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issues. Look at the evidence you have.

Look at it and see if it is really there to prove to you beyond a reasonable doubt each one of those issues.

Don't feel like you are letting anybody off the hook if you answer one of them no, if that is the way you feel that your answer should be.

Whatever you think the answer should be in your heart based on the evidence, based upon what you deem reasonable doubt is the correct answer.

We ask you to look closely at the evidence, ladies and gentlemen, and I know you are going to think strongly about what you do.

Again, I do not have another opportunity to argue with you. This will be the last time we have to talk with you.

We thank you for the way you have served, and on that, I will sit down.

MR. FEAZELL: Your Honor, if you will let me know when I have about five minutes left.

STATE'S FINAL ARGUMENT

MR. FEAZELL: Ladies and gentlemen, what you are called upon to do now is

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answer two issues, and we went over them with you in detail on voir dire.

Remember, we took it a word and a phrase at a time on both of them, and that is what you are asked to do, now, is to follow your oath, to render that true verdict according to the law and the facts that you have heard, the facts in both parts of the trial, the facts concerning the crime itself and the facts that you heard during the punishment, what you heard from Darvin Pack, what you heard from Gene Deal, the parole officer, what you found out from this, what is commonly called a pen packet that Mr. Spence had already been in prison for an offense.

As a matter of fact, there is his picture right there, and you all can look at that, and what you heard from Dr. Jolliff about his evaluation of David Spence and about how dangerous he feels that David Spence is, and it is your duty now by your oath to answer these issues truthfully and honestly.

Was the conduct of the Defendant, David Spence, that caused the death of the deceased, Kenneth Franks, committed deliberately? Remember, we said that was a two-part question. Was it done

1 deliberately?

2 The pictures are out here. If
3 you have any doubt at all, you can look at the
4 pictures again.

5 If you stab somebody that many
6 times, you stick a knife in their throat, it is
7 deliberate. It is deliberate.

8 Deliberate meaning on purpose,
9 knowing what is going to happen.

10 You assist by tying up, by
11 marching here and there, by holding a knife on
12 him, by helping in the murders, it is deliberate.

13 The second part, and with the
14 reasonable expectation that the death of the
15 deceased, Kenneth Franks, or another would result.

16 Well, you don't even have to
17 worry about "or another" here. That the death of
18 Kenneth Franks would result, yes, yes. No doubt
19 about it.

20 If you treat somebody that way
21 with a knife, there is a reasonable expectation
22 they are going to die from it.

23 Special Issue No. 2, is there
24 a probability -- a probability -- we asked you what
25 that means. Oh, a probability, a likelihood. More

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likely than not, some of you said, but a probability that the Defendant, David Wayne Spence, would commit criminal acts of violence that would constitute a continuing threat to society.

Is there a probability that he will commit criminal acts of violence? Mr. Reaves asked you to interpret that question. Is there a possibility he will change? He asked you that because of the question asked Dr. Jolliff, well, Dr. Jolliff, is there a possibility? I mean, even the remotest possibility that he might change? That is not what this question is asking, people.

Even Dr. Jolliff admitted the reason he answered it the way he did is just because of the theoretical hypothesis that anything is possible.

The sun might quit shining today. The world might stop -- might quit turning. Anything is possible, but it is not asking, is there a possibility that somehow David Spence might change, that somehow he could develop some loyalties or that somehow he might find it in himself to care about somebody else other than what Dr. Jolliff called his own immediate gratification, whatever pleases him at the time, but whether there is a

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probability that he would commit criminal acts of violence in the future.

The bit brought up about, well, Dr. Jolliff, don't you remember asking him about his family? Why don't you remember, and remember, I asked Dr. Jolliff, if you had picked up anything about caring for mamma or for daddy or for anybody or children or wife or anybody, wouldn't you have remembered that? Yes, he said. Remember his words, he said, if there had been a glimmer of that, I would have probably wanted to see him some more to find out, but David Wayne Spence is the worst I have ever seen, the worst in my 20 years as a psychiatrist that I have ever seen.

He is the worst that Kenneth Franks in his 18 years had ever seen. He is the worst that Jill and Raylene in their 17 years had ever seen.

He is the worst that Darvin Pack; as he sat up there last night, in his 18 years at the time had ever seen.

You know, Darvin had to step out here and pull up his pants legs on both sides and show you the scars that were left on him, the scars that were left on him by the knife wielding

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David Spence, but you know, there is scars on Darwin Pack worse than what he showed you on his legs.

I am talking about the scars done to his spirit, to his soul and to his mind, that to live with that kind of thing the rest of his life.

That was in September 1982. The murders of these three children here happened in July of 1982. The blood still fresh on his hands. I mean, two months later, and he is already cutting up another boy.

Is there a probability that David Spence would commit criminal acts of violence? The evidence says yes. It says yes.

Well, Mr. Reaves told you, we are sorry. Nothing will bring back Kenneth Franks. Nothing will bring back Raylene or Jill. Your verdict won't bring them back.

That's true. That's true, but the question is, someday will your verdict keep some other lawyer from standing up here and apologizing and saying, well, it won't bring them back. It won't bring them back.

Dr. Jolliff testified that he didn't think David Spence would ever change. If

1 anything, maybe he would get worse, if he could
2 get worse, and if he hadn't done anything violent
3 from the time he saw him until now, it wasn't
4 because of any changes that he thought he had
5 been through but because of the amount of security
6 around him.

7 Are we to be asked to risk
8 somebody else on the hope that there will always
9 be enough security around David Wayne Spence? No.
10 No. That is not a risk, folks. That is not a risk
11 that we should have to take.

12 That is why society has laws.
13 That is why our society has the possibility of a
14 death penalty in a case like this.

15 Each and every one of you
16 answered yes when asked on the witness stand
17 whether or not you could answer questions in such
18 a way if you believed by the evidence they ought
19 to be answered that way if even knowing that it
20 would result in the death penalty, and you said,
21 yes, I could, if the evidence was such.

22 Well, you have already found
23 the evidence such that David Spence is guilty of
24 capital murder.

25 Now, it is for you to answer

1 those questions truthfully and honestly and every
2 one of you said, I will answer them truthfully and
3 honestly and not base my answers on whether or not
4 it would result in the death penalty or not.

5 Life is precious. It is very
6 precious, very precious, and nobody wants it snuffed
7 out of them. Nobody wants to take the chance of
8 having somebody out there or even having somebody
9 locked up somewhere who could snuff out the life
10 of another human being the way these babies lives
11 were snuffed out them.

12 We have the responsibility,
13 the duty to follow the law and to answer those
14 questions the way the evidence dictates.

15 Think about the families, oh,
16 folks. I agree there is so many victims to this
17 crime -- not just Kenneth, not just Raylene, not
18 just Jill but the parents here, the parents here,
19 the parents here and the family of David Spence,
20 that is true, and the family of Gilbert Melendez
21 and Tony Melendez and everybody else who has in
22 some way been touched by this horrible thing.

23 There are many victims, but
24 you are to look at answering these questions based
25 on the probability of the perpetrator -- not the

1 victims.

2 Think about the other families,
3 the other families that could be situated where the
4 families of Kenneth Franks and Jill have sat
5 throughout this trial. Think of that. Think of
6 that.

7 You know, there is little
8 comfort, little comfort in the death of a loved one,
9 even someone who is taken out by an accident, a
10 car accident or something, and I have heard so
11 many times as you have, people say, well, you know,
12 at least they went quickly. At least they went
13 quickly. Take comfort in that.

14 You know, there is no comfort
15 in the way these children died. There is no
16 comfort in the way Kenneth and Jill and Raylene
17 died.

18 When those parents who had been
19 waiting up worrying about them got those phone
20 calls that confirmed that fear -- Mr. Franks, I
21 am sorry, the policeman told him, Kenneth is dead.

22 Ma'am, we found your daughter,
23 and she is dead. I am sorry. Raylene is dead.
24 They are dead.

25 Look at the pictures. Look at

1 them. Because like I told you, these are the last
2 pictures their parents ever saw of them. They want
3 to remember them like this.

4 These scenes will flash through
5 their minds just like with Darvin Pack. The fear
6 that he felt will stay with him the rest of his
7 life.

8 He might be a 65 or 70 year old
9 man someday, and he will still carry those scars,
10 if not the ones on his leg, the ones in his mind.

11 You can bet when David Spence
12 told Darvin Pack, you don't call the cops, you don't
13 say anything or I will kill you, Darvin believed it.

14 You saw Dr. Jolliff. He
15 believes it, and he has seen a bunch of them, folks,
16 a bunch of them. Little comfort. Little comfort.

17 You talk about deterrence. That
18 is up to you whether it will deter somebody else,
19 but even so, you are asked to answer those two
20 questions, but you know one thing. It is going to
21 deter David Wayne Spence from ever killing or cutting
22 or raping again.

23 Mr. Reaves used the word "mercy."
24 He wants you to show mercy, and Mr. Fezell is
25 going to get up here, and he is going to tell you

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that David didn't show mercy on July 13, 1982.

Well, that's right. He didn't. He didn't.

At least, David Spence has somebody to stand up here and ask -- and ask for mercy. Look at this. They have got gags in their mouths.

Where were their cries for mercy? Shut up, by David Spence. They fell on the deaf ears of David Spence. They couldn't even scream.

You heard Gilbert and Tony. They couldn't even scream as the knife went into them, as his teeth sunk into them because it sounded muffled like a hand was over them, and when he had Kenneth by the throat, he couldn't scream until he fell to the ground, and then he curled up in a ball, and the last thing ever heard from Kenneth was the death gurgle.

Raylene asked for mercy. Don't kill me. I didn't see anything. I won't tell anybody. Don't kill me. Look what happened to her cries for mercy.

You know, I am not saying this to try to tell you, well, he didn't show mercy so don't show mercy. I am telling you this because I

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think it has a lot to do with how that second question is answered.

 If there is a probability that he would commit criminal acts of violence to constitute a continuing threat to society, how does a person do something like this? Why does something like this happen? I don't know. I don't know, folks.

 It is just kind -- it's beyond my comprehension why something like this could happen.

 Dr. Jolliff's testimony was a lot like the old phrase I know you have heard. My daddy used to say it a lot, that some people just ain't no good. Some people are just mean. Son, some people are just mean.

 How do people tell their children about this kind of thing? How do you warn the ones you love about the David Spences of the world, about the predators of the world who could commit such random acts of violence as this and what he did to Darvin Pack.

 How do you tell them? You can't. You can't because they are too much like Kenneth and Raylene and Jill.

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Like I talked to you about yesterday, they got the world by the tail, but now -- but now, our fears have a face. Our fears have a face, and this is it, folks.

At least, it was for these parents. Well, their nightmare was real.

Answer those questions truthfully.

Albert Einstein said the world is too dangerous a place to live in but not because of the people who do evil but because of the people who sit idly by and let them do it.

This is your opportunity.

You know, all the time when you hear about this kind of stuff, you hear people say, when is somebody going to do something? Why doesn't somebody do something to put a stop to this kind of stuff?

Well, because of that three weeks of voir dire that we went through and because of the two weeks of trial that we have been through, you are now that somebody.

The next time you are asked why doesn't somebody do something, they will be talking about you. You are the somebody.

Folks, the next time you are asked after today why doesn't somebody do something,

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I hope that you have followed the evidence and followed your oath, and you can hold your head up, and you can look at them and say, let me tell you something, I have done something. I have done something, and not something that I am ashamed of.

All those, putting him in a dark room or putting him in a room and telling him you are going to kill him and then you take him out and you are not and the stays of execution and things like that, well, let me tell you, it is defendants and their lawyers who are asking for the rights and making sure that they are going to be carried out. Don't do it. I want my rights. I want my rights. I want my rights.

Hey, folks, we are talking about justice here, about justice, and justice means doing the right thing -- the right thing, following the law and following your oath so that you can say, I did do something. I saw that justice was done. I didn't shirk my duty.

It might have been a hard decision. I might have had to gut up to do it. Because when we talked on voir dire, you all said, yes, it would be a hard decision to make, and there

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will be a feeling in my gut.

Remember, we talked about whether that feeling would be a reasonable doubt to you or not or whether it would just be a hesitation over having to make such a serious decision.

Don't make your decision just based on your own -- based on your own fear. Don't do that. Don't do that.

Base your decision on justice -- on justice -- justice and the evidence dictates yes, yes.

I have lived with this case for a long time, but I want you to know that whatever your verdict in there, Vic Feazell can live with it, all right? I can live with it. Mr. Butler can live with it.

Kenneth Franks' mamma and daddy, whatever, they can live with it.

I hope you don't pick up the newspaper someday, somewhere and be reading along in an article and --

MR. VANCE: Your Honor, I will object to him arguing outside the record as to what something may happen in the future as to reading a newspaper.

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THE COURT: Sustained.

MR. VANCE: I would ask the jury to disregard that last statement by Mr. Feazell.

THE COURT: Do you mean about the newspaper article?

MR. VANCE: Yes, sir.

THE COURT: All right, disregard, ladies and gentlemen, for any purpose whatsoever the last statement made by Mr. Feazell.

MR. VANCE: And I would ask for a mistrial.

THE COURT: Denied.

MR. FEAZELL: Folks, what I am talking about -- what I am talking about is caring about those other families, caring about the people in the future who may --

MR. VANCE: Your Honor, I will object to that as an improper plea for law enforcement as to the expectation of the community whether in present or in the future.

MR. FEAZELL: Perfectly permissible.

THE COURT: Overruled. Go ahead along that line, but not any other area.

MR. FEAZELL: Thank you, Judge,

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and let me leave you with this. Whatever your verdict, whatever your verdict, I hope other people can live with it. You know what I mean? You know, what I mean? Whether there is a probability the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

That is what it is asking. Are other people going to be able to live with your verdict?

Are there other Darvin Packs in the future, other Kenneths, other Jills, other Raylenes?

Thank you for your attention and for your time, and you have been through a lot. You have been through a lot.

It is almost over. Do the right thing here, please. Thank you.

MR. VANCE: Judge, before they go to deliberate, can we have them excused one more time, please, sir?

(Whereupon the jury retired from the courtroom and the following proceedings took place out of their presence and hearing:

MR. VANCE: Mr. Spence has another request to the Court.

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THE DEFENDANT: Your Honor,
since we wasn't allowed to waive argument without
Mr. Feazell continuing with the argument by the
State, I am not asking for a long period of time,
but I would like to say something to the jury.

It don't have to be real long.
I just want to say a few words.

MR. FEAZELL: It is not proper,
Judge..

THE COURT: Denied.

MR. FEAZELL: The State has a
right to close.

THE DEFENDANT: Your Honor, you
mean I can't even express myself towards these
people concerning my own life? I really don't
understand the judicial system when someone can be
brought to trial, found guilty on a guessing game --

THE COURT: All right, please,
be seated. Bring the jury back in and they will
have time to deliberate.

(Whereupon the jury returned into
the courtroom and the following
proceedings took place:

THE COURT: All right, ladies
and gentlemen, the very same procedure as to the
second phase of the trial -- it will be as far as

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your deliberations are concerned. Here is the original and copies of the Charge.

I am going to clear the courtroom, and you will be in the jury room but to avoid any interruptions of noise and so on, Mr. Dittfurth will be out here. Same procedure. If you have any questions, write them out and knock on the door and give them to Mr. Dittfurth, and he will proceed from there. All right.

(Whereupon the jury retired to deliberate upon their verdict.

(Whereupon an instrument was marked for identification as Defendant's Exhibit No. 19.

MR. VANCE: Your Honor, outside the presence of the jury and in connection with the Defendant's request to exclude the testimony of Gilbert Melendez due to the assertion that he may have been under hypnosis and such testimony presented in court may have been influenced by hypnosis, the State has now tendered us -- to us the tape concerning that particular hypnosis session as it exists or if it existed, and we at this time would mark and offer what has been marked Defendant's Exhibit No. 19 solely for the purpose of that hearing and that it be made part of the record

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in this trial. Any objections?

MR. BUTLER: No.

THE COURT: All right, 19 will
be admitted.

(Defendant's Exhibit No. 19 was
(then admitted into evidence.

(Whereupon the jury returned into
(the courtroom and the following
(proceedings took place:

THE COURT: All right, ladies
and gentlemen, have you reached a verdict?

PRESIDING JUROR: Yes, sir, we
have.

THE COURT: All right, Mr. Green,
if you would, give the verdict to Mr. Dittfurth,
please, sir.

Gentlemen, do you wish to
dispense with reading the issue and read only the
answer, or do you wish to read the entire issue,
or do you want to just read the answer, whichever
way you would like to do it.

MR. VANCE: Read the whole
thing, Judge.

THE COURT: Special Issue No. 1,
was the conduct of the Defendant, David Wayne Spence,
that caused the death of the deceased, Kenneth Franks,

1 committed deliberately and with the reasonable
2 expectation that the death of the deceased or
3 another would result? Answer: We the jury
4 unanimately find and determine beyond a reasonable
5 doubt that the answer to this special issue is yes.
6 Signed Harold K. Green, Presiding Juror.

7 Special Issue No. 2: Is there
8 a probability that the Defendant, David Wayne Spence,
9 would commit criminal acts of violence that would
10 constitute a continuing threat to society? Answer:
11 We the jury unanimately find and determine beyond
12 a reasonable doubt that the answer to this special
13 issue is yes. Signed Harold K. Green, Presiding
14 Juror.

15 Verdict, we the jury return in
16 open court the above answers as our answers to
17 the special issues submitted to us and the same is
18 our verdict in this case. Signed, Harold K. Green,
19 Presiding Juror.

20 Do you wish to poll the jury,
21 gentlemen?

22 MR. REAVES: Yes, sir.

23 THE COURT: All right, ladies
24 and gentlemen of the jury, as I call your name,
25 please, indicate in the affirmative or negative as

1 to the verdict. Charles L. Page?

2 MR. PAGE: Yes, sir.

3 THE COURT: Judith I. Huchton?

4 MS. HUCHTON: Yes, sir.

5 THE COURT: Jimmie L. Vernon?

6 MS. VERNON: Yes, sir.

7 THE COURT: Douglas G. Fuqua?

8 MR. FUQUA: Yes, sir, I do.

9 THE COURT: Marianne Fredericks?

10 MS. FREDERICKS: Yes, sir.

11 THE COURT: Mary Westbrook?

12 MS. WESTBROOK: Yes, sir.

13 THE COURT: Teri King?

14 MS. KING: Yes, sir.

15 THE COURT: Howard Bond?

16 MR. BOND: Yes, sir.

17 THE COURT: Harold Green, you

18 have signed it as Presiding Juror, but please,

19 answer.

20 MR. GREEN: Yes, sir.

21 THE COURT: Joe Sarate, Sr.?

22 MR. SARATE: Yes.

23 THE COURT: Patricia Phillips?

24 MS. PHILLIPS: Yes, sir.

25 THE COURT: Michael Hering?

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MR. HERING: Yes, sir.

THE COURT: All right, let the record reflect that the Court finds the verdict to be in proper form and all 12 jurors have answered in the affirmative that it is their verdict, and the Court orders the verdict filed among the papers of the cause and accepted by the Court.

Ladies and gentlemen, I want to thank you very much on behalf of the Court, the attorneys and the citizens of Brazos County.

Serving on a jury is a high mark of good citizenship and serving on a capital murder case is a higher mark than that.

It is not an easy task. You all have undertaken your duty with diligence and sincerity and seriousness and have executed your duty as the attorneys expected of you and as the Court has.

I know it has not been easy. There have been a lot of times that we have had to hurry up and wait, and I apologize for that, but as I have explained to you throughout and in order to be sure that justice is administered properly, sometimes we have to take time in order to save time.

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is no reason that you need to stay, but you are certainly welcome to stay if you would like. It is up to you all.

You can remain seated in the jury box, or you can go, if there are any seats in the audience, or you can leave, whatever you would like to do.

I tell you that because in addition to being jurors, you are still citizens of Brazos County, and it is an open trial, and you are entitled to stay here and observe if you would like.

It is up to you all. I will give you a chance to decide what you would like to do in case you would like to leave or whatever.

PRESIDING JUROR: We will stay.

THE COURT: Attorneys of record, if there anything else you would like before I state that they are finally discharged?

MR. FEAZELL: No, Your Honor. Nothing from the State other than to again express our gratitude to the jury.

MR. VANCE: Same with the Defense. We also thank you for your patience and your attention.

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THE COURT: All right,

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officially, you are finally discharged, and you are

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no longer members of the jury, but as citizens of

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Brazos County, you are welcome to stay, and I

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assume that by your presence that that is what you

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all have decided to do.

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All right, Mr. Spence, will you

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stand up, please, sir?

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Do you have any legal reason

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why you shouldn't be sentenced at this time?

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THE DEFENDANT: No, sir.

12

THE COURT: All right, having

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been adjudged guilty of capital murder by a jury as

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of yesterday, and further, the jury having answered

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these questions today that your conduct that caused

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the death of the deceased was committed deliberately

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and with reasonable expectation that the death of

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the deceased would occur and the fact that the

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probability that you would constitute a continuing

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threat of society, I hereby sentence you to death

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by lethal injection sufficient to cause death.

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The law of the State of Texas

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requires and mandates that in any capital murder

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case there is an automatic appeal to the Court of

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Criminal Appeals sitting in Austin, Texas.

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So the imposition of sentence will be suspended until there is a final decision by that Court and the mandate issued to this Court.

You will remain in the custody of the sheriff of Brazos County until such time as you are remanded to the proper authorities with the Texas Department of Corrections.

I am going to appoint Mr. Reaves and Mr. Vance as the attorneys to perfect the appeal. They will remain as attorneys in the case.

All right, the trial is adjourned.

MR. VANCE: For the record, we will give formal notice of appeal.

THE COURT: Yes, sir, I don't think that is necessary, but I will so note it in the record, but so noted.

Gentlemen, any other requests before --

MR. VANCE: No, sir, we would request an adjournment to chambers after the jury has been able to leave the premises.

THE COURT: All right, the trial is formally adjourned, and Mr. Huddleston, if you will take charge of Mr. Spence, and I return him to your custody.

1 MR. VANCE: Your Honor, at
2 this time, in Cause No. 15,976, we would ask to
3 withdraw the motion for contempt against Mr. Feazell.
4 His conduct has been exemplary during this trial.

5 THE COURT: Motion is granted
6 but I will sure have to do some advisement and
7 research.

8 MR. VANCE: Also, we would like
9 some kind of idea -- also, at this time, so Mr. Reaves
10 and I can be prepared or not, we would ask the State
11 what their anticipated disposition of Cause No. 15,977
12 is.

13 MR. FEAZELL: For the record,
14 that is, the murder of Raylene Rice?

15 MR. REAVES: Yes.

16 MR. FEAZELL: We will bring
17 papers down for the Judge's signature to dismiss
18 that case when we appear for the motion for new
19 trial here.

20 MR. REAVES: Judge, what about
21 the gag order?

22 THE COURT: You all tell me. Do
23 all attorneys of record agree that the gag order
24 is no longer needed to ensure a fair trial?

25 MR. VANCE: I don't see any

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reason to.

THE COURT: All right, the gag order is lifted. Now then, so far as the Defendant is concerned, gentlemen, the news media wants to talk to him, but you all better discuss it with him. It is his life and who he wants to talk to --

MR. REAVES: We had talked with him and if he wants to talk with him, that is fine. There are no more cases against him so that is fine.

TRIAL ADJOURNED