

**VOLUME ONE OF NINE**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Lexington County

James R. Barber, III, Circuit Court Judge

---

S.C. Supreme Court

DEC - 1 2011

RECEIVED

KEVIN MERCER,

PETITIONER/RESPONDENT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

---

APPENDIX

---

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**VOLUME ONE**  
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# VOLUME ONE OF SIX

STATE OF SOUTH CAROLINA

In The Supreme Court

---

APPEAL FROM LEXINGTON COUNTY

John C. Few, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

KEVIN MERCER,

APPELLANT

---

RECORD ON APPEAL

---

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS  
2003-GS-32-0409

THE STATE OF SOUTH CAROLINA

-VS-

KEVIN J. MERCER

:  
:  
: TRANSCRIPT OF RECORD  
: VOLUME 1  
: PAGES 1 - 499

APRIL 10 - 13, 2006  
APRIL 17 - 22, 2006  
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN FEW, JUDGE, AND JURY.

A P P E A R A N C E S:

DONALD V. MYERS, ESQUIRE  
S. RICK HUBBARD, III, ESQUIRE  
D. SHAWN GRAHAM, ESQUIRE  
MARION MOSES, ESQUIRE  
ATTORNEYS FOR THE STATE

CAMERON B. LITTLEJOHN, JR., ESQUIRE  
MELISSA J. KIMBROUGH, ESQUIRE  
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS  
CIRCUIT COURT REPORTER



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| 11 | S-8        | MAP                                                       |            | 1360       |
| 12 | S-9        | PHOTOGRAPH                                                |            | 1362       |
| 13 | S-10       | DRIVER'S LICENSE                                          |            | 1385       |
| 14 | S-11       | PULLIAM FORD RECEIPT                                      |            | 1386       |
| 15 | S-12       | PHOTOGRAPH                                                |            | 1394       |
| 16 | S-13       | PHOTOGRAPH                                                |            | 1453       |
| 17 | S-14       | PHOTOGRAPH                                                |            | 1453       |
| 18 | S-15       | G.S.R. COLLECTION KIT<br>ON KEVIN MERCER                  | 1464       | 1518       |
| 19 | S-16       | G.S.R. COLLECTION KIT<br>ON MARCUS THOMPSON               | 1464       | 1518       |
| 20 | S-17       | PHOTOGRAPH                                                |            | 1466       |
| 21 | S-18       | PHOTOGRAPH                                                |            | 1466       |
| 22 | S-19       | REVOLVER                                                  |            | 1469       |
| 23 | S-20       | PHOTOGRAPH                                                |            | 1470       |
| 24 | S-21       | EVIDENCE BOX                                              |            | 1474       |
| 25 | S-22       | BULLETS/CARTRIDGES                                        | 1474       | 1569       |

E X H I B I T S

|    | <u>NO.</u> | <u>DESCRIPTION</u>                                     | <u>ID.</u> | <u>EV.</u> |
|----|------------|--------------------------------------------------------|------------|------------|
| 1  |            |                                                        |            |            |
| 2  |            |                                                        |            |            |
| 3  | S-23       | PHOTOGRAPH                                             |            | 1476       |
| 4  | S-24       | BULLET FRAGMENT FROM<br>MARY DAVIS                     | 1477       | 1569       |
| 5  | S-25       | EVIDENCE ENVELOPE                                      |            | 1504       |
| 6  | S-26       | G.S.R. ANALYSIS INFORMATION<br>FORM ON MARCUS THOMPSON |            | 1518       |
| 7  |            |                                                        |            |            |
| 8  | S-27       | G.S.R. ANALYSIS INFORMATION<br>FORM ON KEVIN MERCER    |            | 1518       |
| 9  | S-28       | DIAGRAM OF A HEAD                                      |            | 1579       |
| 10 | S-29       | TRAFFIC TICKET                                         |            | 1735       |
| 11 | S-30       | TRAFFIC TICKET                                         |            | 1739       |
| 12 | S-31       | TRAFFIC TICKET                                         |            | 1741       |
| 13 | S-32       | TRAFFIC TICKET                                         |            | 1743       |
| 14 | S-33       | 10-YEAR DRIVER RECORD                                  |            | 1744       |
| 15 | S-34       | S.L.E.D. WEAPON REPORT                                 |            | 1805       |
| 16 | S-35       | STANDARD CONDITIONS OF<br>PROBATION FORM               |            | 1808       |
| 17 |            |                                                        |            |            |
| 18 | S-36       | INDICTMENT                                             |            | 1810       |
| 19 | S-37       | INDICTMENT                                             |            | 1810       |
| 20 | S-38       | INDICTMENT                                             |            | 1810       |
| 21 | S-39       | PROBATION CITATION                                     |            | 1812       |
| 22 | S-40       | HANDWRITTEN LETTER BY KEVIN<br>MERCER TO AN OFFICER    |            | 1989       |
| 23 | S-41       | INDICTMENT                                             |            | 2017       |
| 24 | S-42       | INDICTMENT                                             |            | 2018       |
| 25 | S-43       | WAL-MART BAG                                           |            | 2047       |

E X H I B I T S

|    | <u>NO.</u> | <u>DESCRIPTION</u>        | <u>ID.</u> | <u>EV.</u> |
|----|------------|---------------------------|------------|------------|
| 1  |            |                           |            |            |
| 2  |            |                           |            |            |
| 3  | S-44       | WAL-MART RECEIPT          |            | 2047       |
| 4  | S-45       | BASEBALL CAP              |            | 2047       |
| 5  | S-46       | SHIRT                     |            | 2047       |
| 6  | S-47       | VISOR                     |            | 2047       |
| 7  | S-48       | BIKER SHORTS              |            | 2047       |
| 8  | S-49       | PHOTOGRAPH                |            | 2051       |
| 9  | S-50       | PHOTOGRAPH                | 2053       | 2061       |
| 10 | S-51       | PHOTOGRAPH                | 2053       | 2057       |
| 11 | S-52       | X-RAY                     | 2053       | 2056       |
| 12 | S-53       | PHOTOGRAPH                |            | 2072       |
| 13 | S-54       | PHOTOGRAPH                |            | 2079       |
| 14 | S-55       | ARMY AWARD SHEET          |            | 2083       |
| 15 | S-56       | POSTHUMOUS AWARD          |            | 2088       |
| 16 | S-57       | PHOTOGRAPH OF AWARD       |            | 2090       |
| 17 | S-58       | PHOTOGRAPH OF AWARD       |            | 2090       |
| 18 | S-59       | PHOTOGRAPH                |            | 2100       |
| 19 | S-60       | PHOTOGRAPH                |            | 2110       |
| 20 | S-61       | PHOTOGRAPH                |            | 2111       |
| 21 | S-62       | PHOTOGRAPH                |            | 2111       |
| 22 | S-63       | PHOTOGRAPH                |            | 2111       |
| 23 | S-64       | MEMORIAL CEREMONY PROGRAM |            | 2117       |
| 24 | S-65       | PHOTOGRAPH                |            | 2122       |
| 25 | S-66       | PHOTOGRAPH                |            | 2122       |

| <u>E X H I B I T S</u> |            |                                      |            |            |
|------------------------|------------|--------------------------------------|------------|------------|
|                        | <u>NO.</u> | <u>DESCRIPTION</u>                   | <u>ID.</u> | <u>EV.</u> |
| 1                      |            |                                      |            |            |
| 2                      |            |                                      |            |            |
| 3                      | S-67       | PHOTOGRAPH                           |            | 2122       |
| 4                      | S-68       | PHOTOGRAPH                           |            | 2122       |
| 5                      | S-69       | PHOTOGRAPH                           |            | 2122       |
| 6                      | S-70       | PHOTOGRAPH                           |            | 2122       |
| 7                      | S-71       | PHOTOGRAPH                           |            | 2122       |
| 8                      | S-72       | PHOTOGRAPH                           |            | 2129       |
| 9                      | S-73       | PHOTOGRAPH                           |            | 2129       |
| 10                     | S-74       | PHOTOGRAPH                           |            | 2131       |
| 11                     | S-75       | FUNERAL PROGRAM                      |            | 2132       |
| 12                     |            |                                      |            |            |
| 13                     | D-1        | PHOTOGRAPH                           |            | 1426       |
| 14                     | D-2        | PHOTOGRAPH                           |            | 1426       |
| 15                     | D-3        | BOOKING REPORT ON<br>MARCUS THOMPSON |            | 1541       |
| 16                     | D-4        | GLOVES                               | 1628       | 1640       |
| 17                     | D-5        | RADIOLOGY REPORT                     |            | 2294       |
| 18                     | D-6        | PHOTOGRAPH                           |            | 2330       |
| 19                     | D-7        | PHOTOGRAPH                           |            | 2330       |
| 20                     | D-8        | PHOTOGRAPH                           |            | 2330       |
| 21                     | D-9        | PHOTOGRAPH                           |            | 2330       |
| 22                     | D-10       | PHOTOGRAPH                           |            | 2330       |
| 23                     | D-11       | HIGH SCHOOL CERTIFICATE              |            | 2343       |
| 24                     | D-12       | PHOTOGRAPH                           |            | 2343       |
| 25                     | D-13       | PHOTOGRAPH                           |            | 2343       |

E X H I B I T S

|    | <u>NO.</u> | <u>DESCRIPTION</u>                                 | <u>ID.</u> | <u>EV.</u> |
|----|------------|----------------------------------------------------|------------|------------|
| 1  |            |                                                    |            |            |
| 2  |            |                                                    |            |            |
| 3  | D-14       | PHOTOGRAPH                                         |            | 2343       |
| 4  | D-15       | PHOTOGRAPH                                         |            | 2343       |
| 5  | D-16       | PHOTOGRAPH                                         |            | 2343       |
| 6  | D-17       | PHOTOGRAPH                                         |            | 2343       |
| 7  | D-18       | PHOTOGRAPH                                         |            | 2343       |
| 8  |            |                                                    |            |            |
| 9  | C-1        | FORENSIC EVALUATION                                | 1216       |            |
| 10 | C-2        | CRIMINAL RESPONSIBILITY<br>AND CAPACITY TO CONFORM |            |            |
| 11 |            | EVALUATION                                         | 1267       |            |
| 12 | C-3        | JURY RETURNS                                       | 1499       |            |
| 13 | C-4        | JURY NOTE                                          | 1708       |            |
| 14 | C-5        | JURY CHARGE                                        | 1708       |            |
| 15 | C-6        | JURY NOTE                                          | 2430       |            |
| 16 |            |                                                    |            |            |
| 17 |            |                                                    |            |            |
| 18 |            |                                                    |            |            |
| 19 |            |                                                    |            |            |
| 20 |            |                                                    |            |            |
| 21 |            |                                                    |            |            |
| 22 |            |                                                    |            |            |
| 23 |            |                                                    |            |            |
| 24 |            |                                                    |            |            |
| 25 |            |                                                    |            |            |

County: LexingtonDate: 4-17-06

## VOIR DIRE

Case No: 03-65-32-409Judge: John FewPl. / State: StateState/Pl's. Atty: Donald Myers,Rick Hubbard, Shawn GradyDefendant: Kevin MercerDefense Atty: Ann Littlejohn,Melissa KimbroughCourt Reporter: Daphne Helms

| Juror No. | Name               | Sex | Race | *Court | Strikes<br>Plaintiff | Defense | Accept |
|-----------|--------------------|-----|------|--------|----------------------|---------|--------|
| 294       | Michelle Smoak     | F   | W    |        | ✓                    |         |        |
| 321       | Becky VanLoezer    | F   | W    |        |                      | ✓       |        |
| 109       | Laura Gibson       | F   | W    |        |                      |         | ✓      |
| 258       | Diane Rivers       | F   | W    |        |                      |         | ✓      |
| 186       | Deborah Lucas      | F   | W    |        |                      | ✓       |        |
| 177       | Timothy Leitner    | M   | W    |        |                      |         | ✓      |
| 196       | Susan Hartley      | F   | W    |        | ✓                    |         |        |
| 197       | Adam McCullough    | M   | W    |        |                      | ✓       |        |
| 36        | Mack Brock         | M   | W    |        | ✓                    |         |        |
| 233       | Victor Petrella    | M   | W    |        |                      | ✓       |        |
| 182       | William Livingston | M   | W    |        |                      |         | ✓      |
| 298       | Darlene Staggs     | F   | W    |        |                      | ✓       |        |
| 27        | Edward Boyle       | M   | W    |        |                      | ✓       |        |
| 24        | Diane Bouye        | F   | W    |        |                      |         | ✓      |
| 228       | Mary Paxton        | F   | W    |        | ✓                    |         |        |
| 127       | Janet Harman       | F   | W    |        |                      |         | ✓      |

\* For the Court column, indicate who made the motion to strike the jurors "for cause."

C-Court, P-Plaintiff, D-Defense

County: Lexington  
 Date: 4-7-06

## VOIR DIRE

Case No: 03-65-32-409Judge: John FewPl. / State: ~~Commonwealth~~ StateState/Pl's. Atty: Myers,Hubbard, GrahamDefendant: Kevin MercerDefense Atty: Littlejohn,KimbrughCourt Reporter: Daphne Helms

| Juror No.      | Name               | Sex | Race | *Court | Strikes<br>Plaintiff | Defense | Accept |
|----------------|--------------------|-----|------|--------|----------------------|---------|--------|
| 70             | Christopher Cuming | M   | W    |        | ✓                    |         |        |
| 170            | Phillip LaFollette | M   | W    |        |                      | ✓       |        |
| 198            | Charles McDaniel   | M   | W    |        |                      |         | ✓      |
| 302            | Darrell Starkey    | M   | H    |        |                      | ✓       |        |
| 304            | Paul Stevens, Jr.  | M   | W    |        |                      |         | ✓      |
| 225            | Edward Osegueda    | M   | W    |        |                      |         | ✓      |
| 2              | Jennifer Adams     | F   | W    |        |                      | ✓       |        |
| 270            | Ronald Schroeder   | M   | W    |        |                      |         | ✓      |
| 191            | Thomas Marinelli   | M   | W    |        |                      |         | ✓      |
| 291            | Neal Smith         | M   | W    |        |                      | ✓       |        |
| 205            | Vicky Mills        | F   | W    |        |                      |         | ✓      |
| — Alternates — |                    |     |      |        |                      |         |        |
| 275            | Phillip Sharpe     | M   | W    |        |                      | ✓       |        |
| 285            | Amber Smith        | F   | W    |        | ✓                    |         |        |
| 260            | William Rivers     | M   | W    |        |                      | ✓       |        |

\* For the Court column, indicate who made the motion to strike the jurors "for cause."

C-Court, P-Plaintiff, D-Defense





1           THE COURT: GOOD MORNING. BE SEATED, PLEASE. GOOD  
2 MORNING, LADIES AND GENTLEMEN. MY NAME IS JOHN FEW. I AM  
3 VISITING WITH YOU ALL FOR THESE COUPLE OF WEEKS FROM  
4 GREENVILLE WHICH IS MY HOME, AND IT'S A PLEASURE TO BE ABLE  
5 TO COME DOWN HERE AND WORK WITH YOU ALL FOR THIS COUPLE OF  
6 WEEKS. NOW, I WANT TO TALK TO YOU FOR JUST A FEW MINUTES TO  
7 KIND OF WELCOME YOU AND TO MAKE SURE THAT EVERYBODY IS SORT  
8 OF AT EASE AND IS PREPARED FOR WHAT IS GOING TO BE A FAIRLY  
9 RELAXED BUT SOMEWHAT LENGTHY PROCESS THAT WE HAVE TO GO  
10 THROUGH OVER THE NEXT SEVERAL DAYS OF QUALIFYING YOU ALL TO  
11 SERVE AS JURORS IN THIS COURT.

12           I WANT TO THANK YOU ALL FOR BEING HERE. I REALIZE  
13 THAT YOU ALL, OF COURSE, ARE REQUIRED TO BE HERE. YOU DIDN'T  
14 CHOOSE TO BE HERE. WE'RE GOING TO DO OUR BEST AS A COURT TO  
15 ACCOMMODATE YOU AND TO MAKE THIS AS -- RUN AS SMOOTHLY AND  
16 EFFICIENTLY AS WE CAN MAKE IT. YOU HAVE BEEN INTRODUCED, I'M  
17 SURE, TO THE GENTLEMEN WHO ARE AROUND THE COURTROOM AND  
18 AROUND THE COURTHOUSE WEARING RED COATS. THESE GENTLEMEN  
19 HAVE THE RESPONSIBILITY OF TAKING CARE OF YOU ALL WHO ARE  
20 MEMBERS OF THE JURY PANEL. IF DURING THE COURSE OF TODAY OR  
21 ANY TIME THIS WEEK OR ANY TIME DURING THIS ENTIRE TERM YOU  
22 NEED ANYTHING, YOUR FIRST RESORT IS TO TURN TO ONE OF THESE  
23 BAILIFFS AND THEY WILL EITHER TAKE CARE OF WHATEVER IT IS YOU  
24 NEED OR GET IN TOUCH WITH ME AND THEN I WILL TAKE CARE OF IT.  
25 WE HAVE -- I'M GOING TO INTRODUCE YOU TO THE REST OF THE

## JURY VOIR DIRE

35

1 PEOPLE WHO ARE INVOLVED IN THIS TERM OF COURT, A LITTLE BIT  
2 LATER THIS MORNING.

3 THERE'S SEVERAL THINGS THAT WE HAVE TO DO FIRST IN  
4 ORDER TO QUALIFY YOU ALL AS JURORS. IT'S BASICALLY A THREE-  
5 STEP PROCESS THAT WE'RE GOING TO GO THROUGH THIS MORNING AND  
6 THIS AFTERNOON. THE FIRST STEP IS THAT THE CLERK OF COURT IS  
7 GOING TO CALL THE ROLL OF ALL OF YOU ALL WHO ARE SUMMONED  
8 HERE TO SERVE. WHEN SHE CALLS YOUR NAME, I WOULD LIKE FOR  
9 YOU TO STAND, TAKE YOUR TIME, REPEAT YOUR NAME FOR US, AND  
10 THEN TELL US HOW FAR YOU HAD TO DRIVE FROM YOUR HOME ONE WAY  
11 TO GET HERE TO THE COURTHOUSE. AND THEN IF YOU DO THAT  
12 LOUDLY AND CLEARLY AND PATIENTLY, THEN YOU CAN SIT BACK DOWN.  
13 I MAY HAVE TO GET YOU TO REPEAT IT IF WE COULD NOT HEAR WHAT  
14 YOU SAID, BUT THAT IS BASICALLY WHAT WE WILL DO DURING ROLL  
15 CALL.

16 THEN AFTER WE HAVE CALLED THE ROLL OF EACH OF YOUR  
17 NAMES, THEN I HAVE A SERIES OF QUESTIONS THAT I HAVE TO ASK  
18 YOU ALL. THESE ARE QUESTIONS THAT ARE SET FORTH IN THE SOUTH  
19 CAROLINA CODE, AND I'LL TALK TO YOU IN A LITTLE BIT MORE  
20 DETAIL ABOUT THOSE QUESTIONS RIGHT BEFORE I GET AROUND TO  
21 ASKING THEM. AND THEN HOPEFULLY THAT WILL BE DONE -- THOSE  
22 TWO STEPS WILL BE DONE BY LUNCHTIME, HOPEFULLY LONG BEFORE  
23 LUNCH, BUT IT MAY TAKE UP UNTIL LUNCH TO GET ALL THAT DONE.

24 AND THEN WHEN WE'RE DONE WITH THOSE TWO STEPS, WE'LL  
25 START THE THIRD STEP WHICH IS BASICALLY A PROCESS WHERE WE

1 WILL BE SPEAKING TO YOU ALL INDIVIDUALLY. YOU WILL BE GIVEN  
2 TIMES DURING THE WEEK TO COME BACK. YOU WON'T HAVE TO STAY  
3 HERE THE WHOLE WEEK, AND WE HOPE THAT WE CAN FINISH THAT  
4 PROCESS BY ABOUT WEDNESDAY AFTERNOON OR THURSDAY MORNING. IT  
5 COULD TAKE A LITTLE BIT LONGER THAN THAT, AND IF WE -- IF WE  
6 REALLY GET GOING AND IF I'M EFFICIENT AND DON'T TALK TOO MUCH  
7 LIKE I'M DOING RIGHT NOW, THEN WE MIGHT EVEN GET IT DONE  
8 BEFORE WEDNESDAY AFTERNOON.

9 NOW, AFTER WE'RE DONE WITH THE QUALIFICATION PROCESS  
10 WEDNESDAY AFTERNOON/THURSDAY MORNING, THEN WE'RE GOING TO  
11 STOP AND WE'RE NOT GOING TO WORK ANY MORE THIS WEEK. I  
12 REALLY HOPE THAT WE WILL NOT BE WORKING ON FRIDAY. WE  
13 CERTAINLY WILL NOT BE WORKING ON SATURDAY AND ON SUNDAY. AND  
14 THEN THOSE JURORS WHO HAVE BEEN QUALIFIED TO SERVE WILL BE  
15 ASKED TO COME BACK ON MONDAY MORNING OF NEXT WEEK, AND WE  
16 WILL BEGIN WITH THE TRIAL OF THE CASE THAT WE ALL ARE HERE TO  
17 TRY THIS WEEK.

18 I'M GOING TO TALK TO YOU IN MORE DETAIL ABOUT ALL  
19 THAT AS WE MOVE THROUGH THE MORNING. I WANT YOU ALL TO EACH  
20 JUST RELAX AND TO UNDERSTAND THAT EVEN THOUGH THIS MAY SEEM  
21 ALL VERY UNFAMILIAR TO YOU, WE'RE GOING TO DO OUR BEST TO TRY  
22 TO ACCOMMODATE YOU AND TO MAKE THIS RUN AS SMOOTHLY AND  
23 EFFICIENTLY AS WE CAN, AND WE'LL GET AROUND EVENTUALLY TO  
24 EXPLAINING A LOT OF WHAT IS GOING ON, BUT I'M NOT GOING TO  
25 OVERLOAD YOU WITH ALL THAT RIGHT NOW.

## JURY VOIR DIRE

37

1           NOW, THE FIRST THING THAT IS GOING TO HAPPEN IS THE  
2 DEPUTY CLERK OF COURT, HOPE FRICK, IS GOING TO ADMINISTER AN  
3 OATH TO YOU. YOU'LL BE ASKED TO STAND. SHE WILL REPEAT THE  
4 OATH THAT YOU TAKE AND THEN YOU WILL SAY -- YOU WILL RESPOND  
5 TO HER AS SHE DIRECTS. THEN IF THERE'S ANY MEMBER OF THE  
6 JURY PANEL WHO DOES NOT TAKE THE OATH, THEN I WILL ASK YOU  
7 ABOUT THAT AFTER THE OATH HAS BEEN GIVEN, AND THEN YOUR CLERK  
8 OF COURT, BETH CARRIGG, IS GOING TO CALL THE ROLL.

9           (WHEREUPON, HOPE FRICK SWEARS THE JURY PANEL AT 9:30  
10 A.M.)

11           THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN,  
12 IS THERE ANY MEMBER OF THE JURY PANEL WHO DID NOT TAKE THE  
13 OATH THAT THE DEPUTY CLERK JUST ADMINISTERED? IF YOU DID NOT  
14 TAKE THAT OATH, PLEASE STAND. ALL RIGHT. NOBODY IS  
15 STANDING. NOW, AS WE GO THROUGH ROLL CALL, YOU WILL HEAR THE  
16 CLERK CALL YOUR JUROR NUMBER, AND I'M SURE THAT SOME OF YOU  
17 HAVE YOUR JUROR CARD WITH YOU AND YOU ALSO -- YOU ALREADY  
18 KNOW WHAT YOUR NUMBER IS. BUT IT WILL BE HELPFUL TO US AND  
19 IT WILL KIND OF HELP US MOVE THROUGH THE WEEK MORE  
20 EFFICIENTLY IF YOU ALL WILL REMEMBER WHAT YOUR JUROR NUMBER  
21 IS. SO, MS. CARRIGG, WOULD YOU PLEASE GO AHEAD AND CALL THE  
22 ROLL?

23           THE CLERK: THANK YOU, JUDGE.

24           (WHEREUPON, THE ROLL CALL OF THE JURY PANEL TOOK  
25 PLACE WITH EACH JUROR STATING THEIR NAME AND THEIR MILEAGE TO

1 THE COURTHOUSE.)

2 THE COURT: ALL RIGHT. HAS EVERYBODY WHO IS HERE  
3 FOR JURY SERVICE GIVEN US YOUR NAME AND YOUR MILEAGE? IF YOU  
4 HAVE NOT, PLEASE STAND. ALL RIGHT. SO WE'RE NOW READY TO  
5 MOVE INTO THE SECOND PHASE OF THE -- OF THE JURY  
6 QUALIFICATION PROCESS IN WHICH I'M GOING TO ASK YOU ALL A  
7 SERIES OF QUESTIONS. I'LL -- I'M JUST GOING TO SAY A FEW  
8 MORE THINGS BY WAY OF INTRODUCTION. THE OATH THAT YOU ALL  
9 HAVE JUST TAKEN THIS MORNING IS AN OATH THAT WILL REMAIN WITH  
10 YOU DURING THIS ENTIRE TERM OF COURT.

11 SO IN JUST A FEW MINUTES WHEN I'M ASKING YOU  
12 QUESTIONS, THE ANSWERS THAT YOU GIVE ME TO THOSE QUESTIONS  
13 ARE GIVEN PURSUANT TO THAT OATH, AND THEN LATER IN THE WEEK  
14 WHEN THOSE OF YOU WHO ARE TO RETURN INDIVIDUALLY DO RETURN,  
15 THE ANSWERS TO YOUR QUESTIONS AT THAT TIME AND ALSO THE OTHER  
16 THINGS THAT YOU TELL US WILL BE GIVEN PURSUANT TO THAT OATH.  
17 AND IF AT ANY OTHER TIME DURING THIS TERM OF COURT YOU'RE  
18 GIVING US ANY INFORMATION, THEN THAT OATH WILL APPLY TO THE  
19 INFORMATION THAT YOU GIVE US.

20 NOW, YOU WILL NOTICE THAT -- WELL, ONE THING ABOUT  
21 -- THAT I WANT TO SAY AT THIS POINT IS TO THANK THE CLERK OF  
22 COURT AND HER STAFF FOR AN OUTSTANDING JOB IN ADMINISTERING  
23 THIS PROCESS UP UNTIL NOW. I KNOW A LOT OF YOU HAVE HAD  
24 COMMUNICATION WITH THE CLERK. A LOT OF YOU HAVE SENT IN  
25 REQUESTS TO ME THROUGH THE CLERK THAT YOU BE EXCUSED, AND

1 WE'LL CONTINUE TO TALK ABOUT THAT. SOME OF YOU MAY END UP  
2 TALKING TO ME ABOUT THOSE REQUESTS AGAIN IN JUST A FEW  
3 MINUTES, BUT I WANT TO THANK THE CLERK OF COURT FOR DOING A  
4 VERY FINE JOB. YOU ALL MIGHT NOT CAN TELL IT, BUT THERE HAS  
5 BEEN A LOT OF WORK THAT HAS GONE INTO THE PROCESS OF GETTING  
6 YOU ALL HERE AND GETTING US TO THE POINT OF BEING READY TO  
7 BEGIN THIS QUALIFICATION PROCESS.

8 NOW, WHEN YOU WERE ANSWERING WITH YOUR NAMES AND  
9 YOUR MILEAGE, WE COULD HEAR MOST OF YOU, BUT THERE IS AN AIR  
10 CONDITIONING UNIT THAT BLOWS AIR OUT OF THESE TWO VENTS RIGHT  
11 HERE AND IT'S KIND OF LOUD. SO AS I'M ASKING YOU ALL THESE  
12 QUESTIONS OVER THE NEXT FEW MINUTES, PLEASE TRY TO KEEP YOUR  
13 VOICES UP SO THAT WE CAN HEAR YOUR RESPONSES. YOU WILL  
14 NOTICE THAT THERE'S A COURT REPORTER SEATED HERE TO MY RIGHT.  
15 SHE IS TAKING DOWN EVERYTHING THAT IS BEING SAID IN HERE, AND  
16 IT'S VERY IMPORTANT NOT ONLY THAT I BE ABLE TO HEAR BUT THAT  
17 SHE BE ABLE TO HEAR AND ALSO THAT THESE FOLKS THAT ARE SEATED  
18 OUT HERE IN FRONT OF ME BE ABLE TO HEAR WHAT YOU ALL SAY.

19 NOW, THIS PROCESS IS GOING TO TAKE AN HOUR OR SO.  
20 IT COULD POSSIBLY TAKE TWO HOURS; I'M NOT REAL SURE. DURING  
21 THAT TIME, THERE MAY BE SOME BREAKS -- THERE MAY BE SOME  
22 TIMES WHEN I'M SPEAKING PRIVATELY TO MEMBERS OF THE JURY  
23 PANEL, AND I WANT TO SAY THIS NOW BEFORE YOU ALL GET AN  
24 OPPORTUNITY TO DISCUSS ANYTHING THAT MIGHT BE ON YOUR MIND  
25 AMONG YOURSELVES. IF YOU ALL KNOW ANYTHING ABOUT ANY CASES

1 THAT MIGHT BE BEFORE THE COURT THIS WEEK OR IF YOU MIGHT HAVE  
2 READ ANYTHING IN THE NEWSPAPER ABOUT ANYTHING THAT MAY BE  
3 GOING ON IN COURT THIS WEEK, JUST DON'T TALK ABOUT IT WITH  
4 YOUR FELLOW JURORS OR WITH ANYONE ELSE RIGHT NOW. I WILL GET  
5 AROUND IN A FEW MINUTES TO DISCUSSING THAT WITH YOU FURTHER,  
6 BUT IF THERE IS A POINT IN TIME IN THE NEXT HOUR OR SO WHEN  
7 I'M DISCUSSING THINGS INDIVIDUALLY AND IT SEEMS LIKE THE  
8 COURT IS SOMEWHAT AT EASE - PERHAPS WE'VE TAKEN A BREAK AND  
9 YOU MAY BE OUT IN THE HALLWAY - DON'T DISCUSS ANYTHING THAT  
10 IS GOING TO BE DEALT WITH OR THAT YOU THINK MIGHT BE DEALT  
11 WITH IN THIS COURT OVER THE NEXT TWO WEEKS.

12 NOW, THERE WERE EIGHT JURORS WHOSE NAMES WERE CALLED  
13 WHO DID NOT ATTEND. NOW, OBVIOUSLY YOU WILL BE CHECKING ON  
14 THOSE JURORS TO FIND OUT WHY THEY'RE NOT HERE. WHEN THEY  
15 REPORT, PLEASE JUST ALERT ME THAT THEY ARE HERE, AND WE WILL  
16 GO THROUGH THE PROCESS OF GIVING THEM THE OATH AND GETTING  
17 THE OTHER INFORMATION THAT WE NEED FROM THEM. I WANT TO  
18 THANK YOU ALL WHO DID SHOW UP. IT'S NOT AT ALL AS IF YOU CAN  
19 JUST CHOOSE NOT TO SHOW UP. THOSE JURORS WHO DID NOT SHOW UP  
20 WILL BE GIVEN THE COURTESY OF A PHONE CALL THIS MORNING, AND  
21 IF THAT DOESN'T TAKE CARE OF IT, THEN THEY WILL BE PROVIDED  
22 WITH A RIDE WITH A LEXINGTON COUNTY SHERIFF'S DEPUTY TO GET  
23 THEM HERE BECAUSE -- SO THAT WE CAN GET THE SAME INFORMATION  
24 FROM THEM THAT WE'RE IN THE PROCESS OF GETTING FROM YOU ALL.

25 NOW, I'M GOING TO ASK YOU SOME QUESTIONS. NOW, EACH

1 ONE OF THESE QUESTIONS IS SET FORTH IN A STATUTE AND I AM  
2 REQUIRED TO ASK THESE QUESTIONS. THERE ARE BASICALLY TWO  
3 TYPES OF QUESTIONS. THE FIRST SERIES OF QUESTIONS RELATES  
4 DIRECTLY TO YOUR QUALIFICATIONS TO SERVE AS JURORS, AND THEN  
5 AFTER I HAVE ASKED THOSE QUESTIONS, I'M GOING TO ASK YOU  
6 ANOTHER SERIES OF QUESTIONS THAT RELATE TO WHAT WE CALL  
7 EXEMPTIONS. SO EVEN THOUGH SOME OF YOU MAY BE QUALIFIED TO  
8 SERVE, THEN IF ONE OF THESE EXEMPTIONS APPLIES TO YOU, YOU  
9 CAN CHOOSE NOT TO SERVE.

10 NOW, YOU ALL KNOW THIS, I'M SURE, BECAUSE THE  
11 EXEMPTIONS ARE SET FORTH AND ALL THE QUALIFICATION QUESTIONS  
12 ARE ALSO SET FORTH IN THE JUROR INFORMATION CARD THAT YOU  
13 WERE GIVEN. SO MANY OF YOU HAVE ALREADY ANSWERED THESE  
14 QUESTIONS. BUT, NEVERTHELESS, IF YOU HAVE ANY INFORMATION  
15 THAT IS RESPONSIVE TO A QUESTION THAT I ASK YOU, IF I ASK YOU  
16 A QUESTION AND YOU HAVE ANYTHING THAT YOU CAN TELL ME IN  
17 RESPONSE, THEN PLEASE STAND AND TELL ME YOUR NAME AND THEN I  
18 WILL GET YOUR INFORMATION. SO I EXPECT THAT WHEN I ASK A  
19 CERTAIN QUESTION, THERE MAY BE 20 OF YOU WHO STAND UP.  
20 STAND, PLEASE, AND BE PATIENT. I'LL ACKNOWLEDGE YOU BY  
21 LOOKING AT YOU AND SAYING, "YES, MA'AM," OR, "YES, SIR."  
22 THEN YOU CAN TELL ME YOUR NAME AND TELL ME YOUR ANSWER.

23 NOW, WE DON'T WANT ANYBODY TO SUFFER ANY  
24 EMBARRASSMENT. SO IF YOU FEEL LIKE GIVING YOUR INFORMATION,  
25 THE INFORMATION THAT YOU WOULD GIVE, IS PRIVATE OR PERSONAL



1 TO YOU AND YOU DON'T WANT TO GIVE THAT INFORMATION OUT LOUD  
2 IN FRONT OF THE OTHER MEMBERS OF THE JURY PANEL, THEN YOU CAN  
3 EITHER STAND AT THAT TIME AND TELL ME THAT YOU WOULD LIKE TO  
4 SPEAK TO ME PRIVATELY OR YOU CAN REMAIN SEATED BECAUSE AT THE  
5 END OF ALL THE QUESTIONS I'M GOING TO ASK THOSE OF YOU WHO DO  
6 NEED TO SPEAK TO ME PRIVATELY TO FORM A LINE IN THE CENTER OF  
7 THE COURTROOM, AND THEN I WILL -- I'LL SPEAK TO YOU ONE AT A  
8 TIME DOWN HERE. NOW, DO WE HAVE A COUPLE OF JURORS WHO HAVE  
9 JUST COME IN?

10 POLICE OFFICER: NO, SIR.

11 BAILIFF: NO, SIR.

12 THE COURT: ALL RIGHT. IS THERE ANY MEMBER OF THE  
13 JURY PANEL WHO IS NOT A CITIZEN OF THE UNITED STATES? IF  
14 NOT, PLEASE STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO  
15 IS NOT A CITIZEN AND RESIDENT OF LEXINGTON COUNTY, SOUTH  
16 CAROLINA? IF NOT, PLEASE STAND. ALL RIGHT. MA'AM, TELL ME  
17 YOUR NAME AGAIN, PLEASE.

18 JUROR ROBINSON: KILEY ROBINSON.

19 THE COURT: MS. ROBINSON.

20 THE CLERK: SHE'S NUMBER 262, YOUR HONOR.

21 THE COURT: WHERE DO YOU LIVE, MS. ROBINSON?

22 JUROR ROBINSON: TECHNICALLY I LIVE IN FLORIDA. I  
23 STAY UP HERE FOUR DAYS A WEEK. I HAVE A JOB UP HERE AND I  
24 STAY IN LEXINGTON COUNTY. MY DRIVER'S LICENSE NEVER GOT  
25 CHANGED FROM UP HERE TO DOWN THERE BECAUSE OF THE FACT THAT I

1 HAVE A P.O. BOX AND NOT AN ACTUAL PHYSICAL ADDRESS SO THEY  
2 WON'T LET ME CHANGE.

3 THE COURT: YOU HAVE A P.O. BOX IN FLORIDA?

4 JUROR ROBINSON: IN FLORIDA AND IN -- AND HERE.

5 THE COURT: AND SO FLORIDA WILL NOT LET YOU CHANGE  
6 YOUR DRIVER'S LICENSE?

7 JUROR ROBINSON: NEITHER ONE OF THEM. I CAN'T  
8 CHANGE -- I CAN'T CHANGE IT TO WHERE I HAVE MY P.O. BOX IN  
9 WEST COLUMBIA AND I CAN'T CHANGE IT TO THE P.O. BOX I HAVE IN  
10 FLORIDA.

11 THE COURT: ALL RIGHT. SO DO YOU -- WHERE DO YOU  
12 FILE -- WHERE DID YOU FILE INCOME TAXES THIS YEAR AS A  
13 RESIDENT?

14 JUROR ROBINSON: WELL, TECHNICALLY I GUESS I FILED  
15 IN SOUTH CAROLINA BECAUSE I WORK HERE.

16 THE COURT: ALL RIGHT. MS. ROBINSON, I'M GOING TO  
17 ASK YOU TO COME UP AND SPEAK TO ME PRIVATELY IN JUST A FEW  
18 MINUTES WHEN THE OTHER JURORS DO. OKAY?

19 JUROR ROBINSON: OKAY.

20 THE COURT: THANK YOU. IS THERE ANY MEMBER OF THE  
21 JURY PANEL WHO IS UNABLE TO READ, WRITE, SPEAK, OR UNDERSTAND  
22 THE ENGLISH LANGUAGE? IF YOU'RE UNABLE TO DO ANY ONE OF  
23 THOSE THINGS, PLEASE STAND. TELL ME YOUR NAME, MA'AM.

24 JUROR DENNIS: MY NAME IS EMMA DENNIS. I'M NUMBER  
25 79.

1 THE COURT: 79?

2 JUROR DENNIS: UH-HUH.

3 THE COURT: MA'AM, CAN YOU READ AND WRITE?

4 JUROR DENNIS: I CAN READ SOME, BUT I CAN'T READ AND  
5 SPELL THAT GOOD.

6 THE COURT: OKAY. MS. DENNIS, ALSO WHY DON'T YOU  
7 COME DOWN FRONT IN JUST A FEW MINUTES AND SPEAK TO ME  
8 PRIVATELY ABOUT THIS? OKAY?

9 JUROR DENNIS: OKAY.

10 THE COURT: THANK YOU. IS THERE ANY MEMBER OF THE  
11 JURY PANEL WHO HAS LESS THAN A SIXTH GRADE EDUCATION? IF SO,  
12 PLEASE STAND. MS. DENNIS?

13 JUROR DENNIS: I WENT TO THE SIXTH GRADE.

14 THE COURT: YOU WENT TO THE SIXTH GRADE?

15 JUROR DENNIS: UH-HUH.

16 THE COURT: OKAY. WE'LL SPEAK ABOUT IT IN JUST A  
17 FEW MINUTES, MS. DENNIS. AND YOU ARE MRS. STINECIPHER?

18 JUROR STINECIPHER: YES, SIR.

19 THE COURT: HOW FAR DID YOU GO IN SCHOOL, MA'AM?

20 JUROR STINECIPHER: SIXTH GRADE.

21 THE COURT: SIXTH GRADE?

22 JUROR STINECIPHER: YES.

23 THE COURT: ALL RIGHT. MS. STINECIPHER, I'M ALSO

24 GOING TO ASK YOU TO COME DOWN FRONT IN JUST A FEW MINUTES AND

25 I'LL SPEAK TO YOU PRIVATELY. THE NEXT QUESTION IS: IS THERE

## JURY VOIR DIRE

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1 ANY MEMBER OF THE JURY PANEL WHO IS UNABLE TO SERVE AS A  
2 JUROR THIS WEEK OR THESE TWO WEEKS BECAUSE OF A MEDICAL  
3 CONDITION, EITHER A MENTAL OR A PHYSICAL CONDITION? IF YOU  
4 ARE UNABLE TO SERVE AS A JUROR DURING THIS TWO-WEEK TERM OF  
5 COURT BECAUSE OF A MEDICAL CONDITION, PLEASE STAND. NOW,  
6 MANY OF YOU HAVE ALREADY ADDRESSED THIS WITH ME AND YOU  
7 PROBABLY ARE GOING TO HAVE TO SPEAK TO ME PRIVATELY, BUT I'LL  
8 GO AHEAD AND HEAR FROM YOU NOW. IF YOU'VE ALREADY SENT IN A  
9 REQUEST ABOUT THIS, THEN IT PROBABLY WOULD BE BETTER JUST TO  
10 SPEAK TO ME PRIVATELY. BUT GO AHEAD AND LET ME HAVE YOUR  
11 NAME, PLEASE, MA'AM.

12 JUROR OXNER: LOUISE OXNER.

13 THE COURT: MS. OXNER?

14 JUROR OXNER: YES, SIR. 226.

15 THE COURT: MA'AM, DO YOU WANT TO TELL ME ABOUT IT  
16 NOW OR DO YOU WANT TO SPEAK TO ME PRIVATELY?

17 JUROR OXNER: I'LL SPEAK TO YOU PRIVATELY.

18 THE COURT: ALL RIGHT.

19 THE CLERK: SHE'S NUMBER 226, YOUR HONOR.

20 THE COURT: YES, SIR?

21 JUROR PRESCOTT: CHARLES PRESCOTT, 243. I'D LIKE TO  
22 SPEAK TO YOU PRIVATELY.

23 THE COURT: ALL RIGHT, SIR. YES, MA'AM.

24 JUROR LUCAS: ANGELA LUCAS, 185. I'D LIKE TO SPEAK  
25 TO YOU PRIVATELY ALSO.

1 JUROR SLAY-CANTRELL: 284, ELIZABETH SLAY.

2 THE COURT: WOULD YOU REPEAT YOUR NAME, PLEASE,

3 MA'AM?

4 JUROR SLAY-CANTRELL: ELIZABETH SLAY.

5 THE COURT: ELIZABETH SLAY?

6 JUROR SLAY-CANTRELL: 284.

7 THE COURT: 284.

8 JUROR SLAY-CANTRELL: I'LL SPEAK TO YOU PRIVATELY.

9 THE COURT: ALL RIGHT.

10 JUROR OLDS: 222.

11 THE COURT: MS. OLDS?

12 JUROR OLDS: YES, SIR. CAN I TALK TO YOU PRIVATELY?

13 THE COURT: CERTAINLY.

14 JUROR OLDS: THANK YOU.

15 THE COURT: YES, MA'AM?

16 JUROR SPENCER: 296, CHERYL SPENCER. I'LL BE HAVING  
17 SURGERY THIS WEEK.

18 THE COURT: MA'AM?

19 JUROR SPENCER: I'LL BE HAVING SURGERY ON MY THROAT  
20 THIS WEEK, SO I WON'T BE ABLE TO TALK.

21 THE COURT: IN TWO WEEKS?

22 JUROR SPENCER: NO, THIS WEEK.

23 THE COURT: THIS WEEK.

24 JUROR SPENCER: YES, SIR.

25 THE COURT: MS. SPENCER, LET ME GET YOU TO COME DOWN

1 FRONT IN A FEW MINUTES AND I'LL TALK TO YOU ABOUT THAT.

2 OKAY?

3 JUROR SPENCER: OKAY.

4 THE COURT: YES, MA'AM?

5 JUROR RIVERS: DIANA RIVERS, 258.

6 THE COURT: ALL RIGHT.

7 JUROR RIVERS: SPEAK TO YOU PRIVATELY.

8 THE COURT: CERTAINLY. YES, MA'AM?

9 JUROR FRENCH: BONNIE FRENCH, 106. I'LL SPEAK TO  
10 YOU PRIVATELY.

11 THE CLERK: WHAT NUMBER, JUDGE?

12 THE COURT: 106?

13 JUROR FRENCH: 106.

14 THE COURT: MS. FRENCH. YES, SIR.

15 JUROR BALLARD: JAMES BALLARD, NUMBER 12. I HAVE A  
16 BROKEN FOOT AND A MESSED UP ANKLE, AND IT'S SUPPOSED TO BE  
17 ELEVATED ALL THE TIME.

18 THE COURT: ALL RIGHT, MR. BALLARD.

19 JUROR BALLARD: I'LL SPEAK TO YOU PRIVATELY.

20 THE COURT: WILL YOU BE ABLE TO GET UP HERE IN JUST  
21 A FEW MINUTES TO TALK TO ME ABOUT IT?

22 JUROR BALLARD: YES, SIR.

23 THE COURT: ALL RIGHT. ARE YOU OKAY FOR RIGHT NOW?

24 JUROR BALLARD: YES, SIR.

25 THE COURT: ALL RIGHT, SIR.

1 JUROR HUGHES: THOMAS HUGHES, 143. I'D LIKE TO  
2 SPEAK WITH YOU PRIVATELY.

3 THE COURT: THAT WAS 143? IS THERE ANY MEMBER OF  
4 THE JURY PANEL WHO HAS EVER BEEN CONVICTED OF A CRIME WHOSE  
5 MAXIMUM PUNISHMENT IS MORE THAN ONE YEAR IN PRISON? THERE  
6 ARE SEVERAL WAYS THAT YOU COULD HAVE BEEN CONVICTED OF SUCH A  
7 CRIME. YOU MIGHT HAVE BEEN FOUND GUILTY BY A JUDGE OR BY A  
8 JURY OR YOU MIGHT HAVE PLED GUILTY, AND IT DOES NOT MATTER  
9 WHAT SENTENCE YOU ACTUALLY DID GET. WHAT'S IMPORTANT IS THE  
10 SENTENCE THAT YOU COULD HAVE GOTTEN. IF YOU COULD HAVE  
11 GOTTEN MORE THAN ONE YEAR IN PRISON FOR ANY CRIME FOR WHICH  
12 YOU HAVE BEEN CONVICTED, THEN PLEASE STAND. MR. COURTENAY?

13 JUROR COURTENAY: YEAH. I WAS CONVICTED OF D.U.I.  
14 IN 1987.

15 THE COURT: ALL RIGHT. MR. COURTENAY, I'M GOING TO  
16 ASK YOU TO COME DOWN FRONT IN JUST A FEW MINUTES, PLEASE,  
17 WHEN I SPEAK TO THE JURORS PRIVATELY. IS THERE ANY MEMBER OF  
18 THE JURY PANEL WHO IS A CLERK OR DEPUTY CLERK OF COURT, A  
19 CONSTABLE, A SHERIFF OR ANY OTHER TYPE OF COMMISSIONED LAW  
20 ENFORCEMENT OFFICER, A PROBATE JUDGE, A COUNTY COMMISSIONER,  
21 A MAGISTRATE OR OTHER COUNTY OFFICER OR ANY PERSON WHO WORKS  
22 INSIDE OF ANY COURTHOUSE? IF SO, PLEASE STAND.

23 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS SERVED  
24 AS A JUROR IN CIRCUIT COURT DURING THIS YEAR, 2006? IF SO,  
25 PLEASE STAND. YES, MA'AM.

1 JUROR PEEK: I HAVE SERVED ON FEDERAL AND MUNICIPAL.

2 THE COURT: MUNICIPAL? ALL RIGHT. NEITHER ONE OF  
3 THOSE WOULD DISQUALIFY YOU. YOU SERVED AS A FEDERAL JUROR  
4 AND AS A MUNICIPAL COURT JUROR.

5 JUROR PEEK: JUST -- I WAS ON THE POOL ON THE  
6 FEDERAL.

7 THE COURT: RIGHT.

8 JUROR PEEK: AND I SERVED IN THE MUNICIPAL COURT.

9 THE COURT: IN MUNICIPAL COURT? ALL RIGHT. BUT YOU  
10 HAVE NOT SERVED IN CIRCUIT COURT.

11 JUROR PEEK: NO.

12 THE COURT: OKAY. AND YOUR NAME, PLEASE?

13 JUROR PEEK: CINDY PEEK.

14 THE COURT: MS. PEEK. OKAY. MS. PEEK, THAT WOULD  
15 NOT DISQUALIFY YOU, BUT THANK YOU FOR TELLING ME ABOUT IT.  
16 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS EMPLOYED AS A  
17 GUARD WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS? IF  
18 SO, PLEASE STAND. ALL RIGHT. NOW WE'RE GOING TO TALK ABOUT  
19 THE EXEMPTIONS. NOW, THESE, AS I SAID, ARE QUESTIONS THAT  
20 RELATE TO EXEMPTIONS SO THAT IF YOU -- EVEN THOUGH YOU MAY BE  
21 QUALIFIED TO SERVE, IF ONE OF THESE EXEMPTIONS APPLIES TO  
22 YOU, THEN YOU MAY CHOOSE NOT TO SERVE. AND THE FIRST OF THE  
23 EXEMPTIONS IS FOR THOSE OF YOU WHO ARE AGE 65 OR OLDER. IF  
24 YOU'RE 65 OR OLDER AND YOU DO NOT WISH TO SERVE AS A JUROR  
25 DURING THIS TERM OF COURT, THEN PLEASE STAND.



1 JUROR ZEIGLER: I'M LULA MAE ZEIGLER AND I'M 66.

2 THE CLERK: 349, YOUR HONOR.

3 THE COURT: ALL RIGHT, MA'AM. AND YOU DO NOT WISH  
4 TO SERVE?

5 JUROR ZEIGLER: NO.

6 THE COURT: ALL RIGHT. I'LL EXCUSE YOU. YOU'RE  
7 FREE TO GO.

8 JUROR ZEIGLER: THANK YOU.

9 THE COURT: THE NEXT EXEMPTION APPLIES TO THOSE OF  
10 YOU WHO MIGHT HAVE SERVED AS JURORS DURING THE YEARS 2004 OR  
11 2005 IN CIRCUIT COURT. IF YOU SERVED AS A JUROR DURING  
12 EITHER OF THOSE TWO YEARS IN THIS COURT, THEN PLEASE -- AND  
13 IF YOU WANT TO BE EXCUSED, THEN PLEASE STAND.

14 NOW, WE HAVE HAD A LOT OF DISCUSSION WITH SEVERAL OF  
15 YOU ABOUT THIS NEXT EXEMPTION WHICH IS THE ONE THAT APPLIES  
16 TO THOSE OF YOU WHO HAVE SMALL CHILDREN. I'M GOING TO GO  
17 AHEAD AND ASK YOU THIS QUESTION. IF YOU WANT TO BE EXCUSED  
18 ON THIS BASIS, THEN I'M GOING TO NEED TO SPEAK TO YOU  
19 PRIVATELY. THERE ARE SEVERAL PARTS TO THE EXEMPTION HERE.  
20 IF YOU HAVE A CHILD WHO IS UNDER THE AGE OF SEVEN AND YOU  
21 HAVE CUSTODY OF THE CHILD AND IF YOU ARE THE PERSON WHO HAS  
22 THE RESPONSIBILITY FOR THE CARE OF THE CHILD, THEN -- AND IF  
23 YOU CANNOT FIND OTHER ARRANGEMENTS FOR THE CARE OF THE CHILD  
24 WHILE YOU SERVE AS A JUROR AND YOU WANT TO BE EXCUSED ON THAT  
25 BASIS, PLEASE STAND AND GIVE ME YOUR NAME AND THEN I'LL ASK

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1 YOU TO COME DOWN AND SPEAK TO ME PRIVATELY IN JUST A FEW  
2 MINUTES.

3 JUROR STALVEY: BRENDA STALVEY. DO YOU MEAN DAY AND  
4 NIGHT? YOU MEAN FULL CUSTODY OF THE CHILD?

5 THE COURT: YES, MA'AM.

6 JUROR STALVEY: OKAY.

7 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL  
8 WHO IS A FULL-TIME STUDENT OR SCHOOL TEACHER OR SCHOOL  
9 CROSSING GUARD OR BUS DRIVER OR WHO SERVES IN ANY OTHER  
10 SCHOOL-RELATED FUNCTION WHO IS UNABLE TO SERVE AS A JUROR FOR  
11 THIS TERM OF COURT BECAUSE OF THAT SCHOOL-RELATED ACTIVITY?  
12 IF SO, PLEASE STAND. ALL RIGHT, MA'AM. TELL ME YOUR NAME,  
13 PLEASE.

14 JUROR COOK: JUROR NUMBER 64, MOLLY COOK. I'M  
15 ENROLLED AT MIDLANDS TECH.

16 THE COURT: AND ARE YOU IN CLASSES NOW?

17 JUROR COOK: I WAS SUPPOSED TO BE THIS MORNING.

18 THE COURT: SUPPOSED TO BE THIS MORNING?

19 JUROR COOK: YES.

20 THE COURT: WHAT COURSES ARE YOU TAKING, MA'AM?  
21 WHAT'S YOUR CURRICULUM?

22 JUROR COOK: MASSAGE THERAPY CLASSES.

23 THE COURT: ALL RIGHT. MS. COOK, I'M GOING TO ASK  
24 YOU TO COME DOWN FRONT AND SPEAK TO ME ABOUT THAT IN JUST A  
25 FEW MINUTES. OKAY?

1 JUROR COOK: ALL RIGHT. THANK YOU, SIR.

2 THE COURT: THANK YOU. YES, MA'AM.

3 JUROR DARBY: DONNA DARBY. I GUESS I'LL SPEAK WITH  
4 YOU PRIVATELY.

5 THE COURT: ALL RIGHT. THANK YOU, MS. DARBY. YES,  
6 MA'AM.

7 JUROR KEFFER: DONNA KEFFER. I'M A SUBSTITUTE  
8 TEACHER FOR LEXINGTON DISTRICT FOUR. WE'RE ON SPRING BREAK  
9 THIS WEEK THOUGH.

10 THE COURT: YOU'RE A SUBSTITUTE TEACHER?

11 JUROR KEFFER: YES, BUT I WORK EVERY DAY.

12 THE COURT: AND WHAT IS YOUR NAME, PLEASE?

13 JUROR KEFFER: DONNA KEFFER, K-E-F-F-E-R, 157.

14 THE CLERK: SHE'S 157.

15 THE COURT: THANK YOU, MS. KEFFER. I'LL BE BACK IN  
16 TOUCH WITH YOU SHORTLY.

17 JUROR KEFFER: THANK YOU.

18 THE COURT: MS. PEEK?

19 JUROR PEEK: YES. I'M ON SPECIAL ED AT IRMO MIDDLE  
20 SCHOOL, AND I'VE ALREADY MISSED TWO DAYS THIS YEAR BECAUSE  
21 I'VE SERVED THOSE OTHER TWO JURY DUTIES.

22 THE COURT: YOU WORK SPECIAL ED WHERE NOW?

23 JUROR PEEK: IRMO MIDDLE SCHOOL.

24 THE COURT: DO YOU KNOW YOUR JUROR NUMBER, MA'AM?

25 JUROR PEEK: 229.

1 THE CLERK: 229.

2 THE COURT: ALL RIGHT. MS. PEEK, I'LL BE IN TOUCH  
3 WITH YOU IN JUST A FEW MINUTES ABOUT THAT. NOW, LADIES AND  
4 GENTLEMEN, OF COURSE, WE RECOGNIZE THAT THOSE OF YOU WHO ARE  
5 HERE DID NOT NECESSARILY CHOOSE TO BE HERE, BUT YOU WERE  
6 SUMMONED TO BE HERE AND THAT IF YOU HAD NOT BEEN SUMMONED TO  
7 BE HERE, THEN YOU WOULD BE SOMEWHERE WHERE YOU CHOSE TO BE  
8 RATHER THAN SOMEWHERE WHERE YOU ARE REQUIRED TO BE, AND FOR  
9 MOST OF YOU -- FOR MOST OF YOU THAT IS -- THERE'S NOTHING I  
10 CAN DO ABOUT THAT. YOU'RE GOING TO BE HERE AND YOU'RE GOING  
11 TO SERVE AS POTENTIAL JURORS, BUT WE RECOGNIZE THAT THERE MAY  
12 BE SOME OF YOU AS TO WHOM THIS IS JUST A VERY BAD WEEK TO  
13 SERVE.

14 I KNOW, FOR EXAMPLE, THAT THIS IS SPRING BREAK AND  
15 SOME OF YOU MAY HAVE YOUR CHILDREN AT HOME EAGERLY AWAITING  
16 YOUR PHONE CALL TO TELL THEM THAT YOU'RE FREE TO GO AND Y'ALL  
17 CAN GO OFF TO THE BEACH OR WHEREVER IT IS THAT YOU HAD --  
18 THAT YOU MIGHT HAVE PLANNED TO GO OR THERE MAY BE SOMETHING  
19 ELSE THAT'S GOING ON WITH YOU OR WITH YOUR FAMILY THAT MAKES  
20 THIS A BAD TIME FOR YOU TO SERVE AS A JUROR. IN JUST A FEW  
21 MINUTES I'M GOING TO ASK ANYONE WHO WOULD LIKE TO SPEAK TO ME  
22 ABOUT BEING TRANSFERRED TO A DIFFERENT TERM OF COURT AND ALSO  
23 ANYONE WHO HAS ASKED THAT THEY SPEAK TO ME PRIVATELY OR IF  
24 YOU HAVE ANY OTHER QUESTION THAT I HAVE ASKED YOU THIS  
25 MORNING THAT YOU HAVE NOT YET ANSWERED, THEN I'M GOING TO ASK

1 YOU TO COME DOWN FRONT AND SPEAK TO ME PRIVATELY.

2 NOW, THIS IS GOING TO TAKE AWHILE BECAUSE I HAVE  
3 ACTUALLY THE NAMES OF ABOUT 20 TO 25 PEOPLE THAT I HAVE  
4 ALREADY TOLD TO COME DOWN HERE, AND I EXPECT THERE ARE  
5 PROBABLY GOING TO BE 75 TO A HUNDRED OF YOU WHO WANT TO SPEAK  
6 TO ME PRIVATELY. THIS IS A -- AS YOU CAN IMAGINE, THIS IS A  
7 LITTLE BIT OF AN UNUSUALLY LARGE POOL OF JURORS, AND NORMALLY  
8 IT TAKES ME 15 TO 20 MINUTES TO GO THROUGH THIS PROCESS OF  
9 SPEAKING TO THE JURORS PRIVATELY. THIS TODAY COULD TAKE 30  
10 TO 45 MINUTES. I'M REALLY NOT SURE HOW LONG IT'S GOING TO  
11 TAKE.

12 SOME OF YOU MAY HAVE WONDERED EARLIER WHEN I WAS  
13 TELLING YOU I WASN'T SURE HOW LONG THIS WAS GOING TO TAKE WHY  
14 I WOULDN'T KNOW THAT SINCE I SIT UP HERE AND DO THIS EVERY  
15 MONDAY MORNING, BUT THE REASON IS THAT I'M NOT SURE HOW MANY  
16 OF YOU ARE GOING TO NEED TO SPEAK TO ME PRIVATELY. SO IN  
17 JUST A SECOND I'M GOING TO TAKE A BREAK AND START THAT  
18 PROCESS.

19 NOW, FOR THOSE OF YOU WHO DO NOT NEED TO SPEAK TO  
20 ME, YOU CAN TAKE A BREAK. YOU CAN GO OUT INTO THE HALLWAY  
21 AND USE THE REST ROOM. BUT I WOULD LIKE FOR YOU TO BASICALLY  
22 STAY IN YOUR SEATS. IF YOU NEED TO GO TO THE REST ROOM, THEN  
23 YOU CAN GO. IF YOU NEED TO TAKE SOME OTHER TYPE OF BREAK,  
24 THEN YOU CAN SPEAK TO A BAILIFF ABOUT DOING THAT.

25 NOW, THERE ARE A LOT OF YOU AND I DON'T WANT TO

1 OVERLOAD OUR FACILITIES OUT THERE, SO IF YOU CAN WAIT A FEW  
2 MINUTES BEFORE YOU TAKE A BREAK, THEN DO THAT AND GIVE THOSE  
3 WHO CAN'T WAIT A FEW MINUTES A CHANCE TO GO AHEAD AND TAKE  
4 THEIR BREAK. IF YOU NEED TO SPEAK TO ME PRIVATELY, THEN I  
5 WOULD LIKE FOR YOU TO GET IN LINE AND DO THAT BEFORE YOU TAKE  
6 YOUR BREAK. NOW, WHEN WE SEE HOW BIG THE LINE IS, I MAY SAY  
7 THAT SOME OF YOU CAN GO AHEAD AND GO AND TAKE YOUR BREAK.  
8 BUT CERTAINLY WHEN YOU'RE DONE, PLEASE COME BACK INTO THE  
9 COURTROOM AND REMAIN QUIET AS YOU ALL HAVE DONE SO FAR THIS  
10 MORNING AND BE SEATED AND BE PATIENT, AND I WILL GET THIS  
11 DONE AS QUICKLY AS I POSSIBLY CAN.

12 ALL RIGHT. SO IF YOU NEED TO SPEAK TO ME PRIVATELY,  
13 LINE UP, PLEASE, IN THE CENTER OF THE COURTROOM RIGHT BEHIND  
14 THESE SWINGING DOORS. THE REST OF YOU MAY TAKE A BREAK AS I  
15 DESCRIBED. (PAUSE.) ALL RIGHT. MA'AM, LET ME LET YOU STAND  
16 BACK THERE JUST FOR A MINUTE AND I'M GOING TO SPEAK TO THE  
17 LAWYERS AND THEN I'LL GET TO YOU. ALL RIGHT. COME HERE FOR  
18 A SECOND.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD. AT THE  
20 CONCLUSION OF THE BENCH CONFERENCE, THE FOLLOWING COLLOQUY  
21 TOOK PLACE OUT OF THE HEARING OF THE JURORS.)

22 THE COURT: LET'S GO OVER A FEW THINGS THAT WE MIGHT  
23 DO BY CONSENT. MS. KEFFER WHO SAYS SHE IS A SUBSTITUTE  
24 TEACHER WITH, I BELIEVE, A LEXINGTON SCHOOL DISTRICT -- I  
25 BELIEVE THAT WOULD QUALIFY, TOO, FOR A TRANSFER TO -- I'M NOT

1 SURE WHAT NUMBER SHE IS.

2 THE CLERK: 157.

3 THE COURT: DO YOU ALL -- EITHER SIDE HAVE ANYTHING  
4 TO SAY ABOUT THAT? 157.

5 MR. LITTLEJOHN: JUDGE, WE'RE FINE WITH THAT. YOU  
6 WERE GOING TO LOOK AT THE STATUTE I THINK TO SEE WHETHER  
7 PART-TIME APPLIED. I DIDN'T GET A CHANCE TO LOOK AT IT. IF  
8 YOU THINK IT APPLIES---

9 THE COURT: SHE SAYS SHE TEACHES EVERY DAY NOW.  
10 THERE PROBABLY IS SOME WIGGLE ROOM WITH IT BEING PART-TIME,  
11 BUT SHE SAYS SHE TEACHES PRETTY MUCH EVERY DAY. SO I JUST  
12 WANTED TO SEE WHAT Y'ALL HAD TO SAY ABOUT IT.

13 MR. LITTLEJOHN: I HAVE NO PROBLEM.

14 MR. GRAHAM: WE CONSENT. THAT'S FINE.

15 THE COURT: ALL RIGHT. I'M GOING TO GO AHEAD AND  
16 HAVE HER TRANSFERRED TO THE SUMMER. HOW ABOUT MRS. PEEK WHO  
17 SAYS SHE -- I THINK SHE'S A TEACHER'S ASSISTANT, SPECIAL ED,  
18 229, OR I THINK HER JUROR INFORMATION SHEET SHOWS THAT SHE IS  
19 A TEACHER'S ASSISTANT IN A SPECIAL ED CLASS.

20 MS. KIMBROUGH: IT'S FULL-TIME, ISN'T IT?

21 THE COURT: I THINK SO.

22 MS. KIMBROUGH: I WOULD SAY SHE QUALIFIES.

23 MR. GRAHAM: SHE'S PROBABLY QUALIFIED, BUT WE  
24 CONSENT TO LETTING HER GO. I DON'T KNOW WHETHER SHE FALLS  
25 UNDER THE STATUTE.

1 MS. KIMBROUGH: I THINK SHE QUALIFIED WITH THE  
2 EXEMPTION.

3 MR. GRAHAM: OH, YOU THINK SHE DOES?

4 MS. KIMBROUGH: I THINK SO.

5 MR. GRAHAM: WE'RE CONSENTING, SO IT DOESN'T MATTER.  
6 I DON'T THINK TEACHERS' ASSISTANTS DO.

7 THE COURT: ALL RIGHT. YOU THINK SHE DOES QUALIFY  
8 FOR THE EXEMPTION?

9 MS. KIMBROUGH: CAM, I DON'T WANT TO SPEAK FOR BOTH  
10 OF US...

11 MR. LITTLEJOHN: THE STATUTE SAYS TEACHER. IT  
12 DOESN'T SAY TEACHER'S ASSISTANT.

13 THE COURT: WHAT DO Y'ALL SAY?

14 MR. LITTLEJOHN: NO OBJECTION.

15 THE COURT: ALL RIGHT. SHE'S -- SHE'S TO BE  
16 TRANSFERRED THEN. NOW, I MENTIONED EARLIER THAT MR. KINCAID  
17 -- HE IS THE MAN WHO WAS -- IS EMPLOYED WITH THE BUDGET AND  
18 CONTROL BOARD, AND HE APPARENTLY CONTACTED TOM TIMBERLAKE WHO  
19 IS THE FINANCE AND PERSONNEL DIRECTOR AT COURT  
20 ADMINISTRATION. TOM TIMBERLAKE CONTACTED THE CHIEF JUSTICE  
21 WHO CONTACTED ME AND ASKED THAT HE BE TRANSFERRED TO A  
22 DIFFERENT TERM OF COURT AND, AS YOU ALL CAN IMAGINE, I  
23 TRANSFERRED HIM TO A DIFFERENT TERM OF COURT. IF THERE'S  
24 SOME OBJECTION TO THAT, THEN IT'S NOT TOO LATE TO UNDO IT.  
25 BUT HE HAD WRITTEN US A LETTER, AS YOU WILL RECALL, THAT



1 OUTLINED HIS INVOLVEMENT IN THE LEGISLATIVE BUDGET PROCESS,  
2 AND THE SENATE IS SUPPOSED TO TAKE UP THE BUDGET NEXT WEEK.  
3 AND SO I FIGURED HE WOULD LIKELY BE TRANSFERRED ANYWAY, SO  
4 WHEN THE CHIEF JUSTICE WEIGHED IN, I WENT AHEAD AND  
5 TRANSFERRED HIM.

6 MR. LITTLEJOHN: I'VE ALWAYS TRIED TO DO WHAT A  
7 CHIEF JUSTICE TOLD ME TO DO.

8 THE COURT: I'M SURE YOU HAVE. IN FACT, I WAS IN  
9 SPARTANBURG LAST WEEK AND DID SEVERAL THINGS THAT A CHIEF  
10 JUSTICE UP THERE ADVISED ME TO DO.

11 MR. LITTLEJOHN: HE'S TESTIFYING TODAY IN BAMBERG AS  
12 AN EXPERT WITNESS IN A CASE.

13 THE COURT: ALL RIGHT. SO HE'S BEEN TRANSFERRED.  
14 NOW, WE ALSO HAVE THIS JUROR NUMBER 192 WHO IS THE WOMAN WHO  
15 I THINK HAD THE DAY CARE CENTER. ISN'T THAT RIGHT? AND WE  
16 HAD A DEPUTY SHOW UP TO PICK HER UP THIS MORNING, AND SHE  
17 BASICALLY PITCHED A FIT. SHE HAD A YOUNG CHILD THERE WITH  
18 HER THAT SHE HAD ALREADY TAKEN IN TO KEEP FOR THE DAY AND  
19 ANOTHER ONE WAS ON THE WAY, AND SHE PITCHED A FIT AND---

20 MS. KIMBROUGH: WHAT'S HER NAME?

21 THE CLERK: MARONEY.

22 MR. LITTLEJOHN: MARONEY.

23 MS. KIMBROUGH: I'D SAY GET RID OF HER.

24 MR. LITTLEJOHN: GET RID OF HER.

25 THE COURT: IT SOUNDS AS IF SHE IS PROBABLY GOING TO

1 END UP BEING ONE OF THOSE JURORS WHO REFUSE TO FOLLOW MY  
2 INSTRUCTIONS ANYWAY, SO -- BUT I'M NOT SAYING THAT'S WHAT I  
3 WANT TO DO. YOU'RE SUGGESTING WE GO AHEAD AND GET RID OF  
4 HER.

5 MS. KIMBROUGH: (NODDED HEAD UP AND DOWN.)

6 MR. LITTLEJOHN: YES, SIR.

7 THE COURT: ALL RIGHT. WE'LL GO AHEAD AND EXCUSE  
8 HER. NOW, THIS GUY, MR. COURTENAY, IF I READ HIS RAP SHEET  
9 RIGHT, HE'S GOT A CONVICTION FOR D.U.I. THIRD WHICH WOULD  
10 DISQUALIFY HIM.

11 THE CLERK: WHO IS IT?

12 MS. KIMBROUGH: MR. COURTENAY.

13 THE COURT: Y'ALL ARE WELCOME TO LOOK AT THAT, BUT  
14 HE TOLD ME. I THINK HE'S IN THE LINE. WE'LL JUST GET HIM UP  
15 HERE AND WE'LL SEE WHAT HE SAYS. LET'S START TALKING TO THE  
16 INDIVIDUAL...

17 OFFICER: 124 IS MR. HALL WHO HAS MOVED TO CALHOUN  
18 COUNTY.

19 THE COURT: OH, YEAH.. HE SAYS -- HE TELLS THE  
20 SHERIFF'S DEPARTMENT THAT HE LIVES IN CALHOUN COUNTY.  
21 APPARENTLY SOMEBODY CONTACTED HIM THIS MORNING WHEN HE DIDN'T  
22 SHOW UP.

23 THE CLERK: HE OVERSLEPT. HE WORKED THIRD SHIFT  
24 LAST NIGHT.

25 THE COURT: HE SAYS A MONTH AGO HE MOVED TO CALHOUN

1 COUNTY. HE SAYS HE TURNED IN THE INFORMATION, BUT I DON'T  
2 THINK WE HAVE IT. SO A DEPUTY IS EN ROUTE RIGHT NOW TO PICK  
3 HIM UP. SO UNLESS Y'ALL JUST SAY FORGET IT, THEN WE'LL  
4 CONTINUE TO GO GET HIM.

5 THE CLERK: JUDGE? HE GAVE HIS ADDRESS AS WEST  
6 COLUMBIA. THAT'S 124; RIGHT?

7 THE COURT: GAVE AN ADDRESS AS WEST COLUMBIA.

8 OFFICER: 124 HADDEN WAY IS WHAT HE GAVE ME.

9 THE COURT: IT SAYS HE'S GOT A NEW ADDRESS, SO  
10 TECHNICALLY WE NEED AN ANSWER TO THAT QUESTION UNDER OATH.  
11 SO WE'LL BRING -- LET'S JUST GO AHEAD AND BRING HIM ON IN.  
12 ALL RIGHT? ANYTHING ELSE BEFORE WE START TALKING TO THE  
13 INDIVIDUALS? ALL RIGHT. WHAT I'LL DO IS I'LL GET THEM TO  
14 STAND ABOUT WHERE YOU ARE AND Y'ALL POSITION YOURSELVES  
15 COMFORTABLY WHERE YOU CAN HEAR. WHAT I'LL DO IS SPEAK TO  
16 THEM FOR A SECOND, AND THEN THERE'S NO NEED FOR Y'ALL TO SAY  
17 ANYTHING WHILE THE JUROR STANDS HERE.

18 I'LL ASK THEM TO STEP OVER THERE. IF THEY'RE  
19 OBVIOUSLY ELIGIBLE FOR AN EXEMPTION OR DISQUALIFIED, I'LL  
20 DISQUALIFY THEM. IF THERE'S SOME DOUBT, THEN I'LL ASK THEM  
21 TO STEP AWAY FOR A SECOND AND WE'LL DISCUSS IT AND THEN I'LL  
22 MAKE A RULING. OKAY? ALL RIGHT. ALL RIGHT. LET'S GO.

23 BAILIFF: JUROR 226, YOUR HONOR.

24 (JUROR OXNER APPROACHES.)

25 THE COURT: 226. AND I'LL TAKE HER SHEET, PLEASE.

1 HOW ARE YOU?

2 JUROR OXNER: OKAY, I GUESS. I'M ON A NUMEROUS  
3 AMOUNT OF MEDICATIONS AND HAVE A MECHANICAL HEART VALVE, AND  
4 I'VE ALREADY BEEN TO THE HOSPITAL ONCE THIS YEAR.

5 THE COURT: YES, MA'AM.

6 JUROR OXNER: AND IT'S TOO---

7 COURT REPORTER: I CAN'T HEAR HER.

8 THE COURT: SHE SAID -- I THINK SHE'S ALREADY SAID  
9 SHE'S ON NUMEROUS MEDICATIONS AND SHE HAS -- YOU SAID  
10 MECHANICAL HEART VALVE?

11 JUROR OXNER: UH-HUH.

12 THE COURT: YOU'VE BEEN TO THE HOSPITAL ALREADY ONCE  
13 THIS YEAR?

14 JUROR OXNER: RIGHT, FOR THE BLOOD GETTING TOO THICK  
15 AND CAUSING BLOOD CLOTS.

16 THE COURT: OKAY. NOW, MA'AM---

17 JUROR OXNER: THEN IT GETS TOO THIN, AND IF I FALL  
18 OR WHATEVER, I CAN BLEED TO DEATH.

19 THE COURT: UH-HUH. OKAY. WELL, IN ORDER TO EXCUSE  
20 YOU FOR THAT, I'VE GOT TO HAVE A WRITTEN EXPLANATION OF YOUR  
21 SITUATION FROM A DOCTOR THAT NOT ONLY TELLS ME WHAT YOUR  
22 CONDITION IS BUT TELLS ME WHY YOU WOULD BE PROHIBITED FROM OR  
23 WHY YOU WOULD BE UNABLE TO SERVE.

24 JUROR OXNER: YES, SIR.

25 THE COURT: SO IF YOU WANT TO TRY TO GET THAT,

1 YOU'VE GOT THE FIRST SEVERAL DAYS OF THIS WEEK TO TRY TO GET  
2 THAT AND YOU CAN GET IT TO ME. THEN I CAN TAKE IT UP WHETHER  
3 OR NOT THAT WOULD DISQUALIFY. AT THIS POINT I'LL HAVE TO  
4 KEEP YOU WITH US 'TIL I HAVE A DOCTOR'S NOTE.

5 JUROR OXNER: SHE WROTE THIS LETTER, BUT I DON'T  
6 KNOW IF Y'ALL -- IF THAT WOULD BE WHAT YOU'RE WANTING.

7 THE COURT: OKAY. LET ME SEE. (THE COURT READS THE  
8 LETTER.) ALL RIGHT.

9 JUROR OXNER: I'M ON HOME HEALTH CARE, SO THEY COME  
10 OUT.

11 THE COURT: THEY?

12 JUROR OXNER: THEY COME OUT. I CAN'T TRAVEL THAT  
13 MUCH ON ACCOUNT OF COUMADIN, THE BLOOD BEING TOO THICK. I  
14 DON'T REALLY KNOW HOW TO EXPLAIN IT.

15 THE COURT: ALL RIGHT. WELL, IF WE WERE ABLE TO --  
16 IT SAYS THAT YOU CAN'T SIT FOR ANY LENGTH OF TIME. WHAT IS  
17 THE LENGTH OF TIME YOU CAN SIT?

18 JUROR OXNER: WELL---

19 THE COURT: AN HOUR? TWO HOURS?

20 JUROR OXNER: NO. USUALLY THE MEDICATION WILL MAKE  
21 ME FALL ASLEEP.

22 THE COURT: ARE YOU ABLE TO SIT FOR AN HOUR?

23 JUROR OXNER: NO, SIR.

24 THE COURT: YOU HAVE TO GET UP AND MOVE SOMETIMES  
25 DURING THAT?

1 JUROR OXNER: YEAH.

2 THE COURT: ALL RIGHT. IF WE WERE TO MAKE  
3 ACCOMMODATIONS FOR YOU SO THAT YOU COULD GET UP AND MOVE  
4 AROUND A LITTLE BIT DURING---

5 JUROR OXNER: YES, SIR.

6 THE COURT: ---DURING THE COURSE OF YOUR JURY  
7 SERVICE... YOU WOULD BE SITTING IN THIS JURY BOX. IF YOU  
8 WERE ABLE TO STAND UP AND MOVE AROUND, WOULD THAT TAKE CARE  
9 OF THAT PROBLEM?

10 JUROR OXNER: I DON'T REALLY KNOW. I CAN'T EVEN --  
11 I HAVE TROUBLE...

12 THE COURT: ALL RIGHT. MS. OXNER, LET ME ASK YOU TO  
13 STEP RIGHT OVER TO THAT TABLE FOR JUST ONE SECOND, PLEASE,  
14 MA'AM.

15 JUROR OXNER: WHAT TABLE?

16 THE COURT: THAT TABLE RIGHT THERE.

17 (JUROR OXNER STEPS AWAY.)

18 MS. KIMBROUGH: NO OBJECTION.

19 MR. LITTLEJOHN: NO OBJECTION.

20 MR. HUBBARD: NO OBJECTION.

21 THE COURT: I'LL EXCUSE HER. MS. OXNER, YOU'RE  
22 EXCUSED, MA'AM. YOU'RE FREE TO GO.

23 JUROR OXNER: THANK YOU.

24 THE COURT: WE'LL KEEP THIS LETTER.

25 (JUROR OXNER LEAVES THE BENCH CONFERENCE.)

1 THE CLERK: HOPE, 226.

2 THE COURT: PASS THAT AROUND. I GUESS -- WOULD YOU  
3 LIKE THAT LETTER? IT'S NOT A BIG DEAL, I GUESS. JUST -- YOU  
4 DON'T HAVE TO PUT IT IN MY NOTEBOOK. JUST KEEP IT FOR  
5 Y'ALL'S FILE. ALL RIGHT. NEXT, PLEASE.

6 BAILIFF: JUROR NUMBER 12, YOUR HONOR.

7 (JUROR BALLARD APPROACHES.)

8 THE COURT: MR. BALLARD, HOW ARE YOU, SIR?

9 JUROR BALLARD: OKAY.

10 THE COURT: YOU HAVE BROKEN YOUR FOOT RECENTLY?

11 JUROR BALLARD: YES, I BROKE IT A LITTLE OVER A  
12 MONTH AGO.

13 THE COURT: ALL RIGHT.

14 JUROR BALLARD: THIS IS WHAT -- THIS IS WHERE I GOT  
15 HURT. IT'S WORKERS' COMP.

16 THE COURT: ARE YOU WORKING NOW?

17 JUROR BALLARD: VERY LIGHT DUTY AND IT HAS TO STAY  
18 ELEVATED. THAT'S THE THING FROM THE DOCTOR. I'M SUPPOSED TO  
19 GO BACK THIS WEEK.

20 THE COURT: OKAY. NOW, IF YOU WERE -- IF WE WERE  
21 ABLE TO FIX YOU A SPOT OVER HERE IN THIS JURY BOX WHERE YOU  
22 COULD SIT COMFORTABLY AND KEEP YOUR LEG UP AND ALSO A SPOT IN  
23 THE JURY ROOM WHERE YOU COULD DO THE SAME THING, WOULD THAT  
24 BE OKAY?

25 JUROR BALLARD: I'LL TRY.

1 THE COURT: ALL RIGHT, SIR.

2 JUROR BALLARD: OR IF Y'ALL WOULD RATHER JUST CHANGE  
3 MY DATES, I'LL BE GLAD TO COME BACK.

4 THE COURT: YOU'LL BE -- YOU'LL BE HEALED UP IN A  
5 COUPLE OF MONTHS?

6 JUROR BALLARD: WELL, I GO BACK THIS WEEK AND  
7 THEY'RE GOING TO TELL ME IF THEY'VE GOT TO DO SURGERY OR NOT.

8 THE COURT: DO YOU HAVE AN APPOINTMENT THIS WEEK?

9 JUROR BALLARD: YES, SIR.

10 THE COURT: IF THEY HAVE TO DO SURGERY, WHEN WOULD  
11 THAT BE?

12 JUROR BALLARD: I WOULDN'T KNOW UNTIL HE TELLS ME.  
13 HOPEFULLY I WON'T HAVE TO HAVE IT.

14 THE COURT: ALL RIGHT. I'LL BE RIGHT BACK WITH YOU.  
15 YOU CAN GO AHEAD AND GO BACK TO YOUR SEAT. I'LL KEEP THIS IF  
16 YOU DON'T MIND.

17 JUROR BALLARD: SURE.

18 (JUROR BALLARD STEPS AWAY.)

19 MS. KIMBROUGH: NO OBJECTION.

20 THE COURT: HUH?

21 MS. KIMBROUGH: NO OBJECTION.

22 THE COURT: ALL RIGHT. MR. BALLARD, WE'RE GOING TO  
23 TRANSFER YOU TO A DIFFERENT TERM OF COURT. SO YOU'RE FREE TO  
24 GO, AND YOU'LL BE NOTIFIED BY THE CLERK SENDING YOU A  
25 DIFFERENT SUMMONS FOR A DIFFERENT WEEK. ALL RIGHT?



1 JUROR BALLARD: JUST GIVE ME A COUPLE OF MONTHS.

2 THE COURT: OKAY. WE WILL.

3 (JUROR BALLARD LEAVES THE BENCH CONFERENCE.)

4 THE COURT: NEXT?

5 BAILIFF: JUROR 243, YOUR HONOR.

6 (JUROR PRESCOTT APPROACHES.)

7 THE COURT: YES, SIR.

8 JUROR PRESCOTT: YOUR HONOR, I'VE GOT A PHYSICAL  
9 PROBLEM WITH MY -- INTESTINAL DIVERTICULITIS. THEY HAVE  
10 TAKEN OUT SOME OF MY INTESTINES ALREADY.

11 THE COURT: UH-HUH. YOU'RE MR. PRESCOTT?

12 JUROR PRESCOTT: CHARLES PRESCOTT. AND I HAVE A  
13 SHORT PERIOD OF TIME THAT I CAN STAY AWAY FROM THE BATHROOM,  
14 TO PUT IT MILDLY.

15 THE COURT: RIGHT. NOW, WE -- FROM TIME TO TIME WE  
16 DO DEAL WITH THIS TYPE OF SITUATION WHERE WE HAVE PEOPLE WHO  
17 HAVE PROBLEMS.

18 JUROR PRESCOTT: LIKE JUST RAISING MY HAND AT ANY  
19 PARTICULAR TIME.

20 THE COURT: IS IT EVERY 15 MINUTES OR IS IT---

21 JUROR PRESCOTT: DEPENDS ON -- THE ONLY WAY TO STOP  
22 IT IS TO STOP EATING.

23 THE COURT: UH-HUH.

24 JUROR PRESCOTT: GO WITHOUT DRINKING AND WITHOUT  
25 EATING.

1 THE COURT: WE DON'T WANT YOU TO DO THAT..

2 JUROR PRESCOTT: I'M JUST SAYING...

3 THE COURT: LET ME ASK YOU A QUESTION. ON AVERAGE  
4 DO YOU HAVE TO GO EVERY HOUR, EVERY HALF-HOUR?

5 JUROR PRESCOTT: THERE HAVE BEEN TIMES I'VE GONE TO  
6 THE BATHROOM SIX TIMES IN AN HOUR. IT JUST DEPENDS ON THE  
7 SITUATION, WHAT I EAT, AND, YOU KNOW, HOW MY INTESTINES ARE.  
8 WHEN YOU HAVE THAT AGGRAVATED INTESTINAL PROBLEMS -- AND SOME  
9 OF THEM HAVE -- IT HAS ALREADY BEEN REMOVED. IT TAKES A  
10 SHORTER TIME PERIOD THAT FOOD CAN STAY IN YOUR COLON. I CAN  
11 SHOW YOU THE SCARS IF YOU WOULD LIKE TO SEE THE SCARS.

12 THE COURT: NO, SIR. I DON'T THINK THAT'S  
13 NECESSARY.

14 JUROR PRESCOTT: I'VE BEEN EXCUSED BEFORE AND I  
15 DON'T UNDERSTAND WHY MY NAME HASN'T BEEN TAKEN OFF THE LIST  
16 BECAUSE IT'S KIND OF EMBARRASSING TO COME UP HERE AND TALK TO  
17 Y'ALL.

18 THE COURT: WELL, I'M SORRY FOR THE EMBARRASSMENT,  
19 BUT IT IS -- IT'S A -- IT IS A COURT OF RECORD AND THINGS  
20 HAVE TO BE PUT ON THE RECORD, SO THAT'S WHY WE---

21 JUROR PRESCOTT: I MEAN, THE TIME BEFORE AND THE  
22 TIME BEFORE WE'VE HAD TO TALK WITH OTHER JUDGES.

23 THE COURT: LET ME GET YOU TO STAND OVER THERE NEXT  
24 TO THAT TABLE, PLEASE.

25 JUROR PRESCOTT: I WISH YOU WOULD TAKE MY NAME OFF

1 THE LIST IF YOU COULD.

2 (JUROR PRESCOTT STEPS AWAY.)

3 MS. KIMBROUGH: NO OBJECTION.

4 MR. LITTLEJOHN: NO OBJECTION.

5 MR. HUBBARD: NO OBJECTION.

6 THE COURT: MR. PRESCOTT, COME UP A SECOND, AND GET  
7 THE NEXT JUROR READY. WE'RE GOING -- I'M GOING TO EXCUSE YOU  
8 FROM THIS TERM OF COURT. NOW, THERE'S NOT ANY WAY I CAN  
9 PERMANENTLY REMOVE YOU FROM THE JUROR LIST, BUT I WILL EXCUSE  
10 YOU FROM THIS TERM. ALL RIGHT. YOU'RE FREE TO GO.

11 JUROR PRESCOTT: THANK YOU, SIR.

12 (JUROR PRESCOTT LEAVES THE BENCH CONFERENCE.)

13 BAILIFF: IT'S NUMBER 333, YOUR HONOR, STAN WHITE.

14 (JUROR WHITE APPROACHES.)

15 JUROR WHITE: YOUR HONOR, I'M STAN WHITE. I MANAGE  
16 CLAYTON HOMES OVER HERE IN LEXINGTON AND WE BUILD, SELL, AND  
17 FINANCE HOMES. I SET FORTH THIS WEEK AND NEXT WEEK TO GO --  
18 I'VE GOT NEW HIRES' ORIENTATION TO GET THEM READY. JUST THE  
19 TIMING IS NOT GOOD FOR ME.

20 THE COURT: ALL RIGHT. YOU -- IS THIS A COMPANY  
21 THAT -- TELL ME YOUR POSITION WITH THE COMPANY, PLEASE.

22 JUROR WHITE: GENERAL MANAGER.

23 THE COURT: GENERAL MANAGER.

24 JUROR WHITE: WE'RE A BERKSHIRE HATHAWAY COMPANY  
25 ACTUALLY.

1 THE COURT: ALL RIGHT. AND YOU HAVE NEW PEOPLE THAT  
2 YOU'RE SUPPOSED TO BE TRAINING?

3 JUROR WHITE: ORIENTATION, YEAH.

4 THE COURT: ORIENTATION? THAT'S THIS WEEK AND NEXT  
5 WEEK?

6 JUROR WHITE: THESE NEXT TWO WEEKS.

7 THE COURT: ALL RIGHT. OKAY. MR.?

8 JUROR WHITE: WHITE.

9 THE COURT: MR. WHITE. OKAY. I'VE GOT -- I HAVE  
10 ACTUALLY THE WRONG SHEET. STAND RIGHT THERE NEXT TO THAT  
11 TABLE. 333.

12 (JUROR WHITE STEPS AWAY.)

13 THE CLERK: 333.

14 THE COURT: ALL RIGHT.

15 MS. KIMBROUGH: I HAVE NO OBJECTION.

16 MR. LITTLEJOHN: WE'LL LEAVE IT UP TO YOU.

17 THE COURT: I MEAN, I'M INCLINED TO KEEP HIM HERE  
18 AND HAVE HIM SERVE.

19 MR. HUBBARD: THAT'S FINE, WITH THE COURT'S  
20 DISCRETION.

21 THE COURT: IT'S THE SAME KIND OF INCONVENIENCE THAT  
22 EVERYBODY FAVORS.

23 MR. LITTLEJOHN: YES, SIR.

24 THE COURT: NOTHING SPECIFIC LIKE THAT. MR. WHITE?

25 JUROR WHITE: YES, SIR.

1 THE COURT: I APOLOGIZE FOR THE INCONVENIENCE THAT  
2 SERVING AS A JUROR WILL IMPOSE ON YOU, BUT YOUR SITUATION I  
3 DON'T THINK IS REALLY ALL THAT MUCH DIFFERENT THAN A LOT OF  
4 JURORS OUT THERE, AND SO I'M GOING TO HAVE TO ASK YOU TO STAY  
5 WITH US AND SERVE IN THIS TERM. ALL RIGHT, SIR. THANK YOU  
6 VERY MUCH.

7 JUROR WHITE: OKAY.

8 (JUROR WHITE LEAVES THE BENCH CONFERENCE.)

9 BAILIFF: NUMBER 121, MR. RAY GUNTER, YOUR HONOR.

10 (JUROR GUNTER APPROACHES.)

11 JUROR GUNTER: HOW ARE YOU DOING?

12 THE COURT: FINE. HOW ARE YOU?

13 JUROR GUNTER: WHAT I WANT TO ASK YOU -- I'D ASK TO  
14 BE EXCUSED. WE'RE HAVING A HARD TIME. I WORK TWO RUNS,  
15 TRUCK AND DRIVER. I HAVE -- WE JUST HAD THE MORNING RUN, AND  
16 WE PUT IN THE PAPER STUFF. THE OTHER GUY'S DAY OFF IS TODAY.  
17 WE WORK SIX DAYS A WEEK.

18 THE COURT: WHO DO YOU WORK FOR?

19 JUROR GUNTER: I WORK FOR C.C.T. TRANSPORT  
20 CONTRACTING PROPOSAL SITES, BUT IT'S TWO SEPARATE RUNS. MY  
21 JOB IS LIKE -- MOST OF HIS TRUCK CAN RUN UPKEEP AND ALL THAT  
22 WITHOUT BEING THERE. IT'S GOING TO BE REALLY HARD TO TRY TO  
23 MAKE IT THIS WEEK AND EVEN NEXT WEEK.

24 THE COURT: ALL RIGHT, SIR.

25 JUROR GUNTER: HIS DAY OFF IS TODAY. WE HAVE A

1 SIX-DAY-A-WEEK SPLIT RUN.

2 THE COURT: MR. GUNTER, I REALIZE THAT THIS IS -- IT  
3 IS AN INCONVENIENCE.

4 JUROR GUNTER: IF I'M OUT OF A JOB, WHAT AM I GOING  
5 TO DO? DO YOU SEE WHAT I'M SAYING?

6 THE COURT: I REALIZE IT'S AN INCONVENIENCE TO YOU,  
7 BUT IT'S THE SAME SITUATION FOR A LOT OF THESE PEOPLE OUT  
8 THERE, AND I'M GOING TO HAVE TO GO AHEAD AND ASK YOU TO STAY  
9 WITH US AND SERVE, AND I APPRECIATE YOU BEARING WITH ME.  
10 THANK YOU VERY MUCH.

11 JUROR GUNTER: LET ME EXPLAIN THIS TO YOU. I'LL BE  
12 RUNNING THE MORNING RUNS NOW. I MAY BE LATE OR SOMETHING.

13 THE COURT: NO, SIR, MR. GUNTER. WE'RE GOING TO  
14 WORK WITH YOU THE BEST WE CAN. WE WANT THIS TO BE AS EASY ON  
15 YOU AS WE CAN MAKE IT, BUT WHEN WE GIVE YOU A TIME TO COME,  
16 THEN YOU'RE GOING TO HAVE TO ADJUST YOUR SCHEDULE IN ORDER TO  
17 ACCOMMODATE OUR SCHEDULE.

18 JUROR GUNTER: OKAY.

19 THE COURT: WE'LL WORK WITH YOU AS BEST WE CAN.  
20 WE'LL TRY TO MINIMIZE THAT FOR YOU, BUT I'M THE ONE WHO IS  
21 GOING TO CONTROL THE SCHEDULE OF COURT.

22 JUROR GUNTER: I UNDERSTAND THAT. I'LL TRY TO TAKE  
23 CARE OF MY JOB. I'M GOING TO TRY MY MORNING RUNS AND WE'RE  
24 GOING TO DO THE COURT THING RIGHT. I UNDERSTAND THAT.

25 THE COURT: WELL...

1 JUROR GUNTER: I UNDERSTAND.

2 THE COURT: YOU CAN GO BACK TO YOUR SEAT.

3 JUROR GUNTER: OKAY. THANK YOU.

4 (JUROR GUNTER LEAVES THE BENCH CONFERENCE.)

5 BAILIFF: YOUR HONOR, IT'S NUMBER 26, DEBRA BOWLING.

6 (JUROR BOWLING APPROACHES.)

7 THE COURT: YES, MA'AM.

8 JUROR BOWLING: HEY. I DON'T HAVE A PROBLEM  
9 SERVING, BUT I'VE GOT THREE WORKMAN'S COMP CASES ON THURSDAY  
10 AND I DIDN'T KNOW IF THAT WOULD BE A PROBLEM.

11 THE COURT: YOU'VE GOT THREE?

12 JUROR BOWLING: HERE IN LEXINGTON WITH WAL-MART.

13 THE COURT: ARE YOU THE CLAIMANT?

14 JUROR BOWLING: NO. I'M THE PERSONNEL MANAGER WITH  
15 WAL-MART.

16 THE COURT: OH, I SEE.

17 JUROR BOWLING: I DIDN'T KNOW IF I WOULD BE  
18 AVAILABLE TO BE THERE FOR...

19 THE COURT: THAT'S THIS WEEK. WE PROBABLY CAN WORK  
20 AROUND THAT.

21 JUROR BOWLING: OKAY.

22 THE COURT: IF YOU CAN GET SOMEBODY TO FILL IN,  
23 YOU'LL KNOW SOMETIME THIS AFTERNOON WHAT YOUR SCHEDULE IS FOR  
24 THIS WEEK. IF YOU NEED TO GET SOMEBODY TO FILL IN, YOU'LL  
25 KNOW IT THEN.

1 JUROR BOWLING: OKAY. GREAT. THANKS.

2 (JUROR BOWLING LEAVES THE BENCH CONFERENCE.)

3 BAILIFF: THIS IS NUMBER 19, GLORIAJANE BERRY.

4 (JUROR BERRY APPROACHES.)

5 THE COURT: YES, MA'AM.

6 JUROR BERRY: FOR ONE, I DON'T HAVE TRANSPORTATION.

7 THE COURT: OKAY. WE'LL TAKE CARE OF YOUR

8 TRANSPORTATION FOR YOU IF WE NEED TO.

9 JUROR BERRY: NUMBER TWO IS I TAKE A LOT OF  
10 MEDICINE.

11 THE COURT: YES, MA'AM.

12 JUROR BERRY: I HAVE TO CONSTANTLY BE DRINKING AND I  
13 CAN'T DO THAT IF I'M SITTING.

14 THE COURT: WELL, WE CAN -- WE CAN HELP YOU WITH  
15 THAT. WE CAN MAKE SURE THAT YOU HAVE WHATEVER IT IS THAT YOU  
16 NEED TO DRINK WATER OR---

17 JUROR BERRY: YES.

18 THE COURT: ---OR SODAS OR WHATEVER.

19 JUROR BERRY: WATER.

20 THE COURT: WE CAN MAKE THAT AVAILABLE TO YOU.

21 JUROR BERRY: OKAY.

22 THE COURT: IT'S NOT NORMAL THAT PEOPLE DRINK IN THE  
23 JURY BOX -- DRINK WATER IN THE JURY BOX, BUT WE CAN TAKE CARE  
24 OF THAT.

25 JUROR BERRY: OKAY. ALL RIGHT.



1 THE COURT: THANK YOU.

2 (JUROR BERRY LEAVES THE BENCH CONFERENCE.)

3 BAILIFF: NUMBER 185, ANGELA LUCAS.

4 (JUROR LUCAS APPROACHES.)

5 JUROR LUCAS: LAST WEEK I JUST FOUND OUT THAT I'M  
6 PREGNANT AND I'VE GOT TO MAKE AN APPOINTMENT WITH THE HEALTH  
7 DEPARTMENT TO MAKE SURE EVERYTHING IS OKAY AND EVERYTHING  
8 LIKE THAT.

9 MR. LITTLEJOHN: WE COULDN'T HEAR.

10 THE COURT: SHE JUST FOUND OUT SHE'S PREGNANT AND  
11 SHE NEEDS TO MAKE AN APPOINTMENT WITH THE HEALTH DEPARTMENT  
12 TO GET CHECKED.

13 JUROR LUCAS: I TRIED TO DO IT LAST WEEK, BUT THEY  
14 SAID THEY DIDN'T DO THE ULTRASOUNDS ON MID---

15 THE COURT: YOU'RE STATING THAT YOU WOULD MAKE THAT  
16 APPOINTMENT SOMETIME THIS WEEK?

17 JUROR LUCAS: YES, SIR.

18 THE COURT: YOU CAN GO AHEAD AND MAKE THAT  
19 APPOINTMENT, AND WE WILL WORK AROUND YOUR SCHEDULE FOR THAT  
20 APPOINTMENT SO THAT---

21 JUROR LUCAS: OKAY.

22 THE COURT: IT PROBABLY WILL NOT CONFLICT BECAUSE  
23 AFTER THIS MORNING YOU'RE ONLY GOING TO HAVE TO COME BACK  
24 ONCE MORE THIS WEEK FOR ABOUT TWO TO FOUR HOURS.

25 JUROR LUCAS: RIGHT.

1 THE COURT: IF THAT HAPPENS TO CONFLICT WITH YOUR  
2 APPOINTMENT, WE'LL GIVE YOU A DIFFERENT TIME.

3 JUROR LUCAS: OKAY.

4 THE COURT: SO IF WE TAKE CARE OF THAT, WILL THAT  
5 SOLVE YOUR PROBLEM?

6 JUROR LUCAS: I HOPE I DON'T GET SICK OR ANYTHING.

7 THE COURT: I HOPE NOT, TOO.

8 JUROR LUCAS: THAT WOULD BE PRETTY BAD. BUT IS THAT  
9 IT?

10 THE COURT: THAT'S IT. THANK YOU, MS. LUCAS.

11 (JUROR LUCAS LEAVES THE BENCH CONFERENCE.)

12 BAILIFF: NUMBER 53, BENJAMIN CASSELMAN.

13 (JUROR CASSELMAN APPROACHES.)

14 THE COURT: YES, SIR.

15 JUROR CASSELMAN: HOW ARE YOU DOING? I DIDN'T STAND  
16 UP WHEN YOU ASKED THE QUESTION. I'M NOT REAL PROUD OF IT,  
17 BUT I WAS CONVICTED OF D.U.I. IN 1982---

18 THE COURT: ALL RIGHT.

19 JUROR CASSELMAN: ---IS THE PRIMARY REASON I CAME  
20 UP. SECOND OF ALL, I'VE GOT A SEVEN-YEAR-OLD AND 13-YEAR-OLD  
21 AT HOME BECAUSE OF SPRING BREAK.

22 THE COURT: LET ME TALK ABOUT YOUR D.U.I.  
23 CONVICTION. WAS IT A FIRST OR SECOND OFFENSE?

24 JUROR CASSELMAN: FIRST OFFENSE. I JUST DIDN'T  
25 STAND UP.

1 THE COURT: I UNDERSTAND. I UNDERSTAND. THAT WOULD  
2 NOT DISQUALIFY YOU FROM SERVING.

3 JUROR CASSELMAN: OKAY.

4 THE COURT: NOW, YOU HAVE CHILDREN AT HOME, AND YOUR  
5 WIFE WORKS?

6 JUROR CASSELMAN: YES.

7 THE COURT: DO YOU WORK?

8 JUROR CASSELMAN: I DO.

9 THE COURT: DO YOU WORK DURING THE DAY?

10 JUROR CASSELMAN: I DO.

11 THE COURT: ALL RIGHT. WELL, WE WOULD LOOK TO YOU  
12 TO USE THE SAME RESOURCES FOR CHILD CARE THAT YOU WOULD USE  
13 IF YOU WERE AT WORK ALL DAY.

14 JUROR CASSELMAN: I UNDERSTAND. THE REASON --  
15 AGAIN, THE PRIMARY REASON IS D.U.I. I JUST DIDN'T WANT TO  
16 STAND UP.

17 THE COURT: ALL RIGHT. THANK YOU FOR BRINGING THAT  
18 TO OUR ATTENTION. ALL RIGHT. YOU CAN GO BACK TO YOUR SEAT.

19 (JUROR CASSELMAN LEAVES THE BENCH CONFERENCE.)

20 BAILIFF: NUMBER 106, BONNIE FRENCH.

21 (JUROR FRENCH APPROACHES.)

22 JUROR FRENCH: I HAVE CHRONIC MIGRAINES. I TAKE  
23 THREE DIFFERENT MEDICATIONS FOR THEM. I DIDN'T ASK FOR  
24 ANYTHING FROM MY DOCTOR BECAUSE I RECENTLY LIKE FIVE MONTHS  
25 AGO WAS PUT ON PREVENTIVE MEDICATION FOR IT, AND I'VE BEEN

1 DOING WELL. STRESS AND ANXIETY BRINGS THEM ON, AND EVER  
2 SINCE I GOT HERE TODAY I'VE STARTED GETTING ONE AND IT'S  
3 REALLY GETTING BAD NOW. SO I WOULD ASK THAT I COULD BE  
4 EXCUSED BECAUSE I KNOW WHAT'S PROBABLY GOING TO HAPPEN  
5 BECAUSE I USUALLY HAVE THEM FROM STRESS AND ANXIETY.

6 THE COURT: OKAY. WHO IS YOUR TREATING PHYSICIAN  
7 FOR THAT?

8 JUROR FRENCH: DR. CAROLINE BIRCHMORE.

9 THE COURT: IS THAT HERE IN LEXINGTON?

10 JUROR FRENCH: YES, RIGHT DOWN ON 378.

11 THE COURT: OKAY.

12 JUROR FRENCH: AND I'VE BEEN DOING WELL ON THE  
13 PREVENTATIVE MEDICATION WHICH IS TORAMAX, BUT THAT'S WHY I  
14 DIDN'T ASK FOR ANYTHING THINKING I COULD HANDLE TODAY, BUT  
15 THE ANXIETY FROM THIS HAS BROUGHT IT ON AND I'VE BEEN---

16 THE COURT: OKAY. LET ME ASK YOU TO STAND RIGHT  
17 OVER AT THAT TABLE FOR JUST ONE SECOND, MS. FRENCH. THANK  
18 YOU.

19 JUROR FRENCH: OKAY.

20 (JUROR FRENCH STEPS AWAY.)

21 THE COURT: ALL RIGHT. MY NORMAL RESPONSE WOULD BE  
22 THAT SHE NEEDS TO CONSULT HER DOCTOR AND HAVE THE DOCTOR  
23 EXPLAIN THAT, MAYBE GO SEE HIM. SHE'LL HAVE TIME THIS WEEK  
24 TO DO THAT. ANY PROBLEM WITH THAT?

25 MR. LITTLEJOHN: NO, YOUR HONOR.

1 MS. KIMBROUGH: NO.

2 MR. HUBBARD: NO.

3 THE COURT: MS. FRENCH, AFTER TODAY YOU'LL HAVE A  
4 CHANCE TO GO -- AFTER THIS MORNING, YOU'LL HAVE A CHANCE TO  
5 CONTACT YOUR DOCTOR AND SEE IF YOU CAN GO BY THERE OR GET HER  
6 TO WRITE OUT AN EXPLANATION OF YOUR PROBLEM AND EXPLAIN THAT  
7 THIS TYPE OF SITUATION IS SOMEWHAT LIKELY TO CAUSE YOU TO  
8 HAVE THE MIGRAINES AND ASK THAT YOU BE EXCUSED.

9 JUROR FRENCH: OKAY.

10 THE COURT: IF YOU GET US A WRITTEN EXPLANATION OF  
11 THAT NOW, WE HAVE -- WE MAY HAVE TO FOLLOW UP WITH THE DOCTOR  
12 ABOUT IT, BUT WE CAN TRY TO GET YOU EXCUSED.

13 JUROR FRENCH: OKAY.

14 THE COURT: ALL RIGHT. BUT YOU REMAIN WITH US THIS  
15 MORNING IF THAT'S OKAY. DO YOU THINK YOU'LL BE OKAY FOR A  
16 WHILE THIS MORNING?

17 JUROR FRENCH: I DON'T KNOW. I DON'T KNOW. I  
18 DIDN'T BRING MY MEDICATION WITH ME. I'M ON IMITREX FOR  
19 MIGRAINES, AND I HAVEN'T HAD ONE AND---

20 THE COURT: OKAY. WELL, GO AHEAD AND GO BACK TO  
21 YOUR SEAT AND I'LL HAVE THE BAILIFF COME SPEAK TO YOU IN JUST  
22 A SECOND.

23 (JUROR FRENCH LEAVES THE BENCH CONFERENCE.)

24 THE COURT: ALL RIGHT. ANY PROBLEM WITH HER -- WITH  
25 ME JUST LETTING HER GO FOR NOW AND---

1 MR. LITTLEJOHN: NO.

2 THE COURT: WE CAN CONTACT HER PERSONALLY TO TELL  
3 HER WHAT TIME SHE'S SUPPOSED TO BE BACK, AND THEN I CAN GIVE  
4 HER... WILL THAT BE FINE?

5 MR. LITTLEJOHN: SURE.

6 THE COURT: ALL RIGHT. I'VE ALREADY TOLD THEM NOT  
7 TO TALK ABOUT THE CASE YET. DO YOU RECKON I NEED TO GET HER  
8 BACK UP HERE AND EXPLAIN THAT TO HER MORE CAREFULLY LIKE I  
9 WOULD DO TO THE ENTIRE PANEL OR DO YOU THINK SHE'S OKAY?

10 MS. KIMBROUGH: I THINK SHE'S FINE.

11 THE COURT: ALL RIGHT. ASK MS. FRENCH TO COME BACK  
12 UP HERE IN JUST A SECOND, PLEASE. SIR, YOU CAN COME ON.

13 BAILIFF: YEAH. THAT'S NUMBER 134, JASON HENDRIX.

14 (JUROR HENDRIX APPROACHES.)

15 JUROR HENDRIX: HELLO, YOUR HONOR. SEVERAL ITEMS  
16 YOU HAD ASKED SPECIFICALLY ABOUT FULL-TIME STUDENTS. I'M A  
17 PART-TIME STUDENT WITH GREENVILLE TECH ON-LINE. OVER THE  
18 NEXT COUPLE OF WEEKS I DO HAVE A TEST THAT I HAVE TO GO TO  
19 GREENVILLE FOR EVEN THOUGH IT IS AN ON-LINE CLASS.

20 THE COURT: DO YOU KNOW THE SPECIFIC SCHEDULE OF  
21 THAT?

22 JUROR HENDRIX: IT'S GOING TO BE EITHER THE 24TH OR  
23 THE 25TH. I CAN TELL YOU EITHER DAY.

24 THE COURT: THAT'S NOT PROBABLY GOING TO CONFLICT  
25 WITH THIS TERM OF COURT, SO -- AND I THINK THE FACT THAT YOU

1 DO THIS ON-LINE PROBABLY DOES NOT -- IS GOING TO MAKE IT SO  
2 THAT YOU'RE NOT ENTITLED TO THE TRANSFER THAT A NORMAL  
3 STUDENT WOULD HAVE BECAUSE OF HAVING TO ATTEND CLASS.

4 JUROR HENDRIX: I DO HAVE A COUPLE OF OTHER  
5 CONCERNS. MY MOTHER HAS SURGERY ON THE 20TH AND I WAS GOING  
6 TO BE THE -- I GUESS THE PRIMARY CAREGIVER FOR HER SEVERAL  
7 DAYS BECAUSE MY FATHER JUST HAD KIDNEY STONES REMOVED.  
8 THAT'S ANOTHER CONCERN BUT...

9 THE COURT: ALL RIGHT. WELL, WE -- YOU KNOW, THERE  
10 COULD BE SOME OVERLAP BETWEEN THE TRIAL OF THIS CASE AND YOUR  
11 MOTHER'S -- THE TIME WHEN SHE NEEDS CARE, BUT I DON'T THINK I  
12 CAN EXCUSE YOU FOR THAT.

13 JUROR HENDRIX: OKAY.

14 THE COURT: ALL RIGHT.

15 JUROR HENDRIX: I UNDERSTAND THAT.

16 THE COURT: ALL RIGHT. THANK YOU.

17 (JUROR HENDRIX LEAVES THE BENCH CONFERENCE.)

18 BAILIFF: THIS IS MS. FRENCH AGAIN, YOUR HONOR.

19 (JUROR FRENCH APPROACHES.)

20 THE COURT: MS. FRENCH, I'M GOING TO LET YOU GO  
21 AHEAD AND GO FOR THIS MORNING, AND IF -- DO YOU REMEMBER WHAT  
22 I SAID ABOUT WHAT -- ABOUT THE DOCTOR? SOMEBODY FROM THE  
23 CLERK'S OFFICE WILL CALL YOU TO MAKE SURE TO GIVE YOU WHAT  
24 INFORMATION YOU NEED ABOUT WHEN TO COME BACK. YOUR TELEPHONE  
25 NUMBER IS 568-3897?

1 JUROR FRENCH: YES, SIR.

2 THE COURT: AND I JUST WANTED TO ALSO MAKE CLEAR  
3 THAT YOU'RE NOT ALLOWED TO DISCUSS THIS CASE. YOU DON'T KNOW  
4 ANYTHING ABOUT IT YET. YOU HAVEN'T EVEN HEARD THE NAME OF  
5 THE CASE, BUT JUST DON'T DISCUSS WITH ANYBODY ANYTHING THAT  
6 MIGHT GO ON IN COURT THIS WEEK. ALL RIGHT. WHEN WE GET YOU  
7 BACK IN HERE, I'LL TALK TO YOU IN MORE DETAIL ABOUT -- YOU'LL  
8 HAVE A CHANCE TO EXPLAIN TO ME... GET THE DOCTORS TO GET AN  
9 EXCUSE.

10 JUROR FRENCH: I'LL DO THAT.

11 THE COURT: GOOD LUCK, MA'AM.

12 (JUROR FRENCH LEAVES THE BENCH CONFERENCE.)

13 BAILIFF: NUMBER 222, MS. OLDS.

14 (JUROR OLDS APPROACHES.)

15 JUROR OLDS: I'M NOT SURE IF I'M TOTALLY FOR THIS  
16 BECAUSE MY DAUGHTER IS GETTING MARRIED AND WE'RE FLYING OUT  
17 UPSTATE ON THE 21ST THROUGH THE 24TH OF THIS MONTH.

18 THE COURT: 21ST?

19 JUROR OLDS: YES, SIR.

20 THE COURT: DO YOU HAVE---

21 JUROR OLDS: IT'S A FRIDAY AND---

22 THE COURT: DO YOU HAVE PLANE TICKETS?

23 JUROR OLDS: YES, SIR.

24 THE COURT: YOU DON'T HAVE ANYTHING WITH YOU.

25 JUROR OLDS: I DON'T HAVE ANYTHING WITH ME BECAUSE A



1 FRIEND OF OURS IS THE ONE PURCHASING THE TICKET. I COULD---

2 THE COURT: IS THERE SOMETHING ELSE YOU WANTED TO  
3 DISCUSS WITH ME?

4 JUROR OLDS: NO, SIR.

5 THE COURT: I WAS THINKING YOU STOOD UP.

6 JUROR OLDS: I KNOW. I THOUGHT THERE WOULDN'T BE  
7 ANY MORE QUESTIONS OR ANYTHING. I JUST THOUGHT -- THAT'S  
8 WHY. I'VE NEVER BEEN IN A JURY DUTY AND I JUST STOOD UP---

9 THE COURT: OKAY. LET ME GET YOU TO STAND RIGHT  
10 BACK OVER THERE FOR JUST A SECOND, PLEASE.

11 (JUROR OLDS STEPS AWAY.)

12 THE COURT: BASED ON WHAT I HAVE HEARD YOU ALL SAY,  
13 THERE'S A SIGNIFICANT CHANCE THAT THE 21ST WE'LL STILL BE  
14 WORKING ON THIS CASE.

15 MR. LITTLEJOHN: (NODDED HEAD UP AND DOWN.)

16 THE COURT: THAT'S FRIDAY OF NEXT WEEK. IF WE HAVE  
17 THE 24-HOUR WAITING PERIOD, THAT LEAVES ONLY THREE DAYS TO  
18 GET THE CASE DONE BEFORE SHE HAS TO LEAVE. SO I BELIEVE THAT  
19 IF SHE SHOWS ME PLANE TICKET RESERVATIONS, THEN I WOULD -- I  
20 WOULD TRANSFER HER. ALL RIGHT. I'M GOING TO ASK HER TO DO  
21 THAT. MS. OLDS, IF YOU CAN GET US---

22 JUROR OLDS: THE TICKET.

23 THE COURT: ---A COPY OF THE TICKET FOR THE  
24 RESERVATION---

25 JUROR OLDS: OKAY.

1 THE COURT: ---THAT SHOWS THAT YOU HAVE THE PLANE  
2 TICKET...

3 JUROR OLDS: TODAY, SIR.

4 THE COURT: WHENEVER YOU CAN GET TO IT.

5 JUROR OLDS: OKAY.

6 THE COURT: BUT UNTIL THEN -- WE'RE GOING TO BREAK  
7 AROUND LUNCH TIME. YOU CAN GO AND TAKE CARE OF THAT.

8 JUROR OLDS: OKAY. THANK YOU.

9 THE COURT: WRITE ON THERE IN RED THAT SHE'S GOING  
10 TO GET -- SHE'LL DO IT. THANKS.

11 (JUROR OLDS LEAVES THE BENCH CONFERENCE.)

12 BAILIFF: NUMBER 284, MS. SLAY.

13 (JUROR SLAY-CANTRELL APPROACHES.)

14 JUROR SLAY-CANTRELL: WHEN I CALLED MY DOCTOR FRIDAY  
15 TO GET MY MEDICINE REFILLED, HE'S THE ONE THAT SAID I SHOULD  
16 NOT BE ON JURY DUTY. I TAKE ZYRTEC ONCE A DAY. I TAKE THEM  
17 FOR ANXIETY PANIC ATTACKS. I HAD NO IDEA THAT THAT WOULD  
18 AFFECT... WHEN HE CALLED ME BACK, HE SAID, "WHY ARE YOU  
19 PICKING THEM UP ON SUNDAY INSTEAD OF MONDAY?" I SAID, "I  
20 HAVE TO GO TO JURY DUTY ON MONDAY." HE SAID, "JURY DUTY?  
21 YOU'RE IN A MEDICATED STATE."

22 THE COURT: IF YOU COULD GET YOUR DOCTOR TO WRITE  
23 THAT OUT.

24 JUROR SLAY-CANTRELL: YES, AND HE SAID HE WOULD FAX  
25 IT OVER WHATEVER Y'ALL WANTED. I PRETTY MUCH RETIRED FIVE

1 YEARS AGO BECAUSE OF THIS.

2 THE COURT: YOU'RE MS. CANTRELL?

3 JUROR SLAY-CANTRELL: YEAH. HOW DID YOU GET MY REAL  
4 NAME?

5 THE COURT: I DON'T KNOW. THE EFFICIENCY OF THE  
6 CLERK'S OFFICE---

7 JUROR SLAY-CANTRELL: OKAY.

8 THE COURT: ---UNCOVERED IT.

9 JUROR SLAY-CANTRELL: THEY STILL HAVE ME AS SLAY,  
10 BUT IT IS CANTRELL.

11 THE COURT: ALL RIGHT. WELL, THEN IF YOU CAN GET US  
12 THAT NOTE FROM THE DOCTOR, THEN WE CAN SEE ABOUT EXCUSING  
13 YOU, BUT GET US THAT NOW AND WE'LL GET BACK TO YOU, BUT UNTIL  
14 THEN STAY WITH US.

15 JUROR SLAY-CANTRELL: OKAY.

16 THE COURT: ALL RIGHT. THANK YOU.

17 (JUROR SLAY-CANTRELL LEAVES THE BENCH CONFERENCE.)

18 BAILIFF: MS. ROBINSON, 262.

19 (JUROR ROBINSON APPROACHES.)

20 JUROR ROBINSON: HEY.

21 THE COURT: YOU'RE MS. ROBINSON. YOU ARE NOT SURE  
22 EXACTLY WHERE YOUR RESIDENCE IS.

23 JUROR ROBINSON: WELL, I DON'T HAVE A RESIDENCE IS  
24 THE PROBLEM. I HONESTLY -- I DON'T HAVE A HOUSE, DON'T HAVE  
25 PROPERTY, NO APARTMENT. I STAY WITH MY MOTHER WHILE I'M IN

1 FLORIDA. I STAY WITH MY BOYFRIEND WHEN I'M UP HERE. I WORK  
2 FOUR DAYS A WEEK. I'M IN FLORIDA FOUR DAYS A WEEK DUE TO  
3 FAMILY ISSUES.

4 THE COURT: LET ME ASK YOU THIS. HOW LONG HAVE YOU  
5 BEEN TRAVELING TO FLORIDA THREE DAYS A WEEK BECAUSE OF THESE  
6 FAMILY ISSUES?

7 JUROR ROBINSON: FOR A YEAR.

8 THE COURT: FOR A YEAR?

9 JUROR ROBINSON: UH-HUH.

10 THE COURT: BEFORE THAT DID YOU STAY IN LEXINGTON  
11 FULL TIME?

12 JUROR ROBINSON: YES, I DID.

13 THE COURT: DO YOU DRIVE TO FLORIDA OR FLY?

14 JUROR ROBINSON: I DRIVE.

15 THE COURT: WHAT PART?

16 JUROR ROBINSON: ASTEROFF, OFF HIGHWAY 40 OUTSIDE OF  
17 DAYTONA.

18 THE COURT: OKAY. HOW LONG HAVE YOU HAD THIS JOB  
19 HERE IN LEXINGTON?

20 JUROR ROBINSON: FOUR YEARS AGO NOW.

21 THE COURT: HAS IT ALWAYS BEEN IN LEXINGTON?

22 JUROR ROBINSON: YEAH. WELL, IT'S NOT IN LEXINGTON.  
23 IT'S ACTUALLY WEST COLUMBIA.

24 THE COURT: ALL RIGHT. LET ME GET YOU TO STAND OVER  
25 NEXT TO THAT TABLE FOR A SECOND, PLEASE.

1 (JUROR ROBINSON STEPS AWAY.)

2 THE COURT: I THINK SHE'S A RESIDENT OF LEXINGTON  
3 COUNTY.

4 MR. LITTLEJOHN: THAT'S WHAT IT SOUNDS LIKE.

5 THE COURT: MS. ROBINSON, THE CONCEPT OF WHERE  
6 YOU'RE A RESIDENT IS A LITTLE BIT UNCLEAR. THERE'S NEVER ANY  
7 REAL CLEAR DEFINITION OF WHERE A PERSON IS A RESIDENT. BASED  
8 ON WHAT YOU HAVE TOLD ME, I BELIEVE YOU ARE A RESIDENT OF  
9 LEXINGTON COUNTY.

10 JUROR ROBINSON: THAT'S WHY I WANTED TO MAKE SURE WE  
11 ARE CLEAR. I DIDN'T KNOW IF IT WOULD MATTER.

12 THE COURT: I APPRECIATE YOU BRINGING IT TO OUR  
13 ATTENTION.

14 JUROR ROBINSON: THANKS.

15 THE COURT: YOU CAN RETURN TO YOUR SEAT. THANK YOU.

16 (JUROR ROBINSON LEAVES THE BENCH CONFERENCE.)

17 BAILIFF: NUMBER 305, MS. STINECIPHER.

18 (JUROR STINECIPHER APPROACHES.)

19 JUROR STINECIPHER: HI.

20 THE COURT: MA'AM, I BELIEVE YOU TOLD ME THAT YOU  
21 WENT THROUGH THE SIXTH GRADE. WHERE WAS THAT?

22 JUROR STINECIPHER: IN THE PHILIPPINES.

23 THE COURT: IN THE PHILIPPINES. DO YOU SPEAK  
24 ENGLISH WELL AND UNDERSTAND ENGLISH?

25 JUROR STINECIPHER: YEAH, I DO.

1 THE COURT: YOU DO? HOW LONG HAVE YOU LIVED IN THE  
2 UNITED STATES?

3 JUROR STINECIPHER: ABOUT ALMOST 36 YEARS.

4 THE COURT: THIRTY-SIX YEARS? AND IN RECENT YEARS  
5 HAVE YOU HAD ANY DIFFICULTY COMMUNICATING WITH PEOPLE AS YOU  
6 GO THROUGH YOUR NORMAL LIFE---

7 JUROR STINECIPHER: YES.

8 THE COURT: ---IN ENGLISH? DO YOU -- LIKE WHEN YOU  
9 GO TO THE GROCERY STORE OR TO THE DEPARTMENT STORE, DO YOU  
10 HAVE TROUBLE?

11 JUROR STINECIPHER: NO.

12 THE COURT: DO YOU READ THE NEWSPAPER HERE?

13 JUROR STINECIPHER: YES.

14 THE COURT: ARE YOU HAVING TROUBLE READING THE  
15 NEWSPAPER?

16 JUROR STINECIPHER: NO, SIR.

17 THE COURT: HAVE YOU HAD ANY TROUBLE UNDERSTANDING  
18 WHAT I'VE SAID TO YOU SO FAR TODAY?

19 JUROR STINECIPHER: NO, SIR.

20 THE COURT: OKAY. ALL RIGHT. IS THERE ANYTHING  
21 ELSE YOU WANTED TO TELL ME?

22 JUROR STINECIPHER: BUT THERE IS -- I'D LIKE TO BE  
23 DISMISSED TODAY IF YOU WOULD BECAUSE THE ONLY THING -- I HAVE  
24 DIFFICULTY BECAUSE MY DAUGHTER HAS BEEN MURDERED ABOUT 1998  
25 SO...

1 THE COURT: YOUR DAUGHTER WAS MURDERED?

2 JUROR STINECIPHER: YES.

3 THE COURT: WHERE DID THAT OCCUR?

4 JUROR STINECIPHER: IN WEST COLUMBIA.

5 THE COURT: I SEE. MA'AM, THERE'S A POINT THAT A  
6 LITTLE LATER IN THE WEEK WE'LL GET AROUND TO WHEN WE CAN TALK  
7 TO YOU ABOUT THAT. WE'LL BE ABLE TO DO IT MORE PRIVATELY.  
8 DO YOU MIND COMING BACK A LITTLE BIT LATER THIS WEEK AND  
9 TALKING TO US ABOUT THAT AT THAT TIME? WE CAN TALK ABOUT  
10 YOUR DAUGHTER'S SITUATION. AND IS THAT OKAY WITH YOU RATHER  
11 THAN HAVING TO GET INTO IT NOW WITH ALL THESE OTHER PEOPLE  
12 AROUND?

13 JUROR STINECIPHER: OKAY.

14 THE COURT: SO SOMETIME THIS AFTERNOON WE'LL TELL  
15 YOU ABOUT WHEN YOU'LL BE ASKED TO COME BACK. OKAY?

16 JUROR STINECIPHER: OKAY. YOU GIVE ME -- I BE HERE.

17 THE COURT: YES, MA'AM. YOU STAY WITH US FOR A  
18 LITTLE WHILE TODAY, AND THEN WE'LL TELL YOU ABOUT WHEN WE  
19 THINK YOU'RE GOING TO NEED TO COME BACK AND I'LL EXPLAIN TO  
20 YOU HOW YOU'LL KNOW WHEN TO COME BACK.

21 JUROR STINECIPHER: OKAY.

22 THE COURT: LET ME ASK YOU ABOUT YOUR SCHOOL. DID  
23 YOU COMPLETE THE SIXTH GRADE?

24 JUROR STINECIPHER: YES.

25 THE COURT: OKAY. ALL RIGHT. HAVE YOU WORKED?

1 JUROR STINECIPHER: NO, SIR.

2 THE COURT: YOU NEVER WORKED?

3 JUROR STINECIPHER: I NEVER WORKED.

4 THE COURT: OKAY. ALL RIGHT. THANK YOU, MS.

5 STINECIPHER. YOU ARE TO RETURN TO YOUR SEAT. WE'LL GET BACK

6 IN TOUCH WITH YOU ABOUT YOUR SITUATION WITH YOUR DAUGHTER.

7 JUROR STINECIPHER: THANK YOU.

8 (JUROR STINECIPHER LEAVES THE BENCH CONFERENCE.)

9 BAILIFF: MS. DENNIS, NUMBER 79.

10 (JUROR DENNIS APPROACHES.)

11 THE COURT: HOW ARE YOU, MS. DENNIS?

12 JUROR DENNIS: I'M DOING ALL RIGHT. BUT I CAN'T

13 READ THAT GOOD AND SPELL, AND I HAVE TROUBLE WITH MY BACK. I

14 HAVE GOT A HERNIATED DISK. THERE'S ONLY SO MUCH STANDING I

15 CAN DO.

16 THE COURT: ONLY SO MUCH WHAT?

17 JUROR DENNIS: STANDING.

18 THE COURT: IT'S BETTER FOR YOU TO SIT?

19 JUROR DENNIS: YEAH.

20 THE COURT: IF WE -- TALKING ABOUT THAT FIRST, IF WE

21 HAVE A PLACE FOR YOU TO -- FOR YOU TO SIT DOWN WHENEVER YOU

22 NEED, WOULD THAT TAKE CARE OF THAT PROBLEM?

23 JUROR DENNIS: YEAH, BUT I TAKE A LOT OF MEDICATION,

24 TOO.

25 THE COURT: OKAY. ALL RIGHT. NOW, LET ME TALK TO



1 YOU ABOUT YOUR EDUCATION. DID YOU SAY -- YOU TOLD ME, I  
2 THINK, THAT YOU DID GO TO THE SIXTH GRADE?

3 JUROR DENNIS: YEAH, I WENT TO THE SIXTH GRADE.

4 THE COURT: DID YOU COMPLETE THE SIXTH GRADE?

5 JUROR DENNIS: YEAH.

6 THE COURT: YOU DID? HAVE YOU HAD JOBS?

7 JUROR DENNIS: YEAH, I HAVE JOBS.

8 THE COURT: WHERE DO YOU WORK NOW?

9 JUROR DENNIS: NO, I'M DISABLED.

10 THE COURT: I SEE. WHAT WAS THE LAST JOB YOU HAD?

11 JUROR DENNIS: I WAS A CUSTODIAN.

12 THE COURT: FOR?

13 JUROR DENNIS: BATESBURG-LEESVILLE, DISTRICT 3.

14 THE COURT: SO YOU WORKED AT THE SCHOOL?

15 JUROR DENNIS: UH-HUH.

16 THE COURT: IN THE COURSE OF YOUR WORK AT THE SCHOOL  
17 DID YOU HAVE TO READ AND WRITE?

18 JUROR DENNIS: YEAH, BUT I GOT PEOPLE THAT HELPED  
19 ME.

20 THE COURT: OKAY. ALL RIGHT. ALL RIGHT. NOW, AS  
21 FAR AS YOUR MEDICATION IS CONCERNED, ARE YOU CONCERNED THAT  
22 THE MEDICATION YOU TAKE WOULD INTERFERE WITH YOUR---

23 JUROR DENNIS: WELL, IT MAKE ME DROWSY A LOT.

24 THE COURT: MAKES YOU DROWSY?

25 JUROR DENNIS: UH-HUH.

1 THE COURT: IF YOU THINK THAT'S GOING TO INTERFERE  
2 WITH YOUR SERVICE AS A JUROR, THEN YOU NEED TO GO TO YOUR  
3 DOCTOR AND HAVE YOUR DOCTOR WRITE OUT AN EXPLANATION---

4 JUROR DENNIS: AN EXPLANATION.

5 THE COURT: ---AS TO HOW THAT WOULD INTERFERE WITH  
6 YOUR SERVICE AS A JUROR.

7 JUROR DENNIS: OKAY.

8 THE COURT: THEN GET THAT BACK TO US AS SOON AS YOU  
9 CAN.

10 JUROR DENNIS: ONE OTHER QUESTION I WANTED TO ASK.  
11 I KEEP MY GRANDCHILDREN DURING THE DAY. WOULD THAT BE...

12 THE COURT: IF YOU'RE SERVING AS A JUROR, YOU'RE  
13 GOING TO HAVE TO GET SOMEBODY ELSE TO KEEP THEM.

14 JUROR DENNIS: I HAD TROUBLE THIS MORNING.

15 THE COURT: I KNOW THAT'S DIFFICULT. YOUR --  
16 WHOEVER'S CHILDREN THEY ARE WILL HAVE TO FIND SOMEONE ELSE.  
17 ALL RIGHT. THANK YOU. IF YOU WANT TO DO SOMETHING ABOUT THE  
18 MEDICATION, GET A DOCTOR'S NOTE THAT EXPLAINS IT.

19 JUROR DENNIS: OKAY.

20 THE COURT: GET IT BACK TO THE CLERK OF COURT.

21 JUROR DENNIS: OKAY.

22 THE COURT: ALL RIGHT. THANK YOU. BUT YOU STAY  
23 WITH US, MA'AM.

24 (JUROR DENNIS LEAVES THE BENCH CONFERENCE.)

25 BAILIFF: NUMBER 250, MS. REESE.

1 (JUROR REESE APPROACHES.)

2 JUROR REESE: MY PARAMOUNT CONCERN, I CAN -- IF IT'S  
3 A CRIMINAL TRIAL, I CANNOT GO THROUGH IT. I WENT THROUGH MY  
4 FRIERSON'S MURDER TRIAL, AND I CANNOT GO THROUGH WITH THIS.

5 THE COURT: TELL ME -- LET ME JUST GET A COUPLE OF  
6 -- SOME BASIC INFORMATION FROM YOU. TELL ME ABOUT YOUR SON'S  
7 TRIAL. WHAT WAS -- WAS HE -- WAS YOUR SON A VICTIM?

8 JUROR REESE: (NODDED HEAD UP AND DOWN.)

9 THE COURT: WHERE DID THAT OCCUR?

10 JUROR REESE: IT OCCURRED IN LEXINGTON.

11 THE COURT: LEXINGTON. WHAT'S YOUR SON'S NAME? I'M  
12 SORRY TO HAVE TO DO THIS.

13 JUROR REESE: PATRICK REESE.

14 THE COURT: PATRICK REESE.

15 JUROR REESE: AND KNOX MCMAHON WAS...

16 THE COURT: PROSECUTOR?

17 JUROR REESE: YEAH.

18 THE COURT: OKAY.

19 JUROR REESE: IF THIS IS A CRIMINAL CASE, I CAN'T GO  
20 THROUGH IT.

21 THE COURT: I UNDERSTAND. LET ME GET YOU TO WALK  
22 BACK RIGHT OVER TO THAT TABLE FOR JUST A SECOND. OKAY?

23 (JUROR REESE STEPS AWAY.)

24 THE COURT: WE'RE NOT AT THE POINT YET WHERE WE  
25 DECIDE WHETHER OR NOT SHE CAN FOLLOW THE INSTRUCTIONS AND

1 DELIBERATE AS A JUROR, BUT HER EMOTIONAL RESPONSE TO HER  
2 FRIERSON'S SITUATION LEADS ME TO BELIEVE THAT WHEN WE GET TO  
3 THAT POINT IT'S GOING TO BE VERY CLEAR THAT SHE'S NOT  
4 QUALIFIED TO SERVE AS A JUROR.

5 MR. LITTLEJOHN: JUDGE, I COULDN'T HEAR WHAT SHE WAS  
6 SAYING.

7 THE COURT: SHE WAS TELLING ME THAT HER SON WAS  
8 MURDERED---

9 MR. LITTLEJOHN: OKAY.

10 THE COURT: ---HERE IN LEXINGTON, AND THE CASE  
11 APPARENTLY WENT TO TRIAL AND KNOX MCMAHON TRIED THE CASE.  
12 AND THAT WAS THE VERY FIRST THING SHE SAID WHEN SHE CAME UP  
13 HERE, AND SHE KEPT SAYING, "IF THIS IS A CRIMINAL CASE, I  
14 CAN'T GO THROUGH WITH IT."

15 MR. LITTLEJOHN: WE AGREE SHE OUGHT TO BE EXCUSED.

16 MS. KIMBROUGH: YES.

17 MR. HUBBARD: YEAH.

18 THE COURT: ALL RIGHT. MS. REESE? I'M GOING TO  
19 EXCUSE YOU. IF YOU WOULD LIKE, I'LL ASK ONE OF THE COURT  
20 STAFF TO TAKE YOU OUT THIS BACK DOOR AND GIVE YOU A CHANCE TO  
21 PULL YOURSELF TOGETHER. WOULD YOU LIKE THAT?

22 JUROR REESE: (NODDED HEAD UP AND DOWN.)

23 THE COURT: OKAY. GO THIS WAY, MA'AM. THANK YOU.  
24 I'M SORRY WE HAD TO BRING ALL THAT UP.

25 (JUROR REESE LEAVES THE BENCH CONFERENCE.)

1 BAILIFF: THIS IS 296, MS. SPENCER.

2 (JUROR SPENCER APPROACHES.)

3 JUROR SPENCER: HOW ARE YOU TODAY?

4 THE COURT: FINE.

5 JUROR SPENCER: I'M HAVING SURGERY ON FRIDAY.

6 THEY'RE REMOVING A MASS ON THE SIDE OF MY THROAT. THEY'RE  
7 ACTUALLY GOING INTO MY THROAT TO DO A BIOPSY FOR CANCER.

8 THE COURT: OKAY. WELL, FIRST OF ALL, I HOPE  
9 EVERYTHING GOES WELL WITH THAT AND---

10 JUROR SPENCER: I WAS REALLY LOOKING FORWARD TO  
11 THIS.

12 THE COURT: WELL, OUR SCHEDULE -- NOW, I'M JUST  
13 GOING TO ASK YOU A FEW QUESTIONS. OUR SCHEDULE WOULD NOT  
14 INTERFERE WITH YOUR SURGERY.

15 JUROR SPENCER: OKAY.

16 THE COURT: BUT I'M ASSUMING THAT YOUR RECOVERY IS  
17 GOING TO CARRY INTO NEXT WEEK.

18 JUROR SPENCER: YES.

19 THE COURT: DO YOU THINK THAT WOULD MAKE YOU  
20 UNAVAILABLE TO SERVE?

21 JUROR SPENCER: I DON'T KNOW. THE DOCTORS ARE  
22 TAKING IT ONE DAY AT A TIME.

23 THE COURT: OKAY. CAN YOU -- CAN YOU GET IN TOUCH  
24 WITH THOSE DOCTORS AND ASK THEM TO... I MEAN, IT MAY BE THAT  
25 -- ARE YOU GOING TO BE -- IS IT INPATIENT SURGERY?

1 JUROR SPENCER: IT'S OUTPATIENT.

2 THE COURT: I THINK -- AND I HATE TO DO THIS BECAUSE  
3 IT MAY BE THAT IT'S JUST OBVIOUS THAT YOU'RE NOT GOING TO BE  
4 ABLE TO SERVE, BUT I REALLY NEED TO HAVE THE DOCTORS EXPLAIN  
5 THAT UNDER THE CIRCUMSTANCES---

6 JUROR SPENCER: SURE. I JUST BROUGHT THIS WITH ME.  
7 THIS IS JUST MY SURGERY DATE AND STUFF.

8 THE COURT: THE QUESTION WOULD BE -- WE'RE NOT GOING  
9 TO BE WORKING THROUGH THE WEEKEND. WE WOULD COME BACK ON  
10 MONDAY MORNING TO BEGIN.

11 JUROR SPENCER: OKAY.

12 THE COURT: THEN WE WOULD BE WORKING THROUGH THE  
13 WEEK. I'M NOT SURE EXACTLY HOW LONG THE CASE IS GOING TO  
14 TAKE. IT'S POSSIBLE THE JURY COULD BE SEQUESTERED IN WHICH  
15 CASE YOU WOULD BE PUT UP IN A HOTEL FOR THE LENGTH OF THE  
16 TRIAL WHICH I KNOW IT PROBABLY IS GOING TO BE OVER BY FRIDAY,  
17 COULD POSSIBLY GO INTO SATURDAY, AND I CAN'T PROMISE YOU THAT  
18 IT WOULDN'T GO INTO SUNDAY, BUT I DON'T BELIEVE THAT'S GOING  
19 TO HAPPEN. SO YOU MIGHT JUST CHECK WITH YOUR DOCTOR, AND IF  
20 YOU AND YOUR DOCTOR BELIEVE THAT YOUR RECOVERY WOULD  
21 INTERFERE WITH YOUR ABILITY TO SERVE AS A JUROR, THEN WRITE  
22 THAT OUT. HAVE THE DOCTOR WRITE THAT OUT FOR US AND GET IT  
23 BACK TO THE CLERK OF COURT.

24 JUROR SPENCER: SURE. SURE. NO PROBLEM.

25 THE COURT: ALL RIGHT. THANKS. I HOPE ALL THAT

1 GOES WELL.

2 JUROR SPENCER: THANK YOU. DO YOU WANT ME TO WAIT  
3 THEN?

4 THE COURT: YES, MA'AM. YOU'LL BE ALLOWED TO LEAVE  
5 AT ABOUT LUNCH, AND YOU CAN TRY TO TAKE CARE OF THAT AND GET  
6 IT BACK TO US WHEN YOU CAN.

7 JUROR SPENCER: THANK YOU.

8 (JUROR SPENCER LEAVES THE BENCH CONFERENCE.)

9 BAILIFF: NUMBER 64, MS. COOK.

10 (JUROR COOK APPROACHES.)

11 JUROR COOK: GOOD MORNING. I'VE BEEN TRYING TO GET  
12 INTO SCHOOL AT MIDLANDS TECH, AND MY CLASSES STARTED THIS  
13 MORNING.

14 THE COURT: OKAY. LET ME ASK YOU TO STAND RIGHT  
15 OVER THERE JUST ONE SECOND.

16 (JUROR COOK STEPS AWAY.)

17 MR. LITTLEJOHN: NO OBJECTION.

18 THE COURT: DO YOU THINK THAT QUALIFIES FOR A  
19 TRANSFER?

20 MR. LITTLEJOHN: YES, SIR.

21 THE COURT: ALL RIGHT. PASS THAT UP TO HER. MS.  
22 COOK?

23 JUROR COOK: YES.

24 THE COURT: WE'RE GOING TO TRANSFER YOU TO A  
25 DIFFERENT TERM OF COURT---

1 JUROR COOK: OKAY.

2 THE COURT: ---THAT WOULD NOT CONFLICT WITH YOUR  
3 CLASS. WOULD THAT BE SOMETIME THIS SUMMER, YOU THINK?

4 JUROR COOK: IT COULD BE. WELL, THE CLASS STARTS  
5 FROM NOW UNTIL JANUARY OF NEXT YEAR.

6 THE COURT: OKAY. ALL RIGHT. THE CLERK OF COURT  
7 WILL TAKE CARE OF THAT FOR YOU, BUT YOU'RE FREE TO GO FOR  
8 RIGHT NOW.

9 JUROR COOK: SO I DON'T NEED TO BE HERE TOMORROW?

10 THE COURT: NO, MA'AM.

11 (JUROR COOK LEAVES THE BENCH CONFERENCE.)

12 BAILIFF: NUMBER 85, MR. DRIGGERS.

13 (JUROR DRIGGERS APPROACHES.)

14 JUROR DRIGGERS: HEY. HOW ARE YOU DOING, SIR?

15 THE COURT: FINE.

16 JUROR DRIGGERS: THE ONLY CONFLICT I'VE GOT IS I  
17 HAVE AN 11-MONTH OLD DAUGHTER WITH A CRANIAL DEFECT, AND  
18 WE'VE GOT AN APPOINTMENT IN CHARLOTTE FOR -- WITH A  
19 SPECIALIST NEXT MONDAY.

20 THE COURT: A WEEK FROM TODAY?

21 JUROR DRIGGERS: YES, SIR, LIKE ABOUT 3, 3:30,  
22 SOMETHING LIKE THAT AND WE'VE ALREADY POSTPONED IT. IT'S AN  
23 INITIAL CONSULTATION. IT'S A SCENARIO WHERE THEY CAN FIX IT  
24 WITH A HEADBAND, BUT WE HAVE GOT A SHORT TIME FRAME AND WE  
25 TRIED TO LET IT NATURALLY HEAL ITSELF. THAT'S WHY WE DIDN'T



1 DO IT EARLIER.

2 THE COURT: RIGHT.

3 JUROR DRIGGERS: BUT UNFORTUNATELY IT DIDN'T WORK  
4 OUT LIKE WE WANTED, SO THIS IS A PRETTY SERIOUS MEETING AND  
5 THAT -- THEY'RE GOING TO HAVE TO MAKE A DECISION. IT'S GOING  
6 TO BE EXTENSIVE, BUT IT'S THE INITIAL SCENARIO. I DON'T HAVE  
7 A PROBLEM ANY OTHER TIME.

8 THE COURT: MR. DRIGGERS, LET ME GET YOU TO STAND  
9 RIGHT OVER THERE FOR JUST ONE SECOND, PLEASE.

10 (JUROR DRIGGERS STEPS AWAY.)

11 THE COURT: I MEAN, IF THAT'S THE CASE, I WOULD  
12 TRANSFER HIM. I CAN MAKE HIM GET A WRITTEN EXCUSE BUT -- OR  
13 I CAN JUST TAKE HIS WORD FOR IT. ANY OBJECTION TO ME TAKING  
14 HIS WORD FOR IT?

15 MR. LITTLEJOHN: NO, SIR.

16 MR. HUBBARD: NO, SIR.

17 THE COURT: MR. DRIGGERS?

18 JUROR DRIGGERS: YES, SIR.

19 THE COURT: WE'RE GOING TO TRANSFER YOU TO A  
20 DIFFERENT TERM OF COURT.

21 JUROR DRIGGERS: OKAY.

22 THE COURT: YOU'LL RECEIVE ANOTHER SUMMONS IN THE  
23 MAIL TELLING YOU WHEN TO COME.

24 JUROR DRIGGERS: OKAY.

25 THE COURT: GOOD LUCK TO YOU.

1 JUROR DRIGGERS: THANKS.

2 (JUROR DRIGGERS LEAVES THE BENCH CONFERENCE.)

3 BAILIFF: NUMBER 143, MR. HUGHES.

4 (JUROR HUGHES APPROACHES.)

5 JUROR HUGHES: I'M TOM HUGHES. I'M IN THE BOAT  
6 BUSINESS. THERE'S ONLY THREE OF US, AND THIS IS THE BUSIEST  
7 TIME OF THE YEAR FOR US. I DO ALL THE MECHANICAL STUFF. I  
8 DO DELIVER ALL THE NEW BOATS. AND I HAVE NO PROBLEM WITH  
9 SERVING JURY DUTY IF I COULD DO IT, PLEASE, DURING THE WINTER  
10 OR THE FALL. I MEAN, I WORK SEVEN DAYS A WEEK. I MEAN,  
11 WE'RE JUST SO BUSY.

12 THE COURT: YOU'RE THE MECHANICAL...

13 JUROR HUGHES: I DO ALL THE -- I OWN IT. I DO ALL  
14 THE MECHANICAL STUFF AND I DO DELIVER ALL THE NEW BOATS AND  
15 RIG ALL THE NEW BOATS.

16 THE COURT: ALL RIGHT, SIR. ALL RIGHT. THE OTHER  
17 PEOPLE WHO WORK FOR YOU, WHO ARE THEY?

18 JUROR HUGHES: MY WIFE AND DAUGHTER.

19 THE COURT: WIFE AND DAUGHTER?

20 JUROR HUGHES: YES, SIR.

21 THE COURT: ALL RIGHT, SIR. LET ME GET YOU TO STAND  
22 OVER THERE JUST A SECOND, MR. HUGHES.

23 (JUROR HUGHES STEPS AWAY.)

24 THE COURT: I THINK -- I THINK THAT THAT'S A  
25 SITUATION THAT'S WITHIN MY DISCRETION TO TRANSFER HIM, BUT IF

1 THERE'S ANY OBJECTION, I'LL HEAR IT.

2 MR. LITTLEJOHN: NO, SIR.

3 MR. HUBBARD: NO, SIR.

4 THE COURT: ALL RIGHT. MR. HUGHES?

5 JUROR HUGHES: YES, SIR.

6 THE COURT: I'LL TRANSFER YOU TO A TERM OF COURT  
7 THAT IS IN WINTER.

8 JUROR HUGHES: THAT'S FINE.

9 THE COURT: SAY IN DECEMBER OF NEXT (SIC) YEAR. IS  
10 THAT FINE?

11 JUROR HUGHES: THAT'S FINE; YES, SIR. I APPRECIATE  
12 IT. THANK YOU VERY MUCH.

13 THE COURT: PUT HIM FOR DECEMBER.

14 JUROR HUGHES: THAT'S FINE. I APPRECIATE IT.

15 THE COURT: HOLD ON JUST ONE SECOND. YOU CAN GO,  
16 MR. HUGHES.

17 (JUROR HUGHES LEAVES THE BENCH CONFERENCE.)

18 THE COURT: HOW MANY PEOPLE HAVE I EXCUSED OR  
19 TRANSFERRED?

20 LAW CLERK: TWELVE WITH THE POSSIBILITY OF THREE  
21 MORE.

22 THE COURT: TWELVE TO 15. AND WE HAD HOW MANY?  
23 130.

24 THE CLERK: UH-HUH. 133, I THINK.

25 THE COURT: SO WE GOT 115.

1 MR. HUBBARD: HALF OF THEM ARE IN LINE.

2 THE COURT: LET'S TIGHTEN IT UP A LITTLE BIT. ALL  
3 RIGHT.

4 BAILIFF: NUMBER 72, MS. DARBY.

5 (JUROR DARBY APPROACHES.)

6 JUROR DARBY: HI. I HAVE 42,000 STUDENT BOOKLETS  
7 THAT NEED TO BE SCORED, HAND-SCORED BY---

8 THE COURT: 42,000?

9 JUROR DARBY: YES, SIR. WE TEST CHILDREN FROM  
10 ACROSS SOUTH CAROLINA. WE TESTED 21,000 CHILDREN, EACH WITH  
11 TWO DIFFERENT BOOKLETS, AND I REQUEST, PLEASE, A TRANSFER.  
12 I'M IN CHARGE OF THAT PROCESS, AND TECHNICALLY I'M BREAKING  
13 THE TERMS OF MY CONTRACT WITH THE STATE AND SOUTH CAROLINA  
14 TEST SECURITY LEGISLATION BY NOT BEING THERE, AND THEN I'M AN  
15 ADJUNCT INSTRUCTOR.

16 THE COURT: THERE ARE OTHER PEOPLE WHO WORK FOR THIS  
17 COMPANY WHO WORK ON THIS SAME PROJECT?

18 JUROR DARBY: YES, SIR. I HAVE THREE PARTNERS, BUT  
19 I'M THE PROJECT COORDINATOR.

20 THE COURT: ALL RIGHT. SO YOU DO NOT WORK FOR THE  
21 STATE, BUT YOU HAVE A CONTRACT WITH THE STATE.

22 JUROR DARBY: THAT'S CORRECT.

23 THE COURT: TO DO THIS, TO GRADE THESE TESTS---

24 JUROR DARBY: TO ADMINISTER THE TEST, WE BRING THEM  
25 IN AND SCORE THEM AND SEND THE RESULTS BACK TO THE DISTRICT

1 BEFORE SCHOOL'S OUT.

2 THE COURT: ALL RIGHT. I'LL GET BACK WITH YOU.

3 JUROR DARBY: OKAY.

4 THE COURT: YOU CAN GO BACK TO YOUR SEAT, AND I'LL  
5 TRY TO GET BACK WITH YOU THIS AFTERNOON.

6 (JUROR DARBY LEAVES THE BENCH CONFERENCE.)

7 THE COURT: NOW, THAT'S NOT A -- THAT'S NOT AN  
8 AUTOMATIC DISQUALIFICATION. THAT DOES NOT... EITHER I'M  
9 JUST GOING TO HAVE TO WAIT AND DECIDE WHETHER OR NOT I'M  
10 GOING TO DO -- I'M JUST GOING TO HOLD THIS ONE -- HOLD THIS  
11 ONE RIGHT HERE OR -- IS THERE ONE UP HERE ON MY DESK TO THE  
12 MIDDLE OF MY DESK?

13 THE CLERK: WHAT WAS THE -- DO YOU WANT ME TO PUT A  
14 QUESTION ON IT?

15 THE COURT: MA'AM?

16 BAILIFF: NUMBER 157, MS. KEFFER.

17 (JUROR KEFFER APPROACHES.)

18 JUROR KEFFER: KEFFER.

19 THE COURT: WELL, ALL RIGHT. MS. KEFFER.

20 JUROR KEFFER: HEY.

21 THE COURT: YOU ARE NOT A FULL-TIME EMPLOYEE OF THE  
22 SCHOOL DISTRICT.

23 JUROR KEFFER: NO.

24 THE COURT: YOU JUST WORK PART-TIME?

25 JUROR KEFFER: I GO IN EVERY DAY. IF I DON'T WORK

1 IN THE CLASSROOM, I WORK IN THE OFFICE OR TIME-OUT OR  
2 WHATEVER.

3 THE COURT: OKAY. ALL RIGHT. NOW, ON ALL THESE  
4 DAYS ARE YOU GETTING PAID?

5 JUROR KEFFER: THIS WEEK, NO.

6 THE COURT: BECAUSE YOU'RE ON SPRING BREAK.

7 JUROR KEFFER: RIGHT.

8 THE COURT: WHEN YOU SAY YOU GO IN EVERY DAY, DO YOU  
9 HAVE CHILDREN WHO GO TO THIS SCHOOL?

10 JUROR KEFFER: NOT AT THIS PARTICULAR SCHOOL BUT THE  
11 SAME DISTRICT.

12 THE COURT: WORK IN THE SAME SCHOOL EVERY DAY?

13 JUROR KEFFER: UH-HUH.

14 THE COURT: AND DO YOU GET PAID EVERY DAY NORMALLY,  
15 NOT COUNTING THIS WEEK?

16 JUROR KEFFER: RIGHT, \$50 A DAY.

17 THE COURT: ALL RIGHT.

18 JUROR KEFFER: AND MY BLOOD PRESSURE - THIS STUFF  
19 MAKES ME REAL NERVOUS - I KNOW IS WAY UP THERE.

20 THE COURT: OKAY. SO TRY TO RELAX. I'M GOING TO  
21 ASK YOU TO GO BACK TO YOUR SEAT. I'LL BE BACK IN TOUCH WITH  
22 YOU SHORTLY.

23 (JUROR KEFFER LEAVES THE BENCH CONFERENCE.)

24 THE COURT: ALL RIGHT. I'M INCLINED -- I CAN KEEP  
25 HER, I THINK. ANY DISAGREEMENT WITH THAT?

1 MR. LITTLEJOHN: NO, YOUR HONOR.

2 THE COURT: I THINK I'M GOING TO KEEP HER. I'LL  
3 SPEAK TO HER IN A LITTLE BIT. PUT THAT UP THERE WITH THE  
4 OTHER ONE. NOW, PREVIOUSLY I HAD SAID THAT I WAS GOING TO  
5 TRANSFER HER.

6 BAILIFF: 335, MS. WILLIAMS.

7 (JUROR WILLIAMS APPROACHES.)

8 JUROR WILLIAMS: I'M SELF-EMPLOYED, SO WHEN I'M HERE  
9 I DON'T GET PAID.

10 THE COURT: OKAY. WHAT KIND OF WORK?

11 JUROR WILLIAMS: I'M AN ESTHETICIAN. I BELIEVE ONE  
12 OF MY CLIENTS IS WORKING ON THIS CASE FOR THE DEFENSE,  
13 CAROLYN GRAHAM.

14 THE COURT: OKAY.

15 MS. KIMBROUGH: I'M AWARE OF THAT, YOUR HONOR.

16 THE COURT: NOW, YOU WORK AT SALON DE LA LUNE.

17 JUROR WILLIAMS: UH-HUH.

18 THE COURT: DO YOU OWN THAT SALON?

19 JUROR WILLIAMS: NO, I RENT A SPACE, SO WHEN I'M NOT  
20 THERE I'M NOT MAKING ANY MONEY.

21 THE COURT: ALL RIGHT.

22 JUROR WILLIAMS: I UNDERSTAND OBVIOUSLY I NEED TO  
23 SERVE AT ONE POINT. THIS IS MY BUSIEST TIME OF THE YEAR,  
24 SO...

25 THE COURT: MS. WILLIAMS, LET ME GET YOU TO STAND

1 RIGHT OVER THERE FOR JUST ONE SECOND, PLEASE.

2 (JUROR WILLIAMS STEPS AWAY.)

3 MS. KIMBROUGH: IN THE INTEREST OF FULL DISCLOSURE,  
4 YESTERDAY AFTERNOON OUR INVESTIGATOR WAS IN THE OFFICE. SHE  
5 CONTACTED CAROLYN. SHE HAD A CONVERSATION WITH CAROLYN, AND  
6 CAROLYN IS HER REGULAR CLIENT AND SHE NOTICED THAT CAROLYN  
7 WAS WORKING ON THE SIDE... SO I DON'T KNOW. I JUST WANT  
8 EVERYBODY TO BE AWARE OF THAT.

9 THE COURT: WELL, IN TERMS -- WE CAN DEAL WITH THAT  
10 PART OF IT LATER, BUT IN TERMS OF WHETHER OR NOT SHE MEETS  
11 THE EXEMPTION BECAUSE HER BUSINESS WOULD SHUT DOWN, I DON'T  
12 THINK SO. SHE TECHNICALLY MEETS THAT. JUST BECAUSE SOMEBODY  
13 IS SELF-EMPLOYED AND CAN'T WORK DOESN'T MEAN THEY GET  
14 EXCUSED. IT'S WHEN A BUSINESS THAT IS DEPENDENT ON THAT  
15 PERSON HAS TO SHUT DOWN BECAUSE OF THEM NOT BEING HERE. SO I  
16 THINK SHE'S QUALIFIED, I THINK, BUT I'M GOING TO KEEP HER.  
17 MS. WILLIAMS, MA'AM, WE'RE GOING TO -- WE'LL WORK WITH YOU AS  
18 BEST WE CAN TO TRY TO MINIMIZE THE AMOUNT OF TIME THAT YOU'RE  
19 HERE, BUT I'M GOING TO HAVE TO ASK YOU TO STAY JUST A LITTLE  
20 WHILE HERE. I'LL GIVE YOU SOME INFORMATION ABOUT WHEN YOU  
21 NEED TO COME BACK.

22 JUROR WILLIAMS: OKAY. THANKS.

23 THE COURT: STAY WITH US FOR RIGHT NOW.

24 JUROR WILLIAMS: OKAY.

25 (JUROR WILLIAMS LEAVES THE BENCH CONFERENCE.)



1 BAILIFF: 258, MS. RIVERS.

2 (JUROR RIVERS APPROACHES.)

3 JUROR RIVERS: I HAVE A CONDITION. I HAVE  
4 SCLERODERMA. I HAVE A HARD TIME SITTING FOR A PERIOD OF  
5 TIME. I CAN STAND ONE DAY MAYBE ALL RIGHT. THE NEXT DAY I  
6 MAY NOT BE ABLE TO GET OUT OF BED. I CAN GET A DOCTOR'S  
7 NOTE.

8 THE COURT: YOU WILL NEED A DOCTOR'S NOTE. YOU WILL  
9 NEED A DOCTOR'S NOTE. IF YOU CAN GET THE DOCTOR TO EXPLAIN  
10 THAT YOUR CONDITION IS LIKELY TO INTERFERE WITH YOUR ABILITY  
11 TO SERVE AS A JUROR, THEN I CAN LOOK AT THAT NOTE AND  
12 CONSIDER EXCUSING YOU.

13 JUROR RIVERS: OKAY.

14 THE COURT: ALL RIGHT? BUT WITHOUT THAT, I'LL HAVE  
15 TO REQUIRE YOU TO STAY. SO WE'LL TAKE A BREAK HERE AFTER --  
16 WHEN WE BREAK FOR LUNCH AND PROBABLY BE DONE FOR A DAY OR SO.  
17 YOU MAY BE COMING BACK THIS AFTERNOON. SOME WILL BE COMING  
18 BACK THIS AFTERNOON, BUT YOU'LL HAVE TIME TO GO SEE YOUR  
19 DOCTOR AND TRY TO GET THAT TAKEN CARE OF. WHEN YOU GET THAT  
20 NOTE, GET IT TO THE CLERK OF COURT AND I'LL TAKE A LOOK AT IT  
21 AND I'LL BE BACK IN TOUCH WITH YOU.

22 (JUROR RIVERS LEAVES THE BENCH CONFERENCE. SERGEANT  
23 ANDERSON TALKS OFF THE RECORD WITH THE COURT.)

24 THE COURT: NUMBER 59 -- DID Y'ALL HEAR THAT NUMBER  
25 59 SAYS THAT SHE'S -- APPARENTLY SHE WAS ONE OF THE ONES WHO

1 DID NOT REPORT, AND LAW ENFORCEMENT MADE CONTACT WITH HER  
2 MOTHER WHO SAYS THAT SHE TAKES EVENING CLASSES ON TUESDAY AND  
3 THURSDAY TO GET A G.E.D. AND DOES SHE STILL HAVE TO COME IN.  
4 AND MY ANSWER WAS YES.

5 SERGEANT ANDERSON: MR. HALL, THE CALHOUN COUNTY  
6 JUROR IS HERE, AND TWO OF THE OTHERS SHOULD BE HERE.

7 THE COURT: ALL RIGHT. THANK YOU.

8 THE CLERK: NUMBER 55, YOUR HONOR, THAT YOU HAD  
9 ADVISED US TO ADVISE TO COME IN TODAY THAT DID NOT RESPOND,  
10 MR. MICHAEL CAYLOR, THE SHERIFF'S DEPARTMENT WAS SENT BACK  
11 OUT TO ADVISE HIM THAT HE HAD TO BE HERE AND FILL OUT A  
12 QUESTIONNAIRE. I JUST RECEIVED THIS FROM THE SHERIFF'S  
13 DEPARTMENT. THEY WENT OUT THERE TO THE RESIDENCE, AND IT  
14 RESULTED IN HE DIDN'T LIVE THERE AND HE HASN'T LIVED THERE IN  
15 ABOUT A YEAR, AND THERE IS NO FORWARDING ADDRESS AT THE  
16 POSTAL SERVICE.

17 THE COURT: SO THAT EXPLAINS WHY HE'S NOT HERE.

18 THE CLERK: YES, SIR.

19 THE COURT: OKAY. THANK YOU. LET'S TAKE A BREAK.  
20 ALL RIGHT? AND I WILL -- I'LL EXPLAIN -- I'LL TAKE THE HEAT  
21 FOR IT AND I'LL EXPLAIN IT. SO WE'LL TAKE ABOUT A FIVE-TO-  
22 TEN-MINUTE BREAK, AND WE'LL COME BACK AND DO SOME MORE. ALL  
23 RIGHT?

24 (THIS CONCLUDES THE COLLOQUY AT THE SIDE BAR.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE

1 GOING TO TAKE A BREAK NOW, AND WE'LL BE BACK IN ABOUT TEN  
2 MINUTES. THOSE OF YOU WHO ARE IN LINE, I APOLOGIZE. IF YOU  
3 WANT TO HAVE A SEAT UP HERE NEAR THE FRONT OF THE COURTROOM,  
4 YOU'RE WELCOME TO DO THAT AND WE'LL BE BACK IN ABOUT TEN  
5 MINUTES TO RESUME. IF YOU -- IF YOU NEED TO GET UP AND TAKE  
6 A BREAK, YOU CAN. PLEASE DO SO ORDERLY AND QUIETLY, AND BE  
7 BACK IN YOUR SEAT BY -- AS SOON AS YOU CAN.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 THE COURT: BE SEATED, PLEASE.

10 (THE COLLOQUY AT THE SIDE BAR BETWEEN THE COURT, THE  
11 ATTORNEYS, AND EACH INDIVIDUAL JUROR AS THEY APPROACHED  
12 RESUMED AS FOLLOWS:)

13 BAILIFF: THIS IS 123, MS. HALL.

14 JUROR HALL: OKAY.

15 THE COURT: OKAY. COME ON UP, MS. HALL.

16 (JUROR HALL APPROACHES.)

17 THE COURT: HOLD ON JUST ONE SECOND. OKAY. MS.  
18 HALL, WHAT WOULD YOU LIKE TO TELL ME?

19 JUROR HALL: I HAVE AN 11-MONTH-OLD WHO IS IN THE  
20 HOSPITAL. HE HAS RODO VIRUS. HE'S AT PALMETTO RICHLAND  
21 RIGHT NOW. I'VE GOT FAMILY WHO CAN HELP OUT THIS WEEK, BUT  
22 WE DON'T KNOW WHEN HE'S GOING TO GET OUT.

23 THE COURT: HOW LONG HAS HE BEEN IN THE HOSPITAL?

24 JUROR HALL: SINCE SATURDAY.

25 THE COURT: WELL, I'M SORRY. THAT'S BEEN A TOUGH

1 WEEKEND FOR YOU. WELL, I APPRECIATE YOU MAKING THE EFFORT TO  
2 GET OVER HERE. YOUR -- AND THEY HAVEN'T GIVEN YOU ANY CLEAR  
3 INDICATION WHEN HE'S GOING TO BE ABLE TO GO HOME?

4 JUROR HALL: NO.

5 THE COURT: LET ME GET YOU TO STAND RIGHT OVER THERE  
6 JUST ONE SECOND, PLEASE.

7 (JUROR HALL STEPS AWAY.)

8 MS. KIMBROUGH: IS SHE THE PRIMARY CARE PROVIDER FOR  
9 THAT CHILD? I MEAN OBVIOUSLY...

10 THE COURT: I DON'T KNOW. I MEAN, SHE SAID---

11 MR. LITTLEJOHN: SHE DID SAY 11?

12 THE COURT: SHE'S GOT AN 11-MONTH-OLD IN THE  
13 HOSPITAL. I THINK I'M GOING TO CUT HER LOOSE.

14 MS. KIMBROUGH: CUT HER LOOSE.

15 THE COURT: COME UP. I HOPE THAT GOES WELL. I HOPE  
16 HE GETS OUT OF THERE SOON. WE'RE GOING TO GO AHEAD AND LET  
17 YOU GO.

18 JUROR HALL: THANK YOU VERY MUCH.

19 THE COURT: WE'LL HAVE TO TRANSFER YOU TO A  
20 DIFFERENT TERM. IT WILL BE SOMETIME LATER. YOU'LL GET  
21 ANOTHER SUMMONS.

22 JUROR HALL: THANK YOU VERY MUCH.

23 THE COURT: GOOD LUCK TO YOU.

24 (JUROR HALL LEAVES THE BENCH CONFERENCE.)

25 BAILIFF: JUROR 294, YOUR HONOR.

1 (JUROR SMOAK APPROACHES.)

2 JUROR SMOAK: HI. I'M MICHELLE SMOAK. I WORK FOR A  
3 SMALL LAW FIRM DOWNTOWN. MY BOSS WROTE A LETTER ASKING THAT  
4 I BE EXCUSED. I'M THE OFFICE MANAGER. I'M THE ONLY PERSON  
5 THAT DOES PAYROLL. I'M TRYING TO HIRE SOMEBODY ACTUALLY  
6 RIGHT NOW.

7 THE COURT: WELL, I'M SURE THAT MR. MCLAURIN WILL  
8 UNDERSTAND THAT WE CAN'T EXCUSE YOU FOR THAT. I UNDERSTAND  
9 IT'S AN INCONVENIENCE FOR YOU AND ALSO FOR HIM, BUT WE NEED  
10 TO HAVE YOU STAY.

11 JUROR SMOAK: OKAY.

12 THE COURT: THANKS. THANK YOU, MA'AM.

13 (JUROR SMOAK LEAVES THE BENCH CONFERENCE.)

14 BAILIFF: JUROR 291, YOUR HONOR.

15 (JUROR SMITH APPROACHES.)

16 JUROR SMITH: HELLO. NEAL SMITH.

17 THE COURT: YES, SIR.

18 JUROR SMITH: I'M SELF-EMPLOYED AND I NEED TO  
19 START---

20 THE COURT: YOU'RE AN ELECTRICIAN? PLUMBER?

21 JUROR SMITH: ELECTRICIAN.

22 THE COURT: OKAY.

23 JUROR SMITH: I'VE GOT THE BEST CONTRACT I EVER HAD  
24 STARTING THIS WEEK.

25 THE COURT: HOW LONG WILL IT TAKE YOU TO COMPLETE

1 THAT WORK?

2 JUROR SMITH: I'VE GOT TO BE FINISHED BY JUNE 30TH.

3 THE COURT: SO IT'S A BIG---

4 JUROR SMITH: IT'S A BIG PROJECT.

5 THE COURT: OKAY.

6 JUROR SMITH: 640 SOMETHING.

7 THE COURT: DO YOU HAVE PEOPLE WHO WORK FOR YOU?

8 JUROR SMITH: NONE YET. I'VE GOT TO HIRE AT LEAST

9 TWO FOR THIS JOB.

10 THE COURT: WHEN WILL YOU ACTUALLY START WORK ON THE  
11 JOB?

12 JUROR SMITH: IF MATERIALS ARE IN, THURSDAY.

13 THE COURT: ALL RIGHT. ALL RIGHT.

14 JUROR SMITH: I'M A SUBCONTRACTOR FOR A COMMERCIAL  
15 -- FOR A COMMERCIAL PLUMBER.

16 THE COURT: OKAY. I'M GOING TO KEEP THINKING ABOUT  
17 IT, AND WE'LL SEE HOW YOUR SITUATION DEVELOPS DURING THE  
18 WEEK.

19 JUROR SMITH: THAT WILL BE FINE.

20 THE COURT: SO STAY WITH US FOR NOW.

21 JUROR SMITH: GREAT.

22 THE COURT: AND THEN WE WILL -- YOU JUST TAKE IT  
23 UPON YOURSELF TO KEEP ME UPDATED THROUGH THE CLERK OF COURT  
24 ABOUT THIS JOB.

25 JUROR SMITH: I'LL LET YOU KNOW THE START DATE OR

1 THE MATERIAL STATUS. THAT WILL BE FINE.

2 THE COURT: ALL RIGHT. GOOD. THANK YOU.

3 JUROR SMITH: THANKS.

4 THE COURT: I'M GOING TO RELY ON YOU TO COME BACK  
5 WITH THAT INFORMATION.

6 JUROR SMITH: THANK YOU, SIR.

7 THE COURT: ALL RIGHT. THANK YOU.

8 (JUROR SMITH LEAVES THE BENCH CONFERENCE.)

9 BAILIFF: JUROR 219, YOUR HONOR.

10 THE COURT: HOLD ON JUST ONE SECOND. NOW, IF IT  
11 TURNS OUT THAT HE HAS A JOB THAT STARTS ON THURSDAY AND THAT  
12 IS OF THAT NATURE, THEN I WOULD PROBABLY -- UNDER NORMAL  
13 CIRCUMSTANCES I WOULD TRANSFER HIM TO A DIFFERENT TERM OF  
14 COURT. WE'LL EVALUATE HOW WE STAND AT THAT TIME TO DECIDE  
15 WHAT I'LL ACTUALLY DO.

16 BAILIFF: JUROR 219.

17 (JUROR NOYES APPROACHES.)

18 JUROR NOYES: GOOD MORNING, YOUR HONOR.

19 THE COURT: GOOD MORNING.

20 JUROR NOYES: MY EMPLOYER SENT YOU A LETTER AND I'M  
21 ONE OF FIVE PEOPLE IN THE CITY THAT DOES WHAT I DO. SHOULD  
22 THERE BE AN ELECTRICAL STORM OR IS A PROBLEM WITH ONE OF THE  
23 FOUR TRANSMITTER SITES, I'M THE ONE THAT PUTS THEM BACK ON  
24 THE AIR, SO... I'M WILLING TO SERVE.

25 THE COURT: APPROXIMATELY HOW OFTEN DO YOU HAVE TO

1 GO INTO THIS TYPE OF EMERGENCY PREPAREDNESS?

2 JUROR NOYES: IT'S HARD TO SAY. I'M ON CALL 24/7.

3 THE COURT: WHEN WAS THE LAST TIME YOU HAD TO DO  
4 ONE?

5 JUROR NOYES: LAST SUMMER WE GOT -- THREE OUT OF THE  
6 FOUR STATIONS WERE OFF THE AIR.

7 THE COURT: LAST SUMMER?

8 JUROR NOYES: I MEAN, IT CAN HAPPEN IN ANY  
9 ELECTRICAL STORM, ANY ONE OF THOSE FOUR. I ALSO CONSULT  
10 THREE OTHER STATIONS IN TOWN.

11 THE COURT: WHEN WAS THE LAST TIME YOU HAD TO DO AN  
12 EMERGENCY REPAIR LIKE THAT?

13 JUROR NOYES: DECEMBER.

14 THE COURT: WELL, I'M GOING TO JUST HOPE THAT THAT  
15 DOESN'T HAPPEN. IF IT DOES, YOU BRING IT TO MY ATTENTION IF  
16 YOU'RE ON THE JURY.

17 JUROR NOYES: I'LL HAVE NO WAY OF KNOWING BECAUSE I  
18 CAN'T HAVE A CELL PHONE OR A PAGER.

19 THE COURT: WE'LL TAKE CARE OF THEIR BEING ABLE TO  
20 GET IN TOUCH WITH YOU. IF YOU GET ON THE JURY, WE'LL MAKE IT  
21 POSSIBLE FOR THEM TO GET IN TOUCH WITH YOU. YOU BRING IT TO  
22 MY ATTENTION, AND I'LL TRY TO ACCOMMODATE YOU IF I CAN.

23 JUROR NOYES: NO PROBLEM.

24 THE COURT: THANKS.

25 (JUROR NOYES LEAVES THE BENCH CONFERENCE.)



1 BAILIFF: JUROR 183, YOUR HONOR.

2 (JUROR LONEY APPROACHES.)

3 JUROR LONEY: WORK IS GOING TO GET IN THE WAY.

4 UNFORTUNATELY, I'M THE THIRD IN COMMAND, AND I HAVE TO BE IN  
5 CHARLOTTE.

6 THE COURT: OF THIS WEEK?

7 JUROR LONEY: THE PRESIDENT IS OUT OF TOWN. THE  
8 C.F.O. IS OUT THIS WEEK. I'M THE ONLY SENIOR MANAGER  
9 AVAILABLE.

10 THE COURT: WE CAN TAKE CARE OF MAKING YOU FREE TO  
11 GO UP THERE THIS WEEK.

12 JUROR LONEY: OKAY.

13 THE COURT: NEXT WEEK YOU WOULD NOT BE ABLE TO.

14 JUROR LONEY: OKAY. AND OUR COMPANY POLICY ONLY  
15 ALLOWS ME OUT FOR FIVE DAYS. IF I'M OUT THIS WEEK, I CAN'T  
16 BE OUT NEXT WEEK, TOO.

17 THE COURT: OKAY. WELL...

18 JUROR LONEY: AS THE SOLE BREADWINNER OF MY FAMILY,  
19 I CAN'T TAKE A WEEK OFF.

20 THE COURT: I UNDERSTAND. I UNDERSTAND THAT. WE  
21 WILL -- WE WOULD DO OUR BEST TO MINIMIZE THE AMOUNT OF TIME  
22 THAT YOU HAVE TO SPEND HERE.

23 JUROR LONEY: RIGHT.

24 THE COURT: BUT IF YOU GET ON THE JURY AND THAT  
25 REQUIRES YOU TO BE OUT MORE THAN FIVE DAYS, YOUR COMPANY WILL

1 HAVE TO MAKE SOME ACCOMMODATION. AND WHETHER THEY PAY YOU OR  
2 NOT WOULD REALLY BE BETWEEN YOU AND THEM, BUT THEY CAN'T KEEP  
3 YOU FROM SERVING.

4 JUROR LONEY: RIGHT.

5 THE COURT: SO YOU'RE NOT DISQUALIFIED BECAUSE OF  
6 THIS.

7 JUROR LONEY: UH-HUH.

8 THE COURT: WE WILL -- IN JUST A LITTLE WHILE YOU'LL  
9 FIND OUT WHAT YOUR SCHEDULE IS FOR THIS WEEK AND WHEN YOU  
10 COME BACK. BEFORE YOU LEAVE HERE THIS WEEK, SPEAK TO ME AND  
11 WE'LL MAKE SURE THAT THAT SCHEDULE DOES NOT KEEP YOU FROM  
12 GOING TO CHARLOTTE AS YOU NEED TO BECAUSE WE CAN ADJUST THE  
13 SCHEDULE FOR THIS WEEK. NEXT WEEK WE CAN'T.

14 JUROR LONEY: ALL RIGHT.

15 THE COURT: THAT WORKS. WE'LL HELP YOU THIS WEEK,  
16 AND THEN NEXT WEEK WE'LL JUST HAVE TO SEE WHAT HAPPENS.

17 JUROR LONEY: GOOD ENOUGH.

18 THE COURT: ALL RIGHT. THANKS.

19 (JUROR LONEY LEAVES THE BENCH CONFERENCE.)

20 BAILIFF: JUROR NUMBER 88, YOUR HONOR.

21 (JUROR EDWARDS APPROACHES.)

22 JUROR EDWARDS: I NEED TO SEE IF I CAN GET EXEMPT.  
23 I'M COURT-ORDERED TO PAY CHILD SUPPORT, AND IF I DON'T WORK I  
24 DON'T GET PAID.

25 THE COURT: OKAY. LET'S SEE. YOU'RE A PRESS

1 OPERATOR AT AMERICAN SYSTEMS?

2 JUROR EDWARDS: YES, SIR.

3 THE COURT: OKAY. I CAN'T -- I CAN'T EXCUSE YOU FOR  
4 THAT. NOW, WHAT I CAN DO IS TO TRY TO MINIMIZE THE AMOUNT OF  
5 TIME THAT YOU WILL SPEND HERE, BUT IF YOU GET ON THE JURY,  
6 THEN YOU'LL JUST HAVE TO MAKE ADJUSTMENTS SOMEHOW. I REALIZE  
7 THAT WILL BE DIFFICULT AND I'M SORRY FOR THE DIFFICULTY, BUT  
8 THERE WILL BE OTHER JURORS ON THE JURY PANEL WHO HAVE THE  
9 SAME DIFFICULTY AND WE'LL JUST DO OUR BEST TO TRY TO MOVE AS  
10 EFFICIENTLY AS WE CAN AND HOPE THAT IT IS AS LITTLE  
11 INCONVENIENCE TO YOU AS WE CAN MAKE IT.

12 JUROR EDWARDS: OKAY.

13 THE COURT: ALL RIGHT? THANKS.

14 (JUROR EDWARDS LEAVES THE BENCH CONFERENCE.)

15 BAILIFF: JUROR 179, YOUR HONOR.

16 (JUROR LEWIS APPROACHES.)

17 JUROR LEWIS: HI. I'VE BEEN WORKING IN CHARLESTON  
18 THE PAST YEAR. I HAD TO CHANGE MY ADDRESS, AND I WORK FOR  
19 MYSELF AND BY MYSELF. I JUST---

20 THE COURT: WHAT KIND OF WORK DO YOU DO?

21 JUROR LEWIS: DELIVERIES.

22 THE COURT: DO YOU STILL LIVE HERE IN LEXINGTON  
23 COUNTY?

24 JUROR LEWIS: I GOT PROPERTY HERE.

25 THE COURT: WHERE DO YOU SPEND THE NIGHT MOST

1 NIGHTS?

2 JUROR LEWIS: I HAVE TO RENT A PLACE IN CHARLESTON.

3 THE COURT: WHERE DOES YOUR DRIVER'S LICENSE SHOW  
4 YOU TO BE A RESIDENT?

5 JUROR LEWIS: LEXINGTON.

6 THE COURT: DO YOU VOTE IN LEXINGTON? ARE YOU  
7 REGISTERED TO VOTE HERE?

8 JUROR LEWIS: YES.

9 THE COURT: OKAY.

10 JUROR LEWIS: I JUST HAVEN'T CHANGED EVERYTHING OVER  
11 BECAUSE I DIDN'T KNOW HOW... I JUST HAVEN'T CHANGED  
12 EVERYTHING OVER BECAUSE I DIDN'T KNOW HOW IT WAS GOING TO  
13 WORK OUT.

14 THE COURT: YOU'RE STILL A RESIDENT OF LEXINGTON  
15 COUNTY. AS FAR AS YOUR WORK SCHEDULE IS CONCERNED, JUST LIKE  
16 WITH ALL THESE OTHER JURORS THAT I'VE BEEN TALKING WITH,  
17 WE'LL TRY TO MINIMIZE THE AMOUNT OF TIME THAT YOU'LL HAVE TO  
18 SPEND AWAY FROM YOUR WORK OR IF YOU GET ON THE JURY THERE'S  
19 GOING TO BE SOMETIME WHEN YOU'RE NOT GOING TO BE ABLE TO  
20 WORK, COULD BE AS MUCH AS A WEEK. SO WE'LL DO OUR BEST.

21 JUROR LEWIS: ALL RIGHT.

22 THE COURT: THANK YOU.

23 JUROR LEWIS: THANK YOU.

24 (JUROR LEWIS LEAVES THE BENCH CONFERENCE.)

25 THE COURT: NOW, WE'RE ALMOST DONE. IF ANYBODY

1 OBJECTS TO ANYTHING THAT I HAVE SAID, I ASSUME YOU WILL  
2 EITHER TELL ME NOW OR TELL ME RIGHT AFTERWARDS. SO HAVING  
3 HEARD NOTHING, I ASSUME THERE'S NO OBJECTION TO ANYTHING WE  
4 HAVE DONE SO FAR.

5 BAILIFF: JUROR 186, YOUR HONOR.

6 (JUROR LUCAS APPROACHES.)

7 JUROR LUCAS: GOOD AFTERNOON.

8 THE COURT: HEY.

9 JUROR LUCAS: I'M DEBORAH LUCAS. I SENT YOU A  
10 LETTER. I HAVE A DAY CARE CENTER, AND I HAVE SOMEBODY  
11 WORKING MY BUSINESS RIGHT NOW. I KEEP THEM FROM EIGHT MONTHS  
12 TO TEN YEARS OLD.

13 THE COURT: UH-HUH.

14 JUROR LUCAS: THAT'S IT. SO THAT'S ALL I HAVE TO  
15 SAY.

16 THE COURT: ALL RIGHT. LET'S SEE. WE HAVE A COPY  
17 OF YOUR REGISTRATION FROM THE DEPARTMENT OF SOCIAL SERVICES.

18 JUROR LUCAS: YES, SIR.

19 THE COURT: AND THAT'S ALL WE HAVE. YOU STATED IN  
20 YOUR QUESTIONNAIRE THAT YOU RUN A DAY CARE CENTER.

21 JUROR LUCAS: YES, SIR.

22 THE COURT: SO WE ASSUMED THAT YOU MEANT THAT YOU  
23 WANTED TO BE EXCUSED, BUT WE DIDN'T THINK THAT WAS ENOUGH  
24 INFORMATION TO EXCUSE YOU JUST BASED ON THAT.

25 JUROR LUCAS: YES, SIR.

1 THE COURT: DO YOU HAVE CHILDREN THAT ARE COMING --  
2 WOULD BE COMING TO YOU THIS WEEK?

3 JUROR LUCAS: NO, SIR. I MADE ARRANGEMENTS PRIOR TO  
4 -- I TALKED TO THE COUNTY CLERK. SHE WAS VERY NICE ON THE  
5 PHONE. SO I HAD SOMEONE RUN THE BUSINESS WHERE IF I KNEW I  
6 WASN'T HERE SOMEBODY IS GOING TO BE THERE, AND I DO HAVE A  
7 POLICE ESCORT. SO I WAS ONE OF THE POLICE ESCORTS.

8 THE COURT: SO TODAY---

9 JUROR LUCAS: YES, SIR.

10 THE COURT: ---ARE THERE CHILDREN THAT ARE AT YOUR  
11 BUSINESS BEING CARED FOR BY OTHER PEOPLE?

12 JUROR LUCAS: A FRIEND OF MINE IS TAKING CARE OF  
13 THEM. I TRUST HER. THAT'S WHY I PUT HER THERE WITH THE  
14 CHILDREN.

15 THE COURT: HOW MANY CHILDREN DO YOU NORMALLY TAKE  
16 CARE OF?

17 JUROR LUCAS: SIX.

18 THE COURT: SIX. ARE THESE THE SAME SIX THAT COME  
19 EVERY WEEK DURING THE DAY?

20 JUROR LUCAS: YES, SIR, FULL-TIME.

21 THE COURT: DO YOU HAVE CONTRACTS WITH THE PARENTS  
22 OF THESE CHILDREN?

23 JUROR LUCAS: YES.

24 THE COURT: ALL RIGHT. NOW, IF YOU ARE REQUIRED --  
25 IF I CAN'T EXCUSE YOU, THIS FRIEND -- IS SHE ABLE TO TAKE

1 CARE OF THEM FOR THE NEXT TWO WEEKS?

2 JUROR LUCAS: YES, SIR.

3 THE COURT: OKAY. LET ME GET YOU TO STAND RIGHT  
4 OVER THERE FOR JUST ONE SECOND, PLEASE.

5 (JUROR LUCAS STEPS AWAY.)

6 THE COURT: I DON'T THINK -- I THINK SHE JUST -- SHE  
7 HAS RE-QUALIFIED HERSELF. ALL RIGHT. ANYBODY DISAGREE?

8 MR. LITTLEJOHN: NO, SIR.

9 MS. KIMBROUGH: HUH-UH.

10 THE COURT: OKAY. MS. LUCAS?

11 JUROR LUCAS: YES, SIR.

12 THE COURT: WE APPRECIATE YOU MAKING ARRANGEMENTS  
13 FOR YOUR CHILDREN TO BE TAKEN CARE OF.

14 JUROR LUCAS: YES, SIR.

15 THE COURT: AND WE WILL TRY TO MINIMIZE THE AMOUNT  
16 OF TIME THAT YOU HAVE TO USE THAT PERSON. FOR EXAMPLE, FOR  
17 THE -- AT ABOUT LUNCHTIME TODAY---

18 JUROR LUCAS: YES, SIR.

19 THE COURT: ---YOU WILL BE ABLE TO BE IN THAT  
20 BUSINESS WORKING FOR THE REST OF THIS WEEK EXCEPT FOR ABOUT  
21 TWO TO FOUR HOURS WHEN YOU'LL HAVE TO COME BACK ONE DAY.

22 JUROR LUCAS: OKAY.

23 THE COURT: AND THEN IF YOU GET ON THE JURY, THEN  
24 YOU'LL NEED THAT PERSON OR SOMEONE ELSE.

25 JUROR LUCAS: SHE'S MY AUNT. I TRUST HER. WILL YOU

1 LET ME HAVE A HEADS-UP TO KNOW WHAT HOURS?

2 THE COURT: YOU WILL KNOW APPROXIMATELY TODAY. I  
3 WILL TELL YOU APPROXIMATELY WHEN YOU WILL NEED TO COME BACK,  
4 AND THEN AS THE WEEK GOES, I'LL GIVE YOU MORE AND MORE  
5 SPECIFIC INFORMATION.

6 JUROR LUCAS: WILL I HAVE MY ESCORT TAKE ME HOME?

7 THE COURT: WE'RE NOT DONE. YOU CAN JUST HAVE A  
8 SEAT. IT WON'T BE MUCH LONGER.

9 JUROR LUCAS: YES, SIR.

10 (JUROR LUCAS LEAVES THE BENCH CONFERENCE.)

11 BAILIFF: JUROR 229, YOUR HONOR.

12 (JUROR PEEK APPROACHES.)

13 THE COURT: MS. PEEK.

14 JUROR PEEK: YES.

15 THE COURT: ALL RIGHT. YOU ARE A TEACHER'S  
16 ASSISTANT?

17 JUROR PEEK: UH-HUH.

18 THE COURT: IS THIS A FULL-TIME JOB?

19 JUROR PEEK: YES.

20 THE COURT: ALL RIGHT. NOW, IS THE TEACHER THAT YOU  
21 WORK FOR -- IS SHE ABLE TO RUN OR HE ABLE TO RUN THE CLASS  
22 WHEN YOU'RE NOT PRESENT?

23 JUROR PEEK: BY LAW THERE'S SUPPOSED TO BE TWO  
24 PEOPLE IN THESE CLASSROOMS BECAUSE IT'S SPECIAL ED.

25 THE COURT: SO YOU HAD TO GET A SUBSTITUTE FOR



1 TODAY?

2 JUROR PEEK: NO, BECAUSE WE'RE OUT ON SPRING BREAK,  
3 BUT THOSE OTHER DAYS THAT I SERVED ON OTHER JURY DUTIES I HAD  
4 TO GET A SUBSTITUTE. SO IF I'M OUT NEXT WEEK, I WILL HAVE TO  
5 GET A SUB FOR THE WHOLE WEEK.

6 THE COURT: OKAY. ALL RIGHT. THANK YOU. LET ME  
7 GET YOU TO STAND RIGHT OVER HERE FOR JUST ONE SECOND.

8 (JUROR PEEK STEPS AWAY.)

9 THE COURT: WELL, I THINK SHE PROBABLY QUALIFIES TO  
10 BE TRANSFERRED AND IT'S AN AUTOMATIC TRANSFER. I CAN  
11 PROBABLY GET AWAY WITH KEEPING HER, BUT I BETTER NOT UNLESS  
12 SHE'S NOT CORRECT THAT THE STATE LAW REQUIRES TWO PEOPLE TO  
13 BE IN THE CLASSROOM. I'LL TAKE HER WORD FOR IT. IT'S A  
14 SPECIAL ED CLASS. I ACTUALLY WOULD SORT OF ASSUME THAT THAT  
15 WOULD BE THE CASE. SO ANY OBJECTION TO ME TRANSFERRING HER?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 MR. GRAHAM: NO.

18 THE COURT: ALL RIGHT. MS. PEEK, I'M GOING TO  
19 TRANSFER YOU TO A DIFFERENT TERM WHICH WOULD END UP BEING THE  
20 SUMMER.

21 JUROR PEEK: THAT'S FINE.

22 THE COURT: SO YOU CAN STAY IF YOU WANT TO AND SERVE  
23 ON THE JURY SERVICE THIS TERM OR I CAN TRANSFER YOU TO THE  
24 SUMMER.

25 JUROR PEEK: WELL, BUT, SEE, IF I -- IF I SERVE --

JURY VOIR DIRE

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1 WE'VE GOT P.A.C.T.S. COMING UP. I'M CONCERNED ABOUT MY KIDS  
2 AS FAR AS WHAT WE'RE GOING TO NEED TO DO WITH THEM.

3 THE COURT: IT'S YOUR CHOICE. IT'S YOUR CHOICE. IF  
4 YOU WANT ME TO TRANSFER YOU, I'LL TRANSFER YOU.

5 JUROR PEEK: YEAH, I DO.

6 THE COURT: OKAY. SHE'LL TRANSFER YOU TO SOMETIME  
7 IN THE SUMMER.

8 JUROR PEEK: SO I CAN GO HOME?

9 THE COURT: YES, MA'AM.

10 JUROR PEEK: THANK YOU.

11 THE COURT: HAVE A NICE SPRING BREAK.

12 (JUROR PEEK LEAVES THE BENCH CONFERENCE.)

13 THE COURT: PUT HER DOWN IN THE SUMMER AND DON'T  
14 TRANSFER HER AGAIN.

15 BAILIFF: JUROR NUMBER 69, YOUR HONOR.

16 (JUROR COURTENAY APPROACHES.)

17 THE COURT: MR. COURTENAY, I GOT YOUR RECORD OF  
18 CONVICTIONS HERE.

19 JUROR COURTENAY: UH-HUH.

20 THE COURT: AND IT LOOKS LIKE YOU WERE CONVICTED  
21 BACK IN '85 OF DRIVING UNDER THE INFLUENCE THIRD OFFENSE. IS  
22 THAT CORRECT?

23 JUROR COURTENAY: YEAH.

24 THE COURT: OKAY. ALL RIGHT. THAT WOULD DISQUALIFY  
25 YOU, AND SO YOU'RE FREE TO GO.

1 JUROR COURTENAY: THANK YOU.

2 THE COURT: THANK YOU, SIR.

3 JUROR COURTENAY: THANK YOU.

4 (JUROR COURTENAY LEAVES THE BENCH CONFERENCE.)

5 BAILIFF: JUROR NUMBER 304.

6 THE COURT: COME UP, SIR.

7 (JUROR STEVENS APPROACHES.)

8 JUROR STEVENS: HI. JUDGE, I DON'T HAVE A PROBLEM  
9 AT ALL SERVING, BUT THIS IS JUST A BAD WEEK. I'M ON SPRING  
10 BREAK AND MY DAUGHTER IS ON SPRING BREAK, AND WE JUST PLANNED  
11 FOR THE BEACH.

12 THE COURT: WHEN ARE Y'ALL PLANNING ON LEAVING?

13 JUROR STEVENS: TOMORROW THROUGH FRIDAY.

14 THE COURT: OKAY. WE'LL TRY TO WORK AROUND THAT FOR  
15 YOU. OKAY? SO YOU CAN LEAVE TOMORROW.

16 JUROR STEVENS: OKAY.

17 THE COURT: THANK YOU. BEFORE YOU LEAVE TODAY, YOU  
18 MAKE SURE THAT WE'VE GOT THAT WORKED OUT FOR YOU. OKAY?

19 JUROR STEVENS: OKAY.

20 THE COURT: WHAT TIME TOMORROW ARE YOU LEAVING?

21 JUROR STEVENS: WE WERE GOING TO TRY TO LEAVE  
22 SOMETIME IN THE MORNING.

23 THE COURT: OKAY. ALL RIGHT. DON'T LEAVE THE  
24 COURTHOUSE TODAY WITHOUT ME MAKING SURE THAT YOU CAN GO TO  
25 THE BEACH. ALL RIGHT?

1 JUROR STEVENS: THANK YOU.

2 (JUROR STEVENS LEAVES THE BENCH CONFERENCE.)

3 THE COURT: HOW ARE WE GOING TO REMEMBER THIS?

4 THE CLERK: I GOT IT. MAKE SURE HE KNOWS TO RETURN  
5 TO HIS SEAT RIGHT NOW.

6 MS. KIMBROUGH: MAYBE WE COULD STICK HIM IN THE  
7 FIFTH PANEL.

8 THE CLERK: WE COULD STICK HIM IN THE FIFTH PANEL.  
9 DO YOU WANT TO DO THAT?

10 THE COURT: WE HAVE TO GO AHEAD AND DRAW THE NAMES  
11 RANDOMLY AND THEN DO THAT.

12 BAILIFF: JUROR NUMBER 28.

13 (JUROR BRADLEY APPROACHES.)

14 JUROR BRADLEY: I FILLED OUT THE FORM AND  
15 EVERYTHING. I'M 68, SO I WANT TO USE THAT AS A WAY TO GET  
16 OUT. MY GRANDDAUGHTER IS COMING DOWN FROM KNOXVILLE AND HER  
17 SCHOOL IS OUT THIS YEAR, AND THE NEXT TIME I GET TO SEE HER  
18 I'LL HAVE TO GO ALL THE WAY TO MICHIGAN.

19 THE COURT: IS THAT THIS WEEK?

20 JUROR BRADLEY: YEAH. SHE'S GOING TO BE DOWN LATER,  
21 ABOUT THURSDAY.

22 THE COURT: OKAY. WELL, NOW, WE CAN WORK AROUND  
23 THAT. WE WILL NEED YOU AFTER LUNCH TODAY. WE'LL ONLY NEED  
24 YOU TO COME BACK UP HERE ONE MORE TIME DURING THE WEEK FOR  
25 TWO TO FOUR HOURS, AND WE CAN PRETTY MUCH DO THAT ANY TIME WE

1 WANT TO. SO WE CAN -- WE CAN MAKE YOU FREE SO THAT YOU CAN  
2 VISIT WITH YOUR DAUGHTER WHEN SHE COMES DOWN IF THAT SUITS  
3 YOU, BUT NOW BECAUSE YOU'RE OVER 65, ALL YOU HAVE TO DO IS  
4 SAY, "I WANT TO BE EXCUSED," AND I'LL EXCUSE YOU. BUT IF  
5 YOU'RE WILLING AND WANTING TO SERVE, THEN WE CAN WORK AROUND  
6 THE PROBLEM THAT YOU HAVE FOR THIS WEEK.

7 JUROR BRADLEY: WELL, SEE, SHE'LL BE OVER PART INTO  
8 NEXT WEEK, TOO. SO YOU CAN CALL ME BACK LATER. I'LL BE GLAD  
9 TO COME BACK.

10 THE COURT: SO YOU WANT TO BE...

11 JUROR BRADLEY: RIGHT. I'D LIKE TO GET OUT THIS  
12 WEEK.

13 THE COURT: WE'LL TRANSFER YOU TO A DIFFERENT WEEK  
14 OF COURT. ALL RIGHT. THANK YOU.

15 (JUROR BRADLEY LEAVES THE BENCH CONFERENCE.)

16 BAILIFF: JUROR NUMBER 98.

17 (JUROR FIDLER APPROACHES.)

18 JUROR FIDLER: HI.

19 THE COURT: HEY.

20 JUROR FIDLER: I HAVE A SIGHT PROBLEM. I HAVE  
21 RETINOPATHY. I HAVE TO WEAR A MAGNIFYING GLASS. READING IS  
22 MY WORST... I DIDN'T REALIZE YOU WERE SO YOUNG WHEN I GOT UP  
23 HERE. BUT I CAN HEAR WELL.

24 THE COURT: LET ME ASK YOU FROM A -- FROM ABOUT,  
25 SAY, ONE OF THESE CHAIRS HERE TO THE WITNESS BOX---

1 JUROR FIDLER: UH-HUH.

2 THE COURT: ---WHICH WITNESS CHAIR -- WHICH IS RIGHT  
3 THERE, ARE YOU ABLE TO SEE PEOPLES' FACES OKAY?

4 JUROR FIDLER: LIKE I CAN'T SEE -- I KNOW SHE'S GOT  
5 ON GLASSES BECAUSE I CAN SEE SOMETHING, BUT, I MEAN, MY  
6 VISION IS NOT GREAT FROM A DISTANCE.

7 THE COURT: CAN YOU -- CAN YOU -- WOULD YOU BE ABLE  
8 TO SEE ME TALKING FROM HERE?

9 JUROR FIDLER: UH-HUH. UH-HUH.

10 THE COURT: YOU CAN?

11 JUROR FIDLER: I CAN SEE YOU FROM HERE.

12 THE COURT: OKAY. HOW ABOUT -- HOW ABOUT FROM BACK  
13 HERE? CAN YOU SEE ME TALKING?

14 JUROR FIDLER: I CAN SEE YOUR LIPS MOVING.

15 THE COURT: OKAY.

16 JUROR FIDLER: I CAN'T SEE YOUR EYES OR ANYTHING.

17 THE COURT: ALL RIGHT.

18 JUROR FIDLER: MY WORST PROBLEM IS READING.

19 THE COURT: OKAY.

20 JUROR FIDLER: LIKE THIS BOLD PRINT I CAN SEE, BUT  
21 PRINT LIKE THAT I CAN'T READ UNLESS I HAVE MY MAGNIFYING  
22 GLASS WITH ME.

23 THE COURT: LET ME GET YOU TO STAND BACK OVER THERE  
24 AT THAT TABLE FOR ONE SECOND.

25 JUROR FIDLER: OKAY.

1 (JUROR FIDLER STEPS AWAY.)

2 THE COURT: ALL RIGHT. THE FIRST TIME I STOOD BACK  
3 I WAS ABOUT THE SAME DISTANCE FROM HER AS ONE OF THESE FIRST  
4 CHAIRS IN THE JURY BOX, AND THE READING PROBLEM I'M NOT  
5 WORRIED ABOUT. IT'S PROBABLY NOT GOING TO BE A REAL  
6 DOCUMENT-INTENSIVE CASE, BUT EVEN IF IT IS, WE CAN GIVE HER  
7 THE MAGNIFICATION. SHE HAS MAGNIFICATION THAT SHE CAN USE.

8 MR. LITTLEJOHN: I KNOW SHE HAD GLASSES ON HER HEAD.  
9 I WAS WONDERING WHAT THOSE CORRECT.

10 THE COURT: THAT MAY BE FOR READING UP CLOSE; I'M  
11 NOT SURE. BUT I THINK SHE'S QUALIFIED. I DON'T THINK THAT  
12 DISQUALIFIES HER. DO Y'ALL?

13 MR. LITTLEJOHN: NO, SIR.

14 MR. HUBBARD: NO, SIR.

15 THE COURT: OKAY. MA'AM? MS. FIDLER, IF YOU GET ON  
16 THE JURY IN THE CASE, THEN WE'LL TRY SEVERAL DIFFERENT THINGS  
17 TO MAKE IT SO YOU CAN---

18 JUROR FIDLER: SIT CLOSER?

19 THE COURT: SIT CLOSER.

20 JUROR FIDLER: THAT'S FINE.

21 THE COURT: IF THERE ARE DOCUMENTS YOU NEED TO READ,  
22 WE'LL GIVE YOU EXTRA TIME.

23 JUROR FIDLER: I'LL BRING MY MAGNIFYING GLASS.

24 THE COURT: OKAY. THANK YOU.

25 (JUROR FIDLER LEAVES THE BENCH CONFERENCE.)

1 BAILIFF: JUROR 196, YOUR HONOR.

2 (JUROR HARTLEY APPROACHES.)

3 THE COURT: ALL RIGHT. MS. HARTLEY.

4 JUROR HARTLEY: YES. I WORK FOR AN ENGINEERING  
5 COMPANY. I'M THE C.F.O. WE JUST RECENTLY -- WELL, WITHIN  
6 THE END OF FEBRUARY, OUR YEAR-END CLOSING -- WE'RE IN THE  
7 PROCESS OF A GRAND AUDIT WHICH IS DUE -- WE HAVE TO HAVE IT  
8 COMPLETED BY THE END OF APRIL. IN ADDITION TO THAT, I ALSO  
9 HAVE A 401(K) AUDIT GOING ON. I HAVE TO BRING THE 401(K)  
10 INTO COMPLIANCE. AT THIS POINT IN TIME I'M ONE OF THE ONLY  
11 PEOPLE LEFT AT THE COMPANY WHO CAN BRING THIS AND GET IT  
12 COMPLETED. SO I'M ASKING JUST TO BE PUT BACK TO A DIFFERENT  
13 DATE LIKE LATER IN THE FALL OR SOMETHING.

14 THE COURT: ALL RIGHT. I WILL -- I'M GOING TO WAIT  
15 BEFORE I DECIDE ON THAT.

16 JUROR HARTLEY: UH-HUH.

17 THE COURT: AND I WILL STAY IN TOUCH WITH YOU THIS  
18 WEEK. YOU'LL BE GIVEN A TIME LATER THIS WEEK TO COME BACK.

19 JUROR HARTLEY: OKAY.

20 THE COURT: OTHER THAN THAT, AFTER WE LEAVE -- AFTER  
21 WE BREAK HERE WHICH WILL BE IN 30 MINUTES OR SO, 30 TO 45  
22 MINUTES, YOU'LL HAVE ONE MORE TIME TO COME BACK THIS WEEK FOR  
23 TWO TO FOUR HOURS. AS THE WEEK PROGRESSES, I'LL SEE WHETHER  
24 OR NOT I CAN EXCUSE YOU FOR NEXT WEEK.

25 JUROR HARTLEY: OKAY.



1 THE COURT: SO STAY IN TOUCH WITH ME.

2 JUROR HARTLEY: I JUST GOT... SO NEXT WEEK IT WILL  
3 BE LIKE AN 8 TO 5 OR 9 TO 5 OR...

4 THE COURT: IF YOU GET ON THE JURY, THEN YOU WOULD  
5 PRETTY MUCH NEED TO DEVOTE THE ENTIRE WEEK... YOU WOULD NOT  
6 -- PROBABLY NOT HAVE ANY TIME IN WHICH TO DO WORK, AND THE  
7 CASE WOULD LAST FROM MONDAY MORNING PROBABLY UNTIL THURSDAY  
8 OR FRIDAY, POSSIBLY LONGER THAN THAT, BUT I KIND OF DOUBT IT.  
9 SO WE'LL DO OUR BEST TO ACCOMMODATE YOU.

10 JUROR HARTLEY: OKAY.

11 THE COURT: BUT I CAN'T MAKE ANY PROMISES AT THIS  
12 POINT.

13 JUROR HARTLEY: OKAY.

14 THE COURT: OKAY. THANK YOU.

15 JUROR HARTLEY: THANK YOU.

16 THE COURT: HAVE YOU FILLED OUT THE JUROR  
17 QUESTIONNAIRE?

18 JUROR HARTLEY: YES, I DID, AND I DID MAIL IT IN.

19 THE COURT: DO WE HAVE THAT?

20 THE CLERK: WHAT'S THE JUROR NUMBER?

21 THE COURT: HER QUESTIONNAIRE.

22 MR. LITTLEJOHN: 196.

23 JUROR HARTLEY: I DID NOT MAIL IT IN ORIGINALLY  
24 BECAUSE I SENT A LETTER NOTARIZED WITH THE FORM, AND THEN IT  
25 WAS LIKE AFTER THAT THEN I SENT IN MY QUESTIONNAIRE.

1 THE COURT: WHEN DO YOU THINK YOU SENT THE  
2 QUESTIONNAIRE IN?

3 JUROR HARTLEY: IT WAS ACTUALLY -- IT WAS LIKE  
4 MARCH 17TH.

5 THE COURT: OKAY. DO Y'ALL KNOW IF Y'ALL HAVE IT?

6 MR. LITTLEJOHN: WE DON'T HAVE IT.

7 THE CLERK: WE DON'T HAVE IT.

8 THE COURT: ALL RIGHT, MA'AM. WE'RE -- I'M GOING TO  
9 NEED YOU TO STAY WHEN I BREAK TODAY, AND THEY'LL GIVE YOU A  
10 BLANK QUESTIONNAIRE AND GIVE YOU A TIME AND PLACE IN WHICH TO  
11 FILL THAT OUT AND TURN IT IN FOR US.

12 JUROR HARTLEY: OKAY.

13 THE COURT: ALSO, THE JUROR INFORMATION CARD NEEDS  
14 TO BE FILLED OUT, TOO. BEFORE YOU LEAVE, COME UP TO THE  
15 CLERK'S BENCH---

16 JUROR HARTLEY: OKAY.

17 THE COURT: ---AND THEIR DESK AND THEY WILL GIVE YOU  
18 A TIME AND PLACE TO FILL THAT OUT.

19 JUROR HARTLEY: OKAY. THANK YOU.

20 THE COURT: HOLD ON A SECOND. ANY PROBLEM WITH  
21 THAT?

22 MR. LITTLEJOHN: NOT AT ALL.

23 (JUROR HARTLEY LEAVES THE BENCH CONFERENCE.)

24 THE COURT: YOU KNOW, FRANKLY THAT'S THE KIND OF --  
25 THAT KIND OF ATTITUDE ABOUT IT WOULD NORMALLY LEAD ME TO SAY

1 I'M NOT TRANSFERRING YOU ANYWAY. I DON'T THINK THERE'S A  
2 DISQUALIFICATION FOR AN OVER-ABUNDANT VIEW OF SOMEONE'S OWN  
3 SELF-IMPORTANCE, SO I PROBABLY SHOULD HAVE PUT THAT ON THE  
4 RECORD BUT...

5 MR. LITTLEJOHN: IF THERE WAS, MR. GUNTER WOULD HAVE  
6 BEEN GONE.

7 THE COURT: OKAY. COME UP.

8 BAILIFF: JUROR NUMBER 270.

9 (JUROR SCHROEDER APPROACHES.)

10 JUROR SCHROEDER: THE REASON I'M ASKING TO BE  
11 EXCUSED IS BECAUSE OF THE FACT THAT FUNDAMENTALLY I RUN A  
12 BUSINESS IN LEXINGTON HERE, AND WE DON'T HAVE ANYBODY THAT IS  
13 GOING TO BE ABLE TO FULFILL THE SPOT. WE HAVE THREE BEDDING  
14 STORES. I ARRANGED FOR MY DAY OFF FOR ME TODAY SO THAT I --  
15 SO THAT I COULD COME TO COURT.

16 THE COURT: SO ARE YOU THE MANAGER FOR EACH OF THESE  
17 THREE STORES?

18 JUROR SCHROEDER: NO, SIR. EACH MANAGER IS ASSIGNED  
19 A STORE.

20 THE COURT: UH-HUH.

21 JUROR SCHROEDER: AND SO THERE ARE---

22 THE COURT: YOUR STORE IS THE LEXINGTON STORE?

23 JUROR SCHROEDER: YES, SIR.

24 THE COURT: HE'S REFERRING TO -- YOURS IS THE ONE  
25 THAT HAS THE LARGEST VOLUME OF SALES?

1 JUROR SCHROEDER: RIGHT. SECOND LARGEST.

2 THE COURT: NOW, SO HOW LONG HAVE YOU BEEN MANAGER  
3 OF THAT STORE?

4 JUROR SCHROEDER: TWO YEARS.

5 THE COURT: AND DURING THAT TWO-YEAR PERIOD OF TIME,  
6 HAVE YOU EVER TAKEN A VACATION?

7 JUROR SCHROEDER: NO. AS A MATTER OF FACT, WE  
8 HAVEN'T -- I HAD ONE TIME WHEN I HAD TO LEAVE, BUT WE HAD  
9 FOUR STORES AT THE TIME AND TWO EXTRA EMPLOYEES THAT  
10 FUNCTIONED AS FLOATERS FOR THE COMPANY.

11 THE COURT: SO TODAY IS THE STORE OPEN RIGHT NOW?

12 JUROR SCHROEDER: THE STORE IS OPEN RIGHT NOW.

13 THE COURT: AND WHO IS RUNNING THE STORE RIGHT NOW?

14 JUROR SCHROEDER: WE HAVE ONE PART-TIME PERSON THAT  
15 ACTS AS A FLOATER FOR THE THREE STORES, AND SO SHE IS MANNING  
16 MY STORE TODAY. SHE WOULD NORMALLY BE THERE ON WEDNESDAY  
17 WHICH IS MY NORMAL DAY OFF.

18 THE COURT: OKAY. ALL RIGHT. OKAY. THANK YOU.  
19 LET ME GET YOU TO STAND RIGHT OVER HERE AT THIS TABLE.

20 (JUROR SCHROEDER STEPS AWAY.)

21 THE COURT: THEY SELL BEDS. I MEAN, THAT'S A PRETTY  
22 -- IT'S A CLEVER SPIN ON IT, BUT I DON'T THINK THAT'S WHAT --  
23 I DON'T THINK THAT FITS THE STATUTORY DISQUALIFICATION. IF  
24 PUT TO THE TASK, HE CAN GET SOMEBODY TO RUN THAT STORE, AND  
25 TO SAY HE HASN'T HAD VACATION IN TWO YEARS... I DON'T THINK

1 THE EXEMPTION IS DESIGNED TO EXCLUDE PEOPLE WHO CHOOSE NOT TO  
2 TAKE VACATIONS, SO I DON'T THINK HE'S DISQUALIFIED. WHAT DO  
3 Y'ALL THINK?

4 MR. LITTLEJOHN: NO OBJECTION.

5 MS. KIMBROUGH: I THINK YOU'RE RIGHT.

6 MR. HUBBARD: I THINK YOU'RE RIGHT.

7 THE COURT: ALL RIGHT. MR. SCHROEDER?

8 JUROR SCHROEDER: YES, SIR.

9 THE COURT: I REALIZE THAT IF YOU'RE ON THE JURY  
10 IT'S GOING TO BE AN INCONVENIENCE TO YOU AND TO YOUR  
11 BUSINESS, BUT I DON'T THINK I CAN EXCUSE YOU FOR THAT. I  
12 THOUGHT ABOUT WHETHER OR NOT IT MEETS THE CRITERIA FOR  
13 SOMEONE WHOSE BUSINESS HAS TO SHUT DOWN, AND EVEN THOUGH I  
14 THINK IT'S GOING -- I UNDERSTAND IT'S GOING TO BE DIFFICULT  
15 FOR YOU ALL TO KEEP THE DOORS OPEN WHILE YOU'RE SERVING AS A  
16 JUROR. I DON'T THINK IT MEETS THAT EXEMPTION, SO I'M GOING  
17 TO HAVE TO ASK YOU TO STAY WITH US. AND MOST OF THE WEEK  
18 THIS WEEK YOU'LL BE ABLE TO BE THERE. IF YOU GET ON THE JURY  
19 NEXT WEEK, YOU WILL NOT BE ABLE TO BE THERE NEXT WEEK.

20 JUROR SCHROEDER: OKAY.

21 THE COURT: ALL RIGHT. SO THANK YOU.

22 JUROR SCHROEDER: ALL RIGHT.

23 (JUROR SCHROEDER LEAVES THE BENCH CONFERENCE.)

24 THE COURT: THERE'S AN ADDITIONAL LETTER THAT I  
25 GUESS GETS MADE A PART OF THE RECORD. YES, SIR.

1 BAILIFF: 177, YOUR HONOR.

2 (JUROR LEITNER APPROACHES.)

3 JUROR LEITNER: IT'S ALMOST DONE.

4 THE COURT: YEAH.

5 JUROR LEITNER: MY CURRENT SITUATION IS IS THAT I'M  
6 SELF-EMPLOYED. I'M WORKING A TWO-YEAR APPRENTICESHIP AS A  
7 REAL ESTATE APPRAISER. IF I DON'T WORK, I DON'T MAKE ANY  
8 MONEY. I'M CURRENTLY ONLY EARNING ABOUT HALF OF WHAT I WOULD  
9 BE EARNING WHEN THE APPRENTICESHIP IS OVER. I DON'T MIND  
10 SERVING, BUT I WOULD LIKE TO SERVE AT A LATER TIME WHEN I'M  
11 MORE FINANCIALLY STABLE, AND TO SERVE NOW WOULD BE  
12 FINANCIALLY CRIPPLING FOR ME BECAUSE I'M WORKING 14 HOURS A  
13 DAY SEVEN DAYS A WEEK TO MAKE ENOUGH MONEY TO PAY MY BILLS.

14 THE COURT: OKAY. SO LET ME MAKE SURE I UNDERSTAND  
15 YOUR WORK SITUATION. YOU HAVE SOMEBODY THAT YOU'RE WORKING  
16 WITH OR WORKING FOR, STUDYING UNDER THEM.

17 JUROR LEITNER: CORRECT.

18 THE COURT: NOW, DO YOU HAVE PEOPLE WHO WORK FOR  
19 YOU?

20 JUROR LEITNER: (SHOOK HEAD FROM SIDE TO SIDE.)

21 THE COURT: IF YOU'RE ON JURY DUTY, YOU'RE NOT ABLE  
22 TO WORK, BUT THE OTHER APPRAISER THAT YOU WORK FOR IS ABLE TO  
23 GO AHEAD AND DO HIS OR HER JOB?

24 JUROR LEITNER: CORRECT.

25 THE COURT: ALL RIGHT, SIR. ALL RIGHT. I WILL --

1 I'LL SEE IF I CAN HELP YOU. I MIGHT NOT BE ABLE TO -- I'M  
2 GOING TO GO AHEAD AND GIVE YOU A TIME TO PROBABLY COME BACK  
3 THIS WEEK AFTER WE LEAVE HERE IN JUST A FEW MINUTES. YOU'LL  
4 BE GONE. YOU'LL BE FREE TO WORK FOR THE REST OF THIS WEEK  
5 EXCEPT FOR A PERIOD WHERE YOU HAVE TO COME UP HERE ONE DAY  
6 TWO TO FOUR HOURS, SOMETHING LIKE THAT, BUT OTHER THAN THAT  
7 YOU CAN WORK THIS WEEK. IF I'M UNABLE TO EXCUSE YOU AND YOU  
8 GET ON THE JURY, THEN YOU WOULD NOT BE ABLE TO WORK ANY NEXT  
9 WEEK, BUT I'LL DO MY BEST.

10 JUROR LEITNER: THAT WOULD BE DEVASTATING.

11 THE COURT: HOW IS THAT DIFFERENT?

12 JUROR LEITNER: I DON'T MAKE ANY MONEY IF I DON'T  
13 WORK. IT'S NOT LIKE I HAVE A JOB AND HE'S GOING TO PAY ME.  
14 I HAVE TO GENERATE MY OWN WORK. I HAVE TO DO MY OWN WORK.  
15 TO GO -- I'M JUST RIGHT THIS MINUTE -- SIX MONTHS FROM NOW IT  
16 WILL BE DIFFERENT BECAUSE MY INCOME WILL BE DIFFERENT, AND  
17 I'LL HAVE SOMEBODY WORKING FOR ME.

18 THE COURT: I THINK I UNDERSTAND YOUR SITUATION. IF  
19 I'VE GOT ENOUGH JURORS, I'LL TRANSFER YOU TO ANOTHER TERM OF  
20 COURT. IF I DON'T HAVE ENOUGH JURORS, I MAY HAVE TO IMPOSE  
21 UPON YOU, BUT I THINK I'LL BE OKAY. BUT I'LL BE IN TOUCH  
22 WITH YOU AS THE WEEK PROGRESSES.

23 JUROR LEITNER: ALL RIGHT. THANK YOU.

24 THE COURT: THANKS.

25 (JUROR LEITNER LEAVES THE BENCH CONFERENCE.)

1 THE COURT: PUT THIS ONE OVER IN THE MIDDLE OF MY  
2 DESK.

3 BAILIFF: JUROR NUMBER 27, YOUR HONOR.

4 (JUROR BOYLE APPROACHES.)

5 THE COURT: ALL RIGHT, SIR. YOU WERE TELLING ME A  
6 MINUTE AGO ABOUT YOUR HEARING PROBLEM, AND I'VE READ YOUR  
7 NOTE.

8 JUROR BOYLE: I'VE GOT ABOUT 30 PERCENT HEARING  
9 LOSS. I DON'T WANT TO BE EXCLUDED FROM SERVING ON THE JURY,  
10 BUT I SAW YOU GIVE THE LADY PREVIOUS TO ME AN IMPROMPTU  
11 HEARING TEST.

12 THE COURT: THAT WAS ACTUALLY A SIGHT...

13 JUROR BOYLE: I'M SORRY.

14 THE COURT: WE'RE WORKING ON HER SIGHT.

15 JUROR BOYLE: OH, OKAY. I'M SORRY.

16 THE COURT: BUT NOW FOR MOST OF WHAT I HAVE SAID  
17 TODAY HAVE YOU BEEN ABLE TO HEAR WHAT I'VE SAID?

18 JUROR BOYLE: I HAVE MISSED A GOOD HALF OF IT.

19 THE COURT: OKAY.

20 JUROR BOYLE: NOW, SOME OF YOUR QUESTIONS YOU WERE  
21 ASKING ABOUT CONVICTIONS. I DIDN'T HEAR A LOT OF QUESTIONS,  
22 BUT I HEARD, "HAVE YOU BEEN CONVICTED OF A SERIOUS CRIME?"  
23 OBVIOUSLY THAT EXCLUDED -- THAT DIDN'T APPLY TO ME, SO...  
24 BUT I'VE MISSED PROBABLY HALF OF WHAT YOU'VE SAID.

25 THE COURT: OKAY. WELL, DO YOU THINK THAT IF YOU



1 ARE ON THE JURY AND YOU'RE SEATED UP HERE IN THIS JURY BOX  
2 AND YOU'RE REQUIRED TO LISTEN TO WITNESSES THAT ARE SITTING  
3 ON THE WITNESS STAND WHICH IS RIGHT THERE---

4 JUROR BOYLE: IF I SIT ON THIS END HERE AND  
5 EVERYBODY IS USING THE SOUND SYSTEM, NO PROBLEM AT ALL.

6 THE COURT: YOU THINK YOU'LL BE FINE?

7 JUROR BOYLE: I BELIEVE SO.

8 THE COURT: IF YOU WERE TO REALIZE THAT YOU'RE  
9 HAVING TROUBLE, YOU COULD LET ME KNOW OR IF YOU MISS  
10 SOMETHING, YOU KNOW, WE COULD DEVELOP SOME WAY THAT YOU COULD  
11 SIGNAL ME OR SIGNAL THE COURT THAT YOU MISSED SOMETHING.

12 JUROR BOYLE: IF THAT'S ACCEPTABLE TO YOU, SURE.

13 THE COURT: YES, SIR. THANK YOU. ALL RIGHT.

14 (JUROR BOYLE LEAVES THE BENCH CONFERENCE.)

15 THE COURT: SO THAT'S PRETTY MUCH IT, AND WE WILL  
16 THEN -- I WILL EXPLAIN TO THEM THE PROCESS THAT WE'RE GOING  
17 TO USE. LET'S SEE. IT'S 12:00, A LITTLE AFTER 12. WE COULD  
18 DEFINITELY START THE FIRST PANEL AT 2. WE COULD DO -- WE  
19 COULD DO THREE PANELS TODAY IF Y'ALL WANT TO. KIND OF -- HOW  
20 ABOUT LET'S DO TWO AND A HALF PANELS BEFORE QUITTING, IF  
21 WE'RE QUITTING AROUND 7? DOES THAT SOUND FINE?

22 MR. LITTLEJOHN: HOW MANY ARE YOU GOING TO HAVE IN  
23 EACH PANEL?

24 THE COURT: SIX. SO WE'LL DO 15 PEOPLE TODAY  
25 STARTING AT 2. DOES THAT SUIT YOU?

1 MR. LITTLEJOHN: IT'S AMBITIOUS, BUT IT SUITS ME.

2 THE COURT: DO Y'ALL JUST WANT TO DO TWO AND SEE HOW  
3 IT GOES? Y'ALL JUST WANT TO DO THAT? WE GOT PLENTY OF TIME.  
4 IT'S NOT LIKE I THINK WE'RE GOING TO---

5 MR. HUBBARD: WE'LL DO WHATEVER IF WE WANT TO TRY TO  
6 GET...

7 THE COURT: LET'S GO AHEAD -- I'LL GO AHEAD AND  
8 DESIGNATE THREE PANELS, AND THEN AS WE MOVE INTO THE  
9 AFTERNOON AND SEE WHERE WE ARE, WE MIGHT CAN CONTACT THAT  
10 THIRD PANEL AND TELL THEM TO COME BACK IN THE MORNING. SO  
11 WHAT I ANTICIPATE IS THAT WE WILL GIVE EACH PANEL A NUMBER,  
12 AND THEN WE WILL UPDATE THE CALL-IN SYSTEM EVERY HOUR OR TWO  
13 THAT SAYS PANEL NUMBER FOUR...

14 THE CLERK: WEB SITE, TOO.

15 THE COURT: AND WEB SITE.

16 THE CLERK: BECAUSE THEY CAN JUST LOOK AT IT ON THE  
17 WEB SITE.

18 THE COURT: HAVE YOU GOT SOMEBODY THAT CAN UPDATE  
19 THIS?

20 THE CLERK: YES, SIR.

21 THE COURT: WE'LL PUT EVERYBODY IN PANELS. THAT'S  
22 WHAT WE CAN DO. SHE CAN GO AHEAD AND START DRAWING THE  
23 PANELS NOW.

24 THE CLERK: DON'T FORGET OUR LATE ARRIVALS.

25 THE COURT: LET ME DO THE LATE ARRIVALS NOW.

1 MR. HUBBARD: WE HAVEN'T CALLED THE CASE.

2 THE COURT: OKAY.

3 MR. HUBBARD: BREAK THEM UP...

4 THE COURT: DO YOU WANT ME TO DO THAT OR?

5 MR. HUBBARD: WHICHEVER YOU WANT, WHATEVER YOU'RE  
6 COMFORTABLE WITH, OR IF YOU WANT TO RESERVE THAT FOR THE  
7 PANELS.

8 THE COURT: WELL, LET'S -- LET'S -- ARE YOU TALKING  
9 ABOUT THE SPECIFIC VOIR DIRE QUESTIONS?

10 MR. HUBBARD: I GUESS THE QUESTIONS ABOUT IF ANYBODY  
11 KNOWS KEVIN MERCER.

12 THE COURT: I DON'T REALLY WANT TO DO THAT RIGHT  
13 NOW. WE GOT WAY TOO MANY PEOPLE. IT'S UNNECESSARY TO DO  
14 THAT RIGHT NOW.

15 MR. HUBBARD: OKAY.

16 THE COURT: I'D RATHER DO THAT AFTER, SAY, MONDAY  
17 MORNING WHEN WE GET THE WHOLE -- WHEN WE GET THE ACTUAL  
18 STRIKING PANEL BACK.

19 THE CLERK: WE HAVE 120 JURORS LEFT, AND THEN THESE  
20 ARE THE LATE ARRIVALS THAT ARE HERE.

21 THE COURT: OKAY. DOES THAT SUIT Y'ALL IN TERMS OF  
22 VOIR DIRE?

23 MS. KIMBROUGH: UH-HUH.

24 THE COURT: WE GOT 120 PEOPLE OUT THERE. IF WE ASK  
25 THEM ALL VOIR DIRE QUESTIONS, WE'RE GOING TO SPEND 60 PERCENT

1 MORE TIME LISTENING TO ANSWERS THAN WE NEED TO. SO I WOULD  
2 PREFER TO SAY WE'LL DO VOIR DIRE THE FIRST OF NEXT WEEK, WHEN  
3 WE COME IN NEXT WEEK, CASE-SPECIFIC VOIR DIRE. WE CAN COVER  
4 -- SOME OF IT WILL BE COVERED DURING THE INDIVIDUAL QUESTIONS  
5 AND ANSWERS THAT WE HAVE THE REST OF THIS WEEK.

6 MS. KIMBROUGH: UH-HUH.

7 THE COURT: BUT -- BUT -- BUT THE THINGS THAT REALLY  
8 RELATE SPECIFICALLY TO THE CASE...

9 MS. KIMBROUGH: I THINK WHAT RICK WAS ASKING IS  
10 SHOULD WE GO AHEAD AND CALL OUT ALL THE NAMES OF WITNESSES  
11 BEFORE WE BROKE. IS THAT CORRECT?

12 MR. HUBBARD: OR MAYBE NOT EVEN THE WITNESSES BUT,  
13 YOU KNOW, IF THEY KNOW ANY OF US, IF THEY'VE GOT -- I DON'T  
14 KNOW.

15 THE COURT: WE CAN DO THAT.

16 MR. HUBBARD: THE VICTIMS OF VIOLENT CRIME OR ANY OF  
17 THAT STUFF. I DON'T KNOW WHAT YOUR PREFERENCE IS. I DIDN'T  
18 KNOW IF...

19 THE COURT: WELL...

20 MR. HUBBARD: I WASN'T SURE HOW YOU WANTED TO DO IT.

21 THE COURT: WELL, WE'LL -- WE'LL -- WE'LL TALK TO  
22 THESE PEOPLE WHO ARRIVED LATE AND THEN I'LL GO UP THERE AND  
23 READ THE INDICTMENTS, LET YOU ALL INTRODUCE YOURSELVES. READ  
24 THE WITNESS LIST PERHAPS AND THEN ASK THEM JUST THOSE BASIC  
25 QUESTIONS IF THEY KNOW ANY OF Y'ALL OR IF THEY KNOW ANYTHING

1 ABOUT THE CASE. I'M LISTENING.

2 MR. LITTLEJOHN: THE ONLY THING I'M THINKING IS IF  
3 YOU WAIT 'TIL MONDAY AFTER WE HAVE GOT THEM QUALIFIED AND YOU  
4 ASK THE GENERAL VOIR DIRE AND YOU LOSE FOUR OR FIVE JURORS,  
5 WE'RE NOT GOING TO HAVE ENOUGH TO STRIKE FROM.

6 THE COURT: OKAY.

7 MR. LITTLEJOHN: AND IT SEEMS LIKE YOU WOULD EITHER  
8 WANT TO WEED THEM OUT AS A GROUP OR MAYBE BY PANEL OR  
9 INDIVIDUALLY SO WE'D KNOW WHEN WE GOT TO THE END OF THE WEEK  
10 THAT WE HAD ENOUGH WHO WERE QUALIFIED AND DIDN'T HAVE SOME  
11 OTHER PROBLEM.

12 THE COURT: WELL, THEN WE MIGHT BETTER JUST GO AHEAD  
13 AND DO THE WHOLE PANEL. IT WILL BE QUICKER TO DO THE WHOLE  
14 PANEL THAN IT WILL IN AN INDIVIDUAL VOIR DIRE.

15 THE CLERK: HOPE, STOP.

16 THE COURT: SHE CAN KEEP GOING.

17 THE CLERK: SHE WAS GOING TO DRAW PANELS.

18 THE COURT: SHE CAN DRAW THEM OUT IN ORDER AND WE --  
19 IF WE TAKE SOMEBODY OUT, WE JUST TAKE THEM OUT.

20 THE CLERK: ALL RIGHT. NEVER MIND. KEEP GOING.

21 THE COURT: ALL RIGHT. SO THAT'S GOING TO TAKE  
22 AWHILE, AND IT'S 12:15. SO I SUGGEST THAT WE LET -- LET'S  
23 CALL THE CASE, BREAK FOR LUNCH, GET EVERYBODY BACK AND DO IT  
24 RIGHT AFTER LUNCH.

25 MR. HUBBARD: DO YOU WANT ME TO CALL IT?

1 THE COURT: DO YOU HAVE A PREFERENCE?

2 MR. HUBBARD: NO, SIR. I'LL BE HAPPY TO CALL IT IF  
3 YOU WANT ME TO OR PASS IT UP TO YOU.

4 THE COURT: WELL, I THINK I PREFER TO DO IT MYSELF.

5 MR. HUBBARD: OKAY.

6 THE COURT: UNLESS THERE'S SOME OBJECTION TO IT.

7 MR. HUBBARD: I'LL GET THE INDICTMENTS.

8 THE COURT: BRING UP THOSE JURORS THAT WERE LATE.

9 MR. LITTLEJOHN: JUDGE?

10 THE COURT: ALL RIGHT. MR. MCGUIRT.

11 (JUROR MCGUIRT APPROACHES.)

12 THE COURT: WASN'T THERE SOMEBODY ELSE? YOU GOT  
13 THEIR INFORMATION? ALL RIGHT. MR. MCGUIRT, RAISE YOUR RIGHT  
14 HAND, PLEASE.

15 CHRISTOPHER MCGUIRT, AFTER BEING DULY SWORN,  
16 TESTIFIED AS FOLLOWS:

17 EXAMINATION BY THE COURT

18 Q. ALL RIGHT, SIR. TELL ME YOUR MILEAGE TO THE  
19 COURTHOUSE, PLEASE.

20 A. I DON'T KNOW TODAY BECAUSE I CAME IN LATE FROM MY --  
21 I WENT TO WORK AND THEN CAME HERE.

22 Q. APPROXIMATELY HOW FAR IS IT FROM YOUR HOUSE TO THE  
23 COURTHOUSE?

24 A. MAYBE 15 MILES.

25 Q. FIFTEEN MILES? OKAY. LET'S GET THEM ALL UP HERE

1 AND DO IT ALL AT ONCE.

2 THE CLERK: TAMEEKA THOMPSON AND KAYLA CLAMP. KAYLA  
3 CLAMP. COME UP. AND WHERE IS MS. CLAMP?

4 THE CLERK: SHE SAID -- APPARENTLY SHE'S NOT HERE  
5 YET. SHE'S 19 AND ON HER WAY FROM BATESBURG.

6 THE COURT: SO WE JUST HAVE TWO HERE RIGHT NOW.

7 POLICE OFFICER: YES, SIR.

8 THE COURT: WASN'T THERE A MR. HALL?

9 POLICE OFFICER: YES, SIR. GET ME MR. HALL, THE ONE  
10 THAT TRANSFERRED.

11 THE COURT: IS HE THE ONE FROM CALHOUN COUNTY?

12 POLICE OFFICER: CALHOUN COUNTY.

13 THE COURT: ALL RIGHT. SO IS THAT IT THEN EXCEPT  
14 FOR MS. CLAMP?

15 POLICE OFFICER: YES, SIR, EXCEPT ONE I HAVEN'T BEEN  
16 ABLE TO FIND YET. HE'S OUT ON A TRUCK WITH READY-MIX.

17 THE COURT: SO WE HAVE EIGHT PEOPLE. OKAY. ALL  
18 RIGHT. STEP UP HERE, MR. HALL. OKAY. I'M GOING TO ASK YOU  
19 FOLKS SOME QUESTIONS. LET ME GET YOU TWO TO RAISE YOUR RIGHT  
20 HANDS, PLEASE.

21 TAMEEKA THOMPSON AND JOHN HALL, AFTER BEING  
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: ALL RIGHT. HOLD ON ONE SECOND. LET ME  
24 STEP THROUGH HERE. ALL RIGHT. ARE YOU EACH A CITIZEN OF THE  
25 UNITED STATES?

1 JUROR MCGUIRT: YES, SIR.

2 JUROR THOMPSON: YES, SIR.

3 JUROR HALL: YES, SIR.

4 THE COURT: ARE ANY ONE OF YOU NOT A RESIDENT OF  
5 LEXINGTON COUNTY? YOU'RE NOT?

6 JUROR HALL: CALHOUN.

7 THE COURT: WHEN DID YOU MOVE TO CALHOUN?

8 JUROR HALL: BEGINNING OF LAST MONTH.

9 THE COURT: DID YOU MOVE THERE PERMANENTLY?

10 JUROR HALL: YES, SIR.

11 THE COURT: YOU INTEND TO STAY THERE?

12 JUROR HALL: YES, SIR.

13 THE COURT: DID YOU MOVE THERE FOR A JOB?

14 JUROR HALL: YES, SIR.

15 THE COURT: WHAT'S YOUR ADDRESS THERE?

16 JUROR HALL: IT IS 154 HADDEN COURT.

17 THE COURT: NOW, DO YOU STILL HAVE YOUR PLACE IN  
18 LEXINGTON?

19 JUROR HALL: NO, SIR. THAT'S MY PARENTS' ADDRESS.

20 THE COURT: SO YOU LEFT FROM YOUR PARENTS' HOME AND  
21 YOU NOW LIVE IN CALHOUN COUNTY?

22 JUROR HALL: YES, SIR.

23 THE COURT: ALL RIGHT, SIR. I'LL EXCUSE YOU. SORRY  
24 YOU HAD TO BE BROUGHT IN, BUT WE HAD TO GET THAT INFORMATION  
25 DIRECTLY FROM YOU WHILE YOU WERE HERE.



1 JUROR HALL: I UNDERSTAND.

2 THE COURT: THANK YOU FOR COMING.

3 (JUROR HALL LEAVES THE BENCH CONFERENCE.)

4 THE COURT: ARE EACH OF YOU ABLE TO READ, WRITE, AND  
5 SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE?

6 JUROR MCGUIRT: YES, SIR.

7 JUROR THOMPSON: YES, SIR.

8 THE COURT: YOU WENT PAST THE SIXTH GRADE?

9 JUROR MCGUIRT: YES, SIR.

10 JUROR THOMPSON: YES, SIR.

11 THE COURT: ANY MEDICAL PROBLEMS THAT WILL PREVENT  
12 YOUR SERVING AS A JUROR?

13 JUROR MCGUIRT: NO, SIR.

14 JUROR THOMPSON: NO, SIR.

15 THE COURT: HAVE YOU EVER BEEN CONVICTED OF A CRIME  
16 THAT CARRIED MORE THAN ONE YEAR IN PRISON?

17 JUROR MCGUIRT: NO, SIR.

18 JUROR THOMPSON: NO, SIR.

19 THE COURT: DO YOU WORK AS A CLERK OR DEPUTY CLERK  
20 OF COURT OR LAW ENFORCEMENT OFFICER OR PROBATE JUDGE OR  
21 COMMISSIONER OR AS A MAGISTRATE OR IN ANY OTHER CAPACITY FOR  
22 THE COUNTY?

23 JUROR MCGUIRT: NO, SIR.

24 JUROR THOMPSON: NO, SIR.

25 THE COURT: DON'T WORK INSIDE A COURTHOUSE?

1 JUROR MCGUIRT: NO, SIR.

2 JUROR THOMPSON: NO, SIR.

3 THE COURT: HAVE YOU SERVED AS A JUROR ALREADY IN  
4 2006?

5 JUROR MCGUIRT: NO, SIR.

6 JUROR THOMPSON: NO, SIR.

7 THE COURT: AND YOU DO NOT WORK FOR THE DEPARTMENT  
8 OF CORRECTIONS.

9 JUROR MCGUIRT: NO, SIR.

10 JUROR THOMPSON: NO, SIR.

11 THE COURT: I CAN TELL THAT YOU'RE BOTH UNDER 65.  
12 DID YOU SERVE AS A JUROR IN 2004 OR 2005?

13 JUROR MCGUIRT: NO, SIR.

14 JUROR THOMPSON: NO, SIR.

15 THE COURT: DO YOU HAVE CHILDREN UNDER SEVEN?

16 JUROR MCGUIRT: YES, SIR.

17 JUROR THOMPSON: YES, SIR.

18 THE COURT: WHO TAKES CARE OF THOSE CHILDREN DURING  
19 THE DAY?

20 JUROR THOMPSON: DAY CARE.

21 THE COURT: DAY CARE? YOU, SIR?

22 JUROR MCGUIRT: MY GIRLFRIEND AND MY MOM.

23 THE COURT: OKAY. NOW -- ALL RIGHT.

24 JUROR MCGUIRT: AND MY GRANDPARENTS.

25 THE COURT: NEITHER ONE OF YOU WORK FOR A SCHOOL OR

1 A SCHOOL DISTRICT?

2 JUROR MCGUIRT: NO, SIR.

3 JUROR THOMPSON: NO, SIR.

4 THE COURT: ALL RIGHT. ANY OTHER REASON WHY YOU  
5 MIGHT NOT BE ABLE TO SERVE AS JURORS?

6 JUROR MCGUIRT: NO, SIR.

7 JUROR THOMPSON: NO, SIR.

8 THE COURT: ALL RIGHT. Y'ALL CAN BE SEATED.

9 (JUROR MCGUIRT AND JUROR THOMPSON LEAVE THE BENCH  
10 CONFERENCE.)

11 THE COURT: ALL RIGHT. THEY ALL ANSWERED -- THE  
12 YOUNG MAN WAS NODDING SOME, BUT ALL OF HIS ANSWERS TO THE  
13 QUESTIONS INDICATED THAT HE IS QUALIFIED TO SERVE. ALL  
14 RIGHT. AND THEN JUST KEEP THE -- WHENEVER WE GET MORE LATE  
15 ARRIVALS, JUST -- JUST NOTIFY ME AND WE'LL -- I'LL QUALIFY  
16 THEM. ALL RIGHT.

17 MR. HUBBARD: HERE IS THE INDICTMENT, YOUR HONOR.

18 THE COURT: OKAY. ALL RIGHT. I REALLY WOULD RATHER  
19 GET IT ALL DONE BEFORE LUNCH, BUT IT'S GOING TO TAKE A LONG  
20 TIME TO GO THROUGH THE VOIR DIRE EVEN IF WE NARROW IT DOWN  
21 SOME, DON'T Y'ALL THINK?

22 MR. LITTLEJOHN: JUDGE, I AGREE WITH YOU. DID YOU  
23 INTEND FOR US TO GO OVER WITH THE COURT WHAT THE COURT IS  
24 GOING TO ASK IN THE VOIR DIRE? WE HAD SUBMITTED PROPOSED  
25 VOIR DIRE AS DID THE STATE.

1 THE COURT: IF THERE'S -- IF THERE ARE OBJECTIONS,  
2 SURE. HAVE Y'ALL REVIEWED WHAT THE STATE HAS?

3 MS. KIMBROUGH: I THINK WE DID.

4 MR. LITTLEJOHN: I'M TRYING TO THINK IF THEY SENT US  
5 ANYTHING OTHER THAN WHAT WAS IN THE NORTHCUTT CASE.

6 MS. KIMBROUGH: I THINK THAT'S IT.

7 THE CLERK: LET ME ASK YOU A QUESTION AS -- JUST AS  
8 A REMINDER THAT JUROR NUMBER 304 WHO IS GOING TO TRY TO GO  
9 OUT OF TOWN WITH HIS CHILDREN TOMORROW MORNING THROUGH FRIDAY  
10 THAT -- YOU SAID TO MAKE SURE HE WAS IN A PANEL THIS  
11 AFTERNOON. IF YOU DO THE ENTIRE VOIR DIRE, ARE YOU STILL  
12 GOING TO DO A PANEL THIS AFTERNOON AND PUT HIM IN IT?

13 THE COURT: UH-HUH.

14 THE CLERK: OKAY.

15 THE COURT: JUST TO MAKE IT CLEAR, HIS NAME STILL  
16 WILL BE DRAWN RANDOMLY.

17 THE CLERK: IT IS.

18 THE COURT: HE MIGHT NORMALLY BE CALLED ON FRIDAY OR  
19 SOMETHING, BUT WE'LL MOVE HIM UP. ALL RIGHT. I DON'T THINK  
20 I'M PREPARED TO DO VOIR DIRE RIGHT NOW. WE HAVE GOT TO TALK  
21 ABOUT IT AND SEE IF THERE ARE ANY OBJECTIONS.

22 MR. LITTLEJOHN: YES, SIR.

23 THE COURT: I NEED A LITTLE TIME TO KIND OF NARROW  
24 IT DOWN. SO BARRING DOING IT EITHER DURING THE INDIVIDUAL  
25 VOIR DIRE, LATER QUALIFICATION, OR DOING IT NEXT WEEK, WE'VE

1 GOT TO TAKE A BREAK AND THEN JUST GET THE JURY PANEL TO COME  
2 BACK AFTER LUNCH AND WE'LL CONTINUE. NOW, WITH THAT BEING  
3 THE CASE, WHAT I PREFER TO DO IS JUST TO INSTRUCT THEM THAT  
4 THEY MAY NOT DISCUSS THE CASE AND GO TO LUNCH. WHEN THEY  
5 COME BACK, WE'LL READ THE INDICTMENTS, PUBLISH THE  
6 INDICTMENTS, AND GO FROM THERE.

7 MR. HUBBARD: SOUNDS GOOD.

8 THE COURT: OKAY? YES, MA'AM.

9 MS. KIMBROUGH: DO YOU MIND ALSO LETTING THEM KNOW  
10 THAT WE ARE NOT BEING UNFRIENDLY WHEN WE DON'T SPEAK OR SAY  
11 ANYTHING? THANK YOU.

12 THE COURT: SURE I WILL.

13 MS. KIMBROUGH: IT WOULD BE A VIOLATION.

14 THE COURT: ABSOLUTELY I WILL. SO THAT'S WHAT WE'RE  
15 GOING TO DO. IT'S 12:30. SO WE WILL -- Y'ALL WANT TO GO --  
16 Y'ALL WANT TO RESUME AT 1:30?

17 MR. HUBBARD: YES, SIR.

18 THE COURT: ALL RIGHT. WE'LL GO TO 1:30.

19 (THE COLLOQUY AT THE SIDE BAR CONCLUDED.)

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE DID  
21 PRETTY WELL. WE DIDN'T QUITE GET AS FAR ALONG AS I HAD HOPED  
22 WE WOULD, BUT WE'RE A LOT FURTHER ALONG THAN I FIGURED WE  
23 MIGHT BE. SO IT IS -- IT IS TIME TO EAT LUNCH, AND WE HAVE A  
24 LITTLE BIT MORE WORK THAT I NEED TO DO WITH YOU ALL BEFORE I  
25 LET YOU ALL AS A LARGE GROUP GO AND START BRINGING YOU BACK

1 IN SMALL GROUPS.

2 SO LET ME TALK TO YOU A LITTLE BIT ABOUT WHAT WE'RE  
3 GOING TO DO IN THAT RESPECT, AND THEN -- AND THEN WE'RE GOING  
4 TO BREAK FOR LUNCH. WE'RE GOING TO COME BACK RIGHT AFTER  
5 LUNCH AND GO THROUGH WHAT I HOPE WILL BE A RELATIVELY SHORT  
6 SERIES OF QUESTIONS AND ANSWERS, AND THEN -- AND THEN WE'LL  
7 BREAK YOU UP INTO SMALL GROUPS. SO BASICALLY IN JUST A  
8 SECOND I'M GOING TO ASK -- I'M GOING TO ALLOW YOU TO GO TO  
9 LUNCH AND ASK YOU TO RETURN AT 1:30 WHICH IS NORMALLY AN  
10 ADEQUATE LUNCH HOUR. GIVEN THE FACT THAT THERE ARE ABOUT 120  
11 OF YOU THAT ARE GOING TO BE FLOODING THE LOCAL RESTAURANTS,  
12 IT MAY PUT A LITTLE BIT OF A STRAIN ON THEM, BUT PLEASE DO  
13 YOUR ABSOLUTE BEST AND BE BACK HERE BY 1:30.

14 WE'LL START AT THAT TIME. I HAVE ANOTHER SERIES OF  
15 QUESTIONS THAT I HAVE TO ASK YOU AND ANOTHER COUPLE OF THINGS  
16 THAT I NEED TO TALK TO YOU ABOUT, AND THEN WE'RE GOING TO  
17 CALL -- WE'RE GOING TO RANDOMLY DRAW YOUR NAMES AND PUT YOU  
18 EACH INTO PANELS. WE'LL BRING YOU BACK EVERY TWO HOURS IN  
19 GROUPS OF SIX FOR THE REST OF THE WEEK, AND THEN I HAVE SOME  
20 QUESTIONS THAT I'LL BE ASKING YOU INDIVIDUALLY AND THEN THE  
21 LAWYERS WILL ALSO HAVE AN OPPORTUNITY TO FOLLOW UP WITH A FEW  
22 QUESTIONS THAT THEY'LL BE ASKING YOU INDIVIDUALLY.

23 AGAIN, DON'T -- I DON'T KNOW EXACTLY HOW LONG THAT  
24 PROCESS IS GOING TO TAKE. WE BASICALLY WILL KEEP GOING UNTIL  
25 WE HAVE ENOUGH JURORS TO BEGIN WITH THE TRIAL OF THE CASE. I

1 EXPECT THAT IT WILL TAKE US AT LEAST THROUGH WEDNESDAY  
2 AFTERNOON, PROBABLY INTO THURSDAY, BUT I DO NOT BELIEVE THAT  
3 IT WILL TAKE US INTO FRIDAY, SO IN JUST A SECOND WHEN I  
4 EXCUSE YOU, GO EAT LUNCH AND BE BACK AT 1:30. DO NOT DISCUSS  
5 ANYTHING REGARDING ANY BUSINESS OR ANY CASES THAT MAY BE  
6 PENDING HERE IN THIS COURT.

7 I WILL TELL YOU THAT THERE HAS BEEN PRESS COVERAGE  
8 ABOUT THE CASE THAT I'M GOING TO TALK TO YOU ABOUT AFTER  
9 LUNCH AND THAT'S STATE VERSUS KEVIN MERCER. DON'T READ IT.  
10 THERE'S AN ARTICLE ACTUALLY IN "THE STATE" NEWSPAPER TODAY,  
11 BUT IT DOESN'T HAVE ANYTHING IN IT THAT IS OF ANY INTEREST TO  
12 YOU ALL AS JURORS, AND I AM INSTRUCTING YOU THAT YOU MAY NOT  
13 READ THAT ARTICLE DURING THE LUNCH BREAK THAT WE'RE ABOUT TO  
14 TAKE. IT'S ON THE FRONT PAGE, SO IF YOU WANT TO -- IF YOU  
15 WANT TO LOOK AT THE SPORTS SECTION, YOU CAN JUST SORT OF FLIP  
16 TO THE SPORTS SECTION LIKE THIS AND DON'T READ THE FRONT  
17 SECTION, BUT PLEASE COOPERATE WITH ME. THIS IS VERY  
18 IMPORTANT, AND I THINK YOU ALL CAN UNDERSTAND THAT IF YOU  
19 WERE SERVING AS A JUROR IN THIS CASE IT WOULD BE -- IT WOULD  
20 BE VERY IMPORTANT THAT YOU LEARN EVERYTHING THAT YOU ARE  
21 GOING TO LEARN ABOUT THE CASE WHILE YOU'RE SEATED IN THIS  
22 COURTROOM UNDER MY SUPERVISION, AND IT WOULD NOT BE PROPER  
23 FOR YOU ALL TO LEARN ANYTHING ABOUT THIS CASE OR ANY OTHER  
24 CASE FROM THE NEWSPAPER OR FROM A CONVERSATION THAT YOU MIGHT  
25 HAVE WITH A -- WITH SOMEONE ON THE STREET.

1 SO DO YOUR BEST TO HELP ME OUT HERE, AND BE BACK AT  
2 1:30. DURING THAT TIME DO NOT DISCUSS THE CASE, AND WE'LL  
3 CONTINUE THEN. NOW, HOLD ON JUST ONE SECOND BEFORE YOU  
4 LEAVE. ANYTHING? ANYTHING OTHER THAN THE ONE THING?

5 MR. LITTLEJOHN: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. NOW, NORMALLY WHEN YOU'RE  
7 GOING ABOUT YOUR DAILY LIFE AND YOU RUN INTO SOMEBODY IN A  
8 BUILDING AND YOU HAVE SOME HISTORY OF PERHAPS WORKING WITH  
9 THEM, YOU WOULD SAY, "HELLO. HOW ARE YOU?" AND THE OTHER  
10 PERSON WOULD SAY, "I'M FINE. IT'S NICE TO SEE YOU AGAIN."

11 NOW, UNDERSTAND THAT IN THIS COURTHOUSE IN THE  
12 CONTEXT OF THIS TRIAL, IF YOU'RE COMING BACK IN AFTER LUNCH  
13 AND YOU RUN INTO ONE OF THE LAWYERS, THEY'RE NOT GOING TO  
14 SPEAK TO YOU, AND IT'S NOT BECAUSE THEY'RE BEING RUDE. IT'S  
15 BECAUSE THEY KNOW THEY BETTER NOT SPEAK TO YOU, AND THE  
16 REASON FOR THAT IS -- IS MAYBE NOT AS OBVIOUS TO YOU ALL AS  
17 IT MIGHT BE TO ME. IF A LAWYER ON ONE SIDE OF THE CASE WERE  
18 SEEN FROM, SAY, 30 OR 40 FEET AWAY HAVING A CONVERSATION WITH  
19 YOU THAT WAS NOTHING MORE THAN, "GOOD AFTERNOON. ISN'T IT A  
20 WONDERFUL DAY?" THEN, SAY, SOMEBODY WHO'S INVOLVED IN THE  
21 CASE ON THE OTHER SIDE MIGHT SEE THAT AND GO, "LOOK AT THAT.  
22 THEY'RE TALKING ABOUT MY CASE."

23 AND SO IT'S REAL IMPORTANT THAT WE MAINTAIN THE  
24 APPEARANCE OF IMPROPRIETY AND THAT WE -- I MEAN, THAT WE  
25 AVOID THE APPEARANCE OF IMPROPRIETY. SO THAT'S WHY WHEN YOU



1 SEE THESE LAWYERS AND SEE THESE OTHER PEOPLE WHO ARE GOING TO  
2 BE INVOLVED IN THE CASE, EVEN THOUGH THEY MAY RECOGNIZE YOU  
3 AND YOU RECOGNIZE THEM AND EVEN THOUGH THIS IS THE SOUTH  
4 WHERE WE SPEAK TO EVERYBODY, THEY WILL NOT BE SPEAKING TO  
5 YOU. SO WITH THAT, HAVE A GREAT LUNCH. I'LL SEE YOU ALL AT  
6 1:30.

7 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN  
8 COURT TO GO TO LUNCH AT 12:24 P.M.)

9 THE COURT: RICK, CAN Y'ALL COME UP ONE SECOND?

10 MR. HUBBARD: YES, SIR.

11 (THE FOLLOWING SIDE BAR CONFERENCE TOOK PLACE IN THE  
12 PRESENCE OF JUROR KAYLA CLAMP, THE COURT, AND THE ATTORNEYS.)

13 THE COURT: MS. CLAMP, HEY. I WANT TO ASK YOU A FEW  
14 QUESTIONS.

15 JUROR CLAMP: ALL RIGHT.

16 THE COURT: RAISE YOUR RIGHT HAND.

17 KAYLA CLAMP, AFTER BEING DULY SWORN, TESTIFIED  
18 AS FOLLOWS:

19 EXAMINATION BY THE COURT

20 Q. ALL RIGHT. YOU CAN PUT YOUR HAND DOWN.

21 A. OKAY.

22 THE COURT: NOW, GET MY -- GET MY JURY  
23 QUALIFICATIONS.

24 THE CLERK: HERE.

25

1 BY THE COURT:

2 Q. HOW FAR DID YOU HAVE TO DRIVE FROM YOUR HOME TO GET  
3 HERE, MS. CLAMP?

4 A. LIKE AN HOUR.

5 Q. WHERE YOU DO LIVE?

6 A. BATESBURG-LEESVILLE.

7 Q. IS THAT IN LEXINGTON COUNTY?

8 A. YES, SIR.

9 Q. OKAY. SO APPROXIMATELY HOW MANY MILES?

10 A. I'M NOT REALLY SURE. I CAN TELL YOU MINUTE-WISE.

11 Q. TELL ME.

12 A. ABOUT 35, 40 MINUTES MAYBE.

13 Q. HOW FAR IS IT FROM BATESBURG-LEESVILLE?

14 THE CLERK: ABOUT 30 MILES.

15 BY THE COURT:

16 Q. WE'LL GIVE YOU 30 MILES. NOW, ARE YOU -- YOU'RE A  
17 CITIZEN OF THE UNITED STATES.

18 A. YES, SIR.

19 Q. AND YOU LIVE IN LEXINGTON COUNTY?

20 A. YES, SIR.

21 Q. YOU MADE IT PAST THE SIXTH GRADE?

22 A. YES.

23 Q. YOU CAN READ, WRITE, SPEAK, AND UNDERSTAND THE  
24 ENGLISH LANGUAGE?

25 A. YES, SIR.

1 Q. HOLD ON JUST ONE SECOND. DO YOU HAVE ANY MEDICAL  
2 PROBLEMS THAT WOULD INTERFERE WITH YOUR ABILITY TO SERVE AS A  
3 JUROR?

4 A. NO, SIR.

5 Q. OKAY. HAVE YOU EVER BEEN CONVICTED OF A CRIME THAT  
6 CARRIES MORE THAN ONE YEAR IN PRISON?

7 A. NO.

8 Q. WHAT DO YOU DO FOR A LIVING?

9 A. RIGHT NOW I WORK AT A LUMBER COMPANY.

10 Q. HAVE YOU SERVED AS A JUROR THIS YEAR?

11 A. NO.

12 Q. DO YOU -- YOU DO NOT WORK FOR THE DEPARTMENT OF  
13 CORRECTIONS, I ASSUME.

14 A. NO.

15 Q. I CAN TELL THAT YOU'RE UNDER 65. DID YOU SERVE AS A  
16 JUROR IN 2004 OR 2005?

17 A. NO, SIR.

18 Q. DO YOU HAVE ANY CHILDREN?

19 A. NO.

20 Q. ANY -- AND YOU DON'T WORK FOR THE SCHOOL DISTRICT OR  
21 ARE YOU INVOLVED IN SCHOOL?

22 A. NO.

23 Q. ARE YOU A STUDENT?

24 A. YES.

25 Q. WHERE?

1 A. BATESBURG LIFELONG LEARNING CENTER.

2 Q. WHAT ARE YOU STUDYING?

3 A. I'M GETTING MY G.E.D.

4 Q. OKAY. AND YOUR CLASSES ARE AT NIGHT?

5 A. YES.

6 Q. IS THERE ANYTHING THAT I NEED TO KNOW ABOUT WHY YOU  
7 MIGHT NOT BE ABLE TO SERVE AS A JUROR?

8 A. I WORK LONG HOURS, SEVEN TO SIX.

9 Q. AT THE LUMBER COMPANY?

10 A. SIX DAYS A WEEK.

11 Q. OKAY. ALL RIGHT. OKAY. THANK YOU.

12 A. YOU'RE WELCOME.

13 Q. PLEASE COME BACK AT 1:30 AND BE SEATED OUT IN THE  
14 COURTROOM, AND I'LL TALK TO YOU AT THAT TIME.

15 A. OKAY.

16 Q. THANK YOU.

17 A. ALL RIGHT, SIR. BYE.

18 (JUROR CLAMP LEAVES THE BENCH CONFERENCE.)

19 THE COURT: SHE LOVES ME, DOESN'T SHE? ALL RIGHT.  
20 SEE Y'ALL.

21 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

22 THE COURT: BE SEATED, PLEASE. ALL RIGHT. LADIES  
23 AND GENTLEMEN, WE ARE HERE IN THIS TERM OF COURT PRIMARILY  
24 FOR THE CASE OF THE STATE OF SOUTH CAROLINA VERSUS KEVIN J.  
25 MERCER, AND I HAVE THREE INDICTMENTS. IS THAT...

1 MR. HUBBARD: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT. MR. MERCER HAS BEEN INDICTED  
3 IN THREE INDICTMENTS, AND I'M GOING TO GO OVER THOSE  
4 INDICTMENTS WITH YOU NOW. IN INDICTMENT NUMBER 2003-GS-32-  
5 409 MR. MERCER HAS BEEN INDICTED IN COUNT 1 FOR MURDER, AND  
6 IN THAT INDICTMENT IT IS ALLEGED -- ALL RIGHT. DON'T LET ANY  
7 OTHER JURORS IN UNLESS -- UNLESS YOU SIGNAL ME. ALL RIGHT?

8 IN COUNT 1 OF INDICTMENT 2003-GS-32-409 MR. MERCER  
9 HAS BEEN INDICTED FOR MURDER, AND IN THAT INDICTMENT IT IS  
10 ALLEGED THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR  
11 ABOUT MAY 16TH, 2002, WILLFULLY, FELONIOUSLY, AND WITH MALICE  
12 AFORETHOUGHT KILL ONE TRACY LAMAR DAVIS BY MEANS OF SHOOTING  
13 THE VICTIM IN THE HEAD WITH A PISTOL AND THAT SAID TRACY  
14 LAMAR DAVIS DIED AS A PROXIMATE RESULT THEREOF IN LEXINGTON  
15 COUNTY ON OR ABOUT MAY 16TH, 2002, IN VIOLATION OF SECTION  
16 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS.

17 IN COUNT 2 OF THAT INDICTMENT MR. MERCER HAS BEEN  
18 INDICTED FOR ARMED ROBBERY, AND IN COUNT 2 IT IS ALLEGED THAT  
19 KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT MAY 16TH,  
20 2002, WHILE ARMED WITH A DEADLY WEAPON, TO WIT, A PISTOL, DID  
21 UNLAWFULLY AND FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE  
22 -- TAKE FROM THE PERSON OR IN THE PRESENCE OF TRACY LAMAR  
23 DAVIS BY MEANS OF FORCE OR INTIMIDATION A VEHICLE, GOODS,  
24 MONIES, OR OTHER PERSONAL PROPERTY ITEMS OF THE SAID TRACY  
25 LAMAR DAVIS OR OTHERS, SUCH VEHICLE, GOODS, MONIES, OR OTHER

1 PERSONAL ITEMS BEING DESCRIBED AS FOLLOWS: A 1998 LINCOLN  
2 NAVIGATOR VEHICLE - GOODS, MONIES, OR OTHER PERSONAL ITEMS  
3 WITH THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF SAID  
4 ITEMS, IN VIOLATION OF SECTION 16-11-330 OF THE SOUTH  
5 CAROLINA CODE OF LAWS.

6 AND THEN IN COUNT 3 OF THE INDICTMENT MR. MERCER HAS  
7 BEEN INDICTED FOR POSSESSION OF A FIREARM OR A KNIFE DURING  
8 THE COMMISSION OF A VIOLENT CRIME, AND IN THAT INDICTMENT IT  
9 IS ALLEGED THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR  
10 ABOUT MAY 16TH, 2002, WILLFULLY AND UNLAWFULLY HAVE IN HIS  
11 POSSESSION OR DID VISIBLY DISPLAY A PISTOL DURING THE  
12 COMMISSION OF A VIOLENT CRIME OR CRIMES, TO WIT, MURDER  
13 AND/OR ARMED ROBBERY AS DEFINED IN SECTION 16-1-60; ALL IN  
14 VIOLATION OF SECTION 16-23-490 OF THE SOUTH CAROLINA CODE OF  
15 LAWS.

16 NOW, LADIES AND GENTLEMEN, AS I TOLD YOU EARLIER  
17 TODAY, THE PROCESS OF GOING THROUGH JURY SELECTION IS GOING  
18 TO TAKE US SEVERAL DAYS. WHEN WE GET AROUND TO HAVING A JURY  
19 IMPANELED IN THE CASE WHICH WILL BE NEXT MONDAY, THEN I WILL  
20 GIVE THOSE JURORS DETAILED INSTRUCTIONS ABOUT WHAT YOUR  
21 RESPONSIBILITIES ARE AND WHAT SOME OF THE OTHER RULES AND  
22 PARAMETERS ARE THAT GOVERN YOUR CONDUCT AS JURORS. BUT FOR  
23 NOW I WANT TO MAKE SEVERAL THINGS CLEAR TO YOU ABOUT THE  
24 INDICTMENTS THAT I JUST READ TO YOU. THE INDICTMENT IS NOT  
25 IN ANY SENSE EVIDENCE OF THE ALLEGATIONS THAT ARE CONTAINED

1 WITHIN THE INDICTMENT. THE INDICTMENT IS SIMPLY THE FORMAL  
2 INSTRUMENT THAT CONTAINS THE CHARGES THAT HAVE BEEN MADE  
3 AGAINST THE DEFENDANT, AND THE INDICTMENT SERVES TO PROCESS  
4 THIS CASE AND BRING IT INTO THIS COURT FOR TRIAL.

5 THE DEFENDANT HAS PLED NOT GUILTY TO THESE -- TO ALL  
6 THREE COUNTS OF THIS INDICTMENT, AND THE PLEA OF NOT GUILTY  
7 CASTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY  
8 BEYOND A REASONABLE DOUBT. AND FOR THOSE OF YOU WHO ARE  
9 SELECTED TO SERVE ON THE JURY IN THIS CASE, THAT WILL BE YOUR  
10 JOB: TO DETERMINE WHETHER OR NOT THE STATE HAS MET THAT  
11 BURDEN OF PROOF.

12 NOW, IN THIS CASE THE STATE IS SEEKING THE DEATH  
13 PENALTY, AND WHAT THAT MEANS IS NOT ONLY IS THE JURY  
14 SELECTION GOING TO TAKE A -- TAKE US SEVERAL DAYS TO GET  
15 THROUGH QUALIFICATION AND GET AROUND TO THE POINT OF STRIKING  
16 A JURY ON MONDAY, BUT IT ALSO MEANS THAT THE TRIAL OF THE  
17 CASE WILL BE BIFURCATED AND THAT MEANS IT WILL BE DIVIDED  
18 INTO TWO PHASES. AND WE COMMONLY REFER TO THE FIRST PHASE AS  
19 THE GUILT PHASE, AND IN THE GUILT PHASE OF THE TRIAL THE  
20 STATE WILL PUT ON ITS EVIDENCE AND THE JURY WILL DETERMINE  
21 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROVING THE  
22 DEFENDANT GUILTY OF THE CRIMES THAT I JUST READ AS HAVING  
23 BEEN ALLEGED AGAINST THE DEFENDANT. IF THE DEFENDANT IS  
24 FOUND TO BE GUILTY OF MURDER, THEN WE WOULD MOVE INTO A  
25 PENALTY PHASE OR A SECOND PHASE IN WHICH THE JURY WOULD

1 DETERMINE WHAT PENALTY SHOULD BE IMPOSED UPON THE DEFENDANT  
2 FOR MURDER.

3 NOW, ALL OF THAT IS JUST GIVEN TO YOU BY WAY OF  
4 BACKGROUND TO SORT OF LAY OUT THE SCHEDULE FOR THE WEEK AND  
5 THE -- FOR THESE TWO WEEKS AND THE STRUCTURE OF THE TRIAL.  
6 BECAUSE THIS COMING UP WEEKEND IS EASTER WEEKEND AS I THINK I  
7 EXPLAINED TO YOU EARLIER, WE'RE GOING TO STOP WORK AS SOON AS  
8 WE HAVE QUALIFIED ENOUGH JURORS AND WE WILL THEN ALLOW YOU  
9 ALL TO BE HOME AND BE -- AND BE WITH YOUR FAMILIES FOR EASTER  
10 WEEKEND, AND THEN WE'RE GOING TO START UP ON MONDAY MORNING  
11 BY STRIKING THE JURY AT THAT TIME, AND THEN THE TRIAL OF THE  
12 CASE WILL PROBABLY LAST MOST, IF NOT ALL, OF NEXT WEEK.

13 SO NOW FROM A SCHEDULING STANDPOINT, AFTER ABOUT  
14 ANOTHER HOUR OR SO THIS AFTERNOON, ALL OF YOU WILL BE ALLOWED  
15 TO LEAVE AND THEN YOU'LL BE GIVEN TIMES DURING THE REST OF  
16 THIS WEEK WHEN YOU WILL BE ASKED TO COME BACK AND SPEAK TO US  
17 AND SPEAK TO ME INDIVIDUALLY FOR A FEW MINUTES. IF YOU'RE ON  
18 THE JURY, THEN NEXT WEEK YOU WILL -- YOU WILL BE WITH US THE  
19 ENTIRE WEEK. IT WILL BE -- WE WILL WORK FAIRLY LONG DAYS,  
20 AND YOU WILL NOT HAVE REALLY ANY TIME TO DO ANYTHING OTHER  
21 THAN SERVE ON THIS JURY.

22 NOW, THERE IS SOME POSSIBILITY THAT THE JURY WILL BE  
23 SEQUESTERED BEGINNING ON MONDAY, MEANING THAT WE WILL ASK YOU  
24 TO COME AND BRING YOUR BELONGINGS, BRING YOUR -- BRING  
25 CHANGES OF CLOTHES AND THINGS THAT YOU NEED AND THEN YOU WILL



1 BE KEPT -- WE PUT YOU UP IN A HOTEL AND YOU'LL BE FED AS A  
2 GROUP AND YOU WILL REMAIN TOGETHER DURING THE ENTIRE COURSE  
3 OF THE TRIAL. NOW, I HAVE NOT DECIDED YET WHETHER OR NOT I'M  
4 GOING TO SEQUESTER THE JURY. I'LL MAKE THAT DECISION  
5 SOMETIME LATE THIS WEEK AND EVEN PERHAPS AS LATE AS MONDAY  
6 MORNING. AND, AGAIN, I JUST GIVE YOU ALL THAT INFORMATION BY  
7 WAY OF BACKGROUND.

8 AT THIS TIME I'M GOING TO ASK YOU ANOTHER SERIES OF  
9 QUESTIONS. THESE ARE WHAT WE CALL VOIR DIRE QUESTIONS.  
10 THESE ARE QUESTIONS THAT RELATE DIRECTLY TO THIS CASE AND TO  
11 THE PEOPLE AND TO THE ISSUES THAT WILL BE INVOLVED IN THIS  
12 CASE. JUST AS YOU DID THIS MORNING WHEN I WAS ASKING YOU THE  
13 QUESTIONS THAT RELATED TO YOUR GENERAL QUALIFICATIONS TO  
14 SERVE AS JURORS, I WOULD LIKE YOU TO LISTEN VERY CAREFULLY TO  
15 THE QUESTIONS THAT I ASK. IF YOU HAVE ANY INFORMATION THAT  
16 IS RESPONSIVE TO A QUESTION THAT I ASK, THEN I WOULD LIKE FOR  
17 YOU TO STAND AND THEN I WILL RECOGNIZE YOU. YOU CAN TELL ME  
18 YOUR NAME AND YOUR JUROR NUMBER.

19 BECAUSE THERE'S SO MANY OF YOU, I'M NOT GOING TO ASK  
20 YOU TO ACTUALLY GIVE ME YOUR ANSWER AT THIS TIME. I'M JUST  
21 GOING TO -- WE JUST WANT TO IDENTIFY THE PEOPLE WHO ARE GOING  
22 TO HAVE ANSWERS TO EACH OF THESE INDIVIDUAL QUESTIONS, AND  
23 THEN DURING THE COURSE OF THE REST OF THIS WEEK AND PERHAPS  
24 ALSO ON MONDAY WHEN WE RECONVENE, I MAY -- WE MAY BE ASKING  
25 YOU FOLLOW-UP QUESTIONS THAT RELATE TO THE VOIR DIRE

1 QUESTIONS THAT I'M GOING TO BE ASKING YOU NOW.

2 THE CLERK: JUDGE?

3 BAILIFF: ONE.

4 THE COURT: ALL RIGHT.

5 BAILIFF: I THINK SHE'S BEEN LISTENING THROUGH THE  
6 DOORS, YOUR HONOR.

7 THE COURT: WHAT'S YOUR NAME, MA'AM?

8 JUROR SMITH: AMBER SMITH.

9 THE COURT: MS. SMITH?

10 JUROR SMITH: YES, 285.

11 THE COURT: ALL RIGHT. TAKE A SEAT, MA'AM. LET ME  
12 SEE THE LAWYERS UP HERE FOR ONE SECOND, PLEASE. IS MY JUROR  
13 LIST STILL DOWN THERE?

14 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS  
15 HELD.)

16 THE COURT: WE'RE GOING TO -- WITH REGARD TO THAT --  
17 Y'ALL STEP OVER HERE WHERE YOU CAN HEAR ME. WITH REGARD TO  
18 THAT JUROR WHO JUST CAME IN, WE'RE -- WE DON'T KNOW HOW MUCH  
19 SHE HEARD AND WE'RE GOING TO JUST WAIT AND NOT SAY ANYTHING  
20 SPECIFIC TO HER. WE'LL GO AHEAD AND GO THROUGH THE VOIR DIRE  
21 QUESTIONS, AND THEN WHEN SHE GETS CALLED UP, I WILL ADDRESS  
22 THE READING OF THE INDICTMENT, THE PRESUMPTION OF INNOCENCE,  
23 THE BURDEN OF PROOF, THE THINGS THAT I SAID IN MY  
24 INTRODUCTORY REMARKS. OKAY? RIGHT.

25 MR. LITTLEJOHN: YES, SIR.

1 (WHEREUPON, THE BENCH CONFERENCE CONCLUDED.)

2 THE COURT: MR. HUBBARD, WOULD YOU PLEASE INTRODUCE  
3 YOURSELF AND YOUR CO-COUNSEL AND THOSE WHO WILL BE ASSISTING  
4 YOU IN THE TRIAL OF THIS CASE, PLEASE?

5 MR. HUBBARD: MY NAME IS RICK HUBBARD. I'M THE  
6 DEPUTY SOLICITOR HERE IN LEXINGTON COUNTY. THIS IS SHAWN  
7 GRAHAM, SENIOR ASSISTANT SOLICITOR. OF COURSE, THIS IS OUR  
8 SOLICITOR, DONNIE V. MYERS.

9 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL  
10 WHO IS RELATED BY BLOOD OR MARRIAGE TO MR. HUBBARD, TO MR.  
11 GRAHAM, OR TO SOLICITOR MYERS OR DO ANY OF YOU KNOW EITHER OF  
12 THESE GENTLEMEN IN ANY WAY? IF SO, PLEASE STAND.

13 JUROR NUTTALL: I KNEW DONNIE MYERS.

14 THE COURT: OKAY. JUST STAND AND I'LL RECOGNIZE YOU  
15 IN JUST A MINUTE. ANYBODY WHO NEEDS TO ANSWER THAT QUESTION,  
16 PLEASE GO AHEAD AND STAND, IF YOU KNOW ANY OF THESE THREE  
17 GENTLEMEN. OKAY. NOW, WHAT WE'RE GOING TO DO IS I'M NOT  
18 GOING TO GET YOU TO GIVE ME THE SUBSTANCE OF YOUR ANSWER,  
19 MA'AM. I JUST WANT YOU TO TELL ME YOUR NAME AND YOUR JUROR  
20 NUMBER.

21 JUROR NUTTALL: ELSIE NUTTALL, 221.

22 THE COURT: THANK YOU, MA'AM.

23 JUROR LIVINGSTON: WILLIAM LIVINGSTON. I'M NOT SURE  
24 OF THE NUMBER.

25 THE COURT: WE'LL FIND IT, SIR. THANK YOU. YOU CAN

1 BE SEATED. YES, SIR.

2 JUROR SPONHOUR: MICHAEL SPONHOUR, 297.

3 JUROR MILLS: VICKY MILLS, 205.

4 THE COURT: 205? WHAT WAS YOUR LAST NAME?

5 JUROR MILLS: MILLS.

6 THE COURT: MILLS?

7 JUROR MILLS: UH-HUH.

8 THE CLERK: YOUR HONOR, MR. LIVINGSTON IS JUROR  
9 NUMBER 182, AND WE JUST HAD ANOTHER JUROR WALK IN.

10 THE COURT: WHAT'S YOUR NAME, MA'AM?

11 JUROR BAKER: SHERYL BAKER.

12 THE COURT: MS. BAKER?

13 JUROR BAKER: YES, SIR.

14 THE CLERK: SHE'S NUMBER 10, YOUR HONOR.

15 THE COURT: OKAY. TAKE A SEAT, MS. BAKER. NOW, MR.  
16 LITTLEJOHN, WOULD YOU PLEASE INTRODUCE YOURSELF AND YOUR  
17 CO-COUNSEL AND YOUR CLIENT TO THE JURY?

18 MR. LITTLEJOHN: YES, YOUR HONOR. LADIES AND  
19 GENTLEMEN, MY NAME IS CAM LITTLEJOHN. I LIVE IN LEXINGTON  
20 COUNTY. I PRACTICE LAW IN COLUMBIA. MY CO-COUNSEL IS  
21 MELISSA KIMBROUGH. SHE PRACTICES LAW IN COLUMBIA. AND THIS  
22 IS OUR CLIENT, KEVIN MERCER.

23 THE COURT: WOULD YOU TWO PLEASE STAND AND LET THE  
24 JURY GET A GOOD LOOK AT YOU, PLEASE? THANK YOU. IS THERE  
25 ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR BY

1 MARRIAGE TO MR. LITTLEJOHN, TO MR. KIMBROUGH - I MEAN MS.  
2 KIMBROUGH; I'M SORRY - OR MR. MERCER OR DO YOU KNOW EITHER OF  
3 THE THREE OF THEM IN ANY WAY? IF SO, PLEASE STAND.

4 JUROR RATTEREE: RON RATTEREE, 249.

5 THE COURT: 249?

6 JUROR RATTEREE: UH-HUH.

7 THE COURT: AND WHAT WAS YOUR LAST NAME?

8 JUROR RATTEREE: RATTEREE.

9 THE COURT: RATTEREE. IS THERE ANY MEMBER OF THE  
10 JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS  
11 EVER BEEN EMPLOYED WITH ANY LAW ENFORCEMENT AGENCY OR POLICE  
12 DEPARTMENT, EITHER A STATE, COUNTY, CITY, FEDERAL, OR  
13 MILITARY POLICE DEPARTMENT? IF SO, PLEASE STAND. HAVE YOU  
14 EVER -- YOU OR ANY MEMBER OF YOUR FAMILY EVER BEEN EMPLOYED  
15 BY ANY POLICE DEPARTMENT? IF SO, PLEASE STAND. MS. NUTTALL.

16 JUROR NUTTALL: ELSIE NUTTALL. RIGHT.

17 THE COURT: ALL RIGHT. THANK YOU, MA'AM. SHE'S  
18 221. YES, SIR?

19 JUROR BOLAND: RONNIE BOLAND. I DON'T KNOW MY  
20 NUMBER.

21 THE COURT: MR. BOLAND.

22 POLICE OFFICER: NUMBER 21.

23 THE COURT: THANK YOU, SIR. YES, MA'AM.

24 JUROR EDWARDS: PEGGY EDWARDS, 88.

25 THE COURT: YES, SIR.

1 JUROR SMITH: GREG SMITH, 286.  
2 THE COURT: YES, MA'AM.  
3 JUROR LYONS: JENNEFER LYONS, 188.  
4 THE COURT: 188?  
5 JUROR LYONS: YES, SIR.  
6 JUROR GREER: EDWARD GREER, 117.  
7 THE COURT: 117. YES, SIR?  
8 JUROR OSEGUEDA: EDWARD OSEGUEDA, 225.  
9 THE COURT: YES, MA'AM?  
10 JUROR JONES: SHERRI JONES, 153.  
11 THE COURT: 150 WHAT?  
12 JUROR JONES: THREE.  
13 THE COURT: 153. THANK YOU. YES, SIR?  
14 JUROR WRENN: JANE WRENN, 345.  
15 THE COURT: 345. YES, SIR?  
16 JUROR WARREN: CHRIS WARREN, 325.  
17 THE COURT: WHAT WAS YOUR LAST NAME?  
18 JUROR WARREN: WARREN.  
19 THE COURT: 225?  
20 JUROR WARREN: YES, SIR.  
21 THE COURT: THAT DOESN'T SOUND RIGHT.  
22 THE CLERK: 325, YOUR HONOR.  
23 THE COURT: YES, MA'AM.  
24 JUROR MOAK: ANGELA MOAK, 206.  
25 THE COURT: YES, MA'AM.

1 JUROR SMITH: ROSEMARIE SMITH, 292.  
2 JUROR WILLIS: CHERYL WILLIS, 342.  
3 THE COURT: WHAT WAS THE NUMBER, PLEASE?  
4 JUROR WILLIS: 342.  
5 THE COURT: YES, MA'AM?  
6 JUROR DAY: LAURA DAY, 77..  
7 JUROR SMITH: MARGARET SMITH, 290.  
8 THE COURT: 290?  
9 JUROR SMITH: (NODDED HEAD UP AND DOWN.)  
10 THE COURT: MS. SMITH? YES, MA'AM?  
11 JUROR BERRY: WOULD THAT BE IN SOUTH CAROLINA OR  
12 ANYWHERE?  
13 THE COURT: ANYWHERE.  
14 JUROR BERRY: GLORIA BERRY, 19.  
15 THE COURT: NUMBER 19, MS. BERRY. YES, SIR?  
16 JUROR PETRELLA: VICTOR PETRELLA, 233.  
17 THE COURT: THANK YOU.  
18 JUROR NELSON: DERRICK NELSON, 215.  
19 THE COURT: WHAT WAS YOUR LAST NAME?  
20 JUROR NELSON: NELSON.  
21 THE COURT: 215?  
22 THE CLERK: 215.  
23 THE COURT: YES, SIR?  
24 JUROR TEEM: SAMUEL TEEM, 311.  
25 THE COURT: 311. OKAY. THANK YOU.

1 JUROR SPONHOUR: MICHAEL SPONHOUR, 297.  
2 THE COURT: YES, MA'AM?  
3 JUROR LUCAS: DEBORAH LUCAS, 186.  
4 THE COURT: WILLIAM RIVERS, 260.  
5 JUROR LUESING: LOIS LUESING, 187.  
6 THE COURT: 187?  
7 JUROR LUESING: YES, SIR.  
8 THE COURT: THANK YOU. YES, MA'AM?  
9 JUROR JOINER: JENNIFER JOINER, 148.  
10 JUROR SPENCER: CHERYL SPENCER, 296.  
11 THE COURT: YES, MA'AM?  
12 JUROR PHILLIPS: CHRISTILLE PHILLIPS. I THINK IT'S  
13 235.  
14 THE COURT: YOU'RE RIGHT.  
15 JUROR SHIRK: VINCENT SHIRK, 279.  
16 JUROR ADAMS: JENNIFER ADAMS, NUMBER 2.  
17 THE COURT: YES, MA'AM.  
18 JUROR STALVEY: BRENDA STALVEY, 299.  
19 THE COURT: THANK YOU. YES, SIR?  
20 JUROR BIGHAM: EDDIE BIGHAM, NUMBER 20.  
21 JUROR STEVENS: PAUL STEVENS, 304.  
22 JUROR ROBINSON: KILEY ROBINSON. I GUESS 236.  
23 THE CLERK: 262.  
24 THE COURT: 262, MS. ROBINSON. YES, MA'AM?  
25 JUROR GIBSON: LAUREN GIBSON, 109.



1 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR  
2 ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO IS A RELATIVE OF,  
3 EITHER BY BLOOD OR BY MARRIAGE, OR A CLOSE PERSONAL FRIEND OF  
4 ANYONE WHO WORKS AS A PROSECUTOR OR FOR A PROSECUTOR IN SOUTH  
5 CAROLINA? AND THAT WOULD INCLUDE THE ATTORNEY GENERAL, THE  
6 SOLICITOR OF THIS CIRCUIT OR THE SOLICITOR OF ANY OTHER  
7 CIRCUIT HERE IN THE STATE. IS THERE ANY MEMBER OF THE JURY  
8 PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO IS RELATED  
9 TO BY BLOOD OR MARRIAGE OR FRIENDS WITH IN ANY WAY ANYONE WHO  
10 WORKS FOR A PROSECUTOR? IF SO, PLEASE STAND. YES, SIR.

11 JUROR SMITH: NEAL SMITH, 291.

12 THE COURT: YES, SIR?

13 JUROR HENDRIX: JASON HENDRIX, 134.

14 THE COURT: 134?

15 JUROR HENDRIX: YES, SIR.

16 THE COURT: MR. HENDRIX?

17 JUROR HENDRIX: YES, SIR.

18 THE COURT: YES, MA'AM?

19 JUROR SMOAK: MICHELLE SMOAK, 294.

20 THE COURT: THANK YOU. YES, MA'AM?

21 JUROR ADAMS: JENNIFER ADAMS, NUMBER 2.

22 JUROR GIBSON: LAUREN GIBSON, 109.

23 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR  
24 ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS EVER BEEN  
25 INVOLVED IN ANY WAY IN A CASE THAT IS SIMILAR TO, BY WAY OF

1 IT BEING A VIOLENT CRIME OR IN ANY OTHER WAY, THE INDICTMENTS  
2 THAT I JUST READ TO YOU? NOW, THERE ARE SEVERAL WAYS THAT  
3 YOU COULD HAVE BEEN INVOLVED OR YOUR FAMILY MEMBER COULD HAVE  
4 BEEN INVOLVED IN SUCH A CASE. YOU MIGHT HAVE BEEN A WITNESS  
5 TO A CRIME. YOU COULD HAVE BEEN A DEFENDANT OR YOU HAD A  
6 FAMILY MEMBER WHO WAS A DEFENDANT OR YOU COULD HAVE BEEN A  
7 VICTIM OR YOU HAD A FAMILY MEMBER WHO WAS A VICTIM OF SUCH A  
8 CRIME. IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAS  
9 EVER BEEN INVOLVED IN A CRIMINAL CASE SUCH AS A VIOLENT CRIME  
10 SIMILAR IN YOUR MIND TO THE -- TO THE INDICTMENTS THAT I JUST  
11 READ TO YOU, PLEASE STAND. YES, MA'AM?

12 JUROR VANLOOZEN: BECKY VANLOOZEN. I CAN'T REMEMBER  
13 MY JUROR NUMBER. I HAD A BOYFRIEND---

14 THE COURT: WELL, HOLD ON NOW. JUST TELL ME YOUR  
15 LAST NAME AGAIN, PLEASE.

16 JUROR VANLOOZEN: VANLOOZEN. VANLOOZEN.

17 THE CLERK: SHE'S NUMBER 321, YOUR HONOR.

18 THE COURT: OKAY. YOU CAN BE SEATED, MS. VANLOOZEN.  
19 WE WILL FOLLOW UP WITH YOU AS WE MOVE THROUGH THE COURSE OF  
20 THIS WEEK ABOUT WHAT THE DETAILS OF YOUR ANSWER ARE. YES,  
21 SIR?

22 JUROR NELSON: DERRICK NELSON, 215.

23 THE COURT: 215.

24 JUROR JOYE: GLORIA JOYE, 154.

25 JUROR STALVEY: BRENDA STALVEY, 299.

1 JUROR ROBINSON: KILEY ROBINSON, 262.

2 THE COURT: NOW, LADIES AND GENTLEMEN, WITH REGARD  
3 TO THAT LAST QUESTION, I'M GOING TO MAKE -- I'M GOING TO MAKE  
4 IT -- MAKE MYSELF A LITTLE BIT MORE CLEAR. IF YOU OR ANY  
5 MEMBER OF YOUR FAMILY HAS EVER HAD ANY TYPE OF PERSONAL  
6 CONNECTION - I LISTED SEVERAL OF THE DIFFERENT WAYS THAT YOU  
7 MIGHT COULD HAVE BEEN INVOLVED - TO ANY TYPE OF CRIME THAT  
8 YOU CONSIDER TO BE OR THAT YOU WOULD CONSIDER TO BE A VIOLENT  
9 CRIME, THEN I NEED YOU TO TELL ME YOUR NAME AND YOUR JUROR  
10 NUMBER NOW BECAUSE WE WILL PROBABLY HAVE SOME FOLLOW-UP  
11 QUESTIONS REGARDING THAT LATER.

12 NOW, AFTER I ASKED THE QUESTION, I THOUGHT TO MYSELF  
13 PERHAPS I DIDN'T DO ALL THAT GOOD OF A JOB OF MAKING IT CLEAR  
14 THAT IT DOESN'T NECESSARILY HAVE TO BE A CRIME THAT IS  
15 EXACTLY LIKE THIS ONE. ANY TYPE OF CRIME THAT YOU WOULD  
16 CONSIDER TO BE A VIOLENT CRIME, IF YOU OR YOUR FAMILY MEMBER  
17 HAS EVER BEEN INVOLVED IN SUCH A CRIME AND YOU HAVEN'T  
18 ALREADY TOLD ME YOUR NAME AND NUMBER, PLEASE STAND NOW.  
19 OKAY. MA'AM, TELL ME YOUR NAME AND NUMBER, PLEASE.

20 JUROR HARMON: JANET HARMON, 127.

21 THE COURT: 127? AND... MS. HARMON. YES, SIR.

22 JUROR GUNTER: RAY GUNTER, 121.

23 THE COURT: THANK YOU. YES, SIR?

24 JUROR JUDICE: BRIAN JUDICE, 155.

25 THE COURT: WHAT WAS THE NUMBER?

1 JUROR JUDICE: 155.  
2 THE COURT: BRIAN JUDICE?  
3 JUROR JUDICE: YES, SIR.  
4 THE COURT: 155. YES, MA'AM?  
5 JUROR MOAK: ANGELA MOAK, 206.  
6 THE COURT: 206. THANK YOU. YES, MA'AM?  
7 JUROR BAKER: MY NAME IS SHERYL BAKER.  
8 THE COURT: MS. BAKER?  
9 THE CLERK: NUMBER 10.  
10 THE COURT: THANK YOU, MA'AM. YES, SIR?  
11 JUROR TEEM: SAMUEL TEEM, 311.  
12 THE COURT: 311, MR. TEEM.  
13 JUROR TEEM: YES, SIR.  
14 THE COURT: YES, SIR?  
15 JUROR MCGUIRT: CHRIS MCGUIRT. I'M NOT SURE WHAT MY  
16 NUMBER IS.  
17 THE CLERK: NUMBER 199, YOUR HONOR.  
18 THE COURT: YES, MA'AM?  
19 JUROR SIMONEAU: PATRICIA SIMONEAU, 282.  
20 THE COURT: THANK YOU. YES, MA'AM?  
21 JUROR WILLIAMS: ANGELA WILLIAMS, 335.  
22 THE COURT: THAT WAS MS. WILLIAMS, 335?  
23 THE CLERK: RIGHT.  
24 JUROR LUESING: LOIS LUESING, 187.  
25 JUROR SMITH: AMBER SMITH, 285.

1 THE COURT: NOW, OTHER THAN WHAT I JUST DESCRIBED  
2 FOR YOU -- I MEAN, OTHER THAN THE TWO QUESTIONS I JUST ASKED,  
3 HAS ANY MEMBER OF THE JURY PANEL EVER BEEN CALLED TO TESTIFY  
4 IN THE TRIAL OF ANY CRIMINAL CASE? IF SO, PLEASE STAND.  
5 EVEN IF YOU ALREADY ANSWERED THE QUESTION BEFORE, ANSWER THIS  
6 ONE, TOO, IF IT APPLIES TO YOU. YES, SIR?

7 JUROR NOYES: 219, EDWARD NOYES.

8 THE COURT: YES, MA'AM?

9 JUROR OLDS: IRENE OLDS, 222.

10 THE COURT: YES, MA'AM?

11 JUROR PAXTON: MARY PAXTON, 228.

12 THE COURT: 228?

13 JUROR PAXTON: YES, SIR.

14 THE COURT: AND WHAT WAS YOUR LAST NAME?

15 JUROR PAXTON: PAXTON. P-A-X-T-O-N.

16 THE COURT: THANK YOU. YES, MA'AM?

17 JUROR KEISLER: CAROLYN KEISLER, 158.

18 THE COURT: MS. NUTTALL?

19 JUROR NUTTALL: 221.

20 THE COURT: 221? IS THAT RIGHT?

21 JUROR NUTTALL: YES, SIR. THAT'S RIGHT.

22 THE COURT: YES, MA'AM?

23 JUROR MOAK: ANGELA MOAK, 206.

24 JUROR KELBAUGH: EBBA KELBAUGH, 159.

25 THE COURT: 159. IS THERE ANY MEMBER OF THE JURY

1 PANEL WHO HAS EVER BEEN ACCUSED OF A CRIME? IF SO, PLEASE  
2 STAND. WHETHER YOU WERE CONVICTED OR NOT, HAVE YOU EVER BEEN  
3 FORMALLY ACCUSED OF A CRIME? IF SO, PLEASE STAND.

4 JUROR MCGUIRT: CHRIS MCGUIRT, 199.

5 THE COURT: YES, SIR?

6 JUROR CUMING: CHRIS CUMING, 70.

7 THE COURT: 70?

8 JUROR CUMING: I THINK SO, YEAH.

9 THE CLERK: WHAT WAS THE LAST NAME?

10 THE COURT: CUMING.

11 THE CLERK: THAT IS CORRECT, YOUR HONOR.

12 THE COURT: YES, MA'AM?

13 JUROR JOINER: JENNIFER JOINER, 148.

14 THE COURT: YES, SIR?

15 JUROR STEVENS: PAUL STEVENS, 304.

16 THE COURT: 304?

17 JUROR STEVENS: YES, SIR.

18 THE COURT: YES, MA'AM?

19 JUROR THOMPSON: TAMEEKA THOMPSON. I'M NOT SURE OF  
20 MY NUMBER.

21 THE COURT: WHAT WAS YOUR LAST NAME?

22 JUROR THOMPSON: THOMPSON.

23 THE COURT: THOMPSON?

24 POLICE OFFICER: YES, SIR, THOMPSON. 314.

25 THE COURT: 314?

1 POLICE OFFICER: YES, SIR.  
2 JUROR EDWARDS: PEGGY EDWARDS, 88.  
3 THE COURT: YES, SIR?  
4 JUROR ROCKWOOD: ARRON ROCKWOOD, 263.  
5 JUROR GREER: EDWARD GREER, 117.  
6 JUROR LEWIS: JOHN LEWIS, 179.  
7 THE COURT: 179, MR. LEWIS?  
8 JUROR LEWIS: YEAH.  
9 THE COURT: YES, SIR?  
10 JUROR JUDICE: BRIAN JUDICE, 155.  
11 THE COURT: 155, MR. JUDICE. YES, MA'AM?  
12 JUROR STAGGS: DARLENE STAGGS, 298.  
13 THE COURT: YES, SIR?  
14 JUROR CASSELMAN: BENJAMIN CASSELMAN, 53.  
15 THE COURT: 53?  
16 JUROR CASSELMAN: YES, SIR.  
17 THE COURT: ALL RIGHT. LET ME SEE THE LAWYERS FOR  
18 ONE SECOND, PLEASE.  
19 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HELD  
20 IN THE HEARING OF THE COURT REPORTER:)  
21 THE COURT: I WAS REMINDED THAT MS. STINECIPHER HAD  
22 SAID THAT SHE HAD A CHILD WHO WAS MURDERED, AND WE AGREED  
23 THAT THOSE FOLLOW-UP QUESTIONS WILL JUST BE ADDRESSED ON  
24 INDIVIDUAL VOIR DIRE WITH HER. LET ME ASK Y'ALL -- LET ME  
25 ASK YOU A QUICK QUESTION.

1 (WHEREUPON, THE CONCLUSION OF THE BENCH CONFERENCE  
2 WAS HELD OUT OF THE HEARING OF THE COURT REPORTER.)

3 THE COURT: LADIES AND GENTLEMEN, THE ALLEGED VICTIM  
4 IN THIS CASE, TRACY LAMAR DAVIS, AT THE TIME WAS AN ACTIVE  
5 MEMBER OF THE MILITARY. I MENTION THAT BECAUSE I WANT TO  
6 KNOW WHETHER OR NOT THERE ARE ANY MEMBERS OF THE JURY PANEL  
7 WHO BECAUSE OF SOME FAMILY CONNECTION WITH THE MILITARY,  
8 PERHAPS SOME PERSONAL PARTICIPATION IN THE MILITARY, OR JUST  
9 SOME OTHER FEELINGS THAT YOU MAY HAVE ABOUT THE MILITARY --  
10 IS THERE ANY MEMBER OF THE JURY PANEL WHO FEELS THAT THE FACT  
11 THAT THE VICTIM WAS AN ACTIVE MEMBER OF THE MILITARY WOULD  
12 AFFECT THEIR ABILITY TO BE A FAIR AND IMPARTIAL JUROR? IF  
13 SO, PLEASE STAND. ALL RIGHT. TELL ME YOUR NAME AGAIN, SIR.

14 JUROR NELSON: DERRICK NELSON, 215.

15 THE COURT: YES, SIR?

16 JUROR SCHROEDER: RONALD SCHROEDER, 270.

17 THE COURT: YES, SIR?

18 JUROR TEEM: SAMUEL TEEM, 311.

19 JUROR MCGUIRT: CHRIS MCGUIRT, 199.

20 JUROR SPENCER: CHERYL SPENCER, 296.

21 JUROR POUND: MICHAEL POUND, 241.

22 THE COURT: 241?

23 JUROR POUND: YES, SIR.

24 THE COURT: YES, MA'AM?

25 JUROR ADAMS: JESSE ADAMS, 3.



1 THE COURT: WHAT WAS YOUR NUMBER, MA'AM?

2 JUROR ADAMS: THREE.

3 JUROR KELBAUGH: EBBA KELBAUGH, 159.

4 THE COURT: NOW, LADIES AND GENTLEMEN, YOU HAVE  
5 HEARD ME READ THE INDICTMENTS IN THE CASE. YOU'VE BEEN  
6 INTRODUCED TO THE -- TO THE DEFENDANT, MR. KEVIN MERCER. YOU  
7 WILL RECALL FROM MY READING THE INDICTMENT THAT THIS IS A  
8 CRIME OR A SERIES OF CRIMES THAT IS ALLEGED TO HAVE OCCURRED  
9 ON MAY THE 16TH, 2002. IS THERE ANY MEMBER OF THE JURY PANEL  
10 WHO KNOWS ANYTHING ABOUT THIS CASE, EITHER INFORMATION THAT  
11 YOU MAY HAVE GAINED AT THE TIME THAT IT ALLEGEDLY OCCURRED OR  
12 ANYTHING THAT YOU MAY HAVE LEARNED OR HEARD ABOUT THE CASE IN  
13 RECENT WEEKS THROUGH THE PRESS, THE TELEVISION, THE NEWSPAPER  
14 OR IN ANY OTHER WAY? IS THERE ANY MEMBER OF THE JURY PANEL  
15 WHO BELIEVES THAT THEY KNOW ANYTHING ABOUT THIS CASE OR HAVE  
16 HEARD ANYTHING ABOUT THIS CASE? IF SO, PLEASE STAND. YES,  
17 SIR?

18 JUROR BRAILEY: HERCULES BRAILEY, JUROR 30.

19 THE COURT: WHAT WAS THE NUMBER?

20 JUROR BRAILEY: 30.

21 THE COURT: 30?

22 JUROR LAFOLLETTE: PHIL LAFOLLETTE, 170.

23 THE COURT: YES, SIR?

24 JUROR SPONHOUR: MICHAEL SPONHOUR, 297.

25 THE COURT: MS. SMITH.

1 JUROR STALVEY: BRENDA STALVEY, 299. BRENDA  
2 STALVEY, 299.

3 THE COURT: ALL RIGHT. MA'AM?

4 JUROR SMITH: AMBER SMITH, 285.

5 THE COURT: ANY ADDITIONAL VOIR DIRE TO BE ADDRESSED  
6 TO THE JURY PANEL AT THIS TIME FROM THE STATE?

7 MR. HUBBARD: NO, SIR, YOUR HONOR.

8 THE COURT: FROM THE DEFENSE?

9 MR. LITTLEJOHN: NO, YOUR HONOR, NOT AT THIS TIME.

10 THE COURT: HAVE YOU GOT THE NAMES READY?

11 THE CLERK: YEAH, WE'RE READY.

12 THE COURT: AND LET ME SEE THE LAWYERS JUST FOR A  
13 SECOND, PLEASE.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

15 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL  
16 WHO KNOWS OF ANY REASON WHY YOU COULD NOT GIVE BOTH THE STATE  
17 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?  
18 IF SO, PLEASE STAND. ALL RIGHT. NOW, A COUPLE OF THINGS  
19 THAT I'M GOING TO -- THAT I WANT TO COVER WITH YOU AND THEN I  
20 -- WE HAVE ALREADY TAKEN YOUR NAMES AND DRAWN THEM OUT  
21 RANDOMLY AND PLACED THEM INTO PANELS THAT WILL BE ASKED TO  
22 COME BACK AT DIFFERENT TIMES DURING THE WEEK SO THAT WE CAN  
23 ADDRESS INDIVIDUAL QUESTIONS TO YOU.

24 I WANT TO GO AHEAD AND MENTION TO YOU ALL THE  
25 OBVIOUS FACT THAT IT IS VERY IMPORTANT THAT YOU ALL OBSERVE

1 THESE TIMES THAT WE GIVE YOU VERY CAREFULLY. IF WE ASK YOU  
2 TO BE BACK HERE AT 1:00 AND YOU'RE HERE AT 1:30, THEN THAT  
3 PUTS US IN A DIFFICULT POSITION BECAUSE WE MIGHT HAVE TO SIT  
4 AROUND AND JUST LET THE ENTIRE MACHINE OF THE COURT SYSTEM  
5 SIT AND WAIT ON YOU TO GET HERE. SO IF WE GIVE YOU A TIME,  
6 PLEASE BE VERY CAREFUL TO BE HERE ON TIME.

7 IF AS YOU GO THROUGH THE NEXT DAY OR SO -- NOW, SOME  
8 OF YOU WILL BE STAYING HERE BECAUSE WE'LL BE TALKING TO YOU  
9 RIGHT AWAY. SOME OF YOU WILL BE COMING BACK LATER THIS  
10 AFTERNOON. SOME OF YOU WILL BE COMING TOMORROW. SOME OF YOU  
11 WON'T BE COMING UNTIL WEDNESDAY OR POSSIBLY THURSDAY, BUT AS  
12 YOU GO THROUGH YOUR WEEK BETWEEN NOW AND THE TIME THAT I  
13 SPEAK TO YOU INDIVIDUALLY, IF YOU THINK OF ANYTHING THAT I  
14 ASKED YOU ABOUT ALREADY THAT YOU DIDN'T TELL ME YOU HAD AN  
15 ANSWER TO, THEN WHEN YOU COME IN JUST SAY, "I FORGOT TO  
16 MENTION... I JUST REMEMBERED THAT MY BROTHER-IN-LAW WAS THE  
17 VICTIM OF A CRIME, AND I JUST WANTED TO MENTION THAT,"  
18 SOMETHING LIKE THAT. IF YOU -- IF YOU THINK OF ANYTHING THAT  
19 YOU FORGOT TO MENTION TO ME IN THAT RESPECT, THEN PLEASE  
20 MENTION IT WHEN YOU COME IN.

21 NOW, THAT IS PARTICULARLY TRUE WITH REGARD TO ANY  
22 PRESS COVERAGE OR ANY OTHER INFORMATION THAT YOU MAY HAVE  
23 BEEN EXPOSED TO REGARDING THIS CASE. AS I MENTIONED TO YOU  
24 EARLIER, IF YOU HAVE LEARNED ANYTHING ABOUT THIS CASE, I NEED  
25 TO KNOW ABOUT THAT SO THAT WE CAN DECIDE WHETHER OR NOT THAT

1 WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR.  
2 SO FOR ANYTHING THAT HAS HAPPENED IN THE PAST, IF YOU  
3 REMEMBER WHEN YOU GET HOME, OH, I SAW A T.V. STORY ABOUT THAT  
4 OR I SAW SOMETHING IN THE PAPER, PLEASE BRING THAT TO OUR  
5 ATTENTION WHEN YOU COME IN.

6 NOW, FROM THIS POINT FORWARD I'M EXPECTING THAT  
7 NOBODY IS GOING TO LEARN OR HEAR OR SEE ANYTHING ABOUT THIS  
8 CASE BECAUSE YOU'RE ALL GOING TO BE VERY CAREFUL NOT TO LET  
9 THAT HAPPEN. I'VE ALREADY MENTIONED TO YOU THAT THERE HAS  
10 BEEN A NEWSPAPER ARTICLE ABOUT THIS CASE OR ABOUT -- THAT  
11 RELATED TO THIS CASE TODAY. THERE VERY LIKELY COULD BE OTHER  
12 PRESS COVERAGE DURING THE COURSE OF THIS WEEK BECAUSE I KNOW  
13 THAT THE PRESS IS GOING TO BE COVERING THE TRIAL OF THIS  
14 CASE.

15 SO I'M COUNTING ON YOU ALL, EACH INDIVIDUAL ONE OF  
16 YOU, TO BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED  
17 TO ANY PRESS COVERAGE ABOUT THE CASE. NOW, IF THAT DOES  
18 HAPPEN, IF YOU -- IF YOU UNKNOWINGLY OVERHEAR SOMEONE TALKING  
19 ABOUT THE CASE OR -- OR YOU HAPPEN TO BE SITTING IN FRONT OF  
20 THE T.V. AND YOU DON'T REALIZE THAT THIS COVERAGE IS COMING  
21 ON AND YOU SEE PART OF IT, FIRST OF ALL, TURN IT OFF VERY  
22 QUICKLY, BUT SECONDLY, IF THAT HAPPENS, TELL ME ABOUT IT,  
23 PLEASE, WHEN YOU COME IN EITHER LATER THIS WEEK OR THE FIRST  
24 OF NEXT WEEK. MAKE SURE WE KNOW ABOUT THAT SO THAT WE CAN  
25 ASK YOU THE APPROPRIATE QUESTIONS AND DECIDE HOW THAT MIGHT

1 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR.

2 ALL RIGHT. ARE YOU -- ARE YOU GOING TO CALL OUT THE  
3 PANELS NOW?

4 THE CLERK: I WILL.

5 THE COURT: OKAY. ALL RIGHT. SO LISTEN VERY  
6 CAREFULLY. THE CLERK IS GOING TO CALL OUT THE INDIVIDUAL  
7 PANELS, AND THE PANELS ARE NUMBERED. ALL YOU NEED TO DO IS  
8 REMEMBER WHAT PANEL YOU'RE ON. SHE'S GOING TO SAY PANEL ONE  
9 AND CALL SIX NAMES AND THEN SO ON UNTIL WE GET THE - I DON'T  
10 KNOW -- 12 OR 15 PANELS, HOW EVER MANY YOU HAVE DRAWN. AND  
11 THEN I'M GOING TO -- AFTER THAT, I'M GOING TO GIVE YOU SOME  
12 INSTRUCTIONS ABOUT HOW TO FIND OUT WHEN YOU NEED TO COME  
13 BACK. MA'AM, DID YOU HAVE A QUESTION?

14 JUROR CLAMP: YES. CAN I GET MY NUMBER? LIKE I  
15 DON'T KNOW WHAT IT IS.

16 THE COURT: TELL ME YOUR NAME.

17 JUROR CLAMP: KAYLA CLAMP.

18 POLICE OFFICER: 59.

19 THE COURT: YOU ARE NUMBER 59.

20 JUROR CLAMP: ALL RIGHT.

21 THE CLERK: ARE YOU READY?

22 THE COURT: READY.

23 THE CLERK: ALL RIGHT. PANEL NUMBER 1 IS JUROR

24 NUMBER 30, HERCULES BRAILEY. JUROR 294, MICHELLE SMOAK.

25 JUROR NUMBER 10, SHERYL BAKER. JUROR 321, BECKY VANLOOZEN.

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1 JUROR 297 IS CHERYL SPENCER. JUROR 262 IS KILEY ROBINSON.

2 PANEL NUMBER 2: ANGELA LUCAS, JUROR NUMBER 185.

3 JUROR NUMBER 3, JESSE ADAMS. JUROR 325, CHRISTOPHER WARREN.

4 JUROR 109, LAUREN GIBSON. JUROR 219, EDWARD NOYES. JUROR

5 258, DIANA RIVERS.

6 PANEL NUMBER 3 IS JUROR 186, DEBORAH LUCAS. JUROR

7 177, TIMOTHY LEITNER. JUROR 196, SUSAN HARTLEY. JUROR 345,

8 JANE WRENN. JUROR 106, BONNIE FRENCH. AND JUROR 197 IS ADAM

9 MCCULLOUGH.

10 PANEL 4 IS JUROR 36, MACK BROCK. JUROR 233, VICTOR

11 PETRELLA. JUROR 182, WILLIAM LIVINGSTON. JUROR 298, DARLENE

12 STAGGS. JUROR 27, EDWARD BOYLE. JUROR 24, DIANE BOUYE.

13 PANEL NUMBER 5 IS JUROR 228, MARY PAXTON. JUROR

14 127, JANET HARMON. JUROR 305, HIPOLITA STINECIPHER. JUROR

15 70, CHRISTOPHER CUMING. JUROR 121, RAY GUNTER. JUROR 297,

16 MICHAEL SPONHOUR.

17 JUROR NUMBER -- PANEL NUMBER 6 IS JUROR 72, DONNA

18 DARBY. 170, PHILIP LAFOLLETTE. 287, KATHRYN SMITH. 327,

19 MICHAEL WATKINS. 67, VALORIE JACKSON. 198, CHARLES

20 MCDANIEL.

21 PANEL NUMBER 7: JUROR 302, DARRELL STARKEY. 304,

22 PAUL STEVENS. 225, EDWARD OSEGUEDA. JUROR 2 IS JENNIFER

23 ADAMS. 270 IS RONALD SCHROEDER. 191 IS THOMAS MARINELLI.

24 PANEL NUMBER 8: JUROR 291 IS NEAL SMITH. 205 IS

25 VICKY MILLS. 275 IS PHILLIP SHARPE. 285 IS AMBER SMITH.

1 260 IS WILLIAM RIVERS, AND JUROR 77 IS LAURA DAY.

2 PANEL NUMBER 9 IS JUROR 235, CHRISTILLE PHILLIPS.

3 187, LOIS LUESING. 206, ANGELA MOAK. 13, PATRICIA

4 BALLINGTON. 169, TED KYZER. 311, SAMUEL TEEM.

5 PANEL NUMBER 10: JUROR 278, RENEE SHEALY. 220,

6 CHARLES NUNNERY. 44 IS RICHARD BURGESS. 350 IS WALLACE

7 ZERUTH. 93 IS ROBIN EZZELL. 154 IS GLORIA JOYE.

8 JURY PANEL NUMBER 11: DONNA KEFFER WHICH IS JUROR

9 157. JUROR 279 IS VINCENT SHIRK. JUROR 240 IS KRISTI

10 POTTER. JUROR 54 IS ANNE CAVANAUGH. JUROR 88 IS PEGGY

11 EDWARDS. JUROR 123 IS JENNIFER HALL.

12 PANEL NUMBER 12 IS JUROR 113, ANTHONY GOODWIN.

13 JUROR 21, RONNIE BOLAND. JUROR 330, JO WELLS. JUROR 263,

14 ARRON ROCKWOOD. JUROR 216, SANDRA NELSON. JUROR 241,

15 MICHAEL POUND.

16 JUROR PANEL NUMBER 13 IS ROBERT JENNINGS, JUROR 149.

17 JUROR 20, EDDIE BIGHAM. JUROR 117, EDWARD GREER. JUROR 52,

18 DIANE CARRAWAY. JUROR 288, KATHRYN SMITH. JUROR 267, JUHA

19 SALENIUS.

20 JURY PANEL NUMBER 14 IS 286, GREG SMITH. 289,

21 LESLIE SMITH. 178, HEATHER LEWIS. JUROR NUMBER 80, LOUISE

22 DICKSON. JUROR 215, DERRICK NELSON. JUROR 164, SUSAN KING.

23 JURY PANEL NUMBER 15 IS RUBEN SALAS, JUROR NUMBER

24 266. 333, STAN WHITE. 26, DEBRA BOWLING. 299, BRENDA

25 STALVEY. 199, CHRISTOPHER MCGUIRT. 222, IRENE OLDS.

1 JURY PANEL NUMBER 16: JUROR NUMBER 6, MIRIAM  
2 ARNOLD. JUROR 120, BETTY GUNTER. 290, MARGARET SMITH. 159,  
3 EBBA KELBAUGH. 292, ROSEMARIE SMITH. 282, PATRICIA  
4 SIMONEAU.

5 JURY PANEL NUMBER 17 IS JUROR 148, JENNIFER JOINER.  
6 JUROR 19, GLORIAJANE BERRY. 155, BRIAN JUDICE. 346, CHERYL  
7 WILLIS. 134, JASON HENDRIX. 158, CAROLYN KEISLER.

8 JURY PANEL 18: JUROR 179, JOHN LEWIS. 79, EMMA  
9 DENNIS. 153, SHERRI JONES. 126, TERRELL HARLEY. 60, TONI  
10 CLARK. 183, DAVID LONEY.

11 JURY PANEL NUMBER 19 IS JURY 200, KARLA MCRAE.  
12 JUROR 59, KAYLA CLAMP. 344, JOHN WOODALL. 322, KEVIN VARN.  
13 209, JOSEPH MORELLI. 46, MARYLIN CAMERON.

14 JURY PANEL NUMBER 20: JUROR 188, JENNEFER LYONS.  
15 314, TAMEEKA THOMPSON. 211, THOMAS MORRIS. 335, ANGELA  
16 WILLIAMS. 98, CONETTE FIDLER. 284, ELIZABETH SLAY.

17 AND JURY PANEL 21 IS JUROR 53, BENJAMIN CASSELMAN.  
18 221, ELSIE NUTTALL. 249, RONALD RATTEREE.

19 THE COURT: ALL RIGHT. NOW, IF Y'ALL ARE LIKE ME,  
20 IF I WAS ON, SAY, PANEL 6 I'D SAY, "ALL RIGHT. NOW, HERE'S  
21 HOW I'M GOING TO REMEMBER HOW I'M ON PANEL 6," AND THEN I'D  
22 GET 10 MINUTES DOWN THE ROAD AND I'D SAY, "NOW, HOW WAS I  
23 GOING TO REMEMBER THAT? WAS IT 6 OR WAS IT 8?" AND YOU'LL  
24 HAVE TROUBLE REMEMBERING PERHAPS WHAT PANEL YOU'RE ON.

25 THERE'S SEVERAL WAYS THAT YOU CAN CHECK ON THAT, AND



1 I'M GOING TO TELL YOU WHAT THOSE ARE IN JUST A SECOND. WHAT  
2 WE'RE GOING TO DO IS THIS: WE'RE GOING TO START IN JUST A  
3 FEW MINUTES WITH PANEL 1, AND I'M GOING TO TELL PANEL 2 THAT  
4 YOU CAN BE -- YOU CAN LEAVE, BUT YOU NEED TO BE BACK HERE  
5 READY TO GO TO WORK AGAIN AT 5:00. AND THEN PANEL 3, YOU  
6 NEED TO REPORT HERE TOMORROW MORNING BY 9 A.M. PANEL 4, YOU  
7 NEED TO BE HERE TOMORROW MORNING AT 11 A.M. I'M ESTIMATING  
8 THAT PANEL 5 WILL NEED TO BE HERE AT 2:00 TOMORROW AFTERNOON.

9 NOW, IF WE GET AHEAD OR IF WE GET BEHIND, WE CAN --  
10 I'M GOING TO ADJUST THOSE START TIMES. SO I WANT TO  
11 ENCOURAGE EACH ONE OF YOU TO CHECK THE TWO DIFFERENT WAYS  
12 THAT YOU CAN CHECK TO FIND OUT WHAT YOUR CURRENT ESTIMATED  
13 START TIME IS FOR YOUR PANEL. THERE ARE TWO WAYS TO DO THAT.  
14 FIRST OF ALL, YOU HAVE -- THEY HAVE ALREADY BEEN GIVEN THE  
15 NUMBER, CORRECT, THE TELEPHONE NUMBER?

16 THE CLERK: THEY DID NOT GET THE CARD, YOUR HONOR.

17 THE COURT: ALL RIGHT. DO WE HAVE THEM UP HERE?

18 THE CLERK: YES, SIR, YOUR HONOR. THE BAILIFFS CAN  
19 GIVE THEM AS THEY LEAVE.

20 THE COURT: ALL RIGHT. AS YOU LEAVE, YOU'LL BE  
21 GIVEN A CARD THAT HAS A TELEPHONE NUMBER ON IT. DOES IT ALSO  
22 HAVE THE WEB SITE ADDRESS ON IT?

23 THE CLERK: IT DOES NOT.

24 THE COURT: ALL RIGHT. IT HAS THE TELEPHONE NUMBER  
25 ON IT, AND YOU CAN CALL THAT TELEPHONE NUMBER. THERE WILL BE

1 A RECORDED MESSAGE ON THAT TELEPHONE LINE THAT TELLS YOU WHAT  
2 WE CURRENTLY ARE EXPECTING TO BE THE START TIME FOR THE NEXT  
3 SEVERAL PANELS. THERE'S ALSO A WEB SITE THAT LEXINGTON  
4 COUNTY MAINTAINS. IT'S W.W.W. DOT L.E.X. DASH C.O. DOT COM.  
5 L.E.X., OBVIOUS STANDING FOR LEXINGTON, DASH C.O., OBVIOUSLY  
6 REPRESENTING THE WORD COUNTY AND THEN DOT C.O.M. IF YOU GO  
7 TO THAT WEB SITE, THERE IS A -- A SELECTION THAT YOU CAN MAKE  
8 THERE FOR JUROR INFORMATION. IS THAT WHAT IT SAYS?

9 THE CLERK: JUROR MESSAGE.

10 THE COURT: JUROR MESSAGE. AND YOU SELECT THAT --  
11 THAT LINK AND IT WILL TAKE YOU TO A PAGE THAT WILL SHOW YOU  
12 THE -- EACH PANEL AND WHO IS ON IT AND WHAT TIME YOU ARE  
13 EXPECTED TO BE HERE AND WHEN. NOW, OBVIOUSLY FOR A PANEL  
14 LIKE NUMBER 10 OR 12, WE DON'T KNOW WHAT TIME YOU'RE GOING TO  
15 BE HERE, BUT IT'S PROBABLY GOING TO BE -- WE'RE PROBABLY  
16 GOING TO BE DOING FIVE OR SIX PANELS A DAY AFTER TODAY. SO  
17 IF YOU'RE ON PANEL 12, THEN YOU'RE LOOKING AT SOMETIME  
18 WEDNESDAY AFTERNOON OR -- OR MAYBE MIDDAY WEDNESDAY. BUT AS  
19 IT GETS TO BE TUESDAY AFTERNOON, WE'LL PUT SOMETHING ON THE  
20 WEB SITE AND SOMETHING ON THE RECORDED MESSAGE THAT WILL GIVE  
21 YOU AN ESTIMATE AS TO WHEN YOU WILL BE EXPECTED TO BE HERE.  
22 AND THEN IF YOU CALL ONE NIGHT AFTER 6 AND YOU'RE EXPECTED TO  
23 BE HERE, SAY, AT 9 OR 11 THE NEXT MORNING, YOU'LL KNOW  
24 EXACTLY THEN WHAT TIME YOU'RE SUPPOSED TO BE HERE.

25 NOW, WE'RE SCHEDULING THESE THINGS TWO HOURS APART.

1 IF WE FIND THAT WE'RE MOVING A LITTLE MORE QUICKLY, WE'LL  
2 MOVE IT DOWN TO, SAY, AN HOUR AND A HALF APART OR AN HOUR AND  
3 45 MINUTES. HISTORICALLY, IT TAKES TWO HOURS TO GET THROUGH  
4 SIX JURORS, SO THAT'S -- THAT'S AN AVERAGE. SOME PANELS MAY  
5 TAKE THREE HOURS; SOME PANELS MAY TAKE ONE HOUR. IT JUST  
6 DEPENDS ON HOW EACH INDIVIDUAL JUROR'S QUESTIONING GOES.

7 NOW, WHEN YOU REPORT, YOU WILL BE -- YOU WILL NEED  
8 TO GO TO THE GRAND JURY ROOM WHICH IS ON THIS FLOOR OVER IN  
9 THAT CORNER OF THE BUILDING. SO AS YOU COME UP OFF OF THE  
10 ELEVATORS OR UP THOSE STAIRS, INSTEAD OF TURNING LEFT TO COME  
11 TO THESE DOORS AT THE BACK OF THE COURTROOM, YOU WOULD TURN  
12 RIGHT AND YOU WOULD GO INTO THE GRAND JURY ROOM, AND THERE  
13 WILL BE BAILIFFS THERE TO DIRECT YOU. YOU NEED NOT WORRY  
14 ABOUT REMEMBERING EXACTLY HOW TO GET TO THE GRAND JURY ROOM  
15 BECAUSE THE BAILIFFS WILL SEE YOU COMING AND THEY WILL DIRECT  
16 YOU TO THAT ROOM. YOU GO IN THE ROOM AND YOU'LL BE SEATED,  
17 AND YOU'LL BE HANDED SOME INFORMATION.

18 ONE OF THE PIECES OF INFORMATION THAT YOU WILL BE  
19 GIVEN IS A LIST OF POTENTIAL WITNESSES WHO WILL BE -- WHO  
20 MIGHT BE CALLED TO TESTIFY IN THIS CASE. I WOULD LIKE FOR  
21 YOU ALL TO EACH INDIVIDUALLY PATIENTLY AND CALMLY TO READ  
22 OVER THAT LIST AND SEE IF YOU RECOGNIZE ANY OF THE NAMES ON  
23 THE LIST. IF YOU DO, THEN MARK IT. WE'LL HAVE SOME PENCILS  
24 IN THERE, AND YOU CAN MARK THAT. AND THEN WHEN YOU COME IN  
25 TO TALK TO ME, YOU CAN SAY -- AND I WILL ASK YOU, "WHO DO YOU

1 KNOW OFF THAT LIST? YOU TELL ME WHO YOU KNOW. HOW DO YOU  
2 KNOW THEM?" AND WE'LL PROBABLY ASK YOU SOME FOLLOW-UP  
3 QUESTIONS.

4 NOW, SOMETIMES YOU'LL SEE A NAME ON A WITNESS LIST  
5 AND YOU THINK, WELL, I KNOW -- I THINK I KNOW THAT PERSON,  
6 BUT I'M NOT SURE IF THAT'S THE PERSON I KNOW. IF THAT'S YOUR  
7 SITUATION, IF YOU THINK YOU MIGHT KNOW SOMEBODY BUT YOU'RE  
8 NOT SURE, THEN WHEN YOU COME IN HERE YOU SAY, "JUDGE, I THINK  
9 I KNOW THAT PERSON, BUT IF YOU'LL GIVE ME SOME MORE  
10 INFORMATION ABOUT THE PERSON, I CAN TELL YOU IF THAT'S THE  
11 PERSON I KNOW," AND WE'LL GIVE YOU SOME MORE INFORMATION SO  
12 YOU CAN DECIDE IF THAT'S THE PERSON THAT YOU KNOW.

13 NOW, WHEN YOU -- WHEN YOU COME UP HERE, REMEMBER NOW  
14 YOU CANNOT DISCUSS THIS CASE. YOU CANNOT DISCUSS ANY OF THE  
15 BUSINESS THAT IS GOING ON BEFORE THIS COURT. DON'T DISCUSS  
16 WHAT YOU THINK WE MIGHT BE ASKING YOU WHEN YOU COME IN HERE.  
17 WHEN YOU LEAVE AND YOU MIGHT SEE OTHER JURORS COMING IN,  
18 DON'T DISCUSS BETWEEN YOU WHAT I JUST ASKED OR WHAT SOME OF  
19 THE LAWYERS MIGHT HAVE JUST ASKED. JUST DON'T TALK ABOUT  
20 ANYTHING RELATED TO THIS CASE.

21 NOW, ALSO WITH REGARD TO DISCUSSING THIS CASE, I  
22 SUPPOSE THAT MOST OF YOU HAVE A FAMILY THAT YOU LIVE WITH OR  
23 YOU HAVE FRIENDS THAT YOU LIVE AROUND AND YOU'RE GOING TO GO  
24 HOME TONIGHT OR GO HOME TOMORROW AND SOMEBODY IS GOING TO SAY  
25 TO YOU, "WHAT WERE YOU DOING UP AT THE COURTHOUSE TODAY?"

1 TELL ME WHAT'S GOING ON UP THERE." WELL, YOUR -- I'M GOING  
2 TO MAKE IT REAL SIMPLE FOR YOU. "I CAN'T TALK ABOUT IT. THE  
3 JUDGE TOLD ME NOT TO TALK ABOUT IT, AND HE ASSURED ME THAT IF  
4 I DID WHAT HE TOLD ME TO DO, HE WOULD COOPERATE WITH ME BUT  
5 THAT IF I DIDN'T DO WHAT HE TOLD ME TO DO, I'D BE MAKING IT  
6 DIFFICULT FOR MYSELF." THAT'S WHAT -- THAT'S WHAT WE CALL AN  
7 UNDERSTATEMENT. BUT, PLEASE, BE VERY CAREFUL.

8 IF SOMEBODY -- AND THEY WILL. PEOPLE ARE GOING TO  
9 ASK YOU AND THEY'RE GOING TO -- THEY'LL SAY THINGS LIKE, "OH,  
10 COME ON. YOU CAN JUST TELL ME. I'M NOT GOING TO TELL  
11 ANYBODY." "I CAN'T TALK ABOUT IT." THAT'S THE ONLY THING  
12 YOU NEED TO SAY IS I CAN'T TALK -- YOU CAN TELL THEM THAT  
13 YOU'RE ON A JURY PANEL FOR A CASE THAT'S PENDING UP HERE.  
14 THAT'S ALL YOU NEED TO TELL THEM, AND YOU DON'T HAVE TO TELL  
15 THEM ANYTHING ELSE. SO IF PEOPLE TRY TO GET YOU TO TALK  
16 ABOUT IT, DON'T TALK ABOUT IT.

17 IF PEOPLE TRY TO TALK TO YOU ABOUT THE CASE, TWO  
18 THINGS: FIRST OF ALL, STOP THE CONVERSATION. DO NOT ALLOW  
19 ANYONE TO TALK TO YOU ABOUT THIS CASE AND, SECOND OF ALL,  
20 WHEN YOU GET BACK UP HERE YOU TELL ME ABOUT IT AND I WILL  
21 DEAL WITH THEM.

22 COUNSEL, CAN I SEE Y'ALL UP HERE JUST ONE SECOND,  
23 PLEASE?

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

25 THE COURT: ALL RIGHT. ANY QUESTIONS? GOOD. YES,

1 SIR?

2 JUROR: WHEN WE COME TO THESE PANELS, IF WE'RE  
3 WORKING, DO WE HAVE A DRESS ATTIRE?

4 THE COURT: YOU NEED TO BE ADDRESSED APPROPRIATELY.  
5 WHEN YOU COME TO COURT, YOU COME INTO AN ENVIRONMENT IN WHICH  
6 YOU'RE EXPECTED TO DRESS APPROPRIATELY, AND THAT'S GOING TO  
7 VARY FOR EACH INDIVIDUAL PERSON, BUT CERTAINLY IF ANYBODY HAS  
8 ANY QUESTIONS ABOUT WHAT THAT MEANS, THEN WE CAN HELP YOU  
9 BUT... NOW, MR. STEVENS -- CORRECT?

10 JUROR STEVENS: YES, SIR.

11 THE COURT: YOU STAY. EVEN THOUGH YOU WERE GIVEN A  
12 PANEL NUMBER OF SOMETIME LATER THIS WEEK, YOU STAY WITH US  
13 NOW. WE'RE GOING TO TAKE CARE OF YOU THIS AFTERNOON. IS  
14 THERE -- IF THERE'S ANYBODY ELSE WHO HAS A -- AND I KNOW  
15 THERE WAS -- THERE WAS AT LEAST -- THERE WAS ONE OTHER  
16 GENTLEMAN WHO HAD A MEETING IN CHARLOTTE. ALL RIGHT. I NEED  
17 TO SPEAK TO YOU BEFORE YOU LEAVE. ANYBODY ELSE WHO HAS ANY  
18 PARTICULAR SCHEDULING CONCERN FOR THE REST OF THIS WEEK? IF  
19 YOU HAVE ANY -- IF YOU HAVE ANY SCHEDULING CONCERNS FOR THE  
20 REST OF THIS WEEK, THEN I CAN WORK WITH YOU TO WORK AROUND  
21 WHAT THAT CONCERN MAY BE. SO BEFORE YOU LEAVE, COME UP AND  
22 TELL ME ABOUT THAT AND WE WILL ADJUST YOUR SCHEDULE SO THAT  
23 WE CAN WORK AROUND YOUR SCHEDULING PROBLEM.

24 NOW, AS I TOLD SEVERAL OF YOU DURING -- WHEN I WAS  
25 SPEAKING TO YOU PRIVATELY, WHEN IT COMES TO NEXT WEEK, IF

1 YOU'RE ON THE JURY, THEN THERE'S -- THERE'S NOTHING I CAN DO.  
2 WE'LL BE HERE FROM -- THE WHOLE DAY WORKING UNTIL WE'RE DONE.  
3 SO IF THERE'S ANYBODY WHO WANTS TO TALK ABOUT A SCHEDULING  
4 CONCERN LATER THIS WEEK, MAKE SURE YOU COME UP AND SPEAK TO  
5 ME NOW.

6 PANEL 1, REMAIN WHERE YOU ARE AND YOU -- AS SOON AS  
7 YOU -- AS SOON AS WE DISMISS, YOU'LL BE ESCORTED TO THE GRAND  
8 JURY ROOM OR ACTUALLY I GUESS WE CAN GO AHEAD AND PUT THEM  
9 BACK HERE. ALL RIGHT. AND, PANEL 2, BE BACK AT 5:00. PANEL  
10 3, 9:00 TOMORROW MORNING. PANEL 4, CHECK THE VOICE RECORDER  
11 AND CHECK THE INTERNET. I'M ESTIMATING THAT IT WILL BE 11,  
12 BUT IT COULD BE A LITTLE BIT -- LET'S JUST GO AHEAD AND SAY  
13 10:45. YOU ALL BE HERE TOMORROW MORNING AT 10:45 IF YOU'RE  
14 IN PANEL 4. YES, MA'AM?

15 (AN OFF-THE-RECORD DISCUSSION TOOK PLACE BETWEEN THE  
16 CLERK AND THE COURT.)

17 THE COURT: ALL RIGHT. LET ME -- LET ME SEE THE  
18 LAWYERS FOR A SECOND, PLEASE.

19 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS  
20 HELD:)

21 THE COURT: LET'S PUT THIS ON THE RECORD. NUMBER  
22 23, ROBERT BOLES, SHE MISTAKENLY INCLUDED HIM AS A JUROR WHO  
23 WAS TRANSFERRED, BUT HE WAS NOT TRANSFERRED. SO WE PROPOSE  
24 -- AND HE'S HERE. WE PROPOSE TO JUST MAKE HIM LAST BUT  
25 THAT'S -- THAT'S -- YOU KNOW, WE COULD GO BACK AND REDO THE

1 WHOLE THING IF YOU WANT US TO.

2 MR. LITTLEJOHN: WELL, JUDGE, SEE, ALLOWING THE  
3 WHOLE -- THE JURY WAS PREVIOUSLY---

4 THE COURT: OKAY. WOULD YOU RATHER HAVE HIM LAST  
5 AGAIN BECAUSE WE CAN PUT HIM -- IF YOU STILL WANT HIM LAST,  
6 WE CAN PUT BOLES IN THIS NEXT ONE. ALL RIGHT. DOES  
7 EVERYBODY AGREE TO THAT?

8 MR. HUBBARD: YES, SIR.

9 THE COURT: I'M GOING TO ASK IF THERE'S ANYBODY ELSE  
10 WHOSE NAMES WERE NOT CALLED.

11 THE CLERK: I APOLOGIZE.

12 (THE BENCH CONFERENCE CONCLUDED.)

13 THE COURT: ALL RIGHT. MR. ROBERT BOLES, WE  
14 NEGLECTED TO CALL YOUR NAME; CORRECT?

15 JUROR BOLES: THAT'S CORRECT.

16 THE COURT: YOU'RE NOW IN PANEL 21.

17 JUROR BOLES: OKAY.

18 THE COURT: ALL RIGHT? IS THERE ANY OTHER JUROR  
19 WHOSE NAME WAS NOT CALLED? ANYBODY WHO WAS NOT PUT INTO A  
20 PANEL? IF SO, PLEASE STAND. ALL RIGHT. NOW, TRY TO MAKE  
21 SURE YOU KNOW WHAT PANEL YOU'RE IN BEFORE YOU LEAVE. YOU CAN  
22 CHECK WITH THE CLERK OF COURT NOW AND THEN -- AND FIND OUT.  
23 IF YOU'RE -- IF YOU DON'T HAVE TO BE -- IF YOU'RE NOT IN  
24 PANEL 1, YOU CAN GO. BYE. SEE YOU WHEN YOU'RE DESIGNATED TO  
25 COME BACK. IF YOU HAVE A SCHEDULING CONCERN, THEN YOU COME



1 TALK TO ME. THIS GENTLEMAN, COME ON UP. ALL RIGHT. ONE AT  
2 A TIME. DIRECT THEM UP HERE ONE AT A TIME, PLEASE.

3 (WHEREUPON, THE ENTIRE JURY PANEL, WITH THE  
4 EXCEPTION OF PANEL 1 AND JURORS WITH SCHEDULING CONCERNS,  
5 LEAVE THE COURTROOM.)

6 BAILIFF: JUROR 314, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
9 THE COURT AND JUROR 314, TAMEEKA THOMPSON.)

10 THE COURT: LET ME SEE THE NEXT JUROR WHO NEEDS  
11 SCHEDULING.

12 BAILIFF: 298, YOUR HONOR.

13 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
14 THE COURT AND JUROR 298, DARLENE STAGGS.)

15 BAILIFF: 183, YOUR HONOR.

16 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
17 THE COURT AND JUROR 183, DAVID LONEY.)

18 BAILIFF: 177, YOUR HONOR.

19 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
20 THE COURT AND JUROR 177, TIMOTHY LEITNER.)

21 BAILIFF: 305, YOUR HONOR.

22 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
23 THE COURT AND JUROR 305, HIPOLITA STINECIPHER.)

24 THE COURT: WHERE IS PANEL 1? WHO ALL IS ON PANEL  
25 1? ALL RIGHT. I NEED A BAILIFF TO ESCORT THESE FOLKS BACK

1 HERE.

2 (PANEL 1 JURORS ARE ESCORTED TO THE GRAND JURY  
3 ROOM.)

4 THE COURT: ANYBODY ELSE ON PANEL 1?

5 BAILIFF: 199, YOUR HONOR.

6 THE COURT: GET THE NAMES OF WHO THEY ARE.

7 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
8 THE COURT AND JUROR 199, CHRISTOPHER MCGUIRT.)

9 BAILIFF: 179, YOUR HONOR.

10 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
11 THE COURT AND JUROR 179, JOHN LEWIS.)

12 THE COURT: ALL RIGHT.

13 BAILIFF: 304, YOUR HONOR.

14 THE COURT: ALL RIGHT. YOU -- WE'RE JUST GOING TO  
15 GO AHEAD AND PUT HIM IN PANEL 1. THIS IS MR. STEVENS.

16 MR. LITTLEJOHN: YES, SIR.

17 THE COURT: YOU CAN GO ON BACK. TAKE HIM BACK TO  
18 THE JURY ROOM.

19 THE CLERK: OKAY.

20 THE COURT: WAS THERE SOMETHING ELSE YOU WANTED TO  
21 TELL ME, SIR?

22 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
23 THE COURT AND JUROR 304, PAUL STEVENS. A BENCH CONFERENCE  
24 TAKES PLACE BETWEEN THE COURT AND THE CLERK.)

25 BAILIFF: 285, YOUR HONOR.

1 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
2 THE COURT AND JUROR 285, AMBER SMITH.)

3 THE COURT: ALL RIGHT. IF WE CAN GET US A WITNESS  
4 LIST, WE'RE READY TO ROLL.

5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 THE COURT: BE SEATED, PLEASE. OKAY. NOW, I'M  
7 READY. I'M A LITTLE DISORGANIZED, BUT I'M READY. ARE Y'ALL  
8 READY?

9 MR. MYERS: YES, SIR.

10 THE COURT: BRING OUT HERCULES BRAILEY, PLEASE.

11 BAILIFF: HERCULES BRAILEY?

12 THE COURT: YES.

13 MS. KIMBROUGH: YOUR HONOR, BEFORE WE DO THAT, DO WE  
14 NEED TO PUT ON THE RECORD THE FACT THAT WE HAD MADE THE  
15 REQUEST TO ALLOW---

16 THE COURT: OH, YEAH. HOLD ON JUST A SECOND. GO  
17 AHEAD.

18 MS. KIMBROUGH: THANK YOU, YOUR HONOR. I JUST  
19 WANTED TO REITERATE WHAT WE'VE GONE OVER IN CHAMBERS WHICH IS  
20 THAT THE DEFENSE WANTED TO HAVE MR. MERCER STAND UP AND  
21 INTRODUCE HIMSELF TO PROSPECTIVE JURORS AND ASK THEM IF THEY  
22 COULD GIVE HIM A FAIR TRIAL, AND I BELIEVE YOUR HONOR HAS  
23 HELD THAT THAT WOULD BE IMPROPER, AND SO WE'RE SIMPLY NOTING  
24 OUR OBJECTION. THANK YOU.

25 THE COURT: WELL, YOU MENTIONED THAT BACK IN THE

1 BACK, AND I TOLD YOU THAT MY GUT REACTION WAS TO SAY THAT I  
2 WOULD NOT ALLOW THAT AND I EXPLAINED THAT MY -- MY THINKING  
3 WAS THAT -- THAT CONDUCTING VOIR DIRE IS WITHIN THAT CATEGORY  
4 OF TACTICS THAT ARE NORMALLY ASSOCIATED WITH BEING PERFORMED  
5 BY LAWYERS. AND IN SOUTH CAROLINA IF -- OUR COURTS HAVE MADE  
6 IT VERY CLEAR THAT YOU EITHER HAVE A LAWYER OR YOU DO NOT.  
7 IF YOU HAVE A LAWYER, THEN THE CLIENT IS NOT ENTITLED TO  
8 PERFORM ANY OF THE AT LEAST SPOKEN ROLES THAT A LAWYER WOULD  
9 NORMALLY PERFORM. AND SO MY GUT REACTION WAS TO SAY THAT I  
10 WOULD NOT ALLOW THAT FOR THOSE REASONS.

11 NOW, I'VE NEVER HEARD OF ANYBODY ASKING FOR THAT.  
12 I'M NOT AWARE OF ANY AUTHORITY THAT WOULD PERMIT IT. IF YOU  
13 ARE AWARE OF ANY AUTHORITY THAT WOULD PERMIT THIS, THEN I  
14 WOULD -- I WOULD LIKE TO HEAR ABOUT IT, AND IF THERE'S ANY  
15 PARTICULAR ARGUMENT THAT YOU WOULD LIKE TO MAKE IN FAVOR OF  
16 IT, THEN I WOULD LIKE TO HEAR THAT. SOME OF THE ARGUMENT,  
17 I'M SURE, IS FAIRLY OBVIOUS, BUT IF YOU THINK I'VE  
18 MISAPPREHENDED SOMETHING OR IF YOU WOULD LIKE TO MAKE A  
19 PARTICULAR -- AN ARGUMENT, A BRIEF ARGUMENT, IN FAVOR OF  
20 BEING ALLOWED TO DO THAT, THEN I'LL BE PRIVILEGED TO LET YOU  
21 DO IT.

22 MS. KIMBROUGH: THANK YOU, YOUR HONOR, JUST VERY  
23 BRIEFLY. IN SPEAKING WITH MR. LITTLEJOHN AND ALSO WITH OUR  
24 JURY CONSULTATION EXPERT, MR. SMITH, IT'S OUR OPINION THAT --  
25 AND WE ACKNOWLEDGE THERE'S NO CASE LAW SAYING THAT WE CAN DO

1 IT. WE'RE ALSO AWARE OF NO CASE LAW THAT SAYS WE CAN'T.  
2 CERTAINLY WE ACKNOWLEDGE THAT HYBRID REPRESENTATION IS NOT  
3 APPROPRIATE OR IS NOT ALLOWED IN THIS STATE, AND WE'RE  
4 CERTAINLY NOT PROPOSING THAT MR. MERCER PARTAKE IN EXAMINING  
5 WITNESSES AND THAT SORT OF THING.

6 HOWEVER, IN CASES SUCH AS THIS, THE JURY'S  
7 PERCEPTION AS TO WHO MR. MERCER IS AND WHAT HE'S ABOUT IS  
8 EXTREMELY IMPORTANT IF WE GET TO THE SECOND PHASE, AND WE  
9 FEEL IT WOULD BE IN HIS BEST INTEREST TO AT LEAST SPEAK TO  
10 THE POTENTIAL JURORS WHO WILL BE SEATED ON HIS JURY TO SEE  
11 WHAT THEIR REACTION IS TO HIM. I THINK IT WOULD BE VERY  
12 MEANINGFUL. A LOT OF TIMES JURORS GO THROUGH THE WHOLE CASE  
13 WITHOUT HEARING A WORD FROM THE DEFENDANT, AND SO WE -- WE  
14 THINK ALSO THAT IT'S HELPFUL IN THE SENSE THAT IT HUMANIZES  
15 HIM TO THE JURY. HE'S NOT JUST SOMEBODY'S NAME ON A PAPER  
16 THAT -- OR AN INDICTMENT THAT SAYS MURDER AND HE'S NOT JUST  
17 SOMEONE WHO'S BEING TALKED ABOUT FOR TWO WEEKS. SO, YOU  
18 KNOW, ESSENTIALLY WHAT WE'RE SAYING IS OBVIOUSLY IT'S A  
19 MATTER OF STRATEGY. WE THOUGHT IT WOULD BE TO HIS BENEFIT  
20 NOW AND IN THE FUTURE, AND THAT ESSENTIALLY IS OUR ARGUMENT.

21 THE COURT: ALL RIGHT.

22 MS. KIMBROUGH: CAM, DO YOU HAVE ANYTHING?

23 MR. LITTLEJOHN: NO.

24 THE COURT: I RESPECTFULLY DENY THE REQUEST TO ASK  
25 THAT SPECIFIC OR HAVE HIM ASK THAT SPECIFIC QUESTION.

1 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

2 THE COURT: OR ANY QUESTIONS DURING VOIR DIRE. ALL  
3 RIGHT. BRING IN---

4 MR. LITTLEJOHN: YOUR HONOR, EXCUSE ME. IN THE  
5 ALTERNATIVE, I WOULD PROPOSE AT THE CLOSE OF VOIR DIRE TO ASK  
6 MR. MERCER TO STAND AND ASK THE JUROR IF THEY -- THIS IS  
7 KEVIN MERCER; DO THEY KNOW OF ANY REASON THEY CAN'T GIVE HIM  
8 A FAIR TRIAL? THERE WOULD BE NO QUESTIONS ON HIS PART, NO  
9 RESPONSE BY HIM.

10 THE COURT: IT'S MY INTENTION TO ASK THAT TYPE OF  
11 QUESTION TO EACH JUROR AS ONE OF THE FINAL QUESTIONS THAT I  
12 ASK BEFORE THEY ARE EXCUSED FROM INDIVIDUAL VOIR DIRE. I  
13 DON'T THINK I HAVE ANY PROBLEM WITH -- WITH YOU PERHAPS GOING  
14 THROUGH A -- YOU KNOW, WHEN YOU'RE -- WHEN YOU'RE INTRODUCING  
15 YOURSELF TO THE JURY, AS YOU'RE JUST ABOUT TO BEGIN ASKING  
16 THEM WHATEVER QUESTIONS YOU'RE GOING TO ASK, YOU KNOW, IT  
17 WOULD -- IT WOULD NOT BE INAPPROPRIATE FOR YOU TO GO OVER AND  
18 STAND BEHIND HIM AND ASK HIM TO STAND. "I'M CAM LITTLEJOHN.  
19 I REPRESENT MR. MERCER," AND HAVE THEM GET A LOOK AT HIM.  
20 AND THEN WHEN I GET TO THE END, I CAN ASK THEM THAT QUESTION.

21 I DON'T NECESSARILY MIND YOU ASKING THAT QUESTION.  
22 IT'S NOT AN INAPPROPRIATE QUESTION, BUT I THINK THAT YOU HAVE  
23 TO BE CAREFUL ABOUT TYING AN INTRODUCTION TO MR. MERCER TO A  
24 QUESTION LIKE THAT FOR FEAR THAT I MIGHT REACH THE CONCLUSION  
25 THAT IT'S NOT A QUESTION DESIGNED TO ELICIT INFORMATION ABOUT

1 JUROR BIAS OR PREJUDICE, BUT IT'S, RATHER, AN ATTEMPT TO MAKE  
2 AN ARGUMENT TO THE JURY THAT THEIR VERDICT SHOULD BE ONE WAY  
3 OR THE OTHER. AND SO I DON'T THINK THERE'S ANYTHING WRONG  
4 WITH YOU INTRODUCING YOUR CLIENT DURING THE COURSE OF YOUR  
5 VOIR DIRE. DOES THE STATE DISAGREE WITH THAT?

6 MR. MYERS: NO, SIR.

7 THE COURT: AND -- AND I INTEND TO ASK THAT  
8 QUESTION. SO WOULD THAT SUFFICE? AND I'M NOT SAYING YOU  
9 CAN'T ASK THAT QUESTION BUT...

10 MR. LITTLEJOHN: YOUR HONOR, I JUST THINK THAT'S---

11 THE COURT: IT HAS TO REMAIN AS VOIR DIRE, AND IT  
12 CAN'T CHANGE OVER INTO A PLEA FOR MERCY.

13 MR. LITTLEJOHN: YOUR HONOR, I DON'T -- I CERTAINLY  
14 WOULDN'T MAKE IT ANY SORT OF PLEA. I'D BE JUST MERELY ASKING  
15 THE QUESTION, THE ULTIMATE QUESTION, THE QUESTION THAT WE'RE  
16 ALL HERE TO DECIDE WHICH IS WHETHER THAT JUROR CAN GIVE A  
17 FAIR AND IMPARTIAL TRIAL TO THIS MAN. IT WOULD NOT BE BY WAY  
18 OF ARGUMENT. IT WOULD BE MERELY A QUESTION: DO YOU KNOW OF  
19 ANY REASON YOU CAN'T DO THAT?

20 THE COURT: WELL, THEN, DO YOU HAVE ANY OBJECTION TO  
21 YOU INTRODUCING HIM DURING THE COURSE OF YOUR VOIR DIRE AND  
22 ME ASKING THE QUESTION AS TO WHETHER OR NOT THERE'S ANY  
23 REASON THEY COULDN'T GIVE THE STATE OR THE DEFENDANT A FAIR  
24 AND IMPARTIAL TRIAL? BECAUSE IN MY MIND THAT WOULD ELIMINATE  
25 THE ARGUMENT THAT -- THAT YOU WERE DOING ANYTHING OTHER THAN

1 JUST TRYING TO CONDUCT A LEGITIMATE VOIR DIRE.

2 MR. LITTLEJOHN: YOUR HONOR, OF COURSE, I KNOW WHAT  
3 YOU'RE SAYING, BUT IF YOU RULE WITH ME, THERE WON'T BE ANY  
4 ARGUMENT.

5 THE COURT: RIGHT. RIGHT. WELL, AS I SAID BACK IN  
6 THE BACK, YOU KNOW, I'M GOING TO KEEP A FAIRLY TIGHT REIN ON  
7 -- WELL, I'M GOING TO -- I'M GOING TO -- I MEAN, I THINK IT'S  
8 NECESSARY TO -- FOR US TO CONFINE WHAT WE DO HERE TO WHAT IS  
9 TRULY A -- A SERIES OF QUESTIONS THAT ARE DESIGNED TO ELICIT  
10 INFORMATION ABOUT JUROR BIAS OR PREJUDICE OR WHETHER -- AND  
11 WHETHER OR NOT THEY ARE QUALIFIED UNDER THE CONSTITUTIONAL  
12 LAW THAT APPLIES TO DEATH PENALTY JURORS. AND FRANKLY I'M  
13 CONCERNED THAT WHAT YOU HAVE PROPOSED IS AFIELD OF THAT AND  
14 SO -- IS JUST BEYOND THAT. SO THAT'S MY REACTION.

15 MR. LITTLEJOHN: ALL RIGHT, SIR. I UNDERSTAND YOUR  
16 RULING.

17 THE COURT: BUT I'M NOT RULING AT THIS POINT. I'M  
18 GOING TO -- WE'LL GO AND WE'LL SEE WHAT YOU DO AND WE'LL SEE  
19 HOW IT FLIES AND SEE IF THERE'S AN OBJECTION AND...

20 MR. LITTLEJOHN: FAIR ENOUGH.

21 THE COURT: AND WE'LL GO FROM THERE.

22 MR. LITTLEJOHN: THANK YOU.

23 THE COURT: ALL RIGHT. BRING OUT THE FIRST JUROR,  
24 PLEASE.

25 (JUROR HERCULES BRAILEY IS BROUGHT INTO THE



1 COURTROOM.)

2 HERCULES BRAILEY, HAVING BEEN PREVIOUSLY SWORN  
3 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
4 TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT

6 Q. MR. BRAILEY?

7 A. HOW ARE YOU DOING?

8 Q. HOW ARE YOU, SIR?

9 A. FINE.

10 Q. NOW, YOU REMEMBER THAT EARLIER TODAY YOU WERE PUT  
11 UNDER OATH?

12 A. THAT'S CORRECT.

13 Q. AND YOU'LL NEED TO -- LET'S PULL THIS MICROPHONE A  
14 LITTLE CLOSER TO YOU. I WANT TO BE ABLE TO MAKE SURE THESE  
15 LAWYERS AND EVERYBODY OUT THERE CAN HEAR YOU.

16 A. ALL RIGHT.

17 Q. ALL RIGHT? NOW, YOU'RE STILL UNDER THAT OATH. DO  
18 YOU UNDERSTAND THAT?

19 A. CORRECT.

20 Q. ALL RIGHT, SIR. NOW, I ASSUME THAT IN THIS VERY  
21 SHORT TIME SINCE YOU AND I LAST TALKED WHEN THE GROUP WAS OUT  
22 HERE THAT NOBODY HAS TALKED TO YOU ABOUT THE CASE, AND YOU  
23 HAVEN'T HEARD ANYBODY -- YOU HAVEN'T TALKED ABOUT THE CASE.

24 A. I HAVEN'T.

25 Q. YOU HAVE NOT. ALL RIGHT, SIR. NOW, WE'RE GOING TO

1 GO THROUGH A LITTLE QUESTION-AND-ANSWER SESSION HERE, AND I'M  
2 GOING TO START OFF ASKING YOU A FEW QUESTIONS. THEN I'M  
3 GOING TO GIVE THE CHANCE -- GIVE THE LAWYERS A CHANCE TO  
4 FOLLOW UP, AND THEY MAY FOLLOW UP WITH A FEW QUESTIONS. NOW,  
5 WE DON'T WANT TO PROBE TOO DEEP INTO YOUR PERSONAL LIFE, BUT  
6 WE DO HAVE SOME QUESTIONS THAT WE HAVE TO ASK YOU, AND I HOPE  
7 YOU WILL UNDERSTAND THAT. THERE ARE NOT ANY RIGHT OR WRONG  
8 ANSWERS TO THESE QUESTIONS. WE JUST WANT YOU TO LISTEN  
9 CAREFULLY TO THE QUESTIONS AND BE OPEN AND HONEST WITH US AND  
10 TELL US HOW YOU FEEL ABOUT THESE ISSUES AND WHAT YOU THINK.

11 NOW, WE'RE GOING TO GET INTO SOME DISCUSSION ABOUT A  
12 POSSIBLE PENALTY PHASE OF THIS TRIAL. NOW, THAT DOESN'T MEAN  
13 ANYTHING ABOUT THIS DEFENDANT. IT DOESN'T MEAN ANYTHING  
14 ABOUT THIS CASE. IT JUST MEANS THAT WE RECOGNIZE THAT WE  
15 MIGHT GET INTO THE PENALTY PHASE OF THIS TRIAL. AND WE HAVE  
16 SOME QUESTIONS -- I HAVE SOME QUESTIONS THAT I NEED TO ASK  
17 YOU ABOUT SOME OF THE ISSUES THAT WILL COME UP IF WE DO GET  
18 INTO A PENALTY PHASE.

19 NOW, IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT  
20 AND APPLY THE LAW PRECISELY AS I WILL GIVE IT TO YOU AND SET  
21 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
22 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
23 BASED SOLELY ON THAT TESTIMONY AND EVIDENCE THAT YOU SEE AND  
24 HEAR IN THIS COURTROOM? CAN YOU DO THAT?

25 A. YES, SIR.

1 Q. ALL RIGHT. DO YOU UNDERSTAND THAT IN A CRIMINAL  
2 CASE THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY  
3 BEYOND A REASONABLE DOUBT?

4 A. YES, SIR.

5 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
6 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
7 I WILL GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
8 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
9 STATE HAS MET ITS BURDEN OF PROOF?

10 A. YES, SIR.

11 Q. NOW, YOU CAN ADJUST THAT MICROPHONE SO THAT YOU  
12 DON'T HAVE TO KEEP MOVING, AND IT DOES KEEP YOUR VOICE UP.  
13 YOU JUST MAKE YOURSELF COMFORTABLE.

14 A. ALL RIGHT.

15 Q. THERE YOU GO. IF YOU'RE ON THE JURY IN THE CASE AND  
16 IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE  
17 WOULD MOVE INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE  
18 TRIAL. I'M GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS  
19 THAT WILL COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS,  
20 INCIDENTS, OR DETAILS OF AN OCCURRENCE THAT THE STATE OF  
21 SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE  
22 CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE  
23 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM  
24 THE CRIME.

25 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE

1 FACTS, INCIDENTS, OR DETAILS OF AN OCCURRENCE THAT SOUTH  
2 CAROLINA HAS DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF  
3 MURDER, AND THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE  
4 OF MORAL CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU  
5 UNDERSTAND WHAT I MEAN WHEN I SAY AGGRAVATING AND MITIGATING  
6 CIRCUMSTANCES?

7 A. YES, SIR.

8 Q. ALL RIGHT. NOW, YOU WERE GIVEN, WHEN YOU WENT BACK  
9 INTO THE JURY ROOM, THIS SHEET THAT SHOWS THE THREE TYPES OF  
10 JURORS.

11 A. UH-HUH.

12 Q. DID YOU HAVE A CHANCE---

13 A. YES, SIR.

14 Q. ---TO REVIEW THAT SHEET?

15 A. YES, SIR.

16 Q. DO YOU -- DO YOU -- ARE YOU -- DO YOU CONSIDER  
17 YOURSELF TO BE ONE OF THOSE THREE TYPES OF JURORS?

18 A. YES, SIR.

19 Q. WHICH ONE WOULD IT BE?

20 A. THAT WOULD BE THE SECOND PARAGRAPH.

21 Q. THE SECOND KIND? THE SECOND TYPE?

22 A. THAT'S CORRECT.

23 Q. NOW, DOES THAT MEAN THAT YOU WOULD NEVER BE ABLE TO  
24 IMPOSE THE DEATH PENALTY UNDER ANY CIRCUMSTANCES?

25 A. I DON'T BELIEVE IN THE DEATH PENALTY.

1 Q. SIR?

2 A. I DO NOT BELIEVE IN THE DEATH PENALTY.

3 Q. ALL RIGHT. SO IF YOU WERE A JUROR IN THE SENTENCING  
4 PHASE OF THIS CASE AND YOU HAD TWO OPTIONS AS TO WHAT THE  
5 VERDICT WOULD BE, EITHER A LIFE SENTENCE WHICH WOULD MEAN  
6 LIFE WITHOUT THE POSSIBILITY OF PAROLE OR A DEATH SENTENCE,  
7 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU  
8 FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD GIVE IT TO  
9 YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

10 A. THAT'S CORRECT. I CAN DO THAT.

11 Q. COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH  
12 PENALTY?

13 A. NO, I WOULDN'T.

14 Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH YOU COULD  
15 VOTE TO RETURN A VERDICT FOR THE DEATH PENALTY?

16 A. NO.

17 Q. ALL RIGHT, SIR. MR. BRAILEY, I'M GOING TO ASK FOR  
18 YOU TO STEP BACK INTO THE HALLWAY---

19 A. ALL RIGHT.

20 Q. ---FOR JUST A SECOND, AND THEN I WILL GET YOU RIGHT  
21 BACK IN HERE.

22 (JUROR BRAILEY LEAVES THE COURTROOM.)

23 THE COURT: NOW, NORMALLY I WOULD NOT -- I WOULD NOT  
24 DO THAT SO QUICKLY. I WOULD GO AHEAD AND GIVE YOU BOTH AN  
25 OPPORTUNITY TO QUESTION HIM. I'LL GIVE YOU BOTH AN

1 OPPORTUNITY TO QUESTION HIM NOW IF YOU WANT TO. WHEN I DO  
2 THAT, THAT'S A SIGNAL THAT I THINK THE DECISION IS CLEAR. IF  
3 Y'ALL DISAGREE, WE'LL KEEP ON GOING.

4 MR. LITTLEJOHN: IF YOU WOULD GIVE ME JUST A MOMENT,  
5 YOUR HONOR.

6 THE COURT: CERTAINLY.

7 (MR. LITTLEJOHN TALKS OFF THE RECORD WITH MS.  
8 KIMBROUGH.)

9 THE COURT: YES, SIR.

10 MR. LITTLEJOHN: YOUR HONOR, WE'D -- WE'D AGREE WITH  
11 THE COURT AS TO THIS JUROR.

12 THE COURT: THAT HE'S NOT DEATH-PENALTY QUALIFIED.

13 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT. GET THE NEXT JUROR READY AND  
15 SEND HIM IN HERE.

16 (JUROR BRAILEY IS BROUGHT INTO THE COURTROOM.)

17 THE COURT: MR. BRAILEY---

18 THE WITNESS: YES, SIR.

19 THE COURT: ---I'M GOING TO EXCUSE YOU NOW. YOU ARE  
20 FREE TO GO, AND YOUR SERVICES WILL NOT BE NEEDED ANY LONGER  
21 IN THIS CASE. ALL RIGHT, SIR?

22 THE WITNESS: THANK YOU, SIR.

23 THE COURT: THANK YOU.

24 (JUROR BRAILEY LEAVES THE COURTROOM. JUROR MICHELLE  
25 SMOAK IS BROUGHT INTO THE COURTROOM.)

1                    MICHELLE SMOAK, HAVING BEEN PREVIOUSLY SWORN AS  
2 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
3 TESTIFIED AS FOLLOWS:

4                    EXAMINATION BY THE COURT

5            Q.    HAVE A SEAT RIGHT HERE, MA'AM. MAKE YOURSELF  
6 COMFORTABLE.

7            A.    ALL RIGHTY.

8            Q.    NOW, YOU WILL RECALL THAT EARLIER TODAY YOU WERE PUT  
9 UNDER OATH, AND YOU'RE STILL UNDER OATH NOW. DO YOU  
10 UNDERSTAND THAT?

11          A.    YES, SIR.

12          Q.    I'M ASSUMING THAT SINCE YOU LEFT THE COURTROOM  
13 EARLIER AND WENT BACK INTO THIS JURY ROOM THAT YOU DID NOT  
14 PARTICIPATE IN ANY DISCUSSIONS ABOUT THIS CASE.

15          A.    THAT'S CORRECT.

16          Q.    AND NOBODY TALKED TO YOU ABOUT THIS CASE.

17          A.    THAT'S RIGHT.

18          Q.    NOW, I'M GOING TO ASK YOU SOME -- WE'RE ALL GOING TO  
19 ASK YOU SOME QUESTIONS. I'M GOING TO START OFF. THE LAWYERS  
20 MAY DECIDE TO ASK YOU SOME FOLLOW-UP QUESTIONS. WE HOPE WE  
21 DON'T GET TOO FAR INTO YOUR PERSONAL LIFE, BUT WE DO HAVE  
22 SOME QUESTIONS THAT WE HAVE TO ASK YOU.

23          A.    ALL RIGHT.

24          Q.    THERE ARE NO RIGHT OR WRONG ANSWERS TO ANY OF THESE  
25 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY. BE

1 OPEN AND BE HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT  
2 YOU THINK.

3 A. OKAY.

4 Q. WE'RE GOING TO HAVE A DISCUSSION ABOUT A POSSIBLE  
5 PENALTY PHASE OF THIS TRIAL. NOW, THAT DOES NOT MEAN  
6 ANYTHING ABOUT THIS DEFENDANT. IT DOESN'T MEAN ANYTHING  
7 ABOUT THIS CASE. IT JUST MEANS THAT WE RECOGNIZE THAT WE  
8 MIGHT GET INTO A PENALTY PHASE. WE HAVE SOME QUESTIONS WE  
9 NEED TO ASK YOU ABOUT SOME OF THE ISSUES THAT WILL COME UP IF  
10 WE DO.

11 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND  
12 APPLY THE LAW PRECISELY AS I WILL GIVE IT TO YOU AND SET  
13 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
14 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
15 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND  
16 HEAR IN THIS COURTROOM? CAN YOU DO THAT?

17 A. YES, I CAN.

18 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
19 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
20 REASONABLE DOUBT?

21 A. I DO.

22 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
23 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
24 I WILL GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
25 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE



1 STATE HAS MET ITS BURDEN OF PROOF?

2 A. I COULD.

3 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
4 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
5 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M  
6 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL  
7 COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS,  
8 INCIDENTS, OR DETAILS OF AN OCCURRENCE THAT THE STATE OF  
9 SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE  
10 CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE  
11 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM  
12 THE CRIME.

13 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
14 FACTS, INCIDENTS, OR DETAILS OF AN OCCURRENCE THAT SOUTH  
15 CAROLINA HAS DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF  
16 MURDER, AND THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE  
17 OF MORAL CULPABILITY OR RESPONSIBILITY FOR THE CRIME. NOW,  
18 HAVE YOU BEEN -- HAVE YOU HAD A CHANCE TO READ OVER THIS  
19 SHEET THAT LISTS THE THREE DIFFERENT TYPES OF JURORS?

20 A. I HAVE.

21 Q. DID YOU UNDERSTAND THE THREE TYPES?

22 A. I DID.

23 Q. DID YOU -- DO YOU CONSIDER YOURSELF TO BE ANY ONE OF  
24 THOSE THREE TYPES OF JURORS?

25 A. I THINK I'M PROBABLY THE THIRD TYPE.

1 Q. THE THIRD TYPE. IF YOU ARE A JUROR IN THE -- IN A  
2 DEATH PENALTY CASE, IN THE SENTENCING PHASE YOU WOULD HAVE  
3 TWO OPTIONS AS TO WHAT YOUR VERDICT COULD BE. ONE OPTION IS  
4 FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND  
5 THE OTHER OPTION IS FOR THE DEATH PENALTY. COULD YOU,  
6 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
7 EXIST AND CONSIDERING THE LAW AS I WOULD GIVE IT TO YOU,  
8 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

9 A. YES.

10 Q. COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH  
11 PENALTY?

12 A. YES.

13 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE, YOU MIGHT  
14 BE SEQUESTERED FOR FIVE OR SIX DAYS DURING THE TRIAL. I HAVE  
15 NOT DECIDED YET WHETHER OR NOT THE JURY WILL BE SEQUESTERED.  
16 IF YOU WERE, IF I DO SEQUESTER THE JURY, THEN YOU WOULD HAVE  
17 TO SPEND THAT TIME WITH US IN A HOTEL AND YOU WOULD NOT BE  
18 ALLOWED TO GO HOME -- TO GO HOME. WOULD THAT IMPOSE A  
19 TERRIBLE BURDEN ON YOU?

20 A. YES.

21 Q. TELL ME WHY.

22 A. WELL, I'M THE OFFICER MANAGER OF A SMALL LAW FIRM,  
23 AND I RUN THE OFFICE, NUMBER ONE. ACTUALLY THAT'S NUMBER  
24 TWO. NUMBER ONE IS THAT I HAVE TWO SMALL CHILDREN, AND  
25 ALTHOUGH I AM MARRIED AND I HAVE A HUSBAND THAT HELPS ME,

1 I -- I NEED TO BE WITH THEM, AND SO THAT WOULD BE DIFFICULT  
2 FOR ME. AT NIGHT -- MY HUSBAND IS SOMETIMES ON CALL, AND SO  
3 IT WOULD BE DIFFICULT AT NIGHT---

4 Q. IS HE A DOCTOR?

5 A. ---IN PARTICULAR. NO, HE'S NOT A DOCTOR. HE WORKS  
6 FOR THE SOUTH CAROLINA PIPELINE, BUT -- SO IT'S NOT -- I  
7 MEAN, IT'S NOT A LIFE OR DEATH -- WELL, I GUESS IT WOULD BE  
8 IF IT WAS LIKE GAS, SMELLY GAS CALLS AND STUFF LIKE THAT. HE  
9 HAS NO CHOICE; HE HAS TO GO. SO THAT WOULD BE DIFFICULT.

10 Q. ALL RIGHT. HOW OFTEN DOES THAT OCCUR?

11 A. IT DOES NOT OCCUR VERY OFTEN, BUT IT IS A  
12 POSSIBILITY AND YOU NEVER KNOW WHEN IT'S GOING TO HAPPEN.

13 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST  
14 THAT WE GAVE YOU?

15 A. I DID.

16 Q. DO YOU KNOW ANYBODY ON THAT LIST?

17 A. I DO NOT.

18 Q. DID YOU READ EVERY NAME ON THE LIST?

19 A. I DID.

20 Q. AND YOU DON'T KNOW ANYBODY.

21 A. NO, SIR.

22 Q. ALL RIGHT. MS. SMOAK, I'M GOING TO CERTAINLY TAKE  
23 INTO ACCOUNT YOUR SITUATION WITH YOUR FAMILY, AND I'M NOT --  
24 I'M NOT SAYING THAT I'M OVERLOOKING THAT OR RULING THAT YOU  
25 WOULD JUST HAVE TO TOUGH IT ANYWAY.

1 A. I UNDERSTAND.

2 Q. BUT DEPENDING ON HOW THE -- WHAT MY DECISION IS  
3 ABOUT SEQUESTERING THE JURY, THEN I MAY COME BACK AND ASK YOU  
4 SOME MORE QUESTIONS ABOUT THAT. NOW, WITH REGARD TO YOUR  
5 WORK, YOU CAN TELL YOUR BOSSES THAT YOU PLED WITH ME AND THAT  
6 I WAS JUST SO MEAN AND THAT I WOULD NOT LET YOU GO AND DO  
7 YOUR WORK FOR THEM, AND I SAID THEY WERE JUST GOING TO HAVE  
8 TO DO IT ON THEIR OWN.

9 A. I HAVE TO MAKE AN EARNEST EFFORT.

10 Q. YOU MADE A VERY GOOD EFFORT. ALL RIGHT. I'M GOING  
11 TO ALLOW THE LAWYERS TO ASK YOU ANY QUESTIONS THAT THEY MAY  
12 CHOOSE TO ASK YOU.

13 A. YES, SIR.

14 MR. MYERS: MAY IT PLEASE THE COURT?

15 DIRECT EXAMINATION

16 BY MR. MYERS:

17 Q. MS. SMOAK, IN THESE PROCEEDINGS THE LAW SAYS THE  
18 ATTORNEYS HAVE TO ASK YOU SOME QUESTIONS. WE DON'T MEAN TO  
19 PRY, AND WE'LL BE VERY BRIEF. I NOTICE ON THIS QUESTIONNAIRE  
20 THAT YOU FILLED OUT THAT YOU'VE NEVER SERVED ON A JURY  
21 BEFORE. IS THAT CORRECT?

22 A. THAT'S CORRECT, NOT ON A -- NOT ON A CRIMINAL COURT  
23 JURY. WELL, A D.U.I.

24 Q. BUT NOTHING UP IN GENERAL SESSIONS.

25 A. BUT NOTHING -- NO, NOTHING IN THE HIGHER COURTS.

1 Q. SO ALL THIS IS KIND OF FOREIGN TO YOU, THE  
2 QUESTIONING OF JURORS AND STUFF---

3 A. YES.

4 Q. ---TO SERVE ON A JURY PANEL?

5 A. SOMEWHAT.

6 Q. BECAUSE YOU WORK IN A LAW OFFICE.

7 A. I WORK IN A LAW OFFICE.

8 Q. I NOTICED THIS MORNING WHEN THE JUDGE WAS ASKING --  
9 HE WAS ASKING Y'ALL A BUNCH OF QUESTIONS, AND HE SAID  
10 SOMETHING ABOUT DID ANY JUROR HAVE A CONNECTION WITH A  
11 PROSECUTOR'S OFFICE, THE ATTORNEY GENERAL'S OFFICE, ANOTHER  
12 PROSECUTOR'S OFFICE, MAYBE THE U.S. ATTORNEY'S OFFICE---

13 A. CORRECT.

14 Q. ---AND I THINK YOU STOOD UP.

15 A. I DID.

16 Q. WHAT WAS THAT?

17 A. I HAVE A VERY CLOSE FAMILY -- TWO ACTUALLY CLOSE  
18 FAMILY FRIENDS. ONE IS BARBARA LINDSAY. SHE WORKS FOR  
19 BARNEY GIESE.

20 Q. UH-HUH.

21 A. AND THE OTHER IS A -- ANOTHER ASSISTANT DISTRICT  
22 ATTORNEY WHO IS IN NEW ORLEANS.

23 Q. OKAY. ALL RIGHT. THAT WOULDN'T INTERFERE WITH YOUR  
24 ABILITY TO SERVE AS A JUROR IN THIS CASE.

25 A. I DON'T BELIEVE SO.

1 Q. YES, MA'AM. NOW, THE JUDGE TOLD YOU IN A CASE LIKE  
2 THIS THERE COULD BE TWO PARTS. THE FIRST PART IS LIKE ANY  
3 CRIMINAL CASE. WITNESSES WILL TESTIFY. THE JUDGE WILL TELL  
4 THE JURY WHAT THE LAW IS, AND THE JURY WOULD HAVE TO COME  
5 BACK WITH A VERDICT: GUILTY OR NOT GUILTY. DID YOU  
6 UNDERSTAND THAT?

7 A. I DID.

8 Q. DO YOU KNOW ANYTHING ABOUT THIS CASE OR IS THERE  
9 ANYTHING ABOUT YOU THAT WOULD PREVENT YOU FROM BEING A FAIR  
10 AND IMPARTIAL JUROR IN THE GUILT PHASE OF THE TRIAL?

11 A. I DON'T BELIEVE SO.

12 Q. OKAY. YOU DON'T KNOW ANYTHING ABOUT THE CASE.

13 A. I DO NOT.

14 Q. NOW, HE SAID THERE COULD BE A SECOND PART, TOO. SO  
15 LET'S ASSUME FOR THE MOMENT THAT YOU'RE ON THE JURY AND THE  
16 JURY RETURNED A GUILTY VERDICT. THEN WE'D HAVE TO GO INTO  
17 THAT SECOND PART, AND THAT'S CALLED THE PENALTY PHASE: LIFE  
18 IMPRISONMENT OR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. I UNDERSTOOD FOR YOU TO TELL THE JUDGE: AS FAR AS  
21 THOSE TWO SENTENCES, YOU WERE IN THE THIRD CATEGORY.

22 A. YES, SIR.

23 Q. IF THE FACTS AND EVIDENCE WARRANTED, YOU COULD VOTE  
24 FOR LIFE?

25 A. YES, SIR.

1 Q. BUT IF THE FACTS AND EVIDENCE WARRANTED, YOU COULD  
2 VOTE FOR THE DEATH PENALTY.

3 A. I BELIEVE SO. IT WOULD BE DIFFICULT BUT...

4 Q. I UNDERSTAND. NOW, LET ME ASK YOU THIS, PLEASE,  
5 MA'AM. WE CAN'T TELL YOU WHAT THE FACTS ARE. WE CAN'T TELL  
6 YOU WHAT THE EVIDENCE IS GOING TO BE. BUT THE JUDGE  
7 EXPLAINED SOMETHING TO YOU ABOUT AGGRAVATING CIRCUMSTANCES  
8 AND MITIGATING CIRCUMSTANCES. AGGRAVATION WORSENS THE CRIME;  
9 MITIGATION LESSENS THE CRIME. AND EVIDENCE MAY BE PRESENTED  
10 FOR THOSE TWO TYPES OF FACTORS.

11 A. YES, SIR.

12 Q. WOULD YOU BE WILLING TO LISTEN TO ALL THAT?

13 A. CERTAINLY.

14 Q. OKAY. AND THE JUDGE WILL TELL THE JURY THAT NOT TO  
15 MAKE UP THEIR MIND UNTIL THEY HEARD ALL OF THE TESTIMONY.  
16 COULD YOU DO THAT?

17 A. YES.

18 Q. THEN HE WOULD GO INTO DETAIL AT THE END AND EXPLAIN  
19 TO THE JURY WHAT AGGRAVATING CIRCUMSTANCES MEANT. HE WOULD  
20 GIVE THE JURY SOMETHING IN WRITING ABOUT WHAT AGGRAVATING  
21 CIRCUMSTANCES WERE INVOLVED IN THIS CASE. HE WOULD TELL THE  
22 JURY WHAT MITIGATING CIRCUMSTANCES MEANT. HE WOULD GIVE THE  
23 JURY SOMETHING IN WRITING ABOUT MITIGATING FOR THEM TO USE IN  
24 REACHING THE APPROPRIATE SENTENCE. NOW, HE WOULD TELL THE  
25 JURY THAT THEY SHOULD CONSIDER THOSE AGGRAVATING AND

1 MITIGATING CIRCUMSTANCES IN DECIDING THE PUNISHMENT. COULD  
2 YOU FOLLOW THOSE INSTRUCTIONS IF HE TOLD THE JURY THAT?

3 A. YES, SIR.

4 Q. AND CONSIDER WHATEVER AGGRAVATING IS AND CONSIDER  
5 WHATEVER MITIGATING IS.

6 A. YES, SIR.

7 Q. HE WOULD TELL THE JURY THIS, MRS. SMOAK: IF THE  
8 JURY DECIDED THAT LIFE WITHOUT THE POSSIBILITY OF PAROLE WAS  
9 THE RIGHT SENTENCE, JUST THE FOREMAN WOULD SIGN THAT VERDICT.  
10 IF YOU WERE THE FOREMAN, YOU WOULD HAVE TO SIGN IT AND NOBODY  
11 ELSE.

12 A. OKAY.

13 Q. BUT HE WOULD TELL THE JURY ALSO IF THE JURY  
14 DETERMINED THAT THE DEATH PENALTY WERE THE RIGHT SENTENCE,  
15 THEN EVERY JUROR WOULD HAVE TO SIGN A DEATH PENALTY VERDICT.  
16 IT'S REQUIRED IN OUR LAW. I ASK YOU THIS BECAUSE -- IT SEEMS  
17 LIKE KIND OF A SILLY QUESTION, BUT SOME PEOPLE SAY, "WELL,  
18 I'LL TELL YOU WHAT I THINK, BUT I'M NEVER GOING TO WRITE IT  
19 DOWN." THE FACT THAT OUR LAW REQUIRES A SIGNATURE ON A DEATH  
20 PENALTY VERDICT, WOULD THAT IN ANY WAY PREVENT YOU FROM  
21 VOTING FOR THE DEATH PENALTY?

22 A. NO.

23 Q. OKAY. YOU'D HAVE TO LISTEN TO THE EVIDENCE, LISTEN  
24 TO THE FACTS?

25 A. I WOULD.



1 Q. OKAY. IS THERE ANYTHING ABOUT YOU THAT WE DON'T  
2 KNOW THAT WOULD PREVENT YOU FROM BEING IMPARTIAL AND DECIDING  
3 LIFE OR DEATH ONLY ON WHAT YOU HEAR IN THIS COURTROOM?

4 A. I DON'T BELIEVE SO.

5 Q. THANK YOU, MRS. SMOAK.

6 A. UH-HUH.

7 MR. MYERS: I APPRECIATE IT.

8 CROSS-EXAMINATION

9 BY MR. LITTLEJOHN:

10 Q. GOOD AFTERNOON, MS. SMOAK. MS. SMOAK, THIS IS KEVIN  
11 MERCER. HE'S THE DEFENDANT ON TRIAL. HE WAS INTRODUCED  
12 EARLIER. I JUST WANTED TO REINTRODUCE HIM.

13 A. UH-HUH.

14 MR. MERCER: THANK YOU.

15 BY MR. LITTLEJOHN:

16 Q. LIKE SOLICITOR MYERS, I WILL TRY AND BE BRIEF WITH  
17 THIS. I REALIZE THIS HAS BEEN A LONG DAY. IN YOUR WORK AS A  
18 PARALEGAL DO YOU EVER WORK ON CRIMINAL CASES?

19 A. I DO NOT.

20 Q. YOUR FIRM DOES NOT DO CRIMINAL CASES, IF I -- IF I  
21 KNOW THE TWO INDIVIDUALS INVOLVED.

22 A. THAT'S CORRECT.

23 Q. OKAY. AND I UNDERSTAND YOUR HUSBAND WORKS FOR THE  
24 SOUTH CAROLINA PIPELINE?

25 A. THAT'S CORRECT.

1 Q. THAT'S A PART OF SCANA?

2 A. YES.

3 Q. OKAY. MS. SMOAK, LET ME ASK YOU: IF YOU WERE  
4 SELECTED AS A JUROR IN THIS CASE, ONE OF THE JURORS' JOBS  
5 WOULD BE TO DETERMINE THE CREDIBILITY OF THE WITNESSES.

6 A. YES.

7 Q. DO YOU THINK YOU WOULD HAVE ANY PROBLEM DETERMINING  
8 THE CREDIBILITY OF WITNESSES, WHETHER THOSE WITNESSES ARE LAY  
9 WITNESSES OR EXPERTS OR POLICE OFFICERS, GIVEN HIS HONOR'S  
10 INSTRUCTIONS TO YOU?

11 A. I DON'T THINK SO.

12 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY DIFFICULTY IN  
13 APPLYING THE LAW THAT IS TO BE APPLIED TO THE FACTS AS YOU  
14 FIND THEM, THE LAW BEING WHAT JUDGE FEW WOULD INSTRUCT YOU?

15 A. I DON'T BELIEVE SO.

16 Q. ALL RIGHT. NOW, THE COURT GAVE YOU A FORM THAT HAD  
17 THREE DIFFERENT KINDS OF JURORS, AND I BELIEVE YOU INDICATED  
18 THAT YOU THOUGHT YOU WERE BEST DESCRIBED AS THE THIRD TYPE OF  
19 JUROR.

20 A. RIGHT.

21 Q. DID YOU HAVE ANY DIFFICULTY DECIDING THAT YOU WERE  
22 THE THIRD TYPE OF JUROR? DID YOU HAVE TO WEIGH THAT BETWEEN  
23 TWO OF THE TYPES OF JURORS?

24 A. I DID. I THINK IT WOULD BE DIFFICULT TO RENDER A  
25 DEATH PENALTY VERDICT, BUT I THINK THAT AS A CITIZEN AND AS A

1 POTENTIAL JUROR I WOULD HAVE TO BE FAIR AND IMPARTIAL TO BOTH  
2 SIDES.

3 Q. OKAY.

4 A. AND WEIGH THE EVIDENCE AND LISTEN TO THE  
5 INSTRUCTIONS BEFORE I COULD MAKE UP MY MIND ONE WAY OR THE  
6 OTHER. SO---

7 Q. ALL RIGHT.

8 A. ---THAT'S WHY I CHOSE NUMBER THREE.

9 Q. OKAY. AND AS -- AS YOU RESPONDED TO SOLICITOR  
10 MYERS, YOU THINK IF THE FACTS AND THE LAW WARRANT A DEATH  
11 PENALTY YOU COULD VOTE FOR THE DEATH PENALTY. IF THE FACTS  
12 AND THE LAW WARRANTED A LIFE SENTENCE, YOU THINK YOU COULD  
13 VOTE FOR A LIFE SENTENCE?

14 A. I DO.

15 Q. OKAY. NOW, AS JUDGE FEW INDICATED EARLIER, THE  
16 ALLEGED VICTIM IN THIS CASE WAS IN THE UNITED STATES ARMY.  
17 HE WAS ACTIVE MILITARY. WOULD THAT FACT HAVE ANY BEARING ON  
18 YOUR ABILITY TO SERVE IN THIS CASE?

19 A. NO.

20 Q. OKAY. DO YOU THINK IT WOULD HAVE ANY AFFECT ON YOU?

21 A. I -- NO.

22 Q. ALL RIGHT. FAIR ENOUGH. NOW, IF WE GOT TO THE  
23 SECOND PHASE OF THE -- OF THE TRIAL AND YOU WERE ON THE JURY,  
24 AS JUDGE FEW INDICATED, YOU WOULD BE CALLED UPON WITH THE  
25 OTHER JURORS TO MAKE A DECISION AS TO WHAT PENALTY WOULD BE

1 IMPOSED, AND AS JUDGE FEW SAID, YOU MAY VERY WELL OR WOULD  
2 HEAR EVIDENCE IN MITIGATION. THAT EVIDENCE WOULD BE -- COULD  
3 BE GOOD THINGS THAT HAD HAPPENED TO KEVIN MERCER, COULD BE  
4 BAD THINGS THAT HAD HAPPENED TO KEVIN MERCER DURING HIS  
5 LIFETIME.

6 A. UH-HUH.

7 Q. DO YOU THINK YOU COULD TAKE THAT EVIDENCE AND WEIGH  
8 IT VERY CAREFULLY AND CONSIDER IT IN A SERIOUS MANNER BEFORE  
9 ARRIVING AT YOUR VERDICT?

10 A. CERTAINLY.

11 Q. OKAY. LET ME ASK YOU THIS, MS. SMOAK: SOLICITOR  
12 MYERS HAD ASKED YOU ABOUT BEING ABLE TO SIGN YOUR NAME TO A  
13 VERDICT FORM AND WHETHER YOU COULD SIGN THAT FORM ALONG WITH  
14 THE OTHER JURORS. IF YOU FOUND -- IF YOU WERE ON THE JURY  
15 AND YOU FOUND THAT THE OTHER JURORS HAD AN OPINION AS TO  
16 WHICH WAY THE CASE OUGHT TO GO---

17 A. UH-HUH.

18 Q. ---AND YOU HAD A SEPARATE OPINION AND YOU THOUGHT IT  
19 WAS A GOOD-FAITH OPINION, WOULD YOU EVER CONSIDER CHANGING  
20 YOUR OPINION OR YOUR VERDICT JUST TO GO ALONG WITH THE OTHER  
21 JURORS?

22 A. WOULD I CONSIDER CHANGING MY MIND JUST TO GO ALONG  
23 WITH THE CROWD?

24 Q. YES, MA'AM.

25 A. NO. I THINK IF I THOUGHT I WAS RIGHT, I WOULD STICK

1 WITH WHAT I THOUGHT WAS RIGHT.

2 MR. LITTLEJOHN: OKAY. YOUR HONOR, I BELIEVE THAT'S  
3 ALL I HAVE. IF YOU WOULD GIVE ME JUST A MOMENT. (PAUSE.)  
4 THAT'S ALL WE HAVE, YOUR HONOR.

5 THE COURT: MA'AM, DO YOU KNOW OF ANY REASON WHY YOU  
6 COULD NOT GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND  
7 IMPARTIAL TRIAL IN EITHER OF THE PHASES OF THE TRIAL?

8 THE WITNESS: I DO NOT.

9 THE COURT: ALL RIGHT. I'M GOING TO ASK YOU TO STEP  
10 BACK OUT INTO THE HALLWAY.

11 THE WITNESS: OKAY.

12 THE COURT: WE'LL HAVE YOU BACK IN HERE IN JUST A  
13 SECOND.

14 THE WITNESS: OKAY.

15 (JUROR SMOAK LEAVES THE COURTROOM.)

16 THE COURT: ALL RIGHT. I THINK SHE'S QUALIFIED.  
17 ANYBODY DISAGREE?

18 MR. MYERS: NO, SIR.

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. BRING HER IN AND GET THE  
21 NEXT JUROR READY.

22 (JUROR SMOAK IS BROUGHT INTO THE COURTROOM.)

23 THE COURT: MS. SMOAK, I WOULD LIKE FOR YOU TO CALL  
24 THE RECORDED MESSAGE THAT YOU HAVE OR CHECK THE INTERNET ON  
25 SUNDAY NIGHT AFTER 6:00 FOR INSTRUCTIONS ABOUT MONDAY

1 MORNING. NOW, I WILL STILL TAKE INTO CONSIDERATION YOUR  
2 SITUATION WITH REGARD TO YOUR CHILDREN, AND IF I'M GOING TO  
3 SEQUESTER THE JURY, THEN YOU AND I WILL DISCUSS THAT AGAIN ON  
4 MONDAY MORNING.

5 THE WITNESS: OKAY.

6 THE COURT: SO IF I AM GOING TO SEQUESTER THE JURY,  
7 YOU'LL BE ASKED TO BRING YOUR BELONGINGS AND I WILL DO MY  
8 BEST TO TRY TO ACCOMMODATE YOUR NEEDS IF I'M GOING TO DO  
9 THAT. OKAY?

10 THE WITNESS: OKAY.

11 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

12 THE WITNESS: THANK YOU.

13 (JUROR SMOAK LEAVES THE COURTROOM.)

14 MR. LITTLEJOHN: YOUR HONOR, COULD I ADDRESS ONE  
15 THING BEFORE WE BRING IN THE NEXT JUROR?

16 THE COURT: YES, SIR.

17 MR. LITTLEJOHN: YOUR HONOR, YOU HAD ASKED US AT ANY  
18 POINT IF WE HAD SOME SUGGESTION. IN YOUR EXPLANATION TO THE  
19 JURORS IN TALKING ABOUT---

20 THE COURT: HOLD ON. HOLD ON ONE SECOND, PLEASE.

21 MR. LITTLEJOHN: IN TALKING ABOUT MITIGATING  
22 EVIDENCE, I THINK THE COURT - AND I'M NOT SURE THE EXACT  
23 LANGUAGE - BUT YOU WERE SAYING THAT IT WAS THINGS THAT WOULD  
24 MITIGATE CIRCUMSTANCES OF THE CRIME, AND WE THINK IT MIGHT BE  
25 MORE APPROPRIATE TO EXPAND THAT TO: MITIGATION CAN BE

1 CERTAIN CIRCUMSTANCES RELATING TO THE DEFENDANT'S BACKGROUND  
2 AND OTHER FACTORS OTHER THAN JUST THOSE THINGS THAT INVOLVE  
3 THE OCCURRENCE OF THE CRIME.

4 THE COURT: THE DEFINITION THAT I GAVE WAS NOT -- IS  
5 NOT INTENDED TO EXCLUDE THINGS THAT AREN'T SPECIFICALLY  
6 RELATED TO THE ALLEGED CRIME AND NOR IS IT SO WITH  
7 AGGRAVATING CIRCUMSTANCES, SO...

8 MR. LITTLEJOHN: I THINK IF YOU COULD JUST ADD THE  
9 WORD BACKGROUND OF THE DEFENDANT OR SOMETHING TO THAT.

10 MR. MYERS: I THINK THE DEFINITION YOU TOOK IS  
11 PRETTY MUCH WHAT YOUR CHARGE IS TO THE JURY, AND IT EITHER  
12 AGGRAVATES THE CRIME OR LESSENS THE CRIME OR THE SEVERITY OF  
13 IT. WE WOULD OBJECT GOING INTO ANY MORE DETAIL AT THIS  
14 POINT.

15 MR. LITTLEJOHN: YOUR HONOR, OF COURSE, WE TAKE THE  
16 POSITION IN ORDER FOR THE JURY TO UNDERSTAND WHAT MITIGATION  
17 IS THAT IT -- THE STATUTORY DEFINITIONS OBVIOUSLY INCLUDE  
18 THINGS THAT DEAL WITH OTHER THAN JUST THE OCCURRENCE OF THE  
19 CRIME.

20 THE COURT: RIGHT. HOLD ON JUST A SECOND. WELL,  
21 YOU WOULD AGREE THAT WHAT'S TRUE FOR -- IF I -- IF I EXPAND  
22 THE DEFINITION OF MITIGATING CIRCUMSTANCES, IT WOULD -- I  
23 WOULD -- I WOULD ALSO CHANGE THE DEFINITION FOR AGGRAVATING  
24 CIRCUMSTANCES.

25 MR. LITTLEJOHN: IF YOU COULD INDULGE ME FOR JUST A

1       MOMENT, YOUR HONOR.

2                (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN  
3       MR. LITTLEJOHN AND MS. KIMBROUGH.)

4                THE COURT:  ISN'T THAT -- ISN'T THAT LANGUAGE PRETTY  
5       MUCH TAKEN RIGHT OUT OF A CASE?

6                MS. KIMBROUGH:  IT MAY HAVE BEEN, YOUR HONOR, BUT  
7       WHAT WE'RE CONCERNED ABOUT IS IF THE JURY THINKS THAT WE HAVE  
8       TO PRESENT EVIDENCE OR THAT MITIGATING EVIDENCE HAS TO RELATE  
9       TO THE CRIME ITSELF, I MEAN, ESSENTIALLY IT ALMOST SHIFTS THE  
10      BURDEN TO US THAT IF WE WANT OUR CLIENT TO BE ABLE TO GET A  
11      LIFE SENTENCE WE HAVE TO SHOW THAT THIS MURDER IS REALLY LESS  
12      THAN A MURDER, THAT WE CAN MITIGATE THE MURDER.  WELL, WE  
13      CAN'T DO THAT.  BY THE TIME WE'RE IN THE PENALTY PHASE AND  
14      HE'S CONVICTED OF MURDER AND HE'S CONVICTED OF AN AGGRAVATING  
15      CIRCUMSTANCE, THEN OUR JOB IS TO GIVE REASONS WHY---

16              THE COURT:  WELL, I UNDERSTAND.  I MEAN, I'M NOT --  
17      I'M NOT INTENDING TO LIMIT MITIGATING CIRCUMSTANCES TO FACTS  
18      SURROUNDING THE ALLEGED CRIME.  YOU JUST WANT ME TO EXPLAIN  
19      THAT BETTER.

20              MS. KIMBROUGH:  I'LL LEAVE THAT TO CAM, BUT---

21              THE COURT:  RIGHT?

22              MS. KIMBROUGH:  ---YES.  I MEAN, I THINK THEY NEED  
23      TO UNDERSTAND THAT IT'S NOT JUST RELATED TO THE CRIME.  IT'S  
24      RELATED TO THE OFFENDER AND THE SORT OF PROPORTIONALITY  
25      BETWEEN WHO HE IS AND WHAT HE DID.



1 MR. LITTLEJOHN: JUDGE, THAT'S OUR ARGUMENT.

2 MR. MYERS: WHOA. WHOA. WHOA.

3 MR. LITTLEJOHN: THE OTHER THING IS: INsofar AS  
4 EXPANDING THE DEFINITION OF AGGRAVATING CIRCUMSTANCES, IF AN  
5 AGGRAVATING CIRCUMSTANCE WAS THAT THE DEFENDANT HAD A PRIOR  
6 MURDER CONVICTION, FOR INSTANCE, THEN THE BACKGROUND COULD BE  
7 ADDED TO THAT DEFINITION, BUT THE ONLY AGGRAVATING  
8 CIRCUMSTANCES WHICH THE STATE HAS PUT US ON NOTICE OF IS THE  
9 ARMED ROBBERY WHICH IS PART OF THIS PARTICULAR CRIME. IT'S  
10 NOT RELATING TO THE DEFENDANT'S BACKGROUND.

11 MR. MYERS: NO, SIR, THAT'S WRONG. THE SECOND PHASE  
12 IS FOR THE CRIME AND THE CIRCUMSTANCES AND THE CHARACTER,  
13 GOOD OR BAD, AND THERE ARE NONSTATUTORY AGGRAVATING  
14 CIRCUMSTANCES JUST LIKE THERE'S NONSTATUTORY MITIGATING  
15 CIRCUMSTANCES. SO IF WE WANT TO GET INTO AN ARGUMENT NOW  
16 ABOUT THE CONDUCT OF THE DEFENDANT AND CHARACTER AND GOING  
17 THROUGH SPECIFIC FACTS, I THINK THAT'S GOING TOO FAR FOR THE  
18 PURPOSES OF VOIR DIRE UNDER STATE VERSUS SOUTH, STATE VERSUS  
19 SMART, AND A WHOLE OTHER LINE OF CASES.

20 IT'S JUST A GENERAL VOIR DIRE OF THEM AS TO WHETHER  
21 OR NOT THEY WOULD BE AN IMPARTIAL JUROR, AND GETTING INTO  
22 CHARACTERISTICS AND EVERYTHING, THAT'S SPECIFIC MITIGATION IN  
23 WHICH STATE VERSUS HILL AND STATE VERSUS POWERS HAVE HELD  
24 SEVERAL TIMES BY THE SOUTH CAROLINA SUPREME COURT... IT'S A  
25 GENERAL QUALIFICATION OF THE JURY, NOT TO GO INTO THEIR

1 BACKGROUNDS AND DEVELOP PROFILES OR TO TRY TO INSTRUCT THEM  
2 ON DIFFERENT POINTS OF LAW AND SPECIFIC MITIGATION.

3 MR. LITTLEJOHN: YOUR HONOR, I DISAGREE WITH MR.  
4 MYERS BECAUSE THAT'S NOT WHAT WE'RE ASKING FOR.

5 THE COURT: WELL, WAIT A MINUTE NOW. I'M GOING TO  
6 SAY THIS FOR THE RECORD. WE'RE ENGAGED IN A STRATEGIC TUSSLE  
7 HERE. BOTH SIDES SEE A STRATEGIC OPPORTUNITY AND BOTH SIDES  
8 ARE TRYING TO GRAB A HOLD OF IT. I'M GOING TO MAKE A LEGAL  
9 DECISION AS TO WHAT THE PROPER DEFINITION OF AGGRAVATING AND  
10 MITIGATING CIRCUMSTANCES SHOULD BE. I HAVE SAID THAT I DON'T  
11 THINK THE DEFINITION THAT I HAVE USED DOES CONFINE MITIGATING  
12 CIRCUMSTANCES TO THE FACTS OF THE ALLEGED CRIME, AND I DON'T  
13 THINK AGGRAVATING CIRCUMSTANCES DOES EITHER. HOW ABOUT IF I  
14 JUST WERE TO SAY, USING MITIGATING CIRCUMSTANCES, BUT I'LL DO  
15 IT FOR BOTH -- BECAUSE I'M GOING TO COME BACK LATER AND TELL  
16 THEM WHAT THE STATUTORY AGGRAVATING CIRCUMSTANCES ARE. AND  
17 SO THERE'S NOT GOING TO BE ANY POSSIBILITY THAT THEIR -- THAT  
18 THEY WOULD CONVICT -- THAT THEY WOULD IMPOSE THE DEATH  
19 PENALTY BECAUSE OF A PRIOR CONVICTION OF MURDER.

20 ALL RIGHT. I'M GOING TO -- THAT'S GOING TO BE CLEAR  
21 WHEN I -- WHEN I GET AROUND TO CHARGING THE JURY. BUT  
22 MITIGATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR DETAILS OF  
23 AN OCCURRENCE, WHETHER RELATED TO THIS CRIME OR NOT,  
24 SOMETHING LIKE THAT. SAME FOR AGGRAVATING CIRCUMSTANCES.

25 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN

1 MR. LITTLEJOHN AND MS. KIMBROUGH.)

2 MS. KIMBROUGH: YOUR HONOR, IF I -- IF I MAY  
3 BRIEFLY? OUR ONLY CONCERN IS THAT IF WE ADDRESS MITIGATING  
4 CIRCUMSTANCES IN TERMS OF HOW THEY RELATE TO AN OCCURRENCE  
5 THAT THAT MAY GIVE THE IMPRESSION THAT MITIGATING EVIDENCE  
6 HAS TO RELATE TO AN EVENT RATHER THAN TO A PERSON. WE THINK  
7 MITIGATION IS SOMETHING THAT'S PRESENTED ABOUT MR. MERCER AND  
8 HIS LIFE AND NOT AS TO THE CRIME. THE CRIME IS OBVIOUSLY NOT  
9 MITIGATED IN ANY WAY, SHAPE, OR FORM IF IT'S A MURDER. YOU  
10 KNOW, IT'S NOT SOMETHING LESS THAN MURDER; IT'S MURDER. AND  
11 WE CERTAINLY CAN'T MITIGATE THAT. OUR MITIGATION CENTERS ON  
12 MR. MERCER. AND SO THAT -- THAT WAS REALLY OUR CONCERN. WE  
13 JUST DIDN'T WANT THE JURY TO PERHAPS GET OUT OF THE GATE  
14 THINKING THAT WE HAD TO LESSEN THE...

15 THE COURT: WELL, DOES THE PROPOSAL THAT I MADE  
16 SOLVE YOUR CONCERN?

17 MS. KIMBROUGH: WELL, IF YOU COULD ADD OCCURRENCE OR  
18 PERSON. I MEAN, JUST MAKE SURE THAT THEY UNDERSTAND THAT  
19 MITIGATION RELATES TO THE DEFENDANT AND NOT TO THE EVENT THAT  
20 WE'RE ALL HERE TO LITIGATE.

21 MR. MYERS: I HAVE NO PROBLEM WITH THAT AS LONG AS  
22 YOU DON'T USE THE WORD MITIGATION BECAUSE IT APPLIES IN  
23 AGGRAVATION AND MITIGATION, HIS CHARACTER.

24 THE COURT: ALL RIGHT. SAY WHAT YOU JUST SAID NOW.  
25 RELATED TO THE PERSON OR THE?

1 MS. KIMBROUGH: THAT'S RIGHT. RELATED TO THE PERSON  
2 OR THE EVENT. THE STATE'S GOING TO PRESENT EVIDENCE THAT  
3 THIS MURDER OCCURRED DURING THE COURSE OF AN ARMED ROBBERY,  
4 AND OBVIOUSLY THAT AGGRAVATING FACTOR RELATES TO THE  
5 OCCURRENCE WHEREAS WE MAY PRODUCE EVIDENCE THAT IS  
6 MITIGATING, NOT ONLY INSOFAR AS, SAY, HIS MENTAL STATE, FOR  
7 INSTANCE, AT THE TIME OF THE OCCURRENCE, BUT ALSO EVIDENCE  
8 THAT IS COMPLETELY DIVORCED FROM, UNRELATED TO, THE  
9 OCCURRENCE, SIMPLY FACTS ABOUT HIS LIFE, GOOD THINGS HE'S  
10 DONE OR DISABILITIES HE'S HAD THAT HE'S HAD TO OPERATE WITH.

11 MR. MYERS: WHY DON'T WE USE WHAT THE UNITED STATES  
12 SUPREME COURT HAS SAID AND WHAT THE SOUTH CAROLINA SUPREME  
13 COURT HAS SAID? THE PENALTY INVOLVES THE CIRCUMSTANCES  
14 SURROUNDING THE CRIME AND THE CHARACTER OF THE DEFENDANT.  
15 THAT'S ABOUT AS PLAIN AND SIMPLE AS WE CAN GET IT, AND THAT'S  
16 WHAT BOTH THE UNITED STATES SUPREME COURT HAS SAID AND THAT'S  
17 WHAT THE SOUTH CAROLINA SUPREME COURT HAS SAID.

18 THE COURT: WELL, WHAT -- WHAT -- WHERE YOU ALL  
19 ARE -- I'VE GOT THREE THINGS LISTED. FACTS, THAT'S ONE.  
20 DETAILS, THAT'S ANOTHER. I MEAN, I'M SORRY. FACTS IS ONE.  
21 INCIDENTS IS ANOTHER. AND THE THIRD ONE IS DETAILS OF AN  
22 OCCURRENCE. NOW, THAT DOES NOT MEAN THAT THE FACTS -- SO  
23 THAT THE "OF AN OCCURRENCE" RELATE TO DETAILS THAT DON'T  
24 RELATE BACK TO FACTS. SO IF I -- I COULD JUST TAKE OUT -- I  
25 COULD JUST SAY FACTS, INCIDENTS, OR DETAILS, AND THAT DOES

1 NOT CONFINE THE DEFINITION TO THE ALLEGED FACTS OF THIS  
2 CRIME. JUST TAKE OUT THE WORDS "OF THE OCCURRENCE." HOW  
3 ABOUT THAT?

4 MS. KIMBROUGH: I THINK THAT'S GREAT.

5 THE COURT: SOLICITOR?

6 MR. MYERS: YES, SIR.

7 THE COURT: ALL RIGHT. BRING IN THE JUROR.

8 (JUROR SHERYL BAKER IS BROUGHT INTO THE COURTROOM.)

9 SHERYL BAKER, HAVING BEEN PREVIOUSLY SWORN AS A  
10 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
11 TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT

13 Q. MA'AM, HAVE A SEAT RIGHT HERE.

14 A. HI.

15 Q. HI. HOW ARE YOU?

16 A. I'M OKAY.

17 Q. JUST ONE SECOND. ALL RIGHT. MA'AM, WHEN WE CAME  
18 BACK FROM LUNCH, YOU WERE A LITTLE BIT LATE GETTING BACK;  
19 CORRECT?

20 A. NO PARKING SPACES.

21 Q. THAT'S OKAY. I'M NOT -- AND I'M NOT -- YOU'RE NOT  
22 IN TROUBLE FOR IT. I JUST WANT TO KNOW WHAT -- WHAT PART --  
23 I NEED TO GO OVER A FEW THINGS WITH YOU.

24 A. YES.

25 Q. BECAUSE YOU MIGHT HAVE MISSED PART OF WHAT I SAID.

1       A.     OKAY.

2       Q.     THIS IS THE STATE OF SOUTH CAROLINA VERSUS KEVIN  
3     MERCER.   MR. MERCER HAS BEEN INDICTED IN THREE INDICTMENTS --  
4     I MEAN IN ONE INDICTMENT WITH THREE COUNTS.  THE INDICTMENT  
5     NUMBER IS 2003-GS-32-409, AND HE HAS BEEN INDICTED FOR  
6     MURDER.   AND IN THAT INDICTMENT IT IS ALLEGED THAT KEVIN J..  
7     MERCER DID IN LEXINGTON COUNTY ON OR ABOUT MAY 16TH, 2002,  
8     WILLFULLY, FELONIOUSLY, AND WITH MALICE AFORETHOUGHT KILL ONE  
9     TRACY LAMAR DAVIS BY MEANS OF SHOOTING THE VICTIM IN THE HEAD  
10    WITH A PISTOL AND THE SAID TRACY LAMAR DAVIS DIED AS A  
11    PROXIMATE RESULT THEREOF IN LEXINGTON COUNTY ON OR ABOUT  
12    MAY 16TH, 2002, IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH  
13    CAROLINA CODE.

14            IN COUNT 2 OF THE INDICTMENT MR. MERCER HAS BEEN  
15    INDICTED FOR ARMED ROBBERY, AND IN THAT INDICTMENT IT IS --  
16    IN THAT COUNT IT IS ALLEGED THAT KEVIN J. MERCER DID IN  
17    LEXINGTON COUNTY ON OR ABOUT MAY 16TH, 2002, WHILE ARMED WITH  
18    A DEADLY WEAPON, TO WIT, A PISTOL, DID UNLAWFULLY AND  
19    FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE OF TRACY LAMAR  
20    DAVIS BY MEANS OF FORCE OR INTIMIDATION A VEHICLE, GOODS,  
21    MONIES OR OTHER PERSONAL PROPERTY -- PERSONAL ITEMS OF THE  
22    SAID TRACY LAMAR DAVIS OR OTHERS, SUCH VEHICLE, GOODS,  
23    MONIES, OR OTHER PERSONAL ITEMS BEING DESCRIBED AS FOLLOWS:  
24    A 1998 LINCOLN NAVIGATOR VEHICLE, GOODS, MONIES OR OTHER  
25    PERSONAL ITEMS WITH THE INTENT TO DEPRIVE THE OWNER OF SAID

1 ITEMS, IN VIOLATION OF SECTION 16-11-330 OF THE SOUTH  
2 CAROLINA CODE.

3 AND IN COUNT 3 OF THE INDICTMENT MR. MERCER HAS BEEN  
4 INDICTED FOR POSSESSION OF A FIREARM OR A KNIFE DURING THE  
5 COMMISSION OF A VIOLENT CRIME, AND IN THAT COUNT IT IS  
6 ALLEGED THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR  
7 ABOUT MAY 16TH, 2002, WILLFULLY AND UNLAWFULLY HAVE IN HIS  
8 POSSESSION OR DID VISIBLY DISPLAY A PISTOL DURING THE  
9 COMMISSION OF A VIOLENT CRIME OR CRIMES, TO WIT, MURDER  
10 AND/OR ARMED ROBBERY, AS DEFINED IN SECTION 16-1-60 AND ALL  
11 IN VIOLATION OF SECTION 16-23-490 OF THE SOUTH CAROLINA CODE.

12 NOW, IF YOU'RE SEATED ON THE JURY IN THIS CASE,  
13 MA'AM, I WOULD GIVE YOU DETAILED INSTRUCTIONS ABOUT WHAT SOME  
14 OF THE RULES AND PARAMETERS ARE THAT GOVERN YOUR CONDUCT AS A  
15 JUROR AND I'LL ALSO TALK TO YOU ABOUT THE INDICTMENT. BUT  
16 LET ME MAKE IT CLEAR NOW WHAT THE INDICTMENT IS AND WHAT THE  
17 INDICTMENT IS NOT. THE INDICTMENT IS NOT IN ANY SENSE  
18 EVIDENCE OF THE ALLEGATIONS THAT ARE CONTAINED IN THAT  
19 INDICTMENT. THE INDICTMENT IS SIMPLY THE FORMAL DOCUMENT  
20 THAT SERVES TO PROCESS THIS CASE AND BRING IT INTO THIS COURT  
21 FOR TRIAL, AND IT CONTAINS THE ALLEGATIONS THAT HAVE BEEN  
22 MADE AGAINST THE DEFENDANT.

23 THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT  
24 -- TO ALL THREE COUNTS OF THIS INDICTMENT, AND THE PLEA OF  
25 NOT GUILTY CASTS THE BURDEN ON THE STATE TO PROVE THE

1 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. AND IF YOU'RE  
2 SEATED ON THE JURY IN THIS CASE, THAT WILL BE YOUR JOB TO  
3 DETERMINE WHETHER OR NOT THE STATE HAS MET THAT BURDEN OF  
4 PROOF. AND THEN -- NOW, MA'AM, YOU WERE HERE WHEN I ASKED  
5 ALL THE QUESTIONS THAT I -- THAT I ASKED A MINUTE AGO WHEN WE  
6 WERE ALL IN HERE AS A GROUP. IS THAT CORRECT?

7 A. YES, SIR.

8 Q. ALL RIGHT. NOW, SINCE WE BROKE UP AS A GROUP AND  
9 YOU WERE TAKEN BACK INTO THE JURY ROOM, HAVE YOU HAD ANY  
10 CONVERSATIONS WITH ANYBODY ABOUT THE CASE OR ANYTHING ABOUT  
11 THIS CASE?

12 A. NO.

13 Q. OKAY. AND NOW I'M GOING TO ASK YOU SOME QUESTIONS  
14 ABOUT THE CASE. THE LAWYERS MAY HAVE SOME FOLLOW-UP  
15 QUESTIONS TO ASK YOU. WE'RE GOING TO TRY NOT TO GET TOO FAR  
16 INTO YOUR PERSONAL LIFE, BUT WE ARE GOING TO HAVE TO ASK YOU  
17 SOME QUESTIONS. NOW, YOU RECALL THAT YOU ARE UNDER OATH.

18 A. YES, SIR.

19 Q. YOU RECALL THAT. ALL RIGHT.

20 A. YES, SIR.

21 Q. NOW, MA'AM, FOR THESE QUESTIONS THAT I ASK YOU,  
22 THERE ARE NOT ANY RIGHT OR WRONG ANSWERS. WE JUST WANT YOU  
23 TO LISTEN CAREFULLY AND TO BE OPEN AND HONEST WITH US AND  
24 TELL US WHAT YOU FEEL AND WHAT YOU THINK. MAKE YOURSELF  
25 COMFORTABLE AND RELAXED AND JUST TELL ME WHATEVER IS ON YOUR



1 MIND .

2 NOW, WE'RE GOING TO HAVE A DISCUSSION ABOUT A  
3 POSSIBLE PENALTY PHASE OF THE TRIAL. THAT DOESN'T MEAN  
4 ANYTHING ABOUT THIS CASE. IT DOESN'T MEAN ANYTHING ABOUT  
5 THIS PARTICULAR DEFENDANT. IT JUST MEANS THAT WE RECOGNIZE  
6 THE POSSIBILITY THAT WE MIGHT GET INTO THE PENALTY PHASE OF  
7 THE TRIAL, AND WE HAVE SOME QUESTIONS THAT WE NEED TO ASK YOU  
8 ABOUT SOME OF THE ISSUES THAT WILL COME UP IF WE DO. IF YOU  
9 ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND APPLY THE LAW  
10 PRECISELY AS I WILL EXPLAIN IT TO YOU AND SET ASIDE ANYTHING  
11 THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE CASE AND  
12 RENDER A VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND  
13 EVIDENCE THAT YOU WILL HEAR AND SEE IN THIS COURTROOM? CAN  
14 YOU DO THAT?

15 A. (PAUSE.)

16 Q. DID YOU UNDERSTAND THE QUESTION?

17 A. (WITNESS NODDED HEAD UP AND DOWN.)

18 Q. IN OTHER WORDS, YOU WOULD BE ASKED TO RENDER A  
19 VERDICT BASED ON WHAT IS BEFORE YOU IN THE COURTROOM AND NOT  
20 BASED ON ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
21 THE CASE BEFOREHAND.

22 A. YES, SIR.

23 Q. YOU CAN DO THAT?

24 A. YES, SIR.

25 Q. NOW, DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE

1 STATE HAS THE BURDEN OF PROOF AND MUST PROVE THE DEFENDANT  
2 GUILTY BEYOND A REASONABLE DOUBT?

3 A. YES, SIR.

4 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
5 OF THE CASE THAT YOU FIND TO HAVE BEEN PROVEN IN LIGHT OF THE  
6 LAW AS I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
7 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
8 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

9 A. YES, SIR.

10 Q. YOU COULD. ALL RIGHT. NOW, IF YOU DON'T MIND,  
11 MA'AM, YOU MIGHT NEED TO PULL THAT MICROPHONE JUST A LITTLE  
12 BIT CLOSER TO YOU, BUT SPEAK UP JUST A LITTLE BIT SO THAT  
13 EVERYBODY OUT THERE IN THE COURTROOM CAN HEAR YOU.

14 A. OKAY.

15 Q. ALL RIGHT?

16 A. I'M SORRY.

17 Q. THAT'S ALL RIGHT. NOW, IF YOU'RE ON THE JURY IN  
18 THIS CASE AND IF THE JURY FINDS THE DEFENDANT GUILTY OF  
19 MURDER, WE WOULD MOVE INTO THAT SECOND PHASE THAT I WAS  
20 DISCUSSING WITH YOU EARLIER. SOME OF THE ISSUES THAT ARE  
21 GOING TO COME UP WE'RE GOING TO DISCUSS RIGHT NOW.  
22 AGGRAVATING CIRCUMSTANCES. AGGRAVATING CIRCUMSTANCES ARE  
23 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH  
24 CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME  
25 OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY

1 OF THE CRIME AND ADD TO THE INJURY RESULTING FROM THE CRIME.

2 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
3 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
4 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE  
5 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
6 RESPONSIBILITY FOR THE CRIME. NOW, MA'AM, WHEN YOU WERE BACK  
7 THERE IN THAT JURY ROOM WAITING ON US TO BRING YOU OUT HERE,  
8 DID YOU GET A CHANCE TO LOOK OVER THIS SHEET THAT HAS THE  
9 THREE DIFFERENT TYPES OF JURORS?

10 A. YES, SIR.

11 Q. DID YOU UNDERSTAND THOSE THREE DIFFERENT TYPES?

12 A. YES, SIR.

13 Q. DO YOU THINK THAT YOU FALL INTO ONE OF THESE THREE  
14 CATEGORIES OF JURORS?

15 A. I'M SORRY. I'M SORRY. I DO NOT HAVE MY GLASSES, SO  
16 I HAVE TO HOLD IT OUT.

17 Q. DO YOU WANT ME TO GO OVER IT WITH YOU?

18 A. NUMBER THREE.

19 Q. YOU FEEL THAT YOU'RE IN THE THIRD CATEGORY?

20 A. (WITNESS NODDED HEAD UP AND DOWN.)

21 Q. ALL RIGHT. NOW, IF YOU'RE A JUROR IN THE DEATH  
22 PENALTY -- IN A DEATH PENALTY CASE IN THE SENTENCING PHASE,  
23 YOU WOULD HAVE TWO OPTIONS AS TO WHAT YOUR VERDICT COULD BE.  
24 ONE OPTION IS FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF  
25 PAROLE. ANOTHER OPTION IS FOR THE DEATH PENALTY. COULD YOU,

1     DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
2     EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,  
3     COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

4     A.     YES.

5     Q.     MA'AM?

6     A.     YES.

7     Q.     COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH  
8     PENALTY?

9     A.     YES.

10    Q.     IF YOU'RE ON THE JURY, YOU MIGHT BE SEQUESTERED FOR  
11    FOUR OR FIVE DAYS, MEANING THAT YOU WOULD BE PUT UP IN A  
12    HOTEL WITH THE OTHER MEMBERS OF THE JURY AND YOU WOULD NOT BE  
13    ALLOWED TO GO HOME UNTIL THE CASE WAS OVER.  WOULD THAT  
14    IMPOSE A TERRIBLE BURDEN ON YOU?

15    A.     MY WORK.

16    Q.     YOUR WORK?  WELL, NOW IF YOU'RE ON THE JURY, WHETHER  
17    I SEQUESTER THE JURY OR NOT, YOU REALLY WOULD NOT BE ALLOWED  
18    TO GO TO WORK BECAUSE WE'RE GOING TO BE -- WE WOULD BE  
19    WORKING ALL THROUGH THE WORKDAY EACH DAY.  SO I DON'T  
20    THINK -- I DON'T THINK THAT THE JURY BEING SEQUESTERED IS  
21    GOING TO CHANGE HOW MUCH WORK YOU CAN GET DONE BECAUSE YOU  
22    WOULDN'T BE ABLE TO WORK ANYWAY.  BUT JUST IN TERMS OF YOUR  
23    FAMILY AND OTHER ASPECTS OF YOUR LIFE, WOULD YOU BE ABLE TO  
24    DO THAT, TO BE SEQUESTERED FOR FOUR OR FIVE DAYS WHILE WE TRY  
25    THIS CASE?

1 A. YES, SIR.

2 Q. DID YOU GET A CHANCE TO GO OVER THAT WITNESS LIST.  
3 THAT YOU WERE GIVEN BACK IN THE JURY ROOM?

4 A. YES, SIR.

5 Q. DID YOU READ EVERY NAME ON THE LIST?

6 A. YES, SIR.

7 Q. DO YOU KNOW ANYBODY OR ARE YOU RELATED TO ANYBODY  
8 WHOSE NAME IS ON THAT LIST?

9 A. I DO KNOW SOMEONE.

10 Q. TELL ME WHO IT IS.

11 A. I HAD -- I HAD -- IN THE PAST YEARS I HAVE WORKED  
12 FOR A PSYCHIATRIC FIRM, AND THIS DR. DONNA SCHWARTZ-WATTS,  
13 PSYCHIATRIST, I KNOW OF HER.

14 Q. OKAY.

15 A. BUT NOT PERSONALLY.

16 Q. OKAY. NOW, THE LAWYERS ARE GOING TO ASK YOU SOME  
17 QUESTIONS OR THEY MIGHT ASK YOU SOME QUESTIONS, AND THAT WILL  
18 PROBABLY BE ONE OF THE ONES THAT THEY'LL ASK YOU SOME FOLLOW-  
19 UP QUESTIONS ABOUT. OKAY?

20 A. OKAY.

21 THE COURT: ALL RIGHT. SOLICITOR?

22 MR. MYERS: YES, SIR.

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q. MRS. BAKER?

1 A. YES.

2 Q. I'M REQUIRED TO ASK YOU JUST A FEW QUESTIONS.

3 A. YES, SIR.

4 Q. I NOTICE ON THIS SHEET THAT YOU FILLED OUT AND SENT  
5 BACK IN, YOU SAID YOU'D NEVER SERVED ON A JURY PANEL BEFORE.  
6 IS THAT CORRECT?

7 A. YES, SIR.

8 Q. SO ALL OF THIS IS KIND OF STRANGE TO YOU, NEW?

9 A. A LITTLE SCARY, YEAH. THAT'S OKAY THOUGH.

10 Q. I CAN IMAGINE SO. DO YOU KNOW ANYTHING AT ALL ABOUT  
11 THIS CASE OTHER THAN WHAT YOU HEARD HERE THIS MORNING?

12 A. NO.

13 Q. OKAY.

14 A. NO, SIR.

15 Q. NOW, THE JUDGE WAS ASKING THE JURORS SOME QUESTIONS  
16 OUT THERE THIS MORNING.

17 A. YES, SIR.

18 Q. AND HE SAID THAT IF YOU -- IF YOU FELL INTO SOME OF  
19 THOSE CATEGORIES, JUST STAND UP AND GIVE US YOUR NAME AND  
20 YOUR NUMBER AND WE'LL TALK ABOUT IT A LITTLE BIT LATER. DO  
21 YOU REMEMBER THAT?

22 A. YES, SIR.

23 Q. AND HE ASKED A QUESTION -- I THINK IT WAS SOMETHING  
24 ABOUT: HAS ANY JUROR OR ANY FAMILY MEMBER OR FRIEND EVER  
25 BEEN THE VICTIM OF A VIOLENT CRIME OR A WITNESS FOR A VIOLENT

1 CRIME OR SOMETHING LIKE THAT. DID YOU STAND UP AT THAT  
2 POINT, MA'AM?

3 A. YES.

4 Q. AND WAS THAT A CRIME THAT YOU WERE A VICTIM OR A  
5 WITNESS OR WHAT?

6 A. VICTIM.

7 Q. OKAY. DID THAT HAPPEN HERE IN LEXINGTON?

8 A. YES, SIR.

9 Q. OKAY. AND I'M NOT GOING TO ASK YOU ABOUT THAT, BUT  
10 THE FACT THAT YOU WERE A VICTIM OF A CRIME, WOULD THAT IN ANY  
11 WAY INTERFERE WITH YOUR ABILITY TO BE A FAIR JUROR IN THIS  
12 CASE?

13 A. NO, I DON'T -- I DON'T BELIEVE SO.

14 Q. OKAY. ALL RIGHT. IT WASN'T RELATED TO A MURDER  
15 CHARGE OR ANYTHING LIKE THAT, WAS IT?

16 A. NO, SIR.

17 Q. IT WASN'T RELATED TO AN ARMED ROBBERY CHARGE OR  
18 ANYTHING LIKE THAT.

19 A. NO, SIR.

20 Q. BECAUSE THAT'S WHAT THIS CASE IS ABOUT: MURDER AND  
21 ARMED ROBBERY.

22 A. YES, SIR.

23 Q. OKAY. NOW, THE JUDGE WILL TELL THE JURY -- WHEN  
24 THEY FIRST COME IN FOR THIS CASE, HE'LL HAVE THEM TO STAND UP  
25 AND THEY'LL TAKE AN OATH AND THAT OATH WILL BASICALLY SAY

1 THIS: THAT THEY SOLEMNLY SWEAR THAT THEY WILL RETURN  
2 VERDICTS BASED ONLY ON WHAT THEY HEAR IN THIS COURTROOM---

3 A. YES, SIR.

4 Q. ---THE EVIDENCE AND THE LAW AS HE GIVES IT TO YOU.  
5 COULD YOU UPHOLD THAT OATH---

6 A. YES, SIR.

7 Q. ---AS A JUROR? NOW, MRS. BAKER, YOU KNOW THAT IN A  
8 NORMAL CRIMINAL CASE WITNESSES TESTIFY. THEY WOULD SIT IN  
9 THAT SAME CHAIR YOU'RE SEATED IN. THE JURY WOULD LISTEN TO  
10 THAT TESTIMONY. THE JUDGE THEN WOULD TELL THE JURY WHAT THE  
11 LAW IS. THEN THE JURY WOULD TAKE THAT TESTIMONY AND THE LAW  
12 AND REACH A VERDICT OF GUILTY OR NOT GUILTY. YOU'RE AWARE OF  
13 THAT.

14 A. OH, YES. YES.

15 Q. THAT'S WHAT THE FIRST PART OF THIS CASE WOULD BE  
16 ABOUT. IF YOU WERE ON THIS JURY PANEL, COULD YOU BASE A  
17 VERDICT OF GUILTY OR NOT GUILTY ONLY ON WHAT YOU HEARD IN  
18 THIS COURTROOM?

19 A. YES, SIR.

20 Q. AND THAT WOULD BE THE EVIDENCE AND THE LAW.

21 A. YES, SIR.

22 Q. OKAY. NOW, LET'S ASSUME THAT THAT FIRST PART OF THE  
23 CASE WERE OVER WITH AND THE JURY HAD RETURNED GUILTY  
24 VERDICTS. THEN WE NEED TO GO INTO THAT SECOND PHASE. THAT'S  
25 SOMETHING A LITTLE DIFFERENT. NORMALLY WHEN A JURY CONVICTS



1 SOMEBODY, THE JUDGE DOES THE SENTENCING, BUT IN THIS CASE THE  
2 JURY IS GOING TO HAND DOWN A SENTENCE: LIFE OR DEATH. DO  
3 YOU UNDERSTAND THAT? DO YOU UNDERSTAND THAT?

4 A. AS YOU'RE TELLING ME.

5 Q. THAT'S THE TWO POSSIBLE PUNISHMENTS: LIFE  
6 IMPRISONMENT OR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

7 A. THAT'S WHAT YOU'RE SAYING THIS IS---

8 Q. YES, MA'AM.

9 A. ---ABOUT?

10 Q. YES, MA'AM.

11 A. OKAY.

12 Q. JUST LIKE IN THAT FIRST PART, THE JURY -- THEY HAVE  
13 TO VOTE FOR GUILTY OR NOT GUILTY.

14 A. TRUE.

15 Q. THE SECOND PART THEY HAVE TO VOTE FOR LIFE  
16 IMPRISONMENT OR THE DEATH PENALTY.

17 A. YES, SIR.

18 Q. YOU UNDERSTAND THAT.

19 A. YES, SIR.

20 Q. ALL RIGHT. WHEN SOMEONE COMES AROUND FOR THE JUDGE  
21 TO SENTENCE THEM, THE JUDGE SAYS, "WELL, TELL ME SOMETHING  
22 ABOUT THAT PERSON SO I'LL KNOW WHAT'S THE RIGHT PUNISHMENT."  
23 THAT'S WHY WE HAVE THIS SECOND PART OF THE CASE. WE CALL  
24 THIS THE SENTENCING PART, AND THAT GOES TO THE CIRCUMSTANCES  
25 OF THE CRIME AND THE CHARACTER OF THE DEFENDANT. IT COULD BE

1 SOMETHING BAD ABOUT HIM, COULD BE SOMETHING GOOD ABOUT HIM.  
2 DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. AND THE BAD PART ABOUT IT WOULD BE CALLED  
5 AGGRAVATING CIRCUMSTANCES. COULD BE ABOUT THE CRIME. IT  
6 COULD BE ABOUT HIM. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. MITIGATION WOULD BE THE GOOD THINGS ABOUT HIM.  
9 COULD BE SOMETHING GOOD ABOUT HIM TO HELP TO TRY TO REDUCE  
10 IT. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. AND ONCE THE JURY HAD HEARD ALL THIS, THE  
13 AGGRAVATION, THE BAD, THE MITIGATION, THE GOOD, THE JUDGE  
14 WOULD TELL THE JURY WHAT THE LAW IS, AND THE JURY WOULD HAVE  
15 TO COME BACK WITH A SENTENCE: LIFE OR DEATH. DO YOU  
16 UNDERSTAND THAT?

17 A. YES, SIR.

18 Q. NOW, YOU TOLD THE JUDGE A LITTLE WHILE AGO IN THOSE  
19 THREE CATEGORIES -- ONE WAS A PERSON WHO WOULD ALWAYS VOTE  
20 FOR THE DEATH PENALTY NO MATTER WHAT. ONE WOULD BE SOMEBODY  
21 WHO ALWAYS VOTED FOR LIFE IMPRISONMENT AND COULD NEVER VOTE  
22 FOR THE DEATH PENALTY, AND THE THIRD ONE WOULD BE SOMEBODY  
23 WHO WOULD SAY, "WELL, I'D HAVE TO LISTEN TO EVERYTHING, AND  
24 IF LIFE IS THE RIGHT SENTENCE I COULD VOTE FOR IT OR IF THE  
25 DEATH PENALTY IS WARRANTED AND APPROPRIATE I COULD VOTE FOR

1 IT." IS THAT THE THIRD CATEGORY YOU SAID YOU WERE IN?

2 A. YES, SIR.

3 Q. YOU'D HAVE TO HEAR EVERYTHING.

4 A. YES, SIR.

5 Q. AND THEN BASED ON THE EVIDENCE AND THE LAW---

6 A. YES, SIR.

7 Q. ---THEN YOU COULD VOTE FOR LIFE OR DEATH.

8 A. YES, SIR.

9 Q. WHAT WAS THE NECESSARY PUNISHMENT.

10 A. YES, SIR.

11 Q. IS THERE ANYTHING ABOUT YOU THAT WOULD PREVENT YOU

12 FROM BEING A FAIR AND IMPARTIAL JUROR AND BASING YOUR

13 VERDICTS AND SENTENCES JUST ON WHAT YOU HEARD IN THIS

14 COURTROOM, MRS. BAKER? DO YOU UNDERSTAND THAT?

15 A. THE BEGINNING OF WHAT YOU JUST SAID, WHAT -- I'M...

16 Q. WHAT I'M SAYING IS WE DON'T KNOW EVERYTHING ABOUT

17 YOU. IS THERE ANYTHING ABOUT YOU THAT WOULD PREVENT YOU FROM

18 BEING A FAIR JUROR?

19 A. ANYTHING ABOUT ME FROM BEING A FAIR JUROR?

20 Q. ANYTHING ABOUT YOU THAT WOULD CAUSE YOU TO FAVOR THE

21 STATE OR FAVOR THE DEFENSE REGARDLESS OF WHAT THE EVIDENCE

22 WAS?

23 A. NO. EVIDENCE IS EVIDENCE.

24 Q. YOU'D BASE YOUR VERDICT ON THE EVIDENCE.

25 A. YES, SIR.

1 Q. AND THE LAW.

2 A. YES, SIR.

3 Q. THAT'S ALL WE CAN ASK OF YOU, MA'AM. THANK YOU,  
4 MRS. BAKER.

5 A. YOU'RE WELCOME.

6 CROSS-EXAMINATION

7 BY MR. LITTLEJOHN:

8 Q. GOOD AFTERNOON, MS. BAKER.

9 A. HI.

10 Q. MS. BAKER, LET ME REINTRODUCE YOU TO KEVIN MERCER  
11 WHO IS THE DEFENDANT IN THIS CASE. NOW, LET ME ASK YOU A FEW  
12 QUESTIONS, IF I MAY, TO BEGIN WITH ABOUT YOUR QUESTIONNAIRE.  
13 YOU INDICATED IN THERE YOUR EMPLOYER WAS MAXIM HEALTHCARE?

14 A. YES, SIR.

15 Q. COULD YOU TELL ME A LITTLE BIT ABOUT WHAT YOU DO,  
16 WHAT YOUR JOB IS?

17 A. I'M A HOME HEALTH ASSISTANT.

18 Q. UH-HUH.

19 A. SO I TAKE CARE OF PEOPLE IN THEIR HOMES.

20 Q. I UNDERSTAND.

21 A. THAT ARE IN ONE WAY OR ANOTHER DISABLED AND PROVIDE,  
22 ACCORDING TO THE CLIENT, TO MEET THEIR NEEDS.

23 Q. OKAY. HOW LONG HAVE YOU BEEN DOING THAT TYPE WORK?

24 A. I HAVE BEEN DOING -- I HAVE BEEN WITH THIS COMPANY  
25 FOR -- SINCE -- OH, IT'S APRIL. SINCE APRIL 19TH.

1 Q. OKAY. AND HOW LONG HAVE YOU BEEN A NURSE'S AIDE?

2 A. OH....

3 Q. I'M NOT TRYING TO PIN YOU DOWN, JUST YOUR BEST  
4 ESTIMATE.

5 A. I WENT TO SCHOOL AND GRADUATED IN '95.

6 Q. '95? OKAY. MS. BAKER, YOU HAD INDICATED THAT IN  
7 RESPONSE TO SOLICITOR MYERS' QUESTION AND WHAT JUDGE FEW HAD  
8 ASKED EARLIER THAT YOU HAD BEEN THE VICTIM OF A VIOLENT CRIME  
9 OF SOME SORT?

10 A. (WITNESS NODDED HEAD UP AND DOWN.)

11 Q. OKAY. CAN I ASK YOU -- LET ME ASK YOU TO ANSWER OUT  
12 LOUD SO THE COURT REPORTER CAN PICK IT UP, IF YOU WOULD. IS  
13 THAT RIGHT?

14 A. YES.

15 Q. OKAY. I DON'T WANT TO GO INTO THE DETAILS OR  
16 ANYTHING, BUT I WOULD JUST ASK YOU: DID THAT OCCUR IN  
17 LEXINGTON COUNTY?

18 A. YES.

19 Q. OKAY. WAS IT SOMETHING THAT WAS INVESTIGATED BY THE  
20 LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

21 A. NO.

22 Q. IT WAS NOT? OKAY. WAS IT ANYTHING THAT YOU EVER  
23 HAD CONTACT WITH THE SOLICITOR'S OFFICE ABOUT?

24 A. NO.

25 Q. OKAY. ALL RIGHT. THANK YOU, MA'AM.

1 A. CAN I SAY WHY?

2 Q. YES, MA'AM.

3 A. FEAR.

4 Q. OKAY.

5 A. THAT THIS PERSON WOULD COME AND KILL MY FAMILY AND  
6 MY CHILDREN.

7 Q. OKAY. I UNDERSTAND. I'M SORRY YOU GOT IN THAT  
8 SITUATION. AND THAT'S -- THAT'S ALL -- I JUST WANTED TO KNOW  
9 IF YOU HAD HAD ANY CONTACT WITH THE SHERIFF'S DEPARTMENT---

10 A. THAT WAS THE ONLY---

11 Q. ---OR THE SOLICITOR'S OFFICE.

12 A. THAT WAS THE ONLY REASON THAT I DIDN'T -- I WAS  
13 AFRAID.

14 Q. I UNDERSTAND. MS. BAKER, LET ME GET BACK TO A  
15 COUPLE OF THE THINGS THAT DEAL WITH BEING A JUROR. AS HIS  
16 HONOR HAS INDICATED, IF YOU WERE SEATED ON THIS JURY YOU  
17 WOULD HAVE TO DETERMINE THE CREDIBILITY OF WITNESSES. THAT  
18 WOULD BE PART OF YOUR JOB AS A JUROR. DO YOU THINK YOU WOULD  
19 HAVE ANY PROBLEM DOING THAT, GIVEN THAT THERE WOULD BE LAY  
20 WITNESSES AND EXPERT WITNESSES AND POLICE OFFICER WITNESSES?  
21 DO YOU THINK YOU'D HAVE ANY PROBLEM DETERMINING WHO'S TELLING  
22 THE TRUTH AND WHO'S NOT?

23 A. I -- IT'S SORT OF LIKE A CRYSTAL BALL QUESTION.

24 Q. IT IS KIND OF A GENERAL QUESTION.

25 A. A CRYSTAL BALL QUESTION.

1 Q. RIGHT.

2 A. REPEAT ONE TIME.

3 Q. ALL RIGHT. LET ME -- LET ME -- LET ME SEE IF I CAN  
4 RE-EXPLAIN IT. IF YOU WERE ON THE JURY AND WERE ASKED TO  
5 DECIDE ON A VERDICT IN THIS CASE, JUDGE FEW WOULD TELL YOU  
6 HOW YOU -- OR THE DIFFERENT FACTORS THAT YOU COULD TAKE INTO  
7 CONSIDERATION IN HOW TO DETERMINE WHAT YOU BELIEVE THE TRUTH  
8 IS IN THE CASE. AND I GUESS WHAT I'M ASKING IS: WOULD YOU  
9 HAVE ANY DIFFICULTY -- AS YOU SIT THERE RIGHT NOW, DO YOU  
10 THINK YOU'D HAVE ANY DIFFICULTY MAKING THAT DETERMINATION  
11 BASED ON HIS INSTRUCTIONS TO YOU?

12 A. NO.

13 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY DIFFICULTY IF  
14 YOU WERE SEATED ON THIS JURY APPLYING THE LEGAL PRINCIPLES  
15 AND INSTRUCTIONS THAT JUDGE FEW WOULD GIVE YOU TO THE FACTS  
16 AS YOU FIND THEM?

17 A. CAN YOU REPEAT THAT AGAIN---

18 Q. LET ME---

19 A. ---IN JUST A MINUTE? I'M NERVOUS. I'M SORRY.

20 Q. I UNDERSTAND, AND IT'S UNDERSTANDABLE. IF YOU WERE  
21 SEATED ON THE JURY, AT THE CONCLUSION OF ALL THE EVIDENCE YOU  
22 WOULD BE ASKED TO RENDER A VERDICT, TO GO BACK AND DECIDE  
23 WHAT THE TRUTH IS. BEFORE YOU DID THAT, JUDGE FEW WOULD GIVE  
24 YOU LEGAL INSTRUCTIONS ABOUT WHAT LAW YOU WERE TO APPLY TO  
25 THE FACTS. WHAT I'M ASKING IS: DO YOU THINK YOU WOULD HAVE

1 ANY PROBLEM UNDERSTANDING WHAT THE JUDGE IS SAYING AND  
2 APPLYING THOSE LEGAL PRINCIPLES TO THOSE FACTS THAT YOU FIND?

3 A. OH, NO.

4 Q. OKAY. MAYBE I DIDN'T MAKE IT CLEAR THE FIRST TIME;  
5 I'M SORRY. BEFORE YOU CAME IN HERE A FEW MINUTES AGO, YOU  
6 WERE GIVEN A FORM THAT JUDGE FEW ASKED YOU ABOUT AND IT HAD  
7 THE THREE DIFFERENT TYPES OF JURORS, AND YOU INDICATED THAT  
8 YOU BELIEVE THAT YOU WERE THE THIRD TYPE OF JUROR.

9 A. YES, SIR.

10 Q. IS THAT RIGHT?

11 A. YES, SIR.

12 Q. OKAY. DID YOU HAVE ANY PROBLEM DETERMINING THAT YOU  
13 WERE THAT THIRD TYPE OF JUROR?

14 A. NO.

15 Q. OTHER THAN READING THE FORM WITHOUT YOUR GLASSES?

16 A. NO.

17 Q. OKAY.

18 A. BECAUSE ONE IS THIS WAY, ONE IS THIS WAY, AND THE  
19 OTHER IS -- ONE SAYS I CAN ONLY DO THIS: DEATH. ONE SAYS I  
20 CAN NEVER GIVE DEATH. ONE SAYS THAT I WILL TAKE ALL THE  
21 FACTS, THE LAW, AND WHAT IS PRESENTED TO ME AND BE ABLE TO  
22 MAKE A DECISION FOR LIFE OR DEATH.

23 Q. OKAY. AND YOU HAD -- SO YOU -- YOU FIRMLY BELIEVE  
24 YOU'RE A TYPE THREE JUROR.

25 A. YES, SIR.



1 Q. OKAY. FAIR ENOUGH. MS. BAKER, IT WAS INDICATED  
2 EARLIER BY THE COURT THAT THE ALLEGED VICTIM IN THIS CASE WAS  
3 A MEMBER OF THE ACTIVE MILITARY, THE U.S. ARMY. WOULD THAT  
4 FACT, GIVEN THESE DAYS AND TIMES, WOULD THAT AFFECT YOUR  
5 ABILITY TO FAIRLY AND IMPARTIALLY DETERMINE WHAT YOUR VERDICT  
6 MAY BE OR WHAT THE TRUTH IS? WOULD THAT HAVE ANY EFFECT ON  
7 YOU?

8 A. I'M NOT UNDERSTANDING THE -- WHAT YOU JUST SAID.  
9 THE PERSON?

10 Q. RIGHT.

11 A. AND ABOUT THE MILITARY? I HAVEN'T HEARD OR---

12 Q. OKAY.

13 A. ---READ ANYTHING ABOUT...

14 Q. ALL RIGHT. THE ALLEGED VICTIM IN THIS CASE, MR.  
15 DAVIS AS NAMED IN THE INDICTMENT, WAS AN ACTIVE MEMBER OF THE  
16 MILITARY, THE U.S. ARMY.

17 A. YES, SIR.

18 Q. AND WHAT I'M ASKING IS: WOULD THAT HAVE ANY BEARING  
19 ON YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR, THE FACT  
20 THAT HE WAS A SOLDIER WHO WAS KILLED?

21 A. NO.

22 Q. OKAY. MS. BAKER, HIS HONOR INSTRUCTED YOU THAT IF  
23 WE GET TO THE SECOND PHASE OF THIS TRIAL, IF WE GET TO THE  
24 PENALTY PHASE---

25 A. YES, SIR.

1 Q. ---THAT IF YOU WERE ON THE JURY YOU WOULD BE CALLED  
2 UPON TO RENDER A VERDICT OF EITHER A LIFE IMPRISONMENT OR THE  
3 DEATH PENALTY.

4 A. YES, SIR.

5 Q. BEFORE YOU GOT TO THAT STAGE, THERE WOULD BE  
6 EVIDENCE PRESENTED, AS WE CALL IT, MITIGATING EVIDENCE.

7 A. YES, SIR.

8 Q. AND MITIGATING EVIDENCE COULD BE GOOD THINGS ABOUT  
9 THE DEFENDANT.

10 A. YES, SIR.

11 Q. OR IT COULD BE BAD THINGS THAT HAD HAPPENED TO THE  
12 DEFENDANT.

13 A. YES, SIR.

14 Q. AND MY QUESTION IS: WOULD YOU BE WILLING TO  
15 CAREFULLY CONSIDER ALL OF THAT MITIGATING EVIDENCE---

16 A. OH, YES, SIR.

17 Q. ---BEFORE DECIDING ON YOUR VERDICT?

18 A. YES, SIR.

19 Q. OKAY. ONE FINAL THING, MS. BAKER. IF YOU WERE ON  
20 THE JURY AND IT ENDED UP THAT THE OTHER 11 JURORS HAD ONE  
21 OPINION AS TO WHAT OUGHT TO HAPPEN IN THIS CASE AND YOUR  
22 OPINION WAS DIFFERENT, OKAY, WOULD YOU BE INCLINED TO CHANGE  
23 YOUR OPINION JUST TO GO ALONG WITH THE OTHER JURORS?

24 MR. MYERS: THAT'S AN IMPROPER QUESTION UNDER STATE  
25 VERSUS HILL, YOUR HONOR. THE SUPREME COURT JUST RULED ON

1 THAT. THAT'S A HYPOTHETICAL. IT'S STAKING OUT. IT'S  
2 INVADING THE JURY, AND IT'S IMPROPER AS TO THE QUALIFICATION  
3 OF THE JUROR.

4 MR. LITTLEJOHN: AND, OF COURSE, I DISAGREE.

5 THE COURT: WHAT WAS THE CASE YOU CITED, SOLICITOR?  
6 MA'AM---

7 MR. MYERS: STATE VERSUS HILL, 604 SOUTHEASTERN  
8 SECOND 696, 2004.

9 THE WITNESS: I DIDN'T UNDERSTAND THAT.

10 THE COURT: THAT'S OKAY. I'M GOING TO ASK YOU TO  
11 STEP OUT IN THE HALL FOR JUST ONE SECOND, PLEASE.

12 THE WITNESS: YES, SIR.

13 (JUROR BAKER LEAVES THE COURTROOM.)

14 THE COURT: I THINK I HAD THAT CASE RIGHT HERE.  
15 HAVE YOU GOT A COPY OF IT?

16 MR. MYERS: NO, SIR, BUT I CAN -- I CAN GIVE TO YOU  
17 WHAT I'VE QUOTED OUT OF THE OPINION.

18 THE COURT: THAT'S ALL RIGHT. THAT'S ALL RIGHT.  
19 THE CITATION AGAIN, PLEASE.

20 MR. MYERS: 604 SOUTHEAST SECOND, 696. THE FIRST  
21 PART OF IT SAYS, "DURING VOIR DIRE THE TRIAL JUDGE REFUSED  
22 DEFENSE COUNSEL'S REQUEST TO ASK JURORS WHETHER THEY WOULD  
23 GIVE UP THEIR VOTE IN ORDER TO GO WITH THE MAJORITY. THE  
24 DEFENDANT CONTENDS THIS WAS ERROR. WE DISAGREE." THE  
25 JUDGE'S DECISION NOT TO ALLOW THAT QUESTION WAS AFFIRMED.

1 "THE JUDGE'S RULING IN THIS CASE DISALLOWING DEFENSE COUNSEL  
2 TO QUESTION JURORS ABOUT THEIR PROPENSITY TO GO WITH THE  
3 MAJORITY DID NOT RENDER THE TRIAL FUNDAMENTALLY UNFAIR, AND  
4 WE AFFIRM THE TRIAL JUDGE'S DECISION ON THIS ISSUE."

5 THERE'S ALSO AN ANNOTATION AT 99 A.L.R. SECOND, PAGE  
6 7, SAYS THAT THAT'S A HYPOTHETICAL AND IMPROPER BY THE  
7 MAJORITY JURISDICTION. STATE VERSUS HUNT, A NORTH CAROLINA  
8 CASE, 246 SOUTHEASTERN SECOND 159. STATE VERSUS BRACY,  
9 ANOTHER ONE, 277 SOUTHEASTERN SECOND 390, A NORTH CAROLINA  
10 CASE, BOTH CASES WHICH HAVE BEEN CITED BY THE SOUTH CAROLINA  
11 SUPREME COURT IN PREVIOUS CASES.

12 THE COURT: I -- YOUR OBJECTION -- YOU SAID THE  
13 OBJECTION IS TO BEING A HYPOTHETICAL QUESTION?

14 MR. MYERS: I'M SAYING FOR THE REASONS STATED IN  
15 STATE VERSUS HILL THAT THAT'S AN IMPROPER MATTER FOR VOIR  
16 DIRE, AND IT INVADES THE PROVINCE OF THE JURY. IT INVADES  
17 THE PROVINCE OF WHAT THE JURY'S DELIBERATIONS WOULD BE IN THE  
18 JURY ROOM. IT'S A HYPOTHETICAL QUESTION, AND UNDER STATE  
19 VERSUS HILL IT IS IMPROPER FOR VOIR DIRE TO ASK THIS  
20 QUESTION, FOR ALL THE REASONS STATED BY THE SOUTH CAROLINA  
21 SUPREME COURT.

22 THE COURT: I'M GOING TO -- I'M GOING TO -- I'M  
23 GOING TO -- THIS IS THE SECOND JUROR THAT THIS QUESTION HAS  
24 BEEN ASKED. I'M SURE IT'S GOING TO BE A RECURRING QUESTION.  
25 I'M GOING TO OVERRULE THE OBJECTION THIS TIME AND STUDY IT

1 OVERNIGHT. I READ STATE -- I'VE READ STATE V. HILL; I DO  
2 HAVE IT RIGHT HERE. STATE V. HILL NOR STATE V. BENNETT,  
3 WHICH IT CITES, RULED THAT THAT IS AN IMPROPER QUESTION.

4 MR. LITTLEJOHN: CORRECT.

5 THE COURT: THE QUESTION WAS -- THE QUESTION IN HILL  
6 WAS: WAS IT APPROPRIATE TO FORBID THE ASKING OF THAT  
7 QUESTION? THE QUESTION OF THE -- OF WHETHER OR NOT IT'S  
8 APPROPRIATE TO ALLOW THE ASKING OF THAT QUESTION HAS NOT BEEN  
9 LITIGATED. IN MY OWN VIEW, WHETHER OR NOT A JUROR IS THE  
10 TYPE -- HAS THE ABILITY TO STICK TO THEIR GUNS IN THE FACE  
11 OF -- OF A MAJORITY GOING IN THE OTHER DIRECTION IS NOT AN  
12 IMPROPER SUBJECT FOR VOIR DIRE IN A DEATH PENALTY CASE. HOW  
13 FAR THAT GOES CAN CHANGE THE OUTCOME -- I MEAN, THAT COULD  
14 CHANGE MY RULING, BUT AT THIS POINT I'M GOING TO -- I'M GOING  
15 TO OVERRULE THE OBJECTION AND ALLOW THE QUESTION TO BE ASKED  
16 OF THIS JUROR AND THEN WE WILL -- I WILL OBVIOUSLY RESERVE  
17 THE RIGHT TO CHANGE MY RULING DEPENDING ON HOW FAR THE  
18 INQUIRY GOES AND AFTER I'VE THOUGHT ABOUT IT SOME MORE  
19 TONIGHT. BRING THAT JURY BACK IN -- JUROR BACK IN.

20 (JUROR BAKER IS BROUGHT INTO THE COURTROOM.)

21 THE WITNESS: IS IT OKAY IF I TURN LIKE THIS?

22 THE COURT: YES, MA'AM. YOU JUST MAKE YOURSELF  
23 COMFORTABLE.

24 THE WITNESS: OKAY. THANK YOU.

25

1 BY MR. LITTLEJOHN:

2 Q. MS. BAKER, BEFORE THE BREAK I WAS ASKING IF YOU --  
3 IF YOU FOUND YOURSELF ON THE JURY AND THE OTHER 11 MEMBERS OF  
4 THE JURY HAD ONE OPINION AS TO WHICH VERDICT OUGHT TO BE  
5 RENDERED AND YOU HAD A SEPARATE OPINION, MY QUESTION IS: DO  
6 YOU THINK YOU WOULD EVER CONSIDER CHANGING YOUR OPINION JUST  
7 TO GO ALONG WITH THE MAJORITY IN THE CASE?

8 A. NO.

9 Q. OKAY. THANK YOU, MA'AM.

10 A. YOU'RE WELCOME.

11 THE COURT: MA'AM, YOU MENTIONED THIS INCIDENT THAT  
12 I ALSO DON'T WANT TO ASK YOU ANY DETAILS ABOUT AND THAT YOU  
13 WERE FEARFUL THAT SOMEBODY MIGHT COME BACK AND DO HARM TO  
14 YOU. WOULD THAT INCIDENT OR ANY OF THE CIRCUMSTANCES THAT  
15 AROSE FROM IT -- WOULD ANY OF THAT INTERFERE IN ANY WAY WITH  
16 YOUR ABILITY OR YOUR WILLINGNESS TO GIVE BOTH THE STATE AND  
17 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

18 THE WITNESS: NO.

19 THE COURT: DO YOU KNOW OF ANY REASON WHY YOU COULD  
20 NOT GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND  
21 IMPARTIAL TRIAL IN THIS CASE?

22 THE WITNESS: NO.

23 THE COURT: ALL RIGHT. I'M GOING TO ASK YOU TO STEP  
24 BACK OUT IN THE HALLWAY FOR JUST A SECOND, AND I'LL BE RIGHT  
25 BACK WITH YOU.

1 THE WITNESS: YES, SIR.

2 (JUROR BAKER LEAVES THE COURTROOM.)

3 THE COURT: ALL RIGHT. I THINK SHE'S QUALIFIED.  
4 DOES ANYBODY DISAGREE?

5 MR. MYERS: NO, SIR.

6 MR. LITTLEJOHN: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. BRING HER BACK.

8 (JUROR BAKER IS BROUGHT INTO THE COURTROOM.)

9 THE COURT: MS. BAKER, I WOULD LIKE FOR YOU TO CALL  
10 THE TELEPHONE -- YOU DON'T HAVE TO SIT DOWN. IT'S JUST GOING  
11 TO BE A SECOND. I WOULD LIKE FOR YOU TO CALL THE TELEPHONE  
12 NUMBER ON THAT PINK SLIP OR CHECK THE INTERNET SUNDAY NIGHT  
13 AFTER 6:00 FOR INSTRUCTIONS ABOUT REPORTING HERE ON MONDAY  
14 MORNING. OKAY?

15 THE WITNESS: SO CALL -- I HAVE NO COMPUTER.

16 THE COURT: OKAY. WELL, JUST CALL THE TELEPHONE  
17 NUMBER AND THERE WILL BE A RECORDED MESSAGE.

18 THE WITNESS: I DON'T HAVE MY GLASSES.

19 THE COURT: THIS NUMBER RIGHT HERE, YOU CAN CALL IT.  
20 785-2296. YOU TAKE THAT CARD WITH YOU.

21 THE WITNESS: YES, SIR.

22 THE COURT: YOU CALL THAT NUMBER SUNDAY NIGHT AFTER  
23 6, AND THERE WILL BE INSTRUCTIONS ON THERE ABOUT YOUR  
24 REPORTING FOR COURT ON MONDAY MORNING.

25 THE WITNESS: DOES THAT MEAN I'M ON THE JURY?

1           THE COURT: NO. THAT MEANS YOU ARE -- YOU ARE  
2 QUALIFIED AS A JUROR. WHEN WE COME UP HERE ON MONDAY  
3 MORNING, WE WILL ACTUALLY PICK THE JURY, AND YOU ARE IN THE  
4 POOL TO BE A POSSIBLE JUROR, BUT THAT DOES NOT MEAN THAT  
5 YOU'RE ON THE JURY. WE'LL FIND THAT OUT ON MONDAY.

6           THE WITNESS: I SEE. I SEE.

7           THE COURT: ALL RIGHT.

8           THE WITNESS: I JUST WANTED TO UNDERSTAND.

9           THE COURT: OKAY. THAT'S FINE.

10          THE WITNESS: BECAUSE I'VE NEVER DONE THIS BEFORE.

11          THE COURT: THANK YOU VERY MUCH, MA'AM. WE'LL SEE  
12 YOU MONDAY.

13          THE WITNESS: ALL RIGHTY. AND I TAKE THESE PAPERS  
14 WITH ME?

15          THE COURT: YES, MA'AM.

16          THE WITNESS: OKAY. THANK YOU SO MUCH. I HOPE I  
17 WAS APPROPRIATE AND HELPFUL TO EVERYONE.

18          (JUROR BAKER LEAVES THE COURTROOM.)

19          THE COURT: YOU KNOW, WE HAVEN'T ADDRESSED WHETHER  
20 OR NOT WE ALLOW THEM TO TAKE THE WITNESS LIST AND THE  
21 DESCRIPTION OF THE THREE TYPES OF JURORS WITH THEM.

22          MR. MYERS: WITH THEM HOME?

23          THE COURT: YEAH.

24          MR. MYERS: NO, SIR. WE WOULD SAY THEY'D LEAVE THEM  
25 HERE.



1 THE COURT: ALL RIGHT. WELL---

2 MR. LITTLEJOHN: WE WOULD AGREE WITH THAT, YOUR  
3 HONOR..

4 THE COURT: ALL RIGHT. SIR, ASK MS. BAKER TO TURN  
5 BACK OVER TO YOU THE WITNESS LIST AND THE DESCRIPTION OF THE  
6 THREE TYPES OF JURORS. ALL RIGHT. WE'LL TAKE A SHORT BREAK,  
7 TWO AND A HALF MINUTES.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 THE COURT: BE SEATED.

10 (JUROR BECKY VANLOOZEN IS BROUGHT INTO THE  
11 COURTROOM.)

12 THE COURT: Y'ALL READY TO PROCEED?

13 MR. HUBBARD: YES, SIR, YOUR HONOR.

14 BECKY VANLOOZEN, HAVING BEEN PREVIOUSLY SWORN  
15 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
16 TESTIFIED AS FOLLOWS:

17 EXAMINATION BY THE COURT

18 Q. MS. VANLOOZEN?

19 A. YES, SIR.

20 Q. HOW ARE YOU?

21 A. GREAT.

22 Q. YOU RECALL THAT EARLIER TODAY WE PUT YOU UNDER OATH,  
23 AND YOU'RE STILL UNDER THAT OATH. DO YOU UNDERSTAND?

24 A. YES, SIR.

25 Q. NOW, YOU HAVEN'T BEEN GONE VERY LONG SINCE WE WERE

1 IN HERE ALL TOGETHER, BUT SINCE THEN HAS ANYBODY TALKED TO  
2 YOU ABOUT THE CASE OR HAVE YOU TALKED ABOUT THE CASE WITH  
3 ANYBODY?

4 A. NO.

5 Q. NOW, MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS AND  
6 THE OTHER LAWYERS -- THE LAWYERS MAY HAVE SOME FOLLOW-UP  
7 QUESTIONS ALSO. WE DON'T WANT TO GET TOO FAR INTO YOUR  
8 PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. WE  
9 JUST WANT YOU TO LISTEN CAREFULLY. BE OPEN AND HONEST WITH  
10 US. TELL US HOW YOU FEEL OR HOW YOU THINK. THERE ARE NO  
11 RIGHT OR WRONG ANSWERS. I JUST WANT YOU TO BE COMFORTABLE  
12 AND RELAXED, AND THEN WE'LL TALK FOR A LITTLE WHILE.

13 A. OKAY.

14 Q. NOW, WE'RE GOING TO GET INTO SOME DISCUSSION ABOUT A  
15 POSSIBLE PENALTY PHASE, BUT THAT DOESN'T MEAN ANYTHING ABOUT  
16 THIS CASE. IT DOESN'T MEAN ANYTHING ABOUT THIS DEFENDANT.  
17 IT JUST MEANS THAT WE RECOGNIZE THAT WE MIGHT GET INTO A  
18 PENALTY PHASE, AND THERE ARE SOME QUESTIONS THAT I NEED TO  
19 ASK YOU ABOUT SOME ISSUES THAT MIGHT -- THAT WILL COME UP IF  
20 WE DO. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT AND  
21 APPLY THE LAW PRECISELY AS I EXPLAIN IT TO YOU AND SET ASIDE  
22 ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE CASE  
23 BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS BASED  
24 SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND HEAR IN  
25 THIS COURTROOM? COULD YOU DO THAT?

1 A. I COULD.

2 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
3 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
4 REASONABLE DOUBT?

5 A. YES, SIR.

6 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
7 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
8 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
9 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
10 STATE HAS MET ITS BURDEN OF PROOF?

11 A. YES, SIR.

12 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
13 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
14 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M  
15 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL  
16 COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS,  
17 INCIDENTS, OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS  
18 DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER.  
19 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME  
20 AND ADD TO THE INJURY RESULTING FROM THE CRIME.

21 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
22 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
23 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE  
24 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
25 RESPONSIBILITY FOR THE CRIME. NOW, WHEN YOU WERE BACK THERE

1 IN THE JURY ROOM A FEW MINUTES AGO, DID THEY GIVE YOU A COPY  
2 OF THIS SHEET THAT HAS THE THREE DIFFERENT TYPES OF JURORS ON  
3 IT?

4 A. THEY DID. I'D BE NUMBER THREE.

5 Q. YOU'RE NUMBER THREE? IF YOU'RE A JUROR IN THE DEATH  
6 PENALTY CASE OF -- IN A DEATH PENALTY CASE IN A SENTENCING  
7 PHASE, YOU WOULD HAVE TWO DIFFERENT OPTIONS AS TO WHAT YOUR  
8 VERDICT COULD BE. ONE OPTION IS FOR A LIFE SENTENCE WITHOUT  
9 THE POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD BE FOR  
10 THE DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND  
11 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW  
12 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A  
13 VERDICT FOR A LIFE SENTENCE?

14 A. THAT WOULD DEPEND ON WHAT ALL CAME OUT IN COURT.

15 Q. SO IF YOU FELT THAT A LIFE SENTENCE WAS APPROPRIATE,  
16 YOU COULD VOTE FOR A LIFE SENTENCE?

17 A. YES.

18 Q. NOW, IF YOU FELT THAT THE DEATH PENALTY WAS  
19 APPROPRIATE, COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

20 A. YES.

21 Q. NOW, MA'AM, IF YOU'RE ON THE JURY IN THIS CASE, YOU  
22 MIGHT BE SEQUESTERED FOR FIVE OR SIX DAYS, MEANING THAT YOU  
23 WOULD BE WITH US. WE'D PUT YOU UP IN A HOTEL AND YOU'D STAY  
24 WITH ALL THE OTHER JURORS, AND YOU WOULD NOT BE ALLOWED TO GO  
25 HOME UNTIL THE CASE WAS OVER. NOW, I UNDERSTAND THAT WOULD

1 BE A BURDEN ON YOU, BUT WOULD THAT BE A BURDEN THAT YOU WOULD  
2 NOT BE ABLE TO TOLERATE? WOULD THAT BE A TERRIBLE BURDEN ON  
3 YOU?

4 A. NO. HUH-UH.

5 Q. DID YOU HAVE A CHANCE TO GO OVER THE WITNESS LIST  
6 THAT WE GAVE YOU?

7 A. I DID.

8 Q. DID YOU READ EVERY NAME ON THAT LIST?

9 A. I DID.

10 Q. DID YOU KNOW ANYBODY OR ARE YOU RELATED TO ANYBODY  
11 ON THAT LIST?

12 A. I DON'T KNOW ANY OF THEM.

13 Q. I'M GOING TO ALLOW THE LAWYERS TO ASK YOU SOME  
14 QUESTIONS NOW, MA'AM.

15 A. OKAY.

16 THE COURT: SOLICITOR?

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q. DO YOU PRONOUNCE YOUR NAME VANLOOZEN?

20 A. THAT'S CORRECT.

21 Q. I JUST DIDN'T WANT TO BUTCHER YOUR NAME. MS.

22 VANLOOZEN, I NOTICED DURING THE EARLIER PART OF THE VOIR DIRE  
23 WHEN EVERYBODY ELSE WAS OUT THERE AND THE JUDGE WAS ASKING  
24 QUESTIONS, HE ASKED ABOUT: HAVE YOU EVER BEEN A VICTIM OF A  
25 VIOLENT CRIME OR HAS ANYBODY IN YOUR FAMILY OR YOUR FRIENDS

1 BEEN THE VICTIM OF A VIOLENT CRIME? AND I NOTICED YOU STOOD  
2 UP. I DON'T WANT TO GET INTO THE DETAILS OF WHAT HAPPENED OR  
3 WHO IT WAS, BUT KNOWING WHAT HAPPENED, WILL THAT AFFECT YOUR  
4 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

5 A. I DON'T THINK IT WOULD. I KNOW THAT I FEEL IN MY  
6 OWN CASE I WANT SOMEBODY TO COME TO JUSTICE AND THAT'S NEVER  
7 HAPPENED; IT'S A COLD CASE. I WANT JUSTICE TO BE SERVED  
8 HERE, WHETHER I'M ON THE JURY OR NOT.

9 Q. WAS YOUR CASE IN LEXINGTON COUNTY?

10 A. NO, IT WAS IN AUGUSTA.

11 Q. OKAY. YOU SAY YOU WANT JUSTICE FOR YOUR CASE, AND  
12 YOU WOULD LIKE THAT FOR OTHERS. BUT IN THIS CASE YOU REALIZE  
13 WE HAVE TWO PARTS TO THIS PROCESS. THERE'S A GUILT -- WHAT  
14 WE CALL THE GUILT PHASE WHERE THE DEFENDANT IS TRIED AND THE  
15 JURY HAS TO DETERMINE WHETHER HE'S GUILTY OR NOT GUILTY. CAN  
16 YOU DO THAT? CAN YOU LISTEN TO ALL THE INFORMATION AND ALL  
17 THE EVIDENCE IN THAT CASE AND MAKE THAT DECISION?

18 A. YES. I THINK IF -- IF I'M PICKED FOR THIS JURY THAT  
19 IT WILL BE GOOD PRACTICE FOR ME BECAUSE AT SOME POINT I WILL  
20 BE A KEY WITNESS IN A CASE.

21 Q. CAN YOU SET ASIDE ANY FEELINGS YOU MIGHT HAVE ABOUT  
22 YOUR CASE AND VIEW THIS ONE IMPARTIALLY?

23 A. RIGHT NOW I FEEL THAT WAY, YES.

24 Q. AND I NOTICE YOU'VE SERVED IN THE PAST ON BOTH  
25 CRIMINAL AND CIVIL JURIES.

1 A. I WASN'T SURE WHAT CRIMINAL WAS 'TIL I GOT HERE  
2 TODAY, SO I'M NOT -- I'VE BEEN TO JURY DUTY AND THERE'S BEEN  
3 LIKE A FEW YEARS BETWEEN, SO I CAN'T REMEMBER WHAT THE CASES  
4 WERE ABOUT OR ANY OF THAT. I THINK DISTINCTLY ONE OF THEM  
5 WAS TRAFFIC COURT.

6 Q. OKAY.

7 A. AND I CAN'T REMEMBER WHAT THE OTHER ONES WERE.

8 Q. ONE REASON WHY I ASKED YOU: YOU REALIZE THIS IS A  
9 VERY DIFFICULT PROCESS FROM, SAY, MAGISTRATE'S COURT OR FROM  
10 TRAFFIC COURT.

11 A. UH-HUH.

12 Q. AND YOU REALIZE THE CHARGES ARE PRETTY SERIOUS.

13 A. YES.

14 Q. AND, AGAIN, AS THE JUDGE EXPLAINED, THERE'S TWO  
15 PARTS TO THIS CASE. IN THE FIRST PART YOU HAVE TO DETERMINE  
16 GUILT OR INNOCENCE OR GUILT OR NOT GUILTY, WHETHER THE  
17 DEFENDANT IS GUILTY OR NOT GUILTY. DO YOU UNDERSTAND THAT  
18 PART?

19 A. YES.

20 Q. AND WHAT'S REALLY DIFFERENT ABOUT THIS CASE, IN  
21 CAPITAL CASES, IS THAT IF A DEFENDANT IS FOUND GUILTY OF  
22 MURDER, THE JUDGE DOESN'T SENTENCE HIM.

23 A. THAT WOULD BE THE JURY.

24 Q. THE JURY DOES. THAT'S THE SECOND HALF. AND THE  
25 ONLY OPTION FOR JURORS IN THAT SECOND HALF IS LIFE OR DEATH.

1 IN THAT SECOND HALF, THAT SECOND PHASE OF THE TRIAL, BOTH  
2 SIDES TYPICALLY PRESENT INFORMATION. THE JUDGE HAS MENTIONED  
3 AGGRAVATING CIRCUMSTANCES AND HE'S MENTIONED MITIGATING  
4 CIRCUMSTANCES. AGGRAVATING THINGS ARE THINGS THAT MAKE THE  
5 CASE WORSE OR MAY MAKE THE DEFENDANT APPEAR WORSE, AND  
6 THERE'S MITIGATING CIRCUMSTANCES, THINGS THAT MAY REDUCE THE  
7 SEVERITY OF THE CRIME OR THINGS THAT MAY MAKE THE DEFENDANT  
8 SEEM IN A BETTER LIGHT. DO YOU UNDERSTAND THAT?

9 A. YES.

10 Q. CAN YOU, IF YOU ARE PUT ON THIS JURY, LISTEN TO BOTH  
11 SIDES AND REVIEW AND CONSIDER ALL THAT INFORMATION AND ALL  
12 THAT EVIDENCE?

13 A. YES, SIR.

14 Q. BOTH AGGRAVATING AND MITIGATING?

15 A. YES, SIR.

16 Q. AND COULD YOU ENTER THAT SECOND PHASE WITH AN OPEN  
17 MIND AND WITH A WILLINGNESS TO GIVE EITHER LIFE OR DEATH?

18 A. YES, SIR.

19 Q. NOW, I WANT TO ASK YOU: THERE'S SOMETHING ELSE  
20 ABOUT THIS TYPE OF TRIAL THAT'S DIFFERENT. IN A REGULAR  
21 TRIAL OR A NORMAL TRIAL WHEN A JURY MAKES A DECISION, ALL 12  
22 AGREE, BUT ONLY THE FOREPERSON OR THE FOREMAN SIGNS THAT  
23 VERDICT FORM. IN A DEATH PENALTY CASE, IF THE JURY COMES  
24 BACK AND DECIDES DEATH, ALL 12 HAVE TO AGREE BUT ALL 12 HAVE  
25 TO SIGN THAT VERDICT FORM. COULD YOU DO THAT, IF THAT WAS



1 WHAT YOU THOUGHT THE APPROPRIATE SENTENCE SHOULD BE?

2 A. YES, SIR.

3 Q. MS. VANLOOZEN, IS THERE ANYTHING ABOUT YOU THAT WE  
4 SHOULD KNOW THAT MIGHT HAVE AN IMPACT ON YOUR ABILITY TO BE A  
5 FAIR AND IMPARTIAL JUROR IN THIS CASE?

6 A. WELL, JUDGE FEW ASKED EARLIER AND I WAS TOO  
7 EMBARRASSED TO STAND UP IN FRONT OF ALL THOSE PEOPLE AND SAY  
8 I'VE BEEN ACCUSED OF SOMETHING, BUT I WAS ACCUSED AND CHARGED  
9 WITH CRIMINAL DOMESTIC VIOLENCE. MY DAUGHTER-IN-LAW AND MY  
10 SON LIVED WITH ME FOR AWHILE AFTER THEIR BABY WAS BORN --  
11 WELL, WHILE THEY WERE PREGNANT AND UP 'TIL THE TIME THEIR  
12 BABY WAS BORN. AND AFTER THEY WERE BORN -- AFTER SHE WAS  
13 BORN, MY DAUGHTER-IN-LAW AND MY SON WERE FIGHTING IN MY HOUSE  
14 AND I CALLED THE POLICE, AND IT'S A LONG STORY. ANYWAYS, I  
15 RAISED MY HAND TO -- AND THE OFFICER CAUGHT MY HAND AND PUT  
16 IT BEHIND MY BACK AND TOOK ME OFF TO JAIL, AND I HAD TO DO  
17 CIVIL SERVICE -- CIVIC SERVICE FOR IT.

18 Q. OKAY.

19 A. AND I'M BACK TO ZERO NOW.

20 Q. IS THAT DIFFERENT FROM THE VIOLENT CRIME YOU WERE  
21 TALKING ABOUT IN AUGUSTA, GEORGIA?

22 A. YES.

23 Q. OKAY. BUT WOULD EITHER OF THOSE INCIDENTS, THE  
24 VIOLENT CRIME IN AUGUSTA, GEORGIA, OR THIS C.D.V. THAT YOU'RE  
25 TALKING ABOUT, WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR

1 AND IMPARTIAL JUROR?

2 A. I THINK IT WOULD MAKE ME MORE FAIR BECAUSE, YOU  
3 KNOW, I 'VE BEEN ON BOTH SIDES.

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

5 A. THANK YOU. MAY I GO NOW?

6 THE COURT: MR. LITTLEJOHN IS GOING TO HAVE SOME  
7 MORE QUESTIONS.

8 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

9 THE COURT: I'LL HAVE ANOTHER QUESTION FOR YOU RIGHT  
10 BEFORE YOU LEAVE.

11 THE WITNESS: OKAY.

12 CROSS-EXAMINATION

13 BY MR. LITTLEJOHN:

14 Q. MS. VANLOOZEN, LET ME REINTRODUCE YOU. THIS IS  
15 KEVIN MERCER WHO IS THE DEFENDANT IN THIS CASE. I THINK HE  
16 WAS INTRODUCED EARLIER. I JUST WANTED TO REINTRODUCE HIM TO  
17 YOU. IF I COULD ASK YOU A FEW QUESTIONS ABOUT YOUR  
18 QUESTIONNAIRE ANSWERS. I SEE THAT YOU WORK FOR PETE KORN'S  
19 LAW FIRM?

20 A. I DO.

21 Q. HOW LONG HAVE YOU WORKED THERE?

22 A. RIGHT AT A YEAR.

23 Q. RIGHT AT A YEAR?

24 A. UH-HUH.

25 Q. DO YOU HANDLE ANY CRIMINAL FILES? DOES THAT FIRM--

1 A. NO.

2 Q. ---DO ANY CRIMINAL WORK AT ALL?

3 A. NO. IT'S REAL ESTATE. WE DO FORECLOSURES,  
4 BANKRUPTCIES, AND THINGS LIKE THAT.

5 Q. OKAY. I UNDERSTAND.

6 A. EVICTIONS.

7 Q. AND I BELIEVE IT INDICATES THAT YOU WERE ON A  
8 CRIMINAL JURY BACK IN THE EIGHTIES?

9 A. THAT'S WHAT HE JUST ASKED ME AND I TOLD -- I  
10 COULDN'T REMEMBER WHAT THE CASE WAS WHENEVER---

11 Q. OKAY.

12 A. BUT I THINK IT WAS LIKE TRAFFIC COURT.

13 Q. TRAFFIC COURT. WAS THAT A GOOD EXPERIENCE FOR YOU?

14 A. YEAH.

15 Q. OKAY.

16 A. I THINK EVERY EXPERIENCE YOU GO THROUGH IN LIFE  
17 TEACHES YOU SOMETHING.

18 Q. RIGHT. MS. VANLOOZEN, IN RESPONSE TO ONE OF THE  
19 JUDGE'S QUESTIONS EARLIER, YOU INDICATED THAT -- DID I  
20 UNDERSTAND YOU CORRECTLY THAT YOU OR YOUR FIANCE WAS THE  
21 VICTIM OF A VIOLENT CRIME?

22 A. MY BOYFRIEND. WE WEREN'T TO THE POINT OF BEING  
23 FIANCEES YET.

24 Q. SO IT WAS YOUR BOYFRIEND? YOU AND YOUR BOYFRIEND  
25 WERE VICTIMS?

1       A.     YES, IN A WAY WE WERE. WE WERE STALKED BEFORE IT  
2 ALL HAPPENED.

3       Q.     OKAY. AND THIS IS SOMETHING THAT THEY HAVE --  
4 NOBODY'S EVER BEEN CHARGED WITH IT? IS THAT WHAT I  
5 UNDERSTAND CURRENTLY?

6       A.     THEY HAVE A SUSPECT---

7       Q.     UH-HUH.

8       A.     ---BUT NO ONE'S EVER BEEN CHARGED, NO.

9       Q.     OKAY. AND I TAKE IT FROM THE TONE OF YOUR RESPONSES  
10 THAT THAT WAS KIND OF FRUSTRATING TO YOU. IS THAT A FAIR  
11 ASSESSMENT?

12       A.     I DON'T THINK IT'S FRUSTRATING. I JUST WANT TO SEE  
13 THE WHEELS OF JUSTICE TURN INSTEAD OF JUST STAND STILL.

14       Q.     UH-HUH.

15       A.     MY BOYFRIEND'S PARENTS ARE UP IN AGE AND I DON'T  
16 KNOW IF THEY HOLD ME RESPONSIBLE FOR THEIR FRIERSON'S DEATH,  
17 BUT I KNOW THAT I GOT SOME FEELINGS LIKE THAT FROM HIS SISTER  
18 AND HIS BROTHER.

19       Q.     UH-HUH.

20       A.     AND I WOULD LIKE BEFORE THEY DIE FOR THEM TO KNOW I  
21 HAD NO PART IN IT, AND TODD WAS WITH ME BECAUSE HE WANTED TO  
22 BE.

23       Q.     UH-HUH. OKAY. SO YOUR BOYFRIEND WAS ACTUALLY  
24 KILLED.

25       A.     HE WAS SHOT IN THE HEAD.

1 Q. OKAY. ALL RIGHT. DO YOU THINK THAT WOULD BE  
2 SOMETHING THAT YOU WOULD THINK ABOUT IF YOU WERE ON THIS  
3 JURY, THAT IT'S SOMETHING THAT WOULD AFFECT YOUR---

4 A. NO.

5 Q. ---REASONING OR YOUR ABILITY TO CONSIDER THE  
6 EVIDENCE IN THIS CASE?

7 A. NO. THIS IS TOTALLY DIFFERENT.

8 Q. TOTALLY DIFFERENT. OKAY.

9 A. THIS IS NOT PERSONAL.

10 Q. ALL RIGHT. MS. VANLOOZEN, MR. HUBBARD TOUCHED ON  
11 SOME OF THESE THINGS, BUT I NEED TO ASK YOU: IF YOU WERE  
12 SEATED AS A JUROR IN THIS CASE, HIS HONOR WOULD GIVE YOU  
13 CERTAIN INSTRUCTIONS ABOUT FACTORS AND THINGS YOU COULD USE  
14 TO DETERMINE THE CREDIBILITY OF THE WITNESSES AND TO WHO'S  
15 TELLING THE TRUTH. DO YOU THINK YOU WOULD HAVE ANY PROBLEM  
16 TAKING THE INSTRUCTIONS THE COURT GIVES YOU AND APPLYING THAT  
17 TO THE FACTS THAT YOU HEAR---

18 A. NO, SIR.

19 Q. ---IN DETERMINING WHAT THE TRUTH IS?

20 A. I WOULDN'T HAVE A PROBLEM WITH IT.

21 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY PROBLEM  
22 DETERMINING THE CREDIBILITY OF THE LAY WITNESSES OR THE  
23 EXPERTS OR THE POLICE OFFICERS OR WOULD YOU BE ABLE TO LISTEN  
24 TO ALL THE EVIDENCE AND MAKE THAT DETERMINATION?

25 A. I COULD.

1 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM APPLYING  
2 THE LEGAL PRINCIPLES THAT HIS HONOR WOULD GIVE YOU TO THE  
3 FACTS AS YOU FIND THEM IF YOU WERE ON THE JURY?

4 A. NO, SIR, I WOULDN'T HAVE A PROBLEM WITH IT AT ALL.

5 Q. OKAY. JUDGE FEW DISCUSSED WITH YOU BRIEFLY ABOUT  
6 THE JUROR FORM THAT YOU WERE GIVEN WITH THE THREE TYPES OF  
7 JURORS. DID YOU HAVE ANY PROBLEM DETERMINING YOU WERE A  
8 NUMBER THREE TYPE OF JUROR?

9 A. NOT AT ALL.

10 Q. DID YOU HAVE TO WEIGH ANY OF THE OTHER TYPES OF  
11 JURORS?

12 A. NO, BECAUSE I READ THROUGH THE FIRST TWO AND I JUST  
13 AUTOMATICALLY KNEW THAT'S NOT ME.

14 Q. OKAY. MS. VANLOOZEN, HIS HONOR TOLD YOU EARLIER  
15 THAT THE ALLEGED VICTIM IN THIS CASE, MR. DAVIS, WAS AN  
16 ACTIVE MEMBER OF THE MILITARY. WOULD THE FACT THAT HE WAS A  
17 SOLDIER -- WOULD THAT HAVE ANY EFFECT ON YOUR ABILITY TO BE A  
18 FAIR JUROR IN THIS CASE?

19 A. NO, SIR.

20 Q. OKAY. AS INDICATED, IF WE GET TO THE SECOND PHASE  
21 OF THIS TRIAL, THE PENALTY PHASE, THERE WOULD BE EVIDENCE  
22 PRESENTED WHICH WE CALL MITIGATING EVIDENCE AND HIS HONOR  
23 WOULD INSTRUCT YOU HOW YOU ARE TO USE THAT MITIGATING  
24 EVIDENCE, BUT THAT EVIDENCE COULD BE EVIDENCE CONCERNING  
25 KEVIN MERCER'S PAST, COULD BE GOOD THINGS ABOUT HIM, COULD BE

1 BAD THINGS THAT HAPPENED TO HIM. WOULD YOU BE ABLE TO LISTEN  
2 TO ALL THAT MITIGATING EVIDENCE AND CONSIDER IT AND WEIGH IT  
3 VERY CAREFULLY BEFORE ARRIVING AT WHAT YOUR VERDICT WOULD BE?

4 A. YES, SIR.

5 Q. OKAY. MS. VANLOOZEN, JUST ONE FINAL THING. IF YOU  
6 WERE SEATED ON THIS JURY AND FOUND THAT THE OTHER 11 MEMBERS  
7 OF THE JUROR -- OF THE JURY HAD A DIFFERENT OPINION AS TO  
8 WHAT THE VERDICT OUGHT TO BE, DIFFERENT FROM YOURS, DO YOU  
9 THINK THAT YOU COULD OR DO YOU THINK THAT YOU WOULD EVER  
10 CONSIDER CHANGING YOUR OPINION OR CHANGING YOUR IDEA ABOUT  
11 WHAT THE VERDICT COULD BE JUST TO GO ALONG WITH THE OTHER  
12 JURORS?

13 MR. MYERS: OBJECTION ON THE SAME GROUNDS PREVIOUSLY  
14 STATED.

15 THE COURT: OVERRULED.

16 MR. LITTLEJOHN: YOUR HONOR, I HAVE NO PROBLEM WITH  
17 HIM HAVING A CONTINUING OBJECTION SO HE DOESN'T HAVE TO  
18 OBJECT EVERY TIME. DID YOU UNDERSTAND MY QUESTION?

19 THE COURT: YOU CAN ANSWER THE QUESTION, MA'AM.

20 THE WITNESS: I WOULD HEAR THEIR SIDES OF IT AND  
21 MAKE A DECISION FROM THERE.

22 BY MR. LITTLEJOHN:

23 Q. OKAY. JUST THE FACT THAT THE OTHER 11 HAD A  
24 DIFFERENT OPINION, WOULD THAT CAUSE YOU TO CHANGE YOURS?

25 A. I WOULDN'T KNOW UNTIL I'M THERE. THERE'S NO WAY I

1 COULD KNOW UNTIL I'M THERE.

2 Q. OKAY. BUT DO YOU THINK YOU'D EVER CHANGE YOURS JUST  
3 TO GO ALONG WITH THE REST OF THEM?

4 A. NO, NOT WITHOUT HEARING THEIR SIDES.

5 MR. LITTLEJOHN: OKAY. THANK YOU, MA'AM.

6 THE COURT: MA'AM, DO YOU KNOW OF ANY REASON WHY YOU  
7 COULD NOT GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND  
8 IMPARTIAL TRIAL---

9 THE WITNESS: NO, SIR.

10 THE COURT: ---IN THIS CASE? I'M GOING TO ASK YOU  
11 TO STEP OUT INTO THE HALLWAY FOR JUST A SECOND, AND I'LL GET  
12 YOU RIGHT BACK IN.

13 THE WITNESS: OKAY.

14 (JUROR VANLOOZEN LEAVES THE COURTROOM.)

15 THE COURT: I THINK SHE'S QUALIFIED. DOES ANYBODY  
16 DISAGREE?

17 MR. MYERS: NO, SIR.

18 MR. LITTLEJOHN: NO, YOUR HONOR.

19 THE COURT: BRING HER IN.

20 (JUROR VANLOOZEN IS BROUGHT INTO THE COURTROOM.)

21 THE COURT: MA'AM, YOU'RE QUALIFIED AS A JUROR IN  
22 THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY, BUT THAT  
23 MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE'RE GOING TO  
24 STRIKE THE JURY ON MONDAY MORNING. SO I WOULD LIKE FOR YOU  
25 TO CALL BACK TO THE NUMBER THAT YOU'VE BEEN GIVEN SUNDAY



1 NIGHT AFTER 6 FOR INSTRUCTIONS ABOUT WHAT YOU'LL NEED TO DO  
2 MONDAY MORNING. PROBABLY YOU'LL NEED TO REPORT HERE MONDAY  
3 MORNING, AND YOU MAY BE ASKED TO BRING ALL OF YOUR BELONGINGS  
4 TO STAY FOR FOUR OR FIVE DAYS. ALL RIGHT?

5 THE WITNESS: ALL RIGHT.

6 THE COURT: THANK YOU, MA'AM.

7 THE WITNESS: THANK YOU.

8 (JUROR VANLOOZEN LEAVES THE COURTROOM. JUROR CHERYL  
9 SPENCER IS BROUGHT INTO THE COURTROOM.)

10 CHERYL SPENCER, HAVING BEEN PREVIOUSLY SWORN AS  
11 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
12 TESTIFIED AS FOLLOWS:

13 EXAMINATION BY THE COURT

14 Q. HAVE A SEAT THERE, MA'AM. MAKE YOURSELF  
15 COMFORTABLE. MS. SPENCER, YOU RECALL THAT EARLIER TODAY WHEN  
16 -- THAT YOU WERE PUT UNDER OATH AND YOU'RE STILL UNDER THAT  
17 OATH. DO YOU UNDERSTAND THAT?

18 A. I DO.

19 Q. ALL RIGHT. NOW, YOU CAN MOVE THIS MICROPHONE  
20 TOWARDS YOU IF YOU WOULD LIKE TO, BUT THESE -- THESE FOLKS ON  
21 THE OUTSIDE IN THE COURTROOM ARE GOING TO NEED TO HEAR  
22 EVERYTHING THAT YOU SAY. NOW, SINCE YOU WERE TAKEN BACK INTO  
23 THE JURY ROOM, HAVE YOU TALKED ABOUT THIS CASE WITH ANYONE OR  
24 HAS ANYONE TALKED ABOUT THE CASE WITH YOU?

25 A. NO.

1 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THE  
2 LAWYERS MAY ASK YOU SOME FOLLOW-UP QUESTIONS. WE DON'T WANT  
3 TO GET TOO DEEP INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO  
4 ASK YOU THESE QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG  
5 ANSWERS TO THESE QUESTIONS. WE JUST WANT YOU TO LISTEN  
6 CAREFULLY TO US AND TO BE OPEN AND TO BE HONEST AND TELL US  
7 HOW YOU FEEL AND WHAT YOU THINK ABOUT THESE ISSUES THAT WE'RE  
8 GOING TO DISCUSS.

9 NOW, WE'RE GOING TO GET INTO SOME DISCUSSION ABOUT A  
10 POSSIBLE PENALTY PHASE. NOW, THAT DOESN'T MEAN ANYTHING  
11 ABOUT THIS CASE. IT DOESN'T MEAN ANYTHING ABOUT THIS  
12 DEFENDANT. IT JUST MEANS THAT WE RECOGNIZE THAT WE MIGHT GET  
13 INTO A PENALTY PHASE IN THIS TRIAL, AND THERE'S SOME THINGS  
14 THAT WE NEED TO ASK YOU ABOUT, SOME ISSUES THAT WE'LL BE  
15 DEALING WITH IN THAT PHASE, IF WE DO.

16 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND  
17 APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO YOU AND SET  
18 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
19 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
20 BASED SOLELY ON THAT TESTIMONY AND EVIDENCE THAT YOU HEAR AND  
21 SEE IN THIS COURTROOM? CAN YOU DO THAT?

22 A. YES.

23 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
24 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
25 REASONABLE DOUBT?

1 A. YES.

2 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
3 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
4 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
5 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
6 STATE HAS MET THAT BURDEN OF PROOF?

7 A. YES.

8 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
9 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
10 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M  
11 GOING TO ASK YOU NOW ABOUT SOME THINGS THAT WILL COME UP  
12 THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR  
13 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
14 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
15 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME OF MURDER  
16 AND ADD TO THE INJURY RESULTING FROM THE CRIME.

17 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
18 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
19 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO  
20 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
21 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND WHAT I MEAN  
22 WHEN I SAY AGGRAVATING AND MITIGATING CIRCUMSTANCES?

23 A. SORT OF.

24 Q. DO YOU UNDERSTAND THE CONCEPT---

25 A. CONCEPT, YES.

1 Q. ---OF AGGRAVATING CIRCUMSTANCE AND THE CONCEPT OF  
2 MITIGATING CIRCUMSTANCE?

3 A. YES.

4 Q. NOW, WHEN YOU WENT BACK IN THE JURY ROOM, YOU WERE  
5 GIVEN THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF  
6 JURORS. DID YOU GET A CHANCE TO READ OVER THAT SHEET?

7 A. I DID.

8 Q. DO YOU UNDERSTAND THE THREE TYPES OF JURORS?

9 A. I DO.

10 Q. DO YOU CONSIDER YOURSELF TO BE ONE OF THOSE THREE  
11 TYPES?

12 A. I DO.

13 Q. WHICH ONE?

14 A. NUMBER THREE.

15 Q. NUMBER THREE? IF YOU'RE A JUROR IN A DEATH PENALTY  
16 CASE AND IF THE CASE GOES INTO THE SENTENCING PHASE, THEN YOU  
17 WOULD HAVE TWO OPTIONS AS TO WHAT YOUR VERDICT COULD BE: ONE  
18 IS FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE AND  
19 THE OTHER IS FOR THE DEATH PENALTY. COULD YOU, DEPENDING ON  
20 THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND  
21 CONSIDERING THE LAW AS I WOULD GIVE IT TO YOU, COULD YOU  
22 RETURN A VERDICT FOR A LIFE SENTENCE?

23 A. YES.

24 Q. COULD YOU RETURN A VERDICT FOR THE DEATH PENALTY?

25 A. YES.

1 Q. NOW, IF YOU'RE ON THE JURY, YOU MAY BE SEQUESTERED  
2 FOR FIVE OR SIX DAYS. I HAVE NOT DECIDED YET WHETHER OR NOT  
3 I'M GOING TO SEQUESTER THE JURY. IF YOU ARE SEQUESTERED, YOU  
4 WOULD HAVE TO SPEND THAT TIME WITH US. YOU'D BE SPENDING THE  
5 NIGHT IN A HOTEL, AND YOU WOULD NOT BE ALLOWED TO GO HOME TO  
6 YOUR FAMILY WHILE THE TRIAL IS GOING ON. NOW, WE REALIZE  
7 THAT THAT WOULD BE A BURDEN ON YOU, BUT IS THAT A BURDEN THAT  
8 YOU COULD HANDLE? WOULD THAT BE A TERRIBLE BURDEN ON YOU?

9 A. NO, I COULD HANDLE IT.

10 Q. DID YOU GET A CHANCE TO GO OVER THE WITNESS LIST  
11 THAT YOU WERE GIVEN WHEN YOU WENT BACK INTO THE JURY ROOM?

12 A. I DID.

13 Q. DID YOU READ EVERY NAME ON THAT LIST?

14 A. I DID.

15 Q. DO YOU KNOW OR ARE YOU RELATED TO ANY OF THE NAMES  
16 THAT APPEAR ON THAT LIST?

17 A. NO.

18 Q. ALL RIGHT. ALL RIGHT. MA'AM, I'M GOING TO ALLOW  
19 THE ATTORNEYS TO ASK YOU A FEW QUESTIONS. THEN I'M GOING TO  
20 COME BACK IN THE END AND I'LL ASK YOU A COUPLE OF FOLLOW-UP.

21 A. OKAY.

22 THE COURT: SOLICITOR?

23 MR. HUBBARD: THANK YOU, YOUR HONOR.

24

25

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. MS. SPENCER, I'M RICK HUBBARD. I'M REQUIRED TO ASK YOU A FEW QUESTIONS; I'LL TRY TO KEEP THEM SHORT. BUT WE'RE JUST TRYING TO FIND OUT A LITTLE BIT ABOUT YOU BEFORE WE ENTER INTO THIS PROCESS. I NOTICED YOUR JURY FORM THAT YOU FILLED OUT FOR THE CLERK'S OFFICE---

A. UH-HUH.

Q. ---SAID YOU HAD NEVER SERVED ON A JURY BEFORE. IS THAT TRUE?

A. NO, SIR, NEVER.

Q. NOT CIVIL OR CRIMINAL.

A. NONE.

Q. SO THIS IS A WHOLE NEW WORLD.

A. YES, IT IS.

Q. DID YOU UNDERSTAND WHAT THE JUDGE WAS SAYING HOW THERE'S -- THAT THIS CASE IS UNIQUE -- THIS TYPE OF CASE IS UNIQUE BECAUSE THERE'S TWO PARTS TO IT POTENTIALLY?

A. YES.

Q. THE FIRST PART DEALS WITH GUILTY OR NOT GUILTY OF THE PERSON CHARGED, AND THE SECOND PART DEALS WITH PUNISHMENT.

A. RIGHT.

Q. YOU FOLLOWED THAT PART.

A. GOT IT.

1 Q. THE FIRST PART IS JUST LIKE ANY OTHER TRIAL.  
2 EVIDENCE IS PUT UP. THE STATE HAS TO PROVE ITS CASE BEYOND A  
3 REASONABLE DOUBT, AND THEN THE JURY WILL GO BACK AND DECIDE  
4 WHETHER A PERSON IS GUILTY OR NOT GUILTY, AND ALL 12 HAVE TO  
5 AGREE. IT'S ONLY IF THEY DETERMINE THAT THE DEFENDANT IS  
6 GUILTY, GUILTY OF MURDER, THAT WE GO INTO THAT SECOND PHASE.  
7 IN THAT SECOND PHASE -- WHAT'S UNIQUE ABOUT THAT PHASE IS THE  
8 JUDGE DOESN'T DO THE SENTENCING; THE JURY DOES. DID YOU  
9 UNDERSTAND THAT PART?

10 A. YES.

11 Q. AND ONCE AGAIN THE JURY WILL HAVE TO COME TO A  
12 DECISION ON LIFE OR DEATH, AND ALL 12 WOULD HAVE A VOICE IN  
13 THAT. DO YOU UNDERSTAND THAT?

14 A. YES.

15 Q. ASSUMING WE GO INTO THAT SECOND PHASE, THE DEFENDANT  
16 HAS BEEN CONVICTED OF MURDER AND WE GO INTO THAT SECOND  
17 PHASE, COULD YOU CONSIDER THE INFORMATION AND EVIDENCE THAT'S  
18 PRESENTED IN THAT SECOND PHASE?

19 A. YES.

20 Q. AS THE JUDGE SAID, YOU'RE GOING TO HEAR -- OR IF WE  
21 GET IN THAT SECOND PHASE, YOU WOULD HEAR BOTH AGGRAVATING  
22 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES. AGGRAVATING  
23 CIRCUMSTANCES ARE THINGS THAT MAKE THE CRIME WORSE OR -- OR  
24 SHOW BADLY ON THE DEFENDANT.

25 A. UH-HUH.

1 Q. MITIGATING CIRCUMSTANCES WOULD BE THINGS THAT WOULD  
2 LESSEN THE CIRCUMSTANCES OF THAT CRIME OR THINGS THAT ARE  
3 FAVORABLE TO THE DEFENDANT. YOU WOULD BE ABLE TO CONSIDER  
4 BOTH OF THOSE THINGS -- ALL OF THAT INFORMATION BEFORE  
5 REACHING A DECISION?

6 A. YES.

7 Q. NOW, I NOTICE FROM YOUR FORM AS WELL, MS. SPENCER,  
8 THAT YOUR FATHER WAS IN THE MILITARY.

9 A. YES.

10 Q. AND HE WAS IN THE MILITARY POLICE?

11 A. YES.

12 Q. DOES ANYTHING ABOUT YOUR FATHER'S SERVICE IN THE  
13 MILITARY OR HIS EXPERIENCE IN THE LAW ENFORCEMENT SIDE OF THE  
14 MILITARY -- DOES ANY OF THAT AFFECT YOUR ABILITY TO BE A FAIR  
15 AND IMPARTIAL JUROR IN THIS CASE?

16 A. NO.

17 Q. I NOTICED YOU STOOD WHEN THAT QUESTION CAME UP.

18 A. UH-HUH.

19 Q. BUT COULD YOU BE FAIR AND IMPARTIAL FOR BOTH SIDES  
20 IN THIS CASE?

21 A. YES.

22 Q. AND THERE'S ONE FINAL THING I DO WANT TO ASK YOU,  
23 MRS. SPENCER. IN THAT SECOND PHASE, IF THE JURY COMES TO THE  
24 CONCLUSION THAT LIFE IS THE PROPER SENTENCE, ONLY THE  
25 FOREPERSON SIGNS THAT VERDICT FORM. BUT IF THE JURY COMES TO



1 THE CONCLUSION THAT DEATH IS THE PROPER SENTENCE, ALL 12 MUST  
2 SIGN THAT VERDICT FORM. NOW, A LOT OF PEOPLE SAY THAT  
3 THEY'LL GIVE YOU THEIR OPINION, BUT WHEN IT COMES TO WRITING  
4 SOMETHING DOWN, PARTICULARLY THEIR NAME, THEY HESITATE.  
5 WOULD YOU BE ABLE TO, IF YOU THOUGHT THAT WAS THE PROPER  
6 SENTENCE, WRITE YOUR NAME DOWN ON THAT VERDICT FORM?

7 A. YES.

8 Q. MS. SPENCER, IS THERE ANYTHING ELSE ABOUT YOU THAT  
9 WE MIGHT NEED TO KNOW BEFORE WE GO INTO THIS CASE THAT MIGHT  
10 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

11 A. NO.

12 Q. YOU CAN GIVE BOTH SIDES A FAIR TRIAL?

13 A. YES. I'LL DO MY BEST.

14 Q. THANK YOU, MS. SPENCER. THAT'S ALL WE CAN ASK OF  
15 YOU.

16 A. UH-HUH.

17 CROSS-EXAMINATION

18 BY MR. LITTLEJOHN:

19 Q. GOOD AFTERNOON, MS. SPENCER.

20 A. HOW ARE YOU?

21 Q. AGAIN, MY NAME'S CAM LITTLEJOHN. I, ALONG WITH  
22 MELISSA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE  
23 DEFENDANT HERE. LET ME ASK YOU A FEW QUESTIONS ABOUT YOUR  
24 QUESTIONNAIRE IF I MAY. AS MR. HUBBARD ALLUDED TO, IT  
25 APPEARED THAT YOUR FATHER WAS IN THE MILITARY?

1 A. YES, SIR.

2 Q. AND WAS HE A MILITARY POLICE OFFICER, DID I TAKE IT?

3 A. HE WAS IN C.I.D.

4 Q. OKAY. AND I NOTICE WHEN JUDGE FEW ASKED SOME  
5 QUESTIONS EARLIER THAT YOU STOOD UP AS TO MILITARY AND LAW  
6 ENFORCEMENT.

7 A. RIGHT.

8 Q. IS THAT BECAUSE OF YOUR FATHER?

9 A. YES.

10 Q. ANY OTHER RELATIVES THAT ARE IN THE MILITARY OR IN  
11 LAW ENFORCEMENT?

12 A. I HAD A BROTHER THAT WAS IN THE AIR FORCE.

13 Q. OKAY. LET ME LOOK HERE JUST A SECOND, MS. SPENCER..  
14 OKAY. I THINK THAT COVERS THAT. MS. SPENCER, IF YOU WERE  
15 SEATED ON THE JURY IN THIS CASE, YOU WOULD BE CALLED UPON AS  
16 A JUROR TO DETERMINE THE CREDIBILITY OF THE WITNESSES, GIVEN  
17 CERTAIN INSTRUCTIONS THAT JUDGE FEW WOULD GIVE YOU. DO YOU  
18 THINK YOU WOULD HAVE ANY PROBLEM DETERMINING THE CREDIBILITY  
19 OF WITNESSES, WHETHER THEY BE LAY WITNESSES OR EXPERTS OR  
20 POLICE OFFICERS?

21 A. I WOULD HOPE NOT.

22 Q. OKAY. FAIR ENOUGH. DO YOU THINK YOU WOULD HAVE ANY  
23 PROBLEM LISTENING TO HIS HONOR'S LEGAL INSTRUCTIONS AND  
24 APPLYING THOSE LEGAL INSTRUCTIONS TO THE FACTS AS YOU FIND  
25 THEM AS A JUROR?

1 A. NO.

2 Q. OKAY. MS. SPENCER, EARLIER YOU WERE GIVEN A FORM  
3 WHICH HAD THREE TYPES OF JURORS, AND YOU INDICATED TO JUDGE  
4 FEW THAT YOU FELT THAT YOU WERE THE TYPE -- THE THIRD TYPE OF  
5 JUROR.

6 A. UH-HUH.

7 Q. DID YOU HAVE ANY PROBLEM ARRIVING AT THAT DECISION  
8 BASED ON THOSE THREE TYPES?

9 A. NO.

10 Q. DID YOU HAVE TO CONSIDER EITHER ONE OR TWO---

11 A. NO.

12 Q. ---IN DETERMINING YOU WERE A TYPE THREE?

13 A. RIGHT. NO.

14 Q. OKAY. MS. SPENCER, LET ME ASK YOU THIS: JUDGE FEW  
15 INDICATED EARLIER THAT THE ALLEGED VICTIM IN THIS CASE WAS AN  
16 ACTIVE MEMBER OF THE MILITARY, UNITED STATES ARMY.

17 A. RIGHT.

18 Q. WOULD THAT FACT HAVE ANYTHING TO DO ON YOUR ABILITY  
19 TO -- WOULD THAT HAVE ANY EFFECT ON YOUR ABILITY TO BE A FAIR  
20 AND IMPARTIAL JUROR IN THIS CASE?

21 A. I DON'T THINK SO.

22 Q. OKAY. YOU INDICATED YOUR BROTHER WAS IN THE AIR  
23 FORCE?

24 A. YES, SIR.

25 Q. HOW ABOUT YOUR FATHER? WHAT BRANCH OF SERVICE WAS

1 HE IN?

2 A. HE WAS IN THE ARMY.

3 Q. HE WAS IN THE U.S. ARMY?

4 A. UH-HUH.

5 Q. WAS HE EVER STATIONED AT FORT JACKSON?

6 A. NO, SIR.

7 Q. WAS NOT? OKAY. ANOTHER THING THAT YOU WERE ASKED  
8 ABOUT BRIEFLY WAS ABOUT AGGRAVATING AND MITIGATING EVIDENCE,  
9 AND WHAT I'D LIKE TO ASK YOU IS THIS: IF YOU WERE SEATED ON  
10 THIS JURY AND WE GOT TO THE SECOND PHASE OF THE TRIAL, THE  
11 PENALTY PHASE, EVIDENCE WOULD BE PRESENTED IN MITIGATION AND  
12 BY THAT WE MEAN EVIDENCE THAT WOULD BEAR ON THE DEFENDANT'S  
13 BACKGROUND. IT MIGHT BE GOOD THINGS ABOUT THE DEFENDANT,  
14 MIGHT BE BAD THINGS THAT HAS HAPPENED TO THE DEFENDANT.  
15 WOULD YOU TAKE THAT EVIDENCE AND WEIGH IT VERY CAREFULLY  
16 BEFORE MAKING YOUR DECISION AS TO WHAT THE PROPER VERDICT  
17 MIGHT BE?

18 A. YES, I WOULD.

19 Q. WOULD YOU LISTEN TO IT CAREFULLY?

20 A. YES, I WOULD.

21 Q. OKAY. JUST ONE FINAL THING, MS. SPENCER. IF YOU  
22 WERE SEATED ON THIS JURY AND FOUND THAT THE OTHER 11 JURORS  
23 HAD ONE OPINION AS TO WHAT THE VERDICT SHOULD BE AND YOU HAD  
24 A SEPARATE OPINION, DO YOU THINK YOU WOULD EVER CONSIDER  
25 CHANGING YOUR OPINION JUST TO GO ALONG WITH THE OTHER JURORS?

1 A. NO.

2 Q. OKAY. DO YOU KNOW OF ANY REASON YOU CAN'T GIVE  
3 KEVIN MERCER A FAIR TRIAL IN THIS CASE?

4 A. NO, SIR.

5 MR. LITTLEJOHN: OKAY. THANK YOU, MS. SPENCER.

6 THE COURT: MS. SPENCER, I'M GOING TO ASK YOU TO  
7 STEP OUT INTO THE HALLWAY FOR JUST A SECOND, PLEASE.

8 (JUROR SPENCER LEAVES THE COURTROOM.)

9 THE COURT: I THINK SHE'S QUALIFIED.

10 MR. MYERS: YES, SIR, AND I DIDN'T OBJECT TO THAT  
11 LAST QUESTION. AS YOU UNDERSTAND, IT'S A CONTINUING  
12 OBJECTION THAT RUNS ALONG AND I DON'T HAVE TO INTERPOSE AN  
13 OBJECTION EVERY TIME.

14 THE COURT: THAT SUITS ME.

15 MR. MYERS: THANK YOU.

16 THE COURT: MR. LITTLEJOHN, DO YOU HAVE ANY  
17 DISAGREEMENT THAT THIS JUROR IS QUALIFIED?

18 MR. LITTLEJOHN: NO, YOUR HONOR.

19 THE COURT: BRING HER IN, PLEASE.

20 (JUROR SPENCER IS BROUGHT INTO THE COURTROOM.)

21 THE COURT: MA'AM, YOU DON'T HAVE TO SIT BACK DOWN.

22 YOU'RE QUALIFIED TO SERVE AS A JUROR IN THIS CASE. THAT DOES  
23 NOT MEAN THAT YOU'RE ON THE JURY, BUT IT MEANS YOU'RE  
24 ELIGIBLE TO BE ON THE JURY. WE WILL -- I'M GOING TO ASK YOU  
25 TO BE READY TO COME BACK UP HERE ON MONDAY MORNING. PLEASE

1 CALL THAT TELEPHONE NUMBER THAT YOU WERE GIVEN ON SUNDAY  
2 NIGHT AFTER 6:00 FOR INSTRUCTIONS ABOUT MONDAY. NOW, YOU  
3 MIGHT BE TOLD IN THAT MESSAGE TO BRING WITH YOU ENOUGH OF  
4 YOUR BELONGINGS TO STAY WITH US FOR FOUR OR FIVE DAYS. SO I  
5 LOOK FORWARD TO SEEING YOU ON MONDAY.

6 THE WITNESS: YOU'RE SUPPOSED TO BE GETTING A NOTICE  
7 FROM MY DOCTOR, TOO---

8 THE COURT: OKAY.

9 THE WITNESS: ---BECAUSE I'M HAVING THE SURGERY ON  
10 MY---

11 THE COURT: OH, YES. THAT'S RIGHT. ALL RIGHT. AND  
12 SO THAT -- THAT WILL, OF COURSE, POSSIBLY CHANGE---

13 THE WITNESS: OKAY.

14 THE COURT: ---DEPENDING ON WHAT YOU FIND OUT WHEN  
15 YOU TALK TO HIM AND HOW THAT IS CONVEYED BACK TO US. OKAY?  
16 THANK YOU FOR REMINDING ME OF THAT.

17 THE WITNESS: THANK YOU.

18 (JUROR SPENCER LEAVES THE COURTROOM. JUROR KILEY  
19 ROBINSON IS BROUGHT INTO THE COURTROOM.)

20 KILEY ROBINSON, HAVING BEEN PREVIOUSLY SWORN AS  
21 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
22 TESTIFIED AS FOLLOWS:

23 EXAMINATION BY THE COURT

24 Q. HAVE A SEAT, MA'AM. MS. ROBINSON?

25 A. YES.

1 Q. MAKE YOURSELF COMFORTABLE. YOU RECALL THAT EARLIER  
2 TODAY YOU WERE PUT UNDER OATH, AND YOU ARE STILL UNDER THAT  
3 OATH. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. NOW, SINCE YOU'VE BEEN BACK IN THE JURY ROOM SINCE  
6 WE ALL LEFT HERE IN THE COURTROOM TOGETHER EARLIER, HAVE YOU  
7 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED THE  
8 CASE WITH YOU?

9 A. NO, NOT THE CASE.

10 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THE  
11 LAWYERS MAY ASK YOU SOME FOLLOW-UP QUESTIONS AFTER I'M DONE.  
12 WE DON'T WANT TO GET TOO FAR INTO YOUR PERSONAL LIFE, BUT WE  
13 DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NOT ANY RIGHT  
14 OR WRONG ANSWERS TO THE QUESTIONS. WE JUST WANT YOU TO  
15 LISTEN CAREFULLY AND TO BE OPEN AND HONEST WITH US AND TELL  
16 US HOW YOU THINK OR WHAT YOU THINK AND HOW YOU FEEL ABOUT  
17 THESE ISSUES THAT WE'RE GOING TO DISCUSS.

18 WE'RE GOING TO GET INTO SOME DISCUSSION ABOUT A  
19 POSSIBLE PENALTY PHASE IN THIS TRIAL. THAT DOESN'T MEAN  
20 ANYTHING ABOUT THIS CASE. IT DOESN'T MEAN ANYTHING ABOUT  
21 THIS DEFENDANT. IT JUST MEANS THAT WE RECOGNIZE THAT WE  
22 MIGHT GET INTO THE PENALTY PHASE OF THE TRIAL, AND WE'RE  
23 GOING TO TALK ABOUT SOME OF THE THINGS THAT WILL COME UP IF  
24 WE DO.

25 IF YOU'RE A JUROR IN THIS CASE, CAN YOU ACCEPT AND

1 APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO YOU AND SET  
2 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
3 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
4 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU SEE  
5 AND HEAR IN THIS COURTROOM? CAN YOU DO THAT?

6 A. YEAH.

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

10 A. I DO.

11 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
12 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
13 I WILL EXPLAIN IT TO YOU, COULD YOU GIVE -- COULD YOU FIND  
14 THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON  
15 WHETHER OR NOT YOU FEEL THE STATE HAS MET ITS BURDEN OF  
16 PROOF?

17 A. YES.

18 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
19 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
20 THAT SECOND PHASE OF THE TRIAL, AND I'M GOING TO TALK TO YOU  
21 NOW ABOUT SOME OF THE THINGS THAT WILL COME UP IF WE DO.  
22 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR DETAILS  
23 THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR  
24 TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES  
25 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY



1 RESULTING FROM THE CRIME.

2 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
3 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
4 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE  
5 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
6 RESPONSIBILITY FOR THAT CRIME. DO YOU UNDERSTAND THE  
7 CONCEPTS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

8 A. UH-HUH.

9 Q. NOW, WHEN YOU WENT -- NOW, YOU'LL NEED TO TELL ME  
10 YES OR NO.

11 A. I'M SORRY. YES.

12 Q. THAT'S OKAY. THANK YOU. NOW, WHEN YOU WENT BACK IN  
13 THE JURY ROOM, YOU WERE GIVEN THIS SHEET THAT SHOWS THE THREE  
14 DIFFERENT TYPES OF JURORS.

15 A. UH-HUH.

16 Q. DID YOU READ AND UNDERSTAND THAT---

17 A. YES.

18 Q. ---THAT SHEET?

19 A. YES.

20 Q. DO YOU HAVE AN OPINION AS TO WHICH OF THOSE THREE  
21 TYPES OF JURORS YOU WOULD BE?

22 A. I DO. I COULD BE THE THIRD TYPE OF JUROR. HOWEVER,  
23 I DO HAVE SOME PERSONAL FEELINGS WHEN IT COMES TO WANTING TO  
24 ACCEPT OR DECLINE THE ABILITY TO BE ABLE TO SAY YES OR NO TO  
25 SOMEBODY'S LIFE OR DEATH, AND I DON'T KNOW THAT THAT'S

1 SOMETHING I WOULD WANT TO DO.

2 Q. OKAY. WELL, LET'S TALK ABOUT THAT FOR A LITTLE  
3 WHILE. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT IT, AND YOU  
4 JUST TELL US -- YOU JUST BE HONEST WITH US AND WE'LL -- WE'LL  
5 GET THROUGH IT.

6 A. OKAY.

7 Q. IF YOU'RE A JUROR IN A DEATH PENALTY CASE IN THE  
8 SENTENCING PHASE, YOU WOULD HAVE TWO OPTIONS AS TO WHAT YOUR  
9 VERDICT COULD BE. ONE OPTION IS FOR A LIFE SENTENCE WITHOUT  
10 THE POSSIBILITY OF PAROLE. THE OTHER OPTION WOULD BE FOR THE  
11 DEATH PENALTY. DO YOU THINK THAT, DEPENDING ON THE FACTS AND  
12 CIRCUMSTANCES THAT YOU FOUND TO EXIST AND CONSIDERING THE LAW  
13 AS I EXPLAINED IT TO YOU, DO YOU THINK THAT YOU COULD VOTE TO  
14 RETURN A VERDICT FOR A LIFE SENTENCE?

15 A. I CAN DO THAT.

16 Q. NOW, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT  
17 YOU FOUND TO BE PROVEN, DO YOU THINK THAT YOU COULD RETURN A  
18 VERDICT FOR THE DEATH PENALTY?

19 A. THAT WOULD BE SOMETHING THAT I'D HAVE TO THINK  
20 REALLY HARD ABOUT.

21 Q. OKAY. I'M GOING TO ALLOW THE ATTORNEYS TO ASK YOU  
22 SOME QUESTIONS AT THIS TIME, AND THEN I'LL COME BACK AND I  
23 HAVE A FEW OTHER QUESTIONS THAT I MAY HAVE TO ASK YOU THEN.  
24 OKAY?

25 A. OKAY.

1 THE COURT: ALL RIGHT?

2 DIRECT EXAMINATION

3 BY MR. MYERS:

4 Q. MS. ROBINSON?

5 A. YES.

6 Q. I WAS LOOKING ON THIS INFORMATION. THEY MAILED OUT  
7 A FORM TO YOU. IT WAS 3500 FERNANDINA ROAD.

8 A. THAT'S WHERE THEY MAILED IT TO AND THAT'S BECAUSE  
9 THAT'S WHAT MY DRIVER'S LICENSE STILL SAYS BECAUSE I CAN'T  
10 CHANGE IT BECAUSE THEY WON'T LET ME CHANGE IT TO A P.O. BOX.

11 Q. DID YOU LIVE THERE AT ONE TIME?

12 A. I DID AT ONE POINT IN TIME.

13 Q. WHEN WAS THAT?

14 A. I GUESS THAT WAS PROBABLY 2000 TO 2002, SOMETHING  
15 LIKE THAT.

16 Q. AND WHAT ARE THOSE APARTMENTS CALLED?

17 A. THAT IS RAINTREE APARTMENTS OVER OFF OF FERNANDINA  
18 ROAD. IT WAS APARTMENT NUMBER D-5.

19 Q. DID YOU LIVE THERE IN MAY OF 2002?

20 A. I BELIEVE SO. THERE WAS ACTUALLY A SHOOTING OUTSIDE  
21 OF MY APARTMENT THERE.

22 Q. DO YOU KNOW THIS CASE HAPPENED THERE?

23 A. OH, NO, I DID NOT. THAT'S PROBABLY -- THAT'S WHAT  
24 HAPPENED THEN. I KNEW -- I KNEW THERE WAS A SHOOTING THAT  
25 HAPPENED THERE AND I KNEW IT WAS A NAVIGATOR THAT SOMEBODY

1 WAS TRYING TO STEAL, BUT I DIDN'T KNOW -- IT WAS RIGHT  
2 OUTSIDE MY DOOR LITERALLY, ACROSS THE STREET FROM WHERE I WAS  
3 STAYING AT THE TIME.

4 Q. APARTMENT D-7 I THINK IS WHERE...

5 A. YEAH, BECAUSE I WAS -- THERE WAS ONE NEXT DOOR TO ME  
6 AND THEY WERE JUST THE NEXT ONE OVER.

7 Q. WERE YOU THERE WHEN THIS SHOOTING OCCURRED?

8 A. YEAH, I WAS AT HOME. THEY KNOCKED ON MY DOOR. I  
9 HEARD THE BANG.

10 Q. YOU HEARD THE SHOT?

11 A. I SURE DID.

12 Q. DID THE LAW ENFORCEMENT OFFICERS INTERVIEW YOU?

13 A. THEY KNOCKED ON MY DOOR AND THEY GOT MY NAME. THEY  
14 ASKED ME WHAT I HEARD AND ABOUT WHAT TIME I HEARD IT.

15 Q. THE VICTIM WAS YOUR NEIGHBOR. HAD YOU SEEN HIM  
16 BEFORE IN THAT NAVIGATOR?

17 A. I HAD SEEN HIM, BUT I HADN'T SPOKE TO HIM, DIDN'T  
18 KNOW HIM.

19 Q. DID YOU KNOW HIS ROOMMATE, CLIFTON MAGWOOD?

20 A. NOT THAT I KNOW OF BUT I KNOW THE PEOPLE RIGHT NEXT  
21 DOOR TO ME SEVERAL MONTHS AFTER THAT HAD THOUGHT IT WOULD BE  
22 CUTE OR FUNNY TO DRILL HOLES IN MY CEILING TO TRY TO BE  
23 PEEPING TOMS.

24 Q. BECAUSE YOU WERE THERE WHEN THIS CRIME HAPPENED AND  
25 HEARD THE SHOT AND THE POLICE TALKED WITH YOU, DO YOU THINK

1 THAT WOULD CAUSE YOU SOME PROBLEMS IN THIS CASE, BEING THAT  
2 CLOSELY INVOLVED?

3 A. YEAH. I MEAN, LIKE I SAID, I DON'T HAVE -- I DIDN'T  
4 KNOW EITHER OF THEM OR KNEW WHAT WENT ON, BUT I REMEMBER WHAT  
5 HAPPENED.

6 Q. IT WAS KIND OF UNSETTLING THAT NIGHT WITH ALL THE  
7 POLICE AROUND THERE AND A KILLING HAPPENED?

8 A. A BODY ACROSS THE STREET, YEAH.

9 Q. YES, MA'AM. YOUR HONOR, WE HAVE A MATTER AT THIS  
10 TIME.

11 THE COURT: MA'AM, I'M GOING TO ASK YOU TO STEP OUT  
12 IN THE HALL FOR JUST A MINUTE, AND WE'LL GET YOU BACK IN HERE  
13 IN JUST A SECOND. OKAY?

14 THE WITNESS: SURE.

15 (JUROR ROBINSON LEAVES THE COURTROOM.)

16 MR. MYERS: YOUR HONOR, HER NAME DIDN'T COME UP ON  
17 OUR POTENTIAL WITNESS LIST, BUT THERE WERE A LOT OF PEOPLE IN  
18 THE APARTMENT COMPLEX THAT OFFICERS WERE GOING AROUND TALKING  
19 WITH. HER APARTMENT WAS D-5. I THINK THIS WAS D-7?

20 MR. HUBBARD: YES, SIR.

21 MR. MYERS: AND THE MURDER HAVING -- HER HEARING THE  
22 SHOT -- AND SHE SAYS THAT WOULD PROBABLY INTERFERE SINCE IT  
23 HAPPENED RIGHT THERE. HERE'S A POTENTIAL WITNESS TO THE  
24 CRIME THAT WE'RE TRYING, AND WE WOULD MOVE TO EXCUSE HER.

25 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

1 THE COURT: ALL RIGHT. BRING HER IN.

2 (JUROR ROBINSON IS BROUGHT INTO THE COURTROOM.)

3 THE COURT: YOU DON'T HAVE TO SIT BACK DOWN, MS.

4 ROBINSON. BECAUSE OF YOUR CLOSE INVOLVEMENT TO THE INCIDENT  
5 THAT ALLEGEDLY OCCURRED, YOU ARE NOT GOING TO BE QUALIFIED AS  
6 A JUROR IN THIS CASE. SO YOU'RE FREE TO GO AND YOU DON'T  
7 HAVE TO -- YOU WON'T HAVE TO REPORT BACK.

8 THE WITNESS: OKAY. THANK YOU.

9 THE COURT: HAVE A NICE EVENING.

10 (JUROR ROBINSON LEAVES THE COURTROOM.)

11 THE COURT: I'M GOING TO TAKE ANOTHER  
12 TWO-AND-A-HALF-MINUTE BREAK. THREE-AND-A-HALF-MINUTE...

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 THE COURT: BE SEATED. ALL RIGHT. ARE Y'ALL READY  
15 TO PROCEED?

16 MR. MYERS: YES, SIR.

17 THE COURT: THE NEXT JUROR IS MR. STEVENS, NUMBER  
18 304, I BELIEVE, THAT WE'RE TAKING OUT OF ORDER. HE IS  
19 ACTUALLY IN ANOTHER PANEL; I CAN'T REMEMBER WHICH. NUMBER 7.

20 MR. MYERS: SO HE'S OUT OF ORDER BUT WILL GO BACK  
21 INTO NUMBER 7?

22 THE COURT: YES, SIR. HE'S GOT A BEACH VACATION  
23 WITH HIS CHILDREN THAT HE WANTS TO GO ON IN THE MORNING.  
24 OKAY. BRING HIM IN.

25 (JUROR PAUL STEVENS IS BROUGHT INTO THE COURTROOM.)

1                    PAUL STEVENS, HAVING BEEN PREVIOUSLY SWORN AS A  
2 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
3 TESTIFIED AS FOLLOWS:

4                    EXAMINATION BY THE COURT

5            Q.    HAVE A SEAT HERE, SIR, AND MAKE YOURSELF  
6 COMFORTABLE. MR. STEVENS, YOU RECALL THAT EARLIER TODAY YOU  
7 WERE PUT UNDER OATH?

8            A.    YES, SIR.

9            Q.    YOU'RE STILL UNDER THAT OATH. SINCE YOU LEFT THE  
10 COURTROOM EARLIER AND WERE TAKEN BACK INTO THE JURY ROOM,  
11 HAVE YOU DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE  
12 DISCUSSED THE CASE WITH YOU?

13          A.    NO, SIR.

14          Q.    NOW, WE'RE GOING TO ASK SOME QUESTIONS. I'M GOING  
15 TO START OFF, AND THE LAWYERS MAY ASK SOME FOLLOW-UP  
16 QUESTIONS. WE DON'T WANT TO GET TOO FAR INTO YOUR PERSONAL  
17 LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS. THERE ARE  
18 NOT ANY RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE JUST  
19 WANT YOU TO LISTEN CAREFULLY AND TO BE OPEN AND HONEST WITH  
20 US AND TELL YOU -- TELL US HOW YOU FEEL AND WHAT YOU THINK.

21                    WE'RE GOING TO GET INTO A DISCUSSION OF A POSSIBLE  
22 PENALTY PHASE, BUT THAT DOESN'T MEAN THAT. -- ANYTHING ABOUT  
23 THIS CASE OR ABOUT THIS DEFENDANT. IT JUST MEANS WE  
24 RECOGNIZE THAT WE MIGHT GET INTO A PENALTY PHASE, AND WE HAVE  
25 SOME QUESTIONS THAT WE'RE GOING TO ASK YOU ABOUT ISSUES THAT

1 WILL COME UP IF WE DO.

2 IF YOU'RE A JUROR IN THIS CASE, COULD YOU ACCEPT AND  
3 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND SET  
4 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
5 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
6 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND  
7 HEAR IN THIS COURTROOM? COULD YOU DO THAT?

8 A. YES, SIR.

9 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
10 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
11 REASONABLE DOUBT?

12 A. I DO.

13 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
14 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
15 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
16 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
17 STATE HAS MET ITS BURDEN OF PROOF?

18 A. I COULD.

19 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
20 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
21 THAT SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M  
22 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL  
23 COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS OR  
24 INCIDENTS OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS  
25 DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER.



1 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME  
2 AND ADD TO THE INJURY RESULTING FROM THE CRIME.

3 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
4 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
5 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE  
6 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
7 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT  
8 OF BOTH AGGRAVATING AND MITIGATING CIRCUMSTANCES?

9 A. YES, SIR.

10 Q. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM, YOU WERE  
11 GIVEN A COPY OF THIS LIST OF THREE DIFFERENT TYPES OF JURORS.  
12 DID YOU READ AND DO YOU UNDERSTAND THAT -- THOSE DIFFERENT  
13 CATEGORIES?

14 A. YES, SIR.

15 Q. DO YOU THINK THAT YOU FIT INTO ANY ONE OF THOSE  
16 THREE CATEGORIES?

17 A. I WOULD BE THE THIRD.

18 Q. YOU WOULD BE IN THE THIRD?

19 A. THIRD PARAGRAPH WOULD...

20 Q. IN THE THIRD CATEGORY?

21 A. UH-HUH.

22 Q. ALL RIGHT. NOW, IF YOU'RE A JUROR IN A DEATH  
23 PENALTY CASE AND IN THE SENTENCING PHASE, YOU WOULD HAVE TWO  
24 OPTIONS AS TO WHAT YOUR VERDICT COULD BE: ONE IS FOR A LIFE  
25 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE AND THEN THE OTHER

1    OPTION WOULD BE FOR THE DEATH PENALTY. COULD YOU, DEPENDING  
2    ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND  
3    CONSIDERING THE LAW AS I WILL EXPLAIN IT TO YOU, COULD YOU  
4    RETURN -- COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE A LIFE  
5    SENTENCE?

6        A.    YES, SIR.

7        Q.    COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
8    DEATH PENALTY?

9        A.    YES, SIR.

10       Q.    IF YOU'RE ON THE JURY, YOU MAY BE SEQUESTERED FOR  
11    FIVE OR SIX DAYS, AND I HAVE NOT YET DECIDED WHETHER OR NOT  
12    TO DO THAT. IF I DO SEQUESTER THE JURY, YOU WOULD BE  
13    REQUIRED TO SPEND THAT TIME IN A HOTEL ROOM AT NIGHT, AND YOU  
14    WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A  
15    TERRIBLE BURDEN ON YOU?

16       A.    YES, SIR.

17       Q.    TELL ME HOW THAT IS OR WHY THAT IS.

18       A.    IT WOULD JUST -- I MEAN, I GUESS I'D BE USED TO MY  
19    REGULAR ROUTINE AND...

20       Q.    WELL, WE REALIZE, OF COURSE, THAT IT WOULD BE INCON  
21    -- IT'S GOING TO BE INCONVENIENT.

22       A.    I MEAN, IT WOULD BE INCONVENIENT, I MEAN, BUT -- I  
23    MEAN, IT'S NOT THAT I COULDN'T DO IT. I MEAN...

24       Q.    YOU MENTIONED THAT YOU HAVE YOUNG CHILDREN.

25       A.    I DO.

1 Q. WOULD YOUR WIFE OR SOMEBODY ELSE BE ABLE TO TAKE  
2 CARE OF THOSE CHILDREN?

3 A. YES, SIR. I DON'T HAVE COMPLETE CUSTODY OF MY  
4 DAUGHTER, SO I GET HER EVERY OTHER WEEKEND---

5 Q. OKAY.

6 A. ---AND LIKE LITTLE HOLIDAYS THAT WE'RE ON NOW.

7 Q. I SEE. SO IF I DO SEQUESTER THE JURY AND YOU WERE  
8 ON IT, YOU COULD HANDLE THAT.

9 A. YES, SIR.

10 Q. DID YOU GET A CHANCE TO LOOK OVER THAT WITNESS LIST  
11 THAT YOU WERE GIVEN?

12 A. I DID.

13 Q. DID YOU READ EVERY NAME ON THE LIST?

14 A. YES, SIR.

15 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
16 IS ON THAT LIST?

17 A. NOT TO MY KNOWLEDGE.

18 THE COURT: ALL RIGHT; SIR. I'M GOING TO GIVE THE  
19 LAWYERS A CHANCE TO ASK YOU A FEW QUESTIONS. THEN I'LL COME  
20 BACK AND ASK YOU A FEW MORE IN A MINUTE.

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q. MR. STEVENS, HOW ARE YOU?

24 A. GOOD. HOW ARE YOU DOING?

25 Q. DOING GOOD. I WAS LOOKING AT YOUR QUESTIONNAIRE.

1 YOU HAVE NEVER SERVED ON A JURY BEFORE; IS THAT CORRECT?

2 A. CORRECT.

3 Q. WHEN THE JUDGE WAS TALKING ABOUT THE TRIAL, YOU  
4 UNDERSTAND THAT IN A -- THE FIRST PART OF THE TRIAL WOULD BE  
5 A DETERMINATION OF GUILT OR INNOCENCE, GUILTY OR NOT GUILTY.

6 A. RIGHT.

7 Q. AND YOU UNDERSTAND THAT YOU'LL HAVE TO LOOK AT ALL  
8 THE EVIDENCE AND LISTEN TO ALL THE TESTIMONY. IF YOU HEAR  
9 ALL THE EVIDENCE AND ALL THE TESTIMONY, WILL YOU BE ABLE TO  
10 COME TO A VERDICT OF GUILTY OR NOT GUILTY?

11 A. I FEEL LIKE I WOULD BE ABLE TO.

12 Q. ONCE YOU GET TO THAT PART, THEN WE WOULD GO INTO --  
13 IF YOU FIND GUILTY, THEN WE'D MOVE INTO THE SECOND PHASE, THE  
14 SENTENCING PHASE OF IT, AND, AGAIN, YOU'D HEAR MORE  
15 TESTIMONY. THE JUDGE WAS DESCRIBING AGGRAVATING, THINGS THAT  
16 MAKE THE CRIME WORSE, AND MITIGATING, THINGS THAT MAKE THE  
17 CRIME NOT SO SEVERE, AND YOU WOULD GET TO HEAR MORE  
18 TESTIMONY. WOULD YOU BE ABLE TO LISTEN TO THE AGGRAVATING  
19 CIRCUMSTANCES, LISTEN TO THE MITIGATING CIRCUMSTANCES, AND  
20 THEN REACH A DECISION AS TO THE APPROPRIATE PUNISHMENT?  
21 COULD -- IN THE RIGHT CIRCUMSTANCES COULD YOU REACH A  
22 DECISION FOR LIFE?

23 A. YES, SIR.

24 Q. AND COULD YOU IN OTHER CIRCUMSTANCES COME UP WITH A  
25 DEATH SENTENCE?

1 A. I FEEL LIKE I COULD; YES, SIR.

2 Q. THERE'S SOMETHING DIFFERENT ABOUT THE PENALTY TYPE  
3 OF THIS CASE - IS THAT IF THE JURY DECIDES THAT IT'S A  
4 SENTENCE FOR LIFE, ONLY THE FOREMAN HAS TO SIGN THE VERDICT,  
5 BUT IF THE -- IF EACH MEMBER ON THE JURY DECIDES THAT THE  
6 APPROPRIATE PUNISHMENT IS DEATH, THEN EVERY MEMBER OF THE  
7 JURY HAS TO SIGN. WOULD YOU BE ABLE TO SIGN THE VERDICT FOR  
8 DEATH IF YOU BELIEVED THAT IT WAS THE APPROPRIATE PUNISHMENT?

9 A. YES, SIR.

10 Q. I NOTICED EARLIER WHEN THE JUDGE HAD THE ENTIRE JURY  
11 PANEL OUT THERE THAT YOU STOOD UP WHEN HE ASKED THE QUESTION  
12 ABOUT LAW ENFORCEMENT, AND I NOTICE ON YOUR QUESTIONNAIRE  
13 THAT YOU SAID THAT YOU HAD A RELATIVE, I THINK, THAT WORKED  
14 IN THE BROAD RIVER ROAD IN THE DEPARTMENT OF -- SOUTH  
15 CAROLINA DEPARTMENT OF CORRECTIONS?

16 A. YES, SIR, FIRST COUSIN.

17 Q. THAT'S FIRST COUSIN?

18 A. RIGHT.

19 Q. WOULD THE FACT THAT HE WORKED THERE AFFECT YOUR  
20 ABILITY TO BE IMPARTIAL AS A JUROR IN THIS CASE?

21 A. NOT AT ALL.

22 Q. AND THE JUDGE HAD ALSO ASKED YOU ANOTHER CRIME -- I  
23 MEAN ANOTHER QUESTION THAT SAID ANYONE ACCUSED OF A CRIME,  
24 AND I SAW YOU STAND UP FOR THAT.

25 A. YEAH, I'VE HAD A D.U.I. I THINK IT WAS '98. AND I

1 THINK YOU HAD ASKED THE QUESTION EARLIER TO STAND IF YOU'D  
2 EVER BEEN CONVICTED OF A CRIME, AND I DIDN'T REALLY CONSIDER  
3 THAT LIKE A MANDATORY... YOU KNOW, I DIDN'T KNOW, BUT THAT'S  
4 -- THAT'S WHY I SPOKE ON THAT.

5 THE COURT: THE EARLIER QUESTION WOULD NOT HAVE --  
6 THAT WAS FOR A CRIME THAT CARRIED MORE THAN ONE YEAR. D.U.I.  
7 DOESN'T -- DOESN'T FIT THAT.

8 BY MR. GRAHAM:

9 Q. WOULD THE FACT THAT YOU'VE BEEN ACCUSED OF A CRIME  
10 OR CONVICTED OF A CRIME AFFECT YOUR ABILITY TO BE IMPARTIAL  
11 AND GIVE A FAIR TRIAL TO THE STATE AND TO THE DEFENSE?

12 A. NOT AT ALL.

13 MR. GRAHAM: THANK YOU, MR. STEVENS.

14 MS. KIMBROUGH: THANK YOU, YOUR HONOR. MAY IT  
15 PLEASE THE COURT?

16 CROSS-EXAMINATION

17 BY MS. KIMBROUGH:

18 Q. GOOD EVENING, MR. STEVENS. HOW ARE YOU?

19 A. FINE. HOW ARE YOU?

20 Q. I BELIEVE YOU WERE INTRODUCED TO HIM EARLIER, BUT  
21 I'D LIKE TO REINTRODUCE KEVIN MERCER. HE'S THE DEFENDANT IN  
22 THIS CASE, MY CLIENT. I JUST HAVE A FEW QUESTIONS TO FOLLOW  
23 UP ON. IN THIS CASE YOU MAY END UP HEARING TESTIMONY AND  
24 RECEIVING EVIDENCE FROM A VARIETY OF SOURCES. CAN YOU THINK  
25 OF ANY PROBLEM OR DO YOU THINK YOU WOULD HAVE ANY PROBLEM IN

1 GIVING DUE CONSIDERATION TO DIFFERENT TYPES OF WITNESSES, FOR  
2 INSTANCE, LAY WITNESSES, EXPERT WITNESSES, AND LAW  
3 ENFORCEMENT PERSONNEL?

4 A. NO.

5 Q. OKAY. YOU DON'T THINK DEALING WITH THOSE DIFFERENT  
6 TYPES OF WITNESSES WOULD CAUSE YOU ANY PROBLEMS?

7 A. I DON'T THINK SO.

8 Q. OKAY. YOU COULD GIVE EQUAL CONSIDERATION TO THOSE  
9 TYPE -- DIFFERENT TYPES?

10 A. SURE.

11 Q. OKAY. ALL RIGHT. DO YOU ANTICIPATE HAVING ANY  
12 PROBLEMS DUE TO BELIEFS OR FOR ANY OTHER REASON APPLYING THE  
13 LEGAL INSTRUCTIONS THAT THE JUDGE WOULD GIVE YOU TO THE FACTS  
14 OF THIS CASE?

15 A. NO.

16 Q. OKAY. AND YOU INDICATED YOU WERE THE THIRD TYPE OF  
17 JUROR?

18 A. YES.

19 Q. OKAY. WHEN YOU MADE THAT DETERMINATION WHEN YOU  
20 WERE LOOKING OVER THE QUESTIONNAIRES, DID YOU HAVE ANY  
21 HESITATION ABOUT THAT?

22 A. WELL, AT FIRST I THOUGHT I FIT INTO NUMBER ONE, BUT  
23 I MEAN, I DON'T -- I DON'T THINK THAT'S IT BECAUSE I DON'T  
24 THINK IT SHOULD BE CUT AND DRY LIKE THAT. I MEAN...

25 Q. OKAY. BUT -- AND YOU'RE SURE ABOUT THAT?

1 A. I AM.

2 Q. OKAY. YOUR INITIAL FEELING THAT PERHAPS NUMBER ONE  
3 WAS YOUR APPROPRIATE CATEGORY -- I REALIZE YOU'VE CHANGED  
4 THAT, BUT WAS THERE ANY SORT OF -- DO YOU THINK IT WAS BASED  
5 ON ANY SORT OF FUNDAMENTAL BELIEF? I MEAN, DO YOU HAVE  
6 RELIGIOUS BELIEFS OR ANYTHING?

7 A. NO, THERE'S NO RELIGIOUS BELIEFS. I MEAN, I JUST --  
8 I FEEL LIKE IF YOU DO WRONG, I MEAN, YOU SHOULD PAY FOR YOUR  
9 CRIME.

10 Q. OKAY. BUT EVEN WHERE SOMEONE'S CONVICTED OF MURDER  
11 -- IF I UNDERSTAND YOUR RESPONSES TO JUDGE FEW CORRECTLY,  
12 EVEN IF SOMEONE IS CONVICTED OF MURDER WHICH IS AN  
13 INTENTIONAL KILLING AND THE JUDGE WILL EXPLAIN THAT TO YOU IN  
14 GREATER DETAIL -- EVEN WITH THAT, YOU COULD CONSIDER EVIDENCE  
15 AND CONSIDER THE POSSIBILITY OF A LIFE SENTENCE.

16 A. YES.

17 Q. OKAY. AND NOW THE VICTIM IN THIS CASE, TRACY DAVIS,  
18 WAS A SOLDIER. HE WAS AN ARMY RECRUITER, BUT HE WAS ACTIVE  
19 IN THE MILITARY. WOULD THAT FACTOR CAUSE YOU ANY PROBLEMS  
20 INSOFAR AS PROVIDING MR. MERCER WITH A FAIR TRIAL?

21 A. NO, MA'AM.

22 Q. ALL RIGHT. NOW, IF WE GET TO THE SECOND PHASE OF  
23 THIS TRIAL, ASSUMING YOU FIND BEYOND A REASONABLE DOUBT THAT  
24 MR. MERCER IS GUILTY OF THE CRIME OF MURDER, DO YOU -- DO YOU  
25 UNDERSTAND THAT A LIFE SENTENCE, IN FACT, MEANS LIFE WITHOUT



1 THE POSSIBILITY OF PAROLE?

2 A. I DO.

3 Q. OKAY. AND DO YOU UNDERSTAND THAT IF YOU ELECT A  
4 DEATH SENTENCE THAT YOU HAVE TO PRESUME THAT THAT PERSON, IN  
5 FACT, WILL BE EXECUTED?

6 A. I DO.

7 Q. OKAY. ALL RIGHT. AND I BELIEVE THE SOLICITOR HAD  
8 GONE OVER THE FACT THAT YOU WILL NEED TO SIGN YOUR NAME?

9 A. UH-HUH.

10 Q. OKAY.

11 A. HE DID.

12 Q. AND THE LAST QUESTION I HAVE CONCERNS THE CONCEPTS  
13 OF AGGRAVATION AND MITIGATION, AND SOMETIMES THESE CONCEPTS  
14 ARE SORT OF ELUSIVE. AGGRAVATED OBVIOUSLY MEANS TO MAKE  
15 WORSE. MITIGATED MEANS TO LESSEN THE CULPABILITY OF THE  
16 PERSON, OF THE OFFENDER. IN THIS CASE, IF YOU GET TO THAT  
17 PHASE, YOU WILL HAVE FOUND MR. MERCER GUILTY OF MURDER. DO  
18 YOU THINK YOU COULD LISTEN TO ALL THE EVIDENCE PRESENTED,  
19 WHETHER IT'S EVIDENCE IN AGGRAVATION AS WELL AS EVIDENCE IN  
20 MITIGATION, AND WAIT UNTIL ALL THE EVIDENCE IS IN BEFORE  
21 DECIDING ON WHAT THE APPROPRIATE PUNISHMENT SHOULD BE?

22 A. I DO.

23 Q. OKAY. MY LAST QUESTION IS: THE JURY IS COMPRISED  
24 OF 12 INDIVIDUAL PEOPLE, AND WHILE YOUR DECISIONS ARE ARRIVED  
25 AT AS A GROUP, DO YOU BELIEVE THAT IF YOU STRONGLY HELD A

1 VIEW, WHETHER IT BE DURING THE GUILT/INNOCENCE PHASE OR THE  
2 PENALTY PHASE, IF WE GET THERE, THAT IF YOU HAD A STRONGLY-  
3 HELD VIEW ONE WAY OR THE OTHER THAT YOU WOULD BE WILLING TO  
4 MAINTAIN THAT VIEW UNLESS YOU WERE CONVINCED BY THE OTHER  
5 MEMBERS THAT THAT VIEW WAS WRONG? IN OTHER WORDS, DO YOU  
6 THINK YOU WOULD GIVE IT---

7 A. WOULD I GO ON WHAT I BELIEVE IN?

8 Q. RIGHT.

9 A. I WOULD.

10 Q. OKAY. SO YOU DON'T THINK YOU WOULD JUST GO ALONG  
11 TO---

12 A. PERSUADE?

13 Q. YES.

14 A. NO.

15 Q. OKAY. UNLESS YOU REALLY BELIEVED IT.

16 A. CORRECT.

17 MS. KIMBROUGH: OKAY. THANK YOU.

18 THE COURT: MR. STEVENS, I'M GOING TO ASK YOU TO  
19 STAND OUT INTO THE HALL IN JUST ONE SECOND, AND WE'LL GET YOU  
20 RIGHT BACK IN.

21 THE WITNESS: OKAY.

22 (JUROR STEVENS LEAVES THE COURTROOM.)

23 THE COURT: ALL RIGHT. I THINK HE'S QUALIFIED.

24 MS. KIMBROUGH: WE AGREE.

25 THE COURT: BRING HIM IN.

1 (JUROR STEVENS IS BROUGHT INTO THE COURTROOM.)

2 THE COURT: MR. STEVENS, YOU ARE QUALIFIED TO SERVE  
3 AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE GOING TO  
4 BE ON THE JURY, BUT YOU'RE ELIGIBLE TO BE ON THE JURY.  
5 YOU'RE DONE FOR THE REST OF THIS WEEK.

6 THE WITNESS: THANK YOU.

7 THE COURT: NOW, YOU'RE GOING TO NEED TO BE -- TO  
8 REPORT HERE ON MONDAY MORNING, AND I WOULD LIKE FOR YOU TO  
9 CALL SUNDAY NIGHT AFTER 6:00 FOR INSTRUCTIONS ABOUT WHAT YOU  
10 NEED TO DO ON MONDAY. AND YOU MAY BE TOLD THAT YOU NEED TO  
11 BRING ENOUGH SUPPLIES AND CLOTHES TO LAST FOR FOUR OR FIVE  
12 DAYS WHILE WE TRY THIS CASE. ALL RIGHT, SIR? HAVE A GOOD  
13 WEEK.

14 THE WITNESS: THANK YOU.

15 THE COURT: HAVE A GOOD TIME AT THE BEACH.

16 THE WITNESS: APPRECIATE THAT.

17 (JUROR STEVENS LEAVES THE COURTROOM. JUROR ANGELA  
18 LUCAS IS BROUGHT INTO THE COURTROOM.)

19 ANGELA LUCAS, HAVING BEEN PREVIOUSLY SWORN AS A  
20 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
21 TESTIFIED AS FOLLOWS:

22 EXAMINATION BY THE COURT

23 Q. HEY. HAVE A SEAT RIGHT HERE. MS. LUCAS?

24 A. YES, SIR.

25 Q. DO YOU RECALL THAT EARLIER TODAY YOU WERE PUT UNDER

1 OATH?

2 A. YES, SIR.

3 Q. YOU'RE STILL UNDER OATH FROM -- FROM -- FROM THIS  
4 MORNING.

5 A. YES, SIR.

6 Q. NOW, SINCE YOU LEFT THE COURTROOM EARLIER, HAVE YOU  
7 -- HAVE YOU DISCUSSED THIS CASE WITH ANYBODY OR---

8 A. NO, SIR.

9 Q. ---HAS ANYBODY DISCUSSED THE CASE WITH YOU?

10 A. NO, SIR.

11 Q. GOOD. I'M GOING TO ASK YOU SOME QUESTIONS, AND THE  
12 LAWYERS MAY FOLLOW UP WITH SOME QUESTIONS OF THEIR OWN. WE  
13 DON'T WANT TO GET TOO FAR INTO YOUR PERSONAL LIFE, BUT WE DO  
14 NEED TO ASK YOU THESE QUESTIONS. THERE ARE NOT ANY RIGHT OR  
15 WRONG ANSWERS TO THESE QUESTIONS. WE JUST WANT YOU TO LISTEN  
16 CAREFULLY AND TO BE OPEN AND HONEST WITH US AND TELL US WHAT  
17 YOU THINK AND HOW YOU FEEL.

18 A. ALL RIGHT.

19 Q. NOW, WE'RE GOING TO HAVE SOME DISCUSSION ABOUT A  
20 POSSIBLE PENALTY PHASE OF THIS TRIAL. THAT DOESN'T MEAN  
21 ANYTHING ABOUT THIS DEFENDANT OR ABOUT THIS CASE. IT JUST  
22 MEANS THAT WE RECOGNIZE THE POSSIBILITY THAT WE MIGHT GET  
23 INTO THE PENALTY PHASE, AND WE'RE GOING TO TALK TO YOU ABOUT  
24 SOME OF THE THINGS THAT WILL COME UP IF WE DO.

25 IF YOU'RE A JUROR IN THIS CASE, COULD YOU ACCEPT AND

1 APPLY THE LAW PRECISELY AS I WILL GIVE IT TO YOU AND SET  
2 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
3 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
4 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD  
5 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

6 A. I BELIEVE I COULD. THAT WAS A LOT BUT, YEAH, I  
7 BELIEVE I COULD.

8 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
9 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
10 REASONABLE DOUBT?

11 A. YES, SIR.

12 Q. NOW, COULD YOU, DEPENDING ON THE FACTS AND  
13 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT  
14 OF THE LAW AS I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE  
15 DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR  
16 NOT YOU FEEL THAT THE STATE HAS MET ITS BURDEN OF PROOF?

17 A. I REALLY WOULDN'T WANT THAT ON ME, SO I WORRY ABOUT  
18 THAT. I DON'T WANT TO HAVE TO DETERMINE WHERE HE'S TO SPEND  
19 THE REST OF HIS LIFE OR ANYTHING LIKE THAT.

20 Q. ALL RIGHT. WELL, THE FIRST QUESTION WOULD JUST BE  
21 WHETHER OR NOT YOU COULD LISTEN TO THE TESTIMONY AND DECIDE  
22 WHETHER OR NOT THE STATE HAS PROVEN HIM TO BE GUILTY OR  
23 WHETHER THEY HAVE FAILED TO PROVE HIM TO BE GUILTY.

24 A. YEAH, I COULD SEE WHERE THEY COULD PROVE WHERE HE  
25 COULD BE GUILTY.

1 Q. OKAY. SO WOULD YOU BE ABLE TO RETURN A VERDICT OF  
2 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU BELIEVE  
3 THE STATE HAS MET ITS BURDEN OF PROOF?

4 A. THAT'S A HARD QUESTION. I WOULD LIKE TO SAY YES,  
5 BUT IT WOULD BOTHER ME TO HAVE TO BE IN THOSE SHOES.

6 Q. OKAY. WELL, LET ME ASK YOU ANOTHER QUESTION THEN.

7 A. OKAY.

8 Q. IF YOU'RE ON THE JURY IN THIS CASE AND THE JURY WERE  
9 TO FIND THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
10 INTO THAT SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL.  
11 THERE ARE SEVERAL ISSUES THAT WOULD COME UP THEN. ONE ISSUE  
12 IS AGGRAVATING CIRCUMSTANCES. AGGRAVATING CIRCUMSTANCES ARE  
13 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH  
14 CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME  
15 OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY  
16 OF THE CRIME AND ADD TO THE INJURY RESULTING FROM THE CRIME.

17 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
18 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
19 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY  
20 SERVE TO EXTENUATE OR TO REDUCE THE MORAL -- THE DEGREE OF  
21 MORAL CULPABILITY OR RESPONSIBILITY FOR THE CRIME. NOW, YOU  
22 WERE GIVEN A SHEET. DO YOU UNDERSTAND -- DO YOU UNDERSTAND  
23 THE CONCEPTS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

24 A. THE AGGRAVATING I DO, BUT THE OTHER ONE I DON'T  
25 REALLY UNDERSTAND.

1 Q. OKAY. WELL, IT'S JUST THE OPPOSITE OF AGGRAVATING  
2 CIRCUMSTANCES. A MITIGATING CIRCUMSTANCE WOULD BE SOMETHING  
3 THAT WOULD -- THAT WOULD RENDER THE CRIME LESS CULPABLE.

4 A. OKAY.

5 Q. EVEN THOUGH IT MIGHT STILL BE MURDER, IT WOULD BE A  
6 LESS SEVERE MURDER. DO YOU UNDERSTAND THAT?

7 A. I UNDERSTAND.

8 Q. NOW, YOU WERE GIVEN THIS SHEET THAT DESCRIBES THE  
9 THREE TYPES OF JURORS, AND DID YOU READ THAT SHEET?

10 A. YES, SIR.

11 Q. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

12 A. I DID UNDERSTAND.

13 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU ARE?

14 A. I BELIEVE I'M THE SECOND ONE.

15 Q. THE SECOND ONE?

16 A. YES, SIR.

17 Q. SO DO YOU BELIEVE THERE ARE ANY CIRCUMSTANCES UNDER  
18 WHICH YOU COULD EVER RETURN A VERDICT FOR DEATH AS A PENALTY  
19 FOR THE CRIME OF MURDER?

20 A. I WOULDN'T WANT TO BE THE ONE TO DO IT.

21 Q. OKAY.

22 A. I JUST DON'T WANT THAT ON MY HANDS.

23 THE COURT: ALL RIGHT. DOES EITHER SIDE WISH TO ASK  
24 HER ANY QUESTIONS AT THIS TIME?

25 MR. LITTLEJOHN: YOUR HONOR, IF I MAY?

1 THE COURT: CERTAINLY.

2 DIRECT EXAMINATION

3 BY MR. LITTLEJOHN:

4 Q. GOOD AFTERNOON, MS. LUCAS.

5 A. GOOD AFTERNOON.

6 Q. THE JUDGE ASKED YOU ABOUT THE JUROR FORM THAT YOU  
7 HAVE THERE IN FRONT OF YOU.

8 A. YES, SIR.

9 Q. AND YOU SAID YOU DIDN'T -- YOU THOUGHT YOU WERE A  
10 NUMBER TWO TYPE JUROR?

11 A. YES, SIR.

12 Q. AND I CAN UNDERSTAND THAT AND I'M NOT TRYING TO  
13 ARGUE WITH YOU OR ANYTHING, BUT DO YOU THINK THAT NUMBER  
14 THREE IS A TYPE OF JUROR THAT YOU COULD CONSIDER?

15 A. I DON'T -- I DON'T BELIEVE SO BECAUSE OF THE FACT  
16 THAT I WOULD HAVE TO LIVE WITH THIS FOR THE REST OF MY LIFE,  
17 AND I DON'T WANT TO HAVE TO DO THAT.

18 Q. OKAY. SO DO YOU THINK THERE ARE ANY CIRCUMSTANCES  
19 UNDER WHICH YOU WOULD, SEATED AS A JUROR, RETURN A DEATH  
20 SENTENCE?

21 A. I DON'T BELIEVE SO.

22 Q. YOU DON'T THINK ANY -- UNDER ANY CIRCUMSTANCES.

23 A. I REALLY DON'T KNOW BECAUSE I DON'T KNOW THE WHOLE  
24 STORY.

25 Q. RIGHT.



1 A. BUT MY HEART SAYS NO BUT, YOU KNOW, I DON'T KNOW. I  
2 REALLY DON'T KNOW. I DON'T KNOW WHAT TO SAY. IT'S VERY  
3 CONFUSING.

4 Q. OKAY.

5 A. THIS IS MY FIRST TIME AND I JUST -- IT'S A LOT.

6 Q. I UNDERSTAND. ALL RIGHT. THANK YOU, MA'AM.

7 A. THANK YOU.

8 THE COURT: MA'AM, I'M GOING TO ASK YOU TO STEP OUT  
9 IN THE HALL JUST ONE SECOND.

10 THE WITNESS: I'M SORRY.

11 THE COURT: I'LL GET YOU RIGHT BACK IN HERE.

12 THE WITNESS: OKAY.

13 (JUROR LUCAS LEAVES THE COURTROOM.)

14 THE COURT: SHE'S NOT QUALIFIED. DO YOU DISAGREE?

15 MS. KIMBROUGH: NO. WE JUST WANT HER ANYWAY.

16 THE COURT: ALL RIGHT. BRING HER BACK IN.

17 (JUROR LUCAS IS BROUGHT INTO THE COURTROOM.)

18 THE COURT: MA'AM, YOU DON'T HAVE TO SIT DOWN.

19 THE WITNESS: OKAY.

20 THE COURT: YOU'RE NOT -- YOU'RE NOT QUALIFIED TO

21 SERVE AS A JUROR IN THIS CASE. THERE'S NOTHING WRONG WITH

22 THAT. IT JUST MEANS THAT YOU'RE NOT GOING TO BE SERVING AS A

23 JUROR, SO YOU'RE DONE. YOU'RE FREE TO GO, AND YOU DO NOT

24 HAVE TO WORRY ABOUT COMING BACK.

25 THE WITNESS: OKAY. IT WAS NICE MEETING YOU.

1 THE COURT: IT WAS NICE TO MEET YOU, TOO. GOOD  
2 LUCK, MA'AM.

3 THE WITNESS: THANK YOU.

4 (JUROR LUCAS LEAVES THE COURTROOM. JUROR JESSE  
5 ADAMS IS BROUGHT INTO THE COURTROOM.)

6 JESSE ADAMS, HAVING BEEN PREVIOUSLY SWORN AS A  
7 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
8 TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT

10 Q. HOW ARE YOU, MA'AM?

11 A. FINE.

12 Q. DO YOU RECALL THAT THIS MORNING YOU WERE PUT UNDER  
13 OATH?

14 A. YES.

15 Q. AND YOU'RE STILL UNDER OATH FOR THAT -- FROM THAT  
16 RIGHT NOW. DO YOU UNDERSTAND?

17 A. OKAY. YES.

18 Q. NOW, SINCE YOU LEFT THE COURTROOM THIS MORNING, HAVE  
19 YOU TALKED TO ANYBODY ABOUT THIS CASE---

20 A. NO.

21 Q. ---OR HAS ANYBODY TALKED TO YOU ABOUT THE CASE?

22 A. NO.

23 Q. OKAY. GOOD. NOW, I'M GOING TO ASK YOU SOME  
24 QUESTIONS, AND THE LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS  
25 THAT THEY WANT TO ASK YOU. I DON'T WANT TO GET TOO DEEP INTO

1 YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE  
2 QUESTIONS.

3 A. OKAY.

4 Q. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE  
5 QUESTIONS. WE JUST WANT YOU TO LISTEN CAREFULLY AND TO BE  
6 OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU  
7 THINK.

8 A. OKAY.

9 Q. NOW, WE'RE GOING TO GET INTO A DISCUSSION ABOUT A  
10 POSSIBLE PENALTY PHASE OF THIS TRIAL, BUT THAT DOESN'T MEAN  
11 ANYTHING ABOUT THIS DEFENDANT. THAT DOESN'T MEAN ANYTHING  
12 ABOUT THIS PARTICULAR CASE. IT JUST MEANS THAT WE RECOGNIZE  
13 THAT WE MIGHT GET INTO THE PENALTY PHASE, AND WE HAVE SOME  
14 ISSUES THAT WE NEED TO ASK YOU ABOUT THAT WILL COME UP IN  
15 CASE WE DO.

16 A. UH-HUH.

17 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
18 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
19 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
20 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
21 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD SEE  
22 AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

23 A. YES.

24 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
25 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A

1 REASONABLE DOUBT?

2 A. YEAH.

3 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
4 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
5 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
6 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
7 FEEL THE STATE HAS MET ITS BURDEN OF PROOF? IN OTHER WORDS,  
8 IF YOU FEEL THAT THE STATE HAS PROVEN HIM GUILTY---

9 A. UH-HUH.

10 Q. ---COULD YOU RETURN A VERDICT OF GUILTY?

11 A. YEAH.

12 Q. AND IF YOU FEEL THE STATE HAS NOT PROVEN HIM GUILTY,  
13 COULD YOU RETURN A VERDICT OF NOT GUILTY?

14 A. YEAH.

15 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
16 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN YOU WOULD  
17 MOVE -- WE WOULD MOVE INTO THE SECOND PHASE OR THE PENALTY  
18 PHASE OF THE TRIAL. NOW, I'M GOING TO TALK TO YOU NOW ABOUT  
19 SOME OF THE ISSUES THAT WOULD COME UP. AGGRAVATING  
20 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE  
21 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE  
22 WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES  
23 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY  
24 RESULTING FROM THE CRIME.

25 A. UH-HUH.

1 Q. MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
2 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
3 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY  
4 SERVE TO EXTENUATE OR TO REDUCE THE SEVERITY, THE DEGREE OF  
5 MORAL CULPABILITY OR RESPONSIBILITY FOR THE CRIME.

6 A. UH-HUH.

7 Q. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING  
8 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES?

9 A. YES, I DO.

10 Q. MA'AM, YOU WERE GIVEN THIS SHEET OF PAPER WHEN YOU  
11 WENT BACK INTO THE JURY ROOM THAT SHOWS THE THREE DIFFERENT  
12 TYPES OF JURORS. DID YOU READ THAT SHEET?

13 A. UH-HUH.

14 Q. AND DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES?

15 A. UH-HUH.

16 Q. DO YOU HAVE AN OPINION AS TO WHICH OF THOSE THREE  
17 TYPES YOU WOULD FIT INTO?

18 A. I THINK I WOULD FIT INTO THE LAST ONE.

19 Q. NUMBER THREE?

20 A. UH-HUH.

21 Q. ALL RIGHT. NOW, IF YOU'RE A JUROR IN A DEATH  
22 PENALTY CASE AND IF THE CASE WERE TO GO INTO THE SENTENCING  
23 PHASE, YOU WOULD HAVE TWO OPTIONS AS TO WHAT YOUR VERDICT  
24 COULD BE.

25 A. UH-HUH.

1 Q. ONE OPTION IS FOR A LIFE SENTENCE WITHOUT THE  
2 POSSIBILITY OF PAROLE---

3 A. UH-HUH.

4 Q. ---AND THE OTHER OPTION IS FOR THE DEATH PENALTY.

5 A. UH-HUH.

6 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
7 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD  
8 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A  
9 LIFE SENTENCE?

10 A. UH-HUH. YES.

11 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
12 DEATH PENALTY?

13 A. I DON'T THINK SO.

14 Q. WELL, NOW---

15 A. NOT REALLY.

16 Q. NOW, YOU TOLD ME A MINUTE AGO---

17 A. I DO, BUT I HAD TO THINK ABOUT IT, YOU KNOW?

18 Q. ALL RIGHT. SO---

19 A. BECAUSE I CRY WHEN A DOG GETS HURT, YOU KNOW? SO I  
20 CAN'T SAY.

21 Q. OKAY.

22 A. I JUST FEEL LIKE I -- I WOULD BE PLAYING GOD, YOU  
23 KNOW.

24 Q. OKAY. WELL, MA'AM, I'M CERTAINLY NOT AND THESE  
25 LAWYERS ARE CERTAINLY NOT GOING TO TRY TO QUESTION YOUR

1 BELIEFS OR MAKE YOUR BELIEFS SOUND WRONG OR ANYTHING.

2 A. UH-HUH.

3 Q. BUT YOU -- I'M GOING TO -- I'M CURIOUS ABOUT THIS--

4 A. UH-HUH.

5 Q. ---BECAUSE YOU DID TELL ME THAT YOU WERE THE THIRD  
6 CATEGORY OF JUROR.

7 A. I DID.

8 Q. AND NOW YOU'RE TELLING ME THAT YOU DON'T BELIEVE YOU  
9 COULD VOTE TO IMPOSE THE DEATH PENALTY.

10 A. I HAD TO THINK ABOUT IT. I REALLY HAD TO THINK  
11 ABOUT IT.

12 Q. ALL RIGHT.

13 A. BECAUSE I WAS -- WHEN I WAS IN THE -- IN THE JURY  
14 ROOM, I WAS THINKING ABOUT IT THEN AND I WAS THINKING ABOUT  
15 IF IT WAS SOMEBODY CLOSE TO ME, COULD I DO IT, YOU KNOW? BUT  
16 I DON'T BELIEVE IN HURTING ANYTHING, SO I HAVE TO -- I HAVE  
17 TO SAY I COULDN'T DO IT.

18 THE COURT: ALL RIGHT, MA'AM. NOW, THANK YOU.  
19 THANK YOU. NOW, DO EITHER OF Y'ALL HAVE ANY FOLLOW-UP  
20 QUESTIONS FOR THIS JUROR?

21 MR. HUBBARD: NO.

22 MS. KIMBROUGH: JUST BRIEFLY, YOUR HONOR.

23 DIRECT EXAMINATION

24 BY MS. KIMBROUGH:

25 Q. HEY THERE, MS. ADAMS. I JUST HAVE ONE QUICK

1 QUESTION FOR YOU.

2 A. UH-HUH.

3 Q. CAN YOU IMAGINE ANY SET OF FACTS---

4 A. I CAN'T HEAR YOU.

5 Q. I APOLOGIZE.

6 A. UH-HUH.

7 Q. CAN YOU IMAGINE ANY SET OF FACTS THAT WOULD ALLOW  
8 YOU TO CONSIDER IMPOSING A DEATH SENTENCE ON ANOTHER PERSON?

9 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

10 Q. NONE WHATSOEVER?

11 A. NONE.

12 MS. KIMBROUGH: OKAY. THANK YOU. THAT'S ALL.

13 THE COURT: ALL RIGHT. MS. ADAMS, YOU'RE NOT GOING  
14 TO BE ON THE JURY IN THIS CASE, AND I AM GOING TO EXCUSE YOU.  
15 YOU'RE FREE TO GO.

16 THE WITNESS: UH-HUH.

17 THE COURT: THANK YOU FOR COMING IN, MA'AM.

18 (JUROR ADAMS LEAVES THE COURTROOM.)

19 THE COURT: NOW, HOLD ON JUST ONE SECOND BEFORE YOU  
20 BRING IN THE NEXT JUROR. NOW, I -- I WILL, I SUPPOSE, WHEN  
21 IT SEEMS VERY OBVIOUS TO ME THAT A JUROR IS DISQUALIFIED JUST  
22 GO AHEAD AND TELL THEM THAT. Y'ALL WILL BE ABLE TO SENSE  
23 THAT I'M ABOUT TO DO THAT. IF YOU HAVE SOME ARGUMENT OR IF  
24 YOU DON'T EVEN WANT ME TO DO THAT -- IF YOU WANT ME TO ALWAYS  
25 SEND THE JUROR OUT INTO THE HALL BEFORE AND ASK YOU WHETHER



1 YOU DISAGREE, I'LL DO THAT, BUT I WAS JUST GOING TO TRY TO  
2 SAVE A LITTLE BIT OF TIME.

3 SO OBVIOUSLY IF YOU DO DISAGREE OR IF YOU THINK I'M  
4 ABOUT TO MAKE A RULING, MAYBE I JUST -- MAYBE I SHOULD JUST  
5 SAY, "I'M GOING TO RULE UNLESS THERE'S SOME OBJECTION," AND  
6 THEN THAT WOULD GIVE Y'ALL A HEADS-UP, AND IF YOU WANT TO SAY  
7 SOMETHING YOU CAN. AND THE ONLY WAY THAT I WOULD BE RULING  
8 WOULD BE TO RULE THAT THE JUROR IS NOT QUALIFIED. ALL RIGHT?  
9 BRING IN THE NEXT JUROR.

10 (JUROR CHRISTOPHER WARREN IS BROUGHT INTO THE  
11 COURTROOM.)

12 CHRISTOPHER WARREN, HAVING BEEN PREVIOUSLY  
13 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER  
14 OATH, TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT

16 Q. HOW ARE YOU, SIR?

17 A. FINE. AND YOU?

18 Q. MR. WARREN, YOU RECALL THAT EARLIER TODAY WE PUT YOU  
19 UNDER OATH, AND I WANT YOU TO -- I WANT TO MAKE SURE YOU  
20 UNDERSTAND THAT YOU'RE STILL UNDER THAT OATH.

21 A. YES, SIR.

22 Q. NOW, SINCE YOU LEFT THE COURTROOM EARLIER TODAY,  
23 HAVE YOU DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE  
24 DISCUSSED THIS CASE WITH YOU?

25 A. NO, SIR.

1 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN  
2 THE LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS THAT THEY WANT  
3 TO ASK YOU. WE DON'T WANT TO GET TOO FAR INTO YOUR PERSONAL  
4 LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.

5 A. OKAY.

6 Q. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE  
7 QUESTIONS. WE JUST WANT YOU TO LISTEN CAREFULLY, TO BE OPEN  
8 AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU  
9 THINK. THERE'S GOING TO BE SOME DISCUSSION ABOUT A POSSIBLE  
10 PENALTY PHASE OF THE TRIAL, BUT THAT DOESN'T MEAN ANYTHING  
11 ABOUT THIS CASE. IT DOESN'T MEAN THAT WE KNOW WE'RE GETTING  
12 INTO THE PENALTY PHASE. IT JUST MEANS WE RECOGNIZE WE MIGHT  
13 GET INTO THE PENALTY PHASE OF THIS CASE.

14 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND  
15 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND SET  
16 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
17 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
18 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD  
19 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

20 A. YES, SIR.

21 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
22 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
23 REASONABLE DOUBT?

24 A. YES, SIR.

25 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES

1 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
2 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
3 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
4 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

5 A. YES, SIR.

6 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
7 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
8 THE SECOND PHASE OF THE TRIAL, AND I'M GOING TO ASK YOU NOW  
9 ABOUT SOME OF THE THINGS THAT WILL COME UP IF WE GET THAT  
10 FAR. AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR  
11 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
12 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
13 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND THEY ADD  
14 TO THE INJURY RESULTING FROM THE CRIME.

15 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
16 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
17 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND  
18 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL  
19 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU  
20 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING  
21 CIRCUMSTANCES?

22 A. YES, SIR.

23 Q. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM A FEW  
24 MINUTES AGO, YOU WERE GIVEN THIS SHEET THAT SHOWS THE THREE  
25 TYPES OF JURORS. DID YOU READ OVER THAT SHEET?

1 A. YES, SIR.

2 Q. DO YOU UNDERSTAND THE THREE TYPES OF JURORS?

3 A. YES, SIR.

4 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU WOULD  
5 BE?

6 A. I WOULD HAVE TO SAY I'M JUROR -- TYPE ONE.

7 Q. TYPE ONE?

8 A. YES, SIR.

9 Q. NOW, DOES THAT MEAN THAT THERE ARE NO CIRCUMSTANCES  
10 UNDER WHICH YOU COULD EVER VOTE TO IMPOSE A LIFE SENTENCE IF  
11 SOMEONE IS CONVICTED OF MURDER?

12 A. WELL, I WOULD THINK IF YOU TOOK A LIFE THAT YOU  
13 OUGHT TO GIVE A LIFE.

14 THE COURT: UH-HUH. ALL RIGHT. ANYBODY WANT TO ASK  
15 ANY FOLLOW-UP QUESTIONS?

16 MR. MYERS: NO, SIR.

17 MR. LITTLEJOHN: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR. YOUR SERVICES WILL NOT  
19 BE NEEDED IN THIS CASE, AND SO I'M GOING TO EXCUSE YOU. YOU  
20 ARE FREE TO GO. THANK YOU.

21 THE WITNESS: THANK YOU.

22 (JUROR WARREN LEAVES THE COURTROOM. JUROR LAUREN  
23 GIBSON IS BROUGHT INTO THE COURTROOM.)

24 LAUREN GIBSON, HAVING BEEN PREVIOUSLY SWORN AS  
25 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,

1 TESTIFIED AS FOLLOWS:

2 EXAMINATION BY THE COURT

3 Q. HOW ARE YOU, MS. GIBSON?

4 A. GOOD.

5 Q. DO YOU RECALL THAT EARLIER TODAY WHEN YOU WERE IN  
6 HERE WE PUT YOU UNDER OATH?

7 A. YES, SIR.

8 Q. YOU'RE STILL UNDER THAT OATH. DO YOU UNDERSTAND  
9 THAT?

10 A. YES, SIR.

11 Q. NOW, SINCE YOU LEFT THE COURTROOM EARLIER, HAVE YOU  
12 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE ATTEMPTED TO  
13 DISCUSS THE CASE WITH YOU?

14 A. NO, SIR.

15 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN THE  
16 LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS. JUST RELAX AND  
17 JUST LISTEN CAREFULLY TO THE QUESTIONS, AND BE OPEN AND  
18 HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK.  
19 THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE  
20 JUST HAVE SOME ISSUES THAT WE WANT TO TALK TO YOU ABOUT.

21 NOW, I'M GOING TO TALK TO YOU A LITTLE BIT ABOUT A  
22 POSSIBLE PENALTY PHASE OF THIS TRIAL, BUT THAT DOESN'T MEAN  
23 ANYTHING ABOUT THE CASE OR THIS DEFENDANT. IT JUST MEANS  
24 THAT WE RECOGNIZE THE POSSIBILITY THAT WE MIGHT GET INTO THE  
25 PENALTY PHASE OF THE TRIAL, AND WE'RE GOING TO TALK ABOUT

1 SOME OF THE ISSUES THAT WILL COME UP IF WE DO GET INTO THAT  
2 PHASE. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT AND  
3 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND SET  
4 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
5 CASE BEFORE THE CASE BEGAN AND RENDER A VERDICT THAT'S BASED  
6 SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND HEAR IN  
7 THIS COURTROOM? COULD YOU DO THAT?

8 A. YES, SIR.

9 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
10 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
11 REASONABLE DOUBT?

12 A. YES, SIR.

13 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
14 OF THIS CASE, THE FACTS THAT YOU FIND TO HAVE BEEN PROVEN AND  
15 IN LIGHT OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU  
16 FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON  
17 WHETHER OR NOT YOU FEEL THE STATE HAS MET ITS BURDEN OF  
18 PROOF?

19 A. YES. YES, SIR.

20 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
21 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
22 THAT SECOND PHASE OF THE TRIAL. HERE ARE SOME OF THE ISSUES  
23 THAT ARE GOING TO COME UP IN THAT PHASE. AGGRAVATING  
24 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE  
25 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE

1 WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES  
2 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY  
3 RESULTING FROM THE CRIME.

4 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
5 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
6 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY  
7 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL  
8 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU  
9 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING  
10 CIRCUMSTANCES?

11 A. YES, SIR.

12 Q. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM EARLIER,  
13 YOU WERE GIVEN THIS SHEET THAT SHOWS THE THREE DIFFERENT  
14 TYPES OF JURORS.

15 A. UH-HUH.

16 Q. WERE YOU ABLE TO READ OVER THAT SHEET?

17 A. YES.

18 Q. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

19 A. UH-HUH.

20 Q. DO YOU KNOW WHICH OF THOSE THREE TYPES OF JURORS YOU  
21 WOULD CONSIDER YOURSELF TO BE?

22 A. THE THIRD TYPE.

23 Q. THE THIRD? NOW, IF YOU ARE A JUROR IN THE  
24 SENTENCING PHASE OF A DEATH PENALTY CASE, YOU WOULD HAVE TWO  
25 OPTIONS AS TO WHAT YOUR VERDICT COULD BE. ONE OPTION WOULD

1 BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND  
2 THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY. COULD YOU,  
3 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
4 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,  
5 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

6 A. YES.

7 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE  
8 DEATH PENALTY?

9 A. (WITNESS NODDED HEAD UP AND DOWN.)

10 Q. AND JUST BECAUSE WE HAVE A COURT REPORTER---

11 A. OKAY.

12 Q. ---YOU'LL NEED TO TELL ME OUT LOUD YES OR NO.

13 A. YES.

14 Q. ALL RIGHT. THANK YOU. NOW, IF YOU'RE ON THE JURY,  
15 THE JURY MIGHT BE SEQUESTERED FOR FOUR OR POSSIBLY AS LONG AS  
16 SIX DAYS, AND WE UNDERSTAND THAT THAT WOULD BE A BURDEN ON  
17 YOU. I HAVEN'T DECIDED YET WHETHER OR NOT I'M GOING TO  
18 SEQUESTER THE JURY, BUT IF I DID, WOULD THAT BE A BURDEN THAT  
19 YOU COULD HANDLE?

20 A. I CAN HANDLE IT. I AM SIX MONTHS PREGNANT, BUT I  
21 COULD HANDLE IT.

22 Q. OKAY. WELL, IS THERE ANYTHING -- ANY PROBLEM WITH  
23 YOUR PREGNANCY THAT WOULD CAUSE ME OR YOU TO BE CONCERNED  
24 THAT YOU WOULDN'T BE ABLE TO MAKE IT THROUGH ABOUT A WEEK OF  
25 LIVING IN A HOTEL ROOM AND HAVING US FEED YOU DINNER AND THAT



1 KIND OF THING?

2 A. NO.

3 Q. OKAY. DID YOU GET A CHANCE TO READ OVER THAT  
4 WITNESS LIST THAT WE SENT BACK THERE?

5 A. YES.

6 Q. DID YOU READ EVERY NAME ON THAT LIST?

7 A. I DID.

8 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
9 IS ON THAT LIST?

10 A. I DO KNOW TWO PEOPLE.

11 Q. TELL ME WHO THEY ARE.

12 A. DEPUTY KATHY JARVIS LOWDER, RICHLAND COUNTY  
13 SHERIFF'S DEPARTMENT, AND OFFICER SHAWN MISNER, WEST COLUMBIA  
14 POLICE DEPARTMENT.

15 Q. ALL RIGHT. NOW, THE LAWYERS MAY ASK YOU SOME  
16 FOLLOW-UP QUESTIONS ABOUT THOSE -- ABOUT THOSE PEOPLE YOU  
17 KNOW AND ABOUT SOME OF THE OTHER ISSUES THAT YOU AND I HAVE  
18 ALREADY DISCUSSED.

19 A. ALL RIGHT.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. MS. GIBSON, I SEE FROM THE FORM THAT YOU RETURNED TO  
23 THE CLERK OF COURT THAT YOU'VE NEVER SERVED ON A JURY BEFORE.

24 A. NO.

25 Q. BUT YOU DO HAVE SOME EXPOSURE TO THE FIELD OF LAW

1 FROM, I GUESS, YOUR JOB; RIGHT?

2 A. I DO.

3 Q. THE LOURIE LAW FIRM, IS THAT NEAL LOURIE?

4 A. THAT'S CORRECT.

5 Q. WHAT DO YOU DO FOR NEAL?

6 A. HIS LEGAL ASSISTANT, PARALEGAL WORK.

7 Q. AND HE DOES A LITTLE BIT OF EVERYTHING, I THINK  
8 CRIMINAL -- CRIMINAL, CIVIL, PERSONAL INJURY.

9 A. UH-HUH. RIGHT.

10 Q. DOES THE FACT THAT YOU DO THAT FOR A LIVING -- WOULD  
11 THAT IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR TO BOTH THE  
12 STATE AND THE DEFENSE?

13 A. NO.

14 Q. AND I THINK WHEN THE JUDGE WAS ASKING QUESTIONS  
15 EARLIER YOU HAD STOOD UP WITH THE LAW ENFORCEMENT QUESTION.  
16 IS THAT REFERRING TO KATHY JARVIS---

17 A. YES.

18 Q. ---AND OFFICER ISENHOWARD?

19 A. ACTUALLY IT WAS MY FATHER. HE WAS IN LAW  
20 ENFORCEMENT.

21 Q. WITH THE HOLLY HILL POLICE DEPARTMENT?

22 A. YEAH, YEARS AGO.

23 Q. WOULD THE FACT THAT YOUR FATHER WORKED FOR THE HOLLY  
24 HILL POLICE DEPARTMENT AFFECT YOUR ABILITY TO BE FAIR AND  
25 IMPARTIAL TO BOTH THE STATE AND THE DEFENSE?

1 A. NO.

2 Q. HOW DO YOU KNOW KATHY JARVIS?

3 A. THROUGH BUSINESS, WORKING AT THE LOURIE LAW FIRM.

4 Q. AND IF SHE WAS A WITNESS IN THIS CASE AND TESTIFIED,  
5 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO  
6 BOTH THE STATE AND THE DEFENSE?

7 A. NO.

8 Q. THE FACT THAT YOU KNOW HER WOULDN'T AFFECT YOU?

9 A. HUH-UH. NO.

10 Q. ON OFFICER ISENHOWARD, HOW DO YOU KNOW OFFICER  
11 ISENHOWARD?

12 A. THAT WOULD BE MISNER.

13 Q. I'M SORRY?

14 A. OFFICER MISNER.

15 Q. I'M SORRY. MISNER.

16 A. PERSONAL. JUST THROUGH FRIENDS.

17 Q. WOULD THE FACT THAT -- THAT'S SHAWN MISNER; RIGHT?

18 A. UH-HUH.

19 Q. WOULD THE FACT THAT -- HOW LONG HAVE YOU KNOWN  
20 SHAWN?

21 A. A YEAR AND A HALF MAYBE?

22 Q. AND IF HE WAS TO TESTIFY IN THIS CASE, WOULD THAT  
23 PREVENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR?

24 A. NO.

25 Q. WOULD YOU STILL BE ABLE TO WEIGH THEIR CREDIBILITY

1 JUST LIKE ANY OTHER PERSON?

2 A. YES, I WOULD.

3 Q. AND YOU UNDERSTAND THAT IN THE FIRST PART OF THE  
4 TRIAL THE DETERMINATION OF GUILTY OR NOT GUILTY -- AND YOU  
5 WOULD BE ABLE TO LISTEN TO ALL THE EVIDENCE AND HEAR ALL THE  
6 TESTIMONY, AND ONCE YOU HEARD ALL THAT, WOULD YOU BE ABLE TO  
7 -- IF WARRANTED, WOULD YOU BE ABLE TO RETURN A GUILTY  
8 VERDICT?

9 A. YES.

10 Q. AND ON THE OTHER SIDE, IF IT WASN'T PROVED BEYOND A  
11 REASONABLE DOUBT, COULD YOU FIND HIM NOT GUILTY?

12 A. YES.

13 Q. IF A GUILTY VERDICT IS RETURNED, WE MOVE INTO THE  
14 PENALTY PHASE, AND IN THAT PHASE YOU'RE GOING TO HEAR WHAT  
15 THE JUDGE REFERRED TO AS MITIGATING CIRCUMSTANCES, THINGS TO  
16 MAKE THE CRIME NOT SO SEVERE, AND AGGRAVATING CIRCUMSTANCES,  
17 THINGS THAT WILL MAKE THE CRIME WORSE. AND WOULD YOU BE ABLE  
18 TO GIVE WEIGHT TO BOTH AGGRAVATING AND MITIGATING  
19 CIRCUMSTANCES?

20 A. YES.

21 Q. AND AFTER YOU HEARD ALL THE AGGRAVATING  
22 CIRCUMSTANCES AND ALL THE MITIGATING CIRCUMSTANCES AND IT  
23 WARRANTED, WOULD YOU BE ABLE TO RETURN A VERDICT FOR LIFE  
24 WITHOUT PAROLE?

25 A. YES.

1 Q. AND ON THE OTHER HAND, IF AFTER LISTENING TO ALL THE  
2 EVIDENCE, THINGS THAT MAKE IT MORE SEVERE, THINGS THAT MAKE  
3 IT LESS SEVERE, AGGRAVATING AND MITIGATING, IF APPROPRIATE  
4 WOULD YOU BE ABLE TO RETURN A VERDICT OF DEATH?

5 A. YES, SIR.

6 Q. THERE'S SOMETHING DIFFERENT ABOUT THE PENALTY PART  
7 IF YOU RETURN A -- IF THE JURY DECIDES THAT LIFE WITHOUT  
8 PAROLE IS THE APPROPRIATE SENTENCE, ONLY THE FOREMAN HAS TO  
9 SIGN, BUT IF THE JURY -- EVERY MEMBER DETERMINES THAT DEATH  
10 IS THE APPROPRIATE PUNISHMENT, THEN EVERY PERSON ON THE JURY  
11 HAS TO SIGN THAT FORM. DOES THE FACT THAT YOU WOULD HAVE TO  
12 SIGN YOUR FORM, WOULD THAT -- WOULD YOU BE ABLE TO DO THAT IF  
13 THAT WAS THE APPROPRIATE VERDICT?

14 A. YES.

15 Q. IS THERE ANYTHING ABOUT YOU THAT WE HAVEN'T TALKED  
16 ABOUT THAT WOULD STOP YOU OR PREVENT YOU FROM BEING A FAIR  
17 AND IMPARTIAL JUROR FOR BOTH THE STATE AND THE DEFENSE?

18 A. NO.

19 MR. GRAHAM: THANK YOU, MS. GIBSON.

20 CROSS-EXAMINATION

21 BY MR. LITTLEJOHN:

22 Q. GOOD AFTERNOON, MS. GIBSON. MY NAME IS CAM  
23 LITTLEJOHN, AND AGAIN I REPRESENT KEVIN MERCER, ALONG WITH  
24 MS. KIMBROUGH HERE. LET ME ASK YOU A COUPLE OF QUESTIONS  
25 ABOUT YOUR QUESTIONNAIRE AND YOUR RESPONSE TO MR. GRAHAM'S

1 QUESTIONS. YOU INDICATED YOUR FATHER WAS WITH THE HOLLY HILL  
2 POLICE DEPARTMENT?

3 A. UH-HUH.

4 Q. WAS THAT -- HOW LONG WAS HE A POLICE OFFICER WITH  
5 HOLLY HILL?

6 A. I DON'T KNOW. I WAS LITTLE.

7 Q. OKAY.

8 A. IT WAS -- THIS WAS YEARS AGO. I WOULD SAY ALMOST 30  
9 YEARS AGO.

10 Q. UH-HUH.

11 A. I HONESTLY DO NOT KNOW HOW LONG IT WAS.

12 Q. WHAT POSITION DID HE HOLD WITH THE HOLLY HILL P.D.?

13 A. JUST A POLICE OFFICER.

14 Q. WAS THAT -- I MEAN, WAS THAT HIS CAREER?

15 A. YES.

16 Q. HE WAS -- HE WAS A FULL-TIME POLICE OFFICER?

17 A. UH-HUH.

18 Q. OKAY. WHY PITTSBURGH STEELERS?

19 A. THEY'RE A GREAT TEAM.

20 Q. OKAY. I'LL ACCEPT THAT. MS. GIBSON, LET ME ASK YOU  
21 A COUPLE OF THINGS ABOUT THE QUESTIONS THAT JUDGE FEW ASKED  
22 YOU, AND I'LL TRY AND BE VERY BRIEF. YOU INDICATED THAT YOU  
23 WERE THE THIRD TYPE OF JUROR AS INDICATED ON THAT FORM?

24 A. UH-HUH.

25 Q. DID YOU HAVE ANY PROBLEM DECIDING THAT YOU WERE THE

1 THIRD TYPE?

2 A. NO, SIR.

3 Q. DID YOU HAVE TO WEIGH ANY OF THE OTHER TWO AT ALL?

4 A. NO, SIR.

5 Q. OKAY. JUDGE FEW MENTIONED EARLIER THAT THE ALLEGED  
6 VICTIM IN THIS CASE WAS AN ACTIVE -- ACTIVE MILITARY MEMBER.  
7 IN FACT, HE WAS WITH THE U.S. ARMY. WOULD THE FACT THAT HE  
8 WAS IN THE U.S. ARMY -- WOULD THAT HAVE ANY BEARING OR ANY  
9 EFFECT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

10 A. NO.

11 Q. OKAY. HIS HONOR TOLD YOU THAT IF YOU WERE ON THIS  
12 JURY AND ENDED UP HAVING -- AND WE GOT TO THE SECOND PHASE  
13 THAT THERE WOULD BE TWO TYPES OF VERDICT, EITHER LIFE OR  
14 DEATH. DO YOU UNDERSTAND A LIFE SENTENCE ACTUALLY MEANS A  
15 LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE?

16 A. YES.

17 Q. OKAY. IN MAKING THE DETERMINATION OF WHAT YOUR  
18 VERDICT WOULD BE IF WE GET TO THAT SECOND PHASE, JUDGE FEW  
19 TOLD YOU YOU WOULD HAVE TO CONSIDER NOT ONLY AGGRAVATING  
20 CIRCUMSTANCES BUT MITIGATING CIRCUMSTANCES, AND THE  
21 MITIGATING CIRCUMSTANCES MIGHT BE THINGS ABOUT THE DEFENDANT  
22 WHICH WERE GOOD THINGS ABOUT HIM OR BAD THINGS THAT MAY HAVE  
23 HAPPENED TO HIM OR OTHER THINGS ABOUT HIS BACKGROUND. WOULD  
24 YOU BE WILLING TO LISTEN TO THAT TYPE OF EVIDENCE VERY  
25 CAREFULLY BEFORE MAKING YOUR DETERMINATION AS TO WHAT YOUR

1 VERDICT SHOULD BE?

2 A. YES.

3 Q. OKAY. ANY -- ANY QUESTION ABOUT THAT?

4 A. NO, SIR.

5 Q. OKAY. MS. GIBSON, IF YOU WERE ON THE JURY AND IT  
6 BECAME TIME TO MAKE A DECISION AND YOU FOUND THAT YOU HAD ONE  
7 OPINION AS TO WHAT THE VERDICT MIGHT BE AND THE OTHER 11  
8 JURORS HAD ANOTHER OPINION, DO YOU THINK YOU WOULD EVER  
9 CHANGE YOUR OPINION JUST TO GO ALONG WITH THE REST OF THEM  
10 JUST TO ARRIVE AT A VERDICT?

11 A. NO.

12 Q. DO YOU THINK IF YOU HAD AN HONEST BELIEF THAT YOU  
13 COULD STICK WITH THAT BELIEF?

14 A. I WOULD TRY.

15 Q. OKAY.

16 A. YES, SIR.

17 MR. LITTLEJOHN: ALL RIGHT. THANK YOU, MS. GIBSON.

18 THE COURT: MS. GIBSON, I'M GOING TO ASK YOU TO STEP  
19 OUT IN THE HALL JUST ONE SECOND, AND I'LL GET YOU RIGHT BACK  
20 IN HERE.

21 THE WITNESS: OKAY.

22 (JUROR GIBSON LEAVES THE COURTROOM.)

23 THE COURT: I THINK SHE'S QUALIFIED.

24 MR. HUBBARD: YES, SIR.

25 MR. LITTLEJOHN: WE AGREE.



1 THE COURT: BRING HER BACK IN.

2 (JUROR GIBSON IS BROUGHT INTO THE COURTROOM.)

3 THE COURT: YOU DON'T HAVE TO SIT DOWN, MA'AM. YOU  
4 ARE QUALIFIED TO SERVE AS A JUROR IN THIS CASE. THAT DOES  
5 NOT MEAN YOU'RE ON THE JURY. IT MEANS THAT YOU'RE ELIGIBLE  
6 TO BE ON THE JURY. YOU WILL NEED TO COME BACK ON MONDAY, AND  
7 IF YOU WOULD CALL SUNDAY NIGHT AFTER 6:00, THERE WILL BE  
8 INSTRUCTIONS ON THE RECORDED MESSAGE THAT YOU WILL HEAR ABOUT  
9 WHAT YOU NEED TO DO MONDAY MORNING. YOU NEED TO BE PREPARED  
10 TO BRING ENOUGH CLOTHING AND OTHER PERSONAL ITEMS TO STAY  
11 WITH US FOR FIVE OR SIX DAYS. HOPEFULLY IT WON'T BE THAT  
12 LONG, BUT IT COULD BE. AND YOU'LL HOPEFULLY FIND OUT THAT  
13 NIGHT ON THE RECORDER AS TO WHETHER OR NOT THE JURY WILL BE  
14 SEQUESTERED.

15 THE WITNESS: THANK YOU.

16 THE COURT: SO WE'LL SEE YOU MONDAY.

17 THE WITNESS: MONDAY AT 9?

18 THE COURT: WELL, PROBABLY AT 9. THAT'S WHAT -- YOU  
19 CALL SUNDAY NIGHT AFTER 6. THE MESSAGE WILL GIVE YOU  
20 SPECIFIC INSTRUCTIONS.

21 THE WITNESS: OKAY. THANK YOU.

22 THE COURT: THANKS.

23 (JUROR GIBSON LEAVES THE COURTROOM.)

24 THE COURT: HOLD ON A SECOND. ALL RIGHT. NEXT IS  
25 EDWARD NOYES. BRING HIM IN.

1 (JUROR EDWARD NOYES IS BROUGHT INTO THE COURTROOM.)

2 EDWARD NOYES, HAVING BEEN PREVIOUSLY SWORN AS A  
3 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
4 TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT

6 Q. MR. NOYES?

7 A. YES, SIR.

8 Q. DO YOU RECALL THAT EARLIER TODAY WE PUT YOU UNDER  
9 OATH?

10 A. YES, SIR.

11 Q. AND YOU'RE STILL UNDER OATH. DO YOU UNDERSTAND  
12 THAT?

13 A. YES, SIR, I DO.

14 Q. SINCE YOU LEFT THE COURTROOM EARLIER, HAVE YOU  
15 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE ATTEMPTED TO  
16 DISCUSS THE CASE WITH YOU?

17 A. NO, SIR, THEY HAVEN'T.

18 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN  
19 AFTER I'VE DONE THAT THE LAWYERS MAY HAVE SOME FOLLOW-UP  
20 QUESTIONS THAT THEY WANT TO ASK YOU. WE DON'T WANT TO GET  
21 TOO DEEP INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU  
22 THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO THE  
23 QUESTIONS. WE JUST WANT YOU TO LISTEN CAREFULLY AND TO BE  
24 OPEN AND HONEST WITH US AND TELL US WHAT YOU THINK AND HOW  
25 YOU FEEL.

1 A. OKAY.

2 Q. WE'RE GOING TO GET INTO SOME DISCUSSION ABOUT A  
3 POSSIBLE PENALTY PHASE, BUT THAT DOESN'T MEAN ANYTHING ABOUT  
4 THIS CASE. IT JUST MEANS THAT WE RECOGNIZE THAT WE MIGHT GET  
5 INTO THE PENALTY PHASE OF THE TRIAL. WE HAVE SOME THINGS WE  
6 NEED TO TALK TO YOU ABOUT IN CASE WE DO.

7 IF YOU'RE A JUROR IN THIS CASE, COULD YOU ACCEPT AND  
8 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND SET  
9 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
10 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT'S BASED  
11 SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR AND  
12 SEE IN THIS COURTROOM? COULD YOU DO THAT?

13 A. I BELIEVE I COULD; YES, SIR.

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

17 A. YES, SIR, I DO.

18 Q. COULD YOU, BASED ON THE FACTS AND CIRCUMSTANCES THAT  
19 YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS I  
20 WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
21 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
22 STATE HAS MET THAT BURDEN OF PROOF?

23 A. YES, SIR, I DO.

24 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
25 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO

1 THAT SECOND PHASE OF THE TRIAL, AND I'M GOING TO ASK YOU SOME  
2 QUESTIONS ABOUT SOME OF THE THINGS THAT WOULD COME UP NOW.  
3 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS  
4 THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR  
5 TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES  
6 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY  
7 RESULTING FROM THE CRIME.

8 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
9 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
10 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND  
11 THEY SERVE TO EXTENUATE OR TO REDUCE THE MORAL CULPABILITY OR  
12 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS  
13 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

14 A. YES, I DO.

15 Q. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM EARLIER,  
16 WERE YOU GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE  
17 DIFFERENT TYPES OF JURORS?

18 A. YES, I WAS.

19 Q. DID YOU UNDERSTAND THOSE THREE DIFFERENT TYPES?

20 A. YES, SIR, I DID.

21 Q. DO YOU -- DO YOU -- WHICH OF THOSE THREE DIFFERENT  
22 TYPES DO YOU THINK YOU WOULD BE?

23 A. I THINK I FIT BETWEEN TWO OF THEM, AND THAT WOULD BE  
24 THE FIRST ONE AND THE THIRD ONE.

25 Q. ALL RIGHT. NOW, IF YOU WERE A JUROR IN THE PENALTY

1 PHASE OF A DEATH PENALTY CASE, YOU WOULD HAVE TWO OPTIONS AS  
2 TO WHAT THE VERDICT COULD BE. ONE OPTION IS FOR A LIFE  
3 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER  
4 OPTION WOULD BE FOR THE DEATH PENALTY. NOW, DEPENDING ON THE  
5 FACTS AND CIRCUMSTANCES THAT YOU FOUND TO BE PRESENT AND  
6 DEPENDING ON THE PRESENCE OF EITHER AGGRAVATING OR MITIGATING  
7 CIRCUMSTANCES, DO YOU BELIEVE OR COULD YOU, DEPENDING ON  
8 THOSE FACTS AND CIRCUMSTANCES -- COULD YOU VOTE TO RETURN A  
9 VERDICT FOR A LIFE SENTENCE?

10 A. I THINK IT WOULD BE -- FOR ME PERSONALLY I WOULD  
11 LEAN TOWARDS THE DEATH PENALTY, BUT I WOULD CONSIDER A LIFE  
12 SENTENCE UNDER CERTAIN CIRCUMSTANCES BUT MORE LIKELY WOULD GO  
13 WITH THE DEATH PENALTY.

14 Q. ALL RIGHT. ALL RIGHT. AND THEN I ASSUME THEN YOU  
15 COULD VOTE TO IMPOSE THE DEATH PENALTY IF YOU FELT THAT WAS  
16 APPROPRIATE.

17 A. YES.

18 THE COURT: OKAY. ALL RIGHT. SOLICITOR?

19 DIRECT EXAMINATION

20 BY MR. MYERS:

21 Q. MR. NOYES, IS IT YOUR STATEMENT THAT YOU WOULD  
22 ALWAYS VOTE FOR THE DEATH PENALTY IN A CASE OF MURDER?

23 A. I DON'T KNOW IF I ALWAYS WOULD, SIR. IT WOULD  
24 DEPEND ON THE CIRCUMSTANCES, BUT I WOULD MORE LIKELY LEAN  
25 TOWARDS THE DEATH PENALTY. I DO BELIEVE IN THE DEATH

1 PENALTY .

2 Q. BUT THERE ARE CERTAIN SITUATIONS IN WHICH YOU WOULD  
3 VOTE FOR LIFE, AND YOU DON'T HAVE TO EXPLAIN IT.

4 A. WELL, I'M TRYING TO UNDERSTAND THE TERM MURDER. I'M  
5 THINKING WITH MANSLAUGHTER IF THERE WAS A DEATH PENALTY---

6 Q. THERE ARE NO DEGREES OF MURDER IN SOUTH CAROLINA  
7 LIKE FIRST OR SECOND DEGREE MURDER. THERE'S MURDER WHICH IS  
8 THE KILLING OF A PERSON WITH MALICE AFORETHOUGHT.

9 A. OKAY.

10 Q. YOU COULD NOT GIVE THE DEATH PENALTY FOR  
11 MANSLAUGHTER BECAUSE THAT WOULD BE A LESSER INCLUDED -- A  
12 TIME WHERE IT WAS PROVOKED.

13 A. OKAY.

14 Q. SO IN A CASE OF MURDER, WE HAVE TO CONVICT SOMEONE  
15 OF MURDER BEFORE WE GET INTO THE PENALTY PHASE. THE FIRST  
16 PART IS GUILTY OR NOT GUILTY; NO PENALTY IS EVEN DISCUSSED.

17 A. OKAY.

18 Q. IF A PERSON IS FOUND GUILTY OF MURDER, WE GO INTO  
19 THE SECOND PART. THAT SECOND PART IS FOR ADDITIONAL  
20 EVIDENCE, TO GIVE THE JURY SOME INFORMATION ABOUT THE  
21 DEFENDANT, MORE INFORMATION ABOUT THE CRIME. THERE COULD BE  
22 GOOD THINGS ABOUT THE DEFENDANT; THERE COULD BE BAD THINGS  
23 ABOUT HIM. IT'S TO GIVE THE JURY SOMETHING ABOUT THE CRIME  
24 AND THE PERSON WHO COMMITTED IT SO THEY'LL KNOW WHAT IS THE  
25 APPROPRIATE SENTENCE.

1           SO WE CAN'T TELL YOU WHAT THE EVIDENCE IS GOING TO  
2 BE PRESENTED. WE CAN'T GO INTO DETAILS, AND I KNOW THESE ARE  
3 VAGUE QUESTIONS. SO MY QUESTION TO YOU IS: WOULD THERE BE  
4 CASES WHERE YOU COULD VOTE FOR LIFE IMPRISONMENT IF YOU  
5 THOUGHT THAT WAS THE APPROPRIATE SENTENCE?

6           A.    YES, I COULD.

7           MR. MYERS:  THANK YOU.

8                               CROSS-EXAMINATION

9   BY MR. LITTLEJOHN:

10          Q.    GOOD AFTERNOON, MR. NOYES.  MR. NOYES, IF I  
11 UNDERSTAND YOUR RESPONSES TO JUDGE FEW IS THAT BASED ON THE  
12 FORM THAT WAS GIVEN, YOU WOULD BE PREDISPOSED TO BE THE  
13 NUMBER ONE TYPE OF JUROR?

14          A.    YES.

15          Q.    OKAY.  AND I UNDERSTOOD FROM WHAT YOU INDICATED TO  
16 THE COURT THAT IF SOMEONE WAS CONVICTED OF MURDER AS OPPOSED  
17 TO A LESSER CRIME, SAY MANSLAUGHTER OR INVOLUNTARY  
18 MANSLAUGHTER OR RECKLESS HOMICIDE, YOU AS YOU SIT THERE TODAY  
19 THINK THAT THAT PERSON SHOULD GET THE DEATH PENALTY?

20          A.    SOMEBODY CONVICTED OF MANSLAUGHTER?

21          Q.    NO.  SOMEBODY CONVICTED OF MURDER, NOT MANSLAUGHTER.

22          A.    YES.  YES.

23          Q.    YOU THINK THEY SHOULD GET THE DEATH PENALTY.

24          A.    YES.

25          MR. LITTLEJOHN:  OKAY.  YOUR HONOR, I BELIEVE THAT'S

1 ALL I HAVE.

2 THE COURT: MR. NOYES, I'M GOING TO ASK YOU TO STEP  
3 OUT INTO THE HALL FOR JUST A SECOND, AND THEN I'M GOING TO  
4 GET YOU BACK IN HERE.

5 (JUROR NOYES LEAVES THE COURTROOM.)

6 THE COURT: THE SOLICITOR THINKS HE'S QUALIFIED.  
7 THE DEFENSE THINKS HE'S NOT.

8 MR. MYERS: NO, SIR. NO, SIR.

9 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

10 MR. MYERS: I THINK THAT, YOUR HONOR, BASED ON HIS  
11 LAST ANSWERS THEN, I THINK HE FITS IN THAT EQUIVOCATING  
12 CATEGORY JUST AS I'M SURE WE'RE GOING TO HAVE SOME JURORS IN  
13 THE FUTURE THAT SAY, "WELL, YOU KNOW, THAT DEATH PENALTY, I  
14 DON'T KNOW ABOUT IT, BUT MAYBE ONE THING -- MAYBE I COULD,  
15 BUT I'M MORE OF A..." I THINK HE'S IN THAT EQUIVOCATING  
16 CATEGORY WITH THE OTHER PEOPLE WHO WILL BE LIKE THAT ON LIFE,  
17 AND I HAVE NO OBJECTION TO YOU EXCUSING HIM BASED ON WHAT HE  
18 SAID.

19 THE COURT: ALL RIGHT.

20 MR. LITTLEJOHN: YOUR HONOR, I AGREE WITH THE  
21 RESULT. I DON'T AGREE WITH THE SOLICITOR'S REASONING.

22 THE COURT: WELL, WE ARE GOING TO HAVE A LOT OF  
23 JURORS WHO ARE GOING TO GIVE CONFLICTING EQUIVOCATING ANSWERS  
24 AS TO WHETHER OR NOT THEY WOULD BE ABLE TO IMPOSE THE DEATH  
25 PENALTY, AND THE SOLICITOR IS -- IS VERY SHREWD. BRING IN



1 THE JUROR.

2 MR. LITTLEJOHN: WE AGREE WITH THAT, YOUR HONOR.

3 (JUROR NOYES IS BROUGHT INTO THE COURTROOM.)

4 THE COURT: ALL RIGHT. MR. NOYES, WE APPRECIATE YOU  
5 ANSWERING THOSE QUESTIONS FOR US. YOUR SERVICES WILL NOT BE  
6 NEEDED IN THIS CASE, AND YOU'LL BE FREE TO GO. THANK YOU,  
7 SIR.

8 THE WITNESS: THANK YOU. THANK YOU, GENTLEMEN.

9 (JUROR NOYES LEAVES THE COURTROOM. JUROR DIANA  
10 RIVERS IS BROUGHT INTO THE COURTROOM.)

11 DIANA RIVERS, HAVING BEEN PREVIOUSLY SWORN AS A  
12 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
13 TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT

15 Q. MS. RIVERS, HOW ARE YOU?

16 A. I'M GOOD.

17 Q. SORRY WE HAD TO KEEP YOU HERE SO LATE.

18 A. THAT'S ALL RIGHT.

19 Q. YOU RECALL THAT YOU WERE PUT UNDER OATH EARLIER  
20 TODAY.

21 A. YES, SIR.

22 Q. AND YOU'RE STILL UNDER THAT OATH.

23 A. YES, SIR.

24 Q. MA'AM, SINCE YOU LEFT THE COURTROOM EARLIER, HAVE  
25 YOU DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED

1 THE CASE WITH YOU?

2 A. NO, SIR.

3 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN THE  
4 LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS FOR YOU. I DON'T  
5 MEAN TO GET TOO FAR AND I'M SURE THEY DON'T MEAN TO GET TOO  
6 FAR INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE  
7 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST  
8 WANT YOU TO LISTEN CAREFULLY TO US, BE OPEN AND HONEST WITH  
9 US ABOUT THE ISSUES THAT WE'RE GOING TO DISCUSS, AND TO TELL  
10 US HOW YOU FEEL AND WHAT YOU THINK.

11 A. OKAY.

12 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
13 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
14 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
15 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
16 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD  
17 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

18 A. YES, SIR.

19 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
20 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
21 REASONABLE DOUBT?

22 A. YES, SIR.

23 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
24 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
25 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT

1 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
2 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

3 A. YES, SIR.

4 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
5 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
6 INTO THE SENTENCING PHASE OF THE TRIAL. I'M GOING TO TALK TO  
7 YOU NOW ABOUT SOME OF THE ISSUES THAT WILL COME UP IF WE DO  
8 MOVE INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES ARE FACTS OR  
9 INCIDENTS OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS  
10 DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER.  
11 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME  
12 AND ADD TO THE INJURY RESULTING FROM THE CRIME.

13 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
14 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
15 TO LESSEN THE SEVERITY OF THE CRIME, AND THEY SERVE TO  
16 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
17 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS  
18 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

19 A. I THINK SO.

20 Q. OKAY. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM  
21 EARLIER, WERE YOU GIVEN A COPY OF THIS SHEET THAT SHOWS THE  
22 THREE DIFFERENT TYPES OF JURORS?

23 A. YES, I WAS.

24 Q. DID YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF  
25 JURORS?

1 A. I THINK SO, YES.

2 Q. DO YOU KNOW WHICH OF THOSE THREE TYPES OF JURORS YOU  
3 WOULD CONSIDER YOURSELF TO BE?

4 A. I JUST THINK I COULD BE FAIR. I MEAN, I GUESS  
5 NUMBER THREE.

6 Q. ALL RIGHT. NOW, MA'AM, IF YOU'RE A JUROR IN A DEATH  
7 PENALTY CASE AND IF IT GETS INTO THE SENTENCING PHASE, YOU  
8 WOULD HAVE TWO OPTIONS AS TO WHAT YOUR VERDICT COULD BE. ONE  
9 OPTION IS FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF  
10 PAROLE. ONE OPTION IS FOR THE DEATH PENALTY. COULD YOU,  
11 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
12 EXIST IN AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO  
13 YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

14 A. YES, SIR.

15 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
16 DEATH PENALTY?

17 A. YEAH, I THINK I COULD. I MEAN...

18 Q. OKAY. NOW, MA'AM, IF YOU'RE ON THE JURY, I MAY  
19 SEQUESTER THE JURY WHICH WOULD REQUIRE THAT YOU WOULD BE PUT  
20 UP IN A HOTEL FOR FIVE OR SIX DAYS, AND YOU WOULD NOT BE  
21 ALLOWED TO GO HOME DURING THAT PERIOD OF TIME. WOULD THAT  
22 IMPOSE A TERRIBLE BURDEN ON YOU?

23 A. NO, SIR.

24 Q. DID YOU GET A CHANCE TO GO OVER THE WITNESS LIST  
25 THAT WE GAVE YOU WHEN YOU WENT BACK INTO THE JURY ROOM?

1 A. YES, I DID.

2 Q. DID YOU READ EVERY NAME ON THAT LIST?

3 A. YES, I DID.

4 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
5 IS ON THAT LIST?

6 A. NO, SIR.

7 Q. ALL RIGHT, MA'AM. I'M GOING TO ALLOW THE LAWYERS TO  
8 ASK YOU SOME FOLLOW-UP QUESTIONS; OKAY?

9 A. OKAY.

10 DIRECT EXAMINATION

11 BY MR. MYERS:

12 Q. MS. RIVERS. MS. RIVERS, DO YOU KNOW ANYTHING ABOUT  
13 THIS CASE AT ALL?

14 A. NO, SIR.

15 Q. OKAY. ON THAT SHEET THAT YOU SENT IN, I NOTICED  
16 THAT YOU'VE NEVER SERVED ON A JURY BEFORE?

17 A. HUH-UH. NO.

18 Q. SO SOME OF THESE QUESTIONS ARE KIND OF STRANGE?

19 A. (WITNESS NODDED HEAD UP AND DOWN.)

20 Q. I UNDERSTAND. NOW, MS. RIVERS, IF THE JURY FOUND  
21 THE DEFENDANT GUILTY OF MURDER, WE'D HAVE TO GO INTO THAT  
22 SECOND TRIAL OR THAT SECOND PHASE OF THE CASE, AND THAT'S  
23 WHERE THE JURY WOULD HAND DOWN A SENTENCE, LIFE IMPRISONMENT  
24 OR THE DEATH PENALTY. DID YOU UNDERSTAND THAT?

25 A. YES, I DID.

1 Q. YOU JUST TOLD THE JUDGE THAT YOU WERE IN WHICH  
2 CATEGORY? I COULDN'T HEAR; I'M SORRY.

3 A. NUMBER THREE.

4 Q. NUMBER THREE? WAS THERE ANOTHER ONE THAT YOU WERE  
5 CONTEMPLATING OTHER THAN NUMBER THREE?

6 A. NO, SIR.

7 Q. OKAY. SO BEING IN THE CATEGORY NUMBER THREE, THAT  
8 IS, IF THE FACTS WERE APPROPRIATE AND YOU THOUGHT LIFE IN  
9 IMPRISONMENT WERE THE RIGHT SENTENCE, YOU COULD VOTE FOR  
10 LIFE.

11 A. YES, SIR, I THINK I COULD.

12 Q. BUT ON THE OTHER HAND, IF THE CRIME AND THE  
13 CIRCUMSTANCES AND THE CHARACTER OF THE DEFENDANT WARRANTED,  
14 IF THE DEATH PENALTY WERE THE APPROPRIATE AND NECESSARY  
15 SENTENCE, COULD YOU VOTE FOR THE DEATH PENALTY?

16 A. I THINK I COULD, YES.

17 Q. NOW, YOU SAID YOU THOUGHT---

18 A. I MEAN, YEAH, I THINK I CAN.

19 Q. OKAY. DO YOU HAVE SOME HESITANCY ABOUT THAT OR NOT?

20 A. NO.

21 Q. OKAY. IS THIS SOMETHING ALL NEW TO YOU---

22 A. YES.

23 Q. ---THIS THOUGHT PROCESS?

24 A. YES.

25 Q. ANYTHING ABOUT YOU THAT WE DON'T KNOW OR ANYTHING

1 ABOUT YOUR EXPERIENCES IN LIFE THAT WOULD PREVENT YOU FROM  
2 VOTING FOR THE DEATH PENALTY?

3 A. NO.

4 Q. OKAY. YOU'D HAVE TO LISTEN TO EVERYTHING.

5 A. YES.

6 Q. NOW, OUR LAW SAYS THAT IF A JURY COMES BACK WITH THE  
7 DEATH PENALTY THAT EVERY JUROR MUST SIGN THAT DEATH VERDICT.  
8 THAT'S SOMETHING DIFFERENT IN THE LAW. THE FACT THAT IF YOU  
9 WERE ON THE JURY AND THOUGHT THAT THE DEATH PENALTY WERE  
10 CORRECT AND YOU HAD TO PUT YOUR NAME ON IT, WOULD THAT  
11 PREVENT YOU FROM VOTING FOR THE DEATH PENALTY---

12 A. NO.

13 Q. ---THE VERY FACT THAT YOU HAD TO SIGN YOUR NAME?

14 A. NO.

15 MR. MYERS: THANK YOU, MS. RIVERS. THAT'S ALL WE  
16 ASK OF YOU.

17 CROSS-EXAMINATION

18 BY MR. LITTLEJOHN:

19 Q. GOOD AFTERNOON, MS. RIVERS.

20 A. HELLO.

21 Q. MS. RIVERS, AGAIN MY NAME IS CAM LITTLEJOHN, AND I,  
22 ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE  
23 DEFENDANT IN THIS CASE.

24 A. YES, SIR.

25 Q. I JUST HAVE A VERY FEW QUESTIONS FOR YOU. AND I WAS

1 LOOKING AT YOUR QUESTIONNAIRE. YOU -- YOU WERE BORN IN  
2 NORFOLK?

3 A. YES, SIR.

4 Q. GREW UP IN NORFOLK?

5 A. YES, SIR.

6 Q. WENT TO OSCAR SMITH HIGH SCHOOL?

7 A. YEAH, SMITH HIGH SCHOOL. YES, SIR.

8 Q. OKAY. AND YOU'VE NEVER BEEN ON A JURY BEFORE.

9 A. NO, SIR.

10 Q. OKAY. MS. RIVERS, DO YOU THINK THAT IF YOU WERE  
11 SEATED ON THIS JURY YOU WOULD HAVE ANY PROBLEM FOLLOWING  
12 JUDGE FEW'S LEGAL INSTRUCTIONS TO YOU AND APPLYING THOSE  
13 LEGAL PRINCIPLES TO THE FACTS AS YOU FIND THEM?

14 A. NO, SIR. I DON'T THINK I'D HAVE A PROBLEM WITH  
15 THAT.

16 Q. OKAY. WOULD YOU BE IN A POSITION TO LISTEN TO ALL  
17 THE WITNESSES AND DETERMINE WHO'S TELLING THE TRUTH AND WHO'S  
18 NOT, NO MATTER WHETHER THOSE WITNESSES---

19 A. YES, SIR.

20 Q. ---ARE LAY WITNESSES OR POLICE OFFICERS OR EXPERTS?

21 A. YES, SIR.

22 Q. DO YOU THINK YOU'D HAVE ANY PROBLEM DOING THAT?

23 A. NO.

24 Q. OKAY. THE JUDGE TOLD YOU THAT IN -- IF WE GET TO  
25 THE SECOND PHASE OF THIS TRIAL THAT THERE WOULD BE



1 AGGRAVATING CIRCUMSTANCES AND EVIDENCE OF MITIGATING  
2 CIRCUMSTANCES PRESENTED. THE MITIGATING CIRCUMSTANCES MIGHT  
3 INCLUDE INFORMATION ABOUT KEVIN MERCER'S PAST AND IT MIGHT BE  
4 GOOD THINGS ABOUT HIM AND IT MIGHT BE BAD THINGS THAT HAVE  
5 HAPPENED TO HIM, BUT WHAT I WANT TO ASK YOU IS: WOULD YOU BE  
6 WILLING TO LISTEN TO ALL THAT MITIGATING INFORMATION BEFORE  
7 DECIDING WHAT YOUR VERDICT SHOULD BE AS TO THE PENALTY---

8 A. YES, SIR.

9 Q. ---IF WE GET TO THAT?

10 A. YES, SIR.

11 Q. YOU DON'T HAVE ANY PROBLEM DOING THAT?

12 A. NO, I DON'T.

13 Q. OKAY. MS. RIVERS, IF YOU FOUND THAT YOU WERE ON THE  
14 JURY AND THE OTHER 11 MEMBERS OF THE JURY HAD AN OPINION AS  
15 TO WHAT THE VERDICT SHOULD BE AND YOU HAD A DIFFERENT  
16 OPINION, DO YOU THINK YOU WOULD EVER CONSIDER CHANGING YOUR  
17 OPINION JUST TO GO ALONG WITH THE REST OF THEM AND TO HAVE A  
18 VERDICT?

19 A. NO, SIR.

20 Q. NO PROBLEM WITH THAT.

21 A. NO.

22 MR. LITTLEJOHN: ALL RIGHT. THANK YOU VERY MUCH.

23 THE COURT: ALL RIGHT. I'M READY TO RULE. ALL  
24 RIGHT, MA'AM. YOU'RE QUALIFIED TO SERVE AS A JUROR IN THIS  
25 CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY, BUT IT MEANS

1 YOU'RE ELIGIBLE TO BE ON THE JURY.

2 THE WITNESS: OKAY.

3 THE COURT: YOU'RE DONE FOR THE WEEK, AND WE WOULD  
4 ASK THAT YOU BE PREPARED TO COME BACK ON MONDAY MORNING  
5 PROBABLY AT 9 AND WE'LL BEGIN WITH THE STRIKING OF THE JURY  
6 IN THE TRIAL OF THE CASE AT THAT TIME.

7 THE WITNESS: OKAY.

8 THE COURT: WE'RE GOING TO PUT A RECORDED MESSAGE ON  
9 THE RECORDER THAT -- WHOSE TELEPHONE NUMBER YOU WERE GIVEN  
10 EARLIER TODAY. SUNDAY NIGHT AFTER 6:00 THERE WILL BE A  
11 MESSAGE ON THERE THAT TELLS YOU EXACTLY WHAT TIME TO COME AND  
12 WHETHER OR NOT YOU NEED TO BRING ENOUGH STUFF TO STAY FOR  
13 FIVE OR SIX DAYS IF I DECIDE TO SEQUESTER THE JURY, AND THAT  
14 WOULD INCLUDE ENOUGH CHANGES OF CLOTHES AND OTHER -- WHATEVER  
15 OTHER PERSONAL ITEMS YOU MIGHT -- YOU MIGHT NEED.

16 THE WITNESS: OKAY.

17 THE COURT: SO HAVE A GOOD REST OF THE WEEK, AND  
18 WE'LL SEE YOU MONDAY.

19 THE WITNESS: YOU, TOO.

20 (JUROR RIVERS LEAVES THE COURTROOM.)

21 THE COURT: NOW WE HAVE JUROR NUMBER 177, MR.  
22 LEITNER. HOLD ON. HOLD ON JUST ONE SECOND, MR. LEITNER.  
23 I'M NOT SURE THAT ALL OF Y'ALL CAUGHT THIS, BUT HE HAD A  
24 WORK-RELATED ISSUE THAT HE DISCUSSED WITH ME AND ASKED THAT  
25 HE BE MOVED UP TO TODAY. I'VE FORGOTTEN EXACTLY WHAT IT WAS

1 HE SAID, BUT I TOLD HIM THAT WE WOULD. HE WAS -- HE WAS --  
2 UNLIKE ONE OF THE OTHER JURORS WHO CAME UP HERE AND SORT OF  
3 SMARTED OFF WHEN I TOLD HER I COULDN'T HELP HER, HE WAS VERY  
4 COOPERATIVE THE WHOLE TIME AND I JUST DECIDED TO HELP HIM  
5 OUT. SO...

6 MR. MYERS: HE'S -- HE'S TAKEN OUT OF ORDER, TOO?

7 THE COURT: YES, SIR. HE IS FROM -- LET ME JUST---

8 THE CLERK: PANEL 3.

9 THE COURT: HUH?

10 THE CLERK: PANEL 3.

11 THE COURT: HE'S FROM PANEL 3. SO HE WOULD HAVE  
12 BEEN TOMORROW MORNING. ALL RIGHT. BRING HIM IN.

13 (JUROR TIMOTHY LEITNER IS BROUGHT INTO THE  
14 COURTROOM.)

15 TIMOTHY LEITNER, HAVING BEEN PREVIOUSLY SWORN  
16 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
17 TESTIFIED AS FOLLOWS:

18 EXAMINATION BY THE COURT

19 Q. HAVE A SEAT, SIR. ALL RIGHT. MR. LEITNER, YOU  
20 RECALL THAT YOU WERE PUT UNDER OATH EARLIER THIS MORNING?

21 A. YES, SIR.

22 Q. AND DO YOU UNDERSTAND YOU'RE STILL UNDER OATH?

23 A. YES, SIR.

24 Q. NOW, SINCE YOU LEFT THE COURTROOM EARLIER, HAVE YOU  
25 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED THIS

1 CASE WITH YOU?

2 A. NO, SIR.

3 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THE  
4 LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS THAT THEY WANT TO  
5 ASK YOU. WE'RE NOT TRYING TO GET TOO FAR INTO YOUR PERSONAL  
6 LIFE, BUT WE DO HAVE TO ASK THESE QUESTIONS. THERE ARE NO  
7 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE JUST WANT YOU  
8 TO LISTEN VERY CAREFULLY, TO BE OPEN AND HONEST WITH US, AND  
9 TO TELL US HOW YOU FEEL AND WHAT YOU THINK.

10 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
11 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
12 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
13 THIS CASE BEFORE THE CASE BEGAN AND RENDER A VERDICT THAT IS  
14 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD  
15 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

16 A. YES, SIR.

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

20 A. YES, SIR.

21 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
22 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
23 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
24 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
25 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

1 A. YES, SIR.

2 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
3 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
4 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M  
5 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WOULD  
6 COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS OR  
7 INCIDENCES -- INCIDENTS OR DETAILS THAT THE STATE OF SOUTH  
8 CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME  
9 OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY  
10 OF THE CRIME AND ADD TO THE INJURY RESULTING FROM THE CRIME.

11 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
12 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
13 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE  
14 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
15 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS  
16 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

17 A. YES, SIR.

18 Q. NOW, WHEN YOU WENT BACK INTO THE JURY ROOM EARLIER,  
19 YOU WERE GIVEN A COPY OF THIS SHEET THAT SHOWS THESE THREE  
20 TYPES OF JURORS. DID YOU GET A CHANCE TO GO OVER THAT SHEET?

21 A. I DID.

22 Q. DO YOU UNDERSTAND THE THREE TYPES OF JURORS THAT ARE  
23 LISTED ON THE SHEET?

24 A. I DO.

25 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU WOULD

1 BE?

2 A. THE THIRD ONE.

3 Q. THE THIRD? IF YOU ARE A JUROR IN A DEATH PENALTY  
4 CASE, YOU WOULD HAVE TWO OPTIONS AS TO WHAT YOUR VERDICT  
5 COULD BE. ONE OPTION IS FOR A LIFE SENTENCE WITHOUT THE  
6 POSSIBILITY OF PAROLE. THE OTHER OPTION WOULD BE FOR THE  
7 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND  
8 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW  
9 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A  
10 VERDICT FOR A LIFE SENTENCE?

11 A. YES.

12 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

13 A. YES.

14 Q. NOW, IF YOU'RE ON THE JURY AND IF I DECIDE TO  
15 SEQUESTER THE JURY, MEANING TO PUT THE JURY UP IN A HOTEL FOR  
16 THE LENGTH OF THE TRIAL WHICH COULD BE FOUR OR FIVE, POSSIBLY  
17 EVEN SIX DAYS, COULD -- WOULD THAT IMPOSE A TERRIBLE BURDEN  
18 ON YOU?

19 A. IT WOULD IMPOSE A FINANCIAL BURDEN ON ME BUT---

20 Q. NOW, IF I RECALL---

21 A. IS THAT WHAT YOU'RE TALKING ABOUT OR...

22 Q. WELL, LET ME -- LET ME DIFFERENTIATE BETWEEN WHETHER  
23 THE JURY IS SEQUESTERED OR NOT, BECAUSE WHEN WE TALKED  
24 EARLIER DURING QUALIFICATION YOU EXPLAINED TO ME THAT YOU'RE,  
25 I THINK, TRAINING AS AN -- AS AN -- AS AN APPRENTICE TO BE IN

1 THE APPRAISAL BUSINESS AND YOU'RE NOT MAKING THE KIND OF  
2 MONEY THAT YOU NORMALLY WOULD BE MAKING AND SO YOU'RE HAVING  
3 TO WORK EXTRA LONG HOURS IN ORDER TO MAKE UP FOR THE FACT  
4 THAT YOUR EARNINGS RATE IS NOT AS HIGH AS IT PROBABLY USED TO  
5 BE AND HOPEFULLY WILL BE.

6 A. CORRECT.

7 Q. IF I -- IF I DON'T SEQUESTER THE JURY, YOU'RE STILL  
8 GOING TO HAVE TO BE WITH ME PRETTY MUCH ALL OF NEXT WEEK, AND  
9 YOU REALLY WOULD NOT HAVE ANY TIME TO WORK.

10 A. I UNDERSTAND.

11 Q. IF I DO SEQUESTER THE JURY, THEN ONCE WE'RE DONE  
12 WITH COURT FOR THE DAY, INSTEAD OF GOING TO YOUR HOME, YOU  
13 WOULD GO TO A HOTEL ROOM. ACTUALLY, THEY WOULD -- THEY WOULD  
14 TAKE YOU OUT TO DINNER. THEN THEY'D TAKE YOU TO A HOTEL  
15 ROOM. SO THE DIFFERENCE WOULD BE NOT IN TERMS OF HOW MUCH  
16 YOU COULD WORK BUT JUST IN TERMS OF WHERE YOU SPEND THE NIGHT  
17 AND WHERE YOU EAT. SO WITH THAT IN MIND, DO YOU THINK THE  
18 FACT THAT I MIGHT SEQUESTER THE JURY WOULD IMPOSE A TERRIBLE  
19 BURDEN ON YOU?

20 A. MORE THAN THE OTHER ONE.

21 Q. RIGHT. OKAY. I UNDERSTAND. ALL RIGHT. DID YOU  
22 GET A CHANCE TO GO OVER THE WITNESS LIST THAT I GAVE YOU OR  
23 THAT I HAD SOMEONE GIVE YOU EARLIER?

24 A. YES, SIR.

25 Q. DID YOU READ EVERY NAME ON THAT LIST?

1 A. I DID.

2 Q. NOW, DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE  
3 NAME APPEARS ON THAT LIST?

4 A. NO, SIR.

5 THE COURT: NOW, I'M GOING TO LET THE LAWYERS ASK  
6 YOU SOME QUESTIONS, SIR, AND THEN I'LL COME BACK TO YOU. ALL  
7 RIGHT? THANK YOU.

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. IS IT MR. LEITNER?

11 A. YEAH. TIM.

12 Q. I JUST WANT TO MAKE SURE I WAS PRONOUNCING IT RIGHT.

13 A. RIGHT.

14 Q. THE LAW REQUIRES THAT I ASK YOU A FEW QUESTIONS.  
15 THERE WILL JUST BE A FEW. AS I UNDERSTAND IT FROM WHAT THE  
16 JUDGE SAYS, YOU PLACE YOURSELF IN THAT THIRD CATEGORY IN THAT  
17 LIST OF QUESTIONS THAT HE HAD FOR YOU. IS THAT CORRECT?

18 A. CORRECT.

19 Q. YOU REALIZE THERE'S TWO PARTS TO THIS PROCESS.  
20 THERE'S WHAT WE CALL THE GUILT PHASE, JUST LIKE A NORMAL  
21 CRIMINAL TRIAL WHERE THE STATE COMES FORWARD WITH EVIDENCE  
22 AND THEN THE JURY HAS TO DECIDE WHETHER SOMEBODY'S GUILTY OR  
23 NOT GUILTY.

24 A. YES, SIR.

25 Q. IT'S ONLY IF YOU DETERMINE OR THE JURY DETERMINES



1 THE DEFENDANT IS GUILTY OF MURDER THAT WE GET TO THE SECOND  
2 PART.

3 A. CORRECT.

4 Q. AND AS I UNDERSTAND IT IN YOUR QUESTIONS -- IN YOUR  
5 ANSWERS TO THE JUDGE, YOU'D BE WILLING TO LISTEN TO WHATEVER  
6 IS PRESENTED DURING THAT PHASE OF THAT TRIAL. IS THAT  
7 CORRECT?

8 A. YES, SIR.

9 Q. AND YOU HEARD THE JUDGE TALK ABOUT BOTH AGGRAVATING  
10 AND MITIGATING CIRCUMSTANCES.

11 A. YES, SIR.

12 Q. THERE ARE THINGS THAT TYPICALLY COME OUT IN THAT  
13 SECOND PHASE OF A TRIAL. THE AGGRAVATING CIRCUMSTANCES ARE  
14 THINGS THAT MAKE A CRIME -- THAT SHOW THE SEVERITY OF THE  
15 CRIME THAT MAY BE BAD THINGS ABOUT THE DEFENDANT, THINGS THAT  
16 DON'T NORMALLY COME OUT IN A NORMAL TRIAL THAT SHOW THAT --  
17 THAT INTENSIFY THAT CRIME. DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. THERE'S ALSO STUFF THAT COULD COME OUT ABOUT --  
20 THAT'S GOOD ABOUT THE DEFENDANT OR THINGS THAT MIGHT LESSEN  
21 THE SEVERITY OF THE CRIME, AND YOU UNDERSTAND THAT.

22 A. YES, SIR.

23 Q. AND AS I UNDERSTAND YOUR ANSWERS, YOU'D BE WILLING  
24 TO LISTEN TO ALL OF THAT.

25 A. CERTAINLY.

1 Q. AND YOU'D WANT TO LISTEN TO THAT AND CONSIDER THAT  
2 BEFORE YOU RENDERED A DECISION.

3 A. CERTAINLY. YES, SIR. YES, SIR.

4 Q. AND IF YOU THOUGHT IT WAS APPROPRIATE, YOU COULD  
5 GIVE A LIFE SENTENCE, AND IF YOU FELT THE FACTS WARRANTED IT,  
6 YOU COULD GIVE A DEATH SENTENCE.

7 A. YES, SIR.

8 Q. NOW, ONE THING THAT IS ALSO PECULIAR ABOUT THIS  
9 PROCESS IS THAT WHEN A JURY ISSUES A VERDICT IN A DEATH  
10 PENALTY CASE, IF IT'S LIFE, JUST THE FOREMAN SIGNS THAT  
11 VERDICT FORM. BUT IF IT'S DEATH, ALL 12 MEMBERS OF THE JURY  
12 MUST SIGN THAT FORM. COULD YOU AND WOULD YOU BE WILLING TO  
13 SIGN THAT FORM IF THAT'S WHAT YOU THOUGHT WAS THE APPROPRIATE  
14 SENTENCE?

15 A. IF I'M CONVINCED THAT'S THE PROPER ACTION, YEAH.

16 Q. YES, SIR.

17 A. IF THE -- IF YOU MEET YOUR BURDEN OF PROOF---

18 Q. YES, SIR?

19 A. ---AND IT'S BEYOND A REASONABLE DOUBT? YES, SIR.

20 Q. OKAY. AND YOU KNOW THAT THE FIRST PHASE WE HAVE  
21 THAT BURDEN TO PROVE SOMEONE GUILTY, AND IN THE SECOND PHASE  
22 ALL THIS INFORMATION IS LAID BEFORE YOU, BOTH GOOD AND BAD,  
23 AND YOU WOULD CONSIDER ALL OF THAT?

24 A. YES, SIR.

25 MR. HUBBARD: OKAY. I THINK THAT'S ALL I CAN ASK OF

1 YOU. THANK YOU, SIR.

2 CROSS-EXAMINATION

3 BY MR. LITTLEJOHN:

4 Q. GOOD EVENING, MR. LEITNER. I'M CAM LITTLEJOHN; I  
5 INTRODUCED MYSELF EARLIER. I, ALONG WITH LISA KIMBROUGH,  
6 REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN THIS CASE.  
7 LET ME ASK YOU JUST A FEW QUESTIONS, IF I MAY, ABOUT YOUR  
8 QUESTIONNAIRE. I NOTICE YOU'RE GETTING INTO REAL ESTATE  
9 APPRAISAL?

10 A. I'M CURRENTLY A REAL ESTATE APPRAISAL APPRENTICE.

11 Q. UH-HUH.

12 A. I HAVE BEEN FOR A YEAR AND A HALF.

13 Q. OKAY. WHAT DID YOU DO PRIOR TO THAT?

14 A. I WAS IN THE MORTGAGE BUSINESS, AND PRIOR TO THAT I  
15 WAS IN CONSTRUCTION.

16 Q. UH-HUH.

17 A. I'M ALSO A LICENSED REAL ESTATE AGENT AND A LICENSED  
18 HOME INSPECTOR.

19 Q. OKAY. AND YOU INDICATED YOU WERE A MORTGAGE BANKER?

20 A. YES, SIR.

21 Q. WHO WERE YOU AFFILIATED WITH?

22 A. I WAS SELF-EMPLOYED AS A BROKER FOR FOUR YEARS, AND  
23 THEN I WENT TO WORK UNFORTUNATELY WITH HOMEGOLD.

24 Q. YES, SIR. I UNDERSTAND THAT. OKAY. YOU INDICATE  
25 YOUR SPOUSE'S OCCUPATION IS AN ADMINISTRATIVE ASSISTANT?

1 A. YES, SIR.

2 Q. WHO DOES SHE WORK FOR?

3 A. H. RUBIN VISION CENTER.

4 Q. OKAY. MR. LEITNER, IF YOU WERE SEATED ON THIS JURY,  
5 OBVIOUSLY YOU UNDERSTAND THAT YOU WOULD, ALONG WITH THE OTHER  
6 JURORS, HAVE TO DETERMINE IN THE FIRST PHASE OF THIS CASE  
7 WHETHER THE STATE HAD MET ITS BURDEN OF PROOF, WHICH IS  
8 BEYOND A REASONABLE DOUBT, BEFORE YOU COULD FIND THE  
9 DEFENDANT GUILTY OF ANYTHING.

10 A. CORRECT.

11 Q. YOU UNDERSTAND THAT, DON'T YOU?

12 A. YES, SIR.

13 Q. YOU UNDERSTAND THAT'S A VERY HIGH BURDEN OF PROOF  
14 THAT THE STATE HAS.

15 A. I DO.

16 Q. AND IT WOULD ONLY BE IF YOU FOUND THAT THEY HAD MET  
17 THAT BURDEN OF PROOF THAT WE WOULD GET TO THE SECOND PHASE.

18 A. CORRECT.

19 Q. YOU UNDERSTAND THAT.

20 A. YES, SIR.

21 Q. OKAY. THE JUDGE GAVE YOU A FORM CONCERNING IF WE  
22 GET TO THAT SECOND PHASE AS TO WHAT TYPE JUROR YOU THINK YOU  
23 ARE.

24 A. YES, SIR.

25 Q. AND YOU INDICATED THAT YOU THOUGHT YOU WERE THE

1 THIRD TYPE OF JUROR.

2 A. YES, SIR.

3 Q. OKAY. DID YOU HAVE ANY PROBLEM ARRIVING AT THAT  
4 CONCLUSION?

5 A. NO.

6 Q. DID YOU HAVE TO CONSIDER EITHER NUMBER ONE OR NUMBER  
7 TWO?

8 A. NO.

9 Q. OKAY. MR. LEITNER, HIS HONOR INDICATED EARLIER THAT  
10 THE ALLEGED VICTIM IN THIS CASE WAS A MEMBER OF THE -- WAS AN  
11 ACTIVE MEMBER OF THE MILITARY, NAMELY THE U.S. ARMY.

12 A. RIGHT.

13 Q. WOULD THAT FACT HAVE ANYTHING OR ANY BEARING ON YOUR  
14 ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

15 A. NO, SIR.

16 Q. OKAY. YOU UNDERSTAND THAT IF WE GOT INTO THE SECOND  
17 PHASE OF THIS TRIAL THAT THERE WOULD BE MITIGATING EVIDENCE  
18 PRESENTED OR MITIGATING CIRCUMSTANCES. THAT EVIDENCE MIGHT  
19 INCLUDE THINGS -- GOOD THINGS ABOUT THE DEFENDANT, BAD THINGS  
20 THAT HAD HAPPENED TO THE DEFENDANT, OTHER BACKGROUND  
21 INFORMATION. I'D LIKE TO ASK YOU IF YOU WOULD CONSIDER VERY  
22 CAREFULLY ALL OF THAT EVIDENCE BEFORE YOU DECIDED ON WHAT THE  
23 VERDICT SHOULD BE, IF WE GET TO THAT.

24 A. ABSOLUTELY.

25 Q. OKAY. DID YOU UNDERSTAND FROM HIS HONOR'S REMARKS

1 THAT A LIFE SENTENCE IN A CASE LIKE THIS MEANS LIFE WITHOUT  
2 ANY POSSIBILITY OF PAROLE? DID YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. OKAY. ONE FINAL THING, MR. LEITNER. IF YOU WERE  
5 SEATED ON THE JURY AND IT CAME TIME TO RENDER A VERDICT,  
6 EITHER IN THE FIRST OR THE SECOND PHASE OF THE TRIAL, AND YOU  
7 FOUND THAT THE OTHER 11 JURORS HAD A DIFFERENT OPINION FROM  
8 YOUR OPINION, DO YOU THINK YOU WOULD EVER CONSIDER CHANGING  
9 YOUR OPINION JUST TO GO ALONG WITH THEM JUST TO ARRIVE AT A  
10 VERDICT?

11 A. NOT IF I'M NOT CONVINCED OF WHAT'S GOING ON.

12 MR. LITTLEJOHN: FAIR ENOUGH. THANK YOU, SIR.

13 THE COURT: ALL RIGHT. I'M READY TO RULE ON THIS.

14 MR. LEITNER, YOU ARE QUALIFIED TO SERVE AS A JUROR IN THIS  
15 CASE. YOU'RE DONE FOR THIS WEEK. SO YOU CAN GO AND GET ALL  
16 YOUR WORK DONE JUST IN CASE YOU END UP ON THE JURY NEXT WEEK.  
17 CHECK IN SUNDAY NIGHT BY CALLING THE RECORDED MESSAGE OR  
18 CALLING THE TELEPHONE NUMBER THAT YOU WERE GIVEN. IT WILL  
19 HAVE A RECORDED---

20 THE WITNESS: OH, IS THAT ON THAT PINK CARD?

21 THE COURT: IT'S ON THE PINK CARD; YES, SIR. AND IT  
22 WILL -- SO SUNDAY NIGHT YOU'LL BE TOLD BY A MESSAGE ON THAT  
23 RECORDING WHEN YOU NEED TO BE HERE MONDAY MORNING. PROBABLY  
24 IT WILL BE 9:00, AND THEN IT WILL ALSO TELL YOU WHETHER OR  
25 NOT THE JURY IS GOING TO BE SEQUESTERED. AND SO UNTIL THEN

1 YOU'RE FREE TO GO.

2 THE WITNESS: DOES THAT MEAN THAT I AM SERVING ON  
3 THE JURY?

4 THE COURT: NO, SIR.

5 THE WITNESS: OR THAT JUST MEANS THAT I'M MOVING TO  
6 THE NEXT PHASE---

7 THE COURT: RIGHT.

8 THE WITNESS: ---THE DECISION-MAKING PROCESS?

9 THE COURT: THAT'S RIGHT. WE'LL -- WE'LL PROBABLY  
10 BRING ABOUT 40 TO 45 JURORS IN ON MONDAY AND PROBABLY ABOUT  
11 14 OF THOSE PEOPLE WILL ACTUALLY BE ON THE JURY.

12 THE WITNESS: OKAY.

13 THE COURT: TWELVE PLUS A COUPLE OF ALTERNATES.

14 THE WITNESS: OKAY.

15 THE COURT: ALL RIGHT? SEE YOU MONDAY.

16 THE WITNESS: ALL RIGHT. THANKS. MONDAY AT 9:00.

17 THE COURT: WELL, PROBABLY 9. THAT MESSAGE THAT YOU  
18 WILL HEAR WILL TELL YOU EXACTLY WHAT TIME.

19 THE WITNESS: OKAY. THANK YOU.

20 THE COURT: THANK YOU.

21 (JUROR LEITNER LEAVES THE COURTROOM.)

22 THE COURT: ALL RIGHT. UNLESS -- UNLESS ANY OF  
23 Y'ALL WANT ME TO ATTEMPT TO QUALIFY YOU ALL AS JURORS, WE'RE  
24 GOING TO QUIT FOR THE DAY. BEFORE WE LEAVE, I THINK WE ENDED  
25 UP MAKING DECENT PROGRESS.

1 MR. LITTLEJOHN: WE MADE---

2 THE COURT: THE SECOND PANEL WENT PRETTY WELL. I  
3 GUESS THE PURPOSE OBVIOUSLY OF MY ASKING SOME OF THE  
4 QUESTIONS IN THE BEGINNING IS SO THAT YOU ALL DON'T HAVE TO  
5 ASK THOSE SAME QUESTIONS. SEVERAL TIMES, ESPECIALLY AT  
6 FIRST, I THINK A LOT OF WHAT I WAS SAYING WAS SIMPLY BEING  
7 REPEATED. I THINK THAT SMOOTHED OUT A PRETTY GOOD BIT TOWARD  
8 THE END, AND THAT -- I MEAN, I REALLY THINK WE MADE... IT  
9 SEEMED -- IT TOOK US LIKE AN HOUR AND 15 TO MAKE IT THROUGH  
10 THE FIRST THREE JURORS, AND THEN WE JUST BLISTERED THROUGH  
11 THE LAST 11. WE WENT THROUGH 14 JURORS.

12 SO I DON'T REALLY HAVE ANYTHING TO SAY OTHER THAN I  
13 THINK THAT, YOU KNOW, IF Y'ALL JUST STAY CONSCIOUS TO NOT  
14 REPEAT WHAT I SAY IT WILL BE QUICKER. IF Y'ALL HAVE ANYTHING  
15 THAT -- I MEAN, THERE ARE QUESTIONS THAT Y'ALL ARE ASKING  
16 THAT I COULD PROBABLY ASK AND IT MIGHT SHORTEN IT A LITTLE  
17 BIT. SO IF Y'ALL WANT TO THINK ABOUT THAT, LET ME KNOW, BUT  
18 I'M CONTENT JUST AT THIS POINT JUST TO KEEP ON GOING LIKE  
19 WE'RE GOING.

20 MR. HUBBARD: YES, SIR.

21 MR. LITTLEJOHN: YES, SIR.

22 THE COURT: SO I'LL BE HERE IN THE MORNING EARLY  
23 ENOUGH FOR US TO DISCUSS THAT IF YOU WANT. THE JURY PANEL IS  
24 REPORTING AT 9. I SUPPOSE THAT ABOUT THE FIRST WE'LL BE ABLE  
25 TO GET IN HERE IS ABOUT 9:15 AFTER THE FIRST JUROR HAS HAD A



1 CHANCE TO READ OVER THE WITNESS LIST AND THE -- AND THE THREE  
2 TYPES OF JURORS. SO WE'LL PLAN ON STARTING TO QUALIFY THE  
3 JURY -- WITH THE FIRST JUROR ABOUT 9:10 OR 9:15. SEE Y'ALL  
4 IN THE MORNING.

5 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

6 THE CLERK: JUDGE, HOPE TOLD THE JURORS TO BE HERE  
7 AT 8:45.

8 THE COURT: SO THE JURORS HAVE BEEN TOLD TO BE HERE  
9 AT 8:45. SO WE'LL START -- WE'LL PLAN ON STARTING RIGHT AT  
10 9.

11 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 7:15  
12 P.M. AND RESUMED THE FOLLOWING DAY, APRIL 11, 2006.)

13 THE COURT: BE SEATED. GOOD MORNING. IS THERE  
14 ANYTHING Y'ALL WANT TO DISCUSS BEFORE WE START WITH THE  
15 JURORS?

16 MR. MYERS: THE ONLY THING IS THE SECOND ONE THIS  
17 MORNING WE HAVEN'T GOTTEN A RETURN, AND I THINK HOPE WAS  
18 TRYING TO GET HER TO FILL ONE OUT.

19 THE COURT: THAT'S THE GUY -- OH, OKAY. ARE YOU  
20 TALKING ABOUT SUSAN HARTLEY?

21 MR. MYERS: YES, SIR.

22 THE COURT: OKAY. IS -- DO YOU HAVE IT, HOPE?

23 THE CLERK: PARDON?

24 THE COURT: DO YOU HAVE THE RETURN?

25 THE CLERK: ON WHICH ONE?

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1 THE COURT: SUSAN HARTLEY.

2 THE CLERK: THAT'S WHAT I'M DOING RIGHT NOW IS  
3 MAKING COPIES.

4 THE COURT: OKAY.

5 THE CLERK: WE JUST HAD HER FILL OUT ONE, YOUR  
6 HONOR.

7 THE COURT: GOOD. THANK YOU.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD BETWEEN THE  
9 COURT AND THE CLERK.)

10 THE COURT: WE HAVE ONE JUROR WHO DID NOT SHOW UP  
11 YESTERDAY. HIS NAME IS MR. PHILLIPS. AND DO YOU KNOW OFF  
12 THE TOP OF YOUR HEAD HIS JUROR NUMBER, HOPE?

13 THE CLERK: NO, SIR. HOLD ON JUST A SECOND.

14 THE COURT: MUST BE 234?

15 THE CLERK: YOU GOT IT QUICKER THAN I COULD, JUDGE.

16 THE COURT: I GOT LUCKY. JUROR 234, MR. PHILLIPS,  
17 DID NOT SHOW UP YESTERDAY. HE HAS NOT BEEN QUALIFIED. HE'S  
18 NOT IN THE LIST OF -- OF PANELS. SO I'LL DO WHATEVER Y'ALL  
19 SUGGEST. NORMALLY WHEN SOMEBODY DOESN'T SHOW UP WE JUST  
20 TRANSFER THEM TO A DIFFERENT TERM. DOES ANYBODY HAVE  
21 ANYTHING THEY WANT TO SAY ABOUT MR. PHILLIPS?

22 MR. MYERS: WE AGREE TO THAT.

23 MR. LITTLEJOHN: WE HAVE NO PROBLEM WITH THAT, YOUR  
24 HONOR.

25 THE COURT: ALL RIGHT.

1 THE CLERK: DO YOU WANT ME TO GO OUT AND -- WHEN DO  
2 YOU WANT HIM TRANSFERRED TO, JUDGE? WE HAVE A JURY COMING IN  
3 NEXT WEEK. WE HAVE A JURY COMING IN THE NEXT WEEK.

4 THE COURT: TRANSFER HIM TO NEXT WEEK.

5 THE CLERK: NEXT WEEK? COMMON PLEAS.

6 THE COURT: ALL RIGHT. BRING OUT THE NEXT JUROR.

7 MR. LITTLEJOHN: YOUR HONOR, BEFORE WE BEGIN, ONE  
8 THING I SHOULD MENTION TO THE COURT: THIS MORNING AS MS.  
9 KIMBROUGH AND I WERE RIDING UP THE ELEVATOR TO COME UP TO THE  
10 FOURTH FLOOR, THERE WAS A JUROR ON THERE WHO I BELIEVE IS MS.  
11 HARTLEY. AND BILL RAST, WHO'S A LOCAL ATTORNEY, GOT ON THE  
12 ELEVATOR WITH US ALONG WITH MR. MOORE WHO'S IN MR. MYERS'  
13 OFFICE, AND BILL RAST -- I SAID HELLO TO HIM. HE SAID, "ARE  
14 YOU TRYING THAT DEATH PENALTY CASE?" I SAID, "YEAH." HE  
15 SAID, "YOU'RE GOING TO WIN." AND I LOOKED AT BILL AND I  
16 POINTED TO THE JUROR WHO HAD HER BACK TO ME AND JUST WENT  
17 LIKE THIS, AND I DIDN'T SAY ANYTHING ELSE. I THINK HE GOT  
18 THE MESSAGE, BUT THEN HE SAID, "HOW LONG ARE YOU GOING TO BE  
19 PICKING A JURY?" AND I SAID, "HOPEFULLY WE'LL FINISH THIS  
20 WEEK." BUT THAT OCCURRED IN THE ELEVATOR AND---

21 THE COURT: OKAY.

22 MR. LITTLEJOHN: ---I THOUGHT I SHOULD BRING IT TO  
23 THE ATTENTION OF THE COURT. WE REALLY DIDN'T TALK ABOUT  
24 ANYTHING SUBSTANTIVE, BUT IN CASE IT COMES UP I WANTED THE  
25 COURT TO KNOW IN THE SPIRIT OF A FULL DISCLOSURE.

1 THE COURT: NOT THAT I EXPECT Y'ALL TO TELL ME  
2 WHETHER YOU AGREE OR DISAGREE WITH WHAT MR. RAST SAID, BUT DO  
3 YOU FEEL THAT THAT NEEDS TO BE ADDRESSED IN ANY WAY?

4 MR. MYERS: NO, SIR. WE'LL JUST TAKE IT UP ON VOIR  
5 DIRE.

6 THE COURT: ALL RIGHT. BRING THE JUROR IN.

7 (JUROR DEBORAH LUCAS IS BROUGHT INTO THE COURTROOM.)

8 DEBORAH LUCAS, HAVING BEEN PREVIOUSLY SWORN AS  
9 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
10 TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT

12 Q. HEY. HAVE A SEAT, MA'AM.

13 A. YES, SIR.

14 Q. GOOD MORNING.

15 A. GOOD MORNING, SIR.

16 Q. YOU RECALL THAT YESTERDAY WHEN YOU WERE HERE YOU  
17 WERE PLACED UNDER OATH AND YOU'RE STILL UNDER OATH THIS  
18 MORNING.

19 A. YES, SIR.

20 Q. DO YOU UNDERSTAND THAT?

21 A. UH-HUH.

22 Q. SINCE YOU LEFT THE COURTROOM YESTERDAY, HAVE YOU  
23 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED THE  
24 CASE WITH YOU?

25 A. NO, SIR.

1 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN  
2 THE LAWYERS ARE PROBABLY GOING TO FOLLOW UP WITH SOME -- WITH  
3 SOME OTHER QUESTIONS. WE'RE NOT TRYING TO PRY TOO FAR INTO  
4 YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE  
5 QUESTIONS.

6 A. OKAY.

7 Q. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS. WE JUST  
8 WANT YOU TO LISTEN VERY CAREFULLY AND TO BE OPEN AND HONEST  
9 WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK. IF YOU  
10 ARE A JUROR IN THIS CASE, COULD YOU ACCEPT AND APPLY THE LAW  
11 PRECISELY AS I GIVE IT TO YOU AND SET ASIDE ANYTHING THAT YOU  
12 MIGHT HAVE HEARD OR LEARNED ABOUT THE CASE BEFORE THE TRIAL  
13 BEGAN AND RENDER A VERDICT THAT'S BASED SOLELY ON THAT  
14 TESTIMONY AND EVIDENCE THAT YOU SEE AND HEAR IN THIS  
15 COURTROOM? COULD YOU DO THAT?

16 A. YES, SIR.

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

20 A. YES, SIR.

21 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
22 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
23 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
24 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
25 STATE HAS MET ITS BURDEN OF PROOF?

1 A. YES, SIR.

2 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
3 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO  
4 THAT SECOND PHASE OR THAT SENTENCING PHASE OF THE TRIAL. I'M  
5 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL  
6 COME UP IF WE GET TO THAT PHASE. AGGRAVATING CIRCUMSTANCES  
7 ARE FACTS, INCIDENTS, OR DETAILS THAT THE STATE OF SOUTH  
8 CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME  
9 OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY  
10 OF THE CRIME AND ADD TO THE INJURY RESULTING FROM THE CRIME.

11 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
12 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED  
13 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO  
14 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
15 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS  
16 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

17 A. AGGRAVATING MEANS DOING SOMETHING MORE TO INTENSIFY  
18 IT, AND THE OTHER ONE I'M NOT TOO SURE.

19 Q. OKAY. WELL, AN AGGRAVATING CIRCUMSTANCE COULD BE  
20 ANYTHING THAT MAKES THE CRIME WORSE.

21 A. OKAY.

22 Q. NOW, THERE ARE A LIST -- THERE'S A LIST OF  
23 AGGRAVATING CIRCUMSTANCES.

24 A. UH-HUH.

25 Q. AND I WOULD DESCRIBE -- I WOULD EXPLAIN THAT TO YOU

1 DURING THE COURSE OF THE TRIAL. YOU WOULDN'T HAVE TO BE  
2 COMING UP WITH AGGRAVATING CIRCUMSTANCES.

3 A. OKAY.

4 Q. MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
5 ANYTHING THAT MIGHT LESSEN THE SEVERITY OF THE CRIME. IT  
6 STILL WOULD BE A MURDER, BUT IT COULD BE A LESS SEVERE MURDER  
7 BECAUSE OF SOME MITIGATING CIRCUMSTANCE.

8 A. YES, SIR.

9 Q. DO YOU UNDERSTAND THOSE TWO CONCEPTS?

10 A. YES, SIR.

11 Q. NOW, WHEN YOU WERE -- WHEN YOU CAME IN THIS MORNING,  
12 WERE YOU GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE  
13 DIFFERENT TYPES OF JURORS?

14 A. YES, SIR.

15 Q. DID YOU READ OVER THAT SHEET?

16 A. YES, SIR.

17 Q. DID YOU UNDERSTAND THE THREE DIFFERENT TYPES OF  
18 JURORS?

19 A. YES, SIR.

20 Q. AND WHAT -- WHICH OF THOSE TYPES DO YOU THINK YOU  
21 MIGHT BE?

22 A. WELL, I BELIEVE IN THE DEATH PENALTY.

23 Q. OKAY. WELL, YOU BELIEVE IN THE DEATH PENALTY.

24 A. UH-HUH.

25 Q. DO YOU BELIEVE THAT THERE ARE CIRCUMSTANCES IN WHICH

1 SOMEONE COULD BE GUILTY OF MURDER AND YET NOT HAVE THE DEATH  
2 PENALTY IMPOSED?

3 A. YES.

4 Q. SO WOULD THAT PUT YOU INTO THE THIRD CATEGORY OF  
5 JURORS WHERE YOU WOULD LISTEN TO THE FACTS AND CIRCUMSTANCES  
6 OF THE CASE BEFORE YOU DECIDED WHETHER THE DEATH PENALTY OR A  
7 LIFE SENTENCE WAS APPROPRIATE?

8 A. I WOULD LISTEN TO THE FACTS; YES, SIR.

9 Q. IF YOU WERE ON THE JURY IN A DEATH PENALTY CASE SUCH  
10 AS THIS AND IF WE GOT INTO THE SENTENCING PHASE, THEN, FIRST  
11 OF ALL, THE JURY WOULD BE THE ONES THAT WOULD MAKE THE  
12 DECISION ABOUT WHETHER OR NOT TO IMPOSE THE DEATH PENALTY---

13 A. YES, SIR.

14 Q. ---AND THERE WOULD BE TWO OPTIONS FOR YOUR VERDICT.  
15 THE FIRST OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE  
16 POSSIBILITY OF PAROLE. THE SECOND OPTION WOULD BE FOR THE  
17 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND  
18 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW  
19 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A  
20 VERDICT FOR A LIFE SENTENCE?

21 A. YES, SIR.

22 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

23 A. YES, SIR.

24 Q. NOW, IF YOU ARE ON THE JURY IN THIS CASE, YOU MIGHT  
25 BE SEQUESTERED FOR FIVE OR SIX DAYS. THAT MEANS THAT YOU



1 WOULD BE PUT UP IN A HOTEL ROOM AT NIGHT AND YOU WOULD NOT BE  
2 ALLOWED TO GO HOME. WE'D FEED YOU MEALS AND WE'D TAKE CARE  
3 OF EVERYTHING FOR THOSE FIVE OR SIX DAYS. WOULD THAT IMPOSE  
4 A TERRIBLE BURDEN ON YOU?

5 A. NO, SIR.

6 Q. DID YOU GET A CHANCE TO GO OVER THAT WITNESS LIST  
7 THAT YOU WERE GIVEN THIS MORNING?

8 A. YES, SIR.

9 Q. DID YOU READ EVERY NAME---

10 A. EVERY---

11 Q. ---ON THAT LIST?

12 A. ---SINGLE NAME.

13 Q. NOW, WE'VE GOT TO BE CAREFUL TO MAKE SURE WE DON'T  
14 TALK OVER EACH OTHER. SO LET ME FINISH MY WHOLE QUESTION---

15 A. YES, SIR.

16 Q. ---EVEN THOUGH YOU MAY ANTICIPATE WHAT MY  
17 QUESTION---

18 A. YES, SIR.

19 Q. ---IS. LET ME FINISH MY WHOLE QUESTION AND THEN---

20 A. YES, YOUR HONOR.

21 Q. ---YOU CAN ANSWER.

22 A. OKAY.

23 Q. SO DID YOU READ OVER EVERY NAME ON THE LIST?

24 A. (WITNESS NODDED HEAD UP AND DOWN.)

25 Q. YOU DID?

1 A. (WITNESS NODDED HEAD UP AND DOWN.)

2 Q. OKAY. YOU'RE -- YOU'RE NODDING YOUR HEAD YES?

3 A. I'M SORRY.

4 Q. I DIDN'T MEAN TO MAKE YOU NERVOUS; I'M SORRY. BUT

5 NOW THE COURT REPORTER DOES HAVE TO TAKE DOWN YOUR ANSWER.

6 YOU'RE DOING FINE. IN FACT, YOU'RE DOING SO WELL YOU'RE

7 ANTICIPATING MY QUESTIONS. I JUST HAD TO SLOW YOU DOWN A

8 LITTLE BIT. SO DID YOU KNOW ANYBODY OR ARE YOU RELATED TO

9 ANYBODY WHOSE NAME IS ON THAT LIST?

10 A. NO, SIR.

11 THE COURT: OKAY. I'M GOING TO ALLOW THE LAWYERS

12 NOW TO ASK YOU SOME FOLLOW-UP QUESTIONS, AND THEN I'LL COME

13 BACK AND SPEAK TO YOU AGAIN.

14 DIRECT EXAMINATION

15 BY MR. MYERS:

16 Q. GOOD MORNING, MRS. LUCAS.

17 A. GOOD MORNING, SIR.

18 Q. MRS. LUCAS, I SAW THAT FORM YOU SENT BACK IN, AND

19 YOU'VE NEVER SERVED AS A JUROR BEFORE UP IN HIGH COURT. IS

20 THAT RIGHT?

21 A. YES, SIR. CORRECT.

22 Q. ALL THIS IS KIND OF NEW TO YOU?

23 A. YES, SIR.

24 Q. MRS. LUCAS, I KNOW THAT YOU'RE FAMILIAR THAT IN A

25 NORMAL CRIMINAL TRIAL THE LAWYERS WOULD HAVE TO PUT UP

1 WITNESSES UP ON THE STAND.

2 A. YES, SIR.

3 Q. AND AFTER ALL THE EVIDENCE IS IN, THEN THE JUDGE  
4 WOULD TELL THE JURY WHAT THE LAW IS, AND THE JURY WOULD HAVE  
5 TO RETURN A VERDICT OF GUILTY OR NOT GUILTY. YOU'RE FAMILIAR  
6 WITH THAT, AREN'T YOU?

7 A. YES, SIR.

8 Q. AND DO YOU KNOW ANYTHING ABOUT THIS CASE?

9 A. NO, SIR.

10 Q. SO YOU COULD LISTEN TO THE EVIDENCE AND RETURN A  
11 VERDICT OF GUILTY OR NOT GUILTY.

12 A. YES, SIR.

13 Q. BASED ON WHAT YOU HEARD IN THE COURTROOM.

14 A. YES, SIR.

15 Q. IN A NORMAL CASE, MRS. LUCAS, WHEN A JURY CONVICTS  
16 SOMEBODY, THEIR JOB IS OVER WITH, AND THE JUDGE DOES THE  
17 SENTENCING. AND THE JUDGE WOULD NORMALLY SAY, "Y'ALL TELL ME  
18 SOMETHING ABOUT THIS PERSON SO I'LL KNOW WHAT IS THE RIGHT  
19 SENTENCE TO GIVE HIM. TELL ME SOMETHING GOOD ABOUT HIM.  
20 TELL ME SOMETHING BAD ABOUT HIM. TELL ME EVERYTHING YOU CAN  
21 ABOUT HIM." THAT'S SO THE JUDGE WILL HAVE MORE OF A BASIS OF  
22 KNOWLEDGE TO IMPOSE THE CORRECT SENTENCE. YOU UNDERSTAND  
23 THAT.

24 A. YES, SIR.

25 Q. IN THIS CASE THE JURY WILL HAND DOWN THE SENTENCE:

1 LIFE OR DEATH.

2 MR. LITTLEJOHN: YOUR HONOR, I OBJECT TO THE FORM OF  
3 THAT QUESTION. I DON'T THINK THAT'S... THE WAY THE  
4 SOLICITOR PHRASED THE QUESTION ANTICIPATES THAT WE WILL GET  
5 INTO THE SECOND PHASE OF THIS CASE.

6 MR. MYERS: I CAN REPEAT IT.  
7 BY MR. MYERS:

8 Q. LET'S ASSUME THAT THE JURY RETURNED A GUILTY  
9 VERDICT. IF THEY RETURN A GUILTY VERDICT, THEN WE HAVE TO GO  
10 INTO THAT SECOND PART OF THE SENTENCING. YOU UNDERSTOOD THE  
11 JUDGE TO SAY THAT.

12 A. YES, SIR.

13 Q. NOW, THERE'S TWO CHOICES IN THAT SECOND TRIAL: A  
14 SENTENCE OF LIFE OR A SENTENCE OF DEATH. YOU UNDERSTAND  
15 THAT.

16 A. YES, SIR.

17 Q. ON THAT FORM THAT THEY HANDED UP TO Y'ALL THIS  
18 MORNING, YOU GOT A CHANCE TO READ THAT OVER.

19 A. YES, SIR.

20 Q. AND WHAT THAT IS IS PEOPLE USUALLY FALL IN ONE OF  
21 THREE CATEGORIES. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. THERE'S SOME PEOPLE THAT SAY; "I COULD NEVER VOTE  
24 FOR THE DEATH PENALTY. I WOULD ALWAYS VOTE FOR LIFE."  
25 THAT'S ONE CATEGORY. THE SECOND CATEGORY IS JUST THE

1 OPPOSITE. THERE'S SOMEBODY THAT SAYS, "I'D ALWAYS VOTE FOR  
2 THE DEATH PENALTY. I COULDN'T VOTE FOR LIFE." AND THEN  
3 THERE'S THE THIRD CATEGORY WHERE SOME PEOPLE WOULD SAY,  
4 "WELL, I COULD VOTE FOR EITHER ONE, BUT I'VE GOT TO HEAR THE  
5 EVIDENCE. I'VE GOT TO HEAR ALL THE FACTS AND EVERYTHING  
6 ABOUT THIS BEFORE I COULD DECIDE." WHICH ONE OF THOSE  
7 CATEGORIES DO YOU FALL IN?

8 A. ONE AND THREE.

9 Q. OKAY. YOU SAID ONE AND THREE?

10 A. YES, SIR.

11 Q. OKAY. NOW, DOES THAT MEAN THAT YOU WOULD  
12 AUTOMATICALLY VOTE FOR LIFE OR DEATH?

13 A. YES, SIR.

14 Q. WHICH ONE?

15 A. NUMBER ONE FOR THE DEATH PENALTY AND NUMBER THREE TO  
16 HEAR ALL THE FACTS, HAVE ALL YOUR FACTS IN BEFORE YOU CAN  
17 MAKE THAT DECISION.

18 Q. OKAY. I NEED TO CLARIFY THAT A LITTLE BIT.

19 A. OKAY.

20 Q. BECAUSE IF YOU'RE A NUMBER ONE, THEN YOU'RE NOT  
21 GOING TO CONSIDER THE FACTS; YOU'RE ALWAYS GOING TO VOTE FOR  
22 DEATH. NUMBER THREE, YOU'VE GOT TO LISTEN TO EVERYTHING AND  
23 THEN YOU COULD VOTE FOR LIFE OR DEATH. SO WHICH ONE DO YOU  
24 FOLLOW?

25 A. I WOULD WANT TO LISTEN TO ALL THE FACTS FIRST BEFORE

1 YOU SEND DOWN A DECISION LIKE THAT.

2 Q. WHAT DO YOU MEAN BY THAT?

3 A. WELL, YOU'RE TALKING ABOUT SOMEONE'S LIFE HERE ON  
4 TRIAL.

5 Q. YES, MA'AM.

6 A. AND YOU WANT TO BE VERY, VERY SURE BEFORE YOU MAKE A  
7 DECISION LIKE THAT.

8 Q. I UNDERSTAND.

9 A. SO THAT'S THE BEST WAY I CAN ANSWER THAT.

10 Q. THAT'S GOOD ENOUGH. THAT'S GOOD ENOUGH. SO DO I  
11 TAKE IT FROM THAT THEN THAT YOU WOULD HAVE TO LISTEN TO  
12 EVERYTHING BEFORE YOU COULD VOTE FOR LIFE OR YOU'D HAVE TO  
13 LISTEN TO EVERYTHING BEFORE YOU COULD VOTE FOR DEATH?

14 A. YES, SIR.

15 Q. OKAY. ARE YOU COMMITTED TO VOTE FOR EITHER LIFE OR  
16 DEATH RIGHT NOW WITHOUT HAVING HEARD ANYTHING?

17 A. THAT'S A TOUGH QUESTION. IF I HAVE TO BE VERY  
18 HONEST WITH THAT---

19 Q. UH-HUH.

20 A. ---I WOULD HAVE TO HAVE MY FACTS, AND MY FACTS WOULD  
21 BE IF SOMETHING WAS STEMMING TO THE POINT TO WHERE IT WAS ALL  
22 LEADING TO THAT ONE PARTICULAR DEATH PENALTY, IF I HAVE ALL  
23 MY FACTS I'LL KNOW WHERE TO GO FROM THERE. BUT IF YOU DON'T  
24 HAVE YOUR FACTS, YOU JUST CAN'T MAKE THAT DECISION.

25 Q. IF YOU CAN'T PROVE IT, YOU'D VOTE FOR LIFE, BUT IF

1 WE CAN PROVE IT, YOU'D VOTE FOR DEATH. IS THAT WHAT YOU'RE  
2 SAYING?

3 A. IF THE FACTS WERE IN, YES.

4 Q. BUT IT WOULD HAVE TO BE PROVED TO YOU.

5 A. THAT'S---

6 Q. WE'D HAVE TO PROVE THE FACTS TO YOU.

7 A. YES, SIR. YES, SIR.

8 Q. THANK YOU, MS. LUCAS.

9 A. OKAY.

10 Q. I APPRECIATE IT.

11 A. AM I DONE?

12 CROSS-EXAMINATION

13 BY MR. LITTLEJOHN:

14 Q. GOOD MORNING, MS. LUCAS.

15 A. GOOD MORNING, SIR.

16 Q. AGAIN, MY NAME IS CAM LITTLEJOHN, AND I, ALONG WITH  
17 LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT  
18 IN THIS CASE. MS. LUCAS, LET ME FOLLOW UP WITH A FEW THINGS  
19 THAT SOLICITOR MYERS ASKED YOU ABOUT. WE WERE TALKING ABOUT  
20 THE THREE FORMS -- THE THREE TYPES OF JURORS AS INDICATED ON  
21 THAT FORM YOU WERE GIVEN.

22 A. UH-HUH.

23 Q. AND I THINK YOU -- YOU HAD INDICATED THAT YOU  
24 THOUGHT YOU WERE EITHER A TYPE ONE OR TYPE THREE?

25 A. YES, SIR, I DID.

1 Q. OKAY. AND DID YOU HAVE -- I NOTICED WHEN JUDGE FEW  
2 ASKED YOU, YOU SAID YOU BELIEVED IN THE DEATH PENALTY.

3 A. WELL, I DO.

4 Q. UH-HUH.

5 A. IF IT'S SOMEBODY THAT -- WELL, WHAT I WAS TRYING TO  
6 SAY LIKE THAT -- IF IT'S SOMETHING THAT REALLY DEMANDS THE  
7 DEATH PENALTY THAT IT'S SO BAD AND IF THE DEATH PENALTY WOULD  
8 COME INTO THE -- YOU KNOW, WITH ALL THE FACTS IN, THEN I  
9 WOULD BE OKAY WITH THAT.

10 Q. UH-HUH.

11 A. AND THEN THE OTHER ONE WAS I WOULDN'T EVEN CONSIDER  
12 THE DEATH PENALTY UNTIL I HAVE ALL THE FACTS IN IT, UNTIL YOU  
13 HAVE EVERYTHING.

14 Q. OKAY.

15 A. I MEAN, THAT'S THE WAY YOU LOOK AT ALL THIS.

16 Q. ALL RIGHT. WELL, AS YOU SIT THERE NOW, ARE YOU  
17 TALKING ABOUT ALL THE FACTS AS TO WHETHER THE DEFENDANT DID  
18 THE CRIME?

19 A. YES, SIR.

20 Q. OKAY. SO IF YOU WERE CONVINCED THAT THE DEFENDANT  
21 COMMITTED MURDER, WHICH IS THE INTENTIONAL KILLING OF ANOTHER  
22 WITH MALICE AFORETHOUGHT, YOU WOULD VOTE FOR THE DEATH  
23 PENALTY?

24 A. YES, SIR.

25 MR. MYERS: WELL, THAT'S AN INCOMPLETE QUESTION



1 BECAUSE HE'S GOT TO EXPLAIN ABOUT YOU DON'T REACH A PENALTY  
2 DECISION IN THE GUILT PHASE, AND YOU HAVE TO GO INTO THAT  
3 SECOND---

4 THE COURT: SINCE THERE'S BEEN SOME---

5 THE WITNESS: I'M CONFUSED.

6 THE COURT: ---I THINK CONFUSION, IF YOU DON'T MIND  
7 -- DO YOU MIND IF I ASK HER A FEW QUESTIONS---

8 MR. LITTLEJOHN: NO, YOUR HONOR, CERTAINLY NOT.

9 THE COURT: ---AND THEN YOU CAN... ALL RIGHT.

10 RE-EXAMINATION BY THE COURT

11 Q. MA'AM---

12 A. I'M SORRY.

13 Q. THAT'S OKAY. YOU DON'T -- YOU DON'T NEED TO BE  
14 SORRY. THAT'S WHAT WE WANT YOU TO DO. WE WANT YOU TO TELL  
15 US WHAT'S ON YOUR MIND AND HOW YOU FEEL. BUT I WANT TO MAKE  
16 SURE THAT A COUPLE OF THINGS ARE CLEAR, AND I THINK PROBABLY  
17 IT'S MY FAULT FOR NOT MAKING THIS CLEAR IN THE BEGINNING.

18 THE CASE IS DIVIDED UP INTO TWO PHASES. IN THE  
19 FIRST PHASE THE JURY WOULD DECIDE WHETHER OR NOT THE STATE  
20 HAS PROVEN THE DEFENDANT IS GUILTY OF MURDER, AND IF THE --  
21 IF THE JURY DECIDES THAT THE STATE HAS PROVEN THAT THE  
22 DEFENDANT IS GUILTY OF MURDER, THEN YOU WOULD RETURN A  
23 VERDICT -- THE JURY WOULD RETURN A VERDICT OF GUILTY FOR  
24 MURDER. THEN WE WOULD MOVE INTO THE SECOND PHASE, AND THAT'S  
25 WHEN THE EVIDENCE WOULD FOCUS ON WHAT ARE THE AGGRAVATING

1 CIRCUMSTANCES AND WHAT ARE THE MITIGATING CIRCUMSTANCES, AND  
2 THERE WOULD BE OTHER EVIDENCE THAT WOULD BE OFFERED BY BOTH  
3 SIDES ABOUT THIS CASE.

4 THEN THE JURY WOULD GO BACK AND DELIBERATE AGAIN,  
5 AND THEY WOULD DECIDE AT THAT TIME WHETHER OR NOT TO IMPOSE A  
6 LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE OR THE DEATH  
7 PENALTY. AND SO NOW THE QUESTION THAT WE NEED FOR YOU TO  
8 ANSWER FOR US IS: IF YOU'RE ON THE JURY AND THE JURY HAS  
9 ALREADY RETURNED A VERDICT FOR MURDER AND YOU'RE BACK IN THAT  
10 JURY ROOM DELIBERATING AFTER YOU'VE HEARD ALL THE EVIDENCE  
11 DURING THE SECOND PHASE OF THE TRIAL, WOULD YOU BE WILLING TO  
12 CONSIDER ALL OF THAT EVIDENCE AND CONSIDER THE LAW AS I WILL  
13 INSTRUCT YOU AND THEN DECIDE WHETHER OR NOT TO IMPOSE A LIFE  
14 SENTENCE OR THE DEATH PENALTY?

15 A. YES.

16 Q. SO IN THAT CIRCUMSTANCE WOULD YOU BE ABLE TO, IF YOU  
17 FELT THE CIRCUMSTANCES WERE APPROPRIATE AND IF YOU FELT THE  
18 CIRCUMSTANCES WARRANTED IT, WOULD YOU BE ABLE TO CAST YOUR  
19 VOTE FOR A LIFE SENTENCE IF YOU FELT IT WAS THE APPROPRIATE  
20 THING TO DO?

21 A. YES, SIR.

22 Q. WOULD YOU BE ABLE TO CAST YOUR VOTE FOR THE DEATH  
23 PENALTY IF YOU FELT THAT WAS THE APPROPRIATE THING TO DO  
24 BASED ON THE FACTS AND CIRCUMSTANCES THAT YOU FOUND TO HAVE  
25 BEEN PROVEN DURING THAT SECOND PHASE OF THE TRIAL?

1 A. YES, SIR.

2 THE COURT: ALL RIGHT. NOW, I'M GOING TO GO AHEAD  
3 AND LET MR. LITTLEJOHN FOLLOW UP ON THAT, AND HE CAN -- HE'S  
4 GOING TO ASK YOU SOME OTHER QUESTIONS THAT RELATE TO THIS  
5 SAME SUBJECT AND MAYBE SOME OTHERS. OKAY?

6 RECROSS EXAMINATION

7 BY MR. LITTLEJOHN:

8 Q. MS. LUCAS, I HATE TO HARP ON THE FORM THAT YOU WERE  
9 GIVEN, BUT DID YOU HAVE DIFFICULTY DECIDING WHETHER YOU WERE  
10 TYPE ONE OR TYPE THREE?

11 A. WELL, WHEN I WAS READING THIS---

12 Q. UH-HUH.

13 A. ---I KNEW IN MY HEART, IF I WAS TO BE TOTALLY  
14 HONEST, IF THE DEATH PENALTY WITH ALL THE FACTS -- I WAS FOR  
15 THE DEATH PENALTY, IF IT WAS LIKE A MURDER TRIAL.

16 Q. RIGHT.

17 A. OKAY? I'M BEING HONEST HERE. THEN WHEN I WAS  
18 READING -- I WOULD NOT MAKE ANY DECISION UNTIL I HAD ALL MY  
19 FACTS IN 'TIL -- I MEAN, 'TIL YOU -- YOU HAVE TO -- IT'S JUST  
20 LIKE YOU HAVE TO HEAR EVERYTHING. YOU HAVE TO KNOW WHAT  
21 YOU'RE -- WELL, YOU KNOW, YOU JUST HAVE TO KNOW ALL YOUR  
22 FACTS---

23 Q. UH-HUH.

24 A. ---BASICALLY, AND THAT'S THE WAY I FEEL.

25 Q. OKAY. WELL, AS HIS HONOR TOLD YOU, IF WE GET TO THE

1 SECOND PHASE OF THIS TRIAL---

2 A. YES, SIR.

3 Q. ---THERE WOULD BE EVIDENCE IN AGGRAVATION AND  
4 EVIDENCE IN MITIGATION PRESENTED TO THE JURY, AND THE  
5 EVIDENCE IN MITIGATION - I'LL TELL YOU THIS - CONCERNS THINGS  
6 ABOUT THE DEFENDANT, ABOUT HIS BACKGROUND, COULD BE GOOD  
7 THINGS, COULD BE BAD THINGS THAT HAPPENED TO THE DEFENDANT.  
8 AND I WOULD ASK YOU: WOULD YOU BE WILLING TO CONSIDER ALL OF  
9 THAT INFORMATION BEFORE MAKING YOUR DECISION AS A JUROR?

10 A. YES, SIR.

11 Q. OKAY. ANY -- ANY QUESTION ABOUT THAT?

12 A. NO, SIR.

13 Q. OKAY. MS. LUCAS, YESTERDAY JUDGE FEW TOLD THE JURY  
14 PANEL THAT THE ALLEGED VICTIM IN THIS CASE WAS AN ACTIVE  
15 MILITARY PERSON. HE WAS IN THE U.S. ARMY.

16 A. YES, SIR.

17 Q. THE FACT THAT HE WAS IN THE U.S. ARMY, WOULD THAT  
18 HAVE ANY EFFECT ON YOUR ABILITY TO BE FAIR IN THIS CASE?

19 A. NO, SIR.

20 Q. NOT AT ALL?

21 A. NOT AT ALL.

22 Q. OKAY. ONE FINAL THING, MS. LUCAS. IF YOU WERE  
23 SEATED ON THIS JURY AND DURING EITHER THE FIRST PHASE OF THE  
24 TRIAL OR THE SECOND PHASE, IF WE GET THERE, IF YOU FOUND THAT  
25 YOU HAD AN OPINION AS TO WHAT THE VERDICT SHOULD BE AND THE

1 OTHER 11 JURORS HAD A DIFFERENT OPINION, DO YOU THINK YOU  
2 WOULD EVER CONSIDER CHANGING YOUR OPINION JUST TO GO ALONG  
3 WITH THEM JUST TO ARRIVE AT A VERDICT?

4 A. WELL, I KNOW ON -- IF ALL THE OTHER JURORS HAVE  
5 THEIR VERDICT AND THEY ALL SAY ONE WAY---

6 Q. UH-HUH.

7 A. ---AND IF I FEEL IN MY HEART AND I FEEL THAT THERE'S  
8 SOMETHING WRONG AND THERE'S A NICHE IN THERE THAT'S NUDGING  
9 AT ME AND I'M NOT SURE---

10 Q. YES, MA'AM.

11 A. ---YOU KNOW, I WOULD STICK TO MY OWN BELIEF.

12 Q. UH-HUH.

13 A. AND I'D PROBABLY BE THE ONE THAT, YOU KNOW... BUT  
14 NOW, ON THE OTHER HAND, IF IT WAS UNANIMOUS, THEN THAT WOULD  
15 BE THAT.

16 Q. RIGHT.

17 A. I'M ANSWERING AS BEST I KNOW HOW. I'VE NEVER DONE  
18 THIS BEFORE.

19 Q. OH, I UNDERSTAND. I UNDERSTAND THIS IS DIFFERENT  
20 FOR YOU.

21 A. NEVER.

22 Q. OKAY. THANK YOU, MS. LUCAS.

23 A. IS THAT IT?

24 THE COURT: HOLD ON JUST A SECOND. SOLICITOR, DID  
25 YOU HAVE ANY FOLLOW-UP?

1 MR. MYERS: NO, SIR.

2 THE COURT: MA'AM, DO YOU KNOW OF ANY REASON THAT  
3 YOU WOULD -- THAT YOU WOULD NEED TO TELL US WHY YOU COULD NOT  
4 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL  
5 TRIAL IN THIS CASE?

6 THE WITNESS: IT JUST BOILS DOWN TO THE FACTS. YOU  
7 HAVE TO HAVE ALL YOUR FACTS BEFORE YOU GOT SOMEONE'S LIFE IN  
8 YOUR HANDS, AND YOU CAN'T JUST MAKE A QUICK DECISION LIKE  
9 THAT AND SAY JUST BECAUSE NINE, TEN, OR ELEVEN OF THEM SAY  
10 GUILTY AND YOU FEEL, YOU KNOW, THAT EVERYTHING IN YOUR HEART  
11 -- YOU KNOW, YOU MIGHT BE THAT ONE TO SLAY IT, BUT IF YOU'RE  
12 NOT AND IF IT'S UNANIMOUS, THEN... EITHER WAY, YOUR HONOR,  
13 THAT'S ALL I'M...

14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. I  
15 WOULD LIKE FOR YOU TO STEP OUT IN THE HALL FOR JUST A SECOND,  
16 AND THEN I'LL GET YOU RIGHT BACK IN.

17 THE WITNESS: OKAY.

18 THE COURT: THANK YOU.

19 THE WITNESS: UH-HUH.

20 (JUROR LUCAS LEAVES THE COURTROOM.)

21 MR. LITTLEJOHN: YOUR HONOR, WE WOULD MOVE TO EXCUSE  
22 THE JUROR FOR CAUSE. I THINK THE ANSWER SHE GAVE INDICATING  
23 THAT SHE WAS A TYPE ONE JUROR OR A TYPE THREE JUROR INDICATES  
24 THAT -- THAT I DON'T KNOW THAT SHE CAN BE IMPARTIAL AND  
25 LISTEN TO ALL THE EVIDENCE AND MAKE A DECISION. IN RESPONSE

1 TO ONE OF SOLICITOR MYERS' QUESTIONS, I BELIEVE SHE INDICATED  
2 AT LEAST IN AN INITIAL ANSWER THAT SHE WOULD BE INCLINED TO  
3 AUTOMATICALLY GO FOR THE DEATH PENALTY, AND WE THINK FOR THE  
4 REASONS OR FOR THE ANSWERS SHE GAVE THAT SHE SHOULD BE  
5 DISQUALIFIED FOR CAUSE.

6 MR. MYERS: YOUR HONOR, WHEN SHE CAME IN SHE WAS  
7 BETWEEN ONE AND THREE ON THE FORM, AND I THINK WHEN YOU  
8 QUESTIONED HER AGAIN THAT SHE STATED OVER AND OVER THAT SHE'D  
9 JUST HAVE TO BE SURE, SHE'D HAVE TO LISTEN TO THE FACTS, AND  
10 SHE COULDN'T VOTE UNLESS SHE KNEW EVERYTHING. SHE EVEN SAID  
11 ABOUT TALKING WITH OTHER JURORS SHE'D HAVE TO BE CONVINCED.

12 THIS IS SOMEWHAT ANALOGOUS TO JUROR WATKINS IN STATE  
13 VERSUS GEORGE AT 476 SOUTHEASTERN SECOND 903, A 1996 CASE.  
14 IN THAT CASE THEY ALLEGE THAT THE JUDGE ERRED IN QUALIFYING  
15 MR. WATKINS AFTER HE STATED HE COULD NOT SIGN HIS NAME TO A  
16 LIFE SENTENCE FORM, BUT THEN THE COURT SAID INITIALLY WATKINS  
17 STATED THAT IF AN AGGRAVATING CIRCUMSTANCE WAS FOUND HE COULD  
18 NOT SIGN HIS NAME TO THE LIFE VERDICT. HOWEVER, WHEN THE  
19 JUDGE FURTHER INQUIRED AS TO HIS ABILITY TO SERVE, HE  
20 ANSWERED THAT HE WOULD BE WILLING TO LISTEN TO ALL THE  
21 INSTRUCTIONS AND THAT HE WOULD FOLLOW ALONG. AND IF SOMEONE  
22 IS CONVICTED OF MURDER, WOULD YOU ALWAYS VOTE FOR THE  
23 IMPOSITION OF THE DEATH PENALTY? AND THE JUROR SAID, "NO, I  
24 WOULDN'T BECAUSE OF THAT. I THINK I COULD LISTEN TO ALL THE  
25 REASONS AND EVERYTHING BEFORE I PUT DOWN THE PUNISHMENT."

1 THE JUDGE SAYS, "YOU'RE TELLING ME THAT YOU COULD  
2 PUT THE PUNISHMENT DOWN FOR DEATH, BUT EQUALLY YOU FELT EVEN  
3 THOUGH CONVICTED OF MURDER YOU COULD GIVE LIFE." THE JUROR  
4 SAID, "YES." I THINK THIS JUROR ANSWERED MORE IMPARTIALLY  
5 THAN JUROR WATKINS IN STATE VERSUS GEORGE.

6 NOW, THERE ARE SEVERAL MORE CASES. STATE VERSUS  
7 GREEN IS ONE. THIS LADY'S NEVER SERVED ON A JURY BEFORE.  
8 ALL THIS IS NEW TO HER. AS A MATTER OF FACT, WHEN YOU  
9 STARTED TALKING TO HER ABOUT AGGRAVATION AND MITIGATION, SHE  
10 HAD A DISCOURSE WITH YOU CONCERNING THOSE, AND SHE SAID -- I  
11 THINK SHE'S TRYING TO ANSWER TO THE BEST OF HER ABILITY. I  
12 DO NOT THINK SHE FITS INTO THE MORGAN LINE OF JURORS THAT SHE  
13 WOULD AUTOMATICALLY ALWAYS VOTE FOR THE DEATH PENALTY. WE  
14 WOULD SUBMIT TO YOU SHE'S QUALIFIED.

15 THE COURT: ALL RIGHT. I THINK SHE'S QUALIFIED. I  
16 THINK THAT FROM -- FROM -- WHILE THERE WAS SOME POSSIBLE  
17 CONFUSION IN HER FIRST COUPLE OF ANSWERS, UPON MY RE-  
18 QUESTIONING OF HER ON TWO DIFFERENT OCCASIONS IT BECAME CLEAR  
19 TO ME THAT IT WAS NOT THE TYPE OF BOUNCING BACK AND FORTH  
20 BETWEEN ONE TYPE OF JUROR AND ANOTHER THAT WOULD GIVE ME  
21 CONCERN ABOUT WHETHER OR NOT SHE'S QUALIFIED, BUT IT WAS  
22 SIMPLY HER INABILITY TO EXPRESS WHAT HER -- WHAT HER TRUE  
23 FEELING WAS.

24 I DON'T -- I NEVER GOT THE IMPRESSION THAT SHE COULD  
25 NOT DECIDE WHETHER OR NOT SHE WAS WILLING TO CONSIDER BOTH



1 VERDICTS OF A LIFE SENTENCE AND A DEATH PENALTY. I SIMPLY  
2 GOT THE IMPRESSION THAT SHE WAS HAVING TROUBLE EXPRESSING TO  
3 US WHAT HER FEELINGS WERE, AND I GOT A VERY CLEAR IMPRESSION  
4 THROUGHOUT THAT SHE IS WILLING TO AND CAPABLE OF FOLLOWING MY  
5 INSTRUCTIONS ON THE LAW, CONSIDERING THE AGGRAVATING AND THE  
6 MITIGATING CIRCUMSTANCES THAT -- THAT -- THAT WILL BE OFFERED  
7 AND EVIDENCE THAT WILL BE OFFERED OF THOSE AND RENDER A  
8 VERDICT THAT'S BASED ON THE FACTS AND IS BASED ON THE LAW.  
9 SO I THINK SHE'S QUALIFIED. BRING HER IN, PLEASE.

10 (JUROR LUCAS IS BROUGHT INTO THE COURTROOM.)

11 THE COURT: MA'AM, YOU ARE QUALIFIED TO SERVE AS A  
12 JUROR IN THIS CASE. SO YOU'RE -- THAT DOESN'T MEAN YOU'RE ON  
13 THE JURY. THAT JUST MEANS YOU'RE -- YOU'RE SUBJECT TO BEING  
14 ON THE JURY. WE'RE GOING TO ACTUALLY STRIKE THE JURY OR PICK  
15 THE JURY ON MONDAY. SO WHAT I WOULD LIKE FOR YOU TO DO IS TO  
16 CALL UP HERE ON SUNDAY NIGHT AFTER 6:00. THERE'S THAT LITTLE  
17 PINK CARD THAT YOU WERE GIVEN; IT HAS A TELEPHONE NUMBER ON  
18 IT. CALL THAT NUMBER SUNDAY NIGHT AFTER 6:00, AND THERE WILL  
19 BE INSTRUCTIONS ON THERE TELLING YOU WHEN TO REPORT AND  
20 WHETHER OR NOT YOU NEED TO BRING ENOUGH PERSONAL ITEMS AND  
21 CLOTHING TO STAY WITH US FOR FIVE OR SIX DAYS. ALL RIGHT?  
22 AND WE'LL SEE YOU MONDAY.

23 THE WITNESS: OKAY.

24 THE COURT: HAVE A NICE REST OF THE WEEK, MA'AM.

25 (JUROR LUCAS LEAVES THE COURTROOM. JUROR SUSAN

1 HARTLEY IS BROUGHT INTO THE COURTROOM:)

2 SUSAN HARTLEY, HAVING BEEN PREVIOUSLY SWORN AS  
3 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
4 TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT

6 Q. GOOD MORNING.

7 A. GOOD MORNING.

8 Q. MS. HARTLEY?

9 A. UH-HUH.

10 Q. DO YOU RECALL THAT YESTERDAY WHEN YOU WERE HERE YOU  
11 WERE PUT UNDER OATH?

12 A. THAT IS CORRECT.

13 Q. AND YOU'RE -- YOU'RE STILL UNDER OATH THIS MORNING.  
14 DO YOU UNDERSTAND THAT?

15 A. I UNDERSTAND THAT.

16 Q. NOW, SINCE YOU LEFT HERE YESTERDAY, HAS ANYBODY  
17 DISCUSSED THIS CASE WITH YOU OR HAVE YOU DISCUSSED THIS CASE  
18 WITH ANYBODY ELSE?

19 A. NO, SIR.

20 Q. MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS, AND I  
21 EXPECT THAT THESE LAWYERS ARE GOING TO FOLLOW UP WITH SOME  
22 QUESTIONS OF THEIR OWN. WE'RE NOT TRYING TO PRY TOO DEEP  
23 INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE  
24 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE  
25 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO

1 BE OPEN AND HONEST WITH US. TELL US WHAT YOU THINK AND HOW  
2 YOU FEEL ABOUT THESE SUBJECTS THAT WE'RE GOING TO ASK YOU  
3 ABOUT.

4 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
5 AND APPLY THE LAW PRECISELY AS I GIVE IT TO YOU AND SET ASIDE  
6 ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE CASE  
7 BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS BASED  
8 SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD SEE  
9 AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

10 A. YES, I COULD.

11 Q. NOW, IN A CRIMINAL CASE DO YOU UNDERSTAND THAT THE  
12 -- THAT THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT  
13 GUILTY BEYOND A REASONABLE DOUBT?

14 A. UH-HUH.

15 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
16 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
17 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
18 EITHER TO BE GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT  
19 YOU FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

20 A. REPEAT YOUR QUESTION.

21 Q. COULD YOU FIND THE DEFENDANT EITHER GUILTY OR NOT  
22 GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE STATE HAS MET  
23 ITS BURDEN OF PROOF?

24 A. YES.

25 Q. NOW, IN A CASE SUCH AS THIS, IF THE JURY WERE TO

1 FIND THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE INTO  
2 A SECOND PHASE IN WHICH THE JURY WOULD HAVE TO DECIDE WHETHER  
3 OR NOT TO IMPOSE A LIFE SENTENCE OR THE DEATH PENALTY. DO  
4 YOU UNDERSTAND THAT?

5 A. THAT IS CORRECT.

6 Q. NOW, I'M GOING TO TALK TO YOU ABOUT SOME OF THE  
7 THINGS THAT MIGHT COME UP OR WOULD COME UP IN THAT SECOND  
8 PHASE IF WE GOT TO THE SECOND PHASE OF THE TRIAL.  
9 AGGRAVATING CIRCUMSTANCES ARE ANY FACTS OR INCIDENTS OR  
10 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
11 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
12 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
13 THE INJURY THAT RESULTS FROM THE CRIME OF MURDER.

14 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
15 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
16 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY  
17 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL  
18 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. NOW, CAN YOU  
19 UNDERSTAND THE CONCEPTS OF -- NOT -- CAN YOU UNDERSTAND THE  
20 CONCEPT OF WHAT AN AGGRAVATING OR A MITIGATING CIRCUMSTANCE  
21 IS?

22 A. WELL, IT SEEMS TO ME LIKE HOW HEINOUS WAS THE CRIME  
23 OR EXACTLY WHAT REALLY TRANSPIRED AROUND THIS TO -- WELL, I  
24 GUESS THERE'S LIKE HOW HORRIBLE THIS WAS PROBABLY.

25 Q. THAT WOULD BE PART OF IT AND ALSO---

1       A.    OR OTHER -- OR MAYBE THERE'S OTHER FACTS THAT MAKE  
2 IT NOT QUITE SO BAD.

3       Q.    THAT WOULD BE PART OF IT.  THERE ARE ALSO THINGS  
4 ABOUT --- POSSIBLY ABOUT THE DEFENDANT HIMSELF THAT WOULD FIT  
5 AS EITHER AGGRAVATING OR MITIGATING CIRCUMSTANCES.

6       A.    UH-HUH.

7       Q.    A VARIETY OF DIFFERENT FACTS OR DIFFERENT INCIDENTS  
8 OR DIFFERENT DETAILS COULD BE EVIDENCE OF AGGRAVATING OR  
9 MITIGATING CIRCUMSTANCES.

10      A.    UH-HUH.

11      Q.    DO YOU THINK YOU UNDERSTAND THE CONCEPT OF AN  
12 AGGRAVATION OR A MITIGATING CIRCUMSTANCE?

13      A.    YES, I DO.

14      Q.    MA'AM?

15      A.    YES.

16      Q.    WERE YOU GIVEN THIS SHEET OF PAPER BACK IN THE BACK  
17 THAT SHOWS THE THREE DIFFERENT TYPES OF JURORS?

18      A.    THAT'S CORRECT.

19      Q.    DID YOU UNDERSTAND WHAT THOSE THREE DIFFERENT TYPES  
20 OF JURORS WERE?

21      A.    YES.

22      Q.    DO YOU THINK YOU FIT INTO EITHER ONE OF THOSE THREE  
23 CATEGORIES?

24      A.    THE THIRD ONE.

25      Q.    MA'AM?

1 A. THE THIRD ONE.

2 Q. THE THIRD ONE?

3 A. UH-HUH.

4 Q. IF YOU'RE A JUROR IN A DEATH PENALTY CASE, IN THIS  
5 DEATH PENALTY CASE, AND IF WE GET INTO A SENTENCING PHASE, IT  
6 WOULD BE UP TO THE JURY TO DECIDE WHAT THE SENTENCE SHOULD  
7 BE, AND YOU'D HAVE TWO DIFFERENT OPTIONS AS TO WHAT THE  
8 SENTENCE COULD BE. ONE IS THAT THERE WOULD -- THAT YOU WOULD  
9 HAVE AN OPTION FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF  
10 PAROLE, AND THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY.  
11 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU  
12 FOUND TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT  
13 TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE  
14 SENTENCE?

15 A. YES.

16 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

17 A. I GUESS YES PREDICATED UPON ALL THE FACTS OF THE  
18 CASE.

19 Q. OKAY.

20 A. IT WOULD HAVE TO BE PRETTY BAD.

21 Q. SO -- SO THEN IS IT TRUE THAT YOU WOULD BE -- YOU  
22 WOULD BE WILLING TO LISTEN TO ALL THE FACTS, CONSIDER ANY  
23 AGGRAVATING CIRCUMSTANCES, CONSIDER ANY MITIGATING  
24 CIRCUMSTANCES, AND THEN DECIDE WHETHER TO CAST YOUR VOTE FOR  
25 A LIFE SENTENCE OR FOR THE DEATH PENALTY?

1 A. CORRECT.

2 Q. AND AFTER DOING ALL THAT, IF YOU FELT THE  
3 CIRCUMSTANCES WARRANTED IT, YOU COULD IM -- YOU COULD VOTE TO  
4 IMPOSE A LIFE SENTENCE.

5 A. YES.

6 Q. AND YOU COULD ALSO -- IF YOU FELT THE CIRCUMSTANCES  
7 WARRANTED IT, YOU COULD VOTE TO IMPOSE THE DEATH PENALTY.

8 A. CORRECT.

9 Q. THE JURY IN THIS CASE MIGHT BE SEQUESTERED, MEANING  
10 THAT YOU WOULD BE WITH US FOR FIVE OR SIX DAYS UNTIL THE  
11 TRIAL WAS OVER. WE'D FEED YOU MEALS. WE'D PUT YOU UP IN A  
12 HOTEL AT NIGHT, AND YOU WOULD NOT BE ALLOWED TO GO HOME.  
13 WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU, MA'AM?

14 A. YES, IT WOULD.

15 Q. EXPLAIN THAT TO ME.

16 A. IT'S NOT SO MUCH THE HOME BUT AT THIS POINT IN TIME  
17 FOR MY PROFESSIONAL WORK.

18 Q. OKAY. WELL, NOW, IF YOU'RE ON THE JURY -- NOW,  
19 YOU'RE A -- YOU'RE A -- THE CHIEF FINANCIAL OFFICER OF SOME  
20 COMPANY. I REMEMBER YOU TELLING ME THAT EARLIER.

21 A. YES. THAT'S CORRECT.

22 Q. OKAY. IF YOU'RE ON THE JURY, WHETHER WE SEQUESTER  
23 THE JURY OR NOT, YOU'RE ALMOST CERTAINLY NOT GOING TO HAVE  
24 TIME TO DO ANY WORK. WE'RE GOING TO BE -- BECAUSE WE'RE  
25 GOING TO BE WORKING FAIRLY LONG HOURS TO TRY TO GET THE CASE

1 OVER AS EFFICIENTLY AS POSSIBLE.

2 A. THAT IS CORRECT. THIS WOULD STILL IMPOSE A BURDEN  
3 AT THIS POINT.

4 Q. OKAY. SO IS IT THE FACT -- IS IT BEING ON THE JURY  
5 THAT WOULD IMPOSE THE BURDEN OR IS IT HAVING THE JURY  
6 SEQUESTERED THAT WOULD IMPOSE THE BURDEN?

7 A. JUST BEING ON THE JURY AT THIS POINT.

8 Q. OKAY. DID YOU GET A CHANCE TO READ OVER THAT  
9 WITNESS LIST?

10 A. YES, AND I'M NOT FAMILIAR WITH ANY OF THE NAMES.

11 Q. OKAY. SO YOU READ EVERY NAME ON THE LIST?

12 A. UH-HUH.

13 Q. YOU DON'T KNOW AND YOU'RE NOT RELATED TO ANYBODY  
14 WHOSE NAME IS ON THAT LIST.

15 A. NO.

16 Q. MA'AM, I'M GOING TO ALLOW THE ATTORNEYS TO ASK YOU  
17 SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME BACK AND  
18 SPEAK TO YOU.

19 A. THANK YOU.

20 DIRECT EXAMINATION

21 BY MR. MYERS:

22 Q. MS. HARTLEY?

23 A. GOOD MORNING.

24 Q. HOW ARE YOU TODAY?

25 A. I'M WELL.



1 Q. MS. HARTLEY, I NEED TO ASK YOU A FEW QUESTIONS. THE  
2 LAW SAYS THE ATTORNEYS HAVE TO TALK WITH JURORS A LITTLE BIT.  
3 IF YOU DON'T UNDERSTAND ANYTHING, JUST ASK ME TO REPEAT IT,  
4 PLEASE, MA'AM.

5 A. OKAY.

6 Q. MS. HARTLEY, IF THE JURY FOUND THE DEFENDANT GUILTY,  
7 THEN WE'D HAVE TO GO INTO THAT PENALTY PHASE THE JUDGE WAS  
8 TALKING WITH YOU ABOUT.

9 A. CORRECT.

10 Q. YOU UNDERSTOOD THAT.

11 A. UH-HUH.

12 Q. NOW, YOU SAID THAT YOU WERE IN THE THIRD CATEGORY ON  
13 THE DEATH PENALTY?

14 A. YES.

15 Q. OKAY.

16 A. AS I READ THIS SHEET, YES.

17 Q. YES, MA'AM. ARE THERE ANY OTHER CATEGORIES THAT YOU  
18 WOULD POSSIBLY FIT IN THAT ARE NOT ON THAT SHEET CONCERNING  
19 THE DEATH PENALTY?

20 A. WELL, I THINK THE DEATH PENALTY IS ONE OF THE  
21 ABSOLUTE LAST RESORTS.

22 Q. UH-HUH.

23 A. AND I THINK IT WOULD HAVE TO BE A VERY HEINOUS CRIME  
24 TO PUT SOMEONE ELSE TO DEATH.

25 Q. OKAY. AND THE LAW SAYS THIS, MS. HARTLEY---

1 A. COULD YOU SPEAK A LITTLE LOUDER?

2 Q. I'D BE GLAD TO.

3 A. I'M SORRY.

4 Q. THAT'S OKAY; I AM SPEAKING SOFTLY. THE LAW SAYS  
5 THIS: THAT IF ALL JURORS AGREE THAT THE DEATH PENALTY IS THE  
6 APPROPRIATE PUNISHMENT, THEN EVERY JUROR HAS TO SIGN THAT  
7 VERDICT. IT'S SOMETHING A LITTLE DIFFERENT IN OUR LAW.  
8 USUALLY THE FOREMAN IS THE ONLY PERSON THAT SIGNS THE  
9 VERDICT, BUT IF THE DEATH PENALTY IS IMPOSED, EVERY JUROR  
10 WOULD HAVE TO SIGN IT. IT SEEMS LIKE A FOOLISH QUESTION, BUT  
11 THE FACT THAT THE LAW REQUIRES A SIGNATURE ON A DEATH PENALTY  
12 VERDICT, WOULD THAT CAUSE YOU ANY PROBLEMS IF THE DEATH  
13 PENALTY WERE THE APPROPRIATE VERDICT?

14 A. THAT'S A REALLY TOUGH QUESTION HERE.

15 Q. UH-HUH.

16 A. I THINK IT WOULD GIVE ME REASON FOR PAUSE, YES.

17 Q. WOULD IT PREVENT YOU FROM VOTING FOR THE DEATH  
18 PENALTY?

19 A. IT WOULD NOT PREVENT ME FROM VOTING FOR IT. AS I  
20 SAY ONE MORE TIME, IF IT WAS A VERY HEINOUS CRIME, THEN, YES,  
21 I -- I WOULD BE ABLE TO VOTE FOR IT. BUT, YOU KNOW, I WOULD  
22 HAVE REASON TO PAUSE WHEN IT COMES TO SIGNING IT, NOT THAT I  
23 WOULD NOT SIGN IT, BUT IT WOULD GIVE ME REASON TO THINK ABOUT  
24 IT.

25 MR. MYERS: THANK YOU, MA'AM. THAT'S ALL WE HAVE.

CROSS-EXAMINATION

1  
2 BY MS. KIMBROUGH:

3 Q. GOOD MORNING, MS. HARTLEY. HOW ARE YOU?

4 A. GOOD MORNING.

5 Q. I JUST HAVE A COUPLE OF QUESTIONS. I BELIEVE  
6 SOLICITOR MYERS HAD NOTED THAT DEATH PENALTY CASES OBVIOUSLY  
7 ARE SOMEWHAT UNIQUE UNDER OUR SYSTEM, AND SO IT CAUSES US TO  
8 ASK QUESTIONS ABOUT THE FUTURE, AND WE HAVE TO ASSUME WHEN WE  
9 ASK QUESTIONS ABOUT PENALTY THAT THERE'S BEEN A GUILTY  
10 VERDICT. I JUST WANTED TO MAKE SURE THAT YOU UNDERSTAND OR  
11 AREN'T UNDER THE IMPRESSION THAT BECAUSE WE ASK QUESTIONS  
12 ABOUT PENALTY THAT GUILT IS A FOREGONE CONCLUSION. SO I  
13 GUESS MY QUESTION IS: KNOWING THAT WE'RE ASKING QUESTIONS  
14 ABOUT PENALTY, DO YOU FEEL LIKE YOU'D BE CAPABLE OF HOLDING  
15 THE STATE TO ITS BURDEN OF PROOF BEYOND A REASONABLE DOUBT IN  
16 THE ACTUAL GUILT-OR-INNOCENCE PHASE? WOULD YOU HAVE ANY  
17 TROUBLE WITH THAT?

18 A. BEYOND A REASONABLE DOUBT?

19 Q. YES.

20 A. I WOULD HAVE NO PROBLEM.

21 Q. HIS HONOR -- ALL RIGHT. SO YOU UNDERSTAND THAT JUST  
22 BECAUSE WE'RE ASKING YOU ABOUT BOTH PHASES---

23 A. NO.

24 Q. ---DOESN'T MEAN WE GET THERE.

25 A. NO.

1 Q. OKAY. NOW, THE VICTIM IN THIS CASE, TRACY DAVIS,  
2 WAS AN ACTIVE MEMBER OF THE MILITARY. I BELIEVE HE WAS AN  
3 ARMY RECRUITER. WOULD THE FACT THAT THIS PARTICULAR VICTIM  
4 WAS, IN FACT, ASSOCIATED WITH THE MILITARY, WOULD THAT GIVE  
5 YOU ANY DIFFICULTY INsofar AS GIVING MR. MERCER A FAIR TRIAL?

6 A. NO.

7 Q. OKAY. AND JUST A LITTLE BIT ABOUT AGGRAVATING AND  
8 MITIGATING CIRCUMSTANCES, THESE ARE SORT OF ELUSIVE CONCEPTS.  
9 AGGRAVATING, I THINK MOST OF US GET A PRETTY CLEAR SENSE OF  
10 WHAT THAT MEANS. IT MAKES IT WORSE.

11 A. UH-HUH.

12 Q. WE ALL KNOW WHAT IT IS TO BE AGGRAVATED. MITIGATION  
13 IS A LITTLE MORE ELUSIVE. DO YOU THINK YOU COULD CONSIDER OR  
14 WOULD YOU BE WILLING TO CONSIDER A VARIETY OF TYPES OF  
15 EVIDENCE INsofar AS MITIGATION IS CONCERNED? IT COULD BE  
16 THINGS ABOUT KEVIN'S BACKGROUND, SOME GOOD THINGS HE'S DONE  
17 OR SOME TRAUMAS HE'S HAD IN HIS LIFE. COULD YOU CONSIDER  
18 THAT INFORMATION IN DECIDING WHETHER OR NOT TO IMPOSE LIFE OR  
19 DEATH?

20 A. YES.

21 Q. OKAY. OKAY. AND THE FINAL QUESTION I HAVE IS: AS  
22 IN MOST JURY TRIALS, YOU HAVE TO -- OR AS IN ALL JURY TRIALS,  
23 THE VERDICT HAS TO BE UNANIMOUS. IF YOU WERE ON THIS JURY  
24 AND, SAY, DELIBERATING EITHER OVER THE QUESTION OF GUILT OR  
25 OVER THE QUESTION OF PENALTY AND YOU HAD A VIEW THAT DIFFERED

1 -- IT WAS A FIRMLY-HELD VIEW THAT DIFFERED FROM THE OTHER. 11.  
2 DO YOU THINK YOU WOULD BE WILLING TO HOLD ON TO THAT VIEW  
3 UNLESS CONVINCED THAT IT WAS ERRONEOUS OR DO YOU THINK YOU  
4 MIGHT BE INCLINED TO GO ALONG WITH THE OTHER 11?

5 A. I THINK IF I HAD A VIEW AND I WAS THE ONLY ONE WITH  
6 THE VIEW, THEN IT WOULD BE UP TO THE REST OF THE PEOPLE ON  
7 THE JURY TO CONVINC ME OR TO GET THE EVIDENCE TO CHANGE MY  
8 MIND.

9 Q. OKAY. SO IT WOULDN'T JUST BE THE FACT THAT 11  
10 PEOPLE DISAGREED WITH YOU.

11 A. NO.

12 Q. THANK YOU.

13 A. UH-HUH.

14 MS. KIMBROUGH: I APPRECIATE IT.

15 THE COURT: MA'AM, I'M GOING TO ASK YOU TO STEP OUT  
16 IN THE HALLWAY FOR JUST ONE SECOND, AND THEN I'LL BE RIGHT  
17 BACK WITH YOU.

18 THE WITNESS: OKAY.

19 (JUROR HARTLEY LEAVES THE COURTROOM.)

20 THE COURT: I THINK SHE'S QUALIFIED. ANYBODY  
21 DISAGREE?

22 MR. MYERS: NO, SIR.

23 MR. LITTLEJOHN: NO, YOUR HONOR.

24 THE COURT: BRING HER BACK.

25 (JUROR HARTLEY IS BROUGHT INTO THE COURTROOM.)

1           THE COURT: MA'AM, YOU ARE QUALIFIED TO SERVE ON  
2 THIS JURY. THAT DOES NOT MEAN YOU'RE ON THE JURY. THAT JUST  
3 MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. SO WE WOULD NEED  
4 YOU TO COME BACK ON MONDAY, AND IF YOU WOULD CALL THE  
5 TELEPHONE NUMBER THAT IS ON THAT PINK SLIP OF PAPER THAT YOU  
6 HAVE BEEN GIVEN, SUNDAY NIGHT AFTER 6:00 THERE WILL BE  
7 SPECIFIC INSTRUCTIONS ABOUT WHEN AND UNDER WHAT CIRCUMSTANCES  
8 YOU NEED TO RETURN. WE'LL TELL YOU AT THAT TIME WHETHER OR  
9 NOT YOU NEED TO BRING ENOUGH OF YOUR BELONGINGS TO SPEND  
10 SEVERAL DAYS WITH US IF THE JURY IS GOING TO BE SEQUESTERED.  
11 SO REMEMBER NOW THAT YOU ARE NOT ALLOWED TO DISCUSS THIS  
12 CASE, AND I WILL SEE YOU ON MONDAY. THANK YOU.

13           THE WITNESS: THANK YOU.

14           (JUROR HARTLEY LEAVES THE COURTROOM. JUROR JANE  
15 WRENN IS BROUGHT INTO THE COURTROOM.)

16           JANE WRENN, HAVING BEEN PREVIOUSLY SWORN AS A  
17 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
18 TESTIFIED AS FOLLOWS:

19                           EXAMINATION BY THE COURT

20           Q.     GOOD MORNING, MA'AM.

21           A.     GOOD MORNING, SIR.

22           Q.     YOU'RE MS. WRENN?

23           A.     THAT'S TRUE.

24           Q.     ALL RIGHT. DO YOU RECALL THAT YESTERDAY YOU WERE  
25 PUT UNDER OATH?

1 A. YES, SIR.

2 Q. AND YOU'RE STILL UNDER OATH THIS MORNING. DO YOU  
3 UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. NOW, MS. WRENN, I'M GOING TO ASK YOU SOME QUESTIONS,  
6 AND THEN THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME  
7 FOLLOW-UP QUESTIONS. WE'RE NOT TRYING TO PRY TOO DEEP INTO  
8 YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE  
9 QUESTIONS. WE DON'T -- WE JUST WANT YOU TO LISTEN CAREFULLY.  
10 TELL US HOW YOU FEEL AND WHAT YOU THINK. BE OPEN AND HONEST  
11 WITH US. THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE  
12 QUESTIONS. YOU JUST TELL US HOW YOU -- HOW YOU FEEL.

13 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
14 AND APPLY THE LAW PRECISELY AS I WOULD GIVE IT TO YOU AND SET  
15 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
16 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT'S BASED  
17 SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR AND  
18 SEE IN THIS COURTROOM? COULD YOU DO THAT?

19 A. YES, SIR.

20 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
21 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
22 REASONABLE DOUBT?

23 A. YES, SIR.

24 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
25 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS

1 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
2 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT THE  
3 STATE HAS MET ITS BURDEN OF PROOF?

4 A. YES, SIR.

5 Q. MA'AM?

6 A. YES, SIR.

7 Q. ALL RIGHT. THANK YOU. NOW, THE WAY THIS -- THIS --  
8 THIS TYPE OF TRIAL WORKS IS THE JURY WOULD FIRST IN THE FIRST  
9 PHASE DECIDE WHETHER OR NOT THE DEFENDANT HAS BEEN PROVEN TO  
10 BE GUILTY OF MURDER, AND IF SO, THEN WE WOULD MOVE INTO THE  
11 SECOND PHASE OF THE TRIAL WHERE THE JURY WOULD DECIDE WHETHER  
12 OR NOT TO IMPOSE THE DEATH PENALTY OR TO IMPOSE A LIFE  
13 SENTENCE. NOW, THERE ARE SEVERAL THINGS THAT COME UP DURING  
14 THAT SENTENCING PHASE OR THAT SECOND PHASE OF THE TRIAL.  
15 AGGRAVATING CIRCUMSTANCES ARE ONE OF THEM. AGGRAVATING  
16 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE  
17 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE  
18 WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES  
19 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY  
20 RESULTING FROM THE CRIME.

21 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE  
22 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS  
23 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY  
24 SERVE TO EXTENUATE OR TO REDUCE THE SEVERITY OR THE MORAL  
25 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. NOW, DO YOU



1 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING  
2 CIRCUMSTANCES?

3 A. YES, YOUR HONOR. I THINK SO.

4 Q. WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN THIS  
5 SHEET OF PAPER THAT SHOWS THE THREE DIFFERENT TYPES OF  
6 JURORS. DID YOU HAVE A CHANCE TO READ OVER THAT SHEET---

7 A. YES, SIR.

8 Q. OKAY. NOW, JUST -- JUST SO THE COURT REPORTER  
9 DOESN'T HAVE ANY TROUBLE TAKING DOWN WHAT YOU AND I SAY, LET  
10 ME GO AHEAD AND FINISH MY WHOLE QUESTION AND THEN YOU ANSWER.  
11 EVEN THOUGH YOU'RE ANTICIPATING WHAT I'M GOING TO ASK, JUST  
12 LET ME FINISH AND THEN YOU CAN ANSWER. DID YOU UNDERSTAND  
13 WHAT THOSE THREE TYPES OF JURORS WERE?

14 A. YES, SIR.

15 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK  
16 YOU ARE?

17 A. I THINK I COULD LISTEN AND DECIDE WHICH ONE, WHETHER  
18 IT WAS MITIGATING OR AGGRAVATING, AND DECIDE THEN WHETHER I  
19 WOULD VOTE FOR THE JURY TO INSTALL THE DEATH PENALTY OR  
20 WHETHER TO HAVE HIM TO HAVE LIFE IN PRISON.

21 Q. OKAY. SO THAT WOULD PUT YOU IN THAT THIRD CATEGORY  
22 OF JURORS.

23 A. YES, SIR.

24 Q. IN THE SENTENCING PHASE OF A CASE LIKE THIS IT WOULD  
25 BE THE JURY THAT WOULD DECIDE WHAT SENTENCE SHOULD BE

1 IMPOSED, AND YOU WOULD HAVE TWO OPTIONS AS YOU HAVE ALREADY  
2 IDENTIFIED. ONE OPTION IS FOR A LIFE SENTENCE WITHOUT THE  
3 POSSIBILITY OF PAROLE, AND THE OTHER OPTION IS FOR THE DEATH  
4 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
5 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD  
6 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A  
7 LIFE SENTENCE?

8 A. YES, SIR.

9 Q. NOW, DEPENDING ON THOSE FACTS AND CIRCUMSTANCES THAT  
10 YOU FIND TO EXIST, COULD YOU VOTE TO IMPOSE THE DEATH  
11 PENALTY?

12 A. YES, SIR.

13 Q. THE JURY IN THIS CASE MIGHT BE SEQUESTERED FOR FIVE  
14 OR SIX DAYS WHILE WE TRY THIS CASE, AND THAT WOULD MEAN THAT  
15 YOU WOULD BE PUT UP IN A HOTEL. WE'D TAKE YOU TO DINNER AND  
16 WE'D FEED YOU YOUR MEALS, AND YOU WOULD NOT BE ALLOWED TO GO  
17 HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

18 A. NO, SIR.

19 Q. DID YOU HAVE A CHANCE TO READ OVER THAT WITNESS LIST  
20 THAT YOU WERE GIVEN THIS MORNING?

21 A. YES, SIR.

22 Q. DID YOU READ EVERY NAME ON THAT LIST?

23 A. YES, SIR.

24 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
25 IS ON THAT LIST?

1 A. NO, SIR.

2 Q. OKAY. MA'AM, THE LAWYERS ARE GOING TO ASK YOU SOME  
3 FOLLOW-UP QUESTIONS. THEN I'LL COME BACK AND SPEAK TO YOU  
4 AFTER THAT.

5 A. THANK YOU.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. MS. WRENN, HOW ARE YOU THIS MORNING?

9 A. I'M FINE, SIR.

10 Q. I'VE JUST GOT A FEW QUESTIONS THAT I'M REQUIRED TO  
11 ASK YOU, AND I'LL TRY TO BE BRIEF AND HOPEFULLY I WON'T PRY  
12 TOO MUCH. BUT I JUST WANT TO KIND OF GO OVER EXACTLY WHAT  
13 YOU'VE JUST DONE WITH THE JUDGE JUST SO WE CAN ALL MAKE SURE  
14 THAT YOU UNDERSTAND THIS PROCESS BECAUSE IT IS A VERY  
15 DIFFERENT PROCESS. AND I WAS LOOKING AT YOUR FORM THAT YOU  
16 SENT IN TO THE CLERK'S OFFICE. YOU'VE NEVER SERVED ON A JURY  
17 BEFORE, HAVE YOU?

18 A. NO, SIR.

19 Q. SO THIS ALL IS PRETTY NEW THEN I IMAGINE---

20 A. YES, SIR.

21 Q. ---ISN'T IT? WELL, THE JUDGE HAS TALKED ABOUT TWO  
22 PARTS TO THIS SYSTEM. THERE'S A FIRST PHASE AND A SECOND  
23 PHASE. THE FIRST PHASE IS WHERE A JURY DETERMINES GUILT OR  
24 NOT GUILTY. THE DEFENDANT IS GUILTY OR NOT GUILTY. AND  
25 THAT'S JUST LIKE ANY OLD NORMAL TRIAL WHERE THE STATE PUTS UP

1 EVIDENCE. PEOPLE SIT RIGHT WHERE YOU'RE SITTING. THEY HEAR  
2 TESTIMONY, AND THE JURY GOES BACK AND THEY HAVE TO MAKE A  
3 UNANIMOUS DECISION BEFORE THEY CAN DETERMINE IF A PERSON IS  
4 GUILTY, JUST LIKE YOU PROBABLY ALREADY UNDERSTAND. IS THAT  
5 YOUR UNDERSTANDING---

6 A. YES, SIR.

7 Q. ---OF THE JURY PROCESS?

8 A. YES, SIR.

9 Q. WHAT'S DIFFERENT ABOUT THE PROCESS WE'RE IN TODAY IS  
10 IF A JURY CONVICTS A DEFENDANT IN THIS PROCESS, THE JURY DOES  
11 THE SENTENCING RATHER THAN THE JUDGE. THAT'S THAT SECOND  
12 PHASE THAT THE JUDGE WAS TALKING TO YOU ABOUT WHERE THERE'S  
13 AGGRAVATING AND MITIGATING CIRCUMSTANCES, THINGS THAT WOULD  
14 COME OUT SHOWING THAT -- AGGRAVATING THE CRIME, SHOWING --  
15 MAKING IT WORSE, MORE SEVERE, THINGS ABOUT THE DEFENDANT, AND  
16 THERE MAY ALSO BE THINGS ABOUT THE DEFENDANT THAT COME OUT  
17 MITIGATING THE CRIME OR MITIGATING THE DEFENDANT'S BEHAVIOR.  
18 DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND AS I UNDERSTAND IT, YOU'D BE WILLING AND WANT TO  
21 LISTEN TO ALL OF THAT.

22 A. YES, SIR.

23 Q. BEFORE YOU COULD MAKE A DECISION AS TO LIFE OR  
24 DEATH.

25 A. YES, SIR.

1 Q. NOW, THERE'S ONE QUESTION I DON'T BELIEVE I HEARD  
2 THE JUDGE ASK, BUT I WOULD LIKE TO ASK YOU. IF YOU WERE ON  
3 THAT JURY AND JUST ASSUMING WE GOT TO THAT SECOND PHASE, IF  
4 YOU THOUGHT THE FACTS WARRANTED THE DEATH VERDICT, YOU COULD  
5 VOTE FOR DEATH?

6 A. YES, SIR.

7 Q. AND AS I UNDERSTAND IT, YOU SAID IF YOU THOUGHT THE  
8 FACTS WARRANTED IT, YOU COULD VOTE FOR LIFE.

9 A. YES, SIR.

10 Q. IF YOU VOTED -- IF YOU FOUND THAT DEATH WAS THE  
11 APPROPRIATE VERDICT - I'M NOT SURE THAT THAT CAME OUT - BUT  
12 TO DO THAT, ALL 12 JURORS HAVE TO SIGN THAT VERDICT FORM. IF  
13 YOU VOTE FOR LIFE, ONLY THE FOREPERSON SIGNS THAT VERDICT  
14 FORM. IF THE JURY DECIDES DEATH, ALL 12 JURORS HAVE TO PUT  
15 THEIR NAME DOWN ON THAT PIECE OF PAPER. AND THE REASON WHY  
16 I'M ASKING YOU THAT IS: SOME PEOPLE ARE WILLING TO VOICE  
17 THEIR OPINION, BUT WHEN IT COMES TO WRITING THEIR NAME DOWN  
18 ON IT, THEY BACK UP AND THEY HAVE A PROBLEM WITH THAT. I  
19 WANT TO ASK YOU: IF THAT WAS YOUR OPINION THAT DEATH WAS THE  
20 APPROPRIATE SENTENCE, COULD YOU PUT YOUR NAME DOWN ON THAT  
21 VERDICT FORM?

22 A. YES, SIR. I WOULD HAVE TO BE VERY SURE.

23 Q. RIGHT.

24 A. BUT, YES, SIR, I WOULD PUT MY NAME DOWN.

25 Q. AND YOU WOULD WANT TO LISTEN TO ALL THE FACTS SO

1 THAT YOU WOULD KNOW THAT WHAT YOU WERE DOING WAS RIGHT.

2 A. YES, SIR.

3 Q. THAT'S ALL WE COULD ASK OF YOU, MS. WRENN.

4 A. THANK YOU.

5 MR. HUBBARD: THANK YOU VERY MUCH.

6 CROSS-EXAMINATION.

7 BY MS. KIMBROUGH:

8 Q. GOOD MORNING, MS. WRENN. HOW ARE YOU?

9 A. I'M FINE.

10 Q. GOOD. MS. WRENN, I REPRESENT KEVIN MERCER. I JUST  
11 WANTED TO REINTRODUCE KEVIN TO YOU. I JUST HAVE A FEW  
12 QUESTIONS. THIS PROCESS IS VERY DIFFERENT FROM MANY THAT  
13 PEOPLE ENCOUNTER WHEN THEY DO CRIMINAL TRIALS OR CIVIL  
14 TRIALS, AND SO WE HAVE TO ASK YOU A LOT OF QUESTIONS ABOUT  
15 THE FIRST PHASE AND THE SECOND PHASE. BUT I JUST WANTED TO  
16 MAKE -- MAKE CERTAIN YOU UNDERSTAND THAT SIMPLY BECAUSE WE'RE  
17 ASKING QUESTIONS ABOUT THE SECOND PHASE, THAT DOESN'T MEAN  
18 WE'RE GOING TO GET THERE. DO YOU UNDER -- DO YOU UNDERSTAND  
19 THAT?

20 A. YES.

21 Q. OKAY. AND IN THE FIRST PHASE THE STATE WOULD BE  
22 REQUIRED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. MERCER  
23 WAS GUILTY OF CERTAIN OFFENSES, PARTICULARLY MURDER IN ORDER  
24 TO GET INTO THAT SECOND PHASE. NOW, I NOTICE THAT IN YOUR  
25 JUROR INFORMATION SHEET THAT YOU WORK FOR THE DEPARTMENT OF

1 MENTAL HEALTH?

2 A. YES, MA'AM.

3 Q. AND YOU'VE HAD SOME EXPERIENCE IN CORRECTIONS?

4 A. YES, MA'AM.

5 Q. WHAT EXACTLY DID YOU DO WITH CORRECTIONS?

6 A. I WAS A NURSE.

7 Q. YOU WERE A NURSE?

8 A. STILL AM A NURSE BUT NOT WITH THE CORRECTIONS.

9 Q. OH, OKAY. DID YOU DO SOME MENTAL HEALTH---

10 A. YES.

11 Q. ---NURSING? OKAY. NOW, THE FACT THAT YOU'VE WORKED

12 AROUND PRISONERS AND IN A CORRECTIONAL SETTING, WOULD THAT --

13 DO YOU THINK THAT WOULD AFFECT YOU INsofar AS BEING FAIR AND

14 IMPARTIAL ON THIS JURY?

15 A. NO.

16 Q. OKAY. SO YOU'VE MET LOTS OF PEOPLE---

17 A. IT MAY BE THE OPPOSITE. I CAN KIND OF SEE BOTH ENDS  
18 OF IT.

19 Q. GREAT. COULDN'T ASK FOR MORE. OKAY. AND I BELIEVE

20 THE SOLICITOR HAD ASKED YOU SOME PRETTY DETAILED QUESTIONS

21 ABOUT WHETHER OR NOT YOU COULD GIVE CAPITAL PUNISHMENT AND IF

22 YOU'D BE WILLING TO SIGN YOUR NAME. I THINK YOUR RESPONSE

23 WAS YOU'D HAVE TO BE VERY SURE. I JUST WANT TO FOLLOW UP ON

24 THAT VERY BRIEFLY. IN A CAPITAL CASE THE JURY HAS TO BE

25 CERTAIN BEYOND A REASONABLE DOUBT THAT A MURDER WAS COMMITTED

1 BEFORE THEY CAN EVEN CONSIDER THE POSSIBILITY OF PENALTY. SO  
2 WHEN YOU SAID VERY SURE, YOU WEREN'T REFERRING TO VERY SURE  
3 ABOUT GUILT.

4 A. NO.

5 Q. OKAY. VERY SURE THAT THIS PARTICULAR DEFENDANT  
6 WOULD BE DESERVING OF CAPITAL PUNISHMENT.

7 A. ABSOLUTELY.

8 Q. IS THAT WHAT YOU MEANT?

9 A. YES, MA'AM.

10 Q. OKAY. ALL RIGHT. AND IN THIS TRIAL THERE'S A  
11 POSSIBILITY THAT THE DEFENDANT WOULD PRESENT EVIDENCE IN THE  
12 PENALTY AS WELL AS THE GUILT PHASE. NOW, THERE MIGHT BE  
13 DIFFERENT TYPES OF EVIDENCE PRESENTED, SOME OF WHICH MAY BE  
14 FAMILIAR TO YOU, OTHERS MIGHT BE, YOU KNOW, RELEVANT TO JUST  
15 THE TYPE OF PERSON THAT KEVIN MERCER IS. CAN YOU THINK OF  
16 ANY REASON WHY YOU WOULDN'T BE ABLE TO KEEP AN OPEN MIND---

17 A. NO, MA'AM.

18 Q. ---ABOUT THAT TYPE OF EVIDENCE?

19 A. NO, MA'AM.

20 Q. OKAY. AND LASTLY, YOU KNOW, A JURY IS COMPRISED OF  
21 12 PEOPLE AND THE DECISION HAS TO BE UNANIMOUS. IF YOU WERE,  
22 SAY, IN THE GUILT PHASE AND IN YOUR VIEW THE STATE HAD NOT  
23 MET ITS BURDEN BEYOND A REASONABLE DOUBT AND THE OTHER 11  
24 FOLKS DISAGREED WITH YOU, DO YOU THINK YOU WOULD BE WILLING  
25 TO STAND YOUR GROUND UNTIL AND UNLESS YOU WERE CONVINCED BY



1 THEM THAT YOUR VIEW WAS ERRONEOUS?

2 A. OH, ABSOLUTELY, YES, MA'AM.

3 Q. OKAY. AND IN PENALTY COULD WE EXPECT THE SAME TYPE  
4 OF...

5 A. YES, MA'AM.

6 Q. OKAY.

7 A. LIKE I SAY, I'M A NURSE. I'M -- MY LEANING IS  
8 TOWARDS SAVING LIFE BUT...

9 Q. BUT YOU'D KEEP AN OPEN MIND.

10 A. YES, MA'AM.

11 Q. OKAY. THANK YOU.

12 A. THANK YOU.

13 THE COURT: MA'AM, WOULD YOU MIND STEPPING OUT IN  
14 THE HALL FOR JUST A SECOND? AND WE'LL HAVE YOU RIGHT BACK  
15 IN.

16 THE WITNESS: OKAY. THANK YOU.

17 (JUROR WRENN LEAVES THE COURTROOM.)

18 THE COURT: I THINK SHE'S QUALIFIED.

19 MR. MYERS: YES, SIR.

20 MR. LITTLEJOHN: YES, YOUR HONOR.

21 THE COURT: BRING HER BACK.

22 (JUROR WRENN IS BROUGHT INTO THE COURTROOM.)

23 THE COURT: MS. WRENN, YOU ARE QUALIFIED TO SERVE ON  
24 THE JURY IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY.  
25 THAT JUST MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE'LL

1 START BACK UP ON MONDAY MORNING WHEN WE'RE ACTUALLY GOING TO  
2 SELECT THE JURY. SO YOU'RE DONE FOR THIS WEEK, BUT WE WOULD  
3 NEED FOR YOU TO COME IN ON MONDAY MORNING. IF YOU WILL CALL  
4 THE TELEPHONE NUMBER THAT IS ON THAT PINK SLIP THAT YOU'VE  
5 BEEN GIVEN, SUNDAY NIGHT AFTER 6:00 THERE WILL BE A MESSAGE  
6 ON THERE TELLING YOU THE DETAILS OF WHEN AND WHAT ELSE YOU  
7 NEED TO KNOW IN ORDER TO COME IN. FOR EXAMPLE, YOU MAY BE  
8 TOLD THAT YOU NEED TO BRING ENOUGH CLOTHING AND PERSONAL  
9 ITEMS TO STAY WITH US FOR A WEEK.

10 THE WITNESS: OKAY.

11 THE COURT: AND SO UNTIL THEN, YOU'RE FREE TO GO.  
12 PLEASE REMEMBER THAT YOU MAY NOT DISCUSS THIS CASE WITH  
13 ANYONE NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU, AND  
14 PLEASE BE VERY CAREFUL NOT TO READ OR WATCH ANY NEWS COVERAGE  
15 ABOUT THIS CASE. ALL RIGHT?

16 THE WITNESS: YES, SIR.

17 THE COURT: ALL RIGHT. WE'LL SEE YOU MONDAY.

18 THE WITNESS: ALL RIGHT. THANK YOU. THANK YOU.

19 (JUROR WRENN LEAVES THE COURTROOM.)

20 THE COURT: ALL RIGHT. LET'S TAKE A SHORT BREAK AND  
21 THEN WE'LL -- WE'VE GOT -- THE NEXT PANEL IS COMING IN AT  
22 10:45?

23 THE CLERK: YES, SIR.

24 THE COURT: SO WE'VE GOT 30 MINUTES AND WE ONLY HAVE  
25 TWO MORE JURORS LEFT IN THIS PANEL, SO WE'RE A LITTLE AHEAD,

1 I THINK, SO...

2 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

3 THE COURT: BE SEATED, PLEASE. ALL RIGHT. BRING IN  
4 BONNIE FRENCH, PLEASE.

5 (JUROR BONNIE FRENCH IS BROUGHT INTO THE COURTROOM.)

6 BONNIE FRENCH, HAVING BEEN PREVIOUSLY SWORN AS  
7 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
8 TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT

10 Q. HOW ARE YOU, MA'AM?

11 A. I'M BETTER TODAY.

12 Q. GOOD MORNING. YOU -- YOU WERE HAVING TROUBLE WITH  
13 YOUR -- WITH YOUR HEADACHE YESTERDAY.

14 A. RIGHT.

15 Q. DO YOU FEEL FINE TODAY?

16 A. I BROUGHT MY MEDICINE TODAY.

17 Q. OKAY. WELL, DO YOU FEEL NOW AS THOUGH YOU CAN GO  
18 THROUGH THIS PROCESS, IF NECESSARY, AND YOUR HEADACHE PROBLEM  
19 WILL NOT -- WILL NOT GET IN YOUR WAY?

20 A. YES, I DON'T HAVE IT TODAY.

21 Q. OKAY.

22 A. SO THE ANXIETY WAS YESTERDAY, SO I'M FINE.

23 Q. DID YOU GO BY AND VISIT WITH YOUR DOCTOR?

24 A. SHE IS NOT IN THIS WEEK.

25 Q. OKAY. WELL, I'M ASKING YOU THESE QUESTIONS BECAUSE

1 I JUST WANT TO MAKE SURE YOU FEEL COMFORTABLE BECAUSE  
2 YESTERDAY I COULD TELL FROM TALKING TO YOU THAT YOU -- THAT  
3 YOU WERE VERY UNCERTAIN ABOUT HOW -- WHETHER OR NOT YOU COULD  
4 DO THIS. SO NOW YOU THINK YOU CAN.

5 A. YES.

6 Q. OKAY. AND DO YOU RECALL YESTERDAY THAT YOU WERE PUT  
7 UNDER OATH?

8 A. YES, SIR.

9 Q. AND YOU'RE STILL UNDER OATH NOW. DO YOU UNDERSTAND  
10 THAT?

11 A. YES.

12 Q. ALL RIGHT. I HAVE SOME QUESTIONS THAT I'M GOING TO  
13 ASK YOU. JUST STAY RELAXED AND CALM. THERE ARE NO RIGHT OR  
14 WRONG ANSWERS TO THESE QUESTIONS. WE'RE JUST GOING TO TRY  
15 NOT TO PROBE TOO DEEP INTO YOUR PERSONAL LIFE, BUT WE DO HAVE  
16 TO ASK YOU THESE QUESTIONS. WE WANT YOU TO LISTEN VERY  
17 CAREFULLY TO THE QUESTIONS. BE OPEN AND HONEST WITH US AND  
18 TELL US HOW YOU FEEL AND WHAT YOU THINK.

19 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
20 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
21 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
22 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT  
23 THAT IS BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT  
24 YOU WOULD HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

25 A. YES.

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

4 A. YES.

5 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
6 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
7 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
8 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
9 STATE HAS MET ITS BURDEN OF PROOF?

10 A. YES.

11 Q. NOW, IF YOU ARE ON THE JURY IN THIS CASE AND IF THE  
12 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
13 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND  
14 IN THAT PHASE OF THE TRIAL THE JURY WOULD ULTIMATELY DECIDE  
15 WHAT PENALTY TO IMPOSE. SO I'M GOING TO TALK TO YOU NOW  
16 ABOUT SOME OF THE THINGS THAT WILL COME UP IF WE GET INTO  
17 THAT PENALTY PHASE.

18 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR  
19 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
20 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
21 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
22 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
23 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS, INCIDENTS, OR  
24 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
25 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR

1 TO REDUCE THE DEGREE OF MORAL CULPABILITY RESULTING FROM THE  
2 CRIME OR THE DEGREE OF MORAL RESPONSIBILITY FOR THE CRIME.  
3 NOW, DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING AND  
4 MITIGATING CIRCUMSTANCES?

5 A. (PAUSE.)

6 Q. IT'S SIMPLY THAT THERE ARE SOME CIRCUMSTANCES THAT  
7 MAKE THE CRIME OF MURDER MORE SEVERE, AND THERE ARE SOME  
8 CIRCUMSTANCES THAT MAKE THE CRIME OF MURDER LESS SEVERE.

9 A. YES.

10 Q. DO YOU UNDERSTAND THAT?

11 A. UH-HUH.

12 Q. ALL RIGHT. YOU'RE NODDING YOUR HEAD YES.

13 A. YES.

14 Q. WHEN YOU CAME IN THIS MORNING, WERE YOU GIVEN A COPY  
15 OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF JURORS?

16 A. YES.

17 Q. DID YOU READ OVER THAT SHEET?

18 A. YES, I DID.

19 Q. DO YOU UNDERSTAND WHAT THOSE THREE TYPES OF JURORS  
20 ARE?

21 A. YES.

22 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK  
23 YOU ARE?

24 A. THE SECOND ONE.

25 Q. THE SECOND ONE?

1 A. UH-HUH.

2 Q. NOW, WOULD THAT MEAN THAT YOU WOULD -- THAT YOU  
3 WOULD NEVER BE ABLE TO IMPOSE THE DEATH PENALTY?

4 A. I DON'T THINK SO, NO. I COULD NOT.

5 Q. REGARDLESS OF HOW -- OF THE AGGRAVATING  
6 CIRCUMSTANCES, YOU DON'T THINK YOU COULD EVER IMPOSE THE  
7 DEATH PENALTY.

8 A. NO.

9 THE COURT: OKAY. ALL RIGHT. DOES EITHER SIDE WISH  
10 TO ASK ANY FOLLOW-UP QUESTIONS AT THIS TIME?

11 MR. LITTLEJOHN: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. MA'AM, THEN YOUR SERVICES  
13 WILL NOT BE NEEDED IN THIS CASE, AND SO YOU'RE DONE AND  
14 YOU'RE FREE TO GO, AND WE THANK YOU FOR COMING. THANK YOU  
15 FOR TALKING TO US.

16 (JUROR FRENCH LEAVES THE COURTROOM.)

17 THE COURT: BRING HIM IN.

18 (JUROR ADAM MCCULLOUGH IS BROUGHT INTO THE  
19 COURTROOM.)

20 ADAM MCCULLOUGH, HAVING BEEN PREVIOUSLY SWORN  
21 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
22 TESTIFIED AS FOLLOWS:

23 EXAMINATION BY THE COURT

24 Q. GOOD MORNING, MR. MCCULLOUGH.

25 A. GOOD MORNING, SIR.

1 Q. HOW ARE YOU?

2 A. FINE, SIR.

3 Q. YOU RECALL THAT YESTERDAY YOU WERE PUT UNDER OATH.

4 A. YES, SIR.

5 Q. AND YOU'RE STILL UNDER OATH THIS MORNING. DO YOU  
6 UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. OKAY. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND  
9 THEN THE LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS THAT THEY  
10 WANT TO ASK YOU. WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR  
11 PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. WE  
12 JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO BE OPEN AND  
13 HONEST WITH US. TELL US HOW YOU FEEL AND WHAT YOU THINK.  
14 THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS.

15 IF YOU WERE A JUROR IN THIS CASE, COULD YOU ACCEPT  
16 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
17 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT  
18 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT  
19 THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU  
20 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

21 A. YES, SIR, I BELIEVE I COULD.

22 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
23 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
24 REASONABLE DOUBT?

25 A. YES, SIR, I DO.



1 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
2 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
3 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
4 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
5 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

6 A. YES, SIR.

7 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
8 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
9 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THIS TRIAL, AND  
10 IN THE PENALTY PHASE THE JURY WOULD DECIDE WHAT PENALTY TO  
11 IMPOSE. THERE ARE SEVERAL THINGS THAT WOULD COME UP DURING  
12 THAT PENALTY PHASE, AND I'M GOING TO TALK TO YOU ABOUT THOSE  
13 NOW.

14 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR  
15 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
16 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
17 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
18 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
19 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS, INCIDENTS, OR  
20 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
21 SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE TO EXTENUATE  
22 OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
23 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT  
24 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

25 A. YES, SIR, I DO.

1 Q. WHEN YOU WERE BROUGHT IN THIS MORNING, YOU SHOULD  
2 HAVE BEEN GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE  
3 DIFFERENT TYPES OF JURORS.

4 A. YES, SIR.

5 Q. DID YOU GET A CHANCE TO READ OVER THAT SHEET?

6 A. YES, SIR, I DID.

7 Q. DO YOU UNDERSTAND THOSE THREE CATEGORIES?

8 A. YES, SIR.

9 Q. WHICH OF THOSE THREE CATEGORIES DO YOU THINK YOU  
10 FALL INTO?

11 A. I BELIEVE I FALL INTO THE THIRD CATEGORY.

12 Q. SO YOU WOULD BE ABLE TO CONSIDER ALL THE FACTS AND  
13 EVIDENCE BEFORE MAKING A DECISION AS TO WHAT THE PENALTY  
14 SHOULD BE?

15 A. YES, SIR.

16 Q. IF YOU'RE ON A JURY OR THE JURY IN THIS CASE AND IF  
17 WE GET INTO THE PENALTY PHASE OR THE SENTENCING PHASE, YOU  
18 WOULD HAVE TWO OPTIONS. THE JURY WOULD HAVE TWO OPTIONS AS  
19 TO WHAT THE VERDICT COULD BE. ONE OPTION WOULD BE FOR A LIFE  
20 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER  
21 OPTION IS FOR THE DEATH PENALTY. COULD YOU, DEPENDING ON THE  
22 FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND  
23 CONSIDERING THE LAW AS I WOULD GIVE IT TO YOU, COULD YOU VOTE  
24 TO RETURN A VERDICT FOR A LIFE SENTENCE?

25 A. I COULD.

1 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

2 A. I COULD.

3 Q. NOW, THE JURY MIGHT BE SEQUESTERED IN THIS CASE. I  
4 HAVEN'T MADE UP MY MIND YET AS TO WHETHER I'M GOING TO  
5 SEQUESTER THE JURY. IF I DO, THEN YOU WOULD BE PUT UP IN A  
6 HOTEL FOR FIVE OR SIX DAYS, AND YOU WOULD NOT BE ALLOWED TO  
7 GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

8 A. NO.

9 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST  
10 THAT YOU WERE GIVEN WHEN YOU CAME IN THIS MORNING?

11 A. I DID.

12 Q. DID YOU READ EVERY NAME ON THAT LIST?

13 A. YES, SIR.

14 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
15 APPEARS ON THAT LIST?

16 A. NO, SIR.

17 THE COURT: ALL RIGHT. SIR, THE LAWYERS ARE GOING  
18 TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I MAY HAVE  
19 SOME OTHER QUESTIONS THAT I'LL ASK YOU -- THAT I'LL ASK YOU  
20 AFTERWARDS.

21 DIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q. MR. MCCULLOUGH, HOW ARE YOU THIS MORNING?

24 A. FINE. YOURSELF?

25 Q. DOING GOOD. DOING GOOD. IS THIS YOUR FIRST TIME

1 SERVING ON A JURY?

2 A. YES, SIR.

3 Q. OKAY. I THOUGHT I HAD SEEN THAT ON YOUR  
4 QUESTIONNAIRE FORM. I GUESS YOU UNDERSTOOD WHAT THE JUDGE  
5 WAS SAYING THAT THERE'S POTENTIALLY TWO PARTS TO THIS CASE  
6 AND THAT THE FIRST HALF IS PRETTY MUCH LIKE YOU WOULD  
7 PROBABLY IMAGINE A CASE WOULD BE. THE JURY SITS HERE IN THIS  
8 BOX. THE STATE PRESENTS EVIDENCE, AND THEN THE JURY GOES  
9 BACK AND DECIDES WHETHER THE DEFENDANT IS GUILTY OR NOT  
10 GUILTY.

11 A. YES, SIR.

12 Q. YOU UNDERSTAND THAT PART.

13 A. YES, SIR, I DO.

14 Q. WHAT'S DIFFERENT ABOUT THIS CASE IS, SEE, TYPICALLY  
15 IN A NORMAL CASE IF SOMEBODY IS CONVICTED, THEY STAND IN  
16 FRONT OF THE JUDGE AND HE SENTENCES THEM. IN THIS CASE THE  
17 JURY WILL HAVE TO DECIDE THE SENTENCE. SO IF THE DEFENDANT  
18 IS FOUND GUILTY OF MURDER, WE GO INTO THAT SECOND PHASE SO  
19 THE JURY CAN HEAR ALL THAT OTHER INFORMATION THAT A JUDGE  
20 WOULD TYPICALLY HEAR. THAT'S WHERE THE JUDGE WAS TALKING  
21 ABOUT THE MITIGATING AND AGGRAVATING CIRCUMSTANCES.

22 A. YES, SIR.

23 Q. THINGS THAT WOULD MAKE THE CRIME MORE WORSE OR MORE  
24 SEVERE, THINGS ABOUT THE DEFENDANT THAT AREN'T SO GOOD, AND  
25 THEN YOU MIGHT HEAR THINGS ABOUT THE DEFENDANT THAT ARE GOOD

1 OR THINGS THAT MIGHT REDUCE HIS CULPABILITY OR LESSEN THE  
2 SEVERITY OF THE CRIME. AND AS I UNDERSTAND YOUR ANSWERS TO  
3 THE JUDGE, YOU'D WANT TO HEAR ALL OF THAT.

4 A. YES, SIR, I DO.

5 Q. AND YOU'D NEED THAT BEFORE YOU COULD DECIDE LIFE OR  
6 DEATH.

7 A. TRUE.

8 Q. OKAY. I ALSO WANT TO POINT OUT THAT IF YOU GET TO  
9 THAT SECOND PHASE AND YOU'RE SITTING ON A JURY, IF THE JURY  
10 DECIDES LIFE, ONLY THAT FOREMAN SIGNS THAT VERDICT FORM, BUT  
11 IF YOU DECIDE DEATH, ALL 12 PEOPLE MUST SIGN THAT FORM. IF  
12 YOU THOUGHT THAT DEATH WAS THE APPROPRIATE SENTENCE, COULD  
13 YOU SIGN THAT VERDICT FORM?

14 A. YES, SIR, I COULD.

15 Q. DO YOU KNOW OF ANYTHING THAT WOULD PREVENT YOU FROM  
16 BEING A FAIR AND IMPARTIAL JUROR?

17 A. NO, SIR, I DON'T.

18 MR. HUBBARD: THANK YOU. THAT'S ALL WE CAN ASK OF  
19 YOU, MR. MCCULLOUGH.

20 CROSS-EXAMINATION

21 BY MR. LITTLEJOHN:

22 Q. GOOD MORNING, MR. MCCULLOUGH.

23 A. GOOD MORNING.

24 Q. MR. MCCULLOUGH, I'M CAM LITTLEJOHN. I INTRODUCED  
25 MYSELF EARLIER. I, ALONG WITH LISA KIMBROUGH, REPRESENT

1 KEVIN MERCER WHO IS THE DEFENDANT IN THIS CASE. LET ME ASK  
2 YOU A COUPLE OF QUESTIONS, IF I MAY, ABOUT YOUR ANSWERS ON  
3 YOUR QUESTIONNAIRE. I NOTICED THAT YOU WERE IN THE AIR  
4 FORCE?

5 A. YES, SIR, I WAS.

6 Q. WHAT DID YOU DO IN THE AIR FORCE?

7 A. F-16 AVIATION ELECTRONICS.

8 Q. WAS THAT DOWN IN SUMTER?

9 A. NO, SIR. I WAS STATIONED AT AVIANO, ITALY, FOLLOWED  
10 ON BY MOODY AIR FORCE BASE IN VALDOSTA, GEORGIA.

11 Q. OKAY. AND THAT WAS BETWEEN '95 AND '97?

12 A. YES, SIR.

13 Q. OKAY. MR. MCCULLOUGH, HIS HONOR HAS TOLD YOU THAT  
14 THE DEFENDANT IN THIS CASE IS CHARGED WITH MURDER AND SOME  
15 OTHER CRIMES, AND THIS WOULD BE A -- COULD BE A TWO-PART  
16 CASE. THE FIRST PART WOULD DEAL WITH WHETHER THE DEFENDANT  
17 IS GUILTY OR NOT GUILTY. AND DO YOU UNDERSTAND THAT THE  
18 STATE WOULD HAVE THE BURDEN OF PROVING HIM GUILTY BEYOND A  
19 REASONABLE DOUBT?

20 A. YES, SIR, I DO.

21 Q. WOULD YOU HAVE ANY PROBLEM FOLLOWING AND MAKING THE  
22 STATE MEET THAT BURDEN OF PROOF IF HIS HONOR TOLD YOU THAT  
23 WAS THE BURDEN THAT YOU HAD TO -- YOU HAD TO ESTABLISH?

24 A. NO, SIR. I HAVE NO PROBLEM WITH THAT.

25 Q. OKAY. AND YOU UNDERSTAND THAT ONLY IF HE'S FOUND

1 GUILTY WOULD WE GO INTO THE SECOND PHASE OF THIS TRIAL.

2 A. YES, SIR.

3 Q. ALL RIGHT. NOW, THE JUDGE GAVE YOU A QUESTIONNAIRE  
4 - OR NOT A QUESTIONNAIRE - EXCUSE ME, A FORM, THAT HAD THREE  
5 DIFFERENT TYPES OF JURORS.

6 A. YES, SIR.

7 Q. AND I BELIEVE YOU INDICATED YOU THOUGHT YOU WERE THE  
8 THIRD TYPE OF JUROR.

9 A. YES, SIR.

10 Q. DID YOU HAVE ANY PROBLEM OR ANY HESITANCY IN  
11 DETERMINING THAT YOU WERE A NUMBER THREE TYPE OF JUROR?

12 A. NO, SIR.

13 Q. DID YOU HAVE TO DECIDE BETWEEN EITHER OF THE OTHER  
14 TYPES OF JURORS?

15 A. NO, SIR.

16 Q. OKAY. JUDGE FEW INDICATED YESTERDAY THAT THE  
17 ALLEGED VICTIM IN THIS CASE WAS ACTIVE MILITARY AND, IN FACT,  
18 HE WAS IN THE U.S. -- U.S. ARMY. WOULD THE FACT THAT HE WAS  
19 A SOLDIER -- WOULD THAT HAVE ANY EFFECT ON YOUR ABILITY TO BE  
20 FAIR AND IMPARTIAL IN THIS CASE?

21 A. NO, SIR.

22 Q. OKAY. NOW, HIS HONOR ALSO TOLD YOU THAT IF WE GET  
23 TO THE SECOND PHASE IN THIS CASE THERE WOULD BE EVIDENCE  
24 PRESENTED IN WHAT WE CALL AGGRAVATION AND THERE WOULD BE  
25 EVIDENCE IN WHAT WE CALL MITIGATION. THE EVIDENCE IN

1 MITIGATION THAT WOULD BE PRESENTED WOULD BE THINGS ABOUT  
2 KEVIN MERCER'S BACKGROUND, MAYBE GOOD THINGS ABOUT HIM, MAYBE  
3 BAD THINGS THAT HAD HAPPENED TO HIM. WOULD YOU BE WILLING TO  
4 CONSIDER ALL OF THAT EVIDENCE BEFORE DETERMINING WHAT THE  
5 SENTENCE SHOULD BE, IF WE GET TO THAT?

6 A. YES, SIR.

7 MR. LITTLEJOHN: OKAY. OKAY. THANK YOU, MR.  
8 MCCULLOUGH. I BELIEVE THOSE ARE ALL THE QUESTIONS I HAVE.

9 THE COURT: ALL RIGHT. I'M READY TO RULE. ANYBODY  
10 HAVE ANYTHING TO SAY?

11 MR. MYERS: NO, SIR.

12 THE COURT: ALL RIGHT. MR. MCCULLOUGH, YOU ARE  
13 QUALIFIED TO SERVE AS A JUROR IN THIS CASE. THAT DOESN'T  
14 MEAN YOU'RE ON THE JURY, BUT THAT MEANS YOU'RE ELIGIBLE TO BE  
15 ON THE JURY. SO YOU WON'T NEED TO DO ANYTHING UNTIL MONDAY  
16 MORNING. PROBABLY YOU'LL BE ASKED TO REPORT AT 9:00 ON  
17 MONDAY MORNING. IF YOU WOULD CALL THE TELEPHONE NUMBER  
18 THAT'S ON THE PINK SLIP THAT YOU'VE BEEN GIVEN, SUNDAY NIGHT  
19 AFTER 6:00 THERE WILL BE INSTRUCTIONS ON THERE TELLING YOU  
20 WHEN TO REPORT AND WHETHER OR NOT YOU NEED TO BRING ENOUGH  
21 PERSONAL ITEMS AND CLOTHING TO STAY FOR SEVERAL DAYS.

22 SO YOU'RE FREE TO GO UNTIL THEN. PLEASE REMEMBER  
23 THAT YOU MAY NOT DISCUSS THIS CASE WITH ANYONE NOR ALLOW  
24 ANYONE TO DISCUSS THIS CASE WITH YOU, AND PLEASE BE CAREFUL  
25 NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE



1 ABOUT THIS CASE.

2 THE WITNESS: YES, SIR.

3 THE COURT: WE'LL SEE YOU MONDAY.

4 THE WITNESS: THANK YOU, SIR.

5 THE COURT: THANK YOU.

6 (JUROR MCCULLOUGH LEAVES THE COURTROOM.)

7 BAILIFF: JUDGE, WE HAVE THREE FROM THE NEXT PANEL  
8 IN THE JURY ROOM. DO YOU WANT TO SEE IF THEY'RE READY TO  
9 COME IN?

10 THE COURT: SEE IF -- SEE IF ANY OF THEM ARE READY.  
11 ALL RIGHT. LET ME -- LET ME -- LET ME PUT THIS ON THE  
12 RECORD. IT'S NOW 10:43. THE NEXT PANEL WAS TOLD TO BE HERE  
13 AT 10:45. THERE ARE THREE MEMBERS OF THAT PANEL BACK THERE,  
14 AND THEY HAVE ALREADY BEEN GIVEN THE SHEETS. RIGHT?

15 BAILIFF: YES.

16 THE COURT: SO I WAS GOING TO SEE IF THE BAILIFFS  
17 WOULD ASK IF ANY OF THEM ARE READY, AND IF THEY ARE, EVEN  
18 THOUGH THEY MAY BE OUT OF THE ORDER, WE CAN GO AHEAD AND DO  
19 WHOEVER IS READY. DOES THAT SUIT Y'ALL?

20 MR. MYERS: NO OBJECTION.

21 MR. LITTLEJOHN: NO PROBLEM AT ALL, YOUR HONOR.

22 THE COURT: HOPE?

23 THE CLERK: YES, SIR.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD BETWEEN THE  
25 COURT AND THE CLERK.)

1 THE COURT: READY WHENEVER HE IS.

2 (JUROR MARK BROCK WAS BROUGHT INTO THE COURTROOM.)

3 MARK BROCK, JR., HAVING BEEN PREVIOUSLY SWORN  
4 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
5 TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT

7 Q. GOOD MORNING, SIR.

8 A. GOOD MORNING, SIR.

9 Q. WE'RE A LITTLE BIT AHEAD OF SCHEDULE, AND I JUST  
10 WANT TO MAKE SURE BEFORE WE START THAT YOU HAD PLENTY OF TIME  
11 TO READ OVER THE TWO DOCUMENTS---

12 A. I DID.

13 Q. ---THAT YOU WERE GIVEN.

14 A. YES, SIR.

15 Q. ALL RIGHT. YOU RECALL THAT YOU WERE PUT UNDER OATH  
16 YESTERDAY.

17 A. YES, SIR.

18 Q. AND YOU'RE STILL UNDER OATH THIS MORNING. DO YOU  
19 UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN  
22 THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP  
23 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE  
24 QUESTIONS, AND WE'RE NOT GOING TO -- WE'RE NOT TRYING TO PRY  
25 TOO DEEP INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU

1 THESE QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY,  
2 TO BE OPEN AND HONEST BE US. TELL US HOW YOU FEEL AND WHAT  
3 YOU THINK.

4 IF YOU ARE ON THE JURY IN THIS CASE, COULD YOU  
5 ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO  
6 YOU AND SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR  
7 LEARNED ABOUT THIS CASE BEFORE THE TRIAL BEGAN AND THEN  
8 RENDER A VERDICT THAT'S BASED SOLELY ON THE TESTIMONY AND  
9 EVIDENCE THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM?  
10 COULD YOU DO THAT?

11 A. YES, SIR.

12 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
13 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
14 REASONABLE DOUBT?

15 A. YES, SIR.

16 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
17 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
18 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
19 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
20 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

21 A. YES, SIR.

22 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
23 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
24 INTO THE SENTENCING PHASE OR THE PENALTY PHASE OR THE SECOND  
25 PHASE OF THE TRIAL, AND IN THAT PHASE THE JURY WOULD DECIDE

1 WHAT IS THE PENALTY THAT SHOULD BE IMPOSED. I'M GOING TO ASK  
2 YOU SOME QUESTIONS NOW ABOUT SOME OF THE THINGS THAT WOULD  
3 COME UP IF WE GET INTO THAT PENALTY PHASE OF THE TRIAL.

4 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR  
5 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
6 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
7 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
8 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
9 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR  
10 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
11 SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE TO EXTENUATE  
12 OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR  
13 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND WHAT THE --  
14 THE CONCEPTS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

15 A. YES, SIR.

16 Q. NOW, WHEN YOU CAME IN WERE YOU GIVEN THIS SHEET THAT  
17 EXPLAINS THE THREE TYPES OF JURORS?

18 A. YES, SIR.

19 Q. DID YOU GET A CHANCE TO READ OVER THAT SHEET?

20 A. YES, SIR.

21 Q. NOW, DO YOU UNDERSTAND THOSE THREE CATEGORIES?

22 A. YES.

23 Q. WHICH OF THOSE THREE CATEGORIES DO YOU THINK YOU  
24 FALL INTO?

25 A. THE THIRD TYPE.

1 Q. IF YOU'RE A JUROR IN THIS CASE AND IF WE MOVE INTO  
2 THE SENTENCING PHASE BECAUSE THE DEFENDANT WAS FOUND GUILTY  
3 OF MURDER, THEN THE JURY WOULD HAVE TWO OPTIONS AS TO WHAT  
4 THE SENTENCE SHOULD BE. ONE OPTION WOULD BE A SENTENCE OF  
5 LIFE WITHOUT PAROLE -- WITHOUT THE POSSIBILITY OF PAROLE, AND  
6 THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY. COULD YOU,  
7 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
8 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,  
9 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

10 A. YES.

11 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
12 DEATH PENALTY?

13 A. YES, SIR.

14 Q. NOW, THE JURY IS POSSIBLY GOING TO BE SEQUESTERED IN  
15 THIS CASE. I HAVEN'T DECIDED YET WHETHER OR NOT I'M GOING TO  
16 DO THAT. IF I DO, THEN YOU WOULD BE PUT UP IN A HOTEL FOR  
17 FIVE OR SIX DAYS WHILE WE TRY THIS CASE. YOU WOULD NOT BE  
18 ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON  
19 YOU?

20 A. NO, SIR.

21 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST  
22 THAT YOU WERE GIVEN THIS MORNING?

23 A. YES, SIR.

24 Q. DID YOU READ EVERY NAME ON THAT LIST?

25 A. YES, SIR.

1 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME  
2 APPEARS ON THAT LIST?

3 A. I DIDN'T RECOGNIZE ANY NAME.

4 THE COURT: ALL RIGHT, SIR. THE LAWYERS ARE GOING  
5 TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL SPEAK  
6 TO YOU AFTER THAT.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q. MR. BROCK, HOW ARE YOU MORNING?

10 A. JUST FINE. THANK YOU.

11 Q. I WAS LOOKING AT THE QUESTIONNAIRE THAT YOU TURNED  
12 IN TO THE CLERK OF COURT AND SEE THAT YOU HAVE ACTUALLY  
13 SERVED ON A CRIMINAL CASE BEFORE.

14 A. ONE TIME.

15 Q. SO THIS IS NOT ALL BRAND-NEW TO YOU THEN, IS IT?

16 A. NO, SIR.

17 Q. SO WHEN THE JUDGE WAS EXPLAINING THE FIRST PART OF A  
18 TRIAL IS JUST A DETERMINATION OF GUILT OR INNOCENCE, YOU CAN  
19 DO THAT.

20 A. YES.

21 Q. IF YOU'RE ON THE JURY AND A VERDICT IS RETURNED  
22 GUILTY OF MURDER, THEN WE GO INTO THE SECOND PART, AND THAT  
23 WOULD BE SOMETHING DIFFERENT FROM WHAT YOU HAVE DONE BEFORE.

24 A. RIGHT.

25 Q. IN THAT CASE, AS THE JUDGE SAID, THERE WOULD BE

1 ADDITIONAL EVIDENCE. THERE WOULD BE AGGRAVATING EVIDENCE AND  
2 MITIGATING EVIDENCE, THINGS THAT MAKE A CRIME WORSE AND  
3 THINGS THAT MAKE IT LESS SEVERE. WOULD YOU BE ABLE TO LOOK  
4 AT ALL THAT EVIDENCE?

5 A. YES, SIR.

6 Q. BASED ON THAT, WOULD YOU BE ABLE TO REACH A DECISION  
7 OF WHETHER -- WHAT THE APPROPRIATE PUNISHMENT WAS, WHETHER  
8 LIFE WAS APPROPRIATE OR WHETHER THE DEATH SENTENCE WAS  
9 APPROPRIATE?

10 A. YES, SIR.

11 Q. ANOTHER THING THAT WOULD BE A LITTLE DIFFERENT FROM  
12 YOUR SERVICE BEFORE WOULD BE THAT IF WE DO GET TO THAT SECOND  
13 PHASE, IF IT'S A LIFE SENTENCE THE FOREMAN WOULD SIGN THE  
14 VERDICT FORM, JUST AS IN WHAT YOU HAD DONE BEFORE. HOWEVER,  
15 IF IT'S A DEATH SENTENCE, MEANING ALL 12 MEMBERS OF THE JURY  
16 AGREE THAT DEATH IS THE APPROPRIATE SENTENCE, THEN EACH  
17 MEMBER OF THE JURY WOULD HAVE TO SIGN THAT FORM. IF YOU  
18 THOUGHT THAT DEATH WAS THE APPROPRIATE PUNISHMENT AFTER  
19 HEARING ALL THE EVIDENCE, WOULD YOU BE ABLE TO SIGN THAT  
20 FORM?

21 A. YES, SIR.

22 MR. GRAHAM: THANK YOU.

23 CROSS-EXAMINATION

24 BY MR. LITTLEJOHN:

25 Q. GOOD MORNING.

1 A. GOOD MORNING.

2 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA  
3 KIMBROUGH, REPRESENT KEVIN MERCER WHO'S THE DEFENDANT IN THIS  
4 CASE.

5 A. YES, SIR.

6 Q. I JUST WANTED TO REINTRODUCE... IS IT REVEREND  
7 BROCK?

8 A. YES.

9 Q. OKAY. REVEREND BROCK, I NOTICE YOU'RE THE SENIOR  
10 PASTOR AT GATEWAY BAPTIST CHURCH?

11 A. YES, SIR.

12 Q. WHERE IS GATEWAY BAPTIST CHURCH?

13 A. IN IRMO.

14 Q. WHERE IN IRMO?

15 A. IT'S ON EXIT 101 OFF INTERSTATE 26, RIGHT ON THE  
16 INTERSTATE.

17 Q. THAT'S LAKE MURRAY BOULEVARD?

18 A. THE ONE PAST THAT.

19 Q. OKAY. OKAY.

20 A. THE ONE PAST LAKE MURRAY.

21 Q. I KNOW WHERE YOU'RE TALKING ABOUT NOW. THANK YOU.

22 A. YES.

23 Q. REVEREND BROCK, AS HAS BEEN EXPLAINED TO YOU, THIS  
24 IS A MURDER CASE.

25 A. RIGHT.



1 Q. AND THE FIRST PART OF THIS CASE DEALS WITH WHETHER  
2 THE DEFENDANT IS GUILTY OR NOT GUILTY OF MURDER. AND THE  
3 JUDGE WILL INSTRUCT YOU THAT IF YOU'RE ON THE JURY THE STATE  
4 WOULD HAVE THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT, AND  
5 ONLY UNLESS THAT BURDEN OF PROOF WAS MET COULD THE JURY FIND  
6 THE DEFENDANT GUILTY OF MURDER.

7 A. YES.

8 Q. WOULD YOU HAVE ANY PROBLEM ACCEPTING AND PUTTING  
9 THEM TO THAT BURDEN, ACCEPTING THAT STANDARD AND PUTTING THE  
10 STATE TO THAT BURDEN?

11 A. NO PROBLEM.

12 Q. OKAY. WOULD YOU HAVE ANY PROBLEM JUDGING THE  
13 CREDIBILITY OF WITNESSES, THE BELIEVABILITY OF WITNESSES,  
14 WHETHER THOSE WITNESSES ARE, SAY, LAYPERSONS OR EXPERTS OR  
15 POLICE OFFICERS?

16 A. NO, SIR.

17 Q. OKAY. THE JUDGE GAVE YOU A FORM THAT HAD THREE  
18 TYPES OF JURORS ON THERE, AND I BELIEVE YOU INDICATED YOU  
19 WERE THE THIRD TYPE OF JUROR.

20 A. YES, SIR.

21 Q. DID YOU HAVE ANY PROBLEM FIGURING OUT WHICH OF THE  
22 THREE TYPES YOU WERE?

23 A. NO. IT WAS VERY SIMPLE.

24 Q. OKAY. DIDN'T HAVE TO HESITATE OR CONSIDER ANY OF  
25 THE OTHER TWO?

1 A. NO, SIR.

2 Q. ALL RIGHT. REVEREND BROWN (SIC), AS HAS BEEN  
3 MENTIONED, THE ALLEGED VICTIM IN THIS CASE WAS AN ACTIVE  
4 MILITARY PERSON.

5 A. YES, SIR.

6 Q. HE WAS A SERGEANT IN THE U.S. ARMY. WOULD THAT FACT  
7 HAVE ANYTHING THAT WOULD -- WOULD THAT BY ITSELF AFFECT YOUR  
8 ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

9 A. NO, SIR.

10 Q. OKAY. REVEREND BROCK, JUST A COUPLE OF FINAL  
11 THINGS. IF WE GET TO THE SECOND STAGE OF THIS CASE, AS WAS  
12 MENTIONED, THERE WOULD BE EVIDENCE PRESENTED IN AGGRAVATION  
13 WHICH MAKES A MURDER CASE WORSE---

14 A. RIGHT.

15 Q. ---AND THAT WOULD BE THE ONLY WAY THAT THE STATE  
16 COULD SEEK THE DEATH PENALTY IF IT WAS -- IF THERE WERE  
17 AGGRAVATING CIRCUMSTANCES. THERE WILL ALSO BE EVIDENCE IN  
18 MITIGATION, AND THAT EVIDENCE WOULD PROBABLY INCLUDE THINGS  
19 ABOUT THE BACKGROUND OF KEVIN MERCER, GOOD THINGS ABOUT KEVIN  
20 MERCER, PERHAPS BAD THINGS THAT HAD HAPPENED TO KEVIN MERCER  
21 IN HIS LIFETIME. WOULD YOU HAVE ANY PROBLEM LISTENING TO ALL  
22 THAT EVIDENCE AND WEIGHING IT CAREFULLY BEFORE DECIDING ON  
23 WHAT THE APPROPRIATE PUNISHMENT IS?

24 A. NO PROBLEMS.

25 Q. OKAY. WOULD YOU LISTEN TO IT VERY CAREFULLY?

1 A. YES, SIR.

2 Q. OKAY.

3 A. ABSOLUTELY.

4 Q. THANK YOU, REVEREND.

5 A. THANK YOU.

6 THE COURT: ALL RIGHT. I'M READY TO RULE. MR.  
7 BROCK, YOU ARE QUALIFIED TO SERVE AS A JUROR IN THIS CASE.  
8 THAT DOES NOT MEAN THAT YOU'RE ON THE JURY. IT MEANS YOU'RE  
9 ELIGIBLE TO BE ON THE JURY. YOU'RE BASICALLY DONE. I'M  
10 SORRY I---

11 THE WITNESS: THAT'S OKAY.

12 THE COURT: SOME WATER WENT DOWN THE RIGHT WRONG WAY  
13 WHILE YOU WERE TESTIFYING, AND IT'S GOT MY VOICE ALL  
14 SCRATCHY. BUT YOU'RE DONE FOR THIS WEEK. WE WOULD NEED YOU  
15 TO RETURN MONDAY MORNING PROBABLY AT 9:00. IF YOU'LL CALL  
16 BACK ON SUNDAY NIGHT AFTER 6:00 TO THAT TELEPHONE NUMBER THAT  
17 YOU WERE GIVEN ON THE PINK SLIP, THERE WILL BE A RECORDED  
18 MESSAGE THERE THAT WILL TELL YOU WHAT TIME TO COME, AND IT  
19 WILL ALSO TELL YOU WHETHER OR NOT I'M GOING TO SEQUESTER THE  
20 JURY AND WHETHER OR NOT YOU NEED TO BRING ENOUGH OF YOUR  
21 CLOTHING AND PERSONAL ITEMS TO LAST FOR FIVE OR SIX DAYS.

22 PLEASE REMEMBER THAT YOU MAY NOT DISCUSS THIS CASE  
23 WITH ANYONE NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU,  
24 AND PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE  
25 EXPOSED TO ANY PRESS COVERAGE ABOUT THIS CASE, AND WE'LL SEE

1 YOU MONDAY.

2 THE WITNESS: THANK YOU, SIR.

3 (JUROR BROCK LEAVES THE COURTROOM.)

4 MR. MYERS: IS PETRELLA THE NEXT ONE, DEE?

5 BAILIFF: YES.

6 (JUROR VICTOR PETRELLA IS BROUGHT INTO THE  
7 COURTROOM.)

8 VICTOR PETRELLA, HAVING BEEN PREVIOUSLY SWORN  
9 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
10 TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT

12 Q. HOLD ON JUST ONE SECOND, SIR.

13 A. YES, SIR.

14 Q. GOOD MORNING.

15 A. GOOD MORNING.

16 Q. DO YOU RECALL THAT ON MONDAY -- ON YESTERDAY YOU  
17 WERE PUT UNDER OATH?

18 A. YES, SIR.

19 Q. AND YOU'RE STILL UNDER OATH. DO YOU UNDERSTAND  
20 THAT?

21 A. I DO.

22 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN  
23 THE LAWYERS ARE -- WELL, FIRST OF ALL, LET ME ASK YOU THIS:  
24 SINCE YESTERDAY, HAVE YOU TALKED TO ANYBODY ABOUT THIS CASE  
25 OR HAS ANYBODY TALKED TO YOU ABOUT THE CASE?

1 A. NO.

2 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN THE  
3 LAWYERS ARE PROBABLY GOING TO ASK SOME FOLLOW-UP QUESTIONS.  
4 WE'RE NOT TRYING TO PROBE TOO DEEP INTO YOUR PERSONAL LIFE,  
5 BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NO  
6 RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO LISTEN VERY  
7 CAREFULLY TO THE QUESTIONS AND THEN BE OPEN AND HONEST WITH  
8 US. TELL US HOW YOU FEEL AND WHAT YOU THINK.

9 IF YOU ARE SEATED ON THE JURY IN THIS CASE, COULD  
10 YOU ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT  
11 TO YOU AND SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR  
12 LEARNED ABOUT THE CASE BEFORE THE TRIAL BEGAN AND RENDER A  
13 VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE  
14 THAT YOU SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

15 A. YES, I COULD.

16 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
17 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
18 REASONABLE DOUBT?

19 A. YES, I DO.

20 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
21 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
22 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT  
23 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU  
24 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

25 A. YES, I COULD.

1 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
2 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
3 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL.  
4 NOW, I'M GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT  
5 WOULD COME UP THEN. FIRST OF ALL, IT WOULD BE THE JURY THAT  
6 WOULD DECIDE WHICH PENALTY TO IMPOSE, EITHER A LIFE SENTENCE  
7 OR THE DEATH PENALTY.

8 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR  
9 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
10 AGGRAVATE OR TO WORSEN THE CRIME OF MURDER. AGGRAVATING  
11 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
12 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
13 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR  
14 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
15 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR  
16 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY  
17 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING  
18 AND MITIGATING CIRCUMSTANCES?

19 A. YES, I DO.

20 Q. WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A COPY  
21 OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF JURORS.  
22 DID YOU READ AND UNDERSTAND THAT SHEET?

23 A. YES, I DID.

24 Q. WHICH OF THOSE THREE CATEGORIES OF JURORS DO YOU  
25 THINK APPLIES TO YOU?

1 A. THE THIRD.

2 Q. IF YOU'RE A JUROR IN THIS CASE AND IF WE MOVE INTO  
3 THE SENTENCING PHASE, AS I SAID BEFORE, THE JURY WOULD HAVE  
4 TWO OPTIONS AS TO WHAT THE SENTENCE SHOULD BE. ONE OPTION IS  
5 FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND  
6 ANOTHER OPTION IS FOR THE DEATH PENALTY. COULD YOU,  
7 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO  
8 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,  
9 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

10 A. YES, I COULD.

11 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
12 DEATH PENALTY?

13 A. YES, I COULD.

14 Q. NOW, IT'S POSSIBLE THAT THE JURY IN THIS CASE WILL  
15 BE SEQUESTERED AND I'LL HAVE TO PUT YOU UP IN A HOTEL ROOM  
16 FOR FIVE OR SIX DAYS. YOU WOULD NOT BE ALLOWED TO GO HOME.  
17 WE WOULD PROVIDE YOU WITH MEALS AND ALL OF THAT. IF I DID  
18 THAT, WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

19 A. NO, IT WOULDN'T.

20 Q. DO YOU -- WERE YOU GIVEN A COPY OF THE WITNESS LIST  
21 THIS MORNING?

22 A. YES, I WAS.

23 Q. DID YOU READ EVERY NAME ON THAT LIST?

24 A. YES, I DID.

25 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME

1 APPEARS ON THAT LIST?

2 A. NO, I AM NOT.

3 Q. ALL RIGHT. THE LAWYERS ARE GOING TO ASK YOU SOME  
4 FOLLOW-UP QUESTIONS NOW, AND THEN I WILL COME BACK AND SPEAK  
5 TO YOU AFTER THAT.

6 A. YES, SIR.

7 DIRECT EXAMINATION

8 BY MR. MYERS:

9 Q. MR. PETRELLA, HOW ARE YOU?

10 A. GOOD. HOW ARE YOU DOING?

11 Q. MR. PETRELLA, I SAW ON YOUR SHEET THAT YOU SERVED IN  
12 THE NAVY?

13 A. YES, SIR.

14 Q. AND IS THAT WHERE YOU GOT YOUR TRAINING WITH THE  
15 POWER PLANT IN THE NAVY?

16 A. WITH THE WHAT, SIR?

17 Q. YOUR JOB WITH THE POWER PLANTS.

18 A. YES, SIR.

19 Q. OKAY. AND THE VICTIM IN THIS CASE WAS IN THE ARMY.  
20 THE FACT THAT YOU SERVED IN THE NAVY AND THIS VICTIM WAS IN  
21 THE ARMY, THAT WOULDN'T INTERFERE WITH YOUR ABILITY TO SERVE  
22 ON THIS CASE, WOULD IT?

23 A. NO, SIR, IT WOULD NOT.

24 Q. GOOD. ALSO, I NOTICED ON YOUR SHEET THAT YOU HAD  
25 SOME RELATIVES IN LAW ENFORCEMENT. IT WAS SOMETHING ON



1 THERE.

2 A. MY WIFE'S UNCLE IS IN S.L.E.D.

3 Q. OKAY. AND IS THAT THE ONLY RELATIVE YOU HAVE IN LAW  
4 ENFORCEMENT?

5 A. I SERVED IN THE U.S. NAVY POLICE FOR TWO OR THREE  
6 YEARS.

7 Q. OKAY. AND THAT WOULDN'T INTERFERE WITH YOUR ABILITY  
8 TO BE A FAIR AND IMPARTIAL JUROR, WOULD IT?

9 A. NO, SIR.

10 Q. I KNOW THIS IS PROBABLY NEW TO YOU. HAVE YOU EVER  
11 SERVED ON A MURDER CASE BEFORE OR A CAPITAL CASE?

12 A. NO, I HAVE NOT.

13 Q. OKAY. LET'S ASSUME THE JURY HAD COME BACK IN THE  
14 JURY ROOM AND FOUND THE DEFENDANT GUILTY. WE'D GO INTO A  
15 SECOND PART OF THE CASE, AND THAT'S CALLED THE SENTENCING  
16 PHASE. THIS IS DIFFERENT BECAUSE USUALLY THE JUDGE HANDS  
17 DOWN THE SENTENCE.

18 A. RIGHT.

19 Q. BUT WHEN A DEATH PENALTY IS INVOLVED, THE JURY WILL  
20 HAND DOWN THE SENTENCE. YOU UNDERSTAND THAT.

21 A. YES, I DO.

22 Q. IN THAT SECOND PHASE THERE WOULD BE ADDITIONAL  
23 EVIDENCE, MORE EVIDENCE THAN WHAT YOU HEARD IN THE FIRST  
24 PART. IT COULD BE SOMETHING ABOUT THE CRIME. IT COULD BE  
25 SOMETHING ABOUT THE DEFENDANT, SOMETHING GOOD ABOUT HIM,

1 SOMETHING BAD ABOUT HIM, TO GIVE THE JURY A BETTER  
2 UNDERSTANDING. WOULD YOU BE WILLING TO LISTEN TO ALL THAT  
3 TESTIMONY BEFORE YOU DECIDED WHAT THE APPROPRIATE PUNISHMENT  
4 WAS?

5 A. YES, I WOULD.

6 Q. AND AS I UNDERSTAND IT, YOU'RE IN THAT THIRD  
7 CATEGORY WHICH SAYS THAT YOU COULD VOTE FOR LIFE IF YOU  
8 THOUGHT THAT WAS THE RIGHT SENTENCE?

9 A. THAT IS CORRECT.

10 Q. IS THAT CORRECT? OR YOU COULD VOTE FOR THE DEATH  
11 PENALTY IF YOU THOUGHT THAT WAS AN APPROPRIATE SENTENCE AND  
12 THE SENTENCE THE CRIME DESERVED.

13 A. THAT IS CORRECT.

14 Q. BUT YOU'D HAVE TO HEAR EVERYTHING FIRST.

15 A. YES, SIR.

16 Q. NOW, LET ME TELL YOU ONE MORE THING ABOUT THE LAW,  
17 AND THIS SEEMS LIKE A SILLY QUESTION. NORMALLY THE FOREMAN  
18 OF THE JURY WRITES OUT THE VERDICT AND WRITES OUT EVERYTHING  
19 FOR THE JURY. OUR LAW SAYS THAT IF A JURY, ALL 12, DECIDE  
20 THE DEATH PENALTY IS THE APPROPRIATE SENTENCE, THE SENTENCE  
21 THAT'S CALLED FOR, THEN EACH ONE OF THEM WOULD HAVE TO SIGN  
22 THEIR NAME, ALL 12. NOW, SOME FOLKS SAY, "WELL, I'LL TELL  
23 YOU WHAT I WANT TO DO, BUT I WON'T SIGN MY NAME." THE FACT  
24 THAT THE LAW REQUIRES THE SIGNATURE OR THE NAME FOR A DEATH  
25 PENALTY VERDICT, WOULD THAT IN ANY WAY INTERFERE WITH YOUR

1 ABILITY TO RETURN A DEATH PENALTY VERDICT?

2 A. NO, SIR.

3 Q. DO YOU KNOW OF ANY REASON WHY YOU COULDN'T SIT ON  
4 THIS CASE AND BASE YOUR SENTENCE ON WHAT YOU HEAR IN THIS  
5 COURTROOM?

6 A. NO.

7 Q. AND LIFE YOU COULD SO VOTE, AND IF THE DEATH PENALTY  
8 WERE WARRANTED YOU COULD SO VOTE FOR THAT?

9 A. YES, SIR.

10 MR. MYERS: THANK YOU, SIR. THAT'S ALL WE ASK.

11 CROSS-EXAMINATION

12 BY MR. LITTLEJOHN:

13 Q. GOOD MORNING, MR. PETRELLA.

14 A. GOOD MORNING.

15 Q. I'M CAM LITTLEJOHN AGAIN, AND I, ALONG WITH LISA  
16 KIMBROUGH, REPRESENT KEVIN MERCER WHO'S THE DEFENDANT IN THIS  
17 CASE. LET ME ASK YOU A FEW THINGS ABOUT YOUR RESPONSES IN  
18 YOUR QUESTIONNAIRE, IF I MAY. YOU INDICATED YOU WERE IN THE  
19 NAVY FROM '91 TO '98?

20 A. THAT IS CORRECT.

21 Q. CAN YOU TELL ME A LITTLE BIT ABOUT WHAT YOUR DUTIES  
22 WERE?

23 A. I SERVED ON BOARD THE U.S.S. TENNESSEE FOR FIVE  
24 YEARS AS A MECHANICAL OPERATOR OF THE NUCLEAR POWER PLANT.  
25 AFTER THAT TIME, I WAS STATIONED ON BOARD THE M.R.S. LADD

1 (PHONE T I C) WHERE I WAS IN THE REDCON MAINTENANCE AS A REDCON  
2 MAINTENANCE SUPERVISOR.

3 Q. YOU ALSO INDICATED YOU WERE IN THE MILITARY POLICE?

4 A. YES, SIR. I DID THAT AS A COLLATERAL DUTY.

5 Q. OKAY. TELL ME ABOUT THAT. WHAT WERE -- WHAT DID  
6 YOU DO AS A -- AS A MILITARY POLICE OFFICER?

7 A. YOU DID THE DUTIES OF A POLICE OFFICER WHICH IS YOU  
8 DO TRAFFIC STOPS, RESPOND TO CALLS AS NEED BE, GET TRAINING  
9 IN VEHICLES, WEAPONS, DEFENSE TACTICS, APPLICATION OF THE  
10 LAW.

11 Q. OKAY. THAT WAS ON -- YOU WERE -- YOU WERE A BASE --  
12 STATIONED AT A BASE---

13 A. YES, SIR.

14 Q. ---WHEN YOU WERE DOING THAT? OKAY. YOU INDICATED  
15 THAT YOUR WIFE'S UNCLE IS A S.L.E.D. AGENT?

16 A. THAT IS CORRECT.

17 Q. WHO IS THAT?

18 A. GARY MARTIN.

19 Q. GARY MARTIN?

20 A. YES, SIR.

21 Q. HE'S IN SUMTER, I BELIEVE, ISN'T HE?

22 A. HE IS.

23 Q. OKAY.

24 A. I HAVE NEVER ACTUALLY MET.

25 Q. OH, YOU'VE NEVER MET HIM?

1 A. NO, SIR.

2 Q. I THINK YOU ALSO INDICATED YOU HAD A RELATIVE THAT  
3 WAS WITH THE SOUTH CAROLINA HIGHWAY PATROL?

4 A. HE'S THE SAME PERSON. HE INITIALLY---

5 Q. THAT'S GARY?

6 A. ---STARTED AS...

7 Q. MR. PETRELLA, AS HAS BEEN INDICATED, THIS IS A  
8 MURDER CASE AND THERE COULD BE TWO PARTS TO THE MURDER CASE,  
9 BUT BEFORE IT'S EVEN DECIDED IF WE GO TO THE SECOND PART, THE  
10 DEFENDANT WOULD HAVE TO BE PROVEN BY THE STATE BEYOND A  
11 REASONABLE DOUBT TO BE GUILTY OF THE CRIME OF MURDER.

12 A. THAT IS CORRECT.

13 Q. WOULD YOU HAVE ANY PROBLEM MAKING SURE THAT THE  
14 STATE MET THEIR BURDEN OF PROOF BEFORE YOU FOUND THE  
15 DEFENDANT GUILTY?

16 A. I WOULD NOT HAVE A PROBLEM WITH THAT AT ALL.

17 Q. DO YOU HAVE ANY PROBLEM WITH THE CONCEPT OF  
18 PRESUMPTION OF INNOCENCE?

19 A. I DO NOT HAVE A PROBLEM WITH THE PRESUMPTION OF  
20 INNOCENCE, NO.

21 Q. OKAY. DO YOU THINK YOU COULD SIT AND, GIVEN HIS  
22 HONOR'S INSTRUCTIONS, DECIDE ON THE CREDIBILITY OF THE  
23 WITNESSES, WHETHER THEY BE POLICE OFFICERS OR LAY WITNESSES  
24 OR EXPERTS?

25 A. YES, I COULD.

1 Q. OKAY. JUDGE FEW ASKED YOU ABOUT THE FORM THAT YOU  
2 WERE GIVEN THAT HAD THE THREE TYPES OF JURORS, AND YOU  
3 INDICATED THAT YOU THOUGHT YOU WERE TYPE THREE.

4 A. THAT'S CORRECT.

5 Q. DID YOU HAVE ANY HESITANCY IN DETERMINING THAT  
6 THAT'S THE TYPE OF JUROR YOU ARE?

7 A. NO, SIR, I DID NOT.

8 Q. DID YOU HAVE TO CONSIDER EITHER ONE OR TWO?

9 A. NO.

10 Q. OKAY. IF WE GET TO THE SECOND PHASE OF THIS TRIAL,  
11 IT WAS INDICATED THAT THERE WOULD BE EVIDENCE PRESENTED IN  
12 WHAT WE CALL AGGRAVATION, AND THERE WOULD BE EVIDENCE IN WHAT  
13 WE CALL MITIGATION. THAT MITIGATION EVIDENCE WOULD CONCERN  
14 THE BACKGROUND OF KEVIN MERCER, AND IT COULD INCLUDE THINGS  
15 THAT WERE GOOD ABOUT KEVIN MERCER. IT COULD INCLUDE BAD  
16 THINGS THAT HAD HAPPENED TO KEVIN MERCER DURING HIS LIFETIME  
17 AND OTHER THINGS. MY QUESTION IS: WOULD YOU WEIGH THAT  
18 INFORMATION VERY CAREFULLY BEFORE MAKING YOUR DECISION AS A  
19 JUROR---

20 A. YES, SIR.

21 Q. ---WHAT THE PENALTY SHOULD BE IF WE GET TO THAT?

22 A. YES, I WOULD.

23 Q. OKAY. MR. PETRELLA, DO YOU KNOW OF ANY REASON THAT  
24 YOU COULDN'T GIVE KEVIN MERCER A FAIR TRIAL IN THIS CASE IF  
25 YOU WERE SEATED AS A JUROR?

1 A. I DO NOT KNOW OF ANY REASON.

2 MR. LITTLEJOHN: OKAY. THANK YOU VERY MUCH.

3 RE-EXAMINATION BY THE COURT

4 Q. I'M READY TO RULE.

5 A. I WANT TO SAY ONE THING.

6 Q. ALL RIGHT, SIR.

7 A. THIS MORNING I WAS THINKING OF WHAT YOU ASKED  
8 YESTERDAY ABOUT IF YOU KNOW ANYBODY THAT WAS INVOLVED IN THE  
9 CRIME.

10 Q. YES, SIR.

11 A. NOW, MY WIFE WAS -- SHE WORKED FOR SOUTH CAROLINA  
12 BANK AND TRUST AS AN INVESTMENT REPRESENTATIVE DURING THE  
13 BANK ROBBERY, BUT SHE WASN'T DIRECTLY INVOLVED IN IT. I  
14 DON'T KNOW IF THAT BEARS ANY...

15 Q. WELL, I'M GLAD YOU TOLD US ABOUT IT. WAS SHE IN THE  
16 BUILDING WHEN THE ROBBERY OCCURRED?

17 A. SHE WAS IN THE BUILDING, BUT SHE WAS IN HER OFFICE.  
18 SHE WASN'T---

19 Q. IS THIS LIKE A HEADQUARTERS BUILDING OR IS THIS MORE  
20 LIKE A SMALL BRANCH BUILDING?

21 A. IT WAS A TWO-STORY BUILDING, AND SHE WAS ON THE  
22 FIRST FLOOR AND HER OFFICE -- IF THIS WAS THE BUILDING AND  
23 YOU WALKED IN HERE, HER OFFICE WAS IN THE FAR CORNER THERE  
24 AND THE TELLER LINE WAS OVER THERE. SHE WAS ACTUALLY IN HER  
25 BATHROOM AT THE TIME.

1 Q. DID SHE EVEN KNOW IT WAS HAPPENING?

2 A. SHE KNEW AT THE END IT WAS HAPPENING.

3 Q. I SEE. ALL RIGHT. WERE THERE ANY -- WAS ANYBODY  
4 HURT OR ANYTHING IN THAT ROBBERY?

5 A. I DON'T -- I DON'T THINK THERE WAS. I CAN'T  
6 REMEMBER. IT WAS -- IT WAS BACK IN 2002.

7 Q. OKAY.

8 A. AND...

9 Q. DO YOU -- DO YOU FEEL THAT THE FACT THAT YOUR WIFE  
10 WAS INVOLVED IN THAT SITUATION -- WOULD THAT INTERFERE IN ANY  
11 WAY WITH EITHER YOUR WILLINGNESS OR YOUR ABILITY TO GIVE BOTH  
12 THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN  
13 BOTH PHASES OF THIS CASE?

14 A. NO. AS I SAID, I'D FORGOT ABOUT IT 'TIL THIS  
15 MORNING WHEN I WAS---

16 Q. I SEE.

17 A. ---THINKING OF THE TIME FRAMES.

18 Q. ALL RIGHT. ALL RIGHT. AND NOW -- AND BY SAYING  
19 BOTH PHASES OF THE CASE, I DON'T MEAN TO IMPLY THAT THERE'S  
20 DEFINITELY GOING TO BE A SECOND PHASE---

21 A. OKAY.

22 Q. ---BUT IF WE GOT INTO THE SECOND PHASE, WOULD THAT  
23 INTERFERE IN ANY WAY WITH YOUR ABILITY TO BE A FAIR JUROR AND  
24 LOOK AT BOTH THE VERDICT OPTIONS IN THE SENTENCING PHASE IF  
25 WE GOT TO THAT PHASE?



1       A.     IT WOULD NOT AFFECT ME.

2           THE COURT: ALL RIGHT. ANYBODY WANT TO ASK ANY  
3 FOLLOW-UP QUESTIONS?

4           MR. LITTLEJOHN: NO, YOUR HONOR.

5           MR. MYERS: NO, SIR.

6           THE COURT: ALL RIGHT, SIR. YOU ARE QUALIFIED TO  
7 SERVE AS A JUROR IN THIS CASE.

8           THE WITNESS: YES, SIR.

9           THE COURT: THAT DOES NOT MEAN THAT YOU'RE GOING TO  
10 BE ON THE JURY. IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY.  
11 I WOULD LIKE FOR YOU TO PREPARE TO COME BACK ON MONDAY  
12 MORNING. IF YOU WOULD CALL THE TELEPHONE NUMBER THAT'S ON  
13 THE PINK SLIP THAT YOU HAVE BEEN GIVEN, SUNDAY NIGHT AFTER  
14 6:00 THERE WILL BE SPECIFIC INSTRUCTIONS AS TO WHEN YOU NEED  
15 TO COME IN AND WHETHER OR NOT YOU NEED TO BRING ENOUGH OF  
16 YOUR PERSONAL ITEMS TO STAY WITH US IF THE JURY IS  
17 SEQUESTERED.

18           NOW, BETWEEN NOW AND THEN, AS I HAVE TOLD YOU, DON'T  
19 ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU AND DON'T DISCUSS  
20 IT WITH ANYONE. AND PLEASE BE VERY CAREFUL NOT TO ALLOW  
21 YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE THAT THERE MAY  
22 BE ABOUT THIS CASE. SO UNTIL MONDAY MORNING, YOU'RE --  
23 YOU'RE -- YOU'RE DONE. WE'LL SEE YOU MONDAY.

24           THE WITNESS: GREAT. THANK YOU, SIR.

25           THE COURT: THANK YOU, SIR.

1 THE WITNESS: THANK YOU FOR YOUR TIME.

2 (JUROR PETRELLA LEAVES THE COURTROOM.)

3 THE COURT: ALL RIGHT. I'M GOING TO TAKE A SHORT  
4 BREAK BEFORE WE BRING THE NEXT JUROR IN. TAKE A SHORT BREAK.

5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 THE COURT: BE SEATED. BRING IN THE NEXT JUROR.

7 (JUROR WILLIAM LIVINGSTON WAS BROUGHT INTO THE  
8 COURTROOM.)

9 WILLIAM LIVINGSTON, HAVING BEEN PREVIOUSLY  
10 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER  
11 OATH, TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT

13 Q. JUST ONE SECOND, SIR. GOOD MORNING, MR. LIVINGSTON.

14 A. GOOD MORNING, SIR.

15 Q. YOU RECALL THAT YESTERDAY YOU WERE PUT UNDER OATH,  
16 AND I WANT YOU TO UNDERSTAND YOU'RE STILL UNDER OATH THIS  
17 MORNING.

18 A. YES, SIR.

19 Q. DO YOU UNDERSTAND? SINCE YOU LEFT US YESTERDAY,  
20 HAVE YOU DISCUSSED THIS CASE WITH ANYONE OR HAS ANYBODY  
21 DISCUSSED THIS CASE WITH YOU?

22 A. NO, SIR.

23 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN  
24 THE LAWYERS ARE PROBABLY GOING TO FOLLOW UP WITH SOME OTHER  
25 QUESTIONS. WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR

1 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.  
2 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE  
3 JUST WANT YOU TO LISTEN CAREFULLY AND TO BE OPEN AND HONEST  
4 WITH US. TELL US HOW YOU FEEL AND WHAT YOU THINK.

5 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND  
6 APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO YOU AND SET  
7 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE  
8 CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS  
9 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD  
10 SEE AND HEAR IN THIS COURTROOM? CAN YOU DO THAT?

11 A. YES, I CAN.

12 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
13 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A  
14 REASONABLE DOUBT?

15 A. YES, SIR.

16 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES  
17 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS  
18 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER  
19 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE  
20 STATE HAS MET ITS BURDEN OF PROOF?

21 A. YES, SIR, I COULD.

22 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
23 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE  
24 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND  
25 IN THAT PHASE THE JURY WOULD DECIDE WHAT THE PENALTY SHOULD

1 BE. THERE ARE SEVERAL THINGS THAT I'M GOING TO TALK TO YOU  
2 ABOUT NOW THAT WOULD COME UP IF WE GET INTO THAT PHASE.

3 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, OR  
4 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
5 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
6 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
7 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
8 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR  
9 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
10 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR  
11 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY  
12 OF THE CRIME. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING  
13 AND MITIGATING CIRCUMSTANCES?

14 A. YES, SIR, I DO.

15 Q. NOW, WHEN YOU CAME IN THIS MORNING YOU WERE GIVEN A  
16 COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF  
17 JURORS. DID YOU -- DO YOU UNDERSTAND THOSE THREE DIFFERENT  
18 TYPES OF JURORS?

19 A. YES, I DO.

20 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK  
21 YOU ARE?

22 A. I'M IN CATEGORY THREE.

23 Q. CATEGORY THREE.

24 A. YES, SIR.

25 Q. IF YOU'RE A JUROR IN THIS CASE AND IF WE MOVE INTO

1 THE PENALTY PHASE OF THE TRIAL, AS I SAID, YOU WOULD HAVE TWO  
2 OPTIONS AS TO WHAT THE VERDICT COULD BE. ONE OPTION IS FOR A  
3 LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE. ANOTHER  
4 OPTION IS FOR THE DEATH PENALTY. COULD YOU, DEPENDING ON THE  
5 FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND  
6 CONSIDERING THE LAW AS I WOULD GIVE IT TO YOU, COULD YOU VOTE  
7 TO RETURN A VERDICT FOR A LIFE SENTENCE?

8 A. I COULD.

9 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE  
10 DEATH PENALTY?

11 A. I COULD.

12 Q. IT'S POSSIBLE THAT THE JURY IN THIS CASE MIGHT BE  
13 SEQUESTERED, AND THAT WOULD MEAN THAT FOR FIVE OR SIX DAYS  
14 WHILE THIS TRIAL IS GOING ON YOU WOULD BE WITH US AND YOU  
15 WOULD BE PUT UP IN A HOTEL ROOM AT NIGHT AND YOU WOULD NOT BE  
16 ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON  
17 YOU, SIR?

18 A. NO, SIR.

19 Q. WERE YOU GIVEN A COPY OF THE WITNESS LIST THIS  
20 MORNING?

21 A. YES, I WAS.

22 Q. DID YOU READ EVERY NAME ON THAT LIST?

23 A. I DID.

24 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME  
25 APPEARS ON THAT LIST?

1 A. NO, SIR. I DIDN'T RECOGNIZE ANY NAMES.

2 THE COURT: THANK YOU, SIR. THE LAWYERS ARE GOING  
3 TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME  
4 BACK TO YOU IN JUST A SECOND.

5 DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q. MR. LIVINGSTON, GOOD MORNING.

8 A. GOOD MORNING, SIR.

9 Q. MR. LIVINGSTON, I SEE FROM YOUR BROCHURE THAT YOU  
10 SENT IN FOR THE COURT THAT YOU SERVED SOME TIME IN THE UNITED  
11 STATES AIR FORCE.

12 A. THAT'S CORRECT.

13 Q. IN THIS CASE YOU'LL HEAR THAT THE VICTIM IN THIS  
14 CASE SPENT A PERIOD OF TIME IN THE UNITED STATES ARMY AND WAS  
15 IN THE ARMY AT THE TIME OF THIS INCIDENT. IS THERE ANYTHING  
16 ABOUT YOUR EXPERIENCE IN THE MILITARY THAT WOULD AFFECT YOUR  
17 ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

18 A. NO, SIR. THAT WAS 45 YEARS AGO.

19 Q. AWHILE BACK THEN, HUH? NOW, I ALSO SAW FROM YOUR  
20 QUESTIONNAIRE THAT YOU'VE SERVED AS A JUROR BEFORE IN A  
21 CRIMINAL CASE.

22 A. I DON'T -- I DON'T REMEMBER WHETHER IT WAS A  
23 CRIMINAL CASE.

24 Q. OKAY.

25 A. IT WAS A CASE WHERE A MAN WAS IN JAIL AND SNEAKED

1 AWAY---

2 Q. OKAY.

3 A. ---WHILE THEY WERE ON THE OUTSIDE DUTY, AND WE HAD  
4 TO DECIDE WHAT HIS PENALTY WOULD BE AND WHETHER HE WAS GUILTY  
5 TO SERVE MORE TIME OR WHATEVER.

6 Q. THAT WAS WHEN YOU WERE IN THE AIR FORCE?

7 A. NO, SIR. THAT WAS IN GEORGIA.

8 Q. OKAY. WELL, IN THIS CASE, THE FIRST HALF OF THE  
9 CASE THAT THE JUDGE EXPLAINED TO YOU WHERE THE DECISION FOR  
10 THE JURY IS TO DETERMINE THE GUILT OR INNOCENCE OR GUILT OR  
11 NOT GUILTY ISSUE IS PROBABLY VERY MUCH LIKE WHAT YOU HAD TO  
12 DO IN THAT CASE. THE STATE PRESENTS EVIDENCE. PEOPLE  
13 TESTIFY. THEY SIT RIGHT WHERE YOU'RE SITTING RIGHT NOW. THE  
14 JURY HAS TO GO BACK, AND BEFORE THEY CAN CONVICT, THEY HAVE  
15 TO ALL AGREE, ALL 12 OF THEM, THAT THE DEFENDANT IS GUILTY.

16 IN THIS CASE IF THEY DO THAT, IF THE JURY DOES THAT  
17 AND THEY DETERMINE THE DEFENDANT IS GUILTY OF MURDER, WE GO  
18 TO THE SECOND PHASE, AND THAT BRINGS UP WHAT THE JUDGE WAS  
19 DESCRIBING TO YOU ABOUT THE MITIGATING AND AGGRAVATING  
20 CIRCUMSTANCES. AS I UNDERSTAND YOUR RESPONSES TO THE JUDGE,  
21 YOU COULD LISTEN IN THAT SECOND PHASE TO ALL THE INFORMATION  
22 PRESENTED TO YOU.

23 A. YES, SIR.

24 Q. YOU WOULDN'T GO INTO THAT SECOND PHASE WITH YOUR  
25 MIND MADE UP THAT THIS GUY WAS CONVICTED OF MURDER AND,

1 THEREFORE, I'M GOING TO GIVE HIM LIFE OR DEATH.

2 A. NO, SIR, NOT AT ALL.

3 Q. OKAY. AND EACH WITNESS THAT TAKES THAT STAND IN  
4 THAT PHASE, WHETHER IT'S GOOD STUFF ABOUT THE DEFENDANT OR  
5 BAD STUFF ABOUT THE DEFENDANT, YOU WOULD CONSIDER AND WOULD  
6 WANT TO BEFORE YOU'D MAKE A DECISION.

7 A. CORRECT.

8 Q. THERE'S ONE OTHER THING THAT'S A LITTLE DIFFERENT  
9 ABOUT A DEATH PENALTY CASE SUCH AS THIS SHOULD WE GET TO THAT  
10 SECOND PHASE. IF A JURY DETERMINES LIFE, ONLY THE FOREPERSON  
11 SIGNS THE VERDICT FORM, BUT IF THE JURY DETERMINES DEATH, ALL  
12 12 JURORS HAVE TO SIGN THAT VERDICT FORM. NOW, A LOT OF  
13 PEOPLE THEY'LL FREELY -- FREE TO GIVE THEIR OPINIONS.  
14 THEY'LL TELL YOU WHAT THEY THINK, BUT WHEN IT COMES TO  
15 SIGNING SOMETHING, THEY BACK OFF. COULD YOU SIGN THAT  
16 VERDICT FORM IF YOU THOUGHT THAT WAS THE APPROPRIATE  
17 SENTENCE?

18 A. IF THE JURY VOTED THAT WAY AND I WAS PART OF IT, I  
19 COULD DO THAT.

20 Q. AND YOU COULD GIVE BOTH SIDES A FAIR TRIAL AND  
21 LISTEN TO EVERYTHING PRESENTED IN THIS CASE.

22 A. I WOULD.

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

24 A. YES, SIR.

25



CROSS-EXAMINATION

1  
2 BY MS. KIMBROUGH:

3 Q. GOOD MORNING, MR. LIVINGSTON. HOW ARE YOU?

4 A. FINE. THANK YOU.

5 Q. I JUST WANT TO REINTRODUCE YOU TO KEVIN MERCER.

6 A. KEVIN.

7 Q. THANK YOU. I JUST HAVE A COUPLE OF QUICK QUESTIONS.

8 WELL, MAYBE MORE THAN A COUPLE BUT NOT TOO MANY.

9 A. I'M SORRY. I DIDN'T HEAR YOU.

10 Q. I'LL MOVE A LITTLE CLOSER. I BELIEVE THE JUDGE HAD  
11 ASKED YOU SOME QUESTIONS ABOUT HOW YOU FELT ABOUT THE DEATH  
12 PENALTY AND WHICH CATEGORY AND WHICH -- ONE THROUGH THREE,  
13 WHICH ONE YOU FELL INTO?

14 A. RIGHT.

15 Q. I BELIEVE YOU WOULD FALL INTO THE NUMBER THREE  
16 CATEGORY?

17 A. YES, I WOULD.

18 Q. OKAY. DID YOU HAVE ANY HESITANCY ABOUT THAT?

19 A. NOT AT ALL.

20 Q. SO YOU KNEW WHEN YOU SAW IT THAT THAT WAS YOU.

21 A. I KNEW IT BEFORE I SAW IT.

22 Q. OKAY. NOW, THIS CASE IS A LITTLE DIFFERENT FROM  
23 MOST CRIMINAL CASES IN THAT THERE ARE TWO PHASES,  
24 THEORETICALLY TWO PHASES. I DON'T WANT TO MISLEAD YOU,  
25 BECAUSE IF YOU GET THROUGH THE FIRST PHASE AND THE JURY

1 DETERMINES THAT MR. MERCER IS NOT GUILTY OF MURDER, THERE  
2 WOULD BE NO SECOND PHASE. AND I JUST WANTED TO MAKE IT CLEAR  
3 THAT IT'S NOT GUARANTEED THAT WE GET TO THAT SECOND PHASE,  
4 BUT WE HAVE TO ASK THESE QUESTIONS ANYWAY. DURING THE FIRST  
5 PHASE DO YOU THINK YOU'D HAVE ANY TROUBLE APPLYING ANY OF THE  
6 PRINCIPLES OF LAW THAT THE JUDGE WILL APPLY -- INSTRUCT YOU  
7 ON SUCH AS PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

8 A. NO, MA'AM, I WOULDN'T HAVE ANY PROBLEM.

9 Q. OKAY. AND YOU SAT ON A PRIOR CRIMINAL TRIAL?

10 A. YES.

11 Q. HOW LONG AGO WAS THAT?

12 A. (PAUSE.)

13 Q. HAS IT BEEN AWHILE?

14 A. PROBABLY 15 OR 20 YEARS AGO.

15 Q. OKAY. AND THAT CASE WOULDN'T HAVE ANY IMPACT ON  
16 YOUR ABILITY TO BE FAIR IN THIS CASE, WOULD IT?

17 A. NO, MA'AM.

18 Q. OKAY. WITH THE CHOICES BEING LIFE WITHOUT PAROLE  
19 AND THE DEATH PENALTY. OKAY. I NOTICED ON YOUR JUROR  
20 QUESTIONNAIRE THAT YOU'RE AN INDEPENDENT AUTO DEALER?

21 A. I WAS. I HAVE SINCE QUIT THAT JOB BECAUSE I WANTED  
22 A LITTLE MORE FREE TIME.

23 Q. OKAY. SO YOU'RE PERMANENTLY RETIRED?

24 A. NO, SEMI-RETIRED.

25 Q. SEMI?

1 A. I WORK TWO OR THREE DAYS A WEEK.

2 Q. WHAT DO YOU DO DURING THOSE DAYS?

3 A. I SELL FOR COMAR WHICH IS A CULTURED PRODUCT  
4 MANUFACTURER IN PELION.

5 Q. SO THAT'S A LOCAL JOB?

6 A. YES.

7 Q. AND ASSUMING YOU WERE ON THIS JURY, THAT WOULDN'T  
8 TAKE TOO MUCH TIME AWAY FROM THAT POSITION?

9 A. NO, MA'AM.

10 Q. WOULDN'T CAUSE YOU ANY TROUBLE?

11 A. NO, MA'AM.

12 Q. OKAY. NOW, ASSUMING WE GET TO THE SECOND PHASE, THE  
13 ONLY WAY TO GET THERE WOULD BE IF THE JURY HAD FOUND THAT MR.  
14 MERCER HAD COMMITTED AN INTENTIONAL KILLING OF ANOTHER  
15 PERSON, AND DURING THAT SECOND PHASE THERE WOULD BE NOTHING  
16 THAT WOULD DIMINISH THE FACT THAT IT WAS AN INTENTIONAL  
17 KILLING. DO YOU THINK GIVEN THAT FACT AND GIVEN THAT FACT  
18 THAT THE QUESTIONS ARE GOING TO BE BETWEEN -- OR THE  
19 DECISION-MAKING IS GOING TO BE BETWEEN A LIFE SENTENCE AND  
20 THE DEATH SENTENCE, DO YOU THINK YOU COULD CONSIDER OR WOULD  
21 KEEP AN OPEN MIND, EVEN THOUGH MR. MERCER HAD BEEN CONVICTED  
22 OF MURDER, INsofar AS PUNISHMENT IS CONCERNED?

23 A. NO, MA'AM. I CAN KEEP THAT SEPARATE.

24 Q. OKAY. ALL RIGHT. AND YOU KNOW IF YOU GET TO THAT  
25 PHASE THAT IT'S AN INTENTIONAL KILLING. IT'S NOT A

1 MANSLAUGHTER; IT WASN'T AN ACCIDENT. IT WOULD HAVE TO BE AN  
2 INTENTIONAL KILLING.

3 A. I UNDERSTAND.

4 Q. OKAY. AND IF WE GET TO THAT PHASE, THE STATE IS  
5 GOING TO -- I WOULD ANTICIPATE WILL PRODUCE EVIDENCE THAT  
6 THEY SAY MAKES THIS CRIME MUCH WORSE THAN EVEN A NORMAL  
7 MURDER WHICH - I HATE TO SAY NORMAL MURDER - BUT, YOU KNOW,  
8 THE CASE IN WHICH SOMEONE INTENTIONALLY KILLS ANOTHER PERSON  
9 BUT THERE ARE NO OTHER CIRCUMSTANCES. THEY'RE GOING TO TRY  
10 OR THEY WILL PRESENT EVIDENCE IN SUPPORT OF THEIR POSITION  
11 THAT THE DEATH PENALTY WOULD BE APPROPRIATE.

12 ON THE OTHER HAND, MR. MERCER - HE HAS NO BURDEN TO  
13 PRODUCE ANY EVIDENCE. HOWEVER, HE COULD PRODUCE EVIDENCE OF  
14 HIS BACKGROUND, HIS LIFE HISTORY, YOU KNOW, POSSIBLY MEDICAL  
15 INFORMATION, THINGS THAT WOULD BE RELEVANT TO HIS MORAL  
16 CULPABILITY. COULD YOU KEEP AN OPEN MIND AND CONSIDER ALL  
17 THAT INFORMATION BEFORE DECIDING ON PENALTY?

18 A. YES, MA'AM, I COULD.

19 Q. OKAY. AND IN BOTH OF THESE PHASES THE VERDICT MUST  
20 BE UNANIMOUS. ALL 12 OF YOU MUST AGREE, AND WHILE YOU  
21 OPERATE AS A GROUP, OBVIOUSLY YOU'RE EACH 12 INDIVIDUALS.  
22 YOU'RE NOT CONNECTED, YOU KNOW, AS ONE HOMOGENOUS ENTITY.  
23 HOWEVER, YOU'VE GOT TO COME TO A UNANIMOUS DECISION. IF YOU  
24 DISAGREED IN EITHER THE INNOCENCE PHASE OR THE LIFE OR DEATH  
25 PHASE, DO YOU THINK YOU WOULD MAINTAIN YOUR POSITION IF IT

1 WAS FIRMLY HELD OR DO YOU THINK YOU WOULD BE POSSIBLY  
2 INCLINED TO GO ALONG WITH THE MAJORITY SOLELY FOR PURPOSES OF  
3 REACHING A VERDICT?

4 A. IF I LISTENED TO ALL THE EVIDENCE AND CAME UP WITHIN  
5 MY OWN SELF ONE WAY OR THE OTHER, IT MIGHT BE DIFFICULT TO  
6 CHANGE MY MIND.

7 Q. OKAY. SO YOU WOULDN'T GO ALONG JUST FOR THE SAKE OF  
8 ARRIVING AT A VERDICT.

9 A. NO, MA'AM.

10 Q. YOU'D HAVE TO BE CONVINCED IN YOUR OWN MIND.

11 A. I DO.

12 MS. KIMBROUGH: THANK YOU. I HAVE NO FURTHER  
13 QUESTIONS.

14 THE COURT: OKAY. I'M PREPARED TO RULE AS TO THIS  
15 JUROR. MR. LIVINGSTON, YOU ARE QUALIFIED TO SERVE AS A JUROR  
16 IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY. THAT  
17 MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE WILL ACTUALLY GO  
18 THROUGH THE JURY SELECTION PROCESS OR THE STRIKING PROCESS ON  
19 MONDAY. IF YOU WOULD PLEASE CALL BACK ON SUNDAY NIGHT AFTER  
20 6:00 TO THAT TELEPHONE NUMBER THAT YOU WERE GIVEN ON THAT  
21 LITTLE PINK SLIP---

22 THE WITNESS: YES, SIR.

23 THE COURT: ---THEN WE'LL HAVE DETAILED INSTRUCTIONS  
24 ABOUT WHEN YOU NEED TO SHOW UP AND WHETHER OR NOT YOU NEED TO  
25 BRING ENOUGH OF YOUR PERSONAL ITEMS IF THE JURY IS GOING TO

1 BE SEQUESTERED.

2 THE WITNESS: RIGHT.

3 THE COURT: BETWEEN NOW AND THEN, PLEASE DON'T  
4 DISCUSS -- YOU MAY NOT DISCUSS THIS CASE OR ALLOW ANYONE TO  
5 DISCUSS THIS CASE WITH YOU, AND PLEASE BE VERY CAREFUL NOT TO  
6 ALLOW YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE ABOUT THIS  
7 CASE.

8 THE WITNESS: CORRECT.

9 THE COURT: WE'LL SEE YOU MONDAY.

10 THE WITNESS: THANK YOU, SIR.

11 THE COURT: THANK YOU FOR COMING, SIR.

12 (JUROR LIVINGSTON LEAVES THE COURTROOM. JUROR  
13 DARLENE STAGGS IS BROUGHT INTO THE COURTROOM.)

14 DARLENE STAGGS, HAVING BEEN PREVIOUSLY SWORN AS  
15 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,  
16 TESTIFIED AS FOLLOWS:

17 EXAMINATION BY THE COURT

18 Q. GOOD MORNING, MS. STAGGS. HOW ARE YOU?

19 A. I'M FINE. THANKS.

20 Q. GOOD. NOW, YOU MIGHT NEED TO PULL THAT MICROPHONE A  
21 LITTLE CLOSER TO YOU AND TO KEEP YOUR VOICE UP JUST A LITTLE  
22 BIT SO WE CAN MAKE SURE THE LAWYERS OUT THERE CAN HEAR  
23 EVERYTHING THAT YOU'RE SAYING. YOU RECALL YESTERDAY THAT WE  
24 PUT YOU UNDER OATH.

25 A. YES.

1 Q. OKAY. AND YOU'RE STILL UNDER OATH THIS MORNING. DO  
2 YOU UNDERSTAND THAT?

3 A. YES.

4 Q. SINCE YOU LEFT US YESTERDAY, HAS ANYBODY DISCUSSED  
5 THIS CASE WITH YOU OR HAVE YOU DISCUSSED THIS CASE WITH  
6 ANYONE?

7 A. NO.

8 Q. MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND  
9 THEN THE LAWYERS ARE PROBABLY GOING TO FOLLOW UP WITH SOME  
10 QUESTIONS OF THEIR OWN. WE'RE NOT TRYING TO PROBE TOO DEEP  
11 INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE  
12 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THESE  
13 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND  
14 THEN BE OPEN AND HONEST WITH US. TELL US HOW YOU FEEL AND  
15 WHAT YOU THINK.

16 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT  
17 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND  
18 THEN SET ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD  
19 ABOUT THIS CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A  
20 VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE  
21 THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO  
22 THAT?

23 A. YES.

24 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE  
25 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A

1 REASONABLE DOUBT?

2 A. LIKE -- EXPLAIN.

3 Q. ALL RIGHT. WELL, PART OF THE CHARGE, THE JURY  
4 CHARGE, THAT I WOULD GIVE YOU, THE LAW THAT IS APPLICABLE TO  
5 THIS CASE, IS THAT IN A CRIMINAL CASE SUCH AS THIS IN ORDER  
6 TO PROVE THE DEFENDANT GUILTY OF A CRIME, THE DEFENDANT (SIC)  
7 MUST PROVE THAT THE DEFENDANT IS GUILTY BEYOND A REASONABLE  
8 DOUBT?

9 A. RIGHT.

10 Q. DO YOU UNDERSTAND THAT?

11 A. RIGHT. I DO.

12 Q. NOW, COULD YOU, DEPENDING ON THE FACTS AND  
13 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT  
14 OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE  
15 DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR  
16 NOT YOU FEEL THE STATE HAS MET THAT BURDEN OF PROOF?

17 A. MAKE A DECISION ABOUT ALL THE EVIDENCE AND  
18 EVERYTHING ON MY OWN? YES.

19 Q. YES, MA'AM. AND AS A PART OF THE JURY, IF YOU FELT  
20 THAT THE STATE HAD PROVEN THE DEFENDANT GUILTY BEYOND A  
21 REASONABLE DOUBT, COULD YOU FIND HIM GUILTY?

22 A. ONLY IF I FELT HE WAS GUILTY.

23 Q. RIGHT, BUT, WELL---

24 A. RIGHT.

25 Q. ---IT WOULDN'T BE---



1 A. NOT JUST BECAUSE THEY SAID HE WAS.

2 Q. OKAY.

3 A. I MEAN THAT---

4 Q. NOW, I'M GOING TO BE CLEAR ABOUT MY LANGUAGE BECAUSE  
5 IT WOULDN'T MATTER WHETHER YOU FELT HE WAS GUILTY. IT WOULD  
6 MATTER WHETHER YOU FELT THE STATE HAD PROVEN THAT HE WAS  
7 GUILTY BEYOND A REASONABLE DOUBT. IF YOU BELIEVE THE STATE  
8 PROVED THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, COULD  
9 YOU FIND HIM GUILTY?

10 A. I JUST DON'T UNDERSTAND. IF I -- IF I -- IF THEY  
11 FOUND HIM GUILTY AND I WATCHED EVERYTHING AND CONSIDERED  
12 EVERYTHING AND I DON'T THINK HE'S GUILTY? IS THAT WHAT YOU  
13 MEAN?

14 Q. WELL, NO, THAT'S NOT WHAT I MEAN. YOU'RE A MEMBER  
15 OF THE JURY. THE STATE WILL PRESENT EVIDENCE BEFORE THE  
16 JURY, AND THEN THE DEFENSE HAS AN OPPORTUNITY TO PRESENT  
17 EVIDENCE IF THEY CHOOSE TO. AFTER ALL THAT, WE'LL GO THROUGH  
18 CLOSING ARGUMENTS AND THEN I EXPLAIN THE LAW TO YOU, AND THEN  
19 YOU GO BACK IN THE JURY ROOM WHERE YOU WOULD DELIBERATE WITH  
20 THE OTHER MEMBERS OF THE JURY. AND AFTER GOING THROUGH THAT  
21 DELIBERATION PROCESS AND CONSIDERING ALL THE EVIDENCE THAT'S  
22 BEEN OFFERED AND CONSIDERING THE LAW AS I EXPLAIN IT TO YOU,  
23 IF YOU BELIEVED IN YOUR MIND THAT THE STATE HAD PROVEN BEYOND  
24 A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY, COULD YOU  
25 VOTE---

1 A. OH, YES.

2 Q. ---FOR A GUILTY VERDICT?

3 A. YES.

4 Q. NOW, IF YOU DID NOT BELIEVE THAT THE STATE HAD  
5 PROVEN BEYOND A REASONABLE DOUBT THAT HE WAS GUILTY, COULD  
6 YOU VOTE NOT GUILTY?

7 A. YES. THAT'S WHAT I WAS TRYING TO SAY.

8 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE  
9 JURY DECIDES -- IF THE JURY FINDS THE DEFENDANT GUILTY, THEN  
10 WE WOULD MOVE INTO THE PENALTY PHASE OR THE SENTENCING PHASE  
11 OF THE TRIAL, AND IN THAT PHASE IT WOULD BE UP TO THE JURY TO  
12 DECIDE WHETHER TO IMPOSE A LIFE SENTENCE OR THE DEATH  
13 PENALTY. AND THERE ARE SEVERAL ISSUES THAT ARE GOING TO COME  
14 UP IF WE GET INTO THAT TRIAL -- INTO THAT PHASE OF THE TRIAL,  
15 AND THAT'S WHAT I WANT TO TALK TO YOU ABOUT RIGHT NOW.

16 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR  
17 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO  
18 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING  
19 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO  
20 THE INJURY RESULTING FROM THE CRIME. MITIGATING  
21 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR  
22 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE  
23 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR  
24 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY  
25 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING

1 AND MITIGATING CIRCUMSTANCES?

2 A. NO.

3 Q. DO YOU UNDERSTAND THAT THERE ARE -- THAT AGGRAVATING  
4 CIRCUMSTANCES EVEN THOUGH SOME -- A CRIME MIGHT BE A MURDER,  
5 AGGRAVATING CIRCUMSTANCES WOULD MEAN THAT IT WAS A MORE  
6 SEVERE MURDER OR A MORE AGGRAVATED MURDER, WHEREAS A  
7 MITIGATING CIRCUMSTANCE WOULD MEAN THAT IT MIGHT BE A LESS  
8 SEVERE OR A LESS AGGRAVATED MURDER. DO YOU UNDERSTAND THAT?

9 A. OKAY.

10 Q. DO YOU?

11 A. I DO.

12 Q. OKAY. WERE YOU GIVEN THIS -- YOU SHOULD HAVE BEEN  
13 GIVEN THIS SHEET WHEN YOU FIRST CAME IN THIS MORNING. IT  
14 EXPLAINS THE THREE TYPES OF JURORS. DID YOU GET THAT SHEET?

15 A. I DID.

16 Q. DID YOU GET A CHANCE TO READ OVER IT?

17 A. I DID.

18 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

19 A. I DO.

20 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK  
21 YOU WOULD BE?

22 A. THE THIRD.

23 Q. IF YOU'RE A JUROR IN THE PENALTY PHASE OF THIS  
24 TRIAL, THEN, AS I SAID, YOU WOULD HAVE TWO OPTIONS AS TO WHAT  
25 YOUR VERDICT COULD BE. ONE OPTION WOULD BE A LIFE SENTENCE