

1 Pass the prospective juror.

2 **THE COURT:** Defense counsel.

3 **MR. WHIPPLE:** Thank you, your Honor.

4

5 EXAMINATION BY THE DEFENSE

6 **BY MR. WHIPPLE:**

7 Q Hi, Miss Miller, how are you?

8 A Fine.

9 Q Thanks for being here today.

10 I just want to follow up on some of the
11 questions Mr. Stanton has asked.

12 First of all, you know there are no right
13 or wrong answers, because we're just trying to find
14 a group of individuals that we think can sit fairly
15 here today, so we appreciate you speaking from your
16 heart.

17 Knowing what you know, do you have an
18 opinion at this point for the proper punishment for
19 Mr. Johnson?

20 A No, sir.

21 Q Why is that?

22 A Because I don't know the facts of the
23 case. I don't know the evidence.

24 Q Have you sat in judgment of another human
25 being before?

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1 A No, I have not.

2 Q How do you feel about that, doing stuff
3 like that?

4 A It's something that -- I don't know; I'm
5 sort of anxious about -- anxiety.

6 Q Sure.

7 A But something that I know I can use a
8 level head on and be there.

9 Q In your employment, are you in a situation
10 where you pass judgment on other person's work
11 performance or their product or pass judgment on the
12 work that they performed?

13 A I have a person I supervise, but -- in
14 that sense, yes.

15 Q Do you have any problems with that type of
16 interaction?

17 A No.

18 Q I know you've been waiting patiently for a
19 couple of days.

20 Have you had a chance to talk about this
21 case at all to other persons out there?

22 A No, I haven't.

23 Q So, you have no expectations at this
24 point?

25 A Right.

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1 Q It's going to be a very challenging
2 situation. You know when you watch TV, you always
3 get to see the guilt or innocence, and we have such
4 wonderful constitutional protection -- the
5 presumption of innocence. That's not going to apply
6 here. Mr. Johnson, my client, is a cold-blooded
7 killer. He's already been convicted by another
8 group of individuals.

9 A Right.

10 Q How do you feel about that?

11 A Well, I think it's wrong to be a
12 cold-blooded killer.

13 Q You're not going to find anybody that will
14 ever disagree with that, and we are not going to say
15 he was ever justified or excused or any type of
16 attempt to try to suggest that what he did was
17 right. We're here only to determine what the future
18 holds for Mr. Johnson. I need to ask you some
19 questions concerning, like, the death penalty.

20 Do you have an opinion with regard to the
21 death penalty?

22 A I'm in favor of it for certain situations,
23 yes.

24 Q Is that something you thought about?

25 A Yes.

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1 Q When have you thought about it?

2 A Oh, for many years depending, you know,

3 like when you watch a trial or something.

4 Q Sure.

5 Who have you had these discussions with?

6 A My husband, usually.

7 Q And does he have the same opinion as you

8 or do yours differ from his?

9 A We're about the same, yes.

10 Q You said that it's appropriate in certain

11 circumstances.

12 What are those certain circumstances?

13 A I would say premeditated maybe or

14 something along that line that someone knows the

15 outcome before the situation arises.

16 Q Somebody that kind of lays and waits and

17 takes another person's life in anticipation?

18 A Yes.

19 Q Do you think that the death penalty should

20 always be in that situation or --

21 A No. Like I say, it's the evidence and

22 just the situation, the facts.

23 Q From my point of view, I will be asking

24 for a life sentence for Mr. Johnson, and there are

25 three separate life sentences that you have to be

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1 able to consider. He's already been convicted of
2 killing four individuals. I need to know if you can
3 still be objective coming into this situation.

4 In this case, you're going to learn that
5 Mr. Johnson committed murder, four murders,
6 premeditated, deliberate, cold-blooded. Four
7 individuals were tied up with their hands behind
8 their back, with their face down in the carpet, with
9 their feet taped together, and each individual shot
10 through the back of the head, one by one. Knowing
11 nothing more, is it possible to consider a life
12 sentence in that situation?

13 **MR. STANTON:** Your Honor, I would object
14 to the form of the question, because it presupposes,
15 with nothing more, and that's not the process that
16 occurs here, and that's not the decision for any
17 juror in this case. So, the question is irrelevant,
18 and I would object to its form.

19 **THE COURT:** You'll have the chance to
20 question her and inform her of the facts that you
21 want to.

22 **PROSPECTIVE JUROR:** I would definitely
23 consider that.

24 **BY MR. WHIPPLE:**

25 Q I understand that. When you say you can

1 consider the death penalty or you could consider a
2 life sentence --

3 A Just from what you told me, I would be
4 leaning towards the death penalty.

5 Q I appreciate your honesty.

6 Could you consider a life sentence in that
7 situation?

8 A I'd have to hear everything.

9 Q I do appreciate that, because you're going
10 to hear -- if you're selected as a potential juror
11 in this case, you're going to hear -- you said, "I
12 would like to hear," and you will hear a lot. In
13 fact, Miss Jackson and I will be presenting
14 information to you that we call "mitigators." It's
15 a legal term. Another way to describe it is a
16 reason to give life over death.

17 A Okay.

18 Q In fact, there was a specific question
19 that addressed that. It was Question No. 38 that
20 basically just paraphrased what I just asked you,
21 and it says, are you willing to consider all
22 forms -- in fact, there's another one here that
23 says, "Do you feel you would consider these types of
24 factors?" You said, "Based on evidence and facts
25 and also the defendant's history."

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1 What do you mean? Can you expand on that
2 just a little bit?

3 A I guess if they had maybe a previous -- I
4 don't know -- a previous conviction, maybe a
5 manslaughter or something -- you know, something
6 along the same line, but not the severity.

7 Q That wouldn't be mitigating; that would be
8 more reasons to probably give a more serious
9 penalty, wouldn't it?

10 A Um-hmm.

11 Q Have you ever heard of the term "Abuse
12 excuse"? Have you ever heard that?

13 A No, not really.

14 Q It's where people blame their problems on
15 their history.

16 A Okay.

17 Q And again, we're not doing that here,
18 because there is no justification, no excuse, but
19 just that term, "abuse excuse" and trying to blame
20 your problems on your past, do you have any feelings
21 on that?

22 A I think it might be justified in some
23 cases.

24 Q You might be willing to listen to that
25 type information?

1 A I would listen to it, sure.

2 Q Would you be able to consider it?

3 A Yes.

4 Q Why?

5 A Because it might be a factor.

6 Q Let me interrupt you for a second. One

7 reason is you have to -- under Nevada law, you do

8 have to be able to consider it.

9 A Okay.

10 Q What I want to know personally, why do you

11 think it's a factor? Why do you think it's worth

12 considering?

13 A It could be an explanation of a certain

14 behavior.

15 Q Again, not trying to justify or excuse,

16 but just talking about the future of an individual

17 where he will spend the rest of his life.

18 A Um-hmm.

19 Q You also received instructions from the

20 Court at some point that the death penalty is never

21 required. It's never required. In fact, those

22 issues that we call "mitigating circumstances" can

23 be something you can even explain. It could be

24 mercy, it could be something you just feel from the

25 heart. If you got in a situation where you had a

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1 different opinion with regard to the future of
2 Mr. Johnson from other individual jurors that sit
3 with you, how would you handle that?

4 A I would explain where I'm coming from with
5 my -- what I believe and whatever -- let them know.

6 Q Do you consider yourself, like, a leader
7 or follower? If you were to graph yourself from one
8 end to the other, where would you put yourself on a
9 scale of one to ten?

10 A I would say eight towards leadership.

11 Q What happens if somebody disagreed with
12 you and they couldn't explain why they wanted to
13 give a life sentence over a death sentence, how
14 would you handle that?

15 A I'd have to -- I don't know. I would
16 probably maybe go into -- not an argument but a
17 point-versus-point type of thing.

18 Q Sure.

19 Do you understand in some situations it
20 may be just to respect a person's opinion why they
21 can't justify it, it's just a feeling that they
22 have?

23 A Um-hmm.

24 Q What do you think of that, just accept a
25 person and respect their opinion?

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1 A I think they would have to review the
2 facts. I don't know.
3 Q If a person were just to verbalize --
4 couldn't verbalize it and said, "I just have this
5 feeling, it comes from my heart," could you respect
6 that?
7 A Oh, yes, I would respect it.
8 Q Why?
9 A Because it's their individual feelings.
10 Q Vice versa, if yours were different from,
11 say, 11 other individuals and you felt convinced
12 this was the right decision --
13 A I'd verbalize it.
14 Q -- you'd verbalize it?
15 A Sure.
16 Q Would you stand your ground?
17 A I would -- that's difficult to say.
18 **MR. WHIPPLE:** I understand. I thank you
19 for your time.
20 Your Honor, I pass for cause.
21 **THE COURT:** All right.
22 Ma'am, we're going to let you go for now.
23 Come back tomorrow at 10:00 a.m. All right?
24 **PROSPECTIVE JUROR 113:** Ten a.m.?
25 **THE COURT:** Right, downstairs.

1 The State may exercise their fifth
2 peremptory challenge.

3 **MR. DASKAS:** Judge, the State would waive
4 its fifth peremptory challenge.

5 **THE COURT:** All right.
6 The defense may exercise their fifth.
7 Do you guys want a few minutes to talk it
8 over?

9 **MS. JACKSON:** Yes, your Honor.

10 **THE COURT:** All right.

11 **MR. STANTON:** Your Honor, how long a
12 recess?

13 **THE COURT:** Five minutes.

14 **MR. STANTON:** Five minutes?

15 **THE COURT:** Yes.

16 **THE BAILIFF:** All rise.
17 (Recess taken.)

18 **THE COURT:** Who is next?

19 **MS. JACKSON:** We were going to exercise
20 what I believe would be our fifth challenge, Judge.

21 **THE COURT:** Who?

22 **MS. JACKSON:** It's going to be 004,
23 Mr. Parsons.

24 **THE COURT:** Okay, Seat No. 2, Juror No.
25 004. All right. Mr. Parsons, he's out.

1 Bring in the next one.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 123

4 **THE COURT:** Mr. Acklin, you had to take
5 off and go to the doctor yesterday or the day
6 before?

7 **PROSPECTIVE JUROR 123:** Yes, sir. I
8 brought an excuse with me.

9 **THE COURT:** What's your problem?

10 **PROSPECTIVE JUROR:** I'm a disabled
11 veteran, and got a lot of medical problems. I'm
12 taking a lot of drugs.

13 **THE COURT:** You're on a lot of drugs now?

14 **PROSPECTIVE JUROR:** Yes, sir.

15 **THE COURT:** Do any of them alter your mind
16 or cause you not to be able to concentrate or stay
17 awake?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **THE COURT:** We'll excuse you. You can go.
20 Mr. George Story. Mr. Story said he don't
21 believe in the execution system.

22 Is he out there?

23 **THE BAILIFF:** No.

24 **THE COURT:** Issue an order to show cause
25 for Mr. Story.

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1 Next is Mr. Love.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 125

4 **THE COURT:** Mr. Love, David J. Love -- you
5 have to answer out loud.

6 **PROSPECTIVE JUROR 125:** Yes.

7 **THE COURT:** You've been in Las Vegas how
8 long?

9 **PROSPECTIVE JUROR:** Twenty-seven years.

10 **THE COURT:** So, born here?

11 **PROSPECTIVE JUROR:** Born and raised.

12 **THE COURT:** All right.

13 What kind of work do you do?

14 **PROSPECTIVE JUROR:** Craps dealer.

15 **THE COURT:** All right.

16 Are you married?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** What does your wife do?

19 **PROSPECTIVE JUROR:** Cocktails.

20 **THE COURT:** Is she going to school?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** She is.

23 What school is she going to?

24 **PROSPECTIVE JUROR:** UNLV.

25 **THE COURT:** Do you know what he's

1 studying?

2 **PROSPECTIVE JUROR:** Biology.

3 **THE COURT:** Biology.

4 What is she planning on doing with that?

5 **PROSPECTIVE JUROR:** Dental.

6 **THE COURT:** Dental hygienist or dental

7 school?

8 **PROSPECTIVE JUROR:** I'm not sure. She

9 hasn't finished all that yet.

10 **THE COURT:** You were in the U.S. Army?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** How long?

13 **PROSPECTIVE JUROR:** Four years.

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

15 before?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** Did you ever work in security

18 in the Army or as an armored police?

19 **PROSPECTIVE JUROR:** Yes, military police

20 one year while I was stationed in Korea.

21 **THE COURT:** Now, you said you have a

22 sister that works in the justice system?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** What does she do?

25 **PROSPECTIVE JUROR:** She used to be a

1 homicide detective for Metro; now she's on the
2 street, just a sergeant patrol officer.

3 **THE COURT:** What's her name?

4 **PROSPECTIVE JUROR:** Debbie Love.

5 **THE COURT:** Debbie Love.

6 Who was arrested for domestic violence?

7 **PROSPECTIVE JUROR:** When? I was once.

8 **THE COURT:** How long ago?

9 **PROSPECTIVE JUROR:** Two years ago -- 2001.

10 **THE COURT:** Here, you said you have
11 friends of all different races and creeds.

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** And it wouldn't affect -- that
14 the defendant is black wouldn't have anything to do
15 with his race, but then you go and say "if the
16 victim was white and the defendant was black, it was
17 reverse discrimination."

18 **PROSPECTIVE JUROR:** By that I meant a few
19 years ago I had a friend that was in an incident and
20 he shot and killed a black man. He was a white
21 male, and fortunately couldn't live with the
22 consequences, and killed himself. And the paper
23 said "White Supremist kills black football star,"
24 and I just feel it was reverse discrimination. If
25 he was a white male and killed four black people, I

1 think it would be looked at differently.

2 **THE COURT:** You lost me here. You said
3 you had a friend, and he shot and killed -- is that
4 the guy who shot the black football player who was
5 with the Asian woman out at Drink?

6 **PROSPECTIVE JUROR:** Correct -- actually,
7 it was, yes.

8 **THE COURT:** Okay. Now, what were you
9 saying about that?

10 **PROSPECTIVE JUROR:** Just the way that the
11 press and things viewed that. I feel it's in my
12 opinion of what I refer to as reverse
13 discrimination.

14 **THE COURT:** How did the press handle that?

15 **PROSPECTIVE JUROR:** The headline was
16 "White Supremist killed a black football star." It
17 was nothing like that, he just happened to be a
18 white male that killed a black male.

19 **THE COURT:** I thought he killed her
20 because he was dating a -- was it a white or Asian
21 girl and he got mad?

22 **PROSPECTIVE JUROR:** No; that was the
23 media. I know the guy in person.

24 **THE COURT:** Why did they kill the guy?

25 **PROSPECTIVE JUROR:** From my understanding

1 it was a scuffle, he attempted to get his handgun,
2 and he grabbed the case from the guy, and it was a
3 shooting involved.

4 **THE COURT:** That's totally contrary to the
5 way the press and everybody and the police reported
6 it.

7 What's the reverse discrimination? What's
8 the other part you're talking about? I don't
9 understand.

10 **PROSPECTIVE JUROR:** I just feel things are
11 looked at the other way, it's not looked at it is an
12 issue like that. It's wrong. It's just how things
13 like that are viewed.

14 **THE COURT:** So, you don't think people
15 kill each other because of race?

16 **PROSPECTIVE JUROR:** I do, but it's not
17 always the case.

18 **THE COURT:** Okay.

19 **PROSPECTIVE JUROR:** I think if it's a
20 white male that kills a black male, it's
21 automatically first looked at in a racial point of
22 view, and unfortunately, that's the way I view
23 things.

24 **THE COURT:** You have this defendant here
25 who has been convicted of killing some white guys.

1 How do you look at it?

2 **PROSPECTIVE JUROR:** I don't know. An eye
3 for two eyes is how I was raised.

4 **MS. JACKSON:** I'm sorry, your Honor. What
5 was the last thing he said?

6 (The record was read.)

7 **PROSPECTIVE JUROR:** Oh, yeah.

8 **THE COURT:** Could you be fair in this
9 case?

10 **PROSPECTIVE JUROR:** I don't think so.

11 **THE COURT:** You're excused.

12 **MR. WHIPPLE:** Thank you, your Honor.

13

14 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 127

15 **THE COURT:** Miss Ritchie.

16 **PROSPECTIVE JUROR 127:** Yes.

17 **THE COURT:** From Evanston, Wyoming.
18 You've been here 16 years?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** You left Las Vegas to go to
21 school up in Utah?

22 **PROSPECTIVE JUROR:** Right.

23 **THE COURT:** Why did you do that?

24 **PROSPECTIVE JUROR:** I went to study civil
25 engineering. They had a good water program up

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1 there.

2 **THE COURT:** Are you LDS?

3 **PROSPECTIVE JUROR:** Yes, I am.

4 **THE COURT:** So, did that have anything to

5 do with it?

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** Were you still in school now?

8 **PROSPECTIVE JUROR:** I took a year -- I'm

9 taking a year off and working.

10 **THE COURT:** So, you're working on your

11 master's. Okay.

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Are you working here?

14 **PROSPECTIVE JUROR:** Yes, I am.

15 **THE COURT:** Where are you working?

16 **PROSPECTIVE JUROR:** I work for a civil

17 engineering firm.

18 **THE COURT:** Which one?

19 **PROSPECTIVE JUROR:** G.C. Wallace.

20 **THE COURT:** G.C. Wallace. Okay.

21 Your husband -- what does he do?

22 **PROSPECTIVE JUROR:** He's a student right

23 now at UNLV.

24 **THE COURT:** What is he studying?

25 **PROSPECTIVE JUROR:** He's studying romantic

1 languages.

2 **THE COURT:** What is he going to do, get a
3 Ph.D. in that?

4 **PROSPECTIVE JUROR:** Actually, he's
5 planning to go work for the NSA.

6 **THE COURT:** The what now?

7 **PROSPECTIVE JUROR:** The National Security
8 Agency.

9 **THE COURT:** He wants to be a spy, huh?
10 Did he go to Utah State?

11 **PROSPECTIVE JUROR:** He did.

12 **THE COURT:** And he got his bachelor's in
13 what, computer science or something?

14 **PROSPECTIVE JUROR:** Actually, he didn't
15 finish his bachelor's, but he was studying computer
16 science, and he came to UNLV and he changed.

17 **THE COURT:** He's still working on his
18 bachelor's now?

19 **PROSPECTIVE JUROR:** Yes, he is.

20 **THE COURT:** Romantic language. Is he
21 taking Spanish or Latin?

22 **PROSPECTIVE JUROR:** He's taking Spanish,
23 Italian, French, Latin.

24 **THE COURT:** Did he ever go on a mission?

25 **PROSPECTIVE JUROR:** He did.

1 **THE COURT:** What country?
2 **PROSPECTIVE JUROR:** To Brazil.
3 **THE COURT:** He speaks Portuguese?
4 **PROSPECTIVE JUROR:** He does.
5 **THE COURT:** What foreign language do you
6 speak?
7 **PROSPECTIVE JUROR:** I know a little bit of
8 Spanish.
9 **THE COURT:** A little bit of Spanish?
10 **PROSPECTIVE JUROR:** Nothing fluent.
11 **THE COURT:** Okay.
12 You never had any courses in criminal
13 justice or anything like that?
14 **PROSPECTIVE JUROR:** No, I have not.
15 **THE COURT:** Now, on this Question No. 25,
16 you said you had family members who had been charged
17 with a crime.
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Who was that?
20 **PROSPECTIVE JUROR:** My uncle. He lives in
21 Idaho.
22 **THE COURT:** What was he charged with?
23 **PROSPECTIVE JUROR:** He robbed a church.
24 **THE COURT:** Robbed a church?
25 **PROSPECTIVE JUROR:** Yeah. He stole some

1 speakers and stereo equipment.

2 **THE COURT:** What kind of church was it?
3 It wasn't an LDS church, was it?

4 **PROSPECTIVE JUROR:** It was an LDS church.

5 **THE COURT:** Well, you know, that happens.

6 **PROSPECTIVE JUROR:** It does, it does.

7 **THE COURT:** And your house has been
8 burglarized; is that right?

9 **PROSPECTIVE JUROR:** Yes, it has.

10 **THE COURT:** Now, as you know from reading
11 the questionnaire, we're trying to pick a jury who
12 can hear this case and decide upon a penalty. Now,
13 the defendant has already been convicted of
14 first-degree murder with the use of a deadly weapon,
15 and you will have to decide the punishment according
16 to the laws of the State of Nevada, and the State of
17 Nevada law provides that you will decide from four
18 different forms, that is, the death penalty, life in
19 prison without the possibility of parole, life in
20 prison with the possibility of parole or for a
21 definite term of 50 years plus a consecutive term of
22 50 years for the use of a deadly weapon for a total
23 of a hundred years, and parole possible after 40
24 years has been served, and this applies for each
25 count.

1 Do you understand that so far?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** What I want to know is can you
4 consider all four forms of punishment?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** What I mean by that is -- like
7 some people, they only believe -- they believe in an
8 eye for an eye, and the only punishment that they
9 would consider would be the death penalty. Some
10 people don't believe that a person should ever be
11 sentenced to life without parole, because they said
12 it's cruel, plus, it cost the taxpayers a lot of
13 money. Some people say they could never consider
14 life with the possibility of parole.

15 Could you look at all four of them and
16 pick out the one that's most appropriate considering
17 the facts of the case, the background of the people
18 involved and the law and decide upon the most
19 appropriate one?

20 **PROSPECTIVE JUROR:** Yes, I could.

21 **THE COURT:** You never served on a jury
22 before?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** Do you have any relatives that
25 work in the legal profession or law enforcement?

1 **PROSPECTIVE JUROR:** No, I don't.
2 **THE COURT:** Can you be fair to both sides?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** Can you follow the Court's
5 instructions on the law?
6 **PROSPECTIVE JUROR:** Yes.
7 **THE COURT:** Can you be impartial and
8 unbiased?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** State.
11 **MR. STANTON:** Thank you, your Honor.

13 EXAMINATION BY THE STATE

14 **BY MR. STANTON:**

15 Q Good afternoon, Miss Ritchie.

16 A Good afternoon.

17 Q Thank you for your patience today.

18 A series of questions I'm going to ask you
19 this afternoon is your ability to be fair and
20 impartial in this case. Basically, what we're
21 looking for is jurors who come in with no
22 preconceived notions about what the punishment
23 should be and will wait until all the evidence comes
24 in in rendering a just and fair verdict in this
25 case.

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1 The first of that deals with your role in
2 this case, and that is the penalty phase only.
3 There's nothing about this case or our role as a
4 potential juror in this case that deals with the
5 determination of guilt or innocence. That's
6 previously been done by another jury.

7 The defendant, Donte Johnson, has been
8 convicted of four counts of first-degree murder.
9 The Judge will instruct you that you have to abide
10 by that previous jury's verdict.

11 Can you do that?

12 A Yes.

13 Q Even looking at what your role would be in
14 determining punishment?

15 A Yes.

16 Q Part of what you will hear from the
17 State's presentation of the facts in this case is
18 some of the underlying facts and circumstances
19 regarding the underlying quadruple murder in this
20 case. As part of that evidence, that evidence is
21 rather graphic in nature, very brutal. Your role as
22 a juror, while emotional and probably for most
23 compassionate people is distasteful, it's important
24 that you view that evidence with an eye as a juror,
25 that is, you look at that and determine as evidence

1 ultimately the issue that's before you, the just
2 punishment.

3 I don't know anything about you, but based
4 upon your knowledge of your own character, can you
5 look at that type of information and abide by your
6 function as a juror in this case to review it as
7 evidence?

8 A Yes, I would.

9 Q In addition, there are four different
10 victims that were killed in this case, and that your
11 job as a juror would be to determine the appropriate
12 and just punishment as it relates to each one of
13 those victims. It may be that your decision as it
14 relates to each one is the same or it might be that
15 it's different.

16 Does that cause you any problems, that
17 process?

18 A No.

19 Q You indicated that your family member that
20 was involved in the criminal justice system -- as a
21 result of it, have you formed any opinion both
22 either positive or negative about the system? What
23 I mean by that is do you harbor any feelings of
24 resentment towards either the police or the
25 prosecution about how they handled your uncle's

1 case?

2 A No.

3 Q Do you think he was treated fairly?

4 A I think he was.

5 Q And that was not here in Las Vegas?

6 A No; that was in Idaho.

7 Q Have you had much discussion about that
8 case or what occurred and the punishment with your
9 family?

10 A No. I mean, we talked about it at the
11 time, which was several years ago, so this was when
12 I was young.

13 Q Was he incarcerated as a result of this?

14 A He was.

15 Q Is he still serving time?

16 A No.

17 Q Do you have much contact with that uncle?

18 A Not too much.

19 Q Would your participation in this
20 proceeding cause you any difficulty in looking your
21 uncle in the eye at some time and telling him about
22 this case and telling him that you were involved in
23 the jury? Would that cause you any discomfort?

24 A No.

25 Q The questions in your answers about the

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1 death penalty in the questionnaire -- I believe you
2 filled it out approximately a week or so ago -- you
3 indicated that you would consider the death penalty
4 in certain circumstances --

5 A Um-hmm.

6 Q -- is that correct?

7 A Yes.

8 Q Is that a feeling that you've had for a
9 period of time about the death penalty? Have you
10 thought about it for a while?

11 A It's something that I've thought about
12 whenever you hear cases about whenever the death
13 penalty is imposed.

14 Q Knowing that in this particular case the
15 defendant has been convicted of four counts of
16 first-degree murder, while that fact alone is a
17 basis to aggravate a case and you can use it as a
18 basis, you would keep your mind open for other
19 sentencing options and to listen to all the evidence
20 until it was formally given to you for deliberation?

21 A Yes, I would.

22 **MR. STANTON:** No further questions, your
23 Honor.

24 **THE COURT:** All right.

25 **MR. STANTON:** Pass the prospective juror.

1 **THE COURT:** Defense Counsel.

2 **MR. WHIPPLE:** Thank you, your Honor.

3
4 EXAMINATION BY THE DEFENSE

5 **BY MR. WHIPPLE:**

6 Q Hi Miss Ritchie. How are you?

7 A I'm doing all right.

8 Q Thank you for your time.

9 Miss Ritchie, when you received this jury
10 questionnaire about a week ago and you read through
11 it, what thoughts passed through your mind?

12 A Well, obviously, I thought, wow, that's a
13 murder case, and since I've taken that, a lot of
14 thoughts about how I feel about murder and what
15 should happen, because I know that there were the
16 four in the questionnaire -- it talks about the four
17 different penalties that are applied to that and
18 just how I felt about those.

19 Q Take me, if you would, just a little
20 farther through your thought process. I'm very
21 impressed. This really seems to be the genesis of a
22 lot of your thoughts.

23 What have you been thinking about since
24 that time?

25 A I just felt like I don't really know much

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1 about what happened, so I couldn't make a decision
2 which way, but I know that if I did hear what
3 happened, that I would be able to make a decision in
4 that direction, whichever way it should go.

5 Q How do you feel about sitting in judgment
6 of another human being?

7 A I think it's a big responsibility.

8 Q Have you ever been in a situation where
9 you've done that before?

10 A No.

11 Q Have you had an opportunity to talk to any
12 of the folks, other jurors out there in the hall
13 about this particular case or what to expect or some
14 of the things you might be expecting?

15 A Not really. I try to kind of stay out of
16 that.

17 Q Is it fair to say there's some talking
18 about what this case is and what's going on?

19 A I don't think anybody really knows, but
20 just talking about it, just speculation.

21 Q Sure.

22 It asks -- one of the questions is media.
23 You left it blank.

24 I assume you're not familiar with this
25 case at all?

1 A No. I haven't heard anything about it,
2 and I watch the news a lot, that's why I was
3 surprised.

4 Q How long have you been here in Las Vegas?

5 A I think I put 16 years. I've lived here
6 since I was in elementary school.

7 Q What school did you go to, which high
8 school?

9 A I went through Basic High School.

10 Q I'm kind of surprised, because this did
11 catch a lot of media when this occurred.

12 You don't remember anything about that?

13 A No, I don't.

14 **THE COURT:** I have a question for you.

15 Were you out at Basic when I gave a speech
16 out there one day?

17 **PROSPECTIVE JUROR:** I don't know. I don't
18 recall. Maybe I wasn't there.

19 **MR. DASKAS:** Maybe she ditched that day.

20 **MS. JACKSON:** They knew you were coming.

21 **BY MR. WHIPPLE:**

22 Q There were some questions on the jury
23 questionnaire, and you actually scribbled some out.

24 A Because I misread it. I misread the
25 question, and my answer didn't make sense, because I

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1 filled out the questionnaire, and I wanted to make
2 sure my answers were legit and correct, and I went
3 through and it didn't answer the question, so I
4 wanted to make sure that it was correct.

5 Q So, you double-checked your work?

6 A Yes, I did.

7 Q We really appreciate that.

8 The death penalty -- you spoke about it
9 briefly.

10 Do you have a decision with regard to the
11 death penalty, if it's used too much or not enough,
12 do you have any type of opinions that way?

13 A My opinion is I'm not against the death
14 penalty, but in order to be for it, I think there
15 has to be compelling evidence.

16 Q How about the old adage, "An eye for an
17 eye" -- do you agree with that old adage? Do you
18 agree with that eye for an eye?

19 A No, I don't agree with an eye for an eye.

20 Q Why not?

21 A It's Mosaic. It's guess it's Mosaic law.
22 It's old.

23 Q This is not like one of those TV shows
24 where -- you know, Perry Mason. This is not a
25 trial. My client, Mr. Johnson, is a cold-blooded

1 killer, and you are going to be asked to determine
2 what will the future entail for my client, so I need
3 to ask you some questions about that.

4 If a person has been convicted of
5 first-degree, cold-blooded, premeditated, deliberate
6 murder, could you consider a potential life
7 sentence?

8 A Yes, I could.

9 Q And in this particular case, we have an
10 individual who has been convicted. We're not trying
11 to justify, we're not here to excuse. It was a
12 terrible, terrible thing. There would be nobody
13 that disagrees with that, but he had four innocent
14 individuals who were bound with tape on their hands,
15 and their feet were bound together, and they were
16 laid on the floor, and they were shot through the
17 back of the head one by one. Knowing nothing more,
18 is it possible that you could consider a life
19 sentence in that situation?

20 A Yes.

21 Q You're going to hear at some point from
22 this Court -- he will give you instructions, and
23 some of those instructions will give you the fact
24 that a death penalty is never required, and other
25 instructions will talk about mitigation, and I'm

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1 sure the State will talk to you about aggravation;
2 we'll talk to you about mitigation. Mitigation is
3 essentially any reason to choose life over death.
4 We, in fact, had some questions that were put in
5 here about mitigation, and you answered that -- I'm
6 going to paraphrase it. It says, "In reaching a
7 verdict in this penalty phase, you must consider the
8 defendant's background."

9 A Correct.

10 Q It is a must. The Nevada law requires
11 people in the penalty phase -- not the trial phase
12 but in the penalty phase -- individuals are willing
13 to look at all the facts and circumstances, and it
14 says, "that is, mitigating circumstances such as
15 defendant's health, mental status, age, childhood
16 experience," et cetera. And then it asked, "Do you
17 feel you would consider those types of factors?" and
18 you struck, "Very much."

19 Why did you strike "very much"? There
20 were four different options there.

21 A Well, I think your background has a lot to
22 do with how you act and conduct yourself throughout
23 your life, so you would have to consider maybe what
24 drove you to do something, to commit a heinous
25 crime.

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1 Q There's that term "abuse excuse."
2 A That their parents abused them so they
3 continue that abuse cycle.
4 Q That could be the term, but people try to
5 blame their problems on the past.
6 A Okay.
7 Q They're refusing to accept accountability,
8 and we accept full accountability, I want to make
9 clear, but the term "abuse excuse" exists, and I'm
10 just curious if you've heard about it and if you
11 have any comments on it?
12 A I guess the way you explained it more
13 generalized, I have heard that people with their
14 background, they would blame it on something else or
15 someone caused them to do something.
16 Q How do you feel about that?
17 A Well, I think you have to be responsible
18 for the things that you do.
19 Q We would all agree with that.
20 Miss Ritchie, if you found yourself in a
21 situation where your opinion was different from
22 other individuals, how would you handle that in
23 general? Before you answer that, I'm going to ask a
24 second question, so consider it a compound question.
25 Do you consider yourself a leader or

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1 follower, so it kind of mesh together?

2 A I think it always depends on the
3 situation. If you feel that your opinion is valid
4 and important, then you should make sure that you're
5 a leader with your opinion, but sometimes someone
6 else will have a better opinion, and in that case,
7 you should be the follower.

8 Q How do you make the determination if you
9 should be a leader or follower?

10 A You just have to decide how strong your
11 opinion is.

12 Q And I understand that.

13 One of the things I anticipate you need to
14 do is -- mitigation does not always have to be
15 verbalized. Simple things like mercy or a gut
16 feeling of choosing life over death is a mitigator.
17 Maybe sometimes one wouldn't be able to verbalize a
18 reason why she chose life over death.

19 How do you feel about that?

20 A Well, I feel you should respect everyone's
21 opinion.

22 Q What if others had a different opinion
23 than you on that issue?

24 A On respecting others' opinions?

25 Q Yes.

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1 A I just think that's how it is sometimes,
2 people just may not agree with you.

3 Q Could you stand your ground and hold your
4 opinion if you felt convinced?

5 A Definitely, I would stand my ground.

6 **MR. WHIPPLE:** Miss Ritchie, I thank you
7 for your time. I have no further questions, and I
8 pass for cause, your Honor.

9 **THE COURT:** Thank you very much, ma'am.
10 We're going to have you come back tomorrow morning
11 at 10:00 a.m., and we'll let you know.

12 **PROSPECTIVE JUROR 127:** Ten a.m.?

13 **THE COURT:** Yes, downstairs.

14 At this time the State may exercise their
15 sixth peremptory challenge.

16 **MR. STANTON:** Can we have the Court's
17 indulgence for just a moment?

18 **THE COURT:** Yeah, I'll give you a few
19 minutes.

20 (Recess taken.)

21 **THE BAILIFF:** Remain seated, come to
22 order. Court is again in session.

23 **THE COURT:** State, have you decided on
24 your sixth peremptory challenge?

25 **MR. DASKAS:** Judge, we have. We would

1 exercise our sixth peremptory challenge on Juror
2 No. 046, Miss Finn seated in position No. 11, Judge.

3 **THE COURT:** All right, Miss Finn.

4 Who is next?

5

6 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 132

7 **THE COURT:** Mr. Gray?

8 **PROSPECTIVE JUROR 132:** Yes, sir.

9 **THE COURT:** I think you said you know
10 Miss Jackson?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **THE COURT:** Where do you know Miss Jackson
13 from?

14 **PROSPECTIVE JUROR:** Out of the triple
15 three right down the street.

16 **THE COURT:** Out of the what?

17 **PROSPECTIVE JUROR:** The 333 building. We
18 have a maintenance office on the bottom, she's up on
19 top.

20 **THE COURT:** Okay. You're down there now?

21 **PROSPECTIVE JUROR:** No. I'm down at
22 juvenile now.

23 **THE COURT:** How long have you -- which one
24 is 333?

25 **MS. JACKSON:** That's our building, your

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1 Honor. It's right on the corner.
2 **THE COURT:** Is it a County building?
3 **MS. JACKSON:** It is, your Honor.
4 **THE COURT:** You work for the County?
5 **PROSPECTIVE JUROR:** Yes.
6 **THE COURT:** You work for the County
7 maintenance?
8 **PROSPECTIVE JUROR:** Yes.
9 **THE COURT:** So, now you work at the
10 juvenile facility?
11 **PROSPECTIVE JUROR:** Yes.
12 **THE COURT:** Okay.
13 So, you would see Miss Jackson when you
14 were at work?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** Is that going to cause you to
17 be biased towards her or against her?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** Now, you've been in Las Vegas
20 how long?
21 **PROSPECTIVE JUROR:** Thirty-two years.
22 **THE COURT:** Thirty-two years. Okay.
23 You went to high school here?
24 **PROSPECTIVE JUROR:** Yes.
25 **THE COURT:** How long have you been

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1 employed with the County?

2 **PROSPECTIVE JUROR:** Sixteen years.

3 **THE COURT:** Are you married?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Does your wife work outside

6 the home?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** What kind of work does she do?

9 **PROSPECTIVE JUROR:** She's with a financial

10 company.

11 **THE COURT:** Now, I believe in Question

12 No. 21, you said you have a brother who works in law

13 enforcement.

14 **PROSPECTIVE JUROR:** Yes. He works for the

15 school district.

16 **THE COURT:** What does he do for them?

17 **PROSPECTIVE JUROR:** Police officer.

18 **THE COURT:** School district policeman.

19 Okay.

20 And you were a juror about a year ago?

21 **PROSPECTIVE JUROR:** It's been several

22 years ago.

23 **THE COURT:** What kind of case was it?

24 **PROSPECTIVE JUROR:** It's been so long, I

25 don't even remember.

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1 **THE COURT:** Was it in this building or the
2 federal building?
3 **PROSPECTIVE JUROR:** It was in this
4 building.
5 **THE COURT:** You don't remember who the
6 Judge was?
7 **PROSPECTIVE JUROR:** No.
8 **THE COURT:** Do you know if it was a
9 criminal case or civil?
10 **PROSPECTIVE JUROR:** I think it was
11 criminal.
12 **THE COURT:** The guy committed some kind of
13 crime?
14 **PROSPECTIVE JUROR:** Yes.
15 **THE COURT:** You don't remember what the
16 crime was?
17 **PROSPECTIVE JUROR:** No.
18 **THE COURT:** Were you the foreman of the
19 jury?
20 **PROSPECTIVE JUROR:** No.
21 **THE COURT:** Without telling us what your
22 verdict was, did you all reach a verdict?
23 **PROSPECTIVE JUROR:** Yes, we did.
24 **THE COURT:** Here in Question No. 24, the
25 question is, "What are your opinions and feelings

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1 about how the criminal justice system works?" and
2 you stated, "It's okay but needs a little more
3 work."

4 What kind of more work does it need?

5 **PROSPECTIVE JUROR:** Well, some people get
6 off with the same crime and some people don't get
7 off with it. I mean, if you should do something and
8 I do the same thing and you get off and I don't, how
9 fair can that be?

10 **THE COURT:** You think there's a
11 discrepancy in how some people are treated?

12 **PROSPECTIVE JUROR:** Yeah.

13 **THE COURT:** What do you think needs to be
14 done?

15 **PROSPECTIVE JUROR:** Everybody need to be
16 treated fairly, equal, straight across the board.

17 **THE COURT:** Why do you think that happens,
18 that some people get off, some get punished?

19 **PROSPECTIVE JUROR:** I don't know. I've
20 been asking myself that for a long time.

21 **THE COURT:** Have you had any family
22 members or close friends who have been charged with
23 a crime?

24 **PROSPECTIVE JUROR:** Yes, but he's
25 deceased.

1 **THE COURT:** Who is that?
2 **PROSPECTIVE JUROR:** He's deceased now.
3 **THE COURT:** What was he, a cousin or
4 something?
5 **PROSPECTIVE JUROR:** He was a cousin.
6 **THE COURT:** Cousin.
7 Did he die of natural causes or was he
8 killed or what?
9 **PROSPECTIVE JUROR:** Natural causes.
10 **THE COURT:** What kind of crime was he
11 charged with?
12 **PROSPECTIVE JUROR:** Drugs and bail bonds.
13 **THE COURT:** Bail bonds?
14 **PROSPECTIVE JUROR:** Yeah. He was a bail
15 bondsman.
16 **THE COURT:** Are you related to Mr. Gray,
17 the electrician?
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** What's your relationship to
20 Mr. Gray?
21 **PROSPECTIVE JUROR:** That's my uncle.
22 **THE COURT:** Now, Mr. Gray's son, is he in
23 jail?
24 **PROSPECTIVE JUROR:** No, he's -- well, I'm
25 not for sure. He was, but I'm not sure if he's

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1 still in there.

2 **THE COURT:** Now, the one -- what was the
3 one's name that was the bail bondsman?

4 **PROSPECTIVE JUROR:** Gregory Gray.

5 **THE COURT:** Gregory.
6 How did he die?

7 **PROSPECTIVE JUROR:** He had a heart attack.

8 **THE COURT:** Heart attack.
9 Had he moved back to Las Vegas?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** Tell me this here: Now, you
12 understand that this trial will be to decide on the
13 punishment. The defendant has already been
14 convicted of four counts of first-degree murder.
15 Do you understand that?

16 **PROSPECTIVE JUROR:** Um-hmm.

17 **THE COURT:** Is that a "yes"?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** So, the jury will have to
20 decide on the punishment. They will have four
21 choices -- the death penalty, life in prison without
22 parole, life in prison with the possibility of
23 parole or for a definite term of 50 years and parole
24 after 20 years. Of course, those punishments are
25 doubled because a deadly weapon was used. So, it

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1 would be 50 years plus an additional consecutive 50
2 years for a total of a hundred years, and you would
3 be eligible for parole after 40 years.

4 Do you understand that that's the way it
5 operates?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Would you be able to consider
8 all four forms of punishment?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Do you have any objections,
11 moral or otherwise, to the death penalty?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Could you impose a sentence of
14 life in prison with the possibility of parole if you
15 thought it was appropriate after you heard the facts
16 and the law?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you're open to all four of
19 them?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** Can you be fair to both sides?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Can you be fair to the State?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** You can be fair to the

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1 defense?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thank you, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Mr. Gray, thank you for your patience,
9 number one.

10 Secondly, as the Judge just alluded to, a
11 jury has already convicted this defendant of four
12 counts of first-degree murder.

13 You realize that?

14 A Um-hmm.

15 Q Would you have any problems accepting the
16 fact that another jury found him guilty, that that
17 would not be your decision?

18 A No.

19 Q You would accept that verdict?

20 A Yes.

21 Q One of your answers, you wrote -- it's
22 asking about the different racial backgrounds of the
23 defendants and the victim. You wrote, "It doesn't
24 matter, committed the crime, do the time."

25 A Yes.

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1 Q Tell me why you wrote that.
2 A That's what it is, if you do the crime,
3 you do the time.
4 Q Regardless of the color of your skin?
5 A It don't matter.
6 Q There was another question that asked
7 whether you would consider the mental status, the
8 mental state of the defendant, whether that's
9 important to you in deciding punishment, and you
10 wrote, "there shouldn't be."
11 You don't think that's important in a
12 criminal case?
13 A No.
14 Q What about in deciding?
15 **THE COURT:** You got to answer out loud,
16 sir, because she has to take down what you said.
17 **PROSPECTIVE JUROR:** Okay.
18 **MR. DASKAS:** I heard him say no.
19 **BY MR. DASKAS:**
20 Q Did you say no?
21 A No.
22 Q How about in deciding punishment? In this
23 case, we're talking about possibly imposing the
24 death penalty.
25 Do you think it might be important to

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1 consider someone's mental status in deciding
2 punishment?

3 A No.

4 Q One of your other answers -- it asks you
5 in the questionnaire about the different forms of
6 punishment, and you wrote, "It depends on the case."

7 What I understand that to mean is any one
8 of those might be appropriate depending on what you
9 hear?

10 A Right.

11 Q Is that how you feel?

12 A Right.

13 Q Could you base your decision on punishment
14 on both the facts of the case -- because we're going
15 to talk to you about how he committed these four
16 homicides -- and could you also base your decision
17 on that man's background?

18 A Yes.

19 Q Or do you think it's even important to
20 consider his background?

21 A Yes and no.

22 Q Tell me what you mean by that.

23 A It depends on how much evidence there is
24 against him. He might have a good background, he
25 might not have a good background, so it could go

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1 either way.

2 Q I don't want to put words in your mouth,
3 but is it more important for you to base your
4 decision on punishment on the facts of the quadruple
5 homicide or on this man's background?

6 A On the homicide.

7 Q You know that he's already been convicted
8 of that homicide. He's already been found guilty
9 four times, four first-degree murders.

10 Does that mean you would automatically
11 vote for death?

12 A No.

13 Q What else would you want to consider?

14 A I probably would have to hear a little bit
15 more about it.

16 Q About the case itself?

17 A About the case itself to make that
18 determination.

19 Q That's fair.

20 You volunteered on day one that you know
21 Miss Jackson.

22 How often do you see Alzora?

23 A I used to see her a lot when I worked down
24 there.

25 Q Almost every day?

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1 A Pretty much, once or twice a week.

2 Q Did you and Miss Jackson ever talk about
3 her cases or her clients that she represented?

4 A No.

5 Q Let's say for the sake of our discussion
6 that you're selected as a juror, okay, and you
7 listen to all the evidence and you listen to all the
8 information about this defendant's background and
9 that you believe this is the appropriate case where
10 the death penalty should be handed down.

11 Can you actually impose that punishment?
12 Can you vote for it?

13 A Yes.

14 Q Kind of a follow-up question to that.
15 Let's say that the other members of the jury want
16 you to be the foreperson. Okay? You have the same
17 vote as everybody else. You all have to agree on
18 the punishment, but the one thing you would have to
19 do as the foreperson is sign the verdict form that
20 sentences the defendant to death.

21 Do you feel like if you believe that's the
22 punishment that he deserves, you can sign that form
23 and sentence him to death?

24 A Yes.

25 **MR. DASKAS:** I appreciate it. Thank you.

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1 Judge, we'll pass this juror for cause.

2 **THE COURT:** All right.

3 Counsel.

4 **MS. JACKSON:** Thank you.

5

6 EXAMINATION BY THE DEFENSE

7 **BY MS. JACKSON:**

8 Q Good afternoon, Mr. Gray. As a matter of
9 fact, have we ever had a conversation except to say
10 good morning, how are you doing?

11 A No.

12 Q I don't remember one either.

13 A No.

14 Q Is it fair to say we were just people who
15 worked in the same building?

16 A That's it.

17 Q That wouldn't impact your decision one way
18 or another in this case?

19 A Right.

20 Q The only area that concerns me a little
21 bit, Mr. Gray -- maybe the question is somewhat
22 overbroad.

23 No. 33 -- "To what extent should the
24 mental status of a criminal defendant be considered
25 in a sentencing decision between life and death?"

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1 You were very emphatic with Mr. Daskas, "Not at
2 all."

3 Question No. 38, "In reaching a verdict,
4 you must consider the defendant's background,
5 mitigating circumstances such as the defendant's
6 health, mental status, age, childhood experience,
7 education." And then it says, "Do you feel you
8 would consider those types of factors?" and you say,
9 "very much." So, I don't know where you -- Question
10 34 probably -- 33, excuse me, is probably not a very
11 good question. We'll probably delete that one next
12 time, but did you realize it's kind of asking you
13 almost the same thing? As a matter of fact, they
14 put in No. 38, one of the factors as mitigation
15 could be mental status.

16 A I probably didn't really understand it.

17 Q It's not the best question in the world.

18 You still believe, as you sit here today,
19 just like you wanted to know more about the case --
20 you told Mr. Daskas that --

21 A Yes.

22 Q -- if you're going to decide if someone
23 lives or dies, it would also be important to you,
24 sir, to know as much as you could about that
25 person --

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1 A Right:

2 Q -- before you decide if they live or die?

3 The law says that you must consider
4 mitigation, and mitigation could be any reason under
5 the sun to give life. As Mr. Daskas said, we're
6 here because we know that four innocent lives were
7 taken, and that's an aggravator.

8 Have you ever heard the phrase the "abuse
9 excuse"?

10 A Um-hmm, yes.

11 Q What does that mean in your understanding?

12 A Somebody is being abused and taking
13 advantage of and harassed. I don't use it.

14 Q In my line of work sometimes when people
15 are convicted of doing things, they will come to
16 court and they will say, "Well, I was abused as a
17 child, so that may explain why we're here." That's
18 the context I was referring to.

19 Have you ever heard it used in that
20 context?

21 A Yes.

22 Q What do you think about that, Mr. Gray?

23 A It would depend on who is abusing who. If
24 it's an adult abusing a child or kid or whatever --
25 basically, anybody that's being abused for no

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1 apparent reason, they're not right.

2 Q That could affect a person's upbringing,
3 especially a child?

4 A Yeah, it could.

5 Q You are willing to consider those types of
6 factors?

7 A Yes.

8 Q Your jury experience before was so long
9 ago you don't remember anything about it. I
10 imagine, though -- I've been told by some jurors
11 that it can get rough in a jury room sometimes, that
12 people sometimes may disagree.

13 Is there anything about that experience
14 that you can remember that was unpleasant?

15 A No. We had a -- I was with a, pretty
16 much, older group. I was kind of young at the time.

17 Q I see.

18 A I didn't have no problems with no adults.

19 Q All right. Okay.

20 This is a very serious matter, life and
21 death. It just doesn't get any more serious with
22 that.

23 Would you agree with me?

24 A Yes.

25 Q If you were in the jury room, Mr. Gray,

1 and you heard the State's case and you feel
2 comfortable enough that you know enough about what
3 happened and then you hear what we have to say about
4 Mr. Johnson's background and you deliberated with
5 your fellow jurors, they all want to kill my client,
6 and after due deliberation, you feel that you, as a
7 juror, can give life, because one juror can do
8 that -- you will be instructed at the right time
9 that death is never required -- what would you do if
10 they insisted on you explaining or justifying your
11 position to them?

12 A I think we would have a long discussion,
13 because -- I mean, like you say, it would depend on
14 the case.

15 Q In my hypothetical, you've already
16 deliberated, you've heard their side, you've heard
17 our side. You've spoken with your other jurors,
18 you've fulfilled your duty as a citizen, and now you
19 come to the place in your own heart and your own
20 mind where you are convinced after everything that
21 this is a case for life but everybody else wants
22 death, would you change your vote just to get a
23 verdict?

24 A No.

25 Q What if they painted you into a corner and

1 insisted that you justify your verdict?

2 A No.

3 Q What would you do?

4 A Once my mind is set, it's set. Nothing is
5 going to change it.

6 Q You probably don't have much trouble with
7 people trying to push you around anyway.

8 A No.

9 **MS. JACKSON:** Thank you, sir.

10 We pass Mr. Gray for cause, your Honor.

11 **THE COURT:** Mr. Gray, we'll let you know
12 tomorrow at 10:00 o'clock. Report downstairs in the
13 jury room.

14 **PROSPECTIVE JUROR 132:** All right.

15 **THE COURT:** Ten o'clock in the morning.

16 Laura Kaplan is in the military and has a
17 temporary duty assignment, I believe -- something
18 like that.

19 **MS. JACKSON:** She says she's TDY in
20 Oklahoma.

21 **THE COURT:** We'll excuse her.

22 Who is next, Jimerson?

23 **THE BAILIFF:** Jimerson.

24 **MR. STANTON:** Judge, did you want to
25 exercise a challenge before we go with the next one?

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1 **THE COURT:** Getting ahead of myself.

2 The defense may exercise its sixth
3 peremptory challenge.

4 **MS. JACKSON:** That would be Juror 112,
5 Robin Nesbit, and her position is No. 12.

6 **THE COURT:** No. 12?

7 **MS. JACKSON:** Yes, sir.

8
9 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 135

10 **THE COURT:** Miss Jimerson, how long have
11 you lived in Las Vegas?

12 **PROSPECTIVE JUROR 135:** All my life.

13 **THE COURT:** You came here -- I thought you
14 were born in Monroe?

15 **PROSPECTIVE JUROR:** Yeah, well I was a
16 baby when I came here.

17 **THE COURT:** Oh, were you?

18 **PROSPECTIVE JUROR:** Yeah.

19 **THE COURT:** Are you married?

20 **PROSPECTIVE JUROR:** Um-hmm.

21 **THE COURT:** How is your husband employed?

22 **PROSPECTIVE JUROR:** City of Las Vegas.

23 **THE COURT:** What does he do for them?

24 **PROSPECTIVE JUROR:** Maintenance worker.

25 **THE COURT:** What kind of work do you do,

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1 ma'am?
2 **PROSPECTIVE JUROR:** Houseman porter at the
3 Riviera.
4 **THE COURT:** And you have one daughter?
5 **PROSPECTIVE JUROR:** Yes.
6 **THE COURT:** She's 12?
7 **PROSPECTIVE JUROR:** She's what?
8 **THE COURT:** She's an adult?
9 **PROSPECTIVE JUROR:** Yeah, she's an adult.
10 **THE COURT:** Where does she work?
11 **PROSPECTIVE JUROR:** She works for Bank of
12 America.
13 **THE COURT:** You've never been on a jury
14 before?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** You have been?
17 **PROSPECTIVE JUROR:** Um-hmm.
18 **THE COURT:** You weren't supposed to put
19 the verdict down that you reached.
20 How long ago was this?
21 **PROSPECTIVE JUROR:** I think it was three
22 years ago.
23 **THE COURT:** What kind of case was it?
24 **PROSPECTIVE JUROR:** Murder.
25 **THE COURT:** A murder case?

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1 **PROSPECTIVE JUROR:** Um-hmm.

2 **THE COURT:** Mr. Daskas and Mr. Stanton

3 didn't try the case, did they, those D.A.s?

4 **PROSPECTIVE JUROR:** No.

5 **THE COURT:** Was Miss Jackson or

6 Mr. Whipple on the case?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Were you the foreman of the

9 jury?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** Tell me this here: Was that a

12 death penalty case?

13 **PROSPECTIVE JUROR:** I don't remember.

14 **THE COURT:** You don't remember.

15 Did the jury sentence the defendant?

16 **PROSPECTIVE JUROR:** Excuse me?

17 **THE COURT:** Did you guys pronounce

18 sentence?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** This is a -- I understand the

21 jury in this case has already convicted the

22 defendant of four counts of first-degree murder.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** Um-hmm.

25 **THE COURT:** Is that a "Yes"? You have to

1 answer "Yes."

2 **PROSPECTIVE JUROR:** Oh, yes.

3 **THE COURT:** This jury's job is you're
4 going to need to decide punishment. You understand
5 that you have four choices, the death penalty, life
6 in prison without parole, life in prison with the
7 possibility of parole or for a definite term of 50
8 years with the possibility of parole after 20, and
9 because a deadly weapon was used, these sentences
10 are doubled, so it would be a hundred years and
11 parole after 40.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** I don't quite
14 understand what you're saying.

15 **THE COURT:** Okay.

16 There are four possible punishments for
17 first-degree murder.

18 Do you understand is that?

19 **PROSPECTIVE JUROR:** Um-hmm, yes.

20 **THE COURT:** One of them is the death
21 penalty. The jury can sentence the defendant to
22 death. The jury can sentence him to life in prison
23 without parole or they can sentence him to prison
24 with the possibility of parole or they can sentence
25 him to a definite term of 50 years. Now, because a

1 deadly weapon was used, the penalty is doubled.
2 Do you understand that?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** So, it would be -- you can
5 sentence him to death, you can sentence him to life
6 in prison without parole, life in prison with the
7 possibility of parole or for a hundred years and
8 parole after 40 years.
9 Do you understand that?
10 **PROSPECTIVE JUROR:** Yes.
11 **THE COURT:** Now, what I want to know is,
12 do you have any objections, moral or religious or
13 otherwise to the death penalty?
14 **PROSPECTIVE JUROR:** No.
15 **THE COURT:** And could you consider in this
16 case the punishment of life in prison without
17 parole, life in prison with the possibility of
18 parole or for a definite term of a hundred years?
19 **PROSPECTIVE JUROR:** Yes.
20 **THE COURT:** You can consider that along
21 with the death penalty; is that right?
22 **PROSPECTIVE JUROR:** Yes.
23 **THE COURT:** You can listen to the
24 evidence, the facts of the case, listen to
25 background information about the people involved and

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1 decide -- and of course, listen to the Court's
2 instructions on the law and decide on what's the
3 most appropriate punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** You don't have any problems in
6 following the Court's instructions on the law?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Are you biased or prejudiced
9 against either side for any reason?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** You could be fair and
12 impartial?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Had you heard anything about
15 this case?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** State.

18 **MR. STANTON:** Thank you, your Honor.

19

20 EXAMINATION BY THE STATE

21 **BY MR. STANTON:**

22 Q Good afternoon, Miss Jimerson. Is it
23 correct to pronounce your name Jim-er-son
24 (phonetic)?

25 A Jim-er-son (phonetic).

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1 Q Thank you for your patience today. I have
2 a couple of questions I'd like to ask you about the
3 questionnaire you filled out about a week ago.

4 A Yes.

5 Q There is a section in here or Question
6 No. 32 that said, "To what extent should the mental
7 status of a criminal defendant be considered in a
8 sentencing decision between life and death," and you
9 left that blank.

10 Can you give me an answer of what your
11 thoughts are to that question as you sit here today?

12 A No.

13 Q You don't know?

14 A Not really.

15 Q Do you consider -- would it be important
16 to you to know something about the mental status of
17 someone in determining punishment?

18 A Yes.

19 Q How important is that among the things
20 that you can think about as you sit here today? I
21 know you haven't heard the facts and you haven't
22 been instructed on the law, but how important is
23 that to you?

24 A It can be very important to the case.

25 Q Your answer about the death penalty is

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1 that you've never thought about it?

2 A No, never thought about it.

3 Q You've never seen cases and didn't discuss
4 it, just never come up in conversation?

5 A No.

6 Q There was a Question No. 36, and it says,
7 "If you were convinced beyond a reasonable doubt
8 that the defendant was guilty of first-degree
9 murder, would you say that" -- and it gave you two
10 options or two questions underneath that. Your
11 first -- the first question was, "Your beliefs about
12 the death penalty are such that you would
13 automatically vote against the death penalty
14 regardless of the facts and circumstances of the
15 case," and you answered "Yes."

16 A Yes.

17 Q Is that your feeling as you sit here
18 today?

19 A Yes.

20 Q So, regardless of what was presented to
21 you, your vote would be against the death penalty?

22 A Yes.

23 Q And there's nothing that could change your
24 mind under any circumstances?

25 A No.

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1 **MR. STANTON:** Your Honor.

2 **THE COURT:** Ma'am, I thought you just told
3 me that you weren't opposed to the death penalty?

4 **PROSPECTIVE JUROR:** I'm probably getting
5 confused.

6 **THE COURT:** What question was that,
7 counsel?

8 **MR. STANTON:** Your Honor, it was No. 36 on
9 page 7.

10 **THE COURT:** This is what I want to know
11 without regard to the question, because I can see
12 how you can get confused with that.

13 Are you against the death penalty?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Are you against the death
16 penalty?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** So, you would not impose the
19 death penalty?

20 **PROSPECTIVE JUROR:** Yes -- well, no,
21 right? I'm so nervous.

22 **THE COURT:** There's nothing to being
23 nervous. I don't know. If you thought someone had
24 killed someone -- I can't put it like that.

25 Could you sentence someone to death?

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**PLEADING
CONTINUES
IN NEXT
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1 appropriate in this case?

2 A Um-hmm, yes.

3 Q What will happen in a penalty phase is
4 that evidence will be presented to you from the
5 State about the underlying murders and also will be
6 presented evidence by the defense in this case
7 before the matter is ultimately submitted to the
8 jury.

9 Do you understand how that process works
10 now, having heard a little bit more about what this
11 case is?

12 A Yes.

13 Q In this case, there is no guilt phase to
14 determine whether or not the defendant was guilty
15 beyond a reasonable doubt. He stands convicted by
16 another jury of four counts of first-degree murder.

17 Are you comfortable with that, being
18 instructed by the Court, that you have to respect
19 that other verdict? Are you comfortable in doing
20 that?

21 A Yes.

22 Q In this case, there are four victims, and
23 the punishment, as the jury has to find in this
24 case, is the appropriate and just punishment for
25 each one of the victims, that is, it can be

1 different as it relates to each victim depending on
2 the facts and circumstances.

3 Does that principle or idea bother you in
4 any way?

5 A No, it doesn't.

6 Q Now, there's no real direction or law that
7 gives direction to how a foreperson of the jury is
8 selected. That's up for the entire jury to
9 determine.

10 If, in this case, you're selected as the
11 foreperson, and after due deliberation to all the
12 facts and the law as Judge Gates will instruct you
13 in this matter, you and your fellow jurors believe
14 that the death penalty is the appropriate punishment
15 in this case, could you, sir, sign your name as the
16 foreperson to that verdict form that puts that man,
17 Donte Johnson, to death?

18 A Yes, I could.

19 MR. STANTON: Thank you.

20 Pass the prospective juror.

21 MR. WHIPPLE: Thank you, your Honor.

22

23 EXAMINATION BY THE DEFENSE

24 BY MR. WHIPPLE:

25 Q Good afternoon, Mr. Larson. My name is

1 Bret Whipple, and I want to visit with you for a few
2 moments, if I can. Again, I represent Mr. Johnson.
3 There are no right or wrong answers. I think that
4 was mentioned to you when you were in here a little
5 earlier; we just want to get a little background
6 about yourself.

7 How do you feel about sitting in judgment
8 of another human being?

9 A It's difficult. It's not an easy job.

10 Q Do you have children?

11 A Yes, I do.

12 Q How old are your children?

13 A My daughter is 25, and my son is 29.

14 Q And you've lived here 17 years.

15 Where are you from originally, if I might
16 ask?

17 A Southern California.

18 Q Vegas is obviously for you to do well.

19 A Yes.

20 Q When you say you're an Exxon retailer, you
21 own your own gas station?

22 A Right.

23 Q You obviously deal with the people.

24 Are you still in a situation where you
25 deal with the public yourself on a daily basis, or

1 are you kind of management at this point?

2 A I deal with them on a daily basis.

3 Q Okay.

4 Can I ask what side of town or what areas
5 of town?

6 A It's in Henderson.

7 Q Okay. Okay.

8 I want to ask you some questions to kind
9 of get to know a little bit more about yourself.

10 What kind of hobbies do you have, or if
11 you have free time, what type of things would you
12 like to do?

13 **MR. STANTON:** Your Honor, I'm going to
14 object to that question.

15 **THE COURT:** What was the question again?

16 **MR. STANTON:** He asked him what his
17 hobbies were.

18 **THE COURT:** Why would you object to that?

19 **MR. STANTON:** Because I don't know what
20 relevance it has to whether or not he can be a fair
21 and impartial juror, and we object on the grounds of
22 relevance.

23 **THE COURT:** It all depends. If he had a
24 hobby of sniping on people --

25 **MR. STANTON:** I don't know if that's a

1 hobby, your Honor.

2 **THE COURT:** For some people it might be a
3 hobby.

4 **MR. STANTON:** I think it's a little
5 overbroad and irrelevant.

6 **THE COURT:** Go on.

7 **MR. WHIPPLE:** Thank you, your Honor.

8 **BY MR. WHIPPLE:**

9 Q Mr. Larson, I'm trying to know a little
10 bit about your background and know where your coming
11 from a little bit. I don't mean to be prying or
12 invasive; I'm just kind of curious of what you do in
13 your free time if you have a hobby.

14 A Basically, my business is my hobby. Right
15 now it takes a lot of my time. There's not too much
16 free time.

17 Q I understand that.

18 Do you have an opinion with regard to the
19 death penalty?

20 A No.

21 Q Have you ever discussed it with anybody,
22 with, like, family members or other friends just
23 with regard to conversation?

24 A Well, I've talked to my wife about it.

25 Q In what context?

1 A What context? Just matters on the news.

2 Q Does your opinion seem to be different
3 from other people, or do you just kind of feel yours
4 is mainstream?

5 A Well, probably mainstream, neither for nor
6 against it.

7 Q Okay.

8 You know I've often heard that adage, "An
9 eye for an eye." It's kind of like asking the same
10 question twice. I'm curious about your position
11 with regard to the adage, "An eye for an eye."

12 A I'm not really for "an eye for an eye."
13 Like I said, it depends on the circumstances.

14 Q I understand.

15 I notice here -- did you attend or did you
16 go to college or the type of things you studied in
17 school?

18 A Yeah. I went to Owens School College. I
19 went there a year.

20 Q It's a community college, is it?

21 A Yeah, it's a community college.

22 Q You took general ed type classes?

23 A No; civil engineering.

24 Q Okay.

25 What stopped you from becoming a civil

1 engineer and choosing this other route?

2 A Well, I didn't have any money when I went
3 to college. It was difficult to go to college and
4 pay for it, and I've grown up around the automotive
5 business.

6 Q How is that?

7 A Well, my brother had a service station in
8 Newport Beach, California, and I've been around it
9 all my life, and I like it.

10 Q Now, you mentioned you would like to know
11 all the facts and circumstances. Can you tell me
12 what you mean by the "facts and circumstances" --
13 and let me just follow up on that, because in this
14 situation, it's not like watching TV where you have
15 a jury trial; this is an unusual situation compared
16 to what the general experience or expectation would
17 be. Mr. Johnson is convicted. He's not -- there's
18 no presumption of innocence. He is a convicted
19 killer. He has killed, and he's convicted of
20 killing four individuals of first-degree,
21 premeditated, deliberate murder. So, we have to now
22 have the opportunity to sit and make a decision as
23 to society and as to his future, and I need to be
24 able to ask these questions of you because it is
25 such a serious matter.

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1 Knowing that he has been convicted of
2 killing four young adults who also happened to be
3 Caucasian, Hispanic, of first-degree, premeditated,
4 deliberate murder, could you consider a potential
5 life sentence?

6 A I don't know anything about the case,
7 where or how it was done or anything like that. All
8 I know is my daughter went to school with one of the
9 people. I couldn't even tell you the name of the
10 person, because she didn't tell me.

11 Q What school was it that they attended, do
12 you know?

13 A Green Valley High.

14 Q Do you know how close she was to this
15 individual?

16 A I don't know.

17 Q Did she ever sit down and talk to you
18 about this case at all?

19 A No.

20 Q Or is it something you learned in passing?

21 A No. I only learned of it a few days ago
22 when I told them I'm in jury service.

23 Q Oh, I see.

24 So, she never even mentioned it to you
25 prior to that?

1 A No, not to me.

2 Q While you've been waiting over the last
3 day or two, have you had a chance to visit with
4 anybody about this case or have there been any
5 discussions about what's going on in here?

6 A No.

7 Q You never heard anybody discussing what
8 their expectations are?

9 A No.

10 Q Your brother who owns a service station in
11 California, has he ever been victimized by an armed
12 robbery, do you know?

13 A No.

14 Q If, after going through all the facts and
15 circumstances that you would hear over a few days
16 and deliberating, knowing that Mr. Johnson has been
17 convicted of first-degree, premeditated, deliberate
18 murder -- and again, it's almost an execution type
19 style -- would you be able to, if you felt convinced
20 in your heart of hearts that he should deserve life
21 in prison or life with parole, could you do that?
22 Could you give him a life sentence?

23 A I think so.

24 Q When you say you think so --

25 A Well, if I believed in my heart, yes.

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1 Q Do you think it would be difficult to
2 believe in your heart just knowing the facts as we
3 give them to you?

4 A Like I said, I don't know the facts, so
5 it's hard for me to answer that question.

6 Q Sure.

7 This is a hypothetical. I'm not talking
8 about this case right now, just talking if an
9 individual were convicted -- if we know for a fact
10 that a person killed four individuals, premeditated,
11 deliberate and cold-blooded, and they were
12 essentially tied up with their hands behind their
13 back and bound about their feet and laid in a room
14 and had a bullet put through the back of each one of
15 their head -- just knowing that, would it be
16 possible for you to consider a life sentence?

17 A It would be pretty hard. I don't think
18 so.

19 Q Okay. I need to follow through on that.
20 Why is that?

21 A Premeditated, planned out in advance
22 killing of four individuals -- I don't know what
23 these individuals did to this person, but that's
24 pretty bad.

25 Q Bound at the feet, bound behind the backs,

1 shot in the back of the head, bullet for each one of
2 them -- because of the number of them, it seems to
3 be more difficult to consider a potential life
4 sentence in that situation?

5 A Yes, it would be more difficult.

6 Q Do you think you could consider a life
7 sentence as you sit here today?

8 A I don't know.

9 **THE COURT:** I didn't hear that, sir.

10 **PROSPECTIVE JUROR:** I don't know if I
11 could or not.

12 **BY MR. WHIPPLE:**

13 Q I appreciate your honesty. There's no
14 trickery involved. We're not trying to put words in
15 your mouth; I just need to know, because this is a
16 difficult job, and it's not for everybody. We
17 deserve to know what you feel as much as you should
18 have an expectation as to what's going forward.

19 A I've never been under that having to make
20 a decision like that.

21 Q It's a very rare circumstance, it truly
22 is.

23 I want to talk with regard to some of the
24 facts and circumstances. Though you have mentioned
25 several times you would like to know the facts and

1 circumstances, there is no justification. There is
2 no excuse for murder.

3 A Right.

4 Q We're not offering any -- we're not trying
5 to say he's justified, we're not trying to say
6 what's right, but when it comes to the penalty and
7 trying to save the future of another human being,
8 Nevada law says that that person has a right to
9 present information about themselves, and if that
10 information is a reason for giving a life sentence
11 instead of death, that's known as "mitigation." If
12 you're asked to sit on this jury, you'll hear that
13 term, "mitigation." In fact, it was asked on
14 No. 38, and the question was, "In reaching a verdict
15 in this penalty phase, you must consider the
16 defendant's background, that is, mitigating
17 circumstances such as the defendant's health, mental
18 status, age, childhood experiences, education."

19 "Do you feel you would consider those
20 types of factors?" And you put, "Not sure."

21 I don't want to have to push you, but we
22 need to be able to know, because Nevada law requires
23 a person who would sit on this type of
24 decision-making process -- that they could consider
25 those types of factors. I can't go into it much

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1 more than that.

2 Do you think that's something you could
3 consider? We've had a few minutes to talk. You've
4 mentioned facts and circumstances. What do you feel
5 about me asking you to be able to consider that type
6 of information?

7 A Sure, I could consider it.

8 Q Do you think it's important?

9 A Oh, yeah.

10 Q Do you think it's appropriate that I would
11 ask you to consider that type of information?

12 A Yes.

13 Q Why?

14 A Well, I would have to know the facts
15 behind what happened, you know. Like I said, I
16 don't know what happened. I don't know what the
17 whole story is.

18 Q Again, I don't want to belabor it, but the
19 fact -- there is no excuse. There is no
20 justification --

21 A I understand.

22 Q -- for first-degree, premeditated,
23 deliberate homicide. There's no justification or
24 excuse. All you're going to have an opportunity to
25 do is learn a little bit about the victims in this

1 case, some of their families and my client's
2 families and some of his background.

3 Do you think that's appropriate and can
4 you do that?

5 A Yeah.

6 Q Knowing these questions that I've asked
7 you, if you were sitting where I am now -- and you
8 know your state of mind -- do you think you would
9 favor the State over myself, or do you think that
10 you would be more prone to favor me over the State?
11 Only you know what you're thinking.

12 Should one of us be worried or nervous
13 about how you're thinking?

14 A I don't think so. I don't favor either
15 one.

16 Q Okay.

17 This is my last question, and I appreciate
18 your time. If, after viewing all of the mitigating
19 circumstances, the facts and circumstances, knowing
20 that Mr. Johnson is guilty of first-degree,
21 premeditated, deliberate murder on four young,
22 innocent lives -- if you felt it was appropriate to
23 give a life sentence, would you be able to stand up
24 and say and vote for life?

25 A Yes, if I felt it was appropriate.

1 **MR. WHIPPLE:** That's as much as I can ask.
2 I appreciate your time, sir.
3 Pass for cause, your Honor.
4 **THE COURT:** Okay.
5 Sir, we're going to have you come back
6 tomorrow at 10:00 a.m. Okay?
7 **PROSPECTIVE JUROR 97:** Sure.
8 **THE COURT:** We'll let you know tomorrow.
9 The State's third peremptory challenge.
10 **MR. DASKAS:** Judge, the State would
11 exercise its third peremptory challenge on Juror
12 No. 0007, Miss Austin in position No. 3.
13 **THE COURT:** Miss Austin. Okay.
14 What do you guys want to do with Rubin?
15 She's not here and she didn't show up. I don't know
16 if you want her anyway.
17 **MR. STANTON:** She didn't show up, your
18 Honor?
19 **THE COURT:** Well, she was here yesterday,
20 but --
21 **THE BAILIFF:** She was here the first day.
22 She had an anxiety attack.
23 **MR. STANTON:** Oh, she did?
24 **THE BAILIFF:** She had an anxiety attack
25 and ran down the hallway.

1 **MR. WHIPPLE:** I think we got out of this
2 lucky, your Honor.

3 **THE COURT:** She says she belongs to the
4 Paul Revere Society. What is that?

5 **MR. STANTON:** It's a group that believes
6 in kind of a mantra. It borders language, and she
7 wrote it. Actually, she uses the mantra in her
8 comments.

9 **THE COURT:** All it says is for borders,
10 language and culture, but what does that mean?

11 **MR. STANTON:** I can't say that it's
12 liberal or conservative; it's just a group that
13 believes in --

14 **THE COURT:** Not letting any immigrants in
15 and making sure they speak English or something?

16 **MR. STANTON:** Yeah, but they're not an
17 absolute close the borders off to everybody but much
18 more controlled. I would consider it probably
19 libertarian than I would consider it liberal or
20 conservative.

21 **THE COURT:** In No. 24 she says, "I'm
22 beyond unsatisfied with the system since the murder
23 of Terri Schiavo. I have no respect for the legal
24 system."

25 **MR. STANTON:** I would submit it to the

1 Court.

2 MR. DASKAS: Maybe she ran to close the
3 border.

4 THE BAILIFF: She came here with her
5 mother. Her mother was out there. I don't know why
6 she brought her.

7 MR. STANTON: I figure if she ran out of
8 the courtroom with an anxiety attack, this probably
9 isn't the case for her to deliberate on.

10 THE COURT: We'll just excuse her. It
11 says, "Terri Schiavo's murder makes me sick. I
12 cannot believe the court's have more power than
13 George W. Bush. I am also tired of the courts
14 trying to ban God left and right."

15 She seems like an angry young woman. she
16 probably wants to go to the Laughlin River Run like
17 that one guy.

18 MR. DASKAS: Yeah.

19 THE COURT: I don't know why you told me
20 that afterwards.

21 MR. DASKAS: "I got a meeting," he said.

22

23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 108

24 THE COURT: Mr. Estes (sic)?

25 MR. STANTON: It's Michael Krispli.

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1 **THE COURT:** Krispli. I'm sorry. I got
2 you mixed up there.

3 How long have you been in Las Vegas, sir?

4 **PROSPECTIVE JUROR 108:** Almost two years.
5 It will be two years in July.

6 **THE COURT:** Where did you live before?

7 **PROSPECTIVE JUROR:** Youngstown, Ohio.

8 **THE COURT:** There are a lot of people in
9 gaming from Youngstown, Ohio. Why is that?

10 **PROSPECTIVE JUROR:** Have you ever been to
11 Youngstown, Ohio?

12 **THE COURT:** You said you had no friends in
13 the justice system.

14 What is your degree in?

15 **PROSPECTIVE JUROR:** Speech communications.

16 **THE COURT:** What's your job now?

17 **PROSPECTIVE JUROR:** Right now, I'm an
18 assistant shift manager at the Tropicana in the slot
19 department.

20 **THE COURT:** All right.

21 You said you were the victim of a robbery;
22 is that right?

23 **PROSPECTIVE JUROR:** In college, I was the
24 victim of a couple of robberies. I stayed off
25 campus.

1 **THE COURT:** This was in Kentucky?

2 **PROSPECTIVE JUROR:** At the time, I was in
3 Cincinnati, and I went to school at The University
4 of Cincinnati and I finished up at Northern Kentucky
5 which is right across the border.

6 **THE COURT:** Did they have a gun when they
7 robbed you or was it a strong arm robbery?

8 **PROSPECTIVE JUROR:** I wasn't home.

9 **THE COURT:** Huh?

10 **PROSPECTIVE JUROR:** I wasn't actually
11 home.

12 **THE COURT:** They broke into your house?

13 **PROSPECTIVE JUROR:** They broke into my
14 house.

15 **THE COURT:** A burglary. Robbery is when
16 they take something from you personally with the use
17 of a weapon or violent force from your person or in
18 your presence; so, you can remember that in the
19 future.

20 Can you follow the Court's instructions on
21 the law?

22 **PROSPECTIVE JUROR:** Yes, sir.

23 **THE COURT:** This is how this is going to
24 proceed. The parties will present evidence, and
25 after they present the evidence, I'll instruct you

1 on what the law is, and the jury will make their
2 decision.

3 As you know from reading the
4 questionnaire, the defendant has been convicted of
5 four counts of first-degree murder. The jury will
6 have to decide the penalty for each of those counts,
7 and the possible penalties are the death penalty,
8 life in prison without the possibility of parole,
9 life in prison with the possibility of parole or for
10 a definite term of 50 years with the possibility of
11 parole after 20 years. Now, these sentences are
12 doubled because a deadly weapon was used. So, it
13 would be 50 years plus a consecutive 50 years, which
14 means that if the jury gave him a definite term of
15 50 years, it would be for each of those counts. It
16 would be a hundred years for each count, and then he
17 would be eligible for parole after serving 40 years,
18 and it would be up to the Court whether or not they
19 would run concurrently or consecutively.

20 Do you understand?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Could you consider all four
23 forms of punishment?

24 **PROSPECTIVE JUROR:** Yes, I believe so.

25 **THE COURT:** Do you have any moral or

1 religious objection to the death penalty?

2 **PROSPECTIVE JUROR:** No, sir.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thank you, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Mr. Krispli, the Judge mentioned the
9 defendant has already been convicted. Another jury
10 heard the evidence, listened to the questions and
11 arguments and decided beyond a reasonable doubt that
12 he was guilty of four counts of murder. If you're
13 selected as a juror, you have to accept that other
14 jury's verdict.

15 Do you feel like you can accept that other
16 jury's verdict?

17 A Yes.

18 Q Of course, your responsibility would be to
19 determine the appropriate punishment in this case.
20 Both sides will present evidence, as the Judge said.
21 What I want to talk to you about is I'm sure you,
22 like most people, may have had discussions about the
23 death penalty, but what we're talking about now is
24 the prospect of having to make that decision, and
25 it's a big decision. We appreciate that.

1 My question is this: If, after hearing
2 all the evidence and everything presented about this
3 man over here, the defendant, if you believe that
4 the death penalty is appropriate, do you think you
5 can impose that punishment?

6 A I think it would be difficult, but I think
7 I could.

8 Q And it should be difficult. We appreciate
9 that. It should be a very difficult decision.

10 The other thing I want to ask you this is
11 this: One among you of the 12 jurors will be
12 selected as the foreperson, and the foreperson has
13 the same vote as every other juror. You all have to
14 agree on the decision, but the foreperson has to
15 sign the verdict form that will put the defendant to
16 death.

17 If you're the foreperson, do you think you
18 could accept that additional responsibility to sign
19 the document that sentences somebody to death?

20 A If that's my role, I can do it.

21 Q Again, I'm assuming that you've heard the
22 evidence and you believe in your heart of hearts
23 that's the appropriate punishment?

24 A Absolutely, and if that's what I have to
25 do, then I have to do that.

1 Q The final area is as the Judge mentioned,
2 we're talking about four different murder
3 convictions in this case, and one of your roles is
4 to assign punishment to each of those murder
5 convictions. It may be that you and the other
6 jurors decide the punishment should be the same for
7 each murder, it may be that you should decide there
8 should be different punishments for each murder.

9 Do you think you can accept that
10 punishment as well?

11 A Yes, sir.

12 **MR. DASKAS:** Thank you, sir.

13 Judge, we pass the juror for cause.

14 **THE COURT:** Okay.

15 Defense.

16

17 EXAMINATION BY THE DEFENSE

18 **BY MS. JACKSON:**

19 Q Mr. Krispli, good afternoon, sir.

20 A Hi.

21 Q Knowing that this is a case where you're
22 going to have four victims, young men, you're going
23 to -- you're definitely going to see photographs --
24 they were executed -- bound and executed, and it's
25 going to be required of you to see pictures of that,

1 somewhat shocking pictures probably, times four. Of
2 course, you're also going to hear quite a bit about
3 my client, Donte Johnson, and it's difficult,
4 because you don't know what those things are yet,
5 but just knowing that alone, can you consider life
6 in this case?

7 A Yes.

8 Q In your estimation, sir, is life
9 imprisonment -- is that significant punishment?

10 A I've never spent any time in prison. I
11 think that life in prison is, in any sense, a
12 significant punishment.

13 Q Do you think it's a severe punishment?

14 A Yes, I do.

15 Q You will be instructed at the appropriate
16 time that you're to deliberate with your fellow
17 jurors, and after that deliberation, what if you
18 find yourself the only person who felt that, in your
19 heart of hearts, that life was the appropriate
20 verdict and you were asked to explain yourself to
21 the other 11, what would you say?

22 A If I believe that, I would stand by that
23 even if I was the only one. I mean, that's my duty.
24 If I'm selected, that's my role. If you have a
25 belief, you should at least share it with somebody

1 else, because everybody else has their beliefs, but
2 I want them to know what my opinion is. Whether
3 they agree with it or not, my opinion is my opinion.
4 I'm entitled to that.

5 Q You would respect their opinion, of
6 course?

7 A Absolutely.

8 Q And you would demand that they respect
9 yours?

10 A I would hope that they respect mine, but I
11 mean when you're dealing with somebody's life, I
12 think that everybody should hear somebody else's
13 opinion and be open to it.

14 Q Would you surrender your opinion just for
15 the sake of reaching a unanimous verdict, sir?

16 A No, sir -- no, ma'am. I'm sorry.

17 Q How would you feel if you deliberated over
18 a period of time and every juror has done their
19 best, deliberated, and just can't seem to reach a
20 verdict? How would you feel about that?

21 A I'm a little bit confused. If my opinion
22 was different from everybody else's --

23 Q That's a different question.

24 In order for my client to be killed, this
25 entire jury has to agree, all 12.

1 A Right.

2 Q One juror can give life and stop the
3 killing, but if the other 11 disagreed, that's
4 what's called a "Hung jury." What if that happened
5 to you if you were selected to sit on this jury, how
6 would you feel about that?

7 A I'd understand it. I mean, if you can't
8 come to a mutual agreement on it -- if somebody --
9 it would be difficult, because I realize how much
10 time it would take, but that's just the way it is.

11 Q If you were the sole holdout, would that
12 be a sufficient basis for you to surrender your
13 honest conviction --

14 A No.

15 Q -- just for the sake of reaching a
16 verdict?

17 A No.

18 Q Would you consider sentencing someone in
19 this situation for multiple first-degree,
20 cold-blooded homicides without considering any of
21 that person's background information?

22 A I think I would consider everything.

23 Q Do you have any thoughts about the
24 benefits of imposing a sentence of life in this
25 case? If you don't, that's fine.

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1 A I don't know. No.

2 Q Do you have any thoughts about the
3 benefits of imposing a death sentence in this case?
4 If you don't have any thoughts, that's fine, sir.

5 A No, I don't.

6 **MS. JACKSON:** Thank you, Mr. Krispli.
7 Your Honor, we would pass Mr. Krispli for
8 cause.

9 **THE COURT:** Mr. Krispli -- that's an
10 unusual name. I haven't seen that one before,
11 K-R-I-S-P-L-I, right?

12 **PROSPECTIVE JUROR 108:** It's like the
13 adverb.

14 **THE COURT:** We're going to have you come
15 back tomorrow at 10:00 o'clock, and we'll let you
16 know.

17 **PROSPECTIVE JUROR 108:** Okay.

18 **THE COURT:** The defense may exercise their
19 third peremptory challenge.

20 **MS. JACKSON:** Thank you, your Honor. We
21 would thank and excuse Dr. Allen Anes, A-N-E-S.

22 That's number three for us, correct,
23 Judge?

24 **THE COURT:** Right. He's seated in No. --
25 Seat 12. His number is 039.

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1 The next one is Estes, but the bailiff
2 informed me that Mr. Estes is not outside.

3 When were these two supposed to come in?

4 **THE BAILIFF:** This is the morning group.
5 The afternoon group is who we had at 1:30.

6 **THE COURT:** What about Estes?

7 **THE BAILIFF:** He didn't answer yesterday;
8 he didn't answer this morning.

9 **THE COURT:** He wasn't here the last two
10 days?

11 **THE BAILIFF:** He didn't answer in the last
12 couple of days. I'll call his name out and see if
13 he's there.

14 **THE COURT:** Who is next?

15 **THE BAILIFF:** Cynthia Armistead.

16

17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 111

18 **THE COURT:** Armistead?

19 **PROSPECTIVE JUROR 111:** Armistead.

20 **THE COURT:** All right, Miss Armistead.

21 How long have you lived in Las Vegas,

22 ma'am?

23 **PROSPECTIVE JUROR:** Five years.

24 **THE COURT:** Are you a nurse?

25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** Where do you work?
2 **PROSPECTIVE JUROR:** Mountain View
3 Emergency Room."
4 **THE COURT:** You need to speak up louder.
5 **PROSPECTIVE JUROR:** Mountain View
6 Emergency Room.
7 **THE COURT:** Okay.
8 Are you married?
9 **PROSPECTIVE JUROR:** I am.
10 **THE COURT:** How is your husband employed?
11 **PROSPECTIVE JUROR:** He's a driver for a
12 limousine company.
13 **THE COURT:** You have one child?
14 **PROSPECTIVE JUROR:** One.
15 **THE COURT:** Have you or anyone in your
16 family ever been arrested for a crime or charged
17 with a crime?
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Who was that?
20 **PROSPECTIVE JUROR:** Relatives on my
21 father's side of the family.
22 **THE COURT:** Are they in Chicago?
23 **PROSPECTIVE JUROR:** Yes.
24 **THE COURT:** Were any of them charged with
25 a violent crime, like murder or anything like

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1 that -- robbery?

2 **PROSPECTIVE JUROR:** I'm not sure what they
3 were charged with.

4 **THE COURT:** Are any of them in prison?

5 **PROSPECTIVE JUROR:** I think so.

6 **THE COURT:** Would that affect your ability
7 to be fair in this case?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** You're being considered for
10 jury duty in this case, and you're going to have to
11 decide the punishment.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** I do.

14 **THE COURT:** The defendant has been
15 convicted of four counts of first-degree murder, and
16 there are four possible sentences. One is the death
17 penalty, one is life imprisonment without the
18 possibility of parole, one is life imprisonment with
19 the possibility of parole or for a definite term of
20 50 years with the possibility of parole after 20
21 years. Now, because a deadly weapon was used, these
22 sentences will be doubled.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** I do.

25 **THE COURT:** The 50 years becomes a hundred

1 years -- 50 plus 50, and he will be eligible for
2 parole after 40 years, and this applies to each
3 count.

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** Now, can you consider all four
7 forms of punishment?

8 **PROSPECTIVE JUROR:** Can I consider them?

9 **THE COURT:** Right.

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Do you know what I mean by
12 that?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** You'll have to listen to the
15 evidence and the law and decide which punishment is
16 most appropriate for these crimes.

17 Do you think you can do that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** What I want to know is -- some
20 people come in and they say, "I am opposed to the
21 death penalty. I can't impose it under any
22 circumstance."

23 Do you have that feeling?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Some people say, "I can never

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1 give life with the possibility of parole."

2 Do you have that feeling?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** You can consider them all and
5 decide which is the most appropriate, correct?

6 **PROSPECTIVE JUROR:** Right.

7 **THE COURT:** Looking at Question No. -- I
8 guess Question No. 33, it asks, "To what extent
9 should the mental status of a criminal defendant be
10 considered in a sentencing decision between life and
11 death?" I guess you said, "If a person has a
12 documented history of mental illness and not
13 substance abuse but mental illness."

14 Are you talking about the kind where a
15 person would be found not guilty by reason of
16 insanity?

17 **PROSPECTIVE JUROR:** Yes. I'm talking
18 about no substance abuse would play a part in.

19 **THE COURT:** First of all, the defendant --
20 there was no mental illness to the degree that would
21 render him not guilty because of insanity.

22 Do you understand that?

23 **PROSPECTIVE JUROR:** I do.

24 **THE COURT:** He was convicted of
25 first-degree murder, and if he was insane under the

1 law, he wouldn't have been convicted of first-degree
2 murder.

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** They're allowed to present
5 evidence of mitigation which is the mental
6 condition, status, childhood background,
7 education -- all of that stuff for you to consider,
8 and you have to decide which are mitigators and
9 whether or not it outweighs the aggravators.

10 Do you understand?

11 **PROSPECTIVE JUROR:** I do.

12 **THE COURT:** In Question No. 38, you said
13 the only one you would consider is mental status.
14 You don't think that a person's childhood,
15 upbringing -- not in every situation, but depending
16 on the facts -- education, experience -- all of that
17 stuff should be considered?

18 **PROSPECTIVE JUROR:** I don't.

19 **THE COURT:** So, you would not consider any
20 other mitigation but mental status?

21 **PROSPECTIVE JUROR:** That's correct.

22 **THE COURT:** All right.

23 State.

24 **MR. STANTON:** Briefly, your Honor.

25 /////

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q This procedure involves mitigation
4 evidence, what we lawyers call as a "proceeding of
5 death," and that is the background, who the
6 defendant Donte Johnson is, where did he come from,
7 hearing from family members and other evidence
8 regarding that side.

9 Would you consider that important in
10 making a decision about whether or not -- what
11 punishment should be imposed by a jury in a case as
12 severe as this?

13 A No.

14 Q You don't think so?

15 A No.

16 Q I believe you said -- I believe you said
17 nothing other than mental status would be something
18 that you would consider at all?

19 A Correct.

20 **MR. STANTON:** I would submit it, your
21 Honor.

22 **MS. JACKSON:** Your Honor, may we inquire?

23 **THE COURT:** Yes.

24 /////

25 /////

1 EXAMINATION BY THE DEFENSE

2 **BY MS. JACKSON:**

3 Q Good day, Miss Armistead.

4 A Hi.

5 Q You're a nurse?

6 A Yes.

7 Q You're an RN?

8 A I am.

9 Q How long have you been an RN?

10 A Thirteen years.

11 Q Thirteen years.

12 It says here that you've had quite a few
13 courses that prepared you for your training
14 including psych courses, sociology courses and
15 things of that nature.

16 A Correct.

17 Q How long have you been over at Mountain
18 View?

19 A A year and a half.

20 Q I'm sorry?

21 A One-and-a-half years.

22 **THE COURT:** Approach the bench.

23 (Sidebar conference outside the presence
24 of the court reporter.)

25 / / / / /

1 BY MS. JACKSON:

2 Q Have you had any cases brought into the
3 emergency room with child abuse?

4 A Yes.

5 Q You've seen children who had not been
6 given enough to eat?

7 A Yes.

8 Q You believe that that affects a child's
9 development?

10 A I do.

11 Q And as a nurse, you recognize that could
12 affect their brain in their development?

13 A That's correct.

14 Q Those are the kinds of things that would
15 be considered mitigation.

16 Are you saying that you would not consider
17 someone as a child, perhaps the first five years of
18 their life, wouldn't receive adequate food, would
19 not, as a nurse, consider that?

20 A I'm not understanding you.

21 Q If someone -- we could show you that a
22 child from ages, say, zero to five didn't, say, have
23 enough food to eat --

24 A Okay.

25 Q -- you don't think you would want to

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1 consider that before you decide if you want to kill
2 that person?

3 A What happened after -- you said zero to
4 five years?

5 Q Um-hmm. This is an example.

6 A Right. I understand that, but I'd need to
7 see what happened after the five years.

8 Q We will show you that.

9 A Okay.

10 Q Can you consider --

11 A I can consider anything.

12 Q -- that factor?

13 You said you can consider anything. Are
14 you going to give it a serious consideration?

15 A That's correct.

16 Q What other things would be important to
17 you in the way of mitigation?

18 A Such as --

19 Q You tell me. What would you like to know
20 about -- in this situation, you're being asked to
21 judge someone and decide if they're going to live or
22 die. Before you made that decision, what, if
23 anything, would you like to know about that person?

24 A The evidence that found the person guilty.

25 Q Well, that's already been determined,

1 because he's guilty times four. You're going to
2 decide if he lives or dies.

3 A How do I know what circumstances got them
4 to the guilty verdict? I know nothing. I'm just
5 going to come into a room and decide if a person --
6 am I correct in saying that I'm going to come into a
7 room and decide what the penalty is going to be
8 without knowing anything? I was under the
9 impression that we were going to be told some
10 things --

11 Q You will be.

12 A -- about the case.

13 **MS. JACKSON:** We would submit it, your
14 Honor.

15 **THE COURT:** Submit it? I have no motion
16 before me.

17 **MS. JACKSON:** The State submitted it, we
18 submit it. The challenge for cause regarding
19 mitigation -- we don't think she can consider
20 mitigation.

21 **THE COURT:** You need to say the magic
22 word.

23 Granted.

24 You're excused, ma'am.

25 **PROSPECTIVE JUROR 111:** Thank you.

1 **MR. DASKAS:** Can we state, just for the
2 record before we bring in the next juror, that I
3 don't know precisely what ethnicity this woman was?

4 **THE COURT:** She was black. What do you
5 mean you don't know what ethnicity she was?

6 **MR. DASKAS:** I don't know if she was
7 Puerto Rican or Cuban or Hispanic.

8 **THE COURT:** She was not Puerto Rican or
9 Hispanic.

10 **MR. DASKAS:** Well then, that's the record
11 we want to make, Judge. The defense challenged.

12 **THE COURT:** And then not only that, you
13 can be Puerto Rican and Hispanic and still be black.

14 **MR. DASKAS:** I understand, Judge. Nobody
15 made that inquiry. It was apparent to us she was a
16 minority and we submitted it, and then the defense
17 challenged for cause.

18 **THE COURT:** You were afraid to say she was
19 a black woman and excused by Miss Jackson?

20 **MR. DASKAS:** That's right, in anticipation
21 of some challenge down the road, Judge.

22
23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 112

24 **THE COURT:** You're Miss Nesbit?

25 **PROSPECTIVE JUROR 112:** Yes, I am.

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1 **THE COURT:** Good afternoon, Miss Nesbit.
2 **PROSPECTIVE JUROR:** Good afternoon.
3 **THE COURT:** You're from Albion, Michigan.
4 Where is Albion Michigan?
5 **PROSPECTIVE JUROR:** It's up by Battle
6 Creek, Michigan where Kelloggs and General Mills is.
7 **THE COURT:** I thought Kelloggs was in
8 Battle Creek.
9 **PROSPECTIVE JUROR:** General Motors is in
10 Kalamazoo -- in the same basic area.
11 **THE COURT:** And you went to Ferris State
12 up in Big Rapids?
13 **PROSPECTIVE JUROR:** That's correct.
14 **THE COURT:** What were you studying?
15 **PROSPECTIVE JUROR:** At that time, I was
16 studying to be the education teacher.
17 **THE COURT:** Then you took criminal justice
18 at one point?
19 **PROSPECTIVE JUROR:** Yes, because I was in
20 the Air Force for 20 years, and my job in the Air
21 Force, I was an investigator.
22 **THE COURT:** So, exactly what kind of stuff
23 did you have to investigate?
24 **PROSPECTIVE JUROR:** Rapes, child abuse,
25 drugs.

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1 **THE COURT:** Okay.

2 You were stationed all over the United
3 States.

4 Did you go outside the country also?

5 **PROSPECTIVE JUROR:** Yes, I was outside.
6 Do you want to know where I was?

7 **THE COURT:** No, no.

8 **PROSPECTIVE JUROR:** Yes, I was overseas
9 also.

10 **THE COURT:** Your husband was also an
11 investigator?

12 **PROSPECTIVE JUROR:** Yes, he was.

13 **THE COURT:** Are you working now?

14 **PROSPECTIVE JUROR:** Yes. I work part-time
15 for an electrical contractor.

16 **THE COURT:** Okay.

17 Did you ever investigate any cases like
18 having to do with murder or any kind of battery or
19 assault?

20 **PROSPECTIVE JUROR:** I've investigated
21 child abuse cases and mostly unattended deaths to
22 determine whether they were suicide or not.

23 **THE COURT:** You testified in
24 court-martials and that sort of thing?

25 **PROSPECTIVE JUROR:** Yes, I have.

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1 **THE COURT:** Now, you understand that
2 you're being considered for service on this jury
3 which will have to decide the penalty. Now, the
4 defendant has already been convicted of four counts
5 of first-degree murder.

6 Do you understand that?

7 **PROSPECTIVE JUROR:** Yes, I do.

8 **THE COURT:** What I want to know is can you
9 consider the four possible punishments that the
10 State of Nevada allows in this case, that is, the
11 death penalty, life in prison without the
12 possibility of parole, life in prison with the
13 possibility of parole or for a definite term of 50
14 years with the possibility of parole after 20 years
15 plus a consecutive 50 years with the possibility of
16 parole after 20 years because a deadly weapon was
17 used? What that means is because a deadly weapon
18 was used, these punishments are doubled, and these
19 are punishments for each count.

20 Do you understand that?

21 Could you consider all four punishments
22 and after listening to the evidence and the law and
23 the facts of the case, pick the most appropriate
24 one?

25 **PROSPECTIVE JUROR:** I believe so, yes.

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1 **THE COURT:** Are there any here that you're
2 opposed to that you could not impose?

3 **PROSPECTIVE JUROR:** Not at this time
4 because I don't know the facts -- yeah, right now,
5 no.

6 **THE COURT:** There are four people who have
7 been killed.

8 **PROSPECTIVE JUROR:** Yes, I understand.

9 **THE COURT:** He's been convicted of four
10 counts of first-degree murder, and of course,
11 evidently, there was no self-defense or whatever,
12 because if it had been self-defense, he wouldn't
13 have been convicted of first-degree murder.

14 Do you understand? There's probably
15 nothing to justify it, so what you have to listen to
16 is the background information about the parties, the
17 people involved. You will also get the facts of
18 what happened in the case too, and you will hear
19 from both sides.

20 What I want to know is -- I'm not asking
21 you which one you would give, but some people think
22 for a murder, the only penalty that they could ever
23 impose would be the death penalty. Some people
24 believe that they could never impose life in prison
25 without parole, because they said it's costing

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1 taxpayers money, and they don't believe in it, so
2 they would either give the death penalty or life
3 imprisonment with the possibility of parole, and
4 then there are some people who say they don't
5 believe people should even be considered for parole
6 no matter what their background is or whatever.

7 Do you hold any of those views?

8 **PROSPECTIVE JUROR:** I believe in the death
9 penalty, but I also believe the person should get
10 the penalty that's appropriate for whatever he's
11 done.

12 **THE COURT:** So, you can consider all four
13 of them --

14 **PROSPECTIVE JUROR:** Yes, I can.

15 **THE COURT:** -- based on the facts? All
16 right.

17 You can follow the Court's instructions on
18 the law?

19 **PROSPECTIVE JUROR:** I'm sorry?

20 **THE COURT:** You can follow the Court's
21 instructions on the law?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And you can be fair and
24 impartial?

25 **PROSPECTIVE JUROR:** I believe so, yes.

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1 **THE COURT:** State.

2 **MR. DASKAS:** Thank you, Judge.

3

4 EXAMINATION BY THE STATE

5 **BY MR. DASKAS:**

6 Q Mrs. Nesbit, good afternoon.

7 A Good afternoon.

8 Q Thank you for your patience.

9 You have obviously an extensive

10 investigative background. In this case if you're
11 selected, you would have -- you will be instructed
12 you will have to accept a previous jury's verdict.
13 You see my concern with your background? You would
14 want to know about the instruction itself.

15 Do you think you can follow the Court's
16 instruction when you -- the Judge says you have to
17 accept that verdict that's already been rendered?

18 A I believe so, yes.

19 Q We will give you the underlying facts in
20 the quadruple homicide.

21 Are you comfortable with that?

22 A Yes.

23 Q As you know, the Judge said this case is
24 now about punishment.

25 A Right.

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1 Q You mentioned it's the appropriate answer.
2 You can't really tell us what you're going to
3 decide, because you don't know enough information
4 yet. That's true?

5 A That's true.

6 Q You want to know as much information about
7 the homicides themselves and the defendant himself
8 before you make that decision?

9 A That's correct.

10 Q You realize how important that is?

11 A Yes.

12 Q Let's assume that you've heard all that
13 evidence and that you're convinced after absorbing
14 all that information that this is the appropriate
15 punishment for the death penalty, can you impose
16 that punishment?

17 A I believe I can, yes.

18 **MR. DASKAS:** Thank you, ma'am.

19 Judge, we'll pass the prospective juror
20 for cause.

21 **THE COURT:** Defense Counsel.

22 **MS. JACKSON:** Thank you, your Honor.

23 /////

24 /////

25 /////

EXAMINATION BY THE DEFENSE

1
2 **BY MS. JACKSON:**

3 Q Good afternoon, Miss Nesbit.

4 A Good afternoon.

5 Q Ma'am, in your capacity as an investigator
6 for the United States Air Force, was that pretty
7 much law enforcement type work?

8 A No.

9 Q I'm sorry?

10 A You mean law -- the way for me to explain
11 to you what we do --

12 Q Please.

13 A In a sense, if you look at the local
14 police --

15 Q Yes, ma'am.

16 A -- then you have the federal, the FBI.

17 Q Yes, ma'am.

18 A On the base, you have your security
19 police, then you have the Air Force office, and Air
20 Force special agents are like the FBI, so that would
21 be kind of -- we would investigate the more serious
22 cases versus traffic. We don't do traffic
23 accidents, stuff like that.

24 Q Okay.

25 So, your findings were then brought back

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1 to an agency that had the authority to court-martial
2 someone?

3 A We worked with the JAGs office, yes, but
4 we were the ones who prepared the reports and give
5 the report to the Staff Judge Advocate or to the US
6 Attorney if it was a joint investigation with the
7 Bureau.

8 Q So, on page 4, Question 19, it says, "Have
9 you ever been involved in a military court-martial?"
10 You indicate that, "Yes. I have testified as one of
11 the agents investigating the case and cases."

12 So, this would have been on the
13 prosecution end?

14 A Yes, that's correct.

15 Q All right.

16 That's a lot of years, and your husband
17 also did the same general type of work?

18 A Um-hmm.

19 Q That's a lot of years and combined
20 experience working in law enforcement.

21 Wouldn't you say that that would cause you
22 to identify more with the prosecution than the
23 defense in any type of court proceeding?

24 A That would be a fair statement, yes.

25 Q Should I be concerned about that? This is

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1 a situation where we're going to be asking you -- as
2 a matter of fact, the law demands that you consider
3 all four possible forms of punishment.

4 Can you say in your heart of hearts that
5 you can fairly do that?

6 A I can, because when I investigate a case,
7 I investigate it. I didn't go looking for the
8 person to be guilty when I investigated it; I tried
9 to bring up the facts together and be as independent
10 as I could, and I would present the facts of the
11 case.

12 Q Did any of your investigations ever clear
13 anybody?

14 A Yes, they have.

15 Q Did you have to testify in that situation
16 or were charges not brought because of the
17 investigation?

18 A Charges were brought because of the
19 investigation.

20 Q How many times did it happen that you
21 think?

22 A Not that many times. It's really hard
23 because I have 17-and-a-half years. I can't
24 remember all the cases that I've worked.

25 Q How long has it been since you stopped

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1 doing that?

2 A Nine years.

3 Q Nine years. Okay.

4 No. 24, when asked about your feelings of
5 the criminal justice system, you thought it worked
6 very well some of the time, but you thought high
7 profile cases may be an exception.

8 What did you mean by that?

9 A To me, the O.J. Simpson case I thought was
10 very high profile, and I thought the verdict should
11 have been guilty, personally, and I think if it's
12 high profile, a lot of -- what's the right word for
13 it -- I just think that they probably get a better
14 deal than other people do, maybe.

15 Q What about Scott Peterson? Wasn't that
16 high profile?

17 A I didn't want to follow that because I got
18 kind of bored with it.

19 Q Well, me too. O.J. really bored me, but
20 in terms of high profile.

21 A I think some people might have done it
22 because they had such a smart defense team they got
23 them out. That's what I'm saying; they were lucky
24 enough to afford someone to get them off.

25 Q So, it's economics really?

1 A Yeah.

2 Q I got you. Okay.

3 Donte Johnson has a Public Defender and a
4 former Public Defender. What do you think his
5 chances of getting a good defense are?

6 A I think he has a great chance.

7 Q You don't have any particular bias against
8 lawyers?

9 A No, I don't.

10 Q Certainly not female lawyers?

11 A Of course not.

12 Q Can you help me understand in No. 33 --
13 actually, I'm going to take 33 in tandem with 38,
14 because they basically kind of ask about the same
15 thing. Thirty-three asks you, "To what extent, if
16 any, mental status should be determined?" and your
17 answer was, "If the person is competent, it should
18 not be an issue."

19 Again, maybe before chatting with the
20 Judge and Mr. Stanton you didn't understand that
21 this is not a case where competency is an issue,
22 because we're already past that. He's been
23 convicted times four. What we're trying to ask you
24 centers more on question 38. In reaching a verdict
25 in this case, the law says that you need to consider

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1 what we call "mitigators" -- if a child was abused,
2 if a person's parents used drugs -- things of that
3 nature -- things that our legislature has recognized
4 that maybe there are things that maybe we haven't
5 listed. Anything that you feel is a reason to give
6 life is, by law, mitigation. You may hear from the
7 defendant's mother and decide that you want her to
8 have a chance to visit with her son, and in your
9 estimation, that may be a reason to give life.

10 Now, are you open to considering those
11 things, because you checked on your questionnaire
12 "somewhat"? And the law says in the language that's
13 mandatory, that you must consider those things.

14 Can you do that?

15 A Yes, I can.

16 Q You think you have a pretty good
17 understanding of what mitigators are?

18 A Um-hmm.

19 Q I'll bet you do being an investigator for
20 all those years.

21 Have you ever heard the phrase, "The abuse
22 excuse" when it comes to why people commit certain
23 crimes?

24 A Um-hmm.

25 Q What does that mean to you?

1 A To me, it's an excuse, exactly what it
2 says.

3 Q And you recognize that Mr. Johnson stands
4 convicted here, so we're not offering any excuses?

5 A Right.

6 Q That this is different when you're asking
7 a juror to consider mitigation before deciding
8 someone's punishment.

9 A I agree with that.

10 Q Do you think that's probably a good idea,
11 to get to know all you can about a person before you
12 decide if they live or if they die?

13 A Of course.

14 Q And of course, you're going to hear a lot
15 about the State's case as well.

16 One final area. No. 13 says here, "Have
17 you had any courses or special training?" and you
18 indicated that you had basic investigation, crime
19 scene interrogations and advanced courses on serial
20 killers and sex deviants.

21 Can you share with me a wee bit about the
22 area on serial killers? What was that about?

23 A That was a program done by the FBI when
24 they told you as far as how to do profiling into
25 serial killers. It was the seminar that we went to.

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1 Q Were you ever involved in the actual
2 profiling and assisting agencies?

3 A We sat down, and they showed us case
4 studies of what they've done with various serial
5 killers.

6 Q Were you ever personally involved in
7 helping to track down or profile a serial killer?

8 A No.

9 MS. JACKSON: Court's indulgence.

10 BY MS. JACKSON:

11 Q You mentioned the O.J. Simpson case.

12 A Um-hmm.

13 Q Do you think O.J. Simpson should have
14 received the death penalty?

15 A Not necessarily. I just think he should
16 have been found guilty. I didn't think anything
17 past that as far as what his sentence should be.

18 Q What do you think of the Old Testament
19 saying "An eye for an eye"?

20 A Tough question. Not literally an eye for
21 an eye.

22 Q Do you think the death penalty is used too
23 often, not enough, or do you have any opinion on
24 that in this country?

25 A I don't have an opinion whether it's used

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1 too much or not enough.

2 Q You don't have an opinion either way?

3 A No, I do not.

4 Q Okay.

5 I don't think I have to ask you if you had
6 an opinion that differed from the other 11 jurors,
7 would you be able to stand by your own convictions.
8 I don't think anybody in the court would have a
9 question about that.

10 Thank you for your time, Miss Nesbit.

11 **MS. JACKSON:** We would pass for cause,
12 your Honor.

13 **THE COURT:** All right.

14 Ma'am, we're going to let you go now, but
15 you're going to have to come back tomorrow morning
16 at 10:00 o'clock, and we'll let you know.

17 **PROSPECTIVE JUROR 112:** Okay. Very good.

18 **THE COURT:** Thank you.

19 **PROSPECTIVE JUROR:** Thank you.

20 **THE COURT:** The State may exercise its
21 fourth peremptory challenge.

22 **MR. DASKAS:** Judge, the State will waive
23 its fourth peremptory challenge.

24 **THE COURT:** The defense may exercise its
25 fourth peremptory challenge.

1 **MS. JACKSON:** We will preempt Mr. Blonk,
2 084.

3 **THE COURT:** All right. He's in seat
4 No. 4.

5
6 **VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 113**

7 **THE COURT:** Miss Miller.

8 **PROSPECTIVE JUROR 113:** Yes.

9 **THE COURT:** Where are you from originally?

10 **PROSPECTIVE JUROR:** Phoenix.

11 **THE COURT:** Phoenix?

12 **PROSPECTIVE JUROR:** Um-hmm.

13 **THE COURT:** What kind of work do you do?

14 **PROSPECTIVE JUROR:** I'm a staff
15 accountant.

16 **THE COURT:** For whom?

17 **PROSPECTIVE JUROR:** On Stage
18 Entertainment.

19 **THE COURT:** What kind of company is that?

20 **PROSPECTIVE JUROR:** They produce the
21 Legends in Concert's show at Imperial Palace.

22 **THE COURT:** Oh, okay.

23 Now, you went to -- let me know if I'm
24 pronouncing this correctly, Yav-va-pie (phonetic).

25 **PROSPECTIVE JUROR:** Yavapai.

1 **THE COURT:** That's not too far from here.
2 What's that that start with a P?
3 **PROSPECTIVE JUROR:** It's in Prescott.
4 **THE COURT:** Are you married, ma'am?
5 **PROSPECTIVE JUROR:** Yes, I am.
6 **THE COURT:** What kind of work does your
7 husband do?
8 **PROSPECTIVE JUROR:** He's a construction
9 drywaller.
10 **THE COURT:** You don't have any kids?
11 **PROSPECTIVE JUROR:** No.
12 **THE COURT:** Have you or anyone in your
13 family ever been charged with a crime? I think you
14 said yes -- no -- been convicted.
15 **PROSPECTIVE JUROR:** No.
16 **THE COURT:** Been the victim of a crime?
17 **PROSPECTIVE JUROR:** No.
18 **THE COURT:** You or your friends or family
19 never been the victim of a crime?
20 **PROSPECTIVE JUROR:** Oh, oh, I'm sorry, a
21 victim. I thought you said "convicted." Yes. My
22 car was stolen last year.
23 **THE COURT:** Any relatives or friends that
24 have been the victim of a violent crime, assault,
25 sexual assault, battery, attempt murder or anything

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1 like that?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** How long have you been in
4 Las Vegas?

5 **PROSPECTIVE JUROR:** That is my eighth
6 year. It will be eight years in October.

7 **THE COURT:** Eight years. Okay.

8 Now, you understand that you're being
9 considered for possible jury duty in this trial
10 which is going to determine the penalty to be
11 imposed.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** Right.

14 **THE COURT:** Do you understand that the
15 defendant has already been convicted of four counts
16 of first-degree murder?

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** You will have to decide the
19 punishment.

20 Do you understand there are four possible
21 punishments that you can impose -- the death
22 penalty, life in prison without parole, life in
23 prison with the possibility of parole or for a
24 definite term of 50 years plus a consecutive term of
25 50 years for the use of a deadly weapon and parole

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1 possible after 40 years. This would apply to each
2 count these sentences range.

3 **PROSPECTIVE JUROR:** All right.

4 **THE COURT:** Could you consider all four
5 forms of punishment?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you have any moral or
8 religious objection to the death penalty?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** Do you have any objection to
11 life imprisonment with the possibility of parole or
12 without parole?

13 **PROSPECTIVE JUROR:** No, I don't.

14 **THE COURT:** Could you consider a term of
15 50 years plus an additional term of 50 years for the
16 use of a deadly weapon?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Of course, the State is going
19 to present evidence, the defense is going to present
20 evidence. You will have to look at the evidence,
21 the facts of the case and the law as I give it to
22 you and decide on the appropriate punishment.

23 Do you think you can do that?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** You can be fair to both sides?

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** You're not biased or

3 prejudiced against the lawyers or anybody in this

4 case, are you?

5 **PROSPECTIVE JUROR:** No, I'm not.

6 **THE COURT:** You don't have your mind made

7 up, do you?

8 **PROSPECTIVE JUROR:** No, I don't.

9 **THE COURT:** If I remember right, you don't

10 know any facts about this case.

11 **PROSPECTIVE JUROR:** No. I remember when

12 that occurred. It was shortly after I moved here.

13 **THE COURT:** Like in '98 or something?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Do you live out in that area?

16 **PROSPECTIVE JUROR:** No, I don't. I live

17 Sahara and Decatur.

18 **THE COURT:** Are you sure it's this case?

19 **PROSPECTIVE JUROR:** Pardon me?

20 **THE COURT:** Are you sure this is the case

21 you heard about?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** What makes you think that?

24 **PROSPECTIVE JUROR:** The street. When we

25 were in here the other day and you mentioned the

1 name of the street, and it tied it all together.

2 **THE COURT:** All right.

3 State.

4 **MR. STANTON:** Thank you, your Honor.

5

6 EXAMINATION BY THE STATE

7 **BY MR. STANTON:**

8 Q Thank you, Miss Miller, and thank you for
9 your patience.

10 Part of this process involves the fact
11 that another jury has determined the guilt in this
12 case and that the verdict that you know now by the
13 questions and questionnaire was that the defendant
14 was found guilty of four counts of first-degree
15 murder.

16 A Yes.

17 Q Are you comfortable knowing that you will
18 be instructed in this case that you have to abide
19 and respect that jury verdict as it relates to guilt
20 or innocence?

21 A Yes.

22 Q Strictly here now, what is the appropriate
23 and just punishment for Donte Johnson? That's what
24 the jury is being selected for.

25 Are you comfortable with that?

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1 A Um-hmm.

2 Q The most crucial aspect that we want to
3 find as jurors is that they can be fair and
4 impartial and that they have no preconceived notions
5 about either the case or what they would select as
6 punishment.

7 My understanding from Judge Gates'
8 questions to you, all the sentencing options that
9 are required by law in a case such as this, you will
10 have an open mind as to all those?

11 A Yes, sir.

12 Q Would it be a fair statement, ma'am, that
13 you would wait until all the evidence has been
14 presented, the evidence presented by the State and
15 Mr. Johnson's counsel before you would make that
16 decision?

17 A Yes.

18 Q In this case, you will be provided with
19 facts and evidence regarding the initial quadruple
20 murders in this case. Some of that evidence will be
21 very graphic in nature. Knowing yourself, your
22 personality, your character, is that something that
23 you can do? While it may be uncomfortable, it is
24 still part of the job of a juror to look at it as
25 evidence.

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1 Do you think you can do that?

2 A Yes, sir.

3 Q The indication in your questionnaire about
4 victims of crime, you said your car was stolen.

5 Was that here in Las Vegas?

6 A Yes.

7 Q As a result of that incident, do you
8 harbor any resentment either to law enforcement
9 authorities that investigated it or the District
10 Attorney's office in a negative way?

11 A No.

12 Q And the same thing as to Mr. Johnson's
13 defense team over there, as a result of that, you
14 wouldn't hold anything against them for that?

15 A No.

16 Q In this case, there are four victims, and
17 your duty and obligation as a juror is to determine
18 the just punishment as it relates to each one of
19 those victims, and it may be in your collective
20 judgment individually and with other jurors that the
21 punishment would be different for each victim. I'm
22 not saying that it is or will be, but that's a
23 possibility that you could do.

24 Are you comfortable with that concept?

25 A Um-hmm. Yes, sir.

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1 Q The fact that in this case the death
2 penalty and life options are available to the jury,
3 there is a series of legal instructions that Judge
4 Gates would give you regarding mitigation evidence,
5 that which would suggest some punishment potentially
6 of less than death or less than the more severe life
7 alternatives.

8 Do you feel that you can comfortably
9 address that information and either accept or reject
10 it and then render a verdict?

11 A Yes.

12 Q Ma'am, there is a process which has little
13 or no instructions by the Court, and that is how a
14 foreperson is selected in a jury. That's totally up
15 to the jury themselves.

16 If you were selected the foreperson in
17 this case and after deliberate, careful -- careful
18 deliberation of all the facts and the instructions
19 involved, you yourself with your fellow jurors
20 conclude that the death penalty is appropriate and
21 you're the foreperson, ma'am, could you affix your
22 name to those verdict forms that puts the defendant
23 Donte Johnson to death?

24 A Yes, sir.

25 MR. STANTON: Thank you.

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2005 APR 21 A 8:52

Handwritten signature

1 TRAN
2 CASE NO. C153154
3 DEPT. NO. XV
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * *

8
9 THE STATE OF NEVADA,)
10)
11 Plaintiff,)
12 vs.)
13 DONTÉ JOHNSON,)
14 Defendant.)

ORIGINAL

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

VOLUME I - AM

15
16
17 BEFORE THE HONORABLE
18 LEE GATES, DISTRICT COURT JUDGE
19 WEDNESDAY, APRIL 20, 2005
20 1:30 p.m.

21 APPEARANCES:

22 For the Plaintiff: ROBERT DASKAS, ESQ.
23 DAVID STANTON, ESQ.

24 For the Defendant: ALZORA JACKSON, ESQ.
25 BRET O. WHIPPLE, ESQ.

Reported by: LISA MAKOWSKI, CCR No. 345

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1 TRAN
2 CASE NO. C153154
3 DEPT. NO. XV

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA
8 * * *

9 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 DONTÉ JOHNSON,
14 Defendant.

REPORTER'S TRANSCRIPT
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25 BRET O. WHIPPLE, ESQ.

Reported by: LISA MAKOWSKI, CCR No. 345

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 WEDNESDAY, APRIL 20, 2005
3 1:30 p.m.

4 * * *
5 P R O C E E D I N G S

6 THE COURT: All right, guys, Juror
7 No. 371 was excused. He was a police officer down
8 in the jury room with his uniform on and gun and
9 all that stuff. They are not supposed to come to
10 jury duty dressed like that so the Commissioner
11 excused him, then I have here Juror number 031,
12 Donald Lemley, we have a --

13 MS. JACKSON: What is that number?

14 THE COURT: Lemley?

15 MS. JACKSON: Last digits, 031? I have
16 Emelina Chaffee.

17 THE COURT: 208, and he was excused.

18 MS. JACKSON: Page 4, of our printout,
19 Judge.

20 THE COURT: Anyway, doctor said he has
21 heart problems. When is he supposed to be down
22 here? Is he downstairs?

23 MS. JACKSON: Beg your pardon.

24 THE COURT: I wonder if he is downstairs.

25 THE BAILIFF: I can check and see.

1 THE COURT: Check to see if he is down
2 there.

3 MR. WHIPPLE: With the Court's permission
4 can I make a brief record?

5 THE COURT: I'm listening.

6 MR. WHIPPLE: Your Honor, yesterday the
7 first potential juror was No. 01, that was Carol
8 Clemens, and she went, she took the stand, was
9 asked if she can -- and essentially I'm
10 paraphrasing, if she can consider the death penalty
11 and she said, basically said no, she cannot
12 consider the death penalty, and I was given the
13 opportunity to voir dire her, and I asked her
14 essentially if Osama Bin Laden, you were sitting in
15 judgment of Osama Bin Laden, and there was an
16 immediate objection by Mr. Daskas, and I have had
17 an opportunity to discuss that with him. He showed
18 me the court rules, which, of course, I'm familiar
19 with.

20 I want to bring up the point to this
21 Court that we have a whole lineage of cases. We
22 have Gregg and Furman that talk about the death
23 penalty is appropriate for the worst of the worst,
24 and you also know that under Gardner v. Florida
25 death is different. I think it is appropriate that

1 I have an opportunity to ask these jurors and see
2 if they can be death qualified, to see if they
3 could consider situations which were much more
4 worse than the four victims that we have in this
5 matter.

6 I think it is appropriate to ask them
7 about Osama Bin Laden or Timothy McVeigh type of
8 scenario where multiple lives are taken, people are
9 much closer to the worst of the worst than what my
10 client would be. I want to put that on the record
11 and request that issue be revisited.

12 MR. DASKAS: Judge, my objection was
13 based on Eighth Judicial District Court Rule 7.7
14 which states that there are certain delineated
15 improper areas of inquiry, one of which is asking a
16 juror what his or her verdict would be based on
17 hypothetical facts, and it is improper to ask
18 questions that are in substance arguments of the
19 case, and I think that is a violation of both of
20 those rules, Rule 7.7. That was the basis for my
21 objection.

22 You know, Judge, at some point then we
23 can stand up and let these jurors know that there
24 are -- the majority of the 87 or so people on death
25 row committed a single homicide, and so the concern

1 Is at what point does this end and what point are
2 we arguing facts not in evidence and picking a jury
3 based on facts and hypotheticals not in evidence.
4 That is a concern, and I believe it is a violation
5 of Rule 7.7.

6 MR. WHIPPLE: If I can respond briefly.
7 Again, under Gardner v. Florida death is different.

8 THE COURT: We know that, we know that,
9 so what? It means no rules apply? So it is
10 different, but you still have the same evidentiary
11 rules that apply. I don't want to hear about that
12 death is different. We know what they require.

13 MR. WHIPPLE: Your Honor, I believe in
14 this situation these court rules have to bend. In
15 fact, we do have a right under the United States
16 Supreme Court rulings to ask these individuals in a
17 scenario that is much worse or different than what
18 we are facing here today. I think that is an
19 appropriate line of questioning. That's why I'm
20 asking leave of this Court to ask those type of
21 questions.

22 THE COURT: Yeah, but the only problem is
23 so what if Osama Bin Laden killed 3,000 people or
24 whatever. It doesn't mean the person will be able
25 to, I guess if they said they can oppose the death

1 penalty on Osama Bin Laden then you are saying that
2 they would be qualified as a juror to serve on this
3 jury?

4 MR. WHIPPLE: It is my position if they
5 can consider the death penalty for the worst of the
6 worst, which I would say Osama Bin Laden or
7 Mr. McVeigh, they would, in fact, be death
8 qualified and should not be preempted.

9 MR. DASKAS: Here is what is interesting
10 to me. I hear him making two arguments out of
11 different sides of his mouth. When we objected
12 based on the question they posed which was knowing
13 that Mr. Johnson has been convicted of four first
14 degree murders can you consider parole and the
15 answer was no, they objected to us asking them to
16 include background facts and circumstances in
17 mitigation, so they are limiting their questions to
18 a quadruple homicide, but they want this jury to
19 know nothing else. On the other hand, to
20 rehabilitate jurors that should be excused, they
21 want to talk about Osama Bin Laden who has nothing
22 to do with this case.

23 MR. WHIPPLE: I believe to the contrary,
24 and, again, I don't know of what Mr. Daskas is
25 referring, but we would just as soon bring out all

1 the pictures. We would just as soon as bring out
2 everything with regard to this case right now. We
3 have been prohibited. I'm not sure what Mr. Daskas
4 is referring to when he makes this comment.

5 MR. DASKAS: I'm referring to the precise
6 questions you objected to multiple times yesterday,
7 your Honor. And as you just said, your Honor, the
8 rules apply. They want to expose this jury to
9 photos that are not in evidence in the case as of
10 yet because these people have not been seated as
11 jurors that is a violation of the rules. We are
12 mixing apples and oranges here. Let's address the
13 issue which is proper voir dire and not bring in
14 inadmissible photographs and suggest that somehow
15 is a violation of the rules.

16 MR. WHIPPLE: Judge, we are not arguing
17 that. We are not asking that to be revisited. We
18 accept this Court's order. We are asking this
19 Court to allow us to ask potential jurors about the
20 worst of the worst, situations which are much more
21 difficult or extreme than what they are facing
22 here. Those are the parameters of my request,
23 nothing more.

24 THE COURT: You have any cases to quote
25 from?

1 MS. JACKSON: Mr. Daskas provided us a
2 case this afternoon which I think provides support
3 Walker v. State, 113 Nevada 853. In that case, the
4 Nevada Supreme Court said at page, I guess it is
5 page 11, prospective jurors had initially, and it
6 gives the juror numbers, had initially indicated
7 they could not vote to impose a sentence of life
8 with the possibility of parole after convicting a
9 person of first degree murder and then it says
10 those prospective jurors were given the following
11 factual scenario: A man saw his child being raped
12 by two men and later found and killed the man --

13 THE COURT: Just tell me page 11, what
14 paragraph?

15 MS. JACKSON: Where it starts 164, 167,
16 and 182, the second full paragraph.

17 THE COURT: Did you read No. 17?

18 MS. JACKSON: Yes.

19 THE COURT: So even if you ask it, so --

20 MS. JACKSON: Your Honor.

21 THE COURT: You know what, I really don't
22 care, seems like the Supreme Court allowed it both
23 ways. I have to take every time and see what you
24 have to say.

25 MR. DASKAS: Right, Judge, and my request

1 is so long as they are doing, that's why I provided
2 the Court with the case. We should be allowed to
3 attempt to rehabilitate the jurors by providing a
4 scenario in which they would consider death even in
5 a first degree murder conviction, so long as we get
6 to play by the same rules then I think I understand
7 the Court's ruling.

8 THE COURT: All right.

9 MR. DASKAS: Thank you, Judge.

10 MR. WHIPPLE: Thank you, Judge.

11 EXAMINATION OF PROSPECTIVE JUROR 026

12 THE COURT: What is your name, ma'am?

13 PROSPECTIVE JUROR: Carol Salcido.

14 THE COURT: What kind of work do you do,
15 Ms. Salcido?

16 PROSPECTIVE JUROR: I work for the school
17 district as a psychologist under the department of
18 special student services.

19 THE COURT: Where did you grow up?

20 PROSPECTIVE JUROR: Trenton, New Jersey.

21 THE COURT: Did you go to high school in
22 New Jersey?

23 PROSPECTIVE JUROR: Yes, I did.

24 THE COURT: Then you went to college in
25 California?

1 PROSPECTIVE JUROR: Yes, I did.

2 THE COURT: What brought you out to
3 California, the 60s?

4 PROSPECTIVE JUROR: Yes, but it wasn't
5 that, no. Well, actually, I needed to leave New
6 Jersey, and I wanted to go to school. California
7 had state colleges that offered me an opportunity
8 to go to school, so I had a sister out here, so I
9 relocated.

10 THE COURT: Okay. So you are a school
11 psychologist now?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: You worked in the past as a
14 clinical psychologist?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Never have?

17 PROSPECTIVE JUROR: Never have.

18 THE COURT: And what kind of work does
19 your husband do?

20 PROSPECTIVE JUROR: He works for UBS
21 PaineWebber.

22 THE COURT: Stockbroker?

23 PROSPECTIVE JUROR: He is vice president
24 of investments.

25 THE COURT: Okay. Now, you said that you

1 have read quite a bit about this case?

2 PROSPECTIVE JUROR: I wouldn't say quite
3 a bit. I vaguely -- I think I vaguely remember
4 reading about it. I don't remember much.

5 THE COURT: So you were on a jury before?

6 PROSPECTIVE JUROR: Long time ago.

7 THE COURT: Was that in California?

8 PROSPECTIVE JUROR: Yes, I think it was.

9 THE COURT: It is the dog poisoning case.

10 PROSPECTIVE JUROR: Dog poisoning.

11 THE COURT: Were you the foreman of that
12 jury?

13 PROSPECTIVE JUROR: No, I was not.

14 THE COURT: You said your sister-in-law
15 was mugged; is that correct?

16 PROSPECTIVE JUROR: Yes, she was.

17 THE COURT: Where was this?

18 PROSPECTIVE JUROR: This was Ala and
19 Rainbow. I believe there is a Home Depot store.

20 THE COURT: Right, right. Okay. She was
21 coming out of the Home Depot store?

22 PROSPECTIVE JUROR: Yes, she was.

23 THE COURT: Did they hit her?

24 PROSPECTIVE JUROR: Yes, they did.

25 THE COURT: The person that assaulted

1 her, what was the race of the person?

2 PROSPECTIVE JUROR: I have no idea. With
3 regard to that question, I do remember that
4 question worded something, do you know of anyone
5 who was a victim of a crime -- was that.

6 THE COURT: Right, right.

7 PROSPECTIVE JUROR: I also worked at a
8 school -- I do work at that school with the mother
9 of a son who was part of the Oklahoma bombing.

10 THE COURT: So this is the lady that the
11 son got killed?

12 PROSPECTIVE JUROR: Peggy Brocksdiben
13 (phonetic).

14 THE COURT: She was on TV because of the
15 anniversary.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: How long have you worked with
18 her?

19 PROSPECTIVE JUROR: Probably ten years.
20 She is retired. She is now a substitute teacher at
21 the same school where she was employed full-time at
22 the time of the incident.

23 THE COURT: Okay. Now going over this,
24 these questions on the death penalty, now you have
25 no moral or religious objection to the death

1 penalty; is that correct?

2 PROSPECTIVE JUROR: That's correct.

3 THE COURT: All right. And you
4 understand that in this case, you will have to
5 decide on a punishment for a person who has been
6 convicted of four counts of first degree murder.
7 You understand that?

8 PROSPECTIVE JUROR: I do. I'm puzzled by
9 that.

10 THE COURT: What do you mean you are
11 puzzled by that?

12 PROSPECTIVE JUROR: Well, I guess I've
13 always assumed that the jury that hears the case
14 also does the sentencing and I must be a little
15 confused. I'm feeling like a new team is coming in
16 to do this.

17 THE COURT: True, and that happens
18 sometimes, so it is not unusual.

19 PROSPECTIVE JUROR: Not unusual.

20 THE COURT: So, you are not confused by
21 it, just we do that sometimes.

22 PROSPECTIVE JUROR: Well, I'm a little
23 uncomfortable with that. I feel for myself, not
24 hearing the case, I may -- I assume it is not going
25 through an additional trial.

1 THE COURT: No, you will be informed of
2 all the relevant evidence.

3 PROSPECTIVE JUROR: The evidence and the
4 facts.

5 THE COURT: That occurred in the prior
6 trial.

7 PROSPECTIVE JUROR: I think you miss a
8 lot of maybe the nuances that occur. Having to
9 make a decision of that magnitude concerns me
10 particularly when I feel as though I have spent the
11 majority of my working years on the other end of
12 the spectrum which is in trying to prevent
13 tragedies of this sort and now I'm on this end and
14 have to face making a decision, and I'm not sure I
15 have the constitution to do that.

16 THE COURT: You know a decision of this
17 magnitude is not easy for anyone unless they were,
18 the original trial jurors came in, were
19 professional, or whatever. In fact, that's why we
20 go through this rigorous process, because it is
21 serious, and we want it to get serious attention.
22 We don't want people to enter into this endeavor
23 lightly, so feeling uncomfortable is not unusual.

24 I think most people feel uncomfortable,
25 it is not pleasant to sit and judge your fellow

1 man, but someone has to do it, and that is an
2 obligation of citizenship, and I mean all the other
3 jurors are going to be starting off from the same
4 point that you are. You understand that?

5 PROSPECTIVE JUROR: Yes, I do.

6 THE COURT: And some of them won't have
7 your background, you know. You have all this
8 training in psychology which a lot of people don't
9 have, so, but, anyway let's just explore this some.

10 Now, for the first degree murder, the
11 four possible penalties are the death penalty, life
12 imprisonment without the possibility of parole,
13 life imprisonment with the possibility of parole,
14 for a definite term of 50 years with the
15 possibility of parole after 20 years and this
16 crime -- I mean this punishment is doubled if a
17 deadly weapon was used, you understand that, and,
18 of course, this applies for each of the victims.
19 You understand that? So this would be the
20 punishment for each charge you understand that?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Could you consider all four
23 punishments?

24 PROSPECTIVE JUROR: I really don't know.

25 THE COURT: What do you mean?

1 PROSPECTIVE JUROR: I guess it is not a
2 question that I have thought about. I think there
3 is a responsibility to society to when there is a
4 dangerous individual to maybe step forward and
5 protect society from the dangers of that
6 individual. I guess these are issues that I have
7 not had to contemplate in my life. Again, I'm
8 focused on preventing such tragedies.

9 THE COURT: I understand that, but at
10 this point, we are here now.

11 PROSPECTIVE JUROR: When it happens, I
12 don't know what I would do.

13 THE COURT: I understand you don't know
14 what you would do. We don't want you to have your
15 mind made up. You are not supposed to have your
16 mind made up. You have not heard the evidence.
17 You have not heard any of the arguments of counsel
18 or whatever.

19 What I want to know is like some people
20 come in here and say under no circumstances can I
21 give the death penalty. I don't believe in the
22 death penalty, under no circumstances can I punish
23 someone by imposing the death penalty. Some people
24 come in here and say under no circumstances could I
25 give a person life with the possibility of parole.

1 Some people come in and say under no circumstances
2 can I give a person life without parole. They
3 either should be able to get paroled after so many
4 years or put to death, but is not the law. None of
5 those positions comports with our law.

6 Our law states that the sentencing person
7 or persons should consider all four and pick the
8 one that is the most appropriate based upon the
9 evidence, and the circumstances. You understand
10 me?

11 PROSPECTIVE JUROR: I do. I guess I
12 would have to consider all four because I don't
13 have, not knowing the facts, I don't come with
14 preconceived notions of a blanket.

15 THE COURT: That's what we want to know,
16 what we want to know is if you thought that the
17 death penalty was appropriate after the evidence
18 was presented and arguments of counsel, then if you
19 thought it was appropriate in the situation given
20 the people involved, you could impose it, and if
21 you thought after hearing all of the evidence and
22 the witness, listening to the witnesses and the
23 testimony and the arguments of counsel, lawyers, if
24 you felt that a term of years in prison with the
25 possibility of parole was appropriate, and so we

1 want to know whether or not you can consider all
2 four, and you have to make the decision as to which
3 one is appropriate given the law and the facts.
4 Can you do that?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. Can you be fair to
7 both sides?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Can you follow the Court's
10 instructions on the law?

11 PROSPECTIVE JUROR: Yes, I can.

12 THE COURT: State.

13 EXAMINATION OF PROSPECTIVE JUROR 026

14 BY MR. DASKAS:

15 Q. Mrs. Salcido, let me ask you a question a
16 little different about the death penalty. Assume
17 you are queen of your own country. Would you
18 implement a law that had the death penalty in your
19 country if it were your decision?

20 A. Under what circumstances?

21 Q. If you could make the decision, if you
22 got to make the law of the country of which you
23 were queen, would you have the death penalty as a
24 sentencing option?

25 A. As a sentencing option? Yes, I think I

1 would.

2 Q. So I take it, based on your answers,
3 there are scenarios or situations where you think
4 there is a place for the death penalty?

5 A. Yes.

6 Q. I don't want to put words in your mouth.
7 If you don't agree with me, by all means tell me
8 you disagree.

9 A. At the anniversary of the Oklahoma
10 bombing, I have to say yes.

11 Q. Is that the only scenario you can come up
12 that you think death is appropriate in that
13 situation?

14 A. It is a pretty extreme scenario.

15 Q. Is it the only one you can think of that
16 death is an appropriate punishment?

17 A. No, I can imagine others that may be
18 equally as destructive and violent.

19 Q. Is that what you would require in your
20 mind to impose death, something that is that
21 destructive or that many victims?

22 A. It is very hard for me to think in any
23 absolutes, very hard because I guess I'm just not
24 that definitive. I'm used to considering so many
25 factors. To say, it absolutely would be this no

1 matter what.

2 Q. Right. And I appreciate that. Let me
3 phrase it a little differently. In this case, as
4 you obviously know, the defendant's already been
5 convicted of four first degree murders.

6 Now knowing that you would have to accept
7 those verdicts, and I appreciate like you said that
8 it is difficult perhaps, but if the judge instructs
9 you to accept those verdicts. Can you do that?

10 A. Yes, I can.

11 Q. Now having said that, having accepted the
12 fact that he is a four time convicted murderer,
13 first degree, can you imagine a situation with that
14 number of victims in which you would impose the
15 death penalty?

16 A. Possibly.

17 Q. All right. In other words, you wouldn't
18 require us to produce the number of victims of the
19 Oklahoma City bombing? It is not just that factor
20 that you require?

21 A. Probably not. I have no idea of the
22 circumstances and details.

23 Q. And it is a bit unfair of us to put
24 people like yourselves in, like yourself in that
25 seat and ask you to make a commitment, and we don't

1 want you to tell us what your verdict would be. We
2 want to know would you consider all the options
3 knowing what you know now?

4 A. Perhaps I can give you another incident
5 that I recall from California. There was a man
6 there, an older man who captured a young girl who
7 was a hitchhiker and hacked her to bits with a
8 hatchet and somehow she survived. That is also a
9 horrendous kind of case, but there was one victim,
10 so to -- by just the number of victims, I can't say
11 that that is what would impact me.

12 Q. I appreciate that. You are more
13 concerned about the underlying facts of the
14 homicide or homicides I take it?

15 A. Exactly.

16 Q. In your questionnaire, you wrote some
17 comments in the narrative section which you stated
18 you work with young kids, and I will paraphrase
19 this, and at some point, although kids come from
20 horrible backgrounds, they are adults and they make
21 their own decisions. You feel strongly about that?

22 A. Yes, I do. I think my first inclination
23 when I have one that goes awry is to think somehow
24 society has failed them. I have to face the fact,
25 after all my years in working with young children,

1 that there are some that for some reason do not
2 have the resilience and no matter how well society
3 does or does not serve them, they will fail, and
4 they will make poor decisions for themselves, and I
5 don't know. I don't have an answer to that. I
6 wish I did. I've been seeking it. I look at
7 trying to instill resilience in young people so
8 that they can come from a myriad of circumstances
9 and survive it.

10 Q. I take it that in your line of work you
11 have seen individuals come from extremely similar
12 circumstances yet turn out completely different?

13 A. Yes, I have.

14 Q. And this is the type of explanation we
15 are all searching for, maybe there is no
16 explanation?

17 A. Maybe not.

18 Q. Do you think, though, that someone's
19 background is important in making the decision that
20 you would have to make in a case like this where
21 you are going to impose punishment on somebody?

22 A. Well, I think it should be considered. I
23 myself did not come from a very fine background and
24 somehow made some transitions.

25 Q. Absolutely.

1 A. So I don't know what differentiates those
2 that do and those that don't, other than there have
3 been a lot of long-time studies to try and figure
4 out what qualities of character we are looking for
5 that indicate survival under the worst of
6 circumstances.

7 Q. And I'm almost finished. I appreciate
8 your patience. No. 34 asks if, well, basically
9 about your feelings regarding the death penalty,
10 whether you are in favor of it, opposed to it so
11 on, so forth. You circled you are in favor and you
12 would consider it in certain circumstances.

13 A. (No audible response.)

14 Q. Explain why you circled two options as
15 opposed to just one?

16 A. I guess to clarify my position that I do
17 not think in absolutes, that I think that for every
18 action that the death penalty is automatic. I just
19 can't think in absolutes.

20 Q. I understand. Finally, you state in the
21 explanation, I regret to say that in some
22 circumstances it may be appropriate, and you use
23 the term regret?

24 A. Yes.

25 Q. Tell me why you regret that in some

1 circumstances that it is appropriate?

2 A. Well, I don't know if necessarily solves
3 anything. It may be the only solution that makes
4 any sense at the time. It is probably the burden
5 of mankind to have to deal with those among us that
6 somehow cannot live in society, no matter what we
7 do, and we have to have an answer, and there is no
8 good answer, and maybe that's the only one that we
9 have at this time, but it is not a good one.

10 Q. I appreciate that. Thank you, ma'am.
11 We will pass for cause, Judge.

12 THE COURT: Ms. Jackson.

13 MS. JACKSON: Thank you, your Honor.

14 EXAMINATION OF PROSPECTIVE JUROR 026.

15 BY MS. JACKSON:

16 Q. Hi, Ms. Salcido. Do you believe you can
17 give life to someone who under the certain
18 circumstances who has been convicted of murdering
19 four innocent people?

20 A. Do I think I could give life?

21 Q. Give life.

22 A. Without the possibility of parole?

23 Q. Uh-huh.

24 A. Yes.

25 Q. I want to go to your narrative as well.

1 On page 9, you indicate that you work with young
2 children at two elementary schools. What are the
3 age ranges of the children you work with?
4 A. Kindergarten through fifth grade, five
5 through about ten.
6 Q. And they come from horrible backgrounds.
7 I did not see these factors as justification to
8 kill. Now justified homicide, we wouldn't be here.
9 We have already cleared those hurdles. Do you
10 understand that?
11 A. Okay, yes.
12 Q. When you wrote this, did you understand
13 the posture of this case?
14 A. Possibly not. I'm hoping that the jury
15 considered all the background factors, and I assume
16 all of those were presented.
17 Q. Okay. One of the things we are going to
18 talk to you about is, see, I think you are
19 confusing justification which you wrote here with
20 mitigation. Do you understand that
21 justification -- we are not talking about that at
22 all in this case. There is no justifiable reason
23 or it wouldn't be first degree murder.
24 A. Right. I'm thinking in terms of
25 justifying the degree of harshness of sentence.

1 Q. Okay, for that term legally we call that
2 mitigation?
3 A. Okay.
4 Q. So we can get on the same page so we can
5 have a conversation?
6 A. Now.
7 Q. In regards to mitigation, the law states
8 that when someone has been convicted of first
9 degree murder, as Mr. Johnson has, that anybody who
10 decides what the appropriate punishment the law
11 dictates that they must consider mitigation and
12 that's defined as a person's background, were they
13 abused, did they get enough to eat, are their
14 parents on drugs when they were born, things of
15 that nature.
16 Would those things be important to you as
17 sentencing a person in this situation in deciding
18 what is an appropriate punishment?
19 A. Yes, I think so.
20 Q. Do you think so or do you know so?
21 A. Well, again, you know, I know of people
22 who come from extremely harsh circumstances and
23 that's really not an excuse to commit murder.
24 Q. And, again, we are not -- we are not
25 talking about that.

1 A. I realize that.
2 Q. The law simply states as you are sitting
3 on this jury and deciding what the four punishments
4 are, and, again, I know you have not heard them
5 before and it takes a little time to let them sink
6 in, life with parole?
7 A. I understand.
8 Q. Which in this case would be 20 plus --
9 40. Would be 40 times four years in prison, so
10 that is a 160 years in this case?
11 MR. DASKAS: Ms. Jackson, I apologize.
12 Technically that's not true, and that's up to, your
13 Honor, so I don't want to leave the prospective
14 juror with any misconceptions. It is 40 years at
15 the bottom end.
16 THE COURT: What now?
17 MR. DASKAS: Ms. Jackson is suggesting
18 that the minimum sentence in this case is a hundred
19 and sixty years. That may not be true depending on
20 what, your Honor's, decision is.
21 THE COURT: It could be true and not
22 true. It could be 40 years, could be hundred and
23 sixty years for each individual. It is 40 years,
24 but all told the Court could run them consecutive.
25 MR. DASKAS: Correct.

1 THE COURT: Could be hundred and sixty
2 years.
3 BY MS. JACKSON:
4 Q. So that's essentially a lifetime. Life
5 without parole in this case is one of your
6 questions mean there is no parole ever, and then
7 there is a term of years, 50, as the Court stated
8 that's doubled, and these people were shot, so
9 that's a hundred years or then there is death, so
10 there is four possibilities. Do you agree with me
11 that either of those four is a severe punishment?
12 A. Oh, yes.
13 Q. When you say that society has to be
14 protected, do you understand that the other jury,
15 whoever that was, has by their verdict already
16 guaranteed that there is punishment because you
17 agree that any one of those four is a severe
18 punishment?
19 A. I understand.
20 Q. Do you understand that?
21 A. Yes.
22 Q. In your mind, life without parole is a
23 severe punishment?
24 A. Yes.
25 Q. So are you able to accept the fact that

1 when we present to you what we have to by law,
 2 mitigation, do you understand that we are not
 3 trying to excuse or justify the homicide? We are
 4 way past that because you keep using those words.
 5 Do you understand my distinction, ma'am?
 6 A. Uh-huh, uh-huh.
 7 THE COURT: Is that yes, ma'am?
 8 PROSPECTIVE JUROR: That is. But still
 9 how would one decide upon those four options?
 10 BY MS. JACKSON:
 11 Q. By listening to all of the information.
 12 The State will give you some information. We are
 13 going -- the law mandates that I, as a defense
 14 attorney, present mitigation on behalf of
 15 Mr. Johnson. Furthermore, the law mandates that
 16 you must consider it before you reach a justified
 17 decision as based upon your sound reasoning. And
 18 all I'm asking you is can you do that, because
 19 those factors do need to be considered. That's
 20 what the law states. What the law states and what
 21 people do on the jury may be two different things.
 22 A. Indeed.
 23 Q. What I'm asking you, ma'am, is based upon
 24 all your clinical -- you have also a lot of
 25 clinical training. You work with abused children,

1 and I understand. All of us know people that came
 2 from very deprived backgrounds and went on and did
 3 marvelous things, but that's not the issue. The
 4 issue is can you listen to what happened to Donte
 5 Johnson, mitigation, and before making up your mind
 6 about which of those four, and you agreed they are
 7 very serious punishments?
 8 A. Yes.
 9 Q. Can you listen to what happened to him
 10 before you make up your mind?
 11 A. Yes, I think I can.
 12 Q. You said that a person makes choices. Do
 13 you think a person chooses who their parents are?
 14 A. No, they do not.
 15 Q. Do you think a person chooses if their
 16 parents are going to use drugs or not?
 17 A. Absolutely not.
 18 Q. Do you think a person chooses what
 19 neighborhood they are going to be born into?
 20 MR. DASKAS: I think this argumentative
 21 at this point, I object.
 22 MS. JACKSON: I'm simply asking
 23 questions, Judge.
 24 THE COURT: It is argumentative,
 25 sustained.

1 MR. DASKAS: Thank you.
 2 BY MS. JACKSON:
 3 Q. You also indicate that the time involved
 4 in this decision will significantly impact my
 5 ability to maintain compliance deadlines for the
 6 Clark County School District if it extends for a
 7 week. We are going to go way past a week.
 8 A. That's problematic in that I have two
 9 schools, two elementary schools. I have special
 10 education deadlines, compliance deadlines, in which
 11 IEPs need to be renewed, eligibility for special
 12 education services need to be reviewed. You know
 13 there is no substitute. It is not like they call
 14 in a substitute teacher for me. I'm the one that
 15 does that.
 16 Q. You don't work in teams? There is no
 17 school psychologist who can do what you are doing?
 18 A. Not that's assigned to my school, no.
 19 Q. So the children that you are --
 20 A. They would wait. It would have to wait.
 21 My pressure is I have two schools. One is a
 22 year-round school one is a nine-month school. The
 23 nine-month school has about five weeks to go.
 24 Q. Could this impact those children's
 25 educational quality? Would they be hindered in

1 their educational matriculation.
 2 A. Not in matriculation, but they are
 3 children who are waiting for assessments, waiting
 4 to have meetings which have to be held by a certain
 5 deadline in order to renew special education
 6 services, and those are the compliance, the federal
 7 and state compliance deadlines that we must meet
 8 for triannual reassessments.
 9 Q. This is two different schools?
 10 A. Two different schools.
 11 Q. A total of how many children,
 12 approximately?
 13 A. Approximately maybe 1500.
 14 Q. Are you going to be able to -- this is
 15 Wednesday and we have not even started yet, so
 16 certainly we are going to go at least two weeks.
 17 Will you be able to focus what is going on here in
 18 this courtroom given your constraints of your
 19 employment?
 20 A. It would be difficult.
 21 Q. Would it be impossible?
 22 A. It would be impossible.
 23 MS. JACKSON: Your Honor, I challenge on
 24 basis of hardship.
 25 THE COURT: I don't see a hardship. I

1 mean all she has to do is meet this stuff. We will
2 be done by week after -- before next week, so not
3 two weeks. We are already half of one week.

4 MS. JACKSON: That's denied, your Honor?

5 THE COURT: Yes.

6 MS. JACKSON: Very well, your Honor.

7 THE COURT: Ma'am, now if you are on this
8 jury, you will pay attention to the case, aren't
9 you?

10 PROSPECTIVE JUROR: Absolutely.

11 THE COURT: I mean you are not going to,
12 if we finish -- what is today? Today is the 20th,
13 so what is next Friday?

14 MR. DASKAS: Twenty-ninth, your Honor.

15 THE COURT: Week from this Friday, 29th.

16 So if we are done by the 29th, would that give you
17 still enough time, wouldn't it, to do what you have
18 to do?

19 PROSPECTIVE JUROR: It would give me four
20 weeks. Thing would be out of compliance, but they
21 would probably be done, yes.

22 THE COURT: Okay.

23 BY MS. JACKSON:

24 Q. No. 16 when you asked do you remember
25 anything about the case. You did remember a name

1 and he was accused of murder, and it appears to be
2 a danger to society and extremely violent
3 individual who would be so in any setting. By that
4 do you mean to say that any setting, does that
5 include prison?

6 A. Possibly. I don't really know.

7 Q. It goes back to if you believe that and
8 you wrote it, you wrote it a week ago, probably
9 about week ago, so you had a chance to think about
10 it. Do you feel that way today? If you believe
11 someone would be a danger in any setting, then you
12 cannot consider anything except death; correct?

13 A. No, I wouldn't say that. I would say
14 there are many violent people in prison who
15 continue to be violent, but they are maintained
16 there.

17 Q. Okay. And you believe that is, again, a
18 severe punishment?

19 A. Yes.

20 Q. So your answer to No. 16 is no indication
21 that you have already made up your mind?

22 A. As far as punishment goes.

23 Q. Yes, ma'am?

24 A. No, I don't think so. I think even after
25 knowing the facts I will have a hard time making up

1 my mind.

2 Q. Your friend, your coworker whose son was
3 the victim of Oklahoma bombing, how close a friend
4 is that, ma'am?

5 A. She is a teacher that I work with. I
6 don't socialize with her on the outside. She did
7 have a conversation with me about how she felt.
8 She went back to Oklahoma and actually witnessed
9 the execution. She talked to me about how
10 therapeutic that was for her as a mother having
11 lost her son.

12 Q. And she found that be very therapeutic?

13 A. She did.

14 Q. As a psychologist, did you agree with
15 her? With her assessment?

16 A. I can't speak for her feelings.

17 Q. I'm asking you how do you feel, ma'am?

18 A. Whether or not that was therapeutic for
19 her?

20 Q. Uh-huh. You thought it was valid
21 observation?

22 A. Well, I can't -- those were her feelings.
23 She felt it resolved it for her. Whether or not
24 that would resolve it for me if I lost a son, I
25 can't say.

1 Q. Because of your relationship with her,
2 would you feel an obligation to the victims that
3 are parents in this case to kill my client?

4 A. Not necessarily, no.

5 Q. Not necessarily. I'm sure I don't know
6 what that means. What does not necessarily mean,
7 ma'am?

8 A. I wouldn't use that as my criteria that
9 surely if this mother found it therapeutic that
10 other mothers would find it therapeutic as well.

11 Q. What if they took the stand and told you
12 that?

13 MR. DASKAS: Judge, I object. That's not
14 a proper question we get to ask.

15 THE COURT: Sustained.

16 BY MS. JACKSON:

17 Q. Will you be thinking of that coworker of
18 yours during the course of this trial?

19 A. No, I don't think so. I think those are
20 very different circumstances.

21 Q. Okay. You know when the question I asked
22 you at Question 38, we talked about this
23 previously, but I'm very concerned about this.

24 We asked the question whether you
25 consider it. It says you must, M-U-S-T, consider

1 mitigation, and you did not strike any answer. The
2 answer was very much, not at all, somewhat or not
3 sure. You didn't strike any answer, and then you
4 wrote extremely few but justify murder in my mind,
5 so that tells me you are not going to consider
6 mitigation; correct?

7 A. No.

8 Q. Well, your answer has changed from last
9 week because last week you refused to strike either
10 of the answers. Would you like to see it?

11 A. Did I just not answer that question?

12 Q. You didn't answer it at all, ma'am. You
13 wrote in that nothing justifies murder is what you
14 said.

15 MR. DASKAS: Judge, again, I apologize to
16 Ms. Jackson. Let's be fair. I want the record to
17 be complete and accurate. What it says is,
18 "extremely few" as opposed to nothing would justify
19 murder in my mind. So the record is clear.

20 PROSPECTIVE JUROR: I interpreted this
21 question to mean would I consider these factors in
22 terms of mental status, age, childhood experience,
23 education. Do you consider these type of factors.
24 I feel like, yes, I would.
25 / / /

1 BY MS. JACKSON:

2 Q. But that's not what you wrote?

3 A. I feel as though that even though that is
4 there to just blankly say that would justify some
5 one murdering another person, I can't be that
6 absolute. I wish I could. I wish I can, but I
7 can't be. I can't be that absolute. Do I feel as
8 though all factors need to be considered?

9 Q. Do you understand, again, Ms. Salcido, do
10 you understand that no one on this side of the
11 courtroom is seeking to justify anything. You keep
12 using that word. It tells me you don't know how to
13 process words and that's okay, but if you can't
14 really appreciate how the law operates, maybe this
15 isn't the case for you. Do you understand
16 justification versus mitigation?

17 MR. DASKAS: Your Honor, again, it's been
18 asked and answered.

19 THE COURT: Counsel, you are arguing with
20 the witness. Not only that, she doesn't have to
21 know the law because I have not instructed her on
22 the law. So, because she doesn't understand the
23 law is no reason for her not to be on this jury
24 because I have not given her one instruction yet,
25 so, and, you know, you have asked the questions

1 about four or five time about justification versus
2 mitigation. You can't keep asking the question
3 over and over again.

4 MS. JACKSON: Therefore, I would like to
5 make a motion given this witness' level of
6 education and expertise, she clearly has stated on
7 the questionnaire and today that she would require
8 murder to be justified. To me that is a blatant
9 disregard of the law despite my painstaking effort
10 to have her understand that nothing here is -- we
11 are not seeking to justify anything. That is what
12 she is saying she will require. I think the record
13 will speak for itself.

14 Therefore, I think if she is requiring us
15 to justify four homicides.

16 THE COURT: I have not heard her say that
17 one time.

18 MS. JACKSON: That's what she wrote.

19 THE COURT: That's not what she wrote.

20 She just said I don't think it is justified. She
21 didn't say she is going to require you guys to
22 justify anything, and I think she explained her
23 reasoning here and did it in an appropriate manner
24 as to what she meant. I don't think that's what
25 she is doing. I don't know.

1 State, what is your position on this?

2 MR. DASKAS: Your Honor, I think she is
3 well qualified. What she has said repeatedly in
4 response to questions from Ms. Jackson she would
5 consider everything. She has not made up her mind.
6 She is concerned about situations like the Oklahoma
7 City bombing requiring the death penalty and not
8 necessarily anything else.

9 She would not require the defense to
10 justify anything. She said repeatedly I would
11 consider everything. She might reject some of it
12 but she would consider it. They have fallen
13 clearly short of establishing a challenge for
14 cause, Judge, and so if that's the challenge, it
15 should absolutely be denied.

16 THE COURT: Ms. Jackson, anything you
17 want to add.

18 MS. JACKSON: I'm not done with the
19 questionnaire, your Honor. If the Court will not
20 grant my motion at this point, I would like to be
21 allowed to continue with this venire person if I
22 may.

23 THE COURT: The motion is denied.

24 MS. JACKSON: Very well, your Honor.
25 / / /

1 BY MS. JACKSON:

2 Q. Ms. Salcido, you also indicate at line
3 40, we ask you that if you impose death you must
4 assume it will be carried out, and again you answer
5 no. You are not sure. There always seems to be a
6 retrial. And at question 40 we ask the same with
7 regards to life without parole, and you said no you
8 don't believe that either because some seem to get
9 out on a technicality.

10 Based upon your answers, ma'am, it would
11 seem to me that you don't have much faith in the
12 system; is that correct?

13 A. Sometimes I don't. Sometimes. And that
14 could be just the media that I hear too much about
15 thieves are tried and tried and tried repeatedly as
16 long as the funding supports that to the point of
17 where they have lost track of where they started.

18 Q. So my question, ma'am, is that with your
19 opinions that you hold about the system, would that
20 effect your ability to fairly listen to the
21 evidence in this case and consider all of the
22 mitigation before you decide what is an appropriate
23 punishment for my client based upon your answers to
24 your questionnaire that you don't believe that
25 these punishments are what they say they are?

1 A. Well, I think the jury would have four to
2 select from. They are all to me extremely severe.
3 The degrees between them in terms of severity I
4 think is that the previous question wanted to know
5 whether or not in considering the degrees of
6 severity of the four choices that factors -- would
7 I consider factors like background and so forth in
8 choosing one of those four. That's how I'm
9 interpreting that.

10 They are all very severe, but there has
11 got to be a reason to select one over the other.
12 What would I base that on? Whatever is presented.

13 Q. So the fact that you don't believe that
14 the punishments are what they say they are will
15 that effect your ability to deliberate among the
16 four punishments?

17 A. No, I don't think so. I think I do
18 believe they are what they say they are.

19 Q. So then you changed your mind since?

20 A. There are times when a jury has made a
21 decision and it is not carried out. Why, I don't
22 know, probably I'm not focusing on it.

23 Q. Will you base your decision upon what you
24 hear here in the courtroom, ma'am?

25 A. I will indeed.

1 MS. JACKSON: Your Honor, I want the
2 record to reflect that I think Ms. Salcido should
3 be excused for cause on at least the three basis as
4 I previously stated.

5 THE COURT: Like I said, I denied them.
6 I didn't think they were correct, so the court,
7 like I said, denial will stand, ma'am. When have I
8 told other people to come back?

9 MR. DASKAS: I think you said tomorrow at
10 ten o'clock. That was yesterday, though, Judge.

11 THE COURT: I think you better come back
12 Friday at ten, ma'am.

13 All right. We will let you know.

14 PROSPECTIVE JUROR: Thank you.

15 THE COURT: All right. Who is next?
16 No. 28, Laehr.

17 EXAMINATION OF PROSPECTIVE JUROR 029

18 THE COURT: How do you pronounce your
19 name, sir?

20 PROSPECTIVE JUROR: Laehr.

21 THE COURT: He is silent.

22 PROSPECTIVE JUROR: It is German.

23 THE COURT: Okay. Laehr. So no one in
24 your family has ever been charged with a crime?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: No one in your family has
2 ever been the victim of a crime?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Never served on a jury
5 before?

6 PROSPECTIVE JUROR: No.

7 THE COURT: And you don't recall hearing
8 anything about this case?

9 PROSPECTIVE JUROR: I'm not sure. I
10 recall one case that happened in Henderson around
11 this time. Would that be the same case?

12 THE COURT: I don't know.

13 PROSPECTIVE JUROR: I'm not sure where.
14 There were four --

15 MR. DASKAS: It was East Tropicana, east
16 Las Vegas off Tropicana Avenue.

17 THE COURT: You don't remember any facts
18 of the case, the case you think you heard about?

19 PROSPECTIVE JUROR: The case I thought it
20 reminded me of was where four teenagers were killed
21 in a home execution style, and I thought it to be
22 drug related.

23 THE COURT: All right. Now you, Question
24 No. 35 asks if you hold any strong moral or
25 religious views towards the death penalty and its

1 Imposition and you stated, yes, I can justify it?
 2 PROSPECTIVE JUROR: Yes.
 3 THE COURT: What is that?
 4 PROSPECTIVE JUROR: It means I can
 5 justify the death penalty in certain cases.
 6 THE COURT: Otherwise you don't have any
 7 moral or religious opposition to it?
 8 PROSPECTIVE JUROR: Correct.
 9 THE COURT: So you are for the death
 10 penalty under certain circumstances?
 11 PROSPECTIVE JUROR: Correct.
 12 THE COURT: Now looking at the back of
 13 your thing here, you said you are a commissioned
 14 sales person and the only one that -- you are on
 15 commission and your father has Parkinson's.
 16 PROSPECTIVE JUROR: Your Honor, my father
 17 is dying. I have been instructed by my mother to
 18 come out this weekend. He is in California. He
 19 does have advanced Parkinson's. He is 91 years
 20 old. I would like to see him this weekend. It may
 21 be the last time I will.
 22 THE COURT: How long are you going to
 23 stay there?
 24 PROSPECTIVE JUROR: Just the weekend.
 25 THE COURT: We don't work on weekends.

1 When were you going?
 2 PROSPECTIVE JUROR: Friday. And aside
 3 from that, I think that is first and foremost. In
 4 my position, I'm a salesperson for U.S. Food
 5 Service, strictly commission, no compensation
 6 otherwise. If I don't see my clients face to face
 7 on a daily basis, the competition is very tough out
 8 there. When competitors come in, I do lose
 9 business and it can be long-term which affects my
 10 budget, and if you are not on budget by the end of
 11 the year you can lose your job.
 12 THE COURT: Counsel?
 13 MR. STANTON: Your Honor, I have reviewed
 14 Mr. Lehr's questionnaire. The State has no
 15 objection, based upon his comments and especially
 16 his father's condition, to excusing him for service
 17 in this case.
 18 MR. WHIPPLE: Join that.
 19 THE COURT: You are excused.
 20 PROSPECTIVE JUROR: Thank you, your
 21 Honor.
 22 EXAMINATION OF PROSPECTIVE JUROR 030
 23 THE COURT: Ms. Morgan?
 24 PROSPECTIVE JUROR: Yes.
 25 THE COURT: You still have that surgery

1 scheduled for the 29th?
 2 PROSPECTIVE JUROR: Yes, I do.
 3 THE COURT: Think you can move it a
 4 couple of days, if you have to?
 5 PROSPECTIVE JUROR: Yes, my doctor is
 6 okay with that. We already put it off a while.
 7 Another week or two won't matter.
 8 THE COURT: So you are from Douglas,
 9 Wyoming. That is where you were born?
 10 PROSPECTIVE JUROR: That's where I was
 11 born, yes.
 12 THE COURT: Were you raised in Wyoming?
 13 PROSPECTIVE JUROR: First three years. I
 14 was raised the rest of the time in Montana.
 15 THE COURT: Billings?
 16 PROSPECTIVE JUROR: Billings' area, yes.
 17 THE COURT: And you went to Montana State
 18 University and you have a B.S., B.A. and MBA.
 19 PROSPECTIVE JUROR: I got my masters in
 20 Missoula at U of M.
 21 THE COURT: What kind of work do you do?
 22 PROSPECTIVE JUROR: I'm a banker for
 23 Washington Mutual bank.
 24 THE COURT: How long have you been with
 25 them?

1 PROSPECTIVE JUROR: Almost four years.
 2 THE COURT: Are you married?
 3 PROSPECTIVE JUROR: No.
 4 THE COURT: Divorced?
 5 PROSPECTIVE JUROR: Yes.
 6 THE COURT: What kind of work did your ex
 7 husband do?
 8 PROSPECTIVE JUROR: We were in oil
 9 fields.
 10 THE COURT: He worked in oil fields?
 11 PROSPECTIVE JUROR: For about 16 years.
 12 THE COURT: Now you have three adult
 13 children; is that right?
 14 PROSPECTIVE JUROR: Uh-huh.
 15 THE COURT: They live here in Las Vegas?
 16 PROSPECTIVE JUROR: No, none of them live
 17 here.
 18 THE COURT: So where do they live?
 19 PROSPECTIVE JUROR: I have one daughter
 20 in Salt Lake City, and I have a son in Helena,
 21 Montana and a daughter in Laurel, Montana near
 22 Billings.
 23 THE COURT: Okay. Have you ever served
 24 on a jury before?
 25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Have you or anyone in your
2 family ever been the victim of a crime?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Have you or anyone in your
5 family ever been charged with a crime?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Now you said you might have
8 heard the name of the defendant, but you don't
9 remember anything about the case; is that correct?

10 PROSPECTIVE JUROR: That's correct.

11 THE COURT: Can you be fair and impartial
12 in this case?

13 PROSPECTIVE JUROR: I believe I could,
14 sir.

15 THE COURT: Could you follow the Court's
16 instructions on the law?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Now, if you are picked to
19 serve as a juror in this case, you will have to
20 decide on the punishment, and as you remember from
21 the questionnaire, you will have four possible
22 choices, the death penalty, the life imprisonment
23 without the possibility of parole, life
24 imprisonment with possibility of parole or definite
25 term of 50 years with possibility of parole after

1 20 and each of those penalties are doubled for the
2 use of a deadly weapon, and they apply to each
3 charge. Understand that?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Could you consider all four
6 forms of punishment?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: State.

9 MR. DASKAS: Thank you, Judge.

10 EXAMINATION OF PROSPECTIVE JUROR 030

11 BY MR. DASKAS:

12 Q. Hi. Your answer to No. 36, you stated I
13 believe in the death penalty in certain cases
14 depending on the circumstances. I take it that is
15 still your belief today?

16 A. I guess what I mean by that is I would
17 look at everything. I'm a very fair person. I
18 think my friends and family would say that also,
19 that me being me, I would look at everything before
20 I make a decision.

21 Q. You understand that it is very important
22 to consider as much information as possible, both
23 about the crime itself and the defendant before you
24 decide punishment?

25 A. Absolutely.

1 Q. You would do that?

2 A. Absolutely.

3 Q. If after doing that you believe in this
4 case that death is appropriate, could you impose
5 that punishment?

6 A. Are you asking me if I can vote for that?

7 Q. No. It is a difficult concept, I guess,
8 but I'm sort of assuming that you have deliberated,
9 and based on your analysis of the information, the
10 facts of the case, this man's background and
11 everything else presented, let's assume you believe
12 that death is an appropriate punishment?

13 A. Based on everything we have heard?

14 Q. Based on everything we presented. Could
15 you be the one to sign the form to be the one to
16 put the person to death?

17 A. My conscience would tell me that I have
18 to if that's what I felt everything pointed to.

19 Q. I'm not suggesting that decision is easy?

20 A. I didn't come in here thinking it would
21 be, sir.

22 Q. It seems like you appreciate the
23 distinction between having a philosophical
24 discussion about the death penalty and finding
25 yourself in the courtroom today having to

1 potentially do it?

2 A. Absolutely. I have thought about it.
3 I'm very aware of how serious this is.

4 Q. I appreciate that. The judge mentioned
5 and the questionnaire mentioned that there are four
6 victims in this case. You can and will have to
7 impose punishment for each one of those victim's
8 murders. Do you understand that you can impose
9 different punishments for each victim?

10 A. Yes.

11 Q. And I'm not suggesting that you should or
12 shouldn't, but you understand that you can?

13 A. Yes.

14 Q. The questionnaire mentioned, and I think
15 the judge told you that Mr. Johnson, the defendant,
16 has already been convicted of all four murders.
17 You realize that?

18 A. Yes.

19 Q. You have heard about in our criminal
20 justice system the presumption of innocence, that
21 someone is innocent until proven guilty?

22 A. Right.

23 Q. You appreciate in this case that
24 presumption is gone?

25 A. Right.

1 Q. And you accept that another jury has
2 convicted him?

3 A. Yes, I can accept that, but I don't
4 understand why it isn't the same jury, excuse me,
5 but, yeah, that was their decision. I didn't make
6 that decision.

7 Q. If the Judge instructs you that you have
8 to accept that, you can accept that?

9 A. Absolutely.

10 Q. Despite questions in the back of your
11 mind about why?

12 A. And I assume they will explain that why.

13 Q. Let's just say it happens in some cases.
14 That's all we can tell you.

15 A. And that's fine. I just never heard of
16 that before.

17 Q. Let me ask you this final question, let's
18 assume -- it goes back to my original question.
19 Let's assume you are convinced after hearing all of
20 the evidence in the case and information about the
21 defendant that death is appropriate. Would the
22 fact that another jury convicted him hang you up in
23 any way on imposing death?

24 A. No.

25 Q. Would you still be comfortable with that

1 decision?

2 A. No, because I want to be fair. That was
3 their decision. I go from this point forward.

4 MR. DASKAS: Thank you so much, ma'am.

5 Judge, we will pass for cause.

6 EXAMINATION OF PROSPECTIVE JUROR 030

7 BY MS. JACKSON:

8 Q. Hi. Ms. Duncan (sic), how are you today?

9 A. Good.

10 Q. Can you give life to someone who has
11 already been convicted of four murders? After you
12 heard everything that happens inside this
13 courtroom, could you give life to -- vote for life?

14 A. Yes.

15 Q. If you felt after due deliberation --

16 A. Absolutely, because I intend to be fair.
17 I would want somebody to be fair with me.

18 Q. Yes, ma'am. You will get an instruction
19 at the appropriate time that mitigation -- and the
20 questionnaire kind of vaguely eludes to this. I
21 know this is not stuff you even think about in your
22 normal life, but it talks about what mitigation is,
23 childhood, age of defendant, and things like that.
24 The questionnaire mentioned those.

25 Do you know that you can find anything to

1 be mitigating, anything at all and that will give
2 you a basis to give life? You okay with that?

3 A. You mean anything from birth to today?
4 Is that what you are saying?

5 Q. Yes. Let's say, for example, you have
6 deliberated with the jury and you have engaged and
7 you followed the Court's instructions, and you have
8 listened to everything in this courtroom, and you
9 have been as fair as you can be, and in your heart
10 of hearts this is a case where you would vote for
11 life and the rest of the jury votes for death, and
12 they are asking you to tell them why you won't vote
13 with them. Would you feel like you have to explain
14 it to them if you felt that after due deliberation
15 that was your just decision?

16 A. No.

17 Q. Do you understand my question? Would you
18 feel you had to articulate it to them?

19 A. Yeah, if I had the opportunity.

20 Q. But what if you just can't put it into
21 your words, that you feel in your heart this is
22 your decision that this is a case for life?

23 A. I wouldn't put it into words unless it is
24 a yes or no vote I wouldn't have to say anything.
25 I'm very good at finding those kind of

1 opportunities.

2 Q. You are a person that can stick, you have
3 the courage of your own convictions?

4 A. Absolutely. I'm a person of my own
5 right.

6 Q. Just as you would respect somebody else's
7 decision, their right to vote their conscious after
8 due deliberation. Would you also demand they
9 respect yours, your right to vote your conscious?

10 A. Yes.

11 Q. And you would stick to that?

12 A. Yes.

13 Q. Would you vote a certain way just to get
14 a unanimous verdict?

15 A. No.

16 MS. JACKSON: Fine. Thank you so much.
17 That's all I have, your Honor.

18 THE COURT: Pass for cause?

19 MS. JACKSON: Yes, sir.

20 THE COURT: All right. Ms. Morgan, we
21 are going to have you report back Friday morning at
22 ten. All right. See you back on Friday.

23 PROSPECTIVE JUROR: Okay.

24 EXAMINATION OF PROSPECTIVE JUROR 031

25 THE COURT: Okay, Ms. Chaffee?

1 PROSPECTIVE JUROR: Yes, sir.
 2 THE COURT: So, Ms. Chaffee, you were
 3 born in the Philippines?
 4 PROSPECTIVE JUROR: Yes.
 5 THE COURT: How long have you been over
 6 in the United States?
 7 PROSPECTIVE JUROR: About 25 years.
 8 THE COURT: Twenty-five years?
 9 PROSPECTIVE JUROR: Yes.
 10 THE COURT: Where did you go to college?
 11 PROSPECTIVE JUROR: California, it is
 12 community college.
 13 THE COURT: I know. You got your
 14 associates degree; right?
 15 PROSPECTIVE JUROR: Yes.
 16 THE COURT: What did you get your
 17 associates in?
 18 PROSPECTIVE JUROR: San Bernadino.
 19 THE COURT: What field?
 20 PROSPECTIVE JUROR: Accounting.
 21 THE COURT: Accounting. Do you work in
 22 accounting now?
 23 PROSPECTIVE JUROR: No, sir.
 24 THE COURT: What kind of work do you do
 25 now?

1 PROSPECTIVE JUROR: I work with Burger
 2 King as a district manager.
 3 THE COURT: Which one?
 4 PROSPECTIVE JUROR: Burger King.
 5 THE COURT: Burger King?
 6 PROSPECTIVE JUROR: It is fast food.
 7 THE COURT: Burger King. Now, you said
 8 your son was a Henderson police officer?
 9 PROSPECTIVE JUROR: He was, yes.
 10 THE COURT: And then when problems came
 11 up. What kind of problems?
 12 PROSPECTIVE JUROR: He could not get, how
 13 I say, abuse that he is getting from the kids
 14 calling him names and things like that.
 15 THE COURT: So otherwise he was a police
 16 officer on the streets?
 17 PROSPECTIVE JUROR: Yes.
 18 THE COURT: And people would abuse him?
 19 PROSPECTIVE JUROR: Kids, some kids would
 20 call him pig and all kinds of names, and he
 21 doesn't -- he could not take that.
 22 THE COURT: He didn't like it?
 23 PROSPECTIVE JUROR: Yes.
 24 THE COURT: So he quit?
 25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And I believe you said no one
 2 in your family has ever been arrested or charged
 3 with a crime; is that right?
 4 PROSPECTIVE JUROR: Not that I know of.
 5 THE COURT: And you said someone stole
 6 your purse and so you are the victim of identity
 7 theft now?
 8 PROSPECTIVE JUROR: Yes.
 9 THE COURT: How long ago did this happen?
 10 PROSPECTIVE JUROR: 2000.
 11 THE COURT: And they have not caught them
 12 yet?
 13 PROSPECTIVE JUROR: No. The last time
 14 they used my identity was in last year of July.
 15 THE COURT: Okay. All right. Now you
 16 have been summoned for possible jury duty in a case
 17 where you will have to decide the penalty. You
 18 understand that?
 19 PROSPECTIVE JUROR: Yes, sir.
 20 THE COURT: And you will have to
 21 decide -- the defendant has been charged with --
 22 convicted of four counts of first degree murder, so
 23 the four choices you will have will be the death
 24 penalty, life imprisonment without possibility of
 25 parole, life in prison with the possibility of

1 parole or for a definite term of 50 years with a
 2 possibility of parole after 20 years, and these
 3 sentences are doubled for the use of a deadly
 4 weapon. Do you understand that?
 5 PROSPECTIVE JUROR: Yes, sir.
 6 THE COURT: Now, could you consider all
 7 four forms of punishment?
 8 PROSPECTIVE JUROR: I would.
 9 THE COURT: Do you have any opposition to
 10 the death penalty?
 11 PROSPECTIVE JUROR: No.
 12 THE COURT: Would you be able to, given
 13 the circumstances and facts, are there
 14 circumstances under which you can impose a sentence
 15 of life imprisonment?
 16 PROSPECTIVE JUROR: Could you rephrase
 17 the question, sir?
 18 THE COURT: Could you sentence someone to
 19 life in prison?
 20 PROSPECTIVE JUROR: Yes, sir.
 21 THE COURT: For possibility of parole?
 22 PROSPECTIVE JUROR: Yes, sir.
 23 THE COURT: You will listen to all the
 24 facts and evidence and witnesses before you make up
 25 your mind?

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1 PROSPECTIVE JUROR: I would think that he
2 was caught killing people. I would think that he
3 is already guilty.

4 THE COURT: Yeah, he is already guilty.
5 That's not what we are here for. You have to
6 listen to the witnesses. We will have witnesses
7 here. We will have witnesses. The State is going
8 to have witnesses. I mean the State will have
9 witnesses, and you have to listen to them and
10 decide on the appropriate punishment. That's what
11 I mean.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: So can you do that? You are
14 not going to decide on his guilt or innocence.
15 That's already decided. You understand that?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What you have to decide is
18 what is the appropriate punishment. So both
19 parties are going to call witnesses. You are going
20 to hear evidence from the case, then you have to
21 decide upon the appropriate punishment. Can you do
22 that?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You already have your mind
25 made up to what punishment you should impose?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: You do?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: What?

5 PROSPECTIVE JUROR: Guilty. It is they
6 already commit suicide -- committed crime.

7 THE COURT: Right, right. We already
8 know that. But you have to decide on punishment,
9 me'am, so do you have your mind made up as to a
10 punishment?

11 You have problems understanding what?

12 PROSPECTIVE JUROR: No. No. I just
13 don't know how to say.

14 THE COURT: The concept.

15 PROSPECTIVE JUROR: You asking me what
16 kind of punishment I would decide I would say --

17 THE COURT: Did you already make up your
18 mind?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: So you have made up your
21 mind?

22 PROSPECTIVE JUROR: Yes, yes.

23 THE COURT: When did you make up your
24 mind?

25 PROSPECTIVE JUROR: When I wrote on that

1 questionnaire, sir.

2 THE COURT: All right. All right. Which
3 punishment have you decided is the appropriate one?

4 PROSPECTIVE JUROR: What that I wrote in
5 there. It is first one.

6 THE COURT: One of them you have circled
7 life in prison without the possibility of parole
8 and later on you said you were generally in favor
9 of the death penalty, and then one of them you said
10 you would automatically vote for death. So what is
11 it?

12 PROSPECTIVE JUROR: Automatically for
13 death.

14 THE COURT: All right. Approach the
15 bench. Counsel, approach the bench.

16 (Thereupon, a brief discussion was
17 held at the bench.)

18 THE COURT: Me'am, we are going to excuse
19 you. We are going to excuse you, me'am. You can
20 go. Thank you very much.

21 They have to switch reporters here for a
22 minute.

23 ATTEST: Full, true and accurate
24 transcript.

25 *Lisa Makowski*

1 LISA MAKOWSKI, CCR #345
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2005 APR 21 A 9:50

DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA)
)
Plaintiff,)
)
vs.)
)
DONTÉ JOHNSON,)
)
Defendant.)
-----)

CASE NO. C153154
DEPT. NO VIII

ORDER TO PREPARE TRANSCRIPT

IT IS HEREBY ORDERED that SONIA L. RILEY, CCR 727, prepare a transcript in the above-captioned matter heard on 4/19 P.M. ; 4/20 P.M., 2005.

FURTHER ORDERED, that said transcript shall be prepared pursuant to Supreme Court Rule 250 and at State's expense with cost and fees assessed according to NRS 3.370.

DATED THIS _____ DAY OF _____, 2005.

[Signature]
DISTRICT COURT JUDGE

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COUNTY CLERK

SONIA L. RILEY, CCR 727
455-3610

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DISTRICT COURT

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THE STATE OF NEVADA,)
)
 PLAINTIFF,)
)
 VS.)
)
 DONTÉ JOHNSON,)
)
 DEFENDANT.)

CASE NO.: C153154

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME II - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED WEDNESDAY, APRIL 20, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610 *SS*

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APR 21 2005

COUNTY CLERK

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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5 DISTRICT ATTORNEY'S OFFICE
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8 (702) 455-4711

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12 SPECIAL PUBLIC DEFENDER'S OFFICE
13 333 South Third Street
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15 Las Vegas, Nevada 89155
16 (702) 455-6265

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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PAGE

VOIR DIRE (RESUMED)

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

3

1 VOIR DIRE EXAMINATION (RESUMED)

2
3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 32

4 **THE COURT:** Who is next, Miss Batts?

5 Miss Batts, how long have you lived in
6 Las Vegas?

7 **PROSPECTIVE JUROR 32:** About a
8 year-and-a-half.

9 **THE COURT:** Where did you live before you
10 came here?

11 **PROSPECTIVE JUROR:** Kansas.

12 **THE COURT:** Were you raised in Kansas?

13 **PROSPECTIVE JUROR:** No; I was raised in
14 Illinois.

15 **THE COURT:** How long did you live in
16 Kansas?

17 **PROSPECTIVE JUROR:** This last time, we
18 lived there six years.

19 **THE COURT:** What part were you in?

20 **PROSPECTIVE JUROR:** Lawrence, so the
21 eastern part.

22 **THE COURT:** University of Kansas, right?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** So, you took some classes
25 there, didn't you?

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4

1 **PROSPECTIVE JUROR:** My husband did.
2 **THE COURT:** Your husband did?
3 **PROSPECTIVE JUROR:** Um-hmm.
4 **THE COURT:** Okay.
5 And you said that your brother-in-law
6 abused your daughter?
7 **PROSPECTIVE JUROR:** Yes.
8 **THE COURT:** This was in Kansas?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** Okay.
11 **PROSPECTIVE JUROR:** Well, no; it was
12 actually when we lived in Tennessee. I'm sorry --
13 when she was eight.
14 **THE COURT:** Was he prosecuted?
15 **PROSPECTIVE JUROR:** Yes, he was.
16 **THE COURT:** Now, you understand that
17 you're being considered for possible jury duty in a
18 penalty phase of a trial.
19 Do you understand that?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** Now, you understand that the
22 defendant has already been convicted of first-degree
23 murder, four counts, so the jury will have to decide
24 the punishment.
25 Do you understand that?

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5

1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** And the jury will have four
3 possible choices. One, the death penalty, life in
4 prison without parole, life in prison with parole or
5 for a definite term of 50 years with parole after 20
6 years, and that crime is doubled, I mean the
7 sentence is doubled if a deadly weapon is used.

8 Do you understand that?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Of course, this is for each
11 charge. There are four counts of murder, and you
12 will have to decide on four punishments, one for
13 each murder.

14 Do you understand that?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** You will have the same four
17 choices.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** Could you consider all four
21 choices?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** You can listen to the
24 evidence, the arguments of counsel and apply the
25 appropriate verdict depending upon the circumstances

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6

1 and the facts of the case?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Have you automatically made up
4 your mind?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Not "automatically" -- have
7 you made up your mind already of what the penalty
8 should be?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** Do you believe you can be fair
11 to both sides?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Can you follow the Court's
14 instructions on the law?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** Can you wait until you've
17 heard all the evidence before you make up your mind?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Have you had any close friends
20 or relatives who have been the victim of a violent
21 crime?

22 **PROSPECTIVE JUROR:** No.

23 **THE COURT:** You said that you think you
24 might have heard something about this case, but you
25 don't remember any details?

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7

1 **PROSPECTIVE JUROR:** I just remember
2 hearing the name on the news.

3 **THE COURT:** State?

4 **MR. DASKAS:** Thank you, Judge.

5
6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Hi.

9 A Hi.

10 Q In one of your answers, I think it was
11 Question 38 -- whether it would be important to
12 consider things about the defendant's background,
13 and you checked "very much." If I can paraphrase,
14 you think it's important to know as much about this
15 man as possible before you make a decision like
16 you're about to make?

17 A Right.

18 Q You would also like to know about the
19 facts of the homicides themselves, I take it?

20 A Yes.

21 Q That would be important to you?

22 A Very important.

23 Q In a narrative section that you wrote, and
24 I'm going to paraphrase again, in cases of
25 cold-blooded murder that might be a situation where

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8

1 death is justified?

2 A Yes.

3 Q That's how you feel today?

4 A Yes.

5 Q We're sort of talking about these things
6 in a vacuum. Let me sort of forecast for you what
7 might happen in this case if you're selected as a
8 juror. You're in the deliberation room, and you
9 have to check the box marked "death" to impose death
10 against somebody in this room today.

11 If you think that's justified, do you
12 think you can do that?

13 A Yes.

14 Q It would be difficult, wouldn't it?

15 A It would. It would be very difficult.

16 Q We understand that.

17 If, in your heart of hearts, you feel like
18 that's the right punishment, do you believe you can
19 check that box?

20 A Yes.

21 **MR. DASKAS:** Thank you, ma'am.

22 Judge, we'll pass for cause.

23 **THE COURT:** Counsel?

24 **MS. JACKSON:** Thank you, your Honor.

25 /////

1 EXAMINATION BY THE DEFENSE

2 **BY MS. JACKSON:**

3 Q Is it pronounced Bats (phonetic)?

4 A Yes.

5 Q Good afternoon, ma'am.

6 Do you think that life imprisonment
7 without the possibility of parole -- do you think
8 that's a severe punishment?

9 A Yes.

10 Q You hesitated a wee bit.

11 A Yes, because I've seen -- of course
12 through the media, which you never know quite if
13 that's accurate or not -- a lot of people who have
14 been life imprisoned, and the life that they lead,
15 you sometimes wonder is it really a punished life or
16 is it just doing everything, only within the
17 confines of a prison setting but still having all of
18 the everyday things that people on the outside would
19 have.

20 Q So, that's something you would want to
21 know about when you take into consideration what's
22 the appropriate punishment in this case? You would
23 find it helpful, you think, to know something about
24 what life in prison without parole really means here
25 in the State of Nevada?

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10

1 A Yes.

2 Q Okay. That's fair enough.

3 And you indicate here -- and Counsel has
4 mentioned this -- "If someone of sound mind could
5 calculate and carry through on a decision to kill
6 someone, they may" -- and you used the word "may,"
7 and that's a good thing -- "need to receive the
8 death penalty. Evidence would need to prove
9 cold-blooded murder.

10 What do you mean by "cold-blooded murder"?

11 A I think it's a cliché phrase, I guess.
12 For me, that would mean something that was sat down,
13 thought about, calculated through, planned over a
14 period of time, not just some spur of the moment
15 decision.

16 Q I realize that -- again, like Mr. Daskas
17 said, we ask you these questions and you don't know
18 what the case is about and you wasn't the jury that
19 heard the trial, but you will learn enough
20 information about why you're here to be able to make
21 a fair decision. We do believe that.

22 Now, you know that my client has already
23 been convicted?

24 A Yes.

25 Q Of four -- you might even want to use the

1 word "cold-blooded," because it's first-degree
2 murder, and you say "of sound mind," and legally if
3 he didn't have a sound mind, we wouldn't be here.

4 A Right.

5 Q So, the situation that we find ourselves
6 in is sound mind is not an issue. You could even
7 call these murders cold-blooded times four.

8 Can you still listen to everything that
9 comes in and base your decision and consider all
10 four forms of punishment even if it's cold-blooded
11 times four?

12 A Yes, I believe I can. Again, not having
13 heard the full evidence, upon hearing the evidence,
14 I certainly might have a different opinion or --
15 upon hearing the evidence, it might make me go to a
16 particular decision, but at this point in time, I
17 believe, yes, I can choose the death penalty.

18 Q That's what we want you to do. We want
19 you to listen to the evidence and then choose one
20 that, in your experience, based upon the evidence
21 and with your common sense and all the instructions
22 that the Court gives you. And it is a weighty
23 decision. We understand that.

24 You're going to be in the jury room with
25 12 people, and the Judge is going to instruct you

1 that it is your duty to deliberate. The Judge will
2 instruct you at the appropriate time that you must
3 consider what we call "mitigating evidence" --
4 childhood, things like that, things that we talk
5 about. If, after hearing those things, you decide
6 that based upon the mitigation -- the mitigation may
7 be whatever you think it is -- you'll also get that
8 instruction, and you may be the only one -- you may
9 decide that life is the appropriate verdict in this
10 case -- if all of your other jurors wanted to go for
11 death, would you be able to stick to what you would
12 be convinced would be what would be your considered
13 decision to life? Could you hold to your opinion
14 after due deliberation?

15 A Yes, I could hold that. Obviously, with
16 other people's discussions and so forth, my decision
17 could be changed. I could change my decision if
18 someone presented a discussion to me that showed
19 something that I hadn't thought of previously.

20 Q From what I understand about what goes on
21 in the jury room, that's called "deliberation," and
22 the Judge will tell you, that's what you're supposed
23 to do. We want you to do that. However, after
24 having done that and you have determined that this
25 is not a case where you feel death is justified,

1 could you hold to your resolve?

2 A Yes, I believe I could, because if I
3 didn't truly think that -- obviously, that's a
4 serious conviction. I would not want to vote in a
5 way that I didn't think -- if it wasn't right,
6 certainly not end someone's life as a result of it.

7 Q But you respect your fellow jurors'
8 opinions?

9 A Sure.

10 Q Would you respect their right to vote
11 their conscience?

12 A Yes.

13 Q Would you demand they respect yours?

14 A Yes.

15 Q What if you couldn't explain it to their
16 satisfaction, would you still be able to have the
17 courage of your own convictions?

18 A Yes.

19 **MS. JACKSON:** Thank you. That's all I
20 have, Miss Batts.

21 Your Honor, we pass Miss Batts for cause.

22 **THE COURT:** Miss Batts, we're going to
23 have you report back at 10:00 o'clock Friday
24 downstairs in the jury lounge.

25 **PROSPECTIVE JUROR 32:** Okay.

1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 33

2 **THE COURT:** Miss Tweedy?

3 **PROSPECTIVE JUROR 33:** Yes.

4 **THE COURT:** Stay seated.

5 Did you grow up in Iowa?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** What part?

8 **PROSPECTIVE JUROR:** Fort Madison right on
9 the river, Mississippi River, southeast corner.

10 **THE COURT:** You've been in Las Vegas 25
11 years?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** What kind of work do you do?

14 **PROSPECTIVE JUROR:** I am a tuition manager
15 for a private Christian school.

16 **THE COURT:** And you said you went to art
17 school or received some art training?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** What's your medium?

20 **PROSPECTIVE JUROR:** Portraits, sculpture
21 and oil painting.

22 **THE COURT:** Do you still do it?

23 **PROSPECTIVE JUROR:** No. I have to work
24 for a living.

25 **THE COURT:** Now, have you heard anything

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15

1 about this case?

2 **PROSPECTIVE JUROR:** Just years ago, but
3 not recently.

4 **THE COURT:** How many years ago do you
5 think?

6 **PROSPECTIVE JUROR:** Well, you said earlier
7 when we were in here that it happened in 1998. I
8 remember when it was in the news, but not in the
9 last -- since then.

10 **THE COURT:** Okay.

11 Do you remember any of the details?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Have you or anyone in your
14 family ever worked in law enforcement?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Now, you said that you've been
17 on a jury two times?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** And the person was charged
20 with -- murder cases?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** And the jury came back with
23 manslaughter both times?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** Were those cases here?

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16

1 **PROSPECTIVE JUROR:** One was yours. I was
2 in your courtroom.
3 **THE COURT:** It was mine? Oh, gee. I'm
4 trying to remember. I thought you looked familiar.
5 Which one was that, do you remember?
6 **PROSPECTIVE JUROR:** It was a case where
7 the man had killed his wife -- that won't help. I
8 don't remember the names. I remember Judge
9 Cherry -- it was right before he was elected a
10 Judge. He was the defense.
11 **THE COURT:** Oh, okay.
12 Was that manslaughter?
13 **PROSPECTIVE JUROR:** Yes.
14 **THE COURT:** That was where the woman shot
15 her husband?
16 **PROSPECTIVE JUROR:** Yes. Yes, okay, the
17 one on the highway.
18 **THE COURT:** Right. I don't think that was
19 manslaughter though.
20 Carbary. Do you remember Linda Carbary?
21 **PROSPECTIVE JUROR:** I remember one of the
22 cases I was on was manslaughter.
23 **THE COURT:** Miss Carbary, that was the
24 one.
25 You state because of your religion and the

1 kind of work you do, you don't believe you can
2 impose the death penalty.

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** That's under any circumstance?

5 **PROSPECTIVE JUROR:** I believe so. Where I
6 work, it would be -- it would be against the
7 principles of where I work.

8 **THE COURT:** You would have to think about
9 your job?

10 **PROSPECTIVE JUROR:** I guess I would have
11 to follow my true -- the way I was raised, but it
12 would be extremely difficult to explain --

13 **THE COURT:** To them?

14 **PROSPECTIVE JUROR:** -- to my supervisor
15 and the whole school, you know.

16 **THE COURT:** I guess, generally, you don't
17 believe in the death penalty?

18 **PROSPECTIVE JUROR:** I don't.

19 **MR. WHIPPLE:** If I could, your Honor.

20 **THE COURT:** Go on.

21

22 EXAMINATION BY THE DEFENSE

23 **BY MR. WHIPPLE:**

24 Q Hi. My name is Bret Whipple, and I
25 represent Mr. Donte Johnson. This is an unusual

1 circumstance, because it's a penalty hearing and
2 it's not a trial. You've been through two trials
3 before where the individual that was charged was
4 presumed innocent, and here, Mr. Johnson has already
5 been convicted of four charges of first-degree,
6 deliberate, premeditated murder. It's all of our
7 jobs to get as fair jurors as we can. We want
8 people to be fair and honest, and that's why we all
9 appreciate you speaking from your heart.

10 I want to inquire a little bit further
11 with regard to your position, because it seems like
12 it could be an influence from an outside source
13 because of where you work.

14 I think, recently, it was just the
15 anniversary of the Oklahoma City Bombing; do you
16 recall that?

17 A Yes.

18 Q The United States Supreme Court says that
19 the death penalty, which is certainly in issue here,
20 is reserved for the worst of the worst, and it also
21 says, all you have to do is be able to consider it.
22 So, in the worst of the worst, if we have the
23 Jeffrey Dahmer or the Timothy McVeigh --

24 **MR. STANTON:** I apologize, your Honor. I
25 would impose an objection, because it violates the

1 local court rules for voir dire using hypotheticals
2 and arguing facts outside.

3 **THE COURT:** Go on. Overruled.

4 **MR. WHIPPLE:** Thank you, your Honor.

5 **BY MR. WHIPPLE:**

6 Q We were talking about the worst of the
7 worst, Timothy McVeigh or the Jeffrey Dahmer, and
8 you were asked to sit with regard to making a
9 determination what their punishment would be, is it
10 possible for you to, in that situation, consider,
11 just consider, the possibility of a death penalty?
12 And when I say that, I mean by looking at all the
13 facts and circumstances.

14 A I look at this young man, he's very young,
15 and I work with high school students, and I know
16 they make mistakes. It would bother me for somebody
17 so young -- and I know this is a severe mistake, I
18 realize that, but he's still very young. It would
19 be very hard for me to give a death penalty for a
20 very young person.

21 Q I appreciate that. I acknowledge that.
22 I want to do more of the worst of the
23 worst.

24 If there's a situation like Timothy
25 McVeigh who literally hacks our own lifestyle, our

1 own government and kills children, innocent children
2 at a daycare because he's unhappy with the system
3 where there were many, many people killed, is there
4 a situation where you could envision where you could
5 just consider the death penalty, where if people
6 discussed the facts and circumstances surrounding
7 that particular crime, the facts and circumstances
8 of the individual being charged, would you be in a
9 position where you could at least consider the
10 possibility of the death penalty?

11 A I don't think so.

12 MR. WHIPPLE: And that's all we ask, and I
13 appreciate your time.

14 THE COURT: All right.

15 MR. WHIPPLE: Submit it, your Honor.

16 THE COURT: All right.

17 Miss Tweedy, we're going to excuse you,
18 ma'am.

19 Approach the bench, though.

20 PROSPECTIVE JUROR 33: Me?

21 THE COURT: Yes.

22 (Prospective Juror 33 approached the
23 bench.)

24 MR. DASKAS: Can I mention something real
25 quick before the next juror comes in? I appreciate

1 you giving the defense some latitude in using
2 examples. What I do have a problem with is when he
3 mentions what the U.S. Supreme Court has said and
4 how the penalty should be reserved for the worst of
5 the worst. I'm objecting to him referring to U.S.
6 Supreme Court decision with respect to jurors. I
7 appreciate the latitude you're giving them, we
8 respect that decision, but I think the rest is
9 objectionable.

10 **THE COURT:** That's kind of argumentative,
11 Counsel.

12 **MR. DASKAS:** Thank you, Judge.

13 **MR. WHIPPLE:** Your Honor, I don't want to
14 go -- I don't want to go beyond your order. Would
15 it be appropriate to say we believe or that we
16 believe that the death penalty is saved for the
17 worst of the worst?

18 **MR. DASKAS:** It's still argument, your
19 Honor.

20 **MR. WHIPPLE:** If I can finish.

21 **MR. DASKAS:** I apologize. Go ahead.

22 **MR. WHIPPLE:** It's not argument; it's a
23 hypothetical that we've already discussed. That's
24 what we've discussed.

25 **THE COURT:** That's not the hypothetical

1 saying it's reserved for the worst of the worst. A
2 hypothetical is -- I'm letting you do a hypothetical
3 as long as it's not the hypothetical of this
4 particular case and facts. Like I said, you can't
5 say, "Mr. Johnson" -- "If we put on the evidence to
6 show that his avid mother -- the defendant's mother
7 testified to this and this" -- you can't do that,
8 but if you're talking about a hypothetical -- you're
9 not supposed to, but in a case like this, I'm
10 allowing it, because in certain cases when you're
11 trying to find out people who are going to impose
12 the death penalty or not, I'm giving you some leeway
13 here. I'm letting you say, "Well, if somebody did a
14 terrible, terrible crime like Osama bin Laden or
15 Timothy McVeigh" -- like you're doing -- "can you
16 envision giving the death penalty?" That's fine.
17 But only for guys who have killed whatever and
18 whatever, then that's kind of argumentative.

19 **MR. WHIPPLE:** Okay. I understand.

20 **MR. DASKAS:** Thank you, Judge.

21 **THE COURT:** You can say some but not --

22 **MR. WHIPPLE:** I understand.

23

24 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 34

25 **THE COURT:** Miss Yaskin?

1 **PROSPECTIVE JUROR 34:** Yes, sir.
2 **THE COURT:** You were born in Siler City, .
3 North Carolina?
4 **PROSPECTIVE JUROR:** That's correct.
5 **THE COURT:** How long did you live in North
6 Carolina?
7 **PROSPECTIVE JUROR:** Two years.
8 **THE COURT:** Where did you grow up?
9 **PROSPECTIVE JUROR:** Mostly in
10 Williamsburg, Virginia.
11 **THE COURT:** Williamsburg?
12 **PROSPECTIVE JUROR:** Yes, sir.
13 **THE COURT:** What did you do there?
14 **PROSPECTIVE JUROR:** That's where my dad
15 lived, so I lived there until I went to college.
16 **THE COURT:** You went to Wake Forest?
17 **PROSPECTIVE JUROR:** Yes, sir.
18 **THE COURT:** And received a BA in
19 psychology?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** What kind of work do you do?
22 **PROSPECTIVE JUROR:** I'm not employed right
23 now; I'm just at home.
24 **THE COURT:** Now, your husband, he died in
25 January of this year?

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1 **PROSPECTIVE JUROR:** Yes, sir.

2 **THE COURT:** Did he die from natural

3 causes?

4 **PROSPECTIVE JUROR:** He died of cancer.

5 **THE COURT:** Okay.

6 Now, did you ever work in the psychology

7 area or psychological area?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** Have you worked in the past?

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

11 **THE COURT:** What kind of work have you

12 done in the past?

13 **PROSPECTIVE JUROR:** Started out doing

14 retail management, then I worked in dental offices

15 and more recently for the Clark County School

16 District as a nurse's aid.

17 **THE COURT:** What kind of work did your

18 husband do?

19 **PROSPECTIVE JUROR:** He was senior VP of

20 sales for Caesar's Palace.

21 **THE COURT:** How long have you lived in

22 Las Vegas?

23 **PROSPECTIVE JUROR:** Fourteen years.

24 **THE COURT:** A couple of things I want to

25 go over with you. The first thing, you grew up in

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1 the South. You spent most of your young adult life
2 there. The South has had a lot of racial issues and
3 problems.

4 How do you feel or do you think your past
5 background growing up in the South, would that cause
6 you to be biased against the defendant because of
7 his race?

8 **PROSPECTIVE JUROR:** No. I don't look at
9 color. I don't judge people based on color, and I
10 grew up in the South for probably the first 18 or 19
11 years of my life. I'm 46, and we've lived in
12 Detroit; we've lived in Texas; we've lived in
13 California; we've lived in Vegas.

14 **THE COURT:** Texas doesn't mean anything.
15 Maybe that's the worst, but the rest of them -- I
16 get your point.

17 **PROSPECTIVE JUROR:** I know what you're
18 saying.

19 **THE COURT:** We just have to ask these
20 questions.

21 **PROSPECTIVE JUROR:** Sure.

22 **THE COURT:** I'm not implying that you are
23 prejudiced or anything --

24 **PROSPECTIVE JUROR:** Sure.

25 **THE COURT:** -- but I just have to ask for

1 the record.

2 You said you think you might have heard
3 something about this case but you don't really know
4 any of the details; is that right?

5 **PROSPECTIVE JUROR:** Right.

6 **THE COURT:** Now, on the death penalty, you
7 think that some criminals probably deserve it but
8 you're not sure if you could vote for it?

9 **PROSPECTIVE JUROR:** That's correct.

10 **THE COURT:** So, you really haven't made up
11 your mind about whether or not you're for it or
12 against it?

13 **PROSPECTIVE JUROR:** That's exactly
14 correct.

15 **THE COURT:** And a little bit of it is
16 religious, because you're not sure that God would
17 approve of people taking other people's life, right?

18 **PROSPECTIVE JUROR:** Um-hmm.

19 **THE COURT:** Now, I guess the question is,
20 the defendant here has been convicted of four counts
21 of first-degree murder, so if you're picked to serve
22 on this jury, you would have to decide the
23 punishment. Now, the law in the State of Nevada
24 states that you will have to decide from four
25 possible punishments, and you should consider all

1 four of them and apply the one that fits the
2 circumstances, the facts of the case and that sort
3 of thing.

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **THE COURT:** Now, what I need to know is --
7 I know you said you haven't made up your mind yet on
8 the death penalty, so we need to know right here
9 whether or not you could impose it if the facts and
10 the circumstances were appropriate?

11 **PROSPECTIVE JUROR:** It would be very hard.
12 I don't know if I could or not.

13 Does that answer your question?

14 **THE COURT:** Not really.

15 See, the law never requires you to impose
16 the death penalty.

17 **PROSPECTIVE JUROR:** Right.

18 **THE COURT:** They never say you have to do
19 it or whatever --

20 **PROSPECTIVE JUROR:** Right.

21 **THE COURT:** -- no matter what, but the law
22 is that you should be able to consider it.

23 **PROSPECTIVE JUROR:** Right.

24 **THE COURT:** You can't be unalterably
25 opposed to it. What I need to know right now is are

1 you opposed to applying the death penalty under any
2 circumstance for whatever reason, religious?

3 **PROSPECTIVE JUROR:** As I said in my
4 questionnaire, I struggled with this for years when
5 people discuss the death penalty and how you feel,
6 but I hate to be so wishy-washy, but I cannot come
7 to a resolution in my mind if it's the right thing
8 to do or not; so, if I had to pick one, I would say
9 I would probably be less likely to vote for the
10 death penalty. I'm more in favor of not imposing
11 the death penalty than imposing it.

12 **THE COURT:** I understand that, but that
13 doesn't answer our question.

14 **PROSPECTIVE JUROR:** It's hard to give you
15 an answer when I haven't made up my mind. You're
16 saying would I be able to consider it -- yes, I
17 would be able to consider it.

18 **THE COURT:** But -- let me put it another
19 way: You're saying that you would be able to
20 consider it, but you lean to other punishments more
21 so than you lean to it?

22 **PROSPECTIVE JUROR:** Correct.

23 **THE COURT:** Tell me this here: Are there
24 some circumstances under which you could envision
25 voting for the death penalty?

1 **PROSPECTIVE JUROR:** Yeah, I think so.

2 **THE COURT:** And of course, would you have
3 any problems with the other punishment -- life in
4 prison without parole, life in prison with the
5 possibility of parole --

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** -- or for a definite term of
8 50 years with the possibility of parole after 20?
9 Of course, you have to keep in mind that these
10 punishments are doubled because a deadly weapon was
11 used.

12 Do you understand that 50 years is really
13 a hundred for each?

14 **PROSPECTIVE JUROR:** No, I have no problems
15 with the other three.

16 **THE COURT:** Okay.

17 State?

18

19 EXAMINATION BY THE STATE

20 **MR. DASKAS:** Thank you, Judge.

21 **BY MR. DASKAS:**

22 Q You can imagine where I'm going with my
23 questions. Understand, there are no right or wrong
24 answers. I'm sure you can appreciate that it
25 wouldn't be fair to the defense if we had jurors who

1 said, "You know, I would consider life with parole"
2 but automatically dismiss it, and it's not fair to
3 the State and the victims in this case if we have
4 jurors who say, "Well, death would enter my mind,
5 but I would automatically dismiss it."

6 A Right, sure.

7 Q Tell me your thoughts about that, because
8 the concern that I have is you're saying you would
9 consider it but maybe you wouldn't really consider
10 it.

11 A Well, I look at it differently if someone
12 else is deciding it than if I'm on the jury.

13 Q Absolutely.

14 A I have to look at the fact of can I live
15 with myself if I have a factor in that, and I'm
16 still struggling with that. I think I'm open-minded
17 enough to listen to everything and be objective, but
18 then I bring to that the subjectivity of not wanting
19 to suffer the pain of that decision.

20 Q Only you know if you can live with
21 yourself for the rest of your life after having made
22 that decision.

23 A Yeah.

24 Q What I hear you saying is you're not sure?

25 A Yeah, I'm not sure.

1

2 Q Let me put it in more realistic terms.
3 Let's say you're on the jury and you're selected as
4 the foreperson. One of the responsibilities as the
5 foreperson is to sign the verdict form that puts
6 this defendant to death.

7 Could you do that?

8 A No.

9 Q No doubt about that?

10 A (Inaudible response.)

11 Q I need you to answer out loud.

12 A No, I don't think I can do that.

13 Q Let me go back to my original question.
14 Can you really consider death as an option, as a
15 realistic option?

16 A Not as much as the others, no. If you
17 want me to say "No," I'll say "No."

18 Q No, no, no.

19 A I know you want clear-cut answers, and
20 it's real hard for me.

21 Q It's a huge decision, we understand that.

22 A I have not suffered what these victims'
23 families suffered. If I had suffered that, I
24 probably would be a little bit different in my
25 opinion. I suffered other losses but not that loss.

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1 Q Absolutely. The problem we all have right
2 now is like the Judge said, now is the time we have
3 to know.

4 A Of course you do.

5 Q In your questionnaire, you hadn't thought
6 much about it, and you're not sure. I'm putting you
7 on the spot right now.

8 A Right.

9 Q Can you realistically consider death as an
10 option if you're the one who has to vote to impose
11 it?

12 A Not as much as the others.

13 Q All right.

14 A I mean, "consider it" is such a general
15 term. Consider it -- consider it 10 percent,
16 20 percent, 50 percent, I mean --

17 Q Let me ask it slightly differently.

18 Can you envision a situation where you can
19 consider it and it's a realistic option in your
20 mind, or are you telling me, "Yeah, I would consider
21 it, but I know I'm going to dismiss it. I can't
22 ever imagine actually imposing it"?

23 A Signing a verdict is a little different
24 than being part of the panel.

25 Q That's true, although it takes 12 people

1 to reach that decision. The foreperson can't do
2 that on his or her own; everybody must agree. You
3 would be part of the process.

4 A Right.

5 Q Even though you don't sign that verdict
6 form, it's not getting signed without your consent.

7 A Then I probably would not be able to
8 consider it.

9 Q You couldn't consider?

10 A I've answered this question. I could
11 consider it but not as much as the other options.

12 Q Another jury has already convicted the
13 defendant of four counts of first-degree murder.
14 Can you accept their verdict?

15 A Absolutely.

16 Q You have no problem with that?

17 A No problem. I have no problem with life
18 imprisonment without parole, but death is a little
19 different.

20 Q You have a problem with the death penalty?

21 A Yeah. I'm just not sure how I feel about
22 it.

23 Q Let me read one of your answers, and I
24 want to discuss it a little bit. It's the answer to
25 No. 35. "I'm not sure if God would want us to take

1 another person's life."

2 A Right.

3 Q Your opposition, if you have an
4 opposition, is based on religious beliefs?

5 A Right.

6 Q Let me ask you this: You would receive
7 instructions, if you're selected at the end of the
8 case, that you must consider death as an option.
9 Let's envision a situation where what you say is
10 you're not sure that God would want you to do that.
11 Maybe when you're on the jury, there's some
12 intervention, divine intervention, and now you're
13 saying, "God says I can't consider it."

14 **MS. JACKSON:** Your Honor, now he's going
15 too far. I was giving him some leeway, but now
16 you're saying that she's going to and what if she
17 hears -- God tells her not to do it. That's not
18 saying she cannot consider it. That's not what the
19 law requires.

20 **MR. DASKAS:** Your Honor, with all due
21 respect, I'm reading specifically her answer that's
22 based on God's -- her belief.

23 **THE COURT:** Hold on a minute. Read the
24 question back to me, the last one, ma'am.

25 (The record was read as follows:

1 "Let me ask you this: You would
2 receive instructions, if you're selected
3 at the end of the case, that you must
4 consider death as an option. Let's
5 envision a situation where what you say is
6 you're not sure that God would want you to
7 do that. Maybe when you're on the jury,
8 there's some intervention, divine
9 intervention, and now you're saying, 'God
10 says I can't consider it.')

11 **MS. JACKSON:** Your Honor, I think that's
12 an improper question.

13 **THE COURT:** You know, you grabbed the
14 jury's questionnaire, and that's what is on there,
15 and she put it on here about her religion, and she
16 wrote down there about God.

17 Overruled.

18 Go on.

19 **MR. DASKAS:** Thank you, your Honor.

20 **THE COURT:** Of course, he hadn't finished
21 the question.

22 What was the end of the question?

23 **MR. DASKAS:** Thank you, Judge.

24 /////

25 /////

1 **BY MR. DASKAS:**

2 Q What I'm getting at is I'm concerned there
3 could be a conflict between your religious beliefs
4 and what the Judge tells you.

5 A Right.

6 Q A lot of people would say my religious
7 beliefs are going to trump what the Judge in the
8 robe tells you, for obvious reasons.

9 Is that a concern with you?

10 A I wouldn't do something against the Judge,
11 but if it's my opinion, yes, my belief system would
12 take precedent.

13 Q Over the instructions?

14 A Unless I'm doing something that's against
15 what the Judge has ordered. I wouldn't go against
16 what he ordered. I guess that's your question,
17 right?

18 Q That's my question; so, we're sort of
19 right back where we started. You're not sure?

20 A I would have to say I would follow my
21 religious beliefs.

22 Q Over the Judge's instructions?

23 A You make it sound like I would be
24 disobeying the Judge.

25 **THE COURT:** Which is correct. First of

1 all, on this question here, her religious belief or
2 whether or not she can follow the law -- the law has
3 nothing to do with her religious beliefs, sir. If I
4 tell her to -- all I have to do is tell her she can
5 consider it. If she says she can consider it and
6 whatever her conscience says -- how that plays into
7 it, that's not a violation of the Court's order.

8 **MR. DASKAS:** That's my question.

9 **BY MR. DASKAS:**

10 Q If you're faced with a situation where
11 there's a conflict between your religious beliefs
12 and the Judge telling you you have to consider
13 death, which you told me a moment ago was your
14 religious beliefs would take precedent --

15 A Right, but the whole thing is the word
16 "consider." You're saying would I consider it in my
17 questionnaire. I'm saying yes, I would consider,
18 because I have not made my mind up, but you want a
19 definite answer -- would I consider it in any sense
20 of the word or would I rule it out, so it's like the
21 word "consider" is not really the right word to use.

22 Q I understand; unfortunately, that's what
23 the law tells us. That's the word the law uses. I
24 didn't make up the word.

25 A I know, but you understand what I'm trying

1 to say.

2 Q Absolutely, and the problem for all of us
3 is --

4 A Sure.

5 Q -- we have to have 12 jurors who can
6 realistically consider all these options, and only
7 you know that.

8 A Right.

9 Q So, let me ask one final time about the
10 religious beliefs --

11 A Okay.

12 Q -- versus the instructions you're given.

13 A Okay.

14 Q What you told me a moment ago was -- is if
15 you're faced with death, the religious beliefs would
16 take precedent over the instructions.

17 Is that accurate, or am I misstating what
18 you said?

19 A Well, I think the Judge said it better.
20 Yes, I'm going to consider it, but in the
21 deliberation, my religious beliefs would be part of
22 that consideration.

23 Q If your religious beliefs at that time are
24 that God wouldn't want you to put somebody to death,
25 you couldn't do it?

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1 A Correct.

2 **MR. DASKAS:** Judge, we would challenge for
3 cause.

4 **MS. JACKSON:** I would traverse.

5 **THE COURT:** Yes.

6 **MS. JACKSON:** May I close, your Honor?

7 **THE COURT:** Yes.

8 **BY MS. JACKSON:**

9 Q Miss Yaskin?

10 A Yes, ma'am.

11 Q It's an arduous process. It's necessary.
12 You indicated on your questionnaire in
13 quiet reflection, when you filled the questionnaire
14 out, you were in the jury room with nobody asking
15 you questions.

16 A Uh-huh.

17 Q Did you give it some thought before you
18 completed the questionnaire?

19 A Yes, ma'am.

20 Q You've had a week to think about it?

21 A Um-hmm.

22 Q When you did that, you circled -- would
23 you say that you are generally -- you circled C --
24 "would consider the death penalty in certain
25 circumstances," and you circled that?

1 A Yes.

2 Q Now, you're saying that you would find it
3 difficult to impose death?

4 A Yes.

5 Q I think anybody would.

6 A Yes, I think so. I hope so. I hope no
7 one would take that lightly.

8 Q Exactly. So, those kinds of concerns --
9 we're not asking about those, because any human
10 being would find it hard. What we're trying to get
11 you to understand is that the law says that you have
12 to consider it.

13 A I understand.

14 Q Can you consider it?

15 A Yes. I already said I could consider it,
16 but I think you wanted to know the degree or he
17 wanted to know the degree.

18 Q No.

19 A That's how I kind of understood the
20 question.

21 Q No; you just have to be able to tell us as
22 you did in your questionnaire, that you would be
23 able to consider it.

24 A Yes.

25 Q Would you consider it fairly with an open

1 mind?

2 A I hope so. I mean, I'm trying to be as
3 honest with you as I can, and maybe most people have
4 made up their decision on this, but it's such a
5 tough decision for me that I haven't been able to
6 form an opinion about the death penalty.

7 Q But as you indicated on your
8 questionnaire, you are willing, as the Judge will
9 instruct you, to consider the death penalty?

10 A Yes.

11 Q In the right circumstances?

12 A Yes.

13 Q And that's really all that we're asking.

14 A Yes.

15 **MS. JACKSON:** Your Honor, I think that she
16 has fulfilled her requirements of the law.

17 **THE COURT:** Ma'am, I guess the question
18 is -- it's my job to instruct you on what the law
19 is, and you take an oath that you will follow the
20 law. The Court basically -- I know they're asking
21 all of these questions. The only thing that I need
22 to know is -- I'm going to instruct you on what the
23 law is, and then, of course, you have to make your
24 own decisions based upon the law that I give you.
25 There's no exact thing. What I want to know is can

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1 you follow the Court's instructions on the law?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Now, the D.A. was asking you
4 about this one thing. You're basically just saying
5 you were wondering what the morality of imposing the
6 death penalty is. That's how I read that answer
7 that you gave, and everybody who walks into a jury
8 room or whatever, we all have our own belief system
9 that's been formulated since we were kids.

10 **PROSPECTIVE JUROR:** Sure.

11 **THE COURT:** Go to church, school,
12 ethics -- all of that -- you're not required to
13 throw all of that out because you become a juror,
14 but you have to follow the law. The law says could
15 you consider the four forms of punishment, and
16 that's all I want to know, can you do that if I
17 instruct you?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **THE COURT:** To look at that; is that
20 correct?

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

22 **THE COURT:** Challenge is denied.

23 Anything else, Miss Jackson?

24 **MS. JACKSON:** Mr. Daskas.

25 **MR. DASKAS:** No, your Honor.

1 **THE COURT:** I thought he was done.

2 **MS. JACKSON:** Just a couple of questions
3 real quick, your Honor. I won't be long.

4 **BY MS. JACKSON:**

5 Q Miss Daskas (sic), if you're selected for
6 this jury and you've deliberated as the Judge will
7 instruct you to and you discussed it and you find
8 that after listening to everything in this courtroom
9 and weighing it fairly in your own mind and you find
10 that this is not an appropriate case for death and
11 the other 11 people do, would you be able to have
12 the courage to stick to your own convictions?

13 A I hope so.

14 Q What if you're asked to articulate to the
15 jury why you feel that way and you found, even
16 though you tried and you just could not find the
17 words, would you still hold to your own convictions?

18 A Well, I don't think I would have a problem
19 with the articulation, I really don't.

20 Q If you asked one of your fellow jurors who
21 were voting opposite what you felt was appropriate,
22 why they felt that way, and they were unable to
23 articulate that even if it was up to your
24 satisfaction, would you respect their right to hold
25 to their sincerely held convictions?

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1 A Sure.

2 Q Would you demand that they give you the
3 same respect?

4 A Yes.

5 **MS. JACKSON:** Very well.
6 Thank you, your Honor.
7 We would pass.

8 **THE COURT:** Miss Tweedy -- not Miss
9 Tweedy -- Yaskin. Sorry about that.
10 Is that what you said?

11 **MS. JACKSON:** No, that's not what I said.
12 I mistakenly called her Miss Daskas at one point,
13 but I don't think Mr. Daskas heard me.

14 **THE COURT:** We're going to have you report
15 back Friday at 10:00 a.m. downstairs in the jury
16 lounge, and we'll let you know.

17 **PROSPECTIVE JUROR 34:** Okay. Thank you
18 very much, sir.

19

20 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 38

21 **THE COURT:** Mr. Roybal?

22 **PROSPECTIVE JUROR 38:** Yes, sir.

23 **THE COURT:** How long have you lived in
24 Las Vegas?

25 **PROSPECTIVE JUROR:** I was born and raised

1 here -- 44 years.

2 **THE COURT:** What kind of work do you do?

3 **PROSPECTIVE JUROR:** I'm a flooring
4 contractor.

5 **THE COURT:** What kind of meeting are you
6 supposed to go to tomorrow?

7 **PROSPECTIVE JUROR:** Actually, I'm going on
8 vacation. I've had a vacation planned for about six
9 or seven weeks. I'm not going to be available
10 Thursday and Friday, but I'll be back Sunday night.

11 **THE COURT:** When are you leaving?

12 **PROSPECTIVE JUROR:** Tomorrow.

13 **THE COURT:** Why did you put down here it
14 was a meeting that you had to go to?

15 **PROSPECTIVE JUROR:** It is. It's a meeting
16 in Laughlin.

17 **THE COURT:** I thought you said it was
18 vacation.

19 **PROSPECTIVE JUROR:** Vacation, meeting. I
20 work for myself. A lot of my meetings are
21 vacations.

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

23 (Sidebar conference outside the presence
24 of the court reporter.)

25 **THE COURT:** Mr. Roybal, we're going to

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1 excuse you, sir.

2 **PROSPECTIVE JUROR 38:** Thank you.

3

4 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 39

5 **THE COURT:** Doctor -- how do you pronounce
6 your last name?

7 **PROSPECTIVE JUROR 39:** Anes (phonetic).

8 **THE COURT:** Anes.

9 You're a practicing physician?

10 **PROSPECTIVE JUROR:** I'm retired now.

11 **THE COURT:** Retired. Okay.

12 Where did you have your practice?

13 **PROSPECTIVE JUROR:** In Las Vegas. I was
14 with Associated Pathologists Laboratories for 24
15 years.

16 **THE COURT:** So, you went to Wayne State
17 University?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Do you believe that you can be
20 fair and impartial in this case?

21 **PROSPECTIVE JUROR:** Yes, I do.

22 **THE COURT:** Can you follow the Court's
23 instructions on the law?

24 **PROSPECTIVE JUROR:** Yes, I can.

25 **THE COURT:** Now, you have a daughter who

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1 is an attorney; is that correct?

2 **PROSPECTIVE JUROR:** I have a daughter who
3 is an attorney, a son-in-law who is an attorney, and
4 an ex-son-in-law who is an attorney.

5 **THE COURT:** Now, do they all live in San
6 Francisco?

7 **PROSPECTIVE JUROR:** No. My ex-son-in-law
8 lives in Las Vegas.

9 **THE COURT:** What's his name?

10 **PROSPECTIVE JUROR:** His name is Matthew
11 Dushoff.

12 **THE COURT:** At the Attorney General's
13 Office?

14 **PROSPECTIVE JUROR:** He was with them for
15 about ten years, and for the last year or so, he's
16 been in private practice.

17 **THE COURT:** I know Matt very well.

18 So, you've never been on a jury before; is
19 that correct?

20 **PROSPECTIVE JUROR:** That's correct.

21 **THE COURT:** Can you be fair to both sides
22 in this case?

23 **PROSPECTIVE JUROR:** Yes, sir, I think I
24 can.

25 **THE COURT:** Now, as you probably already

1 know, the defendant was convicted of four counts of
2 first-degree murder. It will be your job as a juror
3 in this trial to decide on the punishment. You will
4 have four possible punishments to decide upon or to
5 decide from. One will be the death penalty, life in
6 prison without parole, life in prison with the
7 possibility of parole or for a definite term of 50
8 years with the possibility of parole after 20 years,
9 and of course, those penalties are doubled because a
10 deadly weapon was used.

11 Could you consider all four punishments?

12 **PROSPECTIVE JUROR:** Yes, I could.

13 **THE COURT:** You can be fair to both sides
14 in this case?

15 **PROSPECTIVE JUROR:** Yes, I can.

16 **THE COURT:** State?

17 **MR. STANTON:** Thank you, your Honor.

18

19 EXAMINATION BY THE STATE

20 **BY MR. STANTON:**

21 Q Good afternoon, sir. I noticed in your
22 questionnaire that I think you probably filled out
23 approximately a week ago that you indicated your
24 field in pathology. There will be testimony in this
25 case, anticipated testimony involving forensic

1 pathology in this case, and I'm sure for the reasons
2 that you can probably understand that area. Is
3 there any difficulty in you listening to that
4 testimony, having extensive training and experience
5 and all that?

6 A I have a lot of training in pathology but
7 very little training in forensic pathology.

8 Q There's nothing about your training in
9 pathology that you think would be an inhibitor in
10 absorbing and listening fairly and accurately to the
11 testimony in that field and that science in this
12 case?

13 A No.

14 Q You had previous military service in the
15 Air Force; is that correct?

16 A Correct.

17 Q Where were you duty assigned?

18 A Eglin Air Force Base in Fort Walton Beach,
19 Florida.

20 Q Your family members that are attorneys,
21 you indicate that one is an estate planning and
22 taxation attorney in San Francisco?

23 A Correct.

24 Q Always has been, as far as the type of
25 practice?

1 A Since he's been an attorney, which has
2 been for about five years.

3 Q The two in-laws which were litigators,
4 besides the question the Judge asked about the
5 attorney general, was any of that in the field of
6 criminal law?

7 A My son-in-law who is married to the estate
8 planning attorney was with the Nevada Attorney
9 General's Office, and he was involved with
10 securities and litigation. Whether that was
11 criminal or not, I don't know.

12 Q And any other -- I guess that would be,
13 then, your ex-son-in-law that would be the litigator
14 as well -- any criminal experience in that regard?

15 A He was involved in the State Attorney
16 General's Office, but I don't know.

17 **THE COURT:** He did mostly criminal
18 prosecution, Matthew Dushoff.

19 **BY MR. STANTON:**

20 Q You stated that as far as your interaction
21 with them, there wasn't any significant interaction
22 relative to legal matters?

23 A Correct.

24 Q The point in all of this is that the
25 instructions of law will be given to you from Judge

1 Gates, and the concern regarding family ties with
2 attorneys is whether or not you can put aside what
3 you may have learned from someone or some person
4 outside the context of this courtroom to focus
5 strictly on and abide by the rules of law instructed
6 by Judge Gates in this case.

7 Could you do that?

8 A Yes, I could.

9 Q The other thing is the potential
10 punishments. As the Judge indicates, Mr. Johnson
11 stands dually convicted by a jury of four counts of
12 first-degree murder, and the Judge asked you about
13 the four potential punishments, one being the death
14 penalty, and three -- what I will refer to as "life
15 options." Is it a fair assessment, sir, that you
16 can and would consider all four of those options
17 until the case is finally submitted to you for
18 deliberations?

19 A Yes.

20 Q Is there anything in your -- that you
21 would have difficulty in determining in this case
22 that you would have to deliberate and determine the
23 appropriate and just punishment as it relates to
24 each victim in this case?

25 Could you do that?

1 A Could you ask that question again?

2 Q Certainly.

3 Four counts of murder -- there were four
4 separate individual victims in this case, four human
5 beings, and your duty as a juror in this case would
6 be to select the just and appropriate verdict as it
7 relates to each victim.

8 Could you do that?

9 A Yes, I could.

10 MR. STANTON: Thank you, Judge.

11 Pass the perspective juror.

12 MR. WHIPPLE: Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 BY MR. WHIPPLE:

16 Q My name is Bret Whipple. Thank you for
17 being with us here today.

18 I want to inquire a bit with regard to
19 your position at APL.

20 You're a pathologist?

21 A Yes.

22 Q What exactly did you do at APL?

23 A For a period of time, I was the laboratory
24 director. I spent my time looking at microscopic
25 slides, making diagnoses and interacting with

1 physicians as a consultant when they needed help
2 interpreting laboratory tests.

3 Q You basically looked at the slides and
4 made interpretations from that?

5 A Yes.

6 Q Now, APL we all know is widely -- in fact,
7 I know the State of Nevada uses them a lot on a lot
8 of these cases and, in fact, you could have
9 information in this case that came through APL. I
10 don't know one way or the other.

11 The fact that you had a relationship with
12 the State of Nevada -- do you feel there's a
13 relationship with the State of Nevada as the
14 director of the laboratory?

15 A I've never had any interaction with the
16 State of Nevada.

17 Q Kind of an asset to us would be to ask
18 you -- you know how lawyers work. We advocate for
19 different positions. Only you know your frame of
20 mind. I represent Mr. Johnson who has been
21 convicted of first-degree, premeditated, deliberate
22 murder, four of them.

23 Do you -- knowing what you know, do you
24 sense that you would be concerned if you were in my
25 shoes representing Mr. Johnson or for the State? Do

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1 you understand? Knowing what you know, what you're
2 insight is, what could happen over the next few
3 days, would you feel reluctant if you were in my
4 shoes or the State's shoes?

5 A You're asking me could I just as easily
6 represent one side or the other?

7 Q Yeah.

8 A No; I would suspect that if I were in the
9 legal profession, I probably would have a problem
10 representing an accused criminal.

11 Q Okay.

12 If you were in my shoes knowing what you
13 think, would you have a concern knowing what you
14 think?

15 A Would I have a concern for what you are
16 doing or what I'm doing?

17 Q For what I'm doing if you were in my
18 shoes.

19 A I would have a problem with it, but I
20 would have no concern about you doing it.

21 Q So, you wouldn't hold it against me?

22 A No.

23 Q Do you think you can be fair to both
24 sides?

25 A Yes, I think I can.

1 Q Why do you say that?

2 A Because I think I can be objective, and to
3 be perfectly frank, I wouldn't be very excited about
4 spending the next two weeks here, but I feel I have
5 a civil responsibility that I think I can honestly
6 fulfill.

7 Q I want to ask you some questions about the
8 death penalty.

9 Do you have an opinion about the death
10 penalty?

11 A I would favor the death penalty in cases
12 in which it's deserved.

13 Q How long have you had this opinion?

14 A I think most of my life.

15 Q Is this something that you've talked to
16 other people about? Is this something that you
17 discuss with other people from time to time?

18 A On rare occasion I would think, but it
19 isn't something that is in the forethought of my
20 mind.

21 Q I think you said you would advocate or you
22 favor the death penalty in those cases in which it's
23 deserved.

24 What do you mean by "in which it's
25 deserved"?

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1 A I think there are a lot of reasons for
2 murder ranging from one end where I pay you \$10,000
3 and ask you to kill somebody, you go out and you do
4 that. I think that deserves the death penalty. If,
5 however, somebody killed your brother, and you ran
6 across him six months later or nine months later and
7 ended up killing him, I don't put that in the same
8 category. I think that's a mitigating circumstance,
9 so no, I am not against the death penalty. I'm not
10 against mitigating circumstances.

11 Q We've touched on this with other potential
12 jurors. In this case, there is no excuse. You will
13 never hear us justify, excuse or try to make amends
14 to say what Mr. Johnson did was ever right. We
15 would all agree, it was a terrible wrong. The only
16 issue is what is the appropriate punishment. So, in
17 this case, there are four individuals who were
18 executed, who were tied up with tape, taped with
19 their hands behind their back, laid on the ground
20 and summarily executed, one bullet in the head of
21 each individual, one after another.

22 Now, in a situation like that, would you
23 be able to consider a life --

24 **MR. STANTON:** Your Honor, once again, I
25 would object. That's an improper statement of the

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1 proceeding. There is going to be mitigating
2 evidence, and Counsel is asking it in a very
3 unilateral and improper format as to what this juror
4 would hear and to make that ultimate decision.

5 **MR. WHIPPLE:** My next question, your
6 Honor, is to ask after you deliberate. Right now
7 I'm going to see if he can consider a life sentence
8 knowing nothing more.

9 **MR. STANTON:** That's the problem with the
10 question, your Honor. They're breaking it up and
11 saying "knowing nothing more," and that's not the
12 procedure.

13 **MR. WHIPPLE:** Of course it is. I have a
14 right to ask an individual if he can consider life
15 with --

16 **THE COURT:** Go on.

17 Overruled.

18 **MR. WHIPPLE:** Thank you, your Honor.

19 **BY MR. WHIPPLE:**

20 Q Dr. Anes, my question to you was if an
21 individual committed first-degree, cold-blooded,
22 premeditated, deliberate murder execution style with
23 four individuals, could you consider a life
24 sentence?

25 A I might consider it, but if there were no

1 mitigating circumstances, if the circumstances were
2 as you propose, I think it would be very unlikely
3 that I would seriously consider anything else.

4 Q Other than the death penalty?

5 A Other than the death penalty.

6 Q What was brought up by the State is you
7 will have an opportunity to hear mitigating
8 circumstances, and you will have an opportunity to
9 hear other information. At the conclusion of that,
10 if you felt that a life sentence was appropriate, I
11 assume you would have no problem giving a life
12 sentence?

13 A Absolutely.

14 Q There's an old adage, an eye for an eye.
15 Have you ever contemplated that or what do
16 you think about when people say "an eye for an eye"?

17 A You respond to the same depth of violence
18 or horror that is perpetrated on you or someone very
19 close to you.

20 Q Do you think that's appropriate,
21 inappropriate?

22 A I think it's, basically, inappropriate.
23 We have laws, and you can't take the law into your
24 own hands, but again, that's a mitigating
25 circumstance, and as I mentioned, if you were

1 responding to the murder of somebody in your own
2 family, that's wrong as a mitigating circumstance
3 and wouldn't necessarily deserve the death penalty.

4 Q So, obviously, there's facts and
5 circumstances that you will take into consideration?

6 A Yes.

7 Q I know there's a Hippocratic Oath, and I
8 know nothing more than that.

9 Is that something that you would have to
10 address at all in your serving on this jury?

11 A No. Hippocratic Oath pertains to medical
12 care and medical situations, not to legal
13 proceedings outside of the medical environment.

14 Q We touched on the issue of mitigating
15 circumstance, and you're going to get proper
16 instructions at the proper time from this Court that
17 will instruct you that the death penalty is never
18 required, and mitigating circumstances is simply a
19 reason to give life. In fact, there were some
20 questions that pretty much address that issue, and I
21 know one is No. 38. It said, "In reaching a verdict
22 in this penalty phase you must consider the
23 defendant's background. Do you feel you would
24 consider those types of factors?" and you said,
25 "Very much."

1 A Again, it depends on the background. If
2 you say he committed the crime because he came from
3 a slum area and had a broken family, that would not
4 carry all that much weight with me, because I was
5 brought up in a slum from a broken family, so I
6 don't know what I was thinking when I answered that
7 question specifically, but I'm not sure what I would
8 consider a strong mitigating circumstance and a weak
9 mitigating circumstance.

10 Q I understand.

11 A I think there's a broad spectrum, and I
12 would tend to not necessarily be all that flexible
13 if you're giving stuff that I don't think is
14 necessarily mitigating.

15 Q What I want -- this is important to be
16 open and honest. There's no right answers, there's
17 no wrong answers. Nevada law requires you to
18 consider these different options, you need to be
19 able to consider mitigating circumstances?

20 A Correct.

21 Q Okay.

22 I can tell you that some of those
23 mitigating circumstances will be exactly what you've
24 raised -- the background, the way a person was
25 raised and their family. You need to be able to

1 consider those, and if you feel -- to be honest, if
2 you don't think you can consider those, those are
3 things that I need to know now.

4 A I can consider those. The point I think I
5 was trying to convey is how much weight would I give
6 to something, and there are some things that I think
7 have significant weight and there are some things
8 that I think would have minimal weight, and being
9 perfectly frank, being brought up in a bad
10 neighborhood from a broken family -- since I and a
11 lot of people I know were brought up under
12 circumstances and have not done such terrible
13 things, then I might not give that as much weight as
14 somebody who has not experienced that and been in
15 that type of background.

16 Q Just sitting here -- and if you can think
17 of any -- what mitigating circumstances are a reason
18 to choose life? What would you give great weight
19 to?

20 **MR. STANTON:** Your Honor, I apologize.
21 I'm going to have to object to that. I think that's
22 an improper question getting into the deliberative
23 process and asking for a precommitment from a
24 potential juror in this case.

25 **MR. WHIPPLE:** If I can respond, your

1 Honor, we list those factors here on No. 38, mental
2 status, age, childhood, education -- that he
3 responded to. If you like, I can go through them
4 unilaterally, but I was trying to save time.

5 **MR. STANTON:** He's, I believe, already
6 asked the question. I don't need an objection if he
7 goes to those questions, but I think he's answered
8 some of those already, but if he's going to focus on
9 the ones --

10 **THE COURT:** I think so, Counsel. I think
11 you're trying to solicit the kind of stuff that you
12 would probably come up with as a juror as mitigating
13 circumstances which I think is improper to ask them
14 how they're going to rule.

15 **MR. WHIPPLE:** I understand, your Honor.

16 **THE COURT:** If you limit it to what's
17 already on here, that's fine.

18 **MR. WHIPPLE:** I'll do so, your Honor.
19 Thank you.

20 **BY MR. WHIPPLE:**

21 Q Dr. Anes, on Question No. 38, it listed a
22 number of mitigating circumstances, and I'm going to
23 ask you -- we already touched on childhood
24 experiences. There's several others here -- mental
25 status, age, education.

1 Are those issues or things that you would
2 consider mitigating circumstance?

3 A I think there would be mitigating
4 circumstances, but I think if somebody only has a
5 high school education or maybe dropped out of school
6 in the tenth grade, that would not carry the same
7 type of weight as he had been abused by these people
8 and finally something snapped and he responded that
9 these people had done something to seriously hurt
10 somebody whom he loved or cared for. Again, they
11 would be mitigating circumstances, but if you had to
12 give them a one, which is very light consideration
13 to something that was very, very heavy, I might give
14 something like not having a high school education a
15 one, whereas his brother had been repeatedly abused
16 by these guys --

17 Q Sure.

18 A -- as maybe a seven or an eight.

19 Q Okay. That makes sense.

20 Mitigating circumstance, a reason to
21 choose life, sometimes this doesn't need to be
22 described, it's just what we call a gut feeling,
23 mercy or just something that you feel.

24 If there were other individuals who
25 differed from you with regard to their belief that a

1 mitigating circumstances exist and you didn't see
2 it, would you be able to respect other people's
3 opinions with regard to that?

4 A Yeah. I wouldn't necessarily agree with
5 them, but I would not hold it against somebody else
6 if he or she disagreed with me.

7 Q Why not?

8 A Well, my wife is probably my biggest
9 advocate and disagrees with me all the time, and
10 most of the time we disagree, she's right.

11 Q Reasonable minds differ. I understand.

12 Your relationship with Mr. Dushoff --
13 actually, I think most all of us know him -- is that
14 something that we should be concerned about?

15 A No. He is an ex-son-in-law. We still
16 maintain a relationship with him because we have a
17 granddaughter, and we probably see him or speak to
18 him once a month, and we stay very, very pleasant
19 because it's to our granddaughter's benefit for us
20 to always be on talking terms.

21 Q So, you wouldn't hold it for or against us
22 if some of us knew him or worked in the same type of
23 businesses that he did?

24 A No.

25 **MR. WHIPPLE:** Doctor, thank you for your

1 time.

2 And pass for cause, your Honor.

3 **THE COURT:** Doctor, we're going to let you
4 know on Friday about 10:00 o'clock. You'll either
5 report downstairs to the jury commissioner at
6 10:00 o'clock on Friday.

7 **PROSPECTIVE JUROR 39:** In the jury room at
8 10:00 o'clock on Friday?

9 **THE COURT:** Right.

10 **PROSPECTIVE JUROR 39:** Thank you.

11 **THE COURT:** Counsel, come up here. I want
12 to chat for a minute.

13 (Sidebar conference outside the presence
14 of the court reporter.)

15 **THE COURT:** Does the State want to
16 exercise their first peremptory challenge now?

17 **MR. DASKAS:** We haven't thought about it.

18 **THE COURT:** Take a few minutes.

19 (Brief pause.)

20 **THE COURT:** Who is your first peremptory
21 challenge?

22 **MR. DASKAS:** Your Honor, I just want to
23 clarify, we're not going to waive the first one. If
24 and when we do waive, we don't waive the subsequent
25 challenges.

1 **THE COURT:** You only waive the individual
2 one at that time.

3 **MR. DASKAS:** We would exercise our first
4 peremptory on prospective No. 11-0034, Miss Yaskin.

5 **THE COURT:** All right. We'll call up
6 another one to replace Miss Yaskin.

7 Who is that?

8 **THE BAILIFF:** That would be Beverley
9 Jensen.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 40

12 **THE COURT:** Miss Jensen, how are you
13 doing?

14 **PROSPECTIVE JUROR 40:** Fine.

15 **THE COURT:** You were born in LA and
16 married.

17 How long have you been in Las Vegas?

18 **PROSPECTIVE JUROR:** Twenty-seven years.

19 **THE COURT:** What kind of work do you do?

20 **PROSPECTIVE JUROR:** I'm a housekeeper.

21 **THE COURT:** What hotel do you work in?

22 **PROSPECTIVE JUROR:** I work for Westbrook
23 Homes. I'm a private housekeeper at the owner's
24 house.

25 **THE COURT:** You're a private housekeeper

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1 now. Okay.

2 Has anyone in your family ever been
3 charged with a crime?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Who?

6 **PROSPECTIVE JUROR:** My husband.

7 **THE COURT:** What was he charged with?

8 **PROSPECTIVE JUROR:** Something petty when
9 he was young.

10 **THE COURT:** A long time ago. Nothing
11 recent?

12 **PROSPECTIVE JUROR:** (Inaudible response.)

13 **THE COURT:** Is that "No"?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** You have to speak up, because
16 she has to take down everything.

17 Have you or anyone in your family ever
18 been the victim of a crime?

19 **PROSPECTIVE JUROR:** Almost.

20 **THE COURT:** Who?

21 **PROSPECTIVE JUROR:** A couple years ago my
22 husband and I were almost murdered on Thanksgiving
23 when my friend was murdered.

24 **THE COURT:** Tell me what happened.

25 **PROSPECTIVE JUROR:** We were invited over

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1 for Thanksgiving, and that day, my friend's son
2 murdered him and his friend just minutes before we
3 showed up.

4 **THE COURT:** Wait a minute. You were
5 invited over to your friend's house?

6 **PROSPECTIVE JUROR:** For Thanksgiving.

7 **THE COURT:** This is last Thanksgiving?

8 **PROSPECTIVE JUROR:** Two years ago.

9 **THE COURT:** Two years ago -- 2003.

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Before you guys got there, the
12 son killed --

13 **PROSPECTIVE JUROR:** Both men.

14 **THE COURT:** Your friend?

15 **PROSPECTIVE JUROR:** And his friend.

16 **THE COURT:** You guys were on your way over
17 there or were supposed to be there?

18 **PROSPECTIVE JUROR:** We were there just as
19 the police started taping up the yard. It was just
20 a matter of minutes.

21 **THE COURT:** Do you know why he killed
22 them?

23 **PROSPECTIVE JUROR:** I didn't attend the
24 trial; I just heard different things.

25 **THE COURT:** What happened at the trial?

1 **PROSPECTIVE JUROR:** I think he got 40
2 years on each count -- no, 20 years on each count.
3 **THE COURT:** Did you know the son?
4 **PROSPECTIVE JUROR:** Yeah.
5 **THE COURT:** Did he have any kind of
6 problems? Did he have mental problems or anything?
7 **PROSPECTIVE JUROR:** I always thought so.
8 **THE COURT:** You did?
9 **PROSPECTIVE JUROR:** Yeah.
10 **THE COURT:** Would that affect your ability
11 to be fair in this case?
12 **PROSPECTIVE JUROR:** I don't know.
13 **THE COURT:** We're going to have to get
14 past "I don't know," because we need to know before
15 you're allowed to serve on the jury whether or not
16 you can be fair.
17 Now, you know the defendant here has been
18 charged with or convicted of four counts of murder,
19 so you'll have to decide the punishment.
20 Do you understand that?
21 **PROSPECTIVE JUROR:** Yeah.
22 **THE COURT:** Do you think you can do that?
23 **PROSPECTIVE JUROR:** I really don't think
24 so.
25 **THE COURT:** Why not?

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1 **PROSPECTIVE JUROR:** Because I couldn't
2 judge my friend's son. I leave it in God's hands.
3 **THE COURT:** Are you a religious person?
4 **PROSPECTIVE JUROR:** To life and death I
5 think I am.
6 **THE COURT:** Are there any circumstances in
7 which you could impose the death penalty?
8 **PROSPECTIVE JUROR:** If somebody killed one
9 of mine.
10 **THE COURT:** All right.
11 You can see some circumstances where you
12 can impose it; is that right?
13 **PROSPECTIVE JUROR:** I guess so.
14 **THE COURT:** You said you're in favor of
15 the death penalty; is that true?
16 **PROSPECTIVE JUROR:** Yes.
17 **THE COURT:** Would you be able to consider
18 life in prison with or without parole?
19 **PROSPECTIVE JUROR:** I guess I could
20 consider it.
21 **THE COURT:** And you could consider a
22 definite term of 50 years. Of course, let me tell
23 you, this is for each count, plus, the penalties are
24 doubled because a deadly weapon was used; so,
25 really, 50 years is really a hundred years and

1 parole after 40 years.
2 Do you understand that?
3 You have to speak up.
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** Could you consider that as a
6 punishment?
7 **PROSPECTIVE JUROR:** That would be awful
8 lightweight.
9 **THE COURT:** What now?
10 **PROSPECTIVE JUROR:** He killed four people.
11 **THE COURT:** This is for each person.
12 **PROSPECTIVE JUROR:** Oh.
13 **THE COURT:** Do you understand what I'm
14 saying?
15 **PROSPECTIVE JUROR:** So, he would never be
16 able to get out of jail is what you're saying?
17 **THE COURT:** I don't know that. It depends
18 on what the sentence is.
19 Do you understand what I'm saying?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** What I want to know is could
22 you consider all four? You have to decide which one
23 to impose, you and your fellow jurors.
24 Do you understand that?
25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** But you would have to be able
2 to consider all of them and pick the one that's most
3 appropriate based upon the facts and the evidence in
4 the case.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you think you can do that?

8 **PROSPECTIVE JUROR:** I could only try.

9 **THE COURT:** Well, is there any one of
10 these penalties that you don't think you can impose
11 or that you would not consider?

12 **PROSPECTIVE JUROR:** Freedom.

13 **THE COURT:** So, you don't think you can
14 consider life with parole or for a definite term?

15 **PROSPECTIVE JUROR:** No; I don't think he
16 should ever get paroled.

17 **THE COURT:** So, those two you couldn't
18 consider under any circumstances?

19 **PROSPECTIVE JUROR:** Right.

20 **THE COURT:** State?

21 **MR. DASKAS:** Thank you, Judge.

22
23 EXAMINATION BY THE STATE

24 **BY MR. DASKAS:**

25 Q Let me give you a slightly different

1 factual scenario, and you tell me what you think.
2 Let's just imagine a case where someone has been
3 convicted of first-degree murder but you learn that
4 the reason the defendant killed the victim was
5 because the victim had maybe hurt the defendant's
6 daughter, raped his daughter, and months later the
7 defendant -- the dad goes out and finds the guy who
8 raped his daughter and kills him, so it's legally
9 first-degree murder.

10 How about that situation, might you
11 consider parole in a situation like that?

12 A Yeah.

13 Q So, you don't automatically exclude that
14 in a first-degree murder conviction?

15 A No.

16 Q You might give it in a situation like
17 that?

18 A Right.

19 Q And you can imagine a situation, not
20 necessarily this case, but where death would be
21 appropriate?

22 A Right.

23 Q So, you would consider that as well?

24 A Yes.

25 Q And can you imagine situations in between

1 where maybe someone shouldn't get death, maybe they
2 didn't get parole, but at least they should get life
3 in prison with no chance of getting out?

4 Can you imagine a situation like that?

5 A Yeah, but it's a waste of our money.

6 Q All right.

7 Regardless of the economic impact, you can
8 imagine that might be an appropriate punishment; is
9 that true?

10 A Yes.

11 Q As you sit here today as a potential juror
12 on a murder case, you can consider all the possible
13 punishments depending on the facts and circumstances
14 of the case; is that true?

15 A Yes.

16 **MR. DASKAS:** Thank you, ma'am.

17 We'll pass for cause, Judge.

18

19 EXAMINATION BY THE DEFENSE

20 **BY MS. JACKSON:**

21 Q Hi, Miss Jensen. You said it's a waste of
22 our money when Mr. Daskas asked you about the life
23 sentence.

24 Why do you think that?

25 A All these people are in prison, and

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1 they're never going to get out, and they've done
2 horrible crimes, and they're living, some of them
3 better than some of us out on the street.

4 Q That's why you said in your Answer No. 4
5 "If you said if they're guilty without question, put
6 them to sleep."

7 In your mind, put them to sleep is better?

8 A Yeah.

9 Q Because it saves money?

10 A Well -- plus --

11 Q One of the reasons?

12 A There's no benefit out of their life
13 anymore. They've ruined their lives.

14 Q Are you saying that you believe that --
15 like you say, when they're guilty without
16 question -- that would be Mr. Johnson, he's guilty
17 without question times four, brutal murder, horrible
18 murder, tied up, bound with duct tape, shot in the
19 back of the head -- you're going to have to look at
20 pictures of that.

21 That certainly would be guilty without
22 question -- yes?

23 A Yes.

24 Q The only punishment in your mind would be
25 to put him to sleep?

1 A Yes.

2 Q You certainly wouldn't consider anything
3 else?

4 A No.

5 **MS. JACKSON:** Your Honor, I challenge for
6 cause.

7 **MR. DASKAS:** She left out the most
8 important part of the question, and that would be
9 mitigation.

10 **THE COURT:** Traverse her. Go on.

11

12 EXAMINATION BY THE STATE

13 **BY MR. DASKAS:**

14 Q Understand in the death penalty hearing,
15 the defense can, and the prosecution can, for that
16 matter, present what we call mitigation, good
17 things, if you will, about the defendant, reasons
18 you might consider giving a sentence of life with or
19 without parole. That could be any number of things.
20 I'm not talking about this defendant, but in
21 general -- maybe the defendants were abused sexually
22 or physically or mentally or emotionally, maybe they
23 weren't fed growing up, maybe they witnessed dad
24 beating mom on a regular basis, maybe they witnessed
25 a murder.

1 Can you imagine a situation where someone
2 kills more than one person if you heard enough bad
3 things about that person's life, tragic things,
4 awful things, maybe you would consider parole?

5 A No.

6 Q Not in any situation?

7 A No.

8 **MR. DASKAS:** I'll submit it, Judge.

9 **THE COURT:** All right. She's excused.

10 You can go.

11 **THE COURT:** Who's the next one, Pursley?

12

13 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 41

14 **THE COURT:** Mr. Pursley, I read that you
15 said you were a single father.

16 **PROSPECTIVE JUROR 41:** Yes, sir.

17 **THE COURT:** You have custody of your
18 daughter?

19 **PROSPECTIVE JUROR:** Yes, I do.

20 **THE COURT:** What kind of work do you do?

21 **PROSPECTIVE JUROR:** Sunstar Optical. I'm
22 an optical technician.

23 **THE COURT:** You said you don't have any
24 money in the bank and they don't pay you for being
25 on the jury?

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1 **PROSPECTIVE JUROR:** No. I asked that this
2 morning, and he won't do it, but the simple fact --
3 like I said, no welfare or anything, I could barely
4 pay for baby-sitting yesterday.

5 **THE COURT:** We're going to excuse you on
6 the basis of hardship.

7 **PROSPECTIVE JUROR:** Thank you very much,
8 your Honor. I appreciate that.

9 **THE COURT:** Guys, let's come back tomorrow
10 at 10:00. We're going to be in recess until
11 tomorrow at 10:00.

12 (Evening recess taken at 4:45 p.m.)

13 (WHEREUPON, THE PROCEEDINGS WERE
14 CONCLUDED.)

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

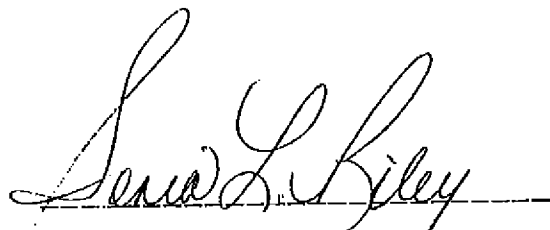
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


SONIA L. RILEY, CCR 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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DISTRICT COURT
CLARK COUNTY, NEVADA

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ORIGINAL

THE STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON,

DEFENDANT.

CASE NO.: C153154

REPORTER'S AMENDED COVER PAGE OF TRANSCRIPT

OF

HEARING: MOTION TO EXCLUDE PRIOR BAD ACTS

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED FRIDAY, APRIL 15, 2005

FOR THE PLAINTIFF: DAVID STANTON, ESQ.
ROBERT J. DASKAS, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
DAVID SCHIEK, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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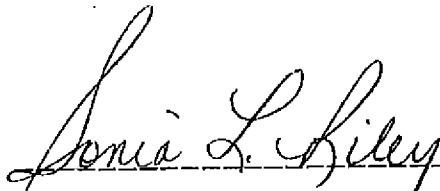
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
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RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


SONIA L. RILEY, CCR 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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Arlene Williams
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

STATE OF NEVADA

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154
DEPT. NO VIII

ORDER TO PREPARE TRANSCRIPT

IT IS HEREBY ORDERED that LISA MAKOWSKI, CCR 345, prepare a transcript in the above-captioned matter heard on 4/19 AM & 4/20 A.M., 2005.

FURTHER ORDERED, that said transcript shall be prepared pursuant to Supreme Court Rule 250 and at State's expense with cost and fees assessed according to NRS 3.370.

DATED THIS _____ DAY OF _____, 2005.

[Signature]

DISTRICT COURT JUDGE

LISA MAKOWSKI, CCR 345 455-4288

Page: 5719

NSC Case No. 65168 - 4946

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DISTRICT COURT

CLARK COUNTY, NEVADA 2005 APR 22 1A 8:41

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THE STATE OF NEVADA,)
)
 PLAINTIFF,)
)
 VS.)
)
 DONTÉ JOHNSON,)
)
 DEFENDANT.)
-----)

CASE NO.: C153154

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME III - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED THURSDAY, APRIL 21, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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COUNTY CLERK

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

512

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ROBERT J. DASKAS, ESQ.
4 DAVID STANTON, ESQ.
5 DISTRICT ATTORNEY'S OFFICE
6 200 South Third Street
7 Las Vegas, Nevada 89101
8 (702) 455-4711

9 FOR THE DEFENDANT:

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11 BRET WHIPPLE, ESQ.
12 SPECIAL PUBLIC DEFENDER'S OFFICE
13 333 South Third Street
14 Second Floor
15 Las Vegas, Nevada 89155
16 (702) 455-6265

17 * * * * *

18 SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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I N D E X

PAGE

VOIR DIRE (RESUMED)

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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VOIR DIRE EXAMINATION (RESUMED)

THE BALLIFF: Be seated, come to order.
Court is again in session.

THE COURT: Who is next?
Shriver, Vanessa Shriver.

VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR No. 95

THE COURT: Miss Shriver, you're from
California originally?

PROSPECTIVE JUROR 95: Yes.

THE COURT: How long have you been here --
approximately nine years?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you married?

PROSPECTIVE JUROR: No.

THE COURT: Divorced?

PROSPECTIVE JUROR: No.

THE COURT: Never been married?

PROSPECTIVE JUROR: No.

THE COURT: But you have an adult
daughter?

PROSPECTIVE JUROR: Yes.

THE COURT: Where does she go to college?

PROSPECTIVE JUROR: Fullerton.

1 **THE COURT:** Pardon?
2 **PROSPECTIVE JUROR:** Fullerton.
3 **THE COURT:** Cal State Fullerton.
4 You don't remember hearing anything about
5 this case?
6 **PROSPECTIVE JUROR:** No.
7 **THE COURT:** What kind of work do you do,
8 ma'am?
9 **PROSPECTIVE JUROR:** Transportation, Levi
10 Strauss.
11 **THE COURT:** Are you a truck driver?
12 **PROSPECTIVE JUROR:** No. I work in the
13 office.
14 **THE COURT:** Have you ever served on a jury
15 before?
16 **PROSPECTIVE JUROR:** No.
17 **THE COURT:** Have you or anyone in your
18 family ever been charged with a crime before?
19 **PROSPECTIVE JUROR:** No.
20 **THE COURT:** Have you or anyone in your
21 family ever been the victim of a crime?
22 **PROSPECTIVE JUROR:** No.
23 **THE COURT:** Have you had any friends or
24 neighbors who have been the victim of a violent
25 crime?

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1 **PROSPECTIVE JUROR:** No.

2 **THE COURT:** Now, you're being considered

3 for service on this jury here to consider the

4 penalty for the defendant Mr. Johnson there.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** Yeah.

7 **THE COURT:** He's been convicted of four

8 counts of first-degree murder, so you'll have to

9 decide the appropriate punishment. The four choices

10 you will have are the death penalty, life

11 imprisonment without parole, life imprisonment with

12 the possibility of parole or for a definite term of

13 50 years with the possibility of parole after 20

14 years, and those are double if a deadly weapon is

15 used.

16 Do you understand that?

17 **PROSPECTIVE JUROR:** Sort of.

18 **THE COURT:** What do you mean "sort of"?

19 What do you have a question about?

20 **PROSPECTIVE JUROR:** To be honest with you,

21 I have a very weak stomach, and I can't really

22 listen or see any really graphic thing, because I

23 might just pass out. I just can't do it. I don't

24 really understand all the --

25 **THE COURT:** You don't think you understand

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6

1 what now -- all the --
2 **PROSPECTIVE JUROR:** All the penalties.
3 **THE COURT:** There's four.
4 **PROSPECTIVE JUROR:** Yeah.
5 **THE COURT:** I just told you. You can
6 sentence a person to death, you and the fellow
7 jurors -- you can sentence him to life in prison
8 without the possibility of parole, you can sentence
9 him to life in prison with the possibility of
10 parole, and that would be after 40 years plus
11 another 40 years -- excuse me -- it will be after 40
12 years, because it's 20 years, and then it's double
13 for the use of a deadly weapon.
14 Do you understand that?
15 **PROSPECTIVE JUROR:** Okay.
16 **THE COURT:** Or you can sentence him to 50
17 years plus an additional 50 years for the use of a
18 deadly weapon, and he would be eligible for parole
19 after 40 years.
20 Do you understand that?
21 **PROSPECTIVE JUROR:** Yeah.
22 **THE COURT:** Are we clear? All right.
23 Now, are you opposed to the death penalty?
24 **PROSPECTIVE JUROR:** In a way I am, because
25 I don't know if I can sit through and hear

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1 everything. I probably wouldn't pay attention
2 because I wouldn't want to hear it.

3 **THE COURT:** All right. You're excused.
4

5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 97

6 **THE COURT:** Mr. Larson, how long have you
7 been in Las Vegas?

8 **PROSPECTIVE JUROR 97:** Seventeen years.

9 **THE COURT:** Seventeen years.
10 What part of the country did you grow up
11 in?

12 **PROSPECTIVE JUROR:** Southern California.

13 **THE COURT:** What kind of work do you do?

14 **PROSPECTIVE JUROR:** I'm an Exxon retailer.

15 **THE COURT:** What kind?

16 **PROSPECTIVE JUROR:** Exxon.

17 **THE COURT:** Oh, retailer.

18 **PROSPECTIVE JUROR:** Gas service and
19 automotive service center.

20 **THE COURT:** You've never been on a jury
21 before?

22 **PROSPECTIVE JUROR:** No.

23 **THE COURT:** You never worked for law
24 enforcement before?

25 **PROSPECTIVE JUROR:** No.

1 **THE COURT:** Do you recall hearing anything
2 about this case?

3 **PROSPECTIVE JUROR:** My daughter went to
4 school with one of the kids that was killed.

5 **THE COURT:** Okay.

6 Would that affect your ability to be fair
7 and impartial in this case?

8 **PROSPECTIVE JUROR:** I don't think so.

9 **THE COURT:** The fact that your daughter
10 knew the victim, that wouldn't cause you to be
11 biased or prejudiced against the defendant?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** What are your views on the
14 death penalty?

15 **PROSPECTIVE JUROR:** Well, that's a good
16 question. It would depend on the facts and
17 circumstances behind what was done. I'm not saying
18 I'm for it or really against it.

19 **THE COURT:** Well, first of all, the law
20 requires that you be able to consider all four forms
21 of punishment.

22 So, are you opposed to the death penalty?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** Do you think under some
25 circumstances you could impose the death penalty?

1 **PROSPECTIVE JUROR:** I think so, yes.

2 **THE COURT:** Now, for a person that's been
3 convicted of four counts of first-degree murder with
4 a deadly weapon, could you consider life in prison
5 without the possibility of parole?

6 **PROSPECTIVE JUROR:** Yes, I could.

7 **THE COURT:** Could you consider life in
8 prison with the possibility of parole?

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **THE COURT:** Could you consider a definite
11 term of 50 years plus 50 years and parole
12 eligibility after 40 years? Of course, this is for
13 each count.

14 Do you understand that?

15 **PROSPECTIVE JUROR:** Yeah, depending on the
16 facts.

17 **THE COURT:** Right, right, right. Of
18 course, that's what you'll hear. You'll hear
19 testimony from the State, you'll hear testimony from
20 the defendant and his lawyers, witnesses and other
21 evidence and evidence in mitigation of punishment,
22 and you have to listen to all that evidence and
23 decide which is the appropriate verdict according to
24 the facts and the law.

25 Do you think you can do that?

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1 **PROSPECTIVE JUROR:** Sure.

2 **THE COURT:** What we don't want is people
3 to come in -- it's all right to think it, but the
4 law requires that you have to be open to consider
5 all four forms of punishment. Some people think for
6 first-degree murder, there's only one punishment,
7 and that is the death penalty, an eye for an eye.

8 Of course, you understand that's not the
9 law?

10 **PROSPECTIVE JUROR:** Right.

11 **THE COURT:** And of course, some people
12 think that some people shouldn't -- life in prison
13 without parole is the worst punishment, and that's
14 the one that's most befitting, and they won't
15 consider life with the possibility of parole or the
16 death penalty. Some people think that a person
17 should not be in prison forever at the taxpayer's
18 expense, so they either think you should get the
19 death penalty or life with the possibility of
20 parole.

21 Do you have any of those views?

22 **PROSPECTIVE JUROR:** No, I'm not for either
23 one of them.

24 **THE COURT:** You can to listen to the
25 evidence and the facts and the circumstances before

1 you make a decision?

2 **PROSPECTIVE JUROR:** Right.

3 **THE COURT:** Okay.

4 State?

5 **MR. STANTON:** Thank you, your Honor.

6

7 EXAMINATION BY THE STATE

8 **BY MR. STANTON:**

9 Q Good afternoon, Mr. Larson.

10 A Hi.

11 Q The questionnaire that you filled out
12 about a week ago -- do you remember that?

13 A Yes.

14 Q There's a couple of questions that you
15 didn't answer, and I would like to raise them with
16 you briefly here.

17 One of the questions, No. 24, was what
18 your feelings about the criminal justice system are.

19 Do you have any strong feelings or
20 feelings about the system that we deal with in
21 criminal matters?

22 A No, I don't have any strong feelings.

23 Q Do you think it works well, poorly?

24 A I think it works well.

25 Q And you mentioned, I think to the Judge's

1 questions, no one either in your business or close
2 family members or friends have ever been a victim of
3 a crime.

4 A What do you mean "a victim of a crime"?
5 I've been burglarized.

6 Q That's precisely --

7 A My business has been broke into.

8 Q Was that here in Las Vegas?

9 A Yes.

10 Q As a result of those experiences, did
11 you -- being the victim of a crime, do you harbor
12 any resentment either for the State or for the
13 defense in this matter?

14 A No.

15 Q They're unrelated to that?

16 **THE COURT:** Have you ever been the victim
17 of a robbery, an armed robbery, your business?

18 **PROSPECTIVE JUROR:** No, never armed
19 robbery.

20 **THE COURT:** Okay.

21 **BY MR. STANTON:**

22 Q You said that as the Judge gave you the
23 four options that are potential punishments in this
24 case, your mind is open, as you sit here today, as
25 to those potential punishments possibly being

CHRISTOPHER R. ORAM, LTD.
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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed
Jan 09 2015 02:25 p.m.
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)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XXI  
~~~~~

ATTORNEY FOR APPELLANT

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
7	ADDENDUM TO NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 04/26/2000)	1733-1734
6	AFFIDAVIT OF JOSEPH S. SCISCENTO IN SUPPORT OF THE MOTION TO CONTINUE (FILED 12/14/1999)	1428-1433
19	AMENDED EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 08/24/2000)	4585
7	AMENDED JURY LIST (FILED 06/06/2000)	1823
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4	6	OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 12/06/1999)	1415-1417
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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