

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, IN AND
FOR LAKE COUNTY, FLORIDA

CASE NO. 87-1347-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

VOLUME II

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CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY
TAVARES, FLORIDA



Ruth C. Patz & Associates
Official Court Reporters, Fifth Judicial Circuit
Tavares, Florida 32778

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1 Baptist Church.

2 MR. HOGAN: Anything about your religious training that
3 would make it difficult for you to recommend capital
4 punishment if that is the appropriate decision?

5 MS. EMERSON: No, sir.

6 MR. HOGAN: Do you understand there are two separate
7 charges here, but one trial?

8 MS. EMERSON: Yes, sir.

9 MR. HOGAN: Do you understand, Dr. Emerson, that our
10 burden in this case is to prove this beyond a reasonable
11 doubt?

12 MS. EMERSON: Yes, I believe I understand about that,
13 yes, sir.

14 MR. HOGAN: No higher burden?

15 MS. EMERSON: Right.

16 MR. HOGAN: Thank you very much, Doctor. Appreciate it.
17 If you have any questions, just stop me.

18 Ms. Elders? How are you doing?

19 MS. ELDERS: Just fine.

20 MR. HOGAN: Hear most of the questions?

21 MS. ELDERS: Yes, sir.

22 MR. HOGAN: Do you have any areas that you have any
23 questions about yourself?

24 MS. ELDERS: No, I don't have any.

25 MR. HOGAN: Do you understand that should the jury

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1 return a verdict of guilty of First Degree Murder, that I
2 am going to be back up here to the podium asking for a
3 recommendation of death, do you understand?

4 MS. ELDERS: Right.

5 MR. HOGAN: Do you have any problems with that?

6 MS. ELDERS: No.

7 MR. HOGAN: Do you believe that capital punishment is
8 appropriate in certain cases?

9 MS. ELDERS: Yes, in certain cases I think it is.

10 MR. HOGAN: Do you understand the process that we go
11 through arriving at that decision? The weighing of the
12 aggravating factors and the mitigating factors?

13 MS. ELDERS: I think I do.

14 MR. HOGAN: You think you could follow the law?

15 MS. ELDERS: Yes.

16 MR. HOGAN: Do you understand, Ms. Elders, that you
17 should use your common sense?

18 MS. ELDERS: Yes, sir.

19 MR. HOGAN: And in using your common sense, you form an
20 abiding conviction of guilt, this confidence in your
21 convictions?

22 MS. ELDERS: Yes.

23 MR. HOGAN: That you should stick to it?

24 MS. ELDERS: Yes, sir.

25 MR. HOGAN: You also understand that when you are

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1 deliberating in the jury room, you may be the only person
2 ... you may, in fact, be the only person who has one point
3 of view. The Judge is going to instruct you to deliberate,
4 which certainly implies that you can discuss and be capable
5 of changing your mind if the evidence persuades you to
6 change your mind. In other words, there is nothing wrong
7 with going into the jury room and changing your mind.

8 Do you understand, Ms. Elders, that circumstantial
9 evidence is good evidence?

10 MS. ELDERS: Yes, sir.

11 MR. HOGAN: This is not Perry Mason. First of all,
12 noone is going to jump up and run out of the courtroom or
13 no dramatics. Okay? This is not Perry Mason. Circumstantial
14 evidence is good evidence, you understand that?

15 MS. ELDERS: Ahum. (Affirmative response)

16 MR. HOGAN: Mrs. Elders, do you understand that it is
17 perfectly acceptable and perfectly alright to rely on
18 expert testimony or have experts explain what certain
19 pieces of evidence means?

20 MS. ELDERS: I think I understand that.

21 MR. HOGAN: Do you understand about how we all rely
22 on experts in our lives?

23 MS. ELDERS: Yes, sir.

24 MR. HOGAN: And courts are no different.
25 Ms. Elders, I noted from Mr. Edmund's voir dire that he

1 seemed rather upset and sarcastic about someone coming here
2 from the FBI. Do you have any feelings against the FBI
3 for some reason?

4 MS. ELDERS: No.

5 MR. HOGAN: Do you understand that the Federal Bureau
6 of Investigation very commonly assists local law enforcement
7 like the Lake County Sheriff's Office as they did in this
8 case, in aiding the Lake County Sheriff's Office involving
9 this case?

10 MS. ELDERS: Yes, sir.

11 MR. HOGAN: Ms. Elders, will you listen to the evidence
12 and the testimony of the FBI agent expert and evaluate that
13 testimony according to the rules that Judge Lockett explains
14 to you?

15 MS. ELDERS: Yes, sir.

16 MR. HOGAN: Do you understand that you can consider
17 this FBI expert's educational training, background and
18 experience?

19 MS. ELDERS: Yes, sir.

20 MR. HOGAN: And you may, in fact, Ms. Elders, decide
21 that he is better equipped and better qualified to testify
22 than any local law enforcement officer, do you understand
23 that?

24 MS. ELDERS: Yes, sir.

25 MR. HOGAN: Mrs. Elders, lastly, will you ask yourself

1 after you listen to the testimony of the FBI agent, will
2 you ask yourself why was Mr. Edmund so sarcastic about FBI
3 agents?

4 MR. EDMUND: Your Honor, I think I have to object to
5 that on the grounds that it is personal, if it please, Your
6 Honor.

7 THE COURT: I am going to sustain that, Mr. Hogan.

8 MR. HOGAN: Do you have any questions, Ms. Elders,
9 for me?

10 MS. ELDERS: No, sir.

11 MR. HOGAN: Do you have any children, Ms. Elders?

12 MS. ELDERS: Yes, sir.

13 MR. HOGAN: How many?

14 MS. ELDERS: Three girls and a boy.

15 MR. HOGAN: How old are they?

16 MS. ELDERS: They range from thirty-seven to twenty-
17 seven. No... yeah... I don't know what their ages are.

18 MR. HOGAN: What do they do?

19 MS. ELDERS: Two are LPNs and the boy is in a housing
20 project. They are all in North Carolina.

21 MR. HOGAN: Okay, do you have any grandchildren?

22 MS. ELDERS: I have three boys and a girl.

23 MR. HOGAN: How old are they?

24 MS. ELDERS: The oldest boy... I have a great grandson.

25 MR. HOGAN: You don't look old enough for that.

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1 MS. ELDERS: I am.
2 MR. HOGAN: I believe you. What does your great
3 grandson do?
4 MS. ELDERS: I don't know what he is doing. He is up
5 in North Carolina.
6 MR. HOGAN: Have you ever had any contact with the
7 criminal justice system?
8 MS. ELDERS: No.
9 MR. HOGAN: Have you ever been a victim or a witness
10 or had any family members?
11 MS. ELDERS: My son, when he was younger, he got
12 in trouble that boys, you know, get into.
13 MR. HOGAN: Right. Typical juvenile type thing?
14 MS. ELDERS: Yes.
15 MR. HOGAN: Anything about that that would cause you
16 to be...?
17 MS. ELDERS: No, nothing.
18 MR. HOGAN: What church do you go to?
19 MS. ELDERS: Baptist Church.
20 MR. HOGAN: Anything about your religious training or
21 background which would cause you concerns or problems with
22 capital punishment?
23 MS. ELDERS: No.
24 MR. HOGAN: Do you think you could recommend capital
25 punishment if it is appropriate in this case?

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1 MS. ELDERS: I think so.

2 MR. HOGAN: Ms. Warren, what is a certified operator?

3 MS. WARREN: I am a certified computer operator.

4 MR. HOGAN: Oh, computer. I guess the busy time of
5 year just passed?

6 MS. WARREN: Not yet. We have extensions.

7 MR. HOGAN: Ms. Warren, you heard me read the list
8 of witnesses and heard me talk with one of the other jurors
9 who may be gone now, I don't recall which one of the folks
10 it was, Mr. Meaker, about the Hispanic names that appear on
11 the witness list and the fact that some people will be
12 testifying who need an interpreter. Did you understand
13 that?

14 MS. WARREN: Yes.

15 MR. HOGAN: Did you understand their testimony should
16 be evaluated just like anybody else's testimony and you
17 should not hold the fact that they cannot speak English
18 against them?

19 MS. WARREN: Yes.

20 MR. HOGAN: Did you hear everything we talked about
21 so far? Do you have any questions?

22 MS. WARREN: No.

23 MR. HOGAN: Do you think it is unusual for an eleven
24 year old girl to trust a police officer?

25 MS. WARREN: No.

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1 MR. HOGAN: Had you, as a child, been told to trust a
2 police officer; if you got lost, find a police officer, and
3 that sort of thing?

4 MS. WARREN: Yes.

5 MR. HOGAN: Do you think it is possible for an adult
6 male to sexually assault or rape or attempt to rape an
7 eleven year old girl?

8 MS. WARREN: No, sir.

9 MR. HOGAN: You don't think that is possible?

10 MS. WARREN: I don't think it is possible?

11 MR. HOGAN: Yes? Do you think that is possible? Or
12 in your mind is it just so far fetched...?

13 MS. WARREN: It is possible.

14 MR. HOGAN: You understand that is possible?

15 MS. WARREN: Yes.

16 MR. HOGAN: Do you understand that I expect the
17 testimony to show that this eleven year old girl walked a
18 short distance from her home to a convenience store where
19 there were video games to buy a pencil at 10:00 or 10:30
20 at night. Do you understand the fact that she may or may
21 not ... maybe she shouldn't have been out that time of
22 night alone, that is not what the trial is about?

23 MS. WARREN: No.

24 MR. HOGAN: And her mother, for letting her walk to the
25 store, her mother is not on trial here. Understand that?

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1 MS. WARREN: Yes.

2 MR. HOGAN: Do you understand, Ms. Warren, that you can
3 and should use your common sense?

4 MS. WARREN: Yes.

5 MR. HOGAN: Do you understand, do all of you understand
6 that when Mr. Edmund uses the term "partner", he is using
7 that in a loose sense of the word. A jury is an independent
8 body and they make their decisions based on the facts and the
9 law. Once you go into that jury room, neither he nor I
10 or Mr. Hurm or even the Judge has anything to say about your
11 deliberations. We are not your partners. Do you understand
12 that?

13 MS. WARREN: Yes.

14 MR. HOGAN: Ms. Warren, do you understand there is no
15 set time in the law... the law sets no period of time necessary
16 to form premeditation. Premeditation can be formed in a
17 split second, do you understand that?

18 MS. WARREN: Yes, sir.

19 MR. HOGAN: Ms. Warren, do you understand that if you
20 take an oath as a juror, you have an obligation to return a
21 verdict of guilty for the highest crime proved beyond a
22 reasonable doubt? Do you understand that my burden is a
23 reasonable doubt and no higher burden?

24 MS. WARREN: Ahum. (Affirmative response)

25 MR. HOGAN: Not beyond all doubt; not beyond a shadow

1 of a doubt. No Perry Mason stuff.

2 MS. WARREN: Ahum. (Affirmative response)

3 MR. HOGAN: If you have an abiding conviction of guilt,
4 then I have proven this case beyond a reasonable doubt,
5 okay? Your common sense, okay? Do you understand that?

6 MS. WARREN: Ahum. (Affirmative response)

7 MR. HOGAN: Ms. Warren, I expect to have to, in order
8 to prove this case, to introduce graphic testimony and
9 photographs, so that I can explain to the jury what happened
10 in this case. Do you feel that you will be able to examine
11 that evidence?

12 MS. WARREN: Yes, sir.

13 MR. HOGAN: And consider it?

14 MS. WARREN: Yes, sir.

15 MR. HOGAN: Ms. Warren, a moment ago you said you would
16 find that common and you have been told, in fact, in your
17 life that you can trust police officers and you find it
18 certainly understandable for a child to trust a police
19 officer, but would you also agree that just because someone
20 is a police officer doesn't mean they can't commit a crime?

21 MS. WARREN: That they can't?

22 MR. HOGAN: They are human beings, right?

23 MS. WARREN: Ahum. (Affirmative response)

24 MR. HOGAN: And they are just like any other section of
25 society, there are bad apples in every bunch. Would you

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1 agree with that?

2 MS. WARREN: Yes.

3 MR. HOGAN: How do you feel about capital punishment,
4 Ms. Warren?

5 MS. WARREN: It is necessary when it is needed.

6 MR. HOGAN: Do you really understand that that may be
7 a real possibility in this case? I am not just picking on
8 you, but that it really may come down to the fact that you
9 may have to recommend, vote to recommend the death penalty?

10 MS. WARREN: Yes, sir.

11 MR. HOGAN: Do you think that you can do that?

12 MS. WARREN: If necessary.

13 MR. HOGAN: Do you think you can follow the law?

14 MS. WARREN: Yes, sir.

15 MR. HOGAN: That is what I am asking you.

16 MS. WARREN: Yes, sir.

17 MR. HOGAN: Now, Ms. Warren, I don't know how well you
18 could hear Mr. Edmund, but he referred to someone named
19 "Jimmie" and I am assuming that he means the defendant,
20 James Duckett, in this case, saying that Jimmie, assuming
21 that he meant the defendant, James Duckett, deserves a fair
22 trial. Do you understand that my client, the People of the
23 State of Florida deserve a fair trial?

24 (WHEREUPON, MRS. WARREN NODS IN THE AFFIRMATIVE)

25 MR. HOGAN: Do you have any questions?

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1 MS. WARREN: No, sir.
2 MR. HOGAN: What church do you go to?
3 MS. WARREN: I don't. I don't have time.
4 MR. HOGAN: If you did go, what one would you go to?
5 MS. WARREN: I am a Baptist.
6 MR. HOGAN: Is there anything about your religious
7 training that would make it difficult for you to be on this
8 case?
9 MS. WARREN: No, sir.
10 MR. HOGAN: To return a verdict of guilty? To
11 recommend capital punishment if it is appropriate?
12 MS. WARREN: No, sir.
13 MR. HOGAN: You could do that?
14 MS. WARREN: Yes, sir.
15 MR. HOGAN: Do you have any questions, Ms. Elders?
16 MS. ELDERS: No, sir.
17 MR. HOGAN: Would you like to be on the jury?
18 MS. ELDERS: Yes.
19 MR. HOGAN: You have never been on a jury before, is
20 that right?
21 MS. ELDERS: Yes, sir.
22 MR. HOGAN: Dr. Emerson, what about yourself?
23 MS. EMERSON: I would be glad to serve, because it is
24 my duty, but like someone else said, I am not overjoyed to
25 be here, but it is my duty as a citizen.

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1 MR. HOGAN: I appreciate that. Anyone else have any
2 comments or questions? You ma'am? Ms. Hunt?
3 MS. HUNT: No.
4 MR. HOGAN: Mr. Hall?
5 MR. HALL: No, sir.
6 MR. HOGAN: Mr. Meaker?
7 MR. MEAKER: No.
8 MR. HOGAN: Mr. Halstead?
9 MR. HALSTEAD: No.
10 MR. HOGAN: Anybody else? Everybody having a good
11 time?
12 JURORS: No.
13 MR. HOGAN: You all still happy you got that summons
14 in the mail?
15 We do appreciate your patience. Thank you very much.
16 THE COURT: Mr. Edmund?
17 MR. EDMUND: If it please, Your Honor?
18 THE COURT: Yes, sir.
19 VOIR DIRE EXAMINATION
20 BY MR. EDMUND:
21 Ms. Warren, do you have any doubt in your mind that
22 I was referring to my client when I referred to Jimmie?
23 MS. WARREN: I didn't have any doubt in my mind?
24 MR. EDMUND: Ahum?
25 MS. WARREN: No, sir.

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1 MR. EDMUND: Do you think that that is what I was
2 talking about?

3 MS. WARREN: Yes.

4 MR. EDMUND: Do you really think the State Attorney had
5 any doubt in his mind that I was talking about Jimmie?
6 Do you think from his reaction, that maybe I struck a nerve
7 when I started to jump on the FBI?

8 MR. HOGAN: Judge, I would object.

9 THE COURT: Double edged sword, Mr. Edmund.

10 MR. EDMUND: Right, Your Honor, but it is not...

11 MR. HOGAN: It is improper and I ask that he be
12 isntructed to refer to the defendant or James Aren Duckett
13 or Mr. Duckett.

14 THE COURT: Mr. Edmund, the State Attorney is asking if
15 you will refer to your client by his last name or as the
16 defendant.

17 MR. EDMUND: I will not prefer, Judge, as the defendant,
18 if it please the Court. I will refer to him by his last
19 name.

20 THE COURT: Generally, my rule has been that we do
21 not use first names only. You may use first and last if you
22 choose.

23 MR. EDMUND: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. EDMUND: Ms. Warren, could you hear the questions

1 that I asked the other members of the panel?

2 MS. WARREN: Yes.

3 MR. EDMUND: Do you have any problem with the presumption
4 of innocence, or can you presume my client to be innocent?

5 MS. WARREN: Yes, sir.

6 MR. EDMUND: Can you clothe him with that presumption
7 of innocence throughout every stage of the trial?

8 MS. WARREN: Yes.

9 MR. EDMUND: If you are selected as a juror, as I
10 asked the others to do, would you start to deliberate with
11 the thought in mind right then he is presumed innocent and
12 he is sitting outside or wherever he is, awaiting your
13 verdict, that he, at that moment in time, is presumed to be
14 innocent?

15 MS. WARREN: Yes.

16 MR. EDMUND: Ms. Elders, will you presume my client
17 to be innocent?

18 MS. ELDERS: Yes, until proven guilty.

19 MR. EDMUND: Ma'am?

20 MS. ELDERS: Yes, sir, until he is proven guilty.

21 MR. EDMUND: Do you understand that he would only be
22 proven guilty if you are on the jury and they return a
23 verdict of guilty?

24 MS. ELDERS: Yes.

25 MR. EDMUND: Do you understand when you start your

1 deliberations, that he is still, at that moment in time,
2 presumed to be innocent?

3 MS. ELDERS: Yes, sir.

4 MR. EDMUND: If the Judge tells you that is the law,
5 will you follow it?

6 MS. ELDERS: Yes, sir, I guess I would if the Judge told
7 me.

8 MR. EDMUND: Dr. Emerson, can you presume my client
9 James Duckett, to be innocent?

10 MS. EMERSON: Yes, sir, I am used to dealing in
11 scientific methodology.

12 MR. EDMUND: Can you... will you make a conscious effort
13 to remember that when you start your deliberations, and
14 start it from point one?

15 MS. EMERSON: Yes, sir.

16 MR. EDMUND: Doctor, what are your hobbies?

17 MS. EMERSON: I am interested in all kinds of natural
18 phenomena. Right now, I am trying to study the birds that
19 are around and I am having a hard time with that. I like
20 to garden. I like to read. I like to write. Getting back
21 to your question, I occasionally watch TV, but that
22 is not a hobby. If you match that with the other group.

23 MR. EDMUND: There you go.

24 MS. EMERSON: I do watch the movies occasionally and I
25 enjoy football games and I watch Jeopardy when I have the

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1 time.

2 MR. EDMUND: There you go. Thank you. Ms. Elders, if

3 you watch television, ma'am, what do you like to watch?

4 MS. ELDERS: I watch Jeopardy and I like Hawaii Five O.

5 MR. EDMUND: What are your hobbies, ma'am?

6 MS. ELDERS: I like fishing. I don't have time to do

7 much of anything, because I got to work at 11:00 at night

8 and I work until 7:00 in the morning and sleep pretty much

9 of the day.

10 MR. EDMUND: How about you, Ms. Warren?

11 MS. WARREN: I roller skate, play guitar.

12 MR. EDMUND: Alright, if you watch TV, what are you

13 likely to watch?

14 MS. WARREN: I don't watch TV. I don't watch TV.

15 MR. EDMUND: I will just stop right there. If a young

16 person doesn't watch TV, I am all for it.

17 Have you ever been and I don't want to know what, but

18 any of you three ladies ever been a victim of a crime of

19 violence?

20 Have you had any close friends or relatives who might

21 have been victims of crimes of violence?

22 JURORS: No.

23 MR. EDMUND: Do you have any close friends or relatives

24 who are now or have been in law enforcement at any level?

25 MS. ELDERS: A brother-in-law that is a policeman.

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1 MR. EDMUND: At the present time?
2 MS. ELDERS: Ahum. (Affirmative response)
3 MR. EDMUND: Are you in his company from time to time,
4 Ms. Elders?
5 MS. ELDERS: No, he is in North Carolina.
6 MR. EDMUND: There is nothing about that that would
7 tend to have you give more weight or more believability to
8 a police officer's testimony than anyone else that might
9 be called?
10 MS. ELDERS: No, I am not around him that much. I
11 don't see him very much.
12 MR. EDMUND: Speaking of the FBI, would you be inclined
13 to give greater weight to an employee of the Federal Bureau
14 of Investigation simply because he was an employee of that
15 Bureau than any other witness who might be called,
16 Dr. Emerson?
17 MS. EMERSON: No.
18 MR. EDMUND: Would you, Ms. Elders?
19 MS. ELDERS: No.
20 MR. EDMUND: Do you have a problem with that? Is there
21 something about being an employee of the Federal Government
22 that makes him better than someone else who might be called?
23 MS. ELDERS: No, not better.
24 MR. EDMUND: Would you be inclined to give more
25 believability to his testimony?

1 MS. ELDERS: No, I don't know whether I would or not.

2 MR. EDMUND: Would you be inclined ... somebody said
3 that an expert is a so and so from out of town with a
4 briefcase. Would you be inclined to give him greater weight
5 simply because he is from out of town and will have a brief-
6 case?

7 MS. ELDERS: No.

8 MR. EDMUND: How about you, Ms. Warren, are you going
9 to give his testimony greater weight?

10 MS. WARREN: No.

11 MR. EDMUND: Will you judge it by the same yardstick
12 that you judge any other person who takes this witness stand?

13 MS. WARREN: Yes.

14 MR. EDMUND: Make your own determination whether he
15 has got the where with all to form the opinions he did or
16 whether he blew it or whether he didn't blow it, and compare
17 it with other testimony and other evidence, and compare it
18 with your own common sense, will you do that?

19 (WHEREUPON, MS. WARREN NODS HEAD IN THE AFFIRMATIVE)

20 MR. EDMUND: Now, have either of you three ladies ever
21 given any real thought or stopped and given any real
22 thought to just how important our jury system is? You have,
23 Doctor? You would because of your background, obviously.

24 MS. EMERSON: Right.

25 MR. EDMUND: And because of your profession, no doubt.

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1 Have you Ms. Elders?

2 MS. ELDERS: No, not really.

3 MR. EDMUND: Is it coming to you now just how important
4 this is to our system of juris prudence?

5 MS. ELDERS: Yes.

6 MR. EDMUND: Ms. Warren?

7 MS. WARREN: Yes.

8 MR. EDMUND: It would be unusual, of course, if people
9 not associated with it would give it any real thought.
10 You are aware, are you not, that it is one of the few
11 countries in the world that ... America is one of the few
12 countries in the world that has a jury system. Where people
13 of our peers can judge whether the State, the People of the
14 State of Florida, the establishment, can charge us and get
15 away with it unless we are, in fact, guilty, and if we are
16 not, then they acquit us, understand that? Ms. Warren?
17 Ms. Elders? Dr. Emerson?

18 JURORS: Yes, sir.

19 MR. EDMUND: Alright. Now, have you, Doctor, ever been
20 watching the news and comes an explanation of what an arrest
21 for the victim of a heinous crime, like this one. This is
22 a terrible thing and the thought occurred to you what they
23 ought to do to that person?

24 MS. EMERSON: No.

25 MR. EDMUND: You give him the benefit of the presumption

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of innocence?

MS. EMERSON: Yes, sir.

MR. EDMUND: You understand that from time to time even an establishment can make a mistake?

MS. EMERSON: Yes, sir.

MR. EDMUND: Do you understand that also, Mrs. Elders?

MS. ELDERS: Yes.

MR. EDMUND: Ms. Warren?

MS. WARREN: Ahum. (AFFIRMATIVE RESPONSE)

MR. EDMUND: Do you have time now to stop and smell the roses, Doctor?

MRS. EMERSON: Well, I am a person who likes to keep busy, but I also go do that, too.

MR. EDMUND: Again, can you be alone with yourself and make decisions alone?

MS. EMERSON: Yes.

MR. EDMUND: Obviously, you can make decision in company if you were in your profession for as long as you were. Would you like yourself for a friend?

MS. EMERSON: Yes, sir.

MR. EDMUND: You consider yourself a friend?

MS. EMERSON: Yes, sir.

MR. EDMUND: Now, I suppose I asked the other members of the jury this question before. I am concerned with what effect that the testimony and the photographs and the graphic

1 evidence might have upon you emotionally and I am further
2 and also concerned about how that emotion might affect your
3 judgment as it relates to my client, James Duckett. Do you
4 foresee any problem either with your own emotions or if you
5 have any problems with your emotions, that that would blow
6 over so that you would say somebody has got to be guilty
7 and he is that man?

8 MS. EMERSON: No, sir.

9 MR. EDMUND: Do you think any of the rest of you would
10 have any of that problem?

11 JURORS: No, sir.

12 MR. EDMUND: Ms. Symmes?

13 MS. SYMMES: No, sir.

14 MR. EDMUND: Ms. Fogarty?

15 MS. FOGARTY: No, sir.

16 MR. EDMUND: Ms. Brown?

17 MS. BROWN: No, sir.

18 MR. EDMUND: Mr. Halstead, how about you?

19 MR. HALSTEAD: No.

20 MR. EDMUND: Ms. Shepard?

21 MS. SHEPARD: No.

22 MR. EDMUND: Ms. Prevatt, how about you?

23 MS. PREVATT: No, sir.

24 MR. EDMUND: Ms. Stroud?

25 MS. STROUD: No, sir.

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1. MR. EDMUND: Don't let it blow over if you do have
2. problems. How about you, Ms. Hunt?

3. MS. HUNT: No, sir. I don't know how I would react
4. when I have to look at the pictures. I have glanced at
5. the pictures, but a glance at something and to look at
6. something is two different things.

7. MR. EDMUND: You have seen photographs of this
8. particular homicide, ma'am?

9. MS. HUNT: No.

10. MR. EDMUND: Oh, I see.

11. MS. HUNT: But I have seen photographs of a homicide.

12. MR. EDMUND: Now, we are going to have a graphic,
13. sitting wherever he is sitting, and you look at these
14. photographs and they affect you emotionally, are you going to
15. react like somebody has got to go down for this and he is
16. out there, so it is going to be him? Mrs. Hunt?

17. MRS. HUNT: No.

18. MR. EDMUND: Mr. Hall?

19. MR. HALL: No.

20. MR. EDMUND: Mr. Meaker?

21. MR. MEAKER: No.

22. MR. EDMUND: How about you, Ms. Warren?

23. MS. WARREN: No.

24. MR. EDMUND: Ms. Elders?

25. MS. ELDERS: No, sir.

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1 MR. EDMUND: You all, I assume, like each other?
2 By that, I mean you like yourselves?

3 It is getting late in the afternoon. Get as old as I
4 am, dark comes earlier than it used to, I tell you. Alright.
5 Like yourself, ma'am?

6 MS. ELDERS: Yes.

7 MR. EDMUND: Incidentally, when I say partner, it
8 ain't no different than they saying, ma'am. It is sixty-
9 four years of habit, so please forgive me if I have offended
10 anybody by "partner", and forgive me if I offend you by
11 "ma'am". You don't mind being alone?

12 MRS. WARREN: No, I rather enjoy it.

13 MR. EDMUND: There you go. You don't mind making
14 decisions alone?

15 MS. WARREN: No.

16 MR. EDMUND: You don't mind making decisions with other
17 people around?

18 MS. WARREN: No.

19 MR. EDMUND: Would you mind making decisions in a
20 room full of people who are older than you by varying
21 degrees?

22 MS. WARREN: No.

23 MR. EDMUND: Would you stand up and look the world in
24 the eye and say, "By golly, this is my opinion and I am going
25 to stay by it unless somebody shows me I am wrong, and if

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1 they do, then I'll change it."

2 MS. WARREN: Yes, sir.

3 MR. EDMUND: So your responses and answers would be the
4 same as the questions I asked all of you, Ms. Elders?

5 MS. ELDERS: I think so.

6 MR. EDMUND: Do you have any reservations whatsoever
7 Doctor, sitting as a juror on this case, you have some ink-
8 ling what you are going to be seeing, hearing, and subjected
9 to.

10 MS. EMERSON: No, just like other people, it is something
11 that you don't volunteer to do, but you are mindful of your
12 obligations and you are glad to do it.

13 MR. EDMUND: How about you, Ms. Elders?

14 MS. ELDERS: I feel the same way.

15 MR. EDMUND: And you, Ms. Warren?

16 MS. WARREN: Yes.

17 MR. EDMUND: Now, if you should wind up in that jury
18 room after a lengthy deliberation, Ms. Warren, and Ms.
19 Elders and Dr. Emerson, and you find yourself in that
20 minority of one, where the entire jury is voting one verdict
21 and you are an exception and you are voting the other, and
22 you listen to the law the Judge tells you about reconsidering
23 your position; re-examining your position, even attacking
24 your own position, but at the conclusion of that, you are
25 still convinced you are correct, will you stand by your

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verdict, Dr. Emerson?

MS. EMERSON: Yes, sir.

MR. EDMUND: Even if you know it results in a hung jury and we would try this case again?

MS. EMERSON: Yes, sir.

MR. EDMUND: Will you do the same, Ms. Elders?

MS. ELDERS: Yes, sir.

MR. EDMUND: Will you do the same, Ms. Warren?

MS. WARREN: Yes, sir.

MR. EDMUND: Are either of you three ladies conscious of any reason why you think you couldn't sit fairly and impartially in this trial?

JURORS: No.

MR. EDMUND: Will each of you try to maintain a completely open mind until you have heard all of the evidence presented by the State and all of the evidence presented by the Defense and the argument of the lawyers and most importantly, the law that Judge Lockett tells you that you must apply to the facts that you have heard. Will each of you again attempt to do that?

JURORS: Yes.

MR. EDMUND: There you go. Thank you.

THE COURT: Come up when you are ready, please, gentlemen.

(WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

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1 THE COURT: Do I have any challenges for cause?
2 MR. HOGAN: No, sir.
3 MR. EDMUND: No, sir.
4 THE COURT: You have ten to a side. The State will
5 go first. Your prospective jury is Halstead, Shepard,
6 Chandler, Hunt, Fogarty, Prevatt, Stroud, Hall, Meaker,
7 Brown, Symmes, and Emerson and you can backstrike. The
8 State goes first.
9 MR. HOGAN: Judge, if I understand you, I am trying
10 to understand which people are on the jury. The two alternates
11 are Hunt and Chandler?
12 THE COURT: No. We start at the first twelve.
13 MR. HOGAN: Okay.
14 MR. EDMUND: May I get my other sheet a minute?
15 MR. HOGAN: We will strike Mrs. Hunt.
16 THE COURT: The State used one. The prospective
17 jury is Halstead, Shepard, Chandler, Fogarty, Prevatt,
18 Stroud, Hall, Meaker, Brown, Symmes, Emerson and Elders.
19 MR. EDMUND: Halstead.
20 THE COURT: You each used one. The prospective jury
21 is everybody in the box left.
22 MR. HOGAN: Strike Mrs. Shepard.
23 THE COURT: Alright, the State used two, Defense used
24 one. There is not enough for a Jury. The question is should
25 we continue striking and fill the box?

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1 MR. HOGAN: Continue to strike.
2 MR. EDMUND: That is fine. Go ahead.
3 THE COURT: Go ahead.
4 MR. EDMUND: Fogarty.
5 THE COURT: You each used two. We don't have enough
6 for a prospective jury, but you understand these will be
7 seated... Chandler, Prevatt, Stroud, Hall, Meaker, Brown,
8 Symmes, Emerson, Elders, and Warren.
9 MR. HOGAN: I don't have any others right now.
10 You still reserve the right to strike.
11 MR. EDMUND: I don't have any more at this time.
12 THE COURT: Alright, let's go one more round. We will
13 re-box them and fill up what we have.
14 (WHEREUPON, BENCH CONFERENCE ENDS)
15 THE COURT: Folks, again, you may step down if I
16 read your name. Your jury service is completed. You need
17 not call back or come back. We thank you very much for
18 a long day. Mr. Halstead can come down. Mrs. Shepard can
19 come down, and Mrs. Hunt, and Mrs. Fogarty. You are all
20 free to come down. I know you are sort of going to have
21 to climb over one another, but please bear with us.
22 And folks, we will do it again if you would, please.
23 Ms. Chandler is going to move over to the number one seat.
24 Next will be Mrs. Prevatt is going to have to come around
25 any way you can do it, ma'am, I would appreciate it.

1 Next to Mrs. Prevatt will be Mrs. Stroud. And last on the
2 back row will be Mr. Hall. Now we move all the way over,
3 Mr. Meaker. There is nothing but the front to come back
4 in front again, so you won't climb all the way over each
5 other if you would. Mrs. Brown, you are going to be next
6 to Mr. Meaker when you find your way to the end there.
7 Next to Mrs. Brown will be Mrs. Symmes; next, Dr. Emerson;
8 next to Dr. Emerson will be Ms. Elders; and Ms. Warren
9 will be first on the front row. You all have figured out
10 my system.

11 We sort of play them until there are none, sir, is
12 about what it amounts to. Alright, folks, for those of
13 you that are with us, we can continue to fill the seat
14 next to Mrs. Warren.

15 We have #156, Jo Ann Jackson.

16 #221, Jo-Ann McGill.

17 We have #242, Debra Gries.

18 #160, Phillip Flack.

19 For all the new persons in the box, Mrs. Jackson,
20 Mrs. McGill, Mrs. Gries and Mr. Flack, would you answer
21 the following questions for me please, audibly.

22 Do any of you have any physical defects, hearing,
23 sight or otherwise, which would render you incapable of
24 performing your duty as a juror in this case?

25 Do you have any bias or prejudice either for or against

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1 the defendant?

2 If you are selected as a juror in this cause, will you
3 render a fair and impartial verdict, based upon the evidence
4 presented in this courtroom and the law as it pertains to
5 this particular case, as instructed by the Court? Will you
6 all do that?

7 Do you have any other reason why you cannot give this
8 case your undivided attention and render a fair and impartial
9 verdict?

10 Mrs. Jackson, if you would, please, ma'am, introduce
11 yourself to us and I'll help you through that if we need
12 to.

13 MRS. JACKSON: I am Jo Ann Jackson, and I am just
14 married, Sojourner is my name.

15 THE COURT: How do you spell your last name, ma'am?

16 MRS. SOJOURNER: S O J O U R N E R.

17 THE COURT: Thank you, ma'am. To whom are you married,
18 ma'am?

19 MRS. SOJOURNER: Scott.

20 THE COURT: Where do you all live?

21 MRS. SOJOURNER: Clermont.

22 THE COURT: What do you do for a living?

23 MRS. SOJOURNER: I am a word processor for Foster and
24 Cain.

25 THE COURT: What are they or who are they?

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1 MRS. SOJOURNER: Attorneys, and he works for Bill
2 Ceramics, and he makes tiles...

3 THE COURT: Have you ever served on a jury before?

4 MRS. SOJOURNER: No, sir.

5 THE COURT: Mrs. McGill?

6 MRS. MC GILL: I am Jo-Ann McGill. I live East of
7 Eustis on 44, off North Lake . I am a Med Department
8 Chairman and I teach at Orlando Evans High School.

9 THE COURT: Orlando Evans.

10 MRS. MC GILL: My husband works for McCrory Holding
11 company in commercial real estate.

12 THE COURT: Let me just catch up with you, ma'am. I
13 will be right with you. Have you ever served on a jury?

14 MRS. MC GILL: I served on a DUI.

15 THE COURT: That would be criminal jury. How long ago?

16 MRS. MC GILL: Four years, I believe.

17 THE COURT: Any other jury service?

18 MRS. MC GILL: No.

19 THE COURT: Mrs. Gries?

20 MRS. GRIES: My name is Debra Gries. I am a service
21 manager at Wal-Mart in Leesburg, and I live in Tavares,
22 Florida, on Highway 19 and never served on a jury.

23 THE COURT: Are you married, Ms. Gries?

24 MS. GRIES: No, I am engaged.

25 THE COURT: What does your fiance do?

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1 MS. GRIES: He works at the Classic Bowling Alley in
2 Leesburg.

3 THE COURT: Classic Bowling Alley, okay. Thank you.
4 Mr. Flack?

5 MR. FLACK: My name is Phillip Flack. My wife's name
6 is Lyndell. I am an electronic technician and I also am
7 a consultant on the side.

8 THE COURT: Who do you work for?

9 MR. FLACK: Telemetrics Systems.

10 THE COURT: Telemetrics Systems. Does your wife work
11 outside the home?

12 MR. FLACK: No.

13 THE COURT: What town do you all live in?

14 MR. FLACK: I live near John's Lake.

15 THE COURT: Where is that?

16 MR. FLACK: Unincorporated Lake County.

17 THE COURT: Okay, unincorporated Lake County, that is
18 fine. Have you ever served on a jury?

19 MR. FLACK: No.

20 THE COURT: Alright.

21 VOIR DIRE EXAMINATION

22 BY MR. HURM:

23 For those of you that have been sitting out there, I
24 can appreciate what you feel. I have been in the same
25 kind of activities.

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1 My name is Steve Hurm. I am also prosecutor with
2 Mr. Hogan, and we work for Ray Gill, as he said earlier,
3 and we are going to be trying this case together. That
4 is one thing I am going to address right up front. We have
5 the advantage, I guess there are numbers on our side,
6 because there will be two of us and Mr. Edmund has the
7 advantage of experience and age. The Judge is going to
8 instruct you at the end of the trial that the lawyers
9 aren't on trial and feelings about us shouldn't interfere
10 in any way. Can you all promise to obey that? And that
11 would be everybody on the panel?

12 If you get irritated at Mr. Hogan or myself, that you
13 will hold that against us personally and not the State of
14 Florida, our client, and the same for Mr. Edmund. If you
15 get mad at him, hold it against him and not against his
16 client.

17 That makes sure that your verdict is determined by the
18 evidence and the law and that is what we have been talking
19 about all day, so that we can reach a fair result in this
20 case.

21 For those of you who just came and please forgive me,
22 other panel members, if I ignore you. It is not that I
23 don't want to talk to you too. Mr. Hogan covered it so well,
24 that I don't want to go back over that, but Ms. Jackson,
25 I am sorry, Ms. Jackson, Foster and Kelly, that is a law

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1 firm that you work with?

2 MS. SOJOURNER: Right.

3 MR. HURM: Where is that?

4 MS. SOJOURNER: Orlando.

5 MR. HURM: What kind of law do they practice?

6 MS. SOJOURNER: Commercial litigation.

7 MR. HURM: Any criminal law?

8 MS. SOJOURNER: No, sir.

9 MR. HURM: Have you ever been involved in going to
10 court and any litigation or sitting through a trial?

11 MS. SOJOURNER: This is the first I have been in the
12 courthouse.

13 MR. HURM: Ever?

14 MS. SOJOURNER: Ever.

15 MR. HURM: Would your involvement with lawyers, the
16 fact you work with lawyers every day, would that have any
17 effect negatively or positively on your ability in this
18 case?

19 MS. SOJOURNER: No, I din't think so.

20 MR. HURM: You said your husband makes china paints.
21 Is that paints for dishes?

22 MS. SOJOURNER: Ceramics.

23 MR. HURM: Is that in Orlando as well?

24 MS. SOJOURNER: No, Clermont.

25 MR. HURM: You heard the witness list read by Mr. Hogan.

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1 Did any names strike a familiar cord with you?

2 MS. SOJOURNER: No.

3 MR. HURM: Any of you familiar with any names?

4 JUROR: There is one name I am not sure.

5 Katherine Hensley?

6 MR. HURM: Yes.

7 MS. SOJOURNER: I know a Kathy Hensley in Orlando, who
8 is an elderly woman.

9 MR. HURM: I don't know how she would be ...

10 MR. HOGAN: She is with the FBI.

11 JUROR: No.

12 MR. HURM: Ms. Gries or Mr. Flack?

13 JURORS: No.

14 MR. HURM: Let me ask you a few of the things Mr. Hogan
15 talked to the other folks about and I am going to talk to
16 you new panel members about as well.

17 First of all, you heard talk about circumstantial
18 evidence. have you heard that before in your work with
19 the law firm? I don't imagine that would come into play much
20 with commercial litigation.

21 I use an example sometimes if I think of something
22 from Florida, like the beaches that Mr. Hogan used.
23 If you were going away to go shopping at the mall, let's
24 say, and does your husband cut your grass where you live?
25 It is a painful chore, especially in July around here.

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1 Say you hired some neighborhood boy to come cut the
2 grass. As you went away, you promised him you would pay
3 him ten or fifteen dollars, whatever the going rate is now,
4 to cut your grass and it should be done when you come back.
5 Now, assume that when you come back, noone saw him cut the
6 grass. There was no eye witness to his cutting the grass.
7 When you get back, the grass is cut; there is a smell of
8 burned gasoline in the air; he has grass clippings on his
9 legs and he is perspiring heavily and panting. Now, based
10 on the fact that there weren't any eye witnesses, would you
11 not pay him? Would you refuse to pay him?

12 JUROR: I would pay him.

13 MR. HURM: Would you pay him, Ms. Gries?

14 MS. GRIES: Yes.

15 MR. HURM: Mr. Flack?

16 MR. FLACK: Yes.

17 MR. HURM: Mr. Flack, why would you pay him?

18 MR. FLACK: Because everything looks like he just
19 finished cutting the grass.

20 MR. HURM: Okay, every circumstance points to the fact
21 that he cut the grass, doesn't it?

22 MR. FLACK: Yes.

23 MR. HURM: Would you agree with that, Ms. Gries?

24 MS. GRIES: Yes.

25 MR. HURM: And that is why you would. Ms. McGill,

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1 would that be one of the things? That is circumstantial
2 evidence. That is all it is. Would you agree, Ms. McGill
3 that circumstantial evidence is good evidence and would be
4 considered valuable evidence by you?

5 MS. MC GILL: Yes.

6 MR. HURM: So if circumstantial evidence is presented
7 to you as part of this case and Mr. Hogan talked to you
8 about what circumstantial evidence is; fingerprints and
9 that sort of thing, if you hear some circumstantial evidence
10 in this case, will you consider that equally with the
11 testimony of people who saw things happen and were witnesses
12 to certain acts of this case?

13 MS. MC GILL: Ahum. (Affirmative response)

14 MR. HURM: Would you do the same thing, Ms. Jackson?
15 Ms. Gries? Mr. Flack?

16 JURORS: Yes.

17 MR. HURM: Mr. Flack, do you have any children?

18 MR. FLACK: I have a son almost two.

19 MR. HURM: Almost two. Now, I have a daughter four,
20 and she is just about to the age ... I don't imagine your
21 son is to the age yet, but we expect to talk about if you
22 have any trouble go to a policeman and that sort of thing.
23 Would you agree that that is a normal kind of instruction
24 that parents give the children? That it is okay to trust
25 a policeman? Or police officers in general?

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1 MR. FLECK: Yes.

2 MR. HURM: Would you think that it was odd that an
3 eleven year old might trust a policeman and do what he told
4 her?

5 MR. FLECK: No.

6 MR. HURM: Ms. Gries, would you agree that that is
7 pretty much normal instruction that parents give their kids
8 as they are growing up?

9 MS. GRIES: Yes.

10 MR. HURM: Do you have any children?

11 MS. GRIES: No, I don't.

12 MR. HURM: Ms. McGill, would you agree that is a normal
13 instruction?

14 MS. MC GILL: Yes.

15 MR. HURM: Do you have any children?

16 MS. MC GILL: Five.

17 MR. HURM: What are their ages?

18 MS. MC GILL: From thirty-three, thirty-two, thirty,
19 twenty-eight and twenty-six.

20 MR. HURM: Stair steps. I am the oldest, the highest
21 stair step of five myself.

22 MS. MC GILL: Is that an instruction that you give your
23 children while they were coming up? If they were ever lost
24 or had a problem, they should go to a police officer?

25 MS. MC GILL: Yes.

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1 MR. HURM: How about you, Ms. Jackson?
2 MS. JACKSON: Yes.
3 MR. HURM: You just recently married, right?
4 MS. SOJOURNER: Right.
5 MR. HURM: As you were growing up, did your parents
6 instruct you that way?
7 MS. SOJOURNER: Yes.
8 MR. HURM: Would you agree, Ms. Jackson, that police
9 officers are human beings and that they are, as a group,
10 corporately, they are not all perfect... as a matter of
11 fact, none of them are perfect anymore than any one of us
12 is perfect. Would you agree there could be bad police
13 officers? Unfortunately?
14 MS. SOJOURNER: Yes.
15 MR. HURM: Would you agree, Ms. McGill, that police
16 officers can break the law?
17 MS. MC GILL: yes.
18 MR. HURM: Ms. Gries? Mr. Flack?
19 JURORS: Yes.
20 MR. HURM: If you found from the evidence presented in
21 this trial that you were persuaded beyond a reasonable doubt
22 that the defendant committed the crimes he has been charged
23 with committing, would the fact that he was a policeman
24 inhibit you in any way in being able to return a verdict of
25 guilty?

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1 JUROR: No.

2 MR. HURM: Mr. Hogan talked a little bit about the grue-
3 some nature of this offense and there is quite frankly no
4 prettying this up. We all agree this is a horrible horrible
5 case, and there are going to be photographs that we find are
6 necessary in order to do our job properly to introduce those
7 photographs in evidence and you are going to have to consider
8 them if you sit on this jury.

9 Would that cause you such emotional hardship that you
10 would have a hard time sitting as a juror in this case?
11 Would you be so uncomfortable that you would be unable to
12 look at the evidence and make a fair and reasonable decision?
13 Ms. McGill? Ms. Gries? Mr. Flack?

14 JURORS: No.

15 MR. HURM: Ms. McGill, when your children were growing
16 up, did you establish curfews for them when they were young?

17 MS. MC GILL: Yes.

18 MR. HURM: In this case, you heard Mr. Hogan talk about
19 the fact that there may be some evidence that the victim,
20 Teresa McAbee was eleven at the time she died. She went up
21 to a convenience store just a few hundred yards away from
22 her house and that that happened at 10:00 or 10:30 at night.
23 Would that, even though you might not have agreed and would
24 not have done that yourself with your own children, can you
25 put that aside and consider whether or not we proved our case

1 beyond a reasonable doubt, based on the evidence?

2 In other words, do you think that should be an issue, the fact
3 that the little girl was out at the store by herself at
4 10:30? Should that have any bearing on whether she got killed
5 or not?

6 MS. MC GILL: None whatsoever.

7 MR. HURM: And whether the person that killed her should
8 be held responsible for her death? Do you think that should
9 have any bearing on whether or not that person should be held
10 responsible?

11 MS. MC GILL: What I am saying is the child should be
12 able to go to the convenience store and back in safety.

13 MR. HURM: Without being sexually assaulted and murdered?

14 MS. MC GILL: Right.

15 MR. HURM: Would you agree with that Ms. Jackson?
16 Mrs. Gries? Mr. Flack?

17 JURORS: Yes.

18 MR. HURM: Mr. Flack, you heard the charges read earlier
19 and one of the charges is Sexual Battery, Capital Sexual
20 Battery and we are charging the Defendant, being a person
21 over eighteen, committed Sexual Battery on a child eleven years
22 old. Now, would you agree that is possible for a grown man
23 to sexually assault an eleven year old?

24 MR. FLACK: Ahum. (Affirmative response)

25 MR. HURM: What is your feeling on that?

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1 MR. FLACK: It is possible.

2 MR. HURM: So if you heard evidence on that, you wouldn't
3 think that there is no way; that just can't be?

4 MR. FLACK: No.

5 MR. HURM: Ms. Gries, would you agree as horrible as
6 that is, would you agree that that is possible?

7 MS. GRIES: Yes.

8 MR. HURM: Ms. McGill?

9 MS. MC GILL: Yes.

10 MR. HURM: Ms. Jackson?

11 MS. SOJOURNER: Yes.

12 MR. HURM: Mr. Hogan talked about our burden of proof,
13 that we, as prosecutors, representing the People of the State
14 of Florida, have the responsibility of presenting evidence
15 and persuading you beyond a reasonable doubt that the defendant
16 is guilty of the charges with which he has been charged.
17 Now, our burden is that. Beyond a reasonable doubt. The
18 Judge will explain to you what that means. But as that has
19 been pointed out, that is not like Perry Mason, beyond a
20 shadow of a doubt, or beyond any doubt. But beyond a doubt
21 that you can attach a reason to and say, "I have got a doubt
22 about the defendant's guilt and this is the reason."

23 Mr. Flack, will you promise me you will hold us to that
24 burden, because that is the way our system is set up, and
25 quite frankly, Mr. Hogan and I do not want you to come back

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1 with a verdict of guilty if you are not persuaded that we
2 have proven the case beyond a reasonable doubt. That wouldn't
3 be justice. So can you hold us to that burden? Ms. Gries,
4 can you promise the same thing?

5 MS. GRIES: Yes, sir.

6 MR. HURM: Ms. McGill?

7 MS. MC GILL: Yes, sir.

8 MR. HURM: Ms. Jackson?

9 MS. SOJOURNER: Yes.

10 MR. HURM: The other side, however, Ms. Jackson, can
11 you also promise not to hold us to a higher burden than the
12 one the law requires of us? In other words, can you promise
13 you won't get back there and say, "Well, beyond a reasonable
14 doubt, they have probably proved that, but I want beyond any
15 doubt. I want every hole filled out. I want every answer
16 or every question I have in my mind explained and they haven't
17 done that, then he is not guilty." That would be above,
18 wouldn't you agree? To demand that would be more than what
19 the law requires. Can you promise to hold us to what the law
20 requires?

21 Ms. McGill, can you promise to do that?

22 MS. MC GILL: Yes.

23 MR. HURM: Ms. Gries, do you think that is a fair
24 burden?

25 MS. GRIES: Ahum. (Affirmative response)

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1 MR. HURM: That is the burden we have got to have?

2 MS. GRIES: Yes.

3 MR. HURM: Ms. McGill, how do you feel about that? Do
4 you think we ought to have a higher burden than that? That
5 we ought to be able to prove beyond any shadow of a doubt,
6 or do you think beyond a reasonable doubt is just about right?

7 MS. MC GILL: Yes.

8 MR. HURM: Mr. Flack, how do you feel about that?

9 MR. FLACK: I agree with that. I think it would be
10 right.

11 MR. HURM: Alright. I guess the bottom line of my
12 questions and the bottom line of all our questions is can you
13 follow the law in deliberating and reaching a verdict in this
14 case? Can you promise to do that?

15 Part of the Judge's instructions says we are all depending
16 on you to follow the law. For two hundred years we have been
17 on a Constitution, and we operated under a Constitution and
18 no one of us has the right to violate the rules we all
19 share. That is why it is so important you all promise that
20 when you take that oath as jurors, that you take it very
21 seriously, as you are pledging to follow the law as the Judge
22 reads it to you, and explains it to you.

23 Ms. Jackson, let me follow up on what Mr. Hogan asked
24 some of the other individuals. Where do you go to church?

25 MS. SOJOURNER: I don't.

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1 MR. HURM: If you did go to church, were you raised in
2 church?

3 MS. SOJOURNER: Yes. The Baptist Church.

4 MR. HURM: Was there anything about your upbringing
5 religiously or philosophically that causes you to have some
6 reservations about the death penalty in any way?

7 MS. SOJOURNER: No.

8 MR. HURM: If we got to that point in this trial and
9 deliberated and found the defendant guilty of First Degree
10 Murder, and then Mr. Hogan came back and asked you to return
11 a recommendation of the death penalty and after weighing the
12 aggravating and mitigating factors, you felt that the
13 aggravating factors outweighed the mitigating factors, could
14 you come back with that recommendation?

15 MS. SOJOURNER: Yes.

16 MR. HURM: Ms. McGill, how do you feel about capital
17 punishment?

18 MS. MC GILL: It is necessary sometimes.

19 MR. HURM: What is your religious background?
20 Do you attend church?

21 MS. MC GILL: Not now. Episcopal.

22 MR. HURM: Was there anything about your upbringing or
23 your church affiliation that would cause you problems that
24 way?

25 MS. MC GILL: No.

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1 MR. HURM: Ms. Gries, how about you? The same question?

2 MS. GRIES: I am Methodist and if it is necessary, yes.

3 MR. HURM: You understand that Mr. Hogan indicated this
4 isn't an emotional decision. I mean, let's face it, all of
5 us are going to be emotionally involved in this thing and there
6 is no way around it. We don't ask you to check your life
7 experiences and common sense at the door. Understand, that
8 all of us come in carrying all of our life experiences, and
9 that is part of the system and it is recognized as part, and
10 that is why we don't have trial by computer, with all due
11 respect to your profession, because there is that human element
12 there. However, the decision whether to recommend death or
13 life imprisonment is a legal one where you have to weigh the
14 factors, the aggravating and mitigating factors. As you
15 listen to Mr. Hogan explain that process, did you get a fair
16 idea of what would go on during that penalty phase?

17 JURORS: Yes.

18 MR. HURM: Mr. Flack, how about you, sir?

19 MR. FLACK: Yes.

20 MR. HURM: Do you think you could put aside your
21 emotions and decide that based on legal questions that are
22 put to you?

23 MR. FLACK: Yes, sir.

24 MR. HURM: May I have just a moment, Your Honor.

25 THE COURT: Yes, sir.

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1 MR. HURM: Ms. Gries, you indicated as far as the
2 ... as far as capital punishment is concerned, the death
3 penalty, you indicated that sometimes you feel it is necessary?

4 MS. GRIES: Yes, sir.

5 MR. HURM: Would you agree that there are times when it
6 is appropriate and should be imposed?

7 MS. GRIES: Yes, sir.

8 MR. HURM: How about you, Mr. Flack, how do you feel
9 about that?

10 MR. FLACK: I feel the same way.

11 MR. HURM: If you were put in a position of having to
12 make that recommendation to the Court, and you felt that
13 the aggravating factors outweighed the mitigating factors,
14 could you come back and recommend death?

15 MR. FLACK: Yes.

16 MR. HURM: Do any of the four of you or any of you for
17 that matter, have any questions for me, based on anything that
18 I have said? Something that triggered something in your mind
19 that you want to ask about? Ms. Jackson? Ms. McGill?
20 Ms. Gries? Mr. Flack?

21 JURORS: No, sir.

22 MR. HURM: Thank you for your attention and your
23 responses. I appreciate it.

24 THE COURT: Mr. Edmund?

25 MR. EDMUND: If it please, Your Honor.

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1. VOIR DIRE EXAMINATION

2 BY MR. EDMUND:

3 What was your name, ma'am? Sojourner?

4 MS. SOJOURNER: Yes, sir. I am in the process between
5 name change on driver's license and social security.

6 I am Jack Edmund, Mr. Flack, Ms. Gries, Ms. McGill.

7 Let's change a little bit of the circumstantial evidence
8 of the boy with the grass on his legs and the lawn mower
9 smoking in the air. Let's put two boys out there sweating,
10 grass on their legs, and one lawn mower. There was no
11 conversation as to who was going to mow the lawn. Could you
12 determine from that beyond a reasonable doubt from that circum-
13 stantial evidence who to pay, Mr. Flack?

14 MR. FLACK: No.

15 MR. EDMUND: Could you, Ms. McGill?

16 MS. MC GILL: No.

17 MR. EDMUND: Could you Ms. Gries?

18 MS. GRIES: No.

19 MR. EDMUND: That is precisely what the law says.

20 Two theories and there is a reasonable doubt if there are
21 two theories.

22 Additionally, the State Attorney has repeatedly said
23 a doubt to which you can assign a reason, and each of you
24 agreed that if you found a doubt to which you could assign
25 a reason, that you would, under the law, return a verdict of

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1 not guilty. Now, at the conclusion of this trial, during
2 argument, for example, if I am successful in pointing out to
3 you a legitimate doubt, a reason for that doubt, and you can
4 assign a doubt to that reason, will you return a verdict of
5 not guilty, if the Judge tells you to do that?

6 Will you, Ms. McGill?

7 MS. MC GILL: Yes, sir.

8 MR. EDMUND: Will you, Ms. Gries?

9 MS. GRIES: Yes, sir.

10 MR. EDMUND: Will you, Mr. Flack?

11 MR. FLACK: Yes.

12 MR. EDMUND: All of you have been sitting here all day
13 and you have heard all our questions. Is there anything
14 about what we talked about prior to now that you know I have
15 been looking for; that you know Mr. Hogan has been looking for;
16 that you know that Mr. Hurm has been looking for; that you
17 think would be of importance to us now? You do presume my
18 client to be innocent, do you not, Ms. Sojourner?

19 MS. SOJOURNER: Yes.

20 MR. EDMUND: Ms. McGill?

21 MS. MC GILL: Yes,

22 MR. EDMUND: Ms. Gries?

23 MS. GRIES: Yes.

24 MR. EDMUND: Mr. Flack?

25 MR. FLACK: Yes.

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1 MR. EDMUND: Do you also stop to smell those roses?

2 Do you like yourself, all the rest of you?

3 MRS. WARREN: Most of the time.

4 MR. EDMUND: Can each of you handle the emotional issues
5 of the trial? Steve went into it, Mr. Hurm. I will go into
6 it again. Can you handle the emotional issues of seeing the
7 photographs and hearing testimony and thinking of an eleven
8 year old that has been killed? Can you do that? Can you do
9 that without wanting to hurt my client, James Duckett, and
10 thus overlook the facts that would indicate he didn't do it
11 Ms. Sojourner?

12 MS. SOJOURNER: Yes.

13 MR. EDMUND: Would you look for a scape goat?

14 MS. SOJOURNER: I would wait until I heard everything.

15 MR. EDMUND: Alright, you won't just say he is in there.

16 There has got to be smoke. I am going to bomb him.

17 How about you, Ms. McGill?

18 MS. MC GILL: Not until I heard the evidence.

19 MR. EDMUND: And the argument of the lawyers and the
20 law the Judge tells you to apply to what you have heard?

21 MS. MC GILL: Yes.

22 MR. EDMUND: Could you react the same way, Ms. Gries?

23 MS. GRIES: Yes.

24 MR. EDMUND: And would you also, Mr. Flack?

25 MR. FLACK: Yes.

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1 MR. EDMUND: Is there anyone of you or more, who have
2 reservations about sitting on the jury to the point that you
3 think it would affect your judgment? Would affect your health?
4 Would affect your sleeping? Incidentally, who on the jury
5 smokes?

6 May I address, Your Honor, with regard to that? Do they
7 prohibit the smoking in the jury room here as a rule?

8 MR. CORBETT: We have two jury rooms. There is a separate
9 place for smokers.

10 MR. EDMUND: I wish they would do that in Polk County.
11 Our jurors go crazy in the jury room.

12 THE COURT: Mr. Corbett thinks of everything, I can
13 assure you of that, as he is paid to do.

14 MR. EDMUND: Would you call Jim Hessler down in Bartow
15 and tell him to set one of those up.

16 Alright. Alright. You don't have to worry about
17 nicotine fits, folks.

18 What are your hobbies, Mr. Flack?

19 MR. FLACK: Golfing.

20 MR. EDMUND: There you go. Do you watch TV?

21 MR. FLACK: Not much.

22 MR. EDMUND: How about you, Ms. Gries? Any hobbies?

23 MS. GRIES: Bowling and painting. I do ceramics and
24 stuff.

25 MR. EDMUND: Do you watch TV at all?

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1 MS. GRIES: Occasionally.

2 MR. EDMUND: What do you usually watch?

3 MS. GRIES: Jeopardy and Highway Five O and stuff like
4 that.

5 MR. EDMUND: Ms. McGill, what are your hobbies?

6 MS. MC GILL: Computer, gardening, knitting.

7 MR. EDMUND: If you watch television, what do you likely
8 watch?

9 MS. MC GILL: Jeopardy. I like Wheel of Fortune, too.

10 MR. EDMUND: Jeopardy is just as important as ... what
11 do you call it...? popular as everybody says it was. How
12 about you, Ms. Sojourner?

13 MS. SOJOURNER: I like fishing, sailing, and as far as
14 television, I watch it occasionally.

15 MR. EDMUND: Any of you all been personally the victims
16 of a crime of violence? Have you had close friends or family
17 members who have been the victim of crimes of violence?

18 JURORS: No.

19 MR. EDMUND: Have any of you all been involved in law
20 enforcement?

21 JURORS: No.

22 MR. EDMUND: Any have close friends or relatives who have
23 been or are?

24 JURORS: No.

25 MR. EDMUND: Is there anyone on the jury that has any

1 dietary problems that needs to be brought to the bailiff or
2 the Court's attention?

3 Is there anyone on the jury that needs regular ... I
4 think you asked this, Your Honor, but may I ask it again,
5 regular medication that you might need to send for?

6 Alright. Fine. Have either of you all given any thought
7 to the importance of the jury system in the United States,
8 Mr. Flack?

9 MR. FLACK: Since I got my summons.

10 MR. EDMUND: Since you got your summons? You have been
11 thinking about it, too, Ms. Gries?

12 MS. GRIES: Yes.

13 MR. EDMUND: Ms. McGill?

14 MS. MC GILL: Yes.

15 MR. EDMUND: AND Ms. Sojourner?

16 MS. SOJOURNER: Yes. For a while, since I have been
17 working with everything.

18 MR. EDMUND: Did you give any thought to it prior to that
19 and in light of your profession and with whom you work?

20 MS. SOJOURNER: I don't think so.

21 MR. EDMUND: Can you stand headstrong on your decision
22 if it should be contrary to the decision of the eleven other
23 folks if they are in that jury room with you, ma'am?

24 MS. SOJOURNER: Yes.

25 MR. EDMUND: Would you, Ms. McGill? You won't give up

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1 and get a unanimous so that you can go home or anything like
2 that?

3 MS. MC GILL: No way. I am stubborn.

4 MR. EDMUND: How about you, Ms. Gries? Would you stand
5 headstrong and not just give up to go home.

6 MS. GRIES: No.

7 MR. EDMUND: Mr. Flack?

8 MR. FLACK: No. Absolutely not.

9 MR. EDMUND: Did you say absolutely?

10 MR. FLACK: I absolutely will stand on my own.

11 MR. EDMUND: Now, would you be inclined to give greater
12 weight to this expert from Washington than anybody else that
13 might come in here to swear to tell the truth, the whole
14 truth and nothing but the truth so help you God?

15 MR. FLACK: No.

16 MR. EDMUND: Ms. Gries?

17 MS. GRIES: No, sir.

18 MR. EDMUND: Ms. McGill?

19 MS. MC GILL: No.

20 MR. HOGAN: Judge, I object to that question, the way
21 the question is phrased. He should complete the question, not
22 just because he is from Washington. But it may, in fact, be
23 that the man is educated and they should give great weight
24 to his testimony.

25 MR. EDMUND: That was my question, Judge.

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1 THE COURT: Your question was just because he was from
2 Washington.

3 MR. HOGAN: I stand corrected. That is not the way I
4 heard it.

5 THE COURT: I recall that.

6 MR. EDMUND: How about you?

7 JUROR: Yes.

8 MR. EDMUND: None of the four of you have any reservations
9 other than those that you would normally have sitting on
10 this jury?

11 None of you know of anything within you that would tend
12 to bias or prejudice you either for or against my client, or
13 for or against the State of Florida?

14 JURORS: No.

15 MR. EDMUND: Would you make every effort, Ms. Sojourner,
16 to keep your mind open until you have heard everything?
17 All the evidence; the arguments of the lawyers and the law
18 the Judge tells you you must apply to the facts?

19 MS. SOJOURNER: Yes, sir.

20 MR. EDMUND: The same thing, Ms. McGill?

21 MS. MC GILL: Yes.

22 MR. EDMUND: And the same, Ms. Gries?

23 MS. GRIES: Yes.

24 MR. EDMUND: And the same, Mr. Flack?

25 MR. FLACK: Yes.

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1 MR. EDMUND: Alright, sir. I neglected to ask this
2 before on the latter of you. Do you feel, Mr. Flack, as
3 Mr. Stewart did earlier that for every homicide there has to
4 be a death penalty?

5 MR. FLACK: No.

6 MR. EDMUND: Do you, Ms. Gries?

7 MS. GRIES: No.

8 MR. EDMUND: Do you, Ms. McGill?

9 MS. MC GILL: No.

10 MR. EDMUND: Do you, Ms. Sojourner?

11 MS. SOJOURNER: No.

12 MR. EDMUND: Do you, Ms. Warren?

13 MS. WARREN: No.

14 MR. EDMUND: Dr. Emerson?

15 MS. EMERSON: No, sir.

16 MR. EDMUND: Ms. Elders, do you?

17 MS. ELDERS: No.

18 MR. EDMUND: Thank you. If it please, Your Honor.

19 THE COURT: Thank you all. Come up when you are ready,
20 gents.

21 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

22 THE COURT: Do we have any challenges for cause?
23 Do we have any challenges for cause, Mr. Hurm?

24 MR. HURM: No, sir.

25 THE COURT: Mr. Edmund?

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1 MR. EDMUND: No, Your Honor.

2 THE COURT: You each used two. You have eight left.
3 The prospective jury is Chandler, Prevatt, Stroud, Hall,
4 Meaker, Brown, Symmes, Emerson, Elders, Warren, Jackson,
5 McGill. To the State?

6 MR. HOGAN: Mr. Meaker.

7 THE COURT: The State three, the Defense two. The
8 prospective jury is Chandler, Prevatt, Stroud, Hall, Brown,
9 Symmes, Emerson, Elders, Warren, Sojourner, McGill and
10 Gries.

11 MR. EDMUND: Elders.

12 THE COURT: Each of you used three. The prospective
13 jury is Chandler, Prevatt, Stroud, Hall, Brown, Symmes,
14 Emerson, Warren, Sojourner, McGill, Gries and Flack.

15 MR. HOGAN: Sojourner.

16 THE COURT: Alright, the State has used four and the
17 Defense used three. Technically, we are out, but I will
18 allow you to continue to strike if you want to.

19 Your jury is Chandler, Prevatt, Stroud, Hall, Brown,
20 Symmes, Emerson, Warren, McGill, Gries and Flack.

21 MR. EDMUND: We are down to eleven now. Aren't we?

22 THE COURT: Yes, sir.

23 MR. EDMUND: I have one I have a question on, but
24 rather than exercise a challenge, I will come to the bench
25 and announce it in the morning if I decide to do it.

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1 THE COURT: Do you want to reserve your right to challenge
2 first tomorrow?

3 MR. EDMUND: Well, sir, I just thought I would do it as
4 a matter of courtesy, because it is my turn.

5 MR. HOGAN: Whenever we start back, it is his turn.

6 THE COURT: It is Defense' turn. In the AM, how about
7 that?

8 MR. HOGAN: Fine.

9 THE COURT: Alright, I am going to admonish these folks
10 and send them home. It was your turn.

11 MR. EDMUND: That's right.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 THE COURT: I am sure as you understand by now, folks,
14 if I call our your name, you are free to step down. You need
15 not come back or call back. Your service is complete and once
16 again, we thank you very much. Mrs. Elders can come down.
17 Mr. Meaker. Mrs. Sojourner.

18 While we are here, gentlemen, although we are going home
19 for the evening momentarily, let me rebox this jury one more
20 time. The back row remains the same. Then I have Ms. Brown
21 moved over in the first seat in the second row. Mrs. Symmes,
22 Dr. Emerson. I think again I will bring the front row down
23 in front. Watch your step. Next to Dr. Emerson is Ms.
24 Warren. Next to Ms. Warren is Mrs. McGill. The first seat
25 in the front row is going to be Mrs. Gries. Next to Mrs. Gries

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1 would be Mr. Flack.

2 I don't think we will have any harm in going ahead and
3 filling those remaining three seats, although I intend to
4 stop after there. Do you all agree with that, gentlemen?

5 COUNSEL: Yes, sir.

6 THE COURT: #195, Betty Gerber.

7 #183, Melody Gerger.

8 I have #238, Billie Gail Stamper.

9 If we know one thing now we didn't know before folks,
10 it is why we bring so many people in. And let me assure you
11 it does end at some point. The whole system does end at
12 some point.

13 Folks, for those of you who are out here with me that
14 have not been called, would all my prospective jurors stand
15 up, so that I can get an idea of how many more I have left?

16 Thank you very much. I see six folks out here.

17 Folks, all we are going to do, speaking to all of you up
18 here in the jury box and those six folks who are still out
19 here on the other side of the rail, is remind you one more
20 time of our admonitions and how important they are. That you
21 must not discuss the case among yourselves or with anyone
22 else. You must not visit the scene of the alleged occurrence
23 if you think somehow you could. You must not read any
24 newspaper accounts, watch any television, or listen to an
25 radio accounts whatsoever about the case. I know you have

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1 all heard this several times and I am speaking to everyone,
2 and I will tell you that I am going to ask you to assure me
3 first thing in the morning that each and every one of you
4 did abide by our admonitions. Obviously, we have not yet
5 completed jury selection and we will continue in the morning.

6 Does anyone either out here, prospective jurors, or here,
7 have any questions for me at this time?

8 Alright, yes, ma'am, Doctor?

9 MS. EMERSON: We appear in this courtroom at nine o'clock?

10 THE COURT: We are going to ask you to come right on
11 back in here at nine o'clock in the morning, because that
12 other group is going to be over in that jury room, so we will
13 ask each of you to come in and take your seats and the folks
14 that are left out here, come right on in here and take your
15 seats out there, if you will, promptly at nine o'clock, and
16 we will commence jury selection at that time.

17 Any other questions whatsoever?

18 Gentlemen, do you all have anything more for me? I am
19 sorry. Mr. Hogan?

20 MR. HOGAN: No, sir.

21 THE COURT: Mr. Edmund?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: We will be in recess until nine o'clock in
24 the morning.

25 (WHEREUPON, COURT IS IN RECESS AT 5:22 P. M.)

1 April 26, 1988, 9:00 A. M.

2 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
3 COUNSEL, MR. EDMUND)

4 (WHEREUPON, COURT CONVENES AT 9:03 A. M.)

5 THE COURT: Could we see counsel at the bench just
6 briefly, please.

7 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

8 THE COURT: Madam Jury Clerk advised me one of the
9 ladies, a prospective juror who was outside on the other
10 side of the bar, Mrs. Sticker, #147, her car broke down and
11 she walked in all the way from Dora Canal Bridge and she
12 wanted to know if she could be excused.

13 MR. EDMUND: I have no objection, Your Honor.

14 MR. HOGAN: Fine.

15 THE COURT: Thank you.

16 (WHEREUPON, BENCH CONFERENCE ENDS)

17 THE COURT: Mrs. Stickler, ma'am, I understand your
18 situation. We are going to allow you to be excused. I am
19 sorry about that very much. You are free to go.

20 MRS. STICKLER: Thank you.

21 THE COURT: Yes, ma'am.

22 Folks, for those of you who are jurors in the box and
23 for those of you who are prospective jurors on the other
24 side of the bar, can all of you assure us that you did abide
25 by our admonitions of yesterday?

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1 JURORS: Yes, sir.

2 THE COURT: Any questions about that at all?

3 JURORS: No.

4 THE COURT: I see all affirmative responses. I have
5 certain basic questions to ask our last three jurors that
6 we seated yesterday, Mrs. Gerber, and Gerger and Stamper.
7 Do you have any physical defects, hearing, sight or otherwise,
8 which would render you incapable of performing your duty as
9 a juror in this cause?

10 JURORS: No.

11 THE COURT: Do any of you have any bias or prejudice
12 either for or against the defendant?

13 JURORS: No, sir.

14 THE COURT: If you are selected as a juror in this
15 cause, will you render a fair and impartial verdict based upon
16 the evidence presented in this courtroom and the law as it
17 pertains to this particular case, as instructed by the Court?

18 JURORS: Yes.

19 THE COURT: Do you have any other reason why you cannot
20 give this case your undivided attention and render a fair and
21 impartial verdict?

22 JURORS: No.

23 THE COURT: Alright. Mr. Hogan?

24 VOIR DIRE EXAMINATION

25 BY MR. HOGAN:

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1 Thank you, Judge. Good morning ladies. Good morning
2 everyone.

3 Were you ladies able to hear the questions and answers
4 that were given all day yesterday?

5 JURORS: Yes.

6 MR. HOGAN: And you heard the witness list. Anyone on
7 the witness list you know at all?

8 JURORS: No, sir.

9 MR. HOGAN: Mrs. Gerber, are you married, ma'am?

10 MRS. GERBER: Yes, sir.

11 MR. HOGAN: What does your husband do?

12 MRS. GERBER: He is an auto mechanic at White Aluminum
13 in Leesburg.

14 MR. HOGAN: Do you work outside the home?

15 MRS. GERBER: Yes, sir, I work for the City of Leesburg.

16 MR. HOGAN: What do you do?

17 MRS. GERBER: I am billing clerk.

18 MR. HOGAN: And you live in Leesburg?

19 MRS. GERBER: Fruitland Park.

20 MR. HOGAN: Do you have any children?

21 MRS. GERBER: Yes, sir.

22 MR. HOGAN: How many?

23 MRS. GERBER: Two boys and a girl.

24 MR. HOGAN: And what do they do?

25 MRS. GERBER: I have a son at St. Louis, Missouri,

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1 at George Washington University at Madison, and the other
2 son is here in Leesburg at White Aluminum. The daughter is
3 in Palatka and she works with her husband at a business.

4 MR. HOGAN: Do you have any grandchildren?

5 MRS. GERBER: Yes, I have.

6 MR. HOGAN: How many?

7 MRS. GERBER: I have three grandsons and one granddaughter.

8 MR. HOGAN: How old are they?

9 MRS. GERBER: From one to sixteen.

10 MR. HOGAN: Do you go to church, ma'am?

11 MRS. GERBER: Yes, sir.

12 MR. HOGAN: What church do you go to?

13 MRS. GERBER: Lutheran.

14 MR. HOGAN: Mrs. Gerber, you heard the discussion that
15 we had yesterday about capital punishment and about the fact
16 that the trial will be conducted in two phases, two parts;
17 the guilt phase and then assuming that Mr. Duckett is found
18 guilty of First Degree Murder, then we have the penalty
19 phase. Do you understand that?

20 MRS. GERBER: Yes, sir.

21 MR. HOGAN: Did you understand the process that you would
22 go through in deciding what your recommendation would be for
23 capital punishment or life imprisonment? The weighing of the
24 aggravating factors against the mitigating factors?

25 MRS. GERBER: Yes.

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1 MR. HOGAN: You understand it is not a counting process.
2 There could be twenty things for mitigation and only one thing
3 given to you for aggravation but the thing in aggravation
4 might be so important that it may outweigh all twenty of the
5 mitigating factors. Understand?

6 MRS. GERBER: Yes.

7 MR. HOGAN: How do you feel about capital punishment?

8 MRS. GERBER: I feel it is necessary.

9 MR. HOGAN: Do you feel that you could follow the law
10 and recommend capital punishment if it was appropriate?

11 MRS. GERBER: Yes, sir.

12 MR. HOGAN: How do you feel about that, Mrs. Gerger?

13 MRS. GERGER: At the risk of sounding redundant, I
14 feel in certain instances it is appropriate.

15 MR. HOGAN: Mrs. Stamper, how do you feel about that?

16 MRS. STAMPER: I feel the same way.

17 MR. HOGAN: Ladies, understand I know there has been
18 some discussion about stopping and smelling the roses and
19 liking yourself and that sort of thing, but you understand
20 when you are in court, we are here on business. Very, very
21 important business in which the jury plays the most important
22 role and you understand, Ms. Stamper, Ms. Gerber and Ms. Gerger,
23 that I intend to do everything that I can to convict this man
24 within the law and you very well may be sitting in this jury
25 box and go back into that room and do your job and be forced

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1 to make that decision with what kind of recommendation you may
2 make. Understand that?

3 JURORS: Yes.

4 MR. HOGAN: Okay, and you can go home and smell the
5 roses afterwards, but I am asking you if you are willing to
6 do your job while you are in court?

7 JURORS: Yes, sir.

8 MR. HOGAN: Ms. Gerger, you are married?

9 MRS. GERGER: Yes, sir.

10 MR. HOGAN: And does your husband work?

11 MRS. GERGER: My husband worked the last fifteen years
12 with United Telephone.

13 MR. HOGAN: Do you work outside the home?

14 MRS. GERGER: I am a registered nurse at Leesburg Regional
15 Medical Center.

16 MR. HOGAN: How long have you done that?

17 MRS. GERGER: At Leesburg Regional for eight years.
18 I have been a critical care nurse for the last ten years.

19 MR. HOGAN: Do you know Dr. Shutze?

20 MRS. GERGER: In passing. I know who he is to recognize
21 him.

22 MR. HOGAN: Nothing about that would affect your ability
23 to be a fair and impartial juror?

24 MRS. GERGER: No, sir.

25 MR. HOGAN: Are you familiar with ... in your nursing

1 career, have you come across some trauma injuries? Emergency
2 room care?

3 MRS. GERGER: Frequently. Many, yes, sir.

4 MR. HOGAN: I would assume that you would be properly more
5 prepared to examine photographs and listen to medical testimony
6 than maybe the rest of us would be?

7 MRS. GERGER: Probably true.

8 MR. HOGAN: How about you, Ms. Gerber, do you understand
9 it is going to be necessary to discuss things like the cause
10 of death and to give illustrations of that? Do you understand
11 that?

12 MRS. GERBER: Yes, I am not going to say that won't bother
13 me, but...

14 MR. HOGAN: I would expect it would even bother Mrs.
15 Gerger in the career she is in. I am sure she doesn't get up
16 in the morning and say, "Boy, I look forward to seeing someone
17 torn up.". I mean, I would expect it would bother you, but
18 do you think you would be able to consider that evidence fairly
19 and examine it and possibly learn from it what you are supposed
20 to learn from it?

21 MRS. GERBER: Yes.

22 MR. HOGAN: Do you have any children, Mrs. Gerber?

23 MRS. GERBER: Yes, I do. I have two. A daughter six
24 and a son four.

25 MR. HOGAN: Mrs. Gerger, as you were growing up, did your

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1 parents tell you if you get lost to find a policeman and that
2 sort of thing?

3 MRS. GERGER: Yes, sir.

4 MR. HOGAN: Do you think it is reasonable for an eleven
5 year old girl to trust a police officer?

6 MRS. GERGER: I instructed my children the same way.

7 MR. HOGAN: But you understand, ladies, that it is
8 certainly possible for a police officer to be a bad person?

9 MRS. GERGER: Yes.

10 MR. HOGAN: So it certainly would be possible to find a
11 police officer guilty of a crime, even one as heinous as this
12 one?

13 MRS. GERGER: Yes, sir.

14 MR. HOGAN: Do you go to church, Mrs. Gerber?

15 MRS. GERBER: Yes, I do. Church of God.

16 MR. HOGAN: Is there anything about your religious
17 background or training that is going to make it difficult
18 for you to sit on this jury?

19 MRS. GERBER: No, sir.

20 MR. HOGAN: Ms. Gerger, and all of you ladies, and the
21 rest of you also, you have been through this, do you understand
22 when I am talking about the penalty phase and your recommen-
23 dation to the Judge, it is just that, a recommendation. You
24 understand that Judge Lockett is the one that does the
25 sentencing and you are not responsible for that. That is the

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1 Judge's job?

2 JURORS: Yes, sir.

3 MR. HOGAN: Mrs. Gerger, certainly we can all agree that
4 this defendant like all defendants, whether it is a reckless
5 driving case or a murder case, is presumed innocent at this
6 point and has to be. You have heard no evidence, correct?
7 Mrs. Gerger?

8 MRS. GERGER: Yes, sir.

9 MR. HOGAN: Mrs. Stamper?

10 MRS. STAMPER: Yes, sir.

11 MR. HOGAN: And he is entitled to a fair trial, to his
12 day in court, as we say, but you ladies understand as I have
13 said several times, I have a client too. You can't see my
14 client, but my client deserves a fair trial, right?

15 JURORS: Yes.

16 MR. HOGAN: You agree with that?

17 JURORS: Yes.

18 MR. HOGAN: Mrs. Gerger, were you able to hear and under-
19 stand the discussions we had about reasonable doubt?

20 MRS. GERGER: Yes, sir.

21 MR. HOGAN: Mrs. Stamper and Mrs. Gerber?

22 JURORS: Yes, sir.

23 MR. HOGAN: You understand that I accept that burden.
24 That is the system we all live by and I think as Ms. Symmes
25 said yesterday, if one of her friends happened to be in court,

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1 that she would want a good qualified jury, and certainly that
2 is what I want and Mr. Hurm wants and I am sure the Defense
3 Attorney wants that also. Certainly, we all believe in the
4 system. That is that the prosecution, the State should prove
5 the case beyond a reasonable doubt. We accept that burden.
6 But don't hold us to a higher burden. Don't become confused
7 by what that burden means.

8 One thing that Mr. Edmund said yesterday during his
9 voir dire is that he supposed that he could give you a
10 reasonable doubt. That is not exactly the way it works. If
11 you do have a doubt that does become reasonable, that doubt
12 will come to you from the evidence and the evidence alone.
13 Okay?

14 You will make that decision. But you understand you may
15 still have many questions when this case is over as to what
16 happened at certain points in time. But you understand the
17 only eye witness is dead, but you may not have a reasonable
18 doubt. You may have an abiding conviction. If you have an
19 abiding conviction, that feeling inside that you know this guy
20 did it, but you don't have a reasonable doubt, do you under-
21 stand that?

22 JURORS: Yes, sir.

23 MR. HOGAN: Ms. Symmes?

24 MS. SYMMES: yes.

25 MR. HOGAN: Thank you, Mr. Gerger. Ms. Stamper,

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1 where do you work?

2 MS. STAMPER: I am currently unemployed right now, but I
3 worked for Amback Nursery and Construction as a secretary.

4 MR. HOGAN: What type of work do you normally do?
5 Secretarial?

6 MS. STAMPER: Not normally.

7 MR. HOGAN: What type of work are you looking for?

8 MS. STAMPER: Sales, sales clerk.

9 MR. HOGAN: In what part of the County do you live in?

10 MS. STAMPER: I live in Astatula, Florida.

11 MR. HOGAN: Sure. How long have you lived there?

12 MS. STAMPER: For five and one-half years.

13 MR. HOGAN: Where did you live before that?

14 MS. STAMPER: Orlando, Florida.

15 MR. HOGAN: Do you go to church, Ms. Stamper?

16 MS. STAMPER: Yes, I do.

17 MR. HOGAN: What church?

18 MS. STAMPER: South Orlando Baptist Church.

19 MR. HOGAN: Anything about your religious training that
20 would make it difficult for you to recommend capital punishment
21 in this case?

22 MS. STAMPER: No.

23 MR. HOGAN: Were you told as a child to trust a police
24 officer?

25 MS. STAMPER: Yes, I was.

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1 MR. HOGAN: Do you understand, Ms. Stamper, that the very
2 ... one of the very reasons that we have juries in this country
3 is to decide disputes among the citizens whether it be civil
4 or criminal is because the jury system, they combine their
5 common sense or you are supposed to use your common sense?

6 MS. STAMPER: Yes, I do.

7 MR. HOGAN: And your common sense may well be what
8 helps you arrive at that abiding conviction?

9 MS. STAMPER: Yes.

10 MR. HOGAN: One of the things that I always like to ask
11 if I get an accountant on the jury panel, or a prospective
12 jury panel, or a bookkeeper, you know a lot of times in
13 their line of work, they want their columns to balance out.
14 They want two zeros. They want that to be perfect. You
15 understand, we are dealing with human beings and we are
16 dealing with a large number of human beings and we are dealing
17 with almost a year's time, so this is not going to be a perfect
18 trial. There is no such thing as a perfect trial. That is
19 where your common sense is going to come in, and your abiding
20 conviction is going to come in, and your ability as a human
21 being, to analyze and decide within yourself. Okay?

22 MS. STAMPER: Ahum. (Affirmative response)

23 MR. HOGAN: Did you understand the discussion about ...
24 that we had about circumstantial evidence?

25 MS. STAMPER: Yes, I did.

1 MR. HOGAN: And the various examples that were given
2 about the footprints, fingerprints, hair fiber, all those
3 types of things that are circumstantial evidence. Do you
4 understand that?

5 MS. STAMPER: Ahum. (Affirmative response)

6 MR. HOGAN: I think Mr. Hurm gave a pretty good example
7 of circumstantial evidence when he talked about the boy
8 mowing the lawn, and then Mr. Edmund got up and said what if
9 there were two boys with grass on them. Well, if there was
10 only one boy with grass on him, you will know what to do,
11 won't you?

12 JURORS: Ahum.

13 MR. HOGAN: Let me talk to you ladies about the FBI.
14 Mr. Edmund has made, in fact, has encouraged the response from
15 some of the prospective jurors to automatically say, "No,
16 I wouldn't listen to the FBI". That isn't exactly appropriate.
17 All I am asking you to do is to consider what the expert
18 from the FBI has to say, like any other witness.

19 Judge Lockett will give you a list of rules as to how
20 you are to analyze each witness's testimony. He is going to
21 tell you that you can believe or disbelieve a witness. An
22 expert witness is like any other witness. You can believe
23 him or you can disbelieve him. You can believe part of what
24 he says or disbelieve all of it, or believe all of it, but
25 just because he is from the FBI, I don't want you to go in

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1 with any jaded... I don't want you to automatically say, "This
2 guy is from the FBI. Mr. Edmund told us to watch out for
3 him.". Be fair. That is all I am asking you to do. Be
4 fair. When you listen to any experts, including the FBI
5 experts, listen to the credentials and years of experience
6 and his training. Understand, he may, in fact, be someone
7 that is worthy of belief. You may, in fact, say, well, he
8 really does have...

9 MR. EDMUND: I object to the argument, if it please the
10 Court.

11 THE COURT: You need to ask some questions, Mr. Hogan.

12 MR. HOGAN: You understand that you may find him worthy
13 of believe? Do you understand that it is certainly proper
14 and it is done all the time to accept the opinion of an
15 expert, do you understand that?

16 JURORS: Yes.

17 MR. HOGAN: You also understand that the Federal Bureau
18 of Investigation assisted the Lake County Sheriff's Office
19 in this case. They worked with them as they commonly do.
20 Okay? There is nothing wrong with that. That may have been
21 the implication. There is nothing wrong with that. Under-
22 stand that, Mrs. Gerger? Mrs. Stamper?

23 JURORS: Yes.

24 MR. HOGAN: You ladies understand I expect to have to
25 use an interpreter in this case. For people who speak Spanish.

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1 Do you have any bias or prejudice against Mexicans or Hispanic
2 people?

3 JURORS: No.

4 MR. HOGAN: You haven't been to Mexico and gotten in
5 jail or anything...?

6 JURORS: No, sir.

7 MR. HOGAN: Anything like that?

8 JURORS: No, sir.

9 MR. HOGAN: Anything I need to know about that?
10 Any of you ever been a victim of a crime?

11 JURORS: No, sir.

12 MR. HOGAN: Ms. Gerber?

13 MS. GERBER: No, not me personally.

14 MR. HOGAN: Okay, do you know of someone who was a
15 victim?

16 MS. GERBER: My daughter and her husband.

17 MR. HOGAN: Was that something that happened here
18 locally?

19 MS. GERBER: It happened in Sarasota.

20 MR. HOGAN: Anything about that experience in your mind...
21 was the person caught?

22 MS. GERBER: Yes, he was.

23 MR. HOGAN: Was the person prosecuted?

24 MS. GERBER: Yes.

25 MR. HOGAN: Are you satisfied with the results of that?

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1 MRS. GERBER: Well, not really, I wasn't.

2 MR. HOGAN: Let me ask you this way. Did you understand..
3 I don't know where your dissatisfaction comes in, obviously,
4 I wasn't there. Can you put that case out of your mind whether
5 you were dissatisfied or whether he wasn't punished hard
6 enough or was dissatisfied because the prosecutor's office
7 made a plea bargain or whatever your reason may be?

8 MS. GERBER: Yes, I can.

9 MR. HOGAN: Do you understand that none of us here in
10 this case had anything to do with that case?

11 MRS. GERBER: Yes, sir, I know.

12 MR. HOGAN: You can be fair and impartial in this
13 case?

14 MS. GERBER: Yes.

15 MR. HOGAN: Alright. Thank you, ma'am. Do all of you
16 three ladies understand that certainly it is possible and
17 certainly it happens far too often in this country that
18 adults commit sexual acts upon children? None of you ladies
19 believe that that doesn't happen. You believe that does happen
20 unfortunately?

21 JURORS: Yes, I do.

22 MR. HOGAN: Do you understand also, ladies, that you may
23 have had a tight curfew on your children, Mrs. Gerger, and you
24 may intend to and you may intend to. You may have had tight
25 curfews, a couple of you, but you understand that there is

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1 nothing necessarily wrong with allowing an eleven year old
2 child to walk four hundred yards to a convenience store at
3 ten o'clock at night. You may not personally have done it,
4 but the girl's mother is not on trial, do you understand that?

5 JURORS: Yes.

6 MR. HOGAN: You ladies understand that there may be
7 what we call lesser included crimes. The Judge may tell you
8 about for example, Second Degree Murder, but you have an
9 obligation to return a verdict, that you return an honest
10 verdict, of the highest crime proven, do you understand that?

11 JURORS: Yes, sir.

12 MR. HOGAN: Would any of you feel like that maybe you
13 would not return a First Degree Murder conviction, because you
14 want to avoid the penalty phase or could you keep that separate
15 in your mind?

16 JUROR: I could keep it separate.

17 MR. HOGAN: Ms. Gerber?

18 MS. GERBER: I will listen to the evidence before I make
19 a decision.

20 MR. HOGAN: But if the evidence, in other words, Mr. Hurm
21 and myself prove to you that every element of First Degree
22 Murder, the premeditation, the killing, the killing was done
23 with premeditation, if we prove that to you, will you go back
24 in that jury room and return a verdict of First Degree Murder,
25 knowing that you are tehn going to have to consider the

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1 penalty?

2 MS. GERBER: Yes.

3 MR. HOGAN: You understand those are two separate things?

4 MS. GERBER: Yes.

5 MR. HOGAN: Ladies, this is going to be a tough decision.

6 This is going to be a circumstantial evidence case. There will
7 be no video tape of the crime and no eye witnesses. It is
8 going to be a tough case. The evidence, I believe, will be
9 there, but it is going to be a tough case. Do you think you
10 are up to making a decision like that?

11 JURORS: Yes.

12 MR. HOGAN: What I am telling you is there will be no
13 bed of roses, do you understand that?

14 JURORS: Yes.

15 MR. HOGAN: And still you are willing to serve on this
16 jury?

17 JURORS: Yes, sir.

18 MR. HOGAN: Do you have any questions for me?

19 JURORS: No, sir.

20 MR. HOGAN: Anyone else?

21 Thank you, Judge. Thank you, ladies.

22 VOIR DIRE EXAMINATION

23 BY MR. EDMUND:

24 If it please, Your Honor. Good morning.

25 JURORS: Good morning.

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1 Ms. Gerger, I didn't hear what your business occupation
2 or profession, ma'am?

3 MS. GERGER: I am a critical care nurse, RN.

4 MR. EDMUND: Thank you. I guess every lawyer has his
5 own way of selecting a jury, but when I talk to people about
6 smelling the roses, I don't want somebody on my jury that
7 doesn't like themselves because there is no way he is going to
8 like my client.

9 I don't want anybody on my jury that won't take time with
10 themselves; they won't take time with my client. There is an
11 old adage floats around in the legal profession that if the
12 law is with you, you hammer away at the Judge. If the facts
13 are with you, you hammer away at the Jury. If neither of them
14 are with you, you hammer away at the other lawyer, and I got
15 hammered away at a little bit here this morning. I don't
16 really know what that means, but it seems that we struck some
17 nerves yesterday about circumstantial evidence; about the
18 FBI...

19 MR. HOGAN: Judge, could we get to the questions, please?

20 THE COURT: We need to ask questions.

21 MR. EDMUND: There you go. Thank you, Your Honor.

22 Ms. Gerger, would you give James Duckett the benefit of
23 the presumption of innocence?

24 MS. GERGER: Yes, sir.

25 MR. EDMUND: Will you clothe him with it throughout this

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1 entire trial?

2 MS. GERGER: yes, sir.

3 MR. EDMUND: At the commencement of the deliberations,
4 will you try to remember then that right then he is still
5 presumed to be innocent?

6 MS. GERGER: Yes, sir.

7 MR. EDMUND: And will you bring it to the attention of
8 the other members of the Jury?

9 MS. GERGER: Yes, sir.

10 MR. EDMUND: How about you, Ms. Gerber, will you give
11 James Duckett the benefit of the presumption of innocence?

12 MS. GERBER: Yes, sir.

13 MR. EDMUND: Do you have any reservations at all about
14 the presumption of innocence?

15 MS. GERBER: No, sir.

16 MR. EDMUND: Do you have any reservations at all about
17 the presumption of innocence, Ms. Gerger?

18 MS. GERGER: No, sir.

19 MR. EDMUND: It is something that is a little difficult
20 psychologically to live with, because of the old where there is
21 smoke there is fire and if the police accuse him, there has
22 got to be some reason. These kinds of things. Can you truly
23 presume at this time that Jim Duckett is innocent?

24 MS. GERGER: I have to be honest about this. I think
25 that I read the case a lot in the paper.

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1 THE COURT: Don't tell us what you have read, please,
2 ma'am. You can go ahead and answer the question.

3 MR. EDMUND: As a result of that, now don't tell us
4 what, but did you come to some sort of opinion or conclusion
5 and don't tell us what it is, just yes or no?

6 MS. GERGER: I don't think I would be honest with you
7 if I told you I didn't have some type of conclusion.

8 MR. EDMUND: Did you discuss the matters that you read
9 with other people? Whether members of your family or friends
10 or someone you stopped on the street? Did you discuss this
11 case with other people?

12 MS. GERGER: Yes, it has been very close. My husband
13 and I are very close. We talk a lot.

14 MR. EDMUND: Did you say to him, "I think so and so",
15 and did he say to you, "I think so and so"?

16 MS. GERGER: Yes.

17 MR. EDMUND: Did you then begin the opinion making
18 process; that is concluding yes or no as regards my client
19 James Duckett? And again, I don't want to know what it is.

20 MS. GERGER: No.

21 MR. EDMUND: But you did come to an opinion or conclusion,
22 did you not?

23 MS. GERGER: Yes.

24 MR. EDMUND: And you voiced them?

25 MS. GERGER: Yes.

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1 MR. EDMUND: And obviously, you are having trouble now
2 determining in your own mind whether you can put all that
3 aside and sit fairly and impartially and incidentally,
4 Tom Hogan doesn't want a fair jury and I don't want a fair
5 jury. He wants one to convict and I want one to acquit, but
6 we are going to get a fair jury and that is how the system
7 works. Let's talk about fairness and all that. We are going
8 to get a fair jury. That is what we are seeking, or we
9 wouldn't be asking these questions. You don't think you can
10 sit fairly, do you?

11 MS. GERGER: I think I can.

12 MR. EDMUND: Can you put out of your mind all that you
13 have read, Ms. Gerger?

14 MS. GERGER: I think so, really.

15 MR. EDMUND: Do you think you could refrain, for example,
16 from saying, "Well, such and such" and "so and so" and you
17 realize five minutes later, "Oh, my Lord, I didn't hear that
18 in the courtroom." or somebody on the jury said, "We didn't
19 hear that in the courtroom", and you realize that you read it
20 in the paper. Do you think you can totally refrain from doing
21 that?

22 MS. GERGER: Yes, sir.

23 MR. EDMUND: Now, we start out with the conversation with
24 you very hesitant about sitting on this jury and being fair
25 and now we have reached a point where I think you are all fair

1 and ready to sit?

2 MS. GERGER: Well, I just felt like you ought to know.

3 MR. EDMUND: I appreciate it, ma'am, I do. But what
4 I am looking for is a juror who is not pre-disposed to
5 convict James Duckett. Can you tell me at this point in time
6 that you come into that category?

7 MS. GERGER: I just like to think I am an honest person.

8 MR. EDMUND: No question about that. No question about
9 that, but ...

10 MS. GERGER: Even though I have read...

11 MR. EDMUND: Pre-disposition and an opinion; thought
12 processes already in motion; all of these things, right?

13 MS. GERGER: That i could listen to the evidence that
14 you have.

15 MR. EDMUND: But then can you sift it out from what
16 you have been reading for the past eleven months and not blurt
17 out something that was never introduced into evidence in this
18 courtroom and you know without a doubt you can do that?

19 MS. GERGER: I think I can.

20 MR. EDMUND: Thank you. Ms. Stamper, will you presume
21 Jim Duckett to be innocent?

22 MS. STAMPER: Yes, I will.

23 MR. EDMUND: Will you clothe him with that throughout
24 this trial?

25 MS. STAMPER: Yes, I will.

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1 MR. EDMUND: Have you had any of the thought making
2 processes that Ms. Gerger has had?

3 MS. STAMPER: No, I have not.

4 MR. EDMUND: No publicity has interfered with your
5 thinking?

6 MS. STAMPER: No, it has not.

7 MR. EDMUND: No opinions or conclusions?

8 MS. STAMPER: No.

9 MR. EDMUND: How about you, Ms. Gerber?

10 MRS. GERBER: To be truthfully, I can't recall the
11 last time I picked up a newspaper, except to go over the grocery
12 ads. I really have very little knowledge of this case at all.

13 MR. EDMUND: Thank you.

14 Ms. Stamper, tell me your hobbies and if you watch TV,
15 what do you likely watch?

16 MS. STAMPER: I very hardly watch TV. I more like to
17 read a book, Steven King and stuff like that. And my hobbies
18 are I like to fish. I like to swim. I like to surf and
19 skate and I am a very outgoing person. I am very seldom
20 home to watch TV.

21 MR. EDMUND: Thank you. How about you, Ms. Gerber?

22 MS. GERBER: Very little TV. When I do, I find one
23 show a week and that is the Cosby Show. Anyone with kids
24 can relate to that. As far as my hobbies, I like to swim,
25 scooba dive, tennis, my children. We live out in the country

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1 so we do a lot of gardening and animals and spend a lot of
2 time out there.

3 MR. EDMUND: Ms. Gerger, what are your hobbies, ma'am,
4 do you watch TV? What do you like to watch?

5 MS. GERGER: Sewing is my hobby.

6 MR. EDMUND: Ma'am?

7 MS. GERGER: Sewing. We do watch quite a lot of TV.

8 MR. EDMUND: Can we film some news now and then into
9 this newspaper you have been reading, ma'am?

10 MS. GERGER: And ...

11 MR. EDMUND: This thing has got a lot of play up here.

12 MS. GERGER: I like thirty minute Sitcoms.

13 MR. EDMUND: Let's get back to the news. Have you
14 been watching the news where they have been talking about
15 James Duckett in this case?

16 MS. GERGER: Well...

17 MR. EDMUND: When you all were sitting there and watching
18 for the first time... the first time you heard about this
19 thing, did you have a reaction or for that matter, did Mr.
20 Gerger have a reaction or express a view, "They ought to take
21 that dude out and string him up", or words to that effect?

22 MR. GERGER: No, I don't think so.

23 MR. EDMUND: So often that happens to me. I make my
24 living fighting criminal offense law. If it happened to you,
25 I think it is perfectly natural. If it did, please tell us.

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1 MS. GERGER: I don't know if either one of us said
2 that.

3 MR. EDMUND: Do you know if one of you thought it?
4 That one being you?

5 MS. GERGER: I don't know.

6 MR. EDMUND: I don't know, ma'am, you have got to say
7 "yes" or "no".

8 MS. GERGER: I guess I would say yes.

9 MR. EDMUND: Thank you. Do you think that type of
10 feelings in you is so strong, let me put it this way... do
11 you feel you believe in the law and the following of our
12 system of American juris prudence is so strong that you can
13 put aside what are obviously yours and I think most of our
14 strong feelings of revulsion against a case like this,
15 particularly since you have thought it and perhaps voiced it
16 and truly give James Duckett the benefit of the presumption
17 of innocence? Truly? And not get all bent out of shape
18 and mad at yourself for doing it?

19 MS. GERGER: If the evidence is there, I would... I
20 could.

21 MR. EDMUND: Now, we are reaching another point. You see,
22 James Duckett, the Court will tell you, doesn't have to prove
23 anything. Like his lawyer, I can sit there like a lump
24 and never open my mouth. I ain't going to, but I could.
25 The law doesn't require him to prove anything, and if you are

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1 wanting evidence to prove his innocence, again that is
2 contrary to our American system, that the State accepts and
3 the State is stuck with.

4 So it is not that the evidence is going to prove his
5 innocence, but that the evidence must prove his guilt.
6 Can you give some thought to that, please.

7 Since I ran my lip yesterday about the importance of
8 juries and all, did you give thought to that over the evening
9 or during the course of sitting in this courtroom, Ms. Gerger?

10 MS. GERGER: Yes, I have. I thought about it prior to
11 coming in here and after I received my summons and began to
12 think about it, I began to give it a lot of thought and
13 the best way I think through things is using analogies and
14 my greatest analogy I think, the way I did this was in
15 my profession I make decisions many many many times a day
16 and the decisions I have to do take in all the evidence and
17 weigh it and make a decision with the full knowledge I can't
18 recoup that decision and my decision may be a life or death
19 decision of that patient. I kind of put myself in that
20 position as a juror. I have got to weigh all that evidence,
21 becuse it is a life or death of someone else and I can't
22 take back my decision once I made it.

23 Many times I have to use the people around me, my
24 resources around me, the other people with the same information
25 to tell me how they feel. Many times when I have to ignore

1 what they say, I still feel in my mind I am accepting the
2 full responsibility of the patient and the consequences of
3 the action and I have given much thought for these very reasons.
4 That is what I do as a profession.

5 MR. EDMUND: What did you conclude?

6 MS. GERGER: I am ... that jury summons paper I
7 originally got in the mail, I thought, I am now on the Jury.
8 Now has become very important and I really have some of the
9 issues as in my business.

10 MR. EDMUND: The state of your mind is the state of
11 mind that you would want if you were selecting a juror
12 yourself?

13 MS. GERGER: Yes.

14 MR. EDMUND: Is your state of mind such that you would
15 want a juror you selected to have that state of mind,
16 Ms. Stamper?

17 MS. STAMPER: I would like a juror to be fair about it.

18 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

19 MR. HURM: Your Honor, it is a violation of the Golden
20 Rule where he is asking them to take themselves out of the
21 jury box and put themselves into a position as a litigant.
22 Asking whether they would be satisfied with a person like
23 themselves as a juror and that is improper.

24 MR. EDMUND: I couldn't hear what he said. I think he
25 is talking about if they were selecting a juror in a trial

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1 in which they were a party. That wasn't the way my question
2 was. Only if you were selecting yourself, not for yourself.

3 MR. HOGAN: Well, Your Honor, I think that is the
4 implication that they are accepting and that they are answering
5 on the basis that if they were picking the jury and they
6 were a litigant, it is improper to take the jury at any time
7 out of the box and put them in a position as a judge or as
8 either of the parties.

9 MR. EDMUND: I couldn't hear what he said.

10 THE COURT: It is the Golden Rule Argument to pick
11 themselves as a juror.

12 MR. EDMUND: My question was phrased if they were
13 selecting a juror not for themselves and not for litigation,
14 but a juror themselves.

15 MR. HURM: The only people who pick jurors are the
16 litigants.

17 MR. EDMUND: It came out that way. Just accidentally.
18 I had asked them precisely complaining about thinking it is
19 proper, but in this instance, my question came out philosophic-
20 ally different than the question I would normally have asked,
21 Judge, but in this case, I didn't ask that juror about either
22 of them about selecting for themselves. Only their state of
23 mind is such they were selecting a juror, they would be
24 satisfied or words to that effect. I didn't even put in the
25 implication that they were being on a trial. The only thing
is selecting. You are talking to me now in a jury selection

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1 process. They are not relating to me in a defendant attitude.
2 They responded in my opinion to that question as though they
3 were in the process of selecting a jury almost in a vacuum
4 for whatever the reason and not for themselves, Judge.

5 I am not going to ask it of anyone else.

6 MR. HURM: Okay. just as long as they drop it, that
7 is fine.

8 THE COURT: You are not going any further with it?

9 MR. EDMUND: No, sir, I will move along.
10 I wasn't going through the panel.

11 THE COURT: Okay. Thank you.

12 (WHEREUPON, BENCH CONFERENCE ENDS)

13 MR. EDMUND: Do either of you three ladies have any
14 experience in law enforcement?

15 JURORS: No, sir.

16 MR. EDMUND: Do either of you have any close friends or
17 relatives who are involved now in law enforcement or have
18 in the past been involved in law enforcement?

19 JURORS: No, sir.

20 MR. EDMUND: A relative or a friend, Mrs. Gerber?

21 MRS. GERBER: I have an uncle, brother-in-law, and a
22 cousin, is State Troopers.

23 MR. EDMUND: All State Troopers?

24 MRS. GERBER: Yes, sir.

25 MR. EDMUND: Whereabouts?

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1 MS. GERBER: In Illinois.

2 MR. EDMUND: Illinois? Is there anything about the
3 members of your family being involved in law enforcement
4 that would tend in any way to have you favor the State in
5 a contest such as this and it is a contest?

6 MS. GERBER: No, sir.

7 MR. EDMUND: Now, no prejudicial favoritism for the
8 State of Florida or whatever?

9 MS. GERBER: No, sir.

10 MR. EDMUND: Alright, ma'am. Do any of you have close
11 friends or relatives who are in the judiciary?

12 Judges or clerks or bailiffs or whatever?

13 JURORS: No, sir.

14 MR. EDMUND: Any of you have any dietary particular
15 peculiar dietary needs that need to be addressed during
16 the daylight hours? Or medical reasons that need to be
17 addressed during daylight hours?

18 JURORS: No, sir.

19 MR. EDMUND: I am going to ask you if you like yourself?
20 Ms. Gerber?

21 MS. GERBER: Sure do.

22 MR. EDMUND: How about you, Ms. Gerger?

23 MS. GERGER: Yes, sir.

24 MR. EDMUND: How about you, Ms. Stamper?

25 MS. STAMPER: Yes, sir.

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1 MR. EDMUND: I am going to ask you if you like being
2 alone with yourself? Ms. Stamper?
3 MS. STAMPER: Yes, sir.
4 MR. EDMUND: Ms. Gerber?
5 MS. GERBER: Yes.
6 MR. EDMUND: Ms. Gerger?
7 MS. GERGER: Yes, sir.
8 MR. EDMUND: I am going to ask you if you can make
9 decisions when you are alone? Not only when you are hastled
10 in your profession?
11 MS. GERGER: Yes, sir.
12 MR. EDMUND: But also when other people are around and
13 when you are hastled in your profession?
14 MS. GERGER: Yes.
15 MR. EDMUND: The same Ms. Stamper?
16 MS. STAMPER: Yes.
17 MR. EDMUND: The same, Ms. Gerber?
18 MS. GERBER: Yes, sir.
19 MR. EDMUND: Do either of you three ladies feel that
20 for every homicide there must be a death by way of execution?
21 Ms. Gerger?
22 MS. GERGER: No.
23 MR. EDMUND: Ms. Stamper?
24 MS. STAMPER: No.
25 MR. EDMUND: Ms. Gerber?

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1 MS. GERBER: No, sir.

2 MR. EDMUND: I am going to also ask about the FBI. Would
3 you give greater weight to the testimony of an individual
4 who works for the Federal Bureau of Investigation simply
5 because they work for the Federal Bureau of Investigation
6 than you would any other witness who might take the stand?

7 MS. GERGER: Greater weight, no. I am sure they will
8 list their credentials, experience and education and that is
9 going to be what makes the difference. If they are qualified
10 to present that evidence.

11 MR. EDMUND: We fool around in the courtroom and we think
12 we are so learned and we have all this law we can stuff
13 juries and then we ask a question and they tell us what the
14 law is. That is especially what the Court will ask you to do.
15 Make a determination based upon his qualifications, and
16 reasonableness of what he said, in light of your knowledge of
17 every day affairs and in light of any other testimony that
18 might be available to you throughout the trial. The Judge
19 isn't going to say it that way, but that is essentially how
20 it comes out.

21 Would you approach the FBI agent employee's testimony
22 in the very same vein as that, Ms. Gerber?

23 MS. GERBER: Yes.

24 MR. EDMUND: Just as Ms. Gerger does?

25 MS. GERBER: Yes.

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1 MR. EDMUND: Ms. Stamper?

2 MS. STAMPER: Yes, sir. I consider they are like a
3 police officer and the FBI agent or whoever are equal. They
4 are all people and consider them equal, since they should be
5 tried equally, they should be tried fairly and also I think,
6 you know, if there is evidence , if there is enough evidence
7 I will give you my decision.

8 MR. EDMUND: Here again, if they blow something, they
9 have got to stand up and be counted, if they blow it?

10 MS. STAMPER: Ahum. (Affirmative response)

11 MR. EDMUND: If they blow it. Now, I am assuming
12 Ms. Gerger, you would have less problems with the emotional
13 issues of this case as it relates to the testimony of
14 pathologists and as it relates to the photographs of the
15 victim and the trauma and such as that, but it is a little
16 outside of your every day professional duties. Do you have
17 any thought that it might... that your emotional reaction
18 and we all have them, might be of such a nature that you
19 will want to reach out and strike and because James Duckett
20 is handy, you will forget the true issues of this case of
21 his guilt or innocence, based upon the evidence, and simply
22 say he is there, somebody needs to be punished and so he is
23 it?

24 MS. GERGER: Obviously, there was a crime committed,
25 but it is up to the two of you to prove whether or not he

1 is the one who did it or not.

2 MR. EDMUND: Fine. Would you feel the same, Ms. Stamper?

3 MS. STAMPER: Yes.

4 MR. EDMUND: Would you feel the same, Ms. Gerber?

5 MS. GERBER: Yes.

6 MR. EDMUND: Ms. Gerber, would you be able to maintain
7 a truly open mind throughout this trial and give both sides
8 an opportunity to be heard?

9 MS. GERBER: Yes, sir.

10 MR. EDMUND: Give the lawyers a chance to make their
11 closing arguments to you and then listen carefully and later
12 read the law that the Judge tells you that you must apply
13 to the facts of this case?

14 MS. GERBER: Yes.

15 MR. EDMUND: Will you completely refrain, ma'am, from
16 discussing this case now with anybody else?

17 MS. GERBER: Yes, sir.

18 MR. EDMUND: Would your answer be the same, Ms. Gerger?

19 MS. GERGER: Yes, sir.

20 MR. EDMUND: Ms. Stamper?

21 MS. STAMPER: Yes, sir.

22 MR. EDMUND: Ms. Stamper, will you stand by your verdict
23 if you feel it is the correct verdict in light of what the
24 Judge has told you and in light of the evidence as you recall
25 it?

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1 MS. STAMPER: Yes.

2 MR. EDMUND: Can you do the same, Ms. Gerger?

3 MS. GERGER: Yes.

4 MR. EDMUND: Ms. Gerber?

5 MS. GERBER: Yes.

6 MR. EDMUND: If you are one against the eleventh and
7 yet you feel that your verdict is the correct verdict, will
8 you stand by your verdict even if it should result in a
9 mistrial?

10 MS. GERBER: Yes, sir.

11 MR. EDMUND: Will you do the same, Ms. Gerger?

12 MS. GERGER: Yes, sir.

13 MR. EDMUND: And Ms. Gerber?

14 MS. GERBER: Yes, sir. By all means.

15 MR. EDMUND: Thank you. Thank you, Your Honor.

16 THE COURT: Come up when you are ready, please.

17 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

18 THE COURT: Let me ask, do we have any challenges for
19 cause?

20 MR. HURM: No, we don't.

21 MR. EDMUND: Ms. Gerger. I think it is obvious she had
22 preformed opinions and it is apparent her mental capacity
23 is such that she can truly put out of her mind to the point
24 she can approach this objectively.

25 MR. HOGAN: Judge, just because someone has read the

1 paper it is certainly not a challenge for cause. Mrs. Gerber
2 has twice been very forthright in saying, "Yes, I read the
3 paper" and she has also twice, once here at the bench and
4 as you will recall, the jury box incident, has repeated that
5 she could be fair and would put out of her mind and not tell
6 the other jurors about it and I think that she has passed
7 all the requisite tests to remain on this jury. Mr. Edmund
8 might not like her on the jury, but it is not a challenge
9 for cause.

10 MR. EDMUND: No response, Your Honor.

11 THE COURT: She bothers me sufficiently. I am going to
12 strike her for cause.

13 Let's recap where we are now. The State has used
14 four and the Defense has used three. Our prospective jury
15 is Chandler, Prevatt, Stroud, Hall, Brown, Symmes, Emerson,
16 Warren, McGill, Gries, Flack and Gerger. It is Defense'
17 strike.

18 MR. EDMUND: Stamper, Your Honor.

19 THE COURT: You have gone too far. That is not the
20 prospective juror. It was up to Gerger.

21 MR. EDMUND: Chandler.

22 THE COURT: You have each used four. Your jury will be
23 Prevatt, Stroud, Hall, Brown, Symmes, Emerson, Warren, McGill,
24 Gries, Flack, Gerger and Stamper.

25 MR. EDMUND: I don't guess there is any doubt they will

1 pass.

2 THE COURT: It is up to you.

3 MR. HOGAN: We will pass.

4 THE COURT: They pass.

5 MR. EDMUND: You sandbag people sometimes. Stamper.

6 THE COURT: The State has used four, the Defense used
7 five. You don't have enough to pick a jury. You can continue
8 striking or fill in the seats. I will leave it up to you
9 all. What do you want to do?

10 MR. HOGAN: We will strike.

11 THE COURT: Do you want to continue picking? Do you
12 want to continue on striking?

13 MR. EDMUND: I have no further at this point.

14 MR. HOGAN: Strike Ms. Brown.

15 THE COURT: Each have used five. It seems we ought to
16 fill the seats now and start again.

17 Thank you.

18 MR. HURM: Judge, are we going to have enough of the
19 ones in here now and the six outside?

20 THE COURT: I have enough to fill these seats.

21 (WHEREUPON, BENCH CONFERENCE ENDS)

22 THE COURT: I am sure you understand if I call out
23 your name, you may step down. Your jury service is completed.
24 You need not call back or come back. In the far back,
25 Mrs. Chandler can come down. Mrs. Brown can come down.

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1 Mrs. Gerber can come down and Ms. Stamper can come down.
2 Thank you all very much for your service. You will not need
3 to call back or come back.

4 And now we are going to ask everyone to bear with us and
5 move around, Ms. Prevatt will move to the far right seat.
6 Next to her will be Mrs. Stroud. Next will be Mr. Hall.
7 Mrs. Symmes will be all the way back next to Mr. Hall.
8 In the middle on the far right will be Dr. Emerson. Next to
9 her, Mrs. Warren. Next to her, Mrs. McGill. Next to her
10 Mrs. Gries. Next to her, Mr. Flack. And in the front row,
11 Mrs. Gerger, correct. If you would.

12 We will call some more names. Folks, it is obvious
13 that I excused #147. If I call that number, then we will just
14 move on to the one after that. I purposely didn't reach in
15 the box to remove that initially.

16 We have #207, Nancy Mulvaney.

17 #255, Wilbur Schlager.

18 #158, Evelyn Rhodes.

19 #235, Troy Barry.

20 Does that leave any prospective jurors in the courtroom,
21 please, folks? I should have one. You are it.

22 Gentlemen, bear with me. I will remove #147 from the
23 box since we excused her earlier.

24 Folks, I think it is appropriate we take about a ten
25 minute recess at this time. If you will bear with us. I want

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1 to readmonish all of you. Don't discuss the case among
2 yourselves or with anyone else. Don't read anything about
3 the case, watch or listen to anything about the case.
4 Do we have anything further, gentlemen, before we take a
5 recess?

6 COUNSEL: No, Your Honor.

7 THE COURT: We will be back in about ten or fifteen
8 minutes.

9 (WHEREUPON, COURT IS IN RECESS AT 9:58 A. M.)

10 (WHEREUPON, COURT RECONVENES AT 10:27 A. M.)

11 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
12 COUNSEL, MR. EDMUND)

13 THE COURT: Folks, I am certain we understand the
14 procedure by now. For the new jurors in the box, starting
15 with Mrs. Mulvaney and across, would you all answer these
16 general questions for me.

17 Do any of you have any physical defects, hearing, sight
18 or otherwise, which would render you incapable of performing
19 your duty as a juror in this case?

20 Do you have any bias or prejudice either for or against
21 the Defendant?

22 If you are selected as a juror in this cause, will you
23 render a fair and impartial verdict based upon the evidence
24 presented in this courtroom and the law as it pertains to this
25 particular case, as instructed by the Court?

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1 Do you have any other reason why you cannot give this
2 case your undivided attention and render a fair and impartial
3 verdict?

4 I forgot on my new group this morning and didn't allow
5 them to introduce themselves, so one of the attorneys did
6 that for me, but I am going to allow you all to do that.

7 Ms. Mulvaney, if you would help me, please, ma'am?

8 MS. MULVANEY: I am Nanvy Mulvaney. I am a Registered
9 Nurse. I work at Leesburg Regional Medical Center. My
10 husband's name is Jim and he is medically retired. Two
11 children, son sixteen and a daughter fourteen.

12 THE COURT: What town do you all live in, ma'am?

13 MS. MULVANEY: Leesburg.

14 THE COURT: Have you ever served on a jury?

15 MS. MULVANEY: No, sir.

16 THE COURT: I don't mean to pry, but when you say
17 your husband is medically retired, what did he do before he
18 retired?

19 MS. MULVANEY: He was a project engineer.

20 THE COURT: Do you know Mrs. Gerger?

21 MRS. GERGER: Yes.

22 THE COURT: Mr. Schlager, please?

23 MR. SCHLAGER: My name is Wilbur Schlager. I am married.
24 My wife's name is Evelyn. I work for A&P. for thirty-four
25 years as a meat cutter. I have two children.

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1 THE COURT: Does your wife work outside the home, sir?
2 MR. SCHLAGER: No, sir.
3 THE COURT: What town do you all live in?
4 MR. SCHLAGER: Lady Lake.
5 THE COURT: Have you ever served on a jury?
6 MR. SCHLAGER: Yes, sir.
7 THE COURT: Do you remember if it was criminal or civil?
8 MR. SCHLAGER: It was criminal.
9 THE COURT: Do you remember how long ago that was
10 approximately?
11 MR. SCHLAGER: Ten years ago in Michigan.
12 THE COURT: Ms. Rhodes?
13 MS. RHODES: My name is Evelyn Rhodes and my husband's
14 name is Cecil Rhodes.
15 THE COURT: What do you all do for a living, please,
16 ma'am?
17 MS. RHODES: We are AC mechanics.
18 THE COURT: Both of you?
19 MS. RHODES: Yes, sir.
20 THE COURT: That means air conditioning, I presume,
21 right?
22 MS. RHODES: Yes, sir.
23 THE COURT: What town do you all live in, please?
24 MS. RHODES: Ferndale.
25 THE COURT: Have you ever served on a jury?

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1 MS. RHODES: No, sir.

2 THE COURT: Mr. Barry?

3 MR. BARRY: My name is Troy Barry. My wife's name is
4 Emma. I work for Air Force Textron in Orlando.

5 THE COURT: What do you do there, Troy?

6 MR. BARRY: I am a machine operator and also in the
7 Air Force Reserves and my wife doesn't work and I have two
8 kids, a four year old son and a five year old daughter.

9 THE COURT: What town do you all live in?

10 MR. BARRY: Clermont.

11 THE COURT: Have you ever served on a jury?

12 MR. BARRY: No, sir.

13 THE COURT: Mr. Hogan?

14 VOIR DIRE EXAMINATION

15 BY MR. HOGAN:

16 Good morning. At this point, I am sure most of you
17 are looking forward to hearing these questions again.

18 That is like scratching a blackboard. You understand, I have
19 a responsibility to at least go through these questions with
20 you, because I don't know your responses. Okay?

21 Ms. Mulvaney, have you... you have a fourteen year old
22 daughter and a sixteen year old son. Do you have a curfew
23 for them?

24 MS. MULVANEY: Yes. My son works at Wendy's until
25 ten or so. My daughter is in before dark.

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1 MR. HOGAN: You have heard this question asked I
2 presume. Could you hear everything that has gone on so far?
3 About the facts that this eleven year old girl was allowed
4 to walk to a convenience store within sight of her home,
5 but understand whether you think that certainly in this
6 country you ought to be able to walk to a store to buy a
7 pencil without getting raped and murdered, that may be your
8 position, but also maybe that you feel that her mother should
9 not have let her go down there at ten o'clock at night.
10 But you understand, her mother is not on trial?

11 MS. MULVANEY: Yes.

12 MR. HOGAN: Ms. Mulvaney, do you know Mrs. Gerger?

13 MS. MULVANEY: Yes.

14 MR. HOGAN: Have you ever worked together?

15 MS. MULVANEY: No.

16 MR. HOGAN: Do you work in the same department?

17 MS. MULVANEY: No.

18 MR. HOGAN: Do you know Dr. Shutze?

19 MS. MULVANEY: No.

20 MR. HOGAN: Do we have another nurse on this panel
21 besides these two? I think we did.

22 One thing I need to ask the people in the medical
23 profession, which may apply to Dr. Emerson also. You have
24 devoted your life to saving lives. Maybe you are in a
25 position here to have to choose to, if you follow the law,

1 to represent to Judge Lockett that he impose capital
2 punishment, which may be directed opposed to what you devoted
3 your life to, your profession.

4 Do you understand that this is sort of a sterile
5 environment now and if you take an oath as a juror, you are
6 going to be at least for a brief period of time, a different
7 profession. Do you think you could do that?

8 JURORS: Yes.

9 MR. HOGAN: Do you go to church, Ms. Mulvaney?

10 MS. MULVANEY: Yes.

11 MR. HOGAN: What church?

12 MS. MULVANEY: Baptist.

13 MR. HOGAN: Is there anything about your religious
14 background or training that would make it difficult or
15 impossible for you to ...?

16 MS. MULVANEY: No.

17 MR. HOGAN: You understand that Judge Lockett is the
18 one that actually imposes the sentence and he does consider
19 the recommendation of the jury?

20 MS. MULVANEY: Yes.

21 MR. HOGAN: The same question I asked Mrs. Mulvaney
22 Mrs. Gerger, did you make that distinction between your life
23 profession and your job as a juror?

24 MS. GERGER: Yes, sir.

25 MR. HOGAN: Dr. Emerson?

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1 DR. EMERSON: Yes.

2 MR. HOGAN: Is anyone on the witness list that I read
3 any of you knew?

4 Yes, ma'am?

5 JUROR: About eight or ten years ago, I worked with a
6 Susan Clark, about three months, and I do know Don Campbell.

7 MR. HOGAN: From Groveland?

8 JUROR: Yes, sir.

9 MR. HOGAN: Is there anything about the fact that you
10 know Don Campbell and you may know Susan Clark and I guess
11 you won't be sure until you see her, but ...

12 JUROR: I am not even sure if I see her. We are talking
13 eight to ten years ago.

14 MR. HOGAN: Okay, well, the fact that you may know
15 Susan Clark and you do know Don Campbell, is that going to
16 affect you one way or another as far as being a fair juror?

17 JUROR: No.

18 MR. HOGAN: Let me make one thing clear, Mrs. Rhodes.
19 Let me make one thing clear to you. This is not a contest.
20 This is a trial and we want justice to be done here and I
21 want a fair jury. That is all I want is a fair, honest
22 jury. I have confidence in my case. Understand? I believe
23 I can convict this man with a fair jury and that is all I
24 want. I want to be able to go home and sleep. I don't want
25 any jury slanted one way or the other. Okay?

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1 MS. RHODES: Yes, sir.

2 MR. HOGAN: Back to you. Did you understand the
3 discussion about reasonable doubt?

4 MS. RHODES: Yes, sir.

5 MR. HOGAN: Do you understand that that is our burden,
6 to prove the case beyond a reasonable doubt and contrary again
7 to what Mr. Edmund said and I am not attacking him personally,
8 but he said if I had it my way, we wouldn't have that
9 burden. Well, I believe in the system and I accept that
10 burden and I have confidence I can overcome that burden,
11 but you understand you are not to hold me to a higher burden.
12 I can't prove it to you beyond any... beyond a shadow of a
13 doubt; beyond all doubt. You understand all that discussion?

14 MS. RHODES: Yes.

15 MR. HOGAN: Would you like to be on this jury Ms.
16 Mulvaney?

17 MS. MULVANEY: Yes. I would like to see how the
18 system works.

19 MR. HOGAN: Mr. Schlager?

20 MR. SCHLAGER: Yes, sir.

21 MR. HOGAN: I got in my notes that you were A & P,
22 a meat cutter. But where were you working?

23 MR. SCHLAGER: I am retired now.

24 MR. HOGAN: Where were you working?

25 MR. SCHLAGER: I was in Michigan.

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1 MR. HOGAN: What are your children doing?
2 MR. SCHLAGER: They both work for ... it was American
3 Motors and now it is Chrysler, in drafting. Body work.
4 MR. HOGAN: Sons or daughters?
5 MR. SCHLAGER: Boys, both of them.
6 MR. HOGAN: Do you have any grandchildren?
7 MR. SCHLAGER: Yes, three of them. All boys.
8 MR. HOGAN: Do you go to church?
9 MR. SCHLAGER: Occasionally.
10 MR. HOGAN: Which church is that?
11 MR. SCHLAGER: Lutheran.
12 MR. HOGAN: How do you feel about capital punishment,
13 Mr. Schlager?
14 MR. SCHLAGER: If it is necessary, it is. But you have
15 to have all the facts and everything.
16 MR. HOGAN: Did you understand the discussions we had
17 before about the aggravating and mitigating factors, the
18 two parts of the trial?
19 MR. SCHLAGER: Yes.
20 MR. HOGAN: With whatever your feelings are on capital
21 punishment, personally, do you think you could put those
22 aside if need be and follow the law?
23 MR. SCHLAGER: Yes, sir.
24 MR. HOGAN: In other words, if logically speaking, your
25 common sense told you that, first of all, if you have an

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1 abiding conviction of guilt and your common sense tells you
2 that this is the man that did this murder and this rape,
3 and he is convicted of First Degree Murder, then you enter
4 the penalty phase and your common sense again tells you
5 that the aggravating factors outweigh the mitigating factors,
6 could you then recommend capital punishment?

7 MR. SCHLAGER: Yes, sir.

8 MR. HOGAN: Is there anything about your religious
9 training or background that is going to be opposed to that?

10 MR. SCHLAGER: No, I think every man should have his
11 day in court and judged by his peers.

12 MR. HOGAN: You understand that I have a client too,
13 that deserves a fair trial?

14 MR. SCHLAGER: Yes, sir.

15 MR. HOGAN: Do you understand, Mr. Schlager, that the
16 discussion that we have had about circumstantial evidence
17 and I am telling you this is a circumstantial evidence case,
18 do you understand the discussion?

19 MR. SCHLAGER: I do.

20 MR. HOGAN: If at the end of this case you feel the
21 circumstantial evidence gives you that abiding conviction of
22 guilt, using your common sense, knowing that you are not
23 going to see a video tape of this homicide, not like on TV,
24 not going to be proven beyond all doubt. You are still going
25 to be asked to make that tough decision. Do you think you

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1 will be able to follow the law?

2 MR. SCHLAGER: Yes, sir.

3 MR. HOGAN: Thank you very much. Ms. Rhodes?

4 MS. RHODES: Yes, sir.

5 MR. HOGAN: As the air conditioning mechanic, do you
6 repair, install...?

7 MS. RHODES: A little bit of all of it.

8 MR. HOGAN: Commercial? Residential?

9 MS. RHODES: All of it.

10 MR. HOGAN: Do you work for a company or do you have your
11 own business?

12 MS. RHODES: No, we work for a company.

13 MR. HOGAN: How long have you been an air conditioning
14 mechanic?

15 MS. RHODES: Off and on for about fifteen years.

16 MR. HOGAN: Did you say you had children?

17 MS. RHODES: I have two children.

18 MR. HOGAN: What are they doing?

19 MS. RHODES: One ... the youngest is a fifteen year old
20 girl, a student, and the boy is twenty, and he works for
21 John Paul Pipe.

22 MR. HOGAN: Mrs. Rhodes, when your children were growing
23 up and even now, did you tell them that if they got lost
24 or got in trouble, to find a police officer?

25 MS. RHODES: Yes, sir.

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1 MR. HOGAN: Do you feel it would be appropriate for an
2 eleven year old girl to trust a police officer?

3 MS. RHODES: Yes, sir.

4 MR. HOGAN: Ms. Rhodes, do you believe that an adult
5 male could sexually attack or have some desire to sexually
6 attack an eleven year old girl?

7 MS. RHODES: Yes, sir.

8 MR. HOGAN: Sad, but true?

9 MS. RHODES: Sad but true, yes.

10 MR. HOGAN: Ms. Rhodes, do you understand the discussion
11 we had about expert witnesses and more, in particular, the
12 FBI witness, the expert, which has become an issue here in
13 voir dire?

14 MS. RHODES: Yes.

15 MR. HOGAN: Do you understand that all we want you to
16 do ... Mr. Hurm and myself, is to be fair about every
17 witness, including the expert witnesses, the FBI witness?

18 MS. RHODES: Yes, sir.

19 MR. HOGAN: Would you agree, Mrs. Rhodes, that if the
20 FBI expert does, in fact, have credentials and experience,
21 years of experience, that he would be someone that you may
22 want to rely on their opinion?

23 MS. RHODES: I would have to say I would have to wait
24 and listen to him.

25 MR. HOGAN: Absolutely. I would want you to do that.

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1 I am asking you to assume for a moment that this person had
2 the proper credentials, much like when you go to a doctor.
3 You go to your doctor and you know he has the proper training
4 and experience. The doctor tells you to take a certain
5 medication. You don't know what is in that capsule, do you?

6 MS. RHODES: No, sir.

7 MR. HOGAN: But you take it. You allow him to give you
8 a shot?

9 MS. RHODES: Sometimes.

10 MR. HOGAN: You see what I am saying?

11 MS. RHODES: Yes, sir.

12 MR. HOGAN: I am asking you if...

13 MS. RHODES: If he has the experience, yes, I would.

14 MR. HOGAN: That is all I am asking you to do. I
15 am asking you to evaluate his testimony like everyone else's.

16 I am asking you, Mrs. Rhodes, to not to be pre-disposed
17 somehow by the fact this FBI Agent was brought up over and
18 over again, to automatically look at the FBI Agent and say,
19 "Something is wrong with him, because Mr. Edmund kept talking
20 about him.". Start off with a neutral position like every
21 other witness. Okay?

22 MS. RHODES: Yes, sir.

23 MR. HOGAN: Can you do that, Ms. Symmes?

24 MS. SYMMES: Yes, sir.

25 MR. HOGAN: Do you have any questions?

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1 JURORS: No, sir.
2 MR. HOGAN: Mr. Hall?
3 MR. HALL: No.
4 MR. HOGAN: Thank you, Ms. Rhodes. Mr. Barry, how are
5 you?
6 MR. BARRY: Just fine.
7 MR. HOGAN: What do you do in the Air Force Reserve?
8 MR. BARRY: I am in munitions.
9 MR. HOGAN: Were you ever in the regular Air Force?
10 MR. BARRY: Yes, sir, I was.
11 MR. HOGAN: How long have you been in the Air Force?
12 MR. BARRY: Six years.
13 MR. HOGAN: Where were you stationed?
14 MR. BARRY: I was stationed at Mississippi and then I
15 went over seas to the Philipines and then Arkansas.
16 MR. HOGAN: What was your classification?
17 MR. BARRY: I was a heavy equipment operator.
18 MR. HOGAN: Did you ever have any occasion to become
19 involved in a court martial, not yourself, but as a witness
20 or?
21 MR. BARRY: No, sir.
22 MR. HOGAN: Do you have ... you have two children, is that
23 correct?
24 MR. BARRY: Yes, sir.
25 MR. HOGAN: Do you have any questions? Do you understand

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1 the discussions we have had so far?

2 MR. BARRY: Sure.

3 MR. HOGAN: Do you understand that there are two
4 charges to be tried together?

5 MR. BARRY: Yes, sir.

6 MR. HOGAN: Do you go to church?

7 MR. BARRY: No, sir.

8 MR. HOGAN: If you did go to church, which one would
9 you go to?

10 MR. BARRY: Baptist.

11 MR. HOGAN: Anything about your religious background or
12 training that would make it difficult or impossible for you
13 to serve on the jury?

14 MR. BARRY: No, sir.

15 MR. HOGAN: Do you understand the fact that you may well
16 be placed in a position, in fact, that is my intention, to
17 ask you to return a verdict of capital punishment?

18 MR. BARRY: Yes, sir.

19 MR. HOGAN: Could you do that? Follow the law?

20 MR. BARRY: Yes.

21 MR. HOGAN: How about you, Ms. Rhodes, what church do
22 you go to?

23 MS. RHODES: I don't go to church.

24 MR. HOGAN: If you did go to one, which would you go to?

25 MS. RHODES: Baptist.

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1 MR. HOGAN: Is there anything about your religious
2 training that would make it difficult or impossible for you
3 to serve on this jury?

4 MS. RHODES: No, sir.

5 MR. HOGAN: How do you feel about capital punishment?

6 MS. RHODES: If it is necessary.

7 MR. HOGAN: Could you follow the law?

8 MS. RHODES: Yes.

9 MR. HOGAN: Do you understand it is a legal decision
10 and not an emotional one?

11 MS. RHODES: Yes.

12 MR. HOGAN: Do you have any questions for me? Anybody?
13 Anyone?

14 I appreciate your patience and it may seem that this
15 is dragging more and it maybe is, but this is an important
16 case and I apologize if you feel that way and I thank you
17 for paying attention.

18 Thank you, Judge.

19 THE COURT: Mr. Edmund?

20 VOIR DIRE EXAMINATION

21 BY MR. EDMUND:

22 Good morning. Ms. Mulvaney, is that it, ma'am?

23 MS. MULVANEY: Yes, sir.

24 MR. EDMUND: I didn't hear what you said. You speak so
25 softly. You say that you and Ms. Gerger know one another?

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1 MS. MULVANEY: Know of each other. I work a totally
2 different shift than she does. I work nights and she works
3 days.
4 MR. EDMUND: You are in the same profession?
5 MS. MULVANEY: Right.
6 MR. EDMUND: Have not worked together?
7 MS. MULVANEY: No.
8 MR. EDMUND: Not socially friends?
9 MS. MULVANEY: No.
10 MR. EDMUND: Okay. Fine. Can you presume James
11 Duckett to be innocent?
12 MS. MULVANEY: Yes.
13 MR. EDMUND: You heard us talk about it. You realize
14 the importance that at least I put on it and the law puts
15 on the presumption of innocence?
16 MS. MULVANEY: Yes.
17 MR. EDMUND: Did you have any preconceived idea of guilt
18 or innocence when you came to this courthouse?
19 MS. MULVANEY: No.
20 MR. EDMUND: Had you been exposed to media publicity that
21 you think might invade your thinking during your deliberations
22 back here?
23 MS. MULVANEY: No.
24 MR. EDMUND: How about you, Mr. Schlager, can you presume
25 my client to be innocent?

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1 MR. SCHLAGER: Yes, sir.

2 MR. EDMUND: And were you exposed to any sort of media
3 publicity that might cause you problems in sifting out what
4 comes from the stand and what you have read or heard or seen?

5 MR. SCHLAGER: I read a lot before I knew it was down
6 here. Every time you pick up a paper, I have seen it was
7 different so I have no opinion or anything.

8 MR. EDMUND: Did you have an occasion to discuss what
9 you read in the paper with any member of your family or
10 others?

11 MR. SCHLAGER: My wife. We discussed it.

12 MR. EDMUND: Did either of you indicate that you formed
13 an opinion as to James Duckett's guilt or innocence?

14 MR. SCHLAGER: No, sir.

15 MR. EDMUND: What was your immediate reaction upon
16 hearing or reading about this particular offense? Were you
17 angry?

18 MR. SCHLAGER: I think I heard it on TV. I didn't pay
19 that much attention. Some girl was missing and found her.

20 MR. EDMUND: When you picked up more of what was in the
21 newspapers and what was on the news, what sort of feeling
22 did you have about you then? Was it a feeling of anger or
23 sadness or what?

24 MR. SCHLAGER: I felt like I say, every time you read it
25 it was a different opinion. A different thing about it.

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1 You just don't draw no opinion, because every time you get
2 the paper, and everyone has a different theory on it. It
3 is hard to tell and I just don't have no opinion on it at all.

4 MR. EDMUND: Ms. Rhodes, do you have any problem
5 ma'am, presuming James Duckett innocent?

6 MS. RHODES: No, sir.

7 MR. EDMUND: Do you feel you can clothe him with that
8 presumption throughout the entire trial?

9 MS. RHODES: Yes, sir.

10 MR. EDMUND: Were you exposed to enough publicity that
11 you feel you have any knowledge of at least what the alleged
12 facts of this case will be?

13 MS. RHODES: No, sir.

14 MR. EDMUND: Has there been anything said during the
15 voir dire that has caused you to maybe form opinions one way
16 or the other about whether you would rather not sit on this
17 jury?

18 MS. RHODES: No, sir.

19 MR. EDMUND: Would you tell me your hobbies, ma'am,
20 and what you are likely to watch, if you watch television.

21 MS. RHODES: Well, I don't watch much TV, but I work
22 all day and I come in and I have a house to take care of.
23 I have to get that all cleaned before seven o'clock. Jeopardy
24 comes on at seven. My husband, he don't watch that much
25 TV. He is musically inclined and he practices his music.

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1 Most of the time, I sit there and listen to him and do
2 ceramics.

3 MR. EDMUND: What are your hobbies, Mr. Barry?

4 MR. BARRY: I like to go boating on weekends and I
5 do shoot target practice a lot.

6 MR. EDMUND: Rifle or pistol?

7 MR. BARRY: Rifle.

8 MR. EDMUND: Where do you practice?

9 MR. BARRY: Out where I live. I have a piece of land.

10 MR. EDMUND: Do you have any problem with the presumption
11 of innocence of James Duckett? You heard us talk about it.
12 Do you have any reservations about that at all?

13 MR. BARRY: No, sir.

14 MR. EDMUND: If you watch television, what are you
15 likely to watch?

16 MR. BARRY: I watch Simon and Simon and Cheers.

17 MR. EDMUND: How about you, Mr. Schlager?

18 MR. SCHLAGER: Mostly golf and play tennis.

19 MR. EDMUND: Okay. Ms. Mulvaney?

20 MS. MULVANEY: I like baseball.

21 MR. EDMUND: What are your hobbies, ma'am? You like to
22 watch baseball or play baseball?

23 MS. MULVANEY: Watch it. I like to read, garden, and
24 try to find enough time to sleep.

25 MR. EDMUND: How about your hobbies?

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1 MR. SCHLAGER: Golfing, fishing...

2 MR. EDMUND: Have any of you been the victim of a crime
3 of violence? I don't need to know what it is. Only whether
4 or not it happened?

5 Any members of your family or close friends?

6 Have any of you been engaged or involved with law
7 enforcement at any level or any members of your family or
8 close friends now or in the immediate past?

9 Have you given thought perhaps even since yesterday,
10 or perhaps since you received your jury summons, of the
11 importance of sitting as a juror? The importance of a jury
12 system?

13 MS. RHODES: Since I got my summons, and more since
14 yesterday, I thought about it.

15 MR. EDMUND: In response to Mr. Hogan's question, did
16 you want to sit on this jury, did you say "yes" or "no"?

17 MS. RHODES: I said yes.

18 MR. EDMUND: Thank you. Alright, and then in response
19 to his question, why, what was your answer?

20 MS. RHODES: I would like to learn more about the system.
21 I have never been exposed to the courtroom.

22 MR. EDMUND: Do you feel that you can put aside your
23 personal feelings that you have about what the law ought to
24 be and follow precisely and as well as you can, the parameters
25 that Judge Lockett says you must follow and the law that he

1 says you must follow?

2 JUROR: Yes.

3 MR. EDMUND: Do you feel the same way, Mr. Schlager?

4 MR. SCHLAGER: Yes, sir.

5 MR. EDMUND: Follow the law, do what the Judge says,
6 and form your own opinion?

7 MR. SCHLAGER: Yes, sir.

8 MR. EDMUND: have you given some thought now to the
9 importance of the jury system?

10 MR. SCHLAGER: Yes, sir.

11 MR. EDMUND: Do you have a feeling one way or the other
12 as to whether you would rather or not sit on this jury?

13 MR. SCHLAGER: No, sir.

14 MR. EDMUND: Either way?

15 MR. SCHLAGER: I was called. I represent the people
16 and I will the best I can.

17 MR. EDMUND: How about you, Ms. Rhodes? Do you have
18 any feeling either way whether you would rather or rather
19 not sit as a juror?

20 MS. RHODES: I would rather.

21 MR. EDMUND: You would rather? And for what reason,
22 ma'am?

23 MS. RHODES: Well, I am an open minded person and I
24 believe that ... in the law that everybody has a right to
25 a fair trial.

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1 MR. EDMUND: You feel then at this point in your mental
2 process that you can give this trial a fair trial?
3 MS. RHODES: Yes, sir.
4 MR. EDMUND: Alright. Fine. Is this something you
5 feel you walked into the courtroom with or you feel it may
6 have developed as you have listened to Mr. Hogan and Mr. Hurm?
7 And the Judge?
8 MS. RHODES: No, sir, I always believed that.
9 MR. EDMUND: Okay, fine. How about you, Mr. Barry?
10 MR. BARRY: I don't have any feelings either way.
11 If I was picked, I can do it.
12 MR. EDMUND: No particular desire to sit, but no
13 reluctance to sit if, in fact, you are selected?
14 MR. BARRY: That's right. I feel I am honest.
15 MR. EDMUND: That is probably the bottom line and if
16 that is the case, then you can probably be comfortable with
17 yourself when you are alone?
18 MR. BARRY: Yes.
19 MR. EDMUND: You probably like yourself?
20 MR. BARRY: Yes.
21 MR. EDMUND: How about you, Ms. Rhodes?
22 MS. RHODES: Yes, sir.
23 MR. EDMUND: Mr. Schlager?
24 MR. SCHLAGER: Yes.
25 MR. EDMUND: Ms. Mulvaney?

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1 MS. MULVANEY: Yes.

2 MR. EDMUND: Now, Ms. Mulvaney, once you come to a
3 decision or a conclusion, do you find that you can stand
4 by that decision or conclusion even in the face of odds or
5 in the face of arguments?

6 MS. MULVANEY: Yes, sir.

7 MR. EDMUND: When you come to your conclusions, do you
8 just make snap judgments or how do you approach coming to a
9 conclusion about any particular point or problem?

10 MS. MULVANEY: Try to gather together all the facts and
11 all the things involved and then make my decision on that.

12 MR. EDMUND: And weigh the right and the wrong and
13 truth and untruth. Those kind of things?

14 MS. MULVANEY: Uhuh. (Affirmative response)

15 MR. EDMUND: Do you feel that you could maintain your
16 position if eleven other people are saying, "Oh, heck, you are
17 wrong"?

18 MS. MULVANEY: Yes.

19 MR. EDMUND: But you look at it again and examine your
20 position and even try to knock holes in your position, but
21 you are still satisfied, would you be able to continue to
22 maintain that minority of one position?

23 MS. MULVANEY: Yes.

24 MR. EDMUND: How about you, Mr. Schlager?

25 MR. SCHLAGER: Yes, I feel I can maintain it.

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1 MR. EDMUND: Will your thought processes bring you to
2 the opinions and conclusions about the same as Ms. Mulvaney?

3 MR. SCHLAGER: Yes. Because I figure that you have
4 to weigh all the evidence and look at everything; think it
5 over; sort it all out; and then make your decision.

6 MR. EDMUND: Ms. Rhodes?

7 MS. RHODES: Yes, sir.

8 MR. EDMUND: The same as Mr. Schlager and Ms. Mulvaney?

9 MS. RHODES: Yes, sir.

10 MR. EDMUND: Mr. Barry?

11 MR. BARRY: Yes.

12 MR. EDMUND: I really think that with the exception
13 of making some remark about being from out of town that
14 my question with regard to the FBI was would you be inclined
15 to give greater weight to the testimony of an individual
16 employed by the FBI than any other individual who might be
17 called to that stand; just making a determination of his
18 qualifications, his background, is apparent honesty, whether
19 or not he seems to know what he is talking about, and these
20 kind of things. Will you give greater weight to his testimony
21 simply because he comes in here with the FBI stamp?
22 Mr. Schlager?

23 MR. SCHLAGER: No.

24 MR. EDMUND: Ms. Rhodes?

25 MS. RHODES: No.

1 MR. EDMUND: Mr. Barry?
2 MR. BARRY: No.
3 MR. EDMUND: Fine. Mr. Barry, do you feel you can handle
4 whatever emotions might arise when you hear the testimony
5 of the horrible things that happened in this trial and see
6 some of the photographs that will probably be admitted, and
7 not have it affect your judgment as to the guilt or innocence
8 of my client, James Duckett?
9 MR. BARRY: It would have to be pretty bad.
10 MR. EDMUND: You are not going to let it flow over to
11 the point where you say that we have got to have somebody to
12 punish and he is sitting out there, so he is the guy?
13 MR. BARRY: No. Now, a crime has happened, whether or
14 not he is guilty of that crime...
15 MR. EDMUND: How about you, Ms. Rhodes?
16 MS. RHODES: I feel the same way.
17 MR. EDMUND: Mr. Schlager?
18 MR. SCHLAGER: I feel the same way.
19 MR. EDMUND: Ms. Mulvaney?
20 MS. MULVANEY: The same way.
21 MR. EDMUND: Do any of you feel that just because there
22 has been a killing, there has to be an execution?
23 Ms. Mulvaney?
24 MS. MULVANEY: No.
25 MR. EDMUND: Mr. Schlager?

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1 MR. SCHLAGER: No.

2 MR. EDMUND: Ms. Rhodes?

3 MS. RHODES: No.

4 MR. EDMUND: Alright. Ms. Rhodes, will you make every
5 effort, ma'am, to maintain an open mind throughout all the
6 phases of this trial?

7 MS. RHODES: That was the way I was raised.

8 MR. EDMUND: Will you do the same thing, Mr. Schlager?

9 MR. SCHLAGER: Yes, sir.

10 MR. EDMUND: Will you do the same thing, Mr. Barry?

11 MR. BARRY: Yes.

12 MR. EDMUND: Will you do the same, Ms. Mulvaney?

13 MS. MULVANEY: Yes.

14 MR. EDMUND: Thank you, Your Honor.

15 THE COURT: Yes, sir. Come up when you are ready, please,
16 gentlemen.

17 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

18 THE COURT: You have each used five and five.

19 Any challenges for cause?

20 MR. HOGAN: No, sir.

21 MR. EDMUND: No, Your Honor.

22 THE COURT: You hav each used five. The State goes first.
23 Your prospective jury is Prevatt, Stroud, Hall, Symmes,
24 Emerson, Warren, McGill, Gries, Flack, Gerger, Mulvaney and
25 Schlager.

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1 MR. HOGAN: Your Honor, I think we had the last strike.
2 I think it is his turn.
3 THE COURT: I thought he struck the last lady in the box
4 last.
5 MR. HOGAN: We struck Ms. Brown.
6 THE COURT: I thought after that, he struck Ms. Stamper.
7 The very last lady in the box.
8 MR. HOGAN: No, because we had the question as to whether
9 we wished to go on even though we were down to eleven and we
10 struck Ms. Brown after Ms. Stamper was stricken.
11 THE COURT: That's right. It is through Schlager.
12 Including Schlager.
13 MR. EDMUND: Gerger.
14 THE COURT: The State used five. Defense used six.
15 Up through Rhodes.
16 MR. HOGAN: Strike Mrs. McGill.
17 THE COURT: You have each used six. Up through Barry.
18 If there are no strikes, that is a jury.
19 MR. EDMUND: If there is no strike...
20 THE COURT: If you both say no strikes, that is the jury
21 and we will be back to the alternates.
22 MR. EDMUND: Mulvaney.
23 THE COURT: Alright. That is not enough for a jury
24 and you can continue if you want to.
25 MR. HOGAN: No.

1 THE COURT: Alright, do you want to put them in the box.
2 Now, we have to do it the hard way, which we ought to anyway.
3 We will go to the second group of jurors. Those not picked
4 over from the pre-trial publicity. You think we can go ahead
5 and bring them in and then start on that. It is only
6 eleven o'clock. We won't get through, but we can start with
7 that, if you all agree.

8 MR. HOGAN: Yes, sir.

9 THE OCURT: I am going to seat this one gentleman out here
10 in the first seat, the last number in the box and then
11 start with them.

12 MR. HOGAN: One question I have. I guess the other
13 jurors can just sit here in the box and watch all this?

14 THE COURT: I don't have any other thing to do.

15 MR. HOGAN: They could go to the jury room. That is the
16 only thing they can do.

17 My concern is that I think sometimes someone sitting
18 up here could be heard in the jury box that might not be
19 heard out there...

20 THE COURT: Let's remand them to the jury room while we
21 bring the other group in, just so they don't hear anything.

22 MR. EDMUND: Great.

23 THE COURT: We will do that.

24 (WHEREUPON, BENCH CONFERENCE ENDS)

25 THE COURT: Again, folks, if you hear your name called,

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1 you can step down. Your jury service will be completed.
2 You will not need to come back or call back.

3 Mrs. McGill can come down, and Mrs. Gerger, and
4 Mrs. Mulvaney.

5 The back row will remain the same. In the second row,
6 next to Mrs. Warren is Ms. Gries. Next to her is Mr. Flack.
7 Next to Mr. Flack will be Mr. Schlager. In the front row
8 is Mrs. Rhodes and Mr. Barry, okay.

9 Well, sir, guess what. We have #203, the last of our
10 remaining jurors from this particular group, and that is
11 Ellis Westbrook.

12 Folks, what we are going to do now is ask Mr. Bailiff
13 to take all of our prospective jurors back to the jury room.
14 You are going to have to bear with me. I have to bring the
15 whole other group of people in and work with them for some
16 period of time and then they will be available to fill our
17 remaining seats, so if you would, Mr. Bailiff. Please do not
18 discuss the case among yourselves or with anyone else.

19 Remember where you are seated.

20 (WHEREUPON, FIRST GROUP OF JURORS LEAVE COURTROOM AND
21 ENTER JURY ROOM)

22 THE COURT: Let's begin recess, although I am not going
23 to go anywhere and give Mr. Bailiff and Madam Jury Clerk
24 an opportunity to bring our other group of people in.

25 MR. EDMUND: May we step out of the courtroom, Your

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1 Honor?

2 THE COURT: Yes.

3 (WHEREUPON, COURT IS IN RECESS AT 11:05 A. M.)

4 (WHEREUPON, COURT RECONVENES AT 11:19 A. M.)

5 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
6 COUNSEL, MR. EDMUND)

7 THE COURT: Ladies and gentlemen, you have been extra
8 patient with us. At least your time of waiting and wondering
9 what we are doing is over, because we just about to tell you.

10 What I would like to do first, I don't believe I did
11 this with your group before, is introduce the respective
12 attorneys to you and the Defendant in this case.

13 Representing the State of Florida is Mr. Tom Hogan and
14 Mr. Steve Hurm. Their paralegal with them is Mrs. Pauline
15 Albon. Do any of the prospective jurors know any of these
16 persons?

17 Mrs. Herbst, I know that we know you. Mrs. Herbst
18 works as a satellite with the court system. She is in charge
19 of our TASC Program, Treatment Alternatives to Street Crime.
20 Anyone else in this room know any of these gentlemen I
21 introduced?

22 Counsel for the Defendant is Mr. Jack Edmund. With him
23 is his investigator, Mr. Robert Nipper. The Defendant is
24 Mr. James Aren Duckett. Does any prospective juror know any
25 of these persons?

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1 Alright, I see all negative responses.

2 Folks, at this time, I am going to ask you to pay very
3 careful attention. As you surmize, this is the State of
4 Florida versus James Aren Duckett. We are actually trying
5 two cases together by agreement and stipulation of counsel
6 for both parties. One has been charged by Grand Jury
7 Indictment and the other by the State Attorney Information.

8 I am going to read to you both the Indictment and the
9 Information. The Information and Indictment are not to be
10 considered as evidence but are mere formal accusations of
11 the Defendant. You must not consider them as evidence of
12 the Defendant's guilt. You must not be influenced by the
13 fact that the Information has been filed against him or the
14 Indictment. The only purpose in doing this is once I have
15 completed this, we are going to ask you to come forward,
16 one at a time, to the bench. Please be very careful to follow
17 these rules exactly. If you think you know anything whatso-
18 ever from a source outside this courtroom about these cases,
19 I am going to ask you to simply raise your hand. Do not
20 and I repeat do not tell us what you think you might know.
21 We will invite you to come up to the bench privately one at
22 a time. If you do come up, please have your summons with you
23 if you happen to have it. That will just help expedite
24 matters and we will discuss with you what you know about the
25 case, if anything. If any of you think after you have heard

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1 this, you might know something. You heard about it. You
2 read about it. You saw something on television or heard
3 something on the radio about it, then we are going to give
4 you an opportunity to come forward and discuss that with us.
5 Is everyone clear on why we are doing this? Alright.

6 The Indictment reads: In the Circuit Court of the
7 Fifth Judicial Circuit, of the State of Florida, in and for
8 Lake County, at the Fall Term thereof, in the Year of Our
9 Lord One thousand Nine Hundred and Eighty-Seven, the State
10 of Florida versus James Aren Duckett, Case No. 87-1347-CF.
11 Indictment for: Murder in the First Degree.

12 In the name and by the authority of the State of Florida
13 the Grand Jurors of the State of Florida empaneled and sworn
14 to inquire and true presentment make, in and for the body of
15 the County of Lake, upon their oath do present, that James
16 Aren Duckett, of the County of Lake and the State of Florida,
17 on the 12th day of May, in the Year of Our Lord One Thousand
18 Nine Hundred and Eighty-Seven, the County and State aforesaid,
19 did unlawfully and from a premeditated design to effect the
20 death of Teresa Mae McAbee, a human being, kill and murder
21 the said Teresa Mae McAbee, by strangling and/or drowning,
22 in violation of Florida Statute 782.04(1)(a)(1), contrary
23 to the form of the Statute in such cases made and provided,
24 and against the peace and dignity of the State of Florida.

25 A true bill, signed by the Foreman of the Grand Jury.

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1 Likewise, as I told you, there is a State Attorney
2 Information which reads as follows: In the Circuit Court of
3 the Fifth Judicial Circuit of the State of Florida, in and
4 for Lake County, in the year of Our Lord, One Thousand Nine
5 Hundred and Eighty-Eight, the State of Florida versus
6 James Aren Duckett, Case No. 88-262-CF-A-01. Information
7 for: Capital Sexual Battery. In the name and by the
8 authority of the State of Florida, S. Ray Gill, State Attorney
9 for the Fifth Judicial Circuit of the State of Florida, in
10 and for Lake County, prosecuting for the State of Florida,
11 by and through the undersigned Assistant State Attorney,
12 in the said County, under oath, Information makes: That
13 James Aren Duckett, in the County of Lake and the State of
14 Florida, between the 11th and 12th day of May in the Year of
15 Our Lord, One Thousand Nine Hundred and Eighty-Seven, did,
16 being a person eighteen years of age or older, unlawfully
17 injure the sexual organs of Teresa McAbee, date of birth:
18 July 10, 1975, a person less than twelve years of age,
19 while in an attempt to commit Sexual Battery upon said person,
20 in violation of Florida Statute 794.011(2), contrary to the
21 form of the Statute in such cases made and provided and
22 against the peace and dignity of the State of Florida.
23 Signed under oath by Stephen D. Hurm, Assistant State
24 Attorney to S. Ray Gill.

25 I am going to ask you, Mr. Bailiff, beginning on your

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1 side and in the front row, if anyone thinks that they might
2 have any information concerning these charges from any source
3 whatsoever outside this courtroom, to have them obtain your
4 attention and come forward one at a time.

5 Counsel, you are free to come up, and Ms. Patz.

6 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

7 THE COURT: I have Constance Jean Gibson, #12. If you
8 would, tell me what you heard or read about this case.

9 MS. GIBSON: I have read newspaper accounts.

10 THE COURT: Have you read them fairly extensively?

11 MS. GIBSON: I read the Sentinel on Sunday.

12 THE COURT: Have you read it before that?

13 MS. GIBSON: Before that?

14 THE COURT: Yes, ma'am?

15 MS. GIBSON: I read the original accounts.

16 THE COURT: Have you discussed this case with anybody?
17 Your family or friends?

18 MS. GIBSON: You mean extensively or just...?

19 THE COURT: Well, even at all?

20 MS. GIBSON: Yes.

21 THE COURT: Have you formed an opinion about the
22 defendant's guilt or innocence at this point?

23 MS. GIBSON: No.

24 THE COURT: Do you think that you can put aside whatever
25 you might have read or heard about this case and give the

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1 State of Florida and the Defendant a fair trial, based on
2 the testimony and evidence you heard in this courtroom?

3 MS. GIBSON: Yes, I do.

4 THE COURT: Mr. Hogan?

5 MR. HOGAN: No questions.

6 THE COURT: Mr. Edmund?

7 MR. EDMUND: No questions.

8 THE COURT: Take your seat.

9 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)

10 THE COURT: We have Rebecca Herbst, #1. Tell us what
11 you know about this case and from what source?

12 MS. HERBST: Just what I read in the newspapers, accused
13 of sexual assault and murder of the girl.

14 THE COURT: Did you read the Sentinel article?
15 Recently?

16 MS. HERBST: Yes, sir.

17 THE COURT: have you read other articles about the case?

18 MS. HERBST: I have been following the case.

19 THE COURT: Have you discussed the case with nother
20 people?

21 MS. HERBST: Sure.

22 THE COURT: Without telling me what it is, have you
23 formed an opinion as to the defendant's guilt or innocence?

24 MS. HERBST: No, not really.

25 THE COURT: Do you think that you can put that out of

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1 your mind and put aside whatever you might have read about
2 the case and whatever discussions you might have had and
3 give the State of Florida and the Defendant a fair trial
4 based only on the testimony and evidence received in this
5 courtroom and nothing else?

6 MS. HERBST: Yes, sir.

7 THE COURT: Mr. Hogan, any questions?

8 MR. HOGAN: No, sir.

9 MR. EDMUND: Any statements made to other people that
10 you think would influence you...

11 MS. HERBST: No, sir.

12 MR. EDMUND: Have you formed any opinion whatsoever
13 as to guilt or innocence?

14 MS. HERBST: Not really.

15 MR. EDMUND: In the discussions you had, have you made
16 the statement he is guilty and needs to be punished?

17 MS. HERBST: In this trial? No.

18 MR. EDMUND: In this case?

19 MS. HERBST: No.

20 MR. EDMUND: No further questions.

21 THE COURT: Mr. Hogan?

22 MR. HOGAN: No questions.

23 THE COURT: Thank you, ma'am. Have a seat.

24 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)

25 THE COURT: Julia B. Martin, #24. If you would,

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1 Ms. Martin, tell me exactly what you know about this case
2 and what you have read.

3 MS. MARTIN: Yes. I had just seen it on TV and read
4 in the newspapers the charges filed against him.

5 THE COURT: Did you read the recent article in the
6 Sentinel?

7 MS. MARTIN: No, sir.

8 THE COURT: Have you discussed this case with anyone?

9 MS. MARTIN: Just about it. Not any feelings...
10 Just generally when it happened.

11 THE COURT: No details or anything?

12 MS. MARTIN: No details.

13 THE COURT: Without telling me what it might be, have
14 you formed any opinions about the Defendant's guilt or
15 innocence?

16 MS. MARTIN: No, I haven't.

17 THE COURT: Do you believe that you could put aside any-
18 thing you may have read or heard or discussed and give the
19 State of Florida and the Defendant a fair trial, based on the
20 evidence and the testimony you will hear in this courtroom
21 and nothing else?

22 MS. MARTIN: Yes, sir.

23 MR. HOGAN: No questions.

24 MR. EDMUND: No questions, Your Honor.

25 THE COURT: Take your seat, ma'am.

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1 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)
2 THE COURT: We have Linda Watts, W A T T S, #47.
3 Tell me what is your source of information and what do you
4 know or think you know about this particular case?
5 MS. WATTS: I just have read this in the paper. That
6 is all. I have just seen articles in the paper. I know nothing
7 other than what I have read, but I have seen the Sunday
8 paper.
9 THE COURT: Did you read that article in the Orlando
10 Sentinel this past week?
11 MS. WATTS: Yes, I did.
12 THE COURT: Have you discussed this case with anyone?
13 MS. WATTS: No, I have not.
14 THE COURT: Without telling me what it might be, have
15 you formed any opinion as to the Defendant's guilt or
16 innocence?
17 MS. WATTS: No, sir.
18 THE COURT: Do you think that you could be put anything
19 you might have heard or read about this case and give the
20 State of Florida and the Defendant a fair trial, based upon
21 only the evidence and the testimony you hear and see in the
22 courtroom?
23 MS. WATTS: Yes, I do.
24 MR. HOGAN: No questions.
25 MR. EDMUND: Have you discussed your feelings about this

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1 matter with any other people?
2 MS. WATTS: No, I have not.
3 MR. EDMUND: No further questions, Your Honor.
4 THE COURT: You can take your seat. I appreciate it.
5 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)
6 THE COURT: Donna Morgan, #88. Tell me what is your
7 source of information and what you think you know about
8 this case?
9 MS. MORGAN: Just what I read in the Sentinel and
10 the story in the Sunday paper.
11 THE COURT: You read some newspaper articles?
12 MS. MORGAN: Yes, sir.
13 THE COURT: Did you read the one in the Sunday Sentinel?
14 MS. MORGAN: Yes, sir.
15 THE COURT: Have you discussed this case with anyone?
16 MS. MORGAN: No, not since we have been on the jury,
17 no.
18 THE COURT: Even before that?
19 MS. MORGAN: Yes, sir, casually discussed it.
20 THE COURT: Without telling me what it might be, have
21 you formed any opinion as to the Defendant guilt or innocence?
22 MS. MORGAN: No, sir.
23 THE COURT: Do you think that you can put aside anything
24 you might hav read or heard and give the State of Florida and
25 the Defendant a fair trial, based only on the testimony and

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1 the evidence you will hear and see in this room?

2 MS. MORGAN: No, sir.

3 THE COURT: Are you telling me what your problem is?
4 I appreciate your honesty.

5 MS. MORGAN: I work for an attorney and I am a paralegal
6 and I heard different things and I don't honestly think I
7 can.

8 THE COURT: Who do you work for?

9 MS. MORGAN: Robert Thomas of Apopka.

10 THE COURT: Have you discussed this with Mr. Thomas?
11 Anything about this case?

12 MS. MORGAN: No, sir, just to say I was on duty.

13 THE COURT: You are telling me your past personal
14 judgment is that you really could not be fair? And I know
15 that is a tough way to put it, but we have to get right down
16 to the bottom of it.

17 MS. MORGAN: Yes, I had to make the judgment on what is
18 in here. I could, but if I had to think things, I can't.

19 MR. HOGAN: She pretty well answered all the questions
20 I have.

21 MR. EDMUND: No questions.

22 THE COURT: Thank you, ma'am. Take your seat.

23 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)

24 THE COURT: We have with us Cynthia A. Burkhart,

25 #105. Thank you, Cynthia. If you would, tell me what you know

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1 and what the source of your things you might know about this
2 case?

3 MS. BURKHART: I work for the Sentinel. I work in the
4 Advertising Department, and I have read the news on this
5 case and it is part of my job to read the paper every day.

6 THE COURT: Would it be fair to say you have fairly
7 extensive knowledge about the allegations in the situation,
8 is that fair?

9 MS. BURKHART: Yes, sir.

10 THE COURT: Have you discussed this case with anyone?

11 MS. BURKHART: My husband.

12 THE COURT: What is the various detailed discussions
13 or supervision ...

14 MS. BURKHART: It is just based on things we both read
15 in the paper.

16 THE COURT: Without telling me what it is, have you
17 formed an opinion as to the defendant's guilt or innocence?

18 MS. BURKHART: No, sir, I have not.

19 THE COURT: Tough question coming. Do you think you
20 could put this aside, everything you have read, the
21 discussions you might have had, and give the State of Florida
22 and the Defendant a fair trial, based only on what you see
23 and hear in the courtroom?

24 MS. BURKHART: Yes, sir, I think I could.

25 MR. HOGAN: No questions.

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1 MR. EDMUND: No questions.

2 (WHEREUPON, NEXT PROSPECTIVE JUROR APPROACHES BENCH)

3 THE COURT: #44, Richard Bishop. Richard, what have you
4 read or heard about this case?

5 MR. BISHOP: Just the newspaper accounts. I haven't
6 followed it or anything, but I have read it. I know
7 the defendant is a police officer, or was, and that sort of
8 thing. I haven't studied it in detail, but I have read
9 about it.

10 THE COURT: Did you read the article in the Sentinel,
11 Lake Sentinel section? Sunday?

12 MR. BISHOP: Yes, I did.

13 THE COURT: Have you discussed this case with anyone,
14 even casually?

15 MR. BISHOP: No, sir. People have asked me if I was
16 on this jury, since I got the jury summons, and I have
17 said, "Well...I can't talk about it".

18 THE COURT: That is what you were supposed to do. Don't
19 tell me what it might be? Have you formed any opinions on
20 the Defendant's guilt or innocence?

21 MR. BISHOP: That is a long story, sir. Yes, I think
22 I have.

23 THE COURT: Don't tell me what, but why you think you
24 formed the opinions, if you would.

25 MR. BISHOP: I am a real estate appraiser in Orlando.

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1 I am another one of the former pre-law students but got into
2 another career. I just formed some while I was in school,
3 some definite opinions about the people who can't get out of
4 going to trial.

5 THE COURT: Do you think you could put aside your feelings
6 of what you have read or discussed and come in here with an
7 open mind and give the State of Florida and the Defendant
8 a fair trial, based only on the evidence and testimony in
9 this courtroom?

10 MR. BISHOP: Honestly, sir, I don't know.

11 THE COURT: You have serious doubts?

12 MR. BISHOP: Yes, sir.

13 THE COURT: Mr. Hogan?

14 MR. HOGAN: No questions.

15 MR. EDMUND: No questions.

16 THE COURT: Thank you very much.

17 MR. CORBETT: That will be all, Judge.

18 THE COURT: Alright, gentlemen, my motions are to excuse
19 the fifth person, Mrs. Morgan, #88, the Orlando Sentinel person.
20 #88. Mrs. Morgan, from the Sentinel.

21 And Mr. Bishop, #44, the former law student.

22 MR. HOGAN: Mrs. Morgan didn't want to be excused.

23 She worked for Bob Thomas as a paralegal. It was the other
24 one that worked for the Sentinel.

25 THE COURT: She worked for Bob Thomas. That is the one,

1 but I am talking about Mrs. Morgan, the legal secretary.
2 Do you object to either one of those two being excused?

3 MR. HOGAN: No.

4 THE COURT: Do you object to either one of those?

5 MR. EDMUND: No.

6 THE COURT: Do either of you suggest any others?

7 MR. HOGAN: I would suggest that the one that worked
8 for the Sentinel certainly has extensive knowledge and I
9 would suggest to the Court that that would require further
10 voir dire and I think there is a real danger.

11 THE COURT: Mrs. Burkhart, #105.

12 MR. HOGAN: Probably for Mr. Edmund more than myself.

13 THE COURT: I would rather excuse them.

14 MR. HOGAN: I think she answered the questions right at
15 the bench, but I think we should have to voir dire her
16 extensively in front of the rest of the Jury...

17 THE COURT: Do you have any objection to striking the
18 lady from the Sentinel, #105?

19 MR. EDMUND: No objection.

20 THE COURT: We will strike her. Do you suggest anyone
21 else?

22 MR. EDMUND: Who is the lady in the grocery store?
23 Who is the one the Court said...

24 THE COURT: #1, Rebecca Herbst. Juror #1. She was
25 the second person up here.

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1 MR. EDMUND: I would challenge her. She had pretty
2 extensive conversations about the things apparently in the
3 courts and according to her statement, I think obviously
4 other places also. I think she might give it her best shot,
5 but we do have plenty of jurors.

6 THE COURT: I am not going to take a chance. I will
7 strike her. Anyone else?

8 MR. EDMUND: No, sir.

9 THE COURT: It is twenty of twelve. Rather than dragging
10 late into the noonhour, let's bring our jurors out and come
11 back after lunch.

12 MR. HURM: If it goes as it did yesterday, we probably
13 wouldn't even get to them today. Is that the way it is?

14 THE COURT: I know the questions is starting in earnest.
15 I would like to be ready to do openings today.

16 MR. HOGAN: I was just wondering. We need to get our
17 evidence marked and the best time to do it, whether an
18 extended lunch might be appropriate, or do it this afternoon,
19 after we dismiss for the afternoon.

20 THE COURT: Let's see how it checks out.

21 (WHEREUPON, BENCH CONFERENCE ENDS)

22 THE COURT: Folks, we appreciate the candor of everyone
23 that came up. I am going to excuse the following persons
24 from jury service as to this case. That will conclude your
25 jury service for the week. You won't need to call back or

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1 come back.

2 Ms. Herbst. Mrs. Morgan. Ms. Burkhart. Mr. Bishop.
3 Thank you all very much and you are free to go.

4 Now, Mr. Bailiff, while those folks are leaving us,
5 if we would bring out our jurors.

6 Now you find out. They have been in the back sitting
7 waiting for us.

8 I think by now you folks are probably experts at where
9 you sit, but I'll make sure that we have everyone in the
10 right place.

11 Alright, folks, for those of you that have just come
12 with us, we are bearing going to be able to get started
13 before the noon hour, but I am going to call two numbers,
14 and match them with names and place those people in the jury
15 box so we can at least make some progress before we recess
16 for lunch.

17 I have #47, Linda Watts.

18 I have #66, Rowell Chickering. Is that correct, sir?

19 MR. CHICKERING: Yes, sir.

20 THE COURT: Folks, these questions are addressed just
21 to the last three of you that have just taken our jury box
22 seats. Mr. Westbrook, Ms. Watts and Mr. Chickering.

23 Do any of you have any physical defects, hearing, sight,
24 or otherwise, which would render you incapable of performing
25 your duty as a juror in this case?

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1 JURORS: No.

2 THE COURT: Do you have any bias or prejudice either
3 for or against the Defendant?

4 JURORS: No.

5 THE COURT: If you are selected as a juror in this cause,
6 will you render a fair and impartial verdict based upon the
7 evidence presented in this courtroom and the law as it
8 pertains to this particular case, as instructed by the court.
9 Will you assure us you will do that?

10 JURORS: Yes, sir.

11 THE COURT: Do you have any other reason why you cannot
12 give this case your undivided attention and render a fair
13 and impartial verdict?

14 JURORS: No.

15 THE COURT: I know it seems a little awkward folks, to
16 bring all of you in and do more than that, but once we start,
17 it gets lengthy. Trust me when I tell you that. I think
18 the appropriate thing to do, since it is quarter of twelve,
19 is go ahead and take our noon recess, asking all of our
20 jurors again to remember where you are seated. Reminding all
21 our jurors, both up here and folks out here who are our
22 prospective jurors, of our admonitions. These are extremely
23 important and I would like to run over them once again.

24 You must not discuss this case among yourselves or with
25 anyone else. You must not read any newspaper or other written

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1 accounts of the case. You must not watch any television or
2 listen to any radio reports concerning the case. You must
3 not attempt to visit the scene of the alleged occurrence if
4 you should happen to think by now that you know where that
5 may be. I forewarn everyone again, that I will ask all of you,
6 both those outside the bar and those in the prospective juror
7 box, to assure me when we come back from lunch that you have
8 abided by our admonitions. Are we all clear about that?

9 Understand, failure to do that could result in a mistrial
10 in this case and require us to start all over. Goodness knows,
11 we already have enough time and effort in this case. Let's
12 don't do that. Alright?

13 Anyone have any questions about what we are going to do?
14 We are going to come back at 1:30. Everyone will come back
15 to this courtroom. You folks will be in your places and the
16 rest of you will be outside.

17 Any questions from the folks in the box?
18 Or from anyone on the other side of the bar?

19 Alright, folks, we will see you back at 1:30. We will
20 be in recess until that time.

21 (WHEREUPON, COURT IS IN RECESS AT 11:45 A. M.)

22 (WHEREUPON, COURT RECONVENES AT 1:35 P. M.)

23 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
24 COUNSEL, MR. EDMUND)

25 THE COURT: Welcome back, folks. Can everyone assure us

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1 both in the box and on the other side of the bar that you did
2 abide by our admonitions over the recess?

3 JURORS: Yes.

4 THE COURT: Thank you very much. Alright folks, let's
5 start, realizing that some of the group with us has not been
6 through our situation before, Mr. Westbrook, I know you are
7 an expert by now. We are going to ask each prospective juror
8 of the last three that we have seated, one at a time, please,
9 to introduce yourself and tell us your name and your spouse's
10 name if you are married; what town you are from; what
11 occupation you have; and what occupation your spouse has;
12 and whether you have served on a jury or not before, and I
13 am going to help you folks through that, so don't worry about
14 that, if you would give it a shot, Mr. Westbrook.

15 MR. WESTBROOK: My name is Ty Westbrook. I live in
16 Mount Dora. I am a musician. I am a basist. I am single.

17 THE COURT: Have you ever served on a jury?

18 MR. WESTBROOK: Never served on a jury.

19 THE COURT: Okay. Thank you, sir.

20 Ms. Watts?

21 MS. WATTS: My name is Linda Watts. I live in Leesburg.
22 I am a pre-school teacher. My husband is Alan Watts, employed
23 by United Telephone and I have served. I was on a Petit
24 Jury.

25 THE COURT: Was that civil or criminal, do you remember,

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1 ma'am?

2 MS. WATTS: That was a stolen vehicle.

3 THE COURT: Okay, that would be criminal.

4 Criminal jury, thank you very much.

5 Mr. Chickering?

6 MR. CHICKERING: My name is Rowell Chickering. I am
7 retired for the past ten years. I live in Leesburg. My wife's
8 name is Phyllis and she is also retired. I have never had
9 the opportunity to sit on a jury before.

10 THE COURT: Alright, sir, could you tell us what you and
11 your wife did before you retired?

12 MR. CHICKERING: I was in the fuel oil business in
13 New England a good many years and I am glad to be out of
14 it right now.

15 THE COURT: And what about your wife?

16 MR. CHICKERING: My wife ran a very successful nursing
17 school. Not a baby sitting deal, but a real school.
18 Back in Massachusetts.

19 THE COURT: I understand. Thank you kindly.

20 Mr. Hogan?

21 VOIR DIRE EXAMINATION

22 BY MR. HOGAN:

23 Good afternoon, everyone. This is a bit of an arguous
24 process. If you will understand, these two new jurors, and
25 these folks in the audience have not had the pleasure of

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1 sitting through the full blown version of voir dire, but they
2 are about to.

3 If you folks try to pay attention to what is going on
4 up here at the podium, if you should get chosen to fill in any
5 of these seats, if you have already heard the questions, that
6 can save some time. I would just ask you did you hear all
7 the questions and you can say "yes" and cut it short.

8 I would appreciate it if you would kind of pay attention if
9 you are a prospective juror. Can you all hear me?

10 PROSPECTIVE JURORS: Yes, sir.

11 MR. HOGAN: Thank you very much.

12 Mr. Westbrook, what is a basist? A base guitar?

13 MR. WESTBROOK: A base is an upright base also.

14 MR. HOGAN: Do you have formal training in that regard?

15 MR. WESTBROOK: Yes, now, I am in school right now.

16 MR. HOGAN: What type of school?

17 MR. WESTBROOK: Lake Sumter Community College, taking
18 the music program over there. They are having it for Central
19 Florida.

20 MR. HOGAN: Do you make your living at that?

21 MR. WESTBROOK: Yes.

22 MR. HOGAN: What type of band do you play in?

23 MR. WESTBROOK: Well, I play in a lot of different
24 groups. I am in a Top Forty Group, rock and roll, playing in
25 Eustis. Play in a symphony in Ocala. I just had a performance

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1 last night and playing jazz and country; lots of different
2 stuff.

3 MR. HOGAN: Okay. In other words, basists are used in
4 all different types of music?

5 MR. WESTBROOK: Yes.

6 MR. HOGAN: Very good. Do you go to church?

7 MR. WESTBROOK: No.

8 MR. HOGAN: If you did go to church, what church would
9 you go to?

10 MR. WESTBROOK: Should I pick one?

11 MR. HOGAN: Have you ever been to one?

12 MR. WESTBROOK: Well, yeah, the Baptist church.

13 MR. HOGAN: I am not telling you you have to go.

14 MR. WESTBROOK: Well, should I just pick one.

15 MR. HOGAN: How do you feel about capital punishment,
16 Mr. Westbrook?

17 MR. WESTBROOK: I am not really for or against it.
18 I don't think it achieves what it is supposed to achieve,
19 but I am not against it.

20 MR. HOGAN: Do you understand for the benefit of you
21 folks and you folks out here, this trial will be conducted
22 in two phases, assuming there is a verdict of guilt.
23 First of all, you will be deciding whether or not the
24 defendant, James Duckett, is guilty of Murder in the First
25 Degree. He has been charged by a Grand Jury Indictment as

1 you heard the Judge read, of Murder in the First Degree.
2 Now, and that is the case, Mr. Hurm and myself intend to
3 present to you, ... understand so far? Now, we intend to
4 prove to you, beyond a reasonable doubt, that he is, in fact,
5 the person who committed this homicide and it is, in fact,
6 premeditated First Degree Murder. Now, once he is convicted
7 of First Degree Murder, a First Degree Murder conviction,
8 and the Sexual Battery, which is... there is two charges
9 as the Judge told you. Two charges and one trial. Does
10 everyone understand that so far?
11 You understand that, ma'am?
12 MS. WATTS: It will be together?
13 MR. HOGAN: Together. You will try both if you are
14 on the jury. Understand, Mr. Chickering?
15 MR. CHICKERING: Yes, sir.
16 MR. HOGAN: In Florida, in a capital punishment case,
17 the Jury makes a recommendation to the Judge as to what the
18 sentence should be. Do you understand it is just a
19 recommendation. The Judge does the sentencing, but the Jury
20 makes the recommendation. The Judge gives great weight to that
21 recommendation? Do you understand that?
22 This recommendation comes from the second phase of the
23 trial. After the verdict of guilty is turned in by the Jury,
24 then they would hear additional evidence that goes to what
25 we call the aggravating factors and mitigating factors, and

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1 mitigating factors, and then the Jury would deliberate, would
2 retire to deliberate a second time, and then the Jury would
3 decide whether those aggravating factors outweigh the
4 mitigating factors. It is not a counting process. You
5 don't go back and say, "Okay, there are five aggravating
6 factors and only three mitigating factors. Therefore, there
7 is more aggravation and therefore, it is the death penalty. "
8 You weigh them. It may well be that there were ten
9 mitigating factors and two aggravating factors, but those
10 aggravating factors are so important that they outweigh the
11 mitigating factors. Now, during that portion of the trial,
12 do you understand so far? During that portion of the
13 recommendation or penalty phase, you would vote unlike the
14 guilt phase, the guilt phase of the trial, the verdict must
15 be unanimous. In other words, everyone must agree on the
16 verdict in the guilt phase. Okay so far?

17 The penalty phase would be by vote. If seven or more
18 people vote to recommend to Judge Lockett that he impose
19 capital punishment, that would be the jury's recommendation.
20 No one will ever know how any individual voted, but it will
21 be reported as a seven to five vote, or eight to four, or
22 whatever the vote would be.

23 If six or more of you vote to recommend life, which is
24 life in prison without possibility of parole, that is what
25 the Judge will tell you, then your recommendation will be

1 for life in prison without possibility of parole for twenty-
2 five years. That would be the only two choices that you
3 would have. Here again, it is a recommendation. Okay?

4 Knowing that, Mr. Westbrook, I think you probably heard
5 that before, but knowing that, do you feel that you can follow
6 the law, and weigh the aggravating and mitigating factors
7 and make a recommendation not emotional recommendation, but
8 a recommendation based on the law?

9 MR. WESTBROOK: Yes.

10 MR. HOGAN: You feel you could do that?

11 MR. WESTBROOK: Yes.

12 MR. HOGAN: Your opinions about the death penalty,
13 about whether or not ... I don't know exactly what you mean
14 when you say it doesn't work, but it doesn't matter. What
15 matters is whether or not you can follow the law in this
16 case?

17 MR. WESTBROOK: I can.

18 MR. HOGAN: In other words, you don't have any moral
19 of philosophical opposition to the death penalty that would
20 make it such that you could not sit on this jury?

21 MR. WESTBROOK: No.

22 MR. HOGAN: Now, Ms. Watts, do you have any children?

23 MS. WATTS: Yes.

24 MR. HOGAN: How many?

25 MS. WATTS: I have two children.

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1 MR. HOGAN: How old are they?
2 MS. WATTS: Twenty-three and seventeen.
3 MR. HOGAN: What do they do?
4 MS. WATTS: My daughter is married and works for a
5 dentist. My son is a Junior in high school.
6 MR. HOGAN: Do you have any grandchildren?
7 MS. WATTS: No, I do not.
8 MR. HOGAN: How long ago was it you sat on the Jury,
9 the criminal jury?
10 MS. WATTS: Probably about seven years ago.
11 MR. HOGAN: Was that here?
12 MS. WATTS: Yes, sir.
13 MR. HOGAN: Do you understand that the law we are
14 going to apply to this case will come from Judge Lockett?
15 MS. WATTS: Yes, I do.
16 MR. HOGAN: Do you understand that we don't change the
17 law. We follow the law?
18 MS. WATTS: Right.
19 MR. HOGAN: And Judge Lockett will explain to you what
20 the law is and apply it to this case.
21 One thing that Judge Lockett will discuss with you
22 which may in fact be the same as when you sat on the other
23 jury, the fact that myself and Mr. Hurm, as prosecutors in
24 this case, have the burden of proof and to prove this case
25 and the elements of First Degree Murder and the elements of

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1 Sexual Battery or Attempted Sexual Battery, beyond a reasonable
2 doubt.

3 Now, we accept that burden. I believe in the system.
4 I work in the system and I intend to prove this case to you
5 beyond a reasonable doubt. Do you understand that?

6 You also understand, Ms. Watts, that my burden is a
7 reasonable doubt. Not beyond all doubt. Not beyond a shadow
8 of a doubt. If you ever watch the lawyer shows on TV,
9 Perry Mason, they are very popular. They like to use the
10 word "beyond a shadow of a doubt". I can't prove it to you
11 the sun is still shining outside beyond a shadow of a doubt.
12 That is just an impossible burden. Would you agree with
13 that?

14 MS. WATTS: Yes.

15 MR. HOGAN: Also, you understand I accept the burden
16 of reasonable doubt. I intend to prove this case to you
17 until you have an abiding conviction of guilt. Do you
18 understand that?

19 MS. WATTS: Yes.

20 MR. HOGAN: Would you hold me to that burden?

21 MS. WATTS: Yes.

22 MR. HOGAN: But no higher burden?

23 MS. WATTS: No, just to what...

24 MR. HOGAN: You understand, this is a First Degree
25 Murder case. This is a capital case. This is the most

1 important kind of case you can have in the criminal court.
2 But that reasonable doubt burden is the exact same burden
3 that would be on me, would be on you as a juror, if I was to
4 bring to you a reckless driving case. Do you understand?

5 MS. WATTS: Yes. To prove it to me, right?

6 MR. HOGAN: Yes, ma'am?

7 MS. WATTS: Yes.

8 MR. HOGAN: Beyond a reasonable doubt, but no higher
9 burden.

10 Do you understand also, Ms. Watts, you can use your
11 common sense and in fact, you should use your common sense
12 in reaching a verdict?

13 MS. WATTS: Yes.

14 MR. HOGAN: That is the whole purpose for a jury, to
15 have twelve people to sort through the evidence and decide
16 what happened. Do you understand that you can use your
17 common sense to arrive at that abiding conviction of guilt?

18 MS. WATTS: Yes.

19 MR. HOGAN: Do you have any questions for me?

20 MS. WATTS: No.

21 MR. HOGAN: Are you sure?

22 MS. WATTS: I understand what you are telling me.

23 MR. HOGAN: I have to make sure.

24 MS. WATTS: Yes, I understand.

25 MR. HOGAN: Do you understand that Mr. Edmund, the

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1 Defense Attorney here, is sitting there with his client
2 at this table?

3 MS. WATTS: Yes.

4 MR. HOGAN: Would you agree with me that his client is
5 at this point, presumed innocent?

6 MS. WATTS: Yes.

7 MR. HOGAN: Would you agree with me that his client
8 deserves a fair trial?

9 MS. WATTS: Yes, I do.

10 MR. HOGAN: Would you also agree with me that I am
11 sitting at this table and you can't see my client. This is
12 Steve Hurm and this is Pauline Albon, our paralegal, and
13 you understand you can't see my client. Do you understand
14 I have a client, the People of the State of Florida?

15 MS. WATTS: Right.

16 MR. HOGAN: Would you agree that my client is entitled
17 to a fair trial?

18 MS. WATTS: Yes.

19 MR. HOGAN: Do you understand, Ms. Watts, that we are
20 entitled to a fair trial and he is entitled to a fair trial,
21 but not a perfect trial. There is no such thing as a perfect
22 trial. Okay?

23 MS. WATTS: Yes.

24 MR. HOGAN: Mr. Westbrook, you understand at the end
25 of the case, you may have an abiding conviction of guilt, but

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1 you may have about a hundred questions in your mind about
2 certain details of what happened on May the 11th and 12th,
3 1987. Do you understand that?

4 MR. WESTBROOK: Yes.

5 MR. HOGAN: You understand there is only one eye witness
6 in this case, Teresa McAbee and she is dead?

7 MR. WESTBROOK: Yes.

8 MR. HOGAN: And so some of those questions may never be
9 answered, but that does not necessarily mean you have a
10 reasonable doubt?

11 MR. WESTBROOK: No.

12 MR. HOGAN: Thank you, Mr. Westbrook. Any questions for
13 me?

14 MR. WESTBROOK: No.

15 MR. HOGAN: Do you go to church?

16 MS. WATTS: Yes.

17 MR. HOGAN: What church do you go to?

18 MS. WATTS: I got to Calvary Baptist Church.

19 MR. HOGAN: How do you feel about capital punishment?

20 MS. WATTS: I do believe in capital punishment.

21 MR. HOGAN: Anything about your religious training or
22 background that would cause you any problems with recommend-
23 ing capital punishment if you feel it is appropriate? In
24 other words, if the aggravating factors outweigh the mitigating
25 factors?

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1 MS. WATTS: No.

2 MR. HOGAN: If those aggravating factors do... it is a
3 fine thing... if those aggravating factors outweigh the
4 mitigating factors, can you recommend to Judge Lockett that
5 he invoke capital punishment?

6 MS. WATTS: I fully and totally believe ...

7 MR. HOGAN: Well, if they are proven to you beyond a
8 reasonable doubt?

9 MS. WATTS: And then you say I can use my own common
10 sense? My decision?

11 MR. HOGAN: You use your common sense, your life
12 experience in reaching your conclusion as to whether or not
13 the aggravating factors have been proven beyond a reasonable
14 doubt.

15 MS. WATTS: I would.

16 MR. HOGAN: Then you weigh then against the mitigating
17 factors?

18 MS. WATTS: Ahum. (Affirmative response)

19 MR. HOGAN: If you think the aggravating factors are
20 more important than the mitigating factors, then could you
21 follow the law?

22 MS. WATTS: Yes.

23 MR. HOGAN: Do you understand it is designed this way
24 so that it is not an emotional decision?

25 MS. WATTS: I understand that.

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1 MR. HOGAN: I am not picking on you, but there are
2 very few people for me to talk to.

3 MS. WATTS: I do understand. There is a lot, but I
4 know what I understand.

5 MR. HOGAN: I agree. It is an awful lot to learn in
6 just a few minutes.

7 This is a heavy heavy decision to be placed upon you
8 suddenly and I understand that, and I sympathize with you
9 for that and certainly it will take a lot of courage no
10 matter what you do, but you understand, I need to try to
11 find a fair and impartial jury? I have confidence in my
12 case and feel I can prove it, but I want to make sure I have
13 people who can be fair.

14 MS. WATTS: I understand.

15 MR. HOGAN: Mr. Chickering, how are you, sir?

16 MR. CHICKERING: Fine.

17 MR. HOGAN: And you were in the fuel oil business. Was
18 that your business?

19 MR. CHICKERING: Yes, I was a partner in a business
20 for a while and I managed the business for another.

21 MR. HOGAN: How many employees did you have?

22 MR. CHICKERING: Fifteen to sixteen during this time.

23 MR. HOGAN: Did you ever have to fire any of them?

24 MR. CHICKERING: What is that?

25 MR. HOGAN: Did you ever have to fire any employees over

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1 the years?

2 MR. CHICKERING: Oh, yeah.

3 MR. HOGAN: So you had to make decisions that affected
4 people's lives?

5 MR. CHICKERING: Yes, I would think so.

6 MR. HOGAN: Do you understand this decision will be a
7 very tough decision?

8 MR. CHICKERING: Right.

9 MR. HOGAN: You understand there are certain guidelines
10 that will be laid out for you in the law that makes that
11 decision a little easier for you?

12 MR. CHICKERING: I hope so.

13 MR. HOGAN: Because you just have to follow the law?

14 MR. CHICKERING: Yes, sir.

15 MR. HOGAN: You understand, Mr. Chickering, Ms. Watts,
16 and Mr. Westbrook, that the Jury does not sentence the
17 Defendant. That is left up to the Judge. The Jury simply
18 recommends, do you understand that, sir?

19 MR. CHICKERING: Yes.

20 MR. HOGAN: Do you understand, Mr. Chickering?

21 MR. CHICKERING: Yes.

22 MR. HOGAN: Do you go to church, Mr. Chickering?

23 MR. CHICKERING: Yes.

24 MR. HOGAN: What church is that?

25 MR. CHICKERING: Union Congregational. Occasionally.

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1 MR. HOGAN: That is better than Mr. Westbrook. He has
2 never gone.

3 I am just teasing you, Mr. Westbrook.

4 Now, Mr. Chickering, do you have any children?

5 MR. CHICKERING: Yes.

6 MR. HOGAN: What are they doing? Where are they?

7 MR. CHICKERING: What are they doing?

8 I have a son by a former marriage that is sixty-one years
9 old tomorrow and he is a Memphis State University,
10 distinguished professor. Also, connected with the George
11 Mason University in Fairfax, Virginia; and another son who
12 has a nice real estate business in Montpelier, Vermont,
13 and a daughter who is out in Alpine, California with three
14 small children and she has a Masters Degree in Speech.

15 MR. HOGAN: Do you have any grandchildren?

16 MR. CHICKERING: No.

17 MR. HOGAN: I am amazed you have a son sixty-one?

18 MR. CHICKERING: Yes. An early start and a late stop.

19 MR. HOGAN: How do you feel about capital punishment,
20 Mr. Chickering?

21 MR. CHICKERING: My own opinion, it depends on the
22 circumstances.

23 MR. HOGAN: I think that is basically why we have the
24 system set up the way we do. That is why we have the system
25 of aggravating factors and mitigating factors. More or less,

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1 I have said the same thing. It depends on the circumstances.
2 Do you feel it is appropriate in some cases?

3 MR. CHICKERING: Yes.

4 MR. HOGAN: Do you feel that you can vote to recommend
5 capital punishment to Judge Lockett if you felt the
6 aggravating factors outweighed the mitigating factors?

7 MR. CHICKERING: On that basis, yes.

8 MR. HOGAN: Do you understand that my client has a
9 right to a fair trial?

10 MR. CHICKERING: Certainly.

11 MR. HOGAN: Now comes the part that you all waited for.
12 The witness list. I am going to read a list of witnesses
13 and ask you all to listen carefully so I don't have to repeat
14 this. It is a long list. Please do listen.

15 THE COURT: He is serious, ladies and gentlemen. It is
16 a long list. Please do listen carefully. Hopefully, we will
17 only have to read this list once more during this trial.

18 MR. HOGAN: Jay Horbelt, Virgil Smith. If you recognize
19 any of these names, stop me. Okay? Sheila McBee. Randy
20 Swails, Billy Marsh, Thomas Shrout, Louise Braswell, Susan
21 Clark, Linda Laws, Christine Pickett, Emiliano Rodriquez,
22 Don Campbell, James Williams, Tony Carlton Bougart, Helen
23 Kirkland, Connie Lowe, Ricky McQuire, Miranda Robbins,
24 Lea Prew, Carla Theisen, Hannah M. Foster, Mark Sharp,
25 Richard Davis, Maureen Eastwood, Bob Cherry, Daniel Doherty,

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1 Benny McDaniels, Tina Holbrooks, Sherry Holton, Becky
2 Crawford, Peggy Kahle, Marion Linda McJunkin, Dr. Thomas
3 Techman, Mrs. Samona Brady, Susan Carol, Enrique Hernandez,
4 Richard Hall, Shelby Ann Dow, Vicky M. Davis, Jesse James
5 Gaitan, Angela Denise Williams, Beth Holmes, Connie Gray,
6 A. Herbst, R. A. Asbury, Wanda Tatum, Dave Houston, Doris
7 Guerlich, Patty Wiley, Dr. R. Wright, Renee Harding,
8 M. C. Hagge, J. Watkins, Witt Graves, G. McKnight, Bud Lamb,
9 Greg Scala, Ida Marion Press, Al Gusti, Michael Baird,
10 Robert Shlaer, C. Mattox, W. H. Windley, James Horner, G.
11 Terry, Ivan Balaza, Katherin Hensley, Grace Gwendolyn Gurley,
12 Tammy Savala, Herbert J. Spiegel, Wesley Randall Parrish,
13 Jim Clark, Michael Brady, John North, Dorothy McAbee, Randy
14 Aleno, William H. Shutze, James Morris, Claude Gnann, Jimmy
15 Horner, Chuck Johnson, Dan Wimberly, Bill Hampton, Rocky
16 Harris, Lynn Wagner, Gerard King, Michael Howard, Joe
17 Jannesick, Johnny Lancaster, Carrie Bennett, Gary Nelson,
18 James Mock, Armando Villareal, Salvador Calisto, Charles
19 Palmer, Maximinio Rubio, Mike Rafferty, Paul Brackman, Leroy
20 Parker, Jean Ahern, Shirley Williams, Armando Gonzalez,
21 Art Ekiert, Dick Kerr, Pedro Savala, Edward Crumbley, Gary
22 Miller, Wendy Gray, Joyce Reynolds, Kimberly Vargas, Mayetta
23 Rose, Troy Smith, Michael Poole, James Cooper, Terrell
24 Kingery, Polly Carr, Margaret Tabor, Kimberly Fowler, Becky
25 Purvis, Denise Anderson, Linda Upshaw, Michelle Wampler,

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1 Roy Wagoner, Ronald Wright, Deborah Steger, Shirley Fernandez,
2 Sylvia May Anderson, Mary Yates, Dr. Robert Shaler, David
3 Hall, Dave Rawson, Bruce Pahaley, Rocky Barr. Mike Malone.
4 None?

5 Good. Okay, I just read to you an awful long list of
6 witnesses and you may be in some sort of fear that this trial
7 will go on forever. Let me assure you that we are not going
8 to call all those witnesses. There is a possibility, of course,
9 we may call any one of those witnesses. That is why we
10 check them, because we have to make sure you don't know them,
11 but we are not going to call them all. My only obligation
12 is to prove this case beyond a reasonable doubt, and I don't
13 need all those other witnesses to do it, and when I felt that
14 I have done that, then I will rest. I won't call the rest
15 of the witnesses.

16 Do you understand, Mr. Chickering?

17 MR. CHICKERING: Yes.

18 MR. HOGAN: And Ms. Watts?

19 MS. WATTS: Yes.

20 MR. HOGAN: Mr. Chickering, do you understand that
21 circumstantial evidence is good evidence? Did you know that?

22 MR. CHICKERING: Yes.

23 MR. HOGAN: Sometimes you see on television, and
24 especially on the old Perry Mason Show, you would see Perry
25 jump up and yell, "Circumstantial evidence" as if something

1 were wrong with it. But you understand that circumstantial
2 evidence is good evidence. You can consider it in your
3 verdict. Let me give you an illustration. Where are you
4 from originally? You are from up north?

5 MR. CHICKERING: Right.

6 MR. HOGAN: How about you, Ms. Watts?

7 MS. WATTS: Florida.

8 MR. HOGAN: Well, there is only a few of us, but
9 let me give you an example, Mr. Chickering, that you will
10 understand and I'll give you one, too.

11 If you are out in the middle of the woods and there is
12 a fresh snow. The snow has just fallen. It is a fresh, clean
13 snow with no markings in it, and you see a set of fresh
14 rabbit tracks and you start following those rabbit tracks
15 and they enter a hole and there is no other tracks around
16 that hole, then that is circumstantial evidence that that
17 rabbit is in that hole, would you agree?

18 MR. CHICKERING: I would say so, yes.

19 MR. HOGAN: Okay, and Ms. Watts, if you were at the
20 beach and the sand, the waves had washed the sand nice and
21 clean and there is not a mark in it; it is nice and smooth,
22 and you are sitting in your chair and you close your eyes and
23 sleep for four or five minutes and you open your eyes and
24 a set of footprints go in front of your chair. Those foot-
25 prints are circumstantial evidence that someone had walked in

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1 front of your chair. Would you agree with me?

2 MS. WATTS: Yes.

3 MR. HOGAN: Do you understand that things like finger-
4 prints, hair and fiber evidence, body fluid analysis and
5 things like that are circumstantial evidence that can be
6 considered. Do you understand that?

7 MS. WATTS: Yes.

8 MR. HOGAN: Do you understand that, Mr. Chickering?

9 MR. CHICKERING: Yes. I don't see how you can try a case
10 without it.

11 MR. HOGAN: Well, normally you do have some circumstantial
12 evidence in every case and some cases are nothing but circum-
13 stantial evidence and there is nothing wrong with a case that
14 is pure circumstantial evidence, do you understand that?

15 MR. CHICKERING: Yes.

16 MR. HOGAN: Mr. Westbrook?

17 MR. WESTBROOK: Yes, sir.

18 MR. HOGAN: Mr. Westbrook, did you hear the conversation
19 we had about expert witnesses?

20 MR. WESTBROOK: Yes.

21 MR. HOGAN: Will you folks understand that when you have
22 a fingerprint or a hair or fiber or body fluids or blood or
23 something, the evidence is there, but you and I can't make
24 heads or tails of it without an expert, would you agree with
25 that? Mr. Chickering? Ms. Watts?

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1 JURORS: Yes.

2 MR. HOGAN: So you understand it is perfectly okay
3 to rely on expert witnesses?

4 JURORS: Yes.

5 MR. HOGAN: Once we hear their qualifications, of
6 course. Let me ask you this question and I am sure Mr.
7 Westbrook has heard this time and time again, I anticipate
8 calling at least one expert from the FBI. I am not asking
9 you to believe him merely because he is from the FBI. There
10 used to be a television show called "The FBI". I am not
11 asking you to believe him merely because he has an identifi-
12 cation badge, "FBI". What I am asking you to do is treat
13 him like every other witness. Listen to his qualifications
14 and listen to his years of experience and then decide if he
15 is worthy of your belief. If he is, then I ask you to
16 consider his expert opinion. In other words, his analysis
17 of some of the evidence. Okay? Do you understand that
18 experts do not create evidence. They merely tell us what
19 certain pieces of evidence like a fingerprint means. We can
20 look at it and we can say, "Yes, it is a fingerprint there",
21 but we don't know what it means without the expert, correct?

22 JURORS: Ahum. (Affirmative response)

23 MR. HOGAN: You all rely on experts in your every day
24 lives. Would you agree that when you go to the doctor and
25 he gives you a shot or tells you to take certain medicine,

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1 that you don't know what is in that capsule or you don't know
2 what is in that syringe, but you rely on his expert opinion.
3 Is that right? Is that right, Mr. Chickering?

4 MR. CHICKERING: Yes.

5 MR. HOGAN: Thank you. In fact, if you drove down here
6 today, you relied on whichever expert keeps your brakes in
7 order, or installed them; when you put your foot on the brake;
8 you rely on an expert. Okay?

9 JURORS: Ahum. (Affirmative response)

10 MR. HOGAN: Any of you folks had contact with the
11 criminal justice system before? As a witness? Victim?
12 Do you have anything for any reason that you don't like
13 the establishment or you don't like law enforcement or you
14 didn't like the FBI show on television, or you don't like
15 anything like that?

16 JURORS: No.

17 MR. HOGAN: Do you understand that eye witnesses are
18 not needed to prove a case? Did you know that, Mrs. Watts?

19 MS. WATTS: Yes.

20 MR. HOGAN: Mr. Chickering?

21 MR. CHICKERING: Yes.

22 MR. HOGAN: Do you understand I don't need to put any
23 eye witnesses on necessarily to win this case?

24 MR. CHICKERING: Say again?

25 MR. HOGAN: What I am telling you is I don't have any

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1 eye witnesses, but you understand I still think I can prove
2 this case?

3 MR. CHICKERING: Oh, yes, I understand that.

4 MR. HOGAN: How about you, Mr. Westbrook, do you
5 understand that?

6 MR. WESTBROOK: I understand.

7 MR. HOGAN: How many times have you heard that question?

8 MR. WESTBROOK: I stopped counting.

9 MR. HOGAN: Now, when I read that witness list, you
10 heard me read several names that are Hispanic in origin.
11 First of all, let me ask you three folks, if, for any reason,
12 you have any prejudice or bias against the people of Hispanic
13 background or Mexican background?

14 JURORS: No.

15 MR. HOGAN: I am going to tell you now we are going to
16 require an interpreter for some of those witnesses. Some of
17 those witnesses do not speak English. Do you think you can
18 give the same weight to their testimony, give them a fair
19 chance, in other words, and evaluate their testimony fairly,
20 even though that testimony is coming through an interpreter?
21 Would you...you are not going to hold it against them because
22 they can't speak English, in other words?

23 JURORS: No.

24 MR. HOGAN: Mrs. Watts, when you were growing up, did you
25 tell your children that if they got lost, they should try to

1 find a police officer?

2 MS. WATTS: We do that in pre-school. We learn the name
3 and address, where they live and things like that.

4 MR. HOGAN: And they should find a police officer?

5 MS. WATTS: Yes.

6 MR. HOGAN: So you think it is perfectly alright for
7 an eleven year old girl to have trusted a police officer?

8 MS. WATTS: Yes.

9 MR. HOGAN: How about you, Mr. Chickering?

10 MR. CHICKERING: Yes, certainly.

11 MR. HOGAN: Mr. Westbrook?

12 MR. WESTBROOK: I think it is common.

13 MR. HOGAN: Now, another thing, Mrs. Watts, and Mr.
14 Westbrook and Mr. Chickering, you are going to hear that an
15 eleven year old girl was allowed to walk to a convenience
16 store some four hundred feet from her home at about ten
17 o'clock at night to buy a pencil. Now, you might not think
18 that that was a good idea. Maybe her mother should not have
19 let her go out that late at night. Some people may say that
20 if you can't walk to a store within sight of your home, at any
21 time, day or night, something is wrong with this country, but
22 others may feel that the mother never should have let her go
23 out of the house that late. If you feel that way, you under-
24 stand that Mrs. McAbee, the mother of the victim, is not on
25 trial here today for letting her daughter walk to the store.

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1 Do you understand that?

2 MS. WATTS: Yes.

3 MR. HOGAN: Do you understand that, Mr. Chickering?

4 MR. CHICKERING: Yes.

5 MR. HOGAN: Mrs. Watts, do you believe it is possible
6 an adult male, an adult man, may have desires or may want to
7 sexually attack an eleven year old girl?

8 MS. WATTS: I believe it is possible, yes.

9 MR. HOGAN: Sad, but true?

10 MS. WATTS: Yes, exactly.

11 MR. HOGAN: Do you believe that is possible, Mr. Westbrook?

12 MR. WESTBROOK: It is possible.

13 MR. HOGAN: Mr. Chickering?

14 MR. CHICKERING: I guess it is possible, yes.

15 I don't like to think it is, but I guess it must be.

16 MR. HOGAN: I wish we didn't have to be here today, but
17 would you agree that it is certainly something that is possible?
18 In other words, it is not out of the realm of possibility?

19 MR. CHICKERING: Yes.

20 MR. HOGAN: Now, folks, in order for me to prove this
21 case, Mr. Hurm and myself, we are going to have to exhibit
22 and introduce into evidence certain photographs that depict
23 the cause of death and other things in this case. These are
24 very graphic, possibly disturbing photographs, but in order
25 for you to evaluate the evidence, you are going to have to

1 consider those photographs and that graphic testimony if
2 you are on the jury. Do you feel that you could do that,
3 sir?

4 MR. CHICKERING: Yes.

5 MR. HOGAN: Mrs. Watts?

6 MS. WATTS: I could. I might ... it might be hard, but I
7 could do it.

8 MR. HOGAN: Mr. Westbrook?

9 MR. WESTBROOK: Yes.

10 MR. HOGAN: Okay, thank you. Any of you feel that ...
11 do you understand ... I guess I should rephrase that... that
12 police officers are human beings and there are some bad
13 apples in every barrel? Any of you feel that a police
14 officer is incapable of committing a crime like this?

15 JURORS: No.

16 MR. HOGAN: Do you agree it is certainly possible?

17 JURORS: It is possible.

18 MR. HOGAN: One of the key elements of First Degree
19 Murder is going to be the Judge will give you all the
20 elements, but one of the key elements is premeditation.
21 There was a killing, but it was done with a premeditated
22 intent. Do you understand the word premeditation is not the
23 same as the word planned. In other words, I just intended to
24 hit that podium. There is no set amount of time required for
25 premeditation. Do you all understand?

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1 JURORS: Yes.

2 MR. HOGAN: Mr. Chickering?

3 MR. CHICKERING: Yes.

4 MR. HOGAN: Listen closely to the instructions. You
5 won't hear the Judge say there had to be a plan; to have a
6 detailed plan. There had to be enough time to reflect and
7 to decide to do it. Okay?

8 Do you also understand that the Judge is going to
9 instruct you on what is called lesser included offenses? In
10 other words, there is First Degree Murder, Second Degree
11 Murder, but you have an obligation to return an honest verdict,
12 to convict the defendant of the highest crime proved beyond
13 a reasonable doubt. Do you understand that, Mr. Westbrook?

14 MS. WESTBROOK: Yes.

15 MR. HOGAN: Ms. Watts?

16 MS. WATTS: Yes.

17 MR. HOGAN: Mr. Chickering?

18 MR. CHICKERING: Yes.

19 MR. HOGAN: Not beyond all doubt, right, Mrs. Watts?

20 MS. WATTS: Yes.

21 MR. HOGAN: Not beyond a shadow of a doubt, just a
22 reasonable doubt. You can use your common sense to get that
23 abiding conviction of guilt.

24 Now, Mr. Westbrook, do you understand that this case,
25 by the very nature of the scenario and the facts of the case

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1 that are going to come out to you, and you have already
2 picked up on quite a few of them, is going to be something
3 that is going to be hard for you if you have any feelings
4 in you at all, not to become emotionally involved. But you
5 understand that you can reach your decision and you should
6 reach your decision without having sympathy for anyone. Not
7 the victim, and certainly not the defendant. But your
8 decision will be laid out for you if you follow the
9 instructions the Judge gives you, you should be able to
10 reach your decision. Do you understand that?

11 JURORS: Yes.

12 MR. HOGAN: And that also applies to your recommendation,
13 do you understand that?

14 JURORS: Yes.

15 MR. HOGAN: Ms. Watts?

16 MS. WATTS: Yes.

17 MR. HOGAN: Mr. Chickering?

18 MR. CHICKERING: Yes.

19 MR. HOGAN: Thank you very much. Would you all agree
20 that the Jury's task in this particular trial as in all
21 trials, is to follow the law. The laws are made in
22 Tallahassee. Judge Lockett will enforce the law and we
23 follow the law. Would you agree with that?

24 We can't change the law by our verdict or by our
25 recommendation. We are not going to go back into the jury

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1 room and say, "We don't like this law. Therefore, let's
2 don't follow it.". Even if you don't like the law, you have
3 to follow the law. If you think you can't follow the law,
4 tell us now so that we can get you off the jury. We want a
5 jury that is going to follow the law. Okay? Mr. Chickering?
6 Everyone?

7 Mr. Westbrook, would you like to be on this jury?

8 MR. WESTBROOK: I don't know if I would like to be on
9 it. I think it is very important thing. It is a very
10 important thing and I feel I should do it. I feel if a person
11 feels that they can follow the law, as it relates to the
12 facts and do it without any other biases, they should offer
13 themselves to be on the jury, if asked.

14 MR. HOGAN: Okay, you understand, Mr. Westbrook, and I
15 appreciate that answer. That is certainly what we hope for.
16 Do you understand that this is going to be a case that is
17 going to take a great deal of courage and stick to your guns,
18 if you are going to follow the law.

19 MR. WESTBROOK: Right.

20 MR. HOGAN: Are you willing to do that?

21 MR. WESTBROOK: Yes.

22 MR. HOGAN: Ms. Watts, would you like to be on this
23 Jury?

24 MS. WATTS: Honest answer, if I had a choice, you asked
25 me "yes" or "no", I would say "no", because of the thought

1 to be on here and just because of the responsibility, but
2 if I was summoned and I am here and I feel I came. I wanted
3 to do this and if asked to do it, I will do it with no
4 problem to the best of my ability.

5 MR. HOGAN: That is what we want. And likewise, the
6 same question to you. Do you understand that a great deal
7 of pressure will be put upon you?

8 MS. WATTS: I realize, I do.

9 MR. HOGAN: But you think you can stick to your guns and
10 follow the law?

11 MS. WATTS: I would definitely.

12 MR. HOGAN: No matter what the consequences of that were?

13 MS. WATTS: That is the hard part, right, but I would
14 and I will, you know, with all that I could do, but if I
15 honestly had a choice, I would say not because of the
16 circumstances and the pressure, and just the over-all ...

17 MR. HOGAN: You understand that certainly there is no
18 way that every question you may have about the facts is ever
19 going to be answered, but you are still going to be required
20 to make a decision in this case. And it may be easier, at
21 some point in time, just to say, "Forget it".

22 MS. WATTS: No, I would be able to follow through and
23 get it...

24 MR. HOGAN: You understand that we are depending on you
25 to do just that?

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1 MS. WATTS: I know that and if I was summoned, I would
2 do that. If I was honest, it would be my responsibility for
3 myself to do that, to perform that.

4 MR. HOGAN: Thank you very much. Mr. Chickering?

5 MR. CHICKERING: Well, I feel honored, I guess, to be
6 selected. I approach the job with considerable apprehension.
7 It is a very awesome responsibility, but I had quite a wide
8 experience in my lifetime and eighty-two years old right
9 now.

10 MR. HOGAN: I was hoping you would tell me without me
11 having to ask you how old you were.

12 MR. CHICKERING: And I think I am capable of handling
13 this job and doing it right.

14 MR. HOGAN: Mr. Chickering, there is nothing that is
15 more important than experience and experience leads to
16 common sense. Would you agree with that?

17 MR. CHICKERING: Right.

18 MR. HOGAN: Sometimes I think in this country we lose
19 sight of the respect that we ought to give to the people who
20 reach eighty-two years of age.

21 MR. CHICKERING: Thank you. For all of us.

22 MR. HOGAN: Let me say one more thing to you folks and
23 you folks waiting. I want to make sure you understand.
24 Certainly the people who have been in the courtroom under-
25 stand that while you may have been sitting around with nothing

1 to do, we have been working and there may be times when the
2 jury is taken out of the courtroom for long periods of time,
3 believe me, Judge Lockett is holding our feet to the fire.
4 He is one of the hardest working judges in this circuit and
5 I worked all over the circuit, so when I come here, I know
6 I am going to work, so you may not be in the courtroom, but
7 we are working, so don't hold that against us. Okay?

8 Thank you very much. Thank you, Judge.

9 THE COURT: Yes, sir. Mr. Edmund?

10 VOIR DIRE EXAMINATION

11 BY MR. EDMUND:

12 Mr. Westbrook, Ms. Watts, Mr. Chickering. As each
13 year passes, I am more and more aware that someone older
14 than me is in the courtroom.

15 MR. CHICKERING: Well, there are a few older than I am
16 here, too.

17 MR. EDMUND: There you go. Mr. Chickering, let's go
18 back to the rabbit and the snow and let's take you to the
19 rabbit hole. As you look at that hole, you see a set of
20 tracks that you followed going in and you see another set
21 going out. Neither with fresh snow; neither with any
22 indication that one was on top of the other. Do you know
23 now beyond a reasonable doubt that the rabbit is in the
24 hole?

25 MR. CHICKERING: Not if I see another set going out, no.

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1 MR. EDMUND: Right, sir. And if you see the tracks
2 that go by your chair in the sand, accompanied by another
3 track, another set of tracks, neither stepping on top of
4 the other; neither being more windblown than the other or
5 more filled with sand than the other. Do you know beyond
6 a reasonable doubt which person went by first?

7 JURORS: No.

8 MR. EDMUND: So the circumstantial evidence in those
9 cases is subject to two theories and does not convince either
10 of you beyond a reasonable doubt the rabbit is in the hole
11 or the right set of tracks went by first. Is that a fair
12 statement, Ms. Watts?

13 MS. WATTS: Right.

14 MR. EDMUND: Mr. Chickering?

15 MR. CHICKERING: That is right.

16 MR. EDMUND: Mr. Westbrook?

17 MR. WESTBROOK: Yes.

18 MR. EDMUND: Will you presume that if you heard me ask
19 everyone here, James Duckett to be innocent, to clothe him
20 with that presumption of innocence throughout the entire
21 trial?

22 JURORS: Right.

23 MR. EDMUND: Again, if you are selected as a juror, will
24 you make a conscious effort to remember that as you start
25 to deliberate?

1 JURORS: Yes.

2 MR. EDMUND: Will you also make a conscious effort to
3 remind the others when you start with square one, the
4 presumption of innocence?

5 JURORS: Yes.

6 MR. EDMUND: Ms. Watts, will you do the same? Clothe
7 James Duckett with the presumption of innocence throughout the
8 entire trial?

9 MS. WATTS: Yes, I am.

10 MR. EDMUND: How about you, Mr. Chickering?

11 MR. CHICKERING: Yes, I will try.

12 MR. EDMUND: Well, sir, it is most important. For
13 example, if you go back and deliberate James Duckett's
14 guilt or innocence and you fail to reach a verdict and the
15 case is declared a mistrial, we will try it again and when
16 he goes into the next courtroom, he is presumed to be
17 innocent, so the presumption of innocence actually enters
18 the jury room with you when you are deliberating his guilt.

19 Now, the State, of course, as it puts on evidence, may
20 or may not chip away at that presumption of innocence, but
21 the fact is you are ordered by the Court not to form any
22 opinions; ordered by the Court not to discuss this case at
23 all until you go back there to deliberate. You are supposed
24 to be starting afresh. You are supposed to be starting with
25 okay, presumption of innocence. Did they prove his guilt

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1 beyond a reasonable doubt, and it is important. Will you
2 give it that importance and make every effort to presume
3 his innocence when you start your deliberations?

4 MR. CHICKERING: I will.

5 MR. EDMUND: And will you, Ms. Watts?

6 MS. WATTS: I will.

7 MR. EDMUND: Will you tell me your hobbies and what you
8 watch on TV if you watch, Mr. Westbrook?

9 MR. WESTBROOK: TV, I don't watch a whole lot. I watch
10 the only regular show that I watch is Moonlighting.

11 MR. EDMUND: Have you ever seen a TV lawyer jump up
12 and holler, "circumstantial evidence"?

13 MR. WESTBROOK: Oh, yeah.

14 MR. EDMUND: You have?

15 MR. WESTBROOK: Yes.

16 MR. EDMUND: I am sorry. You are not old enough to
17 watch Perry Mason.

18 MR. WESTBROOK: It is in syndication.

19 MR. EDMUND: Okay.

20 MR. WESTBROOK: The most TV I watch is public TV.
21 That sort of stuff. Documentaries and that sort of stuff.
22 I read quite a lot when I have time and music. I am playing
23 quite a bit, you know. Usually doing something six nights
24 a week, usually playing or teaching or doing something
25 related to music.

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1 MR. EDMUND: What do you do in your spare time?

2 MR. WESTBROOK: That is about it.

3 MR. EDMUND: There you go. Thank you. What are your
4 hobbies, ma'am?

5 MS. WATTS: My hobbies are my husband and I, we do
6 woodworking and he does the wood and I paint. We do gifts,
7 things like that and we do sports. He plays ball and boating.
8 Just family type things.

9 MR. EDMUND: Have you all had time to watch TV?
10 And what are you likely to watch?

11 MS. WATTS: I like Adams Way, that new little program.
12 My husband, he usually gets the choices of what he likes.

13 MR. EDMUND: A rare household.

14 MS. WATTS: I know. But I like Matlock. I like the
15 older ones.

16 MR. EDMUND: How about you, Mr. Chickering, what are
17 your hobbies, sir?

18 MR. CHICKERING: Right now, mostly reading. I had to
19 give up golf, aging and bumb feet and so forth, so I read
20 about three books a week. All kinds of literature, novels,
21 and detective stories. International intrigues and what
22 all. That is my ... I don't know if it is a hobby or not.
23 More of a past time. I love to work in the soil. A couple
24 acres up in New England I planted a lot of trees and flowers
25 and my wife loves flowers, but there isn't much room... I have

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1 got a little mobile home now, so there isn't much planting
2 you can do around there, but I would like to.

3 MR. EDMUND: I gave up golf about forty years ago when
4 I found out I could throw a ball further than I could hit the
5 ball.

6 Have you, any of the three of you, ever been a victim
7 of a crime of violence? I don't want to know what it is,
8 just whether or not you have been such a victim?

9 JURORS: No.

10 MR. EDMUND: Have you had any close friends or members
11 of your immediate family who have been victims of a crime of
12 violence?

13 JURORS: No.

14 MR. EDMUND: Have any of you been involved in law
15 enforcement in any capacity?

16 JURORS: No.

17 MR. EDMUND: Or had close friends or relatives who are
18 or have been?

19 JURORS: No.

20 MR. EDMUND: Or who are members of the judiciary?
21 Judges of any Court, whether city court or supreme court
22 or whatever?

23 JURORS: No.

24 MR. EDMUND: Now, do either of the three of you have any
25 particular dietary problems that need attending during the day?

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JURORS: No.

MR. EDMUND: Or medical problems that need attending during the day?

JURORS: No.

MR. EDMUND: Obviously, each of you has stopped and thought at least since you have been here to the courthouse the importance of sitting as a juror, based upon your responses to Mr. Hogan's last question and I appreciate that.

Now, you heard me ask it and I'll ask you, have you ever stopped to smell the roses?

MR. CHICKERING: Orange blossoms, it used to be. Not anymore. Now just roses.

MR. EDMUND: The same thing. Alright. Do you like yourself?

MR. CHICKERING: Yes.

MR. EDMUND: Can you be alone with yourself?

MR. CHICKERING: Yes.

MR. EDMUND: Can you be honest with yourself?

MR. CHICKERING: Yes.

MR. EDMUND: How about you, Ms. Watts?

MS. WATTS: Yes.

MR. EDMUND: Can you be alone and be happy? I don't mean forever or the rest of your life. Do you have times when you simply must have just you and nobody bothering you?

1 MS. WATTS: Yes.

2 MR. EDMUND: Can you be honest with yourself?

3 MS. WATTS: Yes, I can.

4 MR. EDMUND: Mr. Chickering?

5 MR. CHICKERING: I think I will say yes to those
6 questions.

7 MR. EDMUND: Thank you, sir. Now, would either of the
8 three of you give greater weight to the testimony of a witness,
9 whether expert or otherwise, simply because he is employed
10 by the FBI? Would you, Ms. Watts? Simply because he is an
11 FBI employee, or would you judge him by the rule the Judge
12 tells you to judge him by?

13 MS. WATTS: Background and his credentials, yes.

14 MR. EDMUND: The fact he comes in here from Washington?

15 MS. WATTS: No.

16 MR. EDMUND: Has nothing to do with that. The fact he
17 is employed by the Federal Government has nothing to do
18 with that. Is that a fair statement?

19 MS. WATTS: That is right.

20 MR. EDMUND: Not going to be overwhelmed by his being
21 from the establishment or anything like that?

22 MS. WATTS: No.

23 MR. EDMUND: Mr. Chickering, would your responses be
24 the same?

25 MR. CHICKERING: I don't know. I would think I would

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1 figure he was pretty well trained. Pretty much of an expert.

2 MR. EDMUND: Have you ever been disappointed in your
3 figuring? Seriously?

4 MR. CHICKERING: Sure I have. Of course, I have.

5 MR. EDMUND: Good enough. How about you, Mr. Westbrook?

6 MR. WESTBROOK: I wouldn't give ~~ham~~ any greater weight
7 to his testimony than any other witnesses.

8 MR. EDMUND: But? Were you going to say but?

9 MR. WESTBROOK: No.

10 MR. EDMUND: You wouldn't give him any greater weight?

11 MR. WESTBROOK: Right.

12 MR. EDMUND: Now, Ms. Watts, you indicated that you
13 thought you could handle the emotional aspect of the real
14 graphic testimony and obvious and probably some photographs
15 that you are going to hear and observe in this trial. Do you
16 feel though, that your emotion might result in harm to my
17 client in that you reach a period where you say, "This is
18 awful. This is terrible. This child is dead. This child was
19 assaulted. Somebody has got to be punished and that dude
20 sitting out there is the guy that ought to go down.", whether
21 there is proof or not?

22 MS. WATTS: No, I would not. It might be hard. I have
23 never been exposed and I have never seen what I would see,
24 and it would be hard, but I would not say that because I saw
25 them. It would be hard for me maybe to see it.

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1 MR. EDMUND: Mr. Westbrook?

2 MR. WESTBROOK: What was the question?

3 MR. EDMUND: Basically, are you just gonna reach out and
4 punish James Duckett because someone needs to be punished
5 or are you going to require the State to prove that he is the
6 person who did this thing?

7 MR. WESTBROOK: Require the State to prove it.

8 MR. EDMUND: Would you feel the same to that, Mr.
9 Chickering?

10 MR. CHICKERING: I would require a lot of proof.

11 MR. EDMUND: Thank you. Now, is there any one of the
12 three of you who feels that because there has been a homicide
13 there must be an execution?

14 JURORS: No.

15 MR. EDMUND: Ms. Watts and Mr. Chickering, a criminal
16 trial is broken down into certain segments. That is, the
17 selection of the Jury, the opening statements by the lawyer,
18 the presentation of the case by the State and presentation of
19 the case by the Defense, any rebuttal testimony if admissible,
20 the argument of the lawyers to the Jury and then that important
21 very important aspect of the trial, when the Judge reads to you
22 and sends to the Jury room with you a copy of the law that you
23 swear that you will apply to the facts you have heard. Now,
24 will each of you, and you, Mr. Westbrook, you have heard
25 Mr. Hogan's explanation earlier, will each of you make every

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1 effort to keep your minds as open as you can until you have
2 heard all of the evidence by the State, all of the evidence
3 by the Defense, the argument of the lawyers and most
4 importantly, the law that Judge Lockett tells you that you
5 must apply to the facts that you have heard over the preceding
6 days?

7 JURORS: I will.

8 MR. EDMUND: You will do that? Now, if you should be a
9 minority of one after whatever length of deliberation it takes
10 to vote, everybody else has voted the other way, whether
11 it is guilty or whether it is innocent, everyone is voting
12 the other way, and you, realizing your position, try to poke
13 holes in your position. You get all through with that and
14 you listen to the evidence. When you get all through with
15 that and you are still convinced you are correct, will you
16 stand on your verdict?

17 JURORS: Yes.

18 MR. EDMUND: Will you not abandon it simply to get a
19 unanimous verdict and go home?

20 JURORS: No.

21 MR. EDMUND: Will you do the same thing, Ms. Watts?

22 MS. WATTS: I would stand, yes.

23 MR. EDMUND: Would you do the same, Mr. Chickering?

24 MR. CHICKERING: Yes.

25 MR. EDMUND: Even though you knew that if the Jury doesn't

1 come to a unanimous verdict, we will try this case over
2 again, will you still stand by your verdict?

3 MR. CHICKERING: Yes. If I was sure, yes.

4 MR. EDMUND: Sir?

5 MR. WESTBROOK: Yes.

6 MR. EDMUND: Thank you, Mr. Westbrook.

7 Thank you, Your Honor.

8 THE COURT: Come up when you are ready, please,
9 gents.

10 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

11 THE COURT: Any challenges for cause, Mr. Hogan?

12 MR. HOGAN: No, sir.

13 THE COURT: Mr. Edmund? Any challenges for cause?

14 MR. EDMUND: No, Your Honor.

15 THE COURT: My count is the State has used six and the
16 Defense seven. Your presumptive jury is Prevatt, Stroud,
17 Hall, Symmes, Emerson, Warren, Gries, Flack, Schlager, Rhodes,
18 Barry Westbrook. I believe it is the State's strike.

19 MR. HOGAN: Westbrook.

20 THE COURT: You have each used seven and your
21 presumptive jury is through Watts.

22 MR. EDMUND: Watts.

23 THE COURT: Your presumptive jury is through Chickering.
24 The State used seven, the Defense eight.

25 MR. HOGAN: Mrs. Prevatt.

1 THE OCURT: Way back to Mrs. Prevatt you go. They
2 challenged her. Alright, you have both used eight.
3 That doesn't leave enough. Want your next bunch then?

4 MR. EDMUND: I don't have any now.

5 THE COURT: Do you want to rebox or strike. We only
6 have eleven up here.

7 MR. EDMUND: I am not anyway,... oh, I strike Chickering,
8 I am sorry.

9 THE COURT: The State used eight, the Defense nine.

10 MR. HOGAN: That's it.

11 MR. EDMUND: When we reseat them, will you take a short
12 recess?

13 THE COURT: As soon as we reseat them, I can do that.

14 MR. EDMUND: I would appreciate it.

15 (WHEREUPON, BENCH CONFERENCE ENDS)

16 THE COURT: Alright, folks, as has been our system, if
17 we read your name, you may step down. You need not come back
18 or call back. Your jury service is completed.

19 Mrs. Prevatt, you are excused. Mr. Westbrook, Ms. Watts,
20 Mr. Chickering, you are all excused. Thank you very much
21 for your service.

22 Now, gents, we have to rebox the entire group, because
23 we lost number one juror. That will take just a minute.

24 Our first seat will be Mrs. Stroud and next to Mrs.
25 Stroud, Mr. Hall. Next to him, Mrs. Symmes. Next to

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1 Mrs. Symmes; Dr. Emerson. First on the second row is
2 Mrs. Warren; next to her, Mrs. Gries; next to her, Mr. Flack;
3 next to him, Mr. Schlager; next to him, Mrs. Rhodes; and in
4 the front row, Mr. Barry. That puts you up there all alone,
5 don't we, Mr. Barry?

6 THE COURT: We will give you some company here in just
7 a minute, Mr. Barry. Okay, folks, we will call some more
8 names and ask you to come up and take a seat in the front row,
9 as we call your names.

10 I have #32, Joseph DeClerk.

11 #14, Wilma Stephens.

12 #17, June Gray.

13 #12, Constance Jean Gibson.

14 These general questions will be directed to our four
15 new jurors.

16 Do any of you have any physical defects, hearing, sight
17 or otherwise, which would render you incapable of performing
18 your duty as a juror in this case?

19 JURORS: No.

20 THE COURT: Do any of you have any bias or prejudice
21 either for or against the Defendant?

22 JURORS: No.

23 THE COURT: If you are selected as a juror in this cause,
24 will you render a fair and impartial verdict based upon the
25 evidence presented in this courtroom and the law as it

1 pertains to this particular case, as instructed by the
2 Court?

3 JURORS: Yes.

4 THE COURT: Do you have any other reason why you cannot
5 give this case your undivided attention and render a fair
6 and impartial verdict?

7 JURORS: No.

8 THE COURT: Mr. DeClerk, if you would start, I'm going
9 to ask you to introduce yourself. As soon as we finish
10 introductions, we will take a short recess before we go on.

11 MR. DE CLERK: My name is Joseph DeClerk. My wife is
12 Irene. I am a Sales Manager for a manufacturing company of
13 farm equipment. I have the ... that is all you wish, wasn't
14 it?

15 THE COURT: That is probably enough, because they will
16 ask some more if they want to know. Well, I need a few more
17 questions. Did your wife ever work outside the home?

18 MR. DE CLERK: About three months.

19 THE COURT: What did she do there?

20 MR. DE CLERK: Oh, she baby sat.

21 THE COURT: What town do you all live in, Mr. DeClerk?

22 MR. DE CLERK: Here?

23 THE COURT: Yes, sir?

24 MR. DE CLERK: Tavares.

25 THE COURT: Have you ever served on a jury before?

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1 MR. DE CLERK: No.

2 THE COURT: Thank you, sir. Mrs. Stephens?

3 MRS. STEPHENS: My name is Wilma Stephens. I live in
4 Clermont. My husband's name is Darrell and we run a trailer
5 park on 27.

6 THE COURT: I'll be right there with you in just a
7 second. Have you ever served on a jury?

8 MRS. STEPHENS: No, sir.

9 THE COURT: Thank you, ma'am. Mrs. Gray?

10 MRS. GRAY: I am June Gray. I live in Leesburg. I am
11 a nurse. I have been doing private duty in a home for the
12 past five years. My husband is John and he works for Minute
13 Maid. I have six children and seven grandchildren.

14 THE COURT: Have you ever served on a jury, ma'am?

15 MRS. GRAY: No, sir.

16 THE COURT: Are you an RN or LPN?

17 MRS. GRAY: LPN.

18 THE COURT: Thank you, ma'am. Mrs. Gibson?

19 MRS. GIBSON: I am Constance Gibson. I live in
20 Altoona. My husband is Assistant Principal at Umatilla High
21 School and I am a Guidance Counselor at the High School.
22 I have served on a jury before.

23 THE COURT: Civil or criminal, ma'am?

24 MRS. GIBSON: Drunk driving.

25 THE COURT: That is criminal jury. Your husband's name

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1 was?

2 MRS. GIBSON: Bobby Gibson.

3 THE COURT: Thank you kindly. Alright, Mr. Bailiff,
4 let's take about a fifteen minute recess. Folks, we will ask
5 all of you to remember not to discuss the case among yourselves
6 or with anyone else. I ask everyone to come back in the
7 courtroom at about three o'clock.

8 (WHEREUPON, COURT IS IN RECESS AT 2:45 P. M.)

9 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM AT
10 3:05 P. M. WITH HIS COUNSEL, MR. EDMUND)

11 (WHEREUPON, COURT CONVENES AT 3:17 P. M.)

12 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

13 THE COURT: It always happens. Mr. Corbett, our bailiff,
14 came during the recess and says there is a prospective juror,
15 she is out in back, not up in the box, Mrs. Dupree, #101,
16 that has finally told him that she had not heard a thing we
17 had done for two days. He wanted to be sure it was true and
18 in his conversation with her, she came here, and I am inclined
19 to excuse her and let him tell her to go home. # 101. Another
20 for cause.

21 (WHEREUPON, BENCH CONFERENCE ENDS)

22 THE COURT: Mr. Bailiff, you can advise Mrs. Dupree she
23 will be excused, if you would, please.

24 If I recollect, Mr. Hogan, I believe it is your turn with
25 the new jurors.

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1 MR. HOGAN: Thank you, Judge.

2 VOIR DIRE EXAMINATION

3 BY MR. HOGAN:

4 Ladies and gentlemen. Were you able to hear our
5 discussions that we had earlier this afternoon?

6 JURORS: Yes.

7 MR. HOGAN: That will help out a lot. Mr. DeClerk,
8 do you have any children?

9 MR. DE CLERK: Four.

10 MR. HOGAN: What do they do, sir?

11 MR. DE CLERK: Well, one is a CPA and Vice President of
12 Colonial Bank. One has multi gas stations and restaurants
13 and another one teaches computers and the fourth one is a
14 little rascal and she is at home.

15 MR. HOGAN: Do you go to church, Mr. DeClerk?

16 MR. DE CLERK: Church?

17 MR. HOGAN: Yes, sir?

18 MR. DE CLERK: Yes, Lutheran.

19 MR. HOGAN: Mr. DeClerk, were you able to understand the
20 discussion we had about those parts of the trial?

21 MR. DE CLERK: Yes, sir, I sure did.

22 MR. HOGAN: You understand, Mr. DeClark, ...

23 MR. DE CLERK: That is DeClerk.

24 MR. HOGAN: Well, I have it spelled right, but I was
25 pronouncing it wrong. You understand I fully intend to place

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1 you in a position of having to make a recommendation for a
2 death penalty?

3 MR. DE CLERK: Absolutely.

4 MR. HOGAN: You feel you could do that?

5 MR. DE CLERK: Oh, certainly.

6 MR. HOGAN: Do you understand the discussion we had
7 about circumstantial evidence?

8 MR. DE CLERK: I sure do.

9 MR. HOGAN: Do you understand our discussions we had about
10 reasonable doubt?

11 MR. DE CLERK: Yes.

12 MR. HOGAN: No higher burden?

13 MR. DE CLERK: Ahum. (Affirmative response)

14 MR. HOGAN: Do you understand, Mr. De Clerk, that if
15 you have to speculate in order to find a doubt, if you say
16 to yourself, well, maybe it didn't happen that way, that is
17 speculation. You are not supposed to do that.

18 MR. DE CLERK: I don't think I would. I think the facts
19 would regulate the way I think.

20 MR. HOGAN: Alright, if you go back to the jury room
21 and you are saying to yourself, you are feeling the pressure
22 of making that decision and you say to yourself, "Well,
23 maybe it didn't happen the way the evidence tends to show",
24 that is called speculation. That would be what they call a
25 speculative doubt. That kind of doubt is not a reasonable

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1 doubt. Do you understand?

2 MR. DE CLERK: I sure do.

3 MR. HOGAN: Do you understand that there are certainly
4 lots of unanswered questions when this case is over?

5 MR. DE CLERK: Yes, sir.

6 MR. HOGAN: Thank you, sir. Ms. Stephens, how are you
7 doing?

8 MS. STEPHENS: Fine.

9 MR. HOGAN: Do you have any children?

10 MS. STEPHENS: Yes, I do. I have two sons.
11 One lives in Cincinnati and one is at home.

12 MR. HOGAN: What do they do?

13 MS. STEPHENS: The oldest son is a carpenter and the
14 younger son helps with the mobile home park.

15 MR. HOGAN: Either you or Mr. DeClerk, have any contact
16 with the criminal justice system?

17 MRS. STEPHENS: No.

18 MR. HOGAN: Any grandchildren?

19 MRS. STEPHENS: One five years old.

20 MR. HOGAN: How about you, Mr. DeClerk?

21 MR. DE CLERK: I have got four and three great grand
22 children.

23 MR. HOGAN: Very good. You go to church, Mr. Stephens?

24 MS. STEPHENS: Yes, First Christian in Clermont.

25 MR. HOGAN: Where is that?

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