

THE BAILIFF: Frank Smith, Jr.

THE COURT: Mr. Smith, come in and have a seat right here if you would.

MR. SMITH: Thank you.

BY THE COURT:

Q Mr. Smith, we are going to inquire of you exactly what it is that you have read, heard, seen, talked about, or been talked to about this case and ask you to recite in as much detail as you can what that might have been. That is number one. Number two, we are going to ask you then, based on that, whether or not you have formed an opinion about the guilt or innocence of this Defendant in this case. Number three, if you have formed an opinion, we are going to ask you what it is. Number four, if you have formed an opinion, we are going to ask you whether or not you feel you could set aside that opinion, whatever it may be, and perform the functions as a fair and impartial juror in this case, concentrating solely on what is presented to you in the courtroom and setting aside anything that you may have read, heard, seen, viewed, or whatever from outside sources. So, I think we will put the ball in your corner, and you can start by telling us exactly what you can recall having read, viewed, talked about, seen, et cetera.

A I guess to begin with I do remember the television report and I saw an open field. I saw a mobile home court. I have lived in the area and worked in the area of Moraine City quite a bit. I did recognize the areas in question. Then, I saw newspaper reports of

the victim, the student. It seems that perhaps I must have known his father, but I can't really place him. I worked at Frigidaire for 34 years. I read some of the reports as to where the victim had gone to school, at the Kettering school near the area, and about a year previous to that that he had transferred to Waynesville and had gone to school there; that he had returned back to Kettering and had at that time, the last few months, absentee problems. Those, I remember. I can remember -- I can't remember whether it was the Police Chief or an investigator who made reports on television that there was an investigation underway and that they would come to some kind of a conclusion. I can remember later announcements on that. About two weeks after all this happened, I ran into a man down at the Dayton Mall that used to work at Frigidaire who apparently lived in the area and had some knowledge of what happened, and that was the first time that I had heard that the genitals of the victim had been removed. I believe that is basically what I can remember or what I can recall. I guess when you go back that many months there is some things you forget.

Q Sure. No problem with that. Let me ask you, based on that information that you received outside of the courtroom whether or not you have formed an opinion about the guilt or innocence of this Defendant?

A No, I don't believe I have formed an opinion.

Q Could you put out of your mind all of this information that you received through the newspaper sources and the television

sources and this co-worker, could you put all of that aside, put it out of your mind and perform the functions of a fair and impartial juror based solely on the evidence that is presented to you in the courtroom?

A Well, I would certainly try. I would hope so. I believe I could.

THE COURT: Fine. Any questions?

MR. HEAD: I have no questions.

MR. LANGER: Excuse me. I have a couple of questions.

BY MR. LANGER:

Q Mr. Smith, do I understand you to say you had read in the paper that the victim in this case had gone to school in Waynesville?

A Yes, sir.

Q Secondly, regarding the man from Frigidaire that you talked to, two weeks later, you said he had some knowledge. Did he indicate that was knowledge he had gathered from reading about the case or was it personal knowledge he might have had?

A I don't know whether it was personal knowledge or whether he had just lived in the area and had heard it. I have no way of knowing that. He was an hourly worker, and I would see him around. He never did work for me. I do not know his name and probably never did. He approached me and talked to me. During the conversation, he brought things up. So, I can't answer that. I don't know.

Q You say you may be acquainted with the father of the deceased whose name would be -- the father's name would be Bobby



Rowell, R-O-W-E-L-L?

A I do not remember him by name. The gentleman in question had told me possibly I would know him.

Q He will be testifying in this trial. If you happen to recognize him, would that in any way affect your ability to be fair to this Defendant just because you recognize the father of the deceased?

A I don't believe it would. I would hope not.

MR. LANGER: That is all.

THE COURT: Counsel?

BY MR. BOSTICK:

Q Mr. Smith, based upon what you read and heard and the conversation two weeks afterwards with a neighbor, what impression did you get from those sources of information?

A Well, I think it was a situation of something that has happened that I didn't like. I think it was a crime that bothered me as a citizen.

Q Did you read any articles about the time that this young man was arrested?

A Well, I have to go back that many months. I think I read both Dayton newspapers and I watch the news. Based on the fact that I read the papers daily, I am sure that I did. That is the only way I can answer your question.

Q I appreciate that. Based upon what you have said so far, did you take it that he was guilty at the time of his arrest or not



guilty?

A Well, I am not sure that I formed an opinion of that kind. To me, it is easy to listen to the media, and you can pick up things sometimes that you wonder if they are true, wonder if they are right, and I think in this case I listened to the news, I read the news, and I don't recall having made an opinion or even considered making one.

Q The man that you talked to two weeks afterwards, did he express an opinion of guilt or innocence to you when he talked to you?

A Yes. I believe he thought this young man was guilty.

Q That didn't affect you one way or the other, what he thought?

A No, sir.

Q Have you discussed with anyone else other than that person that you told us about what you read in the newspapers or saw on television?

A Yes. I know some people in Moraine City that I have worked with, that I had discussed it with. I don't recall anybody that discussed it in great detail. It was more or less just when you meet somebody on the street or someplace, there is some mention made. Other than that, I don't recall anything.

Q You did not express an opinion to these people?

A No, sir.

Q Nor did they express an opinion to you?

A The one person I told you about is the only one.

MR. BOSTICK: Thank you.

THE COURT: Thank you very much, Mr. Smith. If you will, we will see you back in the courtroom at quarter 'til 3:00.

MR. STEPHAN: May we go off-the-record?

THE COURT: Yes.

(Whereupon an off-the-record discussion was had.)

THE BAILIFF: Patrick Cotter.

THE COURT: Mr. Cotter, would you have a seat, please, sir.

MR. COTTER: Yes, Your Honor.

THE COURT: Thank you.

BY THE COURT:

Q Mr. Cotter, we are going to ask you to recount for us in as much detail as you can recall anything that you may have seen, heard, viewed, or talked about with anyone about this case. That is number one. Number two, we are going to ask you whether or not based on all of that or any of that, that you have formed an opinion about the guilt or innocence of this Defendant. Number three, if you have formed an opinion, we are going to ask you what it is. Number four, if you have formed an opinion, we are going to ask whether or not you feel you could set it aside and listen to the evidence presented in this courtroom and not confuse it with anything you might have heard or read or whatever about the case and perform the functions of a fair and impartial juror. So, let's start back at the beginning. Why don't you tell us everything you can remember that you may have heard, read about, et cetera about this case.

A I remember the case quite vividly. Not the details of

what happened so much as the fact that my daughter was a classmate of the victim. She attended Van Buren. We were quite concerned at the time for the safety of our children in that area. In fact, my daughter was a babysitter frequently for some friends who live very close to the scene of the crime. In terms of exactly what happened, we heard a lot of stories about the body being mutilated, the area of the privates as well as I heard it was stabbed repeatedly. The kids were talking about drugs being involved in the situation. I don't recall whether I read that in the paper or not, but that was the rumor I heard. Frankly, we were just quite upset about the whole situation and the safety of the children in the area.

Q Okay. Based on that information that you received through your children and through whatever sources that you may have seen, the media sources, have you formed an opinion about the guilt or innocence of this Defendant in this case?

A I have not formed an opinion about that gentleman in particular. You know, I don't know that he is the one who did the crime. I have some very firm convictions, I guess, as is apparent, about that crime. I don't know that I can be real fair as a juror.

Q That is kind of a separate inquiry that we are going to get into later on. What we are focusing on right here is whether or not, based on news coverage and other outside sources of information, whether you have formed an opinion based on that about the guilt or innocence of this Defendant, and if you have, whether or not you could set it aside and listen to the evidence in the case and judge the case



based on that evidence and not something you heard outside the courtroom. That is really the area of inquiry. I think what I hear you saying is you do not have an opinion?

A I do not have an opinion about guilt or innocence. I have an opinion about how horrible the crime was and was quite concerned at the time.

Q I am certain that all counsel share your opinion about that, as does the Court. Let me see if I can sum it up. There is nothing for you to set aside as far as guilt or innocence on this particular Defendant based on anything you may have heard, and assuming we cross our hurdles and you are selected as a juror, you would not judge this case based on anything you heard outside the courtroom? You would judge it strictly on what is presented to you inside the courtroom, is that what you are saying?

A I will certainly do a good job as a juror. I would try to do just that. I wanted you to know that I have some familiarity with this case before. I told you what I thought.

Q I appreciate it. Thank you.

THE COURT: Does counsel have any questions?

BY MR. LANGER:

Q Mr. Cotter, what has your daughter told you about the victim?

A She, of course, was a classmate of the victim. It was, I think, general discussion in the school there at Van Buren about what happened to him, about his being stabbed, and particularly about

the rape aspects of the incident. The children were quite concerned that there were a group that were involved in drugs and that this thing was drug related. Because of that, as a parent, I was real concerned about what was going on in that school.

Q Did your daughter tell you anything about David Rowell as a person and the sort of fellow he was?

A Yes.

Q What did she tell you about what sort of person he was?

A Frankly, she didn't think he was a real good person.

Q Did she say why she felt that?

A She felt he was also involved with drugs, taking drugs.

MR. LANGER: Thank you.

THE COURT: Counsel?

MR. BOSTICK: Thank you, sir. We have no questions.

THE COURT: Thank you very much, sir. We will see you back in the courtroom about a quarter 'til 3:00.

THE BAILIFF: Janet McCaffrey.

THE COURT: Would you have a seat right here, please.

BY THE COURT:

Q Ms. McCaffrey, we are going to ask you a few things, the first of which is for you to recount for us exactly what it is that you recall having seen, heard, read, or talked about, about this case in as much detail as you can recall. Secondly, we are going to ask whether or not, based on these things, you have formed or expressed any opinion about the guilt or innocence of this Defendant

in this case. Thirdly, if you have formed an opinion about that, we are going to ask you what it is. Finally, if you have formed an opinion, we are going to ask you whether or not you can set that opinion aside as well as anything that you may have heard, read, seen, talked about in this case and perform the functions of a fair and impartial juror, paying attention only to the evidence that is presented to you in the courtroom. Based on that, I will just let you go ahead and tell us what it is that you recall having read, viewed, et cetera.

A I recall hearing the boy was missing, the murdered boy, and then I remember hearing, I don't remember if it was television or radio, that the father had found the boy. I remember that I was very upset that the father had to be the one to find the boy, that this is something the father will always live with. Then, I work downtown. So, the police officer that comes into our business all the time, I remember, was the one who told me about the boy's mutilation. Then, I do remember feeling rather relieved when they had arrested someone. I don't know whether that means I had formed an opinion of guilt or innocence or not. I don't know. That is a part of it that kind of concerns me. I felt that there must be something that they had enough to charge someone with. I recall reading in the paper some of the details about the boys, I believe it was in the trailer and the night of the murder and that the murdered boy had been bound and gagged and was kept in another room. I can't recall whether it was alcohol or drugs being used during the party, but I thought, here we



go again. That is a very definite opinion.

Q We are going to get into some other legal instructions that the jury will have in terms of the presumption of innocence and things like that, which you may be familiar with. I am not sure. But, right now we are just trying to determine whether or not based on what you may have seen or heard or gathered from these outside sources, number one, whether you have formed an opinion on the guilt or innocence of this Defendant and, number two, if you have, whether you could set that opinion totally aside and whether you could set aside in addition to the opinion all of the other extraneous things about this case you may have heard from the outside sources and decide the case solely on the basis of the evidence presented in the courtroom. That is basically the question. I have got to determine, number one, whether you have an opinion.

A As to his guilt or innocence?

Q As to his guilt or innocence?

A I don't know. I really don't know. I look at him, and I don't feel I look at him and feel he is guilty. When he was brought into the courtroom, I looked at him, and I thought there is no way he had that hairdo before this. I don't know. I really don't know.

Q May I take it that if you don't know if you have an opinion, the chances are you don't have an opinion? If you had one, you would probably know it, right?

A I would think so. I would hate to get halfway through

and find that I --

Q That is why we ask the jurors to do a little soul-searching and make definite answers. We can't rely on kind of and the quasi answers, well, I think so or maybe, like that. It has got to be basically yes or no. So, I don't mean to put words in your mouth or to lead you through this, but I do need some kind of answer, a definite if you will, as to whether you have an opinion or not. That is the first threshold thing we have to get to.

A I would have to say honestly that I don't know. If I do, I would be leaning towards guilt because I do feel that in order to pick someone up and charge them, there has to be some facts.

Q That is kind of a separate inquiry. We will get to that. That is a separate area. Let me do it this way. Assuming that you have, let's say, you may have an opinion that hasn't dawned on you fully at this point, would you nevertheless be able to set aside whatever you have learned about, know about, or may think about in this case, would you be able to set that totally aside in your mind and decide this case solely on the basis of the evidence presented in the courtroom?

A Probably.

Q And only that evidence?

A Probably.

Q I need a yes or no answer.

A Yes, I believe I could.

Q Would you be able to follow the instructions of law given

to you by the Court, and I am going to get back into this other area, particularly in the area of the presumption of innocence. For example, one of the instructions of law given to the jurors by the Court will be anybody accused of a crime is presumed innocent until proven guilty.

A I believe so, yes.

Q You could follow that instruction?

A Yes.

THE COURT: Counsel may inquire.

MR. HEAD: Thank you, Judge.

BY MR. HEAD:

Q You said an officer came in your store and told you parts --

A We were discussing it.

Q Was it a Moraine officer?

A No, no. Dayton.

Q He just heard about it the way cops hear about cases?

A Right.

Q May I assume that when you heard that they had arrested somebody and you felt relieved, you felt relieved because they got the man who did the crime?

A Yes, that was my thinking.

Q Now that we are here and this man is the man charged with the crime, are you telling us you no longer feel that we have got the man? That wasn't worded quite right. You are willing, regardless of



whether you have an opinion, maybe leaning toward or not leaning toward guilt, that you will listen to all the evidence with an open mind and not make any final opinion or decision as to the guilt or innocence until you hear all the evidence?

A I believe so. It is a little different when you look at a human being as opposed to when you hear something on the news or read it in the paper.

MR. HEAD: I don't have any more questions.

THE COURT: Counsel?

BY MR. BOSTICK:

Q I assume, ma'am, that but for what you have told us you wouldn't have any opinion at all? Putting it differently, had you not been exposed, you would have had to be in a different state, but had you not been exposed to what you indicated, you then wouldn't be in a position to say, when asked if you had an opinion, and I am quoting you, I don't know, would you?

A No.

Q So, you are where you are now basically because of what you have heard from the sources that you heard it from?

A I am where I am now because of what I heard from the sources I heard. My concern and the opinion was based on some of the things that I thought at the time this occurred, so I hadn't really thought anything about it after that, you know. Like sometimes when you read something in the paper I'd think about it again, but I hadn't thought anything about it afterwards until I got the summons.

Q In other words, you haven't necessarily followed the case in the newspapers?

A No.

Q You haven't looked for it from week to week?

A No.

Q Have you discussed it with anyone other than this police officer?

A Only at the time that it went on, you know. Other than that --

Q Did he express an opinion to you?

A No.

Q You didn't express one to him, of course?

A Just the usual, it is a terrible thing.

Q But you did come to the conclusion that if somebody is picked up, I think you said, there has to be something there?

A Yes.

Q And you arrived at this --

A Not picked up. Charged.

Q Excuse me. Charged. And you formed this opinion -- was this an opinion of yours?

A Yes.

Q And you formed this opinion based upon what?

A Because I know in order to charge someone there has to be some evidence linking the person to a crime.

Q And what you read and heard, was that the evidence that

you considered?

A No. I didn't consider any evidence at all because I know most of it doesn't go in the paper anyway.

MR. BOSTICK: Thank you, ma'am.

THE COURT: We will ask you to come back at a quarter of 3:00. See you then.

THE BAILIFF: Richard Betley.

THE COURT: Mr. Betley, would you have a seat right there, please.

MR. BETLEY: Thank you.

BY THE COURT:

Q Mr. Betley, we are going to make a couple of different inquiries of you. First of all, we are going to ask that you tell us in as much detail as you can recall what it is that you have either seen or read about or heard about in this case. That is number one. Number two, we are going to ask you then whether or not you have formed an opinion based on that about the guilt or innocence of this Defendant in this case. Number three, if you do have such an opinion, we are going to ask you what it is. Number four, if you do have an opinion, we are going to ask whether or not you feel you could nevertheless set it aside and in addition set aside anything that you may know about this case from any of these other sources and be a fair and impartial juror and decide the case based solely on what you hear in the courtroom. So, let's go back to the beginning and have you tell us everything that you can recall with as much specificity as



you recall about what you may have seen, read, or heard about this case.

A The best I can recall is my wife and I were sitting at the dining room table, and I don't recall if I was doing paperwork from work or if I was paying bills, but she was telling me what she was reading in the newspaper. Of course, as I was working, I was listening to what she was saying. I can recall saying to her that whoever did that was a sick person, and I did form an opinion, yes, and I have formed and stated my opinion on two different occasions.

Q Is this the newspaper accounts that were read to you by your wife, is that the only source of information that you have had?

A If I remember correctly, it was the same evening. In fact, it was the same evening I saw it on television.

Q Based on those accounts, the newspaper and the television accounts, did you form an opinion about the guilt or innocence of this particular Defendant?

A I didn't know who the Defendant or anybody was at the time. If it was mentioned, I don't recall it.

Q Would it be fair to say your opinions and attitudes that you have relate to the nature of the crime as opposed to the guilt or innocence of this particular Defendant?

A Would you repeat that, please.

Q Would it be fair to say that your opinions or attitudes relate to the nature of the crime as opposed to the guilt or innocence of this particular individual?

Voir Dire

A The nature of the crimes, yes, sir.

Q Let me ask you this as a final question. Do you feel that you could set aside those opinions and any of the information that you received through the newspapers or through the television accounts? Could you set those aside, out of your mind, and judge this case based solely on what is presented in the courtroom from the witness stand and by way of evidence and be a fair and impartial juror in this case?

A I don't know if I could, Your Honor, really because when you have read the circumstances of the crime, I was sort of disgusted right then and there at that time.

Q I am sure counsel and everybody shares your feelings in that regard. We don't ask our jurors to be inhuman. Obviously, they are human beings, and we ask that they remain human beings. We do ask, however, that they make every reasonable human effort to be as fair and impartial as they can, realizing they don't live in a vacuum. I guess what I am asking you is whether or not you feel you would be able to set aside the things that you have learned about this case through the outside sources and decide the case based solely on what you hear in the courtroom?

A I will be truthful. I don't know if I could or couldn't.

Q We have got to pin you down a little closer. I realize that is hard to do because you haven't heard anything yet. Unfortunately, this is one of those areas where the law requires a yes or no answer from the prospective juror, and it is a little unfair because

you haven't heard enough to know. We ask that you project ahead even though you don't know what is coming and make a yes or no answer to the question.

A Boy. That is a tough one. I am going to have to say no.

THE COURT: Fair enough. Does counsel have any questions?

MR. HEAD: No, we don't.

THE COURT: Counsel?

MR. BOSTICK: No, Your Honor. Thank you.

THE COURT: Mr. Betley, we are going to excuse you from the jury. I appreciate you are struggling with this problem.

MR. BETLEY: If it was -- can I say something else? If it was anything other than this, I think I would be able to be a juror.

THE COURT: I agree with you. I think the jurors that we have excused I would feel the same way about them. Thank you.

MR. BETLEY: Thank you, sir.

THE BAILIFF: Mildred Moritz.

THE COURT: Ms. Moritz, why don't you have a seat right here, if you will. Thank you.

BY THE COURT:

Q Ms. Moritz, we are going to ask that you recount for us as best you are able everything that you can recall having heard or read or viewed about this case. That is number one. Number two, after you do that, we are going to ask you whether or not you have formed any opinion based on that about the guilt or innocence of this Defendant. If you have formed such an opinion, we are going to



then ask you what it is. If you have formed such an opinion, we are going to then ask whether or not you can nevertheless set it aside and set aside anything you may have read or heard or viewed about this case and perform the functions of a fair and impartial juror, deciding the case solely on the evidence that is presented to you in the courtroom. So, I guess I will turn it over to you and if you would, just as best as you can recall, state whatever it is that you may have heard, read, or viewed about this case.

A Well, to tell you the truth, we were out of town for three months of the winter, and we canceled our paper. We came back. That is old news. I never heard anybody discuss it. So, I really couldn't tell you.

Q Do you have an opinion about the case one way or another, about the guilt or innocence of this Defendant?

A No.

Q Are you saying there really isn't much of anything for you to put out of your mind?

A No, no, unless he is proven guilty. Then, I am for it.

Q What I am asking you is you don't possess -- do you possess any particular knowledge about this case that you would have to put out of your mind so as to concentrate on the evidence presented from the witness stand?

A I would concentrate on the witnesses.

THE COURT: Any questions?

MR. HEAD: No questions.

THE COURT: Counsel?

MR. BOSTICK: Just one, if I can.

BY MR. BOSTICK:

Q When did you return to the city?

A The first part of March. We go to Texas every winter.

Q It was kind of cold here this year, wasn't it?

A Yes.

Q I take it you haven't read anything right up to this morning? You haven't read or heard anything?

A No.

Q What newspapers do you take?

A The Dayton Daily News, but old papers like that I don't read, you know.

Q You will forgive me, ma'am. I was writing when you made a statement a few minutes ago. Did you say if they prove him guilty, I am for it?

A I don't know how I worded it.

Q That is probably not what you said. I tried to scribble something down. I can't read my writing.

A If he is proven guilty, I guess I would be with them.

Q If he is proven guilty?

A Yes.

Q That has got nothing to do with what is in the newspapers?

A No. I have never read it in the paper at all.

MR. BOSTICK: Okay.

THE COURT: You are excused, ma'am. We will see you at a quarter of 3:00.

THE BAILIFF: Juror Lutz.

THE COURT: Ms. Lutz, would you have a seat, please.

BY THE COURT:

Q Ms. Lutz, we are going to ask a couple or three or four questions of you. The first is we are going to ask if you will recite in as much detail as you can recall the things that you have seen, heard, viewed, talked about, or whatever about this case. That is number one. Then, after that, we are going to ask whether or not based on these matters you have formed an opinion about the guilt or innocence of this Defendant. If you have done that, if you do have an opinion, we are going to ask you, number three, what that opinion is. Number four, finally, if you do have an opinion, we are going to ask whether or not you can set aside that opinion and anything that you may have heard, viewed, or read about this case and perform the functions of a fair and impartial juror, listening only to the evidence presented from the witness stand in this case. So, I guess we will go back to the beginning. Why don't you tell me whatever it is that you can recall having read or viewed or listened to about this case.

A I don't remember a lot, but the main thing I remember was they found the body of a young man out in the field. He had been sexually assaulted, and part of his vital organs were removed. Then there was a trail of blood leading back to the trailer of the accused.



Voir Dire

Q Did that information come to you from the television or newspapers?

A Both, I would say.

Q Based on this information that you received from these outside sources, have you formed an opinion on the guilt or innocence of this Defendant?

A In my mind, I felt it was pretty clear that he was guilty, but --

Q That is an opinion you had formed, is that correct?

A Yes.

Q Do you still hold that opinion at this time?

A At this point, I would.

Q My question to you is, do you feel that you would be able, in spite of the fact that you have received this outside information about the case and in spite of the fact that you have formed this opinion based on that information outside of the actual case in the courtroom, do you feel that you could nevertheless set these matters all aside in your mind and listen solely to the evidence presented in the courtroom and set any opinions you may have had aside and decide this case based solely on the evidence presented in the courtroom?

A Honestly, I am not sure that I could.

Q Again, I appreciate how difficult this is because you have to kind of project yourself into a situation that you don't really and can't possibly know exactly all the details about; but,

we do require that you make a kind of definite yes or no answer in spite of the fact you probably don't have really enough information to make that. We do ask the jurors to do that anyway.

A I can answer that. I would have to say in fairness to him that maybe I should not serve.

Q Your answer is that you could not set aside these opinions and this information?

A Right.

THE COURT: Counsel?

MR. HEAD: Nothing, Your Honor.

THE COURT: Counsel?

MR. BOSTICK: No questions, Your Honor.

THE COURT: Thank you very much for staying around and participating in the process. We appreciate it very much. You are excused.

THE BAILIFF: Yvette Rand.

THE COURT: Ms. Rand, would you have a seat right here, please.

MS. RAND: Sure will.

THE COURT: Thank you.

BY THE COURT:

Q Ms. Rand, we are going to ask you a few things in this proceedings. Basically, what we want you to do is recite for us as much as you can recall about anything that you may have read, seen, or heard about this case. Then, after you do that, we are going to

ask whether or not you have formed any opinion based on that material about the guilt or innocence of this Defendant. If you have formed such an opinion, we are going to ask you what it is. Then, after that, if you have formed such an opinion, we are going to ask whether or not you feel you could set it aside and all the other material that you may have heard or read or viewed about the case and perform the functions of a fair and impartial juror based solely on the evidence that comes from the witness stand. So, let's go back to the beginning. Why don't you tell us in as much detail as you can recall what you may have read, heard, or talked about as far as this case is concerned?

A The only reason I came in this first group was I believe I have only heard this discussed at work, only the top layer. Nothing very deep, but, it seems I went away from that not thinking I wonder if he did it, but why in the world would he do it, and that doesn't seem good. It seems to me that the Prosecutor would have less trouble convincing me that he was guilty than the Defendant would have to convince me that he was innocent. Whether once they produce evidence, you know, I could stand there and be very fair -- I would hope I could. It just seems I came off with that feeling.

Q Let me ask you a couple questions now. Your outside source of information is people at work talking to you?

A Yes. I believe that may be where I heard it. The name sounded vaguely familiar.

Q You don't think you got any other information from the



newspapers or television?

A I don't think so.

Q Based on what these people at work talked to you about, you felt that you came away with an opinion that the Defendant in this case was guilty, is that what you are saying?

A It seems, yes.

Q The next question then -- well, let me ask you this. Do you still have that opinion?

A It is based on so little that it is hard for me to answer that.

Q Let me go a little further then. Whether or not you have this opinion at the present time, at least at one time you did have it. Would you be able to set it aside, that is, set out of your mind anything that you may have heard from your co-workers and also set aside this formerly held opinion or any opinion that you may now have, set aside all that and decide this case solely on the basis of the evidence that is presented in this courtroom?

A I believe I could.

Q And not based on any opinion that you may have had or anything else you may have heard about the case?

A I believe I could.

THE COURT: Does counsel have any inquiry?

MR. HEAD: Yes, I have one question or two, Judge.

BY MR. HEAD:

Q Ms. Rand, you said that you would be able to put aside

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any opinions that you have?

A Right.

Q You also said it might be easier for me to convince you of this guy's guilt than it would be for Defense counsel to convince you of his innocence.

A Only because it seems what went through my mind was not at that time, boy, I wonder if he did it, but why did he do it. What made me say that, I don't know. Maybe the people who talked to me were saying, you know, he did it. I don't know. I don't know.

Q I guess what we are all looking for is someone who can listen to all of the evidence as it comes from the witness stand with an open mind.

A Right.

Q Discounting anything else read about it or heard about it.

A Right.

Q And then at the close of all the evidence make a decision.

A Right.

Q Based on what the evidence shows.

A I understand.

Q Can you do that?

A I believe I could.

MR. HEAD: Okay. Fine. Thanks.

THE COURT: Counsel?

BY MR. BOSTICK:

Q I take it, Ms. Rand, you have been very candid, and we

appreciate that. I take it, based upon what your co-workers discussed with you, that it made you think that the young man that was arrested was guilty?

A I am afraid that is what I might have come away from the conversation with.

Q You had no problem with the first consideration of who did it?

A No. I didn't think of anybody else.

Q That was based upon what you had heard from your co-workers?

A Right.

Q Who had gotten the information from someone else?

A Maybe the paper.

Q Then, what really bothered you was not who did it but why they did it?

A That is right.

Q Is that still in your mind today?

A What is in my mind is was that a normal reaction; would most people who had heard that come away like me or would they come away void. I don't know. That was me.

Q Well, you are being introspective and you are being honest with us. We appreciate that. My question is do you still feel that the man who was arrested is the man who did it and are you still wrestling with the problem deep inside of why he did it?

A I am feeling today, really, before you could judge the



case you should hear both sides of the story. I don't know that much about it. All I heard was surface.

Q I appreciate that. You said, and I tried to write it quickly, in response to the last question Judge Kessler asked you, could you set it aside.

A I believe I could.

Q And base it strictly on what you hear in the courtroom.

A I believe I could.

Q You said, I believe I could.

A Yes.

Q Would it be fair if I asked you what you mean when you say I believe I could?

A Because I had so little to base my first opinion on. All right? It was I didn't hear the pros and cons. I heard, you know, this boy was arrested and this is what happened. I thought that is an awful thing.

Q You would agree with me, wouldn't you, you don't have anything to base your opinion on this afternoon?

A No, I don't.

Q Absolutely nothing?

A No, I don't know enough about it.

MR. BOSTICK: We have no further questions.

THE COURT: Very well. We will see you back in the courtroom at quarter of 3:00. Thank you very much.

THE BAILIFF: Pamela Fannon.

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THE COURT: Ms. Fannon, would you have a seat here, ma'am, please.

BY THE COURT:

Q Ms. Fannon, we are here for a couple different reasons. First, we would want to ask you to recount as best you can everything that you may have heard, viewed, read about, or talked about, or been talked to about, about this case. Secondly, after you do that, we are going to ask whether, based on all of that, whether or not you have formed any opinion about the guilt or innocence of this Defendant. If you have formed such an opinion, we are then going to ask you what it is. After that, we are going to, if you have formed such an opinion, we are going to ask whether or not you could nevertheless set the opinion aside and also set aside anything you may have heard or learned about this case and decide this case based solely on the evidence presented from the witness stand and be a fair and impartial juror in this case. So, let's go back to the beginning and have you recount, if you can, in as great a detail as you can anything you may know about the case.

A I followed the case in the newspapers and on television as far as how old the boy was and the things from the time like when they were talking about his father finding him, how he disappeared, and the fact that he was killed. And, there was mutilation involved and he was raped. Basically, that type of stuff. What was in the paper. Hearsay as to what was supposedly done to him, you know, in the time that he was being held and stuff like that. That is hearsay.

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Q From what source was that?

A Just people talking. Hearing people talk about it.

Q Based on these various pieces of information and sources of information that you have had available to you, have you formed any opinion about the guilt or innocence of this Defendant?

A Yes, sir, I have.

Q What is the opinion?

A In my opinion, I believe he is guilty.

Q I would ask you then as a final matter, do you feel that you could nevertheless set aside this opinion and anything that you may have heard, read, or seen about the case and from these various sources and be a fair and impartial juror, judging this case on what is presented from the witness stand?

A No, sir, I don't.

THE COURT: Any questions?

MR. HEAD: None, Your Honor.

MR. BOSTICK: Nothing, Your Honor.

THE COURT: Thank you for being candid. We appreciate it. You are excused.

THE BAILIFF: Mr. Smith.

THE COURT: Mr. Smith, we are here to find out exactly what it is that you may have heard, viewed, listened to, or talked about as far as this case is concerned through any source, any media source or any other source and to have you tell us in as much detail as you can about that. That is number one. Number two, we are going



to ask whether or not based on any of that information you have an opinion about the guilt or innocence of this Defendant. Then, if you do have such an opinion, we are going to ask you what it is. After that, we are going to ask you whether or not, if you have such an opinion, you could nevertheless set it aside and decide this case based solely on what would be presented to you from the evidence from the witness stand and so on and discount all the other stuff. We have got to start at the beginning. The beginning is to find out what it is, if anything, that you have heard, read, viewed, and so on about this case.

A Well, I heard the first time when it was, in the winter. I heard the little boy was missing. They found him in a field. Then they found who the person was that did it. Me and dad talked about this stuff. He works the same place I do. We discuss criminal stuff that goes on. This happened to be a pretty big case. I'd probably be a little biased on that.

Q Let me ask you, do you have an opinion based on this information?

A Yes, I would have an opinion.

Q What is the opinion?

A I believe in capital punishment. It would be swaying it the other way.

Q I can tell you capital punishment is not in this particular case.

A I realize that. I am saying that is what I believe.

Q Let me ask you specifically, do you have an opinion that the Defendant is guilty in this case?

A I would say yes.

Q The final question is, could you set aside this opinion and anything else that you may have heard or know about this case from these outside sources and nevertheless judge this case fairly and impartially as a juror in this matter?

A I don't believe I could.

THE COURT: Fair enough. Counsel?

MR. HEAD: No questions. Thank you.

MR. BOSTICK: Nothing, Your Honor.

THE COURT: Thank you very much for sharing this with us. You are excused from further service.

(Whereupon the Reporter inquired as to Mr. Smith's first name. His first name was stated to be Craig.)

THE BAILIFF: Charles Klein.

THE COURT: Mr. Klein, would you come in, please.

BY THE COURT:

Q Mr. Klein, we have a couple of inquiries. First of all, I am going to ask that you recount to us as best you can anything that you may have read or that you recall seeing, or have heard on radio, or have gotten from any other outside source about this case. We want you to recite what that is. Secondly, after you do that, we are going to ask whether or not you have formed any opinion about the guilt or innocence of this Defendant based on that. Then, we are

going to ask if you have formed such an opinion, we are going to ask you what it is. After that, we are going to ask whether or not you could set that opinion aside and judge this case fairly and impartially, based solely on the evidence presented from the witness stand. Why don't you start and tell me what you recall about what you have learned about this case.

A Mainly, what I heard was on radio and television, just what happened. Me and my friend were talking about it. We thought it was kind of sick, what happened, stuff like that. That is basically all. I believe I heard the word Wampler mentioned a couple of times.

Q That was mentioned through your friend or on radio?

A Through our friends.

Q Based on this information that came to you through your friends and through the television and so on, have you formed any opinion about the guilt or innocence of this Defendant?

A Not really.

Q There wouldn't be anything then, no opinion at least for you to set aside? Let me ask you this. Could you set aside any of this information that you got through your friends or through the television or whatever, forget about all of that and just judge this case based on the evidence presented in the courtroom?

A I don't know if I could or not.

Q We are going to have to get you pinned down on that.

Unfortunately, the law requires you to do a little introspection in yourself and to say yes or no whether you could or couldn't because,



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obviously, if you can't set aside the things you have learned from the outside sources, then you couldn't be a fair and impartial juror.

A I'd say probably not. I thought the whole time that is who had done it.

Q You do have that opinion?

A Yes.

Q You could not set that opinion aside, is that correct?

A Possibly, but I guess not.

THE COURT: Counsel?

BY MR. LANGER:

Q Mr. Klein, why is it that you have this opinion? Did you have specific information that leads you to think he is guilty?

A A friend of mine knows some Wamplers is the reason I remembered the name. The people own Hara Arena. It just stuck in my mind. No basic reason why I think he did it. Just talking and stuff like that.

Q Friends who are familiar with the Wampler family said negative things about the Wampler family?

A Yes.

THE COURT: Counsel?

MR. BOSTICK: Nothing, Your Honor.

THE COURT: Mr. Klein, you are going to be excused from any further service in this case. We appreciate you coming in and saying this to us personally.

THE BAILIFF: Michael Stokes.

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THE COURT: Mr. Stokes, would you have a seat, please, sir. Thank you.

BY THE COURT:

Q Mr. Stokes, we are going to ask you to do a couple of things. First of all, we are going to ask you to recount for us as best you can anything that you may have read, viewed, listened to, been told about, as far as this case is concerned. That is number one. Number two, we are going to then ask whether, based on any of that, you have an opinion about the guilt or innocence of this Defendant. That is number two. Number three, if you do have such an opinion, we are going to ask you what it is. Number four, if you do have such an opinion, we are going to ask you whether or not you feel you could nevertheless set that opinion aside and also set aside anything you may have read, seen, or heard about this case and judge this case solely from the evidence that comes to you in the courtroom. So, why don't we start with you and you recount best you can anything that you know about this case.

A Well, I first seen the case on television when Channel 7 put it on the air and where they had found the body, and I followed it in the papers. Specific details, I couldn't tell you except that the body was mutilated. They did find him in a field next to a mobile home park, and they did trace the tracks back to a mobile home where they found the Defendant.

Q Okay. This source is mainly the television?

A Mainly television and newspapers.

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Q Newspapers?

A I read it in the newspaper, also.

Q Based on this information, have you formed an opinion about the guilt or innocence of this Defendant?

A Yes, sir, I have.

Q What is that opinion?

A I think he is guilty.

Q The final question, then, is whether you feel that you would be able to set aside this opinion and set aside all this information that you have already received about this case through these outside sources and nevertheless function as a fair and impartial juror, judging the case solely on the evidence presented from the witness stand?

A No, sir, I don't think I could.

Q Very well.

A To be honest.

THE COURT: Thank you. Does counsel have any questions?

MR. HEAD: No, Your Honor.

MR. BOSTICK: No, Your Honor.

THE COURT: You are going to be excused from the case. We do appreciate you staying around and participating.

THE BAILIFF: Theresa Demeo.

THE COURT: Ms. Demeo, would you have a seat here. Thank you.

BY THE COURT:



Q We are going to ask you a couple of things. First of all, we are going to ask you to recount for us in as great a detail as you can anything you may have read, seen, or heard in any media source or anything that anybody may have told you about this case. That is the first thing. Then, after you do that, we are going to ask you whether or not, based on any of that, you have formed any opinion about the guilt or innocence of this Defendant. If you have formed such an opinion, we are going to ask you what it is. If you have formed such an opinion, we are going to ask you whether or not you could nevertheless set it aside and set aside anything you may know about this case from any of these outside sources and be a fair and impartial juror and decide the case solely on what is presented from the witness stand. Back to the beginning. Tell us anything you may recall that you have heard about this case from any outside source.

A Just what I have read in the paper, mainly. That is when the young boy's father was looking all over for him and everything and asked the police to help him. Then, you know, he found him and all. Then, investigating, looking for the person who had done it. They had found bloody trails, I believe, in the trailer. I don't know if the boy was killed in the trailer or back in the place where they had found him. Let me think. Well, about whether to have the TV camera and whether they were going to try him as a juvenile or an adult. I did do a lot of talking with my kids about the case mainly because I have boys. We discussed it with them. I was trying to think of the other stuff I had read, you know, but I think that was

just about the main stuff.

Q Let me ask you, have you formed any opinion based on any of this information that you received in this case from these outside sources about the guilt or innocence of this Defendant?

A Well, just on my own. I kind of have, you know.

Q What is the opinion?

A I think he is guilty.

Q As a final question, let me ask you this. Do you feel that you could set aside that opinion and set aside anything that you may have learned about the case from these outside sources and nevertheless perform the functions of a fair and impartial juror in this matter?

A I don't know. I honestly don't.

Q I can appreciate how difficult this is for you because it requires you to really look inside yourself, but the law does require that we get the jurors to say yes or no to that question so that we can determine whether or not they can in fact be an impartial juror. Let me ask it again. Do you feel that you could set aside your opinion about the Defendant's guilt in this case and set aside anything that you may have learned from any of these outside sources and be a fair and impartial juror and decide the case based solely on what you hear from the evidence presented in the courtroom?

A Yes, I guess I could.

THE COURT: All right. Counsel?

BY MR. HEAD:

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Q I may be going to repeat some of what the Judge said only because I caught your last answer to be yes, I guess I could, right? Can we be a little more positive about that? Can you be more yes I can or no I can't? I know it is tough, as the Judge explained.

A Yes.

MR. HEAD: Okay. No other questions.

THE COURT: Counsel?

MR. BOSTICK: Yes, Your Honor.

BY MR. BOSTICK:

Q Ms. Demeo, when was the last time you remember something about this matter and discussed it?

A I discussed it Sunday, and was it Friday or Saturday they had an article in the paper?

Q I believe so.

A I am not sure of the exact date. Sometimes I read the Saturday paper on Sunday.

Q The person or persons with whom you discussed this matter, did you also discuss the opinion that you had arrived at?

A I discussed it with my two older sons. We were talking about jury duty. I had said I knew this case was coming up. I said, wouldn't it be something if I had that, and we started talking.

Q You had discussed the matter with him before?

A Yes.

Q Did he express an opinion to you before?

A No. He said it probably wouldn't be that. They probably



already picked a jury.

Q He said that Saturday?

A No, Sunday.

Q In any event, your opinion heretofore has been, and I am quoting you, I think he is guilty?

A Yes.

Q And that opinion, in all fairness, was based upon what you read and heard about the case?

A Yes, what I read.

Q What you read. Excuse me. Really, ma'am, there is nothing that has taken place up until this minute which has changed your mind about it, has there, based upon what you have read?

A Well, I read it, you know, quite a while ago. Like I said, it was the different things that had been in the paper about it. That has, you know, more or less, you know, kept my interest alive, and then listening to Judge Kessler's comments.

Q You didn't have the Judge in the living room with you?

A Right.

Q None of us do. In any event, I am not prying. You realize this is pretty serious?

A Right.

Q Would you say that was a strong attitude on your part, the fact that you think he is guilty? Maybe I should ask it this way. How strong was the feeling that you had?

A I think it was more about the act and everything like

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that, more so than, you know, the crime itself.

Q The crime itself?

A Right. Just the way it happened and all this kind of thing.

Q That turned you off immediately, didn't it?

A Yes. Everything, I just, you know, read it in the paper and talked about it.

Q I understand. Let me finally ask you this, and I want to be as candid with you as you are with us. You have really given three answers in the last two or three answers. The first time around with respect to whether or not you could set aside what you read and discussed you said, I honestly don't know.

A Yes.

Q The second time around you said, I guess I could. And then the third time around you said, yes. Why did you go from honestly don't know to yes?

A Well, I was thinking about what the Judge said, you had to have a definite answer. I think in a way I could put everything else I read about it aside because it was a while ago that I did read it, you know.

MR. BOSTICK: Nothing further.

THE COURT: Thank you. I will ask you to go back in the courtroom and we will see you shortly.

THE BAILIFF: Anna Ondre.

THE COURT: Ms. Ondre, would you have a seat.

BY THE COURT:

Q Ms. Ondre, we are asking a few questions. The first is I want you to recite as best you can anything you may have heard, seen on television, read about in the newspapers, had people talk to you about, et cetera.

A Yes.

Q About this case. Then, after that, we are going to ask you whether or not, based on any of this, you have formed any opinion about the guilt or innocence of this Defendant. If you have formed such an opinion, we are going to ask you what it is. Then, if you have formed such an opinion, we are going to ask whether you could nevertheless set it aside, whatever it is, and perform the functions of a fair and impartial juror. So, let me go back to the beginning and have you recite as best you can anything you remember that you have learned from any outside sources.

A Naturally, I read it in the paper and saw it on television, and I remember the father going out looking for the boy. Then, finally, later on finding the boy and about the testicles being cut off, about the blood being in the different trailers and back and forth and they were seemingly friends in the beginning. But, other than that, that is it. Whether I have formed an opinion, no, no way.

Q No opinion?

A No opinion.

Q Then I have one other question of you and that is whether or not you could set aside all this information that you got from



these outside sources and, if you are selected as a juror, to try this case just on the evidence presented in the courtroom and not rely on any of this other stuff?

A Well, I imagine I would have to weigh the facts, naturally.

Q And decide the case just on what is presented in the courtroom?

A Yes, sir.

Q You would be able to separate all that other stuff out of your mind?

A Yes, sir, because it hadn't been proven to me one way or the other.

Q Do you feel you can be fair and impartial?

A I think so.

THE COURT: Any questions?

MR. HEAD: No, Your Honor.

MR. BOSTICK: No.

THE COURT: We will see you back in the courtroom.

THE BAILIFF: Bonita Frideger.

THE COURT: Ms. Frideger, would you have a seat, please.

BY THE COURT:

Q Ms. Frideger, we are going to ask a number of things. First of all, we are going to ask that you recite for us as best you can any information that you may have received about this case either that you heard through the radio or from other people talking to you about this case, that you may have read in the newspapers or seen on

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television, and then after you tell us that, we are going to ask you whether or not, based on any of that, you have formed any opinion about the guilt or innocence of this Defendant. Then, if you have formed such an opinion, we are going to ask you what it is. After that, if you have formed such an opinion, we are going to ask whether or not you feel that you could set such an opinion aside and decide this case fairly and impartially based on the evidence presented in the courtroom. So, back to the beginning. Why don't you recite as best you can anything that you may have learned about this case.

A Well, I just remember reading about it and seeing it on television, and I have teenage boys of my own. I sort of have an opinion.

Q Let's stay with what it is you have learned about the case. Do you recall any of the details as far as radio and television and newspaper accounts of the case?

A Would you repeat that?

Q Do you recall any of the details about these?

A Not really.

Q Newspaper accounts?

A Not really.

Q You said that you had an opinion based on these accounts. What is that opinion?

A Well, if it would happen to my son, I would want the person, you know, convicted.

Q The question is whether or not you have an opinion as to

the guilt or innocence of this particular Defendant. Do you have such an opinion?

A Yes.

Q What is the opinion?

A Guilty.

Q My question to you, then, my final question, is do you feel you could set aside that opinion and anything you may have learned from the newspapers and radio and television and decide this case solely on the basis of what is presented in the courtroom?

A I don't think so.

THE COURT: All right. Does counsel have any questions?

BY MR. LANGER:

Q Why do you have this opinion, by the mere fact he has been arrested or was this specific information that you heard that made you believe that he is the man who did it?

A Well, just if something like that happened to my son I would, you know, really feel mad about it, and I want that person convicted.

Q So that it is not any particular facts about the case?

A No, I don't remember the particular facts. I just remember reading about it.

Q If you were selected as a juror in this case and were presented all the evidence and you were told that you had to be convinced beyond a reasonable doubt of the Defendant's guilt before you could vote guilty -- let's say you had reasonable doubt. Let's



say you thought the evidence wasn't strong enough to remove the reasonable doubt. Could you vote not guilty even though you are disgusted by these crimes?

A I suppose I could, you know. You'd have to listen and get your opinion.

Q That is what we are asking, whether you can, despite the negative reaction you have to this crime and the fact that you have sons, can you put that aside and start out presuming this Defendant is innocent and if his guilt isn't proved by the facts, proved in the court beyond a reasonable doubt, you say you could vote not guilty, is that right?

A If I had to prove that he was guilty.

MR. LANGER: That is all.

THE COURT: Counsel?

BY MR. BOSTICK:

Q Who would have to prove to you that he was innocent?

A Just from listening. You would have to form your opinion.

Q What would you base it on?

A Just what I have heard.

Q From all the evidence, all the testimony?

A Yes.

Q How would you reconcile the opinion that you would take into the courtroom -- strike that. How would you reconcile the opinion that you had before you came into this room today that the person was guilty when you went into deliberations a couple weeks

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from now after having heard all the evidence?

A I don't know.

Q Let me ask you this way. By that time, would you have put the guilty judgment out of your mind and listened strictly to the evidence?

A If I was on the jury, yes. That is what you would have to do.

Q When would you begin to do that? Would you do it the first day or wait until maybe the second week and start to do that?

A You would have to do it the first day.

Q The first day. Would you be willing to do that?

A Yes, I would try.

MR. BOSTICK: No further questions.

THE COURT: You may go back, ma'am, and have a seat in the courtroom. We will get going momentarily.

THE BAILIFF: Benny Morrow.

THE COURT: Mr. Morrow, would you have a seat, please, sir.

MR. MORROW: Thank you.

BY THE COURT:

Q Mr. Morrow, we are going to ask you a couple of questions. The first is we are going to ask that you tell us as much as you can recall and in as much detail about anything that you may have heard about this case, that you may have read about the case, that you may have seen on television about the case, and so on. Then, after you

do that, we are going to ask you whether or not you have formed any opinion based on that about the guilt or innocence of this Defendant. If you have formed such an opinion, we are going to ask you what it is. Then, if you have formed such an opinion, we are going to ask you whether or not you feel you could nevertheless set it aside and perform the functions of a fair and impartial juror and set aside anything else you may know about the case and decide the case based on what you hear in the courtroom.

A Okay.

Q Let's start with what it is in as much detail as you can recall about what you have heard and know about this case.

A Well, the only thing I heard about was on the news and glanced through the paper. I didn't read it in detail, but I was familiar with it. I think I saw it on television first and read the paper the next day. I didn't form any opinion. It was just like I looked at something and, hey, this is news.

Q Okay. So, you don't have an opinion that you have to worry about setting aside?

A None whatsoever.

Q Do you feel you could set aside whatever it is that you heard about the case on the television or read about in the newspapers? Could you set all that aside and decide this case based solely on what you hear in the courtroom?

A Yes, I could.

Q Do you feel you could be a fair and impartial juror in



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this case?

A I do.

THE COURT: Counsel?

BY MR. LANGER:

Q What exactly do you recall reading in the paper?

A The paper I read stated that this fellow had been dragged out into a field and abused and raped. Some of the same things was on the news on television.

Q Were you the juror, Mr. Morrow, that is acquainted with Mr. Bostick?

A Yes.

Q Since you are here, might I ask you how you know Mr. Bostick?

A An acquaintance. He plays golf. That is all.

Q Have you socialized with Mr. Bostick on occasion, you know, at a party? How well do you know him?

A No. I see him on the golf course. That is all.

THE COURT: Does counsel have any questions?

MR. BOSTICK: I have one.

BY MR. BOSTICK:

Q Mr. Morrow, you indicated that -- let me ask it this way. Following your reading of the incident in the paper and seeing it on television, did that make you think that the young man who was apprehended was guilty or not guilty?

A I didn't think either way. The only thing I did was