

V No 9D
IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE, TENNESSEE

STATE OF TENNESSEE,

Appellee,

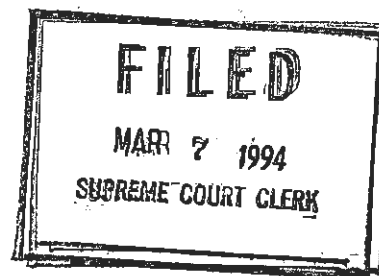
-vs-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035



TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993
Volume 3 of 22 Volumes

BEFORE THE HONORABLE **REX HENRY OGLE**, PRESIDING JUDGE,
AND JURY

APPEARANCES:

FOR THE STATE

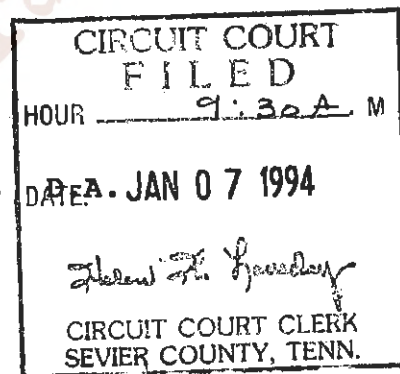
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Courtesy of
Time of Death Podcast
by Beth Braden

1 formed an opinion as to the guilt or innocence of any party?

2 JUROR SMITH: No.

3 THE COURT: Okay. Likewise, Ms. Griffin, same question:
4 Have you formed an opinion based on anything you've seen or
5 heard?

6 JUROR GRIFFIN: No, sir.

7 THE COURT: Okay. In regards to the death penalty,
8 Ms. Griffin, would you consider the death penalty as an option
9 if---and only if---someone were convicted of first degree
10 murder?

11 JUROR GRIFFIN: My decision would be based on the
12 circumstances surrounding the case.

13 THE COURT: And the aggravating and mitigating factors
14 the Court would instruct you on?

15 JUROR GRIFFIN: Yes.

16 THE COURT: Is it something that you would automatically
17 impose or automatically exclude?

18 JUROR GRIFFIN: No, sir.

19 THE COURT: Okay. Ms. Smith?

20 JUROR SMITH: If I (indiscernible), I couldn't do it.

21 THE COURT: Would not consider the death penalty as an
22 option?

23 JUROR SMITH: (No audible response.)

24 THE COURT: All right, ma'am, we'll excuse you. Thank
25 you.

1 (Juror Smith is excused.)

2 **THE COURT:** One more.

3 (The following juror was called to fill the jury box:
4 Robert Kratochvil.)

5 **THE COURT:** Let's see, let me get caught up here just
6 a minute.

7 Okay, Mr. Kratochvil, have you heard all the questions
8 that have been asked here today, sir?

9 **JUROR KRATOCHVIL:** (No audible response.)

10 **THE COURT:** Have you read or heard anything about this
11 case before you came here today?

12 **JUROR KRATOCHVIL:** Yes, I have.

13 **THE COURT:** Have you formed an opinion, sir, as to the
14 guilt or innocence of anyone?

15 **JUROR KRATOCHVIL:** No, I haven't.

16 **THE COURT:** Okay. In regards to the death penalty, have
17 you heard the Court explain that it is a sentencing option; it
18 is not mandated or required, but it is a sentencing option? Do
19 you have any moral reservation about considering the death
20 penalty as an option?

21 **JUROR KRATOCHVIL:** No problem with the death penalty at
22 all.

23 **THE COURT:** Okay. On the other hand, would you
24 automatically impose the death sentence on anyone just because
25 they were convicted of first degree murder, or would you look

1 at the mitigating and aggravating circumstances under the law?

2 JUROR KRATOCHVIL: No, if they were convicted of first
3 degree murder I would give them the death penalty.

4 THE COURT: Automatically?

5 JUROR KRATOCHVIL: Yes, sir.

6 THE COURT: I'll have to excuse you, sir. Thank you.
7 Thank you for your honesty.

8 (Juror Kratochvil is excused.)

9 (The following juror was called to fill the jury box:
10 Jody Humphrey.)

11 THE COURT: Hi. How soon? How soon?

12 JUROR HUMPHREY: About five weeks.

13 THE COURT: Flip the old judicial coin here. Is it
14 going to impose a real problem for you sitting on this jury?

15 JUROR HUMPHREY: I've got a shower and a class this
16 week.

17 THE COURT: I guess you've heard all the debates about
18 when life begins. I suppose that may be what we may have to
19 deal with here. The Court may have to make a guess. If you
20 think it would -- it would pose a real problem for you, ma'am,
21 the Court's not going to make you serve. I would feel badly for
22 you if -- more so for you than I would us, to be real honest
23 with you, if it's -- if you think it's going to be a problem for
24 you, and you ask me to excuse you, I will. It's that simple.
25 So you tell me.

1 JUROR HUMPHREY: May I be excused?

2 THE COURT: I sure will.

3 JUROR HUMPHREY: Bad timing.

4 THE COURT: Huh?

5 JUROR HUMPHREY: Bad timing. Come back another day.

6 THE COURT: I understand. Thank you. Boy, it didn't
7 take us long to figure you out, did it?

8 (Juror Humphrey is excused.)

9 (The following juror was called to fill the jury box:
10 Kenneth Caughron.)

11 THE COURT: Have you heard all the questions,
12 Mr. Caughron?

13 JUROR CAUGHRON: Yes, sir.

14 THE COURT: Have you formed an opinion about this case
15 based on anything you've read or heard?

16 JUROR CAUGHRON: No, sir.

17 THE COURT: All right. In regards to the death penalty,
18 if someone were convicted of first degree murder in this case,
19 would you consider it as a sentencing option?

20 JUROR CAUGHRON: Say that again.

21 THE COURT: Okay. Under the law the sentence for first
22 degree murder is either life or death. If someone is convicted
23 of first degree murder, at a subsequent sentencing hearing by
24 this jury, this jury would determine whether to impose a life
25 sentence or a death sentence. The jury must unanimously agree

1 in order to impose a death sentence.

2 You are never required to impose the death sentence, but
3 it is a sentencing option for the jury to determine. Would you
4 consider the death penalty as a sentencing option if someone
5 were convicted of first degree murder?

6 JUROR CAUGHRON: Yes.

7 THE COURT: Okay. Would you automatically sentence
8 someone to death just because they'd been convicted of first
9 degree murder, or would you consider the enhancing and
10 mitigating factors that the Court gives you?

11 JUROR CAUGHRON: I'd consider all of it.

12 THE COURT: Okay.

13 JUROR CAUGHRON: (Indiscernible).

14 THE COURT: Okay. All right.

15 MR. WEBB: Your Honor, may we approach the bench and ask
16 just a question?

17 THE COURT: Sure.

18 (A bench conference is held on the record, to-wit:)

19 MR. DANIEL: Is Your Honor going to charge only on
20 first?

21 THE COURT: No, not necessarily. Ever what the proof
22 in the case shows. If it -- you know, I...

23 MR. DANIEL: Well, I don't think that we should say --
24 I mean, if he can't say it could be second, 'cause if
25 you only charge on first, that's almost telling the jury

1 I don't think it's second. So, I don't want you... But
2 I just wanted to know, for reasons of my preparation,...
3 **THE COURT:** Why, sure, if you want -- why, sure.
4 **MR. DANIEL:** ...as to how... And I can visualize some
5 areas that we would be entitled to a second degree
6 charge.
7 **THE COURT:** Yeah, you know, and I have never -- I have
8 never seen a first degree murder case, at least in my
9 lifetime, that second degree wasn't charged. But, now,
10 it might could happen.
11 **MR. DANIEL:** I'm just saying, 'cause we're not asking
12 that you tell him at this time, because then if you
13 didn't charge it,...
14 **THE COURT:** Right.
15 **MR. DANIEL:** ...it looks like you're saying, "Well,
16 boys, this is a first degree charge."
17 **THE COURT:** Right. Right. But, you know, if the
18 proof's there, as I understand the law, I'm obligated
19 to charge all lesser includeds raised by the proof...
20 **MR. DANIEL:** All lesser.
21 **THE COURT:** ...even if I'm not asked to charge it, as
22 I understand it.
23 **MR. DANIEL:** I think that's right. I just -- I just
24 thought we'd been talking about it, and...
25 **MR. WEBB:** I didn't know if I'd heard -- but it's almost

1 reversible error if you don't charge it.

2 **THE COURT:** It is reversible error if you don't charge
3 lesser includeds raised by the proof.

4 **MR. WEBB:** Right. Right.

5 **MR. MILLER:** I think what David's saying, there's a --
6 I think it's a death penalty case that said it is error
7 not to charge down to second degree, and that there's
8 no...

9 **MR. WEBB:** I think that's what I read.

10 **THE COURT:** Okay.

11 **MR. MILLER:** And that it could be harmless, but that it
12 is error.

13 **THE COURT:** Well, if you can find that, you need to show
14 it to me.

15 **MR. DANIEL:** And even whether the proof develops it or
16 not? That's my question. I don't know.

17 **THE COURT:** I don't know. But more than likely, in all
18 candor, now, the Court -- I can envision, just depending
19 upon what a jury could find in a given case, either the
20 act is committed and the reckless and intent for first
21 degree murder is not there, you know. It all depends
22 on what they find their state of mind to be, and if it
23 concurs with the act in question. So, I can -- I can
24 just almost guess I would charge second degree murder.

25 **MR. DANIEL:** I was just -- I was just -- we just been

1 talking about it,...

2 **THE COURT:** Now, I'm not prejudging it, but that...

3 **MR. DANIEL:** I just got to thinking about it, I thought,
4 'Well, heck, we're here just talking to the jury, they
5 need to think that...'

6 **THE COURT:** Sure.

7 **MR. DANIEL:** It could be proper and it could be -- well,
8 it could be first or death or nothing.

9 **THE COURT:** Yeah. Yeah.

10 **MR. WEBB:** Well, that may have been what that one juror
11 said. He said if they did it, they -- I can't remember
12 what... What was he saying, Ed? If they did it...

13 **THE COURT:** I never did figure out what he was saying,
14 so...

15 **MR. WEBB:** Well, it dawned on me at that time, well,
16 there's other... But apparently he said if there's a
17 killing it's first degree, which that's not exactly
18 true.

19 **THE COURT:** Well, just move on.

20 **MR. WEBB:** Okay. Okay.

21 **THE COURT:** We need to go just as we can (sic) in the
22 voir dire here.

23 (The bench conference having been concluded, the
24 following proceedings were had in open court.)

25 **THE COURT:** Okay, you may proceed, General Schmutzer.

1 **GENERAL SCHMUTZER:** I have Ms. McClelland and
2 Ms. Griffin, and I have Mr. Caughron. You're on the top. And
3 I think that's the only three the had come in. Now, you heard
4 -- you've heard my questions before. Any problems with sitting
5 on a case where the State is going to offer circumstantial
6 evidence? Any of you have any difficulty with that? And, in
7 fact, that's -- the law is that it's as much your duty to
8 convict on circumstantial evidence as it is direct evidence.
9 And, of course, you've heard the rest of the things about it,
10 "reasonable" being the key word. "Reasonable" being what's
11 based on the law and the evidence, obviously, not upon guessing.
12 Any of you have any difficulties with that?

13 (No jurors respond audibly.)

14 **GENERAL SCHMUTZER:** I take it you don't.

15 Further question with regard to expert witnesses; you'll
16 listen to them, look at their qualifications, how they come
17 across on the stand, and you'll size them up like any other
18 witness, following the Court's instruction about that? If
19 expert witnesses disagree on something, you'll look at them and
20 size them up relative to each other to determine who's telling
21 the truth? I take it you have no problem with that.

22 (No jurors respond audibly.)

23 **GENERAL SCHMUTZER:** Is there anything that you can think
24 of, do you have any problems or difficulties, either physical,
25 such as a hearing problem or maybe, you know, an impairment with

1 your vision that might cause you some problem in looking at
2 photographs, things like this, or something that may be weighing
3 on your mind to the extent -- something that would stand in the
4 way from you directing your complete attention to the evidence
5 as presented here in this case over the next few days? Any of
6 the three of you? Anyone that...?

7 JUROR McCLELLAND: I don't have any disability, but I
8 do have a seven-month-old child at home that I don't know what
9 to do with.

10 GENERAL SCHMUTZER: Yes, ma'am. I'm going to let you
11 talk to His Honor. We get to pass some of those, and that'll
12 be one of them.

13 THE COURT: So I take it that you don't want to sit on
14 this jury, do you?

15 JUROR McCLELLAND: Well, I don't want to be sequestered.
16 I mean, I just don't know what I'll do with my baby, is all.

17 THE COURT: I could ask you a whole lot of smart aleck
18 questions, but I won't. If you -- if it's a problem for you,
19 I'm -- you know, I'm certainly not going to make a mother stay
20 away from an infant child, or to make the child be away from its
21 mother. I understand that. If you can't serve, I'll be glad
22 to let you...

23 JUROR McCLELLAND: I'll serve on the other, since I've
24 been here three times.

25 THE COURT: I know. I know you have. And I appreciate

1 that. But it is a burden to have to stay locked up on this
2 situation. Okay. Thank you.

3 (Juror McClelland is excused.)

4 **THE COURT:** Let's call one more, then, instead of --
5 while we've got...

6 (The following juror was called to fill the jury box:
7 Mark Curtis Sullivan.)

8 **THE COURT:** Any problems, Mr. Sullivan, with what's been
9 asked so far?

10 **JUROR SULLIVAN:** Yes, sir.

11 **THE COURT:** Okay, we need to talk about it, then.

12 **JUROR SULLIVAN:** Oh, no problems.

13 **THE COURT:** Oh, no problems? So you've not formed any
14 opinion on the guilt or innocence of anybody based on what
15 you've seen or heard?

16 **JUROR SULLIVAN:** No, sir.

17 **THE COURT:** Do you state to the Court that in a proper
18 case, in the event someone were convicted of first degree
19 murder, that you could consider, as a sentencing option, the
20 death penalty?

21 **JUROR SULLIVAN:** Yes, sir.

22 **THE COURT:** However, on the other hand, would you
23 automatically impose the death penalty just because someone
24 happened to be convicted of first degree murder?

25 **JUROR SULLIVAN:** No, sir, that would be depending on the

1 evidence.

2 THE COURT: Okay, thank you. General Schmutzer?

3 MR. WEBB: Your Honor, let's -- can I approach just a
4 moment?

5 (A bench conference is held on the record, to-wit:)

6 MR. WEBB: A couple of the potential witnesses come into
7 court. They just now walked in, so they've not heard
8 anything. And I thought we said we was going to leave
9 the witnesses out.

10 GENERAL SCHMUTZER: Well, the only reason we had
11 witnesses out was to make room for the...

12 THE COURT: For the other jurors.

13 GENERAL SCHMUTZER: ...for the other jurors.

14 MR. WEBB: Oh, so you don't care?

15 THE COURT: No. No.

16 MR. WEBB: Okay.

17 THE COURT: At this juncture. Now, I see they have a
18 minor child. If that minor child starts crying, I'll
19 ask them to leave.

20 MR. WEBB: Okay. I just wanted to make...

21 THE COURT: Yeah.

22 (The bench conference having been concluded, the
23 following proceedings were had in open court.)

24 GENERAL SCHMUTZER: In fact, I'll ask you right...
25 Where do you live, please, sir?

1 JUROR SULLIVAN: Seymour.

2 GENERAL SCHMUTZER: And your occupation?

3 JUROR SULLIVAN: I'm a salesman.

4 GENERAL SCHMUTZER: I'm sorry?

5 JUROR SULLIVAN: Salesman.

6 GENERAL SCHMUTZER: Salesman?

7 JUROR SULLIVAN: Yes, sir.

8 GENERAL SCHMUTZER: And what do you sell?

9 JUROR SULLIVAN: (Indiscernible).

10 GENERAL SCHMUTZER: Thank you. And I forgot to ask you,
11 Ms. Griffin, where do you live?

12 JUROR GRIFFIN: Gatlinburg.

13 GENERAL SCHMUTZER: Okay. And your occupation?

14 JUROR GRIFFIN: I'm a housewife.

15 GENERAL SCHMUTZER: Okay, very good.
16 And Mr. Caughron?

17 JUROR CAUGHRON: Maryville; TVA employee.

18 GENERAL SCHMUTZER: Okay, sir.

19 Mr. Sullivan, you heard the questions I've asked here.
20 Any problems with any of them, the fact this is a circumstantial
21 evidence case?

22 JUROR SULLIVAN: No, sir.

23 GENERAL SCHMUTZER: Any of the three of you all -- any
24 connection at all with the defendants or their attorneys at all?
25 (No jurors respond audibly.)

1 **GENERAL SCHMUTZER:** Anything that I've asked in the past
2 that would cause any of the three of you any problems or any
3 difficulties that you think you need to bring to our attention,
4 that might stand in the way of you being a juror in this
5 particular case? No? I notice you were sort of a little
6 pensive, Ms. Griffin.

7 **JUROR GRIFFIN:** I was just kind of thinking back,...

8 **GENERAL SCHMUTZER:** I don't want to rush you through.

9 **JUROR GRIFFIN:** ...and I was trying to decide, and no.

10 **GENERAL SCHMUTZER:** Okay, thank you. Thank you very
11 much.

12 **MR. MILLER:** Something that hasn't been talked about
13 that I would like to mention is something I don't think you can
14 ignore. You all notice that there's extra security here at the
15 courthouse today in the courtroom. I don't want anybody to get
16 the misconception that that's because somebody---you, me, or
17 somebody else---may be endangered by our clients. That's not
18 the reason they're here. That's -- the court personnel and
19 everybody recognizes the volatility of this situation, with bad
20 blood probably running on both sides, and that's, quite frankly,
21 why the security's here. I just didn't want you to have any
22 misconceptions about that.

23 Mr. Whitted, where are you? Right here? Where did you
24 say you lived?

25 **JUROR WHITTED:** Seymour.

1 MR. MILLER: Do you happen to know a James Whitted?

2 JUROR WHITTED: (No audible response.).

3 MR. MILLER: If he's related to you, you don't know it,
4 then? Okay.

5 Mr. Sullivan and Ms. Griffin and who else do I have
6 that's new? Mr. Caughron. Have you all ever had a case or an
7 occasion to be represented by the attorney general's office,
8 they prosecuted a case for you all, got any connection with them
9 at all?

10 (No jurors respond audibly.)

11 MR. MILLER: Have the three of you sat as jurors before?

12 (No jurors respond audibly.)

13 MR. MILLER: Never have? Mr. Caughron, have you sat as
14 a juror?

15 JUROR CAUGHRON: (No audible response.)

16 MR. MILLER: You've heard a lot of talk about the burden
17 of proof in a criminal case, beyond a reasonable doubt. Will
18 each of you hold the State to that burden? Will you do that,
19 Mr. Caughron? Follow the law and hold the State to the burden
20 of proof?

21 (No jurors respond audibly.)

22 MR. MILLER: Mr. Caughron and Ms. Griffin and
23 Mr. Sullivan, do you all have any association with anybody
24 involved in law enforcement?

25 (No jurors respond audibly.)

1 MR. MILLER: It's been awhile since I talked about the
2 elements of first degree murder. I'll just mention those again.

3 THE COURT: And please be careful, okay?

4 MR. MILLER: I confused one -- I won't go into my sub-
5 categories as to how... But, basically, four elements that the
6 State must prove: That the defendants unlawfully killed this
7 victim, that's one; the killing was intentional; that the
8 killing was deliberate; and that it was premeditated. They must
9 prove all four of those. If they prove three and don't prove
10 four, you must find the defendants not guilty. Will you all do
11 that? Can you hold the State to that burden?

12 (No jurors respond audibly.)

13 MR. MILLER: Also, the issue of venue. Not only must
14 they prove all of these things, they must prove that they --
15 that it took place in Sevier County, because a Sevier County
16 jury can't render a verdict on something that happened somewhere
17 else.

18 We talked a lot about circumstantial evidence, and the
19 fact that the evidence must not only point at these --
20 Mr. Dellinger and Mr. Sutton, but it must point away from or
21 exclude any other reasonable theory behind how Ms. Branum died.
22 Mr. Daniel talked about if it became relevant that this woman
23 had attempted suicide and was on drugs at the time, if that
24 became relevant, could you consider that as it fits together
25 with the rest of the facts? Would each of you do that?

1 (No jurors respond audibly.)

2 MR. MILLER: Ms. Griffin, you're no way related to the
3 Griffins that we've talked about, James Griffin and...

4 JUROR GRIFFIN: I'm a new resident here.

5 MR. MILLER: Okay. And I take it you've heard some
6 about the case through the media, is that correct?

7 JUROR GRIFFIN: I had read something in the paper about
8 it, yes.

9 MR. MILLER: You didn't form any opinions based on
10 what's -- what you read in the paper?

11 JUROR GRIFFIN: No.

12 MR. MILLER: Mr. Sullivan, you heard about the case, is
13 that correct?

14 JUROR SULLIVAN: Yes, I did, at the time that it
15 happened.

16 MR. MILLER: Been awhile. Did you form any opinions one
17 way or the other, based on what you heard?

18 JUROR SULLIVAN: (No audible response.)

19 MR. MILLER: And Mr. Caughron, did you see it in the
20 paper or on TV and radio?

21 JUROR CAUGHRON: Yeah, I saw it.

22 MR. MILLER: And did you form any opinions based on what
23 you heard?

24 JUROR CAUGHRON: Not really. I was wondering where she
25 was and where he was.

1 MR. MILLER: Wondering where he was?

2 JUROR CAUGHRON: She was.

3 MR. MILLER: Okay.

4 JUROR CAUGHRON: (Inaudible).

5 MR. MILLER: I understand.

6 Can each of you, Mr. Sullivan, Ms. Griffin, and
7 Mr. Caughron, vote your conscience independent of the rest of
8 the jury? When you go back there, if you're selected, and
9 deliberate, can you vote your conscience and not be swayed to
10 go one way or the other just because your fellow jurors want you
11 to, if you honestly see a doubt there? Will you vote your
12 conscience, Mr. Sullivan?

13 JUROR SULLIVAN: Absolutely.

14 MR. MILLER: That's all I have, Your Honor.

15 THE COURT: Mr. Webb or Mr. Daniel?

16 MR. DANIEL: Thank you, Your Honor.

17 Ms. Griffin, Mr. Caughron, and Mr. Sullivan, could you
18 hear questions we were asking other jurors earlier today back
19 there? I tried to talk loud, and sometimes... If you didn't
20 hear it, I'd like for you to let me know.

21 We don't want to just keep belaboring the point, but as
22 you understand, this is a serious case. It's obvious anytime
23 you start talking about taking somebody's freedom away from
24 them, taking them, caging them for the rest of their life, or
25 taking their life and putting them to death, it's a serious

1 matter. And I'm sure that if you were on trial for this charge,
2 or your son or your brother, your sister, somebody else, you'd
3 want somebody to spend -- take the time to see that they got a
4 fair trial, is that fair enough? Can we all agree on that

5 (No jurors respond audibly.)

6 MR. DANIEL: About this publicity, it's always hard for
7 defendants to try a case where there's adverse -- or not -- I
8 won't say adverse, just where there's publicity, because the
9 newspaper gets what the charges are, they don't get the
10 defendant's story, they get basically what people's accusing
11 them of. Sometimes they go overboard and make statements,
12 newspapers and television commentary, radio people. They say
13 stuff what they think, or what they've picked up on it.
14 Sometimes it's just totally off-base, and sometimes they're
15 right. But the point I'm making is, we're not trying this case
16 in the newspapers, and you're not trying it on the radio. And
17 you may go home, if you've tried this lawsuit, and after it's
18 over, and somebody say, "Well, I thought so and so happened."

19 And you say, "No, that didn't happen at all. That
20 wasn't what came in." Point I'm making is, can we start at
21 least with open minds? And do you all understand that the State
22 puts on their proof first? The defendant does not put on his
23 proof -- really, the defendant doesn't even have to put on any
24 proof, 'cause this is not a country where you have to prove
25 yourself innocent. They have to prove you guilty. If they

1 can't prove you guilty beyond all reasonable doubt the defendant
2 doesn't even have to put on any proof. You can if you want to;
3 you don't have to. The point I'm making is: Will you hold --
4 if chosen as jurors, will you hold the State to the burden that
5 they're under to prove to you beyond all reasonable doubt my
6 client's guilt -- or that my client is guilty beyond all
7 reasonable doubt?

8 (No jurors respond audibly.)

9 MR. DANIEL: We're tried here with a co-defendant. It's
10 a little hard to try cases like this, because Mr. Miller's going
11 to try his case the way he wants to; we're going to try ours.
12 They're not -- just because they're tried together, it don't
13 mean that everything -- evidence is going to apply to both
14 parties. We think there may be evidence that comes in that's
15 from -- doesn't even apply to Mr. Sutton.

16 And the judge may instruct you, "Disregard that. Don't
17 you pay any attention to that as far as Mr. Sutton goes," our
18 client. But you're human, you sit here and you listen to it.
19 It's kind of like putting kerosene in milk, you can strain it
20 all day long and you can't get the taste out of it. You're
21 going to hear it, and it's hard to do that. But you're going
22 to have to, if you want to be fair and you want to do what's
23 right under the law, as the judge tells you. You're going to
24 have to try the evidence as to two separate defendants.
25 Because, just because something comes in as to one defendant

1 doesn't automatically mean it's to the other. We didn't want
2 to try this case together, but we're here.

3 **GENERAL SCHMUTZER:** Objection, Your Honor.

4 **THE COURT:** Sustained as to that. The Court's already
5 ruled on that, Mr. Daniel.

6 **MR. DANIEL:** Okay. But we're going to be here and we're
7 -- it's going to be tried together. They're both -- both cases
8 will be tried at the same time.

9 Now, we've talked, and when you start listening to all
10 the talk about death penalty and life imprisonment, we've jumped
11 the most important thing, and we're starting at the end instead
12 of the beginning. Because this is not a case, and you're not
13 sitting here to decide whether you're going to find a person --
14 put them in the electric chair or you're going to put them in
15 prison for the rest of their life. That's not the issue. The
16 issue here we're starting with is, is whether or not the State
17 can prove to you beyond all reasonable doubt that one or both
18 of these defendants are guilty. And I want to get that across,
19 because seems like when we start talking about this we get off
20 onto something that, by thought process, everybody's thinking,
21 'Well, are we going to give them life or are we going to give
22 them death?' That's not the point. Let's go back to Square One
23 and let's start with an issue. Especially you new jurors.

24 In this case, they're going to base it on circumstantial
25 evidence. The general's said that. He's got the proof that:

1 #1) That Connie Branum died as a result of a criminal
2 instrumentality, or that these boys killed her. That's what
3 they've got to prove. If they can't prove how she died, or if
4 there's any other reasonable explanation, or it could be any
5 other way that she died, then you can't vote for guilty, don't
6 matter if you want to convict somebody. Like one of these
7 jurors said, "I want to convict somebody. If there's somebody
8 dead, somebody ought to be convicted." Well, that's not what
9 we're here for. We're here to decide whether or not the proof
10 is here to convict these two defendants. They have denied it
11 from Day One; they still deny it.

12 They've entered a plea of not guilty here. They came
13 and talked -- the proof will show they came and talked to the
14 officers on two different occasions.

15 **GENERAL SCHMUTZER:** Your Honor, I object, Your Honor,
16 to him going into...

17 **MR. DANIEL:** And my question is on that: Will you
18 listen to the statements that they made to the officers, and
19 listen to what they've told them and listen to how they were
20 questioned. Will you take all that into consideration?

21 (No jurors respond audibly.)

22 **MR. DANIEL:** One juror said, "We wondered where she
23 was." If the proof should show -- let me ask you this: If the
24 proof should show that there was a person that had knowledge...

25 **GENERAL SCHMUTZER:** Your Honor, I would object to this.

1 This is going back to what I asked the Court to rule on before.

2 THE COURT: As I've advised counsel, and...

3 MR. DANIEL: Okay, Your Honor, I'll cover that on
4 opening statement, then.

5 THE COURT: Right. You will consider all of the
6 evidence, ladies and gentlemen, in light of all other evidence,
7 and in light of the instructions that the Court gives you. And
8 you may consider all evidence, regardless of who presents it,
9 on all issues.

10 MR. DANIEL: Then the question: If there is any other
11 reason or any other -- if the State can't prove to you to
12 exclude all reasonable hypotheses of guilt, would you hesitate
13 to return a not guilty verdict? Let's be straight-forward,
14 honest, and be honest with yourself and be honest with us. If
15 you can't do it, tell us. And we want to know that, because
16 that's the law you're going to try this case on. It's
17 circumstantial evidence case, and all circumstances must point
18 to the guilt of these defendants beyond all reasonable doubt.
19 Now, that's the law. It's got reasons behind it. Do all of you
20 feel like that everybody that's ever been convicted of any --
21 that there's never been an innocent person convicted? Do any
22 of you feel that way, that our system of justice has never...

23 GENERAL SCHMUTZER: Object to this, Your Honor. This
24 is...

25 THE COURT: I think we're getting a little bit far

1 afield here. Let's -- all of us can see cases where we've
2 agreed or disagreed with what the jury or the judge did. As a
3 lawyer I often did; even as a judge. I might disagree with what
4 some fellow judge or jury does, but that's not my call. It's
5 our call to do our duty upon our oath, and do the best job we
6 can here today and the following days.

7 MR. DANIEL: Ms. Griffin, I believe you're a housewife,
8 is that correct, ma'am? Did I understand that?

9 JUROR GRIFFIN: Yes.

10 MR. DANIEL: What does your husband do? What type of
11 work does he follow?

12 JUROR GRIFFIN: He maintains dialysis equipment, and
13 heart/lung machines.

14 MR. DANIEL: I'm sorry, I can't hear. I...

15 JUROR GRIFFIN: He maintains dialysis equipment and
16 heart/lung machines.

17 MR. DANIEL: Okay, eh works at most of the -- with the
18 hospitals?

19 JUROR GRIFFIN: Works at hospitals and dialysis units.

20 MR. DANIEL: Okay. As a result of that, does he have
21 any special training, like in forensic pathology? You know what
22 we're talking about? Cause of death, and people's cause of
23 death?

24 JUROR GRIFFIN: Oh, no, sir. All you have to do to do
25 that is to have a technical school degree in electronics.

1 **MR. DANIEL:** Does -- during that -- do you know, from
2 talking with him, if he's ever discussed with you that a person
3 can take pills and alcohol and cause problems with their liver
4 or cause death, or if you can kill yourself from taking pills
5 and alcohol? Did you ever have any discussions with him over
6 what he's doing, as far as preserving life, and how people can
7 die from different things?

8 **JUROR GRIFFIN:** Okay.

9 **MR. DANIEL:** I'm a little -- awkward question, but I...

10 **JUROR GRIFFIN:** Well, the question seems kind of odd in
11 that most people know that if you mix alcohol and drugs you can
12 die. I mean, that's kind of common knowledge. I was just
13 trying to picture...

14 **MR. DANIEL:** Yes. Yes. I just wondered if you all had
15 ever had discussions about that or talked about it?

16 **JUROR GRIFFIN:** No.

17 **MR. DANIEL:** I don't know if any -- if we've asked if
18 you've had prior jury service. Mr. Sullivan, did you ever sit
19 on -- is this your first time?

20 **JUROR SULLIVAN:** No, sir. Right.

21 **THE COURT:** Did you hear the Court's statement about the
22 difference in the burdens of proof in a civil and criminal case?
23 Understand that the burden remains on the state of Tennessee to
24 prove it beyond a reasonable doubt and a moral certainty. Do
25 you understand that concept? And that the defendant has no

1 burden of proof, doesn't have to offer any evidence, whatsoever?

2 JUROR SULLIVAN: Yes.

3 THE COURT: Okay.

4 MR. DANIEL: And that presumption of innocence that
5 we're talking about kind of -- I've heard it says it stands like
6 a cloak, and it drapes around you all through the entire trial,
7 the whole trial. At no time does the defendant ever have to
8 prove his innocence in any way. Now, that being the law, do any
9 of you have any quarrels or disagreement with that rule of law?

10 (No jurors respond audibly.)

11 MR. DANIEL: Would you want that same law applied to you
12 if you were sitting over here as defendant?

13 (No jurors respond audibly.)

14 MR. DANIEL: Mr. Sullivan, you said you were a salesman.
15 And I can't -- maybe I'm getting to where I can't hear, but I
16 couldn't hear what you said, who you worked...

17 JUROR SULLIVAN: I sell plastic pipe valves and
18 fittings.

19 MR. DANIEL: Okay. Who do you sell for?

20 JUROR SULLIVAN: Plastic Pipe Systems in Knoxville.

21 MR. DANIEL: Okay. You live in the Seymour area, is
22 that correct?

23 JUROR SULLIVAN: Yes, I do.

24 MR. DANIEL: Are you married?

25 JUROR SULLIVAN: No, sir.

1 MR. DANIEL: Mr. Caughron, who do you work for, sir?
2 I'm sorry, I couldn't hear you.

3 JUROR CAUGHRON: TVA.

4 MR. DANIEL: TVA?

5 JUROR CAUGHRON: Tennessee Valley Authority, Knoxville.
6 General maintenance mechanic. I should be down there right now
7 (inaudible).

8 MR. DANIEL: Trying to get it cleaned up, huh? How long
9 you been with TVA?

10 JUROR CAUGHRON: Ten years.

11 MR. DANIEL: Ms. Griffin, have you ever worked outside
12 the home?

13 JUROR GRIFFIN: Yes, sir.

14 MR. DANIEL: What type of work did you follow?

15 JUROR GRIFFIN: I worked in the printing industry.

16 MR. DANIEL: Let me ask you, since Mr. Caughron's been
17 very candid and frank about this. We're here in the case, and
18 in these type of cases the law says that the jury must be what
19 they call sequestered, and that's kept separate and apart from
20 other people during the trial and during deliberations. Is --
21 because of that, do you feel that you would blame the defendants
22 in any way? They don't want to be here, either, but they're
23 here and you're here.

24 JUROR CAUGHRON: I won't be offended. They take good
25 care of me.

1 **MR. DANIEL:** Okay. So, but would you hold that against
2 the defendant in any way? Because that's the law. There's
3 nothing we can do about that. You understand that?

4 (No jurors respond audibly.)

5 **MR. DANIEL:** Have any of you got any relatives or real
6 close friends in law enforcement?

7 (No jurors respond audibly.)

8 **MR. DANIEL:** I guess I've asked this of all the rest of
9 you, but I don't know if it's been... Do any of the rest of the
10 jurors, anybody, have any brothers, sisters, cousins, aunts, or
11 close friends, what you call one of your best friends or close
12 friends in law enforcement?

13 (No jurors respond audibly.)

14 **MR. DANIEL:** Do any of you feel like you believe a
15 police officer's statement over another person -- testimony over
16 another person, merely because he's a police officer?

17 (No jurors respond audibly.)

18 **MR. DANIEL:** You feel like because a person's a police
19 officer, he would be believed any more than anybody else? Do
20 you, Mr. Sullivan?

21 **JUROR SULLIVAN:** (No audible response.)

22 **MR. DANIEL:** You take them as you see them, see what --
23 everybody's entitled to be believed, then you'd believe them?

24 **JUROR SULLIVAN:** (No audible response.)

25 **MR. DANIEL:** Can I have just a minute?

1 (Mr. Daniel confers with other defense counsel.)

2 MR. DANIEL: No further questions.

3 THE COURT: All right. Submit your challenges,
4 gentlemen. If you'll collect those for me, Mr. Maynard.

5 (Peremptory Challenge Slip #2 was submitted, and the
6 following jurors were excused: Juror Turner, Juror
7 Burns, and Juror McCarter.)

8 (The following jurors were called to fill the jury box:
9 Larry F. Williams, Samuel R. Warwick, and Dale J.
10 Becker.)

11 THE COURT: Have all of you gentlemen heard all the
12 questions here today?

13 (No jurors respond audibly.)

14 THE COURT: More times, I take it, than you've wanted
15 to hear them.

16 I must ask you about the issues concerning the pretrial
17 publicity. Have you, Mr. Becker, heard anything about this case
18 before you came here today?

19 JUROR BECKER: Yes.

20 THE COURT: Have you formed an opinion based on what
21 you've read or heard?

22 JUROR BECKER: No.

23 THE COURT: Okay. Mr. Williams, have you formed an
24 opinion based on anything that you've read or heard?

25 JUROR WILLIAMS: No, sir.

1 **THE COURT:** Okay. And Mr. Warwick, same question: Have
2 you formed any opinion based on anything you've read or heard?

3 **JUROR WARWICK:** No.

4 **THE COURT:** Okay.

5 **JUROR WARWICK:** I have heard some publicity about it,
6 but no.

7 **THE COURT:** Haven't formed any opinion? Okay, sir,
8 thank you.

9 In regards to the death penalty, I've explained that.
10 It is a sentencing option only in the event of a conviction of
11 first degree murder. Mr. Becker, is there anything that morally
12 would prevent you from considering it as a sentencing option?

13 **JUROR BECKER:** No, there's not.

14 **THE COURT:** Okay. Mr. Williams?

15 **JUROR WILLIAMS:** No, sir.

16 **THE COURT:** And Mr. Warwick?

17 **JUROR WARWICK:** No.

18 **THE COURT:** Okay. Now, I believe at our luncheon break,
19 Mr. Williams, I had asked those jurors who had some reason that
20 they felt like they couldn't serve, in regards to employment or
21 otherwise, and you stated that you knew some of the people
22 involved, is that correct, sir?

23 **JUROR WILLIAMS:** Yes. On both sides.

24 **THE COURT:** Now -- on both sides of the family? Do you
25 live in the same community?

1 JUROR WILLIAMS: No, sir. I know the Sutton boy some,
2 and I (inaudible).

3 THE COURT: His uncle, a Blount -- okay.

4 JUROR WILLIAMS: I know the Branum girl, and I've
5 (inaudible).

6 THE COURT: Okay. Because of your knowledge of these
7 people, do you feel that you could sit fairly and impartially
8 to both sides in this case?

9 JUROR WILLIAMS: (Inaudible).

10 THE COURT: I understand that, sir, and I appreciate
11 that. But do you feel like that if you sit on this jury that
12 you can make your decision without prejudice or sympathy to
13 either side or to any person, and do your duty according to the
14 oath you'll take here?

15 JUROR WILLIAMS: Yes.

16 THE COURT: Okay. Anyone else? Either Mr. Warwick or
17 Mr. Becker have any problem with anything that's been asked or
18 stated here today?

19 JUROR WARWICK: I have a problem with the circumstantial
20 evidence.

21 THE COURT: Okay, let's talk about that.

22 JUROR WARWICK: I feel like I have a problem, and I
23 would be -- it would be hard for me to decide a verdict of
24 guilty based on circumstantial evidence.

25 THE COURT: Okay, even -- even if the law says

1 otherwise?

2 JUROR WARWICK: Yes, sir, I do, with this type of case.

3 THE COURT: Okay. Understanding that in some cases it
4 would be -- it would be your duty to convict as much on
5 circumstantial evidence as it would on direct evidence?

6 JUROR WARWICK: Yes, sir.

7 THE COURT: Okay.

8 JUROR WARWICK: I do not disagree with the law, I just
9 do not personally agree.

10 THE COURT: Yeah. That's your privilege. So you don't
11 feel like that in any case that you could convict someone on
12 only circumstantial evidence?

13 JUROR WARWICK: Not of first degree murder.

14 THE COURT: Okay. Okay. Well, based on that we'll let
15 you go, Mr. Warwick. Thank you, sir. And that way you don't
16 have to worry about those problems you stated to the Court.

17 JUROR WARWICK: I would rather worry about those than...

18 THE COURT: Thank you. Thank you, Mr. Warwick.

19 (Juror Warwick is excused.)

20 (The following juror was called to fill the jury box:
21 Catherine Q. Maples.)

22 THE COURT: Have you heard all the questions,
23 Ms. Maples?

24 JUROR MAPLES: Yes, sir.

25 THE COURT: Anything that's been asked that raised a

1 problem for you so far?

2 JUROR MAPLES: Huh-uh (negative).

3 THE COURT: Have you read or heard anything about this
4 case that's caused you to form an opinion?

5 JUROR MAPLES: No, sir.

6 THE COURT: Okay. How about the death penalty? Is it
7 a -- is it a sentencing option that you would consider in the
8 event of a conviction for first degree murder?

9 JUROR MAPLES: (No audible response.)

10 THE COURT: Is it something that you would automatically
11 impose, or is it something that you would consider after the
12 Court instructed you on the aggravating factors and the
13 mitigating factors?

14 JUROR MAPLES: All factors.

15 THE COURT: Okay. All right. General Schmutzer?

16 GENERAL SCHMUTZER: Just -- trying to see who all...
17 Mr. Williams, I've got Mr. Williams just come in. Bouncing
18 around. I have Ms. Maples. And, let's see, Mr. -- that's
19 Becker, isn't it? "B"? Where do you live, Mr. Becker?

20 JUROR BECKER: In Wears Valley.

21 GENERAL SCHMUTZER: Okay, sir. And your occupation?

22 JUROR BECKER: I'm self-employed.

23 GENERAL SCHMUTZER: Okay. And in what capacity, sir?

24 JUROR BECKER: Rental property. I do rental showings
25 in Gatlinburg, and also (inaudible).

1 **GENERAL SCHMUTZER:** Thank you very much.
2 Let's see, now, Ms. Maples, where do you live, please?
3 **JUROR MAPLES:** Pigeon Forge.
4 **GENERAL SCHMUTZER:** Okay. And your occupation?
5 **JUROR MAPLES:** (Inaudible).
6 **GENERAL SCHMUTZER:** I'm sorry?
7 **JUROR MAPLES:** (Inaudible).
8 **GENERAL SCHMUTZER:** Thank you. And Mr. Williams?
9 **JUROR WILLIAMS:** (Inaudible).
10 **GENERAL SCHMUTZER:** All right, sir.
11 **JUROR WILLIAMS:** (Inaudible).
12 **GENERAL SCHMUTZER:** I'm sorry?
13 **JUROR WILLIAMS:** Installing (inaudible).
14 **GENERAL SCHMUTZER:** Okay, thank you, sir.
15 Mr. Warwick---and I appreciate his candor---stated that
16 he just couldn't decide a case, first degree murder case, in
17 particular, on circumstantial evidence, even though the law says
18 that it's as much your duty to do that as... Anyone else, in
19 thinking over it, may have that same thought, let me... You
20 know, because it's interesting, because in a first degree murder
21 case, in particular, if you realize, there'd be a lot of them
22 that wouldn't be solved if you had to wait 'til you found a
23 eyewitness or get a confession. Because, by the very nature of
24 the crime, itself, the victim can't testify. So do any of you
25 have any difficulty?

1 (No jurors respond audibly.)

2 **GENERAL SCHMUTZER:** Do you understand that this was
3 circumstantial evidence; without circumstantial evidence a lot
4 of murder cases would go unsolved. You don't -- you know, many
5 murders are committed in such a way that other people aren't
6 watching, aren't looking, and people don't always admit to their
7 crimes. One of the hardest things for a person to do is to
8 admit to their own offenses, what they have done. So if we had
9 to wait on that, be few solved. I take it none of you have any
10 problems with circumstantial evidence.

11 (No jurors respond audibly.)

12 **GENERAL SCHMUTZER:** It was mentioned about being an
13 individual juror, and you are. But do any of you feel as though
14 that you would make up your mind and go into the jury room and
15 just sit there and not listen to what the other jurors said, or
16 would -- you know, do any of you feel like you'd do that? Stub
17 up?

18 (No jurors respond audibly.)

19 **GENERAL SCHMUTZER:** I take it none of you would. You
20 would follow the admonition---I think it's a Biblical
21 admonition---to reason together, obviously listening to what
22 everyone else has to say. That's why we have 12 people, because
23 not everyone hears everything. And listen to other viewpoints
24 before making up your mind, and then making your own decision.
25 And at that point, obviously, that's a matter of conscience with

1 you. But I take it you don't have any problems with reasoning
2 together. Does anyone? I mean, don't assume anything. Let me
3 just ask you. Does anyone have any problems with that?

4 (No jurors respond audibly.)

5 **GENERAL SCHMUTZER:** I take it you don't.

6 The -- any of you, as you sit there, think that you
7 would have any difficulty in following the Court's instruction
8 that, if selected as a juror, you'll decide this case without
9 sympathy or prejudice, and that you will fearlessly do your
10 duty? That you won't be cowed or intimidated, but do it based
11 upon the facts and the evidence in this case, and the law given
12 to you by the Court?

13 (No jurors respond audibly.)

14 **GENERAL SCHMUTZER:** I take it by your silence none of
15 you would have any problems with doing that if you're called
16 upon to sit.

17 In that regard, it's been mentioned over and over again
18 about reasonable hypotheses. And, as I pointed out to you in
19 circumstantial evidence, the key word is "reasonable." You're
20 certainly going to hear in this case other hypotheses other than
21 the hypotheses of guilt being offered. I submit to you that the
22 key to that is going to be to take that hypotheses and hold it
23 up to all of the evidence in the case---all of the evidence in
24 the case---to see whether or not it is reasonable. Any of you
25 have any difficulties with that, in dismissing that hypotheses,

1 if it, in fact, is not reasonable?

2 (No jurors respond audibly.)

3 **GENERAL SCHMUTZER:** I take it you wouldn't. Think of
4 anything at all I haven't covered?

5 Let me just ask -- one other question. I haven't asked
6 this of anyone. Has my office -- it's been asked about us
7 representing someone. By the same token, has our office ever
8 prosecuted anyone that you were close to, or a family member,
9 or anything else like this at any time? Any relative?

10 (No jurors respond audibly.)

11 **GENERAL SCHMUTZER:** I take it they haven't. Thank you.

12 **THE COURT:** Mr. Miller?

13 **MR. MILLER:** Mr. Williams, you stated that you had some
14 relationships with people on both sides of the case, and I
15 didn't catch all those. Will you tell me those again.

16 **JUROR WILLIAMS:** The Sutton boy's uncle (inaudible).
17 Of course, I've knowed him and his daddy for over the years, and
18 they was -- I guess (inaudible). I sort of know the boy along
19 that way. Like I say, I don't (inaudible) the Branum girl's
20 first husband.

21 **MR. MILLER:** What's her name?

22 **JUROR WILLIAMS:** (Inaudible).

23 **MR. MILLER:** Yes.

24 **JUROR WILLIAMS:** Sue Williams.

25 **MR. MILLER:** Okay. And no doubt she probably has some

1 interest in this case, at least the outcome of the case, and I'm
2 sure you'll be going back to church and seeing her there. Is
3 that going to make you feel uncomfortable if you were to find
4 these boys not guilty?

5 JUROR WILLIAMS: Well, like I said, I'd rather not sit
6 on the jury. I'd rather (inaudible). But I have a -- it
7 wouldn't bother me, but...

8 MR. MILLER: Let me ask you this question: Would that
9 be -- when they're back there deliberating, would you be
10 thinking about that and your relationship you have through
11 church with -- with that lady?

12 JUROR WILLIAMS: I wouldn't base my judgment on
13 (inaudible).

14 MR. MILLER: You don't think it would bother your
15 judgment at all?

16 JUROR WILLIAMS: I wouldn't think so.

17 MR. MILLER: Well, do you think it would affect your
18 judgment at all, somehow being in the back of your mind?

19 JUROR WILLIAMS: (No audible response.)

20 MR. MILLER: Thank you.

21 Mr. Williams, have you heard any -- through your
22 relationship with the lady there at the church, heard anything
23 she said about the case?

24 JUROR WILLIAMS: Nothing more than I've heard on the
25 news (sic).

1 MR. MILLER: Okay. You hear anything, any gossip around
2 town about the case, or just hear it on the news?

3 JUROR WILLIAMS: (Inaudible).

4 MR. MILLER: You didn't?

5 JUROR WILLIAMS: I didn't (inaudible).

6 MR. MILLER: But you haven't formed any conclusions one
7 way or the other, based on what you heard?

8 JUROR WILLIAMS: (No audible response.)

9 MR. MILLER: Mr. Becker, you said you had heard some --
10 somewhat about the case through the media, is that correct?

11 JUROR BECKER: Yes.

12 MR. MILLER: And you haven't heard -- I mean, haven't
13 formed any opinions based on what you heard, is that true?

14 JUROR BECKER: No.

15 MR. MILLER: And likewise, Ms. Maples, you've heard some
16 about the case?

17 JUROR MAPLES: Yes.

18 MR. MILLER: But not formed an opinion?

19 JUROR MAPLES: (No audible response.)

20 MR. MILLER: Each of you can lay what you've heard or
21 read in the paper aside, and focus on the testimony here this
22 week, and base your decision on that?

23 (No jurors respond audibly.)

24 MR. MILLER: That brings a point, as far as trying to
25 -- Mr. Daniel talked about we're not trying this case through

1 the media, based on what you all have heard through the media.
2 And I think something that surprised a lot of people was the
3 Rodney King case out in Los Angeles, where people had the police
4 officers out there tried and convicted long before they ever
5 went to trial. People just thought that was wrong, whatever
6 they did, whatever they saw on the video tape. But when the
7 jury sat there and saw all the proof, not just this slight
8 portion of the video tape, they did their job as they saw fit,
9 despite the fact that it set off I guess the largest riots we've
10 ever had in this country. Very courageous jurors that will do
11 their duty.

12 And I don't know what -- what would happen if you all
13 found these boys not guilty. That may set off a rash of
14 killings, I don't know. But that's not what you're to be
15 concerned with. You're to do exactly what Mr. Schmutzer said,
16 fearlessly do your duty without thinking about what the
17 implications of that may be. Your duty is to follow the law and
18 judge the facts. Can each of you all do that without regard to
19 what may happen later, or who may be affected.

20 Mr. Cole, I believe you said you lived up on King
21 Branch, is that correct?

22 JUROR COLE: Yes.

23 MR. MILLER: Do you know any of the McClures up there
24 in that area?

25 JUROR COLE: I went to school with a McClure.

1 MR. MILLER: Okay. It was brought to my attention that
2 maybe some of the Griffins had visited up there in King Branch.
3 You don't have any relationship with any of them?

4 JUROR COLE: (Inaudible).

5 MR. MILLER: Mr. Williams, Mr. Becker, and Ms. Maples,
6 I think you said you'd never had a case prosecuted by the
7 attorney general's office, is that correct?

8 (No jurors respond audibly.)

9 MR. MILLER: Do you all have any association with the
10 law enforcement in any county? Not just in Sevier County. Yes,
11 sir?

12 JUROR WILLIAMS: I have a cousin that's a deputy.

13 MR. MILLER: Where's he a deputy?

14 JUROR WILLIAMS: Sevierville.

15 MR. MILLER: What's his name?

16 JUROR WILLIAMS: Travis Reed.

17 MR. MILLER: Okay. And, again, you've heard the reason
18 I ask this question. You're not going to believe his testimony
19 over anybody else because he wears a badge or -- or a uniform,
20 is that correct?

21 JUROR WILLIAMS: (No audible response.).

22 MR. MILLER: I've asked, I think, most of you all if
23 you've ever been the victim of any crime. Have you had a
24 relative or close associate of any kind that's been the victim
25 of a crime? Yes, Mr. Williams?

1 JUROR WILLIAMS: I think years ago, I think, I had a
2 cousin to get killed (inaudible).

3 MR. MILLER: Okay. Was that case prosecuted by the --
4 taken to court?

5 JUROR WILLIAMS: Yes, sir.

6 MR. MILLER: Were you satisfied with the outcome,
7 whatever it was, of that?

8 JUROR WILLIAMS: Well, I don't (inaudible).

9 MR. MILLER: Okay. Anybody else have a similar
10 experience to tell me about?

11 (No jurors respond audibly.)

12 MR. MILLER: That's all, Your Honor.

13 THE COURT: Okay.

14 MR. DANIEL: Mr. Williams, is that correct? Your name?

15 JUROR WILLIAMS: (No audible response.)

16 MR. DANIEL: You say you have a brother-in-law who's a
17 deputy sheriff or...?

18 JUROR WILLIAMS: No, cousin.

19 MR. DANIEL: Cousin. And he works here with the
20 sheriff's department?

21 JUROR WILLIAMS: I think he's a patrolman.

22 MR. DANIEL: And you say you go to church with -- you
23 used to go to church with Mr. Sutton's family, and his uncle --
24 where his uncle's a preacher?

25 JUROR WILLIAMS: His uncle's a pastor.

1 **MR. DANIEL:** Pastor of the church? But now you go to
2 church with -- where one of the other parties...?

3 **JUROR WILLIAMS:** I go to the same place. He was the
4 pastor there (inaudible).

5 **MR. DANIEL:** Okay, sir.

6 The -- as I understood General Schmutzer, he says that
7 ---if I heard him correctly and wrote it down---that there will
8 be other hypotheses, but that the question is -- talked about
9 their reasonableness. Assuming that -- and he's admitting that
10 there will be other hypotheses in this case, or he's making this
11 statement, that my question to you would be would you follow the
12 law as the judge will tell you what the law is. If there are
13 other hypotheses, the facts must exclude every other reasonable
14 theory or hypotheses, except that of guilt. Now, will you hold
15 the State to that test? And if it's -- if there is -- if they
16 can't prove to you beyond -- exclude all others, will you --
17 would you hesitate to vote not guilty?

18 (No jurors respond audibly.)

19 **MR. DANIEL:** Ms. Maples, you understand that?

20 **JUROR MAPLES:** (No audible response.)

21 **MR. DANIEL:** Do you feel like that sometimes the
22 circumstances can point to something, but there's always
23 something else could be an explanation for that?

24 **JUROR MAPLES:** (No audible response.)

25 **MR. DANIEL:** Did you ever walk down the street and see

1 somebody, think you spoke to them, and find out later it wasn't
2 that person at all? Had that happen? Everybody's had that
3 happen to them, I guess. Or see something that you think you
4 saw, or hear something you think you heard, and find out later
5 that maybe you was mistaken?

6 (No jurors respond audibly.)

7 MR. DANIEL: The same token, that certain circumstances
8 can look -- maybe under certain circumstances things can look
9 like they're a certain way, when actually there's another
10 explanation for it. Do you understand that?

11 (No jurors respond audibly.)

12 MR. DANIEL: That's the reason. Our law's usually based
13 on reasoning. Before you can convict somebody, take their
14 freedom, put them to death, whatever you -- whatever the kind
15 of case it might be, whether it's a small case of shoplifting
16 or public drunkenness or whether it's a murder case, the law
17 says we have rights. And if the State's going to try to do
18 that, convict you, that they're going to have to follow some
19 rules. And before they can take a circumstantial evidence case,
20 when they don't have any direct proof that you did it and
21 they're trying to put together some circumstances, they've got
22 to exclude every other hypothesis except that of guilt.

23 GENERAL SCHMUTZER: Your Honor, that's not stating the
24 law, it's every other reasonable hypothesis. "Reasonable" is
25 in there, and object to that, Your Honor.

1 **THE COURT:** Ladies and gentlemen, the lawyers, like the
2 Court after a long day, they start trying to paraphrase and so
3 forth. But the law says that in order to convict on
4 circumstantial evidence, that the State must exclude every other
5 reasonable hypothesis except that of guilt. That's the law.
6 Go ahead, Mr. Daniel.

7 **MR. DANIEL:** I believe it's every other reasonable
8 theory and -- theory or hypothesis, isn't that correct, Your
9 Honor?

10 **THE COURT:** Right. Right. See, there I was shortening
11 it up.

12 **MR. DANIEL:** I happen to have the charge out of the
13 book. I'm not smart enough to remember it, but I have that.

14 **THE COURT:** I'm not either, apparently.

15 **MR. DANIEL:** Also, I asked some other juror -- potential
16 jurors earlier, and I'd like to ask you all. In this case there
17 may be expert witnesses. And an expert is somebody that they
18 let give an opinion, because an ordinary person's not supposed
19 to give opinions on things, but if you've got a little
20 background and training in something, in certain situations,
21 they let you give your opinion, what you think it might be. Do
22 all of you understand that experts are giving opinions, and that
23 if the judge charged you the law that the testimony should be
24 received with caution, would you follow that? And if an expert
25 testifies, you need to receive his testimony with caution.

1 Would you follow that law, if the judge tells you that's the
2 law?

3 (No jurors respond audibly.)

4 MR. DANIEL: And also said it's a field of speculation,
5 it's beset with pitfalls and uncertainties. And would you --
6 if the judge told you that that was part of the charge regarding
7 circumstantial evidence, will you listen to his charge and
8 follow the charge the judge gives you?

9 (No jurors respond audibly.)

10 MR. DANIEL: I think it was asked of you, and we're
11 getting -- getting late in the day, and I know these other
12 jurors sit here and listen to this 'til they get tired of it,
13 but it is an important case, and we want to make sure that --
14 we want to -- that any juror that sits down, you're just as
15 important if you came in the last juror as you were if you were
16 the first juror. You're just as important.

17 The publicity you may have read or heard on this case,
18 you're going to be able to lay that aside and try this on the
19 facts that you -- as you hear it here in the courtroom? I don't
20 know what all the publicity's been, 'cause I've heard some, I
21 remember reading some of it, some of it I forgot. I -- as I
22 said early this morning, I heard something on the radio, and as
23 I understand it, their theory on the radio's not even the
24 State's theory. So, that shows you that sometimes they're even
25 not -- they're not right in every respect. Will you listen to

1 what you here in the courtroom, and do you understand that the
2 defendant puts on his proof last, and you've got to wait 'til
3 all the proof is in before you attempt to try to make up your
4 mind? And when you make up your mind, you're going to have to
5 decide for yourself has the State excluded every other
6 reasonable hypothesis, other than that of guilt of these
7 defendants? Because I think that's what this case will boil
8 down to. Will you do that, and will you listen to the evidence
9 and...?

10 (No jurors respond audibly.)

11 MR. DANIEL: If you was as unfortunate as these boys are
12 to be sitting over here you'd want that same law applied to you,
13 is that right? If you were charged.

14 (No jurors respond audibly.)

15 MR. DANIEL: You all understand that the fact that
16 they're here and charged don't mean they're guilty of anything.
17 It's just a formal accusation that's been brought against them
18 by the State, and that they're here to defend themselves (sic)?
19 You understand that?

20 (No jurors respond audibly.)

21 MR. DANIEL: Some people think just because you're
22 sitting over there you must be guilty of something or you
23 wouldn't be over here. It doesn't work that way; that's not the
24 way our justice system works.

25 General made a statement, said if you was in there would

1 you stub up or would you be intimidated by somebody. I -- I
2 don't know about the word "stub up" or what, but my question is
3 this: Every one of you all are individual jurors. You have to
4 go have your own conscience to decide this case. You have to
5 live with it after you leave. You may never see those other
6 jurors, you may never see me, the State, or these defendants or
7 whatever. But whatever verdict you render, you're going to have
8 to go and live with it. If you vote -- if you had a reasonable
9 doubt, and you went and you voted guilty because somebody else
10 maybe put pressure on you, or felt like they had a more
11 domineering personality than you did and they could coax you
12 into doing that.

13 Would any of you hesitate, if you had a reasonable doubt
14 after you've heard this case, to stand up to the world, to the
15 jury, to anybody else and say, "No, I had a reasonable doubt,
16 and I'm voting not guilty, and that's what I'm -- my conscience
17 says, and that's what I'm going to live with." Would you all
18 do that? Would you have any problem with that?

19 (No jurors respond audibly.)

20 **MR. DANIEL:** Mr. Sullivan, would you have any problem
21 doing that? You don't feel like you have to explain anything
22 to anybody, do you? You don't. You don't have to explain to
23 me, you don't have to explain to the attorney general, police
24 officers, or the judge, or anybody. Nobody does. You shouldn't
25 have to. So if you do that, would you have any -- would you

1 have any quarrels or hesitancy to do so?

2 JUROR SULLIVAN: (No audible response.)

3 MR. DANIEL: In this case the State goes first, we put
4 on our proof last. You'll hear a lot of proof come in through
5 cross-examination, and that's what you question people about
6 things that they've said (sic), got a right to pick at them a
7 little bit and see if their opinions and stuff is not maybe --
8 has got pitfalls, like with experts, if it's not based on
9 conjecture and speculation and things of this nature. Are there
10 -- there's some reasonable explanation, other than what
11 somebody's trying to say. Will you listen to all of that
12 evidence, if chosen as jurors?

13 (No jurors respond audibly.)

14 MR. DANIEL: And like I said to these other jurors, and
15 Ms. Maples and -- I've talked to these other jurors about this.
16 We started out talking about the death penalty and first degree
17 murder. But you all understand that's something the judge has
18 to talk to you about, because the State has elected to ask for
19 the death penalty. That's their prerogative. They've got a
20 right to ask for it if they want to. But just because they ask
21 for it, we're not starting out with the premise that somebody's
22 guilty of anything. It seems like when we start talking here,
23 when I first sit over here, after awhile I thought we were
24 questioning whether we were going to give the electric chair or
25 life in prison. We've jumped the whole judicial process of

1 whether or not they could even prove these boys guilty beyond
2 a reasonable doubt. But will you lay all that aside, that we've
3 talked about all this, and try this case on the facts and the
4 proof that comes in as to their guilt or innocence? Can you do
5 that and will you do that?

6 (No jurors respond audibly.)

7 MR. DANIEL: Do you understand that's just the procedure
8 the Court has to go through. The judge doesn't insinuate or
9 make any suggestions whatsoever that he thinks that there --
10 anybody's guilty of anything. That's just a method he has to
11 do; the law requires him to ask those questions when we start
12 the trial. You all understand that? And so we start...

13 (No jurors respond audibly.)

14 MR. DANIEL: Do you have any quarrels or disagreement
15 with that, with what I've said about the law? Any of you feel
16 like that our laws are unfair, or it's improper (sic) that a --
17 the State should not have to prove a person guilty beyond a
18 reasonable doubt? Do any of you feel that that's -- that's an
19 unfair burden on the State, that they shouldn't have to do that?
20 And if they're going to say something and there's some proof to
21 it, whether it's beyond a reasonable doubt, that that's
22 sufficient to convict. Do any of you feel that way?

23 (No jurors respond audibly.)

24 MR. DANIEL: May I have just a moment?

25 (Mr. Daniel confers with other defense counsel.)

1 MR. DANIEL: No further questions.

2 THE COURT: Okay.

3 (Peremptory Challenge Slip #3 was submitted, and the
4 following jurors were excused: Juror Baumann and Juror
5 Johnson.)

6 THE COURT: Counsel approach the bench. Ms. Baumann and
7 Mr. Johnson, the Court appreciates your time, and you all are
8 free to go. Thank you. All counsel approach the bench.

9 (A bench conference is held on the record, to-wit:)

10 THE COURT: I think I've about reached my saturation
11 point for today.

12 MR. DANIEL: I think I have, too. I don't know if I'm
13 just getting old or what. I hate to admit it.

14 THE COURT: Well, you and General Schmutzer both have
15 one foot in the grave, you know, with your ages.

16 GENERAL SCHMUTZER: I'm doing great, Judge. He's the
17 one that's...

18 THE COURT: But I think...

19 MR. DANIEL: It's up to you, Judge.

20 THE COURT: Well, because of the making of arrangements
21 for the jurors who are in the box...

22 MR. DANIEL: Judge, I don't care -- I don't know one way
23 or the other. Do you have to separate them, or is that
24 the law?

25 THE COURT: I don't think it...

1 **GENERAL GREEN:** (Inaudible), is that what you're talking
2 about doing?

3 **THE COURT:** No, sequestering them for the night.

4 **MR. DANIEL:** The reason I say this, I don't know that
5 -- I'm always kind of afraid of (inaudible).

6 **MR. WEBB:** I think what you're saying, they can -- if
7 they don't have to be sequestered, they've not been
8 sworn, we don't have any...

9 **GENERAL SCHMUTZER:** This is same first degree murder
10 case, and I don't -- I've always thought...

11 **THE COURT:** After they've been sworn.

12 **MR. DANIEL:** I don't know if you have to.

13 **THE COURT:** If you'll let us take a break and look at
14 the statute, I am inclined, very honestly, you know,
15 absent...

16 **MR. DANIEL:** We could theoretically challenge every one
17 of these off, I mean, I guess, if there's enough...

18 **THE COURT:** Yeah. Yeah. The jurors have not been
19 sworn.

20 **MR. DANIEL:** I'm not suggesting they do; I'm just saying
21 as long as they -- nobody comes around or does anything
22 improper, and I would think -- I mean, it's - their
23 families -- I don't think either one of them knows any
24 of these people. I hope not. I think everybody's been
25 kicked off that would have any knowledge, and I think...

1 THE COURT: If you want to check the statute, if he
2 wants to take a break and check the statute on that.
3 But I'm inclined to -- I think that you don't have to
4 sequester them until they are sworn and selected, is my
5 understanding of the law, to be honest with you.

6 GENERAL SCHMUTZER: I honestly don't know.

7 THE COURT: Let's take a recess, and if you'll run
8 upstairs and get your statute on that.

9 MR. DANIEL: Now, Judge, I'm not suggesting you let
10 them, I'm just saying...

11 THE COURT: I know, but...

12 GENERAL SCHMUTZER: Now, Judge, you know, the thing is,
13 and I -- probably nothing would happen. But a case of
14 this magnitude, though, with television and papers,
15 too,...

16 THE COURT: Of course, I'd... All of them -- most of
17 our panel that's left, of course, is going home.

18 GENERAL SCHMUTZER: You've got one on the panel, I
19 think, that's (inaudible).

20 THE COURT: Oh, sure. Yeah. Yeah. Sure, could be.

21 GENERAL SCHMUTZER: We've got family on both sides
22 that...

23 MR. MILLER: He might rather be sequestered.

24 THE COURT: Huh?

25 MR. MILLER: He might rather be sequestered.

1 THE COURT: Well, if you all want them locked up, I'll
2 lock them up.

3 GENERAL SCHMUTZER: I'm not really wanting to, I just
4 think there's just a -- and there's -- there's a -- you
5 know, I think it'd be the prudent thing to do.

6 MR. DANIEL: It could be that some of them get kicked
7 (inaudible).

8 THE COURT: Yeah, that's right.

9 GENERAL SCHMUTZER: Just to be cautious.

10 THE COURT: I might have to think about this a minute,
11 if you're agreeing here on something. I can't imagine
12 how we could come to this.

13 MR. DANIEL: Getting late in the day.

14 THE COURT: Yeah, I'm going to shut her down. I'm going
15 to shut her down.

16 (The bench conference having been concluded, the
17 following proceedings were had in open court.)

18 THE COURT: Ladies and gentlemen, because of the time,
19 if I thought we could conclude the jury process here today I
20 would stay later. If I thought I could finish it. But I can't.
21 We can't. Likewise, because arrangements have to be made to
22 keep those jurors who have already sat in the box overnight, I
23 want to give the officers and Ms. Helen a chance to make those
24 arrangements, and likewise give you an opportunity to call home
25 and make the necessary arrangements for your own personal

1 affairs here tonight.

2 Now, for all of you, both in the box and not in the box,
3 I must caution you not to read any newspapers, not to listen to
4 any radio news broadcasts, or not to watch any television news
5 broadcasts over the nighttime. Do not let anyone call your
6 home, obviously call your motel room. I don't think they could
7 get through at the motels, but don't let anyone talk to you
8 about that case. If somebody calls you and tries to, you tell
9 them what a jerk that judge is, and he says I'm not to talk
10 about it. And if they try to talk to you about it, cut them off
11 and report that to us in the morning. If you can find out who
12 they are, please let us know that.

13 Be back here in the morning at 9:00. I hope we can
14 start promptly, and conclude the jury selection process as
15 quickly as possible. Now, I say those in the box, of course,
16 will have to stay overnight. The officers will assist you in
17 making arrangements with your families and your home and any
18 special needs that you have. So -- yes, those of you---hold on
19 a minute---who are in the box, just remain in the box until
20 arrangements are made for you to get in the clerk's office, and
21 for us to move you, and the rest of you may go until 9:00 a.m.
22 in the morning.

23 (Whereupon, the court is recessed until February 17,
24 1993, at 9:00 a.m.)

P R O C E E D I N G S

THE COURT: By way of announcement, over the evening we subpoenaed -- issued subpoenas for an additional 40 jurors. For those who were subpoenaed last night, you will be on standby, and may leave and come back at 2:00. If for some reason the jury is able to be selected from the current pool that we have, of course, I would let you go. But if you were subpoenaed last night, after you have signed in, you are free to leave and come back at 2:00. Is there anything we need to take up before we bring the...

GENERAL SCHMUTZER: Yes, Your Honor, there's one matter. If I could approach the bench.

THE COURT: Sure.

(A bench conference is held on the record, to-wit:)

GENERAL SCHMUTZER: Your Honor, last night this is the report I received on this Brian Sturgill. It's handwritten out and signed by Zane Daniel, and it simply says, "Met with officers at," something, "company at Oak Ridge. They observed him -- his examination, took evidence with them when they left. Found some markings on one shell which was not on the others. He would be reluctant to testify that these shells were fired from the same gun without further testing, and -- based solely on the findings of the firing pin mark."

Your Honor, number one, there's nothing from here

1 that I could even cross-examine him on. Number two, it
2 doesn't tell me what shell. There were a number of
3 shells taken (inaudible) and shotgun shells. It doesn't
4 -- they were all numbered. The exhibit numbers in our
5 report referred specifically to those shells that they
6 -- they make (inaudible), etcetera. This doesn't refer
7 to the -- to a shell that's marked or anything else
8 about it. I'd just as soon we not have even had
9 anything. I...

10 MR. DANIEL: Well, I can't...

11 GENERAL SCHMUTZER: Well, I know he doesn't, but
12 obviously Mr. Sturgill was there, and Mr. Sturgill took
13 notes while he was there, and made notes while he was
14 there. So, even though he may not have turned them over
15 to him, he has them. But I'm entitled, Your Honor, to
16 more than... If the State were to come in here at the
17 11th Hour and try to get this Court to let them admit
18 scientific evidence, an expert from the Tennessee Crime
19 Laboratory with nothing more than this to defense
20 counsel, they would be up in arms, and the Court would
21 tell me under no circumstance could I proceed in this
22 manner. Now, Your Honor, it's not a dual standard.
23 There's...

24 THE COURT: No, it's the same... Well, and he says that
25 he would be reluctant to testify, based on the fact that

1 he would need further testing. So, absent anything in
2 addition to that, I could not let him testify, anyway.
3 He isn't, at this juncture, saying that he could give
4 an opinion on anything.

5 MR. DANIEL: Well, he's saying that he don't think
6 anybody -- he doesn't think he could or he wouldn't be
7 -- he wouldn't think anybody could give an opinion based
8 on that. And that's basically what I meant by that.

9 THE COURT: Well, I -- but he has not filed his report
10 -- a report, and...

11 MR. DANIEL: Well, he didn't give me a report, Your
12 Honor.

13 THE COURT: I understand that. But he was ordered to
14 give one if he's going to testify, so that the other
15 side would have an opportunity to inspect the report and
16 to -- and have an opportunity to offer countervailing
17 evidence. So, absent that report, gentlemen, as I said
18 yesterday, I won't let him testify. So...

19 GENERAL SCHMUTZER: I will take it, then, he -- nothing
20 can be -- he can't be referred to -- his -- this
21 testimony...

22 THE COURT: Right. Absent complying with the previous
23 order of the Court, he cannot testify.

24 GENERAL SCHMUTZER: Thank you, Your Honor.

25 MR. DANIEL: That's period? Right, Judge?

1 THE COURT: Well, you know, if... Now, if there was
2 something that came up in a non-expert manner as to --
3 if there were to be some discrepancy in the
4 identification of them, if that were a material point,
5 I might let him testify as a non-expert solely as to
6 observations of the shells, themselves. But I will not
7 allow him to give an expert opinion, based on the fact
8 that he's not complied with the previous orders of the
9 Court.

10 MR. DANIEL: Your Honor, maybe -- maybe I misunderstood,
11 but I understood it was either have a report, or I
12 should tell him what I knew that he -- that he had told
13 me, based on that. And that's basically all he told me,
14 that -- we went through there, and I said, "What do you
15 think?" He said...

16 THE COURT: And so there's nothing in that upon which
17 he could give an opinion. So I'm ruling he can't
18 testify as an expert.

19 (The bench conference having been concluded, the
20 following proceedings were had in open court.)

21 THE COURT: There are other cases that...

22 MR. DANIEL: I believe I'd like to file my copy of that
23 as an exhibit.

24 THE COURT: You sure may. Sure. For identification.

25 (EXHIBIT #1 - Handwritten note of Mr. Daniel; marked for

1 identification.)

2 **THE COURT:** There are other cases set on the court's
3 docket for today. Obviously, because we are still in the early
4 stages of the other trial, the other matters set for today are
5 continued. So all your witnesses and everyone is free to go.

6 Bring the jury in, Mr. Officer. All rise.

7 (The prospective jury panel returns to the courtroom,
8 and the following proceedings were had.)

9 **THE COURT:** Counsel, approach the bench while the jury's
10 coming in, just so we can put something else on the record here.

11 (A bench conference is held on the record, to-wit:)

12 **THE COURT:** I had previously erroneously stated that the
13 challenges were 16 and eight on each side for each
14 defendant. It's 15 and eight, so...

15 **MR. WEBB:** Okay.

16 **GENERAL SCHMUTZER:** We have a total of 16, right?

17 **THE COURT:** Right, the State has 16, and the total
18 defense is 30. And I have, of course, listed here how
19 you exercise those.

20 **GENERAL SCHMUTZER:** Okay.

21 (The bench conference having been concluded, the
22 following proceedings were had in open court.)

23 **THE COURT:** You may be seated.

24 Let's call two more jurors down.

25 (The following jurors were called to fill the jury box:

1 Timothy S. Henry and Mary P. Shy.)

2 THE COURT: Good morning.

3 JUROR HENRY: Good morning.

4 JUROR SHY: Good morning.

5 THE COURT: Mr. Henry and Ms. Shy, both of you were here
6 all day yesterday and heard all the questions and the comments
7 by counsel and the Court. Ms. Shy, in regards to any pretrial
8 publicity, have you seen or heard anything about this case
9 before you came here yesterday?

10 JUROR SHY: No. I heard it a long time ago, when it
11 first came out.

12 THE COURT: Okay. Based on what you saw or heard at
13 that time, did you form any opinion as to the guilt or innocence
14 of anyone in this case?

15 JUROR SHY: No, sir.

16 THE COURT: Okay. Thank you.

17 Mr. Henry, did you hear or see anything about this case
18 before you came here yesterday?

19 JUROR HENRY: I've watched TV.

20 THE COURT: Okay. I take it that's been some time ago?

21 JUROR HENRY: Yes, sir.

22 THE COURT: Okay. Based on what you saw and heard on
23 television, did you form any opinion as to the guilt or
24 innocence of anyone in this case?

25 JUROR HENRY: Yes, sir, I have.

1 **THE COURT:** Is -- is that opinion such that it could not
2 be changed by evidence shown from the witness stand? I'm not
3 asking you what that opinion is, and don't tell me what your
4 opinion is. But is -- is your opinion such it could not be
5 changed by evidence that comes from this witness stand?

6 **JUROR HENRY:** No, sir.

7 **THE COURT:** It could not be changed?

8 **JUROR HENRY:** (No audible response.)

9 **THE COURT:** Okay, I will excuse you.

10 (Juror Henry is excused.)

11 (The following juror was called to fill the jury box:
12 Eugene Wilson.)

13 **THE COURT:** Mr. Wilson, did you see or hear anything
14 about this case before you came here yesterday, sir?

15 **JUROR WILSON:** I heard it on the radio.

16 **THE COURT:** Okay. Based on what you heard over the
17 radio, have you formed an opinion as to the guilt or innocence
18 of any person?

19 **JUROR WILSON:** (No audible response.)

20 **THE COURT:** Okay, you have not. Now, did you hear the
21 statements that the Court made about the death penalty
22 yesterday, Mr. Wilson?

23 **JUROR WILSON:** Yes, sir.

24 **THE COURT:** And you understand, sir, that the death
25 penalty is a sentencing option only in the event someone should

1 be convicted of first degree murder, and it is never required.
2 Do you understand that?

3 JUROR WILSON: (No audible response.)

4 THE COURT: Do you have any moral or ethical reservation
5 against considering the death penalty in a proper case?

6 JUROR WILSON: I don't believe in the death penalty.

7 THE COURT: I'm sorry?

8 JUROR WILSON: I don't believe in the death penalty.

9 THE COURT: Okay. So under no circumstances, sir, could
10 you impose a death sentence in a proper case?

11 JUROR WILSON: No, sir.

12 THE COURT: All right, sir, I'll excuse you, Mr. Wilson.
13 Thank you.

14 (Juror Wilson is excused.)

15 THE COURT: Ms. Shy, I'll ask you the same question in
16 regards to the death penalty. Do you understand it's a
17 sentencing option only?

18 JUROR SHY: I do understand this.

19 THE COURT: Yes, ma'am.

20 JUROR SHY: Under the law it is an option.

21 THE COURT: Yes, ma'am.

22 JUROR SHY: However, I am very firm in my belief that
23 -- and if I understand, a first degree murder indictment means
24 that it was a deliberate act.

25 THE COURT: Yes, ma'am.

1 JUROR SHY: All right. If it is...

2 THE COURT: It's alleged that it's a deliberate act,
3 yes, ma'am.

4 JUROR SHY: It's alleged, yes.

5 THE COURT: Yes, ma'am.

6 JUROR SHY: If it is an alleged deliberate act of
7 murder,...

8 THE COURT: Yes, ma'am.

9 JUROR SHY: ...then I think there is no option but the
10 death penalty.

11 THE COURT: Okay, I will excuse you. Thank you.

12 (Juror Shy is excused.)

13 THE COURT: Call two more.

14 (The following jurors were called to fill the jury box:
15 Kenneth Shults and Mary Watkins.)

16 THE COURT: For Mr. Shults and Ms. Watkins, both of you
17 heard the questions and comments by Court and counsel yesterday?

18 (No jurors respond audibly.)

19 THE COURT: In regards to pretrial publicity,
20 Ms. Watkins, have you seen or heard anything about this case
21 before you came here yesterday?

22 JUROR WATKINS: A year or two ago, yes.

23 THE COURT: Okay. Based on what you saw or heard, did
24 you form an opinion about the guilt or innocence of any person?

25 JUROR WATKINS: (No audible response.)

1 **THE COURT:** Okay, you did not?
2 Mr. Shults, same questions. Have you heard anything...?
3 **JUROR SHULTS:** I've got a strong opinion against it.
4 **THE COURT:** Okay. Is that opinion such it could not be
5 changed by evidence coming from the...?
6 **JUROR SHULTS:** No. No. No changing my mind.
7 **THE COURT:** We'll excuse you.
8 (Juror Shults is excused.)
9 (The following juror was called to fill the jury box:
10 John Whitehead.)
11 **THE COURT:** How are you, Mr. Whitehead?
12 **JUROR WHITEHEAD:** Okay.
13 **THE COURT:** Glad to be here, I bet.
14 **JUROR WHITEHEAD:** Yeah.
15 **THE COURT:** All right. You've heard all the questions.
16 Did you see or hear anything about this case before you came
17 here yesterday?
18 **JUROR WHITEHEAD:** Yes, sir, I did.
19 **THE COURT:** Have you formed an opinion about the guilt
20 or innocence of anybody as a consequence of what you saw or
21 heard?
22 **JUROR WHITEHEAD:** Yes, sir, I have.
23 **THE COURT:** Is that opinion such that it could not be
24 changed by evidence shown from the witness stand?
25 **JUROR WHITEHEAD:** No, it could not.

1 **THE COURT:** 'Bye.

2 (Juror Whitehead is excused.)

3 (The following juror was called to fill the jury box:
4 Darryl Lynn Mayberry.)

5 **THE COURT:** Mr. Mayberry, you've heard all the
6 questions?

7 **JUROR MAYBERRY:** Yes, sir.

8 **THE COURT:** Have you heard or seen anything about this
9 case?

10 **JUROR MAYBERRY:** Only what the average informed citizen
11 of Sevier County has heard.

12 **THE COURT:** Okay. Have you formed an opinion about the
13 guilt or innocence of anyone based on what you saw or heard?

14 **JUROR MAYBERRY:** No, sir.

15 **THE COURT:** All right.

16 In regards to the death penalty, sir, do you understand
17 that is a sentencing option?

18 **JUROR MAYBERRY:** (No audible response.)

19 **THE COURT:** Do you understand it is not mandated or
20 required upon a conviction of first degree murder.

21 **JUROR MAYBERRY:** (No audible response.)

22 **THE COURT:** But if someone were convicted, the Court
23 would instruct the entire jury panel on the mitigating and
24 aggravating factors, and then, from those, a jury in its
25 infinite wisdom only could decide either the death penalty or

1 life in prison. Do you have any ethical or moral reservations
2 against considering the death penalty in a proper case?

3 JUROR MAYBERRY: No, sir.

4 THE COURT: All right.

5 Ms. Watkins, the same questions to you. Have you any
6 moral or ethical reservation against it, understanding it's not
7 mandated or required?

8 JUROR WATKINS: (No audible response.)

9 THE COURT: You understand that?

10 JUROR WATKINS: (No audible response.)

11 THE COURT: All right. General Schmutzer?

12 GENERAL SCHMUTZER: Thank you, Your Honor.

13 Good morning.

14 (Certain jurors respond.)

15 GENERAL SCHMUTZER: Let's see, I have Mayberry. Is that
16 right, sir?

17 JUROR MAYBERRY: Mayberry.

18 GENERAL SCHMUTZER: Mayberry, yes, sir. And
19 Ms. Watkins?

20 JUROR WATKINS: Yes, sir.

21 GENERAL SCHMUTZER: Okay. Ms. Watkins, where do you
22 live, please?

23 JUROR WATKINS: I live in Sevierville.

24 GENERAL SCHMUTZER: In Sevierville? And your
25 occupation?

1 JUROR WATKINS: I work at Krogers.

2 GENERAL SCHMUTZER: At Krogers? Okay, thank you.
3 And how about you, Mr. Mayberry?

4 JUROR MAYBERRY: I live on Wears Valley Road.

5 GENERAL SCHMUTZER: And your occupation, please?

6 JUROR MAYBERRY: Electronic technician.

7 GENERAL SCHMUTZER: Okay. And where are you presently
8 employed?

9 JUROR MAYBERRY: Security Electronics.

10 GENERAL SCHMUTZER: Is that here in the county?

11 JUROR MAYBERRY: Yes, sir.

12 GENERAL SCHMUTZER: Thank you.

13 You folks, I think, indicated you were here yesterday.
14 You've heard questions I've asked. I'm not going to attempt to
15 go through all those questions again. We'd have another long
16 day, obviously. But we have talked about the fact that this
17 case is a circumstantial evidence case.

18 And, in thinking about that last night, began to wonder
19 if possibly we had left in your minds the fact that -- the fact
20 that it's a circumstantial evidence case, that maybe that's not
21 as good as a direct evidence case, and hopefully I haven't done
22 that. Do you understand that under some circumstances a
23 circumstantial evidence case can be more persuasive and more
24 indicative of guilt than a direct evidence case, especially when
25 it involves scientific testimony or evidence.

1 In fact, I think we just recently in the papers here had
2 some cases where -- that were being reversed where there had
3 been direct evidence identifying certain people as committing
4 crimes.

5 MR. DANIEL: I'm going to object to the general's
6 reference to other cases.

7 GENERAL SCHMUTZER: Well, Your Honor,...

8 MR. DANIEL: And personal things of this nature.

9 GENERAL SCHMUTZER: I think Your Honor...

10 THE COURT: I allowed both of you to use examples. I
11 don't think we need to talk about particular cases.

12 GENERAL SCHMUTZER: But the -- other cases where cases
13 that were built on direct evidence were later turned around
14 because of scientific evidence. So you can understand that
15 direct evidence we think of, you know, as an eyewitness; can
16 sometimes even be mistaken as to identity. So I hope I haven't
17 left that impression. Do any of you have the impression---not
18 just the two that came in, but any of you sitting there---that
19 because of the questions asked and answered, that you have some
20 feeling that maybe circumstantial evidence case is not a good
21 case, starting out?

22 (No jurors respond audibly.)

23 GENERAL SCHMUTZER: I take it you don't, by your
24 silence.

25 You heard my questions with regard to motive, that the

1 State expects to prove motive with regard to this killing, but
2 we don't have to. That if for some reason we didn't to your
3 satisfaction, but otherwise proved the elements of the offense
4 to your satisfaction, do either one of you have any difficulty
5 in rendering a verdict of guilty, even though the question of
6 why might be left unanswered?

7 (No jurors respond audibly.)

8 **GENERAL SCHMUTZER:** I take it you don't.

9 Anything at all that I asked yesterday comes to mind
10 that -- or anybody asked, that you think might cause you some
11 difficulty in being a juror in this case? Either one of you
12 all?

13 (No jurors respond audibly.)

14 **GENERAL SCHMUTZER:** How about anything that may be on
15 your mind? A problem at work, at home, or something that -- you
16 know, that's really pressing that might keep you from, you know,
17 giving this case your full and complete attention?

18 (No jurors respond audibly.)

19 **GENERAL SCHMUTZER:** I take it there's no problem with
20 hearing or seeing or anything else like that.

21 Think of anything at all that I need to ask or that you
22 need to cover?

23 (No jurors respond audibly.)

24 **GENERAL SCHMUTZER:** Can't think of anything else. Thank
25 you very much. Appreciate it. Thank you, Your Honor.

1 **THE COURT:** Before you start, Mr. Miller, there's been
2 a lot of mention, as it should have been, about circumstantial
3 evidence throughout voir dire. I want to read to you the
4 definition and instruction of circumstantial evidence, so that
5 all of you can hear it at the same time, and exactly how it will
6 be charged to you at the conclusion of this case.

7 "The guilt of anyone, as well as any fact required to
8 be proved, may be established by direct evidence, by
9 circumstantial evidence, or by both combined. Direct evidence
10 is defined as evidence which proves the existence of the fact
11 in issue without inference or presumption of any other facts.
12 Direct evidence may consist of testimony of a person who has
13 perceived, by the means of his or her senses, the existence of
14 the facts sought to be proved or disproved.

15 "Circumstantial evidence consists of proof of collateral
16 facts and circumstances which do not directly prove the fact in
17 issue, but from which that fact may be logically inferred. When
18 the evidence is made up entirely of circumstantial evidence,
19 then before you would be justified in finding someone guilty,
20 you must find that all the essential facts are consistent with
21 the hypothesis of guilt, as that is to be compared with all the
22 facts proved. The facts must exclude every other reasonable
23 theory or hypothesis except that of guilt, and the facts must
24 establish such a certainty of guilt of the defendant as to
25 convince the mind beyond a reasonable doubt that the defendant

1 is the one who committed the offense.

2 "It is not necessary that each particular fact should
3 be proved beyond a reasonable doubt, if enough facts are proved
4 to satisfy the jury beyond a reasonable doubt of all the facts
5 necessary to constitute the crime charged. Before a verdict of
6 guilty is justified, the circumstances, taken together, must be
7 of a conclusive nature and tendency leading on the whole to a
8 satisfactory conclusion, and producing, in effect, a moral
9 certainty that the defendant, and no one else, committed the
10 offense as charged. Mr. Miller?

11 MR. MILLER: Your Honor, we never got rid of the list
12 of witnesses that we had yesterday.

13 THE COURT: I was afraid you were going to ask that.

14 MR. MILLER: Maybe now would be a good time to do that.

15 THE COURT: Let's have it.

16 MR. DANIEL: (Inaudible).

17 THE COURT: I still have to have them. That might be
18 something you all want to compile there after you proceed.

19 MR. DANIEL: Does the clerk have the...?

20 THE COURT: Here are the files, gentlemen. The Court...

21 MR. DANIEL: Your Honor, I have the list here.
22 Actually, this can't be right, 'cause it's got General
23 Schmutzer's names, but... I can give you this list, but that's
24 the only one I have.

25 THE COURT: If that's the one you want me to read from.

1 **GENERAL SCHMUTZER:** Your Honor, that's what we've been
2 trading, I think, potential witnesses the State furnished. I
3 think they also have potential witnesses of...

4 **MR. DANIEL:** I don't know how many of these have been
5 subpoenaed and how many haven't, Judge. Do you want us to wait
6 on that?

7 **THE COURT:** I think it might be better.

8 **MR. DANIEL:** Can we have the clerk's office...

9 **THE COURT:** Sure.

10 **MR. DANIEL:** ...check about the subpoenas, and maybe we
11 can locate...

12 **THE COURT:** You may proceed, Mr. Miller.

13 **MR. MILLER:** Ms. Watkins and Mr. Mayberry, are you all
14 related to or know anybody on either side of this case?

15 **JUROR MAYBERRY:** No, sir.

16 **MR. DANIEL:** Of course, you'll hear the witnesses later
17 on, and you can tell us if you know these people.

18 Have either of you ever been the victim of any crime?

19 (No jurors respond audibly.)

20 **MR. MILLER:** Ever had any close friends or relatives
21 ever been the victim of a crime?

22 (No jurors respond audibly.)

23 **MR. MILLER:** Ever had any association with the attorney
24 general's office of any kind?

25 (No jurors respond audibly.)

1 MR. MILLER: Got any relationship with anybody involved
2 in law enforcement?

3 (No jurors respond audibly.)

4 MR. MILLER: Anybody see anything, since we were here
5 yesterday, about publicity, or did they see anything overnight?
6 There's no problem telling me. Nothing's going to happen. It's
7 not against the law to read the news or watch the TV, but tell
8 me if you saw anything.

9 (No jurors respond audibly.)

10 MR. MILLER: We emphasized yesterday the importance of
11 not trying this case through the media, and not forming opinions
12 based on what you may have heard through the media. And, just
13 want to reiterate the importance of that. Obviously, what we've
14 seen this morning and yesterday, a lot of people have formed
15 opinions based on what they have read in the paper, or heard on
16 TV or the radio, or heard around town in gossip. I'm glad they
17 told us that they had that opinion, whichever way it was. But
18 it's hard to imagine how you can render an opinion without
19 hearing the proof. And I just ask you if you can base your
20 decision in this case on what comes from the witness stand. Can
21 everybody do that?

22 (No jurors respond audibly.)

23 MR. MILLER: Just touch again on the grand jury process.
24 The grand jury has indicted these people, decided they should
25 stand trial. That's merely an accusation. The grand jury is

1 an important body and important process, but they're not there
2 to decide the guilt or innocence. Actually, the buck stops with
3 you all. You all are the buffer between prosecution of innocent
4 people, and that's your purpose.

5 Mr. Schmutzer mentioned scientific evidence. I think
6 what they're really going to offer is people who are so-called
7 experts in certain fields, rendering an opinion that we talked
8 about yesterday, that we all agreed that everybody has an
9 opinion. But will you look to the facts? Basically, what I'm
10 asking you to do is not -- just because somebody gets up there
11 and they call themselves an expert and they reach this
12 conclusion, will you not accept that conclusion just because
13 they're qualified as an expert to give an opinion? Will you
14 look to the reasonableness behind that conclusion?

15 (No jurors respond audibly.)

16 MR. MILLER: And Mr. Schmutzer characterized it as
17 scientific evidence, sort of as something that's infallible
18 that, you know, once that's offered there's no rebutting it, you
19 must accept it as true. Just think about the pitfalls in the
20 world of science. The best scientists in the world built,
21 designed, and ran the space shuttle that blew up, and they build
22 these -- and design and run these nuclear facilities that leak
23 and have accidents. The scientific world is filled with
24 pitfalls. So if the judge tells you his instruction, accept any
25 of that evidence with caution.

1 **THE COURT:** Mr. Daniel, Mr. Webb?

2 **MR. DANIEL:** Since General Schmutzer brought that up,
3 I'd just like to say that, talking about scientific evidence,
4 we know of different situations where people disagree, or that
5 they think that the scientific evidence proves something, and
6 they find out later it doesn't. In Australia they had a dog
7 that took a kid off, they thought -- they convicted people on
8 scientific evidence, and later found out the scientific evidence
9 was wrong. You all follow that? It was a very interesting
10 thing that happened a few years ago.

11 The point I'm making is, if His Honor charges you, and
12 a person testifies, and they're going to give an opinion, you're
13 not obligated to take that opinion just because somebody says,
14 "This is my opinion." He'll charge you that you've got to
15 accept it with caution. It's got -- as Mr. Miller said, it's
16 got pitfalls in it, and you need to weigh it very carefully.

17 And even -- what's important in the circumstantial
18 evidence case is where you just have circumstances you're trying
19 to develop, need all those circumstances has to form together.
20 If there's any other reasonable hypothesis, you've got no other
21 alternative except to vote not guilty. Now, we -- now, would
22 you all have any problems of doing that, if selected as jurors
23 in this case? Because this is a very serious case. They're
24 asking you to not only convict these boys, but they're asking
25 you to go further and take their -- either confine them for the

1 rest of their life or to take their life. It's an awesome thing
2 to have the power to kill somebody, to take their life. That's
3 basically what the jury is going to be placed in your hands
4 (sic). It's an awesome responsibility.

5 Because it's an awesome responsibility, there's going
6 to be certain rules that the Court's going to tell you you
7 should follow regarding this evidence. Can you -- will you
8 listen to the judge's charge?

9 I guess it makes me wonder, from the lawyer's standpoint
10 in trying to defend somebody, when somebody comes down here and
11 says, "I haven't heard a word of proof. I don't know what is
12 going to be said, I don't have any idea what this case is about.
13 I'm supposed to have a neutral mind, I'm supposed to be open-
14 minded, supposed to be fair." But yet make a statement that,
15 "I couldn't -- I can't -- I've made up my mind already," whether
16 it's for guilt or whether it's for innocence, it's still not
17 right. I don't know if it's a way to get off the jury panel,
18 trying to -- we always figure if a man don't want on the jury
19 panel he can say that and just get off. We know that. We know
20 that. You all know that.

21 But it's also -- it's also disturbing to think that a
22 person would make up their mind and prejudge a person, say,
23 "I've got in my mind about a person's guilt, and I will convict
24 a person without hearing any proof, whatsoever." This is --
25 this is appalling not only to our judicial system, but to our

1 sense of -- all of our senses, morality and decency, that you
2 would make your mind up before you ever start to hear a case.

3 The law is, in these cases where -- that's the reason
4 the judge will charge you in circumstantial evidence and on
5 expert witnesses, that because it's got pitfalls, because
6 there's problems with it, that you must listen carefully and you
7 must realize that if there is any other reasonable hypothesis
8 of guilt your obligation would be to vote not guilty. My
9 question to you is: After hearing those statements, do all of
10 you feel like we're going to start this case, when we've chosen
11 the jurors, and we're going to start even? Or have you all made
12 up your mind? Have you decided, 'Well, I heard some news
13 commentator that wanted to have a story, that -- to make it
14 sound good, I heard what they said, and I think I've done
15 decided what this thing's all about.'" Has anybody -- is there
16 anybody that felt -- feel like that right now? If you do,
17 please tell us, because you've got a person's life in your
18 hands.

19 (No jurors respond audibly.)

20 MR. DANIEL: You're holding -- you're holding in your
21 hands a person's decision where a person goes (sic) if they're
22 convicted of first degree murder: to the penitentiary for the
23 rest of their life. They've changed that to -- life now means
24 life. And we've also said that if you can go further, the
25 attorney general's asking you to go further, if you find them

1 guilty, and not only do that, but to place them in -- put --
2 incarcerate them -- stick them in a -- stick them in an electric
3 chair and take their life. So it's an awesome responsibility.
4 And my question is: Are we going to start -- are we starting
5 at scratch and saying, "General, you've not even put on any
6 proof. We don't even have any proof this -- these boys have
7 done anything, or they're guilty of anything yet. But you're
8 asking us if we're going to consider the death penalty." I feel
9 like we're getting...

10 **GENERAL SCHMUTZER:** Your Honor, I'm going to have to
11 object.

12 **THE COURT:** Approach the bench, counsel.

13 (A bench conference is held on the record, to-wit:)

14 **THE COURT:** Gentlemen, the Court doesn't generally like
15 to interfere in voir dire, and especially in a -- in a
16 case like this I don't. But please ask questions.

17 **MR. DANIEL:** I'll try to... Well, you get...

18 **THE COURT:** Let's -- let's -- I understand. I
19 understand. I've been there. But the -- you know, I
20 have instructed them, and they've heard us talk about
21 circumstantial evidence, and I know that you obviously
22 want to make sure they understand about the burden of
23 proof. You're certainly entitled to ask them about
24 that. But please don't continue to tell them what the
25 burden of proof is and -- and the law on circumstantial

1 evidence. I have tried to tell them that several times.

2 **GENERAL SCHMUTZER:** My objection, too, Your Honor -- my
3 objection was to, you know, continuing to give personal
4 reference to me. I don't think that's proper, that I'm
5 trying to get them to put them in the electric chair.
6 You're saying, "General Schmutzer this," and "General
7 Schmutzer that."

8 **THE COURT:** That's who you are, though. That's who
9 they...

10 **MR. DANIEL:** I'm referring to the job more than I am...

11 **THE COURT:** Of course he is. Well, that's -- and they
12 -- I think we've asked them all about the death penalty,
13 and you're certainly entitled to point out to them the
14 importance of that consideration. But please, only one
15 or two times on each panel.

16 **MR. DANIEL:** Well, Your Honor, we did this -- we got it
17 down yesterday, we was tapering off when we left, and...

18 **THE COURT:** I understand. I understand.

19 **MR. DANIEL:** But we've had people come down and make
20 statements and...

21 **THE COURT:** I -- well, I understand that. I sure do.

22 **MR. DANIEL:** And we had -- I had four questions written
23 down, but after -- when they started coming down and
24 saying they'd made up their mind,...

25 **THE COURT:** I understand.

1 MR. DANIEL: ...it just made me feel like we still had
2 to question them about it.

3 THE COURT: If we'll just please ask them more
4 questions.

5 GENERAL SCHMUTZER: Your Honor, you know, the Court had
6 instructed us not to be, you know, talking back and
7 forth.

8 THE COURT: Right.

9 GENERAL SCHMUTZER: And the statement that...

10 THE COURT: And I -- I will...

11 GENERAL SCHMUTZER: ...the statement was made that I am
12 asking them to render a death penalty verdict before
13 they've even heard any proof, which, of course, is
14 totally...

15 THE COURT: Well, no, he's -- he isn't asking for that.
16 He's asking them first to convict them, and then to
17 sentence them to death, if they're found guilty. So,...

18 GENERAL SCHMUTZER: Your Honor, that's the statement he
19 made to the jurors.

20 THE COURT: That's a little...

21 MR. DANIEL: That's not the way I meant it.

22 THE COURT: Well, I understand. I understand. I
23 understand. But I have instructed all of them, and they
24 understand that their first job is to determine guilt
25 or innocence. Let's try to move along, gentlemen.

1 MR. DANIEL: Okay. I've got just, you know, a few more
2 questions along that line, then I'll get on with it.

3 THE COURT: All right. Ask questions, though.

4 (The bench conference having been concluded, the
5 following proceedings were had in open court.)

6 THE COURT: Let me read the charge on expert witnesses,
7 because there's been some statements about that. And I want to
8 try to shorten it up as much as I can for everyone.

9 "Generally, a witness may not testify as to his or her
10 opinions or conclusions. But the Court may permit a witness who
11 has special knowledge or experience on a particular question to
12 testify as an expert on that question.

13 "An expert witness may state an opinion, and give
14 reasons for that testimony. Expert testimony should be received
15 by you with caution. While expert testimony is sometimes the
16 only means of or the best way of reaching the truth, yet it is
17 largely a field of speculation, beset with pitfalls and
18 uncertainties, and requires careful and intelligent evaluation
19 on your part if it is to be a valid means of reaching the truth.

20 "You are not bound to accept expert testimony, but you
21 should give it such weight and value as you think it deserves,
22 along with all the other evidence in the case, governed by the
23 purpose to arrive at the truth."

24 MR. DANIEL: In this case we feel that there will be
25 proof presented by the prosecution maybe regarding one defendant

1 that doesn't apply to another defendant. And should that
2 happen, it's going to be your duty as jurors to try to separate
3 it, with His Honor's instructions to -- you can consider this
4 as to one defendant, but you can't consider it as to another.
5 And it's an awkward situation for you, you realize that? You
6 realize you're human, you're going to hear it. My question is:
7 If the proof comes in that develops regarding one defendant, but
8 does not apply to another defendant, will you separate that?
9 And will you do your best -- well, you have to, under the law.
10 But will you separate that from -- because you're deciding two
11 cases, two defendants. You're not deciding just one case,
12 you're trying two defendants. They're both charged with the
13 same charge, they're being tried together. But they're each --
14 they're -- each case stands on its own bottom, as the old saying
15 goes. Can -- will you listen to His Honor's charge, and as
16 things develop like this, will you listen to that? You
17 understand how -- it's kind of hard to do this, but I guess
18 that's what's going to be done. Will you do that?

19 (No jurors respond audibly.)

20 MR. DANIEL: The -- have any of you members of the jury,
21 the new ones that have come on, do you have any family members
22 that's involved in law enforcement, or that's police officers
23 or anything like this?

24 (No jurors respond audibly.)

25 MR. DANIEL: Do any of you feel like that a police

1 officer's testimony should be believed over that of another
2 person? Members of the jury or anybody else? Just because
3 they're police officers? You'll weigh everybody the same?

4 (No jurors respond audibly.)

5 MR. DANIEL: Mr. Miller commented on the grand jury.
6 Do you all understand how our grand jury system works? A lot
7 of people do not understand. They think people has been tried
8 before. That's not -- that's not true. On the regular panels,
9 I know, when you come in His Honor and other judges explain all
10 of this. But since the new jurors that have been subpoenaed
11 just for this trial probably haven't heard that, but basically
12 if -- the grand jury system is where that they do not hear but
13 one side of the case, and they just hear what evidence the State
14 wants to present to the grand jury. The grand jury does not
15 find guilt or innocence. They only decide should there be a
16 hearing and let you people try the case. Do you all understand
17 that?

18 (No jurors respond audibly.)

19 MR. DANIEL: A lot of people say, "Well, they're here,
20 they must be guilty of something." That's not the way it works.
21 It doesn't have anything to do with it. And once you understand
22 how the system works, you understand that. There's a lot of
23 people don't understand the grand jury's functions.

24 As His Honor will tell you, there is this presumption
25 of innocence that remains with this defendant and all

1 defendants, cloaked around him, and that stands throughout the
2 trial. And if the State -- when we start this trial, the State
3 puts on their proof first, defense puts on their proof through
4 cross-examination, and also through their witnesses, what
5 witnesses we desire to call. The question is: Will you wait
6 'til all the proof is in before you start trying to make up your
7 mind, and not start -- if you start making up your mind at
8 first, and you make up your mind, you never hear the defense
9 side of the story, you never listen to the things that the
10 defendants may want to prove. Will you keep an open mind 'til
11 all the proof is in? Can we have a fair -- start out fair at
12 least on that?

13 (No jurors respond audibly.)

14 MR. DANIEL: In this case I'm going to probably assume
15 that the State will play for you taped recordings of -- or maybe
16 of the defendants' statements. Now, they took -- the defendants
17 voluntarily gave statements on two different occasions. They
18 should...

19 GENERAL SCHMUTZER: May we approach the bench, Your
20 Honor?

21 THE COURT: Yes.

22 (A bench conference is held on the record, to-wit:)

23 GENERAL SCHMUTZER: I would object to the defense asking
24 them -- making assumptions on what the State may or may
25 not prove. They're going into the State's proof, Your

1 Honor. That's improper.

2 THE COURT: Well, I don't -- you know, each of you, I
3 think, can reasonably anticipate, based on statements
4 of the other. Ask them if...

5 MR. DANIEL: If they can...

6 THE COURT: ...if they offer tape recordings, will they
7 consider all of the circumstances, not just the
8 statements. That's all right.

9 MR. DANIEL: I understood the general's statement as to
10 that's what you was going to do.

11 THE COURT: That's what I understood, but maybe I was...

12 MR. DANIEL: I think that's right. When we was in
13 yonder in the other courtroom.

14 THE COURT: That's what I understood. but...

15 GENERAL SCHMUTZER: (Inaudible) the statement, Your
16 Honor.

17 THE COURT: Well, ask them if they'll consider all the
18 circumstances, not just the statements, themselves.

19 MR. DANIEL: That's right.

20 (The bench conference having been concluded, the
21 following proceedings were had in open court.)

22 MR. DANIEL: The question of you is: If the -- if you
23 hear statements that's made by the defendants and what they've
24 told and their stories about this, will you listen to that
25 carefully, listen to their answers? And I want you to also --

1 will you also listen to the methods of interrogation, if certain
2 portions are -- you hear certain portions of their statements,
3 about the methods of interrogation, will you listen to that?
4 Take all of that, along with all the proof, into consideration
5 when you hear what they say about this matter?

6 (No jurors respond audibly.)

7 **MR. DANIEL:** Thank you.

8 (Peremptory Challenge Slip #4 was submitted, and the
9 following jurors were excused: Juror Watkins, Juror
10 Williams, Juror Caughron, Juror Mayberry, and Juror
11 Becker.)

12 (The following jurors were called to fill the jury box:
13 Jerry Chandler, Norma Jean Huskey, Mike Ellis, James
14 Raney, and Claude J. Galyon.)

15 **THE COURT:** For the new jurors, have you heard all the
16 questions and comments that have been made by counsel and the
17 Court so far?

18 (No jurors respond audibly.)

19 **THE COURT:** Starting with Mr. Raney, sir, have you seen
20 or heard anything about this case before you came here
21 yesterday?

22 **JUROR RANEY:** Just what's in the paper.

23 **THE COURT:** Okay, based on what you read in the
24 newspaper, sir, did you form an opinion one way or another as
25 to the guilt or innocence of any person?

1 JUROR RANEY: No, sir.

2 THE COURT: All right, sir. Thank you. Mr. Ellis, same
3 question: Have you formed an opinion about this case yet?

4 JUROR ELLIS: No.

5 THE COURT: Okay. Ms. Huskey, have you formed an
6 opinion about the guilt or innocence of anybody based on what
7 you've seen or heard?

8 JUROR HUSKEY: No.

9 THE COURT: All right. Mr. Chandler, same question:
10 Have you formed any opinion based on anything you've seen or
11 heard?

12 JUROR CHANDLER: Yes.

13 THE COURT: Okay. Is that opinion such that it could
14 not be changed by testimony coming from the witness stand?

15 JUROR CHANDLER: Yes.

16 THE COURT: Okay, we'll let you go, Mr. Chandler. Thank
17 you.

18 (Juror Chandler is excused.)

19 THE COURT: And Mr. Galyon, same question, sir: Have
20 you seen or heard anything about this case?

21 JUROR GALYON: I've heard a lot about it.

22 THE COURT: Have you formed any opinion about the guilt
23 or innocence of these defendants, based on what you've seen or
24 heard?

25 JUROR GAYLON: (No audible response.)

1 **THE COURT:** Okay, thank you. Call one more.

2 (The following juror was called to fill the jury box:
3 Nina Shoemaker.)

4 **THE COURT:** Ms. Shoemaker, have you heard or seen
5 anything about this case before you came here yesterday?

6 **JUROR SHOEMAKER:** Just what was in the papers and on
7 television.

8 **THE COURT:** Have you formed any opinion about the guilt
9 or innocence of either of these defendants based on that?

10 **JUROR SHOEMAKER:** No.

11 **THE COURT:** All right. Now, in talking about the death
12 penalty, first of all, Mr. Raney---and to all of you I will
13 explain again---the penalty for first degree murder, should
14 someone be found guilty of first degree murder, is either life
15 in prison or death. If someone is found guilty of first degree
16 murder, then a separate sentence hearing will be held. Maybe
17 additional evidence might be offered. I would instruct you on
18 the statutory mitigating factors for your consideration, and any
19 statutory aggravating factors for your consideration. Then,
20 based upon that, the jury would have to unanimously agree, in
21 order to sentence someone to death. If you were unable to
22 agree, then it would automatically be life in prison. You are
23 not required, in any case, to impose the death penalty. It is
24 not mandatory.

25 First on Mr. Raney, do you understand what the Court

1 just said about the death penalty?

2 JUROR RANEY: Yes.

3 THE COURT: Do you have any moral reservations against
4 considering the death penalty as an option in a proper case?

5 JUROR RANEY: No.

6 THE COURT: So, would you mandatorily or automatically
7 impose the death sentence on every case where someone's
8 convicted of first degree murder?

9 JUROR RANEY: No, sir.

10 THE COURT: Okay, thank you. And, Mr. Ellis, same
11 question.

12 JUROR ELLIS: Same answer.

13 THE COURT: Same answer? Okay.

14 Ms. Huskey?

15 JUROR HUSKEY: Same answer.

16 THE COURT: Same answer? All right.

17 Ms. Shoemaker?

18 JUROR SHOEMAKER: (No audible response.)

19 THE COURT: Same answer?

20 JUROR SHOEMAKER: (No audible response.)

21 THE COURT: Okay. And Mr. Galyon?

22 JUROR GALYON: Same answer.

23 THE COURT: Same answer. All right. Thank you.

24 General Schmutzer?

25 GENERAL SCHMUTZER: Thank you.

1 Mr. Galyon, where do you live, please, sir?
2 JUROR GALYON: Seymour.
3 GENERAL SCHMUTZER: And your occupation?
4 JUROR GALYON: Arnold's Engineering.
5 GENERAL SCHMUTZER: Thank you. Let's see, I have up
6 here Mr. Raney. Where do you live, please, sir?
7 JUROR RANEY: Sevierville.
8 GENERAL SCHMUTZER: And your occupation?
9 JUROR RANEY: I work for (inaudible).
10 GENERAL SCHMUTZER: Let's see, Ms. Huskey? And where
11 do you live, please, Ms. Huskey?
12 JUROR HUSKEY: Sevierville.
13 GENERAL SCHMUTZER: And your occupation, ma'am?
14 JUROR HUSKEY: Secretary.
15 GENERAL SCHMUTZER: And where?
16 JUROR HUSKEY: Sevierville Water Department.
17 GENERAL SCHMUTZER: Okay. Thank you.
18 And Ms. Shoemaker?
19 JUROR SHOEMAKER: Sevierville. Avon representative.
20 GENERAL SCHMUTZER: Okay.
21 You folks have heard all the questions about
22 circumstantial evidence. As you sit there, do any of you feel
23 as though for some reason circumstantial evidence is inferior
24 to other evidence, or can you consider that just the same as you
25 would direct evidence?

1 (No jurors respond audibly.)

2 **GENERAL SCHMUTZER:** And I just left out Mr. Ellis.
3 Looked right over you, Mr. Ellis. I apologize.

4 **JUROR ELLIS:** That's all right.

5 **GENERAL SCHMUTZER:** You live, and your occupation?

6 **JUROR ELLIS:** I'm a salesman for Tom's.

7 **GENERAL SCHMUTZER:** Thank you. I apologize.

8 My question -- I was interrupted there. I looked around
9 and saw him -- saw him sitting there, and I hadn't asked him.

10 With regard to circumstantial evidence, as you all sit
11 there, those of you who just came in, do you have any feeling
12 that because there is not an eyewitness, that circumstantial
13 evidence is in some way inferior to direct evidence?

14 (No jurors respond audibly.)

15 **GENERAL SCHMUTZER:** I take it you don't.

16 His honor read to you the instructions that he will give
17 at the end of the trial with regard to circumstantial evidence.
18 It's sort of makes sense (sic), it's reasonable. And the key
19 word in that is "reasonable," I submit. It's not every
20 hypothesis other than the hypothesis or theory of guilt, it's
21 the reasonable hypothesis. After you've looked at all of the
22 evidence as a whole. In other words, it's the old thing---
23 you've heard it before---of running a rabbit. If you just take
24 a hypothesis that has no basis in reason and common sense and
25 begin to run it, you're running a rabbit. You're getting of --

1 you're getting off track. Could all of you employ common sense
2 and reason in deciding whether or not any other hypothesis fit
3 that definition of reasonableness?

4 (No jurors respond audibly.)

5 **GENERAL SCHMUTZER:** I take it you would.

6 Also in that charge it mentions that not every fact must
7 be proven. But enough facts must be proven to satisfy your
8 mind. Like a mosaic, each witness will be a piece in that
9 mosaic, putting it together. The State is not required to put
10 every piece in the mosaic, because that would be absolute
11 certainty, and His Honor will tell you absolute certainty is not
12 required under the law. No one would be convicted if absolute
13 certainty was required. But it has to be beyond a reasonable
14 doubt, and there has to be enough of those pieces placed in that
15 mosaic to where you have a clear enough picture to where, beyond
16 a reasonable doubt in your mind, these defendants are guilty.
17 That, and that alone. You understand that, I take it?

18 (No jurors respond audibly.)

19 **GENERAL SCHMUTZER:** It was mentioned about the evidence,
20 and the evidence being considered as to one defendant or the
21 other. In doing that, I submit to you, will you listen to all
22 of the evidence in light of all of the other evidence that's
23 introduced? Because what may, on its face, look like evidence
24 only pointing to one defendant, may, in fact, based upon other
25 evidence, point to both defendants. If you have evidence that

1 one defendant was involved in a crime, but you also have
2 evidence that both of those individuals were together during
3 that period of time that crime was committed, then obviously
4 common sense tells you they both were involved in the crime.
5 You understand that? That's just common sense.

6 (No jurors respond audibly.)

7 **GENERAL SCHMUTZER:** Anything at all that I've covered
8 or haven't covered you think might cause you all some
9 difficulty? Mr. Galyon?

10 **JUROR GALYON:** Mr. Sutton -- I worked with his mother,
11 and I still work with his stepfather, two uncles, and an aunt.

12 **GENERAL SCHMUTZER:** That's why you know something about
13 this. I guess maybe you've heard some talk about it, I guess.

14 **THE COURT:** Let me ask you this, Mr. Galyon: Based on
15 that fact, alone, would that have any effect upon how you viewed
16 the evidence in this case or make your decision in this case?

17 **JUROR GALYON:** No. But in a way I feel like I might
18 need to explain things, you know. I mean, I'd try not to,
19 but...

20 **THE COURT:** Oh, if -- if you reached a verdict in this
21 case, you might feel obligated to explain it to someone, is that
22 what you're saying? After the case is over, is that what...?

23 **JUROR GALYON:** Yeah, I mean, you know,...

24 **THE COURT:** I understand that. Would your fear of that
25 have any effect upon how you decided the case. I mean, could

1 you go in that jury room and make your judgment based on the
2 facts and evidence that comes from this witness stand, and the
3 law that the Court gives you, and not worry about whether or not
4 you had to explain it to somebody?

5 JUROR GALYON: Oh, yes.

6 THE COURT: Okay. All right, thank you. And all of you
7 -- all of us in this courtroom have seen or heard something
8 about this case. Chances are as I read the witness list to you
9 in a few moments, some of you know some of the witnesses. That
10 doesn't keep you from sitting on this jury; it's just whether
11 or not you could view their testimony just like you would anyone
12 else's, and not automatically believe or disbelieve someone just
13 because you know them.

14 JUROR GALYON: I just wanted to...

15 THE COURT: I appreciate that, Mr. Galyon. That's
16 exactly what you should do.

17 (Certain jurors respond.)

18 THE COURT: Yes, sir, Mr. Ellis?

19 JUROR ELLIS: Somebody said---I believe it was Miller
20 ---said heard something about a gunshot (sic). And I'd heard
21 that was -- I don't know where -- remember where I read it, that
22 she'd -- that she'd been shot (inaudible).

23 THE COURT: Okay. Now,...

24 JUROR ELLIS: I just heard that.

25 THE COURT: Right. And so if you didn't hear that from

1 the witness stand, Mr. Ellis, would that have any effect upon
2 how you decided this case?

3 JUROR ELLIS: No, sir.

4 THE COURT: Okay, thank you.

5 GENERAL SCHMUTZER: Anyone else?

6 I take it, Mr. Galyon, what you said, if you're chosen
7 to be a juror, you'd follow strictly by the facts and the law.
8 And if you find the State's carried the burden of proof, you'd
9 have no hesitation about finding him guilty, even though you'd
10 have to...

11 JUROR GALYON: Oh, no.

12 GENERAL SCHMUTZER: ...even though you work for them --
13 or work with them, I mean. Great. I appreciate that. I
14 appreciate you bringing it to our attention.

15 Maybe I'll ask you this, because it's -- you've heard
16 the reverse of this, about if you all or those of your family
17 were sitting over here, would you be comfortable with a juror
18 with your frame of mind. By the same token, and it's just as
19 important, if you were a family member of the victim...

20 MR. DANIEL: Your Honor, we have to object at this time.

21 GENERAL SCHMUTZER: Would you be comfortable...?

22 THE COURT: General, let's don't... Ladies and
23 gentlemen, the issue is whether or not both sides can be
24 comfortable and receive a fair and impartial trial. You are not
25 here to please anybody, and you are not here to satisfy anybody

1 but the law and your conscience, regardless of the victim's
2 family, or defendants, or defendants' family. That's...

3 GENERAL SCHMUTZER: I certainly wasn't asking them to
4 please anybody. I think this...

5 THE COURT: Let's -- let's...

6 GENERAL SCHMUTZER: ...I think they understood that.
7 You understand, what I'm asking is simply could you be fair to
8 both sides, bottom line? Anybody thinks that they can't be for
9 any reason? Not just those that came in, but anybody else?

10 (No jurors respond audibly.)

11 GENERAL SCHMUTZER: I take it by your silence you all
12 can. Thank you. Thank you, Your Honor.

13 THE COURT: Mr. Miller?

14 MR. MILLER: Thank you, Your Honor.

15 Mr. Galyon, have you -- you've heard something about the
16 case, I take it, is that correct? In the newspaper or what?

17 JUROR GALYON: At work.

18 MR. MILLER: Where do you work?

19 JUROR GALYON: (Inaudible).

20 MR. MILLER: What do you do there?

21 JUROR GALYON: Arnold's Engineering.

22 MR. MILLER: What do you do there?

23 JUROR GALYON: Press operator.

24 MR. MILLER: Just a lot of talk of -- among the
25 employees about it?

1 JUROR GALYON: Yes.

2 MR. MILLER: Anybody there that you talked to, are they
3 associated with either side in this case?

4 JUROR GALYON: Well, I've heard one of uncles -- I've
5 heard -- you know,... I mean, I don't want to repeat what I've
6 heard, but...

7 MR. MILLER: That's correct. But you -- well, my
8 question is: Do you work with anybody and talk with anybody
9 there where you work who is associated with either side, be it
10 relatives of the victim or...?

11 JUROR GALYON: You mean normal conversation?

12 MR. MILLER: Yeah.

13 JUROR GALYON: Yeah, the stepfather I do.

14 MR. MILLER: Okay.

15 JUROR GALYON: He works there. And the aunt works on
16 the second shift, and the two uncles works on the day shift.

17 MR. MILLER: Ms. Shoemaker, you've heard about the case
18 also, I take it?

19 JUROR SHOEMAKER: After I came here from Georgia.

20 MR. MILLER: How long have you lived here?

21 JUROR SHOEMAKER: About a year, year and a half.

22 MR. MILLER: Okay. Have you formed an opinions based
23 on what you've heard?

24 JUROR SHOEMAKER: No.

25 MR. MILLER: You understood that we can't try the case

1 through the media, we try it in here, from what comes from the
2 witness stand?

3 JUROR SHOEMAKER: (No audible response.)

4 MR. MILLER: Ms. Huskey, you haven't formed any opinions
5 based on what you've heard, I take it?

6 JUROR HUSKEY: (No audible response.)

7 MR. MILLER: And have you heard anything other than the
8 paper or the TV? Have you heard word-of-mouth around town?

9 JUROR HUSKEY: No, just media.

10 MR. MILLER: Okay. And you're not related to or
11 associated with anybody on either side, is that correct?

12 JUROR HUSKEY: No.

13 MR. MILLER: Mr. Ellis, same question: Have you heard
14 it around town any, or just on TV and the news?

15 JUROR ELLIS: News, paper.

16 MR. MILLER: Not talked to anybody about it, I take it?

17 JUROR ELLIS: Well, just normal conversations.

18 MR. MILLER: You've not talked to anybody who's
19 associated with either side of the case, have you?

20 JUROR ELLIS: I -- I know -- I knew her and her sister.
21 (Inaudible). I've not heard anything from that, though, about
22 this -- about this case.

23 MR. MILLER: You worked at the same place the..?

24 JUROR ELLIS: No, I don't work at the same place, but
25 I go -- go by twice a week where they work.

1 MR. MILLER: And you're talking about the victim and her
2 sister, is that...?

3 JUROR ELLIS: The victim, her sister, and all her
4 family.

5 MR. MILLER: Thank you.

6 THE COURT: You make deliveries, Mr. Ellis, is that what
7 you're saying, at that location?

8 JUROR ELLIS: Yeah.

9 THE COURT: Okay.

10 MR. MILLER: Mr. Ellis, it was me who mentioned about
11 the gun -- the gunshot, and I'm glad you brought that to my
12 attention. You had heard that, I believe, at some point. That
13 was in the papers. But the reason I asked that question is,
14 nobody knows what she -- this girl died of, whether it was
15 drugs, a gunshot wound, or whatever. They don't know. That's
16 the reason.

17 JUROR ELLIS: I don't know whether it was the paper or
18 where I... But I did hear it, kind of like you said here.

19 MR. MILLER: That's the reason -- thank you. That's the
20 reason we need to get away from watching the paper, and listen
21 to what the proof is from the witness stand.

22 Mr. Raney, you've heard about the case, is that correct?

23 JUROR RANEY: Just what I've read in the paper.

24 MR. MILLER: Not talked to anybody about it?

25 JUROR RANEY: (No audible response.).