

VOLUME TWO 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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1 WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD
2 BE THE DEATH PENALTY. COULD YOU -- AS AN INDIVIDUAL JUROR,
3 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
4 FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT
5 TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE
6 SENTENCE IF YOU FELT THAT WAS THE APPROPRIATE VERDICT?

7 A. I COULD.

8 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE
9 DEATH PENALTY IF YOU FELT THAT WAS THE APPROPRIATE---

10 A. I COULD.

11 Q. ---VERDICT? YOU -- I HEARD WHAT YOU SAID, BUT I
12 WANT TO MAKE SURE THE COURT REPORTER HEARD IT. LET ME JUST
13 FINISH MY QUESTION AND THEN YOU CAN ANSWER IT. COULD YOU
14 VOTE TO IMPOSE THE DEATH PENALTY IF YOU FELT THAT THAT WAS
15 THE APPROPRIATE VERDICT?

16 A. I COULD.

17 Q. NOW, MA'AM, IT MIGHT BE THAT I WOULD SEQUESTER THE
18 JURY IN THIS CASE, AND THAT WOULD MEAN THAT YOU WOULD BE PUT
19 UP IN A HOTEL FOR FIVE OR SIX DAYS AND YOU WOULD BE FED YOUR
20 MEALS WITH US AND YOU WOULD NOT BE ALLOWED TO GO HOME. WOULD
21 THAT IMPOSE A TERRIBLE BURDEN ON YOU?

22 A. CERTAINLY.

23 Q. DO YOU MIND -- I UNDERSTAND THAT IT WOULD BE
24 DIFFICULT, MA'AM, BUT WOULD YOU -- WOULD YOU EXPLAIN THE
25 CIRCUMSTANCES THAT WOULD MAKE THAT SUCH A BURDEN ON YOU?

1 A. MY DOG. MY JOB.

2 Q. OKAY. NOW, AS FAR AS -- TELL ME ABOUT YOUR JOB
3 AGAIN. WHAT DO YOU DO?

4 A. AT JIM HUDSON TOYOTA I DO THE CONTRACTS AND NOBODY
5 -- WE'VE ONLY BEEN OPEN NINE MONTHS AND NOBODY ELSE KNOWS HOW
6 TO DO IT.

7 Q. OKAY.

8 A. SO I STAYED 'TIL 9:30 LAST NIGHT AND I'LL BE STAYING
9 'TIL 9:00 AGAIN TONIGHT AND SO...

10 Q. NOW, AS FAR AS YOUR JOB IS CONCERNED, IF YOU'RE ON
11 THE JURY YOU'RE NOT GOING TO HAVE ANY TIME TO WORK EVEN IF
12 YOU ARE NOT SEQUESTERED BECAUSE WE'RE GOING TO BE WORKING
13 PRETTY LONG DAYS. AS FAR AS YOUR DOG IS CONCERNED, I SUPPOSE
14 YOU'D HAVE TO MAKE OTHER ARRANGEMENTS SUCH AS GETTING
15 SOMEBODY ELSE TO FEED OR KEEP THE DOG OR PERHAPS PUTTING THE
16 DOG IN A KENNEL. COULD YOU -- COULD YOU MAKE THOSE
17 ARRANGEMENTS?

18 A. I GUESS I'D HAVE TO, BUT I'D PROBABLY BE REPLACED AT
19 MY JOB.

20 Q. WELL, I KNOW THAT'S A -- THAT'S A CONCERN. THAT
21 IS -- YOU CAN'T BE---

22 A. THEY DON'T PAY US---

23 Q. ---FIRED OR REPLACED BECAUSE YOU'RE SERVING ON A
24 JURY. THAT WOULD BE SOMETHING THAT THE LAW DOES NOT PERMIT
25 YOUR EMPLOYER TO DO. NOW, I REALIZE THAT THAT WOULD BE AN

1 INCONVENIENCE TO YOUR EMPLOYER, BUT THEY WOULD HAVE TO MAKE
2 OTHER ARRANGEMENTS TO GET THOSE CONTRACTS DONE IF YOU ARE
3 SERVING ON THE JURY. MA'AM, WERE YOU GIVEN A COPY OF THE
4 WITNESS LIST THIS MORNING?

5 A. YES, I WAS.

6 Q. DID YOU READ EVERY NAME ON THAT LIST?

7 A. YES, I DID.

8 Q. DO YOU KNOW OR ARE YOU RELATED TO ANY OF THE PEOPLE
9 WHOSE NAMES APPEAR ON THAT LIST?

10 A. NO.

11 THE COURT: ALL RIGHT. THE LAWYERS ARE GOING TO ASK
12 YOU SOME FOLLOW-UP QUESTIONS NOW, MA'AM.

13 DIRECT EXAMINATION

14 BY MR. MYERS:

15 Q. MS. STAGGS?

16 A. HEY.

17 Q. I JUST HAVE A VERY FEW QUESTIONS FOR YOU, MA'AM. DO
18 YOU KNOW ANYTHING AT ALL ABOUT THIS CASE OTHER THAN WHAT YOU
19 HEARD IN THE COURTROOM?

20 A. NOTHING.

21 Q. OKAY. SO YOU COULD BE ON THIS JURY AND WHATEVER
22 VERDICTS YOU REACH YOU COULD BASE IT ONLY ON WHAT YOU HEARD
23 IN THE COURTROOM.

24 A. YES, SIR.

25 Q. IF YOU WERE ON THIS PANEL, MS. STAGGS, AND THE JURY

1 HAD FOUND THE DEFENDANT GUILTY, WE'D HAVE TO GO INTO THAT
2 SECOND PART OF THE CASE. THAT'S THE SENTENCING PART. LIFE
3 IMPRISONMENT OR THE DEATH PENALTY.

4 A. RIGHT.

5 Q. YOU UNDERSTAND THAT. AND AS I UNDERSTAND IT, YOU'RE
6 IN THAT THIRD CATEGORY: DEPENDS ON THE FACTS, DEPENDS ON THE
7 CRIMES OF WHAT SENTENCE YOU WOULD RETURN.

8 A. YES, SIR.

9 Q. YOU COULD VOTE FOR LIFE. IS THAT RIGHT?

10 A. PARDON ME?

11 Q. YOU COULD VOTE FOR A LIFE SENTENCE?

12 A. RIGHT.

13 Q. OR IF THE FACTS WARRANTED AND IT WAS CALLED FOR, YOU
14 COULD VOTE FOR THE DEATH PENALTY.

15 A. YES, SIR.

16 Q. OUR LAW SAYS THAT IF THE JURY DETERMINES THAT THE
17 DEATH PENALTY IS THE RIGHT SENTENCE AND THAT'S WHAT THE JURY
18 VOTES FOR, EVERY JUROR WOULD HAVE TO SIGN THEIR NAME ON THAT
19 VERDICT. NOW, THIS IS A STUPID QUESTION, BUT A LOT OF PEOPLE
20 SAY, "WELL, I'LL TELL YOU WHAT I THINK, BUT I'LL NEVER PUT MY
21 NAME ON ANYTHING." THE FACT THAT OUR LAW WOULD REQUIRE A
22 SIGNATURE, YOUR SIGNATURE, ON A VERDICT FOR DEATH, WOULD THAT
23 PREVENT YOU FROM VOTING FOR DEATH JUST BY HAVING TO SIGN YOUR
24 NAME?

25 A. I DON'T KNOW. IS SOMEBODY GOING TO COME GET ME, I

1 MEAN, HAVE A HATE LIST FOR ME?

2 Q. NO, MA'AM.

3 A. I DON'T THINK I'LL HAVE A PROBLEM.

4 MR. MYERS: GOOD. THAT'S ALL WE CAN ASK OF YOU.

5 THANK YOU.

6 CROSS-EXAMINATION

7 BY MR. LITTLEJOHN:

8 Q. GOOD MORNING, MS. STAGGS.

9 A. HI.

10 Q. MS. STAGGS, AGAIN I'M CAM LITTLEJOHN AND I, ALONG
11 WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE
12 DEFENDANT IN THIS CASE. I JUST HAVE A VERY FEW QUESTIONS
13 ALSO. I NOTICED FROM YOUR QUESTIONNAIRE THAT YOU'VE BEEN
14 WORKING AT JIM HUDSON FOR ABOUT TEN MONTHS?

15 A. UH-HUH.

16 Q. WHAT DID YOU DO BEFORE THAT, IF I MAY?

17 A. THE SAME THING. CAR BUSINESS.

18 Q. DIFFERENT BUSINESS?

19 A. ALWAYS BEEN CAR -- UH-HUH.

20 Q. WHICH DEALERSHIP DID YOU WORK?

21 A. COLUMBIA AUTO MALL.

22 Q. OKAY. I ALSO NOTICED THAT YOU HAD A -- ON THE
23 BUMPER STICKER QUESTION YOU SAID YOU HAD, "SUPPORT SOUTH
24 CAROLINA TROOPERS"?

25 A. YEAH.

1 Q. CAN YOU TELL ME WHY YOU PUT THAT BUMPER STICKER---

2 A. MY MOM GAVE THEM TO ME.

3 Q. DO WHAT?

4 A. MY MOM GAVE THEM TO ME.

5 Q. OKAY. YOU THOUGHT IT MIGHT BE HELPFUL IF YOU RAN
6 THROUGH A RADAR?

7 A. I DON'T KNOW. SHE JUST GETS THEM AND GIVES THEM TO
8 ME.

9 Q. OKAY. YOUR MOM TOLD YOU TO PUT IT ON THERE?

10 A. YEAH.

11 Q. I GOT YOU. MS. STAGGS, AS THE JUDGE EXPLAINED TO
12 YOU, THIS IS A MURDER CASE, AND IN THE FIRST PHASE OF THIS
13 MURDER CASE THE STATE WOULD BE REQUIRED TO PROVE THAT KEVIN
14 MERCER IS GUILTY AND THEY WOULD BE REQUIRED TO PROVE THAT
15 BEYOND A REASONABLE DOUBT. WOULD YOU HAVE ANY PROBLEM
16 FOLLOWING THAT STANDARD AND PUTTING THE STATE TO THEIR BURDEN
17 OF PROOF BEFORE YOU FOUND HIM GUILTY?

18 A. YEAH. THEY'D HAVE TO PROVE IT AND YOU'D HAVE TO
19 BELIEVE THAT THEY WERE PROVING IT.

20 Q. OKAY.

21 A. RIGHT.

22 Q. YOU'D HAVE TO -- YOU'D LISTEN TO WHAT---

23 A. YOU'D HAVE TO---

24 Q. ---HIS HONOR TOLD YOU ABOUT---

25 A. RIGHT.

1 Q. ---THE LAW?

2 A. I DON'T KNOW NOTHING ABOUT ANYTHING, SO I WOULDN'T
3 KNOW NOTHING ABOUT WHAT Y'ALL ARE TELLING ME. SO I'D HAVE TO
4 SEE AND HEAR IT WITH MY OWN EYES TO MAKE MY DECISION, SO...

5 Q. I GOT YOU. DO YOU THINK YOU'D HAVE ANY PROBLEM
6 DETERMINING THE CREDIBILITY OR THE BELIEVABILITY OF THE
7 WITNESSES, WHETHER THEY WERE POLICE OFFICERS OR EXPERTS OR
8 LAY WITNESSES?

9 A. I WOULDN'T.

10 Q. YOU WOULDN'T?

11 A. HUH-UH.

12 Q. OKAY. A COUPLE OF FINAL THINGS. MS. STAGGS, IF WE
13 GET TO THE SECOND PHASE, THERE WOULD BE EVIDENCE PRESENTED IN
14 WHAT WE CALL AGGRAVATION AND EVIDENCE PRESENTED IN WHAT WE
15 CALL MITIGATION, AND THE EVIDENCE IN MITIGATION WOULD CONCERN
16 THINGS ABOUT KEVIN MERCER'S BACKGROUND, GOOD THINGS ABOUT
17 KEVIN MERCER, MAYBE BAD THINGS THAT HAD HAPPENED TO HIM,
18 PERHAPS MEDICAL PROBLEMS THAT HE HAD. WOULD YOU BE WILLING
19 TO LISTEN TO ALL OF THAT EVIDENCE BEFORE YOU MADE A DECISION
20 AS TO WHAT THE PENALTY OUGHT TO BE?

21 A. YES, SIR.

22 Q. WOULD YOU LISTEN TO IT CAREFULLY?

23 A. YES, SIR.

24 Q. DO YOU KNOW ANY REASON AT ALL THAT YOU CAN'T GIVE
25 KEVIN MERCER A FAIR TRIAL?

1 A. NO, SIR.

2 MR. LITTLEJOHN: OKAY. THANK YOU, MA'AM.

3 THE COURT: ANYTHING BEFORE I RULE?

4 MR. LITTLEJOHN: NO, YOUR HONOR.

5 THE COURT: MS. STAGGS, YOU ARE QUALIFIED TO SERVE
6 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU'RE ON
7 THE JURY. IT JUST MEANS THAT YOU'RE ELIGIBLE TO BE ON THE
8 JURY. YOU'RE FINISHED FOR THE REST OF THIS WEEK, AND WE
9 WOULD LIKE FOR YOU TO RETURN ON MONDAY MORNING FOR THE
10 SELECTION OF THE JURY.

11 THE WITNESS: OKAY.

12 THE COURT: IF YOU WILL CALL SUNDAY NIGHT TO THE
13 TELEPHONE NUMBER THAT IS LISTED ON THE PINK SLIP THAT YOU
14 WERE GIVEN EARLIER, THEN WE WILL HAVE A DETAILED MESSAGE ON
15 THAT RECORDER -- ON THAT TELEPHONE LINE THAT WILL TELL YOU
16 WHEN YOU NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING
17 YOUR CLOTHING AND YOUR PERSONAL ITEMS IF THE JURY IS GOING TO
18 BE SEQUESTERED. BETWEEN NOW AND THEN, DO NOT DISCUSS THIS
19 CASE WITH ANYONE NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH
20 YOU, AND PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE
21 EXPOSED TO ANY PRESS COVERAGE ABOUT THE CASE.

22 NOW, I ANTICIPATE THAT WHEN YOU GO BACK TO WORK
23 TODAY YOUR BOSSES ARE GOING TO SAY OR GOING TO WANT TO KNOW A
24 LITTLE BIT ABOUT THE CASE SO THAT THEY'LL UNDERSTAND WHY IT
25 IS THAT YOU CAN'T BE AT WORK POSSIBLY FOR ALL OF NEXT WEEK.

1 YOU CAN JUST TELL THEM THAT YOU'RE IN THE JURY PANEL FOR THIS
2 CASE AND THAT IT COULD LAST ALL WEEK AND THE JUDGE TOLD YOU
3 THAT YOU WERE NOT ALLOWED TO DISCUSS THE CASE, AND THAT'S ALL
4 YOU CAN SAY ABOUT IT. IF YOU GET ON THE JURY, THEN I WILL
5 TELL THEM THAT YOU'RE NOT GOING TO BE IN FOR WORK THAT WEEK.
6 WE'LL SEE YOU MONDAY.

7 THE WITNESS: THANK YOU.

8 THE COURT: THANK YOU.

9 (JUROR STAGGS LEAVES THE COURTROOM. JUROR EDWARD
10 BOYLE IS BROUGHT INTO THE COURTROOM.)

11 EDWARD BOYLE, 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. GOOD MORNING, SIR.

16 A. GOOD MORNING.

17 Q. YOU RECALL THAT YESTERDAY YOU WERE PUT UNDER OATH.

18 A. YES, SIR.

19 Q. AND YOU'RE STILL UNDER OATH THIS MORNING. DO YOU
20 UNDERSTAND THAT?

21 A. I'M SORRY?

22 Q. OH, YOU ARE -- YESTERDAY YOU WERE PUT UNDER OATH.

23 A. YES, SIR.

24 Q. AND YOU'RE STILL UNDER OATH THIS MORNING.

25 A. YES, SIR.

1 Q. DO YOU UNDERSTAND? NOW, WE HAD A DISCUSSION
2 YESTERDAY ABOUT YOUR HAVING A HEARING PROBLEM.

3 A. YES, SIR.

4 Q. SO IF AT ANY TIME TODAY OR AT ANY OTHER TIME THAT
5 YOU'RE HERE THAT YOU HAVE ANY TROUBLE HEARING WHAT I SAY OR
6 ANY TROUBLE HEARING WHAT THE LAWYERS SAY, THEN DON'T BE SHY
7 ABOUT IT. YOU LET US KNOW THAT YOU'RE HAVING TROUBLE HEARING
8 US, AND WE'LL MAKE ARRANGEMENTS TO MAKE SURE YOU CAN HEAR.
9 ARE YOU ABLE TO HEAR EVERYTHING I'M SAYING NOW?

10 A. FINE. YES, SIR.

11 Q. ALL RIGHT. SINCE YOU LEFT YESTERDAY, HAVE YOU
12 DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED THIS
13 CASE WITH YOU?

14 A. NO, SIR.

15 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
16 THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP
17 QUESTIONS. WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR
18 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
19 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE
20 JUST WANT YOU TO LISTEN VERY CAREFULLY AND THEN BE OPEN AND
21 HONEST WITH US. TELL US WHAT YOU THINK AND HOW YOU FEEL.

22 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
23 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND,
24 SETTING ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED
25 ABOUT THE CASE BEFORE IT BEGAN, COULD YOU THEN RENDER A

1 VERDICT THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE
2 THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO
3 THAT?

4 A. YES, SIR.

5 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
6 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
7 REASONABLE DOUBT?

8 A. YES, SIR.

9 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
10 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
11 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
12 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
13 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

14 A. YES, SIR.

15 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
16 JURY DEFINES THE -- FINDS THE DEFENDANT GUILTY OF MURDER,
17 THEN WE WOULD MOVE INTO THE SENTENCING PHASE OR THE GUILT
18 PHASE -- I MEAN THE PENALTY PHASE OF THE TRIAL, AND THERE ARE
19 SEVERAL THINGS THAT WOULD COME UP DURING THAT PHASE THAT I'M
20 GOING TO DISCUSS WITH YOU NOW. AGGRAVATING CIRCUMSTANCES ARE
21 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
22 CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME
23 OF MURDER. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY
24 OF THE CRIME OF MURDER AND ADD TO THE INJURY RESULTING FROM
25 THAT CRIME.

1 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
2 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
3 DECLARED TO REDUCE THE SEVERITY OF THE CRIME OF MURDER, TO
4 LESSEN THE SEVERITY. THEY SERVE TO EXTENUATE OR TO REDUCE
5 THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY FOR THE
6 CRIME. DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING AND
7 MITIGATING CIRCUMSTANCES?

8 A. YES, SIR.

9 Q. NOW, WHEN YOU CAME IN THIS MORNING YOU SHOULD HAVE
10 BEEN GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE
11 DIFFERENT TYPES OF JURORS.

12 A. YES, SIR.

13 Q. WERE YOU GIVEN A COPY OF THAT SHEET?

14 A. YES, SIR.

15 Q. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

16 A. YES, SIR.

17 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK
18 YOU WOULD BE?

19 A. THE THIRD ONE, SIR.

20 Q. THE THIRD. NOW, IF YOU'RE ON THE JURY IN THIS CASE
21 AND IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER AND WE
22 MOVE INTO THAT SECOND PHASE OR THAT SENTENCING PHASE OF THE
23 TRIAL, THE JURY WOULD HAVE TWO OPTIONS AS TO WHAT THE
24 SENTENCE SHOULD BE, AND IT WOULD BE THE JURY THAT WOULD
25 CHOOSE WHICH SENTENCE WOULD BE APPROPRIATE. 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 LIFE SENTENCE IF YOU FELT THAT
6 THAT WAS APPROPRIATE?

7 A. YES, SIR.

8 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE
9 DEATH PENALTY IF YOU FELT THAT WAS APPROPRIATE?

10 A. YES, SIR.

11 Q. NOW, IT'S POSSIBLE THAT THE JURY MIGHT BE
12 SEQUESTERED IN THIS CASE MEANING THAT YOU WOULD BE PUT UP IN
13 A HOTEL FOR FIVE OR SIX DAYS UNTIL THE TRIAL IS OVER, AND YOU
14 WOULD NOT BE ALLOWED TO GO HOME DURING THAT TIME. WOULD THAT
15 IMPOSE A TERRIBLE BURDEN ON YOU?

16 A. NOT A TERRIBLE BURDEN, NO, SIR.

17 Q. YOU COULD HANDLE IT?

18 A. I'D MANAGE; YES, SIR.

19 Q. ALL RIGHT, SIR. WERE YOU GIVEN A LIST OF WITNESSES
20 THIS MORNING?

21 A. YES, SIR, I WAS.

22 Q. DID YOU READ EVERY NAME ON THAT LIST?

23 A. YES, SIR.

24 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
25 APPEARS ON THAT LIST?

1 A. I AM NOT PERSONAL FRIENDS WITH ANYBODY ON THIS LIST.
2 I RECOGNIZE SOME OF THE NAMES AS SOME OF THE SHERIFF'S
3 DEPARTMENT EMPLOYEES THROUGH A CLASS I TOOK LAST SPRING, THE
4 CITIZENS ACADEMY. SO DURING THAT I MET SEVERAL DIFFERENT
5 DEPUTIES, AND SO SOME OF THEIR NAMES ARE FAMILIAR TO ME, BUT
6 AS FAR AS PERSONAL FRIENDSHIPS, NO, SIR.

7 Q. DID YOU MARK THE ONES OF THE NAMES THAT WERE
8 FAMILIAR TO YOU?

9 A. NO, SIR. I WAS ASKED NOT TO MARK ON HERE
10 SPECIFICALLY, AND I ASKED IF I COULD TAKE NOTES SO I COULD
11 WRITE DOWN THE NAMES THAT ARE FAMILIAR AND I WAS ASKED NOT
12 TO, SO I DID NOT.

13 Q. ALL RIGHT. WELL, WHY DON'T YOU TAKE A SECOND TO GO
14 OVER THAT LIST AND YOU CAN MARK ON IT NOW AND YOU CAN USE --
15 DO YOU HAVE A PENCIL?

16 A. YES.

17 Q. ALL RIGHT. JUST TAKE A SECOND NOW AND MARK THOSE
18 NAMES, AND THEN I'M GOING TO ASK YOU WHO THEY ARE.

19 A. OKAY.

20 Q. TAKE YOUR TIME. I JUST WANT TO KNOW WHO THOSE
21 PEOPLE ARE.

22 A. I WOULD ALSO LIKE TO ADD THAT THERE WERE SEVERAL
23 DEPUTIES AND WHATNOT THAT I MET WHOSE NAMES I MAY NOT
24 RECOGNIZE. SOMETIMES IT'S SOMEBODY THAT YOU JUST MEET
25 CAUSALLY. IT'S HARD TO PUT A NAME AND A FACE TOGETHER, BUT

1 SOME OF THE NAMES I DID RECOGNIZE AND I'LL MARK THOSE:

2 Q. ALL RIGHT. THANK YOU.

3 A. (THE WITNESS COMPLIES.)

4 Q. ALL RIGHT. TELL ME THE NAMES OF THE PEOPLE YOU
5 THINK YOU MIGHT KNOW.

6 A. NUMBER 25, LIEUTENANT DAVID DANNELS. NUMBER 31,
7 LIEUTENANT ALAN DRIGGERS. NUMBER 138, SERGEANT JEFF WEED.
8 THAT'S ALL, SIR.

9 THE COURT: ALL RIGHT. THANK YOU. NOW, THE LAWYERS
10 ARE GOING TO HAVE SOME FOLLOW-UP QUESTIONS FOR YOU, AND THEN
11 I'LL TALK TO YOU AFTER THAT.

12 DIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q. MR. BOYLE, IF YOU HAVE ANY TROUBLE HEARING WHAT I'M
15 SAYING, ASK ME TO REPEAT IT AND I'LL BE HAPPY TO DO THAT.
16 OKAY?

17 A. IF YOU'RE ALONG ABOUT THAT DISTANCE, I SHOULD BE
18 FINE, SIR.

19 Q. THE NAMES THAT YOU MENTIONED, IS THERE ANYTHING
20 ABOUT YOUR ASSOCIATION WITH THESE PEOPLE THAT WOULD PREVENT
21 YOU FROM BEING A FAIR JUROR?

22 A. NO. TO TELL YOU THE TRUTH, I CAN'T EVEN PLACE A
23 FACE IN MY MIND. I JUST RECOGNIZE THE NAMES.

24 Q. OKAY.

25 A. AS I SAID, IT WAS JUST DURING THE CITIZENS ACADEMY

1 THAT DIFFERENT DEPUTIES CAME IN AND EXPLAINED DIFFERENT
2 THINGS, AND THAT'S HOW I KNOW THOSE PARTICULAR OFFICERS.

3 Q. HOW LONG AGO DID YOU GO THROUGH THE CITIZENS
4 ACADEMY?

5 A. RIGHT ABOUT THIS TIME LAST YEAR. ALMOST EXACTLY A
6 YEAR AGO, SIR.

7 Q. IS THERE ANYTHING ABOUT YOUR EXPERIENCE IN THAT
8 ACADEMY THAT WOULD PREVENT YOU FROM BEING A FAIR JUROR?

9 A. NO, SIR.

10 Q. AND WHEN THE JUDGE EXPLAINED TO YOU THE TWO
11 DIFFERENT TYPES OF PHASES THAT THIS SYSTEM INVOLVES, DID YOU
12 UNDERSTAND THAT?

13 A. ABOUT THE MITIGATING CIRCUMSTANCES AND THE
14 AGGRAVATING CIRCUMSTANCES?

15 Q. RIGHT.

16 A. YES, SIR.

17 Q. AND DID YOU UNDERSTAND -- AND LOOKING AT YOUR FORM,
18 YOU'VE NEVER BEEN ON A JURY BEFORE, HAVE YOU?

19 A. NO, SIR. WHEN I LIVED IN FLORIDA A NUMBER OF YEARS
20 AGO, I WAS CALLED IN TO JURY DUTY, BUT, YOU KNOW, CALL AFTER
21 6:00. I CALLED AFTER 6; YOU'RE NO LONGER NEEDED.

22 Q. NEVER GOT TO SERVE.

23 A. NO, SIR, I'VE NEVER SERVED ON A JURY.

24 Q. WELL, THE FIRST PART OF THIS TRIAL FOCUSES SIMPLY ON
25 GUILTY OR NOT GUILTY. DO YOU UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. JUST LIKE ANY OTHER TRIAL.

3 A. YES, SIR.

4 Q. IF THE JURY RETURNS A VERDICT FOR GUILTY OF MURDER,
5 WE GO TO THAT SECOND PHASE.

6 A. YES, SIR.

7 Q. AND THAT'S WHERE THE AGGRAVATING AND MITIGATING
8 CIRCUMSTANCES COME INTO PLAY.

9 A. OKAY.

10 Q. DO YOU UNDERSTAND THAT?

11 A. YES, SIR.

12 Q. BECAUSE IN A NORMAL TRIAL THE JUDGE SENTENCES THE
13 DEFENDANT; IN THIS TYPE OF CASE THE JURY DOES. DO YOU
14 UNDERSTAND THAT?

15 A. YES, SIR.

16 Q. AND THAT'S THE SECOND PHASE, AND ALL THAT
17 INFORMATION ABOUT WHAT'S GOOD AND BAD ABOUT THE DEFENDANT
18 COMES IN AT THAT TIME. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. AND AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, YOU'D
21 WANT TO HEAR ALL OF THAT BEFORE MAKING A DECISION.

22 A. CERTAINLY.

23 Q. AND YOU WOULD WANT TO HEAR THAT, AND IN HEARING THAT
24 YOU COULD DECIDE LIFE OR YOU COULD DECIDE DEATH.

25 A. YES, SIR. I WOULD NEED ALL THE FACTS TO MAKE A

1 DECISION; YES, SIR.

2 Q. YOUR DECISION WOULD BE BASED ON THOSE FACTS.

3 A. YES, SIR.

4 Q. OKAY. ONE FINAL THING THAT'S A LITTLE DIFFERENT
5 ABOUT THIS TYPE OF CASE. IF WE GET TO THAT SECOND PHASE, IF
6 THE JURY DECIDES LIFE, ONLY THE FOREPERSON SIGNS THE VERDICT
7 FORM. IF THE JURY DECIDES DEATH, ALL 12 PEOPLE SIGN. IF YOU
8 WERE ON THAT JURY AND IT WAS YOUR VIEW THAT, YES, THIS IS A
9 CASE THAT MERITS DEATH, COULD YOU SIGN YOUR NAME?

10 A. YES, SIR.

11 Q. OKAY. IS THERE ANYTHING ELSE ABOUT YOU THAT WOULD
12 PREVENT YOU FROM BEING A FAIR JUROR?

13 A. NOT THAT I CAN THINK OF, NO, SIR.

14 Q. AND YOU WOULD LISTEN TO BOTH SIDES.

15 A. YES, SIR.

16 MR. HUBBARD: THAT'S ALL WE COULD ASK OF YOU, MR.
17 BOYLE. THANK YOU.

18 CROSS-EXAMINATION

19 BY MS. KIMBROUGH:

20 Q. GOOD MORNING, MR. BOYLE. HOW ARE YOU?

21 A. I KNOW YOU SAID SOMETHING. I BELIEVE YOU ASKED ME
22 HOW I WAS---

23 Q. YES, SIR.

24 A. ---BUT I DIDN'T HEAR WHAT YOU WERE SAYING, MA'AM.

25 Q. OKAY. MR. BOYLE, THIS IS KEVIN MERCER. HE'S THE

1 DEFENDANT IN THIS CASE. HAVE A SEAT, KEVIN. I JUST WANTED
2 TO REINTRODUCE YOU TO HIM. I'LL MOVE UP A LITTLE CLOSER.

3 A. MISS, I APOLOGIZE. YOU'RE VERY SOFT-SPOKEN.

4 Q. I AM AND I APOLOGIZE.

5 A. NORMALLY I HEAR FEMALE VOICES BETTER THAN MALE
6 VOICES.

7 Q. SORRY ABOUT THAT. I'LL STAND HERE SO YOU CAN HEAR
8 ME. IS THIS BETTER?

9 A. THANK YOU. YES.

10 Q. OKAY. I JUST WANTED TO START WITH REALLY JUST A FEW
11 BASIC QUESTIONS, BUT WHAT WAS THE CITIZENS ACADEMY CLASS?
12 WHAT WAS THAT ABOUT? WAS IT A...

13 A. I'M SORRY, MISS?

14 Q. CAN YOU TELL ME WHAT THE CITIZENS ACADEMY CLASS WAS
15 ABOUT?

16 A. IT'S A PROGRAM THAT THE SHERIFF'S DEPARTMENT
17 SPONSORS WHERE THEY BRING IN REGULAR OLD PEOPLE AND JUST SHOW
18 THEM HOW THE SHERIFF'S DEPARTMENT FUNCTIONS. ONE OF THE
19 THINGS WAS TO RIDE ALONG WITH A DEPUTY. ANOTHER THING WAS
20 THAT I SPENT A COUPLE OF HOURS IN THE DETENTION CENTER WHERE
21 THEY BOOK THE PEOPLE IN SO YOU JUST SEE HOW THE SHERIFF'S
22 DEPARTMENT DOES THEIR JOB. WE TOOK A TOUR OF THIS COURTROOM,
23 AS A MATTER OF FACT.

24 Q. OKAY. IS THERE ANY PARTICULAR MOTIVATION FOR TAKING
25 THE CITIZENS ACADEMY OR DID IT JUST HAPPEN TO APPEAL TO YOU?

1 A. CURIOUS HOW THE SHERIFF'S DEPARTMENT WORKS.

2 Q. HAD YOU HAD ANY PRIOR DEALINGS WITH THE SHERIFF'S
3 DEPARTMENT?

4 A. IN 2002 I TOOK A CLASS FOR THE LEADERSHIP OF
5 LEXINGTON COUNTY. IN THERE THEY ACTUALLY SHOWED US HOW THE
6 GOVERNMENT OF LEXINGTON COUNTY WORKED WHERE, AGAIN, WE TOOK A
7 TOUR OF THE COURTHOUSE. WE TOOK -- THEY JUST SHOWED US
8 DIFFERENT FACETS OF COUNTY GOVERNMENT, A PART OF THAT BEING
9 THE SHERIFF'S DEPARTMENT. SO I GOT TO SEE SOME OF THE
10 DEPUTIES AND WE HAD A COUPLE OF LECTURES BY DIFFERENT MEMBERS
11 OF THE SHERIFF'S DEPARTMENT. TO TELL YOU THE HONEST TRUTH, I
12 CAN'T REMEMBER WHAT THOSE LECTURES WERE, BUT AS FAR AS THAT
13 KIND OF STUFF, AS FAR AS ANY KIND OF TROUBLE, SO TO SPEAK,
14 NO, MA'AM. I THINK I'VE HAD ONE OR TWO SPEEDING TICKETS
15 SINCE I'VE BEEN IN SOUTH CAROLINA, AND THAT'S BEEN ALMOST 13
16 YEARS NOW.

17 Q. THAT'S PRETTY GOOD. SO YOUR INTEREST IN THESE
18 CLASSES IS JUST AS A PUBLIC CITIZEN? YOU DON'T HAVE ANY
19 OTHER LAW ENFORCEMENT CONNECTION?

20 A. JUST CURIOUS. YOU KNOW, I GUESS SOME PEOPLE USE IT
21 FOR A BIT OF A POLITICAL SPRINGBOARD. I WAS JUST CURIOUS,
22 YOU KNOW: HOW DOES THE GOVERNMENT WORK? WHAT DO THEY DO?
23 HOW DO THEY FIGURE OUT THE BUDGET, STUFF LIKE THAT, THINGS
24 THAT THEY TALKED ABOUT IN THE CLASS.

25 Q. OKAY. SO YOU'VE HAD TWO CLASSES OF THIS SORT? JUST

1 TWO CLASSES?

2 A. THE LEADERSHIP OF LEXINGTON COUNTY IN 2002 AND THEN
3 THE CITIZENS ACADEMY LAST SPRING, YES, MA'AM.

4 Q. OKAY. ALL RIGHT. I NOTICED YOU WERE BORN IN A --
5 IN A NAVAL HOSPITAL; IS THAT CORRECT?

6 A. I'M SORRY?

7 Q. YOU WERE BORN IN A NAVAL HOSPITAL?

8 A. YES, MA'AM.

9 Q. DO YOU HAVE FAMILY---

10 A. IN KEY WEST NAVAL HOSPITAL, YES, MA'AM.

11 Q. OKAY. DID YOU HAVE FAMILY THAT WAS IN THE MILITARY?

12 A. MY FATHER, A 20-YEAR VETERAN, SUBMARINES. MY
13 BROTHER SERVED NINE YEARS IN THE NAVY, THE LAST FOUR YEARS ON
14 A SUBMARINE.

15 Q. OKAY. BUT JUST THOSE TWO FAMILY MEMBERS, SIR?

16 A. WELL, I HAD AN UNCLE THAT SERVED IN THE ARMY, WORLD
17 WAR II IN KOREA. I HAD A COUSIN WHO SERVED IN THE ARMY IN
18 GERMANY. A GUY THAT I CONSIDER HIM A BROTHER OF MINE, NOT
19 REALLY, BUT HE SERVED DURING -- IN THE ARMY DURING THE FIRST
20 GULF WAR.

21 Q. OKAY. SO WOULD YOU CONSIDER YOURSELF TO HAVE SORT
22 OF AN AFFINITY FOR PEOPLE IN THE MILITARY, SORT OF A
23 CONNECTION WITH THEM?

24 A. THE SHORT ANSWER, YES. THE LONG ANSWER IS SOME OF
25 THEM ARE NOT ALL THAT FRIENDLY WITH -- I GUESS YOU COULD SAY.

1 Q. OKAY.

2 A. BUT IN GENERAL, YEAH, I'D GIVE A MILITARY GUY A
3 PASS, SO TO SPEAK.

4 Q. OKAY. NOW, IN THIS CASE THE VICTIM WAS TRACY LAMAR
5 DAVIS. NOW, MR. DAVIS WAS AN ACTIVE MEMBER OF THE UNITED
6 STATES ARMY. WOULD THAT FACT, THE FACT THAT HE WAS MURDERED,
7 WOULD THAT CAUSE YOU ANY PROBLEM INSOFAR AS BEING FAIR TO MR.
8 MERCER AND TO GIVING A FAIR CONSIDERATION OF THE FACTS,
9 WITHOUT EMOTIONAL RESPONSE OR, IF THERE IS ONE---

10 A. AS FAR AS ME BEING PREDISPOSED TO TAKE CERTAIN FACTS
11 A CERTAIN WAY? NOT NECESSARILY, NO, MA'AM.

12 Q. OKAY. NOW, ASSUMING -- AND THIS IS JUST MAKING AN
13 ASSUMPTION. I'M NOT SAYING WE'RE GETTING TO THE SECOND PHASE
14 BECAUSE THESE ARE TWO VERY DISTINCT PHASES. BUT IN THE FIRST
15 ONE YOU AND THE OTHER 11 MEMBERS OF THIS JURY PANEL WOULD
16 HAVE TO DECIDE IF MR. MERCER WAS GUILTY OF A MURDER AND AN
17 ARMED ROBBERY. ASSUMING THAT THAT HAPPENED -- AND MURDER IS
18 AN INTENTIONAL KILLING. IT'S NOT AN ACCIDENT. IT'S NOT A
19 MISTAKE. IT'S NOT SELF-DEFENSE. IT'S AN INTENTIONAL
20 KILLING. ASSUMING YOU GET TO THAT CONCLUSION THAT, YES, IN
21 FACT, MR. MURDER -- MR. MERCER IS GUILTY OF MURDER AND ARMED
22 ROBBERY, WOULD YOU BE ABLE TO GIVE HIM A FAIR SENTENCING
23 CONSIDERATION BASED ON THE FACT THAT THE VICTIM WAS IN THE
24 ARMY? WOULD THAT BE DIFFICULT FOR YOU AT ALL?

25 A. THE FACT THAT THE VICTIM WAS A MEMBER OF THE

VOLUME TWO 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

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

2003-GS-32-0409

THE STATE OF SOUTH CAROLINA

-VS-

KEVIN J. MERCER

:
:
: TRANSCRIPT OF RECORD
: VOLUME 2
: PAGES 500 - 999

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

1 Q. OKAY.

2 A. YOU CAN'T MAKE UP YOUR MIND 'TIL YOU KNOW FACTS;
3 RIGHT?

4 Q. YOU'RE RIGHT ABOUT THAT. AND THE EVIDENCE THAT
5 WOULD BE PRESENTED TO YOU TO HELP YOU MAKE UP YOUR MIND WOULD
6 CONSIST OF -- POTENTIALLY EXIST OF A -- CONSIST OF A VARIETY
7 OF FACTORS. SOME OF THE INFORMATION WOULD BE THINGS THE
8 STATE WOULD PRESENT CONCERNING THE VICTIM IN HIS LIFE OR BAD
9 THINGS THAT MR. MERCER MIGHT HAVE DONE. WE CAN'T KNOW FOR
10 CERTAIN BECAUSE WE'RE NOT THERE YET. ON THE OTHER HAND, THE
11 DEFENDANT, KEVIN MERCER, HAS NO BURDEN OF SHOWING ANY
12 EVIDENCE IN MITIGATION, NONE. YOU COULD GIVE HIM LIFE---

13 A. EXCUSE ME. WHAT'S THIS LAST LITTLE PART HERE? I
14 WAS WITH YOU UP UNTIL ABOUT THREE SECONDS AGO.

15 Q. OKAY. I'LL SLOW DOWN AND SPEAK LOUDER. MR. MERCER
16 WOULD HAVE THE OPPORTUNITY TO PRESENT WHAT'S CALLED
17 MITIGATING EVIDENCE---

18 A. YES, MA'AM.

19 Q. ---WHICH WOULD BE SOMETHING THAT WOULD LESSEN HIS
20 PERSONAL MORAL CULPABILITY AS FAR AS THE CRIME GOES. IT'S
21 NOT GOING TO MAKE MURDER INTO SOMETHING ELSE. IT'S SIMPLY AN
22 OPPORTUNITY FOR MR. MERCER, SHOULD HE CHOOSE TO DO SO, TO
23 PRESENT EVIDENCE THAT MIGHT CAUSE YOU TO IMPOSE A LESSER
24 SENTENCE. YOU DON'T HAVE TO IMPOSE CAPITAL PUNISHMENT IN ANY
25 CASE.

1 HOWEVER, THE DEFENDANT ALWAYS HAS THE OPPORTUNITY TO
2 PRESENT MITIGATING EVIDENCE, AND THAT COULD BE ANY NUMBER OF
3 THINGS: BACKGROUND INFORMATION ABOUT HIM, THINGS THAT HE'S
4 DONE IN HIS LIFE THAT ARE GOOD, THINGS THAT HAVE HAPPENED TO
5 HIM THAT WERE TRAUMATIC OR DIFFICULT, THEREBY AFFECTING HIS
6 FUNCTIONING AS A PERSON. COULD YOU CONSIDER ALL OF THAT
7 EVIDENCE?

8 A. YES, MA'AM.

9 Q. OKAY. YOU DON'T THINK YOU WOULD HAVE ANY TROUBLE
10 WITH THAT.

11 A. NO. THAT'S WHAT A JUROR IS FOR; RIGHT?

12 Q. I WOULD SAY SO.

13 A. YOU'VE GOT TO CONSIDER EVERYTHING PRESENTED.

14 Q. YES, SIR. YES, SIR. THAT'S JUST -- I JUST WANTED
15 TO MAKE SURE THAT THAT'S THE TYPE OF JUROR YOU ARE, THAT YOU
16 COULD CONSIDER EVERYTHING INCLUDING, YOU KNOW, SOME
17 INFORMATION THAT, YOU KNOW -- IT'S GOING TO BE ALL ACROSS THE
18 BOARD, WHAT YOU COULD BE, YOU KNOW, ASKED TO CONSIDER.

19 A. I UNDERSTAND. THERE'S---

20 Q. IT MAY BE UNUSUAL---

21 A. THERE'S A LOT OF DIFFERENT THINGS THAT COULD COME
22 UP, AND, YES, I WOULD CONSIDER EVERYTHING THAT WAS IN FRONT
23 OF ME.

24 Q. OKAY. AND THE LAST QUESTION IS: IF YOU ARE ON THIS
25 JURY, IN BOTH THE INNOCENCE-OR-GUILT PHASE AS WELL AS THE

1 SENTENCING PHASE AND YOU HAD A BELIEF -- YOU BELIEVED
2 SOMETHING EITHER ABOUT THE FACTS OR ABOUT WHAT THE PUNISHMENT
3 SHOULD BE AND SAY THE OTHER 11 JURORS DIDN'T AGREE WITH YOU,
4 WOULD YOU BE WILLING TO HOLD ON TO YOUR VIEW UNLESS AND UNTIL
5 YOU WERE CONVINCED OTHERWISE OR DO YOU FEEL LIKE YOU WOULD
6 SIMPLY SIGN ON TO THE MAJORITY?

7 A. WELL, I BELIEVE AS A JUROR I NEED TO MAKE UP MY OWN
8 MIND. I NEED TO LISTEN TO WHAT'S PRESENTED IN FRONT OF ME.
9 I NEED TO LISTEN TO WHAT THE JUDGE GIVES US FOR INSTRUCTIONS.
10 THEN WE NEED TO SIT DOWN AND MAKE UP OUR MINDS INDIVIDUALLY,
11 AND IF I'M WRONG, I'M WRONG, BUT I NEED SOMEBODY TO SHOW ME
12 WHERE I'M WRONG. I'M NOT ONE TO JUST GO ALONG JUST BECAUSE
13 EVERYBODY ELSE DOES.

14 MS. KIMBROUGH: THAT'S ALL WE ASK. THANK YOU.

15 THE COURT: ALL RIGHT. MR. BOYLE, LET ME ASK YOU TO
16 STEP OUT IN THE HALL FOR JUST ONE SECOND, PLEASE.

17 THE WITNESS: SURE.

18 THE COURT: HE'LL TAKE YOU RIGHT OUT THERE, AND I'LL
19 GET YOU RIGHT BACK IN.

20 (JUROR BOYLE LEAVES THE COURTROOM.)

21 THE COURT: ALL RIGHT. I THINK HE'S QUALIFIED.
22 DOES ANYBODY DISAGREE?

23 MR. MYERS: NO, SIR.

24 MS. KIMBROUGH: YES, YOUR HONOR.

25 THE COURT: HE'S QUALIFIED?

1 MS. KIMBROUGH: YES, YOUR HONOR.

2 THE COURT: NOW, THE ONLY THING THAT CONCERNS ME
3 THOUGH IS HIS HEARING. I'M SURE WE CAN MAKE ACCOMMODATIONS,
4 BUT WHAT I WAS THINKING OF DOING NOW IS TO LET HIM SIT IN A
5 COUPLE OF THOSE SEATS OVER THERE IN THE JURY BOX AND THEN
6 I'LL SIT HERE. MAYBE A COUPLE OF US CAN SIT HERE AND JUST
7 TALK AND SEE HOW WELL HE HEARS BECAUSE IF WE -- IF WE END UP
8 HAVING TO GET WITNESSES AND COUNSEL TO REPEAT THEMSELVES
9 CONSTANTLY DURING THE COURSE OF THE TRIAL, IT'S GOING TO BE
10 SUCH A DISRUPTION THAT IT'S NOT -- YOU KNOW, WE REALLY WOULD
11 PROBABLY AGREE TO EXCUSE HIM THEN, BUT IT ALSO COULD POSSIBLY
12 GET TO THE POINT WHERE I FEEL I WOULD HAVE TO EXCUSE HIM
13 BECAUSE HE'S NOT ABLE TO UNDERSTAND THE ENGLISH LANGUAGE
14 BECAUSE OF HIS HEARING OR BECAUSE OF THE MEDICAL -- THE
15 MEDICAL ASPECT OF HIS HEARING LOSS. DO Y'ALL AGREE TO
16 CONDUCTING A LITTLE EXPERIMENT HERE TO SEE IF HE CAN -- SEE
17 HOW WELL HE CAN HEAR?

18 MR. MYERS: THAT'S FINE.

19 MR. LITTLEJOHN: YES, SIR.

20 THE COURT: HOW ABOUT -- NEITHER ONE OF Y'ALL ARE
21 REALLY ALL THAT SOFT-SPOKEN, SO... HOPE MIGHT BE.

22 THE CLERK: A LOUD MOUTH?

23 THE COURT: NO. NO.

24 THE CLERK: SOFT-SPOKEN?

25 THE COURT: SOFT-SPOKEN. SO I WAS GOING TO SAY

1 MAYBE WE COULD GET TWO PEOPLE TO SIT OVER THERE AND -- BUCK,
2 WHY DON'T YOU -- WELL, LET'S SEE. WHAT DO Y'ALL THINK? I
3 MEAN, I DON'T KNOW IF I OUGHT TO DO IT. I COULD GET DOWN
4 THERE AND DO IT. I DON'T KNOW IF THAT'S... DO Y'ALL WANT --
5 DO Y'ALL WANT THE LAWYERS TO DO IT? LET LISA AND EITHER RICK
6 OR SHAWN OR SOMEBODY JUST SIT UP THERE AND TALK FOR A SECOND?

7 MR. MYERS: IT SUITS ME IF YOU LET HIM SIT IN THAT
8 FRONT CHAIR RIGHT THERE AND YOU JUST TALK WITH HIM.

9 THE COURT: OKAY.

10 MR. MYERS: SEE IF YOU CAN COMMUNICATE.

11 THE COURT: ALL RIGHT. WELL...

12 MR. LITTLEJOHN: JUDGE, THE THING THAT CONCERNS ME
13 IS, OF COURSE, YOU'RE SPEAKING INTO A MICROPHONE, AND AS WE
14 WALK AROUND THE COURTROOM EXAMINING WITNESSES, OF COURSE,
15 SOMETIMES WE'RE NOT GOING TO BE IN FRONT OF A MICROPHONE,
16 SO---

17 THE COURT: RIGHT.

18 MR. LITTLEJOHN: ---I DON'T KNOW IF YOU WANT TO
19 FACTOR THAT INTO YOUR TEST.

20 THE COURT: ALL RIGHT. I TELL YOU WHAT I'M GOING TO
21 DO. I'M GOING TO SPEAK TO HIM FOR A SECOND AND SEE IF HE --
22 SEE IF HE CAN UNDERSTAND, AND THEN I WOULD LIKE FOR LISA TO
23 SPEAK FROM IN BACK OVER IN HERE IN A RELATIVELY NORMAL VOICE
24 THAT YOU WOULD USE IN ADDRESSING THE JURY AND -- AND --
25 BECAUSE I THINK OF ALL OF THE LAWYERS SHE'S PROBABLY GOT THE

1 MOST SOFT -- SHE'S PROBABLY THE MOST SOFT-SPOKEN. AND WE'LL
2 JUST SEE HOW WELL HE HEARS.

3 SO JUST -- JUST THINK OF SOMETHING TO SAY FOR 10 OR
4 15 SECONDS THAT IS -- YOU KNOW, YOU CAN JUST SAY, WELL, I'M
5 -- THE JUDGE HAS ASKED ME TO SPEAK TO YOU FROM OVER HERE
6 WHERE THERE'S NO MICROPHONE JUST SO THAT YOU CAN -- WE CAN
7 ASSESS HOW WELL YOU'RE GOING TO BE ABLE TO HEAR ME WHEN I'M
8 NOT USING THE MICROPHONE AND I'M NOT ALL THAT CLOSE BY. DOES
9 ANYBODY OBJECT TO THAT?

10 MR. MYERS: NO, SIR.

11 THE COURT: ALL RIGHT. BRING HIM IN, PLEASE.

12 (JUROR BOYLE IS BROUGHT INTO THE COURTROOM.)

13 THE COURT: MR. BOYLE, YOU ARE QUALIFIED TO SERVE ON
14 THIS JURY. I HAVE A LITTLE BIT OF A CONCERN ABOUT YOUR
15 HEARING SITUATION. TELL ME HOW YOU FEEL ABOUT -- ABOUT HOW
16 YOU THINK YOUR HEARING WOULD AFFECT YOUR ABILITY TO SERVE AS
17 AN IMPARTIAL -- TO SERVE AS A JUROR HERE. DO YOU THINK YOU
18 WOULD BE ABLE TO---

19 THE WITNESS: AS WE DISCUSSED BEFORE, IF I COULD SIT
20 TOWARDS THE FRONT AND THE WITNESSES WOULD BE HERE AND THE
21 SOUND SYSTEM IS WORKING, I DON'T SEE IT BEING A PROBLEM.

22 THE COURT: OKAY. LET'S -- LET'S TRY A COUPLE OF
23 THINGS. WHY DON'T YOU TAKE A SEAT IN THAT SECOND CHAIR RIGHT
24 THERE, NOT THE FIRST ONE BUT THE SECOND ONE, AND NOW I'M
25 GOING TO TALK TO YOU FOR A SECOND. THEN I'M GOING TO HAVE A

1 COUPLE OF THE LAWYERS JUST TALK TO YOU FOR A SECOND FROM
2 DIFFERENT POINTS AND JUST MAKE SURE THAT YOU'RE ABLE TO HEAR
3 EVERYTHING THAT'S BEING SAID. NOW, I'VE GOT A PRETTY STRONG
4 VOICE, AND PARTICULARLY WHEN I NEED TO, I CAN GET MY VOICE UP
5 AND I'M NOT ALL THAT HARD TO HEAR. ARE YOU HAVING ANY
6 TROUBLE HEARING ME RIGHT NOW?

7 THE WITNESS: RIGHT NOW I'M CATCHING YOU PRETTY
8 GOOD, SIR.

9 THE COURT: ALL RIGHT. I'M GOING TO ASK MS.
10 KIMBROUGH, WHO, AS YOU KNOW, SHE'S ONE OF THE LAWYERS FOR MR.
11 MERCER, TO SPEAK TO YOU FROM OVER IN THAT AREA WHERE SHE'S
12 STANDING NOW BECAUSE SOMETIMES THEY WILL BE ADDRESSING THE
13 JURY FROM OVER THERE AND LET'S SEE HOW WELL YOU CAN HEAR HER.

14 MS. KIMBROUGH: GOOD MORNING, MR. BOYLE. JUDGE FEW
15 HAS ASKED ME TO SPEAK TO YOU FROM A DISTANCE---

16 THE WITNESS: I'M SORRY, MISS. I'M READING YOUR
17 LIPS MORE THAN I'M HEARING YOUR VOICE. I'M GOING TO MISS
18 HALF OF WHAT YOU SAY AT LEAST.

19 MS. KIMBROUGH: OKAY. GOOD MORNING, MR. BOYLE.
20 JUDGE FEW HAS ASKED ME TO SAY A FEW WORDS TO YOU FROM A
21 DISTANCE TO---

22 THE WITNESS: I'M SORRY, MISS.

23 MS. KIMBROUGH: I'M SORRY.

24 THE WITNESS: I'M NOT HEARING YOU VERY WELL AT ALL.

25 MS. KIMBROUGH: OKAY. MR. BOYLE, CAN YOU HEAR ME

1 NOW?

2 THE WITNESS: I CAN HEAR YOU HALFWAY DECENT. I CAN
3 HEAR YOU HALFWAY DECENT, MA'AM.

4 MS. KIMBROUGH: YOU CAN HEAR ME HALFWAY?

5 THE WITNESS: I'M -- I'M -- WITH READING YOUR LIPS
6 AND WHAT I DO HEAR OF YOUR VOICE, I AM UNDERSTANDING WHAT
7 YOU'RE SAYING RIGHT NOW.

8 MS. KIMBROUGH: OKAY. WHAT IF I WERE WALKING AROUND
9 AND YOU COULDN'T SEE MY LIPS? CAN YOU HEAR WHAT I'M SAYING?

10 THE WITNESS: I HEARD YOU ASK IF YOU WERE WALKING
11 AROUND LIKE THAT IF I HEARD WHAT YOU WERE SAYING. BUT,
12 AGAIN, I WAS PARTIALLY READING YOUR LIPS AND HEARING SOME
13 SOUND.

14 MS. KIMBROUGH: CAN YOU UNDERSTAND WHAT I'M SAYING
15 NOW?

16 THE WITNESS: THAT'S IT. I TOTALLY LOST YOU.

17 MS. KIMBROUGH: HOW ABOUT IF I'M HERE?

18 THE WITNESS: NO.

19 MS. KIMBROUGH: NO WAY? HOW ABOUT IF I'M HERE?

20 THE WITNESS: I CAN HEAR THE SOUND OF YOUR VOICE. I
21 CANNOT HEAR THE WORDS THAT YOU'RE SAYING.

22 THE COURT: OKAY. ALL RIGHT. THANK YOU. LET ME --
23 LET ME DISCUSS THIS WITH THE LAWYERS FOR JUST A MINUTE IF YOU
24 DON'T MIND. IF YOU'LL STEP RIGHT BACK OUT IN THE HALL, THEN
25 I'LL BE RIGHT BACK WITH YOU, SIR.

1 THE WITNESS: YES, SIR.

2 (JUROR BOYLE LEAVES THE COURTROOM.)

3 THE COURT: ALL RIGHT. I THINK THAT WE HAVE A
4 RESPONSIBILITY TO A POINT TO TRY TO MAKE WHATEVER
5 ACCOMMODATIONS WE CAN MAKE SO THAT THIS JUROR, BECAUSE HE IS
6 QUALIFIED TO SERVE, CAN SERVE. NOW, WHEN LISA IS STANDING ON
7 THE OTHER SIDE OF THE ROOM AND -- THEN HE WAS OBVIOUSLY
8 HAVING DIFFICULTY HEARING HER. THIS COURTROOM IS NOT ALL
9 THAT WELL DESIGNED IN TERMS OF ITS ACOUSTICS, AND THERE'S --
10 THESE VENTS ARE JUST BLOWING SOUND. THEY'RE BLOWING MORE
11 SOUND OUT THAN THEY ARE -- THAN THEY ARE AIR OUT.

12 IN FACT, I'M CONSIDERING TRYING TO FIGURE OUT HOW WE
13 CAN IMPOSE THE DEATH PENALTY ON ARCHITECTS WHO PUT AIR
14 CONDITIONING SYSTEMS ABOVE THE BENCH IN COURTROOMS BECAUSE
15 THEY DO THAT ALL OVER THE PLACE. THE SAME CROWD OF YAHOOOS
16 THAT DESIGNED THIS COURTROOM IS THE SAME CROWD OF YAHOOOS THAT
17 DESIGNED THE COURTROOM IN ANDERSON AND IN OCONEE WHERE -- AND
18 BOTH OF THEM ARE ABSOLUTELY PATHETIC. SO, ANYWAY, I'VE
19 GOTTEN THAT OFF MY CHEST. BUT LET'S TAKE A SHORT BREAK.

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 THE COURT: KEEP YOUR SEATS AND COME TO ORDER. THE
22 REASON THAT I MENTIONED THE BACKGROUND NOISE IN THIS
23 COURTROOM IS BECAUSE NORMALLY AS A LAWYER WALKS AROUND THE
24 COURTROOM AND DOES -- ALL RIGHT. WELL, MR. MERCER IS NOT IN
25 HERE..

1 POLICE OFFICER: HE'S COMING IN.

2 (MR. MERCER IS BROUGHT INTO THE COURTROOM.)

3 THE COURT: ALL RIGHT. NORMALLY AS A LAWYER IS
4 WALKING AROUND THE COURTROOM PICKING UP PAPERS, MOVING THINGS
5 AROUND, PREPARING TO SHOW DOCUMENTS TO WITNESSES, OBTAINING
6 SOMETHING FROM THE CLERK'S DESK OR SOMETHING LIKE THAT, THERE
7 ARE MANY TIMES WHEN THE LAWYER HAS THEIR BACK TO THE JURY,
8 AND THE BACKGROUND NOISE IN THE COURTROOM IS SUCH THAT THEY
9 CAN SPEAK AT A RELATIVELY NORMAL TONE OF VOICE AND THE JURY
10 CAN HEAR THEM. I DON'T THINK THAT'S TRUE FOR ANYBODY IN THIS
11 COURTROOM EXCEPT FOR MAYBE THOSE WHO HAVE AN EXTRAORDINARILY
12 STRONG VOICE.

13 THIS IS A COURTROOM IN WHICH GENERALLY YOU'VE PRETTY
14 MUCH GOT TO BE FACING THE JURY AND DELIBERATELY TALKING LOUD
15 ENOUGH FOR THEM TO HEAR, AND THAT'S JUST THE WAY THIS
16 COURTROOM IS DESIGNED AND THAT'S WHAT Y'ALL HAVE TO LIVE WITH
17 ON A DAY-TO-DAY BASIS BECAUSE OF THE POOR DESIGN OF THE
18 ACOUSTICS OF THIS COURTROOM. LISA'S SITUATION IS SLIGHTLY
19 DIFFERENT, I SUPPOSE, BECAUSE SHE'S SOFT-SPOKEN, BUT I
20 QUESTION WHETHER OR NOT WE REALLY NEED TO EXCUSE HIM BECAUSE
21 OF HIS HEARING.

22 AS SHE WAS MOVING TOWARD -- ABOUT TOWARD WHERE THIS
23 UNIT IS AND AS LONG AS SHE DID NOT HAVE HER MOUTH COVERED UP
24 AND WAS FACING THE JURY, THEN HE WAS ABLE TO HEAR HER. AND
25 SO I -- I -- YOU KNOW -- YOU KNOW, IT'S A -- I'M SURE THAT

1 IT'S A JUDGMENT CALL ON MY PART, BUT I FEEL THAT WE HAVE THE
2 RESPONSIBILITY TO TRY TO MAKE IT WORK SO THAT THIS JUROR CAN
3 PARTICIPATE. ANYBODY DISAGREE WITH THAT?

4 MR. HUBBARD: NO, SIR, YOUR HONOR.

5 THE COURT: ALL RIGHT. FROM THE DEFENSE?

6 MR. LITTLEJOHN: JUDGE, I UNDERSTAND WHAT THE COURT
7 IS TRYING TO DO AND TO -- IN AN EFFORT TO GIVE THIS JUROR AN
8 OPPORTUNITY TO SERVE, BUT I JUST THINK FOR THE RECORD I'D
9 HAVE TO STATE THAT I THINK THE MAGNITUDE OF THIS CASE IS SUCH
10 THAT EVERYTHING THAT IS SAID IS IMPORTANT, AND IF THIS JUROR
11 IS GOING TO BE MISSING THINGS AND TRYING TO READ LIPS THAT --
12 YOU KNOW, I THINK HE'S QUALIFIED. HE APPEARS TO BE A VERY
13 FAIR PERSON, BUT I JUST THINK WE RUN THE RISK OF HIM NOT
14 HEARING EVERYTHING AND, IF SO, HE CAN'T -- CAN'T TRULY
15 PARTICIPATE IN THE DELIBERATIONS IF HE HASN'T HEARD
16 EVERYTHING THAT'S OCCURRED IN THE COURTROOM.

17 MR. HUBBARD: I THINK THE ONE THING THAT STRUCK ME
18 IS THAT HE WANTS TO PARTICIPATE, AND I THINK HE'S PROBABLY
19 GOING TO -- KNOWING HIS OWN DISABILITY, IT STRUCK ME HE'S
20 TRYING TO HEAR AND I AGREE WITH YOUR HONOR. I MEAN, I KNOW
21 THERE'S A POINT WHERE YOU'VE GOT TO SAY THIS WON'T WORK, BUT
22 IF IT'S POSSIBLE FOR IT TO WORK, YOUR HONOR, I THINK HE'S
23 WILLING TO DO WHAT HE NEEDS TO DO, AND I THINK IT'S PROBABLY
24 INCUMBENT UPON US LAWYERS TO SPEAK UP. AND I KNOW IT'S
25 DIFFICULT, BUT I THINK WE CAN WORK AROUND IT. THE WITNESSES

1 THANKFULLY HAVE THE MICROPHONE THERE, AND THAT'S WHERE THE
2 EVIDENCE IS COMING FROM, THE TESTIMONY. WHAT WE SAY IS NOT
3 EVIDENCE.

4 THE COURT: RIGHT.

5 MR. LITTLEJOHN: YOUR HONOR, OF COURSE -- EXCUSE ME.

6 THE COURT: I KNOW WHAT I'M GOING TO DO. I'M GOING
7 TO GO AHEAD AND QUALIFY HIM AS A JUROR, AND THEN I'M GOING TO
8 HOLD OPEN AS WE MOVE THROUGH THIS WEEK THE QUESTION OF
9 WHETHER OR NOT TO ACTUALLY ALLOW HIM TO PARTICIPATE IN THE
10 STRIKING OF THE JURY. AND THEN I THINK WHAT I'M GOING TO DO
11 IS GO AHEAD AND LEAVE HIM IN THE PANEL, AND THEN AFTER WE'VE
12 BEEN GOING FOR A DAY OR SO WE CAN HAVE -- WE CAN TAKE A BREAK
13 AND HAVE A CONVERSATION WITH HIM. I CAN HAVE A CONVERSATION
14 WITH HIM IN WHICH -- IN WHICH I CAN TRY TO ASSESS WHETHER OR
15 NOT HIS HEARING PROBLEM IS INTERFERING WITH HIS ABILITY TO
16 HEAR EVERYTHING AND TO -- AND TO COMPLETELY TAKE IN ALL THE
17 EVIDENCE AS YOU DESCRIBED THE PROBLEM MIGHT BE, AND IF HE IS,
18 I WOULD HAVE THE AUTHORITY AT THAT TIME TO EXCUSE HIM AND
19 REPLACE HIM WITH AN ALTERNATE. NOW, DOES ANYBODY SEE A
20 PROBLEM WITH THAT APPROACH?

21 MR. HUBBARD: NO, SIR. NO, SIR, YOUR HONOR.

22 THE COURT: DO YOU SEE A PROBLEM WITH THAT APPROACH?

23 MR. LITTLEJOHN: NO, YOUR HONOR, OTHER THAN WHAT WE
24 PREVIOUSLY STATED, AND YOU'VE TAKEN THAT INTO CONSIDERATION.

25 THE COURT: RIGHT. AND WHAT I'M PROPOSING IS THAT I

1 WOULD -- WE'RE BASICALLY GOING TO TRY IT, AND THEN WE'LL
2 OBSERVE HIM AND THEN HE WILL HAVE A CHANCE TO PARTICIPATE,
3 AND THEN WE'LL HAVE A CONVERSATION IN WHICH I WILL MAKE AN
4 ASSESSMENT AS TO HOW WELL HE'S DOING.

5 MR. GRAHAM: YOUR HONOR, THE ONLY THING I WOULD LIKE
6 TO ADD IS HE, ON THE BACK OF HIS JUROR CARD, SAID THAT HE
7 MIGHT NEED AN AMPLIFICATION DEVICE, AND I WAS GOING TO ASK
8 MAYBE IF WE COULD GET THE CLERK OF COURT TO CHECK WITH COURT
9 ADMINISTRATION TO SEE IF THEY'VE HAD THIS PROBLEM BEFORE AND
10 HOW THAT'S BEEN DEALT WITH.

11 THE COURT: THAT'S A GOOD SUGGESTION. ALL RIGHT.
12 BRING HIM IN.

13 (JUROR BOYLE IS BROUGHT INTO THE COURTROOM.)

14 THE COURT: ALL RIGHT. MR. BOYLE, AS WE -- AS WE
15 ALWAYS DO, WITH ANY JUROR WHO HAS ANY KIND OF ISSUE THAT
16 NEEDS TO BE DEALT WITH, WE'RE TRYING TO FIND A WAY TO MAKE IT
17 POSSIBLE FOR YOU TO SERVE. AND I WANT TO ASK YOU A COUPLE OF
18 QUESTIONS. AND YOU'RE WELCOME TO SIT DOWN IF YOU'D LIKE, BUT
19 IT WON'T TAKE BUT A SECOND. YOU CAN STAND; IT'S UP TO YOU.

20 THE WITNESS: I DON'T MIND STANDING.

21 THE COURT: ALL RIGHT. HAVE YOU EVER USED A HEARING
22 AID OR DO YOU HAVE ANY KIND OF HEARING AMPLIFICATION DEVICE
23 THAT'S AVAILABLE TO YOU?

24 THE WITNESS: NO, SIR. I'VE BEEN TALKING TO MY BOSS
25 AT WORK AND, IN FACT, SOMETIME LATER THIS SPRING OR SUMMER

1 I'LL BE GOING IN TO SEE AN EAR DOCTOR AND BE FITTED FOR A
2 HEARING AID.

3 THE COURT: OKAY.

4 THE WITNESS: I'VE BEEN TO AN AUDIOLOGIST. THEY'VE
5 TOLD ME THAT A HEARING AID WOULD SIGNIFICANTLY IMPROVE MY
6 HEARING, BUT I ALSO HAVE A PROBLEM WITH CERTAIN WORDS. THEY
7 SAID THAT WILL TAKE ME A LITTLE BIT OF TIME TO GET OVER
8 THOSE, BUT THEY SAID A HEARING AID WOULD SIGNIFICANTLY
9 IMPROVE MY HEARING. SO, YES, SOMETIME THIS SPRING OR SUMMER
10 I'LL BE GETTING HEARING AIDS; YES, SIR.

11 THE COURT: ARE YOU AWARE OF ANYTHING THAT YOU COULD
12 -- THAT YOU COULD DO OR THAT WE COULD HELP YOU TO DO BETWEEN
13 NOW AND MONDAY THAT WOULD ASSIST YOU IN BEING ABLE TO HEAR
14 EVERYTHING THAT IS GOING ON IN THE COURTROOM?

15 THE WITNESS: I DON'T KNOW IF THEY HAVE IT HERE;
16 OBVIOUSLY NOT OR YOU PROBABLY WOULD HAVE ALREADY SUGGESTED
17 IT. BUT LIKE SOME OF THE MOVIE THEATERS HAVE HEADSETS THAT
18 YOU CAN WEAR IN THE MOVIE THEATER THAT I GUESS THE SOUND IS
19 BROADCAST TO THE HEADSET, AND YOU CAN TURN THE VOLUME UP ON
20 THE HEADSET. MY SISTER, SHE ALSO HAS A HEARING PROBLEM, AND
21 SHE USES THOSE WHEN SHE GOES TO SEE THE MOVIES. I HAVEN'T
22 PERSONALLY USED THOSE, BUT SHE SAYS THEY WORK FINE.

23 THE COURT: AND SO THAT WOULD -- THAT WOULD -- WELL,
24 WE'RE GOING TO -- WE'LL CHECK INTO THAT. WE HAVE AN
25 ADMINISTRATIVE ARM OF THE COURT OVER IN COLUMBIA THAT IS

1 AVAILABLE TO HELP US WITH A VARIETY OF DIFFERENT THINGS, AND
2 THEY MAY CAN HELP US TO ADDRESS THIS PROBLEM. I THINK WHAT
3 WE'RE GOING TO DO IS GO AHEAD AND LEAVE YOU -- WE'RE GOING TO
4 -- YOU'RE QUALIFIED TO SERVE, AND SO I'M GOING TO -- I'M
5 GOING TO PUT YOU IN THE JURY PANEL. AND IF YOU GET ON THE
6 JURY, THEN WE WILL ASSESS AS WE MOVE ALONG HOW WELL YOU'RE
7 DOING IN BEING ABLE TO HEAR AND UNDERSTAND WHAT'S GOING ON.

8 SO WHAT I'D LIKE FOR YOU TO DO IS TO BE READY TO
9 COME BACK HERE ON MONDAY MORNING. IF YOU WILL CALL THE
10 TELEPHONE NUMBER THAT HAS BEEN -- THAT IS ON THAT PINK SHEET
11 THAT YOU HAVE THERE IN YOUR POCKET---

12 THE WITNESS: THIS PINK SHEET?

13 THE COURT: CALL THAT TELEPHONE NUMBER SUNDAY NIGHT
14 AFTER 6:00. THERE WILL BE INSTRUCTIONS ON THERE AS TO WHAT
15 YOU NEED TO DO MONDAY MORNING. IT'S PROBABLY GOING TO SAY
16 THAT YOU NEED TO COME ON IN AT 9, AND THEN IT'LL ALSO -- THE
17 MESSAGE WILL ALSO TELL YOU WHETHER OR NOT YOU NEED TO BRING
18 ENOUGH OF YOUR PERSONAL ITEMS AND CLOTHING TO STAY FOR FIVE
19 OR SIX DAYS IF THE JURY IS SEQUESTERED.

20 SO BETWEEN NOW AND THEN, DO NOT DISCUSS THIS CASE IN
21 ANY WAY NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU, AND
22 PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED TO
23 ANY PRESS COVERAGE ABOUT THE CASE. NOW, WHEN I SAY DON'T
24 DISCUSS THE CASE, YOU'RE FREE, OF COURSE, TO TALK WITH
25 SOMEBODY ABOUT THE HEARING ISSUES, AND IF YOU WANTED TO TRY

1 TO ADDRESS THAT THIS WEEK, THEN YOU COULD DO THAT AND YOU CAN
2 TALK ABOUT THE FACT THAT YOU'RE GOING TO BE IN COURT AND THAT
3 KIND OF THING, BUT JUST DON'T TALK ABOUT THE SUBSTANCE OF THE
4 CASE OR ANY OF THE PEOPLE WHO ARE GOING TO BE INVOLVED IN THE
5 CASE. ALL RIGHT. SO DO YOU UNDERSTAND ALL THAT?

6 THE WITNESS: YES, SIR.

7 THE COURT: ALL RIGHT. GOOD.

8 THE WITNESS: YES, SIR.

9 THE COURT: WE'LL SEE YOU MONDAY MORNING. THANK
10 YOU, SIR.

11 THE WITNESS: MONDAY MORNING?

12 THE COURT: MONDAY MORNING. CALL SUNDAY NIGHT TO
13 MAKE SURE---

14 THE WITNESS: CALL SUNDAY AFTER 6.

15 THE COURT: RIGHT, TO CONFIRM THE SCHEDULE.

16 THE WITNESS: THANK YOU, SIR.

17 THE COURT: THANK YOU.

18 THE WITNESS: THANK YOU.

19 (JUROR BOYLE LEAVES THE COURTROOM.)

20 THE COURT: BRING THEM IN.

21 (JUROR DIANE BOUYE IS BROUGHT INTO THE COURTROOM.)

22 DIANE BOUYE, HAVING BEEN PREVIOUSLY SWORN AS A
23 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
24 TESTIFIED AS FOLLOWS:
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EXAMINATION BY THE COURT

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Q. MS. BOUYE?

A. YES.

Q. WE APPRECIATE YOU COMING BACK UP HERE. AND YOU WERE
LAST ON THE LIST FOR THIS PANEL, SO YOU HAD TO WAIT LONGER
THAN ANYBODY ELSE DID. AND DO YOU RECALL THAT YOU WERE PUT
UNDER OATH YESTERDAY?

A. YES.

Q. AND YOU'RE STILL UNDER OATH RIGHT NOW. DO YOU
UNDERSTAND THAT?

A. YES.

Q. NOW, SINCE YESTERDAY HAVE YOU DISCUSSED THIS CASE
WITH ANYBODY OR HAS ANYBODY TRIED TO DISCUSS THIS CASE WITH
YOU?

A. A COWORKER JUST ASKED, "I SAW SOMETHING IN THE
PAPER," AND I TOLD HER TO STOP BEFORE SHE WENT ANY FURTHER.

Q. SHE SAID, "I SAW SOMETHING" -- THAT WAS HER QUOTE:
"I SAW SOMETHING IN THE PAPER"?

A. UH-HUH.

Q. AND---

A. AND WANTED TO KNOW IF THAT'S WHAT I WAS HERE FOR AND
I TOLD HER TO STOP.

Q. ALL RIGHT. SO DID SHE REVEAL TO YOU ANY OF THE
SUBSTANCE OF WHAT WAS IN THE PAPER?

A. NO. ALL I HEARD WAS DEATH PENALTY AND THEN THAT WAS

1 IT.

2 Q. OKAY. SO SHE SAID SOMETHING LIKE, "I SAW WHAT WAS
3 IN THE" -- "I SAW SOMETHING IN THE PAPER ABOUT A DEATH
4 PENALTY"?

5 A. UH-HUH.

6 Q. AND THAT'S WHEN YOU STOPPED HER?

7 A. YEAH.

8 Q. OKAY. SO IN TERMS OF WHAT MIGHT BE THE FACTS OF THE
9 CASE OR ANYTHING LIKE THAT, YOU DIDN'T HEAR HER SAY ANYTHING
10 ABOUT THAT?

11 A. NO.

12 Q. OKAY. ALL RIGHT. WELL, YOU DID A FINE JOB. THAT
13 WAS -- THAT'S THE KIND OF THING THAT I -- THAT I KNOW IS
14 GOING TO BE HAPPENING TO JURORS, AND YOU DID EXACTLY WHAT I
15 ASKED YOU TO DO IN STOPPING HER. I'M GOING TO ASK YOU SOME
16 QUESTIONS NOW, AND AFTER I'VE ASKED YOU SOME QUESTIONS, THE
17 LAWYERS ARE GOING TO BE ASKING YOU SOME FOLLOW-UP QUESTIONS.
18 WE'RE NOT TRYING TO PRY TOO FAR INTO YOUR PERSONAL LIFE HERE,
19 BUT WE DO NEED TO ASK YOU THESE QUESTIONS. THERE ARE NO
20 RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO BE OPEN AND
21 HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK.

22 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
23 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND,
24 SETTING ASIDE ANYTHING YOU MIGHT HAVE HEARD OR LEARNED ABOUT
25 THE CASE BEFORE THE TRIAL BEGAN, RENDER A VERDICT THAT IS

1 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD
2 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

3 A. YES.

4 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
5 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
6 REASONABLE DOUBT?

7 A. YES.

8 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
9 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
10 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
11 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
12 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

13 A. YES.

14 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
15 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
16 THE SECOND PHASE OR WHAT'S SOMETIMES CALLED THE PENALTY PHASE
17 OF THE TRIAL. NOW, I'M GOING TO TALK TO YOU ABOUT SOME OF
18 THE THINGS THAT WOULD COME UP THEN.

19 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
20 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
21 AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER. AGGRAVATING
22 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME AND ADD TO
23 THE INJURY RESULTING FROM THE CRIME. MITIGATING
24 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
25 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE

1 SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE TO EXTENUATE
2 OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR
3 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT
4 OF AN AGGRAVATING AND A MITIGATING CIRCUMSTANCE?

5 A. YES.

6 Q. NOW, WHEN YOU CAME IN TODAY YOU WERE GIVEN A COPY OF
7 THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF JURORS.
8 DID YOU GET A CHANCE TO READ OVER THAT SHEET?

9 A. YES, I DID.

10 Q. DID YOU -- DO YOU UNDERSTAND THE THREE DIFFERENT
11 TYPES OF JURORS?

12 A. I DO.

13 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK
14 YOU ARE?

15 A. PROBABLY THE THIRD.

16 Q. IF YOU'RE A JUROR IN THIS CASE AND IF THE JURY FINDS
17 THE DEFENDANT GUILTY OF MURDER AND WE MOVE INTO THE
18 SENTENCING PHASE, YOU WOULD HAVE TWO OPTIONS. THE JURY WOULD
19 HAVE TWO OPTIONS AS TO WHAT THE VERDICT COULD BE, AND THE
20 JURY WOULD BE THE ONE THAT WOULD DECIDE THE SENTENCE, NOT THE
21 JUDGE; THE JURY WOULD. ONE OPTION WOULD BE FOR A LIFE
22 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE. ANOTHER OPTION
23 WOULD BE FOR THE DEATH PENALTY. COULD YOU, DEPENDING ON THE
24 FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND
25 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU

1 VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

2 A. I BELIEVE SO.

3 Q. COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH
4 PENALTY?

5 A. I BELIEVE SO.

6 Q. IF YOU'RE ON THE JURY AND IF I DECIDE TO SEQUESTER
7 THE JURY, THEN YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
8 DAYS. WE'D FEED YOU ALL YOUR MEALS, AND YOU WOULD NOT BE
9 ALLOWED TO GO HOME.. WOULD THAT IMPOSE A TERRIBLE BURDEN ON
10 YOU?

11 A. NO.

12 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
13 THAT YOU WERE GIVEN THIS MORNING?

14 A. YES.

15 Q. DID YOU READ EVERY NAME ON THAT LIST?

16 A. I DID.

17 Q. DO YOU KNOW OR ARE YOU RELATED TO ANY OF THE PEOPLE
18 WHOSE NAMES APPEAR ON THAT LIST?

19 A. I DO.

20 Q. WHO DO YOU KNOW OR ARE RELATED TO?

21 A. IT'S A FRIEND, BRADY NIMMONS. HE'S LISTED. HE USED
22 TO WORK AT THE LEXINGTON COUNTY DETENTION CENTER.

23 Q. ALL RIGHT. SO YOU JUST KNOW HIM AS A FRIEND?

24 A. YES.

25 Q. ALL RIGHT. MA'AM, I'M GOING TO ALLOW THE LAWYERS TO

1 ASK YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I WILL COME
2 BACK TO YOU IN A FEW MINUTES.

3 A. OKAY.

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q. MS. BOUYE, HOW ARE YOU?

7 A. FINE. HOW ARE YOU?

8 Q. DOING GOOD. I GUESS YOU WERE THE LAST ONE BACK
9 THERE ALL BY YOURSELF?

10 A. YES.

11 Q. WELL, I'LL TRY NOT TO TAKE TOO LONG. I JUST WANT TO
12 ASK YOU A FEW QUESTIONS.

13 A. OKAY.

14 Q. AND I'LL START WITH -- YOU SAY YOU KNOW GRADY
15 NIMMONS?

16 A. BRADY, YES.

17 Q. BRADY. OKAY. IS THE FACT THAT YOU KNOW MR. NIMMONS
18 -- WOULD THAT PREVENT YOU FROM BEING A FAIR JUROR IN THIS
19 CASE?

20 A. NO.

21 Q. AS I UNDERSTAND IT, YOU -- YOUR ANSWERS TO THE JUDGE
22 -- YOU UNDERSTAND THAT THERE'S TWO STAGES IN THIS CASE?

23 A. YES.

24 Q. AND THE FIRST PHASE IS JUST LIKE ANY OTHER TRIAL
25 WHERE WE TALK ABOUT GUILT OR NOT GUILTY?

1 A. YES.

2 Q. AND THEN THE SECOND PHASE ONLY COMES ABOUT IF THE
3 JURY DETERMINES THAT THE DEFENDANT IS GUILTY OF MURDER.

4 A. YES.

5 Q. AND THAT SECOND PHASE IS DIFFERENT FROM NORMAL
6 TRIALS BECAUSE THE JURY DOES THE SENTENCING RATHER THAN THE
7 JUDGE. AND AS I UNDERSTAND IT, YOU UNDERSTAND ALL OF THAT.

8 A. CORRECT.

9 Q. AND JUST AS THE JUDGE WOULD WANT TO HEAR EVERYTHING
10 ABOUT A DEFENDANT BEFORE HE SENTENCES HIM, THE JURY NEEDS TO.
11 AND I'M SURE YOU WOULD WANT TO HEAR EVERYTHING AS WELL, WOULD
12 YOU NOT?

13 A. YES.

14 Q. AND IN THAT PHASE THAT'S WHERE THE JUDGE WAS TALKING
15 ABOUT AGGRAVATING AND MITIGATING CIRCUMSTANCES?

16 A. UH-HUH.

17 Q. THINGS GOOD ABOUT THE DEFENDANT, THINGS BAD ABOUT
18 THE DEFENDANT, THINGS THAT MAKE THE CRIME WORSE, THINGS THAT
19 MIGHT MAKE IT NOT QUITE AS BAD. ALL OF THAT INFORMATION
20 WOULD BE PRESENTED OR COULD BE PRESENTED, AND YOU'RE SAYING
21 YOU WOULD WANT TO HEAR THAT BEFORE YOU PASSED JUDGMENT.

22 A. CORRECT.

23 Q. BUT IF AT THE END OF THAT YOU THOUGHT LIFE WAS THE
24 APPROPRIATE SENTENCE, YOU COULD GIVE LIFE.

25 A. CORRECT.

1 Q. AND IF YOU THOUGHT DEATH WAS THE APPROPRIATE
2 SENTENCE, YOU COULD GIVE DEATH.

3 A. CORRECT.

4 Q. THE ONE THING I WANT TO ASK YOU IS: IF DEATH IS THE
5 APPROPRIATE SENTENCE, IN SOUTH CAROLINA ALL JURORS HAVE TO
6 SIGN THEIR NAME ON THE VERDICT FORM.

7 A. UH-HUH.

8 Q. SOME PEOPLE SAY, "I'LL TELL YOU WHATEVER, YOU KNOW,
9 IS ON MY MIND. I'LL TELL YOU WHAT I THINK, BUT I'M NOT
10 PUTTING MY NAME ON ANYTHING." WOULD YOU BE ABLE, IF YOU
11 THOUGHT DEATH WAS THE APPROPRIATE SENTENCE, TO SIGN YOUR NAME
12 ON THAT VERDICT FORM?

13 A. I BELIEVE SO.

14 Q. DO YOU HAVE ANY DOUBT?

15 A. WELL, WITHOUT KNOWING THE CIRCUMSTANCES I CAN'T SAY
16 RIGHT NOW.

17 Q. I UNDERSTAND THAT.

18 A. BUT---

19 Q. YOU WANT TO---

20 A. UH-HUH.

21 Q. ---HEAR EVERYTHING FIRST.

22 A. CORRECT.

23 Q. BUT IF AFTER HEARING EVERYTHING YOU THOUGHT THAT WAS
24 THE APPROPRIATE SENTENCE, COULD YOU SIGN YOUR NAME?

25 A. YES.

1 Q. OKAY. IS THERE ANYTHING ABOUT YOU OR ANY -- THAT WE
2 MIGHT NEED TO KNOW THAT MIGHT PREVENT YOU FROM GIVING BOTH
3 SIDES A FAIR TRIAL?

4 A. I DON'T BELIEVE SO.

5 Q. OKAY. YOU COULD LISTEN TO BOTH SIDES.

6 A. CORRECT.

7 MR. HUBBARD: THAT'S ALL WE CAN ASK OF YOU. THANK
8 YOU.

9 CROSS-EXAMINATION

10 BY MR. LITTLEJOHN:

11 Q. GOOD AFTERNOON. IS IT MS. BOUYE?

12 A. BOUYE.

13 Q. BOUYE. MS. BOUYE, I'M CAM LITTLEJOHN. I, ALONG
14 WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO'S THE
15 DEFENDANT IN THIS CASE.

16 A. HI.

17 Q. LET ME ASK YOU JUST A FEW QUESTIONS IF I MAY. I
18 NOTICE ON YOUR QUESTIONNAIRE YOU INDICATED THAT YOU HAD SOME
19 TRAINING IN THE FIELD OF BEING A PARALEGAL?

20 A. CORRECT.

21 Q. HAS THAT EVER -- HAVE YOU EVER USED THAT TRAINING IN
22 A LAW OFFICE?

23 A. ACTUALLY I USE IT IN THE LEGAL DIVISION AT CAROLINA
24 CARE PLAN. WE'RE AN H.M.O.

25 Q. RIGHT.

1 A. SO MORE OF OUR RESEARCH IS HEALTH CARE LAW---

2 Q. OKAY. SO YOU---

3 A. BUT, YES.

4 Q. EXCUSE ME.

5 A. I'M FAMILIAR WITH THE LAW OFFICE BECAUSE WE HAVE
6 LEGAL CASES, AND WE PROVIDE INFORMATION AND EVIDENCE TO OUR
7 ATTORNEYS.

8 Q. I SEE. YOU'VE NEVER WORKED IN THE FIELD OF CRIMINAL
9 LAW.

10 A. NO.

11 Q. OKAY.

12 A. WELL, I DO FRAUD AND ABUSE INVESTIGATIONS NOW.

13 Q. ALL RIGHT.

14 A. SO KIND OF IN THE AREA OF LAW BECAUSE WHAT I DO I
15 REPORT TO THE ATTORNEY GENERAL'S OFFICE.

16 Q. I UNDERSTAND. OKAY. AND I NOTICE ALSO THAT IF YOU
17 WERE SEATED AS A JUROR IN THIS CASE YOU MAY CELEBRATE A
18 BIRTHDAY WITH US.

19 A. I BELIEVE SO. I DIDN'T THINK ABOUT THAT.

20 Q. OKAY. MS. BOUYE, IF -- AS YOU'VE BEEN INSTRUCTED,
21 THIS IS A MURDER CASE, AND IN THE FIRST PHASE OF THIS CASE
22 THE JURY WOULD BE CALLED UPON TO -- CALLED UPON TO MAKE THE
23 DETERMINATION OF WHETHER THE STATE HAS PROVEN THE GUILT OF
24 THE DEFENDANT BEYOND A REASONABLE DOUBT. WOULD YOU HAVE ANY
25 PROBLEM FOLLOWING THAT LEGAL STANDARD AND PUTTING THE STATE

1 TO THAT BURDEN OF PROOF---

2 A. NO.

3 Q. ---IF YOU WERE A JUROR?

4 A. NO, SIR.

5 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEMS

6 FOLLOWING JUDGE FEW'S LEGAL INSTRUCTIONS AND APPLYING THOSE

7 LEGAL PRINCIPLES TO THE FACTS THAT YOU FIND?

8 A. NO.

9 Q. DO YOU THINK YOU'D HAVE ANY DIFFICULTY DETERMINING
10 THE CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES,
11 WHETHER THEY BE EXPERT WITNESSES OR LAY WITNESSES OR POLICE
12 OFFICER WITNESSES?

13 A. NO.

14 Q. OKAY. YOU WERE PROVIDED WITH A FORM THAT HAD THREE
15 DIFFERENT TYPES OF JURORS, AND I BELIEVE YOU INDICATED TO THE
16 JUDGE THAT YOU THOUGHT YOU WERE PROBABLY A NUMBER THREE TYPE
17 JUROR.

18 A. UH-HUH.

19 Q. DID YOU HAVE ANY DIFFICULTY IN DECIDING YOU WERE A
20 NUMBER THREE? DID YOU HAVE TO DETERMINE MAYBE IF YOU WERE A
21 ONE OR A TWO---

22 A. WELL, I KNOW I'M---

23 Q. ---BEFORE ARRIVING AT THAT?

24 A. I'M SORRY. I KNOW I'M NOT NUMBER ONE.

25 Q. NOT NUMBER ONE. OKAY.

1 A. AND I KNOW I'M NOT NUMBER TWO.

2 Q. OKAY.

3 A. SO I'M MORE, I WOULD THINK, NUMBER THREE.

4 Q. ALL RIGHT. THAT WOULD LEAVE YOU WITH NUMBER THREE.

5 A. UH-HUH.

6 Q. FAIR ENOUGH. MS. BOUYE, THE ALLEGED VICTIM IN THIS
7 CASE, MR. DAVIS, WAS A SERGEANT AT FORT JACKSON. HE WAS AN
8 ACTIVE -- HE WAS ACTIVELY IN THE MILITARY. WOULD THAT FACT
9 HAVE ANY BEARING ON YOUR ABILITY TO BE FAIR IN THIS CASE?

10 A. NO.

11 Q. WOULD THAT SOMETHING -- BE SOMETHING THAT WOULD
12 WEIGH ON YOUR MIND THE FACT THAT HE WAS IN THE ARMY?

13 A. NO.

14 Q. OKAY. THE REASON I ASK THAT IS IN THESE DAYS AND
15 TIMES PEOPLE ARE CONCERNED WITH MILITARY.

16 A. CORRECT.

17 Q. OKAY. IF YOU WERE ON THE JURY AND THE STATE HAD MET
18 THEIR BURDEN OF PROOF, ONLY THEN WOULD WE GO TO THE SECOND
19 PHASE OF THE CASE. IF WE GOT TO THAT POINT, HIS HONOR HAS
20 TOLD YOU THERE WOULD BE EVIDENCE PRESENTED IN WHAT WE CALL
21 AGGRAVATING CIRCUMSTANCES OR THINGS THAT MAKE THE CRIME OF
22 MURDER WORSE. THERE WOULD ALSO BE EVIDENCE IN WHAT WE CALL
23 MITIGATION. NOW, THE EVIDENCE IN MITIGATION COULD INCLUDE
24 THINGS ABOUT KEVIN MERCER'S BACKGROUND, GOOD THINGS ABOUT
25 KEVIN, BAD THINGS THAT HAD HAPPENED TO KEVIN, PERHAPS MEDICAL

1 PROBLEMS. WOULD YOU BE WILLING AND ABLE TO LISTEN TO ALL OF
2 THAT EVIDENCE BEFORE DECIDING WHAT THE PENALTY OUGHT TO BE IN
3 HIS CASE?

4 A. YES.

5 Q. WOULD YOU -- DO YOU HAVE ANY QUESTION ABOUT THAT?

6 A. NO.

7 Q. OKAY. MS. BOUYE, DO YOU KNOW OF ANY REASON THAT YOU
8 CAN'T GIVE KEVIN MERCER A FAIR TRIAL?

9 A. NO.

10 MR. LITTLEJOHN: THANK YOU, MA'AM.

11 THE COURT: ANYTHING FURTHER?

12 MR. LITTLEJOHN: NO, SIR.

13 MR. HUBBARD: NO, SIR, YOUR HONOR.

14 THE COURT: ALL RIGHT. MS. BOUYE, YOU ARE QUALIFIED
15 TO SERVE AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE
16 ON THE JURY, BUT IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY,
17 AND WE NEED FOR YOU TO COME BACK MONDAY WHEN WE WILL ACTUALLY
18 SELECT THE JURY IN THE CASE. BETWEEN NOW AND THEN, PLEASE
19 DON'T DISCUSS THIS CASE WITH ANYONE AND, IN FACT, YOU MAY NOT
20 -- YOU MUST NOT DISCUSS THIS CASE WITH ANYONE AND DON'T ALLOW
21 ANYONE TO DISCUSS THIS CASE WITH YOU. PLEASE MAKE SURE THAT
22 YOU DON'T ALLOW YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE
23 ABOUT THIS CASE.

24 IF YOU WILL CALL BACK TO THAT TELEPHONE NUMBER THAT
25 YOU WERE GIVEN ON THAT PINK SLIP SUNDAY NIGHT AFTER 6:00,

1 THEN THERE WILL BE A MESSAGE ON THAT PHONE LINE THAT HAS
2 DETAILED INSTRUCTIONS ABOUT WHEN YOU NEED TO REPORT AND
3 WHETHER OR NOT THE JURY WILL BE SEQUESTERED. IF IT IS, THEN
4 YOU WILL NEED TO BRING ENOUGH PERSONAL ITEMS AND CLOTHING TO
5 STAY WITH US FOR FIVE OR SIX DAYS.

6 THE WITNESS: OKAY.

7 THE COURT: SO WE'LL SEE YOU MONDAY. HAVE A GOOD
8 REST OF THE WEEK.

9 THE WITNESS: ALL RIGHT. THANK YOU.

10 (JUROR BOUYE LEAVES THE COURTROOM.)

11 THE COURT: ALL RIGHT. LET'S GO TO LUNCH. WE'RE
12 SCHEDULED -- THE NEXT PANEL IS SCHEDULED TO COME IN AT 1:30.
13 LET'S SAY WE WILL BEGIN AT -- AREN'T THEY COMING IN AT 1:30?

14 THE CLERK: THEY'RE SUPPOSED TO BE HERE AT 1:30, SO
15 WE COULD START AT 2.

16 THE COURT: WELL, LET'S -- LET'S TRY TO BE BACK AND
17 BE READY TO GO AT 1:45. THAT GIVES US AN HOUR.

18 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

19 THE COURT: BE SEATED, PLEASE.

20 THE CLERK: THERE ARE NO SIMPLE ANSWERS TO THE
21 POTENTIAL PROBLEM WITH THE HEARING-IMPAIRED JUROR.

22 THE COURT: OKAY. YOU MEAN FROM FINDING TECHNOLOGY
23 TO ASSIST HIM?

24 THE CLERK: I'M NOT SAYING IT CAN'T BE DONE. I'M
25 SAYING RIGHT NOW IT'S NOT A SIMPLE PROCESS, BUT I DO HAVE THE

1 SENATE FOR THE CENTER FOR THE DEAF AND BLIND, BUT COURT
2 ADMINISTRATION HAS NO INFORMATION AT ALL, AND SPECIAL NEEDS
3 AND DISABILITIES HAD NO INFORMATION EITHER.

4 THE COURT: ALL RIGHT. Y'ALL READY?

5 MR. MYERS: YES, SIR.

6 MR. LITTLEJOHN: YES, SIR.

7 THE COURT: BRING IN MARY PAXTON.

8 (JUROR MARY PAXTON WAS BROUGHT INTO THE COURTROOM.)

9 MARY PAXTON, 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. MS. PAXTON?

14 A. YES, SIR.

15 Q. GOOD AFTERNOON.

16 A. GOOD AFTERNOON.

17 Q. YOU RECALL THAT ON YESTERDAY YOU WERE PLACED UNDER
18 OATH.

19 A. YES, SIR..

20 Q. AND YOU UNDERSTAND THAT YOU'RE STILL UNDER OATH NOW.

21 A. YES, SIR.

22 Q. SINCE YESTERDAY WHEN YOU LEFT THE COURTROOM WHEN WE
23 WERE ALL HERE TOGETHER, HAS ANYBODY TALKED TO YOU ABOUT THIS
24 CASE OR HAVE YOU TALKED TO ANYONE ABOUT THIS CASE?

25 A. NO, I HAVE NOT.

1 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN
2 THE LAWYERS WILL PROBABLY HAVE SOME FOLLOW-UP QUESTIONS THAT
3 THEY WANT TO ASK YOU. WE'RE NOT TRYING TO PRY TOO DEEP INTO
4 YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE
5 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE
6 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO
7 BE OPEN AND HONEST WITH US. TELL US HOW YOU FEEL AND TELL US
8 WHAT YOU THINK.

9 A. OKAY.

10 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
11 AND APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO YOU, SET
12 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
13 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT IS
14 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD
15 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

16 A. YES, SIR, I BELIEVE I COULD.

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. ABSOLUTELY.

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.

2 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
3 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE INTO
4 A SENTENCING PHASE OR A SECOND PHASE OF THE TRIAL, AND THERE
5 ARE SEVERAL THINGS THAT WOULD COME UP IN THAT PHASE THAT I'M
6 GOING TO TALK TO YOU ABOUT NOW. AGGRAVATING CIRCUMSTANCES
7 ARE FACTS OR 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 OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
13 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND
14 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
15 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
16 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
17 CIRCUMSTANCES?

18 A. YES, SIR.

19 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON YOU WERE GIVEN
20 A COPY OF THIS SHEET OF PAPER WHICH SHOWS THE THREE DIFFERENT
21 TYPES OF JURORS.

22 A. CORRECT.

23 Q. DO YOU UNDERSTAND THE THREE DIFFERENT TYPES OF
24 JURORS?

25 A. YES, SIR.

1 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU ARE?

2 A. I WOULD HAVE TO SAY THE THIRD TYPE.

3 Q. IF YOU ARE ON THE JURY IN THIS CASE AND IF THE JURY
4 FINDS THE DEFENDANT GUILTY OF MURDER AND THEN WE MOVE INTO
5 THE SENTENCING PHASE, THE JURY WOULD HAVE TWO DIFFERENT
6 OPTIONS AS TO WHAT THE VERDICT WOULD BE AND WHAT THE SENTENCE
7 WOULD BE, AND IT'S THE JURY THAT DECIDES THE SENTENCE IN A
8 CASE LIKE THIS, NOT THE JUDGE. ONE OF THOSE OPTIONS FOR THE
9 JURY WOULD BE A LIFE SENTENCE WITHOUT THE POSSIBILITY OF
10 PAROLE, AND ANOTHER OPTION WOULD BE THE DEATH PENALTY. COULD
11 YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND
12 TO EXIST 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.

15 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE
16 DEATH PENALTY?

17 A. HARDER, BUT YES.

18 Q. MA'AM, IT'S POSSIBLE THAT THE JURY COULD BE
19 SEQUESTERED IN THIS CASE, MEANING THAT IF YOU'RE ON A JURY
20 YOU MIGHT HAVE TO STAY WITH US IN A HOTEL ROOM, AND WE
21 PROVIDE YOU ALL YOUR MEALS FOR FIVE OR SIX DAYS. WOULD THAT
22 IMPOSE A TERRIBLE BURDEN ON YOU?

23 A. I HAVE SIX CATS AT HOME. MY HUSBAND WOULD HAVE TO
24 TAKE CARE OF THEM. OTHER THAN THAT, I'M -- MY CHILDREN ARE
25 GROWN, SO I HAVE NO -- NO PROBLEMS.

1 Q. SO IT WOULD IMPOSE A BURDEN ON YOUR HUSBAND---

2 A. YES, NOT ON ME.

3 Q. ---BUT NOT NECESSARILY YOU.

4 A. EXACTLY.

5 Q. OKAY. ALL RIGHT. DID YOU GET A CHANCE TO GO OVER
6 THAT WITNESS LIST THAT YOU WERE GIVEN THIS AFTERNOON?

7 A. YES, I DID.

8 Q. DID YOU READ EVERY NAME ON THAT LIST?

9 A. I DID.

10 Q. IS THERE ANY -- ARE THERE ANY OF THOSE WITNESSES
11 WHOM YOU KNOW OR WHOM YOU ARE RELATED TO?

12 A. NO. I'M NOT A LEXINGTON NATIVE, SO NO.

13 Q. OKAY. THE LAWYERS ARE GOING TO ASK YOU SOME
14 FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME BACK TO YOU IN A
15 FEW MINUTES.

16 A. OKAY.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q. HEY, MS. PAXTON. HOW ARE YOU DOING?

20 A. HI. PRETTY GOOD. THANKS.

21 Q. I'M JUST GOING TO ASK YOU A FEW QUESTIONS. I NOTICE
22 THAT AT SOME POINT IN YOUR PAST YOU WERE ON THE GRAND JURY?

23 A. YES, SIR, THE STATE GRAND JURY.

24 Q. OKAY. STATEWIDE GRAND JURY? WAS THAT COLUMBIA?

25 A. COLUMBIA. UH-HUH.

1 Q. HOW LONG WERE YOU ON THAT?

2 A. IT WAS A YEAR.

3 Q. OKAY. IS THERE ANYTHING ABOUT YOUR SERVICE ON THE
4 STATEWIDE GRAND JURY THAT WOULD AFFECT OR PROHIBIT OR PREVENT
5 YOU FROM BEING A FAIR JUROR IN THIS CASE?

6 A. I -- I CAN'T SEE HOW THAT IT WOULD AFFECT IT IN ANY
7 WAY. IT JUST GAVE ME A BETTER UNDERSTANDING OF THE JUDICIAL
8 SYSTEM.

9 Q. RIGHT. HAVE YOU EVER SERVED ON WHAT WE CALL A PETIT
10 JURY BEFORE?

11 A. NO. I'VE BEEN CALLED, BUT IT WAS CANCELLED.

12 Q. OKAY. WELL, THE FIRST HALF OF THIS TRIAL IS MUCH --
13 THAT THE JUDGE DESCRIBED IS MUCH LIKE THE TRIALS THAT YOU
14 PROBABLY HAVE ALWAYS HEARD ABOUT WHERE THE STATE PRESENTS
15 EVIDENCE. WE HAVE WITNESSES SITTING RIGHT WHERE YOU'RE
16 SITTING RIGHT NOW, AND THEN THE JURY GOES BACK AND HAS TO
17 DETERMINE WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY.

18 A. UH-HUH.

19 Q. AND IN SOUTH CAROLINA ALL 12 HAVE TO AGREE IF HE'S
20 GUILTY.

21 A. OKAY.

22 Q. USUALLY IN A NORMAL TRIAL IF THEY FIND A MAN GUILTY,
23 YOU STAND THEM UP IN FRONT OF THE JUDGE AND THE JUDGE DOES
24 THE SENTENCING.

25 A. RIGHT.

1 Q. THIS IS DIFFERENT BECAUSE IF THE JURY DETERMINES THE
2 DEFENDANT IS GUILTY OF MURDER, THE JURY DOES THE SENTENCING,
3 AND THAT'S THAT SECOND PHASE THAT THE JUDGE WAS TALKING TO
4 YOU ABOUT. AND JUST AS THE JUDGE WOULD WANT TO KNOW
5 EVERYTHING ABOUT A DEFENDANT BEFORE HE IMPOSES SENTENCE---

6 A. UH-HUH.

7 Q. ---WE HAVE TO LET THE JURY KNOW EVERYTHING ABOUT THE
8 DEFENDANT AS WELL.

9 A. OKAY.

10 Q. AND ABOUT THE CRIME AND THAT'S THE MITIGATING AND
11 AGGRAVATING CIRCUMSTANCES THE JUDGE WAS TALKING ABOUT.

12 A. OKAY.

13 Q. AS I UNDERSTAND IT, YOU WOULD WANT TO HEAR
14 EVERYTHING ABOUT THE DEFENDANT AS WELL.

15 A. YES. YES.

16 Q. AND THINGS THAT YOU MIGHT HEAR MAY MAKE THE CRIME --
17 WORSEN THE SEVERITY OF THAT CRIME OR MAY BE BAD ABOUT THE
18 DEFENDANT.

19 A. CORRECT.

20 Q. ON THE OTHER HAND, YOU COULD HEAR STUFF THAT MAY BE
21 GOOD ABOUT THE DEFENDANT OR THINGS THAT MAY LESSEN THE
22 SEVERITY OF THE CRIME.

23 A. RIGHT.

24 Q. AND AS I UNDERSTAND IT, YOU WOULD WANT TO HEAR ALL
25 OF THAT.

1 A. YES, SIR.

2 Q. ON HEARING THAT, YOU COULD COME TO A DETERMINATION.
3 WITH OTHER PEOPLE AND RENDER A VERDICT EITHER FOR LIFE OR
4 DEATH.

5 A. I BELIEVE THAT I COULD, YES. YES.

6 Q. OKAY. THERE IS ONE FINAL THING THAT MAKES THIS AN
7 UNUSUAL CASE, DIFFERENT FROM YOUR NORMAL CASES. IF A JURY
8 DETERMINES THAT THE DEFENDANT IS TO GET LIFE, ONLY THE
9 FOREMAN SIGNS THAT VERDICT FORM.

10 A. UH-HUH.

11 Q. BUT IF IT'S DEATH, ALL 12 MEMBERS OF THE JURY HAVE
12 TO SHOW THAT THAT'S THEIR OPINION BY SIGNING IT ON THAT
13 VERDICT FORM.

14 A. I CAN UNDERSTAND THAT.

15 Q. MY QUESTION TO YOU IS -- AND IT MAY SOUND KIND OF
16 STRANGE, BUT SOME PEOPLE ARE WILLING TO EXPRESS THEIR
17 OPINIONS, BUT THEY DON'T WANT TO PUT ANYTHING IN WRITING.
18 COULD YOU SIGN THAT VERDICT FORM IF YOU THOUGHT THAT WAS THE
19 APPROPRIATE SENTENCE?

20 A. WELL, MY LIFE HAS BEEN BASED ON - I WAS A FORMER
21 BANK MANAGER - ON PAPERS AND SIGNING AND PEOPLE SWEARING THAT
22 THEY'RE GOING TO PAY ME MONEY BACK AND ME SWEARING THAT I'M
23 GOING TO GIVE THEM THE MONEY, ET CETERA. SO TO ME A
24 SIGNATURE ON A PIECE OF PAPER HAS A LOT OF VALUE, SO I CAN
25 UNDERSTAND THE DIFFICULTY, BUT I COULD SIGN IT IF I CAME TO

1 THAT DECISION.

2 Q. OKAY. AND THE BOTTOM LINE IS: YOU WOULD LISTEN TO
3 EVERYTHING BOTH SIDES PRESENT IN THIS COURTROOM.

4 A. YES, SIR, DEFINITELY.

5 Q. AND YOU'D GIVE EVERYONE A FAIR TRIAL.

6 A. YES.

7 Q. THAT'S ALL WE CAN ASK. THANK YOU VERY MUCH.

8 A. YOU'RE WELCOME.

9 THE COURT: MA'AM, HOLD ON. LET ME ASK YOU THIS IN
10 A LIGHT-HEARTED WAY, BUT DID YOU BRING IN THAT JACKHAMMER SO
11 I WOULDN'T BE ABLE TO HEAR?

12 MR. MYERS: I JUST ASKED IF THEY'D GO DOWN AND ASK
13 THEM TO CEASE AND DESIST. WE COULDN'T HEAR GOOD.

14 THE CLERK: I DID IT INTENTIONALLY. YOU KNOW,
15 THEY'RE DRILLING HOLES FOR THE NEW MARC WESTBROOK SIGN, BUT
16 THEY WEREN'T SUPPOSED TO COME UNTIL SATURDAY.

17 THE COURT: MS. KIMBROUGH.

18 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

19 CROSS-EXAMINATION

20 BY MS. KIMBROUGH:

21 Q. MS. PAXTON, HOW ARE YOU?

22 A. OKAY. THANKS.

23 Q. I THINK I SHOULD BE ABLE TO HEAR YOU A LITTLE BETTER
24 THAN MR. HUBBARD WAS ABLE TO. THIS IS KEVIN MERCER. I
25 BELIEVE HE WAS INTRODUCED---

1 A. HI.

2 Q. ---TO THE FULL PANEL. WE JUST WANTED TO REINTRODUCE
3 HIM TO YOU. SO YOU'RE A CAT PERSON?

4 A. OH, YES.

5 Q. ALL RIGHT. I SEE YOU'RE INVOLVED IN A LOT OF
6 CHARITIES, SOME OF WHICH WOULD PRESUMABLY DIRECTLY BENEFIT
7 THOSE CREATURES.

8 A. YES.

9 Q. THE HUMANE SOCIETY, THE A.S.P.C.A., AND A NUMBER OF
10 OTHER CHARITIES.

11 A. YES.

12 Q. OKAY. AND YOU'VE BEEN INVOLVED IN THOSE FOR AWHILE
13 NOW?

14 A. YES, I HAVE.

15 Q. OKAY. IN LOOKING OVER YOUR FORM I'VE NOTICED THAT
16 YOU HAD INDICATED ON ONE OF THE QUESTIONS THAT YOU HAD A
17 FAMILY MEMBER WHO WORKED WITH LAW ENFORCEMENT, AND IT SAID
18 "OVER" FOR THE EXPLANATION, BUT UNFORTUNATELY OUR OVER
19 DOESN'T SEEM TO EXIST..

20 A. OH, IT DIDN'T TURN IT OVER? OKAY.

21 Q. THAT'S ALL RIGHT.

22 A. MY BROTHER-IN-LAW IS A FEDERAL JUDGE HERE IN
23 COLUMBIA. HE WORKS FOR THE SOCIAL SECURITY ADMINISTRATION.
24 HE WORKED IN HOUSTON PREVIOUSLY AND PRIOR TO THAT IN
25 CHARLESTON, AND THEY'VE SETTLED HERE.

1 Q. OKAY. AND WHO IS THAT?

2 A. HIS NAME IS JOHN R. MARTIN.

3 Q. OKAY. THANK YOU. I APPRECIATE THAT. IS THERE
4 ANYBODY ELSE IN YOUR FAMILY WHO WOULD HAVE A LAW ENFORCEMENT
5 OR A JUDICIAL CONNECTION OR IS HE THE ONLY ONE?

6 A. HE'S THE ONLY ONE.

7 Q. OKAY. ALL RIGHT. AND YOU SAID YOU'RE NOT
8 ORIGINALLY FROM LEXINGTON? WHERE DID YOU GROW UP?

9 A. MY DAD WAS MILITARY. I WAS BORN IN COLUMBIA, BUT I
10 GREW UP ALL OVER THE WORLD.

11 Q. OKAY. TRAGICALLY THE VICTIM IN THIS CASE WAS A
12 FULL-TIME MILITARY PERSON.

13 A. YES.

14 Q. HE WAS AN ARMY RECRUITER. WOULD THAT FACT, GIVEN
15 YOUR MILITARY BACKGROUND, WOULD THAT MAKE IT MORE DIFFICULT
16 FOR YOU TO GIVE MR. MERCER A FAIR TRIAL BASED SOLELY, YOU
17 KNOW, ON THE INFORMATION THAT THIS VICTIM WAS IN THE ARMY?

18 A. I'VE GIVEN THAT A LOT OF THOUGHT OVERNIGHT, AND I
19 DON'T BELIEVE THAT IT WOULD INFLUENCE ME NEGATIVELY BECAUSE
20 ONE LIFE IS AS VALUABLE AS ANOTHER.

21 Q. THANK YOU. WE APPRECIATE THAT. THIS TRIAL, IF YOU
22 WERE TO SERVE ON THE JURY, WOULD REQUIRE YOU TO POSSIBLY BE
23 HERE FOR A WHILE. IT'S NOT A GUARANTEE THAT THERE WILL BE
24 TWO PHASES, BUT THE FIRST PHASE IN THIS CASE IS THE TRIAL
25 PHASE WHERE THE JURY FUNCTIONS PRETTY MUCH THE SAME WAY THAT

1 THEY WOULD IN ANY OTHER TRIAL, WHETHER IT WAS ABOUT
2 SHOPLIFTING OR ARMED ROBBERY. YOU HAVE 12 PEOPLE. YOU HAVE
3 TO REACH A UNANIMOUS VERDICT. THE JUDGE WILL PROVIDE FOR YOU
4 THE APPROPRIATE STANDARDS OF LAW, AND YOU ESSENTIALLY -- YOU
5 AND THE OTHER 11 MEMBERS WOULD BE THE JUDGE OF THE FACTS.
6 THE ONLY FACTS THAT MATTER ARE THE ONES THAT YOU AND THOSE 11
7 PEOPLE WOULD DECIDE..

8 A. RIGHT.

9 Q. HOWEVER, THE SECOND PHASE, IF WE GET THERE, IS VERY
10 UNIQUE. IT'S -- IT'S ALMOST HARD TO EXPLAIN IN MERE WORDS,
11 BUT ESSENTIALLY YOU GET THERE IF YOU DECIDED THAT A HUMAN
12 LIFE WAS TAKEN WITH MALICE AFORETHOUGHT AND NOT JUST THAT A
13 HUMAN LIFE WAS TAKEN WITH MALICE AFORETHOUGHT, MEANING IT'S
14 INTENTIONAL, BUT ALSO THAT THERE WERE OTHER FACTORS THAT MAKE
15 THAT PARTICULAR MURDER MORE EGREGIOUS.

16 A. UH-HUH.

17 Q. NOW, THAT IS GOING TO BE A FACT THAT WOULD BE
18 IMMEDIATELY TRUE THE MINUTE THAT SECOND PHASE BEGAN. SO THE
19 SECOND PHASE IS ABOUT DECIDING PENALTY, AND AS PART OF THE
20 PENALTY-MAKING OR PENALTY PHASE PROCESS, THE PROSECUTION
21 WOULD INTRODUCE EVIDENCE THAT COULD BE EVIDENCE ABOUT THE
22 VICTIM, COULD BE EVIDENCE ABOUT THINGS MR. MERCER HAS DONE,
23 HIS CHARACTER, AND THEY'LL ASK YOU TO CONSIDER THAT AND I
24 SUSPECT THEY'LL ASK YOU TO RETURN A DEATH SENTENCE AS A
25 RESULT OF THOSE FACTORS.

1 ON THE OTHER HAND, MR. MERCER WHO -- LET ME JUST
2 STATE FROM THE GET-GO HAS NO BURDEN IN EITHER PHASE. THE
3 BURDEN IS ALWAYS ON THE STATE, BOTH FOR GUILT AND FOR---

4 A. RIGHT.

5 Q. ---ESTABLISHING DEATH AS THE APPROPRIATE PUNISHMENT.
6 HOWEVER, MR. MERCER WOULD HAVE THE OPPORTUNITY TO PRESENT
7 EVIDENCE, WHAT'S CALLED MITIGATING EVIDENCE, AND IT'S KIND OF
8 AN ELUSIVE CONCEPT, BUT ESSENTIALLY, YOU KNOW, WHAT WE NEED
9 TO UNDERSTAND IS THAT YOU COULD CONSIDER THE EVIDENCE ABOUT
10 MR. MERCER AND HIS LIFE, AND THERE ARE DIFFERENT TYPES OF
11 EVIDENCE THAT MAY BE PRESENTED. I CAN'T SAY FOR CERTAIN;
12 WE'RE NOT THERE YET. WE MAY NEVER GET THERE, BUT IF WE DO,
13 YOU MAY HEAR INFORMATION ABOUT HIS BACKGROUND---

14 A. UH-HUH.

15 Q. ---HIS UPBRINGING, ANY DISABILITIES OR DIFFICULTIES
16 HE MAY HAVE SUFFERED IN LIFE BUT ALSO THE GOOD THINGS ABOUT
17 HIM. AND SO THE ONLY THING WE WANT TO MAKE SURE IS THAT YOU
18 COULD CONSIDER ALL OF THIS AND BE FAIR AND IMPARTIAL. AND DO
19 YOU FEEL LIKE YOU COULD DO ALL THOSE THINGS?

20 A. YES, I THINK SO. I'D HAVE TO CONSIDER THE WHOLE
21 PERSON.

22 Q. OKAY. AND THE FINAL QUESTION. I'LL KEEP THIS
23 SHORT. IF YOU'RE ON THE JURY AND YOU ALL ARE -- AND YOU'RE
24 BACK IN THE DELIBERATION ROOM AND YOU REALLY BELIEVE A FACT,
25 WHETHER IT'S FOR GUILT OR FOR INNOCENCE---

1 A. UH-HUH.

2 Q. ---AND THE 11 OTHER FOLKS WHO ARE IN THERE WITH YOU
3 SAY, "NO, NO. WE THINK HE'S NOT GUILTY," OR, "NO, NO. WE
4 THINK HE'S GUILTY," WOULD YOU BE THE TYPE OF PERSON OR DO YOU
5 THINK YOU'D BE THE TYPE OF PERSON WHO WOULD MAINTAIN YOUR
6 VIEW UNLESS IT WERE CHANGED OR THAT WOULD PERHAPS GO ALONG TO
7 REACH A VERDICT?

8 A. I WOULD NOT IN ANY CASE GO ALONG TO REACH A VERDICT.
9 I WOULD MAINTAIN WHAT I BELIEVED, BUT I WOULD BE OPEN TO
10 LISTENING TO WHAT OTHER PEOPLE HAD TO SAY.

11 Q. THAT'S ALL WE CAN ASK. AND THAT WOULD APPLY ALSO, I
12 GATHER, TO ANY SENTENCING PHASE.

13 A. YES. YES.

14 MS. KIMBROUGH: THANK YOU. I REALLY APPRECIATE IT.

15 THE COURT: ALL RIGHT. DOES ANYBODY HAVE ANYTHING
16 TO SAY BEFORE I RULE?

17 MS. KIMBROUGH: NO, YOUR HONOR.

18 THE COURT: MS. PAXTON, YOU ARE QUALIFIED TO SERVE
19 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU'RE ON
20 THE JURY. IT MEANS THAT YOU'RE ELIGIBLE TO BE ON THE JURY.
21 WE WILL ACTUALLY SELECT THE JURY ON MONDAY. SO YOU NEED TO
22 BE PREPARED TO RETURN HERE TO THIS COURTHOUSE ON MONDAY. IF
23 YOU WILL CALL BACK TO THAT TELEPHONE NUMBER THAT YOU WERE
24 GIVEN ON THE PINK SLIP, SUNDAY NIGHT AFTER 6:00 THERE WILL BE
25 DETAILED INSTRUCTIONS TELLING YOU WHAT TIME YOU NEED TO BE

1 HERE AND WHAT YOU NEED TO BRING. AS I SAID, IT'S POSSIBLE
2 THAT THE JURY MAY BE SEQUESTERED, AND THAT WILL BE EXPLAINED
3 TO YOU WHEN YOU CALL AS TO WHETHER OR NOT YOU NEED TO BRING
4 YOUR PERSONAL ITEMS AND YOUR CLOTHES TO STAY FOR FIVE OR SIX
5 DAYS.

6 THE WITNESS: OKAY.

7 THE COURT: DURING THE MEANTIME, BETWEEN NOW AND
8 THEN, YOU MUST NOT DISCUSS THIS CASE WITH ANYONE NOR ALLOW
9 ANYONE TO DISCUSS THIS CASE WITH YOU. PLEASE MAKE SURE THAT
10 YOU DON'T ALLOW YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE
11 THAT THERE MAY BE ABOUT THIS CASE. SO HAVE A NICE REST OF
12 THE WEEK, AND WE'LL SEE YOU MONDAY.

13 THE WITNESS: THANK YOU.

14 (JUROR PAXTON LEAVES THE COURTROOM.)

15 THE COURT: OKAY. BRING MS. HARMON IN, PLEASE.

16 (JUROR JANET HARMON IS BROUGHT INTO THE COURTROOM.)

17 JANET HARMON, HAVING BEEN PREVIOUSLY SWORN AS A
18 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
19 TESTIFIED AS FOLLOWS:

20 EXAMINATION BY THE COURT

21 Q. HEY. GOOD AFTERNOON, MS. HARMON. YOU RECALL THAT
22 YESTERDAY WHEN YOU WERE HERE YOU WERE PUT UNDER OATH.

23 A. YES, SIR.

24 Q. AND YOU'RE STILL UNDER OATH NOW. DO YOU UNDERSTAND
25 THAT?

1 A. YES, SIR.

2 Q. AND SINCE YESTERDAY WHEN YOU LEFT US, HAS ANYBODY
3 TALKED TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYONE
4 ABOUT THE CASE?

5 A. NO, SIR.

6 Q. MS. HARMON, I'M GOING TO ASK YOU SOME QUESTIONS NOW,
7 AND THEN I THINK THE LAWYERS WILL PROBABLY HAVE SOME FOLLOW-
8 UP QUESTIONS FOR YOU. WE'RE NOT TRYING TO PROBE INTO YOUR
9 PRIVATE LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS.
10 THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE QUESTIONS,
11 BUT WE JUST WANT YOU TO LISTEN VERY CAREFULLY TO THE
12 QUESTIONS AND THEN BE OPEN AND HONEST WITH US. TELL US HOW
13 YOU FEEL AND WHAT YOU THINK ABOUT THESE ISSUES.

14 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
15 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
16 SET ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD ABOUT
17 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS
18 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND
19 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 WILL GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
3 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE
4 STATE HAS MET ITS BURDEN OF PROOF?

5 A. YEAH.

6 Q. MA'AM?

7 A. YES, SIR.

8 Q. OKAY. YOU MIGHT PULL THAT MICROPHONE JUST A LITTLE
9 CLOSER TO YOU. ALL RIGHT. THANK YOU.

10 A. THANKS. .

11 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
12 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE
13 INTO THE SENTENCING PHASE OR THE SECOND PHASE OF THE TRIAL,
14 AND THERE ARE SEVERAL THINGS THAT WILL COME UP DURING THAT
15 PHASE THAT I WANT TO TALK TO YOU ABOUT NOW. 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, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED
23 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO
24 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR
25 RESPONSIBILITY FOR THE CRIME. NOW, DO YOU UNDERSTAND THESE

1 TWO CONCEPTS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

2 A. KIND OF.

3 Q. WELL, WITHOUT HAVING TO KNOW WHAT THEY MIGHT BE IN
4 THIS PARTICULAR CASE, JUST THE IDEA THAT AGGRAVATING
5 CIRCUMSTANCES MAKE THE CRIME MORE SEVERE AND MITIGATING
6 CIRCUMSTANCES CAN BE SEEN TO MAKE THE CRIME LESS SEVERE, DO
7 YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. IS THERE ANYTHING I SAID ABOUT AGGRAVATING OR
10 MITIGATING CIRCUMSTANCES THAT YOU DON'T UNDERSTAND?

11 A. NO.

12 Q. YOU THINK YOU DO?

13 A. I THINK SO.

14 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
15 COPY OF THIS SHEET THAT DESCRIBES THREE DIFFERENT TYPES OF
16 JURORS.

17 A. YES, SIR.

18 Q. DID YOU READ -- DID YOU GET A CHANCE TO READ OVER
19 THAT SHEET?

20 A. YES, SIR.

21 Q. IS THERE ONE OF THESE TYPES OF JURORS THAT WOULD FIT
22 YOU?

23 A. I THINK THE SECOND ONE.

24 Q. THE SECOND ONE?

25 A. YES.

1 Q. NOW, DO YOU BELIEVE THAT THERE ARE ANY CIRCUMSTANCES
2 UNDER WHICH YOU COULD IMPOSE THE DEATH PENALTY AS A PENALTY
3 FOR A MURDER?

4 A. I THINK IF IT WAS DONE COLD-BLOODEDLY,
5 INTENTIONALLY, YEAH, I THINK I COULD.

6 Q. OKAY. SO IF THE CIRCUMSTANCES -- IF YOU WERE TO BE
7 ON THE JURY IN THIS CASE AND IF YOU WERE TO LISTEN CAREFULLY
8 TO ALL OF THE TESTIMONY AND IF THE JURY FOUND THE DEFENDANT
9 GUILTY OF MURDER AND THEN YOU MOVE INTO THE SENTENCING PHASE
10 AND YOU LISTENED VERY CAREFULLY TO ALL THE TESTIMONY ABOUT
11 THE AGGRAVATING CIRCUMSTANCES AND ABOUT MITIGATING
12 CIRCUMSTANCES, WOULD YOU BE ABLE TO CONSIDER AT THAT TIME
13 WHETHER OR NOT TO IMPOSE THE DEATH PENALTY OR A LIFE
14 SENTENCE?

15 A. I THINK SO.

16 Q. AND IF THE CIRCUMSTANCES WARRANTED IT IN YOUR MIND,
17 WOULD YOU BE ABLE TO IMPOSE THE DEATH PENALTY?

18 A. COULD YOU REPEAT THAT? I'M SORRY.

19 Q. IF YOU BELIEVED THAT THE CIRCUMSTANCES OF THE CRIME,
20 THE CIRCUMSTANCES THAT SURROUND ALL ASPECTS OF THIS CASE,
21 WARRANTED THE DEATH PENALTY, WOULD YOU BE ABLE TO VOTE TO
22 IMPOSE THE DEATH PENALTY?

23 A. YES, SIR.

24 Q. YOU WOULD?

25 A. YES, SIR.

1 Q. ALL RIGHT. NOW, IF YOU BELIEVE THAT THE
2 CIRCUMSTANCES ABOUT THE CRIME AND ALL OF THE OTHER
3 CIRCUMSTANCES SURROUNDING THE CASE WARRANTED THE IMPOSITION
4 OF A LIFE SENTENCE, WOULD YOU BE ABLE TO VOTE TO IMPOSE A
5 LIFE SENTENCE?

6 A. YEAH.

7 Q. IT'S POSSIBLE THAT THE JURY MIGHT BE SEQUESTERED IN
8 THIS CASE, MEANING THAT YOU WOULD BE PUT UP IN A HOTEL ROOM
9 FOR THE ENTIRE DURATION OF THE TRIAL WHICH COULD BE FIVE OR
10 SIX DAYS AND THEN WE WOULD -- AND YOU WOULD NOT BE ALLOWED TO
11 GO HOME DURING THAT TIME. WOULD THAT IMPOSE A TERRIBLE
12 BURDEN ON YOU?

13 A. NO, SIR.

14 Q. DID YOU GET A CHANCE TO READ OVER THE WITNESS LIST
15 THAT YOU WERE GIVEN THIS AFTERNOON?

16 A. YES, SIR.

17 Q. DID YOU READ EVERY NAME ON THAT LIST?

18 A. YES, SIR.

19 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
20 APPEARS ON THAT LIST?

21 A. NO, SIR.

22 Q. ALL RIGHT. MA'AM, THE LAWYERS ARE GOING TO ASK YOU
23 SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME BACK WITH
24 YOU IN JUST A FEW MINUTES.

25 A. ALL RIGHT.

DIRECT EXAMINATION

1
2 BY MR. MYERS:

3 Q. MS. HARMON -- MRS. HARMON, I THINK THAT
4 QUESTIONNAIRE THAT YOU SENT BACK IN SAID YOU HAD NEVER SERVED
5 ON A JURY BEFORE. IS THAT CORRECT, MA'AM?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND ALSO, MS. HARMON, YESTERDAY THE JUDGE WAS
8 ASKING THE JURY A WHOLE BUNCH OF QUESTIONS.

9 A. YES, SIR.

10 Q. AND HE ASKED THE QUESTION ABOUT DID ANY JUROR,
11 FAMILY MEMBER OR CLOSE FRIEND -- WERE THEY EVER A VICTIM OF A
12 VIOLENT CRIME OR SOMETHING LIKE THAT, AND I THINK YOU RAISED
13 YOUR HAND.

14 A. IT WAS MY HUSBAND. HE WASN'T A VICTIM OF THE CRIME,
15 BUT HE SERVED ON A -- AS A JUROR ON A MURDER TRIAL.

16 Q. UH-HUH.

17 A. AND SO I WAS KIND OF CONFUSED ON THE WAY IT WAS
18 ASKED.

19 Q. SO HE SERVED ON A JURY.

20 A. YES, SIR.

21 Q. OKAY. THAT'S GOOD. NOW, I'D LIKE TO ASK YOU,
22 PLEASE, MA'AM, ABOUT THAT FORM UP THERE THAT'S GOT THE THREE
23 CATEGORIES THAT PEOPLE GENERALLY FALL IN ON THE DEATH
24 PENALTY.

25 A. YES, SIR.

1 Q. AND THE FIRST ONE I THINK IT SAID THAT THERE WERE
2 PEOPLE IN A CASE OF MURDER THAT THEIR OPINIONS WERE THEY
3 SHOULD ALWAYS GET THE DEATH PENALTY. NEVER LIFE. DID YOU
4 UNDERSTAND THAT?

5 A. YES.

6 Q. THEN NUMBER TWO IS JUST THE OPPOSITE. THERE ARE
7 SOME FOLKS THAT SAY, WELL, I THINK PEOPLE SHOULD BE PUNISHED,
8 BUT I COULD NEVER VOTE FOR THE DEATH PENALTY. I WOULD ALWAYS
9 VOTE FOR LIFE. DO YOU UNDERSTAND THAT?

10 A. YEAH.

11 Q. THEN THERE WAS THE THIRD ONE WHERE PEOPLE WOULD SAY,
12 WELL, I COULD VOTE FOR LIFE OR DEATH DEPENDING ON THE CASE.
13 WHEN YOU CAME OUT, YOU SAID YOU WERE IN THE SECOND CATEGORY
14 THAT YOU'D ALWAYS VOTE FOR LIFE. COULD YOU EXPLAIN THAT?

15 A. I MISUNDERSTOOD THAT. I THINK I WOULD BE THE LAST
16 ONE.

17 Q. THE THIRD ONE.

18 A. YEAH. SORRY.

19 Q. SO YOU'RE IN THE THIRD CATEGORY.

20 A. YEAH. SORRY. I MISUNDERSTOOD THAT.

21 Q. YES, MA'AM. AND THE FOLKS IN THAT THIRD CATEGORY
22 WOULD LISTEN TO ALL THE EVIDENCE, AND THEY COULD VOTE FOR
23 LIFE OR THEY COULD VOTE FOR DEATH.

24 A. YES, SIR.

25 Q. IS THAT WHERE YOU ARE?

1 A. YES, SIR.

2 Q. NOW, MRS. HARMON, LET ME TELL YOU THIS SINCE YOU'VE
3 NEVER SERVED ON A JURY BEFORE. IN A NORMAL CASE A JURY WOULD
4 LISTEN TO EVIDENCE. THEN THEY WOULD GO TO THEIR ROOM AND
5 COME BACK WITH A VERDICT OF GUILTY OR NOT GUILTY.

6 A. YES, SIR.

7 Q. AND IF THEY FOUND THE DEFENDANT GUILTY, THEIR JOBS
8 WOULD BE OVER WITH. THE JUDGE WOULD NORMALLY HANDLE THE
9 SENTENCING. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. WELL, IN THIS CASE THE JURY WILL BE HANDLING THE
12 SENTENCING. THAT'S WHY WE NEED THAT SECOND PART OF THE CASE.

13 A. UH-HUH.

14 Q. THAT'S THE SENTENCING PART, AND THAT SENTENCING PART
15 IS FOR ADDITIONAL EVIDENCE, AND THAT'S WHERE THE JUDGE WAS
16 TALKING ABOUT AGGRAVATING EVIDENCE AND MITIGATING EVIDENCE,
17 THINGS IN FAVOR OF THE DEFENDANT, SOME THINGS NOT IN FAVOR OF
18 HIM. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. WOULD YOU LISTEN TO ALL OF THAT BEFORE YOU DECIDED
21 WHAT THE APPROPRIATE SENTENCE WAS, MRS. HARMON?

22 A. YES, I WOULD.

23 Q. OKAY. AFTER THE JURY HAD HEARD ALL THAT, THE JUDGE
24 WOULD TELL THEM WHAT THE LAW IS. HE'D TELL THEM IN DETAIL
25 WHAT AGGRAVATING CIRCUMSTANCES WERE; HE'D GIVE THE JURY

1 SOMETHING IN WRITING ABOUT IT. HE WOULD TELL THE JURY WHAT
2 -- ABOUT MITIGATING CIRCUMSTANCES AND WOULD GIVE THE JURY
3 SOMETHING IN WRITING FOR THE JURY TO GO TO THEIR ROOM. WOULD
4 YOU LISTEN TO THAT LAW AND FOLLOW IT AS THE JUDGE GAVE IT TO
5 YOU?

6 A. YES, I WOULD.

7 Q. OKAY. AND THEN THE JURY SHOULD GO BACK TO THEIR
8 ROOM, ALL 12 DISCUSS THE CASE, AND THEN COME BACK WITH A
9 SENTENCE OF LIFE IMPRISONMENT OR THE DEATH PENALTY. THAT'S
10 THE ONLY TWO OPTIONS. AND I THINK YOU SAID NOW YOU'RE IN
11 THAT THIRD CATEGORY.

12 A. YES, SIR.

13 Q. IF LIFE WERE THE SENTENCE, YOU COULD VOTE FOR LIFE.
14 IS THAT CORRECT?

15 A. EXCUSE ME?

16 Q. IF LIFE WERE THE APPROPRIATE SENTENCE YOU THOUGHT,
17 YOU COULD SO VOTE FOR A LIFE SENTENCE. IS THAT RIGHT?

18 A. YES, SIR, IF THE EVIDENCE ADDED UP TO THAT, I THINK
19 I COULD.

20 Q. NORMALLY IN A CASE LIKE THAT ONLY THE FOREMAN WOULD
21 SIGN THE VERDICT.

22 A. UH-HUH.

23 Q. ON THE OTHER HAND, IF THE FACTS AND THE
24 CIRCUMSTANCES SHOWED THAT THE DEATH PENALTY WAS WARRANTED AND
25 THE APPROPRIATE SENTENCE, YOU COULD SO VOTE FOR THE DEATH

1 PENALTY?

2 A. YES, SIR.

3 Q. AND IF THE JURY DECIDED THAT THE DEATH PENALTY WAS
4 THE RIGHT VERDICT, THEN ALL 12 JURORS MUST SIGN THEIR NAME ON
5 THAT VERDICT FORM.

6 A. YES, SIR.

7 Q. THE FACT THAT YOU WOULD HAVE TO SIGN YOUR NAME TO A
8 DEATH PENALTY VERDICT, WOULD THAT PREVENT YOU FROM VOTING FOR
9 THE DEATH PENALTY OR COULD YOU SIGN YOUR NAME?

10 A. I THINK I COULD IF THE EVIDENCE, YOU KNOW, SHOWED---

11 Q. ALL RIGHT. IF THE FACTS AND CIRCUMSTANCES SHOWED
12 IT.

13 A. YES.

14 Q. YES, MA'AM. NOW, MS. HARMON, WHILE THE JURY WOULD
15 GO BACK TO THEIR ROOM AND DISCUSS EVERYTHING, NOBODY CAN BE
16 IN THERE WITH THEM. THAT'S THE JURORS' ROOM.

17 A. YES, SIR.

18 Q. EVERYTHING IN THERE IS PRIVATE. AND THEY WOULD
19 DISCUSS ON WHAT THE CORRECT SENTENCE IS. SOME PEOPLE MAY
20 THINK ONE WAY; SOME PEOPLE MAY THINK ANOTHER WAY. BUT IT'S
21 THE JURY'S JOB TO DISCUSS IT AND WORK IT OUT.

22 A. UH-HUH.

23 Q. IF YOU THOUGHT ONE WAY AND A BUNCH OF OTHER JURORS
24 THOUGHT ANOTHER WAY, WOULD YOU GO ALONG WITH THOSE OTHER
25 JURORS JUST TO GET A VERDICT OR WOULD YOU TELL THEM WHAT YOUR

1 OPINIONS ARE AND HAVE GIVE-AND-TAKE?

2 A. I WOULD HAVE TO TALK IT OUT WITH THEM AND LET THEM
3 KNOW HOW I FELT ABOUT IT, AND I WOULD GIVE THEM MY OPINION ON
4 IT.

5 Q. GOOD. SO YOU WOULD LIKE YOUR OPINION UPHELD, TOO.

6 A. YEAH, I WOULD.

7 Q. THANK YOU, MS. HARMON. DO YOU KNOW OF ANY REASON
8 WHY YOU COULDN'T SIT IN ONE OF THESE CHAIRS AND BE A FAIR
9 JUROR TO BOTH THE DEFENDANT AND TO THE STATE IN THIS CASE?

10 A. I SEE NO PROBLEM WITH IT.

11 MR. MYERS: THAT'S ALL WE CAN ASK OF YOU. THANK
12 YOU, MA'AM. YOUR HONOR, THAT LAST QUESTION WAS SUBJECT TO MY
13 PREVIOUS OBJECTION SINCE YOU'VE BEEN ALLOWING IT.

14 THE COURT: I OVERRULE YOUR OBJECTION.

15 MR. MYERS: I JUST NOTED THAT FOR THE RECORD.

16 CROSS-EXAMINATION

17 BY MS. KIMBROUGH:

18 Q. GOOD AFTERNOON, MS. HARMON. HOW ARE YOU?

19 A. I'M FINE.

20 Q. GOOD. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN
21 MERCER. KEVIN, WOULD YOU PLEASE STAND? WE INTRODUCED KEVIN
22 TO YOU EARLIER THIS WEEK, SO I JUST THOUGHT I WOULD
23 REINTRODUCE HIM. I SEE HERE THAT YOU'RE A SCREEN PRINTER?

24 A. YES. YES, MA'AM.

25 Q. AND HOW LONG HAVE YOU BEEN DOING THAT JOB?

1 A. OFF AND ON ABOUT 10 YEARS..

2 Q. AND SERVING ON THIS JURY, WOULD THAT CAUSE YOU ANY
3 PROBLEMS WITH YOUR -- WITH YOUR JOB?

4 A. NO, MA'AM.

5 Q. AND I NOTICED HERE THAT YOU'RE MARRIED AND THAT YOUR
6 HUSBAND IS DISABLED?

7 A. YES, MA'AM.

8 Q. OKAY. WOULD HIS CONDITION HAVE ANY IMPACT ON YOUR
9 ABILITY TO STAY ON OUR JURY?

10 A. NO. HE CAN TAKE CARE OF HIMSELF. HE'S IN SCHOOL
11 AND HE -- HE DRIVES AND EVERYTHING, BUT HE IS STILL
12 CONSIDERED DISABLED.

13 Q. OKAY. GREAT. AND YOU HAVE TWO CHILDREN? SOUNDS
14 LIKE YOU'VE GOT A BOY WHO'S 21 AND A GIRL WHO'S 30?

15 A. YEAH. THEY'RE GROWN; THANK GOODNESS.

16 Q. MUST BE A RELIEF.

17 A. OH, YEAH.

18 Q. AND I COULDN'T QUITE READ YOUR JURY FORM, BUT IT
19 APPEARS YOU ATTEND CHURCH?

20 A. YES.

21 Q. IS THAT A NON-DENOMINATIONAL CHURCH?

22 A. YEAH.

23 Q. I THINK MR. MYERS TOUCHED UPON IT, BUT A DEATH
24 PENALTY CASE OR A CAPITAL CASE IS A LITTLE DIFFERENT THAN
25 YOUR ORDINARY JURY TRIAL. AND YOU SAID YOUR HUSBAND HAD

1 SERVED ON A MURDER CASE?

2 A. YES, MA'AM.

3 Q. WAS IT A CAPITAL CASE? DO YOU RECALL?

4 A. IT'S BEEN AWHILE BACK. I'M NOT EXACTLY SURE.

5 Q. OKAY. YOU PROBABLY WOULD HAVE REMEMBERED HAD IT

6 BEEN BECAUSE THEY'RE RATHER LENGTHY OR THEY TEND TO BE---

7 A. YEAH.

8 Q. ---BEGINNING NOW AND UP UNTIL THE END. BUT JUST BY
9 WAY OF EXPLANATION, THERE WOULD BE TWO STAGES, AND I BELIEVE
10 THE JUDGE HAS TALKED ABOUT THAT AND MR. MYERS SPOKE ABOUT
11 THAT AS WELL. BUT THE FACT THAT WE ASK YOU ABOUT YOUR
12 OPINIONS THAT MIGHT RELATE TO YOUR ABILITY TO SERVE ON THE
13 FIRST PHASE AS WELL AS THE SECOND DOESN'T NECESSARILY MEAN
14 THAT WE'RE EVEN GOING TO GET TO THE SECOND. SO IN LIGHT OF
15 THAT FACT, I'D LIKE TO ASK YOU JUST A COUPLE OF QUESTIONS
16 ABOUT INFORMATION THAT MIGHT BE RELEVANT TO THE FIRST PHASE.

17 A. OKAY.

18 Q. CAN YOU IMAGINE -- DO YOU BELIEVE YOU CAN FOLLOW THE
19 JUDGE'S INSTRUCTIONS ABOUT IMPORTANT PRINCIPLES OF LAW SUCH
20 AS REASONABLE DOUBT, THE PRESUMPTION OF INNOCENCE, AND THE
21 BURDEN OF PROOF?

22 A. YES, MA'AM.

23 Q. OKAY. ALL RIGHT. NOTHING WOULD INTERFERE WITH YOUR
24 ABILITY TO DO THAT?

25 A. NO, MA'AM.

1 Q. OKAY. AND IF YOU'RE IN THE JURY ROOM, OBVIOUSLY
2 YOUR DECISION IS GOING TO BE A COLLECTIVE ONE. HOWEVER, YOUR
3 INDIVIDUAL OPINION AS WELL AS THE OPINIONS OF THE OTHER 11
4 JURORS, YOU KNOW, THEY COUNT, TOO.

5 A. UH-HUH.

6 Q. I MEAN, YOU HAVE TO ANSWER AS A WHOLE: NOT GUILTY
7 OR GUILTY. BUT IF YOU WERE IN THE JURY ROOM -- OH, NEVER
8 MIND. I THINK MR. -- I JUST REMEMBERED MR. MYERS ASKED YOU
9 THAT QUESTION, BUT IF OTHER PEOPLE DISAGREED WITH YOU, MY
10 UNDERSTANDING IS YOU WOULD STILL HOLD YOUR OPINION UNTIL YOU
11 BELIEVED OTHERWISE---

12 A. YES, MA'AM.

13 Q. ---OR THEY CAME TO YOUR SIDE.

14 A. YEAH. LIKE I SAID, I WOULD -- I WOULD LET THEM KNOW
15 HOW I FELT ABOUT IT. THEN IF SOMETHING CAME UP TO CHANGE MY
16 MIND, THEN I COULD POSSIBLY GO TO THE OTHER SIDE. I DON'T --
17 BUT I WOULD HAVE TO SEE SOMETHING, YOU KNOW, TO MAKE ME
18 CHANGE MY MIND.

19 Q. OKAY. AND THAT WOULD BE TRUE OBVIOUSLY OF BOTH---

20 A. YEAH.

21 Q. ---BOTH STAGES?

22 A. YES, MA'AM.

23 Q. OKAY. IF WE GET TO THE SECOND PHASE, THE PENALTY
24 PHASE, AT THAT POINT YOU AND THE OTHER 11 JURORS WILL HAVE
25 DECIDED THAT MR. MERCER IS GUILTY OF MURDER AND ARMED

1 ROBBERY. NOW, AS THE JUDGE WILL INSTRUCT YOU LATER ON,
2 MURDER IS AN INTENTIONAL KILLING. IT'S NOT AN ACCIDENT,
3 IT'S NOT SELF-DEFENSE. IT'S INTENTIONAL. WOULD THAT VERY
4 FACT THAT YOU HAD FOUND KEVIN GUILTY OF INTENTIONALLY TAKING
5 A LIFE -- WOULD THAT PREVENT YOU FROM BEING ABLE TO SERIOUSLY
6 CONSIDER A LIFE SENTENCE?

7 A. LIKE I SAID, I WOULD HAVE TO SEE THE REASON OF THE
8 MURDER AND, LIKE I SAID, IF IT WAS INTENTIONAL, IT WOULD BE
9 HARD TO SAY A LIFE SENTENCE IF I KNEW IT WAS INTENTIONAL.

10 Q. SO IF THE KILLING IS INTENTIONAL WHICH, BY
11 DEFINITION, MURDER IS INTENTIONAL---

12 A. YEAH. I MEAN, YOU KNOW, LIKE IF -- IF HE JUST
13 WALKED UP TO HER AND POINT-BLANK SHOT HER---

14 MR. MYERS: I HATE TO CUT HER OFF RIGHT NOW, YOUR
15 HONOR, BUT SHE'S GIVEN AN INCOMPLETE QUESTION AND THE JUROR
16 DOES NOT HAVE TO GIVE EXAMPLES. SO WE'RE GETTING FAR AFIELD
17 OF WHAT THE VOIR DIRE IS---

18 MS. KIMBROUGH: I DIDN'T ASK FOR AN EXAMPLE, YOUR
19 HONOR.

20 MR. MYERS: YEAH, SHE'S TALKING ABOUT MANSLAUGHTER
21 WHICH IS NOT INVOLVED AND SELF-DEFENSE WHICH IS NOT INVOLVED.
22 IT'S A CONFUSING QUESTION, AND IT'S AN IMPROPER QUESTION AND
23 AN INCOMPLETE QUESTION.

24 MS. KIMBROUGH: YOUR HONOR, I THINK IT'S PROPER
25 BECAUSE IT'S EXPLAINING THE DIFFERENCE---

1 THE COURT: LET ME -- IF YOU DON'T MIND, LET ME
2 SPEAK TO THE JUROR FOR JUST A MINUTE ABOUT -- ABOUT THIS AND
3 THEN I'LL LET YOU COMPLETE YOUR FOLLOW-UP.

4 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

5 THE COURT: IS THAT ALL RIGHT?

6 RE-EXAMINATION BY THE COURT

7 Q. MA'AM, THE DEFINITION OF MURDER IN SOUTH CAROLINA IS
8 AN UNLAWFUL KILLING, AN INTENTIONAL KILLING WITH MALICE
9 AFORETHOUGHT, AND MALICE IS DEFINED AS SOME SORT OF EVIL
10 MOTIVE, SOME SORT OF HATRED OR ILL WILL THAT IS DIRECTED
11 TOWARD THE VICTIM.

12 A. UH-HUH.

13 Q. AND AFORETHOUGHT, OF COURSE, MEANS THAT IT AROSE
14 BEFORE THE ACTUAL KILLING. IT DOESN'T HAVE TO BE FOR A REAL
15 LONG PERIOD OF TIME. IT COULD BE A VERY SHORT PERIOD OF
16 TIME. SO IT'S AN UNLAWFUL KILLING WITH MALICE AFORETHOUGHT.
17 THAT'S THE DEFINITION OF MURDER.

18 A. UH-HUH.

19 Q. A MURDER CAN'T BE ACCIDENTAL. IT HAS TO BE ON
20 PURPOSE.

21 A. UH-HUH.

22 Q. NOW, ALL THIS TALK ABOUT WHAT THE SENTENCE WOULD BE
23 WHICH COMES UP IN THE SECOND PHASE OF THE TRIAL -- AND WE
24 ONLY GET TO THE SECOND PHASE IF THERE IS ALREADY A CONVICTION
25 FOR MURDER, IF THE JURY HAS ALREADY DECIDED---

1 A. YES.

2 Q. ---THAT THE DEFENDANT IS GUILTY OF MURDER. IF THE
3 JURY REACHES A VERDICT OF GUILT ON MURDER, THEN WE WOULD MOVE
4 INTO THE SENTENCING PHASE, AND IN THAT SENTENCING PHASE, JUST
5 LIKE THE SOLICITOR POINTED OUT AND MS. KIMBROUGH ALSO, YOU
6 WOULD HEAR ADDITIONAL EVIDENCE, AND IT COULD TAKE SEVERAL
7 DAYS OF ADDITIONAL TESTIMONY THAT COULD BE OFFERED BY BOTH
8 SIDES.

9 A. YES, SIR.

10 Q. AND IT COULD RELATE TO OTHER INCIDENTS. IT COULD
11 RELATE TO THE PERSONAL HISTORY OF THE DEFENDANT. IT COULD
12 RELATE TO TESTIMONY ABOUT THE VICTIM. IT COULD RELATE TO
13 LOTS OF DIFFERENT THINGS.

14 A. UH-HUH.

15 Q. AFTER HEARING ALL OF THAT TESTIMONY, THEN IT BECOMES
16 THE JURY'S RESPONSIBILITY TO DECIDE WHETHER TO IMPOSE A LIFE
17 SENTENCE OR WHETHER TO IMPOSE THE DEATH PENALTY. NOW, DO YOU
18 FEEL THAT YOU WOULD HAVE ALREADY MADE UP YOUR MIND ABOUT WHAT
19 THE PENALTY SHOULD BE AS SOON AS THE JURY REACHES A VERDICT
20 OF -- IF THE JURY REACHES A VERDICT OF GUILT ON THE QUESTION
21 OF MURDER?

22 A. NO. I THINK I WOULD -- I COULD GO EITHER WAY. I
23 MEAN, I'D HAVE TO HEAR ALL THE EVIDENCE AND EVERYTHING, BUT I
24 THINK---

25 Q. OKAY. AND WOULD THAT -- AND SO -- AND YOU SAY THAT,

1 UNDERSTANDING NOW -- YOU MIGHT -- I'M AFRAID YOU MIGHT HAVE
2 GOTTEN HUNG UP ON THE WORD INTENTIONAL.

3 A. YEAH.

4 Q. BUT YOU UNDERSTAND THAT IT WOULD -- IT WOULD HAVE
5 ALREADY BEEN DECIDED AT THIS POINT THAT THE MURDER WAS
6 INTENTIONAL.

7 A. YEAH.

8 Q. AND THEN YOU WOULD BE LISTENING TO ALL THIS OTHER
9 TESTIMONY. WOULD YOU STILL BE ABLE TO CONSIDER BOTH OF THE
10 OPTIONS THAT YOU WOULD HAVE AVAILABLE TO YOU AS A MEMBER OF
11 THE JURY WHICH WOULD BE A LIFE SENTENCE AND THE DEATH
12 PENALTY?

13 A. YES, SIR.

14 Q. SO AFTER HEARING ALL THAT, IF YOU FELT THE
15 CIRCUMSTANCES AND THE FACTS WARRANTED IT, WOULD YOU BE ABLE
16 TO VOTE TO IMPOSE A LIFE SENTENCE?

17 A. YES, SIR.

18 Q. AND IF YOU FELT THE CIRCUMSTANCES WARRANTED IT,
19 WOULD YOU BE ABLE TO VOTE TO IMPOSE THE DEATH PENALTY?

20 A. YES, SIR.

21 Q. ALL RIGHT. MA'AM, I'M GOING TO ASK YOU TO STEP OUT
22 IN THE HALL FOR JUST ONE SECOND, AND THEN I'LL GET YOU RIGHT
23 BACK IN HERE. OKAY?

24 A. OKAY.

25 (JUROR HARMON LEAVES THE COURTROOM.)

1 THE COURT: ANY OBJECTION TO MY QUESTIONS?

2 MR. MYERS: NO, SIR.

3 MS. KIMBROUGH: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. ANYTHING WE NEED TO DISCUSS
5 BEFORE WE GO FORWARD?

6 MS. KIMBROUGH: I DON'T BELIEVE SO.

7 THE COURT: ALL RIGHT. BRING HER BACK IN.

8 (JUROR HARMON IS BROUGHT INTO THE COURTROOM.)

9 THE COURT: HAVE A SEAT, MA'AM. MS. KIMBROUGH?

10 MS. KIMBROUGH: JUST ONE FINAL QUESTION.

11 THE COURT: OKAY. I'M GOING TO -- SHE'S GOING TO
12 COMPLETE HER QUESTIONING.

13 THE WITNESS: OKAY.

14 RECROSS EXAMINATION

15 BY MS. KIMBROUGH:

16 Q. MS. HARMON, I APOLOGIZE IF I CONFUSED YOU WITH MY
17 QUESTION.

18 A. THAT'S ALL RIGHT.

19 Q. THE LAST QUESTION I HAVE IS: ASSUMING WE GET TO THE
20 SECOND PHASE, THE PENALTY PHASE, AND MR. MERCER HAS BEEN
21 FOUND GUILTY OF MURDER, THERE WILL BE OPPORTUNITIES FOR HIM
22 TO PRESENT EVIDENCE THAT HE WOULD ARGUE MILITATE IN FAVOR OF
23 A LIFE SENTENCE RATHER THAN A DEATH SENTENCE. NOW, THERE'S
24 NO BURDEN FOR HIM TO GIVE ANY EVIDENCE, BUT IF HE DID, SOME
25 OF THE INFORMATION THAT HE MIGHT PRESENT WOULD BE THINGS

1 ABOUT HIS BACKGROUND, HIS LEVEL OF FUNCTIONING AS A PERSON,
2 ALL SORTS OF DIFFERENT KINDS OF INFORMATION HE COULD PRESENT.
3 WOULD YOU BE WILLING TO KEEP AN OPEN MIND EVEN AFTER HEARING
4 THE FIRST PHASE OF EVIDENCE AND ADDITIONAL INFORMATION FROM
5 THE STATE? COULD YOU KEEP AN OPEN MIND UNTIL ALL THE
6 EVIDENCE IS IN AND THEN RENDER A VERDICT WITH THE OTHER
7 JURORS?

8 A. YES, MA'AM.

9 Q. OKAY. SO YOU -- YOU WOULD NOT BE PREDISPOSED---

10 A. NO.

11 Q. ---IN OTHER WORDS.

12 A. I WOULD LISTEN TO EVERYTHING.

13 MS. KIMBROUGH: OKAY. THANK YOU.

14 THE COURT: OKAY. MA'AM, I'M GOING TO ASK YOU --
15 AND I APOLOGIZE FOR DOING THIS TWICE, BUT I'M GOING TO ASK
16 YOU TO STEP OUT IN THE HALL FOR JUST ONE SECOND.

17 THE WITNESS: OKAY.

18 THE COURT: I HAVE ANOTHER MATTER OF LAW THAT I NEED
19 TO TAKE UP WITH THE LAWYERS.

20 THE WITNESS: OKAY.

21 (JUROR HARMON LEAVES THE COURTROOM.)

22 THE COURT: WHAT'S THE DEFENSE POSITION ON THIS
23 JUROR?

24 MS. KIMBROUGH: WELL, OBVIOUSLY WE'RE CONCERNED.
25 YOU KNOW, THERE WAS THE INITIAL STATEMENT THAT IF IT'S

1 INTENTIONAL, YOU KNOW, I LEAN TOWARDS DEATH AND THAT -- YOU
2 KNOW, FOR OBVIOUS REASONS THAT CONCERNS US. WE PREFER TO
3 HAVE SOMEBODY WHO DIDN'T HAVE A LEANING ONE WAY OR THE OTHER.
4 OBVIOUSLY THERE HAVE BEEN QUESTIONS IN REHABILITATION THAT
5 SHE'S ANSWERED.

6 THE COURT: WELL, HOW ABOUT THIS? WOULD YOU FIRST
7 TELL ME WHETHER YOU BELIEVE SHE'S QUALIFIED OR UNQUALIFIED,
8 AND THEN DEPENDING ON WHAT YOUR ANSWER IS, I'LL HEAR ARGUMENT
9 AS TO WHAT -- TO SUPPORT YOUR POSITION.

10 MS. KIMBROUGH: YOUR HONOR, WE BELIEVE SHE'S
11 ANSWERED THE QUESTIONS IN SUCH A WAY THAT WE COULD NOT MOVE
12 TO DISQUALIFY HER FOR CAUSE.

13 THE COURT: SO YOU THINK SHE'S DEATH-PENALTY
14 QUALIFIED. THAT'S WHAT THAT ANSWER MEANS. WHAT'S THE
15 POSITION OF THE STATE?

16 MR. MYERS: SHE'S SIMILAR TO THE STATE VERSUS
17 RAYMOND PATTERSON, 482 SOUTHEASTERN SECOND 760, 1997. IN
18 THAT CASE THE DEFENDANT'S ATTORNEY TRIED TO DO WHAT THEY DID.
19 THEY TALKED ABOUT THE SOLICITOR AND THE STATE INTRODUCING
20 EVIDENCE AND IT BEING A COLD, MALICIOUS MURDER, AN
21 INTENTIONAL MURDER, AND THEN IF THE STATE SHOWED THE VICTIM'S
22 WIFE, LET HER TESTIFY AND PICTURES OF THE VICTIM AND OTHER
23 AGGRAVATING CIRCUMSTANCES, WOULD YOU VOTE FOR THE DEATH
24 PENALTY AUTOMATICALLY? WELL, IT'S AN INCOMPLETE QUESTION.

25 AT THAT POINT THE TRIAL JUDGE THERE DID JUST WHAT

1 YOU DID. HE STOPPED QUESTIONING THE JUROR. THE JUROR
2 ANSWERED JUST LIKE SHE DID HERE. SHE'S GONE FROM NUMBER TWO
3 FOR BEING ALWAYS FOR LIFE TO THE THIRD CATEGORY WHERE SHE WAS
4 CONFUSED. I THINK THAT THAT QUESTION WAS A MOST CONFUSING
5 QUESTION; THAT'S WHY I OBJECTED. I THINK THIS LADY'S
6 POSITION IS THAT SHE'S IN THE THIRD CATEGORY. SHE'LL HAVE TO
7 LISTEN TO EVERYTHING AND THEN DETERMINE.

8 THE COURT: THANK YOU.

9 MS. KIMBROUGH: YOUR HONOR, WITH ALL DUE RESPECT TO
10 SOLICITOR MYERS, I THINK THAT'S A MISCHARACTERIZATION OF MY
11 QUESTION. WE WANTED TO MAKE SURE THIS JUROR UNDERSTOOD THAT
12 ALL MURDER WAS INTENTIONAL.

13 THE COURT: NOBODY -- THE PROPRIETY OF YOUR QUESTION
14 WAS NOT SOMETHING THAT I NEED TO DECIDE OR CONCERN MYSELF
15 WITH. I BELIEVE THAT BOTH OF YOU AGREE THAT THIS JUROR IS
16 QUALIFIED. IF THAT'S NOT CORRECT, I'LL HEAR FROM YOU NOW.
17 HEARING NOTHING, BRING THE JUROR IN.

18 (JUROR HARMON IS BROUGHT INTO THE COURTROOM.)

19 THE COURT: MA'AM, YOU ARE QUALIFIED TO SERVE AS A
20 JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY.
21 IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE WILL ACTUALLY
22 SELECT THE JURY ON MONDAY. SO YOU WILL NEED TO BE PREPARED
23 TO BE HERE ON MONDAY MORNING. IF YOU WILL CALL BACK SUNDAY
24 NIGHT AFTER 6:00 TO THAT TELEPHONE NUMBER THAT YOU WERE GIVEN
25 ON THAT PINK SLIP OF PAPER, THEN WE WILL LEAVE A MESSAGE

1 THERE THAT WILL GIVE YOU DETAILED INSTRUCTIONS ABOUT WHEN YOU
2 NEED TO REPORT AND WHETHER OR NOT YOU NEED TO BRING YOUR
3 CLOTHING AND PERSONAL ITEMS THAT YOU WILL NEED IF YOU ARE
4 SEQUESTERED.

5 BETWEEN NOW AND THEN, YOU MUST NOT DISCUSS THIS CASE
6 NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU, AND PLEASE
7 MAKE SURE THAT YOU DON'T ALLOW YOURSELF TO BE EXPOSED TO ANY
8 PRESS COVERAGE THAT THERE MAY BE ABOUT THIS CASE. HAVE A
9 GOOD REST OF THE WEEK. THANK YOU FOR YOUR TIME, AND WE'LL
10 SEE YOU MONDAY MORNING.

11 THE WITNESS: THANK YOU.

12 (JUROR HARMON LEAVES THE COURTROOM.)

13 THE COURT: HOLD ON. I THINK -- I THINK THE JUROR
14 CLEARLY IS QUALIFIED. NOW, WHEN SHE -- WHEN SHE INITIALLY
15 SAID THAT SHE WAS TYPE TWO, MY FURTHER QUESTIONS CLARIFIED
16 THAT IMMEDIATELY, AND I DON'T -- I THINK THAT IT WAS CLEAR
17 THAT SHE HAD GOTTEN CONFUSED ABOUT WHAT THE TYPE NUMBERS WERE
18 OR -- OR SOMETHING ABOUT THAT CLASSIFICATION. I NEVER SAW
19 HER WAVER A BIT UNTIL THAT LAST -- THAT QUESTION THAT THE --
20 THAT MS. KIMBROUGH ASKED, AND SHE GOT HUNG UP ON THE WORD
21 INTENTIONAL.

22 NOW, AFTER LISTENING TO EVERYTHING THAT SHE SAID,
23 I'M CONVINCED THAT SHE IS QUALIFIED, THAT SHE IS CAPABLE OF
24 FOLLOWING MY INSTRUCTIONS OF CONSIDERING BOTH AGGRAVATING AND
25 MITIGATING CIRCUMSTANCES AND THEN PARTICIPATING IN THE

1 RENDERING OF A VERDICT THAT'S BASED ON THE EVIDENCE AND THAT
2 IS -- AND THAT IS CONSISTENT WITH THE LAW. I FIND NO REASON
3 TO SUSPECT THAT SHE'S NOT QUALIFIED. ALL RIGHT? READY FOR
4 THE NEXT JUROR?

5 MS. KIMBROUGH: YOUR HONOR, WE'D LIKE TO MAKE A
6 REQUEST. I UNDERSTAND THE SOLICITOR WAS CONCERNED ABOUT THE
7 WAY IN WHICH MY QUESTION WAS ASKED CONCERNING INTENTIONAL
8 VERSUS UNINTENTIONAL KILLING. WOULD YOU BE WILLING TO JUST
9 TELL THE JUROR THAT MURDER MEANS INTENTIONAL KILLING AS PART
10 OF YOUR INTRODUCTORY MARKS TO THEM AND LEAVE IT AT THAT SO
11 THEY KNOW FROM THE GET-GO THAT THAT'S WHAT WE'RE TALKING
12 ABOUT?

13 MR. MYERS: IN PRIOR CASES WHERE THIS HAS COME UP
14 WE'VE REQUESTED THE JUDGES CHARGE THE DEFINITION OF MURDER
15 BECAUSE THAT'S WHAT THE LAW IS.

16 THE COURT: WELL, ALL RIGHT. THEN I'LL BE HAPPY TO
17 DO THAT. THE DEFINITION OF MURDER IS AN UNLAWFUL KILLING
18 WITH MALICE AFORETHOUGHT. YOU KNOW, IN A JURY CHARGE THERE
19 IS SOME EXPLANATION THAT GOES ALONG WITH THAT SUCH AS AN
20 EXPLANATION OF CRIMINAL INTENT AND WHAT IS THE DEFINITION OF
21 MALICE. FRANKLY, I DON'T THINK THAT THE DIFFERENCE BETWEEN
22 AN INTENTIONAL AND AN UNINTENTIONAL KILLING IS GOING TO BE AN
23 ISSUE WITH THE VAST MAJORITY OF THE JURORS. I MEAN, MOST
24 EVERYBODY IS GOING TO -- GOING TO KNOW FOR THESE PURPOSES
25 THAT A MURDER IS AN INTENTIONAL KILLING. I WILL GO TO

1 WHATEVER DEPTH OR EXTENT I NEED TO TO MAKE THAT CLEAR, BUT I
2 DON'T WANT TO GET INTO A FIVE-MINUTE JURY CHARGE AS TO WHAT
3 MURDER IS AT THIS STAGE OF THE CASE. THAT IS JUST LIKELY TO
4 CREATE CONFUSION.

5 MR. MYERS: I DON'T -- I DON'T MEAN TO GO INTO THE
6 FULL THING. AND I AGREE WITH YOU: THIS IS NOT THE
7 APPROPRIATE STAGE TO GIVE THE JURY CHARGE, AND THAT'S NOT
8 APPROPRIATE I DON'T THINK FOR VOIR DIRE PURPOSES. BUT IF
9 THEY GO INTO IT, THEN WE'RE GOING TO HAVE TO RE-WORK THE WAY
10 WE START QUESTIONING JURORS TO MAKE SURE THAT THEY UNDERSTAND
11 WHAT THE PROCESS IS. FOR PEOPLE WHO HAVE NEVER BEEN ON A
12 JURY BEFORE, WE MUST ASK THEM ABOUT DEATH PENALTY STUFF AND
13 BIFURCATION AND THINGS OF THAT NATURE.

14 SO IT'LL PROLONG IT, BUT I'VE FACED THIS BEFORE.
15 YOU GET IN THERE AND YOU SAY, "WELL, WHAT IF THEY PROVE A
16 COLD-BLOODED MALICIOUS MURDER? WOULD YOU VOTE FOR THE DEATH
17 PENALTY RIGHT THEN?" THAT'S AN IMPROPER QUESTION BECAUSE
18 IT'S INCOMPLETE. YOU'VE GOT TO TAKE -- YOU DIVIDE IT UP INTO
19 TWO STEPS. YOU GO INTO A 24-HOUR WAITING PERIOD, A COOLING
20 OFF. I DON'T THINK ALL THAT'S APPROPRIATE, AND I THINK IT'S
21 A CONFUSING, IMPROPER VOIR DIRE QUESTION.

22 MS. KIMBROUGH: YOUR HONOR---

23 MR. MYERS: FOR EXAMPLE, IN STATE VERSUS SMART WHERE
24 THE COURT STARTED EVERYTHING ABOUT JUDGES HAVING THE DUTY TO
25 LIMIT VOIR DIRE, THEY WANTED TO GO IN AND TALK ABOUT

1 MANSLAUGHTER, SELF-DEFENSE, PROVOCATION, INVOLUNTARY
2 MANSLAUGHTER, AND THE SUPREME COURT VERY CLEARLY SAID IN THAT
3 CASE AND THE FOLLOWING CASES -- IN BUTLER THEY SAID THAT'S
4 NOT THE PROPER VOIR DIRE. THE VOIR DIRE THAT JURORS HEAR,
5 ONCE THE JUDGE GETS THROUGH WITH HIS INITIAL VOIR DIRE, IS
6 CUT DOWN EXTREMELY AS TO BIAS AND IMPARTIALITY.

7 THE COURT: WELL, HOW ABOUT IF I WERE TO SAY THEN IN
8 THE COURSE OF MY INITIAL REMARKS THAT THE DEFINITION OF
9 MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING WITH MALICE
10 AFORETHOUGHT?

11 MS. KIMBROUGH: THAT'S ALL WE ASK, YOUR HONOR.

12 MR. MYERS: NO OBJECTION.

13 THE COURT: IS THAT ALONG THE LINES THAT YOU WERE
14 SUGGESTING, SOLICITOR?

15 MR. MYERS: THAT'S FINE.

16 THE COURT: ALL RIGHT.

17 MR. MYERS: I'M NOT SUGGESTING YOU GO THERE, BUT IF
18 YOU GO THERE, THAT'S FINE WITH US.

19 THE COURT: WELL, LET'S THINK FOR A SECOND ABOUT
20 WHETHER OR NOT THIS IS JUST GOING TO CREATE MORE DIFFICULTY
21 BECAUSE WHEN YOU ASK THE QUESTION THAT -- A QUESTION LIKE
22 DONNIE JUST QUOTED, IT'S NOT A QUESTION THAT Y'ALL ASK. IT'S
23 A QUESTION THAT CAME FROM SOME OTHER CASE THAT SAID IF YOU
24 WERE -- YOU KNOW, IF IT WAS A COLD-BLOODED, MALICIOUS,
25 INTENTIONAL KILLING. NOW, THAT -- THAT IS NOT A HYPOTHETICAL

1 IN THE SENSE OF LISTING SPECIFIC FACTS, BUT IT IS A
2 HYPOTHETICAL IN THE SENSE OF THE DESCRIPTION OR THE
3 CHARACTERIZATION OF THE FACTS, AND SO I DON'T THINK THAT --
4 THAT THAT REALLY IS ALL THAT DIFFERENT FROM THOSE CASES WHERE
5 THEY HAVE SAID THAT I'M NOT TO ALLOW YOU ALL TO GO INTO
6 HYPOTHETICALS TO GET THE JUROR'S REACTION TO SPECIFIC SETS OF
7 FACTS.

8 BUT, ON THE OTHER HAND, FOCUSING YOUR QUESTION ON
9 THE FACT THAT THERE ARE ELEMENTS TO THE CRIME AND MAKING SURE
10 THE JURY UNDERSTANDS THE ELEMENT OF THE CRIME IS -- IS OF A
11 DIFFERENT CATEGORY. I DON'T KNOW THAT THAT'S IMPROPER. SO
12 THERE'S -- AND THERE'S A FINE LINE THERE. SO, REALLY, USING
13 TERMS LIKE COLD-BLOODED AND MALICIOUS WOULD -- WOULD SEEM TO
14 ME TO CROSS THE LINE. USING A WORD LIKE INTENTIONAL IS -- IS
15 NOT -- DOES NOT SEEM TO ME TO CROSS THE LINE.

16 IT JUST SO HAPPENED HERE THAT THIS ONE JUROR
17 APPARENTLY GOT KIND OF HUNG UP ON THE WORD INTENTIONAL, AND
18 SO I MEAN I -- I DON'T THINK -- I THINK THAT IT WOULD -- I'M
19 INCLINED TO THINK THAT IT WOULD BE HELPFUL TO GIVE A QUICK
20 DEFINITION OF MURDER, BUT IF Y'ALL ARE PLANNING ON FOLLOWING
21 UP ON THAT WITH A WHOLE BUNCH OF QUESTIONS THAT PUSH THIS
22 LINE ABOUT -- ABOUT -- BETWEEN EXPLORING THE ELEMENTS AND
23 EXPLORING THE JURORS' VIEWS AS OPPOSED TO ASKING HYPOTHETICAL
24 QUESTIONS THAT GET INTO SPECIFIC FACTS OR GENERAL FACT
25 CHARACTERIZATIONS, THEN I THINK WE'RE CREATING TROUBLE. I

1 PERSONALLY DON'T THINK IT'S NECESSARY... Y'ALL HAVEN'T HAD
2 THIS PROBLEM WITH ANY OF THE OTHER 30 SOMETHING JURORS THAT
3 WE HAVE -- THAT WE HAVE WORKED ON HERE -- WORKED WITH THESE
4 LAST TWO DAYS.

5 MS. KIMBROUGH: YOUR HONOR, WE HAVEN'T BROUGHT IT
6 UP, BUT, I MEAN, IT'S A GENERAL CONCERN. WE DON'T WANT THE
7 JURORS TO GET -- YOU KNOW, ONCE THEY'RE ON THE JURY, IT'S TOO
8 LATE FOR US TO KNOW WHETHER OR NOT THEY UNDERSTAND THAT NOT
9 EVERY KILLING IS, IN FACT, A MURDER, AND THERE ARE SOME
10 MISCONCEPTIONS ABOUT WHAT MURDER IS. I MEAN, SOMETIMES
11 PEOPLE WILL SAY, "WELL, YOU KNOW, MY SON WAS MURDERED," AND
12 WHAT HAPPENED IS THEIR SON WAS KILLED BY A DRUNK DRIVER.

13 THE COURT: TO SAY THAT THERE'S SOME MISCONCEPTIONS
14 ABOUT WHAT MURDER IS WOULD BE INCORRECT BECAUSE THERE -- I
15 DON'T BELIEVE THERE'S A CORRECT CONCEPTION ABOUT WHAT IT IS
16 UNDER OUR DEFINITION IN SOUTH CAROLINA TO KNOW WHAT IT MEANS.
17 BUT, ANYWAY, THAT'S...

18 MS. KIMBROUGH: HOW ABOUT A MORE CORRECT STATEMENT
19 AS TO WHAT IT IS?

20 THE COURT: WELL---

21 MS. KIMBROUGH: AND WE WOULD NOT FOLLOW UP WITH
22 ADDITIONAL QUESTIONS UNLESS THERE'S -- YOU KNOW, WE GET SOME
23 SORT OF WISHY-WASHY UNCLEAR ANSWER. ALL WE WANT TO DO IS
24 MAKE SURE THAT THEY UNDERSTAND---

25 THE COURT: OKAY. LET ME ASK YOU THIS THEN: IN

1 TERMS OF THE JURORS WHOM WE HAVE ALREADY QUALIFIED, ARE YOU
2 CONCERNED ABOUT ANY OF THOSE FROM THE STANDPOINT THAT WE HAVE
3 NOT SPECIFICALLY DEFINED MURDER IN MOST OF THOSE -- FOR MOST
4 OF THOSE JURORS?

5 MS. KIMBROUGH: NOT IN THE VAST -- NO.

6 THE COURT: ALL RIGHT. AND I'VE SUSPECTED THAT, BUT
7 I WANTED THE RECORD TO BE CLEAR ON IT. YOU SENSED SOMETHING
8 ABOUT THIS PARTICULAR JUROR THAT LED YOU TO ASK THAT SPECIFIC
9 QUESTION.

10 MS. KIMBROUGH: RIGHT. AND IT'S ALWAYS BEEN A
11 GENERAL CONCERN BECAUSE PEOPLE DON'T KNOW WHAT IT MEANS.

12 THE COURT: SOMETHING THAT YOU HAD NOT SENSED ABOUT
13 ANY OF THE OTHER PREVIOUS JURORS.

14 MS. KIMBROUGH: WELL, HER RESPONSE TO MY MORE
15 PROBING QUESTION BROUGHT OUT A RESPONSE THAT WAS KIND OF
16 SURPRISING.

17 THE COURT: ALL RIGHT. OKAY. WELL, I'LL TELL YOU
18 WHAT MY -- HERE'S MY THOUGHT, AND I'LL HEAR WHAT Y'ALL HAVE
19 TO SAY. I'M INCLINED TO CONTINUE DOING IT THE WAY WE'VE BEEN
20 DOING IT. YOU ALL -- JUST LIKE WITH THIS JUROR, YOU GOT A
21 SENSE THAT PERHAPS YOU WERE MISUNDERSTANDING WHAT HER VIEWS
22 ON THE SENTENCE SHOULD BE AND YOU'VE EXPLORED THAT AND WE GOT
23 TO THE BOTTOM OF IT, BUT I'M CONCERNED THAT IF I START
24 TELLING THE JUROR -- EACH JUROR WHAT MALICE IS, THEN I MIGHT
25 -- YOU KNOW, I'M GOING TO HAVE TO START DEFINING MALICE AND

1 WE'RE GOING TO GET INTO A MUCH MORE LENGTHY AND CONFUSING
2 SITUATION. AND I -- I BELIEVE THAT IF YOU -- IF YOU COME
3 UPON ANOTHER SITUATION LIKE THIS WHERE YOU ARE EXPLORING IT
4 AND YOU HAVE A CONCERN ABOUT IT, WE CAN ADDRESS IT JUST AS IT
5 WAS ADDRESSED IN THAT LAST -- WITH THAT LAST JUROR.

6 MR. MYERS: THAT'S FINE WITH US.

7 MS. KIMBROUGH: IS THERE ANY OBJECTION TO US ASKING
8 EACH JUROR, YOU KNOW, DO YOU UNDERSTAND THAT MURDER MEANS AN
9 INTENTIONAL KILLING?

10 THE COURT: WELL, ARE YOU GOING TO ASK THAT OF EVERY
11 JUROR NOW?

12 MS. KIMBROUGH: I'D KIND OF LIKE TO. I MEAN, WE
13 DON'T KNOW THE ANSWER UNLESS WE ASK THE QUESTION, AND IT DOES
14 CONCERN ME BECAUSE THERE ARE A LOT OF MISCONCEPTIONS. I WANT
15 TO MAKE SURE THE JURY DOESN'T, YOU KNOW, THINK THE PENALTY
16 PHASE MEANS, WELL, ONCE WE'VE DETERMINED THAT HE
17 INTENTIONALLY DID IT, WELL, THEN, YEAH, IT'S DEFINITELY
18 DEATH. AND I DON'T WANT TO BELABOR THE PROCESS. I DON'T
19 WANT TO---

20 THE COURT: WELL, IF YOU'RE GOING TO ASK IT OF EVERY
21 -- OF EVERY -- IF YOU'RE GOING TO ASK IT OF EVERY JUROR, THEN
22 I THINK IT'S PROBABLY BETTER IF I DO IT.

23 MS. KIMBROUGH: WE WOULD ASK THAT, IF YOUR HONOR
24 WOULD BE WILLING TO DO IT.

25 THE COURT: AND I'M GOING TO TELL THE JURORS THAT

1 MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING WITH MALICE
2 AFORETHOUGHT.

3 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

4 THE COURT: BRING IN THE JUROR.

5 (JUROR HIPOLITA STINECIPHER IS BROUGHT INTO THE
6 COURTROOM.)

7 HIPOLITA STINECIPHER, HAVING BEEN PREVIOUSLY
8 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
9 OATH, TESTIFIED AS FOLLOWS:

10 EXAMINATION BY THE COURT

11 Q. HOW ARE YOU, MS. STINECIPHER?

12 A. I'M DOING FINE, JUDGE.

13 Q. DID I PRONOUNCE YOUR NAME CORRECTLY?

14 A. YES.

15 Q. OKAY. WHY DON'T YOU PULL THAT MICROPHONE UP JUST A
16 LITTLE BIT CLOSER TO YOU? NOW, I WANT TO START OFF BY GOING
17 BACK TO THE SITUATION THAT YOU DISCUSSED WITH US YESTERDAY
18 INVOLVING -- I BELIEVE IT WAS YOUR DAUGHTER?

19 A. YES.

20 Q. WAS SHE THE VICTIM OF A CRIME SUCH AS THIS?

21 A. YES, SIR.

22 Q. SHE WAS MURDERED?

23 A. YES.

24 Q. WHEN DID THAT OCCUR?

25 A. THAT WAS IN BACK -- THIS -- SEVEN AND A HALF YEARS,

1 1990...

2 Q. 1998? AND THAT HAPPENED HERE IN LEXINGTON?

3 A. IN WEST COLUMBIA.

4 Q. IN WEST COLUMBIA BUT IT WAS IN LEXINGTON COUNTY?

5 A. YES, YOUR HONOR.

6 Q. AND THE CASE WAS TRIED HERE?

7 A. YES, YOUR HONOR.

8 Q. IN THE OLD COURTHOUSE?

9 A. YES, YOUR HONOR.

10 Q. AND IT DID GO TO TRIAL?

11 A. YES, YOUR HONOR.

12 Q. WAS THE DEFENDANT CONVICTED?

13 A. YES, YOUR HONOR.

14 Q. DO YOU REMEMBER THE DEFENDANT'S NAME?

15 A. THOMAS -- THOMAS BALLINGTON.

16 Q. THOMAS -- WHAT DID SHE SAY?

17 MR. MYERS: IF YOU CAN SEND HER OUT FOR A MINUTE, I
18 CAN EXPLAIN.

19 BY THE COURT:

20 Q. ALL RIGHT. MA'AM, DO YOU -- DO YOU BELIEVE THAT THE
21 FACT THAT YOU AND YOUR FAMILY WENT THROUGH THAT TERRIBLE
22 INCIDENT HERE IN LEXINGTON COUNTY -- WOULD THAT INTERFERE
23 WITH YOUR ABILITY TO SERVE AS A FAIR AND IMPARTIAL JUROR IN
24 THIS CASE?

25 A. NO, YOUR HONOR.

1 Q. YOU DON'T THINK SO?

2 A. HUH-UH.

3 Q. ALL RIGHT. LET ME ASK YOU TO STEP OUT IN THE HALL
4 FOR JUST A SECOND, AND I'M GOING TO TAKE UP A MATTER OF LAW
5 WITH THE LAWYERS, AND THEN I'LL GET YOU RIGHT BACK IN HERE.
6 OKAY?

7 A. OKAY.

8 (JUROR STINECIPHER LEAVES THE COURTROOM.)

9 MR. MYERS: YOUR HONOR, HER DAUGHTER WAS MURDERED BY
10 HER HUSBAND; THE DAUGHTER'S HUSBAND MURDERED HER. AND IT WAS
11 AN EXTREMELY EMOTIONAL CASE, AND I WOULD HAVE NO OBJECTION OF
12 YOU EXCUSING THIS LADY UNLESS THE DEFENSE WOULD LIKE TO KEEP
13 HER AND QUESTION HER. I WOULD NOT ASK ANY QUESTIONS OF HER.

14 MR. LITTLEJOHN: WE WOULD AGREE WITH THAT, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. SO I'M GOING TO EXCUSE HER
17 FOR CAUSE BY CONSENT BASED ON HER PERSONAL INVOLVEMENT IN
18 THE -- IN WHAT WE UNDERSTAND WAS A VERY EMOTIONAL CASE IN
19 WHICH SHE WAS THE MOTHER OF THE VICTIM OF A MURDER. BRING
20 HER IN.

21 (JUROR STINECIPHER IS BROUGHT INTO THE COURTROOM.)

22 THE COURT: MS. STINECIPHER, WE WILL NOT BE NEEDING
23 YOU TO SERVE AS A JUROR IN THIS CASE. WE APPRECIATE YOUR
24 TIME AND APPRECIATE YOU COMING BY, AND YOU'RE FREE TO GO.

25 THE WITNESS: THANK YOU.

1 THE COURT: THANK YOU, MA'AM.

2 THE WITNESS: YOU HAVE A GOOD DAY.

3 (JUROR STINECIPHER LEAVES THE COURTROOM.)

4 BAILIFF: YOUR HONOR, HE'S OUT THERE.

5 THE COURT: ALL RIGHT. BRING HIM IN.

6 (JUROR CHRISTOPHER CUMING IS BROUGHT INTO THE
7 COURTROOM.)

8 CHRISTOPHER CUMING, HAVING BEEN PREVIOUSLY
9 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
10 OATH, TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT

12 Q. HOLD ON JUST A SECOND, SIR. MR. CUMING?

13 A. YES, SIR.

14 Q. YOU RECALL THAT YESTERDAY WE PUT YOU UNDER OATH.

15 A. YES, SIR.

16 Q. YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND
17 THAT?

18 A. YES, SIR.

19 Q. SINCE YOU LEFT US YESTERDAY, HAVE YOU DISCUSSED THIS
20 CASE WITH ANYONE OR HAS ANYONE DISCUSSED THIS CASE WITH YOU?

21 A. NO, SIR.

22 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
23 AFTER I'VE ASKED YOU A FEW QUESTIONS, THE LAWYERS ARE
24 PROBABLY GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS. WE'RE
25 NOT TRYING TO PRY INTO YOUR PRIVATE LIFE, BUT WE DO NEED TO

1 ASK YOU THESE QUESTIONS. THERE ARE NO CORRECT OR INCORRECT
2 ANSWERS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND THEN
3 TO BE OPEN AND HONEST WITH US. TELL US HOW YOU FEEL AND WHAT
4 YOU THINK.

5 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
6 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND,
7 SETTING ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD
8 ABOUT THIS CASE BEFORE IT BEGAN, RENDER A VERDICT THAT IS
9 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD
10 HEAR AND SEE IN THIS COURTROOM?

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, WE WOULD MOVE INTO
24 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M
25 GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT WOULD COME

1 UP AT THAT TIME. FIRST OF ALL, I WANT TO MAKE SURE YOU
2 UNDERSTAND THAT MURDER IS DEFINED AS THE INTENTIONAL AND
3 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.

4 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
5 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO
6 MAKE WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES
7 INCREASE THE ENORMITY OF THE CRIME. THEY ADD TO THE INJURY
8 RESULTING FROM THE CRIME. MITIGATING CIRCUMSTANCES, ON THE
9 OTHER HAND, ARE FACTS OR INCIDENTS OR DETAILS THAT SOUTH
10 CAROLINA HAS DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF
11 MURDER. THEY SERVE TO EXTENUATE AND TO REDUCE THE DEGREE OF
12 MORAL CULPABILITY OF THE CRIME. DO YOU UNDERSTAND THE
13 CONCEPTS OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

14 A. YES, SIR, I DO.

15 Q. YOU WERE GIVEN, WHEN YOU REPORTED THIS AFTERNOON, A
16 COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF
17 JURORS. DID YOU GET A COPY OF THAT SHEET?

18 A. YES, SIR, I DID.

19 Q. DID YOU GET A CHANCE TO READ IT?

20 A. YES, SIR.

21 Q. AND YOU UNDERSTAND THE THREE TYPES?

22 A. YES, SIR.

23 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK
24 YOU ARE?

25 A. THE THIRD TYPE.

1 Q. IF YOU ARE A JUROR IN THIS CASE AND IF WE -- IF THE
2 JURY FINDS THE DEFENDANT GUILTY OF MURDER---

3 A. UH-HUH.

4 Q. ---WE WOULD MOVE INTO THE SECOND PHASE OR THE
5 PENALTY PHASE OF THE TRIAL. AND IF YOU'RE -- THE JURY AT
6 THAT TIME WOULD BE THE ONE WHO WOULD DECIDE THE PENALTY. IT
7 WOULD NOT BE ME; IT WOULD BE THE JURY.

8 A. UH-HUH.

9 Q. AND THERE ARE TWO OPTIONS. ONE OPTION WOULD BE FOR
10 A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE.

11 A. UH-HUH.

12 Q. AND THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY.
13 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
14 FIND TO EXIST AND IN LIGHT OF THE LAW AS I WOULD EXPLAIN IT
15 TO YOU, COULD YOU VOTE TO IMPOSE A LIFE SENTENCE?

16 A. YES, SIR, I COULD.

17 Q. AND COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

18 A. YES, SIR, I COULD.

19 Q. IT'S POSSIBLE THAT THE JURY MIGHT BE SEQUESTERED
20 DURING THIS TRIAL WHICH WOULD MEAN THAT YOU WOULD BE PUT UP
21 IN A HOTEL FOR FIVE OR SIX DAYS. YOU'D BE FED AND YOU WOULD
22 NOT BE ALLOWED TO GO HOME.

23 A. UH-HUH.

24 Q. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

25 A. NOT SO MUCH.

1 Q. DO YOU THINK YOU COULD HANDLE IT?

2 A. I'D LIKE TO THINK SO, YEAH.

3 Q. ALL RIGHT, SIR. WERE YOU GIVEN A COPY OF THE
4 WITNESS LIST WHEN YOU CAME IN?

5 A. YES, SIR.

6 Q. DID YOU READ EVERY NAME ON THAT LIST?

7 A. YES, SIR.

8 Q. ARE THERE ANY WITNESSES WHOM YOU KNOW OR TO WHOM YOU
9 ARE RELATED WHOSE NAMES APPEARED ON THAT LIST?

10 A. I DIDN'T RECOGNIZE ANYBODY.

11 Q. SIR, THE LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP
12 QUESTIONS NOW, AND THEN I'LL COME BACK AND ASK YOU A FEW MORE
13 IN A FEW MINUTES.

14 A. ALL RIGHT.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q. GOOD AFTERNOON, MR. CUMING.

18 A. GOOD AFTERNOON, SIR.

19 Q. HAVE YOU EVER BEEN IN COURT BEFORE IN A COURTROOM
20 LIKE THIS SERVING ON JURY DUTY?

21 A. NO, SIR, I HAVEN'T.

22 Q. SO THIS IS ALL BRAND-NEW FOR YOU?

23 A. OH, YEAH.

24 Q. WELL, OF ALL THE CASES FOR YOU TO BE INVOLVED IN,
25 THIS ONE'S A LITTLE UNUSUAL, THIS TYPE OF CASE.

1 A. UH-HUH.

2 Q. THE JUDGE WAS POINTING OUT THAT THERE'S TWO PARTS TO
3 A CASE LIKE THIS. THE FIRST PART IS KIND OF LIKE THE NORMAL
4 CASE THAT YOU PROBABLY HAVE ALWAYS HEARD ABOUT WHERE JURIES
5 SIT OVER HERE. WITNESSES SIT WHERE YOU'RE SITTING. THE
6 STATE PRESENTS EVIDENCE, AND THE JURY GOES BACK AND DECIDES
7 WHETHER SOMEONE'S GUILTY OR NOT GUILTY. THAT'S JUST LIKE A
8 NORMAL TRIAL, THAT FIRST PHASE.

9 A. GOT YOU.

10 Q. THE ISSUES HERE ARE THE INDICTMENTS THE JUDGE READ
11 OUT THE OTHER DAY---

12 A. UH-HUH.

13 Q. ---THE MURDER AND ARMED ROBBERY AND SUCH. THOSE ARE
14 THINGS THAT WILL BE CONSIDERED BY THIS JURY. IF THE JURY
15 CONVICTS, TYPICALLY THAT DEFENDANT IS BROUGHT OVER AND STANDS
16 IN FRONT OF A JUDGE SUCH AS JUDGE FEW AND HE SENTENCES THEM,
17 AND THE STATE AND THE DEFENSE PRESENTS INFORMATION TO THE
18 JUDGE TO LET HIM KNOW ABOUT THE DEFENDANT.

19 A. YES, SIR.

20 Q. BUT IN THIS CASE THE JURY WOULD BE THE ONE TO
21 SENTENCE, AND SO THAT'S THE SECOND PHASE THE JUDGE WAS
22 TALKING ABOUT WHERE BOTH SIDES WOULD HAVE THE OPPORTUNITY TO
23 COME IN HERE AND PRESENT INFORMATION TO THE JURORS ABOUT THE
24 DEFENDANT, ABOUT THE CRIME, THINGS THAT MAKE IT WORSE, THINGS
25 BAD ABOUT THE DEFENDANT, THINGS GOOD ABOUT THE DEFENDANT.

1 YOU MIGHT HEAR THINGS THAT MIGHT MAKE THE CRIME LESS WORSE.

2 A. RIGHT.

3 Q. AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, YOU WOULD
4 WANT TO HEAR ALL OF THAT BEFORE YOU DECIDED LIFE OR DEATH.

5 A. WITH SOMETHING SO SEVERE, YOU NEED ALL THE
6 INFORMATION YOU CAN GET.

7 Q. YOU WOULDN'T WANT TO JUST MAKE YOUR DECISION IN THE
8 DARK. YOU'D WANT ALL THAT INFORMATION PRESENTED SO YOU WOULD
9 KNOW WHAT THE RIGHT DECISION WOULD BE.

10 A. YES, SIR.

11 Q. OKAY. AND THE JUDGE WAS TALKING ABOUT AGGRAVATING
12 CIRCUMSTANCES. YOU COULD CONSIDER THAT.

13 A. UH-HUH.

14 Q. AND YOU COULD CONSIDER ANYTHING THAT MIGHT BE
15 MITIGATING IN THIS CRIME AS WELL. IS THAT...

16 A. YES, SIR.

17 Q. AND AS I UNDERSTAND IT, IF YOU FELT THE APPROPRIATE
18 SENTENCE WAS LIFE, YOU COULD VOTE FOR LIFE.

19 A. YES, SIR.

20 Q. AND IF YOU FELT THE APPROPRIATE SENTENCE WAS DEATH,
21 YOU COULD VOTE FOR DEATH.

22 A. YES, SIR.

23 Q. THERE'S ONE OTHER THING THAT'S UNUSUAL ABOUT A DEATH
24 PENALTY CASE LIKE THIS. WHEN YOU GET TO THAT SECOND PHASE,
25 WHEN A JURY REACHES A CONCLUSION, IF THEY REACH LIFE, ONLY

1 THE FOREMAN SIGNS THAT VERDICT FORM. BUT IF THEY FIND DEATH,
2 ALL 12 MEMBERS OF THE JURY HAVE TO WRITE THEIR NAMES ON THERE
3 SAYING THAT THAT'S WHAT THEIR VIEW IS.

4 A. OKAY.

5 Q. COULD YOU DO THAT, SIR?

6 A. THAT IS A HARD LINE TO DRAW.

7 Q. YES, SIR, IT IS.

8 A. IF I FELT THAT THERE WAS A NEED -- THAT'S A REALLY
9 HARD LINE TO DRAW NOT SEEING TOO MUCH RIGHT NOW, BUT IF THE
10 CIRCUMSTANCES WERE RIGHT, I FEEL I COULD DO IT IF I HAD TO.

11 Q. LET ME ASK IT ANOTHER WAY, AND THIS MIGHT MAKE IT
12 EASIER FOR YOU. IF, AFTER YOU'VE HEARD ALL THE CASE AND YOU
13 AND ALL THE OTHER JURORS ARE BACK THERE AND Y'ALL COME TO THE
14 CONCLUSION THAT DEATH IS THE APPROPRIATE SENTENCE AND THAT'S
15 YOUR POSITION AS WELL AND THAT'S WHAT YOU THINK IS THE
16 APPROPRIATE SENTENCE, COULD YOU THEN SIGN IT?

17 A. WELL, IF IT'S HOW I FELT, I'D HAVE TO STAND BEHIND
18 IT.

19 Q. AND YOU COULD PUT YOUR NAME DOWN ON THAT VERDICT
20 FORM.

21 A. IT WOULDN'T BE RIGHT IF I DIDN'T.

22 Q. BASICALLY YOUR ANSWERS TO THE JUDGE AND TO ME ARE
23 THAT YOU WOULD WANT TO HEAR EVERYTHING FROM BOTH SIDES.
24 WHATEVER WE PRESENT YOU WOULD WANT TO HEAR.

25 A. YES, SIR.

1 Q. AND YOU'D BE WILLING TO GIVE US A FAIR TRIAL.

2 A. YES, SIR.

3 Q. THAT'S ALL WE CAN ASK OF YOU, MR. CUMING. THANK
4 YOU.

5 A. YOU'RE WELCOME.

6 CROSS-EXAMINATION

7 BY MR. LITTLEJOHN:

8 Q. GOOD AFTERNOON, MR. CUMING.

9 A. GOOD AFTERNOON, SIR.

10 Q. MR. CUMING, AGAIN MY NAME IS CAM LITTLEJOHN, AND I,
11 ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE
12 DEFENDANT IN THIS CASE. MR. CUMING, LET ME ASK YOU JUST A
13 VERY FEW QUESTIONS, AND I'D LIKE TO REFER FIRST TO YOUR
14 QUESTIONNAIRE. I NOTICE YOU WENT TO SETON HALL?

15 A. YES, SIR.

16 Q. GRADUATED WITH A B.A.?

17 A. YES, SIR.

18 Q. OKAY. WHEN WAS THAT?

19 A. I GRADUATED IN MAY 2005.

20 Q. GRADUATED IN 2000?

21 A. 2005.

22 Q. 2005?

23 A. THIS PAST MAY, YES, SIR.

24 Q. OKAY. AND YOU'VE BEEN WORKING AT TIME WARNER?

25 A. YES, SIR.

1 Q. OKAY. MY DIGITAL TIER HASN'T BEEN WORKING FOR
2 WEEKS.

3 A. OH, MAN, NO, DON'T START NOW.

4 Q. LET ME ASK YOU A FEW THINGS.

5 THE COURT: I THOUGHT YOU WERE GOING TO START
6 TALKING ABOUT BIG EAST VERSUS A.C.C. BASKETBALL FOR A MINUTE.
7 THERE.
8 BY MR. LITTLEJOHN:

9 Q. MR. CUMING, AS INDICATED, THIS IS A MURDER CASE, AND
10 THE FIRST PHASE OF THIS CASE INVOLVES WHETHER THE DEFENDANT
11 IS GUILTY OR NOT GUILTY, AND HIS HONOR -- IF YOU WERE ON THIS
12 JURY, HIS HONOR WOULD TELL YOU THAT BEFORE YOU OR ANY OF THE
13 OTHER JURORS COULD VOTE GUILTY, THE STATE WOULD HAVE TO PROVE
14 TO YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD
15 COMMITTED THE MURDER.

16 A. UH-HUH.

17 Q. WOULD YOU HAVE ANY PROBLEM HOLDING THE STATE TO THAT
18 BURDEN OF PROOF?

19 A. NO, SIR.

20 Q. OKAY.

21 A. I'M VERY WELL AWARE - PARDON ME - AWARE OF THE FACT
22 THAT IN A CASE LIKE THIS IT'S THEIR JOB TO PROVE BEYOND A
23 REASONABLE DOUBT.

24 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM APPLYING
25 THE LEGAL INSTRUCTIONS THAT JUDGE FEW WOULD GIVE YOU TO THE

1 FACTS THAT YOU FIND THEM?

2 A. I FIND HIS INSTRUCTIONS PRETTY CLEAR.

3 Q. OKAY. YOU WERE GIVEN THAT FORM WITH THE THREE TYPES
4 OF JURORS, AND I TOOK IT BY YOUR ANSWER YOU DIDN'T HAVE ANY
5 PROBLEM DETERMINING THAT YOU WERE THE TYPE THREE JUROR.

6 A. YES, SIR.

7 Q. OKAY. ONE THING THAT IS GOING TO ENTER INTO THIS
8 CASE, MR. CUMING: THE ALLEGED VICTIM IN THIS CASE WAS A
9 SERGEANT IN THE UNITED STATES ARMY.

10 A. YES, SIR.

11 Q. HE WAS ON ACTIVE -- HE WAS ACTIVE AT THE TIME OF
12 THIS OCCURRENCE. THE FACT THAT HE WAS IN THE ARMY, WOULD
13 THAT HAVE ANY BEARING ON YOUR ABILITY TO BE A FAIR AND
14 IMPARTIAL JUROR?

15 A. NO, SIR.

16 Q. OKAY. JUST A COUPLE OF FINAL THINGS. AS INDICATED,
17 IF WE GET TO THE SECOND PHASE OF THIS CASE, THERE WOULD BE
18 EVIDENCE PRESENTED IN WHAT WE CALL AGGRAVATION BY THE STATE.
19 THERE WOULD BE EVIDENCE PRESENTED IN WHAT WE CALL MITIGATION
20 BY THE DEFENSE, AND EVIDENCE IN MITIGATION WOULD, AS JUDGE
21 FEW EXPLAINED TO YOU, WOULD BE THINGS OR DETAILS OR
22 OCCURRENCES THAT WOULD TEND TO MAKE IT NOT AS BAD AS IT COULD
23 BE.

24 A. UH-HUH.

25 Q. THESE THINGS MIGHT CONCERN THE DEFENDANT'S

1 BACKGROUND, COULD BE MEDICAL ASPECTS OF HIS LIFE. IT COULD
2 BE BAD THINGS THAT HAPPENED TO HIM, COULD BE SOME GOOD
3 THINGS, AND I'D LIKE TO ASK YOU THIS: WOULD YOU CONSIDER ALL
4 THOSE THINGS BEFORE YOU DECIDED AT WHAT YOU THOUGHT THE
5 APPROPRIATE PUNISHMENT WOULD BE?

6 A. DUE TO THE SEVERITY OF THE CASE, IT WOULD BE MY
7 OBLIGATION TO DO SO.

8 Q. I APPRECIATE THAT. THANK YOU VERY MUCH.

9 A. YOU'RE WELCOME.

10 THE COURT: ALL RIGHT. ANYTHING BEFORE I RULE?

11 MR. LITTLEJOHN: NO, YOUR HONOR.

12 THE COURT: MR. CUMING, YOU ARE QUALIFIED TO SERVE
13 AS A JUROR ON THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE
14 JURY, BUT IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE'RE
15 GOING TO RESUME WITH THE JURY SELECTION ON MONDAY MORNING, SO
16 YOU NEED TO BE PREPARED TO BE HERE ON MONDAY MORNING.

17 IF YOU WILL CALL BACK ON SUNDAY NIGHT AFTER 6:00 TO
18 THAT TELEPHONE NUMBER THAT WE GAVE YOU ON THE LITTLE PINK
19 SLIP, THERE WILL BE A MESSAGE ON THERE THAT GIVES YOU
20 DETAILED INSTRUCTIONS ABOUT WHEN YOU NEED TO BE HERE AND
21 WHETHER OR NOT YOU NEED TO BE PREPARED TO HAVE -- TO STAY FOR
22 SEVERAL DAYS. IN THE MEANTIME, YOU MUST NOT DISCUSS THIS
23 CASE WITH ANYONE NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH
24 YOU. PLEASE MAKE SURE THAT YOU DON'T ALLOW YOURSELF TO BE
25 EXPOSED TO ANY NEWS COVERAGE OR PRESS COVERAGE ABOUT THE

1 CASE. HAVE A GOOD REST OF THE WEEK, AND WE LOOK FORWARD TO
2 SEEING YOU ON MONDAY.

3 THE WITNESS: I DO HAVE A QUESTION.

4 THE COURT: ALL RIGHT, SIR.

5 THE WITNESS: AS IT BEARS WITH WORKING WEDNESDAY AND
6 THURSDAY AND FRIDAY, I CAN GO INTO WORK NORMALLY; RIGHT?

7 THE COURT: ABSOLUTELY. YOU'RE -- YOU'RE DONE FOR
8 THE REST OF THIS WEEK. THE NEXT TIME WE NEED YOU IS MONDAY
9 MORNING.

10 THE WITNESS: ALL RIGHT. THANK YOU VERY MUCH.

11 THE COURT: YOU'RE WELCOME, SIR.

12 (JUROR CUMING LEAVES THE COURTROOM.)

13 THE COURT: BRING HIM IN.

14 (JUROR RAY GUNTER IS BROUGHT INTO THE COURTROOM.)

15 RAY GUNTER, HAVING BEEN PREVIOUSLY SWORN AS A
16 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
17 TESTIFIED AS FOLLOWS:

18 EXAMINATION BY THE COURT

19 Q. MR. GUNTER, YOU RECALL THAT YESTERDAY YOU WERE PUT
20 UNDER OATH?

21 A. YES, SIR.

22 Q. AND YOU UNDERSTAND THAT YOU'RE STILL UNDER OATH
23 TODAY.

24 A. YES, SIR.

25 Q. SINCE YOU LEFT HERE YESTERDAY, HAVE YOU DISCUSSED

1 THIS CASE WITH ANYONE OR HAS ANYONE DISCUSSED THE CASE WITH
2 YOU?

3 A. NO, SIR.

4 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
5 AFTER I'VE DONE THAT, THE LAWYERS WILL PROBABLY ASK YOU SOME
6 FOLLOW-UP QUESTIONS. WE DON'T MEAN TO GET TOO FAR INTO YOUR
7 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
8 THERE ARE NOT ANY RIGHT OR WRONG ANSWERS HERE. WE JUST WANT
9 YOU TO LISTEN CAREFULLY AND THEN BE OPEN AND HONEST WITH US
10 AND TELL US HOW YOU FEEL AND WHAT YOU THINK.

11 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
12 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
13 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
14 THE 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? COULD YOU DO THAT?

17 A. YES, SIR.

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. YES, SIR.

22 Q. AND COULD YOU, DEPENDING ON THE FACTS AND
23 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT
24 OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE
25 DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR

1 NOT YOU FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

2 A. YES, SIR.

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 THIS TRIAL, AND I'M
6 GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT WILL COME
7 UP IF WE GET INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES ARE
8 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
9 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
10 MAKE IT WORSE. 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 OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
15 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND
16 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
17 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
18 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
19 CIRCUMSTANCES?

20 A. YES, SIR.

21 Q. NOW, WHEN YOU CAME IN YOU WERE GIVEN A SHEET -- CAME
22 IN THIS AFTERNOON, YOU WERE GIVEN A SHEET THAT SUMMARIZES
23 THREE TYPES OF JURORS.

24 A. I HAVE THE SHEET.

25 Q. YOU HAVE IT. DID YOU GET A CHANCE TO GO OVER IT?

1 A. YES, SIR. I LOOKED OVER IT.

2 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

3 A. YES, I DO.

4 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
5 YOU ARE, MR. GUNTER?

6 A. I BELIEVE I'M THE SECOND.

7 Q. THE SECOND ONE?

8 A. YES, SIR.

9 Q. NOW, WHAT THAT MEANS, MR. GUNTER, IS THAT UNDER NO
10 CIRCUMSTANCES WOULD YOU EVER BE ABLE TO VOTE TO IMPOSE THE
11 DEATH PENALTY. IS THAT TRUE?

12 A. YES, SIR.

13 Q. YOU DON'T THINK YOU COULD EVER VOTE TO IMPOSE THE
14 DEATH PENALTY.

15 A. WELL, I JUST -- I WOULDN'T HAVE -- IS HE GUILTY OR
16 IS HE INNOCENT? I WOULD ALWAYS WONDER IF I DID THE RIGHT
17 THING, AND I JUST DON'T KNOW IF I COULD GIVE HIM THE DEATH
18 PENALTY. I MEAN, LIFE IMPRISONMENT IS ONE THING, BUT THE
19 DEATH PENALTY IS SOMETHING I'M JUST NOT -- I'M JUST KIND OF
20 NOT -- I'M OPPOSED TO IT ACTUALLY.

21 Q. UH-HUH.

22 A. DO YOU UNDERSTAND?

23 Q. ALL RIGHT. YES, SIR, I UNDERSTAND, AND I WANT YOU
24 TO KEEP TALKING TO ME ABOUT WHAT YOUR -- WHAT YOUR FEELINGS
25 ARE HERE, BUT LET ME GO ON. DO YOU THINK THAT IF YOU WERE A

1 JUROR IN THIS CASE AND IF THE JURY FOUND THE DEFENDANT GUILTY
2 OF MURDER AND IF WE GOT INTO THE SENTENCING PHASE OF THE
3 TRIAL AND EVIDENCE WAS SUBMITTED TO YOU IN THAT PHASE THAT
4 SHOWED THE CRIME TO BE AGGRAVATED, WOULD YOU BE ABLE TO VOTE
5 TO IMPOSE THE DEATH PENALTY IF YOU FELT THAT THAT WAS
6 WARRANTED?

7 A. WELL, LIKE I SAID THERE AGAIN, I JUST -- THE DEATH
8 PENALTY IS SOMETHING THAT I JUST DON'T AGREE WITH. I MEAN,
9 I'M NOT -- IT'S JUST THE CASES WHERE I'VE HEARD SO MUCH OF
10 PEOPLES' INNOCENCE SOMETIMES, AND I JUST DON'T -- THE DEATH
11 PENALTY IS SOMETHING I'M NOT GOOD WITH.

12 Q. I SEE. ALL RIGHT.

13 A. IF HE'S PROVEN INNOCENT OR GUILTY, I UNDERSTAND
14 THAT, BUT IT'S JUST ONE OF THOSE THINGS WHERE I'D FEEL LIKE,
15 YOU KNOW, IF I'D DONE THE RIGHT THING OR NOT...

16 THE COURT: ALL RIGHT, SIR. DO EITHER OF YOU WISH
17 TO ASK ANY FOLLOW-UP QUESTIONS AT THIS TIME?

18 MR. MYERS: NO, SIR.

19 MS. KIMBROUGH: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. MR. GUNTER, WE APPRECIATE
21 YOU COMING IN. WE WILL NOT BE NEEDING YOU AS A JUROR IN THE
22 CASE, AND SO YOUR SERVICE AS A JUROR IS COMPLETE. WE THANK
23 YOU FOR YOUR TIME, AND YOU'RE FREE TO GO, SIR.

24 THE WITNESS: OKAY. THANK YOU, SIR.

25 (JUROR GUNTER LEAVES THE COURTROOM.)

1 THE COURT: BRING HIM IN.

2 (JUROR MICHAEL SPONHOUR IS BROUGHT INTO THE
3 COURTROOM.)

4 MICHAEL SPONHOUR, HAVING BEEN PREVIOUSLY SWORN
5 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
6 TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT

8 Q. NOW, LET ME MAKE SURE I GOT YOUR NAME RIGHT. IS IT
9 SPONHOUR?

10 A. THAT'S RIGHT.

11 Q. OKAY. YOU RECALL FROM YESTERDAY THAT WE PUT YOU
12 UNDER OATH.

13 A. RIGHT.

14 Q. AND YOU'RE STILL UNDER OATH TODAY. DO YOU
15 UNDERSTAND THAT?

16 A. YES.

17 Q. SINCE YOU LEFT US YESTERDAY, HAS ANYONE DISCUSSED
18 THIS CASE WITH YOU OR HAVE YOU DISCUSSED THIS CASE WITH
19 ANYONE?

20 A. NO.

21 Q. NOW, MR. SPONHOUR, I'M GOING TO ASK YOU SOME
22 QUESTIONS, AND THEN AFTER I'M DONE WITH THAT, THE LAWYERS
23 WILL PROBABLY ASK YOU SOME FOLLOW-UP QUESTIONS. WE'RE NOT
24 TRYING TO PRY TOO DEEP INTO YOUR PRIVATE LIFE, BUT WE DO HAVE
25 TO ASK YOU THESE QUESTIONS. WE JUST WANT YOU TO LISTEN VERY

1 CAREFULLY AND TO BE OPEN AND HONEST WITH US AND TELL US HOW
2 YOU FEEL AND WHAT YOU THINK. THERE ARE NO RIGHT OR WRONG
3 ANSWERS TO THESE QUESTIONS.

4 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
5 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
6 ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD ABOUT THE
7 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT IS
8 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
9 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

10 A. YES.

11 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
12 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
13 REASONABLE DOUBT?

14 A. YES.

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 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
19 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

20 A. YES.

21 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
22 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
23 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND
24 THERE'S SEVERAL THINGS THAT WOULD COME UP IN THAT PHASE THAT
25 I'M GOING TO TALK TO YOU ABOUT NOW. AGGRAVATING

1 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
2 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
3 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
4 INCREASE THE ENORMITY OF THE CRIME, AND THEY ADD TO THE
5 INJURY RESULTING FROM THE CRIME.

6 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
7 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
8 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND
9 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
10 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
11 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
12 CIRCUMSTANCES?

13 A. YES.

14 Q. NOW, WHEN YOU REPORTED THIS AFTERNOON, YOU WERE
15 GIVEN A COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES
16 OF JURORS. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES?

17 A. YES.

18 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU ARE?

19 A. WELL, NONE OF THE THREE EXACTLY, TO BE QUITE HONEST
20 WITH YOU. I DON'T KNOW TO THE EXTENT YOU WANT ME TO
21 ELABORATE ON THAT.

22 Q. WELL, I'M GOING TO ASK YOU SOME MORE QUESTIONS AND
23 WE'LL KEEP TALKING ABOUT IT, AND THEN THIS WILL BE SOMETHING
24 THAT THE LAWYERS WILL PROBABLY ASK YOU ABOUT, TOO. LET ME
25 ASK YOU THIS: IF YOU ARE A JUROR IN THIS CASE AND THE JURY

1 FINDS THE DEFENDANT GUILTY OF MURDER -- LET ME TELL YOU WHAT
2 MURDER IS. MURDER IS THE INTENTIONAL AND UNLAWFUL KILLING OF
3 ANOTHER PERSON WITH MALICE AFORETHOUGHT.

4 NOW, IF THE JURY FINDS THE DEFENDANT GUILTY OF
5 MURDER AND WE'RE IN THE SENTENCING PHASE OF THE TRIAL, IT
6 WOULD BE UP TO THE JURY TO DECIDE WHAT THE PENALTY WOULD BE,
7 AND THERE ARE TWO OPTIONS. ONE OPTION WOULD BE A LIFE
8 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND ANOTHER
9 OPTION WOULD BE THE DEATH PENALTY. COULD YOU, DEPENDING ON
10 THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND
11 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
12 VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE IF YOU FELT THAT
13 WAS THE APPROPRIATE PENALTY?

14 A. YES.

15 Q. COULD YOU VOTE TO IMPOSE A VERDICT -- COULD YOU VOTE
16 FOR A VERDICT TO IMPOSE THE DEATH PENALTY IF YOU FELT THAT
17 THAT WAS THE APPROPRIATE PENALTY?

18 A. I HAVE TROUBLE GIVING YOU A YES OR NO ANSWER ON
19 THAT. IT'S A BIT UNLIKELY THAT I WOULD BE WILLING TO DO
20 THAT.

21 Q. ALL RIGHT, SIR. ALL RIGHT. I'M GOING TO LET THE
22 LAWYERS ASK YOU SOME FOLLOW-UP QUESTIONS NOW, IF THEY HAVE
23 ANY, AND THEN I'LL COME BACK AND ASK YOU A FEW MORE IN A FEW
24 MINUTES.

25 A. OKAY. SURE.

DIRECT EXAMINATION

BY MR. MYERS:

Q. MR. SPONHOUR, I UNDERSTOOD YOU TO SAY THAT YOU DIDN'T FIT IN ANY ONE OF THOSE THREE CATEGORIES?

A. THAT'S CORRECT.

Q. OKAY. WHAT DO YOU MEAN BY THAT, SIR?

A. I BASICALLY BELIEVE THAT IN MOST CASES THE CRIMINAL JUSTICE SYSTEM IS NOT ACCURATE ENOUGH TO RENDER A VERDICT THAT YOU COULD TAKE SOMEONE'S LIFE WITH.

Q. OKAY. AND BASED UPON THAT THEN AND YOUR ANSWER TO THE JUDGE -- HE WAS ASKING YOU ABOUT IN THE CASE IF THE DEATH PENALTY WERE THE APPROPRIATE SENTENCE, COULD YOU VOTE FOR THE DEATH PENALTY. YOU COULDN'T VOTE FOR THE DEATH PENALTY THOUGH.

A. I GUESS WHAT I'M TRYING TO SAY IS IN MOST CASES NO. I MEAN, I THINK WE CAN ALL COME UP WITH HYPOTHETICALS IN WHICH YOU COULD POST A PARTICULARLY EGREGIOUS, HORRIFIC SET OF CRIMES THAT WOULD RISE TO THAT LEVEL, BUT I PERSONALLY FEEL THAT THERE'S JUST BEEN TOO MANY CASES IN WHICH IT'S BEEN SHOWN THAT PEOPLE HAVE BEEN SENT TO DEATH AND THE FACTS WERE LATER FOUND TO LIBERALIZE IT. I WOULD BE VERY TROUBLED ABOUT VOTING FOR THE DEATH PENALTY.

Q. OKAY. UNFORTUNATELY THE LAW DOESN'T ALLOW ANY OF US TO GIVE YOU A SET OF FACTS. WE CAN'T TELL YOU THAT. SO WE KIND OF JUST HAVE TO TREAD ON GENERAL -- GENERALITIES, I

1 GUESS. WELL, MAYBE THIS WILL RESOLVE IT. THE LAW IN SOUTH
2 CAROLINA IS IS THAT IF A JURY PANEL DETERMINES THAT THE DEATH
3 PENALTY IS THE RIGHT SENTENCE, EVERY JUROR MUST SIGN A DEATH
4 PENALTY VERDICT. COULD YOU PUT YOUR NAME ON A DEATH PENALTY
5 VERDICT?

6 A. PROBABLY NOT.

7 Q. OKAY. SO YOU WOULDN'T BE ABLE TO SIGN THAT AS THE
8 LAW REQUIRES.

9 A. IN MOST CASES I WOULD SAY NO.

10 Q. OKAY. IS IT YOUR FEELING BECAUSE OF YOUR BELIEF IN
11 THE INFALLACY OF THE CRIMINAL JUSTICE SYSTEM THAT THAT'S THE
12 BIG THING WITH YOU?

13 A. YES, SIR. I BELIEVE THAT -- I MEAN, I LOOK AT IT IN
14 TWO PARTS. ONE IS THE MORAL ISSUE OF WHETHER THE STATE
15 SHOULD TAKE SOMEONE'S LIFE, AND THEN THERE ARE THE ISSUES OF
16 EVIDENCE AND JURIES AND THE JUDICIAL SYSTEM IN GENERAL, AND I
17 JUST DON'T FEEL THAT THAT SYSTEM IS SO INHERENTLY ACCURATE
18 THAT YOU CAN TAKE SOMEONE'S LIFE WITH IT IN MOST CASES.

19 Q. OKAY. SO IT WOULD BE YOUR OPINION THAT -- HERE
20 AGAIN, WE'RE KIND OF CAUGHT AT A STANDSTILL BECAUSE WE CAN'T
21 GIVE YOU THESE HYPOTHETICAL QUESTIONS.

22 A. I UNDERSTAND.

23 Q. BUT THE LAW SAYS BASICALLY THIS: IF SOMEONE CAN PUT
24 THEIR NAME ON A DEATH PENALTY VERDICT, THEY'RE QUALIFIED TO
25 SERVE.

1 A. UH-HUH.

2 Q. IF THEY CAN'T SIGN THEIR NAME ON THE DEATH PENALTY
3 VERDICT AND SAY THAT UNDER OATH, THEN THEY'RE NOT QUALIFIED
4 TO SERVE. SO THAT'S WHERE I'M STUCK. WHICH SIDE DO YOU FALL
5 IN?

6 A. AGAIN, I FEEL THAT ANY OTHER ANSWER THAT I WOULD
7 GIVE YOU WOULD BE INACCURATE. I'M CERTAINLY NOT TRYING TO BE
8 DIFFICULT IN ANY WAY.

9 Q. I UNDERSTAND.

10 A. BUT I KNOW GOING IN, I MEAN, NOW THAT I UNDERSTAND,
11 YOU KNOW, WHAT THIS CASE IS ABOUT, THAT IT WOULD TAKE AN
12 EXCEPTIONAL CIRCUMSTANCE FOR ME TO SIGN THAT DOCUMENT AS
13 YOU'VE STATED.

14 Q. OKAY. YOU TALKED ABOUT THE JUSTICE SYSTEM AND THE
15 MORALITY OF IT.

16 A. UH-HUH.

17 Q. IS IT JUST THE JUSTICE SYSTEM OR DOES THE MORALITY
18 COME INTO PLAY, TOO?

19 A. I DON'T HAVE AN INHERENT MORAL OPPOSITION TO THE
20 CONCEPT OF THE DEATH PENALTY. AGAIN, I THINK MY PRIMARY
21 OPPOSITION IS THAT THERE'S JUST BEEN TOO MANY CASES WHERE
22 PEOPLE HAVE BEEN SENTENCED AND THIS DEATH SENTENCE HAS BEEN
23 CARRIED OUT AND WE'VE LATER DETERMINED IT WAS WRONG. I DON'T
24 BELIEVE THAT BEING RIGHT NINE OUT OF TEN TIMES OR 95 PERCENT
25 OF THE TIME IS GOOD ENOUGH.

1 Q. AND THAT WOULD BE IN YOUR MIND THE INFALLACY OF THE
2 SYSTEM.

3 A. ABSOLUTELY.

4 Q. AND BECAUSE OF THAT BEING IN YOUR MIND, THAT WOULD
5 INTERFERE WITH YOUR ABILITY TO IMPOSE THE DEATH PENALTY.

6 A. I THINK IT WOULD CERTAINLY BE IN THE FOREFRONT OF MY
7 MIND, AND I THINK IF YOU EVER CAME TO THE POINT OF A LIFE OR
8 DEATH DECISION, WHICH IS WHAT IT WOULD BE, I WOULD BE VERY
9 MINDFUL OF THAT.

10 Q. AND THAT WOULD INTERFERE WITH YOUR ABILITY TO FACE
11 THAT BECAUSE THAT WOULD COME IN -- AS FAR AS YOUR DUTIES AS A
12 JUROR, THAT WOULD SOMEWHAT INTERFERE WITH YOUR DUTIES.

13 A. IT WOULD CERTAINLY BE THERE, YES. ABSOLUTELY.

14 MR. MYERS: THANK YOU.

15 CROSS-EXAMINATION

16 BY MR. LITTLEJOHN:

17 Q. MR. SPONHOUR, GOOD AFTERNOON. I'M CAM LITTLEJOHN,
18 AND I, ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO
19 IS THE DEFENDANT IN THIS CASE. LET ME KIND OF CUT TO THE
20 CHASE HERE. AS THE JUDGE EXPLAINED TO YOU, IF YOU WERE
21 SELECTED AS A JUROR IN THIS CASE, THERE WOULD BE A FIRST
22 PHASE OF THE CASE OR WHAT WE CALL THE TRIAL PHASE, AND AT
23 THAT PHASE THE STATE WOULD HAVE THE BURDEN OF PROVING THE
24 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. AND YOU
25 UNDERSTAND WHAT THAT CONCEPT IS.

1 A. CERTAINLY.

2 Q. OKAY. IF YOU WERE ON THE JURY, YOU WOULD HAVE THE
3 DUTY TO NOT FIND THE DEFENDANT GUILTY UNLESS THE STATE HAD
4 MET THAT BURDEN. YOU WOULD HAVE TO BE CONVINCED THAT THE
5 DEFENDANT WAS GUILTY BEFORE YOU COULD SAY HE WAS GUILTY OF
6 MURDER OR ANY OTHER CRIME. YOU UNDERSTAND THAT.

7 A. ABSOLUTELY.

8 Q. AND DO YOU FURTHER UNDERSTAND THAT YOU WOULD HAVE TO
9 BE CONVINCED OF HIS GUILT BEFORE YOU COULD SAY GUILTY?

10 A. I DO.

11 Q. OKAY. SO GIVEN THAT AND ONLY IF UNDER THOSE
12 CIRCUMSTANCES WOULD WE GET TO THE SECOND PHASE OF THE CASE --
13 AND I GUESS MY QUESTION TO YOU -- AND I UNDERSTAND YOUR
14 CONCERN ABOUT OTHER CASES THAT YOU'VE READ ABOUT AND OTHER
15 CASES THAT YOU'VE HEARD ABOUT WHERE THERE HAVE BEEN PROBLEMS
16 IN THE CRIMINAL JUSTICE SYSTEM. IF YOU WERE CONVINCED OF THE
17 GUILT OF THE DEFENDANT, WOULD THAT SOMEWHAT EASE YOUR
18 THINKING ABOUT BEING ABLE TO VOTE FOR THE DEATH PENALTY IF
19 YOU THOUGHT THAT WAS AN APPROPRIATE SENTENCE?

20 A. AGAIN, I THINK -- YOU KNOW, I KNOW THAT GOING INTO
21 THIS IN MY MIND -- YOU KNOW, VOTING SOMEONE GUILTY BEYOND A
22 REASONABLE DOUBT IS A DIFFERENT THING THAN VOTING TO HAVE
23 SOMEONE PUT TO DEATH. I DON'T THINK THERE'S ANY WAY THAT I
24 COULD, YOU KNOW, JUST APPROACH THAT IN THE UNIFORM MANNER. I
25 THINK THOSE ARE TWO ENTIRELY SEPARATE ISSUES, AND TO BE QUITE

1 HONEST WITH YOU, I THINK TO PUT SOMEONE TO DEATH, THERE'S A
2 HIGHER THRESHOLD.

3 Q. ALL RIGHT. I GUESS WHAT I WAS DRIVING AT WAS YOUR
4 CONCERN ABOUT WHETHER THE DEFENDANT WAS GUILTY OR NOT GUILTY
5 IN THESE OTHER CASES THAT YOU HEARD ABOUT BEFORE THEY WERE --
6 A SENTENCE OF DEATH WAS PASSED UPON THEM.

7 A. WELL, IF -- I GUESS THE -- ONE OF THE THINGS I FEEL
8 ABOUT THAT IS, YOU KNOW, IF SOMEONE IS SENTENCED TO LIFE OR
9 JUST SOME PRISON TERM AND WE LATER DETERMINE THAT THEY DIDN'T
10 DO IT, WE CAN LET THEM GO. IF THEY'VE BEEN EXECUTED, IT'S
11 TOO LATE.

12 Q. I REALIZE THAT AND I'M NOT TRYING TO ARGUE WITH YOU
13 AT ALL, BUT YOU REALIZE IN THIS CASE THAT ALL 12 JURORS WOULD
14 HAVE TO BE CONVINCED OF THE GUILT OF THE DEFENDANT BEFORE YOU
15 COULD EVEN GET TO THE QUESTION.

16 A. SURE.

17 Q. AND IF YOU WERE CONVINCED OF HIS GUILT, I GUESS WHAT
18 I'M ASKING YOU -- YOU SAY YOU HESITATE, BUT COULD YOU VOTE
19 FOR THE DEATH PENALTY IF YOU WERE CONVINCED OF THE GUILT OF
20 THE DEFENDANT AND THE OTHER EVIDENCE---

21 A. I GUESS---

22 Q. ---LED YOU TO THAT CONCLUSION?

23 A. I GUESS THAT, YOU KNOW, OBVIOUSLY BEING CONVINCED OF
24 THE GUILT IS NECESSARY BUT NOT A SUFFICIENT BASIS TO GO WITH
25 THE DEATH PENALTY. I HOPE I'M ANSWERING YOUR QUESTION. I'M

1 CERTAINLY NOT TRYING TO DODGE IT, BUT I'M JUST TRYING TO
2 EXPRESS MY THOUGHTS AS ACCURATELY AS I CAN.

3 Q. ALL RIGHT, SIR. OKAY. IF YOU WOULD INDULGE ME JUST
4 A MOMENT, YOUR HONOR. MR. SPONHOUR, JUST A COUPLE OF THINGS.
5 YOU INDICATED EARLIER, I THINK, IN RESPONSE TO MR. MYERS'
6 QUESTIONS THAT YOU WERE NOT MORALLY OPPOSED TO THE DEATH
7 PENALTY?

8 A. I'M NOT ONE OF THOSE PEOPLE WHO WOULD SAY THAT UNDER
9 NO CIRCUMSTANCES COULD YOU EVER THEORETICALLY JUSTIFY THE
10 DEATH PENALTY. I DON'T -- I'M NOT A -- I KNOW THERE ARE SOME
11 PEOPLE THAT ARE ABSOLUTISTS WHO FEEL THAT THE STATE SHOULD
12 NEVER TAKE A LIFE. I'M NOT IN THAT CAMP. I'M JUST MORE
13 TROUBLED BY THE INHERENT FALLIBILITY OF HUMAN INSTITUTIONS
14 LIKE THE JUDICIAL SYSTEM.

15 Q. OKAY. WELL, IF YOU WERE CONVINCED OF THE
16 DEFENDANT'S GUILT AND THE OTHER INFORMATION THAT WAS
17 PRESENTED TO YOU GAVE YOU THE FIRM BELIEF THAT THE DEATH
18 PENALTY WAS WARRANTED, COULD YOU VOTE FOR THE DEATH PENALTY?

19 A. PERHAPS BUT, YOU KNOW, I CAN'T SAY THAT IF I FELT
20 CERTAIN THAT HE'S GUILTY, THEN I WILL DEFINITELY VOTE FOR THE
21 DEATH PENALTY. I JUST CAN'T SAY THAT.

22 Q. BUT YOU'RE NOT RULING THAT OUT.

23 A. I'M NOT ABSOLUTELY RULING THAT OUT. I THINK, AS I
24 SAID EARLIER, IT'S -- YOU KNOW, IN MY MIND IT WOULD BE
25 UNLIKELY AND A VERY, VERY HIGH HURDLE TO CLEAR IN MY MIND.

1 Q. BUT UNDER SOME CIRCUMSTANCES YOU THINK YOU COULD.

2 A. IN THEORY.

3 MR. LITTLEJOHN: OKAY. THAT'S ALL I HAVE, YOUR
4 HONOR.

5 THE COURT: MR. SPONHOUR, WOULD YOU MIND STEPPING
6 OUT INTO THE HALL FOR JUST A SECOND? AND WE'LL GET YOU RIGHT
7 BACK IN HERE.

8 THE WITNESS: SURE. UH-HUH.

9 (JUROR SPONHOUR LEAVES THE COURTROOM.)

10 THE COURT: ALL RIGHT. THE THING THAT JUMPS OUT AT
11 ME ABOUT THIS JUROR IS IS THAT -- THE FIRST THING IS THAT --
12 IS THAT HE SAID -- HE INDICATED SEVERAL TIMES THAT HE WOULD
13 APPLY A DIFFERENT BURDEN OF PROOF TO THE STATE BEFORE HE
14 WOULD BE WILLING TO CONSIDER THE DEATH PENALTY. AND I THINK
15 THAT IF THAT -- IF THAT'S TRUE, IF THAT'S WHAT HE SAID, IF
16 THAT'S -- IF THAT'S THE WAY HE THINKS, THEN HE WOULD NOT BE
17 QUALIFIED.

18 I THINK THAT THE CORRECT WAY THAT I SHOULD APPROACH
19 THIS IS TO GET HIM BACK HERE AND ASK ABOUT THAT, AND I THINK
20 THAT I WANT TO JUST CONFIRM THIS CONCEPTUAL IDEA WITH Y'ALL.
21 IF THE JURY REACHES A VERDICT BEYOND A REASONABLE DOUBT THAT
22 THE DEFENDANT IS GUILTY OF MURDER, THEN EACH MEMBER OF THE
23 JURY IS THEN UNDER AN OBLIGATION, A LEGAL OBLIGATION, TO
24 CONSIDER BOTH OPTIONS, LIFE OR DEATH, AND THEY ARE NOT
25 PERMITTED TO CONTINUE TO REFLECT BACK ON THE LEVEL OF

1 CERTAINTY IN THEIR MIND AS TO WHETHER OR NOT THE DEFENDANT IS
2 GUILTY. DOES ANYBODY DISAGREE WITH THAT?

3 MR. MYERS: NO, SIR.

4 MS. KIMBROUGH: WELL, YOUR HONOR, THERE'S NO
5 QUESTION THAT ALL THE CRIMES CHARGED, THE ARMED---

6 THE COURT: CAN YOU GIVE ME A YES OR NO?

7 MS. KIMBROUGH: I AGREE THAT ONCE THEY'VE DECIDED
8 BEYOND A REASONABLE DOUBT THAT THAT ENDS THE INQUIRY, YES,
9 BUT I DON'T THINK IT ANSWERS THE PENALTY QUESTION.

10 THE COURT: THAT'S RIGHT. THEY MOVE ON TO THE
11 PENALTY QUESTION.

12 MS. KIMBROUGH: YES, YOUR HONOR.

13 THE COURT: BUT WHEN THE -- JUST LIKE YOU ALL DON'T
14 WANT THE -- I MEAN, NOBODY WANTS THE DEFENDANT TO THINK --
15 THE JURY THINKING AHEAD TO PENALTY BEFORE THEY'VE DECIDED
16 WHETHER OR NOT HE'S GUILTY. WE ALSO DON'T WANT THE JURY TO
17 BE REFLECTING BACK ON WHETHER OR NOT HE'S GUILTY AFTER THE
18 JURY HAS REACHED A VERDICT OF GUILT. WE WANT THEM TO MOVE
19 COMPLETELY ON TO CONSIDER THE QUESTION OF WHAT SHOULD BE THE
20 APPROPRIATE PENALTY.

21 TWO TIMES HE SAID -- HE SAID ONCE, QUOTE, THERE IS A
22 HIGHER THRESHOLD OF PROOF, AND THEN -- AND THEN HE WAS
23 REFERRING TO -- TO IMPOSE THE DEATH PENALTY. AND THEN
24 ANOTHER TIME HE SAID, "A VERY, VERY HIGH HURDLE TO CLEAR IN
25 MY MIND." NOW, PERHAPS I MISUNDERSTOOD WHAT HE SAID,

1 PARTICULARLY WITH THAT LAST ONE. HE MIGHT HAVE SIMPLY BEEN
2 REFERRING TO HOW STRICTLY HE WOULD LOOK AT THE QUESTION OF
3 WHAT SHOULD BE THE PENALTY, BUT AS TO THE FIRST ONE AT LEAST,
4 I BELIEVE HE WAS SAYING, PARTICULARLY IN LIGHT OF ALL HIS
5 COMMENTS ABOUT THERE HAVE BEEN SO MANY PEOPLE WHO HAVE BEEN
6 CONVICTED AND THEY'VE LATER BEEN FOUND OUT TO -- AND GIVEN
7 DEATH AND THEY'VE LATER BEEN FOUND OUT TO BE INNOCENT -- I
8 THINK HE WAS REFERRING BACK TO THE BURDEN OF PROOF THAT
9 THE -- THAT THE LAW IMPOSES ON THE STATE, AND I THINK WE
10 WOULD ALL AGREE THAT IF HE'S GOING TO IMPOSE A DIFFERENT
11 BURDEN OF PROOF, THEN HE'S NOT A QUALIFIED JUROR. AND SO
12 WHAT I WOULD PROPOSE IS -- YOU DON'T DISAGREE WITH THAT, I
13 DON'T SUPPOSE.

14 MR. LITTLEJOHN: YOUR HONOR, TO AN EXTENT I DO
15 BECAUSE I THINK HE WAS -- HE WAS SAYING THAT AS SOMEBODY WHO
16 WAS JUST BROUGHT IN ON VOIR DIRE AND NOW A JUROR SITTING IN
17 THE BOX WHO'S HAD THE BENEFIT OF ALL THE LEGAL INSTRUCTION
18 AND THE DEFINITION OF REASONABLE DOUBT AND THE STANDARD THAT
19 THE JURY IS REQUIRED TO FOLLOW.

20 THE COURT: WELL---

21 MR. LITTLEJOHN: SO WHILE HE MIGHT HAVE A
22 PRELIMINARY HIGH THRESHOLD---

23 THE COURT: ALL RIGHT. ALL RIGHT. I THINK I'M --
24 I'M -- WE DISCUSSED THIS A SECOND AGO AND I THOUGHT EVERYBODY
25 AGREED THAT ONCE YOU GET PAST THE GUILT PHASE, IF THERE'S A

1 GUILTY VERDICT, THEN THAT'S THE END OF THE INQUIRY AS TO
2 WHETHER OR NOT HE'S GUILTY AND WE MOVE ON TO INQUIRING AS TO
3 WHAT SHOULD BE THE PENALTY. AND THAT'S WHAT I'M SAYING IS
4 THAT THIS -- I SUSPECT -- I DON'T KNOW THIS. I'M GOING TO
5 EXPLORE IT AFTER I'VE -- YOU KNOW, IN A SECOND OR I PROPOSE
6 TO. I SUSPECT THAT WHAT HE'S SAYING IS THAT HE WOULD
7 CONTINUE TO REFLECT BACK ON THE QUESTION OF WHETHER OR NOT
8 THE DEFENDANT IS GUILTY WHEN HE IS SUPPOSED TO BE FOCUSED ON
9 WHAT THE PENALTY SHOULD BE, AND I DON'T THINK THAT'S
10 APPROPRIATE AND I THINK WE ALL AGREE THAT THAT'S NOT
11 APPROPRIATE. DON'T WE?

12 MS. KIMBROUGH: YES, YOUR HONOR.

13 MR. LITTLEJOHN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. SO WHAT I -- SO THEN THE
15 NEXT QUESTION WOULD BE EVEN IF -- EVEN IF THAT -- IF WE GET
16 THAT STRAIGHTENED OUT, THE NEXT QUESTION WOULD BE WHETHER OR
17 NOT HIS VIEWS ON THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR
18 HIS ABILITY TO SIT AS AN IMPARTIAL JUROR AND CARRY OUT MY
19 INSTRUCTIONS TO CONSIDER BOTH THE OPTIONS OF LIFE AND DEATH.
20 AND I THINK THAT WHAT -- I THINK WHAT I SHOULD DO NOW IS TO
21 EXPLORE THIS BURDEN OF PROOF QUESTION WITH HIM AND THEN SEND
22 HIM BACK OUT AND WE HAVE ANOTHER DISCUSSION. IS THERE ANY
23 OBJECTION TO THAT OR ANYBODY PROPOSE A DIFFERENT COURSE OF
24 ACTION THAT YOU THINK MIGHT BE BETTER?

25 MR. LITTLEJOHN: NO, SIR.

1 THE COURT: ALL RIGHT. BRING HIM BACK IN.

2 (JUROR SPONHOUR IS BROUGHT INTO THE COURTROOM.)

3 RE-EXAMINATION BY THE COURT

4 Q. MR. SPONHOUR, I'M GOING TO ASK YOU A FEW QUESTIONS
5 AND TALK TO YOU ABOUT A FEW THINGS, AND THERE'S ONE THING I
6 WANT TO MAKE SURE YOU UNDERSTAND OR SEVERAL THINGS, A SERIES
7 OF THINGS. THE LAW CONCERNING WHAT THE BURDEN OF PROOF IS,
8 OF COURSE, HAS BEEN -- IS SOMETHING THAT HAS BEEN DEVELOPED
9 IN OUR COUNTRY OVER A LONG PERIOD OF TIME, AND THE LAW IS
10 THAT THE STATE BEARS THE BURDEN OF PROVING THE DEFENDANT
11 GUILTY BEYOND A REASONABLE DOUBT. NOW, THERE'S SOME
12 DEFINITIONS OF WHAT BEYOND A REASONABLE DOUBT MEANS, BUT IN A
13 LARGE SENSE IT SORT OF IS JUST IN YOUR MIND. IS IT BEYOND A
14 REASONABLE DOUBT? BUT WHAT THE LAW CLEARLY DOES NOT REQUIRE:
15 IT CLEARLY DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
16 POSSIBLE DOUBT.

17 NOW, THERE WERE SEVERAL THINGS THAT I HEARD YOU SAY
18 THAT RAISED SOME QUESTIONS IN MY MIND ABOUT WHETHER OR NOT IN
19 THE CONTEXT OF A DEATH PENALTY CASE YOU WOULD BE WILLING TO
20 FOLLOW THE LAW CONCERNING WHAT IS THE BURDEN OF PROOF. SO
21 I'M GOING TO ASK YOU ABOUT THAT NOW. IF YOU ARE ON THIS JURY
22 AND IF THE JURY FINDS BEYOND A REASONABLE DOUBT THAT THE
23 DEFENDANT IS GUILTY OF MURDER, OF COURSE WE WOULD THEN MOVE
24 INTO THE SECOND PHASE OF THE TRIAL.

25 DURING THAT SECOND PHASE OF THE TRIAL, IT WOULD NOT

1 BE APPROPRIATE FOR YOU OR ANY OTHER MEMBER OF THE JURY TO
2 CONTINUE TO REFLECT BACK ON WHETHER OR NOT THE DEFENDANT IS
3 GUILTY. THE FOCUS AT THAT TIME WOULD BE WHAT IS THE PENALTY
4 THAT SHOULD BE IMPOSED, AND IT WOULD BE YOUR RESPONSIBILITY
5 TO CONSIDER A VERDICT OF GUILT -- I MEAN A VERDICT OF DEATH
6 IF THE STATE HAS PROVEN AGGRAVATING CIRCUMSTANCES, AND IT
7 WOULD ALSO BE YOUR RESPONSIBILITY TO CONSIDER A VERDICT OF A
8 LIFE SENTENCE. AND AFTER CONSIDERING BOTH OPTIONS, IT WOULD
9 BE YOUR RESPONSIBILITY TO VOTE THE WAY THAT YOU FELT THE CASE
10 SHOULD GO.

11 NOW, IF YOU TELL -- YOU'VE SAID SOMETHING LIKE THAT
12 YOU FELT THERE WAS A HIGHER THRESHOLD OF PROOF. NOW, IF
13 YOU'RE SITTING THERE IN THAT SECOND PHASE OR THAT PENALTY
14 PHASE, WOULD YOU IMPOSE A HIGHER THRESHOLD OF PROOF FOR GUILT
15 THAN BEYOND A REASONABLE DOUBT?

16 A. WELL, I WOULD ASSUME THAT WE WOULD HAVE DECIDED THE
17 GUILT OR INNOCENCE IN THE FIRST PHASE.

18 Q. RIGHT. YOU WOULD HAVE.

19 A. WOULD THERE BE A HIGHER BURDEN IN THAT SECOND PHASE
20 IN MY MIND? I HAVE TO ANSWER IT HONESTLY YES.

21 Q. OKAY. ALL RIGHT. AND WHEN YOU SAY A HIGHER BURDEN,
22 YOU MEAN HIGHER BURDEN AS TO GUILT OR INNOCENCE OR GUILTY OR
23 NOT GUILTY.

24 A. WELL, I WOULD ASSUME AT THAT POINT IT WOULD BE A
25 CHOICE BETWEEN THE DEATH PENALTY AND LIFE AS YOU'VE EXPLAINED

1 IT.

2 Q. RIGHT. ALL RIGHT. WELL---

3 A. AGAIN, I'M NOT TRYING -- I'M NOT TRYING TO BE
4 DIFFICULT.

5 Q. YOU'RE NOT BEING DIFFICULT; YOU'RE DOING FINE. THE
6 -- AND THIS IS WHERE SOME OF THESE THINGS -- THIS IS WHY WE
7 HAVE THESE DISCUSSIONS BECAUSE---

8 A. SURE.

9 Q. ---WE WANT TO MAKE SURE THAT WE UNDERSTAND WHAT YOUR
10 THOUGHTS ARE.

11 A. SURE.

12 Q. AND WHEN YOU -- WHEN YOU GET INTO THE PENALTY PHASE,
13 THERE'S NOT -- IT'S NOT REALLY POSSIBLE THAT THE STATE PROVE
14 SOME SPECIFIC FACT BEYOND A REASONABLE DOUBT AND THEN ALL OF
15 A SUDDEN THERE'S GOING TO BE THE DEATH PENALTY. I MEAN,
16 THAT'S IMPERMISSIBLE. IT BECOMES A JUDGMENT CALL FOR THE
17 JURY. THEY HAVE TO CONSIDER BOTH OPTIONS.

18 NOW, IF THERE ARE INDIVIDUAL FACTS THAT HAVE BEEN
19 OFFERED, THEN THE BURDEN IS TO PROVE THOSE FACTS BEYOND A
20 REASONABLE DOUBT, BUT IN THE END IT BECOMES A JUDGMENT CALL
21 FOR EACH INDIVIDUAL JUROR AS TO WHETHER TO IMPOSE THE DEATH
22 PENALTY. AND WHAT I'M ASKING YOU ABOUT IS IF YOU'RE SITTING
23 IN THAT PENALTY PHASE, WOULD YOU STILL BE THINKING BACK AS TO
24 WHETHER OR NOT THE DEFENDANT WAS ACTUALLY GUILTY?

25 A. THERE WOULD BE -- I CAN'T IMAGINE THE ELEMENTS OF

1 THE -- OF THE GUILT-OR-INNOCENCE PHASE WOULDN'T CARRY OVER TO
2 THAT PHASE. I JUST DON'T SEE HOW YOUR MIND COULD POSSIBLY
3 NOT DO THAT TO A CERTAIN EXTENT, AND YOU COULD ALSO ARGUE
4 THAT YOU PERHAPS HAVE A CERTAIN MORAL DUTY TO DO THAT.

5 I MEAN, I THINK WHEN YOU'RE FACED WITH -- I'VE NEVER
6 BEEN FACED WITH HAVING SOMEONE'S LIFE IN MY HANDS. I THINK
7 THAT THAT IS THE ULTIMATE RESPONSIBILITY THAT ANY PERSON
8 COULD POSSIBLY FACE IN THIS WORLD, AND I THINK YOU HAVE TO,
9 YOU KNOW, DEAL WITH THAT AS FORTHRIGHTLY AS YOU CAN. AND IF
10 THERE ARE STRANDS OR ELEMENTS OF THE GUILT PHASE THAT CARRY
11 FORWARD, I DON'T SEE HOW YOU CAN SHUT THAT OUT OF YOUR MIND.

12 I WOULD ALSO SAY THAT IN ALMOST ANY TRIAL -- I'VE
13 WATCHED SOME COURT T.V. LIKE MOST OTHER PEOPLE. YOU KNOW,
14 THESE THINGS ARE RARELY, YOU KNOW, SHUT -- YOU KNOW, OPEN AND
15 SHUT. I MEAN, YOU KNOW, YOU MAY IN THE GUILT PHASE HAVE
16 STRUGGLED WITH IT AND YOU MAY HAVE A LONG DELIBERATION IN THE
17 JURY ROOM. SO I JUST THINK THE STRANDS OF THAT WOULD
18 CERTAINLY CARRY WITH YOU NO MATTER WHAT.

19 Q. OKAY. WELL, LET ME -- LET ME ASK YOU ONE MORE LINE
20 OF QUESTIONS. LET'S -- LET'S SAY THAT YOU -- THE JURY --
21 YOU'RE ON THE JURY AND THE JURY HAS REACHED A VERDICT OF
22 GUILT. IN OTHER WORDS, THE JURY HAS CONCLUDED -- EACH
23 INDIVIDUAL MEMBER OF THE JURY HAS CONCLUDED THAT THE STATE
24 HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS
25 GUILTY OF MURDER. NOW, WOULD YOU -- IF YOU OR ANYBODY ELSE

1 WERE TO SIT IN THE JURY ROOM AND DURING THE PENALTY PHASE --
2 AND DURING DELIBERATION IN THE PENALTY PHASE AND SAY, "I'M
3 NOT GOING TO CONSIDER THE DEATH PENALTY. EVEN THOUGH I FOUND
4 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, I'M NOT GOING
5 TO CONSIDER THE DEATH PENALTY BECAUSE THE JURY -- BECAUSE I'M
6 NOT CONVINCED BEYOND ALL DOUBT THAT HE'S GUILTY..."

7 A. I COULD DEFINITELY SEE ME SAYING THAT.

8 Q. SO YOU CAN SEE YOURSELF SAYING THAT YOU WILL NOT
9 CONSIDER THE DEATH PENALTY EVEN THOUGH THE JURY HAS CONCLUDED
10 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF
11 MURDER.

12 A. OH, I COULD DEFINITELY SEE A CIRCUMSTANCE LIKE THAT.
13 ABSOLUTELY.

14 THE COURT: ALL RIGHT, SIR. LET ME ASK YOU TO STEP
15 BACK OUT IN THE HALL JUST ONE MORE TIME AND LET ME TAKE UP A
16 MATTER OF LAW WITH THE LAWYERS.

17 (JUROR SPONHOUR LEAVES THE COURTROOM.)

18 THE COURT: NOW, I'M -- I'M LISTENING, BUT THE -- TO
19 ME THE FOCUS OF OUR INQUIRY RIGHT NOW IS JUST THAT LAST
20 QUESTION, AND I THINK THAT WHAT HE SAID IS THAT THERE IS --
21 IS THAT WHEN HE GETS INTO THAT JURY ROOM HE'S GOING TO BE --
22 APPLYING A STANDARD THAT IS DIFFERENT FROM THAT WHICH I WOULD
23 REQUIRE HIM TO APPLY WHICH WOULD MEAN THAT HIS VIEWS
24 CONCERNING THE DEATH PENALTY WOULD SUBSTANTIALLY INTERFERE
25 WITH HIS ABILITY TO CARRY OUT MY INSTRUCTIONS WHICH WOULD

1 MEAN THAT HE'S DISQUALIFIED. DOES ANYBODY DISAGREE WITH
2 THAT?

3 MR. MYERS: NO, SIR, I DON'T DISAGREE WITH THAT AND
4 I DON'T -- MAYBE ON AN APPEAL IF SOMEBODY SAID IT I COULD
5 ARGUE FOR IT. INITIALLY I THOUGHT WAY BACK PRIOR TO 1985
6 UNDER THE OLD FOOTNOTE 21 IN THE WITHERSPOON CASE THAT HE MAY
7 HAVE SQUEEZED IN, BUT NOW I DON'T EVEN THINK HE WOULD HAVE
8 SQUEEZED IN UNDER THE WITHERSPOON STANDARD AND CERTAINLY NOT
9 UNDER WAINWRIGHT VERSUS WITT WHICH REPLACED WITHERSPOON.

10 THERE'S NO WAY IN THE WORLD THAT THIS JUROR'S --
11 THIS JUROR'S VIEWS WOULD ALLOW HIM TO SERVE BECAUSE THEY
12 PREVENT AND SUBSTANTIALLY IMPAIR THE PERFORMANCE OF HIS
13 DUTIES AS A JUROR IN ACCORDANCE WITH THE COURT'S INSTRUCTIONS
14 AND OTHERS. HE'S NOT GOING TO FOLLOW THE LAW. HE WON'T
15 FOLLOW THE LAW IN THE GUILT PHASE BECAUSE IN THE GUILT PHASE
16 THE LAW IS BEYOND A REASONABLE DOUBT. HE'S LOOKING FOR
17 BEYOND ALL DOUBT, AN ABSOLUTE CERTAINTY, AND NOT ONLY IN
18 THAT, WERE HE TO GET BY THAT, AN ILLEGAL STANDARD BEYOND ALL
19 DOUBT AND ABSOLUTELY CERTAIN, WHEN HE GOT INTO THAT PENALTY
20 PHASE, HE WOULD BE IN DIRECT VIOLATION OF A RECENT SUPREME
21 COURT CASE.

22 THE SUPREME COURT HAD RULED PREVIOUSLY IN '94 THAT
23 RESIDUAL DOUBT COULD NOT CARRY OVER INTO THE PENALTY PHASE.
24 THAT WAS RECENTLY RE-ARGUED IN THE SUPREME COURT IN A CASE
25 OUT OF OREGON, AND WITHIN THE LAST MONTH OR TWO THE SUPREME

1 COURT HAS REAFFIRMED THAT: RESIDUAL DOUBT DOES NOT GO OVER
2 INTO THE PENALTY PHASE. AND EVEN THAT, HE HAS SAID CERTAINLY
3 IN THE PENALTY PHASE I'M STILL LOOKING AT GUILT BEYOND ALL
4 DOUBT. HE MADE THAT ABSOLUTELY CLEAR. AND HIS THING IS
5 NOT -- NOT THE USUAL OPINION ON THE DEATH PENALTY BECAUSE HIS
6 OPINION IS, AS HE SAID, THE INFALLACY OF THE JUDICIAL SYSTEM
7 IN DEATH PENALTY CASES AND THERE'S BEEN TOO MANY INNOCENT
8 PEOPLE EXECUTED, AND ONCE YOU DO THAT YOU CAN'T GO BACK.

9 SO I THINK HE'S DISQUALIFIED IN THE GUILT PHASE
10 BECAUSE HE NEEDS PROOF BEYOND ALL DOUBT. I THINK HE'S
11 CERTAINLY DISQUALIFIED IN THE PENALTY PHASE BECAUSE THAT'S
12 BLEEDING OVER INTO IT, AND HE'S BRINGING IN AN ARBITRARY AND
13 A CAPRICIOUS MANNER INTO THAT DELIBERATION. UNDER WAINWRIGHT
14 VERSUS WITT I AGREE, YOUR HONOR. WE THINK THAT HIS VIEWS
15 SUBSTANTIALLY IMPAIR -- THEY WOULD PREVENT HIM FROM THE
16 PERFORMANCE OF HIS DUTIES IN ACCORDANCE WITH HIS INSTRUCTION
17 AND HIS OATH AND THE LAW THAT WOULD BE CHARGED TO HIM.

18 MS. KIMBROUGH: THANK YOU, YOUR HONOR. I DON'T
19 THINK MR. SPONHOUR EVER SAID ANYTHING ABOUT HOLDING THE STATE
20 TO A STANDARD HIGHER THAN REASONABLE DOUBT IN THE GUILT
21 PHASE. THAT IS NOT WHAT HE SAID; AT LEAST THAT'S NOT WHAT I
22 HEARD. WHAT I HEARD HIM SAY IS WHEN HE GOES INTO---

23 THE COURT: LET'S DON'T FOCUS ON THAT. LET'S FOCUS
24 ON THE PENALTY PHASE BECAUSE THAT'S A SEPARATE ARGUMENT THAT
25 MR. MYERS WAS MAKING. IT'S NOT THE SAME ARGUMENT HE MADE.

1 HE AGREED WITH ME ON ONE POINT, AND THEN HE SAID, "I GOT
2 ANOTHER ARGUMENT THAT I WANT TO MAKE AS WELL." SO LET'S
3 FOCUS ON THE FIRST POINT WHICH IS WHETHER OR NOT HE WOULD --
4 HE WOULD ALLOW THIS RESIDUAL DOUBT TO CARRY FORWARD AND WHILE
5 IN THE PENALTY PHASE HOLD THE STATE TO A HIGHER BURDEN OF
6 PROOF THAN THE LAW WOULD ALLOW HIM TO DO.

7 MS. KIMBROUGH: WELL, I WOULD FIRST NOTE THAT THE
8 LAW IS PRETTY CLEAR THAT YOU CAN GIVE A LIFE SENTENCE FOR ANY
9 REASON OR NO REASON AT ALL. IT DOESN'T MATTER IF THE -- IF
10 MR. MERCER HAS ONE MITIGATING CIRCUMSTANCE. HE DOESN'T HAVE
11 TO SAY ANYTHING. THE JUROR CAN ALWAYS GIVE LIFE. THERE'S
12 ABSOLUTELY NO BURDEN ON HIM WHATSOEVER, AND IF THIS JUROR HAS
13 THE SCRUPLES TO WANT TO BE VERY CLEAR ABOUT HIS DECISION-
14 MAKING PROCESS AND TO HOLD ONLY THE WORST OF THE WORST
15 ACCOUNTABLE BY WAY OF A DEATH SENTENCE, THEN HE'S DOING HIS
16 DUTY IN OUR VIEW.

17 YOU KNOW, IT SHOULDN'T BE EASY TO COME TO THE
18 CONCLUSION THAT WE SHOULD JUST TAKE ANOTHER HUMAN BEING AND
19 TOSS THEM OFF. IT'S TO HIS CREDIT THAT HE'S THOUGHT ABOUT IT
20 AND, YOUR HONOR, WE THINK HE -- YOU KNOW, HE CAN BE
21 CONSCIENTIOUS, AND THAT'S -- THAT'S WHAT HE NEEDS TO BE. TOO
22 MANY, YOU KNOW, PEOPLE DON'T GIVE IT PROPER CONSIDERATION.

23 HE'S CLEARLY SOMEONE WHO IS NOT FUNDAMENTALLY
24 OPPOSED TO CAPITAL PUNISHMENT. HE HAS PROBLEMS WITH THE WAY
25 IN WHICH THE SYSTEM WORKS; HE SAID THAT. YOU KNOW, THAT'S

1 OBVIOUS THAT HE'S CONCERNED ABOUT IT, BUT HE DIDN'T SAY HE
2 WOULD HOLD THEM TO A STANDARD WHERE HE COULD NOT GIVE THE
3 DEATH PENALTY. HE DIDN'T SAY THAT. HE DIDN'T SAY, WELL,
4 THERE'S NO CIRCUMSTANCE UNDER WHICH -- NO BURDEN THAT THE
5 STATE COULD MEET SUCH THAT I WOULD NEVER GIVE A DEATH
6 SENTENCE.

7 MR. MYERS: THAT'S THE OLD LAW.

8 THE COURT: WELL, I'M READY TO RULE. I -- HE DIDN'T
9 SAY THAT. HE DIDN'T SAY THAT THERE WAS NO CIRCUMSTANCE UNDER
10 WHICH HE COULD GIVE THE DEATH PENALTY AND -- BUT THAT IS NOT
11 THE STANDARD. TO ME THERE ARE TWO REASONS WHY THIS JUROR IS
12 DISQUALIFIED. THE FIRST IS THAT HE MADE IT CLEAR AND I TRIED
13 TO GIVE HIM -- I TRIED EVERY WAY I KNEW TO GIVE HIM AN
14 OPPORTUNITY TO SAY THAT HE WOULD FOLLOW MY INSTRUCTIONS WHILE
15 IN THE PENALTY PHASE OF THE TRIAL, AND HE BASICALLY SAID THAT
16 HE WOULD NOT. HE BASICALLY SAID THAT HE IS GOING TO HOLD THE
17 JURY -- HOLD THE STATE TO A HIGHER STANDARD OF PROOF. HE
18 DIDN'T SAY WHAT IT WAS. HE DIDN'T SAY THAT IT WAS
19 NECESSARILY BEYOND ALL DOUBT, BUT HE SAID THAT IT WAS
20 BEYOND -- IT WAS MORE THAN BEYOND A REASONABLE DOUBT. AND
21 THAT'S IMPERMISSIBLE.

22 WE'VE ALL AGREED ON THAT, AND HE VERY CLEARLY SAID
23 THAT HE WOULD DO THAT AND THAT'S IMPERMISSIBLE. HE'S
24 DISQUALIFIED. HIS VIEWS IN THAT RESPECT WOULD SUBSTANTIALLY
25 INTERFERE WITH HIS ABILITY TO FOLLOW MY INSTRUCTIONS AND

1 CARRY OUT THE LAW AS I GIVE IT TO HIM, SO HE'S DISQUALIFIED,
2 BUT I ALSO THINK THAT BASED ON LISTENING TO EVERYTHING THAT
3 HE HAS SAID AND BASED ON THIS IDEA THAT HE HAS ABOUT THE
4 FALLIBILITY OF THE JUSTICE SYSTEM AND THE NUMBER OF TIMES
5 THAT THE JUSTICE SYSTEM HAS CONVICTED PEOPLE AND SENTENCED
6 THEM TO DEATH WHERE THEY WERE LATER FOUND TO BE NOT GUILTY
7 THAT THOSE VIEWS, EVEN INDEPENDENT OF THIS BURDEN OF PROOF
8 QUESTION -- I AM CONVINCED THAT THOSE VIEWS WOULD
9 SUBSTANTIALLY INTERFERE WITH HIS ABILITY TO CARRY OUT MY
10 INSTRUCTIONS, AND I DO NOT BELIEVE THAT HE IS CAPABLE IN
11 LIGHT OF THOSE VIEWS OF GIVING DUE CONSIDERATION TO BOTH A
12 LIFE SENTENCE AND THE DEATH PENALTY, AND SO I BELIEVE HE'S
13 DISQUALIFIED.

14 ALL RIGHT. I'M GOING TO TAKE A SHORT BREAK BEFORE
15 WE BRING IN THE NEXT JUROR. WELL, ACTUALLY BRING HIM IN AND
16 I'LL...

17 (JUROR SPONHOUR IS BROUGHT INTO THE COURTROOM.)

18 THE COURT: MR. SPONHOUR, WE CERTAINLY DO APPRECIATE
19 YOUR CANDIDNESS AND YOUR WILLINGNESS TO TALK TO US. WE WILL
20 NOT BE NEEDING YOU AS A JUROR IN THIS CASE, AND SO YOU'RE
21 DONE. YOU'RE FREE. AND WE APPRECIATE YOU COMING. YOU DO
22 NOT HAVE TO COME BACK ANYMORE THIS WEEK OR NEXT.

23 THE WITNESS: OKAY. THANK YOU.

24 THE COURT: YOU'RE WELCOME.

25 THE WITNESS: DO I NEED TO LEAVE THIS?

1 THE COURT: YOU CAN GIVE THAT TO THE BAILIFF.

2 THE WITNESS: THANK YOU.

3 (JUROR SPONHOUR LEAVES THE COURTROOM. A SHORT BREAK
4 WAS TAKEN.)

5 THE COURT: BE SEATED. OKAY. WE'RE READY FOR DONNA
6 DARBY. WAIT A MINUTE. WE'RE NOT READY QUITE YET. ARE Y'ALL
7 READY?

8 MR. MYERS: WE'RE READY.

9 THE COURT: ALL RIGHT.

10 MR. LITTLEJOHN: JUDGE, BEFORE WE BRING THAT JUROR
11 IN, I DON'T KNOW IF THIS IS NECESSARY, BUT OUT OF -- EXCUSE
12 ME. IN ORDER TO PRESERVE THE RECORD, WE WOULD EXCEPT TO THE
13 COURT'S RULING CONCERNING THAT LAST JUROR.

14 THE COURT: IS THERE ANYTHING SPECIFIC THAT YOU
15 WOULD SAY THAT PERHAPS I -- MAYBE SOME ISSUE THAT YOU THINK I
16 OVERLOOKED?

17 MR. LITTLEJOHN: NO, YOUR HONOR. I'M NOT SAYING
18 THAT.

19 THE COURT: OR SOME ARGUMENT THAT YOU HAVEN'T MADE?

20 MR. LITTLEJOHN: NO, YOUR HONOR. WE MADE ALL THE
21 ARGUMENTS---

22 THE COURT: OKAY.

23 MR. LITTLEJOHN: ---WE WANT FOR THE RECORD. I THINK
24 JUST TO PRESERVE THE ISSUE I THINK WE HAVE TO NOTE IT.

25 THE COURT: I'M VERY PLEASED TO HAVE BEEN ALLOWED

1 OVER THE LAST ALMOST SIX YEARS TO FORGET ALL OF THE APPELLATE
2 PROCEDURE THAT I MIGHT HAVE EVER KNOWN, BUT I DON'T THINK YOU
3 HAVE TO EXCEPT IN THAT FASHION ANYMORE, BUT YOU'RE WELCOME TO
4 DO THAT.

5 MR. LITTLEJOHN: WELL; BASED ON THE NATURE OF THE
6 CASE---

7 THE COURT: RIGHT.

8 MR. LITTLEJOHN: ---I FEEL BETTER DOING THAT IF THE
9 COURT WILL INDULGE ME.

10 THE COURT: YEAH. IT WAS CLEAR -- IT WAS CLEAR THAT
11 YOU WERE ARGUING THAT THE JUROR WAS QUALIFIED, AND SO I'M
12 SURE THAT YOUR POSITION IS -- IN MY MIND IT WAS CLEAR TO ME
13 THAT YOU TOOK THE POSITION THAT HE WAS QUALIFIED AND I RULED
14 AGAINST YOU, SO I THINK---

15 MR. LITTLEJOHN: I UNDERSTAND. THANK YOU, YOUR
16 HONOR.

17 THE COURT: OKAY.

18 (JUROR DONNA DARBY IS BROUGHT INTO THE COURTROOM.)

19 DONNA DARBY, 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. GOOD AFTERNOON, MS. DARBY.

24 A. YES.

25 Q. HOW ARE YOU?

1 A. ALL RIGHT.

2 Q. DO YOU RECALL THAT YESTERDAY WE PUT YOU UNDER OATH?

3 A. YES, SIR.

4 Q. AND YOU UNDERSTAND THAT YOU'RE STILL UNDER OATH
5 TODAY.

6 A. YES, SIR.

7 Q. NOW, SINCE YESTERDAY WHEN YOU LEFT US, HAVE YOU
8 TALKED TO ANYONE ABOUT THIS CASE OR HAS ANYONE TALKED TO YOU
9 ABOUT THE CASE?

10 A. NO, SIR.

11 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND AFTER
12 I'M DONE THE LAWYERS WILL PROBABLY HAVE SOME FOLLOW-UP
13 QUESTIONS TO ASK YOU. WE DON'T MEAN TO PRY INTO YOUR PRIVATE
14 LIFE TOO MUCH, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
15 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE
16 JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO BE OPEN AND
17 HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK
18 ABOUT THESE ISSUES.

19 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
20 AND APPLY THE LAW PRECISELY AS I WOULD 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 THEN RENDER A VERDICT THAT'S
23 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
24 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

25 A. IT WOULD BE DIFFICULT.

1 Q. NOW, WHY DO YOU SAY IT WOULD BE DIFFICULT? NOW, THE
2 REASON -- THE POINT OF THAT QUESTION IS TO MAKE SURE THAT
3 YOU'RE GOING TO LISTEN TO ME WHEN I TELL YOU WHAT THE LAW IS
4 AND THAT YOU'RE GOING TO MAKE YOUR FACTUAL DECISION BASED ON
5 THE EVIDENCE THAT'S IN THE CASE AND NOT BASED ON SOMETHING
6 ELSE. DO YOU THINK YOU'D HAVE TROUBLE LISTENING TO THE
7 EVIDENCE AND THEN MAKING A DECISION AS A JUROR THAT'S BASED
8 ON THE LAW AS I WOULD GIVE IT TO YOU?

9 A. I GUESS NOT.

10 Q. MA'AM?

11 A. I GUESS NOT.

12 Q. ALL RIGHT. DO YOU UNDERSTAND THAT THE STATE HAS THE
13 BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE
14 DOUBT?

15 A. YES. YES.

16 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
17 OF THIS CASE THAT YOU FIND TO HAVE BEEN PROVEN BY THE STATE
18 AND IN LIGHT OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD
19 YOU FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING
20 ON WHETHER OR NOT YOU BELIEVE THE STATE HAS MET ITS BURDEN OF
21 PROOF?

22 A. I HAVE DIFFICULTY. I ALWAYS HAVE A REASONABLE
23 DOUBT.

24 Q. YOU DO?

25 A. YES, SIR.

1 Q. OKAY. SO DO YOU THINK THAT IF THE STATE PRESENTED
2 ITS EVIDENCE AND YOU BELIEVED THAT THE STATE HAD PROVEN
3 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY,
4 WOULD YOU BE ABLE TO VOTE FOR A GUILTY VERDICT?

5 A. I WOULD HAVE DIFFICULTY.

6 Q. YOU WOULD HAVE DIFFICULTY VOTING FOR A GUILTY
7 VERDICT EVEN THOUGH YOU BELIEVED THAT THE STATE HAD PROVEN
8 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

9 A. YES, SIR.

10 Q. ALL RIGHT. IS THERE ANY PARTICULAR REASON WHY THAT
11 IS TRUE?

12 A. I DON'T KNOW. MAYBE MY AGE AND THINGS THAT I'VE
13 SEEN AND LEARNED AND HEARD AND WITNESSED THROUGH THE YEARS
14 AND IT JUST SEEMS LIKE SO MUCH OF IT IS ASSUMPTIONS AND
15 INFERENCES AND IT'S VERY DIFFICULT TO GET TO THE TRUTH.

16 THE COURT: OKAY. DOES ANYBODY WANT TO ASK ANY
17 FOLLOW-UP QUESTIONS OF THIS JUROR AT THIS TIME?

18 MR. MYERS: NO, SIR.

19 THE COURT: I TELL YOU WHAT. MS. DARBY, LET ME LET
20 YOU STEP OUT IN THE HALLWAY FOR JUST A SECOND, PLEASE, AND
21 I'LL GET YOU RIGHT BACK IN HERE.

22 THE WITNESS: OKAY.

23 THE COURT: THANK YOU, MA'AM.

24 (JUROR DARBY LEAVES THE COURTROOM.)

25 THE COURT: THE REASON I STOPPED THERE IS BECAUSE I

1 DON'T EVEN THINK SHE'S QUALIFIED TO SIT IN A FORGERY CASE,
2 AND I DON'T SEE THE NEED TO GO FORWARD. IF YOU ALL DISAGREE
3 WITH THAT, I'LL KEEP ON GOING.

4 MR. MYERS: WE DON'T DISAGREE.

5 MS. KIMBROUGH: THE ANSWERS WERE BIZARRE, YEAH, AND
6 I'M NOT SURE WE COULD GET ANYWHERE.

7 THE COURT: WELL, DO YOU WANT ME TO KEEP GOING OR DO
8 YOU CONCEDE AT THIS POINT THAT SHE IS DISQUALIFIED? I
9 FELT -- I FELT AS THOUGH I HAD ASKED HER ALL THE QUESTIONS I
10 KNEW HOW TO ASK HER ON WHETHER OR NOT SHE WOULD FOLLOW THE
11 LAW CONCERNING A VERDICT OF GUILTY OR NOT GUILTY, AND I WAS
12 -- BASED ON THOSE ANSWERS, I DIDN'T SEE ANY -- I DIDN'T SEE
13 THAT SHE WAS QUALIFIED. SO I DIDN'T SEE THE NEED TO GO
14 FORWARD. I THOUGHT THAT YOU ALL MIGHT WANT TO -- YOU ALL
15 MIGHT HAVE AN IDEA OF A MORE CREATIVE QUESTION THAT COULD
16 SHOW ME THAT SHE IS QUALIFIED IN THAT -- IN THE FIRST PHASE,
17 BUT IF YOU DON'T...

18 MR. LITTLEJOHN: YOUR HONOR, QUITE FRANKLY, I THINK
19 THE JUROR JUST DOESN'T WANT TO SERVE, BUT I MEAN, HER ANSWERS
20 INDICATE AS -- AS MS. KIMBROUGH SAID, THEY WERE BIZARRE, SO
21 WE DON'T HAVE ANY OBJECTION TO EXCUSING THE JUROR.

22 THE COURT: OKAY. BRING HER IN.

23 (JUROR DARBY IS BROUGHT INTO THE COURTROOM.)

24 THE COURT: MS. DARBY, WE THANK YOU FOR COMING. WE
25 WILL NOT BE NEEDING YOUR SERVICES AS A JUROR IN THIS CASE.

1 YOU CAN HAND THOSE PAPERS TO THE BAILIFF, AND THEN YOU'RE
2 FREE TO GO.

3 THE WITNESS: THANK YOU, SIR.

4 THE COURT: THANK YOU, MA'AM.

5 (JUROR DARBY LEAVES THE COURTROOM.)

6 THE COURT: BRING IN THE NEXT JUROR.

7 (JUROR PHILIP LAFOLLETTE IS BROUGHT INTO THE
8 COURTROOM.)

9 PHILIP LAFOLLETTE, HAVING BEEN PREVIOUSLY SWORN
10 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
11 TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT

13 Q. GOOD AFTERNOON, SIR. TELL ME HOW TO PRONOUNCE YOUR
14 LAST NAME.

15 A. IT'S LAFOLLETTE.

16 Q. LAFOLLETTE.

17 A. YES, SIR.

18 Q. ALL RIGHT. MR. LAFOLLETTE, YOU RECALL THAT
19 YESTERDAY WE PUT YOU UNDER OATH.

20 A. YES, SIR.

21 Q. AND YOU'RE STILL UNDER OATH NOW. DO YOU UNDERSTAND
22 THAT?

23 A. YES, SIR.

24 Q. SINCE YOU LEFT US YESTERDAY, HAVE YOU TALKED TO
25 ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT

1 THE CASE?

2 A. NO.

3 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
4 WHEN I'M DONE, THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME
5 FOLLOW-UP QUESTIONS. WE'RE NOT TRYING TO PRY TOO DEEPLY INTO
6 YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE
7 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE
8 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND BE
9 OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU
10 THINK ABOUT THESE ISSUES THAT WE'LL BE DISCUSSING.

11 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
12 AND APPLY THE LAW PRECISELY AS I WOULD GIVE IT TO YOU AND
13 THEN SET ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD
14 ABOUT THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT
15 THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
16 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

17 A. YES, SIR, I FEEL I COULD.

18 Q. DO YOU UNDERSTAND THAT THE STATE HAS -- IN A
19 CRIMINAL CASE THE STATE HAS THE BURDEN OF PROVING THE
20 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT?

21 A. YES, SIR.

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 WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
25 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU

1 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

2 A. YES, SIR.

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. NOW, I'M
6 GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT WOULD COME
7 UP DURING THAT SECOND PHASE. AGGRAVATING CIRCUMSTANCES.
8 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS
9 THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE
10 THE CRIME OF MURDER OR TO MAKE IT WORSE. AGGRAVATING
11 CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME, AND THEY
12 ADD TO THE INJURY RESULTING FROM THE CRIME.

13 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
14 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
15 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
16 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
17 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
18 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
19 CIRCUMSTANCES?

20 A. YES, SIR.

21 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
22 A COPY OF THIS SHEET THAT DESCRIBES THE THREE DIFFERENT TYPES
23 OF JURORS. DID YOU GET A COPY OF THAT SHEET?

24 A. YES, SIR, I DID.

25 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

1 A. YES, SIR, I DO.

2 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
3 YOU ARE?

4 A. I FEEL THAT I WOULD BE THE THIRD TYPE OF JUROR, BUT
5 I ALSO FEEL I WOULD LEAN TOWARD THE FIRST TYPE ALSO. I DO --
6 I AM A DEATH PENALTY ADVOCATE.

7 Q. ALL RIGHT, SIR. IF YOU ARE A JUROR IN THIS CASE AND
8 IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, YOU WOULD
9 THEN -- WE WOULD THEN MOVE INTO THE SENTENCING PHASE OF THE
10 TRIAL. NOW, THERE'S ONE THING I WANT TO MAKE SURE YOU
11 UNDERSTAND AND THAT IS THAT MURDER IS DEFINED AS THE
12 INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH
13 MALICE AFORETHOUGHT.

14 A. YES, SIR.

15 Q. THE JURY WOULD BE THE ONES WHO WOULD DECIDE THE
16 PENALTY FOR THAT CRIME, AND YOUR OPTIONS WOULD BE EITHER TO
17 IMPOSE A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE OR
18 TO IMPOSE THE DEATH PENALTY.

19 A. YES, SIR.

20 Q. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
23 THAT YOU FOUND TO EXIST AND CONSIDERING THE LAW AS I WOULD
24 EXPLAIN IT TO YOU, COULD YOU FIND -- I'M SORRY. COULD YOU
25 UNDER SOME CIRCUMSTANCES VOTE TO IMPOSE A VERDICT OF THE LIFE

1 SENTENCE -- OF A LIFE SENTENCE?

2 A. YES, SIR, I THINK I COULD.

3 Q. NOW, COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

4 A. YES, SIR.

5 Q. IT'S POSSIBLE THAT THE JURY MIGHT BE SEQUESTERED FOR
6 SEVERAL DAYS IN THIS CASE, AND YOU WOULD NOT BE ALLOWED TO GO
7 HOME. WE'D PUT YOU UP IN A HOTEL. AND WOULD THAT IMPOSE A
8 TERRIBLE BURDEN ON YOU?

9 A. IT WOULD MAKE MY WIFE HAPPY. NO, SIR. NO, SIR, IT
10 WOULD NOT; I'M RETIRED.

11 Q. HAVE YOU HAD A CHANCE TO GO OVER THAT WITNESS LIST
12 THAT YOU WERE GIVEN WHEN YOU CAME IN?

13 A. YES, SIR, I HAVE.

14 Q. DID YOU READ EVERY NAME ON THAT LIST?

15 A. YES, SIR, I DID.

16 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
17 IS ON THAT LIST?

18 A. NO, SIR.

19 Q. ALL RIGHT, SIR. I'M GOING TO ALLOW THE ATTORNEYS TO
20 ASK YOU SOME FOLLOW-UP QUESTIONS AT THIS TIME, AND THEN I'LL
21 COME BACK AND SPEAK TO YOU AFTERWARDS.

22 A. ALL RIGHT.

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q. MR. LAFOLLETTE, HOW ARE YOU?

1 A. FINE. THANK YOU.

2 Q. I READ THAT YOU HAD SERVED ON A JURY BEFORE.

3 A. YES, SIR. IT WAS ABOUT IN THE MID SEVENTIES BACK IN
4 AUGUSTA COUNTY, VIRGINIA.

5 Q. OKAY. WAS IT A MURDER CASE?

6 A. NO, SIR, IT WAS NOT.

7 Q. OKAY. SO ALL THIS IS KIND OF NEW ABOUT THE DEATH
8 PENALTY AND MURDER AND ALL THAT STUFF.

9 A. YES, SIR.

10 Q. AS FAR AS A JURY IS CONCERNED.

11 A. YES, SIR.

12 Q. MR. LAFOLLETTE, THE JURY IN THIS CASE WOULD TAKE AN
13 OATH AND THEY WOULD TAKE AN OATH OF TRYING THIS CASE AND
14 RETURNING VERDICTS BASED ONLY ON WHAT THEY HEARD IN THE
15 COURTROOM. COULD YOU FOLLOW THAT OATH?

16 A. YES, SIR, I COULD.

17 Q. THE JUDGE WOULD TELL THE JURY IN THE FIRST PART OF
18 THE CASE, THE GUILT-OR-INNOCENCE PART OF IT -- WE CALL THAT
19 THE GUILT PHASE---

20 A. UH-HUH.

21 Q. ---THAT THE JURY SHOULD LISTEN TO EVIDENCE AND
22 RETURN A VERDICT OF GUILTY OR NOT GUILTY, AND THE PENALTY
23 WOULD NO WAY BE INVOLVED IN THAT.

24 A. UH-HUH.

25 Q. THE PENALTY HAS NOTHING TO DO WITH THE FIRST PART.

1 A. RIGHT. YES, SIR.

2 Q. COULD YOU FOLLOW THAT INSTRUCTION?

3 A. YES, SIR.

4 Q. ASSUMING THE JURY HAD FOUND THE DEFENDANT GUILTY,
5 THE JUDGE WOULD TELL THE JURY, "NOW WE'RE GOING TO GO INTO
6 THAT SENTENCING PHASE. DON'T MAKE UP YOUR MIND UNTIL YOU'VE
7 HEARD EVERYTHING." COULD YOU FOLLOW THAT?

8 A. YES, SIR.

9 Q. BECAUSE SOMEONE IS FOUND GUILTY OF MURDER, DO YOU
10 THINK THEY SHOULD ALWAYS GET THE DEATH PENALTY?

11 A. NO, SIR.

12 Q. DO YOU THINK THEY SHOULD ALWAYS GET LIFE?

13 A. NO, SIR.

14 Q. ALL RIGHT, SIR. NOW, THAT SECOND PHASE, WE CALL
15 THAT THE SENTENCING PHASE. THE FIRST PHASE IS OVER WITH; THE
16 DEFENDANT IS FOUND GUILTY. GOING INTO THAT SENTENCING PHASE,
17 THE JUDGE WOULD TELL THE JURY, "NOW, LISTEN TO ALL THE
18 EVIDENCE, THE GOOD AND THE BAD." COULD YOU DO THAT?

19 A. YES, SIR.

20 Q. AND THAT'S WHERE THESE TWO TERMS ABOUT AGGRAVATING
21 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES COME IN.

22 A. UH-HUH.

23 Q. AND, YOU SEE, THE REASON THE LAW SAYS THE JURY
24 SHOULDN'T MAKE UP THEIR MIND AND KEEP IT OPEN IS BECAUSE
25 YOU'VE GOT MORE TESTIMONY TO HEAR. YOU COULD HEAR SOME MORE

1 THINGS ABOUT THE CRIME. YOU COULD HEAR SOME THINGS ABOUT THE
2 DEFENDANT, SOME THINGS BAD ABOUT HIM WHICH WE WOULD SAY
3 SUPPORT AGGRAVATION.

4 A. YES, SIR.

5 Q. SOME THINGS GOOD ABOUT HIM WHICH THEY COULD SAY
6 SUPPORTED MITIGATION, LIFE VERSUS DEATH. WOULD YOU BE
7 WILLING TO LISTEN TO ALL THAT BEFORE YOU DECIDED?

8 A. YES, SIR.

9 Q. AND THE JUDGE WOULD TELL THE JURY AT THE END OF ALL
10 THE EVIDENCE WHAT THE LAW WAS. HE WOULD GIVE THEM STUFF IN
11 WRITING ABOUT WHAT'S AGGRAVATING AND WHAT'S MITIGATING AND
12 TELL THE JURY TO USE THAT IN DELIBERATIONS. WOULD YOU FOLLOW
13 THOSE INSTRUCTIONS?

14 A. YES, SIR.

15 Q. AND THEN AFTER HE TOLD THE JURY WHAT THE LAW WAS,
16 THEN AND ONLY THEN WOULD THE JURY BE ALLOWED TO GO TO THEIR
17 ROOM AND DECIDE WHAT THE SENTENCE SHOULD BE. COULD YOU
18 FOLLOW THAT INSTRUCTION AND NOT MAKE UP YOUR MIND UNTIL HE
19 TOLD YOU TO DO THAT?

20 A. YES, SIR.

21 Q. THEN, MR. LAFOLLETTE, THE JURY MUST DECIDE ON ONE OF
22 TWO VERDICTS: LIFE IMPRISONMENT OR THE DEATH PENALTY. NOW,
23 YOU SAID THAT YOU BELIEVED IN THE DEATH PENALTY AND YOU
24 MENTIONED NUMBER ONE.

25 A. YES, SIR.

1 Q. BUT YOU FELT AT FIRST YOU FELL IN THAT THIRD
2 CATEGORY.

3 A. I FEEL THAT I HAVE AN OPEN MIND, THAT ONCE IT GOT TO
4 THE FACTS AND SO FORTH I'D LEAN TOWARD THE DEATH PENALTY;
5 YES, SIR.

6 Q. IN NUMBER ONE THAT SAYS -- I THINK IT SAYS THAT THE
7 FOLKS IN NUMBER ONE THINK IN A CASE OF MURDER THAT IT SHOULD
8 ALWAYS BE THE DEATH PENALTY. YOU THINK IT SHOULD ALWAYS BE
9 THE DEATH PENALTY?

10 A. NO, SIR.

11 Q. YOU JUST SUPPORT THE DEATH PENALTY.

12 A. YES, SIR.

13 Q. BY THAT -- LET ME ASK YOU THIS: AFTER ALL OF THE
14 TESTIMONY IS IN, THE FIRST PART AND THE SECOND PART, IF YOU
15 THOUGHT LIFE IMPRISONMENT WERE THE APPROPRIATE SENTENCE,
16 COULD YOU SO VOTE FOR LIFE IMPRISONMENT?

17 A. YES, SIR.

18 Q. YOU WOULDN'T KNOW UNTIL YOU'VE HEARD EVERYTHING.

19 A. YES, SIR.

20 Q. IF YOU THOUGHT THE DEATH PENALTY WERE THE
21 APPROPRIATE SENTENCE, COULD YOU SO SIGN YOUR NAME ON A DEATH
22 PENALTY VERDICT?

23 A. YES, SIR.

24 Q. MR. LAFOLLETTE, IN A CASE LIKE THIS IT'S UNUSUAL
25 BECAUSE THERE'S TWO PARTS AND IT'S DIVIDED UP. YOU

1 UNDERSTAND THAT.

2 A. YES, SIR.

3 Q. THE GUILT PART AND THEN THE SENTENCING PART.

4 A. RIGHT.

5 Q. AND THE JUDGE TELLING THE JURY GOING INTO THAT
6 SENTENCING PART TO KEEP AN OPEN MIND, YOU COULD DO THAT.

7 A. YES, SIR.

8 Q. ALL RIGHT, SIR. AND ONLY AFTER YOU'VE HEARD
9 EVERYTHING IN BOTH PARTS COULD YOU MAKE UP YOUR MIND.

10 A. YES, SIR.

11 Q. IS IT FAIR TO SAY THAT PUNISHMENT WOULD DEPEND ON
12 WHAT YOU HEARD IN THIS COURTROOM?

13 A. THE FACTS AND -- YES, SIR.

14 Q. AND YOU WOULDN'T KNOW WHAT THAT WOULD BE UNTIL
15 YOU'VE HEARD EVERYTHING.

16 A. THAT'S CORRECT.

17 Q. IT COULD BE LIFE. IT COULD BE DEATH.

18 A. THAT'S CORRECT.

19 Q. THANK YOU, SIR.

20 A. YES, SIR.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. MR. LAFOLLETTE, GOOD AFTERNOON.

24 A. GOOD AFTERNOON.

25 Q. AGAIN, MY NAME IS CAM LITTLEJOHN, AND I, ALONG WITH

1 LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT
2 HERE.

3 A. YES, SIR.

4 Q. LET ME VERY QUICKLY... CAN YOU -- WOULD YOU MIND
5 TELLING ME WHY YOU THINK YOU LEAN TOWARD BEING THE FIRST TYPE
6 OF JUROR AS INDICATED ON THAT FORM?

7 A. I JUST FEEL WE AS A SOCIETY HAVE BECOME MUCH TOO
8 LENIENT IN OUR PENALTIES AND IN OUR LEGAL SYSTEMS, AND I JUST
9 THINK, YOU KNOW, IF WE LOOK AT WHAT'S TAKING PLACE AROUND THE
10 COUNTRY THAT WE DON'T HAVE THE -- THE PENALTIES DON'T FIT THE
11 CRIMES IN A LOT OF THE CASES AND WE ALWAYS FIND A GOOD REASON
12 FOR SOMEBODY BEING LEFT IN JAIL FOR THE REST OF THEIR LIFE
13 WHEN THEY'VE COMMITTED A HEINOUS CRIME.

14 Q. SO YOU THINK IN MANY CASES THE DEATH PENALTY IS
15 APPROPRIATE.

16 A. YES, SIR.

17 Q. DO YOU THINK IT'S APPROPRIATE IN MOST CASES WHERE
18 SOMEONE'S---

19 A. NO, SIR, NOT IN---

20 Q. ---FOUND GUILTY OF MURDER?

21 A. NOT IN MOST CASES.

22 THE COURT: I HESITATE TO INTERRUPT YOU, BUT I WANT
23 TO MAKE SURE THAT YOU LET HIM FINISH YOUR QUESTION BECAUSE
24 YOU MIGHT NOT HAVE UNDERSTOOD---

25 THE WITNESS: OKAY.

1 THE COURT: ---WHAT HE WAS GOING TO SAY AT THE END
2 OF HIS QUESTION. SO MAKE SURE HE FINISHES HIS QUESTION, AND
3 THEN YOU CAN ANSWER. I'M SORRY FOR INTERRUPTING.

4 MR. LITTLEJOHN: NO PROBLEM.

5 BY MR. LITTLEJOHN:

6 Q. DO YOU THINK THE DEATH PENALTY IS APPROPRIATE IN
7 MOST CASES OF MURDER?

8 A. I'D HAVE TO SAY YES.

9 MR. LITTLEJOHN: OKAY. THAT'S ALL WE HAVE, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT. I'M GOING TO ASK YOU TO STEP
12 OUT IN THE HALL FOR JUST A SECOND, SIR, AND WE'LL BE RIGHT
13 BACK WITH YOU.

14 (JUROR LAFOLLETTE LEAVES THE COURTROOM.)

15 THE COURT: NOW, I'M GOING TO START OFF BY SAYING
16 THAT I'M GOING TO LET YOU CONTINUE QUESTIONING HIM IF YOU
17 WANT TO. THERE ARE -- THERE ARE TWO THINGS THAT HE SAID
18 THAT -- THAT HAVE THE POTENTIAL TO RAISE CONCERN ABOUT HIS
19 QUALIFICATION. WHEN I INITIALLY ASKED HIM, "WHAT TYPE OF
20 JUROR ARE YOU?" HE SAID, "I'M A THREE." SOMETHING LIKE THIS:
21 "I'M A THREE, BUT I LEAN TOWARD A ONE. I'M A DEATH PENALTY
22 ADVOCATE." AND ISN'T THAT WHAT HE SAID? AND THEN WHEN
23 SOLICITOR MYERS WAS QUESTIONING HIM AT ONE POINT HE SAID
24 SOMETHING LIKE, "I'M OPEN-MINDED, BUT I'D LEAN TOWARD THE
25 DEATH PENALTY." THAT'S -- THAT'S WHAT I WROTE DOWN.

1 NOW, YOU NEED TO KEEP GOING BECAUSE THAT DOES NOT --
2 I DON'T THINK EITHER ONE OF THOSE IN AND OF THEMSELVES
3 DISQUALIFY HIM. I DON'T THINK THAT THERE HAS BEEN ENOUGH
4 INQUIRY YET FOR ME TO KNOW WHETHER OR NOT HE'S QUALIFIED.
5 I'M GOING TO ASK HIM SOME MORE QUESTIONS IF YOU'RE NOT---

6 MR. LITTLEJOHN: ALL RIGHT, SIR.

7 THE COURT: ---BUT I'M GOING TO LET YOU KEEP GOING
8 IF YOU WANT TO.

9 MR. LITTLEJOHN: YOUR HONOR, QUITE FRANKLY, I DID
10 NOT HEAR HIM SAY THAT HE WAS A DEATH PENALTY ADVOCATE AND I
11 WAS TRYING TO LISTEN, BUT I DIDN'T CATCH THE END OF HIS
12 STATEMENT.

13 THE COURT: ISN'T THAT WHAT HE SAID?

14 MS. KIMBROUGH: YES.

15 MR. LITTLEJOHN: I'M NOT DISAGREEING. I JUST SAY I
16 DIDN'T HEAR---

17 THE COURT: I JUST WANT TO MAKE SURE I HAVE IT
18 RIGHT. I MEAN, THAT'S -- THAT'S WHAT I HEARD.

19 MR. LITTLEJOHN: WELL, THAT DOES CONCERN ME IF HE --
20 IF HE USED THAT LANGUAGE.

21 THE COURT: I DON'T -- BUT, I MEAN, IT'S OBVIOUSLY
22 SOMETHING THAT WE'RE FOCUSED ON, BUT I DON'T THINK THAT THAT
23 IN AND OF ITSELF DISQUALIFIES HIM FOR -- FROM THE JURY
24 BECAUSE WE DON'T KNOW WHAT HE MEANT BY THAT. HE WENT ON
25 LATER TO EXPLAIN. I MEAN, IT COULD BE THAT IT MEANS HE'S AN

1 ADVOCATE OF THE DEATH PENALTY BEING IMPOSED IN THE PROPER
2 CIRCUMSTANCES WHICH WOULD BE A PERFECTLY LEGITIMATE VIEW FOR
3 THE -- FOR A JUROR TO HAVE, BUT IF HE'S AN ADVOCATE OF THE
4 DEATH PENALTY BEING IMPOSED IN EVERY CIRCUMSTANCE, THEN
5 CLEARLY HE'S NOT QUALIFIED. SO WE'RE GOING TO HAVE TO --
6 THERE'S SOME EXPLORATION YET TO BE DONE HERE.

7 MR. LITTLEJOHN: YES, SIR.

8 THE COURT: BUT I DON'T THINK THAT SIMPLY BECAUSE
9 SOMEBODY LEANS TOWARD OR LEANS AWAY FROM THE DEATH PENALTY
10 DISQUALIFIES THEM AS LONG AS THEY'RE -- AS LONG AS THEY ARE
11 WILLING TO FOLLOW THE INSTRUCTIONS AND CONSIDER BOTH OPTIONS.
12 YOU DON'T HAVE TO ASK ANY MORE QUESTIONS, BUT -- BUT I'M
13 GOING TO ALLOW YOU TO IF YOU CHOOSE TO.

14 MR. LITTLEJOHN: ALL RIGHT, SIR.

15 THE COURT: DO YOU -- DO YOU WANT TO?

16 MR. LITTLEJOHN: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. BRING HIM BACK IN.

18 (JUROR LAFOLLETTE IS BROUGHT INTO THE COURTROOM.)

19 CROSS-EXAMINATION RESUMED

20 BY MR. LITTLEJOHN:

21 Q. MR. LAFOLLETTE, I DIDN'T CATCH SOMETHING THAT YOU
22 INDICATED TO JUDGE FEW WHEN HE WAS ASKING YOU EARLIER
23 QUESTIONS. DID YOU INDICATE THAT YOU WERE A DEATH PENALTY
24 ADVOCATE?

25 A. YES, SIR.

1 Q. YOU USED THAT TERM?

2 A. YES, SIR, I DID.

3 Q. CAN YOU EXPLAIN TO ME HOW YOU ARE AN ADVOCATE? I
4 MEAN, DO YOU TALK TO FRIENDS OR COWORKERS OR... I KNOW
5 YOU'RE RETIRED BUT...

6 A. NO. I DON'T GO OUT AND SOLICIT THE DEATH PENALTY,
7 BUT I GUESS I FAVOR THE DEATH PENALTY WHEN IT COMES TO THE --
8 IF THE FACTS ARE THERE AND SO FORTH THAT SAYS THIS PERSON
9 ACTUALLY COMMITTED THIS CRIME, A HEINOUS CRIME, THEN I WOULD
10 PREFER THE DEATH PENALTY. SO THAT'S -- SO THAT'S WHERE I'M
11 COMING FROM.

12 Q. ALL RIGHT.

13 A. YEAH, I DON'T -- NO, I DON'T GO OUT ON THE STREET
14 PROMOTING THE DEATH PENALTY. NO, SIR.

15 Q. I UNDERSTAND, BUT IN YOUR VIEW IF A PERSON COMMITTED
16 WHAT YOU CALL A HEINOUS CRIME OR MURDER, YOU THINK THEY
17 SHOULD BE GIVEN THE DEATH PENALTY?

18 A. NOT IN ALL CASES. I AGAIN STATE WHAT I DID BEFORE
19 THAT I THINK I'VE GOT TO LOOK AT IT WITH AN OPEN MIND, BUT
20 ONCE THE FACTS ARE IN THERE, THEN I WOULD LEAN TOWARD THE
21 DEATH PENALTY VERSUS LIFE IN PRISON.

22 Q. OKAY. DO YOU THINK YOUR LEANING TOWARD THE DEATH
23 PENALTY WOULD AFFECT YOUR ABILITY TO LISTEN TO EVIDENCE IN
24 MITIGATION---

25 A. NO, SIR, I DO NOT.

1 Q. ---OR THINGS THAT THE DEFENSE MIGHT PRESENT?

2 A. NO, SIR, I DO NOT.

3 Q. OKAY. DO YOU THINK THAT WOULD COLOR YOUR VIEW OF
4 THOSE THINGS?

5 A. NO, SIR.

6 Q. CAN YOU ENVISION CIRCUMSTANCES WHERE SOMEONE IS
7 CONVICTED OF MURDER WHERE THEY SHOULD RECEIVE A LIFE
8 SENTENCE?

9 A. YES, SIR.

10 Q. AND WHAT SORT OF THINGS WOULD---

11 MR. MYERS: NO, SIR. NOW, HE DOESN'T -- NO. NO.
12 HE CAN'T ASK TO GIVE EXAMPLES. THAT'S NOT PROPER AT ALL.
13 STATE VERSUS MARTIN (PHONETIC) SAID THAT A LONG TIME AGO.

14 MR. LITTLEJOHN: I'LL WITHDRAW THE QUESTION, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT, SIR.

17 MR. LITTLEJOHN: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR. I'M GOING TO ASK YOU TO
19 STEP OUT IN THE HALL ONE MORE TIME.

20 THE WITNESS: ALL RIGHT. YES, SIR.

21 (JUROR LAFOLLETTE LEAVES THE COURTROOM.)

22 THE COURT: ALL RIGHT. THIS IS KIND OF LIKE THE
23 JUROR FROM -- MR. SANDERS FROM STATE VERSUS SINGLETON. I'VE
24 GOT A MEMO HERE THAT I -- AND I DON'T REMEMBER DOING THIS,
25 BUT I'VE GOT A MEMO IN WHICH I NOTE THAT I DON'T THINK

1 SINGLETON IS GOOD LAW IN LIGHT OF MORGAN VERSUS ILLINOIS
2 WHICH CAME OUT AFTERWARDS. SO I'M -- I'M -- I AM -- I GUESS
3 I'M GOING TO SIT BACK AND UNCHARACTERISTICALLY LISTEN TO YOU
4 ALL MAKE ARGUMENTS ABOUT THIS JUROR.

5 MR. MYERS: YOUR HONOR, IN STATE VERSUS SMITH, 334
6 SOUTHEASTERN SECOND 277, 1985, WHICH WAS AFTER SINGLETON, THE
7 JUROR WAS QUALIFIED WHERE HE STATED HE WAS FOR THE DEATH
8 PENALTY AND---

9 THE COURT: WHAT WAS THE CITATION?

10 MR. MYERS: 334 SOUTHEASTERN SECOND 277.

11 THE COURT: THAT'S 1985?

12 MR. MYERS: YES, SIR.

13 THE COURT: WELL, DO Y'ALL HAVE A COPY OF MORGAN
14 VERSUS ILLINOIS? DO I HAVE THAT IN THIS BOOK?

15 MR. MYERS: YES, SIR. MORGAN VERSUS ILLINOIS WAS A
16 CASE WHERE THE JUDGE DIDN'T ASK A JUROR WHETHER THEY WOULD
17 AUTOMATICALLY VOTE FOR THE DEATH PENALTY AND THAT YOU COULD
18 ASK ABOUT GENERAL MITIGATING FACTORS; THAT'S ALL WE HAVE.
19 YOU COULDN'T ASK ABOUT SPECIFIC MITIGATING FACTORS. STATE
20 VERSUS BUTLER WAS ANOTHER ONE WHERE THE JUROR WHO FAVORED THE
21 DEATH PENALTY WAS QUALIFIED WHEN HE STATED HE WOULD VOTE FOR
22 LIFE IMPRISONMENT IF IT WERE WARRANTED.

23 STATE VERSUS ATKINS, 399, 760, 1990. ATKINS
24 CHALLENGED THE JUDGE'S QUALIFICATION OF FOUR JURORS WHO
25 CONTENDED THAT THEY WERE FOR THE DEATH PENALTY. THE SUPREME

1 COURT SAID THAT THE JUDGE WAS RIGHT BECAUSE DURING THE VOIR
2 DIRE THE JURORS REVEALED THAT THEY ALL COULD, DEPENDING UPON
3 THE EVIDENCE, PRESENT A RECOMMENDATION FOR A LIFE SENTENCE
4 WHICH IS WHAT THIS GUY SAID. HE JUST SAID A LITTLE WHILE AGO
5 THE DEATH PENALTY ISN'T FOR ALL CASES EVEN THOUGH HE FAVORS
6 IT.

7 THE COURT: ALL RIGHT. ARE YOU AWARE OF ANY -- OF
8 ANY AUTHORITY? I MEAN, I THINK I UNDERSTAND WHAT THE GUY
9 SAID AND WHAT THE GUY'S SITUATION IS, BUT ARE YOU AWARE OF
10 ANY AUTHORITY THAT WOULD RELATE TO THIS PARTICULAR JUROR?

11 MS. KIMBROUGH: NO, YOUR HONOR. THE ONLY THING WE
12 WOULD POINT OUT IS THE FACT THAT MORGAN VERSUS ILLINOIS
13 ESTABLISHES THE FEDERAL STANDARD WHEREAS THE STATES, AS WE
14 ALL KNOW, ARE ALLOWED TO PROVIDE GREATER PROTECTION OR
15 SLIGHTLY DIFFERENT STANDARDS, PROVIDED THEY DON'T FALL BELOW
16 THE FEDERAL CONSTITUTIONAL STANDARDS. SO WE THINK THAT STATE
17 VERSUS SINGLETON WOULD NOT AUTOMATICALLY BE OVERRULED BY
18 MORGAN VERSUS ILLINOIS UNLESS OUR SUPREME COURT SPECIFICALLY
19 SAYS WE'RE ADOPTING THAT STANDARD AND ABANDONING THE OTHER.

20 MR. MYERS: I'VE GOT CASES OUT OF -- MORGAN VERSUS
21 ILLINOIS WAS DECIDED IN 1992, AND THAT CASE IS USUALLY CITED
22 BY DEFENSE ATTORNEYS WHEN THEY TRY TO GET INTO SPECIFIC
23 MITIGATING QUESTIONS. AS A MATTER OF FACT, IN STATE VERSUS
24 HILL IN '98 THEY TALKED ABOUT THAT AND---

25 THE COURT: ALL RIGHT. WELL, I TELL YOU WHAT. I

1 THINK THAT -- I THINK THAT I AM READY TO RULE ON THIS JUROR.
2 I THINK HE'S QUALIFIED. I WILL -- AND I THINK IT BOILS DOWN
3 SIMPLY TO THIS: I MEAN, YOU HAVE A JUROR WHO BELIEVES IN THE
4 DEATH PENALTY. HE HAS -- HE IS LIKE A LOT OF THE JURORS THAT
5 WE SEE GO OUT OF THEIR WAY TO BE HONEST WITH THE COURT ABOUT
6 WHAT THEIR FEELINGS ARE BECAUSE THEY KNOW THAT'S WHAT WE'RE
7 ASKING ABOUT, AND HE HAS TOLD US THAT HE'S A DEATH PENALTY
8 ADVOCATE.

9 HE HAS EXPLAINED THAT TO MEAN THAT UNDER THE RIGHT
10 CIRCUMSTANCES HE BELIEVES THE DEATH PENALTY SHOULD BE
11 IMPOSED. YOU ASKED HIM -- YOU ASKED HIM WOULDN'T HE IMPOSE
12 THE DEATH PENALTY MOST OF THE TIME? AND HE -- DIDN'T HE SAY
13 YES?

14 MR. LITTLEJOHN: I BELIEVE THAT'S CORRECT, YOUR
15 HONOR.

16 THE COURT: I MEAN, IS THERE ANYTHING WRONG WITH
17 THAT?

18 MS. KIMBROUGH: YOUR HONOR, WE BELIEVE IT SHIFTS THE
19 BURDEN TO MR. MERCER TO PROVE THAT HE SHOULDN'T GET DEATH.

20 THE COURT: NO, THAT DOESN'T SHIFT THE BURDEN, BUT
21 IT -- THE QUESTION IS WHETHER OR NOT THE DEFENDANT -- THE
22 JUROR IS WILLING TO CONSIDER BOTH OPTIONS AND FOLLOW MY
23 INSTRUCTIONS. I MEAN, YOU KNOW, WE'RE GOING TO HAVE PROBABLY
24 A LOT MORE JURORS WHO ARE QUALIFIED WHO SAY, "MOST OF THE
25 TIME I'M GOING TO VOTE FOR LIFE," AND I DON'T -- Y'ALL

1 WOULDN'T ARGUE THAT THAT MEANT THAT JUROR WAS DISQUALIFIED, I
2 FEEL SURE.

3 MS. KIMBROUGH: NO, AND I HAVEN'T HEARD TOO MANY WHO
4 HAVE SAID THAT BUT...

5 THE COURT: ALL RIGHT. WELL, I'M GOING TO -- I'M
6 GOING TO TENTATIVELY RULE THAT THIS JUROR IS QUALIFIED, AND I
7 WILL CONTINUE TO REFLECT ON IT.

8 MR. MYERS: CAN I GIVE YOU ONE MORE CASE?

9 THE COURT: I WANT YOU TO GIVE ME ALL... I'VE GOT
10 STATE VERSUS SMITH AND ATKINS, AND I WANT YOU TO GIVE ME THE
11 CITATIONS FOR THOSE.

12 MR. MYERS: ATKINS IS 399 SOUTHEASTERN SECOND 760.
13 IT'S A 1990 CASE.

14 THE COURT: UH-HUH.

15 MR. MYERS: AND THEN STATE VERSUS GEORGE, 476
16 SOUTHEAST SECOND 903. IT'S A 1996 CASE.

17 THE COURT: I GOT GEORGE RIGHT OVER THERE. ISN'T
18 THAT IN THAT NOTEBOOK?

19 MR. MYERS: GEORGE WAS -- THERE WAS TWO OF THEM.
20 THIS WAS THE '96 GEORGE.

21 THE COURT: MAYBE IT'S OVER HERE. OKAY. ALL RIGHT.

22 MR. MYERS: YOU CAN THROW STATE VERSUS BUTLER IN
23 THERE IF YOU WANT TO ALSO. THAT'S 290 SOUTHEASTERN SECOND 1.

24 THE COURT: ONE? PAGE 1?

25 MR. MYERS: PAGE 1.

1 THE COURT: OKAY.

2 MR. MYERS: I'LL MAKE SOME COPIES OF THESE CITES FOR
3 YOU.

4 THE COURT: ALL RIGHT. LET'S TAKE A SHORT BREAK.
5 I'M GOING TO -- I'M GOING TO MAKE SOME NOTES ABOUT THIS
6 BEFORE WE MOVE FORWARD SO I DON'T LOSE MY TRAIN OF THOUGHT,
7 AND THEN WE'LL RESUME WITH THE NEXT JUROR.

8 BAILIFF: YOUR HONOR, WHAT ABOUT THIS JUROR OUT
9 HERE? DO YOU WANT ME TO PUT HIM BACK IN THE JURY ROOM?

10 THE COURT: MR. LAFOLLETTE? I'LL GET TO HIM IN JUST
11 A SECOND.

12 BAILIFF: I'LL JUST HAVE HIM WAIT OUT HERE.

13 THE COURT: YEAH.

14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

15 THE COURT: BE SEATED, PLEASE. IN TERMS OF THIS
16 LAST JUROR, MR. LAFOLLETTE, IS IT -- THIS IS MY IMPRESSION AS
17 TO WHAT THE EVIDENCE IS, AND Y'ALL TELL ME IF I'M MISTAKEN.
18 EVERYTHING HE SAID WOULD INDICATE THAT HE'S A QUALIFIED JUROR
19 FOR THREE COMMENTS, AND I'M NOT CHARACTERIZING THOSE COMMENTS
20 AS WHETHER THEY MEAN HE'S QUALIFIED OR MEAN HE'S NOT, BUT
21 THESE ARE THE THREE COMMENTS THAT WE'RE FOCUSED ON.

22 FIRST, HE SAID THAT -- WHEN I WAS TALKING TO HIM, HE
23 SAID THAT HE WAS A DEATH PENALTY ADVOCATE. SECOND, HE SAID
24 -- WHEN HE WAS RESPONDING TO QUESTIONS BY SOLICITOR MYERS, HE
25 SAID, "I'D LEAN TOWARD THE DEATH PENALTY," AND THIRD HE SAID

1 IN RESPONSE TO QUESTIONS THAT MR. LITTLEJOHN WAS ASKING HIM
2 -- AFTER WE TOOK THE INITIAL BREAK, HE SAID SOMETHING ALONG
3 THE LINES OF, "MOST OF THE TIME I WOULD VOTE TO IMPOSE THE
4 DEATH PENALTY."

5 THOSE ARE THE THREE THINGS THAT WE'RE FOCUSED ON,
6 THAT I SHOULD BE FOCUSED ON, IN DECIDING WHETHER OR NOT HE'S
7 A QUALIFIED JUROR. IN MY VIEW EVERYTHING ELSE HE SAID
8 INDICATED THAT HE WOULD CONSIDER -- THAT HE WOULD CONSIDER
9 BOTH OPTIONS AND HE WOULD FOLLOW MY INSTRUCTIONS AS TO WHAT
10 -- AS TO THE LAW. DOES ANYBODY THINK I'M INCORRECT ABOUT
11 THAT?

12 MR. LITTLEJOHN: NO, YOUR HONOR.

13 MR. GRAHAM: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. I'M GOING TO BRING HIM BACK
15 IN HERE AND TELL HIM THAT WE WILL LET HIM KNOW WHETHER OR NOT
16 HE IS GOING TO BE QUALIFIED AS A JUROR AND -- OR MAYBE I
17 SHOULD JUST GO AHEAD AND TELL HIM THAT HE'S QUALIFIED, AND
18 THEN IF I CHANGE MY MIND I CAN TAKE HIM OUT OF THE PANEL.
19 THERE'S NO PREJUDICE TO THAT, IS THERE?

20 MR. LITTLEJOHN: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. BRING HIM IN.

22 (JUROR LAFOLLETTE IS BROUGHT INTO THE COURTROOM.)

23 THE COURT: MR. LAFOLLETTE, I APPRECIATE YOUR
24 PATIENCE. YOU ARE QUALIFIED TO SERVE AS A JUROR IN THIS
25 CASE. THAT DOES NOT MEAN THAT YOU'RE ON THE JURY. IT JUST

1 MEANS THAT YOU'RE ELIGIBLE TO BE ON THE JURY.

2 THE WITNESS: RIGHT.

3 THE COURT: YOU'RE FINISHED FOR THE WEEK. THE NEXT
4 TIME WE WILL NEED YOU WILL BE MONDAY MORNING. I WOULD LIKE
5 FOR YOU TO CALL THE TELEPHONE NUMBER ON SUNDAY NIGHT AFTER
6 6:00. CALL THAT TELEPHONE NUMBER THAT'S -- THAT'S ON THAT
7 PINK SHEET, AND ON THAT RECORDED MESSAGE ON THAT LINE THERE
8 WILL BE DETAILED INSTRUCTIONS ABOUT WHEN YOU WILL BE NEEDED
9 ON MONDAY AND WHETHER OR NOT YOU WILL NEED TO BRING YOUR
10 CLOTHES AND YOUR PERSONAL ITEMS SINCE THE JURY MIGHT BE
11 SEQUESTERED.

12 THE WITNESS: RIGHT.

13 THE COURT: UNTIL THEN, PLEASE -- WELL, YOU MAY NOT
14 - IT'S NOT PLEASE - BUT YOU MAY NOT DISCUSS THIS CASE WITH
15 ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE WITH
16 YOU. PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE
17 EXPOSED TO ANY PRESS COVERAGE CONCERNING THIS CASE. ENJOY
18 THE REST OF YOUR WEEK AND WE'LL SEE YOU ON MONDAY.

19 THE WITNESS: YES, SIR. THANK YOU.

20 (JUROR LAFOLLETTE LEAVES THE COURTROOM.)

21 THE COURT: I'M READY. MA'AM?

22 MS. KIMBROUGH: ONE -- ONE QUICK THING, YOUR HONOR.
23 ARE YOU RESERVING -- I JUST WANT TO MAKE SURE I UNDERSTAND.
24 YOU'RE RESERVING YOUR RULING ON WHETHER MR. LAFOLLETTE IS
25 QUALIFIED UNTIL A LATER DATE OR HE'S QUALIFIED UNLESS YOU

1 CHANGE YOUR MIND?

2 THE COURT: IT DOESN'T MAKE ANY DIFFERENCE TO ME.
3 EITHER WAY I CAN CHANGE MY MIND UP UNTIL THE TIME WE STRIKE
4 THE JURY.

5 MS. KIMBROUGH: OKAY.

6 THE COURT: I THINK HE'S QUALIFIED. I DON'T THINK
7 THAT THOSE THREE STATEMENTS CHANGE THE OTHER EVIDENCE THAT HE
8 GAVE THAT HE IS -- HIS VIEWS ON THE DEATH PENALTY, AND I
9 BELIEVE THAT HIS VIEWS ON THE DEATH PENALTY WOULD NOT
10 SUBSTANTIALLY INTERFERE WITH HIS ABILITY TO CARRY OUT MY
11 INSTRUCTIONS AND FOLLOW MY INSTRUCTIONS IN -- AS A JUROR IN
12 THE CASE. SO I DON'T THINK -- I THINK HE'S QUALIFIED, BUT
13 I'M GOING TO CONTINUE TO THINK ABOUT IT. I'VE GOT THESE
14 CASES I WANT TO READ, AND I WILL BE -- ANYTHING YOU WANT TO
15 ADD LATER IN THE WEEK YOU CERTAINLY CAN. WE CAN -- YOU
16 CAN -- ANYTHING YOU'D WANT TO SHARE WITH ME THAT YOU THINK
17 WILL HELP ME MAKE THE RIGHT DECISION, I WELCOME IT.

18 MS. KIMBROUGH: YOUR HONOR, THERE'S JUST ONE THING I
19 WANT TO PUT ON THE RECORD SO I DON'T FORGET LATER ON. IF I
20 COULD DO THAT VERY QUICKLY, IT'LL TAKE THREE MINUTES. WE
21 JUST SIMPLY MAINTAIN THAT HIS LEANING TOWARDS THE DEATH
22 PENALTY WOULD SEEM TO SHIFT THE BURDEN TO MR. MERCER TO PROVE
23 THAT HE'S NOT AMONG THE MOST CASES OF MURDER WHERE THIS MAN
24 WOULD FAVOR DEATH. WE THINK IN SAYING MOST CASES THAT MEANS
25 ESSENTIALLY THAT HE'S GOING TO WANT TO SEE SOMETHING FROM MR.

1 MERCER IN ORDER TO DISTINGUISH HIM FROM THE HERD OF POTENTIAL
2 MURDER CASES THAT ARE OUT THERE, AND WE BELIEVE THAT THAT IS,
3 IN FACT, IN CONFLICT WITH HIS ROLE OR HIS DUTY AS A JUROR
4 WHICH IS TO NOT HOLD MR. MERCER TO ANY BURDEN OF PROOF WHEN
5 IT COMES TO PENALTY.

6 PENALTY -- A LIFE PENALTY CAN BE GIVEN FOR ANY
7 REASON OR NO REASON. I MEAN, AND THAT'S -- YOU KNOW, THAT'S
8 THE LAW, AND WE THINK THAT UNFORTUNATELY -- GIVEN HIS VIEW OF
9 MOST CASES BEING DESERVING OF THE DEATH PENALTY, WE SUSPECT
10 THAT THAT WILL OR BELIEVE THAT IT WILL SUBSTANTIALLY IMPAIR
11 HIS ABILITY TO GIVE MR. MERCER A FAIR SENTENCING TRIAL AND
12 THAT'S OUR -- THANK YOU.

13 THE COURT: THANK YOU. BRING IN THE NEXT JUROR,
14 PLEASE.

15 (JUROR KATHRYN SMITH IS BROUGHT INTO THE COURTROOM.)

16 KATHRYN SMITH, HAVING BEEN PREVIOUSLY SWORN AS
17 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
18 TESTIFIED AS FOLLOWS:

19 EXAMINATION BY THE COURT

20 Q. GOOD AFTERNOON, MS. SMITH.

21 A. HI. GOOD AFTERNOON.

22 Q. YOU RECALL YESTERDAY THAT YOU WERE PUT UNDER OATH,
23 AND I WANT YOU TO UNDERSTAND YOU'RE STILL UNDER OATH TODAY.

24 A. UH-HUH.

25 Q. DO YOU UNDERSTAND?

1 A. YES, I DO.

2 Q. SINCE YESTERDAY WHEN YOU LEFT US, HAVE YOU DISCUSSED
3 THIS CASE WITH ANYONE OR HAS ANYONE TRIED TO TALK TO YOU
4 ABOUT THIS CASE?

5 A. NO, SIR.

6 Q. MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN
7 I THINK THE LAWYERS WILL HAVE SOME FOLLOW-UP QUESTIONS THAT
8 THEY WILL WANT TO ASK YOU. WE'RE NOT TRYING TO PRY TOO DEEP
9 INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE
10 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS TO THE
11 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND
12 THEN TO BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL
13 AND WHAT YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
14 DISCUSSING.

15 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
16 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND,
17 SETTING ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED
18 ABOUT THIS CASE BEFORE THE TRIAL BEGAN, RENDER A VERDICT THAT
19 IS BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU
20 WOULD HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

21 A. YES, SIR, 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 WILL GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
4 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE
5 STATE HAS MET ITS BURDEN OF PROOF?

6 A. YES, I DO.

7 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
8 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
9 THE SECOND PHASE OR THE PENALTY PHASE OF THIS TRIAL, AND
10 THERE ARE SEVERAL THINGS THAT WOULD COME UP IN THAT PHASE
11 THAT I'M GOING TO TALK TO YOU ABOUT RIGHT NOW. AGGRAVATING
12 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
13 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
14 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
15 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
16 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, AND
20 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
21 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
22 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
23 CIRCUMSTANCES?

24 A. YES, I DO.

25 Q. MA'AM, WHEN YOU REPORTED THIS AFTERNOON, YOU WERE

1 GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT
2 TYPES OF JURORS. DID YOU GET A CHANCE TO GO OVER THAT SHEET?

3 A.. YES.

4 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

5 A. YES, I DO.

6 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
7 YOU ARE?

8 A. THE FIRST ONE.

9 Q. THE FIRST ONE?

10 A. UH-HUH.

11 Q. NOW, THE FIRST TYPE OF JUROR IS ONE WHO WOULD ALWAYS
12 IMPOSE THE DEATH PENALTY ANY TIME THERE'S A CONVICTION FOR
13 MURDER. IS THAT WHAT YOU WOULD DO?

14 A. YES.

15 Q. DO YOU -- DO YOU FORESEE ANY CIRCUMSTANCE IN WHICH
16 YOU MIGHT BE WILLING TO CONSIDER IMPOSING A LIFE SENTENCE FOR
17 SOMEONE WHO IS CONVICTED OF MURDER?

18 A. NO.

19 THE COURT: OKAY. ANY FOLLOW-UP QUESTIONS?

20 MR. MYERS: NO, SIR.

21 MR. LITTLEJOHN: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT, MA'AM. WE WILL NOT BE
23 NEEDING YOU AS A JUROR IN THIS CASE, AND SO YOUR SERVICE IS
24 COMPLETE. YOU'RE FREE TO GO. WE THANK YOU FOR YOUR TIME.

25 THE WITNESS: THANK YOU. DO YOU NEED THESE BACK?

1 THE COURT: YES, MA'AM. THE BAILIFF WILL TAKE THEM
2 FROM YOU.

3 THE WITNESS: OKAY. THANK YOU.

4 (JUROR SMITH LEAVES THE COURTROOM.)

5 THE COURT: BRING HIM IN.

6 BAILIFF: HE'S WALKING UP THE HALL, YOUR HONOR.

7 (JUROR MICHAEL WATKINS IS BROUGHT INTO THE
8 COURTROOM.)

9 MICHAEL WATKINS, HAVING BEEN PREVIOUSLY SWORN
10 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
11 TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT

13 Q. HOW ARE YOU?

14 A. I'M FINE, SIR. HOW ARE YOU?

15 Q. GOOD. I'M FINE. MR. WATKINS, YESTERDAY YOU WERE
16 PUT UNDER OATH, AND YOU'RE STILL UNDER OATH TODAY. DO YOU
17 UNDERSTAND THAT?

18 A. YES, I DO.

19 Q. ALL RIGHT, SIR. SINCE YESTERDAY WHEN YOU LEFT US,
20 HAVE YOU TALKED TO ANYBODY ABOUT THIS CASE OR HAS ANYBODY
21 TRIED TO TALK TO YOU ABOUT THIS CASE?

22 A. JUST SOME FOLKS AT WORK ASKED, YOU KNOW, WHY I WAS
23 OUT BUT DID NOT GET INTO A DETAILED DISCUSSION ON THIS, NO.

24 Q. DID YOU -- WHAT DID YOU TELL THEM?

25 A. I JUST TOLD THEM I HAD JURY DUTY ON A CASE THAT WAS

1 -- IT WAS A MURDER CASE. I DID SAY THAT BUT NO MORE
2 INFORMATION OTHER THAN I COULDN'T TALK ABOUT IT.

3 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU SOME
4 QUESTIONS. NOW, WAIT A MINUTE. LET ME BACK UP. WHEN YOU
5 SAID THAT, DID ANYBODY SAY ANYTHING TO YOU?

6 A. WELL, THEY ASKED ME FOR MORE DETAILS, AND I JUST
7 TOLD THEM I COULDN'T TALK ABOUT IT AT THAT POINT.

8 Q. DID ANYBODY TELL YOU ANYTHING OTHER THAN ASKING YOU
9 QUESTIONS?

10 A. NO.

11 Q. SIR?

12 A. NO.

13 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THE
14 LAWYERS WILL PROBABLY HAVE SOME FOLLOW-UP QUESTIONS FOR YOU.
15 WE DON'T MEAN TO GET TOO DEEP INTO YOUR PERSONAL LIFE, BUT WE
16 DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NO RIGHT OR
17 WRONG ANSWERS TO THE QUESTIONS. WE JUST WANT YOU TO LISTEN
18 VERY CAREFULLY AND TO BE OPEN AND HONEST WITH US AND TELL US
19 HOW YOU FEEL AND WHAT YOU THINK ABOUT THESE ISSUES THAT WE'LL
20 BE DISCUSSING.

21 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
22 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
23 ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED ABOUT THE
24 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT'S
25 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD

1 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

2 A. YES.

3 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
4 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
5 REASONABLE DOUBT?

6 A. YES, I DO.

7 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
8 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
9 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
10 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE
11 STATE HAS MET ITS BURDEN OF PROOF?

12 A. YES, I COULD.

13 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
14 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
15 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
16 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
17 COME UP DURING THAT PHASE IF WE GET THERE. AGGRAVATING
18 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
19 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
20 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
21 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
22 RESULTING FROM THE CRIME.

23 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
24 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
25 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY

1 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
2 CULPABILITY OF THE CRIME. DO YOU UNDERSTAND THE CONCEPT OF
3 AN AGGRAVATING AND A MITIGATING CIRCUMSTANCE?

4 A. YES, I DO.

5 Q. WHEN YOU CAME IN THIS AFTERNOON, SIR, YOU WERE GIVEN
6 A COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF
7 JURORS. DID YOU GET A CHANCE TO GO OVER THAT SHEET?

8 A. I DID.

9 Q. DO YOU UNDERSTAND THE THREE DIFFERENT TYPES OF
10 JURORS?

11 A. YES, I DO.

12 Q. WHICH OF THOSE TYPES OF JURORS DO YOU BELIEVE YOU
13 ARE?

14 A. PROBABLY NUMBER ONE.

15 Q. DO YOU FORESEE -- NOW, WHAT NUMBER ONE IS IS
16 SOMEBODY THAT WOULD ALWAYS IMPOSE THE DEATH PENALTY FOR A
17 CONVICTION FOR MURDER. IS THAT WHAT YOU BELIEVE?

18 A. WELL, YOU WOULD HAVE TO HAVE MITIGATING
19 CIRCUMSTANCES, YES.

20 Q. IF THERE WERE MITIGATING CIRCUMSTANCES, WOULD YOU BE
21 WILLING TO CONSIDER THOSE MITIGATING CIRCUMSTANCES, AND IF
22 YOU FOUND IT TO BE APPROPRIATE, WOULD YOU VOTE TO IMPOSE A
23 LIFE SENTENCE?

24 A. IF -- YES, IF -- I COULD, YES.

25 Q. IF YOU WERE A JUROR IN THIS CASE AND IF THE JURY

1 FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
2 SENTENCING PHASE OF THE TRIAL. NOW, FIRST OF ALL, I WANT YOU
3 TO UNDERSTAND THAT MURDER IS DEFINED AS THE INTENTIONAL AND
4 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
5 IN THE SENTENCING PHASE IT WOULD BE UP TO THE JURY TO DECIDE
6 WHAT THE PUNISHMENT SHOULD BE FOR THE CRIME OF MURDER, AND
7 THERE WOULD BE TWO OPTIONS. THE FIRST OPTION IS A LIFE
8 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE. THE SECOND
9 OPTION IS THE DEATH PENALTY. NOW, DEPENDING ON WHAT YOU
10 FOUND THE CIRCUMSTANCES TO BE IN THE CASE, COULD YOU VOTE TO
11 IMPOSE A VERDICT FOR A LIFE SENTENCE?

12 A. YES, I COULD.

13 Q. COULD YOU VOTE TO IMPOSE A VERDICT FOR THE DEATH
14 PENALTY?

15 A. YES, I COULD.

16 Q. IT'S POSSIBLE THAT THE JURY IN THIS CASE MIGHT BE
17 SEQUESTERED, AND IN THAT EVENT YOU WOULD BE -- YOU WOULD BE
18 REQUIRED TO STAY IN A HOTEL WITH US FOR FIVE OR SIX DAYS
19 UNTIL THE TRIAL WAS OVER. YOU WOULD BE FED YOUR MEALS, AND
20 YOU WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
21 TERRIBLE BURDEN ON YOU?

22 A. IT WOULD FOR WORK PURPOSES BUT NOT FOR FAMILY, NO.

23 Q. ALL RIGHT. NOW, FROM A STANDPOINT OF WORK, IT'S
24 PROBABLY NOT GOING TO MAKE ANY DIFFERENCE WHETHER THE JURY IS
25 SEQUESTERED OR NOT. YOU'RE STILL NOT GOING TO HAVE ANY TIME

1 TO GO TO WORK BECAUSE WE'RE GOING TO BE WORKING LONG DAYS.

2 A. YEAH, I UNDERSTAND THAT.

3 Q. ALL RIGHT. SO DID YOU GET A CHANCE TO GO OVER THIS
4 WITNESS LIST THAT YOU WERE GIVEN?

5 A. YES, I DID.

6 Q. HAVE YOU READ EVERY NAME ON THAT LIST?

7 A. YES, I HAVE.

8 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME
9 APPEARS ON THAT LIST?

10 A. NO, I AM NOT AND I DO NOT KNOW ANYBODY ON THAT LIST.

11 THE COURT: ALL RIGHT. THANK YOU. THE LAWYERS ARE
12 GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS AT THIS TIME, AND
13 THEN I'LL COME BACK AND SPEAK TO YOU AFTERWARDS.

14 DIRECT EXAMINATION

15 BY MR. MYERS:

16 Q. MR. WATKINS, HAVE YOU EVER SERVED ON A JURY BEFORE?

17 A. NO, SIR, I HAVE NOT.

18 Q. OKAY. MR. WATKINS, THIS CASE COULD BE IN TWO PARTS,
19 AND WE KIND OF DIVIDE THEM UP. THE FIRST PART WOULD BE LIKE
20 ANY CRIMINAL CASE. THAT'S THE GUILT PHASE WHERE THE JURY
21 WOULD HEAR EVIDENCE AND RETURN A VERDICT OF GUILTY OR NOT
22 GUILTY. YOU UNDERSTAND THAT.

23 A. YES, I DO.

24 Q. LET'S ASSUME THAT THERE'S A GUILTY VERDICT OF MURDER
25 IN THIS CASE. THEN WE'D HAVE TO GO INTO THE SECOND PART.

1 THE SECOND PART WE CALL THE SENTENCING PHASE; THAT'S
2 SOMETHING NEW. USUALLY THE JUDGE HANDS DOWN THE SENTENCE,
3 BUT IN THIS CASE THE JURY WOULD HAND DOWN THE SENTENCE. DO
4 YOU UNDERSTAND THAT?

5 A. I DO NOW.

6 Q. THAT'S WHY WE -- YOU DIDN'T KNOW THAT UNTIL NOW.

7 A. NO, I DID NOT KNOW THAT BEFORE.

8 Q. THAT'S WHY WE HAVE TO ASK YOU ABOUT THESE DIFFERENT
9 TERMS AND EVERYTHING. IF THE JURY FOUND THE DEFENDANT GUILTY
10 OF MURDER, THE JUDGE WOULD TELL THE JURY, "NOW, WE'RE GOING
11 INTO THE SENTENCING PHASE. DON'T MAKE UP YOUR MIND UNTIL
12 YOU'VE HEARD EVERYTHING IN THAT SENTENCING PHASE." COULD YOU
13 DO THAT?

14 A. I COULD.

15 Q. THAT SENTENCING PHASE IS TO TELL THE JURY ABOUT SOME
16 ADDITIONAL THINGS. THERE COULD BE ADDITIONAL EVIDENCE ABOUT
17 THE CRIME. IT COULD BE ADDITIONAL EVIDENCE ABOUT THE
18 DEFENDANT, GOOD THINGS ABOUT HIM, BAD THINGS ABOUT HIM, SO
19 THE JURY AT THE END WOULD HAVE AS MUCH AS WE COULD GIVE TO
20 YOU - THE CRIME BEING INVOLVED, THE PERSON WHO COMMITTED IT,
21 SOMETHING ABOUT THE PERSON - SO THEY'LL KNOW WHAT THE RIGHT
22 SENTENCE IS TO IMPOSE. NOW, TALKING ABOUT PENALTY, YOU SAID
23 YOU WERE IN CATEGORY NUMBER ONE. IS THAT RIGHT?

24 A. YES.

25 Q. NOW, AS I TAKE IT FROM THAT, ARE YOU THE PERSON THAT

1 HAS AN OPINION THAT FOR EVERY CONVICTION OF MURDER THAT
2 SOMEONE SHOULD ALWAYS GET THE DEATH PENALTY?

3 A. I FEEL LIKE IF YOU TAKE SOMEBODY'S LIFE IN MALICE,
4 THEN YOU SHOULD PAY THE ULTIMATE PRICE.

5 Q. OKAY. SO IT WOULD MAKE NO DIFFERENCE WHAT HAPPENED
6 IN THAT SECOND TRIAL. YOU WOULD HAVE YOUR MIND MADE UP THAT
7 THE DEATH PENALTY IS THE APPROPRIATE SENTENCE.

8 A. WELL, I FEEL THAT WAY. I'M NOT SAYING I COULD NOT
9 BE SWAYED IF THERE WAS MITIGATING CIRCUMSTANCES, BUT THAT'S
10 MY PERSONAL FEELING.

11 MR. MYERS: OKAY. NOTHING FURTHER, YOUR HONOR.

12 CROSS-EXAMINATION

13 BY MS. KIMBROUGH:

14 Q. GOOD AFTERNOON, MR. WATKINS. HOW ARE YOU?

15 A. FINE. HOW ARE YOU?

16 Q. GOOD. THANK YOU.

17 A. IT'S BEEN A LONG DAY, HUH?

18 THE COURT: BEFORE WE GET AWAY INTO THESE NEXT
19 QUESTIONS, LET ME GET YOU TO STEP OUT IN THE HALL JUST ONE
20 SECOND, PLEASE.

21 THE WITNESS: OKAY.

22 (JUROR WATKINS LEAVES THE COURTROOM.)

23 THE COURT: SOLICITOR?

24 MR. MYERS: NO OBJECTION.

25 THE COURT: YOU CONCEDE HE'S NOT QUALIFIED?

1 MR. MYERS: YES, SIR.

2 THE COURT: AND YOU ALSO BELIEVE THAT, I ASSUME.

3 MS. KIMBROUGH: YES, INDEED.

4 THE COURT: BRING HIM IN, PLEASE.

5 (JUROR WATKINS IS BROUGHT INTO THE COURTROOM.)

6 THE COURT: MR. WATKINS, WE WILL NOT BE NEEDING YOUR
7 SERVICES AS A JUROR IN THIS CASE. WE APPRECIATE YOUR TIME
8 AND APPRECIATE YOU COMING IN. YOU'RE FREE TO GO.

9 THE WITNESS: ALL RIGHT. THANK YOU.

10 THE COURT: THANK YOU.

11 (JUROR WATKINS LEAVES THE COURTROOM.)

12 THE COURT: BRING HER IN.

13 (JUROR VALORIE CORBETT JACKSON IS BROUGHT INTO THE
14 COURTROOM.)

15 VALORIE CORBETT JACKSON, HAVING BEEN PREVIOUSLY
16 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
17 OATH, TESTIFIED AS FOLLOWS:

18 EXAMINATION BY THE COURT

19 Q. HOW ARE YOU, MA'AM?

20 A. FINE. HOW ARE YOU?

21 Q. I'M FINE. MA'AM, YOU WERE PUT UNDER OATH YESTERDAY,
22 AND YOU'RE STILL UNDER OATH TODAY. DO YOU RE -- DO YOU
23 UNDERSTAND THAT?

24 A. YES.

25 Q. SINCE YOU LEFT US YESTERDAY, HAS ANYBODY TALKED TO

1 YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYBODY ABOUT THE
2 CASE?

3 A. NO, SIR.

4 Q. MA'AM, I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND
5 THEN THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP
6 QUESTIONS. WE DON'T MEAN TO PRY -- TO PRY TOO DEEP INTO YOUR
7 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
8 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE
9 JUST WANT YOU TO LISTEN CAREFULLY AND THEN TO BE OPEN AND
10 HONEST WITH US. TELL US HOW YOU FEEL AND WHAT YOU THINK
11 ABOUT THESE ISSUES.

12 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 THEN RENDER A VERDICT
16 THAT IS BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT
17 YOU 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? DO YOU UNDERSTAND THAT?

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, WE WOULD MOVE INTO
6 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
7 GOING TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES THAT WOULD
8 COME UP IF WE GET TO THAT PHASE.

9 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
10 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
11 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
12 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
13 AND ADD TO THE INJURY RESULTING FROM THE CRIME. MITIGATING
14 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
15 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
16 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR
17 TO REDUCE THE MORAL CULPABILITY OR RESPONSIBILITY FOR THE
18 CRIME. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING AND
19 MITIGATING CIRCUMSTANCES?

20 A. NOT QUITE.

21 Q. AGGRAVATING CIRCUMSTANCES ARE ANYTHING THAT WOULD
22 MAKE THE CRIME OF MURDER MORE SEVERE, AND A MITIGATING
23 CIRCUMSTANCE WOULD BE ANYTHING THAT MAKES THE CRIME LESS
24 SEVERE. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
2 A COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF
3 JURORS.

4 A. RIGHT.

5 Q. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
6 JURORS?

7 A. YES, SIR.

8 Q. WHICH OF THOSE THREE TYPES OF JURORS WOULD YOU BE?

9 A. TWO.

10 Q. MA'AM, DO YOU THINK THERE IS ANY CIRCUMSTANCE UNDER
11 WHICH YOU COULD EVER VOTE TO IMPOSE A DEATH PENALTY ON
12 SOMEONE WHO IS CONVICTED OF MURDER?

13 A. ASK THE QUESTION AGAIN.

14 Q. DO YOU THINK THAT THERE ARE ANY CIRCUMSTANCES UNDER
15 WHICH YOU COULD VOTE TO IMPOSE THE DEATH PENALTY ON SOMEONE
16 WHO IS CONVICTED FOR MURDER?

17 A. YES.

18 Q. IF YOU ARE A JUROR IN THIS CASE AND IF WE ENTER INTO
19 THE SENTENCING PHASE, THEN YOU WOULD HAVE TWO OPTIONS AS TO
20 WHAT YOUR VERDICT COULD BE. ONE OPTION IS FOR A LIFE
21 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER
22 OPTION IS FOR THE DEATH PENALTY. NOW, I WANT TO EXPLAIN TO
23 YOU THAT AT THIS POINT THE DEFENDANT WOULD HAVE BEEN
24 CONVICTED OF MURDER, AND THE DEFINITION OF MURDER IS AN
25 INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH

1 MALICE AFORETHOUGHT.

2 A. RIGHT.

3 Q. NOW, IF YOU'RE IN THAT JURY ROOM AND YOU HAVE
4 THOUGHT THROUGH THE AGGRAVATING AND MITIGATING CIRCUMSTANCES
5 THAT WERE PRESENTED AND THE EVIDENCE OF THOSE THAT WAS
6 PRESENTED, COULD YOU, DEPENDING ON THE FACTS AND
7 CIRCUMSTANCES THAT YOU FOUND TO EXIST AND CONSIDERING THE LAW
8 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
9 VERDICT THAT WOULD IMPOSE THE DEATH PENALTY ON A DEFENDANT?

10 A. I GUESS IT DEPENDS ON WHAT IT IS.

11 Q. DEPENDS ON THE FACTS AND CIRCUMSTANCES?

12 A. RIGHT.

13 Q. COULD YOU VOTE TO IMPOSE A SENTENCE OF LIFE IN
14 PRISON?

15 A. YES.

16 Q. MA'AM, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
17 DECIDE TO SEQUESTER THE JURY, THEN YOU WOULD BE KEPT IN A
18 HOTEL ROOM AND FED YOUR MEALS FOR FIVE OR SIX DAYS, AND YOU
19 WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
20 TERRIBLE BURDEN ON YOU?

21 A. NO.

22 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
23 THAT YOU WERE GIVEN THIS MORNING?

24 A. YES, AND I RECOGNIZE NO NAMES ON HERE.

25 Q. DID YOU READ EVERY NAME ON THE LIST?

1 A. YES, SIR.

2 Q. ALL RIGHT, MA'AM. THE LAWYERS ARE GOING TO ASK YOU
3 SOME FOLLOW-UP QUESTIONS NOW, AND THEN I WILL COME BACK AND
4 SPEAK WITH YOU.

5 A. OKAY. AND I WANTED TO SAY SOMETHING ABOUT
6 YESTERDAY.

7 Q. OKAY.

8 A. YOU ASKED WHETHER I KNEW ANYONE THAT WORKED FOR THE
9 LAW ENFORCEMENT?

10 Q. YES, MA'AM.

11 A. I DID KNOW SOMEONE THAT DID WORK FOR LEXINGTON
12 COUNTY.

13 Q. WHO IS IT?

14 A. STANLEY (SIC) HALTIWANGER.

15 Q. AND -- AND DOES HE STILL WORK FOR THE COUNTY?

16 A. NO.

17 Q. WHEN DID -- HOW LONG HAS IT BEEN SINCE HE DID?

18 A. IT'S BEEN A LONG TIME AGO.

19 Q. HOW DID YOU KNOW HIM?

20 A. I'M RELATED TO HIS WIFE.

21 THE COURT: I SEE. ALL RIGHT. THANK YOU FOR
22 TELLING US THAT, MA'AM.

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q. YOU'RE RELATED TO STACEY?

1 A. YES.

2 Q. OKAY. MRS. CORBETT, DO YOU KNOW ANYTHING AT ALL
3 ABOUT THIS CASE?

4 A. NO, SIR.

5 Q. SO IF YOU WERE ON THE JURY PANEL, YOU COULD BASE
6 WHATEVER YOUR VERDICTS WERE ON WHAT YOU HEARD IN THE
7 COURTROOM.

8 A. RIGHT.

9 Q. OKAY. NOW, WHEN THE JUDGE ASKED YOU ABOUT THAT
10 SHEET OF PAPER UP THERE WITH THOSE THREE CATEGORIES---

11 A. YES, SIR.

12 Q. ---YOU TOLD HIM YOU WERE A NUMBER TWO?

13 A. YES, SIR.

14 Q. AND NUMBER TWO SAYS THAT PEOPLE THAT ARE IN THAT
15 CATEGORY THAT THEY THINK THAT THEY WILL ALWAYS VOTE FOR LIFE
16 IMPRISONMENT. IS THAT YOUR POSITION?

17 A. WELL, IT KIND OF DEPENDS ON HOW BAD THE
18 CIRCUMSTANCES ARE.

19 Q. YES, MA'AM. WELL, WHAT DO YOU MEAN BY THAT, MS.
20 CORBETT?

21 A. LIKE HOW -- I GUESS IF IT WAS MAYBE SOMEONE MURDERED
22 MY CHILD OR SOMETHING LIKE THAT MAYBE, BUT I -- BUT IF I
23 CONSULT THE LORD, I THINK I WOULD FIND PEACE IN MY HEART
24 MAYBE BECAUSE I AM A CHRISTIAN.

25 Q. YES, MA'AM.

1 A. AND I KNOW THE LORD GIVES LIFE AND HE'S THE ONE THAT
2 TAKE IT AWAY.

3 Q. YES, MA'AM. SO OTHER THAN SOMEBODY MURDERING YOUR
4 CHILD---

5 MR. LITTLEJOHN: YOUR HONOR, I OBJECT. I DON'T
6 THINK---

7 THE COURT: WELL, I DON'T KNOW WHERE IT'S GOING.
8 BUT, MA'AM, WE DON'T MEAN TO BE PUTTING YOU IN A SITUATION
9 WHERE YOU HAVE TO TELL US THE SITUATION---

10 THE WITNESS: OKAY.

11 THE COURT: ---TO WHERE YOU WOULD OR WOULDN'T IMPOSE
12 THE DEATH PENALTY. THAT'S NOT WHAT THE SOLICITOR IS TRYING
13 TO DO.

14 THE WITNESS: OKAY.

15 THE COURT: SO I'M GOING TO LET YOU GO AHEAD AND ASK
16 YOUR NEXT QUESTION, SOLICITOR.

17 MR. MYERS: OKAY. THANK YOU.

18 BY MR. MYERS:

19 Q. AS TO THE DEATH PENALTY AND YOU BEING IN THAT SECOND
20 CATEGORY, THINKING IT SHOULD BE LIFE IMPRISONMENT -- YOU
21 MENTIONED ABOUT THE LORD AND EVERYTHING. IS THAT BASED ON
22 RELIGIOUS BELIEFS?

23 A. YES. WELL, BASED ON RELIGION AND HOW I FEEL.

24 Q. YES, MA'AM. NOW, LET ME TELL YOU THIS. THE LAW IN
25 SOUTH CAROLINA SAYS THAT A JURY IS GOING TO HAVE TO HAND DOWN

1 THE SENTENCE IN THIS CASE.

2 A. RIGHT.

3 Q. THEY'LL EITHER HAVE TO HAND DOWN A SENTENCE OF LIFE
4 IMPRISONMENT OR THE DEATH PENALTY. THAT'S WHY WE GET TO TALK
5 WITH YOU NOW AND EVERYTHING. AND YOU TOLD THE JUDGE IN CASES
6 OF MURDER THAT IF LIFE IMPRISONMENT WAS ONE SENTENCE YOU
7 COULD VOTE FOR LIFE IMPRISONMENT, AND THAT'S WHAT YOU SAID ON
8 THAT NUMBER TWO, THAT YOU THOUGHT LIFE IMPRISONMENT WAS THE
9 CORRECT SENTENCE.

10 A. RIGHT.

11 Q. AND ON THE OTHER HAND, THE DEATH PENALTY BEING
12 INVOLVED, IF THE DEATH PENALTY WAS THE RIGHT SENTENCE, COULD
13 YOU SIGN YOUR NAME ON A DEATH PENALTY VERDICT?

14 A. I'M NOT SURE COULD I.

15 Q. THE LAW -- THE REASON I ASK YOU THIS---

16 A. RIGHT.

17 Q. ---IS BECAUSE THE LAW SAYS THE JURY---

18 A. BECAUSE I---

19 Q. MA'AM?

20 A. I FEEL LIKE I WOULD BE HELD ACCOUNTABLE IF I DID DO
21 IT, SIGN, TO PUT THEM TO DEATH. I FEEL LIKE MAYBE I WOULD BE
22 HELD ACCOUNTABLE FOR IT.

23 Q. UH-HUH.

24 A. BECAUSE I KNOW HE GIVES EVERYONE A CHANCE TO GET IT
25 RIGHT.

1 Q. WHAT DOES THAT MEAN? I'M SORRY. I DIDN'T FOLLOW
2 THAT.. WHAT DOES THAT MEAN?

3 A. I KNOW -- WHAT I'M SAYING: THE LORD, HE GIVES
4 EVERYONE A CHANCE---

5 Q. YES, MA'AM.

6 A. ---TO GET IT RIGHT.

7 Q. YES, MA'AM.

8 A. AND IF THEY DO GET IT RIGHT BEFORE HE DO SEND THEM
9 TO DEATH, I FEEL LIKE I WOULD BE HELD ACCOUNTABLE FOR IT.

10 Q. YES, MA'AM. WELL, THE REASON I ASK YOU THAT
11 QUESTION IS THAT HERE AGAIN OUR LAW SAYS---

12 A. RIGHT.

13 Q. ---THAT IF THE JURY DECIDES THAT THE DEATH PENALTY
14 IS THE SENTENCE, THEN EVERY JUROR, ALL 12, WOULD HAVE TO SIGN
15 THAT VERDICT.

16 A. RIGHT.

17 Q. SOME PEOPLE WILL SAY, "WELL, I'LL TELL YOU WHAT I
18 THINK, BUT I'LL NEVER WRITE MY NAME DOWN." SO MY QUESTION IS
19 -- TO YOU IS: COULD YOU SIGN A VERDICT -- YOUR NAME ON A
20 PIECE OF PAPER SENTENCING SOMEONE TO DEATH?

21 A. I WOULD SAY NO.

22 MR. MYERS: OKAY. THANK YOU, MA'AM.

23 MS. KIMBROUGH: JUST VERY BRIEFLY, YOUR HONOR.

24

25

CROSS-EXAMINATION

BY MS. KIMBROUGH:

Q. GOOD AFTERNOON, MS. JACKSON. HOW ARE YOU?

A. FINE. AND YOU?

Q. GOOD. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN MERCER. MR. MERCER WAS INTRODUCED TO YOU EARLIER. I JUST HAVE A COUPLE OF QUICK QUESTIONS. IT'S OBVIOUS YOU LEAN TOWARDS LIFE AS A PENALTY. OKAY? AND WITHOUT GOING INTO ANY DETAILS, IS THERE ANY MURDER THAT YOU COULD IMAGINE THAT WOULD BE BAD ENOUGH FOR YOU TO FEEL COMFORTABLE VOTING FOR A DEATH SENTENCE AND SIGNING YOUR NAME ON THE DEATH VERDICT?

A. ON THE DEATH VERDICT?

Q. YES, MA'AM.

A. LIKE I SAID, YOU KNOW, IF IT WAS MY CHILD OR SOMETHING AND---

Q. IS THAT THE ONLY CIRCUMSTANCE YOU COULD---

A. WELL, MY HUSBAND OR...

Q. OKAY.

A. MAYBE.

Q. HOW ABOUT THE DEATH OF SOMEONE ELSE'S LOVED ONE?

MR. MYERS: OBJECTION.

THE COURT: SUSTAINED.

MS. KIMBROUGH: ARE THERE ANY CIRCUMSTANCES BEYOND YOUR FAMILY---

MR. MYERS: OBJECTION.

1 THE COURT: SUSTAINED.

2 THE WITNESS: NO.

3 MS. KIMBROUGH: THANK YOU.

4 THE COURT: MA'AM, I'M GOING TO ASK YOU TO STEP OUT
5 IN THE HALLWAY FOR JUST ONE SECOND, AND THEN WE'LL GET YOU
6 BACK IN HERE IN JUST A SECOND.

7 THE WITNESS: OKAY.

8 (JUROR JACKSON LEAVES THE COURTROOM.)

9 THE COURT: AND FIRST I WANT TO MAKE SURE I DIDN'T
10 MISUNDERSTAND YOUR QUESTION, AND I REALIZE THAT YOU WERE
11 STANDING UP THERE WITHOUT REALLY ANYWHERE THAT YOU SAW THAT
12 YOU COULD GO. BUT AS I INTERPRETED THOSE QUESTIONS THAT WERE
13 OBJECTED TO AND THE OBJECTIONS THAT I SUSTAINED, I
14 INTERPRETED THOSE AS QUESTIONS THAT WERE ASKING THE JUROR TO
15 GIVE A SET OF FACTS THAT WERE SUFFICIENTLY BAD OR
16 SUFFICIENTLY EGREGIOUS WHERE SHE WOULD BE WILLING TO IMPOSE
17 THE DEATH PENALTY. DID I MISUNDERSTAND THE QUESTIONS?

18 MS. KIMBROUGH: WELL, MY QUESTION MAY HAVE BEEN
19 POORLY WORDED. IT WAS ACTUALLY SORT OF THE REVERSE OF THAT.
20 SHE GAVE A SET OF FACTS THAT SHE COULD GIVE THE DEATH PENALTY
21 FOR, AND I WAS JUST ASKING HER IS THERE ANYTHING BEYOND THAT
22 SMALL UNIVERSE OF FACTS WHERE SHE COULD IMPOSE THE DEATH
23 PENALTY AND SIGN HER NAME TO THAT VERDICT. I MEAN, SHE MAY
24 BE SOMEONE WHO, UNLESS IT WAS HER FAMILY MEMBER, SHE COULDN'T
25 DO IT.

1 THE COURT: ISN'T THAT---

2 MS. KIMBROUGH: MY QUESTION IS---

3 THE COURT: ISN'T THAT EXACTLY WHAT I JUST SAID?

4 THAT YOU WERE ASKING HER WHETHER OR NOT THERE WAS A SET OF

5 FACTS BEYOND THOSE THAT SHE ALREADY HAD GIVEN WHERE SHE WOULD

6 -- WHERE SHE WOULD VOTE TO IMPOSE THE DEATH PENALTY?

7 MS. KIMBROUGH: YES, YOUR HONOR, BUT I WASN'T ASKING

8 HER TO NAME WHAT THOSE SPECIFIC FACTS WERE.

9 THE COURT: YOU WERE JUST ASKING HER A YES-OR-NO
10 QUESTION?

11 MS. KIMBROUGH: YES-OR-NO QUESTION.

12 THE COURT: OKAY. WELL...

13 MS. KIMBROUGH: I APOLOGIZE IF MY QUESTION WAS
14 IMPROPER, BUT SHE GAVE AN EXAMPLE AND I WAS TRYING TO---

15 THE COURT: WELL, I'M JUST TRYING TO MAKE SURE THAT
16 I -- THAT MY RULING SUSTAINING THE OBJECTION WAS A PROPER
17 RULING. IF YOU WANT TO CONVINCE ME THAT IT WAS AN IMPROPER
18 RULING, THEN I WILL BE HAPPY TO LISTEN.

19 MS. KIMBROUGH: THE ONLY THING I WAS TRYING TO GET
20 AT, AND PERHAPS I COULD TRY TO REWORD IT, IS WHETHER OR NOT
21 HER VIEW OF THE DEATH PENALTY IS SO NARROW THAT SHE IS
22 UNQUALIFIED TO SERVE ON THIS JURY BECAUSE OBVIOUSLY TRACY
23 LAMAR DAVIS IS NOT HER FAMILY MEMBER. I MEAN, HE'S NOT.
24 HE'S SOMEBODY ELSE'S FAMILY MEMBER---

25 MR. MYERS: I HATE TO CUT HER OFF, BUT THE WITNESS

1 DID ANSWER THAT QUESTION AT THE END. SHE SAID, "IS THERE ANY
2 CIRCUMSTANCES OR ANY CASE OTHER THAN FAMILY MEMBERS?" AND SHE
3 SAID, "NO."

4 THE COURT: WELL, SHE DID ANSWER THE QUESTION AFTER
5 I SUSTAINED THE OBJECTION.

6 MS. KIMBROUGH: THEN THAT'S ALL WE HAVE.

7 THE COURT: ALL RIGHT. SO THE WITNESS -- THE JUROR
8 IS DISQUALIFIED. DOES ANYBODY DISAGREE?

9 MR. MYERS: NO, SIR.

10 THE COURT: FROM THE DEFENSE?

11 MS. KIMBROUGH: NO OBJECTION, YOUR HONOR.

12 THE COURT: ALL RIGHT. I MEAN, I'M GOING TO GO
13 AHEAD AND SAY THAT THERE -- THERE WAS A POINT IN TIME THERE
14 WHEN I THOUGHT SHE PROBABLY WAS QUALIFIED. THE THING THAT --
15 AMONG THE THINGS THAT CHANGED MY MIND WAS WHEN SHE SAID THAT
16 -- THAT THE LORD GIVES EACH PERSON A CHANCE TO GET IT RIGHT
17 AND THAT -- AND SHE SAID THAT SHE WOULD BE WORRIED THAT IF
18 SHE VOTED TO IMPOSE THE DEATH PENALTY AND THEN DURING THE
19 PERIOD OF TIME BETWEEN THEN AND THE TIME OF EXECUTION IF THE
20 DEFENDANT, QUOTE, GOT IT RIGHT WITH THE LORD, THEN SHE FELT
21 SHE WOULD BE HELD ACCOUNTABLE FOR THAT -- FOR HER ACTION IN
22 IMPOSING THE DEATH PENALTY. TO ME THAT IS A VIEW THAT WOULD
23 SUBSTANTIALLY IMPAIR HER ABILITY TO CARRY OUT HER
24 RESPONSIBILITIES UNDER THE LAW.

25 IN ADDITION TO THAT, HER OUTRIGHT STATEMENT THAT

1 THERE'S NO SET OF FACTS THAT SHE -- UNDER WHICH SHE COULD
2 IMPOSE THE DEATH PENALTY I THINK CLEARLY MAKES HER
3 UNQUALIFIED. BRING HER IN, PLEASE.

4 (JUROR JACKSON IS BROUGHT INTO THE COURTROOM.)

5 THE COURT: MS. JACKSON, YOU CAN STAND RIGHT THERE.
6 WE WILL NOT BE NEEDING YOUR SERVICE AS A JUROR IN THIS CASE.
7 WE REALLY APPRECIATE YOUR TIME AND APPRECIATE YOU COMING UP
8 HERE, BUT YOU DON'T HAVE TO WORRY ABOUT COMING BACK ANYMORE.

9 THE WITNESS: OKAY. THANK YOU.

10 THE COURT: THANK YOU, MA'AM.

11 (JUROR JACKSON LEAVES THE COURTROOM.)

12 THE COURT: BRING HIM IN.

13 (JUROR CHARLES MCDANIEL IS BROUGHT INTO THE
14 COURTROOM.)

15 CHARLES MCDANIEL, 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. GOOD AFTERNOON, SIR.

20 A. GOOD AFTERNOON.

21 Q. ARE YOU MR. MCDANIEL?

22 A. YES, SIR.

23 Q. YESTERDAY YOU WERE PUT UNDER OATH, AND YOU'RE STILL
24 UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

25 A. I DO.

1 Q. NOW, SINCE YOU LEFT US YESTERDAY, HAVE YOU TALKED
2 ABOUT THIS CASE WITH ANYONE OR HAS ANYONE ATTEMPTED TO TALK
3 TO YOU ABOUT THIS CASE?

4 A. NO.

5 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
6 AFTER I'VE DONE THAT, THE LAWYERS ARE PROBABLY GOING TO ASK
7 YOU SOME FOLLOW-UP QUESTIONS. WE DON'T MEAN TO PRY TOO DEEP
8 INTO YOUR PRIVATE LIFE, BUT WE DO NEED TO ASK YOU THESE
9 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
10 WANT YOU TO LISTEN VERY CAREFULLY AND THEN TO BE OPEN AND
11 HONEST WITH US AND TO TELL US HOW YOU FEEL AND TELL US WHAT
12 YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
13 DISCUSSING.

14 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
15 AND APPLY THE LAW PRECISELY AS I EXPLAIN IT TO YOU AND THEN
16 SET ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED ABOUT
17 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
18 THAT IS BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT
19 YOU WOULD HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

20 A. YES.

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.

25 Q. IF YOU'RE ON THE -- COULD YOU, DEPENDING ON THE

1 FACTS AND CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND
2 IN LIGHT OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
3 FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON
4 WHETHER OR NOT YOU FEEL THE STATE HAS MET ITS BURDEN OF
5 PROOF?

6 A. YES.

7 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
8 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
9 SECOND PHASE OR THE PENALTY PHASE OF THIS TRIAL. NOW, I'M
10 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
11 COME UP THEN IF WE GET TO THAT PHASE.

12 AGGRAVATING CIRCUMSTANCES ARE FACTS OR 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 AND ADD TO
16 THE INJURY RESULTING FROM THE CRIME. MITIGATING
17 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
18 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
19 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR
20 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY
21 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING
22 AND MITIGATING CIRCUMSTANCES?

23 A. YEAH.

24 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
25 COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF

1 JURORS. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
2 JURORS?

3 A. I DO.

4 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
5 YOU ARE?

6 A. NUMBER THREE.

7 Q. IF YOU ARE ON THE JURY IN THIS CASE AND IF THE JURY
8 REACHES A VERDICT OF GUILT FOR MURDER IN THE FIRST PHASE OF
9 THE TRIAL, THEN WE WOULD MOVE INTO THE SECOND PHASE. NOW, I
10 WANT TO MAKE SURE YOU UNDERSTAND THAT MURDER IS DEFINED AS
11 THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH
12 MALICE AFORETHOUGHT.

13 ONE OF THE OPTIONS THAT THE JURY WOULD HAVE --
14 ACTUALLY, THE JURY WOULD BE DECIDING THE PENALTY FOR THAT AND
15 NOT THE JUDGE. ONE OF THE OPTIONS THAT THE JURY WOULD HAVE
16 WOULD BE A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE,
17 AND THE OTHER OPTION WOULD BE THE DEATH PENALTY. COULD YOU,
18 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO
19 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,
20 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

21 A. YES.

22 Q. COULD YOU VOTE TO RETURN A VERDICT TO IMPOSE THE
23 DEATH PENALTY?

24 A. YES.

25 Q. IF YOU'RE ON THE JURY AND IF I DECIDE TO SEQUESTER

1 THE JURY, THEN YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
2 DAYS. WE'D PROVIDE YOUR MEALS FOR YOU, AND YOU WOULD NOT BE
3 ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON
4 YOU?

5 A. NO.

6 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
7 THAT I GAVE YOU?

8 A. I DID.

9 Q. DID YOU READ EVERY NAME ON THAT LIST?

10 A. I DID.

11 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
12 IS ON THAT LIST?

13 A. NO.

14 Q. ALL RIGHT, SIR. THE LAWYERS ARE GOING TO ASK YOU
15 SOME QUESTIONS NOW, AND THEN I'LL COME BACK AND FOLLOW UP IN
16 A FEW MINUTES.

17 A. OKAY.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. GOOD AFTERNOON, MR. MCDANIEL. HOW ARE YOU?

21 A. GOOD AFTERNOON. FINE. THANK YOU.

22 Q. I JUST HAVE A FEW QUESTIONS FOR YOU. I NOTICE FROM
23 YOUR BROCHURE THAT YOU SENT IN TO THE CLERK'S OFFICE---

24 A. UH-HUH.

25 Q. ---THAT YOU FILLED OUT THAT YOU'RE IN THE NATIONAL

1 GUARD?

2 A. I WAS.

3 Q. YOU WERE. HOW LONG AGO WERE YOU IN THE NATIONAL
4 GUARD?

5 A. 1988, SO IT'S BEEN AWHILE.

6 Q. THERE'S GOING TO BE DISCUSSION IN THIS CASE ABOUT
7 THE VICTIM BEING IN THE ARMY, AND WOULD YOUR EXPERIENCE IN
8 THE NATIONAL GUARD HAVE ANY BEARING ON THIS CASE OR HAVE ANY
9 EFFECT ON YOUR ABILITY TO BE FAIR AND IMPARTIAL TO BOTH
10 SIDES?

11 A. NO.

12 Q. I JUST WANT TO ASK YOU ABOUT -- ALSO I SAW IN THERE
13 THAT YOU HAD SERVED ON A CIVIL JURY SOMETIME IN THE PAST.

14 A. UH-HUH.

15 Q. DO YOU KNOW HOW LONG AGO THAT WAS?

16 A. I REALLY THINK IT WOULD PROBABLY HAVE BEEN ABOUT
17 FIVE OR SIX YEARS AGO; IT'S BEEN A WHILE.

18 Q. WAS IT UP IN THIS COURTROOM -- I MEAN, UP IN
19 LEXINGTON?

20 A. YEAH, IT WAS IN LEXINGTON.

21 Q. OKAY. WELL, I WANT TO GO INTO A LITTLE BIT OF WHAT
22 THE JUDGE WENT INTO. A CIVIL CASE, AS YOU KNOW, IS A LITTLE
23 BIT DIFFERENT FROM CRIMINAL.

24 A. TRUE.

25 Q. IN CRIMINAL THE STATE COMES FORWARD WITH EVIDENCE

1 AND HAS THE BURDEN OF PROOF, AND THAT FIRST PHASE THAT THE
2 JUDGE WAS TALKING ABOUT FOCUSES ON GUILTY OR NOT GUILTY,
3 WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. AND YOU
4 UNDERSTAND THAT.

5 A. SURE.

6 Q. AND IN THAT FIRST PHASE WHEN THE JURY GOES BACK TO
7 DELIBERATE, ALL 12 MUST COME TO A CONCLUSION IF THEY'RE GOING
8 TO CONVICT. DO YOU UNDERSTAND THAT?

9 A. I DO.

10 Q. AND DURING THAT PHASE THERE'S NO DISCUSSION AT ALL
11 ABOUT PENALTY - LIFE, DEATH, OR ANYTHING ELSE. DO YOU
12 UNDERSTAND THAT?

13 A. I DO.

14 Q. THAT'S NOT -- THAT'S JUST NOT AT THAT POINT IN THE
15 TRIAL.

16 A. I UNDERSTAND.

17 Q. IT'S ONLY IF THE DEFENDANT IS CONVICTED OF MURDER
18 THAT WE GO INTO THAT SECOND PHASE.

19 A. I UNDERSTAND.

20 Q. AND THAT'S WHAT MAKES A DEATH PENALTY CASE EVEN
21 DIFFERENT FROM MOST CRIMINAL CASES. TYPICALLY IN A CRIMINAL
22 CASE WHEN A DEFENDANT IS CONVICTED, WE STAND THEM UP IN FRONT
23 OF THE JUDGE, AND THEN HE SAYS, "I WANT TO HEAR EVERYTHING
24 ABOUT THE DEFENDANT." YOU'LL HEAR FROM OUR SIDE, AND YOU'LL
25 HEAR FROM THE DEFENSE THE GOOD AND THE BAD. TELL ME ABOUT

1 THIS MAN. TELL ME A LITTLE BIT MORE ABOUT THIS CASE.

2 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES.

3 A. UH-HUH.

4 Q. THAT'S WHEN YOU START THINKING LIFE AND DEATH.

5 THAT'S -- THAT'S WHEN WE START TALKING ABOUT THE PENALTY.

6 YOU UNDERSTAND THAT.

7 A. I DO.

8 Q. NOW, AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, IF

9 YOU FELT THE CIRCUMSTANCES WERE APPROPRIATE, YOU COULD GIVE A
10 LIFE SENTENCE.

11 A. YES.

12 Q. AND IF YOU THOUGHT THE CIRCUMSTANCES WERE

13 APPROPRIATE, YOU COULD GIVE A DEATH SENTENCE.

14 A. YES.

15 Q. IT DEPENDS ON THE FACTS.

16 A. UH-HUH.

17 Q. AND WHAT YOU HEAR IN THIS COURTROOM.

18 A. YES.

19 Q. AND IS IT FAIR TO SAY YOU DON'T BRING ANYTHING IN

20 THIS COURTROOM THAT WOULD MAKE THAT DECISION FOR YOU?

21 A. NO.

22 Q. IT'S WHAT HAPPENS HERE.

23 A. THAT'S CORRECT.

24 Q. THERE IS ONE FINAL THING. IF A JURY DECIDES LIFE,

25 THE FOREMAN SIGNS THE VERDICT. IF THE JURY DECIDES DEATH,

1 ALL 12 JURORS HAVE TO SIGN FOR THAT SENTENCE TO BE IMPOSED.
2 IF YOU FELT DEATH WAS THE APPROPRIATE SENTENCE, COULD YOU
3 SIGN YOUR NAME TO A VERDICT FORM FOR DEATH?

4 A. YES.

5 Q. AND IT'S FAIR TO SAY YOU WOULD WANT TO HEAR FROM
6 BOTH OUR SIDE AND THE DEFENSE SIDE. YOU WOULD WANT TO HEAR
7 ALL THE INFORMATION AVAILABLE---

8 A. OF COURSE.

9 Q. ---BEFORE YOU MADE THAT DECISION.

10 A. OF COURSE.

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

12 A. UH-HUH.

13 CROSS-EXAMINATION

14 BY MR. LITTLEJOHN:

15 Q. GOOD AFTERNOON, MR. MCDANIEL.

16 A. GOOD AFTERNOON.

17 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
18 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN
19 THIS CASE. MR. MCDANIEL, I'LL TRY NOT TO TAKE TOO MUCH OF
20 YOUR TIME. IF I COULD ASK YOU A COUPLE OF THINGS ABOUT YOUR
21 QUESTIONNAIRE. YOU INDICATED THAT YOU HAD BEEN IN THE
22 NATIONAL GUARD?

23 A. THAT'S CORRECT.

24 Q. HOW LONG WERE YOU IN THE NATIONAL GUARD?

25 A. SIX YEARS.

1 Q. SIX YEARS? OKAY. AS YOU REMEMBER YESTERDAY, JUDGE
2 FEW INDICATED THAT THE VICTIM IN THIS CASE WAS AN ACTIVE
3 MILITARY PERSON. HE WAS IN THE U.S. ARMY AS A RECRUITER.

4 A. THAT'S RIGHT.

5 Q. WOULD THAT FACT AND YOUR PRIOR EXPERIENCE -- WOULD
6 THAT HAVE ANY BEARING ON YOUR ABILITY TO BE FAIR AND
7 IMPARTIAL IN THIS CASE?

8 A. NO, IT WOULDN'T.

9 Q. OKAY. I NOTICE THAT YOU ARE IN PHARMACEUTICAL
10 SALES, AND YOU INDICATED THAT PART OF YOUR JOB WAS TO, I
11 GUESS, GO TO DIFFERENT DEPARTMENTS OF CORRECTIONS?

12 A. THAT'S CORRECT.

13 Q. CAN YOU TELL ME A LITTLE BIT ABOUT WHAT YOU DO AND
14 HOW THAT WORKS IN TO THE DEPARTMENT OF CORRECTIONS IN THESE
15 OTHER STATES---

16 A. SURE.

17 Q. ---AND IN THIS STATE?

18 A. SURE. THE DEPARTMENT OF CORRECTIONS ARE SIMPLY LIKE
19 ANY OTHER ACCOUNT. WHEN SOMEONE'S INCARCERATED, THEY NEED
20 HEALTHCARE THERE AS WELL.

21 Q. RIGHT.

22 A. AND MY JOB WITH ABBOTT LABORATORIES IS TO GO TO
23 THOSE INSTITUTIONS, CALL ON THE HEALTHCARE PROVIDERS WITHIN
24 THOSE INSTITUTIONS.

25 Q. OKAY. AND THAT'S JUST KIND OF YOUR SPECIALTY WITHIN

1 ABBOTT?

2 A. THAT IS MY SPECIALTY; YES, SIR.

3 Q. ONE OTHER THING I'D LIKE TO ASK YOU ABOUT AND I
4 DON'T WANT TO PRY INTO YOUR BUSINESS, BUT YOU INDICATED THAT
5 YOU WERE A PARTY TO A CIVIL LAWSUIT---

6 A. YES.

7 Q. ---AT SOME POINT?

8 A. YES.

9 Q. CAN YOU TELL ME JUST GENERALLY WHAT THAT WAS ABOUT
10 AND WHAT KIND OF EXPERIENCE THAT WAS FOR YOU?

11 A. IT REVOLVED AROUND AN AUTO ACCIDENT. IT WAS SETTLED
12 OUT OF COURT.

13 Q. I GOT YOU. OKAY. MR. MCDANIEL, AS JUDGE FEW
14 EXPLAINED TO YOU, THIS IS A CASE WHERE THE DEFENDANT IS
15 CHARGED WITH MURDER, AND THERE ARE -- THERE COULD BE TWO
16 ASPECTS OF THIS CASE, BUT THE FIRST ONE IS CENTERED AROUND
17 WHETHER THE STATE CAN -- HAS -- WHETHER THE STATE PROVES THE
18 DEFENDANT GUILTY OF MURDER OR NOT.

19 A. UH-HUH.

20 Q. AND HIS HONOR WOULD INSTRUCT YOU THAT BEFORE THE
21 JURY COULD FIND A GUILTY VERDICT, THE STATE WOULD HAVE TO
22 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

23 A. UH-HUH.

24 Q. WOULD YOU HAVE ANY PROBLEM PUTTING THE JURY --
25 PUTTING THE STATE TO THAT BURDEN OF PROOF?

1 A. NO.

2 Q. OKAY. AND YOU UNDERSTAND IT WOULD -- ONLY IF THE
3 JURY FINDS THE DEFENDANT GUILTY WOULD WE GET TO THE SECOND
4 PHASE.

5 A. I UNDERSTAND.

6 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY PROBLEM
7 LISTENING AND APPLYING THE LAW THAT JUDGE FEW GIVES TO YOU---

8 A. NO.

9 Q. ---TO THOSE FACTS AS YOU FIND THEM?

10 A. NO.

11 Q. DO YOU THINK YOU'D HAVE ANY PROBLEM JUDGING THE
12 CREDIBILITY OF THE VARIOUS WITNESSES, WHETHER THEY'RE LAY
13 PEOPLE OR EXPERTS OR POLICE OFFICERS?

14 A. I THINK I COULD JUDGE THAT PRETTY WELL.

15 Q. OKAY. YOU INDICATED TO THE JUDGE THAT YOU FELT LIKE
16 YOU WERE THE THIRD TYPE OF JUROR AS INDICATED ON THAT FORM.
17 CAN YOU EXPLAIN TO ME HOW YOU ARRIVED AT THAT CONCLUSION?

18 A. JUST FROM MY OWN PERSONALITY TYPE. I LIKE TO GATHER
19 THE INFORMATION AND THEN MAKE A DECISION. I DON'T MAKE
20 DECISIONS BEFORE I HAVE THE APPROPRIATE INFORMATION.

21 Q. OKAY. AS HE INDICATED TO YOU, IF WE GET TO THAT
22 STAGE, THERE WOULD BE EVIDENCE PRESENTED IN AGGRAVATION AND
23 THERE WOULD BE EVIDENCE PRESENTED IN MITIGATION, AND I TELL
24 YOU THE EVIDENCE IN MITIGATION COULD -- COULD AND WOULD
25 CONCERN ASPECTS OF THE DEFENDANT'S BACKGROUND, GOOD THINGS

1 ABOUT HIM, PERHAPS BAD THINGS THAT HAD HAPPENED TO HIM, MAYBE
2 SOME MEDICAL INFORMATION. WOULD YOU BE WILLING TO LISTEN TO
3 ALL OF THAT INFORMATION BEFORE DECIDING ON WHAT THE
4 APPROPRIATE SENTENCE MIGHT BE, IF WE GET TO THAT STAGE?

5 A. SURE.

6 Q. OKAY. WOULD YOU WANT TO HEAR ALL THAT INFORMATION?

7 A. OF COURSE I WOULD.

8 Q. OKAY. JUST ONE THING FINAL, MR. MCDANIEL. IF YOU
9 FOUND YOURSELF ON THE JURY AT EITHER THE FIRST OR THE SECOND
10 PHASE OF THIS CASE, IF WE GOT TO THE SECOND PHASE, AND YOU
11 FOUND THAT YOU HAD FORMED AN OPINION AND YOUR OPINION WAS
12 DIFFERENT FROM THE OTHER 11 JURORS, DO YOU THINK YOU WOULD
13 EVER CONSIDER CHANGING YOUR OPINION JUST TO ARRIVE AT A
14 VERDICT, JUST TO GO ALONG WITH THE OTHER 11?

15 A. NO.

16 Q. DO YOU THINK YOU WOULD -- YOU WOULD LISTEN TO THEM,
17 BUT YOU'D HAVE TO BE CONVINCED BEFORE YOU'D CHANGE YOUR MIND?

18 A. YES, I WOULD.

19 Q. IS THAT CORRECT?

20 A. THAT IS CORRECT.

21 Q. OKAY. THANK YOU, MR. MCDANIEL. I APPRECIATE YOUR
22 ANSWERS.

23 A. SURE.

24 THE COURT: ALL RIGHT. ANYTHING BEFORE I RULE?

25 MR. LITTLEJOHN: NO, YOUR HONOR.

1 THE COURT: MR. MCDANIEL, YOU ARE QUALIFIED TO SERVE
2 ON THIS JURY. THAT DOESN'T MEAN YOU'RE ON THE JURY, BUT IT
3 DOES MEAN YOU'RE ELIGIBLE FOR THE JURY.

4 THE WITNESS: I UNDERSTAND.

5 THE COURT: WE WILL NOT NEED YOU AGAIN UNTIL MONDAY
6 MORNING, SO YOU'RE FREE FOR THE REST OF THIS WEEK. IF YOU
7 WOULD CALL SUNDAY NIGHT TO THAT TELEPHONE NUMBER. CALL AFTER
8 6:00 TO THE TELEPHONE NUMBER THAT'S ON THAT PINK SLIP OF
9 PAPER THAT YOU HAVE. THERE WILL BE A RECORDED MESSAGE THERE
10 THAT WILL GIVE YOU DETAILED INSTRUCTIONS ABOUT WHEN YOU NEED
11 TO APPEAR AND WHETHER OR NOT YOU NEED TO BRING YOUR CLOTHES
12 AND YOUR PERSONAL ITEMS TO STAY FOR ABOUT FIVE OR SIX DAYS.

13 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
14 WITH ANYONE AND YOU MAY NOT ALLOW ANYONE TO DISCUSS IT WITH
15 YOU. PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE
16 EXPOSED TO ANY PRESS COVERAGE THAT THERE MAY BE ABOUT THIS
17 CASE. ENJOY THE REST OF YOUR WEEK, AND WE'LL SEE YOU MONDAY.
18 THANK YOU, SIR. YOU CAN GIVE THOSE TO THE BAILIFF.

19 THE WITNESS: OKAY.

20 (JUROR MCDANIEL LEAVES THE COURTROOM.)

21 THE COURT: ANYBODY NEED A BREAK OR Y'ALL WANT TO
22 KEEP ON GOING? ARE YOU OKAY?

23 COURT REPORTER: YES, SIR.

24 THE COURT: LET'S GO.

25 MR. LITTLEJOHN: JUDGE, WE GOT TWO MORE PANELS TO DO

1 TODAY?

2 THE COURT: ONE.

3 MR. LITTLEJOHN: JUST ONE MORE PANEL.

4 THE COURT: YEAH.

5 MR. LITTLEJOHN: ALL RIGHT.

6 (JUROR DARRELL STARKEY IS BROUGHT INTO THE
7 COURTROOM.)

8 DARRELL STARKEY, 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. GOOD AFTERNOON, MR. STARKEY. HOW ARE YOU?

13 A. JUST FINE. THANK YOU.

14 Q. YESTERDAY YOU WERE PUT UNDER OATH, AND YOU'RE STILL
15 UNDER OATH TODAY. DO YOU REMEMBER -- DO YOU UNDERSTAND THAT?

16 A. YES, I DO.

17 Q. NOW, SINCE YESTERDAY WHEN YOU LEFT US, HAS ANYONE
18 TALKED TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYBODY
19 ABOUT THIS CASE?

20 A. NO, SIR.

21 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW AND I'M
22 -- AFTER I'VE DONE THAT, THE LAWYERS WILL PROBABLY BE ASKING
23 YOU SOME FOLLOW-UP QUESTIONS. WE DON'T -- WE DON'T MEAN TO
24 GET TOO FAR INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK
25 YOU THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO

1 THE QUESTIONS. WE JUST WANT YOU TO LISTEN CAREFULLY AND TO
2 BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT
3 YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
4 DISCUSSING.

5 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
6 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
7 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
8 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS
9 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU SEE
10 AND HEAR IN THIS COURTROOM? 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, WE WOULD MOVE INTO
24 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M
25 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL

1 COME UP IF WE GET INTO THAT PHASE.

2 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
3 DETAILS THAT SOUTH CAROLINA HAS DECLARED WILL AGGRAVATE OR
4 MAKE WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES
5 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
6 RESULTING FROM THE CRIME. MITIGATING CIRCUMSTANCES, ON THE
7 OTHER HAND, ARE FACTS OR INCIDENTS OR DETAILS THAT SOUTH
8 CAROLINA HAS DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF
9 MURDER. THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF
10 MORAL CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
11 UNDERSTAND THE CONCEPTS OF AGGRAVATING OR MITIGATING
12 CIRCUMSTANCES?

13 A. YES, SIR.

14 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
15 COPY OF THIS SHEET THAT SUMMARIZES THE THREE TYPES OF JURORS.

16 A. YES, SIR.

17 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

18 A. YES, I DO.

19 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
20 YOU ARE?

21 A. I'M NUMBER THREE.

22 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
23 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE INTO
24 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. NOW,
25 BEFORE I GO ANY FARTHER, I WANT TO MAKE SURE YOU UNDERSTAND

1 THAT MURDER IS DEFINED AS THE INTENTIONAL AND UNLAWFUL
2 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. THE JURY
3 WOULD BE DECIDING WHAT THE PENALTY SHOULD BE FOR THAT MURDER,
4 AND THE JURY WOULD HAVE TWO OPTIONS. ONE OF THE OPTIONS IS
5 FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND
6 THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY.

7 A. YES, SIR.

8 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
9 THAT YOU FOUND TO EXIST AND IN CONSIDERING THE LAW AS I WOULD
10 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
11 LIFE SENTENCE?

12 A. YES, SIR.

13 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
14 DEATH PENALTY?

15 A. YES, SIR.

16 Q. NOW, IF YOU'RE ON THE JURY AND IF I DECIDE TO
17 SEQUESTER THE JURY, MEANING YOU WOULD BE PUT UP IN A HOTEL
18 FOR FIVE OR SIX DAYS AND WE'D FEED YOU YOUR MEALS, YOU WOULD
19 NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE
20 BURDEN ON YOU?

21 A. NO, SIR.

22 Q. DID YOU GET A CHANCE TO GO OVER THAT WITNESS LIST
23 THAT I HAD SENT TO YOU BACK IN THE JURY ROOM?

24 A. YES, I HAVE.

25 Q. DID YOU READ EVERY NAME ON THAT LIST?

1 A. YES, I DID.

2 Q. DO YOU KNOW OR ARE YOU RELATED TO ANY OF THE PEOPLE
3 WHOSE NAMES ARE ON THAT LIST?

4 A. NO, SIR.

5 THE COURT: ALL RIGHT, SIR. THE LAWYERS ARE GOING
6 TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME
7 BACK AND SPEAK TO YOU AFTERWARDS.

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. MR. STARKEY, HOW ARE YOU DOING TODAY?

11 A. I'M DOING JUST FINE, SIR.

12 Q. I UNDERSTAND YOU WERE IN THE ARMY FOR ABOUT 22
13 YEARS?

14 A. YES, SIR.

15 Q. I JUST WANT TO -- I BRING THAT UP BECAUSE IN THIS
16 CASE WE'RE GOING TO HEAR ABOUT THE VICTIM HAVING SERVED IN
17 THE ARMY. I JUST WANT TO KNOW: WILL YOUR BACKGROUND, HAVING
18 SERVED IN THE ARMY -- WOULD THERE BE ANYTHING IN YOUR
19 BACKGROUND OR IN YOUR SERVICE, PRIOR SERVICE, THAT WOULD
20 PREVENT YOU FROM GIVING BOTH SIDES A FAIR TRIAL IN THIS CASE?

21 A. NOT AT ALL, SIR.

22 Q. JUST HAD TO ASK YOU THAT, SIR. NOW, HAVE YOU EVER
23 SERVED ON A JURY?

24 A. IN THE MILITARY. IT WAS FOR A D.U.I. CASE; YES,
25 SIR.

1 Q. OKAY. SO THAT WAS BACK HOW MANY YEARS AGO?

2 A. THAT WAS PROBABLY ABOUT EIGHT YEARS AGO.

3 Q. OKAY. I ASKED YOU ABOUT THAT, TOO, BECAUSE THIS
4 CASE IS A LITTLE DIFFERENT FROM MOST OF OUR CRIMINAL CASES.
5 THE FIRST HALF THAT THE JUDGE EXPLAINED TO YOU OR THAT FIRST
6 PHASE IS VERY MUCH LIKE OTHER CRIMINAL CASES WHERE THE STATE
7 PRESENTS EVIDENCE TO JURORS WHO SIT RIGHT OVER HERE. THEY
8 LISTEN TO WITNESSES WHO ARE SITTING RIGHT WHERE YOU'RE GOING
9 TO BE SITTING, AND THEN THE JURY GOES BACK AND HAS TO DECIDE
10 WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. ALL 12 HAVE
11 TO AGREE IF THEY'RE GOING TO CONVICT. DO YOU UNDERSTAND
12 THAT?

13 A. YES, I DO.

14 Q. IN THIS CASE, IF THE JURY CONVICTS THE DEFENDANT,
15 THE CHARGE IS MURDER.

16 A. YES.

17 Q. AND TYPICALLY WHEN SOMEONE'S CONVICTED, THEY STAND
18 IN FRONT OF A JUDGE AND THEN HE ASKS BOTH SIDES, THE DEFENSE
19 AND THE STATE, "TELL ME SOMETHING ABOUT THIS MAN," AND IT
20 GIVES US ALSO A CHANCE TO TALK ABOUT AGGRAVATING
21 CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES. BUT IN THIS CASE
22 THE JUDGE ISN'T THE ONE WHO SENTENCES. IF WE GET TO THAT
23 SECOND PHASE, IT'S THE JURY. DO YOU UNDERSTAND THAT?

24 A. YES, I DO.

25 Q. AND WHEN THE JUDGE WAS EXPLAINING AGGRAVATING AND

1 MITIGATING CIRCUMSTANCES, THAT ONLY COMES UP IN THE SECOND
2 HALF OF THIS PROCESS.

3 A. RIGHT.

4 Q. DO YOU UNDERSTAND?

5 A. YES, I DO.

6 Q. THE FIRST HALF HAS NOTHING TO DO WITH PUNISHMENT.
7 IT'S ONLY THE SECOND HALF. YOU UNDERSTAND THAT.

8 A. YES, I DO.

9 Q. IN THE SECOND HALF, FROM YOUR RESPONSES TO THE
10 JUDGE, IF I'M UNDERSTANDING YOU, YOU WOULD WANT TO HEAR FROM
11 BOTH SIDES.

12 A. YES, SIR.

13 Q. AND YOU WOULD WANT TO HEAR EVERYTHING BEFORE MAKING
14 YOUR DECISION.

15 A. YES, SIR.

16 Q. AND YOU WOULD CONSIDER AGGRAVATING CIRCUMSTANCES AND
17 MITIGATING CIRCUMSTANCES.

18 A. YES, SIR.

19 Q. NOW, LET ME ASK YOU THIS, TOO. IN A CASE LIKE THIS,
20 IF WE GET TO THAT SECOND HALF, THAT SECOND PHASE WHERE WE'RE
21 TALKING ABOUT PUNISHMENT, YOU NEED TO KNOW THIS: IF A JURY
22 COMES BACK WITH LIFE, ONLY THE FOREMAN SIGNS THE GUILTY
23 FORM -- THE VERDICT FORM.

24 A. YES.

25 Q. BUT IF THE JURY IMPOSES DEATH, ALL 12 JURORS MUST

1 SIGN. IF YOU'RE ON THE JURY AND WE GET TO THAT SECOND HALF
2 AND IF AT THE CONCLUSION OF THE TRIAL IT IS YOUR OPINION THAT
3 DEATH SHOULD BE IMPOSED, COULD YOU SIGN YOUR NAME TO THAT
4 VERDICT FORM?

5 A. I BELIEVE I COULD, SIR. YES.

6 Q. DO YOU HAVE ANY DOUBT?

7 A. NOT AT ALL.

8 Q. OKAY. AND SO IT'S SAFE TO SAY YOU WOULD WANT TO
9 HEAR FROM BOTH SIDES AND YOU'D GIVE US ALL A FAIR TRIAL.

10 A. YES, SIR.

11 MR. HUBBARD: THAT'S ALL WE CAN ASK OF YOU, SIR.
12 THANK YOU.

13 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

14 CROSS-EXAMINATION

15 BY MS. KIMBROUGH:

16 Q. GOOD AFTERNOON, MR. STARKEY. HOW ARE YOU?

17 A. FINE. THANK YOU VERY MUCH.

18 Q. GOOD. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN
19 MERCER. WE INTRODUCED KEVIN TO THE WHOLE JURY POOL EARLIER.
20 I JUST WANT TO REINTRODUCE HIM. I JUST HAVE A FEW QUESTIONS
21 FOR YOU. I NOTICED YOU WERE IN THE ARMY FOR QUITE AWHILE?

22 A. YES, MA'AM.

23 Q. WHAT WAS YOUR RANK WHEN YOU RETIRED?

24 A. I WAS AN E-7 SERGEANT FIRST CLASS.

25 Q. OKAY. AND HOW LONG AGO DID YOU RETIRE, SIR?

1 A. I RETIRED IN AUGUST OF 1999.

2 Q. AND HAVE YOU BEEN AT THE SAME EMPLOYMENT SINCE THAT
3 TIME?

4 A. YES, MA'AM.

5 Q. OKAY. AND I KNOW YOU NOTED -- SO YOU'RE AN
6 ELECTRONICS TECHNICIAN?

7 A. YES, MA'AM.

8 Q. IS THAT A SKILL YOU LEARNED IN THE ARMY?

9 A. YES, I DID.

10 Q. OKAY. AND YOU'RE MARRIED AND HAVE CHILDREN?

11 A. YES, MA'AM.

12 Q. AND WHEN THE JUDGE WAS QUESTIONING YOU, I THINK YOU
13 SAID YOU WERE A NUMBER THREE TYPE OF JUROR?

14 A. YES.

15 Q. COULD YOU SHARE WITH US HOW YOU ARRIVED AT THAT?
16 WAS IT -- DID IT TAKE SOME HESITATION OR DID YOU
17 AUTOMATICALLY KNOW THAT THAT WAS YOU?

18 A. NO. ACTUALLY I KIND OF -- I KIND OF EXPECTED THE
19 QUESTION FROM, YOU KNOW, HEARING PEOPLE IN THE PAST THAT THIS
20 POSSIBLY COULD BE -- COULD BE ONE OF THE QUESTIONS THAT THEY
21 HAD ASKED OR THAT THEY HAD BEEN ASKED. NOTHING PERTAINING TO
22 THIS PARTICULAR CASE. BUT I KIND OF THOUGHT THAT, YOU KNOW,
23 IF -- IF ALL THE EVIDENCE -- IF ALL THE EVIDENCE IS PRESENTED
24 AND, YOU KNOW, LOGICALLY LOOKING AT THE ANSWERS IF -- OR THE
25 -- THE -- I'M SORRY. I'M KIND OF NERVOUS RIGHT NOW.

1 Q. THAT'S ALL RIGHT. TAKE YOUR TIME.

2 A. LOGICALLY LOOKING AT THE CIRCUMSTANCES AND ALL THE
3 EVIDENCE THAT I COULD -- I COULD -- I COULD -- I COULD DO IT.
4 I COULD BE EITHER/OR -- OR BE FOR THE DEATH PENALTY OR NOT
5 DEPENDING ON THE OUTCOME AND THE EVIDENCE PRESENTED.

6 Q. FAIR ENOUGH. NOW, I BELIEVE THE SOLICITOR AS WELL
7 AS JUDGE FEW HAD GONE OVER WHAT'S GOING TO HAPPEN IF YOU'RE
8 SEATED ON THIS JURY.

9 A. YES.

10 Q. THE FIRST STAGE IS JUST YOUR BASIC CRIMINAL TRIAL.
11 IS THE DEFENDANT NOT GUILTY OR IS HE GUILTY? AND IF HE'S
12 GUILTY, WHAT IS HE GUILTY OF?

13 A. RIGHT.

14 Q. I BELIEVE THE JUDGE HAD READ OUT THERE ARE THREE
15 INDICTMENTS. ONE IS FOR MURDER. ONE IS FOR ARMED ROBBERY,
16 AND THE OTHER IS FOR POSSESSION OF A WEAPON DURING A VIOLENT
17 CRIME. AND I BELIEVE SOLICITOR HUBBARD HAD MENTIONED THAT
18 THE VICTIM IN THIS CASE RATHER TRAGICALLY WAS A MEMBER OF THE
19 ARMED FORCES.

20 A. YES.

21 Q. AND I BELIEVE YOU'VE ALREADY ANSWERED THE QUESTION,
22 BUT IF I MAY ASK IT AGAIN. WOULD THAT FACT -- AND HE WAS A
23 CAREER ARMY MAN. WOULD THAT FACT MAKE IT DIFFICULT FOR YOU
24 TO BE OBJECTIVE IN THAT FIRST PHASE ABOUT GUILT OR INNOCENCE?

25 A. NOT AT ALL.

1 Q. OKAY. ALL RIGHT. SO YOU COULD SET THAT ASIDE.

2 A. YES, MA'AM.

3 Q. OKAY. AND NOW IN THE PENALTY PHASE, IF WE GET THERE
4 -- AND BEAR IN MIND THAT'S NOT A -- THAT'S NOT A GIVEN. IT
5 WILL DEPEND ON THE VERDICT THAT'S RENDERED IN THAT FIRST
6 PHASE. BUT IF WE GET TO THE SECOND PHASE, YOU ARE AGAIN
7 GOING TO BE PRESENTED WITH A VARIETY OF EVIDENCE. YOU WILL
8 HAVE FOUND AT THAT POINT, IF WE GET THERE, THAT MR. MERCER IS
9 GUILTY OF AN INTENTIONAL KILLING OF A HUMAN BEING. MAKE NO
10 MISTAKE; IT'S AN INTENTIONAL KILLING.

11 A. YES.

12 Q. HOWEVER, THAT ALONE CANNOT BE DECISIVE OF
13 PUNISHMENT. UNDER -- UNDER OUR LAW, YOU GET TO HEAR
14 ADDITIONAL EVIDENCE. THAT EVIDENCE WILL COME FROM THE
15 SOLICITOR'S OFFICE. IT MAY HAVE VICTIM IMPACT TESTIMONY.
16 THERE MAY BE ADDITIONAL EVIDENCE THAT THEY WANT TO PRESENT TO
17 YOU ABOUT MR. MERCER'S CHARACTER, BUT ON THE OTHER HAND, WE
18 WILL ALSO, THE DEFENSE, WILL HAVE AN OPPORTUNITY TO PRESENT
19 EVIDENCE ABOUT MR. MERCER'S LIFE AND WHY WE BELIEVE IT SHOULD
20 BE SPARED. AND I CAN'T GO INTO EXACTLY WHAT THE EVIDENCE
21 PRESENTED WILL BE BECAUSE, QUITE FRANKLY, WE DON'T EVEN KNOW
22 IF WE'RE GOING TO GET THERE YET.

23 HOWEVER, I CAN TELL YOU THAT IT WILL COME FROM A
24 VARIETY OF SOURCES. YOU MAY HEAR LAY TESTIMONY. YOU MAY
25 HEAR EXPERT TESTIMONY, AND YOU MAY HEAR TESTIMONY ABOUT MR.

1 MERCER'S UPBRINGING, HIS BACKGROUND, MAYBE SOME GOOD THINGS
2 HE'S DONE AND PERHAPS SOME BAD THINGS THAT HAVE HAPPENED TO
3 HIM, THINGS THAT HAVE AFFECTED WHO HE IS. AND I JUST WANT TO
4 MAKE SURE: DO YOU FEEL LIKE YOU COULD RESERVE JUDGMENT ON
5 PUNISHMENT UNTIL ALL THAT EVIDENCE IS IN?

6 A. YES, MA'AM.

7 Q. OKAY. BECAUSE THERE ARE TWO SIDES IN EVERY
8 COURTROOM SETTING, ONE SIDE'S OBVIOUSLY GOING TO GO FIRST AND
9 WE JUST WANT TO MAKE SURE THAT, YOU KNOW, YOU CAN PUT ALL THE
10 EVIDENCE THAT'S BEING CRAMMED INTO YOUR HEAD TO THE SIDE
11 BEFORE MAKING A FINAL ASSESSMENT.

12 A. YES, MA'AM.

13 Q. OKAY. AND THE FINAL QUESTION THAT I HAVE IS: YOU
14 KNOW, IN BOTH PHASES YOU HAVE 12 PEOPLE ON THE JURY, AND THE
15 VERDICTS HAVE TO BE UNANIMOUS - BOTH IN THE INNOCENCE-OR-
16 GUILT PHASE AS WELL AS THE PENALTY PHASE. IF YOU HAD A
17 FIRMLY-HELD BELIEF WHICH OTHERS DISAGREED WITH, DO YOU FEEL
18 LIKE IF YOU WERE SOMEHOW -- FOR SOME REASON IN THE MINORITY
19 VIEW THAT YOU WOULD BE INCLINED TO GO ALONG WITH THE REST OF
20 THE GROUP OR WOULD IT TAKE MORE THAN SIMPLE DESIRE TO REACH A
21 VERDICT TO CAUSE YOU TO CHANGE?

22 A. I THINK -- I THINK I WOULD HAVE TO -- I WOULD HAVE
23 TO -- IF I WAS -- IF I WAS -- IF I THOUGHT THAT I NEEDED MORE
24 INFORMATION, YES, I WOULD -- I WOULD -- I WOULD DEFINITELY
25 NEED -- NEED SOME MORE EVIDENCE IN ORDER TO COME UP WITH A

1 VERDICT.

2 Q. OKAY. AND IF ALL THE EVIDENCE WAS IN AND IT WAS A
3 SIMPLE DISAGREEMENT, WOULD THAT CAUSE YOU TROUBLE?

4 A. I DON'T THINK SO, NO.

5 Q. SO UNTIL YOU ARE CONVINCED, YOU WOULD NOT CHANGE
6 YOUR OPINION---

7 A. YES.

8 Q. ---SIMPLY TO GO ALONG.

9 A. YES, MA'AM.

10 Q. OKAY. AND THAT WOULD BE TRUE BOTH IN THE INNOCENCE-
11 OR-GUILT PHASE AS WELL AS THE SENTENCING---

12 A. YES, MA'AM.

13 Q. ---SECTION? OKAY. BEG THE COURT'S INDULGENCE. NO
14 FURTHER QUESTIONS. THANK YOU.

15 THE COURT: ALL RIGHT. ANYTHING BEFORE I RULE?

16 MR. LITTLEJOHN: NO.

17 THE COURT: ALL RIGHT. MR. STARKEY, YOU ARE
18 QUALIFIED TO SERVE AS A JUROR IN THIS CASE. THAT DOESN'T
19 MEAN YOU'RE ON THE JURY, BUT IT MEANS THAT YOU'RE ELIGIBLE TO
20 BE ON THE JURY. WE'RE GOING TO ACTUALLY PICK OR STRIKE THE
21 JURY ON MONDAY MORNING. I WOULD LIKE FOR YOU TO CALL ON
22 SUNDAY NIGHT TO THAT TELEPHONE NUMBER THAT IS ON THE LITTLE
23 PINK SHEET---

24 THE WITNESS: YES, SIR.

25 THE COURT: ---THAT YOU WERE GIVEN.

1 THE WITNESS: YES, SIR.

2 THE COURT: AND WHEN YOU DO THAT, THERE WILL BE A --
3 IF YOU CALL SUNDAY NIGHT AFTER 6:00, THERE WILL BE A RECORDED
4 MESSAGE AS TO EXACTLY WHAT TIME YOU'RE SUPPOSED TO COME AND
5 WHETHER OR NOT YOU'RE SUPPOSED TO BRING YOUR BELONGINGS FOR
6 THE WEEK SO THAT YOU CAN STAY IF I SEQUESTER THE JURY.

7 THE WITNESS: OKAY.

8 THE COURT: BETWEEN NOW AND THEN, YOU ARE NOT
9 ALLOWED TO DISCUSS THIS CASE WITH ANYONE NOR TO ALLOW ANYONE
10 TO DISCUSS THIS CASE WITH YOU. PLEASE BE VERY CAREFUL NOT TO
11 ALLOW YOURSELF TO BE EXPOSED TO ANY NEWS COVERAGE ABOUT THE
12 CASE. ENJOY THE REST OF THE WEEK, SIR, AND WE LOOK FORWARD
13 TO SEEING YOU ON MONDAY MORNING.

14 THE WITNESS: I THANK YOU VERY MUCH, SIR. THANK
15 YOU.

16 (JUROR STARKEY LEAVES THE COURTROOM. JUROR EDWARD
17 OSEGUEDA IS BROUGHT INTO THE COURTROOM.)

18 EDWARD OSEGUEDA, HAVING BEEN PREVIOUSLY SWORN
19 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
20 TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT

22 Q. WHY DON'T YOU TELL ME AGAIN, SO I'LL MAKE SURE I
23 HAVE IT RIGHT, HOW TO PRONOUNCE YOUR LAST NAME, SIR?

24 A. OSEGUEDA.

25 Q. OSEGUEDA.

1 A. YEAH.

2 Q. ALL RIGHT. THANK YOU. NOW, YESTERDAY WHEN YOU WERE
3 HERE YOU WERE PUT UNDER OATH, AND YOU'RE STILL UNDER OATH
4 NOW. DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. SINCE YESTERDAY WHEN YOU WERE IN HERE WITH US, HAS
7 ANYBODY TRIED TO TALK TO YOU ABOUT THIS CASE OR HAVE YOU
8 TALKED TO ANYBODY ABOUT THE CASE?

9 A. NO, SIR.

10 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND AFTER
11 I'VE ASKED YOU SOME QUESTIONS, THE LAWYERS ARE GOING TO
12 PROBABLY FOLLOW UP WITH SOME OTHER QUESTIONS. WE DON'T MEAN
13 TO PRY TOO FAR INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK
14 YOU THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS.
15 WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND THEN TO BE OPEN
16 AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU
17 THINK ABOUT THESE ISSUES THAT WE ARE GOING TO BE DISCUSSING.

18 A. ALL RIGHT.

19 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
20 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, 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 THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
24 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

25 A. I BELIEVE SO.

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. UH-HUH.

5 Q. THAT'S A YES?

6 A. YES.

7 Q. WE HAVE TO BE CAREFUL ABOUT UH-HUHS AND HUH-UHS---

8 A. OKAY.

9 Q. ---BECAUSE THE COURT REPORTER CAN'T PICK THEM UP.
10 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
11 FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS I WOULD
12 EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER GUILTY
13 OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE STATE
14 HAS MET ITS BURDEN OF PROOF?

15 A. YES.

16 Q. NOW, IF YOU'RE A JUROR IN THIS CASE AND IF THE JURY
17 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
18 SECOND PHASE OR THE PENALTY PHASE OF THIS TRIAL, AND I'M
19 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
20 COME UP IF WE GET INTO THAT PHASE.

21 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
22 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
23 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
24 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
25 AND ADD TO THE INJURY RESULTING FROM THE CRIME. MITIGATING

1 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
2 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
3 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR
4 TO REDUCE THE DEGREE OF MORAL CULPABILITY FOR THE CRIME. IF
5 YOU ARE -- NOW, DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING
6 AND MITIGATING CIRCUMSTANCES?

7 A. YES.

8 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
9 A COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF
10 JURORS. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES?

11 A. YES.

12 Q. WHICH OF THOSE THREE TYPES DO YOU BELIEVE YOU ARE?

13 A. I BELIEVE I'M THE THIRD TYPE.

14 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
15 FINDS THE DEFENDANT GUILTY OF MURDER AND YOU'RE IN THE
16 SENTENCING PHASE OF THE TRIAL, YOU WOULD HAVE TWO OPTIONS AS
17 TO WHAT YOUR VERDICT COULD BE. NOW, FIRST OF ALL, BEFORE I
18 GO THERE, I WANT TO MAKE SURE YOU UNDERSTAND THAT MURDER IS
19 DEFINED AS THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
20 PERSON WITH MALICE AFORETHOUGHT. ALSO, IT WOULD BE THE JURY
21 THAT WOULD BE DECIDING THE PENALTY FOR THIS -- FOR MURDER,
22 AND YOU WOULD HAVE TWO OPTIONS ON THE JURY FOR YOUR -- FOR
23 YOUR VERDICT. ONE OPTION WOULD BE A LIFE SENTENCE WITHOUT
24 THE POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD BE THE
25 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND

1 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW
2 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
3 VERDICT FOR A LIFE SENTENCE?

4 A. YES.

5 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
6 DEATH PENALTY?

7 A. YES.

8 Q. NOW, IF THE -- IF YOU'RE ON THE JURY AND IF I DECIDE
9 TO SEQUESTER THE JURY, THEN YOU WOULD BE PUT UP IN A HOTEL
10 FOR FIVE OR SIX DAYS AND WE'D GIVE YOU ALL YOUR MEALS, AND
11 YOU WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
12 TERRIBLE BURDEN ON YOU?

13 A. NOT ON ME.

14 Q. YOU COULD HANDLE IT?

15 A. YEAH, I COULD HANDLE IT.

16 Q. ALL RIGHT. DID YOU GET A CHANCE TO READ OVER THAT
17 WITNESS LIST THAT I GAVE YOU?

18 A. YES.

19 Q. DID YOU READ EVERY NAME ON THE LIST?

20 A. YES, I DID.

21 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
22 IS ON THAT LIST?

23 A. I KNOW A KEITH REID.

24 Q. A KEITH REID.

25 A. YEAH.

1 Q. ALL RIGHT. WELL, LET'S -- LET ME GET SOMEBODY TO
2 TELL ME A LITTLE MORE ABOUT KEITH REID.

3 MS. KIMBROUGH: YOUR HONOR, KEITH REID IS A
4 POTENTIAL WITNESS FOR MITIGATION. HE IS A REVEREND.

5 THE COURT: HE'S A MINISTER?

6 MS. KIMBROUGH: I BELIEVE SO, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 THE WITNESS: NOT THE SAME ONE.

9 THE COURT: NOT THE ONE YOU KNOW? OKAY. ALL RIGHT.
10 NOW, THE LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP
11 QUESTIONS.

12 THE WITNESS: OKAY.

13 DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q. IT'S MR. OSEGUEDA?

16 A. YEAH.

17 Q. I WANTED TO MAKE SURE I GOT THAT RIGHT. HAVE YOU
18 EVER SERVED ON JURY DUTY BEFORE?

19 A. MAGISTRATE'S COURT AND I DIDN'T GET PICKED.

20 Q. OKAY. BUT THAT WAS HERE IN LEXINGTON?

21 A. YEAH.

22 Q. OKAY. SO THIS IS A WHOLE NEW WORLD FOR YOU.

23 A. UH-HUH.

24 Q. HAVE YOU EVER BEEN UP TO THE NEW COURTHOUSE BEFORE?

25 A. I'VE ONLY SEEN IT ON THE NEWS.

1 Q. OKAY. WELL, HOPEFULLY I WON'T KEEP YOU UP HERE TOO
2 LONG. I JUST HAVE A FEW QUESTIONS.

3 A. OKAY.

4 Q. I'M JUST GOING TO KIND OF GO THROUGH WHAT THE JUDGE
5 WENT THROUGH JUST TO GET TO KNOW WHERE YOU'RE COMING FROM---

6 A. OKAY.

7 Q. ---ON THESE QUESTIONS HERE. I WANT TO MAKE SURE
8 THAT YOU KNOW THAT THERE'S TWO POTENTIAL PHASES IN THIS CASE.

9 A. UH-HUH.

10 Q. AND WHEN YOU SERVED IN MAGISTRATE'S COURT OR YOU
11 WERE GOING TO SERVE IN MAGISTRATE'S COURT---

12 A. YES.

13 Q. IT'S KIND OF LIKE WHAT A LOT OF OUR CASES ARE UP
14 HERE. WE HAVE JURORS THAT SIT RIGHT HERE. THE STATE
15 PRESENTS EVIDENCE, AND THE JURY GOES BACK AND DETERMINES
16 WHETHER SOMEONE'S GUILTY OR NOT GUILTY. THAT'S JUST LIKE THE
17 FIRST HALF OF THIS CASE. THERE'S NEVER ANY DISCUSSION OF
18 PUNISHMENT, OF MERCY, OR ANYTHING LIKE THAT. IT'S STRICTLY
19 THE CASE AND IT'S: IS HE GUILTY OR NOT GUILTY? YOU
20 UNDERSTAND THAT.

21 A. YES.

22 Q. AND TYPICALLY IN A CASE, IF SOMEBODY'S FOUND GUILTY,
23 THEY STAND IN FRONT OF THE JUDGE AND THEN THE JUDGE IMPOSES
24 THE SENTENCE. AND HE LOOKS TO US AND HE LOOKS TO THE OTHER
25 SIDE AND SAYS, "TELL ME SOMETHING ABOUT THIS PERSON.

1 AGGRAVATING CIRCUMSTANCES. MITIGATING CIRCUMSTANCES. TELL
2 ME THE GOOD STUFF AND THE BAD STUFF."

3 A. UH-HUH.

4 Q. "TELL ME ALL ABOUT HIM SO I'LL KNOW WHAT TO DO." IN
5 THIS CASE, IF WE GET TO THAT SECOND PHASE, WE WOULD HAVE
6 ALREADY DETERMINED THAT THE DEFENDANT'S GUILTY OF MURDER, AND
7 THE ONLY QUESTION IS: IS LIFE OR DEATH THE APPROPRIATE
8 SENTENCE? AND THE JUDGE MENTIONED THAT'S WHEN WE HEAR ALL
9 THE AGGRAVATING AND MITIGATING CIRCUMSTANCES. WOULD YOU WANT
10 TO HEAR BOTH SIDES BEFORE YOU MAKE A DECISION IN THE CASE?

11 A. YES.

12 Q. NOW, IT'S VERY MUCH LIKE A TRIAL WITH PEOPLE
13 TESTIFYING AND ALL THAT. YOU WOULD LISTEN TO EACH SIDE, TO
14 EVERYTHING WE PRESENT, BEFORE YOU DETERMINE LIFE OR DEATH.
15 IS THAT CORRECT?

16 A. YES.

17 Q. AND YOU WOULD BE WILLING TO CONSIDER AND AT THE END
18 OF THE TRIAL IF YOU THOUGHT THE EVIDENCE LED YOU TO SUPPORT
19 LIFE, YOU COULD VOTE LIFE.

20 A. YES.

21 Q. ON THE OTHER HAND, IF YOU THOUGHT DEATH WAS THE
22 APPROPRIATE SENTENCE, MY UNDERSTANDING FROM WHAT YOU'RE
23 TELLING THE JUDGE IS YOU COULD VOTE FOR DEATH.

24 A. YES.

25 Q. NOW, THERE IS ONE OTHER THING THAT MAKES THIS TYPE

1 OF CASE A LITTLE BIT DIFFERENT FROM OTHERS, NOT JUST THE
2 SENTENCING BUT ACTUALLY SIGNING THE VERDICT FORM.

3 A. UH-HUH.

4 Q. IT'S DIFFERENT IN THIS CASE. IF THE JURY VOTES FOR
5 LIFE, THE FOREMAN SIGNS THE VERDICT FORM, LIKE IN ALL CASES,
6 BUT IF THE JURY DECIDES DEATH, ALL 12 MEMBERS OF THAT JURY
7 SIGN THEIR NAME ON THAT VERDICT FORM. THE REASON WHY I'M
8 ASKING YOU IF YOU COULD DO THAT IS BECAUSE A LOT OF PEOPLE
9 WILL TELL YOU WHAT THEY THINK, BUT THEY'RE REALLY HESITANT
10 ABOUT SIGNING THEIR NAME TO SOMETHING. IF YOU BELIEVE DEATH
11 IS APPROPRIATE AND YOU'VE HEARD ALL THE EVIDENCE AND YOU'VE
12 COME TO THE CONCLUSION DEATH IS APPROPRIATE, COULD YOU PUT
13 YOUR NAME ON THAT VERDICT FORM?

14 A. YES.

15 Q. OKAY. AND YOU WOULD LISTEN TO BOTH SIDES AND
16 CONSIDER EVERYTHING BEFORE YOU DID SO.

17 A. YES, SIR, I'D LIKE TO THINK I WOULD.

18 Q. WELL, THANK YOU. THAT'S ALL WE CAN ASK OF YOU, SIR.
19 THANK YOU.

20 A. OKAY.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. GOOD AFTERNOON, MR. OSEGUEDA.

24 A. GOOD AFTERNOON.

25 Q. DID I PRONOUNCE THAT CORRECTLY?

1 A. OSEGUEDA.

2 Q. OSEGUEDA.

3 A. YEAH.

4 Q. I'M SORRY.

5 A. THAT'S OKAY.

6 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA

7 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT.

8 A. OKAY.

9 Q. LET ME ASK YOU A COUPLE OF THINGS, IF I MAY BRIEFLY,
10 ABOUT YOUR QUESTIONNAIRE. I NOTICE THAT YOU WERE BORN AT
11 SHAW AIR FORCE BASE?

12 A. UH-HUH. YES, SIR.

13 Q. BORN TO A MILITARY FAMILY, I TAKE IT?

14 A. I CAME WITH MY DAD'S RIFLE AND HIS BAG. HE WAS
15 THERE FOR A STINT.

16 Q. OKAY.

17 A. AND I HAPPENED TO BE BORN AT THAT TIME.

18 Q. I UNDERSTAND. OKAY. WELL, THAT'S GOOD THAT YOU
19 WERE BORN.

20 A. YEAH.

21 Q. WAS HE A CAREER MILITARY PERSON?

22 A. NO.

23 Q. WAS NOT? HE WAS NOT -- HE WASN'T IN THE AIR FORCE?

24 A. NO, HE WASN'T. HE WAS IN THE AIR FORCE, BUT HE WAS
25 NOT CAREER MILITARY.

1 Q. I UNDERSTAND. YOU WERE NEVER IN THE MILITARY.

2 A. NO.

3 Q. OKAY. IT'S GOING TO COME OUT AND I THINK JUDGE FEW
4 HAS ALREADY MENTIONED IT THAT THE VICTIM IN THIS CASE WAS
5 ACTIVE MILITARY. HE WAS IN THE U.S. ARMY AS A RECRUITER.
6 WOULD THE FACT THAT HE WAS IN THE MILITARY -- WOULD THAT HAVE
7 ANY BEARING OR ANY EFFECT ON YOUR ABILITY TO BE FAIR AND
8 IMPARTIAL IN THIS CASE?

9 A. I DON'T THINK SO.

10 Q. OKAY. I NOTICE YOU'RE WITH U.P.S.?

11 A. YES, SIR.

12 Q. AND HOW LONG -- YOU'VE BEEN WITH U.P.S. ABOUT 10
13 YEARS?

14 A. NO, SIR.

15 Q. WHERE DID I SEE THAT?

16 A. ALMOST 20.

17 Q. ALMOST 20. I SEE. THAT'S 19 INSTEAD OF 10.

18 A. YEAH.

19 Q. OKAY. LET ME -- LET ME EXPOUND ON A COUPLE OF
20 THINGS THAT JUDGE FEW WAS TALKING ABOUT. AS YOU KNOW, THE
21 DEFENDANT IN THIS CASE IS CHARGED WITH MURDER, ARMED ROBBERY,
22 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
23 CRIME. THIS CASE WOULD BEGIN WITH WHAT WE CALL THE TRIAL
24 PHASE, AND AT THAT PHASE THE JURY WOULD BE CALLED UPON TO
25 MAKE A DETERMINATION AS TO WHETHER THE STATE HAD PROVED THE

1 DEFENDANT GUILTY OF THESE OFFENSES BEYOND A REASONABLE DOUBT.
2 WOULD YOU HAVE ANY PROBLEM, IF YOU WERE ON THE JURY, MAKING
3 THE STATE COMPLY WITH THAT BURDEN OF PROOF BEFORE YOU FOUND
4 THE DEFENDANT GUILTY?

5 A. NO.

6 Q. OKAY. YOU UNDERSTAND THEY WOULD -- THAT THEY WOULD
7 HAVE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

8 A. YES, SIR.

9 Q. OKAY. YOU UNDERSTAND ALSO THAT WE WOULD -- THE JURY
10 WOULD HAVE TO COME TO THAT CONCLUSION BEFORE WE WENT ANY
11 FURTHER.

12 A. YES, SIR.

13 Q. THERE WOULDN'T BE A SECOND PHASE TO THIS TRIAL
14 UNLESS THE JURY FOUND HIM GUILTY.

15 A. YES, SIR.

16 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY PROBLEM
17 JUDGING THE CREDIBILITY OF THE VARIOUS WITNESSES THAT MIGHT
18 COME INTO PLAY HERE? THOSE WITNESSES MIGHT BE POLICE
19 OFFICERS, EXPERT WITNESSES, LAY WITNESSES.

20 A. COULD YOU EXPLAIN THAT A LITTLE BIT FURTHER?

21 Q. SURE. IF YOU WERE ON THE JURY---

22 A. UH-HUH.

23 Q. ---YOU AND THE OTHER JURORS WOULD HAVE TO DETERMINE
24 WHAT THE TRUTH IS.

25 A. OKAY.

1 Q. AND TO MAKE THAT DETERMINATION, YOU'D HAVE TO
2 DETERMINE WHO WAS TELLING THE TRUTH, WHO WAS BELIEVABLE.
3 CREDIBILITY. DO YOU THINK YOU'D HAVE ANY PROBLEM DOING THAT?

4 A. I HOPE NOT.

5 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM APPLYING
6 THE LAW THAT JUDGE FEW WOULD GIVE YOU TO THE FACTS AS YOU
7 FIND THEM?

8 A. NO.

9 Q. OKAY. YOU INDICATED EARLIER THAT, TALKING ABOUT IF
10 WE GET TO THE SECOND PHASE, THAT YOU THOUGHT YOU WERE A TYPE
11 THREE JUROR ON THAT FORM.

12 A. YES, SIR.

13 Q. CAN YOU TELL US HOW YOU ARRIVED AT THAT CONCLUSION?

14 A. I BELIEVE IN THE DEATH PENALTY, BUT I ALSO BELIEVE
15 THAT IT'S NOT THE -- HOW WOULD YOU SAY THE -- THE REQUIRED
16 PUNISHMENT.

17 Q. UH-HUH.

18 A. I THINK THAT DEPENDING ON EACH INDIVIDUAL
19 CIRCUMSTANCE THE -- EXCUSE ME. LET ME REGROUP.

20 Q. SURE. TAKE YOUR TIME.

21 A. I BELIEVE THAT ANY -- EACH CIRCUMSTANCE IS
22 DIFFERENT, SO THE PUNISHMENT FOR THE FIRST CASE COMPARED TO
23 THE SECOND CASE OR -- OR SECOND -- FIRST THING TO THE SECOND
24 THING... THEY MAY BE TOTALLY DIFFERENT, SO YOU CAN'T APPLY
25 THE SAME PUNISHMENT TO BOTH.

1 Q. I UNDERSTAND. YOU'D WANT TO HEAR ALL THE EVIDENCE
2 BEFORE YOU MADE ANY SORT OF DECISION.

3 A. YES, SIR.

4 Q. OKAY. AND IF YOU THOUGHT IT WAS APPROPRIATE, YOU
5 COULD VOTE FOR A LIFE SENTENCE?

6 A. YES, SIR.

7 Q. IF YOU THOUGHT IT WAS APPROPRIATE, YOU COULD VOTE
8 FOR A DEATH SENTENCE?

9 A. YES, SIR.

10 Q. ALL RIGHT. AS JUDGE FEW INDICATED, IF WE GET TO
11 THAT STAGE, THERE WOULD BE EVIDENCE PRESENTED IN AGGRAVATION
12 AND THERE WOULD BE EVIDENCE PRESENTED IN MITIGATION.. THE
13 EVIDENCE IN MITIGATION WOULD CONCERN THINGS ABOUT THE
14 BACKGROUND OF KEVIN MERCER. IT MIGHT BE GOOD THINGS ABOUT
15 HIM; IT MIGHT BE BAD THINGS THAT HAPPENED TO HIM. THERE
16 MIGHT BE SOME MEDICAL TESTIMONY, MIGHT BE SOME EXPERT
17 TESTIMONY. AND I ASK YOU THIS: WOULD YOU BE WILLING TO
18 LISTEN TO ALL OF THAT EVIDENCE, WEIGH IT VERY CAREFULLY
19 BEFORE MAKING A DECISION AS TO WHAT THE PUNISHMENT SHOULD
20 BE---

21 A. YES.

22 Q. ---IF YOU WERE ON THE JURY?

23 A. YES.

24 Q. OKAY. ONE FINAL THING. IF YOU WERE ON THE JURY AND
25 -- WHETHER IT BE THE FIRST PHASE OF THE CASE OR IF WE GOT TO

1 THE SECOND PHASE AND YOU HAD AN OPINION AS TO WHAT THE
2 VERDICT MIGHT BE AND YOUR OPINION DIFFERED WITH THE OTHER 11
3 JURORS, DO YOU THINK YOU WOULD EVER CONSIDER GOING ALONG WITH
4 THE OTHER 11 JURORS JUST TO ARRIVE AT A VERDICT?

5 A. NO. I'M KIND OF STUBBORN.

6 Q. OKAY. YOU THINK THEY'D HAVE TO CONVINCING YOU THAT
7 YOU WERE WRONG BEFORE---

8 A. YES, SIR.

9 Q. ---YOU CHANGED YOUR OPINION?

10 A. YES, SIR.

11 Q. FAIR ENOUGH. THANK YOU, SIR.

12 A. OKAY.

13 THE COURT: MR. OSEGUEDA, YOU ARE QUALIFIED TO SERVE
14 AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE GOING TO
15 BE ON THE JURY, BUT IT MEANS THAT YOU'RE ELIGIBLE TO BE.

16 THE WITNESS: OKAY.

17 THE COURT: WE WILL NOT NEED YOU TO COME BACK UNTIL
18 MONDAY MORNING. IF YOU WOULD CALL THE TELEPHONE NUMBER THAT
19 IS SHOWN ON THAT PINK CARD SUNDAY NIGHT---

20 THE WITNESS: OKAY.

21 THE COURT: ---AFTER 6:00, AND WE WILL LET YOU KNOW
22 ON THAT RECORDED MESSAGE EXACTLY WHEN YOU NEED TO BE HERE AND
23 WHETHER OR NOT YOU NEED TO BRING YOUR -- YOUR CLOTHES AND
24 YOUR PERSONAL ITEMS TO STAY WITH US IF YOU'RE -- IF THE JURY
25 IS SEQUESTERED.

1 THE WITNESS: OKAY.

2 THE COURT: BETWEEN NOW AND THEN, YOU'RE NOT ALLOWED
3 TO DISCUSS THIS CASE WITH ANYONE NOR ARE YOU ALLOWED TO --
4 NOR ARE YOU ALLOWED TO HAVE ANYBODY DISCUSS IT WITH YOU.

5 THE WITNESS: UH-HUH.

6 THE COURT: PLEASE BE VERY CAREFUL NOT TO EXPOSE
7 YOURSELF TO ANY NEWS COVERAGE OR PRESS COVERAGE ABOUT THIS
8 CASE, AND WE LOOK FORWARD TO SEEING YOU ON MONDAY. SO CALL
9 SUNDAY NIGHT AFTER 6 FOR DETAILED INSTRUCTIONS ABOUT WHEN TO
10 BE HERE AND WHAT TO BRING.

11 THE WITNESS: OKAY. I HAVE A QUESTION.

12 THE COURT: OKAY.

13 THE WITNESS: MY WORK SCHEDULE FOR THE REST OF THE
14 WEEK, IS THAT FINE TO...

15 THE COURT: FOR THE REST OF THIS WEEK?

16 THE WITNESS: YEAH.

17 THE COURT: YOU'RE FREE TO GO TO WORK.

18 THE WITNESS: OKAY.

19 THE COURT: YOU'RE FREE TO DO ANYTHING YOU WANT TO
20 DO. JUST BE BACK HERE -- BE READY TO BE BACK HERE ON MONDAY
21 MORNING.

22 THE WITNESS: OKAY.

23 THE COURT: NOW, NEXT WEEK YOU WON'T -- IF YOU'RE ON
24 THE JURY, YOU WILL NOT BE ABLE TO WORK.

25 THE WITNESS: OKAY.

1 THE COURT: IF YOU DON'T GET ON THE JURY, THEN
2 YOU'LL BE DONE.

3 THE WITNESS: OKAY.

4 THE COURT: ALL RIGHT?

5 THE WITNESS: OKAY.

6 THE COURT: HAVE A GOOD WEEK.

7 THE WITNESS: ALL RIGHT. DO YOU NEED THESE?

8 THE COURT: YOU CAN GIVE THAT TO THE BAILIFF.

9 (JUROR OSEGUEDA LEAVES THE COURTROOM. JUROR
10 JENNIFER ADAMS IS BROUGHT INTO THE COURTROOM.)

11 JENNIFER ADAMS, HAVING BEEN PREVIOUSLY SWORN AS
12 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
13 TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT

15 Q. MS. ADAMS, GOOD AFTERNOON. YESTERDAY WE PUT YOU
16 UNDER OATH, AND YOU'RE STILL UNDER OATH TODAY. DO YOU
17 UNDERSTAND THAT?

18 A. YES.

19 Q. ALL RIGHT. NOW, SINCE YESTERDAY WHEN YOU WERE HERE,
20 HAVE YOU DISCUSSED THIS CASE WITH ANYONE OR HAS ANYONE TRIED
21 TO TALK TO YOU ABOUT THIS CASE?

22 A. NO.

23 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
24 WHEN I'M DONE, THE LAWYERS WILL ASK YOU SOME FOLLOW-UP
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. WE JUST WANT YOU TO
3 LISTEN VERY CAREFULLY TO THE QUESTIONS AND THEN BE OPEN AND
4 HONEST WITH US AND TELL US WHAT YOU THINK AND HOW YOU FEEL
5 ABOUT THESE ISSUES THAT WE'RE GOING TO BE DISCUSSING.

6 IF YOU ARE A JUROR ON THIS CASE, COULD YOU ACCEPT
7 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
8 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
9 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
10 THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
11 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

12 A. YES.

13 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
14 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
15 REASONABLE DOUBT?

16 A. YES.

17 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
18 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
19 I WOULD GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
20 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU BELIEVE
21 THE STATE HAS MET ITS BURDEN OF PROOF?

22 A. YES.

23 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
24 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
25 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M

1 GOING TO TALK TO YOU A LITTLE BIT NOW ABOUT SOME OF THE
2 THINGS THAT WOULD COME UP IF WE GET INTO THAT PHASE.

3 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
4 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
5 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
6 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
7 AND ADD TO 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 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS OF AGGRAVATING
13 AND MITIGATING CIRCUMSTANCES?

14 A. YES.

15 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, WE GAVE YOU A
16 COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
17 JURORS. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

18 A. YES.

19 Q. DO YOU THINK THAT YOU ARE -- WHAT TYPE OF JUROR DO
20 YOU THINK YOU WOULD BE?

21 A. THE LAST.

22 Q. THE THIRD CATEGORY?

23 A. UH-HUH.

24 Q. IF YOU ARE ON THE JURY IN THIS CASE AND IF THE JURY
25 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE

1 SENTENCING PHASE OF THE TRIAL. NOW, I WANT TO TELL YOU THAT
2 THE DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL
3 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. IN THE
4 SENTENCING PHASE IT WOULD BE THE JURY WHO WOULD DECIDE WHAT
5 THE PENALTY SHOULD BE, AND THERE WOULD BE TWO OPTIONS. ONE
6 OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY
7 OF PAROLE, AND THE OTHER OPTION WOULD BE FOR THE DEATH
8 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
9 THAT YOU FIND TO EXIST AND IN LIGHT AND CONSIDERING THE LAW
10 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
11 VERDICT FOR A LIFE SENTENCE?

12 A. YES.

13 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
14 DEATH PENALTY?

15 A. YES.

16 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
17 DECIDE TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A HOTEL
18 FOR FIVE OR SIX DAYS, AND WE'D FEED YOU YOUR MEALS AND YOU
19 WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
20 TERRIBLE BURDEN ON YOU?

21 A. ONLY AT NIGHT BECAUSE OF MY CHILDREN.

22 Q. TELL ME HOW OLD YOUR CHILDREN ARE.

23 A. THEY'RE FOUR AND FIVE.

24 Q. AND ARE YOU MARRIED?

25 A. YES.

1 Q. SO WOULD YOUR HUSBAND BE AVAILABLE TO TAKE CARE OF
2 THEM?

3 A. AT NIGHT HE'S ON -- HE'S A POLICEMAN RIGHT NOW.
4 HE'S ON DAY SHIFT, BUT IN THE MORNING -- THIS WEEK IS FINE,
5 BUT NEXT WEEK WHEN THEY'RE OFF OF SPRING BREAK MY FIVE-YEAR-
6 OLD WILL GO BACK TO SCHOOL. AND HE HAS TO BE AT WORK AT 6 IN
7 THE MORNING, SO NO ONE WILL BE THERE TO TAKE HER TO SCHOOL.

8 Q. I SEE. WELL -- AND NORMALLY YOU'RE THE ONE WHO
9 TAKES HER TO SCHOOL?

10 A. YES, AND I DROP MY SON OFF AT MY MOM'S HOUSE FOR
11 CARE.

12 Q. OKAY. WELL, NOW, WE'RE NOT GOING TO PUT YOU IN A
13 POSITION OF BEING -- OF BEING UNABLE TO TAKE CARE OF YOUR
14 CHILDREN. THAT'S WHY I'M ASKING THESE QUESTIONS. SO IS
15 THERE ANYBODY SUCH AS PERHAPS YOUR MOM WHO MIGHT COULD FILL
16 THAT ROLE FOR ONE WEEK?

17 A. SHE MIGHT COULD.

18 Q. OKAY. DO YOU THINK IT'S POSSIBLE THAT YOUR HUSBAND
19 MIGHT COULD REARRANGE HIS WORK SCHEDULE BECAUSE OF THE FACT
20 THAT YOU'RE ON THE JURY AND HE COULD FILL THAT ROLE FOR THE
21 WEEK?

22 A. HE MIGHT COULD---

23 Q. OKAY.

24 A. ---DEPENDING ON, YOU KNOW...

25 Q. WELL, I TELL YOU WHAT I'LL DO THEN. WELL, LET ME

1 ASK YOU THIS: IF YOU WERE ABLE TO FIND SOMEBODY TO TAKE YOUR
2 CHILD TO SCHOOL IN THE MORNING -- AND THEN IS THERE SOMETHING
3 THEY WOULD HAVE TO DO IN THE AFTERNOON ALSO?

4 A. NO. MY MOM USUALLY PICKS THEM UP ANYWAY FROM THE
5 BUS STOP OR PICKS MY DAUGHTER UP.

6 Q. OKAY. AND SO THEN YOUR HUSBAND WOULD BE ABLE TO GET
7 HER---

8 A. AT NIGHT.

9 Q. ---AT NIGHT?

10 A. AFTER HE GETS OFF.

11 Q. SO IF YOU'RE ABLE TO FIND SOMEBODY TO FILL THE ROLE
12 OF TAKING YOUR CHILDREN TO WHEREVER THEY HAVE TO BE IN THE
13 MORNING, DO YOU THINK THAT YOU WOULD BE ABLE TO HANDLE THE
14 BURDEN OF BEING SEQUESTERED IN A JURY PANEL?

15 A. YES. YES, SIR.

16 Q. ALL RIGHT. NOW, IF YOU'RE NOT SEQUESTERED, WHAT
17 TIME WOULD YOU BE FINISHED WITH TAKING YOUR CHILDREN TO
18 SCHOOL AND TO YOUR MOTHER'S HOUSE IN THE MORNING?

19 A. I USUALLY HAVE TO BE AT WORK AT 9, SO I USUALLY TAKE
20 THEM THERE BY 8 OR 8:30 ANYWAY.

21 Q. OKAY.

22 A. MY DAUGHTER HAS TO BE THERE AT 7:30 FOR SCHOOL,
23 SO...

24 Q. AT 7:30? DO THEY GO TO SCHOOL RIGHT AROUND HERE?

25 A. UH-HUH.

1 Q. IN LEXINGTON?

2 A. UH-HUH. RED BANK.

3 Q. HOW FAR AWAY IS THAT FROM DOWNTOWN?

4 A. OH, GOSH, THREE MILES AT MOST.

5 Q. OKAY. ALL RIGHT. DID YOU GET A COPY OF THE WITNESS
6 LIST WHEN YOU CAME IN THIS AFTERNOON?

7 A. I DID.

8 Q. DID YOU READ EVERY NAME ON THAT LIST?

9 A. I DID.

10 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
11 IS ON THAT LIST?

12 A. NOT RELATED. THE ONLY NAME THAT I RECOGNIZE WAS
13 NUMBER 3, CAPTAIN WILLIAM BOWMAN, AND ONLY BECAUSE I REMEMBER
14 HIM BEING NAMED IN A LITIGATION CASE WE HAD AT THE CITY
15 ATTORNEY'S OFFICE AND DON'T REMEMBER ANYTHING ABOUT HIM. IT
16 WAS ONE OF THESE PRO SE PRISONER CASES WHERE HE NAMED
17 EVERYBODY WHO ARRESTED HIM - OUR CITY OFFICERS UP TO PEOPLE
18 AT THE DETENTION CENTER.

19 Q. MIGHT HAVE NAMED ME.

20 A. NO, NO, NOT YOU THIS TIME.

21 Q. ALL RIGHT. I'M GOING TO LET THE LAWYERS ASK YOU
22 SOME FOLLOW-UP QUESTIONS NOW.

23 A. OKAY.

24 Q. AND DON'T YOU WORRY ABOUT THIS THING ABOUT IF YOU'RE
25 SEQUESTERED HOW YOU'RE GOING TO TAKE CARE OF YOUR CHILDREN

1 BECAUSE WE'RE NOT GOING TO PUT YOU IN A POSITION OF THAT
2 BEING A PROBLEM.

3 A. OKAY.

4 Q. I'LL TALK TO YOU A LITTLE BIT MORE ABOUT THAT IN A
5 FEW. OKAY?

6 A. UH-HUH.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q. GOOD AFTERNOON, MS. ADAMS.

10 A. HI.

11 Q. I UNDERSTAND YOU'RE A LEGAL ASSISTANT TO THE
12 ATTORNEY IN THE CITY OF COLUMBIA?

13 A. RIGHT.

14 Q. IS THERE ANYTHING ABOUT YOUR JOB THERE OR YOUR
15 HUSBAND'S JOB THAT WOULD PREVENT YOU FROM GIVING BOTH SIDES
16 IN THIS CASE A FAIR TRIAL?

17 A. NOT THAT I'M AWARE OF, NO.

18 Q. YOU COULD COME INTO THIS COURTROOM AS A JUROR AND
19 LISTEN TO BOTH SIDES AND GIVE EACH SIDE A FAIR TRIAL?

20 A. YES.

21 Q. OKAY: NOW, I WANT TO JUST -- I REALIZE YOU HAVE A
22 LITTLE BIT OF EXPERIENCE OR MORE THAN MOST PEOPLE WITH THE
23 LEGAL SYSTEM WORKING WITH THE CITY OF COLUMBIA.

24 A. UH-HUH.

25 Q. HAVE YOU EVER BEEN IN THE COURTROOM DURING THE

1 TRIALS?

2 A. BRIEFLY. NOT TO SIT THROUGH ONE, NO.

3 Q. YOU'RE PROBABLY FAMILIAR WITH THE PROCESS THOUGH,
4 ARE YOU NOT?

5 A. YES, SIR.

6 Q. IN THIS CASE IT'S A LITTLE BIT DIFFERENT FROM THE
7 TYPICAL CRIMINAL CASE. THE FIRST PART THE JUDGE WAS
8 DESCRIBING IS VERY MUCH LIKE A REGULAR CASE, A NORMAL CASE,
9 WHERE 12 JURORS SIT HERE IN THIS JURY BOX. WITNESSES SIT
10 WHERE YOU'RE SITTING. WE PRESENT EVIDENCE, AND AT THE END OF
11 THAT TRIAL THE JURY GOES BACK AND THEY DETERMINE WHETHER THE
12 DEFENDANT IS GUILTY OR NOT GUILTY.

13 A. UH-HUH.

14 Q. JUST LIKE ANY OTHER CASE. THE DIFFERENCE HERE IS IF
15 THE DEFENDANT IS FOUND GUILTY OF MURDER, THE JUDGE DOESN'T
16 IMPOSE THE SENTENCE; THE JURY DOES. AND JUST AS THE JUDGE,
17 WHEN SOMEBODY'S FOUND GUILTY, WANTS TO HEAR EVERYTHING ABOUT
18 A DEFENDANT AND ALL THE CIRCUMSTANCES SURROUNDING THE CRIME,
19 THE AGGRAVATING AND THE MITIGATING CIRCUMSTANCES---

20 A. UH-HUH.

21 Q. ---THE JURY GETS TO HEAR ALL THAT INFORMATION IN THE
22 SECOND PHASE. DO YOU UNDERSTAND THAT?

23 A. RIGHT.

24 Q. THE FIRST PART IS SIMPLY ABOUT GUILT OR INNOCENCE,
25 NOTHING ABOUT PUNISHMENT.

1 A. UH-HUH.

2 Q. THE SECOND PHASE, THAT'S WHAT WE'RE TALKING ABOUT,
3 PUNISHMENT. LIFE OR DEATH. DO YOU UNDERSTAND THAT?

4 A. YES.

5 Q. AND AS THE JUDGE SAID, IF WE GET TO THE SECOND
6 PHASE, YOU'LL HEAR GOOD THINGS OR BAD THINGS ABOUT THE
7 DEFENDANT, THINGS THAT MAKE THE CRIME WORSE, THINGS THAT MAY
8 REDUCE OR MITIGATE THAT CRIME.

9 A. UH-HUH.

10 Q. AND AS I UNDERSTAND YOUR RESPONSE, YOU WOULD WANT TO
11 BE ABLE TO HEAR ALL THAT INFORMATION BEFORE YOU MADE A
12 DECISION.

13 A. YES.

14 Q. AND IF I UNDERSTOOD YOU, TOO, YOU COULD LISTEN TO
15 ALL THAT INFORMATION AND IF YOU THOUGHT IT WAS APPROPRIATE
16 YOU COULD GIVE A LIFE SENTENCE.

17 A. YES.

18 Q. AND AFTER LISTENING TO ALL THAT INFORMATION, IF YOU
19 THOUGHT IT WAS APPROPRIATE YOU COULD GIVE A DEATH SENTENCE.

20 A. YES.

21 Q. NOW, THERE IS ONE OTHER THING ABOUT THIS TYPE OF
22 SYSTEM THAT IS A LITTLE BIT DIFFERENT. IF THE JURY
23 DETERMINES LIFE, A FOREMAN SIGNS THAT VERDICT FORM, BUT IF
24 THE JURY DECIDES DEATH, ALL 12 JURORS SIGN THAT VERDICT FORM.
25 IF YOU WERE ON THE JURY AND IF Y'ALL CAME BACK WITH A

1 DECISION AND IT WAS YOUR DECISION THAT DEATH WAS APPROPRIATE,
2 COULD YOU SIGN THAT VERDICT FORM?

3 A. YES.

4 Q. AND, AGAIN, YOU WOULD WANT TO HEAR EVERYTHING FROM
5 THE DEFENSE AND FROM THE STATE BEFORE YOU DID THAT.

6 A. RIGHT.

7 Q. MS. ADAMS, THAT'S ALL WE COULD ASK OF YOU. THANK
8 YOU.

9 A. UH-HUH.

10 CROSS-EXAMINATION

11 BY MS. KIMBROUGH:

12 Q. GOOD AFTERNOON, MS. ADAMS. HOW ARE YOU?

13 A. FINE. HOW ARE YOU?

14 Q. GOOD. THANK YOU. I REPRESENT KEVIN MERCER WHO I
15 BELIEVE YOU WERE INTRODUCED TO YESTERDAY MORNING. IT SEEMS
16 LIKE IT'S BEEN SEVERAL DAYS; IT HASN'T BEEN QUITE THAT LONG.
17 AND CAM LITTLEJOHN IS ALSO REPRESENTING MR. MERCER. WE JUST
18 HAVE A FEW QUESTIONS FOR YOU. YOU WORK WITH THE CITY
19 ATTORNEY IN COLUMBIA?

20 A. RIGHT.

21 Q. WHO IS THAT?

22 A. JIM MEGGS.

23 Q. JIM MEGGS?

24 A. AND THERE'S FOUR OTHER ASSISTANT CITY ATTORNEYS.

25 Q. IT'S A PRETTY BIG OFFICE?

1 A. IT IS.

2 Q. OKAY. AND YOU'VE BEEN THERE EIGHT YEARS?

3 A. RIGHT.

4 Q. OKAY. AND AS PART OF YOUR JOB AS A PARALEGAL IN
5 THAT OFFICE, DO YOU HANDLE A FAIR NUMBER OF CRIMINAL MATTERS
6 OR MATTERS THAT INVOLVE PRISONERS? IS THAT...

7 A. MOSTLY -- IF THEY'RE PRISONERS, IT'S FEDERAL. IT'S
8 AT THE FEDERAL LEVEL.

9 Q. OKAY.

10 A. OR CIRCUIT COURT, STATE COURT, COMMON PLEAS. IT'S
11 NOT GENERAL SESSIONS.

12 Q. OKAY. ALL RIGHT. AND YOU HAVE TWO CHILDREN?

13 A. YES.

14 Q. NOW, THE VICTIM IN THIS CASE IS A MAN WHO WAS A
15 CAREER ARMY PROFESSIONAL. HE WAS AN ARMY RECRUITER. WOULD
16 THE FACT THAT HE WAS IN THE MILITARY AND WAS A CAREER
17 MILITARY MAN, WOULD THAT GIVE YOU ANY DIFFICULTY INsofar AS
18 REMAINING FAIR AND IMPARTIAL DURING THE GUILT PHASE OF THIS
19 TRIAL?

20 A. NO.

21 Q. OKAY. I NOTICED YOU HAD -- YOU'VE LISTED SOME
22 BUMPER STICKERS. I WAS JUST KIND OF CURIOUS ABOUT ONE OF
23 THEM. NUMBER THREE, THE BLUE LINE, I HAVE NEVER SEEN THAT
24 BEFORE.

25 A. IT'S A SYMBOL FOR POLICEMEN, BLUE LINE. IT'S THE

1 BLACK WITH THE BLUE LINE IN THE MIDDLE OF IT.

2 Q. OH, OKAY. ALL RIGHT. AND YOUR HUSBAND IS A
3 POLICEMAN?

4 A. UH-HUH.

5 Q. DO YOU THINK SERVING ON A JURY WITH A HUSBAND WHO IS
6 A POLICEMAN -- WOULD THAT CAUSE YOU ANY PROBLEMS? WOULD YOU
7 FEEL SOMEWHAT AT ALL CONFLICTED AS A RESULT OF THAT?

8 A. NO.

9 Q. OKAY. AND HE'S WITH THE UNIVERSITY OF SOUTH
10 CAROLINA?

11 A. THAT'S RIGHT.

12 Q. OKAY. IS HE A PATROLMAN THERE?

13 A. HE IS.

14 Q. OKAY. I'LL MOVE ON TO THE PARTICULAR PARTS OF THIS
15 TRIAL. AND YOU'VE ALREADY BEEN TOLD, I THINK, TWICE NOW THAT
16 THERE ARE TWO PARTS TO THIS TRIAL, POTENTIALLY TWO PARTS. WE
17 KNOW FOR CERTAIN THERE'S ONE PART, AND THAT WOULD BE THE
18 INNOCENCE-OR-GUILT PHASE. AND IN BOTH PARTS OF THIS TRIAL
19 YOU MAY HEAR FROM THE DEFENDANT, MY CLIENT, MR. MERCER, AND
20 YOU'LL ALSO HEAR FROM THE STATE. NOW, DURING THE INNOCENCE-
21 OR-GUILT PHASE OF THE TRIAL, YOU, ALONG WITH THE OTHER 11
22 JURORS, WOULD HAVE TO DECIDE WHETHER OR NOT THE STATE HAD MET
23 ITS BURDEN OF PROOF. CAN YOU THINK OF ANYTHING THAT WOULD
24 STAND IN THE WAY OF BEING ABLE TO ESSENTIALLY HOLD THE STATE
25 TO ITS BURDEN OF PROOF AND ALLOWING YOU TO FOLLOW THE

1 PRESUMPTIONS OF INNOCENCE AND THE REASONABLE DOUBT STANDARD?
2 CAN YOU THINK OF ANYTHING THAT WOULD -- THAT WOULD MAKE THAT
3 DIFFICULT FOR YOU?

4 A. NO.

5 Q. OKAY. NO PRIOR EXPERIENCES THAT WOULD---

6 A. NO.

7 Q. ---CONFLICT WITH THAT. OKAY. AND IF YOU WERE
8 DELIBERATING WITH THE OTHER JURORS AND YOU HELD A -- YOU HAD
9 AN OPINION ABOUT THE FACTS -- BECAUSE YOU AND THE OTHER
10 JURORS WILL BE THE SOLE DETERMINERS OF THE FACTS. YOU'RE THE
11 -- YOU'RE THE ONLY ONES WHO CAN DETERMINE WHAT THEY ARE AND
12 THEN APPLY THE LAW AS THE JUDGE WILL INSTRUCT YOU WHAT IT IS.
13 IF YOU HAD A BELIEF THAT WAS DIFFERENT FROM, SAY, THE OTHER
14 11 OR EVEN JUST A MAJORITY, DO YOU THINK YOU WOULD HAVE
15 DIFFICULTY MAINTAINING YOUR VIEW OR IN ANY WAY FEEL
16 INFLUENCED BY SORT OF MAJORITY PULL?

17 A. NO. PEOPLE HAVE TOLD ME I'VE NEVER HAD A PROBLEM
18 SPEAKING MY MIND, SO THAT'S...

19 Q. OKAY. ALL RIGHT. SO IF YOU FIRMLY HELD AN OPINION,
20 YOU WOULDN'T JUST GO ALONG WITH THE MAJORITY TO REACH A
21 VERDICT.

22 A. NO.

23 Q. OKAY. YOU'D HAVE TO BE CONVINCED.

24 A. ABSOLUTELY.

25 Q. OKAY. GREAT. MOVING ON TO THE PENALTY PHASE, IF WE

1 GET TO THAT PHASE, YOU'RE GOING TO HEAR A LOT OF DIFFERENT
2 TESTIMONY, I WOULD ANTICIPATE. WE'RE NOT THERE YET AND I'M
3 NOT SURE WHAT THE STATE'S GOING TO PRESENT, AND MR. MERCER
4 HAS NO BURDEN TO PRESENT ANYTHING ALTHOUGH HE MIGHT. YOU
5 KNOW, ESSENTIALLY IT WILL BE PRETTY CLEAR THAT THE STATE
6 WANTS THE IMPOSITION OF CAPITAL PUNISHMENT WHEREAS MR. MERCER
7 WANTS THE IMPOSITION OF A LIFE SENTENCE. IF WE GET THERE,
8 THAT'S GOING TO BE VERY CLEAR, AND AS A RESULT, WE'RE BOTH
9 GOING TO BE PRESENTING EVIDENCE.

10 NOW, SOME OF THAT EVIDENCE MAY RELATE TO THE VICTIM
11 IN THIS CASE, MR. DAVIS. IT MAY RELATE TO -- YOU MAY HEAR
12 SOME TESTIMONY FROM PEOPLE WHO KNEW HIM. YOU MAY HEAR FACTS
13 ABOUT HIS LIFE AND GET SORT OF A WINDOW INTO WHO HE WAS. ON
14 THE OTHER HAND OR ON MR. MERCER'S SIDE, YOU MAY ALSO HEAR
15 EVIDENCE ABOUT MR. MERCER'S BACKGROUND. YOU MAY HEAR
16 EVIDENCE RELATED TO HIS FAMILY SITUATION, WHAT KIND OF PERSON
17 HE IS, MAYBE SOME GOOD THINGS HE'S DONE AND MAYBE SOME
18 DIFFICULTIES HE'S HAD IN LIFE, THINGS THAT MAY HAVE IMPACTED
19 THE PERSON THAT HE BECAME OR, YOU KNOW, THE FACTS THAT ARE
20 PART OF HIS BACKGROUND. WOULD YOU BE WILLING TO WAIT UNTIL
21 ALL THE INFORMATION IS PRESENTED BEFORE BEGINNING THE PROCESS
22 OF DECIDING WHAT IS THE MOST APPROPRIATE PUNISHMENT?

23 A. YES.

24 Q. OKAY. WOULD YOU HAVE ANY DIFFICULTY CONSIDERING
25 EXPERT EVIDENCE OVER LAY EVIDENCE OR LAY EVIDENCE, YOU KNOW,

1 IN ADDITION TO THE EXPERT TESTIMONY?

2 A. NO.

3 Q. OKAY. AND BACK TO THE QUESTION OF DELIBERATIONS --
4 THIS IS MY LAST QUESTION. AGAIN, IN THE SENTENCING PHASE IF
5 YOU GOT THERE AND YOU BELIEVED DIFFERENTLY THAN, SAY, THE
6 MAJORITY, WOULD YOU AGAIN WANT TO ESSENTIALLY HOLD ON TO YOUR
7 OPINION UNLESS IT WAS CHANGED?

8 A. I WOULD.

9 MS. KIMBROUGH: OKAY. THANK YOU.

10 THE COURT: MS. ADAMS, YOU ARE QUALIFIED TO SERVE AS
11 A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE GOING TO BE
12 ON THE JURY, BUT IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY.
13 WE'RE ACTUALLY GOING TO STRIKE OR SELECT THE JURY ON MONDAY,
14 SO YOU'RE FINISHED WITH US FOR THE WEEK. YOU'RE FREE TO GO
15 ABOUT YOUR BUSINESS AND DO ANYTHING YOU NEED TO DO. YOU NEED
16 TO BE AVAILABLE TO REPORT ON MONDAY MORNING.

17 NOW, IF YOU WILL CALL ON SUNDAY NIGHT AFTER 6:00,
18 THERE WILL BE A MESSAGE. YOU CALL THAT TELEPHONE NUMBER THAT
19 WAS GIVEN TO YOU ON THAT PINK CARD, AND THERE'S -- THERE WILL
20 BE A MESSAGE THERE THAT GIVES YOU DETAILED INSTRUCTIONS ABOUT
21 WHEN YOU NEED TO REPORT AND WHETHER OR NOT YOU NEED TO BRING
22 YOUR STUFF BECAUSE OF THE FACT THAT YOU MIGHT BE SEQUESTERED.

23 NOW, BETWEEN -- I ACTUALLY SAID YOU WERE DONE. I
24 HAVE A FEW THINGS I WANT YOU TO CHECK ON. IF YOU DON'T MIND,
25 I WOULD LIKE FOR YOU TO CHECK TO SEE IF YOU CAN MAKE

1 ARRANGEMENTS FOR YOUR MOTHER OR YOUR HUSBAND OR SOMEBODY TO
2 TAKE CARE OF THOSE CHILDREN DURING THE WEEK, NEXT WEEK, WHEN
3 WE'RE TRYING THIS CASE, TO TAKE THEM TO SCHOOL IN THE MORNING
4 OR DO WHATEVER IT IS THAT HAS TO BE DONE IN ORDER TO MAKE
5 SURE YOUR CHILDREN ARE CARED FOR PROPERLY WHILE YOU'RE
6 SERVING ON THE JURY. NOW, IF YOU'RE -- IF YOU'RE NOT
7 SEQUESTERED, THEN YOU COULD DO THAT YOURSELF IN THE MORNING.

8 THE WITNESS: RIGHT.

9 THE COURT: WE WOULD -- WE WOULD PERHAPS BE WORKING
10 A LITTLE BIT LATER THAN NORMAL, MAYBE UNTIL ABOUT 7 EVERY
11 NIGHT EVEN IF YOU'RE NOT SEQUESTERED. BUT -- BUT IF YOU ARE
12 SEQUESTERED, THEN YOU'RE NOT GOING TO BE ABLE TO DO ANYTHING
13 WITH REGARD TO THOSE CHILDREN. SO DO YOU MIND CHECKING ON
14 THAT AND THEN REPORT BACK? I'M GOING TO -- I'M GOING TO HAVE
15 THE CLERK MEET YOU -- SOMEBODY FROM THE CLERK'S OFFICE WILL
16 MEET YOU IN THE HALL RIGHT BACK HERE AND TELL YOU A TELEPHONE
17 NUMBER TO CALL.

18 THE WITNESS: OKAY.

19 THE COURT: IF YOU CAN WORK EVERYTHING OUT, JUST
20 TELL THEM -- WHEN YOU CALL BACK JUST SAY, "I'VE GOT
21 EVERYTHING WORKED OUT." IF YOU MIGHT HAVE IT WORKED OUT OR
22 IF YOU NEED TO DISCUSS IT, THEN ANY OBJECTION TO HER HAVING A
23 CONVERSATION WITH ME ABOUT HOW SHE IS GOING TO WORK OUT HER
24 FAMILY SITUATION?

25 MR. MYERS: NO OBJECTION.

1 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

2 THE COURT: ALL RIGHT. IF YOU NEED -- SO IF YOU
3 NEED TO TALK TO ME, YOU CAN JUST TELL THE CLERK THAT WHEN YOU
4 CALL, AND I PROBABLY WILL HAVE TO CALL YOU BACK, BUT I WILL
5 CALL YOU BACK AND WE'LL DISCUSS IT.

6 THE WITNESS: OKAY.

7 THE COURT: OKAY?

8 THE WITNESS: ALL RIGHT.

9 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS
10 ABOUT THAT?

11 THE WITNESS: NO, SIR.

12 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

13 THE WITNESS: THANK YOU.

14 (JUROR ADAMS LEAVES THE COURTROOM.)

15 THE COURT: ALL RIGHT. LET'S TAKE A SHORT BREAK.
16 WE HAVE TWO JURORS LEFT, AND WE'LL BE DONE FOR THE DAY.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 THE COURT: BE SEATED.

19 MR. LITTLEJOHN: I'M SORRY, JUDGE. I THOUGHT YOU
20 WERE GOING TO TAKE A FOUR-MINUTE BREAK.

21 THE COURT: I CROSSED YOU UP. ALL RIGHT. BRING THE
22 JURY IN -- JUROR IN.

23 (JUROR RONALD SCHROEDER IS BROUGHT INTO THE
24 COURTROOM.)

25 RONALD SCHROEDER, HAVING BEEN PREVIOUSLY SWORN

1 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
2 TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT

4 Q. HOW ARE YOU, SIR?

5 A. GOOD.

6 Q. MR. SCHROEDER, YOU WERE PUT UNDER OATH YESTERDAY,
7 AND YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. SINCE YESTERDAY WHEN YOU WERE HERE, HAVE YOU TALKED
10 TO ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT
11 THE CASE?

12 A. NOT A BIT.

13 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
14 THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP
15 QUESTIONS. WE DON'T MEAN TO PRY TOO FAR INTO YOUR PERSONAL
16 LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE
17 NOT ANY RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO LISTEN
18 VERY CAREFULLY AND THEN TO BE OPEN AND HONEST WITH US. TELL
19 US HOW YOU FEEL AND HOW YOU THINK ABOUT THESE ISSUES THAT
20 WE'RE GOING TO BE DISCUSSING.

21 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
22 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
23 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
24 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT IS
25 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD

1 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

2 A. YES, I COULD.

3 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
4 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
5 REASONABLE DOUBT?

6 A. YES.

7 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
8 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
9 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
10 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT THE
11 STATE HAS MET ITS BURDEN OF PROOF?

12 A. YES, I COULD.

13 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
14 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
15 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
16 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
17 COME UP IN THAT PHASE IF WE GET THERE. AGGRAVATING
18 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
19 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
20 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
21 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
22 RESULTING FROM THE CRIME.

23 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
24 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
25 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND

1 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
2 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
3 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
4 CIRCUMSTANCES?

5 A. YES, SIR.

6 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
7 COPY OF THIS SHEET THAT SUMMARIZES THE THREE TYPES OF JURORS.
8 DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

9 A. YES, SIR.

10 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
11 YOU ARE?

12 A. I BELIEVE I'M IN THE THIRD CATEGORY.

13 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
14 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
15 SENTENCING PHASE OF THE TRIAL. NOW, I WANT TO TELL YOU THAT
16 THE DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL
17 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT, AND IT
18 WOULD BE THE JURY THAT WOULD DECIDE THE PENALTY FOR THE CRIME
19 OF MURDER IN A CASE LIKE THIS, AND THERE WOULD BE TWO
20 OPTIONS. ONE OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE
21 POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD BE FOR THE
22 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND
23 CIRCUMSTANCES THAT YOU FIND TO EXIST AND IN LIGHT OF THE LAW
24 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO IMPOSE A LIFE
25 SENTENCE?

1 A. YES.

2 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

3 A. YES.

4 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
5 DECIDE TO SEQUESTER THE JURY, THEN YOU WOULD BE PUT UP IN A
6 HOTEL FOR SEVERAL DAYS WHILE WE TRY THE CASE, FIVE OR SIX
7 DAYS PERHAPS, AND YOU WOULD NOT BE ALLOWED TO GO HOME. NOW,
8 I UNDERSTAND YOU HAVE WORK-RELATED PROBLEMS THAT WE TALKED
9 ABOUT THE OTHER DAY, AND YOU'RE NOT GOING TO BE ABLE TO WORK
10 IF YOU'RE ON THE JURY, WHETHER YOU -- WHETHER THE JURY IS
11 SEQUESTERED OR NOT. BUT IN TERMS OF YOUR HOME LIFE AND YOUR
12 FAMILY LIFE, WOULD HAVING THE JURY SEQUESTERED IMPOSE A
13 TERRIBLE BURDEN ON YOU?

14 A. NO.

15 Q. DID YOU GET THAT WITNESS LIST THAT WE SENT BACK INTO
16 THE JURY ROOM?

17 A. YES, SIR, I DID.

18 Q. DID YOU READ EVERY NAME ON THAT LIST?

19 A. I DID.

20 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
21 APPEARS ON THAT LIST?

22 A. NO, SIR.

23 THE COURT: ALL RIGHT, SIR. NOW THE LAWYERS ARE
24 GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS.

25

DIRECT EXAMINATION

1
2 BY MR. HUBBARD:

3 Q. SIR, DO YOU PRONOUNCE YOUR LAST NAME SCHROEDER OR
4 SCHROEDER (DIFFERENT PRONUNCIATION)?

5 A. SCHROEDER.

6 Q. SCHROEDER. OKAY. I JUST WANTED TO MAKE SURE. I
7 SEE THAT, MR. SCHROEDER, THAT AT ONE POINT YOU WERE IN THE
8 UNITED STATES NAVY?

9 A. THAT'S CORRECT.

10 Q. IN THIS CASE YOU'LL HEAR ABOUT A VICTIM WHO WAS IN
11 THE UNITED STATES ARMY WHO WAS A CAREER -- CAREER SOLDIER. I
12 JUST WANT TO ASK: IS THERE ANYTHING IN YOUR EXPERIENCE IN
13 YOUR BACKGROUND BEING IN THE MILITARY THAT WOULD PREVENT YOU
14 FROM GIVING BOTH SIDES A FAIR TRIAL IN THIS CASE?

15 A. YEAH. THAT WAS A QUESTION THAT I THOUGHT LONG AND
16 HARD ABOUT LAST NIGHT, AND THE TRUTH OF THE MATTER IS THAT
17 REGARDLESS OF THE CIRCUMSTANCES OF THE CASE AND WHO WAS
18 INVOLVED IN IT - AND THIS MAY SOUND A LITTLE MELODRAMATIC -
19 BUT I DID TAKE AN OATH TO PROTECT AND DEFEND THE CONSTITUTION
20 OF THE UNITED STATES, AND UNDER THAT I DO BELIEVE THAT
21 EVERYBODY HAS GOT A RIGHT TO A FAIR TRIAL. SO...

22 Q. OKAY. SO YOU COULD GIVE BOTH SIDES -- IN FACT, YOU
23 WOULD WANT TO GIVE BOTH SIDES A FAIR TRIAL.

24 A. YES, SIR.

25 Q. OKAY. I JUST HAD TO ASK THAT. I THINK I REMEMBER

1 YOU STANDING UP YESTERDAY, TOO, AND I JUST WANTED TO FOLLOW
2 UP WITH THAT. AND I SEE ALSO -- ONE OTHER QUESTION. YOU
3 HAVEN'T SERVED ON A JURY BEFORE, HAVE YOU?

4 A. THAT'S CORRECT.

5 Q. BUT YOU DID TESTIFY IN A CRIMINAL CASE BEFORE?

6 A. NO, I DON'T...

7 Q. OKAY. I COULD BE READING THE FORM WRONG.

8 A. I MIGHT HAVE CHECKED IT WRONG.

9 Q. OKAY. IF YOU DID, FINE. GREAT.

10 A. I TAKE THAT BACK. YES, I DID TESTIFY IN A CRIMINAL
11 CASE; I REMEMBER WHAT IT WAS NOW. IT WAS A CREDIT CARD FRAUD
12 WHEN I WAS WORKING AT SEARS.

13 Q. I SEE.

14 A. AND IT WAS -- IT ACTUALLY ENDED UP BEING A FEDERAL
15 CASE, SO...

16 Q. OKAY. ALL RIGHT. SO YOU HAVE SOME EXPERIENCE WITH
17 THE COURT SYSTEM.

18 A. YEAH, A LITTLE.

19 Q. WELL, AS THE JUDGE WAS SAYING, THIS CASE IS KIND OF
20 DIFFERENT. THERE'S TWO PARTS, POTENTIALLY TWO PARTS. THE
21 FIRST HALF WE FOCUS ON PROVING THE CASE AND WHETHER SOMEONE
22 IS GUILTY OR NOT GUILTY. THE SECOND PHASE WE ONLY GET TO IF
23 A DEFENDANT IS FOUND GUILTY AND THEN WE DETERMINE PUNISHMENT.
24 IN THE FIRST PHASE, JURORS SIT RIGHT HERE IN THIS COURTROOM
25 IN THESE CHAIRS. THE STATE, ME, WILL PUT WITNESSES RIGHT

1 WHERE YOU ARE AND WILL PRESENT EVIDENCE SHOWING THIS CASE,
2 EVIDENCE THAT WE WOULD HOPE TO SHOW THE DEFENDANT'S GUILTY,
3 AND THE DEFENSE WOULD HAVE A CHANCE TO CROSS EVERYBODY. AND
4 AT THE END OF THE TRIAL THE JURY WOULD GO BACK, AND THEY
5 WOULD HAVE TO DETERMINE WHETHER WE HAD MET OUR BURDEN,
6 WHETHER THE DEFENDANT WAS GUILTY OR NOT GUILTY. THERE WOULD
7 BE NO DISCUSSION OF PUNISHMENT AT THAT POINT. DO YOU
8 UNDERSTAND THAT?

9 A. YES, SIR.

10 Q. SIMPLY GUILTY OR NOT GUILTY. IF WE GO TO THE SECOND
11 HALF, IT'S ONLY BECAUSE THE DEFENDANT HAS BEEN FOUND GUILTY
12 OF MURDER. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. AND THAT'S ANOTHER REASON WHY WHAT WE'RE DOING IS A
15 LITTLE DIFFERENT THAN USUAL. TYPICALLY A JURY DOESN'T
16 SENTENCE A DEFENDANT; IT'S THE JUDGE. IN THAT SECOND PHASE,
17 JUST LIKE THE JUDGE SAID, THAT'S WHEN WE'LL FOCUS ON
18 PUNISHMENT, AGGRAVATING CIRCUMSTANCES, AND MITIGATING
19 CIRCUMSTANCES. AND AS I UNDERSTAND IT, YOU'D WANT TO HEAR
20 ALL OF THAT.

21 A. THAT'S CORRECT.

22 Q. AND AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, AFTER
23 HEARING EVERYTHING FROM BOTH SIDES, GOOD AND BAD, IF YOU FELT
24 IN YOUR HEART THAT THE RIGHT DECISION WAS TO VOTE FOR LIFE,
25 YOU WOULD VOTE FOR LIFE.

1 A. THAT'S CORRECT.

2 Q. AND IF YOU FELT THE RIGHT DECISION WAS DEATH, YOU
3 COULD VOTE FOR DEATH.

4 A. YES.

5 Q. AND THERE'S ONE OTHER THING I WANT TO BRING UP.
6 WHEN A JURY VOTES FOR LIFE, ONLY THE FOREPERSON SIGNS THAT
7 VERDICT FORM, BUT WHEN A JURY VOTES FOR DEATH, ALL 12 MEMBERS
8 OF THAT JURY SIGN THEIR NAME SHOWING THAT THAT IS THEIR
9 OPINION. IF YOU WERE ON THE JURY, GOT TO THAT SECOND HALF OF
10 THE TRIAL AND DETERMINED THAT, YES, DEATH WAS THE APPROPRIATE
11 SENTENCE, COULD YOU SIGN YOUR NAME?

12 A. YES, I COULD.

13 Q. AND YOU WOULD DO THAT ONLY AFTER HEARING BOTH SIDES.

14 A. ONLY AFTER HEARING BOTH SIDES.

15 Q. MR. SCHROEDER, THAT'S ALL WE COULD ASK OF YOU.
16 THANK YOU VERY MUCH.

17 A. UH-HUH.

18 CROSS-EXAMINATION

19 BY MR. LITTLEJOHN:

20 Q. GOOD AFTERNOON, MR. SCHROEDER.

21 A. GOOD AFTERNOON.

22 Q. LET ME REINTRODUCE MYSELF, IF I MAY. I'M CAM
23 LITTLEJOHN, AND I, ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN
24 MERCER WHO IS THE DEFENDANT IN THIS CASE. IF I MAY TAKE JUST
25 A VERY FEW MINUTES OF YOUR TIME... ON YOUR QUESTIONNAIRE YOU

1 INDICATED THAT YOU LIVED FOR A WHILE IN IOWA?

2 A. THAT'S CORRECT.

3 Q. IS THAT WHERE YOU WERE BORN AND RAISED?

4 A. I WAS RAISED IN IOWA; YES, SIR.

5 Q. THAT'S WHERE YOU WENT TO SCHOOL PRIMARILY?

6 A. YES.

7 Q. OKAY. AND LET'S SEE. YOU INDICATED THAT YOU HAD
8 LIVED IN LEXINGTON COUNTY FOR 10 MONTHS?

9 A. THAT'S CORRECT.

10 Q. DID YOU -- HAVE YOU LIVED IN THE MIDLANDS AREA
11 LONGER THAN THAT?

12 A. YES, I HAVE.

13 Q. YOU'VE LIVED IN COLUMBIA?

14 A. YES, SIR.

15 Q. I GOT YOU. LET ME ASK YOU ABOUT YOUR EXPERIENCE IN
16 THE U.S. NAVY. HOW LONG WERE YOU IN THE NAVY?

17 A. FIVE YEARS.

18 Q. AND WHAT WERE YOUR DUTIES IN THE NAVY?

19 A. I WAS AN AVIATION ORDINANCEMAN, AND PRIMARY
20 RESPONSIBILITIES WERE THE WEAPON SYSTEMS OF THE AIRCRAFT.

21 Q. ALL RIGHT. CAN I ASK YOU WHAT RANK YOU OBTAINED?

22 A. E-5.

23 Q. E-5. OKAY. MR. SCHROEDER, AS HAS BEEN INDICATED,
24 THE DEFENDANT, MR. MERCER, IN THIS CASE IS CHARGED WITH
25 MURDER, ARMED ROBBERY, POSSESSION OF A FIREARM DURING A

1 VIOLENT CRIME, AND THERE'S BEEN SOME MENTION OF THIS AS BEING
2 A TWO-PART CASE. OF COURSE, YOU UNDERSTAND THAT THE FIRST
3 PHASE OF THIS CASE WOULD DEAL WITH WHETHER THE STATE PROVES
4 THEIR CASE AGAINST MR. MERCER, AND THEY WOULD HAVE TO PROVE
5 THEIR CASE BEYOND A REASONABLE DOUBT BEFORE THE JURY COULD
6 FIND HIM GUILTY. DO YOU UNDERSTAND THAT BURDEN OF PROOF?

7 A. YES, SIR, I DO.

8 Q. OKAY. NOW, DO YOU ALSO UNDERSTAND THEY WOULD HAVE
9 TO MEET THAT BURDEN OF PROOF AND THE JURY WOULD HAVE TO FIND
10 MR. MERCER GUILTY BEFORE WE EVEN GOT TO THE SECOND PHASE?

11 A. ABSOLUTELY.

12 Q. YOU UNDERSTAND THAT'S NOT A FOREGONE CONCLUSION THAT
13 WE GET TO THE SECOND PHASE.

14 A. EXACTLY.

15 Q. ALL RIGHT. DO YOU THINK YOU WOULD HAVE ANY PROBLEM
16 IF YOU WERE ON THE JURY JUDGING THE CREDIBILITY OR THE
17 BELIEVABILITY OF THE VARIOUS WITNESSES THAT MIGHT TESTIFY?
18 THESE MIGHT BE EXPERT WITNESSES, POLICE OFFICERS, LAY
19 WITNESSES?

20 A. NO.

21 Q. DO YOU THINK YOU WOULD HAVE ANY DIFFICULTY DOING
22 THAT?

23 A. NO, I DON'T.

24 Q. OKAY. AND LET ME ASK YOU THIS, MR. SCHROEDER. IF
25 WE GOT TO THE SECOND PHASE OF THIS CASE, HIS HONOR MENTIONED

1 TO YOU THERE MAY BE EVIDENCE PRESENTED IN AGGRAVATION OR
2 EVIDENCE THAT WOULD MAKE THE CIRCUMSTANCES WORSE. THERE
3 WOULD BE EVIDENCE IN MITIGATION WHICH COULD LESSEN THE
4 SEVERITY OF THE -- OF THE CRIME AND THE EVENTS AROUND THE
5 CRIME. THAT EVIDENCE IN MITIGATION WOULD CONCERN DIFFERENT
6 ASPECTS OF KEVIN MERCER'S LIFE: HIS BACKGROUND, GOOD THINGS
7 ABOUT HIM, PERHAPS BAD THINGS THAT HAD HAPPENED TO HIM
8 GROWING UP, PERHAPS SOME MEDICAL INFORMATION. WOULD YOU BE
9 WILLING TO LISTEN TO ALL THAT INFORMATION BEFORE YOU MADE A
10 DECISION AS TO WHAT YOU THOUGHT THE VERDICT OUGHT TO BE?

11 A. ABSOLUTELY.

12 Q. OKAY. IS THERE ANY -- WOULD YOU HAVE ANY DIFFICULTY
13 LISTENING TO THAT TYPE OF INFORMATION?

14 A. NO.

15 Q. WOULD YOU WANT TO LISTEN TO THAT INFORMATION?

16 A. YES.

17 MR. LITTLEJOHN: OKAY. MR. SCHROEDER, IT'S LATE IN
18 THE DAY. I THINK THAT'S ALL THE QUESTIONS I HAVE. THANK
19 YOU.

20 THE COURT: MR. SCHROEDER, YOU ARE QUALIFIED TO
21 SERVE AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE
22 GOING TO BE ON THE JURY. IT JUST MEANS YOU'RE ELIGIBLE TO BE
23 ON THE JURY. I NEED FOR YOU TO COME BACK MONDAY MORNING. IF
24 YOU WILL CALL SUNDAY NIGHT TO THAT TELEPHONE NUMBER THAT IS
25 ON THE PINK CARD THAT YOU'VE BEEN GIVEN -- CALL AFTER 6:00 ON

1 SUNDAY NIGHT. THERE WILL BE INSTRUCTIONS THERE ON A RECORDED
2 MESSAGE TELLING YOU WHEN TO ARRIVE AND WHETHER OR NOT YOU
3 NEED TO BRING YOUR PERSONAL BELONGINGS, YOUR CLOTHES AND
4 EVERYTHING ELSE, IF YOU'RE GOING TO BE SEQUESTERED.

5 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
6 WITH ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE
7 WITH YOU. PLEASE MAKE SURE THAT YOU DON'T GET EXPOSED TO ANY
8 MEDIA COVERAGE ABOUT THE CASE, AND WE WILL SEE YOU ON MONDAY.

9 THE WITNESS: OKAY. VERY GOOD.

10 (JUROR SCHROEDER LEAVES THE COURTROOM. JUROR THOMAS
11 MARINELLI IS BROUGHT INTO THE COURTROOM.)

12 THOMAS MARINELLI, HAVING BEEN PREVIOUSLY SWORN
13 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
14 TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT

16 Q. GOOD AFTERNOON.

17 A. HOW ARE YOU, SIR?

18 Q. WE ARE -- WE ARE PARTICULARLY GLAD TO SEE YOU IN
19 HERE BECAUSE YOU ARE OUR LAST JUROR OF THE DAY.

20 A. I WASN'T SURE IF THAT WAS A GOOD THING OR A BAD
21 THING.

22 Q. WELL, IT'S A GOOD THING TO US, NOT BECAUSE IT'S YOU,
23 BUT BECAUSE WE GET TO QUIT AND GO HOME AFTER THIS.

24 A. VERY GOOD.

25 Q. OR AT LEAST QUIT AND GO BACK TO WORK. YESTERDAY WE

1 PUT YOU UNDER OATH, AND YOU'RE STILL UNDER OATH TODAY. DO
2 YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. SINCE YESTERDAY WHEN YOU WERE HERE, HAVE YOU TALKED
5 TO ANYBODY ABOUT THIS CASE OR HAS ANYONE TALKED TO YOU ABOUT
6 THE CASE?

7 A. NO, SIR.

8 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN
9 AFTER I'M DONE, THE LAWYERS WILL PROBABLY HAVE SOME FOLLOW-UP
10 QUESTIONS TO ASK YOU. WE DON'T MEAN TO PRY TOO DEEP INTO
11 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 TO
14 BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT
15 YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
16 DISCUSSING.

17 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
18 AND APPLY THE LAW PRECISELY AS I WOULD GIVE IT TO YOU AND SET
19 ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED ABOUT THE
20 CASE AND THEN RENDER A VERDICT THAT'S BASED SOLELY ON THE
21 TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR AND SEE IN THIS
22 COURTROOM? COULD YOU DO THAT?

23 A. YES, SIR.

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. YES, SIR.

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 WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
6 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE
7 STATE HAS MET ITS BURDEN OF PROOF?

8 A. YES, SIR.

9 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF
10 THE -- IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE
11 WOULD MOVE INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE
12 TRIAL. I'M GOING TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES
13 THAT WOULD COME UP DURING THAT PHASE. AGGRAVATING
14 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
15 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
16 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
17 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
18 RESULTING FROM THE CRIME.

19 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
20 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
21 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
22 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
23 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
24 UNDERSTAND THE CONCEPT OF AGGRAVATING OR MITIGATING
25 CIRCUMSTANCES?

1 A. YES, SIR.

2 Q. NOW, WHEN YOU REPORTED THIS AFTERNOON, YOU WERE
3 GIVEN A COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT
4 TYPES OF JURORS. DO YOU UNDERSTAND THOSE THREE DIFFERENT
5 TYPES?

6 A. YES, SIR.

7 Q. WHICH OF THOSE THREE TYPES DO YOU BELIEVE YOU ARE?

8 A. THE THIRD TYPE.

9 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
10 REACHES A VERDICT OF GUILTY AS TO THE CHARGE OF MURDER, THEN
11 WE WOULD MOVE INTO THE SENTENCING PHASE. AND NOW I WANT TO
12 TELL YOU THAT MURDER IS DEFINED AS THE INTENTIONAL AND
13 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
14 AND IN THAT PENALTY PHASE OR IN THAT SECOND PHASE IT WOULD BE
15 UP TO THE JURY TO DETERMINE WHETHER OR NOT -- OR TO DETERMINE
16 THE PENALTY, AND THERE ARE TWO OPTIONS AS TO WHAT THE PENALTY
17 COULD BE. THE FIRST OPTION WOULD BE A LIFE SENTENCE WITHOUT
18 THE POSSIBILITY OF PAROLE, AND A SECOND OPTION WOULD BE THE
19 DEATH PENALTY. COULD YOU, DEPENDING ON THE CIRCUMSTANCES AND
20 THE FACTS THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I
21 WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT
22 FOR A LIFE SENTENCE?

23 A. YES, SIR.

24 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
25 DEATH PENALTY?

1 A. YES, SIR.

2 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
3 DECIDE TO SEQUESTER THE JURY, YOU MIGHT BE PUT UP IN A HOTEL
4 FOR FIVE OR SIX DAYS AND NOT ALLOWED TO GO HOME. WOULD THAT
5 IMPOSE A TERRIBLE BURDEN ON YOU?

6 A. SOME BUT NOT TERRIBLE.

7 Q. DO YOU THINK YOU COULD HANDLE IT?

8 A. YES, SIR.

9 Q. ALL RIGHT. DID YOU GET A CHANCE TO GO OVER THE
10 WITNESS LIST THAT WE SENT BACK THERE?

11 A. I DID.

12 Q. DID YOU READ EVERY NAME ON THAT LIST?

13 A. I DID.

14 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
15 APPEARS ON THAT LIST?

16 A. I DO NOT BELIEVE SO.

17 Q. ALL RIGHT, SIR. NOW, THE LAWYERS ARE GOING TO ASK
18 YOU SOME QUESTIONS, AND THEN I'LL COME BACK TO YOU IN A FEW
19 MINUTES.

20 A. THANK YOU.

21 DIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q. GOOD AFTERNOON, MR. MARINELLI.

24 A. GOOD AFTERNOON.

25 Q. I'M SURE YOU'RE READY TO GO HOME ABOUT NOW. I'LL BE

1 SHORT. I JUST WANT TO GO OVER A FEW THINGS THE JUDGE HAS
2 ALREADY GONE OVER WITH YOU. HAVE YOU EVER SERVED ON A JURY
3 BEFORE?

4 A. YES, SIR. I WAS PART OF A FEDERAL HEARING IN
5 COLUMBIA ABOUT THREE YEARS AGO.

6 Q. OKAY. IS THAT YOUR ONLY EXPERIENCE WITH THE COURT
7 SYSTEMS?

8 A. YES, SIR.

9 Q. WAS THAT A CRIMINAL OR A CIVIL CASE?

10 A. CRIMINAL.

11 Q. AND DID YOU ACTUALLY SERVE ON THAT CASE?

12 A. YES, SIR.

13 Q. THE STATE SYSTEM IS VERY SIMILAR TO THE FEDERAL
14 SYSTEM IN MANY RESPECTS AS FAR AS WHAT JURIES DO, AND AS THE
15 JUDGE SAID, THERE'S TWO PARTS TO THIS CASE. IN THE FIRST
16 PART OF THE CASE IT'S PROBABLY SIMILAR TO THAT EXPERIENCE
17 WHERE JURORS SIT IN THE JURY BOX, WITNESSES TESTIFY, AND AT
18 THE END OF THE TRIAL THE JURY GOES BACK AND DECIDES WHETHER
19 THE DEFENDANT IS GUILTY OR NOT GUILTY. YOU UNDERSTAND THAT.

20 A. YES, SIR.

21 Q. IT'S THE SECOND PHASE THAT MAKES THIS SO DIFFERENT.
22 IF THIS JURY CONVICTS THE DEFENDANT OF MURDER, THEN IT'S NOT
23 THE JUDGE WHO WILL IMPOSE A SENTENCE; IT'S THE JURY. THAT'S
24 THE BASIS FOR THE SECOND PHASE. YOU UNDERSTAND THAT PART,
25 TOO, DON'T YOU?

1 A. YES, SIR.

2 Q. AND THAT'S WHAT THE JUDGE IS TALKING ABOUT WHEN
3 YOU'LL HEAR MITIGATING CIRCUMSTANCES THAT -- YOU KNOW, THINGS
4 THAT MITIGATE THE CRIME, THINGS GOOD ABOUT THE DEFENDANT, BUT
5 YOU'LL ALSO HEAR AGGRAVATING CIRCUMSTANCES, THINGS THAT
6 WORSEN THE SEVERITY OF THAT CRIME, BAD THINGS ABOUT THE
7 DEFENDANT. THAT'S WHEN YOU'LL HEAR THAT.

8 A. OKAY.

9 Q. DO YOU UNDERSTAND?

10 A. YES, SIR.

11 Q. SO THE FIRST HALF IS SIMPLY GUILT OR NOT GUILTY.
12 THE SECOND HALF IS ON THE PENALTY.

13 A. YES, SIR.

14 Q. DO YOU FOLLOW ALL THAT?

15 A. YES, SIR.

16 Q. AND AS I UNDERSTAND YOUR RESPONSES TO THE JUDGE,
17 AFTER HEARING ALL THE EVIDENCE IN THE SECOND PHASE, IF WE
18 WERE TO GET THERE -- AFTER HEARING ALL THE TESTIMONY, YOU
19 COULD, IF YOU THOUGHT IT WAS APPROPRIATE, VOTE FOR LIFE.

20 A. YES, SIR.

21 Q. AND YOU COULD, IF YOU THOUGHT IT WAS APPROPRIATE,
22 VOTE FOR DEATH.

23 A. YES, SIR.

24 Q. ONE OTHER THING I WANT TO POINT OUT THAT'S DIFFERENT
25 FROM PROBABLY YOUR SERVICE WHEN YOU WERE IN THE FEDERAL

1 SYSTEM BUT ALSO DIFFERENT FROM MOST JURORS THAT SERVE EVEN IN
2 THIS COURTROOM. IF WE REACH THAT SECOND PHASE AND THAT
3 VERDICT IS RENDERED, IF IT'S A VERDICT OF LIFE, THE FOREMAN
4 SIGNS IT. IF IT'S A VERDICT OF DEATH, ALL 12 JURORS SIGN
5 THAT VERDICT FORM. AND SO MY QUESTION TO YOU -- IT MAY SOUND
6 KIND OF SILLY. YOU KNOW HOW SOME PEOPLE ARE. THEY'LL TELL
7 YOU THEIR OPINIONS, BUT THEY'RE NOT GOING TO SIGN ANYTHING.
8 COULD YOU SIGN THAT VERDICT FORM IF THAT WAS YOUR VIEW OF
9 WHAT WAS APPROPRIATE?

10 A. YES, SIR, I COULD.

11 Q. I THINK THAT'S ALL WE CAN ASK OF YOU.

12 A. THANK YOU.

13 CROSS-EXAMINATION

14 BY MR. LITTLEJOHN:

15 Q. GOOD EVENING, MR. MARINELLI.

16 A. GOOD EVENING, SIR.

17 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
18 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN
19 THIS CASE.

20 A. OKAY.

21 Q. MR. MARINELLI, LET ME ASK YOU JUST A FEW QUESTIONS
22 IF I MAY AND... YOU INDICATED IN YOUR QUESTIONNAIRE YOU HAD
23 LIVED IN LEXINGTON COUNTY FOR NINE YEARS?

24 A. YES, SIR.

25 Q. DID YOU MOVE HERE FROM NEW JERSEY?

1 A. INDIANA.

2 Q. FROM INDIANA.

3 A. YES, SIR.

4 Q. OKAY. WAS IT A JOB MOVE---

5 A. YES, SIR.

6 Q. ---DOWN TO LEXINGTON?

7 A. IT WAS.

8 Q. I UNDERSTAND. AND YOUR WIFE IS THE CHIEF FINANCIAL
9 OFFICER FOR THE BOYS AND GIRLS CLUB?

10 A. YES, SIR.

11 Q. OKAY. JUDGE FEW EXPLAINED TO YOU THAT THE DEFENDANT
12 IN THIS CASE, MR. MERCER, IS CHARGED WITH MURDER AND OTHER
13 CRIMES, AND THERE'S THE POTENTIAL THAT THIS COULD BE A
14 TWO-PART TRIAL PROCEEDING. I JUST WANT TO MAKE SURE YOU
15 UNDERSTAND THAT THE FIRST PART OF THIS TRIAL WOULD BE FOR THE
16 JURY TO DECIDE WHETHER OR NOT THE STATE HAS PROVEN MR. MERCER
17 GUILTY OF THESE CRIMES.

18 A. YES, SIR.

19 Q. DO YOU UNDERSTAND THAT THEY -- THAT THEY, BEING THE
20 STATE, WOULD HAVE TO PROVE HIM GUILTY BEYOND A REASONABLE
21 DOUBT?

22 A. I DO.

23 Q. DO YOU HAVE ANY PROBLEM APPLYING THAT STANDARD OF
24 PROOF TO THE STATE?

25 A. NO, SIR.

1 Q. OKAY. DO YOU UNDERSTAND THAT ONLY IF THE JURY FINDS
2 MR. MERCER GUILTY WOULD WE GET TO THE SECOND PHASE?

3 A. YES, SIR.

4 Q. SO IT'S NOT A GIVEN THING THAT WE'RE GOING TO HAVE A
5 SECOND PHASE.

6 A. YES, SIR.

7 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY PROBLEM IF
8 YOU WERE ON THE JURY DECIDING ON THE CREDIBILITY OR THE
9 BELIEVABILITY OF THE VARIOUS WITNESSES THAT MAY TESTIFY?

10 A. I DON'T THINK SO.

11 Q. WHETHER THOSE WITNESSES ARE POLICE OFFICERS OR
12 EXPERTS OR LAY PEOPLE?

13 A. NO, SIR.

14 Q. OKAY. YOU INDICATED TO JUDGE FEW THAT -- BASED ON
15 THE FORM THAT WAS PRESENTED TO YOU THAT YOU THOUGHT YOU WERE
16 THE THIRD TYPE OF JUROR.

17 A. YES, SIR.

18 Q. DID YOU HAVE ANY PROBLEM DECIDING ON THAT BEING THE
19 TYPE OF JUROR YOU ARE?

20 A. NO, SIR. I GUESS THE ONLY REASON I HESITATED IS
21 BECAUSE, AS I SAID AND ANSWERED SOME OF THE QUESTIONS, I
22 COULD VOTE FOR THE DEATH PENALTY. THE CIRCUMSTANCES WOULD
23 HAVE TO BE PRETTY FAR OUT OF LINE IF SOMEONE WILLINGLY WAS TO
24 MURDER SOMEONE FOR ME NOT TO SAY THAT. SO THAT'S JUST KIND
25 OF WHY I HESITATED A MINUTE.

1 Q. OKAY. CAN YOU EXPLAIN TO ME WHAT YOU MEAN BY
2 CIRCUMSTANCES WOULD HAVE TO BE FAR OUT OF LINE FOR YOU---

3 A. I GUESS---

4 Q. ---NOT TO VOTE FOR THE DEATH PENALTY?

5 A. I GUESS I BELIEVE THAT IF SOMEONE WILLFULLY KILLS
6 SOMEONE ELSE FOR NO REASON, THEN I WOULD NOT HAVE A PROBLEM
7 SAYING THAT, YES, THEY DESERVE THE DEATH PENALTY.

8 Q. OKAY. DO YOU THINK YOU WOULD -- YOU WOULD BE
9 INCLINED TO VOTE FOR THE DEATH PENALTY UNDER THOSE
10 CIRCUMSTANCES THAT YOU'VE MENTIONED?

11 MR. MYERS: THAT'S AN INCOMPLETE QUESTION, YOUR
12 HONOR.

13 MR. LITTLEJOHN: I'M JUST TRYING TO GET HIM TO---

14 THE COURT: I SUSTAIN THE OBJECTION. I'LL LET YOU
15 REPHRASE IT.

16 MR. LITTLEJOHN: MR. MARINELLI, I GUESS WHAT I'M
17 DRIVING AT: WOULD YOU BE MORE INCLINED TO VOTE FOR THE DEATH
18 PENALTY AS OPPOSED TO A LIFE SENTENCE---

19 MR. MYERS: THAT'S AN---

20 MR. LITTLEJOHN: ---IN A MURDER CASE?

21 MR. MYERS: THAT'S AN INCOMPLETE QUESTION.

22 THE WITNESS: I CAN ANSWER THAT, JUDGE, IF---

23 THE COURT: WELL, I NEED YOU TO WAIT FOR JUST A
24 MINUTE.

25 THE WITNESS: OKAY.

1 THE COURT: I'M GOING TO ALLOW THE QUESTION. GO
2 AHEAD. YOU CAN ANSWER IT.

3 THE WITNESS: NO, I WOULD NOT AUTOMATICALLY -- IF
4 THE DEFENDANT WAS FOUND GUILTY, NO, I WOULD NOT AUTOMATICALLY
5 SAY, "OKAY. HE DESERVES THE DEATH PENALTY." I WOULD MAKE
6 SURE THAT I KNEW ALL THE FACTS AND UNDERSTOOD THE LAW BEFORE
7 I MADE THAT DECISION.
8 BY MR. LITTLEJOHN:

9 Q. OKAY. AS MENTIONED, THERE WOULD BE EVIDENCE
10 PRESENTED, IF WE GOT TO THAT STAGE, EVIDENCE IN AGGRAVATION
11 AND EVIDENCE IN MITIGATION, AND THE EVIDENCE IN MITIGATION
12 WOULD CONCERN ASPECTS OF KEVIN MERCER'S LIFE, HIS BACKGROUND,
13 GOOD THINGS ABOUT HIM, PERHAPS BAD THINGS THAT HAD HAPPENED
14 TO HIM, PERHAPS SOME MEDICAL INFORMATION. WOULD YOU CONSIDER
15 ALL THAT BEFORE YOU MADE A FINAL DETERMINATION?

16 A. I WOULD CONSIDER EVERYTHING BEFORE I MADE A FINAL
17 DETERMINATION.

18 Q. OKAY. MR. MARINELLI, IF YOU WERE ON THE JURY AND
19 HAD AN OPINION AS TO WHAT THE VERDICT SHOULD BE, WHETHER IT
20 BE THE FIRST ASPECT OR IF WE GOT TO THE SECOND ASPECT, AND
21 YOU FOUND THAT THE OTHER 11 JURORS HAD A DIFFERENT OPINION,
22 DO YOU THINK YOU'D EVER CONSIDER CHANGING YOUR OPINION JUST
23 TO GO ALONG WITH THEM?

24 A. NO, SIR.

25 Q. WOULD YOU STICK BY YOUR GUNS, SO TO SPEAK, IF YOU

1 THOUGHT YOU WERE RIGHT?

2 A. YES, SIR.

3 MR. LITTLEJOHN: ALL RIGHT, SIR. OKAY. WOULD YOU
4 INDULGE ME JUST A MOMENT, YOUR HONOR? THOSE ARE ALL THE
5 QUESTIONS WE HAVE, YOUR HONOR.

6 THE COURT: MR. MARINELLI, I'M GOING TO ASK YOU TO
7 STEP OUT IN THE HALLWAY FOR JUST A SECOND, AND THEN WE'LL
8 HAVE YOU RIGHT BACK IN.

9 THE WITNESS: THANK YOU.

10 THE COURT: TAKE THAT OUT THERE.

11 (JUROR MARINELLI LEAVES THE COURTROOM.)

12 THE COURT: I THINK HE'S QUALIFIED. ANYBODY
13 DISAGREE?

14 MS. KIMBROUGH: HE'S QUALIFIED, YOUR HONOR.

15 THE COURT: BRING HIM IN.

16 (JUROR MARINELLI IS BROUGHT INTO THE COURTROOM.)

17 THE COURT: MR. MARINELLI, YOU ARE QUALIFIED TO BE A
18 JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY.
19 IT JUST MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE WON'T
20 NEED YOU AGAIN UNTIL MONDAY MORNING. I WOULD LIKE FOR YOU TO
21 CALL THE TELEPHONE NUMBER THAT YOU WERE GIVEN ON THAT LITTLE
22 PINK CARD. CALL THAT NUMBER AFTER 6:00 ON SUNDAY NIGHT, AND
23 ON THE RECORDED MESSAGE THERE THERE WILL BE DETAILED
24 INSTRUCTIONS ABOUT WHEN YOU NEED TO ARRIVE AND WHETHER OR NOT
25 YOU NEED TO BRING YOUR PERSONAL ITEMS SUCH AS YOUR CLOTHING

1 TO STAY WITH US FOR SEVERAL DAYS IF THE JURY IS SEQUESTERED.
2 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
3 WITH ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE
4 WITH YOU. PLEASE BE VERY CAREFUL NOT TO BECOME EXPOSED TO
5 ANY MEDIA COVERAGE ABOUT THIS CASE, AND WE LOOK FORWARD TO
6 SEEING YOU ON MONDAY.

7 THE WITNESS: THANK YOU, SIR.

8 THE COURT: THANK YOU.

9 (JUROR MARINELLI LEAVES THE COURTROOM.)

10 THE COURT: ALL RIGHT. ANYTHING ELSE Y'ALL WANT TO
11 TAKE UP TODAY BEFORE WE QUIT?

12 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE, YOUR
13 HONOR.

14 MR. MYERS: NO, SIR.

15 THE COURT: SEEMS LIKE THERE WAS SOMETHING I WAS
16 GOING TO SAY. I DID -- I DID HAVE -- I HAVE NOT MADE UP MY
17 MIND YET ABOUT WHETHER OR NOT I'M GOING TO SEQUESTER THE
18 JURY, BUT IF I DO AND IF THIS LADY -- AND I WOULD TAKE -- I
19 WOULD TAKE A -- AS FAR AS SEQUESTRATION GOES, I WOULD TAKE A
20 FAIRLY RELAXED VIEW OF IT. IF THIS LADY, JENNIFER ADAMS, IS
21 UNABLE TO MAKE ARRANGEMENTS FOR THE DELIVERY OF HER CHILDREN
22 TO SCHOOL IN THE MORNINGS, I WANT Y'ALL TO THINK ABOUT SOME
23 WAY IN WHICH WE MIGHT COULD ACCOMMODATE HER BY PERHAPS
24 ALLOWING HER TO LEAVE THE HOTEL, GO AND GET HER CHILDREN,
25 TAKE THEM TO SCHOOL AND THEN BRING THEM AND THEN COME BACK

1 HERE. JUST THINK ABOUT THAT. WE'LL SEE. ALL RIGHT.

2 MR. LITTLEJOHN: 9:00, YOUR HONOR?

3 THE COURT: 9:00. I THINK THE FIRST JURY PANEL HAS
4 BEEN TOLD TO BE HERE AT 8:45?

5 THE CLERK: YES, SIR.

6 THE COURT: SO WE WILL AIM TO BEGIN AT 9.

7 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 6:45
8 P.M. AND RESUMED THE FOLLOWING DAY, APRIL 12TH, 2006, AS
9 FOLLOWS:)

10 THE COURT: GOOD MORNING. BE SEATED. I WAS JUST
11 SORT OF SITTING HERE THINKING THERE'S GOT TO BE SOMETHING WE
12 CAN DO TO TAKE UP A LITTLE TIME BEFORE WE DIVE BACK IN
13 BECAUSE ONCE WE DIVE IN, WE'RE NOT GOING TO GET OUR HEADS UP
14 OUT OF THE WATER UNTIL 6:30 TONIGHT OR SO. ANYTHING WE NEED
15 TO TAKE UP BEFORE WE START?

16 MR. LITTLEJOHN: JUDGE, I JUST HAVE AN INQUIRY. HOW
17 MANY JURORS DOES THE COURT PROPOSE TO QUALIFY BEFORE WE...

18 THE COURT: WHEN WE DISCUSSED IT BEFORE, AS I
19 RECALL, WE WERE TALKING ABOUT SHOOTING FOR 45.

20 MR. LITTLEJOHN: RIGHT.

21 THE COURT: THAT MAY DEPEND ON MY DECISION ABOUT
22 SEQUESTERING THE JURY BECAUSE WE HAVE THREE JURORS, AS I
23 RECALL, WHOSE AVAILABILITY WILL VARY DEPENDING ON THAT
24 RULING. WE HAVE TWO WOMEN WHO HAVE SMALL CHILDREN, AND WE
25 HAVE ONE -- WELL, SHE MAY -- THE OTHER LADY WHO IS GOING TO

1 HAVE THE SURGERY, THE OUTPATIENT SURGERY, ON HER NECK... I
2 THINK THOSE ARE THE ONLY ONES THAT MIGHT BE -- WHOSE
3 AVAILABILITY MIGHT BE AFFECTED BY THE SEQUESTRATION DECISION.
4 SO 45 OR SO.

5 MR. LITTLEJOHN: DID YOU PROPOSE TO HAVE TWO OR
6 THREE ALTERNATES OR MORE?

7 THE COURT: I WOULD -- I WOULD -- I DON'T KNOW.
8 PROBABLY THREE. WELL, WE ONLY NEED 39, I THINK, TO HAVE
9 ENOUGH JURORS TO GET THREE ALTERNATES.

10 MR. LITTLEJOHN: RIGHT.

11 THE COURT: I THINK THE REASON WE WERE THINKING 45
12 WAS BECAUSE WE EXPECTED THAT THE DELAY BETWEEN HOPEFULLY
13 TODAY, BUT PERHAPS TOMORROW, AND MONDAY MORNING MIGHT RESULT
14 IN US LOSING SOME BUT -- SO I DON'T KNOW. WE CAN TALK ABOUT
15 IT AS WE GET LATER IN THE DAY. I MEAN, I GUESS ALSO WHAT I
16 WAS THINKING IS THAT WE WOULD HAVE LIKE TWO PANELS TOLD --
17 THE NEXT TWO PANELS WOULD BE TOLD TO COME IN MONDAY MORNING
18 IN CASE WE NEEDED THEM. SO WE COULD QUIT AT 40, 42,
19 SOMETHING LIKE THAT. DID YOU HAVE -- DID YOU HAVE A
20 PREFERENCE?

21 MR. LITTLEJOHN: NO, SIR. I WAS JUST MAKING
22 INQUIRY, AND I THINK THE COURT'S RIGHT BECAUSE WHEN THE
23 REALITY OF SEQUESTRATION HITS IN, SOMETIMES YOU LOSE A COUPLE
24 OF JURORS OVER THE WEEKEND. THEY'LL COME UP MONDAY AND HAVE
25 SOME REASON.

1 THE COURT: WELL, I'M NOT REALLY PLANNING ON
2 LISTENING TO ANY OF THAT FROM ANYBODY WHO DIDN'T MENTION IT
3 TO ME---

4 MR. LITTLEJOHN: OH, I UNDERSTAND.

5 THE COURT: ---WHEN WE TALKED TO THEM INDIVIDUALLY,
6 BUT THOSE TWO WOMEN WERE CLEAR THAT THEY HAD LOGISTICAL
7 ISSUES THEY WERE GOING TO HAVE TO TRY TO WORK OUT. AND IF
8 THEY CAN'T WORK THOSE OUT AND IF I DO SEQUESTER THE JURY,
9 THEN I WILL EXCUSE THOSE TWO WOMEN. BUT, I MEAN, I'LL LISTEN
10 TO Y'ALL, BUT I THINK THAT I -- I DON'T THINK I CAN -- TAKING
11 THAT LADY YESTERDAY, FOR EXAMPLE, THE LADY WHO'S FROM --
12 WHOSE FATHER WAS A POLICE -- POLICEMAN DOWN IN THE LOWER PART
13 OF THE STATE SOMEWHERE... I GUESS IT WAS... WAS IT JENNIFER
14 ADAMS?

15 MR. MOSES: IT WAS LAUREN GIBSON. SHE WAS ON
16 MONDAY.

17 THE COURT: SIR?

18 MR. MOSES: LAUREN GIBSON ON MONDAY. I THINK SHE
19 WAS PREGNANT?

20 THE COURT: YEAH, LAUREN GIBSON IS WHO I WAS
21 THINKING ABOUT. SHE WAS MONDAY?

22 MR. MOSES: SHE WAS LATE MONDAY.

23 THE COURT: GOLLY. ALL RIGHT. SHE IS THE ONE I WAS
24 THINKING ABOUT. NO, MAYBE IT WASN'T HER. MAYBE IT WAS
25 JENNIFER ADAMS. HER HUSBAND IS A POLICE OFFICER, AND SHE HAD

1 CHILDREN SHE HAS TO TAKE TO SCHOOL IN THE MORNING. YOU KNOW,
2 IF SHE'S UNABLE TO WORK THAT PROBLEM OUT, I DON'T THINK THAT
3 I CAN REALLY SAY TOUGH. I THINK I HAVE TO CUT HER LOOSE.
4 DON'T Y'ALL AGREE?

5 MR. LITTLEJOHN: YES, YOUR HONOR.

6 THE COURT: IF I SEQUESTER THE JURY. DOES IT SEEM
7 HOT IN HERE TO Y'ALL?

8 THE CLERK: WE'LL GET IT FIXED. JENNIFER ADAMS
9 CALLED THIS MORNING. SHE IS NOT ABLE TO ARRANGE SOMEBODY TO
10 TAKE HER CHILDREN TO SCHOOL, SO SHE LEFT HER NUMBER.

11 THE COURT: I JUST GOT A MESSAGE FROM THE CLERK THAT
12 SHE CALLED AND SHE IS UNABLE TO ARRANGE SOMEONE TO TAKE HER
13 CHILDREN TO SCHOOL. JENNIFER ADAMS. SO WE'LL TAKE THAT UP
14 LATER. OKAY. ANYTHING ELSE? JUST FOR SCHEDULING PURPOSES,
15 WE -- WE HAVE AT LEAST A COUPLE OF THINGS THAT WE NEED TO DO
16 BY WAY OF HEARING, SAY, TOMORROW. FOR EXAMPLE, WE WILL -- WE
17 WILL ADDRESS AGAIN, EVEN IF BRIEFLY, THE QUESTION OF
18 SEQUESTRATION, AND THEN I'M GOING TO TRY TO RULE TOMORROW.
19 AND I KNOW THAT -- I THINK I'M CORRECT THAT THE CLERK HAD SET
20 UP A MEETING WITH THE PRESS TOMORROW?

21 THE CLERK: I THINK SHE DID.

22 THE COURT: ALL RIGHT. AND THEN I THINK IT WOULD BE
23 USEFUL JUST TO GO ON THE RECORD AND MAKE SURE THAT---

24 MR. MYERS: WHY IS THERE A MEETING WITH THE PRESS?

25 THE COURT: SIR?

1 MR. MYERS: WHY IS THERE A MEETING WITH THE PRESS?
2 IF I COULD JUST INQUIRE.

3 THE COURT: WHY?

4 MR. MYERS: YEAH.

5 THE COURT: JUST TO COORDINATE WHERE THE -- WHERE
6 THEY'RE GOING TO BE AND WHERE THE CAMERAS ARE GOING TO BE AND
7 THAT KIND OF THING. THAT'S THE ONLY REASON.

8 MR. MYERS: OKAY.

9 THE COURT: TO SEE IF THEY HAVE ANY ISSUES THAT NEED
10 TO BE ADDRESSED AND MAKE SURE WE KNOW -- EVERYBODY KNOWS KIND
11 OF WHAT THE SITUATION IS AND MAKE SURE THERE'S NO OBJECTION.
12 AND I THINK IT WOULD BE USEFUL JUST TO GO ON THE RECORD AND
13 MAKE SURE THERE ARE NO OUTSTANDING ISSUES, AND I WAS PLANNING
14 ON DOING THAT TOMORROW. SO I'M NOT REALLY GOING TO TRY TO BE
15 IN ANY HUGE HURRY TODAY ALTHOUGH IF THINGS GO AS QUICKLY
16 TODAY AS THEY DID YESTERDAY, WE PROBABLY WILL DONE IN THE 5
17 OR 6:00 RANGE. BUT I WAS PLANNING ON QUITTING AROUND 6
18 TODAY, AND IF WE DON'T -- IF WE DON'T HAVE ENOUGH JURORS BY
19 THEN, WE'LL JUST DO ONE OR TWO PANELS IN THE MORNING AND JUST
20 NOT TRY TO KILL OURSELVES TODAY. DOES THAT SUIT EVERYBODY?

21 MR. MYERS: YES, SIR.

22 MR. LITTLEJOHN: YES, SIR.

23 THE COURT: ALL RIGHT.

24 MR. LITTLEJOHN: I'M ALL IN FAVOR OF NOT KILLING
25 OURSELVES.

1 THE COURT: ALL RIGHT. THEN LET'S HAVE A JUROR.

2 (JUROR NEAL SMITH IS BROUGHT INTO THE COURTROOM.)

3 NEAL SMITH, HAVING BEEN PREVIOUSLY SWORN AS A
4 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
5 TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT

7 Q. GOOD MORNING.

8 A. GOOD MORNING, YOUR HONOR.

9 Q. YOU WERE PUT UNDER OATH ON MONDAY MORNING. DO YOU
10 RECALL THAT?

11 A. YES, SIR.

12 Q. AND DO YOU UNDERSTAND YOU'RE STILL UNDER OATH TODAY?

13 A. YES, SIR.

14 Q. NOW, SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED
15 ABOUT THIS CASE WITH ANYONE OR HAS ANYONE TALKED TO YOU ABOUT
16 THIS CASE?

17 A. NO, SIR.

18 Q. MR. SMITH, I'M GOING TO ASK YOU SOME QUESTIONS, AND
19 THEN THE LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP
20 QUESTIONS. WE DON'T MEAN TO BE PRYING TOO DEEP INTO YOUR
21 PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS.
22 THERE ARE NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE
23 JUST WANT YOU TO LISTEN CAREFULLY AND TO BE OPEN AND HONEST
24 WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK ABOUT
25 THESE ISSUES THAT WE'RE GOING TO BE DISCUSSING.

1 A. ALL RIGHT, SIR.

2 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
3 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
4 SET ASIDE ANYTHING THAT YOU MAY HAVE LEARNED OR HEARD ABOUT
5 THIS CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS
6 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
7 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

8 A. YES, YOUR HONOR.

9 Q. AND YOU UNDERSTAND THAT IN A CRIMINAL CASE SUCH AS
10 THIS THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY
11 BEYOND A REASONABLE DOUBT.

12 A. YES.

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 WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
16 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
17 FEEL THE STATE HAS MET THAT BURDEN OF PROOF?

18 A. YES.

19 Q. NOW, IF YOU'RE ON THE JURY IN THE CASE AND IF THE --
20 IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE
21 WOULD MOVE INTO THE SENTENCING PHASE OF THE TRIAL, AND NOW
22 I'M GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT WILL
23 COME UP IF WE GET INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES
24 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
25 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO

1 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
2 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM
3 THE CRIME.

4 MITIGATING CIRCUMSTANCE, 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. I BELIEVE SO.

12 Q. NOW, WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A
13 COPY OF THIS SHEET THAT SHOWS THE THREE DIFFERENT TYPES OF
14 JURORS. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

15 A. YES, I DID.

16 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
17 YOU ARE?

18 A. I WOULD SAY NUMBER THREE OR THE THIRD PARAGRAPH.

19 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
20 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD, AS I
21 SAID, MOVE INTO THE SENTENCING PHASE. NOW, THE DEFINITION OF
22 MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
23 PERSON WITH MALICE AFORETHOUGHT. IN THE SENTENCING PHASE IT
24 WOULD BE UP TO THE JURY TO DECIDE THE PENALTY FOR THAT
25 MURDER. THERE ARE TWO OPTIONS THAT THE JURY WOULD HAVE. ONE

1 OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY
2 OF PAROLE, AND THE OTHER OPTION WOULD BE FOR THE DEATH
3 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
4 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD
5 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
6 LIFE SENTENCE?

7 A. I COULD.

8 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

9 A. I COULD.

10 Q. NOW, IT'S POSSIBLE THAT I MAY SEQUESTER THE JURY IN
11 THIS CASE, AND IF I DO THAT, THEN YOU WOULD BE PUT UP IN A
12 HOTEL FOR FIVE OR SIX DAYS WHILE WE TRY THIS CASE. WE'D
13 PROVIDE ALL YOUR MEALS TO YOU, AND YOU WOULD NOT BE ALLOWED
14 TO GO HOME. WOULD THAT BE A TERRIBLE BURDEN ON YOU?

15 A. OTHER THAN BEING SELF-EMPLOYED, NO.

16 Q. ALL RIGHT, SIR. DID YOU GET A CHANCE TO READ OVER
17 THAT WITNESS LIST THAT YOU WERE GIVEN THIS MORNING?

18 A. YES, I DID.

19 Q. DID YOU READ EVERY NAME ON THAT LIST?

20 A. I DID.

21 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME
22 APPEARS ON THAT LIST?

23 A. ONE THAT I'M AWARE OF.

24 Q. TELL ME WHO THAT IS.

25 A. WELL, IT MIGHT NOT BE THE SAME... FRANKIE RIPLEY.

1 Q. ALL RIGHT. I'M GOING TO TURN IT OVER TO THE LAWYERS
2 NOW. THEY'RE GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS AND
3 INCLUDING -- THEY'LL PROBABLY ASK YOU ABOUT YOUR -- HOW YOU
4 KNOW MR. RIPLEY. ALL RIGHT?

5 A. MS. RIPLEY.

6 Q. MS. RIPLEY.

7 DIRECT EXAMINATION

8 BY MR. MYERS:

9 Q. MR. SMITH, DO YOU KNOW ANYTHING ABOUT THIS CASE AT
10 ALL?

11 A. JUST WHAT -- THE INDICTMENT THAT WE WERE READ
12 MONDAY.

13 Q. BUT OTHER THAN THAT, YOU DON'T KNOW ANYTHING.

14 A. NO, SIR, I DO NOT.

15 Q. AND THE REASON I ASK YOU THAT IS BECAUSE THE JURY
16 WOULD TAKE AN OATH AND THAT OATH WOULD SAY THEY WOULD RETURN
17 VERDICTS ONLY ON WHAT THEY HEARD IN THE COURTROOM.

18 A. CORRECT.

19 Q. THE TESTIMONY AND THE LAW. YOU COULD FOLLOW THAT
20 OATH; IS THAT RIGHT?

21 A. YES, SIR.

22 Q. NOW, IF THIS JURY FINDS THE DEFENDANT GUILTY, WE
23 HAVE TO GO INTO THAT SECOND PHASE OF THE CASE. THAT'S
24 SOMETHING A LITTLE DIFFERENT. THAT'S CALLED THE SENTENCING
25 PHASE. NORMALLY WHEN A JURY CONVICTS SOMEBODY, THE JUDGE

1 DOES THE SENTENCING, AND THE JUDGE WOULD SAY, "WELL, TELL ME
2 SOMETHING ABOUT THIS PERSON, GOOD AND BAD, SO I'LL KNOW WHAT
3 THE RIGHT SENTENCE TO IMPOSE." THAT'S WHY WE HAVE THE SECOND
4 PART OF THIS CASE BECAUSE THE JURY IS GOING TO DO THE
5 SENTENCING. DO YOU UNDERSTAND THAT?

6 A. YES, SIR.

7 Q. BEFORE WE START THAT SECOND PHASE, THE JUDGE WOULD
8 TELL THE JURY NOT TO MAKE UP THEIR MIND UNTIL THEY HAD HEARD
9 ALL THIS ADDITIONAL TESTIMONY. COULD YOU FOLLOW THAT?

10 A. YES, SIR, I COULD.

11 Q. AND THE REASON FOR THAT IS THAT SOMEONE CONVICTED OF
12 MURDER -- THAT DOESN'T MEAN THE DEATH PENALTY COMES INTO
13 PLAY, JUST A CONVICTION FOR MURDER. YOU HAVE TO GO INTO THE
14 SECOND PHASE FOR THE JURY TO GET MORE INFORMATION TO DECIDE
15 WHETHER IT'S IMPRISONMENT OR THE DEATH PENALTY.

16 A. OKAY.

17 Q. DO YOU UNDERSTAND THAT?

18 A. NOW I DO.

19 Q. OKAY. ALL THIS IS NEW TO YOU.

20 A. RIGHT.

21 Q. YOU'VE NEVER SERVED ON A JURY BEFORE. AND GOING
22 INTO THAT SECOND PHASE, THEN THERE COULD BE MORE TESTIMONY
23 ABOUT THE CRIME. THERE COULD BE TESTIMONY ABOUT THE
24 DEFENDANT, GOOD THINGS ABOUT HIM, BAD THINGS ABOUT HIM, SO
25 THAT THE JURY WOULD HAVE MORE INFORMATION TO DECIDE WHAT'S

1 THE APPROPRIATE SENTENCE.

2 A. SENTENCE.

3 Q. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. WOULD YOU KEEP AN OPEN MIND GOING INTO THAT SECOND
6 PHASE AND LISTEN TO ALL THAT TESTIMONY?

7 A. I BELIEVE I WOULD.

8 Q. AND THAT'S WHERE THE TWO TERMS THE JUDGE MENTIONED
9 -- AGGRAVATING CIRCUMSTANCES AND---

10 A. MITIGATING.

11 Q. ---MITIGATING CIRCUMSTANCES. AGGRAVATING WOULD BE
12 THINGS AGAINST THE DEFENDANT. MITIGATING WOULD BE THINGS FOR
13 HIM. DO YOU UNDERSTAND THAT?

14 A. WELL, I UNDERSTAND IT WOULD BE A LESSER...

15 Q. WELL, THAT'S WHAT THE JUDGE---

16 A. OKAY.

17 Q. THAT'S THE DEFINITION---

18 A. MITIGATION THEN -- I GOT THAT. NOT A PROBLEM.

19 Q. AGGRAVATING MEANS SOMETHING THAT SHOWED THE
20 DEFENDANT SHOULD GET THE DEATH PENALTY.

21 A. CORRECT.

22 Q. MITIGATING MEANS SOMETHING TO SHOW HE SHOULD GET
23 LIFE.

24 A. LIFE. THAT'S THE WAY I UNDERSTAND IT.

25 Q. TO REDUCE IT DOWN.

1 A. RIGHT.

2 Q. YOU'RE RIGHT. AGGRAVATING HEIGHTENS IT; MITIGATING
3 REDUCES IT.

4 A. CORRECT.

5 Q. AND WOULD YOU BE WILLING TO LISTEN TO ALL THAT
6 EVIDENCE BEFORE YOU WOULD DECIDE WHAT THE RIGHT SENTENCE IS?

7 A. I WOULD.

8 Q. NOW, LET ME ASK YOU THIS. YOU TOLD THE JUDGE THAT
9 YOU WERE IN THAT THIRD CATEGORY.

10 A. RIGHT.

11 Q. WHICH MEANS THAT YOU DON'T THINK LIFE SHOULD ALWAYS
12 BE THE SENTENCE IN A MURDER. YOU DON'T THINK DEATH SHOULD
13 ALWAYS BE THE SENTENCE IN A MURDER.

14 A. RIGHT. THAT'S---

15 Q. IT WOULD DEPEND ON ALL OF THAT EVIDENCE IN THE
16 SECOND PHASE AND THE FIRST PHASE AND EVERYTHING, AND PRETTY
17 MUCH THE PUNISHMENT SHOULD FIT THE CRIME AND THE PERSON. IS
18 THAT RIGHT?

19 A. THAT'S THE WAY I FEEL.

20 Q. GOOD. AND HAVING THAT FEELING, YOU COULD VOTE
21 EITHER FOR LIFE IMPRISONMENT -- IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. OR IF THE DEATH PENALTY WERE WARRANTED, YOU COULD
24 VOTE FOR THE DEATH PENALTY.

25 A. I VERY WELL COULD.

1 Q. I WANT TO ASK YOU WHAT -- WHAT I -- WHAT YOU
2 PROBABLY THINK IS A STUPID QUESTION. OUR LAW SAYS THAT IF A
3 JURY DETERMINES THAT THE DEATH PENALTY IS THE RIGHT SENTENCE,
4 THEN EVERY JUROR MUST SIGN THAT VERDICT. USUALLY JUST THE
5 FOREMAN SIGNS THE VERDICT.

6 A. UH-HUH.

7 Q. BUT THE LAW SAYS IF THE JURY DECIDES THAT THE DEATH
8 PENALTY IS WARRANTED, THEN EVERY JUROR HAS TO SIGN IT. SOME
9 PEOPLE WILL SAY, "I'LL TELL YOU WHAT I THINK, BUT I'M NOT
10 GOING TO PUT MY NAME ON IT." BUT JUST BECAUSE THE LAW
11 REQUIRES A SIGNATURE ON THE DEATH VERDICT, WOULD THAT PREVENT
12 YOU FROM SIGNING THAT---

13 A. NO.

14 Q. ---IF YOU THOUGHT THAT WAS RIGHT?

15 A. NO. I WOULD SIGN IT.

16 Q. MR. SMITH, IS THERE ANYTHING ABOUT YOU THAT WOULD
17 PREVENT YOU FROM BEING A FAIR JUROR TO BOTH SIDES, THAT IS,
18 BASING YOUR VERDICTS ON WHAT YOU HEAR IN THE COURTROOM?

19 A. I DON'T FEEL LIKE THERE IS.

20 Q. GOOD. WE APPRECIATE THAT. THANK YOU, SIR.

21 A. YES, SIR.

22 CROSS-EXAMINATION

23 BY MR. LITTLEJOHN:

24 Q. GOOD MORNING, MR. SMITH.

25 A. GOOD MORNING.

1 Q. MR. SMITH, AGAIN MY NAME IS CAM LITTLEJOHN---

2 A. YES, SIR.

3 Q. ---AND I, ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN
4 MERCER WHO IS THE DEFENDANT IN THIS CASE.

5 A. ALL RIGHT.

6 Q. IF I MAY, SIR, IF I COULD ASK YOU A COUPLE OF
7 QUESTIONS ABOUT YOUR INFORMATION YOU PUT ON YOUR
8 QUESTIONNAIRE.

9 A. YES, SIR.

10 Q. I NOTICE YOU SAID YOU WERE IN THE SOUTH CAROLINA
11 NATIONAL GUARD?

12 A. RETIRED.

13 Q. TWENTY-ONE YEARS?

14 A. YES, SIR.

15 Q. WAS THAT A FULL-TIME---

16 A. NO.

17 Q. ---POSITION?

18 A. I WAS PART-TIME WEEKEND, YOU KNOW, SUMMER CAMP, 21
19 YEARS OF NATIONAL GUARD.

20 Q. I GOT YOU. WHAT KIND OF -- WHAT KIND OF UNIT WERE
21 YOU IN? WHAT RANK DID YOU GET TO?

22 A. I WAS PLATOON SERGEANT E-6 IN THE ENGINEER UNIT,
23 COMBAT ENGINEER UNIT.

24 Q. GREAT. MR. SMITH, AS YOU LEARNED YESTERDAY OR ON
25 MONDAY AND WILL COME OUT, THE VICTIM IN THIS CASE WAS AN ARMY

1 SERGEANT---

2 A. RIGHT.

3 Q. ---WHO WAS STATIONED AT FORT JACKSON, AND I GUESS MY
4 QUESTION IS: WOULD THE FACT THAT THE VICTIM HELD THAT
5 POSITION IN THE ARMY -- WOULD THAT HAVE ANY EFFECT ON YOUR
6 ABILITY TO BE FAIR IN THIS CASE?

7 A. I DON'T SEE WHY THAT IT WOULD AFFECT MY JUDGMENT ONE
8 WAY OR THE OTHER.

9 Q. OKAY. DO YOU THINK YOU COULD---

10 A. RIGHT IS RIGHT, AND WRONG IS WRONG.

11 Q. PARDON ME?

12 A. RIGHT IS RIGHT, AND WRONG IS WRONG.

13 Q. OKAY. THE JUDGE TOLD YOU THAT THIS CASE HAS TWO
14 PARTS POSSIBLY, BUT THE FIRST PART IS THE PART WHICH DEALS
15 WITH THE GUILT OR THE INNOCENCE OF THE DEFENDANT. AND DURING
16 THE FIRST PART OF THE CASE, THE STATE WOULD BE REQUIRED BY
17 LAW TO PROVE THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
18 WOULD YOU HAVE ANY PROBLEM APPLYING THAT STANDARD OF PROOF TO
19 THE STATE IF YOU WERE ON THE JURY?

20 A. NO.

21 Q. OKAY. DO YOU THINK YOU WOULD HAVE ANY PROBLEM
22 JUDGING THE CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES
23 THAT COME BEFORE YOU? THESE WITNESSES MAY BE POLICE
24 OFFICERS. THEY MAY BE EXPERTS, MAY BE LAY WITNESSES.

25 A. I DON'T THINK SO. I'M NORMALLY A GOOD JUDGE.

1 Q. ALL RIGHT. JUDGE FEW DISCUSSED WITH YOU THAT FORM
2 YOU WERE GIVEN WITH THE THREE TYPES OF JURORS.

3 A. YES, SIR.

4 Q. YOU INDICATED THAT YOU WERE THE TYPE THREE JUROR.

5 A. CORRECT.

6 Q. DID YOU HAVE ANY PROBLEM OR DID IT TAKE YOU ANY TIME
7 TO COME TO THAT CONCLUSION?

8 A. NO.

9 Q. OKAY. WHY? TELL ME IF YOU WOULD, IN YOUR OWN
10 WORDS, WHY YOU THINK YOU'RE THAT TYPE OF JUROR.

11 A. I'VE JUST ALWAYS FELT THIS WAY. I MEAN, I THINK
12 BASED ON CERTAIN SITUATIONS, YOU KNOW, IT CAN BE A LESSER OR
13 A GREATER PUNISHMENT.

14 Q. UH-HUH.

15 A. I MEAN, IT MIGHT HAVE NOT BEEN PLANNED OR I MEAN --
16 YOU DON'T KNOW. I DON'T -- I'VE JUST ALWAYS FELT LIKE, YOU
17 KNOW, THE BENEFIT OF THE DOUBT.

18 Q. OKAY. YOU'D WANT TO HEAR ALL THE EVIDENCE AND ALL
19 THE INFORMATION---

20 A. I'D WANT TO HEAR WHAT WENT ON.

21 Q. OKAY. WOULD YOU ALSO WANT TO HEAR ALL THE
22 INFORMATION AND EVIDENCE CONCERNING THE DEFENDANT BEFORE YOU
23 MADE THAT ULTIMATE DECISION---

24 A. YES.

25 Q. ---IF WE GET TO THAT SECOND STAGE?

1 A. YES, I WOULD.

2 Q. OKAY. THAT'S WHAT WE CALL MITIGATING EVIDENCE.

3 A. RIGHT.

4 Q. AS YOU'LL SEE, THAT WOULD INCLUDE INFORMATION ABOUT
5 THE BACKGROUND OF MR. MERCER, GOOD THINGS ABOUT HIM, BAD
6 THINGS ABOUT HIM, BAD THINGS THAT HAVE HAPPENED TO HIM DURING
7 HIS LIFE. WOULD YOU LISTEN TO ALL THAT INFORMATION BEFORE
8 YOU ARRIVED AT A DECISION AS TO WHAT THE PUNISHMENT SHOULD
9 BE, IF WE GET TO THAT?

10 A. YES, I WOULD.

11 Q. OKAY. ONE LAST THING, MR. SMITH. IF YOU WERE ON
12 THIS JURY AND EITHER DURING THE FIRST PHASE OR IF WE GET TO
13 THE SECOND PHASE, YOU FOUND THAT YOU HAD A -- AN OPINION
14 ABOUT WHAT THE VERDICT OUGHT TO BE AND YOU DISCOVERED THAT
15 YOUR OPINION DIFFERED FROM YOUR OTHER JUROR FRIENDS, THE
16 OTHER 11 JURORS, DO YOU THINK YOU'D EVER CONSIDER CHANGING
17 YOUR OPINION JUST TO ARRIVE AT A VERDICT?

18 A. IT WOULD HAVE TO BE ON FACT BEFORE I WOULD CHANGE MY
19 OPINIONS.

20 Q. OKAY. YOU'D HAVE TO BE CONVINCED THAT THEY WERE
21 RIGHT?

22 A. I WOULD HAVE TO BE THOROUGHLY CONVINCED THAT I WAS
23 WRONG AND THEY WERE RIGHT BEFORE I WOULD CHANGE.

24 Q. FAIR ENOUGH. THANK YOU, MR. SMITH. YOUR HONOR,
25 COULD YOU -- I MAY HAVE ONE MORE QUESTION IF YOU COULD

1 INDULGE ME. MR. SMITH, LET ME JUST ASK YOU ONE -- ONE FINAL
2 THING THAT WAS BROUGHT TO MY ATTENTION. YOU SAID IF YOU WERE
3 ON THE JURY AND WERE ARRIVING -- IF YOU GOT TO THE STAGE
4 WHERE YOU HAD TO ARRIVE AT THE PUNISHMENT AND I BELIEVE YOU
5 SAID SOMETHING ABOUT IF THE -- IF THE -- IF THE KILLING WAS
6 PLANNED, THAT WOULD WEIGH HEAVILY. CAN YOU TELL ME WHAT YOU
7 MEANT BY THAT?

8 MR. MYERS: NO, SIR. THAT'S AN INCOMPLETE QUESTION.
9 THERE'S TWO PARTS. THERE'S THE GUILT PART. THEN THEY'VE GOT
10 TO LISTEN TO ALL THE OTHER STUFF BEFORE THEY GET -- THAT'S
11 TRYING TO DIVIDE IT UP AND STAKE OUT THE JUROR, AND THAT'S
12 IMPROPER.

13 THE COURT: I THINK IT'S A PROPER QUESTION TO
14 ADDRESS THE -- AS A FOLLOW-UP TO HIS ANSWER. SO YOU CAN ASK
15 THE QUESTION. I OVERRULE THE OBJECTION.

16 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

17 THE WITNESS: I THINK WHAT I WAS REFERRING TO WAS
18 THE WAY YOU WERE DESCRIBING IT AS AGGRAVATED OR MITIGATION.
19 I MEAN, IF THE SEVERITY OF IT -- I'M NOT SURE HOW TO PHRASE
20 WHAT YOU'RE ASKING ME BUT...

21 MR. LITTLEJOHN: OKAY. WELL, WOULD THE -- THE
22 PLANNING -- THAT WOULD BE ONE ASPECT OF THE CASE THAT YOU
23 WOULD TAKE INTO CONSIDERATION?

24 MR. MYERS: NO.

25 THE COURT: IF YOU DON'T MIND---

1 MR. LITTLEJOHN: I DON'T MIND.

2 THE COURT: ---LET ME TAKE A SECOND TO GO BACK AND
3 ADDRESS WITH HIM THE DEFINITION OF MURDER, AND I'LL FOCUS ON
4 THE CONCEPT OF AFORETHOUGHT IF YOU DON'T MIND.

5 MR. LITTLEJOHN: THAT WILL BE FINE, YOUR HONOR.

6 THE COURT: AND THEN -- AND THEN I'LL GIVE YOU A
7 CHANCE TO FOLLOW UP WITH THAT.

8 MR. LITTLEJOHN: THANK YOU.

9 THE COURT: ALL RIGHT. MR. SMITH, WE DON'T -- WE
10 DON'T WANT TO PUT YOU IN A POSITION OF HAVING TO TELL US WHEN
11 YOU WOULD AND WHEN YOU WOULD NOT THINK THE DEATH PENALTY WAS
12 APPROPRIATE, BUT MR. LITTLEJOHN IS GOING TO TRY TO EXPLORE
13 SOMETHING THAT YOU JUST SAID. SO IN ORDER TO HELP YOU ANSWER
14 THAT QUESTION AND MAKE SURE YOU ARE UNDERSTANDING WHERE HE'S
15 COMING FROM, WHEN I TALK ABOUT THE DEFINITION OF MURDER AS
16 BEING AN INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON
17 WITH MALICE AFORETHOUGHT, THE WORD AFORETHOUGHT MEANS SIMPLY
18 THAT IT WAS -- THE MALICE EXISTED AT SOME POINT IN TIME
19 BEFORE THE KILLING.

20 NOW, IT DOESN'T HAVE TO BE WAY BEFORE. IT CAN BE
21 REALLY ONLY AN INSTANT BEFORE. SO -- AND THEN THAT WOULD BE
22 THE DEFINITION OF AFORETHOUGHT AS THAT FITS INTO THE
23 DEFINITION OF MURDER. SO I'M GOING TO LET HIM NOW FOLLOW UP
24 WITH YOU ABOUT -- WITH WHATEVER HE WANTS TO ASK YOU. BUT I'M
25 NOT GOING TO LET -- THIS IS A RULE THAT I ALWAYS FOLLOW. I'M

1 NOT GOING TO LET ANYBODY PUT YOU IN A POSITION OF HAVING TO
2 THINK ABOUT WHAT ARE THE CERTAIN CIRCUMSTANCES IN WHICH YOU
3 WOULD CONSIDER THE DEATH PENALTY TO BE APPROPRIATE OR, ON THE
4 OTHER HAND, WHICH OF THE CIRCUMSTANCES THAT YOU WOULD THINK A
5 LIFE SENTENCE WOULD BE APPROPRIATE. YOU DON'T HAVE TO ANSWER
6 THAT QUESTION IN THIS -- IN THIS FORUM TODAY. MR.
7 LITTLEJOHN?

8 BY MR. LITTLEJOHN:

9 Q. MR. SMITH, JUST BRIEFLY.

10 A. OKAY.

11 Q. AND I DON'T MEAN TO... WHEN YOU -- YOU INDICATED
12 PLANNING WAS SOMETHING THAT WOULD BE -- THAT YOU WOULD THINK
13 ABOUT IN ARRIVING AT A VERDICT AS TO PUNISHMENT?

14 A. CORRECT.

15 Q. IS THAT JUST ONE ASPECT OF MANY?

16 A. VERY.

17 Q. OKAY.

18 A. OF A LOT.

19 Q. SO THAT'S JUST ONE FACTOR YOU WOULD TAKE INTO
20 CONSIDERATION AMONG OTHER THINGS.

21 A. CORRECT.

22 MR. LITTLEJOHN: FAIR ENOUGH. THANK YOU, MR. SMITH.

23 THE COURT: ALL RIGHT. MR. SMITH, I'M GOING TO ASK
24 YOU TO STEP OUT IN THE HALL FOR JUST A SECOND---

25 THE WITNESS: YES, SIR.

1 THE COURT: ---AND I'LL GET YOU RIGHT BACK IN HERE.
2 THANK YOU, SIR.

3 (JUROR SMITH LEAVES THE COURTROOM.)

4 THE COURT: IS THERE ANY OBJECTION TO WHAT I DID?

5 MR. LITTLEJOHN: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. ANY -- ANYBODY BELIEVE HE'S
7 NOT QUALIFIED?

8 MR. MYERS: NO, SIR.

9 THE COURT: OKAY. BRING HIM BACK IN.

10 (JUROR SMITH IS BROUGHT INTO THE COURTROOM.)

11 THE COURT: MR. SMITH---

12 THE WITNESS: YES, SIR.

13 THE COURT: ---YOU ARE QUALIFIED TO SERVE AS A JUROR
14 IN THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE JURY, BUT IT
15 MEANS YOU'RE ELIGIBLE TO BE ON THE JURY.

16 THE WITNESS: ALL RIGHT, SIR.

17 THE COURT: WE WOULD LIKE FOR YOU TO BE BACK UP HERE
18 ON MONDAY MORNING. IF YOU WOULD CALL THE TELEPHONE NUMBER
19 THAT YOU WERE GIVEN ON THAT LITTLE PINK SLIP, CALL THAT
20 NUMBER SUNDAY NIGHT AFTER 6:00, AND THERE WILL BE
21 INSTRUCTIONS ON THAT RECORDED MESSAGE TELLING YOU EXACTLY
22 WHEN YOU NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING
23 YOUR PERSONAL ITEMS IN CASE THE JURY IS GOING TO BE
24 SEQUESTERED.

25 THE WITNESS: YES, SIR.

1 THE COURT: IN THE MEANTIME, DON'T DISCUSS THIS CASE
2 WITH ANYONE NOR ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU.
3 PLEASE BE CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY
4 PRESS COVERAGE ABOUT THIS CASE.

5 THE WITNESS: YES, SIR.

6 THE COURT: ENJOY THE REST OF YOUR WEEK. WE'LL SEE
7 YOU MONDAY.

8 THE WITNESS: THANK YOU.

9 THE COURT: THANK YOU, SIR.

10 (JUROR SMITH LEAVES THE COURTROOM. JUROR VICKY
11 MILLS IS BROUGHT INTO THE COURTROOM.)

12 VICKY MILLS, HAVING BEEN PREVIOUSLY SWORN AS A
13 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
14 TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT

16 Q. HAVE A SEAT RIGHT HERE, MA'AM. GOOD MORNING.

17 A. GOOD MORNING.

18 Q. WHEN YOU WERE HERE ON MONDAY, WE PUT YOU UNDER OATH
19 AND YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU DISCUSSED THIS
22 CASE WITH ANYONE OR HAS ANYONE DISCUSSED THIS CASE WITH YOU?

23 A. NO, SIR.

24 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND AFTER
25 I'VE DONE THAT, THE LAWYERS ARE PROBABLY GOING TO ASK YOU

1 SOME FOLLOW-UP QUESTIONS. WE'RE NOT TRYING TO PROBE TOO DEEP
2 INTO YOUR PRIVATE LIFE, BUT WE DO HAVE TO ASK YOU THESE
3 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO THE
4 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO
5 BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT
6 YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
7 DISCUSSING.

8 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
9 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
10 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
11 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
12 THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
13 SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

14 A. YES, SIR.

15 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
16 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
17 REASONABLE DOUBT?

18 A. YES, SIR.

19 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
20 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
21 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
22 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
23 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

24 A. OH.

25 Q. IN OTHER WORDS, IF YOU -- IF YOU WERE SITTING ON THE

1 JURY AND IF YOU FELT THAT THE STATE HAD MET ITS BURDEN OF
2 PROOF ON MURDER OR ARMED ROBBERY OR ANY OF THE OTHER CRIMES
3 THAT THE DEFENDANT MAY BE CHARGED WITH, WOULD YOU BE ABLE TO
4 FIND HIM GUILTY?

5 A. YES, SIR.

6 Q. NOW, IF YOU FELT THAT THE STATE HAD FAILED TO MEET
7 ITS BURDEN OF PROOF, WOULD YOU BE ABLE TO FIND THE DEFENDANT
8 NOT GUILTY?

9 A. YES, SIR.

10 Q. IF YOU'RE ON THE JURY IN THE CASE AND IF THE JURY
11 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE INTO
12 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M
13 GOING TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES THAT WILL
14 COME UP IF WE GET INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES
15 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
16 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
17 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
18 ENORMITY OF THE CRIME. THEY ADD TO THE INJURY RESULTING FROM
19 THE CRIME.

20 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
21 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
22 DECLARED TO LESSEN THE SEVERITY OF THE CRIME. THEY SERVE TO
23 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR
24 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT
25 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

1 A. NO, SIR.

2 Q. DO YOU -- IT'S SIMPLY THAT THERE ARE VARYING DEGREES
3 OF SEVERITY FOR A MURDER.

4 A. OKAY.

5 Q. AND SOME CIRCUMSTANCES MIGHT MAKE THE MURDER SEEM
6 MORE SEVERE. SOME CIRCUMSTANCES MIGHT MAKE THE MURDER SEEM
7 LESS SEVERE. DO YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. THAT'S WHAT AGGRAVATING AND MITIGATING CIRCUMSTANCES
10 ARE.

11 A. OH, OKAY.

12 Q. DOES THAT -- DOES THAT MAKE SENSE TO YOU?

13 A. YES, SIR.

14 Q. WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A COPY
15 OF THIS SHEET THAT EXPLAINS THE THREE TYPES OF JURORS. DID
16 YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

17 A. YES, SIR.

18 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
19 YOU WOULD BE?

20 A. WELL, I GUESS I WOULD HAVE TO LISTEN TO THE
21 WITNESSES AND SO FORTH BEFORE I CAN DETERMINE EXACTLY WHICH
22 ONE IT WOULD BE.

23 Q. WHETHER IT WOULD BE A LIFE SENTENCE OR THE DEATH
24 PENALTY?

25 A. YES, SIR.

1 Q. ALL RIGHT. SO IN THE -- IF YOU'RE ON THE JURY IN
2 THE PENALTY PHASE OF THE TRIAL AFTER THE JURY HAS CONVICTED
3 THE DEFENDANT OF MURDER -- AND BY THE WAY, MURDER IS DEFINED
4 AS THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON
5 WITH MALICE AFORETHOUGHT.

6 A. UH-HUH.

7 Q. IF YOU'RE ON THE JURY IN THAT SENTENCING PHASE, THEN
8 IT WOULD BE UP TO THE JURY TO DECIDE THE PENALTY, AND THE
9 JURY WOULD HAVE TWO OPTIONS. ONE WOULD BE FOR A LIFE
10 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER
11 OPTION WOULD BE FOR THE DEATH PENALTY.

12 A. UH-HUH.

13 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
14 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD
15 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
16 LIFE SENTENCE?

17 A. NO, SIR.

18 Q. NOW, I WANT TO MAKE SURE YOU UNDERSTOOD THE QUESTION
19 BECAUSE -- BUT IF YOU FELT THAT THE CIRCUMSTANCES WERE SUCH
20 THAT A LIFE SENTENCE WAS APPROPRIATE, WOULD YOU VOTE TO
21 IMPOSE A LIFE SENTENCE?

22 A. YES, SIR.

23 Q. DID I CONFUSE YOU BEFORE?

24 A. YES, SIR.

25 Q. ALL RIGHT. IF YOU FELT THAT THE CIRCUMSTANCES WERE

1 APPROPRIATE, COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

2 A. YES, SIR.

3 Q. SO IS IT TRUE THEN THAT YOU WOULD MAKE YOUR DECISION
4 AS TO WHETHER TO VOTE FOR A LIFE SENTENCE OR WHETHER TO
5 IMPOSE THE DEATH PENALTY AFTER YOU HAD HEARD ALL OF THE FACTS
6 AND ALL OF THE EVIDENCE AND DEPENDING ON WHAT YOU FELT WAS
7 THE APPROPRIATE SENTENCE IN THAT CASE?

8 A. YES, SIR.

9 Q. IF YOU'RE ON THE JURY, MA'AM, AND IF THE JURY IS
10 SEQUESTERED -- WHICH I HAVEN'T DECIDED YET IF THEY WILL BE---

11 A. UH-HUH.

12 Q. ---YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
13 DAYS, AND YOU WOULD BE FED ALL YOUR MEALS AND YOU WOULD NOT
14 BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN
15 ON YOU?

16 A. NO.

17 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
18 THAT YOU WERE GIVEN THIS MORNING?

19 A. UH-HUH.

20 Q. YOU DID?

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 APPEARS ON THAT LIST?

1 A. THERE'S A COUPLE THAT I KNOW.

2 Q. OKAY.

3 A. I'M NOT SURE EXACTLY -- WHAT EXACTLY YOU'RE LOOKING
4 FOR AS FAR AS KNOWING THEM.

5 Q. WELL, JUST TELL ME ABOUT THEM THEN. TELL ME WHO
6 THEY ARE AND HOW YOU KNOW THEM.

7 A. OKAY. NIKKI RODGERS. HER SON USED TO GO TO MY
8 CHILD'S DAY CARE.

9 Q. OKAY.

10 A. THIS WAS THREE YEARS AGO SINCE, YOU KNOW, THEY LEFT
11 AND THEY'RE NOT GOING THERE ANYMORE.

12 Q. YOUR CHILDREN WERE THE SAME AGE OR ROUGHLY THE SAME
13 AGE?

14 A. PROBABLY ABOUT TWO YEARS APART.

15 Q. OKAY. ALL RIGHT.

16 A. AND THEN ONE OF THEM I JUST KNOW BY NAME, DEPUTY
17 GLENN OXENDINE. NOW, MY SISTER USED TO DATE A GLENN
18 OXENDINE, BUT I'M NOT SURE -- IT'S BEEN A LONG TIME, SO I'M
19 NOT EXACTLY SURE WHAT HE'S DOING OR IF IT'S THE SAME PERSON.

20 THE COURT: OKAY. SOMEBODY GIVE ME A LITTLE BIT OF
21 INFORMATION ABOUT GLENN OXENDINE SO THAT SHE CAN DECIDE IF
22 THAT'S THE GLENN OXENDINE THAT SHE KNOWS.

23 MR. HUBBARD: YOUR HONOR, HE'S WITH THE SHERIFF'S
24 DEPARTMENT. HE'S BEEN WITH THEM FOR QUITE AWHILE. I THINK
25 HE WORKS IN THE EVIDENCE SECTION NOW. A LONG TIME AGO HE

1 USED TO WORK NARCOTICS.

2 BY THE COURT:

3 Q. DOES THAT SOUND LIKE THE SAME PERSON?

4 A. I'M NOT SURE. ALL I KNOW IS HE HAS A BROTHER NAMED
5 ALLEN.

6 MR. HUBBARD: I DON'T KNOW.

7 THE WITNESS: I DON'T KNOW.

8 THE COURT: OKAY. ALL RIGHT. WELL, MA'AM, I'M
9 GOING TO LET THE LAWYERS ASK YOU SOME QUESTIONS NOW, AND THEY
10 MAY FOLLOW UP WITH YOU A LITTLE BIT ABOUT MR. OXENDINE AND
11 THE OTHER WITNESS THAT YOU KNEW.

12 THE WITNESS: OKAY.

13 DIRECT EXAMINATION

14 BY MR. MYERS:

15 Q. MRS. MILLS? MRS. MILLS, OTHER THAN WHAT YOU HEARD
16 IN THIS COURTROOM, DO YOU KNOW ANYTHING ABOUT THIS CASE?

17 A. NO, SIR.

18 Q. OKAY. THE JURORS WILL TAKE AN OATH BEFORE THE CASE
19 STARTS, AND THAT OATH WOULD MAINLY SAY THAT THEY WOULD SWEAR
20 THEY WOULD REACH A VERDICT ON WHAT THEY HEARD IN THIS
21 COURTROOM, THE WITNESSES WHO TESTIFIED, AND THE LAW AS THE
22 JUDGE TELLS THEM WHAT THE LAW IS. COULD YOU FOLLOW THAT
23 OATH?

24 A. YES, SIR.

25 Q. OKAY. NOW, YOU SAID THAT YOU KNEW NIKKI RODGERS AND

1 YOU MAY KNOW GLENN OXENDINE. THE FACT THAT YOU KNEW THEM,
2 WOULD THAT INTERFERE WITH YOUR ABILITY TO BE A FAIR AND
3 IMPARTIAL JUROR?

4 A. NO, IT WILL NOT.

5 Q. THANK YOU, MA'AM. NOW, IF THE JURY FOUND THE
6 DEFENDANT GUILTY, WE WOULD GO INTO A SECOND PART OF THE CASE.
7 THIS IS SOMETHING NEW IN OUR LAW. THIS IS FOR HANDING DOWN A
8 SENTENCE FOR THE DEFENDANT: LIFE IMPRISONMENT OR THE DEATH
9 PENALTY. DO YOU UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. NOW, I NOTICE YOU'VE NEVER SERVED ON A JURY PANEL
12 BEFORE. IS THAT CORRECT?

13 A. YES, SIR. THAT'S CORRECT.

14 Q. OKAY. NOW, I KNOW ALL THIS IS KIND OF STRANGE TO
15 YOU, SO IF YOU HAVE ANY QUESTIONS, JUST STOP US. NORMALLY
16 WHEN A JURY FINDS SOMEONE GUILTY, THE JUDGE DOES THE
17 SENTENCING, AND THE JUDGE WOULD TELL EVERYBODY, "TELL ME
18 SOMETHING GOOD ABOUT THE DEFENDANT. TELL ME SOMETHING BAD
19 ABOUT THE DEFENDANT. YOU CAN TELL ME SOMETHING ELSE ABOUT
20 THE CRIME SO I'LL KNOW WHAT IS THE RIGHT SENTENCE TO HAND
21 DOWN." WELL, THAT'S WHY WE NEED THAT SECOND PART OF THE
22 CASE. THE JURY WOULD HEAR MORE EVIDENCE. THEY COULD HEAR
23 SOME MORE THINGS ABOUT THE CRIME, SOME GOOD THINGS ABOUT THE
24 DEFENDANT OR BAD THINGS ABOUT THE DEFENDANT. DO YOU
25 UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. DID YOU KNOW THAT BEFORE YOU CAME IN HERE TODAY?

3 A. NO, SIR.

4 Q. OKAY.

5 A. NO.

6 Q. IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER,
7 THAT DOESN'T MEAN THE DEATH PENALTY OR EVEN LIFE COME INTO
8 PLAY.

9 A. RIGHT.

10 Q. THAT'S A VERDICT THAT GETS US TO THAT SECOND PART,
11 AND THAT SECOND PART IS FOR THIS OTHER EVIDENCE. WOULD YOU
12 BE WILLING TO LISTEN TO ALL THAT EVIDENCE IN THE SECOND PART
13 BEFORE YOU DECIDED WHAT SENTENCE TO IMPOSE?

14 A. YES, SIR.

15 Q. AS A MATTER OF FACT, THE JUDGE WOULD TELL THE JURY
16 YOU ARE NOT TO MAKE UP YOUR MIND GOING INTO THAT SECOND PART
17 UNTIL YOU'VE HEARD EVERYTHING. COULD YOU FOLLOW THAT
18 INSTRUCTION?

19 A. YES, SIR.

20 Q. NOW, IN THAT SECOND PART, THAT'S WHERE THESE
21 AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES COME
22 INTO PLAY.

23 A. UH-HUH.

24 Q. AGGRAVATING MEANS MAKING THINGS WORSE AGAINST THE
25 DEFENDANT. MITIGATING MEANS LESSENING, SOMETHING FOR THE

1 DEFENDANT. DO YOU UNDERSTAND THAT?

2 A. YES, SIR.

3 Q. AND WE CAN'T TELL YOU WHAT THAT'S GOING TO BE.
4 THAT'S JUST CATEGORIES OR TITLES GIVEN TO THE EVIDENCE.
5 WOULD YOU BE WILLING TO LISTEN TO ALL THAT BEFORE YOU
6 DETERMINE WHAT THE RIGHT SENTENCE IS?

7 A. YES, SIR.

8 Q. NOW, THE JUDGE ASKED YOU ABOUT THIS FORM THAT HAD
9 THE THREE DIFFERENT TITLES ON IT?

10 A. UH-HUH.

11 Q. THE FIRST ONE SAYS UP HERE THAT THAT'S SOMEBODY THAT
12 SAYS THAT THEY WOULD GIVE THE DEATH PENALTY IN ALL CASES OF
13 MURDER. YOU'RE NOT IN THAT CATEGORY, AS I UNDERSTOOD YOU TO
14 SAY. IS THAT RIGHT?

15 A. RIGHT.

16 Q. THE SECOND ONE SAYS IT'S THE TYPE OF PERSON THAT
17 SAID I COULD NEVER GIVE THE DEATH PENALTY. I WOULD ALWAYS
18 VOTE FOR LIFE. YOU'RE NOT THAT TYPE OF PERSON.

19 A. RIGHT.

20 Q. YOU FALL IN THAT THIRD CATEGORY WHERE I THINK YOU
21 TERMED IT PROBABLY AS GOOD AS ANYBODY. YOU'D HAVE TO LISTEN
22 TO ALL THE WITNESSES AND ALL THE EVIDENCE.

23 A. YES, SIR.

24 Q. THEN MAKE UP YOUR MIND.

25 A. UH-HUH.

1 Q. AND IS THAT WHAT YOU WOULD DO IN A CASE? LISTEN TO
2 ALL THE EVIDENCE BEFORE YOU MADE UP YOUR MIND ON WHAT THE
3 SENTENCE SHOULD BE?

4 A. YES, SIR.

5 Q. AND THEN AS I TAKE IT FROM YOU WHAT YOU SAID, IF YOU
6 THOUGHT LIFE WERE THE RIGHT VERDICT, YOU COULD VOTE FOR LIFE?

7 A. YES, SIR.

8 Q. BUT IF YOU THOUGHT THE DEATH PENALTY WAS WARRANTED
9 AND A NECESSARY SENTENCE, YOU COULD VOTE FOR THE DEATH
10 PENALTY.

11 A. YES, SIR.

12 Q. NOW, MY LAST QUESTION I'M GOING TO TELL YOU IS ABOUT
13 OUR LAW AND THIS IS DIFFERENT. OUR LAW SAYS THAT IF THE JURY
14 DECIDES THE DEATH PENALTY IS THE SENTENCE, THEN EVERY JUROR
15 WOULD HAVE TO SIGN THAT SENTENCE. NORMALLY JUST THE JURY
16 FOREMAN WOULD SIGN THE SENTENCE, BUT IN DEATH PENALTY CASES
17 EVERY JUROR WOULD HAVE TO SIGN IT.

18 A. UH-HUH.

19 Q. SOME FOLKS WILL SAY, "I'LL TELL YOU WHAT I THINK,
20 BUT I'M NOT SIGNING MY NAME." THE FACT THAT OUR LAW WOULD
21 REQUIRE A SIGNATURE ON A DEATH PENALTY VERDICT, WOULD THAT
22 PREVENT YOU FROM VOTING FOR THE DEATH PENALTY JUST BECAUSE
23 YOU HAD TO SIGN YOUR NAME?

24 A. NO.

25 Q. THANK YOU, MA'AM. THAT'S ALL WE CAN ASK OF YOU. I

1 APPRECIATE IT.

2 A. OKAY.

3 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MS. KIMBROUGH:

6 Q. GOOD MORNING, MS. MILLS: HOW ARE YOU?

7 A. I'M FINE.

8 Q. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN
9 MERCER. WE INTRODUCED HIM TO THE JURORS EARLIER, AND WE'RE
10 REINTRODUCING HIM. NOW, WHEN WE'RE ASKING JURORS ABOUT THEIR
11 OPINIONS ON THE VARIOUS STAGES OF THIS CASE, I JUST WANT TO
12 MAKE CLEAR AND MAKE SURE YOU UNDERSTAND THAT SIMPLY BECAUSE
13 WE ASK QUESTIONS ABOUT STAGE ONE AND STAGE TWO, THAT DOESN'T
14 MEAN THAT WE'RE GOING TO GET TO STAGE TWO. AND I WANTED TO
15 MAKE SURE THAT YOU UNDERSTAND THAT, IN FACT, THE FIRST PART
16 OF THIS TRIAL MAY BE THE ONLY PART.

17 THE ONLY REASON WE WOULD EVER GET TO THE SECOND
18 PHASE IS IF THE STATE MET ITS BURDEN BEYOND A REASONABLE
19 DOUBT THAT KEVIN MERCER IS RESPONSIBLE FOR A MURDER AND AN
20 ARMED ROBBERY. IF THEY DO NOT PROVE THAT TO YOUR
21 SATISFACTION AND THE SATISFACTION OF THE OTHER JURORS, THEN
22 WE WOULD NOT GET TO THAT SECOND PHASE. DO YOU UNDERSTAND --
23 DO YOU UNDERSTAND THAT, THAT IT'S---

24 A. UH-HUH.

25 Q. IN OTHER WORDS, GUILT IS NOT A FOREGONE CONCLUSION.

1 WE HAVE TO ASK YOU QUESTIONS ABOUT PENALTY BECAUSE WE HAVE TO
2 ASSUME THAT THAT'S A POSSIBILITY THAT WE WILL GET TO THAT
3 SECOND PHASE.

4 A. RIGHT.

5 Q. I JUST WANTED TO MAKE SURE THAT THAT WAS CLEAR
6 BECAUSE ALL THE NORMAL RULES APPLY IN THAT FIRST PHASE: THE
7 BURDEN OF PROOF, PRESUMPTION OF INNOCENCE, REASONABLE DOUBT.
8 AND THE JUDGE WILL INSTRUCT YOU ABOUT THOSE PRINCIPLES AT THE
9 APPROPRIATE TIME. SO MOVING ON TO THAT FIRST PHASE OR JUST
10 FOCUSING ON THAT FIRST PHASE, I TAKE IT YOU HAVEN'T HEARD
11 ANYTHING ABOUT THIS CASE?

12 A. HUH-UH.

13 Q. NOTHING AT ALL?

14 A. HUH-UH.

15 Q. OKAY. SO YOU WOULDN'T COME INTO THAT PHASE WITH ANY
16 PRECONCEIVED NOTIONS ABOUT WHAT HAD -- WHAT WAS GOING ON?

17 A. HUH-UH.

18 Q. OKAY. AND HAVE YOU EVER SERVED ON A JURY?

19 A. NO.

20 Q. NO.

21 A. THIS IS THE FIRST TIME.

22 Q. OKAY. OKAY. NOT CIVIL OR CRIMINAL?

23 A. NOTHING.

24 Q. OKAY. AND I NOTICE YOU WORK FOR BLUE CROSS BLUE
25 SHIELD?

1 A. UH-HUH.

2 Q. HOW LONG HAVE YOU BEEN THERE?

3 A. TWENTY YEARS, ALMOST 21.

4 Q. AND YOU HAVE TWO CHILDREN?

5 A. UH-HUH.

6 Q. THEY'RE YOUNG?

7 A. YEAH. UH-HUH.

8 Q. BUT THAT WOULDN'T BE A PROBLEM AS FAR AS YOUR
9 SERVICE IS CONCERNED?

10 A. NO. HUH-UH.

11 Q. NOW, DO YOU HAVE ANY -- I NOTICED HERE THAT YOU
12 NOTED YOU ATTENDED THE SOUTHERN BAPTIST CHURCH?

13 A. UH-HUH.

14 Q. ARE THERE ANY SPECIFIC BELIEFS THAT YOU WOULD HOLD
15 AS A SOUTHERN BAPTIST THAT MIGHT INTERFERE WITH YOUR ABILITY
16 IN EITHER THE GUILT/INNOCENCE PHASE OR THE PENALTY PHASE?

17 A. NO.

18 Q. IS THERE -- NO CONCERN THERE?

19 A. HUH-UH.

20 Q. OKAY. AND WHEN THE JUDGE AND SOLICITOR MYERS ASKED
21 YOU ABOUT WHAT TYPE OF JUROR THAT YOU WERE, I BELIEVE YOU
22 SAID YOU WOULD FALL INTO THAT THIRD CATEGORY?

23 A. UH-HUH.

24 Q. DID YOU HAVE ANY HESITANCY AT ALL ABOUT THAT?

25 A. NO. I JUST HAVE TO LISTEN TO IT ALL FIRST BEFORE I

1 MAKE MY DECISION. I DON'T WANT TO MAKE THE WRONG DECISION
2 BECAUSE THERE'S SOMETHING THAT I COULD HAVE CAUGHT THAT I
3 MISSED. SO I HAVE TO LISTEN TO THE WHOLE THING.

4 Q. OKAY. AND YOU REALIZE IF WE GET PAST THAT FIRST
5 STAGE THAT THERE WILL BE NO QUESTIONS ABOUT GUILT. IN ORDER
6 TO GET TO THE SECOND PHASE, THERE WOULD HAVE TO BE A FINDING
7 BY THE JURY THAT KEVIN MERCER WAS GUILTY OF BOTH ARMED
8 ROBBERY AND MURDER.

9 A. UH-HUH.

10 Q. OKAY. I BELIEVE THE JUDGE EXPLAINED TO YOU THAT NOT
11 ALL KILLINGS OF HUMAN BEINGS ARE MURDER. THERE HAS TO BE AN
12 ELEMENT OF INTENT.

13 A. RIGHT.

14 Q. BUT EVEN WITH THOSE FACTS, DO YOU FEEL LIKE YOU
15 COULD KEEP AN OPEN MIND UNTIL ALL THE EVIDENCE WAS IN. IN THE
16 SECOND PHASE?

17 A. YES.

18 Q. OKAY. AND IF WE GET TO THE SECOND PHASE, YOU MAY
19 HEAR A VARIETY OF TESTIMONY. IT'S A UNIQUE CREATION IN OUR
20 LAW THAT BOTH SIDES WILL PRESENT EVIDENCE BECAUSE YOU AND
21 YOUR FELLOW JURORS ARE THE SENTENCERS; USUALLY IT'S THE
22 JUDGE. AND SO BOTH SIDES WOULD HAVE AN OPPORTUNITY TO
23 PRESENT EVIDENCE.

24 NOW, THE STATE OBVIOUSLY IS ASKING FOR A SENTENCE OF
25 DEATH, AND SO THEY WOULD PRODUCE EVIDENCE THAT THEY THINK

1 SUPPORTS THAT. ON THE OTHER HAND, KEVIN MERCER IS ASKING FOR
2 A SENTENCE OF LIFE IF HE GETS TO THAT STAGE. WOULD YOU BE
3 ABLE TO ACCEPT THAT HE HAS NO BURDEN AT THAT POINT TO
4 ESTABLISH THAT LIFE IS THE APPROPRIATE PUNISHMENT?

5 A. NO. I'M SORRY. CAN YOU REPEAT THAT?

6 Q. I'M SORRY. I'LL SIMPLIFY MY QUESTION A LITTLE BIT.
7 IF WE GET TO THE SECOND PHASE AND THE QUESTION IS BETWEEN
8 LIFE AND DEATH, CAN YOU ACCEPT THE PRINCIPLE THAT EVEN THOUGH
9 A DETERMINATION HAS BEEN MADE THAT HE IS GUILTY OF MURDER AND
10 ARMED ROBBERY THAT HE STILL HAS NO BURDEN TO PROVE HE'S
11 ENTITLED TO A LIFE SENTENCE OR, EXCUSE ME, NOT ENTITLED, BUT
12 SHOULD RECEIVE A LIFE SENTENCE? COULD YOU ACCEPT THAT
13 PRINCIPLE?

14 A. YES.

15 Q. OKAY. AND SO YOU WOULD NOT HOLD HIM TO ANY BURDEN
16 OF PROOF IN THAT REGARD?

17 A. RIGHT.

18 Q. OKAY. I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.
19 THANK YOU.

20 A. THANK YOU.

21 THE COURT: ANYTHING BEFORE I RULE?

22 MS. KIMBROUGH: NO, YOUR HONOR.

23 THE COURT: MS. MILLS, YOU ARE QUALIFIED TO SERVE AS
24 A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU'RE ON THE
25 JURY. IT MEANS THAT YOU ARE ELIGIBLE TO BE ON THE JURY.

1 WE'RE GOING TO ACTUALLY PICK OR WHAT WE CALL STRIKE THE JURY
2 ON MONDAY MORNING, AND I WOULD LIKE FOR YOU TO BE PREPARED TO
3 BE HERE MONDAY MORNING. IF YOU WOULD CALL THE TELEPHONE
4 NUMBER ON -- THAT YOU WERE GIVEN ON THAT PINK SLIP. CALL
5 THAT NUMBER ON SUNDAY NIGHT AFTER 6:00, AND THERE WILL BE
6 INSTRUCTIONS ON A RECORDED MESSAGE THERE TELLING YOU EXACTLY
7 WHEN YOU NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING
8 YOUR PERSONAL ITEMS IN CASE THE JURY IS GOING TO BE
9 SEQUESTERED.

10 BETWEEN NOW AND THEN, PLEASE -- OR YOU MAY NOT
11 DISCUSS THIS CASE WITH ANYONE NOR MAY YOU ALLOW ANYONE TO
12 DISCUSS THIS CASE WITH YOU. PLEASE BE CAREFUL NOT TO ALLOW
13 YOURSELF TO BE EXPOSED TO ANY PRESS COVERAGE ABOUT THIS CASE.
14 ENJOY THE REST OF YOUR WEEK, AND WE WILL SEE YOU ON MONDAY.

15 THE WITNESS: OKAY.

16 THE COURT: THANK YOU, MA'AM.

17 THE WITNESS: THANK YOU.

18 (JUROR MILLS LEAVES THE COURTROOM. JUROR PHILLIP
19 SHARPE IS BROUGHT INTO THE COURTROOM.)

20 PHILLIP SHARPE, 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. GOOD MORNING. YOU'RE MR. SHARPE?

25 A. YES, SIR.

1 Q. MR. SHARPE, ON MONDAY YOU WERE PUT UNDER OATH, AND
2 YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. NOW, SINCE YOU LEFT US ON MONDAY, HAS ANYBODY TALKED
5 TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYONE ABOUT THE
6 CASE?

7 A. NO, SIR.

8 Q. MR. SHARPE, I'M GOING TO ASK YOU SOME QUESTIONS NOW,
9 AND THEN THE LAWYERS MAY HAVE SOME FOLLOW-UP QUESTIONS FOR
10 YOU. WE DON'T MEAN TO PRY TOO DEEP INTO YOUR PERSONAL LIFE,
11 BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NO
12 RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE JUST WANT YOU TO
13 LISTEN VERY CAREFULLY AND TO BE OPEN AND HONEST WITH US AND
14 TELL US HOW YOU FEEL AND WHAT YOU THINK ABOUT THESE ISSUES
15 THAT WE'LL BE DISCUSSING.

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 SET ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED ABOUT
19 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
20 THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
21 SEE AND HEAR IN THIS COURTROOM?

22 A. YES, SIR.

23 Q. COULD YOU DO THAT?

24 A. YES, SIR.

25 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE

1 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
2 REASONABLE DOUBT?

3 A. YES, SIR.

4 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
5 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
6 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
7 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
8 BELIEVE THE STATE HAS MET THAT BURDEN OF PROOF?

9 A. YES, SIR.

10 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
11 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE
12 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
13 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WOULD
14 COME UP IF WE GET INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES
15 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
16 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
17 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
18 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM
19 THE CRIME.

20 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
21 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
22 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
23 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
24 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
25 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING

1 CIRCUMSTANCES?

2 A. YES, SIR.

3 Q. NOW, WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A
4 COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
5 JURORS. DID YOU GET A CHANCE TO READ OVER THAT SHEET?

6 A. YES, I DID.

7 Q. AND YOU UNDERSTAND THOSE THREE TYPES?

8 A. UH-HUH.

9 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
10 YOU ARE?

11 A. I THINK I WOULD BE ONE OF THE THIRD, THE THIRD TYPE.

12 Q. THE THIRD TYPE?

13 A. THE THIRD TYPE, YES.

14 Q. IF YOU WERE ON THE JURY IN THIS CASE AND IF THE JURY
15 FOUND THE DEFENDANT GUILTY OF MURDER -- AND BY THE WAY, THE
16 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
17 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. AND IF YOU GOT
18 INTO THAT SENTENCING PHASE, IT WOULD BE UP TO THE JURY TO
19 DECIDE WHAT WOULD BE THE PENALTY FOR THAT MURDER, AND THERE
20 WOULD BE TWO OPTIONS THAT THE JURY WOULD HAVE. ONE OPTION
21 WOULD BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF
22 PAROLE, AND THE OTHER OPTION WOULD BE FOR THE DEATH PENALTY.
23 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
24 FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT
25 TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE

1 SENTENCE?

2 A. YES, I COULD.

3 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
4 DEATH PENALTY?

5 A. YES.

6 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
7 SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A HOTEL FOR FIVE
8 OR SIX DAYS. WE'D PROVIDE ALL YOUR MEALS FOR YOU, AND YOU
9 WOULD NOT BE ALLOWED TO GO HOME DURING THAT PERIOD OF TIME.
10 WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

11 A. NO, SIR.

12 Q. DID YOU HAVE A CHANCE TO READ OVER THAT WITNESS LIST
13 THAT I GAVE YOU THIS MORNING?

14 A. YES, I DID.

15 Q. DID YOU READ EVERY NAME ON THAT LIST?

16 A. YES, I DID.

17 Q. IS THERE ANYONE ON THAT LIST WHOM YOU KNOW OR TO
18 WHOM YOU ARE RELATED?

19 A. NO, SIR.

20 Q. ALL RIGHT, SIR. NOW, THE LAWYERS ARE GOING TO ASK
21 YOU SOME FOLLOW-UP QUESTIONS.

22 A. OKAY.

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q. GOOD MORNING, MR. SHARPE.

1 A. GOOD MORNING.

2 Q. MR. SHARPE, OTHER THAN WHAT YOU HEARD IN THE
3 COURTROOM, DO YOU KNOW ANYTHING ABOUT THIS CASE?

4 A. NO, SIR.

5 Q. I NOTICE YOU'VE NEVER SERVED ON A JURY PANEL BEFORE,
6 ON A CRIMINAL JURY. IS THAT RIGHT?

7 A. I SERVED ON A FEDERAL JURY ONCE A FEW YEARS AGO BUT
8 NEVER ON THE COUNTY LEVEL, NO.

9 Q. OKAY. WAS THAT A CRIMINAL OR A CIVIL CASE?

10 A. IT WAS A CIVIL CASE.

11 Q. OKAY. THIS MAY BE NEW TO YOU BECAUSE WHAT WE'RE
12 DEALING WITH IS DIFFERENT THAN A NORMAL CASE.

13 A. YES, SIR.

14 Q. IT'S DIFFERENT IN THIS ASPECT: YOU KNOW THAT
15 USUALLY WHEN YOU TRY A CRIMINAL CASE THE JURY LISTENS TO THE
16 EVIDENCE, AND THEN THEY FIND SOMEBODY GUILTY OR NOT GUILTY
17 BASED ON THE LAW AND EVIDENCE. YOU UNDERSTAND THAT.

18 A. YES, SIR.

19 Q. THIS CASE WILL BE JUST LIKE THAT, JUST LIKE EVERY
20 CRIMINAL CASE, BUT WHAT'S DIFFERENT IS IF THE JURY FINDS THE
21 DEFENDANT GUILTY, THEN WE HAVE TO GO INTO A SECOND PART OF
22 THE CASE. IT'S CALLED THE SENTENCING PART. THAT'S DIFFERENT
23 BECAUSE NORMALLY THE JUDGE HANDS DOWN THE SENTENCE IN A
24 CRIMINAL CASE. BUT OUR LAW SAYS WHEN THE DEATH PENALTY IS
25 INVOLVED, THE JURY HANDS DOWN THE SENTENCE. DID YOU KNOW

1 THAT?

2 A. YES, SIR.

3 Q. OKAY. NOW, HOW THAT'S DIFFERENT IS IS THAT IF THE
4 JURY FINDS THE DEFENDANT GUILTY, THEN WE TAKE A SMALL BREAK
5 AND WE HAVE TO GO INTO THE SECOND PART OF THE CASE, AND THAT
6 SECOND PART IS FOR MORE TESTIMONY. THAT'S WHERE THESE TERMS
7 AGGRAVATION AND MITIGATION COME INTO PLAY. THE JUDGE WOULD
8 TELL THE JURY THAT GOING INTO THAT SECOND PART THEY SHOULDN'T
9 MAKE UP THEIR MINDS OF WHAT THE SENTENCE SHOULD BE UNTIL
10 THEY'VE HEARD EVERYTHING IN THAT SECOND PART. WOULD YOU DO
11 THAT?

12 A. YES, SIR.

13 Q. AND JUST BECAUSE SOMEONE'S FOUND GUILTY OF MURDER,
14 THAT DOESN'T MEAN THE DEATH PENALTY COMES INTO PLAY. THE
15 DEATH PENALTY ONLY COMES INTO PLAY AFTER WE HAVE THAT SECOND
16 PART OF THE CASE. YOU UNDERSTAND THAT.

17 A. YES, SIR.

18 Q. THE JUDGE WOULD TELL THE JURY: "NOW, JURORS, YOU
19 FOUND THE DEFENDANT GUILTY. THAT'S OVER WITH. NOW WE GO
20 INTO THE PENALTY PHASE. DO NOT MAKE UP YOUR MIND UNTIL
21 YOU'VE HEARD ALL THE EVIDENCE." COULD YOU FOLLOW THAT?

22 A. YES, I COULD.

23 Q. THAT PENALTY PHASE, THAT WOULD BE FOR SOME MORE
24 TESTIMONY, MORE WITNESSES TESTIFYING. IT COULD BE SOMETHING
25 ELSE ABOUT THE CRIME. IT COULD BE SOMETHING ABOUT THE

1 DEFENDANT. IT COULD BE SOMETHING GOOD ABOUT HIM, COULD BE
2 SOMETHING BAD ABOUT HIM. THAT'S WHERE THESE TERMS
3 AGGRAVATING EVIDENCE AND MITIGATING EVIDENCE COMES INTO PLAY.
4 AGGRAVATION WOULD BE BAD FOR THE DEATH PENALTY. MITIGATION
5 IS SOMETHING FAVORABLE, SOMETHING THAT LESSENS IT FOR THE
6 DEFENDANT FOR LIFE. DO YOU UNDERSTAND THAT?

7 A. YES, I DO.

8 Q. WE CAN'T TELL YOU WHAT THAT EVIDENCE IS GOING TO BE,
9 BUT THE JUDGE, AFTER EVERYBODY HAS TESTIFIED, HE'LL TELL THE
10 JURY THE DEFINITION ABOUT AGGRAVATING AND MITIGATING IN MORE
11 DETAIL. HE'LL EVEN GIVE THE JURORS SOMETHING IN WRITING
12 ABOUT AGGRAVATING AND MITIGATING STUFF. WOULD YOU FOLLOW
13 THAT AS THE JUDGE TOLD YOU WHAT IT IS?

14 A. YES, I WOULD.

15 Q. NOW, AS TO LIFE IMPRISONMENT AND THE DEATH PENALTY,
16 I THINK YOU SAID YOU FIT IN THAT THIRD CATEGORY.

17 A. YES, SIR.

18 Q. THAT MEANS IN A CASE OF MURDER, YOU DON'T THINK
19 DEATH SHOULD ALWAYS BE THE SENTENCE. IS THAT RIGHT?

20 A. NOT ALWAYS, NO.

21 Q. AND YOU DON'T THINK LIFE SHOULD ALWAYS BE THE
22 SENTENCE.

23 A. NO.

24 Q. IT WOULD DEPEND ON THE EVIDENCE, THE FACTS, AND THE
25 CIRCUMSTANCES.

1 A. YES, SIR.

2 Q. PUNISHMENT TO FIT THE CRIME AND THE PERSON. IS THAT
3 FAIR TO SAY?

4 A. YES, SIR.

5 Q. NOW, WHEN YOU SAID YOU WERE IN PART THREE ON THAT
6 FORM, DID YOU EVER THINK YOU WERE IN TWO OR ONE OR YOU SAID,
7 "THREE IS IT; I GOT TO LISTEN TO EVERYTHING"?

8 A. I THINK THREE ALWAYS.

9 Q. OKAY. NOW, I WANT TO ASK YOU THIS. WOULD YOU BE
10 WILLING TO LISTEN TO EVERYTHING IN THAT SECOND PART BEFORE
11 YOU DECIDED WHAT THE RIGHT SENTENCE WOULD BE?

12 A. YES, I WOULD.

13 Q. WOULD YOU BE WILLING TO LISTEN TO THE AGGRAVATING
14 AND THE MITIGATING BEFORE YOU DECIDED WHAT THE RIGHT SENTENCE
15 WAS?

16 A. YES, SIR.

17 Q. MR. SHARPE, IN SOUTH CAROLINA THERE'S ANOTHER THING
18 THAT THE LEGISLATURE SAID ABOUT DEATH PENALTY CASES.
19 NORMALLY JUST THE FOREMAN SIGNS THE VERDICT IN A CRIMINAL
20 CASE, BUT OUR LEGISLATURE PASSED A LAW THAT SAID IN THE DEATH
21 PENALTY CONTEXT IF THE JURY DECIDES THAT THE DEATH PENALTY IS
22 WARRANTED AND THE RIGHT SENTENCE, EVERY JUROR WOULD HAVE TO
23 SIGN THAT. SOME JURORS SAY, "WELL, I'LL TELL YOU WHAT I
24 THINK, BUT I'M NOT GOING TO SIGN MY NAME TO ANYTHING." THE
25 FACT THAT OUR LAW REQUIRES A SIGNATURE ON A DEATH PENALTY

1 VERDICT, WOULD THAT PREVENT YOU FROM VOTING FOR THE DEATH
2 PENALTY?

3 A. NO, SIR.

4 Q. AND IF YOU THOUGHT WITH THE CRIME, THE EVIDENCE, AND
5 THE FACTS OF THE DEFENDANT THAT LIFE WAS THE APPROPRIATE
6 SENTENCE, YOU COULD VOTE FOR LIFE?

7 A. YES, I COULD.

8 Q. BUT IF YOU THOUGHT THE DEATH PENALTY WAS WARRANTED
9 AND THE NECESSARY SENTENCE, YOU COULD VOTE FOR THE DEATH
10 PENALTY?

11 A. YES, I COULD.

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

13 A. OKAY.

14 CROSS-EXAMINATION

15 BY MR. LITTLEJOHN:

16 Q. GOOD MORNING, MR. SHARPE.

17 A. GOOD MORNING.

18 Q. MR. SHARPE, AGAIN MY NAME IS CAM LITTLEJOHN, AND I,
19 ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE
20 DEFENDANT IN THIS CASE. IF I MAY ASK YOU A COUPLE OF
21 QUESTIONS ABOUT THE INFORMATION ON YOUR QUESTIONNAIRE.

22 A. OKAY.

23 Q. I UNDERSTAND YOU'VE LIVED IN LEXINGTON COUNTY ALL
24 YOUR LIFE?

25 A. YES, SIR.

1 Q. SWANSEA AREA?

2 A. YES.

3 Q. OKAY. I NOTICE THAT YOU INDICATED YOUR STEPSON
4 WAS -- WORKED IN CORRECTIONS?

5 A. YES.

6 Q. CAN YOU TELL ME A LITTLE BIT ABOUT THAT?

7 A. HE WORKED FOR A PRIVATE CONTRACTOR, C.C.A.,
8 CORRECTIONS CORPORATION OF AMERICA, WHICH IS A CONTRACTOR TO
9 JUVENILE JUSTICE---

10 Q. RIGHT.

11 A. ---IN SOUTH CAROLINA.

12 Q. UH-HUH.

13 A. I DON'T THINK THEY'RE STILL OPERATING IN SOUTH
14 CAROLINA, BUT HE WORKED FOR THEM IN OTHER STATES FOR AWHILE,
15 BUT HE DOES NOT WORK FOR THEM ANYMORE.

16 Q. OKAY. DID HE EVER SHARE HIS EXPERIENCES ABOUT THAT
17 KIND OF WORK WITH YOU?

18 A. NOT REALLY, NO.

19 Q. NOT REALLY?

20 A. NOT A WHOLE LOT.

21 Q. OKAY. MR. SHARPE, AS JUDGE FEW MENTIONED TO YOU,
22 THIS IS A CASE WHERE THE DEFENDANT IS CHARGED WITH MURDER,
23 ARMED ROBBERY, AND ANOTHER CRIME.

24 A. UH-HUH.

25 Q. AND THIS COULD BE A TWO-PART TRIAL, BUT BEFORE WE

1 GET TO THE SECOND PART, THERE WOULD HAVE TO BE A FINDING OF
2 GUILT AS TO THE DEFENDANT. AND BEFORE THE DEFENDANT COULD BE
3 FOUND GUILTY - AND HIS HONOR WILL TELL YOU THIS - THE JURY
4 WOULD HAVE TO BE CONVINCED BEYOND A REASONABLE DOUBT THAT THE
5 STATE HAD PROVEN HIS GUILT. AND I GUESS MY QUESTION TO YOU
6 IS: WOULD YOU HAVE ANY PROBLEM FOLLOWING THAT LEGAL
7 PRINCIPLE AND PUTTING THE STATE TO THAT BURDEN?

8 A. NO, SIR.

9 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM JUDGING
10 THE CREDIBILITY OF THE WITNESSES, WHETHER THEY BE POLICE
11 OFFICERS OR LAY WITNESSES OR EXPERTS?

12 A. NO, SIR.

13 Q. OKAY. I NOTICE THAT YOU INDICATED TO JUDGE FEW
14 AFTER REVIEWING THAT FORM THAT YOU WERE GIVEN THAT YOU THINK
15 YOU'RE THE TYPE THREE JUROR?

16 A. UH-HUH.

17 Q. DID YOU HAVE ANY PROBLEM COMING TO THAT CONCLUSION?

18 A. NO.

19 Q. DID YOU HAVE TO CONSIDER EITHER OF THE OTHER TWO
20 OPTIONS?

21 A. NO. I READ ALL OF THEM, BUT I STILL THINK I FIT
22 THREE AFTER I READ THEM; YES, SIR.

23 Q. CAN YOU TELL ME WHY YOU THINK YOU'RE A NUMBER THREE
24 TYPE JUROR?

25 A. I THINK I CAN LISTEN TO ALL THE EVIDENCE AND THEN

1 DRAW A CONCLUSION FROM THERE, YOU KNOW.

2 Q. OKAY. AND YOU'D WANT TO LISTEN TO ALL THE EVIDENCE.

3 A. YES, I WOULD.

4 Q. THIS HAS BEEN ALLUDED TO: IF WE GET TO THE SECOND
5 PHASE OF THIS CASE, THERE WOULD IN ALL LIKELIHOOD
6 BE AGGRAVATING EVIDENCE PRESENTED AND MITIGATING EVIDENCE,
7 AND I TELL YOU THAT THE MITIGATING EVIDENCE WOULD CONCERN
8 THINGS ABOUT KEVIN MERCER'S BACKGROUND, PERHAPS GOOD THINGS
9 THAT HE HAD DONE AND PERHAPS BAD THINGS HE HAD DONE, PERHAPS
10 BAD THINGS THAT HAD HAPPENED TO HIM. THERE MAY BE SOME
11 MEDICAL TESTIMONY. AND WHAT I'D LIKE TO ASK YOU, MR. SHARPE,
12 IS IF YOU WOULD BE WILLING TO LISTEN TO ALL OF THAT AND WEIGH
13 IT VERY CAREFULLY BEFORE YOU ARRIVE AT ANY DECISION AS TO
14 WHAT THE PUNISHMENT SHOULD BE, IF WE GET TO THAT STAGE.

15 A. YES, I WOULD.

16 MR. LITTLEJOHN: OKAY. OKAY. I BELIEVE THAT'S ALL
17 I HAVE, YOUR HONOR. THANK YOU, MR. SHARPE.

18 THE COURT: ANYTHING BEFORE I RULE?

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: MR. SHARPE, YOU ARE QUALIFIED TO SERVE
21 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU'RE ON
22 THE JURY. IT MEANS THAT YOU ARE ELIGIBLE TO BE ON THE JURY.
23 WE WILL ACTUALLY STRIKE OR PICK THE JURY ON MONDAY, AND WE
24 WOULD LIKE FOR YOU TO BE PREPARED TO BE HERE ON MONDAY
25 MORNING. IF YOU WOULD CALL SUNDAY NIGHT AFTER 6:00 TO THAT

1 TELEPHONE NUMBER THAT YOU WERE GIVEN ON THE PINK SLIP THAT
2 YOU HAVE, THERE WILL BE A DETAILED MESSAGE ON THAT LINE THAT
3 TELLS YOU EXACTLY WHEN YOU NEED TO BE HERE AND WHETHER OR NOT
4 YOU NEED TO BRING YOUR CLOTHING AND YOUR PERSONAL ITEMS TO
5 STAY IF THE JURY IS SEQUESTERED.

6 IN THE MEANTIME, YOU MAY NOT DISCUSS THIS CASE WITH
7 ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE WITH
8 YOU. PLEASE BE VERY CAREFUL TO KEEP YOURSELF FROM BEING
9 EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS CASE, AND WE LOOK
10 FORWARD TO SEEING YOU ON MONDAY. THANK YOU, SIR. WE
11 APPRECIATE YOUR TIME.

12 THE WITNESS: I'M DISMISSED UNTIL MONDAY THEN?

13 THE COURT: YOU'RE DISMISSED UNTIL MONDAY. SEE YOU
14 THEN.

15 THE WITNESS: ALL RIGHT, SIR.

16 (JUROR SHARPE LEAVES THE COURTROOM.)

17 THE COURT: NOW, THIS NEXT LADY WAS THE ONE WHO
18 SHOWED UP LATE MONDAY AFTERNOON, AND SO I'M GOING TO GO
19 THROUGH AND PUBLISH THE INDICTMENTS TO HER AND GO OVER THE --
20 AND JUST TALK TO HER ABOUT THE INDICTMENTS AND THE
21 PRESUMPTION OF INNOCENCE AND THAT KIND OF THING. SO -- AND
22 THEN WE'LL GET INTO -- LET'S SEE. NOW, LET ME MAKE SURE I'VE
23 GOT... IS THERE ANYTHING ELSE THAT I NEED TO DO WITH HER
24 OTHER THAN JUST MOVE ON INTO THE VOIR DIRE?

25 MR. MYERS: I DON'T KNOW WHETHER SHE WAS IN HERE

1 WHEN YOU READ THE INDICTMENTS OR NOT.

2 THE COURT: I DON'T THINK SHE WAS BECAUSE I DID THAT
3 RIGHT WHEN WE STARTED, AND SHE MIGHT -- I THINK SHE WAS THE
4 ONE WHERE THE BAILIFF SAID THAT HE THOUGHT SHE MIGHT HAVE
5 HEARD WHAT I SAID THROUGH THE DOOR. BUT IN ANY EVENT, I
6 THINK I'LL JUST GO THROUGH THE WHOLE PROCESS.

7 MR. LITTLEJOHN: SHE CAME UP AND APOLOGIZED FOR
8 BEING LATE, AND I THINK YOU -- YOU ALSO NEED TO ASK HER ABOUT
9 WHETHER SHE'S RELATED TO LAW ENFORCEMENT, PROSECUTORS, AND
10 ALL THOSE QUESTIONS. I DON'T KNOW IF SHE WAS---

11 THE COURT: I THINK SHE WAS HERE FOR ALL THAT.

12 MR. MYERS: YEAH, SHE WAS HERE FOR THAT.

13 THE COURT: BUT BOTH OF THE -- I'LL ASK HER.

14 MR. MYERS: SHE WAS HERE FOR THAT.

15 THE COURT: BOTH OF THEM -- BOTH OF THE JURORS WHO
16 WERE LATE WERE HERE FOR ALL OF THE VOIR DIRE.

17 MR. LITTLEJOHN: ALL RIGHT.

18 THE COURT: IT'S JUST THAT INTRODUCTORY PART. I'LL
19 CONFIRM THAT WITH HER THOUGH IF YOU WANT ME TO.

20 MR. LITTLEJOHN: IF YOU DON'T MIND IF YOU'D JUST ASK
21 HER---

22 THE COURT: NO, I DON'T MIND A BIT. ALL RIGHT.
23 BRING HER IN.

24 (JUROR AMBER SMITH IS BROUGHT INTO THE COURTROOM.)

25 AMBER SMITH, HAVING BEEN PREVIOUSLY SWORN AS A

1 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
2 TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT

4 Q. GOOD MORNING, MS. SMITH.

5 A. GOOD MORNING.

6 Q. NOW, WHEN YOU -- ON MONDAY AFTER LUNCH YOU CAME BACK
7 A LITTLE BIT LATE, AND WE'VE ALREADY DISCUSSED THAT. IT'S
8 NOT THAT YOU'RE IN TROUBLE OR ANYTHING.

9 A. OKAY.

10 Q. THAT'S FORGOTTEN. BUT WE -- I JUST WANT TO MAKE
11 SURE THAT I COVER WITH YOU EVERYTHING THAT I COVERED WITH THE
12 JURY THAT AFTERNOON. NOW, AS I RECALL IT, YOU CAME IN IN
13 TIME TO HEAR ME ASK ALL THE QUESTIONS ABOUT WHETHER OR NOT
14 YOU HAD FAMILY MEMBERS WHO WERE LAW ENFORCEMENT AND ALL THAT.
15 DIDN'T YOU COME IN BEFORE I STARTED ASKING THOSE QUESTIONS?

16 A. YES, YOU DID.

17 Q. ALL RIGHT.

18 A. I DID; I CAME IN BEFORE THAT.

19 Q. OKAY. NOW, I'M GOING TO GO OVER A FEW THINGS WITH
20 YOU THAT I THINK YOU DID MISS. YOU MIGHT HAVE CAUGHT SOME OF
21 THIS, BUT I'M JUST GOING TO GO OVER IT ALL ANYWAY.

22 A. OKAY.

23 Q. THIS IS THE CASE OF THE STATE OF SOUTH CAROLINA
24 VERSUS KEVIN J. MERCER. MR. MERCER HAS BEEN INDICTED IN
25 TWO -- IN THREE -- ACTUALLY IN ONE INDICTMENT BUT THREE

1 COUNTS, AND THE INDICTMENT NUMBER IS 2003-GS-32-409, AND
2 COUNT 1 IS FOR MURDER. IN COUNT 1 IT IS -- IT IS ALLEGED
3 THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT
4 MAY 16TH, 2002, WILLFULLY, FELONIOUSLY, AND WITH MALICE
5 AFORETHOUGHT KILL ONE TRACY LAMAR DAVIS BY MEANS OF SHOOTING
6 THE VICTIM IN THE HEAD WITH A PISTOL AND THAT SAID TRACY
7 LAMAR DAVIS DIED AS A PROXIMATE RESULT THEREOF IN LEXINGTON
8 COUNTY ON OR ABOUT MAY 16TH, 2002, IN VIOLATION OF SECTION
9 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS.

10 IN COUNT 2 OF THE INDICTMENT MR. MERCER HAS BEEN
11 INDICTED FOR ARMED ROBBERY, AND IN THAT COUNT IT IS ALLEGED
12 THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT
13 MAY 16TH, 2002, WHILE ARMED WITH A DEADLY WEAPON, TO WIT, A
14 PISTOL, DID UNLAWFULLY AND FELONIOUSLY TAKE FROM THE PERSON
15 OR IN THE PRESENCE OF TRACY LAMAR DAVIS BY MEANS OF FORCE OR
16 INTIMIDATION A VEHICLE, GOODS, MONIES OR OTHER PERSONAL
17 PROPERTY ITEMS OF THE SAID TRACY LAMAR DAVIS OR OTHERS, SUCH
18 VEHICLE, GOODS, MONIES OR OTHER PERSONAL ITEMS BEING
19 DESCRIBED AS A 1998 LINCOLN NAVIGATOR VEHICLE, AND GOODS,
20 MONIES OR OTHER PERSONAL ITEMS BEING -- AS PERSONAL ITEMS
21 WITH THE INTENT TO DEPRIVE -- TO PERMANENTLY DEPRIVE THE
22 OWNER OF SAID ITEMS, IN VIOLATION OF SECTION 16-11-330 OF THE
23 SOUTH CAROLINA CODE OF LAWS.

24 AND IN COUNT 3 OF THE INDICTMENT IT IS ALLEGED THAT
25 KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT MAY 16TH,

1 2002, WILLFULLY AND UNLAWFULLY HAVE IN HIS POSSESSION OR DID
2 VISIBLY DISPLAY A PISTOL DURING THE COMMISSION OF A VIOLENT
3 CRIME OR CRIMES, TO WIT, MURDER AND/OR ARMED ROBBERY, AS
4 DEFINED IN 16-1-60, ALL IN VIOLATION OF SECTION 16-23-490 OF
5 THE SOUTH CAROLINA CODE OF LAWS.

6 NOW, IF YOU ARE ON THE JURY IN THIS CASE, I WILL
7 GIVE YOU MORE DETAILED INSTRUCTIONS ABOUT WHAT THE INDICTMENT
8 IS AND WHAT IT IS NOT, BUT I WANT TO TELL -- I WANT TO MAKE
9 SURE YOU UNDERSTAND NOW THAT THE INDICTMENT IS NOT IN ANY
10 SENSE EVIDENCE OF THE ALLEGATIONS THAT ARE CONTAINED WITHIN
11 THAT INDICTMENT. THE INDICTMENT IS SIMPLY THE FORMAL
12 DOCUMENT THAT DOES CONTAIN THE ALLEGATIONS THAT HAVE BEEN
13 MADE AGAINST THE DEFENDANT, AND IT SERVES TO PROCESS THE CASE
14 AND BRING IT INTO THIS COURT FOR TRIAL.

15 THE DEFENDANT HAS PLED NOT GUILTY TO ALL THREE
16 COUNTS OF THIS INDICTMENT, AND THE PLEA OF NOT GUILTY CASTS
17 THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND
18 A REASONABLE DOUBT. A DEFENDANT IN A CRIMINAL TRIAL IS NEVER
19 REQUIRED TO PROVE THEMSELVES INNOCENT, AND IF YOU'RE ON THE
20 JURY IN THIS CASE, THAT WOULD BE YOUR JOB: TO DETERMINE
21 WHETHER OR NOT THE STATE HAS MET THAT BURDEN OF PROOF.

22 NOW, THE STATE IS SEEKING THE DEATH PENALTY IN THIS
23 CASE, AND THAT MEANS THAT THE CASE IS BASICALLY GOING TO BE
24 DIVIDED UP INTO TWO POSSIBLE PHASES. IN THE FIRST PHASE THE
25 JURY WOULD DETERMINE WHETHER OR NOT THE STATE HAS MET THAT

1 BURDEN OF PROOF IN TERMS OF WHETHER OR NOT THEY'VE PROVEN THE
2 DEFENDANT GUILTY OF THOSE THREE CRIMES. IF THE -- IF IN THE
3 FIRST PHASE THE STATE DOES PROVE THE DEFENDANT GUILTY BEYOND
4 A REASONABLE DOUBT OF MURDER, THEN WE WOULD MOVE INTO THE
5 SECOND PHASE OF THE TRIAL IN WHICH THE JURY WOULD DETERMINE
6 WHETHER OR NOT -- WHETHER TO IMPOSE A LIFE SENTENCE OR THE
7 DEATH PENALTY.

8 NOW, MA'AM, YOU RECALL THAT ON MONDAY WHEN YOU WERE
9 HERE YOU WERE PUT UNDER OATH.

10 A. YES.

11 Q. AND YOU'RE STILL UNDER OATH TODAY. DO YOU
12 UNDERSTAND THAT?

13 A. I UNDERSTAND.

14 Q. SINCE YOU LEFT US ON MONDAY, HAS ANYONE DISCUSSED
15 THIS CASE WITH YOU OR HAVE YOU DISCUSSED THIS CASE WITH
16 ANYONE?

17 A. I WILL ADMIT SEVERAL COWORKERS HAVE QUESTIONED ME
18 ABOUT IT, AND I TOLD THEM THE TRUTH: THAT I DON'T EVEN KNOW
19 WHAT THE INDICTMENTS ARE---

20 Q. OKAY.

21 A. ---AND JUST DROPPED IT AT THAT.

22 Q. ALL RIGHT. SO IN TERMS OF -- LET'S TRY TO BE A
23 LITTLE -- IF YOU DON'T MIND, LET'S GET A LITTLE MORE SPECIFIC
24 ABOUT WHAT THEY MIGHT HAVE SAID TO YOU. DID THEY JUST ASK
25 YOU QUESTIONS LIKE, "WHY WEREN'T YOU AT WORK?" AND "WHAT WERE

1 YOU DOING AT THIS COURTHOUSE?" AND THINGS LIKE THAT OR DID
2 THEY SAY SOMETHING ABOUT THE CASE?

3 A. NO, THEY DID NOT SAY ANYTHING ABOUT THE CASE. THEY
4 WANTED MORE DETAIL ABOUT WHAT THEY HAD READ WHICH I ALSO
5 WANTED TO SAY THAT MONDAY MORNING BEFORE I EVEN CAME IN HERE
6 ONE OF MY COWORKERS CALLED ME AND SAID THAT SHE HAD READ THE
7 NEWSPAPER ARTICLE AND THAT SHE HAD A SUSPICION SHE KNEW WHAT
8 I WAS BEING CALLED IN FOR JURY DUTY.

9 Q. OKAY. DID YOU READ THE NEWSPAPER ARTICLE?

10 A. NO, I DID NOT.

11 Q. DID YOUR COWORKER TELL YOU WHAT WAS IN THE NEWSPAPER
12 ARTICLE?

13 A. YES. SHE SAID THAT THE DEFENDANT ALLEGEDLY MURDERED
14 SOMEBODY THAT WAS STATIONED AT FORT JACKSON AND THAT THEY HAD
15 PULLED 350 JURORS AND THAT THE CASE MAY TAKE SEVERAL WEEKS,
16 AND SHE WAS WORRIED ABOUT ME BEING SEQUESTERED.

17 Q. OKAY. ALL RIGHT. NOW, IN TERMS OF WHAT THE
18 NEWSPAPER ARTICLE MIGHT HAVE SAID SPECIFICALLY ABOUT THE
19 FACTS OF THE CASE, DID SHE TELL YOU ANYTHING ELSE ABOUT THE
20 FACTS OF THE CASE OR THE ALLEGATIONS THAT HAD BEEN MADE
21 AGAINST THE DEFENDANT?

22 A. NO.

23 Q. OKAY. ALL RIGHT. IS THERE ANYTHING ELSE ABOUT THAT
24 CONVERSATION THAT YOU REMEMBER?

25 A. NO, JUST WHEN AM I GOING TO BE BACK TO WORK.

1 Q. OKAY. ALL RIGHT. NOW -- AND THEN GOING BACK TO
2 YOUR CONVERSATIONS WITH YOUR COWORKERS, AFTER MONDAY, SINCE
3 MONDAY, DID THEY TELL YOU ANYTHING IN THOSE CONVERSATIONS
4 ABOUT THE FACTS OF THE CASE OR ABOUT THE ALLEGATIONS THAT
5 HAVE BEEN MADE AGAINST MR. MERCER?

6 A. NO. NO, THEY DID NOT.

7 Q. IS IT TRUE THEN THAT WHEN THEY ASKED YOU THESE
8 QUESTIONS YOU BASICALLY JUST TOLD THEM YOU COULDN'T ANSWER
9 THE QUESTIONS?

10 A. YES. ACTUALLY, ONE OF MY COWORKERS WANTED ME TO
11 CONFIRM WHETHER OR NOT THIS WAS THE CASE SHE HAD CALLED ME
12 ABOUT ON MONDAY, AND I DID NOT CONFIRM OR DENY.

13 Q. YOU JUST TOLD HER YOU COULDN'T TALK ABOUT IT?

14 A. YEAH, I TOLD HER I DIDN'T KNOW ANYTHING BASICALLY.

15 Q. OKAY. ALL RIGHT. NOW, I'M GOING TO ASK YOU SOME
16 QUESTIONS, AND THEN AFTER I'VE DONE THAT, THE LAWYERS WILL
17 PROBABLY ASK YOU SOME FOLLOW-UP QUESTIONS. BEFORE I DO THAT,
18 I'M GOING TO ASK YOU TO STEP OUT INTO THE HALL FOR JUST A
19 SECOND---

20 A. OKAY.

21 Q. ---AND THEN I'LL GET YOU RIGHT BACK IN HERE.

22 A. OKAY.

23 (JUROR SMITH LEAVES THE COURTROOM.)

24 THE COURT: IS THERE ANYTHING ELSE THAT I NEED TO
25 COVER WITH HER BEFORE I MOVE INTO THIS VOIR DIRE?

1 MR. MYERS: NOTHING FROM THE STATE.

2 MS. KIMBROUGH: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. BRING HER BACK.

4 (JUROR SMITH IS BROUGHT INTO THE COURTROOM.)

5 BY THE COURT:

6 Q. OKAY, MA'AM. NOW, IN ASKING THESE QUESTIONS WE
7 DON'T MEAN TO PRY TOO DEEP INTO YOUR PERSONAL LIFE. WE JUST
8 HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG
9 ANSWERS TO THE QUESTIONS. WE JUST WANT YOU TO LISTEN VERY
10 CAREFULLY AND THEN TO BE OPEN AND HONEST WITH US AND TELL US
11 WHAT YOU THINK AND HOW YOU FEEL ABOUT THESE ISSUES THAT WE'LL
12 BE DISCUSSING.

13 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND
14 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND THEN
15 SET ASIDE ANYTHING THAT YOU MAY HAVE LEARNED OR HEARD ABOUT
16 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS
17 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
18 HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

19 A. YES.

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.

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 YOU
3 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

4 A. YES.

5 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
6 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
7 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M
8 GOING TO TALK TO YOU ABOUT SOME OF THE THINGS THAT WILL COME
9 UP IN THAT PHASE IF WE GET THERE. AGGRAVATING CIRCUMSTANCES
10 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
11 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
12 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
13 ENORMITY OF THE CRIME, AND THEY ADD TO THE INJURY RESULTING
14 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. THEY
18 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
19 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
20 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
21 CIRCUMSTANCES?

22 A. YES.

23 Q. NOW, WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A
24 COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
25 JURORS. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

1 A. YES.

2 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU THINK
3 YOU WOULD BE?

4 A. NUMBER THREE.

5 Q. IF YOU'RE ON THE JURY IN THE CASE AND IF THE JURY
6 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD, OF COURSE,
7 MOVE INTO THAT SECOND PHASE OF THE TRIAL, AND I WANT TO TELL
8 YOU THAT THE DEFINITION OF MURDER IS AN INTENTIONAL AND
9 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
10 THE JURY WOULD BE THE ONES WHO WOULD DECIDE THE PENALTY FOR
11 THE CRIME OF MURDER, AND THE JURY WOULD HAVE TWO OPTIONS.
12 THE FIRST OF THOSE OPTIONS WOULD BE A LIFE SENTENCE WITHOUT
13 THE POSSIBILITY OF PAROLE, AND THE SECOND OPTION WOULD BE THE
14 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND
15 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW
16 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO IMPOSE OR TO
17 FIND A VERDICT FOR A LIFE SENTENCE?

18 A. YES.

19 Q. COULD YOU VOTE IN FAVOR OF A VERDICT TO IMPOSE THE
20 DEATH PENALTY?

21 A. YES.

22 Q. NOW, THE JURY MIGHT BE SEQUESTERED IN THIS CASE, AND
23 IF THEY ARE, YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
24 DAYS. AND WE WOULD PROVIDE ALL YOUR MEALS, AND YOU WOULD NOT
25 BE ALLOWED TO GO HOME DURING THE TIME THAT THE TRIAL IS GOING

1 ON. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

2 A. NO.

3 Q. HAVE YOU HAD A CHANCE TO GO OVER THE WITNESS LIST
4 THAT YOU WERE GIVEN WHEN YOU CAME IN THIS MORNING?

5 A. YES.

6 Q. DID YOU READ EVERY NAME ON THAT LIST?

7 A. YES.

8 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
9 APPEARS ON THAT LIST?

10 A. NO.

11 Q. ALL RIGHT. MA'AM, THE LAWYERS ARE GOING TO ASK YOU
12 SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME BACK AND
13 SPEAK TO YOU AFTER THAT.

14 A. OKAY.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q. GOOD MORNING, MS. SMITH.

18 A. GOOD MORNING.

19 Q. I JUST HAVE A FEW QUESTIONS. THE DEFENSE WILL ASK
20 YOU SOME QUESTIONS, TOO. WE'RE JUST TRYING TO GET SOME IDEAS
21 ABOUT YOUR THOUGHTS AND YOUR IDEAS AND ALSO TO MAKE SURE
22 THAT, YOU KNOW, EVERY JUROR THAT COMES IN HERE REALIZES WHAT
23 THEY'RE LOOKING AT, AND I WANT TO FOLLOW UP ON WHAT THE JUDGE
24 SAID. I BELIEVE IN YOUR QUESTIONNAIRE THAT YOU SENT BACK TO
25 THE CLERK'S OFFICE YOU SAID YOU HAD NEVER SERVED ON A JURY?

1 A. CORRECT.

2 Q. SO THIS IS ALL BRAND-NEW TO YOU.

3 A. EVERY BIT OF IT.

4 Q. HAVE YOU EVER BEEN TO THIS COURTHOUSE BEFORE?

5 A. NO. NO.

6 Q. SO IT'S ALL VERY, VERY NEW.

7 A. YES.

8 Q. WELL, THE FIRST PART OF THE -- YOU KNOW, THE JUDGE
9 SAID THERE'S TWO STAGES. THE FIRST PART IS VERY MUCH LIKE
10 YOU PROBABLY HAVE ALWAYS HEARD WHERE A JURY SITS OVER HERE IN
11 A JURY BOX. WITNESSES SIT RIGHT WHERE YOU'RE SITTING.
12 EVIDENCE IS PRODUCED. TESTIMONY IS GIVEN ON THE CASE, AND AT
13 THE END OF THAT TRIAL, ALL 12 JURORS GO BACK TO A JURY ROOM
14 AND THEY HAVE TO TALK, DISCUSS, AND FINALLY REACH A
15 CONCLUSION WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY.
16 YOU UNDERSTAND THAT PART.

17 A. YES.

18 Q. AND THAT -- AT THAT POINT THERE'S NO TALK ABOUT
19 PUNISHMENT AND THERE'S NO TALK ABOUT MERCY. IT'S ALL ABOUT:
20 IS HE GUILTY OR NOT GUILTY? AND YOU UNDERSTAND THAT.

21 A. I DO UNDERSTAND.

22 Q. WHAT'S DIFFERENT ABOUT THIS PROCESS IS TYPICALLY
23 WHEN SOMEBODY'S FOUND GUILTY, THEY STAND RIGHT UP HERE IN
24 FRONT OF THE JUDGE AND HE SENTENCES THEM, AND BEFORE HE
25 SENTENCES THEM, HE LOOKS AT THE STATE AND HE LOOKS AT THE

1 DEFENSE AND SAYS, "TELL ME A LITTLE BIT MORE ABOUT THIS MAN.
2 TELL ME SOMETHING. TELL ME THE GOOD, THE BAD, THE
3 AGGRAVATING CIRCUMSTANCES, THE MITIGATING CIRCUMSTANCES,"
4 THAT THE JUDGE WAS EXPLAINING. BUT IN THIS TYPE OF CASE THE
5 JURY SENTENCES.

6 SO IF THIS JURY GOES BACK AND COMES BACK WITH THE
7 VERDICT GUILTY OF MURDER, WE GO INTO THAT SECOND PHASE, AND
8 IT'S BASICALLY A WHOLE 'NOTHER TRIAL, BUT IT'S A TRIAL WHERE
9 INFORMATION IS PRESENTED ABOUT BAD THINGS ABOUT THE
10 DEFENDANT, BAD THINGS SURROUNDING THIS CRIME. IT'S ALSO
11 THINGS -- YOU MAY HEAR THINGS THAT ARE GOOD ABOUT THE
12 DEFENDANT OR THINGS THAT MIGHT LESSEN HIS CULPABILITY IN THE
13 CASE. YOU UNDERSTAND THAT.

14 A. I UNDERSTAND.

15 Q. AND AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, YOU
16 WOULD WANT TO HEAR THAT INFORMATION BEFORE YOU MADE A
17 DECISION.

18 A. YES.

19 Q. AND YOU WOULD HEAR FROM BOTH SIDES.

20 A. YES.

21 Q. AND AS I ALSO UNDERSTOOD YOUR ANSWERS TO THE JUDGE,
22 WHATEVER YOU MAY HAVE HEARD BEFORE COMING INTO THIS
23 COURTROOM, YOUR DECISION WOULD BE MADE SOLELY ON WHAT YOU
24 HEAR IN THIS COURTROOM.

25 A. YES.

1 Q. BOTH IN THE GUILT PHASE AND IN THE PENALTY PHASE.
2 IS THAT CORRECT?

3 A. CORRECT.

4 Q. OKAY. NOW, THERE'S SOMETHING ELSE THAT'S A LITTLE
5 DIFFERENT ABOUT THIS PROCESS FROM A NORMAL TRIAL. WHEN A
6 JURY DECIDES THAT LIFE IS APPROPRIATE, THE VERDICT FORM IS
7 ONLY SIGNED BY THAT FOREMAN, BUT IF THE JURY, EACH AND EVERY
8 PERSON, DECIDES THAT DEATH IS APPROPRIATE, ALL 12 JURORS SIGN
9 THEIR NAME ON THAT VERDICT FORM. SO I WANT TO ASK YOU -- IT
10 SOUNDS LIKE A SILLY QUESTION, BUT A LOT OF PEOPLE ARE WILLING
11 TO SIT BACK AND TELL YOU THEIR OPINIONS, BUT THEY DON'T WANT
12 TO SIGN THEIR NAME TO IT. WOULD YOU -- IF YOU THOUGHT THAT
13 DEATH WAS APPROPRIATE AFTER HEARING EVERYTHING, WOULD YOU BE
14 WILLING AND CAPABLE OF SIGNING YOUR NAME?

15 A. YES.

16 Q. OKAY. AND, AGAIN, YOU WOULD WANT TO HEAR FROM BOTH
17 SIDES. YOU WOULD WANT ALL THE INFORMATION BEFORE YOU MADE A
18 DECISION.

19 A. CORRECT.

20 Q. THAT'S ALL WE CAN ASK OF YOU, MS. SMITH. THANK YOU.

21 A. UH-HUH.

22 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

23 CROSS-EXAMINATION

24 BY MS. KIMBROUGH:

25 Q. GOOD MORNING, MS. SMITH. HOW ARE YOU?

1 A. GOOD.

2 Q. GOOD. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN
3 MERCER WHO WAS INTRODUCED YESTERDAY, BUT WE'RE GOING TO
4 INTRODUCE HIM AGAIN. I JUST HAVE A FEW QUICK QUESTIONS; I
5 THINK YOU'VE ANSWERED MOST OF THEM ALREADY.

6 A. OKAY.

7 Q. NOW, BEFORE TODAY YOU DIDN'T KNOW WHAT THE
8 ALLEGATIONS AGAINST KEVIN WERE. IS THAT -- IS THAT CORRECT?

9 A. ALL I KNEW WAS MURDER.

10 Q. OKAY.

11 A. YEAH.

12 Q. AND CERTAINLY MY SENSE FROM YOU IS THAT NOBODY
13 DISCUSSED THEIR VIEWS ON EITHER HIS GUILT OR INNOCENCE OR
14 WHAT WOULD BE AN APPROPRIATE PUNISHMENT.

15 A. NO.

16 Q. NO. OKAY. SO THOSE CONVERSATIONS WERE VERY BRIEF
17 AND SHUT DOWN.

18 A. YES.

19 Q. OKAY. LET'S SEE. AND I BELIEVE HIS HONOR WENT OVER
20 THE CONCEPTS OF WHAT CONSTITUTES MURDER UNDER OUR SYSTEM, AND
21 I JUST WANTED TO MAKE CERTAIN THAT YOU UNDERSTAND THAT IF A
22 MURDER IS ESTABLISHED, THAT MEANS IT'S INTENTIONAL; IT WASN'T
23 AN ACCIDENT. AND IT'S ONLY UNDER THOSE CIRCUMSTANCES, IF YOU
24 FIND THE CIRCUMSTANCES TO EXIST AND TO EXIST BEYOND A
25 REASONABLE DOUBT, THAT KEVIN CAN BE FOUND GUILTY OF MURDER

1 AND FACE THE POSSIBILITY OF A DEATH SENTENCE.

2 A. YES.

3 Q. OKAY. AND SO UNDERSTANDING THAT CONCEPT, YOU
4 CONSIDER YOURSELF TO FALL INTO THE NUMBER THREE CATEGORY
5 WHERE, EVEN GIVEN AN INTENTIONAL KILLING, YOU COULD STILL BE
6 OPEN-MINDED ABOUT THE PENALTY?

7 A. YES.

8 Q. OKAY. THERE'S -- YOU DON'T HAVE ANY EXPERIENCES OR
9 BELIEFS THAT WOULD INTERFERE WITH THAT AT ALL.

10 A. NO.

11 Q. OKAY. LET'S SEE. NOW, WE TALK A LOT ABOUT THE
12 PENALTY PHASE BECAUSE IT'S SUCH A UNIQUE SITUATION IN OUR
13 LEGAL SYSTEM. IT'S THE ONLY TIME THAT THE JURY DECIDES
14 PENALTY IS WHEN DEATH IS -- IS THE ULTIMATE QUESTION -- LIFE
15 OR DEATH ARE THE ULTIMATE QUESTIONS. HOWEVER, I JUST WANT TO
16 MAKE SURE THAT YOU UNDERSTAND THAT BECAUSE WE TALK ABOUT THE
17 PENALTY PHASE DOES NOT IN ANY WAY MEAN THAT THE STATE IS
18 GOING TO AUTOMATICALLY PROVE THEIR CASE IN THE FIRST PHASE.
19 WE JUST SIMPLY HAVE TO ASK SO WE CAN WEED OUT PEOPLE WHO
20 COULD NOT BE FAIR.

21 A. YES.

22 Q. OKAY. I MEAN, ESSENTIALLY WE ASSUME THAT -- WE HAVE
23 TO MAKE THE ASSUMPTION THAT THAT SECOND PHASE IS A
24 POSSIBILITY. OKAY? BUT YOU UNDERSTAND IT'S NOT A GIVEN.

25 A. OH, I UNDERSTAND.

1 Q. OKAY.

2 A. YES.

3 Q. AND THAT THE STATE, YOU KNOW, HAS A BURDEN IN THE
4 GUILT PHASE. ALL RIGHT. DO YOU ALSO UNDERSTAND THAT MR.
5 MERCER HAS NO BURDEN IN THAT PHASE?

6 A. YES.

7 Q. OKAY.

8 A. PROVEN INNOCENT -- INNOCENT UNTIL PROVEN GUILTY.

9 Q. THAT'S RIGHT. THAT'S RIGHT. VERY GOOD. NOW, IN
10 THE PENALTY PHASE, AGAIN, THAT'S AN UNUSUAL PHASE FOR ANYBODY
11 TO BE IN, AND WE CERTAINLY WOULDN'T EXPECT YOU TO KNOW THIS,
12 BUT DO YOU ALSO UNDERSTAND THAT HE HAS NO BURDEN IN THAT
13 PHASE?

14 A. YES.

15 Q. EVEN THOUGH HIS LIFE IS ON THE LINE, EVEN THOUGH THE
16 STATE IS ASKING YOU TO GIVE HIM A DEATH SENTENCE, HE HAS NO
17 BURDEN.

18 A. YES.

19 Q. HOWEVER, IF HE CHOOSES TO, HE HAS THE OPPORTUNITY TO
20 LET THE JURY KNOW A LITTLE BIT MORE ABOUT HIS LIFE, AND THAT
21 WILL PUT YOU IN A POSITION, IF WE GET THERE, OF HAVING TO
22 HEAR A VARIETY -- POTENTIALLY HEARING A VARIETY OF TESTIMONY.
23 IT MAY CONSIST OF LAY WITNESSES. IT MAY CONSIST OF EXPERT
24 TESTIMONY, AND IT MAY CONSIST OF FACTS AND INCIDENTS ABOUT
25 KEVIN'S LIFE THAT WE THINK YOU SHOULD BE AWARE OF IN

1 DETERMINING WHETHER OR NOT HE SHOULD GET A LIFE SENTENCE. DO
2 YOU THINK YOU'D BE ABLE TO KEEP AN OPEN MIND DURING THE WHOLE
3 PRESENTATION OF THAT TESTIMONY, BOTH FROM THE STATE AS WELL
4 AS THE DEFENSE, BEFORE DECIDING?

5 A. YES.

6 Q. OKAY. AND THERE'S NOTHING YOU CAN THINK OF THAT
7 WOULD INTERFERE WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL?

8 A. NO.

9 Q. OKAY. JUST ONE FINAL QUESTION. AND I MAY HAVE
10 MISSED THIS, BUT ARE YOU AWARE THAT THE VICTIM IN THIS CASE
11 WAS AN ACTIVE MEMBER OF THE U.S. MILITARY?

12 A. YES, I UNDERSTOOD THAT FROM THE QUESTIONING ON
13 MONDAY. YEAH.

14 Q. OKAY. ALL RIGHT. AND DO YOU ANTICIPATE THAT THAT
15 WOULD CAUSE YOU ANY DIFFICULTY INsofar AS BEING FAIR?

16 A. NOT THAT I'M AWARE OF.

17 Q. OKAY. SO THAT FACT ALONE WOULD NOT CAUSE YOU...

18 A. NO.

19 MS. KIMBROUGH: ALL RIGHT. THANK YOU.

20 THE COURT: ANYTHING BEFORE I RULE?

21 MS. KIMBROUGH: NO, YOUR HONOR.

22 THE COURT: MS. SMITH, YOU ARE QUALIFIED TO BE A
23 JUROR IN THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE JURY,
24 BUT IT DOES MEAN THAT YOU'RE ELIGIBLE TO BE ON THE JURY. WE
25 WILL NOT NEED YOU AGAIN UNTIL MONDAY, SO YOU'RE FREE FOR THE

1 REST OF THIS WEEK. BUT WE WOULD LIKE FOR YOU TO BE READY TO
2 COME IN ON MONDAY MORNING SO THAT WE CAN STRIKE THE JURY OR
3 ACTUALLY PICK THE JURY. IF YOU WOULD CALL SUNDAY NIGHT AFTER
4 6:00 TO THE TELEPHONE NUMBER THAT YOU WERE GIVEN ON THAT PINK
5 SHEET, THEN THERE WILL BE A RECORDED MESSAGE ON THAT LINE
6 THAT TELLS YOU EXACTLY WHEN YOU NEED TO BE HERE AND WHETHER
7 OR NOT YOU NEED TO BRING ENOUGH OF YOUR PERSONAL ITEMS TO
8 STAY FOR SEVERAL DAYS IF YOU'RE GOING TO BE SEQUESTERED.

9 BETWEEN NOW AND THEN, CONTINUE TO DO THE GOOD JOB
10 THAT YOU HAVE DONE ALREADY IN NOT LETTING ANYBODY TALK TO YOU
11 ABOUT THIS CASE AND NOT TALKING TO ANYBODY ABOUT THE CASE.
12 YOU CAN TELL YOUR COWORKERS THAT THAT JUDGE IS REALLY MEAN-
13 LOOKING AND THAT HE'S GOING TO -- AND THAT YOU JUST DON'T
14 WANT TO CONTEND WITH HIM.

15 THE WITNESS: OKAY.

16 THE COURT: AND PLEASE BE CAREFUL NOT TO READ OR TO
17 OTHERWISE BE EXPOSED TO ANY NEWS COVERAGE ABOUT THE CASE.
18 ALL RIGHT?

19 THE WITNESS: OKAY.

20 THE COURT: WE'LL SEE YOU MONDAY MORNING.

21 THE WITNESS: I HAVE ONE QUESTION.

22 THE COURT: OKAY.

23 THE WITNESS: IF I DO REACH A RECORDING AND IT SAYS
24 -- WILL IT TELL ME AT THAT POINT WHETHER OR NOT I NEED TO
25 BRING MY PERSONAL BELONGINGS OR ANYTHING?

1 THE COURT: IT WILL, YES.

2 THE WITNESS: I WON'T HAVE ANYBODY TO QUESTION ABOUT
3 WHAT I CAN BRING.

4 THE COURT: WHAT YOU CAN BRING?

5 THE WITNESS: I WANTED TO BRING WORK FOR THE HOTEL
6 ROOM IF I CAN.

7 THE COURT: WORK?

8 THE WITNESS: LIKE A LAPTOP WITH WORK.

9 THE COURT: YEAH. WELL...

10 THE WITNESS: IS THAT GOING TO BE A PROBLEM?

11 THE COURT: YOU BRING WHAT YOU THINK YOU NEED TO
12 BRING, AND THEN WE WILL -- LIKE, FOR EXAMPLE, IF YOU BROUGHT
13 SOMETHING TO READ---

14 THE WITNESS: RIGHT.

15 THE COURT: ---THAT HAD NOTHING TO DO WITH THIS CASE
16 OR WITH ANY OF THE ISSUES THAT WERE INVOLVED IN THIS CASE,
17 THEN THAT WOULD BE FINE.

18 THE WITNESS: OKAY.

19 THE COURT: WHEN YOU BRING A LAPTOP, WE'LL HAVE TO
20 ADDRESS WHETHER OR NOT -- TO WHAT EXTENT YOU CAN USE THE
21 LAPTOP.

22 THE WITNESS: OKAY.

23 THE COURT: BUT YOU BRING IT AND THEN WE'LL ADDRESS
24 IT WHEN YOU GET HERE.

25 THE WITNESS: OKAY.

1 THE COURT: ALL RIGHT?

2 THE WITNESS: ALL RIGHT. THANK YOU.

3 (JUROR SMITH LEAVES THE COURTROOM.)

4 THE COURT: OKAY. HOLD ON JUST A SECOND. NOW, I
5 WAS HANDED A NOTE A FEW MINUTES AGO THAT SAYS WE HAVE A JUROR
6 BACK THERE WHO'S IN THE SECOND PANEL FOR THIS MORNING. HER
7 NAME IS PATRICIA BALLINGTON, JUROR NUMBER 13. APPARENTLY
8 SHE'S VERY UPSET AND SHE'S CRYING AND SHE'S SAYING THINGS
9 LIKE, "I DON'T WANT TO DO THIS," AND SHE SAYS THAT SHE HAD
10 CALLED IN BEFORE. I DON'T KNOW IF SHE DID.

11 THE CLERK: SHE DID.

12 THE COURT: DID SHE TALK TO YOU?

13 THE CLERK: NO, SHE TALKED TO HOPE.

14 THE COURT: TO HOPE?

15 THE CLERK: SHE SAID SHE JUST CAN'T BE A PART OF
16 THIS.

17 THE COURT: ALL RIGHT. SO I PROPOSE TO TAKE HER OUT
18 OF ORDER AND GET HER IN HERE NOW AND SORT OF SKIP THROUGH ALL
19 THE QUESTIONS THAT I NORMALLY WOULD ASK HER AND ADDRESS THE
20 CONCERN THAT SHE HAS, AND THEN DEPENDING ON WHAT HAPPENS
21 THERE, EITHER MOVE INTO THE QUALIFICATION OR NOT. BUT IF
22 SHE'S -- IF SHE, YOU KNOW -- SO ANY PROBLEM WITH THAT?

23 MR. LITTLEJOHN: NO, YOUR HONOR.

24 MR. MYERS: NO, SIR.

25 THE COURT: ALL RIGHT. BRING IN MS. BALLINGTON,

1 PLEASE.

2 (JUROR PATRICIA BALLINGTON IS BROUGHT INTO THE
3 COURTROOM.)

4 PATRICIA BALLINGTON, HAVING BEEN PREVIOUSLY
5 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
6 OATH, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT

8 Q. HEY, MS. BALLINGTON. HOW ARE YOU TODAY?

9 A. NOT TOO GOOD.

10 Q. YOU'RE UPSET?

11 A. YES, SIR.

12 Q. WELL, LET -- LET ME JUST TALK TO YOU FOR A MINUTE,
13 AND WE DON'T -- WE DON'T WANT YOU TO BE UPSET. WE WANT YOU
14 TO FEEL COMFORTABLE, AND YOU DON'T HAVE TO WORRY ABOUT
15 ANYTHING. OKAY? ARE YOU WORRIED ABOUT THE FACT THAT THIS IS
16 A DEATH PENALTY CASE AND YOU MIGHT BE SERVING AS A JUROR?

17 A. NO, SIR.

18 Q. TELL ME WHAT IT IS.

19 A. I JUST CAN'T HANDLE THIS KIND OF STUFF.

20 Q. OKAY.

21 A. I JUST -- I JUST -- I'VE NEVER -- I'VE DONE IT ONE
22 TIME, BUT I JUST -- I CAN'T HANDLE IT---

23 Q. OKAY.

24 A. ---HONESTLY. MY NERVES ARE JUST -- MY STOMACH IS IN
25 KNOTS.

1 Q. . . OKAY. WELL, LET ME -- SOMETHING'S -- SOMETHING'S
2 BOTHERING YOU AND YOU THINK IT'S GOING TO INTERFERE WITH YOUR
3 ABILITY TO SERVE AS A JUROR? IS THAT RIGHT? WHATEVER IS
4 BOTHERING YOU IS GOING TO INTERFERE WITH YOUR ABILITY TO
5 SERVE AS A JUROR?

6 A. PROBABLY SO, YES, SIR.

7 Q. OKAY. ALL RIGHT. IS IT SOMETHING -- I DON'T MEAN
8 TO FURTHER UPSET YOU, BUT I JUST WANT TO EXPLORE IT JUST FOR
9 A SECOND. IS IT SOMETHING ABOUT THE SPECIFIC CASE OR IS IT
10 ABOUT SOME OF THE ISSUES THAT WE'LL BE DEALING WITH OR IS
11 THERE SOME EXPERIENCE THAT YOU HAD AS A JUROR BEFORE?

12 A. NO, SIR. I HONESTLY CAN'T EXPLAIN IT. I JUST -- I
13 JUST DON'T FEEL GOOD AT THIS---

14 Q. OKAY.

15 A. ---AT ALL.

16 Q. OKAY. I CERTAINLY UNDERSTAND THAT, MA'AM, AND I'M
17 SORRY THAT YOU -- THAT THIS HAS AFFECTED YOU IN THAT WAY, BUT
18 WE UNDERSTAND. DO YOU MIND STEPPING OUT IN THE HALLWAY FOR
19 JUST ONE SECOND, PLEASE?

20 A. SURE.

21 (JUROR BALLINGTON LEAVES THE COURTROOM.)

22 THE COURT: ALL RIGHT. SHE'S -- YOU KNOW, JUST FOR
23 THE RECORD, SHE'S CRYING. THERE WERE TEARS RUNNING DOWN HER
24 FACE. SHE WAS SHAKING, AND OBVIOUSLY SOMETHING HAS GOT HER
25 VERY -- SOMETHING ABOUT THIS PROCESS HAS GOT HER VERY UPSET.

1 IS THERE ANY OBJECTION TO EXCUSING HER FROM SERVICE?

2 MR. MYERS: NO, SIR. THERE IS A CODE SECTION FOR
3 GOOD CAUSE THAT YOU CAN EXCUSE JURORS, AND THERE'S A CASE
4 ABOUT EMOTIONAL JURORS THAT UPHOLDS THE JUDGE'S DISCRETION ON
5 EXCUSING AN EMOTIONALLY-DISTRAUGHT JUROR. WE HAVE NO
6 OBJECTION.

7 THE COURT: ANY OBJECTION FROM THE DEFENSE?

8 MR. LITTLEJOHN: SUCCINCTLY, NO.

9 THE COURT: ALL RIGHT. WELL, I THINK THAT WHAT THE
10 SOLICITOR SAYS WOULD JUSTIFY THE EXCUSAL, BUT ALSO IT'S CLEAR
11 TO ME THAT WHATEVER IT IS THAT IS BOTHERING HER WOULD
12 SUBSTANTIALLY INTERFERE WITH HER ABILITY TO SERVE AS A JUROR,
13 AND SO SHE IS DISQUALIFIED FOR THAT REASON. I'M GOING TO --
14 BRING HER BACK IN, PLEASE, AND THEN WE'RE GOING TO TAKE A
15 SHORT BREAK AFTER THIS. THREE AND A HALF MINUTES. DO YOU
16 WANT FIVE? I'LL GIVE YOU FIVE.

17 MR. LITTLEJOHN: FOUR AND A QUARTER WOULD BE FINE.

18 THE COURT: ALL RIGHT.

19 (JUROR BALLINGTON IS BROUGHT INTO THE COURTROOM.)

20 THE COURT: MS. BALLINGTON, I'M SO SORRY THAT THIS
21 HAS AFFECTED YOU IN THIS WAY, BUT WE'RE GOING TO -- WE'RE NOT
22 GOING TO NEED YOU TO SERVE AS A JUROR HERE, SO YOU DON'T HAVE
23 TO WORRY ABOUT IT. OKAY?

24 THE WITNESS: THANK YOU.

25 THE COURT: ALL RIGHT. THANK YOU, MA'AM. THANK YOU

1 FOR COMING IN.

2 THE WITNESS: THANK YOU.

3 (JUROR BALLINGTON LEAVES THE COURTROOM.)

4 THE COURT: FOUR AND A QUARTER MINUTES.

5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 THE COURT: BE SEATED. ALL RIGHT. BRING IN THE
7 NEXT JUROR.

8 (JUROR WILLIAM RIVERS IS BROUGHT INTO THE
9 COURTROOM.)

10 WILLIAM RIVERS, 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. MR. RIVERS?

15 A. YES, SIR.

16 Q. LET ME -- LET ME GET YOU IF YOU DON'T MIND -- HAVE
17 YOU GOT A KLEENEX THAT HE CAN PUT HIS GUM IN?

18 BAILIFF: THERE'S A KLEENEX THERE RIGHT...

19 BY THE COURT:

20 Q. MR. RIVERS, ON MONDAY YOU WERE PUT UNDER OATH. DO
21 YOU UNDERSTAND THAT YOU'RE STILL UNDER OATH TODAY?

22 A. YES, SIR.

23 Q. SINCE MONDAY WHEN YOU LEFT US, HAVE YOU TALKED TO
24 ANYBODY ABOUT THIS CASE OR HAS ANYONE TRIED TO TALK TO YOU
25 ABOUT THE CASE?

1 A. NO, SIR.

2 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN AFTER
3 I'VE ASKED YOU THESE QUESTIONS, THE LAWYERS MAY HAVE SOME
4 FOLLOW-UP QUESTIONS. WE DON'T MEAN TO PRY TOO DEEP INTO YOUR
5 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.

6 A. OKAY.

7 Q. THERE ARE NO RIGHT OR WRONG ANSWERS TO THE
8 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND
9 THEN TO BE OPEN AND HONEST WITH US AND TELL US WHAT YOU THINK
10 AND HOW YOU FEEL ABOUT THESE ISSUES THAT WE'RE GOING TO BE
11 DISCUSSING.

12 A. OKAY.

13 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
14 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
15 THEN SET ASIDE ANYTHING THAT YOU MAY HAVE HEARD OR LEARNED
16 ABOUT THE CASE BEFORE IT BEGAN AND THEN RENDER A VERDICT THAT
17 IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD
18 SEE AND HEAR 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 WILL GIVE IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
2 GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THE
3 STATE HAS MET ITS BURDEN OF PROOF?

4 A. YES, SIR.

5 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
6 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
7 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M
8 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
9 COME UP IF WE GET INTO THAT PHASE. AGGRAVATING CIRCUMSTANCES
10 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
11 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
12 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
13 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM
14 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 CONCEPTS OF AGGRAVATING AND MITIGATING
21 CIRCUMSTANCES?

22 A. YES, SIR.

23 Q. NOW, WHEN YOU CAME IN TODAY, YOU WERE GIVEN A COPY
24 OF THIS SHEET THAT SHOWS THE FOUR -- THE THREE DIFFERENT
25 TYPES OF JURORS. DID YOU -- DO YOU UNDERSTAND THOSE THREE

1 DIFFERENT TYPES OF JURORS?

2 A. YES, SIR.

3 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
4 YOU ARE?

5 A. OVERALL I'D BE THE THIRD TYPE.

6 Q. THE THIRD?

7 A. YEAH.

8 Q. IF YOU'RE A JUROR IN THIS CASE AND IF THE JURY FINDS
9 THE DEFENDANT GUILTY OF MURDER -- WHICH, BY THE WAY, MURDER
10 IS DEFINED AS THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
11 PERSON WITH MALICE AFORETHOUGHT. THE JURY WOULD HAVE -- THE
12 JURY WOULD HAVE THE RESPONSIBILITY OF DECIDING THE PENALTY
13 FOR THE CRIME OF MURDER, AND THE JURY WOULD HAVE TWO OPTIONS.
14 THE FIRST OF THOSE OPTIONS WOULD BE FOR A LIFE SENTENCE
15 WITHOUT THE POSSIBILITY OF PAROLE. THE SECOND OPTION WOULD
16 BE FOR THE DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS
17 AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE
18 LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
19 VERDICT FOR A LIFE SENTENCE?

20 A. I COULD.

21 Q. COULD YOU VOTE TO IMPOSE THE DEATH PENALTY?

22 A. YES.

23 Q. IF THE JURY IS SEQUESTERED IN THIS CASE, YOU WOULD
24 BE PUT UP IN A HOTEL FOR FIVE OR SIX DAYS. WE WOULD PROVIDE
25 YOU WITH ALL YOUR MEALS, AND YOU WOULD NOT BE ALLOWED TO GO

1 HOME DURING THAT TIME. WOULD THAT IMPOSE A TERRIBLE BURDEN
2 ON YOU?

3 A. SOMEWHAT, NOT TERRIBLE BUT...

4 Q. BUT YOU COULD HANDLE IT?

5 A. I THINK I COULD, YES.

6 Q. IF YOU NEED -- IF YOU WANT TO TALK TO ME ABOUT IT,
7 NOW WOULD BE THE TIME TO DO IT.

8 A. IT WOULD PUT ME IN A BIND PROFESSIONALLY MORE THAN
9 PERSONALLY.

10 Q. OKAY. WELL, FROM A -- FROM A WORK STANDPOINT YOU'RE
11 -- IF YOU'RE ON THE JURY, YOU'RE NOT REALLY GOING TO HAVE ANY
12 TIME TO WORK ANYWAY BECAUSE WE'RE GOING TO BE WORKING LONG
13 HOURS UNTIL WE GET THE TRIAL COMPLETED.

14 A. RIGHT.

15 Q. SO BEING -- THE JURY BEING SEQUESTERED IS NOT GOING
16 TO REALLY CHANGE HOW BEING ON THE JURY WOULD AFFECT YOUR
17 ABILITY TO WORK. IT WOULD BE MORE YOUR PERSONAL LIFE THAT I
18 WOULD BE CONCERNED ABOUT.

19 A. I COULD HANDLE IT.

20 Q. ALL RIGHT, SIR. DID YOU GET A CHANCE TO READ OVER
21 THAT WITNESS LIST THAT YOU WERE GIVEN THIS MORNING?

22 A. YES, I DID.

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. SOME NAMES LOOK FAMILIAR, BUT I CAN'T -- I CAN'T SAY
3 THAT I KNOW THEM.

4 Q. ALL RIGHT.

5 A. YOU KNOW, IT WOULD JUST BE A COMMON NAME, YOU KNOW.

6 Q. ALL RIGHT. ANYONE IN PARTICULAR WHOSE NAME LOOKS
7 FAMILIAR?

8 A. JAMES GLEATON, NUMBER 42, AND KELLY MATTHEWS, NUMBER
9 76.

10 Q. ALL RIGHT. HOW DO YOU THINK YOU MIGHT KNOW THOSE
11 PEOPLE?

12 A. I DON'T KNOW. I JUST KNOW THE NAME SOUNDS FAMILIAR.

13 Q. OKAY. I'M GOING TO LET THE LAWYERS ASK YOU SOME
14 QUESTIONS NOW, AND THEN I'LL COME BACK AND SPEAK TO YOU IN A
15 FEW MINUTES.

16 A. OKAY.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q. MR. RIVERS, HOW ARE YOU THIS MORNING?

20 A. WELL. AND YOU?

21 Q. DOING GOOD. TIRED.

22 A. I CAN IMAGINE.

23 Q. I JUST WANT TO GO OVER SOME OF THE SAME THINGS THE
24 JUDGE WENT OVER. I'M JUST TRYING TO GET AN IDEA OF HOW
25 EXPOSED YOU'VE BEEN TO THIS SYSTEM BEFORE. HAVE YOU EVER

1 SERVED ON A JURY BEFORE?

2 A. NO, SIR.

3 Q. FIRST TIME IN THIS COURTHOUSE?

4 A. FIRST TIME.

5 Q. SO IT'S ALL BRAND-NEW.

6 A. ABSOLUTELY.

7 Q. OF ALL THE CASES, THIS IS ONE THAT COULD PUT YOU IN
8 A HOTEL OR WHATEVER.

9 A. I WOULDN'T IMAGINE IT WOULD BE ANY OTHER WAY.

10 Q. WELL, LET ME ASK YOU... THERE ARE TWO PHASES THE
11 JUDGE TALKED ABOUT. THE FIRST PHASE IS KIND OF LIKE YOU'VE
12 PROBABLY ALWAYS IMAGINED WHERE JURORS SIT IN A JURY BOX LIKE
13 THIS. WITNESSES SIT RIGHT WHERE YOU SIT. EVIDENCE IS
14 PRESENTED TO THEM. PEOPLE TESTIFY. AND THEN THESE JURORS GO
15 BACK INTO THE JURY ROOM AND THEY DECIDE WHETHER THE DEFENDANT
16 IS GUILTY OR NOT GUILTY, JUST LIKE ANY OTHER CASE. WHAT'S
17 DIFFERENT ABOUT THIS CASE THOUGH IS IF THE JURY REACHES THE
18 CONCLUSION THAT THE DEFENDANT IS GUILTY, HE DOESN'T STAND IN
19 FRONT OF THE JUDGE TO BE SENTENCED. THE JURY DOES THE
20 SENTENCING. THAT'S WHEN WE START THAT SECOND PHASE. BEFORE
21 WE GET TO THAT SECOND PHASE, THE JURY WOULD HAVE DECIDED THE
22 DEFENDANT IS GUILTY OF MURDER. SO YOU GO INTO THAT SECOND
23 PHASE. THE FIRST PHASE IS SIMPLY GUILTY OR NOT GUILTY,
24 NOTHING ABOUT MERCY, NOTHING ABOUT PUNISHMENT. DO YOU
25 UNDERSTAND THAT?

1 A. YES, SIR.

2 Q. THE SECOND PHASE, THAT'S WHEN WE'RE FOCUSED ON THE
3 APPROPRIATE FORM OF PUNISHMENT. AND YOU UNDERSTAND THAT.

4 A. RIGHT.

5 Q. THAT'S WHEN THE JUDGE WAS TALKING ABOUT THE
6 AGGRAVATING CIRCUMSTANCES, THINGS THAT WOULD BE PRESENTED IN
7 THIS COURTROOM THAT MAKE THE CRIME WORSE OR BAD THINGS ABOUT
8 THE DEFENDANT, BUT THEN YOU MIGHT ALSO HEAR THINGS THAT ARE
9 CALLED MITIGATING CIRCUMSTANCES, THINGS THAT MAKE THE CRIME
10 NOT AS BAD OR THINGS GOOD ABOUT THE DEFENDANT. AS I
11 UNDERSTAND YOUR ANSWER TO THE JUDGE, YOU WOULD WANT TO HEAR
12 ALL OF THAT.

13 A. RIGHT.

14 Q. AND YOU'D WANT TO HEAR ALL OF THAT BEFORE YOU'D
15 REACH ANY VERDICT.

16 A. RIGHT.

17 Q. AS TO PUNISHMENT.

18 A. YES, SIR.

19 Q. AND IF I'M LISTENING CORRECTLY, YOU SAID AFTER
20 HEARING ALL THE TESTIMONY IF YOU FELT LIFE WAS APPROPRIATE
21 YOU'D VOTE FOR LIFE. IS THAT RIGHT?

22 A. THAT'S RIGHT.

23 Q. AND IF AFTER LISTENING TO ALL THE TESTIMONY YOU
24 THOUGHT DEATH WAS THE APPROPRIATE SENTENCE, YOU'D BE ABLE TO
25 VOTE FOR DEATH.

1 A. ABSOLUTELY.

2 Q. OKAY. ONE OTHER THING ABOUT THIS PROCESS THAT'S A
3 LITTLE DIFFERENT FROM MOST TRIALS THAT YOU'VE PROBABLY HEARD
4 ABOUT IS NOT ONLY DOES THE JURY DO THE SENTENCING, BUT IN A
5 DEATH PENALTY CASE, IF WE GET TO THAT SECOND PHASE, THERE'S
6 SOMETHING DIFFERENT ABOUT THE VERDICT FORM. NOW, IF THE JURY
7 COMES BACK WITH LIFE, ONLY THE FOREMAN SIGNS THE NAME -- HIS
8 NAME ON THAT JURY VERDICT FORM, BUT IF THE JURY DECIDES
9 DEATH, ALL 12 JURORS SIGN IT. EACH ONE PUTS THEIR NAME DOWN
10 SAYING, "THIS IS WHAT I BELIEVE TO BE THE APPROPRIATE
11 SENTENCE." MY QUESTION IS -- AND IT MAY SOUND KIND OF SILLY.
12 SOME PEOPLE -- AND YOU'VE PROBABLY MET PEOPLE LIKE THIS
13 BEFORE THAT SAY, "I'LL TELL YOU WHATEVER I THINK, BUT I'M NOT
14 SIGNING ANYTHING." COULD YOU, IF DEATH IS THE APPROPRIATE
15 SENTENCE IN YOUR MIND AND IN YOUR HEART, COULD YOU PUT YOUR
16 NAME DOWN ON THAT VERDICT FORM?

17 A. YES.

18 Q. OKAY. AND, AGAIN, BEFORE YOU DO THAT, YOU'D WANT TO
19 HEAR EVERYTHING FROM BOTH SIDES.

20 A. I WOULD.

21 Q. MR. RIVERS, THAT'S ALL WE CAN ASK OF YOU. THANK
22 YOU.

23 A. OKAY.
24
25

CROSS-EXAMINATION

1
2 BY MR. LITTLEJOHN:

3 Q. GOOD MORNING, MR. RIVERS.

4 A. GOOD MORNING.

5 Q. AGAIN, I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA

6 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN

7 THIS CASE. MR. RIVERS, I NOTICE YOU WORK FOR DAY &

8 ZIMMERMANN?

9 A. YES, SIR.

10 Q. IS THAT INTERNATIONAL?

11 A. YES, SIR.

12 Q. WHAT KIND OF COMPANY IS THAT? I'M NOT FAMILIAR WITH

13 THAT.

14 A. ENGINEERING PROCUREMENT AND NOW WE'RE TAKING OVER

15 CONSTRUCTION AND MAINTENANCE CONTRACTS.

16 Q. OKAY. AND Y'ALL WOULD DO WORK FOR THE STATE OR?

17 A. MORE OR LESS CHEMICAL PLANTS, PAPER MILLS, THAT KIND

18 OF THING.

19 Q. OKAY. AND YOU'VE BEEN A -- YOU'RE A SENIOR BUYER

20 WITH THEM?

21 A. YES, SIR.

22 Q. AND YOU DID THAT WORK BEFORE YOU WENT WITH -- WENT

23 TO WORK FOR DAY & ZIMMERMANN?

24 A. RIGHT. THEY TOOK OVER OUR CONTRACT OUT AT EASTMAN,

25 SO I JUST SWAPPED HATS, SO TO SPEAK.

1 Q. I GOT YOU. HOW LONG HAVE YOU BEEN DOING THAT KIND
2 OF WORK?

3 A. TWENTY YEARS.

4 Q. TWENTY YEARS?

5 A. YES, SIR.

6 Q. OKAY. MR. RIVERS, JUDGE FEW EXPLAINED TO YOU THAT
7 THE DEFENDANT IN THIS CASE, KEVIN MERCER, IS CHARGED WITH
8 MURDER, ARMED ROBBERY, AND POSSESSION OF A FIREARM DURING THE
9 COMMISSION OF A VIOLENT CRIME. I THINK YOU'VE GLEANED BY NOW
10 THAT THIS COULD BE A TWO-PART PROCEEDING. THE FIRST PART,
11 HOWEVER, AS MR. HUBBARD INDICATED, IS THE PART IN WHICH THE
12 JURY WOULD HAVE TO DETERMINE WHETHER THE STATE HAD PROVED
13 KEVIN MERCER GUILTY BEYOND A REASONABLE DOUBT. WOULD YOU
14 HAVE ANY PROBLEM PUTTING THE STATE TO THAT BURDEN OF PROOF---

15 A. NO.

16 Q. ---BEFORE HE WAS FOUND GUILTY?

17 A. NO, I WOULD NOT.

18 Q. OKAY. AND YOU UNDERSTAND ONLY IF HE WAS FOUND
19 GUILTY WOULD WE GET TO THE SECOND PHASE.

20 A. I UNDERSTAND THAT.

21 Q. SO IT'S NOT A GIVEN WE'RE GOING TO GET THERE. IT'S
22 JUST A POSSIBILITY THAT WE COULD BE AT THAT SECOND PHASE
23 DEPENDING ON WHAT THE VERDICT IS IN THE FIRST PHASE.

24 A. YES, SIR.

25 Q. DO YOU UNDERSTAND THAT?

1 A. I DO.

2 Q. DO YOU THINK YOU'D HAVE ANY PROBLEM JUDGING OR
3 DETERMINING WHAT THE CREDIBILITY OF THE WITNESSES IS? BY
4 THAT I MEAN THE BELIEVABILITY, WHETHER THESE WITNESSES ARE
5 POLICE OFFICERS OR LAY WITNESSES OR EXPERTS OR WHATEVER. DO
6 YOU THINK YOU COULD PASS ON THE BELIEVABILITY OF THE
7 WITNESSES IN THIS CASE?

8 A. I BELIEVE SO.

9 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM APPLYING
10 THE LEGAL PRINCIPLES THAT JUDGE FEW WOULD GIVE YOU TO THE
11 FACTS AS YOU FIND THEM?

12 A. NO, I WOULD NOT.

13 Q. OKAY. THE VICTIM IN THIS CASE, MR. DAVIS, WAS A
14 SERGEANT IN THE U.S. ARMY. WOULD THAT FACT HAVE ANYTHING OR
15 ANY BEARING ON YOUR ABILITY TO BE FAIR IN THIS CASE OR IS
16 THERE ANY WAY IT WOULD INFLUENCE YOU?

17 A. NO, IT WOULD NOT.

18 Q. OKAY. MR. RIVERS, YOU WERE GIVEN A FORM THAT HAD
19 THREE TYPES OF JURORS ON IT EARLIER TODAY, AND I BELIEVE YOU
20 INDICATED THAT YOU THOUGHT OVERALL YOU WERE A NUMBER THREE
21 TYPE JUROR.

22 A. OVERALL, YES.

23 Q. OKAY. DID YOU HAVE TO CONSIDER EITHER OF THE OTHER
24 TWO OPTIONS?

25 A. WELL, THE FIRST ONE. I WOULD LEAN MORE TOWARDS

1 BEING THE THIRD ONE OVERALL, BUT THE FIRST TYPE WOULD BE --
2 I'M DEFINITELY NOT THE SECOND ONE I GUESS WOULD BE THE BEST
3 WAY TO PUT IT.

4 Q. DEFINITELY NOT THE SECOND ONE?

5 A. RIGHT.

6 Q. OKAY. CAN YOU TELL ME HOW YOU ARRIVED AT THE
7 CONCLUSION THAT YOU WERE A TYPE THREE?

8 A. WELL, BECAUSE A TYPE ONE -- IT SAYS UNDER ANY
9 CIRCUMSTANCES YOU'D GO FOR THE DEATH PENALTY IN A CASE OF
10 MURDER.

11 Q. UH-HUH.

12 A. I WOULD NOT DO THAT IN THE CASE OF, SAY, IF IT WAS
13 SELF-DEFENSE, PROTECTING YOUR LOVED ONES. MAYBE EVEN A CRIME
14 OF PASSION I WOULDN'T CONSIDER THAT---

15 Q. UH-HUH.

16 A. ---A DEATH-PENALTY-TYPE CASE.

17 Q. OKAY.

18 A. SO---

19 Q. WELL, YOU UNDERSTAND -- HIS HONOR GAVE YOU THE
20 DEFINITION OF MURDER WHICH WOULD BE AN INTENTIONAL KILLING---

21 A. YES, SIR.

22 Q. ---WITH MALICE AFORETHOUGHT.

23 A. RIGHT.

24 Q. AND SO BEFORE YOU COULD EVEN GET TO A VERDICT OF
25 GUILTY, THE STATE WOULD HAVE TO PROVE BEYOND A REASONABLE

1 DOUBT THAT IT WAS AN INTENTIONAL KILLING---

2 A. CORRECT.

3 Q. ---WITH MALICE AFORETHOUGHT. AND I THINK THE JUDGE
4 WOULD EXPLAIN TO YOU IT COULDN'T BE SELF-DEFENSE. IT
5 COULDN'T BE SOME OTHER DEFENSE. IT WOULD HAVE TO BE THAT
6 INTENTIONAL KILLING.

7 A. I UNDERSTAND THAT IN THIS CASE. I WAS JUST
8 EXPLAINING WHY I DIDN'T SAY I WAS THE FIRST TYPE THERE.

9 Q. OKAY. I UNDERSTAND. I JUST WANTED TO GIVE YOU THE
10 BENEFIT OF THAT BECAUSE I KNOW THIS IS BRAND-NEW TO YOU.

11 A. RIGHT.

12 Q. MR. RIVERS, IF WE GET TO THE SECOND PHASE OF THIS
13 CASE, THERE WOULD BE PRESENTED TO YOU AS A JUROR EVIDENCE IN
14 AGGRAVATION AND EVIDENCE IN MITIGATION, AND THE EVIDENCE IN
15 AGGRAVATION WOULD BE THE THINGS THAT THE STATE WOULD WANT YOU
16 TO CONSIDER THAT WERE BAD ABOUT THE CASE OR MAKE IT WORSE.
17 THE EVIDENCE IN MITIGATION THAT WE WOULD PRESENT TO YOU WOULD
18 CONCERN THINGS ABOUT THE BACKGROUND OF KEVIN MERCER, PERHAPS
19 GOOD THINGS ABOUT HIM, PERHAPS BAD THINGS THAT HAD HAPPENED
20 TO HIM. THERE MAY BE SOME MEDICAL TESTIMONY. THERE MAY BE
21 TESTIMONY FROM FAMILY MEMBERS. AND MY QUESTION TO YOU IS:
22 WOULD YOU BE WILLING TO LISTEN TO ALL THAT EVIDENCE AND
23 CONSIDER IT VERY CAREFULLY BEFORE ARRIVING AT YOUR DECISION
24 AS TO WHAT THE PUNISHMENT SHOULD BE?

25 A. YES.

1 Q. WOULD YOU WANT TO DO THAT?

2 A. YES.

3 Q. OKAY. MR. RIVERS, IF YOU WERE ON THIS JURY AND
4 EITHER IN THE FIRST PHASE OF THE CASE OR THE SECOND PHASE YOU
5 HAD FORMED AN OPINION AS TO WHAT YOU THOUGHT THE VERDICT
6 OUGHT TO BE AND YOU FOUND THAT THE OTHER 11 JURORS HAD A
7 DIFFERENT OPINION, DO YOU THINK YOU WOULD EVER CONSIDER
8 CHANGING YOUR OPINION JUST TO ARRIVE AT A VERDICT?

9 A. NOT TO ARRIVE AT A VERDICT, NO.

10 Q. WOULD YOU HAVE TO BE CONVINCED THAT YOU WERE -- THAT
11 YOU WERE WRONG BEFORE YOU'D CHANGE YOUR OPINION?

12 A. ABSOLUTELY.

13 Q. OKAY. THANK YOU, MR. RIVERS. IF YOU WOULD INDULGE
14 ME JUST A MOMENT, YOUR HONOR. MS. KIMBROUGH HAS...

15 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
16 MR. LITTLEJOHN AND MS. KIMBROUGH.)
17 BY MR. LITTLEJOHN:

18 Q. MR. RIVERS, LET ME JUST REITERATE ONE THING THAT WE
19 HAD DISCUSSED JUST SO YOU'LL UNDERSTAND. IF THE JURY SHOULD
20 FIND KEVIN MERCER GUILTY OF MURDER, THAT WOULD MEAN THE JURY
21 WOULD HAVE FOUND THAT IT WAS AN INTENTIONAL KILLING WITH
22 MALICE AFORETHOUGHT, AS JUDGE FEW EXPLAINED IT TO YOU. I
23 JUST WANT TO MAKE SURE YOU UNDERSTOOD THAT AT THAT POINT,
24 BEFORE THE JURY FOUND HIM GUILTY, THAT WOULD MEAN THERE WAS
25 NO SELF-DEFENSE OR THERE WAS NO JUSTIFIABLE OR LEGAL DEFENSE

1 OF OTHERS.

2 A. I DO UNDERSTAND.

3 Q. YOU UNDERSTAND THAT.

4 A. YES.

5 Q. OKAY. BUT WOULD THAT -- GIVEN THAT EXPLANATION,
6 WOULD THAT HAVE ANY EFFECT ON YOUR DECISION AS TO WHETHER
7 YOU'RE A NUMBER ONE OR A NUMBER THREE JUROR?

8 A. I WOULD LEAN MORE TOWARDS NUMBER ONE; YES, SIR.

9 Q. YOU WOULD LEAN MORE TOWARDS NUMBER ONE.

10 A. YES.

11 Q. OKAY. WELL, I MEAN, WOULD THAT -- DOES THAT MEAN
12 THAT YOU WOULD -- GIVEN THOSE CIRCUMSTANCES, AN INTENTIONAL
13 KILLING, WOULD YOU THINK THAT THE DEATH PENALTY WOULD BE THE
14 APPROPRIATE PENALTY?

15 MR. MYERS: THAT'S INCOMPLETE, YOUR HONOR---

16 THE WITNESS: NO.

17 MR. MYERS: ---BECAUSE YOU HAVE TO TALK ABOUT THE
18 AGGRAVATING AND MITIGATING AND GOING INTO THE SECOND PHASE.
19 THEY DON'T REACH THE SENTENCE IN THE FIRST PHASE.

20 THE COURT: GO AHEAD WITH THE QUESTION. OVERRULED.
21 BY MR. LITTLEJOHN:

22 Q. OKAY. MY QUESTION IS: GIVEN THAT CIRCUMSTANCE THAT
23 IT WOULD BE -- IF YOU GOT TO THAT POINT, IT WOULD DEFINITELY
24 BE AN INTENTIONAL KILLING.

25 A. RIGHT.

1 Q. WOULD THAT PUT YOU IN THE CATEGORY OF BEING A NUMBER
2 ONE JUROR?

3 A. MORE THAN LIKELY, YES.

4 Q. OKAY. YOU SAY MORE THAN LIKELY. I MEAN, IS THAT...

5 A. WELL, LIKE I SAY, YOU'VE GOT TO HEAR EVERY PART OF
6 THIS STORY, BOTH SIDES.

7 Q. UH-HUH.

8 A. AND THAT WOULD MAKE MY DETERMINATION.

9 Q. OKAY.

10 A. BUT, YES, I MEAN, I WOULD BE LEANING MORE TOWARDS
11 THE DEATH PENALTY IF IT WAS AN INTENTIONAL KILLING.

12 Q. OKAY. TO THE EXCLUSION OF A LIFE PENALTY?

13 A. YES.

14 Q. LIFE SENTENCE?

15 A. YES.

16 MR. LITTLEJOHN: OKAY. THAT'S ALL WE HAVE, YOUR
17 HONOR.

18 RE-EXAMINATION BY THE COURT

19 Q. MR. RIVERS, YOU'VE BEEN ASKED SEVERAL QUESTIONS
20 ABOUT THIS INTENTIONAL KILLING AND WHETHER OR NOT THERE WAS
21 POSSIBLY SELF-DEFENSE INVOLVED OR SOMETHING LIKE THAT. SO
22 I'M GOING TO ASK YOU A FOLLOW-UP QUESTION. IF IT -- AND I'VE
23 GIVEN YOU THE DEFINITION OF MURDER---

24 A. RIGHT.

25 Q. ---AS IT BEING AN INTENTIONAL KILLING, AND I'M GOING

1 TO ASK YOU TO JUST TAKE SELF-DEFENSE OUT OF IT -- OFF THE
2 TABLE FOR THE PURPOSES OF THIS QUESTION.

3 A. RIGHT.

4 Q. BUT AFTER THE DEFENDANT HAS BEEN CONVICTED OF
5 COMMITTING AN INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
6 PERSON WITH MALICE, EVEN AFTER THAT OR AFTER THAT CONVICTION,
7 THE JURY WOULD MOVE INTO THE SECOND PHASE OF THE TRIAL. AND
8 THERE WOULD BE EVIDENCE OFFERED THAT WOULD FIT INTO THE
9 CATEGORY OF EITHER MITIGATING EVIDENCE OR AGGRAVATING
10 EVIDENCE, SOME OF WHICH WOULD TEND, OF COURSE, TO MAKE THE
11 CRIME SEEM LESS SEVERE, SOME OF WHICH WOULD TEND TO MAKE THE
12 CRIME SEEM MORE SEVERE, BUT NEVERTHELESS IT WOULD STILL BE A
13 MURDER. WOULD YOU STILL BE WILLING TO CONSIDER THE
14 POSSIBILITY OF IMPOSING A LIFE SENTENCE IF YOU FELT THAT WAS
15 THE APPROPRIATE THING TO DO?

16 A. YES, I COULD.

17 Q. AND SO YOU WOULD -- WOULD YOU ALSO BE WILLING TO
18 CONSIDER THE POSSIBILITY OF IMPOSING THE DEATH PENALTY IF YOU
19 FELT -- IF YOU FELT THAT WAS THE CORRECT THING TO DO?

20 A. YES.

21 THE COURT: ALL RIGHT. ANY FOLLOW-UP QUESTIONS?

22 MR. MYERS: NO, SIR.

23 MR. LITTLEJOHN: NO, YOUR HONOR.

24 THE COURT: MR. RIVERS, I WANT TO ASK YOU TO STEP
25 OUT IN THE HALL FOR JUST A SECOND, AND I'LL BE RIGHT BACK

1 WITH YOU.

2 THE WITNESS: OKAY.

3 (JUROR RIVERS LEAVES THE COURTROOM.)

4 THE COURT: ALL RIGHT.

5 MS. KIMBROUGH: YOUR HONOR, WE'D SIMPLY REITERATE
6 OUR POSITION. IT'S SIMILAR TO OUR POSITION ON ANOTHER JUROR
7 THAT SAID ONCE THE KILLING WAS INTENTIONAL, THEY WOULD LEAN
8 TOWARDS THE DEATH PENALTY, AND WE BELIEVE THAT THAT PLACES A
9 BURDEN ON MR. MERCER TO ESTABLISH WHY HE SHOULD GET LIFE. AS
10 SOON AS HE'S CONVICTED OF MURDER, UNDER OUR LAW IT'S MY
11 UNDERSTANDING THAT HE HAS NO BURDEN TO ESTABLISH THAT HE IS
12 DESERVING OF LIFE, AND THIS JUROR CLEARLY SAID IF IT'S
13 INTENTIONAL -- NOW, I REALIZE THAT THERE'S SOME FURTHER
14 QUESTIONING, YOU KNOW, "COULD YOU CONSIDER ALL THE
15 CIRCUMSTANCES?"

16 BUT HE CLEARLY SAID IF THIS MAN INTENTIONALLY KILLED
17 ANOTHER PERSON, I WOULD LEAN TOWARDS THE DEATH PENALTY. HE'D
18 BE HEAVILY INCLINED TO DO THAT, AND WE THINK THAT THAT
19 CLEARLY VIOLATES MR. MERCER'S RIGHT TO A JUROR WHO IS NOT
20 SUBSTANTIALLY IMPAIRED FROM CONSIDERING BOTH PUNISHMENTS.

21 THE COURT: WELL, SO YOU ARGUE THAT WHAT THIS JUROR
22 SAID INDICATES THAT HE IS UNWILLING OR UNABLE TO FOLLOW THE
23 INSTRUCTION THAT I WILL GIVE HIM CONCERNING WHO HAS THE
24 BURDEN OF PROOF. THAT'S ONE ARGUMENT.

25 MS. KIMBROUGH: YES, YOUR HONOR.

1 THE COURT: AND YOU BELIEVE THIS JUROR WOULD SHIFT
2 THE BURDEN OF PROOF.

3 MS. KIMBROUGH: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MS. KIMBROUGH: HE'D BE LOOKING TO MR. MERCER.

6 THE COURT: NOW -- AND THE OTHER ARGUMENT IS THAT
7 HIS VIEWS ON THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR
8 OTHERWISE HIS ABILITY TO CARRY OUT MY INSTRUCTIONS ON THE LAW
9 AND THAT HE WOULD BE UNABLE TO CONSIDER MITIGATING
10 CIRCUMSTANCES AND UNABLE TO CONSIDER IMPOSING A LIFE
11 SENTENCE.

12 MS. KIMBROUGH: I THINK HE COULD CONSIDER MITIGATING
13 EVIDENCE, BUT I THINK HE WOULD EXPECT THAT IT WOULD BE
14 FORTHCOMING AND HE WOULD HOLD MR. MERCER TO A BURDEN OF PROOF
15 WITH REGARD TO THOSE MITIGATING CIRCUMSTANCES.

16 THE COURT: OKAY. WELL, I'M TRYING TO FIGURE OUT
17 WHAT YOUR ARGUMENT IS. ARE YOU ARGUING JUST THAT HE WOULD --
18 THAT THIS JUROR WOULD SHIFT THE BURDEN OF PROOF AND IS,
19 THEREFORE, UNQUALIFIED? IS THAT THE ONLY ARGUMENT YOU'RE
20 MAKING?

21 MS. KIMBROUGH: NO, YOUR HONOR. EXCUSE ME. I WOULD
22 ARGUE NOT ONLY THAT BUT ALSO THAT HIS VIEWS SUBSTANTIALLY
23 IMPAIR HIS ABILITY TO FOLLOW YOUR INSTRUCTIONS WHICH ARE
24 GOING TO INCLUDE -- WELL, WE WOULD ASK THAT THEY INCLUDE THAT
25 MR. MERCER HAS NO BURDEN OF PROOF, NONE IN THE PENALTY PHASE,

1 THAT JURORS CAN GIVE LIFE FOR ANY REASON OR FOR NO REASON AT
2 ALL. AND I BELIEVE THAT'S A CORRECT STATEMENT OF THE LAW,
3 AND I BELIEVE THAT HE SAID THAT IF IT'S AN INTENTIONAL
4 KILLING HE FALLS INTO CATEGORY NUMBER ONE.

5 THE COURT: WELL, LET'S SEE ABOUT THAT. I DON'T
6 THINK THAT'S WHAT HE SAID. MY RECOLLECTION IS THAT HE SAID
7 IF IT WAS AN INTENTIONAL KILLING, OR IN WHATEVER OTHER
8 CIRCUMSTANCES HE LISTED, HE WOULD LEAN TOWARDS THE DEATH
9 PENALTY. WHAT I WROTE DOWN WAS THAT HE WOULD MORE THAN
10 LIKELY LEAN TOWARD THE DEATH PENALTY. NOW, IF YOU THINK HE
11 SAID THAT IN THE EVENT OF AN INTENTIONAL KILLING I WOULD BE A
12 CATEGORY ONE JUROR, THEN WE CAN GO BACK AND READ THE
13 TRANSCRIPT OVER AGAIN, BUT---

14 MS. KIMBROUGH: NO, I DON'T THINK HE SAID THAT.

15 THE COURT: ---I'M CONVINCED THAT'S NOT WHAT HE
16 SAID.

17 MS. KIMBROUGH: NO, I DON'T THINK HE SAID THAT. I
18 THINK HE CLEARLY STATED WHAT YOU SAID---

19 THE COURT: ALL RIGHT.

20 MS. KIMBROUGH: ---THAT HE WAS LEANING TOWARDS IT.

21 THE COURT: ALL RIGHT.

22 MS. KIMBROUGH: HOWEVER, I THINK IT'S PRETTY CLEAR
23 THAT ONCE HE'S FOUND THAT MR. MERCER COMMITTED AN UNLAWFUL,
24 INTENTIONAL KILLING THAT HE'S GOING TO GO FOR THE DEATH
25 PENALTY UNLESS WE CAN SOMEHOW CONVINCE HIM OTHERWISE, AND I

1 THINK THAT'S WHAT HE MEANT WHEN HE SAID I'D CONSIDER ALL THE
2 FACTS AND CIRCUMSTANCES. I MEAN, THAT PLACES A BURDEN ON MR.
3 MERCER.

4 THE COURT: ALL RIGHT. THAT'S AN INTRIGUING
5 ARGUMENT, BUT I FRANKLY DO NOT TAKE FROM WHAT HE SAID THAT --
6 ANY INDICATION THAT EITHER HE OR MR. LAFOLLETTE WAS PLANNING
7 ON SHIFTING THE BURDEN OF PROOF TOWARD -- TO THE DEFENDANT OR
8 IMPOSING A BURDEN OF PROOF ON THE DEFENDANT. I MEAN, IN
9 THE -- IN THE PENALTY PHASE IT'S NOT SO MUCH WHO HAS THE
10 BURDEN AS IT IS WHETHER OR NOT THEY CHOOSE TO IMPOSE
11 WHICHEVER PENALTY. AND YOU'RE CORRECT AND I WILL CHARGE THE
12 JURY - I'M PLANNING ON IT AT LEAST - THAT THEY CAN IMPOSE A
13 LIFE SENTENCE FOR ANY REASON OR FOR NO REASON.

14 MS. KIMBROUGH: AND THAT'S A DIFFERENT HURDLE THAN
15 THE STATE HAS TO MEET.

16 THE COURT: OKAY. WELL, SO I RESPECTFULLY DECLINE
17 TO FOLLOW YOUR BURDEN-SHIFTING ARGUMENT, AND AS I SAID
18 YESTERDAY WITH MR. LAFOLLETTE, I DON'T BELIEVE THAT THE FACT
19 THAT ONE PERSON SAYS THEY ARE IN FAVOR OF THE DEATH PENALTY
20 OR THEY'RE AN ADVOCATE OF THE DEATH PENALTY OR THEY
21 WOULD LIKE -- THEY WOULD BE MORE LIKELY TO IMPOSE THE DEATH
22 PENALTY, I DON'T BELIEVE THAT DISQUALIFIES THAT JUROR JUST AS
23 IT WOULD NOT DISQUALIFY JUROR IF THEY SAID THEY WERE OPPOSED
24 TO THE DEATH PENALTY BUT WOULD BE WILLING TO IMPOSE IT UNDER
25 THE PROPER CIRCUMSTANCES OR IF THEY SAID I'D BE MORE LIKELY

1 TO IMPOSE A LIFE SENTENCE IF -- IF THE DEFENDANT IS CONVICTED
2 OF MURDER THAN I WOULD BE TO IMPOSE THE DEATH PENALTY.
3 NEITHER ONE OF THOSE DISQUALIFIES IN THE CONSTITUTIONAL SENSE
4 THE JUROR, SO I THINK THAT THE JUROR IS QUALIFIED. ANYTHING
5 FURTHER?

6 MS. KIMBROUGH: JUST...

7 THE COURT: ANYTHING FROM THE STATE?

8 MR. MYERS: NO, SIR. THE ONLY THING I WOULD BRING
9 OUT, YOUR HONOR, IS HE'S NEVER SERVED ON A JURY PANEL BEFORE,
10 AND THE SUPREME COURT HAS SAID TIME AFTER TIME YOU HAVE TO
11 TAKE THE ENTIRE COLLOQUY, THE VOIR DIRE, NOT JUST AN ISOLATED
12 PORTION. I THINK YOUR FOLLOW-UP QUESTIONS RESOLVED THAT HE
13 IS QUALIFIED.

14 THE COURT: ALL RIGHT. AND I THINK TO BE -- TO
15 BE -- TO ADDRESS DIRECTLY THE THRESHOLD QUESTION ABOUT
16 QUALIFICATION, I SEE NOTHING IN WHAT HE SAID THAT INDICATES
17 TO ME THAT HIS VIEWS ON THE DEATH PENALTY, HIS BELIEF THAT HE
18 WOULD MORE LIKELY FOLLOW THE DEATH PENALTY OR IMPOSE THE
19 DEATH PENALTY -- NOTHING THAT I SEE IN THAT SHOWS ME THAT HIS
20 VIEWS ON THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR HIM IN
21 HIS ABILITY TO LISTEN TO MY INSTRUCTIONS ON THE LAW AND TO
22 CONSIDER BOTH OPTIONS AND TO FOLLOW MY INSTRUCTIONS. I
23 BELIEVE THAT HE WOULD BE -- THAT HE IS A QUALIFIED JUROR.
24 BRING HIM IN, PLEASE.

25 (JUROR RIVERS IS BROUGHT INTO THE COURTROOM.)

1 THE COURT: MR. RIVERS, YOU ARE A QUALIFIED JUROR IN
2 THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE JURY. IT JUST
3 MEANS THAT YOU'RE ELIGIBLE TO BE ON THE JURY. WE'RE ACTUALLY
4 GOING TO SELECT OR STRIKE THE JURY ON MONDAY MORNING, SO I
5 WOULD LIKE FOR YOU TO BE PREPARED TO BE HERE ON MONDAY. IF
6 YOU WOULD CALL SUNDAY NIGHT AFTER 6:00 TO THE TELEPHONE
7 NUMBER THAT APPEARS ON THAT PINK SLIP OF PAPER THAT YOU WERE
8 GIVEN, THE RECORDED MESSAGE ON THAT LINE WILL GIVE YOU
9 DETAILED INSTRUCTIONS ABOUT WHAT YOU NEED TO DO OR WHEN YOU
10 NEED TO BE HERE ON MONDAY AND WHETHER OR NOT YOU NEED TO
11 BRING YOUR CLOTHES AND OTHER PERSONAL ITEMS IF THE JURY IS
12 GOING TO BE SEQUESTERED.

13 BETWEEN NOW AND THEN YOU'RE NOT ALLOWED TO DISCUSS
14 THIS CASE WITH ANYONE NOR SHOULD ANYONE BE ALLOWED TO DISCUSS
15 THIS CASE WITH YOU. PLEASE BE CAREFUL NOT TO BE EXPOSED TO
16 ANY PRESS COVERAGE ABOUT THIS CASE, AND YOU'RE FREE FOR THE
17 REST OF THE WEEK. WE WILL SEE YOU ON MONDAY MORNING. OKAY.
18 THANK YOU, SIR.

19 (JUROR RIVERS LEAVES THE COURTROOM. JUROR LAURA DAY
20 IS BROUGHT INTO THE COURTROOM.)

21 LAURA DAY, HAVING BEEN PREVIOUSLY SWORN AS A
22 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
23 TESTIFIED AS FOLLOWS:

24 EXAMINATION BY THE COURT

25 Q. HOW ARE YOU, MS. DAY?

1 A. GOOD. THANK YOU.

2 Q. ON MONDAY YOU WERE PUT UNDER OATH, AND YOU'RE STILL
3 UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED TO
6 ANYBODY ABOUT THIS CASE OR HAS ANYONE TRIED TO TALK TO YOU
7 ABOUT THE CASE?

8 A. PEOPLE HAVE ASKED ME QUESTIONS, BUT, YOU KNOW, I
9 STOPPED THEM.

10 Q. OKAY. GOOD. AND WHEN THEY ASKED YOU THOSE
11 QUESTIONS, DID THEY JUST ASK YOU WHAT WAS GOING ON OR WHAT
12 YOU WERE DOING OR DID THEY TRY TO TELL YOU ANYTHING THAT THEY
13 MIGHT HAVE KNOWN OR THOUGHT THEY KNEW ABOUT THE CASE?

14 A. NO. THEY JUST WERE CURIOUS ABOUT WHAT CASE IT WAS,
15 THAT KIND OF THING.

16 Q. I SEE. AND WHEN YOU RESPONDED BY SAYING YOU
17 COULDN'T TALK ABOUT IT, DID YOU -- DID YOU SAY ANYTHING ABOUT
18 THE CASE OTHER THAN -- OTHER THAN THAT YOU COULD NOT TALK
19 ABOUT IT?

20 A. SOME PEOPLE SAID, "WELL, WAS IT THE ONE IN THE
21 PAPER?"

22 Q. UH-HUH.

23 A. AND I SAID, "YES," BUT THAT'S AS FAR AS IT WENT.

24 Q. OKAY. AND DO YOU KNOW THAT IT WAS THE ONE IN THE
25 PAPER BECAUSE THAT'S WHAT I TOLD YOU?

1 A. YES.

2 Q. OR DID YOU READ THE ARTICLE IN THE PAPER?

3 A. BECAUSE YOU TOLD ME.

4 Q. OKAY. SO YOU HAVE NOT READ ANY ARTICLES IN THE
5 PAPER.

6 A. NO, NOT AT ALL.

7 Q. ALL RIGHT. THANK YOU. THANK YOU, MA'AM. NOW, I'M
8 GOING TO ASK YOU SOME QUESTIONS, AND THEN THE LAWYERS WILL
9 PROBABLY ASK YOU SOME FOLLOW-UP QUESTIONS.

10 A. OKAY.

11 Q. WE DON'T MEAN TO BE PRYING INTO YOUR PERSONAL LIFE,
12 BUT WE DO NEED TO ASK YOU THESE QUESTIONS. THERE ARE NO
13 RIGHT OR WRONG ANSWERS.

14 A. OKAY.

15 Q. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND TO BE
16 OPEN AND HONEST WITH US AND TELL US WHAT YOU FEEL AND WHAT
17 YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE TALKING
18 ABOUT.

19 A. OKAY.

20 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
21 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
22 THEN SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED
23 ABOUT THE CASE AND RENDER A VERDICT THAT IS BASED SOLELY ON
24 THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD SEE AND HEAR IN
25 THIS COURTROOM? COULD YOU DO THAT?

1 A. I BELIEVE SO.

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.

6 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
7 THAT YOU FIND TO HAVE BEEN PROVEN AND CONSIDERING THE LAW AS
8 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
9 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
10 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

11 A. YES.

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
15 THERE'S SEVERAL THINGS THAT WOULD COME UP IN THAT TRIAL IF WE
16 GET THAT FAR -- IN THAT PHASE IF WE GET THAT FAR, AND I'M
17 GOING TO TALK TO YOU ABOUT THOSE NOW. AGGRAVATING
18 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
19 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
20 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
21 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
22 RESULTING FROM THE CRIME.

23 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
24 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
25 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY

1 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
2 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
3 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
4 CIRCUMSTANCES?

5 A. YES.

6 Q. WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A COPY
7 OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF JURORS.

8 A. UH-HUH.

9 Q. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
10 JURORS?

11 A. YES.

12 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU WOULD
13 BE?

14 A. I BELIEVE I'D BE THE THIRD.

15 Q. THE THIRD? NOW, IF YOU'RE ON THE JURY IN THIS CASE
16 AND IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER -- AND
17 BY THE WAY, THE DEFINITION OF MURDER IS AN INTENTIONAL AND
18 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
19 THE JURY WOULD BE DECIDING THE PENALTY FOR THAT MURDER, AND
20 THE JURY WOULD HAVE TWO OPTIONS. THE FIRST OPTION WOULD BE
21 FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND
22 THE SECOND OPTION WOULD BE THE DEATH PENALTY. COULD YOU,
23 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO
24 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,
25 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

1 A. YES, SIR.

2 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
3 DEATH PENALTY?

4 A. YES, SIR.

5 Q. NOW, IF THE JURY IS SEQUESTERED IN THIS CASE, THEN
6 YOU WOULD BE PUT UP IN A HOTEL ROOM FOR FIVE OR SIX DAYS, AND
7 YOU WOULD NOT BE ALLOWED TO GO HOME. WE'D PROVIDE ALL YOUR
8 MEALS FOR YOU. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

9 A. SOMEWHAT.

10 Q. TELL ME ABOUT THAT.

11 A. JUST THAT I'M THE MOTHER OF TWO BOYS THAT ARE ACTIVE
12 IN SEVERAL SPORTS AND I'M EMPLOYED AND HAVE CERTAIN JOB
13 DUTIES THAT WOULD REQUIRE ME TO -- I DON'T HAVE ANYBODY THAT
14 DOES WHAT I DO---

15 Q. OKAY.

16 A. ---IN OTHER WORDS.

17 Q. AS FAR AS YOUR JOB RESPONSIBILITIES ARE CONCERNED---

18 A. YES.

19 Q. ---I DON'T THINK IT'S GOING TO MAKE ANY DIFFERENCE
20 TO YOU WHETHER THE JURY IS SEQUESTERED OR NOT BECAUSE WE'RE
21 GOING TO BE WORKING FAIRLY LONG DAYS, AND I DON'T THINK
22 YOU'RE GOING TO HAVE ANY TIME TO WORK DURING THE COURSE OF
23 THIS TRIAL. BUT I AM CONCERNED ABOUT HOW IT WOULD AFFECT
24 YOUR ABILITY TO TAKE CARE OF YOUR BOYS.

25 A. YES.

1 Q. SO DO YOU THINK THAT IF YOU WERE SEQUESTERED ON THE
2 JURY THAT YOU OR SOMEBODY ELSE IN YOUR FAMILY WOULD BE ABLE
3 -- OR I SHOULDN'T SAY YOU. WOULD SOMEBODY ELSE IN YOUR
4 FAMILY BE ABLE TO CARE FOR THE BOYS?

5 A. MY HUSBAND AND MY PARENTS WOULD---

6 Q. OKAY. NOW---

7 A. ---STEP IN.

8 Q. ---TALK TO ME ABOUT IT BECAUSE IF THIS IS SOMETHING
9 YOU CAN HANDLE, THAT'S FINE, BUT IF IT'S SOMETHING THAT YOU
10 DON'T THINK YOU CAN HANDLE, I NEED TO KNOW THAT NOW.

11 A. IT COULD BE HANDLED. IT WOULD BE -- IT WOULD BE
12 DIFFICULT.

13 Q. OKAY. WE REALIZE IT'S GOING TO BE DIFFICULT FOR
14 EVERYBODY IF I DO SEQUESTER THE JURY, BUT I WANT TO MAKE SURE
15 THAT IF I DO SEQUESTER THE JURY THAT YOU COULD HANDLE THAT.

16 A. UH-HUH.

17 Q. DO YOU THINK YOU COULD?

18 A. UH-HUH.

19 Q. ALL RIGHT. YOU TOLD ME YES?

20 A. YES.

21 Q. ALL RIGHT.

22 A. SORRY.

23 Q. NOW, HAVE YOU READ OVER THE WITNESS LIST THAT I GAVE
24 YOU THIS MORNING?

25 A. YES.

1 Q. DID YOU READ EVERY NAME ON THAT LIST?

2 A. YES.

3 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME
4 APPEARS ON THAT LIST?

5 A. I ABSOLUTELY KNOW ONE OF THEM AND MIGHT KNOW ANOTHER
6 ONE. I'M NOT SURE.

7 Q. TELL ME WHO THEY ARE.

8 A. SCOTTIE FRIER IS THE ONE I ABSOLUTELY DO KNOW.

9 Q. HOW DO YOU KNOW HIM?

10 A. HE WAS MY FRIERSON'S BASEBALL COACH. OUR SONS
11 PLAYED ON THE SAME TEAM. THE LAW ENFORCEMENT OFFICERS THAT
12 ARE IN MY FAMILY KNOW HIM.

13 Q. OKAY.

14 A. AND TERESA CRIBB WAS THE OTHER ONE.

15 Q. AND HOW DO YOU THINK YOU MIGHT KNOW HER?

16 A. I THINK, IF SHE'S THE ONE THAT I KNOW, SHE'S MARRIED
17 TO A STATE TROOPER BY THE NAME OF JOHNNY CRIBB, AND MY
18 HUSBAND INTRODUCED THEM TO EACH OTHER.

19 Q. OH, REALLY?

20 A. AND THEY GOT MARRIED.

21 Q. HOW LONG AGO WAS THAT?

22 A. PROBABLY -- GOSH, TIME FLIES. MAYBE BETWEEN FIVE
23 AND TEN YEARS AGO.

24 Q. OKAY. AND HOW LONG AGO WAS IT THAT THE OTHER
25 GENTLEMAN WAS YOUR FRIERSON'S BASEBALL COACH?

1 A. TWO OR THREE YEARS AGO.

2 Q. WAS YOUR SON HAPPY WITH THE POSITIONS THAT HE PUT
3 HIM IN AND ALL THAT?

4 A. ABSOLUTELY.

5 THE COURT: OKAY. GOOD. MA'AM, THE LAWYERS ARE
6 GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q. MS. DAY, HOW ARE YOU?

10 A. GOOD. THANKS.

11 Q. I JUST HAVE A FEW FOLLOW-UP QUESTIONS, AND I GUESS
12 WE'LL START WITH THE FACT THAT YOU SAID YOU'RE MARRIED TO
13 SOMEONE WHO'S A STATE TROOPER.

14 A. RIGHT.

15 Q. AND YOU HAVE SOME FAMILY THAT ARE INVOLVED IN LAW
16 ENFORCEMENT.

17 A. THAT'S CORRECT.

18 Q. KNOWING THAT YOUR FAMILY IS IN LAW ENFORCEMENT AND
19 THAT THAT'S PART OF YOUR FAMILY---

20 A. UH-HUH.

21 Q. ---WOULD THAT PREVENT YOU FROM GIVING BOTH SIDES A
22 FAIR TRIAL IN THIS CASE?

23 A. I DON'T THINK SO.

24 Q. YOU'D BE ABLE TO LISTEN TO EVERYTHING IN THE
25 COURTROOM, WHETHER IT -- WHETHER IT COMES FROM THE STATE OR

1 FROM THE DEFENSE?

2 A. YES.

3 Q. AND YOU WOULD BASE YOUR DECISION -- WHETHER IT'S THE
4 FIRST PHASE OR SECOND PHASE, YOUR DECISION WOULD BE BASED ON
5 WHAT HAPPENS IN THIS COURTROOM?

6 A. YES.

7 Q. OKAY. AND JUST TO FOLLOW THAT UP A LITTLE BIT MORE,
8 YOUR ASSOCIATIONS WITH PARTICULAR PEOPLE LIKE SCOTTIE
9 FRIER---

10 A. YES.

11 Q. ---OR TERESA CRIBB, IF THAT HAPPENS TO BE THE PERSON
12 YOU KNOW, IF THEY WERE TO TESTIFY, WOULD THAT INTERFERE OR
13 PREVENT YOU FROM GIVING BOTH SIDES A FAIR TRIAL?

14 A. I DON'T THINK SO.

15 Q. OKAY. DO YOU HAVE ANY DOUBT ABOUT THAT OR DO YOU
16 THINK THAT YOU COULD SET THAT ASIDE AND LISTEN TO BOTH SIDES
17 AND FOCUS ON WHAT'S PRESENTED AS EVIDENCE IN THIS CASE?

18 A. I DEFINITELY THINK I COULD LISTEN TO BOTH SIDES AND
19 GO ON THE EVIDENCE.

20 Q. OKAY. AND AS THE JUDGE WAS SAYING, IN THAT FIRST
21 PHASE IT'S JUST LIKE ANY OTHER TRIAL WHERE THE JURY GOES BACK
22 AND DETERMINES GUILTY OR NOT GUILTY, THE ISSUE OF WHETHER THE
23 DEFENDANT IS GUILTY OR NOT GUILTY.

24 A. UH-HUH.

25 Q. AND YOU UNDERSTAND THAT.

1 A. YES.

2 Q. AND THERE'S NO TALK ABOUT PUNISHMENT. THERE'S NO
3 TALK ABOUT MERCY AT THAT POINT. IT'S JUST GUILTY OR NOT
4 GUILTY.

5 A. UH-HUH.

6 Q. AND YOU UNDERSTAND THAT.

7 A. YES.

8 Q. AND THEN THE SECOND PHASE COMES ABOUT ONLY IF THE
9 JURY DETERMINES THAT THE DEFENDANT IS GUILTY OF MURDER, AND
10 WHAT'S DIFFERENT ABOUT THIS TYPE OF TRIAL AND PROCESS, AS THE
11 JUDGE TOLD YOU, IS THAT IN THIS CASE THE JUDGE DOESN'T DO THE
12 SENTENCING; IT'S THE JURY. AND AS I UNDERSTAND YOU, IN THAT
13 SECOND PHASE YOU WOULD WANT TO HEAR EVERYTHING THAT'S
14 PRESENTED BEFORE YOU MAKE A DECISION.

15 A. ABSOLUTELY.

16 Q. AND THAT HEARING EVERYTHING, WHETHER IT'S
17 AGGRAVATING CIRCUMSTANCES, THINGS THAT MAKE THE CASE WORSE,
18 MAKE THE CRIME WORSE, THE BAD THINGS ABOUT THE DEFENDANT, OR
19 WHETHER IT'S MITIGATING INFORMATION, CIRCUMSTANCES THAT
20 MITIGATE THE CRIME THAT MAY BE GOOD THINGS ABOUT THE
21 DEFENDANT, YOU WOULD HEAR ALL OF THAT BEFORE YOU MADE A
22 DECISION.

23 A. YES.

24 Q. AND THAT YOU'RE CAPABLE OF LISTENING TO ALL THAT AND
25 IF YOU THOUGHT LIFE WAS APPROPRIATE, YOU COULD VOTE LIFE.

1 A. YES.

2 Q. AND IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU'D VOTE
3 DEATH.

4 A. YES.

5 Q. AND YOU COULD DO THIS -- EVEN THOUGH YOU HAVE A LAW
6 ENFORCEMENT CONNECTION, YOUR DECISION WOULD BE BASED ON WHAT
7 HAPPENS IN THIS COURTROOM?

8 A. THAT'S CORRECT.

9 Q. AND YOU WOULD LISTEN TO ALL WITNESSES, NOT JUST
10 SOME?

11 A. RIGHT.

12 Q. OKAY. AND YOU WOULD GIVE EVERYBODY THE BENEFIT OF
13 THE DOUBT.

14 A. YES. I'M KNOWN FOR THAT.

15 Q. OKAY. WELL, GOOD. GOOD. AND YOU WOULDN'T COME IN
16 WITH PRECONCEIVED NOTIONS BUT, RATHER, YOU'D COME IN WITH AN
17 OPEN MIND. IS THAT RIGHT?

18 A. UH-HUH. YES.

19 Q. OKAY. AND BOTH SIDES WOULD BE ABLE TO KNOW THAT
20 WHEN YOU WERE SITTING HERE YOU WERE GOING TO LISTEN TO WHAT
21 THEY HAD TO SAY---

22 A. YES.

23 Q. ---THAT YOU'D LISTEN TO THEIR QUESTIONS AND
24 EVERYTHING THEY HAD TO SAY.

25 A. YES.

1 Q. AND YOU WOULD DO ALL OF THAT BEFORE YOU REACHED A
2 DECISION.

3 A. YES.

4 Q. AND ONE FINAL QUESTION IS: ON A VERDICT FORM IN A
5 DEATH PENALTY CASE, IF IT'S LIFE, JUST THE FOREMAN SIGNS IT,
6 BUT IF IT'S DEATH, ALL 12 PEOPLE SIGN IT. COULD YOU SIGN
7 THAT VERDICT FORM IF YOU THOUGHT DEATH WAS APPROPRIATE?

8 A. YES.

9 Q. BUT, AGAIN, YOU WOULD WANT TO HEAR ALL THE EVIDENCE
10 AND ALL THE TESTIMONY.

11 A. YES.

12 Q. THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MS. DAY.

13 A. THANK YOU.

14 CROSS-EXAMINATION

15 BY MR. LITTLEJOHN:

16 Q. GOOD MORNING, MS. DAY.

17 A. HI.

18 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
19 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN
20 THIS CASE. MS. DAY, IF I MAY ASK YOU A COUPLE OF THINGS
21 ABOUT YOUR QUESTIONNAIRE.

22 A. SURE.

23 Q. I NOTICE YOU INDICATED YOU WENT TO COLLEGE?

24 A. YES, SIR.

25 Q. GRADUATED?

1 A. YES, SIR.

2 Q. WHERE WAS THAT?

3 A. U.S.C.

4 Q. UNIVERSITY?

5 A. YES, SIR.

6 Q. YOU WERE IN THE GRADUATE PROGRAM THERE IN FINE ARTS?

7 A. RIGHT.

8 Q. STUDIO ART ACTUALLY.

9 A. RIGHT.

10 Q. OKAY. AND YOUR HUSBAND IS WITH THE HIGHWAY PATROL.

11 A. RIGHT.

12 Q. AND HAS BEEN FOR 20 YEARS.

13 A. RIGHT.

14 Q. WHERE IS HE -- WHERE DOES HE WORK? WHAT COUNTIES

15 DOES HE WORK IN?

16 A. HE IS AN ACCIDENT RECONSTRUCTIONIST IN INVESTIGATION
17 WITH ABOUT NINE COUNTIES, I BELIEVE: MIDLAND AREA, RICHLAND,
18 KERSHAW, A LOT OF THE SURROUNDING COUNTIES. I DON'T -- I
19 DON'T KNOW EXACTLY.

20 Q. HOW LONG HAS HE BEEN IN THE ACCIDENT RECONSTRUCTION
21 FIELD?

22 A. I THINK 13 YEARS.

23 Q. OKAY. BEFORE THAT HE WAS A PATROL?

24 A. ON THE ROAD, YES.

25 Q. AND WHERE WAS THAT? WAS THAT IN THE MIDLANDS?

1 A. IN RICHLAND COUNTY AND SUMTER.

2 Q. RICHLAND AND SUMTER?

3 A. UH-HUH.

4 Q. DISTRICT ONE?

5 A. THAT'S RIGHT.

6 Q. OKAY. MS. DAY, YOU INDICATED THAT YOU KNEW SCOTTIE
7 FRIER?

8 A. UH-HUH.

9 Q. TELL ME ABOUT THAT RELATIONSHIP. HOW DO YOU KNOW
10 HIM OTHER THAN HIS BEING THE BASEBALL COACH? I MEAN, DO YOU
11 EVER SOCIALIZE WITH HIM?

12 A. NO, I DO NOT. I SEE HIM AT THE BALL FIELD, YOU
13 KNOW, SEE HIS SON AT THE BALL FIELD, YOU KNOW, THROW MY HAND
14 UP, "HELLO," AND THAT KIND OF THING.

15 Q. AND HE COACHED YOUR SON?

16 A. RIGHT.

17 Q. THAT WAS TWO OR THREE YEARS?

18 A. YES, SIR.

19 Q. OKAY. DO YOU EVER SEE HIM OTHER THAN IN THAT
20 CONTEXT?

21 A. NO, USUALLY AT A BALL FIELD.

22 Q. OKAY. BASED ON YOUR RELATIONSHIP WITH HIM AS A
23 BASEBALL COACH---

24 A. UH-HUH.

25 Q. ---DO YOU THINK IT WOULD BE HARD OR DIFFICULT FOR

1 YOU TO BE OBJECTIVE ABOUT HIS BEING A WITNESS IN THIS CASE?

2 A. I DON'T THINK SO.

3 Q. OKAY. BECAUSE I TELL YOU RIGHT NOW HE WAS THE --
4 ONE OF THE MAIN INVESTIGATORS IN THIS MATTER, AND I WOULD
5 ANTICIPATE HE WOULD TESTIFY.

6 A. UH-HUH.

7 Q. DO YOU THINK THAT WOULD CAUSE YOU ANY PROBLEMS IN
8 JUDGING THE CREDIBILITY OF HIS WITNESS -- OF HIS BEING A
9 WITNESS AS COMPARED TO OTHER WITNESSES?

10 A. I WOULD THINK IN THE SCOPE OF THINGS YOU'RE
11 LISTENING TO A LOT OF PEOPLE.

12 Q. RIGHT.

13 A. I DON'T THINK IT WOULD BE A PROBLEM.

14 Q. OKAY. FAIR ENOUGH. MS. DAY, AS THE JUDGE EXPLAINED
15 TO YOU, MR. MERCER IS CHARGED WITH MURDER IN THIS CASE AND
16 OTHER CRIMES. AND THIS COULD POSSIBLY BE A TWO-PART
17 PROCEEDING, BUT THE FIRST PART OF THIS PROCEEDING DEALS WITH
18 THE GUILT OR INNOCENCE OF KEVIN MERCER.

19 A. UH-HUH.

20 Q. AND THE JUDGE WILL EXPLAIN TO YOU, IF YOU'RE ON THE
21 JURY, THAT BEFORE MR. MERCER COULD BE FOUND GUILTY OF MURDER
22 OR ANY OTHER CRIME, THE JURY WOULD HAVE TO BE CONVINCED
23 BEYOND A REASONABLE DOUBT THAT HE WAS GUILTY, AND THAT BURDEN
24 OF PROOF WOULD BE ON THE STATE TO PROVE HIM GUILTY.

25 A. UH-HUH.

1 Q. DO YOU UNDERSTAND THAT CONCEPT?

2 A. YES, I DO.

3 Q. DO YOU HAVE ANY PROBLEM WITH THAT?

4 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

5 Q. OKAY. AND ONLY IF HE'S FOUND GUILTY WOULD WE GET
6 INTO THE SECOND PHASE. SO I JUST WANT YOU TO KNOW IT'S NOT A
7 FOREGONE CONCLUSION AND IT'S NOT AUTOMATIC. THAT HEAVY
8 BURDEN HAS TO BE MET BY THE STATE BEFORE WE EVEN GET TO THAT,
9 BEFORE WE EVEN DISCUSS IT. YOU UNDERSTAND THAT.

10 A. YES.

11 Q. OKAY. YOU INDICATED THAT AFTER REVIEWING THAT FORM
12 THAT YOU WERE GIVEN THIS MORNING THAT YOU THOUGHT YOU WERE
13 THE THIRD TYPE OF JUROR?

14 A. THAT'S CORRECT.

15 Q. DID YOU HAVE ANY PROBLEM ARRIVING AT TYPE NUMBER
16 THREE AS OPPOSED TO TYPES ONE AND TWO?

17 A. NO, IT WAS A QUICK---

18 Q. OKAY.

19 A. ---DECISION.

20 Q. CAN YOU -- WOULD YOU TELL ME WHY YOU THINK YOU'RE A
21 TYPE THREE JUROR?

22 A. BECAUSE IN JUST ABOUT EVERY ASPECT OF MY LIFE I
23 RESEARCH AND READ AND FIND OUT EVERYTHING I CAN FIND OUT
24 BEFORE I MAKE A DECISION.

25 Q. RIGHT.

1 A. PEOPLE KIND OF SOMETIMES GET A LITTLE AGGRAVATED
2 BECAUSE I WANT TO WEIGH EVERYTHING OUT.

3 Q. RIGHT.

4 A. I WANT TO KNOW. AND I JUST -- I DON'T KNOW. I
5 THINK THAT'S IMPORTANT---

6 Q. OKAY.

7 A. ---THAT YOU KNOW EVERYTHING FIRST.

8 Q. VERY GOOD. AS HAS BEEN MENTIONED, IF WE GET TO THIS
9 SECOND PHASE, THERE COULD BE EVIDENCE PRESENTED TO THE JURY
10 IN AGGRAVATION WITH MATTERS WHICH COULD MAKE THE CRIME WORSE.

11 A. UH-HUH.

12 Q. AND THERE WOULD BE EVIDENCE PRESENTED IN MITIGATION
13 WHICH IS LESSENING THE SEVERITY OF THE CRIME, AS HIS HONOR
14 EXPLAINED TO YOU. THE EVIDENCE IN MITIGATION WOULD CONCERN
15 THINGS ABOUT KEVIN MERCER'S BACKGROUND, ABOUT HIS UPBRINGING,
16 ABOUT HIS FAMILY, ABOUT GOOD THINGS ABOUT HIM, PERHAPS BAD
17 THINGS THAT HAPPENED TO HIM. THERE MAY BE MEDICAL TESTIMONY.
18 WOULD YOU BE WILLING TO LISTEN TO ALL THAT EVIDENCE BEFORE
19 ARRIVING AT A DECISION AS TO WHAT YOUR VERDICT SHOULD BE IN
20 THAT PHASE OF THE CASE, IF WE GET THERE?

21 A. YES.

22 Q. WOULD YOU WANT TO LISTEN TO ALL THAT?

23 A. YES.

24 Q. OKAY. JUST ONE FINAL THING, MS. DAY. THE VICTIM IN
25 THIS CASE WAS A SERGEANT AT FORT JACKSON. HE WAS ACTIVE

1 MILITARY IN THE U.S. ARMY. WOULD THE FACT THAT HE WAS IN THE
2 ARMY HAVE ANY BEARING ON YOUR ABILITY TO LISTEN TO THE
3 EVIDENCE AND BE FAIR IN THIS CASE?

4 A. NO.

5 MR. LITTLEJOHN: OKAY. THANK YOU, MS. DAY.

6 THE COURT: ANY ARGUMENT?

7 MR. LITTLEJOHN: NO, YOUR HONOR.

8 THE COURT: MS. DAY, YOU ARE QUALIFIED TO SERVE AS A
9 JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU'RE ON THE
10 JURY. IT MEANS THAT YOU'RE ELIGIBLE TO BE ON THE JURY. WE
11 WILL NOT NEED YOU AGAIN UNTIL MONDAY MORNING, BUT WE WOULD
12 LIKE FOR YOU TO BE READY TO BE HERE MONDAY MORNING -- ON
13 MONDAY MORNING. IF YOU'LL CALL SUNDAY NIGHT AFTER 6:00 TO
14 THE TELEPHONE NUMBER THAT YOU WERE GIVEN ON THAT PINK SLIP,
15 THEN THERE WILL BE A RECORDED MESSAGE THERE THAT TELLS YOU
16 EXACTLY WHEN TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING
17 THE PERSONAL ITEMS AND CLOTHING THAT YOU WOULD NEED IF THE
18 JURY IS GOING TO BE SEQUESTERED.

19 BETWEEN NOW AND THEN, YOU'RE NOT ALLOWED TO DISCUSS
20 THIS CASE WITH ANYONE NOR IS ANYONE ALLOWED TO DISCUSS THIS
21 CASE WITH YOU. PLEASE BE CAREFUL NOT TO BE EXPOSED TO ANY
22 PRESS COVERAGE OR MEDIA COVERAGE ABOUT THIS CASE, AND WE LOOK
23 FORWARD TO SEEING YOU ON MONDAY MORNING.

24 THE WITNESS: OKAY.

25 THE COURT: ANY QUESTIONS?

1 THE WITNESS: NO.

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

3 THE WITNESS: THANK YOU.

4 (JUROR DAY LEAVES THE COURTROOM. JUROR CHRISTILLE
5 PHILLIPS IS BROUGHT INTO THE COURTROOM.)

6 CHRISTILLE PHILLIPS, HAVING BEEN PREVIOUSLY
7 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
8 OATH, TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT

10 Q. HOW ARE YOU, MA'AM?

11 A. GOOD. HOW ARE YOU?

12 Q. MS. PHILLIPS?

13 A. YES, SIR.

14 Q. ON MONDAY WHEN YOU WERE HERE WE PUT YOU UNDER OATH,
15 AND YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. NOW, SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED TO
18 ANYBODY ABOUT THIS CASE OR HAS ANYONE TALKED TO YOU ABOUT THE
19 CASE?

20 A. NO, SIR. MY HUSBAND TRIED TO ASK -- JUST TELL ME A
21 FEW THINGS ABOUT THE PAPER -- THAT THIS IS THE LARGEST JUROR
22 SELECTION. OTHER THAN THAT, NO, SIR.

23 Q. OKAY. SO HE TOLD YOU SOMETHING ABOUT HOW MANY
24 JURORS HAD BEEN DRAWN?

25 A. SOMETHING -- THAT THERE'S A WHOLE BUNCH -- THIS IS

1 THE LARGEST IN THE COUNTY HISTORY.

2 Q. OKAY.

3 A. I DON'T KNOW ANYTHING OTHER THAN THAT.

4 Q. DID HE TELL YOU ANYTHING ELSE FROM THAT NEWSPAPER
5 ARTICLE?

6 A. NO, SIR.

7 Q. SO YOUR HUSBAND READ THE NEWSPAPER.

8 A. YES, SIR.

9 Q. DID YOU READ THAT NEWSPAPER ARTICLE?

10 A. NO, SIR.

11 Q. HAVE YOU SEEN IT?

12 A. NO, SIR.

13 Q. ALL RIGHT. NOW, DID HE TELL YOU -- DID HE TELL YOU
14 ANYTHING ELSE THAT WAS IN THAT NEWSPAPER ARTICLE?

15 A. NO, SIR. I TOLD HIM I'M NOT SUPPOSED TO TALK ABOUT
16 IT.

17 Q. YOU TOLD HIM -- SO WHEN HE STARTED TALKING ABOUT THE
18 NUMBER OF JURORS, YOU SAID---

19 A. "I'M NOT SUPPOSED TO TALK ABOUT IT."

20 Q. ---"HOLD ON THERE. I'M NOT SUPPOSED TO HEAR ANY OF
21 THAT." AND HE STOPPED?

22 A. YES, SIR.

23 Q. SO AT THIS POINT HE UNDERSTANDS THAT HE CAN'T TELL
24 YOU WHAT HE READS IN THE NEWSPAPER?

25 A. YES, SIR.

1 Q. OKAY. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND
2 THEN WHEN -- AFTER I'VE DONE THAT, THE LAWYERS WILL PROBABLY
3 ASK YOU SOME FOLLOW-UP QUESTIONS. WE DON'T MEAN TO PRY TOO
4 DEEP INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE
5 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
6 WANT YOU TO LISTEN VERY CAREFULLY AND THEN TO BE OPEN AND
7 HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK
8 ABOUT THESE ISSUES THAT WE'LL BE TALKING ABOUT.

9 IF YOU ARE ON THE JURY IN THIS CASE, COULD YOU
10 ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO
11 YOU, SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED
12 ABOUT THE CASE BEFORE THE TRIAL BEGAN, AND THEN RENDER A
13 VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE
14 THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO
15 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 CONSIDERING 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 THEN MOVE
4 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. AND
5 IF WE DO, THERE ARE GOING TO BE SEVERAL THINGS THAT WILL COME
6 UP IF WE GET THAT FAR, AND I'M GOING TO TALK TO YOU ABOUT
7 SOME OF THOSE RIGHT NOW.

8 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
9 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
10 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
11 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
12 AND ADD TO 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, SIR.

20 Q. WHEN YOU CAME IN TODAY, YOU WERE GIVEN A COPY OF
21 THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF JURORS. DID
22 YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

23 A. YES, SIR.

24 Q. WHICH OF THOSE THREE TYPES OF JURORS WOULD YOU BE?

25 A. I THINK I WOULD BE THE THIRD TYPE OF JUROR.

1 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
2 FINDS THE DEFENDANT GUILTY OF MURDER -- AND BY THE WAY, THE
3 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
4 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.. THEN IT WOULD BE
5 THE JURY WHO WOULD DECIDE THE PENALTY FOR THAT MURDER, AND
6 THE JURY WOULD HAVE TWO OPTIONS. THE FIRST OPTION WOULD BE
7 FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND
8 THE SECOND OPTION WOULD BE FOR THE DEATH PENALTY. COULD YOU,
9 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO
10 EXIST AND THE -- CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO
11 YOU, COULD YOU VOTE TO RETURN A VERDICT IMPOSING A LIFE
12 SENTENCE?

13 A. I COULD.

14 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
15 DEATH PENALTY?

16 A. I COULD.

17 Q. NOW, IF THE JURY IS SEQUESTERED IN THIS CASE, YOU
18 WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX DAYS WHILE WE TRY
19 THIS CASE, AND WE WOULD PROVIDE YOU WITH ALL YOUR MEALS AND
20 YOU WOULD NOT BE ALLOWED TO GO HOME DURING THAT TIME. WOULD
21 THAT IMPOSE A TERRIBLE BURDEN ON YOU?

22 A. MY HUSBAND'S PRETTY GOOD. HE COULD DO IT.

23 Q. YOU COULD HANDLE THAT?

24 A. YES, SIR.

25 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST

1 THAT I -- THAT I SENT TO YOU THIS MORNING?

2 A. YES, SIR.

3 Q. DID YOU READ EVERY NAME ON THAT LIST?

4 A. YES, SIR.

5 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
6 APPEARS ON THAT LIST?

7 A. THERE WAS ONE NAME THAT WAS FAMILIAR ONLY BECAUSE MY
8 HUSBAND IS A WEST COLUMBIA POLICE OFFICER BUT OTHER THAN
9 THAT -- I DON'T KNOW THAT ACTUAL PERSON. I'VE HEARD THE NAME
10 IN CONVERSATION, BUT I DON'T KNOW ANYONE.

11 Q. WHAT IS THAT NAME?

12 A. I THINK IT WAS MISNER OF WEST COLUMBIA.

13 Q. MISNER?

14 A. I THINK SO.

15 Q. OKAY. ALL RIGHT, MA'AM. THE LAWYERS ARE GOING TO
16 ASK YOU SOME FOLLOW-UP QUESTIONS NOW.

17 A. OKAY.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. MS. PHILLIPS, HOW ARE YOU?

21 A. GOOD. HOW ARE YOU?

22 Q. DOING PRETTY GOOD. LET ME ASK YOU: THE FACT THAT
23 YOUR HUSBAND IS IN LAW ENFORCEMENT, WOULD THAT PREVENT YOU
24 FROM BEING A FAIR JUROR IN THIS CASE?

25 A. I DON'T BELIEVE SO. I COME FROM A FAMILY OF LAW

1 ENFORCEMENT.

2 Q. AND EVEN SO -- EVEN THOUGH YOU'VE COME FROM A FAMILY
3 OF LAW ENFORCEMENT AND YOU'RE MARRIED TO AN OFFICER, YOU
4 WOULD BE ABLE TO COME IN HERE AND LISTEN TO BOTH SIDES IN
5 THIS CASE?

6 A. I BELIEVE SO.

7 Q. AND YOU'LL WANT TO HEAR EVERYTHING BEFORE MAKING A
8 DECISION?

9 A. YES, SIR.

10 Q. AND JUST FOLLOWING UP ON WHAT THE JUDGE SAID, HE
11 MENTIONED THAT IN A TRIAL LIKE THIS THERE'S POTENTIALLY TWO
12 STAGES. THE FIRST STAGE IS ABOUT WHETHER THE DEFENDANT IS
13 GUILTY OR NOT GUILTY. THE SECOND PHASE IS PUNISHMENT IF HE
14 IS GUILTY. YOU UNDERSTAND THAT.

15 A. YES, SIR.

16 Q. IN THAT FIRST PHASE JURORS SIT HERE. WITNESSES SIT
17 UP WHERE YOU ARE, JUST LIKE ANY NORMAL TRIAL. EVIDENCE IS
18 PRESENTED, AND THE JURY GOES BACK AND ALL THEY CONSIDER --
19 THEY DON'T CONSIDER PUNISHMENT AT THAT POINT. THEY DON'T
20 CONSIDER MERCY. IT'S JUST GUILTY OR NOT GUILTY, AND YOU
21 UNDERSTAND THAT.

22 A. YES, SIR.

23 Q. AND WHAT MAKES THIS A LITTLE DIFFERENT FROM THOSE
24 CASES IS IF HE IS, IN FACT, FOUND GUILTY, IT'S GUILTY OF
25 MURDER. INSTEAD OF HIM STANDING IN FRONT OF THE JUDGE AND

1 THE JUDGE LOOKING TO THE STATE AND THE DEFENSE SAYING, "TELL
2 US SOMETHING ABOUT THIS MAN, THE GOOD AND THE BAD," IN THIS
3 CASE THE JURY HEARS THE GOOD AND THE BAD IN THAT SECOND
4 PHASE. YOU UNDERSTAND THAT.

5 A. YES, SIR.

6 Q. AS I UNDERSTAND IT, YOU WOULD WANT TO HEAR
7 EVERYTHING BEFORE YOU MAKE ANY DECISION.

8 A. RIGHT.

9 Q. AND YOU WOULD HEAR -- REGARDLESS OF WHERE IT CAME
10 FROM, WHETHER IT CAME FROM THE STATE OR WHETHER IT CAME FROM
11 THE DEFENSE, YOU WOULD WANT TO HEAR IT.

12 A. YES, SIR.

13 Q. OKAY. AND IN MAKING A DECISION YOU REALIZE THAT --
14 WELL, LET ME ASK YOU THIS ABOUT THE VERDICT FORM. THERE'S
15 SOMETHING ELSE THAT'S A LITTLE BIT DIFFERENT ABOUT THIS
16 SYSTEM. IF THE JURY COMES TO THE CONCLUSION THAT LIFE IS THE
17 APPROPRIATE SENTENCE, THE FOREMAN SIGNS IT. IF THE JURY
18 COMES TO THE CONCLUSION THAT DEATH IS THE APPROPRIATE
19 VERDICT, ALL 12 JURORS SIGN THAT VERDICT FORM. NOW, IF YOU
20 WERE SITTING ON THE JURY AND YOU THOUGHT DEATH WAS THE
21 APPROPRIATE SENTENCE, COULD YOU SIGN THAT VERDICT FORM?

22 A. IF I FELT THAT WAS APPROPRIATE, YES, SIR.

23 Q. IS THERE ANYTHING ABOUT YOU, ABOUT YOUR PAST, ABOUT
24 YOUR FAMILY, YOUR EXPERIENCES, THAT WOULD PREVENT YOU FROM
25 BEING A FAIR JUROR IN THIS CASE?

1 A. I DON'T BELIEVE SO.

2 Q. YOU WOULD WANT TO HEAR EVERYTHING. YOU WOULD LISTEN
3 TO THE JUDGE'S INSTRUCTIONS, AND YOU WOULD DO EVERYTHING YOU
4 CAN TO LISTEN TO BOTH SIDES BEFORE YOU MADE A DECISION?

5 A. I BELIEVE SO.

6 Q. THAT'S ALL WE CAN ASK OF YOU. THANK YOU, MA'AM.

7 A. THANK YOU.

8 CROSS-EXAMINATION

9 BY MS. KIMBROUGH:

10 Q. GOOD MORNING, MS. PHILLIPS. HOW ARE YOU?

11 A. GOOD MORNING. GOOD.

12 Q. I, ALONG WITH CAM LITTLEJOHN, REPRESENT KEVIN
13 MERCER.

14 A. HELLO.

15 Q. I WANTED TO REINTRODUCE YOU TO HIM A BIT. YOU
16 MENTIONED THAT YOU CAME FROM OR THAT YOU COME FROM A FAMILY
17 OF LAW ENFORCEMENT.

18 A. YES, MA'AM.

19 Q. CAN YOU EXPLAIN THAT A LITTLE BIT?

20 A. MY MOTHER IS A RETIRED CORRECTIONAL SERGEANT. MY
21 FATHER IS A RETIRED PAROLE OFFICER, AND MY HUSBAND IS A
22 POLICE OFFICER, AND MY LITTLE BROTHER IS A CORRECTIONAL
23 SERGEANT IN THE STATE OF CALIFORNIA.

24 Q. THAT SOUNDS LIKE A FAMILY IN LAW ENFORCEMENT.

25 A. YES, MA'AM.

1 Q. OKAY. NOW, IN THIS CASE, VERY TRAGICALLY, THE
2 VICTIM WAS A MEMBER OF THE UNITED STATES ARMED FORCES. GIVEN
3 THAT HE WAS A MAN IN UNIFORM, DO YOU THINK YOU WOULD HAVE ANY
4 EMOTIONAL OR OTHER DIFFICULTY IN GIVING THE DEFENDANT A FAIR
5 TRIAL?

6 A. NO.

7 Q. OKAY. SO YOU DON'T THINK THAT THAT WOULD COLOR YOUR
8 DECISION-MAKING.

9 A. NO, MA'AM.

10 Q. OKAY. ALL RIGHT. NOW, AS HIS HONOR EXPLAINED, THIS
11 CASE HAS POTENTIALLY TWO PHASES. EACH ARE DISTINCT AND
12 EXTREMELY IMPORTANT. THE FIRST PHASE WOULD BE THE INNOCENCE-
13 OR-GUILT PHASE, AND IN BOTH OF THESE PHASES KEVIN MERCER HAS
14 NO BURDEN OF PROOF. HE'S BROUGHT INTO COURT BY WAY OF AN
15 INDICTMENT, BUT THE SOLE RESPONSIBILITY IN BOTH PHASES IS FOR
16 THE STATE TO ESTABLISH FIRST THAT HE IS GUILTY BEYOND A
17 REASONABLE DOUBT AND, SECONDLY, TO CONVINCE YOU THAT DEATH IS
18 THE APPROPRIATE PUNISHMENT.

19 ON THE OTHER HAND, MR. MERCER CERTAINLY DOES NOT
20 HAVE TO PROVE HIS INNOCENCE AND IN THE LIFE-SENTENCE PHASE
21 DOESN'T HAVE TO PROVE ANYTHING IN ORDER FOR YOU TO CONSIDER
22 GIVING HIM A LIFE SENTENCE. ARE THOSE TYPES OF BURDENS -- IS
23 THERE ANYTHING THAT WOULD KEEP YOU FROM APPLYING THOSE
24 STANDARDS IN EITHER PHASE?

25 A. I DON'T THINK SO.

1 Q. OKAY.

2 A. NO.

3 Q. ALL RIGHT. NOW, IN THE FIRST PHASE THE TYPES OF
4 EVIDENCE WE WOULD ANTICIPATE YOU WOULD HEAR WOULD BE SORT OF
5 THE STANDARD STUFF MOST PEOPLE WOULD EXPECT. IF YOU'VE
6 WATCHED TELEVISION, YOU KNOW, YOU WOULD EXPECT TO HEAR THINGS
7 ABOUT PHYSICAL EVIDENCE AND WITNESSES AND, YOU KNOW, BURDEN
8 OF PROOF. THE JUDGE WOULD GO OVER THE LAW. A LOT OF PEOPLE
9 ARE FAMILIAR WITH THAT. HOWEVER, IF WE GET TO THAT SECOND
10 PHASE, THINGS BECOME A LITTLE MORE DIFFICULT, I THINK, FOR
11 THE AVERAGE PERSON BECAUSE THIS IS NOT A TYPICAL SITUATION.
12 THESE CASES ARE VERY -- THEY'RE VERY UNIQUE, AND THEY TEND TO
13 BE RATHER LENGTHY.

14 IF WE GET TO THE PENALTY PHASE, YOU MAY HEAR
15 DIFFERENT TYPES OF TESTIMONY. YOU MAY HEAR -- I WOULD
16 ANTICIPATE YOU'D HEAR CHARACTER EVIDENCE, AND THE CHARACTER
17 EVIDENCE MIGHT CONSIST OF CHARACTER AS IT RELATES TO THE
18 VICTIM, TRACY DAVIS, AND IT MAY ALSO RELATE TO THE CHARACTER
19 OF KEVIN MERCER. HOWEVER, IN ADDITION TO THAT, YOU MAY BE
20 EXPOSED TO TESTIMONY FROM EXPERTS. CERTAINLY YOUR BACKGROUND
21 AS A NURSE MAY HELP YOU. HOWEVER, DO YOU THINK YOU WOULD
22 HAVE ANY DIFFICULTY GIVING DUE CONSIDERATION TO ANYTHING OF
23 AN EXPERT NATURE WHICH COULD INCLUDE MEDICAL HISTORY OR
24 PSYCHIATRIC TESTIMONY, ANYTHING ABOUT THOSE -- THOSE FIELDS
25 THAT WOULD BE DIFFICULT?

1 A. I UNDERSTAND THOSE PRETTY WELL.

2 Q. OKAY. ALL RIGHT. NOW, YOUR HUSBAND'S A WEST
3 COLUMBIA POLICE---

4 A. YES, MA'AM.

5 Q. ---POLICE OFFICER? ANYTHING ABOUT THAT CONNECTION
6 -- AND I MAY BE REPEATING MYSELF; I APOLOGIZE IF I AM. BUT
7 IS THERE ANYTHING ABOUT THAT CONNECTION THAT WOULD MAKE IT
8 DIFFICULT FOR YOU TO CONSIDER THE POSSIBILITY OF GIVING LIFE
9 IN THE CASE OF MURDER?

10 A. I DON'T BELIEVE SO, NOT IF IT WAS APPROPRIATE.

11 Q. OKAY. I NOTICED ON YOUR FORM - THIS IS MY LAST
12 QUESTION - THAT YOU'RE LUTHERAN?

13 A. YES, MA'AM. WE WERE MARRIED IN THE LUTHERAN CHURCH.
14 MY HUSBAND'S LUTHERAN.

15 Q. OKAY. ANYTHING SPECIAL ABOUT THE LUTHERAN RELIGION
16 THAT WOULD CAUSE DIFFICULTY CONSIDERING A LIFE OR A DEATH
17 SENTENCE?

18 A. NOT TO MY KNOWLEDGE. I'VE ONLY BEEN JUST THE PAST
19 10 YEARS IN THE LUTHERAN FAITH. I'VE ACTUALLY -- I WAS
20 BAPTIST PRIOR TO THAT, SO I'M -- NOT TO MY KNOWLEDGE.

21 Q. OKAY.

22 A. NOT THAT I KNOW OF.

23 Q. ALL RIGHT. THANK YOU VERY MUCH.

24 A. THANK YOU.

25 THE COURT: ANYTHING BEFORE I RULE?

1 MS. KIMBROUGH: SHE'S QUALIFIED.

2 MR. HUBBARD: NO.

3 THE COURT: MS. PHILLIPS, YOU ARE QUALIFIED TO BE A
4 JUROR IN THIS CASE.. THAT DOES NOT MEAN YOU'RE ON THE JURY,
5 BUT IT DOES MEAN THAT YOU'RE ELIGIBLE TO BE A JUROR. WE WILL
6 NOT NEED YOU AGAIN UNTIL MONDAY MORNING, AND I'D LIKE FOR YOU
7 TO BE READY TO COME UP HERE ON MONDAY MORNING. IF YOU WILL
8 CALL SUNDAY NIGHT AFTER 6:00 TO THE TELEPHONE NUMBER THAT
9 APPEARS ON THAT PINK SLIP OF PAPER THAT YOU'VE BEEN GIVEN,
10 THERE WILL BE A RECORDED MESSAGE ON THAT LINE THAT GIVES YOU
11 DETAILED INSTRUCTIONS ABOUT WHEN YOU NEED TO BE HERE AND
12 WHETHER OR NOT YOU NEED TO BRING YOUR PERSONAL ITEMS AND
13 CLOTHING THAT YOU WOULD NEED IF YOU WERE GOING TO BE
14 SEQUESTERED FOR SEVERAL DAYS.

15 BETWEEN NOW AND THEN, YOU ARE NOT ALLOWED TO DISCUSS
16 THIS CASE NOR TO ALLOW ANYONE ELSE TO DISCUSS IT WITH YOU.
17 YOU'VE DONE A GOOD JOB WITH THAT SO FAR, SO KEEP DOING THAT.
18 PLEASE MAKE SURE THAT YOU DON'T SEE OR HEAR OR LISTEN TO ANY
19 NEWS COVERAGE ABOUT THIS CASE, AND WE'LL SEE YOU MONDAY
20 MORNING.

21 THE WITNESS: OKAY.

22 THE COURT: THANK YOU, MA'AM.

23 THE WITNESS: THANK YOU.

24 (JUROR PHILLIPS LEAVES THE COURTROOM. JUROR LOIS
25 LUESING IS BROUGHT INTO THE COURTROOM.)

1 LOIS LUESING, 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. MA'AM, IS YOUR -- TELL ME HOW TO PRONOUNCE YOUR LAST
6 NAME.

7 A. LUESING.

8 Q. LUESIN (SIC)?

9 A. LUESING.

10 Q. LUESING. OKAY. YOU RECALL THAT ON MONDAY YOU WERE
11 PUT UNDER OATH.

12 A. UH-HUH.

13 Q. AND YOU'RE STILL UNDER OATH TODAY. DO YOU
14 UNDERSTAND THAT?

15 A. YES, I DO.

16 Q. ALL RIGHT. NOW, SINCE YOU LEFT US ON MONDAY, HAS
17 ANYONE TALKED TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO
18 ANYONE ABOUT THE CASE?

19 A. NO. HUH-UH.

20 Q. ALL RIGHT. I'M GOING TO ASK YOU SOME QUESTIONS NOW,
21 AND THEN AFTER I'M DONE, THE LAWYERS ARE GOING TO ASK YOU
22 SOME FOLLOW-UP QUESTIONS. WE DON'T MEAN TO PRY TOO DEEP INTO
23 YOUR PRIVATE LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
24 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE
25 JUST WANT YOU TO LISTEN CAREFULLY AND THEN BE OPEN AND HONEST

1 WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK ABOUT
2 THESE ISSUES THAT WE'RE GOING TO BE TALKING ABOUT.

3 IF YOU ARE ON THE JURY IN THIS CASE, COULD YOU
4 ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO
5 YOU AND THEN, SETTING ASIDE ANYTHING THAT YOU MIGHT HAVE
6 HEARD OR LEARNED ABOUT THE CASE BEFORE THE TRIAL BEGAN,
7 RENDER A VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND
8 THE EVIDENCE THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM?
9 COULD YOU DO THAT?

10 A. YES.

11 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
12 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
13 REASONABLE DOUBT?

14 A. YES.

15 Q. NOW, COULD YOU, DEPENDING ON THE FACTS AND
16 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND
17 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
18 FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON
19 WHETHER OR NOT YOU FEEL THE STATE HAS MET THAT BURDEN OF
20 PROOF?

21 A. YES, SIR.

22 Q. NOW, IF THE JURY FINDS THE DEFENDANT GUILTY OF
23 MURDER, WE WOULD MOVE INTO THAT SECOND PHASE OR THE PENALTY
24 PHASE OF THE TRIAL, AND THERE'S SEVERAL THINGS THAT WOULD
25 COME UP DURING THAT PHASE IF WE GET THAT FAR, AND I'M GOING

1 TO TALK TO YOU ABOUT THOSE NOW. AGGRAVATING CIRCUMSTANCES
2 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
3 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
4 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
5 ENORMITY OF THE CRIME. THEY ADD TO THE INJURY RESULTING FROM
6 THE CRIME.

7 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
8 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
9 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
10 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
11 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
12 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
13 CIRCUMSTANCES?

14 A. YES.

15 Q. NOW, WHEN YOU CAME IN TODAY, YOU WERE GIVEN A COPY
16 OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF JURORS. DO
17 YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF JURORS?

18 A. YES, I DO.

19 Q. WHICH OF THOSE THREE TYPES DO YOU BELIEVE YOU WOULD
20 BE?

21 A. THE THIRD.

22 Q. THE THIRD?

23 A. UH-HUH.

24 Q. IF YOU'RE ON THE JURY AND IF THE JURY WERE TO FIND
25 THE DEFENDANT GUILTY OF MURDER -- AND BY THE WAY, THE

1 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
2 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. THEN THE JURY
3 WOULD BE THE ONE TO DECIDE THE PENALTY FOR THAT CRIME, AND
4 THE JURY WOULD HAVE TWO OPTIONS. THE FIRST OPTION WOULD BE
5 LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE, AND THE
6 SECOND OPTION WOULD BE 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 IMPOSING THE
12 DEATH PENALTY?

13 A. YES.

14 Q. NOW, IF THE JURY IS SEQUESTERED IN THIS CASE, THEN
15 YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX DAYS. WE'D
16 PROVIDE ALL YOUR MEALS FOR YOU, AND YOU WOULD NOT BE ALLOWED
17 TO GO HOME DURING THAT TIME. WOULD THAT IMPOSE A TERRIBLE
18 BURDEN ON YOU?

19 A. IT WOULDN'T BE EASY.

20 Q. TELL ME---

21 A. I'M SURE IT WOULDN'T BE FOR ANYBODY.

22 Q. WELL, IT WOULDN'T BE EASY FOR ANYBODY, BUT TELL ME
23 ABOUT YOUR SITUATION.

24 A. I COULD DO IT. I JUST -- I WORK LIKE ANYBODY ELSE.
25 I HAVE -- I HAVE TWO GROWN SONS THAT ARE AT HOME, BUT IT'S

1 NOT LIKE I COULDN'T DO IT.

2 Q. OKAY. SO YOU THINK YOU COULD HANDLE IT.

3 A. I COULD IF I HAD TO.

4 Q. DID YOU GET A CHANCE TO GO OVER THAT WITNESS LIST
5 THAT YOU WERE GIVEN THIS MORNING?

6 A. YEAH, ACTUALLY I DID.

7 Q. DID YOU READ EVERY NAME ON THAT LIST?

8 A. UH-HUH.

9 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
10 IS ON THAT LIST?

11 A. I THINK I KNOW TWO PEOPLE ON THE LIST. I'M NOT
12 RELATED TO ANYBODY ON THE LIST.

13 Q. CAN YOU TELL ME WHO YOU KNOW?

14 A. LET'S SEE. ONE WAS TAMMY RAWL AND MICHAEL SMILEY.

15 Q. HOW DO YOU KNOW THEM?

16 A. I'M IN THE BUSINESS OF SELLING HOMES, AND TAMMY RAWL
17 I'M PRETTY SURE BOUGHT A HOME FROM US ABOUT 10 YEARS AGO, AND
18 I JUST TALKED TO HER RECENTLY ABOUT AN OFFICE NOT TOO LONG
19 AGO, A COUPLE OF MONTHS AGO. MICHAEL SMILEY, HIS -- IF IT'S
20 THE SAME ONE I THINK IT IS, HIS KIDS AND MY KIDS WENT TO
21 SCHOOL TOGETHER. I MEAN, I DON'T KNOW HIM REAL GOOD, BUT
22 THEY WERE FRIENDS.

23 Q. OKAY.

24 A. I MET THEM.

25 Q. ALL RIGHT. THE LAWYERS ARE GOING TO ASK YOU SOME

1 QUESTIONS NOW, AND THEN I'LL TALK TO YOU AGAIN IN A FEW
2 MINUTES.

3 A. OKAY.

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q. MS. LUESING, HOW ARE YOU?

7 A. FINE. HOW ARE YOU?

8 Q. DOING GOOD. I WAS LOOKING AT THE INFORMATION SHEET
9 THAT YOU SENT BACK TO THE CLERK'S OFFICE. I UNDERSTAND YOU
10 HAVE A BROTHER THAT'S IN LAW ENFORCEMENT?

11 A. HE USED TO BE. HE USED TO BE. HE HASN'T BEEN IN A
12 LONG TIME. HE WORKED FOR THE CITY OF WEST COLUMBIA AND FOR
13 KERSHAW COUNTY, BUT HE HASN'T BEEN IN IT FOR YEARS.

14 Q. OKAY. GREAT. LET ME ASK YOU: DOES THE FACT THAT
15 HE WAS IN LAW ENFORCEMENT -- WOULD THAT HAVE ANY EFFECT ON
16 YOUR ABILITY TO COME IN AND BE A FAIR AND IMPARTIAL JUROR AND
17 LISTEN TO BOTH SIDES IN THIS CASE?

18 A. NO. HUH-UH.

19 Q. I JUST HAD TO ASK YOU.

20 A. OH, SURE.

21 Q. AND I'LL JUST FOLLOW UP ON WHAT THE JUDGE WAS
22 ASKING, TOO. HE WAS TALKING ABOUT HOW THERE'S TWO PHASES IN
23 A CASE LIKE THIS, AND THAT FIRST PHASE IS PRETTY MUCH LIKE
24 YOU PROBABLY UNDERSTAND MOST JURIES TO BE, MOST CASES TO BE
25 LIKE, WHERE JURORS SIT HERE IN THE JURY BOX. WITNESSES SIT

1 WHERE YOU'RE SITTING. EVIDENCE IS PRESENTED TO THEM, AND
2 THEY GO BACK AND DECIDE WHETHER THE DEFENDANT IS GUILTY OR
3 NOT GUILTY. THERE'S NO TALK ABOUT PUNISHMENT AT THAT POINT
4 OR MERCY. YOU UNDERSTAND THAT.

5 A. YES, I DO.

6 Q. AND TYPICALLY IN A NORMAL CASE WHEN A DEFENDANT IS
7 CONVICTED, WE STAND THEM UP IN FRONT OF THE JUDGE AND THE
8 JUDGE LOOKS TO BOTH SIDES AND SAYS, "TELL ME SOMETHING ABOUT
9 HIM, THE GOOD AND THE BAD," THOSE AGGRAVATING AND MITIGATING
10 CIRCUMSTANCES THAT THE JUDGE WAS TALKING TO YOU ABOUT A
11 LITTLE BIT AGO. YOU UNDERSTAND THAT PART, TOO, I'M SURE.

12 A. OH, YES.

13 Q. WHAT'S DIFFERENT ABOUT THIS CASE, AS THE JUDGE WAS
14 TELLING YOU, IS THAT IN THE SECOND PHASE THE JURY DOES THE
15 SENTENCING. SO THE JURY IS THE ONE THAT HAS TO HEAR ABOUT
16 THE AGGRAVATING CIRCUMSTANCES AND THE MITIGATING
17 CIRCUMSTANCES. AND AS I UNDERSTAND YOUR RESPONSES TO THE
18 JUDGE, YOU WOULD WANT TO HEAR ALL OF THAT BEFORE YOU MADE A
19 DECISION IN THIS CASE.

20 A. YES.

21 Q. AND HEARING ALL OF THAT, YOU THINK THAT YOU COULD BE
22 CAPABLE OF RENDERING A LIFE VERDICT IF YOU THOUGHT THAT WAS
23 APPROPRIATE. IS THAT RIGHT?

24 A. YES.

25 Q. AND ALSO A DEATH VERDICT IF YOU FELT THAT WAS

1 APPROPRIATE.

2 A. YES.

3 Q. AND THERE'S ONE OTHER THING THAT'S A LITTLE UNUSUAL
4 ABOUT A CASE LIKE THIS - IS NOT ONLY DOES A JURY RENDER A
5 SENTENCE, BUT THE VERDICT FORM IS DIFFERENT THAN A NORMAL
6 VERDICT FORM. IF THE JURY GOES BACK AND SAYS LIFE IS THE
7 APPROPRIATE SENTENCE, ONLY THE FOREMAN SIGNS THAT VERDICT
8 FORM, BUT IF THEY DECIDE DEATH, ALL 12 MEMBERS OF THAT JURY
9 SIGN THAT VERDICT FORM. AND SO I WANT TO ASK YOU -- AND IT
10 SOUNDS KIND OF SILLY BUT, YOU KNOW, THERE'S SOME PEOPLE OUT
11 THERE THAT WILL TELL YOU WHAT THEY THINK, BUT THEY DON'T WANT
12 TO SIGN ANYTHING OR PUT THEIR NAME ON ANYTHING. IF YOU
13 THOUGHT DEATH WAS APPROPRIATE AFTER LISTENING TO EVERYTHING,
14 COULD YOU SIGN THAT VERDICT FORM?

15 A. AS FAR AS I KNOW I COULD.

16 Q. OKAY. DO YOU HAVE ANY DOUBTS ABOUT THAT?

17 A. I DON'T, BUT I CAN'T HONESTLY TELL YOU IF I WAS --
18 IF IT WAS SITTING RIGHT HERE IN FRONT OF ME WHETHER I WOULD
19 HAVE A DOUBT AT THAT POINT IN TIME OR NOT.

20 Q. OKAY.

21 A. I DON'T KNOW THAT ANYBODY COULD ACTUALLY SAY THAT.

22 Q. WELL, LET ME ASK YOU THIS. OBVIOUSLY THIS IS A BIG
23 DECISION THAT A JURY WOULD HAVE TO MAKE, AND IF YOU WERE ON
24 THAT JURY THIS WOULD BE A HUGE DECISION FOR YOU.

25 A. YES. ABSOLUTELY.

1 Q. DO YOU THINK IF YOU CAME TO THE CONCLUSION THAT
2 DEATH WAS THE APPROPRIATE SENTENCE AND THAT'S WHAT YOU
3 THOUGHT WAS THE APPROPRIATE SENTENCE IN THIS CASE -- DO YOU
4 THINK AT THAT POINT YOU'D BE ABLE TO SIGN IT?

5 A. I THINK I WOULD.

6 Q. OKAY. SO THE DOUBT YOU HAD ABOUT SIGNING, WOULD
7 THAT BE MORE ABOUT THE CASE ITSELF AS OPPOSED TO ACTUALLY
8 SIGNING YOUR NAME?

9 A. I WOULD NEVER SIGN IT UNLESS I FELT ABSOLUTELY SURE
10 IN MY HEART.

11 Q. OKAY.

12 A. AND IF I FELT THAT WAY, THEN I WOULD SIGN IT.

13 Q. OKAY. SO AFTER HEARING EVERYTHING, IF YOU FELT THAT
14 DEATH WAS APPROPRIATE, YOU COULD SIGN?

15 A. YES.

16 Q. OKAY. BUT, AGAIN, YOU WOULD WANT TO HEAR
17 EVERYTHING.

18 A. YES. ABSOLUTELY.

19 Q. THAT'S ALL WE CAN ASK. THANK YOU.

20 A. THANK YOU.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. GOOD MORNING, MS. LUESING.

24 A. GOOD MORNING.

25 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA

1 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN
2 THIS CASE.

3 A. YES, SIR.

4 Q. MS. LUESING, I DIDN'T QUITE HEAR YOUR RESPONSE TO
5 MR. HUBBARD'S QUESTIONS ABOUT YOUR BROTHER. HE WAS WITH THE
6 WEST COLUMBIA POLICE DEPARTMENT?

7 A. AND KERSHAW COUNTY. IT'S BEEN YEARS AGO. HE'S --
8 HE'S BEEN -- HE GOT OUT OF THAT AND WENT INTO PARAMEDICS, AND
9 HE'S BEEN DOING THAT FOR I KNOW 10 YEARS, SO...

10 Q. OKAY. SO THE FACT THAT YOUR BROTHER WAS A POLICE
11 OFFICER, YOU DON'T THINK THAT WOULD HAVE ANY EFFECT ON YOUR
12 ABILITY TO BE A FAIR JUROR.

13 A. I DON'T SEE WHY IT SHOULD.

14 Q. OKAY.

15 A. NO.

16 Q. FINE. MS. LUESING, HIS HONOR HAS EXPLAINED TO YOU
17 BASICALLY WHAT KEVIN'S CHARGED WITH IN THIS CASE, AND YOU'VE
18 HEARD THAT THERE COULD BE TWO ASPECTS TO THIS CASE OR TWO
19 PHASES OF IT. AND DURING THE FIRST PHASE THE JURY WOULD ONLY
20 BE CONCERNED WITH WHETHER THE STATE HAS PROVEN KEVIN GUILTY
21 OF HIS CHARGES BEYOND A REASONABLE DOUBT, AND THAT'S THE
22 STANDARD OF PROOF TO WHICH THE JURY WOULD HAVE TO DECIDE IT.
23 WOULD YOU HAVE ANY PROBLEM APPLYING THAT STANDARD OF PROOF?

24 A. NO.

25 Q. OKAY. AND YOU REALIZE ONLY IF THE JURY FOUND THAT

1 STANDARD OF PROOF HAD BEEN MET BY THE STATE THAT WE WOULD GET
2 TO THE SECOND PHASE.

3 A. RIGHT.

4 Q. YOU UNDERSTAND IT'S NOT A FOREGONE CONCLUSION---

5 A. NO.

6 Q. ---WE'RE GOING TO BE THERE.

7 A. ABSOLUTELY.

8 Q. OKAY. MS. LUESING, DO YOU THINK IF YOU WERE ON THE
9 JURY YOU WOULD HAVE ANY PROBLEM PASSING ON THE CREDIBILITY OR
10 THE BELIEVABILITY OF THE VARIOUS WITNESSES THAT MAY TESTIFY?
11 THERE WOULD BE LAY WITNESSES, EXPERTS, POLICE OFFICERS. DO
12 YOU THINK YOU'D HAVE ANY PROBLEM JUDGING THE CREDIBILITY OR
13 THE BELIEVABILITY OF THE WITNESSES?

14 A. I DON'T THINK THAT I WOULD.

15 Q. OKAY. DO YOU THINK YOU'D HAVE ANY PROBLEM LISTENING
16 TO AND APPLYING THE LEGAL PRINCIPLES THAT JUDGE FEW WOULD
17 GIVE YOU TO THE FACTS AS YOU FIND THEM IF YOU WERE ON THE
18 JURY?

19 A. NO. HUH-UH.

20 Q. OKAY. YOU WERE GIVEN THE FORM THAT I THINK YOU HAVE
21 IN FRONT OF YOU THERE WITH THE THREE TYPES OF JURORS, AND YOU
22 INDICATED TO JUDGE FEW THAT YOU THOUGHT YOU WERE THE THIRD
23 TYPE OF JUROR. IS THAT RIGHT?

24 A. YES.

25 Q. DID YOU HAVE ANY PROBLEM COMING TO THAT CONCLUSION?

1 A. NO.

2 Q. DID YOU HAVE TO CONSIDER ONE OR TWO?

3 A. NO.

4 Q. BEFORE GETTING TO THREE?

5 A. NO.

6 Q. OKAY. CAN YOU TELL ME WHY YOU THINK YOU'RE A TYPE
7 THREE JUROR AS INDICATED ON THAT FORM?

8 A. WHY I THINK I'M A TYPE THREE JUROR?

9 Q. YES, MA'AM, IF YOU COULD JUST EXPLAIN IT TO ME
10 BRIEFLY.

11 A. WELL, BECAUSE I DO BELIEVE IN THE DEATH PENALTY,
12 ABSOLUTELY. I DON'T THINK IT'S USED ENOUGH, IN ALL HONESTY,
13 BUT I BELIEVE IT SHOULD BE USED ONLY WHEN ABSOLUTELY PROVEN
14 THAT IT SHOULD APPLY FOR -- I DON'T KNOW EXACTLY HOW TO
15 EXPLAIN IT, BUT I JUST -- IF THERE IS JUST A HUNDRED PERCENT
16 PROOF THAT THIS PERSON, WHOEVER FOR WHATEVER CRIME -- AND
17 THIS IS A HORRIBLE CRIME, MURDER, INTENTIONALLY, I MEAN, EVEN
18 FOR RAPE AND CHILD MOLESTATION, I DON'T THINK THAT PEOPLE
19 SHOULD BE LIVING THE REST OF THEIR LIVES OUT IN PRISON IN A
20 LIFE SENTENCE SO MUCH SO IF IT'S A HEINOUS CRIME, IF IT'S A
21 REALLY BAD THING. AND IF IT'S UNINTENTIONAL OR IF -- IT
22 DEPENDS ON THE CIRCUMSTANCES BECAUSE THERE ARE CIRCUMSTANCES
23 THAT I CERTAINLY WOULD NEVER THINK THAT SOMEBODY SHOULD BE
24 GIVEN THE DEATH PENALTY.

25 Q. UH-HUH.

1 A. I THINK THEY SHOULD -- SHOULD BE...

2 Q. OKAY. WELL, NOW, THE JUDGE TOLD YOU WHEN -- JUST A
3 FEW MINUTES AGO THAT MURDER IS THE INTENTIONAL KILLING OF
4 ANOTHER PERSON WITH MALICE AFORETHOUGHT.

5 A. UH-HUH.

6 Q. SO IF KEVIN MERCER WAS FOUND GUILTY IN THIS CASE,
7 THE JURY WOULD HAVE CONCLUDED THAT IT WAS AN INTENTIONAL
8 KILLING. NOW, GIVEN THAT POSTURE THAT THE JURY WOULD HAVE
9 FOUND BEYOND A REASONABLE DOUBT THAT IT WAS AN INTENTIONAL
10 KILLING, WOULD THAT CHANGE YOUR OPINION AS TO WHETHER YOU'RE
11 A TYPE THREE JUROR OR A TYPE ONE JUROR?

12 MR. MYERS: THAT'S AN INCOMPLETE QUESTION BECAUSE
13 HE'S NOT GIVING HER THE CHANCE TO CONSIDER THE SECOND PART OF
14 THE TRIAL IN THE AGGRAVATION AND MITIGATION.

15 THE COURT: OVERRULED.

16 BY MR. LITTLEJOHN:

17 Q. GO AHEAD.

18 A. I THINK THAT FROM WHAT I READ HERE THAT ONCE A CRIME
19 OF MURDER HAS BEEN PROVEN BY THE STATE AND THE JUROR IS
20 CONSIDERING PUNISHMENT -- FEELS THAT HE OR SHE IS REQUIRED TO
21 GIVE THE DEATH PENALTY IN EACH AND EVERY CASE, AND ONCE A
22 MURDER HAS BEEN COMMITTED, THE DEATH PENALTY IS THE MOST
23 APPROPRIATE PUNISHMENT NO MATTER WHAT THE CIRCUMSTANCES.

24 Q. UH-HUH.

25 A. THE WAY I READ THAT IS THAT MURDER FOR ANY REASON --

1 THAT THIS PERSON FEELS LIKE THE DEATH PENALTY IS APPROPRIATE.

2 Q. UH-HUH.

3 A. IS THAT RIGHT?

4 Q. WELL, I GUESS WHAT I WAS TRYING TO EMPHASIZE TO YOU:
5 THAT MURDER IS AN INTENTIONAL KILLING, AND BEFORE THE JURY
6 COULD EVEN GET TO THE SECOND PHASE THEY WOULD HAVE FOUND THAT
7 THE MURDER WAS AN INTENTIONAL KILLING.

8 A. IF MURDER -- I GUESS IF MURDER BEING AN INTENTIONAL
9 KILLING---

10 Q. YES, MA'AM.

11 A. ---SOMEONE PURPOSEFULLY...

12 Q. KILLED ANOTHER PERSON.

13 A. KILLED ANOTHER PERSON.

14 Q. RIGHT.

15 A. NOT IN SELF-DEFENSE.

16 Q. UH-HUH.

17 A. THEN, YEAH, I GUESS.

18 Q. YOU'D BE A JUROR NUMBER ONE?

19 A. I GUESS I'D BE A JUROR NUMBER ONE.

20 Q. SO YOU FEEL---

21 A. I WOULD HAVE TO HEAR EVERYTHING, EVERYTHING, BEFORE
22 I WOULD KNOW, BUT, YEAH, I GUESS I WOULD BE THEN.

23 Q. ALL RIGHT. SO---

24 A. I'M SORRY. I APOLOGIZE. MAYBE I READ IT WRONG.

25 THE COURT: LET ME INTERRUPT YOU IF YOU DON'T MIND.

1 MR. LITTLEJOHN: ALL RIGHT, SIR.

2 THE COURT: AND ASK YOU TO STEP OUT INTO THE HALL
3 FOR JUST A SECOND, PLEASE, AND WE'LL HAVE YOU RIGHT BACK IN.

4 THE WITNESS: OKAY. SURE.

5 (JUROR LUESING LEAVES THE COURTROOM.)

6 MR. LITTLEJOHN: EXCUSE ME, JUDGE. COULD THE
7 DEFENDANT -- I GUESS---

8 MS. KIMBROUGH: HE NEEDS A BATHROOM BREAK.

9 MR. LITTLEJOHN: HE NEEDED A BREAK VERY BADLY. I
10 WAS GOING TO...

11 (MR. MERCER LEAVES THE COURTROOM. PAUSE IN
12 PROCEEDINGS.)

13 THE COURT: DO THEY KNOW TO BRING HIM RIGHT BACK
14 OUT?

15 POLICE OFFICER: YES, SIR. HE WAS HAVING SOME
16 STOMACH ISSUES.

17 THE COURT: OKAY. ALL RIGHT. WE'RE GOING TO TAKE A
18 LITTLE BREAK UNTIL MR. MERCER REGAINS CONTROL OF HIMSELF AND
19 CAN BE BACK INTO THE COURTROOM.

20 THE CLERK: DO YOU WANT THAT JUROR TAKEN BACK TO THE
21 JURY ROOM OR LEFT OUT IN THE HALLWAY? SHE CAN'T GO BACK TO
22 THE JURY ROOM.

23 THE COURT: WE'LL JUST LET HER STAY RIGHT THERE.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: BE SEATED. TO YOUR KNOWLEDGE, IS DONNIE

1 ON HIS WAY BACK?

2 MR. HUBBARD: YOUR HONOR, I HAVE NO IDEA. I IMAGINE
3 HE IS. I THINK HE WENT TO THE REST ROOM, TOO.

4 THE COURT: ALL RIGHT. THE REASON THAT I TOOK THE
5 BREAK IS BECAUSE JUST IN GENERAL THE WAY THAT WE WANT THIS TO
6 GO WITH EACH JUROR, OF COURSE, IS WE WANT THEM TO UNDERSTAND
7 THE PROCESS, UNDERSTAND THE GUILT AND THE PENALTY PHASE, AND
8 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES BEFORE THEY TELL US WHETHER OR NOT -- WHAT TYPE
10 OF JUROR THEY'RE GOING TO BE. SO WE TRY TO STRUCTURE IT IN
11 THAT WAY. THERE ARE MANY OPPORTUNITIES DURING THE COURSE OF
12 ALL THIS, PARTICULARLY WITH FOLLOW-UP QUESTIONS, FOR THERE TO
13 DEVELOP SOME TYPE OF CONFUSION IN THE MIND OF THE JUROR ABOUT
14 THE QUESTIONS THAT WE'RE ASKING THEM AND -- AND THE STRUCTURE
15 OF HOW THE CASE WILL PROCEED.

16 NOW, THE SOLICITOR OBJECTS TO THERE BEING AN
17 INCOMPLETE QUESTION, AND I UNDERSTAND THE REASON FOR THE
18 OBJECTION. IT IS THAT IT HAS THE POTENTIAL TO CREATE
19 CONFUSION LIKE I THINK MAY HAVE JUST OCCURRED WITH THIS
20 JUROR, MS. LUESING, BUT I DON'T THINK THAT IT IS NECESSARY
21 THAT THERE BE A PREDICATE TO EVERY FOLLOW-UP QUESTION THAT
22 INCLUDES A RECITAL OF THE ENTIRE STRUCTURE OF HOW THIS CASE
23 IS TO BE HANDLED. SO THAT'S WHY I HAVE OVERRULED THOSE
24 OBJECTIONS AND WILL CONTINUE TO.

25 BUT, NEVERTHELESS, WHEN SOME CONFUSION MIGHT HAVE

1 ARISEN, SUCH AS I BELIEVE MIGHT HAVE OCCURRED NOW, I THINK IT
2 WOULD BE MY RESPONSIBILITY TO GO BACK AND TO GO BACK THROUGH
3 THE STRUCTURE OF THE THING WITH HER AND MAKE SURE THAT SHE
4 UNDERSTANDS THAT THERE WILL BE EVIDENCE OFFERED ON MITIGATING
5 AND AGGRAVATING CIRCUMSTANCES AND ASK HER AGAIN WHETHER OR
6 NOT SHE CAN TAKE ALL THAT INTO ACCOUNT. IF IT TURNS OUT THAT
7 SHE'S GOING TO BE A TYPE ONE JUROR IN -- WHENEVER THERE'S A
8 CONVICTION FOR MURDER, THEN OBVIOUSLY SHE WON'T BE QUALIFIED,
9 BUT -- BUT I THINK THAT LEAVING THE RECORD AS IT IS RIGHT NOW
10 WE DON'T KNOW THAT.

11 YOU MIGHT OBJECT TO THAT. YOU MIGHT RATHER GO AHEAD
12 AND HAVE YOUR OPPORTUNITY TO COMPLETE YOUR QUESTIONING, AND
13 IF YOU WANT THAT, I'LL BE GLAD TO AFFORD IT TO YOU NOW AND I
14 WON'T SAY ANYTHING AND I'LL LET YOU CONTINUE WITH YOUR
15 QUESTIONING. BUT WHAT I THINK HAS OCCURRED POSSIBLY AT LEAST
16 IS THAT SHE HAS GOTTEN CONFUSED, AND I WANT TO SEE IF I CAN
17 PUT THE THING BACK ON THE RIGHT TRACK BEFORE WE MOVE FORWARD.
18 SO WHAT DO YOU SAY, MR. LITTLEJOHN?

19 MR. LITTLEJOHN: YOUR HONOR, QUITE FRANKLY I THINK
20 THE JUROR IS A -- WHERE THERE'S A MURDER INVOLVED, AN
21 INTENTIONAL KILLING, SHE'S A TYPE ONE JUROR, AND I THINK WHAT
22 SHE WAS -- SHE WAS---

23 THE COURT: WELL, THAT MAY BE TRUE. THAT MAY BE
24 TRUE, BUT WE'RE NOT FINISHED WITH THE INQUIRY. THE QUESTION
25 BEFORE US NOW IS: ARE YOU GOING TO CONTINUE ASKING QUESTIONS

1 OR AM I?

2 MR. LITTLEJOHN: I HAVE NO PROBLEM WITH THE COURT
3 CONTINUING, BUT THE REASON I SAY THAT IS TO EXPRESS OUR
4 CONCERNS ABOUT WHAT THE COURT OUGHT TO MAKE INQUIRY ABOUT.

5 THE COURT: I'M GOING TO TRY VERY CAREFULLY NOT TO
6 SUGGEST TO HER THAT SHE HAS GIVEN AN INCORRECT ANSWER OR TO
7 TRY TO CHANGE HER OPINION OR ANYTHING LIKE THAT.

8 MR. LITTLEJOHN: I UNDERSTAND.

9 THE COURT: I JUST WANT TO TELL HER THAT I WANT TO
10 TRY TO MAKE SURE THAT SHE'S NOT CONFUSED AND THAT SHE
11 UNDERSTANDS THE STRUCTURE OF HOW THE CASE WOULD GO AND THAT
12 THERE WOULD BE A LOT OF EVIDENCE OFFERED ON THE MITIGATING
13 SIDE AND THE AGGRAVATING SIDE AFTER THE -- AFTER ANY
14 CONVICTION FOR MURDER AND -- AND GO BACK THEN TO THE
15 QUESTION: WOULD SHE BE WILLING TO CONSIDER BOTH OPTIONS OR
16 IS SHE AUTOMATICALLY GOING TO IMPOSE THE DEATH PENALTY?

17 MR. LITTLEJOHN: BUT I WOULD ASK THE COURT TO
18 RE-EMPHASIZE THE FACT THAT MURDER IS AN INTENTIONAL KILLING
19 WITHOUT LEGAL JUSTIFICATION, AND I THINK THAT'S---

20 THE COURT: OKAY.

21 MR. LITTLEJOHN: SHE WAS SAYING ANYTHING ELSE SHE
22 COULD CONSIDER---

23 THE COURT: OKAY.

24 MR. LITTLEJOHN: ---A LIFE SENTENCE, BUT I THINK
25 WHEN IT CAME TO THAT, THAT'S WHAT SHE WAS -- THAT'S WHAT SHE

1 WAS---

2 THE COURT: ALL RIGHT. I'LL DO THAT.

3 MR. LITTLEJOHN: ---STUCK WITH. WRITTEN IN STONE.

4 THE COURT: ANY OBJECTION FROM THE STATE OR FROM THE
5 DEFENSE?

6 MR. MYERS: NO, SIR.

7 THE COURT: OKAY. BRING HER BACK IN, PLEASE.

8 (JUROR LUESING IS BROUGHT INTO THE COURTROOM.)

9 RE-EXAMINATION BY THE COURT

10 Q. MS. LUESING, AT THIS POINT I'M GOING TO TALK TO YOU
11 JUST A LITTLE BIT MORE. OKAY?

12 A. OKAY.

13 Q. NOW -- AND IN DOING SO, I CERTAINLY AM NOT TRYING TO
14 SUGGEST THAT YOU HAVE SAID ANYTHING WRONG OR THAT YOU HAVE
15 DONE ANYTHING THAT YOU SHOULDN'T HAVE DONE OR SAID ANYTHING
16 YOU SHOULDN'T HAVE DONE. I JUST WANT TO EXPLORE A FEW THINGS
17 WITH YOU. NOW, I WANT TO GO BACK AND EMPHASIZE TO YOU AGAIN
18 THAT WHEN WE TALK ABOUT THE SECOND PHASE OF THE TRIAL WE
19 WOULD ONLY GET TO THAT SECOND PHASE IF THERE HAS BEEN A
20 CONVICTION FOR MURDER, IF THE JURY HAS ALREADY DECIDED THAT
21 THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE
22 DEFENDANT IS GUILTY OF MURDER. AND I WANT TO REMIND YOU THAT
23 THE DEFINITION OF MURDER NECESSARILY IS THAT IT IS AN
24 INTENTIONAL KILLING, AN INTENTIONAL AND AN UNLAWFUL KILLING
25 OF ANOTHER PERSON, WITH MALICE AFORETHOUGHT. SO THEN ONCE --

1 UP UNTIL THAT POINT THOUGH NOW THE JURY WOULD NOT HAVE
2 CONSIDERED ANYTHING RELATED TO THE PENALTY THAT SHOULD BE
3 IMPOSED.

4 A. UH-HUH.

5 Q. IF AND WHEN THE JURY DECIDES THAT THE DEFENDANT IS
6 GUILTY OF MURDER, WE WOULD ENTER A SECOND PHASE. THERE WOULD
7 BE EVIDENCE OFFERED. THERE WOULD BE MORE WITNESSES WHO WOULD
8 COME UP TO THE WITNESS STAND. SOME OF THEM WOULD OFFER
9 EVIDENCE THAT MIGHT TEND TO AGGRAVATE THE CRIME, MAKE IT SEEM
10 WORSE. SOME OF THE WITNESSES WOULD OFFER EVIDENCE THAT WOULD
11 MITIGATE THE CRIME, MAKE IT SEEM NOT SO BAD. AND THEN AFTER
12 ALL THAT HAS BEEN DONE, IT WOULD BE THE JURY'S RESPONSIBILITY
13 TO CONSIDER BOTH OPTIONS, LIFE SENTENCE OR THE DEATH PENALTY.
14 AND THE QUESTION THAT -- THAT I WANT TO ASK YOU IS: IF YOU
15 WERE ON THE JURY AND AFTER YOU HAVE FOUND THE DEFENDANT
16 GUILTY OF MURDER AND AFTER YOU HAVE LISTENED TO ALL OF THE
17 EVIDENCE OF AGGRAVATING AND MITIGATING EVIDENCE, WOULD YOU BE
18 WILLING TO CONSIDER IMPOSING A LIFE SENTENCE IF YOU FELT THAT
19 IT WAS APPROPRIATE OR WOULD YOU ALWAYS IMPOSE THE DEATH
20 PENALTY?

21 A. I THINK -- I WAS THINKING ABOUT THIS AND I THINK
22 THAT THE WAY I WAS READING THIS EARLIER, OVERALL IT WASN'T
23 PERTAINING TO A SPECIFIC TYPE OF CASE. IN OTHER WORDS, IF --
24 IF -- A LOT OF PEOPLE DON'T BELIEVE IN MERCY KILLINGS. OKAY?
25 AND SOME PEOPLE CALL THAT MURDER, AND PEOPLE HAVE BEEN TRIED

1 FOR MURDER FOR SOMETHING LIKE THAT.. IF I WAS ON A JURY AND
2 IT WAS PROVEN THIS PERSON DID MURDER THIS PERSON, QUOTE
3 MURDER, I DON'T FEEL THAT THAT'S THE MURDER THAT YOU'RE
4 TALKING ABOUT. I WOULD NEVER -- AT THAT POINT IN TIME I
5 WOULD NEVER IMPOSE THE DEATH PENALTY. IT WOULD BE A LIFE IN
6 PRISON; I CAN JUST TELL YOU THAT. BECAUSE I DO BELIEVE IN
7 MERCY KILLINGS. AND -- BUT I THINK UNDER THE TERM OF MURDER
8 THAT I'VE BEEN THINKING ABOUT SINCE YOU ASKED ME EARLIER, IN
9 A TYPE OF CASE AS THIS IS, SOMEONE WHO MURDERS SOMEONE FOR
10 THEIR OWN PURPOSE OR GAIN AND NOT FOR ANY OTHER REASON, COULD
11 I -- AND THEY WERE PROVEN WITHOUT A DOUBT GUILTY IN THE PHASE
12 OF THE -- OF THE PUNISHMENT, COULD I GIVE THEM A LIFE
13 SENTENCE? MORE THAN LIKELY NOT. I MORE THAN LIKELY WOULD
14 NOT.

15 Q. WELL, WHEN YOU SAY MORE THAN LIKELY NOT, NOW DOES
16 THAT MEAN THAT YOU WOULD CONSIDER GIVING THE PERSON A LIFE
17 SENTENCE?

18 A. I WISH I COULD ANSWER A YES OR A NO. MORE THAN
19 LIKELY I WOULD NOT EVEN CONSIDER IT. IF IT WAS SO
20 AGGRAVATED, I WOULDN'T, BUT I CAN'T TELL YOU THAT AT THAT
21 VERY POINT IN TIME THAT I WOULD NOT CHANGE MY MIND AND THINK
22 ABOUT IT.

23 Q. OKAY.

24 A. I HATE TO BE SO VAGUE; I REALLY DO.

25 Q. OKAY.

1 A. BUT I HAVE TO BE HONEST WITH YOU ABOUT IT.

2 Q. THANK YOU VERY MUCH. I'M GOING TO ASK YOU TO STEP
3 BACK OUT INTO THE HALL FOR A SECOND, PLEASE.

4 A. OKAY.

5 (JUROR LUESING LEAVES THE COURTROOM.)

6 THE COURT: I DON'T THINK SHE'S QUALIFIED.

7 MR. LITTLEJOHN: WE AGREE WITH THAT, YOUR HONOR.

8 MR. MYERS: NO OBJECTION.

9 THE COURT: BRING HER IN.

10 (JUROR LUESING IS BROUGHT INTO THE COURTROOM.)

11 THE COURT: MS. LUESING, WE APPRECIATE YOUR TALKING
12 TO US AND SPENDING THIS TIME WITH US. WE WILL NOT BE NEEDING
13 YOU AS A JUROR IN THIS CASE, SO YOUR SERVICE IS OVER AND
14 YOU'RE FREE TO GO.

15 THE WITNESS: THANK YOU VERY MUCH. I APPRECIATE IT.

16 THE COURT: THANK YOU.

17 (JUROR LUESING LEAVES THE COURTROOM. JUROR ANGELA
18 MOAK IS BROUGHT INTO THE COURTROOM.)

19 ANGELA MOAK, 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. MS. MOAK?

24 A. YES, SIR.

25 Q. DID I PRONOUNCE THAT CORRECTLY?

1 A. YES, SIR.

2 Q. YOU RECALL THAT ON MONDAY YOU WERE PUT UNDER OATH,
3 AND I WANT TO REMIND YOU THAT YOU'RE STILL UNDER OATH TODAY.
4 DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. NOW, SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED TO
7 ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT
8 THE CASE?

9 A. NO, SIR.

10 Q. OKAY. I'M GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS
11 OR I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN THE LAWYERS
12 ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS.
13 WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR PRIVATE LIFE, BUT
14 WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE NO RIGHT OR
15 WRONG ANSWERS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND
16 THEN TO BE OPEN AND HONEST WITH US AND TELL US WHAT YOU THINK
17 AND HOW YOU FEEL ABOUT THESE ISSUES THAT WE'LL BE TALKING
18 ABOUT.

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 THEN SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED
22 ABOUT THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT
23 THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
24 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

25 A. YES, SIR.

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, 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 WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
8 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
9 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

10 A. YES, SIR.

11 Q. YOU COULD?

12 A. OH. FIND HIM GUILTY OR NOT GUILTY?

13 Q. GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT THE
14 STATE HAS MET ITS BURDEN OF PROOF. IN OTHER WORDS, IF YOU
15 FIND -- IF YOU FEEL THAT THE STATE HAS MET ITS BURDEN OF
16 PROOF, COULD YOU FIND THE DEFENDANT GUILTY?

17 A. YES, SIR.

18 Q. AND IF YOU FEEL THE STATE HAS NOT MET ITS BURDEN OF
19 PROOF, COULD YOU FIND THE DEFENDANT NOT GUILTY?

20 A. YES, SIR.

21 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
22 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE INTO
23 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND THERE
24 ARE SEVERAL THINGS THAT WILL COME UP IN THAT -- IN THAT PHASE
25 THAT I WANT TO TALK TO YOU ABOUT NOW. AGGRAVATING

1 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
2 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
3 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
4 INCREASE THE ENORMITY OF THE CRIME, AND THEY ADD TO THE
5 INJURY RESULTING FROM THE CRIME.

6 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
7 FACTS OR INCIDENTS OR DETAILS THAT THE STATE HAS DECLARED TO
8 LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO
9 EXTENUATE OR REDUCE THE DEGREE OF MORAL CULPABILITY OR
10 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS
11 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

12 A. YES, SIR.

13 Q. NOW, WHEN YOU CAME IN THIS MORNING, YOU WERE GIVEN A
14 COPY OF THIS SHEET THAT HAS THREE DIFFERENT TYPES OF JURORS
15 ON IT. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
16 JURORS?

17 A. YES, SIR.

18 Q. WHICH OF THOSE THREE TYPES OF JURORS WOULD YOU BE?

19 A. PROBABLY THE THIRD TYPE.

20 Q. OKAY. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND
21 IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER -- AND I
22 WANT TO REMIND YOU THAT OR I WANT TO TELL YOU THAT THE
23 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
24 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. IT WOULD BE THE
25 JURY WHO WOULD DECIDE THE PENALTY FOR THAT MURDER, AND THE

1 JURY WOULD HAVE TWO OPTIONS AS TO WHAT THE PENALTY COULD BE.
2 THE FIRST WOULD BE A LIFE SENTENCE WITHOUT THE POSSIBILITY OF
3 PAROLE, AND THE SECOND OPTION WOULD BE THE DEATH PENALTY.
4 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
5 FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT
6 TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE
7 SENTENCE?

8 A. YES, SIR.

9 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
10 DEATH PENALTY?

11 A. YES, SIR.

12 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
13 JURY IS SEQUESTERED, THEN YOU WOULD BE PUT UP IN A HOTEL FOR
14 FIVE OR SIX DAYS. WE WOULD PROVIDE YOU WITH ALL YOUR MEALS,
15 AND YOU WOULD NOT BE ALLOWED TO GO HOME DURING THAT TIME.
16 WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

17 A. YES, SIR.

18 Q. TELL ME HOW THAT WOULD BE.

19 A. I HAVE A CHILD WHO JUST TURNED 10 MONTHS OLD TODAY,
20 AND I DON'T KNOW IF I COULD BE WITHOUT HIM---

21 Q. OKAY.

22 A. ---FOR MORE THAN A COUPLE OF NIGHTS.

23 Q. ALL RIGHT. NOW, ARE YOU MARRIED?

24 A. YES, SIR.

25 Q. AND SO YOUR HUSBAND HELPS YOU, BUT BECAUSE OF THE

1 AGE OF THE CHILD YOU'RE CONCERNED THAT HE -- IS IT A BOY OR
2 GIRL?

3 A. IT'S A BOY.

4 Q. IT'S A BOY? YOU'RE CONCERNED THAT HE NEEDS HIS MAMA
5 WITH HIM, AND HIS MAMA NEEDS HIM, TOO?

6 A. YES, SIR.

7 Q. OKAY. I UNDERSTAND THAT. ALL RIGHT. WE'RE NOT
8 GOING TO TRY TO INTERFERE WITH THAT. IF YOU TELL ME THAT THE
9 FACT THAT YOUR CHILD IS SO YOUNG WOULD PROHIBIT YOU FROM
10 PARTICIPATING AS A JUROR IF THE JURY IS GOING TO BE
11 SEQUESTERED, THEN I'LL ACCEPT THAT. IS THAT -- IS THAT TRUE?

12 A. YES, SIR.

13 Q. OKAY. BUT IF THE JURY IS NOT SEQUESTERED AND IF YOU
14 WERE ALLOWED TO GO HOME EACH NIGHT, EVEN IF IT WERE A LITTLE
15 BIT LATER THAN NORMAL, SAY 6 OR 7:00, WOULD YOU BE ABLE TO
16 HANDLE THAT?

17 A. YES, SIR, BECAUSE HE DOESN'T GO TO BED UNTIL A
18 LITTLE LATER, SO I COULD -- I WOULD GET TO SEE HIM, AND I
19 KNOW HE WOULD BE OKAY.

20 Q. OKAY. ALL RIGHT. NOW, SO I'M GOING TO SAY THAT IF
21 I DECIDE TO SEQUESTER THE JURY, I'M NOT GOING TO REQUIRE YOU
22 TO SERVE. IF I DECIDE NOT TO SEQUESTER THE JURY, THEN YOU
23 WILL BE IN THE JURY -- YOU MIGHT BE IN THE JURY PANEL THAT
24 WOULD MAKE YOU ELIGIBLE TO SERVE AS A JUROR. BUT DID YOU GO
25 OVER THAT WITNESS LIST THAT I SENT BACK THERE?

1 A. YES, SIR.

2 Q. DID YOU READ EVERY NAME ON THAT LIST?

3 A. YES, SIR..

4 Q. DO YOU KNOW OR ARE YOU FAMILIAR WITH -- I'M SORRY.

5 DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME APPEARS
6 ON THAT LIST?

7 A. NO, SIR, I DIDN'T RECALL ANY OF THE NAMES.

8 Q. ALL RIGHT. I'M GOING TO LET THE LAWYERS ASK YOU
9 SOME FOLLOW-UP QUESTIONS NOW, MA'AM.

10 A. OKAY.

11 DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q. MS. MOAK, HOW ARE YOU?

14 A. GOOD. HOW ABOUT YOU?

15 Q. DOING FINE. IS THIS YOUR FIRST TIME IN A COURTROOM?

16 A. YES, SIR.

17 Q. I DID SEE YOU'VE NEVER SERVED AS A JUROR; RIGHT?

18 A. NO, SIR.

19 Q. BUT DID I SEE SOMETHING ON YOUR JUROR FORM WHERE YOU
20 SAID YOU HAD TESTIFIED BEFORE?

21 A. YES, SIR. I DON'T -- I GUESS THAT'S WHAT YOU WOULD
22 CALL IT. I WAS RAPED WHEN I WAS 15, AND MY STATEMENT THEY --
23 BEING MY AGE, THEY WOULDN'T ALLOW -- THEY DIDN'T WANT ME TO
24 BE IN THE COURTROOM.

25 Q. OKAY.

1 A. AND SO THEY JUST READ MY STATEMENT---

2 Q. I SEE.

3 A. ---TO THE PEOPLE---

4 Q. OKAY.

5 A. ---THERE. SO THAT'S WHY I PUT THAT; I WASN'T FOR
6 SURE.

7 Q. I DON'T WANT TO PRY INTO ANY OF THAT, BUT I DO NEED
8 TO ASK: IS THERE ANYTHING ABOUT THE PROCESS YOU WENT THROUGH
9 OR ABOUT WHAT HAPPENED THAT WOULD PREVENT YOU FROM BEING A
10 FAIR AND IMPARTIAL JUROR?

11 A. NO, SIR.

12 Q. YOU COULD LISTEN TO BOTH SIDES IN THIS CASE?

13 A. YES, SIR.

14 Q. AND CONSIDER EVERYTHING THAT COMES UP IN THE
15 COURTROOM AND ALL THE TESTIMONY, ALL THE EVIDENCE? YOU WOULD
16 CONSIDER ALL OF THAT?

17 A. YES, SIR.

18 THE COURT: MR. HUBBARD, LET ME ASK HER A COUPLE OF
19 QUESTIONS AT THIS POINT.

20 MR. HUBBARD: YES, SIR, YOUR HONOR.

21 RE-EXAMINATION BY THE COURT

22 Q. MA'AM, JUST LIKE MR. HUBBARD SAID, WE DON'T REALLY
23 WANT TO HAVE TO MAKE YOU TALK ABOUT ALL THAT, BUT WE
24 UNDERSTAND THAT MUST HAVE BEEN A VERY DIFFICULT EXPERIENCE TO
25 GO THROUGH, AND I JUST WANT TO ASK YOU JUST A FEW QUESTIONS.

1 DID THAT HAPPEN HERE IN LEXINGTON?

2 A. IT WAS SALUDA COUNTY.

3 Q. SALUDA COUNTY? OKAY. WAS THE CASE PROSECUTED?

4 A. HE PLED GUILTY.

5 Q. HE PLED? OKAY. AND I GUESS THE MAIN QUESTION IS:
6 YOUR HAVING GONE THROUGH THAT EXPERIENCE, DO YOU THINK THAT
7 YOUR HAVING GONE THROUGH THAT EXPERIENCE WOULD INTERFERE IN
8 ANY WAY WITH EITHER YOUR WILLINGNESS OR YOUR ABILITY TO BE A
9 FAIR AND IMPARTIAL JUROR IN THIS CASE?

10 A. I DON'T THINK IN THIS CASE BECAUSE IT'S TWO
11 DIFFERENT SITUATIONS.

12 Q. OKAY. ALL RIGHT. IS THERE ANYTHING ABOUT THAT
13 INCIDENT, ABOUT THAT SITUATION, EITHER WHAT HAPPENED OR THE
14 LEGAL PROCESS THAT FOLLOWED THAT, ANYTHING ABOUT ANY OF THAT
15 THAT YOU FEEL YOU OUGHT TO TELL US OR YOU WANT TO TELL US?

16 A. THE ONLY THING WAS THE WAY HE WAS -- HIS PUNISHMENT,
17 I GUESS YOU WOULD CALL IT.

18 Q. AND WHAT?

19 A. HE ONLY -- HE GOT SIX MONTHS HOUSE ARREST.

20 Q. SIX MONTHS HOUSE ARREST?

21 A. (WITNESS NODDED HEAD UP AND DOWN.)

22 Q. OKAY. AND YOU FELT THAT WAS INADEQUATE?

23 A. YES, SIR, GIVEN OTHER CIRCUMSTANCES TO WHERE I WAS
24 NOT THE ONLY ONE, AND I KNOW THAT'S NOT PART OF -- THAT
25 WASN'T PART OF MY TRIAL BUT... AND THEN THEY TRIED TO USE

1 INSANITY TO LESS -- THEY USED THAT TO LESSEN THE SENTENCE.

2 Q. UH-HUH. OKAY. THIS IS WHAT I WANT YOU TO TELL ME.

3 I'M SORRY YOU HAVE TO TALK ABOUT THIS.

4 A. THAT'S OKAY.

5 Q. I APOLOGIZE BUT... WELL, DO YOU FEEL THAT YOU COULD

6 SET ALL THAT ASIDE AND THEN -- AND PARTICIPATE IN THIS CASE

7 OPENLY AND IMPARTIALLY?

8 A. YES, SIR.

9 Q. YOU THINK YOU COULD? OKAY. DO YOU WANT TO TAKE A
10 LITTLE BREAK?

11 A. (WITNESS NODDED HEAD UP AND DOWN.)

12 Q. OKAY. LET'S TAKE A SHORT BREAK. THEY'LL TAKE YOU
13 BACK TO USE THE REST ROOM.

14 A. I'M SORRY.

15 (JUROR MOAK LEAVES THE COURTROOM.)

16 THE COURT: WELL, I CERTAINLY -- I DON'T KNOW
17 WHETHER I HANDLED THAT RIGHT OR NOT, BUT I COULD KIND OF SEE
18 THAT COMING AND I DIDN'T THINK EITHER ONE OF Y'ALL WANTED TO
19 BE THE PERSON TO ELICIT THAT RESPONSE. AND SO I FELT IT
20 WOULD PROBABLY BE BETTER IF IT WAS ME. SO IS THERE ANY
21 OBJECTION TO WHAT I DID?

22 MR. LITTLEJOHN: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. WELL, I WOULD SAY THAT WE
24 WILL JUST WAIT UNTIL SHE'S READY TO COME BACK IN, AND THEN
25 WE'LL ALLOW THE STATE TO CONTINUE WITH THEIR QUESTIONING. I

1 DIDN'T -- IS THERE ANYTHING ELSE Y'ALL WANT ME TO ASK HER
2 ABOUT THAT OR ANYTHING ELSE?

3 MR. LITTLEJOHN: JUDGE, I'M NOT SURE IF I HEARD HER
4 CORRECTLY, BUT DID SHE INDICATE THAT THE DEFENDANT IN HER
5 CASE USED INSANITY TO GET A REDUCED SENTENCE? IS THAT WHAT
6 SHE SAID?

7 THE COURT: SHE DID. NOW, YOU KNOW---

8 MR. LITTLEJOHN: I'M CONCERNED ABOUT THAT.

9 THE COURT: THAT'S PROBABLY -- THAT'S PROBABLY A --
10 A LAY PERSON'S IMPRESSION OF WHAT HAPPENED, AND PROBABLY
11 DURING THE NEGOTIATIONS OR DURING THE SENTENCING HEARING
12 THERE WAS DISCUSSION ABOUT THAT. IT DOESN'T SOUND TO ME LIKE
13 IT WAS A FORMAL INSANITY PLEA, SO -- SO THAT'S -- THAT'S --
14 THAT WAS MY IMPRESSION, BUT THAT IS WHAT SHE SAID.

15 MR. LITTLEJOHN: MY CONCERN IS NOT ACTUALLY WHAT
16 HAPPENED BUT HER IMPRESSION OF WHAT HAPPENED AND HOW THAT
17 COULD ENTER INTO DELIBERATIONS IN THIS CASE WHERE THERE MAY
18 BE SOME -- NOT INSANITY ISSUES BUT---

19 THE COURT: WOULD YOU LIKE FOR ME TO ASK ABOUT THAT?

20 MR. LITTLEJOHN: JUDGE, I THINK SO; YES, SIR.

21 THE COURT: ALL RIGHT. ANY---

22 MR. LITTLEJOHN: I MEAN, IF THAT'S GOING TO HAVE HER
23 -- SOME EFFECT ON HER ABILITY TO BE FAIR IN WHAT SHE'S GOING
24 TO HEAR IN THIS CASE, WE CERTAINLY WANT TO KNOW IT.

25 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION OR

1 ANY THOUGHTS FROM THE STATE? THIS IS OBVIOUSLY A DELICATE --
2 I DON'T -- I DON'T KNOW THAT WE REALLY CAN SAY AT THIS POINT
3 THAT SHE'S NOT QUALIFIED AND THEN JUST -- AND THEN JUST
4 EXCUSE HER. AND SO, YOU KNOW, UNLESS WE DO THAT, I THINK THE
5 LINE OF QUESTIONING THAT YOU HAVE PROPOSED IS -- IS
6 IMPORTANT, AND WHAT I WOULD DO IS SAY THAT -- THAT IF IT GETS
7 INTO THE PENALTY PHASE THERE WILL BE EVIDENCE OFFERED OF
8 AGGRAVATING AND MITIGATING CIRCUMSTANCES, AND SOME OF THE
9 MITIGATING CIRCUMSTANCES WOULD RELATE TO, POSSIBLY RELATE TO,
10 ISSUES REGARDING THE MENTAL HEALTH OF THE DEFENDANT. IS THAT
11 OKAY?

12 MR. LITTLEJOHN: YES, YOUR HONOR.

13 THE COURT: AND THAT -- AND THE ARGUMENT WOULD BE
14 MADE TO THE JURY PERHAPS THAT THOSE MENTAL HEALTH ISSUES
15 SHOULD BE CONSIDERED BY THE JURY IN -- AND THAT THE
16 PENALTY---

17 MS. KIMBROUGH: AS A BASIS FOR A LIFE SENTENCE.

18 THE COURT: AS A BASIS FOR ENTERING A VERDICT FOR A
19 LIFE SENTENCE AS OPPOSED TO THE DEATH PENALTY. ALL RIGHT?
20 AND THEN GET HER REACTION TO IT.

21 MR. LITTLEJOHN: YEAH. THE ONLY OTHER THING WE'D
22 ASK -- OBVIOUSLY SALUDA COUNTY IS IN THE ELEVENTH CIRCUIT
23 WHICH IS COVERED BY THIS SOLICITOR'S OFFICE. I DON'T KNOW IF
24 SHE HAD ANY CONTACT WITH ANYBODY IN THE SOLICITOR'S OFFICE
25 CONCERNING THE RESOLUTION OF HER CASE, BUT WE...

1 THE COURT: OKAY. WELL, HOLD ON. SHE IS -- SHE'S
2 24 YEARS OLD. SHE SAID IT WAS 15 WHEN -- SHE WAS 15. DO YOU
3 REMEMBER THIS CASE?

4 MR. MYERS: NO, SIR.

5 THE COURT: OKAY. SO -- AND I COULD -- OKAY. IS
6 SHE READY?

7 BAILIFF: SHE IS.

8 THE COURT: OKAY. I WILL -- I'LL ASK HER THAT AT
9 THE END. OKAY.

10 (JUROR MOAK IS BROUGHT TO THE COURTROOM.)

11 RE-EXAMINATION BY THE COURT (RESUMED)

12 Q. AGAIN, MS. MOAK, WE'RE VERY SORRY THAT WE HAVE TO GO
13 THROUGH THIS, AND YOU DON'T HAVE TO -- YOU SAID AS YOU WERE
14 LEAVING THAT YOU WERE SORRY. YOU DON'T HAVE TO APOLOGIZE FOR
15 THAT. WE UNDERSTAND. ALL OF US ARE SORRY, BOTH THAT THIS
16 HAPPENED TO YOU AND THAT WE'RE HAVING TO DISCUSS IT WITH YOU.
17 WE WISH WE DIDN'T HAVE TO. BUT I WANT TO ASK YOU A FEW MORE
18 QUESTIONS ABOUT IT IF THAT'S OKAY.

19 A. OKAY.

20 Q. ONE OF THE THINGS THAT YOU MENTIONED WAS THAT THE
21 DEFENDANT IN YOUR CASE HAD USED INSANITY OR TRIED TO CLAIM
22 INSANITY AS A WAY OF REDUCING HIS SENTENCE, AND I -- I -- I'M
23 ASSUMING THAT -- NOW, WAS THAT -- DID HE LIKE SAY THAT TO THE
24 JUDGE WHEN THEY WERE -- WHEN THE JUDGE WAS ABOUT TO IMPOSE A
25 SENTENCE OR DID THAT HAPPEN DURING THE NEGOTIATIONS THAT LED

1 UP TO THAT OR WHAT?

2 A. I THINK IT WAS THE NEGOTIATIONS.

3 Q. OKAY.

4 A. AND THEY WERE USING BECAUSE HE WAS IN A CAR ACCIDENT
5 AND HE MESSED HIS HEAD UP AND THAT'S WHAT THEY WERE TRYING TO
6 SAY---

7 Q. OKAY.

8 A. ---THE REASON WHY THEY SAID THAT.

9 Q. OKAY. ALL RIGHT. WELL, LET ME TELL YOU A LITTLE
10 BIT ABOUT -- GO BACK AGAIN AND LET'S TALK A LITTLE BIT ABOUT
11 WHAT MIGHT COME UP IN A SENTENCING PHASE IN THIS TRIAL. IF
12 THE JURY WERE TO FIND THE DEFENDANT GUILTY OF MURDER AND WE
13 WENT INTO THE SENTENCING PHASE, THEN, AS I SAID, THERE WOULD
14 BE EVIDENCE OFFERED THAT WOULD BE AGGRAVATING EVIDENCE AND
15 THERE WOULD BE EVIDENCE OFFERED THAT WOULD BE MITIGATING
16 EVIDENCE. AND I DON'T REALLY KNOW AT THIS POINT WHAT ALL
17 THAT AGGRAVATING AND MITIGATING EVIDENCE WOULD BE, BUT IT
18 WOULD NOT BE UNUSUAL FOR THERE TO BE EVIDENCE CONCERNING THE
19 DEFENDANT'S MENTAL HEALTH THAT MIGHT BE OFFERED AS A WAY OF
20 OFFERING MITIGATING EVIDENCE. AND THEN -- SO, IN OTHER
21 WORDS, I DON'T KNOW THAT THEY WOULD -- THAT THERE WOULD BE A
22 CLAIM OF INSANITY, BUT THERE WOULD BE EVIDENCE OFFERED
23 PROBABLY OR POSSIBLY OF MENTAL PROBLEMS OR MENTAL ILLNESS. I
24 DON'T KNOW. I'M JUST SAYING THAT THAT -- THAT THAT IS THE
25 TYPE OF EVIDENCE THAT COULD BE OFFERED, AND THEN POSSIBLY IT

1 WOULD BE ARGUED TO THE JURY THAT THAT SITUATION, PERHAPS
2 THOSE MENTAL ISSUES, SHOULD BE THE BASIS FOR THE JURY TO
3 CONSIDER A -- IMPOSING THE LESSER SENTENCE OF LIFE IN PRISON.

4 NOW, FROM YOUR EXPERIENCE -- AND YOU OBVIOUSLY -- I
5 MEAN, I'M INFERRING THIS, BUT YOU OBVIOUSLY WERE -- WERE
6 DISPLEASED WITH THE FACT THAT THE DEFENDANT IN YOUR CASE HAD
7 HIS SENTENCE REDUCED ESSENTIALLY BECAUSE OF HIS MENTAL
8 ISSUES. DO YOU BELIEVE THAT YOU WOULD BE ABLE TO SIT ON THIS
9 JURY AND TO CONSIDER EVIDENCE OF THE DEFENDANT'S MENTAL
10 HEALTH AS MITIGATING EVIDENCE AND AS A BASIS FOR CONSIDERING
11 THE LESSER OF THE TWO PENALTIES - A LIFE SENTENCE? DO YOU
12 THINK YOU WOULD BE ABLE TO SIT AND IMPARTIALLY CONSIDER ALL
13 THAT EVIDENCE?

14 A. I THINK THAT PART WOULD BE HARD.

15 Q. YOU THINK IT WOULD BE TOUGH?

16 A. YES, SIR.

17 Q. SO IF WE GOT -- IF THE CASE WERE TO GET INTO THAT
18 TYPE OF EVIDENCE, DO YOU THINK THAT YOUR EXPERIENCE WOULD
19 INTERFERE WITH YOUR ABILITY TO GIVE FAIR CONSIDERATION TO
20 THAT TYPE OF EVIDENCE?

21 A. WHEN IT CAME TO SOMETHING LIKE THAT, YES, SIR.

22 Q. WHEN IT CAME TO SOMETHING LIKE THAT. OKAY. WELL,
23 MA'AM, AGAIN I'M VERY, VERY SORRY THAT THIS HAD TO ALL COME
24 UP AND ALSO THAT THAT HAPPENED TO YOU. I'M GOING TO ASK YOU
25 TO STEP OUT IN THE HALLWAY JUST ONE MORE TIME JUST FOR A

1 SECOND. I APPRECIATE THAT.

2 A. OKAY.

3 THE COURT: THANK YOU, MA'AM.

4 (JUROR MOAK LEAVES THE COURTROOM.)

5 MR. MYERS: NO OBJECTION.

6 THE COURT: ALL RIGHT. I PROBABLY COULD HAVE JUST
7 GONE AHEAD AND RULED, BUT I JUST WANTED TO TAKE THE
8 PRECAUTION OF MAKING SURE THAT THERE WAS NOT SOMETHING ELSE
9 THAT YOU ALL WANTED ME TO ASK HER.

10 MS. KIMBROUGH: NOTHING, YOUR HONOR.

11 MR. MYERS: NOTHING.

12 THE COURT: EVERYBODY AGREES THAT SHE'S NOT
13 QUALIFIED?

14 MR. MYERS: YES, SIR.

15 MS. KIMBROUGH: YES, YOUR HONOR.

16 THE COURT: THE DEFENSE?

17 MR. LITTLEJOHN: YES, YOUR HONOR.

18 MS. KIMBROUGH: YES, SIR.

19 THE COURT: BRING HER IN, PLEASE.

20 (JUROR MOAK IS BROUGHT INTO THE COURTROOM.)

21 THE COURT: MS. MOAK, I APPRECIATE YOU BEING SO --
22 SO OPEN WITH US AND BEING WILLING TO DISCUSS THIS. WE WILL
23 NOT BE NEEDING YOUR SERVICES AS A JUROR IN THIS CASE, AND SO
24 YOUR SERVICE IS COMPLETE AND YOU'RE FREE TO GO AND WE WISH
25 YOU THE BEST.

1 THE WITNESS: THANK YOU.

2 THE COURT: THANK YOU. THANK YOU VERY MUCH.

3 THE WITNESS: SORRY ABOUT THAT.

4 (JUROR MOAK LEAVES THE COURTROOM.)

5 THE COURT: ALL RIGHT. THE NEXT JUROR THEN WOULD BE
6 TED KYZER.

7 (JUROR TED KYZER IS BROUGHT INTO THE COURTROOM.)

8 TED KYZER, HAVING BEEN PREVIOUSLY SWORN AS A
9 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
10 TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT

12 Q. SIR, JUST ONE SECOND AND I'LL BE RIGHT WITH YOU;
13 OKAY?

14 A. YES, SIR.

15 Q. ALL RIGHT. MR. KYZER -- IS EVERYBODY READY?

16 MR. LITTLEJOHN: YES, SIR.

17 BY THE COURT:

18 Q. YOU RECALL THAT ON MONDAY WHEN YOU WERE HERE WE PUT
19 YOU UNDER OATH?

20 A. YES, SIR.

21 Q. AND YOU'RE STILL UNDER OATH TODAY. DO YOU
22 UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. SINCE YOU WERE HERE ON MONDAY, HAS ANYBODY TRIED TO
25 TALK TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYBODY .

1 ABOUT THE CASE?

2 A. NO, SIR.

3 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN AFTER
4 I DO THAT, THE LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP
5 QUESTIONS PROBABLY. WE'RE NOT TRYING TO PRY TOO DEEP INTO
6 YOUR PERSONAL LIFE, BUT WE DO WANT TO -- WE DO HAVE TO ASK
7 YOU THESE QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG
8 ANSWERS TO THE QUESTIONS. WE JUST WANT YOU TO LISTEN VERY
9 CAREFULLY AND THEN TO BE OPEN AND HONEST WITH US AND TELL US
10 HOW YOU FEEL AND WHAT YOU THINK ABOUT THESE ISSUES THAT WE'RE
11 GOING TO BE DISCUSSING.

12 IF YOU WERE 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 LEARNED OR HEARD ABOUT
15 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
16 THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
17 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

18 A. I'D TRY.

19 Q. DO YOU THINK YOU COULD?

20 A. YES, SIR.

21 Q. ALL RIGHT. NOW, BASICALLY THE QUESTION IS: WOULD
22 YOU LISTEN TO ME WHEN I TELL YOU WHAT THE LAW IS AND WOULD
23 YOU MAKE YOUR DECISION AS A JUROR BASED ON THE TESTIMONY AND
24 EVIDENCE THAT YOU HEAR AND SEE IN THE COURTROOM AS OPPOSED TO
25 SOMETHING ELSE?

1 A. YES, SIR.

2 Q. SIR?

3 A. YES, SIR.

4 Q. ALL RIGHT. DO YOU UNDERSTAND THAT IN A CRIMINAL
5 CASE THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY
6 BEYOND A REASONABLE DOUBT?

7 A. YES, SIR.

8 Q. NOW, COULD YOU, DEPENDING ON THE FACTS AND
9 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND
10 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
11 FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON
12 WHETHER OR NOT YOU FEEL THE STATE HAS MET ITS BURDEN OF
13 PROOF?

14 A. (NO RESPONSE.)

15 Q. LET ME ASK IT A DIFFERENT WAY. IF YOU WERE SITTING
16 ON THE JURY AND IF YOU BELIEVED -- AFTER LISTENING TO ALL THE
17 TESTIMONY AND AFTER GOING THROUGH THE CLOSING ARGUMENTS AND
18 THE JURY CHARGE, IF YOU BELIEVED THAT THE STATE HAD PROVEN
19 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, WOULD YOU BE
20 ABLE TO FIND HIM GUILTY?

21 A. YES, SIR.

22 Q. IF YOU BELIEVED THAT THE STATE HAD FAILED TO PROVE
23 HIM GUILTY BEYOND A REASONABLE DOUBT, WOULD YOU BE ABLE TO
24 FIND HIM NOT GUILTY?

25 A. YES, SIR.

1 Q. NOW, I WANT YOU TO SEE IF YOU CAN'T SPEAK UP JUST A
2 LITTLE BIT. YOU MIGHT TRY PULLING THAT MICROPHONE A LITTLE
3 CLOSER TO YOU. I CAN BARELY HEAR YOU, BUT I THINK THE
4 LAWYERS MAY BE HAVING DIFFICULTY HEARING YOU. NOW, IF YOU'RE
5 ON THE JURY IN THIS CASE AND IF THE JURY WERE TO FIND THE
6 DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE SECOND
7 PHASE OF THE TRIAL OR THE PENALTY PHASE, AND I'M GOING TO
8 TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL COME UP IN
9 THAT PHASE IF WE GET THERE.

10 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
11 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
12 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
13 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
14 AND ADD TO THE INJURY RESULTING FROM THE CRIME. MITIGATING
15 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
16 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
17 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR
18 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY
19 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT OF AN
20 AGGRAVATING AND A MITIGATING CIRCUMSTANCE?

21 A. YES, SIR, I THINK SO.

22 Q. YOU DO?

23 A. YES, SIR.

24 THE COURT: ALL RIGHT. CAN Y'ALL HEAR HIM?

25 MR. LITTLEJOHN: JUST BARELY.

1 BY THE COURT;

2 Q. ALL RIGHT. WHEN YOU GOT HERE THIS MORNING, YOU WERE
3 GIVEN A COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES
4 OF JURORS.

5 A. YES, SIR.

6 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

7 A. YES, SIR.

8 Q. WHICH OF THOSE THREE TYPES DO YOU THINK WOULD -- YOU
9 WOULD BE?

10 A. (PAUSE.)

11 Q. WELL, LET ME ASK---

12 A. I'M IN BETWEEN THE SECOND AND THIRD ONE, I GUESS.

13 Q. THE SECOND AND THIRD?

14 A. YES, SIR.

15 Q. ALL RIGHT. LET ME GO ON AND ASK YOU ANOTHER
16 QUESTION. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
17 HAD ALREADY FOUND THE DEFENDANT GUILTY OF MURDER -- AND I
18 WANT TO TELL YOU THAT MURDER IS DEFINED AS THE INTENTIONAL
19 AND UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE
20 AFORETHOUGHT. IF THE JURY HAD FOUND HIM GUILTY OF MURDER,
21 THEN THE JURY WOULD BE THE ONE TO IMPOSE THE SENTENCE OR TO
22 DECIDE WHAT THE PENALTY WILL BE. THERE ARE TWO OPTIONS THAT
23 THE JURY WOULD HAVE. ONE WOULD BE TO IMPOSE A LIFE SENTENCE
24 WITHOUT THE POSSIBILITY OF PAROLE. THE OTHER OPTION WOULD BE
25 TO IMPOSE THE DEATH PENALTY.

1 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
2 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD
3 EXPLAIN IT TO YOU, COULD YOU GIVE -- COULD YOU VOTE TO RETURN
4 A VERDICT FOR A LIFE SENTENCE IF YOU FELT THAT THAT WAS THE
5 APPROPRIATE THING TO DO?

6 A. YES, SIR.

7 Q. COULD YOU VOTE TO IMPOSE -- TO RETURN A VERDICT
8 IMPOSING THE DEATH PENALTY IF YOU FELT THAT THAT WAS THE
9 APPROPRIATE THING TO DO?

10 A. I'M NOT SURE, SIR.

11 THE COURT: ALL RIGHT, SIR. ALL RIGHT, SIR. I'M
12 GOING TO LET THE LAWYERS ASK YOU A FEW FOLLOW-UP QUESTIONS
13 NOW, AND THEN I'LL COME BACK AND SPEAK TO YOU AGAIN IN A FEW
14 MINUTES.

15 DIRECT EXAMINATION

16 BY MR. MYERS:

17 Q. MR. KYZER?

18 A. GOOD MORNING, SIR.

19 Q. MR. KYZER, YOU SAID THAT YOU WERE IN THAT SECOND OR
20 THIRD CATEGORY ON THE DEATH PENALTY. IS THAT RIGHT, SIR?
21 THE SECOND MEANING THAT SOMEONE IN A CASE OF MURDER WOULD
22 VOTE FOR LIFE IMPRISONMENT. YOU UNDERSTOOD THAT.

23 A. YES, SIR.

24 Q. AND THE THIRD ONE BEING WHERE WE'D HAVE TO LISTEN TO
25 THE EVIDENCE AND DECIDE WHETHER IT'S LIFE OR DEATH. BUT WHAT

1 DO YOU MEAN BY THAT, MR. KYZER?

2 A. WELL, TO ME IT'S JUST HARD TO JUDGE, YOU KNOW,
3 SOMEONE ELSE---

4 Q. YES, SIR.

5 A. ---FOR SOMETHING THAT THEY'VE DONE.

6 Q. YES, SIR.

7 A. THAT -- LIKE I SAY, I DON'T KNOW ALL THE, YOU KNOW,
8 THE PROOF OF WHAT THEY DID, YOU KNOW, OR ANYTHING.

9 Q. UH-HUH.

10 A. I JUST -- I'M JUST NOT SURE WHAT I COULD DO.

11 Q. ALL RIGHT. NOW, WHEN THE JUDGE ASKED YOU COULD YOU
12 VOTE FOR LIFE, YOU SAID YES. IS THAT RIGHT?

13 A. YES, SIR.

14 Q. AND HE ASKED COULD YOU VOTE FOR DEATH, AND YOU
15 HESITATED QUITE AWHILE THERE AND SAID YOU JUST DIDN'T KNOW.

16 A. YES, SIR.

17 Q. LET ME TELL YOU: IN SOUTH CAROLINA THE LAW SAYS
18 THAT IF THE JURY PANEL DETERMINES THAT THE DEATH PENALTY WERE
19 THE SENTENCE, THEN EVERY JUROR WOULD HAVE TO SIGN THEIR NAME
20 ON THAT SENTENCE VERDICT, SENTENCING THE DEFENDANT TO DEATH.
21 IF THE DEATH SENTENCE WAS THE VOTE, COULD YOU SIGN YOUR NAME
22 ON THE DEATH PENALTY VERDICT?

23 A. I DON'T THINK SO, SIR.

24 Q. OKAY. AND THAT'S BECAUSE OF JUST YOUR BELIEFS ON
25 IT?

1 A. RIGHT. YES, SIR.

2 Q. YOU DON'T THINK YOU COULD SIGN YOUR NAME. THAT'S
3 ALL I HAVE AT THIS TIME RIGHT NOW, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. LITTLEJOHN:

6 Q. GOOD AFTERNOON, MR. KYZER. I'M CAM LITTLEJOHN, AND
7 I, ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO'S
8 THE DEFENDANT IN THIS CASE. LET ME GET RIGHT DOWN TO SOME OF
9 THE QUESTIONS THAT WERE ASKED OF YOU CONCERNING THE JUROR
10 TYPE THAT YOU -- THAT YOU FEEL YOU ARE. I UNDERSTOOD FROM
11 YOUR ANSWERS TO SOLICITOR MYERS' QUESTIONS THAT IT WOULD BE
12 VERY DIFFICULT FOR YOU TO CONSIDER A DEATH SENTENCE IF IT
13 CAME TO THAT. IS THAT WHAT I UNDERSTOOD YOUR---

14 A. YES, SIR.

15 Q. ---TESTIMONY WOULD BE? IN A CASE SUCH AS THIS,
16 THERE WOULD BE A FIRST PHASE TO THE CASE, AND THE FIRST PHASE
17 WOULD DEAL STRICTLY WITH WHETHER THE DEFENDANT HAD BEEN
18 PROVEN GUILTY BY THE STATE OR NOT. AND THE STATE WOULD HAVE
19 TO PROVE TO THE JURY THE GUILT OF THE DEFENDANT BEYOND A
20 REASONABLE DOUBT BEFORE THE CASE WENT ANY -- BEFORE THE JURY
21 COULD FIND THE DEFENDANT GUILTY. DO YOU UNDERSTAND THAT?

22 A. YES, SIR.

23 Q. AND THE JURY WOULD HAVE TO DECIDE BEYOND A
24 REASONABLE DOUBT THAT THE JURY -- THAT THE DEFENDANT, MR.
25 MERCER, HAD COMMITTED MURDER WHICH HIS HONOR TOLD YOU IS AN

1 INTENTIONAL KILLING WITH MALICE AFORETHOUGHT. WE WOULDN'T
2 EVEN GET TO THE SECOND STAGE UNLESS THAT HAPPENED, UNLESS THE
3 JURY SAID, YES, HE'S PROVEN GUILTY BEYOND A REASONABLE DOUBT
4 OF MURDER, AN INTENTIONAL KILLING. DO YOU UNDERSTAND THAT?

5 A. YES, SIR. YES, SIR.

6 Q. NOW, IF WE GOT TO THE SECOND PHASE AFTER THAT
7 DETERMINATION HAD BEEN MADE, AFTER THE GUILTY VERDICT, THEN
8 THERE WOULD BE TWO TYPES OF VERDICTS. IT COULD EITHER BE A
9 LIFE VERDICT OR A DEATH VERDICT. AND I GUESS WHAT I'M ASKING
10 YOU IS: IF HIS HONOR TOLD YOU THAT THOSE WERE TWO DIFFERENT
11 TYPES OF VERDICTS THAT YOU WOULD HAVE TO CONSIDER, DO YOU
12 THINK YOU COULD CONSIDER A DEATH SENTENCE AS BEING AN
13 ALTERNATIVE, AS BEING ONE OF THE POSSIBLE VERDICTS?

14 A. YES, SIR.

15 Q. YOU COULD CONSIDER THAT? COULD YOU LISTEN TO THE
16 EVIDENCE PRESENTED BY THE STATE AND BY THE DEFENSE AND
17 DETERMINE WHETHER IT OUGHT TO BE LIFE OR IT OUGHT TO BE
18 DEATH?

19 A. YES, SIR.

20 Q. YOU COULD CONSIDER BOTH THOSE OPTIONS?

21 A. I'LL TRY, YES, SIR.

22 Q. YOU'D TRY TO. AND IT WOULD BE HARD AND WE REALIZE
23 THAT. EVERYBODY IN THIS COURTROOM REALIZES IT WOULD BE HARD
24 FOR A JUROR TO MAKE THAT KIND OF DECISION, BUT THE QUESTION
25 IS: COULD YOU CONSIDER BOTH OF THOSE TYPES OF PENALTIES IF

1 YOU WERE ON THE JURY?

2 A. IT WOULD DEPEND, I GUESS, UPON THE SEVERITY OF THE
3 CASE. YES, MAYBE I COULD.

4 Q. YOU COULD?

5 A. YES, SIR.

6 Q. OKAY. AND YOU'D HAVE A LOT OF INFORMATION IN FRONT
7 OF YOU. YOU'D HAVE, AS HIS HONOR EXPLAINED TO YOU, EVIDENCE
8 IN AGGRAVATION AND EVIDENCE IN MITIGATION, AND THERE WOULD BE
9 A LOT OF THINGS FOR YOU TO CONSIDER, BUT I GUESS WHAT WE'RE
10 CONCERNED WITH IS WHETHER YOU COULD CONSIDER BOTH OF THOSE
11 TYPES OF VERDICTS, A LIFE SENTENCE OR A DEATH SENTENCE, AFTER
12 HEARING EVERYTHING. COULD YOU DO THAT FOR US?

13 A. I'D TRY, YES, SIR.

14 MR. LITTLEJOHN: OKAY. THANK YOU, MR. KYZER. THOSE
15 ARE ALL THE QUESTIONS I HAVE.

16 REDIRECT EXAMINATION

17 BY MR. MYERS:

18 Q. CONSIDER IS ONE WORD. YOU COULD CONSIDER THIS, BUT
19 ACTUALLY DOING IT IS ANOTHER THING. IS THAT CORRECT?

20 A. YES, SIR.

21 Q. AND COMING DOWN AND SIGNING YOUR NAME, YOU DON'T
22 THINK YOU COULD SIGN YOUR NAME ON A DEATH PENALTY.

23 A. THAT'S A HARD QUESTION.

24 Q. YES, SIR.

25 A. LIKE I SAID, I'D HAVE TO KNOW FOR SURE BEFORE I'D

1 PUT MY NAME ON THE LINE.

2 Q. I UNDERSTAND THAT. THE QUESTION IS: COULD YOU SIGN
3 YOUR NAME ON A VERDICT SENTENCING SOMEONE TO DEATH, NOT
4 CONSIDERING IT BUT ACTUALLY DOING IT?

5 A. COULD I?

6 THE COURT: SOLICITOR, DO YOU MIND IF I ASK HIM A
7 COUPLE OF QUESTIONS?

8 MR. MYERS: NO, SIR. THAT'S FINE.

9 THE COURT: AND THEN WE'LL GET BACK TO WHERE YOU
10 ARE.

11 RE-EXAMINATION BY THE COURT

12 Q. MR. KYZER, NONE OF US MEAN TO MAKE YOU FEEL ON THE
13 SPOT OR ANYTHING LIKE THAT. WE'RE NOT TRYING TO -- CERTAINLY
14 NOT TRYING TO MAKE YOU FEEL LIKE YOU HAVE TO DEFEND YOUR
15 POSITION OR ANYTHING LIKE THAT. WE JUST WANT TO UNDERSTAND
16 WHAT YOUR FEELINGS ARE ABOUT THIS QUESTION, SO I THOUGHT THAT
17 I WOULD ASK YOU... WHEN YOU SAY -- YOU HAVE SOME FEELINGS
18 ABOUT THE DEATH PENALTY. IS THERE ANY PARTICULAR SOURCE FOR
19 THE -- FOR YOUR FEELINGS ABOUT THE DEATH PENALTY?

20 A. I GUESS MAYBE -- I DON'T KNOW WHETHER IT'S JUST A
21 BELIEF OR THAT I CAN'T -- I FIND IT HARD FOR ME TO PASS
22 JUDGMENT ON SOMEONE ELSE, YOU KNOW, EVEN -- I KNOW WE'VE ALL
23 GOT TO LIVE BY THE LAW. I GUESS MAYBE IF IT WOULD BE A
24 FAMILY MEMBER OR SOMETHING THAT SOMEONE HAD KILLED MAYBE I
25 COULD -- YOU KNOW, I MIGHT COULD PUT MY NAME ON THE LINE.

1 Q. ALL RIGHT.

2 A. BUT, YOU KNOW...

3 Q. AND YOU'RE WELCOME TO KEEP ON TALKING, BUT I DON'T
4 WANT YOU TO FEEL LIKE YOU HAVE TO TELL ME THE SITUATIONS IN
5 WHICH YOU THINK YOU MIGHT DO IT. BUT -- BUT NOW YOU TALK
6 ABOUT YOUR -- AGAIN, YOUR FEELINGS. I MEAN, DO YOU THINK
7 THAT THERE'S -- IS THERE A RELIGIOUS BASIS FOR THIS FEELING
8 OR IS THIS JUST THE WAY YOU FEEL? AND THERE'S NOTHING WRONG
9 WITH EITHER WAY. I'M JUST TRYING TO EXPLORE WHAT ARE THE
10 BASIS OF THOSE OPINIONS.

11 A. WE WERE JUST BROUGHT UP, YOU KNOW, AN EYE FOR AN EYE
12 AND A TOOTH FOR A TOOTH, BUT, YOU KNOW, THE LAWS HAVE CHANGED
13 SINCE WHENEVER I WAS A KID AND IT'S JUST HARD TO SAY. YOU
14 KNOW, I GUESS, YOU KNOW, IF I HAD TO, I COULD PUT MY NAME ON
15 THE LINE, YOU KNOW. I WOULDN'T FEEL COMFORTABLE DOING IT,
16 BUT IF I HAD TO, I WOULD.

17 Q. WELL, I'M GOING TO ASK YOU ONE MORE QUESTION AND
18 THEN -- AND THEN I'M GOING TO LET THE -- THEN I'LL TURN IT
19 BACK OVER TO THE SOLICITOR AND ANY OF THE OTHER LAWYERS WHO
20 WANT TO ASK ANY QUESTIONS. BUT -- BUT THERE'S NEVER GOING TO
21 BE A SITUATION IN WHICH YOU HAVE TO DO IT. IT WOULD ALWAYS
22 BE A QUESTION OF WHETHER YOU -- WHETHER YOU CHOSE TO DO IT.
23 AND -- AND SO I GUESS THE FIRST QUESTION IS: IF YOU WERE A
24 JUROR IN THE PENALTY PHASE OF THE TRIAL, WOULD YOU -- AND
25 THAT'S AFTER THE DEFENDANT HAS BEEN CONVICTED OF MURDER, IF

1 HE IS CONVICTED. WOULD YOU AUTOMATICALLY IMPOSE A LIFE
2 SENTENCE OR WOULD YOU CONSIDER ALL OF THE EVIDENCE THAT MIGHT
3 BE OFFERED IN THE WAY OF AGGRAVATING THE CRIME AND ALSO ALL
4 THE EVIDENCE THAT MIGHT BE OFFERED IN WAY OF MITIGATING THE
5 CRIME AND WOULD YOU BE ABLE TO CONSIDER IMPOSING THE DEATH
6 PENALTY?

7 A. YES, SIR.

8 Q. YOU THINK YOU COULD CONSIDER IT?

9 A. I'D CONSIDER IT, YEAH.

10 Q. ALL RIGHT. AND THEN THE QUESTION WOULD BE:
11 HAVING -- IF YOU DECIDED THAT THE DEATH PENALTY WAS
12 APPROPRIATE, WOULD YOU BE ABLE TO PUT YOUR NAME ON THAT LINE?

13 A. YES, SIR.

14 THE COURT: ALL RIGHT. LET ME ASK YOU TO STEP OUT
15 IN THE HALL JUST ONE SECOND, AND THEN WE'LL GET YOU BACK IN
16 HERE.

17 (JUROR KYZER LEAVES THE COURTROOM.)

18 THE COURT: WELL, I'M NOT SURE THAT I -- YOU KNOW,
19 IN RETROSPECT, I'M NOT SURE THAT I HANDLED THAT CORRECTLY. I
20 DIDN'T MEAN TO TRY TO SUPPLANT -- TO TAKE OVER WHAT THE
21 SOLICITOR WAS TRYING TO DO, BUT I FELT LIKE THE MAN FELT LIKE
22 HE WAS ON THE SPOT AND I WAS JUST TRYING TO TAKE -- TO
23 ALLEVIATE THAT. AND IF I STEPPED OUT OF LINE AND WENT INTO
24 THE ROLE OF APPEARING TO GO INTO THE ROLE OF ADVOCATING AT
25 ALL, THEN I APOLOGIZE AND I -- I DID NOT INTEND TO DO THAT.

1 SO I DON'T INTEND TO TRY TO DO THAT OFTEN. I WAS SIMPLY
2 TRYING TO TAKE THE MAN OFF THE SPOT. DO Y'ALL HAVE ANY --
3 ANYTHING TO SAY NOW OR DO YOU HAVE SOME FOLLOW-UP QUESTIONS?

4 MR. MYERS: I'VE JUST GOT ONE OR TWO.

5 THE COURT: OKAY. ALL RIGHT. BRING HIM BACK IN
6 THEN.

7 (JUROR KYZER IS BROUGHT INTO THE COURTROOM.)

8 THE COURT: OKAY. MR. KYZER, I'M GOING TO ALLOW THE
9 SOLICITOR TO CONTINUE WITH HIS QUESTIONS AND THEN OTHERS --
10 THE -- MR. LITTLEJOHN MAY ALSO HAVE SOME MORE QUESTIONS.

11 REDIRECT EXAMINATION

12 BY MR. MYERS:

13 Q. I JUST HAVE A FEW, MR. KYZER. YOU WERE TALKING WITH
14 THE JUDGE ABOUT YOUR BELIEFS AND YOUR THINKING AND WHATEVER
15 THE REASON FOR IT. NOBODY IS ARGUING WITH THAT, AND NOBODY
16 IS ARGUING WITH YOUR BELIEFS. AS THE JUDGE SAYS, NO ONE WILL
17 TELL THE JURY WHAT SENTENCE THEY SHOULD RETURN. DO YOU
18 UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. THAT'S UP TO EACH INDIVIDUAL JUROR. NOW, I REALIZE
21 YOUR POSITION ABOUT THE DEATH PENALTY, SIR, AND I NEED TO ASK
22 YOU THIS: YOU SAID SOMETHING ABOUT IF YOUR FAMILY MEMBER
23 WERE A VICTIM -- YOU SAID THAT.

24 A. YES, SIR.

25 Q. THEN YOU'D THINK ABOUT SIGNING YOUR NAME.

1 A. YES, SIR.

2 Q. I'D LIKE TO ASK YOU THIS. IT'S NOT WHETHER YOU
3 COULD CONSIDER IT, BUT IF NECESSARY, IF IT WEREN'T A FAMILY
4 MEMBER WHO WAS THE VICTIM, WERE NOT A FAMILY MEMBER WHO WAS A
5 VICTIM, NOT A RELATIVE, NOT SOMEONE YOU KNEW CLOSE TO YOU,
6 THE QUESTION BECOMES, IF NECESSARY: COULD YOU SIGN YOUR NAME
7 ON A DEATH PENALTY VERDICT SENTENCING SOMEONE TO DEATH OR
8 WOULD YOUR FEELINGS KIND OF INTERFERE WITH THAT ABILITY?

9 A. MY FEELINGS WOULD INTERFERE WITH IT SOME.

10 Q. YOUR FEELINGS WOULD INTERFERE WITH YOUR ABILITY TO
11 SIGN YOUR NAME ON A DEATH PENALTY VERDICT.

12 A. YES, SIR.

13 Q. IF THE VICTIM WERE NOT A FAMILY MEMBER---

14 MR. LITTLEJOHN: YOUR HONOR, I OBJECT IF THE
15 SOLICITOR IS TRYING TO STAKE HIM OUT TO---

16 MR. MYERS: I'M NOT STAKING HIM OUT---

17 MR. LITTLEJOHN: ---A PARTICULAR CIRCUMSTANCE.

18 MR. MYERS: THAT'S PROPER.

19 THE COURT: I'M GOING TO ALLOW YOU TO CONTINUE TO
20 FOLLOW UP ON THE SITUATION THAT HE OUTLINED BUT NOT TO EXPAND
21 THAT.

22 MR. MYERS: I GOT IT.

23 BY MR. MYERS:

24 Q. AND IT NOT BEING A FAMILY MEMBER AND PUTTING YOUR
25 NAME DOWN, YOUR BELIEFS WOULD INTERFERE WITH THAT ABILITY TO

1 SIGN YOUR NAME ON A DEATH PENALTY VERDICT SENTENCING SOMEONE
2 TO DEATH. IS THAT A FAIR STATEMENT?

3 A. PROBABLY SO.

4 MR. MYERS: ALL RIGHT, SIR. THANK YOU, SIR.

5 RECROSS EXAMINATION

6 BY MR. LITTLEJOHN:

7 Q. MR. KYZER, I DON'T WANT TO BEAT THIS INTO THE
8 GROUND, BUT AS I UNDERSTOOD WHEN JUDGE FEW WAS TALKING TO
9 YOU, YOU INDICATED TO HIM THAT YOU -- GIVEN ALL THE
10 CIRCUMSTANCES AND ALL THE EVIDENCE YOU WOULD HEAR, IF THE
11 DEFENDANT WAS FOUND GUILTY OF THE INTENTIONAL KILLING OF
12 ANOTHER OR MURDER THAT YOU COULD CONSIDER BOTH OPTIONS, A
13 LIFE SENTENCE OR A DEATH VERDICT.

14 MR. MYERS: UNDER STATE VERSUS PLATT THAT IS NOT THE
15 PROPER TEST TO MERELY CONSIDER IT. STATE VERSUS PLATT IS AT
16 313 SOUTHEASTERN SECOND 619.

17 MR. LITTLEJOHN: YOUR HONOR---

18 THE COURT: WELL, I DON'T -- THAT -- JUST BECAUSE
19 IT'S NOT THE PROPER TEST DOESN'T MEAN IT'S AN IMPROPER
20 QUESTION. I'M GOING TO ALLOW YOU TO ASK THE QUESTION.

21 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

22 BY MR. LITTLEJOHN:

23 Q. AND YOU UNDERSTOOD THAT IF -- ONLY IF THE JURY GOT
24 TO THE POINT WHERE THEY FOUND THAT THE DEFENDANT HAD
25 COMMITTED MURDER OR AN INTENTIONAL KILLING WOULD YOU GET TO

1 THE POINT OF WHETHER YOU WOULD HAVE TO DECIDE BETWEEN A LIFE
2 SENTENCE OR A DEATH VERDICT. YOU UNDERSTAND THAT.

3 A. YES, SIR.

4 Q. OKAY. AND I BELIEVE YOU TOLD JUDGE FEW THAT YOU
5 COULD CONSIDER BOTH THOSE OPTIONS IF YOU WERE ON THE JURY?

6 A. I WOULD CONSIDER THEM; YES, SIR.

7 Q. OKAY. AND I KNOW IT WOULD BE HARD FOR YOU, MR.
8 KYZER, AND UNDERSTANDABLY TO EVERYBODY IT WOULD BE HARD TO BE
9 ON A JURY AND HAVE TO MAKE THAT KIND OF DECISION, BUT I GUESS
10 MY QUESTION IS THIS -- AND I UNDERSTOOD YOU TOLD JUDGE FEW
11 THAT WHILE IT WOULD BE HARD FOR YOU, IF YOU WERE CONVINCED
12 THAT A DEATH SENTENCE WAS APPROPRIATE THAT YOU COULD SIGN
13 THAT FORM ALONG WITH THE OTHER JURORS.

14 A. THAT GOES BACK TO LIKE HAVING TO PUT MY NAME ON THE
15 LINE YOU SAID WHEN -- FOR A DEATH SENTENCE. I'D STILL HAVE
16 TO THINK ABOUT THAT.

17 Q. CERTAINLY. AND EVERYBODY WOULD WANT YOU TO THINK
18 ABOUT THAT. BUT I GUESS MY QUESTION WAS: IF YOU WERE ON THE
19 JURY AND ALL 12 JURORS AGREED THAT THAT WAS THE APPROPRIATE
20 THING TO DO, THE RIGHT THING TO DO, COULD YOU SIGN ALONG WITH
21 THE OTHER JURORS ON THAT FORM TO RENDER THAT VERDICT?

22 A. YES, SIR.

23 MR. LITTLEJOHN: YOU COULD? ALL RIGHT. THANK YOU,
24 MR. KYZER. I'M SORRY YOU HAD TO GO THROUGH ALL THIS, BUT WE
25 APPRECIATE IT.

1 THE COURT: MR. KYZER, I'M GOING TO ASK YOU TO STEP
2 OUT IN THE HALL AGAIN, PLEASE, AND I'LL HAVE YOU BACK IN JUST
3 A MINUTE.

4 (JUROR KYZER LEAVES THE COURTROOM.)

5 THE COURT: ALL RIGHT. I'LL HEAR BRIEF ARGUMENT
6 FROM THE DEFENSE FIRST AND THEN FROM THE STATE.

7 MR. LITTLEJOHN: YOUR HONOR, I BELIEVE THE JUROR IS
8 QUALIFIED. HE HAS INDICATED HE WOULD CONSIDER BOTH THE TYPES
9 OF SENTENCES IF WE GOT TO THAT STAGE. I THINK HE HESITATED
10 BECAUSE IT WOULD BE HARD FOR HIM TO SIGN THAT DEATH VERDICT,
11 BUT HE INDICATED IN THE BOTTOM LINE THAT HE COULD SIGN IT IF
12 HE THOUGHT IT WAS THE APPROPRIATE THING TO DO, AND BY VIRTUE
13 OF THOSE ANSWERS THAT DOES QUALIFY HIM IN THIS CASE.

14 MR. MYERS: WE HAVE THREE ISSUES, YOUR HONOR.
15 NUMBER ONE, STATE VERSUS PLATT, 313 SOUTHEASTERN SECOND 619,
16 THE SUPREME COURT SAID THIS: "THE TEST OF A JUROR'S
17 QUALIFICATION IS THE ABILITY TO REACH A VERDICT OF EITHER
18 GUILT OR INNOCENCE AND, IF NECESSARY, TO VOTE FOR A SENTENCE
19 OF DEATH. THE ABILITY TO MERELY CONSIDER," IN QUOTATION,
20 "THESE POSSIBILITIES IS NOT SUFFICIENT TO QUALIFY A
21 PROSPECTIVE JUROR."

22 HE KEPT ASKING COULD HE CONSIDER IT. HE SAID,
23 "YEAH," BUT WHEN YOU COME RIGHT DOWN TO DO IT THAT HE HAD
24 ANOTHER OPINION. THEN HE BROUGHT UP IF THE VICTIM WAS A
25 FAMILY MEMBER. STATE VERSUS TRUESDALE, 328 SOUTHEASTERN

1 SECOND 53, THE COURT SAID, "THE TRIAL JUDGE WAS CORRECT IN
2 DISQUALIFYING TWO PROSPECTIVE JURORS ABOUT THEIR WILLINGNESS
3 TO VOTE FOR THE DEATH PENALTY. ONE STATED HE COULD VOTE FOR
4 THE DEATH PENALTY IN CASES THAT AFFECTED HIS FAMILY AND/OR
5 LOVED ONES, I.E., CASES IN WHICH HE WAS PERSONALLY INVOLVED."
6 THE COURT SAID THAT THAT JUROR WAS PROPERLY DISQUALIFIED
7 WHERE THE VICTIM WOULD HAVE TO BE A FAMILY MEMBER.

8 NEXT, AS TO SIGNING HIS NAME, YOUR HONOR, IN STATE
9 VERSUS GEORGE, 476 SOUTHEASTERN SECOND 903, 1996, WHERE THE
10 JUROR SAID SHE DID NOT THINK SHE COULD SIGN HER NAME TO A
11 VERDICT SENTENCING SOMEONE TO DEATH, THAT'S EXACTLY WHAT THIS
12 GUY HAS SAID. SO THOSE THREE MATTERS -- THE CONSIDER PART IS
13 NOT THE TEST. THE FAMILY MEMBER BEING THE VICTIM IS NOT
14 PROPER AND NOT SIGNING THEIR NAME, AND THEN, FOURTHLY,
15 BRINGING THIS ALL IN PERSPECTIVE AND THE TOTALITY OF HIS
16 STATEMENTS, HE SAID OUT OF HIS OWN MOUTH THAT HIS FEELINGS
17 ABOUT THE DEATH PENALTY WOULD INTERFERE WITH HIS ABILITY TO
18 SIGN HIS NAME. THAT'S THE TEST IN WAINWRIGHT - IF THE
19 JUROR'S OPINIONS, FEELINGS, AND ATTITUDES WOULD INTERFERE
20 WITH HIS ABILITY TO FOLLOW THE LAW. AND WE'VE EXPLAINED THIS
21 LAW TO HIM OVER AND OVER. NOBODY WOULD TELL HIM WHAT TO PUT
22 DOWN. HE HIMSELF HAS SAID THAT WOULD INTERFERE WITH HIS
23 ABILITY TO PUT HIS NAME DOWN ON A VERDICT SENTENCING SOMEONE
24 TO DEATH. SO WITH THOSE FOUR REASONS AND THE TOTALITY OF IT,
25 WE SUBMIT HE WOULDN'T BE QUALIFIED.

1 THE COURT: I THINK THE JUROR IS NOT QUALIFIED. THE
2 -- THERE'S SEVERAL THINGS THAT I THINK NEED TO BE MENTIONED,
3 AND THE FIRST IS THE JUROR'S DEMEANOR. EVERY TIME HE GOT
4 READY TO ANSWER A QUESTION, HE TOOK A DEEP BREATH AND HE HAD
5 WHAT I CONSIDERED TO BE A VERY TROUBLED LOOK ON HIS FACE.
6 FROM THAT PRIMARILY I BELIEVE THAT -- THAT THIS JUROR'S VIEWS
7 ON CAPITAL PUNISHMENT WOULD SUBSTANTIALLY IMPAIR HIS ABILITY
8 TO PERFORM HIS DUTIES AS A JUROR IN ACCORDANCE WITH THE
9 INSTRUCTIONS THAT I WOULD GIVE HIM.

10 THE -- YOU KNOW, A LOT OF TIMES I THINK WE SEE
11 JURORS WHO HESITATE AS YOU MENTIONED, MR. LITTLEJOHN, AND I
12 CAN GET -- I FEEL AS THOUGH I CAN GET A SENSE AS TO WHETHER
13 THE JUROR IS HESITATING BECAUSE THEY ARE TRYING TO THINK
14 DEEPLY AND BE COMPLETELY OPEN AND HONEST WITH US OR ARE THEY
15 HESITATING BECAUSE THEY ARE TROUBLED BY THE -- THE ISSUE THAT
16 THEY'RE ABOUT TO DISCUSS.

17 I DID NOT GET THE IMPRESSION, AS I DO SOMETIMES,
18 THAT THIS JUROR HESITATED BECAUSE HE WAS TRYING TO BE CLEAR
19 ABOUT HIS FEELINGS. I GOT THE IMPRESSION THAT HE HESITATED
20 BECAUSE HE WAS TROUBLED BY HIS -- WHAT HE THOUGHT WOULD BE
21 THE QUESTION OF WHETHER OR NOT HE WOULD BE ABLE TO IMPOSE THE
22 DEATH PENALTY. AND SO THIS -- THIS JUROR TO ME IS LIKE SO
23 MANY THAT HAVE -- THAT HAVE BEEN ADDRESSED IN THE APPELLATE
24 DECISIONS OF OUR SUPREME COURT AND IN OTHER COURTS, AND I
25 THINK PRIMARILY OF THE CASE FROM THE FOURTH CIRCUIT CALLED

1 U.S. VERSUS TIPTON WHERE THEY -- WHERE THEY DISCUSS SEVERAL
2 JURORS WHO GAVE CONFLICTING ANSWERS TO DIFFERENT QUESTIONS
3 DURING THE ENTIRE COURSE OF THEIR VOIR DIRE, AND IN THE END I
4 AM LEFT, AS THAT DISTRICT JUDGE WAS, WITH THE IMPRESSION THAT
5 THESE -- THAT THIS JUROR'S VIEWS ON THE DEATH PENALTY WOULD
6 SUBSTANTIALLY IMPAIR HIS PERFORMANCE OF HIS DUTY TO
7 CONSIDER -- TO FOLLOW THE INSTRUCTIONS THAT I WOULD GIVE HIM.
8 AND SO I FIND THAT HE IS DISQUALIFIED. NOW, I THINK
9 THAT'S -- I THINK THAT'S ALL I HAVE TO SAY. BRING HIM BACK
10 IN.

11 (JUROR KYZER WAS BROUGHT INTO THE COURTROOM.)

12 THE COURT: MR. KYZER, YOU DON'T HAVE TO SIT DOWN IF
13 YOU DON'T WANT TO. THIS WILL JUST TAKE A SECOND. WE WILL
14 NOT BE NEEDING YOUR SERVICES AS A JUROR FOR THIS CASE. SO WE
15 APPRECIATE YOUR TIME AND APPRECIATE YOU COMING UP HERE AND
16 DISCUSSING THESE THINGS WITH US. YOUR SERVICE AS A JUROR IS
17 COMPLETE, AND YOU'RE FREE TO GO.

18 THE WITNESS: THANK YOU, SIR.

19 THE COURT: THANK YOU.

20 (JUROR KYZER LEAVES THE COURTROOM.)

21 MS. KIMBROUGH: YOUR HONOR, WILL YOU NOTE OUR
22 OBJECTION TO HIS---

23 THE COURT: SURE.

24 MS. KIMBROUGH: ----BEING DISQUALIFIED?

25 (JUROR SAMUEL TEEM IS BROUGHT INTO THE COURTROOM.)

1 SAMUEL TEEM, 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. MR. TEEM?

6 A. YES, SIR.

7 Q. HOW ARE YOU, SIR?

8 A. GOOD, SIR. AND YOU?

9 Q. I'M DOING FINE. YESTERDAY MORNING WHEN YOU WERE
10 HERE YOU WERE PUT UNDER OATH ON MONDAY, AND I WANT TO MAKE
11 SURE THAT YOU UNDERSTAND THAT YOU'RE STILL UNDER OATH TODAY.
12 DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. SINCE YOU LEFT US YESTERDAY OR ON MONDAY, I MEAN --
15 AND DID I SAY YESTERDAY MORNING WHEN I SAID YOU WERE UNDER
16 OATH?

17 A. YES, SIR.

18 Q. I MEANT MONDAY MORNING. SINCE YOU LEFT US ON
19 MONDAY, HAVE YOU DISCUSSED THIS CASE WITH ANYONE OR HAS
20 ANYONE DISCUSSED THIS CASE WITH YOU?

21 A. THEY'VE ASKED, BUT I SAID NOTHING. I CAN'T REALLY
22 TALK ABOUT IT, SO...

23 Q. THEY WOULD ASK YOU QUESTIONS ABOUT WHAT YOU WERE
24 DOING?

25 A. YES, SIR.