANYTHING ON THE INTERNET.
24 WE NEED TO MAKE SURE YOU REMAIN FAIR AND IMPARTIAL;
25 OKAY?

1 JUROR: YES.

2 THE COURT: WE WILL SEE YOU ON MONDAY AT 9:30.
3 AND I APPRECIATE YOUR DILIGENCE IN RIDING YOUR BIKE
4 OVER HERE TODAY. YOU ARE A BETTER MAN THAN A LOT OF
5 PEOPLE I KNOW. I APPRECIATE THAT. AND I BELIEVE I
6 SPEAK FOR BOTH THE STATE AND THE DEFENSE. WE
7 APPRECIATE YOUR SACRIFICE. IT'S HOT OUT THERE TODAY.

8 JUROR: YOU HAVE A GOOD DAY.

9 THE COURT: YOU, TOO.

10 (JUROR LEFT THE COURTROOM.)

11 THE COURT: MICHAEL LINEN, 206.

12 (JUROR ENTERED THE COURTROOM.)

13 THE COURT: HE'S ON 21.

14 MICHAEL LINNEN, BLACK MALE,
15 TESTIFIED AS FOLLOWS:

16 BY THE COURT:

17 Q HOW ARE YOU, SIR?

18 A FINE.

19 Q IF YOU'D HAVE A SEAT FOR ME AND SIT AS CLOSE TO THAT
20 MICROPHONE AS YOU CAN, AND SPEAK LOUDLY AND CLEARLY FOR
21 US.

22 A OKAY.

23 Q STATE YOU'RE FULL NAME FOR THE RECORD.

24 A MICHAEL LINNEN, SENIOR.

25 Q OKAY. AND SIR, I WILL REMIND YOU THAT YOU'RE STILL

1 UNDER OATH. DO YOU UNDERSTAND?

2 A YES, MA'AM.

3 Q AND YOU ARE JUROR 206; CORRECT?

4 A YES, MA'AM.

5 Q MR. LINNEN, HAVE YOU BEEN EXPOSED TO ANY MEDIA
6 COVERAGE ABOUT THIS CASE SINCE I DISMISSED YOU ON TUESDAY?

7 A NO, MA'AM.

8 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE'RE
9 NOT TRYING TO INVADE YOUR PRIVACY IN ANY WAY, BUT IT'S
10 NECESSARY DUE TO THE NATURE OF THESE PROCEEDINGS FOR US TO
11 ASK THESE QUESTIONS. STATE LAW REQUIRES US TO TALK TO
12 EACH JUROR INDIVIDUALLY IN CASES OF THESE TYPES.

13 A OKAY.

14 Q THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED
15 YOU TO ANSWER US AS FULLY AND COMPLETELY AND HONESTLY AS
16 POSSIBLE. I NEED YOU TO ANSWER EACH QUESTION WITH A YES
17 OR NO RESPONSE. AND IF YOU DON'T UNDERSTAND A QUESTION,
18 PLEASE LET US KNOW.

19 AMONG OTHER THINGS WE'LL BE TALKING ABOUT POTENTIAL
20 PENALTIES. THE MERE FACT THAT WE TALK ABOUT A PENALTY
21 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS
22 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

23 A YES, MA'AM.

24 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
25 YOU LISTEN TO THE LAW? DO YOU KNOW WHAT I MEAN BY THE

1 LAW?

2 A NO, MA'AM.

3 Q I'M NOT TALKING ABOUT THE FACTS OF THE CASE. I'M
4 TALKING ABOUT THE LAW AS THE COURT INSTRUCTS DURING THE
5 COURSE AND DURING THE END OF EACH PHASE OF THE TRIAL. THE
6 COURT HAS TO TELL YOU WHAT THE RULES ARE TO APPLY THEM TO
7 THE FACTS SO THAT YOU CAN DELIBERATE.

8 THE JURY CAN'T JUST LISTEN TO FACTS AND THEN JUST
9 DELIBERATE. YOU HAVE GOT TO HAVE SOME GUIDELINES. AND
10 THE COURT PROVIDES THOSE GUIDELINES. SO I'M ASKING, CAN
11 YOU LISTEN TO THE LAW AS THE COURT WILL INSTRUCT YOU?

12 A I GOT A QUESTION.

13 Q SURE.

14 A YOU MEAN ON THIS CASE OR JUST ANY CASE?

15 Q ANY CASE IN GENERAL.

16 A YEAH. YEAH. ON A CASE, YEAH.

17 Q OKAY. COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
18 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

19 A YES, MA'AM.

20 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
21 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS OR WHAT IT
22 SHOULD BE OR WHAT IT COULD BE? DO YOU UNDERSTAND? LET ME
23 ASK IT A DIFFERENT WAY.

24 AS A JUROR YOU ARE DUTY BOUND TO FOLLOW THE LAW AS
25 THE COURT INSTRUCTS YOU. YOU DON'T HAVE AN OPTION OF

1 NULLIFICATION. YOU HAVE TO PUT ASIDE ANY PRECONCEIVED
2 NOTIONS THAT YOU HAVE.

3 AND IF I TELL YOU, FOR EXAMPLE -- LET ME THINK OF A
4 GOOD EXAMPLE. IF I TOLD YOU THAT THE ELEMENTS OF STEALING
5 A BICYCLE ARE THAT YOU -- I DON'T KNOW IF THAT'S THE BEST
6 EXAMPLE. LET ME THINK OF ANOTHER ONE.

7 IF I TOLD YOU THAT THE ELEMENTS OF BURGLARY IN THE
8 THIRD DEGREE WERE A, B, AND C, BUT YOU THOUGHT THE
9 ELEMENTS OF BURGLARY IN THE THIRD DEGREE WERE A AND B, DO
10 YOU UNDERSTAND THAT YOU'RE DUTY BOUND TO FOLLOW WHAT I
11 TELL YOU A, B AND C ARE?

12 A OKAY.

13 Q YOU UNDERSTAND? IS THAT A BETTER EXAMPLE?

14 A YES, MA'AM.

15 Q OKAY. AND DO YOU BELIEVE THAT YOU COULD DO THAT EVEN
16 THOUGH YOU MAY DISAGREE WITH ME ABOUT WHAT YOU THOUGHT THE
17 LAW SHOULD BE OR COULD BE, THAT YOU ARE DUTY BOUND TO
18 APPLY IT AS I INSTRUCT YOU?

19 A YES, MA'AM.

20 Q OKAY. SIR, COULD YOU DECIDE THIS CASE BASED SOLELY
21 ON THE EVIDENCE PRESENTED IN THIS COURTROOM FROM THE LIPS
22 OF SWORN WITNESSES AND OTHER EVIDENCE THAT WILL BE
23 INTRODUCED AND THE LAW AS THE COURT WILL CHARGE? AGAIN,
24 THERE ARE NO RIGHT OR WRONG ANSWERS. I NEED YOU TO BE
25 COMPLETELY HONEST.

1 A WELL, I HAVE ALWAYS DRAWN MY OPINION. I MEAN, AS FAR
2 AS WHAT I -- WHAT I THINK, I MEAN...

3 Q OKAY. CAN YOU DISREGARD THAT OPINION?

4 A NO, MA'AM, I -- I MEAN...

5 Q ARE YOU TELLING ME YOU HAVE A FIXED OPINION AND
6 YOU'RE NOT WILLING TO LISTEN TO THE EVIDENCE AND APPLY THE
7 LAW AND DELIBERATE AND COME TO A VERDICT?

8 A I HAVE ALREADY -- I MEAN, YOU KNOW, I'VE ALREADY
9 DECIDED. I DECIDED -- ALREADY DECIDED. I MEAN...

10 Q AND THAT IS A FIXED OPINION?

11 A YES, MA'AM.

12 Q IS THAT WHAT YOU'RE TELLING ME?

13 A THAT'S JUST THE WAY I, YOU KNOW, FEEL.

14 Q OKAY. AND ARE YOU TELLING ME THAT YOU CANNOT LISTEN
15 TO THE EVIDENCE AND RENDER A FAIR AND IMPARTIAL DECISION
16 IN THIS CASE?

17 A I WOULDN'T SAY I COULDN'T LISTEN, BUT I HAVE ALREADY
18 DRAWN MY OPINION. I MEAN, THAT'S -- I GUESS YOU COULD SAY
19 I WOULDN'T BE LISTENING. I WOULD LISTEN, BUT I HAVE
20 ALREADY MADE MY MIND UP IS WHAT I'M SAYING.

21 THE COURT: OKAY. ANY QUESTIONS FROM THE STATE?

22 MR. HEMBREE: NO, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MR. KELLY: NONE.

25 THE COURT: ANY EXCEPTION TO THE WITNESS BEING

1 EXCUSED -- I MEAN, I KEEP SAYING WITNESS. I
2 APOLOGIZE. TO THE JUROR BEING EXCUSED?

3 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

4 THE COURT: FROM THE DEFENSE?

5 MR. KELLY: NO, MA'AM.

6 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S
7 THANKS. HAVE GREAT DAY.

8 JUROR: THANK YOU, MA'AM.

9 THE COURT: YOU'RE WELCOME.

10 (JUROR LEFT THE COURTROOM.)

11 THE COURT: YOU'RE WELCOME. ROSCOE PRIEST, 265.
12 WE HAVE HER AS RESPONDING TO 21 -- HIM RESPONDING TO
13 21.

14 (JUROR ENTERED THE COURTROOM.)

15 ROSCOE PRIEST, BLACK MALE,
16 TESTIFIED AS FOLLOWS:

17 BY THE COURT:

18 Q MR. PRIEST, IF YOU WOULD COME HERE FOR ME AND HAVE A
19 SEAT. HOW ARE YOU? IF YOU COULD COME AS CLOSE TO THAT
20 MICROPHONE AS POSSIBLE SO WE CAN HEAR YOU. IF YOU'D STATE
21 YOUR NAME FOR THE RECORD.

22 A ROSCOE PRIEST.

23 Q AND SIR, YOU ARE JUROR 265; IS THAT RIGHT?

24 A YES, MA'AM.

25 Q SIR, I REMIND YOU YOU'RE STILL UNDER OATH. DO YOU

1 UNDERSTAND?

2 A YES, MA'AM.

3 Q AND HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
4 SINCE I GAVE US THE RECESS ON TUESDAY?

5 A YEAH, IN THE -- HEAR A LOT OF PEOPLE TALKING.

6 Q WELL, I MEAN, HAVE YOU DELIBERATELY READ ANYTHING,
7 PAPER, WATCHED ANY NEWS REPORTS ABOUT THIS CASE, LISTENED
8 TO ANYTHING ON THE RADIO OR GONE ON THE INTERNET AND DID
9 ANY INTERNET SEARCHES ABOUT THIS CASE?

10 A I WATCH A LITTLE BIT OF NEWS. I GLANCED -- NEWS. ME
11 AND MY WIFE WAS READING THE PAPER AND SAYING, YOU KNOW,
12 WHAT SHE HEARD ABOUT.

13 Q OKAY. SO TELL ME AGAIN -- TELL ME WHAT EXPOSURE YOU
14 HAD.

15 A WELL, WE JUST SAYING...

16 Q NO, I'M NOT TALKING ABOUT BEFORE YOU CAME ON TUESDAY.
17 I'M TALKING ABOUT AFTER I INSTRUCTED YOU NOT TO WATCH
18 ANYTHING, NOT TO READ ANYTHING. I'M TRYING TO DETERMINE
19 IF FROM WHEN I LET YOU GO ON TUESDAY -- GUESS IT WAS
20 ALMOST 6:00 WHEN I LET YOU ALL GO ON TUESDAY TO NOW, HAVE
21 YOU WATCHED ANYTHING ON THE TV, HAVE YOU READ ANYTHING IN
22 THE NEWSPAPER? I'M TRYING TO DETERMINE IF YOU VIOLATED
23 THE COURT'S INSTRUCTIONS.

24 A I DID -- YEAH, I WATCH -- I WATCHED CHANNEL TWO NEWS.

25 Q ABOUT THIS CASE?

1 A WELL, YEAH, BECAUSE I SEEN -- I SEEN IT TV, THEY WAS
2 OUTSIDE AND I, YOU KNOW, AND WHEN I RAN HOME--

3 Q CURIOSITY GOT THE BEST OF YOU?

4 A PROBABLY DID.

5 Q OKAY. AND YOU UNDERSTOOD THE COURT'S INSTRUCTIONS
6 THAT YOU WERE NOT NOT SUPPOSED TO WATCH, READ, OR LISTEN
7 TO ANYTHING ABOUT THE CASE?

8 A WELL, YEAH, I DID.

9 Q OKAY.

10 A YEAH.

11 Q WE APPRECIATE YOUR CANDOR BECAUSE MOST FOLK WOULDN'T
12 HAVE TOLD, SO I WILL HAVE TO GIVE YOU SOME POINTS FOR
13 THAT. WE'RE GOING TO ASK YOU SOME QUESTIONS NOT TO INVADE
14 YOUR PRIVACY IN ANY WAY BECAUSE IT'S NECESSARY DUE TO THE
15 NATURE OF THESE PROCEEDINGS.

16 THERE ARE NO RIGHT OR WRONG ANSWERS. I JUST NEED YOU
17 TO BE OPEN AND HONEST WITH ME AND ANSWER THE QUESTIONS
18 FULLY WITH EITHER A YES OR A NO ANSWER TO THE BEST OF YOUR
19 ABILITY. IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET
20 ME KNOW.

21 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY,
22 BUT THE MERE FACT THAT WE'RE TALKING ABOUT A PENALTY DOES
23 NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
24 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

25 A YES, MA'AM.

1 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
2 YOU LISTEN TO THE LAW AS THE COURT WILL INSTRUCT? I'M NOT
3 TALKING ABOUT THE FACTS. I'M TALKING ABOUT THE LAW.

4 A YEAH.

5 Q THERE'S A DIFFERENCE. EVIDENCE IS THE FACTS. THE
6 LAW IS WHAT THE COURT INSTRUCTS YOU AS TO WHAT THE LAW IS
7 AND HOW YOU ARE TO APPLY THE LAW.

8 A I CAN, BUT YOU KNOW...

9 Q WELL, I NEED YOU TO GIVE ME A YES OR NO. I WILL GET
10 TO THE OTHER QUESTIONS ABOUT WHETHER YOU HAVE AN OPINION.
11 THAT'S NOT WHAT I'M ASKING NOW. I'M ASKING IF IN ANY
12 CRIMINAL CASE -- NOT TALKING ABOUT THIS CASE -- I'M TRYING
13 TO DETERMINE IF YOU CAN FOLLOW MY INSTRUCTIONS STRICTLY
14 AND DISREGARD ANY PREDISPOSITIONS YOU HAVE ABOUT WHAT YOU
15 THINK THE LAW IS OR WHAT IT COULD BE BECAUSE AS A JUROR
16 WHEN YOU TAKE AN OATH, YOU ARE BOUND TO FOLLOW WHAT THE
17 COURT TELLS YOU.

18 SO I'M TRYING TO DETERMINE THAT; OKAY? AND THERE ARE
19 NO RIGHT OR WRONG ANSWERS. I NEED YOU TO BE COMPLETELY
20 HONEST WITH ME. CAN YOU LISTEN TO THE LAW?

21 A I CAN LISTEN, YES.

22 Q CAN YOU ACCEPT AND APPLY THE LAW AS I WILL INSTRUCT
23 YOU AS THE JUDGE OF THIS COURT?

24 A NO.

25 Q YOU'RE TELLING ME THAT IF I TOLD YOU THE ELEMENTS OF

1 BURGLARY IN THE THIRD DEGREE WERE A, B AND C, THAT YOU
2 WOULD DISREGARD WHAT I TOLD YOU?

3 A IT'S -- IT'S, YOU KNOW, IT'S ALL DEPENDS TO, YOU
4 KNOW, IT'S...

5 Q I NEED YOU IN YOUR MIND TO SEPARATE THE FACTS AND THE
6 LAW. THEY ARE TWO DIFFERENT THINGS. I HAVE NO OPINION
7 ABOUT THE FACTS. FACTS ARE SOLELY FOR THE JURY. WHAT I'M
8 TRYING TO DETERMINE IS IF YOU CAN APPLY THE LAW AS I TELL
9 YOU IT IS IRREGARDLESS OF WHAT YOU THINK THE LAW SHOULD BE
10 OR WHAT IT COULD BE.

11 I'M TRYING TO DETERMINE IF YOU ARE A JUROR THAT CAN
12 FOLLOW THE COURT'S INSTRUCTIONS AND ABIDE BY WHAT THE LAW
13 REQUIRES OF YOU. SO I NEED YOU TO LISTEN VERY CAREFULLY
14 TO MY QUESTION. I'M NOT TALKING ABOUT THE FACTS OF THIS
15 CASE.

16 I NEED TO KNOW IF YOU CAN ACCEPT AND APPLY THE LAW AS
17 I INSTRUCT YOU THE LAW IS IN THE STATE OF SOUTH CAROLINA.

18 A YES.

19 Q CAN YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU MAY
20 DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

21 A NO, MÁ'AM.

22 Q OKAY.

23 THE COURT: ANY EXCEPTIONS TO DISQUALIFICATION
24 OF THE JUROR FROM THE STATE?

25 MR. HEMBREE: NO, YOUR HONOR.

1 THE COURT: FROM THE DEFENSE?

2 MR. DIGGS: NO, YOUR HONOR.

3 THE COURT: OKAY. SIR, YOU'RE EXCUSED. HAVE A
4 GOOD DAY. THANK YOU FOR YOUR CANDOR.

5 (JUROR LEFT THE COURTROOM.)

6 THE COURT: JOSEPH HENSON, 378.

7 (JUROR ENTERED THE COURTROOM.)

8 JOSEPH HENSON, WHITE MALE,
9 TESTIFIED AS FOLLOWS:

10 BY THE COURT:

11 Q HOW ARE YOU TODAY, SIR?

12 A FINE. HOW ARE YOU?

13 Q I'M GOOD. MR. HENSON, IF YOU COULD COME AS CLOSE TO
14 THAT MICROPHONE FOR ME AS POSSIBLE SO THAT WE CAN HEAR
15 YOU. IF YOU WOULD STATE YOUR FULL NAME FOR THE RECORD.?

16 A JOSEPH CHRISTOPHER HENSON.

17 Q AND YOU ARE JUROR 378; IS THAT CORRECT?

18 A YES, MA'AM.

19 Q AND SIR, I WILL REMIND YOU YOU'RE STILL UNDER OATH.
20 DO YOU UNDERSTAND?

21 A YES.

22 Q SIR, HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
23 SINCE THE JURY WAS DISMISSED ON TUESDAY?

24 A NO, MA'AM.

25 Q I'M GOING TO ASK YOU SOME QUESTIONS. WE'RE NOT

1 TRYING TO INVADE YOUR PRIVACY IN ANY WAY. BUT IT'S
2 NECESSARY DUE TO THE NATURE OF THESE PROCEEDINGS, AND
3 STATE LAW REQUIRES THAT WE TALK TO EACH JUROR INDIVIDUALLY
4 IN A CASE OF THIS TYPE.

5 AGAIN, WE'RE NOT TRYING TO INVADE YOUR PRIVACY.
6 THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED YOU TO
7 ANSWER US AS FULLY AND COMPLETELY AND HONESTLY AS YOU CAN.
8 AND IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET US
9 KNOW.

10 BECAUSE SOMETIMES WE TALK IN LEGALESE AND PEOPLE --
11 WE ASSUME FOLK KNOW WHAT WE ARE TALKING ABOUT.

12 A YES.

13 Q SOMETIMES THEY DON'T, YOU KNOW, KNOW WHAT WE ARE
14 TALKING ABOUT. SO IF YOU DON'T UNDERSTAND, PLEASE LET ME
15 KNOW. AMONG OTHER THINGS WE WILL BE TALKING ABOUT
16 POTENTIAL PENALTIES IN THIS CASE.

17 THE FACT THAT WE REFER TO A PENALTY DOES NOT INDICATE
18 ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS PRESUMED IN THE
19 LAW TO BE INNOCENT. DO YOU UNDERSTAND?

20 A YES.

21 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
22 YOU LISTEN TO THE LAW?

23 A YES.

24 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
25 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

1 A YES.

2 Q WOULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
3 MAY DISAGREE WITH ME ABOUT WHAT THE LAW OUGHT TO BE OR
4 SHOULD BE? IN OTHER WORDS, I WILL GIVE YOU AN EXAMPLE.
5 IF I TOLD YOU THE ELEMENTS OF BURGLARY IN THE THIRD DEGREE
6 CONSTITUTED A, B, AND C, BUT IN YOUR MIND BEFORE COMING TO
7 JURY DUTY YOU THOUGHT THE ELEMENTS OF BURGLARY IN THE
8 THIRD DEGREE WERE A AND B, WOULD YOU BE ABLE TO DISREGARD
9 YOUR PRECONCEIVED NOTIONS AND APPLY THE LAW AS I HAVE
10 INSTRUCTED YOU?

11 A YES.

12 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
13 EVIDENCE PRESENTED HERE IN THIS COURTROOM FROM THE LIPS OF
14 SWORN WITNESSES AND THE OTHER EVIDENCE THAT WILL BE
15 INTRODUCED AND THE LAW AS THE COURT WILL CHARGE AND
16 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN
17 ABOUT THIS CASE?

18 A YES.

19 Q HAVE YOU HEARD, READ, OR SEEN ANY MEDIA COVERAGE
20 ABOUT THIS CASE PRIOR TO REPORTING ON TUESDAY?

21 A VERY LITTLE.

22 Q OKAY. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
23 TO, HAVE YOU FORMED ANY FIXED OPINION ABOUT THIS CASE?

24 A NO.

25 Q SIR, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF

1 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
2 DO YOU UNDERSTAND THAT?

3 A YES.

4 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
5 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

6 A YES.

7 Q SIR, HAVE YOU READ THE JUROR TYPE SHEETS?

8 A YES, I DID.

9 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE THREE
10 CATEGORIES?

11 A TYPE THREE.

12 Q OKAY. IF YOU WERE A JUROR IN THE DEATH PENALTY CASE
13 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
14 WE WOULD THEN MOVE TO WHAT WE CALL THE SENTENCING PHASE
15 BECAUSE AS I EXPLAINED, THERE ARE TWO PHASES, GUILT PHASE,
16 AND IF THE DEFENDANT IS FOUND GUILTY, WE THEN MOVE TO THE
17 SENTENCING PHASE WHERE THE JURY WOULD DECIDE SENTENCE.

18 DURING THAT PHASE OF THE TRIAL YOU MAY CONSIDER WHAT
19 WE CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
20 CIRCUMSTANCES. AND I'M GOING TO EXPLAIN BOTH OF THOSE TO
21 YOU.

22 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
23 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
24 DECLARED BY STATUTE WOULD MAKE WORSE, THAT IS AGGRAVATE,
25 THE OFFENSE OF MURDER.

1 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
2 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
3 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
4 COMMISSION OF A CRIME.

5 AND TO GIVE YOU A POINT OF REFERENCE, SOME EXAMPLES
6 OF AGGRAVATING FACTORS ARE MURDER OF A CHILD UNDER AGE 11,
7 DRUG TRAFFICKING, KILLING A PERSON BY POISON, BURGLARY IN
8 ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES. THEY ARE NOT
9 AN EXHAUSTIVE LIST.

10 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
11 OCCURRENCES WHICH THE LEGISLATURE HAS DETERMINED BY STATE
12 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
13 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
14 MORAL CULPABILITY OR RESPONSIBILITY.

15 AND AGAIN, I'M GOING TO GIVE YOU SOME EXAMPLES SO YOU
16 HAVE A POINT OF REFERENCE. MENTAL RETARDATION AT THE TIME
17 OF THE CRIME, THE DEFENDANT WAS PROVOKED BY THE VICTIM,
18 THE DEFENDANT WAS AN ACCOMPLICE AND THEIR PARTICIPATION
19 WAS RELATIVELY MINOR, THE DEFENDANT ACTED UNDER DURESS OR
20 DOMINATION. AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE
21 IS NO EXHAUSTIVE LIST FOR MITIGATION. OKAY?

22 I JUST GIVE THEM TO YOU SO YOU WILL KNOW WHAT WE ARE
23 REFERRING TO. IF YOU WERE A JUROR IN THE SENTENCING PHASE
24 OF A TRIAL, DEPENDING UPON THE PARTICULAR FACTS AND
25 CIRCUMSTANCES OF THE CASE, COULD YOU, INCLUDING THE

1 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
2 AND THE LAW THAT I WILL INSTRUCT YOU THAT APPLIES AT THE
3 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
4 PRISON WITHOUT THE POSSIBILITY OF PAROLE?

5 A YES.

6 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES IN A
7 SENTENCING PHASE AND CONSIDERING AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
9 AT THE CONCLUSION OF THE CASE RETURN A SENTENCE OF DEATH,
10 WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL
11 INJECTION?

12 A YES.

13 Q SIR, AS I HAVE ALREADY INDICATED, THIS JURY WILL BE
14 SEQUESTERED FOR A PERIOD OF APPROXIMATELY 10 DAYS. I WANT
15 TO TELL YOU THAT WE ALREADY ASSUME THAT IT IS INCONVENIENT
16 BOTH PERSONAL AND PROFESSIONALLY. BUT WHAT I NEED TO
17 DETERMINE IS WILL THIS POSE A SERIOUS DANGER TO YOUR
18 HEALTH OR WELL-BEING?

19 A NO, MA'AM.

20 Q NOW, IN EVERY CASE A JURY SIGNS A -- THE FOREPERSON
21 OF THE JURY SIGNS A VERDICT FORM BECAUSE EVERY JURY
22 RETURNS A VERDICT UNLESS THEY ARE DEADLOCKED IN WHICH
23 CASE... THEY STILL SIGN A VERDICT FORM FOR ALL INTENTS AND
24 PURPOSES.

25 IN A CAPITAL CASE, WHICH IS WHAT WE CALL A DEATH

1 PENALTY CASE, IT'S A LITTLE DIFFERENT BECAUSE NOT JUST THE
2 FOREPERSON SIGNS THE VERDICT FORM BECAUSE IN THAT TYPE
3 CASE BECAUSE THE JURY DECIDES PENALTY AND THE COURT IS
4 BOUND BY THE JURY'S DECISION, WHETHER IT BE LIFE WITHOUT
5 THE POSSIBILITY OF PAROLE OR DEATH, EACH JUROR IS REQUIRED
6 TO SIGN THEIR NAME, LINES ONE THROUGH 12, TO THAT VERDICT
7 FORM.

8 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
9 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
10 DEATH?

11 A YES.

12 Q OKAY.

13 THE COURT: ARE THERE ANY QUESTIONS FROM THE
14 STATE?

15 MR. HEMBREE: NO, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MR. KELLY: NO, MA'AM.

18 THE COURT: ANY EXCEPTION TO THE JUROR BEING
19 FOUND QUALIFIED?

20 MR. HEMBREE: NO EXCEPTION, YOUR HONOR. THE
21 JUROR IS QUALIFIED.

22 THE COURT: ANY EXCEPTION FROM THE STATE -- I
23 MEAN THE DEFENSE? I'M SORRY.

24 MR. KELLY: NO. NO, MA'AM.

25 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED

1 WHICH MEANS YOU ARE NOW IN THE POOL OF QUALIFIED
2 JURORS. WHAT WE WILL DO ON MONDAY MORNING AT 9:30 IS
3 FROM THAT POOL WE WILL SELECT A JURY.

4 SO I NEED FOR YOU TO RETURN AT 9:30 ON MONDAY
5 MORNING PACKED FOR TWO WEEKS. YOU DON'T HAVE TO
6 BRING YOUR STUFF UP HERE. IF YOU SELECTED FOR THE --
7 I KNOW BECAUSE I -- IN MY MIND I'M THINKING FOLKS
8 DRAGGING ALL THEIR STUFF UP HERE.

9 IF YOU'RE SELECTED, WE WILL MAKE ARRANGEMENTS
10 FOR YOU TO GET SITUATED. YOU DON'T HAVE TO BRING
11 YOUR THINGS UP HERE. DURING THE BREAK, HOWEVER, I
12 NEED FOR YOU TO STRICTLY ABIDE BY MY INSTRUCTIONS AND
13 HAVE NO DISCUSSION ABOUT THIS CASE WITH ANYONE, THAT
14 INCLUDES YOUR FAMILY MEMBER OR YOUR FRIENDS.

15 I KNOW IT MAY SEEM INNOCUOUS, BUT IT REALLY
16 ISN'T. AND IF ANYBODY TRIES TO TALK TO YOU, TELL
17 THEM, I CANNOT DISCUSS THAT IN ANY WAY WITH YOU
18 INCLUDING THIS JURY QUALIFICATION PROCESS.

19 PLEASE DO NOT WATCH, READ, OR LISTEN TO ANY
20 MEDIA REPORTS ABOUT THIS CASE. IT IS EXTREMELY
21 IMPORTANT AND ESSENTIAL THAT YOU REMAIN IMPARTIAL
22 WHICH MEANS I CAN'T -- CAN'T READ THE NEWSPAPER ABOUT
23 THIS CASE, CAN'T WATCH TV ABOUT IT, CAN'T LISTEN TO
24 THE RADIO, AND YOU CAN'T DO ANY INDEPENDENT RESEARCH
25 OF ANY TYPE ON THE INTERNET. WE'LL SEE YOU ON MONDAY

1 MORNING AT 9:30. HAVE A GOOD DAY.

2 (JUROR LEFT THE COURTROOM.)

3 THE COURT: ALL RIGHT, GUYS. WE ARE DONE TILL
4 LUNCH.

5 (COURT WAS IN RECESS FOR LUNCH.)

6 THE COURT: IF YOU COULD BRING SARAH ROBERTS FOR
7 ME, NUMBER 276. AND SHE IS NOT ON ANY OF THE LISTS.
8 Y'ALL DOING...

9 (JUROR ENTERED THE COURTROOM.)

10 SARAH ROBERTS, WHITE FEMALE, TESTIFIED
11 AS FOLLOWS:

12 BY THE COURT:

13 Q MA'AM, HOW ARE YOU TODAY?

14 A FINE.

15 Q WE APPRECIATE YOU BEING SO PATIENT WITH US. IF YOU
16 WOULD STATE YOUR NAME FOR THE RECORD.

17 A SARAH ROBERTS.

18 Q AND MRS. ROBERTS, CAN YOU HEAR HER VERY CLEARLY OR DO
19 YOU -- IF YOU COULD SCOOT JUST A LITTLE CLOSER FOR ME TO
20 THE MIKE SO WE CAN MAKE SURE EVERYBODY IS ABLE TO HEAR
21 YOU. AND YOU ARE JUROR 276; IS THAT CORRECT?

22 A YES, MA'AM.

23 Q MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH
24 FOR PURPOSES OF THESE PROCEEDINGS. DO YOU UNDERSTAND?

25 A YES.

1 Q NOW, HAVE YOU READ, WATCHED, OR LISTENED TO ANY MEDIA
2 ACCOUNTS ABOUT THIS CASE SINCE YOU WERE GIVEN THE
3 INSTRUCTIONS ON TUESDAY?

4 A NO, MA'AM.

5 Q I'M GOING TO ASK YOU SOME QUESTIONS. WE KNOW THAT
6 SOME OF THESE QUESTIONS MAY SEEM INTENSELY PERSONAL. IT'S
7 NOT OUR INTENT TO INVADE YOUR PRIVACY. STATE LAW REQUIRES
8 THAT WE ASK THESE QUESTIONS AND IT ALSO REQUIRES IN CASES
9 OF THIS NATURE THAT WE SPEAK TO EACH JUROR INDIVIDUALLY.
10 THERE ARE NO RIGHT OR WRONG ANSWERS. TAKE A DEEP
11 BREATH BECAUSE PEOPLE GET NERVOUS, AND IT FEELS LIKE
12 YOU'RE IN THE HOT SEAT, BUT YOU'RE NOT. THERE ARE NO
13 RIGHT OR WRONG ANSWERS. WE JUST NEED YOU TO ANSWER US AS
14 OPENLY AND HONESTLY AND FULLY AS POSSIBLE.

15 AND WE TAKE FOR GRANTED THAT EVERYBODY UNDERSTANDS
16 THE LEGAL LANGUAGE THAT WE USE, SO IF THERE'S ANY QUESTION
17 YOU DON'T UNDERSTAND OR TERM YOU DON'T UNDERSTAND THAT WE
18 USE, PLEASE LET US KNOW SO THAT WE CAN CLARIFY THE
19 QUESTION FOR YOU.

20 A OKAY.

21 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTIES
22 IN THIS CASE. BUT THE MERE FACT THAT WE TALK ABOUT A
23 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT.
24 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
25 UNDERSTAND?

1 A YES.

2 Q IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
3 LISTEN TO THE LAW?

4 A YES.

5 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
6 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

7 A YES.

8 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
9 MIGHT DISAGREE WITH ME ABOUT WHAT THE LAW IS?

10 A YES.

11 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
12 EVIDENCE PRESENTED HERE IN THIS COURTROOM FROM THE LIPS OF
13 SWORN WITNESSES AND THE OTHER EVIDENCE THAT WILL BE
14 INTRODUCED AND THE LAW AS THE COURT WILL INSTRUCT YOU AND
15 DISREGARD ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT
16 THIS CASE?

17 A YES.

18 Q BEFORE TUESDAY DID YOU -- AND I'M -- I DON'T WANT YOU
19 TO GET CONFUSED ABOUT THE TIME PERIODS. I'M REFERRING TO
20 PREVIOUS TO MY INSTRUCTIONS. HAVE YOU READ, HEARD, OR
21 SEEN ANY MEDIA COVERAGE ABOUT THIS CASE?

22 A NO, MA'AM, BUT I -- MY HUSBAND HAD A COUSIN THAT WAS
23 IN JAIL AT THE SAME TIME MR. STANKO WAS, AND HE DID SPEAK
24 OF HIM BUT NOTHING RELATING TO THE CASE.

25 Q OKAY. AS A RESULT OF ANYTHING THAT YOU HEARD, HAVE

1 YOU FORMED ANY FIXED OPINION ABOUT THIS CASE?

2 A NO, MA'AM.

3 Q DO YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF
4 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT?

5 A YES.

6 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
7 PROVE HIS INNOCENCE? IN OTHER WORDS, HE HAS -- LET ME
8 EXPLAIN THAT BECAUSE AGAIN THAT'S A LEGAL TERM. THE STATE
9 IN EVERY CASE HAS WHAT WE CALL THE HIGHEST BURDEN IN THE
10 LAW WHICH IS BEYOND A REASONABLE DOUBT, TO PROVE EVERY
11 OFFENSE, EVERY ELEMENT OF EVERY OFFENSE THAT THEY CHARGE A
12 CRIMINAL DEFENDANT WITH, NO MATTER HOW SERIOUS THE CHARGES
13 ARE.

14 UNDER OUR CONSTITUTION EVERY DEFENDANT IS CLOAKED
15 WITH A PRESUMPTION OF INNOCENCE WHICH MEANS MR. STANKO AND
16 HIS LAWYERS CAN COME TO COURT AND THEY HAVE NO DUTY TO SAY
17 ANYTHING.

18 THEY DON'T HAVE TO DEFEND HIM AT ALL. THE LAW ALLOWS
19 THEM TO COME INTO THIS COURT AND FOR MR. DIGGS AND
20 MR. KELLY -- THEY DON'T EVEN HAVE TO MAKE AN OPENING
21 STATEMENT. THEY DON'T HAVE TO MAKE A CLOSING STATEMENT.
22 THEY DON'T HAVE TO PRESENT WITNESSES. THEY DON'T HAVE TO
23 DO ANYTHING BECAUSE THEY HAVE NO BURDEN OF PROOF.

24 THE STATE HAS COMPLETE BURDEN OF PROOF, AND
25 IRREGARDLESS OF ANYTHING THAT GOES ON AT THE DEFENSE

1 TABLE, THEY STILL HAVE TO PROVE THAT BURDEN BEYOND A
2 REASONABLE DOUBT. DO YOU UNDERSTAND WHAT I--

3 A YES, I UNDERSTAND.

4 Q OKAY. BECAUSE I KNOW WE USE THAT LEGAL LANGUAGE AND
5 PEOPLE DON'T ALWAYS UNDERSTAND WHAT WE MEAN. HAVE YOU
6 READ THE JUROR INFORMATION TYPE SHEET?

7 A YES.

8 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES
9 OF JURORS?

10 A I -- TYPE THREE.

11 Q OKAY. IF YOU ARE A JUROR IN A DEATH PENALTY CASE AND
12 IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, WE
13 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. AND
14 AS I EXPLAINED, IN THIS TYPE TRIAL THERE ARE TWO PHASES, A
15 GUILT PHASE AND A SENTENCING PHASE. DO YOU UNDERSTAND?

16 A I THINK SO, BUT IT'S...

17 Q WELL, I WILL CLARIFY IT FOR YOU. IT'S LIKE TWO
18 TRIALS ALMOST. YOU HAVE ONE TRIAL WHERE YOU DETERMINE THE
19 GUILT OR INNOCENCE OF THE DEFENDANT, AND YOU HEAR EVIDENCE
20 AND THE JURY HEARS THE LAW, AND THEY DELIBERATE AND THEY
21 MAKE A DECISION.

22 IF YOU -- IF HE'S FOUND NOT GUILTY, THAT'S THE END OF
23 IT. IF HE IS FOUND GUILTY OF THE CRIME OF MURDER, WE THEN
24 MOVE TO WHAT IS CALLED THE PENALTY PHASE WHERE THE JURY
25 DETERMINES THE APPROPRIATE PENALTY, WHETHER IT BE LIFE

1 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH BY
2 ELECTROCUTION OR LETHAL INJECTION. DOES THAT CLARIFY IT
3 FOR YOU, MA'AM?

4 A YES, MA'AM.

5 Q IF THE JURY WERE TO FIND THE DEFENDANT GUILTY OF
6 MURDER AND WE MOVED TO THE PENALTY PHASE, YOU WOULD BE
7 ALLOWED TO CONSIDER BOTH AGGRAVATING AND MITIGATING
8 CIRCUMSTANCES. AND I'M GOING TO EXPLAIN BOTH OF THOSE TO
9 YOU AND GIVE YOU EXAMPLES SO YOU CAN UNDERSTAND THOSE
10 TERMS AS I'VE USED THEM.

11 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
12 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
13 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
14 THE OFFENSE OF MURDER.

15 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
16 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
17 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
18 COMMISSION OF A CRIME.

19 AND SOME EXAMPLES -- AND AGAIN, THESE ARE JUST
20 EXAMPLES. MURDER OF A CHILD UNDER THE AGE OF 11, DRUG
21 TRAFFICKING, KILLING BY POISON, OR BURGLARY IN ANY DEGREE.
22 AGAIN, THIS IS NOT AN EXHAUSTIVE LIST. IT IS JUST
23 EXAMPLES SO THAT YOU CAN HAVE A POINT OF REFERENCE AS TO
24 THE TERMS WE'RE USING.

25 YOU WOULD ALSO HAVE THE ABILITY TO CONSIDER

1 MITIGATING CIRCUMSTANCES, WHICH ARE INCIDENTS, DETAILS, OR
2 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
3 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
4 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
5 MORAL CULPABILITY OR RESPONSIBILITY.

6 AND AGAIN, I GIVE YOU -- I'M GOING TO GIVE YOU SOME
7 EXAMPLES. MENTAL RETARDATION AT THE TIME OF THE CRIME,
8 THE DEFENDANT WAS PROVOKED BY THE VICTIM, THE DEFENDANT
9 WAS AN ACCOMPLICE AND THEIR PARTICIPATION WAS RELATIVELY
10 MINOR, THE DEFENDANT ACTED UNDER DURESS OR DOMINATION.

11 AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE IS NO
12 EXCLUSIVE LIST OF MITIGATING FACTORS, BUT I WANT TO GIVE
13 YOU A POINT OF REFERENCE TO BE ABLE TO UNDERSTAND THE
14 TERMS AS WE USE THEM.

15 IF YOU WERE A JUROR IN THE PENALTY PHASE -- IN THE
16 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE PARTICULAR
17 FACTS AND CIRCUMSTANCES OF THE CASE, CONSIDER -- INCLUDING
18 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
19 CIRCUMSTANCES AND THE LAW WHICH I WOULD INSTRUCT YOU THAT
20 APPLIES AT THE CONCLUSION OF THE CASE RETURN A SENTENCE OF
21 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

22 A YES.

23 Q AND COULD YOU IN THE VERY SAME CIRCUMSTANCE THAT I
24 HAVE EXPLAINED CONSIDER AGGRAVATING AND MITIGATING
25 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT AS IT

1 APPLIES AT THE CONCLUSION OF THE CASE AND RETURN A
2 SENTENCE OF DEATH WHICH IN THIS CASE -- IN THIS STATE IS
3 BY ELECTROCUTION OR BY LETHAL INJECTION?

4 A YES.

5 Q AGAIN, AS WE EXPLAINED THE OTHER DAY, THE JURY WILL
6 BE SEQUESTERED WHICH MEANS YOU WILL LIVE IN A HOTEL FOR
7 APPROXIMATELY 10 DAYS. YOU, OF COURSE, WILL HAVE YOUR OWN
8 ROOM. WE'RE NOT GOING TO REQUIRE YOU TO BUNK WITH
9 SOMEONE, SO TO SPEAK.

10 AND I NEED TO TELL YOU THAT WE ALREADY PRESUME THAT'S
11 GOING TO BE INCONVENIENT TO YOU. WE ALREADY ASSUME IT'S
12 GOING TO BE AN INTERRUPTION OF YOUR PERSONAL AND YOUR
13 PROFESSIONAL LIFE. I NEED TO KNOW, HOWEVER, WOULD THIS
14 POSE A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

15 A NO.

16 Q OKAY. NOW, IN EVERY CASE THE JURY RETURNS A VERDICT,
17 AND USUALLY WHAT HAPPENS IS THE FOREPERSON SIGNS THAT
18 VERDICT FORM, AND WHETHER IT BE IN AN AUTOMOBILE ACCIDENT
19 OR A CRIMINAL CASE, THEY FILL IT OUT AND THEY SIGN THEIR
20 NAME AS FOREPERSON AND DATE THE FORM AS AN INDICATION OF
21 THE JURY'S VERDICT.

22 IN DEATH PENALTY CASES LIKE THIS ONE, IT'S A LITTLE
23 DIFFERENT, BECAUSE STATE LAW REQUIRES EACH JUROR
24 IRREGARDLESS OF THE SENTENCE, TO SIGN INDIVIDUALLY ON THE
25 VERDICT FORM, AND IT WOULD BE LISTED ONE THROUGH 12 AND

1 EACH JUROR WOULD BE REQUIRED TO SIGN THEIR NAME.

2 AND THE REASON FOR THIS IS BECAUSE THE JURY IN A
3 DEATH PENALTY CASE DECIDES WHETHER THE DEFENDANT RECEIVES
4 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH, AND THE
5 COURT ABSOLUTELY HAS TO HONOR THAT. IT HAS NO DISCRETION.

6 AND SO I NEED TO ASK, WOULD YOU BE ABLE TO SIGN A
7 VERDICT FORM IN THE EVENT OF A SENTENCE OF LIFE WITHOUT
8 THE POSSIBILITY OF PAROLE OR DEATH?

9 A YES.

10 Q OKAY.

11 THE COURT: ARE THERE ANY QUESTIONS FROM THE
12 STATE?

13 MR. HEMBREE: NO QUESTIONS FROM THE STATE, YOUR
14 HONOR.

15 THE COURT: FROM THE DEFENSE?

16 MR. KELLY: NO, MA'AM.

17 THE COURT: ANY OBJECTION TO THIS JUROR BEING
18 FOUND QUALIFIED FROM THE STATE?

19 MR. HEMBREE: NO, YOUR HONOR. MRS. ROBERTS IS
20 QUALIFIED.

21 THE COURT: FROM THE DEFENSE?

22 MR. KELLY: NO, MA'AM.

23 THE COURT: MRS. ROBERTS, YOU HAVE BEEN FOUND
24 QUALIFIED WHICH MEANS YOU ARE A PART OF A POOL OF
25 JURORS THAT WE WILL SELECT THE ACTUAL JURY FROM.

1 BECAUSE WHAT WE DO IS WE TALK TO EVERYBODY
2 INDIVIDUALLY AND WE DEVELOP A SMALLER POOL OF PEOPLE
3 FROM WHOM WE WILL PICK THE ACTUAL JURY WHICH WILL
4 CONSIST OF 12 MEMBERS AND EITHER TWO OR THREE
5 ALTERNATES.

6 DURING THIS BREAK IN TESTIMONY THERE ARE SOME
7 INSTRUCTIONS I NEED YOU TO ABIDE BY. ONE, I NEED YOU
8 TO RETURN ON MONDAY AT 9:30 PACKED FOR TWO WEEKS. I
9 KNOW IT'S SOBERING, AND WE APPRECIATE YOUR SERVICE.
10 YOU, OF COURSE, DON'T HAVE TO PHYSICALLY BRING IT UP
11 HERE. WE -- YOU KNOW, IF YOU'RE SELECTED FOR THE
12 JURY, WE WILL SITUATE YOU AND GET YOU SETTLED AT THE
13 APPROPRIATE TIME.

14 DURING THE BREAK I ALSO NEED FOR YOU TO REFRAIN
15 FROM ANY DISCUSSIONS WHATSOEVER ABOUT THIS CASE.
16 DON'T SPECULATE ABOUT WHAT YOU THINK IT COULD BE
17 ABOUT OR MAY BE ABOUT. DON'T ALLOW ANYONE TO TALK TO
18 YOU.

19 AND IT'S VERY DIFFICULT I KNOW IN A SMALL
20 COMMUNITY. IT'S REALLY DIFFICULT IN ANY COMMUNITY.
21 PEOPLE SEE YOU AND THEY SAY, GOSH, WE HEARD YOU'RE ON
22 JURY DUTY, WHAT'S THAT ALL ABOUT? AND YOU JUST NEED
23 TO SAY TO THEM, I CANNOT DISCUSS THAT, IT WOULD BE A
24 VIOLATION OF THE COURT'S RULES AND I DON'T WANT TO
25 GET IN TROUBLE AND I DON'T WANT YOU TO GET IN

1 TROUBLE, SO WE'LL JUST END THIS CONVERSATION RIGHT
2 NOW.

3 AND THAT USUALLY SOBERS EVERYBODY UP AND MAKES
4 THEM REALIZE THE REAL IMPORTANCE OF THE SITUATION.
5 ALSO I WOULD ASK THAT YOU NOT READ, WATCH, OR LISTEN
6 TO ANY MEDIA ACCOUNTS ABOUT THIS CASE. THAT INCLUDES
7 ANY NEWSPAPER ARTICLES, ANY RADIO REPORTS, ANYTHING
8 ON TELEVISION, AND ANYTHING THAT YOU COULD FIND ON
9 THE INTERNET ON YOUR OWN OR ANY OTHER INDEPENDENT
10 SOURCE OF RESEARCH, OKAY, BECAUSE WE HAVE TO MAINTAIN
11 YOUR IMPARTIALITY IF YOU'RE SELECTED FOR THIS PANEL.
12 WE APPRECIATE YOUR TIME. HAVE A GREAT DAY.

13 JUROR: THANK YOU.

14 THE COURT: YOU'RE WELCOME.

15 (JUROR LEFT THE COURTROOM.)

16 THE COURT: RYAN IZZARD, 167.

17 MR. HEMBREE: JUDGE, I HAVE ONE MINOR THING TO
18 TAKE UP WITH THE COURT.

19 THE COURT: OH, WAIT ONE SECOND FOR ME.

20 MR. HEMBREE: NOT WITH HER.

21 THE COURT: NO, I MEAN, THEY ARE BRINGING
22 MR. IZZARD, SO I WAS ASKING THEM TO WAIT. MA'AM,
23 YOU'RE FREE TO LEAVE. I NEED YOU TO HOLD MR. IZZARD
24 FOR ME.

25 MR. HEMBREE: IT'S A MINOR THING.

1 THE COURT: SURE.

2 MR. HEMBREE: BUT IN YOUR -- IN YOUR EXAMPLES
3 ABOUT MITIGATING CIRCUMSTANCES, I KIND OF NOTED THAT
4 YOU -- SEEMS LIKE YOU CRAFT OR PICK THEM OUT SO THEY
5 WOULDN'T REFLECT AS TO THIS CASE.

6 THE COURT: YEAH.

7 MR. HEMBREE: HOWEVER, THERE'S THE EXAMPLE OF
8 MITIGATING CIRCUMSTANCES THAT THE DEFENDANT WAS
9 PROVOKED BY THE VICTIM, AND--

10 THE COURT: IS THAT A DEFENSE IN THIS CASE?

11 MR. HEMBREE: WELL, DR. SACHY TESTIFIED THAT THE
12 DEFENDANT TOLD HIM THAT HE WAS PROVOKED BY THE
13 DEFENDANT AND HE--

14 THE COURT: OH, I HAVEN'T THOUGHT ABOUT THAT.

15 MR. HEMBREE: KIND OF A -- SO I -- IF YOU COULD
16 JUST SUBSTITUTE--

17 THE COURT: YEAH. AND THE PROBLEM IS THAT I
18 WAS -- NOT -- PROBLEM REALLY ISN'T THE RIGHT WORD.
19 WHEN I WAS DOING IT, WHEN I READ THE REPORTS, IT SAID
20 IT WAS A TRIGGER WHICH IS DIFFERENT THAN PROVOCATION.
21 SO BASICALLY ANYTHING COULD BE A TRIGGER. SO I
22 DIDN'T SEE IT AS FACTUALLY SIMILAR TO THIS CASE.

23 MR. DIGGS: WE CERTAINLY -- WE DON'T HAVE ANY
24 OBJECTION.

25 THE COURT: I WILL SWITCH IT OUT THOUGH IF Y'ALL

1 HAVE NO OBJECTION.

2 MR. DIGGS: WE'RE CERTAINLY NOT GOING TO ARGUE
3 THERE WAS A PROVOCATION.

4 THE COURT: PARDON ME?

5 MR. DIGGS: WE'RE NOT GOING TO COUCH IT IN TERMS
6 OF PROVOCATION.

7 THE COURT: I DIDN'T THINK YOU WERE BASED ON MY
8 IDEA OF THE THEORY--

9 MR. HEMBREE: YOU CAN SEE WHERE A JUROR MIGHT
10 INTERPRET IT THAT WAY, CHARACTERIZE IT AS
11 PROVOCATION. AND I JUST DON'T WANT TO GET NO --
12 THERE'S NO REASON TO BE EVEN CLOSE.

13 THE COURT: Y'ALL HAVE NO OBJECTION TO CHANGING
14 IT; DO YOU?

15 MR. HUMPHRIES: YOU GOT THE CODE SECTION UP
16 THERE? I WAS TRYING TO PICK ONE TO SHOW IT TO YOU.

17 THE COURT: WE GOT IT. WE GOT A WHOLE MANUAL OF
18 ALL THE STATUTES. IF YOU'D GO AHEAD AND BRING IT
19 DOWN HERE FOR ME. WHY DON'T I USE THE DEFENDANT WAS
20 BELOW THE AGE OF 18 AT THE TIME OF THE CRIME. DOES
21 THAT WORK FOR EVERYBODY?

22 MR. HEMBREE: YES.

23 MR. KELLY: YES, MA'AM.

24 THE COURT: BECAUSE THE REST OF THEM ARE SO VERY
25 SIMILAR. THAT'S WHY WHEN -- AFTER I LOOKED AT THEM

1 AGAIN, I KNOW THAT'S WHY I SKIPPED THEM. OKAY.

2 OKAY. YOU ALL COULD GO AHEAD AND BRING MR. IZZARD.

3 MR. HEMBREE: THANK YOU, YOUR HONOR.

4 THE COURT: NOT A PROBLEM. EASILY SOLVED.

5 (JUROR ENTERED THE COURTROOM.)

6 RYAN IZZARD, BLACK MALE, TESTIFIED AS

7 FOLLOWS:

8 BY THE COURT:

9 Q MR. IZZARD, HOW ARE YOU?

10 A ALL RIGHT. YOU?

11 Q DOING FINE. YOU SURVIVING THE HEAT TODAY?

12 A YES, MA'AM.

13 Q SIR, YOU ARE MR -- STATE YOUR FULL NAME FOR ME FOR
14 THE RECORD.

15 A RYAN IZZARD.

16 Q IS THAT WAS AN A OR -- YOUR MIDDLE NAME?

17 A A.

18 Q AND YOU SAID JUNIOR?

19 A NO.

20 Q NO, I DIDN'T THINK SO. AND YOU'RE JUROR 167;
21 CORRECT?

22 A YES, SIR.

23 Q SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH.
24 DO YOU UNDERSTAND?

25 A YES.

1 Q AND HAVE YOU HAD ANY EXPOSURE TO ANY MEDIA REPORTS
2 ABOUT THIS CASE SINCE THE COURT GAVE ITS INSTRUCTION ON
3 TUESDAY?

4 A (SHOOK HEAD.)

5 Q SIR, WE ARE GOING TO ASK YOU SOME QUESTIONS. WE KNOW
6 THAT SOME OF THEM ARE VERY PERSONAL AND WE'RE NOT TRYING
7 TO INVAD E YOUR PRIVACY. WE JUST NEED TO KNOW SOME OF YOUR
8 VIEWS. I NEED TO EMPHASIZE THERE ARE NO RIGHT OR WRONG
9 ANSWERS IN THIS PROCESS. WE JUST NEED FOR YOU TO BE AS
10 OPEN AND HONEST AND FULL AND COMPLETE IN YOUR ANSWERS AS
11 POSSIBLE.

12 A . OKAY.

13 Q AND WE USE A LOT OF LEGALESE, SO IF THERE'S A
14 QUESTION YOU DON'T UNDERSTAND -- SOMETIMES WE ASSUME
15 PEOPLE UNDERSTAND THE TERMS THAT WE'RE USING AND THEY
16 DON'T, SO IF YOU DO NOT UNDERSTAND WHAT I'M ASKING, PLEASE
17 ASK -- LET ME KNOW SO THAT I CAN CLARIFY IT AS BEST I CAN
18 THE QUESTION FOR YOU.

19 A OKAY.

20 Q AMONG OTHER THINGS, SIR, WE WILL BE TALKING ABOUT
21 PENALTY, BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES
22 NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
23 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

24 A YES.

25 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD

1 YOU LISTEN TO THE LAW?

2 A YES.

3 Q OKAY. AND YOU KNOW THE DIFFERENCE BETWEEN LAW AND
4 THE FACTS?

5 A YES.

6 Q OKAY. AND YOU UNDERSTAND WHAT I MEAN WHEN I SAY THE
7 LAW?

8 A YES, MA'AM.

9 Q OKAY. COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
10 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

11 A YES.

12 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
13 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

14 A YES.

15 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
16 EVIDENCE PRESENTED HERE IN THIS COURTROOM BASED ON THE --
17 FROM THE LIPS OF SWORN WITNESSES AND THE OTHER EVIDENCE
18 THAT IS INTRODUCED AND THE LAW AS THE COURT WILL CHARGE
19 AND DISREGARD ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN
20 ABOUT THIS CASE?

21 A YES.

22 Q SIR, HAVE YOU READ -- HEARD, READ, OR SEEN ANY MEDIA
23 COVERAGE ABOUT THIS CASE PRIOR TO REPORTING -- PRIOR TO MY
24 INSTRUCTIONS?

25 A NO, MA'AM.

1 Q OKAY. IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
2 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
3 DO YOU UNDERSTAND THAT?

4 A YES.

5 Q AND DO YOU UNDERSTAND THAT A DEFENDANT HAS NO BURDEN
6 TO PROVE HIMSELF INNOCENT?

7 A YES.

8 Q OKAY. SIR, HAVE YOU HAD A CHANCE TO REVIEW THE JUROR
9 INFORMATION SHEET THAT WE HAD IN THE JURY ROOM?

10 A YES, I HAVE.

11 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES
12 OF JURORS?

13 A MORE SO THE TYPE THREE.

14 Q OKAY. SIR, IF YOU WERE A JUROR IN A DEATH PENALTY
15 CASE AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF
16 MURDER, WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE
17 TRIAL. AS I EXPLAINED ON TUESDAY, THERE ARE TWO PHASES, A
18 GUILT PHASE, AND IF THE DEFENDANT IS FOUND GUILTY, WE THEN
19 MOVE TO A SENTENCING PHASE WHERE THE JURY IN FACT
20 DETERMINES SENTENCE.

21 IN THAT PHASE THE JURY WOULD HAVE THE ABILITY TO
22 CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND
23 MITIGATING CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU
24 WHAT BOTH OF THOSE ARE AND GIVE YOU EXAMPLES.

25 A ALL RIGHT.

1 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
2 DETAILS OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
3 DECLARED BY STATUTE WOULD MAKE WORSE, THAT IS AGGRAVATE
4 THE OFFENSE OF MURDER.

5 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
6 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
7 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
8 COMMISSION OF A CRIME.

9 AND EXAMPLES WOULD BE, THE MURDER OF A CHILD UNDER
10 AGE 11, DRUG TRAFFICKING, KILLING BY POISONING, OR
11 BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.
12 THIS IS NOT AN EXHAUSTIVE LIST. I JUST NEED YOU TO HAVE A
13 POINT OF REFERENCE ABOUT WHAT WE ARE TALKING ABOUT.

14 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
15 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATUTE
16 REDUCE THE SEVERITY OF AN OFFENSE OF MURDER AND MAY BE
17 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
18 MORAL CULPABILITY OR RESPONSIBILITY.

19 EXAMPLES OF THAT WOULD BE MENTAL RETARDATION AT THE
20 TIME OF THE CRIME, THE DEFENDANT WAS BELOW THE AGE OF 18
21 AT THE TIME OF THE CRIME, THE DEFENDANT WAS AN ACCOMPLICE
22 AND THEIR PARTICIPATION WAS RELATIVELY MINOR, OR THAT THE
23 DEFENDANT ACTED UNDER DURESS OR DOMINATION.

24 AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE IS NO
25 EXHAUSTIVE LIST OF MITIGATING CIRCUMSTANCES. I JUST

1 WANTED TO GIVE YOU A POINT OF REFERENCE.

2 SIR, IF YOU WERE A JUROR IN THAT SITUATION, REFERRING
3 TO THE SENTENCING PHASE OF A TRIAL, DEPENDING UPON THE
4 PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE INCLUDING
5 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU AT THE
7 CONCLUSION OF THE CASE, COULD YOU RETURN A SENTENCE OF
8 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

9 A YES.

10 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES THAT I
11 JUST EXPLAINED, INCLUDING TAKING INTO CONSIDERATION
12 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW AS I
13 WOULD INSTRUCT AT THE CONCLUSION OF THE CASE, RETURN A
14 SENTENCE OF DEATH WHICH IN THIS STATE IS BY ELECTROCUTION
15 OR BY LETHAL INJECTION?

16 A YES.

17 Q SIR, AS I HAVE ALREADY EXPLAINED, THE JURY IN THIS
18 CASE WILL BE SEQUESTERED OR KEPT IN A HOTEL, LODGED IN A
19 HOTEL FOR APPROXIMATELY 10 DAYS. AND WE ASSUME ALREADY
20 THAT THAT IS INCONVENIENT TO YOU BOTH PERSONALLY AND
21 PROFESSIONALLY.

22 BUT WHAT I NEED TO INQUIRE IS TO WHETHER THAT, BEING
23 HOUSED IN A MOTEL DURING THE TRIAL, WOULD POSE A SERIOUS
24 DANGER TO YOUR HEALTH OR WELL-BEING?

25 A NO, MA'AM.

1 Q OKAY. SIR, IN EVERY CASE THE JURY RETURNS A VERDICT.
2 AND USUALLY WHAT HAPPENS IS THAT THE FOREPERSON SIGNS THE
3 VERDICT FORM. A CAPITAL CASE IS A LITTLE DIFFERENT
4 BECAUSE THE JURY DECIDES SENTENCE, WHETHER THAT BE LIFE
5 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

6 AND AS SUCH, STATE LAW REQUIRES THAT EACH JUROR
7 INDIVIDUALLY SIGN THE VERDICT FORM WHICH IS LISTED ONE
8 THROUGH 12 AND EACH PERSON WOULD SIGN THEIR NAME. WOULD
9 YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT OF A LIFE
10 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE OR A DEATH
11 SENTENCE?

12 A YES.

13 Q OKAY.

14 THE COURT: ANY QUESTIONS FROM THE STATE?

15 MR. HEMBREE: NO, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MR. KELLY: NO, MA'AM.

18 THE COURT: ANY EXCEPTION TO THE JUROR BEING
19 FOUND QUALIFIED?

20 MR. HEMBREE: NO, YOUR HONOR.

21 MR. KELLY: NO, MA'AM.

22 THE COURT: SIR, YOU HAVE BEEN QUALIFIED AS A
23 MEMBER -- A POTENTIAL MEMBER OF THE JURY. WHAT WE
24 ARE DOING, AS I INDICATED ON TUESDAY, IS WE'RE
25 DEVELOPING A POOL OF QUALIFIED JURORS FROM WHICH WE

1 WILL SELECT THE ACTUAL JURY ON MONDAY.

2 I NEED FOR YOU TO RETURN ON MONDAY AT
3 9:30 PACKED FOR TWO WEEKS. OF COURSE, YOU DON'T HAVE
4 TO BRING YOUR STUFF UP TO THE COURTROOM. IF YOU ARE
5 SELECTED FOR THE JURY, WE WILL AT THE APPROPRIATE
6 TIME GET YOU SITUATED AT THE HOTEL.

7 OF COURSE, YOU WILL HAVE YOUR OWN ROOM. WE'RE
8 NOT GOING TO MAKE YOU BUNK WITH ANYBODY BECAUSE I
9 KNOW THAT -- THAT WOULD AT LEAST BE A CONCERN IN MY
10 MIND BECAUSE I'M NOT -- I'M NOT BIG ON STRANGERS. I
11 UNDERSTAND. AND EVERYBODY NEED A LITTLE ME-TIME.

12 I WOULD ASK THAT YOU ABIDE BY THE COURT'S
13 INSTRUCTIONS, HOWEVER, AND PLEASE DON'T DISCUSS THIS
14 CASE WITH ANYONE NOR THIS JURY QUALIFICATION
15 PROCEDURE.

16 AND IF ANYBODY TRIES TO TALK TO YOU, JUST SIMPLY
17 TELL THEM, I CAN'T TALK ABOUT IT, I'D BE IN VIOLATION
18 OF THE COURT'S RULES AND I DON'T WANT TO GET IN
19 TROUBLE AND I DON'T WANT YOU TO GET IN TROUBLE.

20 ALSO I WOULD ASK THAT YOU ABIDE BY THE COURT'S
21 INSTRUCTION AND NOT BE -- NOT ALLOW YOURSELF TO BE
22 EXPOSED TO ANY MEDIA ACCOUNTS, THAT INCLUDES ANYTHING
23 THAT COULD BE READ IN THE NEWSPAPER, SEEN ON
24 TELEVISION, LISTENED TO ON THE RADIO, OR ANYTHING
25 THAT YOU COULD FIND ON THE INTERNET ON YOUR OWN.

1 OKAY?

2 JUROR: YES, MA'AM.

3 THE COURT: WE NEED TO MAINTAIN YOUR
4 IMPARTIALITY IN THE EVENT THAT YOU'RE SELECTED AS A
5 JUROR IN THIS CASE. WE HOPE YOU HAVE A GOOD DAY AND
6 WE'LL SEE YOU AT 9:30 ON MONDAY MORNING.

7 JUROR: ALL RIGHT. THANK YOU, MA'AM.

8 THE COURT: YOU'RE WELCOME.

9 (JUROR LEFT THE COURTROOM.)

10 THE COURT: FADY -- IS IT BASSILLY? NUMBER 17.
11 WE HAVE HIM LISTED AS RESPONDING TO QUESTION 21.

12 MR. HEMBREE: AS DO WE, YOUR HONOR.

13 (JUROR ENTERED THE COURTROOM.)

14 FADY BASSILLY, WHITE MALE, TESTIFIED AS
15 FOLLOWS:

16 BY THE COURT:

17 Q SIR, HOW ARE YOU TODAY?

18 A FINE. HOW ARE YOU?

19 Q FINE. WE APPRECIATE YOUR PATIENCE. IF YOU COULD SIT
20 AS CLOSE TO THAT MICROPHONE AS POSSIBLE SO THAT EVERYBODY
21 CAN HEAR YOU CLEARLY. AND STATE YOU'RE FULL NAME FOR THE
22 RECORD.

23 A FADY PHILLIP BASSILLY.

24 Q WHAT A BEAUTIFUL NAME. YOU SAY IT SO MUCH BETTER
25 THAN ME. WHAT'S WHY I DIDN'T WANT TO GO AHEAD... SIR, YOU

1 ARE NUMBER 17; CORRECT?

2 A CORRECT.

3 Q AND SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER
4 OATH. DO YOU UNDERSTAND?

5 A I UNDERSTAND.

6 Q OKAY. SIR, HAVE YOU BEEN EXPOSED TO ANY MEDIA
7 REPORTS ABOUT THIS CASE SINCE THE COURT GAVE ITS
8 INSTRUCTION ON TUESDAY?

9 A NOT SINCE THE COURT GAVE THE INSTRUCTION.

10 Q OKAY. SIR, I'M GOING TO ASK YOU SOME QUESTIONS. WE
11 KNOW THAT THEY ARE PRIVATE -- THEY SAME INTRUSIVE. IT IS
12 NOT OUR INTENT TO INVADE YOUR PRIVACY. STATE LAW IN THIS
13 TYPE OF CASE REQUIRES THAT WE SPEAK TO EACH JUROR
14 INDIVIDUALLY TO INQUIRE OF YOUR VIEWS.

15 WE'RE NOT HERE TO CHALLENGE YOUR VIEWS. THERE ARE NO
16 RIGHT OR WRONG ANSWERS. THE ONLY THING WE ASK IS THAT YOU
17 ANSWER US AS OPENLY AND HONESTLY AND TRUTHFULLY AS
18 POSSIBLE. AND IF YOU NEED TO, TAKE A DEEP BREATH BECAUSE
19 WE KNOW THIS CAN BE A LITTLE UNNERVING. BUT AGAIN, I
20 EMPHASIZE THERE ARE NO RIGHT OR WRONG ANSWERS.

21 AMONG OTHER THINGS WE WILL BE TALKING ABOUT
22 PENALTIES. BUT THE MERE FACT THAT WE DISCUSS PENALTIES
23 DURING THIS QUESTIONING HAS NO BEARING ON THE DEFENDANT
24 BECAUSE HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
25 UNDERSTAND THAT?

1 A YES.

2 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
3 YOU LISTEN TO THE LAW?

4 A YES, I CAN.

5 Q OKAY. AND CAN YOU ACCEPT AND APPLY THE LAW AS I
6 WOULD INSTRUCT YOU?

7 A YES, I CAN.

8 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
9 MAY DISAGREE WITH ME ABOUT WHAT YOU BELIEVE THE LAW TO BE?

10 A YES, I CAN.

11 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
12 EVIDENCE PRESENTED IN THIS COURTROOM FROM WITNESSES AND
13 EVIDENCE AND THE LAW AS THE COURT WILL CHARGE AND
14 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN
15 ABOUT THIS CASE?

16 A IT WOULD BE DIFFICULT, YOUR HONOR.

17 Q OKAY. LET ME ASK AN ADDITIONAL QUESTION. HAVE YOU
18 HEARD, READ, OR SEEN ANY MEDIA COVERAGE ABOUT THIS CASE
19 PRIOR TO COMING TO COURT ON TUESDAY?

20 A I HAVE HEARD OF SOME REPORTS DURING THE TIME THE
21 DEFENDANT WAS ESCAPING AND YOUR ATTEMPT TO CATCH HIM.

22 Q OKAY. AND AS A RESULT OF WHAT YOU HEARD OR READ,
23 HAVE YOU FORMED A FIXED, WHICH MEANS -- WELL, LET ME ASK
24 THAT A DIFFERENT WAY. HAVE YOU FORMED A FIXED OPINION
25 ABOUT THE FACTS IN THIS CASE? IN OTHER WORDS, HAVE YOU

1 ALREADY MADE UP YOUR MIND?

2 A I HAVE FORMED VERY SICK FEELING ABOUT IT.

3 Q FORMED A...

4 A SICK FEELING ABOUT WHOLE SITUATION.

5 Q OKAY.

6 A AND WHAT TRANSPIRED.

7 Q LET ME ASK AN ADDITIONAL QUESTION. AND AGAIN, THERE
8 ARE NO RIGHT OR WRONG ANSWERS. I JUST NEED FOR YOU TO BE
9 AS OPEN WITH ME AND HONEST WITH ME BECAUSE WE NEED TO KNOW
10 WHAT YOUR VIEWS ARE.

11 DO YOU THINK THAT YOU COULD COME INTO THIS COURTROOM
12 JUST AS IF YOU WERE -- THE ONLY ANALOGY I CAN THINK OF IS
13 A HORSE -- WELL, I GUESS I CAN USE LADY JUSTICE, BLINDED,
14 ALMOST BLINDFOLDED -- AND COME INTO THIS COURTROOM ALMOST
15 DEVOID OF WHAT YOU HAVE HEARD AND LISTEN SOLELY TO THE
16 WITNESSES WHO WILL TESTIFY FROM THIS WITNESS STAND UNDER
17 OATH AND CONSIDER THE OTHER EVIDENCE THAT IS INTRODUCED
18 AND LISTEN TO THE LAW AS THE COURT WILL CHARGE YOU AND
19 RENDER A VERDICT IN THIS CASE BASED ONLY ON THAT EVIDENCE
20 AND THAT TESTIMONY AND THE LAW?

21 A IT WOULD BE VERY HARD FOR ME, YOUR HONOR, TO DO SO.

22 Q SIR, ARE YOU TELLING ME YOU CANNOT DISREGARD ANY
23 PRECONCEPTIONS THAT YOU HAVE?

24 A NO, BECAUSE THERE WAS A MURDER AND THERE WAS A RAPE
25 SITUATION, AND THAT IS VERY HARD HAVING BEEN -- I MEAN,

1 BEING FATHER OF TWO DAUGHTERS AND HAVING GRANDCHILDREN.

2 Q SO YOU FEEL THAT YOU HAVE ALREADY MADE UP YOUR MIND
3 ABOUT WHAT HAPPENED?

4 A I FEEL I HAVE STRONG FEELING ABOUT IT, YOUR HONOR.

5 Q AND YOU'RE TELLING ME YOU CANNOT DISREGARD THAT
6 STRONG FEELING?

7 A IT WOULD BE VERY HARD, YOUR HONOR.

8 Q OKAY.

9 THE COURT: ANY ADDITIONAL QUESTIONS FOR THE
10 JUROR?

11 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

12 MR. DIGGS: JUST COUPLE FROM THE DEFENSE.

13 THE COURT: SURE. GO RIGHT AHEAD, MR -- IF YOU
14 WOULD GIVE MR. DIGGS YOUR ATTENTION.

15 BY MR. DIGGS:

16 Q HOW ARE YOU THIS AFTERNOON? YOU HAVE INDICATED THAT
17 YOU COULD LISTEN TO THE JUDGE INSTRUCT ON THE LAW.

18 A YES, I CAN.

19 Q AND THAT YOU COULD FOLLOW THE LAW?

20 A I WILL TRY MY BEST TO FOLLOW THE LAW, YES.

21 Q WHAT IF SHE INSTRUCTED YOU ON A LAW THAT CONSTITUTED
22 A DEFENSE IN THIS CASE?

23 A I DON'T...

24 Q HAVE YOU THOUGHT ABOUT THAT?

25 A COULD YOU IDENTIFY...

1 Q WHAT IF SHE -- YOU LISTENED TO THE EVIDENCE IN THE
2 CASE AND DID -- AT THE END OF THE CASE SHE INSTRUCTS YOU
3 ON THE LAW AND YOU REALIZE THAT THERE ARE FACTS HERE THAT
4 FALL WITHIN A DEFENSE THAT SHE GIVES YOU, COULD YOU GIVE
5 THE DEFENDANT THE BENEFIT OF THAT DEFENSE IF IT'S ALLOWED
6 BY LAW?

7 A IF IT WAS 180-DEGREES DIFFERENT THAN WHAT I HEARD
8 BEFORE--

9 Q OKAY. SO--

10 A -- IT -- IT WOULD BE THE CASE.

11 Q WHEN IT COMES RIGHT DOWN TO IT, IT WILL BE VERY
12 DIFFICULT FOR YOU INDEED TO FOLLOW THE LAW ON THAT EXTENT?

13 A AS I SAID, IF THE FACTS WAS GIVEN AS TO HOW MANY --
14 IT WOULD BE DIFFERENT THAN WHAT THE FACTS WHICH ONE HAVE
15 HEARD FROM THE MEDIA, THEN, YES, OF COURSE, ONE HAVE TO
16 FOLLOW THE FACTS.

17 Q IN THE PENALTY PHASE, LET'S SAY YOU SAT ON THE JURY
18 AND THERE WAS A NEED FOR A PENALTY PHASE. ARE YOU --
19 COULD I ASK YOU WHAT TYPE OF JUROR YOU WOULD BE, WOULD YOU
20 BE A NUMBER ONE, NUMBER TWO, OR NUMBER THREE?

21 A NUMBER TWO FOR SURE.

22 Q NUMBER TWO?

23 A YES.

24 Q OKAY. WOULD YOU SAY YOU WOULD BE A NUMBER TWO EVEN
25 IF THERE WERE SOME GOOD REASONS, VALID REASONS, LEGITIMATE

1 REASONS, TO HAVE MERCY ON A PARTICULAR PERSON?

2 A I DON'T BELIEVE THAT THERE IS ANYTHING THAT WOULD
3 SURVIVE SOMEBODY WHO DO THIS.

4 Q OKAY. THANK YOU?

5 MR. DIGGS: THAT'S ALL I HAVE.

6 THE COURT: ANY EXCEPTION TO THE JUROR BEING
7 EXCUSED FROM THE STATE?

8 MR. HEMBREE: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. DIGGS: NONE.

11 THE COURT: SIR, WE EXCUSE YOU WITH THE COURT'S
12 THANKS. HAVE A WONDERFUL DAY. WE APPRECIATE YOUR
13 PATIENCE.

14 (JUROR LEFT THE COURTROOM.)

15 THE COURT: CAROLYN CANNON, 43.

16 (JUROR ENTERED THE COURTROOM.)

17 CAROLYN CANNON, WHITE FEMALE, TESTIFIED AS
18 FOLLOWS:

19 BY THE COURT:

20 Q HOW ARE YOU TODAY, MA'AM?

21 A FINE.

22 Q IF YOU WOULD TELL US YOUR NAME FOR THE RECORD.

23 A CAROLYN CANNON.

24 Q AND MRS. CANNON, YOU ARE JUROR 43; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND MRS. CANNON, I WOULD REMIND YOU THAT YOU'RE STILL
2 UNDER OATH. DO YOU UNDERSTAND?

3 A YES, MA'AM.

4 Q OKAY. AND I NEED YOU TO MAYBE -- YEAH, PERFECT, SO
5 WE CAN HEAR YOU REAL CLEARLY. HAVE YOU BEEN EXPOSED TO
6 ANY MEDIA ACCOUNTS ABOUT THIS CASE SINCE THE COURT'S
7 INSTRUCTIONS ON TUESDAY?

8 A NO, MA'AM.

9 Q NOW, WE'RE GOING TO ASK YOU SOME QUESTIONS. I KNOW
10 SOME OF THEM ARE -- WILL SEEM INTENSELY PERSONAL. IT'S
11 NOT OUR INTENT TO VIOLATE YOUR PRIVACY. STATE LAW IN
12 THESE TYPE CASES REQUIRES US TO TALK TO EVERY JUROR
13 INDIVIDUALLY, TO INQUIRE OF YOUR VIEWS.

14 WE ARE NOT TRYING TO CHALLENGE YOUR VIEWS, BUT IT'S
15 IMPORTANT FOR US TO KNOW WHAT THEY ARE. THE ONLY THING
16 THAT WE ASK OF YOU IS THAT YOU ANSWER TRUTHFULLY AND
17 HONESTLY. THERE IS NO RIGHT OR WRONG ANSWER. SO YOU CAN
18 EXHALE AND -- BECAUSE I KNOW THIS PROCESS IS A LITTLE
19 UNNERVING FOR PEOPLE.

20 A IT IS.

21 Q IT IS EXTREMELY. AND WE DO THIS ALL THE TIME, SO WE
22 SORT OF SEE IT AS REGULAR, BUT WE RECOGNIZE THAT FOR
23 PEOPLE WHO ARE NOT INVOLVED IN THE SYSTEM, IT CAN BE A
24 LITTLE UNNERVING. SO I JUST NEED YOU TO TAKE A DEEP
25 BREATH.

1 I NEED YOU TO REMEMBER THERE IS NO RIGHT OR WRONG
2 ANSWER. THE ONLY THING THAT WE ASK OF YOU IS THAT YOU BE
3 OPEN AND HONEST AND FULLY ANSWER THE QUESTIONS FOR US. IF
4 YOU DON'T UNDERSTAND THE QUESTION, PLEASE LET ME KNOW,
5 BECAUSE WE USE LEGAL TERMS THAT SOMETIMES PEOPLE DON'T
6 UNDERSTAND. OKAY?

7 NOW, AMONG OTHER THINGS WE'LL BE TALKING ABOUT
8 POTENTIAL PENALTIES IN THIS CASE. THE FACT THAT WE
9 DISCUSS OR REFER TO PENALTIES IS -- DOES NOT INDICATE
10 ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS PRESUMED IN THE
11 LAW TO BE INNOCENT. DO YOU UNDERSTAND?

12 A YES.

13 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
14 LISTEN TO THE LAW?

15 A YES.

16 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
17 INSTRUCT YOU?

18 A YES.

19 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
20 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

21 A YES.

22 Q PARDON ME?

23 A I THINK SO.

24 Q OKAY. UNFORTUNATELY -- WELL, FORTUNATELY,
25 UNFORTUNATELY, I NEED YOU TO ANSWER QUESTIONS FOR ME WITH

1 A YES OR NO. AND AGAIN, THERE IS NO WRONG OR RIGHT
2 ANSWER. AND I NEED TO I GUESS MAYBE CLARIFY A LITTLE,
3 BECAUSE I THINK SOMETIMES PEOPLE THINK WHEN I SAY THE LAW
4 THEY THINK I'M TALKING ABOUT THE FACTS OF THE CASE AND I'M
5 NOT.

6 I'M REFERRING TO -- YOU KNOW, A JUDGE IS ALMOST LIKE
7 A REFEREE IN A SPORTING EVENT. I KIND OF DETERMINE WHAT
8 THE RULES ARE AND HOW EVERYBODY IS GOING TO ABIDE BY THEM
9 AND THAT IS DICTATED BY STATE LAW AND CASE LAW.

10 AND SO WHEN I SAY ABIDE BY THE LAW, THAT'S WHAT I'M
11 REFERRING TO. AND I -- FOR EXAMPLE, IF I SAID TO YOU,
12 BURGLARY IN THE THIRD DEGREE UNDER SOUTH CAROLINA LAW
13 REQUIRES THESE ELEMENTS, A, B AND C, BUT COMING -- BEFORE
14 COMING TO COURT YOU THOUGHT THAT IT MEANT A AND B, WOULD
15 YOU BE ABLE TO DISREGARD WHAT YOU THOUGHT PREVIOUSLY AND
16 ACCEPT AND APPLY THE LAW AS I HAVE TOLD YOU THAT IT IS A,
17 B AND C? DOES THAT MAKE MORE SENSE?

18 A YES.

19 Q WOULD YOU BE ABLE TO DO THAT?

20 A YES.

21 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
22 EVIDENCE THAT IS PRESENTED HERE IN THE COURTROOM FROM THE
23 LIPS OF SWORN WITNESSES AND THE OTHER EVIDENCE AND THE LAW
24 AS THE COURT WILL CHARGE AND DISREGARD ANYTHING THAT YOU
25 MAY HAVE SEEN, READ, OR HEARD ABOUT THIS CASE?

1 A YES.

2 Q HAVE YOU READ, HEARD, OR SEEN ANYTHING ABOUT THIS
3 CASE PRIOR TO ARRIVING FOR JURY DUTY?

4 A YES.

5 Q OKAY. AND AS A RESULT OF WHAT YOU MAY HAVE BEEN
6 EXPOSED TO IN THE MEDIA, HAVE YOU FORMED ANY FIXED OPINION
7 ABOUT THE FACTS IN THIS CASE?

8 A NO.

9 Q MA'AM, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
10 PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
11 UNDERSTAND THAT?

12 A YES.

13 Q AND DO YOU ALSO UNDERSTAND THAT A DEFENDANT HAS
14 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

15 A YES.

16 Q OKAY. HAVE YOU HAD A CHANCE TO READ THE JUROR TYPE
17 SHEET?

18 A I DID.

19 Q AND WHICH TYPE OF JUROR WOULD YOU FEEL -- WHICH
20 CATEGORY WOULD YOU FEEL YOU FALL INTO?

21 A JUROR THREE.

22 Q OKAY. IF YOU WERE A JUROR IN A CRIMINAL CASE -- IN A
23 DEATH PENALTY CASE AND IF THE JURY FOUND THE DEFENDANT
24 GUILTY OF MURDER, WE WOULD THEN MOVE TO THE SENTENCING
25 PHASE.

1 AND AS I EXPLAINED ON TUESDAY, THERE ARE TWO
2 DIFFERENT PHASES. THERE'S A GUILT PHASE. AND IF THE
3 DEFENDANT IS FOUND GUILTY, WE THEN MOVE TO A SENTENCING
4 PHASE.

5 IN SOUTH CAROLINA IN THE SENTENCING PHASE, AS IN MOST
6 STATES, THE JURY DECIDES PENALTY, WHETHER THAT BE LIFE
7 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. AND AS A PART
8 OF THAT PHASE, YOU WILL BE ALLOWED TO CONSIDER WHAT WE
9 CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
10 CIRCUMSTANCES. I'M GOING TO EXPLAIN TO YOU WHAT BOTH OF
11 THOSE ARE.

12 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
13 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
14 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE
15 THE OFFENSE OF MURDER.

16 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
17 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
18 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
19 COMMISSION OF A CRIME.

20 AND SOME EXAMPLES WOULD BE MURDER OF A CHILD UNDER
21 AGE 11, DRUG TRAFFICKING, KILLING BY POISON, OR BURGLARY
22 IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.

23 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
24 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
25 STATE LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND

1 MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE
2 OF MORAL CULPABILITY OR RESPONSIBILITY.

3 AND AGAIN, I'M GOING TO GIVE YOU SOME EXAMPLES.
4 MENTAL RETARDATION AT THE TIME OF THE CRIME, THE DEFENDANT
5 WAS BELOW THE AGE OF 18 AT THE TIME OF THE CRIME, THE
6 DEFENDANT WAS AN ACCOMPLICE AND THERE PARTICIPATION WAS
7 RELATIVELY MINOR OR THAT THE DEFENDANT WAS OPERATING UNDER
8 DURESS OR COERCION OR DOMINATION -- DURESS OR
9 DOMINATION -- I APOLOGIZE, I MISSTATED THAT.

10 AGAIN, THESE ARE JUST EXAMPLES TO GIVE YOU A POINT OF
11 REFERENCE BECAUSE THERE IS NO FINITE LIST OF MITIGATING
12 FACTORS.

13 IF YOU ARE A JUROR IN THAT SITUATION, AND I'M
14 REFERRING TO THE SENTENCING PHASE OF THE TRIAL, COULD YOU,
15 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
16 THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
17 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
18 AT THE CLOSE OF THE CASE -- THAT APPLIES AT THE CLOSE OF
19 THE CASE RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
20 POSSIBILITY OF PAROLE?

21 A YES.

22 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES,
23 REFERRING TO THE PENALTY PHASE AND THE PARTICULAR FACTS
24 AND CIRCUMSTANCES OF THE CASE INCLUDING CONSIDERING
25 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT

1 I WOULD INSTRUCT RETURN A SENTENCE OF DEATH WHICH IN THIS
2 STATE IS BY ELECTROCUTION OR LETHAL INJECTION?

3 A YES.

4 Q AND AS WE HAVE ALREADY EXPLAINED, THIS JURY WILL BE
5 SEQUESTERED. THAT MEANS HOUSED IN A MOTEL DURING THE
6 TRIAL FOR APPROXIMATELY 10 DAYS. EXCEPT FOR PERSONAL
7 INCONVENIENCE, WHICH WE PRESUME THERE WILL BE PERSONAL
8 INCONVENIENCE BOTH TO YOUR FAMILY LIFE AND TO YOUR
9 EMPLOYMENT, WOULD THIS POSE A SERIOUS DANGER TO YOUR
10 HEALTH OR WELL-BEING?

11 A NO.

12 Q NOW MA'AM, IN EVERY CASE A JURY RETURNS A VERDICT.
13 AND USUALLY THAT VERDICT FORM IS ONLY SIGNED BY THE
14 FOREPERSON. BUT IN A CAPITAL CASE STATE LAW REQUIRES THAT
15 EVERY JUROR SIGN THE VERDICT FORM WHETHER THAT BE FOR A
16 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
17 DEATH.

18 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
19 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
20 DEATH?

21 A YES.

22 THE COURT: ANY QUESTIONS FROM THE STATE?

23 MR. HEMBREE: NO, YOUR HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MR. KELLY: NO, MA'AM.

1 THE COURT: ANY EXCEPTIONS TO THE JUROR BEING
2 QUALIFIED?

3 MR. HEMBREE: NO, YOUR HONOR. MRS. CANNON IS
4 QUALIFIED.

5 THE COURT: ANY FROM THE DEFENSE?

6 MR. KELLY: NO, MA'AM.

7 THE COURT: MA'AM, YOU BEEN FOUND QUALIFIED AS A
8 MEMBER OF THIS PANEL. AND AS I EXPLAINED ON TUESDAY,
9 WHAT WE'RE DOING THROUGH THIS QUESTIONING PROCESS IS
10 DETERMINING A POOL OF QUALIFIED JURORS FROM WHOM WE
11 WILL SELECT THE ACTUAL PANEL. WE WILL DO THAT ON
12 MONDAY MORNING AT 9:30.

13 I NEED FOR YOU TO RETURN AT THAT TIME PACKED FOR
14 TWO WEEKS. I KNOW IT'S DAUNTING. OF COURSE, YOU
15 DON'T HAVE TO BRING YOUR SUITCASE UP HERE.

16 JUROR: THIS IS NOT A -- I MEAN -- THERE'S STILL
17 A CHANCE, THOUGH, THAT I CAN GET ELIMINATED; RIGHT?

18 THE COURT: YEAH.

19 JUROR: OKAY.

20 THE COURT: BECAUSE THEY STILL HAVE STRIKES TO
21 EXERCISE AND OTHER THINGS. WHAT WE DO IS WE USE WHAT
22 WE CALL A MAGIC NUMBER WHICH IT TAKES INTO ACCOUNT
23 THE ACTUAL AMOUNT OF JURORS AND THE STRIKES THAT CAN
24 BE EXERCISED. SO WE PROBABLY WILL GO UP TO ABOUT 35
25 OR 45. WE HAVEN'T DECIDED YET.

1 SO IT WILL BE ABOUT 35 OR 45 OF YOU HERE ON
2 MONDAY. AND FROM THAT LIST THE STATE AND THE DEFENSE
3 WILL SELECT THE JURY.

4 JUROR: MONDAY MORNING.

5 THE COURT: MONDAY MORNING AT 9:30. AND AGAIN,
6 AS I INDICATED, I NEED YOU TO PACK FOR TWO WEEKS
7 BECAUSE IF YOU'RE SELECTED, YOU WON'T BE ABLE TO GO
8 BACK HOME. AND WE WILL MAKE ARRANGEMENTS FOR YOU,
9 HOWEVER, TO GET CHECKED INTO THE HOTEL AND GET
10 SITUATED.

11 DURING THE BREAK I NEED YOU TO ABIDE BY THE
12 COURT'S INSTRUCTIONS AND PLEASE DON'T ALLOW YOURSELF
13 TO BE EXPOSED TO ANY MEDIA ACCOUNTS OF THIS CASE
14 WHATSOEVER.

15 ALSO PLEASE DON'T SPECULATE ABOUT WHAT YOU THINK
16 THE CASE MAY BE ABOUT OR COULD BE ABOUT. AND ALSO
17 PLEASE DON'T ALLOW ANYBODY TO DISCUSS THIS WITH YOU.
18 IF SOMEBODY SHOULD APPROACH YOU AND TRY TO TALK ABOUT
19 IT, TELL THEM, I CAN'T TALK ABOUT THIS, I'D BE
20 VIOLATING THE JUDGE'S ORDER.

21 AND IF SOMEBODY SHOULD PERSIST, YOU KNOW, LET US
22 KNOW SO THAT WE CAN MAKE SURE THAT WE TAKE
23 APPROPRIATE ACTION. WE APPRECIATE YOUR TIME. AND
24 WE'LL SEE YOU--

25 JUROR: HOW ABOUT OUR CAR IF WE DRIVE...

1 THE COURT: YOU KNOW, WHAT WE WILL PROBABLY DO
2 IS ALLOW YOU TO TAKE THOSE OVER TO THE HOTEL, BUT
3 AFTER THAT YOU WILL BE IN A VAN WHERE WE WILL
4 TRANSPORT YOU. OKAY? WE WILL SEE YOU ON MONDAY AT
5 930. THANK YOU.

6 (JUROR LEFT THE COURTROOM.)

7 THE COURT: WE'LL TAKE A FIVE MINUTE BREAK.

8 (WHEREUPON A RECESS WAS HAD.)

9 THE COURT: PLEASE BRING LARRY DRAKE.

10 (JUROR ENTERED THE COURTROOM.)

11 LARRY DRAKE, BLACK MALE, TESTIFIED AS
12 FOLLOWS:

13 BY THE COURT:

14 Q YES, SIR. RIGHT THERE. SIR, HOW YOU DOING?

15 A FINE. AND YOU?

16 Q DOING FINE. IF YOU WOULD TELL US YOUR NAME FOR THE
17 RECORD.

18 A LARRY DRAKE.

19 Q AND YOU ARE JUROR 82; IS THAT RIGHT?

20 A CORRECT.

21 Q AND SIR, I WOULD REMIND YOU THAT YOU'RE STILL UNDER
22 OATH. DO YOU UNDERSTAND?

23 A YES, I DO.

24 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS ABOUT

25 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY? IN

1 OTHER WORDS, HAVE YOU SEEN ANYTHING ON TV, WATCHED,
2 LISTENED TO ANYTHING ON THE RADIO, OR READ ANY NEWSPAPER
3 ACCOUNTS SINCE TUESDAY AFTER 6:00?

4 A WELL, I HAD HEARD IT COME ON, BUT I TURNED IT OFF.

5 Q OKAY. SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS.
6 WE'RE NOT TRYING TO INVADE YOUR PRIVACY. WE KNOW SOME OF
7 THESE QUESTIONS ARE VERY PERSONAL. THERE ARE NO RULES TO
8 THIS PROCEDURE.

9 STATE LAW REQUIRES THAT I ASK THESE QUESTIONS AND
10 THAT WE TALK TO EACH JUROR IN A CASE OF THIS TYPE
11 INDIVIDUALLY. THE ONLY -- LIKE I SAID, THERE ARE NO RULES
12 EXCEPT THAT WE JUST -- THE ONLY THING WE ASK IS THAT YOU
13 BE COMPLETELY HONEST WITH US AND YOU ANSWER THE QUESTIONS
14 OPENLY AND FULLY.

15 THERE ARE NO RIGHT OR WRONG ANSWERS. I NEED TO
16 EMPHASIZE THAT. WE KNOW THIS IS A LITTLE NERVE WRACKING
17 AND DISCONCERTING BECAUSE MOST PEOPLE DON'T DO THIS EVERY
18 DAY.

19 AND SO WE'RE USED TO THE STRESS THAT MOST PEOPLE ARE
20 NOT. SO I JUST WANT YOU TO -- PUT YOU AT EASE AND TAKE A
21 DEEP BREATH AND TRY NOT TO BE NERVOUS BECAUSE THERE ARE NO
22 RIGHT OR WRONG ANSWERS.

23 A OKAY.

24 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
25 BUT THE MERE FACT THAT WE TALK ABOUT A PENALTY DOES NOT

1 INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
2 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

3 A YES, I DO.

4 Q SIR, IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
5 LISTEN TO THE LAW?

6 A YES.

7 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
8 INSTRUCT YOU?

9 A YES, I COULD.

10 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
11 MAY DISAGREE WITH WHAT I TELL YOU THE LAW IS?

12 A YES, I THINK I WILL.

13 Q OKAY. AND I NEED YOU TO -- UNFORTUNATELY I HAVE TO
14 HAVE YES OR NO ANSWERS TO EVERY QUESTION, SO I'M GOING TO
15 ASK THAT QUESTION AGAIN. DO YOU THINK THAT YOU COULD
16 ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU EVEN THOUGH YOU
17 MAY DISAGREE WITH WHAT I TELL YOU THE LAW IS? AND AGAIN,
18 THERE ARE NO RIGHT OR WRONG ANSWERS.

19 A YES.

20 Q OKAY. SIR, COULD YOU DECIDE THIS CASE BASED SOLELY
21 ON THE EVIDENCE PRESENTED HERE IN THE COURTROOM FROM THE
22 LIPS OF SWORN WITNESSES AND THE OTHER EVIDENCE THAT IS
23 INTRODUCED AND THE LAW AS THE COURT WILL CHARGE AND
24 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN
25 ABOUT THIS CASE?

1 A YES.

2 Q SIR, PRIOR TO TUESDAY DID YOU -- WERE YOU EXPOSED TO
3 ANY MEDIA COVERAGE ABOUT THIS CASE?

4 A YES.

5 Q OKAY. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
6 TO, HAVE YOU FORMED ANY FIXED OPINION ABOUT THE FACTS IN
7 THIS CASE?

8 A NOT TO THE EXTENT I COULDN'T LISTEN TO ADDITIONAL
9 FACTS AND MAKE A DECISION ON FACTS THAT WERE PRESENTED.

10 Q SO WHAT YOU'RE TELLING ME IS YOU HAVE NOT FORMED A
11 FIXED OPINION. A FIXED OPINION IS WHEN YOU HAVE ALREADY
12 MADE UP YOUR MIND AND NOBODY CAN--

13 A NO, I HAVEN'T.

14 Q OKAY. SIR, HAVE YOU HAD AN OPPORTUNITY TO -- AND
15 ACTUALLY I NEED TO ASK ANOTHER QUESTION. IN A CRIMINAL
16 CASE THE STATE HAS THE BURDEN OF PROVING GUILT AND THEY
17 MUST MEET THAT BURDEN BY PROVING A DEFENDANT'S GUILT
18 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

19 A YES.

20 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO
21 BURDEN TO PROVE HIS INNOCENCE?

22 A YES.

23 Q SIR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE JUROR
24 TYPE FORM?

25 A YES.

1 Q AND DO YOU FEEL THAT YOU FIT INTO ANY OF THOSE
2 CATEGORIES OF JURORS?

3 A TYPE THREE.

4 Q OKAY. SIR, IF YOU WERE A JUROR IN A DEATH PENALTY
5 CASE AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER,
6 WE WOULD THEN MOVE TO WHAT WE CALL THE SENTENCING PHASE.
7 AND AS I EXPLAINED ON TUESDAY, THERE ARE TWO DIFFERENT
8 PHASES.

9 THERE'S A GUILT PHASE. AND IF THE DEFENDANT IS FOUND
10 GUILTY, WE THEN MOVE TO A SENTENCING PHASE WHERE THE JURY
11 ACTUALLY DETERMINES THE PENALTY, WHETHER THAT BE LIFE
12 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. DO YOU
13 UNDERSTAND?

14 A YES.

15 Q AND SIR, DURING THAT PHRASE YOU WOULD BE ALLOWED TO
16 CONSIDER WHAT WE CALL AGGRAVATING AND MITIGATING
17 CIRCUMSTANCES. AND I'M GOING TO DEFINE BOTH OF THOSE
18 TERMS FOR YOU SO THAT YOU UNDERSTAND WHAT WE'RE TALKING
19 ABOUT; OKAY?

20 A YES.

21 Q IF YOU WERE -- AGGRAVATING CIRCUMSTANCES ARE FACTS,
22 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE
23 HAS DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS
24 AGGRAVATE, THE OFFENSE OF MURDER.

25 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN

1 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
2 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
3 COMMISSION OF A CRIME.

4 AND SOME EXAMPLES ARE MURDER OF A CHILD UNDER THE AGE
5 OF 11, DRUG TRAFFICKING, KILLING BY POISON, OR BURGLARY IN
6 ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.

7 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
8 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATUTE
9 REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
10 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
11 MORAL CULPABILITY OR RESPONSIBILITY.

12 AND AGAIN, TO GIVE YOU A LIST OF EXAMPLES -- AND
13 AGAIN, THESE ARE JUST EXAMPLES. MENTAL RETARDATION AT THE
14 TIME OF THE CRIME, THE DEFENDANT WAS BELOW THE AGE OF 18
15 AT THE TIME OF THE CRIME, THE DEFENDANT WAS AN ACCOMPLICE
16 AND HIS OR HER PARTICIPATION WAS RELATIVELY MINOR, THE
17 DEFENDANT ACTED UNDER DURESS OR DOMINATION.

18 AGAIN, JUST LIKE WITH AGGRAVATING CIRCUMSTANCES,
19 THESE ARE ALL JUST EXAMPLES SO THAT YOU CAN KNOW WHAT
20 WE'RE TALKING ABOUT. THEY ARE BY NO MEANS THE ENTIRE
21 LIST. AS A MATTER OF FACT, THERE IS NO LIST -- DEFINITIVE
22 LIST OF MITIGATING CIRCUMSTANCES.

23 SIR, IF YOU WERE A JUROR IN THE SENTENCING PHASE,
24 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
25 CIRCUMSTANCES OF THE CASE, INCLUDING THE CONSIDERATION OF

1 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
2 I WOULD INSTRUCT YOU THAT APPLIED AT THE CLOSE OF THE CASE
3 RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
4 POSSIBILITY OF PAROLE?

5 A YES, I COULD.

6 Q COULD YOU UNDER THOSE SAME CIRCUMSTANCES, DEPENDING
7 UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE
8 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT AT THE
10 CONCLUSION OF THE CASE RETURN A SENTENCE OF DEATH WHICH IN
11 THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

12 A YES.

13 Q ALL RIGHT. SIR, AS I HAVE ALREADY EXPLAINED, THE
14 JURY IN THIS CASE WILL BE SEQUESTERED. THAT IS, THEY WILL
15 BE HOUSED IN A MOTEL DURING THE TRIAL FOR APPROXIMATELY 10
16 DAYS. WE ASSUME THAT'S INCONVENIENT. SO I NEED TO TELL
17 YOU THAT WE ALREADY -- THE LAW ALREADY PRESUMES THAT'S
18 GOING TO INCONVENIENCE YOU PERSONALLY AND IN TERMS OF YOUR
19 EMPLOYMENT.

20 BUT WHAT I -- THE QUESTION THAT I'D LIKE TO ASK IS
21 WOULD BEING IN A HOTEL FOR THE TWO WEEKS POSE A SERIOUS
22 DANGER TO YOUR HEALTH OR WELL-BEING? IN OTHER WORDS,
23 WOULD IT BE LIFE THREATENING TO YOU?

24 A NO.

25 Q OKAY. I KNOW WE USE A LOT OF WORDS. WE'RE WORDY. I

1 THOUGHT ABOUT THAT FOR A MOMENT. I SAID, WHAT I'M REALLY
2 ASKING YOU IS IS IT LIFE THREATENING, SO I WILL REDUCE IT
3 TO THAT.

4 SIR, IN A CASE OF THIS TYPE, BECAUSE THE JURY DECIDES
5 SENTENCE, WHETHER THAT BE LIFE WITHOUT THE POSSIBILITY OF
6 PAROLE OR DEATH, THE LAW REQUIRES THAT EACH JUROR SIGN THE
7 VERDICT FORM. SO ON EACH VERDICT FORM THERE IS LINES ONE
8 THROUGH 12 AND EACH JUROR IS REQUIRED TO SIGN THEIR NAME.

9 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
10 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
11 DEATH?

12 A YES.

13 Q OKAY.

14 THE COURT: ANY QUESTIONS FROM THE STATE?

15 MR. HUMPHRIES: DON'T HAVE ANY QUESTIONS FOR
16 MR. DRAKE.

17 THE COURT: ANY FROM THE DEFENSE?

18 MR. KELLY: YES, MA'AM.

19 THE COURT: YOU MAY PROCEED. SIR, IF YOU GIVE
20 MR. KELLY YOUR ATTENTION, BUT SPEAK LOUDLY FOR US SO
21 WE CAN HEAR YOUR ANSWERS. THANK YOU.

22 BY MR. KELLY:

23 Q DR. DRAKE, I'M GERALD KELLY. I WANT TO ASK YOU A FEW
24 QUESTIONS; OKAY?

25 A OKAY.

1 Q I'M LOOKING AT YOUR JUROR QUESTIONNAIRE AND I'M
2 REFERRING TO QUESTION NUMBER 13 THAT HAS TO DO WITH JOB
3 TITLE AND DUTIES. AND I CAN'T READ -- OR THERE'S NOT ON
4 MY PAGE ALL OF THE INFORMATION. LET ME READ WHAT'S DOWN
5 HERE AND THEN MAYBE YOU CAN TELL ME WHAT THE REST OF IT
6 SAYS; OKAY?

7 A OKAY.

8 Q OR WHAT YOU WROTE. YOU SAID TEACH RESOURCE AND
9 TRANSITION CLASSES TO SPECIAL EDUCATION STUDENTS AND
10 GENERAL HEALTH CLASSES FOR ALL STUDENTS, ALSO SUPERVISE
11 AND MONITOR STUDENTS FROM...

12 A OH, THAT'S -- I WORK AT GEORGETOWN MARINE INSTITUTE--

13 Q YES.

14 A WE HAVE A LIT--

15 COURT REPORTER: I CAN'T HEAR, JUDGE.

16 THE COURT: SIR, I NEED YOU TO REPEAT THE LAST
17 PART OF YOUR ANSWER SO THE COURT REPORTER CAN HEAR
18 YOU.

19 A OKAY. I WORK AT GEORGETOWN MARINE INSTITUTE AND WE
20 DEAL WITH JUVENILES SENT TO US BY THE STATE, AND CURRENTLY
21 WE'RE DEALING WITH SIX TO NINE MONTHS PROGRAM, AND IT'S
22 RESIDENT -- THEY GET REGULAR SCHOOL CLASSES AND VARIOUS
23 OTHER ACTIVITIES WHILE THEY'RE THERE AND WE ALSO KEEP THEM
24 IN SUPERVISION AT ALL TIMES.

25 Q AND MR. DRAKE, DOES THAT MEAN THAT THESE JUVENILES

1 WOULD BE SENT THROUGH THE FAMILY COURT TO YOUR INSTITUTE?

2 A I THINK SOME OF THEM ARE.

3 Q AND THAT WOULD BE BECAUSE SOME OF THEM HAVE COME
4 THERE SINCE THEY HAVE COMMITTED -- I'LL JUST SAY CRIMES OR
5 MISBEHAVED, AND THROUGH THE FAMILY COURT THEY COME THERE
6 IN ORDER TO -- TO BE THERE, TO LEARN, TO BE DISCIPLINED,
7 AND TO BE EDUCATED? IS THAT WHAT THAT IS?

8 A AS FAR AS I KNOW YES, IT IS.

9 Q DO YOU HAVE -- DO YOU HAVE UNIFORMED OFFICERS THERE?

10 A NO, WE DON'T.

11 Q I NOTICE THAT YOU SAID IN RESPONSE TO THE QUESTION 15
12 WHEN YOU WERE ASKED DO YOU HAVE ANY FRIENDS OR RELATIVES
13 IN LAW ENFORCEMENT YOU SAID, YES, YOURSELF, AND THAT YOU
14 HAD BEEN A SECURITY GUARD?

15 A I WORK IN SECURITY GUARD AND CAPACITY SEVERAL TIMES.

16 Q HOW LONG AGO WAS THAT?

17 A LAST TIME WAS '87, '88, ATLANTA, GEORGIA.

18 Q HOW LONG DID YOU WORK IN THE CAPACITY OF SECURITY OR
19 HOW MANY YEARS?

20 A WELL, LAST TIME PROBABLY 18 TO 24 MONTHS, SOMEWHERE
21 IN THE AREA.

22 Q OKAY. WERE YOU EVER A POLICE OFFICER YOURSELF?

23 A NO, I WASN'T.

24 Q WERE YOU A LICENSED TO CARRY A WEAPON DURING THE TIME
25 YOU WERE A SECURITY GUARD?

1 A YES, I DID, IN GEORGIA.

2 Q OKAY. DID YOU EVER MAKE ANY ARRESTS DURING THE TIME
3 YOU WERE A SECURITY GUARD?

4 A NO, I DIDN'T.

5 Q YOU SAID THAT YOU HAD HEARD NEWS OR MEDIA INFORMATION
6 ABOUT THE CASE; CORRECT?

7 A YES.

8 Q OKAY. AND DID YOU SAY THAT YOU'RE ABLE TO DISABUSE
9 YOUR MIND OF THAT?

10 A YES.

11 Q AND TELL -- YOU REALIZE THAT NONE OF THAT IS
12 EVIDENCE. IT'S NEVER BEEN PUT TO THE TEST OF EVIDENCE.

13 A THAT'S RIGHT.

14 Q CORRECT?

15 A YES.

16 Q OKAY. AND WOULD YOU BE ABLE TO LEAVE IT OUTSIDE THE
17 DOOR WHEN YOU WALKED INTO THIS ROOM?

18 A YES.

19 MR. KELLY: I HAVE NO FURTHER QUESTIONS.

20 THE COURT: ANY EXCEPTION TO THE JUROR BEING
21 QUALIFIED--

22 MR. HUMPHRIES: NO, YOUR HONOR.

23 THE COURT: -- FROM THE STATE? FROM THE
24 DEFENSE.

25 MR. KELLY: NO, MA'AM.

1 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED
2 WHICH MEANS AS I EXPLAINED ON TUESDAY, WE ARE IN THE
3 PROCESS OF DETERMINING A QUALIFIED POOL OF JURORS
4 FROM WHICH WE WILL PICK THE ACTUAL JURY PANEL, AND WE
5 WILL DO THAT ON MONDAY MORNING AT 9:30.

6 SO I NEED FOR YOU TO RETURN ON MONDAY AT
7 9:30 PACKED FOR TWO WEEKS IN THE EVENT THAT YOU'RE
8 SELECTED FOR THE JURY. OF COURSE, YOU DON'T HAVE TO
9 BRING YOUR LUGGAGE UP HERE. YOU CAN LEAVE IT IN YOUR
10 CAR, AND WE WILL ARRANGE AT AN APPROPRIATE TIME FOR
11 YOU TO GET SETTLED IN AT THE HOTEL.

12 AND DURING THIS BREAK, PLEASE DO NOT DISCUSS
13 THIS CASE WITH ANYONE. DON'T SPECULATE ABOUT WHAT
14 YOU THINK IT COULD BE ABOUT OR MAY BE ABOUT. IF
15 ANYBODY TRIES TO TALK TO YOU, SIMPLY TELL THEM, I
16 CAN'T TALK ABOUT THIS, THE COURT HAS RESTRICTED ME
17 AND I DON'T WANT TO BREAK ANY OF THE RULES.

18 ALSO PLEASE DON'T EXPOSE YOURSELF TO ANY MEDIA
19 ACCOUNTS ABOUT THIS CASE, THAT INCLUDES ANYTHING THAT
20 COULD BE IN ANY FORM OF THE MEDIA INCLUDING THE
21 INTERNET. OKAY? WE'LL SEE YOU ON MONDAY MORNING.
22 THANK YOU FOR YOUR TIME.

23 JUROR: 9:30.

24 THE COURT: 9:30.

25 JUROR: OKAY.

1 THE COURT: OKAY.

2 JUROR: EVERYBODY SHOW UP EACH OTHER -- RIGHT?

3 THE COURT: THAT'S CORRECT.

4 (JUROR LEFT THE COURTROOM.)

5 THE COURT: KYLON MIDDLETON, 225.

6 (JUROR ENTERED THE COURTROOM.)

7 KYLON MIDDLETON, BLACK MALE, TESTIFIED
8 AS FOLLOWS:

9 BY THE COURT:

10 Q HOW ARE YOU SIR?

11 A WONDERFUL. HOW ARE YOU?

12 Q DOING FINE. WE APPRECIATE YOUR TIME AND YOUR
13 PATIENCE. IF YOU COULD TURN AROUND A LITTLE FOR ME AND
14 FACE THE MICROPHONE. IF YOU COULD SPEAK LOUDLY AND
15 CLEARLY FOR US. AND PLEASE STATE YOUR NAME FOR THE
16 RECORD.

17 A KYLON JEROME MIDDLETON, JUROR 225.

18 Q THANK YOU. AND SIR, I WOULD REMIND YOU THAT YOU'RE
19 STILL UNDER OATH. DO YOU UNDERSTAND?

20 A YES, MA'AM.

21 Q SIR, HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS
22 ABOUT THIS CASE SINCE THE COURT'S INSTRUCTIONS?

23 A NO.

24 Q SIR, I'M GOING TO ASK YOU SOME QUESTIONS. I KNOW
25 THEY MAY SEEM INTRUSIVE, BUT IT'S NOT OUR INTENT TO INVADE

1 YOUR PRIVACY. STATE LAW REQUIRES THAT WE ASK THESE
2 QUESTIONS AND THEY ALSO REQUIRE THAT WE TALK TO EACH JUROR
3 INDIVIDUALLY IN A CASE OF THIS TYPE.

4 WHAT WE NEED FOR YOU TO DO IS TO ANSWER US AS OPENLY
5 AND HONESTLY AND FULLY AS POSSIBLE. THERE ARE NO RIGHT OR
6 WRONG ANSWERS. IF YOU DO NOT UNDERSTAND A QUESTION,
7 PLEASE LET US KNOW. OKAY?

8 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY,
9 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
10 INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
11 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

12 A I DO.

13 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
14 YOU LISTEN TO THE LAW?

15 A YES.

16 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
17 INSTRUCT?

18 A I COULD.

19 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
20 MAY DISAGREE WITH ME ABOUT WHAT YOU THINK THE LAW OUGHT TO
21 BE OR SHOULD BE?

22 A CERTAINLY.

23 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
24 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
25 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS

1 CASE?

2 A ABSOLUTELY.

3 Q HAVE YOU SEEN ANY MEDIA ACCOUNTS ABOUT THIS CASE?

4 A HAVE NOT.

5 Q OKAY. I MEAN PRIOR TO...

6 A HAVE NOT.

7 Q OKAY. IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
8 PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
9 UNDERSTAND THAT?

10 A YES.

11 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
12 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

13 A CERTAINLY.

14 Q HAVE YOU READ THE -- REVIEWED THE JUROR TYPE SHEET?

15 A YES, MA'AM.

16 Q AND WHICH CATEGORY WOULD YOU FEEL THAT YOU WOULD FALL
17 INTO?

18 A CATEGORY ONE.

19 Q OKAY.

20 THE COURT: ANY QUESTIONS FROM THE STATE?

21 MR. HUMPHRIES: NOT A ONE.

22 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

23 MR. KELLY: GO AHEAD.

24 THE COURT: IF YOU WOULD GIVE MR. DIGGS YOUR
25 ATTENTION.

1 BY MR. DIGGS:

2 Q GOOD AFTERNOON. HOW ARE YOU?

3 A WONDERFUL. HOW ARE YOU?

4 Q DOING GOOD. IS IT YOUR FIRM BELIEF THAT YOU WOULD
5 NEVER CONSIDER ANYTHING BUT LIFE?

6 A SAY THAT AGAIN.

7 Q AS A PUNISHMENT?

8 A SAY THAT AGAIN.

9 Q IS IT A CONFIRMED BELIEF OF YOURS THAT YOU WOULD
10 NEVER CONSIDER DEATH AS A PUNISHMENT?

11 A THAT IS MY ABSOLUTE BELIEF.

12 Q OKAY. NO ALTERNATIVE?

13 A NO ALTERNATIVES.

14 Q THAT'S ALL WE HAVE. THANK YOU.

15 THE COURT: YOU'RE WELCOME. ANY EXCEPTION TO
16 THE JUROR BEING EXCUSED FROM THE STATE?

17 MR. HUMPHRIES: NOTHING.

18 THE COURT: FROM THE DEFENSE?

19 MR. DIGGS: NONE, YOUR HONOR.

20 THE COURT: SIR, YOU'RE EXCUSED. THANK YOU.
21 HAVE A WONDERFUL DAY.

22 JUROR: DON'T HAVE TO COME BACK?

23 THE COURT: YOU'RE DONE.

24 (JUROR LEFT THE COURTROOM.)

25 THE COURT: JOAN GRECO, 125.

1 (JUROR ENTERED THE COURTROOM.)

2 JOAN GRECO, WHITE FEMALE, TESTIFIED AS
3 FOLLOWS:

4 BY THE COURT:

5 Q HI. HOW ARE YOU, MA'AM?

6 A HI, I HAVE A NOTE TO GIVE YOU. THIS IS FROM MY
7 DOCTOR.

8 THE COURT: WOULD COUNSEL APPROACH FOR ME,
9 PLEASE?

10 (BENCH CONFERENCE WAS HELD.)

11 THE COURT: MA'AM, COULD YOU GO WITH THE BAILIFF
12 FOR ME FOR A MOMENT? I NEED TO DISCUSS SOME MATTERS
13 OF LAW WITH THE ATTORNEYS.

14 (JUROR LEFT THE COURTROOM.)

15 THE COURT: I NEED HER TO BE IN THE JURY ROOM
16 WHERE SHE CANNOT HEAR WHAT WE ARE SAYING. YOU PUT
17 HER BACK IN THE JURY ROOM? I HAVE TO ENSURE SHE
18 CAN'T HEAR WHAT WE'RE SAYING.

19 I KNOW WHAT MY PERSONAL OPINION IS, BUT AS A
20 VERY WISE MAN ONCE SAID, SILENT CAN NEVER BE
21 MISQUOTED, IT CAN ONLY BE MISINTERPRETED, SO I'M JUST
22 GOING TO KEEP MY MOUTH SHUT. WHAT DO Y'ALL WANT?

23 MR. HUMPHRIES: I--

24 THE COURT: I MEAN, I KNOW PEOPLE THAT FUNCTION
25 EVERY DAY WITH HYPERTENSION. I DON'T THINK IT'S LIFE

1 THREATENING.

2 MR. HUMPHRIES: I THINK AT LEAST GO THROUGH THE
3 VOIR DIRE.

4 THE COURT: I DON'T THINK IT'S LIFE THREATENING.
5 I MEAN, IF SHE'S TAKING HER MEDS AS SHE SHOULD.

6 MR. HUMPHRIES: NO. AND THE TRUTH OF THE MATTER
7 IS THERE'S GOING TO BE SOME ANXIETY, BUT WHAT...

8 THE COURT: MY BLOOD PRESSURE IS UP TODAY
9 PROBABLY. PROBABLY BEEN UP FOR THE LAST THREE DAYS.

10 MR. HUMPHRIES: WHAT THEY ARE GOING TO FIND IS
11 ONCE THEY ARE SEQUESTERED IN THE ROOM, THAT SEEMS TO
12 BRING IT DOWN BECAUSE THEY WILL BE IN THEIR OWN
13 SUPPORT GROUP.

14 THE COURT: MR. KELLY, WHAT DO YOU THINK?

15 MR. KELLY: MA'AM, SOME YEARS AGO DOWN IN JASPER
16 COUNTY I HAD A DEATH PENALTY, WE HAD A JUROR GO
17 INSANE ON THE -- ON THE PANEL.

18 THE COURT: WOW.

19 MR. KELLY: AND HAD TO BE TAKEN OUT OF THE
20 COURTHOUSE.

21 THE COURT: WAS THERE ANY INDICATION OF HER
22 MENTAL STATE PRIOR TO THE TRIAL BEGINNING?

23 MR. KELLY: NOT PRIOR TO THE TRIAL, BUT...

24 THE COURT: SUBSEQUENT Y'ALL FOUND OUT?

25 MR. KELLY: ONCE THEY WERE IMPANELLED AND ONCE

1 THEY WENT TO THE MOTEL, WE FOUND OUT THE NEXT
2 MORNING, CAME TO THE JUDGE'S ATTENTION THAT SHE --
3 HER BEHAVIOR HAD BEEN ODD TO THE EXTENT THAT SHE PUT
4 ON ALL THE CLOTHES THAT SHE BROUGHT WITH HER, AND
5 WHEN SHE WAS EXAMINED IT FOUND THAT SHE HAD --
6 ULTIMATELY SHE WAS COMMITTED.

7 SO WHAT I'M SAYING, MA'AM, IS THAT IT'S MY
8 OPINION THAT THE WOMAN IS IN POOR HEALTH, I'D RATHER
9 SEE HER GO THAN SUFFER.

10 *THE COURT:* YEAH, I -- I WILL BE FRANK. THERE
11 ARE FOLKS THAT, YOU KNOW, MY LAW CLERK SUFFERS WITH
12 HIGH BLOOD PRESSURE, AND LORD KNOWS THE STRESS WE'RE
13 UNDER EVERY DAY, SHE TAKES HER MEDICATION AND SHE'S
14 JUST FINE.

15 I -- MY ULTIMATE OPINION ABOUT THIS IS I --
16 MAYBE I'M JUST JADED, BUT TO SOME EXTENT I THINK IT'S
17 SUBTERFUGE QUITE FRANKLY, AND I -- EVERYBODY SUFFERS
18 FROM, YOU KNOW, EVERYBODY'S BODY IS DIFFERENT, AND I
19 AM INCLINED TO BELIEVE THAT THIS IS AN ATTEMPT SIMPLY
20 TO AVOID JURY SERVICE. THAT IS ANY GUT OPINION.

21 I MIGHT BE WRONG, BUT HOWEVER SHE WERE TO FALL
22 ILL, I'D FEEL HORRIBLE, YOU KNOW, WHICH IS ALWAYS A
23 POSSIBILITY, AND I CAN'T LOOK INTO THE FUTURE AND I
24 DON'T KNOW.

25 AND HER BLOOD PRESSURE MAY WELL BE ELEVATED

1 TODAY. I MEAN, YOU KNOW, ALL OF US ARE DIFFERENT AND
2 WE ALL RESPOND TO STRESSORS DIFFERENTLY.

3 MR. HEMBREE: JUDGE, AND I SNUCK OUT DURING MUCH
4 OF THE JURY EXCUSAL--

5 THE COURT: SHE DID NOT STAND UP. SHE DID NOT
6 STAND UP IN RESPONSE TO THE QUESTION ABOUT HEALTH.

7 MR. HEMBREE: HAD SHE SUBMITTED THAT LETTER THE
8 VERY FIRST DAY, HOW WOULD YOU HAVE TREATED IT?

9 THE COURT: IF SHE SUBMITTED IT THE VERY FIRST
10 DAY, I WOULD HAVE DEFERRED TO YOU ALL ABOUT WHAT YOU
11 THOUGHT ABOUT IT. I PROBABLY -- AND AGAIN, I'M
12 JADED. I GET EVERY EXCUSE UNDER THE SUN.

13 AND ABSENT SOMEBODY BEING HOSPITALIZED OR
14 INCAPACITATED BECAUSE, YOU KNOW, I USUALLY ASK MORE
15 QUESTIONS. YOU KNOW, FOLKS TELL ME THEY ARE
16 HYPERTENSIVE AND THEY HAVE HIGH BLOOD PRESSURE, BUT
17 THEY GO TO WORK EVERY DAY.

18 WELL, YOU KNOW, LIFE IS STRESSFUL. BEING IN
19 TRAFFIC IS STRESSFUL. YOU KNOW, SOME PEOPLE'S BLOOD
20 PRESSURE GOES UP IN RESPONSE TO TRAFFIC, BUT BY THE
21 SAME TOKEN IF SHE -- LIKE I SAID, IF SHE WERE TO GET
22 DEATHLY ILL, YOU KNOW, I'D FEEL HORRIBLE BECAUSE I'M
23 NOT WITHOUT EMPATHY, BUT I'M A LITTLE JADED.

24 MR. HUMPHRIES: SOMEONE COMES IN WITH A DOCTOR
25 DOCUMENTED ANXIETY DISORDER.

1 THE COURT: YEAH, BUT HE HASN'T INDICATED HE
2 PRESCRIBED ANY MEDICATION FOR ANXIETY. I MEAN, LIFE
3 -- YOU KNOW, I HAVE ANXIETY --

4 MR. HUMPHRIES: SHE'S ANXIOUS.

5 THE COURT: -- DURING THE COURSE OF THE DAY AT
6 ANY GIVEN TIME.

7 MR. KELLY: MA'AM, WE'D BE HAPPY TO EXAMINE HER
8 IF YOU WANT...

9 THE COURT: YEAH, I WAS THINKING I MIGHT WANT TO
10 ASK HER -- I DON'T KNOW.

11 MR. HUMPHRIES: SHE MIGHT GET KNOCKED OUT OF HER
12 TYPES.

13 THE COURT: SHE MIGHT BE. I'M JUST CONCERNED
14 THAT SHE DIDN'T MENTION THIS DURING GENERAL JURY
15 QUALIFICATION BECAUSE EVERYBODY THAT REMOTELY HAD A
16 PROBLEM STOOD UP. I MEAN, IT WAS ALMOST THE WHOLE
17 PANEL.

18 MR. KELLY: QUESTION WHY SHE DIDN'T--

19 THE COURT: WHY DON'T WE DO THAT.

20 MR. DIGGS: FIRST TIME IT HAPPENED IN HER LIFE.

21 THE COURT: DOES SHE WORK EVERY DAY. WHAT IS ON
22 HER JURY QUESTIONNAIRE.

23 MR. HEMBREE: SHE'S RETIRED.

24 MR. HUMPHRIES: SHE'S RETIRED.

25 THE COURT: LUCKY.

1 MR. HUMPHRIES: SHE USED TO BE A CONTROLLER AND
2 OFFICE MANAGER THEN, SO SHE DEALT WITH SOME STRESS.
3 HAD FOUR KIDS.

4 THE COURT: THAT'S STRESSFUL, TOO.

5 MR. HUMPHRIES: WE MIGHT FIND OUT.

6 THE COURT: YOU KNOW, AND UNFORTUNATELY I HATE
7 TO REALLY EVEN CONSIDER THIS, BUT YOU KNOW, IF YOU'RE
8 CLOSE ENOUGH TO YOUR DOCTOR, HE'LL WRITE WHATEVER
9 YOUR ASK. THAT'S THE REALITY OF IT.

10 YOU KNOW, PEOPLE CALL THEIR DOCTORS ALL THE TIME
11 AND SAY, I DON'T WANT TO SERVE ON JURY DUTY. THEY
12 SAY, I WILL WRITE YOU A LETTER. I MEAN, THAT HAPPENS
13 ALL THE TIME.

14 I -- YOU KNOW, AND IT'S NO REFLECTION ON THE
15 DOCTOR. I THINK THE DOCTOR IS ALMOST DUTY BOUND, YOU
16 KNOW, IF YOU HAVE A PATIENT THAT CALLS YOU UP AND YOU
17 DOCUMENT IT IN YOUR OFFICE NOTES, OR YOUR NURSE, YOU
18 KNOW, IF THE NURSE IS ANSWERING YOUR TELEPHONE AND
19 SOMEBODY CALLS UP AND SAYS, I AM ON JURY DUTY, I'M
20 FEELING ILL, I NEED AN EXCUSE, AND YOU DON'T WRITE IT
21 AND SOMETHING LATER THEN HAPPENS, YOU KNOW, THAT'S A
22 MALPRACTICE ISSUE FOR THEM.

23 SO I THINK OUT OF AN ABUNDANCE OF CAUTION IF YOU
24 HAVE A PATIENT, AND YOU -- ESPECIALLY IF YOU HAVE A
25 LONG-STANDING RELATIONSHIP WITH THEM, YOU'RE GOING TO

1 DEFER TO WHAT THEY TELL YOU.

2 IF I CALL MY DOCTOR TODAY AND SAID, HEY, LISTEN
3 I'M FEELING REALLY, REALLY BAD, WELL, THEY'RE GOING
4 TO TAKE THAT MATTER SERIOUSLY BECAUSE FIRST, I DON'T
5 EVER CALL, AND IF I CALL, I'M REALLY, REALLY, REALLY
6 SICK.

7 AND SO I ASSUME THAT MOST DOCTORS FEEL THE SAME
8 WAY ABOUT THEIR PATIENTS. THEY FIGURE THAT WHAT THEY
9 ARE REPRESENTING TO THEM IS ACCURATE AND IS CORRECT
10 AND THAT THEY, OF COURSE, MORE FOR LIABILITY REASONS
11 THAN ANYTHING ELSE WILL PROVIDE THEM WITH THE EXCUSE
12 THEY REQUEST OUT OF AN ABUNDANCE OF CAUTION.

13 SO WHY DON'T WE ASK HER A FEW MORE QUESTIONS
14 THEN AND GO THROUGH A FEW MORE QUESTIONS AND LET'S
15 SEE WHERE WE STAND, AND THEN WE'LL MAKE A DECISION
16 AFTER THAT. IF YOU COULD GET HER FOR ME, PLEASE.
17 THANK YOU.

18 (JUROR ENTERED THE COURTROOM.)

19 BY THE COURT:

20 Q HI MA'AM. I'M CURIOUS, AND I HAVE A FEW QUESTIONS.
21 I READ THE LETTER THAT YOUR DOCTOR HAS PROVIDED, AND I'M
22 WONDERING -- DURING GENERAL JURY QUALIFICATION WE ASKED
23 THE QUESTION IF YOU FEEL THAT YOU'RE PHYSICALLY AND
24 MENTALLY ABLE TO RENDER SERVICE, AND I'M WONDERING WHY YOU
25 DID NOT STAND IN RESPONSE TO THAT QUESTION, OR IF YOU DID,

1 MAYBE YOU DID AND I JUST DON'T REMEMBER.

2 A WELL, TRUTHFULLY I HAD NO IDEA WHAT THIS CASE WAS
3 GOING TO BE ABOUT WHEN I CAME TUESDAY. AND IT WASN'T
4 UNTIL I WAS HERE THAT I REALIZED WHAT IT WAS ALL ABOUT.
5 AND I HAVEN'T BEEN -- I HAVE BEEN SO NERVOUS AND UPSET
6 SINCE THEN BECAUSE I REALLY -- IT'S VERY DISTURBING TO ME.

7 Q WHEN YOU SAY IT'S VERY DISTURBING TO YOU, IS THE
8 PROSPECT OF JURY SERVICE VERY DISTURBING TO YOU OR...

9 A OH, THE NATURE OF THE CRIME.

10 Q THE NATURE OF THE CRIME. DO YOU FEEL THAT THAT WOULD
11 IMPAIR YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

12 A YES, I DO.

13 Q OKAY.

14 A ESPECIALLY SINCE AFTER I WAS HERE ON TUESDAY, I
15 REALIZED THAT THE WOMAN THAT WAS MURDERED WAS A MEMBER OF
16 OUR PARISH. AND AT THE TIME OF THE CRIME THERE WAS A LOT
17 OF TALK AND GOSSIP GOING ON, YOU KNOW, AMONG THE MEMBERS
18 OF THE CHURCH, AND I DON'T FEEL I COULD HAVE AN UNBIASED
19 DECISION.

20 Q OKAY. YOU DON'T FEEL LIKE YOU COULD LAY ASIDE MY
21 IMPRESSIONS YOU MAY HAVE AND LISTEN FAIRLY AND IMPARTIALLY
22 TO THE EVIDENCE AND RENDER A VERDICT?

23 A NO, MA'AM.

24 Q LET ME ASK ANOTHER QUESTION. BASED ON THE JURY TYPE
25 SHEET THAT YOU REFERRED -- YOU REVIEWED IN THE JURY ROOM,

1 WHAT TYPE JUROR WOULD YOU SAY YOU ARE?

2 A TWO.

3 Q OKAY. AND IS THAT A FIXED OPINION OF YOURS THAT YOU
4 WOULD BE -- WHERE IT IS ALWAYS THE PUNISHMENT?

5 A YES.

6 Q OKAY. ARE THERE ANY ADDITIONAL QUESTIONS FROM THE
7 STATE?

8 MR. HUMPHRIES: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. KELLY: NO, MA'AM.

11 MR. DIGGS: NO.

12 THE COURT: ANY OBJECTION TO US EXCUSING THE
13 JUROR?

14 MR. HUMPHRIES: NONE, YOUR HONOR.

15 MR. KELLY: NO, MA'AM.

16 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
17 COURT'S THANKS. HAVE WONDERFUL DAY. AND I HOPE YOU
18 FEEL BETTER. WE WILL KEEP YOUR NOTE AS AN EXHIBIT TO
19 THE RECORD.

20 (JUROR LEFT THE COURTROOM.)

21 THE COURT: QUENNIE MURRAY, 237.

22 QUENNIE MURRAY, BLACK FEMALE, TESTIFIED AS
23 FOLLOWS:

24 BY THE COURT:

25 Q HOW ARE YOU MA'AM? DOING OKAY TODAY? LITTLE NERVOUS

1 TAKE A DEEP BREATH. IT WILL BE ALL RIGHT. COULD YOU MOVE
2 AS CLOSE TO THAT MICROPHONE FOR ME AS YOU CAN.

3 A OKAY.

4 Q OKAY. TELL ME YOUR NAME FOR THE RECORD.

5 A QUENNIE MURRAY.

6 Q OKAY. MRS. MURRAY, ARE YOU JUROR 237?

7 A YES.

8 Q OKAY. MRS. MURRAY, I WILL REMIND YOU YOU'RE STILL
9 UNDER OATH. DO YOU UNDERSTAND?

10 A YES.

11 Q I NEED YOU TO SPEAK UP JUST A LITTLE BIT MORE FOR ME.
12 YOU MIGHT NEED TO SPEAK DIRECTLY INTO THE MICROPHONE.

13 A OKAY.

14 Q MA'AM, WE'RE GOING TO ASK YOU SOME QUESTIONS. THEY
15 ARE NOT TO INVADE YOUR PRIVACY IN ANY WAY. THERE ARE NO
16 RIGHT OR WRONG ANSWERS. I NEED TO EMPHASIZE THAT. STATE
17 LAW REQUIRES THAT WE ASK THESE QUESTIONS AND IT ALSO
18 REQUIRES IN CASES OF THESE TYPES THAT WE TALK TO EACH
19 JUROR INDIVIDUALLY; OKAY?

20 A OKAY.

21 Q IF YOU DO NOT UNDERSTAND THE QUESTION, LET ME KNOW.
22 IF YOU NEED ME TO REPEAT A QUESTION, PLEASE LET ME KNOW.

23 A OKAY.

24 Q I NEED YOU TO TAKE A REAL DEEP BREATH BECAUSE I CAN
25 TELL YOU'RE STILL NERVOUS.

1 A OKAY.

2 Q OKAY. ALL RIGHT. YOU NEED SOME WATER OR ANYTHING?

3 A NO.

4 Q OKAY.

5 A NO THANKS.

6 Q OKAY. JUST WANTED TO MAKE SURE. AGAIN, THERE ARE NO
7 RIGHT OR WRONG ANSWERS. THE ONLY THING WE ASK OF YOU IS
8 THAT YOU ANSWER US COMPLETELY, FULLY, AND HONESTLY. OKAY?

9 A OKAY.

10 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT
11 PENALTIES, BUT THE MERE FACT THAT WE TALK ABOUT A PENALTY
12 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS
13 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

14 A YES.

15 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
16 LISTEN TO THE LAW?

17 A YES.

18 Q COULD YOU ACCEPT AND APPLY THE LAW AS INSTRUCTED BY
19 THE COURT?

20 A YES.

21 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
22 MAY DISAGREE WITH WHAT I TELL YOU THE LAW IS?

23 A YES.

24 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
25 EVIDENCE THAT WILL COME FROM THE LIPS OF SWORN WITNESSES

1 AND THE OTHER EVIDENCE THAT WILL BE INTRODUCED AND THE LAW
2 AND DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR
3 SEEN ABOUT THIS CASE IN THE MEDIA?

4 A YES.

5 Q OR OTHERWISE?

6 A YES.

7 Q HAVE YOU READ, HEARD, OR SEEN ANY COVERAGE, MEDIA
8 COVERAGE ABOUT THIS CASE PRIOR TO THE COURT'S INSTRUCTIONS
9 NOT TO DO THAT?

10 A NO.

11 Q OKAY. AND DID YOU -- HAVE YOU SEEN ANY MEDIA
12 ACCOUNTS ABOUT THE CASE PRIOR TO THE COURT GIVING YOU ITS
13 INSTRUCTION -- I MEAN AFTERWARD OR AFTER -- FROM TUESDAY
14 EVENING TILL NOW?

15 A SAW A LITTLE PIECE ON THE NEWS TUESDAY AFTERNOON.

16 Q OKAY. BUT WHEN YOU -- DID YOU FOLLOW THE COURT'S
17 INSTRUCTIONS AND NOT WATCH IT OR DID YOU WATCH IT?

18 A I DIDN'T WATCH IT. I JUST WALKED AWAY, WENT INTO THE
19 KITCHEN.

20 Q OKAY. IT'S HARD WHEN YOU LIVE WITH OTHER FOLKS WHEN
21 THE TV IS ON, I UNDERSTAND. OKAY. IN A CRIMINAL CASE THE
22 STATE HAS THE BURDEN OF PROVING GUILT. DO YOU UNDERSTAND?

23 A YES.

24 Q AND DO YOU UNDERSTAND THAT THEY MUST MEET THAT BURDEN
25 BEYOND A REASONABLE DOUBT?

1 A YES.

2 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
3 NO BURDEN TO PROVE HIS INNOCENCE?

4 A YES.

5 Q MA'AM, HAVE YOU HAD A CHANCE TO LOOK AT THE JUROR
6 TYPE SHEET THAT WE HAD IN THE JURY ROOM?

7 A YES.

8 Q AND IN WHICH CATEGORY DO YOU THINK YOU WOULD FALL?
9 DO YOU NEED A FEW MINUTES TO REVIEW IT AGAIN?

10 A YES.

11 Q OKAY. TAKE YOUR TIME AND LOOK AT IT FOR ME.

12 (WHEREUPON THERE WAS A PAUSE.)

13 BY THE COURT:

14 Q OKAY. HAVE YOU HAD A CHANCE TO REVIEW IT?

15 A YES.

16 Q OKAY. AND WHAT I -- WHAT CATEGORY DO YOU FEEL YOU
17 WOULD FALL INTO?

18 A TWO, TYPE TWO.

19 Q NUMBER TWO? AND IS THAT THE TYPE JUROR WHO ONCE THE
20 CRIME OF MURDER HAD BEEN PROVEN BY THE STATE AND
21 CONSIDERING PUNISHMENT, YOU FEEL THE DEATH PENALTY WOULD
22 ALWAYS BE AN APPROPRIATE PUNISHMENT?

23 A YES.

24 Q OKAY.

25 THE COURT: ANY QUESTIONS FROM THE STATE?

1 MR. HUMPHRIES: NONE FROM THE STATE.

2 THE COURT: ANY FROM THE DEFENSE?

3 MR. DIGGS: NO.

4 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
5 COURT'S THANKS. HAVE A GREAT DAY.

6 JUROR: THANK YOU.

7 (JUROR LEFT THE COURTROOM.)

8 THE COURT: WE'LL BE AT EASE UNTIL 4:00. THANK
9 YOU.

10 (WHEREUPON A RECESS WAS HAD.)

11 (JUROR ENTERED THE COURTROOM.)

12 ANTHONY FRYE, SR., WHITE MALE,

13 TESTIFIED AS FOLLOWS:

14 BY THE COURT:

15 Q HOW ARE YOU TODAY, SIR?

16 A I'M DOING FINE. .THANK YOU, MA'AM.

17 Q SIR, IF YOU COULD STATE YOUR NAME FOR THE RECORD.

18 A ANTHONY W FRYE.

19 Q OKAY. AND SIR, YOU ARE JUROR 105; IS THAT CORRECT?

20 A YES, I AM.

21 Q SIR, I REMIND YOU YOU'RE STILL UNDER OATH. AND IF
22 YOU COULD SPEAK AS LOUDLY AND CLEARLY AS YOU CAN FOR ME
23 AND ANSWER EACH QUESTION TO THE BEST OF YOUR ABILITY WITH
24 A YES OR A NO.

25 A OKAY.

1 Q SIR, HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
2 SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

3 A NO.

4 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE KNOW
5 SOME OF THESE QUESTIONS ARE INTENSELY PERSONAL. IT'S NOT
6 OUR INTENT TO INVADE YOUR PRIVACY. STATE LAW REQUIRES
7 THAT WE ASK THESE QUESTIONS. IT REQUIRES IN CASES OF THIS
8 TYPE THAT WE TALK TO EACH JUROR INDIVIDUALLY.

9 THE ONLY THING THAT WE ASK IS THAT YOU ANSWER US
10 OPENLY, HONESTLY, AND FULLY. THERE ARE NO RIGHT OR WRONG
11 ANSWERS. AND TAKE A DEEP BREATH BECAUSE SOME PEOPLE FIND
12 THIS PROCESS A LITTLE UNNERVING WITH ALL THESE EYES ON
13 THEM, SO WE UNDERSTAND AND WE WANT YOU TO BE AT EASE. AND
14 AGAIN, WE EMPHASIZE THAT THERE IS NO RIGHT OR WRONG
15 ANSWER.

16 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY,
17 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
18 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
19 INNOCENT IN THE LAW. DO YOU UNDERSTAND?

20 A YES.

21 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
22 YOU LISTEN TO THE LAW?

23 A YES.

24 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
25 INSTRUCT YOU?

1 A YES.

2 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
3 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

4 A YES.

5 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
6 EVIDENCE PRESENTED HERE IN THIS COURTROOM FROM THE LIPS OF
7 SWORN WITNESSES AND OTHER EVIDENCE AND THE LAW THAT THE
8 COURT WILL INSTRUCT AND DISREGARD ANYTHING THAT YOU MAY
9 HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

10 A YES.

11 Q SIR, HAVE YOU READ, SEEN, OR HEARD ANY MEDIA COVERAGE
12 ABOUT THIS CASE? AND I'M REFERRING PRIOR TO REPORTING FOR
13 JURY DUTY ON TUESDAY.

14 A VERY LITTLE.

15 Q OKAY. AS A RESULT OF WHAT YOU WERE EXPOSED TO, HAVE
16 YOU FORMED ANY FIXED OPINIONS ABOUT THIS CASE?

17 A NO.

18 Q SIR, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
19 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
20 DO YOU UNDERSTAND THAT?

21 A YES.

22 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
23 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

24 A YES, I DO.

25 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE JUROR TYPE

1 SHEET? YES, SIR, THAT WAS IN THE JURY ROOM.

2 A YES.

3 Q AND DO YOU FEEL THAT YOU FIT -- FALL INTO ANY OF
4 THESE CATEGORIES?

5 A TYPE THREE.

6 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
7 AND IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE
8 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. AND
9 AS I EXPLAINED ON TUESDAY, IN THIS TYPE CASE THERE ARE TWO
10 PHASES, A GUILT PHASE, AND IF THE JURY WERE TO FIND THE
11 DEFENDANT GUILTY OF MURDER, WE WOULD THEN MOVE TO A
12 PENALTY PHASE.

13 AND DURING THE PENALTY PHASE THE JURY ACTUALLY
14 DETERMINES WHAT PENALTY THE DEFENDANT WILL RECEIVE,
15 WHETHER THAT BE LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
16 DEATH. DO YOU UNDERSTAND?

17 A YES.

18 Q OH, THAT'S THAT VIDEO CONFERENCING THING. IT WAS
19 POPPING UP EARLIER. YEAH, WE CAN IGNORE IT. SOMEBODY
20 PROBABLY HIT IT BY ACCIDENT.

21 SIR, DURING THE PENALTY PHASE THE JURY IS ALLOWED TO
22 CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND
23 MITIGATING CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU
24 WHAT WE MEAN BY THOSE TERMS; OKAY?

25 A OKAY.

1 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
2 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
3 DECLARED BY STATUTE WOULD MAKE WORSE, THAT IS AGGRAVATE,
4 THE OFFENSE OF MURDER.

5 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
6 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
7 THE INJURY OF THE CRIME OF MURDER. AND IT IS COMMITTED IN
8 THE COMMISSION OF A CRIME.

9 JUST TO GIVE YOU SOME EXAMPLES. AN EXAMPLE OF AN
10 AGGRAVATING FACTOR WOULD BE THE MURDER OF A CHILD UNDER
11 AGE 11, DRUG TRAFFICKING, KILLING BY POISON, OR BURGLARY
12 IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES SO YOU CAN
13 HAVE A POINT OF REFERENCE. THAT'S NOT THE ENTIRE LIST.

14 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
15 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
16 LAW REDUCE THE OFFENSE -- THE SEVERITY OF THE OFFENSE OF
17 MURDER AND MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING
18 THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

19 AND I'M GOING TO GIVE YOU SOME EXAMPLES OF MITIGATING
20 CIRCUMSTANCES. THOSE WOULD BE MENTAL RETARDATION AT THE
21 TIME OF THE CRIME, THAT THE DEFENDANT HAD NOT REACHED HIS
22 18TH BIRTHDAY BY THE DATE OF THE CRIME, THAT THE DEFENDANT
23 WAS AN ACCOMPLICE AND THAT THEIR PARTICIPATION WAS
24 RELATIVELY MINOR, THAT THE DEFENDANT ACTED UNDER DURESS OR
25 DOMINATION. AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE

1 IS NO EXCLUSIVE LIST OF MITIGATING CIRCUMSTANCES. I JUST
2 GIVE IT TO YOU BY WAY OF EXAMPLE.

3 SIR, IF YOU WERE A JUROR IN THE SITUATION WHERE
4 DISCUSSING, THAT IS THE SENTENCING PHASE, COULD YOU,
5 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
6 THE CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
7 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
8 YOU THAT APPLIES TO THE CASE RETURN A SENTENCE OF LIFE IN
9 PRISON WITHOUT THE POSSIBILITY OF PAROLE?

10 A YES, I COULD.

11 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES
12 RETURN -- CONSIDERING THE AGGRAVATING AND MITIGATING
13 CIRCUMSTANCES AND THE LAW THAT I WILL INSTRUCT THAT
14 APPLIES, RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS
15 BY ELECTROCUTION OR BY LETHAL INJECTION?

16 A YES.

17 Q SIR, AS I'VE ALREADY EXPLAINED, THE JURY IN THIS CASE
18 WILL BE SEQUESTERED, WHICH MEANS YOU'LL BE HOUSED IN A
19 MOTEL FOR A PERIOD OF APPROXIMATELY 10 DAYS. AND WE
20 ASSUME THAT'S PERSONALLY INCONVENIENT. WE ASSUME THAT IT
21 INCONVENIENCES YOUR PERSONAL LIFE, YOUR FAMILY LIFE, AS
22 WELL AS YOUR EMPLOYMENT, AND WE MAKE THAT ASSUMPTION.

23 BUT WHAT I NEED TO DETERMINE IS WOULD THIS POSE A
24 SERIOUS DANGER TO YOU OR OTHERWISE WOULD IT BE LIFE
25 THREATENING FOR YOU TO BE SEQUESTERED?

1 A NO.

2 Q OKAY. SIR, IN EVERY CAPITAL CASE THE LAW REQUIRES
3 THAT THE JURY -- WELL, LET ME REPHRASE THAT. IN A CAPITAL
4 CASE THE JURY DECIDES SENTENCE. IN OTHER WORDS, THEY
5 DECIDE WHETHER IT WILL BE LIFE WITHOUT THE POSSIBILITY OF
6 PAROLE OR DEATH.

7 THE COURT HAS NO DISCRETION. IT HAS TO FOLLOW
8 WHATEVER THE JURY DOES. AND BECAUSE OF THIS, STATE LAW
9 REQUIRES AND MANDATES THAT ON THE VERDICT FORM FOR EITHER
10 THAT EACH JUROR SIGN THEIR NAME INDIVIDUALLY TO THAT FORM.
11 WILL YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT OF A
12 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
13 DEATH?

14 A YES.

15 Q ARE THERE ANY QUESTIONS FROM THE STATE?

16 MR. HEMBREE: NO, YOUR HONOR, NO ADDITIONAL
17 QUESTIONS FOR MR. FRYE.

18 THE COURT: FROM THE DEFENSE?

19 MR. KELLY: YES, MA'AM.

20 THE COURT: YOU MAY PROCEED WHEN YOU'RE READY.

21 BY MR. KELLY:

22 Q MR. FRYE, I NOTICED THAT YOU SAID THAT -- ON YOUR
23 QUESTIONNAIRE THAT YOU HAVE A CLOSE FRIEND IN LAW
24 ENFORCEMENT. WHAT KIND OF LAW ENFORCEMENT IS HE IN?

25 A I -- ASSUME I'M PROBABLY THINKING ABOUT A GUY THAT'S

1 GETTING READY TO BE A NEIGHBOR. I KNOW HIM AS AN
2 ACQUAINTANCE. I DON'T KNOW WHETHER THAT I CONSIDER HIM A
3 CLOSE FRIEND OR NOT.

4 Q WHAT KIND OF LAW ENFORCEMENT?

5 A CITY POLICE.

6 Q CITY POLICE. YOU KNOW, MR. FRYE, SOMETIMES THE
7 ATTORNEYS ARE AFRAID THAT A JUROR WILL LET THEIR
8 FRIENDSHIPS AFFECT THEIR JUDGMENT IN THE COURTROOM. WOULD
9 YOU LET YOUR FRIENDSHIP AFFECT YOUR JUDGMENT IN THIS
10 COURTROOM?

11 A NO, SIR.

12 Q YOU'RE A MAN OF INDEPENDENT MIND, MAKE UP YOUR OWN
13 MIND?

14 A YES, SIR.

15 Q OKAY.

16 A PRETTY MUCH.

17 Q AND -- AND, YOU KNOW, YOU REALIZE THAT -- AND THE
18 JUDGE I BELIEVE HAS TOLD US ALL THAT YOU WOULDN'T BE ABLE
19 TO DISCUSS THE CASE WITH ANYONE IF YOU WERE A JUROR UNTIL
20 THE JUDGE GAVE THE CASE TO THE JURY TO DISCUSS. DO YOU
21 REALIZE THAT?

22 A YES, SIR.

23 Q WOULD YOU BE ABLE TO DO THAT?

24 A YES, SIR.

25 Q OKAY. AND IF SOMEONE BROKE THAT RULE, WOULD YOU

1 REPORT IT?

2 A YES, SIR.

3 Q OKAY. YOU YOURSELF WOULD NOT BREAK THAT RULE?

4 A NO, SIR.

5 Q I NOTICE THAT YOU SAID ON YOUR QUESTIONNAIRE,
6 MR. FRYE, THAT YOUR HOME HAD BEEN BROKEN INTO SEVERAL
7 TIMES.

8 A YES, SIR.

9 Q HAS THAT BEEN RECENT?

10 A NO, SIR. THAT'S BEEN -- PROBABLY BEEN 1979, 1980.

11 Q SO, YOU KNOW, SOMETIMES THE LAWYERS, THEY WORRY THAT
12 IF SOME -- A JUROR HAS BEEN A VICTIM OF A CRIME, THAT THEY
13 WILL LET THAT HURT AND THAT ANGER SPILL OVER INTO THE
14 COURTROOM. YOU WOULDN'T LET THAT HAPPEN; WOULD YOU?

15 A NO, SIR.

16 Q WOULD YOU FOLLOW THE -- AND YOU SAID THAT YOU WOULD,
17 BUT YOU WOULD FOLLOW THE INSTRUCTIONS OF OUR JUDGE; WOULD
18 YOU NOT?

19 A YES, SIR.

20 Q OKAY. AND YOU WOULD KEEP AN OPEN MIND TO ALL THE
21 EVIDENCE THAT'S PRESENTED TO YOU?

22 A YES, SIR.

23 Q IS THAT CORRECT?

24 A YES, SIR.

25 Q OKAY. I THINK YOU SAID THAT YOU HAD VERY LITTLE

1 INFORMATION ABOUT THIS CASE. IS THAT RIGHT?

2 A VERY LITTLE.

3 Q BUT WHATEVER THAT INFORMATION IS, YOU'D BE ABLE TO
4 LEAVE IT OUTSIDE THIS COURTROOM?

5 A YES, SIR.

6 Q THANK YOU, SIR.

7 A NO PROBLEM.

8 THE COURT: ANY EXCEPTION TO THE JUROR BEING
9 QUALIFIED?

10 MR. HEMBREE: NO, YOUR HONOR. MR. FRYE IS
11 QUALIFIED.

12 THE COURT: ANY EXCEPTIONS FROM THE DEFENSE?

13 MR. KELLY: NO, MA'AM.

14 THE COURT: MR. FRYE, YOU HAVE BEEN FOUND
15 QUALIFIED AS A JUROR IN THIS CASE. AND AS I
16 EXPLAINED ON TUESDAY, WHAT WE'RE DOING IS DEVELOPING
17 A POOL OF QUALIFIED JURORS FROM WHICH WE WILL
18 ACTUALLY -- WHICH WE WILL SELECT THE ACTUAL JURY.

19 WE ARE GOING TO DO THAT ON MONDAY AT 9:30. I
20 NEED YOU TO RETURN MONDAY TO THIS COURTROOM AT
21 9:30 PACKED FOR TWO WEEKS WITH ENOUGH CLOTHING,
22 SUPPLIES, YOU KNOW, ANYTHING YOU FEEL WOULD MAKE YOU
23 COMFORTABLE.

24 OF COURSE, YOU DON'T HAVE TO BRING THAT WITH YOU
25 TO THE COURTROOM. IF YOU ARE IN FACT SELECTED TO THE

1 JURY, WE WILL -- WE WILL MAKE SURE YOU GET SITUATED.
2 AND, OF COURSE, YOU'RE GOING TO HAVE YOUR OWN ROOM.
3 YOU'RE NOT GOING TO BE REQUIRED TO SHARE A ROOM WITH
4 ANYONE.

5 I WOULD ASK, HOWEVER, THAT YOU ABIDE BY THE
6 FOLLOWING INSTRUCTIONS, THAT YOU HAVE NO DISCUSSION
7 ABOUT THIS CASE WITH ANYONE. THAT INCLUDES YOUR
8 FAMILY MEMBERS OR FRIENDS.

9 AND I KNOW IT MAY SEEM VERY INNOCENT, BUT IT'S
10 VERY IMPORTANT TO ABIDE BY THAT INSTRUCTION. WE HAVE
11 TO MAKE SURE YOUR IMPARTIALITY IS MAINTAINED. IF
12 ANYONE TRIES TO SPEAK WITH YOU, STOP THEM AND TELL
13 THEM, I'M SORRY, I CAN'T DISCUSS THIS IN ANY WAY, IT
14 WOULD BE A VIOLATION OF THE JUDGE'S RULES, THE
15 COURT'S RULES.

16 ALSO, PLEASE DON'T WATCH, READ, OR LISTEN TO ANY
17 MEDIA ACCOUNTS ABOUT THIS CASE. THAT IS ESSENTIAL
18 ALSO. THAT INCLUDES ANYTHING THAT COULD BE IN THE
19 NEWSPAPER, RADIO, TELEVISION, OR ON THE INTERNET. WE
20 LOOK FORWARD TO SEEING YOU ON MONDAY AND I HOPE YOU
21 HAVE A RESTFUL DAY.

22 JUROR: ALL RIGHT.

23 THE COURT: THANK YOU.

24 JUROR: I HAVE A QUESTION.

25 THE COURT: YES, SIR. CERTAINLY.

1 *JUROR:* IF YOU BRING -- YOU DON'T HAVE ENOUGH
2 CLOTHES TO LAST YOU FOR TWO WEEKS, Y'ALL BE DOING THE
3 LAUNDRY?

4 *THE COURT:* WE WILL SEE WHAT WE CAN DO.

5 *JUROR:* OKAY.

6 (JUROR LEFT THE COURTROOM.)

7 *THE COURT:* RICHANDA KNOWLIN, 187.

8 (JUROR ENTERED THE COURTROOM.)

9 RICHANDA KNOWLIN, BLACK FEMALE,
10 TESTIFIED AS FOLLOWS:

11 BY THE COURT:

12 Q HOW ARE YOU?

13 *MR. KELLY:* MAY IT PLEASE THE COURT.

14 *THE COURT:* YES, SIR.

15 *MR. KELLY:* I DON'T HAVE A QUESTIONNAIRE.

16 *THE COURT:* OKAY. LET'S DOUBLE-CHECK. DO YOU
17 HAVE A QUESTIONNAIRE FOR--

18 *MR. KELLY:* WE HAVE ONE. WE FOUND ONE. THANK
19 YOU.

20 *THE COURT:* YOU'RE WELCOME.

21 BY THE COURT:

22 Q MA'AM, IF YOU COULD SLIDE AS CLOSE AS YOU COULD TO
23 THE MICROPHONE FOR US. HOW ARE YOU DOING TODAY?

24 A FINE.

25 Q WONDERFUL. PLEASE STATE YOUR NAME FOR THE RECORD.

1 A JUROR NUMBER 187, RICHANDA KNOWLIN.

2 Q AND MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER
3 OATH. DO YOU UNDERSTAND?

4 A UH-HUH.

5 Q I NEED YOU TO TELL ME YES OR NO.

6 A YES, MA'AM.

7 Q I KNOW IT'S EASY BECAUSE I DO IT MYSELF SOMETIMES.
8 WE ASK YOU -- WELL ACTUALLY, LET ME ASK ANOTHER QUESTION.
9 HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS
10 CASE SINCE THE COURT GAVE ITS INSTRUCTIONS ON TUESDAY?

11 A NO.

12 Q I'M GOING TO ASK YOU SOME QUESTIONS. I KNOW THEY
13 WILL SEEM VERY PERSONAL, AND IT'S NOT OUR INTENT TO INVAD
14 YOUR PRIVACY. THE STATE LAW REQUIRES THAT WE ASK THESE
15 QUESTIONS. I NEED YOU TO TAKE A DEEP BREATH, GET RELAXED,
16 DON'T BE NERVOUS.

17 THERE ARE NO RIGHT OR WRONG ANSWERS IN THIS PROCESS.
18 ALL WE ASK THAT YOU DO IS ANSWER US AS HONESTLY AS YOU
19 CAN, AS FULLY AND COMPLETELY. IF YOU DON'T UNDERSTAND THE
20 QUESTION, JUST LET US KNOW SO THAT WE CAN REPHRASE IT OR
21 REPEAT IT; OKAY?

22 A ALL RIGHT.

23 Q AND AGAIN, I EMPHASIZE THERE ARE NO RIGHT OR WRONG
24 ANSWERS. AMONG OTHER THINGS WE WILL BE TALKING ABOUT
25 PENALTY, BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES

1 NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
2 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

3 A YES.

4 Q IN A CRIMINAL -- IF YOU WERE A JUROR IN A CRIMINAL
5 CASE, COULD YOU LISTEN TO THE LAW?

6 A YES.

7 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
8 INSTRUCT?

9 A YES.

10 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
11 MAY DISAGREE WITH ME WITH WHAT I TELL YOU THE LAW IS?

12 A YES.

13 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
14 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
15 ANYTHING YOU MAY HAVE HEARD OR READ ABOUT THIS CASE?

16 A YES.

17 Q PRIOR TO COMING TO COURT ON TUESDAY, HAVE YOU HEARD,
18 READ, OR SEEN ANY MEDIA COVERAGE ABOUT THIS CASE?

19 A NO.

20 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
21 PROVING GUILT AND THEY MUST PROVE THAT BEYOND A REASONABLE
22 DOUBT. DO YOU UNDERSTAND?

23 A YES.

24 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
25 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

1 A YES.

2 Q HAVE YOU READ THE JUROR TYPE FORM THAT WAS IN THE
3 JURY ROOM?

4 A UH-HUH. YES, MA'AM.

5 Q OKAY. AND DO YOU FEEL YOU FIT INTO ANY OF THOSE
6 CATEGORIES? YOU WANT A TO TAKE A FEW MINUTES AND REVIEW
7 IT AGAIN?

8 JUROR ONE IS THE KIND OF JUROR THAT BASICALLY IS
9 UNABLE TO, UNWILLING TO EVER GIVE A DEATH PENALTY IN ANY
10 CIRCUMSTANCE. TYPE TWO SAYS, NO MATTER WHAT THE
11 CIRCUMSTANCES, IF THERE WAS A FINDING OF MURDER, THEY
12 ALWAYS THINK THE DEATH PENALTY IS APPROPRIATE.

13 TYPE THREE SAYS, I'M THE KIND OF JUROR THAT I WANT TO
14 LISTEN TO BOTH SIDES BEFORE I MAKE UP MY MIND, LISTEN TO
15 THE LAW, APPLY THE LAW, AND IF THE CIRCUMSTANCE WARRANT,
16 IMPOSE LIFE WITHOUT THE POSSIBILITY OF PAROLE OR IF THE
17 CIRCUMSTANCES WARRANT, DEATH.

18 AND SO WITH THAT -- OR DO YOU WANT -- IS THAT A GOOD
19 SUMMARY TO GET YOU TO THINK ABOUT OR DO YOU WANT TO TAKE
20 SOME TIME AND READ IT?

21 A NUMBER THREE.

22 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
23 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
24 WE WOULD THEN MOVE TO THE SENTENCING PHASE.

25 AND AS I EXPLAINED, IN THESE TYPE CASES THERE IS A

1 GUILT PHASE WHERE THE JURY DETERMINES GUILT, AND THEN IF
2 THE JURY DECIDES THAT THE DEFENDANT IS GUILTY OF MURDER,
3 WE THEN MOVE TO WHAT IS CALLED THE SENTENCING PHASE WHERE
4 THE JURY ACTUALLY DETERMINES SENTENCE, WHETHER THAT BE
5 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. DO YOU
6 UNDERSTAND?

7 A YES, MA'AM.

8 Q NOW, DURING THE SENTENCING PHASE THE JURY IS ALLOWED
9 TO CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND
10 MITIGATING CIRCUMSTANCES. AND I'M GOING TO DEFINE BOTH OF
11 THOSE TERMS FOR YOU SO THAT YOU KNOW WHAT WE'RE TALKING
12 ABOUT; OKAY?

13 A YEAH.

14 Q IF YOU WERE A JUROR IN A DEATH PENALTY CASE -- I
15 APOLOGIZE -- AGGRAVATING CIRCUMSTANCES ARE FACTS,
16 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE
17 HAS DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS
18 AGGRAVATE, THE OFFENSE OF MURDER.

19 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
20 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
21 THE INJURY OF THE CRIME OF MURDER, AND IT IS COMMITTED IN
22 THE COMMISSION OF A CRIME.

23 SOME EXAMPLES OF THOSE ARE MURDER OF A CHILD UNDER
24 THE AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON, AND
25 BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.

1 THAT IS NOT THE ENTIRE LIST.

2 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
3 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
4 STATUTE OR STATE LAW REDUCE THE SEVERITY OF THE OFFENSE OF
5 MURDER AND MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING
6 THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

7 AND SOME EXAMPLES OF THESE ARE MENTAL RETARDATION AT
8 THE TIME OF THE CRIME, THE DEFENDANT WAS BELOW THE AGE OF
9 18 AT THE TIME OF THE CRIME, THE DEFENDANT WAS AN
10 ACCOMPLICE AND THEIR PARTICIPATION WAS RELATIVELY MINOR,
11 OR THAT THE DEFENDANT ACTED UNDER DURESS OR DOMINATION.

12 AGAIN, WHEN I REFER TO THE EXAMPLES OF AGGRAVATING
13 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES, THEY ARE
14 MERELY FOR THE PURPOSE OF AN EXAMPLE AND THEY ARE NOT BY
15 ANY MEANS THE ENTIRE LIST.

16 IF YOU WERE A JUROR IN THE SENTENCING PHASE, COULD
17 YOU DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
18 OF THE CASE INCLUDING CONSIDERING AGGRAVATING AND
19 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
20 YOU THAT APPLIES TO THE CASE RETURN A SENTENCE OF LIFE IN
21 PRISON WITHOUT THE POSSIBILITY OF PAROLE?

22 DO YOU UNDERSTAND THE QUESTION? IT'S A LONG ONE.
23 WANT ME TO RE -- OKAY. LET'S SAY WE GOT TO THE SENTENCING
24 PHASE OF THE TRIAL. AND I -- AND WHAT I'M ASKING IS CAN
25 YOU AT THAT STAGE, CONSIDERING THE PARTICULAR FACTS AND

1 CIRCUMSTANCES OF A PARTICULAR CASE AND INCLUDING THE
2 CONSIDERATION OF WHAT I JUST EXPLAINED TO YOU AS
3 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
4 THE COURT WOULD INSTRUCT YOU APPLIES TO THE CASE AT THE
5 END OF THE CASE, COULD YOU THEN RETURN A SENTENCE OF LIFE
6 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

7 A YES.

8 Q OKAY. COULD YOU IN THE SENTENCING PHASE OF A TRIAL,
9 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
10 THE PARTICULAR CASE INCLUDING THE CONSIDERATION OF
11 AGGRAVATING AND MITIGATING CIRCUMSTANCES, AND AGAIN THE
12 LAW AS I WOULD INSTRUCT YOU APPLIES AT THE CONCLUSION OF
13 THE CASE, RETURN A SENTENCE OF DEATH WHICH IN THIS STATE
14 IS BY ELECTROCUTION OR LETHAL INJECTION?

15 A - YES.

16 Q NOW, WE HAVE ALREADY EXPLAINED THE JURY WILL BE
17 SEQUESTERED. THAT MEANS YOU'LL BE HOUSED IN A HOTEL FOR
18 TWO WEEKS. OF COURSE, YOU'LL HAVE YOUR OWN ROOM. YOU
19 WON'T HAVE TO SHARE WITH SOMEONE.

20 AND WE ALREADY ASSUME THAT THAT WOULD BE PERSONALLY
21 INCONVENIENT FOR YOU, THAT IT WILL INCONVENIENCE YOUR LIFE
22 COMPLETELY. I MIGHT AS WELL JUST BE HONEST. WE ASSUME
23 IT'S GOING TO DISRUPT YOUR FAMILY LIFE, ASSUME IT'S GOING
24 TO DISRUPT WORK, AND EVERYTHING ELSE.

25 BUT WOULD THIS POSE A SERIOUS DANGER TO YOUR HEALTH

1 OR WELL-BEING? IN OTHER WORDS, DO YOU FEEL IT WOULD BE
2 LIFE THREATENING TO YOU IN ANY WAY?

3 A NO.

4 Q OKAY. NOW, IN A CAPITAL CASE WHICH IS WHAT THIS IS,
5 THE JURY DECIDES SENTENCE AND THE COURT IS BOUND BY THE
6 JURY'S DETERMINATION. IN OTHER WORDS, I CAN'T CHANGE IT.
7 WHATEVER YOU ALL DECIDE IS WHAT THE COURT IS BOUND BY.

8 AND AS A RESULT OF THAT, STATE LAW REQUIRES THAT
9 EVERY JUROR PERSONALLY SIGN THE VERDICT FORM. SO THERE
10 WILL BE A LINE ONE THROUGH 12. AND WHETHER THE SENTENCE
11 BE LIFE WITHOUT POSSIBILITY OF PAROLE OR DEATH, EACH JUROR
12 WILL HAVE TO SIGN EACH CORRESPONDING LINE.

13 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
14 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
15 DEATH?

16 A YES.

17 THE COURT: ARE THERE ANY QUESTIONS FROM THE
18 STATE?

19 MR. HEMBREE: NO QUESTIONS FROM THE STATE.

20 THE COURT: FROM THE DEFENSE?

21 MR. KELLY: NO, MA'AM.

22 THE COURT: ANY OBJECTION TO THE WITNESS
23 BEING -- I MEAN THE WITNESS. I KEEP SAYING THAT --
24 TO THE JUROR BEING FOUND QUALIFIED FROM THE STATE?

25 MR. HEMBREE: NO OBJECTION FROM THE STATE, YOUR

1 HONOR.

2 THE COURT: FROM THE DEFENSE?

3 MR. KELLY: NO, MA'AM.

4 THE COURT: YOU CAN TELL I'M USED TO TRYING
5 CASES A LOT. THAT'S USUALLY -- I'M USUALLY TALKING
6 ABOUT QUALIFICATION OF EXPERT WITNESSES OR EXCUSING
7 WITNESSES. I APOLOGIZE, MA'AM.

8 MA'AM, YOU HAVE BEEN FOUND QUALIFIED WHICH MEANS
9 YOU ARE NOW A PART OF THE POOL OF QUALIFIED JURORS.
10 WE WILL DECIDE ON MONDAY FROM THAT POOL WHO WILL
11 ACTUALLY SERVE ON THE JURY.

12 JUROR: ALL RIGHT.

13 THE COURT: AT THAT TIME WE'LL CHOOSE 12 JURORS
14 AND EITHER TWO OR THREE ALTERNATES. I HAVE NOT YET
15 DECIDED. WE WILL NEED YOU TO RETURN ON MONDAY AT
16 9:30 PACKED FOR TWO WEEKS.

17 YOU DON'T HAVE TO BRING YOUR THINGS UP HERE.
18 BECAUSE IF YOU'RE SELECTED, YOU WON'T BE ABLE TO GO
19 HOME. YOU'RE GOING TO HAVE TO -- WE'RE GOING TO
20 START THE TRIAL ON MONDAY.

21 AND WE WILL GET YOU SITUATED AT THE HOTEL AT THE
22 APPROPRIATE TIME. AGAIN, YOU DON'T HAVE TO LUG YOUR
23 THINGS UP HERE. WE'LL MAKE APPROPRIATE ARRANGEMENTS
24 TO GET YOU SETTLED.

25 JUROR: OKAY.

1 THE COURT: DURING THE BREAK IT IS EXTREMELY
2 IMPORTANT THAT YOU NOT DISCUSS THIS QUALIFICATION
3 PROCESS OR ANYTHING ABOUT THIS CASE WITH ANYONE.
4 PLEASE DON'T SPECULATE ABOUT WHAT YOU THINK IT COULD
5 BE ABOUT OR MAY BE ABOUT.

6 IF ANYBODY TRIES TO TALK TO YOU, TELL THEM, I'M
7 SORRY, I CANNOT DISCUSS THIS, IT WILL BE
8 INAPPROPRIATE AND I COULD GET IN TROUBLE AND YOU CAN
9 GET IN TROUBLE, SO I'M JUST GOING TO TERMINATE THIS
10 CONVERSATION, WE CAN TALK ABOUT ANYTHING ELSE, BUT WE
11 CANNOT TALK ABOUT THIS CASE. OKAY?

12 JUROR: UH-HUH.

13 THE COURT: ALSO PLEASE DON'T WATCH, READ, OR
14 LISTEN TO ANY MEDIA ACCOUNTS ABOUT THE CASE. IT IS
15 EXTREMELY IMPORTANT THAT YOU REMAIN IMPARTIAL. AND
16 THE ONLY WAY WE CAN ENSURE THAT IS IF YOU DON'T READ
17 THE NEWS -- WELL, YOU CAN READ THE NEWSPAPER, BUT YOU
18 JUST CAN'T READ ABOUT THIS CASE.

19 PLEASE DON'T WATCH ANY NEWS REPORTS ABOUT IT.
20 DON'T LISTEN TO ANYTHING ON THE RADIO ABOUT IT. AND
21 PLEASE DON'T LOOK FOR ANYTHING INDEPENDENTLY ON YOUR
22 OWN ON THE INTERNET. OKAY?

23 JUROR: OKAY.

24 THE COURT: AND WE APPRECIATE YOUR TIME AND YOUR
25 PATIENCE. WE WILL SEE YOU ON MONDAY AT 9:30. YOU

1 HAVE A GOOD DAY. TRY TO SURVIVE THIS HEAT.

2 (JUROR LEFT THE COURTROOM.)

3 THE COURT: ANDREW BREWINGTON JUNIOR, 31. WE
4 HAVE HIM RESPONDING TO QUESTION 21.

5 MR. HUMPHRIES: THAT'S WHAT I REFLECT ALSO, YOUR
6 HONOR.

7 (JUROR ENTERED THE COURTROOM.)

8 ANDREW BREWINGTON, BLACK MALE,
9 TESTIFIED AS FOLLOWS:

10 BY THE COURT:

11 Q SIR, HOW ARE YOU TODAY?

12 A I'M DOING GOOD. HOW ARE YOU?

13 Q I'M DOING FINE. TRYING TO SURVIVE THIS HEAT.

14 A IN THE RIGHT PLACE.

15 Q THAT'S RIGHT, SOME AIR CONDITIONING. PLEASE STATE
16 YOUR NAME FOR THE RECORD.

17 A ANDREW WILLIAM BREWINGTON, JUNIOR.

18 Q OKAY. AND SIR, YOU ARE JUROR NUMBER 31; IS THAT
19 CORRECT?

20 A THAT'S CORRECT.

21 Q AND SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER
22 OATH. DO YOU UNDERSTAND?

23 A I UNDERSTAND.

24 Q SIR, HAVE YOU SEEN OR HEARD ANY MEDIA ACCOUNTS ABOUT
25 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

1 A CAME ON IN ANOTHER ROOM.

2 Q OKAY. SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS.
3 WE'RE NOT TRYING TO INVITE YOUR PRIVACY IN ANY WAY. WE
4 KNOW THESE QUESTIONS MAY SEEM INTENSELY PERSONAL, AND WE
5 ARE PROBABLY GOING TO ASK YOU TO THINK ABOUT SOME THINGS
6 YOU'VE PROBABLY REALLY NEVER THOUGHT ABOUT BEFORE.

7 STATE LAW REQUIRES US TO ASK THESE QUESTIONS. AND IN
8 A CASE OF THIS TYPE WE'RE REQUIRED TO TALK TO EACH JUROR
9 INDIVIDUALLY. I WOULD EMPHASIZE THAT THERE ARE NO RIGHT
10 OR WRONG ANSWERS. THE ONLY THING THAT WE REQUIRE OF YOU
11 CONSISTENT WITH YOUR OATH IS THAT YOU GIVE US FULL,
12 COMPLETE, AND HONEST ANSWERS. DO YOU UNDERSTAND?

13 A I UNDERSTAND.

14 Q AND SIR, I WOULD ASK THAT YOU TO THE BEST OF YOUR
15 ABILITY RESPOND TO THE QUESTIONS WITH A YES OR NO. AND IF
16 YOU DO NOT UNDERSTAND A QUESTION, PLEASE MAKE ME AWARE OF
17 IT SO THAT I CAN TRY TO CLARIFY IT FOR YOU. DO YOU
18 UNDERSTAND?

19 A I UNDERSTAND.

20 Q SIR, AMONG OTHER THINGS WE WILL BE TALKING ABOUT
21 PENALTY. THE MERE FACT THAT WE TALK ABOUT PENALTY DOES
22 NOT INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
23 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

24 A YES.

25 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU

1 LISTEN TO THE LAW?

2 A YES.

3 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
4 INSTRUCT YOU?

5 A YES.

6 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
7 MAY DISAGREE WITH ME ABOUT WHAT YOU THINK THE LAW IS?

8 A YES.

9 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
10 EVIDENCE PRESENTED HERE IN THE COURTROOM FROM THE LIPS OF
11 SWORN WITNESSES AND THE EVIDENCE THAT WILL BE INTRODUCED
12 AND THE LAW AS THE COURT WILL INSTRUCT AND DISREGARD
13 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
14 CASE?

15 A NO.

16 Q OKAY. ARE YOU TELLING -- LET ME ASK ANOTHER
17 QUESTION. HAVE YOU HEARD, READ, OR SEEN ANY COVERAGE
18 ABOUT THIS CASE? MEDIA COVERAGE, PRIOR TO ARRIVING ON
19 TUESDAY.

20 A YES.

21 Q AND AS A RESULT OF THAT EXPOSURE HAVE YOU FORMED A
22 FIXED OPINION? IN OTHER WORDS, HAVE YOU ALREADY MADE UP
23 YOUR MIND ABOUT THIS CASE?

24 A I DON'T UNDERSTAND FROM WHAT YOU'RE -- THE -- WHAT
25 YOU'RE REALLY SAYING. I'M LEANING, BUT I AM NOT -- I --

1 STILL -- THERE IS STILL SOME ROOM FOR BEING -- LISTENING.

2 Q OKAY. LET ME ASK THE QUESTION A DIFFERENT WAY.

3 A OKAY.

4 Q AND I'M GOING TO TELL YOU WHAT WE ARE TRYING TO
5 DETERMINE. THE LAW REQUIRES WHEN WE HAVE A JURY, THEY ARE
6 PLACED UNDER OATH. AND THAT OATH REQUIRES THAT THEY WILL
7 SOBERLY AND INDEPENDENTLY LISTEN TO THE EVIDENCE.

8 AND THE ONLY THING I GUESS I NEED TO EXPLAIN A LITTLE
9 BIT MORE CLEARLY ALSO. IN THE LAW THE ONLY FACTS WE
10 CONSIDER ARE THE FACTS THAT COME FROM THE LIPS OF SWORN
11 WITNESSES AND THE OTHER EVIDENCE. THE NEWSPAPER IS NOT
12 EVIDENCE. OKAY? IT'S NOT FACTS. OKAY?

13 SO IN OUR EYES THAT'S A REPORT, BUT IT'S NOT
14 EVIDENCE. OKAY? AND SO WHAT I'M TRYING TO DETERMINE IS
15 THAT EVEN IF YOU'VE READ A TON OF ARTICLES, EVEN IF YOU
16 HAD CONVERSATIONS WITH PEOPLE ABOUT THIS CASE, AND EVEN IF
17 YOU FEEL YOU HAVE FORMED SOME -- FORMULATED SOME OPINION
18 ABOUT IT, WHAT I AM TRYING TO DETERMINE IS IF YOU WILL BE
19 ABLE, ONE, TO HONOR THE OATH AND DO WHAT THE COURT
20 INSTRUCTS, AND WHETHER YOU WILL BE ABLE TO BASICALLY COME
21 INTO THIS COURT LIKE A HORSE WITH BLINDERS ON AND SAY,
22 EVEN THOUGH I MAY HAVE SOME PREDISPOSITION, I CAN
23 COMPLETELY DISREGARD THAT PREDISPOSITION, AND I CAN
24 OPENLY, HONESTLY, AND FAIRLY LISTEN TO EACH WITNESS THAT
25 SITS -- IS GOING TO SIT IN THAT VERY WITNESS CHAIR, THEY

1 ARE GOING TO BE SWORN TO TELL THE TRUTH, THE WHOLE TRUTH,
2 AND NOTHING BUT THE TRUTH, AND CAN YOU CONSIDER THOSE
3 WITNESSES, CAN YOU CONSIDER THE OTHER EVIDENCE AND
4 EXHIBITS THAT WILL BE INTRODUCED AND APPLY THE LAW THAT
5 I -- WHAT I WILL TELL YOU THE LAW IS, BECAUSE THE JURY IS
6 THE FACT FINDER. THEY DETERMINE WHAT THE FACTS ARE. THE
7 COURT DOESN'T DETERMINE THAT.

8 ALL I DO IS GIVE YOU THE ROADMAP ON HOW YOU ARE TO --
9 WHAT A -- LAW APPLIES TO THE FACTS AS YOU FIND THEM. AND
10 THEN THE JURY DELIBERATES AND THEY RENDER A VERDICT. AND
11 WHAT I'M TRYING TO DETERMINE IS, CAN YOU LAY ASIDE
12 ANYTHING YOU THINK YOU MAY HAVE -- OPINION YOU MAY HAVE,
13 ANY THOUGHTS YOU MAY HAVE, AND DO WHAT I HAVE ASKED, WHICH
14 IS HONOR YOUR OATH, LISTEN TO THE SWORN WITNESSES,
15 CONSIDER THE EVIDENCE, CONSIDER THE LAW, AND RENDER A TRUE
16 AND JUST VERDICT IN THIS CASE THAT IS FAIR AND IMPARTIAL?

17 A BASED ON THE CLARIFY PREDISPOSITION, YES.

18 Q OKAY. IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
19 PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
20 UNDERSTAND THAT?

21 A YES.

22 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
23 NO BURDEN IN THIS CASE AND THAT HE DOES NOT HAVE TO PROVE
24 HIMSELF INNOCENT?

25 A YES.

1 Q SIR, HAVE YOU REVIEWED THE JUROR TYPE SHEET?

2 A YES.

3 Q DO YOU FEEL YOU FALL INTO ANY OF THOSE THREE
4 CATEGORIES?

5 A I DO.

6 Q WHICH CATEGORY DO YOU FEEL YOU FALL INTO?

7 A I THINK I FALL INTO CATEGORY THREE.

8 Q OKAY. WHEN YOU SAY THINK, IS THAT DEFINITE OR DO
9 YOU...

10 A THAT'S DEFINITE.

11 Q OKAY. I JUST NEED A CLARIFICATION OF THAT. SIR, IF
12 YOU WERE A JUROR IN A DEATH PENALTY CASE AND IF THE JURY
13 FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD THEN MOVE
14 TO ANOTHER PHASE OF THE TRIAL.

15 AS I EXPLAINED ON TUESDAY, WE HAVE TWO PHASES. WE
16 HAVE A GUILT PHASE. AND IF THE JURY FINDS THE DEFENDANT
17 GUILTY OF MURDER, WE THEN MOVE TO WHAT IS CALLED THE
18 SENTENCING PHASE, BECAUSE THE JURY ULTIMATELY DECIDES
19 SENTENCE ALSO, WHETHER THAT BE LIFE WITHOUT THE
20 POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND?

21 A YES.

22 Q AND SIR, DURING THE SENTENCING PHASE THE JURY HAS THE
23 RIGHT TO CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES
24 AND MITIGATING CIRCUMSTANCES. AND I'M GOING TO DEFINE
25 THOSE TERMS FOR YOU SO THAT YOU KNOW WHAT WE'RE REFERRING

1 TO; OKAY?

2 A OKAY.

3 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
4 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
5 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE
6 THE OFFENSE OF MURDER.

7 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
8 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
9 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
10 COMMISSION OF A CRIME.

11 AND SOME EXAMPLES OF THOSE WOULD BE THE MURDER OF A
12 CHILD UNDER THE AGE OF 11, KILLING SOMEONE BY POISON, DRUG
13 TRAFFICKING OR BURGLARY IN ANY DEGREE. AGAIN, THESE ARE
14 JUST EXAMPLES. THAT IS NOT THE ENTIRE LIST. I JUST WANT
15 YOU TO HAVE A POINT OF REFERENCE OF WHAT WE'RE TALKING
16 ABOUT.

17 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
18 OCCURRENCES WHICH THE GENERAL ASSEMBLY HAS DECLARED BY
19 STATE LAW REDUCE THE SEVERITY OF AN OFFENSE OF MURDER AND
20 MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE
21 OF MORAL CULPABILITY OR RESPONSIBILITY.

22 AND SOME EXAMPLES OF THOSE WOULD BE MENTAL
23 RETARDATION AT THE TIME OF THE CRIME, THE PERSON HAD NOT
24 REACHED THE AGE OF 18 AT THE TIME OF THE OFFENSE, THE
25 PERSON WAS OPERATING UNDER DURESS OR SOME FORM OF

1 DOMINATION, THAT THE DEFENDANT WAS AN ACCOMPLICE AND HIS
2 OR HER PARTICIPATION WAS RELATIVELY MINOR.

3 AGAIN, THIS IS JUST BY WAY OF EXAMPLE BECAUSE THERE
4 IS NO PREDETERMINED OR EXHAUSTIVE LIST OF MITIGATING
5 CIRCUMSTANCES. AGAIN, I JUST WANT YOU TO HAVE A POINT OF
6 REFERENCE AS TO WHAT WE ARE TALKING ABOUT.

7 SIR, IF YOU WERE A JUROR IN THAT SITUATION, MEANING
8 THE SENTENCING PHASE OF A TRIAL, COULD YOU DEPENDING UPON
9 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE
10 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
11 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU
12 APPLIES TO THIS CASE RETURN A SENTENCE OF LIFE IN PRISON
13 WITHOUT THE POSSIBILITY OF PAROLE?

14 A YES.

15 Q COULD YOU UNDER THE VERY SAME CIRCUMSTANCES AND
16 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
17 THE CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
18 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
19 APPLIES RETURN A SENTENCE OF DEATH, WHICH IN THIS STATE IS
20 BY ELECTROCUTION OR BY LETHAL INJECTION?

21 A YES.

22 Q SIR, AS I EXPLAINED, THIS JURY WILL BE SEQUESTERED,
23 WHICH MEANS YOU WILL BE HOUSED IN A MOTEL DURING THE TRIAL
24 FOR APPROXIMATELY 10 DAYS. WE ALREADY ASSUME THAT'S AN
25 INCONVENIENCE. WE ASSUME IT'S A COMPLETE DISRUPTION TO

1 YOUR LIFE, MEANING TO YOUR PRIVATE LIFE AND YOUR PUBLIC
2 LIFE, MEANING YOUR EMPLOYMENT AND OTHERWISE.

3 WOULD BEING SEQUESTERED POSE ANY KIND OF LIFE
4 THREATENING DANGER TO YOU TO YOUR HEALTH OR YOUR
5 WELL-BEING?

6 A NO.

7 Q NOW, SIR, IN A CAPITAL CASE BECAUSE THE JURY DECIDES
8 SENTENCE AND BECAUSE THE COURT MUST EFFECT THAT SENTENCE,
9 I HAVE NO DISCRETION TO CHANGE WHAT THE JURY DOES IN A
10 CAPITAL CASE. IF THE JURY ISSUES A SENTENCE OF LIFE
11 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH, THE COURT IS
12 BOUND BY EITHER OF THOSE VERDICTS.

13 STATE LAW, BECAUSE OF THAT, REQUIRES THAT EACH JUROR
14 SIGN THE FORM, THE VERDICT FORM. SO THERE ARE LINES ONE
15 THROUGH 12, AND EACH JUROR HAS TO SIGN HIS OR HER NAME.

16 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
17 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
18 DEATH?

19 A YES.

20 THE COURT: ARE THERE ANY QUESTIONS FROM THE
21 STATE?

22 MR. HEMBREE: NO, YOUR HONOR.

23 THE COURT: ANY FROM THE DEFENSE?

24 MR. KELLY: YES, MA'AM.

25 THE COURT: SIR, IF YOU WOULD GIVE MR. KELLY

1 YOUR ATTENTION AND SPEAK AS LOUDLY AND CLEARLY FOR ME
2 AS POSSIBLE.

3 BY MR. KELLY:

4 Q MR. BREWINGTON, I'M GERALD KELLY. I WOULD LIKE TO
5 ASK YOU ONE OR TWO QUESTIONS. IS THAT ALL RIGHT WITH YOU?

6 A YES, SIR.

7 Q I NOTICED ON YOUR QUESTIONNAIRE THAT YOU SAID THAT
8 YOU HAD A RELATIVE WHO WAS IN LAW ENFORCEMENT. IS THAT
9 RIGHT?

10 A NO.

11 Q NO?

12 A NOT ON MY -- MIGHT HAVE A RELATIVE. JUROR NUMBER 31.

13 Q AND YOU ARE ANDREW BREWINGTON, JUNIOR?

14 A THAT'S CORRECT.

15 Q AND ON NUMBER 15 IT SAYS, DO YOU OR ANY FRIENDS OR
16 RELATIVES IN LAW ENFORCEMENT EXPERIENCE OF ANY KIND. AND
17 HERE -- I WILL JUST SHOW IT TO YOU, IT SAYS RELATIVE, IT
18 SAYS YES. IS THAT -- IS THAT YOURS? WERE YOU A
19 METEOROLOGIST?

20 A YES, SIR, THAT'S RIGHT.

21 Q OKAY. DID YOU FILL THIS OUT HERE?

22 A YES, I DID. I'M TRYING TO REMEMBER. OH, YES.

23 Q WHAT WOULD THAT BE, MR. BREWINGTON?

24 A MY SON IS A PROBATION OFFICER IN THE STATE OF TEXAS.

25 Q IS HE? HOW LONG HAS HE BEEN DOING THAT?

1 A ABOUT A YEAR.

2 Q AND IS THAT THE ONLY POSITION IN LAW ENFORCEMENT THAT
3 HE HAS EVER HELD?

4 A THAT'S CORRECT.

5 Q MR. BREWINGTON, YOU HAD SAID EARLIER THAT YOU HAD
6 SOME STRONG OPINIONS ABOUT THE CASE FROM WHAT YOU HEARD
7 FROM MEDIA?

8 A I HAD PRE -- I HAD PREDISPOSITION. SHE EXPLAINED TO
9 ME AND WITH INSTRUCTIONS, COULD I RENDER A VERDICT BASED
10 ON WHAT -- THE EVIDENCE, AND I SAID, DEFINITELY YES.

11 Q AND I THINK THAT YOU DO UNDERSTAND NOW THAT YOU'D
12 HAVE TO LEAVE ALL OF YOUR PREDISPOSITION, ALL OF YOUR
13 OPINION OUTSIDE THE ROOM BEFORE YOU CAME IN. YOU
14 UNDERSTAND THAT?

15 A YES.

16 Q AND COULD YOU DO IT?

17 A YES.

18 Q SO YOU WOULDN'T BE SITTING IN THE COURTROOM AS A
19 JUROR SAYING, WELL, THAT DOESN'T MATCH UP WITH WHAT I
20 HEARD EARLIER. YOU'D NEVER DO THAT; WOULD YOU?

21 A I'D HAVE THE CASE SOLELY ON THE EVIDENCE THAT I GET
22 IN HERE.

23 Q AND YOU WOULD DO THAT?

24 A I WOULD.

25 Q OKAY. AND YOU'RE A MAN OF INDEPENDENT MIND, YOU MAKE

1 UP YOUR OWN MIND?

2 A YES.

3 Q OKAY. YOU REALIZE YOU COULDN'T DISCUSS THE CASE WITH
4 ANYBODY. THAT WOULD INCLUDE YOUR OWN WIFE OR ANYBODY
5 ELSE. DO YOU UNDERSTAND THAT?

6 A YES.

7 Q UNTIL SUCH TIME AS THE JUDGE GAVE IT TO THE JURY, IF
8 YOU WERE ON THE JURY, TO MAKE YOUR DELIBERATION. YOU'RE
9 AWARE OF THAT?

10 A YES.

11 Q AND IF ANYBODY BROKE THAT RULE, YOU WOULD BE DUTY
12 BOUND TO REPORT IT. COULD YOU DO THAT?

13 A YES.

14 Q AND YOU WOULD NOT DO THAT YOURSELF; CORRECT? YOU
15 WOULD NOT--

16 A NO, SIR.

17 Q -- DISCUSS IT.

18 MR. KELLY: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: ANY OBJECTION TO THIS JUROR BEING
20 FOUND QUALIFIED BY THE STATE?

21 MR. HEMBREE: NO, YOUR HONOR. MR. BREWINGTON IS
22 QUALIFIED.

23 THE COURT: FROM THE DEFENSE?

24 MR. KELLY: YES, MA'AM, WE AGREE HE IS
25 QUALIFIED.

1 THE COURT: OKAY. SIR, YOU HAVE BEEN FOUND
2 QUALIFIED WHICH MEANS YOU ARE NOW A PART OF THE POOL
3 OF QUALIFIED JURORS. FROM THAT POOL WE WILL SELECT A
4 JURY OF 12 AND ALTERNATES ON MONDAY AT 9:30.

5 I NEED FOR YOU TO RETURN ON MONDAY AT 9:30
6 PACKED FOR TWO WEEKS. HAVE EVERYTHING YOU THINK
7 YOU'LL NEED WITH YOU FOR A TWO-WEEK PERIOD. OF
8 COURSE, YOU DON'T HAVE TO BRING IT UP HERE TO THE
9 COURTROOM.

10 BUT IF YOU'RE SELECTED FOR THE JURY, YOU'RE NOT
11 GOING TO BE ABLE TO GO BACK HOME. AND WE'RE GOING
12 TO -- AFTER WE PICK A JURY, WE ARE GOING TO START THE
13 TRIAL.

14 JUROR: OKAY.

15 THE COURT: SO -- AND THEN WE'LL GET YOU
16 SITUATED AT THE HOTEL. DURING THIS BREAK PLEASE
17 ABIDE BY THE FOLLOWING INSTRUCTIONS VERY STRICTLY.
18 PLEASE DO NOT ALLOW YOURSELF TO BE EXPOSED TO ANY
19 MEDIA COVERAGE OF THIS CASE. PLEASE DO NOT DO ANY
20 INDEPENDENT RESEARCH OF ANY TYPE ON THE INTERNET.

21 IT IS EXTREMELY IMPORTANT THAT YOUR IMPARTIALITY
22 BE MAINTAINED. DO NOT ALLOW ANYONE TO SPEAK WITH YOU
23 ABOUT THIS CASE. IF ANYONE SHOULD ATTEMPT TO TALK TO
24 YOU, TELL THEM, I AM SORRY, I CAN'T TALK TO YOU ABOUT
25 THAT, IT WOULD BE A VIOLATION OF THE COURT'S RULES,

1 AND I SIMPLY CANNOT DISCUSS THAT.

2 IF SOMEONE SHOULD PERSIST IN TRYING TO TALK WITH
3 YOU, PLEASE CONTACT US IMMEDIATELY SO THAT WE CAN
4 TAKE IMMEDIATE ACTION TO REMEDY THE SITUATION.
5 PLEASE DON'T SPECULATE ABOUT WHAT YOU THINK THE CASE
6 MAY BE ABOUT OR COULD BE ABOUT. BECAUSE AGAIN, IT IS
7 EXTREMELY IMPORTANT THAT YOUR IMPARTIALITY BE
8 MAINTAINED.

9 SIR, WE APPRECIATE YOUR TIME AND YOUR PATIENCE
10 WITH US AND WE LOOK FORWARD TO SEEING YOU ON MONDAY
11 AT 9:30. YOU HAVE A GOOD AFTERNOON.

12 JUROR: THANK YOU. YOU, TOO.

13 THE COURT: YOU'RE WELCOME.

14 (JUROR LEFT THE COURTROOM.)

15 THE COURT: JOHN SHUTEY. 294.

16 (JUROR ENTERED THE COURTROOM.)

17 JOHN SHUTEY, WHITE MALE, TESTIFIED AS
18 FOLLOWS:

19 BY THE COURT:

20 Q MR. SHUTEY, HOW ARE YOU?

21 A I'M FINE.

22 Q COME ON IN. I'M SORRY. I DIDN'T MEAN TO MAKE YOU
23 STOP WALKING.

24 A I'M SORRY. JUROR 294 REPORTING FOR DUTY.

25 Q YES, SIR. WE NEEDED SOME LEVITY TODAY. WE

1 APPRECIATE THAT. IF YOU'D GET AS CLOSE TO THAT MICROPHONE
2 FOR ME AS YOU CAN SO WE CAN HEAR YOU.

3 A I WILL TRY.

4 Q PERFECT. SIR, IF YOU WILL STATE YOUR FULL NAME FOR
5 THE RECORD.

6 A JOHN JOSEPH SHUTEY, JUNIOR.

7 Q AND SIR, YOU ARE JUROR 294; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q SIR, I REMIND YOU YOU'RE STILL UNDER OATH. DO YOU
10 UNDERSTAND?

11 A YES.

12 Q AND HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS ABOUT
13 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

14 A NO.

15 Q OKAY. SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS.

16 WE KNOW SOME OF THEM MAY SEEM EXTREMELY PERSONAL. IT IS
17 NOT OUR INTENT TO INVAD E YOUR PRIVACY. STATE LAW REQUIRES
18 THAT I ASK YOU THESE QUESTIONS. IN A CASE OF THIS TYPE IT
19 REQUIRES THAT WE TALK TO EACH JUROR INDIVIDUALLY.

20 A OKAY.

21 Q THERE ARE NO RIGHT OR WRONG ANSWERS. THE ONLY THING
22 WE ASK IS THAT YOU ANSWER US COMPLETELY, FULLY, AND
23 HONESTLY.

24 A OKAY.

25 Q AND IF YOU COULD ANSWER ME WITH YES OR NO TO THE BEST

1 OF YOUR ABILITY. AND IF YOU DON'T UNDERSTAND A QUESTION,
2 PLEASE LET ME KNOW. DO YOU UNDERSTAND?

3 A I UNDERSTAND.

4 Q SIR, AMONG OTHER THINGS WE WILL BE TALKING ABOUT
5 PENALTY, BUT THE MERE FACT THAT WE DISCUSS PENALTY DOES
6 NOT INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
7 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

8 A YES.

9 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
10 YOU LISTEN TO THE LAW?

11 A IF I WAS A JUROR?

12 Q IF YOU WERE A JUROR--

13 A UH-HUH.

14 Q -- IN A CRIMINAL CASE, COULD YOU LISTEN TO THE LAW?

15 A YES.

16 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

17 A YES.

18 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
19 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS? WANT ME TO
20 GIVE YOU AN EXAMPLE? BECAUSE THE LAW AND THE FACTS ARE
21 VERY DIFFERENT THINGS.

22 THE FACTS ARE THE PROVINCE OF THE JURY BECAUSE THE
23 JURY IS THE FACT FINDERS, THEY DECIDE WHAT THE FACTS ARE.
24 MY PROVINCE IS THE LAW. IN OTHER WORDS, I TELL YOU WHAT
25 THE LAW IS. IF I'M WRONG, SUPREME COURT WILL CORRECT ME.

1 BUT AS FOR ANY CASE, YOU HAVE TO ACCEPT THE LAW AS I
2 GIVE IT TO YOU EVEN THOUGH YOU MAY HAVE SOME PRECONCEIVED
3 IDEA ABOUT WHAT YOU THINK IT SHOULD BE OR COULD BE.

4 FOR EXAMPLE, YOU -- IF I TOLD YOU THAT BURGLARY HAD
5 THESE ELEMENTS, A, B AND C, BUT YOU CAME TO COURT
6 BELIEVING THAT BURGLARY ONLY HAD ELEMENTS A AND B, DO YOU
7 UNDERSTAND THAT YOU WOULD HAVE TO ACCEPT MY VERSION OF IT
8 AND DISREGARD WHAT YOU THINK THE LAW IS?

9 A YES, I DO.

10 Q AND DO YOU THINK YOU'D BE ABLE TO DO THAT?

11 A YES.

12 Q SIR, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
13 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
14 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
15 CASE?

16 A YES, I -- I THINK I COULD, YES.

17 Q OKAY. SIR, HAVE YOU READ, HEARD, OR SEEN ANY MEDIA
18 COVERAGE ABOUT THIS CASE PRIOR TO REPORTING ON TUESDAY?

19 A I AM FROM PITTSBURGH. I HAD NO CLUE ABOUT WHY I'M
20 HERE TODAY. I THOUGHT IT WAS GOING TO BE A SIMPLE
21 MISDEMEANOR OR SOMETHING, BUT I DIDN'T KNOW WHAT I WAS
22 GETTING INTO.

23 Q OKAY. SO YOU HAVE NOT READ--

24 A I HAVE NO IDEA.

25 Q OKAY. SIR, IN A CRIMINAL CASE THE STATE HAS THE

1 BURDEN OF PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
2 UNDERSTAND THAT?

3 A YES.

4 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
5 PROVE HIS INNOCENCE?

6 A YES.

7 Q SIR, HAVE YOU REVIEWED THE JUROR TYPE SHEET THAT WAS
8 IN THE JURY ROOM?

9 A YES, I HAVE.

10 Q AND DO YOU FEEL THAT YOU FALL INTO ANY OF THOSE
11 CATEGORIES?

12 A I WOULD THINK NUMBER THREE.

13 Q OKAY. WHEN YOU SAY I WOULD THINK, DOES THAT MEAN YOU
14 FIT INTO CATEGORY THREE OR DOES THAT MEAN YOU'RE LEANING
15 TO CATEGORY THREE?

16 A NO, I THINK THREE WOULD BE THE CATEGORY I BELIEVE
17 THAT I WOULD -- THAT I WOULD BE IN.

18 Q OKAY. SIR, IF YOU WERE A JUROR IN THE DEATH PENALTY
19 CASE AND THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
20 WOULD THEN MOVE TO WHAT IS CALLED THE SENTENCING PHASE.
21 BECAUSE AS I EXPLAINED ON TUESDAY, THERE ARE TWO PHASES, A
22 GUILT PHASE AND A SENTENCING PHASE. AND IN SOUTH CAROLINA
23 IN A CAPITAL CASE, AS IN MOST STATES, THE JURY DECIDES
24 PENALTY.

25 A UH-HUH.

1 Q WHETHER IT BE LIFE WITHOUT THE POSSIBILITY OF PAROLE
2 OR DEATH. DO YOU UNDERSTAND?

3 A YES.

4 Q AND DURING THAT PHASE OF THE TRIAL YOU WOULD BE ABLE
5 TO CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND
6 MITIGATING CIRCUMSTANCES. DO YOU UNDERSTAND?

7 A YES.

8 Q AND I'M GOING TO EXPLAIN TO YOU WHAT THOSE ARE SO
9 THAT YOU KNOW WHAT WE'RE REFERRING TO; OKAY? AGGRAVATING
10 CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS, OR AN
11 OCCURRENCE WHICH THE LEGISLATURE HAS DECLARED BY STATE LAW
12 WOULD MAKE WORSE, THAT IS AGGRAVATE, THE OFFENSE OF
13 MURDER.

14 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
15 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
16 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
17 COMMISSION OF A CRIME.

18 SOME EXAMPLES WOULD BE THE MURDER OF A CHILD UNDER
19 THE AGE OF 11, KILLING A PERSON BY POISON, BURGLARY IN ANY
20 DEGREE, OR DRUG TRAFFICKING. AGAIN, THAT IS NOT THE
21 ENTIRE LIST. THAT'S JUST BY WAY OF EXAMPLE.

22 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
23 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
24 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
25 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF

1 MORAL CULPABILITY OR RESPONSIBILITY.

2 SOME EXAMPLES OF THOSE WOULD BE MENTAL RETARDATION AT
3 THE TIME OF THE CRIME, THE DEFENDANT HAD NOT YET REACHED
4 18 AT THE TIME OF THE CRIME, THAT THE DEFENDANT WAS AN
5 ACCOMPLICE AND THAT HIS OR HER PARTICIPATION WAS
6 RELATIVELY MINOR, THAT THE DEFENDANT ACTED UNDER DURESS OR
7 DOMINATION. AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE
8 IS NO DEFINITIVE LIST FOR MITIGATING CIRCUMSTANCES.

9 IF YOU WERE A JUROR IN THE PENALTY PHASE OF A TRIAL,
10 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
11 THAT CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
12 MITIGATING CIRCUMSTANCES AND THE LAW WHICH I WOULD
13 INSTRUCT YOU THAT APPLIES TO THE CASE, COULD YOU RETURN A
14 VERDICT OF -- OR COULD YOU RETURN A SENTENCE OF LIFE IN
15 PRISON WITHOUT THE POSSIBILITY OF PAROLE?

16 A YES.

17 Q COULD YOU UNDER THE VERY SAME CIRCUMSTANCES THAT I
18 HAVE DESCRIBED, CONSIDERING AGGRAVATING AND MITIGATING
19 CIRCUMSTANCES AND THE LAW THAT APPLIES, RETURN A SENTENCE
20 OF DEATH WHICH IN THIS STATE IS BY ELECTROCUTION OR LETHAL
21 INJECTION?

22 A YES, AS LONG AS THE CASE IS -- IS PROVEN THAT WAY. I
23 MEAN...

24 Q IN OTHER WORDS, YOU'RE TELLING ME YOU WOULD CONSIDER
25 THE AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW

1 THE COURT WOULD CHARGE, AND IF THE CIRCUMSTANCES WERE
2 APPROPRIATE, UNDER THOSE CIRCUMSTANCES YOU COULD IMPOSE A
3 SENTENCE OF DEATH; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q OKAY. SIR, AS WE HAVE EXPLAINED, THIS JURY WILL BE
6 SEQUESTERED FOR A PERIOD OF APPROXIMATELY 10 DAYS. IN
7 OTHER WORDS, YOU'LL BE HOUSED IN A MOTEL DURING THE COURSE
8 OF THE TRIAL.

9 AND I WILL TELL YOU AT THE OUTSET THAT WE ALREADY
10 ASSUME THAT'S INCONVENIENT. WE ASSUME IT INCONVENIENCES
11 YOUR BUSINESS AND WE ASSUME IT INCONVENIENCES YOUR FAMILY.

12 A UH-HUH.

13 Q OKAY? I NEED TO KNOW, HOWEVER, IF THIS WOULD POSE A
14 SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING. IN OTHER
15 WORDS, WOULD IT BE LIFE THREATENING TO YOU?

16 A NO.

17 Q OKAY. SIR, IN A CASE OF THIS TYPE, WHICH IS A
18 CAPITAL CASE, AS I INDICATED THE JURY DECIDES PUNISHMENT
19 OR SENTENCE, WHICH MEANS UNDER STATE LAW -- WELL, STATE
20 LAW PROVIDES THAT EACH JUROR SIGN THE VERDICT FORM
21 INDIVIDUALLY.

22 A UH-HUH.

23 Q IN OTHER CASES ONLY THE FOREPERSON SIGNS THE VERDICT.
24 BUT IN THIS TYPE CASE, THE STATE LAW REQUIRES THAT EVERY
25 JUROR SIGN ONE THROUGH 12. WOULD YOU BE ABLE TO SIGN A

1 VERDICT FORM IN THE EVENT OF A LIFE WITHOUT THE
2 POSSIBILITY OF PAROLE OR DEATH SENTENCE?

3 A YES.

4 Q OKAY.

5 THE COURT: ARE THERE ANY QUESTIONS FROM THE
6 STATE?

7 MR. HEMBREE: NO QUESTIONS FROM THE STATE.

8 THE COURT: ANY FROM THE DEFENSE?

9 MR. KELLY: NO, MA'AM.

10 THE COURT: ANY OBJECTION TO THE WITNESS BEING
11 QUALIFIED FROM THE STATE?

12 MR. HEMBREE: NO, YOUR HONOR. MR. SHUTEY IS
13 QUALIFIED.

14 THE COURT: WITNESS. I KEEP SAYING THAT.
15 JUROR. I'M SO SORRY. I JUST CAUGHT MYSELF. I SAID
16 WITNESS INSTEAD OF JUROR.

17 MR. HEMBREE: I DIDN'T EVEN CATCH IT. I'M USED
18 TO HEARING IT.

19 THE COURT: YOU'VE GOTTEN USED TO ME MAKING
20 THAT. MR. KELLY? ONE SECOND.

21 MR. KELLY: WE AGREE THE JUROR IS QUALIFIED.

22 THE COURT: OKAY. YES, SIR. YOU WERE GOING TO
23 ASK ME A QUESTION?

24 JUROR: JUST OUT OF CURIOSITY.

25 THE COURT: SURE.

1 JUROR: IF -- IF I WAS SELECTED AS A JUROR.

2 THE COURT: UH-HUH.

3 JUROR: OKAY. THAT'S NOT MY DECISION, BUT --
4 AND YOUR SEQUESTERED, I DON'T THINK I HAVE 14 PAIR OF
5 PANTS AND 14 UNDERWEAR, THINGS TO WEAR--

6 THE COURT: WE WILL WORK IT OUT. THE SLED
7 PEOPLE ARE PERFECT. THEY ARE WONDERFUL, MIRACLE
8 WORKERS. WE'LL FIGURE IT OUT.

9 JUROR: OKAY. I TOOK CARE OF MY FACTS AND
10 EVERYTHING, TOO, BY -- JUST IN CASE.

11 THE COURT: OKAY.

12 JUROR: I DON'T GET CAUGHT BEHIND. YOU KNOW
13 WHAT I MEAN?

14 THE COURT: OKAY. WHAT WE'RE GOING TO DO, SIR,
15 IS WE'RE GOING TO -- AS I INDICATED, WE ARE THROUGH
16 THIS PROCESS DEVELOPING A POOL OF QUALIFIED JURORS.
17 WE WILL SELECT THE ACTUAL JURY ON MONDAY.

18 I NEED YOU TO RETURN ON MONDAY AT 9:30 PACKED
19 FOR TWO WEEKS. BRING EVERYTHING YOU THINK YOU WILL
20 NEED FOR A TWO WEEK PERIOD BECAUSE IF YOU'RE
21 SELECTED, YOU'RE NOT GOING TO BE ABLE TO GO HOME
22 BECAUSE WE ARE GOING TO START THE CASE IMMEDIATELY.

23 JUROR: SO MONDAY I NEED TO BRING EVERYTHING I
24 NEED FOR TWO WEEKS.

25 THE COURT: YES, SIR.

1 JUROR: OKAY.

2 THE COURT: BUT YOU MAY NOT GET SELECTED. AND
3 IN CASE YOU DON'T GET SELECTED, YOU WILL BE EXCUSED
4 AND YOU GET TO GO HOME. BUT IF YOU ARE SELECTED--

5 JUROR: THAT IS NOT GOING TO MAKE MY WIFE HAPPY.

6 THE COURT: BUT IF YOU ARE SELECTED, YOU WILL
7 HAVE TO STAY HERE WITH US AND WE'D LOVE TO HAVE YOU.

8 JUROR: BE NICE TO BE HERE, I GUESS.

9 THE COURT: YOU'RE COMICAL. I LOVE IT. YOU
10 HAVE A GREAT SENSE OF HUMOR.

11 JUROR: SENSE OF HUMOR, I CAN GUARANTEE THAT.

12 THE COURT: I KNOW. YOU CAN'T TAKE YOURSELF TOO
13 SERIOUSLY, HUH? YOU, OF COURSE, DON'T HAVE TO BRING
14 YOUR THINGS UP HERE. YOU CAN LEAVE THEM IN THE CAR.
15 IF YOU ARE PICKED, WE WILL GET YOU SITUATED AT THE
16 APPROPRIATE TIME.

17 DURING THE BREAK, HOWEVER, I NEED FOR YOU TO
18 STRICTLY ABIDE BY MY INSTRUCTIONS AND PLEASE DON'T
19 DISCUSS THIS CASE WITH ANYONE.

20 JUROR: I WON'T EVEN TALK WITH MY WIFE ABOUT IT.

21 THE COURT: WELL, I RESPECT YOUR CANDOR BECAUSE
22 SOME PEOPLE ARE NOT ABLE TO HAVE THAT DEGREE OF
23 SELF-CONTROL. AND I KNOW IT'S DIFFICULT.

24 JUROR: IT'S NICE TO BE ABLE TO TELL HER, HEY, I
25 CAN'T TELL YOU A DOG-GONE THING, YOU KNOW.

1 THE COURT: AND WE WOULD ASK THAT YOU HAVE NO
2 EXPOSURE TO ANY MEDIA COVERAGE ABOUT IT BECAUSE WE
3 HAVE TO AT ALL TIMES MAINTAIN YOUR IMPARTIALITY IN
4 THE EVENT THAT YOU'RE SELECTED FOR THE PANEL.

5 JUROR: I UNDERSTAND.

6 THE COURT: WE LOOK FORWARD TO SEEING YOU ON
7 MONDAY. YOU HAVE A GREAT EVENING.

8 JUROR: MONDAY 9 AM SHARP?

9 THE COURT: 9:30.

10 JUROR: 9:30? OKAY.

11 THE COURT: GET TIME TO GET PARKED AND GET
12 SITUATED.

13 JUROR: OKAY. WHAT DO I DO NOW?

14 THE COURT: NOTHING. WE'LL JUST SEE YOU ON
15 MONDAY AT 9:30. YOU'RE EXCUSED. YOU CAN GO HOME.

16 JUROR: THAT WAY?

17 THE COURT: YES, SIR. THANK YOU.

18 JUROR: THANK YOU.

19 (JUROR LEFT THE COURTROOM.)

20 THE COURT: ALL RIGHT. WE'RE DONE UNTIL 5 WHICH
21 IS ABOUT FIVE OR SEVEN MINUTES. TAKE A LITTLE BREAK.
22 AND WE'RE AT NUMBER 25.

23 MR. HUMPHRIES: JUST SO I'M CLEAR, WE HAVE
24 GOT -- THIS NEXT JUROR THAT COMES IN WILL ACTUALLY BE
25 69TH DRAWN.

1 THE COURT: I'M NOT DOING THEM THAT WAY. I'M
2 DOING THEM BY PANELS. AND SO WHEREVER MY LAST PANEL
3 ENDS OFF, WHICH IS NUMBER 17 ON FRIDAY AT 11, THIS
4 NEXT SET FALLS IN AFTER THEM.

5 MR. HUMPHRIES: WE ARE TALKING ABOUT THE SAME
6 THING.

7 THE COURT: YEAH. I'M JUST NOT DOING IT THE WAY
8 YOU ARE, BUT YEAH, THEY FALL IN AFTER. SO MADAM
9 CLERK, YOU DON'T NEED TO -- I'M GOING TO FIGURE OUT A
10 WAY TO DO THAT.

11 MR. HUMPHRIES: I CAN TELL YOU WHAT--

12 THE COURT: YOU NEED TO GET A SEPARATE SHEET AND
13 WRITE ANYBODY THAT'S QUALIFIED ON THIS SHEET DOWN
14 BECAUSE THEY WILL GO BEHIND ANY JURORS THAT WE FIND
15 QUALIFIED TOMORROW MORNING, BECAUSE TECHNICALLY THIS
16 DOES NOT START UNTIL 12. THIS GOES BEHIND THE PANEL.
17 SO LET ME SEE WHAT YOU HAVE DONE SO FAR SO I CAN MAKE
18 SURE THAT THAT'S DONE THE WAY WE NEED IT DONE. OKAY.

19 (THE COURT WAS CONFERRING WITH THE CLERK.)

20 THE COURT: IF YOU COULD BRING MRS. SUSAN
21 ARENTSEN, NUMBER SEVEN.

22 (JUROR ENTERED THE COURTROOM.)

23 SUSAN ARENTSEN, WHITE FEMALE,
24 TESTIFIED AS FOLLOWS:

25 BY THE COURT:

1 Q HOW ARE YOU, MA'AM?

2 A I'M FINE.

3 Q HOPE YOU SURVIVE THE HEAT GETTING HERE. IT'S HOT
4 OUTSIDE. IF YOU WOULD STATE YOUR NAME FOR THE RECORD.

5 A SUSAN ARENTSEN.

6 Q AND MRS. ARENTSEN, YOU ARE NUMBER SEVEN; IS THAT
7 CORRECT?

8 A THAT IS CORRECT.

9 Q I WOULD REMIND YOU THAT YOU'RE STILL UNDER OATH. DO
10 YOU UNDERSTAND?

11 A YEAH.

12 Q AND HAVE YOU HEARD ANY OR BEEN EXPOSED TO ANY MEDIA
13 ACCOUNTS ABOUT THIS CASE SINCE THE COURT GAVE ITS
14 INSTRUCTIONS ON TUESDAY?

15 A NO. I SAW ONE THING.

16 Q OKAY. WELL THAT'S -- WE KIND OF EXPECT THAT. AS
17 LONG AS YOU DID NOT DELIBERATELY EXPOSE YOURSELF TO
18 SOMETHING. WE ARE GOING TO ASK YOU QUESTIONS. SOME OF
19 THEM MAY SEEM INTENSELY PERSONAL. IT'S NOT OUR INTENT TO
20 TRY TO INVADE YOUR PRIVACY.

21 STATE LAW REQUIRES IN A CASE SUCH AS THIS THAT WE
22 INQUIRE OF EACH JUROR INDIVIDUALLY. YEAH, IF YOU COULD
23 SCOOT A LITTLE CLOSER TO THE MICROPHONE FOR US. THANK
24 YOU.

25 A ALL RIGHT.

1 Q THAT WE TALK TO EACH JUROR INDIVIDUALLY AND THAT WE
2 INQUIRE BASICALLY TO YOUR VIEWS ON CERTAIN SUBJECTS.

3 IF -- WE DON'T CHALLENGE YOUR VIEWS. THERE ARE -- I
4 EMPHASIZE THERE ARE NO RIGHT OR WRONG ANSWERS; OKAY?

5 A YES.

6 Q THE ONLY THING THAT WE REQUIRE OF YOU IS THAT YOU BE
7 OPEN, HONEST, AND FULLY AND COMPLETE IN YOUR ANSWERS. IF
8 YOU DON'T UNDERSTAND THE QUESTION, PLEASE LET ME KNOW.
9 AND IF YOU COULD ANSWER EACH QUESTION WITH A YES OR NO,
10 THAT WOULD BE WONDERFUL, TO THE BEST OF YOUR ABILITY.

11 A ALL RIGHT.

12 Q AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
13 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
14 INDICATE ANYTHING ABOUT THE DEFENDANT BECAUSE HE IS
15 PRESUMED TO BE INNOCENT IN THE LAW. DO YOU UNDERSTAND?

16 A YES.

17 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
18 LISTEN TO THE LAW?

19 A YES.

20 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

21 A YES.

22 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
23 MAY DISAGREE WITH ME ABOUT WHAT YOU THINK THE LAW IS?

24 A YES.

25 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE

1 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
2 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
3 CASE?

4 A I THINK SO.

5 Q OKAY. AND AGAIN, THERE ARE NO RIGHT OR WRONG
6 ANSWERS, AND I HAVE TO HAVE A YES OR A NO.

7 A YES.

8 Q OKAY. HAVE YOU HEARD, READ, OR SEEN ANY MEDIA
9 COVERAGE ABOUT THIS CASE PRIOR TO TUESDAY?

10 A YES.

11 Q AS A RESULT OF WHAT YOU HAVE BEEN EXPOSED TO, HAVE
12 YOU FORMED ANY FIXED OPINION ABOUT THE FACTS IN THIS CASE?
13 FIXED MEANS, I MADE UP MY MIND, IT'S IN-REMOVABLE OPINION.

14 A NO, I HAVE NOT THEN.

15 Q OKAY. COULD YOU, IRREGARDLESS OF WHAT YOU HAVE HEARD
16 LISTEN TO THE WITNESSES WHO WILL BE MUCH LIKE MY DEPUTY
17 SITTING IN THE WITNESS STAND, THEY WILL BE SWORN TO TELL
18 THE TRUTH AND CONSIDER ONLY THAT TESTIMONY AND OTHER
19 EVIDENCE THAT IS INTRODUCED INTO THE RECORD AS WELL AS THE
20 COURT'S INSTRUCTIONS ON THE LAW AND MAKE A DECISION,
21 BECAUSE THE JURY IS THE FACT FINDER IN ANY CASE, AND WE
22 HAVE TO MAINTAIN OR MAKE SURE THAT YOU ARE IMPARTIAL, AND
23 THAT TO THE EXTENT POSSIBLE THAT YOU COME TO THIS COURT
24 WITH AN OPEN MIND, AND THAT YOU LISTEN TO THE EVIDENCE,
25 BECAUSE THE ONLY THING THAT WE CONSIDER FACTS ARE WHAT

1 COME FROM THE WITNESS STAND.

2 OF COURSE, IT'S UP TO THE JURY TO DECIDE WHETHER THEY
3 BELIEVE IT OR DON'T BELIEVE IT. IT'S UP TO THEM TO WEIGH
4 IT. BUT I HAVE TO MAKE SURE THAT YOU CAN IMPARTIALLY
5 LISTEN TO THE FACTS AND APPLY THE LAW AS THE COURT
6 INSTRUCTS YOU AND RENDER A TRUE AND JUST VERDICT IN THIS
7 CASE BASED ONLY ON THAT EVIDENCE AND THE LAW. DO YOU
8 THINK THAT YOU CAN DO THAT?

9 A YES.

10 Q DO YOU THINK YOU CAN SET ASIDE ANY OPINIONS THAT YOU
11 MAY HAVE DEVELOPED ABOUT THIS CASE? IN OTHER WORDS, CAN
12 YOU DISABUSE YOUR MIND OF ANYTHING YOU THOUGHT ABOUT
13 BEFORE THIS CASE AND CONSIDER ONLY THE EVIDENCE AND THE
14 FACTS AND THE IN AND RENDERING A DECISION?

15 A YES.

16 Q IN A CRIMINAL CASE, MA'AM, THE STATE HAS THE BURDEN
17 OF PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE
18 DOUBT. DO YOU UNDERSTAND THAT?

19 A YES.

20 Q AND DO YOU ALSO UNDERSTAND THAT THE DEFENDANT HAS
21 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

22 A YES.

23 Q HAVE YOU HAD AN OPPORTUNITY TO LOOK OVER THE JUROR
24 TYPE SHEET THAT WAS IN THE JURY ROOM?

25 A YES.

1 Q AND DO YOU FEEL THAT YOU FIT INTO ANY OF THOSE
2 CATEGORIES?

3 A YES.

4 Q AND WHICH CATEGORY WOULD THAT BE?

5 A TYPE ONE.

6 Q OKAY. AND THAT IS THE TYPE JUROR THAT -- WHO IS
7 UNABLE OR UNWILLING TO GIVE THE DEATH PENALTY IN ANY CASE?

8 A YES.

9 Q OKAY. AND IS THAT YOUR FIXED OPINION ABOUT THAT
10 MATTER?

11 A YES.

12 Q OKAY.

13 THE COURT: ANY QUESTIONS FROM THE STATE?

14 MR. HUMPHRIES: NONE FROM THE STATE.

15 THE COURT: FROM THE DEFENSE?

16 MR. KELLY: WE HAVE NONE.

17 THE COURT: OKAY. ANY EXCEPTION TO THE JUROR
18 BEING EXCUSED FROM THE STATE?

19 MR. HUMPHRIES: NONE, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. KELLY: NO, MA'AM.

22 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
23 COURT'S THANKS. HAVE GREAT AFTERNOON.

24 JUROR: THANK YOU.

25 (JUROR LEFT THE COURTROOM.)

1 THE COURT: YOU'RE WELCOME. JUROR 32, PEARLENE
2 BROMELL.

3 (JUROR ENTERED THE COURTROOM.)

4 PEARLENE BROMELL, BLACK FEMALE,
5 TESTIFIED AS FOLLOWS:

6 BY THE COURT:

7 Q HOW ARE YOU, MA'AM?

8 A FINE. HOW ARE YOU?

9 Q FINE. GOOD TO SEE YOU TODAY. MA'AM, IF YOU WOULD
10 STATE YOUR FULL NAME FOR THE RECORD.

11 A PEARLENE BROMELL.

12 Q AND MA'AM, YOU ARE JUROR 32; IS THAT RIGHT?

13 A YES.

14 Q MA'AM, I WOULD REMIND YOU THAT YOU'RE STILL UNDER
15 OATH. DO YOU UNDERSTAND?

16 A YES.

17 Q AND HAVE YOU HEARD OR BEEN EXPOSED TO ANY MEDIA
18 ACCOUNTS ABOUT THIS CASE SINCE THE COURT'S INSTRUCTIONS ON
19 TUESDAY?

20 A LITTLE BIT.

21 Q OKAY. WAS IT IN PASSING OR DID YOU ACTUALLY SIT DOWN
22 AND WATCH A NEWS ACCOUNT?

23 A SORT OF, MY HUSBAND TALK ABOUT IT, SO I TOLD HIM I
24 COULDN'T...

25 Q OKAY. WELL, THAT'S NORMAL. YOU TOLD HIM YOU COULD

1 NOT DISCUSS IT; IS THAT CORRECT?

2 A NO.

3 Q OKAY. MA'AM, WE'RE GOING TO ASK YOU SOME QUESTIONS.
4 SOME OF THEM ARE PERSONAL. IT IS NOT OUR INTENT TO INVAD
5 YOUR PRIVACY. STATE LAW REQUIRES THAT WE ASK THESE
6 QUESTIONS. IT ALSO REQUIRES THAT WE TALK TO EACH JUROR
7 INDIVIDUALLY IN A CASE OF THIS TYPE.

8 I EMPHASIZE THERE ARE NO RIGHT OR WRONG ANSWERS. WE
9 JUST NEED YOU TO BE AS HONEST WITH US AND OPEN AND ANSWER
10 THE QUESTIONS AS FULLY AS POSSIBLE. DO YOU UNDERSTAND?

11 A YES.

12 Q IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET ME
13 KNOW AND PLEASE TRY TO THE BEST OF YOUR ABILITY TO ANSWER
14 EACH QUESTION WITH A YES OR NO ANSWER.

15 A OKAY.

16 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY,
17 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
18 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN
19 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

20 A YES.

21 Q I NEED YOU TO SPEAK UP FOR ME.

22 A OH, YES.

23 Q THANK YOU. IF YOU WERE A JUROR IN A CRIMINAL CASE,
24 COULD YOU LISTEN TO THE LAW?

25 A YES.

1 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

2 A YES.

3 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU
4 EVEN IF YOU DISAGREE WITH ME ABOUT WHAT YOU THINK THE LAW
5 IS OR WHAT IT OUGHT TO BE?

6 A YES.

7 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
8 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
9 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

10 A YES.

11 Q PRIOR TO ARRIVING ON TUESDAY, HAD YOU BEEN EXPOSED TO
12 ANY MEDIA COVERAGE ABOUT THIS CASE?

13 A NO, I DON'T THINK SO.

14 Q OKAY.

15 A NO.

16 Q ALL RIGHT. IN A CRIMINAL CASE THE STATE HAS THE
17 BURDEN OF PROVING THE GUILT OF THE DEFENDANT BEYOND A
18 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

19 A COULD YOU REPEAT THAT?

20 Q SURE. IN EVERY CRIMINAL CASE THE STATE HAS THE
21 BURDEN, AND THEY HAVE TO PROVE -- ONCE THEY'VE ACCUSED
22 SOMEONE OF SOMETHING, THEY HAVE TO PROVE THEIR GUILT
23 BEYOND A REASONABLE DOUBT. IT'S A HIGHEST STANDARD OF
24 PROOF WE HAVE IN THE LAW. DO YOU UNDERSTAND THAT?

25 A YES.

1 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO
2 BURDEN TO PROVE ANYTHING?

3 A YES.

4 Q OKAY. HE DOES NOT HAVE TO PROVE HIS INNOCENCE. DO
5 YOU UNDERSTAND THAT?

6 A YES.

7 Q MA'AM, HAVE YOU HAD A CHANCE TO REVIEW THE JUROR
8 INFORMATION SHEET?

9 A YES.

10 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES
11 OF JURORS? DO YOU NEED SOME MORE TIME TO READ IT OR LOOK
12 AT IT?

13 A YES. I'M NOT SURE UNDERSTAND.

14 Q WANT ME TO SUMMARIZE IT FOR YOU?

15 A YES, UH-HUH.

16 Q OKAY. TYPE ONE IS THE KIND OF JUROR WHERE IF THE
17 DEFENDANT IS FOUND GUILTY, THEY ALWAYS FEEL OR THEY ARE
18 UNABLE OR UNWILLING TO GIVE THE DEATH PENALTY IN ANY KIND
19 OF CASE.

20 TYPE TWO IS THE KIND OF JUROR WHERE A DEFENDANT IS
21 FOUND GUILTY FEELS THAT THE DEATH PENALTY IS APPROPRIATE
22 IN EVERY CASE. IN OTHER WORDS, THAT'S THE KIND -- THAT'S
23 WHAT THEY WOULD IMPOSE IN EVERY SINGLE CASE.

24 AND TYPE THREE IS THE KIND OF JUROR THAT SAYS, I AM
25 WILLING TO LISTEN TO ALL OF THE EVIDENCE, THAT I AM NOT

1 PREDISPOSED, I HAVE NOT MADE UP MY MIND, BUT DEPENDING ON
2 THE FACTS AND CIRCUMSTANCES OF THE CASE AND CONSIDERING
3 THE LAW AS THE COURT GIVES IT TO YOU THAT I COULD GIVE A
4 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
5 DEATH DEPENDING ON THE CIRCUMSTANCES OF EACH PARTICULAR
6 CASE, AND I'M WILLING TO OPEN -- TO LISTEN OPENLY AND
7 FAIRLY BEFORE I MAKE ANY DECISION. DOES THAT HELP YOU
8 UNDERSTAND WHAT EACH OF THOSE MEANS?

9 A YES. I THINK I WOULD BE TYPE THREE.

10 Q OKAY. WHEN YOU SAY YOU THINK YOU WOULD BE, IS THAT A
11 YES OR A NO?

12 A YES.

13 Q AND AGAIN, THERE'S NO RIGHT OR WRONG ANSWER.

14 A YES.

15 Q OKAY.

16 A IT'S PART OF WHAT I DON'T UNDERSTAND, THOUGH.

17 Q OKAY.

18 A TIME FOR ME.

19 Q OKAY. AND AGAIN, THERE IS NO RIGHT OR WRONG ANSWER.
20 YOU KNOW, THESE ARE DIFFICULT QUESTIONS, PROBABLY
21 QUESTIONS THAT PEOPLE NEVER REALLY THOUGHT ABOUT. SO
22 AGAIN, THERE IS NO RIGHT OR WRONG ANSWER. JUST DO THE
23 BEST IN BEING HONEST WITH US AS YOU CAN.

24 IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND IF
25 THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD

1 THEN MOVE TO THE SENTENCING PHASE BECAUSE IN DEATH PENALTY
2 CASES THERE ARE TWO PHASES, THERE'S A GUILT PHASE -- IT'S
3 ALMOST LIKE TWO TRIALS -- BE A GUILT PHASE AND A PENALTY
4 PHASE.

5 IN THE GUILT PHASE THE JURY DECIDES WHETHER THE
6 DEFENDANT IS GUILTY OR NOT GUILTY. IF THEY FIND HIM
7 GUILTY OF MURDER, YOU THEN MOVE TO THE SECOND PHASE WHERE
8 THE JURY DETERMINES THE PENALTY, WHETHER IT'S LIFE WITHOUT
9 THE POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND?

10 A YES.

11 Q YOU NEED TO SPEAK INTO--

12 A OH, YES.

13 Q NOW, IN THAT CASE THE JURY HAS THE ABILITY TO
14 CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND
15 MITIGATING CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU
16 WHAT BOTH OF THOSE ARE BECAUSE THERE'S SOME OTHER
17 QUESTIONS I'M GOING TO ASK YOU THAT RELATE TO THAT
18 INFORMATION; OKAY?

19 A OKAY.

20 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
21 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
22 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
23 THE OFFENSE OF MURDER.

24 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
25 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO

1 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
2 COMMISSION OF A CRIME.

3 SOME EXAMPLES OF AGGRAVATING CIRCUMSTANCES WOULD BE
4 THE MURDER OF A CHILD UNDER AGE 11, DRUG TRAFFICKING,
5 KILLING BY POISON, BURGLARY IN ANY DEGREE. OF COURSE,
6 THESE ARE JUST EXAMPLES.

7 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
8 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
9 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
10 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
11 MORAL CULPABILITY OR RESPONSIBILITY.

12 AND SOME OF THOSE EXAMPLES WOULD BE MENTAL
13 RETARDATION AT THE TIME OF THE OFFENSE, THE PERSON WAS
14 UNDER THE AGE OF 18 AT THE TIME THE CRIME WAS COMMITTED,
15 THAT THEY ACTED UNDER DURESS OR DOMINATION, OR THAT THEY
16 WERE AN ACCOMPLICE AND THAT THEIR PARTICIPATION WAS
17 RELATIVELY MINOR.

18 AGAIN, THESE ARE JUST EXAMPLES SO THAT YOU WILL HAVE
19 A POINT OF REFERENCE AS TO WHAT WE'RE TALKING ABOUT.

20 IF YOU WERE A JUROR IN THE PENALTY PHASE OF A CASE --
21 WELL, LET ME REPHRASE THAT. IF YOU WERE A JUROR IN THE
22 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE FACTS AND
23 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
24 AGGRAVATING AND MITIGATING CIRCUMSTANCES THAT I JUST
25 EXPLAINED TO YOU AND THE LAW THAT I WOULD INSTRUCT YOU

1 APPLIES TO THE CASE, RETURN A SENTENCE OF LIFE IN PRISON
2 WITHOUT THE POSSIBILITY OF PAROLE?

3 A COULD YOU REPEAT? I'M NOT SURE I UNDERSTAND IT.

4 Q CERTAINLY. OKAY. WHAT I'M ASKING IS IF THE JURY
5 WERE TO FIND THE DEFENDANT GUILTY IN ANY DEATH PENALTY
6 CASE, NOT PARTICULARLY THIS CASE, AND WE REACHED THE
7 SENTENCING PHASE AND YOU WERE SEATED ON THE JURY -- ON A
8 JURY IN THOSE CIRCUMSTANCES, AND IF YOU CONSIDERED THE LAW
9 AS I INSTRUCT YOU, WHICH IS THE CONSIDERATION OF
10 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND ANY OTHER
11 LEGAL -- ANY OTHER LAW THAT THE COURT WOULD INSTRUCT YOU
12 IS APPLICABLE, COULD YOU RENDER A SENTENCE OF LIFE WITHOUT
13 THE POSSIBILITY OF PAROLE?

14 A YES.

15 Q OKAY. UNDER THE VERY SAME CIRCUMSTANCES THAT I JUST
16 EXPLAINED, COULD YOU RETURN A SENTENCE OF DEATH, WHICH IN
17 THIS STATE IS DEATH BY ELECTROCUTION OR LETHAL INJECTION?

18 A I -- REPEAT THAT PART OF IT.

19 Q OKAY. SURE. WHAT I'M SAYING IS IF YOU WERE ON A
20 JURY, NOT NECESSARILY THIS JURY, BUT ANY JURY, ANY DEATH
21 PENALTY JURY, AND THE JURY REACHED THE SENTENCING PHASE
22 AND YOU WERE ON THAT JURY, COULD YOU CONSIDER THE LAW THAT
23 IS APPLIED AND AGGRAVATING AND MITIGATING CIRCUMSTANCES
24 AND RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
25 ELECTROCUTION OR LETHAL INJECTION?

1 A NO.

2 Q OKAY.

3 A I WOULD HAVE TO ANSWER NO.

4 Q OKAY.

5 THE COURT: ANY QUESTIONS FROM THE STATE?

6 MR. HUMPHRIES: NO, YOUR HONOR.

7 THE COURT: FROM THE DEFENSE?

8 MR. KELLY: NO, MA'AM.

9 THE COURT: ANY OBJECTION TO THE JUROR BEING
10 EXCUSED FROM THE STATE?

11 MR. HUMPHRIES: NO, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. KELLY: NO, MA'AM.

14 THE COURT: MA'AM, YOU'RE EXCUSED. PLEASE DO
15 NOT DISCUSS THIS QUALIFICATION PROCESS WITH ANYONE.
16 THANK YOU.

17 (JUROR LEFT THE COURTROOM.)

18 THE COURT: BETTY ZURCHER, 367. ZURCHER.

19 MR. HUMPHRIES: SHE WAS MERCER ON HER
20 QUESTIONNAIRE SHEET.

21 THE COURT: I'LL HAVE HER TELL US HER FULL NAME.

22 (JUROR ENTERED THE COURTROOM.)

23 BETTY ZURCHER, WHITE FEMALE, TESTIFIED
24 AS FOLLOWS:

25 BY THE COURT:

1 Q MA'AM, HOW ARE YOU?

2 A I'M GOOD. LITTLE BIT NERVOUS.

3 Q OH, DON'T BE. DON'T BE. TAKE A DEEP BREATH. AND IF
4 YOU COULD GET AS CLOSE TO THAT MICROPHONE AS POSSIBLE SO
5 THAT WE CAN HEAR YOU.

6 A OKAY.

7 Q AND IF YOU WOULD STATE YOUR FULL NAME FOR THE RECORD.

8 A BETTY MIMS MERCER.

9 Q AND IT'S M-E-C--

10 A R-C-E-R.

11 Q AND WE HAD ZURCHER.

12 A ZURCHER. THAT WAS MY NAME BEFORE I GOT MARRIED.

13 Q OKAY. THAT WAS YOUR--

14 A THAT WAS MY OLD NAME.

15 Q OKAY. AND YOU'RE JUROR 367; IS THAT CORRECT?

16 A YES, MA'AM.

17 Q AND MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER
18 OATH. DO YOU UNDERSTAND?

19 A YES, MA'AM.

20 Q AND AFTER THE COURT'S INSTRUCTIONS ON TUESDAY, HAVE
21 YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS CASE?

22 A NO, MA'AM. I CUT THE TV OFF LAST NIGHT.

23 Q OKAY. NOW, WE'RE GOING TO ASK YOU SOME QUESTIONS. I
24 NEED YOU TO TAKE A DEEP BREATH. I KNOW THIS IS NERVE
25 WRACKING A LITTLE, BUT DON'T BE NERVOUS. SOME OF THE

1 QUESTIONS WE ASK MAY SEEM VERY PRIVATE, AND IT'S NOT OUR
2 INTENT TO INVADE YOUR PRIVACY.

3 STATE LAW REQUIRES US TO TALK TO EACH JUROR
4 INDIVIDUALLY IN A CASE OF THIS TYPE, AND IT REQUIRES THAT
5 WE ASK THE VERY QUESTIONS THAT WE ARE ASKING; OKAY?

6 A YES, MA'AM.

7 Q I NEED TO EMPHASIZE FOR YOU THERE ARE NO RIGHT OR
8 WRONG ANSWERS.

9 A OKAY.

10 Q THE ONLY THING THAT WE REQUIRE OF YOU IS THAT YOU
11 ANSWER US OPENLY, HONESTLY, AND FULLY TO THE BEST OF YOUR
12 ABILITY. AND IF YOU COULD ANSWER EACH QUESTION FOR ME YES
13 OR NO, THAT WOULD BE VERY HELPFUL, AGAIN TO THE BEST OF
14 YOUR ABILITY.

15 A OKAY.

16 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
17 BUT THE MERE FACT WE TALK ABOUT PENALTY DOES NOT INDICATE
18 ANYTHING ABOUT THE DEFENDANT. THE DEFENDANT IS PRESUMED
19 INNOCENT UNDER THE LAW. DO YOU UNDERSTAND?

20 A YES, MA'AM.

21 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
22 LISTEN TO THE LAW?

23 A YES, MA'AM.

24 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
25 INSTRUCT YOU?

1 A YES, MA'AM, I COULD.

2 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
3 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

4 A YES, MA'AM.

5 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
6 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
7 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
8 CASE?

9 A YES, MA'AM.

10 Q PRIOR TO ARRIVING ON TUESDAY, HAD YOU HAD ANY MEDIA
11 EXPOSURE TO THIS CASE?

12 A VERY LITTLE BECAUSE I AM A TRUCK DRIVER.

13 Q OKAY.

14 A SO I DON'T GET A PAPER ALL THE TIME AND--

15 Q OKAY.

16 A -- THE ONLY REASON I KNEW WHAT IT WAS WHEN I GOT HERE
17 WAS BECAUSE MY GRANDDAUGHTER HAD TOLD ME.

18 Q OKAY. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
19 TO, HAVE YOU FORMED ANY FIXED OPINION ABOUT THIS CASE?

20 A NO, MA'AM.

21 Q DO YOU BELIEVE THAT YOU COULD LISTEN TO THE EVIDENCE
22 AND RENDER A VERDICT BASED SOLELY ON THE EVIDENCE AND THE
23 LAW AS THE COURT WILL CHARGE?

24 A YES, MA'AM, I THINK SO.

25 Q OKAY. WHEN YOU SAY THINK SO...

1 A I BELIEVE I CAN, YES, MA'AM.

2 Q OKAY. IS THAT A YES?

3 A YES.

4 Q OKAY. THANK YOU. IN A CRIMINAL CASE THE STATE HAS
5 THE BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A
6 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

7 A YES, MA'AM.

8 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
9 NO BURDEN TO PROVE HIS INNOCENCE?

10 A YES, MA'AM.

11 Q HAVE YOU REVIEWED THE JUROR INFORMATION SHEET?

12 A YES, MA'AM.

13 Q TYPED SHEET, RATHER?

14 A YES, MA'AM.

15 Q YES, MA'AM. AND DO YOU BELIEVE YOU FIT INTO ANY OF
16 THOSE CATEGORIES?

17 A YES, MA'AM.

18 Q TELL ME WHICH ONE THAT WOULD BE.

19 A I THINK THREE BECAUSE I BELIEVE I COULD DO THAT
20 MEANING IF IT'S PROVEN BEYOND A DOUBT, I COULD.

21 Q OKAY. NOW, TYPE THREE IS THE PERSON WHO COMES
22 COMPLETELY INDEPENDENT, WHO LISTENS TO THE EVIDENCE AND
23 SAYS, IF THE CIRCUMSTANCES WARRANT, I COULD FIND LIFE
24 WITHOUT THE POSSIBILITY OF PAROLE, AND IF THE
25 CIRCUMSTANCES WARRANT, I COULD FIND DEATH. IS THAT WHAT

1 YOU'RE TELLING ME?

2 A YES, MA'AM.

3 Q AND WHEN YOU SAY, I THINK I CAN, IS THAT A YES OR A
4 NO?

5 A YES.

6 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
7 AND IF THE JURY FOUND THE DEFENDANT GUILTY, WE WOULD THEN
8 MOVE TO THE SENTENCING PHASE. AND AS I EXPLAINED ON
9 TUESDAY, IN A CASE OF THIS TYPE THERE ARE TWO PHASES.

10 THERE'S A GUILT PHASE WHERE THE JURY CONSIDERS
11 WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. AND THERE
12 IS A SENTENCING PHASE WHERE THE JURY LITERALLY DETERMINES
13 THE SENTENCE, WHETHER THAT BE LIFE WITHOUT THE POSSIBILITY
14 OF PAROLE OR DEATH. DO YOU UNDERSTAND?

15 A YES, MA'AM.

16 Q AND IN THE COURSE OF THAT, THE JURY GETS TO CONSIDER
17 WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
18 CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU WHAT THOSE
19 ARE BECAUSE I'M GOING TO ASK YOU A SET OF QUESTIONS AFTER
20 THAT.

21 A OKAY.

22 Q IF YOU DON'T UNDERSTAND SOMETHING, LET ME KNOW.

23 A YES, MA'AM.

24 Q OKAY? AGGRAVATING CIRCUMSTANCES ARE FACTS,
25 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE

1 HAS DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS
2 AGGRAVATE, THE OFFENSE OF MURDER.

3 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
4 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
5 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
6 COMMISSION OF A CRIME.

7 SOME EXAMPLES WOULD BE THE MURDER OF A CHILD UNDER
8 THE AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON, OR
9 BURGLARY IN ANY DEGREE. AND THIS IS -- THOSE ARE ONLY
10 EXAMPLES. IT'S BY NO MEANS THE ENTIRE WELL.

11 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
12 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
13 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
14 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
15 MORAL CULPABILITY OR RESPONSIBILITY.

16 AND SOME EXAMPLES OF THOSE WOULD BE MENTAL
17 RETARDATION AT THE TIME OF THE CRIME, THE DEFENDANT WAS
18 BELOW THE AGE OF 18 AT THE TIME OF THE CRIME, THE
19 DEFENDANT ACTED UNDER DURESS OR DOMINATION, OR THAT THEY
20 WERE AN ACCOMPLICE AND THAT THEIR PARTICIPATION WAS
21 RELATIVELY MINOR. THOSE AGAIN, ARE JUST EXAMPLES BECAUSE
22 THERE IS NO COMPLETE LIST OF MITIGATING CIRCUMSTANCES;
23 OKAY?

24 SO WE JUST GET THOSE -- SEE, BECAUSE WE KNOW WHAT
25 THEY ARE AND WE NEED TO, YOU KNOW, WE DEFINE THOSE TERMS,

1 I NEED TO SORT OF MAKE IT A LITTLE MORE FINITE FOR YOU, SO
2 WE JUST GIVE YOU SOME EXAMPLES.

3 IF YOU WERE A JUROR IN THE SENTENCING PHASE, COULD
4 YOU DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
5 OF THE CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
6 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
7 YOU APPLIES TO THE CASE RETURN A SENTENCE OF LIFE IN
8 PRISON WITHOUT THE POSSIBILITY OF PAROLE?

9 A YES, MA'AM, I THINK SO. I BELIEVE SO, YES.

10 Q OKAY. WELL, I NEED YOU TO TELL ME AGAIN.

11 A YES.

12 Q THERE'S NO RIGHT OR WRONG ANSWER. IS YOUR ANSWER
13 YES?

14 A YES.

15 Q OKAY. AND UNDER THOSE VERY SAME CIRCUMSTANCES THAT I
16 JUST DESCRIBED, IN CONSIDERING THE CIRCUMSTANCES OF THE
17 CASE, THE CONSIDERATION OF AGGRAVATING AND MITIGATING
18 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT THAT
19 APPLY, COULD YOU RETURN A SENTENCE OF DEATH WHICH IN THIS
20 STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

21 A YES.

22 Q NOW, WE'VE ALREADY EXPLAINED THAT THE JURY WILL BE
23 SEQUESTERED, THAT IS HOUSED IN A HOTEL FOR THE DURATION OF
24 THE TRIAL, WHICH WILL APPROXIMATELY BE 10 DAYS. WE
25 ALREADY ASSUME THAT'S INCONVENIENT FOR YOU. WE ASSUME IT

1 IS A COMPLETE DISRUPTION OF YOUR LIFE.

2 BUT WHAT I NEED TO ASK IS WILL THIS POSE A SERIOUS
3 DANGER TO YOUR HEALTH OR WELL-BEING?

4 A NO, MA'AM.

5 Q NO, IN EVERY CAPITAL CASE THE JURORS ARE REQUIRED
6 WHETHER THE SENTENCE BE LIFE WITHOUT THE POSSIBILITY OF
7 PAROLE OR DEATH, EACH JUROR IS REQUIRED TO SIGN THE
8 VERDICT FORM INDIVIDUALLY, WHICH MEANS WILL THERE BE LINES
9 ONE THROUGH 12 AND EACH JUROR WILL HAVE TO SIGN.

10 A YES.

11 Q WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
12 OF A LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCE OR
13 DEATH SENTENCE?

14 A YES, MA'AM.

15 THE COURT: ANY QUESTIONS FROM THE STATE?

16 MR. HUMPHRIES: I DON'T THINK SO. THANK YOU
17 VERY MUCH.

18 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

19 MR. KELLY: NO, MA'AM.

20 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
21 FOUND QUALIFIED?

22 MR. HUMPHRIES: NO, YOUR HONOR.

23 THE COURT: FROM THE STATE?

24 MR. HUMPHRIES: NO, MA'AM.

25 THE COURT: FROM THE DEFENSE?

1 MR. KELLY: NO, MA'AM.

2 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED
3 WHICH MEANS -- WHICH MEANS THAT YOU ARE NOW A PART OF
4 THE POOL OF QUALIFIED JURORS.

5 JUROR: OKAY.

6 THE COURT: FROM THAT POOL ON MONDAY WE WILL
7 SELECT THE ACTUAL JURY. I NEED YOU TO COME ON MONDAY
8 AT 9:30 PREPARED TO STAY WITH US FOR 10 DAYS, WHICH
9 MEANS YOU NEED TO COME PACKED WITH EVERYTHING YOU
10 THINK YOU WILL NEED FOR TWO WEEKS. OF COURSE, YOU
11 DON'T HAVE TO BRING IT UP HERE WITH YOU.

12 JUROR: NO.

13 THE COURT: IF YOU'RE SELECTED, I JUST NEED YOU
14 TO KNOW YOU'RE NOT GOING TO BE ABLE TO GO BACK HOME
15 AND WE'LL GET YOU SITUATED IN YOUR HOTEL. DURING
16 THIS BREAK IN THE PROCEEDINGS, HOWEVER, I NEED FOR
17 YOU TO STRICTLY ABIDE AND HAVE NO DISCUSSION ABOUT
18 THIS CASE WITH ANYONE UNDER ANY CIRCUMSTANCES.

19 JUROR: YES, MA'AM.

20 THE COURT: AND DO NOT WATCH ANY MEDIA ACCOUNTS
21 ABOUT THIS CASE UNDER ANY CIRCUMSTANCES. OKAY?

22 JUROR: YES, MA'AM.

23 THE COURT: WE HAVE TO MAINTAIN YOUR
24 IMPARTIALITY IN THE EVENT THAT YOU'RE SELECTED. WE
25 APPRECIATE YOUR TIME.

1 JUROR: OKAY.

2 THE COURT: AND WE'LL SEE YOU ON MONDAY. YOU
3 HAVE A GOOD DAY.

4 JUROR: THANK YOU.

5 THE COURT: YOU'RE WELCOME.

6 (JUROR LEFT THE COURTROOM.)

7 THE COURT: TOMMY BARNHILL, 15.

8 (JUROR ENTERED THE COURTROOM.)

9 TOMMY BARNHILL, WHITE MALE, TESTIFIED
10 AS FOLLOWS:

11 BY THE COURT:

12 Q HOW ARE YOU DOING TODAY?

13 A GOOD.

14 Q THAT'S A GREAT SHIRT.

15 A GOT IT WHEN I RETIRED.

16 Q FROM WHERE?

17 A RETIRED, ARMY.

18 Q OH, WOW. SIR, PLEASE STATE YOUR NAME FOR THE RECORD.

19 A TOMMY BARNHILL.

20 Q AND SIR, YOU'RE JUROR 15; IS THAT CORRECT?

21 A RIGHT.

22 Q SIR, I WILL REMIND YOU YOU'RE STILL UNDER OATH. DO
23 YOU UNDERSTAND?

24 A YES, MA'AM.

25 Q AND WE APPRECIATE YOU COMING UP HERE ON SHORT NOTICE

1 AND ACCOMMODATING US. WE KNOW HOW HOT IT IS TODAY. SIR,
2 SINCE THE COURT'S INSTRUCTIONS, HAVE YOU BEEN EXPOSED TO
3 ANY MEDIA COVERAGE ABOUT THIS CASE?

4 A NO, MA'AM.

5 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. I NEED YOU TO
6 TAKE A DEEP BREATH. MOST PEOPLE ARE NERVOUS, AND THAT'S
7 NATURAL.

8 A THAT'S OKAY.

9 Q STATE LAW REQUIRES THAT IN CASES OF THESE TYPE THAT
10 WE TALK TO EACH JUROR INDIVIDUALLY. THE QUESTIONS WE ASK
11 MAY SEEM PRIVATE, BUT IT'S NOT OUR INTENT TO INVADE YOUR
12 PRIVACY. I NEED TO REALLY REINFORCE THAT THERE ARE NO
13 RIGHT OR WRONG ANSWERS.

14 THE ONLY THING WE CAN ASK OF YOU IS THAT YOU ANSWER
15 US OPENLY, HONESTLY, AND CANDIDLY, AND FULLY. IF YOU
16 DON'T UNDERSTAND A QUESTION, LET ME KNOW. AND PLEASE TO
17 THE BEST OF YOUR ABILITY ANSWER EACH QUESTION YES OR NO.

18 A OKAY.

19 Q SIR, AMONG OTHER THINGS WE WILL BE DISCUSSING
20 PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT PENALTY
21 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS
22 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
23 THAT?

24 A YES, MA'AM.

25 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD

1 YOU LISTEN TO THE LAW?

2 A YES, MA'AM.

3 Q COULD YOU ACCEPT THE LAW AND APPLY IT AS I WOULD
4 INSTRUCT YOU?

5 A YES, MA'AM.

6 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
7 MIGHT DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

8 A DEFINITELY.

9 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
10 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
11 ANYTHING YOU MAY HAVE HEARD, OR READ, OR SEEN ABOUT THIS
12 CASE?

13 A YES, MA'AM.

14 Q HAVE YOU, PRIOR TO ARRIVING ON TUESDAY, HAD ANY MEDIA
15 EXPOSURE TO THIS CASE? IN OTHER WORDS, DID YOU READ
16 ANYTHING IN THE PAPER, DID YOU SEE ANYTHING ON TV?

17 A ALL I HEARD WAS THE ACCUSATIONS WHEN IT HAPPENED.

18 Q OKAY. WHICH WAS A GOOD LITTLE WHILE AGO?

19 A YEAH. WELL, WHENEVER IT HAPPENED.

20 Q OKAY. AND AS A RESULT OF WHAT YOU MAY HAVE HEARD,
21 HAVE YOU FORMED ANY FIXED OPINION ABOUT THIS CASE?

22 A NO, MA'AM.

23 Q OKAY. IN A CRIMINAL CASE, SIR, THE STATE HAS THE
24 BURDEN OF PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
25 UNDERSTAND THAT?

1 A YES, MA'AM.

2 Q AND DO YOU ALSO UNDERSTAND THAT THE DEFENDANT HAS
3 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

4 A YES, MA'AM.

5 Q SIR, HAVE YOU LOOKED AT THE JUROR TYPE SHEET?

6 A YES, MA'AM.

7 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE TYPES?

8 A YES, MA'AM.

9 Q AND WHICH ONE WOULD THAT BE?

10 A TYPE THREE.

11 Q OKAY. IF YOU WERE A JUROR, SIR, IN A DEATH PENALTY
12 CASE AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER,
13 WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL.
14 AND DURING THAT -- DO YOU UNDERSTAND?

15 A UH-HUH.

16 Q AND DURING THAT --

17 THE COURT: DO YOU NEED HIM TO SAY YEAH OR DID
18 YOU HEAR...

19 BY THE COURT:

20 Q OKAY. AND DURING THAT PHASE -- I ALWAYS HAVE TO ASK
21 MY COURT REPORTER. AND DURING THAT PHASE, SIR, YOU WOULD
22 BE ENTITLED TO CONSIDER AGGRAVATING CIRCUMSTANCES AND
23 MITIGATING CIRCUMSTANCES.

24 AND I AM GOING TO EXPLAIN THOSE TO YOU SO THAT YOU
25 KNOW WHAT THOSE TERMS MEAN BECAUSE I HAVE SOME ADDITIONAL

1 QUESTIONS I NEED TO ASK YOU REGARDING THAT.

2 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
3 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
4 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
5 THE OFFENSE OF MURDER.

6 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
7 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
8 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
9 COMMISSION OF A CRIME.

10 AND SOME EXAMPLES OF THAT WOULD BE THE MURDER OF A
11 CHILD UNDER THE AGE OF 11, THE KILLING BY POISONING, DRUG
12 TRAFFICKING, BURGLARY IN ANY DEGREE. AND BY -- AGAIN, AS
13 I INDICATED, THESE ARE JUST EXAMPLES, BECAUSE SOMETIMES WE
14 TALK ABOUT AGGRAVATING CIRCUMSTANCES, WE NEED TO GIVE YOU
15 POINT OF REFERENCE EXACTLY WHAT WE'RE REFERRING TO.

16 A YES, MA'AM.

17 Q MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
18 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
19 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
20 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
21 MORAL CULPABILITY OR RESPONSIBILITY.

22 AND SOME OF THOSE WOULD BE MENTAL RETARDATION AT THE
23 TIME OF THE CRIME, THE DEFENDANT WAS BELOW THE AGE OF 18
24 AT THE TIME OF THE CRIME, THE DEFENDANT WAS ACTING UNDER
25 DURESS OR UNDER DOMINATION, THAT THEY WERE AN ACCOMPLICE

1 AND THAT THEIR PARTICIPATION WAS RELATIVELY MINOR.

2 AGAIN, THESE ARE ONLY EXAMPLES BECAUSE THERE IS NO
3 EXCLUSIVE LIST OF CIRCUMSTANCES IN MITIGATION.

4 A RIGHT.

5 Q SIR, IF YOU WERE A JUROR IN THE SENTENCING PHASE,
6 COULD YOU, DEPENDING UPON THE FACTS AND CIRCUMSTANCES OF A
7 CASE INCLUDING CONSIDERING AGGRAVATING AND MITIGATING
8 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU
9 APPLIED TO THE CASE RETURN A SENTENCE OF LIFE IN PRISON
10 WITHOUT THE POSSIBILITY OF PAROLE?

11 A YES, MA'AM.

12 Q UNDER THE SAME CIRCUMSTANCES THAT I JUST DESCRIBED,
13 WOULD YOU BE ABLE TO RETURN A SENTENCE OF DEATH WHICH IN
14 THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

15 A YES, MA'AM.

16 Q SIR, IF YOU WERE CHOSEN FOR THIS JURY, AS I
17 INDICATED, THIS JURY WILL BE SEQUESTERED, WHICH MEANS YOU
18 WILL BE HOUSED IN A HOTEL FOR APPROXIMATELY 10 DAYS. AND
19 WE ARE ALREADY KNOW THAT'S PERSONALLY INCONVENIENT. AS A
20 MATTER OF FACT, WE ASSUME IT WILL COMPLETELY DISRUPT YOUR
21 LIFE FOR 10 DAYS. HOWEVER--

22 A PAYING ME BIG MONEY.

23 Q HUH?

24 A YOU'RE PAYING ME BIG MONEY.

25 Q I KNOW, 10 WHOLE DOLLARS. HOW MUCH DO WE PAY IN

1 GEORGETOWN? I KNOW IN CHARLESTON IS ONLY TEN DOLLARS AND
2 FREE PARKING THREE BLOCKS AWAY. EXCEPT FOR THE PERSONAL
3 INCONVENIENCE, WOULD THIS POSE A SERIOUS DANGER TO YOUR
4 HEALTH OR WELL-BEING?

5 A NO, MA'AM.

6 Q SIR, IN A CAPITAL CASE EACH JUROR IS REQUIRED TO SIGN
7 A VERDICT FORM INDIVIDUALLY. IN OTHER WORDS, ALL 12
8 JURORS HAVE TO SIGN THE VERDICT FORM, WHETHER IT BE LIFE
9 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

10 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
11 OF A LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH
12 SENTENCE?

13 A YES, MA'AM.

14 Q OKAY.

15 THE COURT: ANY QUESTIONS FROM THE STATE?

16 MR. HUMPHRIES: NONE FROM THE STATE.

17 THE COURT: FROM THE DEFENSE?

18 MR. DIGGS: JUST BRIEFLY.

19 BY MR. DIGGS:

20 Q MR. BARNHILL, AS I UNDERSTAND YOU CORRECTLY TO SAY,
21 EVEN IF YOU FOUND THE DEFENDANT GUILTY OF MURDER AND EVEN
22 IF YOU FOUND AGGRAVATING CIRCUMSTANCES BY THE DEFENDANT,
23 YOU COULD STILL IMPOSE LIFE IF YOU FELT THAT WAS A
24 POSSIBILITY IN THIS CASE?

25 A YES.

1 MR. DIGGS: THAT'S ALL.

2 THE COURT: ANY EXCEPTION TO THE JUROR BEING
3 FOUND QUALIFIED FROM THE STATE?

4 MR. HUMPHRIES: NONE FROM THE STATE.

5 THE COURT: FROM THE DEFENSE?

6 MR. DIGGS: NONE.

7 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED
8 WHICH MEANS YOU'RE NOW PART OF THE POOL OF QUALIFIED
9 JURORS. WE WILL SELECT THE ACTUAL JURY FROM THAT
10 POOL ON MONDAY MORNING AT 9:30. I NEED FOR YOU TO
11 RETURN AT 9:30 ON MONDAY MORNING PACKED TO BE WITH US
12 FOR TWO WEEKS.

13 JUROR: OKAY.

14 THE COURT: BECAUSE IF YOU'RE SELECTED, I WON'T
15 BE ABLE TO LET YOU GO HOME; OKAY?

16 JUROR: SO I DON'T HAVE TO COME BACK TOMORROW AT
17 12?

18 THE COURT: NO, SIR. YEAH, WE SWITCHED IT
19 AROUND, SO YOU WON'T HAVE TO COME BACK TOMORROW AT
20 12. NEED YOU JUST TO JUST COME ON MONDAY AT 9:30.
21 OF COURSE, YOU DON'T HAVE TO BRING YOUR THINGS TO THE
22 COURTROOM. IF YOU ARE SELECTED, WE WILL GET YOU
23 SITUATED.

24 DURING THIS BREAK PLEASE DO NOT DISCUSS THIS
25 CASE WITH ANYONE. PLEASE DON'T WATCH, READ, OR

1 LISTEN TO ANY MEDIA REPORTS. IT IS ESSENTIAL THAT
2 YOUR IMPARTIALITY BE MAINTAINED.

3 JUROR: YES, MA'AM.

4 THE COURT: OKAY?

5 JUROR: YES, MA'AM.

6 THE COURT: WE LOOK FORWARD TO SEEING YOU ON,
7 MONDAY.

8 JUROR: YES, MA'AM.

9 THE COURT: HAVE A GOOD EVENING.

10 (JUROR LEFT THE COURTROOM.)

11 THE COURT: WILLIAM FRANKLIN, 101.

12 (JUROR ENTERED THE COURTROOM.)

13 WILLIAM FRANKLIN, BLACK MALE,
14 TESTIFIED AS FOLLOWS:

15 BY THE COURT:

16 Q HOW ARE YOU, SIR?

17 A ALL RIGHT. HOW YOU DOING?

18 Q FINE. NICE TO SEE YOU. WE APPRECIATE YOU BEING SO
19 PATIENT AND ACCOMMODATING US BY COMING UP HERE ON SHORT
20 NOTICE. IF YOU WOULD STATE YOU'RE FULL NAME FOR THE
21 RECORD.

22 A MY NAME IS WILLIAM FRANKLIN, SENIOR.

23 Q AND SIR, YOU ARE JUROR 101; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. AND SIR, I REMIND YOU THAT YOU'RE STILL

1 UNDER OATH. DO YOU UNDERSTAND?

2 A YES.

3 Q AND SIR, SINCE THE COURT'S INSTRUCTIONS ON TUESDAY,
4 HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS ABOUT THIS
5 CASE?

6 A NO, YOUR HONOR.

7 Q SIR, COULD YOU COME CLOSER TO THE MICROPHONE FOR ME
8 SO THE COURT REPORTER CAN TAKE DOWN EVERYTHING YOU SAY.
9 NEED SOME WATER?

10 A I'M GOOD.

11 Q SURE? OKAY. SIR, WE'RE GOING TO ASK YOU SOME
12 QUESTIONS. WANT YOU TO TAKE A DEEP BREATH BECAUSE I KNOW
13 THIS IS CAN BE A LITTLE UNNERVING. STATE LAW REQUIRES
14 THAT WE TALK TO EACH JUROR INDIVIDUALLY IN A CASE OF THIS
15 TYPE.

16 STATE LAW REQUIRES THAT WE ASK THE QUESTIONS WE'RE
17 GOING TO ASK YOU. SO WE KNOW SOME OF THEM ARE PRIVATE,
18 BUT IT'S REALLY NOT OUR INTENTION TO INVADE YOUR PRIVACY.
19 WE JUST NEED TO FIND OUT SOME INFORMATION ABOUT YOUR
20 VIEWS.

21 A ALL RIGHT. I UNDERSTAND.

22 Q OKAY. THERE ARE NO RIGHT OR WRONG ANSWERS. I NEED
23 TO EMPHASIZE THAT. THE ONLY THING THAT WE ASK OF YOU IS
24 THAT YOU ANSWER US FULLY, COMPLETELY, AND HONESTLY.

25 A ALL RIGHT.

1 Q AND THAT TO THE BEST OF YOUR ABILITY YOU ANSWER EACH
2 QUESTION YES OR NO; OKAY?

3 A OKAY.

4 Q AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
5 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
6 INDICATE ANYTHING ABOUT THE DEFENDANT, THAT -- HE IS
7 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

8 A YES.

9 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
10 YOU LISTEN TO THE LAW?

11 A YES.

12 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

13 A I COULD.

14 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
15 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

16 A I THINK I COULD, YES.

17 Q OKAY. IS YOUR ANSWER YES?

18 A YES.

19 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
20 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
21 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
22 CASE?

23 A I WOULD SAY NO TO THAT. I...

24 Q TELL ME WHAT YOU MEAN. WELL, LET ME ASK THE
25 QUESTION.

1 A IT'S SO MUCH MEDIA.

2 Q LET ME ASK THE QUESTION ANOTHER WAY. HAVE YOU BEEN
3 EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS CASE?

4 A A LOT, YES.

5 Q OKAY. HAVE YOU FORMED A FIXED OPINION BASED ON WHAT
6 YOU HAVE HEARD?

7 A NOT REALLY FIXED, NO.

8 Q OKAY. AND WHAT'S WHAT WE ARE TRYING TO DETERMINE,
9 WHETHER -- BECAUSE WHAT'S IN THE NEWSPAPER IS NOT EVIDENCE
10 AND IT'S NOT, YOU KNOW, THE JURY'S JOB IS TO BE THE FACT
11 FINDER. AND THE ONLY FACTS YOU CAN CONSIDER ARE FROM THE
12 LIPS OF THE WITNESSES WHO SWEAR TO TELL THE TRUTH AND FROM
13 THE EVIDENCE THAT WOULD BE INTRODUCED.

14 AND YOU HAVE TO CONFINE YOUR DECISION TO THE
15 EVIDENCE, THE WITNESSES, AND THE LAW, AND THAT'S IT. YOU
16 CAN'T CONSIDER ANYTHING ELSE. AND SO IN A PERFECT WORLD
17 PEOPLE WOULD HAVE NO BIASES, THEY'D HAVE NO PREJUDICES,
18 THEY WOULD HAVE, YOU KNOW, THEIR MINDS WOULD BE COMPLETE
19 BLANK SLATES.

20 BUT WE UNDERSTAND THAT THAT IS NOT THE WAY IT IS,
21 THAT WE ALL HAVE OUR OWN VIEWS BASED ON BASICALLY HOW WE
22 ARE SOCIALIZED AND OUR ENVIRONMENT, AND WE UNDERSTAND
23 THAT.

24 BUT WHAT WE ASK IS IF YOU CAN COME TO THIS PROCESS
25 AND COMPLETELY DISABUSE YOUR MIND OF ALL OF IT AND LISTEN

1 ONLY TO THE WITNESSES AND ONLY TO THE EVIDENCE AND APPLY
2 ONLY THE LAW THE COURT INSTRUCTS AND MAKE A DECISION BASED
3 ONLY ON THAT EVIDENCE AND THE LAW AND THE WITNESSES AND
4 RENDER A VERDICT IN THIS CASE, AND THAT IS WHAT I'M
5 ASKING. DO YOU BELIEVE THAT YOU CAN DO THAT?

6 A I COULD TRY, YES.

7 Q WELL, AGAIN THERE IS NO RIGHT OR WRONG ANSWER. IT
8 REQUIRES A YES OR A NO, AND ONLY YOU CAN PROVIDE THAT.
9 AND IF YOU NEED A FEW MINUTES TO THINK ABOUT IT, PLEASE
10 FEEL FREE.

11 A YES.

12 Q OKAY. AND YOU INDICATED TO ME THAT YOU HAD NOT
13 FORMED A FIXED OPINION; IS THAT CORRECT? AND A FIXED
14 OPINION MEANS, MY MIND IS ALREADY MADE UP, DOESN'T MATTER
15 WHAT ELSE YOU SAY TO ME, I ALREADY MADE UP MY MIND ABOUT
16 THE FACTS AND CIRCUMSTANCES OF THIS -- OF THIS CASE.
17 AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.

18 A IT'S REALLY DIFFICULT TO SAY BECAUSE THERE ARE SOME
19 THINGS THAT ARE IN MY MIND FROM -- FROM THE MEDIA AND FROM
20 COMING IN CONTACT WITH CERTAIN INDIVIDUALS WHO HAVE MADE
21 THEIR MINDS UP, AND YOU KNOW, SO I WOULD -- I COULD TRY TO
22 MAKE A GOOD DECISION BASED ON EVIDENCE.

23 Q OKAY. AND AGAIN, THERE ARE NO RIGHT OR WRONG
24 ANSWERS.

25 THE COURT: MR. KELLY, I'M GOING TO BORROW SOME

1 OF YOU QUESTIONS FOR A MOMENT. I HOPE YOU DON'T
2 MIND.

3 MR. KELLY: NO, MA'AM.

4 BY THE COURT:

5 Q SIR, DO YOU BELIEVE THAT YOU ARE A MAN OF INDEPENDENT
6 MIND?

7 A YES.

8 Q DO YOU BELIEVE THAT YOU CAN MAKE YOUR OWN DECISIONS
9 IRREGARDLESS OF WHAT EVERYONE ELSE AROUND YOU THINKS?

10 A YES.

11 Q OKAY. SO AGAIN, YOU HAVE INDICATED -- YOU TOLD ME
12 YOU HAVEN'T FORMED A FIXED OPINION. BUT WHAT I NEED TO
13 KNOW IS WHETHER YOU CAN COMPLETELY BASICALLY LIKE A HORSE
14 WITH BLINDERS COME IN HERE -- BECAUSE THE OATH OF A JUROR
15 REQUIRES THAT YOU DO THAT, REQUIRES BASICALLY THAT YOU
16 SAY, I HAVE A BLANK SLATE IN MY MIND, I MAY HAVE HEARD
17 THINGS, MAY HAVE READ THINGS, BUT YOU KNOW, WHAT'S IN THE
18 NEWSPAPER IS NOT EVIDENCE.

19 WHAT IS REPORTED IS NOT EVIDENCE. IT'S A STORY BASED
20 ON THE NEWSPAPERS' BEST ABILITY TO REPORT WHAT THEY
21 BELIEVE TO BE TRUE. OKAY?

22 A OKAY.

23 Q SO WHAT I'M TRYING TO DETERMINE IS WHETHER YOU CAN
24 TOTALLY, LIKE -- IMAGINE AN ERASER ON A -- SEE, I'M FROM
25 OLD SCHOOL WHERE THEY STILL HAD CHALK. NOW THEY USE DRYER

1 ERASER BOARDS, YOU KNOW, IN SCHOOL, AND NOBODY HAS CHALK
2 ANY MORE.

3 A I'M FROM THE OLD SCHOOL.

4 Q OKAY. YOU REMEMBER WHAT I'M TALKING ABOUT. IF YOU
5 COULD IMAGINE YOUR MIND IS THAT CHALKBOARD WITH WRITING ON
6 IT, CAN YOU BASICALLY JUST USE THAT ERASER AND ERASE
7 EVERYTHING AND COME IN HERE LIKE THAT BLANK CHALKBOARD AND
8 LISTEN TO ONLY SWORN WITNESSES AND THE EVIDENCE THAT'S
9 GOING TO BE INTRODUCED AND THE LAW AS I TELL YOU IT WILL
10 BE AND DELIBERATE WITH 12 OTHER FOLK AND COME TO A
11 DECISION BASED SOLELY ON WHAT YOU HAVE HEARD AND WHAT I
12 INSTRUCT YOU?

13 A I COULD TRY.

14 Q OKAY. NOW, THE QUESTION REQUIRES A YES OR A NO
15 ANSWER. AND AGAIN, THERE'S NO RIGHT OR WRONG ANSWER
16 BECAUSE I'M -- I CAN'T ANSWER FOR YOU.

17 A YES.

18 Q OKAY. DO YOU UNDERSTAND THAT IN EVERY CRIMINAL CASE
19 THE STATE HAS THE BURDEN OF PROVING GUILT BEYOND A
20 REASONABLE DOUBT?

21 A YES.

22 Q DO YOU BELIEVE THE DEFENDANT HAS ABSOLUTELY NO BURDEN
23 TO PROVE HIS INNOCENCE?

24 A HOW YOU MEAN? IN A...

25 Q HE HAS NO BURDEN. LET ME EXPLAIN IT TO YOU, BECAUSE

1 MOST PEOPLE DON'T UNDERSTAND THAT. WHEN THE STATE COMES
2 IN, OUR LAW SAYS THAT THEY HAVE -- WHEN THEY -- WHEN A
3 PERSON IS ACCUSED OF A CRIME, THEY HAVE TO PROVE EACH AND
4 EVERY THING THEY HAVE ACCUSED HIM OF OR HER OF BEYOND A
5 REASONABLE DOUBT, AND THAT IS THE HIGHEST BURDEN OF OUR
6 PROOF IN THE LAW.

7 MR. STANKO AND HIS LAWYERS GET TO COME TO COURT, THEY
8 DON'T HAVE TO SAY ONE WORD. THEY DON'T HAVE TO UTTER A
9 THING. ALL THEY HAVE TO DO IS SIT AT THAT TABLE. THEY
10 DON'T HAVE TO ASK ANY WITNESSES ANY QUESTIONS, THEY DON'T
11 HAVE TO GIVE ANY OPENING OR CLOSING ARGUMENT, AND THEY DO
12 NOT HAVE TO PRESENT ONE WITNESS BECAUSE THEY HAVE NO
13 BURDEN OF PROOF.

14 THE LAW PRESUMES HIM TO BE INNOCENT AND CLOAKS HIM IN
15 INNOCENCE WHICH MEANS WHEN YOU LOOK AT HIM, YOU LOOK AT
16 HIM AS AN INNOCENT MAN AND THE STATE THEN HAS TO SHIFT
17 THAT AND PROVE TO YOU BEYOND A REASONABLE DOUBT THAT HE
18 HAS DONE WHAT THEY HAVE ACCUSED HIM OF. DO YOU UNDERSTAND
19 THAT?

20 A YES.

21 Q OKAY. HAVE YOU REVIEWED THE JUROR TYPE SHEET?

22 A YES, I HAVE, YOUR HONOR.

23 Q AND DO YOU THINK YOU FALL INTO ANY OF THOSE TYPES?
24 YOU WANT TO LOOK AT IT AGAIN?

25 A NO, MA'AM. I PRETTY MUCH KNOW WHAT ONE, TWO, AND

1 THREE IS, BUT SEEMS LIKE NUMBER TWO IS ABOUT CLOSEST TO
2 WHERE I WOULD BE, YEAH.

3 Q YOU FEEL LIKE THE DEATH PENALTY IS APPROPRIATE IN
4 EVERY CIRCUMSTANCE NO MATTER WHAT?

5 A NO, NOT EVERY -- NOT EVERY CIRCUMSTANCES BUT THE
6 OTHER, ONE AND THREE DOESN'T COME NEAR RIGHT...

7 Q DO YOU NEED ME TO POSSIBLY EXPLAIN TO YOU WHAT EACH
8 OF THOSE MEANS OR DO YOU FEEL LIKE YOU FULLY UNDERSTAND
9 THEM?

10 A I UNDERSTAND THEM.

11 Q OKAY. BECAUSE ONE SAYS THE DEATH PENALTY IS NEVER
12 APPROPRIATE NO MATTER WHAT HAPPENS.

13 A I DON'T AGREE WITH THAT.

14 Q TWO SAYS IT'S ALWAYS APPROPRIATE NO MATTER WHAT
15 HAPPENS. AND THREE SAYS, I COME IN HERE AS A BLANK SLATE,
16 WILLING TO LISTEN, LOOK AT AGGRAVATING AND MITIGATING
17 CIRCUMSTANCES, APPLY THE LAW AS THE COURT TELLS ME, AND IF
18 IT'S APPROPRIATE I CAN GIVE A LIFE WITHOUT THE POSSIBILITY
19 OF PAROLE SENTENCE, AND IF IT'S APPROPRIATE, I CAN GIVE A
20 DEATH SENTENCE.

21 A THEN NUMBER THREE, I GUESS.

22 Q OKAY. DID MY EXPLANATION CLARIFY IT FOR YOU?

23 A YEAH.

24 Q BECAUSE SOMETIMES, AGAIN, IT'S A LITTLE BIT OF
25 LEGALESE AND PEOPLE DON'T--

1 A NUMBER THREE IS IT.

2 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
3 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER,
4 BECAUSE AS I EXPLAINED, THERE ARE TWO PHASES IN A DEATH
5 PENALTY CASE. THERE IS A GUILT PHASE WHERE THE JURY CAN
6 FIND THAT THE DEFENDANT IS GUILTY OR NOT GUILTY.

7 IF YOU -- IF THE JURY -- IF THE DEFENDANT WERE TO BE
8 FOUND GUILTY OF MURDER, THERE IS THEN A SENTENCING PHASE,
9 BECAUSE IN A CAPITAL TRIAL IN SOUTH CAROLINA THE JURY
10 DECIDES THE PENALTY, WHETHER IT BE LIFE WITHOUT PAROLE OR
11 DEATH.

12 A OKAY.

13 Q AND WHATEVER YOU DECIDE THE COURT IS BOUND BY; OKAY?
14 NOW, IF THE DEFENDANT WERE FOUND GUILTY, WE WOULD THEN
15 MOVE TO THE SENTENCING PHASE.

16 A UH-HUH.

17 Q AND DURING THE SENTENCING PHASE YOU WOULD BE ABLE
18 TO -- TO CONSIDER AGGRAVATING CIRCUMSTANCES AND MITIGATING
19 CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

20 A YES, YOUR HONOR.

21 Q NOW, I'M GOING TO EXPLAIN TO YOU WHAT AGGRAVATING
22 CIRCUMSTANCES ARE AND WHAT MITIGATING CIRCUMSTANCES ARE
23 BECAUSE THERE ARE A COUPLE MORE QUESTIONS I NEED TO ASK
24 YOU, AND I NEED YOU TO UNDERSTAND WHAT WE MEAN BY THOSE
25 TERMS, OKAY?

1 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
2 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
3 DECLARED BY STATE LAW WOULD MAKE, THAT IS AGGRAVATE, THE
4 OFFENSE OF MURDER.

5 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
6 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
7 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
8 COMMISSION OF A CRIME.

9 AND SOME EXAMPLES -- AND AGAIN, THIS IS NOT THE
10 ENTIRE LIST. I JUST GIVE IT TO YOU AS AN EXAMPLE SO YOU
11 WILL UNDERSTAND WHAT WE MEAN. MURDER OF A CHILD UNDER THE
12 AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON, OR
13 BURGLARY IN ANY DEGREE. OKAY?

14 A MITIGATING CIRCUMSTANCE IS AN INCIDENT, DETAIL, OR
15 OCCURRENCE WHICH THE LEGISLATURE HAS DECLARED BY THE STATE
16 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
17 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
18 MORAL CULPABILITY OR RESPONSIBILITY.

19 AND SOME EXAMPLES OF THOSE WOULD BE MENTAL
20 RETARDATION AT THE TIME OF -- THE CRIME WAS COMMITTED, A
21 PERSON HAVING NOT REACHED THEIR 18TH BIRTHDAY BY THE TIME
22 THE CRIME WAS COMMITTED -- AT THE TIME THE CRIME WAS
23 COMMITTED, THAT THE DEFENDANT ACTED UNDER DURESS OR
24 DOMINATION, THAT THEY WERE AN ACCOMPLICE AND THAT THEIR
25 PARTICIPATION WAS MINOR.

1 AGAIN, THESE ARE ONLY EXAMPLES BECAUSE THERE IS NO
2 EXCLUSIVE LIST OF MITIGATING CIRCUMSTANCES. OKAY?

3 A OKAY.

4 Q IF YOU WERE A JUROR IN THE SENTENCING PHASE, COULD
5 YOU, DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES
6 OF THE CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
7 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
8 YOU APPLIES TO THE CASE, COULD YOU RETURN A SENTENCE OF
9 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

10 A YES.

11 Q AND IN THE SAME CIRCUMSTANCES, CONSIDERING THE FACTS
12 OF THE CASE, THE PARTICULAR CIRCUMSTANCES, THE
13 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES,
14 AND THE LAW THAT I WOULD INSTRUCT APPLIES TO THE CASE,
15 COULD YOU RETURN A SENTENCE OF DEATH WHICH IN THIS STATE
16 IS BY ELECTROCUTION OR LETHAL INJECTION?

17 A YES, I COULD.

18 Q OKAY. SIR, AGAIN, AS I EXPLAINED TO THE JURY ON
19 TUESDAY, THIS JURY WILL BE SEQUESTERED WHICH MEANS YOU
20 WILL BE HOUSED IN A MOTEL DURING THE TRIAL FOR
21 APPROXIMATELY 10 DAYS. THE LAW ALREADY ASSUMES THAT'S
22 GOING TO COMPLETELY DISRUPT YOUR LIFE. WE UNDERSTAND IT'S
23 AN INCONVENIENCE.

24 OTHER THAN THAT PERSONAL INCONVENIENCE, WOULD THIS
25 POSE A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

1 A NO, IT WOULDN'T.

2 Q OKAY. SIR, IN A CAPITAL CASE THE LAW REQUIRES THAT
3 EACH JUROR SIGN THE VERDICT FORM INDIVIDUALLY, WHICH MEANS
4 WHETHER IT'S LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
5 DEATH, EACH JUROR, ONE THROUGH 12, HAS TO SIGN THEIR NAME.

6 THE COURT HAS TO HONOR WHAT THE JURY DOES BECAUSE THE
7 JURY DETERMINES PENALTY. THE COURT DOES NOT. OKAY?

8 A ALL RIGHT.

9 Q WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
10 OF A LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH
11 SENTENCE?

12 A YES.

13 Q OKAY.

14 THE COURT: ANY QUESTIONS FROM THE TATE?

15 MR. HUMPHRIES: NONE, THANK YOU.

16 THE COURT: ANY FROM THE DEFENSE? YOU'RE
17 WELCOME.

18 MR. KELLY: YES, MA'AM.

19 THE COURT: SIR, IF YOU WOULD GIVE MR. KELLY
20 YOUR ATTENTION, BUT IF YOU COULD TURN SIDEWAYS AND
21 SPEAK INTO THAT MICROPHONE FOR ME, THAT WOULD BE
22 GREAT.

23 JUROR: ALL RIGHT.

24 THE COURT: YOU MAY PROCEED.

25 BY MR. KELLY:

1 Q FROM FRANKLIN, I'M GERALD KELLY. I'M GOING TO ASK
2 YOU A FEW QUESTIONS. YOU DON'T MIND; DO YOU?

3 A NOT AT ALL, SIR.

4 Q GOOD. I NOTICED ON YOUR QUESTIONNAIRE THAT YOU
5 ANSWERED THAT YOU HAD A CLOSE FRIEND WHO WAS IN LAW
6 ENFORCEMENT OR HAD LAW ENFORCEMENT EXPERIENCE; IS THAT
7 CORRECT?

8 A YES, SIR.

9 Q OKAY. AND WHAT LAW ENFORCEMENT ARE THEY IN?

10 A THEY'RE WITH THE ELITE GUARD I THINK, AND HE'S ALSO A
11 FIREMAN.

12 Q I'M SORRY. WHAT IS THAT AGAIN?

13 A ELITE GUARD AND A FIREMAN.

14 Q AND A FIREMAN?

15 A YES.

16 Q TWO CLOSE FRIENDS?

17 A YES, SIR.

18 Q I THINK YOU ALSO TOLD THE JUDGE, WELL, I'VE MADE
19 CONTACT WITH INDIVIDUALS WHO HAVE MADE THEIR MINDS UP.

20 A YES, I DID SAY THAT.

21 Q AND WOULD THESE BE THESE FRIENDS?

22 A NO, SIR.

23 Q NO? THE PEOPLE WHO HAD MADE THEIR MINDS UP, WERE
24 THEY CLOSE TO YOU OR IN YOUR FAMILY OR PEOPLE YOU MEET
25 EVERY DAY OR...

1 A CLOSE -- CLOSE TO ME, YES, SIR.

2 Q OKAY. YOU KNOW, SOME PEOPLE HAVE A DIFFICULT TIME
3 GOING FROM THE COURTROOM BACK OUT INTO THE WORLD IF WHAT
4 THEY DO IN THE COURTROOM, THE DECISION THEY MAKE DOESN'T
5 FIT THE OPINIONS OF THEIR FRIENDS. DO YOU UNDERSTAND
6 THAT; DON'T YOU?

7 A YES, I DO.

8 Q ARE YOU LIKE THAT?

9 A I WOULD SAY NO.

10 Q WELL, YOU KNOW, YOU REALIZE THAT WHEN YOU WALK INTO
11 THIS COURTROOM AS A JUROR, THAT YOUR FRIENDS' OPINIONS
12 DON'T MEAN ANYTHING IN HERE.

13 A NO, THEY DON'T, BUT THEY CERTAINLY ARE MY FRIENDS AND
14 I LISTEN TO THEM. NOT THAT I TAKE WHAT THEY BELIEVE, BUT
15 I DO LISTEN AND THEN I MULL IT OVER WITH MYSELF AND I COME
16 UP WITH MY OWN DECISION.

17 Q WELL, SIR, YOU KNOW YOU CAN'T DO THAT IF YOU'RE A
18 JUROR BECAUSE THEIR OPINIONS DON'T MEAN A THING. YOU
19 CAN'T BRING THEIR OPINIONS IN HERE AND MULL THEM OVER AND
20 ANYTHING. YOU HAVE TO LEAVE THEIR OPINIONS OUTSIDE THE
21 ROOM. CAN YOU DO THAT?

22 A YES, I CAN DO THAT, SIR.

23 Q YOU SURE?

24 A I'M POSITIVE.

25 Q WELL, YOU SEEMED TO STRUGGLE WITH THAT EARLIER WHEN

1 TALKING WITH THE JUDGE. BUT YOU'RE NOT STRUGGLING WITH IT
2 NOW?

3 A (SHOOK HEAD.)

4 Q WHY NOT?

5 A NO, SIR.

6 Q WHY NOT?

7 A I CAN PRETTY MUCH STRAIGHTEN MY MIND OUT, SIR.

8 Q NOT PRETTY MUCH, MR. FRANKLIN. YOU HAVE TO DO IT ONE
9 HUNDRED PERCENT.

10 A I CAN MAKE MY MIND UP, SIR.

11 Q WELL, THAT'S WHAT I'M GETTING AT. YOU KNOW, I MIGHT
12 BE LEANING ON YOU A LITTLE BIT, MR. FRANKLIN, BUT--

13 A YOU -- YOU.

14 Q -- YOU UPSET WITH THAT, BY ME ASKING YOU QUESTIONS?

15 A NOT A BIT.

16 Q OKAY. ARE YOU SURE THAT YOU CAN LEAVE THEM BEHIND?

17 A YES.

18 Q OKAY. NOW, IF YOU'RE CHOSEN AS A JUROR, THEY WILL
19 HAVE TO STAY WITH YOU THROUGHOUT THE WHOLE TIME THAT
20 YOU'RE A JUROR. YOU COULDN'T CHANGE YOUR MIND LATER FROM
21 WHAT YOU SAY RIGHT NOW. YOU UNDERSTAND THAT; DON'T YOU?

22 A I DO.

23 Q OKAY. SEE, WE DON'T -- WE CAN'T HAVE A JUROR WHO IS
24 CARRYING INFORMATION FROM OUTSIDE THE COURTROOM INTO THIS
25 ROOM. YOU UNDERSTAND THAT; DON'T YOU?

1 A WOULDND'T CARRY INFORMATION OUT. I'M INSTRUCTED BY
2 THE JUDGE AND I KNOW THE SERIOUSNESS ABOUT WHAT IS
3 INVOLVED HERE.

4 Q RIGHT. YOU KNOW, WHATEVER OPINION YOU HAVE ABOUT
5 ANYTHING IS YOURS AND THERE'S NO RIGHT OR WRONG IN THIS
6 ROOM.

7 A YES, SIR.

8 Q WE ARE ONLY LOOKING FOR JURORS WHO ARE QUALIFIED, AND
9 THAT'S IT. YOU AGREE?

10 A I AGREE.

11 Q OKAY. YOU ALSO SAID SEVERAL TIMES, I COULD TRY. AND
12 THEN WHEN THE JUDGE TALKED WITH YOU, YOU SAID, WELL, THEN
13 YES. I COULD TRY. AND WHEN SHE TALKED WITH YOU, THEN YOU
14 SAID, WELL, THEN YES. AND THAT SEEMED TO ME THAT YOU
15 MIGHT BE JUST TRYING TO SATISFY THE JUDGE.

16 A NO, I'M NOT TRYING TO SATISFY THE JUDGE. SHE SAID
17 THERE'S NO RIGHT OR WRONG ANSWER AND SHE WANTS A YES OR
18 NO, AND SO YES.

19 Q SO YOU WOULDND'T HAVE ANY INFORMATION OR OPINION YOU
20 BRING IN HERE, YOU'D ONLY LISTEN TO THE EVIDENCE IN THIS
21 COURTROOM; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q YOU WOULDND'T BE CONCERNED ABOUT WHAT ANYBODY OUT
24 THERE WOULD THINK ABOUT WHAT YOU WOULD DO IN HERE;
25 CORRECT?

1 A NO.

2 Q THEN WHEN YOU GOT TO THE ONE, TWO, OR THREE JUROR,
3 YOU SAID, ONE AND THREE DON'T COME CLOSE. REMEMBER SAYING
4 THAT?

5 A I REMEMBER SAYING THAT, YES, SIR.

6 Q AND THEN IN THE NEXT BREATH YOU SAID, OH, NO, I'M A
7 THREE.

8 A AFTER SHE EXPLAINED -- I REALLY DIDN'T LOOK AT NUMBER
9 THREE WHEN I WAS IN THE JURY ROOM WITH THE OTHER JURORS
10 BECAUSE THE CONVERSATION WAS GOING ON AND I COULDN'T
11 CONCENTRATE WITH -- WHEN I READ, I LIKE TO READ PERFECTLY
12 QUIET, AND THAT WASN'T THE CASE IN THERE.

13 WHEN SHE MADE IT CLEAR, NUMBER THREE, AFTER READING
14 ONE, TWO, AND THREE, NUMBER THREE IS WHAT I'D ADHERE TO.

15 Q WELL, TALK TO ME ABOUT THAT A MINUTE. NUMBER TWO IS
16 ALWAYS A DEATH PENALTY.

17 A ALWAYS, RIGHT.

18 Q THAT'S NOT YOU?

19 A THAT'S NOT. I DON'T THINK THAT THE DEATH PENALTY
20 SHOULD BE GIVEN LIKE ALWAYS.

21 Q WELL, THE DEATH PENALTY CAN'T ALWAYS BE GIVEN. IT
22 HAS TO BE BASED ON THIS NUMBER THREE JUROR, NOT A ONE OR A
23 TWO; CORRECT?

24 A THAT'S WHAT SHE -- THAT'S WHAT SHE SAID.

25 Q AND THAT'S WHAT YOU AGREE WITH, RIGHT?

1 A THAT THE DEATH PENALTY -- I WOULD NOT SAY GIVEN IN
2 EVERY CASE.

3 Q BUT FRIENDS WHO HAVE MADE UP THEIR MINDS THAT WE ARE
4 TALKING ABOUT, THEY DO BELIEVE THAT THE DEATH PENALTY
5 OUGHT TO BE GIVEN?

6 MR. HUMPHRIES: OBJECT TO HIS QUESTION,
7 FRIENDS...

8 THE COURT: I THINK THE QUESTION NEEDS TO BE
9 REPHRASED, MR. KELLY, BECAUSE THAT REALLY ASSUMES
10 SOMETHING THAT WAS NOT SAID.

11 BY MR. KELLY:

12 Q AM I AM ASSUMING--

13 THE COURT: OBJECTION SUSTAINED.

14 BY MR. KELLY:

15 Q AM I ASSUMING INCORRECTLY THAT THE FRIENDS THAT YOU
16 TALKED ABOUT OR THE PERSON THAT YOU SAY HAD MADE UP THEIR
17 MINDS, THEIR MINDS WERE MADE UP THAT THE DEATH PENALTY
18 OUGHT TO BE GIVEN ALL THE TIME WHEN THERE IS A MURDER;
19 CORRECT?

20 A I DON'T REALLY KNOW WHETHER THEY WOULD HAVE SAID THAT
21 OR NOT SIR, WE HAVE NOT GOTTEN INTO THAT EXTENT, NO, SIR.

22 Q ALL RIGHT. SO IF I UNDERSTAND YOU CORRECTLY, ONCE
23 YOU CAME INTO THE ROOM HERE, ONCE YOU TALKED WITH THE
24 JUDGE, AND ONCE YOU TALKED WITH US, YOU ARE A NUMBER THREE
25 JUROR. YOU LEAN TOWARDS ONE OR TWO EVEN THOUGH YOU'RE A

1 THREE JUROR?

2 A NO, SIR.

3 Q YOU DON'T?

4 A (SHOOK HEAD.)

5 Q AND EVEN THOUGH YOU HAD STRONG OPINIONS, YOU'RE
6 WILLING TO LEAVE THOSE OUTSIDE THE ROOM?

7 A YES.

8 Q OKAY. AND, YOU KNOW, YOU COULDN'T DISCUSS THIS CASE
9 WITH ANYBODY. YOU KNOW THAT; DON'T YOU?

10 A I ASSUME SO.

11 Q UNTIL IT'S GIVEN TO YOU BY THE JUDGE IF YOU'RE A
12 JUROR IN ORDER TO DELIBERATE. ARE YOU AWARE OF THAT?

13 A I'M AWARE OF THAT.

14 Q OKAY. THAT WOULD BE YOUR WIFE OR ANYBODY ELSE, ANY
15 OTHER JUROR. YOU AWARE OF THAT?

16 A I'M AWARE OF THAT.

17 Q OKAY. AND IF SOMEBODY DID DISCUSS IT WITH YOU, IT
18 WOULD BE YOUR OBLIGATION TO TELL THE COURT THAT?

19 A THAT'S CORRECT.

20 Q WOULD YOU DO THAT?

21 A THAT WAS IN HER INSTRUCTIONS, THEN I WOULD DO SO,
22 SIR.

23 MR. KELLY: HAVE NO FURTHER QUESTIONS.

24 THE COURT: ANY EXCEPTIONS?

25 MR. DIGGS: JUST A MINUTE.

1 BY MR. KELLY:

2 Q WERE YOU EMPLOYED DOWN AT THE GEORGETOWN DETENTION
3 CENTER?

4 A NOT AT THE DETENTION CENTER, SIR. I'M -- I WAS -- AM
5 RETIRED FROM THE GEORGETOWN COUNTY COUNCIL, BUT I GO TO
6 THE DETENTION CENTER AS ONE OF THE MALE DELIVERY POINTS
7 FOR THE COUNTY.

8 THERE ARE 57 OFFICERS THAT I DELIVER MAIL TO, 11 ON
9 THE OUTSIDE, DETENTION CENTER IS MY SECOND TO THE LAST
10 STOP. I GO THERE EVERY DAY. USED TO GO THERE EVERY DAY.

11 Q BECAUSE YOU WERE A COURIER AT THE TIME?

12 A YES, SIR.

13 Q YOU STILL A COURIER?

14 A RETIRED, SIR.

15 Q OKAY. DO YOU HAVE ANY INFORMATION ABOUT THE
16 DEFENDANT, MR. STANKO, AS A RESULT OF YOU GOING TO THE
17 DETENTION CENTER DOWN THERE?

18 A NOT REALLY. BUT THEY -- HE WAS TRANSFERRED INTO
19 GEORGETOWN COUNTY, I WAS THERE AT THE DETENTION CENTER
20 WHEN THEY BROUGHT HIM IN.

21 Q OKAY. DO YOU ACCEPT AS A FACT THAT HE IS INNOCENT AS
22 HE SITS HERE BEFORE YOU TODAY?

23 MR. HUMPHRIES: YOUR HONOR, THAT'S ASKED AND
24 ANSWERED.

25 THE COURT: IT IS -- HAS BEEN ASKED AND

1 ANSWERED, MR. KELLY. I ASKED HIM THAT QUESTION.

2 MR. KELLY: WELL, HE SEEMS TO BE HAVING TROUBLE
3 WITH IT, JUDGE.

4 THE COURT: SIR, DO YOU UNDERSTAND THE QUESTION?

5 JUROR: I UNDERSTAND.

6 THE COURT: DO YOU FEEL CAPABLE OF ANSWERING THE
7 QUESTION?

8 JUROR: YES, MA'AM.

9 THE COURT: OKAY. YOU MAY ANSWER THE QUESTION.
10 BUT FOR THE RECORD, IT HAS BEEN ASKED AND ANSWERED,
11 BUT I'M GOING TO GIVE HIM SOME LATITUDE.

12 JUROR: WOULD YOU REPEAT THAT QUESTION?

13 BY MR. KELLY:

14 Q ARE YOU IN AGREEMENT -- ARE YOU AWARE THAT MR. STANKO
15 IS INNOCENT AS HE SITS HERE BEFORE YOU TODAY?

16 A YES.

17 Q OKAY. AND YOU ACCEPT THAT?

18 A YES.

19 Q THANK YOU.

20 THE COURT: ANY EXCEPTIONS TO THE JUROR BEING
21 FOUND QUALIFIED FROM THE STATE?

22 MR. HUMPHRIES: NONE FROM THE STATE, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MR. KELLY: NO, MA'AM. HE'S QUALIFIED.

25 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED.

1 NOW, WHAT THAT MEANS IS WE'RE GOING TO CONTINUE
2 TALKING TO JURORS UNTIL WE REACH A CERTAIN NUMBER OF
3 QUALIFIED JURORS. FROM THAT POOL WE WILL PICK THE
4 ACTUAL JURY ON MONDAY AT 9:30.

5 I NEED FOR YOU TO RETURN TO THE COURTHOUSE AT
6 9:30 ON MONDAY PACKED TO STAY WITH US FOR TWO WEEKS
7 BECAUSE IF YOU'RE SELECTED, YOU WILL NOT BE ABLE TO
8 GO HOME. I KNOW. SO BRING EVERYTHING YOU MIGHT NEED
9 WITH YOU.

10 DURING THIS BREAK PLEASE DO NOT DISCUSS THIS
11 CASE WITH ANYONE. THAT INCLUDES YOUR FAMILY MEMBERS,
12 YOUR FRIENDS, ANYBODY YOU MIGHT RUN INTO IN THE
13 GROCERY STORE.

14 IT'S JUST THE NATURE OF PEOPLE. THEY WILL SAY,
15 GOSH, YOU KNOW, I HEARD YOU GOT SUBPOENAED FOR JURY
16 DUTY, ARE YOU ON THAT CASE? AND YOU HAVE TO SAY, I
17 CANNOT DISCUSS THAT WITH YOU, I'D GET IN TROUBLE WITH
18 THE COURT, OKAY? AND THIS IS A VERY SERIOUS MATTER
19 AND I CANNOT DISCUSS.

20 ALSO PLEASE DO NOT WATCH, READ, OR LISTEN TO ANY
21 MEDIA ACCOUNTS ABOUT THIS CASE AND DON'T DO ANY
22 INDEPENDENT RESEARCH ON THE INTERNET; OKAY? YOU
23 DON'T HAVE TO BRING YOUR BAGS UP HERE WITH YOU. YOU
24 CAN LEAVE THEM IN YOUR CAR.

25 IF YOU'RE SELECTED, WE WILL GET YOU SITUATED

1 BECAUSE WE PLAN TO START ON MONDAY. IF NOT, YOU WILL
2 BE ABLE TO GO HOME.

3 JUROR: ALL RIGHT. UNDERSTOOD.

4 THE COURT: OKAY. YOU HAVE A GREAT DAY, SIR.
5 WE APPRECIATE YOUR PATIENCE WITH US.

6 JUROR: YOU TOO.

7 THE COURT: YOU HAVE A GREAT EVENING.

8 (JUROR LEFT THE COURTROOM.)

9 THE COURT: Y'ALL GIVE ME TWO SHAKES. I HAD A
10 BIG OLD BOTTLE OF WATER.

11 (WHEREUPON THERE WAS A PAUSE.)

12 THE COURT: 242, DEBORAH NEWTON.

13 (JUROR ENTERED THE COURTROOM.)

14 DEBORAH NEWTON, WHITE FEMALE,
15 TESTIFIED AS FOLLOWS:

16 BY THE COURT:

17 Q HOW ARE YOU, MA'AM? COULD YOU COME AS CLOSE TO THE
18 MICROPHONE FOR ME AS POSSIBLE? MA'AM, IF YOU WOULD STATE
19 YOUR FULL NAME FOR THE RECORD.

20 A DEBORAH I NEWTON.

21 Q OKAY. AND MA'AM, YOU ARE JUROR 242; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND MA'AM, I WOULD REMIND YOU THAT YOU'RE STILL UNDER
24 OATH. DO YOU UNDERSTAND?

25 A YES.

1 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
2 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

3 A NO.

4 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. WE'RE NOT
5 TRYING TO INVAD E YOUR PRIVACY. I KNOW SOME OF THESE
6 QUESTIONS WILL SEEM VERY PRIVATE TO YOU AND PROBABLY MAKE
7 YOU THINK ABOUT SOME THINGS YOU'VE NEVER THOUGHT ABOUT
8 BEFORE.

9 STATE LAW REQUIRES THAT WE ASK EACH OF THESE
10 QUESTIONS AND ALSO REQUIRES THAT WE TALK TO EACH JUROR
11 INDIVIDUALLY AS WE ARE DOING BECAUSE OF THE NATURE OF THE
12 PROCEEDINGS.

13 I NEED YOU TO ANSWER EACH QUESTION FOR ME AS FULLY,
14 HONESTLY, AND COMPLETELY AS POSSIBLE. THERE ARE NO RIGHT
15 OR WRONG ANSWERS. AND ALSO, TO THE BEST OF YOUR ABILITY
16 IF YOU COULD ANSWER YES OR NO.

17 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
18 THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT INDICATE
19 ANYTHING ABOUT THE DEFENDANT. THE DEFENDANT IS PRESUMED
20 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

21 A YES.

22 Q MA'AM, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
23 YOU LISTEN TO THE LAW?

24 A YES.

25 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU

1 AS THE JUDGE OF THIS COURT?

2 A YES.

3 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
4 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

5 A REPEAT.

6 Q IN OTHER WORDS, IF I TELL YOU THE LAW IS SOMETHING
7 AND YOU HAVE A PRECONCEIVED NOTION ABOUT WHAT YOU THINK IT
8 IS, DO YOU BELIEVE YOU COULD PUT THAT NOTION ASIDE AND
9 APPLY THE LAW AS I INSTRUCT YOU?

10 A YES.

11 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
12 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
13 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
14 CASE?

15 A YES.

16 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
17 THIS CASE PRIOR TO COMING TO COURT ON TUESDAY?

18 A I CAN VAGUELY REMEMBER WHEN IT HAPPENED.

19 Q OKAY. HAVE -- AS A RESULT OF WHAT YOU WERE EXPOSED
20 TO, HAVE YOU FORMED ANY FIXED OPINION ABOUT THE FACTS AND
21 CIRCUMSTANCES OF THIS CASE?

22 A I CAN'T SAY THAT I COULD DEFINITELY GO WITH THE
23 VERDICT RIGHT THIS MINUTE, NO.

24 Q OKAY. WELL, LET ME ASK THE QUESTION A LITTLE
25 DIFFERENT WAY. WE'RE TRYING TO FIGURE OUT IF YOU'VE

1 ALREADY MADE UP YOUR MIND--

2 A NO.

3 Q -- AS A RESULT OF WHAT YOU HEARD.

4 A NO.

5 Q SO AGAIN, MY QUESTION IS, HAVE YOU FORMED ANY FIXED
6 OPINION ABOUT THIS CASE?

7 A NO.

8 Q IN A CRIMINAL CASE, MA'AM, THE STATE HAS THE BURDEN
9 OF PROVING THE DEFENDANT'S GUILT. THEY MUST PROVE THAT
10 GUILT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

11 A YES.

12 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO
13 BURDEN TO PROVE HIS INNOCENCE?

14 A YES.

15 Q HAVE YOU HAD A CHANCE TO REVIEW THE JUROR TYPE SHEET?

16 A YES.

17 Q AND DO YOU FEEL YOU FALL INTO ANY OF THOSE TYPES?

18 A TYPE THREE.

19 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
20 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER IN
21 THE GUILT PHASE OF THE TRIAL, WE WOULD THEN MOVE TO THE
22 SENTENCING PHASE. DO YOU UNDERSTAND?

23 A YES.

24 Q AND IN THE SENTENCING PHASE THE JURY WOULD BE THE
25 BODY THAT WOULD LISTEN TO THE EVIDENCE AND ACTUALLY

1 DETERMINE WHETHER LIFE WITHOUT THE POSSIBILITY OF PAROLE
2 OR DEATH IS APPROPRIATE. DO YOU UNDERSTAND?

3 A YES.

4 Q AND AS A RESULT, YOU WOULD BE ALLOWED TO CONSIDER
5 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.
6 SO I'M GOING TO EXPLAIN THOSE TO YOU BECAUSE I HAVE SOME
7 MORE QUESTIONS I NEED TO ASK YOU, AND I NEED YOU TO BE
8 ABLE TO UNDERSTAND WHAT THOSE TERMS MEAN. OKAY.

9 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
10 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
11 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
12 THE OFFENSE OF MURDER.

13 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
14 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
15 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
16 COMMISSION OF A CRIME.

17 AND SOME EXAMPLES WOULD BE MURDER OF A CHILD UNDER
18 THE AGE OF 11, KILLING SOMEONE BY POISONING THEM, BURGLARY
19 IN ANY DEGREE, OR DRUG TRAFFICKING. AGAIN, THESE ARE ONLY
20 EXAMPLES.

21 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
22 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
23 LAW REDUCE THE SEVERITY OF THE OFFENSE -- OF THE OF MURDER
24 AND MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE
25 DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

1 AND SOME EXAMPLES OF THOSE WOULD BE MENTAL
2 RETARDATION AT THE TIME OF THE CRIME, THAT THE DEFENDANT
3 HAD NOT YET REACHED THEIR 18TH BIRTHDAY AT THE TIME OF THE
4 CRIME, THAT THEY WERE ACTING UNDER DURESS OR DOMINATION OF
5 ANOTHER, THAT THEY WERE AN ACCOMPLICE AND THEIR
6 PARTICIPATION WAS RELATIVELY MINOR. THESE AGAIN ARE JUST
7 EXAMPLES BECAUSE THERE IS NO EXCLUSIVE LIST FOR MITIGATING
8 CIRCUMSTANCES.

9 IF YOU WERE A JUROR IN THE SENTENCING PHASE,
10 DEPENDING UPON THE FACTS AND CIRCUMSTANCES OF THE CASE
11 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
12 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU IS
13 APPLICABLE AT THE END OF THE CASE, COULD YOU RETURN A
14 VERDICT -- COULD YOU RETURN A SENTENCE OF LIFE IN PRISON
15 WITHOUT THE POSSIBILITY OF PAROLE?

16 A YES.

17 Q UNDER THE VERY SAME CIRCUMSTANCES, COULD YOU RETURN A
18 SENTENCE OF DEATH WHICH IN THIS STATE IS BY ELECTROCUTION
19 OR LETHAL INJECTION?

20 A I THINK I COULD.

21 Q OKAY. AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.
22 SO -- AND I KNOW THESE ARE QUESTIONS YOU'VE PROBABLY NEVER
23 REALLY THOUGHT ABOUT, SO I'M GOING TO REPEAT THE QUESTION
24 FOR YOU, AND AGAIN I NEED TO THE BEST OF YOUR ABILITY A
25 YES OR NO ANSWER. THERE IS NO RIGHT OR WRONG ANSWER.

1 IF YOU WERE A JUROR IN THE SENTENCING PHASE,
2 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
3 THE CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
4 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
5 YOU APPLIES AT THE CONCLUSION OF THE CASE, COULD YOU
6 RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
7 ELECTROCUTION OR BY LETHAL INJECTION?

8 A YES.

9 Q OKAY. NOW, WE HAVE ALREADY EXPLAINED THAT THE JURY
10 IN THIS CASE WILL BE SEQUESTERED OR HOUSED IN A HOTEL
11 DURING THIS TRIAL FOR APPROXIMATELY 10 DAYS. WE ALREADY
12 ASSUME THAT IS GOING TO TOTALLY DISRUPT YOUR LIFE AND WE
13 KNOW IT'S INCONVENIENT.

14 I NEED TO KNOW, HOWEVER, WOULD BEING SEQUESTERED POSE
15 A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

16 A MY SANITY MAYBE, BUT NOT TO MY WELL-BEING.

17 Q OKAY. IF YOU EXPERIENCE ANY DIFFICULTY IF YOU'RE
18 SELECTED, PLEASE BY ALL MEANS LET US KNOW. IN EVERY CASE
19 THE JURY RETURNS A VERDICT. IN MOST -- AND USUALLY THE
20 FOREPERSON SIGNS THE VERDICT FORM.

21 BUT IN A CAPITAL CASE BECAUSE THE JURY DECIDES
22 PENALTY, WHETHER THAT BE LIFE WITHOUT PAROLE OR DEATH,
23 STATE LAW REQUIRES THAT EVERY JUROR SIGN THE VERDICT FORM
24 INDIVIDUALLY, ONE THROUGH 12.

25 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT

1 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
2 A DEATH SENTENCE?

3 A YES.

4 THE COURT: DOES THE STATE HAVE ANY QUESTIONS
5 FOR THE JUROR?

6 MR. HEMBREE: VERY BRIEFLY, YOUR HONOR.

7 THE COURT: YOU MAY PROCEED. MA'AM, IF YOU
8 WOULD GIVE MR. HEMBREE YOUR ATTENTION.

9 BY MR. HEMBREE:

10 Q MRS. NEWTON, I'M GREG HEMBREE. I WAS INTRODUCED TO
11 YOU ON TUESDAY. I ALONG WITH DEPUTY SOLICITOR FRAN
12 HUMPHRIES WILL BE TRYING THIS CASE ON BEHALF OF THE
13 CITIZENS OF GEORGETOWN COUNTY.

14 THE -- THINK IT'S PRETTY OBVIOUS THAT THE CORE OF
15 WHAT WE'RE ASKING ABOUT IS -- ARE YOUR FEELINGS OR YOUR
16 PHILOSOPHY ABOUT THE DEATH PENALTY. AND I JUST WONDERED
17 IF YOU'D JUST TELL ME HOW YOU FEEL ABOUT THE DEATH
18 PENALTY. I KNOW IT'S...

19 A HONESTLY I HAVE NEVER REALLY THOUGHT I'D BE IN THIS
20 POSITION TO GIVE AN ANSWER.

21 Q AND TRULY WE UNDERSTAND THAT AND WE BRING YOU INTO
22 THIS CIRCUMSTANCE -- WITH THIS PROCESS, AND MOST FOLKS
23 HAVEN'T GIVEN IT ALL THAT MUCH THOUGHT, PARTICULARLY IF
24 THEY MAY BE CALLED UPON TO SERVE ON A DEATH PENALTY JURY.
25 BUT YOU HAVE HAD SOME -- OBVIOUSLY THOUGHT ABOUT IT SOME I

1 WOULD IMAGINE SINCE TUESDAY.

2 A YES.

3 Q AND JUST GIVE ME YOUR GENERAL THOUGHTS SINCE YOU HAD
4 SOME TIME TO CONSIDER IT.

5 A WELL, JUST LIKE SHE SAID, WHENEVER SHE ADVISED US
6 BEFORE WE GO IN TO MAKE A RULING OR SENTENCE OR WHATEVER,
7 I WOULD LISTEN CAREFULLY TO WHAT SHE INSTRUCTS AND HOW
8 THINGS ARE BROUGHT ABOUT THROUGH THE COURSE OF THE TRIAL.

9 Q THERE IS A -- AN ASPECT OR SOMETHING ABOUT DEATH
10 PENALTY CASES REGARDING THE VERDICTS. YOU -- YOU WILL
11 NEVER BE REQUIRED AS A JUROR -- THE LAW WILL NEVER PUT YOU
12 IN A POSITION WHERE YOU HAVE TO FIND DEATH, THAT YOU HAVE
13 TO VOTE FOR DEATH.

14 IN OTHER WORDS, IT'S NEVER A PLUS B EQUALS DEATH.
15 IT'S NOT LIKE THAT. THE JURY ALWAYS, AS A JUROR, YOU
16 ALWAYS WOULD HAVE THE OPPORTUNITY TO VOTE FOR LIFE. YOU
17 WOULD NEVER BE PUT IN THAT -- IN THAT -- FORCED INTO THAT
18 BY THE LAW.

19 AND UNDERSTANDING THAT, WOULD YOU BE ABLE TO NOT ONLY
20 CONSIDER THE DEATH PENALTY BUT TO IMPOSE THE DEATH PENALTY
21 AGAINST ANOTHER PERSON IF YOU FELT LIKE THE APPROPRIATE
22 FACTS AND CIRCUMSTANCES HAD BEEN PROVEN?

23 A YES, I COULD.

24 Q OKAY. AND YOU WILL BE FAIR TO THE STATE OF SOUTH
25 CAROLINA AND TO THE DEFENDANT?

1 A I WILL WEIGH IT CAREFULLY.

2 Q THAT'S -- THAT IS ABSOLUTELY ALL WE CAN ASK OF YOU.
3 I APPRECIATE YOUR TIME AND YOUR RESPONSES. PLEASE ANSWER
4 ANY QUESTIONS THE DEFENDANT MAY HAVE.

5 THE COURT: MR. KELLY OR MR. DIGGS?

6 MR. KELLY: I HAVE NONE.

7 THE COURT: OKAY. ANY EXCEPTION TO THIS JUROR
8 BEING FOUND QUALIFIED FROM THE STATE?

9 MR. HEMBREE: NO, YOUR HONOR. MRS. NEWTON IS
10 QUALIFIED.

11 THE COURT: FROM THE DEFENSE?

12 MR. KELLY: SHE IS QUALIFIED, MA'AM.

13 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED
14 WHICH MEANS YOU'RE NOW IN THE POOL OF OTHER QUALIFIED
15 JURORS. AND ON MONDAY WE WILL FROM THAT POOL SELECT
16 THE ACTUAL JURY.

17 SO I NEED FOR YOU TO RETURN ON MONDAY MORNING
18 PACKED AND PREPARED TO GO WITH US IN THE EVENT THAT
19 YOU ARE SELECTED BECAUSE YOU WILL NOT BE ALLOWED TO
20 RETURN HOME.

21 OF COURSE, YOU DON'T HAVE TO BRING YOUR STUFF UP
22 HERE. YOU CAN LEAVE IT IN YOUR VEHICLE. AND AT THE
23 APPROPRIATE TIME WE WILL GET YOU SITUATED AT THE
24 HOTEL IF YOU ARE SELECTED.

25 DURING THE BREAK YOU'RE STRICTLY INSTRUCTED NOT

1 TO HAVE ANY DISCUSSION ABOUT THIS QUALIFICATION
2 PROCESS OR THIS CASE WITH ANYONE. THAT INCLUDES YOUR
3 FAMILY MEMBERS OR YOUR FRIENDS.

4 IF ANYBODY TRIES TO HAVE A CONVERSATION WITH
5 YOU, YOU NEED TO TELL THEM, I CANNOT DISCUSS THIS
6 WITH YOU, IT WOULD BE A VIOLATION OF THE COURT'S
7 RULES, AND I DON'T WANT TO GET IN ANY TROUBLE. OKAY.

8 JUROR: NOT TO DISCUSS IT -- QUALIFICATION?

9 THE COURT: THIS CASE AT ALL -- OR THE
10 QUALIFICATION. YOU CAN'T DISCUSS ANYTHING WE'VE
11 DISCUSSED IN THIS ROOM WITH ANYONE.

12 JUROR: BUT I HAVE TO TELL MY EMPLOYER.

13 THE COURT: OH, YEAH. YOU CAN TELL THEM.

14 JUROR: IF I DRIVE TO WORK MONDAY OR TO THE
15 COURTHOUSE MONDAY, WHAT HAPPENS WITH MY VEHICLE?

16 THE COURT: WE ARE GOING TO TAKE IT TO THE
17 HOTEL.

18 JUROR: OKAY.

19 THE COURT: BUT AFTER THAT, YOU WILL BE IN A VAN
20 THAT WE'LL PROVIDE, AND YOU WILL BE DRIVEN AROUND.
21 SO IF YOU WANT TO HAVE SOMEBODY DROP YOU OFF, YOU CAN
22 DO THAT. I WILL LEAVE IT UP TO YOU. BUT IF YOU'RE
23 NOT SELECTED, YOU'RE GOING TO BE ABLE TO GO HOME.

24 JUROR: I'M PRAYING REAL HARD.

25 THE COURT: SO YOU MIGHT WANT TO KEEP YOUR CAR.

1 I WILL LEAVE IT UP TO YOU. ALSO PLEASE DO NOT HAVE
2 ANY MEDIA EXPOSURE TO THIS CASE AT ALL, WHICH MEANS
3 YOU CAN'T WATCH ANYTHING ABOUT THIS CASE ON TV,
4 CANNOT READ ANYTHING ABOUT IT IN THE NEWSPAPER,
5 CANNOT LISTEN TO ANYTHING ABOUT IT ON THE RADIO. YOU
6 CANNOT DO ANY INDEPENDENT RESEARCH AND READ ANYTHING
7 ON THE INTERNET. OKAY?

8 JUROR: I UNDERSTAND.

9 THE COURT: IT IS ESSENTIAL THAT YOU REMAIN
10 IMPARTIAL. OKAY?

11 JUROR: I UNDERSTAND.

12 THE COURT: WE WILL SEE YOU ON MONDAY AT 9:30.
13 AND YOU HAVE A GOOD EVENING.

14 JUROR: THANK YOU.

15 THE COURT: YOU'RE WELCOME.

16 (JUROR LEFT THE COURTROOM.)

17 THE COURT: ZANDRENA GAMBLE, 375.

18 (JUROR ENTERED THE COURTROOM.)

19 ZANDRENA GAMBLE, BLACK FEMALE,
20 TESTIFIED AS FOLLOWS:

21 BY THE COURT:

22 Q HOW ARE YOU, MA'AM?

23 A HI. HOW ARE YOU?

24 Q DOING FINE. IF YOU WOULD STATE YOUR FULL NAME FOR
25 THE RECORD.

1 A ZANDRENA HERMEL GAMBLE.

2 Q OKAY. AND YOU ARE JUROR 375; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q AND EXCUSE ME FOR HAVING THIS MINT IN MY MOUTH.

5 A YOU'RE FINE.

6 Q I HAVE BEEN TALKING ALL DAY LONG AND IT SORT OF HELPS
7 MY THROAT FEEL A TINY BIT BETTER. MA'AM, I REMIND YOU
8 THAT YOU'RE STILL UNDER OATH. DO YOU UNDERSTAND?

9 A YES.

10 Q NOW, SINCE THE COURT'S INSTRUCTIONS ON TUESDAY, HAVE
11 YOU HAD ANY -- HAD ANY MEDIA EXPOSURE TO THIS CASE?

12 A NO, MA'AM.

13 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. WE KNOW THAT
14 THESE QUESTIONS ARE VERY PRIVATE. IT'S NOT OUR INTENT TO
15 INVADE YOUR PRIVACY. STATE LAW REQUIRES THAT WE ASK THESE
16 QUESTIONS AND STATE LAW REQUIRES THAT WE TALK TO EACH
17 JUROR INDIVIDUALLY TO DETERMINE YOUR VIEWS ABOUT CERTAIN
18 THINGS.

19 A OKAY.

20 Q I NEED TO EMPHASIZE THAT THERE ARE NO RIGHT OR WRONG
21 ANSWERS. THE ONLY THING THAT WE ASK IS THAT YOU BE HONEST
22 WITH US AND YOU ANSWER EACH QUESTION CANDIDLY, TRUTHFULLY,
23 HONESTLY, AND OPENLY, AND FULLY.

24 A OKAY.

25 Q AND TO THE BEST OF YOUR ABILITY ANSWER EACH QUESTION

1 YES OR NO. AGAIN, THERE ARE NO RIGHT, NO WRONG ANSWERS.
2 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY. BUT
3 THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT INDICATE
4 ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW
5 TO BE INNOCENT. DO YOU UNDERSTAND?

6 A YES.

7 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
8 LISTEN TO THE LAW?

9 A YES.

10 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
11 INSTRUCT YOU?

12 A YES.

13 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
14 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

15 A YES.

16 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
17 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
18 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
19 CASE?

20 A YES.

21 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
22 THIS CASE PRIOR TO ARRIVING ON TUESDAY?

23 A NO.

24 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
25 PROVING THE DEFENDANT'S GUILT. DO YOU UNDERSTAND THAT?

1 A YES.

2 Q DO YOU UNDERSTAND THAT THEY MUST PROVE THIS BURDEN
3 BEYOND A REASONABLE -- THEY MUST MEET THIS BURDEN BEYOND A
4 REASONABLE DOUBT?

5 A YES.

6 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO
7 BURDEN TO PROVE HIS INNOCENCE?

8 A YES.

9 Q HAVE YOU REVIEWED THE JUROR TYPE SHEET?

10 A YES, I HAVE.

11 Q AND WHICH TYPE WOULD YOU TELL US THAT YOU'D FALL
12 WITHIN?

13 A TYPE THREE.

14 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
15 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
16 WOULD THEN MOVE TO THE SENTENCING PHASE BECAUSE THE JURY
17 IN SOUTH CAROLINA IN A CAPITAL CASE DECIDES SENTENCE AS IN
18 MOST OTHER STATES. DO YOU UNDERSTAND?

19 A YES.

20 Q DURING THAT PHASE OF THE TRIAL THE JURY WOULD BE
21 ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING CIRCUMSTANCES
22 AND MITIGATING CIRCUMSTANCES. AN AGGRAVATING CIRCUMSTANCE
23 IS FACTS, INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE
24 LEGISLATURE HAS DECLARED BY STATE LAW WOULD MAKE WORSE,
25 THAT IS AGGRAVATE THE OFFENSE OF MURDER.

1 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
2 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
3 THE INJURY OF THE CRIME OF MURDER. AND IT IS COMMITTED IN
4 THE COMMISSION OF A CRIME.

5 AN EXAMPLE OF THAT WOULD BE MURDER OF A CHILD UNDER
6 THE AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON,
7 BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.

8 A MITIGATING CIRCUMSTANCE IS AN INCIDENT, DETAIL, OR
9 OCCURRENCE WHICH THE LEGISLATURE HAS DECLARED BY STATE LAW
10 REDUCES THE SEVERITY OF THE OFFENSE OF MURDER AND MAY BE
11 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
12 MORAL CULPABILITY OR RESPONSIBILITY.

13 SOME EXAMPLES OF THOSE WOULD BE MENTAL RETARDATION AT
14 THE TIME OF THE CRIME, THE DEFENDANT HAD NOT REACHED THE
15 AGE OF 18 WHEN THE CRIME WAS COMMITTED, THAT THE DEFENDANT
16 WAS AN ACCOMPLICE AND THAT THEIR PARTICIPATION WAS
17 RELATIVELY MINOR, THAT THEY COMMITTED THIS -- THE ACT
18 UNDER DURESS OR DOMINATION.

19 AGAIN, THESE ARE JUST EXAMPLES BECAUSE THERE'S --
20 REALLY THERE IS NO EXCLUSIVE LIST OF MITIGATING
21 CIRCUMSTANCES.

22 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
23 CASE, COULD YOU DEPENDING UPON THE PARTICULAR FACTS AND
24 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
25 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT

1 I WOULD INSTRUCT YOU THAT APPLIES AT THE CONCLUSION OF THE
2 CASE RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
3 POSSIBILITY OF PAROLE?

4 A YES.

5 Q COULD YOU IF YOU WERE -- IF YOU WERE A JUROR IN THE
6 SENTENCING PHASE, DEPENDING UPON THE PARTICULAR FACTS AND
7 CIRCUMSTANCES OF THE CASE, INCLUDING THE CONSIDERATION OF
8 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
9 I WOULD INSTRUCT AT THE CONCLUSION OF THE CASE, COULD YOU
10 RETURN A SENTENCE OF DEATH IN THIS STATE WHICH IS BY -- A
11 SENTENCE OF DEATH WHICH IN THIS STATE IS BY ELECTROCUTION
12 OR BY LETHAL INJECTION?

13 A YES.

14 Q IF YOU WERE CHOSEN FOR THIS JURY, YOU WILL BE
15 SEQUESTERED OR HOUSED IN A MOTEL FOR TWO WEEKS. AND WE
16 ARE ALREADY KNOW THAT'S INCONVENIENT. WE KNOW IT
17 COMPLETELY DISRUPTS YOUR LIFE. WE ASSUME THAT. WOULD
18 BEING SEQUESTERED POSE A SERIOUS DANGER TO YOUR HEALTH OR
19 WELL-BEING?

20 A NO.

21 Q NOW, IN CAPITAL CASES EACH JUROR IS REQUIRED TO SIGN
22 THE VERDICT FORM BECAUSE AS I'VE EXPLAINED TO YOU, THE
23 JURY DECIDES SENTENCE AND THE COURT HAS TO CARRY THAT OUT.
24 WOULD YOU BE ABLE TO SIGN A VERDICT IN THE EVENT OF A
25 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR

1 DEATH?

2 A YES.

3 THE COURT: ARE THERE ANY QUESTIONS FROM THE
4 STATE?

5 MR. HEMBREE: NO QUESTIONS FROM MRS. GAMBLE.

6 THE COURT: FROM THE DEFENSE?

7 MR. KELLY: NONE.

8 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
9 FOUND QUALIFIED?

10 MR. HEMBREE: NO, YOUR HONOR. MRS. GAMBLE IS
11 QUALIFIED.

12 MR. KELLY: SHE IS QUALIFIED, MA'AM.

13 THE COURT: MA'AM, YOU HAVE BEEN FOUND
14 QUALIFIED. THAT MEANS YOU'RE NOW A PART OF THE POOL
15 OF QUALIFIED JURORS. ON MONDAY WE WILL SELECT FROM
16 THAT POOL THE JURY.

17 JUROR: OKAY.

18 THE COURT: I NEED YOU TO RETURN ON MONDAY AT
19 9:30 PACKED TO REMAIN WITH US FOR TWO WEEKS. SO YOU
20 NEED TO BRING EVERYTHING WITH YOU THAT YOU FEEL YOU
21 COULD POSSIBLY NEED FOR TWO WEEKS. OF COURSE, YOU
22 DON'T HAVE TO BRING IT TO THE COURTROOM PHYSICALLY.

23 JUROR: OKAY.

24 THE COURT: OKAY. YEAH. YOU'RE GOING TO BE
25 TOTING SUITCASES AND BAGS. IF YOU ARE SELECTED FOR

1 THE PANEL, OF COURSE, WE'LL GET YOU SITUATED. YOU
2 WON'T HAVE TO SHARE YOUR ROOM. YOU WILL HAVE A ROOM
3 TO YOURSELF.

4 DURING THE BREAK, HOWEVER, THERE'S SOME
5 INSTRUCTIONS I NEED YOU TO STRICTLY ABIDE BY. AND I
6 KNOW IT'S DIFFICULT SOMETIMES. BUT PLEASE DO NOT
7 HAVE ANY DISCUSSION ABOUT THIS QUALIFICATION PROCESS
8 OR THIS CASE WITH ANYONE. THAT INCLUDES YOUR FAMILY
9 MEMBERS, YOUR FRIENDS, OR ANYONE THAT YOU WOULD COME
10 IN CONTACT WITH.

11 ALSO, PLEASE DON'T HAVE ANY MEDIA EXPOSURE, THAT
12 INCLUDES ANYTHING YOU COULD SEE ON TV, READ ON THE --
13 IN THE NEWSPAPER OR ON THE INTERNET. OKAY?

14 JUROR: YES, MA'AM.

15 THE COURT: AND WE'LL SEE YOU ON MONDAY MORNING
16 AT 9:30.

17 JUROR: OKAY.

18 THE COURT: HAVE A GOOD EVENING?

19 JUROR: THANK YOU.

20 THE COURT: YOU'RE WELCOME.

21 (JUROR LEFT THE COURTROOM.)

22 THE COURT: BETTY PITTMAN, 254. I WROTE IT DOWN
23 WRONG. SHE ANSWERED NUMBER...

24 (JUROR ENTERED THE COURTROOM.)

25 BETTY PITTMAN, WHITE FEMALE, TESTIFIED

1 AS FOLLOWS:

2 BY THE COURT:

3 Q MRS. PITTMAN, HOW ARE YOU? DID YOU HURT YOUR FOOT?

4 A BEG YOUR PARDON?

5 Q DID YOU HURT YOUR FOOT?

6 A NO, IT'S JUST AGE.

7 Q I UNDERSTAND MORE THAN I COULD EVER TELL YOU. IF YOU
8 COULD STATE YOUR FULL NAME FOR THE RECORD.

9 A BETTY JOE PITTMAN.

10 Q OKAY. MRS. PITTMAN, YOU ARE JUROR 254; IS THAT
11 RIGHT?

12 A (NODDED HEAD.)

13 Q YOU NEED TO TELL ME YES OR NO.

14 A YES.

15 Q AND YOU -- DO YOU UNDERSTAND YOU'RE STILL UNDER OATH?

16 A YES.

17 Q HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE SINCE
18 THE COURT'S INSTRUCTIONS ON TUESDAY?

19 A NOT SINCE TUESDAY, NO.

20 Q OKAY. WE'RE GOING TO ASK YOU SOME QUESTIONS. NEED
21 YOU TO TAKE A DEEP BREATH. I KNOW THIS IS CAN BE A LITTLE
22 UNNERVING.

23 A OKAY.

24 Q THERE ARE NO RIGHT OR WRONG ANSWERS. STATE LAW
25 REQUIRES THAT WE TALK TO EACH JUROR INDIVIDUALLY. THEY

1 ALSO DICTATE THE QUESTIONS THAT WE ASK; OKAY?

2 A OKAY.

3 Q I NEED TO EMPHASIZE THERE ARE NO RIGHT OR WRONG
4 ANSWERS.

5 A OKAY.

6 Q THE ONLY THING WE ASK OF YOU IS THAT YOU BE CANDID
7 WITH US AND THAT YOU ANSWER EACH QUESTION OPENLY,
8 HONESTLY, AND FULLY. NOW, DON'T UNDERSTAND THE QUESTION,
9 LET ME KNOW.

10 A OKAY.

11 Q AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
12 AND THE FACT THAT WE REFER TO PENALTY IS NO INDICATION
13 ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW TO BE
14 INNOCENT. DO YOU UNDERSTAND?

15 A YES.

16 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
17 LISTEN TO THE LAW?

18 A EXPLAIN THAT TO ME.

19 Q THE LAW AND THE FACTS ARE VERY DIFFERENT THINGS. THE
20 FACTS ARE THE EVIDENCE THAT YOU LISTEN TO. THE LAW IS
21 WHAT I TELL YOU THE LAW IS. IN OTHER WORDS, WHAT THE
22 ELEMENTS OF AN OFFENSE ARE, WHAT THE BURDEN OF PROOF IS.

23 A I THINK I COULD.

24 Q HOW YOU JUDGE WITNESS CREDIBILITY AND BELIEVABILITY.
25 OKAY? DO YOU BELIEVE THAT YOU COULD LISTEN TO THE LAW?

1 A YES.

2 Q DO YOU BELIEVE THAT YOU CAN ACCEPT AND APPLY THE LAW
3 AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS COURT?

4 A I'M NOT SURE HOW TO ANSWER THAT.

5 Q OKAY. TELL ME WHY YOU'RE NOT SURE HOW TO ANSWER.

6 A WELL, I'VE ALREADY FORMED AN OPINION ABOUT THIS CASE.
7 I HEARD ALL THE NEWS THAT WENT ON BEFORE, SO...

8 Q SO YOU BELIEVE WHAT THE NEWS REPORTS ARE THE FACTS?

9 A I BELIEVE, YES.

10 Q OKAY. SO YOU'RE TELLING ME YOU'VE FORMED A FIXED AND
11 IMMOVABLE POSITION ABOUT THIS CASE?

12 A YES, MA'AM.

13 Q ARE YOU TELLING ME YOU'VE ALREADY MADE UP YOUR MIND?

14 A YES, MA'AM.

15 THE COURT: ANY QUESTIONS FROM THE STATE?

16 MR. HEMBREE: NO, YOUR HONOR.

17 THE COURT: FROM THE DEFENSE?

18 MR. KELLY: NONE, MA'AM.

19 THE COURT: ANY EXCEPTION TO THE JUROR BEING
20 EXCUSED FROM THE STATE?

21 MR. HEMBREE: NO, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. KELLY: NO, MA'AM.

24 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
25 COURT'S THANKS. PLEASE DO NOT DISCUSS THIS PROCESS

1 WITH ANYONE.

2 JUROR: THANK YOU.

3 THE COURT: YOU'RE WELCOME.

4 (JUROR LEFT THE COURTROOM.)

5 THE COURT: RITA SMALL, 298.

6 (JUROR ENTERED THE COURTROOM.)

7 RITA SMALL, BLACK FEMALE, TESTIFIED AS
8 FOLLOWS:

9 BY THE COURT:

10 Q MA'AM, HOW ARE YOU?

11 A FINE.

12 Q WE APPRECIATE YOU BEING WITH US HERE TODAY. IF YOU
13 WOULD TELL US YOU'RE FULL NAME FOR THE RECORD.

14 A MY NAME IS RITA SMALL.

15 Q OKAY. AND YOU ARE JUROR 298; IS THAT CORRECT?

16 A YES.

17 Q AND I WOULD REMIND YOU YOU'RE STILL UNDER OATH. DO
18 YOU UNDERSTAND?

19 A YES.

20 Q MA'AM, HAVE YOU -- SORRY. HAVE YOU HAD ANY MEDIA
21 EXPOSURE TO THIS CASE SINCE THE COURT'S INSTRUCTIONS ON
22 TUESDAY?

23 A NO.

24 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. I NEED YOU TO
25 TAKE A DEEP BREATH. I KNOW SOMETIMES THIS CAN BE A LITTLE

1 INTIMIDATING, AND THEN THE STRESS OF THE DAY. I
2 UNDERSTAND.

3 THE QUESTIONS MAY SEEM VERY PERSONAL, BUT STATE LAW
4 REQUIRES THAT WE ASK THEM. WE'RE NOT TRYING TO INVAD
5 YOUR PRIVACY. WE JUST NEED TO KNOW YOUR VIEWS.

6 THERE ARE ABSOLUTELY NO RIGHT OR WRONG ANSWERS. THE
7 ONLY THING WE ASK OF YOU IS THAT YOU BE CANDID WITH US,
8 THAT YOU ANSWER THE QUESTION OPENLY, FULLY, AND HONESTLY.

9 A OKAY.

10 Q IF YOU DO NOT UNDERSTAND A QUESTION, LET ME KNOW.
11 AND TO THE BEST OF YOUR ABILITY, YOU SHOULD ANSWER EACH
12 QUESTION WITH A YES OR NO, KEEPING IN MIND THAT THERE IS
13 NO RIGHT OR WRONG ANSWER.

14 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
15 AND THE FACT THAT WE TALK ABOUT PENALTY IS NO INDICATION
16 ABOUT THE DEFENDANT BECAUSE HE IS PRESUMED IN THE LAW TO
17 BE INNOCENT. DO YOU UNDERSTAND?

18 A YES.

19 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
20 LISTEN TO THE LAW?

21 A YES.

22 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
23 INSTRUCT YOU?

24 A YES.

25 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU

1 MAY DISAGREE WITH ME IN REGARDS TO WHAT I TELL YOU THE LAW
2 IS? IN OTHER WORDS, YOU MAY HAVE A PRECONCEIVED IDEA
3 ABOUT WHAT YOU THINK THE LAW IS. BUT IF I TELL YOU IT'S
4 SOMETHING OTHER THAN YOUR NOTION, WOULD YOU BE ABLE TO
5 DISREGARD THAT AND APPLY THE LAW AS YOU WOULD BE SWORN TO
6 AS A JUROR?

7 A YES.

8 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
9 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
10 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
11 CASE?

12 A NO.

13 Q OKAY. HAVE YOU HEARD, READ, OR SEEN ANY MEDIA
14 COVERAGE ABOUT THIS CASE?

15 A PRIOR TO...

16 Q TUESDAY.

17 A YES.

18 Q AND AS A RESULT OF WHAT YOU HEARD, ARE YOU TELLING ME
19 YOU FORMED A FIXED -- WHICH IS AN IMPROVABLE POSITION OR
20 OPINION ABOUT THIS CASE?

21 A YES.

22 Q OKAY. YOU'RE TELLING ME YOU'VE ALREADY MADE UP YOUR
23 MIND?

24 A YES.

25 THE COURT: OKAY. ANY QUESTIONS FROM THE STATE?

1 MR. HEMBREE: NO, YOUR HONOR.

2 THE COURT: FROM THE DEFENSE?

3 MR. KELLY: NONE, MA'AM.

4 THE COURT: ANY EXCEPTION TO THE JUROR BEING
5 EXCUSED?

6 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

7 MR. KELLY: NONE, MA'AM.

8 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
9 COURT'S THANKS. PLEASE DO NOT DISCUSS THIS PROCESS
10 WITH ANYONE. THANK YOU.

11 JUROR: THANK YOU.

12 (JUROR LEFT THE COURTROOM.)

13 THE COURT: GEORGE GRANT, JUNIOR.. 122.

14 (JUROR ENTERED THE COURTROOM.)

15 GEORGE GRANT, BLACK MALE, TESTIFIED AS
16 FOLLOWS:

17 BY THE COURT:

18 Q SIR, HOW ARE YOU DOING TODAY?

19 A I'M OKAY.

20 Q TRYING TO SURVIVE THIS HEAT; HUH?

21 A YES, MA'AM.

22 Q I UNDERSTAND. SIR, YOU ARE JUROR GEORGE GRANT,
23 JUNIOR, 122?

24 A YES, MA'AM.

25 Q AND IS THAT YOUR -- I NEED YOU TO LEAN TOWARD THAT

1 MICROPHONE FOR ME.

2 A YES, IT IS.

3 Q IS THAT YOUR COMPLETE NAME?

4 A YES.

5 Q THANK YOU. SIR, I WILL REMIND YOU YOU'RE STILL UNDER
6 OATH. DO YOU UNDERSTAND?

7 A YES.

8 Q AND HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
9 SINCE MY INSTRUCTIONS ON TUESDAY?

10 A NO.

11 Q SIR, I'M GOING TO ASK YOU SOME QUESTIONS. I KNOW
12 SOME OF THEM MAY SEEM PRIVATE. IT'S NOT OUR INTENT TO
13 INVADE YOUR PRIVACY, BUT WE HAVE TO KNOW YOUR VIEWS.
14 THERE ARE NO RIGHT OR WRONG ANSWERS. THE ONLY THING THAT
15 WE REQUIRE OF YOU IS THAT YOU BE OPEN, CANDID, AND HONEST
16 WITH US AND THAT YOU ANSWER THE QUESTIONS FULLY.

17 AGAIN, I EMPHASIZE THERE ARE NO RIGHT OR WRONG
18 ANSWERS. AND TO THE BEST OF YOUR ABILITY I NEED YOU TO
19 ANSWER EACH QUESTION WITH A YES OR A NO; OKAY?

20 A RIGHT.

21 Q IF YOU DON'T UNDERSTAND ANYTHING, PLEASE LET ME KNOW.
22 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY. AND
23 THE FACT THAT WE REFER TO PENALTIES IS NO INDICATION ABOUT
24 THE DEFENDANT. THE LAW PRESUMES THAT THE DEFENDANT IS
25 INNOCENT. DO YOU UNDERSTAND THIS?

1 A YES.

2 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
3 YOU LISTEN TO THE LAW?

4 A YES, I CAN.

5 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
6 INSTRUCT YOU?

7 A YES.

8 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
9 MIGHT DISAGREE WITH IT?

10 A YES.

11 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
12 EVIDENCE PRESENTED HERE IN THE COURTROOM -- EXCUSE ME --
13 AND DISREGARD ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN
14 ABOUT THIS CASE?

15 A YES.

16 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
17 THIS CASE PRIOR TO TUESDAY?

18 A NO.

19 Q SIR, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
20 PROVING THE DEFENDANT'S GUILT. DO YOU UNDERSTAND THAT?

21 A YES.

22 Q AND DO YOU UNDERSTAND THAT THEY MUST MEET THAT BURDEN
23 BEYOND A REASONABLE DOUBT?

24 A YES.

25 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY

1 NO BURDEN TO PROVE HIS INNOCENCE?

2 A YES.

3 Q SIR, HAVE YOU REVIEWED THE JUROR TYPE SHEET THAT WAS
4 IN THE JURY ROOM?

5 A YES, I DID.

6 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES?

7 A ONE THING I -- I'M OPPOSED TO THE DEATH PENALTY.

8 Q OKAY. IS THAT AN ABSOLUTE?

9 A ABSOLUTE. I DON'T BELIEVE IN THE DEATH PENALTY.

10 Q OKAY.

11 THE COURT: ANY QUESTIONS BY THE STATE?

12 MR. HEMBREE: NO, YOUR HONOR.

13 THE COURT: BY THE DEFENSE?

14 MR. KELLY: NONE, MA'AM.

15 THE COURT: ANY OBJECTION TO THE WITNESS
16 BEING -- I MEAN THE JUROR BEING EXCUSED?

17 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MR. KELLY: NONE, MA'AM.

20 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S
21 THANKS. HAVE A GREAT EVENING.

22 JUROR: THANK YOU.

23 THE COURT: YOU'RE WELCOME.

24 (JUROR LEFT THE COURTROOM.)

25 THE COURT: ALL RIGHT, GUYS. ACCORDING TO MY

1 CALCULATIONS WE HAVE FIVE QUALIFIED JURORS. THEY
2 WILL BE LISTED, HOWEVER, AFTER THE FOUR PANELS --
3 THREE PANELS THAT WE DO IN THE MORNING, AFTER WHICH
4 WE WILL THEN BEGIN WITH PANEL 19 WHICH BEGINS WITH
5 MRS. MYERS NUMBER, 238, IF WE HAVE TO GO THAT FAR.
6 I'M THINKING...

7 MR. HUMPHRIES: WE'VE GOT 30 TOTAL, SO...

8 THE COURT: THAT BE 12. 12 MORE WOULD BE 42?

9 MR. HUMPHRIES: WE GOT THE...

10 THE COURT: IF I GET A COUPLE MORE, WE MIGHT NOT
11 HAVE TO GO VERY MUCH FARTHER, AND DISMISS EVERYBODY
12 ELSE. LET'S THINK POSITIVE.

13 (COURT WAS IN RECESS FOR THE EVENING.)

14 ***** AUGUST 4, 2006 *****

15 THE COURT: IS THE STATE READY TO PROCEED?

16 MR. HEMBREE: STATE'S READY TO PROCEED.

17 THE COURT: IS THE DEFENSE READY TO PROCEED?

18 MR. DIGGS: YES.

19 THE COURT: PLEASE BRING IN MR. MAYERS, 213.

20 (JUROR ENTERED THE COURTROOM.)

21 TYRONE MAYERS, BLACK MALE, TESTIFIED

22 AS FOLLOWS:

23 BY THE COURT:

24 Q COME AS CLOSE TO THE MICROPHONE AS YOU CAN. IF YOU
25 WOULD STATE YOUR NAME FOR THE RECORD.

1 A JUROR NUMBER 213, TYRONE MAYERS.

2 Q MR. MAYERS, I WILL REMIND YOU THAT YOU'RE STILL UNDER
3 OATH. DO YOU UNDERSTAND?

4 A YES, MA'AM.

5 Q OKAY. DON'T BE NERVOUS. TAKE A DEEP BREATH. I KNOW
6 IT'S A LITTLE DAUNTING. HAVE YOU BEEN EXPOSED TO ANY
7 MEDIA COVERAGE ABOUT THIS CASE SINCE TUESDAY WHEN THE
8 COURT GAVE ITS INSTRUCTIONS?

9 A YES, MA'AM.

10 Q OKAY. AND WHAT WERE YOU EXPOSED TO?

11 A THE CHANNEL 13 NEWS.

12 Q OKAY. AND DID YOU WATCH IT DELIBERATELY OR IT WAS
13 JUST ON YOUR HOUSE AND YOU HAPPENED TO GLANCE AT IT?

14 A IT WAS JUST ON.

15 Q OKAY. DID YOU REMOVE YOURSELF FROM WATCHING IT?

16 A NO, MA'AM.

17 Q OKAY. I GUESS WHAT I'M TRYING TO INQUIRE ABOUT IS IF
18 YOU DELIBERATELY VIOLATED THE COURT'S INSTRUCTIONS NOT TO
19 BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS CASE DURING
20 THIS PROCESS.

21 A ACTUALLY WAITING FOR SPORTS TO COME ON.

22 Q SO YOU JUST HAPPENED TO SEE IT?

23 A YES, MA'AM.

24 Q OKAY. SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS.
25 STATE LAW REQUIRES THAT WE TALK TO REACH JUROR

1 INDIVIDUALLY IN A CASE LIKE THIS. SOME OF THESE QUESTIONS
2 MAY SEEM INTENSELY PERSONAL.

3 IT IS NOT OUR INTENT TO INVADE YOUR PRIVACY IN ANY
4 WAY. AGAIN, STATE LAW REQUIRES THAT WE ASK THESE
5 QUESTIONS. I NEED TO EMPHASIZE THAT THERE IS NO RIGHT OR
6 WRONG ANSWER. WE JUST NEED YOU TO BE AS OPEN AND HONEST
7 WITH US AND ANSWER THE QUESTIONS AS FULLY AS POSSIBLE.

8 AND TO THE EXTENT THAT YOU ARE CAPABLE, PLEASE ANSWER
9 EACH QUESTION YES OR NO. AGAIN, THERE ARE NO RIGHT OR
10 WRONG ANSWERS.

11 AMONG OTHER THINGS WE'RE GOING TO BE TALKING ABOUT
12 PENALTY, BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES
13 NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
14 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

15 A YES, MA'AM.

16 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
17 LISTEN TO THE LAW?

18 A YES, MA'AM.

19 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
20 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

21 A YES.

22 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
23 MAY NOT AGREE WITH WHAT I TELL YOU THE LAW IS?

24 A YES.

25 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE

1 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
2 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
3 CASE?

4 A YES.

5 Q SIR, OTHER THAN THE MEDIA COVERAGE THAT YOU HAVE
6 ALREADY TOLD ME YOU WERE EXPOSED TO, HAVE YOU BEEN EXPOSED
7 TO ANY OTHER MEDIA COVERAGE ABOUT THIS CASE?

8 A NO, MA'AM.

9 Q AS A RESULT OF WHAT YOU WERE EXPOSED TO HAVE YOU
10 FORMED ANY FIXED OPINION ABOUT THIS CASE?

11 A NO, MA'AM.

12 Q OKAY. DO YOU BELIEVE THAT YOU WOULD BE ABLE TO
13 LISTEN TO THE EVIDENCE THAT WOULD BE PRESENTED AND THE LAW
14 AS THE COURT WILL CHARGE AND MAKE A DECISION BASED SOLELY
15 ON THE EVIDENCE AND THE LAW IN THIS CASE?

16 A YES, MA'AM.

17 Q SIR, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
18 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
19 DO YOU UNDERSTAND THAT?

20 A YES.

21 Q AND DO YOU UNDERSTAND THAT THE DEFENDANT HAS
22 ABSOLUTELY NO BURDEN TO PROVE HIS INNOCENCE?

23 A YES.

24 Q SIR, HAVE YOU LOOKED AT THE JUROR TYPE SHEET?

25 A YES, MA'AM.

1 Q OKAY. AND DO YOU REMEMBER WHAT EACH TYPE REPRESENTS?

2 A YES.

3 Q AND DO YOU FEEL THAT YOU ARE IN ANY OF THOSE
4 CATEGORIES OF JURORS?

5 A TYPE THREE.

6 Q SIR, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
7 IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD
8 THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. AND AS I
9 EXPLAINED ON TUESDAY, THESE ARE TWO PHASES. THERE IS A
10 GUILT PHASE AND THERE IS A SENTENCING PHASE.

11 IF DURING THE GUILT PHASE THE JURY FINDS THE
12 DEFENDANT GUILTY, WE THEN MOVE TO THE SENTENCING PHASE.
13 AND IN SOUTH CAROLINA IN THIS TYPE CASE THE JURY DECIDES
14 PENALTY, WHETHER IT'S LIFE WITHOUT THE POSSIBILITY OF
15 PAROLE OR DEATH. DO YOU UNDERSTAND?

16 A YES.

17 Q AND DURING THAT PHASE OF THE TRIAL THE JURY WOULD BE
18 ALLOWED TO CONSIDER WHAT WE ALL AGGRAVATING CIRCUMSTANCES
19 AND MITIGATING CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO
20 YOU WHAT THOSE ARE. I'M GOING TO ASK YOU SOME OTHER
21 QUESTIONS SO THAT YOU WILL UNDERSTAND THE TERMS THAT WE'RE
22 USING. DO YOU UNDERSTAND?

23 A YES.

24 Q SIR, AN AGGRAVATING CIRCUMSTANCE ARE FACTS,
25 INCIDENTS, DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE

1 HAS DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS
2 AGGRAVATE, THE OFFENSE OF MURDER.

3 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
4 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
5 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
6 COMMISSION OF A CRIME.

7 AND EXAMPLE OF AN AGGRAVATING CIRCUMSTANCES WOULD BE
8 THE FOLLOWING. THE MURDER OF A CHILD UNDER AGE 11, DRUG
9 TRAFFICKING, KILLING BY POISON, BURGLARY IN ANY DEGREE.
10 AGAIN, THESE ARE JUST EXAMPLES SO THAT YOU'LL UNDERSTAND
11 WHAT WE'RE REFERRING TO.

12 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
13 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
14 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
15 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
16 MORAL CULPABILITY OR RESPONSIBILITY.

17 AGAIN, TO GIVE YOU SOME EXAMPLES WOULD BE THE MENTAL
18 RETARDATION OF THE DEFENDANT AT THE TIME OF THE CRIME, THE
19 DEFENDANT HAD NOT YET REACHED THE AGE OF 18 AT THE TIME OF
20 THE CRIME, THE DEFENDANT WAS AN ACCOMPLICE AND THEIR
21 PARTICIPATION WAS RELATIVELY MINOR OR THAT THE DEFENDANT
22 ACTED UNDER DURESS OR DOMINATION. AGAIN, THESE ARE JUST
23 EXAMPLES BECAUSE THERE IS NO DEFINITIVE LIST OF MITIGATING
24 CIRCUMSTANCES.

25 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A

1 CAPITAL CASE, DEPENDING UPON THE PARTICULAR FACTS AND
2 CIRCUMSTANCES OF THE CASE, INCLUDING THE CONSIDERATION OF
3 MITIGATING AND AGGRAVATING CIRCUMSTANCES AND THE LAW THAT
4 I WOULD INSTRUCT YOU APPLY TO THE CASE, COULD YOU RETURN A
5 VERDICT -- COULD YOU RETURN A SENTENCE OF LIFE IN PRISON
6 WITHOUT THE POSSIBILITY OF PAROLE?

7 A YES.

8 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES THAT
9 I'VE JUST DESCRIBED RETURN A SENTENCE OF DEATH WHICH IN
10 THIS STATE IS DEATH BY ELECTROCUTION OR BY LETHAL
11 INJECTION?

12 A YES.

13 Q SIR, AS WE HAVE ALREADY EXPLAINED, THIS JURY WILL BE
14 SEQUESTERED, WHICH MEANS YOU'LL BE HOUSED IN A MOTEL FOR
15 APPROXIMATELY 10 DAYS. WE ALREADY KNOWS THAT
16 INCONVENIENT. WE KNOW THAT IT WILL INCONVENIENCE YOU IN
17 TERMS OF YOUR FAMILY AND YOUR EMPLOYMENT. BUT WOULD THIS
18 POSE A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

19 A NO.

20 Q SIR, IN A CAPITAL CASE EACH JUROR IS REQUIRED TO SIGN
21 THE VERDICT FORM, WHETHER THAT BE FOR A SENTENCE OF LIFE
22 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. IN OTHER
23 WORDS, IT WILL BE LINES ONE THROUGH 12 AND EACH JUROR
24 WOULD BE REQUIRED TO SIGN THEIR NAME.

25 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT

1 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
2 DEATH?

3 A YES.

4 Q OKAY.

5 THE COURT: ANY QUESTIONS FROM THE STATE?

6 MR. HUMPHRIES: NONE FROM THE STATE.

7 THE COURT: FROM THE DEFENSE?

8 MR. KELLY: NO, MA'AM.

9 THE COURT: ANY OBJECTION TO THE WITNESS BEING
10 QUALIFIED -- I MEAN THE JUROR BEING QUALIFIED FROM
11 THE STATE?

12 MR. HUMPHRIES: THIS JUROR IS QUALIFIED, YOUR
13 HONOR. THANK YOU.

14 THE COURT: FROM THE DEFENSE?

15 MR. KELLY: HE IS QUALIFIED.

16 THE COURT: MADAM CLERK, WE WILL START WITH 26
17 WITH HIM, SO HE WOULD BE NUMBER 26.

18 SIR, YOU HAVE BEEN FOUND TO BE QUALIFIED. AND
19 WHAT THAT SIMPLY MEANS IS THAT TODAY WE WILL BE
20 TALKING -- WELL, FOR SEVERAL DAYS WE HAVE BEEN
21 TALKING TO EACH POTENTIAL JUROR INDIVIDUALLY.

22 FROM THAT PROCESS WE WILL DEVELOP A POOL OF
23 QUALIFIED JURORS. AND ON MONDAY WE WILL SELECT THE
24 ACTUAL JURY PANEL WHICH WILL CONSIST OF 12 JURORS AND
25 EITHER TWO OR THREE ALTERNATES.

1 WHAT I NEED YOU TO DO FOR ME IS I NEED YOU TO
2 RETURN TO THE COURTHOUSE ON MONDAY MORNING AT 9:30.
3 I NEED YOU TO BE PACKED TO STAY WITH US FOR TWO WEEKS
4 IN THE EVENT THAT YOU ARE SELECTED FOR THE PANEL.

5 OF COURSE, YOU DON'T HAVE TO BRING YOUR STUFF UP
6 TO THE COURTROOM. IF YOU ARE SELECTED, WE WILL MAKE
7 ARRANGEMENTS TO GET YOU SITUATED.

8 I NEED TO ADVISE YOU THAT IF YOU'RE SELECTED,
9 YOU WON'T BE ALLOWED TO GO BACK HOME. YOU WILL HAVE
10 TO STAY WITH US FROM THAT POINT. DURING THIS BREAK,
11 HOWEVER, THERE'S SOME INSTRUCTIONS I REALLY NEED YOU
12 TO STRICTLY FOLLOW.

13 AND I UNDERSTAND THAT SOMETIMES THINGS COME ON
14 TV, ESPECIALLY IF YOU LIVE WITH OTHER FOLK OR EVEN IF
15 YOU DON'T. SOMETIMES I JUST TURN THE TV ON AND IT'S
16 RUNNING AND I DON'T REALIZE REALLY -- REALLY NOT
17 PAYING ATTENTION TO WHAT'S ON IT.

18 BUT I NEED YOU TO VERY STRICTLY ABIDE BY MY
19 INSTRUCTIONS AND NOT ALLOW YOURSELF TO BE EXPOSED TO
20 ANY MEDIA COVERAGE. THAT INCLUDES ANYTHING THAT
21 COULD BE ON THE RADIO, TELEVISION, OR IN THE
22 NEWSPAPER.

23 PLEASE DON'T DO ANY INDEPENDENT RESEARCH OF ANY
24 KIND ON THE INTERNET. AND ALSO, PLEASE DO NOT
25 DISCUSS THIS CASE OR THIS JURY QUALIFICATION PROCESS

1 WITH ANYONE. THAT INCLUDES YOUR FAMILY MEMBERS OR
2 YOUR FRIENDS.

3 AND IF ANYBODY SHOULD APPROACH YOU AND TRY TO
4 TALK TO YOU ABOUT THIS CASE, TELL THEM, I'M SORRY, I
5 CAN'T TALK ABOUT THE JURY PROCESS, I CAN'T TALK ABOUT
6 THE CASE, I DON'T WANT TO VIOLATE THE COURT'S RULES;
7 OKAY?

8 JUROR: OKAY.

9 THE COURT: OKAY. WE'LL SEE YOU ON MONDAY AT
10 9:30. YOU HAVE A GOOD DAY.

11 JUROR: THANK YOU.

12 THE COURT: YOU'RE WELCOME.

13 JUROR: NEED TO GET THE INFORMATION FOR MY JOB.

14 THE COURT: DO YOU NEED AN EXCUSE FOR YOUR --
15 WELL, YOU WON'T NEED -- JUST LET THEM KNOW THAT YOU
16 HAVE BEEN REQUIRED TO COME HERE ON MONDAY MORNING AT
17 9:30. AND IF YOU'RE SELECTED, WE CAN MAKE
18 ARRANGEMENTS TO PROVIDE A WORK EXCUSE TO THEM.

19 JUROR: OKAY.

20 THE COURT: OKAY.

21 JUROR: THANK YOU.

22 THE COURT: YOU'RE WELCOME.

23 (JUROR LEFT THE COURTROOM.)

24 THE COURT: SHUH LING KUO.

25 MR. DIGGS: YOUR HONOR, SOME TIME--

1 THE COURT: WAIT ONE SECOND. I'M SORRY.

2 MR. DIGGS: MOST OF THE TIME YOUR STATEMENTS TO
3 THE JURORS ARE, COULD BE -- IT MAY TAKE UP TO 10
4 DAYS. SOMETIMES YOUR STATEMENTS ARE, IT WILL TAKE
5 US -- WILL TAKE TEN DAYS.

6 I WOULD JUST ASK TO LEAVE IT IN THAT POSSIBILITY
7 MODE, IT COULD BE UP TO 10 DAYS, NOT NECESSARILY...
8 YOU SEE WHAT I'M GETTING AT?

9 THE COURT: I DON'T KNOW THAT REALLY MAKES A
10 DIFFERENCE.

11 MR. DIGGS: IF WE GET INTO DELIBERATE, THEY
12 REACH A NOT GUILTY VERDICT BY REASON OF INSANITY
13 AFTER FOUR DAYS, THEN THEY'RE GOING TO BE THINKING,
14 WELL, WHAT ARE WE GOING TO DO FOR THE REMAINING SIX
15 DAYS? AND THEY MAY GATHER FROM THAT SOME KIND OF
16 INTENT, SOME PREDISPOSITION OF THE COURT GETTING
17 INTO...

18 THE COURT: THIS TRIAL -- THIS TRIAL TESTIMONY
19 AND OF ITSELF MAY TAKE TEN DAYS. THE STATE HAS
20 LISTED 80 SOMETHING WITNESSES. I THINK THE TRIAL
21 TESTIMONY ITSELF MIGHT TAKE THREE WEEKS. I DON'T
22 KNOW.

23 MR. DIGGS: WELL, I WOULD SUBMIT -- AND IT'S MY
24 UNDERSTANDING THAT THAT WITNESS LIST IS FOR BOTH
25 PHASES.

1 THE COURT: I DON'T THINK IT MAKES A DIFFERENCE.
2 AND I THINK IT'S SOLELY WITHIN MY PROVINCE WHAT I
3 SAY--

4 MR. DIGGS: NOTE THAT ON THE RECORD.

5 THE COURT: ACTUALLY I HAVE BEEN THINKING LATELY
6 ABOUT INTENDING TO TELLING THEM IT MIGHT TAKE THREE
7 WEEKS, BECAUSE I REALLY THINK IT MIGHT.

8 MR. DIGGS: WELL, THAT'S FINE IF YOU TELL THEM
9 IT MIGHT. BUT WHAT WE'RE OBJECTING TO IS A COMMENT
10 FROM THE COURT SAYS IT WILL TAKE.

11 THE COURT: ANYTHING FROM THE STATE?

12 MR. HUMPHRIES: NO.

13 THE COURT: I DON'T THINK IT MAKES A DIFFERENCE
14 ONE WAY OR THE OTHER. I DON'T KNOW WHAT THE JURORS
15 ARE THINKING. AND I DON'T THINK THAT THEY WILL
16 HAVE -- ONCE I INSTRUCT THEM ON THE LAW, IT REALLY
17 DON'T MATTER WHAT THEY THINK.

18 MR. DIGGS: THANK YOU.

19 THE COURT: BECAUSE I'M GOING TO GIVE THEM
20 PRELIMINARY INSTRUCTIONS ABOUT THIS CASE, SO I DON'T
21 THINK IT REALLY MATTERS ONE WAY OR THE OTHER.

22 MR. DIGGS: JUST SO WE'RE CLEAR ON THE RECORD, I
23 WOULD SUBMIT THAT IT'S A COMMENT THAT COULD MISLEAD
24 THE JURY AS TO WHAT THE COURT'S FEELINGS ARE WITH
25 RESPECT TO THE GUILT--

1 THE COURT: THE COURT DOESN'T HAVE ANY FEELINGS
2 AND I THINK I MADE THAT VERY CLEAR. WE ARE TALKING
3 ABOUT PROCEDURE.

4 MR. DIGGS: WE ARE TALKING ABOUT A -- THE WAY
5 THE JUROR CAN CONSTRUE IT.

6 THE COURT: PARDON ME?

7 MR. DIGGS: I WAS SPEAKING IN TERMS OF WHAT THE
8 JURY -- THE JURORS COULD CONSTRUE.

9 THE COURT: I THINK THEY COULD CONSTRUE THAT
10 THEY COULD BE IN A HOTEL FOR 10 DAYS, AND THAT IS
11 WHAT I INTENT TO COMMUNICATE TO THEM SO THEY CAN COME
12 WITH ENOUGH CLOTHES FOR 10 DAYS.

13 MR. DIGGS: THAT'S WHAT I'M ASKING AS OPPOSED
14 TO--

15 THE COURT: I AM REQUIRED TO TELL THEM THE WORST
16 CASE SCENARIO, WHICH IS 10 DAYS. AND I DON'T WANT
17 THEM TO BE SHORT OF CLOTHES BECAUSE I DON'T WANT TO
18 HAVE THE SLED AGENTS RUNNING AROUND TOWN GETTING
19 CLOTHES FOR THEM AND HAVING TO TRANSPORT 12 TO 14
20 PEOPLE AROUND BECAUSE THEY ARE SHORT OF BELONGINGS.

21 MR. DIGGS: YOUR HONOR, DO YOU UNDERSTAND WHAT
22 I'M SAYING?

23 THE COURT: I UNDERSTAND COMPLETELY.

24 MR. DIGGS: THANK YOU.

25 THE COURT: YOU'RE WELCOME. SHUH LING KUO. I

1 HAVE HER RESPONDING TO QUESTION 21, 22 AND 25. NO,
2 SHE DIDN'T RESPOND TO 25 JUST 21 AND 22. SHE'S JUROR
3 188.

4 (JUROR ENTERED THE COURTROOM.)

5 KUO SHUH LING, ORIENTAL FEMALE, TESTIFIED
6 AS FOLLOWS:

7 BY THE COURT:

8 Q PARDON ME?

9 A SAY GOOD MORNING.

10 Q GOOD MORNING TO YOU, TOO. IF YOU WOULD HAVE A SEAT
11 FOR ME AND GET AS CLOSE TO THE MICROPHONE AS YOU CAN SO
12 THAT WE CAN HEAR YOU CLEARLY.

13 A SURE.

14 Q TAKE A DEEP BREATH. I KNOW IT CAN BE A LITTLE
15 DAUNTING TO BE HERE WITH US. IF YOU COULD STATE YOUR FULL
16 NAME FOR THE RECORD.

17 A MY NAME IS SHUH LING QUO, S-H-U-H DASH L-I-N-G, LAST
18 NAME IS K-U-O.

19 Q THANK YOU. AND YOU'RE JUROR 188; IS THAT CORRECT?

20 A RIGHT, YES.

21 Q AND MA'AM, I WOULD REMIND YOU THAT YOU'RE STILL UNDER
22 OATH. DO YOU UNDERSTAND?

23 A SURE.

24 Q AND I HAVE YOU SEEN ANY MEDIA ACCOUNTS ABOUT THIS
25 CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

1 A NO. I HEARD ON RADIO JUST DRIVING IN CAR.

2 Q OKAY. DID YOU TURN IT OFF WHEN YOU WERE HEARING IT
3 OR WAS IT JUST A BLURB AND YOU DIDN'T HAVE TIME?

4 A JUST A BLURB--

5 Q OKAY.

6 A -- BECAUSE I ALWAYS HAVE THE RADIO ON WHEN I'M
7 DRIVING.

8 Q OKAY. WE'RE GOING TO ASK YOU SOME QUESTIONS. THEY
9 ARE NOT TO INVADE YOUR PRIVACY IN ANY WAY, BUT THEY ARE
10 NECESSARY DUE TO THE NATURE OF THESE PROCEEDINGS. I NEED
11 TO EMPHASIZE THAT THERE IS ABSOLUTELY NO WRONG OR RIGHT
12 ANSWER.

13 THE ONLY THING THAT WE ASK IS THAT YOU BE CANDID,
14 HONEST, AND COMPLETE IN YOUR ANSWERS TO US. OKAY? AND
15 AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.

16 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY,
17 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
18 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN
19 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

20 A I UNDERSTAND.

21 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
22 LISTEN TO THE LAW?

23 A YES.

24 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
25 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

1 A I WILL DO MY BEST.

2 Q DO YOU UNDERSTAND THE DIFFERENCE BETWEEN THE LAW AND
3 THE FACTS?

4 A NOT QUITE.

5 Q BECAUSE SOMETIMES WHEN I SAW, THE LAW, I THINK PEOPLE
6 THINK I'M REFERRING TO THE FACTS. I HAVE NO OPINION ABOUT
7 THE FACTS IN THIS CASE NOR WILL I DURING THE COURSE OF
8 THIS TRIAL. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION.

9 ONLY THE JURY IS ALLOWED TO HAVE AN OPINION ABOUT THE
10 FACTS IN THIS CASE. SO I WOULD NEVER BE INSTRUCTING YOU
11 ABOUT THE FACTS.

12 A OKAY.

13 Q THE ONLY THING -- I'M LIKE A REFEREE IN A SPORTING
14 EVENT. I JUST TELL EVERYBODY WHAT THE RULES ARE AND I
15 MAKE SURE THEY ABIDE BY THEM. AND THE JURY HAS A SET OF
16 RULES, TOO. THOSE ARE CALLED THE LAW. OKAY? AND THE LAW
17 IS WHAT YOU APPLY TO THE FACTS.

18 IN OTHER WORDS, IT'S HOW YOU KNOW WHAT THE CRITERIA
19 IS FOR DECIDING A CASE. SO WHEN I REFER TO THE LAW, THAT
20 IS WHAT I'M TALKING ABOUT. DO YOU UNDERSTAND?

21 A YES.

22 Q OKAY. AND WHAT I'M ASKING IS COULD YOU ACCEPT AND
23 APPLY THE LAW AS I WOULD INSTRUCT YOU?

24 A I WILL DO MY BEST.

25 Q OKAY. AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS,

1 BUT I HAVE TO HAVE A YES OR NO ANSWER.

2 A YES.

3 Q OKAY. AND ARE YOU CERTAIN ABOUT THAT?

4 A YES.

5 Q OKAY. COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH
6 YOU MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?
7 AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.

8 A BE HONEST -- BE HONEST, SOMETIME MAYBE NO BECAUSE I'M
9 KIND OF MY OWN PERSON, GOT STRONG OPINION MYSELF. I'M NOT
10 TRY TO BREAKING THE LAW, BUT, YOU KNOW, MY OWN OPINIONS,
11 I...

12 Q OKAY. DO YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
13 THIS CASE, YOU WOULD BE SWORN TO ACCEPT THE LAW--

14 A I UNDERSTAND THAT.

15 Q -- AND APPLY IT AS THE COURT WOULD TELL YOU?

16 A YES.

17 Q DO YOU UNDERSTAND -- AND I'M GOING TO GIVE YOU AN
18 EXAMPLE AND SEE IF I CAN MAKE IT A LITTLE MORE CLEAR FOR
19 YOU. IF -- FOR EXAMPLE, IF THIS WERE A BURGLARY CASE AND
20 I TOLD YOU THE ELEMENTS OF BURGLARY -- IN ORDER FOR THE
21 STATE TO PROVE BURGLARY, THEY HAVE TO PROVE A, B AND C.

22 A RIGHT.

23 Q BUT BEFORE YOU CAME TO COURT YOU THOUGHT THE STATE
24 ONLY HAD TO PROVE A AND B, WOULD YOU BE ABLE TO DISREGARD
25 THAT PREDISPOSITION AND APPLY THE LAW AS I WOULD INSTRUCT

1 YOU? IN OTHER WORDS, THAT THE STATE STILL HAS TO PROVE
2 A, B AND C, NOT JUST A AND B. DOES THAT MAKE IT A LITTLE
3 MORE CLEAR?

4 A YES. YEAH, I UNDERSTAND.

5 Q OKAY. SO MY QUESTION AGAIN IS UNDER THOSE
6 CIRCUMSTANCES THAT I JUST EXPLAINED TO YOU, DO YOU THINK
7 THAT YOU WOULD BE ABLE TO DISREGARD YOUR PREDISPOSITIONS
8 AND TO APPLY THE LAW AND ACCEPT THE LAW PRECISELY AS I
9 STATE IT TO YOU?

10 A PROBABLY NOT.

11 Q OKAY.

12 THE COURT: ANY QUESTIONS FROM THE STATE?

13 MR. HUMPHRIES: NONE FROM THE STATE.

14 THE COURT: FROM THE DEFENSE?

15 MR. KELLY: NO.

16 THE COURT: ANY OBJECTION TO THE WITNESS -- I
17 MEAN JUROR -- BEING EXCUSED? I APOLOGIZE. KEEP
18 SAYING THAT.

19 MR. HUMPHRIES: NO, YOUR HONOR.

20 THE COURT: MR. DIGGS OR MR. KELLY? ANY
21 EXCEPTION?

22 MR. KELLY: NO, MA'AM. THERE IS NO OBJECTION.

23 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
24 COURT'S THANKS. HAVE A GREAT DAY.

25 (JUROR LEFT THE COURTROOM.)

1 THE COURT: KARIN HARPER. AND I HAVE NO
2 RESPONSE TO ANY OF THE QUESTIONS FROM HER.

3 (JUROR ENTERED THE COURTROOM.)

4 KARIN HARPER, WHITE FEMALE, TESTIFIED
5 AS FOLLOWS:

6 BY THE COURT:

7 Q HOW ARE YOU, MA'AM?

8 A I'M FINE. THANK YOU.

9 Q WHAT AN ATTRACTIVE NECKLACE. VERY UNUSUAL.

10 A THANK YOU.

11 Q IF YOU WOULD STATE YOUR NAME FOR THE RECORD.

12 A KARIN HARPER.

13 Q AND MRS. HARPER, YOU ARE JUROR 136; IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q MA'AM, I WOULD REMIND YOU THAT YOU'RE STILL UNDER
16 OATH. DO YOU UNDERSTAND?

17 A I DO.

18 Q OKAY. AND HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS
19 CASE AFTER THE COURT'S INSTRUCTIONS ON TUESDAY?

20 A NO, I HAVEN'T.

21 Q MA'AM, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE
22 KNOW THAT SOME OF THEM ARE INTENSELY PERSONAL. WANT YOU
23 TO GO AHEAD AND TAKE A DEEP BREATH. DON'T BE NERVOUS.

24 A I'M NOT NERVOUS.

25 Q OKAY.

1 A I TAUGHT SCHOOL FOR 18 YEARS.

2 Q SO WE DON'T INTIMIDATE YOU?

3 A TAKES A LOT TO RATTLE ME.

4 Q OKAY. GOOD. I'M GLAD TO HEAR THAT.

5 A IF YOU RATTLE ME, I WILL TELL YOU, BACK OFF.

6 Q I CAN RESPECT THAT. AGAIN, WE'RE GOING TO ASK YOU
7 SOME QUESTIONS. IT'S NOT OUR INTENT TO INVAD E YOUR
8 PRIVACY. WE JUST NEED TO INQUIRE INTO YOUR VIEWS.

9 A OKAY.

10 Q WE ARE NOT TRYING TO CHALLENGE YOUR VIEWS. I NEED TO
11 JUST REMIND YOU THERE ARE NO RIGHT OR WRONG ANSWERS. THE
12 ONLY THING THAT WE ASK IS THAT YOU ANSWER US FULLY,
13 COMPLETELY, AND HONESTLY. THAT'S ALL WE ASK OF YOU.

14 AND IF YOU CAN TO THE BEST OF YOUR ABILITY ANSWER MY
15 QUESTIONS WITH A YES OR A NO. IF YOU NEED TIME TO THINK,
16 THAT IS FINE BECAUSE WE'RE PROBABLY GOING TO ASK YOU SOME
17 THINGS THAT YOU'VE NEVER REALLY GIVEN A WHOLE LOT OF
18 CONSIDERATION TO, AND WE UNDERSTAND THAT.

19 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
20 THE FACT THAT WE REFER TO PENALTY OR TALK ABOUT PENALTIES
21 HAS NO INDICATION ABOUT THE DEFENDANT. HE IS PRESUMED IN
22 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

23 A I DO.

24 Q AND MA'AM, IF YOU WERE A JUROR IN A CRIMINAL CASE,
25 COULD YOU LISTEN TO THE LAW?

1 A YES.

2 Q OKAY. COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
3 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

4 A I COULD.

5 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
6 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

7 A I COULD.

8 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
9 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
10 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
11 CASE?

12 A YES.

13 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
14 ABOUT THIS CASE PRIOR TO TUESDAY?

15 A I REMEMBER WHEN THIS EVENT HAPPENED, BUT I REALLY
16 DIDN'T GIVE IT A LOT OF READING.

17 Q OKAY. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
18 TO, HAVE YOU FORMED ANY FIXED OPINION ABOUT THE FACTS IN
19 THIS CASE?

20 A NO, I HAVEN'T.

21 Q MA'AM, DO YOU UNDERSTAND THAT THE STATE HAS THE
22 BURDEN OF PROVING THE DEFENDANT'S GUILT BEYOND A
23 REASONABLE DOUBT?

24 A I DO.

25 Q DO YOU UNDERSTAND THAT HE HAS NO BURDEN TO PROVE HIS

1 INNOCENCE?

2 A I DO.

3 Q HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE JUROR TYPE
4 SHEET?

5 A YES, I DID.

6 Q AND DO YOU FEEL THAT YOU FIT INTO ANY OF THOSE TYPES?

7 A TYPE THREE.

8 Q ALL RIGHT. MA'AM, IF YOU WERE A JUROR IN A DEATH
9 PENALTY CASE AND IF THE JURY HAD FOUND THE DEFENDANT
10 GUILTY OF MURDER, WE WOULD THEN MOVE TO WHAT IS CALLED THE
11 SENTENCING PHASE. AND AS I EXPLAINED ON TUESDAY, THERE
12 ARE TWO PHASES, A GUILT PHASE AND A SENTENCING PHASE.

13 IF THE DEFENDANT IS FOUND GUILTY IN THE GUILT PHASE,
14 THEN WE WOULD MOVE TO THE SENTENCING PHASE. AND IN SOUTH
15 CAROLINA THE JURY DECIDES PENALTY, WHETHER THAT BE LIFE
16 WITHOUT THE POSSIBILITY OF PAROLE OR DEATH. DO YOU
17 UNDERSTAND?

18 A I DO.

19 Q DURING THE -- THIS PHASE OF THE TRIAL YOU WOULD BE
20 ALLOWED IF YOU WERE A JUROR TO CONSIDER WHAT WE CALL
21 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.
22 AND I'M GOING TO DEFINE THOSE TERMS FOR YOU.

23 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
24 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
25 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,

1 THE OFFENSE OF MURDER.

2 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
3 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
4 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
5 COMMISSION OF A CRIME.

6 AND I'M GOING TO GIVE YOU SOME EXAMPLES. THIS IS NOT
7 THE ENTIRE LIST, BUT I JUST WANT YOU HAVE A POINT OF
8 PREFERENCE BECAUSE WE USE THESE TERMS OF ART, AND OFTEN
9 TIMES A LAY PERSON DOES NOT UNDERSTAND WHAT WE'RE
10 REFERRING TO.

11 MURDER OF A CHILD UNDER THE AGE OF 11, UNDER THE AGE
12 OF 11, DRUG TRAFFICKING, KILLING BY POISON OR BURGLARY IN
13 ANY DEGREE. AGAIN, THESE ARE SIMPLY EXAMPLES.

14 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
15 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
16 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
17 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
18 MORAL CULPABILITY OR RESPONSIBILITY.

19 SOME EXAMPLES OF THAT WOULD BE MENTAL RETARDATION AT
20 THE TIME OF THE CRIME, THE DEFENDANT HAD -- WAS BELOW THE
21 AGE OF 18 AT THE TIME OF THE CRIME, THE DEFENDANT WAS AN
22 ACCOMPLICE AND PARTICIPATION WAS RELATIVELY MINOR, THE
23 DEFENDANT ACTED UNDER DURESS OR DOMINATION. AGAIN, THESE
24 ARE JUST EXAMPLES SO THAT YOU MIGHT HAVE A POINT OF
25 REFERENCE.

1 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF THE
2 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
3 CIRCUMSTANCES OF THE CASE, INCLUDING THE CONSIDERATION OF
4 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
5 I WOULD INSTRUCT YOU APPLIES AT THE CONCLUSION OF THE
6 CASE, COULD YOU RETURN A SENTENCE OF LIFE IN PRISON
7 WITHOUT THE POSSIBILITY OF PAROLE?

8 A I COULD.

9 Q IF YOU WERE A JUROR IN THE VERY SAME CIRCUMSTANCE
10 THAT I JUST EXPLAINED, CONSIDERING PARTICULAR
11 CIRCUMSTANCES OF THE CASE INCLUDING CONSIDERING
12 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
13 THE COURT WOULD INSTRUCT, COULD YOU AT THE CONCLUSION OF
14 THE CASE RETURN -- WELL, COULD YOU RETURN A SENTENCE OF
15 DEATH WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL
16 INJECTION?

17 A I COULD.

18 Q MA'AM, IF YOU WERE CHOSEN FOR THIS JURY, AS I
19 EXPLAINED ON TUESDAY, THE JURY WILL BE SEQUESTERED WHICH
20 MEANS YOU'LL BE HOUSED IN A MOTEL FOR APPROXIMATELY 10
21 DAYS. WE ASSUME PERSONAL INCONVENIENCE. WE ASSUME THAT
22 IT WILL BE COMPLETELY DISRUPTIVE TO YOUR PERSONAL LIFE AND
23 YOUR EMPLOYMENT. WOULD THIS, HOWEVER, POSE A SERIOUS
24 DANGER TO YOUR HEALTH OR WELL-BEING?

25 A NO, MA'AM.

1 Q NOW MA'AM, IN A CAPITAL CASE AS IN EVERY CASE, A
2 VERDICT FORM IS USED. IN ORDINARY CASES THE FOREPERSON
3 SIGNS THE VERDICT FORM. IN A CAPITAL CASE IT'S A LITTLE
4 DIFFERENT BECAUSE THE JURY IS MAKING -- IS DECIDING
5 SENTENCE, AND SO STATE LAW REQUIRES THAT EACH JUROR SIGN
6 THAT -- SIGN THE VERDICT FORM INDIVIDUALLY.

7 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
8 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
9 DEATH?

10 A I COULD.

11 Q OKAY. NOW, I NEED YOU AGAIN -- I -- COULD YOU TELL
12 ME YES OR NO?

13 A YES.

14 Q OKAY. THANK YOU.

15 THE COURT: ANY QUESTIONS FROM THE STATE?

16 MR. HUMPHRIES: NONE FROM THE STATE.

17 THE COURT: ANY FROM THE DEFENSE?

18 MR. KELLY: NO, MA'AM.

19 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
20 FOUND QUALIFIED BY THE STATE?

21 MR. HUMPHRIES: SUBMIT SHE'S QUALIFIED, YOUR
22 HONOR.

23 THE COURT: BY THE DEFENSE?

24 MR. KELLY: SHE IS QUALIFIED.

25 THE COURT: MA'AM, YOU HAVE BEEN FOUND QUALIFIED

1 AS A JUROR IN THIS CASE. WHAT THAT MEANS IS FROM
2 THIS PROCESS WE ARE SELECTING -- WELL, THROUGH THIS
3 PROCESS WE WILL DETERMINE WHO IS QUALIFIED AS A PART
4 OF THE POOL OF JURORS.

5 ON MONDAY MORNING WE WILL THEN SELECT THE ACTUAL
6 JURY WHICH WILL CONSIST OF 12 JURORS AND EITHER TWO
7 TO THREE ALTERNATES. I HAVE NOT COMPLETELY DECIDED
8 ON THE NUMBER OF ALTERNATES AT THIS TIME.

9 WE WILL NEED YOU TO RETURN ON MONDAY AT
10 9:30 PACKED FOR AT LEAST 10 DAYS AND BRING EVERYTHING
11 THAT YOU MIGHT THINK YOU MIGHT NEED WITH YOU. OF
12 COURSE, YOU DON'T HAVE TO BRING IT UP TO THE
13 COURTHOUSE. I HAVE THESE VISIONS OF FOLKS BRINGING
14 ALL THEIR SUITCASES, FOLLOWING MY INSTRUCTIONS
15 LITERALLY.

16 BUT IF YOU ARE SELECTED FOR THE JURY, WE WILL
17 MAKE ARRANGEMENTS TO GET YOU SITUATED. I NEED YOU TO
18 KNOW, HOWEVER, THAT IF YOU'RE SELECTED, YOU WILL NOT
19 BE ABLE TO GO BACK HOME.

20 NOW, ALSO IN THE INTERIM THERE ARE SOME
21 INSTRUCTION I NEED YOU TO FOLLOW. I WOULD ASK THAT
22 YOU NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING THIS
23 JURY QUALIFICATION PROCESS, AND THAT YOU ALSO MAKE
24 SURE THAT YOU'RE INSULATED FROM ANY MEDIA COVERAGE
25 WHATSOEVER ABOUT THIS CASE.

1 THAT INCLUDES ANYTHING THAT COULD BE ON THE
2 TELEVISION, RADIO, IN THE NEWSPAPER. AND PLEASE
3 DON'T DO ANY INDEPENDENT RESEARCH OF ANY TYPE
4 REGARDING ANY ISSUE OR MATTER INVOLVED IN THIS CASE
5 ON THE INTERNET.

6 WE LOOK FORWARD TO SEEING YOU ON MONDAY AND WE
7 APPRECIATE YOUR TIME AND YOUR PATIENCE, AND YOU HAVE
8 A GOOD DAY.

9 JUROR: THANK YOU.

10 THE COURT: YOU'RE WELCOME.

11 (JUROR LEFT THE COURTROOM.)

12 THE COURT: TIFFANY WILDER, 354. THIS IS THE
13 YOUNG LADY THAT NEVER HAS A BABYSITTER ON FRIDAYS.
14 AND I'M WONDERING IF WE -- SHE HAS -- WAIT BEFORE
15 Y'ALL BRING HER IN BECAUSE I NEED TO DISCUSS
16 SOMETHING WITH THE LAWYERS. SHE HAS THE BABY WITH
17 HER? I DID DO THAT; DIDN'T I? I DID.

18 SHE'S NOT IN THE HALLWAY WHERE SHE CAN HEAR US;
19 IS SHE? SHE INDICATED DURING JURY QUALIFICATION THAT
20 SHE GOES TO WORK FROM A CERTAIN TIME TO A CERTAIN
21 TIME. I DON'T HAVE MY NOTES DOWN HERE WITH ME. MAKE
22 SURE I'M TELLING THE TRUTH.

23 OH YEAH, I ALREADY TOOK THEM OFF MY PAD -- THAT
24 SHE GOES TO WORK FROM A CERTAIN TIME TO A CERTAIN
25 TIME MONDAY THROUGH THURSDAY AND THAT HER MOTHER

1 IS -- FROM TWO.

2 HER MOTHER TAKES CARE OF THE BABY FROM THREE TO
3 WHENEVER SHE -- HER MOTHER GOES TO WORK AT THREE.
4 SHE GETS THE BABY WHEN SHE GETS OFF AFTER 2:00. SHE
5 INDICATED THAT SHE DOES NOT HAVE A BABYSITTER ON
6 FRIDAYS.

7 MR. HUMPHRIES: BECAUSE THE DAY CARE IS CLOSED.

8 THE COURT: WHAT'S THAT? I DON'T UNDERSTAND
9 THAT.

10 MR. HUMPHRIES: THAT'S BIZARRE.

11 THE COURT: YEAH, THAT IS BIZARRE, THAT THE DAY
12 CARE WILL BE CLOSED ON FRIDAY.

13 MR. DIGGS: WE DON'T HAVE ANY OBJECTION TO
14 TAKING FRIDAYS OFF.

15 THE COURT: YEAH, RIGHT. I DON'T FEELS THAT AN
16 OPTION. AND I LEFT HER IN THE POOL BECAUSE, OF
17 COURSE, I WAS OF SEVERAL MIND-SETS. ONE WAS SHE HAD
18 THE SUBPOENA FOR OVER A MONTH AND SHE SHOULD HAVE
19 MADE ARRANGEMENTS, AND I WAS CONCERNED ABOUT THE
20 NUMBERS.

21 BUT, OF COURSE, THE EMPATHETIC SIDE OF ME SAYS
22 SHE'S SAYS A SINGLE MOTHER RAISING A CHILD, AND SHE
23 PROBABLY HAS VERY LIMITED RESOURCES, SHE'S PROBABLY
24 WORKING A MINIMUM WAGE JOB AS WELL AS HER MOTHER OR
25 SOMEWHERE MINIMALLY ABOVE MINIMUM WAGE AND SHE

1 PROBABLY IS DOING THE BEST SHE CAN WITH WHAT SHE'S
2 GOT. AND I'M CONCERNED--

3 MR. HUMPHRIES: SHE PROBABLY JUST STARTED
4 WORKING, TOO, BECAUSE ON THE QUESTIONNAIRE SHE WASN'T
5 EMPLOYED AT THAT TIME.

6 THE COURT: AND I'M CONCERNED ABOUT WHAT SHE
7 WILL DO WITH HER CHILD IF SHE IS SEQUESTERED, THE
8 REALITY OF THAT, BECAUSE HER OWN MOTHER GOES TO WORK
9 EVERY DAY AT THREE. MONDAY THROUGH THURSDAY IT
10 REALLY WOULDN'T -- WELL, YEAH, IT WOULD BE A PROBLEM
11 BECAUSE THE DAYCARE CLOSES AT FIVE I WOULD IMAGINE.

12 IF THE DAYCARE IS CLOSED ON FRIDAY, I IMAGINE
13 THEY CLOSE AT FIVE OR 5:30. I HAVEN'T EVER HEARD OF
14 A DAYCARE BEING CLOSED ON FRIDAY, UNLESS SHE HAS A
15 PRIVATE CITIZEN CARING FOR HER CHILD, WHICH IS VERY
16 POSSIBLE, BECAUSE SHE COULD HAVE SOMEBODY THAT'S JUST
17 A SITTER THAT REALLY ISN'T LIKE A FACILITY.

18 (THE COURT WAS CONFERRING WITH LAW CLERK.)

19 THE COURT: SO WHAT DO YOU ALL THINK? I WELCOME
20 YOUR THOUGHTS AS TO WHAT WE NEED TO DO.

21 MR. HUMPHRIES: I THINK SHE PROBABLY, SHE ALMOST
22 COMES WITHIN THE EXCEPTION ANY WAY. WELL, NOT
23 TECHNICALLY, BUT I MEAN, CLEARLY SHE'S--

24 MR. DIGGS: YEAH. AND SHE'S THE SITUATION WE'RE
25 FACED WITH ALL THE TIME. I MEAN, I HAVE PARENTS ALL

1 THE TIME WHO ONE WORKS ONE SHIFT, ONE WORKS ANOTHER
2 SO THAT THEY DON'T INCUR DAYCARE, BECAUSE REALLY WHEN
3 YOU MAKE A CERTAIN AMOUNT, YOU'RE JUST WORKING TO PAY
4 DAYCARE. I MEAN, A CHILD THAT AGE IS PROBABLY -- I
5 FORGET HOW -- SHE TOLD ME THE CHILD WAS 18 MONTHS?

6 MR. HUMPHRIES: FOURTEEN MONTHS.

7 THE COURT: IN CHARLESTON THAT'S \$150 A WEEK.
8 THAT'S CRAZY. WHICH I DON'T KNOW HOW YOU PEOPLE
9 WORK. WORKING TO PAY DAYCARE. I MEAN... YES, SIR
10 MR. KELLY?

11 MR. KELLY: MA'AM, WE DON'T HAVE ANY OBJECTION.
12 THAT BABY NEEDS PROPER CARE.

13 THE COURT: THAT'S WHAT I THINK, TOO.

14 MR. KELLY: SHE WILL BE DISTRACTED IF SHE WERE
15 AWAY FROM THE CHILD.

16 THE COURT: I THINK SO, TOO. I DON'T THINK
17 SHE'D BE ABLE TO FUNCTION WITH ANY CLARITY. IS THERE
18 ANY EXCEPTION FROM THE STATE FROM US EXCUSING HER?

19 MR. HUMPHRIES: THERE'S NONE FROM THE STATE.

20 THE COURT: OKAY. IF YOU'D BRING HER IN FOR ME.

21 (JUROR ENTERED THE COURTROOM.)

22 TIFFANY WILDER, WHITE FEMALE, TESTIFIED AS
23 FOLLOWS:

24 BY THE COURT:

25 Q LOOK AT THAT CUTIE PIE RIGHT THERE. HE IS PRECIOUS,

1 AND JUST CHEWING, CHEWING, CHEWING. MS. WILDER, AFTER
2 SOME DISCUSSION WITH COUNSEL, WE DECIDED THAT YOU NEED TO
3 BE HOME TAKING CARE OF YOUR BABY, SO WE ARE GOING TO
4 EXCUSE YOU FROM SERVICE.

5 A THANK YOU SO MUCH.

6 Q ESPECIALLY AFTER SEEING HIM, I KNOW I MADE THE RIGHT
7 DECISION. HE IS ADORABLE.

8 A I WAS GOING TO INTRODUCE Y'ALL.

9 (OFF-THE-RECORD DISCUSSION.)

10 (JUROR LEFT THE COURTROOM.)

11 (WHEREUPON THERE WAS A RECESS.)

12 THE COURT: IS THE STATE READY?

13 MR. HUMPHRIES: STATE'S READY.

14 THE COURT: IS THE DEFENSE READY?

15 MR. KELLY: YES, MA'AM.

16 THE COURT: JOHN SCHWINDT, NUMBER 289.

17 (JUROR ENTERED THE COURTROOM.)

18 JOHN SCHWINDT, WHITE MALE, TESTIFIED

19 AS FOLLOWS:

20 BY THE COURT:

21 Q MR. SCHWINDT, HOW ARE YOU?

22 A I'M DOING WELL TODAY. THANK YOU. HOW ARE YOU?

23 Q IF YOU'D HAVE A SEAT FOR ME AND PULL AS CLOSE TO THE
24 MICROPHONE FOR US AS YOU CAN. AND TELL ME YOUR FULL NAME
25 FOR THE RECORD.

1 A OKAY. MY NAME IS JOHN H SCHWINDT.

2 Q AND MR. SCHWINDT, IF YOU WOULD TELL US YOUR JUROR
3 NUMBER.

4 A 289.

5 Q SIR, I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH.
6 WANT YOU TO TAKE A DEEP BREATH. I KNOW THIS CAN BE A
7 LITTLE DAUNTING, AND DON'T BE NERVOUS. SINCE THE COURT'S
8 CAUTIONARY INSTRUCTIONS, HAVE YOU BEEN EXPOSED TO ANY
9 MEDIA COVERAGE ABOUT THIS CASE?

10 A I HAVE NOT. I HAVE INTENTIONALLY STAYED AWAY FROM
11 IT.

12 Q OKAY. AND WE'RE GOING TO ASK YOU SOME QUESTIONS
13 BECAUSE IN THIS TYPE CASE THE STATE LAW REQUIRES THAT WE
14 TALK TO EACH JUROR INDIVIDUALLY.

15 A OKAY.

16 Q I KNOW THAT SOME OF THESE QUESTIONS MAY SEEM
17 INTENSELY PERSONAL, BUT IT IS NOT OUR INTENT TO INVADE
18 YOUR PRIVACY. I NEED TO EMPHASIZE FOR YOU THAT THERE ARE
19 NO RIGHT OR WRONG ANSWERS. THE ONLY THING WE ASK OF YOU
20 IS THAT YOU BE OPEN AND HONEST WITH US AND ANSWER OUR
21 QUESTIONS AS CANDIDLY AS POSSIBLE.

22 A OKAY.

23 Q AND TO THE BEST OF YOUR ABILITY ANSWER EACH QUESTION
24 YES OR NO.

25 A OKAY.

1 Q AGAIN, EMPHASIZING THERE ARE NO RIGHT OR WRONG
2 ANSWERS. AMONG OTHER THINGS WE'LL BE TALKING ABOUT
3 PENALTY. BUT THE MERE FACT THAT WE DISCUSS PENALTY IS NO
4 INDICATION OF THE DEFENDANT BECAUSE IN THE LAW HE IS
5 PRESUMED TO BE INNOCENT. DO YOU UNDERSTAND?

6 A I DO.

7 Q SIR, IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
8 LISTEN TO THE LAW?

9 A I COULD.

10 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
11 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

12 A TO THE BEST OF MY ABILITY.

13 Q OKAY. AGAIN, IT REQUIRES A YES OR A NO ANSWER.

14 A YES.

15 Q OKAY. AND COULD YOU ACCEPT AND APPLY THE LAW EVEN
16 THOUGH YOU MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS? DO
17 YOU UNDERSTAND WHAT I MEAN WHEN I SAY THE LAW?

18 A THE WAY THAT IT'S WRITTEN.

19 Q YES, SIR.

20 A THE WAY IT'S BEEN ESTABLISHED.

21 Q OKAY. BECAUSE THE LAW -- SOMETIMES PEOPLE THINK WHEN
22 I'M TALKING ABOUT THE LAW I'M TALKING ABOUT THE FACTS OF A
23 CASE, AND I'M NOT. I'M JUST SAYING -- I'M GOING TO GIVE
24 YOU AN EXAMPLE AND SEE IF IT WILL MAKE IT A LITTLE MORE
25 CLEAR, BECAUSE WE USE TERMS OF ART AND WE EXPECT PEOPLE TO

1 UNDERSTAND WHAT WE'RE TALKING ABOUT, AND SOMETIMES THEY
2 REALLY DON'T.

3 AND IT'S NO INDICATION OF ANYONE'S ABILITIES. IT'S
4 JUST THAT WE'VE LEARNED THOSE TERMS AND YOU HAVE NOT.

5 A UH-HUH.

6 Q LET'S SAY FOR EXAMPLE THAT WE WERE TRYING A CASE
7 WHERE SOMEONE WAS ACCUSED OF BURGLARY. AND WHAT -- THE
8 JUDGE'S JOB IS ALMOST LIKE A REFEREE IN A GAME, YOU KNOW,
9 I ESTABLISH WHAT THE RULES ARE, I SAY WHEN SOMEBODY HAS
10 MADE A FOUL, YOU KNOW, THINGS LIKE THAT.

11 AND BASICALLY WHAT I DO IS FOR THE JURY -- THE JURY
12 HAS RULES THEY HAVE TO ABIDE BY ALSO. AND ONE OF THOSE IS
13 LIKE THE ELEMENTS OF A CRIME. SO LET'S SAY SOMEBODY WAS
14 CHARGED WITH BURGLARY.

15 AND BURGLARY HAS -- I'M JUST GOING TO USE THIS AS AN
16 EXAMPLE -- THREE ELEMENTS. LET'S JUST SAY IN ORDER FOR
17 THE STATE TO PROVE BURGLARY, THEY HAVE TO PROVE ELEMENTS
18 A, B AND C, BUT YOU THOUGHT THAT TO PROVE BURGLARY THE
19 STATE ONLY HAD TO PROVE A AND B.

20 WOULD YOU BE ABLE TO DISREGARD YOUR PRECONCEIVED
21 NOTION OF WHAT YOU THOUGHT PREVIOUSLY AND APPLY THE LAW AS
22 I INSTRUCT YOU, WHICH IS THAT THERE ARE ELEMENTS A, B AND
23 C--

24 A YES, I COULD DO THAT.

25 Q -- AND DISREGARDS WHAT YOU THINK THE LAW IS OR SHOULD

1 BE AND ACCEPT THE LAW AS I TELL YOU IT IS?

2 A I CAN DO THAT, YES.

3 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
4 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
5 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

6 A YES.

7 Q PRIOR TO TUESDAY, HAD YOU SEEN ANY MEDIA COVERAGE
8 ABOUT THIS CASE?

9 A NOT THAT I'M AWARE OF.

10 Q OKAY. SIR, IN A CRIMINAL CASE THE STATE HAS THE
11 BURDEN OF PROVING A DEFENDANT'S GUILT AND THEY MUST PROVE
12 THAT GUILT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND?

13 A YES.

14 Q AND DO YOU ALSO UNDERSTAND THAT THE DEFENDANT HAS NO
15 BURDEN TO PROVE HIS INNOCENCE?

16 A YES.

17 Q SIR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE JUROR
18 TYPE SHEET?

19 A I DID.

20 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES
21 OF JURORS?

22 A YES.

23 Q AND WHICH CATEGORY WOULD THAT BE?

24 A I'D NOW FIT INTO CATEGORY THREE.

25 Q YOU SAID YOU NOW FIT INTO CATEGORY THREE. TELL ME

1 WHAT THAT MEANS.

2 A OKAY. PRIOR TO COMING, I WOULD HAVE BEEN TYPE TWO.

3 Q OKAY.

4 A OKAY. BUT BECAUSE MY BELIEF IS -- IS A SPIRITUAL
5 BELIEF.

6 Q OKAY.

7 A WHERE I BELIEVE THAT I NEED TO HONOR THE RULES OF THE
8 LAW AS IT STANDS.

9 Q OKAY.

10 A IF THE LAW SAYS THAT I NEED TO MAKE A DECISION ONE
11 WAY OR THE OTHER, THEN I NEED TO GO TO TYPE THREE FROM A
12 TYPE TWO THAT I ORIGINALLY ASSUMED I SHOULD BE AT.

13 Q OKAY. SO YOU'RE TELLING ME THAT UPON REFLECTION AND
14 HAVING READ THE TYPES OF JURORS AND SEARCHING YOURSELF YOU
15 HAVE DECIDED THAT YOU HAVE THE ABILITY TO HONOR WHAT THE
16 LAW WOULD REQUIRE OF YOU EVEN THOUGH IT MAY CONFLICT WITH
17 YOUR OWN PERSONAL BELIEFS?

18 A THAT'S CORRECT.

19 Q WE APPRECIATE YOUR CANDOR. AGAIN, WE'RE NOT
20 CHALLENGING YOUR VIEWS. WE JUST NEED TO KNOW WHAT THAT
21 THEY ARE. AND THERE ARE NO RIGHT OR WRONG ANSWERS.

22 SIR, IF YOU WERE A JUROR IN A DEATH PENALTY CASE AND
23 THE JURY FOUND THE DEFENDANT GUILTY IN THE GUILT PHASE, WE
24 WOULD THEN MOVE TO WHAT WE CALL THE SENTENCING PHASE
25 BECAUSE IN SOUTH CAROLINA IN A DEATH PENALTY CASE THE JURY

1 DECIDES PENALTY, WHETHER THAT BE LIFE WITHOUT THE
2 POSSIBILITY OF PAROLE OR DEATH.

3 AND THE COURT HAS TO HONOR WHAT THE JURY DECIDES. IT
4 HAS NO DISCRETION IN CHANGING A JURY'S VERDICT IN THAT
5 REGARD. SO DO YOU UNDERSTAND THAT THERE ARE TWO PHASES,
6 THE GUILT PHASE AND THE PENALTY PHASE?

7 A YES.

8 Q AND DO YOU UNDERSTAND THAT IF THE -- THAT IF THE
9 DEFENDANT WERE FOUND GUILTY IN THE GUILT PHASE, WE WOULD
10 THEN MOVE TO THE SENTENCING PHASE OR THE PENALTY PHASE?

11 A I DO UNDERSTAND THAT.

12 Q SIR, IN THAT PHASE YOU WOULD BE ALLOWED TO CONSIDER
13 WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
14 CIRCUMSTANCES. AND I'M GOING TO DEFINE THOSE TERMS FOR
15 YOU SO THAT YOU WILL KNOW WHAT WE ARE TALKING ABOUT.
16 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS,
17 OR AN OCCURRENCE WHICH THE LEGISLATURE HAS DECLARED BY
18 STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE, THE OFFENSE
19 OF MURDER.

20 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
21 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
22 THE INJURY OF A CRIME OF MURDER. IT IS COMMITTED IN THE
23 COMMISSION OF A CRIME.

24 SOME EXAMPLES OF AGGRAVATING CIRCUMSTANCES WOULD BE
25 THE MURDER OF A CHILD UNDER AGE 11, DRUG TRAFFICKING,

1 KILLING BY POISON, OR BURGLARY IN ANY DEGREE. AGAIN,
2 THESE ARE JUST EXAMPLES OF WHAT WOULD BE AN AGGRAVATING
3 FACTOR.

4 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
5 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
6 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
7 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
8 MORAL CULPABILITY OR RESPONSIBILITY.

9 AND AGAIN, I'M JUST TO GIVE YOU SOME EXAMPLES SO YOU
10 HAVE A POINT OF REFERENCE. MENTAL RETARDATION AT THE TIME
11 OF THE CRIME, THE DEFENDANT HAD NOT REACHED HIS OR HER
12 18TH BIRTHDAY AT THE TIME OF THE CRIME, THE DEFENDANT WAS
13 AN ACCOMPLICE AND THEIR PARTICIPATION WAS RELATIVELY
14 MINOR, OR THAT THE DEFENDANT ACTED UNDER DURESS OR
15 DOMINATION.

16 AGAIN, THESE ARE JUST EXAMPLES OF MITIGATION BECAUSE
17 REALLY THERE IS NO DEFINITIVE LIST OF MITIGATING
18 CIRCUMSTANCES. AND AGAIN, I GIVE THESE -- BOTH OF THESE
19 TO YOU ONLY AS EXAMPLES SO YOU CAN UNDERSTAND THE TERM OF
20 ART THAT WE'RE USING.

21 SIR, IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
22 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
23 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
24 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
25 I WOULD INSTRUCT YOU APPLIES TO THE CASE, COULD YOU RETURN

1 A SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF
2 PAROLE?

3 A YES.

4 Q AND SIR, UNDER THOSE VERY SAME CIRCUMSTANCES AND
5 DEPENDING UPON PARTICULAR FACTS AND CIRCUMSTANCES OF THE
6 CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
7 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
8 YOU APPLIES TO THE CASE, COULD YOU RETURN A SENTENCE OF
9 DEATH WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL
10 INJECTION?

11 A YES.

12 Q SIR, AS WE HAVE INDICATED, THIS JURY WILL BE
13 SEQUESTERED, WHICH MEANS YOU WILL BE HOUSED IN A HOTEL FOR
14 APPROXIMATELY 10 DAYS. WE KNOW THAT THIS IS PERSONALLY
15 INCONVENIENT. WE ASSUME THAT. WE ASSUME IT'S GOING TO BE
16 COMPLETELY DISRUPTIVE TO YOUR PERSONAL LIFE AND YOUR
17 PROFESSIONAL LIFE. WE ALREADY ASSUME THAT.

18 BUT I NEED TO KNOW WILL THIS POSE A SERIOUS DANGER TO
19 YOUR HEALTH OR WELL-BEING?

20 A NO.

21 Q SIR, IN A CAPITAL CASE EACH JUROR IS REQUIRED TO SIGN
22 THE VERDICT FORM BECAUSE AS I'VE INDICATED, THE JURY
23 DECIDES PENALTY, WHETHER THAT BE LIFE WITHOUT THE
24 POSSIBILITY OF PAROLE OR DEATH. SO THERE WILL BE LINES
25 ONE THROUGH 12 WHERE EACH JUROR WOULD BE REQUIRED TO SIGN

1 THEIR NAME.

2 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
3 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
4 DEATH?

5 A YES.

6 Q OKAY.

7 THE COURT: ARE THERE ANY ADDITIONAL QUESTIONS
8 FROM THE STATE?

9 MR. HUMPHRIES: NO QUESTIONS.

10 THE COURT: FROM THE DEFENSE?

11 MR. KELLY: YES, MA'AM.

12 THE COURT: SIR, IF YOU WILL GIVE MR. KELLY YOUR
13 ATTENTION. AND IF YOU COULD TURN YOUR CHAIR SIDEWAYS
14 AND STILL SPEAK INTO THE MICROPHONE FOR ME. MR.
15 KELLY, YOU MAY PROCEED.

16 MR. KELLY: THANK YOU.

17 THE COURT: YOU'RE WELCOME.

18 BY MR. KELLY:

19 Q MR. SCHWINDT, I WAS LOOKING AT YOUR QUESTIONNAIRE.

20 A YES, SIR.

21 Q AND I NOTICE THAT YOU SAID THAT YOU HAVE A RELATIVE
22 WHO IS IN THE FBI.

23 A THAT'S CORRECT, SIR.

24 Q WHO WOULD THAT BE?

25 A THAT'S MY SON, BRUCE.

1 Q I BELIEVE YOU SAID THAT UNTIL YOU HAD EXAMINED THE
2 QUESTIONNAIRE AND THOUGHT THE MATTER THROUGH YOU HAD
3 PREVIOUSLY BEEN A TYPE TWO?

4 A THAT IS CORRECT, SIR.

5 Q BUT NOW YOU COULD CONSIDER LIFE IN PRISON WITHOUT
6 PAROLE AS WELL AS THE DEATH PENALTY DEPENDING ON THE
7 CIRCUMSTANCES.

8 A THAT IS CORRECT, SIR.

9 Q YOU KNOW, SOMETIMES PEOPLE FEEL PEER PRESSURE FROM
10 THEIR FRIENDS AND MEMBERS OF THEIR FAMILY WHO MIGHT BE LAW
11 ENFORCEMENT OR HOLD PARTICULAR VIEWS ON THE DEATH PENALTY.
12 DO YOU FEEL ANY PEER PRESSURE OR OUTSIDE PRESSURE AS TO
13 WHAT YOU MIGHT DO HERE IF YOU WERE TO DETERMINE WHAT THE
14 PENALTY WOULD BE AND THEN YOU WOULD GO BACK OUT INTO THE
15 COMMUNITY? DO YOU UNDERSTAND WHAT I SAID?

16 A LET ME REPHRASE IT, IF I MAY, AND SEE. ARE YOU
17 SAYING THAT AFTER THE FACT OR DURING -- BECAUSE DURING THE
18 PROCESS THEY WOULD NOT HAVE ANY INFLUENCE UPON ME BECAUSE
19 WE'D BE SEQUESTERED.

20 Q LET ME GIVE YOU AN EXAMPLE.

21 A OKAY.

22 Q LET'S SAY WE HAD A LADY ON THE JURY AND HER HUSBAND
23 BELIEVED THAT EVERYBODY SHOULD GET THE DEATH PENALTY IF
24 THEY COMMIT A MURDER AND SHE KNOWS THAT, SHE'S ON -- SHE'S
25 ON THE JURY.

1 AND SHE'S SAYING TO HERSELF, WHAT AM I GOING TO DO,
2 HOW AM I GOING TO TELL MY HUSBAND, HOW AM I GOING TO
3 EXPLAIN TO HIM? I'VE GOT TO LIVE WITH HIM. THAT WOULD BE
4 PEER PRESSURE, WOULDN'T IT, SO-TO-SPEAK?

5 A SO-TO-SPEAK, YES.

6 Q DO YOU FEEL THAT PRESSURE?

7 A NO. MY CHILDREN DON'T PUT THAT KIND OF PRESSURE ON
8 ME.

9 Q OR ANYBODY ELSE?

10 A NO, SIR.

11 Q THANK YOU, SIR.

12 A YOU'RE WELCOME.

13 THE COURT: ANY EXCEPTION TO THE JUROR BEING
14 FOUND QUALIFIED?

15 MR. HUMPHRIES: NONE FROM THE STATE.

16 THE COURT: FROM THE DEFENSE?

17 MR. KELLY: HE'S QUALIFIED.

18 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED
19 AND YOU WILL GO INTO THE POOL OF QUALIFIED JURORS.
20 AND WHAT THAT MEANS IS WE'LL -- WE'RE GOING TO
21 CONTINUE TALKING TO JURORS UNTIL WE REACH A CERTAIN
22 NUMBER THAT WE NEED FOR JURY -- FOR THE JURY
23 SELECTION PROCESS.

24 JUROR: OKAY.

25 THE COURT: FROM THAT POOL OF PEOPLE WE WILL

1 SELECT THE ACTUAL JURY ON MONDAY. SO I NEED YOU TO
2 COME TO THE COURTHOUSE ON MONDAY AT 9:30 AND I NEED
3 FOR YOU TO PACK FOR AT LEAST 10 DAYS. BRING
4 EVERYTHING YOU NEED WITH YOU BECAUSE IF YOU'RE
5 SELECTED, YOU WON'T BE ABLE TO GO BACK HOME.

6 JUROR: OKAY.

7 THE COURT: OKAY?

8 JUROR: ALL RIGHT.

9 THE COURT: AND IF YOU'RE NOT SELECTED, HOWEVER,
10 YOU'LL BE ABLE TO GO BACK HOME AND GO ON ABOUT YOUR
11 DAY.

12 JUROR: YEAH. UNPACK.

13 THE COURT: YEAH, UNPACK, EXACTLY. DURING THE
14 BREAK, HOWEVER, THERE ARE SOME THINGS I NEED YOU TO
15 DO FOR ME. I NEED YOU TO STRICTLY ABIDE BY THESE
16 INSTRUCTIONS.

17 PLEASE HAVE NO DISCUSSION ABOUT THIS JURY
18 QUALIFICATION PROCESS OR THE TRIAL WITH ANYONE, THAT
19 INCLUDES YOUR FAMILY MEMBERS OR YOUR FRIENDS. AND I
20 KNOW IT'S DIFFICULT.

21 JUROR: BUT I'M ALLOWED TO TELL MY WIFE I MAY
22 HAVE TO GO?

23 THE COURT: OH, YEAH. YOU CAN TELL HER THAT.
24 I'M JUST SAYING NOT IN SPECIFICS.

25 JUROR: OKAY.

1 THE COURT: YOU OF COURSE, CAN TELL YOUR
2 EMPLOYER AND WHOMEVER ELSE THAT YOU NEED TO.

3 JUROR: I'M SELF-EMPLOYED, SO I ALREADY TOLD
4 MYSELF.

5 THE COURT: OKAY. YOU TOLD YOURSELF?

6 JUROR: IT'S A SCARY THING. I HAVE ALREADY DONE
7 THAT.

8 THE COURT: YOU -- YEAH, YOU CAN, OF COURSE,
9 MAKE PROVISIONS, MAKE ARRANGEMENTS.

10 JUROR: ALL RIGHT.

11 THE COURT: YOU -- IT'S NOT LIKE A -- WELL, I
12 DIGRESS. BUT IT'S NOT LIKE, YOU KNOW, WHEN YOU KNOW
13 SOMEBODY IN THE NAVY AND THEY SAY, WE'RE LEAVING THE
14 AREA, WE CAN'T TELL YOU WHERE WE'RE GOING OR WHEN
15 WE'RE COMING BACK, BUT WE'RE GONE. NO, YOU DON'T
16 HAVE TO DO THAT TO HER. NO, YOU CAN TELL YOUR WIFE.

17 JUROR: THAT WILL BE FINE.

18 THE COURT: BUT JUST -- AND OF COURSE YOU DON'T
19 HAVE TO BRING YOUR BELONGINGS UP HERE. IF YOU'RE
20 SELECTED FOR THE JURY -- I MEAN, YOU CAN LEAVE THEM
21 IN YOUR CAR. WE WILL MAKE SURE YOU GET SITUATED AT
22 THE APPROPRIATE TIME.

23 AGAIN, PLEASE DON'T DISCUSS -- BECAUSE IT'S A
24 SMALL -- IN ANY TOWN, YOU KNOW, A CASE OF THIS
25 MAGNITUDE, PEOPLE WILL COME UP TO YOU AND SAY, GOSH,

1 I HEARD YOU GOT SUBPOENAED FOR JURY DUTY, WHAT DO YOU
2 THINK? JUST TELL THEM, I CAN'T DISCUSS IT, I CAN'T
3 VIOLATE THE COURT'S RULES AND I'M GOING TO KEEP YOU
4 HONEST AND KEEP ME HONEST, YOU HAVE A WONDERFUL DAY,
5 WE CAN TALK ABOUT ANYTHING ELSE, WEATHER, SPORTS, BUT
6 WE CAN'T TALK ABOUT THAT. AND I THINK MOST PEOPLE
7 CAN RESPECT THAT WHEN YOU'RE FORTHRIGHT WITH THEM.

8 ALSO, PLEASE DO NOT ALLOW YOURSELF TO BE EXPOSED
9 TO ANY MEDIA ACCOUNTS ABOUT THIS CASE, INCLUDES
10 ANYTHING THAT COULD BE ON THE RADIO, TELEVISION,
11 INTERNET, OR OTHERWISE BECAUSE WE HAVE TO MAINTAIN
12 YOUR IMPARTIALITY IN THE EVENT THAT YOU'RE SELECTED
13 FOR THE JURY.

14 JUROR: OKAY.

15 THE COURT: WE APPRECIATE YOUR TIME AND YOUR
16 PATIENCE. I HOPE YOU HAVE A WONDERFUL DAY.

17 JUROR: I HOPE SO, TOO.

18 THE COURT: THANK YOU, SIR.

19 JUROR: THANK YOU.

20 THE COURT: WE WILL SEE YOU ON MONDAY.

21 (JUROR LEFT THE COURTROOM.)

22 THE COURT: ROBERT MILLS EDWARDS, JUNIOR, NUMBER
23 86. NUMBER 86, MR. EDWARDS.

24 (JUROR ENTERED THE COURTROOM.)

25 ROBERT M EDWARDS, WHITE MALE,

1 TESTIFIED AS FOLLOWS:

2 BY THE COURT:

3 Q SIR, IF YOU COULD COME RIGHT HERE FOR US AND HAVE A
4 SEAT. AND COME AS CLOSE TO THE MICROPHONE FOR ME AS YOU
5 CAN.

6 A OKAY.

7 Q SIR, IF YOU COULD STATE YOUR NAME FOR THE RECORD.

8 A MILLS ROBERT EDWARDS, JUNIOR.

9 Q MILLS ROBERT EDWARDS, JUNIOR?

10 A GO BY BOBBY.

11 Q GOT YOUR FIRST NAME AND YOUR MIDDLE NAME IN REVERSE.
12 AND YOU'RE JUROR 86; CORRECT?

13 A RIGHT.

14 Q SIR, I WOULD REMIND YOU THAT YOU'RE STILL UNDER OATH.
15 DO YOU UNDERSTAND?

16 A YES.

17 Q SIR, HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
18 SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

19 A NOT FROM THE MEDIA, NO.

20 Q OKAY. WHEN YOU SAY NOT THE MEDIA...

21 A I DID HAVE A CONVERSATION WITH MY STEPSON.

22 Q OKAY.

23 A HE WAS ACTUALLY IN PRISON WITH THE DEFENDANT.

24 Q OKAY.

25 A AND HE HAD SOME CONVERSATION THAT -- HE TOLD ME SOME

1 THINGS THAT I -- I TOLD HIM NOT ALLOWED TO DISCUSS IT, BUT
2 HE WAS TALKING TO ME AND TALKING TO HIS MOTHER AND TOLD US
3 SOME THINGS THAT I PROBABLY SHOULDN'T KNOW, I GUESS, AND
4 THAT WAS AFTER TUESDAY.

5 Q OKAY. I'M GOING TO ASK YOU SOME ADDITIONAL QUESTIONS
6 TO FOLLOW UP ON WHAT YOU JUST TOLD ME.

7 A OKAY.

8 THE COURT: COUNSEL, COULD YOU ALL APPROACH FOR
9 ME? BEAR WITH US.

10 (WHEREUPON A BENCH CONFERENCE WAS HELD.)

11 THE COURT: THANK YOU. ALL RIGHT.

12 BY THE COURT:

13 Q SIR, I'M GOING TO ASK SOME QUESTIONS OF YOU. SOME OF
14 THEM MAY SEEM INTENSELY PERSONAL. IT IS NOT OUR INTENT TO
15 INVAD E YOUR PRIVACY IN ANY WAY. WE HAVE TO INQUIRE ABOUT
16 YOUR VIEWS. AND STATE LAW REQUIRES THAT WE ASK THESE
17 QUESTIONS. IN A CASE OF THIS TYPE WE'RE REQUIRED TO TALK
18 TO EACH JUROR INDIVIDUALLY. OKAY?

19 A YEAH.

20 Q SO I DON'T NEED YOU TO BE NERVOUS.

21 A OKAY.

22 Q WE APPRECIATE HOW CANDID YOU WERE WITH US BECAUSE YOU
23 CERTAINLY DIDN'T HAVE TO BE, AND WE WOULD HAVE HAD NO WAY
24 OF KNOWING WITHOUT YOUR TELLING US. SO AGAIN, TAKE A DEEP
25 BREATH.

1 A OKAY.

2 Q I KNOW IT'S -- THIS IS UNCOMFORTABLE FOR SOME PEOPLE
3 TO HAVE TO SIT AND TALK TO STRANGERS, SO I WANT TO
4 EMPHASIZE TO YOU THAT THERE ARE NO RIGHT OR WRONG ANSWERS
5 IN THIS PROCESS. THE ONLY THING THAT WE ASK OF YOU IS
6 THAT YOU BE FAIR, OPEN, AND HONEST WITH US WITH YOUR
7 RESPONSES. AND TO THE BEST OF YOUR ABILITY IF YOU COULD
8 ANSWER ME WITH A YES OR A NO. OKAY?

9 A OKAY.

10 Q AMONG OTHER THINGS WE'RE GOING TO BE TALKING ABOUT
11 PENALTY. THE FACT THAT WE TALK ABOUT PENALTIES IN THIS
12 CASE IS NO REFLECTION OR ANY INDICATION ON THE DEFENDANT.
13 IN THE LAW HE IS PRESUMED TO BE INNOCENT. DO YOU
14 UNDERSTAND?

15 A YES.

16 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
17 YOU LISTEN TO THE LAW?

18 A COULD I LISTEN TO THE LAW?

19 Q UH-HUH.

20 A YES.

21 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
22 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

23 A YES.

24 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
25 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

1 A YES.

2 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
3 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
4 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
5 CASE? THAT INCLUDES THE CONVERSATION YOU HAD WITH YOUR
6 STEPSON.

7 A I THINK SO.

8 Q OKAY. AGAIN, I NEED A YES OR A NO ANSWER. AND THERE
9 IS NO RIGHT OR WRONG ANSWER.

10 A I SAY YES.

11 Q OKAY. SIR, AS A RESULT OF WHAT YOU HAVE HEARD, READ,
12 OR SEEN, THAT INCLUDES THE CONVERSATION WITH YOUR STEPSON,
13 AND ANY MEDIA COVERAGE YOU MAY HAVE SEEN BEFORE I GAVE YOU
14 THE INSTRUCTIONS, DO YOU BELIEVE YOU HAVE FORMED ANY FIXED
15 OPINION ABOUT THE FACTS OF THIS CASE?

16 A UM, IT WOULD BE HARD TO SAY I DON'T HAVE AN OPINION.

17 Q WELL, MY QUESTION IS A LITTLE MORE DETAILED THAN
18 THAT, FOR LACK OF A BETTER WAY OF EXPLAINING IT. WE
19 PRESUME IN A CASE OF THIS TYPE MAGNITUDE, WITH AS MUCH
20 MEDIA COVERAGE AS IT HAS HAD AND AS MUCH INTEREST, THAT
21 IT'S ONLY HUMAN NATURE THAT PEOPLE MAY FORM SOME OPINION
22 WITHOUT HAVING KNOWN ALL THE FACTS.

23 BUT WHAT I'M TRYING TO DETERMINE IS IF YOU HAVE
24 FORMED A FIXED OPINION. AND A FIXED OPINION IS ONE THAT
25 IS NOT MOVED. IT IS ONE THAT IS MADE UP.

1 A OKAY.

2 Q IN OTHER WORDS, HAVE YOU JUST COMPLETELY MADE UP YOUR
3 MIND ABOUT THIS CASE FROM WHAT YOU HAVE HEARD, READ, SEEN
4 INCLUDING ANYTHING YOU COULD HAVE SEEN IN THE NEWSPAPER,
5 RADIO--

6 A OPINION WHERE I WOULDN'T CHANGE MY MIND?

7 Q YEAH.

8 A GIVEN THE FACTS--

9 Q A FIXED OPINION. IT MEANS, I HAVE ALREADY MADE UP MY
10 MIND, THERE'S NOTHING ELSE YOU CAN TELL ME.

11 A NO. NO.

12 Q SIR, COULD YOU COME INTO THIS COURTROOM ALMOST AS A
13 BLANK SLATE AND LISTEN TO THE EVIDENCE THAT WILL BE
14 PRESENTED FROM THE LIPS OF SWORN WITNESSES AND THE OTHER
15 EVIDENCE THAT WILL BE INTRODUCED AND LISTEN TO THE LAW AS
16 THE COURT WILL CHARGE AND MAKE A DECISION BASED SOLELY ON
17 THE EVIDENCE AND THE LAW?

18 A YES.

19 Q OKAY. IN A CRIMINAL CASE, SIR, THE STATE HAS THE
20 BURDEN OF PROVING GUILT AND THEY MUST MEET THAT BURDEN
21 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

22 A YES.

23 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
24 NO BURDEN TO PROVE HIS INNOCENCE?

25 A YES.

1 Q SIR, HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE JUROR
2 TYPE SHEET IN THE JURY ROOM?

3 A YES.

4 Q AND WHICH CATEGORY WOULD YOU SAY YOU FALL INTO?

5 A TYPE THREE.

6 Q OKAY. SIR, IF YOU WERE A JUROR IN A DEATH PENALTY
7 CASE AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF
8 MURDER, WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE
9 TRIAL. DO YOU UNDERSTAND?

10 A YES.

11 Q AND DO YOU REMEMBER FROM TUESDAY WHEN I DISCUSSED A
12 GUILT PHASE AND A SENTENCING PHASE?

13 A RIGHT.

14 Q OKAY. IN THE SENTENCING PHASE THE JURY WOULD HAVE
15 THE ABILITY TO CONSIDER WHAT WE CALL AGGRAVATING
16 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES. AND I'M GOING
17 TO EXPLAIN BOTH OF THOSE TERMS TO YOU SO THAT YOU'LL KNOW
18 WHAT WE'RE REFERRING TO. DO YOU UNDERSTAND?

19 A YES.

20 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
21 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
22 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
23 THE OFFENSE OF MURDER.

24 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
25 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO

1 THE INJURY TO THE CRIME OF MURDER. IT IS COMMITTED IN THE
2 COMMISSION OF A CRIME.

3 AND EXAMPLES OF MITIGATING (SIC) CIRCUMSTANCES WOULD
4 BE MURDER OF A CHILD UNDER THE AGE OF 11, DRUG
5 TRAFFICKING, KILLING BY POISON, OR BURGLARY IN ANY DEGREE.
6 AGAIN, THESE ARE JUST EXAMPLES.

7 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
8 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
9 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
10 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
11 MORAL CULPABILITY OR RESPONSIBILITY.

12 SOME EXAMPLES OF THOSE WOULD BE MENTAL RETARDATION AT
13 THE TIME OF THE CRIME, THE DEFENDANT HAD NOT YET REACHED
14 HIS OR HER 18TH BIRTHDAY AT THE TIME OF THE CRIME, THAT
15 THE DEFENDANT WAS AN ACCOMPLICE AND THAT THEIR
16 PARTICIPATION WAS RELATIVELY MINOR OR THAT THE DEFENDANT
17 ACTED UNDER DURESS OR DOMINATION. AND AGAIN, THESE ARE
18 JUST EXAMPLES BECAUSE THERE IS NO EXCLUSIVE LIST OF
19 MITIGATING CIRCUMSTANCES.

20 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
21 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
22 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
23 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
24 I WOULD INSTRUCT YOU THAT APPLIES AT THE CONCLUSION OF THE
25 CASE, COULD YOU RETURN A SENTENCE OF LIFE IN PRISON

1 WITHOUT THE POSSIBILITY OF PAROLE?

2 A YES.

3 Q COULD YOU DEPENDING UPON THE PARTICULAR FACTS AND
4 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
5 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
6 I WOULD INSTRUCT YOU THAT APPLIES AT THE CONCLUSION OF THE
7 CASE RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
8 ELECTROCUTION OR BY LETHAL INJECTION?

9 A IT WOULD DEPEND ON THE CIRCUMSTANCES.

10 Q OKAY. I WANT YOU TO LISTEN TO MY QUESTION VERY
11 CAREFULLY. OKAY. BECAUSE IT REQUIRES A YES OR NO ANSWER.
12 AND AGAIN, THERE IS NO RIGHT OR WRONG ANSWER. AND TO SOME
13 EXTENT YOUR RESPONSE TO ME IS ENCOMPASSED IN THE QUESTION,
14 SO I NEED YOU TO LISTEN VERY CAREFULLY BECAUSE I KNOW IT
15 CAN BE A LITTLE NERVOUS, AND I WANT YOU TO LISTEN FOR ME.

16 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
17 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
18 CIRCUMSTANCES OF THE CASE AND INCLUDING THE CONSIDERATION
19 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW
20 THAT I WOULD INSTRUCT YOU APPLIES TO THE CASE, COULD YOU
21 RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
22 ELECTROCUTION OR BY LETHAL INJECTION?

23 A YES.

24 Q SIR, IF YOU WERE CHOSEN FOR THIS JURY, YOU WILL BE
25 HOUSED IN A MOTEL WHICH IS WHAT I EXPLAINED TO YOU BEING

1 SEQUESTERED. YOU WILL BE THERE FOR APPROXIMATELY 10 DAYS.
2 EXCEPT FOR THE PERSONAL INCONVENIENCE, WHICH WE ASSUME IT
3 WILL BE PERSONALLY INCONVENIENT, WOULD THIS POSE A SERIOUS
4 DANGER TO YOUR HEALTH OR WELL-BEING?

5 A NO.

6 Q SIR, IN A CAPITAL CASE EACH JUROR IS REQUIRED TO
7 INDIVIDUALLY SIGN THE VERDICT FORM. IN OTHER WORDS,
8 EACH -- THE VERDICT FORMS HAVE LINES ONE THROUGH 12 AND
9 EACH JUROR IS REQUIRED TO SIGN THEIR NAME BECAUSE IN SOUTH
10 CAROLINA THE JURY DECIDES PENALTY AND THE COURT HAS TO
11 UPHOLD WHATEVER PENALTY THE JURY IMPOSES, WHETHER THAT IS
12 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR DEATH.

13 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
14 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
15 DEATH?

16 A YES.

17 THE COURT: ANY QUESTIONS FROM THE STATE?

18 MR. HUMPHRIES: NONE FROM THE STATE.

19 THE COURT: ANY FROM THE DEFENSE?

20 MR. KELLY: YES, MA'AM.

21 THE COURT: SIR, IF YOU WOULD GIVE MR. KELLY
22 YOUR ATTENTION. AND IF YOU COULD JUST TURN YOUR
23 CHAIR TO THE SIDE BUT STILL SPEAK INTO THE
24 MICROPHONE.

25 JUROR: OKAY.

1 BY MR. KELLY:

2 Q MR. EDWARDS, I BELIEVE THAT YOU TOLD US THAT EVEN
3 THOUGH YOU HAD HEARD OR HAD SEEN ACCOUNTS IN THE NEWS THAT
4 YOU'D BE ABLE TO PUT THOSE OUT OF YOUR MIND. IS THAT
5 CORRECT?

6 A YES.

7 Q AM I RIGHT ABOUT THAT?

8 A RIGHT.

9 Q THEN YOU ALSO SAID THAT YOUR STEPSON SAID SOMETHING
10 TO YOU; CORRECT?

11 A YES.

12 Q DO YOU REALIZE THAT IF YOU WERE CHOSEN AS A JUROR,
13 NOT ONLY WOULD YOU HAVE TO KEEP THAT OUT OF YOUR MIND, YOU
14 COULDN'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. DO
15 YOU UNDERSTAND THAT? DO YOU?

16 A YES.

17 Q IT WOULD BE IMPROPER FOR YOU TO EVER SAY TO OTHER
18 JURORS, WELL, MY SON-IN-LAW TOLD ME, SO AND SO. IT
19 WOULDN'T BE IN EVIDENCE. ARE YOU AWARE OF THAT?

20 A YES.

21 Q COULD YOU DO THAT?

22 A NOT SPEAK WITH THE OTHER JURORS ABOUT THAT?

23 Q YES.

24 A YES.

25 Q BECAUSE THAT WOULD BE IMPROPER.

1 A RIGHT.

2 Q OKAY. THANK YOU.

3 MR. KELLY: NO FURTHER QUESTIONS.

4 THE COURT: ANY EXCEPTION TO THE JUROR BEING
5 FOUND QUALIFIED BY THE STATE?

6 MR. HUMPHRIES: NONE FROM THE STATE.

7 THE COURT: FROM THE DEFENSE?

8 MR. KELLY: HE'S QUALIFIED.

9 THE COURT: SIR, YOU HAVE BEEN FOUND QUALIFIED
10 AS A PART OF THE POOL OF JURORS. AND WHAT THAT MEANS
11 IS AS WE GO THROUGH THIS PROCESS, WE'LL BE FINDING
12 JURORS QUALIFIED. FROM THAT POOL OF QUALIFIED JURORS
13 WE WILL ACTUALLY SELECT THE JURY. OKAY.

14 AND WE WILL DO THAT ON MONDAY MORNING AT 9:30.
15 SO I NEED YOU TO RETURN ON MONDAY MORNING AT 9:30. I
16 NEED YOU TO BE PACKED FOR AT LEAST A MINIMUM OF 10
17 DAYS, AND BRING EVERYTHING THAT YOU WOULD NEED FOR
18 THAT TIME PERIOD BECAUSE IF YOU'RE SELECTED, YOU'RE
19 NOT GOING TO BE ABLE TO GO BACK HOME.

20 OF COURSE, YOU DON'T HAVE TO PHYSICALLY BRING
21 THOSE THINGS INTO THE COURTROOM, BECAUSE IF YOU'RE
22 SELECTED, WE'LL GET YOU SITUATED AT THE HOTEL AT THE
23 APPROPRIATE TIME.

24 DURING THIS BREAK IT IS VITAL THAT YOU HAVE NO
25 DISCUSSION ABOUT THIS CASE WITH ANYONE, THAT INCLUDES

1 YOUR FAMILY MEMBERS, FRIENDS, ASSOCIATES, OR
2 OTHERWISE.

3 AND I KNOW IT'S DIFFICULT BECAUSE ESPECIALLY IN
4 A CASE OF THIS MAGNITUDE, PEOPLE WILL COME UP TO YOU
5 AND SAY, OH, I HEARD YOU'VE GOT JURY DUTY. AND YOU
6 JUST NEED TO TELL THEM, I AM SORRY, I CANNOT DISCUSS
7 THAT, I CANNOT VIOLATE THE COURT'S RULES.

8 ALSO PLEASE MAKE SURE THAT YOU HAVE NO MEDIA
9 EXPOSURE WHATSOEVER TO THIS CASE. IT IS ESSENTIAL
10 THAT YOUR IMPARTIALITY BE MAINTAINED. OKAY?

11 JUROR: OKAY.

12 THE COURT: IN THE EVENT THAT YOU'RE SELECTED.
13 WE APPRECIATE YOUR PATIENCE AND WE APPRECIATE YOUR
14 CANDOR. YOU HAVE A GOOD DAY.

15 (JUROR LEFT THE COURTROOM.)

16 THE COURT: VIRGINIA PORTER 260. SHE RESPONDED
17 TO 21.

18 (JUROR ENTERED THE COURTROOM.)

19 VIRGINIA PORTER, WHITE FEMALE,
20 TESTIFIED AS FOLLOWS:

21 BY THE COURT:

22 Q HOW ARE YOU THIS MORNING, MA'AM.

23 A DOING FINE.

24 Q IF YOU COULD SCOOT AS CLOSE FOR ME AS YOU CAN TO THE
25 MICROPHONE BECAUSE THE ACOUSTICS IN HERE ARE HORRIBLE.

1 A OKAY.

2 Q SO WE'LL BE ABLE TO HEAR YOU CLEARLY.

3 A ALL RIGHT.

4 Q THANK YOU SO MUCH. IF YOU'LL STATE YOUR FULL NAME
5 FOR THE RECORD.

6 A VIRGINIA M PORTER.

7 Q MA'AM, IF YOU COULD TELL US YOUR JUROR NUMBER FOR THE
8 RECORD.

9 A 260.

10 Q AND MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER
11 OATH. DO YOU UNDERSTAND?

12 A YES, MA'AM.

13 Q OKAY. MRS. PORTER, HAVE YOU BEEN EXPOSED TO ANY
14 MEDIA COVERAGE ABOUT THIS CASE SINCE THE COURT'S
15 INSTRUCTIONS ON TUESDAY?

16 A WELL, I TRIED TO STAY AWAY FROM THE NEWSPAPERS AND
17 THE TV.

18 Q YEAH. WE KNOW IT'S HARD. BUT I MEAN, I'M JUST
19 TRYING TO DETERMINE IF YOU HAVE DELIBERATELY READ AN
20 ARTICLE--

21 A NO, MA'AM.

22 Q -- OR WATCHED A TV SHOW OR DID ANY RESEARCH ON THE
23 INTERNET.

24 A NO, MA'AM.

25 Q OKAY. WE'RE GOING TO ASK SOME QUESTIONS. WE KNOW

1 THAT SOME OF THESE QUESTIONS ARE PERSONAL. IT'S NOT OUR
2 INTENT TO INVADE YOUR PRIVACY. NEED YOU TO TAKE A DEEP
3 BREATH. WE KNOW THIS CAN BE A LITTLE DAUNTING.

4 AND STATE LAW, BECAUSE OF THIS TYPE -- THE NATURE OF
5 THESE PROCEEDINGS REQUIRES US THE TALK TO EACH JUROR
6 INDIVIDUALLY. WE'RE NOT TRYING TO CHALLENGE YOUR VIEWS.
7 WE KNOW THAT THERE'S SOME THINGS WE'RE GOING TO ASK YOU
8 ABOUT THAT YOU PROBABLY REALLY HAVE NEVER GIVEN A GREAT
9 DEAL OF THOUGHT TO. BUT WE -- IT IS IMPORTANT THAT WE
10 KNOW YOUR VIEWS.

11 I NEED TO EMPHASIZE FOR YOU THAT THERE ARE NO RIGHT
12 OR WRONG ANSWERS. THE ONLY THING WE ASK IS THAT YOU BE
13 CANDID WITH US, YOU BE OPEN, AND YOU ANSWER US HONESTLY
14 AND FULLY.

15 A YES, MA'AM.

16 Q IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET US
17 KNOW. AND TO THE BEST OF YOUR ABILITY PLEASE ANSWER EACH
18 QUESTION YES OR NO. AMONG OTHER THINGS WE'LL BE TALKING
19 ABOUT PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT
20 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT.
21 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
22 UNDERSTAND?

23 A YES, MA'AM.

24 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
25 LISTEN TO THE LAW?

1 A YES, MA'AM.

2 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
3 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

4 A YES, MA'AM.

5 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
6 MAY DISAGREE WITH ME WITH WHAT I TELL YOU THE LAW IS? DO
7 YOU UNDERSTAND WHAT I MEAN WHEN I SAW THE LAW?

8 A YES, MA'AM.

9 Q OKAY. YOU UNDERSTAND I'M NOT TALKING ABOUT THE FACTS
10 OF THE CASE BECAUSE THE--

11 A YES.

12 Q -- JURIES ARE THE FACT FINDERS. THEY LISTEN TO THE
13 EVIDENCE AND THEY DECIDE WHAT THE FACTS ARE. THE COURT
14 HAS -- NEVER HAS ANY OPINION ABOUT THE FACTS, NEVER
15 INVADES THE JURY'S PROVINCE IN THAT WAY NOR WOULD I EVER
16 INDICATE TO YOU WHAT I THINK THE FACTS ARE IN A CASE
17 BECAUSE THE CONSTITUTION DOES NOT ALLOW ME TO HAVE AN
18 OPINION.

19 A YES, MA'AM.

20 Q SO I'M ALWAYS NEUTRAL, AND IT'S A WONDERFUL THING.

21 A LUCKY YOU.

22 Q LUCKY ME. I WAS IN THE FAMILY COURT FOR MANY YEARS
23 WHERE I HAD TO BE THE FACT FINDER. WHEN I GOT MY FIRST
24 JURY VERDICT, I ALMOST DID A SUMMERSAULT RIGHT IN THE
25 COURTROOM, BECAUSE IT'S A WONDERFUL THING.

1 SO WHAT I'M TRYING TO EXPLAIN IS THAT I WOULD NEVER
2 TELL A JURY WHAT THEY SHOULD THINK ABOUT THE FACTS OF THE
3 CASE. THE ONLY THING THAT I INSTRUCT ON IS THE LAW. AND
4 THE BEST EXAMPLE I CAN THINK OF LIKE A REFEREE, THE UMPIRE
5 OF A GAME, AND I TELL EVERYBODY WHAT THEIR
6 RESPONSIBILITIES ARE AND WHAT THE GUIDELINES ARE.

7 AND SO WHAT I'M TRYING TO DETERMINE IS IF YOU CAME
8 INTO COURT WITH A PRECONCEIVED IDEA OF WHAT YOU THOUGHT
9 THE LAW WAS BUT I TOLD YOU THAT IT WAS SOMETHING THAT WAS
10 OTHER THAN WHAT YOU INTERPRETED IT TO BE, WOULD YOU BE
11 ABLE TO DISREGARD THAT PRECONCEPTION AND APPLY THE LAW AS
12 I TELL YOU IT IS EVEN THOUGH YOU MIGHT DISAGREE WITH WHAT
13 THE STATE LAW IS?

14 A YES, I THINK I COULD.

15 Q OKAY. AND AGAIN, THERE ARE NO RIGHT OR WRONG
16 ANSWERS, BUT I HAVE TO HAVE A YES OR A NO.

17 A YES, MA'AM.

18 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED IN THIS COURTROOM AND DISREGARD AND
20 DISABUSE YOUR MIND OF ANYTHING YOU MAY HAVE HEARD, READ,
21 OR SEEN ABOUT THIS CASE?

22 A (PAUSE) .

23 Q AGAIN, THERE IS NO RIGHT OR WRONG ANSWER.

24 A NO, MA'AM, I DON'T THINK I COULD.

25 Q OKAY. AND LET ME ASK THE QUESTION ANOTHER WAY SO

1 THAT I CAN MAKE SURE AND SO THAT WE CAN BE CLEAR FOR THE
2 RECORD. WHEN A JUROR IS SEATED IN A CASE, THEY TAKE AN
3 OATH, THAT THEY BASICALLY COME INTO THE COURT AS A BLANK
4 SLATE AND THAT THE ONLY THING THEY WILL CONSIDER IN MAKING
5 A DETERMINATION IS THE TESTIMONY THEY HEAR FROM THE LIPS
6 OF SWORN WITNESSES AND THE OTHER EVIDENCE THAT IS
7 INTRODUCED AND THE LAW AS THE COURT WILL CHARGE.

8 AND AFTER THAT THEY THEN AGREE THAT THEY WILL
9 DELIBERATE AMONG THEIR OTHER JURORS AND RENDER A DECISION
10 THAT IS BASED SOLELY ON THAT EVIDENCE, THE TESTIMONY, AND
11 THE LAW. AND I'M TRYING TO DETERMINE, ARE YOU TELLING ME
12 YOU CANNOT DO THAT?

13 A THAT'S RIGHT. I CANNOT DO THAT.

14 Q OKAY.

15 THE COURT: ANY QUESTIONS FROM THE STATE?

16 MR. HUMPHRIES: NONE FROM THE STATE.

17 THE COURT: FROM THE DEFENSE?

18 MR. DIGGS: JUST A COUPLE.

19 THE COURT: SURE. MA'AM, IF YOU WOULD GIVE MR.
20 DIGGS YOUR ATTENTION AND ANSWER ANY QUESTIONS HE
21 MIGHT HAVE.

22 BY MR. DIGGS:

23 Q MRS. PORTER, HOW ARE YOU?

24 A DOING FINE.

25 Q NOW, YOU WORK AT A LAW OFFICE NOW?

1 A I DON'T NOW. I'M KIND OF SEMI-RETIRED, BUT I DO WORK
2 IN THE COURTHOUSE.

3 Q OKAY. AND YOU WORKED IN A LAW OFFICE, THOUGH, FOR A
4 NUMBER OF YEARS?

5 A YES, SIR.

6 Q NOW, WHAT IF THE JUDGE -- AND YOU INDICATED TO HER
7 AFTER SOME THOUGHT THAT YOU COULD FOLLOW THE LAW THAT SHE
8 GAVE.

9 A (NODDED HEAD.)

10 Q WHAT IF IN THE INSTRUCTIONS THAT SHE GAVE YOU THERE
11 WERE -- THERE WAS A LAW OR SOME RULES THAT WHEN APPLIED TO
12 THE FACTS THAT YOU FOUND IN THE CASE PROVIDED FOR A
13 DEFENSE, WOULD YOU BE ABLE TO APPLY THE LAW AT THAT POINT
14 TO A DEFENSE IN FAVOR OF THE DEFENDANT?

15 A I DON'T BELIEVE I'D BE ABLE, NO, SIR.

16 Q OKAY. YOU DON'T BELIEVE YOU COULD DO THAT IN THAT
17 SITUATION?

18 A NO, SIR.

19 Q ALL RIGHT.

20 MR. DIGGS: THANK YOU. THAT'S ALL.

21 THE COURT: ANY EXCEPTION TO THE EXCUSING THE
22 JUROR FROM THE STATE?

23 MR. HUMPHRIES: NONE FROM THE STATE.

24 THE COURT: FROM THE DEFENSE?

25 MR. DIGGS: NONE, YOUR HONOR.

1 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
2 COURT'S THANKS. HAVE A GREAT DAY.

3 JUROR: THANK YOU VERY MUCH.

4 THE COURT: YOU'RE WELCOME.

5 (JUROR LEFT THE COURTROOM.)

6 THE COURT: NUMBER 230, RAYMOND MILLER. AND HE
7 RESPONDED TO QUESTION 21.

8 (JUROR ENTERED THE COURTROOM.)

9 RAYMOND MILLER, BLACK MALE, TESTIFIED
10 AS FOLLOWS:

11 BY THE COURT:

12 Q SIR, IF YOU'D COME HAVE A SEAT FOR ME. HOW YOU DOING
13 TODAY?

14 A FINE. HOW ARE YOU?

15 Q FINE.

16 A ALL RIGHT.

17 Q IF YOU'D HAVE A SEAT FOR ME. GET AS CLOSE TO THE
18 MICROPHONE AS YOU CAN. THE ACOUSTICS IN HERE ARE KIND OF
19 BAD. YEAH, IT'S MY COMEDIAN. HOW YOU DOING TODAY?

20 A FINE. YOURSELF?

21 Q DOING FINE. SIR, IF YOU WOULD STATE YOUR FULL NAME
22 FOR THE RECORD. PLEASE STATE YOUR FULL NAME FOR THE
23 RECORD.

24 A RAYMOND MILLER.

25 Q AND SIR, YOU ARE JUROR 230; IS THAT CORRECT?

1 A YES, MA'AM.

2 Q SIR, I WILL REMIND YOU YOU'RE STILL UNDER OATH. DO
3 YOU UNDERSTAND?

4 A YES, MA'AM.

5 Q AND SIR, HAVE YOU HAD ANY EXPOSURE TO MEDIA COVERAGE
6 OF THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

7 A NO, MA'AM.

8 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. NEED YOU
9 TO TAKE A DEEP BREATH. I KNOW THIS CAN BE A LITTLE NERVE
10 WRACKING. I WANT YOU TO KNOW THAT SOME OF THE QUESTIONS
11 WE ASK MAY SEEM VERY PERSONAL. IT IS NOT OUR INTENT TO
12 INVADE YOUR PRIVACY.

13 WE KNOW WE'RE GOING TO ASK YOU ABOUT THINGS YOU
14 PROBABLY HAVEN'T REALLY EVER THOUGHT ABOUT IN ANY GREAT
15 DETAIL. I WANT TO EMPHASIZE TO YOU THERE ARE NO RIGHT OR
16 WRONG ANSWERS.

17 THE ONLY THING WE ASK OF YOU IS THAT YOU ANSWER OUR
18 QUESTIONS AS CANDIDLY, OPENLY, HONESTLY, AND FULLY AS
19 POSSIBLE. AND TO THE EXTENT THAT YOU CAN, PLEASE ANSWER
20 US WITH A YES OR A NO.

21 A OKAY.

22 Q OKAY?

23 A YES, MA'AM.

24 Q AND AGAIN, I EMPHASIZE THERE ARE NO RIGHT OR WRONG
25 ANSWERS. BLESS YOU. SIR, NEED SOME TISSUE, MR. KELLY?

1 MR. KELLY: GOT ONE HERE.

2 BY THE COURT:

3 Q SIR, AMONG OTHER THINGS WE'LL BE TALKING ABOUT
4 PENALTY. BUT THE MERE FACT THAT WE TALK ABOUT PENALTY
5 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS
6 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

7 A YES, MA'AM.

8 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
9 YOU LISTEN TO THE LAW?

10 A YES, MA'AM.

11 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
12 INSTRUCT YOU?

13 A YES, MA'AM.

14 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU
15 EVEN THOUGH YOU MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU
16 THE LAW IS?

17 A YES, MA'AM.

18 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED HERE IN THIS COURTROOM FROM THE LIPS OF
20 SWORN WITNESSES AND THE OTHER EVIDENCE THAT WILL BE
21 INTRODUCED AND THE LAW AS THE COURT WILL INSTRUCT AND
22 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN
23 ABOUT THIS CASE?

24 A NO, MA'AM.

25 Q OKAY. LET ME ASK IT -- ANOTHER QUESTION. ARE --

1 HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE ABOUT
2 THIS CASE BEFORE TUESDAY?

3 A YES, MA'AM.

4 Q AND AS RESULT OF WHAT YOU READ, HEARD, OR SAW, HAVE
5 YOU FORMED A FIXED OPINION ABOUT THE FACTS IN THIS CASE?
6 IN OTHER WORDS, HAVE YOU ALREADY MADE UP YOUR MIND?

7 A YES, MA'AM.

8 Q OKAY. AND ARE YOU TELLING ME THAT YOU CANNOT COME
9 INTO THIS COURT AS AN EMPTY SLATE, DISREGARD WHAT YOU HAVE
10 HEARD AND CONSIDER ONLY THE EVIDENCE THAT IS PRESENTED IN
11 THIS COURT AND THE LAW AND MAKE A DECISION AND DISREGARD
12 ANY OPINIONS YOU MAY HAVE FORMULATED?

13 A NO, MA'AM.

14 Q YOU UNDERSTAND WHAT I'M ASKING?

15 A YES, MA'AM.

16 Q OKAY.

17 A NO, MA'AM.

18 Q OKAY.

19 THE COURT: ANY QUESTIONS FROM THE STATE?

20 MR. HUMPHRIES: NONE FROM THE STATE.

21 THE COURT: FROM THE DEFENSE?

22 MR. DIGGS: JUST...

23 THE COURT: SIR, IF YOU WOULD GIVE MR. DIGGS
24 YOUR ATTENTION. BUT STILL SPEAK INTO THE MICROPHONE.
25 TURN TO THE SIDE. YEAH.

1 BY MR. DIGGS:

2 Q MR. MILLER, HOW ARE YOU THIS MORNING?

3 A FINE, SIR.

4 Q GOOD. WOULD YOUR OPINION -- LET ME BACK UP AND ASK
5 IT THIS WAY. WHEN THE JUDGE WAS DISCUSSING WITH YOU ABOUT
6 YOUR WILLINGNESS TO FOLLOW THE LAW, I BELIEVE YOU
7 INDICATED THAT YOU COULD DO THAT.

8 A FOLLOW THE LAW.

9 Q ALL RIGHT. NOW, LET'S SUPPOSE THAT YOU WERE TO SERVE
10 IN THIS CASE AND YOU HEARD ALL THE EVIDENCE IN THIS CASE
11 FROM BOTH SIDES AND THEN THE JUDGE INSTRUCTED YOU ON THE
12 LAW THAT ALLOWED YOU -- OR YOU REALIZED AT THAT TIME THAT
13 THE LAW ACTUALLY WHEN APPLIED TO THE FACTS AS YOU FIND
14 THEM TO BE OR FOUND THEM TO BE ALLOWED FOR A DEFENSE IN
15 THIS CASE WHEREBY YOU COULD FIND THE DEFENDANT NOT GUILTY,
16 IN THAT SITUATION, AT THAT POINT COULD YOU THEN SET ASIDE
17 YOUR OPINION THAT YOU HAD AND RULE IN ACCORDANCE WITH WHAT
18 THE JUDGE'S INSTRUCTIONS ARE AND AT THAT TIME AT THE END
19 OF THE TRIAL?

20 A NO, SIR.

21 Q ALL RIGHT. EVEN IF -- EVEN IF THE LAW ALLOWED HIM TO
22 BE FOUND NOT GUILTY, YOU WOULD STILL VOTE GUILTY?

23 A YES, SIR.

24 Q OKAY. THANK YOU VERY MUCH.

25 THE COURT: ANY EXCEPTION TO THIS JUROR BEING

1 EXCUSED FROM THE STATE?

2 MR. HUMPHRIES: NONE FROM THE STATE.

3 THE COURT: FROM THE DEFENSE?

4 MR. DIGGS: NO.

5 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S
6 THANKS. HAVE A GREAT DAY.

7 JUROR: THANK YOU, MA'AM.

8 THE COURT: YOU'RE WELCOME. DON'T FORGET YOUR
9 KEYS. YOU'D GET DOWN THERE IN THAT HEAT AND BE
10 LOOKING FOR THEM KEYS. YOU HAVE A GOOD DAY.

11 JUROR: ALL RIGHT.

12 (JUROR LEFT THE COURTROOM.)

13 THE COURT: LET ME ASK Y'ALL A QUESTION. WE'RE
14 DONE OF COURSE TILL 11. GOT ABOUT A 15 MINUTE BREAK
15 BUT I AM THINKING -- WELL, I GUESS WE COULD -- WE'LL
16 BE DONE BEFORE 12. BUT WHAT I AM THINKING WE WILL
17 DO -- AND YOU ALL CAN THINK ABOUT THIS DURING THE
18 BREAK -- IS LET'S JUST SAY BEST CASE SCENARIO IN THIS
19 NEXT PANEL WE GET ALL FOUR OF THESE PEOPLE QUALIFIED,
20 THAT WOULD PUT US AT 34. NO, 33.

21 MR. HUMPHRIES: ACTUALLY IT WOULD PUT US AT 29
22 WOULD BE FOUR, IS 33.

23 THE COURT: YEAH, I KNEW -- GETTING AHEAD OF ME.
24 AND WE -- LET'S JUST SAY BEST CASE SCENARIO WE GET
25 ALL FOUR OF THESE PEOPLE IN THIS NEXT PANEL WHICH

1 WOULD BE 33, AND THEN WE ADD THE FIVE THAT WE HAD
2 FROM -- THAT WOULD GO NEXT IN LINE WHICH WOULD BE THE
3 FIVE FROM LAST NIGHT, WE'D BE AT 38.

4 I AM THINKING THAT WHAT WE WOULD DO THEN
5 IRREGARDLESS OF WHETHER WE, YOU KNOW, EVEN IF ALL OF
6 THESE FOUND NOT QUALIFIED, THAT WOULD PUT US AT 34.
7 I AM THINKING -- WHICH THE NEXT PANEL IS PANEL 19
8 WHICH HAS A LIST OF THE BALANCE OF JURORS WHICH IS --
9 THINK UP TO FORTY SOMETHING. UP TO 48. IT'S 48.

10 WHAT I AM THINKING WE WOULD DO IS DO A PANEL
11 OF -- AT THE RATE WE'VE BEEN GOING, DO Y'ALL THINK
12 THAT FROM 12 TO ONE WE COULD DO SIX? I'M THINKING WE
13 COULD DO SIX, AND WE DO THE FIRST SIX ON THAT LIST,
14 HAVE THEM STAY, AND THEN BREAK EVERYBODY ELSE OUT
15 INTO PANELS OF SIX AND HAVE THEM COME BACK AT 2:30,
16 3:30 AND 4:30?

17 I THINK WE NEED MORE THAN AN HOUR FOR LUNCH WITH
18 ALL THOSE EXTRA PEOPLE COMING DOWNTOWN. I DON'T KNOW
19 IF IT'S BEEN Y'ALLS EXPERIENCE, BUT SERVICE HAS BEEN
20 A LITTLE... FOLK ARE REAL LAID BACK, THEY DON'T RUSH,
21 TRY TO GET ANYTHING.

22 MR. HUMPHRIES: JUST SLOW.

23 THE COURT: IN CHARLESTON THEY JUST WANT YOU OUT
24 TO GET THE NEXT FOLK IN.

25 (OFF-THE-RECORD DISCUSSION WAS HAD.)

1 THE COURT: WE DON'T WE PLAN TO DO THAT. AND I
2 WILL GO AHEAD AND ON MY LIST BREAK THEM OUT INTO
3 GROUPS OF SIX WITH THE APPLICABLE TIMES. I WILL HAVE
4 SUMMER GIVE Y'ALL A COPY OF MY LIST. AND THEN WHEN
5 THEY RETURN AT 12, WE WILL TAKE THOSE SIX, HAVE THEM
6 PLACED IN THE JURY ROOM, AND THEN I WILL CALL EACH
7 ADDITIONAL PANEL OF SIX.

8 AND WHEN WE RUN OUT -- BECAUSE I THINK WE WILL
9 PROBABLY HAVE SOME RESIDUAL -- I WOULD JUST SIMPLY
10 TELL THEM TO COME BACK AT -- LET'S SEE -- I WILL HAVE
11 THEM STILL COME BACK AT 5:30 BECAUSE MAYBE WE WON'T
12 NEED THEM AND I CAN JUST DISMISS THEM SO THAT THEY
13 WON'T JUST BE WAITING AROUND INDEFINITELY.

14 BUT IT WOULD BE SUCH A SMALL NUMBER OF PEOPLE,
15 I'D STILL HAVE TO GO PUT THEM IN A SEPARATE JURY ROOM
16 I THINK. OKAY? BUT I WILL GIVE Y'ALL A COPY OF THE
17 LIST AFTER THE BREAK AFTER I HAVE BROKEN IT DOWN INTO
18 THE ADDITIONAL PANELS. ANY EXCEPTION TO US
19 PROCEEDING THAT WAY FROM THE STATE?

20 MR. HUMPHRIES: NONE FROM THE STATE.

21 THE COURT: FROM THE DEFENSE?

22 MR. KELLY: NONE.

23 THE COURT: Y'ALL HAVE A GREAT BREAK. SEE YA AT

24 11.

25 (WHEREUPON A RECESS WAS HAD.)

1 (JUROR ENTERED THE COURTROOM.)

2 RALPH HOUCHINS, WHITE MALE, TESTIFIED

3 AS FOLLOWS:

4 BY THE COURT:

5 Q SIR, HOW ARE YOU?

6 A HOW ARE YOU? GOOD.

7 Q GOOD TO SEE YOU THIS MORNING. IF YOU WOULD STATE
8 YOUR FULL NAME FOR THE RECORD.

9 A RALPH M HOUCHINS, JUNIOR.

10 Q AND MR. HOUCHINS, YOU'RE JUROR 380; IS THAT RIGHT?

11 A CORRECT.

12 Q MR. HOUCHINS, I WILL REMIND YOU THAT YOU'RE STILL
13 UNDER OATH. DO YOU UNDERSTAND?

14 A YES.

15 Q AND HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
16 SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

17 A NO.

18 Q SIR, I'M GOING TO ASK YOU SOME QUESTIONS. TAKE A
19 DEEP BREATH. WE KNOW THIS CAN BE A LITTLE DAUNTING.
20 THESE QUESTIONS MAY SEEM PRIVATE, BUT IT'S NOT OUR
21 INTENTION TO INVADE YOUR PRIVACY. WE JUST NEED TO
22 ASCERTAIN SOME OF YOUR VIEWS.

23 A OKAY.

24 Q WE'RE NOT HERE TO CHALLENGE YOUR VIEWS. IT'S JUST
25 THAT STATE LAW IN A CASE OF THIS NATURE REQUIRES US TO

1 TALK TO EACH JUROR INDIVIDUALLY. THERE ARE NO RIGHT OR
2 WRONG ANSWERS.

3 THE ONLY THING WE ASK IS THAT YOU BE OPEN, HONEST,
4 AND COMPLETE AND FULL WITH US, AND CANDID IN YOUR ANSWERS.
5 PLEASE ANSWER THE QUESTIONS WITH A YES OR NO TO THE BEST
6 OF YOUR ABILITY. AND AGAIN, I EMPHASIZE THERE ARE NO
7 RIGHT OR WRONG ANSWERS.

8 IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET US
9 KNOW SO THAT WE CAN CLARIFY IT.

10 A OKAY.

11 Q AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
12 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
13 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN
14 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

15 A YES.

16 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
17 YOU LISTEN TO THE LAW?

18 A YES.

19 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
20 INSTRUCT YOU?

21 A YES.

22 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
23 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

24 A (PAUSE.)

25 Q THERE'S NO RIGHT OR WRONG ANSWER.

1 A BUT IT'S MORE THAN A YES OR NO. I MEAN...

2 Q OKAY.

3 A I...

4 Q WELL, LET ME SEE IF I CAN CLARIFY THE QUESTION FOR
5 YOU. SOMETIMES PEOPLE GET CONFUSED WHEN I SAY THE LAW
6 BECAUSE SOMETIMES THEY THINK I'M TALKING ABOUT THE FACTS
7 OF A CASE. I'M NOT.

8 I'M TALKING ABOUT THE LAW WHICH ARE THE RULES WE ARE
9 ALL GOVERNED BY AND THAT WE HAVE TO FOLLOW. AND AS A
10 JUROR YOU ARE SWORN TO ACCEPT THE LAW AND APPLY IT AS I
11 TELL IT TO YOU.

12 FOR EXAMPLE, SOME PEOPLE -- LIKE I WILL USE AN
13 EXAMPLE. IF YOU CAME TO COURT AND WE HAD A CASE ON A
14 BURGLARY CHARGE, AND IN YOUR MIND YOU THOUGHT THE ELEMENTS
15 OF BURGLARY WERE A AND B, BUT I TOLD YOU THAT THE STATE
16 HAD TO PROVE ELEMENTS A, B, AND C.

17 AND EVEN THOUGH YOU DISAGREED WITH THEM HAVING TO
18 PROVE C, YOU WOULD BE ABLE TO DISREGARD THAT FROM YOUR
19 MIND AND APPLY THE LAW PRECISELY AS I GIVE IT TO YOU. AND
20 THAT'S WHAT I'M TRYING TO DETERMINE. AND DO YOU THINK
21 YOU'D BE ABLE TO DO THAT?

22 A UM...

23 Q THERE'S NO RIGHT OR WRONG ANSWER. WE JUST NEED YOU
24 TO BE HONEST WITH US.

25 A NO.

1 Q OKAY. AND TELL ME WHY.

2 A BECAUSE I THINK LIKE WHAT YOU FEEL IN YOUR HEART, IT
3 WOULD BE HARD TO THROW THAT OUT IN YOUR SOUL.

4 Q YEAH. DO YOU UNDERSTAND, THOUGH, THAT THE LAW IS --
5 THE LAW REQUIRES YOU TO DO THAT, HOWEVER. YOU CAN APPLY
6 THOSE KINDS OF FEELINGS TO THE FACTS, BUT YOU CAN'T APPLY
7 THOSE KINDS OF FEELINGS TO THE LAW BECAUSE IT'S A SET
8 GUIDELINE FOR US AND WE'RE ALL SWORN TO UPHOLD IT AND TO
9 APPLY IT.

10 A RIGHT.

11 Q AND SO WHAT I'M ASKING IS WHETHER YOU'D BE ABLE TO
12 SET ALL THAT ASIDE AND SAY, OKAY, THIS IS THE LAW THE
13 JUDGE TOLD ME, EVEN THOUGH I COMPLETELY DISAGREE WITH WHAT
14 THE STATE LAW SAYS, I STILL HAVE TO APPLY IT JUST AS SHE
15 TOLD ME. WOULD YOU BE ABLE TO DO THAT?

16 A YES. DO THE BEST I COULD.

17 Q OKAY. AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.
18 AND I KNOW WE'RE ASKING YOU THINGS YOU PROBABLY NEVER
19 REALLY HAVE THOUGHT ABOUT IN ANY GREAT DETAIL. AND IF I
20 WEREN'T A LAWYER, I PROBABLY WOULDN'T HAVE THOUGHT ABOUT
21 THEM MYSELF.

22 BUT AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS. -- I
23 JUST NEED YOU TO SEARCH YOUR HEART FOR ME AND BE AS CANDID
24 WITH US AS POSSIBLE.

25 A OKAY.

1 Q OKAY? DO YOU -- AND CONSIDERING THAT QUESTION, WHAT
2 DO YOU THINK -- DO YOU THINK YOU WOULD BE ABLE TO APPLY
3 THE LAW AS I WOULD INSTRUCT YOU EVEN THOUGH YOU MIGHT
4 DISAGREE WITH ME?

5 A I WOULD SAY YES. I MEAN, I WOULD DO -- YOU KNOW, TRY
6 TO -- I MEAN, I WON'T DO -- I TRY, YOU KNOW, I FOLLOW THE
7 LAWS.

8 Q OKAY. AND YOU'D BE ABLE TO PUT OUT OF YOUR MIND ANY
9 PRECONCEPTIONS YOU MIGHT HAVE ABOUT WHAT YOU THINK THE LAW
10 IS OR WHAT YOU THINK THE LAW SHOULD BE?

11 A THE LAW, YES.

12 Q OKAY. SIR, COULD YOU DECIDE THIS CASE BASED SOLELY
13 ON THE EVIDENCE PRESENTED HERE IN THIS COURTROOM AND
14 DISREGARD ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT
15 THIS CASE? AGAIN, THERE'S NO RIGHT OR WRONG ANSWER.

16 A I WOULD SAY NO.

17 Q OKAY. ARE YOU TELLING ME THAT YOU WOULD NOT BE ABLE
18 TO COME INTO THE COURT AND LISTEN TO THE TESTIMONY OF
19 SWORN WITNESSES, WHICH IS REALLY THE ONLY EVIDENCE.
20 WHAT'S WRITTEN ABOUT A CASE IS REALLY NOT EVIDENCE.

21 BUT WOULD YOU BE ABLE TO LISTEN TO THE TESTIMONY FROM
22 THE LIPS OF SWORN WITNESSES AND THE EVIDENCE THAT WILL BE
23 INTRODUCED AND LISTEN TO THE LAW AS THE COURT WILL CHARGE
24 AND RENDER A VERDICT BASED SOLELY ON THOSE THINGS?

25 A I WOULD DEFINITELY BE ABLE TO LISTEN AND KNOW WHAT

1 I'M TOLD IN COURT, BUT IT'S HARD TO THROW OUT THINGS YOU
2 ALREADY READ ABOUT, THAT THEY MAY BE THE SAME, SO...

3 Q OR IT MAY BE COMPLETELY THE OPPOSITE.

4 A RIGHT. RIGHT.

5 Q UH-HUH.

6 A BUT YOU'D STILL HAVE THAT IN YOUR HEAD, BUT...

7 Q AND WHAT I'M TRYING TO DETERMINE IS IF YOU CAN COME
8 IN HERE LIKE A BLANK SLATE, LIKE A CHALKBOARD THAT HAS
9 BEEN COMPLETELY ERASED AND EMPTY YOUR MIND COMPLETELY AND
10 LISTEN IMPARTIALLY TO EVERY AMOUNT OF TESTIMONY AND
11 EVIDENCE THAT IS PRESENTED AND MAKE A DECISION BASED ONLY
12 ON THOSE THINGS AND THE LAW. AGAIN, THERE IS NO RIGHT OR
13 WRONG ANSWER.

14 A NO, JUST BECAUSE I WOULD FEEL I HAVE TO...

15 Q THOSE RESIDUAL THOUGHTS?

16 A IN MY HEAD.

17 Q UH-HUH.

18 A RIGHT.

19 THE COURT: ANY ADDITIONAL QUESTIONS FROM THE
20 STATE?

21 MR. HEMBREE: NO, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. DIGGS: NONE.

24 THE COURT: ANY EXCEPTION TO THE JUROR BEING
25 EXCUSED?

1 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

2 THE COURT: ANY FROM THE DEFENSE?

3 MR. KELLY: NONE.

4 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S
5 THANKS. HAVE A GREAT DAY.

6 (JUROR LEFT THE COURTROOM.)

7 THE COURT: DUANE GRATE, 123. WE HAVE SOME
8 JURORS THAT WERE SCHEDULED FOR 12 THAT ARE ALREADY
9 HERE. AND IF THEY'RE IN -- IF WE FINISH THESE NEXT
10 TWO BEFORE ONE -- I MEAN BEFORE 12 AND THEY ARE IN
11 THE NUMBER -- AND THEY ARE IN THEIR NUMERICAL
12 LISTING, WE WILL GO AHEAD AND PUSH FORWARD AND GO
13 WITH THEM ALSO.

14 (JUROR ENTERED THE COURTROOM.)

15 DWAYNE GRATE, BLACK MALE, TESTIFIED AS
16 FOLLOWS:

17 BY THE COURT:

18 Q HOW ARE YOU, SIR?

19 A ALL RIGHT.

20 Q GOOD. SIR, IF YOU COULD GET AS CLOSE TO THE
21 MICROPHONE FOR ME AS YOU CAN. STATE YOUR FULL NAME FOR
22 THE RECORD.

23 A DWAYNE ANTWAN GRATE.

24 Q AND SIR, HOW -- HOW OLD ARE YOU? AND YOU'RE JUROR
25 NUMBER IS 123; CORRECT?

1 A YES, MA'AM.

2 Q OKAY. SIR, I WILL REMIND YOU YOU'RE STILL UNDER
3 OATH. DO YOU UNDERSTAND?

4 A YES, MA'AM.

5 Q HAVE YOU HAD ANY EXPOSURE TO MEDIA ACCOUNTS ABOUT
6 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

7 A NO, MA'AM.

8 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE KNOW
9 THEY MAY SEEM VERY PERSONAL. STATE LAW REQUIRES THAT WE
10 ASK THEM. AND IN A CASE OF THIS TYPE WE HAVE TO TALK TO
11 EACH PROSPECTIVE JUROR INDIVIDUALLY.

12 THERE ARE NO RIGHT OR WRONG ANSWERS. ALL WE ASK IS
13 THAT YOU BE COMPLETELY HONEST WITH US, THAT YOU ANSWER THE
14 QUESTIONS FULLY AND COMPLETELY. TO THE BEST OF YOUR
15 ABILITY I NEED FOR YOU TO ANSWER YES OR NO. OKAY?

16 A OKAY.

17 Q IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET US
18 KNOW.

19 A ALL RIGHT.

20 Q SIR, AMONG OTHER THINGS WE'LL BE TALKING ABOUT
21 PENALTIES. THE MERE FACT THAT WE TALK ABOUT A PENALTY
22 DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS
23 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
24 THAT?

25 A YES, MA'AM.

1 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
2 YOU LISTEN TO THE LAW?

3 A YES, MA'AM.

4 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
5 INSTRUCT YOU?

6 A YES.

7 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
8 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

9 A YES.

10 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
11 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
12 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
13 CASE?

14 A YES.

15 Q HAVE YOU SEEN ANY MEDIA ACCOUNTS ABOUT THIS CASE
16 BEFORE YOU ARRIVED ON TUESDAY?

17 A NO, MA'AM.

18 Q OKAY. IN A CRIMINAL CASE, SIR, THE STATE HAS THE
19 BURDEN OF PROVING GUILT BEYOND A REASONABLE DOUBT. DO YOU
20 UNDERSTAND THAT?

21 A YES.

22 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
23 PROVE HIS INNOCENCE?

24 A YES.

25 Q SIR, HAVE YOU LOOKED AT THE JUROR TYPE SHEET WHEN YOU

1 WERE IN THE JURY ROOM?

2 A YES, MA'AM.

3 Q AND SIR, DO YOU FEEL YOU FIT INTO ANY OF THOSE
4 CATEGORIES? IN OTHER WORDS, DO YOU FEEL YOU'RE A TYPE
5 ONE, A TYPE TWO, OR A TYPE THREE AND DO YOU -- WELL, LET
6 ME ASK IT MORE BASICALLY. DO YOU UNDERSTAND WHAT TYPE
7 ONE, TYPE TWO, AND TYPE THREE ARE?

8 A YES, I READ THAT A COUPLE TIMES.

9 Q OKAY. DO YOU FEEL THAT YOU ARE A TYPE ONE, A TYPE
10 TWO, OR A TYPE THREE?

11 A TYPE ONE.

12 Q OKAY. AND THAT IS THE TYPE JUROR WHO IS UNWILLING OR
13 UNABLE TO EVER IMPOSE THE DEATH PENALTY. IS THAT CORRECT?

14 A YES.

15 Q OKAY.

16 THE COURT: ANY QUESTIONS FROM THE STATE?

17 MR. HEMBREE: NONE, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MR. KELLY: NONE.

20 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
21 EXCUSED FROM THE STATE?

22 MR. HEMBREE: NO, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MR. KELLY: NONE.

25 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S

1 THANKS. HAVE A GREAT DAY.

2 JUROR: YOU, TOO.

3 THE COURT: TAKE CARE.

4 (JUROR LEFT THE COURTROOM.)

5 THE COURT: LILIAN VEREEN, 339.

6 (JUROR ENTERED THE COURTROOM.)

7 LILIAN VEREEN, BLACK FEMALE, TESTIFIED AS
8 FOLLOWS:

9 BY THE COURT:

10 Q HI.

11 A GOOD MORNING.

12 Q GOOD MORNING. HOW ARE YOU?

13 A GOOD. HOW ARE YOU?

14 Q DOING FINE. YOU'D HAVE A SEAT FOR ME. AND TAKE A
15 DEEP BREATH.

16 A OKAY.

17 Q AND PULL AS CLOSE TO THE MICROPHONE FOR US AS YOU
18 CAN.

19 A OKAY.

20 Q OKAY. TAKE A DEEP BREATH. I KNOW IT CAN BE A LITTLE
21 UNNERVING AND RUSHING AROUND.

22 A OKAY.

23 Q MA'AM, IF YOU WILL TELL US YOUR NAME FOR THE RECORD.

24 A MY NAME IS LILIAN VEREEN MCCRAY.

25 Q MCCRAY, AND IS THAT M-C-C-R-A-Y?

1 A M-C-C-R-A-Y.

2 Q AND YOU ARE JUROR 339; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q AND MA'AM, I WILL REMIND YOU YOU'RE STILL UNDER OATH.
5 DO YOU UNDERSTAND?

6 A YES, MA'AM.

7 Q HAVE YOU HAD ANY EXPOSURE TO THE MEDIA COVERAGE ABOUT
8 THIS CASE SINCE THE COURT'S INSTRUCTIONS?

9 A NO, MA'AM.

10 Q OKAY. MA'AM, WE'RE GOING TO ASK YOU SOME QUESTIONS.
11 I KNOW MANY OF THEM MAY SEEM VERY PERSONAL. IT'S NOT OUR
12 INTENT TO INVADE YOUR PRIVACY. STATE LAW REQUIRES THAT WE
13 ASK EACH AND EVERY ONE OF THESE QUESTIONS.

14 A OKAY.

15 Q IN A CASE OF THIS TYPE WE'RE REQUIRED TO TALK TO EACH
16 JUROR INDIVIDUALLY JUST BECAUSE OF THE NATURE OF THE CASE.
17 OKAY?

18 A OKAY.

19 Q SO TAKE A DEEP BREATH AGAIN.

20 A (COMPLIED.)

21 Q EXACTLY. AND EXHALE AS THEY SAY. AND I WANT TO
22 REMIND YOU THAT THERE -- AND EMPHASIZE THAT THERE ARE NO
23 RIGHT OR WRONG ANSWERS.

24 A OKAY.

25 Q THE ONLY THING THAT WE ASK OF YOU IS THAT YOU BE

1 COMPLETELY CANDID WITH US, ANSWER THE QUESTIONS OPENLY,
2 HONESTLY, AND FULLY, AND TO THE BEST OF YOUR ABILITY
3 ANSWER YES OR NO.

4 A OKAY.

5 Q OKAY. AND IF YOU DON'T UNDERSTAND SOMETHING, PLEASE
6 LET ME KNOW.

7 A OKAY.

8 Q AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
9 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT
10 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN
11 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

12 A YES.

13 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
14 LISTEN TO THE LAW?

15 A YES.

16 Q COULD YOU ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

17 A YES.

18 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
19 MAY DISAGREE WITH ME ABOUT WHAT THE LAW IS?

20 A YES.

21 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
22 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
23 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
24 CASE?

25 A YES.

1 Q HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE PRIOR TO
2 REPORTING ON TUESDAY?

3 A NO.

4 Q OKAY. IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
5 PROVING THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
6 DO YOU UNDERSTAND?

7 A YES.

8 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
9 NO BURDEN TO PROVE HIS INNOCENCE? WANT ME TO EXPLAIN THAT
10 TO YOU?

11 A UH-HUH.

12 Q IN EVERY CASE THAT IS BROUGHT BY THE STATE OF SOUTH
13 CAROLINA, THE SOLICITOR WHO REPRESENTS THE STATE HAS TO
14 PROVE EACH AND EVERY ELEMENT OF THE CRIME BECAUSE EVERY
15 CRIME HAS ELEMENTS.

16 IN OTHER WORDS, LIKE SAY IT WERE BURGLARY. THERE ARE
17 SEVERAL ELEMENTS TO BURGLARY, THERE DIFFERENT KINDS OF
18 BURGLARY. BUT TO SIMPLIFY IT, LET'S JUST SAY FOR EXAMPLE
19 IT'S ENTERING SOMEONE'S RESIDENCE OR BUILDING WITHOUT
20 PERMISSION WITH THE INTENT TO COMMIT A FELONY WHICH IS TO
21 STEAL.

22 A UH-HUH.

23 Q AND LET'S SAY THAT A DEFENDANT IS CHARGED WITH
24 BURGLARY. THE STATE HAS TO PROVE TO YOUR SATISFACTION
25 BOTH OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT. THE

1 DEFENDANT COMES TO COURT CLOAKED WITH THE PRESUMPTION OF
2 INNOCENCE.

3 IN THE EYES OF THE LAW HE IS COMPLETELY INNOCENT. HE
4 DOESN'T HAVE THE SAY ANYTHING. HE DOESN'T HAVE TO TALK.
5 HIS LAWYERS DON'T HAVE TO GIVE AN OPENING OR A CLOSING
6 ARGUMENT AND THEY DON'T HAVE TO PRESENT ONE SINGLE
7 SOLITARY BIT OF EVIDENCE OR WITNESSES.

8 IRREGARDLESS OF THAT, THE STATE STILL HAS TO PROVE
9 THEIR CASE BEYOND A REASONABLE DOUBT TO YOUR SATISFACTION
10 AS A JUROR. AND THAT IS WHAT I MEAN WHEN I SAY THAT HE
11 HAS NO BURDEN TO PROVE HIS INNOCENCE.

12 DO YOU NOW UNDERSTAND WHAT I'M ASKING? BECAUSE
13 SOMETIMES PEOPLE HAVE THE IMPRESSION THAT A PERSON HAS TO
14 TESTIFY, THEY GOT TO TELL YOU STUFF, THEY GOT TO EXPLAIN
15 THEMSELVES. THEY DON'T. THEY HAVE NO BURDEN.

16 THE LAW SAYS THEY CAN SIT THERE SILENT, THAT THEY
17 HAVE NO RIGHT -- THEY DON'T HAVE TO PROVE ANYTHING TO YOU,
18 TO A JUROR. ONLY THE STATE HAS THE BURDEN OF PROOF. AND
19 MOST PEOPLE DON'T -- WELL, SOME PEOPLE DON'T UNDERSTAND
20 THAT AND THAT'S WHY I GAVE YOU THAT EXAMPLE.

21 WITH THE COURT'S EXPLANATION, DO YOU NOW UNDERSTAND
22 THE DEFENDANT HAS NO BURDEN TO PROVE ANYTHING TO THE JURY,
23 LEAST OF ALL HIS INNOCENCE?

24 A YES.

25 Q OKAY. WITH THE COURT'S EXPLANATION YOU NOW

1 UNDERSTAND THAT?

2 A YES.

3 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
4 JUROR TYPE SHEET?

5 A YES.

6 Q AND DO YOU FEEL YOU FIT INTO ANY OF THOSE CATEGORIES?

7 A YES.

8 Q WHICH CATEGORY IS THAT?

9 A JUROR TYPE THREE.

10 Q OKAY. MA'AM, IF YOU WERE A JUROR IN A DEATH PENALTY
11 CASE AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF
12 MURDER, WE WOULD THEN MOVE TO THE SENTENCING PHASE OF THE
13 TRIAL. AND AS I EXPLAINED, THERE'S A GUILT PHASE,
14 SENTENCING PHASE.

15 THE DEFENDANT IS FOUND GUILTY IN THE -- OF MURDER IN
16 THE GUILT PHASE, WE THEN MOVE TO THE SENTENCING PHASE,
17 BECAUSE IN SOUTH CAROLINA THE JURY DECIDES PENALTY,
18 WHETHER THAT BE LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
19 DEATH. DO YOU UNDERSTAND?

20 A YES.

21 Q AND DURING THE COURSE OF THAT SENTENCING PHASE THE
22 JURY HAS THE ABILITY TO CONSIDER AGGRAVATING CIRCUMSTANCES
23 AND MITIGATING CIRCUMSTANCES. I'M GOING TO EXPLAIN TO YOU
24 WHAT THOSE ARE; OKAY?

25 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,

1 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
2 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
3 THE OFFENSE OF MURDER.

4 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
5 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
6 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
7 COMMISSION OF A CRIME.. BLESS YOU.

8 AND SOME EXAMPLES WOULD BE THE MURDER OF A CHILD
9 UNDER THE AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON,
10 OR BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES
11 SO THAT YOU CAN UNDERSTAND WHAT WE MEAN BY AN AGGRAVATING
12 CIRCUMSTANCE.

13 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
14 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
15 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
16 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
17 MORAL CULPABILITY OR RESPONSIBILITY.

18 SOME EXAMPLES OF THOSE WOULD BE MENTAL RETARDATION AT
19 THE TIME OF THE CRIME, THAT THE DEFENDANT WAS BELOW THE
20 AGE OF 18 AT THE TIME OF THE CRIME, THAT HE OR SHE WAS AN
21 ACCOMPLICE AND THEIR PARTICIPATION WAS RELATIVELY MINOR,
22 THAT THE DEFENDANT ACTED UNDER DURESS OR DOMINATION.

23 AGAIN, THESE ARE JUST EXAMPLES OF MITIGATION BECAUSE
24 THERE IS NO DEFINITIVE LIST OF MITIGATING CIRCUMSTANCES.
25 OKAY? DO YOU UNDERSTAND WHAT I MEAN BY AGGRAVATING AND

1 MITIGATING?

2 A SOMEWHAT.

3 Q OKAY. TELL ME WHAT YOU DON'T UNDERSTAND.

4 A WHAT YOU'RE SAYING IS THIS...

5 Q THERE ARE CERTAIN CIRCUMSTANCES THAT THE LAW ALLOWS
6 YOU TO CONSIDER AGGRAVATE THE CRIME OF MURDER.

7 A OKAY.

8 Q AND THERE'S CERTAIN CIRCUMSTANCES THAT THE LAW SAYS
9 MAKE IT LESS--

10 A I UNDERSTAND.

11 Q -- THAT MITIGATES IT.

12 A OKAY.

13 Q AND THEREFORE IT HAS THE POTENTIAL TO MITIGATE ANY
14 PUNISHMENT.

15 A RIGHT.

16 Q IS THAT MORE CLEAR TO YOU?

17 A YEAH.

18 Q OKAY. IF YOU WERE A JUROR IN THE SENTENCING PHASE OF
19 THE CASE, DEPENDING UPON THE PARTICULAR FACTS AND
20 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
21 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW AS I
22 WOULD INSTRUCT YOU AT THE END OF THE CASE, COULD YOU
23 RETURN A SENTENCE OF LIFE IN PRISON WITHOUT THE
24 POSSIBILITY OF PAROLE?

25 A YES.

1 Q COULD YOU UNDER THOSE SAME CIRCUMSTANCES CONSIDERING
2 THE PARTICULAR FACTS AND CIRCUMSTANCES OF A CASE INCLUDING
3 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
4 CIRCUMSTANCES AND THE LAW AS THE COURT WOULD INSTRUCT,
5 COULD YOU RETURN A SENTENCE OF DEATH WHICH IN THIS STATE
6 IS BY ELECTROCUTION OR BY LETHAL INJECTION?

7 A YES.

8 Q IF YOU ARE CHOSEN FOR THIS JURY, AS I EXPLAINED ON
9 TUESDAY, YOU WILL BE SEQUESTERED WHICH MEANS YOU WILL BE
10 HOUSED IN A HOTEL FOR APPROXIMATELY 10 DAYS. EXCEPT FOR
11 PERSONAL INCONVENIENCE, WHICH WE ALREADY ASSUME, WOULD
12 THIS POSE A SERIOUS DANGER TO YOUR HEALTH OR WELL-BEING?

13 A NO.

14 Q NOW, IN A CAPITAL CASE EACH JUROR IS REQUIRED TO SIGN
15 THE VERDICT FORM, WHETHER THAT BE FOR LIFE WITHOUT THE
16 POSSIBILITY OF PAROLE OR DEATH, AND IT'S LISTED ONE
17 THROUGH 12 AND EACH JUROR HAS TO SIGN THEIR NAME BECAUSE
18 AS I INDICATED, THE JURY IMPOSES PENALTY AND THE COURT HAS
19 TO UPHOLD THAT IRREGARDLESS OF WHAT IT IS. OKAY.

20 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
21 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
22 DEATH?

23 A YES.

24 Q OKAY.

25 THE COURT: ANY QUESTIONS FROM THE STATE?

1 MR. HEMBREE: I DON'T HAVE ANY QUESTIONS FOR
2 MRS.--

3 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

4 MR. KELLY: NO, MA'AM.

5 THE COURT: ANY EXCEPTION TO THE JUROR BEING
6 FOUND QUALIFIED?

7 MR. HEMBREE: NO, YOUR HONOR. MRS. MCCRAY IS
8 QUALIFIED.

9 THE COURT: FROM THE DEFENDANT?

10 MR. KELLY: SHE'S QUALIFIED, MA'AM.

11 THE COURT: SHE WILL BE NUMBER 30. MA'AM, YOU
12 HAVE BEEN FOUND QUALIFIED WHICH MEANS YOU ARE NOW IN
13 THE POOL OF QUALIFIED JURORS FROM WHICH WE WILL
14 SELECT THE ACTUAL JURY ON MONDAY.

15 JUROR: OKAY.

16 THE COURT: SO I NEED YOU TO RETURN ON MONDAY
17 MORNING AT 9:30. I NEED YOU TO BE PACKED FOR AT
18 LEAST 10 DAYS, BRING EVERYTHING YOU MIGHT NEED. OF
19 COURSE, YOU DON'T HAVE TO TOTE IT UP HERE.

20 IF YOU'RE SELECTED FOR THE JURY, YOU WILL NOT BE
21 ALLOWED TO RETURN HOME, BUT WE WILL MAKE ARRANGEMENTS
22 TO GET YOU SITUATED IN THE HOTEL. OF COURSE, YOU
23 WILL HAVE YOUR OWN LIVING ARRANGEMENTS. YOU WON'T
24 HAVE TO SHARE A ROOM WITH ANYONE.

25 DURING THE BREAK, HOWEVER, I NEED FOR YOU TO

1 ABIDE BY MY INSTRUCTIONS. PLEASE HAVE NO DISCUSSION
2 ABOUT THIS CASE AMONG YOURSELF -- AMONG -- WITH
3 ANYONE, THAT INCLUDES YOUR FAMILY MEMBERS, YOUR
4 FRIENDS, OR OTHERWISE.

5 AND I KNOW IT'S DIFFICULT BECAUSE PEOPLE ARE
6 GOING TO COME UP TO YOU AND THEY ARE GOING TO SAY, I
7 HEAR YOU GOT SUBPOENAED FOR JURY DUTY, AND THEY WANT
8 TO CHAT. AND YOU JUST TELL THEM, I CANNOT DISCUSS
9 IT, I CANNOT VIOLATE THE COURT'S RULE, BECAUSE IT IS
10 JUST ESSENTIAL THAT WE MAINTAIN YOUR IMPARTIALITY.

11 ALSO, PLEASE DON'T ALLOW YOURSELF TO BE EXPOSED
12 TO ANY MEDIA ACCOUNTS ABOUT THIS CASE BECAUSE AGAIN
13 YOUR IMPARTIALITY IS JUST SO VERY IMPORTANT. WE
14 APPRECIATE YOUR TIME AND YOUR PATIENCE, AND HAVE A
15 GREAT DAY. WE WILL SEE YOU ON MONDAY AT 9:30.

16 JUROR: OKAY.

17 THE COURT: ALL RIGHT. BYE BYE.

18 JUROR: I GO BACK OUT THE SAME WAY?

19 THE COURT: YES, MA'AM.

20 JUROR: OKAY. HAVE A GREAT DAY.

21 THE COURT: YOU DO, TOO.

22 (JUROR LEFT THE COURTROOM.)

23 THE COURT: BENJAMIN HOLT, 160.

24 (JUROR ENTERED THE COURTROOM.)

25 BENJAMIN HOLT, WHITE MALE, TESTIFIED AS

1 FOLLOWS:

2 BY THE COURT:

3 Q MR. HOLT, HOW ARE YOU?

4 A FINE. HOW ARE YOU?

5 Q IF YOU'D HAVE A SEAT FOR ME AND SCOOT AS CLOSE TO THE
6 MICROPHONE AS YOU CAN. AND STATE YOUR FULL NAME FOR THE
7 RECORD.

8 A BENJAMIN BRIAN HOLT.

9 Q AND MR. HOLT, YOU ARE JUROR 160; IS THAT CORRECT?

10 A YES, MA'AM.

11 Q SIR, I WILL REMIND YOU YOU'RE STILL UNDER OATH. DO
12 YOU UNDERSTAND?

13 A YES, MA'AM.

14 Q HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE SINCE
15 THE COURT'S INSTRUCTIONS ON TUESDAY?

16 A NO, MA'AM.

17 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. I NEED
18 YOU TO TAKE A DEEP BREATH. I KNOW THIS CAN BE A LITTLE
19 UNNERVING TO BE KIND OF ALMOST FEELING LIKE YOU'RE IN THE
20 SPOTLIGHT.

21 WE'RE GOING TO ASK YOU SOME QUESTIONS. BECAUSE OF
22 THE NATURE OF THIS CASE STATE LAW PROVIDES THAT WE TALK TO
23 EACH JUROR INDIVIDUALLY. I KNOW SOME OF THESE QUESTIONS
24 MAY SEEM REALLY PERSONAL.

25 A OKAY.

1 Q IT'S NOT OUR INTENT TO INVADE YOUR PRIVACY. AND WE
2 ALSO KNOW SOME OF THESE THINGS YOU REALLY MAY HAVE NEVER
3 THOUGHT ABOUT IN ANY GREAT DETAIL.

4 A OKAY.

5 Q THE ONLY THING THAT WE ASK OF YOU IS THAT YOU BE
6 OPEN, HONEST, AND FULL IN YOUR ANSWERS AND THAT YOU BE
7 CANDID WITH US. I EMPHASIZE THERE ARE NO RIGHT OR WRONG
8 ANSWERS.

9 A OKAY.

10 Q OKAY? IF YOU DON'T UNDERSTAND A QUESTION, LET US
11 KNOW, AND WE'LL BE SURE TO TRY TO MAKE IT -- COMMUNICATE A
12 LITTLE BIT BETTER BECAUSE SOMETIMES WE USE LEGALESE AND WE
13 JUST THINK EVERYBODY UNDERSTANDS US AND THEY DO NOT.

14 A I UNDERSTAND.

15 Q OKAY. AMONG OTHER THINGS WE WILL BE TALKING ABOUT
16 PENALTY. THE FACT THAT WE DISCUSS PENALTY IS NO
17 INDICATION ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW
18 TO BE INNOCENT. DO YOU UNDERSTAND?

19 A YES, MA'AM.

20 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
21 YOU LISTEN TO THE LAW?

22 A YES, MA'AM.

23 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
24 INSTRUCT YOU?

25 A YES, MA'AM.

1 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
2 MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW
3 ACTUALLY IS?

4 A YES, MA'AM.

5 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
6 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
7 AND DISABUSE FROM YOUR MIND ANYTHING YOU MAY HAVE HEARD,
8 READ, OR SEEN ABOUT THIS CASE PRIOR TO SERVING ON JURY
9 DUTY?

10 A YES, MA'AM.

11 Q SIR, HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS
12 ABOUT THIS CASE PRIOR TO ARRIVING ON TUESDAY? SORRY. MY
13 EYES ARE ITCHING.

14 A THE ONLY THING I REMEMBER IS HIS NAME. I DIDN'T
15 REALLY KNOW -- I USED TO LISTEN TO TALK RADIO A GOOD BIT,
16 BUT I STOPPED ABOUT A YEAR AGO AND JUST LISTEN. I DRIVE A
17 GOOD DISTANCE ON THE WAY TO WORK, SO I LISTEN TO A BOOK ON
18 TAPE.

19 Q OH, THAT'S SMART. I DO THAT, TOO. YOU READ A WHOLE
20 LOT MORE BOOKS; DON'T YOU?

21 A YES, MA'AM.

22 Q YEAH. AS A RESULT OF WHAT YOU MAY HAVE BEEN EXPOSED
23 TO, DO YOU FEEL THAT YOU FORMED ANY FIXED OPINION ABOUT
24 THE FACTS IN THIS CASE?

25 A NOT NECESSARILY OTHER THAN WHAT I HAVE HEARD JUST

1 FROM PEOPLE. I HAVEN'T REALLY...

2 Q OKAY. A FIXED OPINION IS ONE THAT MEANS MY MIND IS
3 ALREADY MADE UP AND I'M FIXED ON AN OPINION ABOUT HOW I
4 FEEL AND BASICALLY MY MIND IS ALREADY MADE UP. DO YOU
5 FEEL YOU HAVE A FIXED OPINION? AGAIN, THERE ARE NO RIGHT
6 OR WRONG ANSWERS.

7 A I GUESS IN -- WELL, YOU WANT ME TO BE HONEST.

8 Q YEAH, I DO.

9 A MY PERSONAL -- MY PERSONAL OPINION IS THAT IF SOMEONE
10 IS PLEADING INSANITY, THAT MEANS THEY ARE LOOKING FOR A
11 WAY OUT.

12 Q OKAY. SO DO YOU FEEL THAT YOU FORMED A FIXED OPINION
13 ABOUT THE CASE, ABOUT THE FACTS AND CIRCUMSTANCES OF THE
14 CASE?

15 A WELL, I HAVEN'T HEARD THE FACTS OR CIRCUMSTANCES, BUT
16 IF SOMEBODY, YOU KNOW, BEFOREHAND IF THEY HAVE BEEN
17 ACCUSED OF A CERTAIN CRIME, THEY'RE LOOKING FOR A WAY OUT,
18 THAT WILL BE MY ANSWER.

19 Q OKAY. SIR, LET ME ASK THE QUESTION A LITTLE
20 DIFFERENTLY. DO YOU FEEL -- BECAUSE ONCE A JUROR TAKES AN
21 OATH, THEY SWEAR BASICALLY TO COME INTO THIS COURT AS AN
22 EMPTY VESSEL AND TO LISTEN TO THE EVIDENCE THAT WILL BE
23 PROVIDED FROM THE LIPS OF SWORN WITNESSES AND FROM THE
24 EVIDENCE THAT WILL BE INTRODUCED AND APPLY THE LAW AS THE
25 COURT WILL INSTRUCT AND THEN, WHEN RELEASED, DELIBERATE

1 WITH THEIR FELLOW JURORS AND RENDER A DECISION BASED
2 SOLELY ON THAT EVIDENCE AND ON THE LAW THAT THE COURT WILL
3 CHARGE.

4 AND WHAT I'M TRYING TO DETERMINE IS CAN YOU DO THAT?

5 A I FEEL LIKE I COULD.

6 Q OKAY. AND AGAIN, I NEED A YES OR NO ANSWER. AND
7 THERE IS NO RIGHT OR WRONG ANSWER.

8 A YES, MA'AM.

9 Q OKAY. AND YOU FEEL THAT YOU COULD -- BECAUSE YOU
10 HAVE INDICATED TO ME THAT YOU FEEL IF SOMEONE PLEADS
11 INSANITY, THEY ARE SIMPLY LOOKING FOR A WAY OUT. WELL,
12 LET ME -- LET ME REPHRASE IT. YOU SAID IF THEY HAVE DONE
13 IT--

14 A RIGHT.

15 Q -- AND THEY PLEAD INSANITY, YOU FEEL LIKE THEY ARE
16 LOOKING FOR A WAY OUT. DO YOU BELIEVE THAT YOU COULD
17 DISREGARD THAT PREDISPOSITION AND LISTEN TO THE EVIDENCE
18 IMPARTIALLY AND LISTEN TO THE ARGUMENTS OF COUNSEL AND
19 LISTEN TO THE LAW AS THE COURT WILL CHARGE AND PUT ALL OF
20 THAT ASIDE AND ONLY CONSIDER THOSE THINGS WHEN MAKING A
21 DECISION?

22 A NO, MA'AM.

23 Q OKAY.

24 THE COURT: ANY QUESTIONS FROM THE STATE?

25 MR. HEMBREE: NO.

1 THE COURT: FROM THE DEFENSE?

2 MR. DIGGS: NONE, YOUR HONOR.

3 THE COURT: ANY EXCEPTION TO EXCUSING THE JUROR?

4 MR. HEMBREE: NO, MA'AM.

5 THE COURT: FROM THE DEFENSE?

6 MR. DIGGS: NO, MA'AM.

7 THE COURT: SIR, HAVE A WONDERFUL DAY. WE
8 APPRECIATE YOUR CANDOR, TOO.

9 (JUROR LEFT THE COURTROOM.)

10 THE COURT: HAVE A GREAT DAY. OKAY. NOW MADAM
11 CLERK, WE NEED TO -- NOW I AM INSTRUCTING THE CLERK
12 TO FILL IN STARTING AT NUMBER 31 AS FOLLOWS. AND
13 THESE ARE JURORS THAT WE TOOK OUT OF ORDER.

14 WE WILL FILL IN AS FOLLOWS BEGINNING WITH 31 IN
15 THE ORDER THAT THE JURORS THAT WERE QUALIFIED. BETTY
16 M MERCER, JUROR 367, TOMMY BARNHILL, JUROR 15,
17 WILLIAM E FRANKLIN, SENIOR, JUROR 101, DEBORAH I
18 NEWTON, JUROR 242, AND ZANDRENA GAMBLE, JUROR 375.
19 IS THAT EVERYONE'S UNDERSTANDING?

20 MR. HEMBREE: THAT'S WHAT WE HAVE, YOUR HONOR.

21 MR. KELLY: YES, MA'AM.

22 THE COURT: THAT WOULD TAKE US TO 35 JURORS;
23 CORRECT?

24 MR. HEMBREE: CORRECT.

25 THE COURT: THE BAILIFFS HAVE INDICATED TO ME

1 THAT THERE ARE SOME JURORS HERE ALREADY. AND I AM
2 GOING TO ASCERTAIN WHETHER SOME WHO ARE ALREADY --
3 THEY ARE HERE LISTED IN THEIR PROPER ORDER, AND IF
4 THEY ARE, WE'RE GOING TO PUSH FORWARD A LITTLE BIT.

5 IF THEY ARE NOT, WE WILL WAIT TILL 12 AND I WILL
6 BREAK THE JURORS OUT INTO PANELS AS WE'VE INDICATED.
7 AND I DID IT -- I APOLOGIZE, THE NUMBERS ARE FOR THE
8 NUMBER -- FOR THE PEOPLE ABOVE THE TIME SLOT.

9 IN OTHER WORDS, ONE THROUGH SIX IS 12. SEVEN
10 THROUGH 12 IS 2:30. 13 THROUGH 18 IS 3:30. 19
11 THROUGH 24 IS 1:48 -- I MEAN, 19 THROUGH 24 IS 4:30.
12 25 THROUGH 30 IS 5:30. AND THEN I'M GOING TO TELL 31
13 THROUGH 48 JUST TO COME BACK AT 5:30 ALSO BECAUSE I
14 KIND OF THINK WE WILL BE AT OUR IDEAL NUMBER BY THEN
15 AND I WILL BE ABLE TO EXCUSE THEM ALL AND I DIDN'T
16 WANT TO PROTRACT OUT ESPECIALLY ON A FRIDAY NIGHT,
17 I'D LIKE THEM TO STILL LIKE ME, NOT HAVE THEM COME IN
18 HERE AFTER, YOU KNOW, HERE LATER, BECAUSE THEY HAVE
19 PLANS, THEY HAVE CHILDREN, SPORTING ACTIVITIES, AND
20 IT'S SUMMERTIME.

21 I'D LIKE TO BE ABLE TO LET THEM GO AS SOON AS
22 POSSIBLE AFTER IF THAT IS -- IF WE'RE CAPABLE OF
23 THAT. CAN WE SEE IN ASHLEY MYERS, 238, IS HERE?
24 THAT WOULD BE NUMBER ONE ON OUR LIST. AND THEN WHAT
25 WE'LL DO IS GO TO ONE... WE'LL JUST CROSS THAT

1 BRIDGE WHEN WE COME TO IT. SHE'S NOT HERE? OKAY.
2 THEN WHAT WE WILL DO...

3 (OFF-THE-RECORD DISCUSSION WAS HAD.)

4 (WHEREUPON THERE WAS A PAUSE.)

5 THE COURT: WE HAVE A DOCTOR'S EXCUSE FROM JUROR
6 373 WHO IS --

7 MR. HUMPHRIES: THAT'S MRS. DUMM.

8 THE COURT: SHE'S AT THE END OF THE PANEL. SHE
9 WOULD FALL AFTER THE FIRST 5:30 GROUP. WHAT THE
10 EXCUSE SAYS IS, DUE TO DIABETES, LOWER SPINE -- WELL,
11 LS SPINE AND CERVICAL NECK AND HEART DISEASE, MRS.
12 DUMM CANNOT SERVE ON JURY DUTY, SHE IS IN CONSTANT
13 PAIN AND CANNOT SIT AND STAND FOR LONG PERIODS OF
14 TIME.

15 SHE'S ON INSULIN AND MUST EAT ON TIME. I'M
16 TRYING TO REMEMBER. DID SHE HAVE ON THE BLUE TOP?

17 MR. HEMBREE: SHE HAD THE FUSED SPINE. SHE SAID
18 SHE HAD A METAL ROD.

19 THE COURT: WHAT DO Y'ALL WANT TO DO? DO Y'ALL
20 WANT TO EXCUSE HER BECAUSE I DON'T THINK WE'RE GOING
21 TO GET TO HER.

22 MR. HEMBREE: IF WE WERE HAVING TROUBLE, I'D SAY
23 KEEP HER, BUT WE'RE LOOKING GOOD.

24 THE COURT: MR. KELLY, WHAT DO YOU THINK?

25 MR. KELLY: I THINK WE SHOULD EXCUSE.

1 THE COURT: OKAY. CAN WE BRING IN MRS. DONE,
2 NUMBER 373? I ASSUME SHE'S HERE SINCE SHE SENT ME IN
3 HER NOTE.

4 THE CLERK: WHAT NUMBER IS SHE, JUDGE, ON YOUR
5 LIST?

6 THE COURT: SHE IS NUMBER 35. I SAID DONE IT'S
7 DUMM. IT'S DUMM, D-U-M-M. WE WILL ATTACH THAT FOR
8 THE RECORD.

9 (JUROR ENTERED THE COURTROOM.)

10 BARBARA DUMM, WHITE FEMALE, TESTIFIED AS
11 FOLLOWS:

12 BY THE COURT:

13 Q OKAY. MRS. DUMM, HOW ARE YOU?

14 A I'M FINE.

15 Q BASED ON YOUR DOCTOR'S EXCUSE, WE ARE GOING TO EXCUSE
16 YOU FROM SERVICE. OKAY. AND WE HOPE YOU FEEL BETTER.

17 A YOU KNOW WHAT, I DIDN'T WANT TO DISRESPECT YOU,
18 BECAUSE I HONORED YOU.

19 Q NO, NOT AT ALL.

20 A BUT I FELT LIKE YOU DIDN'T KNOW HOW SEVERE MY CASE
21 WAS.

22 Q YES, MA'AM. NO. AND WE'RE GLAD TO EXCUSE YOU.

23 A I LEFT HERE MISERABLE.

24 THE COURT: I'M SORRY. WE'LL TAKE CARE -- WE
25 WILL EXCUSE YOU. WE HOPE YOU HAVE A GREAT DAY.

1 JUROR: THANK YOU.

2 THE COURT: YOU'RE WELCOME.

3 (JUROR LEFT THE COURTROOM.)

4 THE COURT: MRS. MYERS IS NOW HERE. DID WE WANT
5 TO PUSH AHEAD AND DO HER WHILE WE ARE WAITING ON
6 EVERYBODY ELSE? SHE IS NUMBER ONE ON THE FIRST 12:00
7 PANEL. ASHLEY MYERS, 238.

8 (JUROR ENTERED THE COURTROOM.)

9 ASHLEY MYERS, BLACK FEMALE, TESTIFIED
10 AS FOLLOWS:

11 BY THE COURT:

12 Q HOW ARE YOU, MA'AM?

13 A GOOD. HOW ARE YOU?

14 Q DOING FINE. IF YOU WILL HAVE A SEAT FOR US. IF YOU
15 WOULD STATE YOUR NAME FOR THE RECORD.

16 A ASHLEY MYERS.

17 Q AND MRS. MYERS, YOU ARE JUROR 278; IS THAT CORRECT?

18 A YES, MA'AM.

19 Q I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH.

20 YOU'RE A LITTLE SOFT SPOKEN. IF YOU COULD SLIDE A LITTLE
21 CLOSER -- OR ACTUALLY WE COULD SLIDE THE TABLE TO YOU.

22 YEAH, JUST PULL IT TOWARDS YOU. AND IF YOU COULD SPEAK
23 INTO THE MICROPHONE FOR US SO THAT WE WILL ALL HEAR YOU.

24 A OKAY.

25 Q AGAIN I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH.

1 DO YOU UNDERSTAND?

2 A YES.

3 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
4 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

5 A NO, MA'AM.

6 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. WE KNOW SOME
7 OF THEM MAY SEEM PRIVATE. WE'RE NOT TRYING TO INVAD E YOUR
8 PRIVACY. WE JUST NEED TO DETERMINE WHAT YOUR VIEWS ARE
9 ABOUT SOME SUBJECTS.

10 A OKAY.

11 Q STATE LAW REQUIRES THAT WE ASK THESE QUESTIONS, AND
12 IT REQUIRES US TO TALK TO EACH JUROR INDIVIDUALLY IN A
13 CASE OF THIS TYPE. THERE ARE NO RIGHT OR WRONG ANSWERS.
14 WE JUST NEED YOU TO ANSWER US AS HONESTLY, OPENLY, AND
15 CANDIDLY AND FULLY AS YOU CAN, AND TO THE BEST OF YOUR
16 ABILITY TO GIVE US YES OR NO ANSWERS. AGAIN, I EMPHASIZE
17 THERE ARE NO RIGHT OR WRONG ANSWERS.

18 A OKAY.

19 Q AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.
20 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY IS NO
21 INDICATION OF THE DEFENDANT. HE IS PRESUMED IN THE LAW TO
22 BE INNOCENT. DO YOU UNDERSTAND?

23 A YES.

24 Q IF YOU WERE ON -- A JUROR IN A CRIMINAL CASE, COULD
25 YOU LISTEN TO THE LAW?

1 A YES.

2 Q OKAY. DO YOU UNDERSTAND WHAT I MEAN WHEN I SAY THE
3 LAW? AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.

4 A NO. COULD YOU EXPLAIN BETTER?

5 Q SURE. SOMETIMES PEOPLE THINK I'M TALKING ABOUT THE
6 FACTS OF A CASE WHEN I SAY THE LAW. THE FACTS OF THE CASE
7 ARE SOLE PROVINCE OF THE JURY WHICH MEANS IN EVERY CASE
8 TRIED IN THIS TYPE COURT, JURY IS THE FINDER OF FACTS,
9 WHICH MEANS THE JURY DECIDES WHAT THE FACTS ARE AFTER
10 LISTENING TO THE EVIDENCE AND THE WITNESSES.

11 THE LAW IS SOMETHING VERY DIFFERENT. THE LAW ARE
12 LIKE OUR GUIDELINES. THEY ARE LIKE THE RULES. SAY IF YOU
13 WERE PLAYING BASEBALL, SOFTBALL, FOOTBALL, THERE ARE RULES
14 THAT WE ALL ABIDE BY. AND THE COURT, WHEN I SAY INSTRUCTS
15 YOU ON THE LAW, I'M BASICALLY TELLING YOU WHAT THE RULES
16 ARE.

17 A OKAY.

18 Q AND THE RULES THAT YOU HAVE TO FOLLOW. IS THAT A
19 BETTER EXPLANATION FOR YOU?

20 A YES.

21 Q DO YOU THINK YOU COULD LISTEN TO THE LAW?

22 A YES, MA'AM.

23 Q DO YOU THINK YOU COULD ACCEPT AND APPLY THE LAW AS I
24 INSTRUCT YOU?

25 A YEAH, I CAN.

1 Q DO YOU THINK YOU CAN ACCEPT AND APPLY THE LAW EVEN
2 THOUGH YOU MIGHT DISAGREE WITH ME ABOUT WHAT THE LAW IS OR
3 WHAT THE LAW SHOULD BE?

4 A I WILL.

5 Q OKAY. GOOD ANSWER. I'M BEING FACETIOUS, SILLY.
6 SOMETIMES WE HAVE TO HAVE A LITTLE LEVITY, ESPECIALLY IF
7 IT TAKES THE EDGE OFF. COULD YOU DECIDE THIS CASE BASED
8 SOLELY ON THE EVIDENCE PRESENTED HERE IN THE COURTROOM AND
9 DISREGARD ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN
10 ABOUT THIS CASE?

11 A YES, MA'AM.

12 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
13 ABOUT THIS CASE PRIOR TO ARRIVING ON TUESDAY?

14 A YES.

15 Q OKAY. AND AS A RESULT OF WHAT YOU MAY HAVE HEARD,
16 READ, OR SEEN, HAVE YOU FORMED ANY FIXED OPINION ABOUT
17 THIS FACTS IN THIS CASE? IN OTHER WORDS, HAVE YOU ALREADY
18 MADE UP YOUR MIND BASED ON WHAT YOU SAW?

19 A NO.

20 Q OR HEARD. OKAY?

21 A I JUST READ ABOUT STANKO THAT -- I'M ALWAYS WORKING,
22 AND I'M ALWAYS ASLEEP WHEN I GET HOME, SO I DON'T REALLY
23 HAVE TIME TO WATCH NEWS, STUFF LIKE THAT.

24 Q OKAY. SO YOU'RE TELLING ME THAT YOU HAVE NOT FORMED
25 A FIXED OPINION?

1 A NO, MA'AM.

2 Q OKAY. DO YOU BELIEVE YOU COULD COME INTO THIS COURT
3 AND LISTEN TO THE TESTIMONY OF THE SWORN WITNESSES AND THE
4 OTHER EVIDENCE THAT WILL BE INTRODUCED AND LISTEN TO THE
5 LAW AS INSTRUCTED BY THE COURT AND RENDER A VERDICT BASED
6 SOLELY ON THOSE THINGS?

7 A YES, MA'AM.

8 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
9 PROVING THE DEFENDANT'S GUILT. DO YOU UNDERSTAND THAT?

10 A THE STATE BEING...

11 Q MEANING THE STATE OF SOUTH CAROLINA, THE PEOPLE WHO
12 ARE THE CHARGING AUTHORITY, WHICH MEANS THEY ARE THE
13 PEOPLE THAT BRING CHARGES AGAINST INDIVIDUALS AND
14 BASICALLY ACCUSE THEM OF CRIMES.

15 DO YOU UNDERSTAND THAT THEY HAVE THE BURDEN OF
16 PROVING ANYTHING THEY CHARGE?

17 A YES.

18 Q IN OTHER WORDS, THEY HAVE THE BURDEN OF PROVING GUILT
19 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

20 A YES.

21 Q DO YOU UNDERSTAND THAT THE DEFENDANT COMES INTO THIS
22 COURT CLOAKED WITH INNOCENCE AND HE HAS NO BURDEN TO PROVE
23 ANYTHING?

24 A YES.

25 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE

1 JUROR TYPE SHEET?

2 A THAT THIS?

3 Q YES, MA'AM. HAVE YOU HAD A CHANCE TO READ IT?

4 A NO, MA'AM.

5 Q WHY DON'T YOU TALK A FEW MINUTES TO READ IT FOR ME
6 AND THEN WE'LL TALK A LITTLE BIT AFTER THAT. AND TAKE
7 YOUR TIME. DON'T FEEL PRESSURE. (PAUSE.) HAVE YOU HAD A
8 FULL OPPORTUNITY TO READ EACH TYPE?

9 A YES, MA'AM.

10 Q DO YOU FEEL THAT YOU FIT INTO ANY OF THOSE
11 CATEGORIES?

12 A IF ANY IT WOULD BE NUMBER THREE.

13 Q OKAY. AND WHEN YOU SAY, IF ANY, DOES -- AGAIN, THERE
14 ARE NO RIGHT OR WRONG ANSWERS. AND SO ARE YOU TELLING ME
15 YOU DO NOT FEEL YOU FIT INTO TYPE ONE OR TYPE TWO, BUT YOU
16 FIT INTO TYPE THREE?

17 A YES, MA'AM.

18 Q OKAY. IF YOU WERE A JUROR IN A CRIMINAL -- IN A
19 DEATH PENALTY CASE AND IF THE JURY FOUND THE DEFENDANT
20 GUILTY OF MURDER, WE WOULD THEN MOVE TO THE SENTENCING
21 PHASE OF THE TRIAL, BECAUSE AS I EXPLAINED ON TUESDAY,
22 THERE ARE TWO PHASES, A GUILT PHASE AND A SENTENCING
23 PHASE.

24 IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE --
25 IN THE GUILT PHASE, THEN ONLY DO WE MOVE TO THE SENTENCING

1 PHASE. AND IN THIS STATE, JUST AS IN MANY OTHER STATES,
2 THE JURY DETERMINES PENALTY, WHETHER THAT BE LIFE WITHOUT
3 THE POSSIBILITY OF PAROLE OR DEATH, AND THAT IS THE
4 PURPOSE OF THE SENTENCING PHASE. DO YOU UNDERSTAND?

5 A YES.

6 Q DURING THAT PHASE YOU WOULD BE ALLOWED TO CONSIDER
7 WHAT WE CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
8 CIRCUMSTANCES. AND I'M GOING TO EXPLAIN TO YOU WHAT THOSE
9 ARE. OKAY?

10 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
11 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
12 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
13 THE OFFENSE OF MURDER.

14 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
15 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
16 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
17 COMMISSION OF A CRIME.

18 AND SOME EXAMPLES OF THOSE WOULD BE THE MURDER OF A
19 CHILD UNDER AGE 11, DRUG TRAFFICKING, KILLING BY POISON,
20 OR BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES
21 OF AGGRAVATING CIRCUMSTANCES.

22 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
23 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
24 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
25 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF

1 MORAL CULPABILITY OR RESPONSIBILITY.

2 AND SOME EXAMPLES OF THOSE ARE MENTAL RETARDATION AT
3 THE TIME OF THE CRIME, THE DEFENDANT WAS BELOW THE AGE OF
4 18 AT THE TIME OF THE CRIME, THE DEFENDANT ACTED UNDER
5 DURESS OR DOMINATION, OR THAT THE DEFENDANT WAS AN
6 ACCOMPLICE AND THAT THEIR PARTICIPATION WAS RELATIVELY
7 MINOR.

8 AGAIN, THESE ARE JUST EXAMPLES. IT IS BY NO MEANS A
9 DEFINITIVE LIST BECAUSE THERE IS NO EXCLUSIVE LIST OF
10 MITIGATING CIRCUMSTANCES.

11 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
12 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
13 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
14 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW THAT
15 I WOULD INSTRUCT YOU APPLIES TO THE CASE, COULD YOU RETURN
16 A SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF
17 PAROLE?

18 A DEPENDING ON WHICH ONE YOU SAID?

19 Q OKAY. LET ME REPEAT THE QUESTION FOR YOU BECAUSE
20 WHAT I'M--

21 A I'M SORRY.

22 Q NO, YOU DON'T HAVE TO APOLOGIZE. AGAIN, WE USE
23 LEGALESE. WE ASSUME YOU WILL UNDERSTAND. WHAT I'M ASKING
24 AND WHAT I'M TRYING TO DETERMINE IS WHETHER IF YOU WERE IN
25 ANY DEATH PENALTY CASE, NOT PARTICULARLY THIS ONE, AND YOU

1 WERE IN THE SENTENCING PHASE, COULD YOU LOOK AT THE FACTS
2 OF THAT CASE AND APPLY MITIGATING AND AGGRAVATING
3 CIRCUMSTANCES, AND IN THAT PARTICULAR SITUATION IF YOU
4 FELT APPROPRIATE, RETURN A SENTENCE OF LIFE WITHOUT THE
5 POSSIBILITY OF PAROLE?

6 A YES, MA'AM.

7 Q COULD YOU UNDER THOSE VERY SAME CIRCUMSTANCES
8 CONSIDERING AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
9 THE LAW AS THE COURT WOULD INSTRUCT RETURN A SENTENCE OF
10 DEATH WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL
11 INJECTION?

12 A NO.

13 Q OKAY. SO YOU'RE TELLING ME THAT YOU COULD NOT RETURN
14 A DEATH SENTENCE?

15 A CORRECT.

16 Q OKAY. SO WOULD YOU THEN BE A JUROR TYPE ONE OR ARE
17 YOU TELLING ME YOU DON'T UNDERSTAND THE QUESTION? AND
18 THAT'S WHAT I'M TRYING TO -- AND AGAIN, THERE ARE NO RIGHT
19 OR WRONG ANSWERS.

20 A I GUESS IT WOULD HAVE TO DEPEND ON THE DETAILS.

21 Q OKAY. THAT'S WHY I NEED YOU TO LISTEN TO MY QUESTION
22 A LITTLE MORE CAREFULLY.

23 A OKAY. SORRY.

24 Q NO. DON'T APOLOGIZE. AGAIN, AGAIN, THIS IS
25 UNNERVING, AND WE'RE READING TO YOU. AND WE KNOW THESE

1 PRINCIPALS AND THESE CONCEPTS, AND THIS IS THE FIRST TIME
2 YOU'RE HEARING THEM. SO I NEED YOU TO REALLY CONCENTRATE
3 FOR ME AND LISTEN TO THE QUESTION.

4 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
5 DEATH PENALTY TRIAL, COULD YOU DEPENDING UPON THE
6 PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE INCLUDING
7 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
8 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU
9 APPLIES AT THE CONCLUSION OF THAT PHASE OF THE TRIAL
10 RETURN A SENTENCE OF DEATH WHICH IN THIS STATE IS BY
11 ELECTROCUTION OR BY LETHAL INJECTION?

12 A YES.

13 Q OKAY. DID YOU SIMPLY NOT UNDERSTAND MY QUESTION
14 BEFORE?

15 A I WAS CONFUSED.

16 Q OKAY. IF YOU WERE CHOSEN FOR THIS JURY YOU WOULD BE
17 HOUSED IN A MOTEL DURING THE TRIAL OR SEQUESTERED AS I
18 EXPLAINED ON TUESDAY FOR APPROXIMATELY 10 DAYS. WE ASSUME
19 THAT THAT PERSONALLY WILL BE INCONVENIENT TO YOU. OTHER
20 THAN PERSONAL INCONVENIENCE, WOULD THIS POSE A SERIOUS
21 DANGER TO YOUR HEALTH OR WELL-BEING?

22 A NO.

23 Q OKAY. NOW, IN EVERY CAPITAL CASE BECAUSE THE JURY
24 DETERMINES SENTENCE, STATE LAW REQUIRES THAT EACH JUROR
25 SIGN THE VERDICT FORM, WHETHER THAT BE FOR LIFE WITHOUT

1 THE POSSIBILITY OF PAROLE OR DEATH, AND THERE WILL BE 12
2 SPACES AND EACH JUROR WILL BE REQUIRED TO SIGN THEIR NAME.

3 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
4 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
5 DEATH?

6 A YES.

7 Q OKAY.

8 THE COURT: ANY QUESTIONS FROM THE STATE?

9 MR. HEMBREE: JUST A FEW.

10 THE COURT: YOU MAY PROCEED.

11 BY MR. HEMBREE:

12 Q HEY MRS. MYERS.

13 A HOW ARE YOU?

14 Q I'M PRETTY GOOD. HOW ABOUT YOU?

15 A GOOD.

16 Q GOOD. THANKS FOR BEING HERE TODAY WITH US. I'M GREG
17 HEMBREE. I WAS INTRODUCED TO YOU -- SEEMS LIKE A LONG
18 TIME AGO -- BACK ON TUESDAY. I ALONG WITH DEPUTY
19 SOLICITOR FRAN HUMPHRIES WILL BE TRYING THIS CASE ON
20 BEHALF OF THE STATE.

21 WE KIND OF -- WE KIND OF MAYBE TOOK A LITTLE BIT OF
22 ADVANTAGE OF YOU IN THE SENSE THAT WE TOOK YOU A LITTLE
23 EARLY, YOU KNOW, WE'RE JUST TRYING TO MOVE ALONG AS BEST
24 WE CAN, AND YOU HAVEN'T HAD A CHANCE TO READ THE JUROR
25 TYPED FORM. AND THEN WE MADE YOU KIND OF READ IT IN FRONT

1 OF EVERYBODY, AND THAT CAN BE KIND OF INTIMIDATING AND
2 DIFFICULT.

3 LET ME SORT OF CHARACTERIZE IT FOR YOU AND MAY SURE I
4 GOT IT CLEAR WHICH TYPE JUROR YOU ARE AND THERE WERE
5 SOME -- SOME QUESTION ABOUT THAT IN YOUR DISCUSSION.

6 THE FIRST -- TYPE ONE JUROR IS THE TYPE OF JUROR WHO
7 WOULD NEVER IMPOSE THE DEATH PENALTY. THEY DON'T
8 BASICALLY DON'T BELIEVE IN THE DEATH PENALTY AND THAT THEY
9 WOULD NOT IMPOSE THE DEATH PENALTY IN A CASE BECAUSE THEY
10 JUST DON'T BELIEVE IT DON'T THINK THAT'S RIGHT. THEY
11 WOULD ALWAYS NO MATTER THE FACTS AND CIRCUMSTANCES GIVE
12 LIFE WITHOUT PAROLE.

13 THE SECOND TYPE JUROR IS THE KIND OF JUROR THAT SAYS,
14 YOU KNOW, THEY'VE PROVEN MURDER, THEN DEATH IS THE, YOU
15 KNOW, THE ONLY ANSWER. THAT'S KIND OF THE EYE FOR THE
16 EYE--

17 A RIGHT.

18 Q -- DESCRIBED AS THE EYE FOR EYE TYPE OF JUROR. THEY
19 DON'T REALLY CARE ABOUT THE CIRCUMSTANCES. THEY JUST HEAR
20 A MURDER, THAT MEANS DEATH IS APPROPRIATE.

21 THE THIRD TYPE OF JUROR IS THE KIND OF PERSON THAT
22 SAYS, WELL, I COULD IMPOSE LIFE OR I COULD NOT ONLY
23 CONSIDER BUT IMPOSE DEATH, I COULD SENTENCE ONE TO DEATH,
24 ANOTHER PERSON TO DEATH DEPENDING ON THE FACTS AND
25 CIRCUMSTANCES. DOES THAT MAKE SENSE?

1 A YES.

2 Q OKAY. SO SORT OF SUMMARIZING. COULD YOU TELL ME
3 WHICH JUROR DO YOU BELIEVE YOU ARE?

4 A THREE.

5 Q OKAY. AND ONE LAST QUESTION. UNDERSTANDING -- THIS
6 MAY NOT HAVE BEEN EXPLAINED THIS WAY, BUT THERE IS NEVER A
7 SITUATION UNDER THE LAW THAT YOU HAVE TO IMPOSE DEATH.
8 YOU WITH ME? I MEAN, IT JUST DOESN'T HAPPEN.

9 YOU ALWAYS HAVE CHOICE AS A JUROR. AND THE LAW IS
10 NOT GOING TO TELL YOU YOU MUST. THEY WOULD TELL YOU YOU
11 MAY, BUT NEVER THAT YOU MUST IMPOSE DEATH.

12 A OKAY.

13 Q UNDERSTANDING THAT, YOU WOULD NEVER HAVE THE
14 OBLIGATION TO IMPOSE DEATH, WOULD YOU -- WOULD THAT CHANGE
15 YOUR OPINION ABOUT YOUR TYPE OR WOULD YOU STILL REMAIN...

16 A I STILL REMAIN A THREE.

17 Q OKAY. THANKS, MRS. MYERS. I REALLY APPRECIATE YOUR
18 RESPONSES AND THANK YOU AGAIN FOR BEING HERE.

19 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

20 MR. KELLY: NONE.

21 THE COURT: ANY EXCEPTION TO THE JUROR BEING
22 FOUND QUALIFIED BY THE STATE?

23 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.
24 MRS. MYERS IS QUALIFIED.

25 THE COURT: FROM THE DEFENSE?

1 MR. KELLY: SHE'S QUALIFIED.

2 THE COURT: MRS. MYERS, YOU HAVE BEEN FOUND
3 QUALIFIED WHICH MEANS AS WE TALK TO EACH INDIVIDUAL
4 JUROR, WE DEVELOP A POOL OF QUALIFIED JURORS FROM
5 WHICH WE WILL SELECT THE ACTUAL JURY ON MONDAY.

6 SO WE'LL NEED YOU TO RETURN ON MONDAY TO THIS
7 COURTROOM AT 9:30 PACKED TO BE WITH US FOR
8 APPROXIMATELY 10 DAYS. SO YOU NEED TO BRING
9 EVERYTHING -- YOU DON'T HAVE TO TOTE IT UP HERE. YOU
10 CAN LEAVE IT IN YOUR VEHICLE. OR IF YOU NEED
11 ASSISTANCE WITH TRANSPORTATION OR OTHERWISE, LET US
12 KNOW.

13 BUT IF YOU'RE SELECTED, YOU WILL NOT BE ABLE TO
14 GO BACK HOME AND WE WILL TAKE YOU TO THE HOTEL AND
15 GET YOU SITUATED AT THE APPROPRIATE TIME. IF YOU
16 HAVE A VEHICLE, WE WILL JUST TAKE IT OVER TO THE
17 HOTEL.

18 BUT AFTER -- ONCE WE TAKE EVERYTHING TO THE
19 HOTEL, YOU WILL THEN BE RIDING IN A VAN ALTOGETHER AS
20 A GROUP, YOU WILL BE TOGETHER IF YOU'RE SELECTED.

21 DURING THIS INTERIM I WOULD ASK THAT YOU ABIDE
22 BY THE COURT'S INSTRUCTIONS VERY STRICTLY. PLEASE
23 HAVE NO DISCUSSION ABOUT THIS CASE WITH ANYONE, THAT
24 INCLUDES YOUR FAMILY MEMBERS OR YOUR FRIENDS.

25 IF ANYBODY TRIES TO TALK TO YOU TELL THEM, I

1 CANNOT DISCUSS THIS IN ANY WAY, IT WOULD BE A
2 VIOLATION OF THE COURT'S RULE. PLEASE DON'T HAVE ANY
3 MEDIA EXPOSURE TO THIS CASE IN ANY FORM BECAUSE IT IS
4 ESSENTIAL THAT PROSPECTIVE JURORS REMAIN IMPARTIAL,
5 AND WE NEED TO PROTECT THAT. OKAY?

6 JUROR: OKAY.

7 THE COURT: WE WILL SEE YOU ON MONDAY AT 9:30?

8 JUROR: THANK YOU.

9 THE COURT: HAVE A GOOD AFTERNOON.

10 (JUROR LEFT THE COURTROOM).

11 THE COURT: NOW, IT IS 12 NOON. DO WE HAVE
12 EVERYONE HERE THAT WAS SUPPOSED TO REPORT AT 12 NOON?
13 THAT WAS THE BALANCE OF THE PANEL. SO WE SHOULD HAVE
14 50 SOME FOLK. SHOULD BE 48 PEOPLE. BRING THEM ALL
15 IN.

16 (REMAINING JURORS ENTERED THE COURTROOM.)

17 THE COURT: LADIES AND GENTLEMEN, WE APPRECIATE
18 YOUR TIME AND YOUR PATIENCE AND YOUR DILIGENCE WITH
19 US. WE ANTICIPATE THAT WE WILL STILL BE CONTINUING
20 THE INDIVIDUAL QUESTIONING OF JURORS THROUGHOUT THIS
21 AFTERNOON.

22 WE HAVE DIVIDED YOU ALL, THE REMAINING JURORS,
23 INTO PANELS OF SIX, AND I NEED FOR YOU ALL TO LISTEN
24 VERY CAREFULLY AS I CALL YOUR JUROR NUMBERS. IF I
25 CALL YOUR JUROR NUMBER, I WOULD LIKE YOU TO STAND SO

1 THAT I CAN TELL YOU WHAT TIME YOU WILL NEED TO
2 RETURN. WE'RE GOING TO CONTINUE OUR PROCESS.

3 WE HAVE A 12:00 PANEL, AND I'M GOING CALL OFF
4 ALL THOSE NAMES. AND WHEN I CALL THOSE NAMES, I NEED
5 FOR YOU TO GO WITH THE BAILIFF INTO THE JURY ROOM.

6 THERE WILL BE A FORM IN THAT ROOM -- AND I SAY
7 THIS TO THE BENEFIT OF ALL THE JURORS -- SO WHEN YOU
8 ARRIVE AT YOUR SCHEDULED TIME, PLEASE MAKE SURE THAT
9 YOU READ THE FORM THAT IS IN THE JURY ROOM BECAUSE WE
10 WILL BE ASKING YOU QUESTIONS CONCERNING IT.

11 THOSE FORMS HAVE TO REMAIN IN THE JURY ROOM, SO
12 PLEASE DON'T BRING THEM WITH YOU. BUT PLEASE TAKE
13 THE TIME TO VERY THOUGHTFULLY READ THEM SO THAT YOU
14 WILL BE PREPARED WHEN WE ASK YOU REGARDING THAT
15 SHEET.

16 AUDREY DEAS, 71, IF YOU WOULD GO WITH THE
17 BAILIFF FOR ME. WELL, YOU CAN JUST LINE THEM ALL UP
18 IN ONE PANEL. LEVY GAMBLE, JUNIOR, 108. EVELENA
19 GALLISHAW, 107, STEVEN STONE, 310, PATRICIA CANTEEN,
20 44.

21 THIS WILL BE OUR 12:00 PANEL. IF YOU WOULD TAKE
22 THEM. WE'VE ALREADY DONE ONE OF THEIR MEMBERS. AND
23 IF YOU WOULD TAKE THE REST OF THEM INTO THE JURY ROOM
24 FOR ME.

25 AGAIN, AS YOU LISTEN FOR YOUR NAME, WE HAVE

1 SPLIT YOU INTO DIFFERENT PANELS WITH DIFFERENT
2 DESIGNATED TIMES TO RETURN. WE ARE RUNNING EXTREMELY
3 ON TIME, AND YOU WILL -- MOST OF YOUR MEMBERS HAVE
4 BEEN EXTREMELY TIMELY, SO WE APPRECIATE IT.

5 IT'S HELPED US RUN ON TIME. AND I TELL YOU THAT
6 USUALLY I DON'T HAVE THIS EXPERIENCE WITH PUNCTUAL
7 JURORS. I HAVE GREATLY APPRECIATED IT. SO I TELL
8 YOU IN ADVANCE THANK YOU.

9 THE NEXT PANEL WHICH WILL COME IN AT 2:30 IS
10 CHADWICK MILLER, AND AGAIN, IF YOU WOULD COME STAND
11 OVER HERE FOR ME SO AGAIN I CAN REINFORCE THE TIME
12 THAT YOU WILL NEED TO ARRIVE. CHADWICK MILLER 226,
13 PRISCILLA HEYWARD, 150, EMILY VAUSE, 337, GEORGIANN
14 HASELDEN, 141, ELLEN FALLON, 92, AND MARIA
15 LEATHERMAN, 384.

16 OH, BE CAREFUL. YEAH. YOU ALL RIGHT? I WOULD
17 ASK THAT YOU ALL RETURN AND THE BAILIFFS WILL SHOW
18 YOU AS YOU COME UP BECAUSE WE WILL TAKE YOU STRAIGHT
19 INTO THE JURY ROOM.

20 AND AGAIN, I WOULD APPRECIATE IT IF YOU WILL
21 REVIEW THE FORM THAT IS IN THERE WHEN YOU ARRIVE.
22 AND I NEED FOR YOU ALL TO RETURN AT 2:30. ENJOY YOUR
23 LUNCH.

24 CHRISTY TINGEN, 324, JULIUS JOHNSON, 174, ROBERT
25 E EVANS 91, ANN IRISH, 166, NATHANIEL GRATE, 124, AND

1 CHRISTOPHER WATKINS, 345. IF YOU ALL COULD RETURN
2 FOR ME AT 3:30. AT 3:30. THANK YOU SO MUCH.

3 KAREN RUTLEDGE, 284, RODNEY CHILDERS, 51,
4 ROSEZENA CALLUM, 41, CLYDE RATCHFORD, JUNIOR, 267,
5 SANDRA BERRY, 370, COTEILIA HERRIOTT, 148, AND I HOPE
6 I PRONOUNCED YOUR NAME CORRECTLY. IF YOU ALL COULD
7 RETURN FOR ME TODAY AT 4:30. THANK YOU. YOU HAVE
8 ANY QUESTIONS, JUST LET THE BAILIFFS KNOW.

9 DO YOU KNOW HOW MANY FORMS WE HAVE IN THE ROOM?
10 I THINK WE WERE PREPARED FOR FOUR BUT WE NEED TO PUT
11 TWO MORE IN THERE. JAMIE CRIBB, 64, LARRY M JESSUP,
12 170, DEBRA ELERBEE, 87, CHRISTOPHER PARRIS, 391,
13 SUSAN HARRELSON, 138, NORMAN JOHNSON, 177.

14 I NEED FOR YOU ALL TO RETURN FOR ME TODAY AT
15 5:30. AND I KNOW THAT'S LATE, BUT THE OTHER
16 ALTERNATIVE IS SATURDAY. AND I FIGURED YOU ALL WOULD
17 PREFER TO DO THIS TODAY INSTEAD OF SATURDAY. AND
18 WE -- I TELL YOU IN ADVANCE I FEEL LIKE THANK YOU IS
19 SO VERY INADEQUATE, BUT WE REALLY DO APPRECIATE YOUR
20 SACRIFICE. IF YOU COULD RETURN FOR US AT 5:30.

21 OKAY. TO THOSE WHOSE NAMES I DID NOT CALL, I
22 ALSO NEED FOR YOU TO RETURN AT 5:30, AND AT THAT TIME
23 I WILL KNOW WHETHER I HAVE ANY FURTHER NEED OF YOU.
24 AGAIN, THE OTHER ALTERNATIVE WOULD BE FOR ME TO HAVE
25 YOU COME ON SATURDAY, AND I THINK THAT THAT WOULD

1 JUST BE A BAD THING.

2 I WAS TRYING TO THINK OF SOME REAL FLOWERY WAY
3 TO PUT IT, BUT I COULDN'T. I JUST DIDN'T THINK Y'ALL
4 WOULD APPRECIATE THAT TOO MUCH. SO IF YOU COULD
5 RETURN FOR ME AT 5:30, AND AT THAT TIME WE WILL HAVE
6 A MUCH BETTER GRASP ON THE COURT'S NEEDS. WE
7 APPRECIATE YOUR PATIENCE. YOU'RE EXCUSED. WE WILL
8 SEE YOU AT 5:30.

9 (WHEREUPON A RECESS WAS HAD.)

10 THE COURT: PLEASE BRING AUDREY DEASE, 71.

11 (JUROR ENTERED THE COURTROOM.)

12 AUDREY DEAS, BLACK FEMALE, TESTIFIED

13 AS FOLLOWS:

14 BY THE COURT:

15 Q MA'AM, IF YOU'VE COME HAVE A SEAT FOR ME IN THE SEAT
16 AND PULL YOURSELF AS CLOSE TO THE MICROPHONE AS POSSIBLE.
17 HOW YOU DOING TODAY?

18 A I'M DOING FINE.

19 Q GOOD. IT'S GOOD TO SEE YOU.

20 A THANK YOU.

21 Q MRS. DEAS, IF YOU WOULD STATE YOU'RE FULL NAME FOR
22 THE RECORD.

23 A MY NAME IS AUDREY TERESA DEAS.

24 Q AND MA'AM, YOU ARE JUROR 71; IS THAT CORRECT?

25 A YES, MA'AM.

1 Q I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH. DO
2 YOU UNDERSTAND?

3 A YES, MA'AM.

4 Q OKAY. MA'AM, SINCE THE COURT'S CAUTIONARY
5 INSTRUCTIONS HAVE YOU BEEN EXPOSED TO ANY MEDIA REPORTS
6 ABOUT THIS CASE?

7 A NO, MA'AM.

8 Q WE'RE GOING TO ASK YOU SOME QUESTIONS. NEED YOU TO
9 TAKE A DEEP BREATHE, I KNOW THIS IS CAN BE A LITTLE
10 DAUNTING. STATE LAW REQUIRES THAT WE TALK TO EACH JUROR
11 IN A CASE OF THIS TYPE INDIVIDUALLY.

12 WE'RE JUST TRYING TO -- SOME OF THE QUESTIONS MAY
13 SEEM VERY PRIVATE, BUT WE'RE NOT TRYING TO INVADE YOUR
14 PRIVACY. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
15 NEED YOU TO ANSWER US AS COMPLETELY, OPENLY, AND HONESTLY
16 AS POSSIBLE. AND TO THE EXTENT THAT YOU CAN, GIVE US A
17 YES OR A NO ANSWER.

18 A OKAY.

19 Q IF YOU DON'T UNDERSTAND THE QUESTIONS, PLEASE LET US
20 KNOW.

21 A OKAY.

22 Q OKAY? NOW, WE WILL ALSO BE DISCUSSING PENALTIES.
23 THE FACT THAT WE'RE DISCUSSING A PENALTY IS NO REFLECTION
24 ON THE DEFENDANT NOR DOES IT INDICATE ANYTHING ABOUT HIM
25 BECAUSE HE'S PRESUMED IN THE LAW TO BE INNOCENT. DO YOU

1 UNDERSTAND?

2 A YES, I UNDERSTAND.

3 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
4 LISTEN TO THE LAW?

5 A YES.

6 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WILL INSTRUCT
7 YOU AS THE JUDGE OF THE COURT?

8 A YES.

9 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
10 MIGHT DISAGREE WITH ME ABOUT WHAT I TELL YOU THE LAW IS?

11 A YES, MA'AM.

12 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
13 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
14 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
15 CASE?

16 A YES, MA'AM.

17 Q HAVE YOU READ, HEARD, OR SEEN ANY MEDIA COVERAGE
18 ABOUT THIS CASE PRIOR TO COMING TO COURT ON TUESDAY?

19 A SOMEWHAT.

20 Q OKAY. AS A RESULT OF WHAT YOU WERE EXPOSED TO, HAVE
21 YOU FORMED ANY FIXED OPINION ABOUT THE FACTS IN THIS CASE?

22 A NO, MA'AM.

23 Q DO YOU FEEL YOU COULD LISTEN TO THE EVIDENCE AND THE
24 LAW AS THE COURT WILL CHARGE AND RENDER A VERDICT BASED
25 SOLELY ON THOSE THINGS?

1 A YES, MA'AM.

2 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
3 PROVING THE DEFENDANT'S GUILT AND THEY MUST PROVE THAT
4 GUILT BY -- BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND
5 THAT?

6 A YES, MA'AM.

7 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
8 PROVE HIS INNOCENCE?

9 A YES, MA'AM.

10 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE JUROR TYPE
11 SHEET?

12 A YES, I DID.

13 Q DO YOU FEEL THAT YOU FALL INTO ANY OF THOSE THREE
14 CATEGORIES?

15 A YES, MA'AM.

16 Q AND WHICH ONE WOULD THAT BE?

17 A I...

18 Q AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
19 NEED YOU TO BE AS COMPLETELY HONEST WITH US AS YOU CAN.

20 A NUMBER THREE.

21 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
22 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
23 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. DO
24 YOU UNDERSTAND?

25 A YES, MA'AM.

1 Q IN THIS TYPE TRIAL THE JURY DECIDES THE SENTENCE OF
2 THE DEFENDANT, WHETHER IT BE LIFE WITHOUT THE POSSIBILITY
3 OF PAROLE OR DEATH. DO YOU UNDERSTAND?

4 A I UNDERSTAND.

5 Q AND DO YOU ALSO UNDERSTAND THAT YOU WILL BE -- WELL,
6 ACTUALLY I SHOULDN'T HAVE PHRASED THAT AS A QUESTION. I
7 APOLOGIZE. DURING THIS PHASE OF THE TRIAL YOU WILL BE --
8 YOU WILL BE ALLOWED TO CONSIDER WHAT WE CALL AGGRAVATING
9 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.

10 AND I'M GOING TO DEFINE THOSE TERMS FOR YOU SO THAT
11 YOU KNOW WHAT WE'RE TALKING ABOUT.

12 A THANK YOU.

13 Q AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
14 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
15 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
16 THE OFFENSE OF MURDER.

17 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCES WHEN
18 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
19 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
20 COMMISSION OF A CRIME.

21 AND SOME EXAMPLES OF AGGRAVATING CIRCUMSTANCES WOULD
22 BE THE MURDER OF A CHILD UNDER THE AGE OF 11, KILLING
23 SOMEONE BY POISONING, BURGLARY IN ANY DEGREE, OR DRUG
24 TRAFFICKING. AGAIN, THESE ARE JUST EXAMPLES.

25 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR

1 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
2 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
3 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
4 MORAL CULPABILITY OR RESPONSIBILITY.

5 AND SOME EXAMPLES OF THESE WOULD BE THE DEFENDANT HAD
6 NOT REACHED THE AGE OF 18 AT THE TIME OF THE CRIME, THE
7 MENTAL RETARDATION OF THE DEFENDANT, THAT THE DEFENDANT
8 ACTED UNDER DURESS OR DOMINATION OF SOMEONE ELSE, THAT
9 THEY WERE AN ACCOMPLICE AND THAT THEIR PARTICIPATION WAS
10 MINOR.

11 AGAIN, THESE ARE JUST EXAMPLES BECAUSE REALLY THERE
12 IS NO DEFINITIVE LIST OF MITIGATING CIRCUMSTANCES.

13 IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
14 CASE, DEPENDING UPON THE PARTICULAR FACTS AND
15 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
16 MITIGATING AND AGGRAVATING CIRCUMSTANCES AND THE LAW THAT
17 I WOULD INSTRUCT YOU THAT APPLIED AT THE CONCLUSION OF THE
18 CASE, COULD YOU RETURN A SENTENCE OF LIFE WITHOUT THE
19 POSSIBILITY OF PAROLE?

20 A YES.

21 Q COULD YOU UNDER THE VERY SAME CIRCUMSTANCES THAT I
22 DESCRIBED AND DEPENDING UPON THE PARTICULAR FACTS AND
23 CIRCUMSTANCES OF THE CASE INCLUDING THE CONSIDERATION OF
24 AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW AS I
25 WOULD INSTRUCT YOU APPLIES TO THE CASE, COULD YOU RETURN A

1 SENTENCE OF DEATH WHICH IN THIS STATE IS BY ELECTROCUTION
2 OR LETHAL INJECTION?

3 A NO.

4 Q OKAY.

5 THE COURT: ANY QUESTIONS FROM THE STATE?

6 MR. HEMBREE: NO, MA'AM.

7 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

8 MR. KELLY: YES, MA'AM.

9 THE COURT: IF YOU COULD GIVE MR. KELLY YOUR
10 ATTENTION. YOU CAN JUST KIND OF TURN TO THE SIDE BUT
11 STILL SPEAK IN THE MICROPHONE FOR ME.

12 JUROR: OKAY.

13 BY MR. KELLY:

14 Q MRS. DEAS, I THINK YOU SAID IN THE BEGINNING THAT YOU
15 WERE NUMBER THREE JUROR?

16 A YES.

17 Q OKAY. BUT -- AND A NUMBER THREE JUROR IS ONE WHO
18 COULD GIVE LIFE OR DEATH DEPENDING ON THE CIRCUMSTANCES.
19 BUT THEN AT THE END, THE LAST QUESTION YOU SAID NO, I
20 COULD NOT GIVE DEATH AS A PENALTY. IS THAT RIGHT?

21 A RIGHT.

22 Q WHICH ONE ARE YOU?

23 A WELL, I WOULD GIVE LIFE WITHOUT PAROLE BUT NOT DEATH.

24 Q BUT NOT DEATH?

25 A RIGHT.

1 MR. KELLY: THANK YOU, MA'AM. NO FURTHER
2 QUESTIONS.

3 THE COURT: ANY EXCEPTIONS TO EXCUSING THE JUROR
4 FROM THE STATE?

5 MR. HEMBREE: NONE FROM THE STATE.

6 THE COURT: FROM THE DEFENSE?

7 MR. KELLY: NONE, MA'AM.

8 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
9 COURT'S THANKS. THANK YOU FOR YOUR PATIENCE. HAVE A
10 GREAT DAY.

11 JUROR: THANK YOU.

12 THE COURT: YOU'RE WELCOME.

13 (JUROR LEFT THE COURTROOM.)

14 THE COURT: LEVY GAMBLE, 108.

15 (JUROR ENTERED THE COURTROOM.)

16 LEVY GAMBLE, BLACK MALE, TESTIFIED AS
17 FOLLOWS:

18 BY THE COURT:

19 Q COME IN AND HAVE A SEAT. HOW ARE YOU, SIR? YOU ARE
20 LEVY GAMBLE, JUROR NUMBER 103?

21 A YES, MA'AM.

22 Q SIR, I REMIND YOU YOU'RE STILL UNDER OATH. DO YOU
23 UNDERSTAND?

24 A YES.

25 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS ABOUT

1 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

2 A NO, MA'AM.

3 Q SIR, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE'RE
4 NOT TRYING TO INVADE YOUR PRIVACY. THE STATE LAW REQUIRES
5 THAT WE ASK THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG
6 ANSWERS. THE ONLY THING WE ASK IS THAT YOU ANSWER US
7 OPENLY, HONESTLY, AND FULLY.

8 IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET US
9 KNOW. AND TO THE BEST OF YOUR ABILITY, PLEASE ANSWER EACH
10 QUESTION WITH A YES OR A NO.

11 AMONG OTHER THINGS WE WILL BE TALKING ABOUT PENALTY.
12 AND THE FACT THAT WE TALK ABOUT PENALTY DOES NOT INDICATE
13 ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW
14 TO BE INNOCENT. DO YOU UNDERSTAND?

15 A YES, MA'AM.

16 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
17 LISTEN TO THE LAW?

18 A YES, MA'AM.

19 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
20 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

21 A YES, MA'AM.

22 Q COULD YOU APPLY AND ACCEPT THE LAW EVEN THOUGH YOU
23 MAY DISAGREE WITH ME ABOUT WHAT THE LAW -- WHAT YOU THINK
24 THE LAW IS?

25 A NO, MA'AM.

1 Q YOU'RE TELLING ME YOU COULDN'T FOLLOW ME OR YOU
2 COULD? DO YOU UNDERSTAND THE QUESTION?

3 A COULD YOU REPEAT?

4 Q I'LL REPEAT IT. COULD YOU ACCEPT AND APPLY THE LAW
5 AS I INSTRUCT YOU EVEN THOUGH YOU MAY DISAGREE WITH ME
6 ABOUT WHAT I TELL YOU THE LAW IS?

7 A YES, MA'AM.

8 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
9 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
10 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

11 A YES, MA'AM.

12 Q HAVE YOU HAD -- HAVE YOU SEEN ANY MEDIA COVERAGE
13 ABOUT THIS CASE BEFORE YOU ARRIVED ON TUESDAY?

14 A NO, MA'AM.

15 Q IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
16 PROVING GUILT AND THE STATE'S BURDEN -- AND THE STATE MUST
17 MEET THIS BURDEN BY PROVING THE DEFENDANT GUILTY BEYOND A
18 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

19 A YES, MA'AM.

20 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS ABSOLUTELY
21 NO BURDEN TO PROVE HIS INNOCENCE?

22 A NO, MA'AM. YES, MA'AM.

23 Q SIR, HAVE YOU HAD A CHANCE TO REVIEW THE JUROR TYPE
24 SHEET IN THE JURY ROOM?

25 A YES, MA'AM.

1 Q AND DO YOU FEEL THAT YOU ARE IN ANY OF THESE
2 CATEGORIES OF JURORS?

3 A IN THE ONE TYPE.

4 Q OKAY. NUMBER ONE WHICH IS...

5 A I DON'T AGREE WITH NO DEATH PENALTY.

6 Q OKAY.

7 THE COURT: ANY QUESTIONS FROM THE STATE?

8 MR. HEMBREE: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. KELLY: NONE.

11 THE COURT: ANY EXCEPTION TO THE JUROR BEING
12 EXCUSED?

13 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

14 MR. KELLY: NO, MA'AM.

15 THE COURT: SIR, YOU'RE EXCUSED WITH THE COURT'S
16 THANKS. HAVE A GREAT DAY.

17 (JUROR LEFT THE COURTROOM.)

18 THE COURT: EVELENA GALLISHAW, NUMBER 107.

19 (JUROR ENTERED THE COURTROOM.)

20 EVELENA GALLISHAW, BLACK FEMALE,
21 TESTIFIED AS FOLLOWS:

22 BY THE COURT:

23 Q MRS. GALLISHAW, HOW ARE YOU? IF YOU WILL COME
24 FORWARD FOR ME AND HAVE A SEAT RIGHT HERE.

25 A OKAY.

1 Q YOU DOING OKAY TODAY?

2 A PRETTY GOOD. THANK YOU.

3 Q GOOD. WE APPRECIATE YOUR PATIENCE. IF YOU'D HAVE A
4 SEAT AND PULL AS CLOSE TO THAT MICROPHONE FOR ME AS YOU
5 CAN. THAT'S GOOD. AND IF YOU WOULD TELL US YOUR NAME FOR
6 THE RECORD.

7 A EVELENA GALLISHAW.

8 Q YOU CAN BACK UP JUST A BIT. MOST PEOPLE TALK SO
9 SLOW, SOFT, YOU KNOW, SOFT. SO WE APPRECIATE YOU BEING SO
10 CLEAR. AND YOU ARE JUROR 107; IS THAT RIGHT?

11 A YES, MA'AM.

12 Q AND MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER
13 OATH. DO YOU UNDERSTAND?

14 A YES.

15 Q MA'AM, WE'RE GOING TO ASK YOU SOME QUESTIONS. WE
16 KNOW SOME OF THEM MAY SEEM INTENSELY PRIVATE. WE ARE NOT
17 TRYING TO INVAD E YOUR PRIVACY. STATE LAW REQUIRES THAT WE
18 ASK THESE QUESTIONS AND THAT WE TALK TO EACH JUROR
19 INDIVIDUALLY IN A CASE OF THIS NATURE.

20 THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED
21 FOR YOU TO ANSWER US AS OPENLY, HONESTLY, AND FULLY AS
22 POSSIBLE. OKAY? AGAIN, I EMPHASIZE THERE ARE NO RIGHT OR
23 WRONG ANSWERS.

24 PLEASE TO THE BEST OF YOUR ABILITY GIVE US A YES OR
25 NO ANSWER, HOWEVER. AND IF YOU DON'T UNDERSTAND A

1 QUESTION, PLEASE LET ME KNOW. DO YOU UNDERSTAND?

2 A YES.

3 Q MA'AM, AMONG OTHER THINGS WE WILL BE TALKING ABOUT
4 PENALTY, BUT THE MERE FACT THAT WE TALK ABOUT PENALTY DOES
5 NOT INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED
6 IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

7 A YES.

8 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
9 LISTEN TO THE LAW?

10 A YES.

11 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
12 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

13 A YES.

14 Q EVEN THOUGH YOU MAY NOT -- COULD YOU ACCEPT AND APPLY
15 THE LAW EVEN THOUGH YOU MAY DISAGREE WITH ME ABOUT WHAT I
16 TELL YOU THE LAW IS? IN OTHER WORDS, IF YOU HAVE A
17 PRECONCEIVED IDEA ABOUT WHAT YOU THINK THE LAW IS OR
18 SHOULD BE AND I -- WHAT I TELL YOU DOES NOT AGREE WITH
19 THAT, CAN YOU DISAGREE WITH WHAT YOU BELIEVE IT SHOULD BE
20 AND FOLLOW IT AS I TELL YOU IT IS?

21 A YES.

22 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
23 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
24 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

25 A I'M NOT SURE.

1 Q OKAY. LET ME ASK THAT QUESTION A DIFFERENT WAY,
2 BECAUSE SOMETIMES WHAT WE SEE ON TV AND WHAT WE READ IN
3 THE PAPER WE PRESUME TO BE FACTS. OKAY? AND WHEN YOU
4 COME INTO A COURTROOM AS A JUROR, YOU TAKE AN OATH TO BE
5 IMPARTIAL.

6 A RIGHT.

7 Q AND TO LISTEN TO THE FACTS AS IF YOU WERE AN EMPTY
8 VESSEL BECAUSE THE ONLY FACTS THE COURT RECOGNIZES ARE
9 THOSE THAT COME FROM THE LIPS OF SWORN WITNESSES AND THE
10 OTHER EVIDENCE THAT IS INTRODUCED.

11 SO WHAT I NEED TO KNOW IS WHETHER YOU CAN COME INTO
12 THIS COURT AS AN EMPTY VESSEL AND LISTEN TO THE TESTIMONY
13 FROM THE LIPS OF SWORN WITNESSES AND THE OTHER EVIDENCE
14 THAT WILL BE INTRODUCED AND APPLY THE LAW AS THE COURT
15 WILL CHARGE, DELIBERATE WITH 12 -- 11 OTHER PEOPLE AND
16 MAKE A DECISION BASED SOLELY ON WHAT YOU HEAR IN THIS
17 COURTROOM. AND THERE IS NO RIGHT OR WRONG ANSWER.

18 A I DON'T THINK SO.

19 Q OKAY. WELL, AGAIN, THERE ARE NO RIGHT OR WRONG
20 ANSWERS. SO I -- I NEED A YES OR A NO. AND AGAIN, THERE
21 ARE NO RIGHT OR WRONG ANSWERS.

22 A NO.

23 Q OKAY.

24 THE COURT: ANY QUESTIONS FROM THE STATE?

25 MR. HEMBREE: NO, YOUR HONOR.

1 THE COURT: FROM THE DEFENSE?

2 MR. KELLY: NONE.

3 THE COURT: ANY EXCEPTION TO THE JUROR BEING
4 EXCUSED?

5 MR. HEMBREE: NONE FROM THE STATE.

6 MR. KELLY: NO, MA'AM.

7 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
8 COURT'S THANKS. HAVE A GREAT DAY.

9 JUROR: THAT MEAN I CAN GO HOME?

10 THE COURT: YES, MA'AM, YOU CAN GO HOME.

11 JUROR: THANK YOU VERY MUCH.

12 THE COURT: WE WON'T BE CALLING YOU NO MORE.

13 JUROR: THANK YOU. THANK YOU.

14 THE COURT: HAVE YOUR LIFE BACK.

15 JUROR: THANK YOU. THANK YOU. THANK YOU.

16 THE COURT: YOU'RE WELCOME.

17 (JUROR LEFT THE COURTROOM).

18 THE COURT: STEVEN STONE, 310.

19 (JUROR ENTERED THE COURTROOM.)

20 STEVEN STONE, WHITE MALE, TESTIFIED AS
21 FOLLOWS:

22 BY THE COURT:

23 Q SIR, IF YOU COULD HAVE A SEAT FOR ME.

24 A OKAY.

25 Q COME AS CLOSE TO THE MICROPHONE AS POSSIBLE.

1 A IS THERE SOMEONE I CAN SPEAK TO YOU? I MEAN... JUST
2 USES OR...

3 Q NO. EVERYTHING YOU SAY TO ME, IT HAS TO BE ON THE
4 RECORD.

5 A OKAY.

6 Q AND IT HAS TO BE IN EVERYONE ELSE'S PRESENCE. AND I
7 KNOW THAT THAT MAY BE VERY DIFFICULT FOR YOU.

8 A YES.

9 Q AND I IN NO WAY WANT TO INVADE YOUR PRIVACY, BUT WHEN
10 YOU SPEAK TO EVERYBODY, IT'S JUST LIKE SPEAKING TO ME.

11 A FINE.

12 Q I WILL BE GLAD FOR YOU TO -- YOU WANT TO TELL ME
13 SOMETHING?

14 A OH, YEAH. I DIDN'T STAND THE OTHER DAY WHEN YOU
15 ASKED IF WE KNEW SOME OF THE PEOPLE YOU HAD MENTIONED,
16 BUT...

17 Q OKAY.

18 A MY CHILDREN PLAYED BALL WITH MR. THATCHER'S SON. I'M
19 ACTUALLY ON THE BALL TEAM. AND I JUST DON'T FEEL THAT I
20 COULD BE IMPARTIAL. I MEAN...

21 Q MR. THATCHER?

22 A MICHAEL THATCHER.

23 Q IS THAT A POTENTIAL WITNESS?

24 A YES, MA'AM.

25 MR. HUMPHRIES: FROM GEORGETOWN.

1 A AND ALSO MY WIFE USED TO WORK AT THE RESTAURANT --
2 HER MOM OWNED A LITTLE RESTAURANT OUTSIDE THE RADIO
3 STATION THAT MR. LING AND MRS. LING, YOU KNOW, RAN IN THE
4 PAST, AND THEY CAME IN THERE QUITE OFTEN.

5 Q SO YOU'RE TELLING ME YOU DON'T FEEL YOU CAN BE FAIR
6 AND IMPARTIAL?

7 A NO, MA'AM. I DON'T THINK SO.

8 THE COURT: OKAY. ANY OBJECTIONS TO EXCUSING
9 THE JUROR FROM THE STATE?

10 MR. HEMBREE: NO, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. KELLY: NO, MA'AM.

13 THE COURT: SIR, YOU'RE EXCUSED. HAVE A GREAT
14 DAY.

15 JUROR: THANK YOU.

16 (JUROR LEFT THE COURTROOM.)

17 THE COURT: PATRICIA CANTEEN, JUROR 44. AND WE
18 HAVE HER AS RESPONDING TO QUESTION 21.

19 (JUROR ENTERED THE COURTROOM.)

20 PATRICIA CANTEEN, BLACK FEMALE,
21 TESTIFIED AS FOLLOWS:

22 BY THE COURT:

23 Q HOW ARE YOU MA'AM? IF YOU COULD COME FORWARD FOR ME
24 AND HAVE A SEAT AND COME AS CLOSE TO THE MICROPHONE FOR ME
25 AS YOU CAN. IF YOU WOULD STATE YOUR NAME FOR THE RECORD.

1 A PATRICIA CANTEEN.

2 Q AND MRS. CANTEEN, YOU ARE JUROR 44; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q MA'AM, I WILL REMIND YOU THAT YOU'RE STILL UNDER
5 OATH. DO YOU UNDERSTAND?

6 A YES, MA'AM.

7 Q AND HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
8 SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

9 A NO, MA'AM.

10 Q WE'RE GOING TO ASK SOME QUESTIONS OF YOU. WE KNOW
11 SOME OF THEM ARE INTENSELY PERSONAL. IT'S NOT OUR INTENT
12 TO INVADE YOUR PRIVACY. EACH QUESTION THAT WE ASK, STATE
13 LAW REQUIRES US TO ASK IT.

14 AND IN A CASE OF THIS NATURE WE'RE REQUIRED TO SPEAK
15 TO EACH JUROR INDIVIDUALLY TO MAKE UP OUR POOL OF
16 QUALIFIED JURORS FROM WHICH THE JURY WILL BE SELECTED. I
17 NEED TO EMPHASIZE FOR YOU THAT THERE ARE NO RIGHT OR WRONG
18 ANSWERS.

19 THE ONLY THING THAT WE ASK IS THAT YOU BE CANDID AND
20 HONEST WITH US AND THAT YOU ANSWER EACH QUESTION FULLY,
21 COMPLETELY, AND HONESTLY.

22 A OKAY.

23 Q IF YOU DO NOT UNDERSTAND A QUESTION, PLEASE LET US
24 KNOW. AND TO THE BEST OF YOUR ABILITY PLEASE ANSWER EACH
25 QUESTION WITH A YES OR NO ANSWER. AGAIN, KEEPING IN MIND

1 THERE ARE NO RIGHT OR WRONG ANSWERS.

2 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.

3 THE MERE FACT THAT WE TALK ABOUT PENALTY DOES NOT INDICATE
4 ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW
5 TO BE INNOCENT. DO YOU UNDERSTAND?

6 A YES.

7 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
8 LISTEN TO THE LAW?

9 A YES.

10 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
11 INSTRUCT YOU AS THE JUDGE OF THIS COURT?

12 A YES.

13 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
14 MIGHT DISAGREE WITH ME ABOUT WHAT THE LAW IS, WHAT I
15 INSTRUCT YOU THE LAW IS?

16 A SAY THAT AGAIN.

17 Q IN OTHER WORDS, SOMETIMES PEOPLE HAVE PRECONCEIVED
18 IDEAS ABOUT WHAT THEY THINK -- HOW THEY THINK THE LAW
19 SHOULD BE OR -- AND WHEN I SAY THE LAW, I'M TALKING ABOUT
20 THE RULES THAT GOVERN THE COURT. I'M TALKING ABOUT THE
21 ELEMENTS OF THE OFFENSES.

22 AND I WILL GIVE YOU AN EXAMPLE. FOR EXAMPLE, EVERY
23 CRIME IN SOUTH CAROLINA HAS ELEMENTS. AND ELEMENTS ARE
24 THINGS THE STATE MUST PROVE. FOR EXAMPLE, IN A BURGLARY
25 CASE THEY HAVE TO PROVE AN UNAUTHORIZED ENTRY, HOWEVER

1 SLIGHT. THEY HAVE TO PROVE THE PERSON INTENDED TO ENTER
2 WITH THE INTENT TO STEAL SOMETHING. OKAY?

3 AND THERE'S SOME OTHER ELEMENTS BECAUSE THERE ARE
4 DIFFERENT FORMS OF BURGLARY. I JUST PICKED THAT ONE OUT
5 OF THE AIR BECAUSE IT'S EASIER AND IT'S SHORT -- AN
6 EXAMPLE.

7 IF, FOR EXAMPLE, YOU CAME TO COURT AND YOU THOUGHT
8 THE STATE ONLY HAD TO PROVE AN UNAUTHORIZED ENTRY BUT I
9 TOLD YOU THEY HAD TO PROVE FIVE OTHER THINGS, COULD YOU
10 PUT ASIDE THOSE THOUGHTS AND THEORIES AND APPLY THE LAW AS
11 I INSTRUCT YOU?

12 A YES.

13 Q OKAY. COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
14 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
15 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE?

16 A YES.

17 Q OKAY. AND AGAIN, KEEP IN MIND THERE ARE NO RIGHT OR
18 WRONG ANSWERS. WE JUST NEED YOU TO BE CANDID WITH US.

19 OKAY. HAVE YOU HEARD, READ, OR SEEN ANY MEDIA COVERAGE
20 ABOUT THIS CASE PRIOR TO ARRIVING ON TUESDAY?

21 A YES.

22 Q AS A RESULT OF WHAT YOU MAY HAVE READ, HEARD, OR
23 SEEN, DID YOU FORM ANY FIXED OPINION ABOUT THE FACTS IN
24 THIS CASE? AND A FIXED OPINION MEANS, I HAVE ALREADY MADE
25 UP MY MIND ABOUT THE FACTS OF THIS CASE, IT DOESN'T MATTER

1 WHAT ELSE I HEAR, I HAVE ALREADY MADE UP MY MIND.

2 A YES.

3 Q OKAY. ARE YOU TELLING ME -- AND LET ME ASK ANOTHER
4 QUESTION, AND THIS WILL GIVE ME SOME CLARITY. AS A JUROR,
5 YOU TAKE AN OATH TO COME INTO THIS COURT AS WHAT I CAN
6 BEST -- BEST EXAMPLE I CAN THINK OF IS AN EMPTY VESSEL.
7 OKAY?

8 AND WHAT YOU COME INTO THIS COURT AND SWEAR TO DO IS
9 THAT YOU WILL COME IN HERE WITH AN EMPTY MIND AND THAT THE
10 ONLY THING YOU WILL CONSIDER IN YOUR DECISION IS THE
11 EVIDENCE THAT WILL COME FROM THE LIPS OF SWORN WITNESSES
12 AND THE OTHER EVIDENCE THAT WILL BE INTRODUCED AND THE LAW
13 THAT THE COURT WILL CHARGE.

14 WE KNOW AS HUMAN BEINGS EVERYBODY HAS PREDISPOSITIONS
15 AND OPINIONS. WITH A CASE OF THIS MAGNITUDE AND THIS MUCH
16 MEDIA COVERAGE, WE KNOW THAT IT WOULD BE SORT OF
17 UNREALISTIC TO THINK THAT PEOPLE HAD NOT READ ANYTHING.

18 AND WE NEED TO MAKE SURE THAT YOU UNDERSTAND THAT
19 WHAT YOU READ IN THE NEWSPAPER AND WHAT YOU SEE ON TV ARE
20 NOT THE FACTS. THEY -- THE LAW DOES NOT CONSIDER THOSE
21 FACTS. AND THOSE ARE NOT THINGS YOU CAN BASE YOUR
22 DECISION UPON.

23 AND SO WHAT WE NEED TO KNOW IS IF YOU CAN TOTALLY
24 EMPTY YOUR MIND OF EVERYTHING YOU HAVE READ, SEEN, OR
25 HEARD OR ANYTHING YOU MAY HAVE DISCUSSED WITH ANYONE AND

1 COME INTO THIS COURT AS THAT BLANK SLATE AND LISTEN TO
2 WHAT WE CONSIDER TO BE THE EVIDENCE, WHICH IS THE
3 EVIDENCE, BECAUSE IT'S OUR ONLY RECORD OF WHAT WE HAVE,
4 WHICH WILL BE WITNESSES WHO WILL BE SWORN AND THE OTHER
5 EVIDENCE AND OTHER THINGS THAT WILL BE INTRODUCED BY THE
6 PARTIES AS WELL AS THE LAW WHICH ARE THE GUIDELINES THAT
7 THE COURT WILL GIVE YOU ON HOW YOU APPLY THE LAW TO THE
8 FACTS AND WHETHER YOU CAN COME TO AN COMPLETELY IMPARTIAL
9 DECISION UNINFLUENCED BY ANYTHING ELSE.

10 AND I KNOW THAT WAS A LONG EXPLANATION. BUT WHAT --
11 AND I'LL BOIL IT DOWN. CAN YOU -- CAN YOU IN FACT COME
12 INTO THE COURT AS AN EMPTY VESSEL AND CONSIDER ONLY THE
13 EVIDENCE THAT IS PRESENTED HERE AND THE LAW AS THE COURT
14 WILL CHARGE, DELIBERATE WITH YOUR FELLOW JURORS, AND MAKE
15 A DECISION BASED SOLELY ON THOSE THINGS?

16 A I DON'T THINK SO, NO.

17 Q OKAY. SO YOUR ANSWER IS NO?

18 A NO.

19 Q OKAY.

20 THE COURT: ANY QUESTIONS FROM THE STATE?

21 MR. HEMBREE: NO, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. KELLY: NO, MA'AM.

24 THE COURT: ANY EXCEPTIONS TO THE JUROR BEING
25 EXCUSED FROM THE STATE?

1 MR. HEMBREE: NO EXCEPTIONS FROM THE STATE.

2 THE COURT: FROM THE DEFENSE?

3 MR. KELLY: NO, MA'AM.

4 THE COURT: MA'AM, YOU'RE EXCUSED WITH THE
5 COURT'S THANKS. HAVE A GREAT DAY.

6 JUROR: THANK YOU. THAT MEAN I DON'T HAVE TO...

7 THE COURT: NO, MA'AM.

8 JUROR: THANK YOU.

9 THE COURT: YOU'RE WELCOME. ALL RIGHT. WE ARE
10 DONE UNTIL 2:30 WHICH GIVES US ABOUT AN HOUR AND A
11 HALF FOR LUNCH WHICH GIVES US TIME TO... ENJOY YOUR
12 LUNCH. SEE YOU AT 2:30.

13 (WHEREUPON COURT WAS IN RECESS FOR LUNCH.)

14 THE COURT: OKAY. AS A MATTER OF HOUSEKEEPING.
15 WE HAVE A JUROR -- I ASKED SUMMER TO PULL HER NUMBER
16 FOR ME EARLIER BECAUSE I RECOGNIZED HER FACE, BUT I
17 DID NOT REMEMBER HER NUMBER. I GUESS WE NEED
18 MR. STANKO. I APOLOGIZE. TELL ME PRELIMINARILY WHAT
19 YOU ALL THINK.

20 I'M SURE Y'ALL WILL REMEMBER HER. SHE HAS A
21 PERFUME ALLERGY AND SHE LITERALLY CANNOT BE IN THE
22 PRESENCE OF ANYBODY. AND I WOULD REALLY HAVE TO TELL
23 THE JURY NOT TO WEAR PERFUME, AND THAT WOULD BE SUCH
24 A, YOU KNOW, OR DEODORANT OR ANYTHING BECAUSE SHE'S
25 SO VERY SENSITIVE.

1 SHE ALSO HAS A SHUNT AND SHE TOLD ME THAT SHE'S
2 GOING TO HAVE TO HAVE IT -- SHE HAS TO HAVE SOME
3 SURGERY ON IT. AND MY FEAR -- I DID NOT WANT TO, YOU
4 KNOW, ALTHOUGH WE ARE HOPEFUL FINISHING IN TWO WEEKS.
5 IN THE EVENT THAT WE WERE TO RUN OVER, I DON'T WANT
6 HER TO BE IN A POSITION WHERE HER HEALTH IS
7 COMPROMISED.

8 MR. HUMPHRIES: AS A PRACTICAL MATTER, WE
9 WOULD--

10 THE COURT: WELL, WE HAD TO SEPARATE HER. WE
11 HAD TO PUT HER IN THE LIBRARY.

12 MR. HUMPHRIES: SHE WAS COMING IN AND SHE IS
13 GOING TO BE A -- SHE WILL HAVE SPECIAL NEEDS.

14 THE COURT: I JUST THINK IT WOULD BE -- WELL,
15 SHE TOLD THE CLERK THE ONLY WAY SHE COULD -- AND SHE
16 TOLD ME THIS DURING QUALIFICATION. ACTUALLY WHEN SHE
17 SAID TO ME IS I HAVE A CHEMICAL ALLERGY. AS LONG AS
18 NOBODY IN MY VICINITY HAD ON STRONG PERFUME, I'LL BE
19 FINE.

20 BUT BASICALLY WHAT SHE HAS COMMUNICATED TO US
21 NOW IS THAT WE WOULD HAVE TO ASK EVERYBODY ON THE
22 JURY NOT TO WEAR PERFUME, NOT TO WEAR ANY KIND OF
23 DEODORANT, NOT -- AND I JUST THINK THAT WOULD BE
24 EXTREMELY STRESSFUL TO OTHER FOLK BECAUSE WE ARE
25 ALREADY DISRUPTING THEIR ROUTINE BY HAVING THEM IN A

1 HOTEL AND THEN WE WOULD BE FURTHER DISRUPTING HAVE
2 MANY ROUTINES, YOU KNOW, LIKE HOW YOU GET DRESSED IN
3 THE MORNING AND WHAT YOU DO, AND I JUST THINK IT
4 WOULD BE EXTREMELY STRESSFUL FOR HER AND I THINK IT
5 WOULD BE EXTREMELY STRESSFUL FOR THOSE AROUND HER.

6 SO I WAS THINKING SINCE WE WERE AT 36 AND I'M
7 FEELING A LITTLE MORE COMFORTABLE AND I'M THINKING
8 WE'RE GOING TO HAVE ENOUGH TO HAVE A FAIRLY ADEQUATE
9 CUSHION THAT WE COULD JUST GO AHEAD AND DISMISS HER.
10 AND I WANTED TO KNOW IF Y'ALL HAD ANY OBJECTION TO
11 THAT.

12 MR. KELLY: NO OBJECTION.

13 MR. HEMBREE: NO OBJECTION.

14 THE COURT: OKAY. COULD WE PLEASE BRING NUMBER
15 166? SHE'S IN THE LIBRARY BY HERSELF. SHE'S IN THE
16 LIBRARY. BECAUSE I NEVER -- I HAVE ALLERGIES, BUT I
17 DON'T HAVE THAT KIND OF AN ALLERGY, BUT I'VE HEARD
18 THOSE KIND OF ALLERGIES ARE VERY EXTREME, JUST NOT A
19 GOOD SITUATION, SO -- I WAS HESITANT TO LET HER GO
20 BEFORE WE GOT TO 35, BUT NOW THAT WE'RE AT 36.

21 (JUROR ENTERED THE COURTROOM.)

22 ANN IRISH, WHITE FEMALE, TESTIFIED AS
23 FOLLOWS:

24 BY THE COURT:

25 Q MA'AM, YOU DON'T HAVE TO SIT UNLESS YOU WANT TO.

1 A NO, I DON'T. IT WAS THE PERFUME.

2 Q YEAH. WHAT I WAS GOING TO TELL YOU IS I HAVE
3 DISCUSSED YOUR ALLERGIES -- WELL, NOT YOUR ALLERGY, BUT
4 YOUR SITUATION WITH THE ATTORNEYS AND I WAS HESITANT TO
5 LET YOU GO THE OTHER DAY WHEN YOU TOLD ME SIMPLY BECAUSE I
6 WASN'T SURE WE WERE GOING TO REACH THE NUMBER THAT WE
7 NEEDED AND I WANTED TO HAVE A LARGE ENOUGH POOL TO SELECT
8 FROM.

9 BUT YOU ALSO TOLD ME YOU HAD TO HAVE A PROCEDURE,
10 CORRECT? I FORGET THE DAY YOU TOLD ME.

11 A WELL, WE HAVEN'T GOT A DATE YET.

12 Q THAT'S WHAT YOU TOLD ME.

13 A TRUTHFULLY THERE IS NO REASON FOR ME TO BE EXCUSED.

14 Q OKAY.

15 A BE AS LONG AS I DON'T HAVE TO HAVE SOMEBODY LIKE
16 THAT -- TO ME.

17 Q YEAH. THE PROBLEM IS I CAN'T GUARANTEE THAT, AND
18 THAT'S THE ONLY THING THAT CONCERNS ME. AND I DON'T WANT
19 YOU TO HAVING A VIOLENT REACTION AND I CANNOT INSTRUCT THE
20 JURY NOT TO WEAR PERFUME, COLOGNES, OR -- AND MOST PEOPLE,
21 YOU KNOW, SOME PEOPLE WEAR A HINT OF IT, SOME PEOPLE WEAR
22 PERFUMES THAT BY THEIR VERY NATURE ARE JUST OVERBEARING
23 EVEN IF THEY WEAR A LITTLE OR A LOT.

24 AND SO WHAT WE'RE GOING TO DO, WE HAVE DETERMINED
25 THAT IT'S IN YOUR BEST INTEREST THAT WE GO AHEAD AND

1 EXCUSE YOU SO WE WOULDN'T HAVE TO PUT YOU IN THAT
2 SITUATION.

3 A BUT I DON'T WANT TO BE EXCUSED.

4 Q OKAY.

5 A I DON'T WANT TO BE EXCUSED.

6 Q OKAY. YOU UNDERSTAND THAT I WOULD NOT BE ABLE TO ASK
7 OTHER JURORS NOT TO WEAR PERFUME. THAT IS NOT SOMETHING
8 I'M GOING TO BE ABLE TO DO. I CANNOT INSTRUCT THEM NOT TO
9 WEAR THEIR TOILETRIES AND WHAT THEY NORMALLY WEAR EVERY
10 DAY.

11 A NOW, IN SCHOOLS, THE WHOLE SCHOOL GOES WITHOUT IF
12 ANYBODY -- ONE CHILD IS ALLERGIC.

13 Q THAT'S A LITTLE DIFFERENT BECAUSE THAT -- THAT -- A
14 SCHOOL ENVIRONMENT IS A LITTLE BIT DIFFERENT. I DON'T
15 KNOW IF THE SCHOOL GOES -- I DON'T KNOW THAT THAT IS IN
16 FACT TRUE.

17 A I DO BECAUSE I TAUGHT AT MT.--

18 Q PARDON ME?

19 A THAT WAS TRUE WHEN I TAUGHT.

20 Q WELL, IN CHARLESTON COUNTY I KNOW THEY STILL SERVE
21 PEANUT BUTTER BECAUSE MY NEPHEW IS A VERY PICKY EATER, THE
22 ONLY ONE -- THE ONLY THINGS HE WILL EAT IS PEANUT BUTTER
23 AND JELLY, AND I KNOW HE GETS TO HAVE THAT AT LUNCH TIME.

24 A I JUST, YOU KNOW, I FEEL STRONGLY THAT I SHOULD NOT
25 BE EXCLUDED BECAUSE -- I MEAN, THE ONLY THING I CAN

1 COMPARE IT TO MAYBE IS ALCOHOLISM. AND THE ALCOHOLIC --
2 TO BE EFFECTIVE, THE ALCOHOLIC HAS TO ACTUALLY DRINK THE
3 LIQUOR.

4 FOR ME TO BE AFFECTED FROM SOMEBODY NEXT TO ME CAN
5 SHOW -- PERFUME, AND I FEEL THAT MY RIGHTS ARE BEING
6 INFRINGED UPON IF I HAVE TO SIT NEXT TO THEM.

7 Q AND WHAT I'M SAYING IS I CAN'T GUARANTEE THAT YOU
8 WON'T BE SITTING NEXT TO SOMEONE THAT HAS ON PERFUME.
9 EVERYBODY HAD DIFFERENT THEORIES ABOUT THEIR OWN PERSONAL
10 HYGIENE. SOME PEOPLE DON'T WEAR ANY AT ALL. SOME PEOPLE
11 WEAR VERY LIGHT SCENTS.

12 SOME PEOPLE WEAR OTHER SCENTS, YOU KNOW, ESPECIALLY
13 SOME OF THESE VERY POPULAR SCENTS, EVEN IF YOU PUT A DROP
14 OF IT ON, I MEAN, IT IS EVERYWHERE. I MEAN, I HAVE BEEN
15 IN ELEVATORS WITH WOMEN WEARING THE MOST CURRENT SCENT,
16 AND IT IS -- IT ALMOST ENVELOPS ME, AND I'M ONE OF THESE
17 PEOPLE THAT BELIEVE THAT, YOU KNOW, WHEN YOU WEAR YOUR
18 PERSONAL SCENTS, YOU REALLY -- THE PERSON IN CLOSE
19 PROXIMITY IS THE ONLY PERSON WHO IS SUPPOSED TO SMELL IT,
20 BUT EVERYBODY DOES NOT HAVE THAT THEORY, AND I CANNOT
21 INSTRUCT THE JURORS NOT TO WEAR PERFUME, NOT TO WEAR
22 DEODORANT. THAT IS NOT SOMETHING THAT I CAN DO.

23 AND WHAT I AM SAYING IS THAT I UNDERSTAND THAT YOU
24 WANT TO SERVE. I UNDERSTAND AND WANT TO GIVE YOU THE
25 OPPORTUNITY TO SERVE. HOWEVER, I HAVE TO MAKE SURE THAT

1 NOTHING LIFE THREATENING HAPPENS TO YOU.

2 I HAVE TO MAKE SURE, AND I HAVE TO BE ABLE TO REST AT
3 NIGHT KNOWING THAT IT'S ALMOST LIKE PLAYING ROULETTE WITH
4 YOUR HEALTH. YOU KNOW, MAYBE THE PERSON YOU'RE SITTING
5 NEXT TO ONE DAY MAY FORGET THEIR PERFUME AND THE NEXT DAY
6 THEY WEAR IT AND YOU HAVE A SEVERE REACTION. THAT'S NOT
7 FAIR TO YOU..

8 AND I SIMPLY CANNOT INSTRUCT THEM NOT TO WEAR THEIR
9 PRODUCTS. NOW, I DON'T KNOW IF ANY SCHOOLS -- THEY
10 STOPPED DOING, YOU KNOW, I DON'T KNOW WHAT THEIR POLICIES
11 ARE AND I HAVE NO CONTROL OVER THAT.

12 BUT I KNOW THAT WHEN I AM CONSTITUTIONAL TYPE
13 ANALYSIS, I KNOW THAT I -- THAT NO COURT WOULD UPHOLD ME
14 DOING THAT BECAUSE I HAVE TO WEIGH THE RIGHTS OF A FEW
15 AGAINST THE RIGHTS OF MANY.

16 AND I CAN -- I COULD NOT JUSTIFY TELLING THE ENTIRE
17 PANEL OF 13 FOLK THAT YOU CAN'T WEAR YOUR PERFUMES. I
18 MEAN, THERE'S SOME PEOPLE THAT FELT VERY STRONGLY AND HAVE
19 OTHER HYGIENE ISSUES WHERE THEY HAVE TO WEAR PERFUME OR
20 THAT OTHER -- AND I'M TRYING TO BE DELICATE -- OR THE
21 OTHER ODORS YOU MIGHT COME IN CONTACT WITH THAT WOULD BE
22 FAR MORE OFFENSIVE TO YOU THAN THEM WEARING PERFUME.

23 AND THERE ARE PEOPLE LEGITIMATELY THAT HAVE THOSE
24 KIND OF ISSUES WHERE THEY HAVE TO WEAR DEODORANT AND
25 PERFUMES EVERY DAY.

1 A I'M PERFUMES -- TALKING ABOUT--

2 Q WELL, PERFUMES -- I MEAN, PERFUMES, COLOGNE, AND IT
3 JUST DEPENDS, YOU KNOW. I DON'T KNOW WHO IS GOING TO BE
4 ON THE JURY. IT'S A COMPLETELY RANDOM PROCESS. I DON'T
5 KNOW HOW -- WHO ELSE WILL BE FOUND QUALIFIED FOR THIS
6 PANEL.

7 I DON'T HAVE ANY CLUE HOW THE LAWYERS WILL EXERCISE
8 THEIR PEREMPTORY CHALLENGES. AND I DON'T -- I JUST WOULD
9 HAVE NO WAY OF GUARANTEEING WHO WOULD BE SITTING BY YOU
10 EVERY DAY.

11 I HAVE NO -- YOU WILL HAVE TO BE -- YOU WILL BE
12 SEQUESTERED. YOU'RE GOING TO BE RIDING IN A VAN IN CLOSE
13 PROXIMITY WITH THOSE SAME PEOPLE TO AND FROM COURT EVERY
14 DAY, GOING OUT TO LUNCH, GOING OUT TO DINNER.

15 AND I JUST WOULD -- IN ORDER TO ENSURE YOUR SAFETY,
16 WHICH IS MY MAIN CONCERN, AND IN ORDER TO MAKE SURE THAT
17 YOU'RE IN AN ENVIRONMENT THAT IS HEALTHY TO YOU, THE ONLY
18 WAY I CAN PREVENT YOU FROM BEING -- YOUR SPACE PERSONALLY
19 BEING ASSAULTED, FOR LACK OF A BETTER WAY OF PUTTING IT,
20 IS FOR ME TO BASICALLY INSTRUCT EVERYBODY THEY CAN'T WEAR
21 PERFUME, AND I JUST WOULDN'T BE ABLE TO DO THAT, AND I
22 WOULD NOT BE ABLE TO INSURE--

23 A WELL, I JUST FEEL THAT'S DISCRIMINATED AGAINST ME.

24 Q UH-HUH.

25 A OKAY? IF I WERE HANDICAPPED AND I NEEDED A WALKER OR

1 IF I HAD A ARTIFICIAL LEG, WOULD YOU DISCRIMINATE AGAINST
2 ME THEN?

3 Q NO, BUT THAT'S A TOTALLY DIFFERENT SITUATION BECAUSE
4 I WOULDN'T BE INFRINGING ON ANYONE ELSE'S RIGHTS. I
5 WOULDN'T HAVE TO INSTRUCT THEM NOT TO DO SOMETHING THAT
6 THEY FEEL MIGHT BE CLOSELY HELD AND PERSONAL BELIEF THAT
7 THEY FEEL VERY STRONGLY ABOUT.

8 IF YOU ARE HANDICAPPED, I WOULD BE COMPLYING WITH THE
9 AMERICAN WITH DISABILITIES ACT. I'D MAKE SURE THERE WAS A
10 RAMP FOR YOU.

11 A BUT MULTIPLE CHEMICAL SENSITIVITY IS NOT CONSIDERED
12 ANY KIND OF A DISABILITY?

13 Q NO, MA'AM.

14 A ARE YOU FAMILIAR WITH IT AT ALL?

15 Q I AM VERY FAMILIAR WITH IT. I AM VERY FAMILIAR WITH
16 IT AND I HAVE HAD THAT SITUATION WITH MANY JURORS, AND
17 USUALLY THEY BRING A NOTE FROM THEIR DOCTOR TELLING ME
18 THAT THEY HAVE TO REMAIN IN WHAT IS BASICALLY EQUIVALENT
19 TO A STERILE ENVIRONMENT AND THEY WOULD PREFER NOT TO
20 SERVE.

21 A I'M JUST THE OPPOSITE.

22 Q AND I AGREE. AND I ENCOURAGE YOU TO SERVE. I WANT
23 YOU TO SERVE. I DON'T WANT TO--

24 A I WANT ME TO SERVE, TOO.

25 Q I'M NOT SAYING THAT I DON'T WANT YOU TO. I'M JUST

1 GIVING YOU THE OPTION AND I'M GIVING YOU A FULL DISCLOSURE
2 THAT I'M NOT GOING TO ADVISE THE OTHER JURORS THAT THEY
3 CANNOT WEAR THEIR HYGIENE PRODUCTS AND THAT THEY, YOU
4 KNOW, THEY WILL BE ABLE TO WEAR PERFUME. I CAN'T
5 GUARANTEE THAT.

6 A THERE WERE TWO PEOPLE DONE IT. THE FIRST ONE -- THE
7 FIRST DAY WE WERE IN HERE AND THERE WAS A LITTLE ELDERLY
8 WOMAN WHO DIDN'T EVEN HAVE TO BE HERE, AND SHE WAS THE ONE
9 THAT GOT ME WITH THE PERFUME.

10 Q BUT WHAT -- I MEAN, WHAT IF -- THE THING IS, EVEN IF
11 I SAT YOU IN A GROUP OF EVERYBODY THAT'S HERE TODAY, THERE
12 ARE OTHER PEOPLE YOU HAVEN'T BEEN IN CONTACT WITH. OVER
13 THE WEEKEND SOMEBODY MIGHT GO TO THE STORE -- AND YOU KNOW
14 HOW WHEN YOU WALK IN THE STORE AND FOLKS SPRAY PERFUME ON
15 YOU?

16 A NO. I KNOW HOW.

17 Q BUT THEY MAY WELL DECIDE THEY WANT TO TRY A NEW
18 FRAGRANCE, SOMETHING THEY DIDN'T WEAR WHEN YOU WERE HERE
19 LAST WEEK OR THIS WEEK -- NOT LAST WEEK, EARLIER THIS
20 WEEK. ALL MY DAYS ARE STARTING TO RUN TOGETHER.

21 BUT THEY MAY WELL DECIDE, I WANT TO TRY A NEW
22 PERFUME. OR YOU HAVE SOME WOMAN THAT WEAR DIFFERENT
23 PERFUME EVERY WEEK. I WEAR THE SAME FRAGRANCE ALL THE
24 TIME BECAUSE I'M JUST A CREATURE OF HABIT. BUT I HAVE
25 FRIENDS WHO WEAR A DIFFERENT FRAGRANCE -- WHATEVER THE

1 MOOD HITS THEM.

2 SO, I MEAN, THEY MIGHT HAVE ON ONE THAT -- YOU KNOW,
3 LIKE FOR EXAMPLE, THE CALVIN KLEIN FRAGRANCES, THERE ARE
4 SEVERAL OF THEM, BUT THEY ARE VERY STRONG. THEY ARE VERY
5 CONCENTRATED. THEY MAKE ME NAUSEOUS. BUT THEY ARE PEOPLE
6 THAT LOVE THEM.

7 AND YOU KNOW, THERE ARE OTHER ONES -- SOME OF THE --
8 I WON'T GO INTO ALL THE BRANDS, BUT WE KNOW SOME OF THE
9 VERY POPULAR BRANDS ARE VERY CONCENTRATED AND YOU CAN
10 SMELL THEM FROM A MILE AWAY, I DON'T CARE IF YOU PUT ON A
11 LITTLE BIT OR A LOT.

12 AND I HAVE NO WAY OF GUARANTEEING THAT A FRAGRANCE OF
13 SOMEONE DID NOT WEAR THIS WEEK, THEY MAY NOT DECIDE, WELL,
14 I'M GOING TO BE GONE FOR TWO WEEKS, I NEED TO TAKE SEVERAL
15 FRAGRANCES WITH ME, AND I MAY WANT TO CHANGE UP EVERY DAY.

16 I HAVE NO WAY -- AND WHAT I'M SAYING IS THAT YOU ARE
17 FREE TO SERVE, BUT I HAVE NO WAY OF GUARANTEEING--

18 A I'M NOT ASKING YOU TO.

19 Q -- THAT THAT WON'T INVADE YOUR SPACE. AND I JUST
20 HAVE CONCERN ABOUT YOUR OWN WELL-BEING. AND I DIDN'T WANT
21 THAT IN ANY WAY TO BE ASSAULTIVE. I JUST -- BECAUSE I
22 KNOW WITH MULTIPLE CHEMICAL SENSITIVITY THAT'S--

23 A NOW, IF YOU GET -- IF I GET CHOSEN, DO YOU HAVE A--

24 Q I'M SORRY. REPEAT THAT.

25 A IF I GOT CHOSEN AND GOT SEQUESTERED.

1 Q YES, MA'AM.

2 A DO YOU HAVE A PRIVATE ROOM OR DO YOU HAVE TO SHARE?

3 Q HAVE A PRIVATE ROOM.

4 A OKAY. SO THAT WOULDN'T BE AN ISSUE.

5 Q NO, BUT I DON'T KNOW IF THE HOTEL IS GOING TO BE
6 USING THE KIND OF DETERGENTS AND OTHER THINGS THAT -- I
7 WOULD IMAGINE THAT YOU USE THE THINGS WITH NO DYES AND
8 WITH NO PERFUMES. I DON'T KNOW WHAT THE HOTEL USES.

9 AND I CANNOT INSTRUCT THEM TO LAUNDER YOUR ITEMS IN
10 ONLY THOSE PRODUCTS. EVEN IF I DID, I HAVE NO WAY OF
11 GUARANTEEING THAT THAT'S IN FACT WHAT THEY WOULD DO. I
12 MEAN, I COULD ASK THEM, BUT I DON'T KNOW THAT THEY ARE
13 EQUIPPED--

14 A I'M NOT ASKING YOU TO ASK THEM. I MEAN--

15 Q -- TO DO IT.

16 A IT REALLY -- IT ONLY AFFECTS ME WHEN SOMEBODY WHO IS
17 THAT BATHED IN PERFUME--

18 Q UH-HUH.

19 A -- COMES IN RIGHT NEXT TO ME. I -- I FEEL STRONGLY
20 THAT I WANT TO SERVE.

21 Q OKAY. WELL THEN YOU--

22 A I'M 52 YEARS OLD. MAYBE I'M TOO INTELLIGENT. YOU
23 STRESSED THE WHOLE SIXTH GRADE EDUCATION. I HAVE TWO
24 MASTER'S DEGREES.

25 Q WELL, STATE LAW REQUIRES THAT I ASK THAT QUESTION. I

1 SAID SIXTH GRADE EDUCATION OR ITS EQUIVALENT BECAUSE THERE
2 ARE MANY PEOPLE WHO HAVE GONE TO THE THIRD GRADE -- AS A
3 MATTER OF FACT, I HAD A NEIGHBOR WHO WENT TO THE THIRD
4 GRADE, BUT HE RAN THE WATER WORKS FOR CHARLESTON.

5 HE WAS MORE INTELLIGENT THAN ANY PERSON I KNEW THAT
6 HAD FIVE COLLEGE DEGREES BECAUSE HE HAD WISDOM AND HE HAD
7 COMMON SENSE FAR BEYOND -- IN BUSINESS ACTING BEYOND ANY
8 MAN I KNEW.

9 A SO IF YOU MADE UP YOUR MIND -- YOU CAN--

10 Q NO, WE WILL KEEP YOU. AND WHAT I INDICATED, I WANTED
11 TO GIVE YOU -- I THOUGHT THERE WAS CONCERNS ABOUT YOUR
12 HEALTH. AND IF THAT WERE IN FACT THE CASE, I WANTED YOU
13 TO KNOW THAT WE HAD AGREED THAT THAT WAS OPTIONAL TO YOU.
14 IF YOU WOULD LIKE TO BE EXCUSED, WE WILL EXCUSE YOU.

15 IF YOU WANT TO REMAIN WITH US, WE WILL BE GLAD TO
16 KEEP YOU. I JUST NEED TO MAKE YOU AWARE I CANNOT MAKE ANY
17 SPECIAL ARRANGEMENTS. I CANNOT GUARANTEE THAT YOU WILL
18 NOT SIT NEXT TO SOMEONE WHO WILL CAUSE YOU TO HAVE A
19 REACTION.

20 I HAVE NO WAY OF KNOWING WHAT PERFUMES PEOPLE WILL
21 WEAR. I HAVE NO IDEA THAT PEOPLE WILL NOT WEAR PERFUME
22 DIFFERENTLY THAN THE ONE THEY WORE THIS WEEK. I JUST HAVE
23 NO WAY OF PROVIDING THOSE GUARANTEES. AND THAT'S ALL I
24 WANTED TO MAKE YOU AWARE OF AFTER HEARING YOUR
25 ADDITIONAL--

1 A AND THE OTHER--

2 Q -- QUESTIONS OF THE COURT.

3 A -- THE OTHER ISSUE WITH ME IS I DO HAVE A SHUNT IN MY
4 HEAD.

5 Q YES, MA'AM.

6 A AND IT HAS BEEN MALFUNCTIONING.

7 Q YES, MA'AM.

8 A DOCTOR -- IS GOING TO DO FURTHER SURGERY IN A COUPLE
9 OF WEEKS. IT CAN WAIT UNTIL THIS IS OVER.

10 Q WELL, BUT THAT WAS IF OTHER CONCERN I HAD WAS THAT IF
11 YOU NEEDED TO GO AHEAD AND HAVE THAT SURGERY, THEN THERE'S
12 NO NECESSITY IN YOU DELAYING IT FOR US. I WANTED TO GIVE
13 YOU THE OPPORTUNITY TO GO AHEAD -- AND BECAUSE I KNOW THAT
14 A SHUNT IS A VERY SERIOUS THING.

15 AND GENERALLY WHEN THEY MALFUNCTION, THEY NEED TO BE
16 REPAIRED IMMEDIATELY BECAUSE IT CAN BE GRAVE AND IT CAN BE
17 LIFE THREATENING--

18 A I HAD FOUR SURGERIES ON THE SHUNT. THE FIRST TWO
19 WERE DONE AT THE -- ALMOST FAILED. DR. TOCK HAS BEEN THE
20 ONE WHO HAS REALLY -- HE SAID NOW IT'S AT THE POINT IT'S
21 PUMPING, BUT THE VENTRICLE IS NOT REALLY CLEARING LIKE
22 THEY SHOULD.

23 Q OKAY.

24 A SO HE JUST HAS TO GO INTO ONE LITTLE BIT AND DO IT.

25 Q OKAY.

1 A HE SAID IT WILL TAKE 15 OR 20 MINUTES.

2 Q HOW LONG IS YOUR RECOVERY AFTER THAT?

3 A THE LAST TIME I -- NIGHT I WAS UP AND AROUND.

4 Q OKAY. AND WHAT I -- AGAIN, MY CONCERN IS FOR YOUR
5 WELL-BEING AND WHETHER YOU WANT -- I DID NOT WANT YOU TO
6 BE DELAYED IN GOING AND HAVING A PROCEDURE IF YOU WANTED
7 TO GO AHEAD--

8 A IT'S NOT LIFE THREATENING, REALLY.

9 Q OKAY.

10 A AND HE SHOWED ME THAT IF I START TO GET -- TO BE
11 AHEAD, TO JUST PUMP THE -- PUMP IT AND IT WILL GO AWAY.

12 Q WELL, I JUST WANTED TO MAKE YOU -- I THOUGHT THAT YOU
13 WERE OF THE PERSUASION THAT YOU MIGHT WANT TO BE EXCUSED
14 OR--

15 A NO.

16 Q -- I WANTED YOU TO KNOW THAT YOU HAVE THAT OPTION.
17 AND I ALSO WANTED TO MAKE YOU FULLY AWARE AND INFORM YOU
18 THAT I HAVE NO WAY OF MAKING THIS A COMPLETELY, FOR LACK
19 OF A BETTER WAY OF PUTTING IT, STERILE ENVIRONMENT. I
20 JUST HAVE NO WAY--

21 A AS LONG AS IF I WERE TO GET CHOSEN, I WOULD GET A
22 ROOM THAT I WOULDN'T SHARE.

23 Q NO.

24 A OKAY.

25 Q NOBODY IS GOING TO HAVE TO SHARE WITH ANYBODY.

1 A OKAY.

2 Q NO, WE WOULD NEVER REQUIRE THAT OF ANYONE. WE KNOW
3 FOLK NEED -- I NEED MY ME TIME. I WOULD IMAGINE AFTER THE
4 STRESS OF ALL DAY LONG, EVERYBODY ELSE WILL NEED A LITTLE
5 TIME TO EXHALE ALSO. NO, I THINK THAT FRANKLY WOULD BE
6 TOO MUCH TO ASK OF ANY ONE PERSON AND WE WOULD NOT DO
7 THAT.

8 A BECAUSE QUITE FRANKLY THE CHEMICAL SENSITIVITY
9 DOESN'T ACT UP THAT OFTEN. THE ONLY CURE IS TO AVOID--

10 Q UH-HUH.

11 A -- STRONG PERFUME, AND NORMALLY I CAN'T AVOID THAT,
12 SITTING THERE IN BENCHES AND PUSHING EVERYBODY TOGETHER,
13 THAT WAS A LITTLE DIFFICULT.

14 Q WELL, JUST SO YOU CAN HAVE A POINT OF REFERENCE, THIS
15 IS HOW YOU WOULD BE SEATED.

16 A YES. OKAY.

17 Q AND THERE IS NO OTHER ARRANGEMENT.

18 A I SERVED ON TWO JURIES.

19 Q OKAY.

20 A I AM...

21 Q SO THIS IS HOW --

22 A QUITE FAMILIAR.

23 Q -- WELL, I WANTED YOU TO KNOW THE CONFIGURATION OF
24 THIS COURTROOM.

25 A OKAY.

1 Q AND THIS IS WHERE THE JURY WILL BE SITTING. AND THIS
2 IS THE PROXIMITY THAT YOU WILL BE SEATED TO ONE ANOTHER.
3 AND WE DON'T HAVE ANY OTHER OPTIONS. YOU KNOW, THESE
4 ARE -- WE'RE LIMITED IN THAT REGARD. SO I CANNOT
5 GUARANTEE THAT SOMEONE -- THAT'S VERY CLOSE.

6 A NOT AS CLOSE AS WE WERE ON THAT BENCH.

7 Q YEAH. BUT I MEAN, IF SOMEBODY ON THIS END HAS ON A
8 VERY STRONG, CONCENTRATED FRAGRANCE AND YOU'RE SEATED HERE
9 OR SEATED BEHIND THEM, YOU DO HAVE -- I MEAN, WHAT HAPPENS
10 WHEN YOU HAVE A REACTION?

11 A I GET A HEADACHE.

12 Q OKAY.

13 A AND IT DOES GO AWAY.

14 Q SO AS YOU INDICTED, IT IS NOT LIFE THREATENING?

15 A NO.

16 Q IS IT SUCH A HEADACHE THAT YOU WOULD NOT BE ABLE TO
17 CONCENTRATE ON WHAT'S GOING ON?

18 A NO.

19 Q OKAY. WELL, I TELL YOU WHAT. I JUST WANTED --
20 BEFORE WE GOT STARTED QUESTIONING THE NEXT PANEL OF JURORS
21 BECAUSE I DON'T THINK YOU'RE SCHEDULED TO BE HERE UNTIL
22 3:30.

23 A WELL, WHAT HAPPENED IS THE OTHER DAY YOU GOT SO -- A
24 LOT OF US LEFT, AND YOU SAID ALL OF YOU COME BACK AT 12,
25 WHICH IS WHAT WE DID.

1 Q YES, MA'AM.

2 A AND THEN WE WERE TOLD WHAT TIME FROM THEN.

3 Q YES, MA'AM.

4 A IF I KNEW I DIDN'T HAVE TO BE HERE TILL 3:30 I
5 WOULDN'T HAVE BEEN HERE AT 12.

6 Q YOU STILL HAD TO BE HERE AT 12 BECAUSE I HAD NOT MADE
7 A DECISION NOR WAS I EQUIPPED TO MAKE THE DECISION ABOUT
8 WHETHER I WAS GOING TO NEED YOU. SO THE REASON I HAD YOU
9 ALL COME BACK AT 12 IS BECAUSE IT WAS TO SAVE TIME BECAUSE
10 IF I DIDN'T NEED YOU, I WAS GOING TO LET YOU ALL GO HOME
11 TODAY.

12 A OKAY.

13 Q BUT IT TURNS OUT THAT I WAS GOING TO NEED YOU, SO WE
14 HAD TO FURTHER PANEL EVERYBODY OUT. OKAY? I TELL YOU
15 WHAT. WHY DON'T YOU GO WITH THE BAILIFFS. AND I WANTED
16 TO GIVE YOU THAT OPTION. WE WELCOME YOU TO STAY WITH US
17 IF YOU WOULD LIKE TO BE HERE.

18 A OKAY. THANK YOU.

19 THE COURT: THANK YOU.

20 (JUROR LEFT THE COURTROOM.)

21 MR. HEMBREE: I'VE GOT SOME GENUINE CONCERN OF
22 HER MENTAL--

23 THE COURT: OF HER MENTAL STATE?

24 MR. HEMBREE: -- DISABILITIES. SHE SAID THE
25 OTHER DAY SHE WANTED TO BE EXCUSED, AND THERE'S NO

1 QUESTION ABOUT THAT, WE ALL SAW THAT. NOW SHE
2 DOESN'T WANT TO BE EXCUSED. AND SHE'S JUST ALL OVER
3 THE MAP.

4 I MEAN, SHE'S GOING TO HAVE THE SURGERY, NOW
5 SHE'S NOT GOING TO HAVE THE SURGERY. BY THE END OF
6 THE CONVERSATION SHE WAS GOING TO HAVE THE SURGERY.
7 AND THAT'S JUST -- THOSE ARE JUST TWO EASY EXAMPLES,
8 AND I CAN GO INTO A LOT MORE.

9 THE COURT: I KNOW. AND I THINK YOUR CONCERNS
10 ARE LEGITIMATE. MR. KELLY, MR. DIGGS, Y'ALL WANT TO
11 SHARE ANYTHING WITH US? I'M TRYING TO FIND A VERY
12 TACTFUL AND DELICATE WAY TO DEAL WITH THAT.

13 I WAS TRYING THE BEST AS I COULD NOT TO OFFEND
14 HER BECAUSE -- AND I HOPE I DIDN'T BECAUSE THAT
15 SINCERELY WAS NOT MY INTENTION.

16 MR. KELLY: WELL, MA'AM, SHE -- AS FAR AS BEING
17 CLOSE TO PEOPLE IN THE JURY ROOM IS CLOSER
18 ENVIRONMENT EVEN THAN THAT.

19 THE COURT: I KNOW, IT'S SMALL.

20 MR. KELLY: BUT SHE'S IN THE LINE-UP. SHE MAY
21 NOT EVEN QUALIFY--

22 THE COURT: THAT'S WHAT I'M THINKING.

23 MR. KELLY: -- WHEN SHE'S EXAMINED. WE MAY NOT
24 EVEN REACH HER--

25 THE COURT: THAT'S MY OTHER CONCERN.

1 MR. KELLY: -- AS FAR AS THAT GOES. SHE IS --
2 SHE IS A VERY, FOR THE LACK OF A BETTER DESCRIPTION
3 DEMANDING AND NEEDY PERSON, AND I DON'T THINK THAT WE
4 WILL BE ABLE TO DEAL IT OTHER THAN TO FURTHER
5 QUALIFY.

6 THE COURT: THAT WAS MY THOUGHT, TOO, MR. KELLY,
7 AND I -- I -- YOU SAID WHAT I WAS THINKING, WHICH IS
8 I DON'T KNOW THAT WE WILL REACH HER. AND THE OTHER
9 CONCERN THAT I HAVE, FRANKLY, IS THAT SHE HAS A
10 CONSTITUTIONAL RIGHT TO SERVE, THE RIGHT BELONGS TO
11 HER, SHE HAS THE RIGHT TO EXERCISE IT.

12 I WAS SURPRISED WHEN SHE SAID SHE DIDN'T WANT TO
13 BE DISMISSED. SO WE'LL JUST--

14 MR. KELLY: SHE MADE A TOTAL REVERSAL AS THE
15 SOLICITOR SAID, AND I AGREE WITH THE SOLICITOR SHE'S
16 MISSPOKEN HERSELF -- VARIED WITH WHAT SHE SAID
17 EARLIER. AND I'M CONCERNED THAT SHE IS AS THE
18 SOLICITOR PORTRAYED HER.

19 HOWEVER, WE PREFER TO MOVE FORWARD AND SEE WHAT
20 HAPPENS.

21 THE COURT: YEAH. WHY DON'T WE CROSS THAT
22 BRIDGE WHEN WE COME TO IT. I DON'T WANT TO BE IN A
23 SITUATION WHERE SHE FEELS THAT I HAVE REQUIRED HER TO
24 BE EXCUSED OR OTHERWISE.

25 MR. KELLY: WELL MA'AM, YOU WENT A LOT FURTHER

1 THAN MANY WOULD.

2 THE COURT: MR. KELLY, THANK YOU. YOU MADE ME
3 FEEL BETTER BECAUSE I WAS STRESSING JUST NOW ABOUT
4 THE WHOLE SITUATION. THE OTHER THING, I THOUGHT
5 ABOUT IT OVER LUNCH, AND I TRIED TO CLARIFY IT ON THE
6 RECORD, AND I DON'T KNOW IF I DID AS GOOD A JOB AS I
7 SHOULD HAVE. I GOT SOME WATER RIGHT HERE. I'M FINE.
8 I NEED A CUP THOUGH, YEAH.

9 ONE OF THE JURORS -- AND I REALLY DON'T REMEMBER
10 HER NAME. SHE WAS ONE OF OUR VERY YOUNG JURORS, AND
11 I ASKED HER IF SHE COULD FOLLOW THE LAW AS I ASKED --
12 I MEAN, AS I EXPLAINED IT TO HER EVEN IF SHE
13 DISAGREED WITH ME, AND SHE WENT, I'D HAVE TO, AND I
14 SAID, GOOD ANSWER.

15 BUT I -- I WANTED YOU ALL TO KNOW THAT I WASN'T
16 TRYING TO -- AFTER I SAID IT, YOU KNOW, I'M A VERY
17 APPLICABLE PERSON, AND MY SOMETIMES MY INSTINCTS TAKE
18 OVER. SHE WAS ABSOLUTELY UNNERVED BY THIS WHOLE
19 PROCESS.

20 AND I SAID THAT TO TRY TO TAKE THE EDGE OFF OF
21 HOW SHE WAS FEELING AND ADD SOME LEVITY. SO I DIDN'T
22 WANT YOU ALL TO THINK THAT I WAS IN ANY WAY, YOU
23 KNOW, MINIMAL -- YOU KNOW, I -- I READ PEOPLES EYES,
24 I READ THEIR AFFECT, AND SHE WAS LITERALLY...

25 MR. HEMBREE: IT WAS VERY CLEAR, YOUR HONOR,

1 THAT THAT WAS -- THAT WAS DONE TO BREAK THE ICE AND
2 MAKE HER FEEL COMFORTABLE.

3 MR. KELLY: YES, MA'AM. WE NOTICED THAT AND WE
4 FELT THAT THAT WAS PROPER.

5 THE COURT: THANK YOU. I JUST WANTED TO MAKE
6 SURE THAT WAS CLEAR FOR THE RECORD. BECAUSE, YOU
7 KNOW, IT'S A FUNNY THING WHEN YOU READ THE WHOLE
8 RECORD AND YOU WEREN'T THERE, AND I WAS AT LUNCH
9 AND -- WHAT WERE YOU THINKING. SO I APPRECIATE YOU
10 ALL RELAYING MY CONCERNS.

11 WE WILL -- I HOPE WE WILL GET CAUGHT BACK UP. I
12 THINK WE WILL. IF YOU ALL CAN BRING CHADWICK MILLER
13 TO ME, NUMBER 226. AND HE DID NOT RESPOND TO ANY OF
14 THE QUESTIONS.

15 (JUROR ENTERED THE COURTROOM.)

16 CHADWICK MILLER, BLACK MALE, TESTIFIED
17 AS FOLLOWS:

18 BY THE COURT:

19 Q SIR, HOW ARE YOU?

20 A GOOD. HOW ARE YOU?

21 Q I APPRECIATE YOUR PATIENCE. HOW ARE YOU DOING TODAY?

22 A DOING OKAY.

23 Q IF YOU COULD GET AS CLOSE TO THAT MICROPHONE FOR ME
24 AS POSSIBLE. YOU SEEM TO BE A LITTLE SOFT SPOKEN. AND
25 TAKE A DEEP BREATH. DON'T BE NERVOUS. I KNOW THIS CAN BE

1 A LITTLE UNNERVING. PLEASE TELL US YOUR NAME FOR THE
2 RECORD.

3 A CHADWICK MILLER.

4 Q AND MR. MILLER, YOU ARE JUROR 226?

5 A YES, MA'AM.

6 Q IS THAT RIGHT? SIR, I WILL REMIND YOU YOU'RE STILL
7 UNDER OATH. DO YOU UNDERSTAND?

8 A YES, MA'AM.

9 Q AND SIR, I'M GOING TO ASK YOU -- WELL, LET ME ASK
10 ANOTHER QUESTION. HAVE YOU BEEN EXPOSED TO ANY MEDIA
11 COVERAGE ABOUT THIS CASE SINCE THE COURT'S INSTRUCTIONS ON
12 TUESDAY?

13 A NO, MA'AM.

14 Q SIR, I'M GOING TO ASK YOU SOME QUESTIONS. AGAIN, I
15 WANT YOU TO TAKE ANOTHER DEEP BREATH. BE RELAXED. I KNOW
16 THIS AGAIN CAN BE VERY NERVE WRACKING TO THOSE WHO ARE NOT
17 USED TO BEING INVOLVED IN THE PROCESS.

18 IN A CASE OF THIS TYPE STATE LAW REQUIRES US TO TALK
19 TO EACH JUROR INDIVIDUALLY. AND SOME OF THESE QUESTIONS I
20 KNOW WILL SEEM VERY PERSONAL. IT'S NOT OUR INTENT TO
21 INVADE YOUR PRIVACY. I KNOW WE'RE GOING TO ASK YOU ABOUT
22 SOME THINGS YOU PROBABLY NEVER HAVE GIVEN ANY REAL GREAT
23 THOUGHT TO. OKAY?

24 A YES, MA'AM.

25 Q SO I NEED YOU TO ASSURE YOU THERE ARE NO RIGHT OR

1 WRONG ANSWERS. THE ONLY THING WE ASK IS THAT YOU BE OPEN
2 AND HONEST AND CANDID WITH US ABOUT YOUR VIEWS AND YOUR
3 FEELINGS. OKAY?

4 A ALL RIGHT.

5 Q AND IF YOU DON'T UNDERSTAND A QUESTION, LET ME KNOW.
6 AND IF THE -- TO THE BEST OF YOUR ABILITY IF YOU COULD
7 ANSWER EACH QUESTION WITH A YES OR NO ANSWER. AND YOU'RE
8 GOING TO HAVE TO TELL ME YES OR NO BECAUSE--

9 A YES.

10 Q OKAY. THANK YOU. SIR, AMONG OTHER THINGS WE'LL BE
11 TALKING ABOUT PENALTY. AND THE FACT THAT WE TALK ABOUT
12 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT.
13 HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
14 UNDERSTAND?

15 A YES, MA'AM.

16 Q SIR, IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD
17 YOU LISTEN TO THE LAW?

18 A YES, MA'AM.

19 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
20 INSTRUCT YOU?

21 A YES, MA'AM.

22 Q EVEN THOUGH YOU MAY NOT AGREE -- EVEN THOUGH YOU MAY
23 DISAGREE WITH WHAT I TELL YOU THE LAW IS, WILL YOU STILL
24 BE ABLE TO ACCEPT AND APPLY IT?

25 A YES, MA'AM.

1 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
2 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
3 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
4 CASE?

5 A YES, MA'AM.

6 Q SIR, PRIOR TO TUESDAY HAD YOU BEEN EXPOSED TO ANY
7 MEDIA COVERAGE ABOUT THIS CASE?

8 A NO, MA'AM.

9 Q SIR, IN A CRIMINAL CASE THE STATE HAS THE BURDEN OF
10 PROVING GUILT AND THEY MUST PROVE GUILT BEYOND A
11 REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

12 A YES, MA'AM.

13 Q DO YOU ALSO UNDERSTAND THAT THE DEFENDANT HAS NO
14 BURDEN TO PROVE HIS INNOCENCE?

15 A YES, MA'AM.

16 Q SIR, HAVE YOU HAD A CHANCE TO READ THE JUROR TYPE
17 FORM THAT WAS IN THE JURY ROOM?

18 A YES, MA'AM.

19 Q AND OF THOSE THREE, WHAT TYPE WOULD YOU CHARACTERIZE
20 YOURSELF AS?

21 A TYPE ONE.

22 Q OKAY. AND THAT IS THE TYPE JUROR WHO COULD NEVER
23 IMPOSE THE DEATH PENALTY; IS THAT CORRECT?

24 A YES, MA'AM.

25 Q AND DO YOU -- IS THAT A STRONGLY HELD BELIEF?

1 A YES, MA'AM.

2 Q OKAY.

3 THE COURT: ANY QUESTIONS FROM THE STATE?

4 MR. HEMBREE: NO QUESTIONS FROM THE STATE, YOUR
5 HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MR. KELLY: NO, MA'AM.

8 THE COURT: ANY EXCEPTION TO THE JUROR BEING
9 EXCUSED?

10 MR. HEMBREE: NONE FROM THE STATE.

11 MR. KELLY: NO, MA'AM.

12 THE COURT: SIR, YOU'RE EXCUSED. HAVE A GOOD
13 DAY. AND AGAIN, WE REALLY APPRECIATE YOUR TIME AND
14 YOUR PATIENCE.

15 JUROR: ALL RIGHT. THANK YOU.

16 THE COURT: YOU'RE WELCOME.

17 (JUROR LEFT THE COURTROOM.)

18 THE COURT: PRISCILLA HEYWARD, 160. AND WE DO
19 NOT HAVE HER AS RESPONDING TO ANY QUESTIONS.

20 (JUROR ENTERED THE COURTROOM.)

21 PRISCILLA HEYWARD, BLACK FEMALE,
22 TESTIFIED AS FOLLOWS:

23 BY THE COURT:

24 Q MA'AM, IF YOU WILL COME FORWARD FOR US AND HAVE A
25 SEAT. HOW YOU DOING TODAY?

1 A FINE. HOW ARE YOU?

2 Q DOING FINE. IF YOU COULD COME CLOSE TO THE
3 MICROPHONE FOR US. GET YOURSELF SITUATED. GET
4 COMFORTABLE. TAKE A DEEP BREATH. I KNOW IT'S A LITTLE
5 NERVE WRACKING. AND TELL US YOUR NAME FOR THE RECORD.

6 A PRISCILLA HEYWARD.

7 Q AND MRS. HEYWARD, YOU ARE JUROR 150; IS THAT RIGHT?

8 A CORRECT.

9 Q OKAY. MRS. HEYWARD, I'LL REMIND YOU YOU'RE STILL
10 UNDER OATH. DO YOU UNDERSTAND?

11 A YES, I DO.

12 Q AND HAVE YOU BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT
13 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

14 A NO, I HAVEN'T.

15 Q NOW, WE'RE GOING TO ASK YOU SOME QUESTIONS.

16 A OKAY.

17 Q BECAUSE OF THE NATURE OF THIS CASE STATE LAW REQUIRES
18 THAT WE TALK TO EACH JUROR INDIVIDUALLY. AGAIN, I WANT
19 YOU TO TAKE ANOTHER DEEP BREATH. GET RELAXED. I KNOW
20 THIS CAN BE A LITTLE DAUNTING AND -- BUT I NEED TO
21 REAFFIRM FOR YOU THAT THERE ARE NO RIGHT OR WRONG ANSWERS.

22 I KNOW SOME OF THESE QUESTIONS MAY BE SEEM VERY
23 PRIVATE AND I KNOW THEY MAY REQUIRE YOU TO THINK ABOUT
24 SOME THINGS YOU NEVER REALLY THOUGHT ABOUT BEFORE. OKAY?
25 BUT AGAIN, I WANT TO REASSURE YOU THAT THERE ARE NO RIGHT

1 OR WRONG ANSWERS.

2 THE ONLY THING WE ASK IS THAT YOU BE OPEN AND HONEST
3 WITH US AND ANSWER US AS COMPLETELY AND FULLY AS POSSIBLE.
4 OKAY?

5 A ALL RIGHT.

6 Q IF YOU DON'T UNDERSTAND A QUESTION, PLEASE LET ME
7 KNOW.

8 A ALL RIGHT.

9 Q AND TO THE BEST OF YOUR ABILITY, IF YOU COULD ANSWER
10 EACH QUESTION WITH A YES OR NO ANSWER.

11 A OKAY.

12 Q NOW, AMONG OTHER THINGS WE'LL BE TALKING ABOUT
13 PENALTY. THE FACT THAT WE DISCUSS PENALTY DOES NOT
14 INDICATE ANYTHING ABOUT THE DEFENDANT. HE IS PRESUMED IN
15 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND?

16 A YES, I DO.

17 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
18 LISTEN TO THE LAW?

19 A YES, I CAN.

20 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
21 INSTRUCT YOU?

22 A YES, I CAN.

23 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
24 MIGHT DISAGREE WITH WHAT I TELL YOU THE LAW IS?

25 A YES, I CAN.

1 Q MA'AM, COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
2 EVIDENCE PRESENTED HERE IN THE COURTROOM AND DISREGARD
3 ANYTHING THAT YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
4 CASE?

5 A YES.

6 Q OKAY. HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE
7 PRIOR TO COMING TO JURY DUTY ON TUESDAY?

8 A NO, I HAVEN'T.

9 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
10 JUROR TYPE SHEET?

11 A YES, I HAVE.

12 Q AND WOULD YOU CHARACTERIZE YOURSELF IN ONE -- WOULD
13 YOU PLACE YOURSELF IN ONE OF THOSE CATEGORIES?

14 A YES, I CAN.

15 Q OKAY. TELL ME WHICH ONE.

16 A TYPE THREE.

17 Q OKAY. IF YOU WERE A JUROR IN A DEATH PENALTY CASE
18 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
19 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. DO
20 YOU UNDERSTAND?

21 A YES.

22 Q AND DO YOU REMEMBER ON TUESDAY WHEN I SAID IN THIS
23 TYPE CASE WE HAVE TWO PHASES. WE HAVE A GUILT PHASE. IF
24 THE DEFENDANT IS FOUND NOT GUILTY, WE DON'T GO ANY
25 FURTHER.

1 IF HE'S FOUND GUILTY, WE THEN GO TO THE SENTENCING
2 PHASE. BECAUSE IN SOUTH CAROLINA, AS IN MOST STATES, THE
3 JURY DECIDES PENALTY, WHETHER THAT IS LIFE WITHOUT THE
4 POSSIBILITY OF PAROLE OR DEATH. DO YOU UNDERSTAND?

5 A YES, I DO.

6 Q AND WHEN WE GET TO THAT, IF WE GET TO THAT PHASE OF
7 THE TRIAL, THE JURY WOULD BE ALLOWED TO CONSIDER WHAT WE
8 CALL AGGRAVATING CIRCUMSTANCES AND MITIGATING
9 CIRCUMSTANCES. DO YOU UNDERSTAND?

10 A I UNDERSTAND THAT.

11 Q AND ACTUALLY -- YOU KNOW WHAT, I GOT A LITTLE AHEAD
12 OF MYSELF. I APOLOGIZE. WHAT I MEANT TO SAY TO YOU WAS,
13 I'M GOING TO EXPLAIN TO YOU WHAT THOSE TERMS MEAN SO THAT
14 YOU WILL BE ABLE TO UNDERSTAND. I'M SORRY. I'VE BEEN
15 ASKING THESE QUESTIONS A LOT. AND SO I APPRECIATE YOU
16 BEING SO PATIENT WITH ME.

17 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
18 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS
19 DECLARED BY STATE LAW MAKE WORSE, THAT IS AGGRAVATE THE
20 OFFENSE OF MURDER.

21 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCES WHEN
22 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
23 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
24 COMMISSION OF A CRIME.

25 AND I'M GOING TO GIVE YOU SOME EXAMPLES SO YOU CAN

1 HAVE A POINT OF REFERENCE. MURDER OF A CHILD UNDER THE
2 AGE OF 11, DRUG TRAFFICKING, KILLING BY POISON, OR
3 BURGLARY IN ANY DEGREE. THESE ARE JUST SOME EXAMPLES OF
4 AGGRAVATING CIRCUMSTANCES.

5 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
6 OCCURRENCES WHICH THE LEGISLATURE HAS DECLARED BY STATE
7 LAW REDUCE THE SEVERITY OF THE OFFENSE OF MURDER AND MAY
8 BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
9 MORAL CULPABILITY OR RESPONSIBILITY. I'M GOING TO GIVE
10 YOU SOME EXAMPLES OF THOSE.

11 A OKAY.

12 Q MENTAL RETARDATION AT THE TIME OF THE CRIME, THE
13 DEFENDANT WAS BELOW THE AGE OF 18 AT THE TIME OF THE
14 CRIME, THE DEFENDANT ACTED UNDER DURESS OR UNDER
15 DOMINATION, THAT THE DEFENDANT WAS AN ACCOMPLICE AND THEIR
16 PARTICIPATION WAS RELATIVELY MINOR.

17 AGAIN, THESE ARE ONLY EXAMPLES BECAUSE THERE REALLY
18 IS NO COMPLETE LIST OF MITIGATING CIRCUMSTANCES.

19 A OKAY.

20 Q IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A CASE
21 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
22 THAT CASE INCLUDING A CONSIDERATION OF AGGRAVATING AND
23 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT
24 YOU APPLIES TO THE CASE, COULD YOU RETURN A SENTENCE OF
25 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

1 DO YOU UNDERSTAND THE QUESTION? IN OTHER WORDS, IF
2 WE GOT TO THE SENTENCING PHASE OF THE TRIAL.

3 A UH-HUH.

4 Q COULD YOU LOOK AT AGGRAVATING CIRCUMSTANCES,
5 MITIGATING CIRCUMSTANCES, AND THE LAW AS THE COURT WOULD
6 INSTRUCT YOU AND THE FACTS OF THE CASE?

7 A YES, I CAN.

8 Q AND COULD YOU IMPOSE LIFE WITHOUT THE POSSIBILITY OF
9 PAROLE?

10 A YES, I COULD.

11 Q IN THOSE SAME SET OF CIRCUMSTANCES, AGAIN, AND I'LL
12 BREAK IT DOWN A LITTLE MORE SIMPLY. IF WE REACH THE
13 SENTENCING PHASE OF THE TRIAL AND CONSIDERING AGGRAVATING
14 AND MITIGATING CIRCUMSTANCES AND THE PARTICULAR FACTS OF
15 THE CASE AND THE LAW AS I WOULD INSTRUCT YOU THAT APPLIES
16 TO THE CASE, COULD YOU IMPOSE A SENTENCE OF DEATH WHICH IN
17 THIS STATE IS BY ELECTROCUTION OR LETHAL INJECTION?

18 A IF I KNOW ALL THE FACTS. I MEAN, IF I LISTEN TO THE
19 CASE AND, YOU KNOW, HEAR ALL THE FACTS, I CAN COME UP WITH
20 A VERY GOOD -- YEAH.

21 Q OKAY. LET ME ASK THE QUESTION AGAIN. AND I -- AND
22 SO THAT'S BASICALLY WHAT I'M SAYING, WHAT YOU JUST SAID,
23 WHICH IS IF YOU WERE A JUROR IN THE SENTENCING PHASE
24 DEPENDING UPON THE FACTS AND CIRCUMSTANCES OF THE
25 PARTICULAR CASE INCLUDING THE CONSIDERATION OF AGGRAVATING

1 AND MITIGATING CIRCUMSTANCES AND THE LAW AS THE COURT
2 WOULD INSTRUCT YOU, COULD YOU RETURN A SENTENCE OF DEATH
3 WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL
4 INJECTION?

5 A YES.

6 Q OKAY. NOW, WE HAVE EXPLAINED THAT IF YOU'RE CHOSEN
7 FOR THE JURY, THE JURY IS GOING TO BE SEQUESTERED WHICH
8 MEANS YOU'LL BE HOUSED IN A HOTEL FOR APPROXIMATELY TWO
9 WEEKS.

10 WE ALREADY KNOW THAT'S A PERSONAL INCONVENIENCE. WE
11 ASSUME THAT. WE KNOW IT'S A DISRUPTION TO YOUR WORK AND
12 TO YOUR FAMILY. BUT I -- WOULD THIS POSE A SERIOUS DANGER
13 TO YOUR HEALTH OR WELL-BEING?

14 A NO, IT WON'T.

15 Q NOW, ALSO IN THIS TYPE CASE BECAUSE THE JURY
16 DETERMINES SENTENCE, WHETHER IT BE LIFE WITHOUT PAROLE OR
17 DEATH, THE LAW REQUIRES THAT EACH JUROR INDIVIDUALLY SIGN
18 THE VERDICT FORM. SO THERE WILL BE LINES ONE THROUGH 12
19 AND EACH JUROR WILL HAVE TO SIGN THE VERDICT FORM.

20 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
21 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
22 A DEATH?

23 A YES.

24 THE COURT: ANY QUESTIONS FROM THE STATE?

25 MR. HEMBREE: NO, YOUR HONOR.

1 THE COURT: FROM THE DEFENSE?

2 MR. KELLY: NO, MA'AM.

3 THE COURT: ANY EXCEPTION TO THIS JUROR BEING
4 QUALIFIED FROM THE STATE?

5 MR. HEMBREE: NO, YOUR HONOR, MRS. HEYWARD WIS
6 QUALIFIED.

7 THE COURT: FROM THE DEFENSE?

8 MR. KELLY: SHE'S QUALIFIED.

9 THE COURT: MRS. HEYWARD, YOU HAVE BEEN FOUND
10 QUALIFIED. AND WHAT THAT MEANS -- WHAT WE'RE DOING
11 IS FROM THE GROUP OF PEOPLE WE'RE QUESTIONING, WE ARE
12 A DEVELOPING A POOL OF QUALIFIED CANDIDATES. WE WILL
13 NOT PICK THE ACTUAL JURY UNTIL MONDAY. SO THAT MEANS
14 YOU'RE NOW A PART OF THAT POOL OF QUALIFIED JURORS.

15 I NEED YOU TO RETURN ON MONDAY AT 9:30. I NEED
16 YOU TO COME PACKED FOR AT LEAST TWO WEEKS. BRING
17 EVERYTHING YOU THINK YOU MIGHT NEED, BECAUSE IF
18 YOU'RE SELECTED FOR THE JURY, YOU WON'T BE ABLE TO GO
19 BACK HOME.

20 OF COURSE, YOU DON'T HAVE TO BRING ALL THAT
21 STUFF UP HERE WITH YOU. YOU CAN LEAVE IT IN YOUR
22 CAR. IF YOU'RE SELECTED, WE WILL MAKE ARRANGEMENTS
23 AT THE APPROPRIATE TIME TO GET YOU SITUATED AT THE
24 HOTEL.

25 AND OF COURSE EACH PERSON WILL HAVE THEIR OWN

1 ROOM, THEIR OWN ARRANGEMENTS. WE'RE NOT GOING TO
2 REQUIRE YOU TO HAVE, YOU KNOW, LIKE A PAJAMA PARTY.

3 AND I NEED YOU TO ABIDE BY SOME INSTRUCTIONS,
4 HOWEVER, AND I NEED YOU TO TAKE THEM VERY SERIOUSLY
5 AS I'M SURE YOU WILL.

6 PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE, AND
7 THAT INCLUDES YOUR FAMILY MEMBERS OR YOUR FRIENDS.
8 PLEASE DON'T SPECULATE ABOUT WHAT YOU THINK, IT MAY OR
9 COULD BE ABOUT.

10 IF ANYBODY TRIES TO TALK TO YOU ABOUT IT, YOU
11 SIMPLY NEED TO TELL THEM, SORRY, CAN'T TALK ABOUT
12 THAT, IT WILL BE A VIOLATION OF THE COURT'S RULES,
13 AND I DON'T WANT TO GET IN TROUBLE. AND MOST PEOPLE
14 CAN RESPECT THAT.

15 JUROR: I WILL.

16 THE COURT: ALSO, PLEASE DON'T HAVE ANY EXPOSURE
17 TO ANY MEDIA ACCOUNTS ABOUT THIS CASE BECAUSE IT IS
18 VITAL THAT YOU REMAIN IMPARTIAL IN THE EVENT THAT
19 YOU'RE SELECTED FOR THIS PANEL. OKAY?

20 JUROR: ALL RIGHT.

21 THE COURT: WE APPRECIATE YOUR PATIENCE AND YOUR
22 TIME WITH US. YOU HAVE A GOOD WEEKEND. WE'LL SEE
23 YOU ON MONDAY.

24 JUROR: OKAY.

25 THE COURT: ALL RIGHT.

1 (JUROR LEFT THE COURTROOM.)

2 THE COURT: EMILY VAUSE, 337. I THINK THAT'S
3 HOW IT'S PRONOUNCED, ISN'T THAT VAUSE?

4 (JUROR ENTERED THE COURTROOM.)

5 EMILY VAUSE, WHITE FEMALE, TESTIFIED
6 AS FOLLOWS:

7 BY THE COURT:

8 Q MRS. VAUSE, HOW ARE YOU? AM I PRONOUNCING YOUR NAME
9 CORRECTLY?

10 A YES.

11 Q IF YOU HAVE A SEAT FOR ME. YOU'RE FINE. HAVE A SEAT
12 FOR ME SCOOT AND AS CLOSE AS YOU CAN TO THE MICROPHONE.
13 TAKE A DEEP BREATH.

14 A I HAD A LOT TO SAY BACK THERE.

15 Q IF YOU WOULD STATE YOUR FULL NAME FOR THE RECORD.

16 A EMILY O VAUSE.

17 Q OKAY. AND MA'AM, YOU'RE JUROR 337; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q I WILL REMIND YOU THAT YOU'RE STILL UNDER OATH. DO
20 YOU UNDERSTAND?

21 A YES, MA'AM.

22 Q AND I KNOW THIS CAN BE VERY DAUNTING, BUT JUST
23 RELAX -- ABOUT TO STORM. THAT'S PROBABLY GOOD BECAUSE I
24 DON'T THINK MY DADDY WATERED MY PLANTS WHILE I WAS GONE.
25 I'M HOPING IT'S RAINING IN CHARLESTON.

1 HAVE YOU HAD ANY EXPOSURE TO ANY MEDIA ACCOUNTS OF
2 THIS CASE SINCE THE COURT'S INSTRUCTIONS ON TUESDAY?

3 A NO, MA'AM.

4 Q OKAY. WE'RE GOING TO ASK YOU SOME QUESTIONS. AGAIN,
5 I DON'T WANT YOU TO BE NERVOUS. I KNOW SOME OF THESE
6 QUESTIONS ARE INTENSELY PERSONAL. WE'RE NOT TRYING TO
7 INVADE YOUR PRIVACY.

8 STATE LAW REQUIRES THAT WE TALK TO EACH JUROR
9 INDIVIDUALLY IN A CASE OF THIS NATURE. AND IT ALSO
10 REQUIRES US TO ASK THE QUESTIONS THAT I'M GOING TO ASK
11 YOU.

12 A OKAY.

13 Q AND AGAIN, IT IS NOT OUR INTENT TO INVADE YOUR
14 PRIVACY. AND WE KNOW THAT SOME -- SOME OF THESE THINGS
15 YOU'VE PROBABLY NEVER THOUGHT ABOUT IN ANY GREAT DETAIL.
16 AND SO IF YOU NEED TO PAUSE AND THINK, THAT IS FINE.

17 THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED
18 FOR YOU TO BE OPEN AND HONEST WITH US AND ANSWER THE
19 QUESTIONS FULLY. AND TO THE BEST OF YOUR ABILITY IF YOU
20 COULD ANSWER THEM WITH A YES OR NO ANSWER, AGAIN, KEEPING
21 IN MIND THAT THERE IS NO RIGHT OR WRONG ANSWER.

22 AND IF YOU DON'T UNDERSTAND A QUESTION, PLEASE MAKE
23 US AWARE OF IT SO THAT I CAN REPHRASE IT OR ONE OF THE
24 ATTORNEYS CAN REPHRASE IT.

25 AMONG OTHER THINGS WE'LL BE TALKING ABOUT PENALTY.

1 BUT THE MERE FACT THAT WE TALK ABOUT PENALTY IS NO
2 INDICATION ABOUT THE DEFENDANT. HE IS PRESUMED IN THE LAW
3 TO BE INNOCENT. DO YOU UNDERSTAND?

4 A YES, MA'AM.

5 Q IF YOU WERE A JUROR IN A CRIMINAL CASE, COULD YOU
6 LISTEN TO THE LAW?

7 A YES, MA'AM.

8 Q DO YOU KNOW WHAT THE LAW IS VERSUS THE FACTS?
9 SOMETIMES I THINK PEOPLE THINK I'M TALKING ABOUT FACTS
10 WHEN I SAY THE LAW.

11 A EXPLAIN IT TO ME.

12 Q YOU NEED ME TO EXPLAIN IT?

13 A YES, MA'AM.

14 Q IN EVERY CASE THE JURY IS THE FINDERS OF THE FACTS
15 WHICH MEANS WHATEVER YOU HEAR FROM THE EVIDENCE, FROM THE
16 WITNESSES AND THE EVIDENCE, THE JURY IS THE SOLE FINDERS
17 OF CREDIBILITY, BELIEVABILITY AND OTHERWISE.

18 THE COURT IS NEVER ALLOWED TO HAVE AN OPINION ABOUT
19 THE FACTS OF A CASE NOR WOULD I EVER SUGGEST ANYTHING TO
20 YOU ABOUT THE FACTS. THE COURT IS KIND OF LIKE THE UMPIRE
21 IN A SPORTING EVENT OR THE REFEREE. I TELL EVERYBODY WHAT
22 THEIR -- THE GUIDELINES ARE.

23 AND SO WHEN I REFER TO THE LAW, THAT'S WHAT I'M
24 REFERRING TO, THOSE GUIDELINES. FOR EXAMPLE, I CAN TELL
25 YOU HOW TO JUDGE WITNESS CREDIBILITY AND BELIEVABILITY AND

1 THE CRITERIA FOR THAT, HOW, YOU KNOW, HOW YOU -- WHAT
2 YOU'RE TO LOOK FOR IN TERMS OF THAT.

3 IN EVERY CRIMINAL OFFENSE AS WELL AS CIVIL CASES
4 THERE ARE ELEMENTS THAT HAVE TO BE MET IN EVERY ONE OF
5 THOSE CIRCUMSTANCES, AND I WOULD TELL YOU WHAT THOSE
6 ELEMENTS ARE. AND SO THAT'S WHAT I'M REFERRING TO WHEN I
7 SAY THE LAW.

8 A OKAY.

9 Q OKAY? DO YOU THINK YOU CAN LISTEN TO THE LAW IF YOU
10 WERE A JUROR IN A CRIMINAL CASE?

11 A YES, MA'AM.

12 Q DO YOU THINK YOU COULD ACCEPT AND APPLY THE LAW AS I
13 WOULD INSTRUCT YOU AS THE JUDGE OF THE COURT?

14 A YES, MA'AM.

15 Q DO YOU THINK YOU COULD ACCEPT AND APPLY THE LAW EVEN
16 THOUGH YOU MAY DISAGREE WITH ME ABOUT WHAT I TELL YOU THE
17 LAW IS?

18 A YES, MA'AM.

19 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
20 EVIDENCE PRESENTED HERE IN THIS COURTROOM AND DISREGARD
21 ANYTHING YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS
22 CASE?

23 A YES, MA'AM.

24 Q HAVE YOU BEEN EXPOSED TO ANY MEDIA ACCOUNTS ABOUT
25 THIS CASE PRIOR TO TUESDAY?

1 A YES, MA'AM.

2 Q AS A RESULT OF WHAT YOU MAY HAVE HEARD, READ, OR
3 SEEN, HAVE YOU FORMED ANY FIXED OPINION ABOUT THE FACTS OF
4 THIS CASE?

5 A YES, MA'AM.

6 Q OKAY. AND DO YOU UNDERSTAND WHAT I MEAN WHEN I SAY A
7 FIXED OPINION?

8 A YES, MA'AM.

9 Q OKAY. A FIXED OPINION MEANS YOU HAVE ALREADY MADE UP
10 YOUR MIND.

11 A THAT'S RIGHT.

12 Q OKAY. ANY -- WELL, LET ME ASK ONE FURTHER QUESTION
13 JUST FOR THE SAKE OF CLARITY OF THE RECORD. WHEN A JUROR
14 COMES INTO COURT, THEY TAKE AN OATH TO BE IMPARTIAL. AND
15 THE BEST EXAMPLE I COULD USE -- PROBABLY TWO.

16 ONE WOULD BE AN EMPTY VESSEL, YOU KNOW, A GLASS OR A
17 VASE THAT'S COMPLETELY EMPTY OR A BLACKBOARD THAT'S
18 COMPLETELY ERASED OR EVEN A HORSE WITH BLINDERS, OR A LADY
19 JUSTICE, YOU KNOW HOW SHE WEARS THE BLINDFOLD AND SHE HAS
20 THE SCALES.

21 AND WHAT THE LAW REQUIRES IS THAT YOU COME INTO THIS
22 COURTROOM AND BASICALLY EMPTY YOUR MIND OF EVERYTHING YOU
23 MAY HAVE HEARD BECAUSE, YOU KNOW, WHAT YOU READ IN THE
24 NEWSPAPER, THE LAW DOES NOT CONSIDER THAT A FACT.

25 WHAT WE CONSIDER FACTS ARE WHAT YOU HEAR FROM THE

1 LIPS OF SWORN WITNESSES WHO WILL TESTIFY AND THE OTHER
2 EVIDENCE THAT WILL BE INTRODUCED AND THE LAW AS THE COURT
3 WILL CHARGE.

4 AND WHAT I'M TRYING TO DETERMINE IS, CAN YOU EMPTY
5 YOUR MIND OF ANY PRECONCEIVED OPINIONS YOU MAY HAVE ABOUT
6 THIS CASE AND MAKE A DECISION ONLY ON THE EVIDENCE THAT
7 YOU WILL HEAR IN THIS COURTROOM FROM THE LIPS OF SWORN
8 WITNESSES AND THE OTHER EVIDENCE AND APPLY THE LAW AND
9 RENDER A TRUE AND JUST VERDICT IN THIS CASE?

10 AND THERE IS NO RIGHT OR WRONG ANSWER. I JUST NEED
11 FOR YOU TO BE CANDID WITH US.

12 A YES, MA'AM.

13 Q OKAY. AND WHAT CAUSES YOUR CHANGE FROM TELLING ME
14 YOU HAVE A FIXED OPINION TO TELLING ME YOU CAN BE FAIR AND
15 IMPARTIAL?

16 A BECAUSE, I MEAN, I WILL BE WILLING TO LISTEN TO IT,
17 TO.

18 Q OKAY.

19 A YOU KNOW, LIKE YOU SAID, MAYBE WHAT I HEARD
20 INCORRECT, I DON'T KNOW.

21 Q WOULD YOU BE WILLING TO OR ABLE TO COME INTO THIS
22 COURT AS AN EMPTY VESSEL, LIKE I SAID, WHERE YOUR MIND
23 WOULD BE A BLANK SLATE?

24 A IT WOULD BE HARD BECAUSE I'M JUST -- YOU KNOW.

25 Q DO YOU THINK IT IS WITHIN YOUR CAPACITY TO DO THAT

1 AND PUT ASIDE EVERY OPINION YOU MAY HAVE HEARD OR HAVE
2 ABOUT THIS CASE?

3 A NO, I CAN'T PUT EVERYTHING ASIDE. NO, MA'AM.

4 Q OKAY.

5 A NO, MA'AM.

6 THE COURT: ANY QUESTIONS FROM THE STATE?

7 MR. HEMBREE: REAL QUICK.

8 THE COURT: GO RIGHT AHEAD. I WELCOME IT.

9 BY MR. HEMBREE:

10 Q HAD SO MANY -- MRS. VAUSE, CAN -- I THINK I HAVE
11 HEARD -- I HEARD YOU ANSWER AND I THINK I UNDERSTAND WHERE
12 YOU ARE. COULD YOU BE FAIR AND IMPARTIAL? COULD YOU SET
13 THOSE OPINIONS -- YOU GOT OPINIONS AND THOUGHTS ABOUT THIS
14 CASE. YOU HAVE INDICATED THAT.

15 A (NODDED HEAD.)

16 Q AND WE KNOW THAT, YOU KNOW, YOU HAVE THINGS IN YOUR
17 HEAD AND YOU CAN'T ERASE YOUR MIND. I MEAN, THAT'S NOT
18 PRACTICAL. I MEAN, IT'S JUST IMPOSSIBLE TO ERASE IT.
19 BUT, JUST BE AS HONEST AS YOU CAN.

20 COULD YOU TAKE THAT INFORMATION OR THOSE OPINIONS AND
21 SET THEM ASIDE AND PUSH THEM OUT OF THE WAY BECAUSE, YOU
22 KNOW, I CAN -- I CAN MAKE THIS DECISION SOLELY ON WHAT I
23 HEAR FROM THE WITNESS STAND, WHAT IS PRESENTED IN THIS
24 COURTROOM, OR DO YOU BELIEVE THAT THOSE OPINIONS ARE GOING
25 TO EFFECT OR HAVE INFLUENCE ON YOUR DECISION MAKING

1 PROCESS?

2 A I GUESS AWAY FROM THE MEDIA AND EVERYTHING, I COULD,
3 YOU KNOW -- YEAH, I COULD DO THAT.

4 Q YOU FEEL CONFIDENT IN SAYING THAT?

5 A YEAH, I COULD.

6 THE COURT: ANY QUESTIONS FROM THE DEFENSE?

7 MR. KELLY: YES, MA'AM.

8 THE COURT: MA'AM, IF YOU WOULD GIVE MR. KELLY
9 YOUR ATTENTION. YOU CAN TURN THE CHAIR TO THE SIDE
10 AND STILL BE ABLE TO TALK WITH INTO THE MICROPHONE.

11 BY MR. KELLY:

12 Q MRS. VAUSE?

13 A YES, SIR.

14 Q I'M GERALD KELLY. I'M GOING TO ASK YOU A FEW
15 QUESTIONS. IS THAT ALL RIGHT? MRS. VAUSE, YOU SAID YOU
16 HAD A FIXED OPINION AND THEN YOU SAID, WELL, I THINK I CAN
17 PUT THAT ASIDE, AND THEN YOU SAID, I COULD PUT IT ASIDE,
18 OKAY?

19 WE JUST WANT TO KNOW REALLY WHAT'S IN YOUR OWN MIND.
20 IF YOU CAME AND YOU WERE QUALIFIED AS A JUROR, YOU'D HAD
21 TO LEAVE IT OUTSIDE. YOU COULDN'T BRING IT IN HERE.

22 A YES, SIR.

23 Q YOU KNOW, YOU COULDN'T SIT IN THE JURY BOX AND SAY,
24 WELL, THAT DOESN'T FIT WITH WHAT I HEARD BEFORE OR THAT
25 DOES FIT WITH WHAT I'VE HEARD BEFORE. YOU UNDERSTAND?

1 A YES, SIR.

2 Q YOU COULD ONLY -- YOU COULDN'T DO THAT IF YOU MADE UP
3 YOUR MIND, THEN YOU NEED TO TELL US. BUT IF YOU HAVEN'T
4 MADE UP YOUR MIND, YOU NEED TO TELL US WHAT. WHICH ONE IS
5 IT?

6 A I COULD LISTEN -- I MEAN, I WOULD, YOU KNOW, BE
7 HONEST AND I COULD PUT EVERYTHING ASIDE AND TRY IT. I
8 MEAN, I -- THERE'S THINGS THAT I KNOW, YOU KNOW, THAT I
9 READ ABOUT, BUT, YOU KNOW, IF I HAD TO COME LISTEN TO IT,
10 I WOULD GIVE IT MY ONE HUNDRED PERCENT.

11 Q WELL, I'M -- IF THERE ARE THINGS THAT YOU'VE HEARD
12 ABOUT IT, YOU WOULD HAVE TO PUT THEM ASIDE IN YOUR MIND.

13 A CORRECT.

14 Q NOT JUST TRY OR TRY A HUNDRED PERCENT. YOU JUST HAVE
15 TO DO THAT. COULD YOU DO THAT?

16 A YES, I COULD DO IT.

17 Q NO FURTHER QUESTIONS.

18 THE COURT: THANK YOU. COULD APPROACH FOR A
19 MOMENT?

20 MR. KELLY: WAIT JUST A MOMENT, MA'AM. ONE MORE
21 LITTLE LINE OF QUESTIONS.

22 THE COURT: GO AHEAD.

23 BY MR. KELLY:

24 Q I NOTICE FROM YOUR QUESTIONNAIRE, MA'AM, THAT YOU
25 SAID THAT YOU HAD RELATIVES AND CLOSE FRIENDS THAT WERE IN

1 LAW ENFORCEMENT, AND YOU EVEN LISTED SOME OF THEM. IS
2 THAT CORRECT?

3 A THAT IS CORRECT.

4 Q OKAY. YOU KNOW, SOMETIMES PEOPLE ARE EFFECTED BY THE
5 PEER PRESSURE OF THEIR FRIENDS AND RELATIVES AND THAT
6 IF -- OR WOULD YOU BE ABLE, IF YOU WERE A JUROR, TO SET
7 THAT ASIDE? YOU COULDN'T WORRY ABOUT WHAT YOUR FRIENDS
8 THINK OR WOULD THINK OF YOU AS TO WHAT YOU MIGHT DO.
9 COULD YOU DO THAT?

10 A YES, I COULD.

11 Q OKAY. IF YOUR FRIENDS WERE ALL IN FAVOR OF THE DEATH
12 PENALTY, THINK THAT EVERYBODY WHO HAD WHO MURDERED SHOULD
13 HAVE DEATH AND -- OR ANY OF THEM DID THAT, WOULD THAT
14 AFFECT YOU IN ANY WAY?

15 A NO, I HAVE MY OWN OPINION ABOUT IT.

16 Q SO YOU'RE INDEPENDENT ENOUGH THAT YOU COULD SET THAT
17 ASIDE?

18 A CORRECT.

19 Q THANK YOU, MA'AM.

20 THE COURT: COULD Y'ALL APPROACH FOR ME FOR A
21 SECOND?

22 (AT BENCH.)

23 THE COURT: DO Y'ALL THINK WE SHOULD CONTINUE
24 QUESTIONING HER OR DO YOU THINK SHE'S BEEN
25 SUFFICIENTLY REHABILITATED OR DO YOU THINK HER

1 OPINION IS SO FIXED THAT SHE CANNOT LISTEN?

2 MR. HEMBREE: I THINK SHE'S BEEN REHABILITATED,
3 YOUR HONOR. OKAY.

4 MR. DIGGS: I BELIEVE THAT THE TOTALITY OF HER
5 ANSWERS INDICATE THAT SHE'S PRE-FIXED. MR. HEMBREE
6 DID A GOOD JOB TRYING TO REHABILITATE HER, BUT I
7 DON'T THINK -- IT'S NOT CONVINCING TO ME.

8 THE COURT: THE CONCERN I HAVE, MR. HEMBREE, IS
9 THAT YOU -- WHEN YOU TALKED TO HER, I THOUGHT SHE WAS
10 SALVAGEABLE. BUT WHEN SHE STARTED RESPONDING TO MR.
11 KELLY, IT'S ALMOST LIKE, MY OPINION IS MADE UP, BUT I
12 WILL LISTEN SOME MORE, AND THAT'S WHAT CONCERNS ME
13 ABOUT HER.

14 AND I'M NOT SURE WE WOULD REACH HER ANY WAY. AT
15 THIS POINT IT'S KIND OF -- YOU KNOW.

16 MR. KELLY: I THINK YOU SHOULD ASK HER MORE,
17 JUDGE.

18 THE COURT: YOU THINK I SHOULD CONTINUE TO?

19 MR. KELLY: ABSOLUTELY, ABSOLUTELY, TILL YOU GET
20 TO THE BOTTOM OF IT.

21 MR. HEMBREE: THAT'S FAIR.

22 THE COURT: OF WHETHER HER OPINION IS FIXED?

23 MR. KELLY: YEAH, BECAUSE SHE'S GOING BACK AND
24 FORTH.

25 THE COURT: YEAH. I AGREE WITH YOU. THAT'S MY

1 ONLY CONCERN. LET'S TRY TO SEE -- I WILL ASK HER ONE
2 MORE QUESTION AND THEN WE'LL HUDDLE AGAIN.

3 (BACK IN OPEN COURT.)

4 BY THE COURT:

5 Q NOW, AND AGAIN, THERE ARE NO RIGHT OR WRONG ANSWERS.
6 AND AS I INDICATED, ONLY YOU CAN SEARCH YOURSELF AND KNOW
7 WHAT THE ANSWER IS. THE ONLY THING WE ASK OF YOU IS THAT
8 YOU BE CANDID WITH US.

9 AND I KNOW THIS IS PROBABLY -- YOU KNOW, THE FUNNY
10 THING, I'M THE KIND OF PERSON I KIND OF THINK OUT LOUD
11 SOMETIMES AND WHILE I'M TALKING I COME TO MY CONCLUSION.

12 AND SOMETIMES IT'S BECAUSE, YOU KNOW, THESE ARE VERY
13 SERIOUS MATTERS AND PROBABLY MOST PEOPLE HAVE NEVER BEEN
14 PUT IN THIS SITUATION IN THEIR LIFE. AND BUT FOR THE FACT
15 THAT WE DO THIS EVERY DAY, WE WOULDN'T BE IN THIS
16 SITUATION EITHER, AND WE PROBABLY WOULD BE MUCH LIKE YOU
17 TRYING TO THINK THROUGH, YOU KNOW, HOW WOULD I REALLY
18 HANDLE THIS ON, YOU KNOW, I THOUGHT ABOUT THIS
19 THEORETICALLY, BUT NOW FACED WITH THIS, HOW WOULD I REALLY
20 HANDLE IT.

21 SO I JUST NEED TO REINFORCE THAT THERE ARE NO RIGHT
22 OR WRONG ANSWERS. THE ONLY THING THAT WE OR THE LAW
23 REQUIRE OF YOU IS THAT YOU BE COMPLETELY CANDID WITH US
24 AND ANSWER AS TRUTHFULLY AS YOU CAN.

25 AND I'M GOING TO TRY TO -- I'M THINKING OF A WAY TO

1 PHRASE THE QUESTION WITHOUT IT BEING SO LONG THAT SO
2 YOU'LL UNDERSTAND WHAT I'M ASKING.

3 CAN YOU COME INTO THIS COURT AND DISREGARD AND
4 DISABUSE FROM YOUR MIND EVERY OPINION YOU MAY HAVE HELD
5 ABOUT THIS CASE OR MAY HOLD ABOUT THIS CASE, LISTEN TO THE
6 WITNESSES WHO WILL COME INTO THIS COURT AND BE SWORN AND
7 TESTIFY IN THIS CASE, BECAUSE THAT'S THE ONLY -- IN OUR --
8 IN THE LAW'S VIEW, THAT IS THE ONLY EVIDENCE THERE IS --
9 AND THE OTHER EVIDENCE THAT WILL BE INTRODUCED, LISTEN TO
10 THE ARGUMENTS OF THE LAWYERS AND THE COURT'S INSTRUCTIONS,
11 AND RENDER A VERDICT BASED SOLELY ON THAT INFORMATION.

12 WOULD YOU BE ABLE TO DO -- WILL YOU BE ABLE TO DO
13 THAT? CAN YOU DO THAT?

14 A YES, MA'AM.

15 Q OKAY. NOW, I HAVE ASKED THAT QUESTION SEVERAL WAYS
16 FOR A REASON BECAUSE YOU SORT OF VACILLATED A LITTLE FOR
17 ME -- FOR ME. YOU HAVE SAID, WELL, I HAVE AN OPINION, BUT
18 I'M WILLING TO LISTEN SOME MORE. AND WHAT WE'RE REQUIRING
19 IS A LITTLE BEYOND THAT.

20 IT SAYS, YOU KNOW, BECAUSE IT'S UNREALISTIC TO THINK
21 NOBODY HAS AN OPINION ABOUT ANYTHING. AS HUMAN BEINGS, WE
22 ARE JUST OPINIONATED. THAT'S JUST THE WAY WE ARE. SOME
23 MORE THAN OTHERS.

24 AND IT WOULD BE UNREALISTIC TO SAY THAT WE'RE
25 ISOLATED IN SOCIETY AND WE ARE NEVER EXPOSED TO ANYTHING

1 AND WE -- THAT WOULD BE VERY UNREALISTIC ON OUR PART TO
2 THINK THAT.

3 BUT I HAVE TO BE SURE THAT WHATEVER PRECONCEPTIONS
4 YOU HAVE, THAT YOU WILL BE ABLE TO COMPLETELY LAY THEM
5 ASIDE AND DECIDE THIS CASE ONLY ON THE EVIDENCE AND THE
6 LAW. AND IS THAT WHAT YOU'RE TELLING ME YOU CAN DO?

7 A YES, MA'AM.

8 Q OKAY. AND YOU HAVE NO QUESTION ABOUT THAT?

9 A NO, MA'AM.

10 Q OKAY. AND YOU UNDERSTAND -- AND MR. KELLY, AGAIN,
11 I'M GOING BORROW SOME OF YOUR QUESTIONING. YOU UNDERSTAND
12 THAT -- LET'S SAY YOU WERE PICKED FOR THIS JURY AND YOU
13 WERE IN THE JURY ROOM AND YOU WERE DELIBERATING, YOU
14 UNDERSTAND THAT YOU COULD NOT MENTION ANYTHING THAT YOU
15 MAY HAVE READ OR HEARD ABOUT THIS CASE OUTSIDE OF THE
16 EVIDENCE?

17 A YES, MA'AM. I UNDERSTAND.

18 Q YOU UNDERSTAND THAT EVEN IN YOUR OWN MIND YOU
19 WOULDN'T BE ABLE TO SAY, WELL, YOU KNOW, THIS DOESN'T
20 MATCH UP WITH WHAT I READ OR WHAT I HEARD AND THAT YOU
21 CANNOT HAVE AN IMAGINARY STANDARD, SO TO SPEAK, AND
22 BALANCE THAT AGAINST WHAT YOU HEAR IN HERE VERSUS WHAT YOU
23 HAVE HEARD OUTSIDE. DO YOU UNDERSTAND THAT?

24 A YES, MA'AM.

25 Q OKAY.

1 THE COURT: DOES THE STATE WISH TO HAVE THE
2 COURT CONTINUE IN QUESTIONING?

3 MR. HEMBREE: YES, YOUR HONOR.

4 THE COURT: THE DEFENSE?

5 MR. KELLY: I THINK IT'S SUFFICIENT, MA'AM.

6 THE COURT: OKAY.

7 BY THE COURT:

8 Q NOW MA'AM, IN A CRIMINAL CASE THE STATE HAS THE
9 BURDEN OF PROVING GUILT AND THEY MUST MEET THIS BURDEN BY
10 PROVING GUILT BEYOND A REASONABLE DOUBT. IT'S THE HIGHEST
11 STANDARD IN THE LAW. DO YOU UNDERSTAND THIS?

12 A YES, MA'AM.

13 Q DO YOU UNDERSTAND THAT THE DEFENDANT HAS NO BURDEN TO
14 PROVE HIS INNOCENCE?

15 A YES, MA'AM.

16 Q WANT ME TO EXPLAIN THAT TO YOU A LITTLE BIT? BECAUSE
17 SOMETIMES I DON'T THINK PEOPLE UNDERSTAND THAT PART OF
18 IT -- OR DO YOU UNDERSTAND WHAT I'M ASKING?

19 A KIND OF. EXPLAIN IT FOR ME.

20 Q OKAY. IN EVERY CRIMINAL CASE THE STATE IS THE ONLY
21 PARTY WITH THE BURDEN.

22 A OKAY.

23 Q AND A BURDEN IN THE LAW IS LIKE A BURDEN OF PROOF.

24 A OKAY.

25 Q THEY -- IT'S THE BURDEN AT WHICH THE LAW REQUIRES

1 THEM TO PROVE SOMETHING. AND BEYOND A REASONABLE DOUBT,
2 THIS IS THE HIGHEST LEVEL OF PROOF. FOR EXAMPLE, WE HAVE
3 WHAT WE CALL A SCINTILLA, WHICH IS LIKE A MINIMAL, TINY
4 AMOUNT.

5 THEN WE HAVE A PREPONDERANCE, WHICH IS IF YOU IMAGINE
6 THE SCALES OF JUSTICE, THEY ONLY HAVE TO TIP SLIGHTLY IN
7 FAVOR OF ONE PARTY OR THE OTHER IN ORDER TO PREVAIL. AND
8 THEN WE HAVE CLEAR AND CONVINCING, WHICH IS MORE LIKE
9 THIS.

10 BUT BEYOND A REASONABLE DOUBT IS LIKE... AND THIS IS
11 WHERE THE STATE'S BURDEN IS AT.

12 A OKAY.

13 Q IT IS THE HIGHEST ONE TO BE CONSIDERED. AND WHEN
14 ACCUSE A PERSON OF A CRIME, EVERY CRIME HAS CERTAIN
15 ELEMENTS. FOR EXAMPLE, BURGLARY HAS SEVERAL ELEMENTS
16 WHICH IS THE UNLAWFUL ENTERING OF THE PREMISES WITH THE
17 INTENT TO COMMIT A FELONY, AND THERE ARE SOME OTHER
18 ELEMENTS THAT GO WITH IT, BUT I JUST WANTED YOU -- BECAUSE
19 THERE ARE DIFFERENT DEGREES OF BURGLARY, BUT I WANTED TO
20 GIVE YOU AN EXAMPLE.

21 IF THE STATE ACCUSES SOMEONE OF THAT OFFENSE, THEY
22 HAVE TO PROVE EACH AND EVERY ELEMENT OF THE OFFENSE BEYOND
23 A REASONABLE DOUBT. THEY DON'T GET TO PROVE ONE PART AND
24 NOT PROVE THE OTHER TWO PARTS. THEY HAVE TO PROVE IT ALL
25 BEYOND A REASONABLE DOUBT.

1 MR. STANKO COMES INTO THIS COURTROOM CLOAKED IN THE
2 PRESUMPTION OF INNOCENCE WHICH MEANS IN THE EYES OF THE
3 LAW HE IS INNOCENT. HE DOES NOT HAVE TO PROVE ANYTHING.
4 HE DOES NOT HAVE TO SPEAK. HIS ATTORNEYS DON'T HAVE TO
5 SPEAK. THEY DON'T HAVE TO PRESENT ANY WITNESSES. THEY
6 HAVE NO BURDEN.

7 AND EVEN IF THEY NEVER UTTER A WORD, THE STATE STILL
8 HAS TO MEET THEIR BURDEN BEYOND A REASONABLE DOUBT.

9 A OKAY.

10 Q AND SO THAT IS WHAT I'M REFERRING TO WHEN I SAY THE
11 STATE HAS THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT
12 AND THAT MR. STANKO HAS ABSOLUTELY NO BURDEN AT ALL.

13 A OKAY.

14 Q DO YOU UNDERSTAND THAT?

15 A YES, MA'AM.

16 Q OKAY. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
17 JUROR TYPE SHEET?

18 A YES, MA'AM, I HAVE.

19 Q AND WHICH CATEGORY DO YOU FEEL YOU FALL INTO?

20 A TYPE ONE.

21 Q OKAY. AND IS THAT A FIXED OPINION ON YOUR PART?
22 BASICALLY, DO YOU UNDERSTAND WHAT THE TYPES ARE? WHY
23 DON'T YOU EXPLAIN TO ME IN YOUR OWN WORDS WHAT TYPE ONE
24 IS.

25 A I WOULD SAY TYPE ONE, BUT THEN AGAIN, IN SOME CASES I

1 DO THINK DEATH PENALTY IS NEEDED.

2 Q OKAY. LET ME TELL YOU WHAT TYPE ONE IS IN A
3 NUTSHELL. TYPE ONE SAYS EVEN IF A PERSON IS CONVICTED OF
4 MURDER, THERE IS NEVER A CIRCUMSTANCE WHERE I WOULD IMPOSE
5 THE DEATH PENALTY. THOSE ARE CLASSICALLY REFERRED TO
6 PEOPLE WHO ARE OPPOSED TO THE DEATH PENALTY.

7 TYPE TWO IS THE KIND OF CASE WHERE A JUROR SAYS I,
8 DON'T CARE OR WHAT TYPE OF MURDER IT WAS, THE DEATH
9 PENALTY IS ALWAYS THE APPROPRIATE PENALTY.

10 AND TYPE THREE IS THE TYPE JUROR WHO SAYS, I CAN DO
11 EITHER, BUT BEFORE I CAN DO EITHER, I NEED TO LISTEN TO
12 ALL THE FACTS AND EVIDENCE, AND I NEED TO WEIGH THE
13 AGGRAVATING AND MITIGATING CIRCUMSTANCES, AND IF WARRANTED
14 I CAN GIVE LIFE WITHOUT PAROLE, AND IF WARRANTED I COULD
15 DO DEATH.

16 A I WOULD BE TYPE THREE DEFINITELY THEN.

17 Q OKAY. AND TELL ME WHAT MAKES THE DIFFERENCE BETWEEN
18 YOU TELLING ME ORIGINALLY THAT YOU WERE TYPE ONE.

19 A MY THOUGHT IS IS IF IT'S SOMEBODY WHO LIKE IS LIKE A
20 MURDERS LIKE CONTINUOUSLY AND CONTINUOUSLY, THEY NEED THE
21 DEATH PENALTY. BUT IF IT'S SOMEBODY SAY A ONE TIME
22 CIRCUMSTANCE WHERE, YOU KNOW, THEY DID A MURDER, BUT IT
23 WASN'T INTENTIONAL, IF YOU -- YOU KNOW WHAT I'M SAYING --
24 LIKE TO PROTECT THEIRSELF OR SOMETHING, THEN THEY GOT
25 FOUND GUILTY, NO, THEY DON'T NEED THE DEATH PENALTY, THEY

1 NEED TO GO TO JAIL AND SERVE THEIR TIME WITH NO PAROLE IS
2 HOW I FEEL FOR A MURDER.

3 Q OKAY. AND SO WHAT I'M TRYING TO FIGURE OUT -- YOU
4 TOLD ME INITIALLY YOU WERE A TYPE ONE JUROR WHERE -- AND
5 THAT'S WHY I ASKED TO CLARIFY, BECAUSE THEN YOU SAID I
6 COULD BE A TYPE TWO.

7 A I DIDN'T UNDERSTAND TYPE THREE WHEN I WAS READING IT.
8 I DIDN'T UNDERSTAND.

9 Q OKAY. SO YOU UNDERSTAND NOW THAT TYPE THREE IS THE
10 KIND OF JUROR WHO SAYS, MY MIND IS NOT MADE UP, I DON'T
11 HAVE ANY POSITION ABOUT IT REALLY ONE WAY OR THE OTHER, I
12 COULD DO EITHER, BUT I WOULD NEED TO LISTEN TO ALL THE
13 FACTS AND CIRCUMSTANCES FIRST?

14 A YEAH.

15 Q OKAY. IF YOU WERE A JUROR IN THE DEATH PENALTY CASE
16 AND IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE
17 WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL. DO
18 YOU UNDERSTAND?

19 A YES, MA'AM.

20 Q AND IN THE SENTENCING PHASE YOU WOULD BE ALLOWED TO
21 CONSIDER AGGRAVATING CIRCUMSTANCES AND MITIGATING
22 CIRCUMSTANCES. AND I'M GOING TO DESCRIBE FOR YOU WHAT
23 THOSE ARE.

24 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS,
25 DETAILS, OR AN OCCURRENCE WHICH THE LEGISLATURE HAS

1 DECLARED BY STATE LAW WOULD MAKE WORSE, THAT IS AGGRAVATE,
2 THE OFFENSE OF MURDER.

3 IN OTHER WORDS, THE AGGRAVATING CIRCUMSTANCE WHEN
4 ACCOMPANYING A MURDER INCREASES THE ENORMITY OR ADDS TO
5 THE INJURY OF THE CRIME OF MURDER. IT IS COMMITTED IN THE
6 COMMISSION OF A CRIME.

7 AND SOME EXAMPLES WOULD BE THE MURDER OF A CHILD
8 UNDER AGE 11, DRUG TRAFFICKING, KILLING BY POISON, OR
9 BURGLARY IN ANY DEGREE. AGAIN, THESE ARE JUST EXAMPLES.

10 MITIGATING CIRCUMSTANCES ARE INCIDENTS, DETAILS, OR
11 OCCURRENCE -- OR OCCURRENCES WHICH THE LEGISLATURE HAS
12 DECLARED BY STATE LAW REDUCE THE SEVERITY OF THE OFFENSE
13 OF MURDER AND MAY BE CONSIDERED AS EXTENUATING OR AS
14 REDUCING THE DEGREE OF MORAL CULPABILITY OR
15 RESPONSIBILITY.

16 AND SOME EXAMPLES OF THOSE WOULD BE THAT THE PERSON
17 HAD NOT YET REACHED THEIR 18TH BIRTHDAY AT THE TIME THE
18 CRIME WAS COMMITTED, THAT THEY SUFFERED FROM SOME FORM OF
19 MENTAL RETARDATION DURING THE TIME THAT THE CRIME WAS
20 COMMITTED, THAT THEY ACTED UNDER DURESS OR DOMINATION, OR
21 THAT THEY WERE AN ACCOMPLICE AND THAT THEIR PARTICIPATION
22 WAS RELATIVELY MINOR.

23 AGAIN, THESE ARE ONLY EXAMPLES SO THAT YOU CAN MORE
24 READILY UNDERSTAND WHAT WE'RE TALKING ABOUT.

25 A UH-HUH.

1 Q IF YOU WERE A JUROR IN THE SENTENCING PHASE OF A
2 CASE, NOT PARTICULARLY THIS CASE, BUT ANY CASE, DEPENDING
3 UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE
4 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
5 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU APPLY
6 TO THE CASE, COULD YOU RETURN A SENTENCE OF LIFE IN PRISON
7 WITHOUT THE POSSIBILITY OF PAROLE?

8 A YES, MA'AM.

9 Q AND AGAIN, SAME CIRCUMSTANCES, IF YOU WERE A JUROR IN
10 THE SENTENCING PHASE, COULD YOU, DEPENDING UPON THE FACTS
11 AND THE CIRCUMSTANCES OF THE PARTICULAR CASE, INCLUDING
12 THE CONSIDERATION OF AGGRAVATING AND MITIGATING
13 CIRCUMSTANCES AND THE LAW THAT I WOULD INSTRUCT YOU
14 APPLIES TO THE CASE RETURN A SENTENCE OF DEATH WHICH IN
15 THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION?

16 A YES, MA'AM.

17 Q OKAY. IF YOU WERE CHOSEN FOR A JURY, AS I INDICATED,
18 THE JURY WILL BE SEQUESTERED WHICH MEANS YOU'LL BE HOUSED
19 IN A MOTEL FOR APPROXIMATELY 10 DAYS. EXCEPT FOR THE
20 PERSONAL INCONVENIENCE, WHICH WE ASSUME IT WILL BE
21 PERSONALLY INCONVENIENT, WOULD THIS POSE A SERIOUS DANGER
22 TO YOUR HEALTH OR WELL-BEING?

23 A THE ONLY THING IS, JUDGE, I HAVE A SEVEN YEAR OLD
24 DAUGHTER AND SHE HAS BEEN TO THE DOCTOR ONE TIME. SHE HAS
25 A FOLLOW-UP APPOINTMENT. SHE'S HAD LIKE NOSE BLEEDS FOR

1 NO REASON, AND THEY'RE REALLY BAD, AND THAT'S MY ONLY
2 CONCERN BECAUSE...

3 Q DO YOU KNOW WHEN HER NEXT APPOINTMENT IS?

4 A WE'RE WAITING RIGHT NOW, THE WHOLE WEEK. WE'RE
5 SEEING -- THEY ARE TRYING A HUMIDIFIER AT NIGHT TO SEE IF
6 THAT WORKS. WE GOT A WHOLE ANOTHER WEEK TO DO THAT.

7 Q OKAY.

8 A HAD TO DO A WEEK WITHOUT IT, THEN WITH IT, TO SEE IF
9 MAYBE IT'S JUST LIKE, YOU KNOW, AN AIR THING. THEY DON'T
10 KNOW. BUT IF SHE GETS LIKE UPSET OR EXCITED, THAT'S WHEN
11 SHE ACTUALLY--

12 Q GETS THE NOSE BLEEDS?

13 A YEAH. AND AT NIGHT. THAT -- WE DON'T KNOW, YOU
14 KNOW, SOMETIMES AT NIGHT IT HAPPENS, BUT...

15 Q AND YOU'RE HUSBAND WILL BE THERE TO CARE FOR HER IF
16 YOU'RE SELECTED FOR THE JURY?

17 A MY HUSBAND WORKS BUT, YOU KNOW, WE HAVE DAYCARE AND
18 MY MOTHER IS AVAILABLE, BUT SHE CANNOT -- HELP ME OUT.
19 THAT'S MY ONLY OTHER HELP THAT I NORMALLY HAVE.

20 Q OKAY. YOU SAID YOUR HUSBAND WORKS WHAT SCHEDULE?

21 A HE GOES IN LIKE AT 6:30 IN THE MORNING. HE'S BACK
22 HOME ABOUT FOUR NORMALLY WITH THE HEAT NOW BECAUSE HE DOES
23 VINYL SIDING OUTSIDE WORK.

24 Q OKAY. BUT YOU'RE WAITING FOR A FOLLOW-UP
25 APPOINTMENT, BUT Y'ALL ARE TRYING TO SEE IF THE HUMIDIFIER

1 IS GOING TO WORK?

2 A RIGHT DR. KENSBY IS HER DOCTOR.

3 Q OKAY.

4 THE COURT: WHAT Y'ALL WANT TO DO?

5 MR. HEMBREE: SHE'S QUALIFIED, JUDGE.

6 THE COURT: YEAH, I KNOW.

7 MR. HEMBREE: AND, YOU KNOW, I JUST -- WE WORKED
8 SO HARD TO KEEP HER QUALIFIED AND TO LET HER GO AT
9 THIS POINT -- IF SHE DOESN'T KNOW--

10 THE COURT: WELL, I KNOW. WELL, WHAT I'M GOING
11 TO TELL HER AND INSTRUCT HER IS IF AN EMERGENCY COMES
12 UP, TO LET US KNOW AND WE'LL DO OUR BEST TO
13 ACCOMMODATE HER TO MAKE SURE HER DAUGHTER IS NOT LEFT
14 IN A REAL...

15 MR. DIGGS: I GUESS.

16 THE COURT: YEAH. I FIGURE IF AN EMERGENCY
17 COMES UP, WE WILL HAVE ALTERNATES, YOU KNOW, IF WE
18 GET THAT FAR. YEAH. OKAY.

19 BY THE COURT:

20 Q MA'AM, WHAT -- AND JUST TO ALLAY YOUR CONCERNS
21 BECAUSE I KNOW IT'S SO HARD WHEN CHILDREN ARE AT THAT AGE,
22 AT ANY AGE, REALLY -- WHAT WE CAN DO IS IF YOU'RE SELECTED
23 FOR THE JURY, WE OF COURSE, CAN MAKE ACCOMMODATIONS IF
24 SOMETHING HAPPENS, AND WE WOULD NOT HAVE YOUR CHILD ILL
25 AND YOU NOT BEING ABLE TO ATTEND TO HER, OKAY?

1 NOW, IN EVERY TYPE -- EVERY CAPITAL CASE EACH JUROR
2 HAS TO INDIVIDUALLY SIGN A VERDICT FORM, WHETHER IT'S LIFE
3 WITHOUT PAROLE OR DEATH. AND THERE WILL BE LINES ONE
4 THROUGH 12 ON THE VERDICT FORM AND EACH JUROR WOULD HAVE
5 TO SIGN THEIR NAME.

6 WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN THE EVENT
7 OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE OR
8 DEATH.

9 A WHAT WAS THE QUESTION AGAIN?

10 Q I'M SORRY. YOU WANT SOME TISSUE? OH, THE CLERK HAS
11 SOME. TAKE A MINUTE. YOU WANT SOME WATER? OKAY. YOU
12 ALL RIGHT?

13 A YES.

14 Q OKAY. WOULD YOU BE ABLE TO SIGN A VERDICT FORM IN
15 THE EVENT OF A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
16 PAROLE OR DEATH?

17 A MA'AM.

18 Q OKAY. YOU SURE YOU'RE ALL RIGHT? IS IT JUST THE
19 WHOLE PROCESS IS JUST A LITTLE OVERWHELMING?

20 A NO. I HAVE LIKE THREE IMPORTANT THINGS GOING ON.

21 Q OKAY. WHAT ELSE IS GOING ON?

22 A MY LITTLE GIRL'S BIRTHDAY IS TUESDAY AND I DON'T WANT
23 TO MISS HER BIRTHDAY.

24 Q OKAY.

25 A AND I HAVE A 14 YEAR ANNIVERSARY. I DEFINITELY DON'T

1 WANT TO MISS THAT.

2 Q WHAT DAY IS THAT?

3 A THE 22ND.

4 Q OH, YOU WON'T.

5 THE COURT: ANY EXCEPTION TO EXCUSING THIS JUROR
6 FROM THE STATE?

7 MR. HEMBREE: NO, YOUR HONOR.

8 THE COURT: FROM THE DEFENSE?

9 MR. KELLY: NO, MA'AM.

10 THE COURT: MA'AM, WE WILL EXCUSE YOU FROM
11 SERVICE.

12 JUROR: THANK YOU.

13 THE COURT: YOU'RE WELCOME.

14 (JUROR LEFT THE COURTROOM.)

15 THE COURT: GEORGIANN HASELDEN, 141.

16 (JUROR ENTERED THE COURTROOM.)

17 GEORGIANN HASELDEN, WHITE FEMALE,
18 TESTIFIED AS FOLLOWS:

19 BY THE COURT:

20 Q MRS. HASELDEN, COME ON IN AND HAVE A SEAT FOR US.

21 YOU INDICATED TO THE BAILIFF YOU HAD A PANIC ATTACK; IS
22 THAT RIGHT?

23 A YES, MA'AM. YEAH.

24 Q ARE YOU OKAY? CAN YOU BREATHE?

25 A YEAH, I CAN. I'LL BE ALL RIGHT.

1 Q YOU SURE?

2 A YEAH.

3 Q DO YOU HAVE PANIC ATTACKS OFTEN? ARE THEY IN
4 RESPONSE TO STRESS?

5 A (NODDED HEAD.)

6 Q OKAY. DO YOU THINK YOU WOULD BE ABLE TO RENDER
7 EFFICIENT SERVICE DUE TO YOUR PANIC ATTACK?

8 A I DON'T THINK SO.

9 THE COURT: OKAY. ANY EXCEPTION TO EXCUSING THE
10 JUROR?

11 MR. HEMBREE: NO, YOUR HONOR.

12 MR. KELLY: NO, MA'AM.

13 THE COURT: MA'AM, YOU'RE EXCUSED. DO YOU NEED
14 US TO GET ANYTHING FOR YOU? DO YOU NEED US TO GET A
15 BAG? ARE YOU HYPERVENTILATING?

16 JUROR: I'LL BE OKAY.

17 THE COURT: YOU SURE? YOU WANT ME TO CALL AN
18 AMBULANCE?

19 JUROR: HUH-UH.

20 THE COURT: OKAY. DO YOU NEED SOMETHING TO
21 DRINK OR ANYTHING?

22 JUROR: I AM JUST GOING TO GO TO THE RESTROOM
23 FOR A COUPLE OF MINUTES.

24 THE COURT: OKAY. IF YOU NEED ANYTHING, LET THE
25 BAILIFFS KNOW. WE WILL GET YOU SOME SODA, SOME

1 WATER, SOMETHING. IF YOU NEED SOMETHING TO EAT,
2 WE'LL GET THAT FOR YOU.

3 AND BY ALL MEANS, IF YOU NEED SOME MEDICAL
4 ATTENTION, I WILL HAVE ONE OF THE DEPUTIES DRIVE YOU
5 TO THE HOSPITAL; OKAY? PLEASE DON'T GET ILL AT THIS
6 COURTHOUSE AND NOT LET US HELP YOU; ALL RIGHT?

7 JUROR: THANK YOU.

8 THE COURT: YOU'RE WELCOME. OKAY.

9 (JUROR LEFT THE COURTROOM.)

10 THE COURT: ELLEN FALLON, NUMBER 92. SHE HAS
11 RESPONDED TO NUMBER 21.

12 (JUROR ENTERED THE COURTROOM.)

13 ELLEN FALLON, WHITE FEMALE, TESTIFIED
14 AS FOLLOWS:

15 BY THE COURT:

16 Q MA'AM, HOW ARE YOU DOING TODAY?

17 A I'M A LITTLE STRESSED OUT.

18 Q OH, TAKE A DEEP BREATH.

19 A WELL--

20 Q WE KNOW IT'S BEEN A LONG DAY.

21 A NOT MUCH OF A PUBLIC SPEAKER.

22 Q THAT'S OKAY. WE'RE NOT GOING TO -- I KNOW IT'S VERY
23 DAUNTING AND I KNOW IT'S VERY DIFFICULT ESPECIALLY BECAUSE
24 YOU ALL ARE NOT FAMILIAR WITH THE PROCESS AND THIS IS
25 PROBABLY YOUR FIRST CONTACT WITH US.

1 A THIS IS MY FIRST TIME IN A COURTROOM.

2 Q THAT'S HOW MOST -- YEAH, THAT'S MOST CITIZENS'
3 EXPERIENCE, WHICH IS A GOOD THING, ALTHOUGH I WISH MORE
4 PEOPLE WOULD COME AND JUST OBSERVE THE PROCESS, SO THEY
5 COULD KNOW HOW IT WORKS. PLEASE STATE YOU'RE FULL NAME
6 FOR THE RECORD.

7 A ELLEN LOUISE FALLON.

8 Q AND MRS. FALLON, IF YOU COULD COME A LITTLE CLOSER
9 FOR ME AND SPEAK FOR THE MICROPHONE. OKAY. AND STATE
10 YOUR NAME FOR ME ONE MORE.

11 A ELLEN LOUISE FALLON.

12 Q AND YOU'RE NUMBER 92; CORRECT?

13 A YES.

14 Q MRS. FALLON, I WILL REMIND YOU THAT YOU'RE STILL
15 UNDER OATH. DO YOU UNDERSTAND?

16 A YES, I DO.

17 Q HAVE YOU HAD ANY MEDIA EXPOSURE TO THIS CASE SINCE
18 THE COURT'S INSTRUCTIONS ON TUESDAY?

19 A NO.

20 Q NOW, I WANT YOU TO TAKE A DEEP BREATH FOR ME. NO
21 NEED TO -- I KNOW IT'S DAUNTING, I KNOW IT'S UNNERVING.
22 BUT I WANT YOU TO KNOW THAT WE'RE GOING TO ASK YOU A FEW
23 QUESTIONS. THERE -- THEY MAY SEEM VERY PRIVATE, BUT IT'S
24 NOT OUR INTENT TO INVADE YOUR PRIVACY. WE JUST NEED TO
25 KNOW YOUR VIEWS.

1 A SURE.

2 Q WE KNOW THAT SOME OF THESE QUESTIONS YOU PROBABLY
3 HAVE NEVER GIVEN ANY REAL THOUGHT TO. SO IF YOU NEED TO
4 TAKE TIME TO REFLECT, PLEASE FEEL FREE TO DO SO.

5 A OKAY.

6 Q I EMPHASIZE THAT THERE ARE NO RIGHT OR WRONG ANSWERS.
7 THE ONLY THING THAT WE ASK OF YOU IS THAT YOU BE CANDID
8 WITH US, OPEN, HONEST, AND ANSWER THE QUESTIONS AS FULLY
9 AS YOU KNOW HOW.

10 IF YOU DO NOT UNDERSTAND THE QUESTION, LET ME KNOW.
11 AND TO THE BEST OF YOUR ABILITY ANSWER EACH QUESTION WITH
12 A YES OR A NO.

13 A OKAY.

14 Q OKAY? AMONG OTHER THINGS WE'LL BE TALKING ABOUT
15 PENALTIES. THE FACT THAT -- MERE FACT THAT WE TALK ABOUT
16 PENALTY DOES NOT INDICATE ANYTHING ABOUT THE DEFENDANT
17 BECAUSE HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
18 UNDERSTAND?

19 A YES.

20 Q IF YOU ARE A JUROR IN A CRIMINAL CASE, COULD YOU
21 LISTEN TO THE LAW?

22 A YES.

23 Q COULD YOU ACCEPT AND APPLY THE LAW AS I WOULD
24 INSTRUCT YOU?

25 A YES.

1 Q COULD YOU ACCEPT AND APPLY THE LAW EVEN THOUGH YOU
2 MAY DISAGREE WITH ME ABOUT WHAT YOU THINK THE LAW OUGHT TO
3 BE OR SHOULD BE AND IT DISAGREES WITH WHAT I TELL YOU THE
4 LAW ACTUALLY IS?

5 A REPEAT THAT.

6 Q OKAY. I KNOW IT'S A LONG QUESTION. WHAT I'M TRYING
7 TO ASCERTAIN IS SOMETIMES PEOPLE HAVE PRECONCEIVED NOTIONS
8 ABOUT WHAT THEY THINK THE LAW IS. LIKE FOR EXAMPLE,
9 PROBABLY ONE OF THE MOST -- THINGS THAT MOST PEOPLE WOULD
10 THINK ABOUT WOULD BE LIKE LOTS OF THE TRAFFIC REGULATIONS
11 AND THINGS, LIKE LOTS OF PEOPLE DON'T REALIZE THAT YOU
12 AREN'T SUPPOSED TO CHANGE LANES WHEN THE LINES ARE A
13 CERTAIN WAY BECAUSE MOST PEOPLE DON'T READ THE DRIVER'S
14 HANDBOOK EXCEPT WHEN THEY ARE TAKING THE TEST.

15 SOMETIMES WE HAVE PRECONCEIVED NOTIONS ABOUT HOW
16 THINGS WORK BECAUSE WE HAVE DONE IT THAT WAY SO MUCH
17 BEFORE.

18 AND WHAT I'M TRYING TO ASCERTAIN IS IF YOU HAD A
19 PRECONCEIVED NOTION ABOUT THE WAY YOU THINK THE LAW SHOULD
20 BE OR OUGHT TO BE AND IT DOESN'T AGREE WITH WHAT I
21 INSTRUCT YOU THE LAW IS, CAN YOU DISREGARD THAT
22 PRECONCEPTION AND APPLY THE LAW PRECISELY AS I INSTRUCT
23 YOU?

24 A YES.

25 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE

1 EVIDENCE PRESENTED IN THE COURTROOM AND DISREGARD ANYTHING
2 YOU MAY HAVE HEARD, READ, OR SEEN ABOUT THIS CASE? AND
3 THERE ARE NO RIGHT OR WRONG ANSWERS.

4 A NO.

5 Q OKAY. ARE YOU TELLING ME THAT AS A RESULT OF WHAT
6 YOU HAVE HEARD, READ, OR SEEN, THAT YOU HAVE FORMED A
7 FIXED OPINION ABOUT THIS CASE?

8 A YES.

9 Q ARE YOU TELLING ME THAT YOU HAVE ALREADY DETERMINED
10 IN YOUR MIND OR RESOLVED IN YOUR MIND WHAT THE FACTS ARE?
11 IN OTHER WORDS--

12 A YES.

13 Q YOU HAVE ALREADY MADE UP YOUR MIND?

14 A YES.

15 Q OKAY.

16 THE COURT: ANY QUESTIONS FROM THE STATE?

17 MR. HEMBREE: NO, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MR. KELLY: NO, MA'AM.

20 THE COURT: ANY EXCEPTION TO THE JUROR BEING
21 EXCUSED?

22 MR. HEMBREE: NO, YOUR HONOR.

23 MR. KELLY: NO, MA'AM.

24 THE COURT: MRS. FALLON, YOU'RE EXCUSED WITH THE
25 COURT'S THANKS. HAVE A GREAT DAY.