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1 friends of yours ever been arrested?

2 A My sister.

3 Q And how long ago was that?

4 A It was 12, 11 -- about 12 years ago I guess.

5 Maybe longer. My daughter is 17 so maybe 16, 15, 16 years
6 ago.

7 Q Do you know what she was arrested for?

8 A I'm not for sure but I want to say grand
9 larceny. That's what I want to say.

10 Q Anything about her experience with the justice
11 system that would affect your thinking in this case?

12 A No.

13 Q Have you, any member of your family or any
14 friends of yours ever been the victim of a crime?

15 A No.

16 Q Have you ever been on a jury before?

17 A Yes.

18 Q Tell us how many times.

19 A One time.

20 Q Was it a criminal or civil case?

21 A Civil. Telemarketing so I guess it's civil.

22 Q Well, was the burden instruction beyond a
23 reasonable doubt or to a preponderance of the evidence?

24 A Reasonable doubt I think.

25 Q So that would have been a criminal case. Was

12

1 your jury able to reach a verdict without telling us what
2 the verdict was?

3 A Yes, we did.

4 Q Is there anything about your jury service that
5 would affect your thinking in this case?

6 A No.

7 Q Can you serve again and follow the instructions
8 like you did the first time?

9 A Yes.

10 Q Any concern about adverse public opinion that
11 might result from any verdict you would render in the case?

12 A No.

13 Q Ever been involved in any court proceeding as a
14 witness or a party?

15 A No.

16 Q Do you have any philosophical, religious or
17 moral objections to the death penalty?

18 A That's the one I have a problem with. The
19 reason being like I said before because religious belief,
20 but then again I don't know the circumstances. I can't
21 judge until I know the circumstances.

22 Q Well, in this case you're being kind of asked
23 this question in a vacuum because you've only heard a very
24 abbreviated version about the case. The Nevada legislature,
25 whether we agree with it or whether we don't agree with it,

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1 has made a public policy decision that if an individual is
2 convicted for first degree murder, that is premeditated
3 murder, there are four alternate forms of punishment and as
4 judges we have to instruct the jury and the jury has to
5 given the guilty verdict pick from one of the four forms of
6 penalty. Now, in this case the four forms are life
7 imprisonment with parole, life without parole, 50 years
8 eligible for parole when 20 years has been served or the
9 death penalty. The question is can you keep an open mind
10 and give fair consideration to all four forms of penalty if
11 you're sworn as a juror in this case?

12 A Yes.

13 Q You believe you can do that?

14 A I think I can.

15 Q If you yourself were involved in this case, say
16 a relative of the victim of the case or a relative of the
17 defendant or a primary witness in the case, would you feel
18 comfortable with 12 people in your frame of mind and your
19 attitude and sense of fairness sitting in judgment on the
20 case? Would you like 12 people like you sitting on your
21 case in other words?

22 A Yes, I would.

23 THE COURT: The State of Nevada may inquire.

24 MR. HARMON: Thank you, Your Honor.

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25EXAMINATION

BY MR. HARMON:

Q Good afternoon. Were you born and raised here?

A I was born in Texas. I've been here ever since I was three. So that's 30 some odd years.

Q You have discussed with the court the situation involving your sister?

A Right.

Q That happened quite a few years ago?

A I think about 15, 16 years ago.

Q Is there anything about the way the police were involved in the case or anything about the way the criminal justice system operated that concerns you?

A To be perfectly honest I really didn't get that involved in that situation. Me myself being an honest person and you roll the dice and she paid the cost. That's the bottom line. That's the way I feel.

Q So you don't harbor any type of feelings really one way or the other about the way it was handled?

A Well, I feel as though she did the crime so she had to pay for what she did and it's not the court's fault. They didn't encourage her to go out and do it.

Q Did you know anything at all about this case before you began to fill out the questionnaire?

A No, I did not.

13

1 Q As the court has explained potentially there
2 are two phases to the trial.

3 A Correct.

4 Q The first one involves the jury determining
5 guilt or innocence. It's only if Mr. Chappell is convicted
6 of murder of the first degree that we would have a second
7 phase and the jury would have to become involved in the
8 sentencing process for that crime. You've been consistent
9 in the questionnaire and also in your answers to the court
10 that you're really not sure what you're able to do in terms
11 of capital punishment.

12 A Not that I'm not sure as that I don't know as
13 far as not really actually being involved in it. If I am
14 selected as a juror, by the time the court is over with it
15 may be a different opinion. I can't elaborate on something
16 I don't know. That's what I'm saying.

17 Q We understand that it is awkward because you
18 don't really know the evidence. You weren't familiar with
19 the circumstances?

20 A Right.

21 Q However, we're trying to select jurors who can
22 be fair to both sides.

23 A I think I can do that.

24 Q And jurors who can consider the full range of
25 punishment if that becomes a duty of the jury.

13

1 You have mentioned that you attend your church
2 regularly?

3 A Correct.

4 Q I would assume you read the Bible on a regular
5 basis?

6 A Try to.

7 Q Now, I've noticed in response to one of the
8 questions you say the Bible tells us not to kill.

9 A Right. That's one of the commandments,
10 correct.

11 Q Now, are you going to be able to reconcile that
12 with the possibility that you may serve on a jury which
13 conceivably could be asked to impose a death sentence?

14 A As far as my beliefs go I'm not -- I don't
15 think I'll be able to go against God's word. Put it that
16 way.

17 Q Well, are you saying that it's your opinion
18 that God's word is that we not carry out death sentences?

19 A No, I am not saying that. I'm speaking from my
20 opinion more to say. You know, it's like if you never
21 actually -- this is the first for me to be sitting on a
22 criminal trial, whatever. But if you've never been there,
23 you don't know how you're going to go. You can think this
24 is the way I feel but then again it may turn out to be the
25 opposite. Why I put down I don't know because I don't know.

13

1 Q And is it an accurate statement even as we
2 speak you frankly don't know whether you would be able to do
3 it or you would be unable to do it in terms of the death
4 sentence until we get to that point in the proceedings?

5 A I can't say. I'm not going to say -- how can I
6 explain this to you? Can you repeat the question, please?

14

7 Q Of course. As we speak now are you able to
8 give us any type of firm response to how you will react --
9 let's just assume that we're in a penalty hearing and just
10 assume for the sake of the question that most of the persons
11 on the jury were in favor of a death sentence. As you
12 examine your personal philosophy and your religious views
13 and the type of person you are can you see yourself being in
14 a position to where you would be able to go along with that
15 type of punishment or is it your position that you simply
16 don't know now and would just have to wait and see?

17 A I don't think I know at this time.

18 MR. HARMON: Thank you. Pass for cause, Your
19 Honor.

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21 EXAMINATION

22 BY MR. BROOKS:

23 Q Ma'am, I think we've asked this before and I
24 hope you let me ask it again. You understand that we are
25 not conceding here first degree murder?

14

1 A Correct.

2 Q And we would be asking that if the evidence
3 supports a verdict other than first degree murder in the
4 first part of these proceedings that you would stand up for
5 that verdict?

6 A Yes.

7 Q Do you agree with that?

8 A Yes, I do.

9 Q Do you have any problem at all with the idea
10 that the State has the burden of proof to prove their case
11 beyond a reasonable doubt?

12 A No.

13 Q And do you have any problem with the idea that
14 my client gets the benefit of that?

15 A Correct.

16 Q Even if my client was guilty but the State
17 couldn't prove their case, my client is entitled to receive
18 that benefit?

19 A He's innocent.

20 Q I noticed in the questionnaire on question 42
21 and question 43 which dealt with this statement, defendant's
22 background should be considered in deciding whether or not
23 the death penalty is an appropriate punishment and you
24 indicated no. If the court instructs you you should
25 consider the evidence and if some of that evidence includes

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1 background information, will you consider that evidence?

2 A Yes.

3 Q In making a decision?

4 A Yes.

5 Q The same as the case with regards to the
6 statement the facts surrounding a killing and not the
7 killer's background should be the main consideration -- I'm
8 sorry. You answered yes to that. I apologize.

9 With regard to some of the questions Mr. Harmon
10 was asking you I think I'm right in saying -- and tell me if
11 I'm wrong -- your position is you are open to the death
12 penalty but the decision as to whether or not you would
13 apply it depends on the facts that you hear during the
14 trial; is that right?

15 A Right.

16 MR. BROOKS: Thank you very much and we'll pass
17 for cause.

18 THE COURT: Thank you.

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20 EXAMINATION

21 BY THE COURT:

22 Q Miss Styff, any reason that you can think of
23 why you couldn't be fair to both sides?

24 A No, sir.

25 Q Can you wait until all the evidence is in

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1 before coming to any conclusion about any issue in this
2 case?

3 A Yes.

4 Q Have you, any member of your family or close
5 friends to yours ever been arrested?

6 A Yes.

7 Q Tell us a little bit about that.

8 A My son. For outstanding warrants.

9 Q Traffic?

10 A Yes.

11 Q Anything about the way those matters were
12 resolved that would affect your thinking in this case?

13 A No.

14 Q Have you, any member of your family or any
15 close friends of yours ever been the victim of a crime?

16 A No.

17 Q Ever been on a jury before?

18 A No.

19 Q Any concern about adverse public opinion?

20 A No.

21 Q Ever been involved in a court proceeding as a
22 witness or a party?

23 A No.

24 Q Any philosophical, moral or religious
25 objections to the imposition of the death penalty?

14

1 A No.

2 Q If you were called to serve as a juror in this
3 case and if you reach the issue of penalty which can only
4 occur if the jury convicts the defendant of first degree
5 murder, would you be able to consider all four forms of
6 statutory punishment?

7 A Yes.

8 Q And if you are involved in this case yourself
9 directly, would you feel comfortable with 12 jurors like you
10 sitting on the jury?

11 A Yes.

12 THE COURT: State of Nevada may inquire.

13 MR. HARMON: Thank you, Your Honor.

14

15 EXAMINATION

16 BY MR. HARMON:

17 Q Good afternoon. How do you feel about the
18 opportunity of serving on this type of case?

19 A This is my very first time and it has been
20 quite an experience already coming here three days.

21 Q Is it an experience that you feel that you are
22 willing to perform?

23 A Yes.

24 Q To become involved in?

25 A Yes.

14 1 Q There are persons who find it very difficult
2 2 for a variety of reasons when it comes right down to making
3 3 the decision of passing judgment on a fellow human being.
4 4 We wouldn't want anything to suggest that we think that's
5 5 easy or necessarily pleasant. The fact is occasionally in a
6 6 criminal case it has to happen. Do you feel that you're the
7 7 type of person who would be able to do it?

8 8 A Yes, I do.

9 9 Q If the decision was left solely up to you,
10 10 would we have capital punishment in this state?

11 11 A Just capital punishment?

15 12 Q No. As part of our statutory scheme.

13 13 A Yes.

14 14 Q The question is not to suggest that we would
15 15 only have that punishment.

16 16 A Yes, I believe that.

17 17 Q I notice that you mentioned on the
18 18 questionnaire regarding the death penalty I do believe in it
19 19 when justified. Is that still your position?

20 20 A I think it's about what we're talking about
21 21 now. I do believe in it, but I do believe that you have to
22 22 hear everything to really say yes, I do or yes, I would. I
23 23 really think you have to hear everything.

24 24 Q In a sense we're not even talking about this
25 25 case because you know nothing about the case except the very

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1 broad generalities you've been given. But just in a manner
2 of generally speaking do you think that you're the type of
3 person who if selected on the jury and if you felt that a
4 particular punishment was proper, whether that involved a 50
5 year term in the state prison, life with or without the
6 possibility of parole or the death sentence, do you feel
7 you're capable of coming back into the courtroom and
8 personally voting the way you feel the evidence requires you
9 to do so?

10 A Yes, I do.

11 MR. HARMON: Thank you. Pass for cause.

12 THE COURT: For the defense.

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EXAMINATION

15 BY MR. BROOKS:

16 Q Mrs. Styff, I'm real curious what do you think
17 of this process we have here? Do you think it's burdensome
18 or do you like it?

19 A Like I said I don't know what's to like, but
20 it's been quite an experience. From what you hear from
21 different people that have been down, you know.

22 Q Have you had to do a lot of waiting during the
23 process?

24 A Yes.

25 THE COURT: That promise at least was

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1 fulfilled.

2 BY MR. BROOKS:

3 Q I notice in here that you put I believe not
4 applicable to your opinion of defense attorneys, public
5 defender, state prosecutors. Do you have any opinion at all
6 about these folks?

7 A I really didn't get what that was all about. I
8 mean, I have never had anything to do with a district
9 attorney or prosecutors so I really didn't know how to
10 answer that question and be truthful and say anything about
11 anyone.

12 Q Perhaps it was a poorly worded question. Well,
13 I'm real curious about how you feel about the court system
14 in general. Some people come in here and say the court
15 system is too lenient and we're always concerned that people
16 may try to take that out on my client. Is the court system
17 too lenient?

18 A I really couldn't answer that in all honesty.
19 I know that there's the justice — I follow all the rules.
20 I think other people should and I really can't answer that
21 honestly.

22 Q On page two of the questionnaire with regards
23 to news reports about this case you said that I have read
24 about it in the newspaper. Are you sure you read about this
25 case?

15

1 A Yes, I did because my friend lived across the
2 street and I just knew the address.

3 Q In the complex there?

4 A Yes. Not in the complex, but across the
5 street.

6 Q Across Lamb?

7 A Right. 825, right.

8 Q Do you remember very much detail about the
9 case?

10 A No. But I do remember because we talked about
11 it at work.

12 MR. BROOKS: Thank you. The defense will pass
13 for cause, Your Honor.

14 THE COURT: Thank you.

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EXAMINATION

17 BY THE COURT:

18 Q Mr. Rogers, good afternoon.

19 A Good afternoon.

20 Q Any reason that you can think of why you
21 couldn't be fair to both sides?

22 A No.

23 Q Can you wait until all the evidence is in
24 before coming to any conclusion about the case?

25 A Yes.

15

1 Q Have you, any member of your family or any
2 friends of yours ever been arrested?

3 A My son has come close. He's had handcuffs on a
4 few times.

5 Q And I take it that he was able to use his
6 persuasive powers to avoid completion of the process?

7 A Well, he's a student at U.N.L.V. taking
8 criminal justice so he is learning I guess as he goes.

9 Q Anything about his near misses so to speak that
10 would affect your thinking in this case?

11 A Only if it would come to traffic officers. He
12 had a case where he ran a stop sign basically and was
13 involved in an accident, his fault, and the police officer
14 listened to two people who had been following him and gave
15 him a ticket for reckless driving. And it ended up he got a
16 lawyer and he had it reduced but it cost him a thousand
17 dollars. But I spoke to the officer and I had gone back and
18 basically checked with these two people that said they were
19 totally wrong and the officer would not --

16

20 Q So you're saying your son wasn't actually at
21 fault?

22 A He was at fault, he went through the stop sign
23 but reckless driving, no.

24 Q But you understand that in every profession
25 there are talented persons, mediocre persons and sometimes

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1 people of unacceptable levels, correct?

2 A Yes.

3 Q Or who perform their job in an unacceptable
4 way?

5 A Uh-huh.

6 Q Do you think you'd keep an open mind about any
7 police witness that takes the stand and judge that person's
8 credibility based upon what you see and hear and how it
9 makes sense with regard to all the other evidence?

10 A Yes.

11 Q Have you ever been the victim of a crime or a
12 member of your family or a friend of yours?

13 A No.

14 Q Ever been on a jury before?

15 A Yes, I have.

16 Q How many times?

17 A I served once in Texas.

18 Q Was it a civil or criminal case?

19 A It was a criminal case.

20 Q So you've heard the burden of proof instruction
21 before?

22 A Yes.

23 Q Anything about that experience that would
24 affect your ability to be fair in this case?

25 A No.

16

1 Q Without telling us what the verdict was in the
2 Texas case can you tell us whether your jury reached a
3 verdict?

4 A Yes, we did. We were also involved in the
5 penalty.

6 Q So it was a homicide case?

7 A No, it was an armed robbery.

8 Q But under Texas law the jury has a role of
9 setting penalty on a robbery case?

10 A It was up to the defendant to choose us or the
11 judge.

12 Q Ever been involved in a court proceeding as a
13 party or witness?

14 A No.

15 Q Any concern about adverse public opinion that
16 might arise from any verdict you may render in the case?

17 A No.

18 Q Any moral, religious or conscientious
19 objections to the imposition of the death penalty?

20 A No.

21 Q And although we've had a discussion already
22 about this can you give fair consideration to all four forms
23 of punishment?

24 A Yes.

25 Q Can you keep an open mind about all four forms

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1 and impose the punishment you feel is appropriate?

2 A Yes.

3 Q Can you do that without regard to your concerns
4 about the expense of one penalty versus another to the State
5 of Nevada?

6 A Yes.

7 Q If you're involved in this case would you feel
8 comfortable with 12 jurors like you sitting on the matter?

9 A Yes.

10 THE COURT: Thank you very much.

11 The State of Nevada may inquire.

12 MS. SILVER: Thank you.

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EXAMINATION

15 BY MS. SILVER:

16 Q I just want to ask you and follow up with what
17 the judge has mentioned already to you. I saw in your
18 questionnaire you had some concerns about the economy of
19 certain penalties and recognizing that that is not something
20 for your consideration in imposing one of the four penalties
21 do you think if you were chosen as a juror that you could
22 sit and listen to the evidence and if proven to you beyond a
23 reasonable doubt the defendant is guilty of the crime of
24 murder in the first degree are you of such a mind that you
25 could convict him of that crime?

16

1 A Yes.

2 Q Could you further if you and the other 11
3 people chosen as jurors — if you listen to the evidence at
4 the penalty phase in which the State would have the
5 opportunity to present evidence of what we call aggravating
6 circumstances and of course the defense would be able to
7 present mitigating evidence as well could you listen to all
8 of the evidence and collectively with the 11 jurors if you
9 felt it was appropriate consider the death penalty as well
10 as the other three forms of punishment?

11 A Yes.

12 Q Have you ever had any exposure whether on TV or
13 talking with friends about domestic violence?

14 A Yes.

15 Q What type of exposure?

16 A Oh, we've talked about it. I just attended a
17 Toastmaster talk where the woman that gave a talk was about
18 her work with domestically abused children.

19 Q And do you ever envision a situation in which
20 it's okay to be violent towards, say, a woman?

21 A No.

22 Q Do you think that people ought to be held
23 accountable for their actions?

24 A Yes.

25 MS. SILVER: Thank you. We would pass this

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1 juror for cause.

2 THE COURT: For the defense.

3 MR. BROOKS: Thank you, Your Honor.

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5 EXAMINATION

6 BY MR. EWING:

7 Q Mr. Rogers, the district attorney asked you if
8 you could after listening to the evidence and reviewing the
9 evidence return a verdict of guilty to murder in the first
10 degree. My question for you is do you feel like you're the
11 kind of person that if you find that the evidence does not
12 prove the case, could you return a verdict of not guilty?

17

13 A Yes.

14 Q Could you review the evidence and perhaps
15 consider a lesser crime?

16 A Yes.

17 Q Based upon what you hear?

18 A Yes.

19 Q And not based upon any preconceived notions
20 about what this case might be about?

21 A Yes.

22 Q Are you comfortable with and do you understand
23 the presumption of innocence?

24 A Yes.

25 Q Is that something that you think is a good

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1 idea?

2 A Yes.

3 Q Do you consider yourself the kind of an
4 individual who can assess the credibility of individuals as
5 they testify?

6 A Yes.

7 Q If someone were to testify to a fact and no one
8 were to present any evidence contrary to that, would you
9 tend to believe that fact?

10 A Yes.

11 Q Do you feel that you can give James a fair
12 trial?

13 A Yes.

14 Q If you or someone you were closely associated
15 with were in James' position, are you the kind of juror that
16 you would want to have on the case?

17 A Yes.

18 Q To the issue of accountability, accountability
19 is important, we should all be held accountable for our
20 actions. Can you envision a circumstance where someone is
21 convicted of first degree murder where a 50 year sentence
22 with 20 year parole eligibility would be acceptable? Did
23 you understand my question?

24 A Yes. It would depend on the circumstances.

25 Q But that could happen?

17

1 A Yes.

2 Q And that would in your mind be holding that
3 person accountable?

4 A Yes.

5 Q And the same would be true with a life sentence
6 with the possibility of parole?

7 A Yes.

8 Q You mention in your jury questionnaire that you
9 can't consider an individual's background to be important.
10 Is that still your opinion?

11 A Yes. I think a lot of times the background is
12 used as an excuse to justify the crime.

13 Q Is it possible that background while not being
14 an excuse might be something that could help you arrive at
15 an appropriate sentence?

16 A Yes, it could.

17 Q Not as an excuse but perhaps as an explanation?

18 A Yes.

19 Q Or circumstances which may just basically shed
20 more light on the whole topic?

21 A Yes.

22 Q Can you see how background information might be
23 important in a case like this?

24 A Yes.

25 MR. EWING: Pass for cause.

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1 THE COURT: Thank you.

2 Mr. Ewing.

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EXAMINATION

5 BY THE COURT:

6 Q Mr. Snavelly, any reason that you can think of
7 why you couldn't be fair to both sides?

8 A No.

9 Q Can you wait until all the evidence is in
10 before coming to any conclusion about any issue in the case?

11 A Yes.

12 Q Have you, any member of your family or friends
13 of yours ever been arrested?

14 A No.

15 Q Have you ever been the victim of a crime?

16 A I've had stuff stolen from me.

17 Q Any member of your family or friends of yours
18 ever had an experience as being the victim of a serious
19 crime?20 A Not serious crime, if you don't consider theft
21 a serious crime.

22 Q It can be considered very serious.

23 A Depending on how much it was but it was only a
24 couple guns for me.

25 Q Anything about your experience in that regard

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1 that would affect your thinking?

2 A No.

3 Q Can you give fair consideration to all four
4 forms of statutory punishment?

5 A Yes.

6 Q Any religious, moral or conscientious
7 objections to the death penalty?

8 A No.

9 Q Have you ever been on jury before?

10 A No.

11 Q Ever been involved in a court proceeding as a
12 witness or party?

13 A No.

14 Q Any concern about adverse public opinion?

15 A No.

16 Q If involved in this case would you feel
17 comfortable with 12 people like you sitting in judgment of
18 this case?

19 A Yes.

20 THE COURT: State may inquire.

21 MS. SILVER: Thank you.

22

23 EXAMINATION

24 BY MS. SILVER:

25 Q I notice in your questionnaire you talk about

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1 showing grace and mercy to others as part of your beliefs.

2 A Well, there's the thing of -- the difference
3 between justice and the -- which is the right or the wrong
4 and then the grace and the mercy on what you're going to do
5 with after that judgment.

6 Q In our daily lives it's something you generally
7 try to do yourself obviously. You said you've actually
8 shown it to others and have it shown to you.

9 A Especially with my children. There's been many
10 times when I should have done something to them and chose
11 not to and there's been many times in my life when I should
12 have gotten something and I didn't and that's just what
13 happened. I didn't have anything to do with that.

14 Q And obviously then there are circumstances
15 you're talking about with your children where you should
16 show grace and mercy perhaps?

17 A Sure.

18

18 Q You understand that in this circumstance that
19 the State is seeking to convict this defendant of murder in
20 the first degree?

21 A Yes.

22 Q And you understand that in this case the State
23 is seeking to have the death penalty imposed as a sentence
24 for this murder in the first degree?

25 A Yes.

18

1 Q How would your notions of providing grace and
2 mercy to someone, how would you -- how do you feel that
3 works with the death penalty?

4 A Well, first you'd have to get through the
5 judgment. You'd go through the facts to see what was the
6 circumstances of it, whether it was proved and then the --
7 all the facts with that is under your consideration for what
8 you know, and I'm sure with whatever instructions given it's
9 going to be very black and white, it either meets this set
10 of circumstances or it doesn't.

11 Q You understand that you would not even be
12 getting to a penalty phase unless the jury collectively
13 convicted the defendant of first degree murder?

14 A Yes, I realize there's two parts to it.

15 Q I guess what I am trying to ask you is do you
16 understand that it would be unfair to the defense in this
17 case if we had a juror who only believed in the death
18 penalty, that was the only appropriate sentence for murder
19 in the first degree and they sat up and said I could
20 consider all of the penalties involved, that would be unfair
21 to the defendant because later on that person would just go
22 back in the jury room and pick the death penalty?

23 A Yes.

24 Q Likewise wouldn't you also consider it to be
25 unfair to the State as well if someone says conceptually

18

1 yes, I can consider the death penalty and got on this jury
2 but when the time came basically throws their hands up and
3 say nope, you know what, I just can't do it?

4 A Do you have my answer to the one question on
5 there of my opinion of the death penalty in the first place?
6 Now, I don't know if you want to read that but basically if
7 I was -- if I decide I'm going to go out and commit this
8 murder, I am going to kill this person and I did that, I
9 don't think it would be unfair for me to pay the price and
10 forfeit my life for that particular act.

11 Q So if it were --

12 A That would be a just outcome of my actions.

13 Q So if we were to ask you do you think that the
14 death penalty ought to be on the books or a law, you would
15 agree with that?

16 A Yes, I would.

17 MS. SILVER: Thank you. We would pass for
18 cause.

19 THE COURT: Thank you.

20 For the defense.

21

22 EXAMINATION

23 BY MR. EWING:

24 Q Mr. Snavelly, how do you envision your role as a
25 juror?

18

1 A Judge between the facts of whether they
2 presented their case and whether it meets the criteria that
3 the law has dictated.

4 Q Whether they meet the burden of proof?

5 A Yes.

6 Q Do you feel that you have any particular
7 obligations to the defendant?

8 A No. To me I would see it -- I don't have a
9 particular obligation to him any more than I have a
10 particular obligation to them.

11 Q Do you have an obligation to James that he not
12 be convicted until the State proves their case?

13 A Yes. That's America. I would want it that way
14 if I was on the receiving end of it. If they don't prove
15 their case, then that's my role to judge that.

16 Q If you were on the receiving end of it as you
17 put it, are you the type of juror that you'd want?

18 A Yes.

19 Q Is there anything that you can think of that we
20 should know about that we don't already know that would help
21 us to judge your --

22 A I could not give you elaborate answers because
23 of the space, but I have my particular convictions of what I
24 believe now as far as the death penalty, your religious
25 questions of thou shall not kill which should be thou shall

18

1 not murder forfeiting your life for a particular crime that
2 you did, retribution for your crimes is not an abstract
3 thing that shouldn't be in America. I believe you should
4 pay for your crimes and retribution should be there.

5 Q If someone commits first degree murder, are
6 there circumstances you can envision where a 50 year
7 sentence would be paying for your crime?

8 A Depending on the circumstances. But I'm not
9 naive enough to think that I'm set enough in my convictions
10 to say there's no way I would ever change my opinion about
11 anything. I kind of look at it that's how older people get
12 wise, is through their life experiences they learn more.
13 And what I believe now might not necessarily be what I
14 believe 20 years from now. But through this particular
15 circumstance I'm sure I will learn something through it.

19

16 Q Do you feel that if this case were to get to a
17 penalty phase do you feel that mercy is an element that
18 could possibly play a role in your decision?

19 A I would really have to see how the instructions
20 are given to us because I've never been on the receiving end
21 of this, I don't know what the instructions are that you're
22 actually given, whether it's black and white enough to give
23 you any legal aid as a juror.

24 Q If it's available, if it's available, would you
25 do that?

19

1 A Yeah, I'd consider all four of them, and the
2 questions that you brought up about background and stuff
3 like that, that again I wouldn't use it as a justification.
4 I would like it as a justification for somebody to not be
5 responsible for their actions, but I'm sure there's
6 information that can be brought to light that would
7 influence your decision about the four penalties.

8 MR. EWING: Thank you. I'll pass for cause.

9 THE COURT: All right. That concludes the
10 process of qualifying the jurors for cause.

11 Ladies and gentlemen, we are going to bring up
12 the other 32 members of the jury that have been qualified at
13 this time and we are going to make sure they are all here to
14 make sure that we have the full complement of jurors.
15 Otherwise we may have to go through this process one more
16 time. So if you'll be at ease we are going to declare a
17 brief recess at this point while we take up some matters
18 outside your presence and bring the other jurors upstairs.

19 During this recess it is your duty not to
20 converse among yourselves or with anyone else on any subject
21 connected with the trial, or to read, watch or listen to any
22 report of or commentary on the trial by any medium of
23 information including, without limitation, newspaper,
24 television and radio, and you are not to form or express any
25 opinion on any subject connected with this case until it is

19

1 finally submitted to you.

2 We will be reconvening at five minutes after
3 four o'clock. We'll be at ease while you depart the
4 confines of the courtroom.

5 (Jurors left.)

6 THE COURT: We are outside the presence of the
7 jury. In Department VII the standard practice is before the
8 exercise of peremptory challenges the alternate positions in
9 the jury box are picked by lot. What that means is we will
10 pick eight positions.

11 Mr. Harmon, you're the expert on the
12 mathematics.

13 MR. HARMON: We will need eight.

14 THE COURT: We will pick eight spots, eight
15 numbers, one through 36. Those numbers will then be the
16 alternate positions.

17 MR. BROOKS: I'm sorry. Eight positions one
18 through what again?

19 THE COURT: One through 36. Out of one through
20 36 there will be eight positions. That way randomly picked
21 as the alternate positions in the jury box. The highest
22 remaining number of the alternates will be the alternates,
23 the highest remaining number that aren't stricken through
24 the peremptory challenge process that have not been
25 designated as alternates will be the regularly constituted

19

1 jury. Do you understand?

2 MR. EWING: Lowest remaining.

3 THE COURT: Lowest remaining. The lowest 12
4 numbers of the prospective jury panel members that have not
5 been designated as alternates will be the regularly
6 constituted jury. The lowest remaining numbers of the
7 positions designated as alternates will be the alternate
8 jurors. Do you understand that?

9 MR. BROOKS: Yes.

10 THE COURT: And the idea is to keep this so
11 that we won't have the four highest numbers in the jury box
12 being the alternates. So that no one among the jury panel
13 will know who the alternates are. So you will also be given
14 the statutory peremptory challenges as to the alternates.
15 Do you now understand the procedure?

16 MR. EWING: Yes, Your Honor.

17 THE COURT: So to capsulize we'll have a
18 representative of each side draw alternate numbers from the
19 cup, numbers one through 36 are in the cup and you will draw
20 those blindly by lot and the eight numbers pulled will be
21 the alternate positions. When you exercise your peremptory
22 challenges as to the alternates, you must exercise the
23 alternate peremptory challenges as to the alternate
24 position.

25 MR. BROOKS: Before the jury comes back could

19

1 we leave the room and confer?

2 THE COURT: Yes.

3 All right. Alternate positions on the list,
4 position number two, Ms. Lucido, position number nine, Mr.
5 Mesnard, position 19, prospective juror Burris, position 21,
6 Mr. Swartz, position 26, Ms. Purcell and position 27, Mr.
7 Pietryman, position 28, Miss Ochoa, position 30, Ms.
20 8 Sheehan. So positions 2, 9, 21, 26, 27, 28 and 30 are the
9 alternate positions drawn at random in the jury list. So
10 exercise your eight peremptory challenges only as to the
11 jurors in the positions we have not drawn from the cup.
12 When it comes time to exercise your peremptory challenges as
13 to the alternates, exercise those challenges only as to the
14 positions that have just been drawn that I have just listed
15 for you. Any questions?

16 MR. HARMON: No, Your Honor.

17 THE COURT: Any objections to selecting the
18 alternates in this way?

19 MR. HARMON: No, Your Honor.

20 MR. BROOKS: No, Your Honor.

21 THE COURT: Thank you very much. At this point
22 we'll take a couple minutes while you converse. Do you wish
23 to have the prospective jury panel in the room so you can
24 see them? I could put them in numerically or do you need to
25 do that?

20

1 MR. BROOKS: Not necessary for us, Your Honor.

2 MR. HARMON: It isn't necessary.

3 THE COURT: All right. I'll give you about
4 five minutes and then you can go ahead and we will start the
5 process of striking.

6 (Recess.)

7 THE COURT: Let me take the roll of the jurors
8 that have been qualified for cause.

9 Juror Spruell?

10 BADGE NO. 402: Here.

11 THE COURT: Juror Lucido?

12 BADGE NO. 432: Here.

13 THE COURT: Prospective juror Parr?

14 BADGE NO. 405: Here.

15 THE COURT: Prospective juror Gritis?

16 BADGE NO. 406: Here.

17 THE COURT: Prospective juror Cail?

18 BADGE NO. 434: Here.

19 THE COURT: Prospective juror Ewell?

20 BADGE NO. 435: Here.

21 THE COURT: Prospective juror Linkogel?

22 BADGE NO. 409: Here.

23 THE COURT: Prospective juror Wells?

24 BADGE NO. 433: Here.

25 THE COURT: Prospective juror Mesnard?

20

1 BADGE NO. 436: Here.
2 THE COURT: Prospective juror Tripp?
3 BADGE NO. 412: Here.
4 THE COURT: Prospective juror Souder?
5 BADGE NO. 420: Here.
6 THE COURT: Prospective juror Taylor?
7 BADGE NO. 421: Here.
8 THE COURT: Prospective juror Dear?
9 BADGE NO. 426: Here.
10 THE COURT: Prospective juror Bourne?
11 BADGE NO. 427: Here.
12 THE COURT: Prospective juror Digiovanna?
13 BADGE NO. 437: Here.
14 THE COURT: Prospective juror Hull?
15 BADGE NO. 439: Here.
16 THE COURT: Prospective juror Larsen?
17 JUROR NO. 442: Here.
18 THE COURT: Prospective juror Gushwa?
19 JUROR NO. 444: Here.
20 THE COURT: Prospective juror Burris?
21 BADGE NO. 483: Here.
22 THE COURT: Prospective juror Romero.
23 BADGE NO. 447: Here.
24 THE COURT: Prospective juror Swartz?
25 BADGE NO. 448: Here.

20

1 THE COURT: Prospective juror Massar?
2 BADGE NO. 449: Here.
3 THE COURT: Prospective juror Yates?
4 BADGE NO. 455: Here.
5 THE COURT: Prospective juror Harmon?
6 BADGE NO. 458: Here.
7 THE COURT: Prospective juror Fittro?
8 BADGE NO. 461: Here.
9 THE COURT: Prospective juror Purcell?
10 BADGE NO. 462: Here.
11 THE COURT: Prospective juror Pietryman?
12 BADGE NO. 463: Here.
13 THE COURT: Prospective juror Ochoa?
14 BADGE NO. 467: Here.
15 THE COURT: Prospective juror Poulos?
16 BADGE NO. 469: Here.
17 THE COURT: Prospective juror Sheehan.
18 BADGE NO. 472: Here.
19 THE COURT: Prospective juror Fitzgerald?
20 BADGE NO. 473: Here.
21 THE COURT: Prospective juror Hill?
22 BADGE NO. 474: Here.
23 THE COURT: Prospective juror Marshall?
24 BADGE NO. 493: Here.
25 THE COURT: Prospective juror Styff?

20

1 BADGE NO. 497: Here.

2 THE COURT: Prospective juror Rogers?

3 BADGE NO. 502: Here.

4 THE COURT: Prospective juror Snavely?

5 BADGE NO. 506: Here.

6 THE COURT: The record will reflect then that
7 all 36 prospective jurors that have been approved for cause
8 are present in the courtroom.

9 Ladies and gentlemen of the prospective jury
10 panel that were not chosen to — did not reach the jury box
11 for individual voir dire, thank you very much for your
12 attention. You are hereby discharged from jury service in
13 this rotation. Even though you were not picked as jurors
14 nor did you get into the jury box to be interrogated, you
15 provided a very, very important service to us all because we
16 have the strength of numbers to know that we could get a
17 full panel of jurors approved for cause. It is the jury
18 system in this country, ladies and gentlemen, that is one of
19 the most important bastions of our democracy, provides a
20 very important barrier between the government and governed
21 as I indicated to you during orientation. This is very
22 important. It required a commitment by all of you to come
23 and be candid. We appreciate that and again those of you
24 who were not brought into the box for interrogation and
25 approval for cause you are dismissed with the thanks of the

20

1 court.

2 Miss Selby, I need to have you provide your
3 name and address to the bailiff. I need the citation number
4 for your parking ticket. I don't know if I can do anything
5 about it, but I can certainly write a letter asking for some
6 dispensation in your favor because of the extenuating
7 circumstances that caused you to receive your parking
8 ticket.

9 BADGE NO. 540 Lisa has my ticket to take care
10 of it.

11 THE COURT: We don't take care of it, that's a
12 bad word, but I will at least write the letter and if you'll
13 come by chambers on Friday, I will return that to you with
14 your letter.

15 BADGE NO. 540: Thank you.

16 I'll be at ease while the jurors have been
17 released to depart the confines of the courtroom.

18 I'll hand the list to counsel for the first
19 peremptory challenge.

20 Ladies and gentlemen, if you'll be at ease just
21 a moment, we will be with you shortly, I have to take a
22 matter outside your presence. Please remain in place.

23 During this recess it is your duty not to
24 converse among yourselves or with anyone else on any subject
25 connected with the trial, or to read, watch or listen to any

20

1 report of or commentary on the trial by any medium of
2 information including, without limitation, newspaper,
3 television and radio, and you are not to form or express any
4 opinion on any subject connected with this case until it is
5 finally submitted to you.

1

6 The following was held outside
7 the presence of the panel.)

8 THE COURT: We are outside the presence of the
9 jury. The list of peremptory challenges has been provided
10 to the court. The court has made the appropriate notations
11 on the jury list to determining that 12 of the 14
12 unchallenged jurors will be the regularly constituted jurors
13 and four of the unchallenged alternates will be the
14 alternate jurors.

15 At this time I understand that the defense has
16 an objection to two of the State's peremptory challenges.

17 MR. BROOKS: We do, Your Honor. In the initial
18 pool of unchallenged jurors we had only two black jurors,
19 that being 493, Miss Jones, with the hyphenated and I can't
20 remember it.

21 THE CLERK: Marshall.

22 MR. BROOKS: The other juror being 427, that
23 being Mrs. Bourne, B-o-u-r-n-e. The State has used
24 peremptory challenges to eliminate all blacks from the jury.
25 We now are faced with an all white jury panel and we object
to that.

1 THE COURT: Mr. Harmon.

2 MR. HARMON: Your Honor, I would make the
3 initial observation that we have had a substantial
4 representation on the entire panel of members of the black
5 race.

6 THE COURT: Also the record will reflect that
7 several of the African American prospective jurors indicated
8 an unwillingness to serve for one reason or another because
9 of their beliefs about the death penalty and their removal
10 from the jury was agreed to by the defense.

11 MR. HARMON: That is certainly true.

12 As to juror 427 -- and by the way, Your Honor,
13 we'd like to designate the jury questionnaires both as to
14 Olga Bourne and Adraine Marshall --she is prospective juror
15 493 -- to be part of the record.

16 THE COURT: It will be made as court's exhibits
17 A and B to the trial.

18 MR. HARMON: The reason for the challenges are
19 really the same, although I will elaborate the specific
20 reasons relating the response of the jurors, but both of
21 these jurors were extremely equivocal regarding capital
22 punishment. In the questionnaire Miss Bourne, who by the
23 way is a well-educated woman to our thinking, obviously
24 intelligent. If this wasn't a capital case, she probably
25 would make a terrific juror. Her problem lies in penalty if

1 we reach that phase. She mentions regarding the death
2 penalty in the questionnaire -- and this is question 35 --
3 the death penalty should be used rarely, if at all. When
4 asked as she was asked in question 51 of the questionnaire
5 if she could personally come into the courtroom and vote for
6 the death penalty if she thought that was appropriate, her
7 answer was I don't know. When asked if we should have
8 capital punishment in the State of Nevada if the matter was
9 left solely up to her, she thought about it and then
10 indicated that she leaned away from the death penalty and
11 actually was undecided on that particular issue.

12 THE COURT: The court finds that there is a
13 race neutral basis for the peremptory challenge. If the
14 only reason for the challenge was her belief that the death
15 penalty should be applied rarely, that would not be a
16 sufficient justification I would think, but the other
17 justifications were recorded and the court noted them at the
18 time.

19 MR. HARMON: Thank you, Your Honor.

20 AS I indicated as to Adraine Marshall probably
21 once again a very nice lady. Judge, she made it clear
22 throughout the questionnaire and throughout the court's
23 canvass and my voir dire of her that she simply doesn't have
24 any opinion about the death penalty. I'm assuming that she
25 was being candid, that she was doing her best, but she puts

1 us in a position of not knowing. Now, I realize we're
2 asking these people to do it in a vacuum, it's awkward for
3 them, but generally speaking we need some type of commitment
4 that in a proper case they'd be able to do it and Miss
5 Marshall never gave us that. She's a religious woman which
6 frankly I consider to be to her credit, she indicates in the
7 questionnaire she goes to church regularly, she acknowledged
8 that the Bible is important to her during the voir dire, she
9 mentioned that the Bible tells us not to kill and
10 furthermore indicated that she wouldn't be prepared to go
11 against God's will. However, on the other hand there was an
12 ambiguity because she suggested she would try, but the
13 bottom line each time is I don't know what I would do when
14 faced with the decision regarding the death sentence.

15 When the court asked the question that is asked
16 of all of the prospective jurors do you have any religious,
17 moral or conscientious objection to the death penalty, once
18 again this juror said that's the one I have a problem with.

19 Judge, it shouldn't have to be a guessing game
20 and I know in the sense that we roll the dice, nobody knows
21 for sure, but we are entitled to have jurors who will commit
22 themselves to an ability to consider the full range of
23 punishments.

24 In questions 35 and 50 of the questionnaire in
25 terms of the death penalty she's asked what her opinion is

2

1 and she says I don't know how I really feel about the death
2 penalty. In question 50 she is asked if she can personally
3 come back and vote death penalty and the answer was I don't
4 know.

5 Well, we don't know either, Judge, and there
6 are too many other jurors who are willing to consider the
7 full range of punishment.

8 THE COURT: Mr. Brooks.

9 MR. BROOKS: Just for the record I'd like the
10 record to reflect that after Mr. Harmon finished asking Miss
11 Jones dash Marshall questions, I specifically asked her if
12 she would consider the death penalty and have her decision
13 depend on the facts and she said she would be open to
14 considering the death penalty at that time and would make
15 her decision according to the facts and evidence.

16 THE COURT: The court finds that the peremptory
17 challenge is race neutral. The prospective juror of which
18 we are speaking when you consider the totality of the
19 questioning was somewhat equivocal on the commitment to be
20 able to consider all forms of punishment on a fair basis or
21 at least on an open-minded basis.

22 Whether the Batson case will be expanded at
23 some point on the basis that we are excluding minority
24 jurors because of their attitude toward the death penalty
25 and because that attitude may spring from the facts

2

1 statistically the death penalty is imposed in large numbers
2 against minorities is another matter, but that has not been
3 reached by the Nevada Supreme Court, the United States
4 Supreme Court and I'm not sure that it is an issue that is
5 yet right from the standpoint of imperical evidence to
6 indicate that a challenge to a minority juror based upon
7 their objections to the death penalty is an appropriate
8 criteria for excluding the juror in a peremptory challenge
9 setting. But again that's a simple matter for future courts
10 to decide.

(The following was held in the
presence of the panel.)

11
12 THE COURT: We're back on the record in the
13 presence of the prospective jury panel. The court now makes
14 its announcement relative to the members of the jury panel
15 that have been selected in this case.

16 Juror number one will be Denise Wright Parr,
17 juror number 405. If you'd please come forward as your name
18 is called and we'll have you take a seat in the jury box
19 where you'll be assigned for the rest of the trial.

20 Kenneth Edward Gritis, juror number 406.

21 Jerry Wayne Ewell, 435.

22 Cheryl Lynn Wells, 433.

23 Jim Blake Tripp, number 412.

24 Kellyanne Bentley Taylor, 421.

25 Bruce Todd Larsen, 442.

2 1 Will counsel approach the bench.

2 (At this time, an
3 off-the-record
4 discussion was held.)

4 THE COURT: Celestina Lucido.

5 David John Mesnard, 436.

6 Marylen Burris — strike that.

7 Michael Joseph Swartz.

8 Mark Gregory Massar.

9 Dana Terry Yates.

10 Glen Eugene Fittro, 461.

11 Lois J. Ochoa.

12 MR. EWING: Your Honor, could we approach.

13 (At this time, an
14 off-the-record
15 discussion was held.)

15 THE COURT: Miss Burris, I'm sorry. I called
16 your name by mistake.

17 Kenneth Ray Fitzgerald, 473.

18 MR. FITZGERALD: It's Kenneth Roy.

19 THE COURT: Wendy Lee Hill, 474.

20 At this point do the parties agree and
21 stipulate that the court has selected the jurors from the
22 list that appear to be the final grouping?

23 MR. HARMON: Yes, Your Honor.

24 THE COURT: Have I correctly read from the
25 list?

2 1 MR. BROOKS: Yes, Judge.

2 THE COURT: At this point then I will call the
3 roll of the jurors to make sure we have everybody in the
4 box.

5 (Called roll.)

3 6 THE COURT: At this point in time I would ask
7 the members of the jury to stand and be sworn.

8 (Jury sworn.)

9 Ladies and gentlemen, at this point in time the
10 parties and the court have been here since 8:30 this morning
11 performing the process of jury selection. I am going to
12 declare the evening recess at this time. When we come back
13 on Tuesday we'll have opening statements and your initial
14 jury instructions are designed to outline the process that
15 you'll be undergoing for the rest of the trial.

16 To the ladies and gentlemen of the jury —

17 MR. BROOKS: I'm sorry. You indicated that
18 they are to come back Tuesday.

19 THE COURT: Excuse me. Thursday.

20 To those of you who weren't picked I want to
21 thank you very much for your attendance during the jury
22 selection process. I realize it's an onerous process but
23 this has to be done very carefully to make sure that the
24 process is fair. The goal was to pick 12 jurors and four
25 alternates that are fair-minded and can consider all the ..

3 1 issues in the case. I believe that we have done that. You
2 have my thanks and you are hereby released from jury service
3 in this rotation. Thank you all very much for coming.

4 During this recess it is your duty not to
5 converse among yourselves or with anyone else on any subject
6 connected with the trial, or to read, watch or listen to any
7 report of or commentary on the trial by any medium of
8 information including, without limitation, newspaper,
9 television and radio, and you are not to form or express any
10 opinion on any subject connected with this case until it is
11 finally submitted to you.

12 Ladies and gentlemen, we will not been having
13 court proceedings because of other commitments tomorrow. We
14 will resume trial at ten o'clock on Thursday morning at
15 which time we will begin with your opening instructions,
16 pretrial instructions and the opening statements of counsel
17 or both sides if they wish to give opening statements.

18 Again, the admonition is a very important thing
19 for you to honor. If you would please refrain from watching
20 any news casts, if you see something on the news that looks
21 like it's going to be about a court matter here locally,
22 please turn away from that station or leave the room or just
23 stay away from the nes for the next couple of weeks any way
24 that you can think you can accomplish that. Of course don't
25 read the newspapers. Again it is very important for you to

3 1 understand that you must not do any investigations on your
2 own, you must not visit any of the places described by any
3 of the witnesses during the trial. You must restrict your
4 verdict to the evidence as is presented to you and with that
5 I wish you a very good evening and we'll see you Thursday
6 morning. We'll be at ease while you depart the confines of
7 the courtroom.

8 Again you are free to bring coffee, Coke,
9 water, whatever you like into the jury room with you just so
10 you're comfortable. Lisa will come and collect you on
11 Thursday morning from the jury room somewhere around ten
12 o'clock.

13 Will there be anything further from the
14 parties?

15 MR. BROOKS: Not from the defense.

16 MR. HARMON: No, Your Honor.

17 (The proceedings concluded.)

18
19 * * * * *

20
21 ATTEST: Full, true and accurate transcript of
22 proceedings.

23
24 
25 LISA BRENSKE, CCR No. 186

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

OCT 09 1996 19

LORETTA BOWMAN, CLERK

BY *Lisa Hurd* Deputy

THE STATE OF NEVADA,
Plaintiff,
Vs
JAMES MONTELL CHAPPELL,
Defendant.

CASE NO. C131341
DEPT. NO. VII
DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

TUESDAY, OCTOBER 8, 1996, 8:40 A.M.

VOLUME II - MORNING SESSION

APPEARANCES:

FOR THE STATE: MELVYN T. HARMON &
ABBI SILVER
Deputies District Attorney

FOR THE DEFENDANT: HOWARD S. BROOKS &
WILLARD N. EWING
Deputies Public Defender

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER



1	<u>INDEX</u>	
2		<u>PAGE</u>
3		
4	<u>JURY SELECTION CONTINUED</u>	
5		
6		
7	<u>DOLORES ROMERO</u>	
8	VOIR DIRE EXAMINATION BY MR. HARMON	19
9	VOIR DIRE EXAMINATION BY MR. BROOKS	23
10	<u>MICHAEL JOSEPH SWARTZ</u>	
11	VOIR DIRE EXAMINATION BY MS. SILVER	29
12	VOIR DIRE EXAMINATION BY MR. EWING	30
13	<u>MARK GREGORY MASSAR</u>	
14	VOIR DIRE EXAMINATION BY MR. HARMON	35
15	VOIR DIRE EXAMINATION BY MR. BROOKS	38
16	<u>DANNA TERRY YATES</u>	
17	VOIR DIRE EXAMINATION BY MR. HARMON	43
18	VOIR DIRE EXAMINATION BY MR. BROOKS	45
19	<u>ROGER ALAN HARMON</u>	
20	VOIR DIRE EXAMINATION BY MS. SILVER	51
21	VOIR DIRE EXAMINATION BY MR. EWING	55
22	<u>GLENN EUGENE FITTRO</u>	
23	VOIR DIRE EXAMINATION BY MR. HARMON	62
24	VOIR DIRE EXAMINATION BY MR. BROOKS	66
25		

PATSY K. SMITH, OFFICIAL COURT REPORTER

1	<u>ANNETTE LYNN PURCELL</u>	
2	VOIR DIRE EXAMINATION BY MS. SILVER	72
3	VOIR DIRE EXAMINATION BY MR. EWING	77
4	<u>JOSEPH PIETRYMAN</u>	
5	VOIR DIRE EXAMINATION BY MR. HARMON	86
6	VOIR DIRE EXAMINATION BY MR. BROOKS	90
7	<u>LOIS J. OCHOA</u>	
8	VOIR DIRE EXAMINATION BY MR. HARMON	94
9	VOIR DIRE EXAMINATION BY MR. BROOKS	96
10	<u>WILLIAM NICHOLAS POULOS</u>	
11	VOIR DIRE EXAMINATION BY MR. HARMON	100
12	<u>MARYANN SHEEHAN</u>	
13	VOIR DIRE EXAMINATION BY MS. SILVER	106
14	VOIR DIRE EXAMINATION BY MR. EWING	108
15	<u>KENNETH ROY FITZGERALD</u>	
16	VOIR DIRE EXAMINATION BY MR. HARMON	113
17		
18	<u>WENDY LYNN HILL</u>	
19	VOIR DIRE EXAMINATION BY MS. SILVER	118
20	VOIR DIRE EXAMINATION BY MR. EWING	122
21		
22		
23		
24		
25		

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 TUESDAY, OCTOBER 8, 1996, 8:40 A.M.

2 THE COURT: C131341, State of Nevada versus
3 James Montell Chappell.

4 The defendant is present represented by his
5 counsel. State of Nevada represented by the Deputies
6 District Attorney. This is the continuation of jury
7 selection in this matter.

8 We have now qualified for cause 16
9 prospective jurors and are continuing on with the process.
10 So if we would take the next 14 names from the panel of
11 prospective jurors and ask them to be seated in the jury
12 box, we will then re-proceed with jury selection.

13 THE CLERK: Badge number 445, Hannelore T.
14 Kelly, K-E-L-L-Y, badge number 447, Dolores Romero,
15 R-O-M-E-R-O, badge number 448, Michael Joseph Swartz,
16 S-W-A-R-T-Z, badge number 449, Mark Gregory Massar,
17 M-A-S-S-A-R, badge number 455, Danna Terry Yates,
18 Y-A-T-E-S, badge number 458, Roger Alan Harmon,
19 E-A-R-M-O-N, badge number 461, Glenn Eugene Fittro,
20 F-I-T-T-R-O, badge number 462, Annette Lynn Purcell,
21 P-U-R-C-E-L-L, badge number 463, Joseph Pietryman,
22 P-I-E-T-R-Y-M-A-N.

23 MR. BROOKS: I'm sorry, what was that badge
24 number again, please?

25 THE CLERK: 463.

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1 Badge number 465, John L. Difillippo,
2 D-I-F-I-L-L-I-P-P-O.

3 JUROR NO. 465: Your Honor, I would like to
4 say at this time I'm ill. I was up all night last night.

5 THE COURT: Do you have the flu?

6 JUROR NO. 465: Yes, I think so.

7 THE COURT: All right, I will go ahead and
8 excuse you from jury service.

9 THE CLERK: Badge number 467, Lois J. Ochoa,
10 O-C-H-O-A, badge number 469, William Nicholas Poulos,
11 P-O-U-L-O-S, badge number 472, Maryann Sheehan,
12 S-H-E-E-H-A-N, badge number 473, Kenneth Roy Fitzgerald,
13 F-I-T-Z-G-E-R-A-L-D, badge number 474, Wendy Lynn Hill,
14 H-I-L-L.

15 THE COURT: Good morning, ladies and
16 gentlemen. Let me make sure we have everybody in place.
17 We have Ms. Kelly, Ms. Romero, Mr. Swartz, Mr. Massar, Ms.
18 Yates, Mr. Harmon, Mr. Fittro, Ms. Purcell, Mr. Pietryman.

19 A VOICE: Right.

20 THE COURT: Ms. Ochoa, Mr. Poulos (sic)?

21 A VOICE: Poulos.

22 THE COURT: Poulos?

23 A VOICE: Yes.

24 THE COURT: All right.

25 Ms. Sheehan, Mr. Fitzgerald, and Ms. Hill.

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1 All right.

2 Are all the attorneys here on the civil
3 matter?

4 A VOICE: I believe so, your Honor.

5 THE COURT: Will counsel approach the
6 bench.

7 (Off the record discussion not reported.)

8 THE COURT: All right, we're back on the
9 record in State versus Chappell and, at this point, we will
10 begin the examination of individual prospective juror Ms.
11 Kelly.

12 Good morning.

13 A Good morning, sir.

14 THE COURT: Is there any reason you can
15 think of why you couldn't be fair to both sides in this
16 case?

17 A Excuse me, I was awake the whole night
18 thinking about the death penalty. I thought I could handle
19 it, but I can't. I haven't been able to go to sleep. I
20 guess it's my way of operating. I don't know.

21 THE COURT: Well, I'm very sorry that you
22 lost sleep over the issue, but I also respect the concern
23 that you have over the importance of these proceedings.

24 A Yes.

25 THE COURT: And at this point you have a

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1 problem with actually sitting in a case where the death
2 penalty is a potential?

3 A Yes.

4 THE COURT: And you feel that at this point
5 you couldn't impose the death penalty?

6 THE REPORTER: I didn't hear your answer.

7 THE COURT: You have to speak up.

8 A I could not impose the death penalty.

9 THE COURT: And any objection to releasing
10 her at this point?

11 MR. BROOKS: No, we will stipulate, your
12 Honor.

13 MR. HARMON: State will stipulate.

14 THE COURT: Thank you very much, ma'am.

15 Again, I appreciate the commitment that you made to come to
16 court and I appreciate your being candid with us this
17 morning.

18 A Thank you.

19 THE COURT: You can go back to the jury
20 commissioner.

21 THE CLERK: Badge number 476, Jennifer L.
22 Davis, D-A-V-I-S.

23 THE COURT: That's another piece of
24 architectural genius. You notice there is only one way in
25 and one way out of this jury box.

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1 Ms. Davis, good morning.

2 A Good morning.

3 THE COURT: Any reason you can think of why
4 you couldn't be fair to both sides in this case?

5 A Absolutely, there is a reason. I was a
6 victim of domestic abuse for approximately 10 years and I
7 would not be a favorable juror in any way for this
8 defendant.

9 THE COURT: All right, shall we stipulate to
10 this?

11 MR. BROOKS: Defense would, your Honor.

12 MR. HARMON: Yes, your Honor.

13 THE COURT: All right, thank you, ma'am, for
14 being candid and for spending these two days with us.

15 A Thank you, Judge.

16 THE CLERK: Badge number 479, Catherine M.
17 Bennett, B-E-N-N-E-T-T.

18 THE COURT: Counsel, since we are using the
19 Arizona method of jury selection, what we're going to do,
20 in the event that we have insufficient jurors to replace
21 the jurors that are disqualified for cause, we will leave
22 those positions opened and then when we bring the rest of
23 the panel back this afternoon, we will fill those in first
24 and then go from there.

25 Do you understand what I'm saying?

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1 MR. HARMON: Yes, your Honor.

2 THE COURT: So, for example, if this
3 position here is not filled with a juror for cause, then we
4 will leave position 19 opened until we bring back the next
5 group this afternoon.

6 Ms. Bennett, good morning.

7 A Good morning.

8 THE COURT: Is there any reason you can
9 think of why you couldn't be fair to both sides in this
10 case?

11 A Yes. A few months ago my -- somebody
12 that I know personally killed his girlfriend and he is
13 still awaiting trial and I'm for the death penalty all the
14 way and just from knowing him, I don't know. I don't know
15 if I could do it.

16 THE COURT: Well, I mean his case is
17 completely different than this case. They are not the same
18 and what you are being asked to do is to make a factual
19 determination relative to the State's burden of proof and
20 then ultimately, if that is satisfied, the penalty and
21 this, while we know our life experiences effect us and
22 effect our judgment, we also know that in this process that
23 jurors must set aside those feelings and assess the facts
24 of this particular case and we have people in that position
25 all the time that can still serve and the question I have

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1 for you is, is this association with this other person such
2 that you can't interact with other jurors, provide your
3 input as to what your view of the evidence is, and then
4 make an individual determination in accordance with your
5 own analysis of the facts of the case?

6 A I just don't know if I could agree with
7 all the other options. I just feel that if someone killed
8 somebody, they should get the death penalty. That's just
9 the way I feel.

10 THE COURT: Well, you know from your own
11 experience that each situation is different and each
12 person's life is different and is there any set of
13 circumstances under which you could consider the other
14 options?

15 A No, I just don't feel like anyone has a
16 right to take a life and I -- no matter what the background
17 or anything. That's just the way I feel.

18 THE COURT: All right, I'll excuse you from
19 jury service at this time, Ms. Bennett. Thank you very
20 much.

21 THE CLERK: Badge number 480, Henry Walter
22 Fryt, Jr., F-R-Y-T.

23 A VOICE: This is the hot seat.

24 THE COURT: Well, sometimes we have a little
25 trouble getting started in the morning.

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1 Mr. Fryt or is it Fryt?

2 A It's Fryt, sir.

3 THE COURT: Fryt.

4 Mr. Fryt, is there any reason you can think
5 of why you couldn't be fair to both sides in this case?

6 A No, I can be extremely fair and listen
7 to all the testimony, but if I can tell you up front, if
8 the individual was found guilty of murder of the first
9 degree, the only way I would go is the death penalty or
10 life in prison without the possibility of parole.

11 THE COURT: The issue in this case,
12 obviously, is first guilt and you have to get past that
13 before you can get to the issue of penalty.

14 A Uh-huh.

15 THE COURT: Once that's been done and the
16 jury finds the defendant guilty of first degree murder,
17 then pursuant to legislative mandate, the jury is then
18 asked to consider one of four possible punishments.

19 Now I realize that is your view coming in,
20 but as a juror, you can be -- what you are asked to do is
21 to sublimate your own views of the law and this is one of
22 the reasons why I asked the question in the beginning
23 whether you could follow the Court's Instructions.

24 Can you make an intellectual decision that
25 you can consider the other -- all four forms of penalty,

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1 even though you philosophically don't believe in two of
2 them?

3 A Well, unfortunately, I read the news
4 too much, I see too much TV and the news too much and I
5 have been around long enough to see too many people getting
6 off with serving so much time, then getting off and going
7 right back out and doing the same crime over and over
8 again.

9 I think the judicial system is very, very
10 weak and I think that's the reason why our life styles out
11 there are so reckless. People just don't pay for their
12 crimes and I have got kids and I just firmly believe if you
13 are going to kill someone -- I mean, I do understand the
14 difference between an accidental death, premeditated
15 death --

16 THE COURT: There is no question but if this
17 defendant is convicted of first degree murder, one of the
18 elements that has to be satisfied is premeditation.

19 A Right.

20 THE COURT: And for lack of a better term,
21 it means it was done on purpose.

22 A That's right. I think that the
23 prosecuting attorneys would love me and the defense
24 attorneys would despise me because I would go after all I
25 could and I would try everything in my power to persuade my

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1 comrades to do the same.

2 MR. BROOKS: We will challenge for cause,
3 your Honor.

4 THE COURT: All right, the challenge is
5 granted. Mr. Fryt, thank you very much for your candor
6 this morning.

7 We will leave position 19 open for the time
8 being.

9 Ms. Romero, good morning.

10 A Good morning.

11 THE COURT: Is there any reason you can
12 think of why you can't be fair to both sides?

13 A Well, I was in a abusive marriage and I
14 think it would be very stressful for me.

15 THE COURT: Well, the process here is not
16 pleasant. There is no question about that and it would
17 require a commitment by you to be fair to both sides in the
18 case and it won't be as stressful as you might imagine
19 because this is simply a matter of -- since there is no
20 right or wrong answer from an individual juror, the
21 individual juror has simply an obligation to be fair, come
22 to an individual conclusion, and provide it when you are in
23 the jury room.

24 With that in mind, would you be able to
25 serve as a juror in a case like this? The fact that you

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1 have had life experiences does not necessarily disqualify
2 you from jury service. It simply provides a medium of
3 examination to make sure that you can be a fair juror to
4 both sides of the case.

5 A Well, I can consider all the evidence
6 and be fair. I feel I can.

7 THE COURT: All right. Can you wait until
8 all the evidence is in before coming to any conclusion
9 about any issue in the case?

10 A Yes.

11 THE COURT: And have you, any member of your
12 family or any friends of yours ever been arrested?

13 A Yes, one son.

14 THE COURT: And can you tell us a little bit
15 about that.

16 A Yeah, him and a friend broke into a
17 neighbor's house.

18 THE COURT: This is when they were young?

19 A Yes, teenagers.

20 THE COURT: And he went through the juvenile
21 justice system --

22 A Yeah, he was put on probation.

23 THE COURT: -- and everything?

24 A And we took him to counseling.

25 THE COURT: And he's grown-up and he is --

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1 A Yes, he's okay now.

2 THE COURT: He is doing fine?

3 A Yes.

4 THE COURT: Anything about the way that case
5 was handled that might effect your thinking in this case?

6 A No, sir.

7 THE COURT: Have you or any member of your
8 family or friends ever been the victim of a crime and we'll
9 talk about the domestic violence issue in just a second;
10 other than that?

11 A Well, just breaking into my home and my
12 daughter's home has been broken into and my sister's.

13 THE COURT: The police were called on those
14 occasions?

15 A Yes.

16 THE COURT: Did the police handle the matter
17 as well as they could?

18 A Yes.

19 THE COURT: Do you have any ill feelings
20 toward any police agency as a result of those
21 interactions?

22 A No.

23 THE COURT: And, on the other hand, is there
24 anything about the fact of those incidents that might
25 effect your judgment in a case like this one?

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1 A No.

2 THE COURT: Let's turn to the issue of your
3 marriage. I don't want to belabor the point because we are
4 not here to make this an unduly and unpleasant experience
5 for you, but we need to find out at this point as to
6 whether that life experience would prevent you from being
7 able to hear all the evidence in this case and weigh,
8 first, whether or not the State had met its burden of proof
9 beyond a reasonable doubt?

10 A No.

11 THE COURT: Now you indicated earlier you
12 thought this might be a stressful situation?

13 A Yeah.

14 THE COURT: Will you avoid consciously going
15 into a transference into the jury room, that is thinking
16 about your case --

17 A Right.

18 THE COURT: -- in analyzing this case?

19 A Yes, I can avoid that.

20 THE COURT: You think you can set it aside?

21 A Yes.

22 THE COURT: Will you be able to do the same
23 thing on the issue of penalty?

24 A Yes.

25 THE COURT: And will you be able to consider

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1 all four forms of penalty in the event that we get to that
2 point?

3 A Yes.

4 THE COURT: Do you have any moral,
5 conscientious, or religious objections to the death
6 penalty?

7 A No.

8 THE COURT: Have you ever been on a jury
9 before?

10 A Yes.

11 THE COURT: How many times?

12 A Once.

13 THE COURT: Was it --

14 A In California.

15 THE COURT: Was it a criminal or civil case?

16 A Burglary.

17 THE COURT: Without telling us what the
18 verdict was, was your jury able to reach a verdict?

19 A Yes.

20 THE COURT: And was there anything about
21 that experience that would effect your judgment in this
22 case?

23 A No.

24 THE COURT: So you've heard the jury
25 instructions on reasonable doubt before and you will be

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1 able to analyze the instructions as they are read to you
2 here?

3 A Yes.

4 THE COURT: And as they relate to the case
5 of course?

6 You have to answer out loud.

7 A Yes.

8 THE COURT: Thank you.

9 Any concern about adverse public opinion
10 that might result from any verdict in the case?

11 A No.

12 THE COURT: And have you ever been involved
13 in any kind of court proceeding as a witness or a party?

14 A No, just divorce.

15 THE COURT: If you were involved in this
16 case in any way, as a member of one of the families
17 involved or a witness, would you feel comfortable with 12
18 jurors with your sense of judgment and fairness in sitting
19 on the case?

20 A Yes.

21 THE COURT: State of Nevada may inquire.

22 MR. HARMON: Thank you, your Honor.

23 . . .

24 . . .

25 . . .

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1 VOIR DIRE EXAMINATION

2 BY MR. HARMON:

3 Q Ms. Romaro, good morning.

4 A Good morning.

5 Q In the questionnaire, you told us that
6 this case sounded familiar to you?

7 A Yes. I listen to the news every night
8 and I also read the newspaper and it sounded vaguely
9 familiar, but I'm not sure.

10 Q You are not sure?

11 A No. It sounds familiar, but, yet, at
12 the same time, it might be a different case.

13 Q During the course of the trial, if you
14 should remember something that you were exposed to in
15 connection with the publicity about the case, would you be
16 able to set that out of your mind?

17 A Yes.

18 Q You understand the importance of basing
19 a verdict solely upon the evidence introduced during the
20 trial?

21 A Yes.

22 Q A true and just verdict must be based
23 upon the evidence applying to that the Court's legal
24 instructions?

25 A Yes.

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1 Q Now, you've served as a juror on
2 another occasion?

3 A Yes.

4 Q Is it once or various times?

5 A Once.

6 Q You said you found it very boring.

7 A Well, I sat for about a week before we
8 went in the jury room.

9 Q Before you were picked?

10 A Right.

11 Q Well, I'm not making any guarantees to
12 you in this case.

13 A Right, I know.

14 Q It may be equally boring.

15 A Uh-huh.

16 Q Are you willing, nevertheless, to serve
17 on the case where the charges involve murder, burglary, and
18 robbery?

19 A Yes.

20 Q Do you feel you are the type of person
21 who would be able to make the difficult decisions required
22 of a juror in this type of case?

23 A Yes.

24 Q You suggested that you felt, and this
25 is in the questionnaire, some pressure from your workplace

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1 in having to be away?

2 A Yes. Well, they don't like me to ever
3 miss because they don't have a replacement for me. The
4 office staff has to do my job.

5 Q Well, assuming they will be able to
6 manage, do you think that you can focus on the trial
7 proceedings while the Court is in session?

8 A Yes.

9 Q And not be worried unnecessarily about
10 how things are going on at work?

11 A Yes.

12 Q You mentioned that you have one son who
13 had been arrested before?

14 A Uh-huh, yes.

15 Q I think you said it was for a burglary?

16 A Uh-huh, yes.

17 Q As I recall, from the questionnaire,
18 you indicated drugs may have been involved also?

19 A Yes.

20 Q How long ago was this?

21 A About 20 years ago. He's in his 30s
22 now. So he was a teenager then.

23 Q Do you remember what type of drugs?

24 A Marijuana. They said the neighbor was
25 growing it and they went into that neighbor's house with a

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1 friend.

2 Q And I take it, given the remoteness in
3 time, you wouldn't harbor any type of ill feeling towards
4 the criminal justice system as a result of what happened in
5 his case?

6 A No.

7 Q You described yourself as a follower.
8 You said that --

9 A Well --

10 Q "I'm timid and shy?"

11 A Well, I have always been shy. I've
12 never been outgoing, but I'm overcoming it.

13 Q If we select you, are you going to be
14 willing to participate actively in the deliberation of this
15 case?

16 A Yes.

17 Q And you'll certainly be willing to
18 express your views and listen to those of the other
19 jurors?

20 A Yes.

21 Q Regarding the issue of punishment, if
22 that should become a responsibility of the jury, you were
23 asked, toward the end of the questionnaire, this is the
24 question, "If you believe the evidence warranted the death
25 penalty, could you personally vote to impose the death

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1 penalty?" And your answer at that time was, "Don't know?"

2 A Well, it all depends on the evidence
3 and --

4 Q That is certainly true and we wouldn't
5 be asking you to prejudge the case. At this point, you
6 know very, very little about it. Just hypothetically
7 speaking, though, assume for the moment for the purpose of
8 the question that Mr. Chappell was convicted of murder of
9 the first degree and assume also that, at the conclusion of
10 a penalty hearing, it was your earnest opinion that the
11 appropriate punishment would be a death sentence, do you
12 think you would have the intestinal fortitude to come back
13 to the courtroom and personally vote for such punishment?

14 A Yes.

15 MR. HARMON: Thank you.

16 Pass for cause, your Honor.

17 THE COURT: For the defense.

18 MR. BROOKS: Thank you, Judge.

19

20 VOIR DIRE EXAMINATION

21 BY MR. BROOKS:

22 Q Ms. Romero, taking Mr. Harmon's
23 question and changing it around a little bit, assuming we
24 went through the trial and you did not feel the facts
25 warranted first degree murder, but rather a lesser

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1 conviction, are you willing to stand up for that belief?

2 A Yes.

3 Q And if we did go into a penalty phase
4 and you felt the evidence did not warrant a death penalty,
5 you would be opened to all three of the other penalties?

6 A Yes.

7 Q I'm sure that you can understand that
8 we really appreciate, a few moments ago, I think, with Mr.
9 Fryt and his honesty about what he said and I think you
10 probably agree that there are a lot of people that feel
11 that way?

12 A Yes.

13 Q Do you understand how we are concerned
14 about that type of view, the view that someone is going to
15 be an advocate in the jury box from the get-go for one side
16 or the other?

17 A Yes.

18 Q Do you think it's right that the jury
19 consist of people who are willing to put aside that type of
20 view?

21 A Yes.

22 Q Obviously, what we want to do is to get
23 a fair trial for James, we want the jury to consider all
24 the options, listen to all the arguments and not have his
25 mind made up from the beginning and we want the jury to

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1 apply the presumption of innocence. How do you feel about
2 the presumption of innocence?

3 A I think he's innocent until proven
4 guilty.

5 Q Are you willing to apply that
6 throughout the trial as you evaluate all the facts?

7 A Yes.

8 Q Is there anything about you that we
9 should know right now that you think we should know in
10 terms of deciding whether or not you should be on the
11 jury?

12 A No. Anything you would like to know, I
13 will answer you.

14 MR. BROOKS: Thank you.

15 We would pass for cause, your Honor.

16 THE COURT: All right, I have just been
17 advised that I have a matter I have to take up in
18 chambers. If you will all just relax, this will only take
19 about less than five minutes and I'm going to be right
20 back. So if you will just be at ease. You can stand up in
21 the jury box or whatever, but I will be right back.

22 During this break, it is your duty not to
23 converse among yourselves or with anyone else on any
24 subject connected with this trial or to read, watch, or
25 listen to any report of or commentary on this trial or any

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1 person connected with this trial by any medium of
2 information, including, without limitation, newspapers,
3 television, or radio, and you are not to form or express an
4 opinion on any subject connected with this case until it is
5 finally submitted to you.

6 If you want to use the facilities also, you
7 are certainly welcomed to, but I will be back here by 20
8 after the hour.

9

10 (Off the record at 9:13 a.m. and back on the
11 record at 9:20 a.m.)

12

13 THE COURT: We were just about to conduct an
14 interview with Mr. Swartz. Let me make sure where I am in
15 the room here. My grid here doesn't mirror the same way
16 this is set up.

17 So, Mr. Swartz, am I pronouncing your name
18 correctly?

19 A Yes.

20 THE COURT: Is there any reason you can
21 think of before coming to any conclusion about the case?

22 A Yes.

23 THE COURT: Have you, any member of your
24 family or friends ever been arrested?

25 A I have.

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1 THE COURT: Tell us about that.

2 A It was a DUI about in 1981, I guess,
3 when I was young.

4 THE COURT: Well, you still look young, at
5 least in my age group.

6 Anything about that experience in your life
7 that would effect your thinking here?

8 A Oh, no.

9 THE COURT: Hold any hard feelings against
10 the police agencies or prosecution agencies?

11 A Not at all.

12 THE COURT: Have you, any member of your
13 family or friends of yours ever been the victim of a
14 crime?

15 A Yes.

16 THE COURT: Tell us about that.

17 A My apartment was burglarized, my
18 parents' house was burglarized, excuse me, and that's about
19 it.

20 THE COURT: Anything about those experiences
21 that would effect your judgment in this case?

22 A No, not at all.

23 THE COURT: Again, you don't have any ill
24 feelings toward the police about how the matter was
25 handled?

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1 A No.

2 THE COURT: And you don't have any ill
3 feelings about that that would effect your thinking with
4 regard to the defendant's cause in this case?

5 A No.

6 THE COURT: Ever been on a jury before?

7 A No.

8 THE COURT: Any concern about adverse public
9 opinion that might result from a verdict in this case?

10 A No, not at all.

11 THE COURT: Ever been a participant in a
12 court proceeding as a witness or a party?

13 A No.

14 THE COURT: Do you have any religious,
15 philosophical, conscientious or moral objections to the
16 imposition of the death penalty?

17 A No.

18 THE COURT: Can you give fair consideration
19 to all statutory forms of penalty in the event that you are
20 caused to deliberate on that issue?

21 A Yes.

22 THE COURT: If you were involved in this
23 case yourself, would you feel comfortable with 12 jurors
24 just like you sitting in judgment on the matter?

25 A Yes, I would.

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1 THE COURT: State of Nevada may inquire.

2 MS. SILVER: Thank you, your Honor.

3

4 VOIR DIRE EXAMINATION

5 BY MS. SILVER:

6 Q You have stated in your questionnaire
7 that your wife had been a victim of domestic violence when
8 she was a child?

9 A Yes.

10 Q And she's obviously talked with you
11 about that experience?

12 A Yes, she has.

13 Q Do you think that, as a juror in this
14 case, you could put the fact that your wife had been abused
15 by her parents and give the defendant in this case a fair
16 trial?

17 A Yes, I do.

18 Q And you recognize that all jurors, each
19 one selected of all 12, each bring with them different life
20 experiences, but that together using those life experiences
21 and listening to the evidence collectively you would be
22 able to make a decision in this case?

23 A Yes.

24 Q I noticed here that you would actually
25 like to be a juror?

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1 A Uh-huh.

2 Q You have to say yes or no for the
3 record.

4 A Yes.

5 Q Do you think you could be fair and
6 impartial to both sides in this case?

7 A Yes, I do.

8 Q And you can consider all four forms of
9 punishment?

10 A Yes.

11 MS. SILVER: Thank you.

12 We would pass this juror for cause.

13 THE COURT: All right, thank you.

14 MR. EWING: Thank you, your Honor.

15

16 VOIR DIRE EXAMINATION

17 BY MR. EWING:

18 Q Mr. Swartz, when you were arrested for
19 the DUI 14, 15 years ago --

20 A Uh-huh.

21 Q -- did you have a trial?

22 A No.

23 Q Were you ever represented by counsel?

24 A No.

25 Q In your jury questionnaire, you

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1 indicate that the death penalty is not appropriate in all
2 cases of murder?

3 A Correct.

4 Q But you also indicate that it may be
5 appropriate in a case in a ghastly murder, even if there is
6 no premeditation?

7 A I think attempt.

8 Q Do you understand the only way we will
9 have a penalty phase is if you find premeditation?

10 A Yes.

11 Q Can you think of circumstances or do
12 you think there are circumstances where a premeditated
13 murder might deserve a fifty year sentence?

14 A Yes, there are.

15 Q And you also think there might be
16 circumstances where a first degree murder may deserve a
17 life sentence --

18 A Yeah.

19 Q -- with the possibility of parole?

20 It appears that you also believe that
21 someone's background should be considered?

22 A Yes, I do.

23 Q In assessing a sentence, as well as the
24 facts of the case?

25 A Yes.

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1 Q Do you feel that someone's background
2 is interwoven with the facts of the case to a certain
3 extent?

4 A I wouldn't know that until I heard the
5 evidence.

6 Q Do you think it's possible, though?

7 A It's possible.

8 Q Do you feel like you could give James a
9 fair trial?

10 A Yes, I do.

11 Q Do you feel like that's important?

12 A Very important.

13 MR. EWING: Pass for cause.

14 THE COURT: All right, thank you.

15 All right, Mr. Massar, good morning.

16 A Good morning.

17 Q Any reason you can think of why you
18 couldn't be fair to both sides in this case?

19 A No, there's not.

20 THE COURT: Can you wait before all the
21 evidence is in before coming to any conclusion about any
22 issue in the case?

23 A Yes.

24 THE COURT: Have you, any friends of yours
25 or family members ever been arrested?

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1 A Three years ago my girlfriend was
2 arrested for two counts of felony DUI.

3 THE COURT: Was she ultimately convicted on
4 those?

5 A Yes, she was.

6 THE COURT: Now that's a charge that
7 requires mandatory imprisonment. Did she go to trial? Was
8 she convicted of a charge that required her to be
9 incarcerated?

10 A It's a strange story, your Honor, and
11 it's a very long story, but all I really know is that she
12 was given five years probation.

13 THE COURT: All right.

14 Anything about the way the police handled
15 that case or about the fact of that case that would effect
16 your thinking in here?

17 A No, there's not.

18 THE COURT: Do you have any ill feelings or
19 any negative thoughts toward law enforcement as a result of
20 the way her case was handled?

21 A Absolutely not.

22 THE COURT: And any feelings of any kind
23 that might effect your judgment in this case?

24 A No.

25 THE COURT: Have you, any member of your

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1 family or any friends of yours ever been the victim of a
2 crime?

3 A No.

4 THE COURT: Have you ever been on a jury
5 before?

6 A No.

7 THE COURT: Any concern about adverse public
8 opinion?

9 A No.

10 THE COURT: Ever been involved in a court
11 proceeding as a witness or a party?

12 A No.

13 THE COURT: Do you have any religious,
14 conscientious or moral objections to the imposition of the
15 death penalty?

16 A No.

17 THE COURT: Can you give fair consideration
18 to all four forms of punishment in the event that you reach
19 that issue in a penalty phase of the trial?

20 A Absolutely.

21 THE COURT: If you were involved in this
22 case, would you feel comfortable with 12 jurors just like
23 you sitting in judgment on the matter?

24 A No question about it.

25 THE COURT: State of Nevada may inquire.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. HARMON: Thank you, your Honor.

2

3 VOIR DIRE EXAMINATION

4 BY MR. HARMON:

5 Q Good morning, sir.

6 A Good morning.

7 Q In your questionnaire, you suggested
8 that you hadn't personally experienced any type of domestic
9 violence situations, but your co-workers and friends?

10 A I hear about it a lot. It's very
11 epidemic. I think in this jury panel we see that it occurs
12 a lot.

13 Q As it has been mentioned, there may
14 very well be evidence in this case of domestic violence.
15 Is that going to effect your ability to be fair and
16 impartial?

17 A No, sir.

18 Q On this same subject, you, in terms of
19 how persons are effected by it, gave this answer,
20 "Emotionally, it seems to take a heavy toll. They become
21 bitter, weary, and resentful."

22 Who were you talking about?

23 A Generally, the people that I have
24 conversation with, victims of domestic violence.

25 Q You were referring to the state of mind

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1 of the victims --

2 A Yes.

3 Q -- of domestic violence?

4 You suggested, in terms of the seriousness
5 of the various punishments for murder of the first degree,
6 that, in your opinion, a life sentence is probably
7 harsher?

8 A Yeah. In fact, I was thinking on
9 Sunday, they had the movie Papillon and in that, he was
10 given life imprisonment and that can be sometimes worse
11 than the death penalty. I think it can be a more severe
12 punishment.

13 Q It would depend a lot, though, on the
14 circumstances of the facility where the individual is
15 incarcerated?

16 A I wouldn't say. I would still say it's
17 pretty much a wasted life.

18 Q There's no doubt that for the quality
19 of life, anyone would choose freedom.

20 A Right.

21 Q Do you understand, if it becomes the
22 jury's duty to fix a punishment, the Court would provide
23 additional instructions explaining the law which applies?

24 A Yes, sir.

25 Q But would you strive, to the best of

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1 your ability, to follow the Court's Instructions at every
2 phase of the trial?

3 A I would have no choice, yes.

4 Q Because you have a personal view about
5 the severity of life in the state prison, would that effect
6 your ability to follow the Court's Instructions regarding
7 punishment?

8 A I don't quite understand.

9 Q Well, I'm wondering because we could, I
10 suppose, debate philosophically whether a death sentence is
11 the more severe or, as you have suggested, a life sentence
12 is the most harsh.

13 If you thought in this case that Mr.
14 Chappell was deserving of the most harsh punishment, are
15 you telling us that you would vote for a life sentence or
16 that you would follow the Court's Instructions and apply
17 those to the evidence and circumstances and then from the
18 facts of this case vote for the punishment you thought was
19 the most appropriate?

20 A I believe that, based on the facts, I
21 would have no trouble making the proper decision based on
22 what the rules were. I wouldn't try to -- if the rules
23 dictated that he was to get life or whatever, I would
24 follow that. I wouldn't try to, because of my personal
25 beliefs or intentions, try to sway to some other decision.

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1 Q Are you telling us then that if you
2 thought, from the circumstances of this case and from the
3 law which apply to it, that a life sentence was proper, you
4 certainly would vote for that?

5 A Yes, sir.

6 Q And, likewise, if you concluded, after
7 everything has been presented, that the death sentence was
8 the proper punishment, would you have the strength of your
9 conviction to vote for that punishment?

10 A Yes, I would.

11 Q How do you feel about serving as a
12 juror on this case?

13 A I believe that I will make a good
14 juror. I don't have any preconceptions about guilt or
15 innocence or anything. I think I'm a very factual person.
16 Most people say that I would make a good juror.

17 MR. HARMON: Thank you.

18 Pass for cause, your Honor.

19 THE COURT: Thank you.

20 For the defense.

21

22 VOIR DIRE EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Massar, one thing I'm always
25 curious about, we spend so much time in here talking about

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1 the death penalty and what happens if a person is convicted
2 of first degree murder, does that suggest to you, in any
3 way, that we are conceding first degree murder?

4 A Absolutely not.

5 Q You understand that this is just a
6 hypothetical situation we have to address?

7 A Yes.

8 Q And you understand that we're
9 contesting that first degree murder all the way?

10 A Yes.

11 Q I thought your answers to some of the
12 questions had a little bit of a sense of humor to them. I
13 was hoping you would let me share this. I got a kick out
14 your answer to, "Do you consider yourself a follower?" You
15 said, "Where I lead, no one wants to follow." I got a kick
16 out of that.

17 Do you know why that is?

18 A My social skills I think.

19 Q You have also mentioned in here that,
20 in talking about a defendant's background, you didn't feel
21 in terms of what you felt yourself, your gut feeling, that
22 a defendant's background should really matter in deciding a
23 punishment. The Court is going to tell you the law says
24 you should consider that. How would you resolve that
25 conflict between your gut feeling and what the law says?

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1 A That's interesting. I wouldn't -- --
2 couldn't answer you unless I thought about it for awhile.
3 I don't have an answer offhand.

4 Q Well, if the Court says consider the
5 background evidence you hear, would you consider the
6 background evidence?

7 A I'd feel compelled to, sure.

8 Q You would follow the Court's
9 Instructions?

10 A Oh, absolutely.

11 Q Also, you had mentioned one of the
12 statements was the facts surrounding the killing and not
13 the killer's background should be the main consideration in
14 determining punishment. You agreed with that statement.
15 Do you understand the Court is going to tell you to
16 consider both?

17 A To consider -- could you repeat that?

18 Q The Court is going to tell you to
19 consider both the background and the facts surrounding the
20 killing.

21 MR. HARMON: Your Honor, I don't want to
22 quibble, but I don't agree with the way that question is
23 phrased. I would submit the Court is going to explain that
24 the jury consider certain things, but the Court isn't going
25 to dictate to the jury what they have to consider and

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1 that's the inferences.

2 MR. BROOKS: I quibble with Mr. Harmon's
3 statement. I think the law is clear. They must consider
4 the information given from the jury box and that includes
5 evidence considering background.

6 MR. HARMON: Not true.

7 MR. BROOKS: They must consider it.

8 THE COURT: Well, it's a semantical
9 difference, but I will allow the question.

10 A VOICE: I think definitely, if I think
11 about the case of my girlfriend, that there was a lot of
12 background that went into the decision and it should be
13 considered and I don't think I would have a problem doing
14 that.

15 Q (BY MR. BROOKS) If you were James
16 Chappell, would you want someone like yourself being on the
17 jury?

18 A Yes.

19 Q And you will have no problem applying
20 the presumption of innocence to the facts of this case?

21 A Absolutely not.

22 MR. BROOKS: Thank you.

23 We'll pass for cause, your Honor.

24 THE COURT: Thank you, Mr. Brooks.

25 Ms. Yates, good morning.

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1 A Hi.

2 THE COURT: Any reason you can think of why
3 you couldn't be fair to both sides in the case?

4 A No, sir.

5 THE COURT: Can you wait until all the
6 evidence is in before coming to any conclusion about any
7 issue in the case?

8 A Yes.

9 THE COURT: Have you, any member of your
10 family or any friends of yours ever been arrested?

11 A A cousin for DUI.

12 THE COURT: Anything about that experience
13 in that person's life that would effect your thinking
14 here?

15 A No, sir.

16 THE COURT: Have you, any member of your
17 family or any friends of yours ever been the victim of a
18 crime?

19 A No, sir.

20 THE COURT: Ever been on a jury before?

21 A No.

22 THE COURT: Any concern about adverse public
23 opinion that might result from a verdict in this case?

24 A No.

25 THE COURT: Ever been a participant in a

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1 court proceeding as a party or a witness?

2 A No.

3 THE COURT: Any objection, moral,
4 conscientiously or religiously, to the death penalty?

5 A No, sir.

6 THE COURT: Can you give fair consideration
7 to all four forms of punishment that the Nevada legislature
8 has enacted with regard to first degree murder?

9 A Yes.

10 THE COURT: If you were involved in this
11 case yourself as a participant, a witness, a member of
12 anyone's family that's involved in the case, would you feel
13 comfortable with 12 people just like you sitting in
14 judgment on that?

15 A I believe so.

16 THE COURT: State of Nevada may inquire.

17 MR. HARMON: Thank you.

18

19 VOIR DIRE EXAMINATION

20 BY MR. HARMON:

21 Q Good morning.

22 You mentioned in the questionnaire that
23 there had been family members who had drug or alcohol
24 problems?

25 A Uh-huh.

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1 Q Would you elaborate.

2 A It was the same cousin and a couple
3 others and I know my father before -- that was before he
4 married my mother -- had some alcohol problem.

5 Q Is this anything that you have
6 experienced personally with them or something you just
7 heard about?

8 A No, it never directly effected me at
9 all.

10 Q I take it from your answer then, it
11 would not have any effect then on your attitude toward this
12 case?

13 A No.

14 Q How do you feel about the opportunity
15 of serving as a juror on this type of case?

16 A I think it's interesting. I'm
17 honored. I believe in our system.

18 Q If it was left solely up to you, would
19 we have capital punishment in the State of Nevada?

20 A As an option, yes.

21 Q Do you agree that gender or race or
22 prejudice of any kind is not an appropriate basis for a
23 verdict?

24 A Oh, yes, sir. It's not appropriate at
25 all.

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1 MR. HARMON: Thank you.

2 We would pass for cause, your Honor.

3 THE COURT: Thank you.

4 For the defense.

5

6 VOIR DIRE EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Yates, I have asked this question
9 of other people and it's a real important consideration for
10 us. We spend so much time here during this process talking
11 about the death penalty and life without the possibility of
12 parole and other considerations. You understand that we
13 absolutely are not conceding first degree murder?

14 A Yes, sir.

15 Q You understand we're addressing this
16 simply in the event that we get to that point in order that
17 you can fairly consider all four sentences?

18 A Yes, sir.

19 Q When you look at the idea of convicting
20 a person of first degree murder and consider the
21 possibility of a fifty year sentence with eligibility for
22 parole after 20 years, how do you feel about that
23 particular sentence?

24 A It would depend on the circumstances.
25 It would depend on the trial itself.

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1 Q So would you consider that?
2 A If it was appropriate. Yeah, it could
3 be appropriate.
4 Q You would be as opened to that sentence
5 as you would be to all the other sentences?
6 A Yes.
7 MR. BROOKS: Thank you.
8 We will pass for cause, your Honor.
9 THE COURT: Thank you.
10 Mr. Harmon, good morning.
11 A Good morning, sir.
12 THE COURT: Any reason you can think of why
13 you couldn't be fair to both sides in the case?
14 A No, sir.
15 THE COURT: Can you wait until all the
16 evidence is in before coming to any conclusion about any
17 issue in the case?
18 A Yes, sir.
19 THE COURT: Have you, any members of your
20 family or any close friends of yours ever been arrested?
21 A Quite a few of my friends, sir.
22 THE COURT: Tell us a little bit about it.
23 Anything serious?
24 A Well, I'm retired military and been all
25 over the world. We military have some high spirited young

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1 men and they wind up getting in a little bit of trouble
2 here and there.

3 THE COURT: Anything serious?

4 A Nay.

5 THE COURT: What about branch of service
6 were you in?

7 A I was in the CPs for 21 years.

8 THE COURT: Is there anything about the
9 experiences that your friends had over the years with the
10 MPs or the shore patrol that would effect your thinking in
11 this case?

12 A No, sir.

13 THE COURT: Anyone in your family, you or
14 friends of yours ever been the victim of a crime?

15 A Yes, sir.

16 THE COURT: Tell us a little bit about
17 that.

18 A Well, my second wife's next to oldest
19 sister was killed by her husband and he was convicted,
20 spent 18 years in prison, and I have seen the results of
21 what happened to the three kids.

22 THE COURT: Sure.

23 A And how it effected the rest of the
24 family.

25 THE COURT: And that must have been quite

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1 serious obviously.

2 A Yes, sir.

3 THE COURT: Now, let's take your view of
4 that situation and apply it to the courtroom here.

5 Is there anything about your knowledge of
6 that family experience that would effect your thinking on
7 the issue of guilt or innocence in this case or on the
8 issue of penalty?

9 A No, sir.

10 THE COURT: You can put that aside and pick
11 the right penalty, if we get to that point?

12 A Yes, sir.

13 THE COURT: And you can put the State to its
14 burden of proof --

15 A Yes, sir.

16 THE COURT: -- in this case?

17 In other words, before you can find the
18 defendant guilty of anything, the State must satisfy the
19 very stringent burden that the case be proved beyond a
20 reasonable doubt?

21 A Yes, sir.

22 THE COURT: And when you get in the jury
23 room, you won't be applying your family situation to this
24 situation?

25 A No, sir.

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1 THE COURT: In other words, you will be
2 using all your life experiences and, of course, you can't
3 put that aside, but you can use all of your life
4 experiences to determine what the appropriate result should
5 be in this case on any of the issues you may be called upon
6 to decide?

7 A Yes, sir.

8 THE COURT: Ever been on a jury before?

9 A No, sir.

10 THE COURT: I don't know how you managed to
11 escape that.

12 A Well, they say for 21 years I
13 travelled. I was never in the states more than three
14 months at a time.

15 THE COURT: Are you looking forward to
16 serving as a juror?

17 A It's another job, sir.

18 THE COURT: Another job you consider an
19 important obligation of citizenship?

20 A Yes, sir.

21 THE COURT: Any concern about adverse public
22 opinion from any verdict?

23 A I never have cared what the public
24 thought.

25 THE COURT: And have you ever been involved

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1 in any court proceedings as a witness or a party?

2 A Well, just divorce proceeding and
3 adoption, sir.

4 THE COURT: Nothing about those
5 experiences --

6 A No, sir.

7 THE COURT: -- that would effect your
8 thinking about this case?

9 A No, sir.

10 THE COURT: Do you have any religious,
11 philosophical or moral objections to the imposition of the
12 death penalty?

13 A No, sir.

14 THE COURT: Can you give fair consideration
15 to all four statutory forms of penalty?

16 A Yes, sir.

17 THE COURT: And if you were involved in this
18 case yourself in any way, would you feel comfortable with
19 12 jurors just like you sitting in judgment on that?

20 A Yes, sir.

21 THE COURT: State of Nevada may inquire.

22 MS. SILVER: Thank you, your Honor.

23 . . .

24 . . .

25 . . .

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1 VOIR DIRE EXAMINATION

2 BY MS. SILVER:

3 Q You stated in your questionnaire that
4 your wife's sister --

5 A Yes, sir, or ma'am.

6 Q -- that was murdered, that she had been
7 a victim of domestic violence as well?

8 A For about 12 years.

9 Q So she was with this person that killed
10 her for about 12 years before he killed her?

11 A Yes.

12 Q Do you know whether or not she tried to
13 leave him?

14 A Five or six different times, but some
15 people and, like in her case, just seem to have a compelling
16 need to go back.

17 Q Do you think --

18 A And that's what happened.

19 Q You stated that they had three children
20 in common as well?

21 A Yes, ma'am.

22 Q Were the children present during the
23 acts of domestic violence?

24 A Yes, ma'am.

25 Q Do you know whether or not they were

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1 effected by it?

2 A Well, when it was all over with, my
3 wife's mother had to take in the two youngest ones. The
4 oldest one, he went in the army and in the process of doing
5 that, it broke their family apart and her and her husband
6 wound up being divorced down the line, but all the kids
7 grew up pretty -- the only one that had any problems out of
8 it was the daughter, youngest daughter, and she runaway
9 from home a week before graduating from high school.

10 Q So it seemed to have a negative effect
11 on everyone involved?

12 A Well, it's like dropping a stone into a
13 pond. It makes one small ripple and then it travels
14 further on and further out.

15 Q Now, you stated that she tried to leave
16 him five or six times. Were you aware or do you have any
17 knowledge of whether or not he became more violent with her
18 when she tried to leave him?

19 A Well, all I can tell you is what my
20 wife told me. This happened when I was in the service and
21 I was away from home. So all I know is what is actually
22 hearsay.

23 Q Okay.

24 A And my wife -- she went to my wife and
25 first husband a couple times to get away from him and he

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1 always come back, she would go back with him, and the last
2 time she was in living with my brother-in-law in Georgia
3 and she decided to go back to Alabama. When she went back
4 there, two days later, he blew her apart with a shotgun.

5 Q Do you think she deserved what she got
6 with the shotgun --

7 A No.

8 Q -- because she kept going back to him
9 repeatedly?

10 A No.

11 Q Is there ever a situation that you can
12 envision that a woman deserves that type of treatment,
13 whether it's to be killed --

14 A No person.

15 Q -- or beaten?

16 A No person deserves that treatment.

17 Q Do you think people ought to be held
18 accountable for their actions?

19 A Definitely.

20 Q Do you think in this case that, even
21 though you've had this life experience, at least through
22 your wife, that you could put that experience aside
23 because, undoubtedly, there's going to -- there may be some
24 inferences as to domestic violence in this case and you
25 could separate that and be fair to both the State and the

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1 defense?

2 A Well, let me explain it this way. What
3 happened to my wife and her family is all in the past and
4 we can't live in the past. We have to go ahead in the
5 future and whether things were right or whether things were
6 wrong, I was not there to judge and it was not my job to
7 judge and everybody is accountable for their actions and
8 they will account to God when the time comes no matter what
9 we say or what we do.

10 Q So, again, then you think you could be
11 fair and you could judge the facts of this case alone
12 without going back to what had happened?

13 A Yes, ma'am.

14 Q And you, again, could consider all
15 forms of punishment?

16 A Yes, ma'am.

17 MS. SILVER: Thank you.

18 We would pass for cause.

19 THE COURT: Thank you.

20 For the defense.

21 MR. EWING: Thank you, your Honor.

22 . . .

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 VOIR DIRE EXAMINATION

2 BY MR. EWING:

3 Q Mr. Harmon.

4 A Yes, sir.

5 Q When this tragic incident occurred in
6 your family and your wife's sister was killed, you were
7 overseas?

8 A Yes, sir.

9 Q Were you overseas for the entire
10 duration of the proceeding?

11 A Well, I have to explain what happened.
12 My wife now, which is my second wife, her and I grew up
13 together. I left home when I was 19. Ten days after I
14 graduated from high school, I joined the army. I was gone
15 three years.

16 When I came back, she had gotten married.
17 So I turned around and I joined the navy. When I retired
18 from the navy, I came out here and she had remarried and
19 moved in with Anna for 16 years. So it was only 20 years
20 there where I never seen her or anything else and she was
21 on her way to California to live with her brother and she
22 got my address from my brother in Florida. So she stopped
23 by to see me and I talked with her and gave her five days
24 to rest up and I told her, "This is as far as you are
25 going." So I paid for her divorce. Then her and I got

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1 married.

2 So she is my childhood sweetheart is
3 actually what it was.

4 Q So you weren't even together during
5 this situation?

6 A No.

7 Q Do you know if there was a trial?

8 A Yes. From what I understand is what
9 came through the trial. Her father and her mother and her
10 brother was there at the courthouse and was waiting for
11 court to start and then he had to go to the restroom and on
12 the way down, he glanced in another court down the hallway
13 and found out that's where it was. So he went back to get
14 his mother and dad. By the time they got there, it was
15 already over and done with and they never had their say or
16 anything else.

17 Q So they never testified --

18 A No.

19 Q -- is what you are saying?

20 You indicated, in your jury questionnaire,
21 that you don't particularly like crowds?

22 A No, sir, I don't.

23 Q Do you feel, though, you would be able
24 to interact with the jury?

25 A Well, the jury is not a crowd.

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1 Q Can you talk with them and discuss your
2 views with them, could you do that?

3 A Yes, sir.

4 Q Feel comfortable doing that?

5 A Yes, sir.

6 Q You indicated earlier that you felt
7 strongly that people should be held accountable for their
8 actions?

9 A Yes, sir.

10 Q Do you feel there are circumstances
11 where a sentence, other than death, would be holding
12 someone accountable for a first degree murder?

13 A Well, let me put it this way. A person
14 has choices in life from the day he was born. He had a
15 choice either to do something or he had a choice not to do
16 it. It's up to the person what choice to make and --

17 Q That's true.

18 A -- for every choice you make there is
19 an action and reaction.

20 Q My question for you specifically,
21 though, do you feel there are situations where someone
22 could be sentenced to 50 years for first degree murder and
23 that would be holding them accountable for their actions?

24 A Yes, sir.

25 Q You indicate also in your jury

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1 questionnaire that you don't feel that someone's background
2 should be considered when assessing a punishment?

3 A No, sir, I don't. Like I say, a person
4 had choices. They can choose the environment they are in,
5 they can move out of it or they can change it. It's up to
6 their choice what they wanted. You don't have to flow with
7 the stream. You can swim against it or you can get out.

8 Q Do you feel like different people have
9 different strengths to get out of certain situations?

10 A Everybody develops their own
11 strengths.

12 Q If you were to hear evidence from the
13 witness stand about an individual's abilities and
14 strengths, would that be something that would effect your
15 decision?

16 A No, sir.

17 Q If the Judge instructed you that you
18 could consider a person's past in assessing sentence, would
19 you follow that instruction?

20 A Yes, sir.

21 Q Would you consider a person's past?

22 A Depending on the evidence that was
23 presented, yes, sir.

24 Q You would evaluate the evidence and if
25 you felt there was something in their past that was

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1 important, you could consider that?

2 A Yes, sir.

3 MR. EWING: Pass for cause.

4 THE COURT: All right, thank you.

5 Mr. Fittro?

6 A Yes.

7 THE COURT: Am I pronouncing your name

8 correctly?

9 A Yes.

10 THE COURT: Any reason you couldn't be fair

11 in this case?

12 A No.

13 THE COURT: Can you wait until all the

14 evidence is in before coming to any conclusion about any

15 issue in the case?

16 A Yes.

17 THE COURT: Have you, any member of your

18 family or any friends of yours ever been arrested?

19 A Yes, I have.

20 THE COURT: And tell us a little bit about

21 that.

22 A That was about 23 years ago and this

23 was for theft and I did a plea bargain and the sentence was

24 five years probation and later, it was reduced to three

25 years.

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1 THE COURT: And I take it, ultimately, your
2 civil rights were restored and everything has been fine
3 since?

4 A Yes.

5 THE COURT: Anything about that experience
6 with the justice system that would effect your thinking in
7 a case like this?

8 A No. This was in the State of
9 Illinois. So I don't think so.

10 THE COURT: It's a long time ago and that
11 was then and this is now, right?

12 A Yes.

13 THE COURT: Is there anything about that
14 experience that would cause you, for example, to increase
15 the burden the State would have to meet to find the
16 defendant guilty?

17 A No.

18 THE COURT: Is there anything about that
19 experience that would lessen that burden?

20 A No.

21 THE COURT: So you would be able to follow
22 the Court's Instructions on the burden of proof?

23 A I believe so.

24 THE COURT: So you won't be carrying that
25 experience into the jury room?

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1 A No.

2 THE COURT: You can set it aside?

3 A Yes.

4 THE COURT: Anything about -- strike that.

5 Have you ever been a victim of a crime or a
6 member of your family or close friends of yours ever have
7 that experience?

8 A No.

9 THE COURT: Ever been on a jury before?

10 A No.

11 THE COURT: Ever been involved in a court
12 proceeding as a witness or a party?

13 A No.

14 THE COURT: Any concern about adverse public
15 opinion that might flow from any verdict you might render
16 in this case?

17 A No.

18 THE COURT: And do you have any moral,
19 conscientious or religious objection to the death penalty?

20 A No.

21 THE COURT: And if you were involved to
22 serve as a juror in this case, would you be able to give
23 fair consideration to all four statutory forms of penalty?

24 A Yes.

25 THE COURT: And if you were involved in this

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1 case, would you yourself, as a participant, witness, member
2 of a family of anyone involved in the case, would you feel
3 comfortable with 12 people like you sitting in judgment on
4 the case?

5 A Yes.

6 THE COURT: State of Nevada may inquire.

7 MR. HARMON: Thank you, your Honor.

8

9 VOIR DIRE EXAMINATION

10 BY MR. HARMON:

11 Q Good morning, sir.

12 A Good morning.

13 Q Appreciating that what happened in
14 Illinois occurred a long time ago and I certainly don't
15 want to belabor the point, Mr. Fittro, but, nevertheless,
16 were you satisfied with the way the criminal justice system
17 approached your situation?

18 A No, not exactly. I feel I was
19 represented by an attorney poorly in that he told me that
20 the record could be expunged quickly and it turned out not
21 to be true. Then I went for appeal and the State wouldn't
22 hear the appeal. So I was a little upset on both sides.

23 Q Was there anything about the way law
24 enforcement, what I mean by law enforcement, anything about
25 the investigation and the police involvement that concerns

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1 you?

2 A No.

3 Q There will certainly be police officers
4 testifying in this case and understanding you said, just a
5 moment ago, that was Illinois and, of course, this is
6 Nevada, do we have your complete assurance that your
7 unfortunate experience many years ago there would not
8 effect, in any way, your attitude toward this case?

9 A Yes, you have my assurance.

10 Q How do you feel about the opportunity
11 of serving as a juror on this type of case?

12 A I prefer not to, but if required, I
13 would go ahead.

14 Q From your answer, I take it if you are
15 basically drafted, if we accept you, that you are willing
16 to serve?

17 A Yes.

18 Q Do you feel that you can do so fairly
19 and impartially?

20 A I believe so.

21 Q Now, you suggested in the questionnaire
22 in one of your answers that there might be a problem if the
23 parties involve persons of different races?

24 A Yeah, that's a possibility. I may have
25 a problem.

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1 Q I want to make sure I understand what
2 you are saying. Are you talking about a different race
3 than you or are you talking about the victim and the
4 defendant being of different races?

5 A The victim and the defendant.

6 Q If I suggest to you in this case that,
7 even though the evidence will show that they have been
8 boyfriend and girlfriend, that they were not of the same
9 race, is that going to be a factor that would be troubling
10 to you to the point that you can't render equal and exact
11 justice both to Mr. Chappell, the defendant, and to the
12 prosecution?

13 A I believe it could be.

14 Q We've asked a number of the other
15 prospective jurors if they agreed with the principle that
16 race and gender and, in fact, any type of prejudice is not
17 a proper basis for a verdict. Mr. Fittro, do you agree
18 with that notion?

19 A With the verdict?

20 Q Yes.

21 A Yes.

22 Q Are you going to do your very best to
23 focus solely upon the evidence and the Court's legal
24 instructions in reaching decisions in this case?

25 A Yes.

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1 Q If you were called upon to impose a
2 punishment, would that be such a burden that you couldn't
3 handle it?

4 A No, I think I could handle it.

5 Q If it was left solely up to you, would
6 we have capital punishment in the State of Nevada?

7 A Yes.

8 Q Would we have life sentences also for
9 murder of the first degree?

10 A Yes.

11 Q If, after you had heard everything and
12 it was your responsibility, as a member of this jury, to
13 impose a punishment, if, after you considered all of the
14 circumstances and the law, it was your earnest belief that
15 this was a case for capital punishment, would you be able
16 to come to the courtroom and personally vote for that
17 penalty?

18 A Yes.

19 MR. HARMON: Thank you. Pass for cause.

20 THE COURT: For the defense.

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

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1 VOIR DIRE EXAMINATION

2 BY MR. BROOKS:

3 Q Mr. Fittro, with the events of a long
4 time ago and the unfortunate problems with your lawyer and
5 all, any problems toward defense attorneys stemming from
6 that?

7 A No, I don't think so.

8 Q You won't hold us responsible for what
9 happened a long time ago?

10 A No.

11 Q Mr. Harmon, the man sitting next to
12 you, not this Mr. Harmon, just told a really compelling
13 story about domestic violence and he also made an
14 interesting statement. He said people have choices, people
15 make choices. Do you think that's absolutely totally
16 true?

17 A Yes, I think so.

18 Q Do you think the woman who ended up
19 being killed in that case chose to stay in that
20 relationship?

21 A Yes.

22 Q And do you think that because she chose
23 to do that, she sort of, in some way, even though she
24 didn't deserve to be killed, influenced the events?

25 A No, I don't think so.

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1 Q So when you say that some people do
2 things where they don't really want to or they are not of
3 choice?

4 A Yes.

5 MR. BROOKS: Thank you. We'll pass for
6 cause.

7 THE COURT: Counsel approach the bench.

8 (Off the record discussion not reported.)

9 THE COURT: Well, we have been here almost
10 an hour and a half, other than the slight delay in getting
11 you up in here in the courtroom. Is everybody
12 comfortable? Anybody want a break?

13 That probably overrules the rest of us. We
14 will take our morning recess at this time.

15 At this time, ladies and gentlemen, I would
16 remind you it is your duty not to converse among yourselves
17 or with anyone else on any subject connected with this
18 trial or to read, watch, or listen to any report of or
19 commentary on this trial or any person connected with this
20 trial by any medium of information, including, without
21 limitation, newspapers, television, or radio, and you are
22 not to form or express an opinion on any subject connected
23 with this case until it is finally submitted to you.

24 We will be restarting at 15 minutes after
25 the hour. We will be at ease while you depart the confines

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1 of the courtroom.

2

3 (At this time, the jury left the courtroom.)

4

5 THE COURT: All right, we are outside the
6 presence of the jury.

7 Immediately following the voir dire
8 examination of Mr. Fittro, I asked the attorneys to
9 approach the bench to discuss the fact that defense counsel
10 did not ask any follow-up questions on the issue of Mr.
11 Fittro's concern over sitting as a juror in a case where
12 there was a -- where the victim and the defendant were --
13 or the victim and the alleged perpetrator were of different
14 ethnicity. Mr. Brooks indicated, at the bench, that he
15 chose not to go into that any further on the issue, that it
16 cuts both ways, and he made a tactical decision not to
17 inquire further of this juror.

18 Do you wish to affirm that on the record at
19 this time?

20 MR. BROOKS: That's correct, your Honor.

21 THE COURT: All right. With that in mind,
22 we will be in recess.

23

24 (Off the record at 10:05 a.m. and back on
25 the record at 10:20 a.m.)

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THE COURT: All right, we were about to begin our questioning of Ms. Purcell. The record will reflect the presence of all parties and counsel.

Good morning, Ms. Purcell.

Any reason you can think of why you couldn't be fair to both sides in the case?

A No, sir.

THE COURT: Can you wait until all evidence is in before coming to any conclusion about any issue in this case?

A Yes, sir.

THE COURT: Let me catch my breath here.

Have you, any member of your family or friends of yours ever been arrested?

A Just some friends of mine when I was in the military.

THE COURT: Anything serious?

A No.

THE COURT: Just weekend beats?

A Uh-huh.

THE COURT: Anything about that experience that would effect your judgment in this case?

A No, sir.

THE COURT: Have you, any member of your

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1 family or friends of yours ever been the victim of a crime?

2 A No, sir.

3 THE COURT: Ever been on a jury before?

4 A No, sir.

5 THE COURT: Ever been involved in a court
6 proceeding as a witness or a party?

7 A As a witness.

8 THE COURT: All right, tell us a little bit
9 about that.

10 A Just a traffic dispute. I was a
11 witness.

12 THE COURT: Anything about that that would
13 effect your thinking in a case like this?

14 A No.

15 THE COURT: Any concern about adverse public
16 opinion that might result from a verdict in the case?

17 A No.

18 THE COURT: Do you have any religious, moral
19 or conscientious objections to the imposition of the death
20 penalty?

21 A No.

22 THE COURT: This is obviously the most
23 serious allegation that can be lodged in the criminal court
24 and the most serious penalty is being sought. Can you give
25 fair consideration to all statutory forms of punishment,

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1 all four forms of punishment provided by our legislature?

2 A It would depend on the case.

3 THE COURT: That's true, but you are kind of
4 in a vacuum in jury selection. You haven't heard the
5 evidence in the case yet, but you have kind of gotten the
6 gist of the case so far.

7 A Uh-huh.

8 THE COURT: Do you believe, at least
9 generally knowing what you know now, that you could give
10 fair consideration to all four forms of punishment and keep
11 an open mind until you hear all the case?

12 A Knowing what I know now, yes.

13 THE COURT: If you were involved in this
14 case in any way, a member of any of the families, if you
15 were a witness in the case, would you feel comfortable
16 knowing that the jurors had your sense of fairness and were
17 sitting on the jury?

18 A Yeah.

19 THE COURT: All right. State of Nevada may
20 inquire.

21 MS. SILVER: Thank you.

22 . . .

23 . . .

24 . . .

25 . . .

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1 VOIR DIRE EXAMINATION

2 BY MS. SILVER:

3 Q You answered one of the Judge's
4 questions, you said, when he asked you, "Could you be fair
5 on this jury," you said, "Knowing what I know now, yes?"

6 A Uh-huh.

7 Q Is there something that's changed?

8 A No. I just feel that if it's a
9 person's first offense, then all four sentences should be
10 considered, but if this is there second offense or more,
11 then the only consideration to me would be the death
12 penalty because they have been given a chance to better
13 themselves.

14 Q What type of offense are we talking
15 about when you say repeat offender?

16 A Murder. If they have committed a
17 murder and they have been given parole and they have done
18 it again, I feel the only sentence should be death.

19 Q Okay.

20 But knowing what you know about this case as
21 of yet --

22 A Uh-huh.

23 Q -- you believe that you can be fair as
24 towards all punishments?

25 A Right, uh-huh, knowing what I know

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1 now.

2 Q Even if someone hadn't committed a
3 murder before --

4 A Uh-huh.

5 Q -- could you consider all three
6 forms --

7 A Yes.

8 Q -- of punishment, including the death
9 penalty?

10 A Yes.

11 Q I noticed in here, from your
12 questionnaire, you stated that, "Have you or anyone you
13 know been a victim of domestic violence," and you said,
14 "Yes, your mother had been abused verbally by an alcoholic
15 father?"

16 A Uh-huh.

17 Q From that statement, then you recognize
18 that domestic violence can be emotional or verbal abuse as
19 well as physical?

20 A Uh-huh.

21 THE REPORTER: Is that answer yes?

22 Q (BY MS. SILVER) I'm sorry, you have to
23 say yes or no because she is taking down the record.

24 A Okay.

25 Q So you recognize it can be in more

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1 forms than just physical?

2 A Yes.

3 Q Do you believe that sometimes verbal
4 and emotional abuse can be just as bad as physical abuse?

5 A I think sometimes it's worse.

6 Q Was that in your case?

7 A Yes.

8 Q Were you present during these
9 situations?

10 A Yes.

11 Q And that's something that you witnessed
12 yourself then?

13 A Yes.

14 Q Because of this now in your adult life,
15 do you feel that now that you've seen this,
16 automatically -- well, strike that.

17 Because you have had this experience in your
18 family background, do you think now that this automatically
19 will make you a victim of domestic violence because of your
20 mother?

21 A No, because I'm more aware of the
22 symptoms of it.

23 Q So you believe that you have a choice
24 now in what you will do in your future relationships?

25 A Correct.

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1 Q Because you've seen this in your
2 background, you can go one way or the other?

3 A Right.

4 Q Do you have any brothers or sisters?

5 A I have a younger brother.

6 Q Was he also present during this --

7 A Yes, he was.

8 Q -- abuse?

9 Do you think that he would automatically be,
10 say, a perpetrator of this type of abuse because he has
11 seen this?

12 A No.

13 Q Do you think he too has a choice in his
14 future relationships as well?

15 A Yes, he does.

16 Q Nevertheless, do you feel that you and
17 your brother, perhaps, emotionally have been effected by
18 this?

19 A Yes.

20 Q Do you feel that you, to some extent
21 and your brother, have been victims of what you have seen?

22 A Yes.

23 Q I just wanted to make sure I'm correct,
24 you can again consider all four forms of punishment in this
25 case?

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1 A Yes.

2 Q And going back, although you've had
3 this particular experience in your background, do you think
4 that you could put it aside and listen to the facts in this
5 case because, undoubtedly, as you've heard from the
6 questions that it is alleged that there has been domestic
7 violence in this case?

8 A I can put it aside.

9 Q Do you think you can put that aside and
10 be fair and impartial to both the defendant and the State
11 in this case?

12 A Yes.

13 Q Do you think that because, as you've
14 heard in this case from my co-counsel's opening statement,
15 that there were three children involved also in this case,
16 that you could put that aside and listen to the facts of
17 this case and be fair, again, to both the State and the
18 prosecution?

19 A Yes, I can.

20 MS. SILVER: Thank you.

21 We would pass this juror for cause.

22 THE COURT: Thank you, counsel.

23 For the defense.

24 MR. EWING: Thank you, your Honor.

25

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1 VOIR DIRE EXAMINATION

2 BY MR. EWING:

3 Q Ma'am, how long was your father an
4 alcoholio?

5 A From the time I can remember until my
6 mother took me and my brother out of the home and we left
7 him when I was 13. So from the time I can remember until I
8 was 13 and probably past that, but I wasn't with him. So I
9 don't know.

10 Q Did you see him much after you moved
11 out?

12 A No.

13 Q Did he ever try to quit drinking
14 alcohol?

15 A My brother went back to live with him
16 about two years after my mother pulled both of us out and
17 my brother did get him into AA meetings and such. So he is
18 a recovered alcoholio now.

19 Q Did you consider his alcoholism
20 something he couldn't control?

21 A No. I feel he could have controlled
22 it.

23 Q Do you feel like he had a disease of
24 any type because of his alcoholism?

25 A To me, he had a disease, yes, but he

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1 didn't realize it at the time. He wouldn't accept the
2 fact.

3 Q Do you feel like, let's say, for
4 example, your father had been charged with a crime, do you
5 feel like his alcoholism should have been, in any way, a
6 consideration of how that crime was dealt with or handled?

7 A No, I don't feel it should be
8 considered because I think that even when you are drinking,
9 you make that choice just as if you were drunk, you make
10 the choice to do whatever you do. Your actions -- you are
11 still responsible for your actions no matter if you are
12 under the influence of alcohol, drugs or whatever.

13 Q I think we all agree that you are still
14 responsible and I'm not trying to suggest that because he's
15 an alcoholic, that should excuse the action, but do you
16 think the alcoholism is something that should be
17 considered?

18 A No.

19 Q Not in any circumstance?

20 A Uh-huh.

21 THE REPORTER: Is that no?

22 THE JUROR: No.

23 Q (BY MR. EWING) In your jury
24 questionnaire, you indicate that the death penalty is
25 appropriate for repeat offenders?

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1 A Yes.

2 Q And then, when Ms. Logue was
3 questioning you further -- Ms. Silver was questioning you
4 further, I apologize, you said that just applied to
5 murders?

6 A Yes.

7 Q So if someone were, for example, had a
8 criminal history for committing burglaries, do you think
9 that person deserved the death penalty if they were later
10 convicted of first degree murder?

11 A Depending on the circumstances
12 surrounding the conviction of the murder.

13 Q So the burglary really wouldn't matter
14 that much?

15 A It would matter, but not to the extent
16 of the murder.

17 Q What about crimes like misdemeanors,
18 petty larcenies, things like that?

19 A In those cases, I feel that, as the law
20 is in California, the Three Strikes Law. I believe in
21 something like that. If you have given somebody repeat
22 chances to better themselves and they haven't, then maybe
23 they should be incarcerated for life. Maybe not the death
24 penalty, but maybe they should have been given a life
25 sentence because they have been given more than one chance

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1 to better themselves.

2 Q So any type of criminal history then
3 would enter into your decision when considering
4 punishment?

5 A Yes.

6 Q What about positive things about the
7 individual, about their past, would that enter into your
8 decision?

9 A Yes.

10 MR. EWING: I pass for cause.

11 THE COURT: All right, thank you.

12 Mr. Pietryman, am I pronouncing your name
13 correctly?

14 A You are doing a good job, uh-huh.

15 THE COURT: Any reason you can think of you
16 why you couldn't be fair in this case?

17 A No.

18 THE COURT: Can you wait until all the
19 evidence is in before coming to any conclusion about any
20 issue in the case?

21 A Yes.

22 THE COURT: Have you, any member of your
23 family or any close friends of yours ever been arrested?

24 A No.

25 THE COURT: Anyone in your family, you or

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1 close friends of yours ever been the victim of a crime?

2 A Well, apartment robbed, car stolen,
3 stuff like that.

4 THE COURT: When you say you were robbed,
5 are you talking about an actual confrontation?

6 A No, no.

7 THE COURT: Or burglary?

8 A They broke into the apartment I think
9 once or twice and that's the normal crime. Like in New
10 York, it will happen. They don't even bother with that
11 there.

12 THE COURT: All right.

13 Anything about the way those matters were
14 handled that would effect your thinking in this case?

15 A No, just took a report and that's about
16 it.

17 THE COURT: Never found the perpetrator?

18 A I don't even think they looked.

19 THE COURT: Anything about the fact of that
20 incident or those incidents that would effect your thinking
21 in this case?

22 A No, it's just a way of life.

23 THE COURT: Have you ever been on a jury
24 before?

25 A Two times.

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1 THE COURT: Criminal or civil?

2 A Both.

3 THE COURT: One of each?

4 A I spent most of the time in the jury
5 room. That's what I did, but I did have one trial. I was
6 picked for another one and it was settled and the other one
7 was mistrial, a criminal; they threw it out.

8 THE COURT: All right.

9 A So I really didn't come to a decision.

10 THE COURT: So you've never really got to
11 the point where you were deliberating with other jurors?

12 A No. I have got about a week or two
13 into the jury room and it was a mistrial.

14 THE COURT: Anything about that experience
15 that would effect your thinking in this case?

16 A A little confusion. That's about all,
17 you know, what was going on. Why it was a mistrial and
18 everything because it was in the middle, everything had
19 stopped and just cleared it and chased everybody out.

20 THE COURT: Was it because the jury was
21 unable to reach a verdict?

22 A Oh, it wasn't a jury. It was the
23 lawyers. Something happened. They was screaming and
24 yelling the whole trial. So.

25 THE COURT: All right.

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1 Hopefully, we will not have that kind of
2 interchange here and I trust we won't given the
3 professionalism of these lawyers.

4 A I don't know about that.

5 THE COURT: Anything about that experience
6 at all that would effect your thinking here?

7 A No.

8 THE COURT: Any concern about adverse public
9 opinion that might result from any verdict in the case?

10 A No.

11 THE COURT: Have you ever been involved in
12 any court proceeding as a witness or a party?

13 A No.

14 THE COURT: Any religious, conscientious or
15 moral objections to the imposition of the death penalty?

16 A Well, death penalty bothers me. I
17 think it's a very hard thing to do, you know, but --

18 THE COURT: But can you?

19 A It would bother me a little bit. It's
20 one of those things.

21 THE COURT: So what you are saying is that
22 you have some reservations about it, but you could impose
23 it, if it was the proper case?

24 A I guess I'm like the lady over there.
25 When you wake up that morning, you will really know when

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1 you have to do it. I never had to do it.

2 THE COURT: Well, this is that moment of
3 reckoning in your case, I guess.

4 A Well, if you put me on the jury, that
5 would be the moment.

6 THE COURT: Well, before you can qualify to
7 sit on the jury, we have to know some things about your --

8 A Yeah.

9 THE COURT: -- ability to deliberate on all
10 the issues and that's why we are asking these questions of
11 everyone.

12 A I understand.

13 THE COURT: Do you have a philosophical
14 objection to the death penalty that would prevent you from
15 imposing it or at least concluding that it should be
16 imposed?

17 A No, but I feel, you know, really -- I
18 think it's necessary, uh-huh.

19 THE COURT: So you can then give fair
20 consideration to all the statutory forms of punishment?

21 A I think I can.

22 THE COURT: Can you give fair consideration
23 in a proper case to the death penalty, if you think it's
24 appropriate?

25 A I think I could.

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1 THE COURT: Can you give fair consideration
2 to life without the possibility of parole?

3 A Yes.

4 THE COURT: And, again, this is only if we
5 deliberate on the issue of penalty.

6 A Yes. I'm just saying what I feel like
7 right now.

8 THE COURT: And do you think you can give
9 fair consideration to life with parole or 50 years with
10 parole?

11 A Right.

12 THE COURT: If you were involved in this
13 case, would you feel comfortable with 12 people with your
14 sense of fairness and judgment?

15 A Well, I feel comfortable about myself
16 in this. Everybody would have to make their own opinion.

17 THE COURT: Right, but let's say you were
18 involved in this case some way. You were a member of one
19 of the families involved or you were a witness, would you
20 feel comfortable --

21 A I think they are --

22 THE COURT: -- with 12 people just like you
23 on the case?

24 A I think they are all honest, hard
25 working people here from what I see.

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1 THE COURT: No, we are talking about you.

2 A Oh, yes, I feel comfortable. Sorry.

3 THE COURT: You would feel comfortable if
4 people were like you on the jury?

5 A Yes.

6 THE COURT: All right, the State may
7 inquire.

8 MR. HARMON: Thank you, your Honor.

9

10 VOIR DIRE EXAMINATION

11 BY MR. HARMON:

12 Q Good morning, sir.

13 A Good morning.

14 Q In the questionnaire, you indicated
15 that you weren't real anxious to serve as a juror. You
16 said you had a hard time making decisions?

17 A Summons. I had a chance to be a
18 supervisor and everything on the job, I just didn't want to
19 come around firing people. Things like that. It was
20 required. I would have a hard time with decisions.

21 Q As we mentioned to a number of other
22 prospective jurors, we're certainly not suggesting that it
23 shouldn't be hard to make a decision in this type of case.
24 It's not easy, it shouldn't be easy.

25 A Oh, you want people who care.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q We want people to be very conscientious
2 and very sincere in approaching the case.

3 A Uh-huh.

4 Q Do you feel, sir, that you are the type
5 of individual who can objectively consider the evidence in
6 this case realizing the importance of the decisions to be
7 made?

8 A Yes.

9 Q And then reach a decision?

10 A Yes.

11 Q When asked about the criminal justice
12 system, you said that it needs to have more common sense.

13 A Okay, so.

14 Q Will you elaborate. What do you mean
15 by that?

16 A Well, every time I served, I spent a
17 lot of time doing nothing, spent, you know, four or five
18 times and like I said, a lot of arguing and, you know,
19 bickering. Sometimes, you know, you see decisions made
20 like in the newspapers or something like that where people
21 get out for murder or something like that. I feel the -- I
22 don't know. It's more balanced or something like that.

23 Q Now you mentioned in the questionnaire,
24 when asked about punishment, you said that the death
25 sentence should be imposed for brutal crimes?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes. For brutal crimes, I would say
2 for -- like we had in New York, they had the case where the
3 guy murdered 19 people and something like that, I think you
4 need the death penalty and, also, they also gave him 19
5 separate trials. That's what I meant by common sense. So
6 it was up to five when I left. So I didn't think that was
7 necessary.

8 Q Do you feel that in order for capital
9 punishment to be appropriate, it would have to be multiple
10 murders? For example, in the case of a single victim, can
11 you imagine a set of circumstances where you would believe
12 that the death sentence was appropriate?

13 A I would have to hear the case. I
14 couldn't tell you right offhand.

15 Q Well, you properly said to the Court, a
16 few minutes ago, that the moment would be if we select you
17 as a juror?

18 A That's it. No, that's the moment of
19 truth.

20 Q But I think he also properly said
21 either to you or someone else, we are operating a little
22 bit in a vacuum here because you haven't yet been selected
23 and you, of course, don't know the facts and circumstances
24 of the case.

25 A I have no opinion.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q However, we need to know that we are
2 getting jurors who would consider the full range of
3 responsibilities that are required.

4 A Uh-huh.

5 Q And, for example, if a juror is just
6 predisposed totally in the event of needing to fix a
7 punishment to a life sentence and, yet, said that he or she
8 could consider the full range of punishments, that
9 obviously wouldn't be fair and, on the other hand, if
10 someone was simply incapable of genuinely considering
11 capital punishment and yet, said, that they could, even
12 though you are right, this isn't the moment, but still we
13 need to know about that. Are you quite confident, as you
14 sit here now, that you can meaningfully consider all four
15 of the punishments if called upon to impose a penalty in
16 this case?

17 A I would try my best to do something
18 like that and when it comes down to it, when I get up that
19 morning, I guess that's when I'll know.

20 MR. HARMON: Thank you.

21 Pass for cause.

22 THE COURT: For the defense.

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

**PLEADING
CONTINUES
IN NEXT
VOLUME**

We pass for cause, your Honor.

THE COURT: Thank you, Mr. Brooks.

EXAMINATION

BY THE COURT:

Q Miss Wells, good afternoon.

A Hi.

Q Any reason you can think of why you couldn't be fair to both sides in this case?

A No.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes.

Q Have you or any member of your family or any close friends of yours ever been arrested?

A Yes.

Q Tell us a little bit about that.

A Myself about ten years ago for a DUI.

Q Is there anything about how that was handled or the experience in and of itself that would affect your thinking in this case?

A No.

Q That was then, this is now?

A Right.

1 Q Do you have any feelings of hostility left over
2 toward the police as a result of that?

3 A No.

4 Q So you believe you could give both sides a fair
5 trial in the case?

6 A Uh-huh.

7 Q You have to answer out loud.

8 A Oh, yes, sir. I'm sorry.

9 Q Have you or any member of your family or close
10 friends of yours ever been the victim of a crime?

11 A Yes.

12 Q Tell us about that.

13 A I was robbed by a boyfriend about thirteen,
14 fourteen years ago. Actually maybe even longer than that.

15 Q When you say robbed, was this by force or was
16 this --

17 A I was not home.

18 Q Okay. This was a theft of your home?

19 A Yeah. I came home and he had wiped out my
20 house.

21 Q Did the police respond to that?

22 A Yes.

23 Q Anything about how the police handled that
24 situation that would affect your thinking?

25 A No.

1 Q Anything about that confrontation with him that
2 would affect your thinking in this case?

3 A No.

4 Q Have you ever been on a jury before?

5 A No.

6 Q Have you ever been a participant or a witness in
7 any court proceeding?

8 A Yes, I was a witness to a fatal accident.

9 Q Anything about that interaction with the court
10 system that would tend to affect your judgment in this
11 case?

12 A No.

13 Q And do you have any concern about adverse
14 publicity that might result in this verdict if there is
15 any?

16 A No.

17 Q In your current frame of mind do you feel that
18 you could give fair consideration to all four forms of
19 punishment?

20 A Yes.

21 Q And do you have any religious, moral or
22 conscientious objections to the imposition of the death
23 penalty?

24 A No.

25 Q If you were involved in this case would you feel

1 comfortable with twelve jurors just like you sitting in
2 judgment?

3 A Yes.

4 THE COURT: State of Nevada, you may inquire.

5 MR. HARMON: Thank you, your Honor.

6
7 EXAMINATION

8
9 BY MR. HARMON:

10 Q Mrs. Wells, you had mentioned to the Court the
11 incident involving a boyfriend quite a few years ago.

12 A Uh-huh.

13 Q You understand that even when someone has a
14 relationship with another human being, that other person
15 can still victimize?

16 A Yes.

17 Q It doesn't change the damage to your apartment
18 or any loss you suffered because this fellow had been a
19 boyfriend, did it?

20 A State that again. I don't think I understand.

21 Q You said when you came home you caught him doing
22 something.

23 A He was wiping out my house.

24 Q When you say wiping out my house, what do you
25 mean?

1 A Robbing me.

2 Q Was he taking things that were --

3 A Well, he wasn't there. I just had a sneaking
4 suspicion and I left work early, went home, and a lot of my
5 possessions were gone. And we got the police there and
6 everything before he came back for another load. He had my
7 house set up for another load. That was years ago and
8 different circumstances than --

9 Q You apparently suffered quite a bit of loss as a
10 result of this entry in your residence?

11 A Yes.

12 Q You didn't consent to having him come in, did
13 you?

14 A He was living with me.

15 Q But you're saying that he stole --

16 A Right. He -- no, I didn't give him my consent
17 to take my things, no.

18 Q The point I'm making is because of this
19 relationship, that didn't give him a license to steal from
20 you, did it?

21 A No.

22 Q And so you would understand that even though
23 someone might be a boyfriend or a former boyfriend, that
24 that person can still commit crimes?

25 A Oh, yes.

1 Q How do you feel about serving on this jury?

2 A Fine. I don't -- I don't have any problem with
3 it at all.

4 Q In fact in the questionnaire you indicated that
5 you would like to serve?

6 A Yeah. My boss would like me back to work, but I
7 would, to me it would be interesting because of the type of
8 case it would be, that it is. There may be unpleasant
9 moments, but it would be interesting to follow, go through
10 the system.

11 Q Are you the type of person if it becomes
12 necessary who would be able to pass judgment upon a fellow
13 human being?

14 A Yes.

15 Q I don't think anyone is suggesting that that is
16 necessarily easy or pleasant. However, in this case
17 initially a jury is going to have to decide if Mr. Chappell
18 is guilty or not guilty. Do you think you could take the
19 evidence you hear in the courtroom and apply to that the
20 Court's legal instructions and come to such a decision?

21 A Yes.

22 Q If you need to impose a punishment, that is if
23 the conviction was for murder of the first degree, is there
24 any reason why you couldn't select the most appropriate
25 punishment of the four provided in this state for murder of

2 1 the first degree and then come back to this court and make
2 your verdict known?

3 A Would I have a problem with that? No.

4 Q If it was solely up to you would we have capital
5 punishment in the State of Nevada?

6 A Yes.

7 Q Why?

8 A I think a lot of our laws are too lenient in a
9 lot of cases. I don't think the, I think the, well,
10 somebody had said, and I agree with this, that the
11 punishment should fit the crime, and I don't -- and I think
12 that's why we should have capital punishment.

13 Q Thank you.

14 Pass for cause your Honor.

15 THE COURT: For the defense.

16
17 EXAMINATION
18

19 BY MR. BROOKS:

20 Q Miss Wells, I was curious in the questionnaire
21 where they asked what do you think of defense attorneys and
22 prosecutors and all those people. You said "not much."
23 What does that mean?

24 A Well --

25 THE COURT: It means she doesn't give us much

2
1 thought.

2 JUROR #433: Well, I think there is good ones
3 and bad ones just like in any other field. Not much. I
4 haven't really had a lot of experience I guess.

5 BY MR. BROOKS:

6 Q Had you had much contact with prosecutors
7 before?

8 A Not much.

9 Q Any real contact with defense attorneys?

10 A Not much. I mean a little here and there
11 through my life, but not much at all.

12 Q One of the things that we worry about sometimes
13 is people are going to go home and watch the news and they
14 see so much crime on TV that they get upset and they come
15 back in here and want to punish my client for their
16 frustration with the big picture. How do you feel about
17 that?

18 A That's not being fair to him. And to the case.

19 Q Are you willing to judge this case on its facts?

20 A Yes.

21 Q In this case you're probably going to see some
22 photographs and possibly hear descriptions of things that
23 are not pleasant. Can you sort through these things to try
24 to find a fair resolution of the case despite the grimness
25 of these facts?

2 1 A I think so. You know, I have a feeling I can.
2 I've never been through this before. I've never been a
3 juror before. So I think I could.

4 Q Any problem at all with the idea that the burden
5 is entirely on the State to prove their case?

6 A No.

7 Q No problem at all.

8 Will you be a fair juror in this case?

9 A I'll do my best.

10 Q Thank you.

11 We'll pass for cause, Judge.

12 THE COURT: At this point what I'm going to do
13 is I'm going to release Miss Spruell, Miss Lucido, Miss
14 Parr, Mr. Gritis, Miss Cail, Mr. Ewell, Miss Linkogel and
15 Miss Wells. I'm also going to excuse from jury service --
16 before you leave I'm going to give you your admonishment.
17 I'm going to excuse from jury service the following
18 persons: Mr. Altz, you're excused from jury service.

19 MR. HARMON: What number is that?

20 THE COURT: I'm sorry.

21 JUROR #430: 430.

22 THE COURT: 430.

23 Mr. Cracroft.

24 JUROR #425: 425.

25 THE COURT: 425.

JUROR #425: Thank you, your Honor.

THE COURT: Thank you.

Juror Troy Wayne Newberry.

JUROR #429: 429.

THE COURT: 429.

Juror Duncan R. McCoy.

JUROR 451: 451.

THE COURT: Thank you, sir, for attending.

And Jimmy Lee Gilmore.

JUROR #452: 452.

THE COURT: 452.

All right. Now I'm also going to hold for -- we're going to try to get through the box tonight before we leave and then there will be a method to my madness because you'll get a break in the morning. The next six in the rotation -- hold the next six. I'm doing this so I can give some people a chance to go home now. It appears strange, but believe me the jury members whose names are not going to be called will be grateful.

I would ask that at this point, what we'll do is if these two prospective jurors can move into the second row we'll do it this way so we have some organization. The jurors that will remain behind that have not been called to the box will be David John Mesnard. I think I see you sitting in your regular order.

3 1 Helen DiGiovanna.

2 MR. HARMON: Could we have the numbers, Judge?

3 THE COURT: 436 and 437.

4 I spoke too soon.

5 Linda Ruth Aquilla.

6 MR. HARMON: Number?

7 THE COURT: 438.

8 Cheryl Diane Hull, 439. Bruce Todd
9 Larsen and Michael Richard Gushwa.

10 Just go ahead and sit in this front seat
11 right here. You'll be fine.

12 All right. Now everyone else including
13 Jurors Spruell, Lucido, Parr, Gritis, Cail, Ewell, Linkogel
14 and Wells are dismissed for this evening with the following
15 admonition:

16 Ladies and gentlemen, it is your duty
17 not to converse among yourselves or with anyone else on any
18 subject connected with this trial; or to read, watch or
19 listen to any report of or commentary on this trial or any
20 person connected with this trial by any medium of
21 information, including without limitation newspapers,
22 television and radio; and you are not to form or express an
23 opinion on any subject connected with this case until it is
24 finally submitted to you.

25 Ladies and gentlemen, I'm going to ask

3 1 that all of the jurors return tomorrow, with the exception
2 of the seven jurors who we've gone through cause, at 8:30
3 to the courthouse.

4 UNIDENTIFIED JUROR: To this room?

5 THE COURT: No, to the jury holding area
6 downstairs to be picked up downstairs to come up for
7 further jury selection. And the jurors that are seated in
8 the box at this point are relieved of further
9 responsibility until tomorrow afternoon at two o'clock when
10 I'll ask that you be downstairs in the jury holding area at
11 2:00 p.m. You may not have anything to do at that point,
12 but we want to make sure you're available when we have
13 completed the jury selection process.

14 So that everybody understands, the
15 jurors in the box are excluded from the box until two
16 tomorrow and the jurors not in the box are excused and must
17 come back at 8:30 in the morning.

18 We'll be at ease while you depart the
19 confines of the courtroom.

20
21 (Portion of jurors exit courtroom.)
22

23 THE COURT: Everyone comfortable under the
24 circumstances?
25

EXAMINATION

BY THE COURT:

Q Mr. Ulicki, am I pronouncing your name correctly?

A Ulicki.

Q Any reason you can think of why you couldn't be fair to both sides in this case?

A No.

Q Can you wait until all the evidence is before coming to any conclusion about any issue in the case?

A Yes.

Q Have you or any member of your family or friends of yours ever been arrested?

A No.

Q Have you or any member of your family or friends of yours ever been the victim of a crime?

A Just a car was stolen.

Q Anything about that that would affect your thinking?

A No.

Q Ever been on a jury before?

A No.

Q Any concern about adverse public opinion that might result from any verdict you might render?

3 1 A No.

2 Q Ever been involved in any court proceeding as a
3 witness or a participant?

4 A Used to prosecute a lot, used to take a lot of
5 people for theft and embezzlement.

6 Q From the store you worked at?

7 A Right.

8 Q You're in security; correct?

9 A Right.

10 Q Anything about that interaction with the court
11 system that will affect your thinking in this case?

12 A Just that the courts are too lenient.

13 Q Well, I guess you get a chance to vote on that
14 one in the upcoming election. I know we all have a
15 tendency to hear about the worst case scenarios in the
16 system. But that opinion aside, do you think that that
17 opinion would have any affect on your thinking here in this
18 case?

19 A No.

20 Q Do you have any moral or religious or
21 conscientious objections to the imposition of the death
22 penalty?

23 A No.

24 Q And would you be able to give fair consideration
25 to all four forms of penalty in the event you were asked to

3 1 deliberate on the penalty if the defendant was convicted of
2 first degree murder?

3 A If he was found guilty of murder I couldn't, I'd
4 be a hundred percent about ever letting him go out on the
5 street again ever. It's not fair to the victim.

4 6 Q Now understand that under our system the
7 legislature has come to the conclusion that there are four
8 possible forms of punishment for first degree murder and
9 you can consider a whole range of things in making that
10 determination; the defendant's background, interaction that
11 led to the event itself, his health, his state of mental
12 health, any of those things. And go back and consider that
13 on this issue. So with that in mind and knowing that that
14 is the law in the State of Nevada and it would be your
15 charge as juror to consider those forms of penalty, could
16 you consider all forms of penalty and make up your mind as
17 to one of them?

18 A No, I could never, I could just never pass a
19 verdict of letting a murderer back out on the streets to do
20 it again.

21 THE COURT: I'll hear from counsel at this
22 time.

23 MR. BROOKS: We would object and challenge for
24 cause.

25 THE COURT: Mr. Ulicki, thank you very much

4 1 for your candor.

2 JUROR #411: Thank you.

3 THE CLERK: Badge number 436, David John
4 Mesnard, M-e-s-n-a-r-d.

5 THE COURT: I'm afraid this isn't first class
6 leg space. It's coach in the front row. So we may try to
7 rearrange thing when the jurors are picked so the people
8 with longer legs can sit in the back row. For the time
9 being please indulge us with the physical plant here which
10 again was not designed by an expert obviously.

11
12 EXAMINATION

13
14 BY THE COURT:

15 Q Mr. Mesnard, good afternoon.

16 A Good afternoon.

17 Q Any reason you can think of that why you
18 couldn't be fair to both sides in this case?

19 A No, sir.

20 Q Can you wait until all the evidence is in before
21 coming to any conclusion about any issue in the case?

22 A Yes, sir.

23 Q You or any member of your family or close
24 friends ever been arrested?

25 A After reviewing my past history I had a

4 1 brother-in-law that had a drug paraphernalia in Lincoln
2 County and a sister-in-law with a DUI in Lincoln County
3 about ten years ago.

4 Q Anything about their experiences that will
5 affect your judgment in this case?

6 A No, sir.

7 Q Have you or any member of your family or any
8 friends of yours ever been the victim of a crime?

9 A No, sir.

10 Q Ever been on a jury before?

11 A Yes, sir.

12 Q How many times?

13 A Four times.

14 Q Four times. Is that here in Nevada?

15 A Yes, sir.

16 Q And were they civil or criminal cases or a
17 mixture of both?

18 A Mixture of both.

19 Q So you've heard the instructions on the lesser
20 burden of proof in a civil case and the more severe burden
21 of proof in a criminal case?

22 A Yes.

23 Q And you're able to draw a distinction between
24 the two and react accordingly with the facts?

25 A Yes.

4 1 Q The basic concept in this case is the State has
2 to prove the case beyond a reasonable doubt.

3 A Yes, sir.

4 Q And you'll be able to follow those instructions?

5 A Yes, sir.

6 Q Anything about your prior jury experiences that
7 would unnecessarily jade you or somehow affect negatively
8 your ability to be a fair juror in this case?

9 A No, sir.

10 Q Ready to serve again?

11 A Yes, sir.

12 Q Sometimes the system calls on some people more
13 often than others. So long as you believe you can be fair
14 and you have the ability to make this commitment.

15 A Yes, sir.

16 Q Any concern about adverse public opinion that
17 might result from any verdict you might render?

18 A No, sir.

19 Q Ever been involved in any kind of legal
20 proceeding as a witness or as a participant?

21 A I was a witness fifteen years ago, as a witness
22 to a civil claim against my company.

23 Q Anything about that interaction that will affect
24 your ability to act as a juror in this case?

25 A No, sir.

4 1 Q Do you have any conscientious, moral or
2 religious objections to the imposition of the death
3 penalty?

4 A No, sir, I do not.

5 Q If you're called to serve as a juror on this
6 case and you're caused also to deliberate on the
7 consideration of punishment, can you give fair
8 consideration to all four forms of punishment?

9 A Yes, I could.

10 Q If you were involved in this case yourself in
11 any way would you feel comfortable with twelve jurors
12 sitting in judgment on the matter?

13 A Yes, sir.

14 THE COURT: State may inquire.

15
16 EXAMINATION

17
18 BY MS. SILVER:

19 Q I see that you have actually sat as a juror on a
20 murder case.

21 A Alternate, ma'am.

22 Q Was that a case in which the State was seeking
23 the death penalty?

24 A Yes, ma'am.

25 Q Did you actually sit through a penalty phase as

4 1 well?

2 A No, ma'am, I did not sit through the penalty
3 phase.

5 4 Q So you only sat through then the guilt phase?

5 A Yes, ma'am.

6 Q Do you recall who the prosecutor was in that
7 case?

8 A No, ma'am, I don't remember his name.

9 Q How long ago was it?

10 A Four years, ma'am.

11 Q Without telling us your verdict, did the jury
12 come to a verdict from what you recall?

13 A Yes, ma'am.

14 Q But you were not part of those deliberations?

15 A Yes, ma'am.

16 Q You were also involved in some other criminal
17 trials?

18 A One trial that was plea bargained and two civil
19 cases.

20 Q In the criminal trial, what was the charge in
21 that trial?

22 A Robbery.

23 Q And how long ago was that?

24 A Seven or eight years ago.

25 Q That was also here in Nevada?

5 1 A Yes, ma'am.

2 Q When you say it was plea bargained before you
3 sat, that was before you were -- did you ever get
4 questioned?

5 A We were sitting here, went to lunch, came back,
6 they had said you're dismissed, have a nice day.

7 Q So you didn't actually get to be impaneled?

8 A No, ma'am.

9 Q Do you feel if you were selected as a juror in
10 this case that you could consider all four punishments that
11 have been described to you?

12 A Yes, ma'am, I do.

13 Q Do you think that you could actually impose the
14 death penalty if you felt it was appropriate?

15 A If the situation arose, yes, ma'am.

16 Q Were you even instructed on your prior murder
17 case --

18 A Yes, ma'am.

19 Q -- as far as the law on the penalty phase?

20 A No, ma'am.

21 Q Thank you.

22 We would pass for cause.

23 THE COURT: For the defense.

24 MR. EWING: Thank you, your Honor.

25 Defense passes this juror for cause.

THE COURT: Thank you very much.

EXAMINATION

BY THE COURT:

Q Mr. Tripp?

A Yes.

Q Any reason you can think of why you couldn't be fair to both sides?

A No, sir.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes.

Q Have you any member of your family or any friends of yours ever been arrested?

A Not that I know of.

Q Have you or any member of your family or any friends of yours ever been the victim of a crime?

A No, sir.

Q Have you ever been on a jury before?

A No, sir.

Q Ever been involved in a court proceeding in any way as either a witness or a party?

A Between four or five years ago, lack of insurance thanks to my wife.

5 1 Q Anything about that interaction of the legal
2 system that would affect your thinking here?

3 A No.

4 Q Any concern philosophically, religious or
5 conscientiously about the imposition of the death penalty?

6 A No, sir.

7 Q Will you be able to give fair consideration to
8 all four forms of statutory punishment in this matter?

9 A Yes, sir.

10 Q If you're involved in this case would you feel
11 comfortable with twelve people just like you sitting in
12 judgment on this case?

13 A I could.

14 THE COURT: Thank you very much.

15 State of Nevada may inquire.

16 MS. SILVER: Thank you.

17
18 EXAMINATION

19
20 BY MS. SILVER:

21 Q I wanted to ask you about one of your questions
22 on the questionnaire. It was asked if Mr. Chappell is
23 convicted of first degree murder, and a penalty is held,
24 would you consider the four possible penalties. And then
25 at the end of it you put life without the possibility of

5 1 parole. What did you mean by that?

2 A If it was a proven fact that it was premeditated
3 I would.

4 Q You understand now after listening to all of
5 this that the only way you would even get to a penalty
6 phase is if you all came back with murder in the first
7 degree; you understand that process?

8 A Yes.

9 Q Knowing that could you then consider the death
10 penalty?

11 A Yes.

12 Q Could you consider life without the possibility
13 of parole?

14 A Yes.

15 Q And could you consider life with the possibility
16 of parole or 50 years fixed term with the possibility of
17 parole?

18 A I could.

19 Q Do you believe in the death penalty?

20 A I do on certain cases.

21 Q Why is that?

22 A Well, it depends on the murder. Like if it's a
23 child, any human being, if it was premeditated, planned it.

24 Q So you understand that the judge will give you
25 during the penalty phase a set of instructions as to how

5 1 you or when you can consider the death penalty, if you
2 2 found the appropriate circumstances existed, you could
3 3 then, and you're in favor then of the death penalty under
4 4 the right circumstances?

5 A Right.

6 Q Thank you.

7 I would pass this witness for cause,
8 your Honor.

9 THE COURT: Thank you.

10 For the defense.

11 MR. EWING: Thank you, your Honor.

12
13 EXAMINATION
14

15 BY MR. EWING:

16 Q Mr. Tripp, you indicate that you would consider
17 equally both the facts of the case and the surrounding
18 facts concerning the defendant's background; is that true?

19 A On his background, if he has a history of such,
20 murder, real bad crimes, you know, childhood crimes or
21 something -- like this penny ante stuff, no. But if it's
22 violent crimes throughout his past he would have, I would
23 take that into consideration if it's led up to this point.

24 Q That specifically deals with negative things
25 about an individual's background. Would you consider

6

1 positive things?

2 A Yes.

3 Q Would you consider the way they were brought up?

4 A What I would do in this case is the facts
5 itself.

6 Q If the Court instructed you that you could look
7 at an individual's background, would you do that?

8 A I would do that.

9 Q Would you feel good about that?

10 A Depending on his background. A lot of people
11 has different kinds of background that don't have any
12 bearing on that case leading up to that point.

13 Q But you would still look at the background and
14 make a determination whether or not it was important?

15 A Yes.

16 Q Is that what you're saying?

17 A Yes.

18 Q Early on the judge asked you if you were
19 involved in any phase of this trial, either as the
20 prosecution or the defense or the judge, are you the kind
21 of person that you would want to have sit on the jury and
22 you answered yes. If you or someone related to you was
23 sitting where Mr. Chappell is, would you want that person
24 to consider background, history, childhood?

25 A Yes.

6

1 Q That's important?

2 A Right.

3 Q Do you understand the difference between -- let
4 me rephrase that. Do you understand the concept that if
5 you have a penalty phase it's because a jury has convicted
6 of first degree murder; do you understand that?

7 A Yes.

8 Q And do you feel that there could be
9 circumstances where a 50 year sentence would be in order?

10 A Yes.

11 Q And there could be circumstances where a life
12 sentence with the possibility of parole could be warranted?

13 A Yes.

14 Q And you could consider that?

15 A Yes.

16 Q Do you feel like you could give Mr. Chappell a
17 fair trial?

18 A I could.

19 Q Do you feel like it's important for every single
20 juror to give Mr. Chappell a fair trial?

21 A Yes.

22 Q You would do your part to see that that happens?

23 A Yes, I would.

24 Q Thank you. Pass for cause.

25 THE COURT: Thank you.

EXAMINATION

BY THE COURT:

Q Is it Miss Souder?

A Yes.

Q Any reason you can think of why you couldn't be fair to both sides in this case?

A No.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes.

Q Have you or any member of your family or any friends of yours ever been arrested?

A No.

Q Have you or any member of your family or friends of yours ever been the victim of a crime?

A Yes.

Q Tell us about that.

A My niece was sexually abused by my sister's boyfriend.

Q How long ago was that?

A Oh, probably at least fifteen years or more.

Q Is there anything about the way the police handled that that would affect your ability to be fair to the police witnesses and judge their credibility?

6

1 A No.

2 Q Is there anything about that incident that would
3 affect your thinking in this particular case?

4 A No, it has nothing to do with him.

5 Q That was then, this is now?

6 A Yes.

7 Q Different people, different story, different
8 time, different facts?

9 A Yes.

10 Q Ever been on a jury before?

11 A Yes.

12 Q How many times?

13 A Once.

14 Q Was it a civil or criminal?

15 A Civil.

16 Q Do you know there is a different burden of proof
17 in this case?

18 A Yes.

19 Q You were probably instructed that the burden of
20 proof goes to the preponderance of the evidence for the
21 plaintiff to prevail in this case; do you remember that?

22 A Yes.

23 Q This is a different burden of proof, it's a more
24 serious burden of proof.

25 A Yes.

6 1 Q More onerous.

2 A Yes.

3 Q And it's up to the State of Nevada to prove each
4 and every element of the charge, the charges in this case
5 beyond a reasonable doubt, not by a preponderance of the
6 evidence.

7 A Yes.

8 Q And you can draw those distinctions and follow
9 the instructions?

10 A Yes.

11 Q We'll tell you what reasonable doubt is and what
12 the burden is and if we design that you'll have no trouble
13 following the instructions?

14 A No.

15 Q Anything about your jury service that would
16 affect your thinking in this case?

17 A No.

18 Q Ready to serve again?

19 A Yes.

20 Q If you have to?

21 A Yes, of course.

22 Q Ever been involved in a court proceeding as a
23 witness or as a party?

24 A No.

25 Q Any concern about adverse public opinion that

1 might be generated by this verdict?

2 A No.

3 Q Would you feel comfortable with twelve jurors in
4 your frame of mind sitting in judgment on this case?

5 A I hope so. Yes.

6 Q Someone with your sense of fairness?

7 A Yes.

8 Q Any religious, moral or conscientious objections
9 to the imposition of the death penalty?

10 A No.

11 Q Can you give fair consideration to all statutory
12 forms of punishment, all four forms of statutory
13 punishment?

14 A Yes.

15 THE COURT: State of Nevada may inquire.

16 MS. SILVER: Yes.

17
18 EXAMINATION

19
20 BY MS. SILVER:

21 Q You said that your niece was a sexual assault
22 victim?

23 A Yes.

24 Q How old was she?

25 A Oh, probably under 15.

7 1 Q Like an adolescent?

2 A Yeah, she was a minor.

3 Q And you said this was by a boyfriend?

4 A That was living with my sister and she had two
5 children by him.

6 Q So this was like a stepfather to this daughter,
7 to this child?

8 A Yeah, in the sense they weren't married though.

9 Q Did she consider him though like a stepfather,
10 in that role?

11 A The person -- the victim or my sister?

12 Q The child.

13 A I don't know. I've been out of New Jersey for
14 like eight years at that time. No, I don't think she
15 would. It's just an unfortunate incident.

16 Q Do you think that she was any less sexually
17 assaulted because it was a boyfriend or had a relationship
18 with your sister versus a stranger sexually assaulting her?

19 A No.

20 Q Were you aware of whether or not she had
21 emotional problems after this?

22 A I believe she did.

23 Q Do you think that there is ever a time when it's
24 okay for a boyfriend or a husband or significant other to
25 be violent, physically violent to a woman in a

7 1 relationship?

2 A No.

3 Q Do you ever think that there is a time that
4 she's asking for it or deserves it?

5 A No, not to my knowledge anyway.

6 Q What if a woman goes back a couple times with
7 that boyfriend or significant other, husband, even after
8 he's battered her, do you think that there ever comes a
9 point where she deserves it the next time around or she was
10 asking for it?

11 A No.

12 Q Would it be fair to say that it wouldn't be
13 right no matter --

14 A Under any circumstances not right, no.

15 Q If it were up to you would we have the death
16 penalty?

17 A Yes, I believe in it.

18 Q Why is that?

19 A Because -- let me think about this. Under
20 circumstances the death penalty does apply to meet the
21 situation. Without it it's probably not really a deterrent
22 for anyone. They can say I can go out and kill someone and
23 the worst thing they're going to do is maybe put me in
24 jail. With the death penalty being active they have to
25 think about that, what could happen to them.

7 1 Q You think it could have a deterrent effect in
2 society and send out a message in our community not to do a
3 crime?

4 A I hope so, yes. I think that's the purpose of
5 it.

6 Q And under the appropriate circumstances you
7 yourself could actually impose it if you felt it was
8 appropriate?

9 A If the crime, you know, fits the punishment,
10 yes. Yes.

11 Q Thank you.

12 We would pass this juror for cause.

13
14 EXAMINATION
15

16 BY MR. EWING:

17 Q You stated earlier that you were involved in a
18 civil trial?

19 A Yes.

20 Q How long ago was that?

21 A Oh, this was -- I've been here eight years,
22 maybe fourteen, something like that.

23 Q Was that here in Las Vegas?

24 A No, it was New Jersey.

25 Q Did you feel like the people involved with the

7 1 trial tried to make it easy for you to understand what was
2 2 going on?

3 A Yes.

4 Q Were the rules of law easy to understand?

5 A Yes. The judge was, you know -- yes.

6 Q You state in your jury questionnaire that you
7 consider yourself a follower, that you would rather not
8 lead.

9 A I never had the situation where I had to lead.
10 I just -- you know.

11 Q Do you feel like your opinion is important?

12 A Yes, everybody's opinion is important.

13 Q Do you feel like if you were picked on this jury
14 that you would be willing to voice your opinion?

15 A Yes.

16 Q But you'd be willing to listen to other people?

17 A Yes.

18 Q As they voice their opinion; correct?

19 A Right. Yes.

20 Q And you feel strongly if you were correct, even
21 if you were the only person, would you stick to your
22 position?

23 A Yes.

24 Q I know we talked about this a lot, you've
25 probably heard this type of question a lot, but in your

7 1 jury questionnaire you indicated that you don't feel an
2 individual's background is important in terms of assessing
3 punishment. Do you still feel that way after what you've
4 heard today?

5 A No, because at that time I figured you were
6 going to rule on somebody, their background has nothing do
7 do with it, but like you say, if it's brought up and it's
8 part of the trial, yes, I would consider it.

9 MR. EWING: I would pass for cause.

10 THE COURT: Thank you.

11
12 EXAMINATION

13
14 BY THE COURT:

15 Q Miss Taylor, good afternoon.

16 A Hello.

17 Q Any reason that you can think of why you
18 couldn't be fair to both sides in the case?

19 A No.

20 Q Can you wait until all the evidence is in before
21 coming to any conclusion about any issue in the case?

22 A Yes.

23 Q Have you or any member of your family or any
24 close friends of yours ever been arrested?

25 A Yes.

8

1 Q Tell us about that.

2 A My brother-in-law was repossessing a car and he
3 was picked up for auto theft.

4 Q I take it he was able to --

5 A Oh, yeah.

6 Q -- convince the authorities that he was legally
7 where he was supposed to be?

8 A Yeah. He had the paperwork, just not with him
9 so --

10 Q Anything about his experience in that regard
11 that would affect your thinking in this case?

12 A No.

13 Q Anyone in your family or any friends of yours or
14 yourself ever been the victim of a crime?

15 A No.

16 Q Ever been on a jury before?

17 A No.

18 Q Any concern about adverse public opinion that
19 might result from any verdict in this case?

20 A No.

21 Q Ever been involved in any kind of legal
22 proceeding as a participant or a witness?

23 A No.

24 Q Any any conscientious, religious or moral
25 objections to the death penalty?

8

1 A No.

2 Q If you were called to deliberate on the issue of
3 punishment in this case, which will occur again only if the
4 defendant is convicted of first degree murder, will you be
5 able to give fair consideration to all four forms of
6 punishment?

7 A Yes.

8 Q And if you were involved in this case in any
9 capacity would you feel comfortable with twelve people just
10 like you sitting in judgment on the matter?

11 A Yes.

12 THE COURT: State of Nevada may inquire.

13 MR. HARMON: Thank you, your Honor.

14

15 EXAMINATION

16

17 BY MR. HARMON:

18 Q Mrs. Taylor, in the questionnaire you indicate
19 that your husband is a student?

20 A Uh-huh.

21 Q Where is he going to school?

22 A UNLV.

23 Q What is he studying?

24 A Nursing.

25 Q You described yourself as involved in financial

8

1 management.

2 A I work for the state. My official title is
3 Financial Management Assistant. What I -- I'm the
4 accountant.

5 Q You work for the State of Nevada?

6 A Yes.

7 Q How long have you been doing that?

8 A Three years.

9 Q Is that the approximate length of time that
10 you've been here in southern Nevada?

11 A No. I've been, I've lived in Clark County
12 fourteen years, not consecutively.

13 Q You indicated in the questionnaire that you were
14 a reluctant leader. What does that mean?

15 A If the situation warrants it I will take charge.
16 It's just not my first inclination to do so.

17 Q How do you feel about the opportunity of serving
18 on this type of a case?

19 A It wouldn't be my first choice but --

20 Q It wouldn't be your first choice to serve on a
21 murder case?

22 A No, it wouldn't.

23 Q But nevertheless is it a responsibility you're
24 willing to accept?

25 A Yes.

8

1 Q If the evidence in this case establishes that
2 the victim and the defendant had had a relationship of
3 boyfriend/girl friend, are you going to view the case as
4 somehow less serious --

5 A No.

6 Q -- simply because of that relationship?

7 A No, not at all.

8 Q I don't think anyone would suggest that passing
9 judgment on someone else is easy or pleasant, but
10 nevertheless are you the type of person who could do that?

11 A I would have to give it a lot of careful
12 consideration before I could pass judgment on someone that
13 would impact their life the way that the decision involved
14 in this trial would. But the decision has to be made and I
15 could come to that decision.

16 Q You fully understand the serious nature --

17 A Yes.

18 Q -- of this matter?

19 Would you be able to give your full
20 attention to the trial proceedings when the court is in
21 session?

22 A Yes.

23 Q If it became necessary for the jury to fix a
24 punishment, is there any reason why you wouldn't have the
25 intestinal fortitude to come back into the courtroom and

1 vote your conviction?

2 A No.

3 Q Do you believe that persons should be held
4 individually responsible when they commit serious crimes of
5 violence?

6 A Yes.

7 Q Thank you.

8 Pass for cause.

9 THE COURT: For the defense.

10 MR. BROOKS: We'll pass for cause, Judge.

11 THE COURT: All right. Thank you.

12
13 EXAMINATION

14
15 BY THE COURT:

16 Q Is it Miss Dear?

17 A Yes, it is.

18 Q All right. When the clerk read your name off it
19 sounded like a hyphenated name.

20 A Yeah, it is.

21 Q Any reason you can think of why you couldn't be
22 fair to both sides?

23 A No.

24 Q Can you wait until all the evidence is in before
25 coming to any conclusions in this case?

8 1 A Yes, I could.

2 Q Have you or any member of your family or any
3 friends ever been arrested?

9 4 A Yes.

5 Q Tell us a little bit about that.

6 A This happened before I was born, but my father
7 was convicted of stealing a relatively small amount of
8 money from a relative's restaurant and was put into prison
9 for four years, but I did not know about this until I
10 graduated from high school. I grew up not knowing this as
11 a child.

12 Q Anything about his experience in that regard,
13 what you've learned of it, that would affect your thinking
14 in this case?

15 A I don't believe so.

16 Q Have you or any member of your family or any
17 close friends of yours ever been the victim of a crime?

18 A No.

19 Q Ever been on a jury before?

20 A No.

21 Q Ever been a participant in a court proceeding?

22 A Yes.

23 Q Tell us about that.

24 A I'm, at the time I was a kindergarten teacher
25 and one of my students was abused by the parents, was

9

1 burned by the parents, and I had to substantiate the days
2 that he was out of my classroom, the weeks that he was gone
3 and when he returned. That was in Henderson.

4 Q Anything about that interaction with the court
5 system that would affect your thinking in this case?

6 A No. It was very distressing to me but I don't
7 think -- that was a separate case.

8 Q As distressing as it was, you're not going to,
9 if you're called to deliberate, let that incident in your
10 life come into your thought processes in making a decision
11 in this case?

12 A It's an entirely different situation.

13 Q Thank you.

14 Any concern about adverse public opinion
15 that might result from a verdict in this case?

16 A No.

17 Q Any religious, moral or conscientious objections
18 to the imposition of the death penalty?

19 A I just stated in the questionnaire that I'm
20 Catholic and they don't believe really in abortion or the
21 death, or death. But as a whole -- but if -- depending on
22 the situation I would look at it I guess. Whatever.

23 Q Would you be able to consider the death penalty
24 along with the other forms of punishment in arriving at a
25 verdict?

9 1 A Yes, I could consider it.

2 Q Can you give fair consideration to each of the
3 four forms of penalties in this case?

4 A Yes, I can.

5 Q Whether that's a death penalty, life
6 imprisonment with parole, life imprisonment without parole,
7 or 50 years in prison with eligibility of parole after 20
8 years; would you be able to give fair consideration to all
9 four forms of punishment?

10 A After hearing the evidence, yes.

11 Q If you were involved in this case would you feel
12 comfortable with twelve people just like you sitting in
13 judgment on the matter?

14 A Yes, I would.

15 Q That would be if you were a member of the
16 victim's family or a member of the defendant's family?

17 A Yes.

18 THE COURT: State of Nevada may inquire.

19

20 EXAMINATION

21

22 BY MS. SILVER:

23 Q As a teacher you're a mandated reporter of child
24 abuse?

25 A Yes.

9 1 Q And that means that if you see a child or
2 believe that a child is a victim of child abuse you have to
3 report that by law to authorities?

4 A That's correct.

5 Q Do you think that there can be times maybe that
6 you thought to yourself, maybe not sure, but you thought
7 this child could be a victim of child abuse, but they don't
8 disclose anything to you?

9 A Yes.

10 Q You may have thought that before?

11 A Yes.

12 Q Why do you think it is that a child may not tell
13 on a parent because of child abuse?

14 A Because they're fearful of repercussions from
15 their family at home.

16 Q Do you think that there are times when a victim
17 can be, or a woman can be a victim of domestic violence,
18 yet not tell anyone of the abuse?

19 A Yes.

20 Q And why is that?

21 A Well, I just feel that for survival, just to
22 have a home and to keep the family together, that they
23 would endure whatever needs to be done to a certain point
24 until they can't --

25 Q Do you think likewise of what you've just stated

9 1 about the child being afraid of repercussions from the
2 2 person in control, that likewise the same thing could
3 3 happen in a domestic violence situation, a victim may be
4 4 fearful of repercussions and so they don't go to
5 5 authorities just like a child wouldn't go to a teacher?

6 A Yes, I can. Yes.

7 Q Because they could be fearful of a perpetrator?

8 A Uh-huh.

9 Q You have to say yes or no for the record.

10 A Yes.

11 Q Do you blame that victim for not going forward?
12 Do you think she deserves it because she didn't get help?

13 A No, I wouldn't blame her for not seeking help.

14 Q Do you think that the person at fault is the
15 perpetrator who actually batters?

16 A Will you state that again?

17 Q Do you think that the real person at fault --

18 A Yes.

19 Q -- is the person that actually commits the crime
20 and hits?

21 A Yes.

22 Q Do you think people ought to be held accountable
23 for their actions?

24 A Yes, I do.

25 Q I notice that you were somewhat hesitant in your

10 1 views on capital punishment. Is that due to your religious
2 beliefs?

3 A Well, I just feel that if the person would be,
4 could endanger another person at some time, then I would
5 say yes for the death penalty. I guess. I would have to
6 hear the evidence.

7 Q Okay. Do you think that there are circumstances
8 that you personally could impose the death penalty?

9 A I think so.

10 Q You can consider all of the possible punishments
11 that you've stated, but do you have a predisposition of
12 like veering away from the death penalty because of your
13 religious beliefs, what you said, Catholics?

14 A Not after I would hear all the evidence, I could
15 be fair.

16 Q You would be equal in your decision?

17 A I believe I could.

18 MS. SILVER: Thank you. We would pass for
19 cause.

20 THE COURT: For the defense.

21 MR. EWING: Thank you, your Honor.

22

23

24 ///

25 ///

EXAMINATION

BY MR. EWING:

Q Miss Dear, it says in your jury questionnaire that you retired as assistant principal?

A No, my husband did. Did I put it in the wrong spot?

Q I just read it wrong.

A I'm still working.

Q You are a school teacher, elementary, kindergarten and second grade?

A Yes.

Q I imagine you get to see first hand the effects that challenges can have on kids?

A Absolutely.

Q And you dealt with kids who had maybe some intellectual challenges?

A Yes.

Q Probably was frustrating, wasn't it?

A Yes.

Q You dealt with children who probably had some problems at home?

A Yes.

Q Parents that were not around?

A Exactly. Exactly.

10 1 Q Do you think that those kind of considerations
2 are important?

3 A Yes.

4 Q In assessing something like a possible
5 punishment?

6 A Yes, I think it is.

7 MR. EWING: Pass for cause.

8 THE COURT: Thank you.

9

10 EXAMINATION

11

12 BY THE COURT:

13 Q Miss Bourne, good afternoon.

14 A Good afternoon.

15 Q Any reason that you can think of why you
16 couldn't be fair to both sides in this case?

17 A No.

18 Q Can you wait until all the evidence is in before
19 coming to any conclusion about any issue in the case?

20 A Yes.

21 Q Have you or any member of your family or any
22 close friends of yours ever been arrested?

23 A No, sir.

24 Q Anyone in your family, close friends of yours or
25 you, ever been the victim of a crime?

10

1 A I had. I was burglarized about sixteen years
2 ago. I forgot to put it there. I came in the front door,
3 the people were running out the back door.

4 Q The police responds?

5 A Yes, sir.

6 Q And were they able to apprehend the
7 perpetrators?

8 A No.

9 Q Anything about the way the case was handled that
10 would affect your thinking negatively against law
11 enforcement witnesses?

12 A No, sir.

13 Q Anything about the fact of the event itself that
14 would cause you some jaundice toward a person charged with
15 a crime?

16 A No, sir.

17 Q Ever been on a jury before?

18 A Yes, sir.

19 Q How many times?

20 A Twice.

21 Q Was it a civil or criminal?

22 A Both.

23 Q One of each?

24 A One of each.

25 Q So you have been instructed on the burden of

10

1 proof in both cases?

2 A Yes, sir.

3 Q Any trouble distinguishing between the two?

4 A No.

5 Q Were your jurors able to reach verdicts in the
6 two cases?

7 A One.

8 Q And the other one was hung?

9 A No, the other one, the next day it was settled
10 out of court.

11 Q So you've been through the process before and
12 ready to serve again?

13 A Yes, sir.

14 Q If you have to?

15 A What?

16 Q If you have to of course.

17 A If I have to.

18 Q Anything about that experience that would affect
19 your thinking here?

20 A No, sir.

21 Q Ever been involved in court proceedings in any
22 way as a witness or a party?

23 A No.

24 Q Any concern about adverse public opinion?

25 A No.

1 Q And do you have any moral, religious or
2 conscientious objections to the imposition of the death
3 penalty?

4 A (Inaudible response.)

5 Q You have to answer out loud.

6 A No.

7 Q Will you, if called upon to deliberate on the
8 question of penalty, be able to give fair consideration to
9 all statutory forms of punishment?

10 A Yes.

11 Q If you were involved in this case as a member of
12 the defendant's family or the member of the alleged
13 victim's family in this case, would you feel comfortable --

14 A Yes.

15 Q -- with jurors with your frame of mind?

16 A Yes.

17 THE COURT: Thank you.

18 State of Nevada may inquire.

19 MR. HARMON: Thank you, your Honor.

20
21 EXAMINATION

22
23 BY MR. HARMON:

24 Q Miss Bourne, you've been a registered nurse by
25 profession?

11 1 A Yes, sir.

2 Q You also apparently served for a period of time

3 in the Army?

4 A Yes.

5 Q How long were you in the Army?

6 A Twenty years.

7 Q You retired in 1980?

8 A Uh-huh.

9 Q And you practiced nursing in the service?

10 A No, I did not practice after I got out. I had

11 surgery on my spine and I was sort of physically incapable.

12 Q So your nursing experience is limited to while

13 you were in the service?

14 A And some in Trinidad where I was born.

15 Q You've also indicated that you served in the

16 postal service for five years?

17 A Yes, sir.

18 Q Regarding your prior jury experience, you

19 indicated one of the cases was a criminal case?

20 A Yes.

21 Q What type of crime was it?

22 A Something to do with, I don't know how to

23 describe the type of crime it was, it was like something,

24 somebody had been taking something from somewhere,

25 something like that. I can't remember it too well. And

11

1 they set it up and caught him red-handed.

2 Q It was some type of theft case?

3 A Yes, sir.

4 Q On the subject of punishment, if that should
5 become pertinent to this case -- in the questionnaire
6 regarding the death penalty you said that it should be used
7 rarely if at all.

8 A Yes.

9 Q What was your thinking in providing that type of
10 answer?

11 A I would say honestly that I lean more away from
12 it than rushing to it. So the crime would have to be
13 something that, I don't know, except heinous, not
14 necessarily heinous, I don't know how to describe what I
15 mean. Because it -- you can always -- might get the wrong
16 man.

17 Q You would be concerned if that type of
18 punishment was imposed that you be very sure that the
19 person convicted had committed the murder?

20 A Yes, sir.

21 Q If it was left solely up to you would we have
22 capital punishment in this state?

23 A I'm not quite convinced of that. I tend to say
24 no, but then sometimes I hear some case and I say yes, we
25 need it. So I'll be honest, it's more like I don't know if

11

1 we should have it.

2 Q You're simply undecided regarding that issue?

3 A Yes.

4 Q Perhaps the crucial question, if this case
5 should, and I emphasize should, we don't know what the jury
6 will do during the trial phase, but should it proceed to a
7 penalty hearing the question then becomes whether a
8 prospective juror would personally be able to come back
9 into the courtroom and vote whatever of the four
10 punishments that juror thought was appropriate. Do you
11 feel you can do that?

12 A I think so.

13 Q I'm asking that of you because in question 51
14 you were asked about the death penalty and you said "I
15 don't know."

16 A Well, that is according to what I was saying
17 before. It's like you hear of things and oh, I could do
18 this and that, and then what he says, do you think you can
19 and right there you say I don't know. I would have to be
20 involved in what is happening here, the facts in that
21 particular case.

22 Q But can you think of a set of circumstances
23 where you would believe that capital punishment would be
24 proper for murder of the first degree?

25 A Yes, sir.

11

1 Q Do you agree that race or gender or really
2 prejudice of any type is not a proper basis for a verdict?

3 A Oh, no. I mean because of race or gender?

4 Q Yes.

5 A No.

6 Q Would you consider this case any less serious if
7 the evidence showed that the defendant and the victim had a
8 prior boyfriend/girl friend relationship?

9 A No. No, sir.

10 Q Is there any reason why you can't give your full
11 attention to these proceedings?

12 A No reason, sir.

13 Q Thank you.

14 Pass for cause.

15 THE COURT: For the defense.

16 MR. BROOKS: Defense would pass for cause,
17 your Honor.

18 THE COURT: All right. For the six
19 prospective jurors that are sitting in the jury box, that's
20 Mr. Mesnard, Mr. Tripp, Miss Souder, Miss Taylor, Miss Dear
21 and Miss Bourne, I wish you good evening. I'm going to
22 admonish you at this time that it is your duty not to
23 converse among yourselves or with anyone else on any
24 subject connected with this trial; or read, watch or listen
25 to any report or commentary on this trial by any medium of

11 1 information including without limitation newspapers,
2 television and radio; and you are not to form or express
3 any opinion on this case until it is finally submitted to
4 you.

12 5 Your responsibilities will resume again
6 at two o'clock in the afternoon when I would like to have
7 you down in the jury lounge in the event, when we finally
8 get the jury selected. We'll be at ease while you depart
9 the confines of the courtroom. Good evening.

10 I'd like to try two more for cause if
11 you don't mind. Everybody comfortable?

12 THE CLERK: Badge number 437, Helen
13 DiGiovanna, D-i-G-i-o-v-a-n-n-a.

14 Badge number 438, Linda Ruth Aquilla,
15 A-q-u-i-l-l-a.

16 THE COURT: At this point what I'm going to
17 do, we have three jurors left over, we're not going to be
18 that long so has anybody got any problems with personal
19 arrangements?

20
21 EXAMINATION

22
23 BY THE COURT:

24 Q Good afternoon, Miss DiGiovanna. Am I
25 pronouncing your name correctly?

12 1 A You're doing great. It's not easy.

2 Q So is mine. Everybody has a problem with mine.

3 Any reason that you can think of why you
4 couldn't be fair in this case?

5 A No.

6 Q Can you wait until all the evidence is in before
7 coming to any conclusion about any issue in this case?

8 A Yes.

9 Q Anyone in your family, you or friends of yours
10 ever been arrested?

11 A No.

12 Q You or anybody in your family or friends of
13 yours ever been the victim of a crime?

14 A No.

15 Q Ever been on a jury before?

16 A No.

17 Q Ever been involved in a legal proceeding before
18 as a witness or a party?

19 A No.

20 Q Any concern about adverse public opinion that
21 might result from a verdict in this case?

22 A No.

23 Q Any conscientious, moral or religious objection
24 to the death penalty?

25 A No.

Q Would you be able to give fair consideration to all four statutory forms of punishment in the event you were caused to deliberate on the issue of penalty?

A Yes.

Q And would you feel comfortable with twelve jurors just like you if you were involved in this case?

A Yes.

THE COURT: State of Nevada may inquire.

MR. HARMON: Thank you, your Honor.

EXAMINATION

BY MR. HARMON:

Q You've lived here for about two years?

A Three in April. Two and a half.

Q Where did you move from?

A Moved from Pocomos in Pennsylvania.

Q How did you happen to come out west to southern Nevada?

A Warm weather and age.

Q You mentioned in the questionnaire that you've experienced some domestic violence in your family.

A When I was a child. That was during the depression and liquor was -- every Friday night the husbands would get drunk I think more or less and there was

12

1 some domestic violence. .

2 Q So this involved your father abusing your
3 mother?

4 A Yeah. Also breaking dishes, things like that.

5 Q You've mentioned also that your youngest
6 daughter --

7 A Yes.

8 Q -- also has been the victim of domestic
9 violence?

10 A Yes. She's divorced now. I wasn't there. It
11 happened in New Mexico.

12 Q You simply heard about some of the things which
13 happened?

14 A Some of the things she said, yeah. She told us
15 about it.

16 Q Do you feel that there is anything actually
17 which excuses being physically abusive of some other
18 person?

19 A Not really.

20 Q There will undoubtedly be evidence in this case
21 of some history of domestic violence. Is that going to
22 affect your ability to be fair and impartial?

23 A I don't think so. I think if I get the whole
24 picture of everything I believe I can be fair about it. I
25 still talk to my ex son-in-law.

12 1 Q Are you for or against the death penalty?

2 A I'm for it.

3 Q Why do you say that you're in favor of it?

4 A Well, because there are so many horrible crimes
5 going on. I'm not saying this is a must, but there are so
6 many horrible crimes I don't think anything else is the
7 answer to it. But I think, I've also stated too I do
8 believe there are extenuating circumstances in many cases.

9 Q I take it you're willing to consider all of the
10 circumstances involved in this case?

11 A Oh, absolutely. Yes.

12 Q Would you like to serve as a juror?

13 A Yes.

14 Q You feel you could be an effective juror?

15 A I think so.

16 MR. HARMON: Pass for cause, your Honor.

17 THE COURT: Thank you.

18 For the defense.

19

20 EXAMINATION

21

22 BY MR. BROOKS:

23 Q Miss DiGiovanna, you indicated in your survey
24 that I believe you were not particularly interested in
25 considering the background of a person when considering the

1 death penalty. The judge is going to instruct you that is
2 one of the things to be considered.

3 A If I'm told to there is no question about it,
4 that's what I'm going to do.

5 Q So you'll consider the facts and also the
6 defendant's background?

7 A Yes.

8 Q Do you feel that you could be fair to James
9 Chappell?

10 A Yes, I do.

11 Q And will you apply the presumption of innocence
12 throughout the trial?

13 A Absolutely.

14 Q Thank you.

15 We'll pass for cause your Honor.

16 THE COURT: Thank you.

17
18 EXAMINATION

19
20 BY THE COURT:

21 Q Miss Aquilla, good afternoon. Am I pronouncing
22 your name correctly?

23 A Yes, you are.

24 Q Any reason you can think of why you couldn't be
25 fair to both sides?

13

1 A No.

2 Q Can you wait until all the evidence is in before
3 coming to any conclusion?

4 A Yes.

5 Q Have you, any family member or close friend of
6 yours ever been arrested?

7 A No.

8 Q Same question with regard to whether a member of
9 your family, you, friends of yours ever been the victim of
10 a crime?

11 A No.

12 Q Ever been on a jury before?

13 A No.

14 Q Ever been a participant in a court proceeding?

15 A Only small claims.

16 Q So collection matters. Anything about that
17 experience or those experiences that would affect your
18 thinking here?

19 A No.

20 Q Any concern about adverse public opinion that
21 might result from any verdict in the case?

22 A No.

23 Q And do you have any religious, moral or
24 conscientious objections to the imposition of the death
25 penalty?

13

1 A No.

2 Q Do you believe in the death penalty?

3 A Absolutely.

4 Q And will you be able to give fair consideration
5 to all four forms of punishment in the event the defendant
6 is convicted of first degree murder and you're caused to
7 deliberate on the question of penalty?

8 A If he is convicted of first degree murder I'd
9 have a real hard time with parole being a consideration.

10 Q But there are situations in which the parole can
11 be appropriate; you understand that?

12 A Yes, sir.

13 Q The legislature has so determined that fact, the
14 people we elect go to Carson City, has created four forms
15 of punishment for first degree murder. Can you buy into
16 that for the purpose of deliberating in this trial?

17 A In all honesty I don't think I could ever
18 consider parole if he was found guilty of first degree
19 murder.

20 Q Even if you were to sit back and consider all of
21 the all, of his life consequences, the interaction leading
22 up to the event itself, his own plans for the future, those
23 sort of things?

24 A I believe many of us are from dysfunctional
25 families and if they use that as an excuse -- I don't

13

1 believe in using that as an excuse. Explanation maybe,
2 excuse, no.

3 Q In the legal sense the term excuse means you are
4 forgiven for this thing, there is no responsibility for it.
5 In this instance the punishments are not by definition
6 excuses. One is 50 years in the Nevada State Prison, the
7 other is life, and those two sentences of course have the
8 possibility of parole. The other two do not. One is death
9 penalty and the other one is life without. Now as we sit
10 here today the question really is whether you can fairly
11 consider all four statutory forms of punishment.

12 A If he's found guilty of first degree murder?

13 Q Correct. That's the only time that you get to
14 consider.

15 A No.

16 THE COURT: All right. State.

17 MR. HARMON: We'll stipulate to excusing her.

18 MR. BROOKS: We challenge for cause, your
19 Honor.

20 THE COURT: Thank you very much. It's a
21 little late to go back to the jury commissioner, but I
22 think you've already been paid for today. Thank you for
23 your candor and wish you the best of a good evening.

24 THE CLERK: Badge number 439, Cheryl Diane Hull,
25 H-u-l-l.

EXAMINATION

BY THE COURT:

Q Good afternoon, Miss Hull.

A Good afternoon.

Q Have you heard all the, obviously by now you've heard these questions over and over again.

A Yes, sir.

Q Is there anything we should know about you?

A No.

Q Have you ever been on a jury before?

A No.

Q No arrests, no victims of crimes?

A No.

Q You can be fair to both sides?

A Yes.

Q And you can wait until all the evidence is in before drawing any conclusion in the case?

A Yes.

Q Ever been in any legal proceeding?

A No.

Q Do you feel comfortable with twelve people like you sitting in judgment on this matter if you were involved in this case?

A Yes.

13 1 Q Any moral, conscientious or religious objections
2 to the death penalty?

3 A No.

4 Q Can you give fair consideration to all four
5 forms of punishment?

6 A Yes.

7 THE COURT: State may inquire.

8 MR. HARMON: Thank you, your Honor.

9

10 EXAMINATION

11

12 BY MR. HARMON:

13 Q I just wanted to clear up something, Miss Hull.
14 As I look at the questionnaire I see the question 35
15 regarding the death penalty, and you said "I do agree with
16 the death penalty"; is that correct?

17 A Yes, I did.

14

18 Q As I look at question 49, you are asked whether
19 you can consider all four possible punishments and you
20 indicated "I don't know."

21 A Well, I don't believe I -- I don't think that I
22 knew that the death penalty was among those. I just
23 thought it was three.

24 Q In question 51 now perhaps you misunderstood?

25 A I might have.

14

1 Q This question as well: The question was, "If
2 you believe the evidences warrant the death penalty, could
3 you personally vote to impose the death penalty?" And you
4 wrote "No."

5 A Oh, I must have misunderstood the question.

6 Q So that there is no misunderstanding, if this
7 case went to a penalty hearing and if you believed from all
8 the evidence and circumstances, and applying to that the
9 Court's legal instructions that death was the appropriate
10 punishment, would you be willing to vote for it?

11 A Yes, I would.

12 Q Could you personally come to the courtroom and
13 participate in announcing that type of verdict?

14 A Yes, I could.

15 Q How do you feel about the opportunity of serving
16 as a juror on this type of case?

17 A Well, it's a little overwhelming. I'm so dry.
18 I feel like I've been in a dust storm.

19 THE COURT: Would you like a glass of water?

20 JUROR #439: I'll get one in a minute.

21 I believe that I could do whatever the
22 judge told me to do and I could make the decision. Yes, I
23 do.

24 BY MR. HARMON:

25 Q We're certainly not implying that it's easy. It

14 1 shouldn't be easy.

2 A I know that. I know that. It's a little scary
3 because I've never been, I'm getting older and I've never
4 been through anything like that.

5 Q You feel it's a task that you're up to
6 performing?

7 A Yes. Uh-huh.

8 Q Thank you.

9 Pass for cause.

10 THE COURT: For the defense.

11

12 EXAMINATION

13

14 BY MR. BROOKS:

15 Q Are you open to all four of the punishments that
16 is listed there in the questionnaire?

17 A Yes, I am.

18 Q And you would consider all four if we got to the
19 point where we were at penalty phase?

20 A Yes.

21 Q You've heard us talk about the presumption of
22 innocence. How do you feel about that?

23 A If the evidence showed that he was innocent, I
24 would, you know, you have to consider both sides and if the
25 evidence came in and I, you know, listened to all of his

14

1 and all of theirs, I would make my decision.

2 Q What if the evidence was simply inconclusive and
3 the State didn't meet their burden and we didn't put any
4 evidence on at all?

5 A And you didn't put out any what?

6 Q We didn't put on any evidence at all, but the
7 State's evidence failed to persuade you completely.

8 A Uhm, I don't know. I don't know how I'd answer
9 that.

10 THE COURT: The question is that under our
11 system of justice the defense has no burden of proving
12 innocence. The defense has no obligation to come forward,
13 it's the State's obligation to come forward and produce
14 evidence. And they must produce evidence that convinces
15 you beyond a reasonable doubt that the defendant is guilty
16 or beyond a reasonable doubt that the death penalty should
17 be imposed.

18 JUROR #439: Right.

19 THE COURT: Now the question is if they fail
20 to meet that burden and the defense puts on no evidence,
21 would you be be able to render a verdict of not guilty?

22 JUROR #439: Yes. Yes, I would.

23 THE COURT: That's your question, isn't it,
24 Mr? Brooks.

25 MR. BROOKS: Yes, it is. Thank you, Judge.

14

1 Pass for cause.

2 THE COURT: At this point since we have two
3 jurors left in the audience, rather than bring you back
4 tomorrow morning, would you two gentlemen like to go
5 through the process now?

6 JUROR #442: Yeah, that's fine.

7 THE COURT: Let's go forward.

8 THE CLERK: Badge Number 442, Bruce Todd
9 Larsen.

10 JUROR #442: Present.

11 THE CLERK: L-a-r-s-e-n.

12 Badge number 444, Michael Richard
13 Gushwa, G-u-s-h-w-a.

14

15 EXAMINATION

16

17 BY THE COURT:

18 Q All right. Mr. Larsen, any reason that you
19 can think of why you couldn't be fair to both sides?

20 A No.

21 Q Can you wait until all the evidence is in before
22 coming to any conclusion on any issue in the case?

23 A Yeah.

24 Q Have you or any member of your family or any
25 friends of yours ever been arrested?

14

1 A I was arrested.

2 Q Tell us about that.

3 A DUI in '82 after my first airlines Christmas
4 party.

5 Q And anything about that experience that would
6 affect your thinking here?

7 A No.

8 Q Have you or any member of your family or any
9 friends of yours ever been the victim of a serious crime?

10 A No.

11 Q Ever been part of a legal proceeding as a
12 witness or as a --

13 A Yeah, I was a witness once.

14 Q How long ago was that?

15

15 A Probably about six, eight years, somewhere like
16 that.

17 Q What kind of a case was it?

18 A It was basically one of the employees that work
19 for me had hurt his back in a car accident and I was
20 basically just telling that he was an employee and what
21 type of job he did.

22 Q So there is nothing about that case that would
23 affect your thinking here?

24 A No.

25 Q Ever been on a jury before?

15

1 A No.

2 Q Any concern about adverse public opinion?

3 A No.

4 Q Any conscientious, moral or religious objections
5 to the death penalty?

6 A No.

7 Q Can you give fair consideration in the event
8 you're called to do so to all four statutory forms of
9 penalty?

10 A Yes, I can.

11 Q Whether it's death penalty or 50 years with 20
12 years?

13 A Yes.

14 Q Whether it's life with or life without the
15 possibility of parole?

16 A Yes.

17 Q If you were involved in this case would you feel
18 comfortable with twelve people with your sense of fairness
19 sitting on the jury?

20 A Yes, I would.

21 MS. SILVER: Thank you.

22

23

24 ///

25 ///

EXAMINATION

BY MS. SILVER:

Q Am I incorrect in reading or interpreting on your questionnaire, you have for the death penalty you find that it would be appropriate only for cases of mass murder or serial killers?

A No. In those cases more so than other cases, but, no, it could be administered for cases such as this one or other cases.

Q I see.

A It would have to merit it on its own individual case.

Q So you're not saying exclusive of mass murderers or serial killers I can't consider the death penalty?

A No, just more so in those situations.

Q Even though in a case such as this where one person is killed, that is something that under the right circumstances you could actually consider the death penalty?

A Yes, if the case warranted it, yes.

Q Could you actually impose the death penalty as well?

A Yes.

Q Because I notice here in, of course no one is

15 1 suggesting, no one, either side is suggesting it's easy or
2 2 a pleasant task to undertake and sit in judgment of another
3 3 person, but do you think, you have here I think it's a
4 4 very, I think you said you want to be on the jury, yes or
5 5 no, you said "yes, because of the interest, but I don't
6 6 like the fact that someone's life is in my hands".

7 A Yes.

8 Q You recognize then the seriousness of this?

9 A Yes.

10 Q You recognize also that you would not be the
11 11 person deciding this, that it would be a collective
12 12 decision among twelve of you on whether it's to convict the
13 13 defendant or further down the line to actually impose the
14 14 death penalty?

15 A Yes.

16 Q It's not just your decision?

17 A Right. It's part, twelve.

18 Q Correct. Do you have any problem with that?

19 A No.

20 Q And you could consider all forms of punishment?

21 A Yes, that's correct.

22 Q Thank you.

23 We would pass for cause.

24 THE COURT: For the defense.

25

EXAMINATION

BY MR. EWING:

Q It's true that there are twelve jurors, but you still believe that your opinion is important?

A Very important.

Q And perhaps your opinion is important enough to stand on its own if it needs to?

A Yep.

Q Is that true?

A That's correct.

Q Just because there is twelve people doesn't mean you have to agree with all twelve people?

A No.

Q There may be room for disagreement?

A Yeah.

Q There must also be a dialogue, there must be a willingness to listen to other people's opinions?

A Exactly.

MR. EWING: We pass for cause.

THE COURT: Thank you.

///

///

EXAMINATION

BY THE COURT:

Q Is it Mr. Gushwa?

A Yeah.

Q Am I pronouncing it correctly?

A Yeah.

Q Any reason you can think of why you couldn't be fair in the case?

A No.

Q Can you wait until all the evidence is in before drawing any conclusions in the matter?

A Yes.

Q Ever been arrested, friends or family ever been arrested?

A No.

Q Ever been the victim of a crime or friends or family ever been the victim of a crime?

A We had a car stolen.

Q Anything about the way the police handled that or the fact of the incident itself that would affect your thinking in this case?

A No.

Q You can put that aside and decide this case on its facts?

15

1 A Yeah.

2 Q Ever been on a jury before?

3 A No.

4 Q Any concern about adverse public opinion that
5 might result from a verdict in this case?

6 A No.

7 Q Ever been a participant or a party to any court
8 proceeding?

9 A No.

10 Q If you were involved in this case would you feel
11 comfortable with twelve jurors just like you sitting in
12 judgment on the matter?

13 A Yes.

14 Q Do you have any religious, philosophical,
15 conscientious or moral objections to the imposition of the
16 death penalty?

17 A No.

16

18 Q Can you consider if you're called upon
19 deliberating on the question of penalty all four statutory
20 forms of punishment?

21 A Yeah.

22 Q That is life with parole, life without parole,
23 death penalty or 50 years with 20, eligibility after 20?

24 A Yes.

25 THE COURT: The State of Nevada may inquire of

16 1 this juror.

2

3

EXAMINATION

4

5 BY MS. SILVER:

6 Q I noticed in a couple of your answers, I wanted
7 to ask you to explain a couple of them. One of them you
8 said that where it asks the statement, the death penalty is
9 appropriate in some cases but not in others, you wrote if a
10 person kills someone there may be a reason. What do you
11 mean by that?

12 A Well, there is reasons for everything. There
13 might be a circumstance.

14 Q What do you mean?

15 A You know, like if somebody is cheating on you.

16 Q You think that if someone is cheating on you
17 that that gives them a reason to murder the other person?

18 A No, no, I'm just talking about the death
19 penalty.

20 Q So if the person was cheating on another person
21 then that's something that you feel well, that would
22 mitigate the murder somehow?

23 A No.

24 Q That that victim deserved to die?

25 A Oh, no.

16

1 Q Can you explain then what you mean?

2 A I'm just talking about the death penalty and,
3 you know, the 50 years, maybe 50 years --

4 Q They may deserve 50 -- the person who committed
5 the crime may only deserve 50 years because the victim was
6 a cheater? Maybe I'm interpreting what you're saying
7 wrong.

8 A No.

9 Q I'm just -- you're against the death penalty?

10 A I'm for the death penalty in cases.

11 Q You do believe that in some cases it could be
12 appropriate?

13 A No.

14 Q Okay. Then in fact here you said the death
15 penalty is a little too harsh?

16 A In some cases.

17 Q What do you mean by that? In what cases?

18 A You don't give the death penalty to everyone.

19 Q I'm sorry, say it again. I can't hear you. I
20 can't understand you.

21 A Oh, state that again.

22 Q I'm sorry. Do you think that the death penalty
23 can be too harsh a penalty?

24 A I'm not certain. Like when they give the death
25 penalty.

1 Q Okay. Do you think that you could give the
2 death penalty if it was appropriate?

3 A Yes.

4 Q There might be a time when it would be an
5 appropriate sentence.

6 A Yeah. Yes.

7 Q Okay. Thank you.

8 Your Honor, we would pass for cause.

9 THE COURT: The defense.

10 MR. EWING: Thank you, your Honor.

11
12 EXAMINATION

13
14 BY MR. EWING:

15 Q Mr. Gushwa, is that how you say that?

16 A Yes.

17 Q I believe what you are trying to say here is
18 that there are circumstances where the death penalty could
19 be warranted and there are circumstances where it might not
20 be warranted; is that true?

21 A True.

22 Q And you would look at the circumstances of the
23 case and make that determination?

24 A Yeah.

25 Q And there is a lot of factors to be considered?

16

1 A True.

2 Q For example, you gave the example if someone is
3 cheating on someone else that would simply be a factor to
4 be considered?

5 A Yes.

6 Q You also believe that there are other factors to
7 be considered such as the history of the defendant;
8 correct?

9 A Yeah.

10 Q And when you say that the death penalty is a
11 little too harsh, do you mean that the death penalty should
12 simply be reserved for the worst cases?

13 A Yeah.

14 MR. EWING: Pass for cause.

15 THE COURT: At this point we have by my count
16 eighteen prospective jurors passed for cause so that means
17 we're halfway through the process at this point.

18 MR. HARMON: That's correct.

19 THE COURT: It's my suggestion that we start
20 tomorrow morning at 8:30 in the morning. Does anyone have
21 a problem with us doing that since we're going to be
22 entirely jury selection tomorrow? Maybe we'll get to
23 opening statements.

24 All right. Miss DiGiovanna and Miss
25 Hull and Mr. Larsen and Mr. Gushwa, you are expected to be

16 1 back at the courthouse tomorrow at two o'clock in the
2 2 afternoon ready for the completion of jury selection when
3 3 we get through the rest of the jurors. You will not have
4 4 to come back up here, stay down in the lounge where it's
5 5 more comfortable.

6 During the evening recess, it is your
7 7 duty not to converse among yourselves or with anyone else
8 8 on any subject connected with this trial; or read, watch or
9 9 listen to any report or commentary on the trial or any
10 10 person connected with the trial by any medium of
11 11 information, including without limitation newspapers,
12 12 television and radio; and you are not to form or express
13 13 any opinion on any subject connected with this case until
14 14 it is submitted to you.

15 Also as you were told at juror
16 16 orientation, do not visit the scene, do not do any
17 17 investigation on your own.

17 Good evening, ladies and gentlemen.
18 we'll see you tomorrow afternoon.

19 JUROR #442: You said we'll stay downstairs
20 20 tomorrow?
21 21 tomorrow?

22 THE COURT: Yeah. You don't have to come up
23 23 until we call you.

24 Anything further from the parties this
25 25 evening?

MR. HARMON: Not from the State, your Honor.

MR. BROOKS: Not from the defense, your Honor.


THE COURT: This matter is in recess. We'll see you at 8:30 in the morning.

MR. HARMON: Good night, Judge.

(Proceedings adjourned.)

--oOo--

ATTEST: Full, true, and accurate transcript of proceedings.


DANETTE L. ANTONACCI
CCR #222

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

* * * * *

FILED IN OPEN COURT

OCT 09 1996 19

ORIGINAL

LORETTA BOWMAN, CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant.

BY

Case No. C131341

Dept. No. VII

Deputy

REPORTER'S TRANSCRIPT

OF

JURY TRIAL, VOLUME II, AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT JUDGE

Tuesday, October 8, 1996

2:00 P.M.

APPEARANCES:

For the State:

MELVYN T. HARMON, ESQ.
Deputy District Attorney
&
ABBI SILVER, ESQ.
Deputy District Attorney

For the Defendant:

HOWARD S. BROOKS, ESQ.
Deputy Public Defender
&
WILLARD N. EWING, ESQ.
Deputy Public Defender

Reported by: LISA BRENSKE, CCR No. 186

CE

1 LAS VEGAS, CLARK COUNTY; TUESDAY, OCTOBER 8, 1996

2
3 P R O C E E D I N G S
4

5 THE COURT: Everyone that has been qualified
6 for cause please stand. They don't need to sit through the
7 rest of this part of it so flexibility being the key word
8 here we'll send the jurors who have qualified for cause back
9 down to the jury lounge and that'll give us enough room for
10 everybody to sit down.

11 As I've said to the prospective jurors
12 yesterday is everybody suitably uncomfortable? Ladies and
13 gentlemen of the prospective jury, my name is Bill Maupin,
14 District Court Judge that's presiding over this case. This
15 is State of Nevada versus James Montell Chappell, case
16 number C131341. The defendant is present represented by his
17 attorneys, the State of Nevada represented by deputy
18 district attorneys. The State and the defense has already
19 announced ready. We have qualified for cause 31 prospective
20 jurors; is that correct at this point?

21 MR. HARMON: Yes, it is, Your Honor.

22 THE COURT: Ladies and gentlemen, as you are
23 now aware this is a case in which the State is seeking a
24 conviction against the defendant for the primary charge of
25 first degree murder. The death penalty is being sought in

1

1 this case. You have filled out jury questionnaires which
2 have been designed to facilitate jury selection. They have
3 served that purpose thus far as we have been able to get
4 most of the jury presently seated from a standpoint of
5 qualifying jurors for cause. We have five more positions to
6 fill and at this point I would ask that the Deputy District
7 Attorney stand, state the general nature of this action and
8 read off the list of witnesses the State may call in support
9 of its case.

10 MR. HARMON: Thank you, Judge.

11 Good afternoon, ladies and gentlemen. As the
12 court has made you aware this is a criminal case. The
13 defendant is charged by the State of Nevada with three
14 crimes. They are burglary, robbery with use of a deadly
15 weapon and murder with the use of a deadly weapon. The
16 deadly weapon alleged is a knife.

17 My name is Mel Harmon. I will be one of the
18 prosecutors on the case. I'm employed as a Deputy District
19 Attorney here in Clark County. My partner is Abbi Silver
20 seated at counsel table. She also is a Deputy District
21 Attorney.

22 The defendant Mr. Chappell is charged with
23 committing crimes against Deborah Ann Panos. The evidence
24 will show that at the time she was killed she was the mother
25 of three and 26 years of age. The evidence will further

1 show that the defendant committed these crimes at a place
2 where she lived. He had been a boyfriend of Miss Panos for
3 eight to ten years. In fact, he fathered the three children
4 that she was the mother of. The location of the offense is
5 the Balerina Mobile Home Park at 839 North Lamb Boulevard,
6 space 125. The offenses occurred on August the 25th, 1995
7 during the early afternoon hours.

8 The State will call witnesses from among the
9 following persons. I want to prepare you this is a lengthy
10 list. I don't mean to suggest that we'll call everyone.
11 But we do want to alert you to any potential witnesses.
12 Naturally the parties have an interest in knowing if any of
13 you as prospective jurors are acquainted with those who may
14 be witnesses in the case. But don't be intimidated by the
15 length of the list. Actually the State will call about 25
16 witnesses during its case in chief and this list is much
17 longer than that.

18 Norm Adams, Las Vegas. K. Adkins, A-d-k-i-n-s,
19 of the Las Vegas Metropolitan Police Department. Larry
20 Arave, A-r-a-v-e, of Las Vegas. Luana Dorene Ayers,
21 A-y-e-r-s, Las Vegas. Laura Berfield, B-e-r-f-i-e-l-d, of
22 Tucson, Arizona. R. Burton, Al Cabrales, C-a-b-r-a-l-e-s,
23 both of the Las Vegas Metropolitan Police Department. Mike
24 Compton, C-o-m-p-t-o-n, Las Vegas. Dan Connell and Terry
25 Cook both of the Las Vegas Metropolitan Police Department.

1 C. Dickens, D-i-c-k-e-n-s, also of the Metropolitan Police
2 Department. Bill Duffy, Las Vegas. John and Lisa Duran
3 both of Las Vegas, the last name is D-u-r-a-n. Linda
4 Errichetto, E-r-r-i-c-h-e-t-t-o, of the Metropolitan Police
5 Department. Lisa Foreman, F-o-r-e-m-a-n, of Cellmark
6 Diagnostics in Germantown, Maryland. Steve Grabowski,
7 G-r-a-b-o-w-s-k-i, Las Vegas. Dr. Sheldon Green of the
8 Coroner Medical Examiner's office here in Las Vegas. A.
9 Hanners, H-a-n-n-e-r-s, and D. Heiner, H-e-i-n-e-r, both of
10 the Las Vegas Metropolitan Police Department. Ed Henderson,
11 Ladonna Jackson both of Las Vegas, Nevada. G. Jolley,
12 J-o-l-l-e-y. W. Keeton, K-e-e-t-o-n, E. Kerns, K-e-r-n-s,
13 Bill Leaver, L-e-a-v-e-r and Russell Lee, L-e-e, all of the
14 Las Vegas Metropolitan Police Department.

15 Michelle Mancho, M-a-n-c-h-o, Las Vegas.
16 Lawrence Martinez, Chino, California. M. Maston,
17 M-a-s-t-o-n, Metropolitan Police Department. K. Morris, Las
18 Vegas. Maynard Munson, Tucson, Arizona. Paul Osuch,
19 O-s-u-c-h, of the Metropolitan Police Department. James
20 Panos, Tucson, Arizona. Norma Penfield, P-e-n-f-i-e-l-d, of
21 Tucson. M. Perkins, D. Peterson both of the Metropolitan
22 Police Department. Mike Pollard, P-o-l-l-a-r-d, Las Vegas.
23 Phil Ramos, R-a-m-o-s, and R. Rees, R-e-e-s, both of the
24 Metropolitan Police Department. Kimberly Sempson,
25 S-e-m-p-s-o-n, of La Habra, California. M. Shadler,

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1 S-h-a-d-l-e-r, Las Vegas. Latrona Smith, first name is
2 L-a-t-r-o-n-a, North Las Vegas, Nevada. Charmaine Smith,
3 Las Vegas. Monte Spoor of the Metropolitan Police
4 Department. John Stallings, S-t-a-l-l-i-n-g-s, Las Vegas.
5 K. Townsend, T-o-w-n-s-e-n-d, Las Vegas. Deborah Turner
6 also of Las Vegas. Jim Vacarro, V-a-c-a-r-r-o, M.
7 Washington both of the Las Vegas Metropolitan Police
8 Department. Wendy Wilkinson, Las Vegas. Willie Wiltz,
9 W-i-l-t-z, of Las Vegas. Calvin Winchell, also of Las
10 Vegas. W. Yada, Metropolitan Police Department. Paula
11 Yates, Cellmark Diagnostics, Germantown, Maryland. Alan
12 Williams. David Stansbury, S-t-a-n-s-b-u-r-y. Michael
13 Szeles, S-z-e-l-e-s, and Daniel Giersdorf, G-i-e-r-s-d-o-r-f
14 all of the Metropolitan Police Department.

15 Tanya Hobson, H-o-b-s-o-n, Las Vegas. Dr. John
16 McCourt, M-c-C-o-u-r-t, Las Vegas. Dina Freeman,
17 F-r-e-e-m-a-n, Tucson. Dorothy Klein, Metropolitan Police
18 Department. W. Grove, Las Vegas. L. McNitt, M-c-N-i-t-t.
19 Officer Haggerty, H-a-g-g-e-r-t-y, Officer J. Earnst,
20 E-a-r-n-s-t, Officer Neidkowsk, N-e-i-d-k-o-w-s-k-i,
21 Officer Vernon, V-e-r-n-o-n, Officer Ausserns,
22 A-u-s-s-e-r-n-s, and Officer Stoner, S-t-o-n-e-r, all of the
23 Tucson Police Department in Tucson, Arizona.

24 Kenneth Gay, Lansing, Michigan. Paul Widner,
25 W-i-d-n-e-r and John Priebe, P-r-i-e-b-e, of the Lansing

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1 Police Department in Lansing, Michigan. Al Granger, address
2 unknown, Robin Cotton or designee Cellmark Diagnostics,
3 Germantown, Maryland.

4 THE COURT: Thank you, Mr. Harmon.

5 Mr. Brooks, would you introduce your colleague
6 and your client and state any witnesses you think the
7 defense may call even though we know that the defense does
8 not have to call any witnesses.

9 MR. BROOKS: Thank you, Judge.

10 My name is Howard Brooks, I'm a defense
11 attorney here in town. My partner is Wil Ewing. We'll be
12 trying this case. My client is James Chappell.

13 THE COURT: Thank you.

14 Ladies and gentlemen of the prospective jury
15 panel, we will now proceed with the matter of jury selection
16 of the last five prospective jurors. At this time I would
17 ask whether either of the parties desire to present a
18 challenge to the prospective jury panel this afternoon as a
19 whole?

20 MR. HARMON: The State does not, Your Honor.

21 MR. BROOKS: The defense does not, Your Honor.

22 THE COURT: Thank you. At this time I would
23 ask the clerk to call the roll of the prospective jurors.

24 THE CLERK: Please answer here or present when
25 your name is called.

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Claude R. Hall.

BADGE NO. 481: Here.

THE CLERK: Willie Arthur Blizzard.

BADGE NO. 482: Here.

THE CLERK: Marylen Cotter Burris.

BADGE NO. 483: Here.

THE CLERK: Belinda M. Franklin.

BADGE NO. 484: Here.

THE CLERK: Cheryl Ann Covey.

BADGE NO. 485: Here.

THE CLERK: Tammy Silva Pessagno.

BADGE NO. 487: Here.

THE CLERK: Albert A. Gualtier, Jr.

BADGE NO. 488: Here.

THE CLERK: Phaedra Tschann Burke.

BADGE NO. 489: Here.

THE CLERK: Gilbert Correa.

BADGE NO. 490: Here.

THE CLERK: Michael Henry Armstrong.

BADGE NO. 491: Here.

THE CLERK: Christopher Napolitano.

BADGE NO. 492: Here.

THE CLERK: Adraine Denise Jones-Marshall.

BADGE NO. 493: Here.

THE CLERK: Constance Marie Ludgate.

2 1 BADGE NO. 494: Here.

2 2 THE CLERK: Anna V. Woelfel.

3 3 BADGE NO. 496: Here.

4 4 THE CLERK: Virginia Ruth Styff.

5 5 BADGE NO. 497: Here.

6 6 THE CLERK: Dawn Marie Cagliostro.

3 7 BADGE NO. 498: Here.

8 8 THE CLERK: Lorri Campbell.

9 9 BADGE NO. 499: Here.

10 10 THE CLERK: Carol Ann Castelone.

11 11 BADGE NO. 500: Here.

12 12 THE CLERK: Mariano Ted Teodoro.

13 13 BADGE NO. 501: Here.

14 14 THE CLERK: William Michael Rogers.

15 15 BADGE NO. 502: Here.

16 16 THE CLERK: Janice Williams.

17 17 BADGE NO. 505: Here.

18 18 THE CLERK: Mark Steven Snavelly.

19 19 BADGE NO. 506: Here.

20 20 THE CLERK: Gustav Scott Von Wolfradt.

21 21 BADGE NO. 507: Here.

22 22 THE CLERK: Karen Mattson.

23 23 BADGE NO. 508: Here.

24 24 THE CLERK: Dia Marie Moon.

25 25 BADGE NO. 510: Here.

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1 THE CLERK: William Hugh Mains.
2 BADGE NO. 512: Here.
3 THE CLERK: James Glen Gilliard.
4 BADGE NO. 514: Here.
5 THE CLERK: Rodney Paul Williams.
6 BADGE NO. 515: Here.
7 THE CLERK: Scott Lewis Greenspan.
8 BADGE NO. 517: Here.
9 THE CLERK: Christine Diane Niquette.
10 BADGE NO. 518: Yes.
11 THE CLERK: Harlan McLeod Wilson.
12 BADGE NO. 519: Here.
13 THE CLERK: Margie M. Covert.
14 BADGE NO. 520: Here.
15 THE CLERK: Cynthia L. McNeely.
16 BADGE NO. 521: Here.
17 THE CLERK: Bonnie Brogan Swandal.
18 BADGE NO. 523: Here.
19 THE CLERK: Tammy Choung.
20 BADGE NO. 524: Here.
21 THE CLERK: Gail Adele Stevenson.
22 BADGE NO. 525: Here.
23 THE CLERK: Robert Arlyn Glotfelty.
24 BADGE NO. 526: Here.
25 THE CLERK: Joyce Anderson.

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BADGE NO. 527: Here.

THE CLERK: David L. Wright.

BADGE NO. 529: Here.

THE CLERK: Michael John Swanson.

BADGE NO. 530: Here.

THE CLERK: Robert Earl Sackville.

BADGE NO. 531: Here.

THE CLERK: Sidney Love, Jr.

BADGE NO. 532: Here.

THE CLERK: William Milton Swanson.

BADGE NO. 533: Here.

THE CLERK: Lisa Denny.

BADGE NO. 534: Here.

THE CLERK: Paulette Porter Olekson.

BADGE NO. 535: Present.

THE CLERK: Shelli D. Banks.

BADGE NO. 536: Here.

THE CLERK: Bryan D. Gizelbach.

BADGE NO. 537: Here.

THE CLERK: Andrea Prey.

BADGE NO. 538: Here.

THE CLERK: Debra Ann Selby.

BADGE NO. 539: Here.

THE CLERK: Kenneth Piscopo.

BADGE NO. 541: Here.

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1 THE CLERK: Jacqueline Carver.
2 BADGE NO. 542: Here.
3 THE CLERK: Donna Anne McAleer.
4 BADGE NO. 543: Here.
5 THE CLERK: Michael Arthur Neitz.
6 BADGE NO. 544: Here.
7 THE CLERK: Rose Schweppe Cirac.
8 BADGE NO. 545: Here.
9 THE CLERK: Toni Galyean Allen.
10 BADGE NO. 547: Here.
11 THE CLERK: Louann Morales.
12 BADGE NO. 548: Here.
13 THE CLERK: Michael Eugen Helbert.
14 BADGE NO. 549: Here.
15 THE CLERK: Heidi Garafalo.
16 BADGE NO. 550: Here.
17 THE COURT: Is there anyone whose name that
18 wasn't called? Let the record reflect a uniform negative
19 response.
20 Will counsel agree and stipulate that I may
21 have the entire panel sworn at the same time to answer
22 truthfully all questions propounded to them as to
23 qualifications to serve as jurors as I might ask questions
24 collectively so it would not be necessary to administer the
25 oath to each?

3

1 MR. HARMON: Yes.

2 MR. BROOKS: Yes.

3 THE COURT: At this time I would ask the jury
4 panel to please stand and you will be sworn.

5 (Potential jurors sworn.)

6 THE COURT: Ladies and gentlemen, as you have
7 now surmised whoever designed this courtroom and the other
8 courtrooms in this courthouse didn't know much about how
9 courtrooms worked so I know you must be uncomfortable
10 sitting in these benches and in close proximity to each
11 other. If at any time you wish to get up and use the
12 facilities if you're not in the jury box or you need to
13 stand up and stretch, please do so. You won't bother us in
14 the slightest. We'll try to make this as expeditious and as
15 comfortable for you as we can. If you feel like you need to
16 stretch, please feel free to do that.

17 At this time I am going to read a series of
18 ground rules for this jury selection. They come in the form
19 of preliminary jury instructions. I'd rather speak to you
20 extemporaneously, but they have to be read specifically. So
21 I'll read to you these carefully prepared instructions.

22 Ladies and gentlemen, we are about to commence
23 what is called voir dire examination of the prospective
24 jurors in this case. The term voir dire, means, loosely
25 translated, to tell the truth. During this process you will

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1 be asked questions bearing on your ability to sit as fair
2 and impartial jurors. To accomplish this result various
3 questions will be asked of you by me or counsel of the
4 parties. On occasion some will seem somewhat personal and
5 we do not wish to unnecessarily pry into your personal
6 lives; however, the questions are necessary so that counsel
7 and the court can make an intelligent determination as to
8 your capabilities to serve fairly and impartially.

9 I want you to know that I and the attorneys and
10 all other persons involved in this case are deeply concerned
11 with having this matter tried by 12 people who are
12 completely open-minded, neutral, objective and unbiased in
13 their thinking.

14 Wide discretion is vested in the trial judge as
15 to the method of examination of jurors. As I stated I may
16 personally conduct the voir dire, but I must give the
17 attorneys the opportunity to participate in this
18 questioning.

19 The following areas of inquiry are not properly
20 within the scope of voir dire examination by counsel:

21 One, questions already asked and answered by
22 the court and other counsel;

23 Two, questions touching upon anticipated
24 questions on the law;

25 Three, questions touching upon a verdict a

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1 juror would return when based upon hypothetical facts;

2 Four, questions are in substance arguments of
3 the case.

4 Ladies and gentlemen, it is important that you
5 know the significance of full, complete and honest answers
6 to all the questions we are about to ask you. I caution you
7 not to try to withhold anything which might indicate bias or
8 prejudice of any sort by any of you. Should you fail to
9 answer truthfully or if you hide or withhold anything
10 touching upon your qualifications, that fact may tend to
11 contaminate your verdict and subject you to further inquiry
12 even after you're discharged as jurors.

4

13 Your decision should be based upon all the
14 evidence presented during the trial and not based upon
15 preconceived prejudice or bias. Prejudice is an irrational
16 predisposition against something or someone and bias is an
17 irrational predisposition in favor of something or someone.

18 I will conduct a general voir dire examination
19 of all of you while you are seated in the audience. After
20 those questions are asked, the clerk will call five names
21 using the order provided to us by the jury commissioner to
22 fill the jury box.

23 Sometime during the process of selecting a jury
24 the attorneys for both sides will have the right to ask that
25 a particular person not serve as a juror. These requests

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1 are called challenges. There are two types of challenges,
2 challenges for cause and peremptory challenges. A challenge
3 for cause means that a juror has been excused because his or
4 her answers to some of the voir dire questions indicate that
5 he or she would have a difficult time in giving a fair and
6 impartial hearing to the case. A peremptory challenge means
7 that a juror can be excused from duty without counsel having
8 to give a reason for the excusal. Please do not be offended
9 should you be excused by either of the challenge procedures.
10 They are simply a part of the procedures designed to protect
11 the rights of the parties under our system of government.
12 If you wish to respond to a question individually and in the
13 affirmative, please raise your hand, give your name and
14 indicate the badge number that you have been assigned.

15 First and very importantly to any case is there
16 anyone who has such a sympathy, prejudice or bias relating
17 to age, religion, race, creed, sex or national origin that
18 they feel would affect their ability to be open-minded, fair
19 and impartial?

20 BADGE NO. 548: Louann Morales, 548. I taught
21 religious education for ten years and I don't believe in the
22 death penalty and believe in the right to life and that's
23 where I feel bias.

24 THE COURT: Is there any circumstance under
25 which you could consider all of the four forms of punishment

4 1 for first degree murder?

2 BADGE NO. 548: I thought about this since day
3 one and I honestly don't think I can live with that
4 conscience had it come out to being the death penalty.

5 THE COURT: Counsel stipulate?

6 MR. HARMON: The State stipulates, Your Honor.

7 MR. BROOKS: Defense would.

8 THE COURT: Thank you, ma'am. You can go back
9 to the jury commissioner.

10 BADGE NO. 524: Tammy Choung, 524, and I feel
11 the same way about the capital punishment.

12 THE COURT: Under no circumstances could you
13 consider any of the four forms of punishment under the
14 statute?

15 BADGE NO. 524: I would consider it but not the
16 death penalty.

17 THE COURT: There are four forms of punishment;
18 death penalty, life with the possibility parole, life
19 without the possibility of parole and 50 years in the Nevada
20 State Prison with parole eligibility to commence when 20
21 years has been served. Are you telling us now that you
22 would not be able to fairly consider all four forms of
23 punishment?

24 BADGE NO. 524: Not all four, no.

25 THE COURT: Which is the form of punishment

4 1 that you have a problem with?

2 BADGE NO. 524: The death penalty.

3 THE COURT: I'll go ahead and excuse you from
4 jury service.

5 MR. HARMON: What was her number once more?

6 BADGE NO. 524: 524.

7 THE COURT: You can return back to the jury
8 commissioner.

9 THE COURT: We'll get to the death penalty
10 questions. This question has to do really with preconceived
11 bias or prejudice.

12 BADGE NO. 550: 550. I am a victim of domestic
13 violence and I'm not quite sure I could be fair to the
14 defendant.

15 THE COURT: If you'd be seated.

16 Anyone else on this side of the room?

17 BADGE NO. 488: 488. I was a police officer in
18 Chicago for four years.

19 THE COURT: As a police officer that means
20 you're biased or prejudice?

21 BADGE NO. 488: Prejudiced, yes.

22 THE COURT: You can be seated.

23 BADGE NO. 505: Death penalty, badge number
24 505, I don't agree with that.

25 THE COURT: We'll get to that in just a second.

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Are any of you acquainted with the defendant or his counsel? Let the record reflect a uniform negative response.

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Are any of you acquainted with the deputy district attorneys who have introduced themselves here this afternoon, Miss Silver or Mr. Harmon? Let the record reflect a uniform negative response.

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The district attorney's office employs many deputies and other personnel. Is there anyone who has such a close relationship with either the district attorney, his deputy or other member of his staff that would affect your ability to serve as a fair and impartial juror in this case?

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14

BADGE NO. 488: 488. I know one of the bailiffs downstairs.

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THE COURT: Well, they're not in the district attorney's office.

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18

Anyone else? Let the record reflect a uniform negative response.

19

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21

Are any of you acquainted with any of the witnesses whose names were previously mentioned by the Deputy District Attorney this afternoon?

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23

BADGE NO. 529: Terry Cook with the Las Vegas Police Department. 529.

24

25

THE COURT: You know Terry Cook?

BADGE NO. 529: Yeah.

5

1 THE COURT: Is it a social relationship or is
2 it —

3 BADGE NO. 529: Social.

4 THE COURT: Is there anything about Mr. your
5 relationship with Mr. Cook that would affect your ability to
6 judge his credibility although he's a criminalist?

7 BADGE NO. 529: I don't think so.

8 BADGE NO. 543: Donna McAleer, 543. I know a
9 woman named Kay Morse and I don't know if it's the same.

10 THE COURT: How well do you know her?

11 BADGE NO. 543: We are working associates.
12 We're not in the same office.

13 THE COURT: Do you know where she works so
14 maybe the district attorney could assess whether --

15 MS. SILVER: What was the name?

16 BADGE NO. 543: Kay Morse.

17 THE COURT: Do you know where she works?

18 BADGE NO. 543: Yes. At the University of
19 Nevada Las Vegas at the radio station.

20 THE COURT: Is this the same person?

21 MR. HARMON: We don't think so, Your Honor.

22 BADGE NO. 549: Mike Helbert, 549. I know Phil
23 Ramos. My wife went to school with him.

24 THE COURT: Is this anything other than a
25 casual acquaintance?

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BADGE NO. 549: No.

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THE COURT: It's not a close personal

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relationship?

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BADGE NO. 549: No.

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THE COURT: Is there anything about your

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acquaintanceship with this person that would affect your

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ability to be fair to both sides in this case?

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BADGE NO. 549: No.

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MR. BROOKS: For the record who was the

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individual he knows?

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BADGE NO. 549: Phil Ramos.

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BADGE NO. 545: Rose Cirac, badge 545. I'm an

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acquaintance of a Norma Adams.

14

THE COURT: And do you know where she works?

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BADGE NO. 545: No.

16

THE COURT: Is there anything about your

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acquaintanceship with this person that would affect your

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ability to fairly judge her credibility?

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BADGE NO. 545: No.

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THE COURT: So it's just a passing?

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BADGE NO. 545: Yes.

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THE COURT: Acquaintanceship?

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BADGE NO. 545: Yes.

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BADGE NO. 489: Badge 489. I know Kay Morse

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also at UNLV through the radio station.

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THE COURT: Is it a close relationship in any event?

BADGE NO. 489: I know her hanging out going to the station, but I don't know her beliefs or anything.

THE COURT: Well, assuming that's the witness is there anything about this person that would affect your ability to judge her credibility if she took the witness stand?

BADGE NO. 489: I honestly don't know. I don't think so.

THE COURT: I don't think it's the same person. Anybody else know any of the prospective witnesses? Let the record reflect a uniform negative response.

At this point I am going to ask for the identity of any prospective jurors that have extenuating circumstances that would affect their ability to sit in a two and a half week jury trial. This matter is scheduled to go through this week with the exception of Wednesday and through next week through Tuesday afternoon and then possibly into the following week.

BADGE NO. 500: I work in preop and we're short staffed, badge 500.

THE COURT: Where do you work?

BADGE NO. 500: In preop in a surgery center.

5

1 THE COURT: I'll go ahead and excuse you from
2 jury service. You can go back to the jury commissioner.

3 BADGE NO. 499: My name is Lorri Campbell, 499.
4 Currently I have a child that's in day-care. My husband and
5 I have just one car at the present time and we live like way
6 on the northwest side and we are taking each other back and
7 forth to Lake Mead and 95.

8 THE COURT: I'll go ahead and excuse you.

9 BADGE NO. 526: Bob Glotfelty, number 526, I am
10 self-employed.

11 THE COURT: What's the nature of your
12 employment?

13 BADGE NO. 526: I'm a computer consultant so if
14 I'm working here I'm not working.

15 THE COURT: So you're the business?

16 BADGE NO. 526: I am the business. I am a one
17 man business.

18 THE COURT: I will go ahead and excuse you from
19 jury service.

20 BADGE NO. 527: Badge number 527. I teach and
21 we're in the middle of school right now, school semester.

22 THE COURT: Have you been arranging for
23 substitute teachers during this time?

24 BADGE NO. 527: I've had to the last times
25 we've had to keep coming.

5

1 THE COURT: Last week when you came over and
2 yesterday and today?

3 BADGE NO. 527: Uh-huh.

4 THE COURT: I'll go ahead and excuse you from
5 service.

6 BADGE NO. 521: Badge number 521. I have a
7 letter from my employer. We're a new company, he considers
8 me essential personnel. Plus my husband is to be deployed
9 overseas in about within the next couple of weeks.

10 THE COURT: All right. I'll go ahead and
11 excuse you from service.

12 BADGE NO. 537: My name is Bryan Gizelbach,
13 badge number 537. My son's fiance has been admitted to the
14 psycho ward and has caused stress to the immediate family.

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15 THE COURT: He's in-patient right now?

16 THE DEFENDANT: Yes, at county hospital in
17 Milwaukee. And there is a lot of stress and my son is not
18 taking it well and my daughter is suffering from anxiety
19 attacks and we're anticipating we might go back to
20 Milwaukee.

21 THE COURT: I'll excuse you.

22 BADGE NO. 545: I work at Sunrise Hospital,
23 badge number 545.

24 THE COURT: In what department?

25 BADGE NO. 545: Ultrasound department, and the

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1 staffing level is going to be decreased in the next few
2 weeks and it would be very difficult to find staff and
3 replace me.

4 THE COURT: We'll put you at the bottom of the
5 list.

6 BADGE NO. 496: 496. I work for Sprint and
7 we're down-sizing, closing the warehouse and they've advised
8 me Thursday they're closing my repair shop and I have three
9 weeks to go ahead and get people placed.

10 THE COURT: We'll place you at the bottom of
11 the list.

12 BADGE NO. 541: 541. Three weeks of no
13 commission, head of the household.

14 THE COURT: What kind of job?

15 BADGE NO. 541: Mechanic.

16 THE COURT: I'll go ahead and excuse you from
17 service.

18 BADGE NO. 550: 550. I am a single mother of
19 three and I support them on commission sales.

20 THE COURT: I'll excuse you.

21 BADGE NO. 490: Badge 490. Electrical
22 contractor and I've got my license to be reinstated and I
23 work with a friend of mine.

24 THE COURT: So are you doing piecework?

25 BADGE NO. 490: Yes, sir. . . .

6

1 THE COURT: I'll go ahead and excuse you from
2 jury service.

3 BADGE NO. 484: 484. I had a miscarriage in
4 May, I'm approximately three weeks pregnant right now, my
5 doctor has excused me, due to the stress level he doesn't
6 want me to do this and that's the reason I miscarried five
7 months ago. Increased amount of stress.

8 THE COURT: I will excuse you.

9 BADGE NO. 481: Badge 481. I'm under treatment
10 for arrhythmic heart with a cardiologist and I have an
11 appointment like next week and they're probably going to zap
12 me, whatever that means.

13 THE COURT: I hope it isn't as bad as it
14 sounds. I understand. He'll use electronic stimulation to
15 reestablish your rhythm. I'll go ahead and excuse you from
16 jury service.

17 BADGE NO. 485: Badge 485. My husband and I
18 just started a company two months ago, home building
19 company, and we're getting ready to close on two houses on
20 October 15th so we're combining all of our legal lenders and
21 so forth and he and I are the only ones doing this and this
22 will cause tremendous hardship.

23 THE COURT: I'll go ahead and excuse you.

24 BADGE NO. 487: Badge number 487. I work at
25 the MGM Grand and I'm a performer there so I will be out of

6

1 work there. It's difficult to replace me because you would
2 have to come in and train somebody to do everything that I
3 do, dance-wise.

4 THE COURT: Is this at night or during the day?

5 BADGE NO. 487: It's during the day. I'm in
6 the theme park. And I am the only person in my family
7 that's employed.

8 THE COURT: We'll put you at the bottom of the
9 list.

10 BADGE NO. 488: Badge number 488. This week
11 I'm leaving for vacation for a week out in California, Your
12 Honor, and I have rooms out there that are nonrefundable.

13 THE COURT: We'll put you at the bottom of the
14 list.

15 BADGE NO. 482: 482. I'm also employed at a
16 resort hotel that recently opened up and my position is
17 management in receiving and hotel warehouse and we have no
18 one trained to take my place.

19 THE COURT: We'll put you at the bottom of the
20 list.

21 BADGE NO. 519: 519. I just had a quadruple
22 bypass and I have to go follow up for the 14th of this
23 month.

24 THE COURT: I will go ahead and excuse you from
25 jury service.

6

1 BADGE NO. 510: Badge number 510. I work for
2 W.R. Gibbons third-party administrator for worker's
3 compensation. Last Thursday we had two employees quit and
4 so my workload has increased, and I also go to school and I
5 have one professor that's not very accommodating even to
6 jury duty. And we have a test every Thursday.

7 THE COURT: Well, I guess we could arrange an
8 accommodation, but it won't be necessary. I'll excuse you.

7

9 BADGE NO. 495: Badge number 495. I just had
10 two recent knee surgeries and I go to physical therapy three
11 times a week 4:30 to six. My therapist leaves at six and if
12 I'm not there at 4:30, I don't get the full length of my
13 therapy and if I don't go to therapy, that will set me back
14 from getting better.

15 THE COURT: I understand. The court's been
16 there so I'll let you out of jury service.

17 BADGE NO. 505: Badge number 505. I am the
18 mother of two kids and I solely support them. I work for
19 APL Laboratory, I'm a supervisor and I have to run three
20 clinics and currently I'm going to classes for domestic
21 violence.

22 THE COURT: I'll go ahead and excuse you from
23 jury service.

24 BADGE NO. 535: Badge number 535. I'm a
25 special education teacher and it's difficult for my students

7

1 to deal with change.

2 THE COURT: Sure. I'll go ahead and excuse you
3 from jury service.

4 BADGE NO. 508: Karen Mattson, 508. A good
5 friend of mine lives in the Balerina Mobile Home Park and at
6 the time that this took place she kind of filled me in on
7 some of the stuff that took place that she had heard about.

8 THE COURT: So you have more direct information
9 about this than from reading the newspaper and having a
10 friend there?

11 BADGE NO. 508: Uh-huh.

12 THE COURT: I'll excuse you.

13 BADGE NO. 539: 539. I'm the only support
14 staff for my entire office so they would have a hard time
15 without me.

16 THE COURT: What is the nature of your office?

17 BADGE NO. 539: I work for the attorney in the
18 Human Resources department.

19 THE COURT: Who is the attorney?

20 BADGE NO. 539: Dorothy Cox. She used to work
21 with the attorney general's office.

22 THE COURT: We'll put you at the bottom of the
23 list.

24 Anyone else? Badge number 545, could you give
25 me your name, please?

7

1 BADGE NO. 545: Rose Cirao.

2 THE COURT: You're excused from jury service in
3 this rotation.

4 Badge number 496.

5 BADGE NO. 496: Anna Woelfel.

6 THE COURT: I will excuse you from jury service
7 in this rotation.

8 Badge number 487 I'll excuse you from jury
9 service.

10 Badge number 492.

11 BADGE NO. 492: Christopher Napolitano.

12 THE COURT: I'll excuse you from jury service
13 in this rotation.

14 Badge number 539, you're excused from jury
15 service in this rotation.

16 And badge number 488.

17 BADGE NO. 488: Albert Gualtier.

18 THE COURT: You're excused from jury service in
19 this rotation.

20 Has anyone on the panel ever been engaged in
21 law enforcement work or have a spouse or close relative
22 that's been engaged in that capacity?

23 BADGE NO. 529: Yes, sir.

24 THE COURT: You work with Terry Cook?

25 BADGE NO. 529: My wife worked in the

7

1 fingerprint bureau and works with convicted felons.

2 THE COURT: Anything about her work that would
3 affect your ability to judge the facts of this case?

4 BADGE NO. 529: No, sir.

5 BADGE NO. 544: Badge 544. I worked at the San
6 Diego Police Department.

7 THE COURT: Anything that would affect your
8 ability to judge this case?

9 BADGE NO. 544: No, sir.

10 BADGE NO. 482: 482. I have a sister and a
11 niece that are both prison guards.

12 THE COURT: Anything about their work or your
13 knowledge of it that would affect your ability to be fair to
14 both sides in this case?

15 BADGE NO. 482: I'm not sure whether it would.

16 THE COURT: You don't know the defendant or any
17 of the witnesses, correct?

18 BADGE NO. 482: Right.

19 THE COURT: And so is there something about
20 your interaction with your relatives --

21 BADGE NO. 482: My sister and I are pretty
22 close.

23 THE COURT: But is there something about that
24 interaction that would prohibit you from being fair to both
25 sides in this case as a juror?

7

1 BADGE NO. 482: I'm not sure.

2 THE COURT: The question is whether their work
3 and what they told you about it somehow has jaded you
4 against fairly judging the facts of this case?

5 BADGE NO. 482: I think it would enter my
6 judgment somewhat.

7 THE COURT: Why do you say that?

8 BADGE NO. 482: I hear a lot of things about
9 what actually goes on in prisons. One's at a male prison
10 and the other one is at a female prison.

11 THE COURT: Well, go ahead and be seated and
12 I'm not sure that that's substantial enough to really cause
13 a problem.

14 Anyone else?

15 BADGE NO. 520: Yes, 520. About two years ago
16 my husband worked for Jean prison for about two years.

17 THE COURT: Anything about his work that would
18 affect you to be fair to both sides?

19 BADGE NO. 520: Yes.

20 THE COURT: Why is that?

21 BADGE NO. 520: Well, just all the stuff he
22 told me.

23 THE COURT: We'll go ahead and have you have a
24 seat.

25 BADGE NO. 534: Badge number 534, my name is

8

1 Lisa Denny and I have a cousin that is a police officer. I
2 don't have no communication with him.

3 THE COURT: Is there anything about that person
4 or your knowledge that would affect you to be fair to both
5 sides?

6 BADGE NO. 534: No.

7 BADGE NO. 549: 549. My ex-brother-in-law was
8 a police officer.

9 THE COURT: Anything about that work that would
10 affect your sense of fairness in this case?

11 BADGE NO. 549: No.

12 THE COURT: Anyone else? Let the record
13 reflect a uniform negative response.

14 Is there any member of the prospective jury
15 panel that would have a tendency to give more weight or
16 credence to the testimony of a law enforcement officer
17 simply because that witness was a law enforcement officer?
18 Would someone have a tendency to believe policemen more than
19 other witnesses?

20 BADGE NO. 529: Being an ex-police officer,
21 yes, I would be being a state employee.

22 THE COURT: From time to time you had a chance
23 to interact with your colleagues, correct?

24 BADGE NO. 529: Yes.

25 THE COURT: And some were more worthy of belief

8

1 than others?

2 BADGE NO. 529: This is true.

3 THE COURT: If you were sitting here observing
4 a witness on the stand and analyzing what that witness said
5 in relation to all the facts in the case, could you evaluate
6 that witness, a police witness, fairly and determine whether
7 that person in your view was being candid?

8 BADGE NO. 529: Yes.

9 THE COURT: Anyone else? Let the record
10 reflect a uniform negative response.

11 Is there anyone who may not be able to follow
12 the instructions of the court on the law in the case even if
13 the instructions on the law differed from their personal
14 conceptions of what the law ought to be? Does anyone have
15 any problem following the court's instructions? Let the
16 record reflect a uniform negative response.

17 Let me give you an example. If, as I will, I
18 instruct the jury before the jury gets the case that the
19 State must prove its case beyond a reasonable doubt, would
20 anyone in the jury panel not be able to follow that
21 instruction for example? Let the record reflect a uniform
22 negative response.

23 Has anyone been contacted by any individual
24 circulating material about the jury system near the
25 courthouse? Let the record reflect a uniform negative

8

1 response.

2 Under our system certain principles of law
3 apply in every criminal trial. They are, one, that a person
4 is presumed innocent; two, that the charging document, in
5 this case an Information, filed in the case is a mere
6 accusation and is not evidence of guilt; and, three, that
7 the State must prove the defendant is guilty beyond a
8 reasonable doubt. Does anyone not understand or believe in
9 these basic precepts of American justice? Let the record
10 reflect a uniform negative response.

11 Does anyone know anything about this case other
12 than what has been stated in the courtroom today? Anyone
13 have any advanced knowledge of this case? Let the record
14 reflect -- yes, sir?

15 BADGE NO. 482: 482. I heard about the case on
16 radio back when it first happened and bits and pieces of
17 information on it up until the point where Mr. Chappell was
18 apprehended. I'm one of these people who listen to the news
19 all the time.

20 THE COURT: And obviously we don't want jurors
21 that live in a vacuum either. The question is whether you
22 could listen to the evidence and wait until all the evidence
23 is in before making any determinations about the guilt or
24 innocence of the defendant. Can you do that?

25 BADGE NO. 482: Yes.

8

1 THE COURT: With that we will commence
2 individual voir dire of the next five prospective jurors and
3 we'll start with position 19 since that was where we left
4 off so you can all keep up on your worksheets.

5 To save a little bit of time is there anyone
6 among the prospective jury panel that has such a strong
7 philosophical feeling about the penalty aspect of this case
8 that they could not consider all four statutory forms of
9 punishment? And those four statutory forms of punishment
10 are the death sentence, life without the possibility of
11 parole, life with the possibility of parole and 50 years in
12 the Nevada State Prison with parole eligibility after 20
13 years has been served. We'll start on this side of the
14 room.

15 BADGE NO. 494: 494, Connie Ludgate. I
16 wouldn't commit anybody to the death penalty. I don't
17 believe they ought to get life without parole either. I
18 don't believe in that.

19 THE COURT: All right.

20 BADGE NO. 494: The tax dollars at work, no,
21 thank you.

22 THE COURT: That's why we're here, to find that
23 out. You can go back to the jury commissioner at this time.

24 BADGE NO. 543: 543. I have severe
25 reservations about the death penalty philosophically. I can

8 1 understand it's the law in Nevada and I can understand and
2 2 sometimes emotionally I could understand why I would say
9 3 okay, that works for certain cases, but my emotional side
4 4 and intellectual side aren't in complete agreement and I
5 5 really -- it doesn't follow to me that the state should take
6 6 a life.

7 THE COURT: There is a lot of people that feel
8 8 that way; however, that is the law in the State of Nevada.
9 9 The question is even though that is your philosophical --
10 10 that's the philosophical slash intellectual dilemma that you
11 11 are in, could you as a juror once you've taken your oath
12 12 fairly consider all four forms of punishment and follow the
13 13 instruction? The question is whether you could follow the
14 14 instructions or not and consider all four forms of penalty?

15 BADGE NO. 543: I don't think I could consider
16 16 them equally.

17 THE COURT: The question is it's impossible to
18 18 consider -- although the standard questionnaire here talks
19 19 about equal consideration, it's really impossible to find a
20 20 jury where everyone says I'll consider them all equally.
21 21 The question is really a matter of fair consideration of any
22 22 of the four possibilities.

23 BADGE NO. 543: I wouldn't judge anyone who
24 24 made that judgment themselves, but it's not something I
25 25 would be comfortable doing. I could understand that's a

9 1 jury's job and I could entertain the thought. I don't
2 2 know —

3 THE COURT: Again that's the comfort issue.
4 The question is still once you are in the jury box and you
5 were under oath to fulfill this obligation would you be able
6 to assess the case and impose the death penalty?

7 BADGE NO. 543: I could assess the case, I
8 could consider all forms of punishment, I don't know if I
9 could — if I could assess the case.

10 THE COURT: The question is what it comes down
11 to is, is there one of the four forms of punishment that you
12 could not consider on a fair and open-minded basis?

13 BADGE NO. 543: Okay. Sort of like a moment of
14 truth. I don't know until I'm there, but I would try to be
15 open-minded. I just don't know — and I guess it would have
16 to be the merits of the case help me decide that.

17 THE COURT: It's very good that we've had this
18 interchange because this is probably the most illuminating
19 form of interchange that we could have so that the rest of
20 the jury can understand what the nature of this inquiry is.
21 I'll go ahead and let you be seated at this point. If
22 you're picked for further inquiry we'll talk about it some
23 more. Thank you very much for your candor.

24 BADGE NO. 549: 549. I don't believe in life
25 with parole. I believe if it's that bad it should be the

9

1 death penalty.

2 THE COURT: And that's an initial inclination a
3 lot of people have, but the question is based on the fact
4 that the legislature itself requires that there be four
5 alternative forms of punishment for first degree murder and
6 each case is different, each case could compel a different
7 result. The question is as a juror could you consider the
8 other two forms of punishment in addition to life without
9 the possibility of parole and death?

10 BADGE NO. 549: I could consider all of them
11 but the one of life with the possibility of parole.

12 THE COURT: I'll go ahead and excuse you from
13 jury service in this rotation.

14 BADGE NO. 491: 491. I feel the same as him,
15 I'd go for the death penalty if he was convicted. There's
16 no way I would consider parole, no.

17 THE COURT: I will go ahead and excuse you from
18 jury selection. Thank you very much for your candor.

19 BADGE NO. 480: Badge 489. I'm not too clear
20 on whether I can handle the death penalty idea. I have a
21 hard time with saying somebody is guilty for something and
22 then myself taking the sword in hand. I have a problem with
23 that. I don't think that's fair.

24 THE COURT: And of course that's another very
25 elaborate set of constitutional authority from the United

9

1 States Supreme Court. But the question is notwithstanding
2 that philosophical issue could you sit on the jury and using
3 your intellectual side consider fairly all four forms of
4 punishment?

5 BADGE NO. 480: The death penalty I'm not sure
6 if I could go for that one. I lost my father last year to
7 suicide. I have a problem with death. I don't want to
8 impose the death penalty.

9 THE COURT: I'll go ahead and excuse you from
10 jury service.

11 BADGE NO. 501: Badge 501. Out of the four I
12 would not -- I just can't see life with probation. I would
13 seek the death penalty.

14 THE COURT: Excuse me?

10

15 BADGE NO. 501: I would seek the death penalty.

16 THE COURT: But --

17 BADGE NO. 501: I could not consider 50 years
18 of probation for taking someone's life.

19 THE COURT: It's 50 years in the prison
20 eligible for parole after 20 years has been served.

21 BADGE NO. 501: I could not consider that, sir.

22 THE COURT: I'll excuse you from jury service.

23 BADGE NO. 514: Badge 514. I feel the same
24 way. I can't see anyone having parole for what I've heard
25 so far.

10

1 THE COURT: Do you understand that the
2 legislature has made this determination, we ask jurors to
3 follow that. And in order to sit on a jury like this you
4 have to be able to consider all four forms of punishment
5 even if the defendant is convicted of first degree murder
6 and it only happens in the event of first degree with
7 premeditation. So you're saying you could not consider the
8 lesser two penalties?

9 BADGE NO. 514: Right.

10 THE COURT: Counsel?

11 MR. HARMON: We'll stipulate, Your Honor.

12 MR. BROOKS: We will stipulate, Your Honor.

13 THE COURT: Thank you very much. You may go
14 back to the jury room.

15 BADGE NO. 493: Adraine Marshall, juror 493.
16 Now let me understand that we're saying out of all four,
17 because I don't know if I can really consider the death
18 penalty, but I do have the choices out of the three; am I
19 correct or --

20 THE COURT: You have the choice of any of the
21 four.

22 BADGE NO. 493: But I don't know how I would
23 actually -- because of my religious belief I don't know how
24 I would feel about the death penalty.

25 THE COURT: You can be seated.

10

1 BADGE NO. 482: 482. For our economy and taxes
2 I don't believe that someone should sit in prison for the
3 rest of their life. If they're found guilty, then we go
4 with the death penalty.

5 THE COURT: All right. I'll excuse you from
6 jury service in this rotation.

7 BADGE NO. 502: William Rogers, 502. I also
8 have a problem with life without the possibility of parole.
9 I feel the same about taxpayer dollars. I would rather -- I
10 mean I could consider it but it would have to be extenuating
11 circumstances.

12 THE COURT: There's four forms of penalty. You
13 are not to consider the cost of incarceration in this event.
14 What you're considering is the nature of the case, the
15 administrative problems that attend to any of these
16 sentences are not considerations for the deliberation
17 process. Do you understand that?

18 BADGE NO. 502: Yes.

19 THE COURT: So the question is whether you can
20 consider all four forms of punishment and in the proper case
21 give any of the four?

22 BADGE NO. 502: I would consider the death
23 penalty or life with parole or the 50 year sentence before I
24 would consider life without the possibility of parole.

25 THE COURT: Of course that's the hierarchy.

10

1 The question is whether you can keep an open mind as to all
2 four forms of punishment. Can you do that?

3 BADGE NO. 502: Yes, sir.

4 THE COURT: All right. Be seated.

5 Anyone else? Let the record reflect a uniform
6 negative response.

7 Call the next five jurors and put them in the
8 box.

9 THE CLERK: Badge number 483, Marylen Burris,
10 B-u-r-r-i-s.

11 Badge number 493, Adraine Denise
12 Jones-Marshall, J-o-n-e-s-M-a-r-s-h-a-l-l.

13 THE COURT: Before Miss Marshall takes her
14 seat, Miss Marshall, you've indicated some reservations
15 about the death penalty. Is there any set of circumstances
16 in which you could consider the death penalty?

17 BADGE NO. 493: I don't know.

18 THE COURT: Can you keep an open mind about it?

19 BADGE NO. 493: Yes.

20 THE CLERK: Virginia Ruth Styff, S-t-y-f-f,
21 badge number 497.

22 Badge number 502, William Michael Rogers,
23 R-o-g-e-r-s.

24 Badge number 506, Mark Steven Snavelly,
25 S-n-a-v-e-l-y.

10

1 THE COURT: I am going to ask the members of
2 the prospective jury panel to come and sit in this part of
3 the room. That way if you want to get up and use the
4 facilities while this is going on, you can do that without
5 being obtrusive.

6 I am going to excuse juror number 520 for
7 cause.

8 Remember there are no wrong answers to any of
9 these questions and so there's no reason to be apprehensive
10 about the process.

11

12

EXAMINATION

13

BY THE COURT:

14

Q Miss Burris, good afternoon.

15

A Good afternoon.

16

17

Q Any reason that you can think of why you
couldn't be fair to both sides in this case?

18

A No.

19

20

Q Can you wait until all the evidence is in
before coming to any conclusion about any issue in the case?

21

A Yes.

22

23

Q Have you, any member of your family or any
close friends of yours ever been arrested?

24

A Yes.

25

Q Can you tell us about that.

10
11

1 A My son, he was 16 and a half, 17 years old, he
2 broke in somebody pickup. He was arrested and they called
3 me about it.

4 Q Anything about his experience that would affect
5 your thinking in a case like this one?

6 A No. This was his first offense that he ever
7 did. I was glad he got caught. I was glad he got punished
8 for it. He's in the Navy now.

9 Q He's been fine ever since?

10 A Yes.

11 Q Anyone in your family, you or any friends of
12 yours ever been the victim of a crime?

13 A No.

14 Q Ever been on a jury before?

15 A No. I have been called for jury duty.

16 Q Never actually got into the position to
17 deliberate?

18 A No.

19 Q Any concern about adverse public opinion that
20 might result from any verdict in this case?

21 A No.

22 Q Have you ever been involved in any court
23 proceeding as a witness or a participant?

24 A No.

25 Q Do you have any philosophical, religious or

11

1 moral objections to the death penalty?

2 A No.

3 Q Will you be able to consider fairly all four
4 forms of punishment if you're called upon to do that?

5 A Yes.

6 Q And if you were involved in this case would you
7 feel comfortable with 12 people like you sitting on the
8 jury?

9 A Yeah.

10 THE COURT: State may inquire.

11 MR. HARMON: Thank you, Your Honor.

12

13 EXAMINATION

14 BY MR. HARMON:

15 Q Good afternoon, Mrs. Burris. How do you feel
16 about the opportunity of serving on this type of case where
17 the charges include murder, robbery and burglary?

18 A I just figure it's my American duty to serve if
19 I'm called.

20 Q Occasionally we encounter persons who find it
21 very difficult to pass judgment upon a fellow human being.
22 Are you capable of doing that in this case?

23 A Yes, I am.

24 Q Now, potentially there are two phases to the
25 trial as the court has explained. Initially the jury must

11

1 determine whether Mr. Chappell is guilty or not guilty. If
2 he is found guilty of murder of the first degree, the jury
3 would have the initial responsibility of the penalty hearing
4 to impose punishment. If it was left solely up to you,
5 would we have capital punishment in the State of Nevada.

6 A Yes.

7 Q Why?

8 A If — they know right from wrong. If they kill
9 somebody in my opinion. They know what would happen to
10 them.

11 Q The jury naturally is not a fact finder, the
12 jury isn't to go out and do investigation on their own. You
13 would limit your consideration to the evidence you hear?

14 A Oh, yes.

15 Q Do you agree with me that consideration such as
16 race or gender or the concern about public opinion or in
17 fact any type of prejudice would not be a proper basis for a
18 verdict?

19 A It doesn't make a difference what color race
20 they are or anything. No.

21 Q Gender and race are irrelevant, do you agree?

22 A Right.

23 Q Do you feel you can fairly and impartially
24 decide this case?

25 A Yes.

11

1 Q Can you give your full attention at these
2 proceedings while the court is in session?

3 A Yes.

4 Q Let's suppose for just a moment that a penalty
5 hearing was necessary and after you had carefully considered
6 all the evidence and applied to it the law of the case, it
7 was your earnest opinion that the death sentence was an
8 appropriate punishment. Would you have the intestinal
9 fortitude to come to the courtroom and participate in such a
10 vote?

11 A Yes.

12 MR. HARMON: Thank you. Pass for cause.

13

14 EXAMINATION

15 BY MR. BROOKS:

16 Q Miss Burris, taking Mr. Harmon's question and
17 changing it around a little bit, let's assume that we did
18 get to the penalty phase and my client was convicted of
19 first degree murder and let's assume that you did not feel
20 the facts under the law given to you by the judge deserved
21 the death penalty, would you have the intestinal fortitude
22 to stand up for that position?

23 A Yeah. It depends what he did and how -- yeah.

24 Q Do you realize that we'll be talking a lot
25 about the death penalty and also the punishment for first

11

1 degree murder and do you understand that we are not
2 conceding first degree murder in this case?

3 A Oh, yes.

12

4 Q And you understand that the court will instruct
5 you on the law and if you believe that the facts and the
6 evidence warrant something other than first degree murder,
7 are you willing to stand up for that?

8 A Yes.

9 Q In these types of cases the State has the
10 burden to prove their case beyond a reasonable doubt and my
11 client is presumed innocent. We ask that a lot because it's
12 so important to us. How do you feel about that?

13 A Excuse me?

14 Q How do you feel about the presumption of
15 innocence? Is that the way it should be or do you think
16 people should have to prove their innocence?

17 A They're supposed to be innocent. They have to
18 be proved -- they got to prove -- the attorney have to prove
19 they're guilty. They supposed to be innocent until they
20 prove him guilty, yes.

21 Q And that's not a problem for you?

22 A No.

23 Q I noticed in the questionnaire on question 42 a
24 defendant's background should be considered in deciding
25 whether or not the death penalty is an appropriate . .

12

1 punishment. And you said no. If the court instructs you
2 that you should consider the background, would you be
3 willing to follow the court's instructions?

4 A Yes.

5 Q Also here we have the facts surrounding a
6 killing and not the killer's background should be the main
7 consideration in determining punishment and you answered no
8 to that. If the court instructed you that both are to be
9 considered, can you follow that?

10 A Yes.

11 MR. BROOKS: Thank you. We'll pass for cause,
12 Your Honor.

13 THE COURT: Thank you.

14

15 EXAMINATION

16 BY THE COURT:

17 Q Miss Marshall, good afternoon.

18 A Good afternoon.

19 Q Any reason that you can think of why you
20 couldn't be fair to both sides in this case?

21 A No.

22 Q Can you wait until all the evidence is in
23 before coming to any conclusion about any issue in the case?

24 A Yes.

25 Q Have you, any member of your family or any

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,

S.C. CASE NO. 61967

Appellant,

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Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) AND SENTENCE OF DEATH
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CAROLYN ELLSWORTH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME III  
~~~~~

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IN THE SUPREME COURT OF NEVADA

JAMES CHAPPELL,

CASE NO. 61967

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
11	ACKNOWLEDGMENT AND WAIVER (FILED 9/26/2003)	2622-2622
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/7/2003)	2672-2682
11	AFFIDAVITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (FILED 3/10/2003)	2683-2692
8	AMENDED JURY LIST (10/23/1996)	2062-2062
10	AMENDED ORDER APPOINTING COUNSEL (FILED 11/29/1999)	2359-2359
2	ANSWER TO MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION (FILED 9/11/1996)	306-308
12	APPLICATION AND ORDER FOR DEFENDANT CHAPPELL (FILED 1/25/2007)	2901-2903
9	CASE APPEAL STATEMENT (FILED 1/23/1997)	2202-2204
11	CASE APPEAL STATEMENT (FILED 6/18/2004)	2754-2756
11	CASE APPEAL STATEMENT (FILED 6/24/2004)	2759-2760
20	CASE APPEAL STATEMENT (FILED 10/22/2012)	4517-4519
11	CERTIFICATE OF MAILING	

1	12	(FILED 7/23/2004) CERTIFICATE OF MAILING (FILED 9/21/2006)	2780-2781 2879-2880
2	1	CRIMINAL BINDOVER (FILED 10/10/1995)	001-037
3	20	COURT MINUTES	4644-4706
4	10	DECLARATION IN SUPPORT OF MOTION TO PERMIT PETITION (FILED 10/19/1999)	2324-2326
5	10	DECLARATION IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999)	2328-2332
6	9	DEFENDANT'S MOTION FOR STAT OF EXECUTION (FILED 12/27/1996)	2175-2177
7	2	DEFENDANT'S MOTION IN LIMINE REGARDING DETAILS OF DEFENDANT'S RELEASE (FILED 10/4/1996)	328-335
8	2	DEFENDANT'S MOTION IN LIMINE REGARDING EVENTS RELATED TO DEFENDANT'S ARREST FOR SHOPLIFTING ON SEPTEMBER 1, 1995 (FILED 10/4/1996)	336-341
9	2	DEFENDANT'S MOTION TO COMPEL PETROCELLI HEARING REGARDING ALLEGATIONS (FILED 9/10/1996)	297-302
10	5	DEFENDANT'S MOTION TO DISMISS ALL CHARGES BASED ON STATE'S VIOLATION (FILED 10/11/1996)	1070-1081
11	1	DEFENDANT'S MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 7/30/1996)	250-262
12	1	DEFENDANT'S MOTION TO STRIKE STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 7/23/1996)	236-249
13	1	DEFENDANT'S MOTION TO VACATE JUNE 3, 1996, TRIAL DATE AND CONTINUE TRIAL UNTIL SEPTEMBER (FILED 4/23/1996)	210-215
14	2	DEFENDANT'S OFFER TO STIPULATE TO CERTAIN FACTS (FILED 9/10/1996)	303-305
15	2	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 9/10/1996)	287-296

1	12	DISTRICT COURT JURY LIST (FILED 3/13/2007)	3046-3046
2	20	DOCKETING STATEMENT (FILED 10/30/2012)	4520-4526
3			
4	9	ENTRY OF MINUTE ORDER (FILED 1/3/1997)	2199-2199
5	16	ENTRY OF MINUTE ORDER (FILED 5/10/2007)	3860-3860
6			
7	12	EX PARTE APPLICATION AND ORDER TO PREPARE TRANSCRIPTS (FILED 1/23/2007)	2898-2900
8			
9	11	EX PARTE APPLICATION AND ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 8/24/2007)	2798-2800
10			
11	2	EX PARTE APPLICATION FOR TRANSCRIPT (FILED 9/27/1996)	323-325
12	11	EX PARTE APPLICATION TO UNSEAL PSI (FILED 11/18/2002)	2629-2631
13			
14	11	EX PARTE MOTION FOR AN ORDER TO PRODUCE DEFENDANT'S INSTITUTIONAL FILE (FILED 4/8/2004)	2740-2743
15			
16	10	EX PARTE MOTION FOR APPOINTMENT OF INVESTIGATOR AND FOR EXCESS FEES (FILED 9/18/2002)	2550-2552
17			
18	11	EX PARTE MOTION FOR CHANGE OF INVESTIGATOR, EX PARTE MOTION FOR FEES IN EXCESS OF STATUTORY LIMIT, AND EX PARTE MOTION FOR CONTRACT VISITS (FILED 10/15/2002)	2623-2626
19			
20	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/13/2000)	2374-2381
21			
22	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 5/17/2001)	2385-2398
23			
24	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (4/11/2002)	2405-2415
25			
26	10	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 7/8/2002)	2521-2539
27			
28	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 12/11/2002)	2633-2649

1	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 2/3/2003)	2655-2670
2			
3	11	EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES (FILED 1/27/2004)	2728-2738
4			
5	10	EX PARTE MOTION FOR ORDER TO TRANSPORT PETITIONER (FILED 7/30/2002)	2541-2542
6			
7	11	EX PARTE MOTION FOR PAYMENT OF FINAL ATTORNEY FEES AND COSTS (FILED 7/6/2004)	2763-2772
8			
9	11	EX PARTE ORDER GRANTING CHANGE OF INVESTIGATOR, FEES IN EXCESS OF STATUTORY LIMIT, AND CONTACT VISIT (FILED 10/17/2002)	2627-2628
10			
11	11	EX PARTE ORDER TO PRODUCE INSTITUTIONAL FILE (FILED 4/12/2004)	2744-2744
12			
13	10	EX PARTE ORDER TO TRANSPORT PETITIONER (FILED 7/31/2002)	2543-2543
14	11	EX PARTE ORDER TO UNSEAL PSI (FILED 12/3/2002)	2632-2632
15			
16	11	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 6/3/2004)	2745-2748
17			
18	20	FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER (FILED 11/20/2012)	4527-4537
19			
20	1	INFORMATION (FILED 10/11/1995)	038-043
21	7	INSTRUCTIONS TO THE JURY (FILED 10/16/1996)	1701-1746
22			
23	9	INSTRUCTIONS TO THE JURY (FILED 10/24/1996)	2134-2164
24	15	INSTRUCTIONS TO THE JURY (FILED 3/21/2007)	3742-3764
25			
26	9	JUDGMENT OF CONVICTION (FILED 12/31/1996)	2190-2192
27	16	JUDGMENT OF CONVICTION (FILED 5/10/2007)	3854-3855
28			
	4	JURY LIST (FILED 10/9/1996)	843-843

1	1	MEDIA REQUEST (FILED 1/3/1996)	206-206
2			
3	5	MEDIA REQUEST (FILED 10/11/1996)	1068-1068
4	1	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
5		(FILED 7/9/1996)	230-233
6	2	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
7		(FILED 8/22/1996)	276-280
8	6	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	
9		(FILED 10/14/1996)	1347-1350
10	12	MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION OF THE EIGHTH AMENDMENT	
11		(FILED 9/20/2006)	2831-2837
12			
13	20	MOTION FOR AUTHORIZATION TO OBTAIN A SEXUAL ASSAULT EXPERT	
14		(FILED 2/15/2012)	4556-4561
15	20	MOTION FOR AUTHORIZATION TO OBTAIN AN INVESTIGATOR AND FOR PAYMENT FEES	
16		(FILED 2/15/2012)	4550-4555
17	20	MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND FOR PAYMENT FEES	
18		(FILED 2/15/2012)	4485-4490
19	12	MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/20/2006)	2838-2842
20	12	MOTION TO BIFURCATE PENALTY PHASE (FILED 9/20/2006)	2843-2848
21			
22	2	MOTION TO COMPEL DISCLOSURE BY THE STATE OF ANY AND ALL INFORMATION RELATING TO AGGRAVATING OR MITIGATING FACTORS	
23		(FILED 7/31/1996)	263-270
24	2	MOTION TO COMPEL EXAMINATION OF DEFENDANT BY OPTOMETRIST AND OBTAIN EYE GLASSES IF NECESSARY	
25		(FILED 8/19/1996)	271-275
26			
27	12	MOTION TO DISMISS STAT'S NOTICE OF INTENT TO SEEK DEATH PENALTY	
28		(FILED 9/20/2006)	2849-2878

1	12	MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/20/2006)	2817-2825
2			
3			
4	12	MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR OF THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY (FILED 9/20/2006)	2801-2816
5			
6	10	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT -AFFIRMED (FILED 11/4/1999)	2338-2353
7			
8	11	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT-AFFIRMED (FILED 5/5/2006)	2782-2797
9			
10	9	NOTICE OF APPEAL (FIELD 1/17/1997)	2200-2201
11			
12	11	NOTICE OF APPEAL (FILED 6/18/2004)	2757-2758
13	20	NOTICE OF APPEAL (FILED 10/22/2012)	4515-4516
14			
15	9	NOTICE OF COMPLIANCE WITH SUPREME COURT RULE 250 (FILED 3/17/1997)	2205-2206
16			
17	11	NOTICE OF CROSS-APPEAL (FILED 6/24/2004)	2761-2762
18	12	NOTICE OF DEFENDANT'S EXPERT WITNESS (FIELD 2/15/2007)	2927-2977
19			
20	12	NOTICE OF DEFENDANT'S WITNESSES (FIELD 3/1/2007)	3043-3045
21	20	NOTICE OF DEFICIENCY (FILED 10/23/2012)	4430-4430
22			
23	11	NOTICE OF DECISION AND ORDER (FILED 6/10/2004)	2749-2753
24	20	NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER (FLED 11/20/2012)	4538-4549
25			
26	12	NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 2/23/2007)	3032-3038
27			
28	12	NOTICE OF EXPERT WITNESSES (FILED 2/16/2007)	2978-3011

1	1	NOTICE OF INTENT TO SEEK DEATH PENALTY (11/8/1995)	044-046
2	12	NOTICE OF MOTION AND MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/20/2006)	2826-2830
3			
4	1	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR BAD ACTS (FILED 5/9/1996)	217-226
5			
6	10	NOTICE OF MOTION AND MOTION TO APPOINT COUNSEL FOR CAPITAL MURDER DEFENDANT TO HELP (FILED 11/2/1999)	2334-2337
7			
8	10	NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR (FILED 4/17/2001)	2383-2384
9			
10	2	NOTICE OF MOTION AND SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONG OR BAD ACTS (FILED 8/29/1996)	281-283
11			
12	12	NOTICE OF WITNESSES (FILED 2/28/2007)	3039-3042
13			
14	2	OPPOSITION TO MOTION FOR STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES (FILED 9/11/1996)	309-320
15			
16	2	ORDER (FILED 9/25/1996)	321-322
17			
18	2	ORDER (FILED 9/27/1996)	326-327
19	12	ORDER (FILED 1/29/2007)	2904-2905
20			
21	15	ORDER (FILED 3/20/2007)	3628-3629
22	10	ORDER APPOINTING COUNSEL (FILED 11/16/1999)	2357-2357
23			
24	10	ORDER APPOINTING INVESTIGATOR AND GRANTING EXCESS FEES (FILED 9/24/2002)	2553-2553
25			
26	16	ORDER FOR PRODUCTION OF INMATE (FILED 3/29/2007)	3831-3832
27	9	ORDER FOR STAY OF EXECUTION (FILED 12/30/1996)	2178-2178
28			
	2	ORDER FOR TRANSCRIPT (FILED 10/7/1996)	354-354

1	10	ORDER FOR TRANSCRIPT (FILED 11/19/1999)	2358-2358
2	11	ORDER GRANTING FINAL PAYMENT OF ATTORNEY'S FEES AND COSTS	
3		(FILED 7/12/2004)	2773-2773
4	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
5		(FILED 7/24/2000)	2382-2382
6	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
7		(FILED 6/7/2001)	2399-2399
8	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
9		(FILED 4/12/2002)	2416-2416
10	10	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
11		(FILED 7/10/2002)	2540-2540
12	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
13		(FILED 12/12/2002)	2650-2650
14	11	ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEY'S FEES	
15		(FILED 1/28/2004)	2739-2739
16	1	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 1/3/1996)	207-207
17			
18	5	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 10/11/1996)	1069-1069
19	9	ORDER OF EXECUTION (FILED 13/31/1996)	2198-2198
20			
21	16	ORDER OF EXECUTION (FILED 5/10/2007)	3856-3856
22	10	ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/20/1999)	2333-2333
23			
24	1	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 7/15/1996)	234-235
25	2	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 9/4/1996)	284-286
26			
27	6	ORDER TO ENDORSE NAMES ON INFORMATION (FILED 10/14/1996)	1345-1346
28	16	ORDER TO STAY EXECUTION (5/14/2007)	3861-3861

1	1	ORDER TO TRANSPORT (FILED 4/26/1996)	216-216
2	9	PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/19/1999)	2258-2316
3	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR APPOINTMENT OF COUNSEL (FILED 10/19/1999)	2317-2322
4	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (FILED 10/19/1999)	2323-2323
5	10	PETITION FOR WRIT OF HABEAS CORPUS MOTION TO PERMIT PETITION TO CONTAIN LEGAL CITATIONS (FILED 10/19/1999)	2327-2327
6	11	POST EVIDENTIARY HEARING BRIEF (FILED 7/14/2003)	2693-2725
7	18	PRE-SENTENCE INVESTIGATION REPORT NOT FILED (CONFIDENTIAL)	
8	16	PROPOSED JURY VERDICTS NOT FILED	
9	20	RECEIPT FOR DOCUMENTS (FILED 10/24/2012)	4429-4429
10	20	RECORDER'S TRANSCRIPT RE: EVIDENTIARY HEARING: ARGUMENT MONDAY, OCTOBER 19, 2012 (FILED 10/29/2012)	4417-4428
11	20	RECORDER'S TRANSCRIPT RE: STATUS CHECK WEDNESDAY, AUGUST 29, 2012 (FILED 1/15/2013)	4413-4428
12	20	REPLY TO STATE'S RESPONSES TO SUPPLEMENTAL BRIEF (FILED 7/30/2012)	4491-4514
13	1	REPORTER'S TRANSCRIPT OF OCTOBER 3, 1995 PRELIMINARY HEARING (FILED 11/14/1995)	047-205
14	1	REPORTER'S TRANSCRIPT OF MAY 1, 1996 TRIAL SETTING (FILED 5/9/1996)	227-229
15	2	REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- MORNING SESSION (FILED 10/8/1996)	355-433

1	2-3	REPORTER'S TRANSCRIPT OF OCTOBER 7, 1996 VOLUME 1- AFTERNOON SESSION (FILED 10/8/1996)	434-617
2			
3	3-4	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2- MORNING SESSION (FILED 10/9/1996)	717-842
4			
5	3	REPORTER'S TRANSCRIPT OF OCTOBER 8, 1996 VOLUME 2-AFTERNOON SESSION (FILED 10/9/1996)	618-716
6			
7	4	REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3-MORNING SESSION (FILED 10/11/1996)	846-933
8			
9	4	REPORTER'S TRANSCRIPT OF OCTOBER 10, 1996 VOLUME 3- AFTERNOON SESSION (FILED 10/11/1996)	934-1067
10			
11	5	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- MORNING SESSION (FILED 10/14/1996)	1082-1191
12			
13	5	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1996 VOLUME 4- AFTERNOON SESSION (FILED 10/14/1996)	1192-1344
14			
15	6	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- MORNING SESSION (FILED 10/15/1996)	1472-1529
16	6	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1996 VOLUME 5- AFTERNOON SESSION (FILED 10/15/1996)	1351-1471
17			
18	6-7	REPORTER'S TRANSCRIPT OF OCTOBER 15, 1996 VOLUME 6 (FILED 10/16/1996)	1530-1700
19			
20	7	REPORTER'S TRANSCRIPT OF OCTOBER 16, 1996 VOLUME 7 (FILED 10/17/1996)	1750-1756
21			
22	7	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- MORNING SESSION (FILED 10/22/1996)	1757-1827
23			
24	8	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996 PENALTY PHASE VOLUME 1- AFTERNOON SESSION (FILED 10/22/1996)	1828-1952
25			
26	8	REPORTER'S TRANSCRIPT OF OCTOBER 22, 1996 PENALTY PHASE VOLUME 2 (FILED 10/23/1996)	1953-2061
27			
28	9	REPORTER'S TRANSCRIPT OF OCTOBER 23, 1996 PENALTY PHASE VOLUME 3 (FILED 10/24/1996)	2063-2122

1	9	REPORTER'S TRANSCRIPT OF OCTOBER 24, 1996 PENALTY PHASE VOLUME 4 (FILED 10/24/1996)	2123-2133
2			
3	9	REPORTER'S TRANSCRIPT OF DECEMBER 11, 1996 (FILED 12/12/1996)	2172-2174
4	9	REPORTER'S TRANSCRIPT OF DECEMBER 30, 1996 (FILED 12/31/1996)	2179-2189
5			
6	10	REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 STATE'S MOTIONS (FILED 1/13/2000)	2363-2365
7			
8	10	REPORTER'S TRANSCRIPT OF NOVEMBER 15, 1999 (FILED 11/16/1999)	2354-2356
9	10	REPORTER'S TRANSCRIPT OF DECEMBER 15, 1999 (FILED 12/16/1999)	2360-2362
10			
11	10	REPORTER'S TRANSCRIPT OF JANUARY 19, 2000 STATUS CHECK (FILED 2/29/2000)	2366-2370
12			
13	10	REPORTER'S TRANSCRIPT OF JUNE 27, 2000 (FILED 6/28/2000)	2371-2373
14	11	REPORTER'S TRANSCRIPT OF NOVEMBER 6, 2000 HEARING: WRIT (FILED 12/23/2002)	2651-2654
15			
16	10	REPORTER'S TRANSCRIPT OF JUNE 12, 2001 (FILED 6/13/2001)	2400-2402
17			
18	10	REPORTER'S TRANSCRIPT OF JULY 26, 2001 STATUS CHECK ON BRIEFING SCHEDULE (FILED 8/28/2001)	2403-2404
19			
20	10	REPORTER'S TRANSCRIPT OF JULY 25, 2002 HEARING: WRIT (FILED 8/19/2002)	2544-2549
21			
22	11	REPORTER'S TRANSCRIPT OF SEPTEMBER 13, 2002 (FILED 9/24/2002)	2554-2621
23	11	REPORTER'S TRANSCRIPT OF APRIL 2, 2004 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 7/23/2004)	2774-2779
24			
25			
26	12	REPORTER'S TRANSCRIPT OF JULY 17, 2006 STATE'S REQUEST PER SUPREME COURT REMITTITUR (FILED 2/13/2007)	2924-2926
27			
28	12	REPORTER'S TRANSCRIPT OF JULY 25, 2006 (FILED 2/9/2007)	2912-2914

1	12	REPORTER'S TRANSCRIPT OG OCTOBER 3, 2006 HEARING ON MOTIONS (FILED 2/9/2007)	2918-2920
2			
3	12	REPORTER'S TRANSCRIPT OF NOVEMBER 2, 2006 HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007)	2921-2923
4			
5	12	REPORTER'S TRANSCRIPT OF NOVEMBER 16, 2006 RE: HEARING ON DEFENDANT'S MOTIONS (FILED 2/9/2007)	2915-2917
6			
7	12	REPORTER'S TRANSCRIPT OF JANUARY 11, 2007 PRE-PENALTY PHASE MOTIONS (FILED 2/20/2007)	3012-3031
8			
9	16	REPORTER'S TRANSCRIPT OF JANUARY 11 PRE-PENALTY MOTIONS (FILED 4/9/2007)	3833-3853
10			
11	13	REPORTER'S TRANSCRIPT OF MARCH 14, 2007 MORNING SESSION (FILED 3/15/2007)	3047-3166
12			
13	13	REPORTER'S TRANSCRIPT OF MARCH 14, 2007 AFTERNOON SESSION (FILED 3/15/2007)	3167-3222
14			
15	14	REPORTER'S TRANSCRIPT OF MARCH 15, 2007 MORNING SESSION (FILED 3/16/2007)	3268-3404
16			
17	13	REPORTER'S TRANSCRIPT OF MACH 15, 2007 AFTERNOON SESSION (FILED 3/16/2007)	3223-3267
18			
19	14-15	REPORTER'S TRANSCRIPT OF MARCH 16, 2007 MORNING SESSION (FILED 3/19/2007)	3450-3627
20			
21	14	REPORTER'S TRANSCRIPT OF MARCH 16, 2007 AFTERNOON SESSION (3/19/2007)	3405-3449
22			
23	15	REPORTER'S TRANSCRIPT OF MARCH 19, 2007 PENALTY HEARING (FILED 3/20/2007)	3630-3736
24			
25	16	REPORTER'S TRANSCRIPT OF MARCH 20, 2007 PENALTY HEARING (FILED 3/21/2007)	3765-3818
26			
27	16	REPORTER'S TRANSCRIPT OF MARCH 21, 2007 PENALTY HEARING VERDICT (FILED 3/22/2007)	3819-3830
28			

1	12	REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 2/6/2007)	2906-2911
2			
3	16	REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS (FILED 5/17/2007)	3862-3866
4			
5	9	SPECIAL VERDICT (FILED 10/24/1996)	2168-2169
6	9	SPECIAL VERDICT (FILED 10/24/1996)	2170-2171
7			
8	15	SPECIAL VERDICT (FILED 3/21/2007)	3737-3737
9	15	SPECIAL VERDICT (FILED 3/21/2007)	3738-3738
10			
11	15	SPECIAL VERDICT (FILED 3/21/2007)	3739-3740
12	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF POTENTIAL PENALTY HEARING EVIDENCE (FILED 9/29/2006)	2888-2889
13			
14	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO LIMIT PENALTY HEARING EVIDENCE TO AVOID VIOLATION (FILED 9/29/2006)	2895-2897
15			
16	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW JURY QUESTIONNAIRE (FILED 9/29/2006)	2886-2887
17			
18	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 9/26/2006)	2893-2894
19			
20	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY (FILED 9/29/2006)	2881-2883
21			
22	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND FOR CONSIDERATION BY THE CLARK COUNTY DISTRICT ATTORNEY'S DEATH REVIEW COMMITTEE (FILED 9/29/2006)	2884-2885
23			
24	12	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE SEXUAL ASSAULT AGGRAVATOR (FILED 9/29/2006)	2890-2892
25			
26	20	STATE'S OPPOSITION TO MOTION FOR LEAVE TO CONDUCT DISCOVERY	
27			
28			

1	(FILED 5/16/2012)	4479-4485
2	20	
3	STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN EXPERT SERVICES AND PAYMENT OF FEES (FILED 5/16/2012)	4468-4473
4	20	
5	STATE'S OPPOSITION TO MOTION FOR AUTHORIZATION TO OBTAIN SEXUAL ASSAULT EXPERT AND PAYMENT OF FEES, AND OPPOSITION TO MOTION FOR INVESTIGATOR AND PAYMENT FEES (FILED 5/16/2012)	4474-4478
6		
7	20	
8	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS AND DEFENDANT'S SUPPLEMENTAL BRIEF (FILED 5/16/2012)	4431-4467
9	10	
10	STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 6/19/2002)	2481-2520
11	9	
12	STIPULATION AND ORDER (FILED 5/27/1997)	2207-2257
13	11	
14	STIPULATION AND ORDER EXTENDING TIME (FILED 9/2/2003)	2726-2727
15	1	
16	STIPULATION REGARDING BRIEFING SCHEDULE (FILED 3/27/1996)	208-209
17	4	
18	STIPULATION TO CERTAIN FACTS (FILED 10/10/1996)	844-845
19	2	
20	SUMMARY OF JUROR QUESTIONNAIRE DEVELOPMENTS (FILED 10/4/1996)	342-353
21	20	
22	SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 2/15/2012)	4562-4643
23	9	
24	SUPPLEMENTAL INSTRUCTION (FILED 10/24/1996)	2165-2166
25	10	
26	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED 4/30/2002)	2417-2480
27	9	
28	VERDICT (FILED 10/24/1996)	2167-2167
	15	
	VERDICT (FILED 3/21/2007)	3741-3741
	7	
	VERDICT-COUNT I (FILED 10/16/1996)	1747-1747
	7	
	VERDICT- COUNT II (FILED 10/16/1996)	1748-1748

1	7	VERDICT - COUNT III (FILED 10/16/1996)	1749-1749
2	9	WARRANT OF EXECUTION (FILED 12/31/1996)	2193-2197
3			
4	16	WARRANT OF EXECUTION (FILED 5/10/2007)	3857-3859
5			
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 18th day of November, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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