

1 A PROSPECTIVE JUROR: Yes.
2 MR. STANTON: Miss Cadena?
3 A PROSPECTIVE JUROR: Yes.
4 MR. STANTON: Miss Frandsen?
5 A PROSPECTIVE JUROR: Yes.
6 MR. STANTON: Mr. Jones?
7 A PROSPECTIVE JUROR: Yes.
8 MR. STANTON: Mr. Battaglia?
9 A PROSPECTIVE JUROR: Yes.
10 MR. STANTON: Mr. Moss?
11 A PROSPECTIVE JUROR: Yes.
12 MR. STANTON: Mr. Golbov?
13 MR. STANTON: Yes.
14 MR. STANTON: Miss Imasaki?
15 A PROSPECTIVE JUROR: Yes.
16 MR. STANTON: Miss Kizis?
17 A PROSPECTIVE JUROR: Yes.
18 MR. STANTON: Mr. Estey?
19 A PROSPECTIVE JUROR: Yes.
20 MR. STANTON: Miss Roberts?
21 A PROSPECTIVE JUROR: Yes.
22 MR. STANTON: Mr. Furrie?
23 A PROSPECTIVE JUROR: Yes.
24 MR. STANTON: Miss Frankel?
25 A PROSPECTIVE JUROR: Yes.

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1 MR. STANTON: Miss Booth?

2 A PROSPECTIVE JUROR: Yes.

3 MR. STANTON: Mr. Thomas?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Mr. Dunn?

6 A PROSPECTIVE JUROR: Yes.

7 MR. STANTON: Thank you very much.

8 Pass the jury for cause save and except for any
9 additional issues that arise.

10 THE COURT: Counsel, approach, please.

11 (Whereupon, a bench conference was held among
12 Court and counsel as follows:)

13 THE COURT: It's on you. Do you have any
14 additional things you want to raise with regard to your voir
15 dire? Do you want to take a break? Do you want -- we have
16 only been going about 10 minutes.

17 MR. BOSLER: I think the Court needs to rule on
18 our portion of the voir dire.

19 THE COURT: With regard to page 4?

20 MR. BOSLER: Yes.

21 THE COURT: Do you have anything more to offer
22 as to why I should let you ask all those questions?

23 MR. BOSLER: Do you want me to do it right now
24 at the side-bar?

25 THE COURT: It takes us approximately 17
minutes to move the jury panel in and out of the courtroom.

1 So if we don't do it right now at side-bar, we're going to
2 take 35 minutes or so, in just getting them in and out.

3 So I have read -- it is marked as an exhibit.
4 It's part of the record. I certainly heard everything you
5 said before. I haven't received anything further from you.

6 But if you want to tell me some reason why
7 those questions on page 4 are appropriate or a specific
8 question is appropriate, or a specific area of inquiry is
9 something you want to go into, now is the time for you to do
10 that.

11 MR. BOSLER: Your Honor, what I would like to
12 do, because I don't want the jury to appear there is any
13 delay, allow my offer of proof at a later date. Maybe you
14 will let me get through my questions, and then I will
15 reserve if I'm going to pass them for cause and we can have
16 a hearing.

17 May be time for a break, if the State will
18 consider that contemporaneously. Because I don't want to
19 waive the contemporaneousness.

20 THE COURT: I'm ruling now. I'm going to
21 exclude those questions on page 4. If you don't give me a
22 reason to allow you to ask those questions, you can't
23 preserve that, because I can only rule on what I have before
24 me. I have no problem with you going forward and asking
25 your questions, and then if you want to wait to pass for

1 cause and you want to think -- talk amongst yourselves and
2 decide, if you want to make -- ask a couple of more
3 questions and ask me to do that, that's fine.

4 MR. BOSLER: I will get a break at that point?

5 THE COURT: It depends on what time it is. We
6 think we're going to go -- we will try to go at least an
7 hour more before we take a break. I don't -- I don't know
8 how long you are going to take. We can certainly do a
9 side-bar, and you can tell me what your thoughts are at that
10 point.

11 MR. BOSLER: I'd prefer to make an offer of
12 proof at a later time and ask my questions that you have
13 approved at this point and then consult with counsel and
14 make a proffer.

15 THE COURT: Decide if you want to renew your
16 request to ask more questions?

17 MR. BOSLER: Yes.

18 (Whereupon, the following proceedings were held
19 in open court, in the presence of the jury.)

20 THE COURT: I know it is warm in here. If you
21 all think you are warm, think about me up about five feet
22 higher, heat rises. So if you need water, we have the Jury
23 Commissioner and my law clerk standing by. They are glad to
24 help, and they will give you a glass of water if you need
25 it. So just be sure to kind of get their eye, and they will

1 get it for you.

2 And we don't have any air conditioning in the
3 building at this time of the year. So there is nothing I
4 can do to cool it down. It will be cooler when we have less
5 people on a regular basis in the courtroom.

6 Mr. Bosler, you may continue -- you may begin
7 your inquiry.

8 MR. BOSLER: And I thank you, ladies and
9 gentlemen. I know it's been not only a long day today, long
10 day yesterday. You had a short lunch break, and I know that
11 you people out there who are in the gallery, it's very
12 difficult to sit in these circumstances. And I'm not here
13 to prolong that.

14 Essentially I want to just ask you some
15 questions about your background, your certain views on
16 particular subjects. There is no right, there is no wrong
17 answer. The only right answer is your true feelings, your
18 true beliefs.

19 In that sense, if you feel uncomfortable
20 sharing those, you could raise your hand. You have seen we
21 have had little side bars over here where we talk to the
22 judge separately. If there is something that you want to
23 say in response to one of my questions, I encourage you to
24 say that because this is your time to talk, where lawyers
25 are supposed to be quiet. Take advantage of that because it

1 doesn't happen very often.

2 Just as a general background question, has
3 anybody changed -- I know that on your questionnaires it
4 lists your present occupation. Has anybody changed their
5 occupation in the last five years from what's reflected on
6 that questionnaire? We have a few people in back.

7 Mr. Hinxman.

8 A PROSPECTIVE JUROR: Just recently was
9 appointed to the director of Court Services. Before for the
10 past four years, I have been just as employee, employed by
11 the County as a probation officer.

12 MR. BOSLER: For the last five years you have
13 been some part of Court Services?

14 A PROSPECTIVE JUROR: Four years, yeah. Prior
15 to that I worked for juvenile probation.

16 MR. BOSLER: How long did you work for juvenile
17 probation?

18 A PROSPECTIVE JUROR: About four years.

19 MR. BOSLER: Is that the job you did out of
20 high school or out of college?

21 A PROSPECTIVE JUROR: After college, yeah.
22 During and after.

23 MR. BOSLER: You worked here locally or another
24 juvenile Probation Department?

25 A PROSPECTIVE JUROR: Here in Washoe County.

1 MR. BOSLER: Miss Kominek, you changed
2 occupations?

3 A PROSPECTIVE JUROR: Yes, I did. I was a
4 floral designer before.

5 MR. BOSLER: How long did you do that for?

6 A PROSPECTIVE JUROR: About three years.

7 MR. BOSLER: Then you changed to your present
8 occupation? You are actually --

9 A PROSPECTIVE JUROR: That is what I did before
10 I had this job then.

11 MR. BOSLER: You are now involved in Reno
12 Diagnostic?

13 A PROSPECTIVE JUROR: Correct.

14 MR. BOSLER: Anybody else? Mr. Decker.

15 A PROSPECTIVE JUROR: I was a field ironworker
16 for 31 years, and I changed my occupation to estimator in
17 the same field because of a severe injury to my back.

18 MR. BOSLER: Back injuries?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Is it difficult sitting? I know
21 some of these chairs aren't very comfortable.

22 A PROSPECTIVE JUROR: I'm doing good as long as
23 I can stretch my legs out.

24 MR. BOSLER: Would you have any trouble if you
25 had to sit for two or three hours at a time?

1 A PROSPECTIVE JUROR: No. These chairs are a
2 lot more comfortable than the ones I sit in at the office.

3 MR. BOSLER: Sorry to hear that. Any
4 medications or anything you have to take to take care of
5 your back?

6 A PROSPECTIVE JUROR: I generally take all
7 those in the morning.

8 MR. BOSLER: Does that affect anything, affect
9 your ability to perceive things?

10 A PROSPECTIVE JUROR: No. It's a mild -- well,
11 it is Aleve.

12 MR. BOSLER: Like a muscle relaxer?

13 A PROSPECTIVE JUROR: Anti-inflammatory.

14 MR. BOSLER: Next down the line. Miss Guiler.

15 A PROSPECTIVE JUROR: Yes. I have done several
16 different things over the years after my children were gone
17 and married. But right now -- the last job that I had was
18 working for West Telecommunications as an AT&T operator, and
19 before that we had a business, a pizza parlor, and we sold
20 it and started another business that we're now involved in.

21 MR. BOSLER: For the sake of efficiency, does
22 that kind of account for the last five years as far as
23 occupation?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: If you could share with me, how

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1 long have you been in Washoe County? How long have you
2 lived in this area?

3 A PROSPECTIVE JUROR: Since 1984.

4 MR. BOSLER: And let's continue down the line.
5 The second row? Towards me, anybody else change
6 occupations? Third row?

7 Miss Lyman.

8 A PROSPECTIVE JUROR: I was a sales clerk for
9 13 and a half years, and I changed to being a secretary and
10 in a medical office.

11 MR. BOSLER: Was this in Reno?

12 A PROSPECTIVE JUROR: Yes, Reno.

13 MR. BOSLER: And you have been in Washoe County
14 for about --

15 A PROSPECTIVE JUROR: About 10 months.

16 THE COURT: Mr. Lafond has his hand up.

17 A PROSPECTIVE JUROR: That within the last five
18 years have you changed jobs?

19 MR. BOSLER: Changed occupations, jobs, yes.

20 A PROSPECTIVE JUROR: Yeah. I worked for
21 Motorola as a loss prevention officer for three years, and I
22 came here five years ago, and I have been a security officer
23 at the Nugget. Before that I had 28 years in service, three
24 tours of Nam.

25 MR. BOSLER: That's quite a long time in

1 Vietnam. Were you there as a police officer or as a foot
2 soldier?

3 A PROSPECTIVE JUROR: FBI captain, and I was
4 there on the first landing.

5 MR. BOSLER: Before your job as a security
6 guard and this loss prevention officer, did you have other
7 jobs that required you to enforce laws?

8 A PROSPECTIVE JUROR: Loss prevention. That is
9 basically a security officer in Motorola, but they call it
10 loss prevention officer; and I'm a security officer at the
11 Nugget.

12 MR. BOSLER: If you could, could you share why
13 you decided to take that as a profession or change an
14 occupation?

15 A PROSPECTIVE JUROR: Retired for five years.
16 I came back to the States. I lived over in the Philippines
17 for five years. And when I was in the service, it was a
18 pretty easy job to get ahold of. Because I came to the
19 States, I was 52 years old looking, being so old, they don't
20 want to hire you.

21 MR. BOSLER: Do you go back to the Philippines
22 frequently or have family back there? I guess your son has
23 returned there.

24 A PROSPECTIVE JUROR: My son, daughter-in-law
25 and my wife goes back once in a while. We still have a

1 house over there. I'm just working for Social Security
2 right now.

3 MR. BOSLER: Your daughter-in-law native
4 Filipino?

5 A PROSPECTIVE JUROR: Yes, sir.

6 MR. BOSLER: Next. I think we got down to the
7 fourth row. Yes, Miss Imasaki.

8 A PROSPECTIVE JUROR: Prior to my current
9 occupation I worked for the school district as a school
10 social worker.

11 MR. BOSLER: Before that you were a school
12 social worker?

13 A PROSPECTIVE JUROR: I'm sorry. Prior to my
14 current position I was with the school district as a school
15 social worker, and then prior to that I was with Child
16 Protective Services.

17 MR. BOSLER: How long were you a school social
18 worker?

19 A PROSPECTIVE JUROR: I was on a 10-month
20 contract.

21 MR. BOSLER: And before that, Child Protective
22 Services, how long did you stay with them?

23 A PROSPECTIVE JUROR: A little over two years.

24 MR. BOSLER: Child Protective Services, I
25 imagine you probably come in contact with law enforcement

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1 authorities on occasion?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: Would that be correct? Anything
4 about that that makes you think differently or have some
5 reservations about sitting on this particular case?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: I think there is someone in the
8 front also. Did you get somebody else, Mr. Bosler?

9 MR. BOSLER: One here.

10 THE COURT: Mr. Moss.

11 A PROSPECTIVE JUROR: Does my application thing
12 show that I'm retired?

13 MR. BOSLER: Says just unemployed.

14 A PROSPECTIVE JUROR: Before that was -- I had
15 31 years in food service.

16 MR. BOSLER: Was that locally?

17 A PROSPECTIVE JUROR: No. In California.

18 MR. BOSLER: I notice you have 25 years in
19 Washoe. So you got a job transfer and came up here?

20 A PROSPECTIVE JUROR: Yes. My last employment
21 was 14 years at Harrah's as a cook.

22 MR. BOSLER: Any particular restaurant?

23 A PROSPECTIVE JUROR: Before that, to answer
24 Mr. Stanton, it was my privilege to be hotel butcher at the
25 Ahwahnee Hotel in Yosemite. So I have seen more blood than

1 you can tell.

2 MR. BOSLER: How long were you in Yosemite?

3 A PROSPECTIVE JUROR: Eight years, sir.

4 MR. BOSLER: Front row? Sorry, I missed one.

5 THE COURT: It is Miss Booth.

6 MR. BOSLER: Miss Roberts?

7 A PROSPECTIVE JUROR: I retired four years ago.
8 I'm not sure what I put down.

9 MR. BOSLER: You list worked for the U.S.
10 Department of Health and Human Resources. It doesn't
11 really -- the application doesn't give you a chance to put
12 down what you did before. That is why I'm kind of
13 interested.

14 A PROSPECTIVE JUROR: I was in the Air Force
15 Reserve. I retired from that and retired from government
16 service.

17 MR. BOSLER: What was the government service,
18 if you could?

19 A PROSPECTIVE JUROR: I was an administrative
20 officer. I worked in personnel. I worked in supply. So I
21 have had varied jobs within the government.

22 MR. BOSLER: Administrative officer, is that
23 something that requires you to --

24 A PROSPECTIVE JUROR: Hire and fire.

25 MR. BOSLER: Kind of like a boss type person

1 over others?

2 A PROSPECTIVE JUROR: I had three people under
3 me.

4 MR. BOSLER: After you quit the administrative
5 officer, you say you went to work where?

6 A PROSPECTIVE JUROR: Health and Human
7 Services. That was as a retirement clerk.

8 MR. BOSLER: Having had a government job, does
9 that affect your ability? Do you feel any differently about
10 that knowing there is going to be other government agents
11 here testifying?

12 A PROSPECTIVE JUROR: No. Probably not.
13 Probably anything that would go back to being married to a
14 police officer and having a circle of friends that were
15 officers and an officer for a short time myself.

16 MR. BOSLER: And I don't mean to put you on the
17 spot because again, there is no right or wrong answers. You
18 indicated earlier that you kind of had a bias in that
19 regard. Having had a relationship and been around those
20 people, you kind of had a bias?

21 A PROSPECTIVE JUROR: Probably, yes.

22 MR. BOSLER: Thinking of that bias, do you
23 think, taking that bias into consideration, do you think you
24 are the type of person who is going to be a good juror in
25 this type of a case?

1 A PROSPECTIVE JUROR: I think I would probably
2 lean probably toward a police officer's testimony more than
3 I would a civilian.

4 MR. BOSLER: Ultimately there is more than
5 police officers testifying. This is a case about who caused
6 the death of a police officer.

7 A PROSPECTIVE JUROR: Right.

8 MR. BOSLER: Thinking about that and the bias,
9 how does that affect your ability, thinking about, Am I
10 going to be a fair juror to sit in this jury or should they
11 put me on a different jury, I can't be fair, which camp do
12 you put yourself in?

13 A PROSPECTIVE JUROR: I think I could be fair.

14 MR. BOSLER: I appreciate your honesty. And
15 that gets us to the front row.

16 Miss Booth.

17 A PROSPECTIVE JUROR: Prior to working for
18 Community Services Agency, I worked at the Silver Legacy in
19 their human resources office.

20 MR. BOSLER: How long did you work at the
21 Silver Legacy?

22 A PROSPECTIVE JUROR: I was there when they
23 opened. But I was working there three years.

24 MR. BOSLER: Before that?

25 A PROSPECTIVE JUROR: Waitressing.

1 MR. BOSLER: Has that always been locally?

2 A PROSPECTIVE JUROR: Yeah. I moved here from
3 school. So I have been here since around '90.

4 MR. BOSLER: In your capacity in human
5 resources, did you have occasion to hire, fire people?

6 A PROSPECTIVE JUROR: I didn't personally hire
7 and fire, no. I dealt with people when they were coming in
8 and going out.

9 MR. BOSLER: Review applications, things like
10 that?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: You have responsibility to say
13 whether this person is qualified for certain types of
14 positions?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Anybody I have missed?

17 Is there anybody -- I guess this is kind of an
18 obvious question. Anybody belong to an organization, a
19 group, even a loose association, that is related to law
20 enforcement or has law enforcement ties, executive ties or
21 advocates of victims' rights, crime prevention, things like
22 that? Neighborhood Watch.

23 There are a lot of organizations that probably
24 fit in that organization. Anybody belong to any of those
25 organizations?

1 MR. STANTON: Has any member of the prospective
2 panel had any negative interactions with law enforcement,
3 police, either yourself, close friend or acquaintance or
4 family member?

5 THE PROSPECTIVE JURORS: No.

6 A PROSPECTIVE JUROR: Yes.

7 MR. STANTON: Okay. Mr. Thomas.

8 A PROSPECTIVE JUROR: I have a daughter who has
9 gotten -- recently gotten into trouble, and that is still
10 pending.

11 MR. STANTON: Is there anything that the State
12 has to worry about if you were on this jury about holding us
13 to a different standard or reviewing evidence in this case
14 or the fact that the victim in this case was a police
15 officer, based upon that interaction?

16 A PROSPECTIVE JUROR: No.

17 MR. STANTON: Is there anybody else?

18 Yes, Mr. Dunn.

19 A PROSPECTIVE JUROR: I have a stepson that has
20 a little problem down in California right now. It has no
21 bearing on anything.

22 MR. STANTON: You heard my questions of
23 Mr. Thomas, and you wouldn't -- there wouldn't be any
24 problem, there is nothing me and Mr. Gammick have to worry
25 about in that case?

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1 A PROSPECTIVE JUROR: No.

2 MR. STANTON: Miss Booth.

3 A PROSPECTIVE JUROR: I put on my questionnaire
4 also, but I have an ex-boyfriend who had been arrested a
5 couple of times when we were together.

6 MR. STANTON: Also a relative you put on your
7 questionnaire, a cousin.

8 A PROSPECTIVE JUROR: Cousin that lives out of
9 state who had a DUI.

10 MR. STANTON: Is there anything about those
11 interactions with law enforcement that causes you a problem
12 in this case now that you know some facts about this case?

13 A PROSPECTIVE JUROR: I don't believe so, no.

14 MR. STANTON: Are you certain?

15 A PROSPECTIVE JUROR: Yes. No, I can separate.
16 Different incidents.

17 MR. STANTON: Yes, Miss Imasaki.

18 A PROSPECTIVE JUROR: I have been stopped a
19 couple of times by Sheriff's officers for DUI, and one of
20 them was a jerk.

21 MR. STANTON: One of the police officers was a
22 jerk. That happens. That happens, and that is exactly the
23 type of instances that I'm talking about.

24 Miss Imasaki, there are going to be some
25 witnesses in this case that are police officers, as well as

1 the fact that the victim in this case was a police officer
2 on duty at the time he was murdered. Does that cause you
3 any problem in this case?

4 A PROSPECTIVE JUROR: No.

5 MR. STANTON: Do you think the State has
6 anything to worry about if you were a juror on this case in
7 that regard?

8 A PROSPECTIVE JUROR: No.

9 MR. STANTON: Thank you very much. Let me just
10 stay with this row and I'll get you. Miss Kizis.

11 A PROSPECTIVE JUROR: Nephew and cousin that
12 were involved in drugs and arrested for that.

13 MR. STANTON: Is there anything about -- you
14 have heard my questions to the other jurors. Is there
15 anything about that experience that would cause you a
16 problem in this case?

17 A PROSPECTIVE JUROR: No.

18 MR. STANTON: Thank you, ma'am.

19 And Miss Frandsen.

20 A PROSPECTIVE JUROR: My son in the '70s was
21 picked up for drugs.

22 MR. STANTON: You put that on your
23 questionnaire. Is there anything about that interaction
24 with the police and your knowledge of it that would cause
25 you a problem in the case based upon what you have heard so

1 far?

2 A PROSPECTIVE JUROR: None at all.

3 MR. STANTON: Anybody else? Let me go to
4 Miss Frankel.

5 A PROSPECTIVE JUROR: I actually forgot to put
6 this on my questionnaire. Like maybe one years old when
7 this happened, but my uncle was arrested for drugs. But I
8 have no knowledge of it, has nothing to do with this case.

9 MR. STANTON: Can't even believe that you
10 remember that, but thank you very much.

11 It would be Miss Roberts?

12 A PROSPECTIVE JUROR: Roberts. My son was
13 arrested for drugs.

14 MR. STANTON: Once again in the '70s?

15 A PROSPECTIVE JUROR: Yeah.

16 MR. STANTON: That is what you put down in your
17 questionnaire.

18 A PROSPECTIVE JUROR: Is that what I said? It
19 must be around the day.

20 MR. STANTON: Is there anything about that
21 experience, Miss Roberts, that would cause you a problem in
22 this case?

23 A PROSPECTIVE JUROR: No.

24 MR. STANTON: Anybody else? Let me go row by
25 row here.

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1 Mr. Gerbatz.

2 A PROSPECTIVE JUROR: Some friends that were
3 arrested.

4 MR. STANTON: And anything about your knowledge
5 of the experiences your friends encountered with the police
6 that would cause you to be anything but fair and impartial
7 in this case?

8 A PROSPECTIVE JUROR: No.

9 MR. STANTON: Anybody else in that second row?
10 Yes, sir, Mr. Decker.

11 A PROSPECTIVE JUROR: Yes. As I told the judge
12 earlier, I was a character witness for a very good friend in
13 the early, mid '80s, that was arrested for firing a weapon
14 inside the city limits. I think he was -- I'm not sure of
15 the charge that he was charged with. There was a couple
16 people injured. Not too seriously, as I understand. But I
17 think he was acquitted of that charge, but he received
18 probation for the firearms.

19 MR. STANTON: Is there anything about your
20 knowledge of that case, whether as a witness or subsequent
21 to the event, about how the police conducted themselves
22 either in the incident or during the investigation that
23 would cause you a problem in this case based upon what you
24 know of the facts of this case?

25 A PROSPECTIVE JUROR: No, sir.

1 MR. STANTON: Anybody else in the second row?
2 In the third row starting from my left. Anybody?

3 Mr. Sotero.

4 A PROSPECTIVE JUROR: Yes. I have had several
5 run-ins with the law.

6 MR. STANTON: Were those run-ins with the law
7 here locally in Washoe County?

8 A PROSPECTIVE JUROR: Yes.

9 MR. STANTON: Anything about those interactions
10 with law enforcement officers cause you a problem as far as
11 today?

12 A PROSPECTIVE JUROR: Like somebody said, some
13 cops are jerks.

14 MR. STANTON: I think probably everybody in
15 this room could agree with that to some extent. Is there
16 anything about that interaction or those interactions that
17 would cause you a problem to be a juror in this case?

18 A PROSPECTIVE JUROR: Probably not.

19 MR. STANTON: Okay. Your term "probably," can
20 you give me some explanation why it's probably as opposed to
21 some other term?

22 A PROSPECTIVE JUROR: Well, whether a person is
23 an officer or not, we're all human, we all make mistakes.
24 And sometimes, in my past experience, I felt an officer made
25 a mistake, but he was the officer, he had the gun and the

1 badge, and I'm Joe Citizen, and I obviously lost.

2 MR. STANTON: In this case, do you feel that
3 you would carry any of those feelings into your deliberation
4 of the evidence as a juror?

5 A PROSPECTIVE JUROR: I will try not to.

6 MR. STANTON: Can you do that?

7 A PROSPECTIVE JUROR: I think so.

8 MR. STANTON: Anybody else in the back row?
9 Miss Kominek.

10 A PROSPECTIVE JUROR: Do you want us to respond
11 other than what was on the questionnaire?

12 THE COURT: If you have something additional to
13 add, please do that.

14 MR. STANTON: And I'll be coming back to your
15 questionnaire when I get to individual. I'll ask it to you
16 now. You indicated there was a problem in the past with law
17 enforcement with a relative?

18 A PROSPECTIVE JUROR: Yes, two actually.

19 MR. STANTON: And was that locally?

20 A PROSPECTIVE JUROR: Yes, one.

21 MR. STANTON: Was there anything about those
22 interactions that would cause you a problem in this case?

23 A PROSPECTIVE JUROR: No.

24 MR. STANTON: And Mr. Lafond.

25 A PROSPECTIVE JUROR: Yes. My son, was about

1 how he did some shoplifting after he went back to the
2 Philippines, and the police come knocking on my door. It
3 has nothing to do with this case. He have made his mistake.
4 That is his problem.

5 MR. STANTON: Mr. O'Daye?

6 A PROSPECTIVE JUROR: Yeah. I'm on house
7 arrest right now.

8 MR. STANTON: Can you tell me what agency that
9 was that arrested you that led to your house arrest?

10 A PROSPECTIVE JUROR: Just Sparks.

11 MR. STANTON: Somewhere in Sparks? Was it
12 Sparks Police Department?

13 A PROSPECTIVE JUROR: Yes, police.

14 MR. STANTON: I'm assuming that the fact that
15 you are here and someone hasn't come tracking you down, that
16 you have worked it out with your house arrest folks that
17 that doesn't set off the alarm.

18 A PROSPECTIVE JUROR: Yeah, it's all right.

19 MR. STANTON: Is there anything, Mr. O'Daye,
20 about that experience that would cause you a problem in this
21 case?

22 A PROSPECTIVE JUROR: No.

23 MR. STANTON: From behalf of the State?

24 A PROSPECTIVE JUROR: It's all right.

25 MR. STANTON: Can you give us a fair shake in

1 this case as a juror?

2 A PROSPECTIVE JUROR: Yes.

3 MR. STANTON: Anybody else?

4 Occasionally in the two predominant newspapers
5 that service the Washoe County area, the Reno
6 Gazette-Journal and the Sparks Tribune, there is an
7 advertisement relative to concept of jurors' rights. Has
8 anybody on this panel ever seen that advertisement?

9 THE PROSPECTIVE JURORS: No.

10 MR. STANTON: Anybody say yes?

11 There have been several questions so far about
12 whether or not any of you, based upon your life experiences
13 that you bring to court today, have any bias or prejudice in
14 this case. And you all to this point have indicated that
15 you do not.

16 Is there any of you -- along with those two
17 concepts, there is another one called sympathy as a juror.
18 In this case, both as your function in the guilt phase and
19 in the penalty phase, you cannot interject in your
20 decision-making --

21 MR. BOSLER: I object to that statement, Your
22 Honor. I don't believe that's a correct statement of the
23 law with regard to penalty.

24 THE COURT: Counsel approach.
25

1 (Whereupon, a bench conference was held among
2 Court and counsel as follows:)

3 THE COURT: Go ahead, Mr. Bosler.

4 MR. BOSLER: Your Honor, there is case law that
5 says mercy is a valid concept to be imposed, considered by
6 judges and jurors when they decide penalties. And to say
7 they can't exercise sympathy, I know that is a general
8 instruction with regard to the guilt phase, but it is not
9 true in the penalty phase.

10 MR. STANTON: I couldn't disagree more. The
11 anti-sympathy instruction has been upheld by the State of
12 Nevada Supreme Court on no less than three occasions.

13 THE COURT: His objection is that you can allow
14 sympathy to influence you with regard to mitigation in the
15 penalty phase, not in guilt phase. That is his argument.

16 MR. STANTON: And that's what I'm saying is
17 that there is an anti-sympathy instruction at both the guilt
18 phase and the penalty phase, and that is upheld numerous
19 times by the Nevada Supreme Court.

20 THE COURT: I'm very concerned about implying
21 that the jury must contain their ideas of mitigation to one
22 particular area or certain particular areas. I think the
23 case law is very clear that the juror may consider anything
24 they want by way of mitigation.

25 MR. STANTON: Yes, and in fact --

1 THE COURT: What my concern is, that unless we
2 are very careful on how we ask the question, there could be
3 implication the limiting can be mitigation. I think you
4 would be fine if you ask the question with regard to guilt
5 phase and we stay away from it for penalty.

6 MR. STANTON: The decisions say that if the
7 instruction says that you may consider any evidence in
8 mitigation. If that instruction is given along with the
9 anti-sympathy instruction, that's a correct statement of the
10 law.

11 THE COURT: But what are you calling sympathy?
12 If they believe that his receiving the death penalty would
13 deprive his mother of her son, I call that sympathy, but
14 that's a mitigator they can consider, and I will allow the
15 defense to argue that.

16 MR. STANTON: But I'm not sure that is
17 distinctive from what I'm saying.

18 THE COURT: I'm not either. That is my
19 problem. Just calling it sympathy generally. I think it's
20 a semantic term, and I want to be sure with the objection on
21 the record that we're careful that the jury doesn't get the
22 wrong impression.

23 I think the way we can do it, you can just talk
24 about it in terms of penalty, in terms of guilt phase, and
25 then just say it is going to be reinstructed as to what they

1 can and must consider in penalty phase.

2 MR. STANTON: Okay.

3 MR. BOSLER: Your Honor, we would ask the Court
4 to instruct the jury at this point they are not allowed --
5 they are allowed to consider anything they think is
6 appropriate in the penalty phase, to cure the implication
7 they can't be sympathetic.

8 THE COURT: I think I will listen to how
9 Mr. Stanton modifies his question, and I feel at that time
10 it hasn't been corrected, I will make a corrected
11 instruction to the jury. But at this time I think
12 interrupting his question, he'll be able to fix it in his
13 answer and not have to cause special attention to this whole
14 issue.

15 MR. GREGORY: Judge, how long are we going
16 before we take a break, because we have been here since 9:00
17 or something, something like that? So a lot of these jurors
18 have also.

19 THE COURT: I'm not worried about the jurors.
20 They look perfectly okay to me. If he can go until quarter
21 to 12:00, that's how long we will go.

22 We'll go til quarter to 12:00.

23 MR. BOSLER: Judge, while we're here, I'd ask
24 the Court's guidance because there are people who say that
25 they formed an opinion based upon media. They are still in

1 this pool. We have handled them individually before. I
2 want to get the Court's feeling on that.

3 THE COURT: I think we won't handle them
4 individually because the reason we ended up doing the other
5 individuals was because it was lunchtime and I thought we
6 were going to work straight through lunch, handle those
7 jurors while the main body got lunch, but you all needed a
8 break. We couldn't do it. So it just sort of happened that
9 we got bogged down like that. It wasn't an intentional
10 thing. I'm especially concerned about some of their
11 responses, but in this group I don't think we have to do it
12 individually.

13 MR. BOSLER: A lot of people say they have been
14 influenced by media, people they have talked to, and I think
15 you run the risk they are going to blurt out something that
16 is going to contaminate the juror pool. That is our
17 concern.

18 THE COURT: Thank you for that concern. I
19 appreciate your calling it to my attention.

20 So far I haven't heard anything different.
21 They all seemed to have heard the exact same thing. I
22 just -- I'll play it by ear. I may interrupt them if I feel
23 they are going off and telling us everything they know about
24 the case.

25 They have also told us that they didn't -- all

1 these people said they haven't learned anything new since
2 they filled out the questionnaire.

3 You have the questionnaire. So I don't think
4 you have to go into what they already knew. I think the
5 question goes to whether or not they can put that aside and
6 decide the case. I'm going to allow you to inquire in that
7 regard, but I don't think you have to go into what else they
8 know.

9 MR. BOSLER: Your Honor, if I don't know what
10 they have heard or read about the case, I'm not sure exactly
11 if they have heard every detail about the case and they are
12 going to say, I'm not biased.

13 THE COURT: You have got the questionnaire.
14 You have got the response to the questionnaire where they
15 filled out what they had heard. I have asked the question:
16 Is there anything new that you have heard or read about this
17 case in addition to the questionnaire? All of them said no.

18 There's no need for you to go beyond the
19 questionnaire. You have got it. You can ask them again if
20 there is something more, but they have all told me there
21 isn't anything more.

22 Just pull the questionnaire out. That is why
23 we have a questionnaire, so we don't ask everybody.

24 I also want to encourage counsel, I will shut
25 you down if you ask the same question twice. And both of

1 you. We're going to move through this selection. You can
2 not repeat your questions three and four times, the same
3 question.

4 Ask your question once. If you have follow-up
5 questions based on the answer, follow up. But don't repeat
6 the question. And you don't have to repeat the same
7 question more than once to the same jury panel. Okay?

8 MR. STANTON: Do you want all the generals and
9 specifics at the same time?

10 THE COURT: Yes.

11 MR. BOSLER: Your Honor, I gave you a list of
12 my questions, and you didn't disapprove of a lot of them. A
13 lot of them require the questions as to each specific juror,
14 occupation, things like that. There is no way I can ask it
15 once just one juror and move on.

16 THE COURT: Well, you requested permission to
17 ask -- and we didn't even go into this. We'll talk about
18 it. You are not going to get -- we will have another break
19 before you get to ask your questions.

20 (Whereupon, the following proceedings were held
21 in open court, in the presence of the jury.)

22 MR. STANTON: Since it's a while since I asked
23 my last question, I'll once again go over it.

24 We have talked before about bias, prejudice in
25 this case. I would ask you relative to the issue of the

1 guilt phase of this trial, once again, there being two
2 phases, the guilt phase and the penalty phase.

3 Could you, knowing and looking at yourself
4 honestly, the character and the type of person you are, put
5 aside your bias, your sympathy and your prejudice when
6 determining the issues of the guilt or innocence of
7 Mr. Vanisi?

8 THE PROSPECTIVE JURORS: Yes.

9 A PROSPECTIVE JUROR: I couldn't.

10 MR. STANTON: Okay. That's Miss Buckley?

11 A PROSPECTIVE JUROR: Yes.

12 MR. STANTON: Is that based upon the opinion
13 that you have previously indicated that you have in this
14 case?

15 A PROSPECTIVE JUROR: Yes. It's just the way I
16 feel.

17 MR. STANTON: I understand that. And you feel
18 that way because of what you know about the case to date?

19 A PROSPECTIVE JUROR: Uh-huh. And what I read
20 back during that period of time. And the fright that we
21 felt when we had to keep going to work that someone was out
22 there.

23 MR. STANTON: Miss Buckley, you have heard
24 about the presumption of innocence that we have talked about
25 yesterday and today?

1 A PROSPECTIVE JUROR: Yes.

2 MR. STANTON: Do you believe in that?

3 A PROSPECTIVE JUROR: I believe in that, and I
4 feel that he should have a fair trial, and I don't feel that
5 I could give him that.

6 MR. STANTON: What is it about it, about your
7 opinion - I don't want necessarily the details of it - but
8 what makes you think that you can't afford that to
9 Mr. Vanisi? Because you can't put what you know aside?

10 A PROSPECTIVE JUROR: Right.

11 MR. STANTON: If the judge were to instruct you
12 that as a juror in this case, you decide what the facts are,
13 no one else does, no one tells you what to decide or what
14 weight to give to the facts, you and you alone do that, do
15 you think you could do that?

16 A PROSPECTIVE JUROR: I really don't. I'm
17 afraid I can't. That's not fair. It's just the way I feel.
18 I walked til 2:00 o'clock this morning. I can't erase that.
19 It is the way I feel.

20 MR. STANTON: Anybody else have an answer to
21 that question that we need to speak about?

22 In this case --

23 MR. BOSLER: Counsel, I believe Miss Cadena, if
24 I'm not mistaken.

25 Did your hand go up?

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1 A PROSPECTIVE JUROR: It did and it went down
2 again. It's really the same territory we covered yesterday.
3 I still don't feel sure that I could be fair about it.

4 MR. STANTON: But the same issues and the same
5 reasons we discussed yesterday?

6 A PROSPECTIVE JUROR: Exactly.

7 MR. STANTON: Anybody else?

8 Mr. Gerbatz, same thing as to yesterday?

9 A PROSPECTIVE JUROR: I need to let you know
10 that I again have a very strong opinion, but I don't
11 think -- I think I could look at this, the evidence and
12 determine a verdict with the evidence, the instructions of
13 the Court, but at this point I am burdened with a heavy
14 thing.

15 MR. STANTON: The questions to all of you
16 relative to having opinions, having opinions are fine. Some
17 people have very strong opinions about a trial that may be
18 starting this week in Washington, D.C.

19 The question is: Can you put aside whatever
20 your opinions are and say, I have a special role as a juror,
21 and that is you sit in those chairs, you listen to witnesses
22 take the witness stand, there will be evidence presented in
23 the form of documentation, photos, exhibits, and then make
24 your decision solely on that, not what you hear, say, for
25 example, in the newspaper?

1 In other words, this case isn't tried by what
2 Mike Henderson says in the Gazette Journal or what Tad
3 Dunbar says on the evening news. It is tried in this
4 courtroom through that chair and through presentation of
5 evidence by both sides here. That's the question about the
6 people that have any preexisting opinion one way or another.

7 Can you put that aside and listen to what
8 happens in this room? Is there anybody that cannot do that?

9 And that's Mr. Gerbatz and Miss Buckley. Is
10 that correct?

11 In this case there will be what I think I can
12 fairly state is powerful testimony and gruesome testimony
13 and photographs. My question to you is how you know
14 yourself, your personality, your character, is can you look
15 and listen to that testimony? Are you the type of person
16 that can listen to it?

17 It's not going to be pleasant. But it's
18 necessary as a juror because there is specific forensic
19 evidence that is addressed in not only the testimony but in
20 the photographs.

21 Is there anybody in this panel that feels that
22 they would have difficulty doing that?

23 Okay. Let me start with Miss Mueller.

24 A PROSPECTIVE JUROR: I can't stand the site of
25 any kind of blood or any gruesome pictures. It just gets to

1 me.

2 MR. STANTON: Okay. And when you say it gets
3 to you, to the point where you couldn't look at them at all?

4 A PROSPECTIVE JUROR: No, I couldn't.

5 MR. STANTON: Okay. Anybody else in the back
6 row?

7 MR. BOSLER: Let the record reflect, Your
8 Honor, that Miss Mueller is tearful at this point.

9 THE COURT: The record will so reflect.

10 MR. STANTON: Miss Guiler, what concerns do you
11 have regarding this?

12 A PROSPECTIVE JUROR: Well, I have never been
13 one to watch horror movies or like "The Titanic," I could
14 never go to that movie and watch that movie. Even though,
15 say, it's a love story, I could never go and watch it
16 because of the fact that people were losing their lives. I
17 have never been a fan of any kind of like "Star Trek" or
18 anything that was like out of the ordinary as far as
19 gruesome goes.

20 And I don't really know how it would affect me
21 to have to -- because I have kind of sheltered myself over
22 the years from things like that, like from violence.

23 MR. STANTON: Okay. Well, in this case, as I
24 indicated, there will be photographs and testimony in
25 conjunction with those photographs that speak to the

1 evidence in this case. It's not designed to shock you or
2 like maybe some of the movies are, but because it tells you
3 evidence in this case. That's the role of the jurors is to
4 determine the evidence in this case.

5 So knowing that, I know you said you shielded
6 yourself purposely from that, what do you think about your
7 ability as your personality goes, as a role of a juror when
8 it comes to that evidence? Do you think you can, even
9 though it may be distasteful to observe and to listen to,
10 could you continue to perform your function as a juror?

11 A PROSPECTIVE JUROR: Yes, sir, I could.

12 MR. STANTON: Thank you. Anybody else in the
13 back row? In the second row. Okay.

14 Miss Mills. Can you tell me about your
15 concerns?

16 A PROSPECTIVE JUROR: Well, I have seen a lot
17 of operations on TV in the medical channels and things like
18 that, heart operations, and that didn't bother me. But to
19 see photographs on a death, I think it would.

20 MR. STANTON: I'm hopeful that most
21 compassionate people, photographs of this nature would
22 bother them or they are not something that they would enjoy
23 looking at. My question as it was to Miss Guiler and I'd
24 ask you directly, can you put your feelings aside and
25 perform your role as a juror to evaluate as evidence?

1 A PROSPECTIVE JUROR: That's a hard one to
2 answer. I don't know.

3 MR. STANTON: The concern I'd be looking at is
4 a potential juror who says, I can't look at them. Kind of
5 shuts it off, both when they observe the photographs as well
6 as hear the testimony. Someone that just simply cannot
7 absorb and listen to it. It will not be pleasant for
8 anybody. But can they do that.

9 Is there anybody that, other than the witnesses
10 or the potential jurors that have already answered that
11 question, is there anybody else that thinks that they will
12 have trouble doing that?

13 Okay. That would be Miss Arlitz?

14 A PROSPECTIVE JUROR: Yes.

15 MR. STANTON: Could you tell me a little bit
16 more about your concerns regarding this?

17 A PROSPECTIVE JUROR: I never watch movies or
18 anything like that that has to do with blood. I have passed
19 out.

20 THE COURT: I'm going to stop you right there.
21 Mr. Lafond told me about -- do you need to leave right now?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Go ahead and go with the Jury
24 Commissioner into the jury room, please.
25

1 (Prospective Juror LaFond excused from the
2 courtroom.)

3 PROSPECTIVE JUROR IN THE AUDIENCE: Excuse me,
4 Your Honor. There is some of us that have to go, too.

5 THE COURT: Go ahead and have a seat, please.

6 MR. STANTON: Do you want me to continue
7 questioning while he is gone?

8 THE COURT: Do you stipulate to the questioning
9 of these people who indicated specific issues? Mr. Bosler?

10 MR. BOSLER: Your Honor, I would ask that we
11 wait for the juror to come back because one of these
12 questions may raise a concern that they want to express.

13 THE COURT: He is just inquiring as to the
14 question that he gave that they raised their hand about
15 concerns with the photographs.?

16 MR. BOSLER: My concern is the responses that
17 are elicited may cause the person missing to raise his hand.
18 So I ask that we wait.

19 THE COURT: Bailiff, approach, please.

20 (Prospective Juror LaFond returned to the
21 courtroom.)

22 MR. STANTON: Miss Arlitz, my question
23 ultimately is this: Can you knowing -- because you know
24 yourself better than anybody in this courtroom, can you put
25 your feelings about that subject matter aside and perform

1 your function as a juror to review it as evidence?

2 A PROSPECTIVE JUROR: I'm not sure.

3 MR. STANTON: Would you do your best?

4 A PROSPECTIVE JUROR: I'll try.

5 MR. STANTON: Ma'am, Miss --

6 A PROSPECTIVE JUROR: I have butterflies in my
7 stomach, you just talking that way. I am very sensitive. I
8 had trouble going to sleep last night just thinking about
9 it. But I could try to put my thoughts aside to that.

10 MR. STANTON: Okay. Thank you very much. That
11 is Miss Kizis; right?

12 A PROSPECTIVE JUROR: Uh-huh.

13 MR. STANTON: Anybody else?

14 THE COURT: Before you inquire, we have lost
15 one of our gallery. So we'll wait for just a moment before
16 you move on to a new question.

17 Ladies and gentlemen, yesterday I noticed how
18 long it takes a hundred of you to move in and out of a
19 courtroom. If I take a recess now, we won't get back in
20 before noon. I want to keep moving so that your time is
21 well spent. So that's why we're taking this extraordinary
22 measure just taking those people who have to.

23 I plan on recessing at a quarter to 12:00. So
24 that's about 20 more minutes. I cannot proceed, there is no
25 stipulation to proceed without you present for any of the

1 questions. So we must wait.

2 MR. BOSLER: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Whereupon, a bench conference was held among
5 Court and counsel as follows:)

6 MR. BOSLER: Your Honor, I was going to suggest
7 an efficient use of time, may we have side-bar with Miss
8 Mueller at this time?

9 THE COURT: We have the lady back in the
10 courtroom. What do you want to do about Miss Mueller?

11 MR. STANTON: I know she is upset.

12 THE COURT: We'll just keep going.

13 (Whereupon, the following proceedings were held
14 in open court, in the presence of the jury.)

15 MR. STANTON: Is there any other juror that
16 would have any problem along the lines of testimony or
17 photographs in this case?

18 Miss Mills?

19 A PROSPECTIVE JUROR: I would like to elaborate
20 on my statement where you generally hear -- this is your
21 job, this is your life, you see this every day. I don't. I
22 don't see photographs every day the way you do. But what
23 I'm saying is what I see in a photograph, I don't want it to
24 affect the rest of my life with that picture. I want to --
25 I don't want to see it.

1 MR. STANTON: Okay. And do you think based
2 upon what I have described to you today that it might do
3 that?

4 A PROSPECTIVE JUROR: Yes, I do.

5 MR. STANTON: Based upon that, do you think it
6 would affect your ability to continue or to perform your
7 function as a juror? In other words, where you won't pay
8 attention to the facts and evidence or where you couldn't be
9 fair and impartial?

10 A PROSPECTIVE JUROR: I think where I couldn't
11 pay attention to facts and evidence, I would just have this
12 photograph in my mind, and that would be -- I have no idea
13 when I'm going to look at that, and I think, yes, I don't
14 want that image in my mind for the rest of my life.

15 MR. STANTON: Okay.

16 MR. BOSLER: Your Honor, at this time we make a
17 motion to challenge her for cause. If she can't sit fairly
18 and look at photographs.

19 THE COURT: Do you want to traverse?

20 MR. STANTON: I would not traverse, Your Honor.

21 THE COURT: Miss Mills, you are excused.

22 (Prospective Juror Mills excused from the
23 courtroom.)

24 MR. BOSLER: Your Honor, I don't know if this
25 is an opportune time, but based upon the responses from Miss

1 Buckley and Mr. Damoth -- Miss Buckley and Mr. Gerbatz, we
2 make the same motion. I think they both expressed to the
3 Court they can't be fair based upon their answers in this
4 case.

5 MR. STANTON: Relative to the motion with
6 Miss Buckley, Your Honor, the State would not traverse. We
7 would traverse the motion for cause as to Mr. Gerbatz.

8 THE COURT: Miss Buckley, you are excused.

9 (Prospective Juror Buckley excused from the
10 courtroom.)

11 THE COURT: Based upon Mr. Gerbatz's responses,
12 the Court denies the motion with regard to Mr. Gerbatz.

13 The clerk will call the names of two more
14 people to replace them. We will first replace Miss Mills
15 and then Miss Buckley.

16 THE CLERK: Menandro H. Domingo.

17 Robin W. Sheets.

18 MR. GREGORY: Are they not sitting in sequence?

19 THE COURT: We excused Miss Mills first,
20 therefore, the first person called replaces Miss Mills. The
21 second motion that was made was with regard to Miss Buckley.
22 That motion was granted. Therefore, the second name called
23 replaced Miss Buckley.

24 MR. GREGORY: Thank you, Your Honor.

25 MR. STANTON: Your Honor, do you want me to go

1 into the generals?

2 THE COURT: Yes. I'm giving them an
3 opportunity to review the witness list.

4 A PROSPECTIVE JUROR: I don't know anyone on
5 the list, Your Honor.

6 THE COURT: Okay. Mr. Sheets?

7 A PROSPECTIVE JUROR: No, Your Honor, I don't
8 know anyone.

9 THE COURT: My questions are for you,
10 Mr. Domingo, and you, Mr. Sheets. Were you able to hear all
11 my questions this morning?

12 A PROSPECTIVE JUROR: Yes.

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Would you have responded to any of
15 my questions affirmatively? Would you have raised your hand
16 and said, Yes, judge, I have that issue?

17 A PROSPECTIVE JUROR: Just one.

18 THE COURT: Which one, Mr. Sheets?

19 A PROSPECTIVE JUROR: Working with officers.
20 The Reno PD does weaponless defense at the armory, and I
21 have several officers that are in the National Guard as
22 well.

23 THE COURT: Anything about that relationship
24 with Reno police or the officers that are in the Guard that
25 would cause you difficulty serving in this case?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Now, was that the same Guard that
3 Mr. Gammick used to be a member of or is a member of?

4 A PROSPECTIVE JUROR: I have no idea.

5 THE COURT: You are not familiar with him?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: And is there anything about your
8 relationship with police officers that would cause you to
9 favor someone's testimony over another person's testimony?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Domingo, what would you have
12 responded to?

13 A PROSPECTIVE JUROR: I would like to respond
14 that I know and am acquainted with one of the Sheriff's
15 deputies, and his name is Jim Barros. He is a friend of
16 mine, and he used to be my supervisor, too.

17 THE COURT: Is there anything about that
18 relationship that would cause you difficulty serving as a
19 juror in this case?

20 A PROSPECTIVE JUROR: I don't think so.

21 THE COURT: Anything else that you would want
22 to respond to?

23 A PROSPECTIVE JUROR: Yes, Your Honor. I have
24 two daughters that I have to drop to school in the morning,
25 and both of them are in variance because we moved from

1 Lemmon Valley closer to town, and they still go to the same
2 school. One is in Stead Middle School, and one is in Lemmon
3 Valley school.

4 And I have a hard time dropping them off.
5 Picking them up is no problem because my wife works during
6 the day. And to drop them off is really a hardship to me
7 because I don't know how to drop them so they won't get late
8 in school.

9 THE COURT: I'm sorry. Because you have to
10 come to court?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: What time are they due at school?

13 A PROSPECTIVE JUROR: The middle schooler is
14 starting at 8:00 and the other starts at 9:00.

15 THE COURT: If you have to be here before 9:00
16 you would have a problem?

17 A PROSPECTIVE JUROR: That's right, Your Honor.

18 THE COURT: Okay. You won't have to be.

19 A PROSPECTIVE JUROR: Good.

20 THE COURT: Anything else?

21 A PROSPECTIVE JUROR: I also served as a juror
22 about eight, nine, ten years ago. It was a DUI case, and if
23 I remember it correctly, Attorney Stanton was the prosecutor
24 at that time.

25 THE COURT: And now without telling me the

1 result of the case, were you able to reach a verdict?

2 A PROSPECTIVE JUROR: Yes. The best of my
3 knowledge.

4 THE COURT: Now, is there anything about the
5 fact that you saw Mr. Stanton as an attorney in a case
6 previously that would cause you to be biased for or against
7 the State in this case?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Or would you be biased for or
10 against the defense in this case?

11 A PROSPECTIVE JUROR: That's -- I have a mixed
12 reaction on that question, Your Honor. Because we -- we
13 also are victim of a crime, and if you let me continue my
14 story, I'll tell you why.

15 THE COURT: Go ahead.

16 A PROSPECTIVE JUROR: Because I have a relative
17 who was murdered in the Philippines, and it's really left a
18 big scar on our family. And out of that scar developed a
19 rage, a rage that we want to see every -- whoever, whatever
20 race that is, to be convicted, to be convicted and get the
21 maximum penalty allowed by the law.

22 THE COURT: So you think you would be biased
23 against the defendant because of that circumstance?

24 A PROSPECTIVE JUROR: Yes, Your Honor. Because
25 of the scar that is left in our family.

1 THE COURT: Anything else on your list that you
2 wanted to tell me about?

3 A PROSPECTIVE JUROR: That's all, Your Honor.

4 THE COURT: Were you able to hear my question,
5 especially my last question that I asked today of the whole
6 panel with regard to the potential for the jury to determine
7 the penalty in a case? Did you hear me talk about that?

8 A PROSPECTIVE JUROR: Yes, Your Honor.

9 THE COURT: Would you feel compelled to enter
10 any particular -- a particular verdict in all cases of first
11 degree murder?

12 A PROSPECTIVE JUROR: Your Honor, because of
13 the thing that happened to my family, I'm going to have a
14 hard time figuring out the verdict, meaning to say that I
15 would have a hard time to reach the decision because to me,
16 I mentioned the word rage, to me, I would see the person,
17 regardless of who he is, what he is, to be convicted.

18 THE COURT: Okay.

19 MR. BOSLER: Your Honor, I believe we have a
20 stipulated cause challenge.

21 THE COURT: Okay. Make your motion.

22 MR. BOSLER: We would ask that he be excused
23 for cause.

24 MR. STANTON: State would not traverse that.

25 THE COURT: Mr. Domingo, based on your answers

1 and their stipulation, I'll go ahead and excuse you. Thank
2 you.

3 Call another name.

4 (Prospective Juror Domingo excused from the
5 courtroom.)

6 THE CLERK: Sandra J. Ellin.

7 THE COURT: Go ahead and review the witness
8 list, Miss Ellin.

9 A PROSPECTIVE JUROR: I don't know any of them,
10 Your Honor.

11 THE COURT: Mr. Sheets, would you be compelled
12 to return any particular verdict with regard to penalty if
13 you were called upon to sit on a jury that was required to
14 determine penalty?

15 A PROSPECTIVE JUROR: (Shakes head negatively.)

16 THE COURT: Would you feel you always had to
17 vote for the death penalty no matter what the Court's
18 instructions or the law?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Would you feel you always had to
21 vote against the death penalty no matter what the Court's
22 instructions or law?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Miss Ellin, have you had an
25 opportunity to hear all my questions this morning?

1 A PROSPECTIVE JUROR: Yes, Your Honor.

2 THE COURT: Would you have wanted to respond to
3 any of my questions if you had been sitting here?

4 A PROSPECTIVE JUROR: I have an uncle that was
5 a sheriff in Riverside, California, and he was there for
6 many years.

7 I don't think I'd be a good juror. I don't
8 think I could listen to those pictures. I believe in the
9 death penalty, strongly. I have a sister that's in Norgo,
10 prison for women, that the police officers in California
11 just harassed. I just don't think I'm a good juror.

12 Also, I'm sorry I'm kind of emotional. I work
13 as a waitress, I work four hours a day. I get 5:15 an hour.
14 I have been stressed over this for the whole week.

15 My income is tips. I'm the only person that
16 pays my bills. And I have been worried about how I'm going
17 to pay my bills. I don't think I would be very good at
18 this.

19 MR. BOSLER: Your Honor, not to state the
20 obvious, but the record should reflect she is tearful at
21 this point.

22 THE COURT: The record will so reflect.
23 Counsel wish to inquire?

24 MR. STANTON: I have no questions of this
25 witness, Your Honor.

1 MR. BOSLER: I don't mean to put you on the
2 spot.

3 A PROSPECTIVE JUROR: Fine.

4 MR. BOSLER: I heard you say that based upon
5 your life experiences, you think that if this case came down
6 to a murder conviction, you'd vote for the death penalty?

7 A PROSPECTIVE JUROR: I strongly believe in
8 that. When a person does a crime, they should pay for what
9 they have done.

10 MR. BOSLER: Is there anything that you would
11 consider that would change your mind if you found a
12 first-degree murder conviction you would -- you wouldn't
13 vote for it?

14 A PROSPECTIVE JUROR: No, I would vote for it.

15 MR. BOSLER: We would make a motion to excuse
16 for cause.

17 THE COURT: Mr. Stanton.

18 MR. STANTON: Miss Ellin, are you saying that
19 if under every circumstance you sat as a juror and someone
20 was convicted of first-degree murder, you think the
21 appropriate punishment would be the death penalty?

22 A PROSPECTIVE JUROR: Yes, I do.

23 MR. STANTON: There is no cases where you would
24 think that something less than the death penalty would be
25 appropriate?

1 A PROSPECTIVE JUROR: No, sir, I don't.

2 MR. STANTON: And you are absolute in your
3 convictions about that?

4 A PROSPECTIVE JUROR: Yes, I am.

5 MR. STANTON: And it's just the fact that it is
6 a crime of first degree murder that the punishment would
7 be -- automatically should be the death penalty?

8 A PROSPECTIVE JUROR: That, yes, I do.

9 MR. STANTON: Do you think that there's some
10 other things you should consider before you decide the death
11 penalty, such as mitigating evidence about who the defendant
12 is, whether or not they have any other prior contact with
13 the law, that would help you make that decision?

14 A PROSPECTIVE JUROR: No, sir, I don't. I
15 strongly believe in it.

16 MR. STANTON: Thank you. No further questions.

17 THE COURT: Motion has been made. Mr. Stanton.

18 MR. STANTON: We would not traverse it, Your
19 Honor.

20 THE COURT: Miss Ellin, based upon your
21 responses to the death penalty, I'm going to excuse you.

22 A PROSPECTIVE JUROR: Thank you, ma'am.

23 (Prospective Juror Ellin excused from the
24 courtroom.)

25 MR. BOSLER: Your Honor, the record should

1 reflect that Mr. Rumbaugh was also nodding his head on that
2 question.

3 THE COURT: The problem I have is I want to
4 make it really clear, in spite of what Mr. Bosler asked in
5 terms of the way the question was asked, the law does not
6 exclude people who have strongly held convictions one way or
7 another. You must, as I told you earlier, be willing to
8 follow the instructions that I give you with regard to the
9 law and follow the specific instructions that I give you
10 with regard to what you must consider before determining
11 penalty. And that is of significance here.

12 So although I know many of you are hearing
13 things and think there are some differences between you or
14 that there are no differences between you and people who are
15 excused, there are differences in responses and the reasons,
16 and I will inquire of Mr. Rumbaugh in just a minute.

17 Call another name.

18 THE CLERK: Gordon D. Berg.

19 THE COURT: Mr. Berg, go ahead and look at
20 those, that witness list, please. Do you know anyone?

21 A PROSPECTIVE JUROR: No, I didn't recognize
22 anyone, no.

23 THE COURT: Not related to anybody on that
24 list; right?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Have you been able to hear my
2 questions this morning?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Would you want to respond to any of
5 those questions had you been sitting in the jury box all
6 day?

7 A PROSPECTIVE JUROR: Only that my ex-wife is
8 married to a Washoe County detective; and I do strongly
9 believe in the death penalty, but I do try to keep an open
10 mind.

11 THE COURT: With regard to your -- the issue on
12 the penalties provided, as I indicated this morning, it's
13 only on certain kinds of cases that juries decide penalty,
14 and it would only be after a determination of guilt were
15 found as to first degree murder that that consideration
16 could even come into play.

17 A PROSPECTIVE JUROR: Right.

18 THE COURT: If that were the determination by
19 the jury at some point, you would be called upon to
20 determine the penalty. I will instruct you as to which
21 penalties are available and what the law is with regard to
22 things that you must consider before determining the
23 penalty.

24 Would you be able to follow that instruction?

25 A PROSPECTIVE JUROR: Sure.

1 THE COURT: In spite of a strong belief in the
2 death penalty, would you give -- would you be compelled to
3 give the death penalty in all cases? Or would you
4 consider --

5 A PROSPECTIVE JUROR: No, I'd consider the
6 circumstances always.

7 THE COURT: And would you be compelled -- I
8 think based on your questions, the answer is going to be no,
9 but I do want to make a record. Would you feel compelled to
10 always vote against the death penalty if you sat on a jury
11 that was -- had to determine penalty?

12 A PROSPECTIVE JUROR: You lost me there.

13 THE COURT: If you happen to be on a jury that
14 was required to determine the penalty, would you vote
15 against the death penalty no matter what the evidence or the
16 instructions?

17 A PROSPECTIVE JUROR: Well, no, I'd follow the
18 instructions.

19 THE COURT: Thank you.

20 Mr. Rumbaugh, Mr. Bosler told me that you were
21 nodding your head when Miss Ellin was talking. Do you have
22 something to add?

23 A PROSPECTIVE JUROR: You know, I just kind of
24 agree with her.

25 THE COURT: About not wanting to be here?

1 A PROSPECTIVE JUROR: No, not wanting to be
2 here, no. The penalty. An eye for an eye and all that
3 stuff.

4 THE COURT: Now, I had asked you before but I
5 want to be sure you understood my question. Do you
6 understand that I will give you instructions as to what you
7 must consider before you determine the proper penalty, if
8 you even get there?

9 A PROSPECTIVE JUROR: It's awfully hard to
10 blank a person's mind out and start two separate sides.

11 THE COURT: Nobody is asking you to blank out
12 your mind. The question is, will you be able to follow the
13 law which requires you to weigh certain considerations.

14 The question is, no matter who the person is
15 who was convicted of first degree murder, always, no matter
16 what the evidence, no matter who the person was, vote to
17 impose the death penalty? Or would you consider the person?

18 A PROSPECTIVE JUROR: No, I'd do the death
19 penalty.

20 THE COURT: No matter if it was your daughter
21 who committed the offense, you would say, Yeah, death
22 penalty?

23 A PROSPECTIVE JUROR: Like I say, you commit
24 the crime, you do the punishment.

25 THE COURT: Counsel, you may inquire.

1 MR. STANTON: Mr. Rumbaugh, the adage that you
2 just mentioned about doing the crime and doing time, there
3 is a distinction between doing obviously prison time and the
4 death penalty. So I'm not sure if I misunderstand your
5 citation to that quote.

6 If you believe that someone committed a murder
7 and you believe the only punishment that you would recognize
8 and consider would be the death penalty, is that what you
9 are saying?

10 A PROSPECTIVE JUROR: Sometimes murder might be
11 justified.

12 MR. STANTON: Okay. There are some cases where
13 someone would be convicted of murder in the first degree
14 where the punishment based upon any number of factors that
15 the jury considers in mitigation that would justify the
16 person not getting the death penalty. Would you agree with
17 that principle?

18 A PROSPECTIVE JUROR: I just say go with the
19 death penalty.

20 MR. STANTON: There is a lot of murders that
21 aren't, in the eyes of the law at least, not death penalty
22 cases, because in order for a case to be death penalty,
23 there has to be specific facts that the Legislature has
24 agreed to be aggravating circumstances that have stated in
25 the law this aggravates first degree murder before the death

1 penalty is a viable form of punishment.

2 Do you agree with that concept? In other
3 words, that you can't have the death penalty unless certain
4 aggravating circumstances have been proven?

5 MR. BOSLER: Your Honor, we're going to object
6 at this time. I think that is a misstatement of the law.
7 In the eyes of the Legislature, even if you find
8 aggravators, death is never an absolute. They can always
9 choose life.

10 THE COURT: That's clear. But I don't think
11 that's what his question implied. No, I don't think he was
12 implying that. That's just the first part of it, was the
13 aggravating. I'm sure he is getting to the mitigating.
14 Motion is denied.

15 MR. STANTON: I certainly wasn't trying to
16 imply that. Sir --

17 THE COURT: Ladies and gentlemen of the jury,
18 there always -- we got to be careful, and that's why I
19 started at the beginning. I didn't really want to go
20 through all the instructions.

21 Mr. Bosler is asking questions about what kind
22 of a case -- do you understand that a certain kind of case
23 only can even be considered for the penalty, you can even
24 think about it?

25 Now, what Mr. Bosler is saying is that there is

1 a whole bunch of things that must be considered by the jury
2 before they ever impose that kind of penalty, and that's
3 what we're calling these mitigating circumstances. So be
4 sure that you don't get bogged down on the instructions.

5 MR. BOSLER: Your Honor, that is not the
6 correct statement of the law. Because even if the jury were
7 to consider the aggravators and mitigators, they never have
8 an obligation to impose death under Nevada law. Even if
9 they found nine aggravators or however many.

10 THE COURT: Mr. Bosler, thank you.

11 Ladies and gentlemen of the jury, I'm going to
12 give you a special instruction at this time.

13 "The jury must consider whether
14 aggravating circumstances exist if they
15 reach a penalty for first degree murder.
16 This determination must be unanimous and it
17 must be beyond a reasonable doubt.

18 The jurors need not find mitigating
19 circumstances unanimously in determining the
20 appropriate sentence. Each juror must
21 consider and weigh any mitigating
22 circumstances or circumstances which the
23 juror independently finds.

24 The jury may impose a sentence of
25 death only if: One, the jurors find

1 unanimously and beyond a reasonable doubt
2 that at least one aggravating circumstance
3 exists; two, each and every juror determines
4 that the mitigating circumstance or
5 circumstances if any which he or she has
6 found do not outweigh the aggravating
7 circumstance or circumstances; and three,
8 the jurors unanimously determine that in
9 their discretion a sentence of death is
10 appropriate."

11 This is a cite to Sonner versus State, 114
12 Nevada 321, 1998 case. It is a quote, and I don't think we
13 need to discuss further the circumstances. It is
14 complicated. That is the instruction.

15 MR. BOSLER: Thank you, Your Honor.

16 THE COURT: You may inquire.

17 MR. STANTON: Mr. Rumbaugh, having heard that
18 instruction of law, is there anything about that instruction
19 of law that would prohibit you from doing your sworn duty as
20 a juror in this case?

21 A PROSPECTIVE JUROR: Yes. No, there isn't.

22 MR. STANTON: Do you want me to continue with
23 my generals?

24 THE COURT: We're ready to quit for the lunch
25 break, as long as you have reached a determination of

1 whether or not you want to traverse Mr. Bosler's motion.

2 MR. STANTON: I would traverse the motion by
3 Mr. Bosler.

4 MR. BOSLER: Your Honor, we'll make a
5 Weatherspoon challenge.

6 THE COURT: We'll -- fine. That is fine.
7 We'll talk about it in a moment.

8 Ladies and gentlemen of the jury panel, we're
9 going to recess for lunch now, and I'm going to ask that you
10 return at 1:00 o'clock. We'll start with the roll call at
11 1:00 o'clock.

12 Ladies and gentlemen in the audience, I have
13 much more business to do with these attorneys while you
14 leave the courtroom. I ask that you leave quietly and that
15 you return at 1:00 o'clock. Remember the admonition that
16 you have all received. I ask that you follow that
17 admonition. Do not get up and leave until I give it to you,
18 please. Be sure to remember to remain -- to come back to
19 the courthouse at 1:00 o'clock.

20 The admonition is as follows: You may not
21 view, listen to or read any news media accounts regarding
22 this case should there be any. You may not discuss the case
23 among yourselves or with anyone else. Do not form any
24 further opinions with regard to the outcome of this case and
25 do not allow anyone to attempt to influence you with regard

1 to it.

2 Ladies and gentlemen, we are going to take a
3 very brief recess while you exit the courtroom. I ask that
4 counsel remain in the courtroom so we can make a record as
5 soon as the courtroom is clear. We have several things to
6 puts on the record. Thank you. Court is in recess.

7 (Recess taken at 11:47 a.m.)

8 (Whereupon, the following proceedings were held
9 in open court, outside the presence of the jury
panel.)

10 THE COURT: Mr. Bosler, go ahead and make your
11 record.

12 MR. BOSLER: Your Honor, I'm not quite sure
13 which record you wanted me to make. There are many, several
14 jurors that expressed they formed opinions based upon the
15 media. I asked the Court to consider allowing them to
16 discuss what they have heard and how that affected their
17 opinions outside the presence of the rest of the jury pool
18 because of the risk of contamination. I think the judge,
19 you said that you would consider that but you are reluctant
20 to do that. That's one of the motions.

21 The other one is I think we have a --

22 THE COURT: Let's just do them one at a time.
23 I'm going to deny that motion at this time. Depending on
24 what the jurors say, if I feel it's necessary based on what
25 they say to have either a side-bar like we have been doing

1 or to do it individually, I will do it at that time.

2 MR. STANTON: In addition, Your Honor, I think
3 the Court had made in a side-bar ruling that the question
4 would have to be proffered whether there was anything in
5 addition to what they had put on their questionnaire that
6 would be a basis of additional information. Counsel would
7 have to ask that and inquire of that as a predicate.

8 THE COURT: Right. That's correct.

9 MR. BOSLER: Your Honor, in addition, I think
10 we have a stipulated challenge to Juror Mueller. She is in
11 the first position.

12 THE COURT: Mr. Stanton.

13 MR. STANTON: Yes, I would stipulate to
14 Miss Mueller's dismissal. I would indicate to the Court or
15 for the record that Miss Mueller was the juror who was quite
16 emotional relative to the subject matter of photographs.

17 Subsequent to the side-bar comment about Miss
18 Mueller, I have watched her reaction. Her physical reaction
19 is obviously one of grave discomfort as well as emotion, and
20 I believe that based upon the facts of this case, that it
21 would be ultimately presented that Miss Mueller may not be
22 able to perform her function as a juror in this case.

23 THE COURT: Based upon the stipulation and
24 motion of the defense, I will excuse Miss Mueller.

25 MR. BOSLER: Your Honor, at this time we renew

1 our motion to have Mr. Rumbaugh excused for cause. He
2 indicated before anybody started questioning him he formed
3 his opinion about this case months ago, has expressed the
4 opinion. He's said eye for an eye, is what I heard, you do
5 the crime, do the time.

6 He agreed with the one juror that said in every
7 murder case, death penalty is appropriate. That is his
8 opinion. He made that unequivocal expression. I think it
9 is a Weatherspoon challenge.

10 MR. STANTON: Your Honor, I don't believe
11 Mr. Rumbaugh's answers to the questions or his comments at
12 any point during the voir dire have indicated that he is a
13 person that, as a matter of law sitting as a juror when
14 properly instructed, he is going to automatically impose the
15 death penalty in all first degree murder cases. It is quite
16 evident from the questioning so far that Mr. Rumbaugh has
17 strong feelings relative to the death penalty, but that is
18 not the precise issue of life or death qualifying this jury.

19 Especially I think that the critical colloquy
20 that occurred between Mr. Rumbaugh was after the Court had
21 instructed relative to the deliberative process of the death
22 penalty, and Mr. Rumbaugh answered that question with
23 precision. And I think it's been the most precise question
24 posed to him about the ultimate Weatherspoon criterion and
25 that is he would follow the law by the Court. Based on his

1 response to that, I don't think that satisfies the cause
2 motion by defense counsel.

3 MR. BOSLER: Your Honor, just for the record,
4 Mr. Rumbaugh has said that he would favor police officer's
5 testimony over civilian witnesses, he could not be fair to
6 the defendant, and I think he was unequivocal when he said
7 that if he is convicted, death is the appropriate remedy.

8 If it is not a Weatherspoon challenge,
9 certainly it is a for-cause challenge. I'm not backing off
10 the Weatherspoon argument, but I think it is a challenge for
11 both reasons.

12 MR. STANTON: Well, Your Honor, if I may
13 briefly respond. Mr. Rumbaugh indicated, and I think there
14 is a misperception, at least it is the State's perspective,
15 the defense is misconceiving the responses how jurors would
16 treat police officers' testimony. There is no legal
17 impediment that I'm aware of if a juror responds that if
18 there is two conflicting witnesses in a case, that they
19 would side on a police officer, that that is not violative
20 of law or decision that I'm aware of.

21 In fact, I think it's a pretty commonplace
22 perception of a juror. The question is, is can they or
23 would they disregard any other person's testimony that would
24 conflict with the police officer or that they would
25 automatically believe a police officer's testimony. I think

1 from Mr. Rumbaugh's responses, they don't fall within either
2 of those two examples.

3 As far as counsel's comment that he couldn't be
4 fair to the defendant, I don't recall that in the context
5 that he couldn't do his job as a juror in this case. He is
6 one of the jurors that has an opinion, but he has also
7 indicated that he could put that opinion aside and listen to
8 the facts here.

9 And that phenomenon has occurred in many
10 high-profile cases, both in federal and state court and that
11 is a person coming in as a prospective juror that has a
12 preexisting opinion. That is not a basis for
13 disqualification. Absent something else, I don't think the
14 defense has made a case for it.

15 THE COURT: I was concerned about his
16 responses, and that's why I read the specific instruction of
17 Sonner to determine whether or not he understood, and we
18 were getting bogged down in the issue how to -- how do you
19 explain to a jury without giving them specific instruction
20 how they must deliberate in the penalty phase if they reach
21 that phase and the requirement that they must determine
22 mitigating circumstances, they have to look at anything that
23 could possibly be mitigating. I read the instruction, and
24 his -- any confusion or ambiguity was cleared up. His
25 answer was unequivocal that he would follow the instruction

1 and he accepted it.

2 Based on that, the motion for Weatherspoon is
3 denied.

4 We have a request with regard to your voir
5 dire, Mr. Bosler. You asked me -- you had showed it to me
6 before we started court yesterday, and you asked me about
7 did I have any objections to your proposed voir dire. We
8 did that at the side-bar, too, but we didn't get into the
9 specifics.

10 MR. BOSLER: That is correct, Your Honor. And
11 I think the Court should rule on the for-cause challenge
12 issue, too.

13 THE COURT: I understand why the defense
14 doesn't want him, but I don't see a legal reason for
15 excluding him for cause. Therefore, the motion is denied.

16 MR. BOSLER: Thank you, Your Honor.

17 THE COURT: Now, let's get into the question of
18 your questions, voir dire. Although you haven't had an
19 opportunity to inquire of the whole jury in blanket form,
20 although you have inquired independently of them, what you
21 said at side-bar was you were going to want to ask every
22 prospective juror each of those questions, and I didn't
23 understand that was going to be your request. So that's why
24 we have just got to go through it. Because I don't really
25 see the need for all 36 people to be asked what all their

1 prior professional careers were.

2 MR. BOSLER: Your Honor, I'm going to ask them
3 what their last occupation was, not what they have ever done
4 in their life. Of course, that is a question you can't ask
5 to a group.

6 And as the Court is aware, the regular
7 questionnaire we give out to all jurors indicates or gives
8 them a blank to fill out their present employment. That is
9 because your employment --

10 THE COURT: Let's go through your questions,
11 and then you can tell me why you think this bears on
12 their -- the jurors' ability to be a fair and impartial
13 jurors or their impartiality.

14 What was your last job or occupation? How does
15 that bear?

16 MR. BOSLER: The same as what their present
17 occupation is, Your Honor. If someone is now a truck driver
18 and their last occupation was they worked in a lab that
19 supplied police officers with guns, although that does not
20 technically say that they have relatives or related to law
21 enforcement, that would be something that would impact upon
22 their ability to be impartial.

23 I don't know what these other occupations are
24 going to be until I ask that question. And the other
25 questions that are in the questionnaire, even on special,

1 haven't covered that area.

2 THE COURT: Your question with regard to
3 background, what was your last job or occupation? how long
4 did you work there: what other cities have you lived in: is
5 there any reason you left? I'm not going to allow you to ask
6 every juror that question.

7 I will allow to you ask the jurors if they
8 changed their occupation in the last five years, not job but
9 occupation. And if they have, I will allow you to inquire
10 further of those individual jurors who raise their hand.

11 MR. BOSLER: Will the Court make a record why
12 five years is an important date?

13 THE COURT: I don't think it's important. I
14 don't think this question is really a very good question
15 anyway. I'm just trying to give you something to stretch it
16 to what your hypothetical is that maybe somebody somewhere
17 had a job working in a lab. If they didn't do it within the
18 last five years, I can't see any relevance to it. Unless it
19 was something specific that they have brought up.

20 But people do change occupations. But they
21 haven't changed it within the last five years, then they are
22 pretty entrenched in their current occupation.

23 So I'm giving you something to go on. If they
24 change occupations in five years, then you can inquire
25 further, see if maybe in recent times they have had some

1 special experiences that you think might bear on their
2 service.

3 I'm not going to allow you to ask what cities
4 they have lived in. You can look at the questionnaire. If
5 they have lived in Washoe County less than six months, go
6 ahead and inquire. Less than a year, inquire.

7 You have only lived here six months or a year,
8 where did you live before?

9 But I still don't particularly see the
10 relationship to living in another city before coming here.
11 But if they are newly here, if that somehow impacts your
12 defense, I'll go ahead and allow you to ask that.

13 MR. BOSLER: Your Honor, for the record, I
14 think that if I ask a juror who has come from another state
15 and they say, I left Los Angeles in order to get away from
16 the crime because I was fearful, I left five years ago and I
17 have lived in Washoe County ever since, I'm not going to be
18 able to get that information based upon the Court's
19 restriction of my voir dire. I think that greatly impacts
20 upon Mr. Vanisi's chance, his opportunity to intelligently
21 exercise not only for-cause challenges, but his right to
22 exercise his peremptories.

23 THE COURT: Why?

24 MR. BOSLER: If someone came from California to
25 escape crime, obviously they are going to have some -- the

1 fact this is a criminal case as opposed to a civil case.
2 The fact this involves murder as opposed to some other
3 crime, the fact this involves the alleged killing of a
4 police officer, those are things that are going to impact
5 upon their ability to deliberate. Simply asking them if
6 they are biased may not get to that core issue.

7 THE COURT: Motion is denied. I disagree that
8 that would lead to reasons to -- just about half of our
9 population left California to get away from the crime or the
10 taxes. And I just don't -- it's not -- it is not realistic
11 about where our population came from or how many people in
12 Washoe County reside here from California. I just don't
13 think that is going to help you.

14 Activities, what civic, social, religious or
15 professional or trade organizations do you belong to? You
16 are going to ask every juror this?

17 MR. BOSLER: I'll ask them if they belong to
18 those organizations. Hopefully I'll get some hands and
19 won't need to ask it individually.

20 THE COURT: You mean if they belong to any
21 social, civic, religious or professional trade
22 organizations?

23 MR. BOSLER: Yes.

24 THE COURT: Then you are going to inquire as to
25 what they are?

1 MR. BOSLER: Yes.

2 THE COURT: How does that assist you?

3 MR. BOSLER: Of course, social organizations,
4 professional organizations, things like the NRA, MADD.

5 THE COURT: You can ask about the NRA. You can
6 ask if anybody is a member of the NRA. I'm not going to go
7 into every religious organization that these jurors belong
8 to. I don't think that is necessary. I'm going to deny
9 that request.

10 MR. BOSLER: Why does the Court think the NRA
11 is important?

12 THE COURT: If you think the NRA is important,
13 you mentioned that, I said okay, I'll let you ask that
14 question.

15 MR. BOSLER: I'd ask the Court to make the
16 record why the Court agrees the NRA is important.

17 THE COURT: I don't agree. You asked, you said
18 the basis for this question is that it's important to you to
19 know if somebody belongs to the NRA. That's a specific you
20 gave me. I said okay, fine. You can ask that question.
21 You got another specific you want to offer?

22 MR. BOSLER: Your Honor, there is just too many
23 organizations out there that we don't even know about until
24 a juror says, I belong to the Retired Organization for the
25 Fraternal Brotherhood of Police Officers. I just thought

1 I'd let you know it is not in existence anymore, but I
2 belonged to it for ten years.

3 I'm not going to be able to go through every
4 specific organization that may either impact upon again
5 Mr. Vanisi's right to --

6 THE COURT: Why don't you come up with a
7 general category for organizations that you are concerned
8 about? You don't have to ask people everything about their
9 lives. If you have a general category of organizations, you
10 have something specific you are looking for, go ahead and
11 tell me. I'll certainly consider it.

12 But just saying, I'm going to ask what every
13 organization anybody ever belonged to, I'm not going to let
14 you do that. So come up with a specific and/or a general
15 that encompasses certain kinds of organizations. You wanted
16 to ask that kind of a question, I sometimes allow that
17 question, but it has to have some correlation to making an
18 intelligent decision.

19 MR. BOSLER: That is the next question on the
20 list, Your Honor.

21 THE COURT: The question 2, under activities?

22 MR. BOSLER: Yes, Your Honor.

23 THE COURT: Now, Mr. Stanton, did you want to
24 say something?

25 MR. STANTON: No, I think the Court just

1 answered the question that maybe he could ask it in a
2 fashion generally. That is my only comment.

3 THE COURT: If you come up with something
4 during the lunch hour, Mr. Bosler, feel free to tell me with
5 everyone else present, and I'll certainly consider your
6 request. Your question as to 2 you are requesting to ask is
7 fine.

8 2 under activities. You can ask a question on
9 the news media. Any questions that come out, any specific
10 questions that come out of what people have said or what
11 they said on either of their questionnaires, you certainly
12 may ask direct specific questions based on their answers.

13 However, the blanket question about what
14 stations are watched, et cetera, I'm not going to allow. I
15 will allow you to inquire as to general questions regarding
16 whether or not they are regular viewers of police drama,
17 whatever that question is, police and crime shows, the
18 realistic things. You certainly can inquire and ask them
19 about that. And if they answer affirmatively, you can
20 inquire further as necessary.

21 I have asked all the questions I think about
22 jury experience that are important. Does anyone have any
23 objection to asking if they served as foreperson previously?

24 MR. STANTON: No, Your Honor.

25 THE COURT: You may ask that question. The

1 rest I have covered.

2 MR. BOSLER: Question 4?

3 THE COURT: 3, have you ever served as a juror
4 or foreperson.

5 MR. BOSLER: You will allow that question?

6 THE COURT: Yes.

7 MR. BOSLER: The fourth question is what
8 qualities should qualify or disqualify a person from serving
9 as a juror? The Court objects to that?

10 THE COURT: Just asking every potential juror
11 that question, yes, I think that's overly burdensome and
12 could lead to confusion as well as colloquies that have
13 nothing to do with this particular case or the selection of
14 the jury.

15 I don't want to get into philosophical debates
16 with the jury. If there is some particular person who
17 responded in a manner that you think that question would be
18 appropriate to ask that particular person, I'll certainly
19 allow you to do that. But not just ask everyone because
20 they are sitting here in the box that question.

21 MR. BOSLER: Your Honor, will the Court
22 consider a question: Does anybody think there are qualities
23 that should qualify or disqualify a person, and then I can
24 follow up with those people who raised their hands as
25 opposed to asking individually?

1 THE COURT: You know, there are certain people
2 are going to say, those people who want off the jury, they
3 are going to say their qualities disqualify them.

4 MR. BOSLER: That is information we need to
5 know, Your Honor.

6 THE COURT: I mean, you haven't figured out
7 which of these people want off?

8 MR. BOSLER: Those people haven't figured out
9 how to get off the jury.

10 THE COURT: They may not have figured out
11 exactly the magic answers, but they certainly have
12 exhibited -- anyone sitting here has observed that there are
13 certain people on this panel that do not want to be here.
14 So I don't think you have to ask that question to figure out
15 who those people are.

16 MR. BOSLER: I think human nature, people still
17 may be reluctant to be forthcoming. Unless I have a
18 chance --

19 THE COURT: I don't want to get into a debate
20 about human nature. I said you can ask jury question number
21 3.

22 MR. BOSLER: You won't accept the modification
23 of number 4?

24 THE COURT: Well, I don't know where we're
25 going to go. You want to ask the question if anybody thinks

1 there is any qualities. As soon as they raised their hand,
2 you are going to go into colloquy with that person what
3 qualities may or may not exist.

4 I think it's much more instructive to you in
5 making your determination if you ask them if there is
6 something that would disqualify them. That's a direct
7 question to ask the jury panel. And then if they say there
8 is, let them tell you what it is.

9 But just going into the broad discussions about
10 philosophy with every member of this panel or even a goodly
11 number of them is not appropriate. So you can ask the
12 question if there is anything that would disqualify someone.
13 I have asked that question. But I will let you ask that
14 again.

15 MR. BOSLER: The jurors can know whether it is
16 a legal disqualification.

17 THE COURT: Do you have any qualities that you
18 think should disqualify you from service, and then see if
19 somebody gives you a response.

20 MR. BOSLER: My question is, what qualities
21 should qualify or disqualify a person to be a juror? Will
22 the Court maybe give me a suggestion how you want that
23 modified?

24 THE COURT: Does anybody currently sitting in
25 the jury box believe they possess any qualities which

1 should -- that a juror should not possess?

2 MR. BOSLER: Just the disqualify?

3 THE COURT: Correct. We had a discussion about
4 alcohol previously. You wanted to disqualify one of the
5 potential jurors because she had an issue with alcohol.
6 Mr. Stanton told me that alcohol is not involved in this
7 case. We didn't have a chance to inquire further on the
8 record.

9 MR. SPECCHIO: I think she's gone, and alcohol
10 isn't involved.

11 THE COURT: Is not? Do we really need to
12 inquire? She's still here.

13 MR. SPECCHIO: Wasn't it Mills?

14 THE COURT: Kizis. But my question is, there
15 are four questions here about alcohol, and if it is not
16 involved in this case, I don't know why we have to ask all
17 36 people about alcohol four times.

18 MR. BOSLER: Your Honor, may I have a moment?

19 THE COURT: Yes.

20 MR. BOSLER: Your Honor, in order to properly
21 respond to the Court's concern, I think we're going to have
22 to ask the Court for an ex parte confidence where we can
23 discuss what we think we can present. I don't think
24 Mr. Vanisi should be handicapped by our putting things in
25 evidence before the State had served them or things that may

1 handicap his ability to present a defense.

2 THE COURT: Mr. Stanton.

3 MR. STANTON: I have no objection to that
4 procedure if it would include that that be recorded by the
5 court reporter and under seal.

6 MR. BOSLER: Absolutely.

7 THE COURT: Okay. I'll wait deciding about the
8 alcohol questions. The second, the third and fourth pages
9 that you have provided to me are excerpts from the
10 questionnaire that I did not accept previously. Is it your
11 request to ask each juror these questions?

12 MR. BOSLER: Your Honor, I wanted to try to
13 pose it to the panel and go from there, and hopefully I
14 won't need to ask all the jurors questions. But obviously,
15 a lot of people have formed opinions. I don't think they
16 are strictly confined to the issues of race, issues of drug
17 use again.

18 I mean, if those are issues in the case, they
19 are things that need to be broached. I don't think the
20 Court has included in its canvass or the State in its
21 canvass issues as to race.

22 THE COURT: I agree with you with regard to the
23 issues of race. If you want to go into that issue, you
24 certainly are entitled to do that.

25 MR. BOSLER: It is just a difficult issue.

1 People don't want to stand up. I have had people stand up
2 in this courtroom, say they are racist. That is the one in
3 10,000.

4 THE COURT: We have had that. I don't know if
5 it's one in 10,000.

6 MR. BOSLER: I don't think that was the only
7 racist in town, Your Honor. I think it is a delicate
8 subject. People are afraid to express it, especially in the
9 context of being in front of their peers and say, My
10 daughter dated this guy, and I didn't like it because he was
11 black. Those are issues that are difficult to broach. I'm
12 trying to find a delicate way to try to get them talking.

13 THE COURT: Are we talking about the same piece
14 of paper? My third page that you gave me was: What
15 altitudes do you feel are most important in serving as a
16 juror in a criminal case? That's what I had from you. And
17 were you going back to drugs and raise those questions?

18 MR. BOSLER: That is the second page, Your
19 Honor.

20 THE COURT: So you are going to make an in
21 camera offer of proof why the drugs questions are
22 appropriate?

23 MR. BOSLER: Yes, Your Honor.

24 THE COURT: With regard to the race questions,
25 I will allow you to ask 1 through 5. 6, I think we're

1 speculating and getting into areas that aren't necessary to
2 inquire. That's the one that says: What effect do you
3 think racial or other forms of discrimination have on the
4 people who are the targets of the discrimination?

5 That blanket question to each juror I don't
6 think is necessary. Certainly if someone says, I have
7 discriminated, you can follow up: What do you think that --
8 would you think about that, if you are looking for some
9 issue about whether they think about other people. But only
10 if you have a legitimate reason to follow up on that
11 question.

12 Then I just see blanks. Constitutional rights,
13 penalty, exit questions.

14 MR. BOSLER: I guess these are akin to what the
15 District Attorney has done, Your Honor. I would inquire of
16 the Court whether the Court has had the opportunity to
17 preview the District Attorney's proposed voir dire.

18 THE COURT: No. I will do that so that we --
19 so far I was ready to sustain any objections that you might
20 make. I don't know how much more Mr. Stanton has to go.

21 MR. STANTON: I don't have much further to go,
22 Your Honor.

23 MR. BOSLER: I guess it is a moot point then
24 now, Your Honor.

25 THE COURT: So far he hasn't asked each juror

1 any particular -- I mean, we haven't asked them those kind
2 of questions where they have to respond, every juror has to
3 respond. Do you have any questions like that, Mr. Stanton?

4 MR. STANTON: Yes, Your Honor. I'm going to
5 ask the -- individually to each juror, explain to them the
6 process, that there will be a foreperson in this case and
7 ask that if they were elected the foreperson, whether or not
8 with the appropriate facts and circumstances, whether or not
9 they could sign the verdict form and impose death against
10 Mr. Vanisi.

11 THE COURT: Anything else?

12 MR. STANTON: That is the only individual
13 question I have of each member of this panel.

14 THE COURT: And how many more areas of inquiry
15 do you have?

16 MR. STANTON: The only areas that I have at
17 this juncture are the death penalty, specifically the four
18 aggravators filed in this case, whether or not anybody has
19 any problems with those aggravators. And whether anybody, a
20 spouse, friend, co-worker or supervisor, would criticize
21 them if they returned a verdict of death. Whether they have
22 any religious, moral or conscientious objection to the death
23 penalty. And then my individual question, and that's it.

24 THE COURT: Okay. Now, with regard to the
25 question that you are going to ask on whether they would be

1 subject to any ridicule, I'd ask that you ask that in the
2 neutral form, if they returned a verdict of the death
3 penalty, or the alternative, that they did not return a
4 verdict. Ask that these questions -- jurors can kind of
5 figure out where each of you are going, but I would rather
6 we tried to ask them as neutral as possible. Any objection
7 to that general inquiry?

8 MR. SPECCHIO: I don't understand the question
9 about whether they have any trouble with the aggravators.
10 What does that mean?

11 THE COURT: Mr. Stanton, what are you going to
12 ask there?

13 MR. STANTON: Well, the aggravators filed in
14 this case are four in number. And I'm going to ask that if
15 any of the members of this panel believe that any of those
16 aggravators should not be or could not -- or disagree with
17 the fact that there are aggravators in this case.

18 THE COURT: Are you objecting to that question?

19 MR. SPECCHIO: They have no idea what any of
20 that is all about, do they? I mean, that's a blind-sided
21 question.

22 THE COURT: Tell me if you object.

23 MR. SPECCHIO: I object.

24 THE COURT: Sustain that objection.

25 MR. SPECCHIO: If you were going to talk about

1 mitigators and aggravators.

2 THE COURT: The weighing process.

3 MR. SPECCHIO: Right.

4 THE COURT: Which he already has.

5 MR. SPECCHIO: I have no problem.

6 THE COURT: I do. I want to be real careful.
7 I want to use this instruction we have given the jury. I
8 really don't want to get into Mr. Stanton and Mr. Bosler
9 instructing the jury and then me having to interrupt, and
10 we're going to get really confused.

11 I think we have given the instruction. We'll
12 stick with that, and I'd like us to move on. With regard to
13 asking them, determine whether those should be aggravators,
14 I'm going to deny that request. Now, we have this page that
15 has the excerpts from the jury questionnaire, Mr. Bosler.
16 What did you want to do with these?

17 MR. BOSLER: Your Honor, I believe some of them
18 are repetitive, but general thoughts on criminal justice
19 process. Those aren't things that have been asked by either
20 the Court or by the State. Their opinions as to death
21 versus life without something that bears upon their ability
22 to impose a sentence in this case. I'm going to have to --
23 I just threw this in so I could glance at it for ideas, but
24 this is the section where I talk about penalty on page 2 of
25 my typewritten form. I think they are all relevant

1 questions. I don't want to ask them individually. I want
2 to try to ask it as a group and get some people talking
3 about it in that regard.

4 But each of those questions that you see on
5 those pages is something that bears upon the jurors's
6 ability to not only decide this case in the trial but to
7 impose a penalty, and ultimately the answer to those
8 questions are going to bear upon Mr. Vanisi's ability to
9 intelligently exercise his peremptory challenges.

10 THE COURT: I have numbered your pages 1, 2, 3
11 and 4. The clerk will call them as an exhibit. They will
12 be placed in the file just for purposes of the record.

13 MR. BOSLER: Thank you, Your Honor.

14 THE COURT: And with regard to page 3, it
15 begins with: What attitudes do you feel are most important
16 in serving as a juror in a criminal case? I don't see any
17 of those questions on that page that need to be asked again.
18 They have either been covered in the specific questionnaire
19 that we gave the jurors or in the general questions of the
20 Court.

21 With regard to the page 4, which begins with,
22 Because one of the possible sentences, that information,
23 that whole paragraph I don't think we need to go into. Plus
24 we have, What purposes do you think the death penalty
25 serves? I'm not going to allow that question of every

1 juror.

2 In what types of cases, offenses do you think
3 the death penalty should be imposed? I'm not going to let
4 you do that. Because then I'm going to have to get into the
5 whole issue of the legislation and aggravating.

6 I think what's important here -- I'm making my
7 ruling. You made your offer, Mr. Bosler.

8 MR. BOSLER: I need to still add something to
9 the record, Your Honor.

10 THE COURT: Well, why don't you then make it in
11 writing and we'll get it at 1:00, and then I'll just rule on
12 whatever you give me in writing. I'm not going to keep the
13 court reporter here while we debate it. Go ahead and tell
14 me why you need any specific question as to page 4, just a
15 one-line sentence or whatever you think is important as to
16 those questions, give it to me before the 1:00 o'clock
17 hearing, I'll make my ruling, and then we'll move on. So
18 you can have an opportunity to complete your record.

19 MR. BOSLER: Is the Court going to give me the
20 opportunity to eat, breaks between lunch then if I have to
21 be back at 1:00? I don't have an opportunity to eat before
22 I present my voir dire. I think I should get a break so I
23 can be fresh.

24 THE COURT: I don't know what you want me to
25 do, Mr. Bosler. Do you want me to get you a sandwich, or

1 what do you need?

2 MR. BOSLER: Your Honor, I can make a short
3 record as to why I think these questions are important.

4 THE COURT: Mr. Nelson will be back here at
5 1:00 o'clock, and he's going to have to be working on this
6 case all afternoon. His fingers have worn out. So I'm
7 telling you, you can make it in writing.

8 If you need food or whatever you need, we're
9 going to take a very short recess, because the court clerk
10 and myself will be in court all during the lunch hour on
11 another case. We'll be glad to get you whatever you need.

12 It doesn't have to be long. Just tell me
13 just -- Mr. Gregory is here. I'm sure he will be glad to
14 type it out for you while you eat your sandwich. But this
15 has to be a priority, this case. If you need a break --

16 MR. GREGORY: Your Honor --

17 THE COURT: Mr. Gregory, sit down, please. Sit
18 down, Mr. Gregory. It is Mr. Bosler's motion. He argues
19 it.

20 Mr. Bosler, if you want to take a break before
21 you begin your voir dire, when Mr. Stanton is through, I'll
22 be glad to take that break for you so you can collect your
23 thoughts. Ask me any more questions you have this afternoon
24 before you begin your voir dire. So I won't make you go
25 straight in cold. If that helps you. Or if you want to

1 make a record later this afternoon, you can certainly do
2 that verbally. But you really need to get your thoughts
3 together and decide what you want to do; okay?

4 MR. BOSLER: I prefer to make a verbal record,
5 Your Honor.

6 THE COURT: I think the State is entitled and
7 I'm entitled to see what you want. It is kind of hard to
8 make these decisions if all you do is verbally request
9 stuff.

10 MR. BOSLER: Your Honor, I wasn't given a copy
11 of their questions, nor do I suppose they were given a copy
12 of mine. I'm the only person who has had to discuss in
13 front of the Court.

14 THE COURT: Mr. Stanton did, and I denied one
15 of his basic questions. I'm sure he's not happy about it.

16 MR. STANTON: There is no other objection that
17 he's made other than the one form of the question that we
18 had a side-bar, and he just stated, I don't have his
19 questions, never seen them before. So you are reading off
20 documents that the State knows nothing about. So I don't
21 want the record to reflect that it is some sort of an unfair
22 playing field.

23 THE COURT: We're in recess. See you back at
24 1:00 o'clock.

25 (Recess taken at 12:25 p.m.)

1 RENO, NEVADA, TUESDAY, JANUARY 12, 1999, 1:12 P.M.

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3
4 (Whereupon, the following proceedings were held
5 in open court, in the presence of the jury
6 panel.)

7 THE COURT: Clerk will call the roll.

8 (Roll call of jury panel conducted, and all
9 were present.)

10 THE CLERK: Rebeka A. Hilliary?

11 THE COURT: She was excused. Rhonda D.

12 Pembroke.

13 THE COURT: She's been released.

14 At this time based upon the hearings that we
15 heard when you all weren't here, I'm going to excuse Miss
16 Mueller, and I'm also going to excuse Mr. Rumbaugh.

17 (Jurors Mueller and Rumbaugh were excused from
18 the courtroom.)

19 THE COURT: The clerk will call two more names.

20 THE CLERK: Shelby A. Denton.

21 THE COURT: Yes, Miss Denton will take the
22 place of Miss Mueller.

23 THE CLERK: Julie C. Springer.

24 THE COURT: Go ahead and review those witness
25 lists, please. Miss Denton, Miss Springer, have you had an
opportunity to review that list of potential witnesses?

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1 A PROSPECTIVE JUROR: Yes.

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Do you know anyone or are you
4 related to anyone on that list?

5 A PROSPECTIVE JUROR: Steve Sauter, I know his
6 wife, Debbie, just by acquaintances. And that's it.

7 THE COURT: Anything about that association
8 with his wife that would cause you difficulty serving as a
9 fair and impartial juror in this case?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Miss Springer.

12 A PROSPECTIVE JUROR: I don't know anyone.

13 THE COURT: You didn't know anybody?

14 The following questions are addressed to both
15 of you. Were you able to hear all of my questions thus far?

16 A PROSPECTIVE JUROR: Yes.

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Would you have responded to any of
19 my questions had you been sitting here in the jury box the
20 entire time?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Yes, Miss Springer.

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Tell me what you would have
25 responded to.

1 A PROSPECTIVE JUROR: Just nothing, three
2 police officers.

3 THE COURT: Who were they?

4 A PROSPECTIVE JUROR: Through our school. Jim
5 Overton, Bob Callry and Bob Stone.

6 THE COURT: You went to school with them?

7 A PROSPECTIVE JUROR: My kids go to school with
8 their kids.

9 THE COURT: Is there anything about that
10 relationship between your children and their children that
11 would cause you difficulty serving as a juror in this case?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Is there anything about the
14 relationship between your children and just going to school?
15 Are they really good friends?

16 A PROSPECTIVE JUROR: No, they were just
17 friends in the same classes.

18 THE COURT: Is there anything about that
19 acquaintance with those police officers that would cause you
20 difficulty determining credibility of witnesses?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Is there any other -- are there any
23 other questions that I asked this morning that you would
24 have wanted to respond to if you were here in the jury box
25 the whole time?

1 A PROSPECTIVE JUROR: Just that I did form an
2 opinion from last year when it all happened.

3 THE COURT: You formed an opinion based on the
4 media accounts?

5 A PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: As you know, I asked last -- a
7 couple of days ago I guess at this point, yesterday, about
8 setting aside those preconceived ideas. Are you able to do
9 that?

10 A PROSPECTIVE JUROR: Yes, I am.

11 THE COURT: Do you understand my question with
12 regard to the potential consideration for penalty in this
13 case?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Do you understand that there is
16 that possibility that that could come about depending on the
17 circumstances?

18 A PROSPECTIVE JUROR: Yes, I did.

19 THE COURT: Do you believe that you would
20 always vote for the death penalty no matter what the Court's
21 instructions or the law is?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Would you feel compelled to always
24 vote against the death penalty no matter what the Court's
25 instructions or the law was?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Do either of you, were either --
3 were you both able to hear Mr. Stanton's questions up to
4 this point?

5 A PROSPECTIVE JUROR: Yes.

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Would you have responded to any of
8 his questions affirmatively?

9 A PROSPECTIVE JUROR: No.

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Stanton, you may continue with
12 your inquiry.

13 MR. STANTON: Thank you.

14 Mr. Hinxman, I know you are the acting
15 director. Based upon the time commitments that you heard,
16 is there any problem with your operation slowing down or
17 shutting down during your service as a juror in this case?

18 A PROSPECTIVE JUROR: I don't think it will
19 shut down. But it will -- I'm sure it will affect our
20 operation.

21 MR. STANTON: Something that your office can't
22 adjust to accommodate?

23 A PROSPECTIVE JUROR: No, they can accommodate.

24 MR. STANTON: Miss Imasaki, are you now in the
25 licensing care division?

1 A PROSPECTIVE JUROR: Yes, I am.

2 MR. STANTON: The next series of questions I
3 would like to address to the entire panel are questions
4 specifically about the death penalty. First question I'd
5 like to ask about that is if there is any member of the
6 prospective panel that would have any religious, moral or
7 conscientious objection to imposing the death penalty in
8 this case.

9 THE PROSPECTIVE JURORS: No.

10 THE COURT: Anybody answer yes to that
11 question?

12 Is there anybody here who would have a problem
13 based upon the dynamics that occurs at work with either a
14 friend, a co-worker or supervisor, about the verdict that
15 they would render in this case, something that would affect
16 their ability to freely and impartially and fairly
17 deliberate in this case?

18 THE PROSPECTIVE JURORS: No.

19 MR. STANTON: Anybody say yes to that question?

20 My final question and the question I will ask
21 each of you individually deals with the specific aspect of
22 the death penalty. One of the things that occurs with a
23 jury when they retire to deliberate is to pick someone who
24 is a foreperson. How that is done, who that is, is entirely
25 up to the jury, and there is no instructions or otherwise

1 directive to you. So at this juncture, neither you nor any
2 of us know who is going to be the foreperson.

3 My question that I want to pose to each of you
4 is as follows: If you were elected as the foreperson of
5 this jury, and under the facts that are presented to you in
6 this courtroom under oath, based upon the law that Judge
7 Steinheimer instructs you, if you find that the facts and
8 the law support it, could you -- and I'll start with you,
9 Miss Denton -- affix your name to the verdict form putting
10 that man to death?

11 A PROSPECTIVE JUROR: Yes, I believe so.

12 MR. STANTON: Miss Guiler?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: Mr. Sotero?

15 A PROSPECTIVE JUROR: Yes.

16 MR. STANTON: Mr. Adamson?

17 A PROSPECTIVE JUROR: Yes.

18 MR. STANTON: Miss Springer?

19 A PROSPECTIVE JUROR: Yes.

20 MR. STANTON: Mr. Hinxman?

21 A PROSPECTIVE JUROR: Yes.

22 MR. STANTON: Miss Kominek?

23 A PROSPECTIVE JUROR: Yes.

24 MR. STANTON: Mr. Lafond?

25 A PROSPECTIVE JUROR: Yes.

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TQALLS01173

1 MR. STANTON: Mr. O'Daye?
2 A PROSPECTIVE JUROR: Yes.
3 MR. STANTON: Mr. Barger?
4 A PROSPECTIVE JUROR: Yes.
5 MR. STANTON: Mr. Stephenson?
6 A PROSPECTIVE JUROR: Yes.
7 MR. STANTON: Mr. Berg?
8 A PROSPECTIVE JUROR: Yes.
9 MR. STANTON: Mr. King?
10 A PROSPECTIVE JUROR: Yes.
11 MR. STANTON: Mr. Gerbatz?
12 A PROSPECTIVE JUROR: Yes.
13 MR. STANTON: Mr. Damoth?
14 A PROSPECTIVE JUROR: Yes.
15 MR. STANTON: Mr. Sheets?
16 A PROSPECTIVE JUROR: Yes.
17 MR. STANTON: Mr. Decker?
18 A PROSPECTIVE JUROR: Yes.
19 MR. STANTON: Miss Arlitz?
20 MR. STANTON: Yes.
21 MR. STANTON: Miss Lyman?
22 A PROSPECTIVE JUROR: Yes.
23 MR. STANTON: Miss Viernes?
24 MR. STANTON: Yes.
25 MR. STANTON: Mr. McCargar?

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1 THE COURT: No, it doesn't. Where did you read
2 that?

3 MR. GREGORY: I think to accommodate the
4 reporters it is.

5 THE COURT: No.

6 MR. GREGORY: Well, your rule last week said
7 10:00 o'clock.

8 THE COURT: I want to get a jury. Courts
9 normally start at 10:00, but we got to spend a little time
10 in the morning. Do you have a problem?

11 MR. GAMMICK: While I'm here, we have people
12 subpoenaed for penalty phase, and so does defense, that are
13 being told cannot sit in the guilt phase of the trial, that
14 involves familial members for both sides. So we would
15 like -- we're both ready to waive any kind of a problem.

16 THE COURT: I think the reason that anybody was
17 excluded today was that we said we would find seats for the
18 jurors first, and anybody who wanted to come in couldn't
19 come in unless there was a seat. If there was a seat, they
20 could come in. You thought they were being excluded?

21 MR. GAMMICK: The bailiff was under the
22 impression if they were subpoenaed at all for the penalty
23 phase.

24 THE COURT: You both stipulate people who are
25 here for the penalty phase can -- as far as I know, have you

1 all instituted the rule of exclusion?

2 MR. SPECCHIO: Not yet. I usually do it after
3 the jury is selected.

4 THE COURT: Are you going to?

5 MR. SPECCHIO: Sure. We will. And I don't
6 have any problem with this. I just don't want
7 Mrs. Sullivan, who he is talking about, to let out a scream
8 or a screech or where somebody talks about doing violent
9 things to her dead husband or showing pictures or any of
10 that kind of stuff.

11 MR. GAMMICK: We have advised her on a couple
12 of occasions if she feels she is going to have any kind of
13 emotional difficulty, to leave the courtroom, and she has
14 also indicated a preference not to be here for some of the
15 testimony. So we don't expect any problems, and we'll talk
16 to her about that.

17 THE COURT: Why don't you all think about it.
18 Let me get rid of the jury, and while Mr. Vanisi is still
19 here, we will do the rule of exclusion and decide who can
20 come and go, who is subpoenaed.

21 MR. GAMMICK: I just want to bring the issue
22 up.

23 MR. GREGORY: We have two more problems. First
24 of all, getting Vanisi in the courtroom if you get these
25 jurors back in 9:30.

1 Secondly, I believe the Supreme Court required,
2 since they require 24-hour transcripts, that there are set
3 times to run these capital cases.

4 MR. STANTON: I don't remember.

5 THE COURT: I'll double check. If we can't
6 start before 10:00, we won't, but I don't remember anything
7 in the rule that requires that. We are starting later than
8 10:00 o'clock, by the way, on Wednesday. We're starting at
9 11:00. One of counsel has a doctor's appointment. So we're
10 going to go ahead and start then.

11 (Whereupon, the following proceedings were held
12 in open court.)

13 THE COURT: All right. As I was saying, you
14 will all come back at 9:30 in the morning. When you come
15 back, you will report directly to this courtroom. The
16 bailiff will assist you in finding your proper seat. Those
17 of you seated outside the rail can just find a chair, and as
18 you can see, you all will have a chair. We have made some
19 improvement from this morning.

20 Those of you seated here in the jury box look
21 at where you are seated, look at who you are sitting next to
22 and find your chair tomorrow morning. Have a seat. The
23 bailiff will check on you. I'll come in as soon as you are
24 all here and we'll start, we'll continue this process. But
25 we will call roll.

1 If when we call roll everybody isn't here,
2 we'll have to stop and wait until everyone gets here. We
3 can't do it with half the people here, and you have to
4 continue to keep track of the questions that you would
5 respond to.

6 So as you know, we're going -- it's important
7 that we don't have to repeat everything if you keep close
8 tabs to what you want to respond to if you are called to
9 replace someone. As those of you seated behind the rail
10 have seen today, it happens, and there may be more
11 replacements tomorrow. So please be here on time, and ready
12 to take note of what's happening.

13 Those of you in the jury box, just be back
14 here, and you will be responding to me as the questions are
15 asked.

16 Now, the bailiff will be collecting -- before
17 you leave the courtroom, the bailiff will be collecting your
18 pencils from you that he's given you. We're on a tight
19 budget here in the county. And we want to be able to give
20 them back to you tomorrow. So please be sure to follow the
21 instructions of the bailiff.

22 In addition, I'd ask that counsel remain until
23 the whole jury panel leaves because I want to go back on the
24 record after the jury has gone and discuss some of the
25 things we weren't able to quite do. So just wait for a few

1 minutes while everyone clears out.

2 Miss Guiler.

3 A PROSPECTIVE JUROR: Are we supposed to wear
4 these?

5 THE COURT: Wear your badges on your clothing
6 tomorrow morning when you come in so that no one
7 accidentally talks about the case in front of you.

8 Remember, just come in, get on the elevator,
9 and come directly to the department. Have a seat.

10 Now during this break you are all, because of
11 the oath that you took, obligated to fulfill the
12 requirements of that oath. Among those requirements is that
13 you must follow my directions, my lawful directions. And my
14 lawful directions to you are that you may not view any news
15 media accounts regarding this case. I do not want you to
16 come back in the morning having watched more news accounts
17 or read the newspaper. So do not watch the local news. Do
18 not listen to the radio and do not view the newspaper unless
19 someone sanitizes it for you.

20 In addition, you may not form or express any
21 opinion to somebody else about this case. You may not allow
22 anyone to attempt to influence you about it and don't be
23 talking about it among yourselves or with anyone else.

24 When you go home and your family members ask
25 you what was your day like, you can tell them how hot it was

1 in here, but I don't want you to talk about the questions
2 that were asked or your responses or your thoughts or what
3 anybody else's responses are. I want to find and get a jury
4 based on your thoughts and not your family members'
5 thoughts.

6 Does everyone understand these admonitions?

7 THE PROSPECTIVE JURORS: Yes.

8 THE COURT: Yes, Mr. LaFond.

9 A PROSPECTIVE JUROR: Yes. Can we get our
10 parking validated before we come up here?

11 THE COURT: Before you come up here? When do
12 you want them to validate?

13 MS. LOPSHIRE: It would probably be easier on
14 your lunch break. We will have a full house again in the
15 morning.

16 THE COURT: Can you come up here and validate
17 for them here?

18 MS. LOPSHIRE: Yes.

19 THE COURT: Just park, bring your tickets with
20 you, and you won't have to go down there to get validated.
21 Her staff will be up here and validating your tickets up
22 here.

23 Any other questions before we recess?

24 Please, we are going to hold a little court
25 after you all leave, so I would ask that you leave as

1 quickly as you can when I call my recess.

2 See you tomorrow morning. Court is in recess.

3 (Recess taken at 5:15 p.m.)

RENO, NEVADA, MONDAY, JANUARY 11, 1998, 5:20 P.M.

-o0o-

(Whereupon, the following proceedings were held in open court, outside the presence of the jury panel.)

THE COURT: Mr. Gammick, do you want to go ahead? Were you all able to stipulate to anything?

MR. GAMMICK: I believe, Your Honor, I believe Mr. Specchio is going to request the rule of exclusion, which I'll leave that up to him.

MR. SPECCHIO: We will, Your Honor.

MR. GAMMICK: And then based on that, Your Honor, both Mr. Specchio and I have subpoenaed people for the penalty phase who will not be witnesses during the guilt phase. And we both agreed I believe that we have no objection to those witnesses that are subpoenaed strictly for the penalty phase can come in for the guilt phase if they wish to watch a portion or all of the trial.

THE COURT: Specifically who are those people, Mr. Gammick? We don't have -- I don't think on the witness list we're providing to the jurors has -- I don't think that list has the witnesses for penalty phase on it, does it?

MR. STANTON: Some.

MR. GAMMICK: Yes, some of them are on there, Your Honor.

1 THE COURT: I don't think the defense has
2 provided us with any names for penalty phase.

3 MR. SPECCHIO: We're not sure yet.

4 THE COURT: So who are we talking about?

5 MR. GAMMICK: To date, my understanding, that
6 means today, because Court is aware things are subject to
7 change, but we're talking about Carolyn Sullivan and Officer
8 Steve Sauter. And I believe the defense has the wife of the
9 defendant, his aunt, his mother, that are expected to appear
10 at penalty phase but won't be in the guilt phase.

11 MR. SPECCHIO: And his sister.

12 THE COURT: What are those names for the
13 bailiff?

14 MR. SPECCHIO: That would be Sela, S-E-L-A,
15 Vanisi; Deanne Vanisi. I'm going to have to spell this one,
16 Your Honor. T-O-E-U-M-U, Toeumu Tafuna.

17 THE COURT: And the last name is spelled how?

18 MR. SPECCHIO: T-A-F-U-N-A.

19 THE COURT: So those are the four individuals
20 for the defense?

21 MR. SPECCHIO: Actually three, Your Honor. It
22 is his aunt. Miss Tafuna is the aunt. Sela Vanisi is his
23 sister. Deanne Vanisi is his wife.

24 May I have the Court's indulgence?

25 THE COURT: Yes.

1 MR. SPECCHIO: That would be all the -- at
2 least at this point, Your Honor.

3 THE COURT: And you have the two, Mr. Gammick?

4 MR. GAMMICK: We have those two at this time.
5 There may also be Meghan Sullivan, who is the daughter of
6 George and Carolyn Sullivan, and then it's unknown at this
7 time if George Sullivan's sister will be here during the
8 guilt phase or not. But those are specific people we're
9 looking at that will not be called at guilt phase.

10 THE COURT: What is her name?

11 MR. STANTON: Susan Millard, M-I-L-L-A-R-D.

12 THE COURT: Now, Mr. Specchio, are you
13 stipulating that these people can be allowed in during the
14 guilt phase in lieu -- in light of the motion for the rule
15 of exclusion?

16 MR. SPECCHIO: Yes, Your Honor. And I do have
17 the cautionary portion of that that we're not going to have
18 outbursts from the family or the wife if photographs are
19 shown or statements are made. There is going to be a lot of
20 talk that is going to be upsetting to these people.

21 THE COURT: Okay. What I intend to do is I'll
22 grant the motion for exclusion with the caveat that those
23 individuals that you have each named will be allowed in.

24 Before you leave tonight, if you will confirm
25 with the bailiff that he has their names correctly so he can

1 continue. Either he or Deputy Uptain, one of them will have
2 to be working with this list. So please be sure that you
3 confirm with him those names.

4 Those individuals will be allowed during the
5 guilt phase as long as all of the people, from no matter
6 which side, that they can conduct themselves with the proper
7 decorum that is required by people in the courtroom.

8 If there is any display of emotion, outward
9 display of emotion that distracts the Court or the jury,
10 they will be excluded. And I advise counsel that it is your
11 responsibility to, one, advise your witnesses of what the
12 rule of exclusion is; two, see that everyone that you each
13 are presenting understand the rule and abide by the rules;
14 and three, that you make sure that those familial members
15 that you have in attendance at the trial abide by the proper
16 rules and you caution them.

17 I know both of you will do that or have done
18 that; is that correct?

19 MR. GAMMICK: Well, Your Honor, I only have one
20 problem with what the Court has just ordered. I don't see
21 how we are in a position to make them abide by the rule. We
22 have advised them that if they are going to get emotional or
23 there is a problem, they need to leave the courtroom.

24 THE COURT: Abide by the rule of exclusion,
25 what I mean. I want to make sure that you understand that

1 it's your responsibility to see that your two witnesses are
2 not talking to each other in front of your investigator, any
3 of those problems.

4 MR. GAMMICK: We have definitely advised them
5 of that, Your Honor. We don't expect there will be any
6 difficulties.

7 THE COURT: Thank you. Mr. Specchio, you will
8 advise Mr. Vanisi's family the same thing?

9 MR. SPECCHIO: Yes, Your Honor.

10 THE COURT: All right. Anything further for
11 tonight?

12 MR. GAMMICK: Your Honor, just one other thing
13 just to make sure the record is clear. We are also invoking
14 the rule of exclusion during the guilt phase for any defense
15 witnesses that may be brought in during the guilt phase.
16 That is with the understanding of the exceptions we have
17 talked about.

18 THE COURT: I understood that to be reciprocal.
19 Anything further?

20 We start at 9:30 tomorrow. We will try to
21 go -- I really will probably -- it depends on how much
22 moving around of people we have. We might go straight
23 through until noon or quarter til.

24 MR. STANTON: We had the jury report up to the
25 room. I'm sure the Court has made arrangements relative to

1 bringing Mr. Vanisi in. That was the one thing that caused
2 the State some pause relative to that issue.

3 THE COURT: I have the same problem. We will
4 be sure that Mr. Vanisi is here well in advance of the jury
5 coming in and/or Mr. Vanisi will be in the jury room with
6 his attorneys. I don't know exactly how they are going to
7 work it out.

8 The concern, we just don't have another place
9 for him to go.

10 MR. STANTON: I understand.

11 THE COURT: Some jury trials were continued
12 from today until tomorrow. So the Jury Commissioner has
13 full panels down there, and there is no other place to put
14 them. So I'd just as soon they were in the courtroom.

15 We might take the roll without Mr. Vanisi's
16 presence just so we're sure everybody is here, take a quick
17 break and have you come in. We will be sure that the jury
18 panel does not get the impression that Mr. Vanisi is in
19 custody.

20 Counsel, if you would check -- counsel for
21 Mr. Vanisi -- if you all would check with the security
22 people early in the morning to see what time they want to
23 move Mr. Vanisi so you can be with him, that would probably
24 be a good idea, or you can talk to him right now.

25 MR. SPECCHIO: They have been calling us,

1 Judge, when they get him to the top of the stairs, and we
2 have been walking with him.

3 THE COURT: They might want to come as early as
4 8:30, quarter to 9:00. I don't know what time they want to
5 come over. Maybe talk to them before you leave today.

6 MR. SPECCHIO: That is fine.

7 THE COURT: Yes, Mr. Gammick.

8 MR. GAMMICK: Your Honor, not being quite
9 certain when we're going to pick a jury, I do have one
10 exhibit I do intend to use during my opening, and I believe
11 we have a stipulation as to Exhibit No. 7, which is the
12 large blowup photograph of the UNR campus.

13 THE COURT: You are going to want to move for
14 the admission of Exhibit 7?

15 MR. GAMMICK: Yes, Your Honor.

16 THE COURT: Is it for demonstrative purposes or
17 will it be utilized in the jury room?

18 MR. GAMMICK: It will be an exhibit during the
19 trial.

20 THE COURT: Mr. Specchio.

21 MR. SPECCHIO: We don't have any objection.

22 THE COURT: You stipulate to its admission?

23 MR. SPECCHIO: I don't know if it is No. 7.

24 THE COURT: Let's make sure. Clerk is nodding
25 her head.

1 MR. SPECCHIO: No problem, Your Honor.

2 MR. GAMMICK: It is the large photograph of the
3 UNR campus, Your Honor.

4 THE COURT: Exhibit 7 then is admitted upon
5 stipulation.

6 (Exhibit No. 7 admitted.)

7 THE COURT: Anything further?

8 MR. SPECCHIO: We can leave everything in the
9 courtroom, Judge?

10 THE COURT: Yes. The bailiff has made
11 arrangements. Have you talked to them, Deputy?

12 THE SHERIFF: I will.

13 THE COURT: He will find a safe home for them.
14 Court is in recess.

15 (Recess taken for day at 5:30 p.m.)
16
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25

STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter
of the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the
above-entitled Court and took stenotype notes of the
proceedings entitled herein, and thereafter transcribed the
same into typewriting as herein appears;

That the foregoing transcript is a full, true
and correct transcription of my stenotype notes of said
proceedings.

DATED: At Reno, Nevada, this 11th day of
January, 1999.

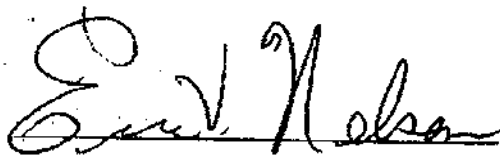

ERIC V. NELSON, CCR No. 57

EXHIBIT 160

EXHIBIT 160

1 Case No. CR98-0516

2 Dept. No. 4

3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

9 -oOo-

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 SIAOSI VANISI,)

14 Defendant.)

TRIAL
VOLUME 2

January 12, 1998

Reno, Nevada

15 APPEARANCES:

16 For the Plaintiff:

RICHARD A. GAMMICK
District Attorney
DAVID L. STANTON
and THOMAS BARB
Chief Deputies District Attorney
75 Court Street
Reno, Nevada 89520

20 For the Defendant:

MICHAEL R. SPECCHIO
Public Defender
STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

24 The Defendant:

SIAOSI VANISI

25 Reported by:

ERIC V. NELSON, CCR No. 57

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TQUALS01033

1 RENO, NEVADA, TUESDAY, JANUARY 12, 1998, 9:36 A.M.

2 -oOo-

3
4 THE COURT: The first thing that we will be
5 doing today is calling the roll. The clerk will call the
6 roll. Those present please answer here or present out loud.

7 (A roll call was conducted.)

8 THE COURT: Counsel, the Court has heard from
9 Juanita Pierce's son.

10 MR. SPECCHIO: We'll stipulate to her being
11 excused, Your Honor.

12 THE COURT: I just need to make a record. She
13 is in the hospital, and we have confirmed she is in
14 intensive care.

15 Any objection, Mr. Stanton, to her being
16 excused?

17 MR. STANTON: No.

18 MR. BOSLER: No, Your Honor.

19 THE COURT: Miss Pierce is excused. The clerk
20 will call the names of the two individuals that weren't here
21 earlier.

22 THE CLERK: Luisa Arlitz?

23 A PROSPECTIVE JUROR: Here.

24 THE CLERK: Becky J. Ehly?

25 A PROSPECTIVE JUROR: Here.

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TQUALS01034

1 THE COURT: Counsel stipulate to the presence
2 of the entire panel?

3 MR. STANTON: Yes, Your Honor.

4 MR. BOSLER: Yes, Your Honor.

5 THE COURT: Counsel, please approach.

6 (Whereupon, a bench conference was held among
7 Court and counsel as follows:)

8 THE COURT: Miss Pembroke, who was called at
9 the end of the day yesterday, she's having a very difficult
10 time. She didn't want to come to the courtroom. She is
11 crying hysterically. We calmed her down enough to get her
12 into the courtroom, but she says she's been unable to sleep
13 all night, that she's had flashbacks to some other
14 circumstance you might want to review.

15 MR. BOSLER: Do you want to talk to her
16 individually then?

17 THE COURT: I think we should. We'll put on
18 the record what she's told my staff.

19 MR. SPECCHIO: Is that the cocktail waitress?

20 THE COURT: Yes.

21 MR. BOSLER: We'd like to do that one
22 individually.

23 THE COURT: I'm not going to do it
24 individually. I'm going to bring her here so she can leave
25 right away. Do you have the questionnaire on her? Have you

1 read it?

2 MR. BOSLER: Yes.

3 THE COURT: I think she mentioned something in
4 her questionnaire. Why don't you go get your questionnaire.

5 Miss Pembroke, will you come up, please.
6 (Prospective Juror Pembroke presented at bench
conference.)

7 THE COURT: Do you want me to wait for
8 Mr. Bosler, Mr. Specchio?

9 MR. GREGORY: Yes, ma'am.

10 THE COURT: Miss Pembroke, you told my staff
11 you were having a very tough time. Would you tell the
12 lawyers what you told my staff?

13 A PROSPECTIVE JUROR: All night flashing back
14 to -- I had something happen to me in the past, and it's
15 very traumatic for me to be in here.

16 THE COURT: In the courtroom?

17 A PROSPECTIVE JUROR: Uh-huh. I didn't think
18 it was going to have this effect.

19 THE COURT: And you started to point something
20 out? What is causing you the problem?

21 A PROSPECTIVE JUROR: Just seeing him, being
22 next to him and just being in here.

23 THE COURT: Can you tell us what happened?

24 A PROSPECTIVE JUROR: I was raped.

25 THE COURT: I see that you are crying, and I

1 understand how upset you are.

2 Counsel have any objection to excusing Miss
3 Pembroke?

4 MR. BOSLER: Under the circumstances, no, Your
5 Honor.

6 MR. STANTON: No, Your Honor.

7 THE COURT: Thank you, Miss Pembroke. You are
8 excused.

9 (Prospective Juror Pembroke excused from the
10 courtroom.)

11 (Whereupon, the following proceedings were held
12 in open court, in the presence of the jury.)

13 THE COURT: The clerk will call the name of
14 another juror to replace Miss Pembroke.

15 THE CLERK: Jerome A. Moss.

16 THE COURT: Yesterday right before the break we
17 substituted many members on to the jury panel that had not
18 previously been here. Some of you indicated that you were
19 unable to hear all of my questions earlier. Therefore,
20 we're going to have to repeat the questions that I went
21 through.

22 These questions that I'm about to ask are
23 addressed to Mr. Rumbaugh, Mr. O'Dayc, Mr. Decker, Miss
24 Buckley, Miss Hilliary, Mr. Giordano, Miss Roberts,
25 Mr. Thomas, and Mr. Moss.

Can you all hear me at this time?

1 THE PROSPECTIVE JURORS: Yes.

2 THE COURT: I'd ask that you tell me if any of
3 my questions you are unable to hear, and I'll be glad to
4 repeat them.

5 Is any juror acquainted with or related to the
6 defendant in this case? If it is no, answer out loud.

7 THE PROSPECTIVE JURORS: No.

8 THE COURT: Is any juror related to or
9 acquainted with the attorneys who are involved in this case?

10 THE PROSPECTIVE JURORS: No.

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Who raised their hand? Mr. Thomas.

13 A PROSPECTIVE JUROR: I'm familiar with
14 Mr. Gammick through his association with the National Guard.

15 THE COURT: And how often do you see him?

16 A PROSPECTIVE JUROR: Well, since he became the
17 D.A., I don't see him very often at all.

18 THE COURT: Are you able to set aside your
19 prior working relationship through the Guard with him and
20 decide this case based on the merits?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Do you feel you would be biased for
23 or against his position just because of your knowledge of
24 him?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Anyone else? Yes, Mr. Decker.

2 A PROSPECTIVE JUROR: I met Mr. Gammick several
3 years ago. Fairly briefly, though.

4 THE COURT: Is there anything about that
5 earlier meeting that would cause you to be biased for or
6 against either side in this case?

7 A PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: That was all who answered.

9 Is anyone related to or acquainted with any
10 member of the District Attorney's Office staff?

11 THE PROSPECTIVE JURORS: No.

12 THE COURT: Is anyone acquainted with or
13 related to any member of Mr. Specchio's staff?

14 THE PROSPECTIVE JURORS: No.

15 THE COURT: Is any juror related to or
16 acquainted with any law enforcement officers?

17 THE PROSPECTIVE JURORS: No.

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: We have Mr. Decker.

20 A PROSPECTIVE JUROR: I have several friends
21 that are on the Sparks police force.

22 THE COURT: Can you give us their names?

23 A PROSPECTIVE JUROR: Morrow is one of them.
24 Harris. Litke, I think he's retired now.

25 Also I'm acquainted with one of the court

1 bailiffs. His last name is Ingerham. I think that's all.

2 THE COURT: Would you feel any pressure to
3 decide this case one way or another because of your
4 relationship with law enforcement?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Do you feel you would give law
7 enforcement officers any special treatment as witnesses
8 because of your relationship with law enforcement officers?

9 A PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: There was someone else. Was it
11 you, Mr. Thomas?

12 A PROSPECTIVE JUROR: Yes. I'm a member of the
13 Sheriff's Search and Rescue Air Squadron. Through that
14 affiliation I'm familiar with several deputies.

15 THE COURT: Anyone involved in this case?

16 A PROSPECTIVE JUROR: Not that I know of.

17 THE COURT: And would you have any bias or
18 prejudice towards either side because of your association or
19 your membership in the Sheriff's Air Squadron?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Do you feel that you would have to
22 give any special preference to law enforcement witnesses if
23 they testified?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Miss Roberts.

1 A PROSPECTIVE JUROR: I was married to an L.A.
2 Police Department officer for 14 years. I was an L.A.
3 County Sheriff for a short period of time. I worked at the
4 South Bay Muni Court and affiliated with many officers on a
5 day-by-day basis.

6 THE COURT: How long ago has that been?

7 A PROSPECTIVE JUROR: Twenty years.

8 THE COURT: Is there anything about your prior
9 involvement in the court or in law enforcement that would
10 cause you difficulty serving in this case?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Would you feel you had to give any
13 special preference to law enforcement witnesses in this
14 case?

15 A PROSPECTIVE JUROR: I might take their word
16 over someone else's word.

17 THE COURT: If you had two conflicting stories,
18 is that what you are talking about?

19 A PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Would you be able to assess their
21 presentation in the courtroom in making that determination?

22 A PROSPECTIVE JUROR: I believe I would, yes.

23 THE COURT: Would you always believe a police
24 officer, or you would look at the way they presented
25 themselves and the basis for their opinion?

1 A PROSPECTIVE JUROR: I think I'd look at the
2 way they presented themselves, yes.

3 THE COURT: Are you talking about it would be
4 two equal circumstances, you might go with the police
5 officer?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Anybody else raise their hands?
8 Yes, sir.

9 A PROSPECTIVE JUROR: Yes. I forgot to mention
10 yesterday, I forgot all about it, but I was a witness to a
11 guy that beat up somebody in the casino, and he had bit my
12 hand when I took him off, and he went to court. He only got
13 six months, and there was four counts against him, four
14 officers.

15 THE COURT: That was a misdemeanor case?

16 A PROSPECTIVE JUROR: He got six months. I
17 forget what it was now.

18 THE COURT: In the Justice Court?

19 A PROSPECTIVE JUROR: Yeah, it was Sparks.

20 THE COURT: Thank you, Mr. Lafond. Is there
21 anything about that --

22 A PROSPECTIVE JUROR: I missed that question
23 yesterday.

24 THE COURT: Okay. That's good. Is there
25 anything about that that would cause you a problem in this

1 case?

2 A PROSPECTIVE JUROR: I don't think so. Beings
3 the guy only got six months, it kind of bothered me. And I
4 had to sweat through HIV and everything else.

5 THE COURT: Right. The question would be
6 whether or not you would be substituting your experience
7 into this case and deciding the case based on your own
8 experience.

9 A PROSPECTIVE JUROR: I doubt it.

10 THE COURT: Anyone else?

11 MR. STANTON: Your Honor, before we proceed to
12 the next question, Mr. Thomas indicated he was a member of
13 Search and Rescue. I'd just like to indicate to the Court
14 and counsel that on our witness list there is a gentleman by
15 the name of Fernando Moreira. He is a member of Search and
16 Rescue.

17 THE COURT: Do you have a witness list,
18 Mr. Thomas?

19 A PROSPECTIVE JUROR: I saw one yesterday, and
20 there was only one name that I recognized, and it wasn't
21 that one.

22 THE COURT: All right. Now that Mr. Stanton
23 has called it to your attention, are you familiar with that
24 person?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: We ask the Court to inquire about
2 the jurors, new jurors were able to see the witness list or
3 whether the old jurors maybe walked out with them?

4 THE COURT: The bailiff has been watching that,
5 and I'll get to that question. Thank you, Mr. Bosler.

6 This question is to all of you even though --
7 all the new jurors, even though you may not have been
8 acquainted with or friends with law enforcement.

9 Do any of you believe that if a law enforcement
10 officer were to testify in this case, that you would tend to
11 give more or less weight to that testimony simply because
12 the person testifying is a law enforcement officer?

13 A PROSPECTIVE JUROR: I would.

14 A PROSPECTIVE JUROR: I would, too.

15 THE COURT: Mr. Rumbaugh.

16 A PROSPECTIVE JUROR: Rumbaugh.

17 THE COURT: You would give special
18 consideration to that testimony?

19 A PROSPECTIVE JUROR: I would.

20 THE COURT: And exactly what do you mean?

21 A PROSPECTIVE JUROR: I just favor them, their
22 opinion, what have you. They have got the evidence and
23 everything, and it is just kind of natural.

24 THE COURT: Are you telling me that you would
25 take a police officer's testimony without analyzing what

1 they said or how they got the evidence? Would you just take
2 it at face value and you'd never think about it? Or would
3 you be able to evaluate that testimony like every other
4 witness?

5 A PROSPECTIVE JUROR: Usually in all the
6 conversations that will work up to it, you just form an
7 opinion, both sides.

8 THE COURT: What your role here will be is to
9 sit and listen to the testimony. So you won't really get a
10 conversation. But you will hear from the witnesses.

11 Now my question is: Would you automatically
12 believe everything a police officer says on the witness
13 stand, no matter how they got that information, no matter
14 how they present themselves, or would you be able to
15 evaluate their testimony like every other witness and say,
16 Oh, I like what he is saying or I don't like what he is
17 saying? Which way is it?

18 MR. BOSLER: Your Honor, may we approach?

19 THE COURT: When the witness -- when the juror
20 answers my question.

21 MR. BOSLER: Yes, Your Honor.

22 A PROSPECTIVE JUROR: Well, it's kind of hard,
23 you know. I think I'd favor the police.

24 THE COURT: Okay. Now, I'd rather explore this
25 area with Mr. Rumbaugh before I talk to you at side bar,

1 Mr. Bosler. Is that okay?

2 MR. BOSLER: I think it is necessary to have a
3 side bar now.

4 THE COURT: Well, I'm going to let Mr. Stanton
5 ask some questions.

6 Go ahead, Mr. Stanton.

7 MR. STANTON: Mr. Rumbaugh, one of the
8 functions of a juror, as the judge said, is to listen to
9 what a witness says, their demeanor and the content of what
10 they say. If a police officer were to testify in this case
11 about something, are you capable of listening to it and say,
12 Well, I don't think he did his job very good, and therefore,
13 I'm not going to believe his testimony?

14 A PROSPECTIVE JUROR: That's possible. But I
15 can't refer to this case.

16 MR. STANTON: I understand. There is no
17 evidence that's been presented to you yet. I'm just saying
18 that the question here is whether or not just because
19 somebody is a police officer, that you are going to
20 automatically believe what they say. I guess it's, you
21 know, not an unusual opinion, hopefully, that people --

22 A PROSPECTIVE JUROR: Aren't all perfect.

23 MR. STANTON: You are able to assess a police
24 officer based upon their demeanor and the content of their
25 job, if they are not accurate, you can evaluate that?

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1 A PROSPECTIVE JUROR: I think so.

2 MR. STANTON: Thank you.

3 THE COURT: Mr. Bosler.

4 MR. BOSLER: Mr. Rumbaugh, I don't want to try
5 to put words in your mouth. It's my understanding that if
6 you had two people come before you, both witnesses to the
7 same thing, and a police officer said one thing and the
8 other person who wasn't a police officer said something
9 different, you would side with the police officer because he
10 was a police officer?

11 A PROSPECTIVE JUROR: If they were absolute
12 strangers, then you got to make your own judgment then. But
13 like you read in the papers, for months and months, and it's
14 all set in your mind.

15 MR. BOSLER: If one -- going back to my
16 example, if one of those persons was a police officer, would
17 you give that person, his testimony, more weight, tend to
18 believe him more because he's just a police officer and
19 really no other reason?

20 A PROSPECTIVE JUROR: If I never heard of
21 either one of them and I'm off the street, you make your own
22 decision from that.

23 MR. BOSLER: Go ahead. I'm sorry.

24 A PROSPECTIVE JUROR: Like it is, I know too
25 much over the years, you know, and the months, in this case

1 it's shot down. You know what I mean?

2 MR. BOSLER: I think I do. I thank you for
3 your honesty.

4 May we approach, Your Honor?

5 THE COURT: Yes. I want to encourage the
6 audience to try to keep your voices down. Remember, this
7 isn't a spectator sport here.

8 (Whereupon, a bench conference was held among
9 Court and counsel as follows:)

10 MR. BOSLER: Your Honor, at this time we're
11 going to make another objection. I think that the nature of
12 your questions, they are leading questions. You are going
13 to give an officer the same treatment as you give another
14 witness. And leading questions --

15 THE COURT: Your objection is denied.

16 MR. BOSLER: I need to make a complete record.

17 THE COURT: It is the same objection you said.

18 MR. BOSLER: Well, I think when you have people
19 who express opinions and you lead them to disabuse those
20 opinions, then you are essentially taking an -- almost a
21 position the same as the State.

22 THE COURT: I'm not hearing anything new,
23 Mr. Bosler. Do you have something new?

24 MR. BOSLER: That is the same objection, Your
25 Honor.

THE COURT: Okay. I'm going to make the same

1 ruling. I'm not doing that. There is nothing different in
2 this case. In fact, in spite of the fact on this witness
3 that you are claiming that I tried to rehabilitate him, he
4 didn't rehabilitate with me at all. But with your questions
5 he did.

6 We just happened -- yesterday on numerous
7 occasions, you kept on asking questions until the witness,
8 the juror finally was rehabilitated, when I was going to
9 excuse them.

10 So, Mr. Bosler, your motion is without merit.
11 All you have to do is say you have a continuing objection,
12 and unless you have something new to add, I'll continue to
13 rule on it.

14 If you have something new to add, approach and
15 we will put the new evidence on.

16 MR. BOSLER: Thank you, Your Honor.

17 (Whereupon, the following proceedings were held
18 in open court.)

18 THE COURT: Counsel, anything further?

19 MR. BOSLER: No, Your Honor. Based upon the
20 witness's -- the juror's earlier statements, we make a
21 motion to have him excused for cause.

22 THE COURT: Mr. Stanton.

23 MR. STANTON: I don't believe defense has met
24 the burden necessary for a motion for cause in this witness.
25 I think ultimately this witness has been able to say that he

1 can evaluate the witness to include a police officer like
2 any other witness. The fact that he may have initial
3 impression believing a police officer if there is testimony
4 that's in conflict with another person is not a basis for
5 cause, nor is it improper instruction of law.

6 THE COURT: The motion is denied at this time.
7 I think some of Mr. Rumbaugh's answers may require further
8 inquiry and may be a basis for dismissal later on, and I'd
9 ask you to keep a close eye on it, Mr. Bosler. I think
10 there may be another basis for making a motion.

11 We will move on with the questions from the
12 Court at this time.

13 Does anyone know anything of their own personal
14 knowledge regarding the facts of this case?

15 A PROSPECTIVE JUROR: Say that again.

16 THE COURT: Do you know anything of your own
17 personal knowledge regarding the facts of the case? Did you
18 have any contact with direct people who know about this
19 case?

20 I'm not talking about media reports. I'm
21 talking about something you know of your own personal
22 knowledge.

23 A PROSPECTIVE JUROR: Just some friends of mine
24 that had been on the campus just about after it happened.

25 THE COURT: So you did get some information

1 from people who were on the University of Nevada campus?
2 Were they employees of the campus or were they just there to
3 visit the campus?

4 A PROSPECTIVE JUROR: They were just there
5 seeing some friends.

6 THE COURT: And they told you something about
7 the events after?

8 A PROSPECTIVE JUROR: What was going on.

9 THE COURT: About after the alleged --

10 A PROSPECTIVE JUROR: The investigation going
11 on, so forth, like that.

12 THE COURT: Who were these people?

13 A PROSPECTIVE JUROR: One of them was a son of
14 a friend of mine and who had a friend on the campus. His
15 name was Ron.

16 Other than that, I don't know any of the
17 people. But we were over to the house there one evening,
18 and his boy came in and was talking, and other than that --
19 then the account started coming over the media.

20 THE COURT: Now, did you tell us about
21 everything you knew in your questionnaire when you filled it
22 out before?

23 A PROSPECTIVE JUROR: No, I don't think so. I
24 didn't realize there was a question in it.

25 THE COURT: About the news media accounts?

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1 A PROSPECTIVE JUROR: Yeah.

2 THE COURT: Is there anything that you learned
3 from this son who learned it from Ron that was different
4 than what you may have seen or heard in the news media
5 accounts?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Have any of you read any news media
8 accounts regarding this, or television?

9 A PROSPECTIVE JUROR: From the beginning to the
10 end?

11 THE COURT: Yes.

12 A PROSPECTIVE JUROR: Yes, I have read.

13 THE COURT: I have to keep track of who is
14 talking for the court reporter. So Mr. Rumbaugh has,
15 Mr. Giordano has. Miss Decker.

16 A PROSPECTIVE JUROR: Buckley.

17 THE COURT: You have. Who else was going to
18 raise their hand in answer to this question? Yes,
19 Miss Roberts, Mr. Moss and Mr. Thomas. And --

20 A PROSPECTIVE JUROR: McCargar.

21 THE COURT: I'm sorry, Mr. McCargar. Now, I
22 asked that question a little bit yesterday, too. Has anyone
23 seen or heard anything other than what you told us about on
24 your questionnaire?

25 THE PROSPECTIVE JURORS: No.

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1 THE COURT: Answer out loud, please.

2 THE PROSPECTIVE JURORS: No.

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Yes, Miss Buckley.

5 A PROSPECTIVE JUROR: Related to it. My best
6 friend was very supportive of the family, and of course, I
7 got information back from that. Plus the news and the
8 television.

9 THE COURT: So your best friend is --

10 A PROSPECTIVE JUROR: Maddie Stevens. She is
11 the wife of the transportation director.

12 THE COURT: For University of Nevada, Reno?

13 A PROSPECTIVE JUROR: Right. No, the State.
14 The State. Transportation of the State.

15 THE COURT: That is what your friend does?

16 A PROSPECTIVE JUROR: That's what her husband
17 does. But the friend that supported the family was Maddie
18 Stevens. She works on campus. I also work on campus.

19 THE COURT: Anyone else? Yes.

20 A PROSPECTIVE JUROR: My wife told me when I
21 got home last night about what she heard on the news. I
22 didn't watch it but she told me. She knew she wasn't
23 supposed to. But she likes to talk.

24 THE COURT: Well, thank you for sharing that.

25 MR. BOSLER: Could we have the juror

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1 identified?

2 THE COURT: It is Mr. McCargar. We are all
3 adults in this room, and everyone knows that you can control
4 your environment. I expect everyone to do that.

5 And I understand you had a problem, I
6 appreciate you sharing that with us.

7 But is there anyone sitting on the jury box now
8 that believes they will not be able to control their
9 environment at least in terms of this requirement that you
10 decide the case based on the evidence and not the news media
11 accounts?

12 THE PROSPECTIVE JURORS: No.

13 THE COURT: Out loud, please.

14 THE PROSPECTIVE JURORS: No.

15 THE COURT: That will be a requirement if you
16 sit on the jury.

17 Have any of you newly added to our panel formed
18 or expressed any opinion as to the guilt or innocence of the
19 defendant in this matter?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: We have Miss Buckley. You have
22 formed or expressed an opinion?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Both?

25 A PROSPECTIVE JUROR: Well, I haven't discussed

1 it, but in my own mind, I have formed an opinion. I have
2 worked on campus, and I did not know the victim personally,
3 but just to see him. I have been there 17 years.

4 THE COURT: Thank you. Miss Hilliary, you
5 raised your hand?

6 A PROSPECTIVE JUROR: I didn't.

7 THE COURT: Mr. Rumbaugh.

8 A PROSPECTIVE JUROR: I formed my opinion
9 months ago.

10 THE COURT: Have you expressed that opinion to
11 others?

12 A PROSPECTIVE JUROR: Not recently.

13 THE COURT: Mr. Giordano, did you raise your
14 hand?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: You have formed an opinion?

17 A PROSPECTIVE JUROR: Yes, I have.

18 THE COURT: Have you given that opinion to
19 anyone else?

20 A PROSPECTIVE JUROR: Yes. Through
21 conversations, yes.

22 THE COURT: Anyone else raised their hand to
23 that question?

24 THE PROSPECTIVE JURORS: (No response.)

25 THE COURT: Do any of you have anything other

1 than a passing interest in the outcome of this case?

2 THE PROSPECTIVE JURORS: No.

3 THE COURT: Do any of you entertain any bias or
4 prejudice for or against the State of Nevada?

5 THE PROSPECTIVE JURORS: No.

6 THE COURT: Any of you harbor any bias or
7 prejudice for or against the defendant?

8 THE PROSPECTIVE JURORS: No.

9 THE COURT: You all have been given a witness
10 list of the new jurors. Has anyone not seen that witness
11 list?

12 A PROSPECTIVE JUROR: Can I give mine to him?

13 THE COURT: Mr. Thomas, you saw it yesterday?
14 He has it.

15 Thank you, Mr. Moss.

16 Have all the rest of you seen it?

17 THE PROSPECTIVE JURORS: Yes.

18 THE COURT: Is there anyone on that list that
19 you are related to or acquainted with?

20 THE PROSPECTIVE JURORS: No.

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Mr. Thomas, other than who you told
23 us, one person?

24 A PROSPECTIVE JUROR: David Jenkins, who I have
25 as a student. I don't know if it's the same one. He works

1 at the Clarion Casino.

2 MR. STANTON: David Jenkins is a homicide
3 detective with the Reno Police Department.

4 A PROSPECTIVE JUROR: Not this one.

5 THE COURT: Any others?

6 At the conclusion of the evidence I will state
7 to you the law that applies to this case. I will instruct
8 you that it is your duty to apply that law to the facts as
9 found by you. Would any juror be reluctant to apply the
10 general principles of law as stated by the Court?

11 THE PROSPECTIVE JURORS: No.

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Mr. Giordano.

14 A PROSPECTIVE JUROR: I would. I have gone
15 through life using common sense, and intuition, and it's
16 held me in pretty good stead. So if anybody tries to get me
17 to go against what I believe, I could have a problem with
18 that.

19 THE COURT: Do you have a strongly held opinion
20 as to what the law is?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: So you think -- you think common
23 sense should override the legislation?

24 A PROSPECTIVE JUROR: From what I have seen in
25 the last 30 years or so, I'd say yes.

1 THE COURT: Do you understand that you would
2 take an oath to follow the law as I instruct you it is?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Would you be able to follow that
5 oath?

6 A PROSPECTIVE JUROR: To the best of my
7 ability.

8 THE COURT: But if there came to be a conflict,
9 you would not follow the law and you'd make up your own
10 version?

11 A PROSPECTIVE JUROR: I can't say that. It
12 would have to be whatever the circumstances were.

13 THE COURT: Did someone else say yes? Is that
14 all?

15 Do any of you believe --

16 MR. BOSLER: Your Honor, I believe
17 Mr. Rumbaugh.

18 THE COURT: Did you raise your hand, too,
19 Mr. Rumbaugh?

20 A PROSPECTIVE JUROR: I wanted to but I didn't.

21 THE COURT: Mr. Bosler must be able to read
22 your mind.

23 A PROSPECTIVE JUROR: It's hard to blank
24 everything out of your mind and start off fresh. You know,
25 it's just hard to do.

1 THE COURT: I want to make sure that you don't
2 misunderstand the question. The role of the jury is to
3 determine the facts in a case. No judge will instruct you
4 as to what the facts are. You make that determination, the
5 jury does.

6 The law is the general principles of law that
7 apply to a case. There's many of them. The Court gives you
8 those instructions instructing you on what the elements of
9 offenses are, what evidence you can and cannot consider,
10 what certain requirements are. That is the general
11 principles of law that the Court will be instructing you on.

12 Now, the question is: Would you not follow
13 those general principles of law? You'd make up your own
14 version of the law?

15 A PROSPECTIVE JUROR: I could follow them.

16 THE COURT: Would you -- do you understand, all
17 of you, that the role that the jury has is to take the facts
18 as they find them to be, apply the general principles of law
19 as I instruct you it is and reach a verdict consistent with
20 the facts and the law? Do you all understand that?

21 THE PROSPECTIVE JURORS: Yes.

22 THE COURT: Now is there anybody who cannot do
23 that?

24 A PROSPECTIVE JUROR: What if you have already
25 formed an opinion?

1 THE COURT: I'm going to let the attorneys
2 inquire a little further with regard to your forming of an
3 opinion as to what the facts are. We'll talk about that in
4 a few minutes, but the Court is not going to be instructing
5 you as to the facts. The instruction goes to the law. Does
6 everyone understand that?

7 If the Court were to instruct you that at the
8 conclusion of this case a defendant in a criminal action is
9 presumed to be innocent until the contrary is proven beyond
10 a reasonable doubt, and in case of a reasonable doubt as to
11 whether the defendant's guilt is satisfactorily shown, they
12 are entitled to be acquitted, would each of you accept and
13 follow that instruction?

14 THE PROSPECTIVE JURORS: Yes.

15 THE COURT: If you were to be instructed that a
16 reasonable doubt is one based on reason, it is not mere
17 possible doubt but is such a doubt as would govern or
18 control a person in the more weighty affairs of life; if the
19 minds of the jurors after the entire comparison and
20 consideration of all the evidence are in such condition they
21 can say they feel an bidding conviction of the truth of the
22 charge, there is not a reasonable doubt; doubt to be
23 reasonable must be actual, not mere possibility or
24 speculation, would each of you accept and follow that
25 instruction?

1 THE PROSPECTIVE JURORS: Yes.

2 THE COURT: Have any of you ever served on a
3 jury before, criminal or civil?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: We have Mr. Rumbaugh. When did you
6 serve previously?

7 A PROSPECTIVE JUROR: Probably 30 years ago,
8 twice.

9 THE COURT: Was there anything about your prior
10 service that would cause you difficulty serving again?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Would you be able to set aside
13 anything you were told about the law in that prior case and
14 decide the case on the law as I instruct you?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: What kind of a case was it?

17 A PROSPECTIVE JUROR: Civil.

18 THE COURT: Were you able to reach a verdict?

19 A PROSPECTIVE JUROR: Oh, yes.

20 THE COURT: Miss Buckley.

21 A PROSPECTIVE JUROR: Criminal and a civil.

22 THE COURT: How long ago?

23 A PROSPECTIVE JUROR: The criminal trial was
24 about 12 years ago. It was a two-week trial. The civil one
25 was about five years ago, and it was settled the next day

1 out of court.

2 THE COURT: Now, with regard to the case you
3 actually went to the verdict, were you able to reach a
4 verdict?

5 A PROSPECTIVE JUROR: Yes, they reached a
6 verdict.

7 THE COURT: Is there anything about that prior
8 service that would cause you difficulty serving again?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: I think Mr. Thomas.

11 A PROSPECTIVE JUROR: Yes, '76 or '77, it was a
12 civil case here in Reno.

13 THE COURT: Anything about that prior service
14 that would cause you a problem?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Would you be able to set aside
17 anything you might have learned about the law in that other
18 case and decide the law as it is today in this case?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: And would you be able to do the
21 same thing, Miss Buckley?

22 A PROSPECTIVE JUROR: Pardon?

23 THE COURT: Would you be able to set aside
24 anything you might have heard in the prior case with regard
25 to the law and decide this case based solely on the law as

1 it is today?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: As I instructed you?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Anyone else?

6 Is there anyone sitting, any of the new people
7 who know anybody else in the jury box?

8 THE PROSPECTIVE JURORS: No.

9 THE COURT: Yes, Miss Hilliary.

10 A PROSPECTIVE JUROR: I'm associated with Janet
11 Frandsen through the Reno-Sparks Association of Realtors.

12 THE COURT: Miss Frandsen, then you know Miss
13 Hilliary?

14 A PROSPECTIVE JUROR: No. I apologize.

15 A PROSPECTIVE JUROR: That's okay.

16 THE COURT: She's a realtor. So you guys
17 probably have met somewhere.

18 Is there anything about being a realtor and
19 kind of running into her in the past that would cause you a
20 problem if you sat on the same case?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Now, Miss Frandsen, you may later
23 find out which realty company she works for, and it may jog
24 your memory. But do you see any reason why at this time you
25 could not serve on the same case?

1 A PROSPECTIVE JUROR: None.

2 THE COURT: Are any of you involved currently
3 or have you previously been involved in litigation, actual
4 cases that went to trial? Yes, Mr. Decker.

5 A PROSPECTIVE JUROR: I was a character witness
6 for a friend in a civil matter that was kind of in the
7 mid '80s, early '80s.

8 THE COURT: Anything about that experience that
9 would cause you a problem in this case?

10 A PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Was there something else you wanted
12 to tell me?

13 A PROSPECTIVE JUROR: Well, this friend is
14 deceased now.

15 THE COURT: But you didn't have any
16 uncomfortable -- were you uncomfortable at all as a witness,
17 or is there anything like that that would cause you a
18 problem in this case?

19 A PROSPECTIVE JUROR: No, I don't believe so.

20 THE COURT: Miss Hilliary?

21 A PROSPECTIVE JUROR: I was a witness in a
22 criminal embezzlement case about five years ago.

23 THE COURT: Is there anything about that
24 experience being a witness in the courtroom that would cause
25 you a problem?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Mr. Gerbatz, did you raise your
3 hand?

4 A PROSPECTIVE JUROR: I did.

5 THE COURT: Mr. Giordano.

6 A PROSPECTIVE JUROR: Yes, about two years ago
7 a fellow let his dog out, and it killed two of my goats, pet
8 goats. And I turned in a complaint, and the State went
9 after him under Animal Killing Livestock Act or something.
10 So I was a witness for the State.

11 THE COURT: Anything about being a witness
12 previously for the State that would cause you difficulty in
13 this case?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Was the District Attorney's Office
16 the prosecuting office?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: And is there anything about that
19 experience that would cause you to be biased one way or
20 another with regard to the District Attorney's Office?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Mr. Thomas.

23 A PROSPECTIVE JUROR: I was, five or eight
24 years ago, a defense witness in a criminal sexual harassment
25 case, I guess you'd call it.

1 THE COURT: Anything about being a witness in
2 that case would cause you difficulty serving in this trial?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: Is there anyone I have missed? Do
5 any of you have any health reasons why you should not or
6 could not serve as a juror in this case?

7 THE PROSPECTIVE JURORS: No.

8 THE COURT: Yes, Mr. Giordano.

9 A PROSPECTIVE JUROR: I don't know if it's
10 serious enough to be excused, but I have Type 2 diabetes,
11 and I have to eat every couple, three hours. Otherwise I
12 start getting a headache and so forth. Like yesterday
13 afternoon, by the time I got home, my head was splitting.

14 THE COURT: Did you bring something to eat
15 today?

16 THE DEFENDANT: No, I did not.

17 THE COURT: A snack or something?

18 A PROSPECTIVE JUROR: No. I wasn't sure
19 whether I could sit here and eat a little donut.

20 THE COURT: Well, no.

21 A PROSPECTIVE JUROR: Piece of bread or
22 something.

23 THE COURT: No.

24 A PROSPECTIVE JUROR: That's what I thought.
25 That is why I brought it up.

1 THE COURT: But we do take breaks every two
2 hours or so. The court reporter can't go steady much more
3 than two hours. So you will get a break. So you could have
4 snacks, you would get that opportunity. Would that solve
5 your medical problem?

6 A PROSPECTIVE JUROR: Yes, I think so.

7 THE COURT: Anyone else? How are you and
8 Mr. Rumbaugh doing with regard to the hearing issue that you
9 had yesterday?

10 A PROSPECTIVE JUROR: I'm missing some words,
11 but I'm able to fill them in.

12 THE COURT: You still are with me?

13 A PROSPECTIVE JUROR: Yeah, every now and then.
14 There is a certain pitch or tone that I have a problem
15 hearing.

16 THE COURT: The higher ones?

17 A PROSPECTIVE JUROR: No, it's usually the low
18 ones.

19 THE COURT: How are you doing, Mr. Rumbaugh?

20 A PROSPECTIVE JUROR: I'm getting most of it.

21 THE COURT: Are you feeling like you are
22 missing some things?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: No?

25 A PROSPECTIVE JUROR: Not from you.

1 THE COURT: Have any of you ever been a victim
2 of a crime?

3 THE PROSPECTIVE JURORS: No.

4 THE COURT: Do any of you have any business or
5 professional reason or personal reason why you feel you
6 cannot serve in this case because it will interfere with
7 your impartiality?

8 THE PROSPECTIVE JURORS: No.

9 THE COURT: Yes, ma'am. Miss Roberts.

10 A PROSPECTIVE JUROR: I don't think it will,
11 impartiality would come up, but I do have an airline ticket
12 to go to Hawaii on the 18th of January. I don't know
13 whether you give a --

14 THE COURT: I do care.

15 A PROSPECTIVE JUROR: Just as long as you give
16 me something so I don't lose my money.

17 THE COURT: But we can -- it's a situation
18 where we could give a letter saying that you were compelled
19 to do service?

20 A PROSPECTIVE JUROR: It is a personal. My son
21 lives there, and he gave me a ticket, yes.

22 THE COURT: So you could kind of reschedule
23 your time?

24 A PROSPECTIVE JUROR: I didn't call them to ask
25 them what I could do with the ticket, but I guess with a

1 letter from the Court, they'd have to do something for me.

2 THE COURT: Yes. Which airline?

3 A PROSPECTIVE JUROR: United.

4 THE COURT: I think we can help you there if
5 you are on the jury.

6 A PROSPECTIVE JUROR: Thank you.

7 THE COURT: Yes, Mr. Giordano.

8 A PROSPECTIVE JUROR: I'm in the same boat.
9 The first time I was called for jury duty, my wife and I
10 just made plans to leave town. I called up and they
11 graciously excused me and said they'd reschedule me. And I
12 waited two and a half months, made arrangements to fly down
13 to meet some buddies in Saint George, Utah.

14 About three days after I waited two and a half
15 months to be recalled, I made airline reservations for
16 tomorrow at 9:30 to leave, and I got picked for this jury
17 duty again. I didn't bring it up before because I had
18 already been excused once. But I'd sure like to go down to
19 Utah.

20 MR. SPECCHIO: Judge, if I may approach.

21 THE COURT: Sure.

22 (Whereupon, a bench conference was held among
23 Court and counsel as follows:)

24 MR. BOSLER: Based upon really what is on his
25 questionnaire, I don't think he is going to be here to stay.

1 THE COURT: I know that. And that's why I said
2 that there is something he is going to tell us to be a
3 reason to get rid of him.

4 MR. STANTON: We'll stip.

5 THE COURT: The only problem I have with doing
6 it right now, I don't know if you read the newspaper this
7 morning, but Mike Henderson said in the newspaper that the
8 reason we were excusing people is because they had already
9 formed an opinion, ergo our two gentlemen who want off
10 anyway, and I don't want them to think because you have an
11 airline ticket, how can I excuse him and not Mrs. Roberts
12 who is going -- can't go fly to Hawaii to see her family.

13 MR. SPECCHIO: I think we should do both,
14 Judge.

15 THE COURT: See, my problem is I'm not going to
16 just excuse everybody who could come up with any idea.

17 MR. STANTON: The State's perspective would be
18 Mr. Giordano, I think, his hearing.

19 THE COURT: That is my problem.

20 MR. STANTON: And the fact that he can't hear
21 everything here. Now, there is a way to ask the question if
22 he can raise his hand to fill in the blanks. It's not an
23 automatic excusal. But that in conjunction with everything
24 else, the State is prepared to stipulate for his release.

25 MR. BOSLER: Stipulated, Your Honor, based upon

1 his questionnaire.

2 THE COURT: I'm going to excuse him because of
3 his hearing so that the jury panel doesn't believe it is for
4 the other things. But we do have a little education going
5 on here, and we want to get a jury.

6 (Whereupon, the following proceedings were held
7 in open court, in the presence of the jury.)

8 THE COURT: Did I hear from everybody with
9 regard to that question?

10 Do any of you know of any reason why you cannot
11 be a fair and impartial juror in this case? Mr. -- I'm
12 sorry, did you raise your hand?

13 A PROSPECTIVE JUROR: Just that I formed my
14 opinion.

15 MR. BOSLER: I believe three hands went up.

16 THE COURT: Did three hands go up? Okay, thank
17 you, Mr. Bosler.

18 Mr. Barger.

19 A PROSPECTIVE JUROR: Well, I don't know
20 whether this is the place to ask it and that, but I have
21 been waiting to see where it would fit in. At one point you
22 asked the panel if there is anybody that knew the defendant.
23 But I don't believe there was any place where it fit in that
24 any of us knew the deceased.

25 THE COURT: Okay. Thank you.

1 A PROSPECTIVE JUROR: Which I do. I did.

2 Excuse me.

3 THE COURT: You did. You were a personal
4 friend?

5 A PROSPECTIVE JUROR: I work for the school
6 district. I drive a school bus, and I have taken the school
7 Whitehead on field trips where he has been, had been --
8 excuse me -- a chaperone on the bus at two different times.
9 We worked on a picnic and we were there.

10 THE COURT: Thank you. Now also, yes, Miss
11 Buckley.

12 A PROSPECTIVE JUROR: Working on campus during
13 that period of time, a lot of us were very relieved when
14 this man was arrested, and I just don't think I can just
15 erase the feelings I have towards him.

16 THE COURT: Anyone else? Now, Mr. Rumbaugh,
17 you also raised your hand?

18 A PROSPECTIVE JUROR: Well, it's the same
19 thing. My mind is made up.

20 MR. BOSLER: Your Honor, I don't want to put
21 anybody on the spot, but I thought I saw Miss Cadena's hand
22 go up.

23 THE COURT: That's it.

24 A PROSPECTIVE JUROR: I can't hear.

25 A PROSPECTIVE JUROR: I didn't hear you.

1 MR. BOSLER: I thought I saw a juror raise a
2 hand.

3 THE COURT: Mr. Giordano, I know you are having
4 trouble because I can see it on your face, and I noticed
5 that you couldn't hear Mr. Bosler. So I am going to excuse
6 you for your hearing problem. I don't want you missing
7 anything on the case. I don't want you to fill in the
8 blanks. You have to hear what the people say.

9 So I really appreciate your service and you
10 sitting through all this, but with your hearing situation,
11 the way it is, I'm going to excuse you. Thank you.

12 (Juror Giordano excused from the courtroom.)

13 THE COURT: We'll call another name to replace
14 Mr. Giordano.

15 THE CLERK: William B. King.

16 THE COURT: Mr. King, go ahead and review that
17 witness list. I'm going to ask you if you know anyone.

18 A PROSPECTIVE JUROR: I see no names that I
19 recall.

20 THE COURT: Also have you been able to hear my
21 questions both this morning and yesterday?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Did you keep a mental or written
24 note of what you would respond to?

25 A PROSPECTIVE JUROR: Yes, I have. There are a

1 few items I would like to address.

2 THE COURT: Thank you.

3 A PROSPECTIVE JUROR: I have a brother-in-law
4 that's a Reno policeman, Raymond Barrett. I live probably
5 within a mile of the crime scene. I work on UNR campus.

6 And let's see. I think I recognize the
7 defendant as a member of a crew that poured my concrete at
8 my house when I was building my home. I'm not positive of
9 that, but I think he was there.

10 And I have been a victim of a crime. Mostly
11 thefts. I have had some tools stolen and bikes and license
12 plates off my cars. But other than that, that's it.

13 THE COURT: With regard to your prior
14 association with the defendant through the concrete being
15 poured, if in fact that were the case, is there anything
16 about that job or the circumstances that would cause you
17 difficulty serving in this case?

18 A PROSPECTIVE JUROR: No, ma'am.

19 THE COURT: Do you feel biased or prejudiced
20 one way or another with regard to the defendant?

21 A PROSPECTIVE JUROR: No, I do not.

22 THE COURT: And with regard to your being a
23 victim of a crime previously, are you able to disassociate
24 your prior personal experiences from this case?

25 A PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: Can you decide this case based
2 solely on the evidence as it's presented here in the
3 courtroom?

4 A PROSPECTIVE JUROR: I think so, yes, ma'am.

5 THE COURT: The question that I guess I didn't
6 ask clearly -- specifically enough previously to be honest
7 are you acquainted with the deceased in this case?

8 A PROSPECTIVE JUROR: No, I am not. I have had
9 opportunity to speak with some of the officers on campus,
10 but I don't know any of them personally.

11 THE COURT: Is there anything about that
12 connection with university campus that would cause you
13 difficulty serving in this case?

14 A PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: Now, that question with regard to
16 being acquainted with or related to the deceased should be
17 applied to everyone. So would anyone sitting in our jury
18 box wish to respond to that question? Is that a no?

19 THE PROSPECTIVE JURORS: No.

20 THE COURT: Just want to make sure I understand
21 you clearly.

22 Now, I have one other question I'd like to ask
23 of the jury panel, and I'm going to allow the attorneys to
24 do some questioning. They may well want to explore some of
25 your answers to me a little bit further, especially Miss

1 Buckley and Mr. Rumbaugh and perhaps Mr. Barger.

2 The question I have for the entire panel is
3 that the Legislature has said in certain kinds of cases,
4 certain results must be -- the penalty must be determined by
5 the jury.

6 The charge that the defendant is facing in this
7 case is that of murder. If the jury were to return a
8 verdict of first-degree murder - and I'm not in any way
9 implying that that is the right verdict in this case - but
10 if that were the result, then the members of the jury would
11 be called upon to determine penalty.

12 They would receive separate instructions from
13 me with regard to the law, the penalties available, what
14 evidence and circumstances must be considered by the jury
15 before reaching a verdict with regard to penalty. I do not
16 want to go into all the specifics of what might happen
17 somewhere down the road. I don't want any -- I don't want
18 to worry you about all the eventualities which might happen,
19 and there is no guarantee any of them will happen.

20 But I do want to inquire of the jurors, if they
21 were compelled to serve on a jury that ultimately had to
22 decide penalty, would any of you automatically vote for the
23 death penalty no matter what my instructions were or the
24 evidence?

25 THE PROSPECTIVE JURORS: No.

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1 THE COURT: Did anyone say yes?

2 Would any of you, the same information
3 available to you, would any of you automatically feel
4 compelled to vote against the death penalty no matter what
5 my instructions or the evidence?

6 THE PROSPECTIVE JURORS: No.

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Miss Hilliary.

9 A PROSPECTIVE JUROR: Yes, I had a yes. I
10 don't think that I would be a good candidate to determine
11 someone to die. I would not. I couldn't live with myself
12 for that. I really couldn't.

13 THE COURT: So you wouldn't be able to follow
14 the Court's instructions?

15 A PROSPECTIVE JUROR: I wouldn't be able to
16 vote personally to that.

17 THE COURT: Mr. Stanton, you may inquire.

18 MR. STANTON: Thank you, Your Honor.

19 Miss Hilliary, the judge would instruct you and
20 there would be a separate penalty phase where evidence is
21 adduced about what the law is in the State of Nevada
22 regarding the death penalty. There are certain requirements
23 that need be met, proved beyond a reasonable doubt, called
24 aggravating factors. Mitigating factors are also presented.

25 After that is presented, the jury determines

1 whether the aggravation outweighs the mitigation and then
2 makes a separate decision as to whether or not they think
3 the death penalty is appropriate or what punishment is
4 appropriate.

5 Is there any circumstance that you could impose
6 the death penalty?

7 A PROSPECTIVE JUROR: I don't believe so.

8 MR. STANTON: You don't believe so?

9 A PROSPECTIVE JUROR: I don't think it's
10 something that I could live with. A trial that has that
11 kind of penalty would not be something I would be very
12 effective.

13 MR. STANTON: Have you thought of a case, maybe
14 hypothetical or something that has occurred in the news
15 prior to this case, of a case where you thought the death
16 penalty was appropriate?

17 A PROSPECTIVE JUROR: No.

18 MR. STANTON: Thank you, Your Honor.

19 THE COURT: Mr. Bosler, do you wish to inquire?

20 MR. BOSLER: Just briefly. Miss Hilliary, as
21 you have heard the prosecutor say, the law may present
22 certain aggravating factors to you, there may be things you
23 consider as aggravators, things that you can consider as
24 mitigators. The law never says you have to impose the death
25 penalty. That is what the law says.

1 Are you willing to consider those aggravators
2 and mitigators and decide what weight you want to give them
3 and if you have to eventually come to a decision about a
4 penalty, make that decision, knowing that all you have to do
5 is make the weighing process?

6 A PROSPECTIVE JUROR: I could weigh the
7 evidence. I just -- I know I could do that. I just know
8 that I could never -- I wouldn't -- it would be very
9 difficult for me to live with myself if I imposed a death
10 penalty, if I was involved with voting someone to die. That
11 would be very difficult to me.

12 MR. BOSLER: But you are at least willing to
13 weigh the aggravating factors?

14 A PROSPECTIVE JUROR: Yes, definitely.

15 THE COURT: The occurrence may occur, Miss
16 Hilliary, where you weighed it and the decision was against
17 what you have told me you would want to do. Could you vote
18 to impose the death penalty?

19 A PROSPECTIVE JUROR: I feel I would have to
20 abstain from voting.

21 THE COURT: Any further inquiry?

22 MR. STANTON: No further questions of Miss
23 Hilliary, Your Honor. At this time I would make a motion
24 for cause. United States Supreme Court mandates under
25 Weatherspoon would make her a proper juror to be excused for

1 cause.

2 MR. BOSLER: Your Honor, just because she has
3 reluctance in imposing the death penalty, the law does not
4 require that, and she's admitted she will weigh the
5 aggravators against the mitigators. That is all the law
6 requires.

7 THE COURT: The law actually requires that you
8 be able to impose the death penalty in certain circumstance.
9 She cannot. She would abstain. We would have an automatic
10 hung jury. Therefore, she must be excused.

11 You are excused.

12 (Prospective Juror Hilliary excused from the
13 courtroom.)

14 THE COURT: For the benefit of the jury panel,
15 I want to make sure you understand that we have all read
16 your jury questionnaires. Many of my rulings are not based
17 solely on what you're telling us verbally in front of
18 everyone. So individuals who are being excused may have
19 clearly delineated issues and concerns to me prior. So it
20 is not based solely on what we're hearing here in the
21 courtroom.

22 Call the name of someone to replace Miss
23 Hilliary, please.

24 THE CLERK: Anita J. Cason.

25 THE COURT: Go ahead and look at the witness

1 list, Miss Cason. Thank you.

2 A PROSPECTIVE JUROR: I recognize a couple of
3 the names, I believe, but I don't know any of the people
4 personally.

5 THE COURT: Okay. If it turned out that
6 somebody you think you might know testified, are any of
7 those -- who are those people you think you might know?

8 A PROSPECTIVE JUROR: I think the name Craig
9 Meyer. I don't know if he is a police officer. Somebody my
10 ex-husband may have known. I was married to a police
11 officer.

12 The other one was Jim Duncan. I just don't
13 know.

14 THE COURT: Are those law enforcement officers?

15 LEFT1: Jim Duncan is a detective, homicide
16 detective with Reno. Craig Meyer is a deputy sheriff with
17 the Salt Lake County, Utah, Sheriff's Department.

18 A PROSPECTIVE JUROR: It was a different Meyer
19 then. I thought he was a Washoe County officer.

20 THE COURT: Okay. Now, if it turns out that
21 the other officer, that you recognize him and you remember
22 him from when your ex-husband might have been friends with
23 him, would it cause you any difficulty serving on this case
24 if that person were to take the stand?

25 A PROSPECTIVE JUROR: I don't believe so.

1 THE COURT: Would you feel compelled to decide
2 the case in any particular manner based upon your
3 relationship with that potential witness?

4 A PROSPECTIVE JUROR: No, I don't think I
5 would.

6 THE COURT: Were you able to hear all my
7 questions?

8 A PROSPECTIVE JUROR: Yes, I was. I have a
9 list.

10 THE COURT: Thank you.

11 A PROSPECTIVE JUROR: I was married to Sean
12 Cason. He was a deputy when the jail first opened. He went
13 through the academy, so I got to meet a lot of the people
14 that he was going through the academy with.

15 My cousin, Dan Parker, is a Reno police
16 officer. He is on the SWAT team. He is a first cousin.
17 We're close with his family.

18 I have a very good friend, Stacy Hill, who
19 works for Washoe County. I have been friends with he and
20 his wife for quite some time.

21 Eric Soderblom who is with the Reno PD. I work
22 with his wife very closely. She did give me some
23 information after the death that I think may cause me to --
24 one of the comments she made, I don't know if I can erase
25 that.

1 THE COURT: Okay. So is that the extent --
2 let's start with the extent of your law enforcement
3 connections. Is that it?

4 A PROSPECTIVE JUROR: I think so. There is
5 John Bohach who we were friends with when I was married to
6 my ex-husband. He'd come to the house frequently, and they
7 were good friends. Just associations like that that he
8 developed.

9 I have been divorced or separated from him for
10 seven years. So I haven't seen these people in quite some
11 time other than the ones I just named off.

12 THE COURT: Now, is there anything about the
13 connection that you previously had with law enforcement that
14 would cause you difficulty serving in this case?

15 A PROSPECTIVE JUROR: No, I don't think so. I
16 may weigh their testimony more heavily. My father, too -- I
17 forgot to say -- my father was a Lyon County search and
18 rescue. He always taught us to have a lot of respect for
19 the law. So just in growing up in having that type of --
20 having to have that respect for people, I may weigh their
21 testimony more credibly or not. I can't say what I would
22 do, though, until I'm put in that position.

23 THE COURT: You will receive an instruction
24 from the Court that tells you that you must weigh all
25 witnesses' testimony based upon their manner on the stand,

1 their biases or lack thereof, et cetera. It goes into great
2 deal of detail about the kinds of things that jurors should
3 look at at witnesses.

4 Are you willing to follow that instruction?

5 A PROSPECTIVE JUROR: Yes, I'm willing to
6 follow it, but I think I may weigh a police officer's
7 testimony more heavily.

8 THE COURT: As you're weighing the different
9 things that the law allows you to weigh?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: I understand that answer. Go on
12 with your list.

13 A PROSPECTIVE JUROR: Okay. The other morning
14 on KBUL I heard a slight -- I couldn't get to the radio fast
15 enough -- I heard a little bit about the trial was starting.
16 It was just a really quick thing.

17 And I do have pending child custody. It's been
18 a two-year process that I have ongoing child custody
19 litigation. It's not been finalized. It's been going on
20 for two years. We have been to court twice to trial, but
21 there has been no final decision.

22 THE COURT: Is there anything about your
23 experiences in the courtroom that would cause you difficulty
24 serving as a juror?

25 A PROSPECTIVE JUROR: No. I'm just upset that

1 it's taken so long to make a decision. But other than that,
2 no, I don't think so.

3 THE COURT: Would you substitute your personal
4 experiences in your case for the facts and circumstances of
5 this case?

6 A PROSPECTIVE JUROR: No, I'd try not to.

7 THE COURT: Anything else?

8 A PROSPECTIVE JUROR: And like I said, a
9 friend, the lady I work with did give me personal knowledge
10 of the crime.

11 THE COURT: Mr. Soderblom's wife?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: And that was everything on your
14 list?

15 A PROSPECTIVE JUROR: I believe so.

16 THE COURT: Were you able to hear all of my
17 questions, including my last question with regard to the
18 potential for determining penalty?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Would you have the -- would you
21 have the position that you would always have to vote for the
22 death penalty no matter what the instruction or the
23 evidence?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Would you feel that you would

1 always have to vote against the death penalty no matter what
2 the instruction or evidence?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: You will be able to consider the
5 law as I instruct you it is?

6 A PROSPECTIVE JUROR: I believe so.

7 THE COURT: Any of the other questions that you
8 would want to respond to?

9 A PROSPECTIVE JUROR: No. If I have to
10 respond, as you're asking more of them, I'll raise my hand.

11 THE COURT: Okay. That's fine.

12 Counsel, I'd ask you to approach.

13 Miss Cason, I'm going to ask you to come down
14 here. I wanted to talk for just a minute.

15 (Whereupon, a bench conference was held among
16 Court and counsel and Prospective Juror Cason
17 as follows:)

18 THE COURT: Could you tell me and the attorneys
19 what you heard?

20 A PROSPECTIVE JUROR: The comment was made that
21 it was a trophy kill, and I don't know if I could set that
22 aside. I heard that he was killed because he was a police
23 officer. I don't know if I can put that away.

24 MR. BOSLER: The record should reflect that she
25 is on the verge of tears at this point.

1 THE COURT: She is not on the verge; she is
2 crying.

3 Go ahead and inquire.

4 MR. STANTON: Miss Cason, I know that you had
5 heard something that most people will consider graphic, but
6 that's not evidence yet presented to you.

7 A PROSPECTIVE JUROR: I understand that.

8 MR. STANTON: That is kind of the question that
9 I would ask you is can you put that aside knowing that it's
10 not evidence yet, and wait till you hear the evidence in
11 this case?

12 A PROSPECTIVE JUROR: I had set it aside for a
13 year, and then when I got called for jury, it came back to
14 me. Some of the other comments that I haven't been able to
15 recall, but I think that as I go through this case, I may be
16 able to recall other comments that she had made. I don't
17 know. I'd like to say yes, I could put them aside, but I
18 don't know that I could.

19 MR. STANTON: Well, there's no one that would
20 know better than you whether you can or not. We need an
21 assurance that you can put it aside and listen only to the
22 facts in this case.

23 A PROSPECTIVE JUROR: I can't assure that, no.

24 MR. STANTON: I have no further questions.

25 THE COURT: Mr. Bosler?

1 MR. BOSLER: No questions, Your Honor.

2 THE COURT: Do you have a motion?

3 MR. BOSLER: Yes. Move to challenge her for
4 cause, Your Honor.

5 THE COURT: Okay.

6 MR. STANTON: I would not traverse the motion.

7 THE COURT: You do want to traverse?

8 MR. STANTON: I do not.

9 THE COURT: Miss Cason, I'm sorry that we have
10 to upset you.

11 A PROSPECTIVE JUROR: I'm sorry.

12 THE COURT: Though we appreciate your candor,
13 and I understand your concerns. I'm going to go ahead and
14 grant the motion. You can go ahead and go on down and
15 report to the Jury Commissioner.

16 A PROSPECTIVE JUROR: Thank you very much.

17 (Whereupon Prospective Juror Cason was excused
18 from the courtroom.)

19 (Whereupon, the following proceedings were held
20 in open court, in the presence of the jury.)

21 THE COURT: The clerk will call the name of
22 another potential juror.

23 THE CLERK: Paul E. Damoth.

24 MR. GAMMICK: I didn't catch the last name.

25 A PROSPECTIVE JUROR: It is Damoth, for your
correction.

1 THE COURT: Thank you. Go ahead and read the
2 witness list, Mr. Damoth.

3 A PROSPECTIVE JUROR: I do not recognize any of
4 the names.

5 THE COURT: Have you been able to hear my
6 questions thus far this morning?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Would you respond to any of my
9 questions affirmatively?

10 A PROSPECTIVE JUROR: Yes, I have a list.

11 THE COURT: Thank you.

12 A PROSPECTIVE JUROR: In relation to
13 Mr. Gammick, his son has worked for me in the past at UPS.

14 In relating to officers and filling out my
15 questionnaire, I have been arrested twice. One I did not
16 put on the questionnaire. I kind of forgot about it. It
17 was in 1984.

18 I was a student at UNR, and I don't recall if
19 it was RPD or UNPD, but I was arrested at that time. And my
20 arrest, I did put on the questionnaire, was by a university
21 police officer. I do not remember the name.

22 THE COURT: Is there anything about that prior,
23 those two prior circumstances that would cause you
24 difficulty being fair and impartial in this case?

25 A PROSPECTIVE JUROR: No, not at all. In '82,

1 I was burglarized, and I was involved as a witness in that
2 trial.

3 THE COURT: Anything about your experiences as
4 the recipient of a burglary and testifying that would cause
5 you difficulty being a fair and impartial juror in this
6 case?

7 A PROSPECTIVE JUROR: Not at all.

8 THE COURT: Do you hold any bias for or against
9 the State of Nevada based upon your experiences?

10 A PROSPECTIVE JUROR: None at all. I would
11 like to state to all the questions I feel very impartial,
12 and I think I could be a good juror.

13 THE COURT: Anything else you would want to
14 respond to?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: You heard my last question with
17 regard to your ability to determine penalty in a case if it
18 were required. Would you automatically vote for the death
19 penalty no matter what the instructions?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Would you automatically feel
22 compelled to vote against the death penalty no matter what
23 the instructions or circumstances?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Does anyone have anything else you

1 wanted to tell me about before I allow the attorneys to
2 question you?

3 Okay, Mr. Stanton, you may inquire.

4 MR. STANTON: Thank you, Your Honor.

5 Ladies and gentlemen, first series of questions
6 that I'm going to ask are going to be general questions to
7 the entire panel, and as you have done with Judge
8 Steinheimer, if you could all answer affirmatively and out
9 loud what your response are to those questions.

10 First question I'd like to ask you is that we
11 have talked about certain fundamental rights that exist in a
12 criminal case. One of them is the presumption of innocence
13 that that man sits before you today, Mr. Vanisi, he's
14 presumed innocent. Very important, very critical aspect of
15 a criminal case.

16 There are also some other rights that we
17 haven't discussed this morning, and my first question to you
18 is whether or not you all agree that the right of the State
19 in a criminal case is that if it meets its burden, that it
20 proves a case beyond a reasonable doubt, the State has a
21 right that the verdict be guilty. Would you all agree with
22 that?

23 THE PROSPECTIVE JURORS: Yes.

24 MR. STANTON: Anybody say no?

25 There are some people who have expressed, not

1 necessarily on this panel, concerns either with a religious,
2 moral or some other belief system that makes it very
3 difficult to sit as a juror. Does anybody feel that that is
4 a problem based on any of those grounds I have just
5 mentioned?

6 THE PROSPECTIVE JURORS: No.

7 MR. STANTON: In a criminal case, the judge has
8 told you that the burden of the State, Mr. Gammick and
9 myself, is proof beyond a reasonable doubt. That is the
10 standard in all criminal cases. There is not an increasing
11 standard the more serious a crime gets.

12 And in this case, there is no more serious
13 crime than murder in the first degree. But the burden of
14 proof is the same standard as it would be in any other
15 criminal case. Do you all understand that?

16 THE PROSPECTIVE JURORS: Yes.

17 MR. STANTON: The proof, the standard of proof
18 in a criminal case in charging -- involving the charge of
19 first degree murder is not proof beyond any doubt.

20 Is there anybody here that would require, based
21 upon the nature and seriousness of the charges, the State --
22 holding the State to a higher burden than the proof beyond a
23 reasonable doubt?

24 THE PROSPECTIVE JURORS: No.

25 MR. STANTON: Mr. Barger had indicated, and I'd

1 ask of the entire panel now a series of questions about
2 knowledge of some other people that are involved in this
3 case. The victim in this case is Sergeant George Sullivan.
4 Does anybody on the panel, besides Mr. Barger, know Sergeant
5 George Sullivan?

6 THE PROSPECTIVE JURORS: No.

7 MR. STANTON: In addition, George Sullivan was
8 married and had children. His wife's name was Carolyn
9 Sullivan. She is a nurse at the Northern Nevada Medical
10 Center.

11 Does anybody, based upon that information, feel
12 that they have any knowledge of Carolyn Sullivan?

13 THE PROSPECTIVE JURORS: No.

14 MR. STANTON: Mr. Barger.

15 A PROSPECTIVE JUROR: My wife formerly ran the
16 lab at the hospital, and that's back quite a few years.

17 MR. STANTON: Do you have any specific
18 knowledge as to whether or not she would have known Carolyn
19 Sullivan or knows Carolyn Sullivan?

20 A PROSPECTIVE JUROR: She knows who she was.
21 It has not been social.

22 MR. STANTON: So you and your wife or your wife
23 alone has not socialized or otherwise been involved beyond
24 what you mentioned?

25 A PROSPECTIVE JUROR: No.

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1 MR. STANTON: Anything about that relationship
2 that would cause you to be anything but a fair and impartial
3 juror in this case?

4 A PROSPECTIVE JUROR: No.

5 MR. STANTON: Anybody else?

6 In addition, there are four children of the
7 Sullivans: Meghan, Kyle, Scott and Brian. Meghan, Scott
8 and Brian all would attend junior high or elementary school
9 in the Sparks area. And all of those children's last name
10 would be Sullivan.

11 Based upon that information, is there anybody
12 in the prospective panel that would have any knowledge of
13 those individuals?

14 THE PROSPECTIVE JURORS: No.

15 MR. STANTON: Mr. Barger again.

16 A PROSPECTIVE JUROR: My grand -- my
17 grandchildren go to Whitehead. My grandson has played at
18 the Sullivan home when they lived in the same area.

19 MR. STANTON: And anything about that
20 relationship that would cause you not to be fair and
21 impartial?

22 A PROSPECTIVE JUROR: No.

23 MR. STANTON: You can put that aside and listen
24 to the facts of this case?

25 A PROSPECTIVE JUROR: Yes.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

SIAOSI VANISI,

Appellant,

vs.

RENEE BAKER, WARDEN, and
CATHERINE CORTEZ MASTO,
ATTORNEY GENERAL FOR
THE STATE OF NEVADA,

Respondents.

No. 65774

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APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

RENE L. VALLADARES
Federal Public Defender

TIFFANI D. HURST
Assistant Federal Public Defender
Nevada State Bar No. 11027C
411 E. Bonneville, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
danielle_hurst@fd.org

Attorneys for Appellant

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of January, 2015. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Washoe County District Attorney
tmccarth@da.washoecounty.us

Felicia Darensbourg
An employee of the Federal Public Defender's Office

1 way.

2 MR. BOSLER: They tend to what?

3 A PROSPECTIVE JUROR: Look that way.

4 MR. BOSLER: Your Honor, we'll make a for-cause
5 challenge.

6 THE COURT: Mr. Stanton.

7 MR. STANTON: Thank you.

8 Mr. Battaglia, relative to your comments
9 regarding a code that goes beyond the instructions of law in
10 this case, can you give me an idea of where those might be
11 in conflict? Instead of talking about hypothetical, can you
12 tell me, one, where your moral code would trump what the law
13 is?

14 A PROSPECTIVE JUROR: No.

15 MR. STANTON: In this case or in all criminal
16 cases, one of the fundamental cornerstones is that
17 presumption of innocence, as Judge Steinheimer indicated.
18 Are you the type of person if she tells you as a matter of
19 law that you cannot form an opinion about this case, if you
20 are a juror in this case, until you have heard all the
21 evidence, do you think you could do that?

22 A PROSPECTIVE JUROR: I would wait til the end.

23 MR. STANTON: So you have enough discipline to
24 follow that oath and wait till the end and then make your
25 decision?

1 A PROSPECTIVE JUROR: Yes.

2 MR. STANTON: Relative to the presumption or
3 how you sit here and believe about Mr. Vanisi today, if the
4 judge were to tell you he's presumed innocent and that me
5 and Mr. Gammick have the burden of proof beyond a reasonable
6 doubt to you of his guilt, could you follow that
7 instruction?

8 A PROSPECTIVE JUROR: Yes.

9 MR. STANTON: Thank you. Nothing further. I
10 would oppose the objection based upon -- the motion based
11 upon those answers.

12 THE COURT: Mr. Battaglia, you don't know of
13 any rule or instruction of the Court that you think that
14 right now you know you couldn't follow?

15 A PROSPECTIVE JUROR: I could up til the -- can
16 follow that, yes. I don't know of any that I could not
17 follow.

18 THE COURT: You started to say up til the --

19 A PROSPECTIVE JUROR: Well, it's hard to
20 explain. I guess how I'm going to feel at that time, the
21 end of this trial, is a different thing than what I feel
22 now, I'm sure.

23 THE COURT: One of the things the Court will
24 tell you is that I won't be making the decisions about the
25 facts for you. That's the jury's determination.

1 A PROSPECTIVE JUROR: Right.

2 THE COURT: What I do is give you the law as it
3 is, and I tell you that you make a determination as to the
4 facts, and then you apply the facts to the law, and then you
5 reach a verdict consistent with the facts and the law.

6 Now, would you make up your own version of the
7 law to get to whatever result you think you want to get to,
8 or would you follow that instruction?

9 A PROSPECTIVE JUROR: You're asking me to
10 predict the future.

11 THE COURT: No, I'm asking if you will follow
12 the law.

13 A PROSPECTIVE JUROR: I will follow your
14 instructions.

15 THE COURT: As to what the law is?

16 A PROSPECTIVE JUROR: Right.

17 THE COURT: Motion is denied.

18 Go ahead and go on back with the jury. We'll
19 have you back in here in just a few minutes, I hope. Thank
20 you.

21 (Whereupon, Prospective Juror Battaglia enters
22 the courtroom.)

23 (Whereupon, Prospective Juror Kizis enters the
24 courtroom.)

25 THE COURT: Thank you, ma'am, for coming in. I
want to let you know, I didn't bring you in to make you

1 uncomfortable in the courtroom by yourself. But you had
2 indicated that you had a strongly held opinion based on
3 information that you had received outside the courtroom, and
4 so I wanted to find out what that information was that you
5 had received outside the courtroom. Is that the basis of
6 your --

7 A PROSPECTIVE JUROR: That was from the radio.

8 THE COURT: From the radio?

9 A PROSPECTIVE JUROR: Yeah.

10 THE COURT: What did you hear? Whatever you
11 remember.

12 See why we didn't want you to tell us in front
13 of everybody else?

14 A PROSPECTIVE JUROR: From the radio's point of
15 view, the whole story, I guess. That a hatchet was used;
16 that the defendant did not -- let's see. Bragged about the
17 crime. That he told his friends he was going to -- he
18 wanted to kill a policeman. That it was premeditated. Hid
19 in the bushes, killed the man.

20 Let me see what else. Tried to kill himself in
21 jail.

22 THE COURT: Anything else? I'm not saying that
23 that's all.

24 A PROSPECTIVE JUROR: I'm trying to think. I
25 think that's about it.

1 THE COURT: Now, one of the instructions, one
2 of the things I didn't get to ask the whole panel I want to
3 ask you now, and that is if I were to instruct you at the
4 conclusion of this case that a defendant in a criminal
5 action is presumed to be innocent until the contrary is
6 proved by competent evidence beyond a reasonable doubt, and
7 in a case where reasonable doubt -- where there is
8 reasonable doubt as to whether or not the defendant's guilt
9 has been satisfactorily shown, then the defendant is
10 entitled to an acquittal.

11 Do you understand that instruction?

12 A PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: Would you accept that instruction?

14 A PROSPECTIVE JUROR: Yes. If it was beyond a
15 reasonable doubt, yes.

16 THE COURT: Yes.

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Now, the beyond a reasonable doubt
19 is the burden, part of the burden that the State has. The
20 other part of that question calls for something called the
21 presumption of innocence. That means that the defendant in
22 any criminal case is presumed by the Court, by the jury,
23 everyone, to be innocent, by the court of law, until it is
24 proven to the contrary, until something is proven to the
25 contrary.

1 Now, even though you have this information from
2 the media that we have already talked about, whether or not
3 that's good information or not, even though you have some
4 information and kind of formed an opinion, are you able to
5 set aside that opinion and decide the case based solely on
6 the evidence?

7 A PROSPECTIVE JUROR: I think so.

8 THE COURT: And can you afford the defendant
9 the presumption of innocence?

10 A PROSPECTIVE JUROR: I can try.

11 THE COURT: Mr. Stanton.

12 MR. STANTON: I have no questions of this
13 juror.

14 THE COURT: Mr. Bosler.

15 MR. BOSLER: Miss Kizis, you say you have heard
16 a lot of things on the radio about the events?

17 A PROSPECTIVE JUROR: Uh-huh.

18 MR. BOSLER: But you can't remember them all
19 today if called upon to recite them?

20 A PROSPECTIVE JUROR: I think those were the
21 main ones, yeah. The main points.

22 MR. BOSLER: If there became a point where you
23 sat through the trial and didn't hear things in the trial
24 that you had heard with the media, would the things you
25 heard on the radio still play a part in your opinion, play a

1 part in your deliberations in this case?

2 A PROSPECTIVE JUROR: I guess I would be real
3 surprised if I didn't hear those things. I guess I would be
4 surprised to think, wow, that's pretty amazing. So if I
5 didn't hear it in court as evidence, and I would assume that
6 you had all the evidence in here, then I guess I would have
7 to set that aside, what I heard on the radio.

8 MR. BOSLER: Is that something you think you
9 can do?

10 A PROSPECTIVE JUROR: I can try to, yes.

11 MR. BOSLER: You are just not quite sure at
12 this point whether you can do it?

13 A PROSPECTIVE JUROR: To be honest, yeah, it's
14 hard for me to set it aside.

15 MR. BOSLER: Is there a chance that your
16 ability to deliberate would be impaired by the things you
17 have heard through the media?

18 A PROSPECTIVE JUROR: At this point, yes.

19 MR. BOSLER: If the Court instructed you you
20 are only supposed to hear what you hear in the courtroom, I
21 think that was part of the questionnaire you filled out.

22 A PROSPECTIVE JUROR: I would do my best to do
23 that.

24 MR. BOSLER: You would feel there is a little
25 bit of impairment from what you heard in the radio?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: I don't mean to pry or drag up
3 anything that is painful to you. You said something about
4 alcohol.

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: How that would affect your
7 deliberations.

8 A PROSPECTIVE JUROR: Yes, definitely.

9 MR. BOSLER: Because you have had --

10 A PROSPECTIVE JUROR: Because my brother was
11 killed by a drunk driver.

12 MR. BOSLER: I guess you filled out the
13 questionnaire indicating you don't feel you can be objective
14 in a case that involves alcohol.

15 A PROSPECTIVE JUROR: Right.

16 MR. BOSLER: Again, I'm not trying to pry. If
17 you were to sit on a case where there was an indication of
18 alcohol consumption, is it your statement today in front of
19 the Court that you can't be objective in those
20 circumstances? You can't sit in judgment of someone if
21 there is alcohol involved?

22 A PROSPECTIVE JUROR: Right.

23 MR. BOSLER: Is there anything the Court can
24 say that if the Court said, I want you to disregard that and
25 you are supposed to treat this person or every situation,

1 whether it has alcohol in it or not, the same, do you
2 understand? Can you do that based upon your life
3 experiences?

4 A PROSPECTIVE JUROR: I don't think when it
5 comes to alcohol. Because the person that killed my brother
6 did it many times thereafter and was picked up for drunk
7 driving, and the key should have been thrown away, quite
8 frankly. He should have been put in jail. That is all
9 there is to it. He had a slap on the wrist. My brother is
10 dead, two little children and wife.

11 MR. BOSLER: I think obviously something close
12 to your heart. Is there anything the Court's instruction
13 could --

14 THE COURT: Wait a minute. I have a question.
15 Are we talking about just the mention of alcohol?

16 A PROSPECTIVE JUROR: No. I said that if there
17 was alcohol involved in this case, I didn't feel I could be
18 an objective juror.

19 THE COURT: You mean if -- I don't understand
20 what you mean by "involved in the case." Do you mean if it
21 was caused by alcohol?

22 A PROSPECTIVE JUROR: If the defendant had been
23 drinking.

24 THE COURT: Okay. Go ahead.

25 MR. BOSLER: And I guess you stand by that

1 thought?

2 A PROSPECTIVE JUROR: Yeah.

3 MR. BOSLER: Nothing further, Your Honor. We
4 make the for-cause challenge.

5 THE COURT: Mr. Stanton.

6 MR. STANTON: I'm not sure the basis of the
7 challenge. My gist of what I guess -- I'm assuming from
8 what counsel's motion is that the prospective juror said
9 that she at this point couldn't put some of her feelings
10 aside. But I think when she is making that term, she is
11 being very precise about it.

12 She is saying at this point, at this point in
13 the proceedings, not after she's been instructed and waiting
14 til the evidence has been presented to put aside her
15 feelings, which I think she responded directly to the
16 precise questions by the Court about following the Court's
17 instructions.

18 As far as the latter part, if indeed that is
19 part of the motion for cause, this isn't a drunk driving
20 case. The State is unaware of any alcohol that was involved
21 in this case relative to the offenses. So I'm not sure how
22 that is germane.

23 THE COURT: Motion is denied.

24 Thank you. Go ahead and wait for us in the
25 jury room. Okay?

(Whereupon, Prospective Juror Kizis was excused from the courtroom.)

(Whereupon, Prospective Juror Turnage entered the courtroom.)

THE COURT: Miss Turnage, I asked that you come in by yourself because you had indicated that you had a strongly held opinion with regard to something, and I thought it was the basis -- the basis of that was the media information that you had gotten before you came in here. And so I wanted to find out what the media information was that you were relying on. I wanted to do it in a way so everybody else didn't hear it in case they didn't hear that same media coverage.

A PROSPECTIVE JUROR: That makes sense.

THE COURT: So can you tell us what you --

A PROSPECTIVE JUROR: Well, one of the things I heard is that the defendant, after having allegedly done the crime, told friends of his that, yes, he had done it and he was proud of it. And now, as you said, the media is oftentimes wrong.

But I can't help but feel that there's good chance that what I heard was true and that, I mean, I wouldn't want to say that I have made a strong opinion that he's guilty at this point, but I can't help but feeling a little bit swayed by that.

1 THE COURT: Before we took our break I normally
2 would have asked everyone this question. I didn't get a
3 chance to ask you and everyone else. So I'll ask you now by
4 yourself.

5 And that is if the Court were to instruct you
6 at the conclusion of the case that a defendant in a criminal
7 action is presumed to be innocent until the contrary is
8 proven beyond a reasonable doubt, and in case of a
9 reasonable doubt as to whether the defendant's guilt is
10 satisfactorily shown, then the defendant is entitled to be
11 acquitted, would you follow and accept that instruction?

12 A PROSPECTIVE JUROR: I would try my best to do
13 that.

14 THE COURT: The instruction talks about
15 presuming the defendant innocent until the evidence is
16 presented here in the courtroom. Do you understand that?

17 A PROSPECTIVE JUROR: Right, I do understand
18 that. It's hard to shut off feelings and to just separate
19 that. I would do my best to do that, but I can't say that
20 for sure I would. I would try my best to separate that and
21 put that aside and to go ahead and make him innocent in my
22 mind. But I don't know that that would be the case.

23 THE COURT: Mr. Bosler.

24 MR. BOSLER: Miss Turnage, you were able to
25 fill out a questionnaire before you came to court today?

1 A PROSPECTIVE JUROR: Uh-huh.

2 MR. BOSLER: They gave you time to think about,
3 read the questions and think about your answers?

4 A PROSPECTIVE JUROR: Uh-huh.

5 MR. BOSLER: You were asked a question, do you
6 remember -- I don't know if you remember. You were asked a
7 question whether you could put aside your strongly held
8 opinions or opinions that you have about this case and
9 follow the Court's instruction if you were called to do so.
10 Do you remember what you responded?

11 A PROSPECTIVE JUROR: I believe I wrote no.

12 MR. BOSLER: You wrote no. You say that you
13 are not going to follow directions. I could not go against
14 my beliefs, unquote. Is that something you put on your
15 questionnaire?

16 A PROSPECTIVE JUROR: That is something I did
17 put on my questionnaire, yes.

18 MR. BOSLER: Does that fairly describe how you
19 feel today?

20 A PROSPECTIVE JUROR: Yeah, it does.

21 MR. BOSLER: So in spite of what the Court has
22 said, these are the presumptions, things like that you feel
23 if your beliefs are going to conflict with the instructions,
24 you are not going to follow the instructions?

25 I don't want you to think there is a right or

1 wrong answer. Whatever you give is your answer.

2 A PROSPECTIVE JUROR: I'm just saying that it
3 would be very difficult for me to follow the instructions
4 and go against what I believe, and I would try my best to do
5 that, but I can't say that I would.

6 MR. BOSLER: If you had -- I don't mean to put
7 you on the spot. If you had an instruction that was
8 different from your belief, which one would you follow?

9 A PROSPECTIVE JUROR: I would have to go with
10 my belief.

11 MR. BOSLER: You are honest about that?

12 A PROSPECTIVE JUROR: (Positive nod.)

13 MR. BOSLER: I think you said yes.

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: She nodded her head.

16 A PROSPECTIVE JUROR: I did say yes.

17 MR. BOSLER: If -- at these two tables, who do
18 you think has the burden of proof in this case?

19 A PROSPECTIVE JUROR: The burden of proof is on
20 the prosecution.

21 MR. BOSLER: And have you formed an opinion as
22 to whether Mr. Vanisi is guilty at this point?

23 A PROSPECTIVE JUROR: I have.

24 MR. BOSLER: And that opinion is what?

25 A PROSPECTIVE JUROR: That he is guilty.

1 MR. BOSLER: That's despite what the Court
2 said?

3 A PROSPECTIVE JUROR: Right, but I mean, I
4 would try, like I said, to put that aside. But it would be
5 difficult to do.

6 MR. BOSLER: You can't even promise that that
7 could happen?

8 A PROSPECTIVE JUROR: I can't promise that that
9 could happen.

10 MR. BOSLER: No further questions, Your Honor.
11 We make the challenge.

12 THE COURT: You make a motion?

13 MR. BOSLER: Yes.

14 THE COURT: We'll let Mr. Stanton inquire.

15 MR. STANTON: Miss Turnage, one of the things
16 that jurors have the sole province in a criminal case is you
17 will determine what are the facts in the case. So from that
18 perspective, and that is that there is no one going to be
19 giving you instructions about what the facts are as far as
20 how you determine them to be, is there any instructions of
21 law that you can think of that would go against your
22 personal beliefs and therefore you wouldn't follow? Can you
23 give me an example?

24 A PROSPECTIVE JUROR: Yeah, I can. Say that
25 something came up in the court case that we were admonished

1 by the judge to disregard, to forget we heard it. I
2 couldn't forget I heard anything, if I heard it.

3 MR. STANTON: If you were instructed to, as you
4 just said, disregard it and yet you heard it, when you went
5 back to deliberate to that and you said, Hey, look, this was
6 an important part of the case, I heard it, and then someone
7 said, Hey, but you were instructed by the judge to disregard
8 it, are you saying that you couldn't do that?

9 A PROSPECTIVE JUROR: That's what I'm saying.

10 MR. STANTON: Even if you had taken an oath to
11 follow the rules of the Court?

12 A PROSPECTIVE JUROR: It would still be
13 difficult to disregard the information, yes.

14 MR. STANTON: It may be difficult for the
15 average person to do that, to disregard something they have
16 heard. But the question is, are you the type of person that
17 will take the instructions and the oath to follow the law
18 serious enough that you will put it aside?

19 A PROSPECTIVE JUROR: I'm the type of person
20 that would do my best to do that.

21 MR. STANTON: You indicated on your
22 questionnaire, "My beliefs don't allow me to judge others."
23 Could you explain that to me?

24 A PROSPECTIVE JUROR: Well, God is the only
25 judge, and I know that may sound kind of ridiculous to you

1 people. But to me, I take it very seriously, and I wouldn't
2 want to have to be put in the position to judge anybody for
3 anything.

4 MR. STANTON: When you say judge somebody,
5 would that include finding whether or not they are guilty or
6 innocent of first-degree murder?

7 A PROSPECTIVE JUROR: That is correct.

8 MR. STANTON: How about making the decision
9 whether someone should die or not?

10 A PROSPECTIVE JUROR: I wouldn't want to have
11 to make that decision. I believe that the decision needs to
12 be made, obviously, by somebody.

13 MR. STANTON: But not by you?

14 A PROSPECTIVE JUROR: But I would feel very
15 uncomfortable having to make that decision.

16 MR. STANTON: No objection to counsel's motion.

17 THE COURT: You are excused for cause. Thank
18 you for all your candor. We appreciate your service here.

19 A PROSPECTIVE JUROR: Thank you.

20 THE COURT: Go ahead on down to the Jury
21 Commissioner's office and report to her that you were
22 excused.

23 A PROSPECTIVE JUROR: Where is that located?

24 THE COURT: The first floor where you first
25 went this morning.

1 (Whereupon, Prospective Juror Turnage was
2 excused from the courtroom.)

3 MR. GREGORY: Your Honor, I believe I have one
4 juror left, Miss Kenny.

5 (Whereupon, Prospective Juror Kenny enters the
6 courtroom.)

7 THE COURT: Yes, that is correct.

8 Go ahead and find a seat anywhere, Miss Kenny.

9 A PROSPECTIVE JUROR: Thank you.

10 THE COURT: Miss Kenny, I asked that you come
11 in by yourself because you had some feelings with regard to
12 forming -- judging a case, and you had some issues about the
13 pretrial publicity that you might have seen or heard, and
14 you said you had formed an opinion about the case. So I
15 wanted to hear what the basis of your pretrial publicity
16 that you have heard was. What had you heard?

17 A PROSPECTIVE JUROR: I heard everything,
18 everything. Because I read the paper every day, mostly
19 every day, except the last few weeks I didn't. But my
20 husband watches the news very carefully every night. That's
21 his thing.

22 But I know a lot about it, but I'm not here
23 to -- do you know what I mean? I can't judge anybody. I
24 know it was the most horrible crime committed in the town
25 here since I have been living here. And I am who I am and

1 the personality I do have, and I'm German, I cannot judge
2 and I will not judge.

3 MR. BOSLER: Your Honor, at this time we're
4 going to offer a stipulation to the Court to challenge her
5 for cause.

6 MR. STANTON: Yes, Your Honor. For the record,
7 Miss Kenny's responses on both questionnaires I believe
8 establishes a basis for cause.

9 THE COURT: Okay. Do you stipulate to that?

10 MR. SPECCHIO: We do, Your Honor.

11 THE COURT: Okay. Miss Kenny, they have read
12 your questionnaire, and on the basis of what you told us
13 just now, both sides agree you may be excused from the case.

14 A PROSPECTIVE JUROR: Thank you very much.

15 THE COURT: Thank you for your assistance. We
16 appreciate it.

17 A PROSPECTIVE JUROR: Thanks for the respect
18 you have given me.

19 THE COURT: We'll see you back -- go ahead down
20 to the Court Jury Commissioner on the first floor.

21 (Whereupon, Prospective Juror Kenny exited the
22 courtroom.)

23 THE COURT: Anybody else counsel wants to
24 stipulate to excluding before I call them in?

25 MR. GREGORY: I hate to do this because I know

1 it is going to make Mr. Stanton's day. But are we going to
2 take an afternoon break, a 15-minute break or something like
3 that?

4 MR. SPECCHIO: Judge, can I just ask one
5 question before you even make that call? I had Mr. Jones as
6 saying that he had some kind of an opinion, Lawrence Jones.

7 MR. BOSLER: He said he had an opinion who is
8 responsible for the crime.

9 MR. SPECCHIO: He is the only one that I had.

10 THE COURT: Whatever he said, it wasn't of such
11 a nature that I felt we had to talk to him individually.
12 You can certainly follow up with any questions you might
13 have for him.

14 MR. BOSLER: I also have Janet Frandsen saying
15 she was biased.

16 MR. SPECCHIO: The woman from UNR. Says she
17 taught at UNR or something.

18 THE COURT: Right. But I don't think there was
19 anything that would contaminate the whole panel if she told
20 us her feelings. My main concerns were the media issues,
21 what they might have known outside the courtroom that nobody
22 else would know about. I didn't really want them exploring
23 that. If it is just their personal beliefs.

24 MR. SPECCHIO: As long as she doesn't say
25 anything about UNR.

1 THE COURT: We'll watch it kind of carefully
2 and if we get to that point. That was Mrs. Frandsen?

3 MR. SPECCHIO: That was 23, Judge.

4 THE COURT: Now, the jury came back at a
5 quarter to 2:00. And it's now 20 to 4:00. They wanted a
6 smoke break. And as much as you all know how I feel about
7 cigarette smoke, so as much as my initial response was no
8 way, Mr. Gregory, that, no, I wouldn't let anybody have a
9 smoke break, I did let them go on a smoke break, and that
10 was about 10 minutes ago. Seven minutes ago. So that was
11 anticipating that we would take a short recess now while
12 we're waiting for them to come back. Because we have to let
13 them -- I mean, I don't want to hold them captive here.

14 MR. GREGORY: I think Mr. Bosler would thank
15 the Court for that courtesy.

16 THE COURT: Counsel, we're going to call the
17 other names to fill it. Would you like those names called
18 now so you can kind of during the break be looking at their
19 questionnaires?

20 MR. SPECCHIO: You were not going to have them
21 in there? You are going to call them from out of the room?

22 THE COURT: We can if you want to. We have got
23 quite a few to replace. So if you want to have a chance to
24 look at it, I thought that might be -- save you a little
25 time. I don't care how we do it.

1 MR. SPECCHIO: There are only eight, Judge.

2 THE COURT: Be back in 10 minutes. You may
3 bring the regular jury panel and the full panel back into
4 the courtroom as soon as our recess is over. I think about
5 10 more minutes should do it. Thank you. Court is in
6 recess.

7 (Recess taken at 3:41 p.m.)

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1 RENO, NEVADA, MONDAY, JANUARY 11, 1998, 4:04 P.M.

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4 (Whereupon, the following proceedings were held
5 in open court, in the presence of the jury
6 panel.)

7 THE COURT: Those people who have been taking
8 charge of the jury, Mrs. Davis, have any of the jurors left
9 your presence?

10 THE CLERK: No, Your Honor, they have not.

11 THE COURT: Thank you. And, Miss Lopshire, the
12 other group of people that you had, have any of those jurors
13 left your presence since we took the roll?

14 MS. LOPSHIRE: No, they have not.

15 THE COURT: Thank you. Counsel, will you
16 stipulate to the panel as it is now in the box -- we're
17 missing some people -- to their being present?

18 MR. STANTON: State will stipulate.

19 MR. BOSLER: Based upon the responses we just
20 heard, we stipulate.

21 THE COURT: Clerk will call the names of those
22 to replace some of the jurors whom we have lost. As your
23 name is called, please come forward and take the seat that
24 the bailiff instructs you to take. We'll be filling the
25 seats like we did before. We'll start in the back row and
we'll fill the blanks and then we'll come forward.

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1 THE CLERK: Frank X. Sotero.

2 John W. Auld.

3 Bo H. Larsson.

4 Mary A. Schultz.

5 Grace B. Mills.

6 Randall A. McCargar.

7 Alan R. Golbov.

8 Stephen L. Sowers.

9 THE COURT: Go ahead and fill in those seats.

10 There should be a place for every juror by now.

11 Okay. Those of you who have joined us at this
12 break on our jury panel, as you remember, I asked you to
13 keep track of those questions that you would respond to if
14 you were called upon to replace someone, and now you have
15 been called upon to replace someone. So we will proceed
16 with asking you to tell me what those questions would be
17 that you would respond to.

18 And I think, Mr. Sotero, you were the first
19 person called back up. So far were there any of my
20 questions that you would have wanted to respond to if you
21 were sitting here in the jury box from the beginning?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: You aren't familiar with any of the
24 names on that witness list?

25 A PROSPECTIVE JUROR: None.

1 THE COURT: And you don't know anybody in law
2 enforcement?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: You heard all my questions?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Mr. Auld.

7 A PROSPECTIVE JUROR: Hello.

8 THE COURT: Hello.

9 A PROSPECTIVE JUROR: No on the witness list.

10 THE COURT: I won't go through all my
11 questions. You just tell me.

12 A PROSPECTIVE JUROR: Go ahead.

13 THE COURT: You tell me which ones you would
14 want to respond to.

15 A PROSPECTIVE JUROR: The acquaintance with a
16 police officer.

17 THE COURT: Tell us about that, please.

18 A PROSPECTIVE JUROR: Friend who is a highway
19 patrolman and some cousins that are in Sparks police force.

20 THE COURT: What are your cousins' names?

21 A PROSPECTIVE JUROR: Zarubi.

22 THE COURT: Is there anything about your
23 association with those police officers that would cause you
24 a difficulty serving in this case?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Would you feel compelled to reach
2 any particular verdict based solely on your relationship
3 with the police officers?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Is there anything about your
6 association with police officers that would require you to
7 justify any particular verdict --

8 A PROSPECTIVE JUROR: No.

9 THE COURT: -- to them or anyone else? Go
10 ahead.

11 A PROSPECTIVE JUROR: And then I have got down
12 articles in paper. I saw it as I was crumpling it up
13 putting it underneath the fire on Sunday.

14 THE COURT: So you just saw that headline?

15 A PROSPECTIVE JUROR: Just saw the headline.
16 Didn't read the article. As far as formed opinion, I have
17 formed an opinion.

18 THE COURT: Okay. And the basis of that
19 opinion?

20 A PROSPECTIVE JUROR: Just from media prior to
21 that.

22 THE COURT: No other questions would you have
23 responded to?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Mr. Larsson.

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you keep track of those
3 questions you would respond to?

4 A PROSPECTIVE JUROR: Yes, I did.

5 THE COURT: Which ones would you have responded
6 to?

7 A PROSPECTIVE JUROR: The one about the media.
8 I did form an opinion earlier, not this time when they wrote
9 about it but a long time ago. So I do have an opinion.

10 THE COURT: Based on the media accounts that
11 you observed?

12 A PROSPECTIVE JUROR: That is correct. I do
13 not know anybody on this list, Your Honor.

14 THE COURT: Thank you.

15 Mrs. Schultz? Did you keep track of what you
16 would have responded to?

17 A PROSPECTIVE JUROR: I didn't. I'm sorry.
18 But I heard all the questions that you asked everybody.

19 THE COURT: Okay. But I need to make sure
20 that -- I'll go kind of quick. If any of my questions, if
21 you have a question about it, just ask me. Okay?

22 A PROSPECTIVE JUROR: Okay.

23 THE COURT: Are you acquainted with or related
24 to the defendant in this case? Are you related or
25 acquainted with the attorneys on either side of this case?

1 You have to answer out loud.

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Are you related to or acquainted
4 with any member of the District Attorney's Office?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Any member of Mr. Specchio's
7 office?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Are you related or acquainted with
10 any law enforcement officers?

11 A PROSPECTIVE JUROR: I know one law officer.

12 THE COURT: Who is that?

13 A PROSPECTIVE JUROR: Jim Stegmeier.

14 THE COURT: How do you know him?

15 A PROSPECTIVE JUROR: He is a good friend of
16 our family.

17 THE COURT: Is there anything about your
18 relationship with him that would cause you a problem serving
19 on this case?

20 A PROSPECTIVE JUROR: No. There is not.

21 THE COURT: Would you feel you had to justify
22 any particular verdict to him?

23 A PROSPECTIVE JUROR: I guess not.

24 THE COURT: It's very hard for me to hear you,
25 ma'am.

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Would it affect you? Yes, no.

3 A PROSPECTIVE JUROR: No.

4 THE COURT: I'm really sorry, Miss Schultz, but
5 there is a lot of people in here, and I just can't hear you.

6 A PROSPECTIVE JUROR: I said no.

7 THE COURT: Can you talk even louder?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Louder?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: That's better. Thank you. I know
12 you will feel like you are yelling, but we're going to have
13 to have you do that. All these bodies around you absorb the
14 sound. So that is what happens.

15 If any law enforcement officer were to testify
16 in this case, would you tend to give that testimony any more
17 or less weight simply because that person is a law
18 enforcement officer?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Do you know anything about this
21 case of your own personal knowledge?

22 A PROSPECTIVE JUROR: Just what I heard in the
23 past media, I guess.

24 THE COURT: You don't have any other knowledge
25 other than what you saw or read in the media accounts?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Now, you have indicated that you
3 have read some newspaper accounts?

4 A PROSPECTIVE JUROR: I didn't read the
5 newspaper. I just seen little spurts on TV.

6 THE COURT: Anything other than what you wrote
7 down on your questionnaire, when you were in here before?
8 You told us about what pretrial publicity you had seen.
9 Have you seen any since then?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you formed or expressed any
12 opinion as to the guilt or innocence of the defendant in
13 this case?

14 A PROSPECTIVE JUROR: Sort of. I guess.
15 Borderline. I don't know all the facts.

16 THE COURT: All right. Do you have anything
17 more than a passing interest in the outcome of the case?

18 A PROSPECTIVE JUROR: I don't understand that.

19 THE COURT: Do you feel committed to the case
20 in any way? Do you feel like you have some personal
21 connection to this case?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: As I go through these list of
24 questions, those of you who I have not asked these questions
25 of personally before, please feel free to raise your hand.

1 I didn't mean to exclude you. If any of you wanted to
2 respond to these questions.

3 Are you related to or acquainted with anyone on
4 the witness list?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: At the conclusion of the evidence I
7 will state the law that applies to this case to you. I will
8 tell you that it is your duty to apply that law to the facts
9 as you find them to be.

10 Would you be reluctant to apply these general
11 principles of law which are stated to you by the Court?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: In other words, would you realize
14 that you are not allowed to make up your own version of the
15 law?

16 A PROSPECTIVE JUROR: Yeah, I understand that.

17 THE COURT: Miss Mills, would you have
18 responded to any of those questions?

19 A PROSPECTIVE JUROR: Yes, I did. I don't know
20 how important it is to the Court, but as the former employee
21 of NJC on Reno campus in the '80s, I would just like to show
22 that for the record, and that has no bearing over my
23 decision on this Court or this case; only what does matter
24 would be what I hear in this courtroom.

25 THE COURT: By NJC, you mean the National

1 Judicial College?

2 A PROSPECTIVE JUROR: That's right.

3 THE COURT: Thank you, ma'am. Any other of my
4 questions that I have gone over just now or that I went over
5 earlier that you would respond to?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Mr. McCargar.

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: Would you have responded to any of
10 my questions?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: As I went over them again, did any
13 of those that you wanted to raise your hand and respond to?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Mr. Sowers.

16 A PROSPECTIVE JUROR: Yes. I sent a sympathy
17 card to Carolyn Sullivan. I was asked to do so by the
18 leaders of my fellowship group, Sparks Fellowship Church. I
19 was asked that on Tuesday night, not aware that I was a part
20 of this trial. And just keep her in my prayers.

21 So that might tend to jade things. I don't
22 think so, though. I have never met Carolyn, and I don't
23 know a whole lot about the case.

24 The only relationships with law enforcement
25 would be just casual acquaintances, no actual friendship.

1 Like I would go to their house or them to mine. As far as
2 being related to anybody, no.

3 I wouldn't make a judgment without hearing the
4 facts as far as the relationship to the police as well as
5 other witnesses. However, as far as personal knowledge of
6 the facts, this could be difficult because I am an employee
7 of Siddell Communications and on-air announcer for KBUL
8 Magic 95.5, The Hawk, Cat Country.

9 THE COURT: No commercials.

10 A PROSPECTIVE JUROR: As well as News Talk KOH.
11 So I might be privy to information that shouldn't be -- I
12 shouldn't be privy to.

13 THE COURT: Why don't you -- do you announce
14 for all those stations?

15 A PROSPECTIVE JUROR: Yes, I do.

16 THE COURT: And is that -- do you do the news,
17 or does it happen while you are doing a regular radio show?

18 A PROSPECTIVE JUROR: The job that I do is as a
19 floater. So one day I can be on one station, the next day
20 on the next. I don't know what my schedule is. It is a
21 fill-in part-time type position. But it is inside the media
22 center, and that makes it real difficult.

23 THE COURT: Do you remember things that you
24 learned in the past regarding publicity?

25 A PROSPECTIVE JUROR: I had heard some, but I

1 was out of town while a lot of it was going on. So I didn't
2 hear a whole lot.

3 THE COURT: If you were to serve as a juror in
4 this case, could you and your co-workers insulate you from
5 the news part?

6 A PROSPECTIVE JUROR: That would be very
7 difficult because, like I say, inside the building, you
8 know, it is going to be one of those cases where they are
9 going to drill me or they are going to maybe, Well, what's
10 going on? What's going on? So it would make it very
11 difficult. It is very hard to be isolated into any one area
12 of the building.

13 THE COURT: One of the things that will happen
14 is if you are on this jury, I will tell you that you can't
15 talk about the case or even the evidence as it is being
16 presented.

17 A PROSPECTIVE JUROR: I understand that.

18 THE COURT: And would that help with your
19 co-workers if you said, No, the judge will hold me in
20 contempt if I did something?

21 A PROSPECTIVE JUROR: Sure, absolutely.

22 THE COURT: Any of the other questions that I
23 have asked everyone that you'd want to respond to?

24 A PROSPECTIVE JUROR: No. The other questions
25 were okay, and that was it.

1 THE COURT: Counsel, I think that's all of our
2 new juror members. Did I miss someone?

3 I'm sorry, Mr. Golbov.

4 A PROSPECTIVE JUROR: Right. The only question
5 I would respond to is forming an opinion some months ago
6 when the incident first happened just based on the media.

7 THE COURT: That was the only basis for your
8 opinion?

9 A PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Ladies and gentlemen of the entire
11 panel, I have some more questions. We took our break a
12 little bit prematurely, and I didn't get to ask all my
13 questions. I'm going to finish all my questions with all of
14 you. Those of you who have been here all day, feel free to
15 raise your hand to these questions.

16 And some of you I may have asked this question
17 a little bit earlier. So if you have already been asked
18 these questions, you don't have to worry about responding
19 now.

20 If the Court were to instruct you at the
21 conclusion of this case that a defendant in a criminal
22 action is presumed to be innocent until the contrary is
23 proven beyond a reasonable doubt and in case of a reasonable
24 doubt as to whether the defendant's guilt is satisfactorily
25 shown, the defendant is entitled to be acquitted, would each

1 of you accept and follow that instruction? You can answer
2 yes or no outloud.

3 THE PROSPECTIVE JURORS: Yes.

4 THE COURT: Did anyone answer no?

5 If the Court were to instruct you that a
6 reasonable doubt is one based on reason, it is not mere
7 possible doubt but is such a doubt as would govern or
8 control a person in the more weighty affairs of life. If
9 the minds of the jurors after the entire comparison and
10 consideration of all the evidence are in such condition that
11 they can say they feel an abiding conviction of the truth of
12 the charge, there is not a reasonable doubt. Doubt to be
13 reasonable must be actual, not mere possibility or
14 speculation. Would each of you accept and follow that
15 instruction?

16 THE PROSPECTIVE JURORS: Yes.

17 THE COURT: Anyone feel they cannot?

18 Have any of you ever served on a jury before?
19 Raise your hands if you have.

20 Miss Schultz. No, I'm sorry, Miss Mills. You
21 have served before? Where did you serve?

22 A PROSPECTIVE JUROR: At the federal building
23 perhaps 12 years ago.

24 THE COURT: And was that a civil or criminal
25 case?

1 A PROSPECTIVE JUROR: It was a civil.

2 THE COURT: Now, the laws are different
3 between -- the federal laws and the state laws in civil
4 versus criminal. Plus times change.

5 Would you be able to set aside anything you
6 might have learned or believed was the law based on that
7 service and decide this case based solely on the law as I
8 tell you it is today?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Is there anything about that prior
11 experience that would cause you a problem serving again?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Stephenson, did you raise your
14 hand also?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: When did you serve?

17 A PROSPECTIVE JUROR: About four and a half
18 years ago.

19 THE COURT: And where?

20 A PROSPECTIVE JUROR: Right here. It was over
21 insurance problems or whatever.

22 THE COURT: A civil case?

23 A PROSPECTIVE JUROR: Yeah.

24 THE COURT: Anything about that service that
25 would cause you a problem serving again?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: And would you -- again it would
3 be -- this case is different than that would be and it has a
4 different burden of proof, et cetera. Would you be able to
5 set aside anything you learned in that other case and decide
6 this one based solely on the law as it is today?

7 A PROSPECTIVE JUROR: Yeah.

8 THE COURT: I had two other people. I had
9 Mrs. Kizis.

10 A PROSPECTIVE JUROR: Yes, it was here in a
11 criminal case.

12 THE COURT: How long ago?

13 A PROSPECTIVE JUROR: I don't remember the
14 exact year, but it was the early '80s.

15 THE COURT: And anything about that prior
16 service that would cause you a problem serving again?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: And would you be able to set aside
19 anything you might have learned in that other case and
20 decide the law as I instruct you it is today?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Mrs. Imasaki, you served before,
23 right?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Where?

1 A PROSPECTIVE JUROR: Sparks Justice Court
2 about 15, 20 years ago.

3 THE COURT: A misdemeanor case?

4 A PROSPECTIVE JUROR: Yes, it was.

5 THE COURT: And is there anything about that
6 prior service that would cause you a problem serving again?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Would you be able to set aside
9 anything you might have learned in that other service and
10 decide the case based solely on the law as I instruct you it
11 is?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Now, all four of you, without
14 telling me the verdict, were you each able to reach a
15 verdict in your prior service?

16 A PROSPECTIVE JUROR: They settled out of
17 court.

18 THE COURT: And Miss Mills -- or Miss Mills,
19 were you able to reach a verdict?

20 A PROSPECTIVE JUROR: Yes. I was an alternate.

21 THE COURT: So you didn't get to deliberate.
22 Anything about that circumstance that would cause you a
23 problem?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Thank you. Is there anyone sitting

1 in the jury box now that is acquainted with anyone else in
2 the jury box? You have been in a very small room for a
3 while.

4 Yes, Miss Arlitz.

5 A PROSPECTIVE JUROR: John Auld.

6 THE COURT: And is there anything about your
7 knowledge or your relationship with Mr. Auld that would
8 cause you a problem serving on the same jury?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: How do you know each other?

11 A PROSPECTIVE JUROR: From business.

12 THE COURT: From work?

13 A PROSPECTIVE JUROR: We have a business
14 together.

15 THE COURT: Oh, okay. And if you were to
16 happen to be on a jury and you ended up disagreeing with
17 each other, would that cause you a problem?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: You could disagree with him?

20 Mr. Auld, would you have any problem serving on
21 the same jury as Miss Arlitz?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Would you have any problem if you
24 ended up disagreeing? Would that cause you any difficulty?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: There was someone else. Yes, sir.

2 A PROSPECTIVE JUROR: I know Mr. Dick Adamson.

3 THE COURT: And how do you know him?

4 A PROSPECTIVE JUROR: He was my employer many
5 years ago.

6 THE COURT: He's not any longer; correct?

7 A PROSPECTIVE JUROR: Correct.

8 THE COURT: Is there anything about that prior
9 relationship that would cause you difficulty serving on the
10 same jury?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Mr. Adamson, would you have any
13 problem serving on the same jury?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: You would be okay with that?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: You could disagree? That would be
18 all right? Could you disagree if you had to?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Have any of you ever been involved
21 personally in litigation, a lawsuit that went to trial?
22 Ever been a witness in a case?

23 Yes, Mr. Sotero.

24 A PROSPECTIVE JUROR: I was involved in a civil
25 suit here in Reno about two years ago, and civil suit in

1 small claims about eight years ago.

2 THE COURT: Anything about that prior
3 experience in court that would cause you a problem serving
4 in this case?

5 A PROSPECTIVE JUROR: No, not a problem. It
6 was quite an education.

7 THE COURT: Miss Guiler.

8 A PROSPECTIVE JUROR: Guiler, yes. Now that,
9 you are making me go back a lot of years. In the '70s, I
10 was in divorce court, and in the '70s, I was shot and had to
11 go to court as a witness for the State.

12 And then I have to stop and think. And then I
13 was in court as a witness for the State also for a stalker
14 that was stalking me.—I just went to court in Sparks as a
15 witness on a domestic abuse case. It was last month.

16 THE COURT: In all those experiences in the
17 court, were there anything about those experiences that
18 would cause you difficulty sitting through a jury trial?

19 A PROSPECTIVE JUROR: No, I don't think so.

20 THE COURT: Now, was it the District Attorney's
21 Office that called you as a witness in those cases?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Do you hold any bias for or against
24 the District Attorney based upon those prior occasions?

25 A PROSPECTIVE JUROR: Yeah, a little bit.

1 THE COURT: By your reaction, I don't think
2 it's for the District Attorney's Office. You have mixed
3 feelings about that?

4 A PROSPECTIVE JUROR: Well, I did because it
5 was back in the '70s when women didn't really have rights,
6 and there was a lot of things that went on that now as I'm
7 not 20 anymore, I'm older, and I know how women should be
8 treated. It was -- it's difficult to be -- how can I say
9 it? -- in that situation where I can see the prejudice that
10 was there at that time which is now a whole different
11 situation.

12 THE COURT: So anything that went on in the
13 past you wouldn't hold against the particular District
14 Attorney who is here now?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Yes, Miss Mueller.

17 A PROSPECTIVE JUROR: Back in 1981, I was also
18 a witness in a criminal case where I was shot, and I was
19 used as a witness for the prosecution.

20 THE COURT: Just the luck of the draw the two
21 of you are together. Is there anything about that prior
22 circumstance that would cause you difficulty in this case?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: And do you hold any bias for or
25 against either side based upon your experiences?

1 A PROSPECTIVE JUROR: No, none at all.

2 THE COURT: Was there anyone else in the back
3 row? Yes, Miss Mueller.

4 A PROSPECTIVE JUROR: Myself, personal. I went
5 through a trial with my daughter.

6 THE COURT: You were sort of her support?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Was there anything about that
9 circumstance in going through the trial that would cause you
10 a problem serving as a juror?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Mr. LaFond.

13 A PROSPECTIVE JUROR: Yes. Going back to that
14 acquaintance, I know the lady down there because we worked
15 the same casino together.

16 THE COURT: Miss Mueller. Now that she's
17 talked, you recognize her.

18 A PROSPECTIVE JUROR: He tried getting your
19 attention earlier.

20 THE COURT: I missed it. Is there anything
21 about being on the same jury with Miss Mueller that would
22 cause you a problem?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Miss Mueller, would you have any
25 problem being on the same case with, the same jury as

1 Mr. LaFond?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Would you both be able to
4 deliberate with each other?

5 A PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Mr. LaFond?

7 A PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: Anybody in the second row?

9 Yes, Mr. Judson.

10 A PROSPECTIVE JUROR: Your Honor, for the
11 record, in about 1992, I worked as a trial consultant for a
12 firm that did large civil cases nationwide.

13 THE COURT: Was that a jury trial consultant?

14 A PROSPECTIVE JUROR: Yes. It was a firm. I
15 specialized in jury selection.

16 THE COURT: Have you had fun today?

17 A PROSPECTIVE JUROR: Excuse me?

18 THE COURT: Have you had fun today?

19 A PROSPECTIVE JUROR: Tremendous amount of fun,
20 Your Honor.

21 THE COURT: I'm sure it feels different sitting
22 in that chair. I hope we're making good use of your time.

23 Anything about what you did in that with that
24 civil law firm that would cause you a problem serving as a
25 juror in this case?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Let's see. I think, Miss Mills,
3 did you raise your hand?

4 A PROSPECTIVE JUROR: Yes. I was involved in
5 small claims court.

6 THE COURT: How long ago?

7 A PROSPECTIVE JUROR: '86.

8 THE COURT: Anything about that prior
9 circumstance of you being in court that would cause you a
10 problem in this case?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Anyone else in that row?

13 Third row. Okay, yes, Mr. Jones.

14 A PROSPECTIVE JUROR: Jones, yes. I'm not sure
15 I understood the question, but I have been a witness, a
16 defendant and a plaintiff.

17 THE COURT: You have been it all.

18 A PROSPECTIVE JUROR: But I don't believe it
19 would affect me in any way.

20 THE COURT: Is there anything about your
21 experiences that you would -- that would cause you a problem
22 being a juror in a case?

23 A PROSPECTIVE JUROR: I don't believe so.

24 THE COURT: Anyone else in that row?

25 The fourth row? Miss Kizis.

1 A PROSPECTIVE JUROR: Small claims court in I
2 think the mid '80s. There wouldn't be anything that would
3 affect.

4 THE COURT: Mr. Furrie, did you raise your
5 hand?

6 A PROSPECTIVE JUROR: Yes, I did. About three
7 years ago I was a witness in a civil case of a wife beating
8 that was a couple minutes in court.

9 THE COURT: Anything about your experience as a
10 witness that would cause you a problem in this case?

11 A PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: And there was someone on the other
13 side. Yes, Miss Imasaki.

14 A PROSPECTIVE JUROR: Yes. I have had to
15 attend various family court hearings.

16 THE COURT: And that's in relationship to your
17 employment?

18 A PROSPECTIVE JUROR: To my previous position,
19 yes.

20 THE COURT: Now, is there anything about those
21 court hearings and what went on in the court environment
22 that would cause you any problem serving as a juror?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Anyone else in that row? In the
25 front row?

1 Yes, ma'am.

2 A PROSPECTIVE JUROR: About a year ago I was a
3 witness in a civil trial.

4 THE COURT: In a civil trial. Anything about
5 that experience being a witness in a court that would cause
6 you a problem being a juror?

7 A PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: We have heard about two individuals
9 that have indicated they were victims of a crime. Is there
10 anyone else that was a victim of a crime in the past that
11 you haven't already told me about?

12 Does any juror have any health reason why you
13 feel you should not serve in this case?

14 Anyone have any trouble hearing me or any back
15 problems that even if you could still serve, that I should
16 be aware of?

17 Yes, ma'am.

18 A PROSPECTIVE JUROR: Back.

19 THE COURT: Back problem?

20 A PROSPECTIVE JUROR: Arthritis.

21 THE COURT: The chairs that the jury will be
22 sitting in are more comfortable than the one you are in now.

23 A PROSPECTIVE JUROR: Aspirin.

24 THE COURT: That's what you take for it?

25 A PROSPECTIVE JUROR: Yeah.

1 THE COURT: Now, would you feel comfortable
2 telling me if you needed to stand during the course of the
3 trial? Would you do that?

4 A PROSPECTIVE JUROR: It comes and goes during
5 the years, 27 years.

6 THE COURT: How are you doing today?

7 A PROSPECTIVE JUROR: Better now than earlier.
8 Arthritis in the foot too.

9 THE COURT: You let me know if you are having
10 any difficulty. Just raise your hand.

11 A PROSPECTIVE JUROR: No, I'll put up with it.

12 THE COURT: You tell me if it is bothering you
13 too much.

14 A PROSPECTIVE JUROR: It is for lifetime, so I
15 have learned to accept it.

16 THE COURT: Anyone else? Yes, ma'am.

17 A PROSPECTIVE JUROR: I lost my husband June
18 1st, and I am under doctor's care and therapy.

19 THE COURT: Are you having difficulty following
20 what's happening?

21 A PROSPECTIVE JUROR: No, not at all.

22 THE COURT: Are you taking any medication?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: What kind of medication?

25 A PROSPECTIVE JUROR: Stuff for stress.

1 Zoltoc, Zoloff.

2 THE COURT: I have to get the name of it for
3 the record, but I have absolutely no idea what it is.

4 A PROSPECTIVE JUROR: It is like Valium, I
5 guess.

6 THE COURT: It is like Valium?

7 A PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: I don't need the jury to tell me.

9 A PROSPECTIVE JUROR: It makes me very calm.

10 THE COURT: Does it make you sleepy at all?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Do you feel like you have any
13 problems processing information?

14 A PROSPECTIVE JUROR: Not yet.

15 THE COURT: Have you been able to understand
16 everything today?

17 A PROSPECTIVE JUROR: Yes, I have.

18 THE COURT: Thank you.

19 Yes, Mr. LaFond.

20 A PROSPECTIVE JUROR: I take blood pressure
21 medicine and water pills, and I have to go to the bathroom
22 quite often. I got high blood pressure.

23 THE COURT: Are you doing okay right now?

24 A PROSPECTIVE JUROR: I have been doing all
25 right today because we have been closed in the other room.

1 THE COURT: Well, if you have a problem, just
2 raise your hand, and the bailiff and I will take care of
3 you. We'll watch it.

4 Anybody else? Yes, ma'am.

5 A PROSPECTIVE JUROR: I take like antianxiety
6 pills.

7 THE COURT: And do you know what kind they are?

8 A PROSPECTIVE JUROR: I take Prozac and Buspar.

9 THE COURT: Is there anything -- do you have
10 any problems on that medication? Does it make you sleepy at
11 all?

12 A PROSPECTIVE JUROR: I get real jumpy like I
13 get nervous, but it's supposed to calm me, but I still get
14 really nervous.

15 THE COURT: How are you doing today?

16 A PROSPECTIVE JUROR: I feel really nervous.

17 THE COURT: Especially talking in front of
18 everyone; right?

19 A PROSPECTIVE JUROR: Yes.

20 MR. SPECCHIO: Your Honor, might we approach?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held among
23 Court and counsel as follows:)

24 MR. STANTON: I'll stipulate to excuse the
juror.

25 MR. BOSLER: She indicated she'd faint if she

1 got called.

2 THE COURT: You stipulate to it, Mr. Bosler?

3 MR. BOSLER: I stipulate, yes.

4 THE COURT: Okay.

5 (Whereupon, the following proceedings were held
6 in open court, in the presence of the jury
panel.)

7 THE COURT: Anybody else? Does anybody sitting
8 in the jury box know of any business or personal reason that
9 you have not already discussed with me why you should not or
10 why it would be hard for you to serve as a juror in this
11 case? Let me rephrase the question.

12 Do you have any business or personal reason
13 which you feel would interfere with your impartiality to
14 serve as a juror in this case? And I'm going to include in
15 that your ability to listen and pay attention to the
16 evidence? Okay.

17 Mr. Auld?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: What is your --

20 A PROSPECTIVE JUROR: Well, let's put it this
21 way. It's a small business, and when things -- I am not
22 there, things do not take place. As such, I'm sitting
23 making -- here making notes about what I got to do when I
24 get out of here instead of paying attention.

25 THE COURT: Do you feel like you would be doing

1 that throughout the course of the trial?

2 A PROSPECTIVE JUROR: I would hope not. But
3 it's a difficult situation to be in.

4 THE COURT: I understand that difficulty. But
5 if we took regular breaks -- I know today has been a little
6 strange; we have been trying to get through this -- would
7 that help you?

8 A PROSPECTIVE JUROR: I don't know if anybody
9 has read the little questionnaire, but I do have a business
10 trip the 15th through the 19th planned and paid for. Beyond
11 that, I actually thought it would be kind of interesting,
12 and the hours are not so bad that things could not get
13 accomplished.

14 THE COURT: The business trip you have to
15 take --

16 A PROSPECTIVE JUROR: It's a food show in San
17 Francisco, Moscone Center.

18 THE COURT: So you have plane tickets to San
19 Francisco?

20 A PROSPECTIVE JUROR: I drive, but I have a
21 hotel, and I paid for a booth and all that.

22 THE COURT: So you will be showing your foods?

23 A PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: Mr. Auld, I know about the foods,
25 and I remember you and remember meeting you. So I know what

1 the circumstance is on that. But what was that, was that a
2 Friday?

3 A PROSPECTIVE JUROR: Yeah. It's the 15th I
4 leave, and the show is over on the 19th, and I will come
5 back on the 19th.

6 THE COURT: That's the Tuesday after the
7 holiday.

8 A PROSPECTIVE JUROR: The Tuesday.

9 THE COURT: What kind of a hardship would it
10 create for you if you had to shorten that up a little bit,
11 you could only be there Saturday, Sunday, Monday?

12 A PROSPECTIVE JUROR: You can't. The show runs
13 Sunday through Tuesday. I drive, I work the show from 10:00
14 to 5:00 Sunday, Monday, Tuesday, and it's actually 10:00 to
15 4:00 on Tuesday that I pack up and get out.

16 THE COURT: Okay. Thank you. Also raising her
17 hand I think was somebody over here.

18 Yes, Mr. Larsson.

19 A PROSPECTIVE JUROR: Yes. As I have stated
20 before, I don't have anybody to run my business. I was
21 flooded out in '97, and I had to let the employees go and
22 borrow a lot of money. I think I stated that also.

23 THE COURT: Yes, I remember.

24 A PROSPECTIVE JUROR: I don't have anybody
25 there to run it. I have a trainee right there and delivery

1 person, and they cannot run it. So while I'm sitting here,
2 I'm losing a lot of revenue that I cannot afford to lose.
3 Any other time I wouldn't have a problem serving at all on a
4 jury, Your Honor.

5 THE COURT: You mean like another month?

6 A PROSPECTIVE JUROR: When -- a time when I can
7 get back on my feet again. It is going to take another
8 couple years, I'm afraid.

9 Well, it was the will of God I guess that made
10 the flood, you know, flood my business. I had nothing to do
11 with it. But I'm trying to crawl back up on top again.
12 It's been pretty tough.

13 THE COURT: Thank you, Mr. Larsson. Getting
14 more hands here.

15 Mr. Sotero.

16 A PROSPECTIVE JUROR: Just want the Court to be
17 aware that I also am self-employed.

18 THE COURT: And I know how much trouble it is
19 for everyone who is self-employed, but would the breaks that
20 we are going to take help you a little bit?

21 A PROSPECTIVE JUROR: Well, I'm in the
22 construction business. If I'm not there, nothing gets done.

23 THE COURT: Miss Burkholder.

24 A PROSPECTIVE JUROR: You guys are all aware I
25 do have a three-month old infant that I do nurse. She is

1 not on my schedule. She demands her own schedule usually.
2 It is not like I can do anything about that.

3 THE COURT: I understand your husband has been
4 with us all day?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Appreciate your sticking with us
7 working so hard at making this work.

8 Yes, Miss --

9 A PROSPECTIVE JUROR: Saputo. My grandma had a
10 stroke Friday night, and I'm going to move out of where I'm
11 living and move in with my grandpa. With work and that,
12 it's going to be a strain. But I guess everyone has got
13 strains.

14 THE COURT: You think you really want to tell
15 me about this?

16 A PROSPECTIVE JUROR: I apologize, Your Honor.

17 THE COURT: No, it is fine.

18 Mr. Judson. You were sort of half holding your
19 hand up.

20 A PROSPECTIVE JUROR: There is nothing that
21 would affect my impartiality. However, my office is the
22 Nevada State Demographers office, and it works for the
23 Department of Taxation. The department has requested that I
24 request an excuse from you. They fax'd a memorandum to me
25 this morning to give to you, and this is the moment I guess

1 when it would be appropriate to bring that to your attention
2 for your judgment.

3 THE COURT: You're not legislatively exempt,
4 though, are you?

5 A PROSPECTIVE JUROR: Not to the best of my
6 knowledge.

7 MR. SPECCHIO: Your Honor, may we approach?

8 THE COURT: I kind of want to get everybody
9 done. Do you want me to do part?

10 MR. STANTON: We can wait until you go through
11 the whole panel.

12 THE COURT: We have quite a few more hands.
13 Then you can talk to me about them all at one time.

14 MR. SPECCHIO: You want a wholesale list?

15 THE COURT: I kind of do.

16 Mr. Battaglia.

17 A PROSPECTIVE JUROR: Yes, I have a
18 nine-year-old daughter who gets out of school at three, and
19 my wife gets off work at six, and we haven't solved the
20 child care problem yet.

21 THE COURT: What school does your child go to?

22 A PROSPECTIVE JUROR: Jerry Whitehead.

23 THE COURT: Do you have Latch Key?

24 A PROSPECTIVE JUROR: I don't know.

25 THE COURT: I'm looking at the Jury

1 Commissioner. She sometimes knows those answers off the top
2 of her head. It's my understanding that Jerry Whitehead
3 does have Latch Key. Hopefully your wife and you can work
4 that out.

5 A PROSPECTIVE JUROR: How late do they last?

6 THE COURT: They usually -- the Latch Key?

7 5:30, 5:45.

8 A PROSPECTIVE JUROR: I think 6:00 o'clock.

9 THE COURT: A lot of people use it. It's 6:00
10 o'clock. You will be out of here by then in time to go pick
11 up your child. If that was resolved, would that be okay?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Fourth row. No, we have got
14 someone else.

15 Miss Arlitz.

16 A PROSPECTIVE JUROR: I also have a business
17 and it's a two-person business. I'm in the office answering
18 the phones and the other person in the warehouse.

19 MR. GREGORY: I'm sorry, Your Honor. We didn't
20 hear that.

21 THE COURT: She is in the office answering
22 phones. The other person is in the warehouse.

23 Anyone else in that row? Okay.

24 And yes, Miss Timmerman.

25 A PROSPECTIVE JUROR: Your Honor, slightly

1 embarrassing. I graduated from high school 37 years ago,
2 and I don't understand that hard vocabulary anymore. I
3 don't have my Webster dictionary with me.

4 THE COURT: Are there some words I have used
5 today that have confused you?

6 A PROSPECTIVE JUROR: I was here last week.
7 There was a word or two I couldn't figure out. That's all.

8 THE COURT: On the questionnaire, on the
9 written questionnaire?

10 A PROSPECTIVE JUROR: Speaking. Speaking to
11 us, sitting out there where the jury is, wherever. That's
12 my -- but I got A's and B's in English. That was a long
13 time ago.

14 THE COURT: Well, I have a fourth grader, and
15 sometimes she comes home with stuff I have never even heard
16 of.

17 A PROSPECTIVE JUROR: I'm rusty.

18 THE COURT: We all get that way.

19 Mrs. Timmerman, if you are selected to serve on
20 this jury, and somebody uses a word that you don't
21 understand, I would require of you to tell the bailiff, and
22 then he'd tell me, and we'd have the word explained. Would
23 you do that?

24 A PROSPECTIVE JUROR: That's embarrassing.

25 THE COURT: You could do it in a note to the

1 bailiff. You wouldn't have to do it in front of everybody.
2 Would you do that if you were on the jury?

3 A PROSPECTIVE JUROR: I have a tablet in my
4 purse, yes.

5 THE COURT: You would pass that note to the
6 bailiff for me, and let me know that you wanted me to
7 explain it? I won't tell anybody that it is you.

8 A PROSPECTIVE JUROR: Do I just say the one
9 word if I could spell it correctly?

10 THE COURT: Or close. I'm a lousy speller. I
11 can guess real good.

12 A PROSPECTIVE JUROR: Okay. That was all it
13 was.

14 THE COURT: Thank you. Yes, Mr. Estey.

15 A PROSPECTIVE JUROR: It's my understanding
16 that after 30 days I don't get a paycheck. So if the trial
17 runs more than 30 days, I would be uncomfortable.

18 THE COURT: That won't happen. In spite of my
19 rotten guess about today. My guess for the whole trial is a
20 lot more accurate than today.

21 Yes, Miss Kizis.

22 A PROSPECTIVE JUROR: Child care problem. My
23 husband travels out of town quite a bit, and no family in
24 the area. So that's tough. Especially if he would get sick
25 during the day and have to be brought home or something like

1 that.

2 THE COURT: But your child is school age,
3 right?

4 A PROSPECTIVE JUROR: A second grader.

5 THE COURT: Miss Imasaki.

6 A PROSPECTIVE JUROR: I have a misdemeanor
7 hearing scheduled in Sparks Justice Court for the 21st of
8 this month, and that could be schedule -- rescheduled.

9 THE COURT: I'm sure we can work that out for
10 you. Is it with Judge Volk?

11 A PROSPECTIVE JUROR: I'm not sure which judge
12 will be sitting on that.

13 THE COURT: If we could arrange it for a time
14 when we're on a break so you could go both places, would
15 that work out for you? It wouldn't cause you any
16 difficulty?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Mr. Sowers.

19 A PROSPECTIVE JUROR: My primary source of
20 income is production and Mobile Music Company run by myself.
21 I have some business booked up throughout the month on
22 Friday and Saturday evenings as well as booking business
23 during the week. It is real important to be there. It is
24 not an impartiality issue but more so being at those
25 engagements on Fridays.

1 THE COURT: Mr. Sowers, I usually try not to
2 keep anybody late, especially Friday night.

3 A PROSPECTIVE JUROR: One engagement in
4 particular is Clayton Middle School from 1:05 until 2:18, I
5 believe, next Friday. So it's right in the middle of the
6 day.

7 THE COURT: Actually it's lunchtime, so we
8 could probably work around that for you if that's the
9 daytime when we have it.

10 A PROSPECTIVE JUROR: There is some time
11 involved in take-down time.

12 THE COURT: Okay. And now, Miss Burke, did you
13 raise your hand?

14 A PROSPECTIVE JUROR: Yes, I did. I also own a
15 small business which has signed a contract with a very large
16 convention coming into Reno next week, and I have signed a
17 contract saying I will be there to do it.

18 THE COURT: What will you be doing?

19 A PROSPECTIVE JUROR: I handle all of their
20 transportation, their business affairs. It is a
21 25,000-person convention. I don't want to be the one to
22 tell them.

23 THE COURT: You handle the transportation for
24 them?

25 A PROSPECTIVE JUROR: Transportation, all of

1 their business needs that they have, all of their
2 entertainment needs.

3 THE COURT: What convention is it?

4 A PROSPECTIVE JUROR: Safari Club
5 International.

6 THE COURT: The big Safari?

7 A PROSPECTIVE JUROR: It goes from 6:30 in the
8 morning until midnight.

9 THE COURT: Counsel approach.
10 (Whereupon, a bench conference was held among
Court and counsel as follows:)

11 THE COURT: Okay. You all are going to
12 stipulate to Mrs. Schultz, correct?

13 MR. BOSLER: Correct.

14 MR. STANTON: Correct.

15 THE COURT: Auld you stipulate to?

16 MR. BOSLER: Correct.

17 THE COURT: Mr. Larsson is flooded out?

18 MR. STANTON: It is a tough one for us, but
19 Larsson and Auld I think is the basis if the Court agrees
20 with it.

21 THE COURT: Mr. Bosler.

22 MR. BOSLER: Yes. He's been flooded out.

23 MR. STANTON: I don't want to stipulate to Auld
24 and Larsson. If they make the motion and you do it, then we
25 will do it.

1 THE COURT: You make the motion?

2 MR. BOSLER: Yes, Your Honor.

3 MR. SPECCHIO: Timmerman and Burke.

4 THE COURT: Okay. I'm going to think about
5 those two. We have got Sotero.

6 MR. STANTON: No. I don't accept that.

7 THE COURT: Burkholder, the nursing mother?

8 MR. STANTON: I don't have any idea about
9 nursing, Judge.

10 HE COURT: What she's done today is her husband
11 has been here to hold on to the baby, and then whenever she
12 needed to nurse, he gave her the baby and she nursed. He's
13 told the Jury Commissioner he can't be here all day every
14 day.

15 MR. BOSLER: I'm also told the baby takes some
16 type of medication, something I couldn't understand in the
17 questionnaire.

18 MR. STANTON: I'll stipulate to Burkholder.

19 THE COURT: Saputo.

20 MR. STANTON: I'll stipulate to Saputo.

21 THE COURT: What do you want?

22 MR. BOSLER: I'll defer to you.

23 MR. SPECCHIO: We'll stipulate.

24 THE COURT: You stipulate to Saputo?

25 MR. BOSLER: Yes.

1 THE COURT: Okay. Burkholder?

2 MR. GREGORY: That is the nursing mom.

3 THE COURT: Okay. I'm sorry. Judson,
4 Department of Taxation?

5 MR. STANTON: I stip to that.

6 MR. SPECCHIO: Does he do franchise stuff?

7 THE COURT: He makes the topographical maps.
8 He just happens to be under that. He does the demographics.

9 MR. SPECCHIO: I don't care.

10 THE COURT: I'm not going to do it unless you
11 want to.

12 MR. STANTON: I'll stipulate to it.

13 MR. SPECCHIO: You will?

14 THE COURT: You want him off?

15 MR. STANTON: Stipulated.

16 MR. BOSLER: We'll stipulate.

17 THE COURT: Battaglia. Latch Key, we have
18 confirmed they do have Latch Key.

19 MR. BOSLER: No basis.

20 THE COURT: Hold him. Arlitz.

21 MR. SPECCHIO: Isn't Arlitz and Auld partners?
22 Do I have that wrong?

23 THE COURT: They were in the same business.
24 Auld is Mrs. Auld's Food. He's the owner of Mrs. Auld's
25 Food. They are products that are made.

1 MR. SPECCHIO: Didn't Arlitz say she was his
2 partner?

3 THE COURT: She just works in the business.
4 She does not have to go to San Francisco.

5 MR. SPECCHIO: I would say no with her.

6 MR. STANTON: I wouldn't stip to her.

7 THE COURT: Timmerman.

8 MR. SPECCHIO: Yes. We would stip.

9 THE COURT: Imasaki.

10 MR. STANTON: No, I think we can work around
11 that.

12 MR. SPECCHIO: What was her problem?

13 THE COURT: Misdemeanor in court.

14 MR. STANTON: We can bump that.

15 THE COURT: I'm not inclined to let her off.

16 Sowers, I'm not inclined to let him out for the
17 Clayton Middle School one to two hours on Friday. We can
18 work around that.

19 MR. STANTON: I don't have any problem stippling
20 to him. If they want to keep him.

21 THE COURT: Burke, Safari Club lady.
22 Continuing her. Sowers.

23 MR. SPECCHIO: You can do whatever you want on
24 Sowers and this one.

25 THE COURT: Stop. You guys talk amongst

1 yourselves.

2 MR. GREGORY: She has the business contract.

3 MR. STANTON: I'll stip to Burke and Sowers.

4 MR. SPECCHIO: We'll stipulate.

5 THE COURT: Is there a motion on Miss Sowers by
6 the defense?

7 MR. BOSLER: Yes, Your Honor.

8 THE COURT: And you are stipulating to it?

9 MR. STANTON: Yes.

10 THE COURT: Burke, is there a motion by the
11 defense?

12 MR. SPECCHIO: There is.

13 THE COURT: Stipulating to it, Mr. Stanton?

14 MR. STANTON: Yes.

15 MR. SPECCHIO: Who else did you want?

16 THE COURT: That's it.

17 MR. SPECCHIO: Do you want us to make a motion
18 on these two?

19 THE COURT: Right. Do you want to make a
20 motion on Auld or Larsson? Larsson is flooded out. Auld is
21 the guy who owns Mrs. Auld's.

22 MR. SPECCHIO: He probably needs the money more
23 than Auld does. So I figure if we are going to do one, we
24 should do the other. If nothing else, for humanitarian
25 reasons, I will make a motion as to both.

1 MR. STANTON: I won't stipulate to it, Your
2 Honor.

3 MR. GREGORY: Wait a minute, David. He's
4 already got his plane reservations.

5 MR. STANTON: I don't care. If the judge feels
6 that there is a basis to the motion, she'll grant it.

7 MR. GREGORY: Wait a minute now. This man has
8 set up his booths and stuff.

9 THE COURT: Not yet. He does that on Friday.

10 MR. GREGORY: He rents the space, Your Honor.

11 MR. BOSLER: If he is paid to be down there to
12 be part of his business.

13 MR. GREGORY: He rents the space. That is not
14 fair to him.

15 THE COURT: Okay. I'm going to do something
16 that I do, and I'm going to continue both Mr. Auld and Miss
17 Burke, so people don't think just because you have a
18 financial issue that you are going to get off.

19 MR. SPECCHIO: You can tell them all that.

20 (Whereupon, the following proceedings were held
21 in open court.)

22 THE COURT: As you could tell, your particular
23 circumstances we take very seriously, and I want to tell you
24 that I wish I could just excuse everyone who had any issue
25 and just keep going until we had a panel. But I really have

1 to have a legitimate legal reason to excuse you from
2 service, one that is recognized by counsel for both sides as
3 well as the Court generally.

4 So everyone that had an issue will not be
5 excused, and I want you to understand that it isn't that
6 we're not listening to you, because I am listening to you,
7 and I appreciate your concerns.

8 The following people, though, will be excused.
9 I thank you for your service here today, and you are to
10 report to the Jury Commissioner's office on the first floor.

11 Mary Schultz, Mr. Larsson, Miss Burkholder,
12 Miss Saputo.

13 Mr. Judson, you do have a statutory exception
14 we decided.

15 Miss Timmerman, Mr. Sowers, your service is
16 continued to a later time when you don't have a conflict.

17 A PROSPECTIVE JUROR: Excellent. Thank you.

18 THE COURT: So because you have this problem,
19 we might have problems with witnesses. So you are going to
20 have to serve again, though. You won't be excused because
21 of this.

22 A PROSPECTIVE JUROR: That's fine. I don't
23 mind serving. It was just the conflict with the schedules.

24 THE COURT: And, Miss Burke, you are in the
25 same boat. You are not going to be excused from service.

1 A PROSPECTIVE JUROR: I don't mind that.

2 THE COURT: But you will be required to serve
3 as soon as the Safari Club thing is over. If you have any
4 other booked conventions, you are notified now to notify the
5 Jury Commissioner so she can get you on the panel so that
6 you can be brought in, and then you can't fulfill that
7 window that we give you because I won't be able to excuse
8 you again.

9 A PROSPECTIVE JUROR: I appreciate it. Thank
10 you.

11 THE COURT: So your service is continued.

12 Mr. Auld, your service is continued, the same
13 circumstance.

14 A PROSPECTIVE JUROR: What does that mean?

15 THE COURT: That means you have to serve on a
16 jury, but because you have a prearranged business trip that
17 has already been booked, prior to the time that you were
18 called for this case, we're going to allow that you serve
19 your service on a different case. So you have to tell the
20 Jury Commissioner what business trips you have scheduled and
21 then --

22 A PROSPECTIVE JUROR: Right now?

23 THE COURT: Yes. Once we get that schedule,
24 she will call you for the next opening when you don't have a
25 business trip planned.

1 Anyone I missed, counsel?

2 MR. SPECCHIO: I think you have got them all,
3 Judge. You have eight people; is that right?

4 MR. GREGORY: May we have the names one more
5 time, Your Honor?

6 THE COURT: Nine people. We have lost
7 Mr. Auld, Mr. Larsson, Miss Burkholder, Miss Saputo,
8 Mr. Judson, Miss Timmerman, Mr. Sowers, and Miss Burke.

9 MR. GREGORY: Thank you, Your Honor.

10 THE COURT: Mr. Battaglia, we have confirmed
11 that there is an opening at Jerry Whitehead for your child
12 as long as you are signed up by 2:00 o'clock tomorrow
13 afternoon. The clerk will give you the information, or the
14 Jury Commissioner, at Latch Key.

15 I understand that there are some people that
16 have child care issues by 5:30. I still would like to
17 replace those jurors that we have lost before we leave so
18 counsel will be able to look at that during the evening
19 recess.

20 Will the clerk confirm with me we have an
21 opening in seat five? Just tell me if it is something
22 different. Seat nine --

23 THE CLERK: I'm behind you. I'm sorry.

24 MR. GREGORY: That is correct, Your Honor. We
25 show five and nine, Your Honor.

1 THE COURT: We're trying not to get ahead of
2 the clerk. Then we have seat 10, 11, 12, and 14 vacant.

3 MR. GREGORY: Yes, Your Honor.

4 THE COURT: And then we have seat 27 and 32 and
5 35. Is everyone stipulating those are the ones?

6 MR. SPECCHIO: Yes.

7 THE COURT: We'll draw the next jurors to
8 replace in the order that we struck -- I don't know if I
9 struck them in the exact order of their seats, but I'm going
10 to replace them in the order of their seats. Does counsel
11 stipulate to that procedure?

12 MR. SPECCHIO: That is fine.

13 MR. BOSLER: No objection, Your Honor.

14 MR. STANTON: No objection, Your Honor.

15 THE COURT: When your name is called, please
16 come forward, and the bailiff will help you find the right
17 seat.

18 THE CLERK: James G. Rumbaugh.

19 Preston E. O'Daye.

20 George A. Decker.

21 Rayetta Buckley.

22 Rebeka A. Hilliary.

23 John J. Giordano.

24 Doris E. Roberts.

25 Rhonda D. Pembroke.

1 Peter G. Thomas.

2 THE COURT: Those of you who have just been
3 seated in the jury box, would you please raise your hands
4 for me? Hold them up for me so I can see who you are.
5 Thank you.

6 Have you all been able to hear my questions
7 that I have asked of everyone else? I'd like an outloud
8 answer.

9 THE PROSPECTIVE JURORS: Yes.

10 A PROSPECTIVE JUROR: Some of them.

11 THE COURT: Some you could not hear? Okay.
12 You are Mr. McCargar?

13 A PROSPECTIVE JUROR: No. Giordano.

14 THE COURT: Mr. Giordano. Sorry.

15 And do you know, was it my questions or
16 counsel's questions you couldn't hear?

17 A PROSPECTIVE JUROR: I never heard the counsel
18 asking any questions. But it was some of your questions and
19 the responses I couldn't hear.

20 THE COURT: Okay. You couldn't hear what other
21 people said in response to my questions?

22 A PROSPECTIVE JUROR: Yes. Some of your
23 questions, I didn't understand the whole question. I
24 couldn't hear the whole question.

25 THE COURT: Now, I have asked my questions two

1 times through.

2 A PROSPECTIVE JUROR: I have a general idea of
3 what you were talking about.

4 THE COURT: But you don't know which ones that
5 you couldn't understand?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: And, Mr. Rumbaugh, did you raise
8 your hand, too?

9 A PROSPECTIVE JUROR: I just have a little
10 trouble hearing, too.

11 THE COURT: So you weren't able to hear all my
12 questions either?

13 A PROSPECTIVE JUROR: Not all the time.

14 THE COURT: Other than Mr. Giordano and
15 Mr. Rumbaugh, was everyone else able to hear my questions?
16 Yes or no?

17 THE PROSPECTIVE JURORS: Yes.

18 THE COURT: I'd like you to tell me which
19 questions you would have responded to affirmatively if you
20 were up here, and just raise your hand and we'll go through
21 it.

22 Mr. O'Daye?

23 A PROSPECTIVE JUROR: I have no questions.

24 THE COURT: You wouldn't have responded to any
25 of my questions?

1 A PROSPECTIVE JUROR: I mean I would have, yes.

2 THE COURT: Which ones? I'm confusing you.

3 A PROSPECTIVE JUROR: Yeah, you are.

4 THE COURT: It's probably just because it is
5 late. I know how everyone is tired. I think we'll stop
6 here. I don't know about you, but I'm tired. We're going
7 to stop here.

8 Ladies and gentlemen of the jury panel, those
9 of you seated outside the rail, I am going to require that
10 you return tomorrow morning. Ladies and gentlemen, I ask
11 that you return tomorrow. You are going to be coming back
12 at 9:30. Everyone is going to be coming back at 9:30 in the
13 morning.

14 Now, when you come back, you can come right on
15 back in here. I don't know at what point the courtroom will
16 be opened. I ask that you come --

17 Do you have room for them? No, you have jurors
18 coming in tomorrow.

19 You are going to have to come up here.

20 MR. GREGORY: May we approach, Your Honor?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held among
23 Court and counsel as follows:)

24 MR. SPECCHIO: Doesn't 250 require 10:00
o'clock starts?

25 MR. GREGORY: I think it does.