

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

James R. Barber, III, Circuit Court Judge

Case No. 2006-CP-32-3221

Johnny O. Bennett.....Petitioner,

v.

State of South Carolina Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Marc H. Westbrook, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNY O. BENNETT, JR.

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STATE'S EXHIBIT 14 (PHOTO OF CAR); STATE'S EXHIBIT 32 (TAPED STATEMENT GIVEN 12/1/90); STATE'S EXHIBIT 34 (TAPED TRANSCRIPT OF STATEMENT GIVEN 12/3/90); STATE'S EXHIBIT 35 (TAPED STATEMENT GIVEN 12/3/90); STATE'S EXHIBIT 5 (PHOTOGRAPH OF SHANNON GILBERT); STATE'S EXHIBIT 7 (PHOTOGRAPH OF AARON MCGOUGH)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 93-GS-32-2354

JOHNNY O. BENNETT,) ** VOLUME I **

DEFENDANT.)

JULY 10, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

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CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

****VOLUME I****MONDAY, JULY 10, 2000

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Monday, July 10, 2000

THE COURT: Ladies and gentlemen, I want to welcome you to a term of General Sessions Court. We initially apologize for any delay or problems that we've caused you in your normal life schedules, but I want you to know that we certainly wouldn't have called you if we hadn't of needed you to run court. That's the way we have to operate, we have to use juries to be able to proceed.

Now, my name is Marc Westbrook. I'm the circuit judge here in Lexington County. In fact, I've been on the circuit for six months down in the lower part of the state, and I'm delighted to be back home.

The first thing that we have to do is to get an idea and make sure that we have everybody here. So the clerk is going to do a call of the roll, and I will ask you when she does if you would please give her your undivided attention.

Now, it is very important, particularly for those of you in the back, to speak as loudly and clearly as you can. This is an old courtroom and sound doesn't carry real well. So you may need, again, particularly in the back, and even for the front, to speak as clearly and as loudly as you can so that she can hear you. With that in mind, I will turn you over to her.

Madam Clerk.

1 (WHEREUPON, the roll of the jury venire was
2 called.)

3 THE COURT: Madam Clerk, excuse me just for one
4 minute, okay.

5 THE CLERK: Yes, sir.

6 THE COURT: Juror Number 236, Miller, I believe you
7 had a child with you; is that correct?

8 MS. MILLER: Yes, sir.

9 THE COURT: Is that your child?

10 MS. MILLER: This is my grandson. I quit my job
11 two and half years ago to take care of him. And the only
12 other family lives in Pittsburgh. So I'm not going to drop
13 him in day care for a short period of time. I have no one to
14 watch him.

15 THE COURT: Is the mother not available?

16 MS. MILLER: The mother is working in the town
17 hall. She just got that job six months ago, so there's no
18 time she can get off there.

19 THE COURT: I was going to go ahead and excuse you
20 but if you don't have custody of the child statutorily I
21 can't excuse you for child reasons.

22 MS. MILLER: I have guardianship. I have that in
23 my car.

24 THE COURT: Again, statutorily that's not enough.
25 It has to be custody.

1 MS. MILLER: Well, I can't --

2 THE COURT: Ma'am. You have to have custody of the
3 child, and under the law I can't do anything. I'm bound on
4 that. We'll let you have the child with us today. If you do
5 have to come back I'll ask you to please make other
6 arrangements for the child.

7 MS. MILLER: I can't make other arrangements, sir.

8 THE COURT: Ma'am, if you come back what we'll do
9 is we'll let D. S. S. take care of the child for you. We'll
10 have a child caseworker come over and they'll sit over here
11 with the child.

12 MS. MILLER: No. No. Excuse me. There is nothing
13 on that piece of paper that was sent to me that says you
14 cannot bring a child into court. There is nothing on that
15 paper. You cannot take this child from me because I'm coming
16 here to serve. I do not mind coming back when he goes to
17 school two, three years from now, but you cannot do that.

18 THE COURT: Ma'am, the rules of the Court are that
19 you cannot bring children into the courtroom.

20 MS. MILLER: Where was the piece of paper? On that
21 piece of paper it does not say that you cannot bring a child
22 into the courtroom.

23 THE COURT: Well, I will tell you again, since you
24 have the child with you I certainly don't want to do anything
25 harmful to the child, but don't bring the child back with you

1 if you come back to the courtroom. It may not be on the
2 paper but that's the rules of the Court, you don't do that.

3 MS. MILLER: If it's the rules of the Court, I
4 totally understand --

5 THE COURT: That's enough. I'll talk with you
6 later if you want to, but that's enough. Have a seat,
7 please, ma'am.

8 Continue, Madam Clerk.

9 (WHEREUPON, the roll of the jury venire was
10 concluded.)

11 THE COURT: Counsel, let me ask you to approach
12 just a minute, please, and Mr. Bennett.

13 (WHEREUPON, the following side-bar was
14 reported with the defendant present.)

15 THE COURT: We've got about 20 that are unaccounted
16 for. Do you all want to go ahead and go forward while we're
17 having the sheriff go pick those up? I'm going to send the
18 sheriff out to find out what's going on with them. Do you
19 all want to go ahead and just continue on until we get those
20 in and draw them in the normal procedure like we would
21 anybody else?

22 MR. MYERS: That's fine with the State.

23 MR. FLOYD: Yeah.

24 THE COURT: By the way, about five of the jury
25 excuses after we met before, most of them were statutory and

1 she took care of them. We'll put them on the record in a few
2 minutes. There may be one that we've got to take care of.

3 Do you all have any problem excusing this Miller
4 lady, just letting her go?

5 MR. MYERS: No. We want you to take care of her,
6 Judge.

7 THE COURT: If she stays, she's going to be in
8 contempt before we're through, if she stays. Because if she
9 stays I'm going to have to bring a D. S. S. worker over to
10 take care of that child because we can't --.

11 MR. YOUNG: I think she'd at least give us some
12 entertainment though.

13 THE COURT: She's been very definitely
14 entertaining. We'll excuse her. We'll let Hope go back and
15 tell her she's excused.

16 Hope?

17 THE CLERK: Yes, sir.

18 THE COURT: Go back and tell Ms. Miller she's
19 excused and she can go.

20 (WHEREUPON, the side-bar was concluded.)

21 THE COURT: Counsel, as I understand, on the
22 record, the clerk tells me -- and, ladies and gentlemen,
23 please give us your attention at this point. It's very
24 important to have your attention.

25 Madam Clerk, as I understand it, there are 20

1 jurors who are unaccounted for; is that correct?

2 THE CLERK: Yes, sir.

3 THE COURT: Counsel, as you know, at this time what
4 we will do is send the sheriff out to pick those jurors up at
5 this time. Is there any objection to proceeding without
6 those jurors here and let us just draw them in the regular
7 course of the project for the voir dire examination?

8 MR. MYERS: None from the State.

9 MR. FLOYD: None from the defense, Your Honor.

10 THE COURT: Thank you.

11 Now, ladies and gentlemen of the jury, let me ask
12 you if you would give me your undivided attention, please.
13 First of all, we're going to have to ask you some questions
14 that are required by state law. We must do so with you under
15 oath.

16 Madam Clerk, let me ask at this time if you would
17 put the jury venire under oath, please.

18 (WHEREUPON, the jury venire was sworn.)

19 THE COURT: Now, were there any jurors who were
20 unable to take the oath because of religious or conscientious
21 reasons?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Yes, ma'am, what's your name and
24 number, please?

25 POTENTIAL JUROR: Frances G. Mozingo, 247.

1 THE COURT: Okay. You wish to affirm instead of
2 swear?

3 MS. MOZINGO: Yes, sir.

4 THE COURT: Okay. We'll let you affirm, and you
5 understand that you're still under the same statutes as the
6 rest of the jurors?

7 MS. MOZINGO: Yes, sir.

8 THE COURT: Thank you, ma'am.

9 Anyone else?

10 Yes, what's your name and number, please?

11 POTENTIAL JUROR: Mary Ann Taylor. I forgot my
12 number.

13 THE COURT: Jurors, by the way, very important,
14 when you hear your numbers please try to remember your
15 numbers, okay.

16 THE CLERK: She's number 360, Judge.

17 THE COURT: Number 360, Ms. Taylor. You were
18 unable to swear; is that correct?

19 MS. TAYLOR: Right.

20 THE COURT: You wish to affirm?

21 MS. TAYLOR: Right.

22 THE COURT: You may affirm then. Thank you.

23 Ma'am.

24 Anyone else?

25 (There was no response.)

1 THE COURT: All right. At this time then all
2 jurors are under oath at the time by swearing or by
3 affirmation.

4 Let me ask at this time if there is any member of
5 the jury venire who is under the age of 18? Is there anyone
6 under 18 years of age?

7 (There was no response.)

8 THE COURT: Is there any juror who does not live in
9 Lexington County at the time? Go ahead and stand, please.

10 What's your name and number, please, sir?

11 POTENTIAL JUROR: Mitchell Sitton. I believe my
12 number is 325.

13 THE COURT: And where do you live, Mr. Sitton?

14 MR. SITTON: Greenville.

15 THE COURT: How long have you lived there?

16 MR. SITTON: I just moved there.

17 THE COURT: Okay. When did you move there?

18 MR. SITTON: I started my job on June --
19 approximately June 19th was my first day.

20 THE COURT: I gather you haven't had a chance to
21 change your address and everything then?

22 MR. SITTON: No, sir.

23 THE COURT: Okay. And you intend for that to be
24 your permanent address?

25 MR. SITTON: Yes, sir.

1 THE COURT: You're excused then, Mr. Sitton. You
2 understand you could be called up to Greenville County?

3 MR. SITTON: Yes, sir.

4 THE COURT: Madam Clerk, do you need anything from
5 him before he leaves?

6 THE CLERK: Yes, sir, I do need a current mailing
7 address.

8 THE COURT: What is your current mailing address?

9 MR. SITTON: It's 29 Whiller Drive, W-h-i-l-l-e-r,
10 Drive. And again, that's Greenville, 29605.

11 THE CLERK: 29605?

12 MR. SITTON: Yes, ma'am.

13 THE CLERK: Thank you.

14 THE COURT: Thank you, sir.

15 Yes, ma'am, what is your name and number, please?

16 POTENTIAL JUROR: Elizabeth Waddell, and I think
17 it's 373.

18 THE COURT: Okay. Where do you live, Ms. Waddell?

19 MS. WADDELL: I live in Richland County.

20 THE COURT: How long have you lived there?

21 MS. WADDELL: About three months.

22 THE COURT: I gather you haven't changed your
23 driver's license address yet?

24 MS. WADDELL: No.

25 THE COURT: You know you need to be sure and do

1 that. Not just for driver's license, but for jury purposes
2 and other reasons.

3 MS. WADDELL: I brought my lease with me.

4 THE COURT: I'll take your word for it. You just
5 need to be sure and change your driver's license address.

6 Madam Clerk, what do you need from her?

7 THE CLERK: A correct mailing address.

8 MS. WADDELL: 2916 Bratton Street, B-r-a-t-t-o-n,
9 and that's Columbia, 29205.

10 THE COURT: Thank you, ma'am. You're free to go.

11 Yes, sir, what's your name and number, please?

12 POTENTIAL JUROR: Leo Elson, 113.

13 THE COURT: And where do you live?

14 MR. ELSON: I live in Richland County.

15 THE COURT: How long have you lived there?

16 MR. ELSON: About 11 months.

17 THE COURT: 11 months?

18 MR. ELSON: Yes.

19 THE COURT: You haven't changed your driver's
20 license address?

21 MR. ELSON: Yes, I have.

22 THE COURT: Oh, you have?

23 MR. ELSON: I put it on the form. I noted the new
24 address on the form that I mailed in.

25 THE CLERK: Judge, we do have a new address but it

1 wasn't indicated whether it was Richland or Lexington.

2 THE COURT: All right. Can you give the clerk your
3 current address.

4 MR. ELSON: Yes. 812 Green Springs Drive,
5 Columbia, South Carolina, 29223.

6 THE COURT: Thank you, sir. You're free to go.
7 Yes, sir, what's your name and number, please?

8 POTENTIAL JUROR: Kevin Shumpert, 319.

9 THE COURT: And where do you live?

10 MR. SHUMPERT: Richland County.

11 THE COURT: How long have you lived there?

12 MR. SHUMPERT: About two, two and a half months.

13 THE COURT: I gather you haven't changed your
14 driver's license yet?

15 MR. SHUMPERT: No.

16 THE COURT: Okay. You intend for that to be your
17 permanent address?

18 MR. SHUMPERT: Yes, sir.

19 THE COURT: That's where will be your residence?

20 MR. SHUMPERT: Yes.

21 THE COURT: Would you give the clerk your current
22 address, please.

23 MR. SHUMPERT: 124 Burmaster Drive.

24 THE CLERK: I'm sorry, Burmaster?

25 MR. SHUMPERT: Yes, ma'am, B-u-r-m-a-s-t-e-r. And

1 that's Columbia, 29229.

2 THE CLERK: 29229?

3 MR. SHUMPERT: Yes, ma'am.

4 THE COURT: Again, jurors, you see why it's
5 important to speak up from the back, back there. It's very
6 difficult for anybody up here to be able to hear back there.

7 I'm sorry, I missed you. Yes, ma'am, what's your
8 name and number?

9 POTENTIAL JUROR: I'm still in Richland County.

10 THE COURT: What's your name and number, please?

11 POTENTIAL JUROR: 162, Rose Harrison.

12 THE COURT: Okay. Ms. Harrison, where do you live?

13 MS. HARRISON: 3200 Grenadier Road, Columbia, South
14 Carolina, 29210.

15 THE COURT: How long have you lived there?

16 MS. HARRISON: About a year.

17 THE COURT: Do you intend for that to be your
18 permanent address?

19 MS. HARRISON: Yes, sir.

20 THE COURT: You're excused. Thank you, ma'am.
21 Yes, sir, what's your name and number, please?

22 POTENTIAL JUROR: Michael Bryan. Larry Bryan.

23 THE COURT: What's your number?

24 THE CLERK: Michael Bryan? Is that Larry M?

25 MR. BRYAN: Yes.

1 THE CLERK: Okay. That's number 55.

2 THE COURT: Mr. Bryan, where do you live?

3 MR. BRYAN: I just moved to Richland County
4 recently, about three weeks ago.

5 THE COURT: Okay. And do you intend for that to be
6 your permanent residence?

7 MR. BRYAN: Yes, sir.

8 THE COURT:.. Would you give the clerk your current
9 address, please.

10 MR. BRYAN: Actually, I'm not sure of the address.
11 I don't really know it.

12 THE CLERK: Do you have a phone number?

13 MR. BRYAN: Yeah, I have it in my wallet.

14 THE CLERK: If you can give me your phone number
15 then I can call you and get the address; how about that?

16 MR. BRYAN: 798-0392.

17 THE COURT: Thank you, sir. You're free to go.
18 Anyone else?

19 (There was no response.)

20 THE COURT: Now, is there any member of the jury
21 venire who is not a citizen of the United States?

22 (There was no response.)

23 THE COURT: Is there anyone who does not have a
24 valid driver's license or is not a registered voter? Now,
25 the law says this. In order to sit on a jury you must have

1 either a driver's license or a driver's I. D. card from the
2 Highway Department, or be a registered voter, any one of
3 those three. Is there anyone who does not have any of those
4 three?

5 Yes, ma'am, what's your name and number, please?

6 POTENTIAL JUROR: Stephanie Harris. 161, Stephanie
7 Harris.

8 THE COURT: Okay. Ms. Harris, do you have a
9 driver's license?

10 MS. HARRIS: No, sir.

11 THE COURT: Do you have an I. D. card from the
12 Highway Department?

13 MS. HARRIS: I got a regular I. D.

14 THE COURT: A regular I. D.? What's a regular
15 I. D.?

16 THE CLERK: From the Highway Department?

17 MS. HARRIS: Yes.

18 THE COURT: From the Highway Department?

19 MS. HARRIS: Yes, sir.

20 THE COURT: You can stay with us. Thank you,
21 ma'am. That took care of most of them.

22 Yes, ma'am, what's your name and number?

23 POTENTIAL JUROR: I don't have a number, but my
24 name is Karen Fox; and I don't have either one.

25 THE CLERK: Number 121, Your Honor.

1 THE COURT: Number 121. Do you have a driver's
2 license?

3 MS. FOX: No, sir.

4 THE COURT: Are you registered to vote?

5 MS. FOX: No, sir.

6 THE COURT: Do you have a driver's I. D. card?

7 MS. FOX: No, sir.

8 THE COURT: Okay, you're excused. Thank you,
9 ma'am.

10 Do you have her address, Madam Clerk?

11 THE CLERK: Judge, I believe we have that. Yes,
12 sir, I do.

13 THE COURT: Thank you, ma'am. You're free to go.
14 Anyone else?

15 (There was no response.)

16 THE COURT: Now, is there any member of the jury
17 venire who is employed within the walls of this courthouse,
18 or any county courthouse, or federal courthouse, or county
19 administration building?

20 Yes, sir, what's your name and number, please?

21 POTENTIAL JUROR: William Gardner, jury number 132;
22 and I work for Lexington County fire service.

23 THE COURT: Is that within the walls of the
24 courthouse? I don't believe it is, is it? I hope we don't
25 have a fire department operating out of the courthouse.

1 MR. GARDNER: I know that's where we -- that they
2 employed us from. I didn't know if you were including that.

3 THE COURT: Where you physically work at.

4 MR. GARDNER: No, sir.

5 THE COURT: Is that at the fire department?

6 MR. GARDNER: Yes, sir.

7 THE COURT: Thank you, sir. You can stay with us.
8 Anyone else?

9 (There was no response.)

10 THE COURT: All right. Now, is there anyone who
11 holds any of the following positions; clerk of court, deputy
12 clerk of court, probate judge, a member of county counsel or
13 magistrate? Anyone hold any of those positions?

14 (There was no response.)

15 THE COURT: Does anyone hold any other county
16 office?

17 (There was no response.)

18 THE COURT: Now, is there any member of the jury
19 venire who holds a law enforcement commission; a law
20 enforcement commission, whether with pay or not, whether
21 you're doing it actively or not? Do you have a law
22 enforcement commission?

23 (There was no response.)

24 THE COURT: All right. Is there any member of the
25 jury venire who is a constable, sheriff, deputy sheriff, a

1 highway patrolman or a game warden?

2 (There was no response.)

3 THE COURT: Is there any member of the jury venire
4 who is employed by the South Carolina Department of
5 Corrections?

6 Yes, sir, what is your name and number?

7 POTENTIAL JUROR: 371, Carl Vecchio.

8 THE COURT: Okay. Where do you work?

9 MR. VECCHIO: I do not work, but I volunteer at
10 D. J. J.

11 THE COURT: You're not an employee of the
12 department; is that right?

13 MR. VECCHIO: No, sir.

14 THE COURT: Okay. You can stay with us. Thank
15 you.

16 Anyone else?

17 (There was no response.)

18 THE COURT: Now, is there anyone who has been
19 convicted or pled guilty to a crime from which you could have
20 received more than a year in jail? Now, that doesn't mean
21 that you got more than a year in jail but that the maximum
22 sentence was more than a year in jail, whether in state court
23 or federal court? Anyone?

24 (There was no response.)

25 THE COURT: All right. Thank you. Is there any

1 member of the jury venire who is unable to read, write, speak
2 or understand the English language?

3 (There was no response.)

4 THE COURT: Thank you. Now, is there anyone who
5 has less than a sixth grade education or its equivalent?
6 Now, let me tell you what we mean by the equivalent. If you
7 can hold down a job or if you have held down a job, raised a
8 family or maintained a home that's considered the same as a
9 sixth grade education. So understanding that, is there
10 anyone who has less than a sixth grade education or the
11 equivalent?

12 (There was no response.)

13 THE COURT: All right. Now, there are also certain
14 people who are exempt from jury duty. That means that if you
15 qualify under one of these areas you can be excused if you
16 want to, but if you wish to stay you can also stay. In other
17 words, the choice is yours. It's up to you. First, is there
18 anyone who has served on a jury in this court during the past
19 three years?

20 (There was no response.)

21 THE COURT: Is there anyone who has served on the
22 grand jury during the past five years?

23 (There was no response.)

24 THE COURT: Now, is there anyone who is 65 years of
25 age or older and would like to be excused?

1 Yes, sir, what's your name and number?

2 POTENTIAL JUROR: Hosea E. Knotts. I don't know
3 the number.

4 THE CLERK: I have number 200, Your Honor.

5 THE COURT: All right. Number 200. Mr. Knotts,
6 you are over 65, I believe?

7 MR. KNOTTS: Yeah.

8 THE COURT: You wish to be excused?

9 MR. KNOTTS: Yes, sir.

10 THE COURT: All right. You're free to go. Thank
11 you, sir.

12 Anyone else?

13 (There was no response.)

14 THE COURT: Is there anyone who has legal custody
15 of a child under the age of seven and is not able to make
16 adequate child care arrangements and would like to be
17 excused?

18 Yes, sir, what is your name and number, please?

19 POTENTIAL JUROR: Henry Hannah.

20 THE COURT: We'll find your number, Mr. Hannah.

21 THE CLERK: 155.

22 THE COURT: 155. All right. Mr. Hannah, you have
23 a child under seven?

24 MR. HANNAH: Six years old, Your Honor.

25 THE COURT: Six years old?

1 MR. HANNAH: Yes, sir.

2 THE COURT: And do you stay home and take care of
3 the child?

4 MR. HANNAH: I'm self employed, and most of the
5 time he be with me.

6 THE COURT: You're self employed and most of the
7 time the child is with you?

8 MR. HANNAH: Yes, sir.

9 THE COURT: Do you not have anyone at home to take
10 care of the child?

11 MR. HANNAH: This morning, yes, sir. I made
12 arrangements this morning.

13 THE COURT: You're a single parent?

14 MR. HANNAH: Yes, sir.

15 THE COURT: What's the State's position on this
16 juror?

17 MR. MYERS: No objection.

18 THE COURT: Defense?

19 MR. FLOYD: We agree. He falls under the statute.

20 THE COURT: Do you want to be excused, sir?

21 MR. HANNAH: Yes, sir.

22 THE COURT: All right. We'll excuse you. Thank
23 you.

24 Anyone else?

25 (There was no response.)

1 THE COURT: All right. Is there anyone who is a
2 full-time student or employed within the school district and
3 now in school and would like to be transferred to a time when
4 school is out?

5 POTENTIAL JUROR: Me, Your Honor.

6 THE COURT: Yes, sir, what's your name and number,
7 please?

8 POTENTIAL JUROR: Christopher Miller. I'm not sure
9 about my number.

10 THE COURT: We'll find your number.

11 THE CLERK: Christopher B., 237, Your Honor.

12 THE COURT: All right. Mr. Miller, are you a
13 student?

14 MR. MILLER: Yes, sir.

15 THE COURT: Where are you a student?

16 MR. MILLER: Midland's Technical College.

17 THE COURT: You're in school right now?

18 MR. MILLER: Yes, sir, that's correct.

19 THE COURT: And are you taking a full-time load?

20 MR. MILLER: I'm one credit away from being
21 full-time. I've got 11, and 12 is full-time.

22 THE COURT: Well, for purposes of this case I think
23 it would be appropriate, Counsel, to excuse this juror.

24 Do you want to be excused?

25 MR. MILLER: Yes, sir.

1 THE COURT: Madam Clerk, you want me to just
2 transfer him or excuse him?

3 THE CLERK: Excuse him, Judge.

4 THE COURT: All right. We'll excuse you then,
5 Mr. Miller.

6 MR. MILLER: Thank you, sir.

7 THE COURT: Anyone else?

8 (There was no response.)

9 THE COURT: Now, if there's anyone who has any
10 other problem then we can take care of those problems at the
11 appropriate time. There is going to be a time a little bit
12 later to take care of them and do them at that time.

13 At this time, Mr. Solicitor, are you ready to call
14 the case, please, sir?

15 MR. MYERS: That is indictment 93-GS-32-2354, The
16 State vs. Johnny Olandis Bennett, Jr., charged for murder.
17 The State's ready for trial.

18 THE COURT: Thank you, sir.

19 Is the defense ready?

20 MR. FLOYD: Yes, Your Honor, the defense is ready.

21 THE COURT: Thank you, sir.

22 Bailiffs, let me ask you at this time, would you
23 please seal the doors. No one in, no one out, please. Allow
24 no one to come in and no one to go out. I want the doors
25 sealed. And everyone please be seated, and no moving around,

1 if you would.

2 Ladies and gentlemen of the jury venire, I need you
3 at this time to give me your undivided attention. Please
4 listen very closely to what I'm going to tell you. I need to
5 have your attention at this time. This is in the matter of
6 The State vs. Johnny Olandis Bennett, Jr. It is a case in
7 which Mr. Bennett has been charged with murder.

8 Now, this is a trial of the second part of a trial.
9 What has happened in this trial is this. A previous jury has
10 convicted Mr. Bennett of murder. At this time, we will now
11 be drawing a jury for the second phase of the trial. The
12 State has asked for the death penalty.

13 And in a case in which the death penalty is
14 involved we are required to do certain procedures, and there
15 are certain things that we do differently than we would
16 normally do in a jury term. And that's why it's very, very
17 important that we have your attention as to what we're doing,
18 and that's why it's very important, as you can gather, we've
19 been very strict about the questions that we've asked and
20 about everything that we have tried to do.

21 And I will tell you, by the way, normally I'm not
22 too difficult to deal with with children in the courtroom but
23 this is a case in which we did not wish to have a child to
24 disrupt your attention. It's important that we have your
25 attention at this time.

1 Because the State has asked for the death penalty,
2 then again, there are certain procedures that we will go
3 through. And let me outline for you at this time, if I
4 might, the procedure that we will use.

5 Again, South Carolina has what is called a
6 bifurcated trial. There has been a first part to this trial,
7 as I told you. The defendant has been found guilty of
8 murder; and the second procedure is now the procedure in
9 which the jury will decide the punishment.

10 Now, those of you who sit on the jury will be
11 deciding the punishment for Mr. Bennett. There are only two
12 possibilities. You will give him a life sentence or you will
13 give him a death sentence. That's what this jury will do.
14 You will not hear the case of the charge itself but you will
15 hear the case regarding the sentence.

16 Now, when the State asks for the death sentence
17 there must be what are called aggravating circumstances.
18 Those circumstances are identified in the law. The law says
19 what aggravating circumstances can be used as a ground to ask
20 for the death penalty.

21 Now, of course, that very simply means to aggravate
22 or to make worse. A jury who hears this case is going to
23 hear what are called aggravating circumstances.

24 Now, the jury will also hear what are called
25 mitigating circumstances. Mitigating circumstances. Those

1 are circumstances which would lessen or reduce the
2 punishment. And again, because of that the procedure that we
3 use is a little different.

4 We will use a procedure we call voir dire. It's a
5 Latin term, means to tell the truth. And we will do so in
6 this case individually. We will draw names in a few moments,
7 and we will take you one at a time, those of you whose names
8 are drawn, and we will question you one at a time.

9 Now, let me tell you ahead of time, nobody is going
10 to give you a hard time. There are no right or wrong
11 answers. We're not going to try to make it difficult for
12 you. We just will need to find out your position on certain
13 issues, particularly on the death penalty. That's why you
14 will be here and that's why you will be given a chance to be
15 questioned individually. Now, in other words, no jurors, no
16 other jurors will be in the courtroom and listening to your
17 testimony.

18 Now, what we will do is to try to give you time to
19 reflect on this matter. What we will do, in essence, is
20 this. We will draw panels of five at a time, five at a time,
21 and those panels will come back at certain times. And we
22 will take those five one at a time in the order that they are
23 drawn, and we will ask them questions.

24 Now, it is very, very important, and you can
25 understand now, it is very important that you not talk with

1 anyone about the issues of this case and you particularly not
2 talk with anyone about the death penalty because we are
3 trying to determine your position on the death penalty. A
4 lot of people like to go home and like to talk to a husband
5 or a wife, and that is very important that you not do that.

6 I've seen a lot of people who like to talk with a
7 minister, or a priest, or a rabbi; you cannot do that. And
8 you'll be asked if you've talked with anyone else about it.
9 Because it's very important that we find out what you believe
10 about the death penalty; or believe or not believe, whatever
11 the case may be. So that's why it's important that you not
12 talk with anyone about it.

13 Now, we will give you a sheet to take with you, or
14 may give it to you when you come back, to look over to give
15 you time to reflect on this particular issue. And this sheet
16 will basically categorize three types of jurors, three types
17 of jurors. You may not fall within one of these categories,
18 you may fall between them somewhere; and that's all right if
19 you do. Because this sheet is intended only as a guide.
20 It's not something that's written in stone where you have to
21 fit in a particular box. It's only as a guide to give you an
22 idea of what we're looking for.

23 It will identify three types of jurors, three
24 types. The first type it will identify is a juror who says
25 that if a person has been convicted of murder I would give

1 them a death sentence in every case. I would always give
2 them the death sentence.

3 The second type of juror is a juror who says I
4 could never give a death sentence.

5 So those are the two distinctions. The first says
6 I would always give the death sentence; the second says I
7 could never give the death sentence.

8 The third is a juror who says, well, I wouldn't
9 have my mind made up in advance concerning the punishment. I
10 would want to hear the facts and the circumstances in
11 aggravation. I would want to hear all those facts and
12 circumstances in mitigation.

13 In other words, I'd like to hear both side, and
14 then and only then would I decide the appropriate punishment.
15 And this juror says that if life were the appropriate
16 punishment I could give a life sentence, and if death were
17 the appropriate punishment I could give a death sentence. It
18 would depend on the facts and circumstances of the case.

19 Now, what I've tried to do here is to simply give
20 you an overview of what we're going to do. There will be
21 some more detail that we will go over with you as we go
22 through the process.

23 And again, let me emphasize, don't be too concerned
24 about anybody giving you a hard time, we're not going to do
25 that. We will treat you in the vernacular of kindly and

1 gently. We'll just have more of a little chat than anything,
2 and it will be designed just to find out what your position
3 is and how you feel. That's all we're trying to do. And
4 like I said, there aren't any right or wrong answers about
5 this, it's just how you feel.

6 Now, again, it is very, very important that you not
7 discuss the case with anyone in any way.

8 Now, at this time, Counsel, are we ready to start
9 the selection process?

10 MR. MYERS: The State is ready, Your Honor.

11 THE COURT: The defense ready?

12 MR. FLOYD: The defense is ready, Your Honor.

13 THE COURT: Ladies and gentlemen, as I said, what
14 we're going to do is this. The clerk has all the names in a
15 barrel here. She is going to draw those names from the
16 barrel, and she is going to draw five at a time. That means
17 that, in essence, you'll be in panels of five. We'll give
18 you a specific time to come back and we'll have you directed
19 to go to a particular place. And at that time we'll have you
20 ready for whenever we're ready to question you.

21 Now, very important again, remember again, don't
22 talk with anyone about this. Some of you are going to leave
23 the courthouse and are going to go back and be asked to come
24 back at a specific time. It's important that you not talk
25 with anyone. It is also important that you not listen to any

1 news or stay away from any newspaper between now and the time
2 you come back.

3 Stay away from any news on the radio, any on the
4 television, and stay away from any newspaper until your time
5 to come back. And I know some won't come back until Tuesday
6 or Wednesday, and we apologize for that but it is absolutely
7 necessary that we do so in order that both sides can have a
8 fair trial in this case.

9 With that in mind -- and some of you early on will
10 be given a sheet here.

11 Counsel, let me ask you to approach just a minute,
12 please, and Mr. Bennett.

13 (WHEREUPON, the following side-bar was
14 reported with the defendant present.)

15 THE COURT: Madam Court Reporter, be sure and let
16 the record note that when we do these conferences that
17 Mr. Bennett is the present, okay.

18 What we will do is this. We'll just see if any of
19 you have any problem. We'll let the first panel come back at
20 11:00. We'll take five every hour and a half. That will
21 mean 11:00 to 12:30, and then start the others back after
22 2:00. Any problem with that?

23 MR. MYERS: No.

24 MR. FLOYD: No.

25 THE COURT: Any problem with going a little bit

1 later for purposes of jury selection?

2 MR. MYERS: I'd like for us to finish it as soon as
3 we can. I'd like for us to try and qualify and strike
4 Wednesday.

5 THE COURT: Good. I'd like to go maybe a little
6 bit later, if that's okay. I assume you've had a chance to
7 do your research on the jury up until this point, all of you
8 have?

9 MR. YOUNG: The only thing, we have not received a
10 copy of the rap sheets yet.

11 MR. FLOYD: They gave me notice.

12 THE COURT: Got them. Okay. Good. Let's go a
13 little bit later this evening then, okay.

14 (WHEREUPON, the side-bar was concluded.)

15 THE COURT: At this time, Madam Clerk, I'm going to
16 turn them over to you.

17 THE CLERK: As your name is called, if you will,
18 please come forward all the way up to the front bench here.
19 259, Sherry Owensby; 88, Robert Corley; 30, Ann Bedenbaugh;
20 348, Nidsa Stokes; 207, Darlene Ledbetter.

21 THE COURT: Jurors, let me have your attention, if
22 I might, please, the five of you. You will be the first five
23 jurors that we will examine. We will examine you in the
24 order that she called your name. What we're going to do is
25 ask that you step back to the grand jury room behind us in

1 just a moment. The bailiffs are going to show you where, and
2 we'll ask you to wait there until you're called. You'll be
3 called one at a time.

4 Now, you have in front of you a sheet which
5 describes the three jurors that we talked about. I'll ask
6 you to look over that sheet, if you would, in the meantime.
7 Take some time to reflect on your feelings about the death
8 penalty, particularly as it applies to that sheet, and we'll
9 have some questions when you come back in. Remember, again,
10 you may not fall in one of those categories definitely, you
11 may fall between, and that's all right. But all we're going
12 to do is just chat with you about your feelings.

13 Now, it's very important that you not talk with
14 anyone, even with each other while you're back in the room,
15 with anyone at all about the case or the issues or about
16 anything. There shouldn't be a newspaper back there. So be
17 sure to stay away from any kind of news or anything.

18 With that in mind, I'm going to ask if you'll just
19 follow the bailiff here and he'll show you where to go.
20 We'll bring you back in just a few minutes.

21 (WHEREUPON, Jury Panel Number 1 was taken to
22 the jury room.)

23 THE COURT: All right. Let's call the next panel,
24 please.

25 THE CLERK: 305, Shirlye Sands; 133, Jennifer

1 Garrett; 54, Thomas Brown; 327, Frances Smith; 284, Ashley
2 Ray.

3 THE COURT: Jurors, you'll be the next panel that
4 we will talk with. Now, we'll ask you to come back at two
5 o'clock. At two o'clock this afternoon. And at that time,
6 we'll discuss with you, again, some of these issues involved.
7 Remember, nobody is going to give you a hard time. It's just
8 going to be more of a little chat than anything.

9 And I'll ask you to be sure not to talk with
10 anybody about the case. And again, it's still very important
11 that if you get in your cars you may want to turn your radio
12 off or if you hear the news come on be sure and turn that off
13 too. Stay away from any television or radio or news also, or
14 any newspapers until you come back.

15 So what we'll do is ask you to be back at two
16 o'clock. The bailiff will take you to the room and show you
17 where you're going to report. And come back to that room at
18 two o'clock and we'll be prepared for you then. Thank you.
19 See you back in a little while.

20 (WHEREUPON, Jury Panel Number 2 was excused
21 until two o'clock.)

22 THE COURT: All right. Let's call the next panel,
23 please.

24 THE CLERK: Number 244, Rebecca Morris; 210, Kay
25 Locklair; 274, Elizabeth Porter; 161, Stephanie Harris; 236,

1 Catherine Miller.

2 THE COURT: Ms. Miller has been taken care of.

3 THE CLERK: I'm sorry. We'll draw another one.
4 148, Jay Griswold.

5 THE COURT: Which one does that replace?

6 THE CLERK: 236. Ms. Miller was the one with the
7 small child.

8 THE COURT: Jurors, we will ask you to come back at
9 3:30. If you would, come back to the room back here. The
10 bailiffs are going to show you in just a minute where you'll
11 report to. Until that time, remember, very important that
12 you not talk with anybody about the case in any way. Stay
13 away from any kind of news at all; no radio, no television,
14 no newspaper.

15 When you get a chance, take a few minutes to look
16 over the sheet. Reflect on your feelings about the death
17 penalty, and we'll talk with you when you come back.
18 Remember now, nobody is going to give you a hard time. It's
19 just going to be more of a little chat than anything just to
20 determine how you feel about the death penalty. That's all
21 it is. We'll see you back at 2:30. Thank you.

22 (WHEREUPON, Jury Panel Number 3 was excused
23 until 3:30 p.m.)

24 THE CLERK: Number 119, Joan Follmer; 21, Warren
25 Barnes; 381, Robert Wicker; 307, Carolyn Savoie; 353,

1 Caroline Summers.

2 MR. MYERS: Excuse me. You told that panel the
3 last time, you said 2:30 then one time you said 3:30.

4 THE COURT: I'm sorry. It's 3:30. We'll tell the
5 panel it's 3:30. Thank you, Mr. Myers. I'm sorry.

6 THE CLERK: Judge, this is Mr. Barnes. He has a
7 doctor's excuse. Number 21, Mr. Barnes.

8 THE COURT: Counsel, let me ask if you would
9 approach just a minute, please. Bring Mr. Bennett up,
10 please.

11 (WHEREUPON, the following side-bar was
12 reported with the defendant present.)

13 THE COURT: I'm sorry. I didn't know about this
14 until just now. Mr. Barnes has presented a medical
15 statement.

16 MR. MYERS: I have no objection.

17 THE COURT: Any objection?

18 MR. FLOYD: We don't have any objection to him
19 being excused for this doctor's dismissal.

20 THE COURT: Thank you.

21 (WHEREUPON, the side-bar was concluded.)

22 THE COURT: Mr. Barnes is excused for medical
23 reasons as presented by the doctor's statement.

24 Do you need his address?

25 THE CLERK: I got it, Judge. I'll take care of

1 that.

2 THE COURT: Okay. We need to keep this. Thank
3 you.

4 THE CLERK: We will replace Mr. Barnes with number
5 28, Angelia Beasley.

6 THE COURT: Jurors, we're going to ask all of you
7 to come back at five o'clock, five o'clock. And if you
8 would, come back and just report to this same room back here
9 that the others have gone to. The bailiffs are going to show
10 you which one.

11 Again, remember, very important, don't talk about
12 the case with anybody. And, again, I know it's always a
13 temptation to but you just need to not do that. Stay away
14 from any kind of news, radio, television, newspaper, anything
15 such as that. And take some time to look over the sheet and
16 reflect on your feelings about the death penalty, and we'll
17 chat with you a little bit more when you come back. See you
18 this afternoon at 5:00. Thank you.

19 (WHEREUPON, Jury Panel Number 4 was excused
20 until five o'clock p.m.)

21 THE COURT: Let's do one more panel for today,
22 okay. We'll bring them at 6:30.

23 THE CLERK: Number 280, Brenda Quaethem; 130, Jerry
24 Gantt; 175, Eddy Huckabee; 123, Lynda Franklin; 316, Midgett
25 Shealy.

1 THE COURT: Jurors, we're going to ask you to come
2 back at 6:30 this evening, if you would, please. Again, the
3 bailiff is going to show you the room that we need you to
4 report to. I'll ask you again, be sure not talk with anyone
5 about the case between now and then.

6 Now, certainly you want to let your families know
7 where you're going to be and what you're doing, but it's
8 important that you not talk about the details of anything, or
9 the case, and particularly about the issue of the death
10 penalty because that's something that we need to know as to
11 what you think about it.

12 Stay away from any sort of radio, television, or
13 newspaper, or news. And with that in mind, we'll see you
14 back in here at 6:30. They'll show you where the room is.

15 (WHEREUPON, Jury Panel Number 5 was excused
16 until 6:30 p.m.)

17 THE COURT: Counsel, let's draw the next panel for
18 nine o'clock in the morning, okay.

19 THE CLERK: Number 271, Rudiger Plaumann; 322,
20 Clifton Simmons; 239, Jerry Miller; 362, John Teague; 51,
21 Gwendolen Brown.

22 THE COURT: Jurors, we're going to ask all of you
23 if you would come back tomorrow morning at nine o'clock.
24 Until that time, remember, again, very important that you not
25 talk about the case with anybody.

1 Stay away from any kind of news. Now, you're going
2 to be the first ones basically to be overnight. So obviously
3 when the seven o'clock, or six o'clock, or 11 o'clock news
4 comes on you need to be sure and stay away from that. Stay
5 away from any sort of news on the radio and from any
6 newspapers. And I know a lot of people like to have their
7 morning newspaper, but very important that you not look at it
8 right now.

9 We'll ask you to be back at 9:00. Take some time
10 to look over the sheet to sort of help you guide in
11 determining your feelings about the death penalty. But
12 again, be sure not to talk with anyone about it. The bailiff
13 will show you the room, and we'll ask you to be back at that
14 room at nine o'clock in the morning. Thank you.

15 (WHEREUPON, Jury Panel Number 6 was excused
16 for the day.)

17 THE COURT: 10:30 I think will be the next panel.

18 THE CLERK: Number 53, Michael Brown; 112, Jimmy
19 Elmore; 135, Caroline Gaskin; 39, Julian Blake; 23, Barbara
20 Barrs.

21 THE COURT: Jurors, I'm going to ask if all of you
22 would be back at 10:30 in the morning, 10:30. The bailiffs
23 will show you the room.

24 Until that time, remember, don't talk with anyone
25 about the case, don't let anyone talk with you about it.

1 Stay away from any sort of news until then. And you will
2 have these sheets. We will ask you to look these sheets over
3 and reflect on them before you come back, and we'll see you
4 at 10:30 in the morning. Have a good day.

5 (WHEREUPON, Jury Panel Number 7 was excused
6 for the day.)

7 THE CLERK: Number 83, Joshua Conder; 334, Wally
8 Sox; 258, Wilson Outlaw; 229, David McNinch; 211, Cerita
9 Loftis.

10 THE COURT: Jurors, we'll ask you to be back in the
11 morning at 12 o'clock tomorrow, 12 o'clock. And at that
12 time, if you would just come back to the room that the
13 bailiffs will show you to.

14 Now, it's very important until that time not to
15 talk about the case with anyone. Look over those sheets and
16 give yourself some time to reflect on the issue of the death
17 penalty. And be sure and stay away from any news until then.
18 We'll see you back at 12:00 tomorrow.

19 (WHEREUPON, Jury Panel Number 8 was excused
20 for the day.)

21 THE CLERK: Number 260, Patricia Padgett; 49, Karen
22 Brenneke; 87, Linda Corely; 177, Adam Humphrey; 12, Iry
23 Austin.

24 THE COURT: I'm going to ask each of you if you'll
25 be back tomorrow afternoon at 2:30, 2:30 tomorrow afternoon.

1 Just report to this room back here that the bailiffs will
2 show you to.

3 Until that time, again, please don't talk with
4 anyone about the case. Stay away from any sort of news. And
5 take a little bit of time to read over this sheet and reflect
6 on it a little bit, if you would. We will see you back at
7 2:30 tomorrow.

8 (WHEREUPON, Jury Panel Number 9 was excused
9 for the day.)

10 THE CLERK: Number 370, Ronald Turner; 294, Joan
11 Rivers; 361, William Taylor; 91, Sheri Crafton; 339, Anna
12 Stanberry.

13 THE COURT: Jurors, I'm going to ask if you will be
14 back at four o'clock tomorrow afternoon, if you would,
15 please.. At that time, we'll ask you to report to the room
16 that the bailiffs will show you to.

17 Until that time, it is still very important that
18 you not talk with anyone about the case. Stay away from any
19 sort of news at all. And take a few minutes to look over
20 that sheet. We will see you back tomorrow at four o'clock.
21 Thank you.

22 (WHEREUPON, Jury Panel Number 10 was excused
23 for the day.)

24 THE CLERK: 136, Ronald Gates; 208, Janet Lee; 93,
25 Anthony Crawford; 400, Sherry Wyatt; 389, John Willis.

1 THE COURT: Jurors, I'm going to ask you to be back
2 tomorrow at 5:30 in the afternoon. That's 5:30 tomorrow
3 afternoon.

4 Again, you need to listen to me, sir. You need to
5 listen to me closely, please, okay.

6 5:30 tomorrow afternoon. The bailiffs will show
7 you the room to go to. Until that time, it's very important,
8 remember to not talk with anyone about the case. Stay away
9 from any news accounts in any way, and take a few minutes to
10 look over that sheet. We'll see you back tomorrow at 5:30.

11 (WHEREUPON, Jury Panel Number 11 was excused
12 for the day.)

13 THE CLERK: 73, Lynn Chandler; 24, Diane Bates;
14 194, Barbara Key; 41, Charles Boler; 232, Deborah Mencarelli.

15 THE COURT: All right. I'm going to ask each of
16 you if you'll come back tomorrow at nine o'clock -- Wednesday
17 morning at nine o'clock. The bailiffs will show you the room
18 to report to. And until that time, again, very important,
19 that's two days that you're going to have to go without
20 watching any kind of news, staying away from the radio, no
21 TV, no newspaper, be sure not to talk with anyone.

22 Again, tell your families where you're going to be
23 and what you're going to be doing, that's fine, but just stay
24 away from talking about the case. You have a sheet there,
25 you need to be sure and look that sheet over, and reflect on

1 it, and when you come back we'll just have a little chat with
2 you. See you back at nine o'clock on Wednesday morning.

3 (WHEREUPON, Jury Panel Number 12 was excused
4 until Wednesday.)

5 THE COURT: Counsel, we'll draw one more panel.
6 That will give us 70, I think, or is it 60? Two more panels.

7 THE CLERK: Number 104, Nehal Desai; 128, Maurine
8 Gabus; 394, Gunell Winn; 4, Gail Allen; 132, William Gardner.

9 Judge, Mr. Gardner would like to speak you.

10 MR. GARDNER: Your Honor, my name is William
11 Gardner. I'm a lieutenant from Lexington County Fire
12 Service. Before coming to work for the fire service I was a
13 law enforcement with the City of Cayce. My commission has
14 expired, however, I'm also still a member of the Lexington
15 County Law Enforcement Officers' Association.

16 THE COURT: Well, you still need to come back.
17 Plan to be back with us. Statutorily I can't excuse you for
18 those reasons.

19 Jurors, I'm going to ask if all of you will be back
20 with us at 10:30 Wednesday morning, if you would, please.
21 The bailiffs will show you -- 10:30 Wednesday morning. And
22 again, don't mean to be so picky about it but I've got to be
23 sure that you understand all this. 10:30 Wednesday morning.
24 They'll show you the room back here to report to.

25 Now, until that time, be sure not to talk with

1 anybody about the case. Stay away from any sort of news at
2 all, and take a little bit of time to look over that sheet
3 and reflect on that a little bit. We'll see you back at
4 10:30 Wednesday.

5 POTENTIAL JUROR: Is this going to be longer than a
6 week?

7 THE COURT: It could be.

8 POTENTIAL JUROR: Because I'm in the process of
9 moving to Charleston.

10 THE COURT: We'll take that up when you come back.

11 (WHEREUPON, Jury Panel Number 13 was excused
12 until Wednesday.)

13 THE CLERK: Number 116, Ronald Ferrera; 169, Janett
14 Hill; 118, Richard Fleming; 94, Robert Creed; 312, Timothy
15 Seybt.

16 THE COURT: I'm going to ask each of you to be back
17 at 12 o'clock on Wednesday. That's 12 o'clock noon on
18 Wednesday. Just report to this room back here.

19 Now, until that time, again, very important that
20 you not talk with anyone about the case. Stay away from any
21 sort of news until then. And take a few minutes to look over
22 the sheet and reflect on that a little bit, and we'll just
23 sort of have a chat with you when you get back, okay. We'll
24 see you at 12 o'clock Wednesday. They'll show you the room
25 to report to.

1 (WHEREUPON, Jury Panel Number 14 was excused
2 until Wednesday.)

3 THE COURT: Counsel, I believe that is a total of
4 70 at this point, to start with. What let's do is go ahead
5 and cut it off at that point and just bring all of the other
6 jurors back at 2:30 Wednesday. How does that sound?

7 Is the State all right?

8 MR. MYERS: Yes, sir, that's fine with the State.

9 THE COURT: The defense?

10 MR. FLOYD: Fine with the defense, Your Honor.

11 THE COURT: Jurors, now those of you who have not
12 been chosen in these panels, while I'm sure you're terribly
13 disappointed, we're going to ask you to be back at 2:30
14 Wednesday afternoon. Now, remember that. Wednesday
15 afternoon, 2:30. And you'll come back here in the courtroom.
16 Back here in the courtroom Wednesday afternoon at 2:30.

17 Now, this is going to sound awfully difficult, but
18 it's very important. We have to ask that all of you refrain
19 from talking about this case with anyone. Now, while we have
20 drawn 70 names we frequently go beyond the 70 names. So it's
21 possible that we may still have to draw some of you. So with
22 for that reason, we ask that you not talk about the case with
23 anyone at all. Certainly, let your family and friends know,
24 and your employer know where you're going to be Wednesday at
25 2:30, but certainly don't get into any of the issues about

1 the case with them.

2 Also, please be sure to stay away from any sort of
3 news accounts. I know I'm asking a lot of people not to
4 watch the news in the evening on television, stay away from
5 it on the radio and do not read the newspaper. But it's
6 very, very important that you do that so that both sides can
7 have a fair trial in this case.

8 With that in mind, we're going to ask all of you to
9 be back at 2:30 Wednesday afternoon right here in the
10 courtroom. And you're excused until that time.

11 (WHEREUPON, the jury venire was excused until
12 Wednesday.)

13 THE COURT: We'll take a brief recess.

14 (WHEREUPON, a brief recess was taken.)

15 THE COURT: Counsel, we need to take up some other
16 jury excuses that we had.

17 Madam Clerk, tell us which ones you have there.

18 THE CLERK: I gave the sheet, Judge, to both sides
19 pertaining to these. These jurors brought information in
20 after we had met the last time.

21 Juror Number 75, Gerald Chavis; he did show up this
22 morning but he had requested his age exemption, and he was
23 sent home this morning.

24 Juror Number 78, Chad Cobb; he did send in his
25 driver's license verifying he's a Richland County resident.

1 Juror Number 324 did send in confirmation about a
2 paid vacation and reservations made. This was the lady who
3 was driving through family and staying with family. The
4 family has rented the house at a seaside cottage resort.
5 That is Juror Number 324, Gayle Sims.

6 Juror Number 399 was also deceased, and we have a
7 death certificate.

8 Juror Number 350, Mr. Strunck; he didn't show first
9 thing this morning but he has since come in, he was late
10 getting here. So he is here and we do have his information.

11 Juror Number 385, Angelia Williams, brought a
12 doctor's certificate; and she has been excused.

13 Juror Number 199, Ms. Jo Ann Oswald, was here this
14 morning. She had a panic attack and was excused, and she
15 will be sending us a medical certificate. And I think that's
16 it.

17 THE COURT: Counsel, any objection to excusing
18 those jurors, from the State?

19 MR. MYERS: None from the State.

20 THE COURT: The defense?

21 MR. FLOYD: None from the defense, Your Honor.

22 THE COURT: All right. Thank you. And let me note
23 this. As to the one juror who had the panic attack, as I
24 understand the clerk has indicated that she observed her this
25 morning and felt like it was a legitimate situation that we

1 were dealing with. So we went ahead and excused her rather
2 than having any other problems with her.

3 All right. Anything before we bring the first
4 juror out? Is the State ready?

5 MR. MYERS: The State is ready.

6 THE COURT: Is the defense ready?

7 MR. FLOYD: The defense is ready, Your Honor.

8 THE COURT: All right. Let's bring the first juror
9 in, please.

10 (WHEREUPON, Juror Number 259, Sherry L.
11 Owensby, a white female, enters the courtroom.)

12 SHERRY L. OWENSBY, after having been duly
13 sworn, testified as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. This is Ms. Owensby, I believe, is that correct?

17 A. That's correct.

18 Q. All right. Ms. Owensby, I want you to just relax
19 now. Nobody is going to give you a hard time. We're just
20 going to chat a little bit. As I indicated, there are no
21 right or wrong answers. We're just trying to just see what
22 your feelings are.

23 First of all, as we told you, this is the case of
24 The State vs. Johnny O. Bennett. Let me introduce you to
25 some of the folks involved. This is Mr. Donnie Myers, who is

1 the Solicitor who will be trying the case. Working with him
2 are Mr. Dayton Riddle and Mr. Shawn Graham. Do you know any
3 of those gentlemen?

4 A. I don't.

5 Q. Also, this is Mr. Bennett on the left over here,
6 with the tie. Do you know Mr. Bennett or know of him in any
7 way?

8 A. Which one?

9 THE COURT: Would you raise your hand so we can
10 see, Mr. Bennett.

11 (The defendant complied.)

12 A. I don't.

13 Q. All right. He's represented by Mr. Hervery Young
14 and Mr. Wayne Floyd. Do you know or know of either of them?

15 A. I don't.

16 THE COURT: Counsel, one thing that occurs to me is
17 I did not have a list of the names of witnesses called out to
18 these jurors. Do either of you have your witness names?

19 Let me ask if you'll step back outside the door
20 just one second while we take the matter up, okay.

21 (WHEREUPON, Juror Owensby leaves the
22 courtroom.)

23 THE COURT: Do you have the names of the witnesses
24 prepared at this point, potential witnesses?

25 State, do you have yours?

1 MR. MYERS: We can get them.

2 THE COURT: Defense, do you have yours?

3 MR. FLOYD: We don't have them with us presently in
4 the courtroom but we have one we can get to you, Your Honor.

5 THE COURT: What I need to do is have -- we'll
6 dispense with this jury at least until the two of you can get
7 them, but we will need to get the names of the witnesses to
8 the jurors as they are coming so that we can determine
9 whether or not there's any problem. I don't think it should
10 be a problem, I haven't run into it before, but we need to be
11 sure of that. If you would, how about I'd ask each side to
12 go ahead and just have somebody get a list of the names
13 together, okay?

14 Any problem with that, Mr. Myers?

15 MR. MYERS: Both sides submit a list to you?

16 THE COURT: Yes, sir.

17 MR. MYERS: Then you'll show it to the jurors when?

18 THE COURT: Right. If you recall we've done this
19 before where basically I just give them to the jurors back
20 there. Let them look them over, and they just let me know if
21 they know or know of any of the witnesses involved. And what
22 I've intended in the past to do, just to be fair to both
23 sides, is just to keep the full list sealed, and we'll only
24 have a certain number. And that way we can keep up with them
25 as we go.

1 Any problem with that, from the State?

2 MR. MYERS: No, sir.

3 THE COURT: Defense?

4 MR. FLOYD: No, Your Honor.

5 THE COURT: Okay. Let's go ahead and bring her

6 back.

7 We'll take this issue up with her later on,

8 Counsel.

9 (WHEREUPON, Juror Owensby enters the
10 courtroom.)

11 BY THE COURT:

12 Q. Thank you. I apologize for that.

13 A. That's okay.

14 Q. Ms. Owensby, have you heard or read anything about
15 this case before in any way, that you know of?

16 A. If I have it hasn't registered. I don't recognize
17 the name.

18 Q. To your knowledge, you don't know anything about
19 the case?

20 A. To my knowledge, I know nothing about it.

21 Q. Okay. Have you formed any sort of opinion to any
22 of the issues involved in this case?

23 A. You mean about the --

24 Q. I'm going to get on the death penalty issue.

25 A. Okay.

1 Q. But any of the other issues, have you formed any
2 opinions at all?

3 A. No, Your Honor.

4 Q. Do you know of any reason why you could not give
5 both sides a fair trial?

6 A. I don't.

7 Q. Now, we asked you to look over the sheet, this
8 sheet that has three jurors described on it. Did you get a
9 chance to take a look at it?

10 A. Yes, sir, I did.

11 Q. And have you had a chance to think about it and
12 reflect on it?

13 A. Yes, sir.

14 Q. Do you need more time at all?

15 A. No.

16 Q. You notice this describes three types of jurors?

17 A. Right.

18 Q. Do you feel like you would fit within one of those
19 categories or close to it?

20 A. I was hoping I would never have to answer that
21 question.

22 Q. I understand.

23 A. I'm somewhere between number two and number three.

24 Q. Okay, number two -- and that's no problem. We just
25 need to kind of narrow it down a little bit. Number two is a

1 juror who says that, in essence, that under no circumstances
2 could they ever give the death penalty.

3 A. Right.

4 Q. Is that what you're saying, as far as that's
5 concerned?

6 A. I understand it to say that. My --

7 Q. Okay.

8 A. Go ahead, I'm sorry.

9 Q. Well, I was going to say, the third type of juror
10 is the juror who says this. It says that although the
11 defendant has been found guilty of murder, which as we told
12 you is the case here, that they would not have their mind
13 made up in advance.

14 And this juror says that I want to hear all those
15 aggravating circumstances, I want to hear all of those
16 mitigating circumstances, I want the Judge to tell me the
17 law, and only then, and only then would I make up my mind
18 regarding the appropriate punishment.

19 And if after hearing all of that if I found that a
20 life sentence was appropriate I could give a life sentence,
21 and if I found that a death sentence was appropriate I could
22 give the death sentence. It would depend on the appropriate
23 circumstances. Is that what you are saying?

24 A. Right. Right.

25 Q. That when you are saying somewhere between two and

1 three, I gathered that you're saying you're leaning against
2 the death penalty; is that correct?

3 A. Right. I'm saying that in my head I believe the
4 death penalty is wrong. In my heart, I think that I could
5 kill someone just as much as anyone else could, under certain
6 circumstances.

7 Q. Under the appropriate circumstances.

8 Now, in South Carolina we also have one other step,
9 and I want to go over this with you. The law says this; that
10 if -- in most cases if a jury reaches a verdict only the
11 foreman signs the verdict.

12 Now, in a case such as this, however, if the jury
13 gives a death sentence all 12 jurors must sign a form saying
14 they've given the death sentence. If you were on the jury
15 and with the other jurors had given the death sentence would
16 you be able to sign that form saying you had given a death
17 sentence?

18 A. If that's what I believed was right.

19 Q. Do you know of any other reasons why you could not
20 give both sides a fair trial?

21 A. I don't. I think I probably could.

22 Q. Let me ask if you'll answer any questions the
23 lawyers have, okay?

24 A. Okay.

25 THE COURT: The State?

VOIR DIRE EXAMINATION

1

2 BY MR. MYERS:

3 Q. Ms. Owensby, the law requires that attorneys ask
4 some questions to you.

5 A. Sure.

6 Q. I'll ask those questions.

7 You said about being between category two?

8 A. Right.

9 Q. That is against the death penalty?

10 A. Right.

11 Q. And category three?

12 A. Right.

13 Q. Depending on circumstances; is that correct?

14 A. Uh-huh.

15 Q. And then you said something a little while ago
16 about in your head you believed the death penalty was wrong;
17 did I hear that?

18 A. That's correct. That's correct.

19 Q. And, of course, being a pastor, is that based on
20 religious beliefs --

21 A. Yes, sir.

22 Q. -- or any past experiences?

23 A. Yes, sir.

24 Q. Ms. Owensby, you realize the Judge told you then
25 and this morning the jury is going to have to hand down a

1 sentence in this case; you heard him?

2 A. Right.

3 Q. Either life in prison or the death penalty?

4 A. Right.

5 Q. Now, based on your statement about in your head the
6 death penalty is wrong, could you explain that as to your
7 serving as a juror in this case.

8 A. I don't want to preach in the courtroom because I
9 know this isn't a church.

10 Q. I understand.

11 A. But it's sort of like what the Apostle Paul said,
12 What I don't want to do I do, and what I do want to do I
13 don't do. My head and my heart are not always together.

14 Q. Uh-huh. And when you said something about your
15 heart, and I couldn't hear what you said about your heart.

16 A. I said that in my heart I could probably kill
17 someone myself with my bare hands under certain circumstances
18 as easily as someone else could. I don't like that part of
19 myself.

20 Q. Right.

21 A. But I don't have any doubt that I could do that.

22 Q. And we got an internal conflict within yourself;
23 your head on one part, and your heart on the other one?

24 A. That's right. That's right.

25 Q. Now, could you tell us very honestly, Pastor

1 Owensby, that that conflict between your head and your heart.
2 that that would not go into the jury room with you on
3 deciding a sentence, or would that go into the jury room with
4 you? I know that's a confusing question.

5 A. I think that it would go into the jury room with me
6 in the sense that my head would consider things from one
7 standpoint and my heart would consider them from another
8 standpoint, and it would probably enable me to consider both
9 fairly, fairly, if that makes sense to you.

10 Q. I can follow it a little bit. Your head is in
11 category two and your heart is in category three?

12 A. Uh-huh. Uh-huh.

13 Q. I understand. And going into the jury room you
14 would have that category two in your head in there; is that
15 correct?

16 A. Uh-huh.

17 Q. And that part would -- your thinking on category
18 two would go into the jury room, that would be a part in your
19 deliberations?

20 A. That would be a part of it. It would also be a
21 part of it to consider whatever circumstances there are,
22 because I'm not absolutely rigid on that.

23 Q. This is a difficult question to ask you, and --

24 A. Go ahead.

25 Q. And I don't know how to phrase it but --

1 A. Well, give it a shot.

2 Q. Which is more prevalent?

3 A. My head or my heart? My heart, almost across the
4 board.

5 Q. And I don't know how to phrase this, but I'll just
6 ask you; being very frank with us and admitting that internal
7 battle between your head in category two and heart in
8 category three, is it fair to say that that internal conflict
9 would be involved in your decision making process?

10 A. I'm sure it would be. It's involved in almost
11 every decision I make in my life.

12 Q. And in reaching a verdict in a case of life or
13 death then there would have to be some resolution between
14 your head and your heart, one way or the other?

15 A.. That's right.

16 Q. Could you tell us, Pastor Owensby, unequivocally
17 that that heart would not -- that that head in category two
18 would not interfere with your decision making process?

19 A. I'm not sure how to answer that. If you're asking
20 me whether I would think things through or whether I would
21 just go according to my gut, I would both think things
22 through and go according to my gut.

23 Q. Well, what I meant --

24 A. If you're -- go ahead.

25 Q. What I'm basically asking you is can you tell us

1 that your position about the death penalty in your head on
2 category two --

3 A. Would overrule what I --

4 Q. No. Would that in any way interfere with your
5 decision making process in this case?

6 A. Oh, I don't think it would. I don't think it
7 would.

8 Q. And it would not be a part in your decision making
9 process?

10 A. Well -- "hmm".

11 [PAUSE.]

12 I can't answer that either way, honestly, because I
13 don't know. I was being very honest with you when I said
14 that what I believe and what I do are not always the same
15 thing.

16 Q. I can understand that. Let me ask you this. You
17 said that you had testified in a criminal case before?

18 A. Yes, I have.

19 Q. Did that case involve a murder or a violent crime?

20 A. It involved violence. I was formerly the executive
21 director of the -- it's called Haven in Lee County, in North
22 Carolina. It stands for Helping Abuse and Violence End Now.

23 Q. You were not an eyewitness to a crime?

24 A. No. No.

25 Q. And you said you'd served on a criminal jury

1 before?

2 A. No, not on a criminal jury. Well, I guess it was
3 too. I don't understand exactly the categories in South
4 Carolina, but I was the foreman of the jury for whatever kind
5 of court is held in Swansea.

6 Q. That's a magistrate's court?

7 A. That's a magistrate's court.

8 Q. And you lived in the Swansea area about a year and
9 a half or two?

10 A. Right about -- right. Between a year and a half
11 and two years.

12 Q. I'm going to ask you one final question, and you're
13 going to have to tell us this. The reason the Judge gives
14 the categories to jurors is that someone's opinion about the
15 death penalty -- we have to ask those, and that's what we're
16 doing now. If someone said that, well, I'm pretty strong
17 about that death penalty. I pretty much believe in that
18 death penalty, and when I go into the jury room I'm going to
19 be for the death penalty.

20 Then you got that second category where your head
21 is about, well, I'm not too much for the death penalty. And
22 that's for whether a jury is qualified or not. Because the
23 third category, you know, is you've got to listen to
24 everything without having a feeling one way or the other. If
25 the juror has a belief that it would impair or interfere with

1 the decision making process of life or death then that juror
2 wouldn't be qualified.

3 A. That's true. That's true.

4 Q. Are you qualified based on your faith to serve on a
5 jury to decide life or death?

6 A. I think I'm qualified to be fair. I would rather
7 not be in the position to make such a decision about someone,
8 but I think I could do it and I think I could be fair about
9 it, and I could sign on the dotted line.

10 Q. Thank you, ma'am. That's all we ask of you.

11 A. Okay. Shall I go back?

12 Q. They have to ask you some questions.

13 A. Oh, I'm sorry.

14 VOIR DIRE EXAMINATION

15 BY MR. FLOYD:

16 Q. My name is Wayne Floyd, and I'm one of the
17 attorneys for the defendant. Hervery Young, the gentleman
18 seated next to me, is my co-counsel; and Mr. Bennett is the
19 next person seated there.

20 When you're talking about your conflict between
21 your head and your heart, that's the human condition, isn't
22 it?

23 A. It really is.

24 Q. So what you're talking about is the same conflict
25 we all have when our head tells us to do one thing and our

1 heart tells us to do the other?

2 A. Uh-huh.

3 Q. And it's human nature to reconcile those if we can?

4 A. Uh-huh.

5 Q. So the bottom line is, though, you can perform your
6 duties in this case if you were asked to?

7 A. I think so.

8 MR. FLOYD: Thank you. No further questions.

9 THE COURT: Anything else, Mr. Myers?

10 MR. MYERS: No, sir.

11 THE COURT: All right. Let me ask if you'll step
12 just outside the door for a minute. We'll ask you to come
13 back in in just a second, okay.

14 (WHEREUPON, Juror Owensby leaves the
15 courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Motion to disqualify.

19 THE COURT: The defense position?

20 MR. FLOYD: Your Honor, I think she's clearly
21 qualified. She answered the questions. She said that she
22 could make that decision, she could decide between life and
23 death. Her mind wouldn't be made up, she would be fair.

24 All she's talking about is the same problem we all
25 have where our heart tells us one thing, our head tells us

1 another. That's what we all do every day. But when the
2 bottom line came down and the question was asked she said
3 that she could do what she had to do in this case. So she's
4 eminently qualified.

5 THE COURT: Anything else, Mr. Myers?

6 MR. MYERS: No, sir.

7 THE COURT: I find the juror is qualified. There
8 was some -- I detected some conflict in it but when she came
9 down to it she indicated -- the questions she gave indicated
10 she could follow her oath as a juror. I think she's
11 qualified.

12 (WHEREUPON, Juror Owensby enters the
13 courtroom.)

14 THE COURT: Ms. Owensby, I've determined that you
15 would be qualified to sit on a jury if you're selected. Now,
16 what we're going to do is ask you to come back Wednesday
17 afternoon at 2:30, okay. Now, at that time, if you would,
18 bring bags packed for as much as a week to a week and a half
19 in a motel. The jury will be sequestered. Will that give
20 you any problem, you winced a little bit?

21 MS. OWENSBY: I'm on call for three pastors who are
22 on vacation for emergencies.

23 THE COURT: Well, let me be sure you understand.
24 This jury is going to be sequestered in a motel. And while I
25 hate it, you're not going to be able to go anywhere once

1 you're on the jury. We're going to have basically people who
2 are going to -- you'll be there every night. You'll come to
3 court, go back to the hotel for the night, and then come back
4 to court in the morning. And there will be security people
5 who will be with you at all times. You won't be allowed to
6 leave for any reason.

7 MS. OWENSBY: Not for any reason?

8 THE COURT: No, ma'am.

9 MS. OWENSBY: That is a problem for me right now.
10 It would not be a problem for me at another time.

11 THE COURT: Is that going to cause you any great
12 disruption in your being able to concentrate as a juror? Is
13 it going to give you a problem as a juror?

14 MS. OWENSBY: It would give me problems right now
15 because I'm obligated to be on call for these three pastors
16 who are out of town.

17 THE COURT: Okay. And you already promised them
18 you'd do that?

19 MS. OWENSBY: Right. Right.

20 THE COURT: Okay. Let me ask if you'd step back
21 out just one minute, okay.

22 (WHEREUPON, Juror Owensby leaves the
23 courtroom.)

24 THE COURT: What's the State's position on this
25 juror now?

1 MR. MYERS: Motion to be excused.

2 THE COURT: Defense?

3 MR. FLOYD: Well, Your Honor, our position is the
4 same. She said it would present a problem but she didn't say
5 that it would interfere with her ability to perform her
6 functions as a juror.

7 THE COURT: This is the same situation with jurors
8 as we've done before. We have not excused jurors for normal
9 work problems. However, those that are beyond the ambit of
10 normal and tend to be unusual in nature are a problem.
11 Apparently, from what I understand from her document, she's a
12 minister. She has indicated that she's committed to be
13 obligated to cover for three other pastors for emergency
14 situations at the hospital. Given that, I don't think I have
15 any choice but to excuse her.

16 MR. FLOYD: Your Honor, we would ask that you ask
17 her whether or not there's someone else who could cover for
18 her because she's been called to perform this civic duty, and
19 if so, that would --

20 THE COURT: Okay. I'll ask her that. Bring her
21 back in.

22 (WHEREUPON, Juror Owensby enters the
23 courtroom.)

24 THE COURT: Ma'am, if you were on the jury during
25 that time period would there be someone else who could cover

1 for you? I know you promised to cover some other but do you
2 know of anyone?

3 MS. OWENSBY: I could call the senate office and
4 try to find someone who could.

5 THE COURT: You don't know of anybody right off the
6 bat though?

7 MS. OWENSBY: I don't know who's in town and who's
8 not. I'm sure that it would be possible to find someone
9 else.

10 THE COURT: Let me ask if you'd step back out just
11 a minute, okay.

12 (WHEREUPON, Juror Owensby leaves the
13 courtroom.)

14 THE COURT: Anything else on it, Mr. Floyd?

15 MR. FLOYD: No, Your Honor. I think what she's
16 clearly said is she could just call the government body and
17 they could find somebody for her, and we would ask that she
18 do that.

19 THE COURT: Well, she said she could. I don't
20 think at this point, though, it would make a lot of sense to
21 do that, to be honest. I know she said that she thinks
22 somebody else could cover and she could call but she's not
23 able to tell me who could do that. And my concern would be
24 she's liable to come back during the trial and there's
25 always -- if we knew something definite I'd say go ahead and

1 let somebody else cover for her, but I don't see doing it
2 with that kind of a vague situation.

3 MR. FLOYD: Your Honor, then we would ask that she
4 be allowed to call and see if somebody could cover for her if
5 she had to perform this function then we would know for sure.
6 Right now we're just speculating that there may be a problem.
7 And we feel that she's a good juror, a qualified jurors, and
8 we would like to explore that option before we actually send
9 her away.

10 MR. MYERS: On June the 30th of 2000, I think it
11 was a Friday, we started taking up jury matters. And the
12 State's position was that we just asked the Court to be
13 consistent. I've looked down here on a number of jurors that
14 were excused for work problems, and I think your ruling on
15 excusing her is consistent. And to not excuse her would be
16 inconsistent with prior jurors and work problems.

17 THE COURT: Mr. Floyd, do you want to respond to
18 that?

19 MR. FLOYD: Your Honor, we would disagree with the
20 solicitor's position on that point. Most of those people
21 that we let out had functions in their employment that only
22 they could do, and they were emergency situations that they
23 were covering.

24 In this situation, I think all of us -- the gist I
25 get of it is that when Lutheran ministers go on vacation that

1 someone that's not going on vacation agrees to cover hospital
2 visits for them, if there's emergencies. And I think what
3 she's saying is there is a governing body called the senate
4 of all the Lutheran churches and ministers in the area, and
5 all she would have to do would be to call them and see if
6 there's someone else available that could cover for these
7 three ministers that she's agreed to cover for.

8 And this is not her work. She's only agreed to
9 cover for these people who are on vacation. It would be just
10 as easy for the senate to find some other Lutheran minister
11 who doesn't have this obligation of jury duty to cover for
12 these three people if some kind of emergency comes up.

13 THE COURT: Yes, sir, I understand that.

14 MR. MYERS: Specifically, the number one juror,
15 that there was a worker who was on vacation and that juror
16 was excused so she could take over for the lady on vacation,
17 which is exactly what we have right here.

18 THE COURT: Anything else, Mr. Floyd?

19 MR. FLOYD: Your Honor, there is one other
20 difference, she hasn't asked to be excused. These other ones
21 did, but she hasn't asked to be excused. She said she could
22 probably get someone to cover.

23 THE COURT: I understand. The sense I got was, as
24 I understood, she said that she could do okay another time
25 but it would be hard this time. What I'll do is this. I'm

1 going to ask her to come back in. If she asks to be excused
2 I'm going to excuse her because that again is consistent with
3 what -- it is consistent with what I've done on the other
4 cases. Let's ask her to step in, please.

5 (WHEREUPON, Juror Owensby enters the
6 courtroom.)

7 THE COURT: Sorry to keep bringing you back and
8 forth. Ms. Owensby, based on the problem you told me you
9 had, are you asking to be excused in this case?

10 MS. OWENSBY: I would like to be.

11 THE COURT: Okay. We'll excuse you then, and we
12 appreciate it. Sorry we took so long doing it.

13 MS. OWENSBY: That's okay.

14 THE COURT: But I appreciate you letting me know
15 about that problem, okay.

16 MS. OWENSBY: Thank you.

17 THE COURT: Thank you, ma'am. You're free to go.

18 (WHEREUPON, Ms. Owensby was excused.)

19 MR. MYERS: Your Honor, we have our potential
20 witnesses for the State's case in chief. I'll hand those up
21 to you. And if a juror refers to them we'd ask that they
22 refer to them by number, rather than name.

23 THE COURT: Okay. Mr. Floyd, you want to do the
24 same thing?

25 MR. FLOYD: We don't have numbers though.

1 THE COURT: Let's do this. We'll get these
2 numbered. Do you have this on disk by any chance? If you
3 would, how about get the disk to Patsy.

4 MR. FLOYD: We can get it numbered, Your Honor.

5 THE COURT: Can you just have somebody go ahead and
6 just number them?

7 And then, Mr. Myers, do you happen to have these on
8 a disk by any chance, do you know?

9 MR. MYERS: Yes, sir.

10 THE COURT: If you would, let me ask both sides to
11 get me disk, because what we'll need to do is merge these
12 into one list for the juror to look over.

13 All right. Until we get those, let's continue on
14 with the next juror.

15 MR. FLOYD: Your Honor, before we call the next
16 juror could we just please make sure the record reflects our
17 objection to Your Honor excusing Juror Owensby.

18 THE COURT: So noted. Exception noted.

19 MR. FLOYD: Thank you.

20 THE COURT: All right, go ahead.

21 (WHEREUPON, Juror Number 88, Robert Corley, a
22 white male, enters the courtroom.)

23 ROBERT L. CORLEY, JR., after having been duly
24 sworn, testified as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Mr. Corley, just have a seat and relax. We're not
3 going to give you a hard time, okay. Mr. Corley, as we told
4 you, this is the case of The State vs. Johnny O. Bennett. Do
5 you know or know of Mr. Bennett in any way?

6 A. No, sir.

7 Q. Have you heard anything about this case at all?

8 A. Not that I can remember.

9 Q. Let me introduce you to some folks also. This is
10 Mr. Donnie Myers, who is the Solicitor. With him are
11 Mr. Dayton Riddle and Mr. Shawn Graham who will be trying the
12 case. Do you know or know of any of these gentlemen?

13 A. No, sir.

14 Q. This is Mr. Bennett over here.

15 Mr. Bennett, if you'll just raise your hand.

16 This is Mr. Bennett. And he's represented by
17 Mr. Hervery Young beside him, and Mr. Wayne Floyd. Do you
18 know or know of any of those gentlemen?

19 A. No, sir.

20 Q. You do not. Okay. Now, we gave you a sheet to
21 look over regarding the death penalty. Did you get a chance
22 to look that over?

23 A. Yes, sir.

24 Q. And you noted there were three categories in there
25 that were basically -- roughly describe types of jurors. Do

1 you feel that you would fall within one of those types of
2 jurors?

3 A. Yes, sir.

4 Q. And which is that?

5 A. Probably the third.

6 Q. Third. Let's go over this just to be sure we're
7 talking about the same thing, okay. The third type of juror
8 is the juror who is saying this. That although a person has
9 been found guilty of murder -- and as we told you, in this
10 case Mr. Bennett has been found guilty of murder by a
11 previous jury.

12 This juror says this. That in determining the
13 appropriate punishment that I would not have my mind made up.
14 That I would want to hear all of -- remember we told you.
15 about the aggravating circumstances that tend to make it
16 worse or aggravate it? We told you about mitigating
17 circumstances that tend to reduce it or lessen it.

18 And this juror says I want to hear all those
19 aggravating circumstances, I want to hear all those
20 mitigating circumstances, I want the Judge to tell me the law
21 and only then, only then am I ready to decide what the
22 appropriate punishment is.

23 And after doing that if I determine that a life
24 sentence is appropriate I could give a life sentence. If I
25 determine that the death sentence is appropriate I could give

1 the death sentence. It would just depend on what the
2 circumstances indicate. Is that what you're saying?

3 A. That's correct.

4 Q. Now, the law also says that if a jury gives the
5 death penalty that there is a sheet that all 12 jurors must
6 sign saying that they have given the death penalty. If
7 you're on a jury and you have determined that the
8 circumstances were appropriate for a death penalty and had
9 voted for it, would you be able to sign that sheet?

10 A. Yes, sir.

11 Q. Now, do you know of any reason why you could not
12 give both sides a fair trial in this case?

13 A. No, sir.

14 Q. Okay. Let me ask if you'll answer any questions
15 the attorneys have. Each side is going to ask you some
16 questions.

17 VOIR DIRE EXAMINATION

18 BY MR. MYERS:

19 Q. Mr. Corley, have you ever served on a criminal jury
20 panel before?

21 A. No, sir.

22 Q. All this is new to you?

23 A. Right.

24 Q. I'm sure these terminologies and everything, the
25 legal technicalities, you're not familiar with all of that,

1 are you?

2 A. No, sir.

3 Q. Mr. Corley, basically what this trial is about, as
4 the Judge says, the defendant at another time, another
5 proceeding was found guilty of murder; do you understand
6 that?

7 A. Yes, sir.

8 Q. And this trial will be for the jury to hear
9 testimony and decide what is the right punishment, life
10 imprisonment or the death penalty; so you understand that?

11 A. Yes, sir.

12 Q. And you just told the Judge as to those two choices
13 you are in category three; is that right?

14 A. Yes, sir.

15 Q. You'd have to listen to everything. Once you've
16 heard all the testimony then you could vote either life or
17 death, depending on the law and the circumstances?

18 A. Right, sir.

19 Q. I take it from that then, Mr. Corley, you're not
20 that type of person who would never vote for the death
21 penalty; is that right?

22 A. That's right.

23 Q. And you're not that type of person who would always
24 vote for the death penalty?

25 A. That's right.

1 Q. You just have to listen and then make up your mind?

2 A. Sure.

3 Q. Mr. Corley, do you know of any reason why you
4 couldn't sit in one of these chair over here, be a juror,
5 listen to all of the evidence, listen to the law as the Judge
6 gives you the law and be a fair juror in this case? Do you
7 know of any reason why you couldn't do that?

8 A. No, sir.

9 Q. Mr. Corley, is it fair to say that you would reach
10 your verdict on what you heard in this courtroom, the law and
11 the evidence involved?

12 A. Yes, sir.

13 Q. That's all we can ask of you. Thank you, sir.

14 THE COURT: Mr. Floyd?

15 MR. FLOYD: Thank you, Your Honor.

16 VOIR DIRE EXAMINATION

17 BY MR. FLOYD:

18 Q. Hello, Mr. Corley.

19 A. Hello.

20 Q. My name is Wayne Floyd. What kind of a situations
21 do you think that the death penalty would be appropriate for?

22 MR. MYERS: Objection.

23 THE COURT: Sustained. As you know, you're not
24 allowed to stake out a juror.

25 BY MR. FLOYD:

1 Q. Does your church -- I notice you're a member of a
2 church. Does your church have a position on the death
3 penalty?

4 A. I'm not certain if they have a position.

5 Q. Why are you in favor of the death penalty?

6 MR. MYERS: Objection.

7 MR. FLOYD: I believe I can ask that.

8 MR. MYERS: No, sir, he doesn't have to explain
9 why. He just can be asked what his position is. He doesn't
10 have to justify one way or the other as to why he would give
11 a verdict. That's a personality profile.

12 THE COURT: Well, the main problem, I didn't hear
13 him say he was in favor of the death penalty as such,
14 Mr. Floyd. His answer to me was that he was in category
15 three, that he could go either way.

16 MR. FLOYD: I'll rephrase that question, Your
17 Honor.

18 THE COURT: Okay. Sure.

19 BY MR. FLOYD:

20 Q. Mr. Corley, do you understand that the jurors in
21 this case will not be asked to decide whether or not the
22 defendant is guilty or not?

23 A. (Nodded.)

24 THE COURT: If you would, how about answer yes or
25 no, so it will be on the record, okay.

1 A. Yes.

2 Q. Do you understand that Mr. Bennett, the defendant
3 in this case, has been found guilty of murder?

4 A. Yes, sir.

5 Q. By another jury?

6 A. Yes, sir.

7 Q. Now, do you understand that murder involves the
8 killing of someone with premeditation?

9 A. Yes, sir.

10 Q. Do you feel that a life sentence is possibly
11 appropriate for someone who has been convicted of
12 premeditated murder?

13 A. Yes, sir.

14 Q. Do you all discuss the death penalty in your
15 church?

16 A. No, sir.

17 Q. Did you ever discuss the death penalty with your
18 wife?

19 A. No, sir.

20 Q. Has your attitude or thoughts about the death
21 penalty changed in the last three years?

22 A. No, sir.

23 Q. How long would you say that you have held whatever
24 your thoughts are on the death penalty? How long have you
25 held those thoughts?

1 A. Probably since I've become an adult, maybe 20
2 years.

3 Q. Do you think the death penalty should be used more
4 often than it is?

5 MR. MYERS: Objection.

6 THE COURT: I'm going to sustain that, Counsel.
7 That tends to profile the juror.

8 MR. FLOYD: Just a moment, Your Honor.

9 THE COURT: Sure.

10 [PAUSE.]

11 BY MR. FLOYD:

12 Q. Mr. Corley, you're a number three type juror I
13 think you indicated, correct?

14 A. Right, sir.

15 Q. Will you tell me just what you feel about the death
16 penalty.

17 A. Well, if according to the paragraph there,
18 basically that's the way I feel. If it's -- after listening
19 to all the circumstances if it was -- according to the law if
20 it was proper then that's probably the way it ought to be.

21 Q. By that you mean if it's proper to give the death
22 penalty then it should be given?

23 A. If the circumstances are proper.

24 Q. Can you tell us why one person convicted of murder
25 should get the death penalty and another one should not?

1 MR. MYERS: Objection. That's not appropriate
2 here.

3 THE COURT: Yes, sir. Again, that tends to stake
4 out the juror a little bit, Counsel. Sustained. I know
5 that's not your intent, but I think that's the net effect of
6 it.

7 MR. FLOYD: I have no further questions, Your
8 Honor.

9 THE COURT: Anything else from the State?

10 MR. MYERS: No, sir.

11 THE COURT: All right. Mr. Corley, let me ask if
12 you'll step just outside the door one second, okay.

13 (WHEREUPON, Juror Corley leaves the
14 courtroom.)

15 THE COURT: What's the State's position on this
16 juror?

17 MR. MYERS: Submit he's qualified.

18 THE COURT: Defense?

19 MR. FLOYD: We think under the statute his
20 responses would make him qualified.

21 THE COURT: Okay. I find he is qualified.
22 Let's ask him to step in.

23 (WHEREUPON, Juror Corley enters the
24 courtroom.)

25 THE COURT: Mr. Corley, I determined that you would

1 be qualified to sit as a juror if you were selected in this
2 case. What I'll ask you to do is come back Wednesday
3 afternoon at 2:30, okay, and just come back here in the
4 courtroom. And when you come back have your bags packed.
5 The jury will be in a motel for as much as a week or week and
6 a half, depending on how long the case takes.

7 Now, certainly you want to let your family know
8 what's going to happen. You don't want to just be gone for a
9 week or so. You can tell them where you're going to be, but
10 certainly be sure not to talk about the case in any way.

11 Now, it's also very important you need to still
12 stay away from the news until Wednesday, okay. No television
13 news, no radio news, don't look at any newspaper. And be
14 sure, again, not to talk with anybody about the case. We'll
15 see you back Wednesday at 2:30. Just leave your bags in the
16 car. If you do end up on the jury somebody will take care of
17 your bags for you.

18 MR. CORLEY: All right.

19 THE COURT: See you back Wednesday at 2:30. Thank
20 you.

21 (WHEREUPON, Juror Corley leaves the
22 courtroom.)

23 THE COURT: Next would be Ms. Bedenbaugh.

24 (WHEREUPON, Juror Number 30, Ann H.
25 Bedenbaugh, a white female, enters the courtroom.)

1 ANN H. BEDENBAUGH, after having been duly
2 sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Ms. Bedenbaugh, just relax and take it easy.
6 Nobody is going to give you a hard time. We're just going to
7 ask you some questions. And remember, there are no right or
8 wrong answers.

9 As we told you, this is the case of The State vs.
10 Mr. Johnny Bennett. Let me introduce you to some folks
11 involved. First, have you heard anything about this case
12 before?

13 A. No.

14 Q. This is Mr. Donnie Myers, who is the Solicitor who
15 will be trying the case for the State. With him are
16 Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or know
17 of any of these gentlemen?

18 A. Other than on TV, no.

19 Q. And would that give you any problem in giving both
20 sides a fair trial?

21 A. I don't think so.

22 Q. This is Mr. Bennett.

23 Mr. Bennett, just lift your hand.

24 (The defendant complied.)

25 Do you know or know of Mr. Bennett.

1 A. No.

2 Q. And he's represented by Mr. Hervery Young and
3 Mr. Wayne Floyd. Do you know or know of Mr. Young,
4 Mr. Floyd?

5 A. I don't think so.

6 Q. Don't know any of them then. Okay. Now, you said
7 you never heard anything about this case before; is that
8 right?

9 A. (Shook head.)

10 Q. Do you know of any reason why you could not give
11 both sides a fair trial in this case?

12 A. No.

13 Q. Now, you remember I told you earlier that a
14 previous jury has found Mr. Bennett guilty of murder. And as
15 we told you, the State's asking for the death penalty, and
16 there are only certain circumstances where they can ask for
17 it. And the jury in this case will decide one thing, and
18 that is the appropriate penalty. And remember we told you it
19 would either be life in prison or the death penalty.

20 Did you get a chance to look this sheet over that
21 we gave you?

22 A. Uh-huh.

23 Q. Had a chance to think about it some?

24 A. Uh-huh.

25 Q. And you notice there were three types of jurors

1 that were basically loosely described in that; did you notice
2 that?

3 A. Right.

4 Q. Do you feel like you fall within one of those
5 categories?

6 A. Uh-huh.

7 Q. Which is that?

8 A. The third.

9 Q. Third. And let's be sure we're talking about the
10 same thing, okay. The third juror on this sheet is one who
11 says that even though the person had been found guilty of
12 murder, as is the case here, that this juror says that I
13 still would not have my mind made up as to the proper
14 sentence. I would want to hear all those aggravating
15 circumstances. Remember we told you --

16 A. Right.

17 Q. -- that they are the circumstances that make it
18 worse. And the juror says I want to hear those mitigating
19 circumstances. Remember those that would tend to reduce or
20 make it lighter, or lessen it. The juror says I want to hear
21 all those aggravating circumstances, I want to hear those
22 mitigating circumstances, I want the Judge to tell me the
23 law, and then and only then will I be ready to decide the
24 appropriate sentence.

25 Now, this juror also says that if the facts of the

1 case justified a life sentence I could give a life sentence,
2 and if they justified a death sentence I could give a death
3 sentence. It would just depend on the facts and
4 circumstances of the case.

5 A. Exactly.

6 Q. Is that where you feel like you are on it?

7 A. Exactly.

8 Q. Now, during the law, of course -- during the case,
9 I, as the Judge, will be giving the law or jury instructions
10 as to what they would consider during the case. Would you be
11 able to follow all the instructions that I give you?

12 A. Uh-huh.

13 Q. Okay. One other thing. South Carolina has a
14 little bit of a different thing. In a case such as this if a
15 jury gives an individual a death sentence the law says that
16 they must sign a statement. There's a statement that says
17 we've given a death sentence, and that each juror must sign
18 that saying they've given the death sentence. If you were on
19 the jury and had given the death sentence would you be able
20 the sign it?

21 A. Yes.

22 Q. If you would, let me ask you if you'll answer any
23 of the questions the attorneys have, okay?

24 A. I'll sure try.

25 THE COURT: Mr. Myers?

VOIR DIRE EXAMINATION

1

2 BY MR. MYERS:

3

4

5

Q. The attorneys have to ask you questions in this proceeding. I'll ask you some first, then the defense will ask you questions.

6

7

Ms. Bedenbaugh, have you ever served on a criminal jury before?

8

A. No.

9

Q. I know you've been thrown a lot of legal terminologies and everything. Let me just tell you, if you were on this jury panel the Judge would tell the jury, and they would take an oath to this; that they would base their verdict on the evidence and testimony in the courtroom, and the law as Judge Westbrook would tell them what the law is. Could you follow that oath?

16

A. I believe I could.

17

18

19

20

21

22

23

A. Yes.

24

25

Q. He'll tell the jury what mitigating circumstances are, and he'll even give the jury some things in writing

1 about aggravating and mitigating circumstances. Would you
2 follow that law as the Judge told you what it is?

3 A. Yes, I would.

4 Q. And I take it right now you have no idea what
5 legally aggravating or mitigating would be until the Judge
6 told you in depth; is that right?

7 A. Only what I've heard on TV. But, no, I'd rather
8 hear what he said, yes.

9 Q. And another thing is the Judge will tell the jury
10 they've got to base what they -- base their verdict on what
11 they hear in the courtroom. You could do that too, couldn't
12 you?

13 A. Yes.

14 Q. Now, Mrs. Bedenbaugh, having told you all that, the
15 jury is going to have to come up, you know, with a verdict of
16 life imprisonment or the death penalty, and you just told
17 Judge Westbrook you were in that third category; is that
18 right?

19 A. Yes.

20 Q. So in certain cases of murder when you look at the
21 crime, the background of the person who committed murder,
22 there are cases in which you would deem life imprisonment an
23 appropriate sentence and could so vote for life; is that
24 right?

25 A. I'm not sure, what did you --

1 Q. Let me start over. You understood the Judge tell
2 you that the defendant has been found guilty of murder?

3 A. Yes. Yes.

4 Q. The death penalty can only come into play when a
5 murder conviction has been obtained, you understand that?

6 A. Uh-huh.

7 Q. And then in order for the death penalty to apply
8 the State would have to prove certain things, aggravating
9 circumstances, you understand that?

10 A. Yes, sir.

11 Q. And I told you the Judge would go into detail about
12 aggravating and mitigating. As to the sentence, that you
13 said that there are some cases where a murder was involved
14 that life imprisonment would be the appropriate sentence and
15 you could so vote for life; is that correct?

16 A. Yes.

17 Q. You understand that?

18 A. Yes.

19 Q. And in some cases of murder the death penalty would
20 be appropriate and you could so vote for the death penalty;
21 is that correct?

22 A. (Nodded).

23 Q. She's going to have the take this down, so you're
24 going to have to say it.

25 A. Yes.

1 Q. And we can't ask you what type of cases, naturally.
2 It's just we're looking for jurors who could come into the
3 courtroom with an open mind to vote for life or for death,
4 but it would depend on what they heard in the courtroom. Is
5 that where you are?

6 A. Yes, I believe so.

7 Q. Now, Mrs. Bedenbaugh, being a juror, if you were
8 selected a juror in this case, do you know of any reason why
9 you couldn't sit in one of these chairs with 12 other folks,
10 listen to the evidence and return a verdict that you felt was
11 appropriate, either life imprisonment or the death penalty?

12 A. No, I know of no reason.

13 Q. And you don't know what your sentence would be
14 until you've heard everything?

15 A. No.

16 Q. Is that's correct?

17 A. Right.

18 Q. Once you've heard everything, once you've heard the
19 law then you could decide whether it would be life
20 imprisonment or the death penalty?

21 A. Yes.

22 Q. That's all we can ask of you. Thank you, ma'am.

23 THE COURT: Defense, Mr. Young?

24 VOIR DIRE EXAMINATION

25 . BY MR. YOUNG:

1 Q. Good morning, Ms. Bedenbaugh. My name is Hervery
2 Young. Along with the gentleman sitting next to me, that's
3 Wayne Floyd, we're both representing Mr. Johnny Bennett, who
4 sat there to my right. What we want to do is we just want to
5 talk to you. We're not trying to trick you or anything, not
6 trying to embarrass you. We just want to talk to you about
7 your views as far as the death penalty is concerned, okay.

8 It's unusual for attorneys to be able to talk to
9 jurors. Ordinarily, we allow the Judge to ask all the
10 questions for us, but a death penalty is a different
11 situation. We're required to talk with jurors, basically to
12 see what their opinions are, what their views are on the
13 death penalty. Have you ever had an occasion to discuss your
14 views on the death penalty?

15 A. Oh, I'm sure I have.

16 Q. With family, friends?

17 A. Yeah. Co-workers, yeah.

18 Q. What are your views on the death penalty?

19 A. I believe -- I believe in the death penalty, when
20 it's appropriate.

21 Q. Okay. I understand from reading your questionnaire
22 that you submitted to the Clerk of Court's Office that you
23 are of Lutheran religion?

24 A. Yes.

25 Q. Does your church hold any type of views or policies

1 with regard to the death penalty?

2 A. Not to my knowledge, but I don't go a lot because I
3 work on Sundays so --

4 Q. I understand. I understand. In your discussions
5 with your friends, family and co-workers about the death
6 penalty has your opinion changed at any point in time from
7 one position to another?

8 A. No.

9 Q. Have you held this view on the death penalty for
10 some time?

11 A. Most of my adult life, I'm sure.

12 Q. Lately there's been -- I believe you told the Judge
13 that you have not heard anything about this case before?

14 A. If I've seen anything on TV, I don't recall. The
15 name means nothing to me.

16 Q. Lately there's been a lot of coverage in the media,
17 on television and things of that nature about the death
18 penalty in general.

19 MR. MYERS: Objection. That's not appropriate.

20 THE COURT: Sustained.

21 BY MR. YOUNG:

22 Q. The Judge and Solicitor informed you that in this
23 case Mr. Bennett has already been found guilty of murder by
24 another jury, and your position sitting on this jury will be
25 to consider the penalty for Mr. Bennett, either life or

1 death; do you understand that?

2 A. Yes.

3 Q. Does that cause you any problems with only being
4 able to determine the penalty in the case?

5 A. Cause me any problems?

6 Q. Yes, ma'am. Do it sway you one way or another?

7 A. I don't think I'm sure what you're asking me.

8 Q. Let me see if I can clarify it. Knowing that
9 Mr. Bennett have already been convicted of the crime of
10 murder have you formed any type of opinion regarding the
11 appropriate sentence in this case?

12 A. No.

13 Q. I believe you told Solicitor that you would have to
14 hear all the evidence before you make your decision?

15 A. Right.

16 Q. In handling a penalty phase of a death penalty case
17 the State will be able to present what is called aggravating
18 circumstances. Layman term, that's the bad stuff about a
19 person, okay. The defense would be able to present what is
20 called mitigation. That's the good stuff about the
21 defendant. Are you telling us that you would like to hear
22 both the good and the bad to form your opinion?

23 A. Yes.

24 Q. Once you have heard the good and the bad in the
25 case you understand that as a juror you must make your

1 decision as to what the appropriate punishment is?

2 A. Yes.

3 Q. And you must deliberate with the other jurors.

4 A. Yes.

5 Q. And all 12 of you must come back with a unanimous
6 decision, you understand that?

7 A. Yes.

8 Q. In the event that you return a recommendation or a
9 sentence of death, do you understand that you will be
10 required to sign a form saying that that is what is your
11 vote?

12 A. Yes.

13 Q. Does the potential of you having to sign your name
14 to that form pose any problems to you?

15 A. No, I don't think so.

16 Q. Do you understand that the law never requires that
17 you give a death sentence; do you understand that?

18 A. Yes.

19 Q. Just to clarify it. The Judge would never sit up
20 there and tell you that you are required in any situation to
21 give a sentence of death.

22 A. Yes.

23 Q. You understand that you could vote for a life
24 sentence in any situation if that is your decision; do you
25 understand that?

1 A. Yes.

2 Q. And you're telling us here today that your position
3 is basically that you have to hear the good and the bad in
4 order to make your decision?

5 A. I believe that, yes.

6 MR. YOUNG: Thank you.

7 THE COURT: Anything else from the State?

8 MR. MYERS: No, sir.

9 THE COURT: All right. Let me ask you to step just
10 outside the door, ma'am. We'll bring you back in.

11 (WHEREUPON, Juror Bedenbaugh leaves the
12 courtroom.)

13 THE COURT: What's the State's position on this
14 juror?

15 MR. MYERS: We think she's qualified.

16 THE COURT: Defense?

17 MR. YOUNG: We submit she's qualified, Your Honor.

18 THE COURT: I find that she is qualified.

19 (WHEREUPON, Juror Bedenbaugh enters the
20 courtroom.)

21 THE COURT: Ms. Bedenbaugh, I've determined you
22 will be qualified to sit on a jury in this case if you are
23 selected. So what I'll ask you to do is to come back
24 Wednesday afternoon, if you would, at 2:30. Just come back
25 here in the courtroom. In fact, you'll sit out in this

1 middle section. You'll be there with about 35 or 40 other
2 people and we'll draw the jury from that group.

3 If you would, bring your bags packed for as much as
4 a week or so in a hotel, motel. We don't know how long it
5 will be. It may not be that long but at least let's do that
6 much. Just leave the bags in your car. Somebody will take
7 care of those for you, if you do wind up on the jury.

8 Now, until that time it's still very important not
9 to talk with anyone about the case. And stay away from --
10 and I know this is until Wednesday afternoon, it's kind of
11 hard, but stay away from any kind of news, if you would too;
12 no television or radio news and stay away from any sort of
13 newspapers and all too.

14 With that in mind, we will see you back at -- now,
15 you can tell your family about where you're going to be and
16 what you're doing but just don't go into any details about
17 this case. With that in mind, we will see you back at 2:30
18 on Wednesday.

19 MS. BEDENBAUGH: This Wednesday?

20 THE COURT: Yes, ma'am. Thank you.

21 (WHEREUPON, Juror Bedenbaugh leaves the
22 courtroom.)

23 (WHEREUPON, Juror Number 348, Nidsa L. Stokes,
24 a white female, enters the courtroom.)

25 NIDSA L. STOKES, after having been duly sworn,

1 testified as follows:

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q. Just have a seat and please relax. We're not going
5 to give you hard time.

6 Ms. Stokes, you know we told you earlier in this
7 case that Mr. Bennett has already been convicted by one jury
8 of the charge of murder. And we told you, of course, this
9 jury will decide only the issue of the appropriate
10 punishment; do you remember that?

11 A. Yes, sir.

12 Q. Now, have you heard anything about this case
13 before?

14 A. No, sir.

15 Q. Don't know of anything you've heard about it?

16 A. No, sir.

17 Q. Now, let me ask you to see if you know any of the
18 parties in here. The State is represented by the Solicitor's
19 Office. This is Mr. Myers, Mr. Riddle and Mr. Graham. Do
20 you know or know of any of these gentlemen?

21 A. No, sir.

22 Q. This is the defendant, Mr. Bennett.

23 THE COURT: If you would just raise your hand.

24 Q. Do you know Mr. Bennett or know of Mr. Bennett?

25 A. No, sir.

1 Q. And he's represented by Mr. Wayne Floyd and
2 Mr. Hervery Young. Do you know Mr. Floyd or Mr. Young or
3 know of them?

4 A. No, sir.

5 Q. Do not?

6 A. No.

7 Q. Okay. And then you said you heard nothing about
8 this case before; is that correct?

9 A. No, sir, I have not.

10 Q. Now, we're going to discuss the death issue in just
11 a moment, death penalty issue. But other than that, have you
12 formed any sort of opinions about this case at all?

13 A. No, sir, I have not.

14 Q. You know we gave you a sheet to look over here and
15 it described three types of jurors. Did you get a chance to
16 look it over?

17 A. Yes, I did.

18 Q. And had a chance to think about it?

19 A. Yes, I have.

20 Q. And do you feel like you would fall within one of
21 those categories of the jurors?

22 A. The third one.

23 Q. The third?

24 A. Yes, sir.

25 Q. Let's go over it and be sure we're talking about

1 the same thing, okay?

2 A. Uh-huh.

3 Q. Now, this is a juror who says this. That says that
4 although the defendant has been found guilty of murder that I
5 do not have my mind made up as to the appropriate sentence.
6 That I want to hear all of those aggravating circumstances,
7 remember we talked about those earlier, and I want to hear
8 those mitigating circumstances, and you remember we talked
9 about those?

10 A. Yes, sir.

11 Q. And this juror says I want to hear all those
12 aggravating circumstances, all those mitigating
13 circumstances, I want the Judge to tell me the law, and only
14 then after all that will I be able to decide the appropriate
15 sentence.

16 A. Correct.

17 Q. Is that what you're saying?

18 A. Yes, sir.

19 Q. Now, this juror, of course, also says that if the
20 appropriate sentence, after I heard all the facts, if I felt
21 the appropriate sentence was life in prison I could give the
22 defendant a life sentence, and if it were a death sentence I
23 could give the defendant a death sentence. Is that what
24 you're saying?

25 A. Yes, sir.

1 Q. Now, the law also says this, that if the jury gives
2 a death sentence each juror must sign a form indicating that
3 they have given the death sentence. If you're on the jury
4 and had determined that the death sentence was appropriate
5 would you be able to sign that form?

6 A. Yes, sir.

7 Q. And also during the trial from time the time as the
8 Judge I will give the jury instructions regarding the law in
9 the case and how they proceed. Would you be able to go by
10 the law as I gave it to you?

11 A. Yes, sir.

12 Q. You know of any other reason why you could not give
13 both sides a fair trial?

14 A. Only if it was in the case of a minor child, I can
15 honestly say I could not. If it was a minor child that was
16 murdered I would have a hard time.

17 Q. You understand this case does not involve a minor
18 child?

19 A. Right. But that would be the only time. You had
20 asked me, and that would be the only time I could not.

21 Q. That you could not, what, give a fair trial?

22 A. That I can honestly say that if a minor child was
23 murdered, abused or whatever that -- and the death penalty
24 was the issue, that I could probably honestly say I would
25 have to go with the death penalty.

1 Q. Okay. But what we're asking just, in essence, can
2 you follow the instructions of the Court --

3 A. Oh, yes. Absolutely.

4 Q. -- as to the issues involved?

5 A. Yes.

6 Q. And you understand the issues -- your oath would
7 require you to do that?

8 A. Yes.

9 Q. Again, you feel that you would be able to consider
10 all the facts and circumstances --

11 A. Oh, yes.

12 Q. -- before making a decision?

13 A. Yes, I do.

14 Q. Okay. Now, in this case, a case such as this, we
15 have the attorneys to ask questions. Let me ask if you'll
16 answer any questions they have, okay?

17 A. Yes, sir.

18 THE COURT: Mr. Myers?

19 VOIR DIRE EXAMINATION

20 BY MR. MYERS:

21 Q. Mrs. Stokes, have you ever served on a jury panel
22 before?

23 A. No, sir.

24 Q. Have you ever been in a courtroom when a murder
25 trial was going on?

1 A. No, sir.

2 Q. And I take it by that you've never been in a
3 courtroom when a sentence was either life or death?

4 A. No, sir, I have not.

5 Q. Is all this kind of new to you?

6 A. Yes, it is.

7 Q. Mrs. Stokes, the Judge told you all this morning
8 that at another time the defendant has been found guilty of
9 murder; did you understand that?

10 A. Yes, sir, I did.

11 Q. So that's the law in the case, the defendant's
12 found guilty of murder. And before the death penalty can
13 even be sought someone has to be guilty of murder; did you
14 know that?

15 A. Yes, sir.

16 Q. So the guilt of the defendant has been established
17 so now we have to have this trial to decide what is the
18 appropriate punishment; do you understand that?

19 A. Yes.

20 Q. The Judge used some terms this morning under the
21 law; aggravating circumstances, mitigating circumstances. Do
22 you recall him saying those two terms?

23 A. Yes, I do.

24 Q. Now, Judge Westbrook is going to tell this jury
25 after all the evidence is in, he'll tell them what those

1 terms mean; aggravating circumstances, mitigating
2 circumstances. He'll go into detail explaining what that
3 means under the law. Would you follow that law as he gave it
4 to you if you were on this jury?

5 A. Yes, sir, I would.

6 Q. And basically, just in layman's term, aggravating
7 circumstances, the State has to prove that in order for the
8 jury to even consider the death penalty. We have to show an
9 aggravating circumstance. The Judge will tell the jury what
10 those are. And if the jury found we proved one of those
11 aggravating circumstances then they could consider the death
12 penalty; do you understand that?

13 A. Yes.

14 Q. And then there's mitigating circumstances.
15 Aggravating means things bad or something against the
16 defendant, mitigating means something on the defendant's
17 behalf; do you understand that?

18 A. Yes.

19 Q. Because the jury is going to have to take into
20 consideration the circumstances surrounding the crime and the
21 character of the defendant, the good and the bad about him,
22 you'd be willing to listen to all that?

23 A. Yes, sir.

24 Q. And, Mrs. Stokes, after the jury heard all of this
25 about the crime, the good and the bad, Judge Westbrook would

1 tell the jury what the law is; and you would follow the law?

2 A. Yes, sir, I would.

3 Q. Then the jury must go to their jury room, go over
4 all the testimony, go over the law and come back with life
5 imprisonment or the death penalty. And I understood you to
6 say as to those two punishments, life or death, in some cases
7 life would be the appropriate sentence and you could so vote
8 for life imprisonment; is that correct?

9 A. Yes, I can.

10 Q. And in some cases the death penalty would be the
11 appropriate sentence and you could so vote for the death
12 penalty; is that correct?

13 A. Yes, sir, I can.

14 Q. But you would have to hear everything first?

15 A. Absolutely, yes.

16 Q. You have to hear all of the facts and evidence; is
17 that right?

18 A. Yes, sir, I would.

19 Q. The aggravation and the mitigation; is that
20 correct?

21 A. Yes.

22 Q. And the law as the Judge tells you what the law is;
23 is that right?

24 A. Yes.

25 Q. And then and only then after having heard all of

1 this could you reach the appropriate sentence; is that
2 correct?

3 A. Yes, sir.

4 Q. And if you were on this jury, Ms. Stokes, could you
5 sit in one of these chairs and listen to all of this
6 testimony, listen to the law?

7 A. Absolutely, yes.

8 Q. And then come back with a verdict for life or
9 death, the one you thought was appropriate?

10 A. Yes, I could.

11 Q. That's all we can ask of you. Thank you, ma'am.

12 THE COURT: Defense?

13 VOIR DIRE EXAMINATION

14 BY MR. YOUNG:

15 Q. Ms. Stokes, my name is Hervery Young. Myself and
16 Wayne Floyd represent Mr. Bennett. It's unusual for
17 attorneys to speak with jurors. Usually we just submit our
18 questions to the judge and the judge asks them for us. In
19 cases involving the death penalty we get the opportunity to
20 talk with you, just find out what your views are on the death
21 penalty. We don't want to ask you anything or we don't want
22 to embarrass you. We don't want to do anything to offend
23 you, okay?

24 A. Yes, sir.

25 Q. Have you ever had the opportunity to discuss your

1 views on the death penalty?

2 A. Yes, I have.

3 Q. Discussed it with family, friends, co-workers and
4 all?

5 A. My husband.

6 Q. In discussing your -- well, let me ask you this.
7 What are your views on the death penalty?

8 A. Once again, I would have to know what the
9 circumstances are. I believe that -- I truly believe that
10 people do such things sometimes for certain reasons. And I'm
11 not a black and white person. I don't see things that way.
12 I really have to know everything there is to know in order to
13 make any kind of decision. Whether it's personal, whether,
14 you know -- I have -- that's the type of person I am.

15 Q. In discussing these views with your husband, have
16 your position or your views changed any in your discussions?

17 A. No.

18 Q. This is a view that you've held for some time?

19 A. Yes.

20 Q. In capital cases, in death penalty cases understand
21 that you, yourself, will be hearing both the aggravation and
22 the mitigation. You have to form a decision as to what is
23 the appropriate punishment, whether it's life or death; do
24 you understand that?

25 A. Yes.

1 Q. Do you understand that once you form your opinion
2 then you must discuss that with the other jurors, you must
3 deliberate about it?

4 A. Yes.

5 Q. And that in order for the death sentence to be
6 granted all 12 jurors must unanimously agree on it; do you
7 understand that?

8 A. Yes.

9 Q. You understand that the law never requires a juror
10 to give the death penalty? Do you understand that?

11 A. Yes.

12 Q. If you were in a position where you held a view one
13 way or another, either for life or death, and it was
14 different from the rest of the jurors and after deliberating
15 on it and you still believed that that is your view, would
16 you be able to hold fast to your view?

17 A. Absolutely, yes.

18 Q. If a jury decides that the death penalty is the
19 appropriate sentence the Court will instruct you that you
20 will be required to sign your name to the sentencing form
21 that says that you have voted for death; do you understand
22 that?

23 A. Yes.

24 Q. Is there anything about that, having to sign your
25 name, that causes you any problems?

1 A. No.

2 Q. So what you are telling us here today, that in
3 order for you to make a decision as to the appropriate
4 punishment you must hear everything?

5 A. Absolutely, yes.

6 Q. The good and the bad?

7 A. Yes.

8 MR. YOUNG: Thank you.

9 THE COURT: Anything else from the State?

10 MR. MYERS: No, sir.

11 THE COURT: Let me ask if you'll step just outside
12 the door, okay.

13 (WHEREUPON, Juror Stokes leaves the
14 courtroom.)

15 THE COURT: What's the State's position on this
16 juror?

17 MR. MYERS: Submit she's qualified.

18 THE COURT: Defense?

19 MR. YOUNG: Submit she's qualified, Your Honor.

20 THE COURT: I find she is qualified. Let's ask her
21 to step back in.

22 (WHEREUPON, Juror Stokes enters the
23 courtroom.)

24 THE COURT: Ms. Stokes, I determined you would be
25 qualified to sit on a jury in this case if you were selected.

1 So what I'll ask you to do, if you would, is to come back
2 Wednesday afternoon. And just here in the courtroom and just
3 sit out in this middle section. Now, you'll be there with
4 about 35 or 40 other jurors, and we'll pick the jury from
5 that group.

6 When you come back, if you would, bring bags packed
7 for as much as about a week in a motel. You may not be there
8 that long but at least have it for that much. Leave the bags
9 in your car. And if you're on the jury somebody will take
10 care of the bags for you.

11 MS. STOKES: Okay.

12 THE COURT: Until Wednesday afternoon -- and
13 remember, it's this Wednesday not next Wednesday. This
14 Wednesday.

15 MS. STOKES: Yes, sir.

16 THE COURT: Until then still be sure not to talk
17 about the case with anybody. Of course, let your family know
18 where you're going to be but don't talk about the details of
19 the case. And also, if you would, please try to stay away
20 from any news, too. Don't look at any newspapers and don't
21 listen to any news on the radio or television also, all
22 right?

23 MS. STOKES: All right, sir.

24 THE COURT: With that in mind, we'll see you back
25 Wednesday afternoon. Thank you, ma'am.

1 (WHEREUPON, Juror Stokes leaves the
2 courtroom.)

3 (WHEREUPON, Juror Number 207, Darlene R.
4 Ledbetter, a white female, enters the courtroom.)

5 DARLENE R. LEDBETTER, after having been duly
6 sworn, testified as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Ms. Ledbetter, just have a seat and relax, okay.
10 Nobody is going to give you a hard time, we're just going to
11 chat with you a little bit here.

12 First of all, Ms. Ledbetter, you remember we told
13 you this is the case of The State vs. Johnny O. Bennett. And
14 we told you, remember, that in this case that Mr. Bennett has
15 been convicted by a jury of the murder of Mr. Benton Darrell
16 Smith; do you recall that?

17 A. Uh-huh.

18 Q. And you understand, of course, that as we told you
19 this jury is going to decide only the punishment. Now, have
20 you heard anything about this case before?

21 A. Not at all.

22 Q. Don't know anything about it. The State in this
23 case will be represented by the Solicitor's Office in
24 Lexington. This is Mr. Donnie Myers, Mr. Dayton Riddle and
25 Mr. Shawn Graham who will be trying the case for the

1 Solicitor's Office. Do you know or know of any of them?

2 A. No, sir.

3 Q. And to your knowledge, have you ever had any
4 relationship or any involvement with the 11th Circuit
5 Solicitor's Office in any way?

6 A. No, sir.

7 Q. This is Mr. Bennett right here. Do you know
8 Mr. Bennett or know of him?

9 A. No.

10 Q. And he's represented by Mr. Wayne Floyd and
11 Mr. Hervery Young. Do you know or know of either of them?

12 A. No, sir.

13 Q. Now, we told you earlier, remember, that there was
14 a sheet we wanted you to look over; and did you get a chance
15 to look that sheet over?

16 A. Yes.

17 Q. And did you have time to think about it?

18 A. Uh-huh, I did.

19 Q. Now, you note it described three -- basically three
20 types of jurors, and we wanted you to look at that. Do you
21 feel like one of those types of jurors is close to what you
22 would think?

23 A. Yes.

24 Q. Which is that?

25 A. The second.

1 Q. The second. Now, this is a juror who says this.
2 It says although the defendant has been found guilty of
3 murder that under no circumstances could I ever give the
4 death penalty. And this juror says that I don't need to hear
5 the second part. I don't need to hear the aggravation. I
6 don't need to hear the mitigation. My mind is made up. No
7 matter what, I would never give the death penalty. Is that
8 what you're saying?

9 A. Uh-huh.

10 Q. You're saying under no circumstances could you ever
11 give the death penalty?

12 A. I could never, no.

13 THE COURT: Let me ask you to answer any questions
14 from the State.

15 MR. MYERS: Not at this time.

16 THE COURT: Defense?

17 VOIR DIRE EXAMINATION

18 BY MR. FLOYD:

19 Q. Hello, Mrs. Ledbetter.

20 A. Hi.

21 Q. My name is Wayne Floyd and I'm one of Mr. Bennett's
22 attorneys. And we appreciate your coming here and expressing
23 your views to us. Do you realize, Mrs. Ledbetter, that in
24 this trial Mr. Bennett has already been found guilty of
25 murder and you -- that the jury in this case would not be

1 making a decision about whether or not he's innocent or
2 guilty; do you understand that?

3 A. Uh-huh, I do.

4 Q. Do you understand that the only decision this jury
5 will make is whether the appropriate punishment would be life
6 or death?

7 A. Yes.

8 Q. Do you understand that in our state to be convicted
9 of murder the jury must --

10 MR. MYERS: Objection, Your Honor. We object to
11 any kind of definition of any legal terms. That's for the
12 Court to give the jury and not for the attorneys because
13 therefore we'd have emphasis on particular words, which would
14 be inappropriate.

15 THE COURT: Yes, sir. I'll sustain the objection
16 at this point. Counsel, we won't get into it. If it becomes
17 necessary we will though, okay. At this point we don't need
18 to, but go ahead.

19 MR. FLOYD: Well, I think I just need to ask --
20 well, I'll ask the juror and you tell me if that's improper.

21 BY MR. FLOYD:

22 Q. Conviction of murder requires premeditation; do you
23 understand that?

24 A. (Nodded.)

25 Q. Now, if you found that someone was guilty of

1 premeditated --

2 MR. MYERS: Objection. That's just what I was
3 talking about. You emphasize certain words. It's taken out
4 of context.

5 THE COURT: I understand. Let me do this.

6 Ma'am, you understand that in South Carolina the
7 law says that murder is the killing -- the willful and
8 felonious killing of another human being with malice
9 aforethought. That's the term that we use, malice
10 aforethought. And there has to be malice involved and it has
11 to be at least at or before the time of the killing; do you
12 understand that?

13 MS. LEDBETTER: Yes, sir.

14 THE COURT: So when we talk about murder, that's
15 what we're talking about, okay.

16 Go ahead.

17 BY MR. FLOYD:

18 Q. Knowing now that the conviction of murder requires
19 malice aforethought, could you consider giving the death
20 penalty to someone who has been convicted of a murder with
21 malice aforethought?

22 A. (Shook head).

23 THE COURT: Can you answer yes or no so the court
24 reporter can --

25 A. Okay. No.

1 MR. FLOYD: Thank you.

2 THE COURT: All right. Ms. Ledbetter, we'll excuse
3 you from having to sit in this case, and you're free to go.
4 And we thank you for being with us.

5 (WHEREUPON, Juror Ledbetter was excused.)

6 THE COURT: Counsel, I didn't ask you to sign on.
7 Is there any exception to that finding, from the State?

8 MR. MYERS: None.

9 THE COURT: Defense?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Okay. All right. Counsel, I think
12 we'll be in recess until two o'clock then.

13 MR. MYERS: We've got one matter. I think it was
14 late Thursday afternoon we were served by the defense for a
15 motion to reconsider the Court's ruling on disclosing expert
16 reports. We see no reason to take that up. Your Honor has
17 ruled. It's just a delaying tactic by the defendant in not
18 complying with the Judge's ruling.

19 And also, Your Honor, we think it's appropriate
20 because in the first case -- and I've got as a Court's
21 exhibit, Court Exhibit Number 15, it's on file with the clerk
22 downstairs, I've got it right here. This is a letter to
23 their expert witness in the last trial by the defense
24 attorney in which the second sentence -- or the third
25 sentence, we do not wish to have the --

1 MR. FLOYD: I object. That's not the defense
2 attorney that he had in this case, for this mater.

3 THE COURT: I understand. We'll note that.

4 MR. MYERS: We do not wish to have a written
5 report. And as I suspected in all these cases -- maybe not
6 in all of them, defense experts somehow testify for the
7 defendants but somehow they don't have written reports. And
8 I'm sure that this probably is not an isolated event. So
9 this remains in this file, because it was in the last file,
10 and it remains a Court exhibit. And we would just
11 respectfully require that the defense comply with your ruling
12 on expert reports.

13 THE COURT: Mr. Floyd, do you want to respond?

14 MR. FLOYD: Thank you, Your Honor. Your Honor, the
15 ruling was issued, I believe, on Friday afternoon of --

16 THE COURT: Friday a week ago?

17 MR. FLOYD: Friday a week ago.

18 MR. MYERS: June the 30th.

19 MR. FLOYD: June 30th. Of course, we didn't get
20 out of that court hering until sometime after five, six
21 o'clock, somewhere in that range. We tried to make contact
22 with our experts at that time. I have now made contact.

23 As far as that goes, Your Honor, as we advised at
24 the motion hearing we do have a new witness who is going to
25 be testifying to the same incidents, to the same conclusions

1 that a previous expert was testifying to. So we hadn't asked
2 that person to do any kind of report.

3 Now, after I got the Judge's ruling, Your Honor's
4 ruling on that point, it took me several days to get in touch
5 with that expert because it was the July 4th weekend. They
6 were out of town. They got back in town and, I told them
7 that Your Honor is going to require a written report.

8 And so we will provide it to them when it's done.
9 She says she would try to get that done. But we don't expect
10 that to be any different than the medical examiner -- it's
11 the medical examiner. We don't expect that to be any
12 different than the medical examiner we had in the previous
13 trial who was from out of state.

14 Now, as to our other expert, as Your Honor knew, we
15 have experts who were still doing testing. And one expert --
16 they'll know this too, because they know that we had one
17 expert that had to bring the defendant from the jail over to
18 the Baptist Hospital last Friday, two days ago, because there
19 was still testing being done in connection with whatever this
20 expert was going to do. The other expert was out of the
21 country at the time.

22 So that's why we asked you to reconsider because
23 that's when we tried to reach these experts, you know, we
24 couldn't get them. We're not trying to delay anything. And
25 as soon as they have their reports we'll provide them to the

1 State. And that's why we filed a motion for reconsideration,
2 because we weren't able to get in touch with them to get the
3 reports done in time.

4 THE COURT: Well, we're going to have to have the
5 reports now at a certain time, at a time enough to give the
6 State notice of these folks. Certainly I don't want to be
7 doing it when the expert is taking the stand or something
8 because that certainly is not fair to the State on that
9 point.

10 MR. FLOYD: Your Honor, we anticipate we'll
11 certainly have it before we start our case.

12 MR. MYERS: Well, we'd kind of like to have it --
13 let's see, it was due July the 7th. It's hard for me to
14 believe these experts are so busy they can't get a report
15 done in a week. Today is the 10th, that's 10 days. Tomorrow
16 is the 11th.

17 I just don't see why an expert can't -- and it's
18 going to be a skeleton report anyhow, I know that's coming.
19 But it seems to me that an expert can get us a report within
20 11 days, which is tomorrow, four days past the deadline. We
21 would like to have it by tomorrow, July 11th.

22 THE COURT: Counsel, what I'll do is this.

23 Defense, I will instruct that you have the report
24 before we select the jury on Wednesday afternoon, okay.
25 We're going to draw the jury at 2:30 Wednesday afternoon.

1 Have the report to them by then. Now, that's the latest
2 we'll be able to do it. And you understand if they don't
3 have the reports -- they got to have some report.

4 And obviously even though there may be some testing
5 going on they still know what they're doing, or at least they
6 have an idea of what they want to do. But they need to have
7 a written report of what they have up until that point.

8 I would think sure they're not testing during the
9 trial, but if they are for some reason then they need to
10 update it at the appropriate time as soon as they have it.
11 But we do need to have it. Just go ahead and have them by
12 2:30 Wednesday afternoon.

13 MR. FLOYD: Thank you, Your Honor. As long as
14 we're dealing with that issue, I assume since we received
15 nothing from the State in connection with the matter and they
16 did not file a motion for reconsideration that that means
17 that there will be no opinions of any experts given at this
18 trial that is in any way different than the trial we had
19 previously in 1995.

20 MR. MYERS: Not by our case in chief.

21 THE COURT: As you know, it doesn't apply in
22 rebuttal. Those rules just don't apply in rebuttal.

23 MR. FLOYD: Well, Your Honor, as you'll recall, we
24 only have a death penalty trial in this case. We don't have
25 a guilt phase trial. So it's our position there's no

1 rebuttal allowed in a sentencing only procedure.

2 MR. MYERS: We'll across that bridge when we get to
3 it.

4 THE COURT: I think I've let the prosecution do
5 rebuttal in past cases. I guess we'll find out if it was
6 wrong, won't we? All right. We'll stand in recess until two
7 o'clock.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Counsel, are we ready to bring in the
10 next juror?

11 The State ready?

12 MR. RIDDLE: We've got a couple of housekeeping
13 matters, Your Honor.

14 THE COURT: Okay.

15 MR. RIDDLE: While we were over here this morning
16 we got about nine additional pages of discovery in that we
17 xeroxed, and I would serve on the defense at this time. It
18 was faxed to our office this morning.

19 Additionally, Your Honor, when we gave you the
20 witness list on the disk earlier we inadvertently left one
21 name off and I'd like to add that single name to the list.

22 THE COURT: All right. Thank you, sir.

23 By the way, we're getting the full witness list
24 done too. What we're going to do is just take -- did the
25 defense get your disk in? Did you get a disk?

1 MR. YOUNG: It was left on your law clerk's desk.

2 THE COURT: Oh, okay. Good. I'll let her go ahead
3 and put those two together and we'll go from there.

4 Anything else?

5 MR. RIDDLE: Do I need to give her that name?

6 THE COURT: No. I've got the list right here
7 still, and the disk is still up here, so she'll have to come
8 in and get it.

9 All right. Let's bring in the next juror.

10 (WHEREUPON, Juror Number 305, Shirlie A.
11 Sands, a black female, enters the courtroom.)

12 SHIRLIE A. SANDS, after having been duly
13 sworn, testified as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Ms. Sands, just have a seat there and relax, okay.
17 Nobody is going to give you a hard time. We're just going to
18 have a little chat with you.

19 Ms. Sands, you understand, as we told you in this
20 case, this is The State vs. Johnny O. Bennett. And as we
21 told you, Mr. Bennett was earlier convicted by a jury of
22 murder, of the murder of Mr. Benton Darrell Smith on November
23 27 of 1990. Now, this phase of the trial is where the jury
24 is picked here and will decide the appropriate sentence; do
25 you recall that?

1 A. Yes.

2 Q. Now, have you heard anything about this case
3 before?

4 A. No.

5 Q. Never heard about the case. Let me go through some
6 of these folks with you and ask. This is Mr. Donnie Myers,
7 who's the Solicitor who will be prosecuting the case, along
8 with Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or
9 know of any of these gentlemen?

10 A. No.

11 Q. Now, this is Mr. Bennett over here. Do you know
12 Mr. Bennett or know of him?

13 A. No.

14 Q. He's represented by Mr. Hervery Young and Wayne
15 Floyd. Do you know or know of either of them?

16 A. No.

17 Q. So I gather you don't know anybody in the case
18 then?

19 A. No.

20 Q. And you say you've never heard anything about the
21 case?

22 A. No.

23 Q. Have you formed any sort of an opinion about this
24 particular case? Other than anything regarding the death
25 penalty have you formed any other opinions about the case?

1 A. No.

2 Q. Do you know of any reason why you couldn't give
3 both sides a fair trial?

4 A. No.

5 Q. Now, we gave you a sheet to look over before lunch;
6 do you remember that?

7 A. Yes.

8 Q. And let me ask first; since you left, before you
9 came back, have you talked with anybody about the case?

10 A. No.

11 Q. You haven't heard anything about it, okay. You got
12 a chance to look over this sheet. You notice it described
13 three types of jurors in a case such as this. Did you get a
14 chance to look it over and think about it?

15 A. Yes.

16 Q. And you notice that, again, there are three types
17 of jurors who were described. Do you feel that you would
18 fall within one of these types of jurors?

19 A. Yes.

20 Q. And which is that?

21 A. The third type.

22 Q. Third. This is a juror who says basically this.
23 Says that even though a person's been found guilty of murder
24 that I would not have my mind made up as to the appropriate
25 sentence.

1 A. Right.

2 Q. That I would want to hear all those aggravating
3 circumstances, I would want to hear all those mitigating
4 circumstances, I want the Judge to tell me the law, and only
5 then would I be able to decide the appropriate sentence; is
6 that right?

7 A. Yes.

8 Q. And this juror also says that if I heard all of
9 that and found that a life sentence was appropriate I could
10 give a life sentence, and if I found that a death sentence
11 was appropriate I could give the death sentence; is that
12 correct?

13 A. Yes.

14 Q. Okay. Now, there's one other thing -- also, would
15 you be able to follow the instructions of law as I gave them
16 to the jury?

17 A. Yes.

18 Q. There's one other thing. In a case such as this
19 the law says that if a jury gives a death sentence all 12
20 jurors have to sign a form saying they've given the death
21 sentence. So if you were on a jury and had voted for the
22 death sentence, had given the death sentence, would you be
23 able to sign your name to that?

24 A. Yes.

25 Q. Do you know of any reason why you couldn't give

1 both sides a fair trial, any other reason?

2 A. No.

3 THE COURT: All right. In a case such as this the
4 attorneys ask questions also, besides the judge, so let me
5 ask you if you'll answer any of their questions.

6 Mr. Myers?

7 VOIR DIRE EXAMINATION

8 BY MR. MYERS:

9 Q. Ms. Sands, have you ever been involved with a
10 criminal case as a witness, or a juror, or anything like that
11 before?

12 A. No.

13 Q. And I note you're a teacher in District Two?

14 A. Yes.

15 Q. Which school is that?

16 A. Pineview Elementary.

17 Q. Ms. Sands, you understood the Judge to tell you and
18 other jurors this morning that at another time the
19 defendant's been found guilty of murder?

20 A. Yes.

21 Q. You understood that. And being found guilty of
22 murder then we have this proceeding for a jury to determine
23 what is the appropriate sentence, life imprisonment or the
24 death penalty; you understood that?

25 A. Yes.

1 Q. Now, you told Judge Westbrook just a few moments
2 ago, Ms. Sands, that as to those three categories you fell in
3 the third category?

4 A. Yes.

5 Q. I take it by that then do you have any kind of
6 fixed opinions about always life imprisonment or always the
7 death penalty? Do you have any fixed beliefs on that?

8 A. No, I don't have a fixed belief on it.

9 Q. Yes, ma'am. And as to the death penalty, has that
10 always kind of been your position or has it changed, your
11 basic beliefs concerning the death penalty?

12 A. Could you say that again?

13 Q. The basic beliefs you have about the death penalty
14 now --

15 A. Is what?

16 Q. Is that what you've always had as a belief about
17 the death penalty?

18 A. Yes. My belief is that you listen to the
19 circumstances then you make a decision.

20 Q. And that's what a jury would have to do in this
21 case.

22 A. Yes.

23 Q. They would listen to all the testimony, the Judge
24 would tell them about the law.

25 A. Yes.

1 Q. Then they would make their decision.

2 A. Yes.

3 Q. And I take it from your beliefs that after hearing
4 all that that if you thought that the facts, circumstances
5 warranted life imprisonment you could vote for life
6 imprisonment?

7 A. Yes.

8 Q. But if the facts and circumstances also warranted
9 the death penalty you could also vote for the death penalty;
10 is that right?

11 A. Yes.

12 Q. So I take it it's nothing about your religious
13 beliefs, nothing about your background that would prevent you
14 from voting for the death penalty?

15 A. Nothing.

16 Q. And as the Judge said, our law requires that if a
17 jury returns the death penalty that all 12 jurors must sign
18 that form. You indicated signing that form would not give
19 you a problem if you thought the death penalty were
20 appropriate; is that correct?

21 A. That's correct.

22 MR. MYERS: Thank you, Ms. Sands. That's all we
23 have of you. Appreciate it.

24 THE COURT: Defense?

25 VOIR DIRE EXAMINATION

1 BY MR. FLOYD:

2 Q. Good afternoon, Ms. Sands.

3 A. Good afternoon.

4 Q. My name is Wayne Floyd. I'm one of the attorneys
5 for the defendant, Mr. Bennett, along with Hervery Young
6 there with me.

7 Ms. Sands, do you understand that as a juror if you
8 have an opinion as to what you consider to be the appropriate
9 punishment that you're entitled to stand behind that opinion
10 even if all the other jurors are against you?

11 A. Yes.

12 Q. And if you had a heartfelt opinion like that and
13 all the other jurors were against you could you still stand
14 firm?

15 A. Yes.

16 Q. You understand you're also supposed to talk and
17 deliberate with the other jurors and discuss the matter?

18 A. Yes.

19 Q. And you feel like you could do that?

20 A. Yes.

21 MR. FLOYD: Thank you, Ms. Sands. I have no
22 further questions.

23 THE COURT: Anything else from the State?

24 MR. MYERS: No, sir.

25 THE COURT: All right. Let me ask you to step

1 outside just for a minute, okay.

2 (WHEREUPON, Juror Sands leaves the courtroom.)

3 THE COURT: What's the State's position on this
4 juror?

5 MR. MYERS: Submit she's qualified.

6 THE COURT: Defense?

7 MR. FLOYD: Qualified, Your Honor.

8 THE COURT: I find that she is qualified.
9 Ask her to step back in.

10 (WHEREUPON, Juror Sands enters the courtroom.)

11 THE COURT: Ms. Sands, I have determined you would
12 be qualified to sit on a jury in this case if you were drawn.
13 So what we'll ask you to do is come back Wednesday afternoon,
14 that's the day after tomorrow. Come back at 2:30, if you
15 would. Just come back up here in the courtroom. Bring with
16 you bags packed for as much as about a week in a motel. And
17 leave the bags in the car. If you are picked on the jury
18 then somebody will take care of the bags for you.

19 Until that time it's also very important that you
20 not talk with anybody about the case. Stay away from any
21 kind of news. And I know that's a couple of days and hard to
22 do but you need to stay away from any news on the radio, any
23 news on the television, stay away from the newspaper or
24 anything like that. And be sure, again, not to talk with
25 anybody about the case, okay. We'll see you at 2:30

1 Wednesday with your bags packed.

2 MS. SANDS: Okay.

3 THE COURT: Thank you, ma'am.

4 (WHEREUPON, Juror Sands leaves the courtroom.)

5 (WHEREUPON, Juror Number 133, Jennifer M.
6 Garrett, a white female, enters the courtroom.)

7 JENNIFER M. GARRETT, after having been duly
8 sworn, testified as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Ms. Garrett, just have a seat and just relax, okay.
12 Nobody is going to give you a hard time, we're just going to
13 have a little chat with you.

14 Ms. Garrett, do you recall when we told you earlier
15 this morning that this is the case of The State vs. Johnny
16 Bennett; do you remember that?

17 A. Yes, sir.

18 Q. Have you heard anything about this case before?

19 A. Uh-uh.

20 Q. Don't know anything about it?

21 A. No, sir.

22 Q. And you remember we told you that Mr. Bennett has
23 been found guilty by another jury of murder?

24 A. Yes, sir.

25 Q. And that the issue in this case only is the

1 sentence --

2 A. Yes, sir.

3 Q. -- you understand that?

4 Now, I'm going to introduce you to some folks, and
5 let me know if you know any of those. Prosecuting the case
6 will be Mr. Donnie Myers, the Solicitor. Beside him,
7 Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or know
8 of any of these gentlemen?

9 A. I've heard of Donnie Myers on the news.

10 Q. Okay. Would that affect your ability to give both
11 sides a fair trial?

12 A. No.

13 Q. This is Mr. Bennett right here.

14 THE COURT: Mr. Bennett, if you'll just raise your
15 hand and let her see.

16 Q. Do you know Mr. Bennett or know of Mr. Bennett?

17 A. No.

18 Q. And he's represented by Mr. Hervery Young and
19 Mr. Wayne Floyd. Do you know or know of either of these
20 gentlemen?

21 A. No.

22 Q. All right. And you said you don't know anything
23 about the case at all?

24 A. Just what you've told me.

25 Q. Now, we gave you a sheet to look over. Did you get

1 a chance to look this over?

2 A. Uh-huh.

3 Q. And did you get a chance to think about?

4 A. Yeah.

5 Q. Now, since you left this morning have you talked
6 with anybody about this case?

7 A. No.

8 Q. Heard anything about it at all?

9 A. No.

10 Q. Okay. You notice this sheet describes three types
11 of jurors in a case such as this. Do you feel that you might
12 fall into one of these categories?

13 A. The third type.

14 Q. Third. Now, this is a juror who says this. The
15 juror says that even though the defendant has been found
16 guilty of murder I would not have my mind made up as to the
17 appropriate sentence. I would want to hear all those
18 aggravating circumstances, I want to hear all those
19 mitigating circumstances, I want the judge to tell me the
20 law, and only then would I be ready to decide the sentence;
21 is that correct?

22 A. Yes, sir.

23 Q. And this juror says that if after hearing all this
24 I found that a life sentence was appropriate I could give a
25 life sentence. If I found that a death was appropriate I

1 could give the death sentence.

2 A. Yes, sir.

3 Q. And, again, it just depends on the circumstances;
4 is that right?

5 A. Yes, sir.

6 Q. Now, during the trial I also will be giving the
7 jury instructions from time to time as to the law. Would you
8 be able to follow the instructions that were given to you?

9 A. Yes, sir.

10 Q. And there's one other thing about a case such as
11 this. The law says this; that if a jury gives a death
12 sentence all 12 jurors must sign the death sentence. If you
13 were on the jury and had found that the death sentence was
14 appropriate with the jury would you be able to sign that
15 form?

16 A. Yes.

17 Q. Do you know of any reason why you couldn't give
18 both sides a fair trial?

19 A. No, sir.

20 Q. In a case like this also the attorneys ask
21 questions.

22 A. Okay.

23 Q. So I'm going to ask if you'll answer any questions
24 they have.

25 A. Okay.

1 THE COURT: Anything from the State?

2 MR. RIDDLE: Briefly, Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. RIDDLE:

5 Q. Ms. Garrett, good afternoon. My name is Dayton
6 Riddle, I'm deputy solicitor here. I take it you like to
7 dance?

8 A. I like to dance?

9 Q. Well, I was looking at your jury questionnaire and
10 it says you'd rather be two-stepping at Bubba and Bucks.

11 A. I got that bumper sticker when I was like 16, 17,
12 and Bubba and Bucks closed.

13 Q. Okay.

14 A. They were giving them out so I put it on.

15 Q. It's been there ever since?

16 A. Well, no, the car has been wrecked since then so --

17 Q. I just got a couple of questions I want to ask you,
18 if I could.

19 A. Okay.

20 Q. I want you to know right off the bat there's no
21 right or wrong answers, okay?

22 A. I understand.

23 Q. I just want to make sure of a couple of things.
24 You put yourself in the category three juror?

25 A. Uh-huh.

1 Q. And you know as you sit here now that Mr. Bennett
2 has already been convicted of murder?

3 A. Uh-huh.

4 Q. And you understand from the Judge's instructions
5 that if you get seated on this jury you'll be asked to impose
6 the punishment for that murder?

7 A. Uh-huh.

8 Q. And you know from the Judge's instructions that
9 there is really only two choices, life in prison or the death
10 penalty?

11 A. Uh-huh.

12 Q. Now, I understood the questions that the Judge
13 asked you and I just want to ask you a couple more about
14 that.

15 A. Okay.

16 Q. If you heard all the facts and circumstances
17 surrounding the case, the good stuff about the defendant, the
18 bad stuff about the defendant, I take it from your responses
19 that in an appropriate case you could vote for life
20 imprisonment?

21 A. Uh-huh.

22 Q. And likewise in an appropriate case if the
23 circumstances fit you could vote for the death penalty?

24 A. Yes, sir.

25 Q. And the Judge asked you in particular about a

1 particularity in South Carolina law. I don't know if -- have
2 you ever been on a jury?

3 A. Yeah.

4 Q. What kind of jury were you on?

5 A. Under him. It was an accident.

6 Q. A wreck case?

7 A. Uh-huh.

8 Q. You all were deciding about money?

9 A. Yeah, money and stuff.

10 Q. Civil jury?

11 A. Uh-huh.

12 Q. Well, you know in the civil jury when you all
13 reached a verdict, if you did reach a verdict --

14 A. We did.

15 Q. -- that the foreman spoke for the jury?

16 A. Uh-huh.

17 Q. Then when you all agreed on it the foreman signed
18 his name, and that was the end of that. In a death penalty
19 case it's a little bit different. If the jury was to decide
20 that life imprisonment was appropriate there would be a
21 verdict form, a piece of paper, and it would say something to
22 the effect of, we, the jury, find life imprisonment, and
23 there would be a space for the foreman to sign.

24 But if the jury decided that the death penalty was
25 appropriate it would say, we, the jury, find for the death

1 penalty, but there would be 12 lines to sign because the
2 foreman's not allowed to speak for you all in that. You all
3 have to each speak for yourself.

4 And the reason I ask you that is this. You may
5 know people -- I don't have any reason to believe you're one
6 of them, but may know some that will tell you exactly what
7 they think and they'll act on whatever their belief is, but
8 if you ask them to sign their names they don't want any part
9 of that. If you felt the death penalty was appropriate and
10 you voted for the death penalty would the fact that you have
11 to sign your name, would that prevent you from returning it?

12 A. No.

13 Q. So if that's what the 12 jurors believed you could
14 sign your name?

15 A. If it's what I believed and what we voted on I
16 would sign my name to it.

17 Q. Sure. Last question. Is there anything about you,
18 your upbringing, your background, your beliefs that would
19 prevent you from giving the State and the defense a fair
20 trial?

21 A. No.

22 MR. RIDDLE: Thank you. That's all we're looking
23 for.

24 THE COURT: Defense?

25 VOIR DIRE EXAMINATION

1 BY MR. YOUNG:

2 Q. Ms. Garrett, if I could, could you tell us, how do
3 you feel about the death penalty?

4 A. How I feel? I believe that there's some instances
5 where the death penalty is the only penalty that's right for
6 that particular case. I'm not sure how -- I mean, there's
7 just some instances where it's the only plausible punishment,
8 I guess.

9 Q. And when you come into that decision as to that
10 being the appropriate punishment in a given case, would you
11 require to hear both sides of the case?

12 A. Definitely. I couldn't say that this person
13 deserves to die only hearing part of the story. I'd have to
14 hear both sides.

15 Q. The Solicitor was asking you about having to sign
16 your name on anything; do you understand that if your
17 decision is that death is the appropriate sentence you
18 understand that you will have to sign your name there?

19 A. Yes.

20 Q. Would that cause any injuries or any problems for
21 you to do so?

22 A. No, not if I believe that that's the appropriate
23 punishment.

24 Q. In reaching your decision you understand that you
25 have to make your own individual --

1 A. Yeah.

2 Q. -- decision as to whether that's the appropriate
3 punishment?

4 A. Uh-huh.

5 Q. Then you will deliberate with the other jurors?

6 A. Uh-huh.

7 Q. In the event that you hold a position that is
8 different than the other members of the jury would you be
9 able to hold fast to your --

10 A. Definitely.

11 Q. -- position?

12 A. Definitely.

13 Q. If you think that that is the right position?

14 A. Uh-huh.

15 MR. YOUNG: Thank you. That's all the questions we
16 have.

17 THE COURT: Anything else from the State?

18 MR. RIDDLE: No, sir.

19 THE COURT: Let me ask if you'd step just outside
20 the door for me. We'll bring you right back in in a minute.

21 (WHEREUPON, Juror Garrett leaves the
22 courtroom.)

23 THE COURT: What's the State's position on this
24 juror?

25 MR. RIDDLE: She's qualified, Your Honor.

1 THE COURT: Defense?

2 MR. YOUNG: Qualified, Your Honor.

3 THE COURT: I find she is qualified.

4 Let's ask her to step back in.

5 (WHEREUPON, Juror Garrett enters the
6 courtroom.)

7 THE COURT: Ms. Garrett, I've determined you would
8 be qualified to sit on a jury in this case if you're
9 selected. What I'm going to ask you to do is come back
10 Wednesday afternoon, the day after tomorrow, at 2:30. Just
11 come right back here in the courtroom and you'll sit out here
12 in this middle section.

13 Now, when you come back if you would bring bags
14 packed for as much as a week in a motel. The jury will be
15 sequestered during the trial. Leave the bags in your car,
16 and if you do wind up on the jury somebody will get the bags
17 for you and take them up there.

18 Now, until that time it's still very important that
19 you not talk about the case, and stay away from any kind of
20 news. Now, I know that's a couple of days, that's a long
21 time, but you need to be sure not to watch any television
22 news or radio news, stay away from newspapers too, okay.
23 With that, we'll see you back Wednesday at 2:30.

24 MS. GARRETT: Okay.

25 (WHEREUPON, Juror Garrett leaves the

1 courtroom.)

2 (WHEREUPON, Juror Number 54, Thomas W. Brown,
3 a black male, enters the courtroom.)

4 THOMAS W. BROWN, after having been duly sworn,
5 testified as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Mr. Brown, just relax. We're just going to have a
9 little chat. We're not going to give you a hard time.

10 Mr. Brown, first of all, you know we told you this
11 is the case of The State vs. Johnny Bennett. Have you heard
12 anything about this case before?

13 A. I can't say that I have, no, sir.

14 Q. You don't remember anything about it?

15 A. Uh-uh.

16 Q. Let me introduce you to some folks involved in the
17 case. And prosecuting the case will be the Solicitor,
18 Mr. Donnie Myers. With him are Mr. Dayton Riddle and Shawn
19 Graham. Do you know or know of any of these gentlemen?

20 A. I just know Mr. Myers on television or whatever.

21 Q. Is there anything about what you've seen or heard
22 about him that would give you any problem giving both sides a
23 fair trial?

24 A. Not that I know, no, sir.

25 Q. And Mr. Bennett is over here. This is Mr. Bennett.

1 Do you know Mr. Bennett or know of him?

2 A. I can't say that I know him, no, sir.

3 Q. Can't place him?

4 A. Uh-uh.

5 Q. He's represented by Mr. Hervery Young and Mr. Wayne
6 Floyd. Do you know or know of either of these gentlemen?

7 A. No, sir.

8 Q. So from what I gather, you don't know anybody in
9 the case and have never heard anything about the case; is
10 that right?

11 A. No, sir, I can't say that I have.

12 Q. Okay. You come in with a clean slate. All right.
13 Do you know of any reason why you could not give both sides a
14 fair trial in this case?

15 A. No, I don't.

16 Q. And in a case such as this do you have any kind of
17 bias or hard feelings for or against either the State or the
18 defendant in a case -- in any kind of a criminal case such as
19 this?

20 A. No.

21 Q. We gave you a sheet to look over; did you get a
22 chance to look the sheet over?

23 A. Yes, sir, I did.

24 Q. Did you get a chance to think about it?

25 A. Yes, sir.

1 Q. And, now, before you came back did you talk with
2 anybody about the case?

3 A. No, sir.

4 Q. Hear anything on the news at all?

5 A. Uh-uh.

6 Q. So you've heard nothing else about it?

7 A. No, sir.

8 Q. In looking over the sheet you notice that it
9 describes three types of jurors. Do you feel like one of
10 those types would apply to you?

11 A. Probably the third juror.

12 Q. Third. Now, that's a juror who says this. This
13 juror says that even a person who has been found guilty of
14 murder -- and you recall in this case, as we told you, a
15 previous jury has found Mr. Bennett guilty of murder; you
16 understand that?

17 A. Yes, sir.

18 Q. And in this case this jury is only going to decide
19 one thing, and that's the sentence. And they can give only a
20 life sentence or the death penalty; do you understand?

21 A. Yes, sir.

22 Q. Now, in essence, this juror says that even though
23 the defendant's been found guilty of murder that I still
24 don't have my mind made up as to the appropriate sentence.
25 That I want to hear all those aggravating circumstances, I

1 want to hear all those mitigating circumstances, I want the
2 Judge to tell me the law, and only then could I decide the
3 appropriate; is that correct?

4 A. Yes, sir.

5 Q. And this juror says that if I decide that a life
6 sentence is the best sentence then there's nothing about me
7 or there's no reason why I couldn't give him a life sentence;
8 is that right?

9 A. That's right.

10 Q. And the juror also said that if I felt if the death
11 sentence were appropriate then again there's nothing about me
12 and there's no reason why I couldn't give him a death
13 sentence; is that right?

14 A. That's right.

15 Q. So in other words, you could give a life or a death
16 sentence depending on the circumstances?

17 A. Yes, sir.

18 Q. Now, the law also says this. It says that in a
19 case such as this -- and this is the only time that you do
20 this. That if a jury gives a defendant a death sentence each
21 juror is required to sign the sentence -- form saying they've
22 given the death sentence.

23 Now, if you were sitting on a jury and had
24 determined that a death sentence was appropriate and had
25 given the death sentence would you be able to sign your name

1 on that form?

2 A. Yes, sir.

3 Q. Okay. Again, do you know of any other reason why
4 you couldn't give both sides a fair trial?

5 A. None that I can think of, no, sir.

6 Q. Each of the lawyers is going to ask you some
7 questions. Let me ask if you'll answer their questions,
8 okay?

9 A. Okay.

10 THE COURT: Mr. Myers?

11 VOIR DIRE EXAMINATION

12 BY MR. MYERS:

13 Q. Mr. Brown, do you recall the Judge telling all the
14 jurors this morning that at another time, another proceeding
15 the defendant has been found guilty of murder?

16 A. Yes, sir.

17 Q. And that we needed to have this trial for the jury
18 to determine what the right sentence is?

19 A. That's correct, yes, sir.

20 Q. And there has to be a murder conviction before we
21 can even get to this second phase; do you understand that?

22 A. Yes, sir.

23 Q. And not all murder cases come within the death
24 penalty statute; do you understand that?

25 A. Yes, sir.

1 Q. The death penalty can only come into play when the
2 State proves aggravating circumstances. The State has to
3 prove at least one aggravating circumstance. If we prove
4 that then the jury can consider the death penalty; did you
5 know that?

6 A. No, I didn't know that, sir.

7 Q. You've never been on a jury before?

8 A. No, sir.

9 Q. And have you ever been a witness? I think you said
10 you've never been a witness in a criminal case.

11 A. No.

12 Q. All this is new to you?

13 A. I was polled, but I didn't serve before. That's
14 about it.

15 Q. And, Mr. Brown, this sentencing phase is for the
16 jury -- even though the defendant has been found guilty, it's
17 for the jury to hear some things about the crime,
18 circumstances surrounding the crime. And there will be
19 evidence about the crime, there will be some evidence about
20 the defendant; good things about him, maybe bad things about
21 him. That's where the aggravating circumstances, the
22 mitigating circumstances come into play. Would you be
23 willing to listen to all that testimony if you were a juror?

24 A. Yes, sir.

25 Q. And once testimony is presented as to the character

1 of the defendant testimony is presented about the
2 circumstances of the murder of Benton Smith. When all that's
3 in, the Judge will tell the jury what the law is. Of course,
4 you would follow that law; is that correct?

5 A. Yes, sir.

6 Q. Then the jury must return a verdict of life
7 imprisonment or the death penalty. Now, when the Judge asked
8 you which of those three categories you fell in you said
9 probably the third category; is that right?

10 A. That's right.

11 Q. Were there any other categories close to your
12 beliefs other than the third one, because I noticed you said
13 probably the third one?

14 A. Any other categories close to my belief?

15 Q. Yes, sir. The first one is somebody who would
16 always vote for the death penalty, the second one is somebody
17 who could never vote for the death penalty under any
18 circumstances and the third one was those folks who say I'd
19 have to listen to the evidence and I could vote for life or
20 death.

21 A. I would have to stick with the third. I would have
22 to hear everything.

23 Q. Okay. You just said probably, I thought maybe
24 there was some other categories you were considering.

25 Now, Mr. Brown, have you ever had or have the

1 occasion before of being confronted with the death penalty;
2 talking about it, making a decision about it, forming a
3 belief about it?

4 A. Just forming a belief about it. I have never been
5 confronted with it before.

6 Q. Have you ever expressed any kind of opinion about
7 your belief in the death penalty or belief against the death
8 penalty?

9 A. Just totally in general you mean?

10 Q. Uh-huh.

11 A. Yeah, I probably have had the occasion to express
12 my belief or opinion about it.

13 Q. And has that always been your opinion as you say
14 now that you'd have to listen to the facts before you make up
15 your mind, and you could move for or against it?

16 A. Certainly, yes, sir.

17 Q. Now, Mr. Brown, do you know any reason if you were
18 chosen as a juror in this case, do you know any reason why
19 you couldn't sit over here and listen to all the evidence?

20 A. No, I don't know of any.

21 Q. Do you know of any reason why you couldn't follow
22 the law as the Judge told you what the law is?

23 A. No, I don't know of any.

24 Q. And if after hearing everything, going to the jury
25 room, you're telling us that if your belief is life

1 imprisonment should be the sentence you could so vote for
2 life; is that correct?

3 A. Yes, sir.

4 Q. And on the other hand, if the death penalty was
5 warranted and the correct and appropriate sentence could you
6 so vote for the death penalty?

7 A. Yes, sir.

8 Q. And I think you had stated to the Judge in voting
9 for the death penalty you also could sign your name on that
10 death verdict?

11 A. Yes, sir.

12 MR. MYERS: Thank you, Mr. Brown. That's all we
13 can ask of you.

14 THE COURT: Defense?

15 VOIR DIRE EXAMINATION

16 BY MR. YOUNG:

17 Q. Mr. Brown, the Solicitor was asking you about
18 discussing your views and beliefs about the death penalty.

19 A. Yes, sir.

20 Q. Can you tell us exactly what are your beliefs about
21 the death penalty.

22 A. Well, first of all, since the questionnaire was
23 sent to me I am a licensed minister presently, now. I have
24 been licensed to preach the gospel. My views on the death
25 penalty are this. I feel that we are to live by the law of

1 the land. If the law of the land says that the death penalty
2 is just then we must obey the law of the land.

3 Q. Do you understand that the law never requires a
4 juror to give the death penalty?

5 A. I didn't know that, no, sir.

6 Q. One of the reasons why we have the penalty phase is
7 to allow the State to put up aggravating evidence and allow
8 the defense to put up mitigating evidence, the good and the
9 bad about the person, about the crime itself. And then it is
10 the responsibility of a jury to decide the appropriate
11 punishment; do you understand that?

12 A. Yes, sir.

13 Q. And understand that if a juror finds that there is
14 an aggravating circumstance then and only then could they
15 consider the death penalty?

16 A. Yes, sir.

17 Q. And in making that decision even if they found that
18 there is an aggravating circumstance, do you understand that
19 a juror could vote for a life sentence if they want to?

20 A. If they wanted to you're saying?

21 Q. If they wanted to they can vote for a life
22 sentence; do you understand that?

23 A. Okay. I understand what you're saying.

24 Q. And the gist of it is that the Judge, who will give
25 you what the law is, he will instruct the jury as to what the

1 law is. He will never sit on this bench and tell a jury that
2 they have to give the death penalty in any circumstance.
3 Now, understand that in trying to decide as to the
4 appropriate punishment that you as an individual have to make
5 a decision as to what you think the appropriate punishment
6 is.

7 A. Correct.

8 Q. And you'll have to take your opinions and discuss
9 it with the other jurors.

10 A. Correct.

11 Q. Then and only then could the jurors after
12 deliberation return their verdict.

13 A. Uh-huh.

14 Q. Or return their penalty on it. And understand that
15 in order for a person to receive the death penalty all 12
16 persons have to agree.

17 A. Correct.

18 Q. That death was the appropriate sentence.

19 A. Yes.

20 Q. And understand that if your position is different
21 than the other 11 persons on this jury would you be able to
22 hold fast to your position as to what you think the
23 appropriate punishment is?

24 A. Yes, sir.

25 Q. Even after deliberating with the other jurors and

1 you believe that your position is the right position?

2 A. Yes, sir.

3 Q. And are you telling us here today that in order for
4 you to decide what the appropriate punishment will be that
5 you would have to hear everything in the case?

6 A. Correct.

7 Q. The good and the bad?

8 A. Yes, sir.

9 Q. And then and only then could you make the decision
10 as to what you believe the appropriate punishment is?

11 A. Correct.

12 MR. YOUNG: Thank you. That's all we ask.

13 THE COURT: Anything else from the State?

14 MR. MYERS: No, sir.

15 THE COURT: All right. Let me ask if you'd step
16 outside just a moment, okay.

17 (WHEREUPON, Juror Brown leaves the courtroom.)

18 THE COURT: What's the State's position on this
19 juror?

20 MR. MYERS: We think he's qualified.

21 THE COURT: Defense?

22 MR. YOUNG: Qualified, Your Honor.

23 THE COURT: I find he is qualified.

24 Have him come back in.

25 (WHEREUPON, Juror Brown enters the courtroom.)

1 THE COURT: Mr. Brown, I have determined you'd be
2 qualified to sit on the jury in this case if selected. So
3 what I'll do is ask if you will come back Wednesday
4 afternoon, and just come here to the courtroom. You'll sit
5 in this middle section, okay.

6 When you do, bring bags packed for as much as a
7 week in a motel. The jury will be sequestered during the
8 trial. Leave your bags in the car, and if you are picked on
9 the jury someone will take care of the bags for you.

10 Now, until that time it's still very important that
11 you not talk about the case in any way and that you stay away
12 from any kind of news at all, too, okay. No television,
13 radio news, and no newspapers. All right. With that in
14 mind, we'll see you Wednesday afternoon at 2:30 with your
15 bags packed. Thank you, sir.

16 (WHEREUPON, Juror Brown leaves the courtroom.)

17 THE COURT: All right. Let's bring in the next
18 one.

19 (WHEREUPON, Juror Number 327, Frances L.
20 Smith, a white female, enters the courtroom.)

21 FRANCES L. SMITH, after having been duly
22 sworn, testified as follows:

23 VOIR DIRE EXAMINATION

24 BY THE COURT:

25 Q. Thank you, Ms. Smith. Just have a seat and relax.

1 We're just going to have a little chat, okay.

2 First of all, Ms. Smith, you recall we told you in
3 this case that the State has charged Mr. Johnny Bennett with
4 the offense of murder, and that in this case a previous jury
5 has found Mr. Bennett guilty of murder; do you understand
6 that?

7 A. Yes, sir.

8 Q. And, of course, this jury will be deciding only the
9 sentence. And there are only two possibilities, life in
10 prison or the death sentence; do you understand that?

11 A. Yes, sir.

12 Q. Have you heard anything about this case before?

13 A. No, sir.

14 Q. Don't know anything about it at all?

15 A. No, sir.

16 Q. Let me introduce you to some of the folks involved
17 to see if you know them. This is Mr. Donnie Myers, who is
18 the Solicitor. With him are Mr. Dayton Riddle and Mr. Shawn
19 Graham who will be prosecuting the case, these three. Do you
20 know or know of any of these gentlemen?

21 A. I've seen Mr. Myers on TV. Other than that, no.

22 Q. Is there anything you've seen about Mr. Myers that
23 would cause you to have any problem, have any hard feelings
24 about him or have any problems with giving both sides a fair
25 trial in this case?

1 A. No, sir.

2 Q. Okay. This is Mr. Bennett right over here. Do you
3 know Mr. Bennett or know of him?

4 A. No, sir.

5 Q. Well, did you see him over to the left? Right over
6 there, that's Mr. Bennett.

7 A. No, sir.

8 Q. Do you know him or know of him?

9 A. No, sir.

10 Q. Okay. Mr. Bennett is represented by Hervery Young
11 and Mr. Wayne Floyd. Do you know either of these gentlemen
12 or know of them?

13 A. No, sir.

14 Q. So as I understand you don't know anybody in the
15 case and don't know anything about the case?

16 A. No, sir.

17 Q. You're starting with a clean slate.

18 A. Yes, sir.

19 Q. Now, we gave you a sheet to look over that
20 described three types of jurors. Did you get to look that
21 over and think about it some?

22 A. Yes, sir.

23 Q. And do you feel that one of those categories of
24 jurors would apply to you?

25 A. Number three.

1 Q. The third?

2 A. Yes, sir.

3 Q. Now, as you recall, the third juror is described as
4 this. This juror says that even though a person has been
5 found guilty of murder that I still would not have my mind
6 made up as to the appropriate sentence. This juror says I
7 want to hear all of those aggravating circumstances, I want
8 to hear all of those mitigating circumstances, I want the
9 judge to tell me the law, and only then would I be ready to
10 decide the appropriate sentence; is that correct?

11 A. Yes, sir.

12 Q. And this juror also says that if I heard all of
13 this and I felt that a life sentence was appropriate I could
14 give a life sentence, and if I felt that a death sentence was
15 appropriate I could give the death sentence. It would just
16 depend on the circumstance; is that what you're saying?

17 A. Yes, sir.

18 Q. Now, there's one other thing about the law in this
19 case, and it says this. It says that if the jury gives a
20 death sentence that all 12 jurors must sign a form saying
21 that they've given the death sentence. If you were on the
22 jury and had determined that was appropriate would you be
23 able to sign that form?

24 A. Yes, sir.

25 Q. Now, during the trial it would be my duty to

1 occasionally instruct the jury as to the law in the case.

2 Would you have any problem at all with following the law as I
3 instructed it?

4 A. No, sir.

5 Q. And do you know of any reason why you couldn't give
6 both sides a fair trial in this case?

7 A. No.

8 THE COURT: Let me ask if you would answer any
9 questions the lawyers have. Both sides will have some
10 questions, okay. Thank you, ma'am.

11 VOIR DIRE EXAMINATION

12 BY MR. RIDDLE:

13 Q. Good afternoon, Ms. Smith. My name is Dayton
14 Riddle. I'm Deputy Solicitor here. I just have a couple of
15 questions that I need to ask you. Have you ever served on a
16 jury before?

17 A. No, sir.

18 Q. First time?

19 A. Yes, sir.

20 Q. Are you a little bit nervous?

21 A. Yes.

22 Q. Let me tell you there's no right or wrong answers
23 to any of these questions. All we're trying to do is kind
24 of -- for lack of a better way of putting it, get inside your
25 head, okay, and just kind of understand you as a person a

1 little bit better.

2 You indicated to Judge Westbrook that you felt like
3 you fit into that third category of jurors?

4 A. Yes, sir.

5 Q. So I take it from that that you would -- if you got
6 selected on this case you'd want to sit in this jury box and
7 listen to all the evidence in the case before you made up
8 your mind?

9 A. Yes, sir.

10 Q. And you'd want to hear what the Judge told you the
11 law was so you'd know how to apply that evidence?

12 A. Yes, sir.

13 Q. And only after you had heard all of the evidence
14 and heard the law would you be able to come to a decision in
15 this matter?

16 A. Yes, sir.

17 Q. And you know that in this case Mr. Bennett has
18 already been convicted of murder?

19 A. Yes, sir.

20 Q. And so the jury would just be deciding the
21 punishment.

22 A. Yes, sir.

23 Q. Two choices; death penalty, life in prison. Do you
24 understand that?

25 A. Yes, sir.

1 Q. And when you heard the evidence, that evidence
2 would consist of a couple of things. It would consist of
3 aggravating circumstances, which is stuff that makes the
4 murder worse, bad things about the defendant. And you may
5 hear some mitigating circumstances, those things that lessen
6 the severity of the crime. You'd want to hear all that
7 before you made up your mind?

8 A. Yes, sir.

9 Q. And I take it from your responses there's nothing
10 in your background, your upbringing, your religious beliefs,
11 the things that make you who you are, none of that would
12 prevent you from voting for life in prison if that was
13 appropriate?

14 A. No, sir.

15 Q. And by the same token, none of that would make it
16 impossible or make it difficult for you to vote for the death
17 penalty if that was the appropriate punishment?

18 A. No, sir.

19 Q. And the Judge asked you about signing your name.
20 In South Carolina the foreman usually speaks for the jury;
21 you understand that?

22 A. Yes, sir.

23 Q. But if the death penalty is returned in a case like
24 this the verdict form has a place for each of the 12 jurors
25 to sign, because the verdict has to be unanimous. The fact

1 that you would need to sign your name if that's what you
2 thought was appropriate, that wouldn't cause you any problem,
3 would it?

4 A. No, sir.

5 Q. Last question. Is there anything at all about you
6 that would prevent you from being fair and impartial to the
7 State and the defense in this case?

8 A. No, sir.

9 MR. RIDDLE: Thank you. That's exactly what we're
10 looking for.

11 THE COURT: Defense?

12 VOIR DIRE EXAMINATION

13 BY MR. FLOYD:

14 Q. Good afternoon, Ms. Smith. My name is Wayne Floyd
15 and I'm one of Johnny Bennett's lawyers. And, Ms. Smith,
16 does it give you any concern in this case that Johnny Bennett
17 has already been convicted of murder?

18 A. No, sir.

19 Q. Now, knowing that he has already been convicted of
20 murder do you feel like you could still approach this
21 sentencing process fairly?

22 A. Yes, sir.

23 Q. Now, do you understand that not everybody convicted
24 of murder can get the death penalty?

25 A. Yes, sir.

1 Q. What do you feel about the death penalty?

2 A. In different situations there's a call for it, and
3 I really believe I have to know somebody that did -- how they
4 did the crime and like that. I wouldn't want to make a quick
5 judgment on anything concerning that.

6 Q. Now, do you understand that the jury on this case
7 will hear evidence of what's called aggravation or things to
8 make the situation worse, and they'll also here evidence of
9 mitigation or things that the defense feels would be in
10 Mr. Bennett's favor?

11 A. Yes, sir.

12 Q. And do you feel like you could listen to both sides
13 of that and make some kind of decision you thought was fair?

14 A. Yes, sir.

15 Q. Even if the State were to present to you evidence
16 of aggravation, making you think the death penalty might be
17 what's appropriate, do you think that you could then listen
18 to evidence from the defense on what we call mitigation or
19 good things that might make it change your mind about that
20 and decide life would be the appropriate sentence?

21 A. Yes, sir.

22 Q. Have you ever discussed your feelings about the
23 death penalty with, say, your husband or friends?

24 A. I don't believe so. I can't remember all I've
25 said, and I don't believe I have.

1 Q. That's fair. Just never has really come up before
2 in your conversation?

3 A. No, sir.

4 MR. FLOYD: Thank you, Ms. Smith.

5 THE COURT: Anything from the State?

6 MR. MYERS: No, sir.

7 THE COURT: Let me ask you to step just outside the
8 door, okay.

9 (WHEREUPON, Juror Smith leaves the courtroom.)

10 THE COURT: What's the State's position on this
11 juror?

12 MR. RIDDLE: Submit she's qualified, Your Honor.

13 THE COURT: Defense?

14 MR. FLOYD: We agree she's qualified.

15 THE COURT: I find that she is qualified.

16 Let's ask her to step back in.

17 (WHEREUPON, Juror Smith enters the courtroom.)

18 THE COURT: Ms. Smith, I've determined you would be
19 qualified to sit on the jury in this case if you were called.
20 So what I will do is ask you to come back Wednesday afternoon
21 at 2:30, and just come back here to the courtroom and you'll
22 sit right back here in the middle section.

23 Bring bags packed for as much as about a week in a
24 motel because the jury will be sequestered during the trial.
25 Now, you'll be with about 35 or 40 other people out there and

1 we will draw the jury from that group out there.

2 Now, until that time it's still very important that
3 you not talk about the case with anyone. Certainly you want
4 to tell your family where you're going to be and what's going
5 on but just not talk about the details of the case with them.

6 Also, I'll ask you to be sure, again, to stay away
7 from any sort of news on the television, news on the radio,
8 stay away from newspapers until then. And we'll plan to see
9 you back here at 2:30, with your bags packed. Thank you,
10 ma'am. See you then.

11 (WHEREUPON, Juror Smith leaves the courtroom.)

12 THE COURT: Let's bring the next juror in.

13 (WHEREUPON, Juror Number 284, Ashley S. Ray, a
14 white female, enters the courtroom.)

15 ASHLEY S. RAY, after having been duly sworn,
16 testified as follows:

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q. Ms. Ray, just have a seat and relax, okay.

20 A. Okay.

21 Q. Nobody is going to give you a hard time. We're
22 just going to have a little chat with you.

23 Ms. Ray, do you recall this morning we told you
24 that in this case that Mr. Bennett -- this is the case The
25 State vs. Johnny Bennett. And in this case you recall that

1 we told you that a jury has previously found Mr. Bennett
2 guilty of murder, and they found that he murdered Mr. Benton
3 Darrell Smith on November 27 of 1990; do you understand that?

4 A. Uh-huh.

5 Q. And you recall that we told you that the State's
6 asking for the death penalty and that this jury will be the
7 jury to decide the sentence. There are only two possible
8 sentences, life imprisonment or the death penalty; do you
9 understand that?

10 A. I understand.

11 Q. Now, have you heard anything about this case
12 before?

13 A. No, I have not.

14 Q. Don't know anything about it at all?

15 A. Nothing.

16 Q. Now, let me introduce you to some folks involved
17 and see if you know of any of them. This is Mr. Bennett over
18 here, Mr. Johnny Bennett. Do you know Mr. Bennett or know of
19 Mr. Bennett?

20 A. No, I do not.

21 Q. He's represented by Mr. Hervery Young and Mr. Wayne
22 Floyd. Do you know or know of either of them?

23 A. No, I sure don't.

24 Q. Now, the prosecutor in the case will be the
25 Solicitor, Mr. Donnie Myers. Beside him is Mr. Dayton Riddle

1 and Mr. Shawn Graham who will be helping him. Do you know or
2 know of any of them?

3 A. No, I do not.

4 Q. Okay. So you don't know anybody and don't know
5 anything about the case?

6 A. No.

7 Q. You got a clean slate. Okay. Now, you know we
8 gave you a sheet to look at. Did you look at the sheet?

9 A. I did.

10 Q. And let me ask you, before you came back have you
11 talked with anybody about the case?

12 A. No, I have not.

13 Q. Haven't heard anything since you've been away; is
14 the right?

15 A. No, I have not.

16 Q. You notice this sheet described three types of
17 jurors in a case like this. Do you feel that one of these
18 types of jurors would apply to you?

19 A. Yes, sir, I do.

20 Q. And which is that?

21 A. That would be the last one.

22 Q. Okay. Let's go over it just to be sure we're
23 talking about the same thing, okay?

24 A. Okay.

25 Q. This is a juror who says that even though a

1 person's been found guilty of murder, and I know that there
2 are only two possible sentences available, that I still would
3 not have my mind made up as to the appropriate sentence. I
4 would want to hear all those aggravating circumstances and I
5 want to hear all those mitigating circumstances, I want the
6 judge to tell me the law, and only at that point would I be
7 prepared to decide the appropriate sentence; is that correct?

8 A. That's correct.

9 Q. And this juror also says that if I after going
10 through this if I concluded that a life sentence was
11 appropriate I could give the defendant a life sentence.

12 A. Correct.

13 Q. And if I found that a death sentence was
14 appropriate I could give the defendant a death sentence.

15 A. Correct.

16 Q. So in other words, it would depend only on the
17 facts and circumstances?

18 A. Absolutely.

19 Q. Okay. Now, our law also says this, that if the
20 jury gives a death sentence that each juror is required to
21 sign a form saying that they have given the death sentence.
22 If you're on the jury and have concluded that this was the
23 appropriate sentence would you be able the sign the form?

24 A. Yes, I could.

25 Q. Okay. Now, during the trial from time to time it

1 would be my duty to instruct the jury as to the law. Would
2 you be able to follow the law as I give it to you?

3 A. Sure.

4 Q. You know of any reason at all why you could not
5 give both sides a fair trial in this case?

6 A. No, I do not.

7 Q. Okay. Now, the attorneys -- in this case, the
8 attorneys will also ask questions. Let me ask you if you'll
9 answer their questions, okay?

10 A. Okay.

11 THE COURT: Mr. Myers?

12 VOIR DIRE EXAMINATION

13 BY MR. MYERS:

14 Q. Ms. Ray, I have to ask you just a few.

15 A. Sure.

16 Q. Ms. Ray, you know not all cases of murder bring the
17 death penalty into play; you realize that?

18 A. I realize that.

19 Q. And, first of all, a defendant must be found guilty
20 of murder, then there's got to be a sentencing phase where
21 the State has to prove an aggravating circumstance for the
22 jury to consider murder; do you understand that?

23 A. I understand.

24 Q. And you recall the Judge telling you all this
25 morning that a jury has already found the defendant guilty of

1 murder another time, another place?

2 A. Correct.

3 Q. That's not the jury's decision, that's the law in
4 the case. The defendant is guilty of murder. But this jury
5 must listen to some testimony and decide life imprisonment or
6 the death penalty; do you understand that?

7 A. I do.

8 Q. And for this phase of the case we'll present more
9 testimony about the murder, how it was committed,
10 circumstances surrounding the murder and then we'll present
11 testimony about aggravating circumstances. There can be some
12 testimony about the defendant's character, some bad things
13 about him, may be some things in his favor. Would you be
14 willing to listen to all of that testimony in reaching your
15 verdict?

16 A. Absolutely.

17 Q. And Judge Westbrook will tell the jury when all the
18 testimony is over he will tell them what the law is. He will
19 tell them what aggravating circumstances the State relies on.
20 He'll define legally what the law says on aggravating
21 circumstances and he'll give the jury something in writing on
22 that. Would you follow all of that, the law as the Judge
23 tells you?

24 A. Certainly.

25 Q. He'll also tell the jury what a mitigating

1 circumstance is under the law. He'll define that to the jury
2 and he'll give the jury something in writing about mitigating
3 circumstance; would you would follow that, too?

4 A. I sure would.

5 Q. Now, as to the final verdict, life imprisonment or
6 the death penalty, you said you're in that category where you
7 just have to listen to everything?

8 A. Right.

9 Q. Once you've heard everything, and the law, then you
10 could decide the appropriate sentence?

11 A. Correct.

12 Q. And if life you thought was the appropriate
13 sentence you could return life?

14 A. Right.

15 Q. But if the death penalty was the appropriate
16 sentence, punishment for this crime, you could so vote for
17 the death penalty?

18 A. Absolutely.

19 Q. But you'd have to hear everything first?

20 A. Everything first.

21 Q. The Judge would tell the jury and they would take
22 an oath that they would have to keep an open mind until
23 they've heard everything; you could follow that will law and
24 that oath?

25 A. I sure could.

1 Q. And then depending on the circumstances of the
2 crime, the character of the defendant, the law involved, you
3 could so vote for life or death?

4 A. Uh-huh.

5 Q. But you'd have to hear it first?

6 A. I'd have to hear it first.

7 Q. That's all we can ask of you. Thank you, Ms. Ray.

8 A. Okay. You're welcome.

9 THE COURT: Defense?

10 VOIR DIRE EXAMINATION

11 BY MR. FLOYD:

12 Q. Good afternoon, Ms. Ray, how are you doing?

13 A. Fine. How about you?

14 Q. My name is Wayne Floyd. As you heard, I'm one of
15 Mr. Bennett's lawyers.

16 A. Uh-huh.

17 Q. Now, Ms. Ray, you do understand that Johnny Bennett
18 has already been convicted of murder?

19 A. Correct.

20 Q. Do you know what the elements of murder are, just
21 what that means?

22 A. I know there are certain degrees of murder; is that
23 what you're asking?

24 THE COURT: Let me do this. If I might, I'll
25 charge you as to murder, okay.

1 MS. RAY: Okay.

2 THE COURT: In South Carolina we have only one
3 degree of murder; we have murder only. We have also a couple
4 other things called manslaughter, but that's different from
5 murder. In South Carolina murder is defined as the unlawful
6 and felonious killing of another human being with malice
7 aforethought.

8 Now, malice aforethought means, first of all, that
9 there was malice involved in the killing and that the
10 aforethought was either before or at the time of killing, but
11 that there was malice there along with the killing. So, in
12 essence, that's what murder means in South Carolina, okay.

13 MS. RAY: Okay.

14 THE COURT: Counsel?

15 BY MR. FLOYD:

16 Q. So you understand basically what you thought first
17 degree murder was, that's what murder is --

18 A. Right.

19 Q. -- in South Carolina? Knowing that it's what you
20 thought was first degree murder, is what murder is, would you
21 still consider that it's possible to give someone of first
22 degree murder, as you thought, life imprisonment or should
23 they get the death penalty?

24 MR. MYERS: She's not concerned with murder and she
25 doesn't decide the case on a prior conviction of murder.

1 She's got to hear all of the aggravating, all the mitigating.
2 That's an incomplete question and a confusing question.

3 MR. FLOYD: Your Honor, that's what I'm trying to
4 ask, is if she would still have an open mind knowing that
5 it's first degree.

6 A. No, I would have to hear both sides.

7 THE COURT: Wait, wait.

8 A. I'm sorry.

9 THE COURT: That's all right.

10 Counsel, as you know, the Supreme Court has said
11 that you certainly can't use any sort of residual effect in
12 the sentencing process, so I would have to sustain the
13 objection.

14 Again, ma'am, remember that you will go from the
15 point that the defendant has been convicted of murder, and
16 everything that you base your decision on will be only what
17 you hear in this courtroom, from that point on, okay?

18 MS. RAY: Right.

19 THE COURT: All right. Go ahead, Counsel.

20 BY MR. FLOYD:

21 Q. So even though he's been convicted of murder you
22 could still consider the mitigation, mitigating circumstances
23 that the defendant might present?

24 A. Right.

25 Q. And after hearing those mitigating circumstances if

1 you thought it was appropriate you could then give life
2 imprisonment?

3 A. Certainly.

4 Q. Now, if you felt after discussing it with the other
5 jurors that life imprisonment was the proper punishment but
6 all the other jurors thought the death penalty was proper,
7 what will you do then?

8 MR. MYERS: . Objection. He's going into the jury
9 room. It's a hypothetical situation. He's not to invade the
10 province of the jury. It's on a set of facts, that
11 hypotheticals are improper, and also going into the jury room
12 is improper. And also, as to unanimous verdict, it is a
13 question aimed at invading that.

14 MR. FLOYD: Your Honor, I'm asking this juror the
15 same thing we've asked about ten of them so far.

16 MR. MYERS: No, sir. We haven't asked this
17 question before, Your Honor. We've cited some cases on that
18 previously. The case we were relying on was State vs. Bracey
19 and State vs. Hunt. You can't stake out a juror, you can't
20 -- could get a juror to commit to future course of action in
21 this hypothetical.

22 THE COURT: Anything else, Mr. Floyd?

23 MR. FLOYD: Your Honor, if I need to rephrase that
24 I will, but I think we're asking the same -- in fact, it's
25 the same reason we're down here because of this same

1 question.

2 THE COURT: Yes, sir. You can certainly rephrase
3 it, but our Supreme Court, of course, has said that certainly
4 you want to be sure that each juror understands that they
5 operate independently as a juror.

6 Of course, they must also work with the other
7 jurors in the deliberating process. But certainly you can't,
8 in essence, pit the juror against the other jurors. She
9 would just need to be asked what she would do -- whether she
10 could, in essence, make her own verdict as to the case.

11 MR. FLOYD: I'll rephrase it.

12 THE COURT: Just rephrase it.

13 BY MR. FLOYD:

14 Q. Mrs. Ray, if after deliberating with the other
15 jurors you felt that the proper punishment would be life in
16 prison but the other 11 jurors felt that it would be the
17 death penalty, could you stand up to what you felt was right
18 or would you go along with the other 11?

19 A. No, I wouldn't go along with them. I would
20 definitely stick with my decision.

21 Q. Thank you, Mrs. Ray.

22 A. You're welcome.

23 THE COURT: Anything else from the State?

24 MR. MYERS: Nothing.

25 THE COURT: Let me ask you to please step just

1 outside the door, okay.

2 MS. RAY: Okay.

3 (WHEREUPON, Juror Ray leaves the courtroom.)

4 THE COURT: What's the State's position on this
5 juror?

6 MR. MYERS: Submit she's qualified.

7 THE COURT: Defense?

8 MR. FLOYD: Qualified, Your Honor.

9 THE COURT: I find that she's qualified.
10 Let's ask her to step back in.

11 (WHEREUPON, Juror Ray enters the courtroom.)

12 THE COURT: Ms. Ray, I've determined you'd be
13 qualified to sit as a juror in this case if you're selected.
14 So what I'll ask you to do is to come back Wednesday
15 afternoon at 2:30, okay. That's the day after tomorrow at
16 2:30.

17 MS. RAY: Okay.

18 THE COURT: Just come to the courtroom and you'll
19 be here in this middle section, all right?

20 MS. RAY: Okay.

21 THE COURT: Now, you need to bring bags packed for
22 as much as a week in a motel. The jury is going to be
23 sequestered during the case. Leave the bags in the car, and
24 if you are picked on the jury somebody will take care of the
25 bags for you.

1 MS. RAY: Okay.

2 THE COURT: Now, it's still very important until
3 that time you not talk with anybody about the case.
4 Certainly you want to let your family know where you're going
5 to be and what you're doing but don't talk about any details
6 of the case.

7 MS. RAY: Okay.

8 THE COURT: And still stay away from any sort of
9 news; any news on the radio, news on the television, and the
10 newspaper.

11 MS. RAY: Okay.

12 THE COURT: And with that in mind we'll see you
13 Wednesday at 2:30 with your bags packed. Thank you, ma'am.

14 MS. RAY: Thank you.

15 (WHEREUPON, Juror Ray leaves the courtroom.)

16 THE COURT: Counsel, that's the two o'clock group.
17 Do you want to see if we can get one or two from the 3:30
18 group?

19 MR. RIDDLE: Whatever the Court's preference, Your
20 Honor.

21 MR. YOUNG: Whatever the Court decides.

22 THE COURT: Sir?

23 MR. YOUNG: Whatever the Court decides.

24 THE COURT: Okay.

25 MR. RIDDLE: Your Honor, if we do the 3:30 group

1 will we still strike them in the order that they were drawn?

2 THE COURT: Oh, yes. Yes.

3 MR. RIDDLE: So even if we qualify them out of
4 order we'll still strike as the sheet is done by the clerk?

5 THE COURT: Yes. They're going to be struck in the
6 order that they were drawn by the clerk this morning.

7 (WHEREUPON, Juror Number 244, Rebecca A.
8 Morris, a white female, enters the courtroom.)

9 REBECCA A. MORRIS, after having been duly
10 sworn, testified as follows:

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Ms. Morris, why don't you just have a seat and
14 relax. Nobody is going to give you a hard time.

15 A. Oh, I know. I've been to court before, it's just
16 for some reason this time it's different.

17 Q. That's okay. You know we told you in this case
18 that this is The State vs. Johnny Bennett; do you remember
19 that?

20 A. (Nodded).

21 Q. You need to answer yes or no.

22 A. Oh, yes.

23 Q. You remember that we told you that a previous jury
24 found Mr. Bennett guilty of murder; do you understand that?

25 A. Yes.

1 Q. And that in this case this jury is only going to
2 decide the sentence, two possibilities, life in prison or the
3 death penalty; do you understand that?

4 A. Yes.

5 Q. Now, have you heard anything about this case
6 before?

7 A. No.

8 Q. Don't know anything about it?

9 A. I don't hardly read the newspaper.

10 Q. Okay. And let me introduce you to some folks
11 involved in the case and see if you know any of these folks,
12 okay. This is Mr. Bennett right here. Do you know
13 Mr. Bennett or know of Mr. Bennett?

14 A. No.

15 Q. He's represented by Mr. Wayne Floyd and Mr. Hervery
16 Young. Do you know either of these gentlemen, or know of
17 them?

18 A. No.

19 Q. Now, the case will be prosecuted by the Solicitor's
20 Office. This is the Solicitor, Mr. Donnie Myers. Beside him
21 is Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or
22 know of any of these gentlemen?

23 A. I just heard the name but --

24 Q. Which one?

25 A. Donnie Myers.

1 Q. Mr. Myers?

2 A. You know, on the news sometimes, but not really.

3 Q. Has that caused you to form any opinions for or
4 against Mr. Myers?

5 A. No, I've just heard his name. I don't know
6 nothing --

7 Q. Okay. Listen. Has it caused you to form any
8 opinions for or against Mr. Myers?

9 A. No.

10 Q. Does it give you any problem giving both sides a
11 fair trial in this case?

12 A. No.

13 Q. Now, you know we gave you a sheet to look at. Did
14 you look this sheet over? You notice it described three
15 types of jurors. Do you feel that one of those types of
16 jurors would apply to you?

17 A. Yeah.

18 Q. Which is that?

19 A. Probably -- oh, I don't even know now but --

20 Q. Do you want me to go over it with you just a
21 minute?

22 A. I've read it.

23 Q. You know the sheet described the first type of a
24 juror who says that if someone has been convicted of murder
25 that they would always give the death penalty. The second

1 type is one who said they could never give the death penalty
2 but would always give a life sentence, and the third is the
3 type who says they could give life or death depending on the
4 circumstances.

5 A. Well, I thought I would be the third, depending on
6 the circumstances, but I'm not sure. I don't know if I could
7 or not.

8 Q. What do you mean by that, you say you're not sure
9 if you could?

10 A. I don't know until --

11 Q. Until you hear everything; is that right?

12 A. Yeah, I think.

13 Q. Let's go over this, okay. And just relax now and
14 just take it easy. Nobody is going to give you a hard time.

15 A. I know, I have panic attacks.

16 Q. Oh, are you --

17 A. I take something for it, yeah.

18 Q. Are you having one now?

19 A. No, I just get nervous. I lost the person I lived
20 with for 21 years two months ago.

21 Q. Oh, I see.

22 A. And I get really nervous and upset. I've been on a
23 jury before and it's not a problem.

24 Q. Is that going to give you some difficulty this
25 time?

1 A. I don't know because it's hard for me to
2 concentrate, and I take certain medication for that. And I
3 have bouts with depression. When I think about it I want to
4 cry.

5 [The witness appears to be upset.]

6 Q. Well, again -- and basically, I think you probably
7 just need to tell me if you feel that that's going to give
8 you some difficulty in serving on the jury.

9 A. It may. It might seem like a bad time, he just
10 died April the 26th.

11 Q. Do you --

12 A. And I haven't had enough time to get over it.

13 Q. You need to speak into that microphone, if you can.
14 Do you feel like you need to ask to be off of the jury
15 because of that?

16 A. (Nodded.)

17 THE COURT: Let me ask if you'll step back out here
18 just a minute, okay.

19 Madam Court Reporter, the last answer was a nod.

20 (WHEREUPON, Juror Morris leaves the
21 courtroom.)

22 THE COURT: Counsel, I don't know if you could pick
23 up what she was saying. She was saying that, I guess her
24 husband that she had had for the last 21 years had passed
25 away about a couple of months ago. And as you gathered, she

1 was visibly crying up here and seemed to be struggling with
2 it. She told me she's taking medication for some emotional
3 problems and has trouble concentrating, and that's why I just
4 frankly asked her up front if she wanted to be excused.

5 What's the State's position on that?

6 MR. MYERS: No objection.

7 THE COURT: Defense?

8 MR. FLOYD: No objection, Your Honor.

9 THE COURT: We'll excuse the juror then.

10 Ask her to come in

11 [PAUSE.]

12 THE BAILIFF: Your Honor, she's in here sobbing
13 with tears pretty bad.

14 THE COURT: Okay. Tell her she's excused and she's
15 free to go. Ask and see if she needs to see a doctor. Ask
16 her if she wants the EMT's to come over, okay?

17 THE BAILIFF: Sir?

18 THE COURT: Does she need to have the EMT's come
19 over?

20 THE BAILIFF: She said she's fine. She's got
21 medicine and she's going to take it.

22 THE COURT: Okay. Once the bailiff told her she
23 was excused she seemed to change. I certainly understand
24 that.

25 Let's bring the next juror in, please.

1 (WHEREUPON, Juror Number 210, Kay F. Locklair,
2 a white female, enters the courtroom.)

3 KAY F. LOCKLAIR, after having been duly sworn,
4 testified as follows:

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. I want you to just relax, okay.

8 A. All right.

9 Q. Nobody is going to give you a hard time. We're
10 just going to chat with you a little bit. And remember there
11 are no right or wrong answers to all this.

12 A. Okay.

13 Q. Do you remember that we told you this morning that
14 the State has charged Mr. Johnny Bennett with murder and that
15 a previous jury has found Mr. Bennett guilty of murder; do
16 you recall that?

17 A. Yes, sir.

18 Q. And do you recall that we told you that this jury
19 is going to decide the sentence; either life in prison or the
20 death penalty, those are the only two sentences available.
21 Do you understand that?

22 A. Yes, sir.

23 Q. Have you heard anything about this case before?

24 A. No, sir.

25 Q. Nothing, don't know anything about it?

1 A. I hate to say it, but I'm uninformed.

2 Q. That's all right. That's all right. Let me also
3 ask if you know any of the folks involved, okay. This the
4 Solicitor, Mr. Donnie Myers, who will be prosecuting the
5 case. Beside him are Mr. Dayton Riddle and Mr. Shawn Graham.
6 Do you know or know of any of those gentlemen?

7 A. No, sir. I think I've heard Mr. Myers' name in the
8 news or something. But as far as knowing him, no.

9 Q. Okay. Is there anything that you've heard that
10 would cause you to have any feelings either way about
11 Mr. Myers or about this case at all?

12 A. No, sir, just the name is familiar.

13 Q. This is Mr. Bennett right here. Do you know
14 Mr. Bennett or know of Mr. Bennett?

15 A. No, sir.

16 Q. All right. He's represented by Mr. Wayne Floyd and
17 Mr. Hervery Young. Do you know or know of either of those
18 gentlemen?

19 A. No, sir.

20 Q. Okay. You know we gave you a sheet to look over.
21 Did you get a chance to look this over?

22 A. Yes, sir.

23 Q. And do you feel like -- you noticed it described
24 different categories of jurors?

25 A. Uh-huh.

1 Q. Do you feel like you would fit within one of those
2 categories of jurors?

3 A. Probably the third.

4 Q. The third. That's the juror who says that even
5 though the defendant has been found guilty of murder that
6 this juror says that I still would not have my mind made up.

7 A. Yes, sir.

8 Q. That I would want to hear all those aggravating
9 circumstances, I would want to hear all those mitigating
10 circumstances, I want the judge to tell me the law, and only
11 then am I ready to make a decision; is that correct?

12 A. Yes, sir.

13 Q. And this juror says that if I determine that a life
14 sentence was appropriate I could give a life sentence. If I
15 determined that the death sentence was appropriate I could
16 give the death sentence. It would depend on the
17 circumstances.

18 A. Yes, sir.

19 Q. Okay. You know the law also says that if the jury
20 gives a death sentence then each juror must sign a form that
21 says that they've given the death sentence. If you were on a
22 jury and had determined the death sentence was appropriate
23 and had given the death sentence would you be able to sign
24 the form saying that?

25 A. If I'd made the decision that that was the

1 appropriate course of action, yes, sir.

2 Q. Okay. You know during the case it will be my duty
3 to give the jury instructions as to the law from time to
4 time. Is there any reason why you would not be able to
5 follow the instructions that I gave?

6 A. Not that I'm aware of.

7 Q. Okay. And since you left this morning have you
8 talked with anybody about the case or heard anything about it
9 at all?

10 A. No, sir.

11 Q. Do you know of any reason why you couldn't give
12 both sides a fair trial?

13 A. No, sir.

14 THE COURT: Mr. Myers?

15 VOIR DIRE EXAMINATION

16 BY MR. MYERS:

17 Q. On your form that you sent back in -- and I've
18 forgotten, did you put down whether you'd ever been a juror
19 in a case before?

20 A. No, sir, I have not.

21 Q. Never been a witness in a criminal case before?

22 A. No, sir.

23 Q. This is new territory for you?

24 A. Yes, sir.

25 Q. Ms. Locklair, the Judge told you that a jury

1 previously has found the defendant guilty of murder --

2 A. Yes, sir.

3 Q. -- you realize that, right? So this jury is not
4 concerned with whether the defendant is guilty or not. The
5 law of the case is he's guilty of murder.

6 A. Uh-huh.

7 Q. And when someone is found guilty then there's got
8 to be a punishment, and that's what this trial is for. We
9 call it the sentencing phase of a case. And in that
10 sentencing phase the jury is going to hear testimony about
11 the circumstances of the crime, even though he's been found
12 guilty. The jury will hear about the circumstances
13 surrounding the crime.

14 They'll hear some things about the defendant.
15 They'll hear some things maybe in his favor, they'll hear
16 some bad things about him, because the jury has to take in
17 the circumstances of the crime and the character of the
18 defendant and decide what is the right sentence. Do you
19 understand that?

20 A. Yes, sir.

21 Q. The sentences being life imprisonment or the death
22 penalty. Now, would you be willing to listen to all of that
23 testimony and follow the law in reaching your decision of
24 life or death?

25 A. Yes, sir.

1 Q. When you told Judge Westbrook that you'd probably
2 fit in that third category --

3 A. Uh-huh.

4 Q. -- that means the other two categories is a person
5 always being for the death penalty and could never vote for
6 the death penalty; you don't fall under those first two?

7 A. No, sir.

8 Q. So I take it from your responses there's nothing
9 about you, whether it's religious beliefs or everyday
10 experience, there's nothing about you that would prevent you
11 from voting for the death penalty, is there?

12 A. No, sir.

13 Q. And the same, there's nothing about you that would
14 prevent you from voting for a life imprisonment?

15 A. That's correct.

16 Q. Really, you'd have to hear everything before you
17 can make that decision?

18 A. Yeah, you can't never say never because you --

19 Q. And you don't know anything about the case?

20 A. No, sir. If it's been in the paper lately, I've
21 actually been out of the country for three weeks in the last
22 month and then in Chicago. So I haven't been around.

23 Q. Is that with your job or pleasure?

24 A. Both.

25 Q. I'm envious. And you're a chemist, I think you

1 said?

2 A. Yes, sir.

3 Q. Ms. Locklair, the jurors in this case would be told
4 by the Judge, and they would take an oath that they would
5 base their verdicts on what they heard in this courtroom, all
6 the testimony and all the law; you could follow that oath or
7 that instruction?

8 A. Yes, sir.

9 Q. And, Ms. Locklair, you know of any reason why you
10 couldn't sit on this jury panel and base your verdict on the
11 testimony and the law?

12 A. No, sir.

13 Q. Ms. Locklair, I'm going to ask you one more thing,
14 and I know all this is repetitive. Some folks said that -- I
15 signed something one time and I never signed my name on an
16 important document again, but our law requires every juror to
17 sign a death penalty verdict. They'll have a form with 12
18 lines. You just told the Judge that if you thought the death
19 penalty was the appropriate sentence you could so put your
20 signature on that verdict?

21 A. Yes, sir.

22 Q. And, Ms. Locklair, let me ask you this. Prior to
23 your being a chemist you put down you worked for the
24 Department of Mental Health?

25 A. Yes, sir. Actually, the Department of Mental

1 Retardation, I believe it was.

2 Q. And that was right out of school or something?

3 A. Yes, sir, I worked in the pharmacy department.

4 Q. That's right, pharmacy work. Ms. Locklair, that's
5 all the questions I have for you. They got to ask you some
6 though.

7 A. Oh, sorry. I thought I was done.

8 VOIR DIRE EXAMINATION

9 BY MR. YOUNG:

10 Q. Good afternoon, Ms. Locklair. You put down on your
11 questionnaire that you were a member of the American Society
12 for Quality?

13 A. Yes, sir.

14 Q. What type of organization is that?

15 A. I performed audits with my job. I have to go to
16 different institutions and make sure their quality management
17 systems are up to the level they should be.

18 Q. So it's a professional organization?

19 A. Yeah, I do investigations and stuff, into what kind
20 of procedures they use.

21 Q. Okay. You mentioned when Mr. Myers was asking you
22 some questions about your views on the death penalty about
23 something about seeing something on television. Did you say
24 something about that?

25 A. I said I haven't seen anything on television. If

1 it's been recently, they were telling us not to look at
2 papers and I haven't seen anything in the papers recently.

3 Q. I thought you said that you had seen something.

4 A. Oh, no.

5 Q. Have you ever had the opportunity to discuss your
6 views about the death penalty with anyone; friends,
7 co-workers?

8 A. I don't think. Not recently, no. If I did it
9 would be back in high school and things like that, and it's
10 not something that comes up a lot.

11 Q. Well, that's one of the jobs that we're doing today
12 is trying to find out your views on the death penalty. Can
13 you tell us, what are your views? How do you feel about the
14 death penalty?

15 A. I think at times it may be needed and warranted and
16 I think at times it would be too harsh of a punishment.

17 Q. I understand that in making the decision as to what
18 the appropriate punishment is the State will put up
19 aggravating evidence and the defense will put up mitigating
20 evidence, the good and the bad. Would you be required to
21 hear all of that before you make a decision?

22 A. I believe so. I don't think you could make a
23 decision without hearing both sides.

24 Q. Okay. In making your decision you understand that
25 you must first individually make the decision as to what you

1 think is the appropriate punishment?

2 A. Yes, sir.

3 Q. Then you have to deliberate with the others and
4 come together as a group to decide.

5 A. Yes, sir.

6 Q. In the event that you hold a position that is
7 different than the rest of the jurors, for or against life or
8 death, and you believe after deliberating that your position
9 is the right position or the appropriate position as far as
10 punishment would you be able to hold fast to your position?

11 A. I think Mr. Myers has told me I would have to sign
12 a statement, and if I don't agree with that statement, no, I
13 will not sign it. If I have an opinion I think I will stand
14 by it.

15 Q. And you would have to base that opinion on
16 everything in the case, correct?

17 A. Yes, sir.

18 MR. YOUNG: Thank you. That's all we ask.

19 THE COURT: Anything else from the State?

20 MR. MYERS: No, sir.

21 THE COURT: All right. Let me ask you to step just
22 outside the door, okay.

23 (WHEREUPON, Juror Locklair leaves the
24 courtroom.)

25 THE COURT: What's the State's position on this

1 juror?

2 MR. MYERS: We submit she's qualified.

3 THE COURT: Defense?

4 MR. YOUNG: Qualified, Your Honor.

5 THE COURT: I find she is qualified.

6 Ask her to step in.

7 (WHEREUPON, Juror Locklair enters the
8 courtroom.)

9 THE COURT: Ms. Locklair, I've determined you would
10 be qualified to sit on a jury in this case if you're picked.
11 So what I'll do is ask you to come back Wednesday afternoon,
12 that's the day after tomorrow, at 2:30. And just come right
13 here in the courtroom and you'll sit in this middle section
14 out here. And if you would, bring bags packed for as much as
15 a week in a motel because the jury will be sequestered during
16 that time.

17 Now, until that time it's also still very important
18 that you not talk about the case with anybody and that you
19 stay away from any kind of news on television, news on the
20 radio and, of course, newspapers.

21 MS: LOCKLAIR: Okay.

22 THE COURT: Of course, certainly you'll want to
23 tell your family where you're going to be and what you're
24 doing but just be sure and not discuss any details or
25 anything with it.

1 MS. LOCKLAIR: Fill up the dog feeder, right?

2 THE COURT: You'd want to fill up the dog feeder,
3 right. Okay. I'll see you back Wednesday at 2:30.

4 MS. LOCKLAIR: Wednesday at 2:30. Okay. Thank
5 you, sir.

6 (WHEREUPON, Juror Locklair leaves the
7 courtroom.)

8 THE COURT: Counsel, does anybody need a break at
9 this point or are we still okay?

10 (There was no response.)

11 (WHEREUPON, Juror Number 274, Elizabeth A.
12 Porter, a white female, enters the courtroom.)

13 ELIZABETH A. PORTER, after having been duly
14 sworn, testified as follows:

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. Are you Ms. Porter?

18 A. Yes, sir.

19 Q. Just have a seat and relax, okay.

20 A. Yes, sir.

21 Q. Nobody is going to give you a hard time. We're
22 just going to chat for a minute.

23 A. Okay.

24 Q. Remember we told you this is the case of The State
25 vs. Johnny O. Bennett?

1 A. Right.

2 Q. And remember that we told you that Mr. Bennett has
3 been previously found guilty by another jury of murder? He
4 was found guilty of the murder of Mr. Benton Darrell Smith on
5 November 27, 1990. Now, you recall that we told you that
6 this jury is going to decide the sentence --

7 A. Correct.

8 Q. -- you understand? And there are only two
9 sentences, life in prison or the death penalty; you remember
10 that?

11 A. Right.

12 Q. Now, have you heard anything about this case
13 before?

14 A. If I have I don't remember a word about it.

15 Q. Okay, just don't know anything. Let me introduce
16 you to some of the folks involved and see if you know any of
17 them, okay.

18 A. Okay.

19 Q. This is Mr. Bennett over here. Do you know
20 Mr. Bennett or know of him?

21 A. No, sir, I don't.

22 Q. He's represented by Mr. Wayne Floyd and Mr. Hervery
23 Young. Do you know or know of either one of those gentlemen?

24 A. Not that I can recall.

25 Q. All right. Now, the State's represented by the

1 Prosecutor, the Solicitor here, and that's Mr. Donnie Myers.
2 And along with him, Mr. Dayton Riddle and Mr. Shawn Graham.
3 Do you know or know of any of them?

4 A. Just Donnie Myers.

5 Q. And how do you know Mr. Myers?

6 A. Just from being in Lexington County for years. I
7 know he's been the Solicitor for years.

8 Q. Has that caused you to form any opinions for or
9 against Mr. Myers?

10 A. No, sir, it hasn't.

11 Q. And does it give you any problem giving both sides
12 a fair trial in this case?

13 A. No, sir, I don't think so.

14 Q. Now, you recall we gave you a sheet to look over
15 that described three types of jurors; do you remember that?

16 A. Correct.

17 Q. Do you feel that you would fall within one of those
18 types?

19 A. Absolutely.

20 Q. And which is that?

21 A. The third.

22 Q. The third. Now, this is a juror that says although
23 the defendant has been found guilty of murder that this juror
24 says that my mind would still not be made up as to the
25 appropriate sentence.

1 A. Exactly.

2 Q. That I would want to hear all of those aggravating
3 circumstances, I would want to hear all of those mitigating
4 circumstances, and after all that then I want the Judge to
5 tell me what the law is.

6 A. Correct.

7 Q. Once I've heard all of that then I would be
8 prepared to come to the appropriate sentence; is that
9 correct?

10 A. Yes, sir, it is.

11 Q. Now, the law also says -- and let me ask you this.
12 Of course, as I told you, I will be giving the jury the law
13 during the trial. Is there any problem in following the law
14 as I give it to you?

15 A. No, sir.

16 Q. And the law also says that if a jury gives a death
17 sentence that there's a form that each juror must sign
18 indicating that they have given the death sentence. If you
19 were on the jury and had given the death sentence would you
20 be able to sign that form?

21 A. Yes, sir, I could.

22 Q. Now, do you know of any other reason why you could
23 not give both sides a fair trial in this case?

24 A. No, I don't. I honestly don't.

25 Q. Let me ask you if you'd answer any questions the

1 attorneys have, okay?

2 A. Sure.

3 THE COURT: Mr. Riddle?

4 VOIR DIRE EXAMINATION

5 BY MR. RIDDLE:

6 Q. Ms. Porter, good afternoon.

7 A. Good afternoon.

8 Q. My name is Dayton Riddle. I work for Solicitor
9 Myers as a deputy solicitor here. I just have a couple of
10 questions.

11 A. Okay.

12 Q. Are you a little bit nervous?

13 A. A little bit, not bad.

14 Q. It's just like the Judge told you earlier, there
15 are no right and no wrong answers, okay. Just so you'll
16 understand what we're trying to do is just learn a little bit
17 about what your personal beliefs are.

18 A. Right.

19 Q. There is no right or wrong in this area, it's your
20 belief and that's your belief. The Judge asked you and I
21 believe you indicated that you were in that third category of
22 jurors?

23 A. I think so, yeah.

24 Q. So you would want to hear all the facts and the
25 evidence and hear what the Judge's charge on the law is

1 before you made up your mind about anything?

2 A. Most definitely, yeah.

3 Q. And you understand, the Judge already said, that
4 Mr. Bennett has already been convicted of murder?

5 A. Right.

6 Q. And in this kind of case if you were selected to
7 serve on the jury your role, along with the other 11 folks on
8 the jury, would be to decide what the appropriate punishment
9 is.

10 A. I can do that.

11 Q. And there's two choices; life in prison or the
12 death penalty.

13 A. Right.

14 Q. And I believe you fit in that third category, it
15 would depend on the facts and circumstances?

16 A. Exactly. I mean, I'm not familiar with the case at
17 all so --

18 Q. As you sit here today you can't tell us what you
19 would do?

20 A. No. No. Absolutely not.

21 Q. And your personal beliefs about the death penalty,
22 I take it that sometimes you feel like the death penalty
23 would be appropriate if the facts and circumstances
24 warranted?

25 A. I most definitely do as far as that's concerned,

1 yeah, you know, depending on the circumstances and everything
2 else.

3 Q. And on the other hand, if the facts and
4 circumstances warranted it you would think that life
5 imprisonment would be appropriate?

6 A. This is true.

7 Q. And the Judge mentioned briefly that peculiarity in
8 our law. Have you ever been on a jury?

9 A. No, sir, I haven't.

10 Q. You never served?

11 A. Selected one time for traffic court. That was it,
12 and it was cancelled.

13 Q. It was cancelled. All right. Well, you've been
14 lucky. In normal jury service, and I'm sure you've seen it
15 on TV and whatnot, but there's generally a foreperson who
16 speaks on behalf of the jury, and that would be the case in
17 any kind of criminal case except for this kind of criminal
18 case. And in this kind of criminal case if the jury heard
19 all the evidence, heard the facts and circumstances, heard
20 the Judge's charge, if the jury decided that the death
21 penalty was appropriate then the foreman doesn't speak for
22 the jury. There would be 12 lines and each juror will speak
23 for themselves; do you understand that?

24 A. Yeah.

25 Q. And I don't have any reason to suspect that you're

1 one of these folks but there are people, and I bet you know
2 some, and they'll tell you what you think -- or what they
3 think about something, and they'll act on whatever they
4 believe to be the thing.

5 A. Right.

6 Q. But if you ask them to sign their name to something
7 they don't want to be any part of that. I've heard people
8 say I've signed one thing in my life and I'll never sign
9 another marriage license. The fact that you would have to
10 sign your name, would that interfere with your ability to
11 vote for the death penalty if you thought that was
12 appropriate?

13 A. No, sir.

14 Q. Let me ask you one last thing. Is there anything
15 about your background, your upbringing, your beliefs, you
16 know, the things that make you who you are that would prevent
17 you from being fair and impartial to both sides in this case?

18 A. I don't honestly feel that.

19 MR. RIDDLE: Thank you. That's all we're looking
20 for.

21 THE COURT: Defense?

22 VOIR DIRE EXAMINATION

23 BY MR. FLOYD:

24 Q. Good afternoon, Ms. Porter.

25 A. Hey.

1 Q. My name is Wayne Floyd. I'm Mr. Bennett's lawyer.

2 A. Nice to meet you.

3 Q. Nice to meet you. I'm going to ask you something
4 because we couldn't hear your answer over where we were.

5 A. Okay.

6 Q. When Mr. Riddle asked you about if you felt
7 sometime the death penalty would be the proper punishment and
8 you responded to that, and we didn't hear your response. If
9 you could tell us what it was you said.

10 A. In some cases that I do believe in the death
11 penalty but at the same time I've also been around long
12 enough to know that sometimes there are innocent people who
13 are in jail. I mean, I honestly do not know anything about
14 this defendant. I don't know anything about the case. So,
15 you know, without hearing all the evidence I can't say one
16 way or the other what I would do.

17 Q. Now, do you realize in this case that another jury
18 has already determined that Mr. Bennett is guilty?

19 A. I only realize that because you all have told me.
20 As far as watching the news or anything, I don't watch news
21 it's too depressing.

22 Q. Does the fact that another jury has already found
23 Mr. Bennett guilty of murder, does that alter your response
24 as to what punishment might be appropriate?

25 A. No, sir, I honestly don't feel it would because,

1 like I said, that's their opinion, everybody has their own.

2 Q. Now, when you were asked which type of juror you
3 were we couldn't hear that real good but we think you said
4 you guess so, that you're a number three?

5 A. Oh, I'm the third. I have no doubt about being the
6 third.

7 Q. No doubt on that?

8 A. No.

9 Q. Now, I noticed in your questionnaire that you have
10 been a witness in a criminal case before?

11 A. That was back in 1981, okay. My sister was
12 murdered at the time, okay. Has nothing to do with anything
13 here. But if anything, it's opened my eyes a lot more over
14 the years because, like I said, I was a witness there, I was
15 a direct witness. There was no doubt about that defendant's
16 innocence or guilt, okay. I was there as a state's witness.
17 I was 17 at the time, my sister was 19. But I honestly
18 believe that in this particular case, like I said, I have no
19 knowledge of this defendant. I believe in the death penalty
20 for that reason, okay. But I also believe in life for that
21 reason as well.

22 Q. Okay. For that reason, you mean because of what
23 happened to your sister?

24 A. Exactly. I mean, I know there are innocent people
25 in prison now, okay. In my particular case there's no doubt

1 in my mind as far as my brother-in-law's innocence or guilt.
2 But there's thousands of people in prisons across the country
3 now that you hear about them being acquitted all the time or
4 jury verdicts being overturned and whatnot, so I know it
5 happens.

6 But that's why I say, you know, I have no knowledge
7 of this defendant. If I heard anything about this case it's
8 been so long ago I don't remember a thing about it. So I
9 don't feel like my past has anything to do with whether or
10 not I can make a fair decision now.

11 THE COURT: Mr. Floyd, let me do something, if I
12 could. This came up before.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Ms. Porter, you understand that in this case, as
16 Mr. Floyd mentioned a moment ago, the jury has determined
17 that Mr. Bennett was not innocent?

18 A. Correct.

19 Q. You understand --

20 A. Correct.

21 Q. -- they determined he was guilty, he committed a
22 murder?

23 A. Correct.

24 Q. You have to start with that point. And you
25 understand that if you're on the jury in this case that

1 you're not going to go back and look at the murder issue
2 again?

3 A. Oh, I understand that.

4 Q. You start with the position that he is guilty of
5 murder; do you understand that?

6 A. That's fine. That's fine.

7 THE COURT: Okay. Go ahead now, Mr. Floyd.

8 VOIR DIRE EXAMINATION

9 BY MR. FLOYD:

10 Q. Ms. Porter, I hate to the ask so many questions
11 about it --

12 A. That's okay.

13 Q. -- but it's an important issue. I gather from one
14 of your responses that in the case involving your sister, was
15 your brother-in-law the defendant?

16 A. Yes, my brother-in-law was the defendant. I happen
17 to be there at the time in the house.

18 Q. And was that here in Lexington County?

19 A. Yes, it was.

20 Q. And was your brother-in-law convicted of murder?

21 A. He's serving a life sentence for murder.

22 Q. Was the death penalty sought in that case?

23 A. No. No. The death penalty never came up in that
24 case. What we were told at the time was because of the fact
25 that it was not quote, unquote, mitigating circumstances or

1 aggravating circumstances it didn't meet death penalty cases,
2 statutes or whatever.

3 Q. Do you recall -- would you give us your
4 brother-in-law's name?

5 A. Frank Jeffers. Frank Durant Jeffers.

6 Q. Frank Durant Jeffers?

7 A. It was March 8th of 1981. He was convicted October
8 29th of 1981.

9 Q. Now, Ms. Porter, just a couple other questions. I
10 notice that you are a member of the Church of Jesus Christ
11 Latter-Day Saints.

12 A. Yes, I am.

13 Q. Does your church have a position on the death
14 penalty?

15 A. To be honest with you, I don't know. You know, I'm
16 not the type of person that I let everyone else influence my
17 decision. You know, I'm very adamant, very headstrong in my
18 own ways on my own personal beliefs, and I know some churches
19 believe, some churches don't believe. If you check into the
20 Mormons they don't believe in birth control but I guarantee I
21 do birth control.

22 Q. Now, if you were serving on this jury and all the
23 other jurors wanted to vote for death and you wanted -- you
24 thought life was the proper punishment, would you stick to
25 your position?

1 A. If that's my position and if it's something that I
2 honestly feel in my gut and honestly feel in my heart is the
3 right decision then, yes, okay. It's my conscience that I
4 have to live with not anyone else's.

5 Q. If you felt that the State proved in this case that
6 there were aggravating circumstances to this murder, okay?

7 A. Okay.

8 Q. Would you still consider the possibility of life in
9 prison?

10 A. It would depend on what the Judge read to me as the
11 exact laws because I don't know the laws, okay. It would
12 depend on what the Judge instructs us as what is the proper
13 decision to go with as far as, you know, what the laws are
14 and what stands within certain guidelines.

15 You know, I've seen it on court where the judge
16 says it's got to do this or it's got to do this. You know, I
17 can go either way in that case but, like I said, I'm very
18 headstrong and I have no qualms with making up my own mind
19 based on what I know to be the right thing in my heart.

20 Q. Let me ask that just a different way. If you felt
21 that the State established and proved that there were
22 aggravating circumstances in connection with this murder
23 would you still listen to evidence of the mitigation on
24 behalf of the defendant?

25 A. Yeah, of course. Because, like I said, I have no

1 knowledge of him. I don't know anything about his background
2 or anything about the case or anything. And, I mean, it's
3 kind of like putting the cart before the horse without me
4 really knowing exactly what the details are, you know, trying
5 to sit here and say, yes, I decide this way or no, I decide
6 this way.

7 Q. Ms. Porter, do you understand that the Judge will
8 never tell you how to vote?

9 A. Right, I understand that. What I meant by what the
10 Judge instructs is what he instructs is the laws on what has
11 to meet within certain criterias of the laws in order to fall
12 in that guideline. That's what I was talking about.

13 Q. Do you realize or did you understand that even if
14 the State proved there's aggravating circumstances that you
15 as a juror can decide that life is the proper punishment no
16 matter what?

17 A. I --

18 MR. MYERS: I have to object, Your Honor. He's
19 given half the story, like Paul Harvey. He's got to give the
20 rest of the story. The jury has to listen to aggravating and
21 mitigating. You can't cut them up in the middle of the
22 stream. They've got to have everything, they've got to
23 listen to everything. They don't take a vote in the middle
24 of the case. So we object to those incomplete questions.

25 THE COURT: Mr. Floyd, I'm going to sustain the

1 objection. Again, I realize it's not your intent but what
2 it's basically doing is staking out the juror on those
3 issues. And again, I don't think we need to do it. As she
4 indicated a little while ago -- and, of course, she gave the
5 perfect reason why we don't stake the juror out, is that she,
6 like other jurors, don't know the law at this point.

7 And the issue is not whether or not she would do
8 what under a certain situation but, in essence, as you know
9 the Supreme Court has always said it's whether they can
10 follow the judge's instructions, and that really is -- and
11 let me clarify that if I can on this.

12 Ms. Porter, you understand, as I told you earlier,
13 it would be my job during the trial to give you instructions?

14 MS. PORTER: Right.

15 THE COURT: And at the end of the case I'm going to
16 give you a thorough instruction on the law and the law as it
17 applies to the case; do you understand that?

18 MS. PORTER: Yes.

19 THE COURT: Now, would you be able to follow that
20 law as I give it to you?

21 MS. PORTER: Absolutely.

22 THE COURT: All right. Counsel, go ahead. I think
23 that covers that area.

24 MR. FLOYD: Thank you, Your Honor. No further
25 questions.

FURTHER EXAMINATION

1
2 BY THE COURT:

3 Q. Let me ask a couple questions. I need to be sure.
4 I was kind of unclear and I may have just misunderstood,
5 Ms. Porter. When you were saying that you always take into
6 account someone is innocent, remember again that in this case
7 the jury in the previous case -- in this case previously has
8 found that Mr. Bennett was not innocent. They said he is
9 guilty of murder.

10 A. Right.

11 Q. And in South Carolina murder, I want to be sure you
12 understand, does not involve self defense murder or anything
13 like that. Murder is the killing of another person with
14 what's called malice aforethought. In other words, the jury
15 found that Mr. Bennett killed someone else, and that he did
16 it with malice and he had the malice either at or before the
17 time that he killed the other person; do you understand that?

18 A. Right.

19 Q. Now, given that circumstance, again, do you still
20 feel like you are the third type of juror?

21 A. I honestly do because, like I said, I have no
22 knowledge of his background, you know. And I know there's
23 certain things, you know, certain things come from certain
24 backgrounds and stuff like that. You hear about it all the
25 time on television and stuff like that, and that's what I was

1 talking about as far as not knowing anything personally about
2 this defendant, knowing anything personally about the case or
3 anything. I'd want to hear everything before I tried to base
4 a decision and I can base that decision based on those facts.

5 Q. And, again, given that the jury has found that he's
6 guilty of murder if the circumstances justified a life
7 sentence could you give a life sentence?

8 A. I could give a life sentence. But then again, if
9 the circumstances justified the death penalty I could issue
10 the death penalty.

11 Q. It would depend on what the circumstances
12 justified?

13 A. Exactly. Exactly.

14 Q. And I believe you mentioned yourself that you had a
15 prior case where your brother-in-law killed your sister; is
16 that correct?

17 A. Correct.

18 Q. I mentioned this earlier. I gather during that
19 time you didn't meet any of these solicitors? Is that
20 someone else that must have been prosecuting the case?

21 A. Yeah, it was Dale DeTremble, years ago..

22 THE COURT: Okay. Any other questions from the
23 State?

24 MR. RIDDLE: No, sir, you covered it.

25 THE COURT: Anything else from the defense? And

1 again, I just wanted to clarify that. I was kind of
2 uncertain myself on the previous answers.

3 FURTHER EXAMINATION

4 BY MR. FLOYD:

5 Q. I would just like to ask. You said Dale DeTremble
6 was the prosecutor, but wasn't Mr. Myers the Solicitor at
7 that time?

8 A. Mr. Myers was the Solicitor but we had no dealings
9 with Mr. Myers whatsoever. It was all done through Dale
10 DeTremble.

11 Q. Who worked for Mr. Myers at the time?

12 A. Yeah, he worked for Mr. Myers. But, I mean, as far
13 as ever meeting Mr. Myers personally or anything like that in
14 a courtroom, no, I never met him. I've only seen him on
15 television.

16 Q. Is there anything about the relationship that you
17 had at that time with the Solicitor's Office that might give
18 you some type of problem now being fair and impartial?

19 A. No, because it's two completely different cases.
20 Like I said, with my brother-in-law I was at the house where
21 my brother-in-law shot and killed my sister. There was no
22 doubt whatsoever as to what happened there. So, I mean, as
23 far as developing a relationship with the Solicitor's Office
24 or anything, that never came to be. We were in court for
25 three days and we were out of court. He was convicted and

1 that was it.

2 Q. You didn't have meetings before court?

3 A. I think most of the time the dealings were actually
4 with the Sheriff's Department, to be honest with you. I
5 mean, I was 17 at the time. We're looking at 20 years ago.

6 Q. Do you recall who you dealt with from the Sheriff's
7 Department?

8 A. Dalton White. That was our primary investigator.

9 Q. Would the fact that the Sheriff's Department is
10 involved in this particular case, does that present some
11 problems for you being fair?

12 A. No, sir, I don't think so.

13 Q. Only thing that was curious to us, when you were
14 asked whether you knew anybody in the room you said that only
15 because Mr. Myers had been a prosecutor for years and you saw
16 him on T.V.

17 A. Right.

18 Q. But his office actually handled a case that you
19 were a witness in and you didn't tell us.

20 A. Yeah, but knowing -- I was asked did I know anyone
21 in the room. I've never met Mr. Myers personally. My
22 dealings were directly with Dale DeTremble. The only time
23 I've ever seen Mr. Myers was on television, about like Jimmy
24 Metts, you know. That's why, like I said, I answered the
25 question I was asked, if I knew anyone in here.

1 MR. FLOYD: Thank you. No further questions.

2 THE COURT: Let me ask you to step just outside the
3 door, okay.

4 (WHEREUPON, Juror Porter leaves the
5 courtroom.)

6 THE COURT: What's the State's position on this
7 juror?

8 MR. RIDDLE: She's qualified, Your Honor.

9 THE COURT: What's defense position?

10 MR. FLOYD: Your Honor, we feel that just on the
11 death penalty issue her responses are within the requirements
12 of the statute. However, we would move to excuse her as a
13 juror in this case because of this close relationship she's
14 had with the Sheriff's Department and the Lexington County
15 Solicitor's Office.

16 Although it's 17 years ago that's an awful close
17 relationship when her sister gets killed, she's a primary
18 witness. She's a witness in the case Mr. DeTremble who was
19 one of Mr. Myers' chief assistants at the time, his office
20 used her as a witness.

21 In our opinion, her initial responses as to whether
22 or not she knew Mr. Myers or anybody in this room was evasive
23 when the relationship she had with their office was so
24 substantial. And we feel that the significance of the
25 relationship she's had with the Solicitor's Office and with

1 the Sheriff's Department at that time in a murder case, and
2 we got a murder case here, where they discussed the death
3 penalty in the murder case in 1981 where she was told, well,
4 it didn't have the factors involved, you can't go for the
5 death penalty against your brother-in-law; we just feel that
6 she could not be a fair and impartial juror for us in this
7 case and we ask that she be excused.

8 THE COURT: All right, Counsel -- yes, sir, go
9 ahead, Mr. Myers.

10 MR. MYERS: Let me clear up something. Her answers
11 were not evasive. She put down she was a witness for the
12 State. She said she had seen me on television. I've never
13 met the lady before. Dale DeTremble left my office in 1983.
14 There's nobody been in my office for over 15 years or maybe
15 longer that worked on that case.

16 As a matter of fact, at that time my office was
17 downstairs in front of the courthouse. We had about three
18 rooms. We had a house down the street that the rest of them
19 worked out of, and that's where this case was prepared. It
20 wasn't even prepared in my office in the courthouse. So she
21 hadn't been evasive, she's been truthful. And I've never
22 seen her before.

23 THE COURT: Anything else, Mr. Floyd?

24 MR. FLOYD: Nothing further on this point, Your
25 Honor.

1 THE COURT: All right. Counsel, this juror is
2 somewhat the converse of Juror Number 1. I have some sort of
3 underlying uncertainties about the testimony. However, she
4 did answer the questions appropriately as did Number 1. And
5 her indications were that she could give the appropriate
6 sentence on the circumstances as she found them.

7 My main concern at first was as to whether or not
8 she kept talking about innocence, and I was concerned that
9 she thought maybe she was going to revisit the guilt issue.
10 But she very clearly understood that she would not do that.
11 So I think that clarified it also. This juror is qualified.

12 Let's ask her to step out again, please.

13 (WHEREUPON, Juror Porter enters the
14 courtroom.)

15 THE COURT: Ms. Porter, I've determined you will be
16 qualified to sit on a jury in this case if you were called.
17 Now, what I'm going to ask you to do is to come back
18 Wednesday afternoon at 2:30. That's the day after tomorrow,
19 2:30. Just come right and sit here in the middle section of
20 the courtroom. You'll be there with about 35 or 40 other
21 jurors and we'll pick the jury from there.

22 Now, I'm going to ask you to bring bags packed for
23 as much as a week in a motel. The jury will be sequestered
24 during that time. Leave the bags in your car, and if you are
25 on the jury there will be someone to take care of the bags

1 for you. Until that time it's still very important that you
2 not talk with anyone about the case, that you not -- you
3 certainly want to let your family know where you're going to
4 be but you don't want to discuss any details about it.

5 Stay away from any news on television, stay away
6 from news on the radio and certainly stay away from
7 newspapers until that time. With that in mind we'll see you
8 back at 2:30 Wednesday with your bags packed.

9 MS. PORTER: Okay.

10 THE COURT: Thank you, ma'am.

11 (WHEREUPON, Juror Porter leaves the
12 courtroom.)

13 THE COURT: Counsel, we're running a little bit
14 ahead. Does anybody need a break yet? Let's take a short
15 break at this point.

16 (WHEREUPON, a brief recess was taken.)

17 THE COURT: Counsel, let me note that we have
18 finally been able to get these witness lists combined and
19 they are numbered. What I will do is to -- I'm going to hold
20 onto it for now. Later I'm going to give it to the court
21 reporter as a Court's exhibit, and it will be sealed as a
22 Court's exhibit.

23 However, the jurors will be given it. The next
24 juror may not have it but the ones following that should have
25 it to go from. And what we will do is when these other

1 jurors come back I will examine each of them on the witness
2 list later to make sure that they don't know any of them or
3 that they would be disqualifying. However, we have finally
4 gotten it done.

5 Are we ready to bring the next juror in? Is the
6 State ready?

7 MR. MYERS: The State is ready.

8 THE COURT: The defense?

9 MR. FLOYD: The defense is ready, Your Honor.

10 (WHEREUPON, Juror Number 161, Stephanie A.
11 Harris, a white female, enters the courtroom.)

12 STEPHANIE A. HARRIS, after having been duly
13 sworn, testified as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Ms. Harris, why don't you just relax, okay. I'm
17 trying to recall, were you one of the jurors that had a
18 problem before?

19 A. Transportation.

20 Q. Transportation. Okay. That shouldn't be a
21 problem. We can handle that.

22 Ms. Harris, you recall that we told you this
23 morning that in this case the State has charged Mr. Johnny
24 Bennett with murder and have asked for the death penalty; do
25 you understand that?

1 A. Yes, sir.

2 Q. You recall that we told you that a previous jury
3 has found Mr. Bennett guilty of murder and that this jury
4 will be involved only with the issue of the sentence. In
5 other words, the jury will sentence Mr. Bennett to either
6 life in prison or the death penalty; do you understand that?

7 A. Yes, sir.

8 Q. Now, have you heard anything about this case
9 before?

10 A. No, sir.

11 Q. Don't know anything about the case at all?

12 A. Uh-uh.

13 Q. And let me ask if you know any of these folks
14 involved, okay. Prosecuting for the State will be Mr. Donnie
15 Myers, the Solicitor; and beside him is Mr. Dayton Riddle and
16 Mr. Shawn Graham. Do you know or know of any of these
17 gentlemen?

18 A. No, sir.

19 Q. This is Mr. Bennett over here. Do you know
20 Mr. Bennett or know of Mr. Bennett?

21 A. No, sir.

22 Q. And he's represented by Mr. Wayne Floyd and
23 Mr. Hervery Young. Do you know or know of Mr. Floyd or
24 Mr. Young?

25 A. No.

1 Q. So as I understand, you've never heard of the case
2 and you don't know anything about any of the folks involved;
3 is that correct?

4 A. No, sir.

5 Q. All right. Have you ever had any dealings with the
6 Solicitor's Office in this circuit?

7 A. No, sir.

8 Q. As a witness, or victim, or anything like that,
9 nothing like that?

10 A. No.

11 Q. Okay. Now, you know we gave you a sheet to look
12 over; did you get a chance to look this sheet over?

13 A. Just the first page.

14 Q. Well, there was only one page, I think. Did you
15 get a second one? Did you get a witness list by any chance?

16 A. Uh-huh.

17 Q. You haven't had a chance to look that witness list
18 over, I guess, have you?

19 A. No, sir.

20 Q. How about do this. It may take just a minute or so
21 but how about let's just stop and let you look it over, okay.
22 And what I'm going to ask you to do is this. If you know
23 anyone on that witness list or know of them how about let me
24 know and just tell me by number which one you may know or
25 know of, okay?

1 A. Yes, sir.

2 Q. Just take a second to look it over and tell me when
3 you're through.

4 [PAUSE.]

5 A. No, sir, I don't know anyone.

6 Q. You've looked over the witness list?

7 A. Yes, sir.

8 Q. Don't think you know or know of anybody on the
9 list; is that right?

10 A. That's correct.

11 Q. Now, you know the other sheet we gave you was this
12 sheet this morning, remember that?

13 A. Yes, sir.

14 Q. It described three types of jurors. Did you read
15 that over?

16 A. Yes, sir.

17 Q. Did you get a chance to look at it and think about
18 it?

19 A. Uh-huh.

20 Q. Do you feel like one of those categories of jurors
21 would apply to you?

22 A. Probably the third.

23 Q. Third. Let's go over and be sure we're talking
24 about the same thing. This is a juror who says that even
25 though the defendant has been found guilty of murder, which

1 is what's happened here, that this juror would not have his
2 or her mind made up as to the appropriate punishment.

3 Now, this juror says this. I would want to hear
4 all those facts in aggravation, I want to hear all those
5 facts in mitigation, I want the Judge to tell me the law
6 after all that and then I'm going to be ready to decide the
7 appropriate sentence, but only then would I be ready; is that
8 correct?

9 A. Yes, sir.

10 Q. Be sure and answer yes or no so the court reporter
11 can pick up your answers.

12 And, of course, it would be my duty during the
13 trial to give you the law. Would you be able to follow the
14 law as I instruct you on it?

15 A. Yes.

16 Q. Now, this juror also says this, that if I find from
17 the facts that the appropriate sentence is life I could give
18 a life sentence, and if I find that the appropriate sentence
19 is death I could give a death sentence. Is that what you're
20 saying?

21 A. Yes.

22 Q. So you could give either a life sentence or death
23 sentence depending on the circumstance; is that right?

24 A. Yes.

25 Q. Now, do you know of any reason why you could not

1 give both sides a fair trial in this case?

2 A. If all the evidence wasn't allowed in or all the
3 facts weren't given.

4 Q. No. Now, again, remember what we're going to do is
5 based on this. We will tell you at the appropriate time
6 this, that any sentence you arrive at, whether it's life or
7 death, must be based only on the evidence that comes into the
8 courtroom, and of course only on the law as I give it to you.
9 You're limited to that when you make a decision. Do you
10 understand that?

11 A. Yes, sir.

12 Q. Do you feel like you'll be able to do that?

13 A. Yes.

14 Q. And is there anything about that that would prevent
15 you from giving both sides a fair trial?

16 A. No.

17 Q. And again, do you know of any other reason why you
18 couldn't give both sides a fair trial?

19 A. No.

20 Q. And one other thing I forgot to ask you about, and
21 I apologize. The law says that in a case such as this that
22 if the jury gives a death sentence that all 12 jurors must
23 sign a form saying that they've given the death sentence.
24 Now, if you were on the jury and had determined that the
25 death sentence was appropriate and given the death sentence

1 would you be able to sign that form saying that you had given
2 the death sentence?

3 A. Yes.

4 THE COURT: Now, the attorneys will have some
5 questions to ask. Let me ask if you'll answer their
6 questions.

7 Mr. Myers?

8 VOIR DIRE EXAMINATION

9 BY MR. MYERS:

10 Q. Ms. Harris, have you ever been in this courtroom
11 before?

12 A. No, sir.

13 Q. This is the first time?

14 A. Yes, sir.

15 Q. You never served on a jury panel before?

16 A. No, sir.

17 Q. All this is new to you?

18 A. Yeah.

19 Q. Now, Ms. Harris, the Judge has told you all what
20 this case is about. The defendant has already been found
21 guilty at another time by another jury but we're going to
22 have to select a jury to decide what is the right sentence to
23 give him; do you understand that?

24 A. Yes.

25 Q. And the two choices are life imprisonment and the

1 death penalty; you understand that?

2 A. Yes.

3 Q. What this jury will do is listen to the testimony
4 presented. There will be testimony about this murder. There
5 will be testimony about the defendant. There will be things
6 that may be favorable to him. There may be things that are
7 bad about him. The jury is going to hear all this testimony.
8 The Judge will tell the jury what the law is, and he'll tell
9 the jury to come back with the appropriate sentence; do you
10 understand that?

11 A. Yes, sir.

12 Q. And as I understood you to tell Judge Westbrook as
13 to life imprisonment and the death penalty you're in that
14 third category; is that right?

15 A. Yes.

16 Q. You'd have to listen to everything before you could
17 decide what's the right sentence?

18 A. Yes, sir.

19 Q. That's a fair statement?

20 A. Yes, sir.

21 Q. And the Judge will tell the jury that that's their
22 duty; to listen to all the evidence, to listen what he tells
23 the jury the law is before they make up their mind. You
24 could follow that; is that right?

25 A. Yes.

1 Q. And I take it from you being in that third
2 category, is there anything about your religious beliefs,
3 your upbringing, anything else that would just prevent you
4 from voting for the death penalty?

5 A. No.

6 Q. It would depend on the facts and circumstances?

7 A. Yes.

8 Q. And if you decided that the death penalty was
9 warranted you could so sign your name to that; is that
10 correct?

11 A. Yes.

12 MR. MYERS: That's all we can ask of you. Thank
13 you, ma'am.

14 THE COURT: Anything from the defense?

15 VOIR DIRE EXAMINATION

16 BY MR. YOUNG:

17 Q. Ms. Harris, my name is Hervery Young. Myself and
18 Wayne Floyd, we represent Mr. Bennett over there. What we
19 want to do, we just want to talk with you and ask you a few
20 questions, kind of find out how you feel about the death
21 penalty. There's no right answers, no wrong answers. We're
22 not trying to embarrass you, not trying to harm you in any
23 way. All we want you to do is just be honest with us, okay?

24 A. Yep.

25 Q. Tell me, have you ever had an occasion to discuss

1 your views about the death penalty or how you feel about the
2 death penalty with anyone?

3 A. Not really.

4 Q. Have you ever given any thought as to how you feel
5 about the death penalty?

6 A. Sometimes I read news in the papers and things
7 what's going on. Sometimes it's right, sometimes it's wrong.

8 Q. So it's safe to say that the way you feel about the
9 death penalty is that it's appropriate sometimes and in some
10 cases it's not appropriate?

11 A. Uh-huh.

12 Q. Is that safe to assume?

13 A. Yes, sir.

14 Q. In deciding on the death penalty -- well, let me go
15 back. The Judge informed you that Mr. Bennett has already
16 been convicted of the crime of murder. Is there anything
17 about knowing that the point that you're going to start at is
18 he's already been convicted and what is the appropriate
19 punishment; does that cause you any problems?

20 A. Well, there's murder and there's like grotesque
21 murder and --

22 Q. Lets me see if I can clarify this. Knowing that
23 Mr. Bennett has already been convicted of murder have you
24 formed any opinions as what you think is the appropriate
25 punishment?

1 A. No.

2 Q. Do you require to hear the aggravation and the
3 mitigation, everything in this case, the good and the bad?

4 A. Yes, sir.

5 Q. In deciding the issue of what the appropriate
6 punishment is you understand that you will have to form your
7 own individual decision as to what the right penalty should
8 be?

9 A. Yes, sir.

10 Q. Then you will talk with the other jurors and you
11 will come back with a verdict of the entire group; do you
12 understand that?

13 A. Yes, sir.

14 Q. If the situation comes that you hold a different
15 opinion as to what the appropriate punishment is from the
16 other jurors, whether it's life or death, and you believe
17 after talking it over with the other jurors that your
18 position is the right position or the appropriate punishment
19 would you be able to hold fast to your position?

20 A. Yes, sir.

21 Q. The Judge informed you that upon deciding that that
22 is the appropriate punishment each one of the jurors will
23 have to sign their names on the death sentence. Now, if the
24 jury would come back and say that they believe that life is
25 the appropriate sentence only the foreman will sign the form

1 and bring it out to the Court, but if the jury decides that
2 the death penalty is the appropriate penalty you understand
3 that you'll have to sign your name on that form?

4 A. Yes, sir.

5 Q. Is there anything about having to sign your name on
6 that form, if that is your opinion, that causes you any
7 problems?

8 A. Not if I believe it's the right answer.

9 Q. You are originally from New York?

10 A. Yes, sir.

11 Q. During your time up in New York have you had a
12 different opinion as to the death penalty since the time
13 you've been in South Carolina?

14 A. No, sir.

15 Q. The opinion you stated today has pretty much been
16 your opinion all along?

17 A. Yes, sir.

18 MR. YOUNG: Thank you, Ms. Harris. Please answer
19 any questions that the Court may have.

20 THE COURT: Anything else from the State?

21 MR. MYERS: No, sir.

22 THE COURT: Let me ask if you'll step just outside
23 the door, okay. We'll get you back in in just a second.

24 (WHEREUPON, Juror Harris leaves the
25 courtroom.)

1 THE COURT: What's the State's position on this
2 juror?

3 MR. MYERS: Submit she's qualified.

4 THE COURT: Defense?

5 MR. YOUNG: Submit she's qualified.

6 THE COURT: I find she is qualified.

7 Let's ask her to step in.

8 (WHEREUPON, Juror Harris enters the
9 courtroom.)

10 THE COURT: Ms. Harris, I've determined you would
11 be qualified to sit on a jury in you were called in this
12 case. So what I'll ask you to do is to come back Wednesday
13 afternoon. That's the day after tomorrow.

14 MS. HARRIS: What time Wednesday?

15 THE COURT: 2:30.

16 MS. HARRIS: Will I have transportation?

17 THE COURT: You need to get transportation?

18 MS. HARRIS: Yes, sir.

19 THE COURT: Madam Clerk, let's see if we can get a
20 deputy to give her transportation, okay.

21 THE CLERK: Yes, sir.

22 THE COURT: Where would you need them to take you
23 from, home?

24 MS. HARRIS: My address on the form that you have.

25 THE COURT: Okay, that's fine.

1 Now, what you need to do is have bags packed for as
2 much as a week in a motel, and just bring them. And what
3 we'll do is we'll let the deputy bring them in and just put
4 them in a room, and they will take care of them somewhere for
5 you.

6 MS. HARRIS: Yes, sir.

7 THE COURT: Now, until that time be sure not to
8 talk about the case with anybody. Certainly you may want to
9 let your family know where you're going to be, and that's
10 okay, but just don't talk about the details of the case. And
11 stay away from all the news too; no news on the radio, no
12 news on television, no local newspapers also.

13 And what we'll do, basically, is this. You'll be
14 out here in the middle section. We'll ask you to come in
15 here to the courtroom and go to the middle section. You'll
16 be there with about 35 or 40 jurors, and from that group
17 we'll draw the jury in the case.

18 MS. HARRIS: Okay.

19 THE COURT: Okay. So we'll see you Wednesday at
20 2:30 with your bags packed. Thank you, ma'am.

21 (WHEREUPON, Juror Harris leaves the
22 courtroom.)

23 THE COURT: Do we have anybody from the five
24 o'clock group?

25 (WHEREUPON, Juror Number 148, Jay S. Griswold,

1 a white male, enters the courtroom.)

2 JAY S. GRISWOLD, after having been duly sworn,
3 testified as follows:

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. Just have a seat and relax. They've got you on
7 here as Jay Griswold.

8 A. Yeah, that's my first name.

9 Q. Your first name. You understand I got to call you
10 Mr. Griswold?

11 A. Yes, sir, and I have to call you Judge.

12 Q. Now, Mr. Griswold, you recall in this case we told
13 you this morning that the State has charged Mr. Johnny
14 Bennett with the offense of murder? And you need to answer
15 yes or no.

16 A. Yes, I do recall.

17 Q. And do you remember that we told you that a
18 previous jury has heard this case, the first part of it, and
19 they've determined that Mr. Bennett was guilty of murder, so
20 he's been convicted of murder?

21 A. I understand that.

22 Q. And you understand the jury in this case is only
23 going to decide the sentence, life imprisonment or the death
24 penalty, that's the only two alternatives?

25 A. I do understand.

1 Q. Now, have you heard anything about this case
2 before?

3 A. No, sir.

4 Q. And let me ask you if you know any of these folks
5 involved. This is Mr. Donnie Myers who is the Solicitor who
6 will be prosecuting the case, along with Dayton Riddle and
7 Mr. Shawn Graham from his office. Do you know or know of any
8 of them?

9 A. I do know Donnie Myers.

10 Q. Okay. And how do you know Mr. Myers?

11 A. Just a casual relationship.

12 MR. FLOYD: Your Honor, can we bring a matter to
13 the Court's attention.

14 THE COURT: Okay. Sure.

15 (WHEREUPON, a bench conference was had.)

16 THE COURT: Is your son also known as Jay Griswold?

17 MR. GRISWOLD: He is.

18 THE COURT: And was he born in 1977?

19 MR. GRISWOLD: Yes.

20 THE COURT: I think we got the wrong one.

21 MR. GRISWOLD: You ought to pay me double mile for
22 this.

23 THE COURT: Unless you were born in 1977. Do you
24 want to claim to be 23?

25 MR. GRISWOLD: Well, I'd like to but I don't

1 believe we can.

2 THE COURT: I believe what's happened here is we
3 got the wrong one and it's your son instead.

4 Counsel, what's your position on this? Do you want
5 to go ahead and just -- at this point with what we've done
6 have the son just come in with the others at 2:30 on
7 Wednesday, if we have to have the other jury come in, or just
8 go ahead and excuse him for the week?

9 MR. MYERS: Your Honor's discretion.

10 MR. FLOYD: Court's discretion.

11 THE COURT: Okay. What I'm going to do is this.
12 Does your son have any problem with coming to serve on the
13 jury?

14 MR. GRISWOLD: He works for a plumbing firm. I
15 don't think he would have any problem with it.

16 THE COURT: We have enough at this point so there's
17 really not a need to bother him. We'll excuse him. I guess
18 we'll excuse you too. I am sorry.

19 MR. MYERS: He can serve instead, we don't mind.

20 THE COURT: I apologize for any inconvenience
21 you've had. They just got to wrong one served.

22 MR. GRISWOLD: I've run into this problem before,
23 not quite this way.

24 THE COURT: I wondered why they kept saying Jay
25 Griswold.

1 MR. GRISWOLD: We're both the same name.

2 THE COURT: Yeah, that's why it was. Okay. Well,
3 at least I got to see you again. It's good to see you.

4 MR. GRISWOLD: It's good to see you, sir.

5 THE COURT: Have a good day.

6 (WHEREUPON, Mr. Griswold was excused.)

7 THE COURT: All right. Do we have any on the five
8 o'clock list?

9 (WHEREUPON, Juror Number 119, Joan K. Follmer,
10 a white female, enters the courtroom.)

11 JOAN K. FOLLMER, after having been duly sworn,
12 testified as follows:

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Ms. Follmer?

16 A. Yes.

17 Q. Let me ask you just to relax, okay. Nobody is
18 going to give you a hard time. We're just going to chat a
19 little bit with you here, Okay.

20 Ms. Follmer, do you remember in this case that we
21 told you earlier that the State has charged Mr. Johnny
22 Bennett with murder and asked for the death penalty; do you
23 remember that?

24 A. I remember Mr. Bennett's name.

25 Q. Okay. You need to say yes or no so the court

1 reporter can pick up your answer.

2 A. Yes, I do.

3 Q. But again, you remember that the State has charged
4 him -- he's charged with murder and the State's asking for
5 the death penalty; do you remember that?

6 A. No, I don't remember that the State asked for the
7 death penalty.

8 Q. Well, let's go over it. We went over that this
9 morning, and I'll go over it again just to be sure, okay?

10 A. Yes.

11 Q. In this case, the defendant is Mr. Johnny Bennett.
12 The State charges Mr. Bennett with murder; do you understand
13 that?

14 A. Yes.

15 Q. A previous jury has heard the case regarding the
16 charge and has found Mr. Bennett guilty of murder; do you
17 understand that?

18 A. Yes.

19 Q. So that means now at this time that the State is
20 asking for the death penalty, and that's what this jury will
21 do. This jury will decide the sentence.

22 A. Yes, sir.

23 Q. There are only two possible sentences. The jury
24 can give him life in prison or the death penalty; do you
25 understand that?

1 A. Yes.

2 Q. Now, remember then we told you that the State
3 cannot always ask for the death penalty. There are only
4 certain cases, and when there are certain aggravating
5 circumstances that they can ask for the death penalty; do you
6 understand?

7 A. Yes, sir.

8 Q. And they have to -- of course, the State has to
9 prove those aggravating circumstances; do you understand
10 that?

11 A. Yes.

12 Q. Now, have you heard anything about this case
13 before?

14 A. No.

15 Q. And let me go over some of these folks that are
16 involved here to see if you know them, okay?

17 A. Uh-huh.

18 Q. This is the Solicitor, Mr. Donnie Myers. He's
19 prosecuting the case. And with him are Mr. Dayton Riddle and
20 Mr. Shawn Graham. Do you know or know of any of these
21 gentlemen?

22 A. No, sir.

23 Q. This is Mr. Bennett over here, Mr. Johnny Bennett.
24 Do you know Mr. Bennett?

25 A. No, sir.

1 Q. Do you know of him in any way?

2 A. No, sir.

3 Q. And he's represented by Mr. Hervery Young and
4 Mr. Wayne Floyd. Do you know or know of Mr. Young or
5 Mr. Floyd?

6 A. No, sir.

7 Q. So as I understand it, you've never heard anything
8 about this case and you don't know anybody involved in it; is
9 that right?

10 A. No, sir.

11 Q. You know we gave you a sheet to look over earlier.
12 Did you get -- oh, one other thing. We gave you a witness
13 list to look over, did you look it over?

14 A. I got through two pages then he called me.

15 Q. Okay. How about take a second and we'll just wait
16 and let you look it over. Let me know when you're finished.

17 A. All right.

18 [PAUSE.]

19 Q. Are you finished?

20 A. Yes, sir.

21 Q. If you would, I'm going to ask you if you know any
22 of those witness on the list, and if you do just identify
23 them by number, if you would.

24 A. No. No, sir.

25 Q. Do you recognize any of those?

1 A. No, sir.

2 Q. None of them, okay. Now, we gave you also a sheet
3 to look over that described three types of jurors; do you
4 remember that?

5 A. Yes, sir.

6 Q. Had a chance to look it over?

7 A. Yes, sir.

8 Q. Did you think about it?

9 A. Yes, sir.

10 Q. Do you feel like one of those categories of jurors
11 would apply to you?

12 A. Yes, sir.

13 Q. And which is that?

14 A. The third one.

15 Q. The third, all right. Now, the third is the type
16 of juror who says that even though a person has been found
17 guilty of murder that this juror says that I still don't have
18 my mind made up as to the proper sentence. This jurors says
19 that first I want to hear all those aggravating
20 circumstances, I want hear those mitigating circumstances, I
21 want the Judge to tell me the law and only then, only then am
22 I ready to make a decision; is that correct?

23 A. Yes, sir.

24 Q. And this juror says that I'm going to listen to all
25 of them. I'm going to listen to all the aggravating and all

1 the mitigating before I make a decision; is that right?

2 A. Yes, sir.

3 Q. Now, this juror also says this, that if the facts
4 justify a life sentence I can give a life sentence but if the
5 facts justify a death sentence I can give a death sentence,
6 its just depends on the facts and the circumstances of the
7 case. Is that what your position is?

8 A. Yes, sir.

9 Q. Now, of course, this juror also says that -- and
10 the juror basically says this, that I could sign a form if
11 necessary. And let me tell you what we mean by that, okay.
12 The law says that if a jury gives a death sentence that all
13 jurors must sign a form saying that they've given the death
14 sentence. So if you're sitting on a jury and you had heard
15 everything and determined that the death sentence was
16 appropriate and had voted for the death sentence, would you
17 be able to sign that form giving the death sentence?

18 A. Yes, sir.

19 Q. Now, also during the trial it will be my duty as
20 the Judge to give instructions as to the law during the case.
21 Would you be able to follow the law as I instructed you?

22 A. Yes, sir.

23 Q. And do you know of any other reasons why you could
24 not give both sides a fair trial in this case?

25 A. No, sir, none.

1 Q. Let me ask if you'll answer any questions the
2 attorneys have, okay?

3 A. Yes.

4 VOIR DIRE EXAMINATION

5 BY MR. RIDDLE:

6 Q. How are you, Ms. Follmer?

7 A. A little nervous.

8 Q. A little nervous. My name is Dayton Riddle. I'm
9 Deputy Solicitor here in Lexington. I want you to know there
10 are no right or wrong answers, okay?

11 A. Okay.

12 Q. What we are trying to ask you is what your personal
13 beliefs are. And your personal beliefs are your personal
14 beliefs, and I certainly will not argue and I don't think
15 anybody else is going to argue with what you believe, okay?

16 A. Uh-huh.

17 Q. You indicated to the Judge that you feel like
18 you're in that third category of jurors?

19 A. Yes.

20 Q. And you don't know anything about this case, right?

21 A. Nothing other than the name. The name just sounded
22 like I had heard it but I have not followed the case at all.

23 Q. So as you sit here today you couldn't tell anybody
24 in this courtroom how you would vote for a particular case,
25 could you?

1 A. No, sir.

2 Q. Okay. And you would keep a fair and open mind
3 throughout this whole process, would you not?

4 A. Yes, sir.

5 Q. And the Judge told you that Mr. Bennett's already
6 been found guilty of murder and the purpose of this
7 proceeding is to determine what the appropriate punishment
8 is; you understand that?

9 A. Yes, sir.

10 Q. And you understand that if you were selected on
11 this jury you would have two choices, life in prison or the
12 death penalty?

13 A. Yes, sir.

14 Q. And during this trial the State would put up
15 certain evidence; aggravating evidence, evidence which tends
16 to make the crime worse, evidence about the crime. There may
17 be some evidence about the defendant's character, things that
18 we say make this a worse murder than a lot of other murders.
19 And you may also hear some mitigating evidence, things that
20 are good about the defendant, things that tend to lessen the
21 crime; you understand that?

22 A. Yes, sir.

23 Q. And I take it from your responses to Judge
24 Westbrook that you would want to hear all of that evidence
25 before you decided what was the appropriate thing to do in

1 this case?

2 A. Yes, sir.

3 Q. And even after you've heard all the evidence you
4 wouldn't know what the right decision to make is until you've
5 heard the law from the Judge; is that right?

6 A. That's right, sir.

7 Q. Would you be able to keep a fair and open mind
8 throughout the presentation of all of that evidence and
9 throughout the Judge's charge?

10 A. Yes, sir.

11 Q. Do you think you could go back and reason and
12 deliberate and talk and exchange views with the other jurors
13 and reach a verdict in this particular matter?

14 A. Yes, sir.

15 Q. Now, the Judge explained to you, I think briefly,
16 about signing your name. Have you ever been on a jury?

17 A. Yes, but not this --

18 Q. What kind of jury were you on?

19 A. It was -- a young man was on a motorcycle and he
20 was hit, and they tried to make it out that it was his fault.
21 And there was a young girl who hit him and it was -- he was
22 found not guilty. We went back and discussed it and all.

23 Q. Was it traffic court or was is a civil case for
24 money damages?

25 A. I think he just wanted not to be found guilty. I

1 don't know if anything ensued.

2 Q. Like on a traffic ticket?

3 A. Yes, uh-huh.

4 Q. And that was in magistrate's court?

5 A. No, it was here in this building here.

6 Q. In this building. Oh, okay.

7 A. And I've been to magistrate's court about three
8 times.

9 Q. So you've been around the court system a little bit
10 then?

11 A. Yes, sir.

12 Q. And you understand that ordinarily the jury,
13 whether it be in magistrate's court or big court, you have a
14 foreperson that speaks on behalf of the jury?

15 A. Yes.

16 Q. And in a death penalty case it's a little bit
17 different. The death penalty, of course, requires a
18 unanimous verdict, but a foreperson doesn't speak for the
19 jury. If the jury returns a verdict of death in a death
20 penalty case the verdict form has 12 lines and each person
21 must sign. Did you know that before you came here today?

22 A. No, I did not.

23 Q. I know you probably have met people like this in
24 your life, and I don't have any reason to suspect that you're
25 one of them, but you know there's people out there that will

1 tell you what they think and will act on what they think but
2 if you ask them to sign their name to what they think they
3 don't want any part of that. Are you one of those people?

4 A. No, sir.

5 Q. So the fact that you would have to sign your name
6 signifying your beliefs, that wouldn't hold you up any?

7 A. No, sir.

8 Q. If you thought that was the appropriate thing you
9 could sign your name to the form?

10 A. Yes, sir.

11 Q. You could vote for the death penalty in the
12 appropriate circumstances?

13 A. Yes, sir.

14 Q. Likewise, you could vote for life imprisonment in
15 the appropriate circumstances?

16 A. Yes, sir.

17 Q. Last question.

18 A. Okay.

19 Q. Is there anything about your background, your
20 beliefs, your upbringing, the things that make you who you
21 are that would prevent you from being fair and impartial to
22 the State or the defense?

23 A. No, sir.

24 MR. RIDDLE: Thank you. That's exactly what we're
25 looking for.

1 THE COURT: Defense?

2 VOIR DIRE EXAMINATION

3 BY MR. FLOYD:

4 Q. Good afternoon, Ms. Follmer. How are you doing?

5 A. Hello.

6 Q. My name is Wayne Floyd, and I'm one of Mr. Johnny
7 Bennett's lawyers. Now, did you say you never have served on
8 a criminal case except maybe that one?

9 A. Just that one.

10 Q. That one --

11 A. Yes.

12 Q. -- you think may have been a criminal case? How
13 long ago was that case?

14 A. I would think about maybe 10, 12 years ago.

15 Q. Do you remember any of the people that were
16 involved in that case?

17 A. No, just the young man stays in my mind.

18 Q. Have you ever discussed the death penalty with
19 other people?

20 A. You mean just in conversation? I don't believe so.

21 Q. Do you have an opinion about the death penalty?

22 A. Not really. I'm not afraid of it.

23 Q. Do you feel that any time someone commits a murder
24 they should get the death penalty?

25 A. No, sir.

1 Q. And you understand that Mr. Bennett has already
2 been convicted of murder by another jury?

3 A. Yes, sir.

4 Q. Does that make you approach this question any
5 differently than if we were just starting out fresh?

6 A. That he's already been convicted? No, I would just
7 say that when I was sitting in the jurors' area that it made
8 my heart start to pound a little when they said that he was
9 convicted of murder.

10 Q. How did that make you feel?

11 A. A little scared.

12 Q. Did that give you any ideas as to how he should be
13 punished?

14 A. No, sir, because I don't know anything about it,
15 and I would hope that if I were chosen that I would hear
16 everything from both sides.

17 Q. So you believe that even if someone has been
18 convicted of murder that maybe they shouldn't get the death
19 penalty?

20 A. I don't believe that it should be done every time,
21 no, sir.

22 Q. Now, Mrs. Follmer, if you were on the jury and you
23 wanted to give -- you thought life was the proper punishment
24 but all the other members of the jury felt that the death
25 penalty was proper, would you stand up for your position or

1 would you just go along with it?

2 MR. MYERS: Objection on the same grounds
3 previously stated.

4 THE COURT: Ma'am, let me ask if you would step
5 just outside the door for a minute, okay.

6 (WHEREUPON, Juror Follmer leaves the
7 courtroom.)

8 THE COURT: Counsel, I feel we probably have to
9 deal with this at some point. I hadn't dealt with it before,
10 I think we do need to deal with it now. As I recall in the
11 previous case my understanding -- and I'll get the opinion up
12 here in front of me, was that the Supreme Court never
13 actually ruled that it was a valid question that you could
14 actually get into.

15 Now, you can correct me if I'm wrong on that, but
16 that was my understanding. As I recall, somehow the question
17 got asked and it got into the record and the jury -- and as I
18 understood, the Supreme Court just basically took the
19 position that once it was asked and it was out there that
20 that then indicated -- it sort of fleshed out an improper
21 juror. You want to make any comment on that? But again, I
22 never understood them to say the question was appropriate.

23 MR. FLOYD: I think if they felt the question was
24 not appropriate they would have said something about it, and
25 I don't think they said anything about it. So I think the

1 opinion stands for the proposition that that question is
2 appropriate, and when it was answered in the way it was in
3 the first trial that the jury was disqualified.

4 The State didn't raise the issue that the question
5 was not appropriate, the Court didn't raise the issue that
6 the question was not appropriate. So I think the opinion
7 stands for the proposition that the question is appropriate.

8 THE COURT: All right. Mr. Myers?

9 MR. MYERS: What happened in the first case is the
10 same thing that happened in State vs. Young too, 459 S.E.2d
11 84, 1995 case. In the Young case, defense attorneys asked
12 jurors about what their understanding of life imprisonment.
13 For some reason the solicitor didn't object to that even
14 though in 1988 in The State vs. Mathews the Supreme Court
15 said that is an improper question.

16 So the same thing happened in this case. Based on
17 my stupidity I did not object to the question that was asked
18 the juror. And I forgot his name. I remember what he looks
19 like. Since then I have consistently objected. Now, the
20 Supreme Court doesn't reach the merits of whether that was a
21 proper question or not because it wasn't performed because I
22 didn't object. We submit that that is an improper question.

23 99 A.L.R. 2d, page 7 starts an annotation. In
24 section 7 of that annotation, The majority view prohibits
25 voir dire questions of whether a juror would be influenced by

1 other jurors during deliberations if there were a
2 disagreement as to the verdict among the members of the jury.

3 Now, our Supreme Court hasn't reached that
4 question, with the overwhelming majority of courts that have
5 disallowed it. Two of the leading cases on that issue are
6 State vs. Hunt, 246 S.E.2d 159, it's a North Carolina case
7 decided in 1978; State vs. Bracey, B-r-a-c-e-y, 277 S.E.2d
8 390, another North Carolina case, 1981. The same questions
9 were asked. The Court held that those questions were
10 hypothetical, could not reasonably be expected to result in
11 an answer bearing upon a juror's qualifications.

12 Rather, the questions would tend to commit the
13 juror to a decision on the performance of his duties prior to
14 an instruction of law by the Court with regard to their
15 proper performance pursuant to the law. Also, the
16 hypothetical questions here were designed to commit the juror
17 to a fixed position in regard to the evidence before the
18 juror had even heard from the witnesses and before the juror
19 had been instructed on the law by the Court.

20 Trial judges should not permit counsel to question
21 prospective jurors as to the kind of verdict they would
22 render or how they would be inclined to vote on a given state
23 of facts. It tends to stake out jurors to get them to commit
24 to a future course of conduct and it also goes to influencing
25 the jurors to cause a hung jury.

1 Now, while our courts have never reached this
2 particular question, and I sure wish they would, they have in
3 other cases, State vs. Smart, 1982; State vs. Patterson,
4 1989; State vs. South, which is 1983 or 4 case, I believe;
5 State vs. Patterson, 1997; and a list of other cases have
6 held that hypothetical questions are not appropriate. That
7 you can't ask jurors what they would do given -- based upon a
8 specific set of questions provided by the attorneys. South
9 was '85, I'm sorry, Patterson was '86, and all of those stand
10 for the hypothetical question situation.

11 Also, our courts have held that you can't ask
12 jurors about specific mitigation questions. There's several
13 recent cases that have come down recently in which our
14 Supreme Court says you can't ask jurors what they would do in
15 a particular set of circumstances when they haven't heard the
16 testimony, they haven't been informed on what the law is and
17 their duties. State vs. Powers, 1998; State vs. Hill, 1998
18 goes to that proposition.

19 Also, Your Honor, State vs. Smart has said, and
20 started a line of cases which quoted State vs. Smart, is that
21 you can't develop personality profiles in jurors, you can't
22 say what you would do in this particular situation, you can't
23 give them a hypothetical set of circumstances and ask what
24 they would do because those questions are improper since the
25 purpose of voir dire is to ensure each juror can make a

1 decision based on the evidence presented rather than
2 hypothetical evidence. That was stated in State vs. Raymond
3 Patterson, 1986. It's was stated in State vs. South, 1985.

4 So clearly when you try to invade the juror, when
5 you try to give the jurors a set of hypothetical questions
6 and you ask them what they would do that is not a proper line
7 of voir dire questioning. And based on that, we would ask
8 that any future questions along that line not be allowed and
9 we would ask that our objection run throughout based on those
10 arguments and those questions.

11 THE COURT: Mr. Floyd, do you want to respond?

12 MR. FLOYD: Yes, Your Honor.

13 The Solicitor is comparing apples to oranges. The
14 cases having to do with hypothetical questions are cases
15 where the attorneys were attempting to stake out the juror on
16 some particular attitude the juror might have to some
17 specific fact of the case before them.

18 So sure, we would concur that we couldn't ask this
19 juror would you convict Johnny Bennett or any defendant,
20 would you be more prone to do it if the victim was a child or
21 the victim was a woman? That's staking out the juror and
22 that's not allowed. You can't use a hypothetical for that
23 situation, but that's not what this question is all object.

24 What this question is all about is whether the
25 juror will give an independent voice to the defendant,

1 because the statute provides that this defendant is entitled
2 to the independent voice of each and every juror, and that
3 before he can be convicted of murder it must be a unanimous
4 verdict and each one of these jurors must sign on it.

5 Now, this question is only to ask whether or not
6 they would be an independent juror. That's just like asking
7 them would you listen to aggravation and mitigation. Same
8 type of thing. It is no more hypothetical than that, and it
9 is only asking to see if they are qualified to be a juror in
10 a death penalty case. And it is not fact specific, and
11 therefore, it is not the type of hypothetical question that
12 would not be allowed because it would be staking out the
13 witness.

14 MR. MYERS: I did not object to any questions
15 proposed to any juror in which they are informed, do you
16 understand that your decision as to the verdict is your
17 independent opinion and decision?

18 I do object to the hypothetical of suppose you go
19 in the jury room; suppose other jurors want to vote for the
20 death penalty, 11; suppose you want to vote for life, 1.
21 Based on that supposition and hypothetical situation, what
22 would you do? If that's not hypothetical than I don't know
23 what is. And that's specifically what I'm objecting to.
24 That's what the cases all hold.

25 I'm hoping our Supreme Court would reach this issue

1 and give us some guidance, but if they follow the majority
2 here and the law in our neighboring states, I think Georgia
3 follows it as well, and the overwhelming majority of other
4 states, then they will hold those questions are
5 inappropriate.

6 I submit to you, you can ask a juror, do you
7 understand that your vote on the death penalty or life
8 imprisonment is your own independent decision? But going
9 further than that is certainly hypothetical when you start
10 listing what if, what if, what if.

11 THE COURT: Anything else, Mr. Floyd? I want to be
12 sure to give both of you a chance to make whatever comments
13 you need on this issue because this obviously, as you know,
14 was what was involved in the previous case. Go ahead.

15 MR. FLOYD: Your Honor, just like I said, this is
16 the question we asked in the previous case. This is the
17 question that the Supreme Court used to give Mr. Bennett a
18 new trial. If they weren't happy with that question they
19 could have said so in that opinion.

20 They could have said we are concerned that this
21 might be a type of hypothetical question that should not have
22 been asked. There was no objection made, and once it was
23 answered the juror was not qualified. They could have told
24 us don't ask that question when it comes back down but they
25 didn't. Therefore, they put their stamp of approval upon the

1 question.

2 MR. MYERS: Just for the Court's edification. In
3 the first case I attempted to appeal those issues to the
4 Supreme Court. I appealed several issues. One of them was
5 the judge's refusal to charge Victor vs. Nebraska on
6 reasonable doubt. The other one related to voir dire
7 questions. The Supreme Court summarily dismissed my appeal
8 because I was not the aggrieved party.

9 Therefore, the issue was not before the Supreme
10 Court as to whether it was a proper question or not because I
11 did not object. The only question before the Supreme Court
12 then was based on what was said for that juror, was
13 improperly qualified, and I tried to raise that issue but I
14 was shot down.

15 THE COURT: All right. Anything else, Mr. Floyd?

16 MR. FLOYD: Your Honor, the Supreme Court, if they
17 didn't like the question they would have told us.

18 THE COURT: Counsel, I'm going to rule as follows.

19 As I read the Supreme Court opinion, again, they didn't
20 discuss it with a great deal of thoroughness as to whether or
21 not the question was proper.

22 As I read the opinion, and particularly the portion
23 of the transcript that they published, it showed no objection
24 from the State. And, in fact, just below the answer I
25 noticed they made the comment, The State made no attempt at

1 rehabilitation, and put an emphasis supplied.

2 Based on that, I'm going to find that we can't get
3 into the question as such. And, in fact, I note one other
4 place the Supreme Court said it left uncovered the critical
5 factor. And I don't know if that's a hint at the fact that
6 it wasn't objected to or what. But either way, the fact
7 remained that the question was unobjected to at the time, and
8 the Supreme Court, I think, had to take it in that sense
9 because it had not been objected to.

10 With that in mind, I still don't think you can
11 stake out the juror in that fashion by basically asking the
12 juror, well, if everybody is opposed and you are the only one
13 will you stick to your grounds on it? In essence, that
14 basically tends to crave to the juror a mistrial or some of a
15 hanging onto their position because the problem is the juror
16 doesn't understand the ramifications of it.

17 And, of course, at no time, as you know -- and
18 there are no jurors in here, as we know, that if one juror
19 does not vote for a death sentence then it is a life
20 sentence. There are no mistrials at this point. So the
21 juror doesn't understand the ramifications of it.

22 And, of course, if at any time during my charge or
23 my instruction of the jury I would be neglecting my duty if I
24 ever suggested to the jury that one should hold out, if they
25 wanted to. Certainly, I do tell the jury we don't want them

1 to violate their conscience. But I certainly, obviously,
2 could never suggest to them that they try to hold out just to
3 hold out.

4 And that's not what you're trying to do, I know,
5 Mr. Floyd, also. But I think the bottom line of it is that
6 you just can't ask the question in that form. I think you
7 can certainly ask the juror if they understand that they have
8 to independently make their own determinations as to the
9 facts of the case, certainly nothing wrong with that. But
10 again, I think any time you start pitting the juror against
11 the other jurors that's when you have a problem with it.

12 MR. FLOYD: But, Your Honor, I think the Court
13 thinks the case is about asking for a mistrial. You know,
14 you can't try to get a juror to do us a mistrial. Those have
15 to do with a case where you're deciding guilt or innocence.
16 There can be no mistrial by the jury in their decision in a
17 sentencing phase.

18 THE COURT: Right.

19 MR. FLOYD: Because the question is whether or not
20 all 12 of them vote for the death penalty. It's not going to
21 be no mistrial. It's whether all 12 vote for the death
22 penalty. And I think the stature is clear that the defendant
23 is entitled to the independent vote of each one of those
24 jurors on that question of guilt.

25 Therefore, we need to know whether or not these

1 jurors have the necessary independence to give that
2 independent voice to the jury. And how can we determine that
3 without making some inquiry into them as to how firm they
4 would be, how firm they support their positions, or would
5 they be swayed by others to abandon their positions.

6 THE COURT: Well, again, I think that goes too far.
7 I think you can go into the juror's role themselves but
8 certainly can't go into pitting them against the other
9 jurors, basically. So I'm going to stay with that ruling,
10 Counsel.

11 Mr. Myers, anything else you want to put on the
12 record?

13 MR. MYERS: Yes, sir. We also rely on the United
14 States Supreme Court case of Jones vs. The United States, 119
15 Supreme Court 2090, a 1999 case, in which the United States
16 Supreme Court said that judges should not bring to the jury's
17 attention an issue of a divided jury, or a hung jury, or a
18 non-unanimous jury.

19 It says in here, We have never suggested that the
20 8th Amendment requires a jury to be instructed as to the
21 consequences of a breakdown in the deliberative process. On
22 the contrary, we have long held a view that the very
23 operative of the jury system is to secure unanimity by a
24 comparison of views and the arguments among the jurors
25 themselves.

1 We have further recognized in a capital sentencing
2 proceeding the government has a strong interest in having the
3 jury express the conscience of the community on the ultimate
4 question of life or death and that the Court was of the view
5 that unanimous verdicts are encouraged rather than hung
6 juries and that the issue of a hung jury or a nonunanimous
7 jury should never be brought to the attention of the jurors
8 in a matter of law.

9 THE COURT: Anything else, Mr. Floyd?

10 MR. FLOYD: Your Honor, that case -- those cases
11 have nothing to do with our statute which requires a
12 unanimous verdict and specifically says that each juror must
13 sign their name on it, and it doesn't say it's a hung jury.
14 It says if you don't want death then you don't sign, and
15 therefore by law it's life.

16 It's not like we have a hung jury and we have to
17 try it again. That is a verdict. That is a life verdict.
18 That is not a hung verdict. So all these cases about hung
19 verdicts and trying to get jurors to hang verdicts, they
20 don't have anything do with our statute and with this
21 particular issue.

22 THE COURT: Well --

23 MR. MYERS: Our Supreme Court had addressed hung
24 juries in death penalty cases in the penalty phase; State vs.
25 Adams, 1981; State vs. Cooper and Roberts, 1982; State vs.

1 Span, 1983; State vs. Yates, 1982. Our Supreme Court has
2 specifically talked about hung juries in the penalty phase of
3 a capital trial. He's wrong.

4 MR. FLOYD: Your Honor, in Johnny Bennett's case
5 when they had this question before they didn't say it was
6 improper, they didn't say the solicitor should have objected.
7 What they said was he made no effort to rehabilitate the
8 witness, not that the question was improper. It said if he
9 could have maybe asked him some other questions and disposed
10 of the issue another way, maybe. But they didn't say
11 anything about objecting to it, that he had any right to
12 object to it, or that the question was objected to.

13 MR. MYERS: I agree with him on that. They didn't
14 say I should have objected, and I appreciate it because it
15 was embarrassing enough from the opinion itself that I didn't
16 object.

17 THE COURT: Anything else, Mr. Floyd?

18 MR. FLOYD: Nothing further.

19 THE COURT: Counsel, I'm going to remain with the
20 same ruling. Again, I think the Supreme Court basically did
21 their duty, they did it correctly. And they don't need me to
22 tell them that, they know that. They did it correctly in
23 this matter, and they responded to what was in the record and
24 took the record as it was and made that ruling regarding the
25 record.

1 I find, though, that in this particular venue that
2 we cannot get into the area of suggesting to a juror, trying
3 to ask a juror if they are willing to hold out, or to hold
4 their ground, or anything such as that. That does tend the
5 crave to the juror the possibility of a hung jury, and the
6 fact that they can hold things up. They may figure that out
7 for themselves. If they do, that's fine.

8 But what I'm going to do is rule that we cannot get
9 into those sorts of questions. You can ask a juror if they
10 understand that by their oath that they should make their own
11 determinations of the facts in the case as they find them,
12 but certainly we cannot get into pitting them against the
13 other jurors.

14 All right. Let's bring the juror back in.

15 (WHEREUPON, Juror Follmer enters the
16 courtroom.)

17 THE COURT: Continue, Mr. Floyd.

18 MR. FLOYD: Thank you.

19 BY MR. FLOYD:

20 Q. Ms. Follmer, do you understand that any juror
21 selected in this case has the right to make up their own mind
22 about what the proper punishment should be?

23 A. Yes, sir.

24 Q. And do you agree with that?

25 A. Yes, sir.

1 Q. And do you understand that the jurors can listen to
2 the evidence of aggravation, the evidence of mitigation and
3 for any reason deemed appropriate or important to that juror
4 that juror can make up their mind on the proper punishment?

5 A. Based on both sides --

6 Q. Based on what that juror feels is important?

7 A. I would say it would be based on everything that
8 I've heard.

9 Q. And do you understand that you're entitled to stick
10 to your opinion on that, on the proper punishment, no matter
11 what others say to you?

12 A. Well, we would all be in there to discuss
13 everything, and I believe that being with the jury afterwards
14 that we all discuss what we think.

15 Q. Well, that's correct. I think you're right on
16 that.

17 A. Try to make sure that we all understand it the same
18 way, before a decision would be made.

19 Q. So is it your decision that -- is it your opinion
20 that all the jurors must agree?

21 A. Well, shouldn't they all agree at the end? It
22 doesn't mean that they have to. If I felt one way I would
23 want to have questions. If I had questions, I'd want them
24 answered.

25 Q. Do you feel all the jurors must agree?

1 MR. MYERS: Objection, that's a matter of law. The
2 Judge will charge the jury the law.

3 THE COURT: Sustained. I'll charge the jury as to
4 the necessity for a unanimous verdict.

5 MR. FLOYD: Thank you. No further questions,
6 Ms. Follmer.

7 THE COURT: Anything else from the State?

8 MR. MYERS: Nothing.

9 THE COURT: I'll ask if you'll step back outside
10 just one minute, okay.

11 (WHEREUPON, Juror Follmer leaves the
12 courtroom.)

13 THE COURT: What's the State's position on this
14 juror?

15 MR. RIDDLE: Qualified, Your Honor.

16 THE COURT: Defense?

17 MR. FLOYD: Qualified, Your Honor.

18 THE COURT: All right. I find she is qualified.
19 Let's ask her to step back in.

20 (WHEREUPON, Juror Follmer enters the
21 courtroom.)

22 THE COURT: Ms. Follmer, I've determined you'd be
23 qualified to sit as a juror in this case if you're called.
24 So what I'll ask you to do is to come back on Wednesday at
25 2:30, okay?

1 MS. FOLLMER: Yes.

2 THE COURT: You'll come back to this courtroom and
3 just sit back here in the middle section. Now, when you come
4 back, if you would, bring bags packed for as much as a week
5 in a hotel, since the jury is going to be sequestered during
6 the trial. Leave the bags in your car, and if you do wind up
7 on the jury someone will get the bags for you and take them
8 to the motel for you:

9 Now, until that time, please be sure not talk about
10 the case with anyone, stay away from any kind of news
11 coverage about it at all; no television, radio news, and stay
12 away from the newspapers. And with that in mind, we'll see
13 you back Wednesday afternoon at 2:30 with bags packed.

14 MS. FOLLMER: All right, sir. Thank you.

15 THE COURT: Thank you, ma'am.

16 (WHEREUPON, Juror Follmer leaves the
17 courtroom.)

18 (WHEREUPON, Juror Number 381, Robert E.
19 Wicker, a white male, enters the courtroom.)

20 ROBERT E. WICKER, after having been duly
21 sworn, testified as follows:

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Have a seat. Nobody is going to give you a hard
25 time. We're just going to chat a little bit, okay.

1 Mr. Wicker, you understand in this case the State
2 has charged Mr. Johnny Bennett with murder; do you recall we
3 mentioned that earlier?

4 A. Yes, sir.

5 Q. And do you recall that, as I told you earlier, a
6 previous jury has found Mr. Bennett guilty of murder?

7 A. Yes, sir.

8 Q. And that means that this jury will be deciding only
9 the sentence.

10 A. Yes, sir.

11 Q. There are only two possible sentences, life
12 imprisonment or the death penalty, and that's what this jury
13 will decide; do you understand that?

14 A. Yes, sir.

15 Q. Now, have you heard anything about this case
16 before?

17 A. Can't say that I have.

18 Q. Let me introduce you to some folks involved and see
19 if you know any of them. This is Mr. Bennett on the left
20 over here. Do you know Mr. Bennett or know of Mr. Bennett?

21 A. No, sir.

22 Q. Mr. Bennett is represented by Mr. Wayne Floyd and
23 Mr. Hervery Young. Do you know or know of Mr. Floyd or
24 Mr. Young?

25 A. No, sir.

1 Q. The State will be represented by the Solicitor's
2 Office, Mr. Donnie Myers, the Solicitor.

3 A. Yeah.

4 Q. Along with him is Mr. Dayton Riddle and Shawn
5 Graham. Do you know or know of any of these gentlemen?

6 A. Just the Solicitor is all. I don't know him.

7 Q. You just know of him?

8 A. Know him, right.

9 Q. And is there anything that you've heard about him
10 that would give you any sort of feelings for or against him?

11 A. No, sir.

12 Q. And would it affect your ability to give both sides
13 a fair trial in this case?

14 A. No, sir.

15 Q. Have you ever had any dealings with the Solicitor's
16 Office?

17 A. Myself, no.

18 Q. Yes, sir. Okay. What do you mean by that?

19 A. My wife, which I remarried, my step daughter did,
20 yes, sir.

21 Q. Okay. What kind of dealings did they have?

22 A. Domestic violence, I guess.

23 Q. Was that as a victim or something?

24 A. That's correct.

25 Q. And would that affect your ability to give both

1 sides a fair trial in this case?

2 A. No, sir.

3 Q. All right. Thank you, sir. Now, we gave you a
4 witness list to look over. Did you get a chance to look that
5 over?

6 A. Yes, sir.

7 Q. Did you recognize any name on that list, anyone
8 that you may know or know of?

9 A. Yes, sir.

10 Q. Now, if you'd do this, If you would, just tell me
11 by number which ones you may know or know of, okay.

12 A. 76.

13 Q. 76. All right. And how do you know or know of
14 this particular witness?

15 A. I met the gentleman in Swansea one time, and I know
16 him when I see him.

17 Q. And if he testified would that give you any problem
18 in giving both sides a fair trial?

19 A. No, sir.

20 Q. You wouldn't tend to give his testimony more or
21 less weight than anybody else?

22 A. No, sir.

23 Q. All right. Anyone else on here?

24 A. 108.

25 Q. And how do you know this witness?

1 A. I just know what he does. I have no personal
2 dealings with him.

3 Q. Okay. And would that affect your ability to give
4 both sides a fair trial if he testifies?

5 A. No, sir.

6 Q. And you wouldn't tend to give his testimony more
7 weight than anyone else; is that correct?

8 A. No, sir.

9 Q. Anyone else you know on the list?

10 A. 140.

11 Q. And how do you know this witness?

12 A. Neighbors, I guess. Two doors away.

13 Q. Two doors away?

14 A. Yes, sir.

15 Q. Now, if he testified would you tend to give his
16 testimony more weigh than anyone else just because he's your
17 neighbor?

18 A. No, sir.

19 Q. And would the fact that he testified give you any
20 problem giving both sides a fair trial?

21 A. No, sir.

22 Q. Anyone else?

23 A. And 141.

24 Q. How do you know this witness?

25 A. Being on a jury, and also back with the earlier

1 case with the step daughter, dealing with him in that same
2 one.

3 Q. And if he testified, would you tend to give him
4 more weight or less weight than anyone else?

5 A. No, sir, I wouldn't.

6 Q. And would that give you any problem giving both
7 sides a fair trial?

8 A. No, sir.

9 Q. Do you know any other witnesses on the list?

10 A. No, sir.

11 Q. And again, there's no one else on the list and no
12 one on the list that would give you any problem giving both
13 sides a fair trial; is that right?

14 A. No, sir.

15 Q. Now, we gave you a sheet to look over also that
16 described three types of jurors; do you remember that?

17 A. Yes, sir.

18 Q. Did you look it over?

19 A. Yes, sir.

20 Q. Did you get a chance to think about it?

21 A. Yes, sir.

22 Q. And do you feel like one of those types of jurors
23 would apply to you?

24 A. Yes, sir.

25 Q. And which is that?

1 A. The last one.

2 Q. The third?

3 A. Yeah.

4 Q. Now, this is a juror who says even though a person
5 has been found guilty of murder that this juror would not
6 have their mind made up as to the proper sentence. This jury
7 says that I'd want to hear all those aggravating
8 circumstances, right?

9 A. Yes, sir.

10 Q. I want to hear all those mitigating circumstances.

11 A. That's correct.

12 Q. This juror says I want the judge to tell me the
13 law.

14 A. Yes, sir.

15 Q. And then after all that only then could I decide
16 the proper sentence; is that right?

17 A. That's correct.

18 Q. And this juror says if I come to the determination
19 that the proper sentence is life in prison I can give the
20 defendant life in prison.

21 A. Yes, sir.

22 Q. And if I come to the determination that the proper
23 sentence is the death penalty I can give the death penalty.

24 A. Yes, sir.

25 Q. It just depends on the circumstances of the case.

1 A. Yes, sir.

2 Q. Now, the law also says that if a jury gives a
3 person a death sentence that each juror must sign a form that
4 says that they have given the death sentence. If you were
5 sitting on a jury and had found the defendant guilty and had
6 -- well, the defendant has already been found guilty, but had
7 found that the death sentence was appropriate, would you be
8 able to sign that form?

9 A. Yes, sir.

10 Q. All right. And do you know of any other reasons
11 why you could not give both sides a fair trial in this case?

12 A. No, sir.

13 THE COURT: All right. Any questions from the
14 State?

15 The attorneys have some questions to ask of you at
16 this time.

17 VOIR DIRE EXAMINATION

18 BY MR. MYERS:

19 Q. Mr. Wicker, you said on your jury thing you served
20 as a juror before?

21 A. Yes, sir.

22 Q. In a criminal case?

23 A. Criminal and civil.

24 Q. You never served on a murder case before?

25 A. No, sir.

1 Q. Mr. Wicker, you know in a criminal case, I don't
2 know whether you all found him guilty or not guilty, but if
3 the jury finds someone guilty usually their job is over with,
4 and the judge would hand down the sentence?

5 A. Yes, sir.

6 Q. And the judge would say, well, come around, and you
7 all tell me some good things and bad things about the person
8 so I know what kind of sentence to hand down, normally.

9 A. Yes.

10 Q. In this case the jury is going to hand down the
11 sentence.

12 A. Yes, sir.

13 Q. The defendant has already been found guilty by
14 another jury, another time. So we need this trial before a
15 jury here for them to hear about the crime, good things and
16 bad things about the defendant; do you understand that?

17 A. Yes, sir.

18 Q. And that's so the jury can hand down the sentence
19 that they think is appropriate. And they'll hear about the
20 crime again even though the defendant is guilty. They'll
21 hear about some circumstances of the crime. They'll hear
22 some good and bad things about the defendant. The Judge is
23 going to tell the jury what the law is, then they must come
24 back with life imprisonment or the death penalty; do you
25 understand that?

1 A. Yes, sir.

2 Q. Now, I understood you tell Judge Westbrook that as
3 to the punishment you haven't made up your mind because you
4 haven't heard anything?

5 A. That's correct.

6 Q. You don't know anything about this case?

7 A. No, sir.

8 Q. So is it fair to say before you would reach a
9 sentence you'd have to hear all of that?

10 A. That is correct.

11 Q. You'd have to hear the law as well?

12 A. Yes, sir.

13 Q. And as to the death penalty, Mr. Wicker, I
14 understood your position is some cases of murder life would
15 be appropriate, some cases of murder the death penalty would
16 be appropriate?

17 A. Yes, sir.

18 Q. But you'd have to hear all that first?

19 A. That's correct.

20 Q. Then make up your mind. And after you've heard all
21 of the facts, the circumstances, the character of the
22 defendant, after you've heard the law, then and only then
23 would you make that decision; is that right?

24 A. Yes, sir.

25 Q. And if you were on this jury, after hearing all of

1 the testimony, the circumstances and the law you could so
2 vote for life if that were appropriate?

3 A. Yes, sir.

4 Q. And you could so sign your name on the death
5 penalty if that was warranted?

6 A. Yes.

7 MR. MYERS: That's all we can ask of you. Thank
8 you, Mr. Wicker.

9 THE COURT: Defense?

10 VOIR DIRE EXAMINATION

11 BY MR. YOUNG:

12 Q. Mr. Wicker, could you please tell us, what do you
13 think about the death penalty?

14 A. I think at certain times it's needed, you know,
15 depending on what circumstances there are and how the crime
16 had transpired.

17 Q. The Judge told you that Mr. Bennett has already
18 been convicted of murder.

19 A. Yes, sir.

20 Q. So you're going to start from the point on this
21 jury that he has already been convicted. You're only
22 concerned about what punishment he should receive; do you
23 understand that?

24 A. Yes, sir.

25 Q. Knowing that another jury have convicted

1 Mr. Bennett, does that cause you to form any opinions in your
2 mind --

3 A. No, sir.

4 Q. -- as to what the appropriate punishment is? In
5 deciding on what the appropriate sentence is the Solicitor
6 told you that the jury makes the decision as to what that
7 punishment should be.

8 A. That's right.

9 Q. They, in essence, do what the Judge said. They
10 will hear the good, they will hear the bad in order to
11 deliberate and decide what is the appropriate sentence. And
12 if they decide that life is the appropriate sentence then the
13 foreman will put his name on the sentencing form, bring it
14 out to the Court. If the jury decides that death is the
15 appropriate sentence then all 12 of the jurors would have to
16 sign their name to that death sentence; do you understand
17 that?

18 A. Yes, sir.

19 Q. Is there anything about having to sign your name on
20 that death sentence that causes you any hesitation or any
21 problem?

22 A. No, sir.

23 Q. As a juror on this case, you understand that you
24 would have the right to make your own individual decision as
25. to what you think is the appropriate punishment?

1 A. That's correct.

2 Q. Then you will deliberate with the other jurors?

3 A. Yes, sir.

4 Q. And if all of the jurors decide that death is the
5 appropriate sentence then they would come back with that
6 verdict; do you understand that?

7 A. Yes, sir.

8 Q. In the event that the jurors do not decide -- you
9 understand that there are two sentences that the jury will
10 decide, life or death?

11 A. Yes.

12 Q. You understand that each one of the jurors would be
13 able to have their own individual decisions?

14 A. Yes, sir.

15 Q. And is it your position that before you can make
16 your decision that you would have to hear the aggravation and
17 the mitigation?

18 A. I do, yes, sir.

19 Q. The good and the bad?

20 A. That's correct.

21 MR. YOUNG: Thank you.

22 THE COURT: Anything else from the State?

23 MR. MYERS: No, sir.

24 THE COURT: All right. Let me ask if you'll step
25 just outside the courtroom. We'll bring you back in just a

1 minute.

2 (WHEREUPON, Juror Wicker leaves the
3 courtroom.)

4 THE COURT: What's the State's position on this
5 juror?

6 MR. MYERS: Submit he's qualified.

7 THE COURT: Defense?

8 MR. YOUNG: Submit he's qualified, Your Honor.

9 THE COURT: All right. I find he is qualified.
10 Let's bring him back in.

11 (WHEREUPON, Juror Wicker enters the
12 courtroom.)

13 THE COURT: Mr. Wicker, I've determined you'd be
14 qualified to sit on a jury in this case. I'm going to ask
15 you to come back Wednesday afternoon at 2:30. Just come back
16 here to the courtroom and sit in this middle section, and
17 you'll be there with about 35 or 40 other jurors and we'll
18 draw a jury from that group.

19 MR. WICKER: Wednesday at 2:30?

20 THE COURT: Wednesday at 2:30.

21 Now, I'm going to ask if you would bring with you
22 bags packed for as much as a week in a motel, the jury is
23 going to be sequestered during that time. And leave the bags
24 in your car, and if you do end up on the jury somebody will
25 get the bags and take care of them for you.

1 Very important still that you not talk with anybody
2 about this case. Certainly you want to let your family know
3 where you're going to be but you don't want to talk in any
4 detail about the case. And please still stay away from any
5 sort of news; no news on the television or radio, and
6 certainly stay away from the newspapers also. We'll see you
7 at 2:30 Wednesday with your bags packed.

8 MR. WICKER: Tomorrow is out?

9 THE COURT: You don't have to worry about tomorrow.
10 Thank you, sir.

11 (WHEREUPON, Juror Wicker leaves the
12 courtroom.)

13 (WHEREUPON, Juror Number 307, Carolyn M.
14 Savoie, a white female, enters the courtroom.)

15 CAROLYN M. SAVOIE, after having been duly
16 sworn, testified as follows:

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q. Ms. Savoie, relax and take it easy. Nobody is
20 going to give you a hard time. We're just going to have a
21 little chat.

22 Now, you understand in this case, I told you this
23 morning, that the State has charged Mr. Bennett with the
24 charge of murder. And that, in fact, the jury has convicted
25 Mr. Bennett of murder. He's been found guilty of that. Do

1 you understand?

2 A. Yes, sir.

3 Q. At this point, the State is asking for the death
4 penalty. There are only certain times when they can ask for
5 the death penalty and, of course, they have to prove the
6 grounds that they ask for, but that's what they're asking for
7 now; do you understand that?

8 A. Yes, sir. .

9 Q. And that's what this jury will do. This jury will
10 decide the sentence, life imprisonment or death; do you
11 understand?

12 A. Yes, sir.

13 Q. Now, have you heard anything about this case
14 before?

15 A. No, sir.

16 Q. And let me ask you if you know any of the folks
17 involved. This is Mr. Donnie Myers, who's the Solicitor.
18 And with him are Mr. Dayton Riddle and Shawn Graham. They
19 will be prosecuting the case. Do you know or know of any of
20 them?

21 A. No, I don't.

22 Q. And have you ever had any dealings with the
23 Solicitor's Office in this County?

24 A. No, sir.

25 Q. This is Mr. Bennett right here. Do you know

1 Mr. Bennett or know of Mr. Bennett?

2 A. No, sir.

3 Q. Mr. Bennett is represented by Mr. Wayne Floyd and
4 Mr. Hervery Young. Do you know or know of Mr. Floyd or
5 Mr. Young?

6 A. No, sir.

7 Q. So as I gather, you don't know anything about the
8 case and don't know any of the people involved?

9 A. No, sir.

10 Q. Start with a clean slate, don't you?

11 A. Yes, sir.

12 Q. Now, you know we gave you -- and also I gave you a
13 witness list. Did you get a chance to look that over?

14 A. Yes, I did.

15 Q. Did you recognize any of the names on there?

16 A. No, sir.

17 Q. Don't know or know of any of them?

18 A. None of them looked familiar.

19 Q. Now, we gave you another sheet to look over, and
20 that was this sheet that described the three types of jurors.
21 Did you look that over?

22 A. Yes, sir.

23 Q. And did you get a chance to think about that?

24 A. Yes, I did.

25 Q. You noticed that there were three types of jurors

1 described on it?

2 A. Yes, sir.

3 Q. Do you feel like one of those describes your
4 position on the death penalty?

5 A. The third one.

6 Q. This third one. Now, this is the one where the
7 juror says that even though the defendant has been found
8 guilty of murder, which is this case, that I don't have my
9 mind made up as to the proper sentence.

10 A. Right.

11 Q. I want to hear that second -- that trial, I want to
12 hear all of the aggravating circumstances, I would want to
13 hear all of these mitigating circumstances, I want the judge
14 to tell me the law and only then would I be ready to decide
15 the proper sentence; is that correct?

16 A. Yes, sir.

17 Q. And this juror says also that after hearing all of
18 that and hearing the law if I determined that the life
19 sentence is appropriate I could give a life sentence.

20 A. Yes, I could.

21 Q. And this juror says that after hearing all of that
22 if I determine that a death sentence was appropriate I could
23 give a death sentence.

24 A. Yes, sir.

25 Q. It just depends on the circumstance?

1 A. On the circumstances.

2 Q. Okay. Now, the law also says this, that if a jury
3 gives a death sentence that all 12 jurors must sign a form
4 saying that they've given the death sentence.

5 A. Yes, sir.

6 Q. Now, if you were on the jury and had made that
7 determination, had found that a death sentence was
8 appropriate, would you be able to sign that form?

9 A. Yes, sir.

10 Q. Now, do you know of any reason why you couldn't
11 give both sides a fair trial in this case?

12 A. I don't know of any reason, no, sir.

13 Q. The attorneys will have a chance to ask you some
14 questions. Let me ask if you'll answer any of their
15 questions, okay?

16 A. Yes, sir.

17 VOIR DIRE EXAMINATION

18 BY MR. RIDDLE:

19 Q. How are you, Ms. Savoie?

20 A. I'm fine, thank you.

21 Q. My name is Dayton Riddle, I'm Deputy Solicitor
22 here. I work for Ms. Myers.

23 A. Nice to meet you.

24 Q. I just have a couple of questions I'd like to ask
25 you.

1 A. Okay.

2 Q. I want to start by telling you there are no right
3 or wrong answers. I know you've heard that before. What
4 we're just trying to do is find out what your personal
5 beliefs are, and with your personal beliefs there is no right
6 or wrong with that, it's just what you believe.

7 A. Yes, sir.

8 Q. Where we are starting in this case, Mr. Bennett has
9 already been found guilty of murder, you understand that?

10 A. Yes, sir.

11 Q. And the jury in this case, if you're picked to be
12 one of those 12 jurors, the jury is going to decide
13 punishment. And there's two choices, you understand that?

14 A. Yes, sir.

15 Q. Life in prison, death penalty?

16 A. Yes.

17 Q. And I understood from what you were telling the
18 Judge that depending on the facts and circumstances in a
19 given case you could vote either way?

20 A. Yes, sir.

21 Q. Some cases you would feel that the death penalty
22 was appropriate and you could have voted for that?

23 A. Yes, sir.

24 Q. Some cases you would think life is appropriate and
25 would vote that way?

1 A. It would all depend on the circumstances.

2 Q. And I believe you told the Judge earlier, you don't
3 know anything about this case?

4 A. No, I don't.

5 Q. So as you sit here today you can't tell anybody how
6 you'd vote; is that right?

7 A. No, I can't.

8 Q. And you understand that in this trial what we'll do
9 is the State will present evidence in aggravation, things
10 that make the crime worse, things about the defendant's
11 character that may make him look worse?

12 A. Yes, sir.

13 Q. Things that would tend to make you vote for the
14 death penalty. You may also hear things in mitigation that
15 lessen the crime, or good things about the defendant. Would
16 you want to hear all of that aggravating and mitigating
17 evidence before you decide?

18 A. It would be hard, but I would prefer to.

19 Q. Right. And you'd want to hear what the Judge's
20 charge is?

21 A. Yes, sir.

22 Q. And it's only at that point that you would be able
23 to decide what the appropriate sentence is?

24 A. Yes, sir.

25 Q. Now, ordinarily in a criminal case the judge does

1 the sentencing, you know that?

2 A. Yes, sir.

3 Q. In this particular case the jury would do all the
4 of the sentencing, and you all would actually decide what the
5 sentence is.

6 A. Yes, sir.

7 Q. And the Judge briefly mentioned this, but
8 ordinarily the foreperson speaks for the jury. So that if
9 you came back with a verdict in an ordinary case the foreman
10 would sign his name, or foreperson would sign his name, and
11 then that would be relayed to the Court. In a death penalty
12 case if the jury decides the death penalty is appropriate all
13 12 jurors have to sign.

14 A. Yes, sir.

15 Q. You understand that?

16 A. Yes, sir.

17 Q. And in a sense there is no foreman, in that sense
18 all the jurors speak for themselves?

19 A. All of them.

20 Q. I don't have any reason to believe that you're one
21 of these folks but I have to ask this question.

22 A. Okay.

23 Q. It may seem like a silly question but you probably
24 know some folks like this. There are people that will tell
25 you exactly what they think and there are people that will

1 act on exactly what they think and what they believe, but if
2 you say now sign your name to what you just told me they
3 don't want any part of that.

4 A. Uh-huh.

5 Q. Would the fact that you would have to sign your
6 name if you thought the death penalty was appropriate, would
7 that hinder you from voting for the death penalty?

8 A. No, it wouldn't.

9 Q. So if you thought it was the right thing to do you
10 would --

11 A. I would sign my name.

12 Q. Is there anything about your background, or past,
13 or upbringing, the things that make you who you are that
14 would prevent you from being fair and impartial to everybody
15 involved in this case?

16 A. I don't think so. I was raised in a large family
17 so I had a lot of siblings to deal with so --

18 MR. RIDDLE: Thank you, ma'am. That's all we're
19 looking for.

20 THE COURT: Defense?

21 VOIR DIRE EXAMINATION

22 BY MR. FLOYD:

23 Q. Good afternoon, Ms. Savoie.

24 A. Good afternoon.

25 Q. My name is Wayne Floyd. I'm one of the attorneys

1 for Johnny Bennett.

2 A. Nice to meet you, sir.

3 Q. Have you ever discussed your feelings about the
4 death penalty with other people?

5 A. Yes, I have.

6 Q. What is your opinion of the death penalty?

7 A. I believe if you're proven beyond a shadow of a
8 doubt that you committed a murder or killed somebody then do
9 unto others as you'd have done unto you, and that you'll get
10 it back.

11 Q. So your opinion is if you murder someone then you
12 should get the death penalty?

13 A. Exactly.

14 MR. FLOYD: Thank you. I have no further
15 questions.

16 FURTHER EXAMINATION

17 BY THE COURT:

18 Q. Let me see if I understand. You told me a moment
19 ago that you felt like you were in the category of the third,
20 but what you just said, I understand, that you're actually in
21 the first category, that if somebody is found guilty of
22 murder that you would always give the death penalty?

23 A. Well, I was drawn between both of them, that first
24 one and the last one. And I pulled more toward the last one.
25 But, I mean, I could be more, you know --

1 Q. Right. Well, you understand, the first category is
2 the category that says it's the type of juror who says that
3 if someone is convicted of murder, once they have committed a
4 murder, that the only penalty they would give is the death
5 penalty?

6 A. Well, I do believe that strongly. I don't know
7 that I would, you know -- I would think each case is
8 different.

9 Q. Okay.

10 A. That's why I said I would have to hear the case.

11 Q. Right. Right. Well, you understand in this case a
12 previous jury has already found Mr. Bennett guilty of murder?

13 A. Yes, sir.

14 Q. You understand, he has a murder conviction? In
15 other words, he's committed murder.

16 A. Yes, sir.

17 Q. Given that circumstance, as I understand you were
18 saying that once that's happened you said the only sentence
19 you would give is a death sentence?

20 A. I do believe in my right mind, yes, I do, I would.

21 THE COURT: Any other questions from the State?

22 MR. RIDDLE: Yes, sir.

23 FURTHER EXAMINATION

24 BY MR. RIDDLE:

25 Q. Ms. Savoie?

1 A. Yes, sir.

2 Q. The Judge talked to you previously and told you
3 that Mr. Bennett had been convicted of murder.

4 A. Yes, sir.

5 Q. So we're starting at that point, he's been found
6 guilty of murder.

7 A. Yes, sir.

8 Q. Are you telling us now that if we handed you a
9 piece of paper asking you to sentence Mr. Bennett to death
10 you would do that as you sit in that chair right now?

11 A. I don't think I could because --

12 MR. FLOYD: Objection, Your Honor. That's a
13 hypothetical question that they said we shouldn't do.

14 THE COURT: Overruled. That's basically -- it's
15 just the same question you asked in a different way. I think
16 he has a right to ask that, because at this point Mr. Bennett
17 is convicted of murder.

18 Go ahead.

19 A. I feel myself, in my heart, if 12 jurors already
20 found this gentleman guilty of murder beyond a shadow of a
21 doubt and he is guilty and they sentenced him to life then I
22 think in my heart he should die.

23 Q. 12 jurors have found Mr. Bennett guilty of murder,
24 that's a given, okay?

25 A. Yes, sir.

1 Q. Are you telling us that you would vote for the
2 death penalty right now not knowing any of the evidence in
3 aggravation or any of the evidence in mitigation?

4 A. Well, I feel that if 12 jurors had already found
5 him guilty there must have been enough evidence proven to
6 give him life and if --

7 THE COURT: Let me clarify it.

8 FURTHER EXAMINATION

9 BY THE COURT:

10 Q. You understand, the previous jury hasn't given him
11 life, the previous jury has done nothing to do with
12 sentencing?

13 A. No sentence whatsoever.

14 Q. All they did was they said he's guilty of murder,
15 period. That's all they've done. That's what this jury is
16 going to -- the jury we're trying to sit now is going to
17 decide whether he gets life or whether he gets death. That's
18 what we're doing right now.

19 A. I would have to hear all the evidence myself. I
20 couldn't just go just with guilty.

21 Q. Well, you understand, you have to go -- this jury
22 will have to go with guilty because he's been found guilty?

23 A. But I would have to chose whether he gets life or
24 death?

25 Q. That's correct. That's all this jury is going to

1 do.

2 A. But the only way I could decide that myself would
3 -- you know, deal -- live with myself, would be to see all
4 the evidence that was brought against this person.

5 THE COURT: Okay. Go ahead.

6 FURTHER EXAMINATION

7 BY MR. RIDDLE:

8 Q. Let me see if I understand you. In a normal
9 criminal case, let's say it's a DUI or something, or
10 burglary, something like that.

11 A. Yes, sir.

12 Q. We would put a jury in a jury box, and that jury
13 would hear evidence about whether that person was guilty or
14 not guilty; do you understand that?

15 A. Yes, sir.

16 Q. And the jury would decide guilty or not guilty.

17 A. Yes, sir.

18 Q. And let's say the jury found that person guilty,
19 then in that kind of criminal case the judge would do the
20 sentencing; you understand that?

21 A. Yes, sir.

22 Q. And the judge may say something like bring this
23 person around, and he might say tell me something about him
24 so I know what the appropriate sentence is, so I know what
25 the right thing to do is. And he may ask the State, for

1 instance, to tell him about prior criminal record, other bad
2 things he's done in his life; you understand that?

3 A. Yes, sir.

4 Q. He might ask the defense to tell him some good
5 things about him, things that he may have done in the past
6 that were good; you understand that?

7 A. Yes, sir.

8 Q. And after the judge hears all that information then
9 the judge would decide what the appropriate punishment would
10 be in that burglary, or that DUI, or what have you; you
11 understand that?

12 A. Yes, sir.

13 Q. In a death penalty case the jury actually does the
14 sentencing; do you understand that?

15 A. Uh-huh.

16 Q. And we have the trial so that we can hear some bad
17 things about the defendant and some good things about the
18 defendant so that the jury will know what the appropriate
19 punishment to give is, and the jury's choices would be death
20 penalty or life in prison, you understand that?

21 A. Yes, sir.

22 Q. Would you need to hear all of those good things and
23 bad things before you could decide what the appropriate
24 punishment would be in a case like this?

25 A. Yes, I would.

1 Q. You couldn't decide what the appropriate punishment
2 is as you sit here today right now not knowing anything about
3 the case?

4 A. No, I could not. I don't think it would be fair to
5 anybody for me to say death penalty or life in prison, I know
6 nothing about it, nothing.

7 Q. Right. Okay. You believe in the death penalty?

8 A. Yes, I do.

9 Q. And you think the death penalty is appropriate in
10 some cases?

11 A. In some cases.

12 Q. And you likewise would think life imprisonment
13 would be appropriate in the some cases?

14 A. Yes, sir.

15 Q. And you need to hear all of the bad things and all
16 of the good things and hear the Judge's charge on the law,
17 what the right law is --

18 A. Yes, sir.

19 Q. -- before you could decide?

20 A. Yes, sir.

21 Q. And you understand the Judge is not going to tell
22 you you have to vote for life or you have to vote for death,
23 you understand that?

24 A. Yes, sir, I understand that.

25 Q. The Judge is going to tell you the law and then

1 it's going to be up to you and the other 11 jurors, if you're
2 seated, to decide what the appropriate punishment is.

3 A. Yes, sir.

4 Q. Could you decide the appropriate punishment based
5 on the evidence and the law that the Judge gives you?

6 A. Yes, sir.

7 Q. Could you decide it on that and nothing else?

8 A. No.

9 Q. I'm sorry?

10 A. No, sir.

11 Q. You wouldn't decide it just on the law and the
12 evidence?

13 A. It would have to be every -- the good, the bad
14 things, the Judge, everything.

15 Q. Right. Right. Exactly. I guess what I'm trying
16 to ask you is this, and I sometimes don't do as good as I
17 should, the Judge is going to tell you that you have to
18 decide this case based on the evidence that you hear in the
19 courtroom.

20 A. Yes, sir.

21 Q. And the law that he gives you.

22 A. Yes, sir.

23 Q. Could you decide it on that?

24 A. Yes, sir.

25 Q. And in the appropriate case you could vote for life

1 in prison?

2 A. Yes, sir.

3 Q. And in the appropriate case you could vote for the
4 death penalty?

5 A. Yes, sir.

6 MR. RIDDLE: Thank you.

7 FURTHER EXAMINATION

8 BY MR. FLOYD:

9 Q. Mrs. Savoie?

10 A. Yes, sir.

11 Q. Awhile ago when I asked you what your thoughts were
12 on the death penalty didn't you tell me that if a person
13 commits murder they should get the death penalty?

14 A. Yes, I did.

15 Q. And is that the way you feel about it, deep in your
16 heart?

17 A. I can't just come out and say a person is guilty
18 and they deserve the death penalty. You've got to have all
19 the evidence, good things, bad things, everything that
20 happened. I mean, I just couldn't say this man deserves the
21 death penalty and I don't know anything about what he did, or
22 what his life was.

23 Q. What if he was guilty of murder?

24 A. Beyond a shadow of a doubt guilty of murder? Yes,
25 I could give him the death penalty.

1 Q. In fact, isn't that what you said, that you would
2 think it would be the proper punishment if someone were
3 guilty of murder beyond a shadow of a doubt, would be the
4 death penalty?

5 A. Yes, but you've got to have --

6 MR. RIDDLE: Your Honor, I've got an objection
7 because that's an incomplete question. The question is after
8 she's heard the aggravation, and mitigation, and heard your
9 charge on the law.

10 THE COURT: Yes, sir. I think he was asking if
11 that was what she said a few minutes ago.

12 MR. RIDDLE: All right. I may have misunderstood.

13 THE COURT: That's all right.

14 Go ahead.

15 A. I just need to hear all the evidence. I have to
16 hear it all myself.

17 Q. Well, now, you understand that another jury has
18 already found him guilty --

19 A. Yes, sir.

20 Q. -- beyond a shadow of a doubt, as you say?

21 A. Yes, sir.

22 Q. So if in your heart you say anyone who's guilty of
23 a murder beyond a shadow of a doubt they should get the death
24 penalty; isn't that what you said?

25 A. That's what I said, but I still think I got to hear

1 it all myself. You know, even though those jurors have found
2 him guilty I can't say -- you know, feel right with myself
3 giving this gentleman life or death. I don't know what this
4 gentleman has done, myself.

5 Q. But when I asked you about it earlier didn't you
6 say if he were found guilty of murder he should get the death
7 penalty?

8 A. Yes, I did say that.

9 Q. And isn't that what you really feel in your heart,
10 if a person committed murder they should get the death
11 penalty, an eye for an eye?

12 A. Well, that's the way I've always felt, but people's
13 actions in all cases are different. You don't know what made
14 this person do this. I don't know what made somebody kill
15 somebody, but I've got to see the evidence myself. I can't
16 just say a man deserves the death penalty.

17 Q. But isn't that what you just said?

18 A. Yes, it is what I just said.

19 Q. So isn't that really what you feel in your heart
20 about the death penalty and when it should be applied?

21 A. I may have felt that way at times, but I don't now.
22 I think I've got to hear all the evidence surrounding the
23 case before I can make a judgment like that.

24 Q. But you felt that way three minutes ago?

25 A. Well, I must have misunderstood your question, sir.

1 Q. So what's your thoughts on the death penalty?

2 A. That's a hard question to answer. I know there are
3 cases where a person should lose their life and consequently,
4 you know, where they've killed people, mass murders or
5 whatever, and I think in that case a person should die. You
6 can't go through life killing people after people, and more
7 people, and more people and just, you know, spend your life
8 in jail; and that's a case I think a person deserves the
9 death penalty.

10 Q. So do you think only serial killers should get the
11 death penalty?

12 A. No, there are other people.

13 MR. RIDDLE: Objection. Objection. He can't ask
14 her specific circumstances.

15 THE COURT: Sustained. I didn't detect that that's
16 what she said. I think she just mentioned those one time.

17 Go ahead.

18 BY MR. FLOYD:

19 Q. You mentioned to me that an eye for an eye, is that
20 a philosophy of life that you agree for -- agree in?

21 A. I feel that if you take a person's life than your
22 life should be taken.

23 Q. Thank you. And how long have you felt that way?

24 A. How many years?

25 Q. Yeah.

1 A. I guess since I've become an adult. And you read
2 it in the paper about all these people killing people, and no
3 simple reason for it, just for the heck of it.

4 Q. I understand.

5 A. And I feel, you know, there's just too many people
6 taking people's lives in this world and it's gone too far.

7 Q. I understand.

8 A. And there has to be an example set somewhere where
9 people will learn this can't be tolerated.

10 Q. And therefore, that's why you have the feeling that
11 if you kill someone then you should be killed, an eye for an
12 eye; would you agree?

13 A. Yes, I would agree.

14 MR. FLOYD: Thank you. No further questions.

15 FURTHER EXAMINATION

16 BY THE COURT:

17 Q. Let me backtrack, go back and get a couple points
18 cleared up, okay. You understand that, as we told you,
19 Mr. Bennett has been convicted of murder by a previous jury;
20 you understand that?

21 A. Yes, sir.

22 Q. And let me tell you what murder means in South
23 Carolina, okay. In South Carolina, murder is the killing of
24 another person, another human being with what's called malice
25 aforethought. In other words, it says the defendant acted

1 maliciously and he has malice either at the time of the
2 murder or before the murder.

3 A. It was intentionally done.

4 Q. Yes, ma'am, it was an intentional killing. That's
5 what the law says is murder, okay?

6 A. Yes, sir.

7 Q. Now, South Carolina law also says even with that
8 being the definition of murder you cannot give the death
9 penalty just for that, you understand?

10 A. Yes, sir.

11 Q. And, of course, I will instruct the jury as to
12 that, if they find that there was just a murder that they
13 cannot give the death penalty just by the fact that there was
14 a murder, even though it was done maliciously; do you
15 understand that?

16 A. Yes, sir.

17 Q. Would you have any problem with following that
18 instruction?

19 A. No, I wouldn't.

20 Q. Now, what the law -- let's go over. What the law
21 says is this. It says that in order to be able to have the
22 death penalty that the jury must find that the State has
23 proven beyond a reasonable doubt aggravating circumstances.
24 In other words, in addition to the murder there must be at
25 least one aggravating circumstance.

1 A. Yes, sir.

2 Q. Can't be just murder, got to be the aggravating
3 circumstances. Remember, if you have no murder, no death
4 penalty.

5 A. No death penalty.

6 Q. You cannot give the death penalty.

7 A. Yes, sir.

8 Q. The only way a jury can give the death penalty, if
9 the jury finds that there was murder, of course we know
10 that's been found, but if the jury finds that there has been
11 an aggravating circumstance.

12 A. Yes, sir.

13 Q. Now, those aggravating circumstances are set out in
14 the law, you understand, but the law says there's got to be
15 an aggravating circumstance; you understand that?

16 A. Yes, sir.

17 Q. Would you have any problem with following that
18 instruction?

19 A. No, sir.

20 Q. And you understand that, in essence, you were
21 saying an eye for an eye. That, in essence, what the law
22 says is you can't just -- that an eye for an eye doesn't work
23 in terms of the law?

24 A. Doesn't work, yes, sir.

25 Q. Now, I understand morally it may and it may make

1 sense to a lot of people in that sense, but in terms of the
2 law an eye for a eye is not the law.

3 A. Is not the law.

4 Q. You understand that?

5 A. Yes, sir.

6 Q. And do you have any problem accepting that legal
7 instruction?

8 A. No, sir.

9 Q. Okay. And, again, of course, it's up to the jury
10 to decide when the State puts up their evidence, the defense
11 puts up evidence, you have all that evidence, it's up to the
12 jury to decide whether the State has proven that aggravating
13 circumstance; you understand that?

14 A. Yes, sir.

15 Q. But you understand that if you were on the jury and
16 did not find that an aggravating circumstance had been proven
17 that you could not give the death penalty?

18 A. Yes, sir.

19 Q. And, again, can you follow that instruction?

20 A. Yes, sir.

21 Q. All right. Now, also -- and I'm going a little
22 further then I am with most jurors because we've got some
23 things with you that I want to be sure to get them cleared
24 up. The law also says that even with an aggravating
25 circumstance proven, and I'll charge the jury this at the

1 appropriate time, that a jury can still just give a life
2 sentence just if they want to give a life sentence.

3 A. Yes, sir.

4 Q. Do you understand?

5 A. Uh-huh.

6 Q. And would you be able to follow that instruction?

7 A. Yes, sir.

8 Q. It doesn't mean you'd give it but if you felt it
9 was appropriate to do it then you could do it.

10 A. Appropriate, yes, sir.

11 Q. So understanding that, do you understand then that
12 in order before a death sentence can be given that there must
13 be an aggravating circumstance with it?

14 A. Exactly.

15 Q. And you feel like you can abide by that instruction
16 of the law?

17 A. Yes, sir.

18 Q. Okay. And you understand, in this case the jury
19 has found that Mr. Bennett killed another person with malice
20 aforethought? In other words, he did it maliciously and the
21 malice was there either at the time of the murder or killing
22 or before the time of the killing; you understand that?

23 A. Yes, sir.

24 Q. And you understand that the law says that
25 Mr. Bennett can't get the death sentence just for that,

1 that's not enough?

2 A. Yes, sir.

3 Q. And you understand, of course, that's why we're
4 going to have the second jury, it's for the jury to hear the
5 other aggravating and mitigating circumstances and to listen
6 to all of those?

7 A. Yes, sir.

8 Q. Now, would you be able to consider all the
9 circumstances? In other words, the State is going to put up
10 aggravating circumstances, you understand?

11 A. Yes, sir.

12 Q. And that there will also be mitigating
13 circumstances. In other words, now, the aggravating
14 circumstances are things that, in essence, would be not in
15 Mr. Bennett's favor. They tend to make him look worse, you
16 understand?

17 A. Right.

18 Q. But there will be mitigating circumstances that
19 will tend to make him look better; you understand that?

20 A. Yes, sir.

21 Q. Before you make a decision will you be able to
22 consider all of those circumstances, aggravating and
23 mitigating?

24 A. Once I hear all of them, yes, sir.

25 Q. Okay. And then, in essence, to take the law and

1 apply the law?

2 A. Yes, sir.

3 Q. You understand again -- and I know you were just
4 saying that and it was kind of vague and I wasn't picking it
5 up, even though an eye for an eye sounds like it makes, you
6 know, to some people sounds like it's common sense, it sounds
7 like a good moral statement to people, it is not the law?

8 A. No. No, sir.

9 Q. You understand that?

10 A. Not the law.

11 Q. Do you have any problem accepting that?

12 A. No, sir.

13 THE COURT: Any other questions from the State?

14 MR. RIDDLE: No, sir.

15 THE COURT: From the defense?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: Okay. Let me ask you to step outside
18 the door just one second, okay.

19 (WHEREUPON, Juror Savoie leaves the
20 courtroom.)

21 THE COURT: What's the State's position on this
22 juror?

23 MR. RIDDLE: She's qualified, Your Honor.

24 THE COURT: Defense?

25 MR. FLOYD: Your Honor, we don't feel she's

1 qualified. I think if you look at all this questioning that
2 went on when I asked her the questions and she explained
3 herself she always was consistent with what's in my heart is
4 that anybody commits murder should be given the death
5 penalty, an eye for an eye, and so forth.

6 Now, then when the Solicitor asked her questions
7 and whether she gave a yes or no, and when you asked her
8 questions and get a yes or no she told you all what you all
9 -- well, she tried to anticipate what you wanted to hear, if
10 you would, you know.

11 But when you got right down to what was in her
12 heart and what her real feelings were when she expressed it
13 in her own words they were that anybody who is convicted of
14 murder they deserve the death penalty because it's an eye for
15 an eye, and that's what's in her heart. So we don't think
16 she's qualified at all.

17 THE COURT: Let me tell you, as I picked up her
18 testimony, Mr. Floyd, even at that first question you asked
19 that brought all this on, which obviously was very adroitly
20 done, I detected that she was talking in the abstract, in
21 terms of just general moral concepts and general ideas, and
22 that seemed to be her imprison.

23 I never actually heard her say that if she were
24 sitting on the jury that she would automatically give the
25 death penalty. In fact, one time by the question that was

1 objected to Mr. Riddle asked the question would she -- if she
2 were handed a slip of paper would she go ahead and give the
3 death penalty, and she said no to that.

4 And I understand that she may have been saying what
5 he wanted, but even when she was discussing it with you after
6 that she said that she just misunderstood it. And she
7 indicated that she didn't quite mean it that way.

8 Now, in asking her these questions I did a moment
9 ago she answered them appropriately. She said that -- now,
10 while again we may be talking about her general views and her
11 views as to what morality may dictate she did understand what
12 the law is, and when I told her an eye for an eye is not the
13 law she indicated she understood that and could live with
14 that instruction.

15 At this point, she has answered the questions
16 appropriately to be qualified. Let me do this, I don't want
17 to cut you off. Do you want another opportunity to question
18 her again and go back through it? I don't know if you do or
19 not but at this point --

20 MR. FLOYD: Well, Your Honor, the problem is I
21 won't accomplish anything because when I asked her what's in
22 her heart this is what's in her heart she's told us. I'd
23 have to keep after her until she'll go back to admitting
24 that's what she really feels, because after the Solicitor has
25 asked her the questions to rehabilitate her and sees, well,

1 this is kind of what I need to say, well that's the way she
2 is when I get back to her.

3 Then after I ask her two or three questions her
4 real feelings come out, and what her real feelings are is
5 that it's an eye for an eye, if they committed murder they
6 should get the death penalty. But then she's just so wishy
7 washy when everybody else asks her questions she'd give them
8 the answers that they are seeking. So we are not going to
9 ever get any further than we are now. And what is never
10 going to change is what's in her heart, which is anybody who
11 commits murder should get the death penalty.

12 THE COURT: I understand, and that's why I went
13 through the questions that I went through at the very end
14 with her. Because the Supreme Court -- as I have read
15 Wainwright vs. Whitt, the Supreme Court said that it's not
16 totally important what's in their heart. That, in essence,
17 it's whether or not they can follow the instructions of the
18 Court and follow their oath as a juror and, in essence, if
19 what's in their heart prevents or substantially impairs their
20 ability to follow their oath as a jurors.

21 When I asked her specifically the questions here at
22 the end as to what a jury would be instructed, even on the
23 fact that she could give a life sentence even though they
24 found aggravating circumstances, she indicated she could live
25 by that instruction, she could go by that instruction.

1 So, again, regardless of what is in a juror's heart
2 the Supreme Court has said in Wainwright vs. Whitt it goes
3 beyond that. The question is whether or not they can follow
4 their oath as a juror. Now, what she's said so far indicates
5 to me that she can follow her oath as a juror.

6 And what I was asking is if you want to get into
7 some questions regarding again whether she can follow the
8 instructions legally, I don't mind doing that, if you want to
9 do that. But again, she was talking before again in the
10 abstract -- and I agree, you're right, she's talking about
11 what's in her heart.

12 But the bottom line is whether or not -- and, you
13 know, the first juror, you know, we talked about what's in
14 the heart, what's in the head with that juror. And, of
15 course, I qualified her. Unfortunately had another problem
16 that I hadn't gotten into the full sequestration problem, but
17 as far as qualification, qualified that juror because she
18 answered the questions appropriately even regardless of what
19 was in her head.

20 In that case, it was in her head, but she still
21 said she could follow the instructions of the Court. And
22 that is what's the important factor and that's what I
23 focussed in on here at the end, and the juror indicated that
24 she could.

25 MR. FLOYD: Then, Your Honor, I'd like to have a

1 couple more questions.

2 THE COURT: Okay. Ask her to come back in.

3 (WHEREUPON, Juror Savoie enters the
4 courtroom.)

5 THE COURT: Why don't you have a seat, Ms. Savoie.
6 We're going to ask you just a few more questions, okay?

7 MS. SAVOIE: Okay.

8 THE COURT: And nobody is giving you a hard time
9 now, okay. I want you to know that everybody is just asking
10 some questions. And, again, remember, there are no right or
11 wrong answers, this is just to find out what your position is
12 on these things.

13 MS. SAVOIE: Okay.

14 THE COURT: Go ahead, Mr. Floyd.

15 And you understand Mr. Floyd is not picking on you?

16 MS. SAVOIE: Okay.

17 FURTHER EXAMINATION

18 BY MR. FLOYD:

19 Q. Just some more questions.

20 A. Okay.

21 Q. It won't be very long. I think we've established
22 that what you feel in your heart is that if somebody murdered
23 somebody then they deserved the death penalty; am I correct,
24 just a general feeling in your heart?

25 A. Yes, sir.

1 Q. Now, I guess the question is if you're confronted
2 with a situation here where the defendant has been convicted.
3 of the crime of murder, and murder, as the Judge has
4 explained to you, is a killing with malice aforethought; you
5 understand all that?

6 A. Yes, sir.

7 Q. Now, if you were then asked to make a decision
8 about what the proper punishment would be in that situation,
9 how can you set aside these feelings you have in your heart
10 that anybody that murders anybody should get the death
11 penalty?

12 A. If this was a mal -- if he did this maliciously and
13 killed a person I feel he deserves the death penalty. I'm
14 sorry, but that's the way I feel.

15 Q. You couldn't get that out of your heart, could you,
16 because that's the way you feel?

17 A. Yes, sir.

18 THE COURT: Anything else, Mr. Riddle?

19 MR. RIDDLE: No, sir.

20 THE COURT: All right. Let me ask you to step back
21 out one more time, okay.

22 MS. SAVOIE: Okay.

23 (WHEREUPON, Juror Savoie leaves the
24 courtroom.)

25 THE COURT: What's the State's position?

1 MR. RIDDLE: Your Honor, we still submit she's
2 qualified.

3 THE COURT: The defense?

4 MR. FLOYD: Your Honor, we submit she's not
5 qualified. I mean, I think it's pretty clear from that
6 question.

7 THE COURT: Based on the last answer -- we gave her
8 every chance. Based on the last answer, she's disqualified.
9 She indicated that -- again, she says if he acted maliciously
10 he deserves the death penalty, that goes beyond what the law
11 --

12 Do you want to address that at all, Mr. Riddle?
13 Again, as I understand, that basically goes beyond what the
14 law says.

15 MR. RIDDLE: No, sir, I don't. Although, I would
16 submit to the Court here, Your Honor, she was no farther
17 afield than the first juror we questioned this morning.

18 THE COURT: Well, she wasn't until that last
19 question.

20 Let's ask her to step back in, okay.

21 (WHEREUPON, Juror Savoie enters the
22 courtroom.)

23 THE COURT: Ms. Savoie, we're going to excuse you
24 from having to sit on the jury in this case. We appreciate
25 you being so patient. You were very patient. I appreciate

1 that, and I hope we didn't give you a hard time.

2 MS. SAVOIE: No, you didn't.

3 THE COURT: But you are free to go. Thank you so
4 much.

5 MS. SAVOIE: You have a good evening.

6 THE COURT: Thank you, ma'am.

7 (WHEREUPON, Juror Savoie was excused.)

8 (WHEREUPON, Juror Number 353, Caroline L.
9 Summers, a black female, enters the courtroom.)

10 CAROLINE L. SUMMERS, after having been duly
11 sworn, testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. All right, Ms. Summer, have a seat and relax, okay.
15 We're not going to give you a hard time. We're just going to
16 chat with you a little bit.

17 A. I would like to ask to be excused.

18 Q. Ma'am?

19 A. I would like to ask to be excused.

20 Q. You say you want to ask to be excused?

21 A. Yes.

22 Q. What reason?

23 A. My home was stuck by lightening and I'm having a
24 lot of problems with trying to get insurance people there,
25 and I've also had a death in my family.

1 Q. Let me ask you, was the death fairly recently?

2 A. Saturday morning.

3 Q. Saturday. And have you had the funeral yet?

4 A. No.

5 Q. How close was the person? I hate to be so
6 personal.

7 A. My niece.

8 Q. It was your niece?

9 A. Yes. I was giving her CPR when she died.

10 Q. I'm sorry?

11 A. I was giving her CPR when she died.

12 Q. You say you were giving her CPR?

13 A. Yes.

14 Q. So I gather you're involved in the funeral in some
15 way?

16 A. Yes.

17 Q. And also the problem with your home being struck by
18 lighting?

19 A. Yes. I've got people coming all week and I really
20 need to be there.

21 Q. Okay. Let me note this too. In this case, the
22 jury is going to be sequestered. In other words, they're
23 going to be in a motel during the trial. Would that cause
24 you any particular hardship?

25 A. Yes.

1 THE COURT: Okay. Let me ask if you'll step just
2 outside the door.

3 (WHEREUPON, Juror Summers leaves the
4 courtroom.)

5 THE COURT: What's the State's position on this
6 juror?

7 MR. MYERS: No objection.

8 THE COURT: Defense?

9 MR. FLOYD: Your Honor, we couldn't hear her so --

10 THE COURT: Okay. I apologize. She said that
11 she's had two problems. Her home has been struck by
12 lightening, and she's had a great deal of difficulty getting
13 adjustors and other people to do what they're supposed to do
14 and she's in the middle of trying to do that now.

15 And said she had a niece who died on Saturday and
16 they have not had the funeral yet. And apparently she was
17 involved somehow. She indicated she gave the niece CPR
18 trying to resuscitate her before she died, and that the
19 funeral is apparently in the next few days. And that she has
20 a number of people coming in and out, and she says that it
21 would just cause her a great hardship to have to do that
22 right now.

23 MR. FLOYD: We have no objection.

24 THE COURT: All right. Let's ask her to step back
25 in.

1 (WHEREUPON, Juror Summers enters the
2 courtroom.)

3 THE COURT: All right. Ms. Summers, We'll excuse
4 you from having to sit on the jury. I hope we didn't cause
5 you too much hardship having to be here, but you're free to
6 go.

7 MS. SUMMER: Thank you.

8 THE COURT: Thank you, ma'am.

9 (WHEREUPON, Juror Summers was excused.)

10 (WHEREUPON, Juror Number 28, Angelia M.
11 Beasley, a white female, enters the courtroom.)

12 ANGELIA M. BEASLEY, after having been duly
13 sworn, testified as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Let me note first -- well, a couple things. I
17 believe you indicated on your form that you have a previous
18 conviction; is that correct?

19 A. That's correct.

20 Q. And it was for use of vehicle without permission?

21 A. That's correct.

22 Q. Was that the one that would involve a three year
23 statute; do you recall?

24 A. A three -- you mean, a three year --

25 Q. The possible sentence was three years?

1 A. No. When I spoke with -- I don't even know what
2 the possible sentence was. But when I spoke to Tina she said
3 she checked and she said that it didn't even carry a year.

4 Q. Okay. Okay. Also you had a DUI in 1990?

5 A. That's correct.

6 Q. And S-A-B was?

7 A. That was a domestic, simple assault.

8 Q. Simple assault and battery?

9 A. In '90, uh-huh.

10 Q. You also note on here you have a child who is six
11 years old?

12 A. That's correct.

13 Q. And I assume you have custody of the child?

14 A. That's correct.

15 Q. Now, the jury in this case is going to be
16 sequestered. In other words, they are going to be in a motel
17 for as much as a week. With that child, is that going to
18 give you any great difficulty?

19 A. I have family that's pretty local that I'm sure
20 that could help.

21 Q. Have you talked with them?

22 A. No, I haven't. My mother is out of town this week
23 for a death in the family, but then she'll be back.

24 Q. You understand with having a six-year-old child --
25 you say you have custody of the child?

1 A. Yes, uh-huh.

2 Q. You understand that with a six-year-old child if
3 you don't feel that you can make adequate arrangements you
4 can ask to get off the jury in this case?

5 A. Well, I had thought that the only way I could be
6 excused really was if I didn't have adequate child care,
7 which I do, so I'm --

8 Q. Right. Right. If you can arrange adequate child
9 care, basically. But I certainly understand that anyone with
10 a small child is going to have great difficulty. And that
11 means that, in essence, the time that you're on the jury
12 someone else is going to be totally responsible for the care
13 of the child, if you're sequestered?

14 A. Okay. Well, I wasn't aware that I could just ask
15 to be excused. I mean, I'm totally willing to serve and if
16 -- I wasn't aware that with this case that I would be
17 sequestered, but I thought there was a possibility. I mean,
18 if I could be used somewhere else I would be willing to do
19 that, but I don't think that -- I mean, I'll personally --
20 I'm sure I could find someone to keep her, but I wouldn't
21 want her to be totally with someone else for a week.

22 Q. Well, that's what I'm asking.

23 A. No. I mean, it could be arranged. But my personal
24 choice, no, I wouldn't want to do that.

25 THE COURT: Okay. Let me ask you to step outside

1 the door just for a minute.

2 (WHEREUPON, Juror Beasley leaves the
3 courtroom.)

4 THE COURT: What's the State's position on this
5 juror?

6 MR. MYERS: No objection, excused.

7 THE COURT: Defense?

8 MR. YOUNG: No objections, Your Honor.

9 THE COURT: I tried like a dickens to get her to
10 answer the question directly and I never could. But I got
11 the impression that it would be difficult on her to have the
12 child go with someone else during that time.

13 MR. YOUNG: Your Honor, I would just like to state
14 that I don't think she would be qualified anyway according to
15 her rap sheet.

16 THE COURT: Okay.

17 MR. YOUNG: The use without permission appears to
18 fall within the statute of a conviction more than a year.

19 THE COURT: I think it is the three year sentence.

20 MR. YOUNG: Yes, sir.

21 THE COURT: Okay. Let's ask her to step back in.

22 (WHEREUPON, Juror Beasley enters the
23 courtroom.)

24 THE COURT: Ms. Beasley, we'll excuse you from
25 having to serve on the jury, okay. That would be just too

1 difficult for you to do that.

2 MS. BEASLEY: Okay. Thank you.

3 THE COURT: Thank you, ma'am. Good luck to you.

4 Counsel, we're going to take a short break before
5 we start the 6:30, all right. We'll stand in recess for a
6 few minutes.

7 (WHEREUPON, a brief recess was taken.)

8 THE COURT: Let's bring the next juror out.

9 MR. GRAHAM: Judge, there is one that we could take
10 up before we bring someone in, Mr. Gantt.

11 THE COURT: Mr. Gantt, yeah, I was just going to
12 wait until we get to him. He's next after this one.

13 MR. GRAHAM: Okay.

14 (WHEREUPON, Juror Number 280, Brenda S.
15 Quaethem, a white female, enters the courtroom.)

16 BRENDA S. QUAETHEM, after having been duly
17 sworn, testified as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. Ms. Quaethem, just relax, okay.

21 A. Okay.

22 Q. I notice, first of all, on here that you have some
23 children. How old are your children?

24 A. 19, 25 and 27.

25 Q. Okay. I believe they can take care of themselves?

1 A. I think so.

2 Q. You recall in this case we told you the State has
3 charged Mr. Johnny Bennett with the offense of murder, and
4 you remember that we told you that a previous jury have found
5 Mr. Bennett guilty of murder; you understand that?

6 A. Yes, sir.

7 Q. And so that means that we're drawing this jury only
8 to decide the sentence; do you understand that?

9 A. Yes, sir.

10 Q. And pardon me, this jury will decide the sentence
11 only as to life imprisonment or the death penalty, that's all
12 they'll do; do you understand?

13 A. Yes, sir.

14 Q. Now, do you understand -- let me ask you first of
15 all, have you heard anything about this case at all?

16 A. No, sir.

17 Q. Don't know anything about it at all?

18 A. No, sir.

19 Q. Let me introduce you to some of the folks involved
20 here. This is the Solicitor, Mr. Donnie Myers, who will be
21 prosecuting the case. And along with him are Mr. Dayton
22 Riddle and Mr. Shawn Graham. Now, do you know or know of any
23 of these gentlemen?

24 A. No, sir.

25 Q. This is Mr. Johnny Bennett right here. Do you know

1 Mr. Bennett or know of Mr. Bennett?

2 A. No, sir.

3 Q. Now, he's represented by Mr. Wayne Floyd and
4 Mr. Hervery Young. Do you know or know of either of those
5 gentlemen?

6 A. No, sir.

7 Q. We gave you a witness list to look over; did you
8 look over that list?

9 A. Yes, I did.

10 Q. And did you know or know of anybody on that list?

11 A. No, sir.

12 Q. And you said before that you have not heard
13 anything about this case before; is that right?

14 A. No, sir.

15 Q. Now, do you know of any sort of bias or hard
16 feelings you might have toward the State or the defense in a
17 case such as this?

18 A. No, sir.

19 Q. We gave you also a sheet that describes types of
20 jurors; do you remember that?

21 A. Yes, sir.

22 Q. Did you get a chance to look that over and think
23 about it?

24 A. Yes, sir.

25 Q. And do you feel like one of those jurors would

1 apply to you?

2 A. Let me go back over it, do you mind?

3 Q. Sure. Sure. And I'll be happy to go over it with
4 you.

5 A. Okay, would you please?

6 Q. Okay. Do you recall that the first juror is the
7 juror who said that if someone has been convicted of murder
8 that there is only one punishment I would give, I would give
9 the death penalty and that's all I would do.

10 The second juror is the juror who said that even
11 though they have been found guilty of murder I would always
12 give the life sentence because I could not give a death
13 penalty. So the first one says I'll always give death, the
14 second one says I'll never give death.

15 The third one says I'd want to hear all the facts
16 and circumstances, and I could give life or death depending
17 on the circumstances involved.

18 A. Yes, sir.

19 Q. So those are the three types; do you understand?

20 A. Yes, sir.

21 Q. And do you feel like you fit within one of those
22 categories?

23 A. Yes, sir.

24 Q. And which is that?

25 A. Number three.

1 Q. All right, number three. Now, let me be sure you
2 understand. When we say murder, murder in South Carolina
3 means the killing of another human being with what is called
4 malice aforethought. In other words, it was done maliciously
5 and the malice was there either at the time of the murder or
6 before the murder; you understand that?

7 A. Yes, sir.

8 Q. That's what we mean by murder. And the law still
9 says that's not enough to give the death penalty, that there
10 has to be in addition to that at least one aggravating
11 circumstance; do you understand that?

12 A. Yes, sir.

13 Q. Now, if I give the jury an instruction as to that
14 point, can you follow that instruction?

15 A. Yes, sir.

16 Q. Now, this third type of juror is a juror who says
17 that, okay, if a person has been convicted of murder I still
18 am not going to have my mind made up as to the proper
19 sentence. I want to hear all of those aggravating
20 circumstances, all the aggravating circumstances. I want to
21 hear all those mitigating circumstances, all of them.
22 Remember, aggravating circumstances are circumstances that
23 are unfavorable to the defendant. Mitigating circumstances
24 are favorable to him; do you understand?

25 A. Yes, sir.

1 Q. So this juror says I want to hear both of those
2 aggravating and mitigating, I want the judge to tell me the
3 law and only then will I be ready to decide the proper
4 sentence; is that what you're saying?

5 A. Yes, sir.

6 Q. This juror also says that if the facts justify a
7 life sentence I can give a life sentence, if they justify a
8 death sentence I can give a death sentence. It just depends
9 on what the circumstances are; is that correct?

10 A. Yes, sir.

11 Q. And would you be able to follow the instructions
12 that I gave you during trial as a juror?

13 A. Yes, sir.

14 Q. Now, do you know of any other reasons why you could
15 not give both sides a fair trial in this case?

16 A. No, sir.

17 THE COURT: Let met ask if you'll answer any
18 questions from the attorneys, please.

19 VOIR DIRE EXAMINATION

20 BY MR. MYERS:

21 Q. I'm just required to ask you a few questions then
22 the defense will ask you some.

23 A. Okay.

24 Q. You don't know anything about this case; is that
25 correct?

1 A. That's right.

2 Q. And you understood the Judge to tell you that the
3 defendant has been found guilty?

4 A. Yes, sir.

5 Q. So we have to have a jury to decide what sentence
6 to give him; is that right?

7 A. Yes, sir.

8 Q. And as to the sentences of life imprisonment and
9 the death penalty, I understood you to say you're in that
10 third category; is that correct?

11 A. That's correct, sir.

12 Q. That means that you can vote for life imprisonment
13 in some cases or you could vote for the death penalty in some
14 cases?

15 A. Yes, sir.

16 Q. It would depend on the facts and circumstances?

17 A. Yes, sir.

18 Q. Now, if you were on this jury panel the Judge would
19 tell this jury that they weren't to make up their mind of
20 what the sentence should be until they've heard all the
21 testimony and until he had told them what the law was; could
22 you follow that instruction?

23 A. Yes, sir.

24 Q. The jury would also take an oath that they'd base
25 their verdict on what they heard in the courtroom and the law

1 as the Judge told them what the law was; could you follow
2 that oath?

3 A. Yes.

4 Q. Now, is there anything about you, Ms. Quaethem,
5 that just would prevent you from voting for the death
6 penalty?

7 A. No, sir.

8 Q. It would depend on the facts and circumstances?

9 A. Yes, sir.

10 Q. If after hearing all the facts, after hearing all
11 the circumstances of the crime, after hearing something about
12 the defendant, good or bad, you could vote for the punishment
13 that you thought was the proper one?

14 A. Yes, sir.

15 Q. Whether it be life imprisonment or the death
16 penalty?

17 A. Yes, sir.

18 Q. Now, our law says this, and the Judge may have gone
19 over this with you, if the jury says that death is the
20 appropriate sentence then they would have a verdict form with
21 12 lines on it, that's because our law says every juror must
22 sign that death verdict; do you understand that?

23 A. Yes, sir.

24 Q. The fact that our law requires a signature on a
25 death penalty verdict would that interfere with your verdict

1 for the death penalty if you thought that was appropriate?

2 A. No, sir.

3 MR. MYERS: I think that's all we have of you.

4 Thank you, ma'am.

5 THE COURT: Anything from the defense?

6 VOIR DIRE EXAMINATION

7 BY MR. YOUNG:

8 Q. Have you ever had the opportunity to discuss with
9 family or friends, co-workers about your views on the death
10 penalty?

11 A. Maybe briefly, yes.

12 Q. Will you please tell us what your views are on the
13 death penalty.

14 A. I can see both ways; if you were a family member
15 how you would feel, and if you are a family member of the
16 defendant how you would feel. But then again, you need to
17 listen to all the facts and base your decision on that.

18 Q. Okay. So what you're telling us is that you feel
19 that the death penalty is appropriate in some cases?

20 A. Yes, sir.

21 Q. And is not appropriate in others?

22 A. No, sir.

23 Q. But at no point in time do you feel that every time
24 that a person is convicted of murder that they should get
25 death or life; do you feel that way?

1 A. Yes.

2 Q. Just depends on the case?

3 A. Yes, sir.

4 Q. You understand that as a juror you're going to
5 start from the point that Mr. Bennett has already been
6 convicted of murder; do you understand that?

7 A. Yes, sir.

8 Q. So the only thing that as a jury that you'll be
9 considering is whether to sentence him to life or sentence
10 him to death; do you understand that?

11 A. Yes, sir.

12 Q. In making the decision of life or death, each juror
13 will be able to form their own opinion, make their own
14 decision as to what they think is the appropriate punishment;
15 do you understand that?

16 A. Yes, sir.

17 Q. Then you will deliberate with the other jurors and
18 make a decision to bring out to the Court; you understand
19 that?

20 A. Yes, sir.

21 Q. And you understand that that decision is only life
22 or death?

23 A. Yes, sir.

24 Q. In the event that you hold a position, either way,
25 that is not the same as the other jurors would you be able to

1 hold fast to your positions as you discuss it with the --

2 A. Yes, sir.

3 THE COURT: Sustained. Again, remember, we can't
4 put the question in terms of pitting one juror against the
5 other jurors.

6 MR. YOUNG: Your Honor, I believe that in
7 Mr. Myers' argument he stated that he would not have a
8 problem with asking them if they could hold their independent
9 decisions but not given a hypothetical.

10 MR. MYERS: No, sir. I didn't say anything about
11 holding positions, and I know I had to object to all that
12 language.

13 THE COURT: Well, basically, as you recall, I
14 indicated we can ask a juror do they understand that they are
15 to make their own findings as to the facts in the case as a
16 juror.

17 MR. YOUNG: Okay.

18 BY MR. YOUNG:

19 Q. You understand that each juror has the right to
20 make their own decision as to what they think is the
21 appropriate punishment?

22 A. Yes, sir.

23 Q. And discuss it as a group?

24 A. Yes, sir.

25 Q. And bring that decision out to the Court; you

1 understand that?

2 A. Of course, yes.

3 Q. And if you decide that that appropriate punishment
4 is the death penalty you understand that you would have to
5 sign onto the death sentence form; you understand that?

6 A. Yes, sir.

7 Q. Is there anything about that that poses any
8 problems to you?

9 A. No, sir.

10 Q. Understanding that another jury at some other time
11 have convicted Mr. Bennett of murder, is there anything about
12 that that causes you to form an opinion as to what you
13 believe the appropriate punishment should be?

14 A. No, sir.

15 Q. You are the type of person that would have to hear
16 both sides of it?

17 A. Yes, sir.

18 Q. The good and the bad?

19 A. Yes, sir.

20 MR. YOUNG: Thank you. That's all we can ask.

21 THE COURT: Anything else from the State?

22 MR. MYERS: No, sir.

23 THE COURT: Let me ask you to step just outside the
24 door, okay?

25 MS. QUAETHEN: Okay.

1 (WHEREUPON, Juror Quaethem leaves the
2 courtroom.)

3 THE COURT: What's the State's position on this
4 juror?

5 MR. MYERS: Submit she's qualified.

6 THE COURT: Defense?

7 MR. YOUNG: She's qualified, Your Honor.

8 THE COURT: I find she is qualified.
9 Let's ask her to step back in.

10 (WHEREUPON, Juror Quaethem enters the
11 courtroom.)

12 THE COURT: Ms. Quaethem, I've determine you'd be
13 qualified to sit as a juror in this case. So what I'll ask
14 you to do is to come back Wednesday at 2:30. Well, actually,
15 I'm going to change.

16 Counsel, let me go over with you in just a moment
17 and tell you what I'm going to do in a minute. I'm going to
18 change the time to have the jurors come back to nine o'clock
19 on Wednesday morning. Nine o'clock Wednesday morning. And I
20 don't think I've told any of you this. I'll go into details
21 in just a minute.

22 I'll ask you to come back Wednesday morning at
23 nine o'clock, okay?

24 MS. QUAETHEM: Okay.

25 THE COURT: Now, what you do is when you come back

1 I'm going to ask you to bring bags packed for as much as a
2 week, maybe not that much, but a few days, say four or five
3 days in a motel. And just leave the bags in the car, and if
4 you do wind up on the jury somebody will get the bags for you
5 and take you, okay. The jury will be sequestered, of course,
6 during the trial.

7 MS. QUAETHEM: Yes, sir.

8 THE COURT: Now, when you come back, come back here
9 to this courtroom and just come to the middle section, okay?

10 MS. QUAETHEM: Yes, sir.

11 THE COURT: And you'll have about 35 or 40 other
12 people there, and we'll pick the jury from that group, all
13 right. Now, until that time it's still very important that
14 you not talk with anybody about the case. Of course, be sure
15 and let your family know what you're doing but just don't
16 talk in any detail about the case. And if you would, be sure
17 to stay away from any news; no newspaper, no news on
18 television or radio.

19 MS. QUAETHEM: Okay.

20 THE COURT: With that in mind, we'll see you
21 Wednesday morning nine o'clock, bags packed. Thank you,
22 ma'am.

23 (WHEREUPON, Juror Quaethem leaves the
24 courtroom.)

25 THE COURT: Counsel, I hope I'm not being too

1 optimistic about it but I don't see any problem with maybe
2 having the jury come back at nine Wednesday morning. What I
3 thought I'd do is this, let's go ahead and have them come
4 back in the event -- I don't know how tomorrow will go, but
5 in the event things go fairly well let's have them come back
6 at nine so that we could be at least prepared to go forward
7 at that time.

8 Now, if we're don't have enough then we can do what
9 we have to do and maybe have them come back another time.
10 And while I hate to inconvenience them I would hate for us to
11 be in a position say by Tuesday evening to get going then
12 have to wait until later in the next day to do it. So it
13 would be better if we can at least be prepared to come back
14 Wednesday morning at nine o'clock.

15 Any problem with that from the State?

16 MR. MYERS: No, sir.

17 THE COURT: The defense?

18 MR. FLOYD: No, Your Honor.

19 THE COURT: And again, we'll keep up with it as we
20 go, obviously.

21 All right, let's bring the next jury in, please.

22 MR. GRAHAM: Your Honor, before we bring Mr. Gantt
23 in, I do have a certified copy of his convictions.

24 THE COURT: I've got it. I'm just going to ask him
25 if this is him.

1 Bring him in.

2 (WHEREUPON, Juror Number 130, Jerry E. Gantt,
3 a white male, enters the courtroom.)

4 JERRY E. GANTT, after having been duly sworn,
5 testified as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Just have a seat, Mr. Gantt. Mr. Gantt, let me ask
9 you first, I have a document here that indicates that Jerry
10 Earl Gantt convicted of possession with intent to distribute
11 marijuana. It doesn't have a date in here.

12 A. It's been about 14, 15 years ago, sir.

13 Q. Is that you? Okay. You understand that's a
14 conviction that has a maximum sentence of over a year in jail
15 so that would disqualify you from serving, unless you've been
16 pardoned. Have you been pardoned?

17 A. What do you mean by that?

18 Q. Pardoned is something you would actually apply for
19 to the Parole Board. In other words, to have your voting
20 rights restored. Have you ever had your rights revoked --
21 restored?

22 A. No, sir.

23 Q. So you understand that would disqualify you from
24 sitting on a jury in this case?

25 A. Yes, sir.

1 Q. This is you though; is that correct?

2 A. Yes, sir. Yes, sir.

3 Q. All right.

4 A. I didn't know it went that far back.

5 Q. Yes, sir, it goes back to whatever period of time.
6 You're free to go.

7 A. Thank you.

8 THE COURT: Thank you, sir.

9 (WHEREUPON, Juror Gantt was excused.)

10 THE COURT: Any exception to that from the State?

11 MR. MYERS: No, sir.

12 THE COURT: The defense?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: Let's go ahead and bring the next juror
15 in.

16 (WHEREUPON, Juror Number 175, Eddy A.

17 Huckabee, a white male, enters the courtroom.)

18 EDDY A. HUCKABEE, after having been duly
19 sworn, testified as follows:

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Mr. Huckabee, why don't you just relax and take it
23 easy. We're just going to have a little chat here, okay.
24 Nobody is going to give you a hard time. We're just going to
25 ask you some questions.

1 You understand, as you recall in this case I
2 mentioned this morning about the State has charged Mr. Johnny
3 Bennett with murder; do you understand that?

4 A. Yes, sir.

5 Q. And that, in fact, a previous jury has found
6 Mr. Bennett guilty of that murder. So he's been found guilty
7 of murder at this point.

8 A. Yes, sir.

9 Q. And you understand in South Carolina murder is
10 defined as the unlawful killing of another human being with
11 what is called malice aforethought. So that means that he
12 was convicted of killing someone with malice and that the
13 malice was done -- was there at the time of the murder or
14 before the time; do you understand that?

15 A. Yes, sir.

16 Q. Now, the law still says even in circumstances such
17 as that you cannot give the death penalty just for murder,
18 even though it's a malicious killing. There must be other
19 aggravating circumstance with it; do you understand that?

20 A. I do.

21 Q. And what we do is we have a hearing before the
22 jury, the trial before the jury to determine whether or not
23 the State can prove the aggravating circumstances; do you
24 understand that?

25 A. Yes, sir.

1 Q. Now, have you heard anything about this case
2 before?

3 A. No, sir, not that I know of.

4 Q. And I'm going to ask you if you know any of these
5 folks here. Let me just introduce them to you. This is
6 Mr. Bennett over here. Do you know Mr. Bennett or know of
7 him?

8 A. No, sir, I don't.

9 Q. This is Mr. Hervery Young and Mr. Wayne Floyd who
10 represent him. Do you know either of these gentlemen?

11 A. No, sir.

12 Q. Now, this is Mr. Donnie Myers, with the Solicitor's
13 Office, who will prosecuting the case. With him are
14 Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or know
15 of any of these gentlemen?

16 A. I know Mr. Donnie Myers.

17 Q. You know Mr. Myers. How do you know Mr. Myers?

18 A. We've been in Rotary Club together for 20 years,
19 probably.

20 Q. Would that affect your ability to give both sides a
21 fair trial in this case?

22 A. I don't think so.

23 Q. I know sometimes we say I don't think so; are you
24 sure of that?

25 A. Yes, sir, I'm sure.

1 Q. Now, we also gave you a list of potential witnesses
2 in the case; did you look that over?

3 A. Yes, sir.

4 Q. And do you have that there?

5 A. Yes, sir.

6 Q. Did you feel like you knew any of those or knew of
7 them? And let me ask you if you'll do this, identify them by
8 number, okay?

9 A. Number 59.

10 Q. Number 59. And how do you know or know of that
11 witness?

12 A. If he is the gentleman that -- pathologist.

13 Q. The pathologist. Yes, sir, that is correct.

14 A. Then I know him.

15 Q. And how do you know him?

16 A. I'm a veterinary, and we do some pathology work
17 also. So I know of him.

18 Q. You're a veterinarian?

19 A. Yes, sir.

20 Q. You say you've worked with him?

21 A. I wouldn't know him if he walked in the door.

22 Q. I'm sorry?

23 A. I wouldn't know him if he walked in the door, but
24 know of him and his reputation.

25 Q. Would that affect your ability to give both sides a

1 fair trial if he testified?

2 A. No, sir, I don't think so.

3 Q. In fact, by the fact you recognize that name, would
4 that cause you to give more credit or more weight to his
5 testimony than to anybody else?

6 A. That's difficult because from hearing and what I
7 know he's good, and I have to accept that. But I don't know
8 him personally.

9 Q. Yes, sir. Well, I understand. You understand
10 that, in essence, what we're going to tell the jury is that
11 it's up to you to determine who you believe and who you do
12 not believe?

13 A. And I think I can do that. I know I can do that.

14 Q. Right. In other words, you'll give weight to the
15 testimony?

16 A. Yes.

17 Q. You'll give testimony -- a witness's testimony
18 total weight, or you may give it no weight, or you may give
19 it somewhere in between?

20 A. I think I'll do what is fair.

21 Q. Right. And what I'm asking is this, by the fact
22 that you know who he is, is that going to cause you to give
23 his testimony more weight than you normally would?

24 A. No, sir.

25 Q. Who else would you know?

1 A. I don't know that I know any of these, but I
2 practiced medicine here for 25 years. If I would see a face.
3 I may recognize it. But as far as a name, I can't put a face
4 with any of them.

5 Q. Don't recognize any other names?

6 A. No, sir.

7 Q. Now, I believe I asked you before if you've heard
8 about the case and you indicated you had not; is that
9 correct?

10 A. Have not.

11 Q. Also we gave you a sheet that has three types of
12 jurors described; do you recall that?

13 A. Yes, sir.

14 Q. Do you feel that one of these categories would
15 apply to you?

16 A. Yes, sir, probably the last one.

17 Q. The third one?

18 A. Yes, sir.

19 Q. Let's go over that and be sure we're talking about
20 the same thing, okay. Now, this is a juror who says, in
21 essence, this, that even though a person has been found
22 guilty of murder, the malicious killing of another person,
23 that I still would not have my mind made up as to the proper
24 sentence. That I'd want to hear all those aggravating
25 circumstances I told you about, I'd want to hear all those

1 mitigating circumstances. In other words, I want to hear
2 everything that's not in Mr. Bennett's favor, I'd want to
3 hear everything in his favor. I'd want to hear all of them.

4 A. That's correct.

5 Q. And at that point I still don't have my mind made
6 up.

7 A. That's correct.

8 Q. I want to hear the Judge tell me the law. I want
9 the Judge to tell me the law, and only after all that, only
10 after I've heard all those aggravating and mitigating
11 circumstances, only after the Judge has told me the law then
12 is when I want to decide the proper sentence. Is that what
13 you're saying?

14 A. That's the way I feel, yes, sir.

15 Q. Now, this juror also says that if I determine that
16 a life sentence is appropriate I could give a life sentence.

17 A. Yes, sir.

18 Q. And if I determine that a death sentence is
19 appropriate I could give a death sentence.

20 A. Yes, sir.

21 Q. In other words, this juror says it just depends on
22 the circumstance.

23 A. Yes, sir.

24 Q. Is that what you're saying?

25 A. Yes, sir.

1 Q. Now, the law also says this, that if a jury gives a
2 death sentence that each juror, in other words, all 12 jurors
3 must sign a form saying that they have given the death
4 sentence. And if you were on a jury, determined it was
5 appropriate to give the death sentence, would you be able to
6 sign that form?

7 A. Yes, sir.

8 Q. So basically going through everything that we've
9 talked about here -- and let me ask you this. I didn't
10 mention this before when I was telling you about the
11 solicitors. Have you ever had any dealings with the
12 Solicitor's Office?

13 A. No, sir.

14 Q. None. Not as a victim, or witness, or anything
15 like that?

16 A. No, sir.

17 Q. Do you know of any reason why you could not give
18 both sides a fair trial?

19 A. No, sir, I don't.

20 THE COURT: Okay. Let me ask if you'll answer any
21 questions the lawyers have. Both sides are going to have a
22 few questions for you.

23 Mr. Riddle?

24 VOIR DIRE EXAMINATION

25 BY MR. RIDDLE:

1 Q. How are you, Mr. Huckabee?

2 A. Fine, sir.

3 Q. My name is Dayton Riddle, I'm Deputy Solicitor here
4 in Lexington. I just got a couple questions I need to ask
5 you.

6 A. Sure.

7 Q. I just want to make sure we're on the same page as
8 it were. As I understood what you were telling the Judge
9 you're in that third category?

10 A. I feel so.

11 Q. And that third category is the kind of person that
12 thinks the death penalty is appropriate sometimes and thinks
13 life imprisonment is appropriate sometimes.

14 A. That's correct.

15 Q. Does that sum you up pretty good?

16 A. Yes, sir, I think so.

17 Q. And as you sit here today you don't know anything
18 about this case?

19 A. No, sir, I really don't.

20 Q. And I believe that third category is the person who
21 says I've got to hear all of the aggravating circumstances,
22 the bad things about the defendant, the bad things about the
23 defendant, bad things about the crime; and all of the
24 mitigating circumstances, good things about the defendant,
25 good things in his background before I decide what the

1 appropriate sentence is. Is that fair to say?

2 A. Yes, sir.

3 Q. And that's the category you fit in?

4 A. Yes.

5 Q. You understand that in a capital case, a death
6 penalty case, the jury actually gives the sentences?

7 A. Yes, sir.

8 Q. Ordinarily, Judge Westbrook would do the sentencing
9 in let's say a DUI case, or a burglary case, or something
10 like that.

11 A. Yes, sir.

12 Q. And a jury's job would be over after they heard the
13 evidence about guilty or not guilty, right?

14 A. Yes, sir.

15 Q. What the Judge does in those kinds of cases, he may
16 say bring the fellow around. He may say, Solicitor, tell me
17 something about it. And I might tell him about his prior
18 record, might tell him about some aggravating things about
19 that particular case. And he might say, Defense Lawyer, tell
20 me something about it. The defense lawyer tells the Judge
21 something good about him, something that would go toward
22 giving him a lesser sentence; you understand that?

23 A. Yes, sir.

24 Q. And then, of course, the Judge in that kind of case
25 would hand down the sentence that he thought was appropriate.

1 In a death penalty case we have the jury giving out the
2 sentence. So that's why we have this trial here, so that we
3 can tell the jury, the people that are sentencing, bad things
4 about the defendant, prior record, circumstances of the
5 crime, that type of information. You'll hear good things
6 about the defendant as well. Then what would happen after
7 that is the Judge will tell you what the law that you should
8 apply in this case is; you understand that?

9 A. Yes, sir.

10 Q. And after you've heard all those good things and
11 bad things you would apply the law to the facts that you
12 determine them to be, and that's how you would arrive at your
13 verdict. Is there anything about you that would prevent you
14 from listening to all of the bad things and all of the good
15 things and considering all of the evidence and testimony that
16 would come from that chair you're seated in now?

17 A. I don't know of anything.

18 Q. And there's nothing about you that would prevent
19 you from applying the law that the Judge would give to you?

20 A. I don't know of anything.

21 Q. And you'd do that in a good conscientious matter?

22 A. I think I would.

23 Q. Now, the Judge also explained to you briefly about
24 the death penalty verdict form and the fact that it has 12
25 names. You know, ordinarily the foreman speaks for the jury

1 or the foreperson?

2 A. Yes.

3 Q. But in a death penalty case if the jury thinks the
4 death penalty is appropriate all 12 people have to sign; you
5 understand that?

6 A. Yes, sir.

7 Q. That wouldn't cause you any difficulty; if you
8 thought that was the appropriate thing you could sign?

9 A. If I thought that was appropriate and you wanted me
10 to sign it, yes, that's what I would do.

11 Q. Right. And if that's what your decision was
12 signing your name would not change your decision?

13 A. No, sir. No, sir.

14 Q. Mr. Huckabee, is there anything about your
15 background and upbringing, beliefs, that would prevent you
16 from being fair and impartial in this case?

17 A. I know of nothing.

18 MR. RIDDLE: Thank you, sir. That's exactly what
19 we're looking for.

20 THE COURT: All right. Defense?

21 VOIR DIRE EXAMINATION

22 BY MR. FLOYD:

23 Q. Good afternoon, Dr. Huckabee. My name is Wayne
24 Floyd, and I'm one of the attorneys for Johnny Bennett.

25 A. Yes, sir.

1 Q. Dr. Huckabee, you say you've known Mr. Myers 20
2 years?

3 A. Approximately. I don't know how long we've been in
4 Rotary together.

5 Q. You all in the same social -- well, I wouldn't call
6 it social, service organization?

7 A. Yes, sir.

8 Q. And how often do you see each other?

9 A. Once a week.

10 Q. For about 20 years?

11 A. (Nodded.)

12 Q. Now, I couldn't hear everything you said.

13 A. Sorry.

14 Q. Did you say that you knew Dr. Sexton?

15 A. I know of him. I wouldn't know him if he walked in
16 the door. I just know of him because of his profession, and
17 that's it.

18 Q. And did I hear you say that you thought highly of
19 him from what you've heard?

20 A. From what I've heard, the outside opinion is, yes,
21 I would think highly of him.

22 Q. Now, do you understand that in this trial
23 Mr. Bennett has already been found guilty by another jury of
24 the crime of murder?

25 A. Yes, sir.

1 Q. And this trial is simply to consider the
2 punishment?

3 A. Yes, sir.

4 Q. Does that give you any kind of problem?

5 A. No, sir.

6 Q. How would you describe your opinions on the death
7 penalty?

8 A. You mean how do I feel about giving the death
9 penalty?

10 Q. Yes, sir.

11 A. I feel if the crime is such that that person who
12 committed it doesn't need to be around, you know, that's kind
13 of it in a nutshell for me.

14 Q. Now, you were a veterinarian; is that correct?

15 A. That's correct.

16 Q. And in your practice of veterinarian medicine, did
17 you often have to put animals to sleep?

18 A. Yes, sir, euthanasia.

19 Q. Euthanasia. Does the fact that you -- how many
20 years did you participate in that, in veterinary science?

21 A. I finished in 1971. So that's what, 27, 28 years.

22 Q. So over that period of time how many animals would
23 you estimate that you have euthanized?

24 A. I couldn't tell you, sir, hundreds.

25 Q. Hundreds. Do you have an opinion as to whether or

1 not you're dealing with death on such a daily fashion it
2 might somehow impact upon the decision?

3 A. Do I become hardened to it; is that what you're
4 asking?

5 Q. I guess that would be a way of saying it.

6 A. I can't say that I am hardened to it because it was
7 always sad, but I felt that I was relieving something when I
8 did that, either an animal had been hit by a car, or was in
9 terminal illness. I don't know what you're asking other than
10 that, but it's not my favorite thing to do, no. But I see a
11 need for that in the animal world.

12 Q. I understand that. I'm not criticizing that. I
13 guess I'm just exploring to see if somehow your daily
14 experience with death might somehow impact upon a decision of
15 life and death of a human.

16 A. Sure.

17 Q. As we would have here.

18 A. And to be perfectly honest with you, the first one
19 hurt a lot more than the second, or the third and as you got
20 along, but still I have a place in my heart for these
21 animals. If there was some way I could save them I would
22 save them.

23 Q. Do you feel that your experience in your profession
24 could have any impact upon your decision here in this
25 courtroom?

1 A. I don't believe so.

2 Q. Have you thought about that?

3 A. No, sir.

4 Q. After thinking about it for a few moments can you
5 say with absolutely certain -- absolute certainty that your
6 professional experience would in no way interfere with your
7 ability to determine whether Mr. Bennett should live or die?

8 A. I really don't think that it will.

9 Q. But can you say it with certainty?

10 A. I don't know that I can say it with certainty.

11 MR. FLOYD: Thank you. No further questions.

12 THE COURT: Any redirect from the State?

13 MR. RIDDLE: No, sir.

14 THE COURT: All right. Let me ask you to step just
15 outside the door for a second, okay.

16 (WHEREUPON, Juror Huckabee leaves the
17 courtroom.)

18 THE COURT: What's the State's position on this
19 juror?

20 MR. RIDDLE: He's qualified, Your Honor.

21 THE COURT: The defense?

22 MR. FLOYD: Your Honor, it's our position that he
23 would not be qualified. I think we got into an area there
24 and the question was whether there's anything about this
25 juror that would impair his ability to perform his functions

1 as a juror, and I think what he said was that he wasn't
2 certain that his professional experience of euthanizing
3 hundreds of animals over the years would not impact upon his
4 duties to serve as a juror in the question whether or not a
5 human's life would be taken. I think he said he believed it
6 wouldn't but he couldn't be certain that it wouldn't, and
7 since he couldn't be certain that it wouldn't impact or
8 impair his ability to function in this case then he would not
9 be a qualified juror.

10 THE COURT: Anything else from the State?

11 MR. RIDDLE: Your Honor, I don't believe that
12 that's the standard. The man was as honest as he could be
13 and straightforward as he can be. They asked him would that
14 have an affect. He says no, I don't think. Can you say that
15 with absolute certainty? He said, you know, I can't --
16 basically what I took it to mean is I can't tell you anything
17 with absolute certainty.

18 But, Your Honor, if you have any questions I would
19 submit that you need to ask him questions yourself and make
20 your own determination. But I think and it's our position
21 that he indicated that he could follow the law, follow his
22 oath and that he could return a fair verdict in this case.

23 And, Your Honor, I would just submit that you
24 should ask him a couple follow-up questions if you have any
25 concerns about that. But he was as straight up as he could

1 be about it. I don't think it would have an impact on him.

2 THE COURT: I think that's a good idea. Let me
3 follow up some, and I'll give you both a chance to follow up
4 it you want to.

5 Let's bring him back in.

6 (WHEREUPON, Juror Huckabee enters the
7 courtroom.)

8 FURTHER EXAMINATION

9 BY THE COURT:

10 Q. On the last area you were talking about with
11 Mr. Floyd, can you clarify a little bit for me? He was
12 asking if you could say whether or not the fact that you've
13 euthanized animals would affect you in a case such as this.
14 And the last question, as I understand, was could you say so
15 with absolute certainty, and you indicated you couldn't say
16 so with absolute certainty. Can you clarify on that?

17 A. I don't know that I can because the conversation
18 started with was I hardened to euthanasia, and my comment to
19 that was that the second was maybe easier than the first.
20 The circumstances surrounding someone's tired of the animal
21 and it's not a good pet, it would bite somebody, would I put
22 it to -- would I euthanize it? And, yes, I would.

23 Would that impair my judgment on Mr. Bennett? I
24 honestly don't think that it would, and I also understand it
25 should be beyond a shadow of a doubt. But in my mind, I

1 really at this point, I don't feel that that would interfere.

2 Q. Well, let me ask if you understand this. You
3 understand the law says this, that when you're in the jury
4 box making a decision what's going to happen is I'm going to
5 charge the jury as to the law. I'm going to tell them what
6 the standards of law are and expect them to follow the
7 standards of the law; you understand that?

8 A. Yes, sir.

9 Q. And do you feel like you would be able to follow
10 the law as I gave it to you?

11 A. Yes, sir.

12 Q. Okay. And you understand, of course, in essence
13 what law says, first of all, that before the jury can
14 consider, even consider the death penalty they must first
15 find that the State has proven beyond a reasonable doubt that
16 there was at least one aggravating circumstance along with
17 the murder; you understand that?

18 A. Yes, sir.

19 Q. And do you feel that considering the totality of
20 your background, would you be able to, in essence, put the
21 State to that test and require them to at least prove an
22 aggravating circumstance beyond a reasonable doubt before you
23 even thought about the death penalty?

24 A. Yes, sir.

25 Q. And I will also instruct the jury that even if they

1 find there was an aggravating circumstance that they can even
2 still give a life sentence for any reason or no reason,
3 depending on how they approach it. Now, of course, I'm not
4 asking whether you would do that, and I don't want to do
5 that, but can you at least follow those instructions and at
6 least consider that as an alternative?

7 A. Yes, sir. That's my career, is following
8 instructions.

9 Q. Right, I understand. And also, of course, I would
10 instruct the jury that they must consider all of the
11 mitigating circumstances, in other words, everything in
12 Mr. Bennett's favor before they make the decision; would you
13 be able to do that also?

14 A. Yes, sir.

15 Q. So again, as I understand, you feel like you'd be
16 able to follow the instructions that I give to the jury; is
17 that correct?

18 A. Yes, sir.

19 THE COURT: Any questions from the State?

20 MR. RIDDLE: No, sir.

21 THE COURT: Defense?

22 FURTHER EXAMINATION

23 BY MR. FLOYD:

24 Q. Dr. Huckabee, there was a comment that you made, if
25 I've got it down right, that if the crime is such that if a

1 person committed it that they shouldn't be around?

2 MR. MYERS: Wait a minute. I think this goes back
3 kind of like reply. I think he's going into that area now.
4 Do we open the door and start all over again? I thought this
5 was in reply to what he was bringing up about euthanasia --

6 MR. FLOYD: Well, yes --

7 MR. MYERS: I thought this was on reply, and now
8 we're going to start back all over again.

9 THE COURT: Yes, sir, I understand. That was
10 intended as such. I'll let him go into it though.

11 Go ahead, Mr. Floyd.

12 MR. FLOYD: Yeah, because I'm trying to see if
13 that's somehow related to what we're dealing with.

14 BY MR. FLOYD:

15 Q. Do I need to tell that to you again?

16 A. Well, I think I was speaking of euthanasia of a
17 vicious animal. I had not applied that to a human being, as
18 it was.

19 Q. Was there a comment like --

20 A. And we were talking about my feelings toward
21 euthanasia of an animal, and my comment was that the owner
22 didn't want the animal anymore or the animal had become too
23 vicious to be with, in which case you can't place it in a new
24 home. So my opinion was euthanasia was the best course of
25 action.

1 Q. And there wasn't a statement about if a crime was
2 such that a person shouldn't be around anymore; do you recall
3 making a statement?

4 A. If I said that I don't recall. I was speaking at
5 that time about the animal.

6 MR. FLOYD: Thank you. No further questions.

7 THE COURT: Okay. Let me ask you to step back out
8 again.

9 MR. HUCKABEE: Sure.

10 THE COURT: We're going to keep you running here,
11 aren't we?

12 MR. HUCKABEE: That's all right.

13 (WHEREUPON, Juror Huckabee leaves the
14 courtroom.)

15 THE COURT: Anything else from the State on this?

16 MR. RIDDLE: No, sir. He falls squarely within the
17 parameters of Wainwright, Your Honor.

18 THE COURT: And the defense?

19 MR. FLOYD: Your Honor, it's our position that he's
20 not qualified to serve. I think it's clear that he has at
21 best an ambivalence about death, having had to deal with it
22 in his practice over the years. And though you can call this
23 death euthanasia and this death murder it's still death, and
24 the question is can he separate his feelings toward death,
25 which is a common occurrence, a killing is a common

1 occurrence in his profession. Can he separate that from this
2 important decision we make about one individual's life, and I
3 think that the answers to his questions overall would be that
4 his experience in his profession of several hundred acts of
5 murder, euthanasia though, would impair his ability when
6 we're dealing with the sanctity of a human life.

7 THE COURT: I think the problem is that we're
8 getting back to that proverbial mixing of the apples and the
9 oranges. The issue of euthanasia, while it may impact to
10 some degree on it, at least in terms of attitude toward
11 death, certainly carries with it certain distinctive
12 differences as opposed to the imposition of a death sentence,
13 or as would be involved with a jury in this case.

14 The juror in his last testimony did indicate that
15 he could follow the instructions of the Court, may have been
16 vague a little earlier on some parts, but again, the totality
17 of his testimony is that he could follow -- that whatever his
18 feelings about death are that it would not either prevent or
19 substantially interfere with his ability to carry out his
20 oath as a juror.

21 Again, I agree with Mr. Riddle on this. I think he
22 does fit squarely within Wainwright vs. Whitt. I find he is
23 qualified.

24 Ask him to step in.

25 (WHEREUPON, Juror Huckabee enters the

1 courtroom.)

2 THE COURT: Dr. Huckabee, I've determined you would
3 be qualified to sit on a jury in this case if you're
4 selected. So what I'll ask you to do is to be back Wednesday
5 morning at nine o'clock, okay. That's the day after tomorrow
6 at nine o'clock. If you would, bring bags packed for as much
7 as a week in a motel, the jury will be sequestered during the
8 trial. Now, leave the bags in your car, and if you are
9 picked on the jury somebody will go get the bags for you.

10 MR. HUCKABEE: Yes, sir.

11 THE COURT: Now, also very important that you not
12 talk about the case between now and then. Certainly you want
13 to let your family know where you're going to be and what's
14 going on, but just be sure not to talk about the case. And I
15 would also again ask that you stay away from any news; no
16 news on television or radio, no newspapers, stay away from
17 all of that.

18 MR. HUCKABEE: Wednesday morning at nine o'clock?

19 THE COURT: Wednesday morning at nine o'clock, bags
20 packed.

21 MR. HUCKABEE: And you expect it to last a week?

22 THE COURT: Sir?

23 MR. HUCKABEE: And you expect it to last a week?

24 THE COURT: It may not last a full week. It may be
25 a few days sort of that. But I think it will be safe to pack

1 for as much as a week, just to be safe. It probably will be
2 no more than -- I think it will no more than four or five
3 days, probably.

4 MR. HUCKABEE: So maybe Monday or Tuesday?

5 THE COURT: Should be over by then, I would think.
6 But again, you need to be at least ready for that much.

7 MR. HUCKABEE: Yes, sir.

8 THE COURT: Okay. See you Wednesday morning.
9 Thank you, sir.

10 (WHEREUPON, Juror Huckabee leaves the
11 courtroom.)

12 THE COURT: Let's go ahead and bring the next one
13 in.

14 (WHEREUPON, Juror Number 123, Lynda M.
15 Franklin, a white female, enters the courtroom.)

16 LINDA M. FRANKLIN, after having been duly
17 sworn, testified as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. Ms. Franklin, just have a seat and relax, okay.
21 Let me note, first of all, I noted from your information that
22 you have three children, 14, 12 and 10; is that right?

23 A. Yes, sir.

24 Q. Now, in this case the jury is going to be
25 sequestered. In other words, they'll be in a motel the

1 entire time for as much as a week, maybe no more than four or
2 five days. During that time, of course, you would not be
3 able to come home. You would be in a motel over night, and
4 then stay at night and then come back to court the next
5 morning until the case is over with. Is that going to cause
6 you any great difficulty being able to arrange care for your
7 children during that time?

8 A. No, sir.

9 Q. You certain there's no problem?

10 A. I'm certain.

11 Q. All right. You need to be sure and let me know
12 because once we've qualified you it would be hard to get you
13 out of it, you understand?

14 A. Okay.

15 Q. You feel you could do that, though?

16 A. Yes, sir.

17 Q. You know in this case the State has charged
18 Mr. Johnny Bennett with murder. As I told you earlier, in
19 fact, a previous jury has found Mr. Bennett guilty of murder;
20 do you understand that?

21 A. Yes, sir.

22 Q. Now, in South Carolina murder is defined as the
23 unlawful killing of another human being with what is called
24 malice aforethought. In other words, the jury has convicted
25 Mr. Bennett of killing someone, killing Mr. Benton Darrell

1 Smith on November 27 of 1990, and has found him guilty of
2 doing so maliciously, and that the malice was at or before
3 the time of the killing; do you understand that?

4 A. Yes, sir.

5 Q. Now, the law also says though that the fact that a
6 person is convicted of murder is not enough for the death
7 penalty; do you understand that?

8 A. Yes, sir.

9 Q. The law says there has to be more, that
10 accompanying the murder must be certain aggravating
11 circumstances. There must be at least one, and it sets out
12 what those could be; do you understand that?

13 A. Yes, sir.

14 Q. So that's why we would now impanel the second jury.
15 The second jury would determine whether or not the State can
16 prove those aggravating circumstances; you understand?

17 A. Yes, sir.

18 Q. And, of course, in the process the jury will
19 consider not just the aggravating circumstances but they'll
20 also consider mitigating circumstances. In other words,
21 things in Mr. Bennett's favor; do you understand that?

22 A. Yes, sir.

23 Q. So you feel like you understand all of that so far?

24 A. Yes, sir.

25 Q. Now, have you heard anything about this case

1 before?

2 A. No, sir.

3 Q. Don't know anything about it?

4 A. Don't know anything about it.

5 Q. All right. And let me introduce you to some folks
6 involved. This is Mr. Donnie Myers, he's the Solicitor.
7 With him, trying the case with him will be Mr. Dayton Riddle,
8 who is right here; and Mr. Shawn Graham, who is over here.
9 Do you know or know of any of these gentlemen?

10 A. No, sir.

11 Q. Okay. Now, this is Mr. Bennett right over here.

12 THE COURT: Just hold your hand up a little bit,
13 Mr. Bennett.

14 Q. Do you know Mr. Bennett or know of Mr. Bennett?

15 A. I went to school with him.

16 Q. You went to school with Mr. Bennett?

17 A. Yes, sir.

18 Q. Would that prevent you from giving both sides a
19 fair trial in this case?

20 A. No, sir.

21 Q. That wouldn't be a factor at all; is that correct?

22 A. No, sir.

23 Q. You still feel like you could give both sides a
24 fair trial?

25 A. Yes, sir.

1 Q. Now, this is Mr. Hervery Young, who is one of his
2 attorneys; and Mr. Wayne Floyd was here, he stepped out just
3 for a minute. Do you know or know of Mr. Young or Mr. Floyd?

4 A. No, sir.

5 Q. You know we also gave you a list of witnesses. Did
6 you get a chance to look at that list of witnesses?

7 A. Yes, sir.

8 Q. And did you know any of those or know of any of
9 those witness on the list?

10 A. I don't know any of them personally but --

11 Q. Now, do this, if you would. Let me go down the
12 list with you. If you know or know of any of them don't give
13 us the name but give us the number, okay?

14 A. Okay. Number 6.

15 Q. Number 6. And how do you know this person?

16 A. Just went to school with him.

17 Q. Went to school with him?

18 A. Uh-huh.

19 Q. And, again, would that affect your ability to give
20 both sides a fair trial if he testified?

21 A. No, sir.

22 Q. In other words, by the fact that he testified,
23 would you tend to give his testimony more weight or more
24 credibility than anybody else just because you know him?

25 A. No, sir.

1 Q. Anyone else?

2 A. 15.

3 Q. All right. And how do you know that witness?

4 A. Went to school with him.

5 Q. And, again, would that affect your ability to give
6 both sides a fair trial?

7 A. No, sir.

8 Q. Anyone else?

9 A. 21.

10 Q. All right. And how do you know this person?

11 A. He was the principal in the school that my children
12 attended.

13 Q. And would that affect your ability to give both
14 sides a fair trial?

15 A. No, sir.

16 Q. Anyone else?

17 A. 48.

18 Q. All right. How do you know that person?

19 A. We rode the same school bus.

20 Q. I'm sorry?

21 A. We rode on the same school bus.

22 Q. All right. And would that affect your ability to
23 give both sides a fair trial if that particular person
24 testified?

25 A. No.

1 Q. Anyone else?

2 A. 49.

3 Q. Okay. How do you know that person?

4 A. I've just heard his name before. I don't --

5 Q. Okay. Would that affect your ability to give both
6 sides a fair trial?

7 A. No, sir.

8 Q. Anyone else?

9 A. 76.

10 Q. All right. How do you know him?

11 A. He used to dine at a restaurant where I worked.

12 Q. Would that affect your ability to give both sides a
13 fair trial?

14 A. No.

15 Q. Anyone else?

16 A. Number 86.

17 Q. How do you know her?

18 A. She was the principal at the school my children
19 attended.

20 Q. And would that affect your ability to give both
21 sides a fair trial?

22 A. No, sir.

23 Q. Anyone else?

24 A. 99. I've heard that name before, but I don't --

25 Q. I'm sorry?

1 A. I've heard that name before, but I don't know
2 where.

3 Q. If she testified would that affect your ability to
4 give both sides a fair trial?

5 A. No, sir.
6 108, principal at the school.

7 Q. All right. And again, would that affect your
8 ability to give both sides a fair trial?

9 A. No, sir.

10 Q. All right. Anyone else?

11 A. 109.

12 Q. All right.

13 A. Coach at the school.

14 Q. And would that affect your ability to give both
15 sides a fair trial?

16 A. No, sir.

17 130.

18 Q. All right. How do you know him?

19 A. He owns a gas station in the town where I live.

20 Q. You're going to need to speak up a little bit more,
21 okay. How do you know number 130 again?

22 A. He owns a gas station in the town where I live.

23 Q. Would that affect your ability to give both sides a
24 fair trial?

25 A. No, sir.

1 And 140.

2 Q. And how do you know him?

3 A. Him, his child and my child are on the same little
4 league team.

5 Q. All right. And if he testified would that affect
6 your ability to give both sides a fair trial?

7 A. No, sir.

8 Q. On all the -- anyone else?

9 A. No.

10 Q. On all of these you've identified -- and I gather
11 you're from the Swansea area?

12 A. Yes.

13 Q. If they all -- if any of these testified you're
14 saying that you wouldn't tend to give them more weight or
15 more credibility just because you knew them --

16 A. No, sir.

17 Q. -- is that right? Anyone else on this list at all?

18 A. No.

19 Q. Did you also get a chance to look at this other
20 sheet that we gave you that described three types of jurors?

21 A. Yes, sir.

22 Q. And do you feel like one of these would apply to
23 you?

24 A. Yes, sir.

25 Q. Which one is that?

1 A. The third one.

2 Q. The third. Now, that's the juror who says that
3 even though a person has been found guilty of murder that
4 they would not have their mind made up. This juror says that
5 I would want to hear all of those aggravating circumstances,
6 I want to hear all those mitigating circumstances, I want the
7 Judge to tell me the law and then and only then would I be
8 ready to decide the proper sentence. Is that what you're
9 saying?

10 A. Yes, sir.

11 Q. This juror also says that if the facts justified a
12 life sentence I could give a life sentence. If the facts
13 justified a death sentence I can give a death sentence. It
14 would just depend on the circumstance.

15 A. Yes, sir.

16 Q. And the law also says this, that if the jury gives
17 a person a death sentence that each juror must sign a form
18 saying I have given the death sentence. If you were on the
19 jury and had determined that a death sentence was appropriate
20 would you be able to sign that form saying that you had given
21 the death sentence?

22 A. Yes, sir.

23 Q. Do you know of any other reason why you could not
24 give both sides a fair trial in this case?

25 A. No, sir.

1 THE COURT: Let me ask you if you would answer any
2 questions the attorneys have, okay.

3 Any questions, Mr. Myers?

4 MR. MYERS: Just a few.

5 VOIR DIRE EXAMINATION

6 BY MR. MYERS:

7 Q. Ms. Franklin, you were born and raised around the
8 Swansea area?

9 A. Yes, sir.

10 Q. And you knew a good many names on that list that
11 the Judge gave you; is that right?

12 A. Yes, sir.

13 Q. Now, some of those you said you had gone to school
14 with?

15 A. Yes, sir.

16 Q. And you also went to school with the defendant?

17 A. Yes, sir.

18 Q. Did you all have classes together?

19 A. I don't remember. I remember going to grade school
20 but I don't remember into high school so --

21 Q. So you just remember down in elementary school or
22 things like that?

23 A. Yeah.

24 Q. Now, did you know Benton Smith, the victim in this
25 case who was murdered?

1 A. No, sir.

2 Q. But other than that, you don't know anything about
3 this case; is that correct?

4 A. No, sir.

5 Q. Now, Ms. Franklin, I noticed on your form you've
6 never been on a jury panel before?

7 A. No.

8 Q. Have you ever been in this courtroom before today?

9 A. No, sir.

10 Q. All this kind of new to you?

11 A. Yes, sir.

12 Q. Ms. Franklin, the Judge has told you the jury in
13 this case is going to hand down a sentence, life imprisonment
14 or the death penalty; you understand that?

15 A. Yes, sir.

16 Q. And he also told you that Mr. Bennett has already
17 been found guilty of murder; you understand that?

18 A. Yes, sir.

19 Q. The jury would have to take an oath that they would
20 try this case and return a sentence based only on what they
21 heard in this courtroom; could you do that?

22 A. Yes, sir.

23 Q. The Judge is also going to tell the jury they are
24 not to make up their mind of what's the right sentence until
25 they've heard everything, all the evidence and all law; could

1 you follow that?

2 A. Yes, sir.

3 Q. And you told Judge Westbrook you're in that third
4 category, that if all the facts, all the circumstances,
5 everything involved in the case, the law too, if the death
6 penalty was the right sentence you could vote for the death
7 penalty; is that right?

8 A. Yes, sir.

9 Q. But if life was the right sentence you could also
10 vote for life?

11 A. Yes, sir.

12 Q. So I take it from that then, Ms. Franklin, there's
13 nothing about your upbringing, or religious beliefs, or even
14 knowing the defendant that would prevent you from voting for
15 the death penalty?

16 A. No, sir.

17 Q. It would depend on the facts, circumstances and the
18 law of the case?

19 A. Yes, sir.

20 MR. MYERS: That's all we can ask of you. Thank
21 you, ma'am.

22 THE COURT: Defense?

23 VOIR DIRE EXAMINATION

24 BY MR. YOUNG:

25 Q. Ms. Franklin, this process that we're going through

1 is for the purpose of us getting to know what your feelings
2 are about the death penalty. Have you had the occasion to
3 ever discuss your views or your feelings about the death
4 penalty with anyone else?

5 A. Yes, sir.

6 Q. Can you tell us what those views and opinions are?

7 A. I believe in the death penalty in certain
8 circumstances when the conditions warrant.

9 Q. Okay. You stated that you went to school with
10 Mr. Bennett, correct?

11 A. Yes, sir.

12 Q. During the time that you would have went to school
13 with Mr. Bennett did you learn or form any opinions about him
14 as a person?

15 A. No.

16 Q. Had you heard anyone else referring to him in any
17 type of manner?

18 A. No, sir.

19 Q. The Judge explained to you that in making the
20 decision of death or life that the jury must return a
21 unanimous verdict of death.

22 A. Yes, sir.

23 Q. And if they make a decision that death is the
24 appropriate sentence that the jury will have to sign a
25 verdict form; so you understand that?

1 A. Yes, sir.

2 Q. And on that verdict form each juror would have to
3 sign their name.

4 A. Yes, sir.

5 Q. Understanding that you live in the Swansea area and
6 that you are familiar with Mr. Bennett, if you make the
7 individual decision and it is the jury's decision that death
8 is the appropriate sentence would it cause you any problems
9 to sign your name on that form?

10 A. No, sir.

11 Q. You have lived in the Swansea area?

12 A. All my life.

13 Q. Pretty much all your life. And you have never
14 heard anything about this incident involving Johnny Bennett?

15 A. No, sir.

16 Q. In making your decision as to what the appropriate
17 sentence would be in this case you understand that you will
18 have two choices to make, either life or death?

19 A. Yes, sir.

20 Q. And are you telling us that in order for you to
21 make your decision on the appropriate sentence that you would
22 have to hear all of the evidence?

23 A. Yes, sir.

24 Q. The good and the bad?

25 A. Yes, sir.

1 Q. And then and only then could you make your
2 decision?

3 A. Yes, sir.

4 MR. YOUNG: Thank you. That's all we can ask of
5 you.

6 THE COURT: Anything else from the State?

7 MR. MYERS: No, sir.

8 THE COURT: Let me ask if you'll step just outside
9 the door, okay.

10 (WHEREUPON, Juror Franklin leaves the
11 courtroom.)

12 THE COURT: What's the State's position on this
13 juror?

14 MR. MYERS: Submit she's qualified, sir.

15 THE COURT: Defense?

16 MR. YOUNG: She's qualified, Your Honor.

17 THE COURT: I find she is qualified.

18 Let's ask her to step in.

19 (WHEREUPON, Juror Franklin enters the
20 courtroom.)

21 THE COURT: Ms. Franklin, I have determined that
22 you would be qualified to sit as a juror in this case if
23 you're selected. So what I'll do is ask you to come back
24 Wednesday morning at nine o'clock, okay. Come back here into
25 the courtroom and just sit out here in this middle section.

1 And you'll be there with about 35 or 40 other jurors and
2 we'll pick the jury from that particular group.

3 MS. FRANKLIN: Okay.

4 THE COURT: Now, bring with you -- again, as I
5 said, have your bag packed for as much as a week in a motel.
6 It may not be the full week but at least be prepared for a
7 week. And leave the bags in your car. If you're picked on
8 the jury somebody will come and get the bags for you and take
9 them to the motel for you.

10 MS. FRANKLIN: Okay.

11 THE COURT: Now, until that time -- also, remember,
12 that's the day after tomorrow -- very important that you not
13 take with anybody about the case. Don't let anybody talk
14 with you about the case. You want to certainly let your
15 family know where you're going to be and what you're doing,
16 but again, stay away from talking about the case.

17 Also it's important that you stay away from the
18 news; no TV or radio news, and stay away from newspapers,
19 also. I know that's a lot to do over the next day and a half
20 but you need to do that, if you would. With that in mind,
21 we'll see you Wednesday morning at nine o'clock with your
22 bags packed.

23 MS. FRANKLIN: Okay.

24 THE COURT: Thank you, ma'am.

25 (WHEREUPON, Juror Franklin leaves the

1 courtroom.)

2 THE COURT: Call the next juror, please.

3 (WHEREUPON, Juror Number 316, Midgett E.

4 Shealy, a white female, enters the courtroom.)

5 MIDGETT E. SHEALY, after having been duly
6 sworn, testified as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Ms. Shealy, just relax and take it easy, okay. Let
10 me ask first, I'm asking a number of jurors this, do you have
11 any small children at all?

12 A. Yes, I do.

13 Q. How old are they?

14 A. My youngest is five.

15 Q. Five. Okay. Is that going to give you -- now, you
16 understand the jury in this case is going to be in a motel,
17 will be sequestered in the motel and will not go home for the
18 duration of the trial. We anticipate probably four or five
19 days, maybe as much as a week. Is that going to give you any
20 problems in terms of care of your children?

21 A. It might. My oldest is 15, he can help watch them.

22 Q. Do you feel like you need to be excused from the
23 case because of that?

24 A. Probably.

25 Q. Are you asking to be excused?

1 A. I guess.

2 Q. Well, you don't have to. In a case such as this,
3 obviously, I would never make somebody and would never try to
4 insist that anybody do it, wouldn't even suggest it, but what
5 I'm trying to do, frankly, is to avoid problems ahead of
6 time.

7 A. Right, I understand that.

8 Q. I don't want you to come back on Wednesday and say,
9 wait a minute, I've got to go to a motel, I don't have
10 anybody to take care of my children. But, in essence, I'm
11 asking do you feel like you need to be excused for that
12 reason?

13 A. Yes, sir, it will be the easiest.

14 THE COURT: Okay. Let me ask if you'll step just
15 outside the door a minute, okay.

16 (WHEREUPON, Juror Shealy leaves the
17 courtroom.)

18 THE COURT: What's the State's position on that?

19 MR. MYERS: Court's discretion.

20 THE COURT: Defense?

21 MR. YOUNG: Court's discretion.

22 THE COURT: She has four children, 15, 12, 5 and 8.
23 That's quite a range. I think it will only be fair to her to
24 do it. She may have a husband at home, but -- and, Counsel,
25 as you know, it has always been my policy in these cases to

1 give a mother of small children an out if she wants to, and
2 the Supreme Court basically has said that that sort of
3 latitude is appropriate in a case such as this where there is
4 a sequestration. So with that in mind, I'm going to excuse
5 this juror then.

6 (WHEREUPON, Juror Shealy enters the
7 courtroom.)

8 THE COURT: Ms. Shealy, we're going to excuse you
9 from having to sit in this case.

10 MS. SHEALY: Okay.

11 THE COURT: That will be a little bit too much for
12 you to have to do with four children.

13 MS. SHEALY: Right.

14 THE COURT: And with that in mind, we appreciate
15 you being with us, and you're excused and free to go.

16 MS. SHEALY: Okay. Thank you.

17 THE COURT: Thanks again.

18 (WHEREUPON, Juror Shealy was excused.)

19 THE COURT: Counsel, anything before we break for
20 the day?

21 MR. MYERS: Nothing from the State.

22 THE COURT: Defense?

23 MR. FLOYD: Nothing, Your Honor.

24 THE COURT: All right. Again, Madam Clerk, if we
25 could, let's please go ahead and get in touch with the other

1 jurors and ask them to be back at nine o'clock on Wednesday
2 morning, okay?

3 THE CLERK: Yes, sir.

4 THE COURT: We'll stand in recess until tomorrow
5 morning at nine.

6 (WHEREUPON, the trial of this case was
7 recessed for the day.)

8

9 ** END OF VOLUME I **

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I, Sharon L. Vizer, Official Court Reporter for the
11th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 10th day of July 2000.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

May 19, 2004



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 93-GS-32-2354

JOHNNY O. BENNETT,) ** VOLUME II **

DEFENDANT.)

JULY 11, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

SHAWN GRAHAM, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

WAYNE FLOYD, ESQUIRE

HERVERY YOUNG, ASSISTANT PUBLIC DEFENDER

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

VOLUME II

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Tuesday, July 11, 2000

THE COURT: All parties and attorneys are present in the courtroom, including the Defendant. Let me note that I didn't note for the record yesterday, and should have, yesterday, of course, Mr. Bennett was present for all proceedings.

Any exception to that, Mr. Floyd?

MR. FLOYD: No exception, Your Honor.

THE COURT: Mr. Bennett; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Thank you, sir.

Anything before we call the first juror from the State?

MR. MYERS: No, sir.

THE COURT: Defense?

MR. FLOYD: No, Your Honor.

THE COURT: Okay. Bring the first.

(WHEREUPON, Juror Number 259, Rudiger Plaumann, a white male, enters the courtroom.)

RUDIGER PLAUMANN, after having been duly sworn, testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Mr. Plaumann?

A. Plaumann.

1 Q. Mr. Plaumann. I'm sorry, I just couldn't read this
2 handwriting. I apologize.

3 A. It's all right.

4 Q. Mr. Plaumann, I want you to just relax, okay.
5 Nobody is going to give you a hard time. We just have a few
6 questions that we need to ask and really just a little bit of
7 a chat with you today.

8 A. Sure.

9 Q. First of all, you recall we told you -- let me ask;
10 have you talked with anybody about this case since yesterday?

11 A. No, I have not.

12 Q. Heard or seen anything on the news or anything at
13 all about it?

14 A. No, I did not.

15 Q. Now, you know we told you yesterday that this is a
16 case in which the State has charged Mr. John Bennett with
17 murder. They've charged him with the murder of Mr. Benton
18 Darrell Smith on November 27 of 1990 and have asked for the
19 death penalty. Do you recall that we told you yesterday that
20 a previous jury has found Mr. Bennett guilty of murder?

21 A. Yes.

22 Q. And let me be sure you understand that. When we
23 say murder, in South Carolina murder is defined as the
24 unlawful killing of another human being with what is called
25 malice aforethought. In other words, it wasn't manslaughter,

1 wasn't self defense. It was murder with malice attached to
2 it, and the malice was there either before or at the time of
3 the killing; you understand that?

4 A. Yes, sir.

5 Q. And, of course, South Carolina laws says that you
6 still cannot give the death penalty for murder, there must be
7 other aggravating circumstances attached to it; do you
8 understand that?

9 A. Yes, sir.

10 Q. And what happens then with Mr. Bennett having been
11 convicted of murder this jury is going to decide the sentence
12 and they are going to hear all the evidence about aggravating
13 and mitigating circumstances; do you understand that?

14 A. Yes, sir.

15 Q. Have you heard anything about this case before?

16 A. No, I have not.

17 Q. Never heard anything about it?

18 A. Not that I can recall.

19 Q. Sure. Sure. Well, if you did it wasn't enough to
20 strike anything in your memory I gather, right?

21 A. Correct.

22 Q. Now, let me introduce you to some of the folks
23 involved and see if you know or know of any of them, okay?

24 A. Sure.

25 Q. Now, this is Mr. Bennett right here, Mr. Johnny

1 Bennett. Do you know Mr. Bennett or know of Mr. Bennett?

2 A. No, I do not.

3 Q. He's represented by Mr. Wayne Floyd and Mr. Hervery
4 Young. Do you know Mr. Floyd or Mr. Young or know of either
5 of them?

6 A. Mr. Young was on the right?

7 Q. No, he's on the -- Mr. Bennett's right, he on the
8 left.

9 THE COURT: Raise your hand, Mr. Young.

10 Q. That's Mr. Young.

11 A. This gentleman on the right, he looks familiar.

12 Q. That's Mr. Floyd.

13 A. Okay. I think I've seen Mr. Floyd around a few
14 times.

15 Q. Do you have any sort of impression, a positive or
16 negative impression that would cause you any problem in
17 giving both sides a fair in this case?

18 A. No, it would not.

19 Q. Thank you, sir. Now, representing the State will
20 be the Solicitor's Office. This is Mr. Donnie Myers, the
21 Solicitor. With him are Mr. Dayton Riddle and Mr. Shawn
22 Graham. Do you know or know of any of these gentlemen?

23 A. I've seen the gentleman on the left, sir.

24 Q. That's Mr. Myers?

25 A. Yes, sir.

1 Q. Where have you seen him?

2 A. Can't really tell you, but he definitely looks
3 familiar.

4 Q. Okay. Was there anything you saw about him that
5 again caused any sort of impression, a positive or negative
6 impression that would give you any problems as a juror in
7 this case?

8 A. No.

9 Q. Now, you know we give you a sheet yesterday, a
10 couple things to look over. First of all, we gave you a
11 witness to look over. Did you look that over?

12 A. Yes, I did.

13 Q. Did you recognize any of the names on that?

14 A. A couple names.

15 Q. Now, don't give me the names, give me the numbers,
16 okay?

17 A. Numbers 30 and 43.

18 Q. Number 30. How do you know this lady?

19 A. I believe -- I'm not sure but that's the same name
20 that my ex used to work for at one particular place.

21 Q. Your ex-wife used to work for her?

22 A. Yes, sir.

23 Q. If she testified would that give you any problems
24 in giving both sides a fair trial?

25 A. No. No. Of course not.

1 Q. And who else?

2 A. Number 43, that's the name of someone I used to
3 work with. I don't know if it's the same person or not, but
4 that's the same name as someone I used to work with.

5 Q. If she testified, again, would that give you any
6 problems giving both sides a fair trial?

7 A. No, it would not.

8 Q. Anyone else on this list?

9 A. No, that's it, sir.

10 Q. We also gave you a sheet to look over that
11 described three types of jurors; do you remember that?

12 A. Yes.

13 Q. Did you look it over --

14 A. Yes, I did.

15 Q. -- and have some time to think about it?

16 A. Yes, I did.

17 Q. Do you feel like one of those categories of jurors
18 would apply to you?

19 A. I'd have to say yes, sir.

20 Q. Which is that?

21 A. I do not believe in the death penalty, sir.

22 Q. That's the second category?

23 A. Yes, sir.

24 Q. Now, I want to be sure you understand that the law
25 says you may not believe in it but if you can follow the

1 instructions of the Court and given it under appropriate
2 circumstances then you may still be qualified as juror. I
3 want to be sure.

4 What this juror says here says that under no
5 circumstances could this juror ever give the death penalty.
6 This juror -- I need you to listen closely. You know,
7 normally we're going to hear the aggravating circumstances,
8 we're going to hear the mitigating circumstances to decide
9 the appropriate sentence. This juror says I don't need to
10 hear any of those I'm just opposed to the death penalty and I
11 can't give anybody the death penalty, and I'm not going to do
12 it. That's what this juror says.

13 A. Yes.

14 Q. Now, is that accurate?

15 A. I would have to fall under that category, sir.

16 THE COURT: Let me ask if you'll answer any
17 questions the attorneys have, okay.

18 Anything from the State?

19 VOIR DIRE EXAMINATION

20 BY MR. MYERS:

21 Q. Mr. Plaumann?

22 A. Yes, sir.

23 Q. Mr. Plaumann, I couldn't hear too well back here,
24 somebody was coughing. But you're in that second category?

25 A. Yes, sir.

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. And your beliefs, whether they're religious, or
4 personal, or anything else is that, I think your words were,
5 you just didn't believe in the death penalty?

6 A. Yes, sir, that's what I said.

7 Q. Now, our law, Mr. Plaumann, says if the jury
8 decides the death penalty is the right sentence every juror
9 would have to sign their name onto a death penalty verdict.

10 A. Uh-huh.

11 Q. I take it based on your beliefs you couldn't sign a
12 death penalty --

13 A. No, I could not. I could not condemn the man.
14 Sorry.

15 THE COURT: Anything from the defense?

16 MR. FLOYD: Thank you, Your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. FLOYD:

19 Q. Good morning, Mr. Plaumann. How you doing?

20 A. Morning. How are you?

21 Q. My name is Wayne Floyd, and I represent Johnny
22 Bennett, along with Hervery Young. Have you ever felt that
23 -- have you ever read about a crime that you felt that was
24 such a horrible crime that the death penalty was appropriate?

25 A. My beliefs are that certain, you know, measures

1 have to be taken, okay, to take care of certain situations,
2 regardless of how vicious they are. It is not my belief that
3 I have to right to judge anyone, to take anyone's life in any
4 way. That's for God to decide, not me.

5 MR. FLOYD: Thank you. I respect your opinion.

6 Thank you, Your Honor.

7 THE COURT: Mr. Plaumann, we'll excuse you from
8 having to sit in this case, okay. Thank you for being with
9 us. Thank you for being forthright about that.

10 (WHEREUPON, Juror Plaumann was excused.)

11 THE COURT: All right. Let's bring the next juror
12 in, please.

13 Any exception to that ruling from the State?

14 MR. MYERS: No, sir.

15 THE COURT: The defense?

16 MR. FLOYD: No, Your Honor.

17 (WHEREUPON, Juror Number 322, Clifton L.
18 Simmons, Jr., a white male, enters the courtroom.)

19 CLIFTON L. SIMMONS, JR., after having been
20 duly sworn, testified as follows:

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. Mr. Simmons, just have a seat and relax, please,
24 sir, okay. Mr. Simmons, you remember we told you in this
25 case that the State has charged Mr. Johnny Bennett with

1 murder and has asked for the death penalty; do you remember
2 that?

3 A. I remember that.

4 Q. Do you recall that I've told you, of course, that
5 the previous jury has found Mr. Bennett guilty of murder?

6 A. I do remember that.

7 Q. So that means that this jury will decide only the
8 sentence in the case. You do not even get into the issue of
9 murder. They are only going to decide the appropriate
10 sentence; do you understand that?

11 A. I understand.

12 Q. Have you heard anything about this case before?

13 A. Not to my knowledge.

14 Q. Let me introduce you some of the folks involved and
15 see if you know any of them, okay. The State will be
16 represented by Mr. Donnie Myers, the Solicitor. And beside
17 him are Mr. Dayton Riddle and Mr. Shawn Graham. Do you know
18 or know of any of these gentlemen?

19 A. I've heard Mr. Myers name in the news, that's about
20 all.

21 Q. All right. Is there anything that you've heard
22 that would cause you or give you a particular positive or
23 negative feeling such that it would interfere with your
24 duties as a juror?

25 A. No, sir.

1 Q. Now, this is Mr. Bennett right here. Do you know
2 Mr. Bennett or know of Mr. Bennett?

3 A. No, sir, I do not.

4 Q. He's represented by Mr. Hervery Young on your left
5 there, and Mr. Wayne Floyd. Do you know Mr. Young or know of
6 Mr. Young or Mr. Floyd?

7 A. No, sir.

8 Q. Okay. We gave you a witness list to look over.
9 Did you get a chance to look that over?

10 A. Yes, sir, I did.

11 Q. Do you feel like you recognized any of the names on
12 there?

13 A. There's one name, but I'm not sure.

14 Q. You did? How about just give me the number, if you
15 would, okay.

16 A. 141.

17 Q. And how do you know this gentleman or know of him?

18 A. If I do know him I know him because he's a member
19 of Oliver Lodge in Swansea.

20 Q. Okay. And you're in the same lodge with him?

21 A. No, sir, I am not.

22 Q. You just know he's in that lodge; is that right?

23 A. Yes, sir.

24 Q. Now, by the fact he's in that lodge, if he were to
25 testify as a witness would that give you any problems giving

1 both sides a fair trial?

2 A. No, it wouldn't sway me either way.

3 Q. Wouldn't sway you either way, okay. Don't know any
4 of the other witnesses?

5 A. Not that I'm aware of.

6 Q. Now, Mr. Simmons, we also gave you a list to look
7 over that described three juror types; do you recall that?

8 A. I recall that.

9 Q. Did you get a chance to think about it?

10 A. Yes, sir.

11 Q. And do you feel like one of these types of jurors
12 would apply to you?

13 A. The third type.

14 Q. The third. All right. Let's go over just to be
15 sure we're talking about the same thing, okay. This a juror
16 who said that even though a person has been found guilty of
17 murder that their mind still would not be made up as to the
18 appropriate punishment. This juror says that I'd want to
19 hear all those aggravating facts, I want to hear all those
20 mitigating facts, I want the Judge to tell me the law and
21 then only after I've hear all that would I be able to decide
22 the appropriate sentence; is that correct?

23 A. That's correct.

24 Q. And this juror also says that if I determine that
25 life were the appropriate sentence I could give a life

1 sentence.

2 A. Yes, sir.

3 Q. If I determine that death were the appropriate
4 sentence I could give a death sentence.

5 A. Yes, sir.

6 Q. So in other words, you could give either sentence
7 depending on the circumstances of case; is that right?

8 A. Yes, sir.

9 Q. Now, do you know of any reason why you could not
10 give both sides a fair trial in this case?

11 A. No, sir, I do not.

12 Q. None at all, all right. And one other thing, too,
13 and I forgot to remember this. The law also says that if a
14 jury gives a defendant a death sentence then the jury must
15 sign a form, and each juror must sign a form saying that I
16 had agreed to give the defendant a death sentence. If you
17 were in on the jury and had determined that was the
18 appropriate sentence would you be able to sign that form?

19 A. Yes, sir.

20 Q. And again, you know of no other reason why you
21 couldn't give both sides a fair trial?

22 A. No, sir, I do not..

23 THE COURT: Let me ask you to answer any questions
24 the lawyers might have, okay. Both sides will have some
25 questions.

1 Mr. Myers?

2 VOIR DIRE EXAMINATION

3 BY MR. MYERS:

4 Q. Mr. Simmons, I saw on that form you sent back in
5 that you have never served on a jury up here before?

6 A. No, sir, I have not.

7 Q. Prior to yesterday had you ever even been in this
8 courtroom before?

9 A. I may have been in here on a field trip as a child
10 in grade school.

11 Q. But that's the only time?

12 A. Yes, sir.

13 Q. And I think you also said that you went through the
14 schools in Gaston and Swansea?

15 A. Yes, sir, I did.

16 Q. Mr. Simmons, in this case, as the Judge told you,
17 the defendant has already been found guilty. Normally when
18 someone is found guilty the Judge does the sentencing, and
19 the Judge would say you all tell me the good and the bad
20 about this person and about the crime and everything so I'll
21 know what the's the right sentence to hand down. In this
22 case, 12 men and women, the jury, will hand down a sentence,
23 not the Judge; you understand that?

24 A. I understand.

25 Q. And that's why we need this trial. The jury will

1 hear circumstances surrounding the crime, events relating to
2 the murder of Benton Smith. They'll also hear aggravating
3 circumstances, and the Judge will tell the jury what this
4 means later on. They'll hear mitigating circumstances, and
5 the Judge will tell the jury what that means. They'll hear
6 things about the defendant, maybe some good things, maybe
7 some bad things. Once they've heard all of this, the Judge
8 ~~will tell the jury what is law and they must come back with~~

9 life imprisonment or the death penalty; you understand all
10 that?

11 A. Yes, sir.

12 Q. Now, as of this moment you haven't made up your
13 mind what the sentence should be; is that correct?

14 A. No, sir, I have not.

15 Q. Because you haven't heard of anything?

16 A. No, sir, I have not.

17 Q. And being in that third category you have to hear
18 all the testimony and the law before you decide it?

19 A. Yes, sir.

20 Q. And after hearing all of the law, hearing all of
21 the testimony, I take it your position from what you told the
22 Judge is if a case warrants life imprisonment you could so
23 vote for life imprisonment?

24 A. Yes, sir.

25 Q. But if the death penalty is the appropriate

1 punishment and the death penalty is warranted you could so
2 vote for the death penalty?

3 A. Yes, sir, I could.

4 Q. And it would all depend on what you heard in the
5 courtroom; the evidence, the testimony and the law?

6 A. Yes, sir.

7 Q. Now, do you know anything about this case at all?
8 It happened around the Swansea, and you being from Swansea
9 that's why I'm asking that?

10 A. No, sir, I don't. As a matter of fact, I live in
11 West Columbia now and I don't go to Swansea that often
12 anymore.

13 Q. So you could come in with a so-called clean slate,
14 listen to what you heard in the courtroom, base your sentence
15 on evidence and law in the courtroom?

16 A. Yes, sir.

17 MR. MYERS: That's all we can ask of you. Thank
18 you, sir, Mr. Simmons.

19 THE COURT: Mr. Young?

20 VOIR DIRE EXAMINATION

21 BY MR. YOUNG:

22 Q. Mr. Simmons, we are here today pretty much to kind
23 of find out what your feelings are, what your opinions are on
24 the death penalty. Have you ever had an opportunity to
25 discuss your views or your opinions or your feelings about

1 the death penalty?

2 A. Probably the last time I discussed anything like
3 that was with my parents when -- probably becoming of legal
4 age, in other words, 18 to 21 years of age.

5 Q. Could you tell us what were your opinions of the
6 death penalty at that time?

7 A. That it's a serious matter and not to be taken
8 lightly. But if the circumstances warranted it was the
9 correct punishment.

10 Q. Since becoming of legal age and talking with your
11 parents about it have your opinion changed any?

12 A. No, sir.

13 Q. Basically been your opinion since you've been able
14 to legally make it, huh?

15 A. Right.

16 Q. The Judge stated that Mr. Bennett has already been
17 found guilty of murder. Your job as a juror would only be to
18 decided the appropriate punishment, life or death. The Judge
19 will tell you when he instructs on the law that in order for
20 a jury to find that a person -- that the death penalty is the
21 appropriate sentence that the jury must first find that there
22 is an aggravating circumstance, then and only then could that
23 juror consider the death penalty. Do you understand that?

24 A. I understand that.

25 Q. In summary, if the jury does not find an

1 aggravating circumstance then the sentence would be life. In
2 the event that an aggravating circumstance is found by the
3 jury then they could consider the death penalty. Do you
4 understand that the Judge will never instruct the jury that
5 they have to give the death penalty?

6 A. Yes, sir, I do.

7 Q. Even if they find an aggravating circumstance?

8 A. (Nodded).

9 Q. Understand that the jury, they could give life for
10 any reason whatsoever; do you understand that?

11 A. Yes, sir.

12 Q. Do you understand that as a juror that you will be
13 entitled to make your own independent decision as to what you
14 think the appropriate punishment is?

15 A. Yes, sir.

16 Q. Then you will be able to deliberate with the other
17 jurors. And after deliberating you will be able to come back
18 with your position or with the jury's verdict to the Judge;
19 you understand?

20 A. I understand.

21 Q. And it is my understanding that in order for you to
22 make your independent decision that you must hear everything;
23 is that correct?

24 A. Correct.

25 Q. You must hear the aggravating and the mitigating

1 circumstances?

2 A. Right.

3 Q. The good and the bad, and then and only then will
4 you form your opinion?

5 A. Yes, sir.

6 Q. You have not formed an opinion at this point in
7 time?

8 A. No, sir, I have not.

9 MR. YOUNG: Thank you. That's all we can ask.

10 THE COURT: Anything else from the State?

11 MR. MYERS: No, sir.

12 THE COURT: Let me ask if you'll step just outside
13 the door, okay.

14 (WHEREUPON, Juror Simmons leaves the
15 courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Submit he's qualified, sir.

19 THE COURT: Defense?

20 MR. YOUNG: Qualified.

21 THE COURT: I find he is qualified.

22 (WHEREUPON, Juror Simmons enters the
23 courtroom.)

24 THE COURT: Mr. Simmons, I have determined that you
25 would be qualified to sit as a juror in this case if you were

1 called. So what I'll do is ask you to come back tomorrow
2 morning at nine o'clock, if you would.

3 Now, when you come back bring with you bags packed
4 for as much as about a week in a motel. It may not be the
5 full week but you need to be prepared for as much as a week.
6 Leave jury backs in your car, and if you do wind up on the
7 jury somebody will take care of your bags for you.

8 Now, until that time it's also still very important
9 that you not talk about the case with anyone. Don't let
10 anybody talk with you about the case. And still stay away
11 from any news. And I assume you haven't heard any news since
12 yesterday; is that correct?

13 MR. SIMMONS: It's been hard, Judge, but --

14 THE COURT: I understand. I understand. And I'm
15 always aware of how much difficulty I'm causing people with
16 that but I'm sure you understand that obviously there is an
17 important reason for that.

18 MR. SIMMONS: Yes, sir.

19 THE COURT: If you would, still stay away from any
20 news on television or radio, or stay away from the newspapers
21 until in the morning, okay?

22 MR. SIMMONS: Yes, sir.

23 THE COURT: And certainly you want to tell your
24 family where you're going to be and what you're doing but you
25 need to try to stay away from any discussion, details about

1 the case if you could.

2 MR. SIMMONS: Yes, sir.

3 THE COURT: We'll see you in the morning at nine.

4 Now, come back here to the courtroom and just sit here in the
5 middle section. That's where there will be about 35 or 40
6 people and we'll draw the jury from that group. Thank you.

7 MR. SIMMONS: Have a good day, sir.

8 THE COURT: See you tomorrow at nine with your bags
9 packed.

10 (WHEREUPON, Juror Simmons leaves the
11 courtroom.)

12 (WHEREUPON, Juror Number 239, Jerry C. Miller,
13 a white male, enters the courtroom.)

14 JERRY C. MILLER, after having been duly sworn,
15 testified as follows:

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Mr. Miller, just have a seat, please, sir. I want
19 you to just relax and take it easy. Nobody is going to give
20 you hard time, okay.

21 A. Yeah.

22 Q. First of all, Mr. Miller, do you recall that I told
23 you yesterday in this case that the State has charged
24 Mr. Johnny Bennett with the charge of murder, and they've
25 asked for the death penalty; do you remember that?

1 A. Yes, sir.

2 Q. Do you recall that I told you that a previous jury
3 has found Mr. Bennett guilty of murder and so this jury's
4 role will simply be to determine the appropriate sentence.
5 You're not going to go back into the murder, not going to
6 think about that the issue is only the sentence; do you
7 understand that?

8 A. Yes, sir.

9 Q. Now, have you heard anything about this case
10 before?

11 A. No, I can't honestly say that I have.

12 Q. And let me ask you if you know any of the folks
13 involved. This is Mr. Bennett right here. Do you know
14 Mr. Bennett or know of him, in the white suit?

15 A. No, I don't.

16 Q. And Mr. Bennett's attorney are Mr. Wayne Floyd
17 right here, and Mr. Hervery Young who is right here. Do you
18 know Mr. Young or Mr. Floyd or know of them in any way?

19 A. I believe I saw Mr. Floyd when I came in the front
20 door this morning.

21 Q. Okay. But other than that you don't know him?

22 A. No.

23 Q. He didn't do anything that would cause you to have
24 any problem giving both sides a fair trial?

25 A. No.

1 Q. No gestures or anything, I'm sure?

2 A. No.

3 Q. The State is represented by Mr. Donnie Myers, who's
4 the Solicitor. And with him will be Mr. Dayton Riddle and
5 Mr. Shawn Graham. Do you know or know of any of these
6 gentleman?

7 A. Mr. Myers. I've certainly heard about him in the
8 newspaper and that kind of thing.

9 Q. Is there anything that you've heard that's caused
10 you to have any positive or negative feelings about Mr. Myers
11 such that it would influence your ability as a juror?

12 A. No, sir.

13 Q. Now, we gave you also a witness list. Did you look
14 over that list there?

15 A. Yes, I did.

16 Q. Did you recognize any of those names? And if you
17 did, how about give them to me by number?

18 A. Number 32.

19 Q. 32. And how do you know her?

20 A. I don't actually. I've only see what I thought
21 with a placard on a building with her name on it.

22 Q. Oh, with her name on it. Would that give you any
23 problem at all, would it affect your ability as a juror at
24 all?

25 A. No, sir.

1 Q. Any other name on there you recognize?

2 A. No.

3 Q. Okay. Now, you know we also gave you a sheet like
4 this that described three types of jurors; do you remember
5 that?

6 A. Yes, sir.

7 Q. Do you feel that you would fit within one of those
8 categories?

9 A. Yes, I do.

10 Q. And which is that?

11 A. I feel the very last one.

12 Q. Third. Let's go over it just to be sure we're
13 talking about the same thing. This is a juror who says that
14 although the defendant has been found guilty of murder that
15 this juror would not have their mind made up concerning the
16 appropriate punishment. This juror says that I want to hear
17 that second part. I want to hear all of those aggravating
18 circumstances, I want to hear all those mitigating
19 circumstances.

20 In other words, I want to hear everything against
21 Mr. Bennett and I want to hear everything for Mr. Bennett,
22 both sides. I want the Judge to tell me the law and once
23 I've had all of that, once I've heard all that evidence and
24 once the Judge has told me what the law is only then would I
25 be prepared to decide the appropriate sentence; is that what

1 you're saying?

2 A. That's what I feel.

3 Q. All right. And this juror also says this, that if
4 the appropriate sentence -- if I determine that the
5 appropriate sentence was a life sentence I could give a life
6 sentence, and if I determine that the appropriate sentence
7 was a death sentence I could give a death sentence.

8 A. Yes, sir.

9 Q. Is that correct, it just depends on the
10 circumstance?

11 A. Yes, sir.

12 Q. Now, there's another part of our law that says
13 this, that if a jury gives a death sense that all 12 jurors
14 must sign a form saying that they have given the death
15 sentence. If you were on the jury, had determined that the
16 death sentence was appropriate, would you be able to sign
17 that form?

18 A. Yes, sir, I would.

19 Q. Do you know of any other reason why you could not
20 give both sides a fair trial in this case?

21 A. No, sir, I don't.

22 Q. Okay. And one other thing. I apologize I didn't
23 mention this earlier. The victim, the person who was killed
24 in this case was Mr. Benton Darrell Smith. Did you know
25 Mr. Smith or know of him?

1 A. No, sir.

2 Q. All right. Thank you, sir. Now, both parties are
3 going to have some questions. Let me ask if you'll answer
4 their questions, okay?

5 A. Sure.

6 VOIR DIRE EXAMINATION

7 BY MR. MYERS:

8 Q. Mr. Miller?

9 A. Morning.

10 Q. Morning. Mr. Miller, you said that you had served
11 on a jury before, on that questionnaire you sent back in?

12 A. Yes, sir.

13 Q. Was it a criminal court, civil court?

14 A. Yes, it was.

15 Q. Did you actually serve on a jury?

16 A. Yes, sir.

17 Q. Now, if you served on a jury -- it wasn't a murder
18 case, was it?

19 A. No.

20 Q. If you served on a jury or if you were up here that
21 week when we had trials you know very well that the jury's
22 normal job is to find someone guilty or not guilty?

23 A. Correct.

24 Q. And even if you found someone guilty their job is
25 over with, the Judge normally does the sentencing?

1 A. Right.

2 Q. In this case, Mr. Miller, the jury is going to hand
3 down a sentence, and that's different in our law. Our law
4 says when the death penalty is involved that 12 men and women
5 would return a sentence, life imprisonment or the death
6 penalty; do you understand that?

7 A. Yes, sir.

8 Q. And the defendant, as the Judge said, has been
9 found guilty and now this jury must hear additional evidence.
10 They are going to have to hear evidence about the crime even
11 though the defendant is guilty. They'll hear more evidence
12 about the crime and the circumstances surrounding it.

13 They'll hear some testimony about the defendant,
14 about his background about his character. They may hear some
15 good things about him, may hear some bad things about him.
16 And once the jury has heard all this testimony Judge
17 Westbrook is going to tell them what the law is, and they'll
18 blend together the law and the testimony and come back with
19 life or the death penalty; do you understand that?

20 A. Yes, sir.

21 Q. Some of that testimony is called aggravating
22 circumstances, some of that testimony is called mitigating
23 circumstances, and the Judge is going to tell the jury what
24 those terms mean, legally. You would follow that, wouldn't
25 you?

1 A. Yes, sir.

2 Q. The Judge would also give the jury some things in
3 writing about what aggravating circumstances are and what
4 mitigating circumstances are. You would follow that too; is
5 that correct?

6 A. Yes, I would.

7 Q. And, Mr. Miller, being in that third category I
8 take it that you are the type of person would have to hear
9 everything then you could vote for life or you could vote for
10 death?

11 A. Yes, I would.

12 Q. Depending on the crime, the circumstances, the
13 character of the person who committed the murder; is that
14 correct?

15 A. Yes, sir.

16 Q. You don't know anything about the case so you
17 haven't formed an opinion about what the sentence should be?

18 A. That's correct.

19 Q. The Judge will tell the jury to listen to all the
20 testimony and the law before they made up their mind; you
21 could follow that instruction, couldn't you?

22 A. Yes, sir.

23 Q. And, Mr. Miller, I take it from the your beliefs if
24 life imprisonment was the sentence that you thought was the
25 right one you could vote for life?

1 A. Yes, I would.

2 Q. But on the other hand, if you thought the death
3 penalty was a punishment that fit the crime and warranted,
4 you could so sign your name on a death penalty sentence, too?

5 A. Yes, I could.

6 MR. MYERS: That's all we could ask of you. Thank
7 you, Mr. Miller.

8 THE COURT: Any questions, Mr. Floyd?

9 VOIR DIRE EXAMINATION

10 BY MR. FLOYD:

11 Q. Good morning, Mr. Miller.

12 A. Morning.

13 Q. My name is Wayne Floyd. I'm one of Johnny
14 Bennett's lawyers. This criminal jury that you served on
15 earlier, was it up in this court, in General Sessions, or
16 down in Magistrate's Court?

17 A. No, it was up in this court.

18 Q. This court. And you actually served on the jury?

19 A. Yes, sir.

20 Q. What is your opinion on the death penalty?

21 A. I believe it's a difficult decision to put anybody
22 to death. It's got to be a difficult choice, whether to
23 sentence somebody to life in prison or the death penalty.
24 But again, I've got to hear all the circumstances that
25 surrounded the case to begin with to be able to form a

1 decision.

2 Q. Has your opinion about the death penalty changed in
3 your lifetime?

4 A. Yes, it has. I believe as I've grown older, more
5 mature, seen more what goes on with life and society that we
6 live in I believe it has changed. I believe in my early
7 years, earlier, that I did not agree with the death penalty.
8 However, what would our society be like if we did not have
9 laws and rules that we all have to live by.

10 Q. And so you kind of changed from antideath penalty
11 to it's an appropriate punishment considering the
12 circumstances?

13 A. Considering all the circumstances I would want to
14 hear before I could make any decision regarding life in
15 prison or a death sentence.

16 Q. Now, do you understand that Mr. Bennett has already
17 been convicted of murder by another jury?

18 A. Yes, sir.

19 Q. Are you familiar with what the crime of murder is
20 or how it's defined in South Carolina?

21 A. Probably not.

22 Q. Do you understand that in South Carolina the crime
23 of murder requires malice aforethought before you can be
24 convicted of murder. We don't have like first, and second,
25 and third degree murder like some other states do?

1 A. Okay. I probably understand that, yes.

2 Q. So you understand Mr. Bennett has been convicted of
3 a killing with malice aforethought?

4 A. Yes, sir.

5 Q. With that in mind, do you have an opinion as to
6 whether or not death penalty -- or could you still consider
7 death penalty or life in that circumstance?

8 A. Yes, I believe I could. But I'd still again want
9 to hear all the evidence, the surrounding evidence of why the
10 crime got committed to begin with, and that type of thing.

11 Q. Now, do you understand that in this trial there
12 will be evidence other than evidence about the crime but
13 evidence from the State considering what we call aggravation,
14 which could concern the crime itself, what could concern
15 Mr. Bennett's character, other acts, and so forth; and that
16 the defense will be presenting to you evidence in what's
17 called mitigation or good things about Mr. Bennett in his
18 life?

19 A. Yes, sir.

20 Q. So other factors other than the crime would come
21 into play in the evidence?

22 A. Right. Right.

23 Q. And can you consider those items of evidence other
24 than the crime itself when you make your decision?

25 A. Yes, sir, I can.

1 Q. Thank you, Mr. Miller.

2 A. You're welcome.

3 THE COURT: Mr. Myers, do you have anything else?

4 MR. MYERS: Nothing further.

5 THE COURT: Let me ask if you'll step just outside
6 the door a second, okay.

7 (WHEREUPON, Juror Miller leaves the
8 courtroom.)

9 THE COURT: What's the State's position on this
10 juror?

11 MR. MYERS: Submit he's qualified.

12 THE COURT: Defense?

13 MR. FLOYD: Submit he's qualified.

14 THE COURT: I find he is qualified.

15 Let's ask him to step in.

16 (WHEREUPON, Juror Miller enters the
17 courtroom.)

18 THE COURT: Mr. Miller, I've determined you would
19 be qualified to sit on a jury in this case if you're
20 selected. So what I'll ask you to do is come back tomorrow
21 morning, Wednesday morning, tomorrow at nine o'clock, okay?

22 MR. MILLER: Yes, sir.

23 THE COURT: And if you would, bring with you bags
24 packed for as much as a week in a motel. The jury will be
25 sequestered during the trial. Leave your bags in the car,

1 and if you are picked on the jury someone will take care of
2 the bags for you and get them to the motel for you.

3 Now, until that time it's still very important that
4 you not talk with anyone about the case, don't let anyone
5 talk with you about it. Obviously you want to let your
6 family know where you're going to be and what you're doing
7 but I would try to stay away from any details about the case
8 itself. Also, still, I know it's kind of difficult, but stay
9 away from any news until then; no newspaper, no news on
10 television or radio, and just, again, have to be sure you're
11 not going to hear anything else about the case, okay?

12 MR. MILLER: Yes, sir.

13 THE COURT: With that in mind, we'll see you in the
14 morn -- and by the way, when you come into the courtroom.
15 Come to the middle section and you'll sit back there with
16 about 35 or 40 people and we'll draw the jury from that
17 group.

18 MR. MILLER: Nine o'clock.

19 THE COURT: See you tomorrow at nine with your bags
20 packed. Thank you, sir.

21 (WHEREUPON, Juror Miller leaves the
22 courtroom.)

23 THE COURT: Let's bring the next juror in, please.

24 Counsel, any problems just going ahead and taking
25 the next one?

1 MR. MYERS: No objection.

2 (WHEREUPON, Juror Number 207, Gwendolin L.
3 Brown, a white female, enters the courtroom.)

4 GWENDOLIN L. BROWN, after having been duly
5 sworn, testified as follows:

6 THE COURT: And let me note, Counsel, even though
7 we may take jurors out of line from time to time they still
8 will be struck in the actual order they were drawn by the
9 clerk.

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. Ms. Brown, how are you this morning?

13 A. Good morning. I'm fine, thank you.

14 Q. Good. Good. I want you to just relax and nobody
15 is going to give you a difficult time, okay. We're just
16 going to chat with you a bit.

17 A. Yes, sir.

18 Q. First of all, do that you recall that we told you
19 in this case that the State has charged Mr. Bennett, and this
20 is Mr. Johnny Bennett, with murder; do you understand that?

21 A. Yes, sir.

22 Q. And as I told you, that a previous jury has found
23 Mr. Bennett guilty of murder. They found he committed a
24 murder. The jury's role in this case at this time will be to
25 decide the sentence. There are only two possible sentences,

1 life in prison or the death penalty. And, of course, that's
2 why we're going through this procedure now; do you recall
3 that?

4 A. Yes, sir.

5 Q. Now, let me ask first, have you heard anything
6 about this case before?

7 A. No, I have not, and we were in Iowa for a couple of
8 weeks prior -- through the 4th of July. So in particular I
9 was not exposed to papers or news.

10 MR. YOUNG: I'm sorry, Your Honor.

11 Q. I think we're having a little bit of trouble
12 hearing you. Just turn that way and speak into the
13 microphone, and I believe it will pick you up, okay. Go
14 ahead and repeat that.

15 A. My husband, Lyle Brown, and I were in Iowa. We
16 left for June 28th by car and were not exposed at all to news
17 or newspapers from that time through the present.

18 THE COURT: Could you hear okay?

19 MR. FLOYD: Yes, Your Honor.

20 Q. But you haven't heard anything about the case
21 before; is that right?

22 A. No, sir, I have not.

23 Q. Okay. Let me introduce you to some of the folks
24 involved and see if you know any of them, okay. The State
25 will be represented in this matter by the Solicitor's Office,

1 and this is Mr. Donnie Myers, the Solicitor.

2 A. How do you do?

3 Q. And with him are Mr. Dayton Riddle and Mr. Shawn
4 Graham.

5 A. How do you do?

6 Q. Do you know or know of any of these gentlemen?

7 A. No, sir. I've seen Mr. Myers' name in the
8 newspaper, that's all.

9 Q. All right. Is there anything about it you've seen
10 that's given you any positive or negative reactions either
11 way that would interfere with your duty to give both sides a
12 fair trial?

13 A. Not at all, just respect for him, I think.

14 Q. Well, would that cause, by the fact that you have
15 respect for him, would that give you any problem in giving
16 both sides a fair trial?

17 A. No, it would not.

18 Q. Would not cause you to give him any greater
19 credibility than anyone else in the courtroom?

20 A. No. I think just recognition of his name was all I
21 intended.

22 Q. Okay. Now, have you ever had any dealings with the
23 Solicitor's Office?

24 A. No, sir.

25 Q. Okay. Now, this is Mr. Bennett right here in the

1 white suit. Do you know Mr. Bennett or know of Mr. Bennett?

2 A. No, I do not.

3 Q. And Mr. Bennett is represented by Mr. Wayne Floyd,
4 who is right here.

5 A. How do you do?

6 Q. And Mr. Hervery Young on the other side.

7 A. How do you?

8 Q. Do you know or know of either of these gentlemen?

9 A. No, I think I saw him as I entered the courtroom or
10 entered the building this morning. I did know who --

11 Q. Which one, Mr. Floyd?

12 A. Mr. Floyd, yes.

13 Q. But, obviously, I assume there was no discussion or
14 anything, right?

15 A. No, just good morning.

16 Q. Good. Good. Mr. Floyd certainly is an ethical
17 gentleman who would not do anything wrong. I want to be sure
18 you understand that.

19 Now, you recall that we gave you, first of all, a
20 list of potential witnesses in the case. Did you look that
21 over?

22 A. Yes, I did.

23 Q. Did you know or know of any of those witnesses on
24 there?

25 A. No, I do not know anyone.

1 Q. We gave you another sheet here that described three
2 categories of jurors; do you remember that?

3 A. Yes, sir.

4 Q. Did you look it over?

5 A. Yes, I read it.

6 Q. Did you have a chance to think about it?

7 A. Yes. I feel I'd be in the third category,
8 probably.

9 Q. Okay. Let's go over this to be sure we're talking
10 about the same thing, okay. This is a juror who says this,
11 that even though a person has been found guilty of murder I
12 still would not have my mind made up as to the appropriate
13 sentence; isn't that correct?

14 A. Yes.

15 Q. This jury says that before I can decide the
16 sentence that I've got to hear all those aggravating
17 circumstances. In other words, I've got to hear everything
18 against Mr. Bennett. I've got to hear mitigating
19 circumstances. In other words, everything for Mr. Bennett.
20 I want the Judge to tell me the law, what the law is about
21 it, and then only after I have heard all of that would I be
22 able to decide the proper sentence; is that what you're
23 saying?

24 A. Yes, sir.

25 Q. And this juror says that if I determine that the

1 appropriate sentence was a life sentence I could give a life
2 sentence. If I determine that the appropriate sentence was a
3 death sentence I could give a death sentence. It would just
4 depend on the circumstances of the case; is that correct?

5 A. Yes, sir.

6 Q. Now, the law also says this in a case like this.
7 It says that if a jury gives the defendant a death sentence
8 all 12 jurors must sign a form saying that they have given
9 the death sentence. Now, if you were on a jury and had given
10 a death sentence would you be able to sign that form?

11 A. Yes, I would.

12 Q. Now, do you know of -- and also let me ask you
13 this. The victim in this case, the man who was killed, was
14 Mr. Benton Darrell Smith. Did you know Mr. Smith or know of
15 him in any way?

16 A. No.

17 Q. Do you know of any other reason why you could not
18 give both sides a fair trial in this case?

19 A. I really don't.

20 Q. Let me ask if you'll answer any questions the
21 lawyers have, okay. They're going to have some questions for
22 you.

23 A. Yes. Thank you.

24 THE COURT: Thank you.

25 Mr. Myers?

VOIR DIRE EXAMINATION

1

2 BY MR. MYERS:

3 Q. Mrs. Brown?

4 A. Yes, sir.

5 Q. I just have a few questions for you, Mrs. Brown.

6 Have you ever served on a jury panel before,

7 Mrs. Brown?

8 A. Only in a magistrate's court on a small claims.

9 Q. Prior to yesterday, had you ever been in this
10 courtroom before?

11 A. No, I had not.

12 Q. Mrs. Brown, as the Judge told you, a jury in this
13 case is going to sentence the defendant. You realize that?

14 A. Yes.

15 Q. They will either sentence him to life imprisonment
16 or the death penalty. You realize that?

17 A. Yes.

18 Q. Mrs. Brown, also you've been told the defendant has
19 been found guilty. So he's guilty of murder.

20 A. Yes.

21 Q. Even though he's guilty, the jury is going to hear
22 circumstances surrounding this murder. They're going to hear
23 something about the defendant himself. They'll hear things
24 about his background, they'll hear things about his
25 character. There may be some good things about him, may be

1 some bad things about him, and the jury has to hear all this
2 information; crime, how the crime was committed, something
3 about the defendant so they'll know what's the right
4 sentence; you understand that?

5 A. Yes, sir.

6 Q. When all that's in Judge Westbrook is going to tell
7 the jury what the law is. He'll explain to the jury what
8 aggravating circumstances means. He'll explain to the jury
9 what mitigating circumstances mean. You would follow that
10 law as Judge Westbrook told you what the law was?

11 A. Certainly I would.

12 Q. And then after all that and he's told them what the
13 law is they've got to come back with one of those two
14 verdicts. Now, you said you were in that third category; is
15 that correct, Mrs. Brown?

16 A. Yes. As far as I could understand it, yes.

17 Q. And you don't know what the sentence should be
18 right now because you haven't heard anything about the case?

19 A. No.

20 Q. And you couldn't make up your mind until you've
21 heard everything; is that correct?

22 A. That's correct.

23 Q. And, Mrs. Brown, if you thought the way the crime
24 was committed, the character of the defendant, if you thought
25 life was the right sentence you could so vote for life; is

1 that right?

2 A. Yes, sir.

3 Q. But also if you thought the way the crime was
4 committed and the character of the defendant that the death
5 penalty was the punishment that fit the crime you could so
6 sign your name on a death penalty verdict?

7 A. Yes, I could.

8 Q. You'd have to hear everything first, though?

9 A. Yes.

10 Q. That's all we can ask of you. Thank you,
11 Mrs. Brown.

12 A. Thank you.

13 THE COURT: Mr. Young?

14 VOIR DIRE EXAMINATION

15 BY MR. YOUNG:

16 Q. Ms. Brown, have you had an opportunity in your life
17 to discuss your views or your feelings about the death
18 penalty with anyone?

19 A. In my whole life?

20 Q. Yes, ma'am.

21 A. I suppose I might have reacted to the execution of
22 someone in the newspaper, either pro or con or in terms of
23 the news, you know. But, no, I really feel -- I really feel
24 that I have not resolved this in one way or another, that I'm
25 neutral on this matter.

1 Q. So if I understand you correctly, what you're
2 saying is that in some cases you believe the death penalty is
3 appropriate?

4 A. Yes.

5 Q. And in some cases you believe that life
6 imprisonment is appropriate?

7 A. Yes.

8 Q. Do you understand -- I understand you used to be a
9 teacher, a science teacher, correct?

10 A. Yes, sir.

11 Q. Did you ever teach here in the South Carolina?

12 A. No. No.

13 Q. It was all out of state?

14 A. It was in New York.

15 Q. New York?

16 A. Schenectady, New York.

17 Q. In preparing in your course studies of being a
18 teacher did you ever do any research or anything on the death
19 penalty?

20 A. No. No. It was seventh grade science in those
21 days. We did not deal with some of the things we do with
22 today.

23 Q. Okay. You understand that each juror will be
24 entitled to make their own individual decision as to what
25 they think is the appropriate sentence?

1 A. Yes.

2 Q. Mr. Bennett has already been convicted of murder.
3 Knowing that the only thing that you would be deciding on is
4 guilt -- I mean, is life or death, have you formed any
5 opinion as to what you believe the appropriate punishment
6 should be?

7 A. No, not at all.

8 Q. As I stated, each juror would be able to form their
9 own individual opinion, then they'll deliberate with the rest
10 of the jurors and return a sentence to the Court.

11 A. Yes, sir.

12 Q. And that sentence would either be life or death;
13 you understand that?

14 A. Yes.

15 Q. The Solicitor asked you about having to sign your
16 name to the form, will that cause any injury to your
17 conscience, that for you to have to sign that form, if you
18 believe that death is the appropriate sentence?

19 A. No, not if I have voted for that.

20 Q. Do you understand that the Court will never
21 instruct the jury that they have to return a verdict of guilt
22 -- of death?

23 A. Yes, I understand.

24 Q. Understand that a juror could return a verdict of
25 life for any reason whatsoever?

1 A. Yes.

2 Q. But in order for you to make your individual
3 decision you would have to hear everything?

4 A. Yes.

5 Q. Both the good and the bad?

6 A. Definitely.

7 Q. And then and only then could you make your
8 decision?

9 A. That's correct.

10 MR. YOUNG: Thank you.

11 THE COURT: Anything else, Mr. Myers?

12 MR. MYERS: No, sir.

13 THE COURT: All right. Ms. Brown, let me ask if
14 you'll step just outside the door, okay.

15 (WHEREUPON, Juror Brown leaves the courtroom.)

16 THE COURT: All right. What's the State's position
17 on this juror?

18 MR. MYERS: Submit she's qualified.

19 THE COURT: Defense?

20 MR. YOUNG: Qualified, Your Honor.

21 THE COURT: I find she is qualified.

22 (WHEREUPON, Juror Brown enters the courtroom.)

23 THE COURT: Ms. Brown, I determined you would be
24 qualified to sit as a juror in this case if you were
25 selected. So what we'll ask you to do is come back in the

1 morning, if you would. That's Wednesday morning, tomorrow,
2 at nine o'clock.

3 MS. BROWN: I will.

4 THE COURT: Just come right back here to the
5 courtroom and sit out here in this middle section, okay.
6 You'll be there with about 35 or 40 people and we'll draw the
7 jury from that pool.

8 Now, if you would, bring with you bags packed for
9 as much as a week in a motel. The jury will be sequestered
10 during the trial. And leave your bags in your car, and if
11 you do end up on the jury someone will take care of the bags
12 for you and get them to the motel.

13 Now, until you come back it's also very important
14 that you still not talk with anyone about this case in any
15 way.

16 MS. BROWN: I understand.

17 THE COURT: Obviously you want to let your family
18 know where you're going to be, but just don't talk about the
19 details of the case with them. And at the same time, if you
20 would, please -- and I know it's difficult to do, but please
21 still stay away from any sort of news at all, radio or
22 television, no newspaper.

23 MS. BROWN: I understand.

24 THE COURT: With that in mind, we'll see you
25 tomorrow morning at nine right here.

1 MS. BROWN: I would be sequestered as of tomorrow
2 morning then?

3 THE COURT: It would be as of sometime tomorrow,
4 that's correct. Yes, ma'am.

5 MS. BROWN: Yes, thank you.

6 THE COURT: Thank you.

7 (WHEREUPON, Juror Brown leaves the courtroom.)

8 (WHEREUPON, Juror Number 362, John Teague,
9 Jr., a white male, enters the courtroom.)

10 JOHN TEAGUE, JR., after having been duly
11 sworn, testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. All right. Mr. Teague, just relax, okay. I just a
15 few questions to ask you. Mr. Teague, you recall we told you
16 yesterday that in this case the State has charged Mr. Johnny
17 Bennett with murder and they've asked for the death penalty;
18 do you recall that?

19 A. Yes, sir.

20 Q. And, of course, we also told you that a previous
21 jury has found Mr. Bennett guilty of murder. So that means
22 that this jury is the only going to decide what the
23 appropriate sentence is. You're not going to even worry
24 about the issues regarding the murder, that's been decided.
25 All you're deciding is either life in prison or the death

1 penalty; you understand that?

2 A. Yes, sir.

3 Q. Now, have you heard anything about this case
4 before?

5 A. No, sir.

6 Q. Never heard anything about it?

7 A. No, sir.

8 Q. And let me introduce you to some folks and see if
9 you know them, okay. This is Mr. Bennett right here with his
10 hand up. Do you know Mr. Bennett or know of him in any way?

11 A. No, sir, I don't.

12 Q. And he's represented by Mr. Hervery Young and
13 Mr. Wayne Floyd. Do you know or know of either of these
14 gentlemen?

15 A. No, sir, I don't.

16 Q. The State's is represented by the Solicitor's
17 Office. And, of course, this is the Solicitor, Mr. Donnie
18 Myers. With him is Mr. Dayton Riddle and Mr. Shawn Graham.
19 Do you know or know of any of these gentlemen?

20 A. No, sir.

21 Q. Now, have you ever had any dealings or any
22 relationship at all with the Solicitor's Office here in
23 Lexington?

24 A. No, sir.

25 Q. Okay. Now, you know we gave you a witness list

1 also?

2 A. Yes, sir.

3 Q. Did you got a chance to look that over?

4 A. Yes, sir, I did.

5 Q. Did you recognize any of those names?

6 A. No, sir.

7 Q. None?

8 A. No, sir.

9 Q. Okay. And we also gave you another sheet that was
10 a sheet that describes three juror; is that correct?

11 A. Yes, sir.

12 Q. Do you recall those three categories? Do you feel
13 like you fit within one of those categories?

14 A. Yeah, pretty much in the third one.

15 Q. The third one?

16 A. Yes, sir.

17 Q. All right. The third category of juror is this.

18 It is a juror who says that even though a person has been
19 found guilty of murder that I would still not have my mind
20 made up as to the proper sentence. I would want to hear all
21 those aggravating -- remember we told you yesterday that
22 aggravating circumstances are circumstances which make the
23 murder worse. Mitigating circumstances are those which
24 lighten or reduce the murder; you understand?

25 A. Yes, sir.

1 Q. And, in essence, that aggravating circumstances are
2 things that are against Mr. Bennett that tend to make him
3 look bad. Mitigating circumstances tend to make him look
4 good, they're in his favor; you understand?

5 A. Yes, sir.

6 Q. And as I understand, you're saying you're in the
7 third category. And this juror says that even though a person
8 has been found guilty of murder that I still want to hear all
9 of those aggravating circumstances, I want to hear all of
10 those mitigating circumstances, I want the Judge to tell me
11 what the law is and only at that point am I going to be ready
12 to decide the appropriate sentence; is that correct?

13 A. Yes, sir.

14 Q. In other words, I've got to hear everything and
15 it's going to depend on the circumstances?

16 A. Right.

17 Q. Now, this juror also says this, that if I determine
18 that a life sentence is appropriate I can give a life
19 sentence.

20 A. Yes, sir.

21 Q. And if I determine that a death sentence is
22 appropriate I could give a death sentence.

23 A. Yes, sir.

24 Q. And it just depends on the circumstances; is that
25 right?

1 A. Yes, sir.

2 Q. Now, also there's another provision if our law that
3 says this. It says that if a jury gives a death sentence
4 that all 12 jurors must sign a form that says I have agreed
5 to give the death sentence. If you are on the jury and
6 determined the death sentence was appropriate would you be
7 able to sign that form?

8 A. Yes, sir.

9 Q. Now, let me also note, the victim in this case was
10 Mr. Benton Darrell Smith. Did you know Mr. Smith or know of
11 Mr. Smith?

12 A. No, sir.

13 Q. Do you know of any other reason why you could not
14 give both sides a fair trial in this case?

15 A. No, sir.

16 Q. Both sides will have some questions for you, let me
17 ask if you would answer their questions, okay?

18 A. Okay.

19 THE COURT: Mr. Riddle?

20 VOIR DIRE EXAMINATION

21 BY MR. RIDDLE:

22 Q. How you doing, Mr. Teague?

23 A. Just fine.

24 Q. My name is Dayton Riddle. I'm Deputy Solicitor
25 here in Lexington. I just got a couple of questions I want

1 to ask you in reference to this. You've never served on a
2 jury before?

3 A. No, sir.

4 Q. Have you ever even been in this courtroom?

5 A. No, sir, not through yesterday morning.

6 Q. You're familiar, I take it, with the jury system,
7 just kind of in a general sentence?

8 A. Yes, sir.

9 Q. And you understand that ordinarily what happens in
10 a criminal case is the jury hears evidence regarding whether
11 somebody is guilty or not guilty?

12 A. Yes, sir.

13 Q. And then a jury would vote, and if they voted then
14 the judge would ordinarily do the sentencing; you understand
15 that?

16 A. Yes, sir.

17 Q. In a death penalty case it's a little bit different
18 because a jury actually does the sentencing; do you
19 understand that?

20 A. Yes, sir.

21 Q. And you've been told by his Honor already that
22 another jury has found Mr. Bennett guilty of murder?

23 A. Yes, sir.

24 Q. So what we're going to do in this trial is to give
25 the jury evidence so that they'll understand what the

1 appropriate sentence to give is.

2 A. Yes, sir.

3 Q. And, of course, you'd have two choices, death
4 penalty, life in prison; you understand that?

5 A. Yes, sir.

6 Q. And you would hear testimony from witnesses, see
7 exhibits, all of it coming from that chair you're sitting in
8 now. You'd listen to all of that?

9 A. Yes, sir.

10 Q. And wouldn't make up your mind until you've heard
11 it all?

12 A. No, sir.

13 Q. And you'd want to hear all of the aggravating
14 circumstances, circumstances of the crime?

15 A. Yes, sir.

16 Q. Character of the defendant?

17 A. Yes, sir.

18 Q. That type of information. And you'd want to hear
19 all of the mitigating circumstances?

20 A. Right.

21 Q. Maybe some good things about the defendant?

22 A. Uh-huh.

23 Q. The Judge would tell you what the law is and he
24 would define for you and tell you exactly what aggravating
25 circumstances mean, exactly what mitigating circumstances

1 mean. Could you listen to the charge that the Judge gives
2 you and apply that law?

3 A. Yes, sir.

4 Q. And then you would blend that law with the facts
5 that you heard from the witness stand?

6 A. Yes, sir.

7 Q. And you could arrive at a verdict?

8 A. Yes, sir.

9 Q. Now, you told the Judge, I believe, you're in that
10 third category?

11 A. Uh-huh.

12 Q. And that in an appropriate case you could vote for
13 the death penalty if the crime warranted and the character of
14 the defendant warranted?

15 A. Yes, sir.

16 Q. And in an appropriate case you would vote for life
17 in prison; is that correct?

18 A. Yes, sir.

19 Q. Now, ordinarily -- and this goes back to you being
20 familiar with the jury system, ordinarily, I'm sure you'd
21 know that there is a foreman or foreperson that speaks on
22 behalf of the jury?

23 A. Yes, sir.

24 Q. In a death penalty case if the jury finds the death
25 penalty is an appropriate verdict the foreman does not speak

1 for the jury. The verdict form has 12 lines on there and
2 each person must sign. Now, I ask you this question and it
3 seems like a silly question but it's a question we have to
4 ask. You may know some people that will tell you what they
5 think and they will act on what they think and believe it,
6 but if you ask them to sign it they don't want any part of
7 that. I take it you're not one of those people?

8 A. No, sir.

9 Q. And if you think something and you vote something
10 you'd sign something?

11 A. Yeah.

12 Q. Sir, is there any reason why you couldn't be fair
13 and impartial to both sides in this case?

14 A. No, sir.

15 MR. RIDDLE: Thank you. That's all we're looking
16 for.

17 THE COURT: Anything from defense, Mr. Floyd?

18 VOIR DIRE EXAMINATION

19 BY MR. FLOYD:

20 Q. Good morning, Mr. Teague.

21 A. Morning.

22 Q. My name is Wayne Floyd. I'm one of Johnny
23 Bennett's lawyers. I noticed when the Judge asked you which
24 one of the categories that you fit into I believe your
25 comment was pretty much the third?

1 A. Uh-huh.

2 Q. Was there another category that may apply that you
3 were considering?

4 A. No, sir.

5 Q. What is your opinion on the death penalty?

6 A. I think it's the appropriate thing in some
7 instances but not all.

8 Q. Has your opinion on the death penalty changed over
9 the years?

10 A. No, sir.

11 Q. I noticed you are a member of Palmetto Point
12 Community Church?

13 A. Yes, sir.

14 Q. Does your church have a position on the death
15 penalty?

16 A. I don't have a clue. I really don't know.

17 Q. Not something that comes up?

18 A. Well, I've been to the church for a little over a
19 year and I have no clue.

20 Q. Have you ever discussed the death penalty with
21 either your family, or friends, or coworkers?

22 A. Not just -- I mean, in certain cases it would come
23 up in conversation but not just the death penalty, no, sir.

24 Q. Now, do you understand that Mr. Bennett has been
25 convicted of murder by another juror?

1 A. Yes, sir.

2 Q. Now, do you understand that in South Carolina
3 murder does require -- does mean that the jury has determined
4 that there was a killing with malice aforethought?

5 A. Yes, sir.

6 Q. Kind of a premeditated situation. Now, since
7 you're aware that Mr. Bennett has been convicted of
8 premeditated murder could you still consider a life sentence
9 in that matter?

10 A. Yes, sir.

11 Q. Now, in this case there will be evidence presented
12 to the jury other than evidence of the murder itself,
13 evidence in what's called aggravation or what the State
14 contends are bad acts or character of the defendant,
15 Mr. Bennett.

16 A. Yes, sir.

17 Q. And the defense will have the mitigation evidence,
18 evidence of good traits of the defendant.

19 A. Yes, sir.

20 Q. Can you consider that evidence in addition to the
21 evidence of the crime itself when you make your decision?

22 A. Yes, sir.

23 Q. Now, in a case like this a juror can give a life
24 sentence for whatever reason the juror seems appropriate. Do
25 you agree with that?

1 A. Yes, sir.

2 Q. Have you ever served on a criminal jury before?

3 A. No, sir.

4 Q. Now, I noticed also on your questionnaire that you
5 attended like a Rosewood Elementary. Is that up in the Rock
6 Hill area where from?

7 A. Yes, sir.

8 Q. Because there's one over in Columbia?

9 A. Yes, sir, it's in Rock Hill.

10 Q. So you grow up completely in Rock Hill?

11 A. Yes, sir, I left there -- well, the first time I
12 left I was 18 and came to the university to school, and then
13 moved back after that.

14 MR. FLOYD: Thank you, Mr. Teague.

15 THE COURT: Anything else, Mr. Riddle?

16 MR. RIDDLE: No, sir.

17 THE COURT: All right. Mr. Teague, let me ask if
18 you'll step just outside the door, okay. We'll bring you
19 back in just a minute.

20 (WHEREUPON, Juror Teague leaves the
21 courtroom.)

22 THE COURT: What's the State's position on this
23 juror?

24 MR. RIDDLE: He's qualified, Your Honor.

25 THE COURT: Defense?

1 MR. FLOYD: He's qualified, Your Honor.

2 THE COURT: I find he is qualified.

3 Ask him to step in.

4 (WHEREUPON, Juror Teague enters the
5 courtroom.)

6 THE COURT: Mr. Teague, I've determined that you
7 would be qualified to sit on the jury in this case if you're
8 selected. What I'll ask you to do is come back tomorrow
9 morning, that's Wednesday morning, tomorrow, at nine o'clock.
10 If you would, come here to the courtroom and just come into
11 this middle section of the courtroom. You'll be there with
12 about 35 or 40 people, and we'll pick the jury from that
13 group.

14 Now, if you would, also, please bring bags packed
15 for as much as a week in a motel. The jury will be
16 sequestered during the trial. Leave the bags in your car,
17 and if you do end up on the jury someone will take the bags
18 for you and get them to the motel for you.

19 Now, also, it's still very important that you not
20 talk about the case until then. Certainly you want to let
21 your family know where you're going to be and what you're
22 doing, but try not to talk about the details of the case with
23 them, if you could.

24 And, also, still stay away from any news. I
25 understand that's kind of difficult for some, for a couple of

1 days here, but still, you need to do that. It's very
2 important. Stay away from any newspaper, no news on
3 television or radio in any way. With that in mind, we'll see
4 you tomorrow morning then at nine with your bags packed.

5 MR. TEAGUE: Thank you.

6 THE COURT: Thank you, sir.

7 (WHEREUPON, Juror Teague leaves the
8 courtroom.)

9 THE COURT: Counsel, we're a good little bit early.
10 Why don't we just ahead and take a short break now and then
11 maybe come back at about 15 or 20 after and see if we've got
12 some of them then. I count 20 qualified at this point, does
13 that sound right?

14 MR. MYERS: Yes, sir.

15 THE COURT: Okay. We'll stand in recess for a few
16 minutes then.

17 (WHEREUPON, a brief recess was taken.)

18 THE COURT: Is the State ready?

19 MR. MYERS: Yes, sir.

20 THE COURT: The defense?

21 MR. YOUNG: Yes, Your Honor.

22 THE COURT: Bring the next one.

23 (WHEREUPON, Juror Number 53, Michael R. Brown,
24 a white male, enters the courtroom.)

25 MICHAEL R. BROWN, after having been duly

1 sworn, testified as follows:

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q. Mr. Brown, just relax, okay. Nobody is going to
5 give you a hard time. We're just going to chat a little bit.

6 A. Okay.

7 Q. First of all, do you recall that we told you
8 yesterday in this case that the State has charged Mr. Johnny
9 Bennett with murder?

10 A. Yes, sir.

11 Q. And asked for the death penalty?

12 A. Yes, sir.

13 Q. Do you remember that?

14 A. Yes, sir.

15 Q. Now, you recall we also told you that a jury has
16 previously convicted Mr. Brown of murder. In other words, he
17 has a murder conviction; you understand that?

18 A. Yes, sir.

19 Q. And that this jury's duty is to simply do one
20 thing, and that's to determine the sentence. Now, the
21 sentence is either life imprisonment or the death penalty.
22 The jury is not going to worry about the murder charge,
23 that's been taken care of. They're only worried about the
24 sentence; do you understand that?

25 A. Yes, sir.

1 Q. Now, have you heard anything about this case
2 before?

3 A. No, sir.

4 Q. Let me introduce you to the folks involved and see
5 if you know any of them, okay?

6 A. All right.

7 Q. This is Mr. Donnie Myers, the solicitor who will be
8 handling the prosecution, along with Mr. Dayton Riddle and
9 Mr. Shawn Graham. Do you know or know of any of these
10 gentlemen?

11 A. No, sir.

12 Q. This is Mr. Bennett right here, Mr. Johnny Bennett.
13 Do you know Mr. Bennett or know of him?

14 A. No, sir.

15 Q. His attorneys are Mr. Wayne Floyd, right here, and
16 Hervery Young. Do you know or know of either of those
17 gentlemen?

18 A. No, sir.

19 Q. Now, we also gave you a list of witnesses. Did you
20 have that?

21 A. Yes, sir.

22 Q. Did you recognize any of the names on there?

23 A. No, sir.

24 Q. None of them?

25 A. No, sir.

1 Q. We also gave you a sheet that had three jury
2 categories; do you remember that?

3 A. Yes, sir.

4 Q. Do you feel like one of those categories describes
5 you?

6 A. Yes, sir.

7 Q. Which is that?

8 A. The third one.

9 Q. Let's go over it just to be sure we're talking
10 about the same thing. Now, this juror is a juror who says
11 that even though someone has been convicted of murder that I
12 do not have my mind made up regarding the proper punishment,
13 that I want to hear all of those aggravating circumstances, I
14 want to hear all those mitigating circumstances. In other
15 words, I want to hear everything against Mr. Bennett and I
16 want to hear everything for Mr. Bennett.

17 A. Yes, sir.

18 Q. Then I want the Judge to tell me the law. And once
19 I've heard all of that only then would I be ready to decide
20 the proper sentence; is that right?

21 A. Yes, sir.

22 Q. Now, this juror also says this, says that if I
23 determine that the appropriate sentence is a life sentence I
24 could give a life sentence; is that right?

25 A. Yes, sir.

1 Q. This juror also says that if I determine that a
2 death sentence is the appropriate sentence I could give a
3 death sentence?

4 A. Yes, sir.

5 Q. In other words, it just depends on the facts and
6 circumstances; is that right?

7 A. Yes, sir.

8 Q. Now, our law also says this, that if a jury gives
9 an individual a death sentence, the law says that each juror
10 must sign a form which says that we have given a death
11 sentence to the defendant.

12 A. Right.

13 Q. If you were on the jury and if you had determined
14 that a death sentence was appropriate would you be able to
15 sign that form?

16 A. Yes, sir.

17 Q. Now, also, one thing I'll tell you, the
18 defendant -- the victim, rather, in this case, the person who
19 was killed was Mr. Benton Darrell Smith. Did you know
20 Mr. Smith or know of him in any way?

21 A. No, sir.

22 Q. Okay, didn't know him at all. So do you know then
23 of -- and also, I didn't mention this. I was talking about
24 the Solicitor's Office, have you ever had any dealings with
25 the Solicitor's Office?

1 A. No, sir.

2 Q. So do you know of any reason then why you could not
3 give both sides a fair trial?

4 A. No, sir.

5 Q. Let me ask -- the attorneys will have some
6 questions, let me ask you if you'll answer those questions,
7 all right?

8 A. All right.

9 THE COURT: Mr. Myers?

10 VOIR DIRE EXAMINATION

11 BY MR. MYERS:

12 Q. Mr. Brown?

13 A. Yes, sir.

14 Q. That slip you sent back in, you said you never
15 served as a juror before?

16 A. I served about eight years ago. I didn't serve as
17 a juror, I just came in for jury duty.

18 Q. Was it in this courtroom?

19 A. Yes, sir.

20 Q. But you didn't serve on a jury then?

21 A. No, sir.

22 Q. Okay. Did you watch any trials during that week?

23 A. No, sir.

24 Q. You know during a normal trial that a jury's duty
25 is to find someone guilty or not guilty?

1 A. Yes, sir.

2 Q. And if the jury finds someone guilty their job is
3 usually over with, the judge hands down the sentence, you
4 realize that?

5 A. Yes, sir.

6 Q. In this case, because we're asking for the death
7 penalty, the jury is going to hand down the sentence.

8 A. Right.

9 Q. Our law says that when the death penalty is
10 involved that 12 men and women will determine life
11 imprisonment or the death penalty; you understand that?

12 A. Yes, sir.

13 Q. And also, as Judge Westbrook said, the jury is not
14 concerned with the guilt of the defendant because he's
15 already been found to be guilty of murder.

16 A. Yes, sir.

17 Q. And you realize that not every murder case brings
18 the death penalty into play; you realize that?

19 A. Yes, sir.

20 Q. It's those cases where the murder is committed and
21 there's also some other things that happen too, called
22 aggravating circumstances.

23 A. Yes, sir.

24 Q. The Judge is going to explain this all to the jury
25 in detail during the trial. I take it from what you told the

1 Judge that your opinion is that not every murder deserves
2 life imprisonment; is that right?

3 A. Right.

4 Q. And not every murder deserves the death penalty?

5 A. Right.

6 Q. It could be one or the other, but it depends on the
7 case and the circumstances?

8 A. Yes, sir.

9 Q. Now, in this case, Mr. Brown, the jury is going to
10 hear testimony. They're going to hear testimony about the
11 crime even though the defendant is guilty of murder. The
12 jury will hear witnesses talking about the crime, how it was
13 committed, the circumstances surrounding it. They're also
14 going to hear some testimony about the defendant, testimony
15 about him, his background, his character. Could be good
16 things, could be bad things about him; you understand that?

17 A. Yes, sir.

18 Q. Our law says this, that the jury has to listen to
19 this testimony, testimony about the crime, testimony about
20 the defendant so they'll know what's the appropriate
21 sentence; do you understand that?

22 A. Yes, sir.

23 Q. Are you willing to listen to all that testimony?

24 A. Yes, sir.

25 Q. Before you make up your mind on what the sentence

1 should be?

2 A. Yes, sir.

3 Q. And after all that testimony is in, Mr. Brown,
4 Judge Westbrook is going to tell the jury what the law is.
5 He's going to define in detail what an aggravating
6 circumstance is. He's going to tell the jury that we have to
7 prove that there is at least one aggravating circumstance
8 before the jury can consider the death penalty; do you
9 understand that?

10 A. Yes, sir.

11 Q. He'll give the jury something in writing about
12 aggravating circumstances. Will you listen to that law and
13 follow that law?

14 A. Yes, sir.

15 Q. He's also going to tell the jury about mitigating
16 circumstances, that lessens the severity of the situation.
17 He'll give a full definition. He'll tell the jury what
18 mitigating circumstances are involved and he'll give the jury
19 something in writing about mitigating circumstances. Would
20 you follow those instructions?

21 A. Yes, sir.

22 Q. And he'll tell the jury also that even if they find
23 there is aggravation the jury can give the defendant life for
24 any reason or no reason, it's called mercy; you understand
25 that?

1 A. Yes, sir.

2 Q. Now, are you willing to follow all that law as the
3 Judge tells you what the law is?

4 A. Yes, sir.

5 Q. Mr. Brown, as to the punishment, I take it you
6 don't know anything about this case?

7 A. No, sir.

8 Q. So you haven't made up your mind what sentence
9 should be handed down; is that correct?

10 A. No, sir.

11 Q. And so you would have to hear everything before you
12 made up your mind?

13 A. Yes, sir.

14 Q. Your position about life imprisonment or the death
15 penalty is you have to wait and hear everything before you
16 can make up your mind; is that correct?

17 A. Yes, sir.

18 Q. And if after hearing everything, Mr. Brown, if you
19 thought life was the right thing, you could vote for life?

20 A. Yes, sir.

21 Q. But on the other hand, if you thought the death
22 penalty was warranted and the punishment fit the crime, could
23 you sign your name on the death penalty?

24 A. Yes, sir.

25 Q. But asking all these questions, you've got to hear

1 everything before you decide?

2 A. Yes, sir.

3 MR. MYERS: That's all we can ask of you. Thank
4 you, Mr. Brown.

5 THE COURT: All right, Mr. Floyd?

6 VOIR DIRE EXAMINATION

7 BY MR. FLOYD:

8 Q. Good morning, Mr. Brown.

9 A. Good morning.

10 Q. My name is Wayne Floyd, I'm one of Johnny Bennett's
11 lawyers. Mr. Brown, what is your opinion on the death
12 penalty?

13 A. If necessary, it's something that needs to be done.

14 Q. Have you ever discussed the death penalty with your
15 wife or friends, co-workers?

16 A. No, sir.

17 Q. Has your opinion on the death penalty changed any
18 in your life?

19 A. No, sir.

20 Q. Now, I noticed that you were in the Marines?

21 A. Yes, sir.

22 Q. How long were you in the Marines?

23 A. Just through boot camp.

24 Q. Boot camp. And in your church, does your church
25 discuss the death penalty?

1 A. No, sir.

2 Q. Never had any position on it that you know of?

3 A. Not that I know of.

4 Q. Now, do you understand that Mr. Bennett has already
5 been convicted of murder?

6 A. Yes, sir.

7 Q. Now, in South Carolina did you know that we don't
8 have degrees of murder that we just have murder?

9 A. Yes, sir.

10 Q. And that not every killing is a murder, were you
11 aware of that?

12 A. Yes, sir.

13 Q. Now, if you were to find out that Mr. Bennett, as
14 you will be told, has been convicted of murder, which is a
15 killing with malice aforethought, could you still consider
16 the life imprisonment sentence for that type of a killing?

17 A. Yes, sir.

18 Q. Now, in addition to evidence about the murder
19 itself, both sides will be giving you evidence either in
20 aggravation to show either bad things or conduct about
21 Mr. Bennett or good things and good conduct about
22 Mr. Bennett. Can you consider these other aspects of the
23 case other than just the murder itself in making your
24 decision?

25 A. Yes, sir.

1 Q. Do you understand that a juror can vote for a life
2 sentence for any reason whatsoever?

3 A. Yes, sir.

4 Q. And do you agree with that concept of law?

5 A. Yes, sir.

6 Q. Now, I believe Mr. Myers asked you this, but when
7 you were on the jury you never served on a jury itself, you
8 were just in the panel?

9 A. Yes, sir.

10 MR. FLOYD: Thank you, no further questions.

11 THE COURT: Anything else from the State?

12 MR. MYERS: No, sir.

13 THE COURT: All right. Let me ask you to step just
14 outside the door, okay?

15 (WHEREUPON, Juror Brown leaves the courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Submit he's qualified.

19 THE COURT: Defense?

20 MR. FLOYD: Your Honor, we feel he's qualified.

21 THE COURT: Okay. I find he is qualified.

22 Ask him to step in.

23 (WHEREUPON, Juror Brown enters the courtroom.)

24 THE COURT: Mr. Brown, I've determined you'd be
25 qualified to sit on the jury in this case if selected. So

1 what I'll ask you to do is come back tomorrow morning at nine
2 o'clock, okay. That's Wednesday morning, tomorrow at nine.
3 Just come to the jury room and sit here in the middle
4 section. You'll be there with about 35 other folks and we'll
5 pick the jury from that group.

6 Now, when you come, if you would, bring bags packed
7 for as much as about a week in a motel. Leave the bags in
8 your car. If you do wind up on the jury, somebody will get
9 the bags and we'll get them to the motel for you.

10 Now, in the meantime, it's still very important
11 that you not talk with anyone about the case. Certainly, let
12 your family know what you're doing, but don't talk about the
13 details of the case. And stay away from any sort of news on
14 television or radio, and away from the newspaper. With that
15 in mind, we'll see you tomorrow morning at nine. Thank you.

16 (WHEREUPON, Juror Brown leaves the courtroom.)

17 THE COURT: Bring the next one in.

18 (WHEREUPON, Juror Number 112, Jimmy W. Elmore,
19 a white male, enters the courtroom.)

20 Jimmy W. Elmore, after being duly sworn,
21 testified as follows:

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Mr. Elmore, just relax. Nobody is going to give
25 you a hard time here. We're just going to ask you a few

1 questions. And if you would, try and face toward the front
2 as much as you can so the microphone can pick you up.

3 First of all, you recall that we told you in this
4 case that the State has charged Mr. Johnny Bennett with
5 murder and have asked for the death penalty. Do you remember
6 that?

7 A. Yes, sir.

8 Q. And you remember that we told you that a previous
9 jury has already heard the charge of murder. They've made
10 that determination. They found Mr. Bennett guilty of murder.
11 So this jury will not be involved in that, that's been
12 decided. This jury will be hearing only the questions
13 regarding the proper sentence. And there are only two
14 possible sentences, life in prison or the death penalty. Do
15 you understand that?

16 A. Yes, sir.

17 Q. Now, have you heard anything about this case
18 before?

19 A. No, sir.

20 Q. And let me ask if you know any of these folks
21 involved. This is Mr. Bennett right here. Do you know
22 Mr. Bennett or know of Mr. Bennett?

23 A. No, sir.

24 Q. And he's represented by Mr. Wayne Floyd, right
25 here, and Mr. Hervery Young. Do you know Mr. Floyd or

1 Mr. Young?

2 A. No, sir.

3 Q. Or know of them?

4 A. No, sir.

5 Q. Now, the State's represented by the Solicitor's
6 Office. And this is the Solicitor, Mr. Donnie Myers, who
7 will be prosecuting the case, along with Mr. Dayton Riddle
8 and Mr. Shawn Graham. Do you know or know of any of these
9 gentlemen?

10 A. No, sir.

11 Q. Have you ever had any dealings with the Solicitor's
12 Office?

13 A. No, sir.

14 Q. Now, we also give you a witness list. Did you get
15 a chance to look that over?

16 A. Yes, sir.

17 Q. Did you recognize any of those names on there at
18 all?

19 A. No, sir.

20 Q. We also gave you a sheet with three categories of
21 jurors, did you look that over?

22 A. Yes, sir.

23 Q. Have some time to think about it?

24 A. Yes, sir.

25 Q. Do you feel like one of those categories applies to

1 you?

2 A. Yes, sir, the last one.

3 Q. The last one?

4 A. Yes, sir.

5 Q. Now, let me go over it and be sure what we're
6 talking about. The third juror is a juror who says that even
7 though a person has been found guilty of murder that I will
8 not have my mind made up as to the proper sentence. That I
9 would want to hear all those facts and circumstances about
10 aggravation. In other words, the things against Mr. Bennett.
11 I want to hear the facts and circumstances about mitigation.
12 In other words, everything for Mr. Bennett. I want the Judge
13 to tell me the law, and then only after I've done all of that
14 would I be able to decide the appropriate sentence; is that
15 right?

16 A. Yes, sir.

17 Q. In other words, that my mind is open.

18 A. Right.

19 Q. I have no idea on the sentence until I've heard
20 everything.

21 A. Right.

22 Q. This juror also says that if I determine that a
23 life sentence is appropriate I could give a life sentence.

24 A. Yes, sir.

25 Q. And if I determine that the death sentence is

1 appropriate I could give the death sentence.

2 A. Yes, sir.

3 Q. In other words, I could give either one of those
4 sentences depending on what the circumstances indicated?

5 A. Yes, sir.

6 Q. Now, the law also says that if a jury gives a death
7 sentence that each juror must sign a form which said that
8 they have given the death sentence. Now, if you were on the
9 jury and had determined that was the appropriate sentence
10 would you be able to sign that form?

11 A. Yes, sir.

12 Q. Now, also, I didn't mention this before, the victim
13 in this case was Mr. Benton Darrell Smith. He was the person
14 who was killed. Do you know Mr. Smith or know of him in any
15 way?

16 A. No, sir.

17 Q. And do you know of any other reason why you could
18 not give both sides a fair trial in this case?

19 A. No, sir.

20 Q. Okay. And one other thing. Since you left here
21 yesterday have you heard anything about this case or talked
22 with anybody about it at all?

23 A. No, sir.

24 Q. The attorneys will have some questions for you.

25 Let me ask you if you'll answer their questions, okay?

1 A. Okay.

2 VOIR DIRE EXAMINATION

3 BY MR. RIDDLE:

4 Q. How are you doing, Mr. Elmore?

5 A. How are you doing?

6 Q. My name is Dayton Riddle, I'm Deputy Solicitor here
7 in Lexington.

8 A. Yes, sir.

9 Q. I just have a couple questions to ask you. There's
10 no right or wrong answers.

11 A. Good.

12 Q. What we're just trying to do is find out a little
13 bit about you, your background and what your beliefs are. Of
14 course, it's your beliefs, not mine, and I'm not here to
15 argue with you. Do you understand that?

16 A. Yes, sir.

17 Q. Have you ever served on a jury before?

18 A. No, sir.

19 Q. Have you ever even been in this courtroom before?

20 A. Yes, sir.

21 Q. When was that?

22 A. I wasn't selected.

23 Q. Oh, you got jury duty, but you weren't on the jury?

24 A. Right, I wasn't selected.

25 Q. Was that a murder case or a criminal week rather;

1 do you even remember?

2 A. Just a criminal thing, I think.

3 Q. You're somewhat familiar with the jury system?

4 A. Yes, sir.

5 Q. And you understand that in an ordinary criminal
6 case what happens is the jury will hear evidence about
7 whether somebody is guilty or not guilty?

8 A. Exactly.

9 Q. And if the jury votes guilty, in an ordinary
10 criminal case the judge will do the sentencing?

11 A. Right.

12 Q. And the jury's job would be through. And when the
13 judge does the sentencing, he may say bring that fellow
14 around. He may say, solicitor, tell me something about him.
15 We might tell the judge his prior record and other things
16 that we know about him. Do you understand that?

17 A. Yes, sir.

18 Q. And then the defense lawyer might tell the judge
19 some good things about him.

20 A. Yes, sir.

21 Q. And then the judge would give him whatever sentence
22 he thought was appropriate. In a death penalty case, the
23 jury takes the place of the judge. Now, another jury has
24 already found Mr. Bennett guilty of murder.

25 A. Yes, sir.

1 Q. What we're going to do is put 12 men and women in a
2 box and kind of do that same thing for the jury that we would
3 ordinarily do for the judge; you understand that?

4 A. Yes, sir.

5 Q. And the State will present things to you called
6 aggravating circumstances or aggravating evidence. And
7 that's evidence that tends to make the crime worse. Facts
8 about the defendant that make him appear worse. Of course,
9 the defense would put up good things about the defendant.

10 A. Yes, sir.

11 Q. And then the judge would tell you what the law is
12 that the jury would apply in that case. And based on the law
13 and the evidence the jury would reach their verdict; you
14 understand that?

15 A. Yes, sir.

16 Q. Now, you indicated that you were a category 3
17 juror?

18 A. Yes, sir.

19 Q. So as you sit here today you couldn't tell us what
20 you would vote because you don't have any idea what the
21 evidence is; is that right?

22 A. That's correct.

23 Q. But as a category three juror you're not going to
24 always vote for the death penalty?

25 A. No, sir.

1 Q. And not always going to vote for life in prison?

2 A. No, sir.

3 Q. It would depend on the facts and circumstances?

4 A. Yes, sir.

5 Q. The aggravating and the mitigating; is that right?

6 A. Yes, sir.

7 Q. You would want to hear all of that information
8 before you made your mind in the case?

9 A. Yes, sir.

10 Q. And follow the law that the Judge gives you?

11 A. Yes, sir.

12 Q. After you've heard all that, you think you could
13 reach a fair and just conclusion based on the evidence, based
14 on law?

15 A. Yes, sir.

16 Q. Is there anything about you, Mr. Elmore, your
17 background, your upbringing, your beliefs, what have you, you
18 know, the things that make you who you are?

19 A. Right.

20 Q. Anything about you that we should know that would
21 prevent you from being fair and impartial to both sides in
22 this case?

23 A. No, sir. I've just always tried to be an honest
24 person, so I don't see any reason why I couldn't come up with
25 a fair, just -- you know, I don't see any problem.

1 Q. No axes to grind either way?

2 A. No, sir.

3 Q. Starting with a clean slate?

4 A. Yes, sir.

5 MR. RIDDLE: Thank you, sir, that's exactly what
6 we're looking for.

7 VOIR DIRE EXAMINATION

8 BY MR. YOUNG:

9 Q. Good morning, Mr. Elmore.

10 A. Morning.

11 Q. Have you ever had the occasion to discuss your
12 views or your feelings about the death penalty with anyone?

13 A. Not really, not really, just my own beliefs in it.

14 Q. Tell us, what are your beliefs as far as the death
15 penalty is concerned?

16 A. Well, I think people ought to be held accountable
17 for what they do, whether it be death or life. It's not --
18 you know, it wouldn't be an easy thing to, like, want to put
19 someone to death or whatever. But I would think that, you
20 know, kind of what they've done. You know, just my beliefs
21 that what they've done, if it warrants the death penalty that
22 could be very well what I could vote -- you know, go that
23 way; or if other circumstances arise I could go the other way
24 with life.

25 Q. You mentioned the circumstances. In a capitol

1 murder trial, ordinarily the situation in most jury trials is
2 the jury finds a person guilty or not guilty then the judge
3 will sentence that person.

4 A. Right.

5 Q. But in this type of trial, the jury is the one who
6 will pass down the sentence.

7 A. Yes, sir.

8 Q. They will make the decision of life or death; you
9 understand that?

10 A. Yes, sir.

11 Q. And you understand that Mr. Bennett has already
12 been convicted of murder?

13 A. Yes, sir.

14 Q. Murder in South Carolina, as the Judge stated, is
15 the felonious or willful killing of another person with
16 malice aforethought; do you understand that?

17 A. Yes, sir.

18 Q. That means another jury has already found that he
19 killed someone with malice aforethought.

20 A. Right.

21 Q. Does that cause you to form any opinions as to what
22 the appropriate sentence should be?

23 A. No, sir, not at this point.

24 Q. In the penalty phase of a trial, this phase that
25 we're in now, the State will be able to put up evidence which

1 is called aggravating evidence. The defense will put up what
2 is called mitigating evidence. That's the good and the bad
3 relating to the crime, relating to the defendant. The Judge
4 will instruct that in order for the jury to even consider the
5 death penalty as a sentence that they must first find that
6 there is an aggravating circumstance that exists; you
7 understand that?

8 A. Yes, sir.

9 Q. If that jury finds that there is not any
10 aggravating circumstances then the jury could find -- then
11 the jury would return a verdict of life, understand?

12 A. Yes, sir.

13 Q. If they find that there is an aggravating, then and
14 only then could they even consider the death penalty. The
15 Judge will also instruct the jury that even if you find an
16 aggravating circumstance that you could still return a
17 sentence of life; you understand that?

18 A. Yes, sir.

19 Q. In fact, the jury could return a sentence of life
20 for any reason whatsoever or for no reason at all; you
21 understand?

22 A. Yes, sir.

23 Q. You understand that the Judge would never instruct
24 a jury that they have to return a death verdict?

25 A. Yes, sir.

1 Q. You understand that by serving on the jury that you
2 will be entitled to make your own independent decision as to
3 what you think the appropriate sentence is?

4 A. Yes, sir.

5 Q. Then and only then will you deliberate with the
6 other jurors and return a sentence to the Court. If you feel
7 that your independent decision is life or death, would you be
8 able to vote that way?

9 A. Yes, sir.

10 MR. YOUNG: Thank you, that's all we ask.

11 THE COURT: Anything else?

12 MR. RIDDLE: No, sir.

13 THE COURT: Mr. Elmore, let me ask you to step just
14 outside the door for a minute. We'll get you back in in just
15 a second.

16 (WHEREUPON, Juror Elmore leaves the
17 courtroom.)

18 THE COURT: What's the State's position on this
19 juror?

20 MR. RIDDLE: Submit he's qualified, Your Honor.

21 THE COURT: Defense?

22 MR. YOUNG: He's qualified, Your Honor.

23 THE COURT: I find he is qualified.

24 (WHEREUPON, Juror Elmore enters the
25 courtroom.)

1 THE COURT: Mr. Elmore, I've determined that you
2 will be qualified to sit on the jury if you're selected. So
3 What I'm going to ask you to do, if you would, is come back
4 tomorrow morning at nine. And just come right here in the
5 courtroom and sit right here back in this middle section.
6 Now, you'll be there with about 35 or 40 other people. We're
7 going to pick the jury from that group.

8 When you come back tomorrow, if you would, bring
9 your bags packed for as much as a week in a motel. The jury
10 is going to be sequestered during this time. And just leave
11 your bags in your car and somebody will take care of them for
12 you if you wind up on the jury.

13 Now, during that time, it's very important still
14 that you not talk about the case. Certainly, you want to let
15 your family know where you're going. You don't want to just
16 disappear. I know you want to let them know where you are,
17 and tell them what's going on. But be sure not to talk about
18 any details of the case.

19 And if you would, and I know this is hard also, but
20 stay away from any kind of news until then; no newspapers, no
21 radio news, no television news, stay away from that. And
22 with that -- do you have a question?

23 MR. ELMORE: No, sir.

24 THE COURT: I thought you were about to say
25 something. With that in mind, we'll see you tomorrow morning

1 at nine right here with your bags packed. Thank you. Have a
2 good day.

3 (WHEREUPON, Juror Elmore leaves the
4 courtroom.)

5 (WHEREUPON, Juror Number 135, Caroline M.
6 Gaskin, a white female, enters the courtroom.)

7 CAROLINE M. GASKIN, after being duly sworn,
8 testified as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Ms. Gaskin, just relax here. Nobody is going to
12 give you a hard time. We just have a few questions to ask
13 you, okay.

14 First of all, do you recall that I told you
15 yesterday that this is a case where the State has charged
16 Mr. Johnny Bennett with murder and have asked for the death
17 penalty. Do you remember that?

18 A. Yes, sir.

19 Q. Now, do you recall that I also told you that a
20 previous jury has already found Mr. Bennett guilty of murder.
21 They found he committed murder. And so this jury has only --
22 the only thing this jury will do is to decide the sentence.
23 You're not going to worry about the murder, you're not going
24 to get back into that; do you understand?

25 A. Yes, sir.

1 Q. You're just going to talk about the sentence
2 itself. And there are only two possible sentences, life in
3 prison or the death penalty; you understand?

4 A. Yes, sir.

5 Q. Now, have you heard anything about this case
6 before?

7 A. No, sir.

8 Q. Nothing to your knowledge?

9 A. Nothing to my knowledge.

10 Q. And I'm going to ask you if you know any of these
11 folks involved. This is Mr. Donnie Myers, he's the solicitor
12 prosecuting the case. With him are Mr. Dayton Riddle and
13 Mr. Shawn Graham. Do you know or know of any of these
14 gentlemen?

15 A. No, sir.

16 Q. This is Mr. Bennett, Mr. Johnny Bennett, right
17 here. Do you know Mr. Bennett or know of Mr. Bennett?

18 A. No, sir.

19 Q. And he's represented by Mr. Hervery Young over here
20 and Mr. Wayne Floyd. Do you know or know of either of these
21 gentlemen?

22 A. No, sir.

23 Q. And we gave you a witness list, also. Did you look
24 that over?

25 A. Yes, sir.

1 Q. Did you know any of the people on the list or
2 recognize any of the names?

3 A. I recognized --

4 Q. And if you do just, if you would, give them to me
5 by number, okay?

6 A. 64, 108, 109 and 130.

7 Q. How do you know number 64?

8 A. From working, where I work.

9 Q. He works in the same place you do?

10 A. No, sir, I know him as a customer.

11 Q. He's a customer. Where do you work?

12 A. Wachovia Bank.

13 Q. He's just a customer in the bank?

14 A. Yes, sir.

15 Q. Now, if he were a witness in the case, would that
16 affect your ability to be a fair juror for both sides?

17 A. No, sir.

18 Q. In other words, you wouldn't tend to give him more
19 credibility than anybody else because you know him?

20 A. No, sir.

21 Q. And what other numbers were there?

22 A. 108, 109 and 130, and it's the same with all of
23 them.

24 Q. Okay. 108, 109 and 130 are all people who come in
25 the bank where you work?

1 A. Yes, sir.

2 Q. I gather you work at a bank in Swansea?

3 A. No, in Cayce.

4 Q. And they all come up to Cayce then?

5 A. Or they have in the past years.

6 Q. You must be popular to have all those Swansea
7 people coming up?

8 A. Yes, sir.

9 Q. If any of these folks were to testify would that
10 cause you any problem with giving both sides a fair trial in
11 this case?

12 A. No, sir.

13 Q. In other words, with any of them, you wouldn't give
14 any of them any more credibility just because you know them?

15 A. No, sir.

16 Q. Now, the victim in this case, the man who was
17 killed was Mr. Benton Darrell Smith. Did you ever know
18 Mr. Smith or know of him?

19 A. No, sir.

20 Q. We also gave you a sheet that had three categories
21 of jurors described on it. Did you look that over?

22 A. Yes, sir.

23 Q. Did you get a chance to think about it?

24 A. Yes, sir.

25 Q. And do you feel like one of those categories would

1 apply to you?

2 A. The third one.

3 Q. The third. Now, let's go over that. That's a
4 juror who says that even though the defendant's been found
5 guilty of murder that I still would not have my mind made up
6 as to the proper sentence, that I could give a life or death
7 sentence depending on the circumstances; is that correct?

8 A. Yes, sir.

9 Q. Now, this juror says that I want to hear all those
10 -- do you remember yesterday we told you about aggravating
11 circumstances, which make the murder worse, tend to
12 exacerbate; do you remember that?

13 A. Yes, sir.

14 Q. Told you about mitigating circumstances that tend
15 to reduce or lessen it; do you recall that?

16 A. Yes, sir.

17 Q. So in other words, aggravating circumstances are
18 things that would be against Mr. Bennett, mitigating
19 circumstances would be for Mr. Bennett; you understand?
20 You'd hear both side of those.

21 A. Yes, sir.

22 Q. And would you be able to listen and consider all of
23 those, both aggravating and mitigating?

24 A. Yes, sir.

25 Q. So this juror says I want to hear all those

1 aggravating circumstances, I want to hear all those
2 mitigating circumstances, I want the judge to tell me the
3 law, and then and only then would I be ready to decide the
4 appropriate sentence. In other words, I would not have my
5 mind made up, I wouldn't even think about the sentence until
6 I heard all of that; is that right?

7 A. Yes, sir.

8 Q. Now, this juror also says this, that if I felt --
9 if I found or determined that a life sentence would be the
10 appropriate sentence I would have no trouble giving a life
11 sentence or could give a life sentence. If I found that a
12 death sentence was the appropriate sentence, I could give the
13 death sentence. Is that correct?

14 A. Yes, sir.

15 Q. The law also says this, that if a jury gives a
16 death sentence that all 12 jurors must sign a form saying we
17 have given a death sentence. And, of course, you'll have to
18 sign it along with the other jurors. Now, if you were on a
19 jury and had determined the death sentence was appropriate
20 would you be able the sign that form?

21 A. Yes, sir.

22 Q. Now, do you know then of any reason -- oh, I didn't
23 ask you, also. Have you ever had any dealings with the
24 Solicitor's Office here?

25 A. No, sir.