

1 in favor of the death penalty?

2 A PROSPECTIVE JUROR: Ever since I can remember
3 it being an option. Since I was old enough to understand.

4 MR. BOSLER: Your view is strong enough that
5 you actually wanted to make sure we knew about that before
6 we started our questioning?

7 A PROSPECTIVE JUROR: Yeah.

8 MR. BOSLER: I guess you may know what the
9 questions are going to be. Strongly in favor of the death
10 penalty. First degree murder, that's all we're talking
11 about today. We're not talking about other types of murder.
12 Do you feel in a first degree murder case death, the death
13 penalty is the only proper punishment?

14 A PROSPECTIVE JUROR: Absolutely.

15 MR. BOSLER: If you found that this first
16 degree murder was aggravated by other factors, would that
17 make you feel stronger about automatically imposing the
18 death penalty?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Is there anything that I could,
21 any information I could give you that would make you
22 consider the penalty of less than death for someone who is
23 convicted of first degree murder?

24 A PROSPECTIVE JUROR: No.

25 MR. BOSLER: None of the things you've heard me

1 mention to any of the other jurors?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: It's just a moral decision you've
4 made?

5 A PROSPECTIVE JUROR: I just feel that that's
6 something that -- there's gotta be something wrong for you
7 to do an awful crime like that. I just don't think there's
8 any other way except for them to be put to death.

9 MR. BOSLER: Anything I can say that's going to
10 change that?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: You wouldn't consider any other
13 information?

14 A PROSPECTIVE JUROR: No.

15 MR. BOSLER: I appreciate your candor. I
16 believe it's a Whitt challenge, Your Honor.

17 MR. STANTON: The State would not traverse the
18 motion.

19 THE COURT: Ms. Johnson, you are excused. I
20 mean Ms. Humphries.

21 Sorry, Ms. Johnson. Don't try to go.

22 (Laughter.)

23 THE COURT: The clerk will call the name of
24 another prospective juror.

25 THE CLERK: Holly R. Jenkins.

1 THE COURT: Go ahead and review the list,
2 Ms. Jenkins.

3 Did you get a chance to review it?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: You're not related to anybody?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Have you been able to hear all my
8 questions yesterday and today?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Did you keep track of those
11 questions you would have responded to if you had been
12 sitting here the whole time?

13 A PROSPECTIVE JUROR: If I've attended jury
14 duty before, yes, I have, here in this court about three
15 years ago. It was a civil case. What was your other
16 question? If we came to a verdict? Yes. And I am familiar
17 with some of the people on the jury.

18 THE COURT: Who else do you know?

19 A PROSPECTIVE JUROR: Just a couple girls I
20 used to go to school with. I'm familiar with Judy Kruse and
21 Shaylene up at the top. I think it's Grate now. It used to
22 be Springer.

23 THE COURT: Shaylene?

24 A PROSPECTIVE JUROR: Shaylene.

25 It's been a while.

1 THE COURT: Who is the other person?

2 A PROSPECTIVE JUROR: Pat Grider.

3 THE COURT: Anyone else?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Anything about sitting on the same
6 juror with these people that would cause you a problem?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: Ms. Kruse, Ms. Grate, Mr. Grider,
9 do any of you have difficulty sitting on the same jury with
10 Ms. Jenkins?

11 A PROSPECTIVE JUROR: No.

12 A PROSPECTIVE JUROR: No.

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Ms. Jenkins, any other questions?

15 A PROSPECTIVE JUROR: No, those are the only
16 ones.

17 THE COURT: Mr. Stanton, you may inquire.

18 MR. STANTON: Ms. Jenkins, you indicated on
19 your initial questionnaire back in April an employment that
20 didn't catch my eyes, if I understood what that is. Could
21 you explain that to me a little bit what you do for a
22 living.

23 A PROSPECTIVE JUROR: It's actually a sales
24 consulting firm. We go into big organizations, Fortune 500
25 companies, and teach them a sales process that they use

1 internationally throughout their organization.

2 MR. STANTON: You work primarily here out of
3 Reno?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Were you able to hear all my
6 questions?

7 A PROSPECTIVE JUROR: Yes.

8 MR. STANTON: Is there any problems or concerns
9 with any of the questions I asked?

10 A PROSPECTIVE JUROR: Not that I recall.

11 MR. STANTON: Ms. Jenkins, if you were selected
12 the foreperson of this jury and you believed under the facts
13 and the law the death penalty was the appropriate
14 punishment, could you fill it out as the foreperson and
15 sentence that man to death?

16 A PROSPECTIVE JUROR: Yes.

17 MR. STANTON: Thank you. Nothing further.

18 THE COURT: Mr. Bosler.

19 MR. BOSLER: Thank you, Your Honor.

20 Ms. Jenkins, you also put in your questionnaire
21 that you didn't recall many of the specifics about the case.
22 What's your access to public media?

23 A PROSPECTIVE JUROR: I never watch TV, to be
24 perfectly honest with you. I never read the paper or watch
25 TV. I've heard a little here or there on the news when I'm

1 getting ready for work, but I don't have a radio at work.
2 So very limited.

3 MR. BOSLER: Does your work call you away from
4 Reno also as part of your training?

5 A PROSPECTIVE JUROR: Once in a great while but
6 it's not something that's normal. Just gave two weeks
7 notice at that location anyway, so they're not going to call
8 me to do anything.

9 MR. BOSLER: You're still going to work with
10 the same company but a different location?

11 A PROSPECTIVE JUROR: No, I'm moving to a
12 different organization here in Reno.

13 MR. BOSLER: Same type of work?

14 A PROSPECTIVE JUROR: Same type of work.

15 MR. BOSLER: How long were you at Miller
16 Heiman?

17 A PROSPECTIVE JUROR: Five years.

18 MR. BOSLER: Is that correct?

19 A PROSPECTIVE JUROR: Miller Heiman.

20 MR. BOSLER: You said in your questionnaire you
21 favor the death penalty?

22 A PROSPECTIVE JUROR: Not strongly; but yes, I
23 do. I believe in it.

24 MR. BOSLER: How long have you felt that way?

25 A PROSPECTIVE JUROR: Since I understood -- I

1 mean since I could rationalize that it's an option.

2 MR. BOSLER: In view of some of the other
3 questions I've asked jurors about whether they would believe
4 in first degree murder, death is always the appropriate
5 punishment, is that something you feel?

6 A PROSPECTIVE JUROR: I wouldn't say it's
7 always true, no.

8 MR. BOSLER: In a case involving, do you
9 remember the four things we've talked about, in a first
10 degree murder case like that, do you feel that death is
11 always the appropriate punishment?

12 A PROSPECTIVE JUROR: If that's all there was
13 to it, yes; but if there's the mitigating circumstances,
14 I'll consider them.

15 MR. BOSLER: If you found all those
16 aggravators, you think death is the proper punishment?

17 A PROSPECTIVE JUROR: Possibly, yes.

18 MR. BOSLER: Would that mean that you would the
19 other side to prove up some mitigation in order for you to
20 consider a penalty of less than death?

21 A PROSPECTIVE JUROR: No. I guess I should
22 take that back. I don't know all the evidence to say -- I
23 mean if they prove that he did all four of those things,
24 then yes, I need proof that there's other reasons why or
25 something. I would also consider the other options.

1 MR. BOSLER: If I could kind of split hairs
2 here; if you have a case where you find those four
3 aggravators, you realize the law is going to instruct you
4 that no matter how many aggravators, four or 40, you always
5 have the option for life; is that an instruction you would
6 consider and follow?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Mr. Bosler, I'm going to stop you
9 for a minute.

10 Go ahead.

11 MR. BOSLER: In the case where we have a first
12 degree murder, there's evidence of these four aggravators,
13 are you willing to consider, in your ultimate decision
14 whether someone lives or dies, evidence of mental illness?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Will you consider evidence of
17 intoxication or drug usage on or about the time the crime is
18 committed?

19 A PROSPECTIVE JUROR: Would I consider it, yes.

20 MR. BOSLER: We can only ask you if you would
21 consider it.

22 How about something like a lack of a violent
23 criminal history, another character act?

24 A PROSPECTIVE JUROR: I would consider it.
25 I'll be honest. I don't know how much weight I would give

1 to it.

2 MR. BOSLER: It would be something you would
3 think about?

4 A PROSPECTIVE JUROR: Uh-huh.

5 MR. BOSLER: I guess what it comes down to is
6 the law allows you as a citizen, an individual, to say I
7 don't care how many aggravators. There is this thing in the
8 law that says any other circumstance, any other circumstance
9 that I feel is appropriate. So the law allows you to
10 essentially say it may be some other thing he did in his
11 childhood, that's enough for me to say that he doesn't
12 deserve to die. Are you going to at least engage in that
13 analysis before you decide what type of punishment should be
14 imposed?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Ms. Knight, I think we talked a
17 little bit -- I heard you say yesterday that the process is
18 not difficult because you don't feel like you're judging
19 anybody as part of the process; would I be accurate in that?

20 A PROSPECTIVE JUROR: No.

21 MR. BOSLER: Could you explain to me what
22 you're trying to say?

23 A PROSPECTIVE JUROR: Are you talking about my
24 original statement?

25 MR. BOSLER: I think you actually said it while

1 you were sitting down here in court yesterday.

2 A PROSPECTIVE JUROR: Say what I said again.
3 Because I don't think I said that.

4 MR. BOSLER: You didn't feel that you're
5 actually really judging anything; you're just comparing the
6 facts to the law.

7 A PROSPECTIVE JUROR: I said that there was a
8 problem in semantics. So I went home and looked up "judge"
9 in the dictionary. And then I realized that, yes, in fact
10 you were correct, or somebody was correct that, no, that
11 "judge" does mean that you look at evidence and that you
12 justly and wisely, unbiasedly and fairly look at the evidence
13 and you make a decision.

14 Originally when I said "judge," that was a hard
15 word for me, because I'm in education. What I teach my
16 little ones is that we -- it's not good or bad. I'm not
17 talking about big things. When I wrote that down, I was
18 just immediately thinking about what I tell my kids. Let's
19 not look at it as good or bad; let's look at -- because when
20 you constantly tell kids if they're not good, they
21 automatically think they're bad. So I teach them not to
22 look in terms of good and bad or judge it, let's just look
23 at it and let's look at the consequences. And the word kind
24 of bothered me. But then when I looked at it, what it
25 really meant, then I knew that I could justly, unbiasedly,

1 wisely, fairly look at the evidence. And it probably didn't
2 sound like that yesterday. But that's what -- I really did.
3 I went home and I thought about it, what do these words
4 mean. Because it's important. But it was a matter of
5 semantics, I really believe.

6 MR. BOSLER: So you think you used the word
7 correctly but it may have been taken out of context?

8 A PROSPECTIVE JUROR: Yes, I think it was a
9 semantic miscommunication.

10 MR. BOSLER: Profound decision the jury makes
11 in a capital case?

12 A PROSPECTIVE JUROR: It's a very profound
13 decision. It's not one we do easily.

14 MR. BOSLER: You've heard me talk about the
15 death penalty, options, life imprisonment versus death
16 penalty. Is there any case -- if you had a first degree
17 murder case where you would find a person guilty of first
18 degree murder, find the four aggravating circumstances
19 alleged by the State did in fact exist, are you still
20 willing to consider penalties less than death?

21 A PROSPECTIVE JUROR: Absolutely.

22 MR. BOSLER: You heard me mention things that
23 are mitigating factors, things like that are things-- would
24 they operate in your consideration of whether someone lives
25 or dies?

1 A PROSPECTIVE JUROR: Absolutely.

2 MR. BOSLER: As I stand here, I don't know a
3 lot about any of the jurors, anything that I should be
4 concerned about having you sit here and you belong to any
5 organization that is going to influence your opinion or you
6 have pressure from your close friends or relatives, anything
7 like that that I need to know about?

8 A PROSPECTIVE JUROR: No, I don't believe so.
9 No.

10 MR. BOSLER: You think the way the word "judge"
11 is defined, that's something you could do?

12 A PROSPECTIVE JUROR: Yes, absolutely.

13 MR. BOSLER: Mr. Carmichael, good afternoon.
14 You're in favor of the death penalty also,
15 right?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Held that opinion very long?

18 A PROSPECTIVE JUROR: As long as I can
19 remember, yes.

20 MR. BOSLER: Any particular reason you've come
21 to that conclusion that life imprisonment, the death penalty
22 is better or worse than life imprisonment?

23 A PROSPECTIVE JUROR: It's not necessarily
24 better. That's not what I mean by it. Just as far as the
25 consequences and the facts come to in a first degree murder

1 with the evidence, then I would agree to it.

2 MR. BOSLER: In a first degree murder case, are
3 you saying that you always think death is the automatic
4 punishment?

5 A PROSPECTIVE JUROR: No.

6 MR. BOSLER: So you could find a first degree
7 murder case where death isn't an automatic punishment?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: How about a first degree murder
10 case where it has the four circumstances I've spoken about,
11 that I've posed to other jurors, that type of first degree
12 murder case?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: Automatic death penalty?

15 A PROSPECTIVE JUROR: Not necessarily
16 automatic, because there's always other factors, too.

17 MR. BOSLER: In this factoring, this decision
18 whether someone lives or dies, are you willing to consider,
19 put in your consideration things like mental illness?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: Use of alcohol or drugs?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Lack of criminal history?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: Something as innocuous as the age

1 of the accused?

2 A PROSPECTIVE JUROR: Yeah.

3 MR. BOSLER: What about this separate issue
4 that there's always in your province, in your power as a
5 juror, when you judge someone's life, is to look beyond what
6 the statute says and say, well, there's this other factor
7 there, I think it's important, I'm willing to consider
8 things that aren't listed in the statute and make that part
9 of my consideration of the penalty, whether it's some
10 childhood act or whatever it is, are you at least willing to
11 engage in that type of decision making?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Can you think of any reason -- I
14 know that you were asked whether you knew any Tongans, I
15 think. I think you said you had gone to school with a
16 couple of them?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: In fact, you thought you knew one
19 of the people listed on the witness list?

20 A PROSPECTIVE JUROR: Maybe the first name
21 wasn't so familiar but the last name was familiar?

22 MR. BOSLER: Mr. Taukieuvea, does that sound
23 familiar?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: If I'm pronouncing it correctly.

1 A PROSPECTIVE JUROR: It's just the
2 pronunciation.

3 MR. BOSLER: What you said -- I think you were
4 asked do you still have contact with him or other Tongans.
5 You said that you went to school with some of them and you
6 don't have any contact with them anymore. I'm concerned
7 about the word "them", that you're kind of --

8 A PROSPECTIVE JUROR: That race. A Tongan,
9 just as being around them in school, that's all. There's no
10 socializing really, nothing against them, no nothing.

11 MR. BOSLER: It's not an us versus them type?

12 A PROSPECTIVE JUROR: No, not at all.

13 MR. BOSLER: All right.

14 A PROSPECTIVE JUROR: I didn't mean it that way at all.

15 MR. BOSLER: I just wanted to clarify that.

16 Mr. Tower, strongly favor the death penalty?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Work for the Gazette-Journal?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Interestingly, you say in your
21 questionnaire you don't believe everything that's put in
22 print. Is that accurate?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: How long have you held this
25 opinion about the death penalty?

1 A PROSPECTIVE JUROR: Since high school.

2 MR. BOSLER: Anything in high school that
3 happened that brought this about or just something that you
4 kind of formulated in the natural course of the time?

5 A PROSPECTIVE JUROR: Becoming a young adult,
6 yes.

7 MR. BOSLER: Have you discussed it with
8 relatives, family, something you publicly admit this is your
9 position on the death penalty?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: If you could, give me a little bit
12 more information. You said you were involved in a
13 merchandise reclamation, I don't know what the proper
14 terminology is, that you were involved in the arrest of
15 someone who had taken property from a store and were shot
16 at?

17 A PROSPECTIVE JUROR: Right. I was a store
18 manager for Sav-On Drugs.

19 MR. BOSLER: You were the manager. How long
20 had you done that work?

21 A PROSPECTIVE JUROR: I did it for six months.

22 MR. BOSLER: Ever have any closer call with law
23 enforcement or was that your one thing that you did to try
24 to break up a crime? Were you ever involved in law
25 enforcement, work with an agency involved in law

1 enforcement?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: In terms of strongly favoring the
4 death penalty, and again assuming a first degree murder
5 case, do you believe as you sit as a juror that if it's a
6 first degree murder case automatically the penalty should be
7 death for the other person?

8 A PROSPECTIVE JUROR: Not automatically, no.
9 But I'm happy that it's a choice I can make.

10 MR. BOSLER: Why? Why is that?

11 A PROSPECTIVE JUROR: Because I think it's
12 appropriate in certain instances.

13 MR. BOSLER: Let's talk about that a little
14 bit.

15 Assume an instance that involves the killing of
16 a police officer, the reasons I've previously stated, is
17 that one of the times you'd be happy to impose the death
18 penalty?

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: Although you're happy to impose
21 the death penalty in that situation, will you be willing to
22 consider penalties less than death?

23 A PROSPECTIVE JUROR:- Absolutely.

24 MR. BOSLER: Things like mental condition of
25 the accused at the time of the offense?

1 A PROSPECTIVE JUROR: Certainly. You're
2 talking about taking someone else's life. You have to
3 consider everything. It's probably the most important
4 decision another human can make about a human being. It's
5 certainly not something you're just going to -- a knee-jerk
6 reaction to the circumstances.

7 MR. BOSLER: Right. Not everybody feels that
8 way. That's why I'm asking these questions.

9 Anything as I stand here in my position I
10 should be worried about as a juror?

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

12 MR. BOSLER: I'm sure everybody will be happy
13 to know I'm almost done, Your Honor.

14 Mr. Estes, you are still an engineer?

15 A PROSPECTIVE JUROR: Yes, I am.

16 MR. BOSLER: Mechanical engineering?

17 A PROSPECTIVE JUROR: Mechanical engineering.

18 MR. BOSLER: Your Honor, if I could approach
19 the bench, there may be a sensitive matter.

20 THE COURT: You may approach.

21

22 (Whereupon there was bench conference between
23 court and counsel, outside the presence of the
24 jury.)

24

25 MR. BOSLER: Mr. Estes put on his questionnaire

1 that he knew the PD was trying to be removed from the case.
2 I'd rather not get into how he feels about that and our
3 representation in front of the rest of the jury if they
4 don't have that information. So he's like one of those
5 people I want to include with Ms. Grate, if the Court's
6 willing to let me talk to him about that issue outside the
7 presence of the rest of the jury.

8 THE COURT: Why don't you finish up with
9 everybody else first.

10 MR. BOSLER: Will the Court allow me to do
11 that?

12 THE COURT: What questions do you want to ask
13 him?

14 MR. BOSLER: He put in his questionnaire that
15 he knew the PD wanted to withdraw. What else does he know
16 about that, how does that affect the way he views us as
17 attorneys in this case, if he knows we're Public Defenders,
18 and we're trying to withdraw from the case.

19 THE COURT: Yeah, but I don't know if we'll do
20 it -- we might do it here at the bench.

21 MR. STANTON: Want to bring him up right now?

22 THE COURT: We can.

23 MR. STANTON: That would be fine.

24 THE COURT: Mr. Estes, would you please come
25 forward. Go ahead and have a seat.

1 Everybody will get nice and close and personal
2 here.

3 MR. BOSLER: Mr. Estes, you put in your
4 questionnaire that you had read that the Public Defender's
5 Office had tried to withdraw from this case?

6 A PROSPECTIVE JUROR: Did I?

7 MR. BOSLER: Yes. Do you have information
8 about that?

9 A PROSPECTIVE JUROR: No.

10 MR. BOSLER: Did you read that in the paper?

11 A PROSPECTIVE JUROR: Repeat what you said. I
12 guess I missed something here.

13 MR. BOSLER: On the questionnaire, the
14 questionnaire that you gave to the commissioner, you shared
15 information that the Public Defender's Office was trying to
16 withdraw from representing the defendant.

17 A PROSPECTIVE JUROR: Yes, I remember that now.

18 MR. BOSLER: Now, the reason I want to bring
19 this up is because not everybody knows that. How does that
20 affect the way you perceive us as attorneys?

21 A PROSPECTIVE JUROR: That wouldn't bother me.
22 That doesn't affect me one way or another. I just had heard
23 it on the news and that was all.

24 MR. BOSLER: What information do you have as to
25 why that was occurring?

1 A PROSPECTIVE JUROR: I'm not sure I know. I
2 just had heard on the news.

3 That it happened. It seems to me the best I
4 can recall is there was some disagreement between you and
5 the defendant, something legal.

6 MR. BOSLER: And that doesn't cause you any
7 uncomfortableness sitting as a juror in this case?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: That's all I need, Your Honor.

10 THE COURT: Thank you, Mr. Estes. You have to
11 go back to the hard chair.

12

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

15 MR. BOSLER: You put in the questionnaire you
16 didn't recall a lot about the circumstances involving
17 Mr. Sullivan's death?

18 A PROSPECTIVE JUROR: No. And that's because I
19 thought about it, why I didn't, and I realize that I was
20 working long hours at that time. And I really didn't read
21 any newspapers or listen to any television. I didn't at
22 work. When I came home, I was so tired I usually fell
23 asleep. It's unusual for me because I usually try to keep
24 up on the news but in this particular incident it's just the
25 way it happened.

1 MR. BOSLER: In a first degree murder case, in
2 your opinion do you think that every person that's convicted
3 of first degree murder automatically deserves to die?

4 A PROSPECTIVE JUROR: Not automatically.

5 MR. BOSLER: Even in a murder such as the one
6 we've been talking about over the last two days, day and a
7 half, is that a case you think automatically deserves the
8 death penalty?

9 A PROSPECTIVE JUROR: No, I don't think it's
10 automatic in any case.

11 MR. BOSLER: Would you be willing to consider,
12 in this profound decision-making process who lives or dies,
13 would you be willing to put in your consideration things
14 about the defendant like if he was suffering from a mental
15 illness at the time of the event?

16 A PROSPECTIVE JUROR: Yeah.

17 MR. BOSLER: Use of alcohol?

18 A PROSPECTIVE JUROR: I would consider all the
19 evidence.

20 MR. BOSLER: All the things I've talked about?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: That little mystery, little number
23 that says anything else you think is important, whether it's
24 a childhood act or anything, you can consider that as part
25 of your decision-making process; is that something you're

1 willing to do?

2 A PROSPECTIVE JUROR: Yes. I would say I would
3 consider all the evidence in my decision making.

4 MR. BOSLER: Thank you, Mr. Estes.

5 Ms. Frazer, you said you knew quite a few
6 police officers?

7 A PROSPECTIVE JUROR: Yes.

8 MR. BOSLER: You indicated that you had no
9 really strong held opinions about this case, I guess, is
10 what you put in your questionnaire?

11 A PROSPECTIVE JUROR: Right.

12 MR. BOSLER: Is that accurate?

13 A PROSPECTIVE JUROR: About this case? Right.
14 I mean I was out of town when it happened so I don't recall
15 a bunch about it then. I have read things since, but I
16 don't --

17 MR. BOSLER: In the course of your working in
18 an attorney's office have you had -- you're an escrow agent?

19 A PROSPECTIVE JUROR: But it didn't occur to me
20 to mention yesterday, but my attorney that just handled my
21 divorce just quit private practice and went to work for the
22 District Attorney's Office. I didn't think about that
23 yesterday.

24 MR. BOSLER: His name?

25 A PROSPECTIVE JUROR: It's JoLee Wickes. She

1 works in the juvenile division.

2 MR. GAMMICK: Your Honor, I would indicate that
3 she was just recently hired by our office and she is in the
4 juvenile division. It has nothing to do with the
5 prosecution of criminal cases.

6 THE COURT: Thank you.

7 MR. GAMMICK: Excuse me, criminal adult cases.

8 MR. BOSLER: And she is your private attorney,
9 was your private attorney?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: For how long was she your private
12 attorney?

13 A PROSPECTIVE JUROR: A year and a half.

14 MR. BOSLER: Consider her a close friend?

15 A PROSPECTIVE JUROR: I did go to high school
16 with her. I hadn't seen her for several years. And I
17 needed an attorney. I ran into her. And she represented me
18 in my divorce.

19 MR. BOSLER: So there's not a bias against all
20 attorneys?

21 A PROSPECTIVE JUROR: She was fine. It was my
22 husband's attorney I didn't care for.

23 MR. BOSLER: He's not on the witness list or
24 anything like that?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Knowing that this person who you
2 kind of know from back in high school, is an attorney works
3 for the District Attorney's Office, anything I should be
4 concerned about that you look towards them as being the
5 bread winner or putting money or food in your friend's mouth
6 or anything like that?

7 A PROSPECTIVE JUROR: It has no effect on my
8 opinion of this case.

9 MR. BOSLER: You say you favor the death
10 penalty?

11 A PROSPECTIVE JUROR: In some cases, yes.

12 MR. BOSLER: I'll try to be brief. In the case
13 such as the one we were discussing the last day and a half,
14 killing of a police officer during the commission of a
15 robbery, you know, that evidence presented that the officer
16 was chosen because of ethnicity or some perceived
17 nationality, mutilation, damage to the corpse after death,
18 is that the type of case you think in the murder spectrum
19 always deserves the death penalty?

20 A PROSPECTIVE JUROR: Not always.

21 MR. BOSLER: So under the circumstances you
22 would be willing to consider a penalty less than death? I
23 can only ask you to be honest.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: When you sat down, if you were

1 chosen for the jury, sat down with your fellow jurors and
 2 decided, if you got to the penalty phase, and decided this
 3 huge, profound decision whether someone lives or dies, would
 4 you be willing to make part of your analysis, make part of
 5 your consideration something like whether the accused was
 6 suffering from mental illness?

7 A PROSPECTIVE JUROR: Yes.

8 MR. BOSLER: Or sickness at the time of the
 9 death?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: Drug use, alcohol use?

12 A PROSPECTIVE JUROR: I think it would have to
 13 be coupled with something. I don't think just alcohol use
 14 alone would be a good enough excuse for me.

15 MR. BOSLER: All right. Something you --

16 A PROSPECTIVE JUROR: A lot of people do a lot
 17 of stupid things. And murder isn't -- a lot of people have
 18 done a lot of drinking and haven't gone and murdered
 19 somebody. So I think it would have to be more than just
 20 that they had too much to drink or were under the influence
 21 of drugs.

22 MR. BOSLER: How about something like lack of a
 23 violent criminal history or any criminal history, is --

24 A PROSPECTIVE JUROR: I would consider that.

25 MR. BOSLER: Age?

1 A PROSPECTIVE JUROR: Yes, I would consider
2 that.

3 MR. BOSLER: The mystery thing about something
4 in their life you may think is a reason to spare their life?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: That would go into that analysis.
7 Any reason why I should be worried about you sitting as a
8 juror?

9 A PROSPECTIVE JUROR: No.

10 MR. BOSLER: If I could have a moment?

11 THE COURT: You may.

12 MR. BOSLER: I have a few questions for the
13 whole panel. I'm through with the individuals. It should
14 take less than ten minutes.

15 There was some discussion from jurors about
16 concept of life imprisonment versus the death penalty.
17 Anybody think that really life imprisonment is too light a
18 penalty for murder and shouldn't be considered?

19 MR. STANTON: I'm going to object to the form
20 of the question. Counsel has already covered this ground
21 with virtually every juror.

22 THE COURT: Sustained.

23 MR. BOSLER: If I can rephrase it.

24 Anybody ever had any contact with any maximum
25 security facility, prison?

1 MR. STANTON: I object. The question is
2 improper.

3 May counsel approach?

4 THE COURT: Yes.

5 (Whereupon, a bench conference was held between
6 Court and counsel outside the presence of the
jury as follows:)

7 MR. STANTON: Your Honor, the State's objection
8 is that it's an improper question to ask the jury whether or
9 not they've had any exposure to a prison setting so that
10 they can make an assessment as to the punishment, just as
11 it's improper to call a witness to establish what the
12 conditions are at prison so that they can make that
13 establishment.

14 It's either a sentence of imprisonment for
15 years, not a determination about whether anybody out there
16 can grasp the realities of prison. It's not a proper basis
17 for evidence in the case. Certainly can't be a proper basis
18 to ask questions in voir dire.

19 THE COURT: Mr. Bosler.

20 MR. BOSLER: Do you have a case citation that
21 it would be improper to call someone to testify about the
22 conditions in prison?

23 MR. STANTON: Sure. I don't have the case with
24 me, but I certainly have an appellate case that says you
25 can't call inmates to testify about what prison is like.

1 MR. BOSLER: You may not be able to call
2 inmates, but I think you can call guards and wardens to
3 testify about the conditions of the prison, what people do
4 in prison.

5 THE COURT: The test for the Court for voir
6 dire is not whether or not you would be allowed to call a
7 witness. We can debate that issue later.

8 MR. BOSLER: I'm just --

9 THE COURT: The question is whether or not it's
10 a proper question before the jury panel. I have two
11 concerns: One, I ordered that all questions be submitted to
12 me in writing prior to voir dire. I was told last week by
13 you that you would not be asking any questions that you did
14 not ask in the first trial. This question was not asked in
15 the first trial; therefore, it was not approved by me. This
16 is a new area of inquiry.

17 I see no reason to allow you to go into that
18 new area of inquiry. Furthermore, I don't think it elicits
19 information that will lead to a determination as to who is
20 an appropriate person to sit on this jury. I think it is
21 argumentative in its content, and you are attempting to
22 argue to the jury a particular position. For all of those
23 reasons, I'm going to grant the motion and sustain the
24 objection.

25 MR. BOSLER: I need to make a record. Your

1 Honor, I would ask --

2 THE COURT: You have to make the record before
3 I order something.

4 MR. BOSLER: You didn't ask my position.

5 THE COURT: Yes, I did.

6 MR. BOSLER: You stopped me when we talked
7 about the order. Your Honor, I would ask the Court: First,
8 did the Court get written questions from the District
9 Attorney's Office before the trial started? Either this
10 trial or the first trial?

11 THE COURT: They made the same representation.

12 MR. BOSLER: So no, the Court didn't?

13 THE COURT: There have been no questions. I've
14 reviewed the transcript from the first trial. Mr. Stanton
15 has asked the same questions, except for the individual
16 questions of jurors. I've let you go beyond and ask the
17 specific individual questions of jurors that you wanted.
18 This is a general question of the panel.

19 MR. BOSLER: All right. That being said, Your
20 Honor, I think if a juror is to decide what type of
21 punishment is available, if a juror harbors an idea that
22 life imprisonment is life on a country club, Mr. Vanisi
23 should know that before he decides to exercise his
24 peremptory challenges. I'm not going to try to indoctrinate
25 them to anything. I want to find out what information these

1 people have, what they think about it, because it's going to
 2 help Mr. Vanisi decide whether these people are actually
 3 going to seriously weigh the option of life imprisonment.
 4 Because if they think it's life in a country club, they may
 5 not, they may give it little weight.

6 THE COURT: Your offer on the record has not
 7 changed my mind to my initial ruling.

8 MR. BOSLER: Note my objection.

9 MR. GREGORY: Court's indulgence. Want to have
 10 her specify why --

11 MR. BOSLER: Oh, while we're here -- earlier
 12 there was a challenge to a juror where the State argued it
 13 was Morgan Witherspoon. I argued it was bias. The Court
 14 didn't rule why you were sustaining the challenge; you said
 15 you'd do it later. I ask this to be the later.

16 THE COURT: I'm sorry, I have to think about
 17 it. I didn't want to -- I know I can tell you I didn't want
 18 to put it on the record because I was afraid jurors were
 19 using, starting to pick up on what would get them off the
 20 jury and would be making things up, and that's why I didn't
 21 put the specifics. I'll think about it and review the
 22 transcript and tell you.

23 MR. BOSLER: I'd ask the Court do it as soon as
 24 possible.

25 MR. GREGORY: Thank you, Your Honor.

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

3 MR. BOSLER: Those people that raised their
4 hands can put them down.

5 If I might have a moment, Your Honor.

6 THE COURT: Yes.

7 MR. BOSLER: Your Honor, apart from the
8 challenges I've already made, I'm not going to waive those,
9 but --

10 THE COURT: You have to renew your challenges.

11 MR. BOSLER: I'll renew those challenges:
12 Shaylene Grate, Ms. Ziler. I believe Ms. Patch.

13 THE COURT: Wait. You've got Shaylene Grate,
14 and who was the second one?

15 MR. BOSLER: Well, Your Honor, I think the best
16 thing to do would be to allow me to review the transcript
17 just to make sure everything is done proper or give me a
18 chance to consult with my co-counsel.

19 THE COURT: Certainly. Talk to Mr. Gregory,
20 whoever you want to challenge for cause. When I denied your
21 request, I said subject to renewal. I don't keep track of
22 which ones you really want to request after everyone has
23 asked all these additional questions. Now you have to tell
24 me, if you have someone you want to challenge for cause,
25 tell me.

1 MR. GREGORY: Your Honor, would the Court stand
2 easy? May we have the Court's indulgence while we do this?

3 THE COURT: Certainly. Go ahead and talk.

4 A PROSPECTIVE JUROR: If we can get through
5 this, you want to ask if we want to stay a little late to
6 try to get the final panel in; not everyone has to come back
7 in tomorrow?

8 THE COURT: We are going to get this jury
9 tonight, if I have to provide blankets and pillows.

10 A PROSPECTIVE JUROR: I can use one right now.

11 THE COURT: You in the hard chairs may stand.

12 A PROSPECTIVE JUROR: Does that mean there's a
13 possibility we will be staying after 5:00?

14 A PROSPECTIVE JUROR: Are we going to be after
15 5:00?

16 THE COURT: It's possible.

17 A PROSPECTIVE JUROR: Is there any way I can
18 make a phone call?

19 MR. GREGORY: Your Honor, if I might, may I
20 have our Deputy Ms. Hall come in front of the bar?

21 THE COURT: Certainly.

22 MR. BOSLER: Thank you, Your Honor.

23 THE COURT: Everyone be seated.

24 MR. BOSLER: Your Honor, there are three jurors
25 that caused challenges at this point. We'd like to renew

1 those challenges at this point. Shaylene Grate, Lauren
2 Ziler and Marilyn Patch.

3 THE COURT: Thank you.

4 Mr. Stanton.

5 MR. STANTON: Your Honor, the State would
6 traverse the motion for the reasons previously stated and
7 the comments of counsel at side bar.

8 THE COURT: With those -- I'm going to deny
9 your request to excuse for cause as to those three. With
10 that said, do you pass the rest of the remainder of the
11 panel for cause?

12 MR. BOSLER: Is the Court going to articulate
13 any reason to deny?

14 THE COURT: I don't have any new reason based
15 on the additional questioning. My ruling will stand as I
16 previously made.

17 MR. BOSLER: That being said, we'll pass the
18 rest of the panel for cause.

19 THE COURT: Mr. Stanton.

20 MR. STANTON: May I have the Court's indulgence
21 for one moment?

22 THE COURT: Yes.

23 MR. STANTON: May counsel approach?

24 THE COURT: Certainly.

25 (Whereupon, a bench conference between Court
and counsel outside the presence of the jury as

1 follows:)

2 MR. STANTON: Mr. Bosler some time ago
3 requested a side bar with Ms. Grate to ascertain her
4 knowledge of the publicity of this case outside of the news
5 media. I asked them whether or not they were going to waive
6 that or whether they wanted to have the side bar conference
7 to ascertain that.

8 MR. BOSLER: I think we need to do it sometime,
9 so --

10 THE COURT: We better do it before we pick her
11 as a juror.

12 Ms. Grate, would you please come join us.

13 THE COURT: Now would be a good time for you
14 all to talk quietly amongst yourselves.

15 Hi.

16 MR. BOSLER: Ms. Grate, you had said earlier in
17 the questioning that you had spoken to some friends or
18 police officers and may have learned some information about
19 the crime that wasn't part of the public domain. Can you
20 tell us what information you have about the crime?

21 A PROSPECTIVE JUROR: Nothing, just like rumor
22 type stuff about the trial being a mistrial before and stuff
23 like that. Nothing --

24 MR. BOSLER: Can you explain in more detail?

25 A PROSPECTIVE JUROR: That's really all I know.

1 MR. BOSLER: Just kind of the general --

2 A PROSPECTIVE JUROR: Yeah, like hearsay about
3 stuff.

4 MR. BOSLER: The actual words I'm most
5 interested in.

6 A PROSPECTIVE JUROR: That's about all I have,
7 really. And just I knew some people who had gone to the
8 funeral and stuff but nobody had said anything pertaining to
9 this, to the case itself, anything specifically.

10 MR. BOSLER: All right. Any information about
11 the mistrial that occurred, what it's about?

12 A PROSPECTIVE JUROR: No, just that there was
13 paper problems or something with paperwork. That's all I
14 heard.

15 MR. BOSLER: Any other information that you
16 were given as a result of knowing these people that other
17 people wouldn't know from reading the paper or listening to
18 the news?

19 A PROSPECTIVE JUROR: Not that I can think of.
20 No. I mean that was really about it.

21 MR. BOSLER: All right. Has that changed any
22 of the statements you've already made, any of the things
23 you've already said during questioning, have any information
24 in your mind?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: No further questions.

2 THE COURT: Did you have any questions?

3 MR. STANTON: Ms. Grate, do you believe you
4 know any facts about the underlying crime that was not
5 ascertained from the media?

6 A PROSPECTIVE JUROR: No.

7 MR. STANTON: No further questions.

8 A PROSPECTIVE JUROR: I can't tell you
9 anything.

10 THE COURT: Thank you. Go ahead and have a
11 seat.

12 Mr. Bosler, is there anyone else still on the
13 panel that you wanted me to inquire privately of.

14 MR. BOSLER: No.

15 THE COURT: Okay. Then I did not hear anything
16 new from Ms. Grate that would cause me to have concerns
17 about her remaining on the panel. So I'm going to allow her
18 to stay.

19 MR. BOSLER: Your Honor, would the Court
20 consider this: I know a lot of information has been brought
21 out today. Would the Court consider, since we have enough
22 people to pick the panel with our challenges, allow us to do
23 that tomorrow morning so we can review all the information
24 we have?

25 THE COURT: No. This panel has been sitting

1 here for two days. These people need to get back to work,
2 the ones you're going to excuse. It's 20 minutes to 5:00.
3 There's plenty of time for me to get rid of the audience,
4 give you a little bit of time to look at it. You've been
5 thinking about it. You know who you want. Then we can
6 exercise the peremptory challenges at 5:00.

7 MR. GREGORY: Would it be possible for us to
8 have 10 or 15 minutes, Your Honor.

9 MR. BOSLER: We have to discuss this with
10 Mr. Vanisi.

11 THE COURT: Right. I'm going to give you 10
12 minutes or so. It's 20 to 5:00. We'll come back on the
13 record and exercise the challenges at about two minutes to
14 5:00. So that gives you 18 minutes.

15 MR. BOSLER: I don't think it's enough time,
16 but I'll defer to your judgment.

17 THE COURT: The problem, Mr. Bosler, these
18 people -- you're talking about their lives, and they cannot
19 go back to work until -- if I bring them back in here
20 tomorrow at 10:30, it's a whole nuther day. You've been
21 looking at this panel. You can decide in 20 minutes who you
22 want to exercise. It's the same as any other case.

23 MR. GREGORY: Your Honor, if we might be given
24 a half hour to come back in at 5:15, have the jury out by
25 5:30. I mean we just don't want to be in a fire drill with

1 this.

2 THE COURT: I understand that. I want to give
3 you enough time to do it, but I also want to get the jury
4 moving as quick as possible.

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

8 THE COURT: Ladies and gentlemen of the jury
9 panel, is there any one of the 36 of you seated here in the
10 jury box that after reflection on my questions, the
11 questions of counsel, you feel it's important to tell me
12 something new or different about your circumstances or your
13 position as reflected in the service as a juror?

14 Yes, Ms. Hodges.

15 Counsel approach.

16
17 (Whereupon, a bench conference between court
18 and counsel was held outside the presence of
19 the jury.)

20 A PROSPECTIVE JUROR: As you guys all were
21 aware yesterday, I was very emotional. I still am. I've
22 had a headache these last few days, stomach ache. I haven't
23 hardly been eating. Last night I went to bed at 6:30 when I
24 got home. I cried -- I went, turned the light on, it was
25 8:30. I cried that whole time. This is too emotional for

1 me. I really don't think that I'm going to be able to
2 handle two to three weeks of dealing with this kind of a
3 thing.

4 THE COURT: Do you believe that you will not be
5 able to concentrate on the evidence?

6 A PROSPECTIVE JUROR: I've already got the
7 stress of how I'm going to pay my bills. Like I said
8 before, I'm a single mom. I work. I try to be a good
9 person and do that kind of thing instead of being on welfare
10 and doing nothing.

11 I try to be a good person so my daughter cannot
12 go in that same track.

13 MR. STANTON: Your Honor, I might be able to
14 alleviate some of Ms. Hodges' concerns, if I can talk to
15 counsel and the Court at side bar without Ms. Hodges here.

16 THE COURT: Thank you, Ms. Hodges.

17 MR. STANTON: Your Honor, the State's going to
18 exercise a peremptory challenge against Ms. Hodges anyway in
19 the case, so instead of --

20 THE COURT: Thank you.

21

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

24 THE COURT: Anyone other than Ms. Hodges?

25 Ladies and gentlemen of the jury --

1 MR. STANTON: The question before we went to --
2 the State formally, for the record, would pass the panel for
3 cause. Thank you.

4 THE COURT: Thank you.

5 Ladies and gentlemen of the audience, I want to
6 thank you for your service. We all appreciate your service
7 and your attentiveness. Now, as you know, this courtroom is
8 the people's courtroom. Any time you want to come back and
9 visit, you're always welcome. But you are going to be
10 excused from service in this case. You're released from
11 your admonition. Please check in with the Jury
12 Commissioner so she can tell who has been released. And if
13 you'd quietly exit the courtroom, I'd appreciate it. Thank
14 you.

15 Mr. Anderson, will you get the parking stamp.

16 THE BAILIFF: Tiffany has it.

17 THE COURT: Mr. Anderson, go ahead and get the
18 parking stamp from Ms. Clements so you can assist the Jury
19 Commissioner. Come back as soon as you can.

20 Ladies and gentlemen, I'm going to give the
21 attorneys a few minutes to look over all of your
22 questionnaires, before they exercise those challenges I told
23 you about. Remember I told you there was another kind of
24 challenge other than the ones we've been dealing with the
25 last couple days and that's the peremptory challenges? The

1 attorneys are each going to be allowed 10 peremptory
2 challenges. If you add the numbers up, that's how we reduce
3 your number from 36 to the 16 that will actually be sitting
4 through the trial. So while they do that, I'm going to
5 allow you to stretch your legs. You're going to go with the
6 bailiff. You're going to exit the courtroom and he'll take
7 you down the hall and then he'll bring you back when we're
8 ready for you to come back.

9 Stay together. Do not discuss the case among
10 yourselves or with anyone else. Do not form or express an
11 opinion about the ultimate outcome of this case, and do not
12 allow anyone to influence you with regard to it.

13 (Jury excused.)

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

16 THE COURT: Counsel, do you wish to be in
17 recess and go into a private area or are you doing all right
18 where you're at?

19 MR. GREGORY: If we could be accommodated in
20 that manner. Could we go into the jury room? Would that be
21 all right?

22 THE COURT: Doesn't matter to me, whichever way
23 is -- you've got all your stuff out there.

24 MR. STANTON: We can go into the jury room, if
25 that's convenient for the Court.

1 THE COURT: That's fine.

2 MR. GAMMICK: We can even go downstairs, leave
3 defense here. I believe the Court was mentioning we're
4 going to resume at 5:30.

5 THE COURT: 5:15. Either the defendant will
6 remain in the courtroom or we'll put them in the jury room.
7 I don't care.

8 THE BAILIFF: It probably will be better to
9 keep the defendant in here and we will spread away from them
10 and let them talk.

11 THE COURT: Everyone will leave the courtroom
12 so they can have some privacy. We'll be back on the record
13 at 5:15 for exercising peremptory challenges. The Court's
14 in recess.

15 (Recess taken.)

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1 RENO, NEVADA, TUESDAY, SEPTEMBER 21, 1999, 5:15 P.M.

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3

4 THE COURT: Counsel stipulate to the presence of
5 the jury panel?

6 MR. STANTON: State will so stipulate, Your
7 Honor.

8 MR. BOSLER: Defendant so stipulates, Your
9 Honor.

10 THE COURT: Thank you. Counsel, are you ready
11 to proceed?

12 MR. STANTON: State is.

13 THE COURT: Mr. Bosler?

14 MR. BOSLER: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. GAMMICK: The State has exercised its first
17 peremptory challenge, Your Honor.

18 THE COURT: Thank you.

19 MR. BOSLER: Defense has exercised its first
20 challenge, Your Honor.

21 MR. GAMMICK: State exercises its second
22 peremptory challenge, Your Honor.

23 MR. BOSLER: Mr. Vanisi has exercised his
24 second peremptory challenge, Your Honor.

25 MR. GAMMICK: The State has exercised its third

1 peremptory challenge, Your Honor.

2 MR. BOSLER: Mr. Vanisi has exercised his third
3 challenge, Your Honor.

4 THE COURT: Thank you.

5 MR. GAMMICK: State has exercised its fourth
6 peremptory challenge.

7 MR. BOSLER: Mr. Vanisi has exercised his
8 fourth challenge, Your Honor.

9 THE COURT: Thank you.

10 MR. GAMMICK: State has exercised its fifth
11 peremptory challenge, Your Honor.

12 THE COURT: Okay.

13 MR. BOSLER: Mr. Vanisi has made his fifth
14 challenge, Your Honor.

15 MR. GAMMICK: State has exercised its sixth
16 peremptory challenge, Your Honor.

17 THE COURT: Thank you.

18 MR. BOSLER: Mr. Vanisi has exercised his sixth
19 challenge, Your Honor.

20 MR. GAMMICK: State has exercised its seventh
21 peremptory challenge, Your Honor.

22 MR. BOSLER: Defense has exercised its seventh.

23 MR. GAMMICK: State has exercised its eighth
24 preemptory, Your Honor.

25 MR. BOSLER: Mr. Vanisi has made his eighth

1 peremptory challenge.

2 THE COURT: Hand it to the bailiff, please.

3 MR. GAMMICK: May we see that real quick to see
4 who the eighth was?

5 THE COURT: Certainly. I'm sorry.

6 MR. GAMMICK: Thank you.

7 THE COURT: Counsel, you may exercise the
8 remainder of your challenges, beginning with chair 26.

9 MR. GAMMICK: The State has exercised its first
10 of the two remaining challenges, Your Honor.

11 MR. BOSLER: Mr. Vanisi has exercised his first
12 alternate challenge, Your Honor.

13 MR. GAMMICK: Your Honor, the State has
14 exercised its last peremptory challenge.

15 THE COURT: Counsel, would you like to approach
16 the clerk's list and make sure she has what you have.

17 While they're checking on this, ladies and
18 gentlemen, they have exercised their peremptory challenges
19 that are allowed. In this way they have indicated to the
20 Court what challenges they want to make and the clerk has
21 compiled a list of who will actually be serving on the case.
22 What we're going to be doing as soon as they verify that
23 this is the list of names is the clerk will be reading off
24 those names of people who are excused. Now, if your name is
25 read, just take your belongings and you may leave quietly.

1 When you leave, if you need your parking permit stamped, my
2 administrative assistant is standing by in the office. Go
3 out the doors to the left. It's the far side of the
4 building here on the left. She's waiting. You've met her
5 many times before, Mrs. Clements. She'll be more than glad
6 to stamp your parking permit. The Jury Commissioner's
7 office is closed at this time. There's nobody downstairs to
8 help you.

9 I want to tell you how much I appreciate, as do
10 counsel, your paying such close attention in the last two
11 days and your participation. As I told you in the
12 beginning, I understand that it is a hardship for everyone,
13 and an inconvenience, but our system of government could not
14 work without your assistance. So those of you who are
15 excused, come back and visit at any time. And thank you.
16 Go with our thanks for your service.

17 A PROSPECTIVE JUROR: Are we excused for the
18 remainder of our service or do we have to call in again?

19 THE COURT: If you are excused, you will be
20 excused for the remainder of your service and you won't be
21 called again for a minimum of a year.

22 A PROSPECTIVE JUROR: If I am excused I do need
23 paperwork for work. Do I come back tomorrow?

24 THE COURT: Yes, just tell her what you need
25 and she'll be glad to get it for you. Go on out and go over

1 to her office.

2 THE COURT: Mr. Bosler, you did exercise your
3 last challenge, right?

4 MR. BOSLER: Yes, Your Honor.

5 THE COURT: It looked like you had but it wasn't
6 put on the record.

7 You have had a chance to review it and you have
8 no objection?

9 MR. STANTON: Our record jibes with the Court's
10 record.

11 MR. BOSLER: Yes, Your Honor.

12 THE COURT: The clerk will read the names of
13 those jurors who have been excused from service. And thank
14 you.

15 THE CLERK: Victoria Kersbergen. Marilyn A.
16 Patch. John E. Kennedy. Leon D. Ralston. Mary E. Callahan.
17 Starlin E. Jones. Patrick W. Grider. Kevin M. Stevens.
18 Wendy S. Kruse. Bruce C. Miller. Susan E. Johnson. Joan
19 C. Scolari. Kimberly M. Hodges. Warren C. Estes. Maria L.
20 Knight. Holly R. Jenkins. Donna J. Martin. JoAnn Shively.
21 Diane M. Smith. Miles E. Webb.

22 THE COURT: Ladies and gentlemen of the jury,
23 those of you currently seated with us still will be
24 constituting our jury in this case.

25 I am going to recess in just a few minutes, but

1 first I do want to tell you a few things so you'll know what
2 is expected of you for the remainder of the trial and you
3 can handle your personal arrangements.

4 Tomorrow morning we are beginning the case at
5 ten a.m., and I anticipate we will take a normal lunch hour
6 from 12:00 to 1:00 and will finish up by 5:00. I will try
7 not to go late like I did today unless I give you plenty of
8 advanced notice and an opportunity to be heard if you have
9 other arrangements.

10 I found it necessary to do it today because I
11 really wanted to excuse those people who were not going to
12 be serving on our jury.

13 The role each person will play in the courtroom
14 during these proceedings is important for you to understand.
15 You will, at the conclusion of the evidence, determine the
16 facts in the case, apply to those facts the law which will
17 be stated to you by the Court and on that basis reach a
18 verdict consistent with the facts and the law.

19 It is the duty of attorneys on each side to
20 present their respective cases in the most favorable light,
21 consistent with the truth and the law. But statements and
22 arguments of counsel made during the course of the trial are
23 not to be treated by you as evidence. Keep an open mind.
24 Refrain from forming or expressing any opinion concerning
25 this case until all of the evidence is in, the attorneys

1 have made their closing arguments, you have received the
2 Court's instructions as to the law, and you have retired to
3 the jury room to find your verdict.

4 During the trial do not discuss the case among
5 yourselves or with anyone other person. Do not allow anyone
6 to speak of it in your presence. You are not to read,
7 listen to or observe any newspaper or radio or television
8 news account of the trial while it is in progress. Now it's
9 very important that you follow this admonition. It's
10 important that you not be influenced by anyone else's
11 perception of the evidence except your fellow jurors during
12 your deliberation.

13 I know it will be difficult when you go home
14 and you'll say that you're on the jury and family members
15 will say oh, what happened, or each day, what did you hear,
16 what happened today. But think about how you might be
17 influenced by someone who never ever saw the evidence. If
18 you describe a witness or what a witness says, the way you
19 describe it, the person you're describing it to may react.
20 And their reaction may ultimately influence the way you look
21 at the evidence, and that person may never have heard a word
22 or seen any of the evidence. So you must abide by this
23 admonition.

24 Not only must you conduct yourselves as jurors
25 above reproach, but you must avoid even the appearance of

1 any improper conduct. Do not talk to the defendant, the
 2 attorneys or the witnesses during the trial, even upon
 3 matters unconnected with the case. In the event any person
 4 should attempt to discuss the case with you or in any manner
 5 attempt to influence you with respect to it, you are to
 6 advise the bailiffs, who will in turn advise the Court. Any
 7 rulings made by the Court during the course of this trial
 8 will be based upon the controlling law of the state of
 9 Nevada. Accordingly, you must not infer any leaning on my
 10 part based upon such rulings or infer any feeling on my part
 11 for or against either side in this case.

12 If any objection to the admission of evidence
 13 is sustained, you must not speculate as to what the answer
 14 might have been or draw any inference from the question
 15 itself. During the course of the trial -- and you've
 16 already seen this -- matters may arise which must be
 17 determined by me as matters of law outside the presence of
 18 the jury. Again, you are not to speculate or be concerned
 19 in any way as to the reasons for such occurrences.

20 I assure you that I will be limiting them in
 21 frequency and duration as much as the law permits. Observe
 22 carefully each witness as they testify and consider
 23 carefully all of the evidence as it is presented, for it is
 24 you who must determine the credibility of the witnesses and
 25 wherein the truth lies.

1 You may individually take notes during the
2 course of this trial. And for that purpose you will be
3 provided with pencils and note pads by the bailiff. In the
4 event of a conflict between the notes of the individual
5 jurors during your deliberations, you are not to look at
6 these notes. You must disregard them. And you must proceed
7 with your collective memory of what the testimony was. The
8 only authentic record of this trial is taken by the court
9 reporter. The clerk will now swear you as jurors.

10 Please stand and raise your right hand.

11 (Jury sworn)

12 THE COURT: You may be seated.

13 Ladies and gentlemen of the jury, you are
14 admonished that no juror may declare to your fellow jurors
15 any fact relating to this case that you may have within your
16 own knowledge. And if any juror discovers during the course
17 of the trial or after the jury has retired to deliberate
18 that you do have some personal knowledge of any fact in
19 controversy in this case, you shall disclose that situation
20 to the Court outside the presence of your fellow jurors.
21 Please use the jury room at all times when we have a short
22 recess or hearing outside the presence of the jury, before
23 court starts in the morning, and at lunch, if you desire.

24 The bailiff will open the jury room for you
25 following our noon and overnight recesses. If you should

1 need anything for your personal comfort during the course of
2 the trial, please advise the bailiff who in turn will tell
3 me about it and will make every effort to accommodate you.
4 We have in the jury room coffee in the morning and some
5 snacks, but if you need something else for your personal
6 comfort, you should bring it with you. I think we have tea
7 and chocolate. But you will not be allowed to wander around
8 the courthouse or go down to the vending machines. You'll
9 be able to come and go for lunch and at morning and night.
10 The rest of the time you'll all stay together.

11 I don't know if any of you are part of our
12 smokers, but if you are, accommodation will be made for
13 that. But basically you're going to be pretty much together
14 with the bailiff or Mr. Anderson at all times while you're
15 here in the courthouse. So use the jury room. Let us know
16 if there's something you need and we'll make every effort to
17 accommodate you.

18 Tomorrow morning you will begin hearing --
19 you'll hear the Information. You'll hear what the
20 defendant's plea is, and you'll hear opening statements, and
21 you'll probably begin hearing evidence in the morning also.

22 And then we will proceed with the trial.
23 During the course of the trial, if you have questions of
24 like where to park your car and that kind of thing, the
25 bailiff is going to help you with that. He'll also put you

1 in an order here so that you will all be together in the
2 morning. He'll line you up. He'll probably give you some
3 information tonight and tomorrow morning. Follow the
4 admonition that you've been given at all the breaks and I'll
5 be seeing you tomorrow at 10:00.

6 Before you leave I want to remind you of what that
7 admonition is.

8 Ladies and gentlemen of the jury, during this
9 recess that we are about to take, you are admonished that it
10 is your duty not to discuss among yourselves or with anyone
11 else any matter having to do with this case. It is your
12 further duty not to form or express any opinion regarding
13 the guilt or innocence of the defendant until the case has
14 been finally submitted to you for decision. You are not to
15 read, look at or listen to any news media accounts relating
16 to this case. Should any person attempt to discuss the case
17 with you or in any manner attempt to influence you with
18 respect to it, you are to advise the bailiffs, who in turn
19 will advise the Court.

20 Ladies and gentlemen of the jury, you may go
21 with the bailiff now through the jury room door.

22 A PROSPECTIVE JUROR: Just real quickly.
23 There's 12 and four alternates.

24 THE COURT: We have not decided who the
25 alternates are at this point.

1 A PROSPECTIVE JUROR: That will be determined
2 tomorrow.

3 THE COURT: It will be determined at the end of
4 the trial.

5 A PROSPECTIVE JUROR: Can I bring my own food?
6 Do I have somewhere to put it?

7 THE COURT: Yes, we have a refrigerator and a
8 microwave.

9 A PROSPECTIVE JUROR: We can bring our lunch
10 then?

11 THE COURT: Sure, you can.

12

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

15

16 THE COURT: The audience will be seated. Counsel,
17 the clerk has something to give you notice of pursuant to
18 Supreme Court Rule 234. So before you leave the courtroom,
19 please see the clerk.

20 In addition, many of you will be here during
21 the course of the trial. Because we may have lots of
22 spectators, we may have hearings outside the presence of the
23 jury and be moving the jury in and out. I ask that the
24 audience remain seated when the jury is coming and going.
25 And in that manner, if counsel chooses to stand, that's

1 fine, but the audience will remain seated at all times.
 2 That will accommodate the logistics of me telling people to
 3 sit down right before the attorneys want to talk, et cetera.
 4 I appreciate your accommodation in that regard.

5 Mr. Bosler.

6 MR. BOSLER: Yes, Your Honor. For the sake of
 7 the record, there are some things I have to say. At this
 8 point Mr. Vanisi is going to make an objection to the jury
 9 as it was sworn, just to make the record. I would advise
 10 the Court -- before these proceedings began we asked the
 11 Court for an extended questionnaire to learn a little bit
 12 more about the jury. That was denied. We also made a
 13 motion for individual sequestered voir dire. That motion
 14 was denied. We further made a motion for additional
 15 peremptory challenges. That too was denied. And as part of
 16 those motions we submitted an affidavit from a professor in
 17 Chico about the danger of close-ended questions being asked
 18 by the Court in the process of a jury selection, because
 19 what you have, according to this professor, is people being
 20 indoctrinated and essentially learning the proper responses.

21 I'll submit that's exactly what happened. What
 22 was trying to be prevented in the jury selection actually
 23 came to pass. In fact, what you had is a person who put on
 24 their questionnaire that they were prejudiced against
 25 minorities and could not be fair in the case, but that

1 person, for whatever reason, was able to answer the
2 questions correctly to avoid any *Whitt*, *Witherspoon* or
3 *Morgan* challenges. I would submit that was a systemic
4 problem that could have been cured had we been able to do
5 individual sequestered voir dire.

6 Your Honor, based upon those facts we also have
7 Mrs. Bell, who remains on the jury, despite having a child
8 in the same school as Mr. Sullivan's, I believe having been
9 on a field trip with Mr. Sullivan. We have Shaylene Grate,
10 who, from the first day said she couldn't be fair in this
11 case, but slowly through the process has now learned to say
12 the right things to fight off any challenges.

13 For those reasons we're going to object to the
14 jury panel as it's been sworn on the Sixth Amendment right
15 to a fair trial and impartial jury; the Eighth Amendment
16 right to reliability in sentencing, and a Fourteenth
17 Amendment right to due process and protection.

18 THE COURT: Thank you, Mr. Stanton.

19 MR. STANTON: I believe the record at side bar
20 and the Court's previous rulings regarding the motions that
21 counsel states is sufficient for the State for purposes of
22 establishing the record.

23 I also am somewhat puzzled by Mr. Bosler's
24 response about the juror, I believe it's Mr. Greiner, who he
25 claims was prejudiced against minorities and cites as *Whitt*,

1 Witherspoon and Morgan. Neither of those cases deal in any
2 way, shape or form with the answers that Mr. Greiner gave.
3 Mr. Greiner had no answers to questions that dealt with his
4 ability to assess the death penalty. And citing to *Whitt*,
5 *Witherspoon* and *Morgan* for Mr. Greiner is puzzling, to say
6 the least.

7 In addition, Your Honor, Ms. Ziler and Ms.
8 Grate, the State only wants to establish the record that the
9 defense did not exercise peremptory challenges against those
10 two jurors.

11 MR. BOSLER: For the reason there were other
12 jurors that were more harmful, we believe, Mr. Vanisi
13 believes were more harmful to his position than those people
14 who said the things that may have established the cause, a
15 challenge for cause.

16 Additionally -- I haven't put this on the
17 record -- we have to object to the exclusion of Raul Frias,
18 Mr. Caballero Salais and Joy Ashley, who we believe did not
19 fit any legal exception from jury duty, and that was just
20 because they were life prone and were excluded from the jury
21 pool. For that reason we'll refer the Court to our other
22 objections.

23 THE COURT: Mr. Stanton.

24 MR. STANTON: As far as the final articulation
25 by Mr. Bosler, truly *Whitt* and *Witherspoon* and the record

1 that was established by each of those jurors' responses,
2 that they would not consider the death penalty in any other
3 case, is a basis properly for exclusion.

4 MR. BOSLER: I'll let the record speak for
5 itself.

6 THE COURT: The motion for -- I guess the
7 objection to the jury would be a mistrial, I guess is what
8 you're looking for.

9 MR. BOSLER: It would be an objection to the
10 panel being sworn, which would necessitate a mistrial, Your
11 Honor.

12 THE COURT: It's denied, for the basis of the
13 decisions I made and the record that we made with regard to
14 these jurors as a package. Anything else?

15 MR. BOSLER: Your Honor, I would like the
16 opportunity to get the transcript of the hearing and discuss
17 with Mr. Petty what still is a potential change of venue
18 motion. I'm not comfortable arguing that without looking
19 over the details of the transcript at this point. If it
20 comes to pass, we'd like to renew that, I would like to be
21 able to advise the Court and the State. I'm just trying to
22 figure out a way I can do it accurately, and that would
23 necessitate access to today's transcript, and I won't get
24 that until 8:00 tomorrow morning. And I just wanted to
25 advise the Court.

1 MR. STANTON: The time to make an objection
2 relative to a change of venue because of pretrial publicity
3 was before this jury or panel was excused. Obviously we're
4 not at the point where he's going to make the objection, so
5 I guess we'll just wait and see if the motion comes.

6 THE COURT: Look at the transcript and see if
7 you have standing. You can talk to Mr. Petty about when the
8 proper time to make the motion would have been and whether
9 you should be making it or not. If you do want to make it,
10 be here at a quarter to 10:00 tomorrow morning if you decide
11 you want to make something outside the presence of the jury
12 before we begin.

13 So you're going to see the clerk on the notice
14 that she has to give you. You will also need to look over
15 the Information with her that she's going to be reading
16 first thing in the morning. You'll be ready for opening
17 statement.

18 Is there anything that needs to be marked or
19 any discussion with regard to opening statement,
20 demonstrative documents?

21 MR. BOSLER: Nothing from Mr. Vanisi, Your
22 Honor.

23 MR. GAMMICK: The only thing we're going to do,
24 Your Honor, is I believe we've already talked to the court
25 clerk about setting up the different equipment again, the

1 audio and visual equipment. We're going to try to do that
2 at 9:30 if the Court is clear at that time. If not, then we
3 can do it sometime -- the only time I need to have it set up
4 is before we actually start witnesses. So whenever we get
5 an opportunity,

6 THE COURT: We might be okay. The 8:00 hearing
7 may break in plenty of time for that. But maybe you might
8 want to get your people here around 9:00 in case Mr. Bosler
9 and Mr. Gregory have a motion at a quarter to 10:00 so that
10 you're done. I don't know how long it will take you.

11 MR. GAMMICK: That's fine, Your Honor.

12 I'm advised that if we have access to the court
13 now, our personnel are here with the equipment, we can do it
14 now if that's convenient with the Court.

15 THE COURT: That's fine. That's sort of fine
16 but it is fine. They're nodding their head.

17 Anything else?

18 MR. GREGORY: We have to bring our stuff over.
19 Are we going to interrupt the Court by --

20 THE COURT: I don't think so. I think I'm
21 hearing that we'll have plenty of time in the morning. I do
22 it around 9:00. And then if you have to wait a few minutes,
23 you can still get it in.

24 Anything else?

25 MR. BOSLER: No, Your Honor.

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THE COURT: Court's in recess.

(Recess taken at 6:00 p.m.)

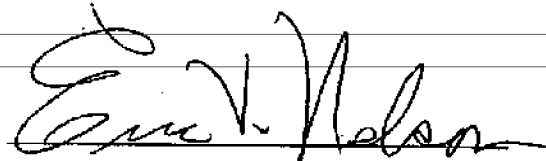
STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

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

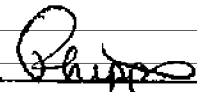
That we were present in Department No. 4 of the
above-entitled Court and took stenotype notes of the
proceedings entitled herein, and thereafter transcribed the
same into typewriting as herein appears;

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

DATED: At Reno, Nevada, this 21st day of
September, 1999.



ERIC V. NELSON, CCR No. 57


DENISE PHIPPS, CCR No. 234

Washoe State of Nevada
District Court, in and for the County of
Washoe, State of Nevada
DATE: _____
Office in care of _____
which was on file in record in my
office in care of _____
DENISE PHIPPS, CCR No. 234
is hereby attested to by the
Shorthand Reporter of the Court
in and for the County of
Washoe, State of Nevada
BY _____
JUDITH

FILED

22

Code No. 4185

SEP 23 1999

AMY HARVEY
By *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516
Dept. No. 4

ORIGINAL

TRIAL - VOLUME 3
September 22, 1999
Reno, Nevada

APPEARANCES:

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The Defendant: SIAOSI VANISI

Reported by: ERIC V. NELSON, CCR No. 57
DENISE PHIPPS, CCR No. 234

SIERRA NEVADA REPORTERS (775) 329-6560

SA00492

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1 RENO, NEVADA, WEDNESDAY, SEPTEMBER 22, 1999, 9:10 A.M.

2 -oOo-

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

7 THE COURT: Counsel, the Court has received a
8 letter from Juror No. 2, Lauren Ziler, and it reads:

9 "Your Honor, as a juror on the civil case
10 pending in your court, I have some issues that
11 are of major concern for me. May I please,"
12 underlined, "see you in private before court
13 convenes this morning?"

14 "Respectfully, Lauren Ziler."

15 She arrived about eight this morning and handed
16 the note to the bailiff. That's why I asked you to come
17 over so that we could make it clear. I have not met with
18 her, but the bailiff did go in and explain that we would
19 have to meet with her with the attorneys present.

20 She went a little further with the bailiff than
21 in her written note, indicated that she was feeling that she
22 might be suffering from a nervous issue. She complained
23 about her hormones being out of whack again, started crying,
24 and acted extremely anxious and said she was afraid she
25 would get sick. So that brings you up to date.

Would you like me to inquire of her?

1 MR. STANTON: State would, Your Honor.

2 MR. BOSLER: Yes, Your Honor.

3 THE COURT: Would you please bring Miss Ziler
4 in?

5 (Juror Ziler present in courtroom.)

6 THE COURT: Good morning, Mrs. Ziler. Not a
7 good morning.

8 JUROR ZILER: No. Absolutely not.

9 THE COURT: I read your letter, and I have
10 shared your letter with counsel. Can you tell us a little
11 bit more about what's happening with you this morning?

12 JUROR ZILER: Going into this, guilty was in my
13 mind, but I truly believed I could be fair and impartial.

14 I have major business concerns that not being
15 able to represent my 20 percent ownership has been
16 constantly on the back of my mind that causes more stress,
17 because any trial by jury in my mind deserves a hundred
18 percent of every juror and nothing less, no matter what kind
19 of trial it is.

20 I joked about my hormones yesterday, but I'm
21 big time stressed. I am not a crier. I am a control freak.
22 I don't like getting drunk because that's letting go of my
23 control, and I'm about this close to losing it. That means
24 my hormones are not allowing me to cope with all this
25 additional stress, and that is a major health concern to me.

1 And I didn't know who else to talk to. That's
2 why I gave you the note.

3 THE COURT: Are you having trouble catching
4 your breath this morning?

5 JUROR ZILER: No, I'm having trouble to keep
6 from getting screaming meemies. I mean, I'm literally this
7 close to going on another crying jag.

8 THE COURT: Have you been crying today?

9 JUROR ZILER: I'm scared to death I am. I got
10 maybe four hours' sleep worrying about this last night. I'm
11 scared to death I'm going to fall asleep in the jury box.
12 And I mean major stress. And I don't know what to do about
13 it.

14 THE COURT: Mr. Stanton, do you have any
15 questions?

16 MR. STANTON: Yes. Miss Ziler, your conditions
17 that you have described here this morning, do you think they
18 would substantially impair your ability to sit and listen to
19 the evidence as a juror needs to in this case?

20 JUROR ZILER: Yeah. That is a major concern,
21 because my business concerns are in the back of my mind
22 constantly. That's not a hundred percent attention out here
23 where it needs to be. And that's causing me a lot of
24 stress.

25 MR. STANTON: Okay. If you could just listen.

1 I know you are emotional, upset. If you could listen to my
2 question very carefully.

3 All the things that are bothering you, would
4 that substantially impair your ability to perform your role
5 as a juror?

6 JUROR ZILER: In my mind, yes.

7 MR. STANTON: Thank you, Your Honor. I have
8 nothing further.

9 THE COURT: Mr. Bosler.

10 MR. BOSLER: No questions, Your Honor.

11 THE COURT: Mrs. Ziler, would you mind going
12 into the jury room and awaiting me? It will just be a few
13 more minutes. Then I'll be able to talk to you.

14 JUROR ZILER: Yes.

15 THE COURT: Thank you.

16 (Juror Ziler excused from courtroom.)

17 THE COURT: Mr. Anderson, would you go into the
18 jury room, please. We have a second juror there now. Would
19 you just wait with the jurors? I don't really want
20 Mrs. Ziler talking. You can go in through this door.

21 Counsel, my inclination is to excuse
22 Miss Ziler. What was not shown on the record was her
23 hesitancy in speaking.

24 It looked to me like she was having trouble
25 catching her breath. She said it was because she was trying

1 to control herself, but she was physically manifesting signs
2 of stress, and I am concerned about her ability to act as a
3 fair and impartial juror at this stage in the proceedings.

4 Mr. Bosler.

5 MR. BOSLER: Your Honor, I don't think this
6 type of case should be easy for anybody, and I would hope
7 that all the jurors feel a little bit of stress sitting in
8 judgment of someone else and deciding whether they live or
9 die. In that sense, I think the stress is understandable.

10 I think what you heard from Miss Ziler is that
11 really this business concern she had which she mentioned on
12 her questionnaire, mentioned during jury selection, in fact
13 mentioned today when we talked about stress, she has
14 business concerns in the back of her mind. I think that
15 really is the majority of her problem.

16 I know that Mr. Stanton asked her a question
17 about substantial impairment. I don't think it fits the
18 Witt case. It's a stress level that is due to the gravamen
19 of the type of case, and that's a natural thing. There is
20 no reason to excuse her as a juror, and we would ask she
21 remain.

22 THE COURT: I thought you wanted me to excuse
23 her.

24 MR. BOSLER: We reserved judgment until we got
25 our jury information, Your Honor.

1 THE COURT: But she was one of the people you
2 wanted me to excuse for cause during the selection. I
3 didn't think you would have a problem with me letting her go
4 now.

5 MR. BOSLER: Your Honor, as I explained
6 earlier, that I made some cause challenges, but as it turned
7 out as I got through the jury, there were people I believed
8 that were worse, and I still believe there are people that
9 are worse than Miss Ziler who would now be seated as jurors
10 if she were excused. For that reason we're going to ask the
11 Court to allow her to stay as a juror.

12 MR. STANTON: The logic of that is astounding
13 to me, Your Honor, why counsel says that there is for cause,
14 and I believe Miss Ziler, Mr. Bosler raises on at least two
15 occasions during the voir dire process, and now they are
16 claiming that she should remain on the jury for some
17 unspoken reason that other jurors are potentially worse, and
18 there is no record or facts articulated by Mr. Bosler that
19 justify that statement.

20 Your Honor, the core question -- and the
21 citation to Witt again is astounding to the State. You
22 can't cite a case that stands for the proposition about
23 whether someone is life or death qualifying in their
24 concerns as an individual to address those issues in a trial
25 as a juror for someone who now has a stress related or

1 The question is confusing. It's confusing to
2 the jury. It has a double meaning. And in that double
3 meaning, you're having a lot of problems with the jurors'
4 responses. So I guess no, I won't let you ask it in that
5 format.

6 MR. BOSLER: So object to the word "consider"
7 as being confusing?

8 THE COURT: The way you're using it when you
9 ask them would they consider that in not imposing the death
10 penalty, you're asking them, will that be a reason not to
11 impose the death penalty for them. That isn't the way --
12 that isn't telling them: Will you look at that evidence?
13 You need to separate it out.

14 MR. BOSLER: Can I ask them if they would
15 consider that as a part of their decision-making process?

16 MR. STANTON: What is proper is the judge has
17 already instructed them about what the aggravators that have
18 been noticed in this case. You can ask the juror what
19 *Morgan* -- the authority you're relying on for those things
20 is *Morgan* -- permits you to ask jurors whether or not they
21 would consider all the evidence in the sentencing phase to
22 include aggravating evidence and mitigating evidence, or any
23 formulation of the question along those lines. That's what
24 I believe, Your Honor, *Morgan* states is proper inquiry.

25 THE COURT: I haven't reviewed *Morgan* again,

1 but that's the way I've been ruling in terms of what I'll
2 let you ask. And I'm not going to let you confuse the
3 issue. I don't think you necessarily are doing that on
4 purpose, but it is happening. And so we have to be very
5 careful about the way you go about this.

6 So the point here is: Will the juror consider,
7 in our definition of the term, evidence in making a
8 determination as to what the appropriate penalty is? Or
9 will they always vote a particular way in spite of evidence?
10 It is not whether or not they'll consider particular pieces
11 of evidence that you plan to put on. So the question is a
12 broad question if they will consider things. You do not
13 have a right to have a jury that will only consider as
14 mitigation those things that you think are mitigating.
15 That's not the point here.

16 MR. STANTON: Once again, counsel's questions
17 about -- that you're posing about alcohol, about the ones
18 that aren't statutory mitigating evidence is violating the
19 rule that you cannot tell a jury what mitigating evidence
20 is. I've permitted it so far, but I'm at the juncture now
21 when they ask that question again outside of the statutory
22 articulating mitigating evidence, I'm going to object.

23 THE COURT: Do you want a few minutes to
24 collect your thoughts or are you ready to go?

25 MR. BOSLER: If you want to order me, I can't

1 talk about specific mitigators, and I know we need to talk
2 about mitigation in general, will they consider that, then
3 I'll follow that order.

4 THE COURT: Follow the *Morgan* case.

5 MR. BOSLER: We have a dispute about how *Morgan*
6 reads.

7 THE COURT: Do you have a cite that you can
8 give me? I have the case right here.

9 MR. BOSLER: If you'll give me time to look at
10 it, I'll find it.

11 MR. BOSLER: Can you help him, Mr. Gregory? Do
12 you know where it is that he thinks --

13 MR. GREGORY: I'm sorry, Your Honor?

14 THE COURT: Do you know where it is that he can
15 do this in *Morgan*?

16 MR. GREGORY: No, Your Honor. I'd have to look
17 at the case again.

18 THE COURT: Let's continue. I'm going to deny
19 it. I just don't -- we've kind of beat this over and over
20 and over. Curtail your inquiry into the permissible
21 inquiry, which is whether or not they will look at other
22 evidence in determining penalty.

23 MR. BOSLER: So don't talk about specific
24 mitigators?

25 THE COURT: No.

1 MR. STANTON: Other than the ones that are
2 listed in the statute.

3 THE COURT: That's right. Do you want the
4 statute?

5 MR. BOSLER: No.

6 THE COURT: Sustained.

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

9 MR. BOSLER: Let me collect my thoughts.

10 I'll finish up with you, Mr. Ralston. You
11 talked about aggravators, and I think you said you would
12 consider other evidence as it related to your decision on
13 guilt or penalty. And correct me if I'm wrong, you would
14 consider use of alcohol as one of those things that helped
15 you in your ultimate decision, use of alcohol or drugs.

16 A PROSPECTIVE JUROR: We didn't talk about
17 that. I sort of look negatively upon that as an influence
18 against capital punishment. I don't look at it as an excuse
19 to commit that kind of a crime.

20 MR. BOSLER: I think the judge is going to
21 instruct you that mitigators aren't offered as an excuse. I
22 think that's part of what she read this morning. I don't
23 want you to think that it's been offered as an excuse. You
24 don't think that alcohol, drug use is a factor that
25 lessens --

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: Any particular reason or life
3 experience why you say that?

4 A PROSPECTIVE JUROR: I just think that it's
5 sort of a cumulative decision that you make. If you go down
6 that road, people start somewhere making the wrong decision.

7 MR. BOSLER: So the voluntariness of it, kind
8 of your own fault for drinking?

9 A PROSPECTIVE JUROR: I think so.

10 MR. BOSLER: Fair enough.

11 If I could, Ms. O'Keefe, you also wrote in your
12 questionnaire that you strongly fear the death penalty.

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: And why is that?

15 A PROSPECTIVE JUROR: It's just how I was
16 raised.

17 MR. BOSLER: Could you give me a little bit
18 more information as to how you were raised?

19 A PROSPECTIVE JUROR: My parents believe in
20 that. They taught me to believe in that. It's something
21 I've always believed in.

22 MR. BOSLER: You've felt this way for all your
23 life, pretty much?

24 A PROSPECTIVE JUROR: Yeah.

25 MR. BOSLER: Talked about it with friends?

1 A PROSPECTIVE JUROR: Friends, family.

2 MR. BOSLER: Is this view that you strongly
3 believe in the death penalty, is that view, does it come
4 into play when you think of first degree murder?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: You know what we've been talking
7 about, premeditated murder? We're not talking about
8 self-defense, manslaughter, vehicle homicide, accidental
9 death, anything like that.

10 In your mind -- we're each individuals here.
11 In your mind, a first degree murder case, do you think
12 there's any other penalty that should be imposed other than
13 death?

14 A PROSPECTIVE JUROR: No.

15 MR. BOSLER: You've had a lifetime to come to
16 this opinion, right?

17 A PROSPECTIVE JUROR: Right.

18 MR. BOSLER: Is that opinion basically just on
19 your moral decision as a person?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: If you believe a first degree,
22 premeditated, deliberate murder should be automatically the
23 death penalty, what about a premeditated, deliberate murder
24 involving an officer?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Involving the four things I've
2 spoken of earlier?

3 A PROSPECTIVE JUROR: Definitely.

4 MR. BOSLER: Does that sway you more towards
5 the automatic imposition of death?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: You heard me talk about some other
8 things that might be offered to lessen a penalty, not as an
9 excuse. Does that have any weight with you, any of those
10 things?

11 A PROSPECTIVE JUROR: No, I don't believe so.

12 MR. BOSLER: You don't believe so because why?

13 A PROSPECTIVE JUROR: Just what I believe in.
14 If you kill somebody, then I believe the same punishment
15 should be inflicted upon you.

16 MR. BOSLER: I appreciate your honesty.

17 If you heard evidence regarding intoxication at
18 the time of the event, would that matter to you?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: Evidence of a mental distress,
21 defect, illness?

22 A PROSPECTIVE JUROR: No.

23 MR. BOSLER: Is there anything that the judge,
24 when it tells you you're supposed to follow her
25 instructions, is that going to change your moral opinion

1 about this issue?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: Is there any evidence I can give
4 you that would take you away from this position that if you
5 found first degree murder and under these circumstances, you
6 would always impose death?

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

8 MR. BOSLER: You don't think so or you know so?

9 A PROSPECTIVE JUROR: I would say I'm 90
10 percent sure I would impose the death penalty.

11 MR. BOSLER: Which leads me to the next
12 question. What's the 10 percent?

13 A PROSPECTIVE JUROR: If evidence suggests
14 otherwise, then I would consider that. But I'm swayed
15 towards the death penalty.

16 MR. BOSLER: But that 10 percent evidence
17 wouldn't be mental illness, suffered by the person at the
18 time of the crime?

19 A PROSPECTIVE JUROR: I really don't know. I
20 would have to -- once the evidence is presented, I would
21 make a decision at that time. It's hard to tell what I'm
22 going to do before all the evidence is presented.

23 MR. BOSLER: Sure.

24 We're going to ask you to work in the
25 hypothetical arena right now. So you're telling me that you

1 would consider if the person was suffering from mental
2 illness at the time of the event, you would consider that in
3 your ultimate decision of penalty.

4 A PROSPECTIVE JUROR: Not necessarily mental
5 illness. I don't know what factors there are that would
6 make me consider not imposing the death penalty. The
7 factors that you've listed?

8 MR. BOSLER: Yes.

9 A PROSPECTIVE JUROR: I think the death penalty
10 should be imposed. Whether alcohol, drugs, mental illness,
11 any of that, I still think it should be imposed.

12 MR. BOSLER: All right.

13 I apologize for kind of being very specific
14 about this. Are you saying that even if you were presented
15 evidence as to those things I talked about, to you, you
16 don't consider them mitigation?

17 A PROSPECTIVE JUROR: No.

18 MR. BOSLER: Thank you for your candor.

19 I make a *Morgan* challenge. Let the District
20 Attorney traverse.

21 MR. STANTON: Your Honor, he hasn't -- I don't
22 need to traverse at this juncture. He hasn't even satisfied
23 *Morgan*, that is that -- I don't know if the Court wants me
24 to --

25 THE COURT: I'll ask the question. Would you

1 automatically vote for the death penalty no matter what?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: You don't believe there's any
4 evidence that you would ever consider?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Mr. Stanton, would you like to
7 inquire?

8 MR. STANTON: Yes.

9 Ms. O'Keefe, I talked earlier this morning
10 about a process that occurs in a death penalty case in the
11 penalty phase. Do you remember kind of the two- or
12 three-stage process?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: Did anything about that process
15 which are, in a quick summary, the instructions of law that
16 the jury in this case will be given regarding how to
17 consider the penalty phase, did anything about that process
18 bother you so that you couldn't follow that process?

19 A PROSPECTIVE JUROR: No.

20 MR. STANTON: In this case, in this state, the
21 process at a penalty phase is upon conviction of first
22 degree murder, evidence is presented, presented aggravating
23 circumstances. You've all heard that term now. Those are
24 reasons why someone should be sentenced to death.
25 Mitigating evidence is reasons why someone should not.

1 Basically the law is going to instruct you that
2 you've got to consider both of those items of evidence,
3 aggravating and mitigating. And then make your decision.
4 No one can tell you or suggest to you what is or is not
5 mitigating evidence and how you're to consider it or whether
6 it will make a difference. Only you as an individual juror
7 and collectively as a jury can answer that question.

8 With that kind of as a context, could you do
9 your sworn duty in this case and listen to aggravating and
10 mitigating evidence and make your decision from that?

11 A PROSPECTIVE JUROR: No.

12 MR. STANTON: I use an example with jurors
13 about doors being opened. Your mind, if you will, being
14 receptive to listening to evidence. I'll ask it just
15 straightforward. Are those doors going to be shut relative
16 to the consideration of mitigating evidence in this case?

17 A PROSPECTIVE JUROR: Yes.

18 MR. STANTON: We would not object to the
19 motion.

20 THE COURT: Ms. O'Keefe, you're excused from
21 further service. The clerk will call the name of another
22 prospective juror.

23 THE CLERK: Connie E. Ryan.

24 THE COURT: Go ahead and take a moment,
25 Ms. Ryan, to read that list of names. Thank you.

1 You've had a chance to review the list. Are
2 you related to or familiar with anyone on that list?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: Have you been able to hear all my
5 questions yesterday and today?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Did you keep a list to those
8 questions you would respond to?

9 A PROSPECTIVE JUROR: Yes, I did.

10 THE COURT: Would you please tell me which
11 questions you would have responded to?

12 A PROSPECTIVE JUROR: I have a brother who is
13 in the military police.

14 THE COURT: Is there anything about your
15 brother's occupation that would cause you difficulty serving
16 in this case?

17 A PROSPECTIVE JUROR: Yeah. Because I mean,
18 he's my brother and he's put in that kind of position every
19 day of his life and everything. He does work with very -- I
20 don't know how to put it -- in dangerous situations.

21 THE COURT: Do you believe that it would impact
22 your decision-making in this case?

23 A PROSPECTIVE JUROR: Yeah, I think so.

24 THE COURT: How?

25 A PROSPECTIVE JUROR: I don't know. Kind of

1 going a little bit further on, but because he's in the
2 police department and everything, per se. You know, if
3 something happened to him, then I'd want justice served for
4 the person who killed him.

5 THE COURT: Have you predecided this case or
6 are you willing to decide and make a determination as to
7 what the facts are after you hear the evidence?

8 A PROSPECTIVE JUROR: I've pretty much formed
9 my own opinion.

10 THE COURT: You would not be swayed by the
11 evidence that's presented?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: What else did you answer in that?

14 A PROSPECTIVE JUROR: That, yeah, I saw, like,
15 news reports after the questionnaire last week.

16 THE COURT: Did you watch those news --

17 A PROSPECTIVE JUROR: No. Just like maybe
18 hearing it on the radio. I have a radio at my work. It's
19 listened to all the time and I'm too busy to change the
20 channel, so it will be on. And I might hear a few passing
21 words on that. Or just at home, you know, if the news is on
22 and I'm in the other room, I'll hear a few passing words on
23 that, too.

24 Another one was if a law enforcement officer
25 was up here as a witness, I would take his word as credible

1 because he's sworn to his duty to tell the truth also. And,
2 yes, I've been a witness and I've had my own case in court
3 for family.

4 THE COURT: You've had a family court matter?

5 A PROSPECTIVE JUROR: I've been in family
6 courts before.

7 THE COURT: Is there anything about your
8 experience in family court that would cause you difficulty?

9 A PROSPECTIVE JUROR: Not on this case, no.
10 It's something completely different.

11 A PROSPECTIVE JUROR: In the case that you were
12 a witness where you actually -- did you testify in court?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Was that in your own case or a
15 different case?

16 A PROSPECTIVE JUROR: Kind of in my own case.
17 I was in a car accident and I had to testify with that.

18 THE COURT: Is there anything about the
19 experience that you had as a witness that would cause you
20 difficulty serving in this case?

21 A PROSPECTIVE JUROR: I don't think so, no.

22 THE COURT: Have you heard all Mr. Stanton's
23 questions?

24 A PROSPECTIVE JUROR: I believe, if I can
25 remember, yes.

1 THE COURT: Did you note anything that you
2 wanted to respond to?

3 A PROSPECTIVE JUROR: If I can remember what he
4 asked. I think one of them was if there was outside
5 influence, if other people were talking about the case.
6 Yeah, a lot of my family and in-laws have been talking about
7 it. And they all know that I've been selected for a jury
8 duty but not this particular one. They've brought it up
9 before. I mean, they kind of guessed. It's big news in the
10 paper.

11 THE COURT: Do you remember any specific
12 questions that you want to respond to?

13 A PROSPECTIVE JUROR: Not that I know of, no.

14 THE COURT: Mr. Stanton, you may inquire.

15 MR. STANTON: Thank you, Your Honor.

16 Ms. Ryan, at the time that you filled out your
17 questionnaire, your initial questionnaire, you indicated an
18 employment. Has that employment changed since today?

19 A PROSPECTIVE JUROR: No.

20 MR. STANTON: In this case there, as I'm sure
21 you've listened to in the back of the courtroom, charges of
22 murder of a police officer. In addition, there's two
23 charges that allege that Mr. Vanisi robbed two convenience
24 stores, 7-Eleven and another mini-mart. Based upon your
25 occupation, does that cause you any problem sitting on a

1 jury in this case?

2 A PROSPECTIVE JUROR: Yeah, because I have that
3 kind of a fear every day that I work, that I can be robbed.
4 My store has been robbed several times in the year since
5 I've worked there.

6 MR. STANTON: Would that fear or that
7 connection with your employment and the facts that are
8 involved in this case, facts of people that work at the
9 particular convenience stores, would that cause you to be
10 something less than a fair and impartial juror?

11 A PROSPECTIVE JUROR: I think so, yes.

12 MR. STANTON: Do you think it would affect your
13 ability to be a juror in this case for this defendant?

14 A PROSPECTIVE JUROR: Yes, if it was proven
15 that he did actually rob those convenience stores, yes.

16 MR. STANTON: You indicated also a vacation
17 that's occurring probably during the middle or a portion of
18 this trial.

19 A PROSPECTIVE JUROR: The beginning of October.

20 MR. STANTON: Is that a prepaid vacation?

21 A PROSPECTIVE JUROR: Yes.

22 MR. STANTON: And, Ms. Ryan, did you hear my
23 question relative to the process of selecting a foreperson
24 in a jury?

25 A PROSPECTIVE JUROR: Yeah, I did.

1 MR. STANTON: If you were selected foreperson.
2 of the jury in this case, and assuming that the facts and
3 the law supported the imposition of the death penalty, could
4 you sign a verdict form putting the defendant to death?

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

6 MR. STANTON: You couldn't under any
7 circumstances?

8 A PROSPECTIVE JUROR: No.

9 MR. STANTON: No further questions.

10 THE COURT: Mr. Bosler?

11 MR. BOSLER: No questions.

12 MR. STANTON: I want to make a motion to excuse
13 Ms. Ryan for several different reasons that she stated.

14 THE COURT: Any objection? You can inquire.
15 You can object. You cannot object.

16 MR. BOSLER: What I'm going to do, and I
17 appreciate that, Your Honor, is I'm going to concur partly
18 with the DA's motion. I don't think the fact that she's not
19 willing to be a foreperson and is unwilling to sign the
20 death verdict in and of itself makes her a *Witherspoon*
21 excludable.

22 However, I think she's honestly indicated some
23 bias and I think that is a reason that the Court should
24 exclude her. With that, I'll submit the matter to the
25 Court. Thank you.

1 THE COURT: I find that Ms. Ryan should be
2 excused for cause.

3 Ma'am, you're excused for cause.

4 MR. BOSLER: Would the Court articulate the
5 reasons for cause?

6 THE COURT: We'll do that later.

7 MR. BOSLER: Thank you, Your Honor.

8 THE COURT: The clerk will call the name of
9 another potential juror.

10 THE CLERK: Kevin M. Stevens.

11 MR. BOSLER: Kevin Stevens?

12 THE CLERK: Correct.

13 THE COURT: Go ahead and look at that list,
14 Mr. Stevens.

15 Mr. Stevens, are you related to or acquainted
16 with anyone on that list?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Have you been able to hear all of
19 my questions yesterday?

20 A PROSPECTIVE JUROR: Yes, I have.

21 THE COURT: Did you keep track of those
22 questions you would have responded to?

23 A PROSPECTIVE JUROR: I have no questions or I
24 have no responses.

25 THE COURT: You wouldn't have raised your hand?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Is there anything in particular
3 that you remember that you would have responded to to
4 Mr. Stanton?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Is there anything in particular
7 that -- I know most of Mr. Bosler's questions have been
8 individual, but any of his general questions that you would
9 have responded to?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Stanton, you may inquire.

12 MR. STANTON: Thank you.

13 Mr. Stevens, you indicated an occupation during
14 your general questionnaire, that you engage in the same form
15 of occupation as you were when you filled out the
16 questionnaire.

17 A PROSPECTIVE JUROR: Yes.

18 MR. STANTON: Now, you know the facts of this
19 case. Does your occupation cause you any difficulty in
20 being anything but a fair and impartial juror in this case?

21 A PROSPECTIVE JUROR: No.

22 MR. STANTON: Nothing involved with your
23 employment that would cause you concern or Mr. Vanisi and
24 his counsel concern to be a juror in this case?

25 A PROSPECTIVE JUROR: No.

1 MR. STANTON: Did you hear my question as being
2 selected as a foreperson?

3 A PROSPECTIVE JUROR: Yes.

4 MR. STANTON: If you were selected as a
5 foreperson and the facts and the law supported in your mind
6 the decision that the death penalty would be appropriate,
7 could you sign the verdict form putting Mr. Vanisi to death?

8 A PROSPECTIVE JUROR: Yes, I could.

9 MR. STANTON: Nothing further.

10 THE COURT: Mr. Bosler, you may continue your
11 inquiry of the entire panel.

12 MR. BOSLER: I believe Mr. Stevens has the hot
13 seat anyway.

14 Mr. Stevens, just so we know, you're a UNR
15 professor?

16 A PROSPECTIVE JUROR: That's correct.

17 MR. BOSLER: How long have you been a UNR
18 professor?

19 A PROSPECTIVE JUROR: Eight years.

20 MR. BOSLER: Can you tell me the subject?

21 A PROSPECTIVE JUROR: I teach history.

22 MR. BOSLER: In your job as a professor at UNR,
23 do you have occasion to come in contact with the UNR Police
24 Department?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Do they ever patrol your building
2 late at night when you were working?

3 A PROSPECTIVE JUROR: If I'm working there
4 late, I might see a car, of course. But I haven't actually
5 come in personal contact.

6 MR. BOSLER: No direct contact with UNR police
7 officers?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: Have you, fellow professors, I
10 guess students, teachers aides, people like that, have you
11 discussed the killing of Mr. Sullivan?

12 A PROSPECTIVE JUROR: No.

13 MR. BOSLER: It wasn't something that
14 happened -- obviously it happened during your tenure.

15 A PROSPECTIVE JUROR: It happened when I was
16 away at Cambridge, so I kind of have a distance from this
17 case anyway.

18 MR. BOSLER: When were you at Cambridge?

19 A PROSPECTIVE JUROR: Two years ago in
20 December, early January.

21 MR. BOSLER: How long after the death of
22 Mr. Sullivan did you return to UNR?

23 A PROSPECTIVE JUROR: I guess it was a week,
24 two weeks.

25 MR. BOSLER: Did you go right back to work?

1 A PROSPECTIVE JUROR: Yeah.

2 MR. BOSLER: Never questioned by the UNR Police
3 Department or anything like that?

4 A PROSPECTIVE JUROR: No.

5 MR. BOSLER: Mr. Stevens, you wrote in your
6 questionnaire you strongly favor the death penalty.

7 A PROSPECTIVE JUROR: (Nodded head
8 affirmatively).

9 MR. BOSLER: How long have you felt that way?

10 A PROSPECTIVE JUROR: I guess all of my adult
11 life.

12 MR. BOSLER: Any particular reason you favor
13 the death penalty?

14 A PROSPECTIVE JUROR: I think it's a proper
15 punishment for a first degree murder.

16 MR. BOSLER: You're probably a pretty smart
17 guy.

18 A PROSPECTIVE JUROR: Not necessarily.

19 MR. BOSLER: You heard what's been going on in
20 the courtroom, right? We're only talking about first degree
21 murder. We're not talking about self-defense, imperfect
22 self-defense, any other variation of murder.

23 In a case where you found first degree murder,
24 premeditated murder, do you believe that the death penalty
25 is the only appropriate punishment?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: And why is that?

3 A PROSPECTIVE JUROR: I'd have to weigh the
4 case. I think there are perhaps other circumstances that
5 would -- mitigating circumstances that would call for
6 another punishment.

7 MR. BOSLER: You've been paying attention
8 today.

9 We'll talk about -- well, in that first degree
10 murder case, assume -- you remember the four aggravators
11 that have already been mentioned with the other jurors. We
12 have killing of a police officer, the race issue, the
13 commission of a robbery and the damage and mutilation of the
14 corpse.

15 In that type of case, would you be willing to
16 consider a penalty less than death?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Would you be willing to
19 consider -- in your ultimate decision on what type of
20 punishment should be imposed, would you be willing to
21 consider something like the mental health or mental state of
22 the defendant at the time of the offense?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: Something like alcohol or drug
25 use?

1 A PROSPECTIVE JUROR: I would consider it, yes.

2 MR. BOSLER: A factor like lack of significant
3 or even violent criminal history, lack of that?

4 A PROSPECTIVE JUROR: I would consider it, yes.

5 MR. BOSLER: I'm only asking if you would
6 consider it.

7 Age, is that something you would consider?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: You also noted on your
10 questionnaire there would be a certain hardship for your
11 students if you're called away from your employment. Does
12 that still exist or is there a way for another history
13 professor to cover your classes?

14 A PROSPECTIVE JUROR: Currently we don't have
15 substitute teachers. This would be my only concern for this
16 case. If it indeed lasted, say, three weeks, it would be a
17 hardship for my students.

18 MR. BOSLER: Would there be anybody to teach
19 the class?

20 A PROSPECTIVE JUROR: No.

21 MR. BOSLER: How many students are there that
22 would be --

23 A PROSPECTIVE JUROR: Roughly 75.

24 MR. BOSLER: As a professor, I guess you don't
25 want to see your students put in a hardship; would that be

1 correct?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: They pay money to go to your
4 class?

5 A PROSPECTIVE JUROR: Exactly.

6 MR. BOSLER: Do you know some of these students
7 from other classes? Are they working their way up through
8 the 200, 300, 400 level classes?

9 A PROSPECTIVE JUROR: Sure.

10 MR. BOSLER: With that hardship in place, do
11 you think that's going to affect your ability to sit here
12 and think about just what happens on the stand and what the
13 lawyers do?

14 A PROSPECTIVE JUROR: No.

15 MR. BOSLER: So you'll be able to put that
16 aside?

17 A PROSPECTIVE JUROR: Absolutely.

18 MR. BOSLER: Any reason you can think of that I
19 should be worried -- you're a UNR professor, we're talking
20 about a killing involving a UNR employee, any reason I
21 should be worried about you sitting as a juror?

22 A PROSPECTIVE JUROR: No.

23 MR. BOSLER: If you were to exchange places
24 with Mr. Vanisi, any reason he should be worried if the
25 spots were switched, would you be the type of person that

1 you think should be sitting in judgment on this type of
2 case.

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: No reason to worry?

5 A PROSPECTIVE JUROR: No.

6 MR. BOSLER: Ms. Kruse, you indicated during
7 the initial questioning -- this happened a little yesterday,
8 you kind of formed an opinion about this case.

9 A PROSPECTIVE JUROR: A little bit.

10 MR. BOSLER: I'm trying to keep track. I think
11 you did. Would that be untrue?

12 A PROSPECTIVE JUROR: Uh-huh, as far as I did,
13 did I say this yesterday?

14 MR. BOSLER: I don't know. Your issue about
15 the prepaid vacation, has that been resolved?

16 A PROSPECTIVE JUROR: I guess I'll go Friday
17 night.

18 MR. BOSLER: Not going to lose a lot of money
19 or anything?

20 A PROSPECTIVE JUROR: No, it's driving down for
21 baseball games.

22 MR. BOSLER: Give me a moment. You still work
23 as an operating room nurse?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: So if you were to see pictures of

1 a body, a dead body, is that something that would affect
2 your ability to be fair?

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: I'm sure it's something you would
5 find disturbing, but is it going to disturb you in the sense
6 that you couldn't sit fairly on this type of case?

7 A PROSPECTIVE JUROR: No, that doesn't bother
8 me.

9 MR. BOSLER: That type of blood or depiction of
10 the human body?

11 A PROSPECTIVE JUROR: No. It doesn't bother
12 me.

13 MR. BOSLER: How long have you been an
14 operating room nurse?

15 A PROSPECTIVE JUROR: For the last year. Then
16 I was an oncology medical nurse.

17 MR. BOSLER: Any of this education take place
18 at UNR?

19 A PROSPECTIVE JUROR: I did four years of
20 elementary education at UNR before I switched over to
21 Truckee Meadows.

22 MR. BOSLER: And correct me if I'm wrong, since
23 I've already been wrong once, isn't the education building
24 very close to the police station for UNR, right; on top of
25 the hill?

1 A PROSPECTIVE JUROR: I think so.

2 MR. BOSLER: Is that accurate?

3 A PROSPECTIVE JUROR: Sure.

4 MR. BOSLER: How about in your schooling, did
5 you ever have contact with UNR police officers?

6 A PROSPECTIVE JUROR: I had to go up there to
7 pay a few parking tickets.

8 MR. BOSLER: Anything about that interaction,
9 involuntary interaction with the police department, that
10 makes you feel uncomfortable about sitting as a juror today?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: Any experience as a nurse or maybe
13 even your education education, any experience with mental
14 illness, studying people with mental illness, ADD, ADHD type
15 things?

16 A PROSPECTIVE JUROR: Absolutely.

17 MR. BOSLER: What kind of stuff have you
18 studied?

19 A PROSPECTIVE JUROR: We had to do about four
20 weeks at the state institute with my nursing training. And
21 then we had at Saint Mary's medical floor, we did receive a
22 lot of alcohol and some mentally ill patients on that floor
23 that I took care of.

24 MR. BOSLER: Were you like a primary caregiver
25 or supervising nurse?

1 A PROSPECTIVE JUROR: Primary caregiver.

2 MR. BOSLER: You probably know where I'm going
3 with this. Assume you had a first degree murder case
4 involving the death of a police officer. Under the
5 circumstances I've already explained to the professor next
6 to you, when you sat down with your fellow jurors and you
7 came to the point where that person being convicted of first
8 degree murder, you had to choose whether they lived or
9 whether they died, would you be willing in that general
10 analysis, be willing to consider the use of alcohol, drugs,
11 the time of the event?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Would you be willing to consider
14 the mental state --

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: -- of the person?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: How about something that is so
19 seemingly innocuous as lack of a violent criminal history?

20 A PROSPECTIVE JUROR: Sure.

21 MR. BOSLER: That would be something you would
22 consider?

23 A PROSPECTIVE JUROR: Uh-huh.

24 MR. BOSLER: Age?

25 A PROSPECTIVE JUROR: Sure.

1 MR. BOSLER: Would you be willing to abide by
2 the law and at least consider this magical catchall
3 exception that says whatever you as a person thinks is
4 relevant, you may consider as a mitigating factor, are you
5 willing to at least take part in that analysis?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: I appreciate your talking with me.
8 Mr. Miller, you have a friend who is a district
9 attorney?

10 A PROSPECTIVE JUROR: Yes.

11 MR. BOSLER: If you could, tell me what office,
12 local or California?

13 A PROSPECTIVE JUROR: I can't even tell you.
14 Dave Vial. He was in my fraternity in college. I've been
15 over to his house.

16 MR. STANTON: Mr. Watts-Vial is a deputy
17 district attorney in our office working within the civil
18 division.

19 MR. BOSLER: Fraternity brother?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: You don't owe him your life or he
22 owes you your life?

23 A PROSPECTIVE JUROR: No.

24 MR. BOSLER: How often do you see him, not very
25 often since you graduated?

1 A PROSPECTIVE JUROR: I think I've been to his
2 house three times in the past year.

3 MR. BOSLER: Two district attorneys sitting
4 opposite me here in the courtroom, any reason I should be
5 nervous considering your relationship to this person?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: Let's talk about your view that
8 you strongly favor the death penalty. That's accurate?

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: That's an accurate description of
11 your current view?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: How long have you felt that way?

14 A PROSPECTIVE JUROR: Ever since I formed a
15 political opinion or those kind of moral opinions.

16 MR. BOSLER: College? High school?

17 A PROSPECTIVE JUROR: I'd say college was when
18 I really started thinking about that.

19 MR. BOSLER: And I guess that's probably been a
20 good five, 10 years ago, right?

21 A PROSPECTIVE JUROR: At least.

22 MR. BOSLER: Is it an opinion you've discussed
23 with, like, family members, your fraternity friend, your
24 district attorney friend?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: Do you feel it's a pretty strongly
2 held moral position?

3 A PROSPECTIVE JUROR: Yes.

4 MR. BOSLER: Let's talk about first degree
5 murder. You've heard the litany of questions that I've
6 posed, in a first degree murder?

7 A PROSPECTIVE JUROR: No.

8 MR. BOSLER: If you had a first degree murder,
9 would you always think the death penalty as the only
10 punishment that should be imposed?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: You can think of circumstances
13 where it would be inappropriate?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: How about a first degree murder
16 involving the four things, the death of a police officer --
17 and I won't go through them.

18 A PROSPECTIVE JUROR: The aggravating causes
19 that you've talked about, no, that is not an automatic.

20 MR. BOSLER: Okay. And it gets me to my next
21 question.

22 A PROSPECTIVE JUROR: The mitigating ones,
23 would I consider everything you talked about ad nauseam?

24 MR. BOSLER: That little magical thing, that
25 nonstatutory.

1 A PROSPECTIVE JUROR: I would consider all
2 mitigating circumstances.

3 MR. BOSLER: You would consider anything you
4 might feel is appropriate in that ultimate decision?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: I appreciate your honesty, your
7 insult.

8 (Laughter.)

9 MR. BOSLER: Brings me to Mr. Buck. You're an
10 investigator?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Tell me how you became an
13 investigator.

14 A PROSPECTIVE JUROR: Basically found out the
15 job was open and I applied for it.

16 (Laughter.)

17 MR. BOSLER: Did you have to take any special
18 law enforcement training?

19 A PROSPECTIVE JUROR: Not prior. We have a
20 national certification. After you get hired you have to
21 pass that.

22 MR. BOSLER: If you could explain to me a
23 little bit about what that entails.

24 A PROSPECTIVE JUROR: It's a counseling
25 licensure -- it's a CLER certification. CLER is counselor

1 on licensure enforcement and regulation, something like
2 that. I'm not that familiar. I don't have them memorized.

3 MR. BOSLER: How long ago did this happen? Was
4 it several years ago, the licensure, the certification?

5 A PROSPECTIVE JUROR: My certification is
6 about, yeah, I got it about five years ago.

7 MR. BOSLER: As part of that certification
8 program, did you have to do things with police officers, go
9 to a crime lab, anything like that?

10 A PROSPECTIVE JUROR: No. Well, there were
11 some police officers -- they're not -- they were formerly
12 police officers that taught sections in a class.

13 MR. BOSLER: All right. And if you could give
14 me an idea, were they the normal faculty or was it kind of
15 an exceptional thing where they came and --

16 A PROSPECTIVE JUROR: They were -- I'm not sure
17 I quite understand.

18 MR. BOSLER: Everyday teachers or just like
19 special subjects?

20 A PROSPECTIVE JUROR: No, they taught that CLER
21 program, they probably taught it four times a year.

22 MR. BOSLER: If you could, you say that you're
23 a registered nurse also?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: As an investigator, do you

1 investigate medical claims or issues? Give me an idea.

2 A PROSPECTIVE JUROR: Claims against nurses.
3 You actually have to go out and interview people and take
4 notes.

5 Most of our interviewing is done over the
6 phone.

7 MR. BOSLER: Some people may say that's kind of
8 a quasi law enforcement type thing.

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: How do you feel about that? Do
11 you consider yourself kind of quasi law enforcement?

12 A PROSPECTIVE JUROR: Not really.

13 MR. BOSLER: Any concern I should have about
14 you in your position being involved in a case involving the
15 death of a law enforcement officer?

16 A PROSPECTIVE JUROR: No.

17 MR. BOSLER: You wrote on your questionnaire
18 you remembered very little about the incident involving this
19 case. Were you in town at that time?

20 A PROSPECTIVE JUROR: I believe I was here.

21 MR. BOSLER: Do you not normally read the
22 newspaper, watch TV, not that type of person?

23 A PROSPECTIVE JUROR: Yeah.

24 MR. BOSLER: The ad nauseam questions, I've
25 previously asked the jurors, in your mind, if you find a

1 case where a killing is a first degree murder involving a
2 police officer who is killed in the commission of a robbery
3 due to perceived ethnic identity and that there's damage or
4 mutilation to the corpse, in that type of case, do you feel
5 the death penalty is always the appropriate penalty?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: In that type of case, when you
8 were to decide the ultimate decision, should the accused
9 live or should the accused be put to death, would you be
10 willing to consider in that decision whether the person had
11 a prior violent history, criminal history?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: Would you be willing to consider
14 their mental condition at the time of the event?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Whether the condition is
17 treatable?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Use of alcohol or other drugs?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: There's kind of a little magical
22 number that says you can consider anything you want because
23 the law says you never have to impose death. Is that an
24 analysis you're willing to take part in as a juror?

25 A PROSPECTIVE JUROR: To consider?

1 MR. BOSLER: To consider that type of thing.

2 A PROSPECTIVE JUROR: I would be willing to
3 consider it.

4 MR. BOSLER: Mr. Butler, you also wrote in your
5 jury questionnaire that you strongly favor the death
6 penalty.

7 A PROSPECTIVE JUROR: That's correct.

8 MR. BOSLER: In fact, you went so far as to
9 say -- I'm quoting you so hopefully this is correct, "I am a
10 strong believer in capital punishment. Our judicial system
11 needs to be more aggressive and strong punishment for more."
12 Is that a correct quotation?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: How long have you felt that way?

15 A PROSPECTIVE JUROR: 30 plus years, going back
16 to high school.

17 MR. BOSLER: What happened in high school?

18 A PROSPECTIVE JUROR: Just the philosophy of my
19 parents. Part of the culture I grew up in, what we've
20 talked about, whenever there was a major crime of some sort.
21 And it's a topic that got discussed frequently.

22 MR. BOSLER: Any time since your high school
23 years that this has wavered, you've changed your mind? It's
24 been constant?

25 A PROSPECTIVE JUROR: No, not at all.

1 MR. BOSLER: Children of your own?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: Are their views of capital
4 punishment the same or have their views changed?

5 MR. STANTON: The prospective juror's
6 children's view of the death penalty is irrelevant.

7 MR. BOSLER: I think it goes to depth of how
8 strong that conviction is.

9 THE COURT: I'm going to sustain the objection.

10 MR. BOSLER: This view has never wavered?

11 A PROSPECTIVE JUROR: No.

12 MR. BOSLER: First degree murder. Can you
13 think of a first degree murder in your mind that wouldn't be
14 the type of case that you would automatically impose the
15 death penalty?

16 A PROSPECTIVE JUROR: No, sir.

17 MR. BOSLER: We're talking about this
18 premeditated. If you feel that way about a premeditated
19 first degree murder, if you later were given information
20 that the murder was, one, committed in the course of a
21 robbery, upon a police officer, who was chosen because of
22 perceived race or ethnicity, and that there was damage or
23 mutilation to the body after the death, does that make your
24 opinion stronger or weaker?

25 A PROSPECTIVE JUROR: No, it doesn't change it

1 at all.

2 MR. BOSLER: You just feel it's a first degree
3 murder, death penalty should be imposed?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: I appreciate your candor.

6 That of course brings me to my next set of
7 questions. I appreciate your patience.

8 If you have this opinion, is there anything
9 that, if you were later given information about the mental
10 condition of the accused at the time of the offense, is that
11 something you would consider in your decision, whether it's
12 an automatic death penalty or something else?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: That's something you would
15 disregard?

16 A PROSPECTIVE JUROR: (Nodded head
17 affirmatively).

18 MR. BOSLER: Things about alcohol, drug use
19 during the event, disregard this?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: The age of the defendant at the
22 time of the event?

23 A PROSPECTIVE JUROR: Disregard it.

24 MR. BOSLER: Lack of criminal history, violent
25 or otherwise?

1 A PROSPECTIVE JUROR: Disregard it.

2 MR. BOSLER: So essentially you feel that first
3 degree murder, death penalty?

4 A PROSPECTIVE JUROR: Yes, sir.

5 MR. BOSLER: Automatic situation?

6 A PROSPECTIVE JUROR: Yes, sir.

7 MR. BOSLER: Anything that the District
8 Attorney or the judge can say that's going to make you
9 waffle on that?

10 A PROSPECTIVE JUROR: I have problems with the
11 lack of the victim's mitigating circumstances or there are
12 no mitigating circumstances for the victim. That's why I
13 have this feeling or this opinion, this belief.

14 MR. BOSLER: I don't know if it's proper to
15 tell them there's potential for victim impact statements. I
16 don't know whether the Court thinks that's fair. That's his
17 concern, that the victim doesn't have mitigation evidence.
18 Is it okay to discuss that?

19 THE COURT: Well, it's true, if we get there,
20 that the people who are affected by the death are allowed to
21 make statements and those statements are allowed to be
22 considered by the sentencing authority. I don't know if
23 Mr. Butler is saying that he has an automatic position in
24 all cases of first degree murder or if that would make a
25 difference.

1 MR. BOSLER: Does that fact make a difference
2 to you?

3 A PROSPECTIVE JUROR: That --

4 MR. BOSLER: That there's a -- of course the
5 victim can't speak, but the family, there's people who meet
6 statutory definitions of people who can come to court and
7 say this is the crime, this is how it's affected me as a
8 person. Does that change your essentially automatic view
9 that first degree murder is the death penalty?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: You have to answer out loud for the
12 court reporter.

13 A PROSPECTIVE JUROR: No, it does not.

14 MR. BOSLER: I will make the challenge, Your
15 Honor.

16 THE COURT: Would you like to inquire?

17 MR. STANTON: Yes.

18 THE COURT: You may do so.

19 MR. STANTON: Mr. Butler, there are several
20 jurors who have talked about the concept of premeditated
21 murder. And none of you at least in this panel, 36 of you,
22 have indicated an occupation as an attorney. We
23 collectively, the lawyers in this room, have a very precise
24 and specific definition of premeditated murder. That's what
25 I want to first want to talk to you about.

1 If you and me decide to rob a bank and I'm the
2 driver, never go in the bank, never step foot in it, I don't
3 have a gun. In fact, I tell you before you go in, don't
4 hurt anybody, no weapons. In fact, unbeknownst to me, you
5 go in with a weapon and someone is killed. I do not
6 premeditate or believe or intend to kill, yet I'm guilty of
7 first degree murder. Would that affect your thinking
8 relative to all first degree murders deserve the death
9 penalty?

10 A PROSPECTIVE JUROR: Yes, it would, because
11 you were, in my opinion, based on what you've told me, not
12 the one who perpetrated the murder.

13 MR. STANTON: But in the eyes of the law, my
14 conduct in what we call the felony murder rule, legal
15 doctrine, is that we are committing an inherently dangerous
16 felony, such that if a consequence that is foreseeable --
17 and robbing a bank and someone getting hurt or killed is
18 foreseeable -- you and I are guilty of the same thing, even
19 though I never touched the gun or never pulled the trigger.

20 Does that change your mind as far as your
21 comment -- and I know this is your first time and experience
22 in a situation like this, but that not all cases involving
23 first degree murder may fit what I perceive your definition
24 of premeditated murder means.

25 A PROSPECTIVE JUROR: That would be a correct

1 statement.

2 MR. STANTON: When you say premeditated, are
3 you talking about someone who thinks about murder, plans
4 murder and then goes out and commits it in a particular
5 fashion; is that what you mean by premeditated?

6 A PROSPECTIVE JUROR: No. Premeditated to me
7 would be the example you used, me being in that situation of
8 going into the bank with a gun, being prepared to use it and
9 to kill somebody.

10 MR. STANTON: In Nevada, not all murders are
11 death penalty cases. In fact, very few are. Do you agree
12 with that or disagree with that?

13 A PROSPECTIVE JUROR: Generally speaking, I
14 would probably disagree with it.

15 MR. STANTON: In Nevada, the only way a case
16 can be a death penalty case is if it is sought by the
17 prosecution and they have evidence to support a list of
18 aggravating factors that's defined by statute. If it
19 doesn't have any of those, death penalty cannot legally be
20 an option. Do you agree with that?

21 A PROSPECTIVE JUROR: With the information
22 given me, yes.

23 MR. STANTON: So the process is that
24 collectively the citizens of the State of Nevada determine
25 through their Legislature what are capital cases. And by

1 that decision, they decide the negative, what cases are not.

2 MR. BOSLER: I object to that, Your Honor. The
3 District Attorney decides that, not the citizens.

4 MR. STANTON: In the aggravating factors, last
5 time I checked, the District Attorneys of the State of
6 Nevada don't choose the aggravating circumstances.

7 THE COURT: Okay. Wait. Ladies and gentlemen
8 of the jury panel, we're trying to be as precise as possible
9 in our questioning, and sometimes things mean different
10 things to lawyers than they do mean to the general
11 layperson.

12 The Legislature enumerates what acts or facts
13 can be considered aggravating circumstances.

14 The District Attorney of the County decides
15 whether a particular case fits into those. A jury
16 determines whether or not those aggravating circumstances
17 exist.

18 MR. STANTON: Do you have any problem with that
19 concept?

20 A PROSPECTIVE JUROR: No, I don't.

21 MR. STANTON: So in the case of this case
22 before you as a prospective juror, if you were to find in
23 the first portion of this trial, what we call the guilt
24 phase, that Mr. Vanisi was guilty of murder in the first
25 degree, would the only punishment you would consider be the

1 death penalty?

2 A PROSPECTIVE JUROR: Yes, sir.

3 MR. STANTON: If the judge instructed you that
4 you cannot consider the death penalty in a vacuum or
5 automatically, that you must as a obligation, duty as a
6 juror to consider aggravating, mitigating evidence, could
7 you follow that instruction?

8 A PROSPECTIVE JUROR: I truly won't know until
9 I'm there, but I don't believe I could.

10 MR. STANTON: And that's kind of what
11 Mr. Bosler and I are attempting to do is to reach in your
12 mind and ask you what you think fairly is going to happen
13 when you get to the deliberative process, no what -- not
14 what you're going to do but would you agree with a mind that
15 is open.

16 In this case, could you do that? Could you
17 follow the Court's instruction?

18 A PROSPECTIVE JUROR: I don't believe so.

19 MR. STANTON: Thank you. I do not object to
20 the motion.

21 THE COURT: Would you like to make the motion,
22 Mr. Bosler?

23 MR. BOSLER: Please, Your Honor, a *Witherspoon*
24 challenge.

25 THE COURT: Motion to disqualify Mr. Butler for

1 cause is granted.

2 Thank you, Mr. Butler, you're excused.

3 MR. BOSLER: Thank you, Your Honor.

4 THE COURT: The clerk will call another juror.

5 THE CLERK: Shawna L. Mefford.

6 THE COURT: Ma'am, please read that list of
7 potential witnesses, please.

8 Have you had a chance to read it, ma'am?

9 A PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Are you related to or acquainted
11 with anyone on that list?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Have you had an opportunity to hear
14 my questions yesterday and today?

15 A PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Did you keep a record of those
17 questions you would respond to?

18 A PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Would you please respond to those?

20 A PROSPECTIVE JUROR: I have several family
21 members involved in the police force, uncles in Sparks
22 Police Department, and also I'm a very good friend with one
23 of the psychics that work with the police department in
24 solving crimes.

25 THE COURT: What's the name of -- what's your

1 uncle's name?

2 A PROSPECTIVE JUROR: Kenny McCone.

3 THE COURT: And now would you feel that you
4 would have to justify any particular result to your uncle?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Go ahead and proceed.

7 A PROSPECTIVE JUROR: Alaina Prophet who works
8 with the District Attorney's Office as a psychic, I'm very
9 good friends with her. And I did have a gallbladder attack
10 last Monday so I'm going to the doctor on Thursday to see
11 what happens with it. I don't know if it will or will not
12 be a problem. And business reasons is that I own five
13 businesses and it's very hard for me to be out for three to
14 four weeks on a case like this.

15 THE COURT: It's two to three. Does that make
16 it any better?

17 A PROSPECTIVE JUROR: We hope. Yeah.

18 THE COURT: The psychic works for the police
19 department?

20 A PROSPECTIVE JUROR: Uh-huh. Works with.

21 THE COURT: Have you discussed this case with
22 her?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: It is a her?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: And when you discussed the case
2 with her, did you tell us on your questionnaire the
3 information that you were given?

4 A PROSPECTIVE JUROR: No, because I wasn't
5 thinking about it at the time when I answered the
6 questionnaire.

7 THE COURT: Do you feel you've gotten
8 additional information from her?

9 A PROSPECTIVE JUROR: I wouldn't say additional
10 information. But we did discuss it before when I did fill
11 the questionnaire out. But I did not put that on my
12 questionnaire at the time because I wasn't thinking of it.

13 THE COURT: But the information you put on the
14 questionnaire, you don't know anything more than what you
15 put on? Or do you want to look at it again to tell me the
16 answer to that?

17 A PROSPECTIVE JUROR: No. I wouldn't say that
18 I -- not facts, just hearsay.

19 THE COURT: Okay. Is there anything about your
20 friend's employment that would cause you difficulty serving
21 on this jury?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Anything else you would want to
24 respond to my questions?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Were you able to hear Mr. Stanton's
2 questions?

3 A PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Are any of those questions specific
5 questions you wrote down that you want to respond to?

6 A PROSPECTIVE JUROR: I absolutely do not
7 believe in death penalty.

8 THE COURT: And any others?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: Any specific questions that
11 Mr. Bosler has asked so far that you would want to respond
12 to?

13 A PROSPECTIVE JUROR: Hu-huh.

14 THE COURT: Yes or no?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Thank you. Mr. Stanton, you may
17 inquire.

18 MR. STANTON: Thank you, Your Honor.

19 Ma'am, tell me the correct pronunciation of
20 your last name.

21 A PROSPECTIVE JUROR: Mefford.

22 MR. STANTON: You said you absolutely don't
23 believe in the death penalty. I'd like to ask you a couple
24 quick questions regarding that. Under no circumstances
25 could you ever impose the death penalty?

1 A PROSPECTIVE JUROR: I think it's the worst
2 punishment for them to have to wake up with every day and
3 deal with it than to be put to death. I think that's a way
4 out.

5 MR. STANTON: Assuming that it bothers them.

6 A PROSPECTIVE JUROR: Right.

7 (Laughter.)

8 MR. STANTON: I would move for cause for
9 Ms. Mefford for the reasons stated.

10 THE COURT: Mr. Bosler, would you like to
11 inquire?

12 MR. BOSLER: Please.

13 THE COURT: You may do so.

14 MR. BOSLER: Ms. Mefford, you said that in your
15 mind, life imprisonment can be worse than death.

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Why is that?

18 A PROSPECTIVE JUROR: I think that no matter
19 what you have ever done in your life, you have to wake up
20 and think about it every single day. Even criminals I'm
21 sure have to face that every single day, and I think that's
22 far worse than taking the way out as death.

23 MR. BOSLER: Ever had any access to maximum
24 security prison to see what living conditions these people
25 live under?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: Some people go to visit with
3 police officers or with school.

4 A PROSPECTIVE JUROR: I've been on a tour of
5 Parr Boulevard but not in an actual prison.

6 MR. BOSLER: Never to a maximum security
7 facility?

8 A PROSPECTIVE JUROR: No.

9 MR. BOSLER: Your impressions of Parr
10 Boulevard?

11 A PROSPECTIVE JUROR: It was horrible.

12 THE COURT: There's a motion to excuse her for
13 cause and I'm going to allow you to inquire as to the
14 aspects of her cause, whether or not she has a predetermined
15 situation that cannot waiver.

16 MR. BOSLER: Ms. Mefford, Mr. Stanton asked you
17 if there's any case you would consider for the death
18 penalty. Do you remember that question?

19 A PROSPECTIVE JUROR: Uh-huh.

20 MR. BOSLER: Do you understand that no matter
21 how bad the case is, you never have to impose the death
22 penalty?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: I think the issue you've heard us
25 discuss is whether you'll consider if you're provided with

1 first degree murder and evidence is presented as to the
2 aggravating factors. Is that something you'll consider?

3 A PROSPECTIVE JUROR: No, I would not.

4 MR. BOSLER: Not even consider mitigating
5 evidence?

6 A PROSPECTIVE JUROR: No.

7 MR. BOSLER: Just automatically believe in your
8 mind?

9 A PROSPECTIVE JUROR: Uh-huh.

10 MR. BOSLER: Even though the courts can tell
11 you to follow the instructions?

12 A PROSPECTIVE JUROR: It's one of the three
13 options that are available. I just don't feel like it's an
14 option that I would choose no matter what circumstances they
15 were.

16 MR. BOSLER: No one could ask you to choose it.
17 No one can order that. The issue is, you can choose life or
18 you can choose life with or without. But will you consider
19 as an option what the other jurors are asked to consider
20 which is death?

21 A PROSPECTIVE JUROR: No, I wouldn't consider
22 it an option.

23 MR. BOSLER: You would automatically vote for
24 life?

25 A PROSPECTIVE JUROR: Right.

1 MR. BOSLER: No circumstance could change your
2 opinion?

3 A PROSPECTIVE JUROR: No.

4 MR. BOSLER: I'll submit the matter, Your
5 Honor.

6 THE COURT: Ms. Mefford, you are excused for
7 cause.

8 Call the name of another prospective juror.

9 THE CLERK: Mark W. Phillips.

10 THE COURT: We don't have Mr. Mark W. Phillips.

11 MR. GAMMICK: Your Honor, I have that
12 individual listed as AWOL from last week. He hasn't been
13 here at all.

14 THE COURT: It was accidentally included,
15 counsel. Anyone have an objection to proceeding with the
16 selection not with Mr. Phillips present?

17 MR. STANTON: No, Your Honor.

18 MR. BOSLER: Has any information changed since
19 the Jury Commissioner--

20 THE COURT: We've still not heard from him.

21 MR. BOSLER: No objection.

22 THE COURT: Call the name of another
23 prospective juror.

24 THE CLERK: Raul B. Frias.

25 A PROSPECTIVE JUROR: Are we going to be

1 breaking soon?

2 THE COURT: Yes.

3 Go ahead and review that list.

4 THE COURT: Have you had a chance to read the
5 list of names? You have to answer out loud for the court
6 reporter.

7 A PROSPECTIVE JUROR: Okay.

8 THE COURT: Are you acquainted with or related
9 to anyone on that list?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Have you been able to hear my
12 questions yesterday and today?

13 A PROSPECTIVE JUROR: Yes, your Honor.

14 THE COURT: And did you keep a record of which
15 questions you would have responded to if you were sitting in
16 the jury box the whole time?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Did you --

19 A PROSPECTIVE JUROR: No, I don't have any
20 questions.

21 THE COURT: You heard all my questions?

22 A PROSPECTIVE JUROR: I heard all your
23 questions.

24 THE COURT: Are you telling me that after every
25 question, you never would have raised your hand and said,

1 yes, that applies to me?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: You're not acquainted with any law
4 enforcement officers?

5 A PROSPECTIVE JUROR: No, Your Honor.

6 THE COURT: You're not related to any of them?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: You don't know either side, either
9 the attorneys or the parties?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Were you able to hear Mr. Stanton's
12 questions? He's the prosecutor over there. You were able
13 to hear his questions?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Would you have raised your hand and
16 responded to any of his general questions?

17 A PROSPECTIVE JUROR: Pardon?

18 THE COURT: Would you have raised your hand and
19 responded to any of his general questions?

20 A PROSPECTIVE JUROR: Yeah.

21 THE COURT: Which ones?

22 A PROSPECTIVE JUROR: No, I changed my mind.

23 MR. STANTON: Your Honor, may counsel approach?

24 THE COURT: Yes.

25 (Bench conference between Court and counsel as

1 follows:)

2 MR. STANTON: Judge, I believe I had a couple
3 things that I might suggest that Mr. Frias has a language
4 difficulty. Not only have his responses to your questions
5 been inconsistent, but his initial juror questionnaire was
6 primarily left blank.

7 In addition, his supplemental questionnaire
8 appears, from at least the State's perspective, that he
9 might have difficulty with the English language, both
10 written and oral. His questions -- his response to your
11 question about hearing my questions this morning was
12 inconsistent with his ultimate answer, and I think he's --
13 my impression of his demeanor is that he's somewhat
14 concerned about his embarrassing himself about not knowing
15 the language.

16 MR. BOSLER: Your Honor, he made it here. We
17 had another juror who had a language problem who couldn't --
18 appeared couldn't figure out how to contact the Jury
19 Commissioner. He's here on time. He's checked the boxes in
20 the jury questionnaire. That indicates he read it. If the
21 State wants --

22 MR. GREGORY: I have no objections to the Court
23 asking him if he has any difficulty with the English
24 language.

25 THE COURT: I'm going to inquire as to his

1 ability to understand English. And then I might allow
2 further questions without going further. But I'm reticent
3 to release him if he can understand English, but if he
4 can't, which does seem to be he's having a little bit of
5 difficulty with my questions, then we will have to release
6 him, but we'll ask him.

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

9 THE COURT: Ladies and gentlemen of the jury
10 panel, remember, I try to go two hours and so if you are
11 getting antsy, which I do sense just a little bit, you can
12 watch the clock and we have a few more minutes. We will try
13 to keep going until 3:00 before we take another recess.

14 Mr. Frias, have you been able to understand all
15 the words everybody has been using all morning and
16 afternoon?

17 A PROSPECTIVE JUROR: Most of them.

18 THE COURT: I don't want to embarrass you but
19 it seemed like maybe you were a little confused about some
20 of the things I was saying.

21 A PROSPECTIVE JUROR: There's one thing I want
22 to say. I oppose the death penalty and nothing is going to
23 change my decision.

24 THE COURT: Okay. Apart from that, I was
25 really going to just ask you about how you were doing with

1 understanding my words in English. I was going to let the
2 lawyers deal with whether or not you feel that way about it,
3 but you feel that strongly about it, the death penalty?

4 A PROSPECTIVE JUROR: (Nodded head
5 affirmatively).

6 THE COURT: How strongly do you feel about it?

7 A PROSPECTIVE JUROR: I oppose the death
8 penalty.

9 THE COURT: I'm going to allow counsel to
10 inquire further, but you're not having any trouble at all
11 with the English language?

12 A PROSPECTIVE JUROR: Well, some of it.

13 THE COURT: Would you raise your hand --

14 A PROSPECTIVE JUROR: I would let them know if
15 I wouldn't understand what they're saying.

16 THE COURT: You will let me know that?

17 A PROSPECTIVE JUROR: I will.

18 THE COURT: Mr. Bosler, you may inquire.

19 MR. BOSLER: Mr. Frias, you oppose the death
20 penalty?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: How long have you held that view?

23 A PROSPECTIVE JUROR: Pardon me?

24 MR. BOSLER: How long have you held that view?
25 How long have you felt that way?

1 A PROSPECTIVE JUROR: Since I was a kid.

2 MR. BOSLER: And have you had a chance to
3 listen to what's been going on this afternoon?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: You know what we're talking about,
6 first degree murder, that's the type of case we're talking
7 about?

8 A PROSPECTIVE JUROR: (No audible response.)

9 THE COURT: We can't record a nod of the head.

10 A PROSPECTIVE JUROR: Okay.

11 THE COURT: Yes or no?

12 A PROSPECTIVE JUROR: Yes.

13 MR. BOSLER: And in the context of first degree
14 murder, there are certain things that jurors are supposed to
15 do, which is namely consider all the evidence. Is that
16 something you're willing to do is consider evidence?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: The law allows you to, in
19 considering evidence, consider three types of punishments.
20 Actually it's four. You can send someone to prison for a
21 number of years. Do you understand that?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: You can send them to prison for
24 life with a chance of being paroled. Do you understand
25 that?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: You could sentence them to life
3 without a chance of ever being paroled. Do you understand
4 that?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: You could send someone to prison
7 or to be put to death ?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: You understand those are four
10 options?

11 A PROSPECTIVE JUROR: I understand.

12 MR. BOSLER: Some people may feel strongly that
13 the death penalty is always warranted. Other people may be
14 opposed to the death penalty. The issue is whether they're
15 willing to at least consider other possible punishments
16 before they make that decision. Are you at least willing to
17 consider other punishments?

18 A PROSPECTIVE JUROR: Yeah, I could consider
19 other punishments.

20 MR. BOSLER: No further questions, Your Honor.

21 THE COURT: Mr. Stanton?

22 MR. STANTON: Thank you.

23 Mr. Frias, on April 8th of this year, you
24 filled out the initial questionnaire in this case. Do you
25 remember that?

1 A PROSPECTIVE JUROR: I do.

2 MR. STANTON: There was a lot of the
3 questionnaire that you didn't fill out. Do you remember
4 this questionnaire? Does it look familiar?

5 A PROSPECTIVE JUROR: I didn't --

6 MR. STANTON: Does that look familiar or do you
7 want me to come a little closer to you?

8 A PROSPECTIVE JUROR: Sure.

9 MR. STANTON: May I approach, Your Honor?

10 THE COURT: You may.

11 A PROSPECTIVE JUROR: You want me to read it?
12 I don't have my glasses.

13 MR. STANTON: I don't want you to read it but
14 does it look familiar to you?

15 A PROSPECTIVE JUROR: Yes.

16 MR. STANTON: There's a lot -- in fact almost
17 the entire form you didn't fill out. Can you tell me why
18 you didn't fill it out?

19 A PROSPECTIVE JUROR: I forgot to bring my
20 glasses with me.

21 MR. STANTON: So you couldn't read it?

22 A PROSPECTIVE JUROR: I couldn't read it.

23 MR. STANTON: There's a couple of things we
24 haven't asked a lot of people because we already knew this
25 information. But can you tell me how you're currently

1 employed?

2 A PROSPECTIVE JUROR: I used to be a bartender.
3 When I inherited a little fortune, I decided to take a
4 little rest.

5 MR. STANTON: So you retired, kind of?

6 A PROSPECTIVE JUROR: Same idea.

7 MR. STANTON: Are you married, sir?

8 A PROSPECTIVE JUROR: Yes, sir.

9 MR. BOSLER: I wish to note the objection.
10 I'll let counsel continue but I don't know if this goes
11 beyond the challenge as to the death penalty qualification.

12 THE COURT: Well, it probably does, but he gets
13 to inquire first anyway.

14 MR. BOSLER: You're allowing general --

15 THE COURT: He can talk to him. These are
16 questions that we do when we normally have them filled out.

17 MR. STANTON: You're married, sir?

18 A PROSPECTIVE JUROR: Yes, sir.

19 MR. STANTON: What does your wife do for a
20 living?

21 A PROSPECTIVE JUROR: She's a cafeterian.

22 MR. STANTON: Are you related to any law
23 enforcement officers?

24 A PROSPECTIVE JUROR: No, sir.

25 MR. STANTON: Have you ever served as a juror

1 before?

2 A PROSPECTIVE JUROR: No, sir.

3 MR. STANTON: Is there any reason about either
4 the spoken English language or reading jury instructions
5 that you think would cause you a problem sitting as a juror
6 in this case?

7 A PROSPECTIVE JUROR: Not really.

8 MR. STANTON: You think you could follow all
9 the evidence and read the instructions of law?

10 A PROSPECTIVE JUROR: Yes, sir.

11 MR. STANTON: And if there was a problem in
12 that you couldn't understand a question or an answer that
13 was given during the trial, are you comfortable enough in
14 your personality --

15 A PROSPECTIVE JUROR: I would let them know.

16 MR. STANTON: You would raise your hand and let
17 somebody know?

18 A PROSPECTIVE JUROR: Uh-huh.

19 MR. STANTON: I'd like to talk to you about
20 your thoughts on the death penalty.

21 Is it your position, sir, that there is
22 absolutely no case whatsoever that you could ever impose the
23 death penalty.

24 A PROSPECTIVE JUROR: Well, I believe that
25 prison, life in prison would be worse punishment.

1 MR. STANTON: That may be the worse punishment.
2 My question is, could you ever impose the death penalty?

3 A PROSPECTIVE JUROR: No.

4 MR. STANTON: Absolutely not under any
5 circumstances?

6 A PROSPECTIVE JUROR: No.

7 MR. STANTON: In this case, the instructions of
8 law speak about consideration of all mitigating and
9 aggravating circumstances. One of the options is the death
10 penalty. You'd never consider that?

11 A PROSPECTIVE JUROR: No.

12 MR. STANTON: Never an option with you?

13 A PROSPECTIVE JUROR: No.

14 MR. STANTON: Thank you. I would challenge
15 Mr. Frias for cause, Your Honor.

16 THE COURT: Mr. Bosler?

17 MR. BOSLER: Just briefly, Mr. Frias. I know
18 you said life imprisonment to you is a greater punishment
19 than death. And you can't think of a case where you would
20 want to impose the death penalty; is that accurate? Would
21 that be true?

22 A PROSPECTIVE JUROR: Uh-huh.

23 MR. BOSLER: I asked you earlier, we talked
24 about the types of punishments that are available for first
25 degree murder. And you said you're willing to at least

1 consider them, even if you don't want to impose death.

2 A PROSPECTIVE JUROR: I would consider the
3 three, life imprisonment, life without parole, but not the
4 death penalty.

5 MR. BOSLER: So you would consider the term,
6 the years in prison, life without, life with?

7 A PROSPECTIVE JUROR: Uh-huh.

8 MR. BOSLER: Are you willing to at least read
9 the Court's instructions about what cases may be eligible
10 for the death penalty? Would you read the Court's
11 instructions?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: How do you answer?

14 MR. BOSLER: You don't think you would be able
15 to read the Court's instructions?

16 A PROSPECTIVE JUROR: I would, but it wouldn't
17 change my position.

18 MR. BOSLER: If you read the Court's
19 instructions and the Court said consider this, you don't
20 have to ever impose death but you should at least consider
21 these different types of punishments, are you willing to, at
22 least to take part in that even if you don't arrive in to
23 that penalty?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: That's all I need to ask. I think

1 that's what the law requires. We'll oppose the challenge.

2 THE COURT: Mr. Frias, are you saying -- you
3 and Mr. Bosler were talking over each other so I couldn't
4 exactly hear what you were saying. You will consider as a
5 potential penalty in this case the term of years and life in
6 prison with or without the possibility of parole?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Will you consider the death
9 penalty?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: It would, under no circumstance at
12 any time would you ever consider the death penalty?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Motion for excusing for cause is
15 granted.

16 Mr. Frias, you are excused. Thank you.

17 We'll call the name of another juror before we
18 recess.

19 THE CLERK: Susan E. Johnson.

20 THE COURT: Ms. Johnson, go ahead and read the
21 list of names.

22 You've read the list?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Are you acquainted with or related
25 to anyone on that list?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Were you able to hear my questions?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Did you keep track of what you

5 would respond to?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: You may tell me what that list is.

8 A PROSPECTIVE JUROR: Did I hear any news and I

9 say yes to that?

10 THE COURT: After you filled out your

11 questionnaire?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: And did you hear new information?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: So everything that you wrote down

16 on your questionnaire is an accurate reflection of what you

17 know about this case?

18 A PROSPECTIVE JUROR: Yes. And those are the

19 only questions from you.

20 THE COURT: Then you had questions you would

21 respond to for the other attorneys?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Why don't you tell us what those

24 are now.

25 A PROSPECTIVE JUROR: From Mr. Stanton, the

1 only one was the being chosen as a foreperson. I wouldn't
2 want to be chosen as that because I would not want to sign
3 my name on there. And that was the only -- that's it.

4 THE COURT: I'm going to let everyone go on
5 their recess now, and when you come back, I will allow the
6 attorneys to inquire of you and then everyone else.

7 Now, ladies and gentlemen, we are going to do
8 what we did yesterday. And that is, you, with the
9 assistance of the bailiff, who do not smoke, will stay on
10 this floor and this floor only. You will not leave the
11 floor. You have a 15- or so minute recess. Walk around and
12 then come back in the courtroom.

13 Those of you who do smoke will go with
14 Mr. Anderson and my administrative assistant, Ms. Clements,
15 who is waiting outside. They'll take you across the street.
16 Try to get away from the entrance to do your smoking. But
17 you stay together, too.

18 Now, remember, while you're all walking around
19 and stretching, you are not to discuss this case among
20 yourselves or with anyone else. You're not to form or
21 express any opinion regarding the ultimate outcome of this
22 case. You're not to allow anyone else to attempt to
23 influence you in any manner regarding this matter. Do not
24 view any news media accounts regarding this case should
25 there be any.

1 Ladies and gentlemen of the jury, we will be in
2 recess for 15 minutes. You must be back at that time.

3 (Recess taken.)

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

7 THE COURT: You all don't have to move out of
8 the way, but I understand that there is a request from
9 Mr. Walker.

10 Mr. Walker.

11 MR. STANTON: It's on behalf of the State, Your
12 Honor. Mr. Walker prepared the motion. Since we were in
13 trial, it's a material witness warrant on behalf of the
14 State due to the unavailability of a witness.

15 THE COURT: Do you want to proceed with it?

16 MR. GAMMICK: I can go ahead and handle this,
17 Your Honor.

18 THE COURT: Thank you. I've had an opportunity
19 to review the affidavit and the motion. I see no reason not
20 to issue a bench warrant. I'd like to hear you with regard
21 to the amount of bond.

22 MR. GAMMICK: Your Honor, we'd ask in this
23 matter, since it is based on the fact she's out of state,
24 we'd ask for a \$50,000 bail at this time, fully
25 understanding that once this is executed then we can have a
hearing once the person is returned to this jurisdiction.

1 THE COURT: No problem with the requested
2 amount.

3 MR. GAMMICK: Thank you, Your Honor.

4 THE COURT: The order will issue in the amount
5 of 50,000.

6 Any other issues that counsel has with regard
7 to the case?

8 Mr. Bosler, you're back up. Anything else
9 outside the presence of the jury before we continue with
10 jury selection?

11 MR. BOSLER: I'll still defer to the Court. I
12 think we have several people you wanted to talk to
13 individually about information they gathered about the case
14 from other than public sources. I'll leave that to the
15 Court when the Court feels it's an opportune time to address
16 that.

17 THE COURT: We seem to be doing pretty well.
18 You had two people that you had requested. And --

19 MR. BOSLER: We have Ms. Mefford.

20 THE COURT: One of them is gone. I think
21 Ms. Grate is the only person left and then Ms. Mefford. But
22 what she said is that she didn't have any additional
23 information over what was on her questionnaire.

24 MR. BOSLER: Your Honor, just for the sake of
25 safety, if we're going to do it, I'd ask you bring her in,

1 too, Ms. Grate and Ms. Mefford.

2 MR. STANTON: Ms. Mefford has been excused.

3 MR. BOSLER: That's right. I think we're down
4 to one.

5 THE COURT: Let's go ahead and bring the jury
6 panel in and get everyone seated. We're ready to start back
7 up. Court's in recess for a few minutes.

8 (Recess taken.)

9
10 (Whereupon, the following proceedings were held
11 in open court, in the presence of the jury.)

12 THE COURT: Counsel stipulate to the presence
13 of the jury?

14 MR. STANTON: The State will, Your Honor.

15 MR. BOSLER: So stipulated, Your Honor.

16 THE COURT: And the bailiff has informed me he
17 thinks everyone is in the audience that's been
18 participating.

19 Are you stipulating that you may proceed with
20 voir dire without calling the roll?

21 MR. BOSLER: Yes, Your Honor.

22 THE COURT: I'm sorry, is it your turn,
23 Mr. Stanton.

24 MR. STANTON: It is, Your Honor.

25 THE COURT: Thank you. For a moment I just

1 could not remember.

2 MR. STANTON: Ms. Johnson, you indicated that
3 you heard all my questions and you only had concerns about
4 one; is that correct?

5 A PROSPECTIVE JUROR: Yes.

6 MR. STANTON: That was my question about being
7 selected as a foreperson?

8 A PROSPECTIVE JUROR: Yes.

9 MR. STANTON: You indicated on your
10 supplemental questionnaire your feelings about the death
11 penalty, and that you're opposed to the death penalty?

12 A PROSPECTIVE JUROR: I said strongly. I
13 didn't say I was totally opposed.

14 MR. STANTON: You're strongly opposed to it?

15 A PROSPECTIVE JUROR: Yes.

16 MR. STANTON: Is there any case where you
17 believe the death penalty would be appropriate punishment?

18 A PROSPECTIVE JUROR: Yes.

19 MR. STANTON: You do?

20 A PROSPECTIVE JUROR: Yes.

21 MR. STANTON: And there's nothing about this
22 case that would prohibit you from considering all the facts
23 and the evidence and all the sentencing possibilities in
24 this case; is that correct?

25 A PROSPECTIVE JUROR: I would consider all of

1 it.

2 MR. STANTON: Are there any other concerns that
3 have been raised by any of the questions so far?

4 A PROSPECTIVE JUROR: No.

5 MR. STANTON: No further questions.

6 THE COURT: Mr. Bosler.

7 MR. BOSLER: Thank you, Your Honor.

8 If I could, thank you for joining us,
9 Ms. Johnson.

10 Ms. Scolari, any relation to the grocery store
11 chain?

12 A PROSPECTIVE JUROR: Probably.

13 MR. BOSLER: During the jury selection the
14 Court asked anybody if there was any reason they thought
15 that they may not be a fair person for the jury. Do you
16 remember that?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: And correct me if I'm wrong, I
19 think I read from your questionnaire that you're on the
20 committee to raise money for the Sullivan family?

21 A PROSPECTIVE JUROR: I was.

22 MR. BOSLER: Tell me how that came about.

23 A PROSPECTIVE JUROR: Actually through my
24 boyfriend. He was on a committee to help raise, and I
25 helped him.

1 MR. BOSLER: Tell me a little bit more about
2 your involvement. Exactly how long were you on the
3 committee?

4 A PROSPECTIVE JUROR: I just accepted the
5 calls, mostly. I didn't do any of the work on it.

6 MR. BOSLER: Where did you accept calls; at
7 your own home?

8 A PROSPECTIVE JUROR: At home. It was more
9 calls for him than me. He belonged to the Reno Chamber of
10 Commerce, and they were trying to do a musical fund-raiser
11 for the family, which didn't happen.

12 MR. BOSLER: Pardon my ignorance. Did you like
13 put out a phone number, then people would call you if they
14 wanted to make donations?

15 A PROSPECTIVE JUROR: He would. And they would
16 call him. Actually, he dealt more with just the Chamber at
17 that time. And I had to answer the calls coming from them.

18 MR. BOSLER: Do you have any official position,
19 were you considered like a co-chairperson or anything like
20 that?

21 A PROSPECTIVE JUROR: No.

22 MR. BOSLER: How long did this committee work
23 last?

24 A PROSPECTIVE JUROR: A couple months.

25 MR. BOSLER: Any reason why you didn't mention

1 that when the judge was asking general questions about
2 things that might affect your fairness?

3 A PROSPECTIVE JUROR: I don't think it will.

4 MR. BOSLER: You stated on your jury
5 questionnaire, I'll quote you, I think I'm correct, if the
6 accused is guilty of such a crime, I feel he should be
7 punished accordingly.

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Something you remember writing
10 down on your questionnaire?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: And then the questionnaires are
13 given to you by the Jury Commissioner?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: You're told to fill them out, turn
16 them in when you're done?

17 A PROSPECTIVE JUROR: Right.

18 MR. BOSLER: Did you feel a lot of pressure on
19 you while you were filling out the questionnaire?

20 A PROSPECTIVE JUROR: Not really.

21 MR. BOSLER: How about today, do you kind of
22 feel, speaking in front of a group, it's a little bit more
23 pressure?

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: I want to talk to you about what

1 you mean, if a person commits such a crime they should be
2 punished accordingly. You've heard the litany of questions
3 ad nauseam that I've proposed or posed to jurors. Just to
4 be clear, we're only talking about first degree murder. You
5 understand that?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: Is that what you mean when you say
8 that if a person commits this --

9 A PROSPECTIVE JUROR: Under all the
10 circumstances that involve the case, if it comes to that
11 point, I believe that he should be punished by death.

12 MR. BOSLER: And I just have to clarify this.
13 You have a first degree murder. Is that what you mean if
14 it's a first degree murder, you think the punishment should
15 be death?

16 A PROSPECTIVE JUROR: Well, according to the
17 circumstances, yes.

18 MR. BOSLER: A first degree murder involving a
19 police officer who is killed in the commission of a robbery,
20 who is killed due to some perceived ethnic group,
21 nationality issue, and whose body is damaged or mutilated
22 after death, that type of case, that's the type of case I
23 want you to talk about.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: And in that type of case do you

1 think the death penalty is always warranted?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: So you think under those
4 circumstances there would be reason to consider other
5 penalties?

6 A PROSPECTIVE JUROR: You'd have to weigh all
7 the evidence and go from there.

8 MR. BOSLER: And if I could talk to you, do you
9 remember what the District Attorney and the Court explained
10 to you about mitigation and aggravation?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: You understand that no matter how
13 much aggravation you find, the law says life is always an
14 option?

15 A PROSPECTIVE JUROR: Right.

16 MR. BOSLER: Life imprisonment?

17 A PROSPECTIVE JUROR: Right.

18 MR. BOSLER: In the way you think, I just know
19 your quotation from your questionnaire, when you make this
20 profound, I don't know how to describe this, but when you
21 make this decision whether someone lives or dies, are you
22 willing to consider in your decision-making process things
23 like whether the person who committed the offense suffered
24 from a mental illness?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: When you decide how this scheme of
2 life works, are you willing to consider lack of a prior
3 criminal history?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: Would the use of alcohol or drugs
6 near the time of the event be something you would consider
7 in your decision-making process?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Something like the age of the
10 accused, is that something you would consider?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Knowing that you are a member of,
13 you at least participated in this committee to raise money
14 for the Sullivan family, any reason I should be worried
15 about your impartiality, your ability to sit through this
16 trial?

17 A PROSPECTIVE JUROR: No.

18 MR. BOSLER: Nothing you can think of?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: Ms. Martin, you put in your
21 questionnaire that you favor the death penalty?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: You didn't say strongly, you just
24 said favorably?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Why is that?

2 A PROSPECTIVE JUROR: If you kill a person and
3 the evidence and everything says that you're guilty.

4 MR. BOSLER: You think death is the next step?

5 A PROSPECTIVE JUROR: If everything weighs out
6 to that, yes. If it doesn't, then they might get something
7 else for punishment.

8 MR. BOSLER: You also wrote some things on your
9 questionnaire --

10 A PROSPECTIVE JUROR: Do you have to read it?

11 MR. BOSLER: If it makes you completely
12 uncomfortable, we can approach the bench.

13 A PROSPECTIVE JUROR: Yes, at this time it
14 would.

15 MR. BOSLER: That's exactly what's supposed to
16 happen.

17 If we could approach, Your Honor.

18 THE COURT: Yes. Ms. Martin.

19 (Whereupon, a bench conference was held between
20 Court and counsel, outside the presence of the
21 jury.)

22 A PROSPECTIVE JUROR: I'm totally embarrassed.

23 MR. BOSLER: If you could, do you remember
24 writing on your questionnaire "I think Vanisi is guilty"?

25 A PROSPECTIVE JUROR: Yes. Because what I've

1 read on TV, I've read every newspaper article up until this
2 date, and that's the way I formed my decision.

3 MR. BOSLER: You also wrote that you couldn't
4 follow the Court's instructions, and you said, quote, "If
5 he's guilty, he should get the death penalty, which he is."
6 Do you remember saying that?

7 A PROSPECTIVE JUROR: Yes. I did. But now
8 that I've heard other stuff, it's that I don't really.

9 MR. BOSLER: You're uncomfortable about other
10 things. I'm not going to mention these in front of the
11 jury.

12 A PROSPECTIVE JUROR: No, I hope you don't.

13 THE COURT: But go ahead. What were you going
14 to say? I couldn't hear what you were saying.

15 A PROSPECTIVE JUROR: It depends on the
16 evidence, what else you guys have been saying, you have to
17 weigh the evidence and hear the evidence and everything.
18 But at the time when I filled this out it was like from what
19 I read in the paper, watched on TV and everything, I
20 thought, hey, he's guilty, he said he was going to kill a
21 cop, so he's guilty.

22 THE COURT: Now that you've participated in the
23 voir dire, do you believe that you would be able to wait and
24 hear the evidence as it's presented in court?

25 A PROSPECTIVE JUROR: As it's presented in

1 court, yeah.

2 THE COURT: So this opinion is not one that you
3 still hold?

4 A PROSPECTIVE JUROR: No.

5 MR. BOSLER: I just wanted to put that part on
6 the record. I could question her. I'm not going to mention
7 her statement, but I can ask her what she wrote without
8 mentioning it. That's all I wanted to do.

9 THE COURT: Do you have any other questions
10 with regard to this?

11 MR. STANTON: No, I don't have any questions.

12 THE COURT: Thank you. You can go and sit
13 down.

14 A PROSPECTIVE JUROR: Can I go and hide first?

15 THE COURT: No.

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

18 MR. BOSLER: Now Ms. Martin, can you think, in
19 the concept of first degree murder cases, first degree
20 murder cases, you wouldn't impose death automatically?

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: In the case where you have a first
23 degree murder and there's four aggravating circumstances,
24 the same four I've already mentioned, in a case like that,
25 are you willing to consider a penalty of less than death?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: Just briefly, in the grand sense
3 of the scheme, whether someone lives or dies and what
4 happens in a penalty phase, would it be part of your general
5 consideration -- I guess that's fine -- if you had evidence
6 that the person was using alcohol or drugs at the time of
7 the offense?

8 A PROSPECTIVE JUROR: I might weigh that into
9 it. I'd weigh the other things into it. But alcohol,
10 drugs, that would be iffy.

11 MR. BOSLER: Any particular reason that's iffy
12 for you?

13 A PROSPECTIVE JUROR: Someone in my family is
14 an abuser of alcohol.

15 MR. BOSLER: Have you noticed behavior changes
16 in them based upon that?

17 MR. STANTON: Object to the question as being
18 irrelevant.

19 THE COURT: Sustained.

20 MR. BOSLER: Just for the record, this is not
21 the *Witherspoon/Whitt* analysis.

22 THE COURT: I understand. Thank you.

23 MR. BOSLER: In this general scheme of deciding
24 this question, would you be able to consider evidence of
25 lack of a criminal history, violent or otherwise?

1 A PROSPECTIVE JUROR: I'd consider it.

2 MR. BOSLER: The mental state of the person who
3 committed the crime, would that be something you would
4 consider?

5 A PROSPECTIVE JUROR: I'd consider it.

6 MR. BOSLER: Age of the accused a
7 consideration?

8 A PROSPECTIVE JUROR: To some extent.

9 MR. BOSLER: There are no things you wouldn't
10 consider at all, those are at least things you would put in
11 your analysis?

12 A PROSPECTIVE JUROR: Yes, I'd consider them.

13 MR. BOSLER: You are a delivery driver at this
14 point?

15 A PROSPECTIVE JUROR: Yes.

16 MR. BOSLER: Anything about that job that
17 brings you into contact with law enforcement officers?

18 A PROSPECTIVE JUROR: No. If they're going to
19 write me a ticket or something, I try and avoid it, or plead
20 not for it.

21 MR. BOSLER: Don't run into them if you deliver
22 early in the morning or anything like that?

23 A PROSPECTIVE JUROR: No, not really. I bypass
24 them on the street.

25 MR. BOSLER: Nothing about any relationship

1 with police or relatives that should cause me concern?

2 A PROSPECTIVE JUROR: No.

3 MR. BOSLER: Ms. Petrilak; is that right?

4 A PROSPECTIVE JUROR: No. That's close.

5 MR. BOSLER: Good afternoon, Ms. Petrilak. You
6 wrote in your jury questionnaire you strongly favor the
7 death penalty?

8 A PROSPECTIVE JUROR: Yes, I do.

9 MR. BOSLER: Can you tell me a little bit about
10 that? How long have you held that view?

11 A PROSPECTIVE JUROR: As long as I can remember
12 learning about the law and things out there in life.

13 MR. BOSLER: Any particular reason you've
14 reached that opinion in your life?

15 A PROSPECTIVE JUROR: Basically my family.

16 MR. BOSLER: Kind of like a family value passed
17 down?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Any particular reason you think
20 why the death penalty is important or why you feel it's an
21 appropriate punishment for murder?

22 A PROSPECTIVE JUROR: If it's a violent crime,
23 then they shouldn't be able to live a life. They took what
24 life away for their life to be taken away.

25 MR. BOSLER: Is it kind of an eye for an eye

1 type analysis for you?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: In the context of first degree
4 murder -- I have to ask you these questions. In the context
5 of first degree murders, do you feel that if someone commits
6 a first degree murder, their punishment should be death?

7 A PROSPECTIVE JUROR: Uh-huh, yes.

8 MR. BOSLER: If you feel that way, that's an
9 opinion you've had for quite some time, would that be safe
10 to say?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Moral decision you've made about
13 the way you feel about life?

14 A PROSPECTIVE JUROR: Uh-huh.

15 MR. BOSLER: If you had this first degree
16 murder and you also had factors I've already explained to
17 other jurors, the death of a police officer, you also have
18 in the commission of a robbery, you have the perceived
19 ethnicity of the deceased, and you have mutilation, damage
20 to the body after death, does that make your position
21 stronger that you think that's an automatic death penalty
22 case?

23 A PROSPECTIVE JUROR: I don't think the
24 nationality has anything to do with it. It's the nature of
25 the crime.

1 MR. BOSLER: So even without the aggravating
2 factors you feel that a first degree murder should be
3 punished by death?

4 A PROSPECTIVE JUROR: Right.

5 MR. BOSLER: You heard the Court explain the
6 way the jury instructions worked. There's other options
7 available for consideration in a capital case. Do you
8 remember that?

9 A PROSPECTIVE JUROR: Right.

10 MR. BOSLER: Am I correct in assuming that
11 those considerations aren't going to enter into your mind
12 because you think death is --

13 A PROSPECTIVE JUROR: No, they wouldn't.

14 MR. BOSLER: So you wouldn't consider the other
15 options?

16 A PROSPECTIVE JUROR: No.

17 MR. BOSLER: Anything I can say, anybody else
18 can say, that can change your view?

19 A PROSPECTIVE JUROR: No.

20 MR. BOSLER: I'd make a *Whitt* challenge, Your
21 Honor.

22 THE COURT: Mr. Stanton.

23 MR. STANTON: Thank you, Your Honor.

24 Ms. Petrilak, I talked on a couple of
25 occasions, I'm sure you were listening, about the doors

1 being opened and the consideration of evidence, not to
2 commit to you what you're going to do as far as the
3 aggravators Mr. Bosler was talking about, but whether or not
4 you would keep an open mind to listen to the evidence and
5 consider it. Could you do that?

6 A PROSPECTIVE JUROR: I don't think I could.

7 MR. STANTON: You don't think you could?

8 A PROSPECTIVE JUROR: No. I know I couldn't.

9 MR. STANTON: You know you couldn't?

10 A PROSPECTIVE JUROR: No.

11 MR. STANTON: No further questions. I would
12 not object to the motion.

13 THE COURT: Ma'am, at the possibility of
14 mispronouncing your name, I'm not going to go there.

15 Thank you for your service. You're excused.

16 The clerk will call the name of another
17 potential juror.

18 THE CLERK: Kerry L. Humphries.

19 THE COURT: Ma'am, go ahead and have a seat and
20 review the witness list, please.

21 A PROSPECTIVE JUROR: I've read it.

22 THE COURT: Have you had a chance to read it?

23 A PROSPECTIVE JUROR: I don't know anybody.

24 THE COURT: You're not related to anybody on
25 that list?

1 A PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: Have you been able to hear all my
3 questions thus far?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: And would you have responded to any
6 of my questions had you been sitting up here the whole time?

7 A PROSPECTIVE JUROR: The only one would be
8 that I do know Sergeant Dennis Syfers. That's it.

9 THE COURT: And is there anything about your
10 relationship with the retired sergeant that would cause you
11 difficulty serving as a fair and impartial juror in this
12 case?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Were you able to hear Mr. Stanton's
15 questions?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: Would you have responded to any of
18 those, the general questions?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Mr. Bosler's general questions?

21 A PROSPECTIVE JUROR: Well, the only thing is
22 that I am totally for the death penalty.

23 THE COURT: So you think someone should explore
24 that with you?

25 A PROSPECTIVE JUROR: I guess it would be --

1 yeah, go with Stanton, that I am for the death penalty.

2 THE COURT: Well, I'll allow whoever wants to
3 inquire. Mr. Stanton, do you want to proceed?

4 MR. STANTON: Yes. Thank you.

5 Ms. Humphries, the questionnaire that you
6 filled out in April indicated employment that may have
7 changed since today. Has it changed since you filled it out
8 in April?

9 A PROSPECTIVE JUROR: Probably not. I don't
10 work.

11 MR. STANTON: Prior to that were you employed
12 in what kind of occupation?

13 A PROSPECTIVE JUROR: Delivery driver.

14 MR. STANTON: For what kind of company?

15 A PROSPECTIVE JUROR: Auto paint store.

16 MR. STANTON: And Ms. Humphries, you indicated
17 in your questionnaire that a relative of yours had had some
18 legal problems here in Reno relatively recently, an uncle?

19 A PROSPECTIVE JUROR: Yes.

20 MR. STANTON: Is there anything about that
21 experience as you know it that causes you a problem with law
22 enforcement?

23 A PROSPECTIVE JUROR: No.

24 MR. STANTON: Did you think your uncle was
25 treated fairly?

1 A PROSPECTIVE JUROR: Yeah, I guess, with what
2 the law is.

3 MR. STANTON: Was that here in Washoe County?

4 A PROSPECTIVE JUROR: Yes.

5 MR. STANTON: Do you know what prosecuting
6 agency prosecuted him?

7 A PROSPECTIVE JUROR: He hasn't gone to trial
8 yet. He's still incarcerated in Carson City.

9 MR. STANTON: It would be through the Washoe
10 County District Attorney's Office as the prosecuting agency
11 and it hasn't formally been disposed of?

12 A PROSPECTIVE JUROR: No.

13 MR. STANTON: Are you close to your uncle?

14 A PROSPECTIVE JUROR: Yes.

15 MR. STANTON: Do you discuss or have you
16 discussed his case, his legal problems with him?

17 A PROSPECTIVE JUROR: No.

18 MR. STANTON: You indicated a question
19 initially by the judge relative to your position on the
20 death penalty. Could you tell me what that is?

21 A PROSPECTIVE JUROR: I'm for it. I totally
22 believe in it.

23 MR. STANTON: Do you remember filling out the
24 supplemental questionnaire when you came in last week?

25 A PROSPECTIVE JUROR: Yes.

1 MR. STANTON: Do you remember what your
2 response was to question number ten, the question about the
3 death penalty?

4 A PROSPECTIVE JUROR: I'm pretty sure I put I
5 believe in it.

6 MR. STANTON: Can I show it to you to refresh
7 your memory?

8 A PROSPECTIVE JUROR: Sure.

9 MR. STANTON: May I approach?

10 THE COURT: Yes.

11 MR. STANTON: I'll show you page four, line
12 seven, question number ten.

13 A PROSPECTIVE JUROR: I didn't read it
14 correctly.

15 MR. STANTON: Can you tell me which one you
16 would have answered out of those five options?

17 A PROSPECTIVE JUROR: I am in favor of capital
18 punishment. I'm strongly in favor of it as an
19 appropriate -- the last one.

20 MR. STANTON: The last one down here?

21 A PROSPECTIVE JUROR: Yes.

22 MR. STANTON: No further questions.

23 THE COURT: Mr. Bosler.

24 MR. BOSLER: Thank you, Your Honor.

25 Ms. Humphries, how long have you strongly been

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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Volume 1 of 9

APPELLANT'S SUPPLEMENTAL APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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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 Supplemental Appendix shall be made in accordance with the Master Service List as follows:

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Felicia Darensbourg
An employee of the Federal Public Defender's Office

1 dealing with the issues that we're now talking about in the
2 voir dire.

3 If the defendant is convicted of first degree
4 murder, the possible penalties are: a prison term of 50
5 years with eligibility for parole beginning when a minimum
6 of 20 years has been served. This does not mean that the
7 defendant would be paroled after 20 years, but only that he
8 would be eligible for parole after that period of time; .

9 or life imprisonment with the possibility of
10 parole is a sentence that is available. This sentence
11 provides that the defendant would be eligible for parole
12 after a period of 20 years. This does not mean that he
13 would be paroled after 20 years but only that he would be
14 eligible for parole after that period of time; .

15 or life imprisonment without the possibility of
16 parole. This means exactly what it says, that the defendant
17 shall not be eligible for parole; .

18 or death. If you sentence the defendant to
19 death, you must assume that the sentence will be carried
20 out.

21 The following factors are the only
22 circumstances by which murder of the first degree may be
23 aggravated in this case. If you find beyond a reasonable
24 doubt that the murder was committed by the defendant in the
25 commission or attempting to commit the crime of robbery with

the use of a deadly weapon; and/or the murder was committed by the defendant upon a peace officer; or the victim was killed while engaged in the performance of his official capacity, and the defendant knew or reasonably should have known the victim was a peace officer; and/or the murder involved torture or mutilation of the victim; and/or the murder was committed by the defendant because of the actual and perceived race, color or national origin of the victim.

The State has the burden of proving beyond a reasonable doubt that an aggravating circumstance or circumstances exist in this case. If you have a reasonable doubt as to the aggravating circumstance or circumstances in this case, or find a mitigating circumstance or circumstances are sufficient to outweigh the aggravating circumstances that you have found, or for any other reason decline to impose the death penalty, the defendant is entitled to a verdict of life imprisonment with or without the possibility of parole, or a term of 50 years in the Nevada State Prison. And you will be required to specify whether such life imprisonment will be with or without the possibility of parole.

Murder of the first degree may be mitigated by any circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of crime. The law never compels the imposition of

1 the death penalty.

2 Even if you find any or all of the aggravating
3 circumstances have been proven beyond a reasonable doubt,
4 and even if you also do not find that any mitigating
5 circumstances exist, you are not required to return a
6 verdict of the sentence of death as punishment, but may
7 instead sentence the defendant to life in the Nevada State
8 Prison with or without the possibility of parole or a term
9 of 50 years in the Nevada State Prison.

10 Counsel, you may continue to inquire.

11 MR. BOSLER: Your Honor, I think we would need
12 to approach the bench one more time.

13 THE COURT: Okay.

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

16 MR. BOSLER: I guess this would be an
17 appropriate time to also instruct them about the weapons
18 enhancement, that all those penalties would be doubled if
19 they were to find the use of a deadly weapon, and how that
20 would affect their view of the years. The term of years is
21 now 40 to a hundred instead of 50 to a hundred.

22 MR. STANTON: This is not the time to do it
23 now, Your Honor.

24 THE COURT: We can handle that I think at the
25 end. It is just whether or not you double a death penalty,
you double the death penalty. It's not going to make a

1 difference.

2 MR. BOSLER: For people considering the term of
3 years, it would make a difference.

4 MR. GREGORY: Judge, if we are going to
5 instruct on the potential sentence, we would like them
6 properly instructed so that they know that they find that a
7 deadly weapon was used, which they will find in this case,
8 that it is a doubling of the sentence.

9 And I apologize to the Court. The Court's
10 secretary only gave one copy to us, and with Mr. Vanisi in
11 between, and had I looked at it, I would have brought it up
12 earlier. I'm sorry.

13 MR. GAMMICK: This is just voir dire, what is
14 their opinion how they feel about the death penalty. That
15 is all we are questioning them about. If we are going to do
16 a full-blown penalty phase at this time, we will redo
17 everything we have been trying to do.

18 MR. GREGORY: We have started it. Let's do it
19 right.

20 MR. STANTON: It is not a question of doing it
21 right or not. The issue we're addressing here is whether or
22 not they are *Whitt* or *Witherspoon* death and life qualifying
23 the jury. The issue of doubling up for weapons enhancement
24 isn't going to answer the question.

25 MR. GREGORY: We got into the other penalties.

1 Since we did that, let's make it clear.

2 THE COURT: But I can't. I have to get into
3 the other penalties. I can't tell them that death is the
4 only option. I have to be accurate.

5 I don't think it's a problem not to instruct on
6 the deadly weapon. And I don't think it's going to be
7 error. So I'm going to deny your request.

8 MR. BOSLER: Your Honor, I think that my
9 position is that their ability to consider other potential
10 penalties, which would be penalties that are doubled for
11 weapons enhancement, is also part of the analysis of
12 *Witherspoon, Whitt*. So for that reason, we would ask you to
13 instruct.

14 THE COURT: If somebody says, I don't think
15 that 20 years is enough in prison, and therefore, I'm going
16 to go with death, that may become relevant, but I don't see
17 it.

18 MR. BOSLER: I don't know what they are
19 thinking in their minds. We just note an objection for the
20 record. That is fine.

21 MR. STANTON: Your Honor, the question is
22 whether or not that life or death qualifying a jury, and
23 what they are doing now is arguing what should be done at
24 the penalty phase.

25 THE COURT: I'm going to deny the request.

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

4 THE COURT: Mr. Bosler, go ahead and inquire.

5 MR. BOSLER: Good morning, ladies and
6 gentlemen.

7 THE PROSPECTIVE JURY: Good morning.

8 MR. BOSLER: Did everybody kind of understand
9 what the judge said earlier about the instructions, how the
10 system works?

11 Miss Ziler, we kind of left off yesterday with
12 an issue still kind of pregnant. The way things work, the
13 only time you would consider death is if you actually found
14 a murder was a first degree murder. Are you comfortable
15 with that concept?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: I understand from your answers
18 yesterday that in that situation, where you found that first
19 degree murder, for you, you feel that if it's first degree
20 murder, the death penalty is warranted.

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: And since we got a chance to talk
23 about it for a little while now, I get the impression that
24 is kind of a personal recent decision you have made?

25 A PROSPECTIVE JUROR: Not that recent, no.

1 MR. BOSLER: Is this decision that is personal
2 to you based upon your moral stance on these type -- on this
3 particular issue?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: That being said, is there anything
6 that I could tell you about the defendant that would change
7 that view? If you found that he was guilty of first degree
8 murder or found a person was guilty of first degree murder,
9 is there anything I could tell you about that person that
10 would change your view?

11 A PROSPECTIVE JUROR: If you told me they were
12 the victim of an assault and the deceased was the assaultee,
13 that would be circumstances that put a different light on
14 it.

15 MR. BOSLER: So if it was a self-defense
16 situation, one person ended up dying --

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Again, these are legal subtleties.

19 A PROSPECTIVE JUROR: Yes.

20 MR. BOSLER: If I told you that wouldn't be the
21 type of case that would be a first degree murder case, and
22 we went back to the first degree murder case, premeditated
23 murder, not one having defense, self-defense, defense of
24 another person, is there anything then that I could tell you
25 about a person that you would say, Well, this person doesn't

1 deserve death?

2 A PROSPECTIVE JUROR: I can't honestly say yes
3 or no to that one.

4 MR. BOSLER: You realize my problem.

5 A PROSPECTIVE JUROR: You would have to tell
6 me, and I would make a judgment at that time. But not
7 knowing, I can't say.

8 MR. BOSLER: That's fair. I appreciate your
9 telling me that.

10 What would you -- would it matter to you if
11 there was a mental illness involved, the person who
12 committed the crime was suffering from a mental illness?

13 A PROSPECTIVE JUROR: Yes, but if they were
14 suffering from mental illness, would they still be held --
15 what is that? -- competent to stand trial?

16 MR. BOSLER: Assume that they would, yes.

17 A PROSPECTIVE JUROR: That would be a different
18 light, yes.

19 MR. BOSLER: Why is that important, in your
20 analysis?

21 A PROSPECTIVE JUROR: Because it might be
22 premeditated, but maybe their logic is out of whack. A
23 mental incapacity to make a rational judgment.

24 MR. BOSLER: That's fair. Have you had any
25 experience with people who were suffering from mental

1 illnesses or mental defects, in your own life?

2 A PROSPECTIVE JUROR: Yes.

3 MR. BOSLER: Does that affect the way you look
4 at that issue, that mitigation?

5 A PROSPECTIVE JUROR: I don't think so. They
6 weren't affected violently. They were not inflicting pain
7 on themselves or anybody else.

8 MR. BOSLER: And if you could, I don't mean
9 to --

10 A PROSPECTIVE JUROR: No, that's fine.

11 MR. BOSLER: -- intrude, if you could tell me
12 these people that you knew. Family, friends?

13 A PROSPECTIVE JUROR: Yes, family.

14 MR. BOSLER: What about something like use of
15 alcohol or drugs at the time the murder is committed? How
16 would that weigh upon your view of a penalty?

17 A PROSPECTIVE JUROR: I don't think that that
18 would affect anything, because it's a conscious choice to
19 take drugs and alcohol.

20 MR. BOSLER: I agree with that.

21 A PROSPECTIVE JUROR: So I would still hold
22 them accountable for whatever they did under the influence.

23 MR. BOSLER: Do you have any experience of
24 whether you have had to, maybe not in your normal manner,
25 under the influence of alcohol or known somebody who --

1 A PROSPECTIVE JUROR: Yeah, look at me when I'm
2 not taking my hormones. It actually causes an imbalance,
3 and I can be a little flaky. Don't injure anybody but --

4 MR. BOSLER: I appreciate you sharing that.
5 How about somebody who maybe didn't have any experience with
6 alcohol and drugs and the effect was a little bit stronger
7 on them? Would that play into your analysis?

8 A PROSPECTIVE JUROR: Possibly.

9 MR. BOSLER: Can you tell me why it is a
10 difference now?

11 A PROSPECTIVE JUROR: If it were like the first
12 time getting drunk, it might, but there's so much
13 information out there of the hazards of substance abuse,
14 that's still a conscious choice on their part to do it
15 anyway.

16 MR. BOSLER: So for someone who I think drank
17 before, gets drunk before, to you that's not really a
18 mitigating factor because they have had an experience with
19 alcohol?

20 A PROSPECTIVE JUROR: No, and I'd probably
21 still feel the same way if it were my son or daughter. They
22 know the hazards. If they make the conscious choice, they
23 need to pay the consequences, whatever that may be.

24 MR. BOSLER: What about something like a person
25 who commits a first degree murder but has really no other

1 criminal history, has not been in trouble with the law? How
2 does that weigh on your decision of what type of penalty
3 they should face?

4 A PROSPECTIVE JUROR: If it still comes out
5 that it is a first degree premeditated?

6 MR. BOSLER: That's what we're talking about.

7 A PROSPECTIVE JUROR: I don't think that would
8 change my opinion.

9 MR. BOSLER: If you could, why would a lack of
10 criminal history not be an important factor for you?

11 A PROSPECTIVE JUROR: Because chances are that
12 there is a history, that it's just never shown up, never
13 been caught before.

14 MR. BOSLER: It's a chance we have all done
15 something, we have never been caught.

16 A PROSPECTIVE JUROR: This is correct. This
17 may be the first time somebody has gotten caught for it.
18 Wife beaters do it for years before they get caught. So
19 there may be no criminal history, but that doesn't mean that
20 there hasn't been a crime committed.

21 MR. BOSLER: Fair enough. I think we got those
22 facts out in this little jury pool, sometimes those events
23 happen and no one ever finds out about it. But if you were
24 given something, instruction by the Court that you are not
25 supposed to speculate on whether people have done things,

1 never got caught for it, but simply look at it like you have
2 heard before, the evidence presented in court, and you don't
3 find significant criminal history, are you still saying -
4 and I know this is a long question - are you still saying
5 that doesn't figure in your analysis? Because you know that
6 they may have done something and have not been caught, you
7 don't really care about that issue?

8 A PROSPECTIVE JUROR: The way I feel at the
9 moment, no, it wouldn't make a difference. But I have never
10 been in the situation, so I can't honestly tell you that I
11 wouldn't change my mind.

12 MR. BOSLER: All right. So if I put you in
13 that situation right now, what you're saying is that you'd
14 have to wait and see what kind of evidence came forward
15 before you'd decide?

16 A PROSPECTIVE JUROR: Yeah, I think I would.
17 But the way I feel personally, it wouldn't weigh. Something
18 may come out during the trial that maybe I might change my
19 thinking a bit.

20 MR. BOSLER: You make things very difficult for
21 the lawyers if you say that. Because it's really your
22 personal feelings, everybody's personal feelings. That is
23 all that matters. There is no right answer, wrong answer.

24 A PROSPECTIVE JUROR: Correct.

25 MR. BOSLER: If you have personal feelings that

1 maybe say that you know Miss Smith, Mr. Brown, they are not
2 good jurors in a capital case, so be it. There is other
3 jury trials, other things you can do. What I'm trying to
4 get at is those personal feelings because I need to get some
5 ideas.

6 A PROSPECTIVE JUROR: I'm pretty hard line.

7 MR. BOSLER: Miss Ziler, if you were given
8 information as to lack of significant criminal history, the
9 way you think --

10 A PROSPECTIVE JUROR: I'm sorry?

11 MR. BOSLER: If you are given information about
12 a lack of a significant criminal history, as you sit now,
13 with your personal makeup, everything that's happened to
14 you, your life experiences, you don't think that's something
15 you would consider as a mitigating factor?

16 A PROSPECTIVE JUROR: That would be difficult
17 to do.

18 MR. BOSLER: And why?

19 A PROSPECTIVE JUROR: Well, you can't unlearn
20 experience.

21 MR. BOSLER: I agree.

22 A PROSPECTIVE JUROR: So it would be difficult
23 to not realize in the back of your mind that this is still
24 possible. There is that little voice that is going to be
25 talking to you. How well you can ignore it is a different

1 story.

2 MR. BOSLER: How well do you think you could
3 ignore it, unlearn it?

4 A PROSPECTIVE JUROR: I don't honestly know.

5 MR. BOSLER: Well, if you could, think about
6 it, and I got some other jurors to talk to. I would like to
7 visit with you again about this issue if you don't mind.

8 A PROSPECTIVE JUROR: That's fine.

9 MR. BOSLER: Miss Patch, I see you back there.
10 You worked for the Sheriff's Department for a little while?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Your husband is currently a deputy
13 sheriff?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: I kind of fear, I have this
16 feeling that in a case involving the death of a police
17 officer, that that would affect your, not only view of the
18 trial, but would affect your view of what penalty would be
19 appropriate. What do you think about that?

20 A PROSPECTIVE JUROR: I disagree with you.

21 MR. BOSLER: And why do you disagree?

22 A PROSPECTIVE JUROR: Because I want to be able
23 to look at the evidence and base it on the facts of the case
24 and go from there, with law in mind.

25 MR. BOSLER: Hopefully --

1 A PROSPECTIVE JUROR: What's right and wrong.
2 The whole case, all the evidence, not just -- I mean, my
3 husband is not here. He's not telling me what to think. He
4 never does. What else do you want to know?

5 MR. BOSLER: Well, you have heard another
6 person say, this other person has a relation to the law
7 enforcement, and that person said, you know, I can't put it
8 out of my mind, that because my relation does this type of
9 work, I see them in the same situation, and that is always
10 going to be churning in my mind when I sit on this type of
11 case. Do you feel the same way or different?

12 A PROSPECTIVE JUROR: Different. It could
13 happen to anybody, but anything can happen to anybody at any
14 given day. We don't know when --

15 MR. BOSLER: Unfortunately, that is true.

16 A PROSPECTIVE JUROR: -- we're going to go.

17 MR. BOSLER: So you don't share those feelings
18 that that other person had?

19 A PROSPECTIVE JUROR: Not in that way, no.

20 MR. BOSLER: You wrote in your questionnaire
21 that you have neutral -- your stance is neutral on the death
22 penalty.

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: Is that an accurate statement?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: What about an offense -- we're
2 talking first degree murder now, a case where you found it
3 was first degree murder, premeditated, and this person not
4 only killed a police officer like we spoke about, but had
5 done it in the commission of another crime? What type of
6 punishment do you think would be appropriate under those
7 circumstances?

8 A PROSPECTIVE JUROR: If he was involved in a
9 crime and somebody -- I don't see it as being premeditated
10 exactly. You would have to prove that it was, he knew he
11 was going to also kill somebody at the time that he was
12 committing that crime.

13 MR. BOSLER: Assume that the reason the person
14 is killed is in order to complete the crime. So in that
15 sense, there's a level of premeditation or design.

16 A PROSPECTIVE JUROR: It's a level. It's not
17 quite the same, I don't think, as setting out to actually
18 kill somebody and do the crime, you know, complete a
19 different crime.

20 MR. BOSLER: So under those circumstances, am I
21 correct in assuming you would think of other types of
22 penalties other than death?

23 A PROSPECTIVE JUROR: Yes.

24 MR. BOSLER: If you could - and I apologize for
25 kind of like a law school analysis; this is what they teach

1 us in law school - further assume that you have this offense
 2 when an officer is killed, allegedly in the commission of
 3 another crime, and that the officer was targeted for this
 4 event because of his perceived color or his perceived
 5 national origin. How does that affect your analysis?

6 MR. STANTON: Your Honor, I object to the form
 7 of the question. Counsel is now interjecting facts of the
 8 case, and I believe it is an improper question because he is
 9 asking for what this juror will decide in the penalty phase
 10 without hearing any of the evidence.

11 THE COURT: I'm going to sustain the objection.
 12 I don't think it is necessary to delve into her
 13 predisposition one way or another with regard to death.

14 MR. BOSLER: That is a pretty general
 15 statement, Your Honor.

16 THE COURT: Well, I don't want to get into a
 17 lot unless you want to approach the bench and we can have a
 18 discussion about it. But I don't think -- I'm going to
 19 sustain the objection. If you want more of a discussion,
 20 you can approach the bench.

21 MR. BOSLER: That is probably going to be
 22 necessary, Your Honor.

23 THE COURT: Okay. Approach.

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

1 MR. BOSLER: Your Honor, I think we kind of
2 had this discussion earlier, that the view of statutory
3 aggravators and potential mitigators is clearly what *Morgan*
4 vs. *Illinois* says is necessary for life-qualification of a
5 jury. And we had this discussion where you asked me what
6 type of aggravators I was going to talk about. I said the
7 ones that are alleged, because otherwise it does not make
8 any sense for me to talk about aggravators in general.

9 If someone tells me based upon the four
10 aggravators, they would always vote for the death penalty,
11 then they are *Morgan* excludable. I can't see how I reach
12 that point without asking them about the four aggravators.

13 MR. STANTON: Well, first of all, that's --
14 unless counsel can cite to a more specific portion of that
15 case, that case doesn't stand for the proposition that he's
16 stating. First of all, it has never been held that during a
17 voir dire selection in a capital case, that counsel can ask
18 whether or not all the aggravators that exist in the case,
19 would you vote for the death penalty. Because the big
20 question is nonsensical. Of course they could because that
21 is what the law allows them to do.

22 In addition, the question that has not been put
23 in context is whether a consideration of all the evidence,
24 the mitigation and the aggravation of the evidence that's
25 presented to them, then would they fairly consider death or

1 life, all the sentencing options. That's the appropriate
2 question that the law allows to life and death qualify.

3 The form of the question is what's
4 objectionable, Mr. Bosler, the way he's doing it. You can't
5 ask them: In this case, if you found that he had killed a
6 police officer, in the commission of a robbery, because he
7 was white, would you vote for the death penalty? That's an
8 unfair question.

9 THE COURT: I sustained it because of the form
10 of the question.

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

13 MR. BOSLER: I apologize, Miss Patch. You have
14 heard the Court instruct you earlier that death is never
15 required under the law.

16 A PROSPECTIVE JUROR: Right.

17 MR. BOSLER: No matter how many aggravators you
18 found, even if you found nothing that mitigated the offense,
19 you can still say, I'm not going to vote for death. Do you
20 understand that?

21 A PROSPECTIVE JUROR: Right.

22 MR. BOSLER: And when I pose these questions,
23 do you understand that there is still the possibility of
24 mitigation coming into evidence?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Maybe I could pose a question a
2 different way. Assume that everything I told you was true
3 about the events of the murder. Is there things in your
4 mind that would mitigate any potential sentence and put an
5 idea in your mind, no, this person deserves a sentence of
6 less than death?

7 A PROSPECTIVE JUROR: Can you repeat the
8 question?

9 MR. BOSLER: We have already talked about a
10 fact circumstance where murder is committed under -- certain
11 other things happened during the murder. In your mind, can
12 you think of facts that would be presented that would tell
13 you even though all this stuff is happening, that the
14 offense is mitigated, it is lessened, there is a reason for
15 a lesser penalty? I talked to --

16 THE COURT: That's a question mark; right?

17 MR. BOSLER: Just to help her a little bit, I
18 talked to Miss Ziler about that.

19 THE COURT: I'm getting confused. So if that's
20 the question, let's give her a chance to answer it, and if
21 she doesn't answer it, you can elaborate further.

22 Did you understand what his question was?

23 A PROSPECTIVE JUROR: I think I do. If there
24 is other mitigating factors in the case and where he could
25 be sentenced to one of the three sentences, would I consider

1 any of the others other than the death sentence? Yes.

2 MR. BOSLER: And my next question is --

3 THE COURT: Your answer was what?

4 A PROSPECTIVE JUROR: My answer is yes.

5 MR. BOSLER: What type of things would you want
6 to hear?

7 A PROSPECTIVE JUROR: What type of things?

8 MR. STANTON: Objection, Your Honor. That is
9 an improper question.

10 THE COURT: Sustained.

11 MR. BOSLER: Where we left off, a lack of
12 significant criminal history, would that be something you'd
13 consider?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: How about a person who is
16 suffering from some mental illness, mental defect?

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: And why do you think those two
19 things are important?

20 THE COURT: Mr. Bosler, I don't think -- if she
21 answers negatively, I'll let you inquire, but she says
22 she'll consider it. I think that is sufficient for your
23 determination at this stage. Certainly sufficient for my
24 determination.

25 MR. BOSLER: Your Honor, seeing as I'm going to

1 pick the people from the jury, I think that I'm asking
2 really the basis for her opinion.

3 THE COURT: Mr. Bosler, you're gone.

4 MR. BOSLER: I'll note an objection for the
5 record, not allowing me sufficient voir dire.

6 THE COURT: It is noted.

7 MR. BOSLER: You talked about I believe it was
8 the mental illness, lack of criminal history, drug and
9 alcohol usage. Is that something you'd consider as
10 mitigating or aggravating in this type of event?

11 A PROSPECTIVE JUROR: Mitigating.

12 MR. BOSLER: And why? You seem to have some
13 trouble with that issue.

14 MR. STANTON: Your Honor, I'm going to object
15 again. The statutory definition of aggravating factors and
16 mitigating factors is already determined by the Legislature
17 of this state.

18 THE COURT: I don't want speaking objections.
19 Counsel approach, please.

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

22 MR. STANTON: Once again, Your Honor, I object
23 to the form of the question. Counsel is attempting to
24 indoctrinate this jury in making a commitment to what they
25 believe are mitigating evidence, which is improper, number

1 one; number two, what would they consider to be mitigating
2 evidence in this case. The objection is to the form of the
3 question and attempting to indoctrinate the jury to some
4 commitment in the case.

5 MR. BOSLER: And I totally disagree, Your
6 Honor. I'm only asking if they would consider it, not that
7 they are going to bind themselves one way or the other; and
8 in fact, intoxication is a defense under Nevada law and
9 should be considered as mitigation. If a juror says, I
10 would always consider intoxication as an aggravator, I think
11 I have a valid basis to try and exclude that juror. Unless
12 I ask them how they feel about it, I'll never know that
13 issue.

14 MR. STANTON: If I'm reading his statement
15 correctly, intoxication is a defense under Nevada law and
16 should be considered as mitigation. What is the legal basis
17 for that statement?

18 MR. BOSLER: Well, something that is a defense
19 shouldn't be considered as an aggravator. Common sense.

20 THE COURT: Okay. Mr. Bosler, I think we have
21 a difference of opinion, a strong difference of opinion of
22 what is appropriate questioning and what is not. I'm going
23 to sustain the State's objection.

24 If a juror answers a question that I will not
25 consider as mitigation, something that you want them to

1 consider, I will reconsider if you approach the bench and
2 tell me why you think you should be allowed to inquire
3 further. Otherwise I'll not allow the inquiry as it is
4 going now.

5 I sustained two objections. You have argued
6 with me at the bench, you have argued with me on the record,
7 and I'm encouraging you not to argue with me on the record
8 in front of the jury.

9 MR. BOSLER: All right.

10 THE COURT: If you want to approach, you have
11 an opportunity to approach. We'll have every discussion on
12 the record. But do not argue with me in front of the jury.
13 It is not in your client's best interests.

14 MR. BOSLER: Your Honor, if I might. Will the
15 Court give me some guidance then? Am I allowed to talk
16 about aggravators and mitigators, or no?

17 THE COURT: The aggravators, the only
18 aggravators that may be considered are the ones that I read.
19 If you want to ask a question: Are you going to consider
20 other things in aggravation, beyond what the Court has
21 instructed you you can consider, you can ask that question.
22 And then we'll see what goes.

23 But you are going way beyond what is
24 appropriate. And the form of your question continually is
25 inappropriate. It's very difficult for me to preguess, but

1 what you are doing is you are saying to me, Judge, tell me
2 what I can say and can't say in vague terms, and then we
3 tell you you can do it and then you form the question
4 inappropriately.

5 You can't ask this jury to prejudge the case.
6 You can't require them to make a determination without any
7 facts as to what the potential penalty is that they are
8 going to vote for. You may qualify them as jurors in this
9 case in a manner that you may exclude people who will never
10 consider mitigation of any kind and will always vote for the
11 death penalty. That's the purpose of this inquiry. And you
12 have to keep your questions in that regard.

13 MR. BOSLER: All right. And I'd like the
14 record to reflect I have always used the word "consider"
15 when I have asked jurors both about aggravation and
16 mitigation. So I'm not asking them to commit.

17 MR. STANTON: Mr. Bosler, -- and I'm directing
18 these comments to the Court -- the appropriate questions
19 regarding mitigation, there are the ones that are
20 specifically articulated in the statute. So counsel could
21 ask a question, these are -- and you can even pick out which
22 ones you think are relevant in this case -- these are
23 mitigation evidence. Would you consider them as evidence in
24 the sentencing phase?

25 Then the residual mitigation provision of the

1 statute, any other case, you can ask the question: Would
2 you consider other things besides the ones I have just given
3 you in mitigation in determining a sentence. That is the
4 proper question. Not asking them: What do you consider
5 mitigation?

6 THE COURT: I agree with Mr. Bosler.

7 MR. BOSLER: You agree with Mr. Stanton. You
8 said "Mr. Bosler."

9 THE COURT: Mr. Stanton.

10 MR. BOSLER: I knew better.

11 THE COURT: I agree with you occasionally,
12 Mr. Bosler.

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

15 THE COURT: Objection is sustained.

16 MR. BOSLER: Miss Patch, we have heard some
17 discussion about aggravators, mitigators, mitigators like
18 lack of criminal history, a mitigator by statute, someone
19 suffering from a severe mental defect or illness.

20 Is there any other factors that you would
21 consider as factors that would mitigate a first degree
22 murder to the extent the death penalty wouldn't be
23 warranted?

24 MR. STANTON: Objection for the reasons stated
25 at side bar.

1 THE COURT: Sustained.

2 MR. BOSLER: Miss Patch, if you consider a
3 first degree murder with the aggravators I listed - you have
4 heard the Court mention them - a first degree murder that is
5 committed in the course of a robbery; a first degree murder
6 that is committed upon a police officer, upon someone who
7 the other person should know is a peace officer; a first
8 degree murder is committed upon a person because of their
9 perceived race or national origin; and a first degree murder
10 that allegedly involves mutilation of the dead person, under
11 those circumstances, are you still willing to consider a
12 penalty less than death?

13 A PROSPECTIVE JUROR: Weighing all the
14 evidence, yes.

15 MR. BOSLER: Weighing all the evidence.

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Thank you very much, Miss Patch.

18 Mr. Kennedy, you say that you attended Officer
19 Sullivan's funeral as part of the honor guard?

20 A PROSPECTIVE JUROR: Yes, sir.

21 MR. BOSLER: Were you invited or did you
22 volunteer?

23 A PROSPECTIVE JUROR: I belong to the honor
24 guard for the fire department, and we always as a group
25 collectively attend funerals of police officers and the fire

1 department.

2 MR. BOSLER: When the call comes in, the honor
3 guard reports to whatever event?

4 A PROSPECTIVE JUROR: Yes.

5 MR. BOSLER: How long have you belonged to that
6 honor guard?

7 A PROSPECTIVE JUROR: Six years.

8 MR. BOSLER: Do you have friends who knew
9 Officer Sullivan?

10 A PROSPECTIVE JUROR: Acquaintances, other fire
11 fighters that knew him from one of the other fire
12 departments.

13 MR. BOSLER: Is this something you guys kind of
14 discussed on your way to the funeral as the honor guard?

15 A PROSPECTIVE JUROR: No. We try to -- I think
16 there was some fire fighters that went on that particular
17 call that day, but we have a duty not to relinquish
18 information about the call and try to keep that code of
19 silence amongst ourselves.

20 MR. BOSLER: I didn't know that. How do you
21 feel about, with your relationship with police officers,
22 because they are kind of involved in your daily work and you
23 know friends who may have known Mr. Sullivan, how do you
24 feel about judging a case where his death is the issue and
25 someone else's life may ultimately be an issue?

1 A PROSPECTIVE JUROR: I feel comfortable with
2 it.

3 MR. BOSLER: And why is that?

4 A PROSPECTIVE JUROR: You know, just in my
5 profession, I have to deal with a lot of life and death
6 situations as it is; and you know, it's just something I'm
7 trying to do, and I just feel comfortable being put in that
8 position.

9 MR. BOSLER: So you think you have a little bit
10 more professional preparation for this type of thing?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Same question to you. In a type
13 of case, a first degree murder case, where you find that the
14 killing was done with those four statutory aggravators --
15 I'll say them again if you need me to, otherwise I'll try to
16 save some time -- you find those four statutory aggravators,
17 can you consider -- would there be any information that
18 would help you -- let me rephrase it some way that is not
19 going to raise an objection.

20 Would you consider a sentence less than death
21 even if you found those four aggravators?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Would things like the mental state
24 of the person who did the murder, would that be important?

25 A PROSPECTIVE JUROR: Yes, I think it's

1 critical information. I'd have to hear it, but again, I
2 deal with people that are mentally ill quite a bit.

3 MR. BOSLER: Drug and alcohol usage?

4 A PROSPECTIVE JUROR: Everything you can
5 imagine.

6 MR. BOSLER: So pretty much everything could be
7 considered?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: But you are willing to sort that
10 stuff out to decide what role it plays?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Let's talk about your special
13 experiences as a fire fighter. I guess you have occasion to
14 deal with intoxicated people?

15 A PROSPECTIVE JUROR: Yes. Like I said,
16 everything, intoxicated people, people taking drugs, violent
17 crimes. 90 percent of our calls are medical emergencies.

18 MR. BOSLER: Does the fire department -- I
19 imagine they give you some special training in like dealing
20 with people who are on drugs or alcohol and learning how to
21 recognize those symptoms?

22 A PROSPECTIVE JUROR: Yes.

23 MR. BOSLER: Do you think that kind of gives
24 you a special life experience to draw from in this type of
25 case?

1 A PROSPECTIVE JUROR: Yes.

2 MR. BOSLER: If I could, Shaylene, getting back
3 to you, you have heard some of the earlier questions; right?
4 I know that you especially have familial legal
5 relationships, people involved in law enforcement. And you
6 earlier expressed that I think the word was, I used it,
7 pushed you towards death and kind of figured in your
8 analysis.

9 In a case - and this is a first degree murder
10 case - in a case where you found that it is not only first
11 degree murder but it is the murder of a police officer, do
12 you think the appropriate penalty is death?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: And why, if you could?

15 A PROSPECTIVE JUROR: Consequences for your
16 actions.

17 MR. BOSLER: Is it an eye for an eye or just
18 this is the first degree murder and police officer idea?

19 A PROSPECTIVE JUROR: All of it.

20 MR. BOSLER: And how long have you felt this
21 way?

22 A PROSPECTIVE JUROR: Since I was an adult,
23 since I was old enough to figure things out.

24 MR. BOSLER: And you are still pretty young, to
25 me. If you tell me how long that's been.

1 A PROSPECTIVE JUROR: I don't know. Fifteen
2 years, I guess.

3 MR. BOSLER: Fifteen years? Is this something
4 you have given a certain amount of thought?

5 A PROSPECTIVE JUROR: Yeah.

6 MR. BOSLER: And a reasoned moral decision you
7 have made, this is the way you look at life?

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: That being said, can you think of
10 anything that I could tell you or that could be presented in
11 a first degree murder of a police officer that would
12 convince you to impose a sentence of less than death?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: This is also taking into
15 consideration the Judge told you several times she is going
16 to instruct you how you are supposed to analyze things, how
17 you are supposed to weigh aggravators, mitigators, how you
18 are supposed to debate a little, all those things being
19 said, this is how you feel about first degree murder, police
20 officer involved? There is no right or wrong.

21 A PROSPECTIVE JUROR: Yes.

22 MR. BOSLER: I appreciate your honesty. I make
23 a challenge, Your Honor.

24 MR. STANTON: Counsel, can we have a side bar
25 so I can make a speaking objection?

1 THE COURT: Okay.

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

4 MR. STANTON: The State would traverse
5 Mr. Bosler's motion for the following reasons. His question
6 and the answer of the juror doesn't make her excludable.
7 The basis of the juror finding that the death of a police
8 officer in the performance of a duty is a statutory
9 aggravator. She could find death penalty would be the
10 verdict that she gives in this case is not in violation of
11 the law and certainly doesn't make her excludable under any
12 Supreme Court decision that I'm aware of.

13 MR. BOSLER: What she said, Your Honor, is
14 under the circumstances she's not going to consider
15 mitigation.

16 THE COURT: You didn't actually ask her if she
17 would consider mitigation or if she would even look at
18 mitigating factors and consider them. You asked her if she
19 could think of anything that would change her mind. I think
20 there is a difference. The jurors aren't responsible for
21 putting on your client's case in voir dire.

22 MR. BOSLER: So can I now ask her about
23 mitigation?

24 THE COURT: Well, there's never been a question
25 that you couldn't ask. Would you consider? As Mr. Stanton

1 told you, and I agreed, you can go through mitigation that
2 is allowed by statute. You can say, would you consider,
3 would you look at this? It doesn't matter what the result
4 is.

5 MR. STANTON: If it's okay with the Court, if
6 the questioning goes where I think it's going, I'm going to
7 ask to ask specific questions of this juror and I'll --

8 THE COURT: I'll let you do that right now
9 because he made the motion and you are traversing it.

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

13 THE COURT: Mr. Stanton, you may inquire.

14 MR. STANTON: Thank you, Your Honor.

15 Miss Grate, counsel's question about an
16 aggravator about killing a police officer, you all know now
17 as a matter of law in the State of Nevada that is an
18 aggravating circumstance that permits the death penalty as
19 being an option. The question ultimately that I want to
20 question you about is whether or not the fact this case
21 involves the murder of Sergeant Sullivan, whether that would
22 close your mind as a juror in this case when you deliberate
23 the penalty phase of this trial, would it close your mind to
24 any other options or evidence pursuant to the Court's
25 instruction that you follow?

1 A PROSPECTIVE JUROR: Yeah, yeah. I mean, yes.

2 MR. STANTON: Yes, it would close your mind?

3 A PROSPECTIVE JUROR: Yeah.

4 MR. STANTON: Let me ask you this. The process
5 in a penalty phase is that the State, like in the guilt
6 phase, bears the burden of proof; and in a capital murder
7 case, it is a proof beyond a reasonable doubt that
8 aggravating circumstances, four in this particular case. If
9 the jury doesn't find beyond a reasonable doubt the State
10 has proven any of the aggravators, death is not an option.

11 So the first decision is for the jury to
12 determine whether or not aggravating circumstances have been
13 proven beyond a reasonable doubt, and if it has, then they
14 can go to the next stage in the analysis, and that is to
15 determine whether or not any mitigating evidence exists.
16 Mr. Bosler has mentioned some of those.

17 After that, the jury must determine whether or
18 not the aggravating factors outweigh the mitigating factors,
19 if any, in this case. Only if the aggravating factors
20 outweigh the mitigating is death an option.

21 The next stage is considering all that, you are
22 now at the point, assuming this hypothetical, the jury has
23 found aggravating circumstances, found them beyond a
24 reasonable doubt and they outweigh the mitigating, the next
25 analysis comes, and that is the jury can still decide any of

1 the punishments, four in this case, that are available.

2 Death is never required to be found.

3 So the question now, Miss Grate, is knowing a
4 little bit more how this process goes -- Mr. Bosler asked
5 you the question about death of a police officer. Is it
6 your opinion of your personality and character - and I
7 understand that you have relations with law enforcement -
8 that if you were a juror back in there, you'd say, I'm
9 sorry, he killed a police officer, that's the end of the
10 hunt and in my mind there is only one punishment and that is
11 the death penalty, because, and for no other reason, he
12 killed a police officer? Is that how you would deliberate?

13 A PROSPECTIVE JUROR: Well, if all the
14 aggravating circumstances were more?

15 MR. STANTON: No, I want to focus strictly now
16 on your view about law enforcement and the fact that a
17 police officer was killed. Are you the type of person that,
18 looking inside yourself, that if you were back in that jury
19 room deliberating the punishment in this case, that you
20 would sit there and say, Look, he killed a police officer,
21 that is the end of the hunt, I'm not going to listen to any
22 other evidence, I'm not going to listen to the instructions
23 of law, that's it for me?

24 A PROSPECTIVE JUROR: Honestly, I have to say
25 yeah, because of how I feel.

1 MR. STANTON: You would not consider or keep an
2 open mind regarding other evidence, and more importantly,
3 the instructions of law?

4 A PROSPECTIVE JUROR: Well, yeah, I would keep
5 an open mind, the evidence and the instructions of law, but
6 that's my nature to go towards the death penalty. That's
7 just my --

8 MR. STANTON: I understand that. The one thing
9 that counsel, myself and Mr. Bosler cannot do is try and get
10 a commitment from you right now as to what you are going to
11 do in this case. The question is: Can you keep an open
12 mind?

13 A PROSPECTIVE JUROR: Yes.

14 MR. STANTON: Whether the fact that you may be
15 leaning towards a particular punishment one way or another,
16 the death penalty or life. Obviously, if the only
17 aggravator was killing a police officer, that could be a
18 death penalty case.

19 So in this case it's not whether it leans you
20 towards it, but the more -- the crucial inquiry is whether
21 or not you will shut your mind out to consider other
22 evidence, and more importantly, whether or not you would
23 shut your mind to the instructions of law, that is that
24 requires you to consider other evidence.

25 A PROSPECTIVE JUROR: No, I wouldn't shut my

1 mind to the law, and I would definitely keep an open mind to
2 the evidence.

3 MR. STANTON: Thank you. For those reasons, I
4 would traverse Mr. Bosler's motion.

5 THE COURT: You may continue your inquiry. At
6 this time, your motion is denied.

7 MR. BOSLER: Miss Grate, if you could, killing
8 a police officer, what -- when would you think that the
9 death penalty was inappropriate for killing a police
10 officer?

11 A PROSPECTIVE JUROR: Was not appropriate?

12 MR. BOSLER: Yes.

13 A PROSPECTIVE JUROR: Never. I mean, that's of
14 anyone really, not just a police officer. Of course, I
15 don't have all the facts yet, you know.

16 MR. BOSLER: I appreciate you saying that you
17 want to reserve your decision until you get those facts.
18 But in a certain way, we need to have a little information
19 before that happens. If I'm hearing you correctly, I
20 thought that you had said that it's killing a police
21 officer, for you it is a death penalty case.

22 A PROSPECTIVE JUROR: In this case.

23 MR. BOSLER: In this case? Why do you say
24 that?

25 A PROSPECTIVE JUROR: Just from, like I said,

1 the limited information that I have. What he said about
2 keeping your open mind, you know. Like I said, I don't have
3 the big picture yet. But from what I know right at this
4 moment, that's where I stand.

5 MR. BOSLER: All right. Fair enough. And
6 maybe I'll get a chance to ask you about what you know in a
7 little while.

8 It kind of brings me back to ground one. You
9 have killing of a police officer, this case. Let's assume a
10 hypothetical case.

11 A person kills a police officer. Later it is
12 shown in this hypothetical case that the murder was
13 committed in the course of a robbery, taking of property,
14 and the murder was committed because of the murderer's
15 perceived, the way he perceived the victim because of his
16 race or national origin. We have another factor in this
17 hypothetical case that the body of the deceased is damaged
18 to the extent that it was torture or mutilation.

19 Those circumstances, is there a situation where
20 you would consider a penalty of less than death?

21 A PROSPECTIVE JUROR: I'd have to say no.

22 MR. BOSLER: All right. And I know that you
23 are trying to be open-minded as you sit here. You are
24 trying to be fair. You are trying to be unbiased.

25 Knowing that those things are supposed to

1 happen, you are supposed to be open-minded, the Court is
2 going to instruct you, do you honestly feel that you would
3 actually consider a penalty of less than death under those
4 circumstances?

5 A PROSPECTIVE JUROR: Under those, what you
6 just gave me right now?

7 MR. BOSLER: Those four circumstances.

8 A PROSPECTIVE JUROR: No, I could not.

9 MR. BOSLER: Let me go to the next step. Is
10 there information I could give you if you found this first
11 degree murder, those four circumstances, is there
12 information I could give you that would make you think,
13 well, hold on, even though I find these four aggravating
14 circumstances, there is something that lessens this offense
15 and I can consider a different penalty?

16 A PROSPECTIVE JUROR: I don't know what that
17 would be.

18 MR. BOSLER: Something like if there was a
19 mental defect or mental illness.

20 MR. STANTON: Your Honor, I object for the
21 reasons stated at side bar.

22 THE COURT: Sustained.

23 MR. BOSLER: If there was a statutory mitigator
24 that said you can consider lack of criminal history of a
25 person, in determining a punishment, is that something you'd

1 consider in this fact pattern with these four aggravators?

2 A PROSPECTIVE JUROR: But they still committed
3 the murder.

4 MR. BOSLER: In this situation, yes.

5 A PROSPECTIVE JUROR: It still happened.

6 MR. BOSLER: In this situation, yes.

7 MR. STANTON: Your Honor, I object to the form
8 of the question. Same reasons stated at side bar.

9 THE COURT: We use certain words differently
10 than what people may put the common meaning to. So I don't
11 know what the question is. The way the question was formed
12 from a legal sense, we are asking if you will consider, look
13 at, think about, this mitigator.

14 If you look at it as a common layperson might
15 look at this question, the form of it seems to be implying
16 what will you do, what will your decision be.

17 Mr. Bosler may not ask you what your decision
18 will be. You may not make a decision. I tell you at every
19 break, you may not form or express a decision, an ultimate
20 opinion as to the decision that will be reached.

21 But his question is appropriate if it's
22 understood that he's asking you: Will you look at this,
23 will you consider it? Not what your decision will be, but
24 will you look at it?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: So if that's the way and meaning of
2 the question, I will allow the juror to answer.

3 MR. BOSLER: Objection overruled?

4 THE COURT: It's sustained sort of and
5 overruled sort of.

6 MR. BOSLER: Thank you, Your Honor.

7 THE COURT: You are welcome.

8 Did you understand the question?

9 A PROSPECTIVE JUROR: Yes, and yes, I would
10 look at the information. It's not like I would close my
11 mind and not look at anything. Obviously I need to make an
12 informed decision when I do make a decision.

13 MR. BOSLER: Would you consider mental illness?
14 I got to that question because of the objection.

15 A PROSPECTIVE JUROR: You said, would I look at
16 it?

17 MR. BOSLER: Consider it, look at it.

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: Would you consider whether -- what
20 other factors? I can probably list 50 things that I would
21 offer you. What other things would you consider?

22 MR. STANTON: Objection, improper question.

23 THE COURT: Sustained. You can ask her
24 specific things you want to find out if she will look at.
25 You can't inquire of the jury to come up with their own

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1 what this person, hypothetical person, was strongly involved
2 in the church. Is that something you would consider?

3 MR. STANTON: Objection. The proper question
4 is whether or not they would consider other mitigating
5 evidence, not getting the juror to commit what is a
6 mitigating evidence. That is improper.

7 THE COURT: That's what we have said at all the
8 side bars, Mr. Bosler. She said already she'll consider
9 several mitigating --

10 MR. BOSLER: Statutory mitigators.

11 THE COURT: Yes. So I don't understand where
12 you want to go here.

13 MR. BOSLER: I don't want to argue with the
14 Court. Can we approach?

15 THE COURT: If you are going to repeat what you
16 already told me, I will sustain the objection. If you have
17 something new, we will approach.

18 MR. BOSLER: I was going to ask for guidance
19 from the Court.

20 THE COURT: Approach.

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

23 MR. BOSLER: As I understand it, I can't ask a
24 vague question about, would you consider other things as
25 mitigation, nonstatutory mitigators, and I'm not allowed to

1 pose to the juror things that I would believe would be
2 nonstatutory mitigators. And I'm just at a loss if I can't
3 pose the question: What would you consider, what things are
4 important to you that aren't statutory mitigators? and I
5 can't create them myself.

6 THE COURT: Mr. Bosler, you lost me.

7 MR. STANTON: I'd just like to say, Mr. Bosler,
8 did you attend the National Judicial College? I think
9 before we started this trial, you indicated that you
10 attended the National Judicial College seminar on the death
11 penalty; correct?

12 MR. BOSLER: Yes. Is this going to be an
13 insult?

14 MR. GREGORY: Is this going to get ugly here?
15 Quit cranking it up, David. Let me --

16 MR. STANTON: We are, because I'm getting
17 pissed off because of him trying to indoctrinate the jury in
18 this case.

19 You know, the law is clear. You cannot get
20 jurors to commit what is mitigating evidence. So your
21 question was, the last question you posed: What in your
22 mind would be mitigating evidence? And then you say: Would
23 going to church be mitigating evidence? You can't do that.

24 MR. BOSLER: If I can't ask them to speculate
25 about what they would consider as mitigating evidence and

1 then I'm also not allowed to ask them about things they may
2 consider as nonstatutory mitigators, what can I ask?

3 MR. STANTON: The question you can ask, just
4 like the State can ask, is: Would you consider mitigating
5 evidence that's presented?

6 You have already told them that there is a
7 statute that provides anything else can be considered
8 mitigating evidence. Anything under the sun. So you ask
9 the jury: Would that, as an instruction of law, would you
10 consider all types of evidence in mitigation?

11 MR. BOSLER: This is where it gets more detail
12 oriented. If I offer a nonstatutory mitigator as my
13 client's --

14 THE COURT: The problem here is you want to
15 find out from each of the jurors whether or not they will
16 consider the mitigators that you want to put on. And that's
17 where I think you are going, and you can't do that.

18 MR. BOSLER: It is a little bit more refined
19 than that, Your Honor. I think if I was to in my case offer
20 a nonstatutory mitigator and if a juror said, No, I'm not
21 going to consider that as a mitigator, it is not important
22 to me, then that would provide a basis for Mr. Vanisi to at
23 least more intelligently exercise his peremptory challenges.
24 I'm not just talking about *Witherspoon*. These are facts he
25 may want to know to use his peremptory challenges. Maybe

1 that is where we're kind of not crossing lines here.

2 MR. STANTON: But the law doesn't permit you in
3 exercising your peremptory challenge to inquire into
4 anything that you may want. You may want to ask someone his
5 political philosophy. That doesn't mean that gives you a
6 legal right in voir dire to ask some questions about what
7 their political philosophy to render your peremptory as more
8 intelligent.

9 The law permits certain questions to be asked
10 relative to the death penalty, and committing jurors to what
11 is mitigating evidence is not one of them.

12 THE COURT: I think there are other ways to
13 find out if people consider church important. But church is
14 a very ticklish question, and religion is not a proper area
15 unless it's -- it's very unusual that we go into people's
16 religious preferences or anything like that.

17 MR. BOSLER: I'm not asking them their
18 religious preferences.

19 THE COURT: I understand. But I think that the
20 form of your question and it's couched in terms of
21 mitigation is asking for a predisposition from the jury as
22 to how they will rule and how they will vote in a verdict,
23 and I'm not going to allow that. The objection is going to
24 be sustained.

25 MR. GREGORY: I want to understand. So the

1 Court has indicated that specific aggravators can be
2 mentioned to the jury, but specific mitigators, even couched
3 in the terms of hypothetical, cannot.

4 THE COURT: I said that you could ask the
5 statutory mitigators. I already said that. I have allowed
6 you to ask the statutory mitigators. I will also allow you
7 to ask if they will consider any other mitigation evidence
8 that you present.

9 I will not allow you to ask the jury specific
10 questions as to things you want them to consider.

11 MR. BOSLER: Note my objection for the record.

12 MR. GREGORY: Thank you, Judge.

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

15
16 MR. BOSLER: Difficult process even for the
17 lawyers.

18 Miss Grate, in your questionnaire, you wrote
19 that you can't be fair, and I think that is the
20 questionnaire you got after you were told what case you were
21 going to be asked to be a juror on. You wrote that you
22 couldn't be fair. Do you remember saying that?

23 A PROSPECTIVE JUROR: Not really but okay. I
24 believe that I said it. Okay?

25 MR. BOSLER: What makes you think that you

1 could be fair now? What in your mind has changed? Because
2 I know yesterday you said, Well, the more I sit here, the
3 less biased I become or something.

4 A PROSPECTIVE JUROR: The more information I
5 receive. I mean, the information I have is from what I have
6 seen on TV and what was in the questionnaire. So from that
7 information, obviously I'm going to have an opinion based on
8 that information.

9 MR. BOSLER: And why do you think now that a
10 week later you're more fair?

11 A PROSPECTIVE JUROR: I don't know that I am.
12 I know that there's more information being revealed that I
13 didn't know. And again, like I said, I can keep an open
14 mind as to information. When someone tells me something, I
15 can logically put it together and, you know, believe that
16 information.

17 MR. BOSLER: I don't mean to imply that you are
18 not going to be able to do that. If I could, I'll move on.

19 Miss Minassian, is that the correct
20 pronunciation?

21 A PROSPECTIVE JUROR: Yes, it is.

22 MR. BOSLER: You said in your questionnaire
23 that you strongly favor the death penalty.

24 A PROSPECTIVE JUROR: Yes.

25 MR. BOSLER: And why is that?

1 A PROSPECTIVE JUROR: Well, in a rare instance.
2 That is probably the hardest question to answer, to be
3 honest with you. But I think in rare instances, yes.

4 MR. BOSLER: I couldn't hear.

5 A PROSPECTIVE JUROR: In a rare instance, yes.
6 No remorse, something willfully done, absolutely.

7 MR. BOSLER: Remorse, and I'm sorry?

8 A PROSPECTIVE JUROR: Someone is found guilty
9 of first degree murder, premeditated, preplanned, yes, I
10 believe in it.

11 MR. BOSLER: You believe in the death penalty?

12 A PROSPECTIVE JUROR: Yes.

13 -- MR. BOSLER: Miss Minassian, you know we're
14 talking about first degree murder.

15 A PROSPECTIVE JUROR: Correct.

16 MR. BOSLER: So we're not talking about
17 self-defense, manslaughter, anything like that, drunken
18 driving accident, nothing like that. Are you telling me --
19 if this is your opinion, that's fine -- are you telling me
20 that it's first degree murder, for you, you think the death
21 penalty is the appropriate penalty?

22 A PROSPECTIVE JUROR: Well, I'd have to
23 consider all the evidence. I feel I can be open-minded to
24 evidence presented and follow the Court's instruction and
25 law.

1 MR. BOSLER: Those are the magic words. What
2 about a first degree murder where it's not only first degree
3 murder, not only premeditated murder, it is the murder
4 involving the killing of a police officer?

5 A PROSPECTIVE JUROR: I still feel the same
6 way. I could weigh the evidence, follow the Court's
7 instruction and try to consider those factors.

8 MR. BOSLER: Unfortunately, it is three steps
9 further, the killing of a police officer, commission of a
10 robbery, due to perceived nationality, a mutilation of the
11 dead body. Does that change the way you feel about your
12 view of first degree murder and penalty?

13 A PROSPECTIVE JUROR: No.

14 MR. BOSLER: Would you be willing to consider
15 in a hypothetical situation - I'm not asking you to commit -
16 in a hypothetical situation, will you consider evidence
17 regarding the mental health or whether the person involved
18 was suffering from mental illness?

19 A PROSPECTIVE JUROR: Yes, I could consider
20 that.

21 MR. BOSLER: What about something like lack of
22 a significant criminal history?

23 A PROSPECTIVE JUROR: I would consider that
24 also.

25 MR. BOSLER: Something like the age of the

1 defendant, youthful person as opposed to an older person?

2 A PROSPECTIVE JUROR: I would consider that
3 also.

4 MR. BOSLER: Use of alcohol, drugs, something
5 you would be willing to consider?

6 A PROSPECTIVE JUROR: Yes, I'm willing to
7 consider that.

8 MR. BOSLER: So you are at least willing to
9 listen to other evidence?

10 A PROSPECTIVE JUROR: Absolutely.

11 MR. BOSLER: Before you decide what punishment
12 is appropriate?

13 A PROSPECTIVE JUROR: Yes.

14 MR. BOSLER: The concept that even if you found
15 all the aggravators and no mitigators, you would still have
16 an opportunity to vote for a penalty of less than death, do
17 you find that concept troubling?

18 A PROSPECTIVE JUROR: No.

19 MR. BOSLER: Why is that?

20 A PROSPECTIVE JUROR: Well, I would, like I
21 say, I'd like to consider all the evidence and the way it is
22 presented, following the Court's instruction, I feel I'm
23 able to do that. Be open-minded and try to do the right
24 thing.

25 MR. BOSLER: I appreciate you saying that.

1 Thank you for your candor.

2 Mr. Grider, you strongly favor the death
3 penalty?

4 A PROSPECTIVE JUROR: If the facts show that,
5 yes.

6 MR. BOSLER: You wrote some other information
7 on your questionnaire, and I didn't see you raise your hand
8 during a lot of the things that went on in court. You wrote
9 on your questionnaire that you knew Officer Sullivan?

10 A PROSPECTIVE JUROR: I had met him on a few
11 occasions, yes.

12 MR. BOSLER: If you could, what type of
13 occasions were those?

14 A PROSPECTIVE JUROR: We do a lot of flooring
15 work up at the university, did a lot of night work so we
16 don't disturb classes during the day, and he comes around
17 and checks on the buildings to make sure everything is okay.

18 MR. BOSLER: Have you actually had words with
19 Mr. Sullivan?

20 A PROSPECTIVE JUROR: Yes.

21 MR. BOSLER: Is there a reason why you didn't
22 raise your hand to let the judge know that you actually knew
23 one of the parties involved?

24 A PROSPECTIVE JUROR: That question got
25 bypassed past me.

1 MR. BOSLER: Well, having been involved at the
2 university and having at least some words with Mr. Sullivan,
3 how do you feel about sitting on a case where his death is
4 an issue and someone's life may be an issue, too, someone
5 else's life?

6 A PROSPECTIVE JUROR: I just -- I knew him as a
7 person. It is not going to affect my decision on whether he
8 was an officer or somebody else. I don't know a lot about
9 him. I just talked to him job wise. I don't know his
10 personal demeanor.

11 MR. BOSLER: All right. How long have you been
12 strongly in favor of the death penalty?

13 A PROSPECTIVE JUROR: As long as I can
14 remember. If the facts show that it's that way, I go that
15 way. But I could consider a lesser charge also.

16 MR. BOSLER: I appreciate your honesty,
17 Mr. Grider.

18 So what you are telling me is that even though
19 you know Mr. Sullivan, and even in a case involving his
20 death, you feel you could be fair?

21 A PROSPECTIVE JUROR: Yeah.

22 MR. BOSLER: You also wrote something else on
23 your questionnaire that I have a concern about. You came
24 out and said I'm prejudiced against minorities.

25 A PROSPECTIVE JUROR: Yes, I am.

1 MR. BOSLER: Do you remember saying that?

2 A PROSPECTIVE JUROR: Yes, I do.

3 MR. BOSLER: Anything that you have changed
4 your mind about that statement?

5 A PROSPECTIVE JUROR: If you remember my
6 explanation on that, it's because I feel like I'm a minority
7 anymore because everything is favored towards minorities.

8 MR. BOSLER: And you had a certain physical
9 altercation with a minor.

10 A PROSPECTIVE JUROR: Yes, I did.

11 MR. BOSLER: So you are saying that you still
12 feel this prejudice in your mind against minorities?

13 A PROSPECTIVE JUROR: Yes, I do.

14 MR. BOSLER: Is there any particular minority
15 or all minorities?

16 A PROSPECTIVE JUROR: Any particular. All of
17 them.

18 MR. BOSLER: All of them. All minorities. So
19 if I told you that Siaosi Vanisi is a minority, that he is a
20 Tongan, very small minority, even in our own community, I
21 guess it necessarily follows that you would be prejudiced.

22 A PROSPECTIVE JUROR: Not towards my decision
23 based on the facts of the case.

24 MR. BOSLER: Can you explain that to me? You
25 are prejudiced towards all minorities, why is your prejudice

1 less if he is charged with killing a white person?

2 A PROSPECTIVE JUROR: I'm prejudiced about how
3 they are treated as to us, how they get all the breaks and
4 all that. I mean, there's all black colonies, there is no
5 white colonies.

6 That is how I'm prejudiced. I'm not prejudiced
7 against each and every minority as a person.

8 MR. BOSLER: So it is classes you are
9 prejudiced. What is your familiarity with Tongans?

10 A PROSPECTIVE JUROR: Never had any.

11 MR. BOSLER: Never known anybody like that?
12 Nothing anything about their social history or cultural
13 history?

14 A PROSPECTIVE JUROR: (Shakes head negatively.)

15 MR. BOSLER: Ever met any Tongans at the
16 university?

17 A PROSPECTIVE JUROR: No, I haven't.

18 MR. BOSLER: Does it concern you that based
19 upon your ideas -- I'm not saying they are wrong, we're all
20 entitled to our own opinions. That is what the United
21 States is about.

22 Does it concern you that after you wrote that,
23 I'm prejudiced against minorities, the defendant being a
24 minority, that the accused is someone you knew, at least
25 talked with who was white, you're saying race, does it

1 concern you that all of those things are going to be played
2 out in the next couple weeks?

3 A PROSPECTIVE JUROR: No, not at all. I would
4 listen to the facts and make a decision from there.

5 MR. BOSLER: All right. Thank you, Mr. Grider.

6 Miss Bell, if I could, you also wrote in your
7 questionnaire that you strongly favor the death penalty.

8 A PROSPECTIVE JUROR: Uh-huh.

9 MR. BOSLER: How long have you had that?

10 A PROSPECTIVE JUROR: As long as I can
11 remember. Don't ask me my age.

12 MR. BOSLER: So safe to say it's more than five
13 years?

14 A PROSPECTIVE JUROR: Yes, that would be a safe
15 assumption.

16 MR. BOSLER: Have you discussed this with
17 members of your family, or with other people?

18 A PROSPECTIVE JUROR: Through the years, yes.

19 MR. BOSLER: Has this always, since you can
20 remember, this has always been your view towards capital
21 punishment, you strongly favor it?

22 A PROSPECTIVE JUROR: As long as it's pretty
23 well cut and dried, there's no questions, there's no gray
24 area, there is no room for doubt, yes.

25 MR. BOSLER: And if you could explain gray

1 areas. In the law there is gray areas.

2 A PROSPECTIVE JUROR: I'm talking about like if
3 somebody goes out, buys a gun, walks up, looks at you,
4 doesn't like you and shoots you, just dead on the spot, and
5 there's 50 witnesses that watched him do it.

6 MR. BOSLER: So in a case where there's no
7 factual issues for you, I mean, if it was videotaped and
8 things like that --

9 A PROSPECTIVE JUROR: I would have to listen to
10 the evidence and come up with my own.

11 MR. BOSLER: Well, let's get back to your
12 hypothetical. You said we're talking about death penalty.
13 You said in a situation where it's cut and dried, black and
14 white, is that the type of case that you think is
15 appropriate for the death penalty?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: And I don't want to belabor this.
18 We're talking about first degree murder. That's the first
19 thing going on. If you found beyond a reasonable doubt that
20 someone was guilty of a first degree murder, do you think
21 that that's the type of case the death penalty is warranted?

22 A PROSPECTIVE JUROR: Yes. But that doesn't
23 mean I'm not open to other ideas or other suggestions.
24 Until I hear everything that's going on or until I know
25 everything about the facts, I can't really make an opinion

1 or a statement.

2 MR. BOSLER: And I can't ask you a vague
3 question. What if it is first degree murder involving again
4 the death of a police officer?

5 A PROSPECTIVE JUROR: I would feel the same way
6 if it was involving the death of a police officer or
7 involving the death of you or involving the death of the
8 gentleman next to me.

9 MR. BOSLER: And why is that?

10 A PROSPECTIVE JUROR: Because I feel life is
11 precious, and I think if someone is goes out and
12 deliberately murders somebody, they deserve the death
13 penalty.

14 MR. BOSLER: That is what I'm trying to get at.

15 A PROSPECTIVE JUROR: I don't think it has to
16 do with being a police officer or lawyer or judge or just
17 grocery store clerk.

18 MR. BOSLER: Attorney?

19 A PROSPECTIVE JUROR: That, too. My boss, a
20 teacher.

21 MR. BOSLER: I don't mean to make light of
22 what's going on. I'm kind of at a loss because I hear you
23 say that it is that intentional, deliberate, premeditated,
24 you buy a gun, kill somebody type murder, it is a death
25 penalty case. But then I hear you say, well, I'm not going

1 to stand by that because I want to say I can listen to other
2 stuff. Do you see?

3 A PROSPECTIVE JUROR: No. If it's a first
4 degree murder where the person deliberately goes out and
5 does it, I believe it is a death penalty case. I'm not
6 saying that I definitely would vote for the death penalty.
7 I'm saying I would listen to the other options, weigh them
8 against other circumstances that may or may not come out.

9 MR. BOSLER: Well, let's talk about a
10 hypothetical situation. Hopefully the jurors can understand
11 why I have to do this one person at a time.

12 Let's suppose this hypothetical situation, you
13 have this premeditated, deliberate, willful, unlawful, first
14 degree murder. You also have it is a murder committed upon
15 a peace officer. You also have the officer was killed in
16 the commission of a robbery. You also have that the officer
17 was killed because of the defendant's perception about his
18 race, origin, nationality. You also have this other thing
19 about the body of the officer being damaged, mutilated in
20 the killing. That type of case.

21 Is that not the type of case where you think
22 that if all those things are happening, then automatically
23 it is a death penalty case?

24 A PROSPECTIVE JUROR: You have to prove that
25 all those things are happening. I have to honestly believe

1 that all those things did in fact happen.

2 MR. BOSLER: And I can't ask you to commit, but
3 only to get your view of this. Putting in your mind those
4 things are satisfied, they have been proven.

5 A PROSPECTIVE JUROR: Then I would listen to
6 what the Judge instructed me to do.

7 MR. BOSLER: And follow the instructions?

8 A PROSPECTIVE JUROR: Uh-huh. Absolutely.

9 MR. BOSLER: Is there anything that I could
10 tell you if you found those things, if I advised you that --
11 or you have this situation, this murder, all those
12 circumstances that I spoke of, if you heard evidence
13 involving a mental illness, mental defect in the accused,
14 would it be something you'd be willing to consider?

15 A PROSPECTIVE JUROR: Absolutely.

16 MR. BOSLER: Consider a penalty less than
17 death?

18 A PROSPECTIVE JUROR: Yes.

19 MR. BOSLER: How about something like this
20 accused has a lack of significant criminal history?

21 A PROSPECTIVE JUROR: It would be something
22 that I would be open to listen to.

23 MR. BOSLER: Would it sway you one way or
24 another?

25 A PROSPECTIVE JUROR: I can't say if it would

1 sway me one way or another. I can't answer that.

2 MR. BOSLER: How about use of alcohol or drugs?

3 A PROSPECTIVE JUROR: Once again, I would have
4 an open mind and listen to what you presented to me and what
5 she says.

6 MR. BOSLER: Can you think, without telling me,
7 can you think of other things, other than the things I
8 mentioned, that in your mind you might consider is a reason
9 to judge somebody whether they live or die, that might be
10 considered by you as mitigation, without mentioning
11 anything?

12 A PROSPECTIVE JUROR: Yeah.

13 MR. BOSLER: That is as far as I can go.

14 A PROSPECTIVE JUROR: You didn't want to hear
15 that one, did you?

16 MR. BOSLER: If you can think of things, you
17 can consider them. That is what I want to know.

18 I'll move down.

19 Mr. Sheahan, you said that you knew one of the
20 officers we saw on the list?

21 A PROSPECTIVE JUROR: No, I knew one of the
22 witnesses.

23 MR. BOSLER: One of the witnesses. Was it a
24 witness involved in law enforcement?

25 A PROSPECTIVE JUROR: No.

1 MR. BOSLER: I have taken a lot of notes. I
2 apologize if I misquoted you. You said you knew some
3 officers as part of your daily life?

4 A PROSPECTIVE JUROR: I knew some officers,
5 yes.

6 MR. BOSLER: Still have a relation with them?

7 A PROSPECTIVE JUROR: Yes, I do.

8 MR. BOSLER: Or contact?

9 A PROSPECTIVE JUROR: Yes, I do.

10 MR. BOSLER: How well, how often?

11 A PROSPECTIVE JUROR: Oh, my ex-brother-in-law
12 once or twice a year. My ex-wife's oldest sister's son I
13 see at Christmas, Easter, all the holidays.

14 MR. BOSLER: He is a police officer?

15 A PROSPECTIVE JUROR: Yes, Sparks policeman.

16 MR. BOSLER: How long has he been a police
17 officer?

18 A PROSPECTIVE JUROR: Approximately five years.

19 MR. BOSLER: And do you guys talk about police
20 officer stuff when he comes to Christmas?

21 A PROSPECTIVE JUROR: A little bit. Not that
22 much.

23 MR. BOSLER: You wrote in your questionnaire
24 that you favor the death penalty.

25 A PROSPECTIVE JUROR: Yes, I do.

1 MR. BOSLER: And why?

2 A PROSPECTIVE JUROR: I figure if he committed
3 the crime, he needs to serve.

4 MR. BOSLER: And I have to ask you to clarify
5 that a little bit. If you find a person has committed a
6 first degree murder, are you telling me that you believe
7 it's an eye-for-an-eye situation?

8 A PROSPECTIVE JUROR: Yes, I do.

9 MR. BOSLER: How long have you felt this way?

10 A PROSPECTIVE JUROR: Probably 20 years, 25
11 years.

12 MR. BOSLER: Have you discussed this opinion
13 with other people?

14 A PROSPECTIVE JUROR: Family a little bit. Not
15 a lot.

16 MR. BOSLER: So you have publicly announced
17 this is the way you feel?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to have you stop there
20 for the lunch hour.

21 MR. BOSLER: This is good.

22 THE COURT: Ladies and gentlemen of the jury
23 panel, I'm going to have you come back at 1:00 o'clock, and
24 we'll continue the voir dire process. We will have to take
25 roll again when you come back from lunch, so please be sure

1 that you are back here on time. As you remember yesterday,
2 we could not start without your presence. So we have to
3 have you here.

4 Remember the admonition that I have given you
5 at all the breaks. Yes.

6 A PROSPECTIVE JUROR: Can we leave our stuff
7 here?

8 THE COURT: You may leave everything right
9 where you have it, if you wish. Okay.

10 I'm going to ask that everyone remember the
11 admonition, but I am going to ask Miss Grate and Miss
12 O'Keefe to remain when everyone else leaves.

13 Ladies and gentlemen of the jury panel, during
14 this recess, remember the admonition. You may not form or
15 express any opinion about the ultimate outcome of this case.
16 You may not discuss the case among yourselves or with anyone
17 else, or any matter having to do with this case.

18 You may not allow anyone to attempt to
19 influence you with regard to it or speak to you about it.
20 If anyone so does, you must report it to the bailiff
21 immediately outside the presence of the other potential
22 jurors.

23 The audience may go ahead and leave at this
24 time for the lunch recess.

25 I'm going to ask you to all be seated for a

1 minute.

2 Counsel approach.

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

5 THE COURT: Mr. Bosler asked my secretary to
6 give me a note that said he wanted to inquire privately of
7 Miss Grate and Miss O'Keefe regarding pretrial publicity.

8 MR. BOSLER: Yesterday she said give me the
9 jurors we thought had that issue before 9:00 o'clock this
10 morning. So I called.

11 MR. STANTON: Okay.

12 THE COURT: I'm just thinking -- I'm hungry,
13 too, but we could do it now and get it out of the way while
14 we get everyone out of here, if that's all right with you.

15 MR. STANTON: Fine with the State.

16 MR. GREGORY: Sounds like they want to eat.

17 MR. BOSLER: I object to that, Your Honor.
18 That is fine.

19 THE COURT: I mean, I just think -- or you all
20 can come back. But they would have to stay then even
21 longer.

22 MR. BOSLER: This is probably the easiest way.

23 THE COURT: Are you going to ask a lot of
24 questions?

25 MR. BOSLER: I'm going to ask them to tell me

1 what they know. It may take a lot of paper. I don't know.

2 THE COURT: I want to give -- everybody needs a
3 little break. Let's at this time break and have them come
4 back a few minutes early.

5 MR. BOSLER: Maybe you can take a longer
6 afternoon recess and we can do it then.

7 THE COURT: We'll do it that way.

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

10 THE COURT: Okay. Miss Grate and Miss O'Keefe,
11 you get to go to lunch with everyone else. We'll see you
12 all back at 1:00 o'clock. Wait.

13 A PROSPECTIVE JUROR: I just wondered, I have
14 to make a plan for tomorrow morning. What time are we
15 starting tomorrow morning?

16 THE COURT: 10:00 a.m.

17 A PROSPECTIVE JUROR: Thank you.

18 THE COURT: Court is in recess.

19 (Recess taken at 12:00 p.m.)
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RENO, NEVADA, TUESDAY, JANUARY SEPTEMBER 21, 1999, 1:12 P.M.

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

THE COURT: The clerk will call the roll of the jurors.

(Whereupon the roll call of the prospective jury was taken.)

THE COURT: Counsel stipulate to proceeding?

MR. STANTON: Yes, Your Honor.

MR. BOSLER: So stipulated, Your Honor.

THE COURT: Mr. Bosler.

MR. BOSLER: Thank you, Your Honor.

Good afternoon, ladies and gentlemen, again. I appreciate your patience. The patience of people out there. I think I left off with Mr. Sheahan.

Mr. Sheahan, you wrote in your questionnaire that you -- there's a question there whether you can be unbiased or impartial, and you said, "I can't be impartial in this case based upon the facts of the case." Do you remember saying that?

A PROSPECTIVE JUROR: I don't remember saying that.

MR. BOSLER: Let me see if I can find the exact

1 words.

2 THE COURT: Are you looking at the transcript?

3 MR. BOSLER: No. It's in his questionnaire. I
4 have a questionnaire.

5 This question: I truly believe this man is
6 guilty of a terrible crime for killing a person, and
7 therefore, you didn't think you could be impartial. Does
8 that sound familiar ?

9 A PROSPECTIVE JUROR: You're right.

10 MR. BOSLER: Has something changed in your mind
11 from the time you wrote that questionnaire? Let me stop
12 there. I guess you were given the questionnaire by the Jury
13 Commissioner.

14 A PROSPECTIVE JUROR: Right.

15 MR. BOSLER: Did the Jury Commissioner provide
16 you with a space to fill out the questionnaire or did you
17 get to bring it home?

18 A PROSPECTIVE JUROR: No, I filled it out
19 there. I was in a hurry and almost everybody was turning
20 theirs in. I was trying to rush through.

21 MR. BOSLER: Did you feel like other people
22 were kind of watching you or wondering what you were going
23 to say?

24 A PROSPECTIVE JUROR: Sort of, yes.

25 MR. BOSLER: Do you feel like you didn't have

1 any privacy when you wrote that?

2 A PROSPECTIVE JUROR: No, I had privacy.

3 MR. BOSLER: What I'm asking is: How are you
4 at public speaking?

5 A PROSPECTIVE JUROR: Not very well.

6 MR. BOSLER: It's kind of uncomfortable to
7 speak in front of a crowd.

8 A PROSPECTIVE JUROR: Yes.

9 MR. BOSLER: Many of your fellow jurors
10 probably feel the same way. You said on you questionnaire
11 when you had a chance to fill it out, you thought you could
12 be impartial. I want to ask you if anything has changed. I
13 want you to know, I'm cognizant you're in front of a group
14 of strangers, too.

15 Has something changed in your mind that you now
16 feel you can be impartial in this case?

17 A PROSPECTIVE JUROR: I think if all the facts
18 are presented in front of me, I could go with that.

19 MR. BOSLER: When you wrote what you wrote on
20 your questionnaire, did you think that maybe you wouldn't be
21 presented facts or somehow you'd be kept in the dark?

22 A PROSPECTIVE JUROR: I was sort of confused a
23 little bit, I think.

24 MR. BOSLER: You also wrote on you
25 questionnaire that you had an opinion as to the guilt or

1 innocence in this case. Do you recall saying that?

2 A PROSPECTIVE JUROR: Vaguely, yes.

3 MR. BOSLER: Knowing that you once had said you
4 couldn't be impartial, that you had an opinion as to
5 Mr. Vanisi's guilt or innocence, you had already formed that
6 opinion, do you think you're the type of person who could
7 fairly sit in judgment of another person, not only for guilt
8 but on the issue of life and death?

9 A PROSPECTIVE JUROR: I think I could,
10 providing the evidence, everything was put in front of me
11 that I could see.

12 MR. BOSLER: You're saying that's because
13 you're going to get to consider the evidence?

14 A PROSPECTIVE JUROR: Right.

15 MR. BOSLER: I'll apologize to the Court. I
16 don't know exactly where we left off.

17 Did we talk about aggravating circumstances,
18 Mr. Sheahan?

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

20 MR. BOSLER: I don't think we did either.

21 Say you were a juror presented with a case, a
22 first degree murder case, and in that case you were
23 presented facts about premeditated killing of a person who
24 happened to be a police officer. And the police officer was
25 killed in the commission of a robbery, and you later learned

1 that the officer was killed due to his -- due to the
2 killer's perceived view of him as he belonged to a certain
3 race group or ethnic group, and that there was a mutilation
4 or damage to the officer after he had died, that type of
5 case.

6 As an honest person, you look at a case like
7 that, do you think you can envision circumstances where you
8 would impose the penalty of less than death?

9 A PROSPECTIVE JUROR: Yes.

10 MR. BOSLER: Things like whether the defendant
11 had been suffering from some mental illness at the time,
12 would that be something you would consider?

13 A PROSPECTIVE JUROR: Very much so.

14 MR. BOSLER: What about alcohol, drug use at
15 the time?

16 A PROSPECTIVE JUROR: I would look at that.

17 MR. BOSLER: It wouldn't matter whether it was
18 voluntary drug use, involuntary drug use, is that an issue
19 for you?

20 A PROSPECTIVE JUROR: It would matter,
21 definitely.

22 MR. BOSLER: How about if this person who had
23 done this -- we'll try to speak hypothetically. This person
24 who had done this thing caused the death of another person.
25 Would you want to know whether they had any prior criminal

1 history?

2 A PROSPECTIVE JUROR: Definitely.

3 MR. BOSLER: Is that something you would
4 consider in imposing the penalty?

5 A PROSPECTIVE JUROR: Yes.

6 MR. BOSLER: Would you agree, without
7 committing yourself, when you sit and judge whether someone
8 lives or someone dies, are there other factors other than
9 the ones I've just talked to you about in this decision of
10 whether someone lives or dies, are you willing to consider
11 other factors?

12 A PROSPECTIVE JUROR: I'd want to weigh the
13 factors that you and everybody else presented in front of me
14 and go from there.

15 MR. BOSLER: I appreciate your honesty.

16 Mr. McMoran, you have some family in law
17 enforcement.

18 A PROSPECTIVE JUROR: Yes, I do.

19 MR. BOSLER: If you could refresh my
20 recollection.

21 A PROSPECTIVE JUROR: My brother is a deputy
22 sheriff back in Colorado. I have two brother-in-laws
23 correctional officers in California.

24 MR. BOSLER: They know you're sitting on this
25 case?

1 A PROSPECTIVE JUROR: No.

2 MR. BOSLER: How do you feel knowing that you
3 have family members involved in law enforcement, sitting on
4 a case where a law enforcement officer has been allegedly
5 killed?

6 A PROSPECTIVE JUROR: I don't think it really
7 has an impact one way or the other.

8 MR. BOSLER: Why is that?

9 A PROSPECTIVE JUROR: I don't know what to tell
10 you. I just don't.

11 MR. BOSLER: Just in your mind, it's not a
12 significant issue for you?

13 A PROSPECTIVE JUROR: I don't think it's a
14 significant issue. I think it's a very serious case that
15 gives serious thought. I know one of the earlier questions
16 was: Would you feel you had to justify it and all this sort
17 of thing. I certainly don't think so.

18 MR. BOSLER: So for you, the fact that it's a
19 first degree murder is really the primary issue regardless
20 of who is actually killed -- for you?

21 A PROSPECTIVE JUROR: It's an important case,
22 yes.

23 MR. BOSLER: I apologize. I don't mean to drag
24 this on, but I need to ask you some specific questions.
25 Again, hopefully everybody understands why this is

1 important.

2 A police officer is killed. I'd like to speak
3 in a hypothetical situation. A police officer is killed.
4 The same four factors I've explained to Mr. Sheahan exist,
5 or you're given information about them, and I'll assume you
6 find that they've existed. What type of penalty do you
7 think is warranted under those circumstances?

8 A PROSPECTIVE JUROR: From what we said,
9 there's several different potential penalties that I would
10 have to weigh. I think the death penalty is obviously one
11 of them.

12 MR. BOSLER: Obviously it would be something
13 you would consider, right?

14 A PROSPECTIVE JUROR: Yes.

15 MR. BOSLER: Would you agree in this analysis
16 that if contrary information that mitigated the events,
17 nonaggravators, mitigators, if you were given information
18 about the mental condition of the accused, is that something
19 you would be willing to consider?

20 A PROSPECTIVE JUROR: It's a very serious
21 penalty. I would certainly consider that.

22 MR. BOSLER: Based upon the nature of the
23 penalty, you would consider the mental condition of the
24 defendant?

25 A PROSPECTIVE JUROR: Yes.

1 MR. BOSLER: Something like his age, would that
2 be something relevant to your consideration?

3 A PROSPECTIVE JUROR: I don't know. I suppose
4 it would. I'm not sure how that would fit in, but --

5 MR. BOSLER: No line that you could think,
6 after 25, before 25, something like that?

7 A PROSPECTIVE JUROR: Never really considered
8 it.

9 MR. BOSLER: Would you be interested in knowing
10 about whether the person had a prior criminal history or
11 even a violent history before the event?

12 A PROSPECTIVE JUROR: I would like to be able
13 to consider it.

14 MR. BOSLER: That would be something you'd be
15 interested in knowing and considering?

16 A PROSPECTIVE JUROR: Yes.

17 MR. BOSLER: Drug use, alcohol use?

18 A PROSPECTIVE JUROR: I would consider that.

19 MR. BOSLER: Can you think in your mind as you
20 sit here today, would there be other factors -- and I can't
21 mention them -- other factors that when you make this
22 life-death decision, you'd be willing to consider before you
23 ultimately said someone should live or someone should die?

24 A PROSPECTIVE JUROR: It's a very severe
25 penalty and I would consider whatever we had, instructions

1 we were allowed to consider. It's not taken lightly.

2 MR. BOSLER: I didn't mean to interrupt.

3 A PROSPECTIVE JUROR: I don't take it lightly.

4 MR. BOSLER: So you're at least willing to
5 listen to everything that's presented?

6 A PROSPECTIVE JUROR: Yes.

7 MR. BOSLER: Mr. Ralston, if you could, I know
8 that you earlier had said that you were involved in a case
9 where there were gruesome photos given and that had some
10 impact on you. Do you remember saying that?

11 A PROSPECTIVE JUROR: Yes.

12 MR. BOSLER: Give me a little more idea.

13 A PROSPECTIVE JUROR: It was a child abuse
14 case. The little boy had died and he was -- they had
15 pictures of him before, during and after the autopsy. And I
16 had nightmares about it.

17 MR. BOSLER: Had it been the first time that
18 you'd been exposed to autopsy, forensic type?

19 A PROSPECTIVE JUROR: No, I also found an
20 employee that was murdered in Houston, Texas and was a
21 witness in that trial. But the little boy was the one that
22 was hard to take.

23 MR. BOSLER: So you had actually been the
24 person who discovered a dead body in a business?

25 A PROSPECTIVE JUROR: Uh-huh.

1 MR. BOSLER: Knowing what you've heard from the
2 District Attorney, there is going to be photos. I would be
3 untruthful to you if I didn't say that they're disturbing,
4 gruesome type photos. How is that going to affect you when
5 you sit as a juror knowing that it's going to conjure up
6 these old memories? Do you feel uncomfortable about that?

7 A PROSPECTIVE JUROR: Yeah, I feel
8 uncomfortable about it. But I think I'm probably better
9 prepared for it than some people here.

10 MR. BOSLER: That could be true. How long ago
11 was this, the child case?

12 A PROSPECTIVE JUROR: It was in '92.

13 MR. BOSLER: Roughly seven years, give or take
14 a couple months.

15 You also put in your questionnaire that you
16 consider yourself as favoring the death penalty.

17 A PROSPECTIVE JUROR: Yes.

18 MR. BOSLER: Why is that?

19 A PROSPECTIVE JUROR: I believe that if someone
20 takes another person's life and premeditates doing it, that
21 that penalty is just.

22 MR. BOSLER: Is the fact that it's premeditated
23 murder that makes you think about the death penalty?

24 A PROSPECTIVE JUROR: I think that and other
25 circumstances can heighten that feeling that I have toward

1 it.

2 MR. BOSLER: The presence of aggravators?

3 A PROSPECTIVE JUROR: Yeah.

4 MR. BOSLER: You heard me discuss several times
5 the type of aggravators that may be considered in this case.
6 We'll wait and see whether they're proved.

7 In that type of case, you have a premeditated
8 murder. That's a given. If in this hypothetical case you
9 have a premeditated murder and you have the four
10 aggravators -- do you remember the ones I've spoken of
11 earlier? -- you have the killing of a police officer in the
12 commission of a robbery, you have the officer supposedly
13 being picked as a person because of race or national origin,
14 ethnicity, and you have damage, mutilation of the body.

15 That type of case, that type of first degree
16 murder case, in your mind is there a situation where you
17 would consider a penalty of less than death?

18 A PROSPECTIVE JUROR: If I found that all of
19 those or most of those were -- if I felt that they were
20 true, I would have a hard time thinking of anything that
21 would lessen my feeling about the death penalty.

22 MR. BOSLER: I appreciate your sharing that.
23 There may be other people that feel the same
24 way.

25 If you were presented with those facts, is

1 there facts that you would consider as a reason to impose a
2 penalty of less than death? Can you think in your mind --
3 even though this crime has happened and these factors are
4 there, either all of them or a majority of them, is there
5 other things you would consider that would bring you away
6 from that decision that, no, this other person deserves to
7 die also?

8 A PROSPECTIVE JUROR: Could you go through that
9 again?

10 MR. BOSLER: I can't repeat it verbatim, I'm
11 sure.

12 The situation where you find the four factors
13 I've just said, in your mind, as you sit there, thinking of
14 a crime, and you have to put yourself in the hypothetical
15 situation. I'm not going to ask you to commit this -- in
16 this hypothetical situation where you've found these four
17 factors and you're sitting as a juror in a first degree
18 murder case, can you think -- are there other things you
19 would want to know that would take you away from that
20 decision to impose death, or for you is it just if all those
21 factors are there then, unfortunately, the sentence is
22 death?

23 A PROSPECTIVE JUROR: So you're saying they're
24 not there and I have to find them or --

25 MR. BOSLER: No. Could there be? Could there

1 be factors that would lead you away from this thought that
2 deserves death?

3 MR. STANTON: I'm going to object. May counsel
4 approach?

5 THE COURT: Yes.

6 (A bench conference was held among Court and
7 counsel as follows:)

8 MR. STANTON: Your Honor, my objection here is
9 the authority, the *Morgan* case that counsel relies on. My
10 concern is that Mr. Bosler once again is asking improper
11 question of this and several jurors. I'm now objecting in
12 addition to an improper question of subject matter pursuant
13 to his own authority, *Morgan v. Illinois*. I'm also
14 objecting now for tactical reasons because of the State's
15 continual necessity to object during his voir dire process.

16 For the record, when I stand up and objected
17 this morning, I heard audible responses from prospective
18 panel members in the back when I object. Tactically, I
19 think the State's now in a position where we're constantly
20 having to do that.

21 I don't know if Mr. Bosler is attempting and
22 revisiting these same areas again for that reason or not.
23 But I want to impose that as an objection as well. *Morgan*
24 *v. Illinois* stands for the proposition that to exercise
25 challenges for cause, not to intelligently exercise
peremptory challenges, counsel may inquire as to whether

1 they would consider mitigating evidence.

2 The State has permitted them to go further than
3 that to address in a hypothetical factor the four
4 aggravators here, and now he's asking them not the operative
5 question that I think *Morgan* allows and that is: After
6 you've weighed aggravating versus mitigating, would you
7 still consider other evidence? That's what they're
8 permitted to do, not go into specifics that Mr. Bosler is
9 telling.

10 MR. BOSLER: Just for clarification, are you
11 saying I can't ask about, ask the jurors about specific
12 mitigators?

13 MR. STANTON: Yes. You can't ask about what --
14 the State's objection is that I do not believe that the law
15 permits defense counsel to inquire into what is specific
16 mitigation.

17 The presentation at the Judicial College
18 indicated that in a relationship to mitigating evidence as
19 jury instructions, it's the what-how test. You cannot
20 instruct a jury about what mitigation is. You can instruct
21 a jury how to consider mitigation evidence. If that's the
22 rule regarding the law through jury instructions, it has to
23 be the rule of law during voir dire.

24 THE COURT: Okay. So is it your position, now,
25 Mr. Stanton, that he shouldn't even be asking questions

1 regarding the statutory indicated mitigators?

2 MR. STANTON: For the purposes of what the
3 State has already permitted, the State's not making the
4 objection now. It is absolutely the State's position that
5 we have permitted voir dire examination by defense counsel
6 beyond what *Morgan v. Illinois* permits. The only thing that
7 *Morgan* permits them to do is: Can you consider mitigating
8 evidence after the aggravating and mitigating evidence has
9 been presented to them?

10 He's asked five jurors now the question, the
11 hypothetical of the aggravators: Would you then consider
12 the death penalty as the only possible punishment? That's
13 an improper question.

14 If he makes any challenges for cause, it's not
15 a basis to do it because he's not giving them the rest of
16 the analysis. And that is a consideration of all the
17 evidence. Aggravators and mitigators. That's what he
18 should be restricted to.

19 And, Judge, I'm asking that the State not have
20 to bounce up like a pogo stick every time he goes down this
21 area. He's now done it with -- we're not even done through
22 the second row of five rows and, tactically, the State's in
23 a predicament of continually objecting to his voir dire.
24 And for tactical reasons, we'd prefer not to have to
25 constantly object to his improper inquiry.

1 THE COURT: Well, I keep sustaining the
2 objections, so do you have a suggestion?

3 MR. STANTON: Yes. If Mr. Bosler can say on
4 the record -- we can have some conclusive -- I don't know
5 what Mr. Bosler is attempting to do, why he keeps on going
6 down this road about actual mitigation evidence. Maybe he
7 can cite to the Court and to me where in *Morgan* he believes
8 it permits him to ask a hypothetical stating the aggravators
9 and then what mitigators a potential juror has to articulate
10 or whether defense counsel can ask that question. I don't
11 see it in *Morgan*. My problem with it is -- I don't want to
12 object every single time he goes down the same line.

13 MR. BOSLER: I thought you said you wanted it
14 done as a hypothetical because it was less committal than
15 assuming these things actually existed.

16 THE COURT: I don't think I ever used the word
17 "hypothetical" today.

18 MR. STANTON: I don't believe you did either.

19 THE COURT: I don't remember ever using that
20 word.

21 MR. BOSLER: I need to talk about specific
22 aggravators and specific mitigators. I think what the
23 District Attorney is saying is that he's objecting that I
24 don't go through the aggravators and go through the
25 mitigators before I ask the juror will he consider a penalty

1 less than death.

2 THE COURT: I think what I have to do and why I
3 require the questions in writing in advance is because many
4 of your questions are improper as to form. They may not be
5 improper in totality in terms of content. But the form of
6 your questions continually are improper. Now, I don't
7 know -- I can't give you an indication of what's okay unless
8 I do the voir dire for you or Mr. Stanton does it for you.
9 And I don't think that's appropriate.

10 You keep asking me to tell you how to ask a
11 question. And I can't do that. You have to know how to ask
12 the question. If you want to write them down and submit
13 them to me and let Mr. Stanton see it, the questions you
14 want to ask in a general format, that's okay. That's why I
15 offered it last week. But if you don't, you've gotta figure
16 out the right way to ask the questions.

17 Now, I do keep sustaining the objection. And
18 when I go back and read this transcript, I'm sure it's going
19 to be very confusing because every time you come up here, I
20 hear something different.

21 I don't know exactly what you're going for
22 except for I get the sense that you think you're entitled to
23 broader inquiry than the *Witherspoon* issues and *Morgan*,
24 because you want to use the information to exercise
25 peremptory challenges. And I think at the last meeting I

1 said no, you're going beyond what is permissible for even
2 peremptory challenges.

3 So I think this inquiry has got to be curtailed
4 to what's required under *Morgan*, *Witherspoon* and the rest of
5 the case law. I'm not going to let you ask every juror what
6 their whole life thought process is in order to make your
7 peremptory challenges.

8 It's being very protracted at this point. So
9 do you want to write down your questions? If you want me to
10 say what the form is or do you understand what is okay and
11 not okay?

12 MR. BOSLER: Will the Court allow me to ask
13 people if they found a murder with these four aggravating
14 factors, would they always consider death as the only
15 possible punishment?

16 MR. STANTON: I don't have an objection to
17 counsel asking the question in the form that he does, like
18 he just did, but what counsel tends to do is he begins to
19 slowly modify that question.

20 If he wants to ask the question as *Morgan*
21 contemplates, what they call second weighing process, after
22 the weighing of the aggravating and mitigating
23 circumstances, would they still keep an open mind in
24 sentencing alternatives, that's what *Morgan* says is proper.
25 So if -- and I think that's what should be permitted as a

1 question.

2 THE COURT: So the question that you just asked
3 is okay. The modifications of that question that you've
4 made as you go through juror after juror is not okay.

5 MR. BOSLER: That question about the
6 aggravators is okay. Is the question about statutory
7 mitigators okay?

8 THE COURT: Why don't you repeat the question
9 that you want to ask.

10 MR. BOSLER: Would you consider the presence of
11 a particular statutory aggravator -- you could insert any of
12 the ones I've spoken about -- would you consider that as a
13 reason to impose the penalty of less than death?

14 THE COURT: The problem you get with that
15 question, which I have to clarify with at least one juror,
16 is that they don't understand that you are -- the difference
17 between "consider" and whether or not it makes a difference
18 in their determination.

19 The problem that we're getting into is jurors
20 think you're asking them: What will the result be if I
21 prove this mitigator to you? That's the way they're
22 answering and that's the problem. And I interceded myself
23 with regard to one of the jurors earlier this morning. And
24 I explained that "consider" means, will you look at the
25 evidence.